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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 25

[Docket No. NM178; Special Conditions No. 25–167–SC]

Special Conditions: Bombardier Model CL–600–2C10 Airplane; Automatic Takeoff Thrust Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Model CL–600–2C10 series airplanes. This new airplane will have a novel or unusual design feature associated with an Automatic Takeoff Thrust Control System (ATTCS). The applicable airworthiness regulations do not contain appropriate safety standards for approach climb performance using an ATTCS. These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 24, 2000.

Send your comments on or before December 18, 2000.

ADDRESSES: Mail your comments on these special conditions in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM178, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or deliver them to the Transport Airplane Directorate at that address. You must mark your comments: Docket No. NM178. You may inspect all comments at that address on weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gerry Lakin, FAA, Transport Airplane Directorate, Aircraft Certification Office, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, Washington, telephone (425) 227–1187; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because those procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received by the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM178." The postcard will be date stamped and returned to the commenter.

Background

On May 6, 1996, Bombardier Aerospace applied for an amendment to U.S. Type Certificate (TC) A21EA, through Transport Canada, to include the Bombardier Model CL600–2C10 series airplane (Regional Jet Series 700). The Model CL600–2C10 is a medium-sized transport category airplane powered by two General Electric Aircraft Engines (GEAE) CF34–8C1 turbofan engines mounted on the aft fuselage. Each engine can deliver up to 13,790 pounds of thrust at takeoff. The airplane will be capable of operating with 5 flight crewmembers and up to 78 passengers.

The Model CL600–2C10 will incorporate an unusual design feature to show compliance with the approach climb requirements of § 25.121(d) ("Climb: One-engine-inoperative"). This design feature is the Automatic Takeoff Thrust Control System (ATTCS), referred to by Bombardier as Automatic Power Reserve (APR). Appendix I to Title 14, Code of Federal Regulations (CFR), part 25, limits the application of performance credit for ATTCS to takeoff only. Since the airworthiness regulations do not contain appropriate safety standards for approach climb performance using ATTCS, special conditions are required to ensure a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.17 ("Designation of applicable regulations"), Bombardier must show that the Model CL600–2C10 meets the applicable provisions of:

- 14 CFR part 25, effective February 1, 1965, including amendments 25–1 through 25–86; and
- § 25.109 ("Accelerate-stop distance"), as amended by amendment 25–92.

The certification basis also may include later amendments to part 25 that are not relevant to these special conditions. In addition, the certification basis for the Model CL600–2C10 includes:

- 14 CFR part 34, effective September 10, 1990, including amendment 34–3, effective February 3, 1999, as well as any amendments in effect at the time of certification; and
- 14 CFR part 36, effective December 1, 1969, including amendments 36–1 through 36–22, and any following amendments that will be applicable on the date the type certificate is issued.

These special conditions form an additional part of the type certification basis. The certification basis also may include other special conditions that are not relevant to these specific special conditions.

If the Administrator finds that the applicable airworthiness regulations (in this case, part 25) do not contain adequate or appropriate safety standards for the Bombardier Model CL600–2C10 because of a novel or unusual design feature, the FAA may prescribe special conditions under the provisions of § 21.16 ("Special conditions"). The special conditions become part of the type certification basis in accordance with § 21.101(b)(2) ("Designation of applicable regulations").

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As stated previously, the Model CL600–2C10 will incorporate an unusual design feature, the ATTCS (referred to by Bombardier as APR), to show compliance with the approach climb requirements of § 25.121(d). The Model CL600–2C10 is powered by two GEAE CF34–8C1 turbofan engines mounted on the aft fuselage of the airplane, and equipped with Full Authority Digital Engine Controls (FADEC) that, in part, protect against exceeding engine limits. Further, the airplane incorporates a non-moving throttle system that functions by placing the throttle levers in detents for the takeoff and climb phases of flight; this allows the FADEC to schedule the power setting based on the phase of flight. With the APR and associated systems functioning normally as designed, all applicable requirements of part 25 will be met without requiring any action by the flight crew to increase power.

Automatic takeoff power control on the Model CL600–2C10 involves uptrimming the operating engine to maximum takeoff power (APR). These actions will be controlled by the FADEC. At takeoff, when the power levers are set to the Takeoff Go-Around (TOGA) detent, if there are no FADEC fault or failure messages displayed, the system is armed and APR will occur without any further action by the crew if an engine fails. During go-around, the uptrim is automatically armed.

Engine power is set to TOGA to initiate the takeoff roll. The value of TOGA for the current ambient conditions will be calculated and set by the FADEC. Following an engine failure during takeoff or go-around, the ATTCS will change the power reference on the operating engine to achieve the maximum takeoff power rating if the engine power was originally set to normal takeoff power. If the reduced power takeoff option is being used, the ATTCS will increase the power of the operating engine to the maximum takeoff rating, although the aircraft performance will be based on a 10% power increase only.

The engine operating limits (turbine temperature and N_1) for TOGA are set and displayed to the pilot when that rating is selected. These limits are set in such a way that the engine redline limits are not exceeded when an APR is engaged. When the maximum takeoff power rating is selected or triggered, the engine limits are reset automatically to reflect the engine redline limits.

The system is armed during all phases of the flight. The power levers will continue to function normally if the ATTCS should fail. Full takeoff power is available if the pilot elects to push the power levers past the takeoff power detent into the overtravel range.

Operations of all systems and equipment will be designed to function within the engine power range. Thrust increase from the initial to the maximum approved takeoff power level will be free of hazardous engine response characteristics.

The APR function, as described above, is part of the powerplant control system. The APR is always armed whenever power levers are above the idle detent. The system is verified before each flight via the FADEC built-in test feature. When the APR is triggered following an engine failure, an "APR" message will appear on the engine display.

The FADEC installed on the Model CL600–2C10 will ensure that inherent flight characteristics of the airplane do provide adequate warning if an engine failure occurs during takeoff. The natural yawing tendency of the airplane, coupled with flashing master warning and master caution lights, will provide the pilot with a clear indication of any engine failure during takeoff.

The part 25 standards for ATTCS, contained in § 25.904 (Automatic takeoff thrust control system (ATTCS)") and Appendix I, specifically restrict performance credit for ATTCS to takeoff only. Expanding the scope of the standards to include other phases of flight, such as go-around, was considered at the time the standards were issued, but flight crew workload issues precluded further consideration. As stated in the preamble to amendment 25–62:

> "In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher thrust for the approach climb [§ 25.121(d)] than for the landing climb (§ 25.119). The workload required for the flightcrew to monitor and select from multiple in-flight thrust settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase." (Refer to 52 FR 43153, November 9, 1987.)

The ATTCS incorporated on the Model CL600–2C10 allows the pilot to use the same power setting procedure during a go-around, regardless of whether or not an engine fails. In either case, the pilot obtains go-around power by moving the throttles into the forward (takeoff/go-around) throttle detent. Since the ATTCS is permanently armed, it will function automatically following an engine failure, and advance the remaining engine to the ATTCS thrust level. Therefore, this design adequately addresses the pilot workload concerns identified in the preamble to amendment 25–62.

Accordingly, these special conditions would require a showing of compliance with those provisions of § 25.904 and Appendix I that are applicable to the approach climb and go-around maneuvers.

The definition of a critical time interval for the approach climb case, during which time it must be extremely improbable to violate a flight path based on the gradient requirement of § 25.121(d), is of primary importance. That gradient requirement implies a minimum one-engine-inoperative flight path capability with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

Applicability

As discussed above, these special conditions would be applicable to the Bombardier Model CL600–2C10. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Bombardier Model CL600–2C10 airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and public comment process in several prior instances, and has been derived without substantive change from those special conditions previously issued. It is unlikely that prior public comment on this action would result in a significant change from the substance contained in this document. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Bombardier Model CL600–2C10 airplane.

1. *General.* An Automatic Takeoff Thrust Control System (ATTCS) is defined as the entire automatic system, including all devices, both mechanical and electrical that sense engine failure, transmit signals, actuate fuel controls or power levers, or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and furnish cockpit information on system operation.

2. *ATTCS.* The engine power control system that automatically resets the power or thrust on the operating engine (following engine failure during the approach for landing) must comply with the following requirements stated in paragraphs 2.a, 2.b, and 2.c:

a. *Performance and System Reliability Requirements.* The probability analysis must include consideration of ATTCS failure occurring after the time at which the flightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

b. *Thrust or Power Setting.*

(1) The initial thrust or power setting on each engine at the beginning of the takeoff roll or go-around may not be less than any of the following:

(i) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

(ii) That shown to be free of hazardous engine response characteristics and not to result in any unsafe aircraft operating or handling characteristics when thrust or power is increased from the initial takeoff or go-around thrust or power to the maximum approved takeoff thrust or power.

(2) For approval of an ATTCS system for go-around, the thrust or power setting procedure must be the same for go-arounds initiated with all engines operating as for go-arounds initiated with one engine inoperative.

c. *Powerplant Controls.* In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety. The ATTCS must be designed to:

(1) Apply thrust or power on the operating engine(s), following any one engine failure during takeoff or go-around, to achieve the maximum approved takeoff thrust or power without exceeding engine operating limits; and

(2) Provide a means to verify to the flightcrew before takeoff and before beginning an approach for landing that the ATTCS is in a condition to operate.

3. *Critical Time Interval.* The definition of the Critical Time Interval in appendix I, § I25.2(b) shall be expanded to include the following:

a. When conducting an approach for landing using ATTCS, the critical time interval is defined as follows:

(1) The critical time interval *begins* at a point on a 2.5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding to the part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) The critical time interval *ends* at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the part 25 minimum one-engine-inoperative approach climb gradient. The all-engines-operating go-around flight path and the part 25 one-engine-inoperative approach climb gradient flight path originate from a common point on a 2.5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

b. The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the Airplane Flight Manual (AFM).

c. The critical time interval is illustrated in the following figure:

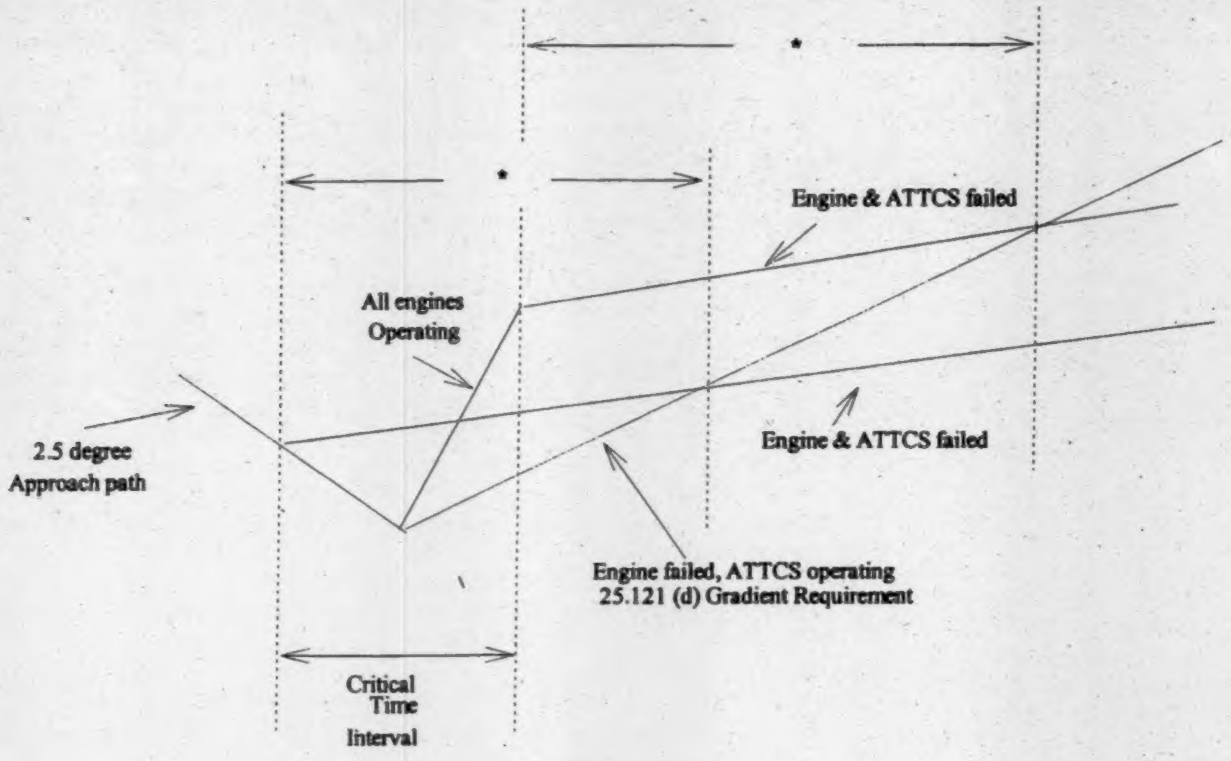

* The engine and ATTCS failed time interval must be no shorter than the time interval from the point of simultaneous engine and ATTCS failure to a height of 400 feet used to comply with I25.2(b) for ATTCS use during takeoff.

Issued in Renton, Washington, on October 24, 2000.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28294 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–17]

Revision of Class E Airspace, Fayetteville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises the Class E Airspace at Fayetteville, AR.

EFFECTIVE DATE: The direct final rule published at 65 FR 54953 is effective 0901 UTC, November 30, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 12, 2000, (65 FR 54953). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 30, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on October 27, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–28292 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–18]

Revision of Class D Airspace, Robert Gray Army Airfield, TX; and Revocation of Class D Airspace, Hood Army Airfield, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises the Class D Airspace at Robert Gray Army Airfield, TX. and revokes the Class D Airspace at Hood Army Airfield, TX.

EFFECTIVE DATE: The direct final rule published at 65 FR 54950 is effective 0901 UTC, November 30, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 12, 2000, (65 FR 54950). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 30, 2000. No adverse comments were received and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on October 27, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–28291 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–15]

Revision of Class E Airspace, Tulsa, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises the Class E Airspace at Tulsa, OK.

EFFECTIVE DATE: The direct final rule published at 65 FR 54952 is effective 0901 UTC, November 30, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 12, 2000, (65 FR 54952). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 30, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on October 27, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–28293 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740 and 774

[Docket No. 000204027–0266–02]

RIN 0694–AC14

Revisions to License Exception CTP; Corrections

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On October 13, 2000 the Bureau of Export Administration published a final rule (65 FR 60852) revising License Exception CTP. This rule corrects inadvertent errors or omissions in the October 13 rule. This rule revises regulations to show the correct effective date that Estonia becomes a Tier 2 country (December 28, 2000). This rule also revises the License Requirements section of Export Control Classification Number (ECCN) 4D002 consistent with previously agreed to changes in the Wassenaar List of Dual-Use Goods and Technologies. In addition, this rule corrects a typographical error that appeared in the regulations. Finally, this preamble clarifies that the preambular text in the October 13 rule incorrectly described changes to ECCNS 4D003 and 4E003. These changes were to ECCNS 4D001 and 4E001 and were correctly set forth in the regulatory text of the October 13 rule.

DATES: This rule is effective October 13, 2000.

FOR FURTHER INFORMATION CONTACT: Kirsten Mortimer, Regulatory Policy Division, Bureau of Export Administration, at (202) 482–2440.

SUPPLEMENTARY INFORMATION: Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), August 10, 1999 (64 FR 44101), and August 8, 2000 (65 FR 48347).

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This regulation involves collections previously approved by the Office of Management and Budget under control numbers 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes per manual submission and 40 minutes per electronic submission. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Information is also collected under OMB control number 0694–0107, "National Defense Authorization Act," Advance Notifications and Post-Shipment Verification Reports, which carries a burden hour estimate of 15 minutes per report. This rule also involves collections of information under OMB control number 0694–0073, "Export Controls of High Performance Computers" and OMB control number 0694–0093, "Import Certificates and End-User Certificates".

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism

assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is issued in final form.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade.

Accordingly, parts 740 and 774 of the Export Administration Regulations (15 CFR Parts 730–799) are amended to read as follows:

1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

2. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

PART 740—CORRECTED

3. Section 740.7 is amended by revising the phrase "As of December 26, 2000" in the last sentence of paragraphs (c)(1) and (d)(1) to read "As of December 28, 2000", and by revising the phrase "greater that 12,500 MTOPS" in paragraph (d)(4) to read "greater than 12,500 MTOPS".

PART 774—CORRECTED

4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers is amended by revising the License Requirements section of Export Control Classification Number (ECCN) 4D002, to read as follows:

4D002 "Software" specially designed or modified to support "technology" controlled by 4E (except 4E980, 4E992, and 4E993).

License Requirements

REASON FOR CONTROL: NS, MT, AT, NP, XP

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to "software" for equipment controlled by 4E for MT reasons	MT Column 1.
AT applies to entire entry	AT Column 1.

NP applies to "software" for computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "software" for computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

* * * * *

Dated: October 27, 2000.

Steven C. Goldman,

Acting Assistant Secretary for Export Administration.

[FR Doc. 00–28307 Filed 11–2–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–126–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Pennsylvania regulatory program (Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The amendment revises certain portions of 25 Pennsylvania Code Chapter 86, Surface and Underground Mining: General, pertaining to ownership and control, bonding, civil penalties and areas unsuitable for mining. The amendments are intended to revise the Pennsylvania program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center (Amtrack), 415 Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background on the Pennsylvania program, including the Secretary's findings and the disposition of comments can be found in the July 30, 1982 **Federal Register** (47 FR 33079). Subsequent actions concerning the regulatory program amendments are identified at 30 CFR 938.11, 938.15 and 938.16.

II. Submission of the Amendment

By letter dated November 2, 1999 (Administrative Record No. PA–845.02), the Pennsylvania Department of Environmental Protection (PADEP) submitted an amendment to its approved regulatory program pertaining to ownership and control, bonding, civil penalties and areas unsuitable for mining pursuant to the Federal regulations at 30 CFR 732.17(b). Pennsylvania did so as a result of its Regulatory Basics Initiative (RBI) intended to revise regulations considered to be unclear, unnecessary or more stringent than the corresponding Federal regulation. The proposed rulemaking was published in the November 29, 1999 **Federal Register** (64 FR 66595). The public comment period closed on December 29, 1999. No one requested an opportunity to speak at a public hearing, so no hearing was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendments to the Pennsylvania permanent regulatory program. Revisions not specifically discussed below concern paragraph notations to reflect organizational changes resulting from this amendment.

Section 86.1. Definitions

1. *Owned or controlled or owns or controls.* PADEP modifies the title to the definition by substituting the word "and" for the second "or" so it now reads "Owned or controlled and owns or controls." This change renders the title substantively identical to, and therefore no less effective than, the title to the Federal counterpart definition at 30 CFR 773.5. PADEP also modifies subparagraph (iii)(E) by deleting the specified percentages (10–50%) of instruments of ownership of a corporate entity necessary to establish a presumption of ownership or control, and by substituting a reference to percentages in the corresponding Federal regulations at 30 CFR 773.5(b)(5). This provision of the Federal regulations was vacated by the United States Court of Appeals for the District of Columbia Circuit in *National Mining Ass'n.* v. *United States Dep't. of the Interior,* 177 F.3d 1, 7 (D.C. Cir. 1999). However, while the vacated Federal regulation cannot be implemented in a Federal program, the text of the regulation has not been deleted from the Code of Federal Regulations.

Moreover, pursuant to section 505(b) of SMCRA, 30 U.S.C. 1255(b), any state law or regulation "which provides for more stringent land use and environmental controls and regulations of surface coal mining operations than do the provisions' of SMCRA "or any regulations issued pursuant thereto shall not be construed to be inconsistent" with SMCRA. As such, state programs may still choose to employ this criterion in defining ownership and control. Therefore, we are approving subparagraph (iii)(E) because it provides a basis for establishing a rebuttable presumption of ownership and control that is in addition to those contained in the Federal regulations.

2. *Related party.* PADEP is excluding from this definition persons who are excluded as owners or controllers based on a percentage of ownership under the definition of "owned or controlled and owns or controls." The term "related party" does not exist in the Federal regulations, but it has previously been approved by OSM, and remains part of Pennsylvania's approved program. We are approving this change to the definition because it makes it clear that the term "related party" is consistent with the term "owned or controlled and owns or controls," and because it does not render the Pennsylvania program inconsistent with SMCRA or the Federal regulations.

3. *Willful violation.* PADEP is adding this definition which states that a willful violation is an act or omission which violates the acts, this chapter, Chapter 87, 88, 89, or 90, or a permit condition required by them, committed by a person who intends the result which actually occurs.

The Director finds that this definition is substantively identical to, and therefore no less effective than the definition found in the Federal rules at 30 CFR 701.5.

Section 86.124(a)(6) Areas Unsuitable for Mining

PADEP is removing current language and substituting the following statement:

> The Department may determine not to process any petition for a designation under § 86.122 (relating to criteria for designating lands as unsuitable) insofar as it pertains to an area for which an administratively complete surface mining operation permit application has been filed and the first newspaper notice has been published. The Department will provide written notice to the petitioner with a statement of its findings.

The Director finds that the revised language is substantively identical to and therefore no less effective than the corresponding portion of the Federal regulation at 30 CFR 764.15(a)(6).

Section 86.152(d) Adjustments (Bond Amount)

PADEP is adding section (d) to require notification of proposed adjustments to bond amounts to the permittee, the surety and any person with a property interest in collateral who has requested such notification. PADEP also adds language providing the permittee an opportunity for informal conference on the adjustment. The Director finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 800.15(b).

Section 86.156 Form of the Bond

PADEP is adding, in new subsection (3), a self bond to the type of bonds the Department may accept. Existing subsection (3) is re-numbered as (4) and modified to state that the Department will accept "[a] combination of bonding instruments as provided in § 86.160 (relating to combination of bonding instruments) for coal surface mining activities." Existing subsections (4) and (5) are re-numbered as (5) and (6), respectively. The Director finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 800.12.

Section 86.160 Combination of Bonding Instruments

PADFP is changing the title of this section from "Surety/collateral combination bond" to "Combination of Bonding Instruments," and is further modifying the section to include self bonds as part of the combination of bonds that may be accepted. The Director finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 800.12(d).

Section 86.171 Procedures for Seeking Release of Bond

PADEP is modifying subsection (d) of this section, which currently requires the Department to inspect a site that has applied for bond release within 30 days of receipt of the complete application, or as soon thereafter as possible, to require inspection within 30 days of receipt of the completed application for bond release "or as soon thereafter as weather conditions permit." The Director finds that the changes described above are substantively identical to and therefore no less effective than corresponding language in the Federal Regulations at 30 CFR 800.40(b).

Section 86.182 Procedures

PADEP is adding a new subsection (a) which requires the Department to notify the permittee and surety of its intent to forfeit the bond. Existing subsections regarding bond forfeiture currently lettered as (a) through (g) are re-lettered as (b) through (h) without modification. The Director finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 800.50(a)(1).

Section 86.193 Assessment of Penalty

PADEP is increasing the threshold for assessment of a civil penalty from $1000 to $1100 in subsections (b) and (c). PADEP also eliminates mandatory penalty amounts for violations of conducting surface mining activities off the permitted area by deleting subsections (d) through (g). The deleted provisions in subsections (d) through (g) have no Federal counterparts. The Department is retaining the requirement, in subsection 86.193(a), that it assess a civil penalty for each violation included as a basis for a cessation order. The Director notes that the Pennsylvania provision, as amended, imposes a lower threshold for mandatory assessment of a civil penalty ($1,100) than the threshold ($1,210) prescribed in the Federal regulations at 30 CFR 845.12(b). Otherwise, the amendments render the Pennsylvania provision substantively identical to its Federal counterparts. Therefore, the Director finds that the changes described above are consistent with the civil penalty provisions in the Federal Regulations at 30 CFR 845.12.

Section 86.194 System for Assessment of Penalties

PADEP is adding language in subsection (b)(1)(vi) allowing an additional civil penalty amount up to the statutory limit to be assessed in extraordinary circumstances.

PADEP also specifies $3,000 as the upper limit to be assessed based on seriousness in subsection (b)(1).

PADEP also modifies subsection (b)(2), "Culpability," by lowering the maximum limit from $1500 to $1200. Also, the minimum amount for violations of willful or reckless conduct was lowered from $2,000 to $260.

PADEP is also changing the criteria for credit to be given for speed of compliance in subsection (b)(3).

PADEP deletes the phrase "without limitation" in subsection (b)(4), pertaining to penalties for costs expended by the Commonwealth as a result of the violation. The presumed effect of this deletion is that costs are now limited to those listed in subdivisions (i) through (iv) of subsection (b)(4).

PADEP also reduces the review period for the history of previous violations from two years to one in subsection (b)(6).

PADEP is also adding new subsection (f) entitled "Revision of civil penalty." Subsection (1) is added and explains that the Department may revise a civil penalty calculated in accordance with dollar limits included in subsection (b) and that the basis for revision would be fully explained and documented. New subsection (2) is added to explain that if the Department revises the civil penalty, the Department will use the general criteria in subsection (b) and will give a written explanation of the basis for the revision to the person to whom the order was issued.

The Director finds that the changes described above are consistent with the Federal regulations at 30 CFR 845.13 and 845.16, except as follows. Subsection (f) contains language that is substantively identical to its Federal counterpart at 30 CFR 845.16(a), but it is punctuated differently, with the result that its meaning differs from the Federal regulation. In order to clarify the meaning of this provision, so that it can be interpreted to be no less effective than its Federal counterpart, the period after the first sentence, ending with "subsaction (b)," must be changed to a comma, and the comma after the term "demonstrably unjust" must be changed to a period. Pennsylvania was informed of this in a teleconference by the Harrisburg, PA OSM Office, and agreed to make the change. The change was published in the Pennsylvania Bulletin dated September 23, 2000. (Administrative Record No. Pa. 845.09) The Director thus finds that the changes described render this provision substantively identical to and therefore consistent with the Federal regulations at 30 CFR 845.16(a).

Section 86.195(c) Penalties Against Corporate Officers

PADEP is adding new subsection (c) which allows a corporate officer to postpone payment of an individual civil penalty where the officer or permittee has agreed in writing on a plan for abatement of or compliance with a failure to abate order. The Director finds that the changes described above are substantively identical to and therefore consistent with the Federal Regulations at 30 CFR 846.18(c).

Section 86.201 Procedures for Assessment of Civil Penalties

PADEP is adding new subsection (a) to allow operators to submit information to the Department and the inspector concerning violations within 15 days of service of a notice of violation or order. Existing subsections (a) through (d) are re-lettered (b) through (e), respectively. PADEP is adding new subsection (f) to bar the use of evidence obtained in an assessment conference in formal review proceedings. Existing subsection (f) is re-lettered as (g). The Director finds that the changes described above are substantively identical to and therefore consistent with the Federal Regulations at 30 CFR 845.17(a) and 845.18(f).

Section 86.202 Final Action

PADEP is changing the title of this section from "Appeal Procedures" to "Final Action." The change is non-substantive in nature and does not render this provision inconsistent with its Federal counterpart at 30 CFR 845.19.

IV. Summary and Disposition of Comments

Federal Agency Comments

On November 3, 1999, we asked for comments from various Federal agencies who may have an interest in the Pennsylvania amendment (Administrative Record Number 845.03). We solicited comments in accordance with section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations. The Federal Mine Safety and Health Administration responded that it did not have any comments in letters dated November 19, 1999 (Administrative Records Numbers PA–845.04 and PA–845.05.)

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(i) and (ii), OSM is required to solicit comments and obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. However, by letter dated November 3, 1999, we requested comments from EPA on the State's proposed amendment of November 2, 1999 (Administrative Record Number 845.02), and EPA responded in its letter dated November 29, 1999 (Administrative Record Number PA–

845.07) that it did not have any comments.

Public Comments

No comments were received in response to our request for public comments.

V. Director's Decision

Based on the above findings, we are approving the amendments to the Pennsylvania program. The Federal regulations at 30 CFR Part 938, codifying decisions concerning the Pennsylvania program, are being amended to implement this decision. This final rule is being made effective immediately (November 3, 2000) to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Pennsylvania program, we will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials. We will require that Pennsylvania enforce only such provisions.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities.

Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 11, 2000.

Allen D. Klein,
Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 938.15 is amended in the table by adding a new entry in

chronological order by "Date of Final Publication" to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
November 2, 1999	November 3, 2000	25 Pa. Code 86.1, 86.124, 86.152, 86.156, 86.160, 86.171, 86.182, 86.193, 86.194, 86.195, 86.201, and 86.202.

[FR Doc. 00–28268 Filed 11–2–00; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 306 and 356

[Department of the Treasury Circular, Public Debt Series No. 1–93]

Marketable Book-Entry Treasury Bills, Notes, and Bonds; Minimum Par Amounts Required for STRIPS

AGENCY: Bureau of Public Debt, Fiscal Service, Department of Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Treasury," "We," or "Us" is issuing in final form amendments to 31 CFR part 306 (General Regulations Governing U.S. Securities) and 31 CFR part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). The purpose of these amendments is to simplify and enhance market participants' ability to strip Treasury fixed-principal securities. "Stripping" a security means to separate it into its principal and interest components. The amendment modifies the minimum and multiple amounts that are required to strip Treasury fixed-principal securities by setting them each at $1,000. It also eliminates the multiple requirement for the interest components that result from stripping, in effect making Treasury fixed-principal securities strippable "to the penny." Further, the amendment eliminates Exhibit C of this part, "Minimum Par Amounts for Fixed-Principal STRIPS," since this table will no longer be necessary. Finally, the amendment provides us the flexibility to designate a Treasury note or bond as strippable even if the note or bond was not originally designated as strippable by its offering announcement. This flexibility will allow us to make eligible for stripping outstanding five-year Treasury notes issued prior to September 30, 1997.

EFFECTIVE DATE: March 1, 2001, except for the amendment of § 356.31(a), which is effective November 3, 2000.

ADDRESSES: You may download this final rule from the Bureau of the Public Debt's Internet site at the following address: www.publicdebt.treas.gov. It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC, 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director) or Chuck Andreatta (Senior Financial Advisory), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632, or e-mail us at govsecreg@bpd.treas.gov.

SUPPLEMENTARY INFORMATION: 31 CFR part 356, also referred to as the uniform offering circular, sets out the terms and conditions for the sale and issuance to the public of marketable Treasury bills, notes, and bonds.[1] The uniform offering circular, in conjunction with offering announcements, represents a comprehensive statement of these terms and conditions.[2] This final rule modifies § 356.31, which pertains to STRIPS (Separate Trading of Registered Interest and Principal of Securities). It also eliminates Exhibit C ("Minimum Par Amounts for Fixed-Principal STRIPS"). In addition, this rule amends 31 CFR 306.128, which pertains to Treasury's discretion to supplement, amend, or revise regulations governing U.S. securities.

Stripping Treasury Securities "To the Penny"

The STRIPS program, which began in January 1985, allows holders of book-entry (electronic) Treasury notes and bonds to separate those securities into their separate principal and interest components. These components can then be held and traded separately as zero-coupon securities. The interest components ("TINTs"), but not the principal components, are fungible (interchangeable). This means that TINTs with the same maturity date have the same identifying CUSIP number regardless of the underlying security from which they were stripped. Securities with the same CUSIP number are considered to be the same security.

Since its implementation, the STRIPS program has required that the par amount of a fully constituted Treasury fixed-principal[3] security to be stripped must be an amount that, based on the stated interest rate of the security, will produce a TINT of $1,000 or a multiples of $1,000. Any amount greater than this par amount must be in a multiple of that amount. Once a book-entry security has been separated, each interest and principal component can then be maintained and transferred in multiples of $1,000. This $1,0000 minimum and multiple requirement conforms with the minimum and multiple requirement of fully constituted Treasury notes and bonds.

The $1,000 multiple requirement for the TINTs, however, results in a wide disparity in the par amounts of fully constituted (unstripped) securities with different interest rates that are needed to produce TINTs in multiples of $1,000. For example, a note or bond with an interest rate of 6⅛ percent requires a minimum of $1,600,000 of the fully constituted security for stripping in order for the resulting TINTs to be in a multiple of $1,000. In this example, the resulting TINTs have payment amounts of $49,000. By contrast, a note or bond with an interest rate of 6¾ percent requires only a minimum par amount of $32,000 to be stripped, with resulting TINTs of $1,000, which is the minimum amounts for TINTs.

When we implemented a process to make TINTs from inflation-indexed securities fungible on March 31, 1999,[4] it was necessary for us to convert the payment values of the TINTs to "adjust values," which could be maintained and transferred "to the penny." At that time, we stated that we would "consider at a later date the desirability of making changes to the minimum and multiple requirements for fixed-principal TINTs, * * * and permitting fixed-principal TINTs to be held in amounts to the penny."[5]

On November 1, 2000, we announced that, effective March 1, 2001, we will be changing the minimum and multiple requirements for stripping Treasury fixed-principal securities. We have decided to make these changes because elimination of the $1,000 minimum and multiple requirements will make stripping easier. Market participants will no longer be required to deliver fully constituted securities in widely different amounts depending on the interest rate of the underlying security. By simplifying the requirements for STRIPS, our goal is to enhance the liquidity and efficiency of the STRIPS market.

Increasing the Number of Strippable Securities

Enhancing the liquidity of the STRIPS market is also our objective in modifying the STRIPS rules to permit us to designate a note or bond as strippable even if the note or bond was not originally designated as strippable by its offering announcement. When the STRIPS program was first implemented in 1985, only Treasury notes and bonds with maturities of 10 years or longer were eligible for stripping. At that time there was little market interest in stripping securities with maturities less than 10 years.

By 1997, however, interest in stripping shorter-term Treasury notes had developed. Consequently, on September 17, 1997, we announced that all Treasury notes issued on or after September 30, 1997, were eligible for STRIPS.

Because Treasury securities currently can be made eligible for STRIPS only by being designated as such in their offering announcements, we have not been able to make eligible for stripping outstanding shorter-term (five-year) notes that were issued prior to September 30, 1997. This amendment to the uniform offering circular will allow us to do so. As a result, we plan to announce that we are making eligible for stripping five-year notes issued prior to September 30, 1997, thereby allowing for an increase in the supply of TINTs that mature in the next two years.

Amendments, Revisions, and Deletions

Accordingly, we are amending the uniform offering circular's general paragraph on STRIPS, 356.31(a), so that we may designate Treasury notes and bonds as being eligible for stripping at a later date if they were not designated as being eligible in their offering announcement. We are also amending paragraph 356.31(b)(1), which provides the minimum par amount and multiple requirements for stripping Treasury fixed-principal securities, so that they may be stripped to the penny. We are also amending 31 CFR 306.128 in order to allow outstanding Treasury notes and bonds that we issued prior to the effective date of the uniform offering circular, March 1, 1993, to also be stripped to the penny. As a result of these amendments, we are removing Exhibit C to the uniform offering circular because this table is no longer necessary.

We are issuing this amendment in final form rather than proposed form in order to more quickly simplify and expand the STRIPS market. In addition, there is no negative impact on the holders of the issues of the securities affected. This change provides an additional feature that should enhance the marketability of these issues.

Procedural Requirements

This final rule is not a "significant regulatory action" under Executive Order 12866. The notice and public procedures and delayed effective date requirements of the Administrative Procedure Act also do not apply, under 5 U.S.C. 553(a)(2).

Since no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons stated in the preamble, we amend 31 CFR Chapter II, Subchapter B, as follows:

PART 306—GENERAL REGULATIONS GOVERNING U.S. SECURITIES

1. The authority citation for part 306 continues to read as follows:

Authority: 31 U.S.C. Chapter 31; 5 U.S.C. 301; 12 U.S.C. 391.

2. Revise § 306.128 to read as follows:

§ 306.128 Supplements, amendments or revisions.

The Secretary of the Treasury may at any time, or from time to time, prescribe additional supplemental, amendatory or revised regulations with respect to U.S. securities. The Secretary also may lower the minimum and multiple requirements for stripping marketable Treasury notes and bonds issued prior to March 1, 1993, through an announcement as provided in § 356.31 of this title.

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

3. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

4. Amend § 356.31 as set forth below:
a. Revise the first sentence in paragraph (a), and
b. Revise paragraph (b)(1) to read as follows:

§ 356.31 STRIPS.

(a) *General.* A note or bond may be designated in the offering announcement, or later by announcement by Treasury, as eligible for the STRIPS program. * * *

(b) *Treasury fixed-principal securities—(1) Minimum par amounts required for STRIPS.* The minimum par amount of a fixed-principal security that may be stripped into the components described in paragraph (a) of this section is $1,000. Any par amount to be stripped above $1,000 must be in a multiple of $1,000.

* * * * *

Exhibit C to Part 356 [Removed]

5. Remove Exhibit C to Part 356.

Dated: October 31, 2000.

Donald V. Hammond,
Fiscal Assistant Secretary.

[FR Doc. 00–28280 Filed 11–1–00; 8:45 am]

BILLING CODE 4810-39-P

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[1] Includes both fixed-principal and inflation-indexed Treasury securities.

[2] The uniform offering circular was published as a final rule on January 5, 1993 (58 FR 412). The circular, as amended, is codified at 31 CFR part 356.

[3] We use the term "fixed-principal" to distinguish such securities from Treasury "inflated-indexed" securities, whose principal amounts are adjusted periodically for inflation.

[4] 63 FR 35782 (June 30, 1998).

[5] 63 FR 35783 (June 30, 1998).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 241–0244a; FRL–6893–1]

Revisions to the California State Implementation Plan, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Antelope Valley Air Pollution Control

District portion of the California State Implementation Plan (SIP). These revisions concern the recission of rules and associated negative declarations for one volatile organic compound (VOC) source category and one oxides of nitrogen (NO_X) source category for the Antelope Valley Air Pollution Control District (AVAPCD). We are approving these local rule recissions and negative declarations under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on January 2, 2001, without further notice, unless EPA receives adverse comments by December 4, 2000. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1184.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rule recissions and negative declarations we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE RECISSIONS AND NEGATIVE DECLARATIONS

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAPCD	1103 & Negative Declaration	Pharmaceuticals and Cosmetic Manufacturing Operations.	01–18–00	03–28–00
AVAPCD	1159 & Negative Declaration	Nitric Acid Units—Oxides of Nitrogen	01–18–00	03–28–00

On May 19, 2000, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

The current versions of Rules 1103 and 1159 were approved in the SIP for the South Coast Air Quality Management District (SCAQMD) on July 2, 1982 and July 12, 1990, respectively. At that time, these rules applied in all of SCAQMD, including the Antelope Valley region of Los Angeles County. [1] The AVAPCD was created pursuant to California Health and Safety Code (CHSC) section 40106 and assumed all air pollution control responsibilities of the SCAQMD in the Antelope Valley region effective July 1, 1997, including responsibility for implementing Rules 1103 and 1159.

C. What Is the Purpose of the Submitted Rules?

Rule 1103 establishes limits for VOC emissions produced by Pharmaceuticals and Cosmetics Manufacturing Operations. Rule 1159 establishes limits for oxides of nitrogen (NO_X) emissions produced by Nitric Acid Plants. The recissions and associated negative declarations were submitted because there are no applicable manufacturing or nitric acid facilities within AVAPCD jurisdiction.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule Recissions?

These SIP revisions must be consistent with Clean Air Act applicable manufacturing or nitric acid facilites within AVAPCD jurisdiction.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule Recissions?

These SIP revisions must be consistent with Clean Air Act requirements for RACT (see sections 182(a)(A) and 182(F)) and SIP relaxations (see sections 110(l) and 193.) To do so, the submittal should provide reasonable assurance that no sources subject to Rules 1103 or 1159 currently exist or are planned for the AVAPCD.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rule recissions and associated negative declarations are consistent with the relevant policy and guidance regarding RACT and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule recissions because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule recissions. If we receive timely adverse comments, the direct final approval will be effective without further notice on January 2, 2001. This will incorporate these rule recissions into the federally enforceable SIP.

III. Background Information

Why Were These Rules Submitted Initially?

VOCs and NO_X help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC and NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC and NO_X rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 2, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 4, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(69)(v) and (c)(168)(i)(H)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(69) * * *

(v) Previously approved on July 8, 1982 in paragraph (c)(69)(iii) of this section and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rule 1103.

* * * * *

(168) * * *

(i) * * *

(H) * * *

(*3*) Previously approved on July 12, 1990 in paragraph (i)(H)(*1*) of this section and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rule 1159.

* * * * *

3. Section 52.222 is amended by adding paragraphs (a)(6)(iv) and (b)(4)(iii) to read as follows:

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[1] The Antelope Valley region of Los Angeles County is contained within the Federal area known as the southeast Desert Modified Air Quality Management Area and the region identified by the State of California as the Mojave Desert Air Basin.

§ 52.222 Negative declarations.

(a) * * *

(6) * * *

(iv) Pharmaceuticals and Cosmetic Manufacturing Operations submitted on March 28, 2000 and adopted on January 18, 2000.

* * * * *

(b) * * *

(4) * * *

(iii) Nitric Acid Units submitted on March 28, 2000 and adopted on January 18, 2000.

* * * * *

[FR Doc. 00–27659 Filed 11–2–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301043; FRL–6740–9]

RIN 2070–AB78

Sodium *o*-nitophenolate, sodium *p*-nitrophenolate, sodium 5-nitroguaiacolate, and the End–Use Product Atonik® Exemption From the Requirement of a Tolerance and Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the active ingredients (a.i.) sodium *o*-nitophenolate, sodium *p*-nitrophenolate, sodium 5-nitroguaiacolate, on all food commodities when used as Plant Growth Regulators on growing crops. These three a.i. comprise the end–use product ATONIK®, ASAHI Manufacturing Company, Ltd., c/o Chemical Consultants International, Inc., West 98th Terrace, Suite 100, Overland Park, KS, 66212, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of sodium *o*-nitophenolate, sodium *p*-nitrophenolate, and sodium 5-nitroguaiacolate and reassess the three existing tolerances for those three a.i..

DATES: This regulation is effective November 3, 2000. Objections and requests for hearings, identified by docket control number OPP–301043, must be received by EPA on or before January 2, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301043 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Richard King, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8052; e-mail address: king.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301043. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 8, 1998 (63 FR 36901) (FRL–5791–6), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e), as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide tolerance petition by ASAHI Manufacturing Company, Ltd., c/o Chemical Consultants International, Inc., West 98th Terrace, Suite 100, Overland Park, KS, 66212. This notice included a summary of the petition prepared by the petitioner ASAHI Manufacturing Company, Ltd. There were no comments received in response to the notice of filing.

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) defines "safe " to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." Additionally, section 408(b)(2)(D) requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues" and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The Biopesticide and Pollution Prevention Division (BPPD) has reviewed submitted data to assess the potential hazards and exposures that might result from the proposed use of ATONIK® in or on all food commodities. The plant growth regulator will be formulated into an End–Use product containing a mixture of 0.6% a.i. sodium 5-nitroguaiacolate (1%), sodium *o*-nitophenolate (0.2%), and sodium *p*-nitrophenolate (0.3%) by weight and applied to all crops at rates of less than 20 grams a.i. (g a.i.) per acre. Based on the review of submitted information, dose levels and toxicity end–points were evaluated for the use of exposure estimates to characterize potential risks.

The Tier I data was submitted on the end–use product, ATONIK®, each of the three a.i., sodium *o*-nitrophenolate, sodium *p*-nitrophenolate, sodium 5-nitoguaiacolate, and a manufacturing use product (a mixture of the components). No toxicity endpoints for dietary, occupational or non–occupational risk charaterizations were indicated because:

1. The no–observed–adverse–effect levels (N0AEL) from dietary administration of the a.i. are 5–6 times higher than that of the developmental toxicity study (1,589 and 1,723 milligrams/kilograms/day (mg/kg/day) for males and females compared with 300 mg/kg/day in pregant rats).
2. The acute toxicity of the end–use product is classified into Toxicity Category IV for the oral ($LD_{50} > 5,000$ mg/kg) and inhalation $LC_{50} > 5.8$ mg/L) routes and Toxicity Category III for the dermal route ($LD_{50} > 2,000$ mg/kg).
3. No developmental effects were noted at dose up to 600 mg/kg/day highest dose tested (HDT).
4. Studies on the three components of the manufacturing use product (MUP) showed no mutagentic activity.
5. The low concentration of the a.i. in the end use product (0.6%).
6. There is a low application rate (< 20 g a.i. per acre).

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non–occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

No toxicity endpoints for dietary, occupational or non–occupational risk characterizations were indicated in subchronic toxicity, developmental toxicity or mutagenicity studies on ATONIK® or its three a.i.. The application rate is so low (< 20 g/acre) that negligible or nonexistent residues would be available for risk characterization. Therefore, considering the lack of toxicity and low exposure no risk characterizations have been conducted for ATONIK®.

1. *Food*. The end–use product, ATONIK®, contains three a.i. (sodium 5-nitroguaiacolate, sodium *o*-nitophenolate, and sodium *p*-nitrophenolate) in very low concentrations. At the application rates employed, the level of each a.i. which may be present in any of the food or feed items would be far below the levels which demonstrated any effects in the subchronic oral feeding study, the developmental toxicity study or the mutagenicity studies. It can be shown that in order to reach a dose rate comparable to the LOAEL of 1,600 mg/kg/day obtained in the subchronic oral feeding study, a person weighing 50 kg (100 lbs.) would have to consume all of the produce from 4 acres of crop every day.

Further, due to the rapid uptake and metabolism of the three a.i. in plants, it is unlikely that any of the residue would be available for potential exposure.

2. *Drinking water exposure*. Similarly, exposure to humans from consumption of water would be equally unlikely.

B. Other Non-Occupational Exposure

Using the previously mentioned criteria, the Agency believes that non–occupational exposures via other routes would be highly unlikely. There is no allowed use of the product containing the three a.i. on lawns, rights–of–way, golf courses, or other areas where human exposure is likely to occur. Therefore, for all practical purposes, exposure from these areas would be non–existent.

V. Cumulative Effects

Exposure through other pesticides and substances with the same mode of toxicity is not likely. What little toxicity that was observed is only detected at extremely high concentrations of these a.i..

VI. Determination of Safety for U.S. Population, Infants and Children

The three a.i. in the End–Use Product, ATONIK®, are all classified as biochemicals. The low toxicity of each of these alone and in combination, as discussed above, demonstrates that these chemicals, at the rates established, will not pose any known risk to human health, either as children or as adults. These three a.i. are already exempted from the requirement of a tolerance for use on cotton, rice, and soybeans.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there was scientific basis for including, as part of the program, androgen and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

When the appropriate screening and/or testing protocols being considered under the EDSP have been developed, sodium *o*-nitrophenolate, sodium *p*-nitrophenolate, and sodium 5-nitoguaiacolate, may be subjected to additional screening an/or testing to better characterize effects related to endocrine disruption. Based on the weight of the evidence of available data, no endocrine system–related effect have been identified.

B. Analytical Method(s)

Adequate data for the end–use product, ATONIK®, and each of the three components: sodium *o*-nitrophenolate, sodium *p*-nitrophenolate, and sodium 5-nitoguaiacolate, were submitted with the initial registration and petition for tolerances.

C. Tolerance Reassessment

The foregoing is a reassessment of the tolerances for § 180.1139 Sodium 5-nitoguaiacolate, and § 180.1140 Sodium o-nitrophenolate, and § 180.1141 Sodium p-nitrophenolate. This reassessment revises these tolerances to include all food commodities when used as plant growth regulators.

D. Codex Maximum Residue Level

No known international tolerances have been granted for this pesticide. Therefore, based on the completeness and reliability of the toxicity data from the published literature and conservative exposure assessment, the Agency concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of ATONIK® including all anticipated dietary exposure and all non–occupational exposures.

VIII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301043 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 2, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301043, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp–docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IX. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* October 4, 1993 (58 FR 51735). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* May 19, 1998 (63 FR 27655); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* February 16, 1994 (59 FR 7629); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* April 23, 1997 (62 FR 19885). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d)(15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* August 10, 1999 (64 FR 43255). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule " as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 6, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. In subpart D §180.1139, 180.1140, and 180.1141 are revised to read as follows:

§180.1139 Sodium 5-nitroguaiacolate; exemption from the requirements of a tolerance.

The biochemical sodium 5-nitroguiacolate is exempted from the requirement of a tolerance when used as a plant growth regulator in end–use products at a concentration of 0.1% by weight and applied at an application rate of 20 g of a.i. per acre or less per application, in or on all food commodities.

§180.1140 Sodium *o*-nitrophenolate; exemption from the requirement of a tolerance.

The biochemical sodium *o*-nitrophenolate is exempted from the requirement of a tolerance when used as a plant growth regulator in end–use products at a concentration of 0.2% by weight and applied at an application rate of 20 g of a.i. per acre or less per application, in or on all food commodities.

§180.1141 Sodium *p*-nitrophenolate; exemption from the requirement of a tolerance.

The biochemical sodium *p*-nitrophenolate is exempted from the requirement of a tolerance when used as a plant growth regulator in end–use product at a concentration of 0.3% by weight and applied at an application rate of 20 g of a.i. per acre or less per application, in or on all food commodities.

[FR Doc. 00–28277 Filed 11–2–00; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7503]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Talladega	City of Sylacauga	October 1, 1999, October 8, 1999, *Daily Home.*	The Honorable Jesse L. Cleveland, Mayor of the City of Sylacauga, P.O. Box 390, Sylacauga, Alabama 35150.	September 21, 1999.	010199 C
Florida:					
Broward	Unincorporated areas.	September 27, 2000, October 3, 2000, *Sun-Sentinel.*	Mr. Roger J. Desjarlais, Broward County Administrator, 115 South Andrews Avenue, Room 409, Fort Lauderdale, Florida 33301.	April 20, 2000	125093 F
Alachua	City of Gainesville	October 11, 1999, October 18, 1999, *The Gainesville Sun.*	Mr. Wayne Bowers, City of Gainesville Manager, P.O. Box 490, Gainesville, Florida 32602.	January 16, 2000	125107 D
Broward	City of Hollywood	September 27, 2000, October 3, 2000, *Sun-Sentinel.*	Mr. Samuel Finz, Manager of the City of Hollywood, P.O. Box 229045, Hollywood, Florida 33022–9045.	April 20, 2000	125113 F
Manatee	Unincorporated areas.	July 13, 2000, July 20, 2000, *Bradenton Herald.*	Mr. Ernie Padgett, Manatee County Administrator, P.O. Box 1000, Bradenton, Florida 34206.	July 5, 2000	120153 B
Illinois:					
Cook	Unincorporated areas.	August 3, 2000, August 10, 2000, *Daily Southtown.*	Mr. John H. Stroger, President of the Cook County, Board of Commissioners, 118 North Clark Street, Room 537, Chicago, Illinois 60602.	November 7, 2000	170054 F
Kane	City of Geneva	August 8, 2000, August 15, 2000, *Kane County Chronicle.*	The Honorable Thomas Coughlin, Mayor of the City of Geneva, 22 South First Street, Geneva, Illinois 60134.	November 13, 2000.	170325 B
McHenry	Village of Huntley	July 13, 2000, July 20, 2000, *The Huntley Farmside.*	Mr. Charles Becker, President of the Village of Huntley, Village Hall, 11704 Coral Street, Huntley, Illinois 60142.	June 29, 2000	170480 C
McHenry	Unincorporated areas.	July 14, 2000, July 21, 2000, *The Northwest Herald.*	Mr. Michael Tryon, Chairperson, McHenry County Board, McHenry County Government Center, 2200 North Seminary Avenue, Woodstock, Illinois 60098.	June 29, 2000	170732 C
Cook	Village of Orland Park.	August 3, 2000, August 10, 2000, *Daily Southtown.*	The Honorable Daniel J. McLaughlin, Mayor of the Village of Orland Park, 14700 South Ravinier Avenue, Orland Park, Illinois 60462.	November 7, 2000	170140 F
Indiana:					
Madison	City of Anderson	June 28, 2000, July 5, 2000, *The Herald Bulletin.*	The Honorable J. Mark Lawler, Mayor of the City of Anderson, 120 East Eighth Street, Anderson, Indiana 46016.	October 4, 2000	180150 B
Allen	City of Fort Wayne	July 12, 2000, July 19, 2000, *The Journal Gazette.*	The Honorable Graham Richard, Mayor of the City of Fort Wayne, 1 Main Street, Room 900, Fort Wayne, Indiana 46802–1804.	July 3, 2000	180003 D
Massachusetts: Bristol.	Town of Easton	August 11, 2000, August 18, 2000, *The Enterprise.*	Mr. Kevin Paicos, Town of Easton Administrator, 136 Elm Street, Easton, Massachusetts 02356.	August 10, 2000	250053
Michigan:					
Macomb	Town of Chesterfield.	October 11, 1999, October 18, 1999, *Macomb Daily.*	Mr. Elbert James Tharp, Chesterfield Township Supervisor, 47275 Sugar Bush Road, Chesterfield, Michigan 48047.	October 5, 1999	260120 D
Macomb	City of Sterling Heights.	June 14, 2000, June 21, 2000, *The Macomb Daily.*	The Honorable Richard J. Notte, Mayor of the City of Sterling Heights, 40555 Utica Road, P.O. Box 8009, Sterling Heights, Michigan 48311.	September 5, 2000.	260128 F
New Hampshire:					
Cheshire	City of Keene	April 28, 2000, May 5, 2000, *The Keene Sentinel.*	The Honorable Michael Blastos, Mayor of the City of Keene, City Hall 3 Washington Street, Keene, New Hampshire 03431.	April 21, 2000	330023 D
North Carolina:					
Wake	Town of Cary	July 19, 2000, July 26, 2000, *The Cary News.*	The Honorable Glenn D. Lang, Mayor of the Town of Cary, 318 North Academy Street, P.O. Box 8005, Cary, North Carolina 27512.	October 24, 2000	370238 E
Dare	Unincorporated areas.	August 24, 2000, August 31, 2000, *The Coastline Times.*	Mr. Stan White, Chairman of the Dare County Board of Commissioners, P.O. Box 1000, Manteo, North Carolina 27954.	August 18, 2000	375348 D
Ohio:					
Greene	City of Beavercreek.	July 3, 2000, July 10, 2000, *Beavercreek News-Current.*	The Honorable Robert Glaser, Mayor of the City of Beavercreek, 1368 Research Park Drive, Beavercreek, Ohio 45432.	October 9, 2000	390876 B
Cuyahoga	City of Cleveland	June 22, 2000, June 29, 2000, *The Plain Dealer.*	The Honorable Michael R. White, Mayor of the City of Cleveland, Cleveland City Hall 601 Lakeside Avenue, Room 202, Cleveland, Ohio 44114.	September 28, 2000.	390104 B
Greene	City of Fairborn	July 3, 2000, July 10, 2000, *Fairborn Daily Herald.*	The Honorable Larry L. Long, Mayor of the City of Fairborn, 44 West Hebble Avenue, Fairborn, Ohio 45324.	October 9, 2000	390195 C
Cuyahoga	City of Highland Heights.	June 22, 2000, June 29, 2000, *The Plain Dealer.*	The Honorable Francine G. Hogg, Mayor of the City of Highland Heights, 5827 Highland Road, Highland Heights, Ohio 44143.	August 28, 2000	390110 D
Pennsylvania:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Lancaster	City of Lancaster	July 25, 2000, August 1, 2000, *Intelligencer Journal.*	The Honorable Charles W. Smithgall, Mayor of the City of Lancaster, P.O. Box 1599, 120 North Duke Street, Lancaster, Pennsylvania 17603–1599.	July 5, 2000	420552 B
Lancaster	Township of Manheim.	July 25, 2000, August 1, 2000, *Intelligencer Journal.*	Mr. Thomas Woodland, President, Manheim Township Board of Commissioners, 1840 Municipal Drive, Lancaster, Pennsylvania 17601–4162.	July 5, 2000	420556 C
Montgomery	Township of Plymouth.	July 18, 2000, July 25, 2000, *Times Herald.*	Ms. Joan Mower, Township of Plymouth Manager, 700 Belvoir Road, Plymouth Meeting, Pennsylvania 19462.	July 7, 2000	420955 E
Rhode Island: Kent	City of Warwick	August 18, 2000, August 25, 2000, *The Kent County Daily Times.*	The Honorable Scott Avedisian, Mayor of the City of Warwick, 3275 Post Road, Warwick, Rhode Island 02886.	November 24, 2000.	445409
Virginia: Brunswick	Unincorporated areas.	September 13, 2000, September 20, 2000, *Lake Gaston Gazette.*	Mr. J. Grady Martin, Chairman of the Brunswick County Board of Supervisors, County Courthouse, P.O. Box 399, Lawrenceville, Virginia 23868.	September 6, 2000.	510236 B
Independent City.	City of Winchester	August 30, 2000, September 5, 2000, *Winchester Star.*	Mr. Edwin C. Daley, City of Winchester Manager, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia 22601.	November 20, 2000.	510173 B
Independent City.	City of Winchester	July 5, 2000, July 12, 2000, *Winchester Star.*	Mr. Edwin C. Daley, City of Winchester Manager, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia 22601.	June 23, 2000	510173 B
Wisconsin: Calumet	City of Brillion	June 8, 2000, June 15, 2000, *The Brillion News.*	The Honorable Robert Mathiebe, Mayor of the City of Brillion, 130 Calumet Street, City Hall, Brillion, Wisconsin 54110.	September 14, 2000.	550036 C
Calumet	Unincorporated areas.	June 8, 2000, June 15, 2000, *Chilton Times-Journal.*	Ms. Allison Blackmer, Calumet County Board of Commissioners, Courthouse, 206 Court Street, Chilton, Wisconsin 53014.	September 14, 2000.	550035 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: October 30, 2000.

Margaret E. Lawless,

Deputy Associate Director for Mitigation.

[FR Doc. 00–28257 Filed 11–2–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 19

[FCC 00–365]

Nonpublic Information

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to establish a procedure to deal with the improper release of nonpublic information. The current rules prohibit the unauthorized release of nonpublic information by Commission officials. The revised rules add language requiring persons regulated by or practicing before the Commission who receive written nonpublic information to return it to the Commission's Office of the Inspector General without further distribution or use of the material. The amended rules also highlight the sanctions available to the Commission to address willful violation of the rules by either employees of the Commission or individuals who are regulated by or practicing before it.

DATES: Effective December 4, 2000.

FOR FURTHER INFORMATION CONTACT: Patrick J. Carney, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION:

1. Recent unauthorized disclosures of nonpublic internal Commission draft orders and documents in market-sensitive proceedings prompt us to adopt this order to amend § 19.735–203 of our rules, 47 CFR 19.735–203. Section 19.735–203 currently governs the disclosure and misuse by Commission personnel of nonpublic information that is contained in Commission records or obtained in connection with Commission employment. The purpose of the amendment is to emphasize the responsibilities of Commission employees in this area and to provide guidance to persons who receive nonpublic documents under circumstances where it appears that the release of the documents was either inadvertent or otherwise unauthorized.

2. Currently, § 19.735–203 prohibits the unauthorized release of nonpublic information, including documents, by Commission officials. Specifically, § 19.735–203(a) states that "[e]xcept as authorized in writing by the Chairman

* * *, or otherwise as authorized by the Commission or its rules, nonpublic information shall not be disclosed, directly or indirectly, to any person outside the commission." Such nonpublic information clearly includes drafts of Commission orders, memoranda and other documents (such as e-mail) containing internal staff recommendations. See 5 CFR 2635.703 ("nonpublic information is information that * * * has not been made available to the general public" including documents that are "designated as confidential by an agency."). We take this opportunity to emphasize that, pursuant to § 19.735–107 of our rules, employees that disclose such documents (or their contents) are subject to significant disciplinary action up to and including removal for cause, in addition to any other penalty prescribed by law. See 47 CFR 19.735–107. Our amendment of § 19.735–203 cross-references this rule governing the Commission's disciplinary and remedial authority.

3. Our rules prohibiting the disclosure of nonpublic information serve to protect the integrity of the Commission's deliberative processes. Disclosure by Commission staff of draft orders, internal confidential memoranda and nonpublic information violates these rules, and we will vigorously investigate and address violations of these rules by Commission personnel.

4. While our existing rules and our guidance in this order make clear our commitment to ensure that Commission personnel do not disclose nonpublic documents, the existing rules do not address the steps that are to be taken by persons regulated by or practicing before the Commission who receive such documents. The revision to § 19.735–203 adds language requiring such persons who come into possession of written nonpublic information (including written material transmitted in electronic form), the release of which they know or reasonably should know was either inadvertent or otherwise unauthorized, to promptly return such written nonpublic information to the Commission's Office of the Inspector General, without further distribution or use of the material.

5. Persons regulated by or practicing before the FCC may be subject to appropriate sanctions for willful violation of this section. In the case of attorneys practicing before the Commission such sanctions may include disciplinary action under the provisions of § 1.24 of the Commission's rules. (Cf., D.C. Rules of Professional Conduct, Rule 1.15 and Opinion no. 256, adopted May 16, 1995. See also: ABA Formal Opinion 92–368, Nov. 10, 1992; Florida Bar Op. 93–3, Feb. 1, 1994; and Oregon Bar Formal Op. No. 1998–150, approved Apr. 1998).

6. The revision also adds a cross reference to § 19.735–203 in a new § 0.458 of the Commission's rules, 47 CFR 0.458. New § 0.458 is within the Commission's part 0 rules dealing with public and nonpublic information.

7. The requirements set forth in 5 U.S.C. 553(b) and (d) pertaining to notice and comment and the effective date in rulemaking proceedings do not apply to this amendment because it concerns matters of agency organization, procedure or practice. See 5 U.S.C. 553(b)(A); 553(d).

8. Accordingly, pursuant to sections 4(i), 4(j), 303(r), 47 U.S.C. 4(i), 4(j), 303(r), parts 0 and 19 of the Commission's rules, 47 CFR part 19, ARE AMENDED as set forth, and is effective December 4, 2000.

List of Subjects

47 CFR Part 0

Classified information.

47 CFR Part 19

Conflict of interests, Nonpublic information.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 19 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.458 is added to read as follows:

§ 0.458 Nonpublic information.

Any person regulated by or practicing before the Commission coming into possession of written nonpublic information (including written material transmitted in electronic form) as described in § 19.735–203(a) of this chapter under circumstances where it appears that its release was inadvertent or otherwise unauthorized shall be obligated to return the information to the Commission's Office of Inspector General pursuant to that section. See 47 CFR 19.735–203.

PART 19—EMPLOYEE RESPONSIBILITIES AND CONDUCT

3. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 7301; 47 U.S.C. 154 (b), (i), (j) and 303 (r).

4. Section 19.735–203 is amended by adding paragraph (d) and a new sentence immediately preceding the second sentence of the note to the section to read as follows:

§ 19.735–203 Nonpublic information.

* * * * *

(d) Any person regulated by or practicing before the Commission coming into possession of written nonpublic information (including written material transmitted in electronic form) as described in paragraph (a) of this section under circumstances where it appears that its release was inadvertent or otherwise unauthorized shall promptly return the written information to the Commission's Office of the Inspector General without further distribution or use of the written nonpublic information. Any person regulated by or practicing before the Commission who willfully violates this section by failing to promptly notify the Commission's Office of the Inspector General of the receipt of written nonpublic information (including written material transmitted in electronic form) that he knew or should have known was released inadvertently or in any otherwise unauthorized manner may be subject to appropriate sanctions by the Commission. In the case of attorneys practicing before the Commission, such sanctions may include disciplinary action under the provisions of § 1.24 of this chapter.

Note: * * * Additionally, employees should refer to § 19.735–107 of this part, which provides that employees of the Commission who violate this part may be subject to disciplinary action which may be in addition to any other penalty prescribed by law.

* * * * *

[FR Doc. 00–28061 Filed 11–2–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000822244-0291-02; I.D. 082100B]

RIN 0648-AO66

Fisheries off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Hawaii-based Pelagic Longline Area Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS makes changes to an emergency interim rule published on August 25, 2000, governing the Hawaii-based pelagic longline fishery. The changes, which are only applicable to the Hawaii-based pelagic longline fishery when fishing in Area C, as designated under that rule, expressly prohibit directing longline fishing effort toward the harvest of swordfish. The changes require vessels to set their main longline so that the deepest point between any two floats is greater than 100 m (328.1 ft), prohibit the possession of lightsticks on board vessels, require permit holders or operators to donate to charity at least 30 percent of their gross revenues from the sale of incidentally caught swordfish, and require each longline vessel operator to have aboard the vessel an observer waiver form issued by NMFS if the vessel fishes without an observer. The intent of this action is to ensure that swordfish are not targeted by the Hawaii longline fishery in Area C and to reduce adverse impacts on sea turtles while NMFS prepares a comprehensive environmental impact statement (EIS) that analyzes the environmental effects of fishing activities conducted under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP).

DATES: This emergency interim rule is effective from November 3, 2000, through February 21, 2001, except for the suspension of § 660.22 (hh) and § 660.33 (d)(4), and for the addition of §660.22 (kk) and § 660.33 (d)(7), which are effective December 4, 2000 through February 21, 2001. Comments must be received no later than 5 p.m., local time, on December 18, 2000.

ADDRESSES: Written comments on this action must be mailed to Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700; or faxed to 808-973-2941. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the regulatory impact review (RIR) may be obtained from Dr. Charles Karnella, PIAO. Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this rule to Dr. Charles Karnella.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru at 808-973-2937.

SUPPLEMENTARY INFORMATION: By this action, NMFS changes an emergency interim rule (65 FR 51992) published on August 25, 2000, governing the Hawaii-based pelagic longline fishery. These changes apply only to the Hawaii-based longline fishery operating in Area C, one of the three designated longline fishing restricted areas established by the August 25, 2000, emergency interim rule. Area C, which encompasses the main and Northwestern Hawaiian Islands, is defined as all waters bounded on the south by 0° lat., on the north by 28° N. lat., on the east by 137° W. long., and on the west by 173° E. long.. NMFS makes these changes in response to allegations made by Plaintiffs in *Center for Marine Conservation* v. *NMFS*, Civ. No. 99-00152 (DAE) that NMFS did not adequately comply with the August 4, 2000, Order Further Amending Order Modifying Provisions of Order of Injunction (August 4, 2000, Order) issued by the U.S. District Court for the District of Hawaii (Court). Plaintiffs complained to the Court that the August 25, 2000, emergency interim rule did not ensure that swordfish would not be targeted by the Hawaii-based longline fishery in Area C. Further, Plaintiffs alleged that the 20-percent standard that NMFS used to implement the Court's requirement that any "profits" from the landing and sale of swordfish incidentally caught in Area C be "donated to charity", did not ensure that all profits would be donated to charity.

The intent of the August 25, 2000, emergency interim rule was to prohibit any fishing activity by the Hawaii-based longline fishery in Area C that targeted swordfish. To clarify that intent, NMFS is hereby revising that rule to expressly prohibit directing any longline fishing effort toward the harvest of swordfish in Area C. NMFS also is revising that rule to require vessels registered for use with a Hawaii longline limited access permit and fishing for pelagic management unit species in Area C, to deploy longline gear so that the deepest point of the longline between any two floats reaches a depth greater than 100 m (328.1 ft) below the sea surface. This change is intended to ensure that hooks are not set at shallow depths where they would target swordfish. Longline sets are identified as shallow or deep depending on how deep the main longline sags between floats. In a study conducted by NMFS on longline gear sag depths in the Hawaii pelagic longline fishery, it was found that 95 percent of the shallow sets had mainline sag depths shallower than 101 m (331.4 ft), with an average of 52.2 m (171.3 ft). Nearly 90 percent of the swordfish harvested in Area C were caught in shallow sets. On the other hand, 95 percent of the deep longline sets targeting bigeye tuna had a mainline sag depth deeper than 109 m (357.6 ft), with an average of 221 m (725.1 ft). NMFS has determined that requiring vessels to deploy their longlines so that the deepest part of the mainline between any two floats is at a depth greater than 100 m (328.1 ft) will effectively prevent them from targeting swordfish.

Finally, NMFS is changing the provision in the August 25, 2000, emergency interim rule requiring that 20 percent of the gross revenue from the sale of swordfish caught incidentally in Area C be donated to IRS-approved charitable organizations to a provision requiring that at least 30 percent of the gross revenue from the sale of all such swordfish be donated to IRS-approved charitable organizations. This change will ensure that fishery participants have no economic incentive to target swordfish in Area C. The 30 percent of gross revenues standard is much higher then the 3.7–percent profit margin for the average tuna longline vessel based on total revenue less all operating and fixed costs. Moreover, it is also substantially higher than the average tuna longline vessel's 20.6–percent annual return on operating and repair costs.

In addition to the changes made in response to the Plaintiff's complaint, NMFS is changing other provisions of the August 25, 2000, emergency interim rule to facilitate enforcement of the longline fishing restrictions in Area C. First, the measure prohibiting the use of lightsticks is changed to a prohibition on the possession of lightsticks. This provision has the same effect on the targeting of swordfish as a use prohibition but is easier to enforce since it relies on evidence of possession at any time in Area C, rather than evidence of actual fishing with lightsticks in Area C. Second, NMFS is adding a provision to require all longline vessels exempted from carrying NMFS-approved observers for specific fishing trips to have on board the vessel a valid observer waiver form issued by NMFS. This requirement will enable U.S. Coast Guard and NMFS enforcement agents to monitor compliance of the observer requirements during at-sea inspections of longline vessels operating in Area C.

Criteria for Issuing an Emergency Interim Rule

This emergency interim rule meets NMFS policy guidelines for the use of emergency interim rules (62 FR 44421, August 21, 1997). Also, it realizes benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

Recent, Unforeseen Events or Recently Discovered Circumstances

Emergency action is necessary to address, in a timely manner, concerns regarding NMFS's August 25, 2000 emergency interim rule implementing the Court's August 4, 2000 Order. Emergency action is also necessary to facilitate enforcement of the emergency interim rule.

Immediate Benefits

Although there are many variables that make it difficult to predict the effects of this fishery upon different sea turtle populations, NMFS anticipates this action will have a positive benefit sea turtles by further reducing the potential for turtles being caught by Hawaii-based longline vessels.

Classification

The Assistant Administrator for Fisheries, NOAA (AA) has also determined that this emergency interim rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws. NMFS prepared an environmental assessment (EA) for the August 25, 2000, emergency interim rule that describes the impact on the human environment of that rule and found that no significant impact would result from the implementation of it. The changes made by the present action clarify the intent of that rule and will facilitate its enforcement. The changes will not cause any significant impact on the human environment.

NMFS also prepared a regulatory impact review for the August 25, 2000, action which assessed its economic costs and benefits. That assessment used calculations from an input-output model of the Hawaii commercial fishery (Sharma, 1999), and showed that in 1998 the Hawaii longline fishery (valued at $46.7 million in ex-vessel revenues) had a total impact on Hawaii business sales of $113 million. The changes made by the present action to the emergency interim rule are expected to have an additional impact on vessel operators who have customarily targeted species other than bigeye tuna, as the requirement that longline gear must be deployed at a depth greater than 100 m (328.1 ft) effectively bans the targeting, in Area C, of yellowfin tuna as well as swordfish. Due to the lack of detailed data, the precise economic impact of the new longline set depth requirement cannot be calculated. However NMFS longline logbook data for 1998-1999 show that approximately 10 percent of the sets in Area C (1,739 of 19,964) targeted yellowfin tuna. This includes sets taken by 74 vessels over the 2-year period, i.e., roughly half of all the vessels that were active during the 2 years.

Nonetheless, the impact of this emergency interim rule is expected to be relatively small because the yellowfin tuna fishery is primarily a summer fishery and has ended for this year and the bigeye tuna fishery, a winter and spring fishery, is about to commence. This emergency interim rule does, however, further reduce the ability of swordfish fishermen to utilize similar gear-setting techniques in Area C and will increasingly require purchase of a line-shooter. Some vessels, however, will operate out of California until NMFS completes the EIS and the emergency interim rule is replaced by final rule.

The Assistant Administrator for Fisheries (AA) finds, for good cause, that under 5 U.S.C. 553(b)(B) providing prior notice and opportunity for public comment for this action is unnecessary given that the Court ordered the actions in the August 25, 2000 emergency interim rule, and that this action is necessary to clarify the intent of the August 25, 2000 rule and to facilitate its enforcement, and the delay associated with providing prior notice and opportunity for public comment would be contrary to the public interest.

Similarly, the AA finds, for good cause, under 5 U.S.C. 553(d)(3), that delaying the effectiveness of this rule for 30 days would be contrary to the public interest. Accordingly, the AA is making this rule effective upon publication in the **Federal Register**, except for the lightstick provisions. The AA is delaying the effectiveness of the provisions prohibiting the possession of lightsicks for 30 days to allow time for any vessel which has a lightstick on board during a current fishing trip to off-load the lightsticks when the vessel returns to port. This delay will not compromise the regulation's effect on the targeting of swordfish since the prohibition on the use of lightsticks will remain in effect.

Under section 305(c) of the Magnuson-Stevens Act, this emergency interim rule will remain in effect for not more than 180 days (until February 21, 2001, based on the effective date of the emergency interim rule published on August 25, 2000). It may be extended for one additional period of not more than 180 days.

Because this emergency interim rule is not required to be published with prior notice and opportunity for public comment under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act do not apply.

This emergency interim rule has been determined to be not significant for purposes of Executive Order 12866.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule (see **ADDRESSES**).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: October 30, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.22, paragraph (hh) is suspended and new paragraphs (kk), (ll), and (mm) are added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(kk) Possess lightsticks on a longline vessel within the Hawaii emergency longline closed Area C in violation of § 660.33 (d)(7).

(ll) Fail to carry onboard the vessel or to make available for inspection by an authorized officer an observer waiver form issued by the Administrator, Pacific Islands Area Office, NMFS, or a designee of the Administrator as required under § 660.33(e)(2).

(mm) Direct longline fishing effort toward the harvest of swordfish in Hawaii emergency longline closed Area C.

3. In § 660.33, paragraphs (d)(4), (d)(5), and (e)(2) are suspended, and new paragraphs (d)(7), (d)(8), (d)(9), and (e)(7) are added to read as follows:

§ 660.33 Hawaii emergency closure.

* * * * *

(d) * * *

(7) A vessel registered for use under a Hawaii longline limited access permit may not possess lightsticks during a fishing trip where part (or all) of the trip involves fishing in Area C.

(8) Within 30 days of each landing of swordfish caught by longline gear in Area C, the permit holder or operator of a vessel registered for use under a Hawaii longline limited access permit must donate to charity at least 30 percent of the total gross revenues from the sale of such swordfish.

(9) Any longline gear deployed after November 3, 2000 by a vessel registered for use under a Hawaii longline limited access permit, fishing for Pacific pelagic management unit species in Area C, must be deployed such that the deepest point of the main longline between any two floats, i.e., the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

(e) * * *

(7) A vessel registered for use with a Hawaii longline access permit may not use longline gear in Area C without a NMFS-approved observer aboard the vessel, unless it is issued a written waiver on a per trip basis by the Administrator, Pacific Islands Area Office, NMFS, or a designee. The waiver must be on board the vessel and made available for inspection by an authorized officer at any time during the trip for which the waiver is valid.

* * * * *

FR Doc. 00–28278 Filed 10–31–00; 4:31 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 214
Friday, November 3, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

[Docket No. FGIS–2000–002a]

RIN 0580–AA74

Fees for Commodity and Rice Inspection Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing an approximate 3.7 percent increase in fees for all hourly rates and certain unit rates for inspection services performed under the Agricultural Marketing Act (AMA) of 1946 in the commodity and rice inspection programs. These increases are needed to cover increased operational costs resulting from the mandated January 2001 Federal pay increase.

DATES: Written comments must be submitted on or before January 2, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Sharon Vassiliades, GIPSA, USDA, 1400 Independence Avenue, SW, Room 1647-S, Washington, DC 20250–3604, or faxed to (202) 690–2755. Comments may also be sent by E-mail to: *comments@gipsadc.usda.gov*. Please state that your comments refer to Docket No. FGIS–2000–002a. Comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his E-mail address: *Dorr@gipsadc.usda.gov*, or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866 the Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, James R. Baker, Administrator, GIPSA, has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee programs to determine if the fees are adequate and continues to seek cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. A January 2001 general and locality salary increase that averages 3.7 percent for all GIPSA employees will increase program costs in both the commodity and the rice inspection programs.

1. Commodity Inspection Program

The commodity inspection program consists of two different programs, *i.e.*, graded commodities and processed commodities. Fees for these programs are in Tables 1 and 2 of 7 CFR 868.90. These programs serve two different markets: The graded commodity market is made up of producers and processors of edible beans, peas, and lentils. The processed commodity market consists of processors and shippers of products such as wheat flour, soybean meal, vegetable oil, and corn meal. USDA's Farm Service Agency (FSA) implemented program changes during FY 2000 that eliminated requirements for end-item and vessel loading observation inspections for processed commodities. Program changes, including personnel adjustments, have been implemented to begin offsetting operating costs due to the loss of the FSA program inspections. Additional cost-cutting measures will continue in FY 2001. Even with these cost-saving measures, the commodity inspection program will continue to lose funds. In FY 1999, operating costs in the commodity inspection program were $5,951,852 with revenue of $7,190,879 that resulted in a positive margin of $1,239,027 and a positive reserve balance of $1,764,140. As of August 31, 2000, FY 2000 operating costs were $4,835,881 with revenue of $5,065,643 that resulted in a positive margin of $229,762 and a positive reserve of $2,066,752. However, in the last two months, since all FSA program changes have been implemented, we have received $579,274 in revenue and $745,125 in costs that have resulted in a $165,851 negative margin. The salary adjustment will increase GIPSA's costs in the commodity inspection program by approximately $95,000. The current positive margin and reserve balance will not continue due to the loss of processed commodity inspection and the remaining programs in the commodity inspection program cannot absorb the 3.7 percent salary increase even with the planned cost-cutting measures.

The proposed fee increase for our graded commodities program applies primarily to GIPSA customers that produce, process, and market graded commodities for the domestic and international markets. There are approximately 156 such customers located primarily in the States of North Dakota, South Dakota, Oregon, Kansas, Colorado, Montana, Texas, Michigan, Nebraska, Minnesota, Washington, Idaho, and California. Many of these customers meet the criteria for small entities established by the Small Business Administration criteria for small businesses. Even though the fees are being increased, the increase will not be excessive (3.7 percent) and should not significantly affect those entities. Those entities are under no obligation to use our service and, therefore, any decision on their part to discontinue the use of our service should not prevent them from marketing their products.

2. Rice Inspection Program

The existing fee schedule for GIPSA's rice inspection program will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Fees for this program are in Tables 1 and 2 of 7 CFR 868.91. In FY 1999, GIPSA's operating costs in its Rice Inspection Program were $4,105,564 with revenue of $4,412,131 that resulted in a positive margin of $306,567 and a negative reserve balance of $508,628. As of August 31, 2000, operating costs in the rice program were $3,694,050 with revenue of $4,421,869 that resulted in a positive margin of $727,819 and a positive reserve of $315,391. The current positive reserve balance is well below the desired 3-month reserve of approximately $1 million.

We have reviewed the financial position of our rice inspection program based on the increased salary and benefit costs, along with the projected FY 2001 workload. Even though the financial status of the rice inspection program has improved, we have concluded that we cannot absorb the increased costs caused by the 3.7 percent salary increase with the small positive reserve balance. This proposed fee increase will collect an estimated $155,500 in additional revenues in the rice program based on the projected FY 2001 work volume of 3.9 million metric tons.

This proposed fee increase applies primarily to GIPSA customers that produce, process, and market rice for the domestic and international markets. There are approximately 550 such customers located primarily in the States of Arkansas, Louisiana, and Texas. Many of these customers meet the criteria for small entities established by the Small Business Administration criteria for small businesses. Even though the fees are being increased, the increase will not be excessive (3.7 percent) and should not significantly affect those entities. Those entities are under no obligation to use our service and, therefore, any decision on their part to discontinue the use of our service should not prevent them from marketing their products.

There will be no additional reporting or record keeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the information collection and record keeping requirements in Part 868 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this rule.

B. Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

C. Proposed Action

Under the provisions of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621, *et seq.*), commodity and rice inspection services are provided upon request and GIPSA must collect a fee from the customer to cover the cost of providing such services. Section 203 (h) of the AMA (7 U.S.C. 1622 (h)) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA administrative and supervisory costs for the performance of official services, including personnel compensation and benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

The commodity inspection fees were last amended on December 18, 1996, and became effective February 18, 1997 (61 FR 66533). The rice inspection fees were last amended on March 30, 2000, and became effective May 1, 2000 (65 FR 16787). These fees were to cover, as nearly as practicable, the level of operating costs as projected for FY 1997 and FY 2000, respectively. GIPSA continually monitors its cost, revenue, and operating reserve levels to ensure that there are sufficient resources for operations. During FY 1998, GIPSA implemented cost-saving measures in the rice program in an effort to provide more cost-effective services. The purpose of these measures was to reduce operating costs in order to reduce the negative retained earnings in this program. The cost containment measures included employee buyouts and better cross utilization of personnel between programs.

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate and continues to seek out cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases.

1. Commodity Inspection Program

The commodity inspection program consists of two different programs, graded and processed commodities. Fees for these programs can be found in 7 CFR 868.90 (a), Tables 1 and 2. These programs serve two different markets with different applicants. The graded commodity market is made up of producers and processors of edible beans, peas, and lentils. The processed commodity market consists of processors and shippers of products such as wheat flour, soybean meal, vegetable oil, and corn meal. USDA's Farm Service Agency (FSA) implemented program changes during FY 2000 that has resulted in a 96 percent reduction in processed commodity inspections. The processed commodity inspection program represents approximately 86 percent of all revenue and 62 percent of the cost. Initial program changes, including personnel adjustments, have been implemented to begin offsetting the lost revenue and reduce operating costs. Additional cost-cutting measures will continue in FY 2001. Even with these cost-saving measures, the commodity inspection program will continue to lose funds. In FY 1999, operating costs in the commodity inspection program were $5,951,852 with revenue of $7,190,879 that resulted in a positive margin of $1,239,027 and a positive reserve balance of $1,764,140. As of August 31, 2000, FY 2000 operating costs were $4,835,881 with revenue of $5,065,643 that resulted in a positive margin of $229,762 and a positive reserve of $2,066,752. However, $579,274 in revenue and $745,125 in costs for the preceding two months since all FSA program changes have been implemented, has resulted in a $165,851 negative margin. The salary adjustment will increase GIPSA's costs in the commodity inspection program by approximately $95,000. The current positive margin and reserve balance will not continue due to the loss of processed commodity inspection and the remaining programs in the commodity inspection program cannot absorb the 3.7 percent salary increase even with the planned cost-cutting measures.

The costs associated with salaries and benefits are recovered by the hourly rates for personnel performing direct service. Other associated costs, including non-salary related overhead, are collected through other fees contained in the fee schedule and are at levels that do not require any change. GIPSA is proposing a 3.7 percent increase to the hourly rates and certain unit rates in 7 CFR 868.90, (a) Table 1–Hourly Rates (Fees for Inspection of Commodities Other Than Rice). Currently, the regular workday hourly rate is $33.00, while Saturday, Sunday, and Holidays are $42.50. The other current unit rates are:

Miscellaneous Processed Commodities: (1) Additional Tests (cost per test, assessed in addition to the hourly rate):	
(i) Aflatoxin Test (Thin Layer Chromatography)	$51.40
(ii) Falling Number	12.00
(iii) Aflatoxin Test Kit	7.50
Graded Commodities (Beans, Peas, Lentils, Hops, and Pulses):	
(1) Additional Tests—Unit Rates (Beans, Peas, Lentils):	
(i) Field run (per lot or sample)	22.70
(ii) Other than field run (per lot or sample)	13.50
(iii) Factor analysis (per factor)	5.50
(2) Additional Tests—Unit Rates (Hops):	
(i) Lot or sample (per lot or sample)	22.00
(3) Additional Tests—Unit Rates (Nongraded Nonprocessed Commodities):	
(i) Factor analysis (per factor)	5.50
(4) Stowage Examination (service—on-request)	
(i) Ship (per stowage space) (minimum $250 per ship)	50.00
(ii) Subsequent ship examination (same as original) (minimum $150 per ship)	
(iii) Barge (per examination) (minimum $250 per ship)	40.00
(iv) All other carriers (per examination)	15.00

2. Rice Inspection Program

The existing fee schedule for GIPSA's rice inspection program will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Fees for this program are in 7 CFR 868.91, Tables 1 and 2. In FY 1999, GIPSA's operating costs in the rice program were $4,105,564 with revenue of $4,412,131 that resulted in a positive margin of $306,567 and a negative reserve balance of $508,628. As of August 31, 2000, operating costs in the rice program were $3,694,050 with revenue of $4,421,869 that resulted in a positive margin of $727,819 and a positive reserve of $315,391. The current positive reserve balance is well below the desired 3-month reserve of approximately $1 million.

We have reviewed the financial position of our rice inspection program based on the increased salary and benefit costs, along with the projected FY 2001 workload. Even though the financial status of our rice inspection program has improved, we have concluded that with the small positive reserve balance we cannot absorb the increased costs caused by the 3.7 percent salary increase. This proposed fee increase will collect an estimated $155,500 in additional revenues in the rice program based on the projected FY 2001 work volume of 3.9 million metric tons.

In 7 CFR 868.91, Table 1—Hourly Rates/Unit Rate Per CWT and Table 2—Unit Rates, currently the regular workday contract and noncontract fees are $42.80 and $52.40, respectively, while the nonregular workday contract and noncontract fees are $59.60 and $72.40, respectively. The unit rate per hundredweight for export port services is currently $0.052 per hundredweight. The rice current unit rates are:

Service	Rough rice	Brown rice for Processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$34.50	$29.60	$21.20
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	26.75	26.75	
(b) All other factors (per factor)	12.70	12.70	12.70
Total oil and free fatty acid		42.00	42.00
Interpretive line samples:			
(a) Milling degree (per set)			89.20
(b) Parboiled light (per sample)			22.35
Extra copies of certificates (per copy)	3.00	3.00	3.00

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR part 868 is proposed to be amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087 as amended (7 U.S.C. 1621, *et seq.*)

2. In § 868.90 paragraph (a) is revised to read as follows:

§ 868.90 Fees for certain Federal inspection services.

(a) The fees shown in Table 1 apply to Federal Commodity Inspection Services specified below.

TABLE 1.—HOURLY RATES [1] [3]

[Fees for inspection of commodities other than rice]

Hourly Rates (per service representative):	
Monday to Friday—$34.20	
Saturday, Sunday, and Holidays—$44.40	
Miscellaneous Processed Commodities: [2]	
(1) Additional Tests (cost per test, assessed in addition to the hourly rate):.	
(i) Aflatoxin Test (Thin Layer Chromatography)	$51.40
(ii) Falling Number	12.50

TABLE 1.—HOURLY RATES [1] [3]—Continued

[Fees for inspection of commodities other than rice]

(iii) Aflatoxin Test Kit	7.50
Graded Commodities (Beans, Peas, Lentils, Hops, and Pulses):	
(1) Additional Tests—Unit Rates (Beans, Peas, Lentils):	
(i) Field run (per lot or sample)	23.00
(ii) Other than field run (per lot or sample)	13.75
(iii) Factor analysis (per factor)	5.65
(2) Additional Tests—Unit Rates (Hops):	
(i) Lot or sample (per lot or sample)	29.30
(3) Additional Tests—Unit Rates (Nongraded Nonprocessed Commodities):	
(i) Factor analysis (per factor)	5.65
(3) Stowage Examination (service-on-request) [4].	
(i) Ship (per stowage space) (minimum $252.50 per ship)	50.50
(ii) Subsequent ship examinations (same as original)	([5])
(iii) Barge (per examination)	40.50
(iv) All other carriers (per examination)	15.50

[1] Fees for original commodity inspection and appeal inspection services include, but are not limited to, sampling, grading, weighing, stowage examinations, pre-inspection conferences, sanitation inspections, and other services requested by the applicant and that are performed within 25 miles of the field office. Travel and related expenses (commercial transportation costs, mileage, and per diem) will be assessed in addition to the hourly rate for service beyond the 25-mile limit. Refer to § 868.92. Explanation of service fees and additional fees, for all other service fees except travel and per diem.

[2] When performed at a location other than the Commodity Testing Laboratory.

[3] Faxed and extra copies of certificates will be charged at $1.50 per copy.

[4] If performed outside of normal business hours, 1½ times the applicable unit fee will be charged.

[5] Minimum $151.50 per ship.

* * * * *

3. Section 868.91 is revised to read as follows:

§ 868.91 Fees for certain Federal rice inspection services.

The fees shown in Tables 1 and 2 apply to Federal rice inspection services.

TABLE 1.—HOURLY RATES/UNIT RATE PER CWT

[Fees for Federal Rice Inspection Services]

Service [1]	Regular workday (Monday–Saturday)	Nonregular workday (Sunday–Holiday)
Contract (per hour per Service representative)	$44.80	$61.80
Noncontract (per hour per Service representative)	54.30	75.00
Export Port Services (per hundredweight) [2]	.054	.054

[1] Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.

[2] Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES

Service [1, 3]	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$34.80	$30.00	$21.50
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	27.00	27.00	
(b) All other factors (per factor)	12.90	12.90	12.90
Total oil and free fatty acid		42.60	42.60
Interpretive line samples: [2]			
(a) Milling degree (per set)			91.00
(b) Parboiled light (per sample)			22.60
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Executive Hills Boulevard, Kansas City, Missouri 64153–1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW, STOP 3630, Washington, DC 20250–3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.

[3] Fees for other services not referenced in table 2 will be based on the noncontract hourly rate listed in § 868.90, table 1.

Dated: October 30, 2000.

David Orr,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 00–28145 Filed 11–2–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 00–24]

RIN 1557—AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1084]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC44

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 2000–90]

RIN 1550–AB11

Simplified Capital Framework for Non-Complex Institutions

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are considering developing a simplified regulatory capital framework applicable to non-complex banks and thrifts (non-complex institutions). The Agencies believe that the size, structure, complexity, and risk profile of many banking and thrift institutions (banking organizations or institutions) may warrant the application of a simplified capital framework that could relieve regulatory burden associated with the existing capital rules.

The Agencies are considering the advantages and disadvantages associated with developing a regulatory capital framework specifically for non-complex institutions. The main objective of this advance notice of proposed rulemaking is to obtain preliminary views from the industry and the public regarding such a framework. The information gathered as a result of this advance notice of proposed rulemaking will assist the Agencies in determining whether to propose a simplified capital framework and, if so, how the framework should be structured and implemented.

In considering the development of a less burdensome regulatory framework, the Agencies would not lower capital standards or encourage a reduction in existing capital levels. Rather, a simplified, less burdensome framework may result in higher minimum regulatory capital requirements for certain institutions than required under current capital standards. Many non-complex institutions currently maintain levels of capital in excess of the regulatory minimum requirements, and the Agencies would therefore expect that most banking organizations subject to a simplified framework would not have to increase capital levels.

This advance notice of proposed rulemaking sets forth broad options for a simplified framework. The options advanced for comment include adopting a simplified risk-based framework (and maintaining the leverage ratio requirement) or adopting a leverage-based approach. The leverage-based approach may include either a traditional leverage framework or one that is modified to address off-balance sheet risks.

DATES: Comments must be received by no later than February 1, 2001.

ADDRESSES: Comments should be directed to:

OCC: Comments may be submitted to Docket No. 00–24, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Comments will be available for inspection and photocopying at that address. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Comments, which should refer to Docket No. R–1084, may be mailed to Ms. Jennifer J. Johnson, Secretary, the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW.. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m. weekdays pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (facsimile number (202) 898–3838; Internet address: *comments@fdic.gov*). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Manager, Dissemination Branch, Information Management & Services Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention Docket No. 2000–90. Hand deliver comments to Public Reference Room, 1700 G Street, NW, lower level, from 9 a.m. to 4 p.m. on business days. Send facsimile transmissions to FAX number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to *public.info@ots.treas.gov* and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW, from 10 a.m. until 4 p.m. on Tuesdays and Thursdays, or obtain comments or an index of comments by facsimile by telephoning the Public Reference Room at (202) 906–5900 from 9 a.m. until 5 p.m. on business days. Comments and the related index will also be posted on the OTS Internet Site at "www.ots.treas.gov."

FOR FURTHER INFORMATION CONTACT:

OCC: Amrit Sekhon, Risk Specialist, Capital Policy Division, (202) 874–5211; or Ron Shimabukuro, Senior Attorney, Legislative and Regulatory

Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

Board: Norah Barger, Assistant Director (202/452–2402), Barbara Bouchard, Manager (202/452–3072), Division of Banking Supervision and Regulation, or David Adkins, Supervisory Financial Analyst (202/452–5259). For the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), Janice Simms (202/872–4984), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Mark S. Schmidt, Associate Director, (202/898–6918), Division of Supervision, William A. Stark, Assistant Director, (202/898–6972), Division of Supervision, or Keith A. Ligon, Chief, Policy Unit, (202/898–3618), Division of Supervision.

OTS: Michael D. Solomon, Senior Program Manager for Capital Policy (202/906–5654), or Teresa A. Scott, Counsel (Banking and Finance) (202/906–6478), Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

In 1989, the Agencies each adopted regulatory capital standards based on the Basel Capital Accord (1988 Accord).[1] The 1988 Accord sets forth a general framework for measuring the capital adequacy of internationally active banks under which assets and off-balance-sheet items are "risk-weighted" based on their perceived credit risk using four broad risk categories.[2] Institutions subject to the 1988 Accord are required to maintain a minimum ratio of regulatory capital[3] to total risk-weighted assets of 8 percent.[4]

In addition to risk-based capital requirements, United States banking organizations must comply with a minimum leverage ratio requirement.[5] Generally, strong banking organizations (*e.g.,* institutions assigned a composite rating of 1 under the Uniform Financial Institutions Ratings System) must maintain a minimum ratio of Tier 1 capital to average total consolidated on-balance sheet assets of 3 percent. For other banking organizations, the minimum leverage ratio is 4 percent. The Agencies view the risk-based and leverage capital requirements as minimums. Institutions should hold capital at a level that is commensurate with their individual risk profile.

United States banking organizations are also subject to Prompt Corrective Action (PCA) regulations. Generally, under these rules an institution's regulatory capital ratios are used to classify the institution into a PCA category. Institutions with the highest capital ratios (*i.e.,* at or above a 10 percent total risk-based capital ratio, at or above a 6 percent Tier 1 risk-based capital ratio, and at or above a 5 percent leverage capital ratio) are usually categorized as "well capitalized." Institutions with lower capital ratios are assigned to lower capital categories. Institutions that are less than well capitalized have restrictions or conditions on certain activities and may also be subject to mandatory or discretionary supervisory action.

Although the 1988 Accord was developed for large and internationally active banking organizations, when the Agencies adopted the risk-based capital standards domestically, the standards were applied to all banking organizations regardless of size, structure, complexity, and risk profile. The four broad risk-weight categories, while imperfect, were viewed as a significant improvement over the previous domestic capital framework that did not take into account asset credit quality and discouraged banking organizations from holding low-risk assets. In addition, the capital adequacy framework incorporated off-balance sheet items into the risk-based capital formula. The consistent application of an international regulatory capital regime was also expected to minimize competitive equity concerns.

The 1988 Accord has had a stabilizing effect on the international banking system. Since its inception, capital levels have risen and competitive equity has been enhanced. Over the past decade, however, the world financial system has become more complex and challenging. The Basel Committee on Banking Supervision (Basel Committee) recognizes that the 1988 Accord needs to evolve along with recent financial innovations and changes in the financial marketplace. Accordingly, the Basel Committee is working to develop a new capital adequacy framework that would enhance the 1988 Accord.

As outlined in its June 1999 consultative paper, A New Capital Adequacy Framework, the Basel Committee is contemplating substantial revisions to the 1988 Accord.[6] Among other things, the Basel Committee is exploring the concept of using sophisticated internal risk measurement systems in the development of minimum capital standards. The Basel Committee is also developing a standardized approach that proposes revisions to the risk-weight framework of the 1988 Accord which might incorporate external ratings in the assessment of a minimum capital requirement.

While the approaches contemplated in the proposed revisions to the 1988 Accord may be appropriate for some large, complex, internationally active banks, many small domestic banking organizations may not have or need the infrastructure to implement a sophisticated internal ratings-based approach to regulatory capital.

Regardless of what revisions are made to the 1988 Accord, however, given the complexity of existing regulatory capital rules, a simplified capital framework could reduce regulatory burden for many institutions without compromising the principles of prudential supervision.

The Agencies wish to explore all options in the development of a regulatory framework for non-complex institutions. The following discussion outlines the Agencies' preliminary views on ways to simplify the regulatory capital framework for such institutions. The Agencies encourage comments from the industry and the public on all aspects of this advance notice of proposed rulemaking.

II. Discussion

A. Overview

This advance notice of proposed rulemaking discusses how non-complex institutions could be defined and presents three possible alternatives for measuring the regulatory capital of non-complex institutions. The Agencies believe that three key factors could serve to define a non-complex institution. These are the nature of the institution's activities, its asset size, and its risk profile. Broadly stated, a relatively small institution engaged in non-complex activities that presents a low-risk profile could be subject to a more simplified capital framework without compromising the safety and soundness of the institution or the banking system. The three broad alternatives for a simplified framework are a simple leverage ratio, a modified leverage ratio and a risk-based framework.

Question 1: Do institutions view maintenance of the current risk-based capital standards as posing undue burden for small institutions? If so, how? Would views change if the current standards were revised to make them more risk-sensitive, in line with the contemplated revisions to the 1988 Basel Accord as set forth in the June 1999 consultative paper?

Question 2: For non-complex institutions, should the Agencies maintain the current risk-based capital standards or develop a simplified capital adequacy framework? What are the advantages and disadvantages of adopting a separate framework?

B. Defining a Non-Complex Institution

The Agencies are considering the nature of a non-complex institution's activities, its asset size, and its risk profile as determinants of eligibility for the simplified capital framework. In general, the Agencies believe that a "non-complex institution" would possess the following characteristics:

—A relatively small asset size (e.g., consolidated assets of less than $5 billion).
—A relatively simple and low-risk balance sheet (e.g., primarily traditional, nonvolatile assets and liabilities).
—A moderate level of off-balance sheet activity that is compatible with core business activities (e.g., commitments, in the case of residential lenders).
—A minimal use of financial derivatives (i.e., institution uses financial derivatives solely for risk management purposes.)
—A relatively simple scope of operations and relatively little involvement in nontraditional activities as a source of income.

In this section, the Agencies describe possible criteria that could be used to determine whether an institution could be considered a non-complex institution.

Nature of Activities

Objective criteria could be used to measure the level of complexity associated with the activities conducted by domestic banking organizations. The Consolidated Reports of Condition and Income and Thrift Financial Reports (regulatory reports) provide the Agencies with information on the structure and operations of an institution. While subject to certain limitations, these data elements could provide objective support for defining a set of non-complex institutions.

The Agencies are considering using various data elements as an initial screen for determining whether a particular institution exhibits a "complex" profile. That is, where an institution reports a significant amount of certain data elements, the Agencies may consider the institution to be complex. Items collected within regulatory reports that could be used include: Trading assets and liabilities; interest only strips; credit derivatives—guarantor and beneficiary; foreign exchange spot contracts; other off-balance sheet assets and liabilities; foreign exchange, equity, commodity, and other derivatives; purchased mortgage servicing rights; purchased credit card relationships; structured notes; performance standby letters of credit; and interest rate derivatives. Data elements such as these could provide an initial screen for determining whether a particular institution exhibits a "complex" profile.

The Agencies envision using additional data elements that might become available due to revisions to regulatory reporting requirements. A concern about such screening criteria is setting an appropriate threshold level for reported activities. The number of institutions that may qualify as non-complex depends upon the threshold level set in establishing the screening criteria.

Question 3: What specific data elements should be considered in determining whether an institution is non-complex? At what level should the thresholds be set for such elements to qualify for the non-complex framework?

Question 4: What information sources other than regulatory reports are available for measuring the level of complexity of domestic banking organizations (e.g., examination reports or other supervisory information or ratings)?

Asset Size

The Agencies believe that a strong relationship exists between the asset size of an institution and its relative complexity. In general, banking organizations of larger asset size exhibit greater levels of complexity. The strength of this correlation changes with the size of the institution. For example, banking organizations with assets of less than $5 billion generally engage in less complex activities than larger banking organizations. This effect is generally more pronounced for institutions with less than $1 billion in assets. However, some smaller banking organizations are engaged in activities reflecting a high level of complexity. The Agencies are considering the extent to which asset size alone might be sufficient to determine which banking organizations may be eligible for the non-complex capital framework.

Question 5: What are the advantages and disadvantages of using asset size to determine "complexity"? What would be a reasonable and appropriate asset size limit for banking organizations to qualify for the non-complex framework?

Question 6: Should banking organizations within a holding company be subject to an asset size limit based on an aggregate or individual institution basis?

Question 7: Should the Agencies apply a simplified framework to all non-complex institutions regardless of size?

*Question 8 :*Should off-balance sheet assets (e.g., securitized assets) be considered within the asset size limit? If not, why not?

Risk Profile

The Agencies are considering whether banking organizations of any size that present a higher risk profile should be required to comply with a more sophisticated risk measurement and capital adequacy framework. A small asset size and lack of complexity do not necessarily equate to lower risk. There can be instances where a small and otherwise non-complex banking organization may be exposed to risks that warrant excluding the institution from the simplified framework.

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[1] The 1998 Accord was developed by the supervisory authorities represented on the Basel Committee on Banking Supervision and endorsed by the G–10 Central Bank Governors. The framework is described in a document entitled "International Convergence of Capital Measurement" issued in July 1998 (with subsequent amendments). The Basel Committee on Banking Supervision is comprised of representatives of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg. The Agencies' risk-based capital standards implementing the 1988 Accord are set forth in 12 CFR part 3 (OCC), 12 CFR parts 208 and 225, Appendices A and E (Board), 12 CFR part 325 (FDIC) and 12 CFR part 567 (OTS).

[2] The categories are 100 percent (the standard risk weight for most claims); 50 percent (primarily for residential mortgages); 20 percent for claims on, or guarantees provided by, certain entities (for example, qualifying depository institutions); and zero percent for very low risk assets (such as claims on, or guarantees provided by, qualifying governments).

[3] Regulatory capital may be comprised of three components. In general terms, Tier 1 capital includes common stockholder's equity, qualifying noncumulative perpetual preferred stock (and for bank holding companies limited amounts of cumulative perpetual preferred stock), and minority interests in the equity accounts of consolidated subsidiaries. Tier 2 capital includes limited amounts of the allowance for loan and lease losses, perpetual preferred stock, hybrid capital instruments and mandatory convertible debt, and term subordinated debt. Tier 3 capital (available only for certain institutions that apply specific rules for market risk) consists of short-term subordinated debt subject to certain restrictions on repayment. Items deducted from regulatory capital include goodwill and certain other intangible assets, investments in unconsolidated subsidiaries, reciprocal holdings of other banking institutions' capital instruments and some deferred tax assets. At least 50 percent of regulatory capital must be Tier 1. See each agency's capital rules referenced in footnote 1 for a more complete discussion.

[4] The 1988 Accord and the implementing United States standards addressed capital in relation to credit risk. In January 1996, the 1988 Accord was amended to include a measure for market risk. The amendment was incorporated into FRB, FDIC, and OCC standards in September 1996.

[5] Leverage guidlines for each agency are located at 12 CFR part 3 (OCC); 12 CFR part 208, Appendix B and 12 CFR part 225, Appendix D (Board); 12 CFR part 325 (FDIC); and 12 CFR part 567 (OTS).

[6] The Basel Committee consultative document was issued on June 3, 1999. Comment was requeted through March 2000. The document is available through the Bank for International Settlements website at www.bis.org.

Factors considered when assessing an institution's overall risk profile should include the level of involvement in activities that present greater degrees of credit, liquidity, market, or other risks, such as sub-prime lending activities, significant asset securitization activities, or trading activities. The issues encountered in trying to define "high-risk" are similar to those encountered in trying to define "non-complex." Approaches could include objective measures derived from regulatory reporting data (as discussed previously) or more subjective alternatives that incorporate assessments made by supervisors in reports of examination, or some combination of objective measures and subjective assessments.

Question 9: What methods for determining a "low-risk" institution are reasonable and appropriate?

C. Setting a Minimum Capital Threshold for Non-Complex Institutions

While a simplified capital framework for non-complex institutions might be less burdensome, such a framework might also be less risk sensitive and flexible. For this reason, the Agencies believe that the minimum capital standard should be set at a level that more than adequately addresses the risks that may not precisely or specifically be measured and identified by the simplified framework. The minimum capital level in such a framework should be a relatively high threshold above which supervisory concerns regarding capital adequacy are minimized. Therefore, a higher minimum capital requirement may ensure that banking organizations that are exempted from the risk-sensitive measures continue to hold sufficient capital.

Setting a higher minimum capital threshold for non-complex institutions raises issues and concerns. To the greatest extent possible, the simplified framework should avoid creating regulatory arbitrage incentives vis-á-vis the risk-based capital standards. However, the minimum capital level for non-complex institutions must continue to promote safety and soundness. A higher minimum threshold in exchange for simpler standards, therefore, may be an appropriate trade-off.

One method to address these concerns is to establish a system that allows a degree of flexibility in designating an institution non-complex and subject to the simplified capital framework. For example, a non-complex institution could be allowed, but not required, to calculate its capital under the simplified framework. A non-complex institution could instead elect to use the more sophisticated, risk-based framework applicable to international or "complex" banking organizations. The trade-off between burden and benefit could be a determination reached by the individual institution, with appropriate supervisory oversight.

Question 10: What factors should be considered in the determination of a minimum threshold capital level for non-complex institutions? Should additional or different elements be included in the definition of capital under a non-complex framework?

Question 11: Should the institution have the option to decide whether to use the simplified framework?

D. Options for Measuring the Capital Adequacy of Non-Complex Institutions

Each option should promote safety and soundness while minimizing regulatory burden. In addition, any alternative to the existing framework would have to be compatible with PCA mandates. The Agencies have some flexibility in establishing a relevant capital measure for non-complex institutions for PCA purposes.[7] The Agencies do not foresee eliminating the leverage requirements established under the Prompt Corrective Action standards.

The alternatives set out in the following paragraphs are: (1) A risk-based ratio (that maintains a leverage requirement); (2) a leverage ratio; and (3) a modified leverage ratio that incorporates certain off-balance sheet exposures. The Agencies also recognize that the risk-based capital framework remains a viable option for non-complex institutions. The Agencies are seeking input on these and any other alternatives to measure regulatory capital commensurate with the size, structure, complexity, and risk profile of non-complex institutions. Comment is requested on the benefits and drawbacks and potential impact on banking organizations of each approach.

A Risk-Based Ratio

One alternative for a non-complex framework is a risk-based capital standard. Such a risk-based capital standard would be consistent with the principles underlying the evolving risk-based standards under discussion by the Basel Committee, but could be tailored to the size, structure, and risk profile of less complex banking organizations. For example, the risk-based approach could be based upon a modified risk-weight system that is consistent with the structure of non-complex institutions.

Potentially, such a risk-based standard for non-complex institutions could both reduce burden and set capital requirements in relation to risk. Implementation of such a system could also prove advantageous because it would not require a structural overhaul to the way banking organizations currently compute capital requirements.

A potential weakness of such an approach could be that, while striving for the dual purposes of greater simplicity and a better match between capital requirements and risk, the approach might fall short of attaining either goal. In effect, it may turn out that greater simplicity in risk-based capital measures means requirements that are less closely aligned to risk (and closer to a leverage measure).

Alternatively, finer and more accurate measurements of risk that require greater computational complexity in the determination of regulatory capital means greater regulatory burden. A key consideration in the development of a simplified framework is to strike an appropriate balance between these potentially conflicting goals.

A Leverage Ratio

Another option for a capital adequacy measure for non-complex institutions is to use only a leverage ratio. Under this alternative, non-complex institutions would no longer be required to comply with the risk-based capital framework. The leverage ratio provides a simple, straightforward measure of capital relative to total assets.

A concern is that the leverage ratio does not adequately account for off-balance sheet exposures and that a minimum capital requirement should accommodate this expanding area of banking risk. Even non-complex institutions can generate significant off-balance sheet exposures (*e.g.*, by issuing standby letters of credit, selling loans with recourse, or extending short-term loan commitments). Another weakness of the leverage ratio is that it does not account for the wide spectrum of credit risk and creates an incentive for the institution to avoid investing in low-risk assets.

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[7] Section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) establishes PCA guidelines as they relate to capital standards. In general, the capital standards prescribed by each appropriate Federal banking agency shall include a leverage limit and a risk-based capital requirement. However, the section also states that an appropriate Federal banking agency may, by regulation, establish any additional relevant capital measures to carry out the purpose of this section, or rescind any relevant capital measure upon determining that the measure is no longer an appropriate means for carrying out the purpose of this section.

A Modified Leverage Ratio

To address some of the concerns with the leverage ratio discussed above, it might be appropriate to consider modifying the measure to account for off-balance sheet exposures. A modified leverage ratio could incorporate the simplicity of the leverage ratio while seeking to remedy its main weaknesses. A modified leverage ratio would be a relatively simple measure—a major objective of the non-complex framework. A disadvantage of the modified leverage ratio is that, unlike the risk-based approach, it would provide no capital benefit to banking organizations that maintain a low-risk profile and might encourage institutions to invest in higher-risk assets.

The appropriate capital framework for a non-complex institution depends partly on the screening criteria chosen to assess complexity or risk. If complex or high-risk banking organizations can be effectively screened out of the non-complex category, then the benefits of a leverage-based approach will likely be enhanced. Similarly, if banking organizations with significant off-balance sheet items are screened out of the non-complex framework, then use of a modified leverage ratio (that incorporates off-balance sheet items) might be unnecessary to assure sufficient levels of regulatory capital.

Question 12: What elements of the current risk-based framework should be retained within a simplified risk-based framework? What elements should not be included?

Question 13: Should classes of assets be re-assigned to other and potentially new risk weights, based on relative comparisons of historical charge-off data or other empirical sources, including but not limited to credit ratings?

Question 14: Is a leverage ratio a sufficient method for determining capital adequacy of non-complex institutions in a range of economic conditions?

Question 15: If off-balance sheet items are incorporated into a modified leverage ratio, what items should be incorporated, and how?

Question 16: What degree of burden reduction is foreseeable regarding any of the alternatives? Do the foreseeable benefits of burden reduction outweigh any concerns about establishing a non-complex domestic framework?

E. Implementation Issues

The establishment of a simplified capital framework presents a host of implementation issues. How would banking organizations be placed within the simplified framework? Once subjected to the simplified framework, how would the institution transition to a more complex framework, if needed? Would there be a transition or adjustment period? These implementation issues can be foreseen, but not fully addressed, until a framework is determined.

Moreover, the Agencies must determine the least burdensome and most efficient manner to collect data necessary to identify the universe of non-complex institutions and to provide this information to banking organizations in a timely manner. Options include requiring the Agencies to determine which banking organizations are subject to the non-complex framework using current regulatory reports, or requiring a banking organization to seek entry into the non-complex framework by filing an application.

On an ongoing basis, a change in size, structure, complexity, or risk profile of a non-complex institution could impact its continued eligibility for the simplified framework. Institutions that were no longer deemed "non-complex" could be required to comply with the standards applicable to complex banking organizations or to take other remedial steps. For an institution transitioning from the non-complex framework to the complex regime, an adjustment period might be necessary to meet reporting and capital requirements.

Establishment of a process for monitoring on-going eligibility for the simplified framework should also be considered. The process used to collect and report data should not undermine burden reduction, one of the primary objectives of a non-complex framework.

Question 17: How could the non-complex capital adequacy framework be initially implemented and thereafter applied on an ongoing basis?

Question 18: Should banking organizations no longer deemed "non-complex" be required to comply with the otherwise applicable capital standards? What other alternatives could be made available for these banking organizations? What types of transition would be most appropriate?

III. OCC and OTS Executive Order 12866 Determination

The Comptroller of the Currency and the Director of the Office of Thrift Supervision have determined that this advance notice of proposed rulemaking does not constitute a significant regulatory action under Executive Order 12866.

Dated: October 26, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 23, 2000.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 17th day of October, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: October 19, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–28270 Filed 11–2–00; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–70–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A319, A320, and A321 series airplanes. This proposal would require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate service life limits for certain items and inspections to detect fatigue cracking, accidental damage, or corrosion in certain structures. This proposal is prompted by issuance of a revision to Airbus Industrie A319/A320/A321 Maintenance Planning Document and Airworthiness Limitation Items document, which specify new or more restrictive compliance times for structural inspection and replacement action. The actions specified by the proposed AD are intended to ensure the structural integrity of these airplanes.

DATES: Comments must be received by December 4, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. "2000–NM–70–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–70–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that a revision to Section 9–1 of the Airbus Industrie A319/A320/A321 Maintenance Planning Document (MRB) has been issued. That revised section provides the service life limits for certain items. In addition, a revision to Issue 3 of Airbus Industrie A319/A320/A321 Airworthiness Limitation Items (ALI) has been issued, which provides an inspection program to detect fatigue corrosion, accidental damage, and corrosion in certain structures. [The FAA refers to the information included in Section 9–1 of the MRB and Issue 3 of the ALI as the Airworthiness Limitations Sections (ALS) of the Instructions for Continued Airworthiness.] These revisions affect all Airbus Model A319, A320, and A321 series airplanes. The revisions to the MRB and ALI documents provide mandatory replacement times and structural inspection intervals approved under section 25.571 of the Joint Aviation Requirements and the Federal Aviation Regulations (14 CFR 25.571). As airplanes gain service experience, or as results of post-certification testing and evaluation are obtained, it may become necessary to add new or more restrictive life limits or structural inspections in order to ensure the continued structural integrity of the airplane.

The DGAC advises that analysis of fatigue test data has revealed that certain inspections must be performed at specific intervals to preclude fatigue cracking in certain areas of the airplane. In addition, the DGAC advises that certain service life limits must be imposed for various components on these airplanes to preclude the onset of fatigue cracking in those components. Such fatigue cracking, if not corrected, could adversely affect the structural integrity of these airplanes.

Explanation of Relevant Service Information

Airbus Industrie has issued Section 9–1, "Life Limits/Monitored Parts," Revision 1, dated August 13, 1999, of Airbus Industrie A319/A320/A321 Maintenance Planning Document (MPD), Volume 1. (The service life limits of revision 20 and on of Chapter 05–11–00 of the Aircraft Maintenance Manual were moved to Section 9–1 of the MPD to provide data to enable traceability and monitoring of selected parts for the airplanes.) Airbus Industrie also issued A319/A320/A321 Airworthiness Limitation Items (ALI), AI/SE–M4/95A.0252/96, Issue 3, dated May 27, 1999, which specifies inspection procedures, thresholds, and intervals for structural significant items (SSI's). The ALI document specifies new or more restrictive inspection and replacement actions. Accomplishment of the actions specified in these documents is intended to adequately address the identified unsafe condition.

The DGAC has approved the revisions to the MPD and ALI documents in order to assure the continued airworthiness of these airplanes in France. The DGAC has not issued a corresponding airworthiness directive, although accomplishment of the new or more restrictive life limits and structural inspections contained in Section 9–1 of the MPD and in Issue 3 of the ALI documents may be considered mandatory for operators of these airplanes in France.

FAA's Conclusions

The FAA has reviewed the revisions to Section 9–1 of the MPD and Issue 3 of the ALI documents and all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Pursuant to the bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral

airworthiness agreement. The FAA has determined that the revisions to Section 9–1 of the MPD and to Issue 3 of the ALI documents must be incorporated into the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a revision to the ALS of the Instructions for Continued Airworthiness to incorporate inspections to detect fatigue cracking of certain Significant Structural Items (SSI's) and to revise life limits for certain equipment and various components that are specified in the previously referenced maintenance document.

Explanation of Action Taken by the FAA

In accordance with airworthiness standards requiring "damage tolerance assessments" for transport category airplanes (section 25.1529 of the Federal Aviation Regulations (14 CFR 25.1529), and the Appendices referenced in that section), all products certificated to comply with that section must have Instructions for Continued Airworthiness (or, for some products, maintenance manuals) that include an ALS. That section must set forth:

- Mandatory replacement times for structural components,
- Structural inspection intervals, and
- Related approved structural inspection procedures necessary to show compliance with the damage-tolerance requirements.

Compliance with the terms specified in the ALS is required by sections 43.16 (for persons maintaining products) and 91.403 (for operators) of the Federal Aviation Regulations (14 CFR 43.16 and 91.403).

In order to require compliance with these inspection intervals and life limits, the FAA must engage in rulemaking, namely the issuance of an AD. For products certificated to comply with the referenced part 25 requirements, it is within the authority of the FAA to issue an AD requiring a revision to the ALS that includes reduced life limits, or new or different structural inspection requirements. These revisions then are mandatory for operators under section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403), which prohibits operation of an airplane for which airworthiness limitations have been issued unless the inspection intervals specified in those limitations have been complied with.

After that document is revised, as required, and the AD has been fully complied with, the life limit or structural inspection change remains enforceable as a part of the airworthiness limitations. (This is analogous to AD's that require changes to the Limitations Section of the Airplane Flight Manual.)

Requiring a revision of the airworthiness limitations, rather than requiring individual inspections, is advantageous for operators because it allows them to record AD compliance status only once—at the time they make the revision—rather than after every inspection. It also has the advantage of keeping all airworthiness limitations, whether imposed by original certification or by AD, in one place within the operator's maintenance program, thereby reducing the risk of non–compliance because of oversight or confusion.

Cost Impact

The FAA estimates that 36 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,160, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–70–AD.

Applicability: All Model A319, A320, and A321 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

Airworthiness Limitations Revision

(a) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness by incorporating Section 9–1, "Life Limits/Monitored Parts," Revision 1, dated August 13, 1999, of the Airbus A319/A320/A321 Maintenance Planning Document, Volume 1, and Airbus Industrie A319/A320/A321 Airworthiness Limitation Items AI/SE–M4/95A.0252/96, Issue 3, dated May 27, 1999, into the ALS.

(b) Except as provided by paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the document listed in paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–114.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 27, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28092 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Parts 75 and 350

Direct Grant Programs and Disability and Rehabilitation Research Projects and Centers Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administrative Regulations (EDGAR) and the regulations for the National Institute on Disability and Rehabilitation Research (NIDRR). The proposed amendments to EDGAR would revise the general selection criteria concerning project design, services, and personnel available for use in direct grant programs. Consistent with the requirements of section 427 of the General Education Provisions Act (GEPA), these amendments would focus on ensuring that discretionary grant applicants demonstrate in their applications the steps they will take to ensure equitable access to, and participation in, their federally assisted programs by members of traditionally underrepresented groups. The proposed amendment to the criterion on quality of project personnel also would add a mandatory factor measuring the extent to which the application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in the proposed project, including the accessibility of the project's worksite and equipment to these individuals. The Secretary also proposes to include the latter amendment concerning project personnel in the regulations providing selection criteria for certain programs administered by the NIDRR.

DATES: We must receive your comments on or before January 2, 2001.

ADDRESSES: Address all comments about these proposed regulations to Julius C. Cotton, U.S. Department of Education, 400 Maryland Avenue, SW., room 3652, ROB–3, Washington, DC 20202–4248. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov.

You must include the term "proposed selection criteria" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Julius C. Cotton. Telephone: (202) 708–8562. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations and the potential effect of the use of the proposed selection criteria in direct grant programs supported by the Department.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's direct grant programs.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3652, ROB–3, Seventh & D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability that needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background

The Department of Education's mission is to ensure equal access to education and promote educational excellence throughout the nation. To ensure that these goals are being met in Department-funded discretionary grant programs, we are proposing several changes to the list of general selection criteria and factors in EDGAR. These EDGAR criteria and factors are used by most programs of the Department. Many programs do not have separate criteria and rely entirely on EDGAR criteria. Other programs have separate regulatory criteria. EDGAR authorizes the programs with separate criteria to use program criteria (and statutory criteria) in conjunction with the EDGAR criteria to evaluate applications. As a result, these amendments would affect most programs of the Department. We propose to amend the NIDRR regulations which do not incorporate the EDGAR provision that permits the use of both EDGAR and program criteria.

The proposed changes stem from two related departmental efforts that have the common goal of ensuring equity and excellence in Department-funded grant projects. The first effort relates to current requirements found in section 427 of the General Education Provisions Act (GEPA) (20 U.S.C. 1228a), which was enacted by Congress in 1994. Section 427 of GEPA requires that each applicant for a Department grant include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted programs for students, teachers, and other program beneficiaries with special needs by addressing barriers to that access and participation, including barriers based on gender, race, national origin, color, disability, or age. The Secretary is prepared to provide technical assistance to applicants in connection with meeting the

requirements of section 427 of GEPA and with the selection criteria in this notice of proposed rulemaking.

Although grant applicants currently provide statements in their applications indicating how they will ensure equitable access and participation, we believe that greater emphasis should be placed on how well the applicants address the GEPA 427 requirements. Under the proposed changes, discretionary grant applicants for programs using the EDGAR list of selection criteria would be rated based on the extent to which their grant applications include an effective project design and project services for ensuring equitable access and participation. These factors also would be amended to more closely track the language in section 427 of GEPA. They would be mandatory factors under their respective criteria.

The second effort involves a similar concern relating to the diversity of project staff who carry out funded projects. Current provisions in EDGAR include—under the criterion for project personnel—a mandatory factor for considering the extent to which the applicant encourages applications for employment from persons who are members of groups that have been traditionally underrepresented. The Secretary is concerned that inadequate attention has been given by many grantees to the employment and advancement of individuals with disabilities. Therefore, this proposal would strengthen these current provisions as they relate to employment and advancement of these individuals and to the provision of accessible worksites and equipment for persons with disabilities. Section 606 of the Individuals with Disabilities Education Act (IDEA) requires the Secretary to ensure that each recipient of assistance under IDEA makes positive efforts to employ and advance in employment qualified individuals with disabilities. We believe that—in promoting excellence and equity in Department-funded projects—this is an appropriate factor to be evaluated in making competitive selections not only under IDEA, but also in other Department programs. Therefore—under the Secretary's general rulemaking authority—we are proposing that the existing criterion on quality of project personnel be amended to add a factor that focuses specifically on individuals with disabilities, consistent with the provisions in section 606 of the IDEA.

For Department programs using the revised EDGAR criterion on quality of project personnel, applicants would be rated on how well their application demonstrates effective strategies for employing and advancing in employment qualified individuals with disabilities in the proposed project. These strategies also include those for the provision of accessible worksites and equipment. In applying this criterion, the Secretary, as appropriate, would also consider the applicant's past success in employing and advancing in employment individuals with disabilities. The latter consideration would be inappropriate, for example, for a newly formed private, nonprofit organization.

Within the Office of Special Education and Rehabilitative Services, NIDRR supports specialized disability-related activities and uses selection criteria found in 34 CFR part 350 rather than the general EDGAR selection criteria. A similar factor is proposed for addition to part 350 to be used in administering NIDRR programs.

Executive Order 12866

Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998, on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, *§ 75.210 General selection criteria.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be applicants for the Department's direct grant programs. The proposed regulations would not have a significant economic impact on any small entities but are expected to benefit all applicants by reducing delays in the grant award process that otherwise would be caused by rulemaking necessary to establish special selection criteria for individual competitions.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

Some of the programs that are affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.133 for Disability and Rehabilitation Research: General Provisions)

List of Subjects

34 CFR Part 75

Accounting, Administrative practice and procedure, Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 350

Administrative practice and procedure, Eligibility, Grant administration.

Dated: October 26, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 75 and 350 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. Section 75.210 is amended as follows:

a. By revising the undesignated introductory text;

b. Redesignating paragraph (c)(2) as (c)(3);

c. Adding a new paragraph (c)(2);

d. Revising newly redesignated paragraph (c)(3) introductory text; and

e. Revising paragraphs (d)(2) and (e)(2).

The revisions and addition read as follows:

§75.210 General selection criteria.

In determining the selection criteria to be used in each grant competition, the Secretary may select one or more of the following criteria and may select from among the list of optional factors under each criterion. However, paragraphs (c)(2), (d)(2), and (e)(2) of this section are mandatory factors under their respective criteria:

* * * * *

(c) * * *

(2) In determining the quality of the design of the proposed project, the Secretary considers the extent to which the application proposes effective steps to eliminate barriers that may impede equitable access or participation by groups that have been traditionally underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition to paragraph (c)(2) of this section, the Secretary also considers one or more of the following factors:

* * * * *

(d) * * *

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and effectiveness of the applicant's strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented based on race, color, national origin, gender, age, or disability, including its steps to overcome barriers to equitable participation by those eligible participants.

* * * * *

(e) * * *

(2)(i) In determining the quality of project personnel—

(A) The Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have been traditionally underrepresented based on race, color, national origin, gender, or age; and

(B) The Secretary considers the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in the proposed project, including the accessibility of the project's worksite and equipment to these individuals.

(ii) In determining the effectiveness of the strategies under paragraph (e)(2)(i)(B) of this section, the Secretary, as appropriate, considers the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

* * * * *

PART 350—DISABILITY AND REHABILITATION RESEARCH PROJECTS AND CENTERS PROGRAM

3. The authority citation for part 350 continues to read as follows:

Authority: Sec. 204; 29 U.S.C. 761–762, unless otherwise noted.

4. Section 350.54 is amended by revising paragraph (n)(2) to read as follows:

§350.54 What selection criteria does the Secretary use in evaluating an application?

* * * * *

(n) * * *

(2)(i) In determining the quality of project staff—

(A) The Secretary considers the extent to which an applicant encourages applications for employment from persons who are members of groups that have been traditionally underrepresented based on race, color, national origin, gender, or age; and

(B) The Secretary considers the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in the proposed project, including the accessibility of the project's worksite and equipment to these individuals.

(ii) In determining the effectiveness of the strategies under paragraph (n)(2)(i)(B) of this section, the Secretary, as appropriate, considers the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

* * * * *

[FR Doc. 00–27991 Filed 11–2–00; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 241–0244b; FRL–6893–2]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) for the Antelope Valley Air Pollution Control District (AVAPCD). The revisions concern the recission and associated negative declarations for one volatile organic compound source category and one oxides of nitrogen source category for the Antelope Valley Air Pollution Control District (AVAPCD).

The intended effect of this action is to bring the AVAPCD SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these recissions and associated negative declarations from the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas. EPA is approving these revisions in accordance with the requirements of the CAA.

DATES: Comments must arrive by December 4, 2000.

ADDRESSES: Mail comments to: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: The rules being approved for recission and the negative declarations being approved for the Antelope Valley Air Pollution Control District (AVAPCD) portion of the California SIP are listed in the following Table:

SUBMITTED RECISSIONS AND NEGATIVE DECLARATIONS

Rule No. and title	Adoption date	Submittal date	Type of revision
1103, Pharmaceuticals and Cosmetic Manufacturing Operations	01–18–00	03–28–00	Recission and Negative Declaration.
1159, Nitric Acid Units—Oxides of Nitrogen	01–18–00	03–28–00	Recission and Negative Declaration.

In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments.

A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 4, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–27660 Filed 11–2–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7401]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1-percent-annual-chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief; Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified Base Flood Elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/country	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Solano County (Unincorporated Areas).	Gibson Canyon Creek	Approximately 2,250 feet downstream of Byrnes Road.	None	*69
			Approximately 100 feet upstream of Browns Valley Road.	None	*143
		South Branch Gibson Canyon Creek.	Just downstream of Crocker Drive	*103	*102
			Just upstream of Browns Valley Road	*137	*142
		Horse Creek	Approximately 500 feet downstream of Willow Avenue.	None	*77
			Approximately 1,500 feet upstream of Willow Avenue.	None	*79

Maps are available for inspection at the Solano County Department of Environmental Management, 601 W. Texas Street, Fairfield, California.

Send comments to The Honorable Michael Johnson, County Manger, 580 W. Texas Street, Fairfield California, 94533.

State	City/town/country	Source of flooding	Location	Existing	Modified
California	Vacaville (City) Solano County.	Gibson Canyon Creek	Approximately 2,100 feet downstream of Interstate Highway 80 (Eastbound).	*76	*78
			Approximately 1,200 feet upstream of Eubanks Road.	None	*113
		South Branch Gibson Canyon Creek.	At confluence with Gibson Canyon Creek	*98	*98
			At intersection with Interstate Highway 505.	*104	*103
			Approximately 500 feet upstream of Eubanks Road.	*117	*121
		Horse Creek	Approximately 800 feet downstream of Leisure Town Road.	*80	*82
			Approximately 2,000 feet upstream of Sewer Maintenance Road.	*134	*137
		Middle Branch Horse Creek.	Just upstream of Interstate Highway 80	*90	*91
			Approximately 2,200 feet upstream of Interstate Highway 505.	None	*112
		Pine Tree Creek	At confluence with Horse Creek	*98	*97
			At upstream side of Putah South Canal	*114	*122
			Just downstream of Browns Valley Road	*136	*136
			At Browns Valley Road Crossing of Southern Pacific Railroad.	#3	#2
		South Branch Horse Creek.	At confluence with Horse Creek	*119	*114
			Just downstream of Southern Pacific Railroad.	132	*134
			Just downstream of Sundance Drive	*134	#2
		Middle Swale to South Branch.	At confluence with South Branch Horse Creek.	*120	*122
		Horse Creek	Just downstream of Southern Pacific Railroad.	*133	*131
			Just upstream of Southern Pacific Railroad.	None	#1
		North Branch Horse Creek	At confluence with Horse Creek	None	*83
			At downstream side of Interstate Highway 80.	None	*88
		Pine Tree Creek Split	At convergence with Pine Tree Creek	None	*122
			Approximately 1,100 feet upstream of convergence with Pine Tree Creek.	None	*125

Maps are available for inspection at the Vacaville City Hall, 650 Merchant Street, Vacaville, California.

Send comments to The Honorable David Fleming, Mayor, City of Vacaville, 650 Merchant Street, Vacaville, California 95688.

State	City/town/country	Source of flooding	Location	Existing	Modified
Colorado	Durango (City) La Plata County.	Animas River	Approximately 0.67 mile downstream of U.S. Highway 155/160.	None	*6,375

State	City/town/country	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 3.56 miles upstream of 32nd Street.	None	*6,551
		Dry Gulch	Approximately 1,500 Feet upstream of confluence with Junction Creek.	*6,626	*6,626
			Approximately 5,670 feet upstream of Borrego Drive.	None	*6,673
		Lightner Creek	At confluence with Animas River	None	*6,485
			Approximately 1,800 feet upstream of confluence with Animas River.	None	*6,513

Maps are available for inspection at the Planning Department, 1235 Camino Del Rio, Durango, Colorado.

Send comments to The Honorable Joe Golgan, Mayor, City of Durango, 949 E. 2nd Avenue, Durango, Colorado 81301.

State	City/town/country	Source of flooding	Location	Existing	Modified
Colorado	La Plata County (Unincorporated Areas).	Animas River	Approximately 2.09 miles downstream of U.S. Highway 155/160.	None	*6,337
			Approximately 2.8 miles upstream of 32nd Street.	*6,550	*6,548
			Approximately 3.56 miles upstream of 32nd Street.	*6,551	*6,551
		Lightner Creek	At confluence with Animas River	*6,485	*6,484
			Approximately 3,525 feet upstream of U.S. Highway 160.	*6,703	*6,699

Maps are available for inspection at the Building Department, 1060 E. 2nd Avenue, Durango, Colorado.

Send comments to The Honorable Frank Joswick, Chairman, La Plata County Board of Commissioners, 1060 E. 2nd Avenue, Durango, Colorado 81301.

State	City/town/country	Source of flooding	Location	Existing	Modified
Iowa	Monona County and Incorporated Areas.	Missouri River	Approximately 5.3 miles Downstream of the McCandless Cleghorn outlet.	None	*1,032
			Approximately 17.9 miles upstream of Iowa Highway 175.	None	*1,065
			At its confluence with the Missouri River	None	*1.039
		McCandless Cleghorn Drainage Ditch.	At County Highway 45	None	*1.063

Maps are available for inspection at the Monona County Zoning Office, 610 Iowa Avenue, Onawa, Iowa.

Send comments to The Honorable Neil Gorham, Chairman, Monona County Board of Supervisors, 610 Iowa Avenue, Onawa, Iowa 51040.

Maps are available for inspection at Whiting City Hall, 605 Whittier Street, Whiting, Iowa.

Send comments to The Honorable Jerry Rowe, Mayor, City of Whiting, City Hall, 605 Whittier Street, Whiting, Iowa 51063.

State	City/town/country	Source of flooding	Location	Existing	Modified
Kansas	Andover (City) (Butler County).	Four Mile Creek	Approximately 12.9 miles upstream of confluence with Walnut River.	*1,275	*1,266
			Approximately 17.5 miles upstream of confluence with Walnut River.	*1,289	*1,288
		Four Mile Creek Tributary	Just upstream of 110th Street	None	*1,287
			Approximately 9,850 feet upstream of confluence with Four Mile Creek.	None	*1,312
		Republican Creek	At approximately 1.3 miles upstream of confluence with Four Mile Creek.	*1,267	*1,266
			At downstream side of Andover Road	None	*1,338
		Republican Creek Tributary.	Approximately 1,900 feet downstream of U.S. Highway 54.	None	*1,290
			Just upstream of U.S. Highway 54	None	*1,300
		North Tributary of Republican Creek.	Approximately 500 feet downstream of Andover Road.	None	*1,341
			Just upstream of Andover Road	None	*1,343
		Terradyne Fork	Approximately 2,500 feet upstream of confluence with Four Mile Creek.	None	*1,320
			Approximately 7,300 feet upstream of confluence with Four Mile Creek.	None	*1,348

Maps are available at City Hall, 909 North Alexander Road, Andover, Kansas.

Send comments to The Honorable Dennis L. Bush, Mayor, City of Andover, P.O. Box 295, Andover, Kansas 67002.

State	City/town/country	Source of flooding	Location	Existing	Modified
Kansas	Augusta (City) (Butler County).	Elm Creek (above Augusta Lake.	At mouth at Augusta Lake	None	*1,263
			Approximately 1,900 feet upstream of Augusta Lake Road.	None	*1,269

State	City/town/country	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available at City Hall, 116 East Sixth Street, Augusta, Kansas.					
Send comments to The Honorable Ross Rountree, Mayor, City of Augusta, P.O. Box 489, Augusta, Kansas 67010.					
Kansas	Butler County (Unincorporated Areas).	Constant Creek	At confluence with Walnut River	*1,270	*1,270
			Just upstream of Atchison, Topeka, and Sante Fe Raiway.	*1,274	*1,278
			At downstream side of Interstate Highway 35/Kansas Turnpike.	None	*1,335
		Dry Creek	At mouth of Sante Fe Lake north Limits	None	*1,275
			Approximately 250 feet downstream of Interstate Highway 35/Kansas Turnpike.	None	*1,294
		Dry Creek Tributary	At confluence with Dry Creek	None	*1,280
			At downstream limit of Interstate Highway 35/Kansas Turnpike.	None	*1,302
		East Tributary to Eight Mile Creek.	At confluence with Eight Mile Creek	None	*1,267
			Approximately 3,600 feet upstream of confluence to East Tributary to Eight Mile Creek.	None	*1,313
		Tributary to East Tributary to Eight Mile Creek.	At confluence with East Tributary to Eight Mile Creek.	None	*1,296
			Approximately 3,000 feet upsteam of confluence with East Tributary to Eight Mile Creek.	None	*1,307
		West Tributary to Eight Mile Creek.	At confluence with Eight Mile Creek	None	*1,288
			Approximately 6,250 feet upstream of 160th Street.	None	*1,311
		Tributary to West Tributary to Eight Mile Creek.	At confluence with West Tributary to Eight Mile Creek.	None	*1,294
			Approximately 1,500 feet upstream of 160th Street.	None	*1,311
		Elm Creek (above Augusta Lake).	Approximately 1,700 feet downstream of 70th Street (County Road 614).	None	*1,269
			Approximately 200 feet downstream of 40th Street (County Road 608).	None	*1,326
		Elm Creek—Tributary A	At confluence with Elm Creek	None	*1,316
			Approximately 2,400 feet upstream of confluence with Elm Creek.	None	*1,320
		Elm Creek—Tributary B	At confluence with Elm Creek	None	*1,309
			Approximately 150 feet upstream of Shumway Road.	None	*1,329
		Elm Creek Tributary C	At confluence with Elm Creek Tributary B	None	*1,312
			Approximately 4,800 feet upstream of Shumway Road.	None	*1,340
		Four Mile Creek	Approximately 12 miles upstream of confluence with Walnut River.	*1,263	*1,263
			Approximately 13.5 miles upstream of confluence with Walnut River.	*1,271	*1,270
			Approximately 900 feet upstream of 110th Street.	*1,290	*1,289
		Four Mile Creek Tributary	At confluence with Four Mile Creek	None	*1,283
			Approximately 3,000 feet upstream of confluence with Four Mile Creek.	None	*1,285
		Republican Creek	At confluence with Four Mile Creek	*1,261	*1,262
			Approximately 1,000 feet downstream of Andover Road.	None	*1,336
		Republican Creek Tributary.	At confluence with Republican Creek	None	*1,273
			Approximately 200 feet upstream of 90th Street.	None	*1,314
		North Tributary to Republican Creek.	Just upstream of Andover Road	None	*1,343
		Repubilcan Creek	Approximately 3,000 feet upstream of Andover Road.	None	*1,354
		Tributary to Santa Fe Lake	At Santa Fe Lake	None	*1,276
			Approximately 100 feet upstream of County Road 612.	None	*1,314
Maps are available at 205 West Central, Third Floor, El Dorado, Kansas.					
Send comments to the Honorable Randall Doll, Chairman, Butler County Board of Commissioners, 205 West Central, Fourth Floor, El Dorado, Kansas 67042.					
Kansas	Chanute (City) Neosho County.	Second Street Channel	Approximately 440 feet downstream of Katy Road.	*917	*917
			At Highland Avenue	*926	*924
			Approximately 60 feet upstream of Wilson Avenue.	None	*964
Maps are available for inspection at the Engineering Department, Memorial Building, 101 S. Lincoln, Chanute, Kansas.					
Send comments to the Honorable Ed Cox, Mayor, P.O. Box 907, Chanute, Kansas 66720.					
	Douglas County (Incorporated Areas).	Atchison, Topeka, and Santa Fe Tributary (Douglas County).	Approximately 300 feet upstream of County Road 1550 North.	*817	+821
			Approximately 1,300 feet upstream of Atchison, Topeka, and Santa Fe Railway.	*826	+827
		Atchison, Topeka, and Santa Fe Tributary (City of Lawrence).	Approximately 1,300 feet upstream of Atchison, Topeka, and Santa Fe Railway.	*826	+827
			Just upstream of 13th Street	*830	+831
			Approximately 600 feet upstream of Leanard Street.	*861	+855
		Baldwin Creek (Douglas County).	Approximately 2,500 feet upstream of County Road 900 East.	*921	+922
			Just downstream of County Road 1800 North.	*839	+840
			Just upstream of County Road 100 East	*869	+870
		Baldwin Creek Tributary (Douglas County).	Approximately 300 feet downstream of County Road 975 East.	*884	+885
			Approximately 400 feet upstream of County Road 975 East.	*930	+931
		Belle Haven Tributary (Douglas County).	Approximately 300 feet downstream of West 29th Terrace.	N/A	+826
		Belle Haven Tributary (City of Lawrence).	Approximately 300 feet downstream of West 29th Terrace.	N/A	+826
			Approximately 500 feet upstream of West 29th Terrace.	*830	+829
			Approximately 350 feet upstream of West 27th Terrace.	*838	+836
		Broken Arrow Tributar (City of Lawrence).	Approximately 1,850 feet downstream of Private Drive.	*826	+825
			Approximately 1,300 feet upstream of Private Drive.	*846	+847
		Brook Street Tributary (City of Lawrence).	Just downstream of 13th Street	*829	+827
			Approximately 1,100 feet upstream of 15th Street.	*844	+843
		Coal Creek (Douglas County).	Approximately 400 feet downstream of County Road 1100 North.	*820	+817
			Just downstream of County Road 700 North.	*859	+860
			Approximately 1,900 feet upstream of County Road 600 North.	*883	+884
		Coon Creek (Douglas County).	Approximately 200 feet downstream of West Woodson Avenue.	N/A	+855
		Coon Creek (City of Lecompton).	Approximately 200 feet downstream of West Woodson Avenue.	N/A	+855
		County Club—Hope Plaza Tributary (Douglas County).	Just downstream of Michigan Street	N/A	+830
		County Club—Hope Plaza Tributary (City of Lawrence).	Approximately 850 feet upstream of Complex Road.	*833	+834
		Deerfield Tributary (Douglas County).	Just upstream of Kasold Drive	*859	+856

State	City/town/country	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1,100 feet upstream of Kansas Turnpike.	*859	+857
		Deerfield Tributary (City of Lawrence).	Approximately 1,100 feet upstream of Kansas Turnpike.	+859	*857
			Just downstream of Princeton Boulevard	*881	+883
		Eudora East Tributary (Douglas County).	Approximately 80 feet upstream of 10th Street.	*837	+840
			Approximately 1,300 feet upstream of Private Access Road.	*841	+841
			Approximately 2,800 feet upstream of the Corporate Limit line with the City of Eudora.	*864	+864
		Eudora East Tributary (City of Eudora).	Approximately 650 feet upstream of Atchison, Topeka, and Santa Fe Railway.	*N/A	+810
			Approximately 80 feet upstream of 10th Street.	*837	+840
			Approximately 1,100 feet upstream of Private Access Road.	*N/A	+840
		Eudora Middle Tributary (Douglas County).	Just downstream of Atchison, Topeka, and Santa Fe Railway.	*806	+807
		Eudora Middle Tributary (City of Eudora).	Approximately 100 feet upstream of Atchison, Topeka, and Santa Fe Railway.	*807	+814
			Just downstream of 10th Street	*819	+824
			Approximately 800 feet upstream of 12th Street.	*837	+837
		Haskell Tributary (City of Lawrence).	Approximately 150 feet upstream of downstream limit of detailed study.	*826	+823
			Approximately 100 downstream of the upstream limit of detailed study.	*837	+834
		Hidden Valley Tributary (Douglas County).	Just downstream of County Road 1350 North.	*834	+837
			Just downstream of 23rd Street	*849	+850
			Approximately 3,000 feet upstream of 23rd Street.	*877	N/A
		Hidden Valley Tributary (City of Lawrence).	Just downstream of County Road 1350 North.	*834	+837
			Just upstream of 23rd Street	*N/A	+851
			Approximately 3,000 feet upstream of 23rd Street.	*N/A	+871
		Kansas River (City of Lawrence).	Approximately 5,500 feet upstream of confluence of Atchison, Topeka, and Santa Fe Railway Tributary.	*820	+820
			Approximately 200 feet downstream of North 2nd Street.	*826	+827
			Approximately 6,500 feet upstream of the confluence of Balwin Creek.	*836	+837
		Kansas River (Douglas County).	Just downstream of County Road 2172 East.	*805	+807
			Approximately 5,500 feet upstream of confluence of Atchison, Topeka, and Santa Fe Railway Tributary.	*820	+820
			Approximately 6,500 feet upstream of the confluence of Baldwin Creek.	*836	+837
			Approximately 3,500 feet upstream of Eisenhower Memorial Drive.	*849	+848
			Approximately 300 feet downstream of Douglas County/Shawnee County Line.	*862	+861
		Kansas River (City of Lecompton).	Approximately 3,500 feet upstream of Eisenhower Memorial Drive.	*849	+848
		Kanwaka Tributary (Douglas County).	Just downstream of Private Drive	*923	+930
			Approximately 4,500 feet upstream of Private Drive.	*996	+1,000
		KLWN Tributary (City of Lawrence).	Approximately 2,400 feet downstream of West 31st Street.	*832	+833
			Just downstream of 31st Street	*842	+843
			Approximately 2,250 feet upstream of West 31st Street.	*863	+862

State	City/town/country	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet. (NGVD)	
				Existing	Modified
		Little Wakarusa Creek (Douglas County).	Approximately 200 feet downstream of County Road 2000 East.	*810	+812
			Approximately 10,500 feet upstream of County Road 2000 East.	*815	+814
		Maple Grove Drainage (Douglas County).	Approximately 2,350 feet downstream of Union Pacific Railroad.	*814	+811
		Maple Grove Drainage (City of Lawrence).	Approximately 450 upstream of North 9th Street.	*819	+820
		Maple Grove Drainage West Fork (Douglas County).	Approximately 1,700 feet upstream of Union Pacific Railroad.	*824	+823
			Just upstream of County Road 1400 East	*826	+824
		Naismith Creek (Douglas County).	Approximately 2,600 feet upstream of 31st Street.	*828	+826
		Naismith Creek (City of Lawrence).	Approximately 1,500 feet downstream of West 27th Street.	*829	+830
			Approximately 500 feet downstream of West 23rd Street.	*847	+848
			Just upstream of 21st Street	*864	+865
		North Spring Creek (Douglas County).	Approximately 2,500 feet upstream of County Road 1275 North.	*810	+813
		Pleasant Grove East Tributary (Douglas County).	Approximately 2,000 feet downstream of County Road 1100 North.	*829	+830
			Just downstream of County Road 1400 East.	*847	+850
			Approximately 500 feet downstream of County Road 1000 North.	*879	+878
		Pleasant Grove West Tributary (Douglas County).	Approximately 2,400 feet downstream of County Road 1100 North.	*829	+830
			Just downstream of County Road 1300 East.	*874	+876
			Approximately 1,650 feet upstream of County Road 1300 East.	*930	+931
		Pleasant Valley Tributary (Douglas County).	Approximately 850 feet downstream of County Road 1300 East.	*829	+830
			Just upstream of County Road 1100 North.	*844	+845
			Just downstream of County Road 1200 East.	*884	+894
		Quail Creek (Douglas County).	Approximately 2,200 feet upstream of confluence with Yankee Tank Creek.	*834	N/A
		Quail Creek (City of Lawrence).	Just downstream of Brush Creek Drive	*839	+840
			Approximately 350 downstream of Quail Creek Drive.	*866	+871
			Approximately 1,000 feet upstream of Quail Creek Drive.	*881	+880
		Tauy Creek East Fork (Douglas County).	Approximately 4,450 downstream of County Road 150 North.	*978	+978
			Just downstream of County Road 200 North.	**996	+996
			Approximately 1,900 feet downstream of High Street.	N/A	+1,003
			Just Upstream of Highway 56	**1,025	+1,030
			Approximately 450 feet upstream of County Road 1700 East.	**1,055	+1,055
		Tauy Creek East Fork (City of Baldwin).	Just upstream of County Road 200 North	N/A	+997
			Just downstream of Highway 56	**1,021	+1,022
			Approximately 450 feet upstream of County Road 1700 East.	N/A	+1,069
			Approximately 1,900 feet upstream of County Road 1700 East.	N/A	+1,055
		Tauy Creek East Fork Tributary (Douglas County).	At the confluence with Tauy Creek East Fork.	**987	+988
			Approximately 750 feet downstream of 6th Street.	**994	+995

State	City/town/country	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet. (NGVD)	
				Existing	Modified
		Tauy Creek East Fork Trituary (City of Baldwin).	Approximately 750 feet downstream of 6th Street.	**994	+995
			Approximately 250 feet upstream of Chapel Street.	**1,042	+1,043
		Tauy Creek East Fork Tributary A (City of Baldwin).	Approximately 150 feet downstream of 3rd Street.	**1,022	+1,019
			Approximately 200 feet upstream of 1st Street.	**1,042	+1,042
		Tauy Creek East Fork Tribuary B (City of Baldwin).	Approximately 1,000 feet downstream of 3rd Street.	**1,004	+1,004
			Just downstream of 3rd Street	**1,019	+1,020
		Tauy Creek East Fork Tributary C (City of Baldwin).	Approximately 1,250 feet downstream of 3rd Street.	**1,007	+1,007
			Approximately 400 feet upstream of High Street.	**1,035	+1,037
		Vinland Creek (Douglas County).	Approximately 3,500 feet downstream of County Road 790 North.	*839	+838
			Just upstream of County Road 700 North	*862	+864
		Vinland Creek West Fork (Douglas County).	Just downstream of County Road 1650 East.	*858	+862
			Just upstream of County Road 1600 East	*885	+888
		Wakarusa River (Douglas County).	Just downstream of County Road 2172 East.	*805	+807
			Just upstream of Atchison, Topeka, and Santa Fe Railway.	*807	+808
			Just upstream of County Road 1900 East	*812	+813
			Approximately 1,300 feet upstream of County Road 1750 East.	*818	+815
			Approximately 3,000 feet upstream of U.S. Highway 59.	*830	+829
			Approximately 3,000 feet upstream of County Road 1150 East.	*834	+833
		Wakarusa River (City of Eudora).	Just downstream of County Road 2172 East.	*805	+807
			Just upstream of Atchison, Topeka, and Santa Fe Railway.	*807	+808
		Wakarusa River (left overbank flow) (Douglas County).	Approximately 200 feet downstream of Haskell Avenue.	*824	+818
			Approximately 1,300 feet upstream of County Road 1750 East.	*818	+814
			Approximately 200 feet upstream of County Road 1400 East.	*828	+823
		Wakarusa River (left overbank flow) (City of Lawrence).	Approximately 200 feet downstream of Haskell Avenue.	*824	+818
	Douglas County (Incorporated Areas).	Washington Creek (Douglas County).	Just upstream of County Road 1200 East	*833	+836
			Approximately 3800 feet upstream of County Road 1075 North.	*845	+846
			Just upstream of County Road 650 East	*905	+908
		Washington Creek Tributary (Douglas County).	Approximately 850 feet downstream of County Road 1075 North.	*837	+842
			Approximately 200 feet downstream of Private Road.	*860	+858
			Approximately 2,600 feet upstream of County Road 900 North.	*879	+878
		Yankee Tank Creek (Douglas County).	Approximately 500 feet downstream of Kasold Drive.	*832	+831
		Yankee Tank Creek East Branch (City of Lawrence).	Approximately 1,650 feet upstream of Kasold Drive.	*838	+837
			Just downstream of Highway 10	*851	+850
			Approximately 400 feet downstream of West 15th Street.	*883	+881

State	City/town/country	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet. (NGVD)	
				Existing	Modified
		Yankee Tank Creek West Branch (Douglas County).	Approximately 4,700 feet downstream of South Lawrence Trafficway.	N/A	+834
			Approximately 600 feet upstream of South Lawrence Trafficway.	*842	+843
		Yankee Tank Creek West Branch (City of Lawrence).	Approximately 4,700 feet downstream of South Lawrence Trafficway.	N/A	+834

Maps are available for inspection at the Douglas County Department of Public Works, 1242 Massachusetts Street, Lawrence, Kansas.

Send comments to the Honorable Craig Weinaug, Douglas County Administrator, County Courthouse, 1100 Massachusetts Street, Lawrence, Kansas 66044.

Maps are available for inspection at the City of Lawrence Planning Department, 6 East Sixth Street, Lawrence, Kansas.

Send comments to the Honorable James R. Henry, Mayor, City of Lawrence, P.O. Box 708, Lawrence, Kansas 66044.

Maps are available for inspection at the City of Lecompton City Hall, 333 Elmore Street, Lecompton, Kansas.

Send comments to the Honorable Jeff Goodrick, Mayor, City of Lecompton, P.O. Box 100, Lecompton, Kanses 66050.

Maps are available for inspection at the City of Eudora City Hall, 4 East Seventh Street, Eudora, Kansas.

Send comments to the Honorable Fred Stewart, Mayor, City of Eudora, P.O. Box 650, Eudora, Kansas 66025.

Maps are available for inspection at City of Baldwin City Hall, 803 Eighth Street, Baldwin, Kansas.

Send comments to the Honorable Stan Krysztof, Mayor, City of Baldwin, P.O. Box 86, Baldwin, Kansas 66006.

	El Dorado (City) (Butler County).	Constant Creek	Approximately 350 feet downstream of Sunset Road.	*1,276	$1,280
			Just downstream of Central Avenue	*1,313	*1,311
			Approximately 700 feet upstream of 6th Street.	*1,328	*1,328

Maps are available at 220 East First Street, El Dorado, Kansas.

Send comments to the Honorable Susan Seeber, Mayor, City of El Dorado, 220 East First Street, El Dorado, Kansas 67042.

Kansas	Manhattan (City) Riley County.	Kansas River	Approximately 3,600 feet downstream of State Highway 177.	*1,012	*1,013
			Approximately 2,000 feet downstream of State Highway 177 (at County Boundary).	*1,014	*1,015
			Approximately 1,600 feet upstream of State Highway 177.	*1,018	*1,018
		Wildcat Creek	Just downstream of the Union Pacific Railroad.	*1,020	*1,020
			Just upstream of K–18 Highway	*1,020	*1,025
			Approximately 9,200 feet upstream of confluence with Little Kitten Creek.	None	*1,060
		Little Kitten Creek	Approximately 1,750 feet above confluence with Wildcat Creek.	None	*1,055
			Approximately 3,700 feet upstream of Kimball Avenue.	None	*1,144
		Virginia-Nevada Tributary	At confluence with Wildcat Creek	*1,036	*1,038
			At upstream side of Dickens Avenue	*1,066	*1,068
		CI–CO Tributary	At Anderson Avenue	None	*1,051
			Approximately 1,560 feet upstream of Clafin Road.	*1,077	*1,076

Maps are available for inspection at the Community Development Office, 1101 Poyntz Avenue, Manhattan, Kansas.

Send comments to The Honorable Roger Reitz, Mayor, City of Manhattan, 1101 Poyntz Avenue, Manhattan, Kansas, 66502–5497.

Kansas	Riley County (Unincorporated Areas).	Kansas River	At downstream county boundary	*990	*990
			Approximately 5,700 feet upstream of confluence with Big Blue River.	*1,012	*1,013
			Approximately 11,800 feet downstream of the confluence Dry Branch.	*1,040	*1,041
			Approximately 1,000 feet downstream of State Highway 18.	*1,048	*1,048
		Wildcat Creek	At confluence with Kansas River	*1,020	*1,019
			Approximately 4,600 feet upstream of confluence with Little Kitten Creek.	*1,056	*1,055
			Approximately 1,000 feet downstream of North Scenic Drive.	*1,062	*1,062
		Little Kitten Creek	At confluence with Wildcat Creek	*1,050	*1,051

State	City/town/country	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Just downstream of Anderson Avenue	*1,060	*1,061
		Eureka Valley Tributary	At confluence with Sevenmile Creek	*1,034	*1,034
			Approximately 300 feet upstream of State Highway 18.	1,038	*1,037
			Just downstream of Wildcat Creek Road	*1,074	*1,073
		CI–CO Tributary	At confluence with Wildcat Creek	None	*1,045
			Just upstream of Missouri, Kansas, and Texas Railroad.	None	*1,051

Maps are available for inspection at the Riley County Planning and Zoning Office, 110 Courthouse Plaza, Manhattan, Kansas.

Send comments to The Honorable Jim Williams, Chairman, Riley County Board of Commissioners, 110 Courthouse Plaza, Manhattan, Kansas 66502.

State	City/town/country	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
New Mexico	Dona Ana County (Unicorporated Areas).	Sanhill Arroyo	At Dona Ana Drain	None	*3,909
			Approximately 1,360 feet upstream of Thurmand Road.	None	*4,336
			At Intersection of McGuffey Street and Northgate Road.	None	#2
			At Intersection of McGuffey Road and Benavidez Road.	None	*4,340
			At intersection of Mesa Grande Drive and Answer Drive.	None	#3

Maps are available for inspection at the Dona Ana Flood Commission, 430 South Main, Dona Ana Annex, Las Cruces, New Mexico.

Send comments to The Honorable Carlos Garza, Chairman, Dona Ana County Board of Commissioners, 180 West Amador Avenue, Las Cruces, New Mexico 88001.

State	City/town/country	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Nex Mexico	Las Cruces (City) Dona Ana County.	Sandhill Arroyo	Approximately 1,650 feet downstream of Elks Road.	*3,974	*3,977
			Approximately 1,060 feet downstream of Thurmand Road.	None	*4,316
			At intersection of Village Drive and Central Avenue.	None	#2

Maps are available for inspection at City Engineering Department, 575 South Alameda Boulevard, Las Cruces, New Mexico.

Send comments to The Honorable Rubin A. Smith, Mayor, City of Las Cruces, P.O. Box 2000, Las Cruces, New Mexico 88004.

State	City/town/country	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
New Mexico	Lovington (City) Lea County.	Main Street Ditch	Just upstream of County Road	None	*3,890
			Just downstream of Jefferson Avenue	None	*3,917
		Railroad Ditch	Approximately 5,450 feet downstream of confluence with Railroad Ditch Tributary.		*3,800
			Just downstream of Ninth Street	None	*3,911
		Railroad Ditch Tributary	Approximately 360 feet downstream of State Route 18.	None	*3,894
			Just downstream of Avenue R	None	*3,899

Maps are available for inspection at City Hall, 214 S. Love, Lovington, New Mexico.

Send comments to The Honorable Troy J. Harris, Mayor, City of Lovington, P.O. Box 1268, Lovington, New Mexico 88260.

State	City/town/country	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
New Mexico	Raton (City) Colfax County.	Raton Creek	Approximately 3,360 feet downstream of Frontage Road.	None	*6,541
			Approximately 1,560 feet Upstream of North Second Street.	None	*6,705
		Middle Creek	Approximately 600 feet downstream of Interstate Highway 25.	None	*6,527
			At Atchison, Topeka and Santa Fe Railway Crossing.	None	*6,633
		South Creek	Approximately 900 feet upstream of confluence with Middle Creek.	None	*6,520
			Approximately 120 feet upstream of South Second Street (U.S. Highway 85).	None	*6,552

Maps are available for inspection at the Office of City Engineer, City Hall, 224 Savage Avenue, Raton, New Mexico.

Send comments to The Honorable Eric Honeyfield, City Manager, P.O. Box 910, Raton, New Mexico 87740.

State	City/town/country	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
South Dakota	Deadwood (City) Lawrence County.	Whitewood Creek	Approximately 800 feet downstream of U.S. Highway 14–A.	None	*4,394

State	City/town/country	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approixmately 550 feet downstream of U.S.Highway 85.	*4,640	*4,642
		Deadwood Creek	Approximately 1,225 feet upstream of Shine Street.	*4,574	None
			Just upstream of U.S.Highway 14–A	*4,630	*4,640
			Approximately 1,550 feet Upstream of U.S. Highway 14–A.	None	*4,658
		Spring Creek	At upstream end of culvert, approximately 400 feet upstream of North Williams Street.	None	*4,590
			At western corporate limit, approximately 2,600 feet upstream of North Williams Street.	None	*4,753

Maps are available for inspection at 102 Sherman Street, Deadwood, South Dakota.

Send comments to The Honorable Barb Allen, Mayor, City of Deadwood, 102 Sherman Street, Deadwood, South Dakota 57732.

State	City/town/country	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Texas	Huntsville (City) Walker County.	Alligator Branch	Approximately 4,200 feet upstream of confluence with Prairie Branch.	None	*307
			Approximately 7,400 feet upstream of confluence with Prairie Branch.	None	*323
		Baldwin Creek	Approximately 36,500 feet above confluence with Nelson Creek.	None	*244
			Approximately 43,500 feet above confluence with Nelson Creek.	None	*261
		Caney Creek	Approximately 1,900 feet upstream of confluence with Winters Bayou.	None	*354
			Approximately 24,000 feet of confluence with Winters Bayou.	None	*374
		Crabb Creek	Approximately 17,400 feet upstream of confluence Nelson Creek.	None	*257
			Approximately 27,100 feet upstream of confluence Nelson Creek.	None	*287
		East Fork	At confluence with Tanyard Branch	None	*271
			Approximately 5,500 feet upstream of confluence with Tanyard Branch.	None	*298
		Ford Branch	At confluence with Wayne Creek	None	*272
			Approximately 2,700 feet upstream of confluence with Wayne Creek.	None	*286
		Hadley Creek	At Rosenwall Road	None	*250
			Approximately 200 feet north of Huntsville Airport Runway.	None	*292
		Horse Branch	At its confluence with Town Branch	None	*274
			Approximately 450 feet downstream of FM 2821.	*288	*285
			Approximately 3,500 feet upstream of Holly Bend Road.	*335	*329
		Mays Creek	Approximately 2,600 feet upstream of confluence of Shepard Creek.	None	*320
			Approximately 13,400 feet upstream of confluence of Shepherd Creek.	None	*355
		McDonald Creek	Approximately 2,300 feet downstream of Sunset Lake Dam.	None	*293
			Approximately 1,900 feet upstream of Spring Lake Dam.	None	*376
		McGary Creek	Approximately 8,050 feet downstream of concluence with Tributary 6.	None	*279
			Approximately 9,700 feet upstream of confluence with Tributary 5.	None	*351
		Parker Creek	Approximately 10,500 feet upstream of confluence with Harmon Creek.	None	*212
			Approximately 1,000 feet upstream of FM 247.	None	*279
		Prairie Branch	Approximately 14,800 feet upstream of confluence with East Sandy Creek.	None	*287
			Approximately 800 feet upstream of Broadmoor Drive.	None	*368
		Robinson Creek	Approximately 4,700 feet downstream of confluence with Tributary 4.	None	*283
			Approximately 16,350 feet upstream of confluence with Tributary 4.	None	*362

State	City/town/country	Source of flooding	Location	#Depth in feet above ground. * Elevation in feet. (NGVD)	
				Existing	Modified
		Shepherd Creek	Approximately 3,700 feet upstream of confluence with Mays Creek.	None	*317
			Approximately 7,150 feet upstream of confluence with Tributary 3.	None	*381
		Sixmile Branch	Approximately 400 feet downstream of confluence with Thompson Branch.	None	*253
			Approximately 1,400 feet upstream of confluence with Thompson Branch.	None	*261
		Tanyard Branch	Approximately 500 feet upstream of confluence with Harmony Creek.	None	*224
			Approximately 2,600 feet upstream of State Highway 190.	None	*363
		Thompson Branch	At confluence with Sixmile Branch	None	*254
			Approximately 1,000 feet upstream of confluence with Sixmile Branch.	None	*260
		Town Branch	At confluence with Parker Creek	None	*260
			Approximately 700 feet upstream of Avenue J and 14th Street.	*359	*361
		Tributary A	At confluence with Town Branch	*324	*322
			Approximately 280 feet upstream of its confluence with Town Branch.	*325	*324
			Approximately 300 feet upstream of State Highway 30/190.	None	*338
		Tributary B	At confluence with Horse Branch	*308	*307
			Approximately 800 feet upstream of Private Dam.	*328	*327
		Tributary 2	At confluence with Tanyard Branch	None	*225
			Approximately 1,250 feet upstream of Robinson Road.	None	*253
		Tributary 3	At confluence with Shepherd Creek	None	*358
			Approximately 1,700 feet upstream of confluence with Shepherd Creek.	None	*364
		Tributary 4	At confluence with Robinson Creek	None	*293
			Approximately 7,800 feet upstream of confluence with Robinson Creek.	None	*330
		Tributary 5	At confluence with McGary Creek	None	*319
			Approximately 7,600 feet upstream of confluence with McGary Creek.	None	*347
		Tributary 6	At confluence with McGary Creek	*None	*292
			Approximately 10,500 feet upstream of confluence with McGary Creek.	None	*319
		Tributary 7	Approximately 14,800 feet upstream of confluence with Hadley Creek.	None	*256
			Approximately 20,400 feet upstream of confluence with Hadley Creek.	None	*275
		Tributary 8	Approximately 3,700 feet upstream of confluence with Parker Creek.	None	*217
			Approximately 8,000 feet upstream of confluence with Parker Creek.	None	*231
		Tributary 9	At confluence with Shepherd Creek	None	*332
			Approximately 6,700 feet upstream of confluence with Shepherd Creek.	None	*347
		Wayne Creek	Approximately 2,100 feet upstream of confluence with Harmony Creek.	None	*259
			Approximately 12,600 feet upstream of confluence with Harmony Creek.	None	*298

Maps are available for inspection at City Service Center, 448 Highway 75 North, Huntsville, Texas.

Send comments to The Honorable Gene Pipes, City Manager, City of Huntsville, 1212 Avenue M, Huntsville, Texas 77340.

State	City/town/country	Source of flooding	Location	Existing	Modified
Utah	Utah County (Unincorporated Areas).	Jordan River	At downstream County boundary	*4,490	*4,491
			At Cedar Fort Road	*4,494	*4,493
			Approximately 1,400 feet upstream of Saratoga Road.	*4,495	*4,492

Maps are available for inspection at the Community Development Department, 100 E. Center Street, Room 3800, Provo, Utah.

Send comments to The Honorable Jerry D. Grover, Utah County Commission Chairman, 100 East Center Street, Room 2300, Provo, Utah 84606.

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* Elevation is in NGVD. Add 0.3 foot (approximately) to the elevation in NGVD to obtain the elevation in NAVD.
** Elevation is in NGVD. Add 0.4 foot (approximately) to the elevation in NGVD to obtain the elevation in NAVD.
+ Elevation in feet (NAVD 1988).

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: October 30, 2000.

Margaret E. Lawless,

Deputy Associate Director for Mitigation.

[FR Doc. 00–28258 Filed 11–2–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20, 42, 61, 63, and 64

[IB Docket No. 00–202, FCC 00–367]

Policy and Rules Concerning the International Interexchange Marketplace and 2000 Biennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This document solicits comments on whether the Commission should continue to require U.S. non-dominant interexchange carriers to file tariffs for international services pursuant to the requirements of the Communications Act. The Commission initiated this proceeding to determine whether to extend the complete detariffing regime that it adopted for domestic, interexchange services to the international services of non-dominant interexchange carriers, including U.S. carriers classified as dominant due to foreign affiliations. The Commission believes that these proposals will foster competition in the U.S. international services market and bring lower rates to U.S. consumers.

DATES: Comments are due on or before November 17, 2000, and reply comments are due on or before December 4, 2000.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lisa Choi, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, FCC 00–367, adopted on October 12, 2000, and released on October 18, 2000. The full text of this document is available for inspection and copying during normal business hours in the Office of Media Relations, Reference Operations Division, (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at http://www.fcc.gov/Bureaus/International/Notices/2000//fcc00367.doc. The complete text of this document also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

This NPRM contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the proposed information collections contained in this proceeding.

Summary of Notice of Proposed Rulemaking

1. In 1996, the Commission adopted policies and rules regarding the detariffing of domestic interexchange services (Domestic Detariffing Order) (61 FR 59340, November 22, 1996). In the Domestic Detariffing Order, the Commission concluded that complete detariffing with limited exceptions for permissive detariffing, satisfies the criteria set forth in section 10(a) of the Communications Act. The Commission made no determination as to whether detariffing international, interexchange services satisfied the requirements of section 10, as competitive conditions in the international marketplace may vary from those in the domestic interexchange marketplace.

2. On October 12, 2000, the Commission adopted a Notice of Proposed Rulemaking (NPRM) to determine whether competitive conditions in the international interexchange marketplace support detariffing non-dominant carriers' provision of international services in accordance with the criteria in section 10 of the Communications Act of 1996. The Commission initiated this proceeding in response to the Communications Act of 1996, which requires the Commission to review all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest. Since adopting the Domestic Detariffing Order, there have been dramatic changes in the market for international interexchange services resulting in increased competition. Thus, the Commission commenced this proceeding to examine whether to continue to require U.S. non-dominant interexchange carriers to file tariffs for international services pursuant to the requirements of section 203 of the Act. The Commission solicits comments on all of the proposals and tentative conclusions contained in the NPRM.

3. The NPRM seeks comment on the Commission's tentative conclusion that the Communications Act requires it to forbear from applying section 203 of the Act and to adopt a policy of complete detariffing for international interexchange services with limited exceptions for permissive detariffing. The NPRM seeks comment on the Commission's determination that its proposals meet the statutory forbearance criteria of section 10 of the Communications Act.

4. The NPRM solicits comment on the Commission's tentative conclusion that tariff filing requirements are not necessary to ensure that the charges, practices, classifications or regulations for the international interexchange services of non-dominant interexchange carriers are just and reasonable, and are not unjustly or unreasonably discriminatory. The NPRM also solicits comment on whether there remains a justification to retain tariffs on certain routes on which sufficient competition may not exist. The Commission tentatively concludes that its policies and enforcement authority, in conjunction with market forces will generally ensure that the rates, practices, and classifications of non-dominant interexchange carriers for international interexchange services will be just and reasonable and not unjustly or unreasonably discriminatory.

5. Comments are requested on the Commission's tentative conclusion that tariffs are not necessary for the protection of consumers of interexchange services. The Commission tentatively concludes that tariffs are not necessary for the protection of consumers. Rather, the Commission believes that tariff filing requirements may harm consumers by undermining the development of competition and possibly leading to higher rates by stifling price reductions

and marketing innovations. The Commission tentatively concludes that detariffing will benefit consumers by permitting carriers to respond to price and service changes in an unregulated manner. The NPRM also discusses the "filed-rate" doctrine and seeks comment on the Commission's tentative conclusion that only with complete detariffing can the Commission be certain to avoid the uncertainty, confusion, and potential harm to consumers associated with the "file-rate" doctrine. The NPRM seeks comment on whether detariffing will protect consumer harm.

6. The NPRM also seeks comment on the Commission's tentative conclusion that complete detariffing for international interexchange services will enhance competition among providers of such services, promote competitive market conditions, and achieve other objectives that are in the public interest. The NPRM sets forth the Commission's analysis on the benefits of complete detariffing and how it meets the statutory forbearance criteria, and comments are requested on these issues whether complete detariffing is in the public interest. In the Domestic Detariffing Order, the Commission found that permissive detariffing, as opposed to complete detariffing, satisfied the public interest and is warranted in two instances: (1) international interexchange direct-dial services to which end-users obtain access by dialing a carrier access code; and (2) international interexchange services provided during the initial forty-five days of service or until there is a written contract between the carrier and the customer. The NPRM addresses these exceptions, and comments are solicited on the Commission's conclusions and whether there are limited exceptions for permissive detariffing.

7. The Commission believes that consumers must have adequate information concerning carriers' rates, terms and conditions to ensure carrier compliance with requirements and for consumers to determine the most appropriate rate plans available. The Commission proposes to require non-dominant interexchange providers of international services to disclose information about their rates, terms and conditions to the public, maintain price and service information regarding the international offerings that can be submitted to the agency upon request, and post information about their offerings on their Internet websites. The Commission proposes that carriers provide the same information that is currently provided in tariffs, and the information must be available to the public in at least one location during regular business hours. The Commission also proposes that carriers with Internet websites post this information on-line in a timely and easily accessible manner with regular updates. The NPRM solicits comments on the proposals regarding maintenance of price and service information and the public disclosure requirements.

8. The NPRM also addresses the issue of price squeeze behavior, and it seeks comment on whether complete detariffing will affect the Commission's ability to monitor potential price squeeze behavior on international routes where U.S. carriers are affiliated with foreign carriers that possess market power.

9. The NPRM also seeks comments on the proposal that the Commission revisit its previous conclusion that permissive detariffing of CMRS providers of international services on unaffiliated routes is in the public notice.

10. The NPRM discusses the carrier-to-carrier contract filing requirement in § 43.51 of the Commission's rules and solicits comments on the Commission's tentative conclusions and proposals to limit the requirement to contracts between an authorized carrier and: (1) An authorized carrier classified as dominant for reasons other than a foreign affiliation; and (2) a foreign carrier possessing market power.

Procedural Matters

11. *Ex Parte Presentations.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *Ex Parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set for section 1.120(b) of the Commission's rules as well.

12. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided herein, including this IRFA, to the Chief Counsel for the Advocacy of the Small Business Administration. In addition, the NPRM and IRFA comments will be published in the **Federal Register**.

13. *Need for, and Objectives, of, the Proposed Rules:* The Commission is issuing this NPRM to review our regulatory regime for international interexchange telecommunications services, and to implement certain provisions of the 1996 Act. In light of the dramatic changes in the market for international interexchange services resulting from increased privatization and liberalization of foreign markets, the World Trade Organization (WTO) Basic Telecom Agreement, decreasing settlement rates and increased competition in the U.S. international services market, we believe it is timely for us to review our requirement that U.S. carriers file tariffs for international interexchange services under section 203 of the Act. Because tariffs can limit the flexibility necessary for all U.S. carriers, including smaller carriers, to offer new services in a competitive market and may harm consumers through the effect of the "filed rate doctrine," we propose requiring complete or mandatory detariffing, with limited exceptions, in this NPRM for the international interexchange services provided by non-dominant carriers. Complete detariffing will reduce carriers' filing costs, and, on balance, the public disclosure and maintenance of information requirements proposed in this item are minimal and do not outweigh the benefits to all U.S. carriers and U.S. consumers to be gained from detariffing. The objective of the NPRM is to provide an opportunity for public comment and to provide a record for a Commission decision on the issues stated above.

14. *Legal Basis:* We tentatively conclude that section 10 of the Communications Act requires the Commission to forbear completely from the tariff requirements contained in section 203 of the Communications Act. In addition, section 11 of the Communications Act directs the Commission to undertake a biennial review of its regulations concerning the operations or activities of any provider of telecommunications services. Thus, the NPRM is adopted pursuant to sections 1, 2, 4, 10, 11, 201–205, 218, 220, 226, 303(g), 303(r) and 332 of the Communications Act of 1934, as amended. 47 U.S.C. 151, 152, 154, 160, 161, 201–205, 215, 218, 220, 226, 303(g), 303(r) and 332.

15. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply:* The RFA

directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Any rule changes that might occur as a result of this proceeding could impact entities which are small business entities, as defined in section 601(3) of the Regulatory Flexibility Act. The proposed rules in this NPRM will reduce regulatory burdens on all non-dominant providers of international interexchange services, including small business entities.

16. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such companies that had been operating for at least one year at the end of 1992. According to the SBA's definition, a wireline telephone company is a small business if it employs no more than 1,500 persons. All but 26 of the 2,321 wireline companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of these companies had more than 1,500 employees, there would still be 2,295 wireline companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 of these wireline companies are small entities that might be affected by these proposals.

17. Specifically, the proposals contained in the NPRM apply to entities seeking authorization to provide international service. The proposals, however, may affect other entities as well. The Commission, therefore, encourages interested parties to comment on the proposals in the NPRM. The proposals contained in the NPRM are intended to improve market efficiency by permitting carriers to respond to the dynamics of the marketplace and further the goals of the Communications Act. At this time, we are not certain as to the number of small entities that will be affected by the proposals. Agency data indicates there has been a steady increase in the number of section 214 applications filed with the Commission. The total number of licensees is difficult to determine, because many licenses are jointly held by several licensees. Based on agency data, we would estimate that there could be 800 applicants that might be a small entity.

18. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:* We believe that the proposed rules will reduce significantly the reporting burdens placed on small entities. The proposed rules would eliminate the requirement of filing tariffs for non-dominant interexchange carriers. These carriers would be required to retain business records containing price and service information regarding their international interexchange offerings. This information, however, is maintained by carriers in the normal course of business. The proposed rules only impose a requirement that providers of international interexchange services maintain this information for a period of at least two years and six months. It is likely that carriers maintain this information for this specific time period, as a normal business practice. .

19. We propose that carriers adopt a public disclosure requirement to make information available to the public concerning current rates, terms, and conditions for all of their international interexchange services, in at least one location during regular business hours. For those carriers with Internet websites, we propose that the carriers make the information available on their websites. In lieu of tariffs, the public disclosure requirement will ensure that the information is readily available to the public in an accessible format.

20. The rules also propose to modify the requirement for filing carrier-to-carrier contracts, thereby reducing the filing burden on most carriers. We propose to simplify and modify our rules and set forth specific criteria that would trigger the carrier contract filing requirement.

21. The proposals should enhance competition among providers of services, promote competitive market conditions and achieve benefits for the consumers while reducing the regulatory burdens on all non-dominant providers of international interexchange services, including small business entities.

22. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

23. We believe that the proposals will facilitate the development of increased competition in the international telecommunications marketplace and provide more flexibility for carriers to respond to the dynamics of the marketplace. Accounting rate reform policies, market forces, and increased competitive entry into the U.S. market have led to substantial reductions in consumer rates for international interexchange services. We believe that tariffs are no longer necessary to ensure that charges, practices, classification or regulations are just and reasonable and are not unjustly or unreasonably discriminatory. In addition, we believe that our proposals will contribute to market efficiency by permitting carriers to respond to the dynamics of the marketplace.

24. In considering alternatives for small entities, we believe that the proposals contained in the NPRM are the least burdensome on small entities. We do not propose to standardize the requirements because the information is unique to the carrier and may be maintained in a manner that is consistent with the carrier's business practices. We propose to reduce the administrative costs to small entities by eliminating the tariff filing requirement. In addition, the public disclosure requirement should not impose burdens on small entities because the information is maintained in the normal course of business.

25. In this NPRM, we are proposing to extend the policies and rules regarding the detariffing of domestic interexchange services to the international interexchange services of non-dominant carriers. We request comment on whether small entities would be adversely affected by the proposals herein and whether the proposals will enable small entities to respond to the demands of the market

with minimum regulatory oversight, delays, and expenses. We believe that our proposals would have either no impact, or would reduce, any economic burdens on small entities. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth findings in the Final Regulatory Flexibility Analysis.

26. *Federal Rules Which Overlap, Duplicate or Conflict with the Commission's Proposal:* None.

27. *Paperwork Reduction Act.* The NPRM contains either new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). The Commission will submit the proposed information collections to the Office of Management and Budget (OMB) for review under the PRA. Upon submission to OMB, comments from OMB, the general public, and other federal agencies will be invited on the proposed information collections contained in the proceeding.

Ordering Clauses

28. Pursuant to sections 1, 4, 10, 11, 201–205, 211, 218, 220, 226, 303(g), 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 161, 201–205, 211, 218, 220, 226, 303(g), 303(r) and 332 the Notice of Proposed Rulemaking is hereby adopted.

29. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.* (1981).

List of Subjects

47 CFR Part 20

Communications common carriers.

47 CFR Parts 42, 61, 63, and 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 20, 42, 61, 63 and 64 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. Section 20.15 is amended by revising paragraphs (c) and (d) to read as follows:

§ 20.15 Requirements under Title II of the Communications Act.

* * * * *

(c) Commercial mobile radio service providers shall not file tariffs for international and interstate service to their customers, international and interstate access service, or international and interstate operator service. Sections 1.771–1.773 and part 61 of this chapter are not applicable to international and interstate services provided by commercial mobile radio service providers. Commercial mobile radio service providers shall cancel tariffs for international and interstate service to their customers, international and interstate access service, and international and interstate operator service.

(d) Nothing in this section shall be construed to modify the Commission's rules and policies on the provision of international service under Part 63 of this chapter. A commercial mobile radio service provider is required to comply with the requirement in § 42.11 if it provides international service to markets where it has an affiliation with a foreign carrier that possesses market power and that collects settlement payments from U.S. carriers. For purposes of this paragraph, affiliation is defined in § 63.18(h)(1)(i) of this chapter.

* * * * *

PART 42—PRESERVATION OF RECORDS OF COMMUNICATIONS COMMON CARRIERS

3. The authority citation for part 42 continues to read as follows:

Authority: Section 4(i), 48 Stat. 1066, as amended, 47 U.S.C. 154(I). Interprets or applies sections 219 and 220, 48 Stat. 1077–78, 47 U.S.C. 219, 220.

4. Section 42.10 is amended by revising paragraph (a) to read as follows:

§ 42.10 Public availability of information concerning interexchange services.

(a) A nondominant interexchange carrier (IXC) shall make available to any member of the public, in at least one location, during regular business hours, information concerning its current rates, terms and conditions for all of its international and interstate, domestic, interexchange services. Such information shall be made available in an easy to understand format and in a timely manner. Following an inquiry or complaint from the public concerning rates, terms and conditions for such services, a carrier shall specify that such information is available and the manner in which the public may obtain the information.

* * * * *

5. Section 42.11 is amended by revising paragraph (a) to read as follows:

§ 42.11 Retention of information concerning detariffed interexchange services.

(a) A nondominant IXC shall maintain, for submission to the Commission and to state regulatory commissions upon request, price and service information regarding all of the carrier's international and interstate, domestic, interexchange service offerings. A commercial mobile radio service provider of international service shall only maintain such price and service information about its international service offerings and only for those routes on which the commercial mobile radio service provider is affiliated with a foreign carrier that possesses market power. The price and service information maintained for purposes of this paragraph shall include documents supporting the rates, terms, and conditions of the carrier's international and interstate, domestic, interexchange offerings. The information maintained pursuant to this section shall be maintained in a manner that allows the carrier to produce such records within ten business days.

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

6. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Public Law 104–104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

7. Section 43.51 is revised to read as follows:

§ 43.51 Contracts and concessions.

(a) (1) Any carrier set forth in paragraph (b) of this section must file with the Commission within 30 days of execution a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party

and amendments thereto with respect to the following:

(i) The exchange of services; and,

(ii) The interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances, except as provided in paragraph (c) of this section.

(2) If the contract, agreement, concession, license, authorization, operating agreement or other arrangement and amendments thereto is made other than in writing, a certified statement covering all details thereof must be filed by at least one of the parties to the agreement. Each other party to the agreement which is also subject to these provisions may, in lieu of also filing a copy of the agreement, file a certified statement referencing the filed document. The Commission may, at any time and upon reasonable request, require any communication common carrier not subject to the provisions of this section to submit the documents referenced in this section.

(b) The following carriers must comply with the requirements of paragraph (a) of this section:

(1) A communications common carrier that is engaged in domestic communications and has not been classified as non-dominant pursuant to § 61.3 of this chapter,

(2) A U.S. common carrier, other than a provider of commercial mobile radio services, that enters into a contract, agreement, concession, license, authorization, operating agreement or other arrangement and amendments thereto with a foreign carrier that has market power in a foreign market, or

(3) A U.S. carrier that has been classified as dominant on any of the international routes included in the contract, except for carriers classified as dominant on a particular route due only to a foreign carrier affiliation under § 63.10 of this chapter.

(c) With respect to contracts coming within the scope of paragraph (a)(1)(ii) of this section between subject telephone carriers and connecting carriers, except those contracts related to communications with foreign or overseas points, such documents shall not be filed with the Commission; but each subject telephone carrier shall maintain a copy of such contracts to which it is a party in appropriate files at a central location upon its premises, copies of which shall be readily accessible to Commission staff and members of the public upon reasonable request therefor; and upon request by the Commission, a subject telephone carrier shall promptly forward individual contracts to the Commission.

(d) Any U.S. carrier that interconnects an international private line to the U.S. public switched network, at its switch, including any switch in which the carrier obtains capacity either through lease or otherwise, shall file annually with the Chief of the International Bureau a certified statement containing the number and type (*e.g.*, a 64-kbps circuit) of private lines interconnected in such a manner. The certified statement shall specify the number and type of interconnected private lines on a country specific basis. The identity of the customer need not be reported, and the Commission will treat the country of origin information as confidential. Carriers need not file their contracts for such interconnections, unless they are specifically requested to do so. These reports shall be filed on a consolidated basis on February 1 (covering international private lines interconnected during the preceding January 1 to December 31 period) of each year. International private lines to countries for which the Commission has authorized the provision of switched basic services over private lines at any time during a particular reporting period are exempt from this requirement.

(e) *International settlements policy.* (1) If a U.S. carrier files an operating agreement (whether in the form of a contract, concession, license, etc.) with a foreign carrier with market power in that foreign market to begin providing switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point and the terms and conditions of such agreement relating to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, are not identical to the equivalent terms and conditions in the operating agreement of another carrier providing the same or similar service between the United States and the same foreign point, the carrier must also file with the International Bureau a modification request § 64.1001 of this chapter. Unless a carrier is providing switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point pursuant to an operating agreement that is exempt from the international settlements policy, the carrier shall not bargain for or agree to accept more than its proportionate share of return traffic.

(2) If a carrier files an amendment to an existing operating agreement with a foreign carrier with market power in that foreign market to provide switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point, and other carriers provide the same or similar service to the same foreign point, and the amendment relates to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, the carrier must also file with the International Bureau a modification request § 64.1001 of this chapter.

(3) A carrier that enters into a contract, including an operating agreement, with a carrier in a foreign point for the provision of a common carrier service between the United States and that point is not subject to the requirements of this subsection if the foreign point appears on the Commission's list of international routes that the Commission has exempted from the international settlements policy.

Note to § 43.51(e)(3): The Commission's list of international routes exempted from the international settlements policy is available from the International Bureau's World Wide Web site at *http://www.fcc.gov/ib.* A party that seeks to add a foreign market to the list of markets that are exempt from the international settlements policy must show that U.S. carriers are able to terminate at least 50 percent of U.S.-billed traffic in the foreign market at rates that are at least 25 percent below the benchmark settlement rate adopted for that country in IB Docket No. 96–261, Report and Order, 12 FCC Rcd 19,806, 62 FR 45758 (Aug. 29, 1997). A party that seeks to remove a foreign market from the list of markets that are exempt from the international settlements policy must show that U.S. carriers are unable to terminate at least 50 percent of U.S.-billed traffic in the foreign market at rates that are at least 25 percent below the benchmark settlement rate adopted for that country in IB Docket No. 96–261.

(f) *Confidential treatment.* (1) A carrier providing service on an international route that is exempt from the international settlements policy under paragraph (e)(3) of this section, but that is otherwise required by paragraphs (a) and (b) of this section to file a contract covering that route with the Commission, may request confidential treatment under § 0.457 of this chapter for the rates, terms and conditions that govern the settlement of U.S. international traffic.

(2) Carriers requesting confidential treatment under this paragraph must include the information specified in § 64.1001(c) of this chapter. Such filings shall be made with the Commission, with a copy to the Chief, International Bureau. The transmittal letter accompanying the confidential filing

shall clearly identify the filing as responsive to § 43.51(f).

Note 1 to § 43.51: To the extent that a foreign government provides telecommunications services directly through a governmental organization, body or agency, it shall be treated as a carrier for the purposes of this section.

Note 2 to § 43.51: Carriers may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are subject to the contract filing requirements set forth in this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points is available from the International Bureau's World Wide Web site at *http://www.fcc.gov/ib*. The Commission will include on the list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points any foreign carrier that has 50 percent or more market share in the international transport or local access markets of a foreign point. A party that seeks to remove such a carrier from the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier lacks 50 percent market share in the international transport and local access markets on the foreign end of the route or that it nevertheless lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. A party that seeks to add a carrier to the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier has 50 percent or more market share in the international transport or local access markets on the foreign end of the route or that it nevertheless has sufficient market power to affect competition adversely in the U.S. market.

PART 61—TARIFFS

8. The authority citation for part 61 continues to read as follows:

Authority: sections 1, 4(I), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended 47 U.S.C. 151, 154(I), 154(j), 201–205, and 403 unless otherwise noted.

9. Section 61.3 is amended by revising paragraph (u) to read as follows:

§ 61.3 Definitions.

* * * * *

(u) *Non-dominant carrier.* A carrier not found to be dominant. The nondominant status of providers of international interexchange services for purposes of this subpart is not affected by a carrier's classification as dominant as defined in § 63.10 of this chapter.

* * * * *

10. Section 61.19 is revised to read as follows:

§ 61.19 Detariffing of international and interstate, domestic interexchange services.

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, or by Commission order, carriers that are nondominant in the provision of international and interstate, domestic interexchange services shall not file tariffs for such services.

(b) Carriers that are nondominant in the provision of international and domestic, interstate, interexchange services are permitted to file tariffs for dial-around 1+ services. For the purposes of this paragraph, dial-around 1+ calls are those calls made by accessing the interexchange carrier through the use of that carrier's carrier access code.

(c) Carriers that are nondominant in the provision of international and domestic, interstate, interexchange services are permitted to file a tariff for such services applicable to those customers who contact the local exchange carrier to designate an interexchange carrier or to initiate a change with respect to their primary interexchange carrier. Such tariff will enable the interexchange carrier to provide service to the customer until the interexchange carrier and the customer consummate a written agreement, but in no event shall the interexchange carrier provide service to its customer pursuant to such tariff for more than 45 days.

11. Section 61.28 is revised to read as follows:

§ 61.28 International dominant carrier tariff filing requirements.

(a) Any carrier classified as dominant for the provision of particular international communications services on a particular route for any reason other than a foreign carrier affiliation pursuant to § 63.10 of this chapter shall file tariffs for those services pursuant to the notice and cost support requirements for tariff filings of dominant domestic carriers, as set forth in subpart E of this part.

(b) Other than the notice and cost support requirements set forth in paragraphs (a) of this section, all tariff filing requirements applicable to all carriers classified as dominant for the provision of particular international communications services on a particular route for any reason other than a foreign carrier affiliation pursuant to § 63.10 of this chapter are set forth in subpart C of this part.

12. Section 61.74 is amended by removing paragraph (d) and redesignating paragraphs (e) and (f) as paragraphs (d) and (e).

PART 63—EXTENSION OF LINES, NEW LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

13. The authority citation for part 63 continues to read as follows:

Authority: Section 1, 4(I), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

14. Section 63.10 is amended by revising paragraph (c)(1) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

* * * * *

(c) * * *

(1) Authorized carriers regulated as dominant for the provision of international communications services on a particular route for any reason other than a foreign carrier affiliation pursuant to this section shall file tariffs for those services as set forth in § 61.28 of this chapter.

* * * * *

15. Section 63.17 is amended by revising paragraph (b)(3) to read as follows:

§ 63.17 Special provisions for U.S. international common carriers.

* * * * *

(b) * * *

(3) Authorized carriers filing tariffs pursuant to §§ 61.19 or 61.28 of this chapter that route U.S.-billed traffic via switched hubbing shall tariff their service on a "through" basis between the United States and the ultimate point of origination or termination;

* * * * *

16. Section 63.21 is amended by revising paragraphs (b) and (c) to read as follows:

§ 63.21 Conditions applicable to all international Section 214 authorizations.

* * * * *

(b) Carriers must file copies of operating agreements entered into with their foreign correspondents that possess market power within 30 days of their execution, and shall otherwise comply with the filing requirements contained in § 43.51 of this chapter.

(c) Carriers regulated as dominant for the provision of international communications services on a particular route for any reason other than a foreign carrier affiliation under § 63.10 shall file tariffs pursuant to section 203 of the

Communications Act, 47 U.S.C. 203, and part 61 of this chapter. Carriers regulated as non-dominant, as defined in § 61.3 of this chapter, and providing detariffed interexchange services pursuant to § 61.19 of this chapter must comply with all applicable public disclosure, and maintenance of information requirements in §§ 42.10, and 42.11 of this chapter.

* * * * *

[FR Doc. 00–28060 Filed 11–2–00; 8:45 am]
BILLING CODE 6712–10–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 224 and 226

[Docket No. 001025297-0297-01; I.D. 101000E]

RIN 0648-XA58

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Lower Columbia River Coho Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of finding and request for information.

SUMMARY: NMFS has received a petition to list the lower Columbia River populations of coho salmon (*Oncorhynchus kisutch*) on an emergency basis and to designate critical habitat under the Endangered Species Act (ESA). NMFS determines that the petition presents substantial scientific information indicating that a listing may be warranted, but that there is insufficient evidence to support an emergency listing. NMFS solicits information and comments pertaining to these coho salmon populations and their habitats, and seeks suggestions from the public for peer reviewers for any proposed listing determination that may result from the agency's status review of the species.

DATES: Information and comments must be received by January 2, 2001.

ADDRESSES: Information and comments on this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street - Suite 500, Portland, OR 97232. Comments will not be accepted if submitted via e-mail or the Internet. However, comments may be sent via fax to (503) 230-5435.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 231-2005 or Chris Mobley, NMFS, Office of Protected Resources, (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Reference materials regarding this rule can also be obtained from the internet at www.nwr.noaa.gov.

Background

On July 24, 2000, NMFS received a petition from Oregon Trout, Native Fish Society, and Oregon Council of Trout Unlimited to list wild populations of lower Columbia River coho salmon as endangered under the ESA. The petitioners further requested that NMFS list these populations on an emergency basis and concurrently designate critical habitat for them in accordance with the ESA. Copies of this petition are available from NMFS (See **ADDRESSES**).

Lower Columbia River coho salmon populations have been the subject of two previous ESA status reviews. The first review resulted from a June 7, 1990, petition from Oregon Trout and several co-petitioners requesting ESA protection for lower Columbia River coho salmon. NMFS accepted the petition but later determined that listing was not warranted because available information was inconclusive and did not allow the agency to identify a distinct population segment (hence a "species") under the ESA (56 FR 29553, June 27, 1991). In 1993, NMFS received additional petitions which prompted a more comprehensive status review of coho salmon in California, Oregon, Idaho, Washington, and southern British Columbia (60 FR 38011, July 25, 1995). This status review identified six distinct population segments (referred to as Evolutionarily Significant Units or "ESUs") of coho salmon, three of which were subsequently listed as threatened species–the central California coast ESU (61 FR 56138, October 31, 1996); southern Oregon/northern California coasts ESU (62 FR 24588, May 6, 1997), and Oregon coast ESU (63 FR 42587, August 10, 1998). NMFS determined that listing was not warranted for three other ESUs - the Olympic Peninsula ESU, Puget Sound/Strait of Georgia ESU, and southwest Washington/lower Columbia River ESU - but that the latter two ESUs should be classified as candidate species due to specific risk factors and concerns about the overall health of the ESUs. The agency committed to re-assessing these candidate ESUs to determine if listing proposals were warranted (60 FR 38011, 38022, July 25, 1995).

In 1996, NMFS' West Coast Coho Salmon Biological Review Team (BRT) updated the 1995 status review and produced a draft document that was distributed to co-managers for review and comment in December 1996 (NMFS, 1996). In this draft update, the BRT reached preliminary conclusions regarding the stock structure of coho populations in the candidate ESUs. With respect to Columbia River coho salmon populations, the BRT concluded that the southwest Washington/lower Columbia River ESU may warrant splitting into separate southwest Washington and lower Columbia River ESUs, but the level of risk faced by these separate ESUs was still in question. Since the time of these preliminary conclusions, NMFS has continued to update and compile data via meetings with comanagers and coho salmon experts in the Pacific Northwest but has not proposed any changes to the ESA status of the candidate ESUs.

Analysis of Petition

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary of Commerce (Secretary) to list species under the ESA (16 U.S.C. 1533(b)(3)(A)). Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary must make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted. This includes determining whether there is evidence that the subject populations may qualify as a "species" under the ESA, in accordance with NMFS' Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon (56 FR 58612, November 20, 1991).

NMFS' ESA implementing regulations define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating a petitioned action, the Secretary considers several factors, including whether the petition contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species (50 CFR 424.14(b)(2)(ii)). In addition, the Secretary considers whether the petition provides information regarding the status of the species over all or a significant portion of its range (50 CFR 424.14(b)(2)(iii)).

NMFS evaluated whether the petition met the ESA's standard for "substantial information" and applied this standard in determining whether to accept the petition as well as whether to invoke an emergency listing under the ESA. NMFS believes it is appropriate to accept the petition to list the species but to reject the petitioner's request for an emergency listing as "endangered." On this latter issue the petition failed to present new and substantial information to resolve longstanding uncertainties about ESU configuration and level of risk to these populations. However, the petition does highlight key issues warranting consideration by NMFS, including: (1) recent genetic evidence bearing on the issue of whether to split the southwest Washington/lower Columbia River ESU; (2) viability analyses indicating that Clackamas and Sandy River coho salmon populations are at high risk of extinction; and (3) evidence that populations may persist in other lower Columbia River tributaries. NMFS believes that an emergency listing should occur only after the ESU structure has been determined. NMFS will not presuppose the outcome of a more rigorous status review and BRT assessment.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available to NMFS scientists, the Secretary determines that the petition presents substantial scientific information indicating the petitioned action may be warranted. However, NMFS does not believe that available information supports the petitioner's request for an emergency listing. In accordance with section 4(b)(3)(B) of the ESA, the Secretary will make his determination whether the petitioned action is warranted for this species within 12 months from the date the petition was received (i.e., by July 24, 2001).

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be threatened or endangered based on any of the following factors: (1) The present or threatened destruction, modification, or curtailment of a species' habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting the species continuing existence. Listing determinations are based solely on the best available scientific and commercial data after taking into account any efforts being made by any state or foreign nation to protect the species.

Information Solicited

To ensure that the status review is complete and based on the best available scientific and commercial data, NMFS solicits information and comments concerning the status of Columbia River basin coho salmon populations (see **DATES** and **ADDRESSES**). Specifically, the agency is seeking updated information since 1994 on: (1) abundance estimates and measures of population productivity, including spawner-recruit or spawner-spawner survival data, smolt production estimates, size and fecundity data, and ocean survival rates; (2) impacts associated with hatchery production including estimates of hatchery fish releases, straying rates, and proportions of hatchery fish in spawner escapements to lower Columbia River tributaries; (3) estimates of hatchery fish survival and their reproductive success in the wild; (4) genetic, life history, habitat, and other evidence distinguishing Columbia River coho salmon populations from coastal populations; (5) current or planned activities and their possible impact on this species (e.g., harvest measures and habitat actions); and (6) efforts being made to protect coho salmon in Washington and Oregon.

NMFS also requests information describing the quality and extent of freshwater, estuarine and marine habitats for Columbia River coho salmon, as well as information on areas that may qualify as critical habitat. Areas that include the physical and biological features essential to the recovery of the species should be identified. Essential features include, but are not limited to, the following: (1) Habitat for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species. NMFS is also seeking information and maps describing natural and manmade barriers within the species' current and historical range in the Columbia River basin.

For areas potentially qualifying as critical habitat, NMFS also requests information describing (1) the activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation. The economic cost to be considered in a critical habitat designation under the ESA is the probable economic impact "of the (critical habitat) designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 or 4(d) of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. NMFS now solicits the names of recognized experts in the field who could take part in the peer review process for the agency's status review of Columbia River coho salmon. Peer reviewers may be selected from academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 30, 2000.

William T. Hogarth,

Deputy Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–28306 Filed 11–2–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 091800K]

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Cancellation of public hearings.

SUMMARY: NMFS announces the cancellation of two public hearings that had dates and locations yet to be determined by the Atlantic States Marine Fisheries Commission (ASMFC) and held in the states of Massachusetts and Rhode Island on the public hearing draft of Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The intent to schedule these meetings was announced in the **Federal Register** on September 27, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director of the Mid-Atlantic Fishery Management Council (Council), 302–674–2331, ext. 19, or John Dunnigan, Executive Director, ASMFC, 202–289–6400, ext. 304.

SUPPLEMENTARY INFORMATION: NMFS, the Council, and ASMFC jointly manage the summer flounder fishery off the Atlantic coast. An earlier notice, published in the **Federal Register** (65 FR 58035, September 27, 2000) announced four public hearings with specific locations and dates to gather public comments on draft Amendment 13. The same notice also advised the public that two additional hearings (one in Massachusetts and one in Rhode Island) would be held at locations and times to be determined by the ASMFC and announced later through another notice in the **Federal Register**. The ASMFC has decided not to hold these hearings.

Dated: October 30, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–28305 Filed 11–2–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

50 CFR Part 679

[Docket No. 001023289–0289–01; I.D. 083000C]

RIN 0648–AO25

Fisheries of the Exclusive Economic Zone Off Alaska; Extension of the Interim Groundfish Observer Program through December 31, 2002

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule to extend through 2002 the existing regulations for the Interim North Pacific Groundfish Observer Program (Observer Program), which otherwise would expire December 31, 2000. This action is necessary to ensure uninterrupted observer coverage through December 31, 2002. The intention is to advance the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The proposed rule would not amend the existing regulations, except to extend the certifications of observer contractors who are currently certified by NMFS.

DATES: Comments on this proposed rule must be received by November 20, 2000.

ADDRESSES: Comments should be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the 1997 Interim Groundfish Observer Program, the RIR/FRFA prepared for the 1998 Interim Groundfish Observer Program, the RIR/FRFA prepared for the 1999–2000 Interim Groundfish Observer Program, and the RIR/Initial Regulatory Flexibility Analysis (IRFA) prepared for this proposed regulatory action may also be obtained from the same address. Send comments on any ambiguity or unnecessary complexity arising from the language used in this proposed rule to the Regional Administrator, Alaska Region, P.O. Box 21668, Juneau AK 99802.

FOR FURTHER INFORMATION CONTACT: Bridget Mansfield, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands Area in the Exclusive Economic Zone under the FMPs. The North Pacific Fishery Management Council (Council) prepared the Fishery Management Plans (FMPs) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council adopted and NMFS implemented the Interim Groundfish Observer Program (Interim Program) in 1996, which superseded the North Pacific Fisheries Research Plan (Research Plan). The requirements of the 1996 Interim Program were extended through 1997 (61 FR 56425, November 1, 1996), again through 1998 (62 FR 67755, December 30, 1997), and again through 2000 (63 FR 69024, December 15, 1998). The Interim Program provides the framework for the collection of data by observers to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Further, it authorizes mandatory observer coverage requirements for vessels and shoreside processors and establishes vessel, processor and contractor responsibilities relating to the observer program. NMFS' intent is that the Interim Program be effective until a long-term program is developed and implemented that addresses several current concerns. These include data integrity, observer compensation, working conditions for observers, and equitable distribution of observer costs.

NMFS is working with the Council and the Council's Observer Advisory Committee (OAC) to address the concerns above and to develop new options for an alternative infrastructure for the Observer Program. A new infrastructure would be expected to ensure the continued collection of quality observer data and address observer coverage cost distribution issues through a fee system or alternate funding mechanism.

The development of a new infrastructure will require extensive time and coordination among NMFS staff, the OAC, and representatives of the industry sectors and observer interests. The intent of NMFS and the Council is to implement a replacement structure for the program prior to the proposed expiration of the current Interim Observer Program on December 31, 2002.

A description of the regulatory provisions of the Interim Groundfish Observer Program was provided in the proposed and final rules implementing this program (61 FR 40380, August 2, 1996; 61 FR 56425, November 1, 1996, respectively) as well as the proposed and final rules extending this program through 1998 and again through 2000 (62 FR 49198, September 19, 1997; 62 FR 67755, December 30, 1997; 63 FR 47462, September 8, 1998; 63 FR 69024, December 15, 1998, respectively). No changes to the existing regulations are proposed in this rulemaking, except to extend certification of observer contractors who are currently certified by NMFS under the terms and conditions set forth in the regulations at § 679.50(i).

NMFS will continue efforts to enhance the existing Interim Program under separate rulemaking. At its June 2000 meeting, the Council recommended several changes to the regulations implementing the Observer Program to address concerns about observer coverage requirements and the adequacy of regulatory provisions supporting the working environment of observers. NMFS anticipates that a proposed rule to implement the Council's recommendation will be published in the **Federal Register** next year for public review and comment. These changes include the following: Revised coverage requirements for shoreside processors, shoreside observer housing, transportation and communication standards, revised coverage requirements for the groundfish pot fishery, and restrictions on distribution of personal information on individual observers.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This rule would extend without change existing collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by the Office of Management and Budget (OMB) under OMB control numbers 0648–0307 and 0648–0318.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The extension of the existing regulations implementing the Interim Observer Program through December 31, 2002, is consistent with the intent and purpose of the Interim Observer Program. The extension will provide the same benefits as listed in the EA/RIR/FRFA for the Interim Observer Program dated August 27, 1996, the RIR/FRFA for the extension of the Interim Observer Program through 1998 dated October 28, 1997, and the RIR/FRFA for the extension of the Interim Observer Program through 2000, dated June 4, 1998. Copies of these analyses are available from NMFS (see **ADDRESSES**).

NMFS prepared an IRFA, which describes the impact this proposed rule would have on small entities, if adopted. A copy of this analysis is also available from NMFS (see **ADDRESSES**).

Observer costs borne by vessels and processors are based on whether an observer is deployed aboard a vessel or at a shoreside processor, and on overall coverage needs. Higher costs are borne by those vessels and shoreside processors that require higher levels of coverage. Most of the catcher vessels participating in the groundfish fisheries off Alaska and that are required to carry an observer (i.e., vessels 60 ft (18.3 m) length overall (LOA) and longer) meet the definition of a small entity under the Regulatory Flexibility Act (RFA). Since 1995, about 270 catcher vessels annually carry observers. The FRFAs prepared for the 1998 and 2000 Interim Observer Program describe the degree to which these vessels would be economically impacted by observer coverage levels or other regulatory provisions of the Observer Program. The proposed action is not expected to result in any economic impacts beyond those already analyzed in these previous FRFAs because (1) this rule would not implement any changes in required coverage levels or other regulations implementing the Interim Observer Program, except for the extension of the effective date; and (2) the underlying socioeconomic conditions of the fishery and participating small entities has remained constant.

Although exact quantification of relative costs is not possible due to the unavailability of data, we can conclude that smaller vessels generally pay a proportionally larger share toward observer coverage than do larger vessels and shoreside processors when seen as a percentage of ex-vessel or product prices. Additionally, impacts of this action cannot be isolated from other factors, including price fluctuation. A fluctuation in ex-vessel or product value would likewise result in a fluctuation of cost of observer coverage as a percentage of the resulting revenues.

Costs borne by industry to meet observer coverage requirements under the Interim Observer Program are considerable ($8–$10 million) and would continue under the proposed action to extend the program. However, impacts of extending the current interim program would be expected to be minimal relative to the No Action alternative. These impacts include: (1) elimination of all observer jobs provided through the program; (2) elimination of earnings realized by observer providers, including the real potential for some companies to go out of business; and (3) potential lost revenue to industry in terms of inaccurate catch accounting and potential mis-allocation of Total Allowable Catch (TAC) resulting in premature or delayed fishery closures. Premature closures cause forfeiture of valuable catch and could adversely impact product supply and prices paid by consumers. Delayed closures of the fishery cause resources to be less effectively managed, with adverse long-term implications for productivity and future catch levels. While these costs cannot be readily estimated, they do represent a real potential loss and would be relatively larger for smaller vessels that pay a higher proportional cost for observer coverage.

The RFA requires that the IRFA describe significant alternatives to the proposed rule that accomplish the stated objectives of the applicable statutes and minimize any impact on small entities. The IRFA must discuss significant alternatives to the proposed rule such as (1) establishing different reporting requirements for small entities that take into account the resources available to small entities, (2) consolidating or simplifying of reporting requirements, (3) using performance rather than design standards, and (4) allowing exemptions from coverage for small entities.

NMFS did not consider alternatives that address modifying reporting requirements for small entities or the use of performance standards. Such alternatives are not relevant to this proposed action and would not mitigate the impacts on small entities. Allowing for additional exemptions for small entities from this proposed action would undermine the collection of information needed to effectively manage the Alaska groundfish fisheries.

However, this proposed action does include measures that will minimize the significant economic impacts of observer coverage requirements on at least some small entities. Vessels less than 60 ft(18.3 m) LOA are not required to carry an observer while fishing for groundfish. Similarly, vessels 60 ft and greater, but less than 125 ft (38.1 m) LOA, have lower levels of observer coverage than those 125 ft and above. These requirements, which have been incorporated into the requirements of the North Pacific Groundfish Observer Program since its inception in 1989, effectively mitigate the economic impacts on some small entities without significantly adversely affecting the implementation of the conservation and management responsibilities imposed by the FMPs and the Magnuson-Stevens Act.

Regulations implementing the existing observer program will expire at the end of 2000 unless extended. Implementation of an alternative program structure including an alternative funding mechanism is not feasible by the end of this year, which would be necessary to provide observer coverage for the 2001–2002 groundfish fisheries. The preferred alternative for an extension of the current interim observer program is the only option that could be implemented by January 1, 2001, and ensure the groundfish fisheries could commence without interruption.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule. Such comments should be sent to the Regional Administrator, Alaska Region (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 27, 2000

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801*et seq.*, and 3631 *et seq.*

2. In § 679.50, the section heading, and paragraphs (i)(1)(i) and (i)(1)(iii) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2002.

* * * * *

(i) * * *

(1) * * *

(i) *Application.* An applicant seeking to become an observer contractor must submit an application to the Regional Administrator describing the applicant's ability to carry out the responsibilities and duties of an observer contractor as set out in paragraph (i)(2) of this section and the arrangements to be used. Observer contractors certified for the year 2000 to provide observers through the North Pacific Groundfish Observer Program, are exempt from this requirement to submit an application and are certified for the term specified in paragraph (i)(1)(iii) of this section.

* * * * *

(iii) *Term.* Observer contractors will be certified through December 31, 2002. NMFS can decertify or suspend observer contractors pursuant to paragraph (j) of this section.

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[FR Doc. 00–28304 Filed 11–2–00; 8:45 am]

BILLING CODE 3510-22-E

Notices

Federal Register
Vol. 65, No. 214
Friday, November 3, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–099–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate the Bluetongue Surveillance Pilot Project sentinel trial, which will be an information collection activity. The purpose of the sentinel trial, which will be voluntary, is to support international export trade through the identification and development of an economically feasible and highly representative surveillance system to substantiate the regionalization of the United States for bluetongue. The sentinel trial will take place on farms in Montana, Nebraska, North Dakota, and South Dakota.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by January 2, 2001.

ADDRESSES: Please send four copies (an original and three copies) of your comment to: Docket No. 00–099–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–099–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information on the Bluetongue Surveillance Pilot Program sentinel trial, contact Ms. Marj Swanson, Management Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 555 S. Howes, Fort Collins, CO 80521; (970) 490–7978. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Bluetongue Surveillance Pilot Program.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The United States Department of Agriculture is responsible for protecting the health of our Nation's animals and poultry by preventing the spread of contagious, infectious, or communicable animal diseases from one State to another and by eradicating such diseases from the United States when feasible. In connection with this mission, the Animal and Plant Health Inspection Service (APHIS), Veterinary Services, Center for Animal Health Monitoring, is requesting approval to initiate the Bluetongue Surveillance Pilot Program (BSPP) sentinel trial information collection activity.

Bluetongue viruses are transmitted by blood-feeding midges (*Culicoides* spp.), which breed in cattle manure and transmit the viruses between hosts, which include antelope, cattle, deer, elk, goats, and sheep. Cattle are infected naturally by these viruses but rarely show clinical signs. However, sheep and other ruminants show signs of the disease, including abortion, birth defects, emaciation, ulcers in the digestive system and mouth, lameness, pneumonia, and death. Twenty-four serotypes of bluetongue virus are distributed throughout the tropical and temperate regions of the world; except for Greece and Italy on occasion, Europe is bluetongue virus-free. The viruses and vectors (insects) have evolved to establish well-defined regional complexes of selected serotypes adapted to specific midge populations. In the United States, four serotypes of bluetongue virus are known to occur; however, their range is restricted to Western and Southern States. This is the result of climatic and ecologic conditions that determine the distribution of the North American vector, *Culicoides sonorensis.*

Bluetongue is an Office International des Epizooties (OIE) List A disease. The criteria for inclusion on this list are transmissibility, potential for serious and rapid spread, and major economic importance in the international trade of animals and animal products. For these reasons, countries, especially those entirely free of bluetongue, take action to minimize the risk of introducing exotic serotypes of the virus, thus restricting trade. These restrictions are estimated to cost the United States $125 million annually (USDA Agricultural Research Service, 1999).

The current method of bluetongue surveillance tests blood samples taken from animals at the time of slaughter through the APHIS Market Cattle Identification (MCI) system. Every 2 years, slaughter samples are tested from 18 Northeastern and North Central States, Alaska, Hawaii, and western Washington, which are considered to be free of bluetongue. In the MCI slaughter survey in 1996, 9,053 slaughter samples were tested. Four of the 14 geographic areas sampled had 2 percent or greater positive samples, which exceeds the OIE standard and leads to restrictions on the export of animals from those areas. Slaughter surveillance as the method for bluetongue surveillance has limited specificity and geographic representativeness with regard to the demands of international trade. Detection of low levels of bluetongue antibody may reflect animal movement rather than disease occurrence at the sampling locations, as the life history of the animals sampled is unknown.

The purpose of the BSPP sentinel trial is to support international export trade through the identification and development of an economically feasible and more representative surveillance system to substantiate the regionalization of bluetongue. The BSPP sentinel trial is a surveillance methodology development activity. In the surveillance trial, specific sentinel animals and farms will be tested serologically over time in contrast to the randomized on-farm and slaughter market surveillance currently practiced. Neither one-time, on-farm nor slaughter market surveillance allows animals to be tracked over time, and the geographic history of the origin of the animals is difficult to establish with consistent reliability.

The Center for Animal Health Monitoring is proposing the BSPP sentinel trial, which will use active serosurveillance, adult insect trapping, and soil sampling for insect larvae from suspect vector breeding sites. The objectives of this study include: (1) Develop a pilot sentinel system as a tool to substantiate disease freedom and compare it to other surveillance options; (2) test for bluetongue status in two demarcated populations (free and infected); and (3) develop data on the epidemiology of bluetongue in a seasonally infected area.

The ideal choice of States is a contiguous north-south group, (*e.g.*, Montana, North Dakota, South Dakota, and Nebraska) that transects the border between the disease-free (North Dakota) and the seasonally affected zone (Montana and Nebraska) with a transitional State (South Dakota) having both free and infected zones. This provides a continuous gradient of environmental determinants of vector distribution that can be measured when moving from north to south.

The Sanitary and Phytosanitary Agreement of the World Trade Organization provides that countries can create disease-free and low-prevalence zones. Determination of such areas must be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary and phytosanitary controls. Further, it is up to the exporting country to develop a regionalization proposal with sufficient information to substantiate zoning for a disease. The importing country is charged with reviewing the proposal and providing a transparent and science-based decision. In the case of bluetongue, a vector-borne disease, it is largely the ecology of the vector that determines the distribution of the disease.

The potential benefits to trade from better bluetongue surveillance include access to new export markets and preservation of existing markets through increased confidence in disease freedom.

Information from this study will be disseminated and used by livestock producers, animal health officials, private veterinary practitioners, animal industry groups, policymakers, public health officials, the media, educational institutions, and others to improve agricultural productivity and competitiveness.

Participation in the BPSS sentinel trial is voluntary, and all data are confidential.

We are asking the Office of Management and Budget (OMB) to approve the use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .93814 hours per response.

Respondents: Industry personnel, private veterinary practitioners, company and independent producers, academicians, State veterinary medical officers, and State public health officials.

Estimated annual number of respondents: 1,365.

Estimated annual number of responses per respondent: 1.06593.

Estimated annual number of responses: 1,455.

Estimated total annual burden on respondents: 1,373 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of October 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–28247 Filed 11–2–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Reinstatement and Revision of a Previously Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) to request the reinstatement and revision of a previously approved information collection. This information collection is used by CCC and FSA to document or determine whether representatives or survivors of a producer are entitled to received payments earned by a producer who dies, disappears, or is declared incompetent before receiving payments or other disbursements.

DATES: Comments on this notice must be received on or before January 2, 2001 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact David Tidwell, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517, telephone (202)720–4542.

SUPPLEMENTARY INFORMATION:

Title: Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

OMB Control Number: 0560–0026.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Persons desiring to claim payment due a person who has died, disappeared, or has been declared incompetent must do so on Form FSA–325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent". This information is used by FSA county office employees to document the relationship of heirs or beneficiaries and determine the order of precedence for disbursing payments to survivors of the person who has died, disappeared, or been declared incompetent.

Information is obtained only when a producer eligible to receive a payment or disbursement dies, disappears, or is declared incompetent, and documentation is needed to determine if any survivors are entitled to receive such payments or disbursements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours (1/2 hour) per response.

Respondents: Individual producers.

Estimated Number of Respondents: 4,000.

Estimated Number of Responses per Respondent: one.

Estimated Total Annual Burden on Respondents: 2,000.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to David Tidwell, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, (202)720–4542.

Copies of the information collection may be obtained from David Tidwell, at the above address.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department of Agriculture on the substantive regulations that may be the subject of other notices.

Signed at Washington, DC, on October 26, 2000.

George Arredondo,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–28264 Filed 11–2–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) to request an extension and revision for the Highly Erodible Land Conservation and Wetland Conservation certification requirements. This information is collected in support of the conservation provisions of Title XII of the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 and the Federal Agriculture, Improvement and Reform Act of 1996 (the Statute).

DATES: Comments on this notice must be received on or before January 2, 2001 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Sharon Biastock, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202)720–6336.

SUPPLEMENTARY INFORMATION:

Title: Highly Erodible Land Conservation and Wetland Conservation Certification.

OMB Control Number: 0560–0185.

Expiration Date: December 31, 2000.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Rules governing those requirements under Title XII of the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 and the Federal Agriculture, Improvement and Reform Act of 1996 relating to highly erodible lands and wetlands are codified in 7 CFR part 12. In order to ensure that persons who request benefits subject to conservation restrictions get the necessary technical assistance and are informed regarding the compliance requirements on their land, information is collected with regard to their intended activities on their land which could affect their eligibility for requested USDA benefits. Once technical determinations are made, producers are required to certify that they will comply with the conservation requirements on their land to maintain their eligibility for certain programs.

Persons may request that certain activities be exempt according to provisions of the Statute. Information is collected from those who seek these exemptions for the purpose of evaluating whether the exempted conditions will be met.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .16 hours (10 minutes) per response.

Respondents: Individual producers.

Estimated Number of Respondents: 250,000

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 40,000.

Proposed topics for comment include: (a) Whether the collection information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Sharon Biastock, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202)720–6336.

Signed at Washington, DC, on October 26, 2000.

George Arredondo,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–28265 Filed 11–2–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Protein Certification

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final notice.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) will begin certifying wheat protein content results on any specified moisture basis requested by applicants, in addition to certifying results on the current 12.0 percent moisture basis. This change was requested by importers of U.S. wheat.

EFFECTIVE DATES: May 1, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Manol at GIPSA, USDA, STOP 3632, 1400 Independence Avenue, SW., Washington, DC, 20250–3632; FAX (202) 720–1015; or E-mail *Pmanol@Gipsadc.usda.gov.*

SUPPLEMENTARY INFORMATION: On May 1, 1978, GIPSA (then the Federal Grain Inspection Service or FGIS) began offering official wheat protein testing for Hard Red Winter and Hard Red Spring wheat to interested parties in the grain industry. An "as-is" moisture basis was used to calculate protein content, though it could also be determined and recorded using any specified moisture basis if requested by the applicant for inspection. GIPSA received numerous complaints, mostly from foreign buyers, about calculating protein content on an as-is moisture basis. These complaints were generally about low protein levels which, in part, appeared due to the difference between the U.S. and Canadian methods for computing and stating protein content. Canada was using a fixed 13.5 percent moisture basis; the U.S. an as-is moisture basis calculation. When using an as-is moisture basis to certify protein, the certified protein result depends directly on the moisture level of the wheat—it is inversely proportional to the moisture content. Consequently, as the moisture content of the wheat gets lower, the protein content reported on an as-is basis gets higher. This phenomenon can give the perception that the protein level increased when, in fact, it remained unchanged.

To address these concerns and increase the uniformity of official protein reporting procedures, FGIS proposed, in 1986, to revise its Grain Inspection Handbook to certify protein content on a constant 12.0 percent moisture basis. A 12.0 percent moisture basis was recommended by various grower and processor organizations, as well as the Grain Quality Workshops, because this percentage represented the average moisture content of wheat exported from the United States. Certifying protein content on a constant 12.0 percent moisture basis would provide buyers and sellers of U.S. wheat results that could be easily evaluated and compared with results from other major wheat exporting countries. For example, Canada uses a 13.5 percent moisture basis, Australia uses either 11.0 percent or "as-is", England and Sweden use 15.0 percent, and many Eastern European and other countries around the world use the dry matter basis. This proposal, announced in the May 30, 1986, **Federal Register** (51 FR 19556), solicited industry comment on this action.

Comments on the May 30, 1986, proposal generally favored a constant moisture basis for protein determination. Some commentors suggested using either a dry matter (0.0 percent moisture basis) or a 14.0 percent moisture basis as the constant. European flour mill purchase specifications typically use a dry matter reporting basis, whereas American mills rely on a 14.0 percent moisture basis. The majority of commentors, including foreign buyers, supported the proposal to certificate protein on a constant 12.0 percent moisture basis. Consequently, FGIS announced this change in the August 26, 1986, **Federal Register** (51 FR 30323) to become effective May 1, 1987.

Moving to a constant 12.0 percent moisture basis eliminated varying protein results caused by fluctuating wheat moisture levels. To date, GIPSA only certifies protein results on a 12.0 percent moisture basis.

The current 12.0 percent moisture basis requirement for protein analysis in wheat may not be fully facilitating the marketing of export wheat. A number of U.S. wheat importers have asked GIPSA to provide optional certification of wheat protein content results on any specified moisture basis requested by applicants, in addition to the current 12.0 percent moisture basis.

To address these requests, GIPSA published a Notice in the October 1, 1998, **Federal Register** (63 FR 52681) that solicited comments on introducing flexible certification in our protein testing program, in addition to maintaining the standardization of results. Allowing certification on the 12.0 percent moisture basis and, optionally, on a moisture basis requested by the applicant would provide sufficient information on the inspection certificate to facilitate the marketing of wheat. Although this certification option was developed to address the export market's need, it could be used for domestic shipments as well. This would be especially true in situations when an exporter is originating wheat to fulfill an export contract that requires a moisture basis other than 12.0 percent. Therefore, this certification option would be available from GIPSA field offices, delegated States, and designated agencies. Adopting this action would allow GIPSA and the grain industry the greatest flexibility in the certification of wheat protein. Protein results would continue to be certified on a constant 12.0 percent moisture basis on all certificates, but GIPSA also would have the flexibility to meet customers' requests for additional information.

Discussion of Comments Received

A total of 22 comments were received from several foreign wheat millers and governments (Jordan, Syria, India, and Poland); State Wheat Boards/Commissions (California, Idaho, Nebraska, and Oregon); a State Department of Agriculture (Wisconsin); U.S. Wheat Associates; and U.S. grain industry trade groups (National Grain & Feed Association (NGFA) and North American Export Grain Association (NAEGA)). One domestic miller also commented on the proposal.

Thirteen comments favored the notice as it was written; that is, to allow for protein certification on any moisture basis requested by an applicant as well as the current 12.0 percent moisture basis. These comments were from the State Wheat Boards/Commissions, the State Department of Agriculture, U.S. Wheat Associates, and several foreign entities.

Two comments (NGFA and NAEGA) opposed the proposal as written. They suggested that reporting protein results on 12 percent and alternative moisture bases would likely create documentation problems for processing letters of credit. They suggested using one basis or the other, but not both.

The remaining seven comments, from foreign entities, suggested reporting results on any moisture basis requested; a 12 percent basis; an "as-is" basis; or a dry matter basis. One commentor suggested certifying the testing methodology.

Producer groups tend to favor certifying protein content on a 12-percent and any requested moisture basis. Their rationale is that dual certification would alleviate any "misperception" that a grain handler could purchase grain on a 12-percent basis and subsequently re-market the same lot of grain using a lower moisture basis, thereby "increasing" the protein content. This was one of the concerns about GIPSA's original policy that certified protein content on an "as-is" basis.

Other comments in support of the change concurred that it would add flexibility to the U.S. wheat marketing system and allow the U.S. industry to better meet its customers needs. The change would allow buyers to better compare U.S. wheat to that of other wheat exporting countries and reflect the U.S. wheat industry's commitment to meet customers' needs. Further, it was suggested that the change would allow the national protein certification system to retain its uniformity and meet customers' specific contract needs.

GIPSA believes that introducing flexible certification in the protein testing program, in addition to maintaining standardization of results, will have a positive impact on export and domestic markets. We do not believe that this change would create documentation problems for processing letters of credit as two commentors suggested. On the contrary, providing for this option in the certification program will give the market the flexibility that it needs. Further, alternative protein reporting would be only used on a request basis. The effective date of this change is May 1, 2001. This will allow sufficient time for interested persons to become familiar with this option and allow the industry to make any adjustments deemed necessary.

Protein analysis and certification by GIPSA has always been optional; that is, buyers and sellers contractually agree whether or not to request official protein testing services. Wheat protein content would be certified on an alternative moisture basis only upon specific request by an applicant. In lieu of such a request, wheat protein would continue to be certified on the current 12.0-percent moisture basis. Overall, this certification option would allow GIPSA and the grain industry the greatest flexibility in the certification of wheat protein.

Accordingly, GIPSA will begin certifying protein content in wheat using the current 12.0 percent moisture basis and any other moisture basis requested by an applicant. This certification option will go into effect May 1, 2001. GIPSA field offices, delegated States, and designated agencies will be responsible for the applicable mathematical calculations for certification using the following industry recognized formula:

$$X = \frac{P\,(100 - PX)}{88}$$

Where:

X = the protein content at a moisture basis other than 12.0 percent requested by an applicant.
P = the protein content determined at a 12.0-percent moisture basis.
PX = the moisture basis specified by the applicant (using the "official" moisture meter results if the applicant requests protein content be certified on an "as-is" basis).

For example, if an applicant requests that protein results also be certified on a dry matter or 0.0 percent moisture basis and the protein content of the lot was determined to be 13.5 percent on a 12.0 percent moisture basis, the following calculation would be used to obtain the alternate protein result:

$$X = \frac{13.5 \times (100 - 0)}{88}$$

$$X = \frac{13.5 \times 100}{88}$$

$$X = \frac{1350}{88}$$

$$X = 15.3$$

Further, the statement on the certificate would read as follows:

> Protein 15.3%, dry matter basis, which converts to 13.5% protein, 12.0% moisture basis. Protein content reported on an alternative moisture basis in addition to the U.S. standard 12.0 percent moisture basis at applicant's request.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: October 30, 2000.

David Orr,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 00–28146 Filed 11–2–00; 8:45 am]

BILLING CODE 3410–EN–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 4, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.
2. The action will result in authorizing small entities to furnish the commodity and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Rake, Forest Fire
  4210–00–540–4512
NPA: Tuscola County Community Mental Health Services, Caro, Michigan

Services:

  Administrative Services (Religious Services Technician)
  Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Cumberland, Maryland

  NPA: Columbia Lighthouse for the Blind, Washington, DC
Base Supply Center
  Trident Refit Facility, Naval Submarine Base, Kings Bay, Georgia
  NPA: L.C. Industries for the Blind, Inc., Durham, North Carolina
Janitorial/Custodial
  U.S. Border Patrol Compound, Davis Monthan AFB, Arizona
  NPA: J.P. Industries, Inc., Tucson, Arizona
Linen Service
  Hickam Air Force Base, Hickam AFB, Hawaii
  NPA: Network Enterprises, Inc., Honolulu, Hawaii

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodity and the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and the service proposed for deletion from the Procurement List.

The following commodity and service have been proposed for deletion from the Procurement List:

Commodity

Water Bag, Nylon Duck
  8465–01–321–1678
  8465–01–321–1678F

Service

Janitorial/Custodial
  Drug Dependence Treatment Center, 2320 West Roosevelt Road, Chicago, Illinois

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–28271 Filed 11–02–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disablities.

EFFECTIVE DATE: December 4, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartlot, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 25, September 1and 15, 2000 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 51794, 53267 and 55939) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities and service.
3. The action will result in authorizing small entities to furnish the commodities and service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

CRT and Keyboard Cleaner
7045–01–247–6020
Strip, Door
3920–02–000–1916

Service

Janitorial/Custodial
Department of Veterans Affairs, BRECC VA Clinic, 3800 Loch Raven Boulevard, Baltimore, Maryland

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–28272 Filed 11–02–00; 8:45 am]

BILLING CODE 6353–01–F

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1124]

Expansion of Foreign-Trade Zone 78 and Authority To Conduct Manufacturing Authority (Computer Products); Nashville, Tennessee

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Metropolitan Government of Nashville and Davidson County (Tennessee), grantee of Foreign-Trade Zone 78, submitted an application to the Board for authority to expand FTZ 78 to include two new sites, as well as for manufacturing authority (computer products) within those sites for Dell Computer Corporation (FTZ Docket 23–2000; filed 6/1/2000);

Whereas, notice inviting public comment was given in **Federal Register** (65 FR 36888, 6/12/2000) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 78, and for manufacturing authority for Dell Computer Corporation, is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 24th day of October 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–28287 Filed 11–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1123]

Approval for Expanded Manufacturing Authority; (Automobile Transmissions) Within Foreign-Trade Subzone 229A; Toyota Motor Manufacturing West Virginia, Inc., Buffalo, West Virginia

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the West Virginia Economic Development Authority, grantee of FTZ 229, has requested authority on behalf of Toyota Motor Manufacturing West Virginia, Inc. (TMMWV), operator of FTZ 229A, at the TMMWV automobile engine manufacturing plant in Buffalo, West Virginia, to expand the scope of authority to include the manufacture of automobile transmissions under FTZ procedures within Subzone 229A (FTZ Doc. 52–99, filed 10–25–99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 59160, 11–2–99);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now Therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 24th day of October 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–28286 Filed 11–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by the petitioner and two producers/exporters of the subject merchandise, the Department of Commerce is conducting an administrative review of the antidumping duty order on extruded rubber thread from Malaysia. This review covers three manufacturers/exporters of the subject merchandise to the United States (Filati Lastex Sdn. Bhd., Heveafil Sdn. Bhd./Filmax Sdn. Bhd, and Rubberflex Sdn. Bhd.). The period of review is October 1, 1998, through September 30, 1999.

We have preliminarily determined that sales have been made below the normal value by each of the three companies subject to this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments in this proceeding are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: November 3, 2000.

FOR FURTHER INFORMATION CONTACT: Irina Itkin, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0656.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1999, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on extruded rubber thread from Malaysia (64 FR 56485).

In accordance with 19 CFR 351.213(b)(1), on October 21, 1999, the petitioner, North American Rubber Thread, requested an administrative review of the antidumping order covering the period October 1, 1998, through September 30, 1999, for the following producers and exporters of extruded rubber thread: Filati Lastex Sdn. Bhd. (Filati), Heveafil Sdn. Bhd./Filmax Sdn. Bhd. (Heveafil), and Rubberflex Sdn. Bhd. (Rubberflex). On October 29, 1999, Filati and Heveafil also requested an administrative review.

On November 23, 1999, the Department initiated an administrative review for Filati, Heveafil, and Rubberflex (64 FR 67846 (Dec. 3, 1999)). The Department also issued questionnaires to each of these companies in November.

In March 2000, we received responses from Filati, Heveafil, and Rubberflex.

In June, July, and September 2000, we issued supplemental questionnaires to Filati, Heveafil, and Rubberflex. We received responses to these questionnaires in September 2000.

In October 2000, we issued additional supplemental questionnaires to Rubberflex. We received responses to these questionnaires in October 2000.

Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this review is dispositive.

Period of Review

The period of review (POR) is October 1, 1998, through September 30, 1999.

Normal Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than normal value (NV), we compared the export price (EP) to the NV for Rubberflex, as specified in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. We compared the constructed export price (CEP) to the NV for Filati and Heveafil, also as specified in those sections.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Review" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade (*i.e.,* sales within the contemporaneous window which passed the cost test), we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in sections B and C of our antidumping questionnaire, or constructed value (CV), as appropriate.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as EP or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (Nov. 19, 1997).

We note that the U.S. Court of International Trade (CIT) has held that the Department's practice of determining levels of trade for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden, Inc.* v. *United States,* 4 F. Supp. 2d 1221, 1241–42 (CIT 1998) *(Borden).* The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgement in *Borden* on the level of trade issue. *See Borden Inc.* v. *United States,* Court No. 96–08–01970, Slip Op. 99–50 (CIT June 4, 1999). The government has filed an appeal of *Borden* which is pending before the U.S. Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) prior to starting a level of trade analysis, as articulated by the Department's regulations at section 351.412.

Filati, Heveafil, and Rubberflex claimed that they made home market sales at only one level of trade (*i.e.,* sales to original equipment manufacturers). Because each of these respondents performed the same selling activities for sales to all customers in the home market, we determined that all home market sales by each of these companies were at the same level of trade.

Both Filati and Heveafil made CEP sales during the POR. In order to determine whether NV was established at a level of trade which constituted a more advanced stage of distribution than the level of trade of the CEP for these companies, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States. We found that Filati and Heveafil performed essentially the same selling functions in their sales offices in Malaysia for both home market and U.S. sales. Therefore, the respondents' sales in Malaysia were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents a F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset for Filati or Heveafil.

Regarding Rubberflex, we compared the selling functions performed for its home market and export price transactions in order to determine whether a level of trade adjustment was warranted. We found that Rubberflex performed essentially the same selling functions for its U.S. and home market sales and that, therefore, no level of trade adjustment is warranted for this company.

Export Price and Constructed Export Price

For Rubberflex, we based the U.S. price on EP, in accordance with section 772(a) of the Act, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted.

For Filati and Heveafil, we based the U.S. price on CEP where sales to the unaffiliated purchaser took place after importation into the United States, in accordance with section 772(b) of the Act. We also based U.S. price on CEP for Filati and Heveafil where the merchandise was shipped directly to certain unaffiliated customers because we found that the extent of the affiliates' activities performed in the United States in connection with those sales was significant.

A. Filati

We calculated CEP based on the starting price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for rebates. In addition, where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for commissions, credit expenses, and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We disallowed an offset claimed by Filati relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance with the Department's practice. *See Extruded Rubber Thread from Malaysia; Final Results Antidumping Duty Administrative Review,* 65 FR 6140, 6142 (Feb. 8, 2000) (*Thread Sixth Review*); *Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review,* 64 FR 12967, 12968 (Mar. 16, 1999); *Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review,* 63 FR 12752, 12754 (Mar. 16, 1998); and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy,* *Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 62 FR 54043, 54075 (Oct. 17, 1997).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Filati and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

B. Heveafil

We calculated CEP based on the starting price to the first unaffiliated customer in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for rebates. We also made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Heveafil and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

C. Rubberflex

We based EP on the starting price to the first unaffiliated purchaser in the United States. We made deductions from the starting price, where appropriate, for rebates. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home market during the POR. Consequently, we based NV on home market sales.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Filati, Heveafil, and Rubberflex had made home market sales at prices below their costs of production (COPs) in this review because the Department had disregarded sales below the COP for these companies in the most recent administrative review. *See Thread Sixth Review,* 65 FR at 6143. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their respective COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act.

We compared the COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, discounts, rebates, and packing costs.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of extruded rubber thread, more than 20 percent of each respondent's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of extruded rubber thread for which there were no comparable home market sales in the ordinary course of trade, we compared EP or CEP, as appropriate, to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country.

Company-specific calculations are discussed below.

A. Filati

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. For all price-to-price comparisons, we made deductions from the starting price for rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses and bank charges. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with

section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

For CV-to-CEP comparisons, we made an adjustment, where appropriate, for differences in credit expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

B. Heveafil

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for discounts. We also made deductions for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) if the Act, we also made deductions for home market credit expenses.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(c)(ii) of the Act and 19 CFR 351.411.

C. Rubberflex

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign inland freight expenses, pursuant to section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) if the Act, we made circumstance of sale adjustments for differences in credit expenses.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

For CV-to-EP comparisons, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark for the daily rate, in accordance with established practice.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period October 1, 1998, through September 30, 1999:

Manufacturer/exporter	Percent margin
Filati Lastex Sdn. Bhd.	18.49
Heveafil Sdn. Bhd./	
Filmax Sdn. Bhd.	0.04
Rubberflex Sdn. Bhd	0.14

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held seven days after the date rebuttal briefs are filed. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs, within 120 days of the publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We calculate importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales, where available. Where the entered value is not available, we calculate a quantity-based assessment rate. These rates will be assessed uniformly on all entries of particular importers made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries for any importer for whom the assessment rate is *de minimis* (*i.e.*, less than 0.50) percent. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of extruded rubber thread from Malaysia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for Filati, Heveafil, and Rubberflex will be the rates established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.16 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 777(i)(1) of the Act.

Dated: October 30, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28285 Filed 11–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 86–00002.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to National Association of Export Companies, Inc. ("NEXCO"). Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to NEXCO.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131 (This is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325 (1999). Pursuant to this authority, a certificate of review was issued on July 9, 1986 to NEXCO.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (section 308 of the Act, 15 U.S.C. 4018, § 325.14 (a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14 (b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (§§ 325.10(a) (3) and 325.14(c) of the Regulations, 15 CFR 325.10(a) (3) and 325.14(c)).

On June 29, 1999, the Department of Commerce sent to NEXCO a letter containing annual report questions with a reminder that its annual report was due on August 23, 1999. Additional reminders were sent on September 27, 1999 and on December 1, 1999. The Department has received no written response from NEXCO to any of these letters.

On September 25, 2000, and in accordance with § 325.10(c)(1) of the regulations, (15 CFR 325.10(c)(1)), the Department of Commerce sent a letter by certified mail to notify NEXCO that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing NEXCO thirty days to respond was published in the **Federal Register** on September 29, 2000 at 65 FR 58512. Pursuant to § 325.10(c)(2) of the regulations (15 CFR 325.10(c)(2)), the Department considers the failure of NEXCO to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to NEXCO for its failure to file an annual report. The Department has sent a letter, dated October 30, 2000, to notify NEXCO of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (325.10(c)(4) and 325.11 of the regulations, 15 CFR 324.10(c)(4) and 325.11 of the regulations, 15 CFR 325.10(c)(4) and 325.11).

Dated: October 30, 2000.

Morton Schnabel,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 00–28212 Filed 11–2–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103000D]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Spiny Dogfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Friday, November 17, 2000, from 10 a.m. until 5 p.m.

ADDRESSES: This meeting will be held at the Comfort Inn at the Airport (Providence), 1940 Post Road, Warwick, RI; telephone: 401–732–0470.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904. -

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid–Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The following agenda items will be discussed: Update current stock status, yield estimates based on F= 0.027 and current stock size, review 2000–01 measures and fishery performance, recommended management measures for 2001–02.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 31, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–28303 Filed 11–2–00; 8:45 am]

BILLING CODE: 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

October 31, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 3, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68333, published on December 7, 1999.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 31, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on November 3, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
237	386,264 dozen.
331	1,500,150 dozen pairs
334	190,433 dozen.
335	216,371 dozen.
336/636	570,082 dozen.
338/339	1,986,641 dozen.
340/640	4,065,662 dozen.
341	3,376,739 dozen.
351/651	965,092 dozen.
352/652	12,908,618 dozen
363	32,816,179 numbers.
369–S[2]	2,161,838 kilograms.
634	630,639 dozen.
635	424,623 dozen.
638/639	2,193,755 dozen.
641	738,723 dozen.
645/646	435,322 dozen.
847	380,252 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–28267 Filed 11–2–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 65 FR 65843; 65 FR 64687.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 1 p.m., Wednesday, November 1, 2000.

CHANGES IN THE MEETING: The open meeting previously scheduled for 1 p.m., Wednesday, November 1, 2000 has been postponed until 1 p.m., Monday, November 6, 2000.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–28351 Filed 11–1–00; 11:24 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 01–C0002]

Tropitone Furniture Co., Inc., a Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Tropitone Furniture Co., Inc., a corporation, containing a civil penalty of $750,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 20, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 01–C0002, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Deborah S. Orlove, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, 1347.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 30, 2000.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. This Settlement Agreement, made by and between the staff ("the staff") of the U.S. Consumer Product Safety Commission ("the Commission") and Tropitone Furniture Co., Inc. ("Tropitone"), a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"), is a settlement of the staff allegations set forth below.

I. The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

3. Tropitone is a corporation organized and existing under the laws of the State of Florida. Its principal offices are located at 5 Marconi, Irvine, California 92618.

II. Staff Allegations

4. The following models of chaise lounge chairs manufactured by Tropitone are the subject of this Settlement Agreement:

Model name	Model No.	Dates manufactured	Dimensions (width × length × height)
TropiKai	935	1985–1991	24″ × 77.5″ × 41.5″.
	935HYA	1991–April 1992	
Verrazano	4332	1987–1992	27.5″ × 78.5″ × 39.75″.
Cotillion	4032	1986–1987	29″ × 81.75″ × 42″.
Cayman	5932	1989–April 1992	27.5″ × 80″ × 44″.
Colony	4932	1987–1991	29.75″ × 80″ × 42″.
Seychelle	4432	1986–April 1992	25″ × 79″ × 40″.

5. Beginning in 1985, Tropitone manufactured, distributed and/or sold into United States commerce more than 123,000 chaise lounge chairs, described in paragraph 4 above. Tropitone is, therefore, a manufacturer, distributor and/or retailer of a consumer product distributed in U.S. commerce, pursuant to 15 U.S.C. 2052(a)(1), (4), (5) and (6).

6. The chaise lounge chairs, described in paragraph 4 above, contained a nylon ratchet system that controlled the height of the headrest on the chaise lounge. The nylon ratchets were prone to break, causing the headrest to collapse and injure consumers. Consumers who reached behind the headrest to adjust its height by placing their fingers between the headrest frame and the chaise bed suffered injuries when the nylon ratchet failure caused the headrest to forcefully collapse and "scissor" their fingers.

7. By mid 1988, Tropitone had begun receiving injury claims and complaints regarding the nylon ratchet failure of the chaise lounges described in paragraph 4. Injuries included finger amputations (multiple, full or partial), finger fractures, crushed fingers, pinched fingers, severe finger lacerations, back injury, skull fracture, and facial injuries. CPSC's records indicate that Tropitone learned of at least 170 incidents of nylon ratchet failure that occurred on the chaise lounge chairs described in paragraph 4 between approximately January 1987 and January 1999.

8. Tropitone obtained information which reasonably supported the conclusion that the chaise lounge chairs described in paragraph 4 contained defects which could create a substantial product hazard, but failed to report to the Commission in a timely manner as required by section 15(b)(2) of the CPSA, 15 U.S.C. 2064(b)(2). Tropitone also obtained information which reasonably supported the conclusion that the chaise lounge chairs described in paragraph 4 created an unreasonable risk of serious injury or death, but failed to report to the Commission in a timely manner as required by Section 15(b)(3) of the CPSA, 15 U.S.C. 2064(b)(3).

9. Over a period of several years, Tropitone also failed to report to the Commission information about approximately 30 settlements and plaintiff's judgments in lawsuits concerning the chaise lounge chairs described in paragraph 4. Tropitone failed to report those lawsuit settlements and judgments in a timely manner as required by section 37 of the CPSA, 15 U.S.C. 2084.

10. By failing to furnish information as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), and section 37 of the CPSA, 15 U.S.C. 2084. Tropitone committed prohibited acts under section 19(a)(4) and (11) of the CPSA, 15 U.S.C. 2068(a)(4) and (11).

11. The staff alleges these violations were committed "knowingly" as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

III. Response of Tropitone

12. Tropitone denies each and every staff allegation set forth in paragraphs 6–11 above. Tropitone further denies that the lounge chairs described in paragraph 4 above contain any defect which could create a substantial product hazard described in section 15(a) of the CPSA, 15 U.S.C. 2064(a), and that these lounge chairs create an unreasonable risk of serious injury or death. Tropitone further denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), section 37 of the CPSA, 15 U.S.C. 2084, or 16 CFR part 1115.

13. In 1977 Tropitone, of its own initiative, reported to the CPSC concerning breakage of nylon ratchets associated with the lounge chairs described in paragraph 4. In addition, beginning in 1991, and in subsequent years including after Tropitone's 1997 report to the CPSC, Tropitone conducted recalls of these lounge chairs. Since its 1997 report to the CPSC, Tropitone has worked cooperatively with the CPSC staff to conduct recall activities and to resolve this matter.

14. Tropitone enters this Settlement Agreement and Order for settlement purposes only, to avoid incurring additional legal costs and expenses.

IV. Agreement of the Parties

15. The Commission has jurisdiction over this matter and over Tropitone under the consumer Product Safety Act CPSA), 15 U.S.C. 2051 *et seq.*

16. Upon final acceptance by the CPSC of this Settlement Agreement and Order, Tropitone knowingly, voluntarily and completely waives any rights it may have in the above captioned matter (1) to the issuance of a Complaint in this matter; (2) to an administrative or judicial hearing with respect to the staff allegations cited herein; (3) to judicial review, or any other challenge or contest, of the validity of this Settlement Agreement and Order as issued and entered; (4) to a determination by the commission as to whether Tropitone violated section 15(b) of the CPSA, 15 U.S.C. 2064(b), and section 37 of the CPSA, 15 U.S.C. 2084; and (5) to a statement of findings of fact and conclusions of law with regard to the staff allegations.

17. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with 16 CFR 1118.20(e).

18. This Settlement Agreement and Order shall become effective upon final acceptance by the Commission and its service upon Tropitone. Tropitone shall pay a civil penalty in the amount of seven hundred and fifty thousand and no/dollars ($750,000.00) to the United States Treasury. Tropitone shall pay two hundred thousand dollars ($200,000.00) within 10 calendar days of receiving service of the final Settlement Agreement and Order, and shall pay the remaining five hundred fifty thousand dollars ($550,000.00) on or before June 15, 2001.

19. In the event of default in any of the payments as set forth in paragraph 18 above, which default continues for ten (10) calendar days beyond the due date of payment, Tropitone shall pay the United States Treasury the entire amount of civil penalty due and owing as well as interest on the amount owing at a rate computed pursuant to 28 U.S.C. 1961(a), as well as a penalty in the amount of five hundred dollars ($500.00) per day until full payment is made, calculated beginning on the first day after payment is due; provided, in its sole discretion the CPSC may waive Tropitone's obligation to pay some or all of any interest and penalty due and owing under this paragraph 19. In addition, in the event of default, Tropitone shall raise no defense or objection to any collection action the Commission deems appropriate, and Tropitone shall pay all the costs incurred in such action.

20. This Settlement Agreement and Order is not deemed or construed as an admission by Tropitone (a) of any liability or wrongdoing by Tropitone; (b) that Tropitone violated any law or regulation; (c) that the lounge chairs described in paragraph 4 are defective or create a substantial product hazard, or are unreasonably dangerous; (d) that the lounge chairs described in paragraph 4 have caused any injuries; (e) of the truth of any claims or other matters stated in this Settlement Agreement and Order (except as set forth in paragraph 15), or alleged or otherwise stated by the commission or any other person either against Tropitone or with respect to the lounge chairs described in paragraph 4. Nothing contained in this Settlement Agreement and Order precludes Tropitone from raising any defenses in any future litigation not arising out of the terms of this Settlement Agreement and Order.

21. Upon final acceptance of this Settlement Agreement by the Commission, the issuance of the Order, and the full and timely payment by Tropitone to the United States Treasury of a civil penalty in the amount of seven hundred fifty thousand dollars ($750,000.00), the Commission specifically waives its right to initiate, either by referral to the Department of Justice or bringing in its own name, any action for civil penalties relating to any of the events that gave rise to the CPSC staff's allegations in paragraphs four through eleven, against (a) Tropitone; (b) any of Tropitone's current or former subsidiaries, affiliates, divisions or related entities; (c) any shareholder, director, officer, employee, agent or attorney of any entity referenced in (a) or (b) above; and (d) any successor, heir, or assign of any entity referenced in (a), (b) or (c) above.

22. Upon final acceptance by the Commission, the parties agree that the Commission may publicize the terms of this Settlement Agreement and Order.

23. Tropitone agrees to the entry of the attached Order, which is incorporated herein by reference, and agrees to be bound by its terms. This Settlement Agreement and Order is binding upon, and shall inure to the benefit of, Tropitone and the assigns and successors of Tropitone.

24. Agreements, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or contradict its terms.

25. This Settlement Agreement and Order have been negotiated by the parties at arms' length. Tropitone is not relying on the advice of the CPSC staff, nor anyone associated with the CPSC staff, as to legal, tax or other consequences of any kind arising out of this Settlement Agreement and Order, and Tropitone specifically assumes the risk of all such legal, tax and other consequences.

26. For all purposes, this Settlement and Order shall constitute an enforceable judgment obtained in an action or proceeding by a governmental unit to enforce its police or regulatory power. This settlement Agreement and Order are pursuant to the Commission's police or regulatory power to remedy the alleged risk created by, and protect the public from, a substantial product hazard which the Commission believes is presented by the lounge chairs described in paragraph 4 above, and this Settlement Agreement and Order are not subject to an automatic stay if Tropitone becomes the subject of a bankruptcy proceeding.

27. If any provision of this Settlement Agreement and Order is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Settlement Agreement and Order, such provision shall be fully severable. In such event, there shall be added as part of this Settlement Agreement and Order a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and may be legal, valid and enforceable. The effective date of the added provision shall be the date upon which the prior provision was held to be invalid, illegal or unenforceable. The rest of this Settlement Agreement and Order shall remain in full effect, unless the CPSC determines, after providing Tropitone with notice and a reasonable opportunity to comment, that severing the provision materially impacts the payment of civil penalties as set forth in this Settlement Agreement and Order. The CPSC determination shall constitute the final agency decision and shall be subject to judicial review, such review to be based upon the record of any such CPSC proceeding and according to law.

28. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing signed by both parties.

29. Tropitone's obligations under this Settlement Agreement and Order shall terminate when Tropitone makes the final payment required under the Order.

Tropitone Furniture Co., Inc.

Dated: September 25, 2000.

Michael L. Echolds,

President.

The Consumer Product Safety Commission.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: October 10, 2000.

Deborah S. Orlove,

Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Tropitone Furniture Co., Inc. and the staff of the U.S. Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Tropitone Furniture Co., Inc., and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted, and it is

Further Ordered, that, upon final acceptance of the Settlement Agreement and Order, Tropitone Furniture Co., Inc., shall pay to the U.S. Treasury a civil penalty under the Consumer Product Safety Act in the amount of SEVEN HUNDRED FIFTY THOUSAND AND no/100 dollars, ($750,000.00). Tropitone shall pay two hundred thousand dollars ($200,000.00) within 10 calendar days of receiving service to this final Settlement Agreement and Order, and the remaining five hundred and fifty thousand and dollars ($550,000.00) on or before June 15, 2001.

Provisionally accepted and Provisional Order issued on the 30th day of October, 2000.

By Order of the Commission.

Sadye E. Dunn,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 00–28203 Filed 11–2–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DoD Healthcare Quality Initiative Review Panel

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: On October 26, 2000, the DoD Healthcare Quality Initiatives Review panel published notice on an upcoming meeting (65 FR 64204). This notice is being published to change meeting dates due to the Federal holiday on November 10th.

DATES: November 8 & 9, 2000.

ADDRESSES: Sheraton Crystal City, 1800 Jefferson Davis Hwy, Arlington, VA 22202.

TIME: November 8th, 8 a.m. to 5:30 p.m.; November 9th, 8 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Gia Edmonds at (703) 933–8325.

Dated: October 30, 2000.

L.M. Bynum,

Alternate OSD Federal Register Officer, Department of Defense.

[FR Doc. 00–28213 Filed 11–2–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Second Interstate Natural Gas Facility-Planning Seminar

October 27, 2000.

The Office of Energy Projects will hold the second in a series of public meetings around the country for the purposes of exploring and enhancing strategies for constructive public participation in the earliest stages of natural gas facility planning. This meeting will be held in Romeoville, Illinois on Thursday, December 7, 2000. We are inviting interstate natural gas companies; Federal, state and local agencies; landowners and non-governmental organizations with an interest in developing a new way of doing business to join us in this effort. We will discuss the facility planning process, not the merits of any pending or planned pipeline projects.

Join us as we continue to explore new strategies being employed by the natural gas industry, agencies, and citizens to learn about each others' concerns and to engage the public and agencies in participatory project design. Interactive discussions with panelists from various Federal and state agencies, representatives from natural gas companies, and private landowners or citizen representatives who have had relevant experiences will be held. There will be substantial opportunity for the sharing of experiences and knowledge during both the panel discussions and in the interactive "brainstorming" session. So, bring your ideas with you and prepare to share them. In addition, a summary of the first seminar in Albany, NY will be given by the staff of the Commission's Office of Energy Projects.

The objectives of the meetings are:

- Build upon the discussions from the first meeting in Albany, NY.
- To explore steps taken to identify the parties directly involved with and affected by natural gas facility siting and/or permitting, so they can work together and resolve issues.
- To explore the best avenues for involving people and agencies toward fostering settlements through creative issue resolution.
- To encourage the submission of filings with no or few contested issues in order to reduce the Commission's processing time.

We are building on what was learned at our Albany meeting and continuing to work towards developing a toolbox of the best available techniques for increasing public involvement in the pre-filing planning process. This will help to plan projects with less opposition that can achieve faster action from the Commission with less controversy and fewer conditions.

The meeting in Joliet, Illinois will be held at the Sancta Alberta Convocation Center at Lewis University, located in Romeoville, Illinois. The meeting is scheduled to start at 10:00 AM and finish at 4:00 PM. A preliminary agenda and directions to Lewis University are enclosed. Also, see attachment 2 regarding the selection of locations of future meetings.

If you plan to attend, please respond by November 22, 2000 via facsimile to Pennie Lewis-Partee at 202–208–0353, or you can email our team at: gasoutreach@ferc.fed.us. Please include in the response the names, addresses, and telephone numbers of all attendees from your organization. We will send acknowledgment of your request.

To help us enhance our panel discussions, please consider issues and/or questions you would like to have addressed at the meetings and email them to us. If you have any questions, you may contact any of the staff listed below:

Richard Hoffmann 202/208–0066
Lauren O'Donnell 202/208–0325
Jeff Shenot 202/219–2178
Howard Wheeler 202/208–2299

J. Mark Robinson,

Director, Division of Environmental & Engineering Review, Office of Energy Projects.

Appendix 1—Agenda

2nd Interstate Natural Gas Facility Planning Seminar

Federal Energy Regulatory Commission, Lewis University, Romeoville, Illinois, December 7, 2000, 10:00 am to 4:00 pm

10:00 Introductions
Welcome: Mark Robinson, Director, Division of Environmental & Engineering Review, Office of Energy Projects, FERC
Rich Hoffmann, Office of Energy Projects, FERC
10:15 The Pipeline Planning/Approval Process
Where FERC fits in
Who's involved and when
10:30 Summary of Comments from the Albany Meeting
10:45 Panel 1. Perspectives on Initial Project Announcement and General Route Planning

[Discussion of factors surrounding announcement and general planning of the project route/sites & alternatives, types of surveys needed; who to tell and when. What are the needs of the various stakeholders?]

Howard Heffler, Alliance Pipeline Company
Marian Gibson, Administrator, Village of Channahon, Illinois (citizen)
Jim Hartwig, Office of Farmland Protection, Illinois Department of Agriculture

[10 minute discussion by each panelist with interactive Q&A session with panelists and audience for remainder of Panel]

11:45 Lunch
12:50 Panel 2. Perspectives on Detailed Pipeline Route Planning [Discussion of details of how landowners and agencies hear about facility locations; where disturbance would occur; aboveground facility sites, and alternatives? What timing and mitigation is involved? How best to be involved?]
Brian Smith, Chicago District, U.S. Corps of Engineers?
John Hopkins, ANR Pipeline Company
____________, Citizen/NGO

[10 minute discussion by each panelist with interactive Q&A session with panelists and audience for remainder of Panel]

2:00 Discussion by Kearns & West, Inc. on Stakeholder Involvement
2:15 Brainstorming Session * * * OEP Staff will lead an all-participants discussion of issues regarding:
Pre-filing Best Management Practices (BMPs) from an Industry Perspective

- How best to work with landowners and communities.

Pre-filing BMPs from an Agency Perspective

- How best to work with applicants and agencies:
- How to coordinate with multiple agencies/jurisdictions.

Pre-filing BMPs from a Citizen Perspective

- How best to engage landowners;
- How to get information on the need for a project;
- How to describe workspace/right-of-way requirements.

3:45 Summary of the Day

DIRECTIONS TO LEWIS UNIVERSITY, Romeoville, IL:

- Lewis University is located on route 53 about 5 miles north of Joliet, IL.
- From the North, take I–55 to exit 267 (RT53). Take Route 53 south for approx. 8 miles to Lewis University on the right.

Appendix 2—Future Meetings?

By September of 2001, we will hold subsequent seminars at other locations around the country. Locations for the meetings will be selected based on the history of past, present and especially future pipeline projects where interstae natural gas markets are developing or expanding.

Areas we are considering for meetings include:

Tampa area, Florida—Jan/Feb, 2001
Boston, Massachusetts/Portland, Maine area—Mar/April, 2001
Seattle/Puget Sound Washington—________ or
Reno/Tahoe, Nevada or Salt Lake City, Utah—________ or
Other—________.

If you care to voice your opinion about these or other areas, please follow the instructions for contacting us in the notice.

[FR Doc. 00–28256 Filed 11–2–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6896–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks OMB Control Number 2060–0327, expiration date 12/31/00. The ICR describes the nature of the information collection and its expected burden and cost, where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 4, 2000.

ADDRESSES: Send comments, referencing EPA ICR No.1611.04 and OMB Control No. 2060–0327, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at *Farmer.Sandy@epamail.epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1611.04. For technical questions about the ICR, contact Scott Throwe at (202) 564–7013.

SUPPLEMENTARY INFORMATION:

Title: National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, OMB Control Number 2060–0327, EPA ICR Number 1611.04, expiration date 12/30/00. This is a request for extension of a currently approved collection.

Abstract: The Administrator has judged that Hazardous Air Pollutants (HAP) emissions from Chromium emissions from hard and decorative chromium Electroplating and chromium anodizing tanks cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of affected hard and decorative chromium electroplating, modification, startups, shut down, date and results of initial performance test and provide reports of excess emissions. They must also develop startup, shutdown, malfunction plans and develop an operations and maintenance plan for their control system. Affected facilities also must provide notification of compliance status and report monitoring exceedances.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 04/18/00 (65 FR 20813) and no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 272 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/operators of hard and decorative chromium electroplating plants.

Estimated Number of Respondents: 948.

Frequency of Response: Quarterly, Semi-annually, Annually.

Estimated Total Annual Hour Burden: 516,186.

Estimated Total Annualized Capital, O&M Cost Burden: $62,920,921.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1611.04 and OMB Control No. 2060–0327 in any correspondence.

Dated: October 26, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–28273 Filed 11–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6896–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, National Emission Standards for Hazardous Air Pollutants (NESHAP), Magnetic Tape Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emission Standards for Hazardous Air Pollutants (NESHAP) 40 CFR part 63, subpart EE, OMB Control No. 2060–0326, expiration date 12/31/2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 4, 2000.

ADDRESSES: Send comments, referencing EPA ICR No. 1678.04 and OMB Control No. 2060–0326, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1678.04. For technical questions about the ICR, contact Steven Hoover at (202) 564–7007.

SUPPLEMENTARY INFORMATION:

Title: NESHAP subpart EE, Magnetic Tape Manufacturing Operations, OMB Control No. 2060–0326; EPA ICR No. 1678.04, expiring 12/31/2000. This is a request for extension of a currently approved collection.

Abstract: This NESHAP standard requires initial notification, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to NESHAP.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 5 years following the date of such measurements, maintain reports, and records. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. This information is being collected to assure compliance with 40 CFR part 63, subpart EE as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on April 18, 2000 (65 FR 20183). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 271 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirement; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Magnetic Tape Manufacturing Operations.

Estimated Number of Respondents: 13.

Frequency of Response: On occasion, Quarterly, Semi-Annually.

Estimated Total Annual Hour Burden: 7,042.

Estimated Total Annualized Capital and O&M Cost Burden: $89,400.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1678.04 and OMB Control No. 2060–0326 in any correspondence.

Dated: October 26, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–28274 Filed 11–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6895–9]

Agency Information Collection Activity: Questionnaire for Nominees for the Annual National Clean Water Act Recognition Awards Program (National Wastewater Management Excellence Awards Program)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Questionnaire for the Nominees for the Annual National Clean Water Act Recognition Awards Program (National Wastewater Management Excellence Awards Program), OMB Control No. 2040–0101, expires December 31, 2000. This ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 4, 2000.

ADDRESSES: Send comments, referencing EPA ICR No. 2040–0101, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA, (202) 260–2740, by E-mail at *farmer.sandy@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1287.06. For technical questions about the ICR contact Maria Campbell, (202) 260–5815 in the Office of Water.

SUPPLEMENTARY INFORMATION:

Title: Questionnaire for Nominees for the Annual National Clean Water Act Recognition Awards Program (National Wastewater Management Excellence Awards Program) (OMB Control No. 2040–0101; EPA ICR No. 1287.06) expires December 31; 2000. This ICR is a re-approval to collect data from EPA's National Clean Water Act Recognition Awards nominees. EPA requests that the currently approved 2800 burden hours be re-approved for the next three years.

Abstract: This ICR requests re-approval to collect information from EPA's National Clean Water Act Recognition Awards nominees. The awards are for the following program categories: Operations and Maintenance (O&M), Beneficial Use of Biosolids (Biosolids), Combined Sewer Overflow Controls (CSO) and Storm Water (SW) management. (Note: Information collection approval for the Pretreatment awards program is included in the National Pretreatment Program ICR (OMB No. 2040–0009, EPA ICR No. 0002.09), approved through September 30, 2003). The Awards Program is managed by EPA's Office of Wastewater Management (OWM). The Awards Program is authorized under section 501(e) of the Clean Water Act, as amended. The Awards Program is intended to provide recognition to municipalities and industries which have demonstrated outstanding technological achievements, innovative processes, devices or other outstanding methods in their waste treatment and pollution abatement programs. Approximately 50 awards are presented annually. The achievements of these award winners are summarized in reports, news articles and national publications.

Submission of information on behalf of the respondents is voluntary. No confidential information is requested. The agency only collects information from award nominees under a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on May 18, 2000 (65 FR 31550–31551); No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average eight hours per response. This estimate of burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide information to EPA. This estimate includes the time needed to review instructions; collect, validate, and verify information, complete and review the collection of information; and transmit the information to EPA.

Respondents/Affected Entities: Wastewater Treatment Industries and Municipalities.

Estimated Number of Respondents: 400.

Frequency of Response: Once annually.

Estimated Total Annual Hour Burden: 2800 hours (1600 hours for the recipients time and 1200 hours for the States' review time).

Estimated Total Annualized Cost Burden: $79,200 per year ($46,600 for the respondents and $33,200 for the States' review time).

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1287.06 and OMB Control No. 2040–0101 in any correspondence.

Dated: October 26, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–28275 Filed 11–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6612–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements
Filed October 23, 2000 through October 27, 2000
Pursuant to 40 CFR 1506.9.

EIS No. 000369, Draft EIS, IBR, ID, Arrowrock Dam Outlet Works Rehabilitation, Construction and Operation, To Remove 10 Lower Level Ensign Valves and Replace with 10 Clamshell Gates, Boise River, City of Boise, ID, Due: January 05, 2001, Contact: John Tiedeman (208) 378–5034.

EIS No. 000370, Draft EIS, BOP, ID, Terre Haute United States Penitentiary (USP), Proposal to Construct and Operate 960 Beds Facilities along with a Special Confinement Unit of 100–120 Beds to Alleviating Overcrowding, Vigo County, Terra Haute, ID, Due: December 18, 2000, Contact: David J. Dorworth (202) 514–6470.

EIS No. 000371, Final EIS, COE, NJ, Raritan Bay and Sandy Hook Bay, Hurricane and Storm Damage Reduction Project, Flood Control and Storm Damage Protection, Port Monmouth, Middletown Township, Monmouth County, NJ, Due: December 04, 2000, Contact: Mark H. Burles (212) 264–4663.

EIS No. 000372, Final EIS, COE, CA, Lower Mission Creek Flood Control Project, Proposed Plan for Flood Control, City of Santa Barbara, Santa Barbara County, CA, Due: December 04, 2000, Contact: Joy Jaiswal (213) 452–3871.

EIS No. 000373, Final EIS, AFS, ID, Brown Creek Timber Sale Project, Implementation, Payette National Forest, New Meadow Ranger District, Adam County, ID, Due: December 20, 2000, Contact: Jack Irish (208) 347–0300.

Dated: October 31, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–28282 Filed 11–2–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

(ER–FRL–6612–4)

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 16, 2000 through October 20, 2000 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated

April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–L65366–AK Rating EC2, Woodpecker Project Area, Timber Harvesting, Dispersed Recreation Opportunities and Watershed Improvements, Implementation, Tongass National Forest, Petersburg Ranger District, Mitkof Island, Petersburg, AK.

Summary: EPA expressed environmental concerns with the greater potential for impacts to water, soil and wildlife resources under Alternative 2, the preferred alternative. Alternative 2 calls for the highest level of road construction and the second highest level of harvesting. EPA recommended additional analysis and changes in the final EIS to further address and mitigate impacts to water quality and fish habitat.

ERP No. D–AFS–L67038–ID Rating EO2, Genesis Placer Claim Gold Suction Dredging, Plan of Operations, Nez Perce National Forest, Red River Ranger District, Red River a Tributary to the South Fork Clearwater River, ID.

Summary: EPA expressed environmental objections on the proposed suction dredging project because of the potential to violate applicable water quality standards for turbidity and sediment, and as well as degrade aquatic habitat, and result in adverse effects to listed and sensitive fish species. Alternative 2 lacks mitigation measures and EPA recommends that the final EIS include additional site-specific information on project reach, potential impacts to aquatic resources, compliance with standards and environmental thresholds, monitoring, and estimated risk and uncertainties of project implementation as well as detailed mitigation measures.

ERP No. D–BLM–J65325–WY Rating EC2, Jack Morrow Hills Coordinated Activity Plan, Implementation, Rock Springs, Portions of Sweetwater, Fremont and Subelette Counties, WY.

Summary: EPA expressed environmental concerns based on the need to fully disclose environmental impacts, especially for the preferred alternative, project objectives which are not consistent with the Green River Management Plan and level of detail for the proposed adaptive management plan, such as including threshold values to protect wildlife.

ERP No. D–BLM–K67052–NV Rating EO2, Newmont Gold Mining, South Operations Area Project Amendment, Operation and Expansion, Plan of Operations, Elko and Eureka Counties, NV.

Summary: EPA expressed environmental objections to the proposed expansion of Newmont's South Operations Area, due to potential significant adverse impacts to water and air quality. Specifically, potential acid rock drainage, contaminated pit lake water and mercury emissions to the air. EPA requests that the final EIS include additional acid generating potential analysis, pollution prevention measures, mitigation, and project monitoring.

ERP No. D–NPS–F61019–MN Rating EC2, Voyageurs National Park General Management, Visitor Use and Facilities Plans, Implementation, Koochiching and St. Louis Counties, MN.

Summary: EPA expressed environmental concerns with the consistency of NPS actions related to proposed wilderness designation, scope of decisions to be made, characterization of existing conditions and impacts associated with the alternatives, and alternatives analysis.

ERP No. D–SFW–K39063–CA Rating EC2, Bolsa Chica Lowlands Restoration Project, Creation of Wetland Habitat Areas, Approval and Issuance of USCOE Section 404 and USCGD Bridge Permits, Orange County, CA.

Summary: EPA has expressed concerns with the proposal because the probability of success of the preferred alternative is unknown. Implementation would result in irreversible destruction of the existing wetland complex and irretrievable commitment of project funds in the construction of an ocean inlet and 6-lane highway bridge. EPA recommended that less-structural and less-costly alternatives be considered as interim measures to enhance the existing wetland and aquatic habitats at Bolsa Chica, while the probabilities associated with the preferred alternative modeling studies are tested and validated further. EPA also recommended the FEIS consider an evaluation of alternative mitigation sites which could fulfill the Ports mitigation requirements if the preferred alternative is not selected.

Final EISs

ERP No. F–AFS–K65227–CA 64-Acre Tract Intermodal Transit Center, Construction and Operation, Lake Tahoe Basin Management Unit, Tahoe City, Placer County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–G65069–NM Rio Puerco Resource Management Plan Amendment, Managing Land and Resource for EL Malpais National Conservation Area and Chain of Craters Wilderness Study Area, Lies South of the City of Grants, Cibola County, NM.

Summary: EPA expressed no objections to the preferred alternative.

ERP No. F–BLM–G65071–NM Albuquerque Field Office Riparian and Aquatic Habitats Management, To Restore and Protect, Rio Puerco Resource Management Plan Amendment (RMPA), Cibola, Sandoval, McKinley, Rio Arriba, Bernalillo, Valencia and Santa Fe Counties, NM.

Summary: EPA had no objections.

ERP No. F–BLM–L65339–OR North Bank Habitat Management Area (NBHMA)/Area of Critical Environmental Concern (ACEC), Federally Endangered Columbian White-Tailed Deer (CWTD) and Special Status Species Habitat Enhancements to Ensure Viability Over Time, Implementation, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–J65285–MT Interagency Bison Management Plan for State of Montana and Yellowstone National Park, Implementation, Maintain a wild, Free Ranging Population, Address the risk of Brucellosis Transmission, Park and Gallatin Counties, MT.

Summary: EPA continues to express environmental objections with adverse impacts to the Yellowstone Bison herd, excluding elk from the Brucellosis management plan, segmentation of NEPA, and the level of action being taken given the extremely low risk to livestock from Brucellosis.

ERP No. F–SFW–J64007–00 Plum Creek Native Fish Habitat Conservation Plan, Issuance of an Incidental Take Permit for Federally Protected Native Fish Species, MT, ID and WA.

Summary: EPA has reviewed the Native Fish Habitat Conservation Plan (NFHCP) and Proposed Permit for Taking of Federally Protected Native Fish Species on Plum Creek Timber Company Land. The EPA expressed environmental concerns regarding integration of the NFHCP with the overall conservation efforts in the entire project area; adequacy of resources for the Services for oversight and evaluation of the Permit and NFHCP; the level of protection of proposed riparian management prescriptions; NFHCP–TMDL consistency; and the adequacy of the proposed monitoring and adaptive management program.

Dated: October 31, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–28283 Filed 11–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00687; FRL–6753–4]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: There will be a 3–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to the following topics: (1) LifeLine™ Model Review, and (2) A Case Study of the Cumulative Risk of 24 Organophosphate Pesticides.

The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Olga Odiott at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on December 6, 7, and 8, 2000 from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Hotel is (703) 486–1111. Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your request must identify docket control number OPP–00687 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Designated Federal Official, Office of Science Coordination and Policy, (7101C), Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: odiott.olga@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), FIFRA, and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* A meeting agenda and copies of EPA primary background documents for the meeting will be available by November 6, 2000. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA/SAP Internet Home Page at http://www.epa.gov./scipoly/sap/. To access this document, on the Home Page, select "**Federal Register** Notice Announcing This Meeting." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedregstr/.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00687. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the (1) LifeLine™ Model review, and (2) A Case Study of the Cumulative Risk of 24 Organophosphate Pesticides, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall # 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00687 in the subject line on the first page of your request. Members of the public wishing to submit comments should contact the person listed under **FOR FURTHER INFORMATION CONTACT** to confirm that the meeting date and agenda have not been modified. Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advance written request to the persons listed under **FOR FURTHER INFORMATION CONTACT**, interested persons may be permitted by the Chair of the FIFRA SAP to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc.). There is no limit on the extent of written comments for consideration by the Panel, but oral statements before the panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral or written statements at the meeting should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies of their presentation and/or remarks to the Panel. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The

PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your request electronically by e-mail to: "opp-docket@epa.gov." Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00687. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

This 3–day meeting concerns several scientific issues undergoing consideration within the EPA Office of Prevention, Pesticides and Toxic Substances (OPPTS), as follows.

1. *LifeLine™ Model review*. Review key features of the LifeLine™ Model to include the software code, data requirements, data inputs, and output reports. To assist the Panel in their evaluation of LifeLine™ each Panel member will be provided a CD containing the LifeLine™ software and supporting documentation. The Panel will be evaluating hypothetical, yet representative, residue and toxicological data sets for assessing aggregate and cumulative exposure and risk via the dietary, residential and drinking water pathways.

2. *A Case Study of the Cumulative Risk of 24 Organophosphate Pesticides*. The case study will illustrate data use and the process for integrating multi-pathway exposures to 24 organophosphate pesticides from food, drinking water and residential sources. This topic will be divided in 4 sessions: (1) Cumulative risk assessment method for dietary (food) exposure, (2) Cumulative risk assessment for residential exposure, (3) Cumulative risk assessment for drinking water, and (4) Integrated cumulative risk assessment. The first three sessions will illustrate how the Agency applied the principles described in the exposure sections of the cumulative risk assessment guidance to monitoring data for residues of organophosphates on food and water. This approach uses available surrogate data on residential/institutional uses to estimate cumulative exposures/risk using the Relative Potency Factor Method as reviewed by the FIFRA SAP in September, 2000. The background material will describe the assumptions, procedures, and methods employed in the assessment to estimate the cumulative exposures resulting from each of the three pathways. An illustration of an approach to integrate exposures from the three pathways into a complete cumulative assessment will be described in session 4.

B. Panel Report

Copies of the Panel's report of their recommendations will be available approximately 45 working days after the meeting, and will be posted on the FIFRA SAP web site or may be obtained by contacting PIRIB at the address and telephone listed below under Unit I.B. of this document.

List of Subjects

Environmental protection.

Dated: October 27, 2000.

Steven K. Galson,

Director, Office of Science Coordination and Policy.

[FR Doc. 00–28279 Filed 11–2–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00439G; FRL–6753–1]

Pesticide Program Dialogue Committee (PPDC): Inert Disclosure Stakeholder Workgroup; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: This notice announces a conference call meeting of the Inert Disclosure Stakeholder Workgroup. The workgroup was established to advise the Pesticide Program Dialogue Committee on ways of making information on inert ingredients more available to the public while working within the mandates of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and related Confidential Business Information concerns.

DATES: The meeting will be held by conference call on Monday, November 20, 2000 from 12:00 pm to 3:00 pm EST.

ADDRESSES: Members of the public may listen to the meeting discussions on site at: Crystal Mall #2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA; conference Room 1123. Seating is limited and will be available on a first come first serve basis.

FOR FURTHER INFORMATION CONTACT: By mail: Cameo Smoot, Office of Pesticide Programs (7506C), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone: (703) 305–5454. Office locations: 11th floor, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. E-mail smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION: The Inert Disclosure Stakeholder Workgroup is composed of participants from the following sectors: environmental/public interest and consumer groups; industry and pesticide users; Federal, State and local governments; the general public; academia and public health organizations.

The Inert Disclosure Stakeholder Workgroup, will advise the EPA through the Pesticide Program Dialogue Committee (PPDC), on potential measures to increase the availability to the public of information about inert ingredients (also called "other ingredients") under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Among the factors the workgroup has been asked to consider in preparing its recommendations are: existing law regarding inert ingredients and Confidential Business Information (CBI); current Agency processes and policies for disseminating inert ingredient information to the public, including procedures for the protection of CBI; informational needs for a variety of stakeholders; and business reasons for limiting the disclosure of inert ingredient information.

The Inert Disclosure Stakeholder Workgroup meeting is open to the public. Written public statements are welcome and should be submitted to the OPP administrative docket OPP–00439A. Any person who wishes to file a written statement can do so before or after the conference call. These statements will become part of the permanent file and will be provided to the Workgroup members for their information.

How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00439A in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments and/or data electronically by e-mail to: "*opp-docket@epa.gov*," or you can submit a computer disk as described above in paragraphs 1. and 2. of this section. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00439A. Electronic comments may also be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Pesticides, Inerts, PPDC.

Dated: October 25, 2000.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

[FR Doc. 00–28281 Filed 11–2–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6894–5]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding Sharpe and Associates, and Palisades Development Company

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act ("Act"). EPA is also providing notice of opportunity to comment on the proposed assessment.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who without authorization discharges a pollutant to a navigable water, or who has violated the conditions of a National Pollutant Discharge Elimination System permit, as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, may be assessed a penalty in a "Class II" administrative penalty proceeding.

Class II proceedings under section 309(g) are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 CFR part 22 ("Consolidated Rules"), published at 64 FR 40138, 40177 (July 23, 1999). The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after publication of this notice.

On September 29, 2000, EPA commenced the following Class II proceeding for the assessment of penalties by filing with Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391, the following Complaint:

In the Matter of Sharpe and Associates, and Palisades Development Company, Oro Valley, Arizona, Docket No. CWA–09–2000–0013.

The Complaint proposes a penalty of up to One Hundred Thirty Seven Thousand, Five Hundred Dollars ($137,500) for violations of NPDES Permit No. AZR100000, the reissued NPDES Permit No. AZR10*### and Section 301(a) of the Act, 33 U.S.C. 1311(a), at the Catalina Shadows Development Phase 4, Oro Valley, Arizona.

The Complainant in this action is EPA Region IX.

Complainant's address is: EPA Region IX, Attn: Hugh Barroll (ORC2), 75 Hawthorne St., San Francisco, CA 94105.

Respondents in this action are Sharpe and Associates and Palisades Development Company.

Respondents addresses are:

Sharpe and Associates, Inc., 4780 Rocky Crest Place, Tucson, AZ 85750
Palisades Development Company, Attn: Sidney Y. Kohn, 1200 N. El Dorado Place, Suite H–810, Tucson, AZ 85715

Procedures by which the public may comment on a proposed Class II penalty or participate in a Class II penalty proceeding are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II penalty is thirty days after issuance of public notice. The Regional Administrator of EPA, Region 9 may issue an order upon default if the respondent in the proceeding fails to file a response within the time period specified in the Consolidated Rules.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed assessment, or otherwise participate in the proceeding should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by Sharpe and Associates and Palisades Development Company is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: October 24, 2000.

Mike Schulz,

Acting Director, Water Division.

[FR Doc. 00–28276 Filed 11–2–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, November 7, 2000, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum re: BIF Assessment Rates for the First Semiannual Assessment Period of 2001.

Memorandum re: SAIF Assessment Rates for the First Semiannual Assessment Period of 2001.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202)416–2007 (TTY), to make necessary arrangements. Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202)898–6757.

Dated: October 31, 2000

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–28308 Filed 10–31–00; 4:07 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Request for Federal Assistance Form (How to Process Mission Assignments).

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0278.

Abstract: Information on the Request for Federal Assistance (RFA) form is required to document requests for Federal assistance and any resulting mission assignments to other Federal agencies. Other methods used to obtain the request portion of the RFA include internal existing State forms. No alternative exists to obligate a mission assignment in FEMA's official integrated financial management system.

Affected Public: Federal Government, State, Local or Tribal Government.

Number of Respondents: 56.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 182 hours.

Frequency of Response: After a disaster.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625, FAX number (202) 646–3524, or e-mail address: muriel.anderson@fema.gov.

Mike Bozzelli,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–28259 Filed 11–2–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: EMI Independent Study Course Enrollment Application.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0277.

Abstract: FEMA Form 95–23 is used to provide independent study course materials to students that enroll in the Independent Study Program. These courses are offered in residence at the Emergency Management Institute (EMI), through State Emergency Management Agencies. The Independent Study Program provides valuable training to emergency management personnel and to the general citizenry of the United States, without having to attend a resident course at EMI, or at a state-sponsored course.

Affected Public: Individuals or households.

Number of Respondents: 90,000.

Estimated Time per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 1500.

Frequency of Response: On Occasion.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625, FAX number (202) 646–3524, or e-mail address: muriel.anderson@fema.gov.

Mike Bozzelli,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–28260 Filed 11–2–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate

inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 27, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. *Capital City Bank Group, Inc.*, Tallahassee, Florida; to acquire 20.75 percent of the voting shares of First Peoples Bankshares, Inc., Pine Mountain, Georgia, and thereby indirectly acquire voting shares of First Peoples Bank, Pine Mountain, Georgia.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Northwest Suburban Bancorp, Inc.*, Mount Prospect, Illinois; to acquire 100 percent of the voting shares of Village Bank and Trust, North Barrington, Illinois.

Board of Governors of the Federal Reserve System, October 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28229 Filed 11–2–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 17, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Midwest Banc Holdings, Inc.*, Melrose Park, Illinois; to acquire through its subsidiary, Midwest Financial and Investment Services, Inc., Elmwood Park, Illinois, Service 1st Financial Corporation, Elmwood Park, Illinois, and thereby engage in securities brokerage activities, pursuant to § 225.28(b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, October 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28230 Filed 11–2–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. R–1037]

Federal Reserve ACH Deposit Deadlines and Pricing Practices for Transactions Involving Private-Sector ACH Operators

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved a new approach to pricing automated clearing house transactions that the Federal Reserve Banks exchange with intermediaries that are defined as operators under the operating rules of the National Automated Clearing House Association. The Reserve Banks will initiate discussions with the private-sector ACH operators (PSOs) to negotiate the structure and level of fees that will be charged by the Reserve Banks for processing interoperator transactions as well as those fees that the Reserve Banks will pay the PSOs. The Reserve Banks will work collaboratively with the PSOs to establish deposit deadlines by which they would exchange interoperator transactions with each other and to address other operational issues. To permit time for necessary software modifications, the new interoperator deposit deadlines will be implemented by the Reserve Banks no later than June 2001 while the new fees will be implemented no later than September 2001.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Manager, Retail Payments Section (202/452–2660); Michele Braun, Project Leader, Retail Payments Section (202/452–2819); or Jeffrey S. H. Yeganeh, Senior Financial Services Analyst, Retail Payments Section, Division of Reserve Bank Operations and Payment Systems (202/728–5801); for the hearing impaired only, contact Janice Simms, Telecommunication Device for the Deaf (202/872–4984).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Reserve Banks are collectively the nation's largest automated clearing house (ACH) operator and process more than 80 percent of commercial interbank ACH transactions. PSOs process the remaining transactions and typically provide services, including processing and settling ACH transactions, similar to those offered by the Reserve Banks. PSOs and the Reserve Banks rely on each other for the processing of some transactions in which either the originating depository financial institution (ODFI) or receiving depository financial institution (RDFI) is not their customer. These interoperator transactions are settled by the Reserve Banks.

Some industry representatives have expressed concerns that the Reserve Banks' price and service level policies have created barriers to open and vigorous competition among ACH operators because the policies do not recognize the role played by operators in the ACH system.[1] Specifically, these representatives have maintained that the Reserve Banks' deposit deadlines and price structure do not permit the PSOs to compete effectively in the provision of ACH services to depository institutions.

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[1] *ACH Vision 2000 Task Force Recommendations*, NACHA, 1997; *The Role of the Federal Reserve and the Banking Industry in the Retail Electronic Payments Systems of the Future*, The Bankers Roundtable, April 1998.

In response to the industry's concerns, the Board requested comment last year on the benefits and drawbacks of modifying the Reserve Banks' deposit deadlines and pricing practices for ACH transactions exchanged with PSOs (64 FR 27793, May 21, 1999). Specifically, the Board requested comment on whether the Reserve Banks should (1) modify their deposit deadlines and processing schedules, (2) modify their price structure for interoperator transactions, and (3) limit any modifications to PSOs only. Based on comments received, the Board concluded that adopting certain modifications to the Reserve Banks' deposit deadlines and price structure for ACH transactions exchanged with PSOs would enhance competition in the provision of ACH operator services to depository institutions.

In May 2000, the Board requested comment on a proposal to modify the Reserve Banks' deadlines and pricing practices for ACH interoperator transactions that would promote competition in the provision of ACH services and address the concerns raised by some commenters (65 FR 34183, May 26, 2000). Specifically, the Board proposed the following modifications to the deadlines and price structure for ACH interoperator transactions that are processed by the Reserve Banks:

- *Deposit deadlines:* The Board proposed that the Reserve Banks work collaboratively with ACH operators to establish interoperator deposit deadlines by which the Reserve Banks and the PSOs would exchange interoperator transactions.
- *Price structure:* The Board proposed the following price structure for interoperator transactions processed by the Reserve Banks with price ranges based on preliminary cost analyses by the Reserve Banks.[2] Further, the Reserve Banks indicated that they planned to maintain the current fee structure for their customers and did not anticipate any increases in fees resulting from this proposal.
  - —First, the Reserve Banks would charge ACH operators a monthly network access fee of between $5 and $10 for each routing number they access on the Reserve Banks' ACH network.
  - —Second, the Reserve Banks would charge ACH operators a per-item fee of between $0.002 and $0.004 for transactions they send through the Reserve Banks' ACH network.
  - —Third, the Reserve Banks would charge depository institutions that send and receive all their transactions through PSOs a monthly settlement fee of about $20 rather than the current monthly account servicing fee of $25.[3]
  - —Fourth, the Reserve Banks would pay PSOs for commercial and government ACH transactions they send to depository institutions through those PSOs. Fees paid by the Reserve Banks to the PSOs would compensate the PSOs for the services they provide the Reserve Banks by delivering transactions to RDFIs. PSOs would not be required to adopt the Reserve Banks' price structure and fees for transactions sent to them by Reserve Banks but rather could establish their own price structure and fees.
- *Eligibility:* The Board proposed limiting the modified deadlines and price structure to intermediaries that are defined as ACH operators in the operating rules of the National Automated Clearing House Association (NACHA).

II. Summary and Analysis of Comments

The Board received twenty-nine responses to its request for comment. The following table shows the number of comments received by category of commenter:[4]

Commenters	Number
Small banks, thrifts, and credit unions	9
Large banks	6
ACH associations	3
Bankers' banks and corporate credit unions	3
Private-sector operators	3
Federal Reserve Banks	2
Trade associations	2
Clearing houses	1
Total	29

Overall, fifteen commenters supported and fourteen commenters opposed the Board's proposal. Those supporting the proposal generally tended to be smaller depository institutions; however, the American Bankers Association, two large banks, a bankers' bank, and the Reserve Banks supported the proposal as well. These commenters believed the proposal would enhance competition. They also believed that the proposal reflected a balanced approach towards addressing the competitive concerns of PSOs and the pricing concerns of small banks. Those opposing the proposal generally tended to be PSOs, ACH associations, and larger banks; however, two corporate credit unions, a clearing house, and the Association for Financial Professionals opposed the proposal as well. These commenters believed that the proposed modifications would not improve competition in the provision of ACH services and were primarily concerned that the proposed price structure would exacerbate current competitive imbalances.

A. Deposit Deadlines

Summary of Comments—In its May 2000 request for comment, the Board proposed that the Reserve Banks work collaboratively with ACH operators to establish interoperator deposit deadlines by which the Reserve Banks and the PSOs would exchange interoperator transactions. The Reserve Banks' preliminary recommendation was that one interoperator deposit deadline be established at 2:30 p.m. eastern time for immediate settlement items and that another interoperator deposit deadline for next-day settlement items be established at 3 a.m. eastern time.[5] Under the proposal, PSOs would continue to be free to establish other deadlines by which they would exchange interoperator transactions among themselves. Further, all ACH operators, including the Reserve Banks, would be free to establish deposit and delivery deadlines for their customers.

Almost all commenters supported the Board's proposal to modify deposit deadlines. Commenters indicated that

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[2] In developing the proposed price structure for interoperator transactions, the Reserve Banks used a cost-based approach to set fees. The Reserve Banks attempted to identify costs related to network access, processing, and settlement and to price those components separately. Further, the Reserve Banks excluded certain costs that might not be incurred when services are provided to ACH operators so that the interoperator fee structure would reflect, as closely as possible, the cost structure for interoperator transactions.

[3] The Reserve Banks would no longer provide customer service to depository institutions for transactions they send or receive through a PSO. These institutions would have to direct transaction and service-related inquiries to their PSOs. The Reserve Banks, however, would continue to provide customer service on settlement-related questions.

[4] Responses from trade associations were included with the organizations they present. Two trade associations (The American Bankers Association and The Association for Financial Professionals), however, did not fall into one specific category and are listed separately.

[5] Immediate settlement items are settled on the same banking day as they are received while next-day settlement items are settled one or two banking days after they are received. The Reserve Banks' banking day for the receipt of ACH items is from 3 a.m. eastern time to 2:59 a.m. eastern time on the next calendar day. Only return items and National Association of Check Safekeeping items are eligible for immediate settlement.

the proposal provided an excellent starting point for discussions between the Reserve Banks and PSOs to establish deposit deadlines for interoperator transactions. These commenters believed that the preliminary recommendation would help level the playing field between Reserve Banks and PSOs and thus improve competition. Further, they believed that because the Reserve Banks currently receive almost all of their next-day item deposits well in advance of the 3 a.m. deposit deadline, most Reserve Bank customers would not be adversely affected. Most commenters believed that the deposit deadline modifications could be implemented independent of the remainder of the proposed modifications and that the Reserve Banks and PSOs would have to address a number of technical issues, such as how to handle requests for deadline extensions.

One commenter, however, indicated that it would not be in favor of modifications that would shorten current deposit deadlines for Reserve Bank customers. Wachovia Bank noted that while the adverse impact of changes in deposit deadlines on Reserve Bank customers might be minimal, the Board should avoid any adverse impact. Another commenter, ABN AMRO, also voiced concerns about the potential earlier Reserve Bank customer deposit deadline for next-day items and suggested that the Board's long-term goal should be to make the deadline later than it is today.

When it requested comment, the Board noted the problems posed by transactions that involve three operators. Currently, some of the transactions that PSOs deposit with the Reserve Banks are destined to other PSOs, which results in some transactions being processed by three operators.[6] With interoperator deposit deadlines, however, if an operator receives a transaction from another operator at the interoperator deposit deadline that is destined to a third operator, the middle operator would be unable to forward the transaction timely because the deadline to deposit transactions with the third operator would have already passed. To address this issue, the Board suggested that NACHA evaluate whether its ACH operator definition should be revisited to require operators to exchange interoperator transactions directly with the operator serving the RDFI. In any case, to ensure that the Reserve Banks are able to forward the transactions to the RDFI's operator by the interoperator deposit deadline, the Board proposed that the Reserve Banks require all ACH transactions that need to be forwarded to another operator, including transactions deposited by a PSO, be deposited by the Reserve Banks' customer deposit deadline.

Commenters believed that the three-operator transaction issue could be addressed through NACHA operating rules but were careful to note that any NACHA operating rule modifications should not result in a degradation of service to RDFIs. The Chicago Reserve Bank, however, suggested that files deposited with the Reserve Banks by a PSO that contain transactions destined to a third operator should not be eligible for modified deadlines and pricing.

Board Analysis—The Board has concluded that the Reserve Banks should work collaboratively with ACH operators to establish interoperator deposit deadlines by which the Reserve Banks and the PSOs would exchange interoperator transactions. The PSOs would continue to be free to establish other deadlines by which they would exchange interoperator transactions among themselves. Further, the Reserve Banks and the PSOs would be free to establish deposit and delivery deadlines for their customers.

Based on the comments received in response to its request for comment, the Board believes that establishing interoperator deposit deadlines by which Reserve Banks and the PSOs would exchange transactions would enhance the competitive environment with minimal operational impact on Reserve Bank customers. Preliminary discussions between the Reserve Banks and the PSOs suggest that the interoperator deposit deadline for immediate settlement items would likely be set at 2:30 p.m. eastern time and the interoperator deposit deadline for next-day settlement items would be set at 3:00 a.m. eastern time. As a result, PSOs should be able to deliver transactions to RDFIs earlier than they do today, which should result in competitive RDFI delivery schedules between the Reserve Banks and PSOs. Assuming these deadlines are adopted, the Reserve Banks' customer deposit deadline for next-day items will be adjusted to permit the Reserve Banks to forward interoperator transactions to PSOs by the 3:00 a.m. deadline. Reserve Bank customer deposit deadlines will be finalized after the Reserve Banks and the PSOs set the interoperator deposit deadlines. In addition, the Reserve Banks and the PSOs will work together to address technical operational issues to ensure that the ACH system operates as efficiently and effectively as possible. The new interoperator exchange deadlines will be implemented no later than June 2001.

The Board agrees with commenters that the three-operator transaction issue should be addressed through NACHA operating rules. Accordingly, the Board recommends that NACHA revisit its ACH operator definition and require operators to exchange interoperator transactions directly with the operator serving the RDFI. Further, to ensure that the Reserve Banks are able to forward interoperator transactions by the interoperator deposit deadline, the Reserve Banks will require all ACH transactions that need to be forwarded to another operator, including transactions deposited by a PSO, be deposited by the Reserve Banks' regular customer deposit deadline. The Board anticipates that the adoption of interoperator exchange deadlines will enable the Reserve Banks and PSOs to offer RDFIs competitive delivery schedules and believes that ODFIs will be able to modify their deadlines or operational procedures to meet an earlier Reserve Bank customer deposit deadline for next-day items.

B. Price Structure for Interoperator Transactions

Summary of Comments.—Commenters were split on the appropriateness of the proposed price structure for interoperator transactions processed by the Reserve Banks. Supporters believed that the proposed price structure would promote competition in the provision of ACH operator services. Some supporters of the proposal, however, indicated that their support was premised on the assumption that these pricing changes would not result in higher fees to Reserve Bank customers, a result they would oppose.

Commenters opposing the proposed price structure believed that it would not correct the current competitive inequities and could possibly harm competition. These commenters suggested that the proposed price structure would permit the Reserve Banks to continue to dominate the market for ACH operator services. These commenters believed that the proposal's use of network access fees based on the number of RDFI routing numbers accessed and per-item fees based on the volume of transactions processed did not accurately reflect the Reserve Banks' cost structure. As a result, these commenters believed that the proposed structure would threaten the viability of PSOs and would result in PSO customers subsidizing Reserve Bank customers. These commenters recommended that the Reserve Banks and the PSOs exchange interoperator transactions at par, i.e., with no fees being assessed. If par exchange were not possible, commenters suggested recovering the network access costs through per-item fees.[7]

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[6] The Board understands that some depository institutions that use a PSO prefer to minimize the number of settlement entries they receive for their ACH transactions. Most of these institutions already receive and reconcile two settlements—one from their PSO, another from the Reserve Banks—and do not want to receive a third settlement for ACH transactions that PSOs exchange directly using the Private ACH Exchange (PAX) system. Thus, PSOs use the Reserve Banks to send some transactions destined to other PSOs, which minimizes the number of settlement entries for a given institution but results in three-operator transactions.

The Board also requested comment on how the fees that operators would charge each other might be restrained. The Board was concerned that an operator might be able to charge other operators excessive fees for access to RDFIs on its network if RDFIs were unwilling to accept the delivery of ACH transactions directly from multiple operators. The Board was also concerned about fee increases to Reserve Bank and PSO customers that could result from potentially spiraling interoperator fees as the Reserve Banks and PSOs attempted to cover the costs of interoperator transactions by charging each other higher fees. The Board noted that it believed that maintaining low, cost-based interoperator fees would enhance the continued growth of the ACH network.

Commenters stated that the Federal Reserve does not have the legal authority to restrain or impose the fees that PSOs charge the Reserve Banks. These commenters noted that the potential need for fee restraints suggested that the proposed price structure was not economically viable. These commenters believed that the only restraints on interoperator pricing should be market-based. If interoperator fees become unreasonable, operators could establish direct connections to its competitors' customers thereby bypassing the operator assessing the unreasonable fees. These commenters, nevertheless, believed that restraints would not be necessary because it is likely that PSOs would charge Reserve Banks the same fees they are charged by the Reserve Banks. Other commenters, however, suggested that the Reserve Banks should negotiate interoperator fees with the PSOs and that Reserve Banks should not pay PSOs a higher fee than they charge the PSOs. By adopting these approaches, these commenters indicated that the Reserve Banks could ensure that their customers are not subsidizing the PSOs' operations.

Board Analysis—The Board has approved a new approach to pricing interoperator transactions. As the Board noted in its request for comment, the Reserve Banks expend resources when they receive, process, and deliver interoperator transactions. Thus, exchanging interoperator transactions at no charge, as suggested by some commenters, could lead to inefficiencies in the processing of ACH transactions. The Board, however, has determined that the proposal to recover network costs through a network access fee based on the number of routing numbers accessed by PSOs would not be an appropriate component of a price structure for interoperator transactions.

Based on its analysis of comments, the Board has concluded that the Reserve Banks should initiate discussions with the PSOs to negotiate the structure and level of fees that would be charged by the Reserve Banks for interoperator transactions as well as those fees that the Reserve Banks would pay the PSOs. The Board believes that negotiations between the Reserve Banks and PSOs should result in interoperator fees that would enhance competition in the provision of ACH operator services.[8]

The Board has also approved, as originally proposed, the settlement fee that would be assessed to depository institutions that send and receive all their transactions that are processed by the Reserve Banks through PSOs. Specifically, the Reserve Banks would charge a monthly settlement fee of about $20 per routing number, rather than the current monthly account servicing fee of $25, to settle interoperator transactions processed by the Reserve Banks for institutions that do not send ACH transactions directly to or receive ACH transactions directly from the Reserve Banks. This fee would enable Reserve Banks to recover the costs associated with settling interoperator transactions processed by the Reserve Banks.

In addition, the Board has determined that PSOs should pay a reduced electronic connection fee. PSOs are currently charged electronic connection fees in accordance with the Reserve Banks' fee schedules. PSOs use their electronic connections to send interoperator transactions to the Reserve Banks. The Reserve Banks, however, also use these electronic connections to send interoperator transactions to the PSOs. As a result, Reserve Banks derive benefits from these electronic connections similar to those derived by the PSOs. Thus, the Board believes that the Reserve Banks should charge the PSOs only half the electronic connection fees they are being charged currently.

The Board anticipates that the new price structure would be implemented no later than September 2001. The specific implementation date of prices for interoperator transactions will be announced well in advance of the effective date.

C. Eligibility

Summary of Comments—The primary distinction between ACH operators, as defined by NACHA rules, and other intermediaries is that operators provide clearing, delivery, and settlement services for intraoperator transactions and exchange interoperator transactions with other operators.[9] Third-party processors typically do not provide settlement services for transactions they process while correspondent banks typically do not provide the comprehensive clearing and delivery services provided by operators. Thus, the Reserve Banks tend to compete with PSOs, and not third-party processors or correspondent banks, in providing services to depository institutions.

Commenters strongly supported the use of NACHA's operator definition to determine eligibility for deadline and price structure modifications. The Federal Reserve Banks of Chicago and Richmond, however, opposed the use of NACHA's operator definition. The Chicago Reserve Bank believed that, given some of the arbitrary aspects of NACHA's operator definition, limiting eligibility for deadline and price structure modifications to intermediaries that meet NACHA's operator definition could worsen the competitive position of other ACH intermediaries vis-á-vis operators and the Reserve Banks. The Richmond Reserve Bank believed that limiting eligibility to only a certain group of intermediaries that provide all of components of the bundle of services that comprise ACH operator services would be inconsistent with the spirit of the proposal, which recognizes the improved competitive environment associated with unbundling services.

Board Analysis—The Board has concluded that the Reserve Banks' deadline and price structure modifications be limited to any intermediary that is defined as an operator under NACHA rules. The Board believes that the role of Reserve Banks in the ACH system is analogous to the role played by PSOs. ACH operators play a significant role in protecting the integrity of the overall ACH network and ensuring its interoperability and efficiency, a role that is separate and distinct from the role of other ACH intermediaries. Further, while the Board believes that certain aspects of NACHA's operator definition could be strengthened, the current definition does not preclude other entities from becoming new operators and competing with established operators.

II. Competitive Impact

The Board conducts a competitive impact analysis when it considers a major operational change, such as that being proposed for ACH interoperator transactions.[10] Specifically, in its analysis, the Board has assessed whether the interoperator deadlines and price structure would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services, and if so, whether the adverse effect on competition is due to differing legal powers or constraints, or due to a dominant market position deriving from such legal differences.

The purpose of the deadline and price structure modifications discussed above is to further enhance the competitive environment for ACH operator services. These modifications should enhance the ability of PSOs to compete with the Reserve Banks in providing ACH operator services to depository institutions. Specifically, PSOs will be able to establish customer deposit deadlines similar to those of Reserve Banks. Further, the Reserve Banks and PSOs will have the same ability to charge each other for the processing and delivery of ACH transactions to RDFIs that they serve. Moreover, depository institutions and other intermediaries might benefit from lower ACH transaction fees that could result from a more competitive market for the provision of ACH operator services. Thus, the Board does not anticipate any adverse effects on competition resulting from this proposal.

IV. Conclusion

The Board has decided on the following modifications to the Reserve Banks' deposit deadlines and price structure for interoperator transactions that the Reserve Banks exchange with PSOs.

- First, the Board has decided that the Reserve Banks should work collaboratively with ACH operators to establish interoperator deposit deadlines by which the Reserve Banks and the PSOs would exchange interoperator transactions. The PSOs would continue to be free to establish other deadlines by which they would exchange interoperator transactions among themselves. The interoperator deposit deadlines will be implemented no later than June 2001.
- Second, the Board has approved a new approach to pricing interoperator transactions that PSOs send to RDFIs on the Reserve Banks' ACH network.
  - —The Reserve Banks will charge depository institutions that send and receive all their transactions through PSOs a monthly settlement fee of $20 per routing number, rather than the monthly account servicing fee (currently set at $25), to settle interoperator transactions processed by the Reserve Banks.
  - —The Reserve Banks will initiate discussions with the PSOs to negotiate the structure and level of fees that will be charged by the Reserve Banks as well as those fees that the Reserve Banks will pay the PSOs.
  - —The Reserve Banks will charge ACH operators half the published electronic connection fee to reflect the use of the connection by both ACH operators and the Reserve Banks to send each other interoperator transactions.

The new prices for interoperator transactions will be implemented by the Reserve Banks no later than September 2001.

- Third, the Board has decided that the Reserve Banks' deadline and price structure modifications be limited to any intermediary that is defined as an operator under NACHA rules.

The specific implementation date for each of the modifications outlined above will be announced well in advance of the effective dates.

By order of the Board of Governors of the Federal Reserve System, October 30, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–28228 Filed 11–2–00; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, November 8, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no discussion of the following item is anticipated. The matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed 2001 Private Sector Adjustment Factor.

Discussion Agenda:

2. Proposed 2001 fee schedules for priced services.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

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[7] Several commenters appeared to have misconceptions about the proposed price structure. For example, Visa USA misunderstood the Board's proposed network access fee as applying to all routing numbers on the Reserve Banks' ACH network. The Board's proposal, however, stated that the Reserve Banks would charge PSOs a network access fee only for those routing numbers to which they actually sent transactions. Due to this misinterpretation, Visa significantly overestimated the fees that PSOs would pay for access to the Reserve Banks' ACH network under the proposed price structure. Similarly, the American Clearing House Association (ACHA) misinterpreted the Board's proposal as restricting how PSOs could establish fees they would charge Reserve Banks for interoperator transactions and as requiring PSOs to adopt a price structure that was based on the Reserve Banks' ACH cost structure. The Board's proposal indicated that the proposed price structure was how the Reserve Banks would charge PSOs for accessing the Reserve Banks' ACH network. The proposal did not require, as suggested in ACHA's response, that the PSOs adopt the proposed price structure when they set fees for Reserve Bank access to the PSOs' ACH networks. Indeed, the Board's concern about a potential escalation in the fees that operators might charge each other indicates that the Board recognized that operators would likely charge each other different fees under different price structures.

[8] The negotiated fees would apply to both commercial and government ACH transactions that the Reserve Banks send to depository institutions through PSOs.

[9] NACHA recently adopted modifications to its definition of an ACH operator (NACHA Operating Rules, section 13.1.1). To qualify as a private-sector ACH operator, an entity must execute an agreement with NACHA to comply with or perform all of the following: adhere to NACHA operating rules and other applicable laws and regulations; execute agreements with a minimum of twenty independent depository institutions that bind the depository institutions to NACHA operating rules and the ACH operator's rules; provide clearing, delivery, and settlement services for intraoperator transactions; exchange interoperator transactions with other ACH operators; process and edit files based on the requirements of NACHA operating rules; evaluate the creditworthiness of and apply risk control measures to their customers; adhere to the Federal Reserve's Policy Statement on Privately Operated Multilateral Settlement Systems; and adhere to any NACHA performance standards for ACH operators. Under this definition, Electronic Payments Network, Visa, and American Clearing House Association are considered to be private-sector ACH operators. The Reserve Banks reserve the right to establish their own operator definition should they object to any future modifications to NACHA's definition of an ACH operator.

[10] Federal Reserve Regulatory Service, 7–145.2.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board, 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: November 1, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28346 Filed 11–1–00; 10:55 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:30 a.m., Wednesday, November 8, 2000, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board, 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 1, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28347 Filed 11–1–00; 10:56 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of October 19, 2000 (65 FR 62722). The notice announced a meeting of the Dermatologic and Ophthalmic Drugs Advisory Committee, which was scheduled for November 16, 2000. The document was published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Anita Prout, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5503.

SUPPLEMENTARY INFORMATION: In FR Doc. 00–26787, appearing on page 62722 in the **Federal Register** of Thursday, October 19, 2000, the following correction is made:

1. On page 62722, in the first column, under the "Location" caption, "Holiday Inn, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD." is corrected to read "CDER Advisory Committee, conference room 1066, 5630 Fishers Lane, Rockville, MD."

Dated: October 31, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–28349 Filed 11–01–00; 2:45 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 13, 2000, 10 a.m. to 4:30 p.m., and November 14, 2000, 8:30 a.m. to 4 p.m.

Location: Hilton, Salons C, D, and E, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Veronica J. Calvin, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12514. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 13, 2000, the committee will discuss two draft guidances: "Guidance for Prescription Use Drugs of Abuse Assays Premarket Notifications" and "Over the Counter (OTC) Screening Tests for Drugs of Abuse: Guidance for Premarket Notifications." The prescription use guidance will be available to the public on the Internet at http://www.fda.gov/cdrh/ode/odecl052.html and supersedes the document entitled "Review Criteria for Assessment of In Vitro Diagnostic Devices for Drugs of Abuse Assays Using Various Methodologies." The OTC use guidance will be available to the public on the Internet at http://www.fda.gov/cdrh/ode/91.html and supersedes the document entitled "Guidance for Premarket Submissions for Kits for Screening Drugs of Abuse To Be Used by the Consumer." Draft questions for the committee regarding these guidances will be available to the public on the Internet at http://www.fda.gov/cdrh/panelmtg.html. On November 14, 2000, the committee will discuss and make recommendations on a premarket notification (510(k)) for a first-of-a-kind prescription use screening device for heroin in human hair.

Procedure: On November 13, 2000, from 10 a.m. to 4:30 p.m., and on November 14, 2000, from 9 a.m. to 4 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 6, 2000. On November 13, 2000, oral presentations from the public regarding the prescription use guidance will be scheduled between approximately 10:45 a.m. and 11:15 a.m., and oral presentations from the public regarding the OTC use guidance will be scheduled between approximately 1:15 p.m. and 2 p.m. On November 14, 2000, oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m. and between approximately 3 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 6, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On November 14, 2000, from 8:30 a.m. to 9 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) relating to present and future agency issues.

FDA regrets that it was unable to publish this notice 15 days prior to the November 13 and 14, 2000, Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 27, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–28350 Filed 11–1–00; 2:45 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10018]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Survey of Medicaid Home and Community-Based Services Waiver and Personal Care Option Recipients for the Multi-Site Study of Medicaid Home and Community-Based Services;

Form No.: HCFA–10018 (OMB# 0938–NEW);

Use: Information collected will pertain to a description of the person, information regarding service use, unmet need for HCBS, quality of life, satisfaction with services, general health and functional status, care management and consumer direction. These data will be combined with secondary data on utilization of health care services to analyze the coordination of care; utilization; outcomes; and cost of providing services.

Frequency: One Time;

Affected Public: Individuals or Households;

Number of Respondents: 4,800; *Total Annual Responses:* 4,800;

Total Annual Hours: 3,200.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 24, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–28206 Filed 11–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–565]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a previously approved collection for which approval has been expired; *Title of Information Collection:* Medicare Qualification

Statement for Federal Employees and Supporting Regulations in 42 CFR 406.15; *Form No.:* HCFA–565 (OMB# 0938–0501); *Use:* The HCFA–565 is completed by an individual filing for hospital insurance (HI) benefits (Part A) based upon their federal employment. This information is necessary to determine if HCFA/SSA can use federal employment prior to 1983 to qualify for free Part A. The data is passed to the HI master record, the Enrollment Data Base (EDB). An HI record showing appropriate entitlement is established and if applicable, a Medicare card is issued.; *Frequency:* Other (one time only); *Affected Public:* Individuals or Households, Federal Government, and State, Local, or Tribal Government; *Number of Respondents:* 4,300; *Total Annual Responses:* 4,300; *Total Annual Hours:* 731.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 24, 2000.

John P. Burke, III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–28207 Filed 11–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–44]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 3, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call he toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 27, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 00–28219 Filed 11–2–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science Central Utah Project Completion Act; Sanpete County, UT

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate agreements among the Central Utah Water Conservancy District (CUWCD), Sanpete Water Conservancy District, Sanpete County, and the Department of the Interior for implementation of Projects in Sanpete County, Utah.

SUMMARY: Public Law 102–575, section 206(a)(1) provides: "After two years from the date of enactment of this Act, the District shall, at the option of an eligible county as provided in paragraph (2), rebate to such county all of the ad valorem tax contributions paid by such county to the District, with interest but less the value of any benefits received by such county and less the administrative expenses incurred by the District to that date." Sanpete County desires to pursue local water development projects and is requesting a rebate of a portion of the ad valorem taxes it has paid to CUWCD, plus interest, to provide the required 35 percent local funding for such projects.

In a letter dated October 7, 1996, Sanpete County requested federal funding, equal to 65 percent of the costs as set forth in section 206(b)(1), to implement the projects. Section 206(b)(1) states: "Upon the request of any eligible county that elects not to participate in the project as provided in subsection (a), the Secretary shall provide as a grant to such county an amount that, when matched with the rebate received by such county, shall constitute 65 percent of the cost of implementation of measures identified in paragraph (2)."

Sanpete County, located within the Sevier River Basin in Central Utah, is requesting federal funding for the Mayfield New Well Project and the Axtell Culinary Water System Improvement Project. Both projects are municipal improvement projects intended to increase the reliability and stability of their existing culinary water systems. Two agreements will be negotiated—one to provide funding for the Mayfield Project and the other for the Axtell Project.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Reed Murray, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, (801) 379–1237, rmurray@uc.usbr.gov.

Dated: October 30, 2000.

Reed R. Murray,

Program Coordinator, Department of the Interior.

[FR Doc. 00–28237 Filed 11–02–00; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare Comprehensive Conservation Plans; National Wildlife Refuges in North Carolina

ACTION: Notice of Intent to Prepare Comprehensive Conservation Plans for Alligator River, Currituck, Mackay Island, Mattamuskeet, Pocosin Lakes, Roanoke River, and Swanquarter National Wildlife Refuges in North Carolina.

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare comprehensive conservation plans and associated environmental documents pursuant to the Service's Comprehensive Conservation Planning Policy and the National Environmental Policy Act and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions; and

(2) Obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: Written comments should be received within 60 days of this publication.

ADDRESSES: Address comments and requests for more information to the following: D. A. Brown, M.S., P.W.S., 1106 West Queen Street, P.O. Box 329, Edenton, North Carolina 27932, (252) 482–2364.

Information concerning these refuges may be found at the following website: http://rtncf-rci.ral.r4.fws.gov

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following address: D_A_Brown@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact D.A. Brown directly at the above address. Finally, you may hand-deliver comments to Mr. brown at 1106 West Queen Street, Edenton, North Carolina. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: It is the policy of the Fish and Wildlife Service to have all lands within the National Wildlife Refuge System managed in accordance with an approved Comprehensive Conservation Plan. The plan guides management decisions and identifies the goals, objections, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the desired conditions of the refuge and how the Service will implement management strategies.

Dated: October 25, 2000.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 00–28208 Filed 11–2–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

SUMMARY: The proposal for renewal of the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 25).

DATES: Comments and suggestions on the renewal must be received by December 4, 2000.

ADDRESSES: Copies of the proposed collection of information and related forms may be obtained by contacting the Division of Real Estate Services as listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Comments and suggestions should be made directly to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner or Helen R. Latall, Bureau of Indian Affairs, Division of Real Estate Services, MS–4510/MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior has statutory authority to acquire lands in trust status for individual Indians and Federally recognized Indian tribes. The Secretary requests information in order to identify the party(ies) involved and describe the land in question. Respondents are Native American tribes or individuals who request real property acquisition for trust status. The Secretary also requests additional information necessary to satisfy those pertinent factors listed in 25 CFR 151.10 or 151.11. The information is used to determine whether or not the Secretary will approve an applicant request. No specific form is used, but respondents supply information and data so that the Secretary may make an evaluation and determination in accordance with established Federal factors, rules and policies.

Title: Land Acquisitions.

OMB approval number: 1076–0100.

Frequency: As needed.

Description of respondents: Native American tribes or individuals who request real property acquisition for trust status.

Nature of response: Required for a benefit.

Estimated completion time: 4 hours.

Annual responses: 9,200.

Annual Burden hours: 36,800.

You are asked to comment on whether it is necessary for the proper performance of agency functions; it reduces burden on small entities; it uses plain, coherent, and unambiguous terminology that is understandable to respondents; its implementation will be consistent and compatible with current reporting and recordkeeping practices; why the information is being collected and how it will be used.

Note: Comments, names and addresses of commentors are available for public review during regular business hours. If you wish us to withhold this information, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. In compliance with the Paperwork Reduction Act of 1995, as amended, the collection has been reviewed by the Office of Management and Budget and assigned a number and expiration date. The number and expiration date are at the top right corner of a form. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless there is a valid OMB clearance number.

Dated: October 30, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–28284 Filed 11–2–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–023–01–1150–DF–035L–241A]

Multiple-Use Activity Management Plan: Fairbanks, Alaska; Notice of Intent To Develop a Multiple-Use Activity Management Plan for the Colville River Special Area

SUMMARY: The BLM is issuing this notice to advise the public that a Multiple-Use Activity Management Plan will be prepared for the Colville River Special Area as directed by the Record of Decision (ROD) for the Northeast National Petroleum Reserve-Alaska (NPR–A) Integrated Activity Plan/Environmental Impact Statement (IAP/EIS). An Environmental Assessment tiered to the 1998 IAP/EIS will be completed in conformance with NEPA, and an ANILCA 810 subsistence evaluation will be completed for this action.

SUPPLEMENTARY INFORMATION: The study area for the plan will comprise the Colville River Special Area, as designated by the Secretary of the Interior in 1977, including designated portions of the Kikiakrorak and Kogosukruk Rivers as described in the April 6, 1999 **Federal Register** Notice (64 FR 16747).

Issues we expect to address in the plan will include subsistence, wildlife (specifically including raptors and other birds) and their habitat, and scenic, recreational, scientific, paleontological and other resources, values and uses of the Colville River planning area that may be identified through this scoping effort. The plan will address management of the Umiat Recreation Land Use Emphasis Area consistent with direction in the IAP/EIS and ROD that emphasizes support of public health and safety. The plan will also address the possible creation of a bird conservation area through a cooperative effort that would include the State of Alaska, the Arctic Slope Regional Corporation, and the BLM.

Proposals for oil and gas-related activities within the Colville River Special Area are outside the scope of this plan and will not be considered. The plan will be tiered to the NPR–A IAP/EIS and ROD, and it will incorporate the detailed analysis and decisions made previously in those documents with respect to oil and gas activities authorized in the Northeast planning area. As indicated in the IAP/EIS, other separate NEPA documents will be prepared to analyze any specific permits and approvals necessary to carry out oil and gas activities authorized in the ROD. The Colville River Plan will focus on issues other than oil and gas in the Special Area.

Scoping meetings will occur during January–February 2001 and will be held in Barrow, Nuiqsut, Fairbanks and Anchorage. The times and locations of the meetings will be announced when determined. The scoping period will end on March 15, 2001, and all comments should be received or postmarked on or before that date.

Comments on the scope of this planning effort, information regarding specific resources, values and uses to be studied, and issues that should be addressed in the plan are sought from all interested parties. To be considered, written comments should be addressed to Gary Foreman, 1150 University Ave., Fairbanks, AK 99709–3844 and must be postmarked or received via e-mail by March 15, 2001.

FOR FURTHER INFORMATION, CONTACT: Gary Foreman, 1–800–437–7021, by mail at 1150 University Avenue, Fairbanks, Alaska 99709, or through the BLM web site at http://aurora.ak.blm.gov.

Robert W. Schneider,

Northern Field Office Manager.

[FR Doc. 00–28238 Filed 11–02–00; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–01–1220–PA: GP1–0021]

Notice of Meeting of the Oregon Trail Interpretive Center Advisory Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Tuesday, December 5, 2000 from 8:30 a.m. to 12:30 p.m. in the Conference Room at the National Historic Oregon Trail Interpretive Center, Oregon Highway 86, Flagstaff Hill, Baker City, Oregon. Public comments will be received from 11 a.m. to 11:15 a.m., December 5, 2000. Topics to be discussed are the review and approval of the updated Strategic Plan, reports from Coordinators of Subcommittees, and the development of Action Plan and Recommendations for FY2001–2002.

DATES: The meeting will begin at 8:30 a.m. and run to 12:30 p.m., December 5, 2000.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, P.O. Box 987, Baker City, OR 97814, (Telephone 541–523–1845).

Sandy L. Guches,

Acting Vale District Manager.

[FR Doc. 00–28210 Filed 11–2–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1310–01; NMNM 1804]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 1804 for lands in Rio Arriba County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from May 1, 2000, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective May 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

Dated: October 24, 2000.

Lourdes B. Ortiz,

Land Law Examiner.

[FR Doc. 00–28209 Filed 11–2–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–929–00–1420–HE]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

T. 27 N., R. 56 E., P.M., MT

The plat, representing the dependent resurvey of a portion of the subdivisional lines and the adjusted original meanders of the former right bank of the Missouri River, upstream, through section 7, and the subdivision of section 7 and the survey of certain division of accretion lines in section 7 and a portion of a medial line of an abandoned channel of the Missouri River, upstream, through a portion of section 7, Township 27 North, Range 56 East, Principal Meridian, Montana, was accepted October 20, 2000.

The survey was requested by the Miles City Field Office and was necessary to identify accretion to original lot 6 in section 7 of the subject township.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filing, the filing will be stayed pending consideration of the protest.

This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: October 24, 2000.

Steven G. Schey,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 00–28266 Filed 11–2–00; 8:45 am]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–00–049]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 13, 2000 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–402 and 731–TA–892–893 (Preliminary)(Honey from Argentina and China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on November 13, 2000; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on November 20, 2000.)
5. Outstanding action jackets:

(1.) Document No. ID–00–019: Approval of final report in Inv. No. 332–411 (Electric Power Services: Recent Reforms in Selected Foreign Markets).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: November 1 , 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–28369 Filed 11–1–00; 1:43 pm]

BILLING CODE 7020–02–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,900, et al.]

OXY USA, Inc., Houston, Texas, et al.; Notice of Revised Determination on Reopening

On October 10, 2000, the company requested Administrative Reconsideration for workers and former workers of the subject firm engaged in the production of crude oil and natural gas.

The initial investigation resulted in a negative determination issued on August 7, 2000, because imports did not contribute importantly to the worker separations. The notice was published in the **Federal Register** on September 12, 2000 (65 FR 55049).

New information submitted to the Department by the company as well as recent information on aggregate U.S. imports of crude oil and natural gas which were not available at the time of the initial investigation revealed that production and employment declined. From 1998 to 1999 aggregate U.S. imports for both natural gas and crude oil increased both absolutely and relative to domestic shipments. Further, imports of crude oil increased in the period January through June 2000 compared to the same time period in 1999.

Workers at OXY USA in Houston, Texas and Liberal, Kansas were covered by a previous certification, (TA–W–34,538) which expired on July 8, 2000. Workers at Aransas Pass, Texas and Venice, Louisiana were not covered by a previous certification.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with crude oil and natural gas produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of OXY USA Inc. Houston, Texas (TA–W–37,900); Liberal, Kansas (TA–W–37,900B) who became totally or partially separated from employment on or after July 9, 2000; and all workers of OXY USA Inc., Aransas Pass, Texas (TA–W–37,900A) and Venice, Louisiana (TA–W–37,900C), who became totally or partially separated from employment on or after June 26, 1999 through two years from the date of this certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of October 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–28239 Filed 11–2–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,981]

Adirondack Knitting Mills, Amsterdam, NY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Adirondack Knitting Mills, Amsterdam, New York. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,981; Adirondack Knitting Mills Amsterdam, New York (October 25, 2000).

Signed at Washington, D.C. this 26th day of October, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–28243 Filed 11–2–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–WA–38,072]

Jn Oil and Gas, Incorporated; Billings, MT; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at JN Oil and Gas, Incorporated, Billings, Montana. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–38,072; JN Oil and Gas, Incorporated; Billings, Montana (October 25, 2000).

Signed at Washington, DC this 26th day of October, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–28242 Filed 11–2–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 13, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 13, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 16th day of October, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 10/16/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,197	Grandoe Corp. (The) (UNITE)	Gloversville, NY	09/29/2000	Leather Gloves.
38,198	Crown Cork and Seal Co (UFCW)	Perrysburg, OH	10/03/2000	Steel Cans and Steel Ends.
38,199	Uniscribe (Wrks)	Wheeling, WV	09/29/2000	Computer Date Entry.
38,200	M. Fine and Son Mfg (Wrks)	Loretto, TN	09/27/2000	Men's Boys, and Ladies' Blue Jeans.
38,201	Tyco Electronics (Comp)	Clinton Twp., MI	09/28/2000	Electronic Connectors.
38,202	Creighton, Inc. (Wrks)	Reidsville, NC	09/29/2000	Military Uniforms.
38,203	Anchor Glass Containers (Comp)	Dayville, CT	10/02/2000	Glass Containers.
38,204	Willamette Industries (WCIW)	Albany, OR	10/02/2000	Mouldings—Cabinets, Doors, Windows.
38,205	Crater Lake Potato (Wrks)	Klamath Falls, OR	09/28/2000	Potatoes.
38,206	Brown Wooten Mills, Inc (Comp)	Mount Airy, NC	10/04/2000	Socks.
38,207	Byrum Concepts, Inc. (Comp)	Lubbock, TX	09/28/2000	Bath Sponges.
38,208	Parana Supplies Corp (Comp)	El Paso, TX	10/09/2000	Ribbon Cartdriges for Printers.
38,209	Chieftain Products (Wrks)	Marine City, MI	09/21/2000	Mini Van Seat Coyers.
38,210	Chilton Toys (PACE)	Seymour, WI	09/26/2000	Tea Sets for Children.
38,211	ADM Milling Co. (IBT)	Milwaukee, WI	09/26/2000	Milled Corn Products.
38,212	Echo Bay Minerals Co (Comp)	Republic, WA	09/22/2000	Gold/Silver Compound.
38,213	GE Industrial Systems (Wrks)	Erie, PA	09/26/2000	DC Motors and Component Parts.
38,214	Fleetwood Homes of Ga (Wrks)	Douglas, GA	09/25/2000	Homes.
38,215	EPSG Pixpay Services (Wrks)	Burbank, CA	09/28/2000	Film Production.
38,216	Samsonite Corp (Comp)	Tucson, AZ	09/29/2000	Softside Luggage.

APPENDIX—Continued

[Petitions instituted on 10/16/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,217	Union Pacific Resources (Comp)	Fort Worth, TX	10/03/2000	Exploration and Prod. Oil and Gas.
38,218	Swift Denim (Comp.)	Erwin, NC	10/05/2000	Denim Fabric.
38,219	C and M Corp (Wrks)	Wauregan, CT	09/29/2000	Cable Assemblies.
38,220	Avery Dennison (Comp)	Crossville, TN	09/29/2000	Markers and Hi-Liters Highlighters..
38,221	Outer Banks (Comp)	Lumberton, NC	10/03/2000	Automatic Pocket Setting Machine.
38,222	Whatman, Inc. (Wrks)	Clifton, NJ	10/02/2000	Microfiltration.
38,223	GE Capital Card Services (Wrks)	Cincinnati, OHD	10/02/2000	Credit Collection Call Center.
38,224	Utica Cutlery Co. (USWA)	Utica, NY	10/04/2000	Stainless Steel Flatware.
38,225	Alcoa Fujikura Ltd (Comp)	Shelbyville, KY	10/06/2000	Wire Harnesses.
38,226	Stimson Lumber Co (LPIW)	Bonner, MT	10/04/2000	Plywood and Veneer Products.

[FR Doc. 00–28241 Filed 11–2–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 13, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 13, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 23rd day of October, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 10/23/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,227	Vulcan Materials Co (Co.)	Attalla, AL	10/11/2000	Slag.
38,228	Initial Security (Wrks)	Portland, OR	09/27/2000	Provides Security.
38,229	Dana Engine Controls (Wkrs)	Branford, CT	10/05/2000	Packaging, Bar Coding and Shipment.
38,230	Leeds and Northrup (Wkrs)	Ellwood City, PA	10/01/2000	Oven Temperature Sensors.
38,231	SI Cutting Services (Wkrs)	Opalocks, FL	10/04/2000	Fabric Cutting.
38,232	Carolina Shoe Co (Wkrs)	Morganton, NC	10/04/2000	Men and Ladies' Footwear.
38,233	Konica Imaging Int'l (Wkrs)	Glen Cove, NY	10/11/2000	Film Manufacturing.
38,234	North Side Manufacturing (Co.)	Philipsburg, PA	10/06/2000	Men's Suit Jackets.
38,235	Universal Auto Radiator (Co.)	Pittsburg, PA	10/10/2000	Automobile Radiators.
38,236	PACE Industries Puget Div (IAMAW)	Fircrest, WA	10/06/2000	Aluminum Die Castings.
38,237	Steag Hamatech (Co.)	Saco, ME	10/17/2000	Original Equipment for Compact Disc.
38,238	Royal Oak Enterprises (Wkrs)	Paris, AR	10/05/2000	Charcoal.
38,239	Airtherm Manufacturing (Wkrs)	St. Louis, MO	10/01/2000	Central Air Distribution Systems.
38,240	Ashby Industries (Co.)	Martinsville, VA	09/30/2000	Textile Machinery.
38,241	Micromatic Textron (UAW)	Holland, MI	10/10/2000	Honing Machines.
38,242	Homestake Mining Co. (USWA)	Lead, SD	10/09/2000	Gold.
38,243	Color Tex International (Wkrs)	Salisbury, NC	10/04/2000	Dyed and Finished Woven Goods.
38,244	Handy Girl LLC (Wkrs)	Deer Park, MD	10/10/2000	Girl's Apparel.
38,245	Leapwood Apparel (Wkrs)	Adamsville, TN	10/11/2000	Knit Shirts.
38,246	Jakel, Inc (Wkrs)	East Prairie, MO	10/13/2000	Small Electrical Motors.
38,247	North Powder Lumber (Wkrs)	North Powder, OR	10/02/2000	Lumber.

[FR Doc. 00–28240 Filed 11–2–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA000001 (Feb. 11, 2000)
MA000002 (Feb. 11, 2000)
  MA000003 (Feb. 11, 2000)
  MA000005 (Feb. 11, 2000)
  MA000006 (Feb. 11, 2000)
  MA000007 (Feb. 11, 2000)
  MA000008 (Feb. 11, 2000)
  MA000009 (Feb. 11, 2000)
  MA000010 (Feb. 11, 2000)
  MA000012 (Feb. 11, 2000)
  MA000013 (Feb. 11, 2000)
  MA000014 (Feb. 11, 2000)
  MA000015 (Feb. 11, 2000)
  MA000017 (Feb. 11, 2000)
  MA000018 (Feb. 11, 2000)
  MA000019 (Feb. 11, 2000)
  MA000020 (Feb. 11, 2000)
  MA000021 (Feb. 11, 2000)
Maine
  ME000022 (Feb. 11, 2000)
New Jersey
  NJ000002 (Feb. 11, 2000)
Rhode Island
  RI000001 (Feb. 11, 2000)
  RI000002 (Feb. 11, 2000)
  RI000003 (Feb. 11, 2000)

Volume II

None

Volume III

Florida
  FL000001 (Feb. 11, 2000)
  FL000002 (Feb. 11, 2000)
  FL000066 (Feb. 11, 2000)
Kentucky
  KY000002 (Feb. 11, 2000)
  KY000007 (Feb. 11, 2000)
  KY000025 (Feb. 11, 2000)
  KY000027 (Feb. 11, 2000)
  KY000029 (Feb. 11, 2000)
  KY000035 (Feb. 11, 2000)

Volume IV

Indiana
  IN000001 (Feb. 11, 2000)
  IN000002 (Feb. 11, 2000)
  IN000003 (Feb. 11, 2000)
  IN000004 (Feb. 11, 2000)
  IN000005 (Feb. 11, 2000)
  IN000006 (Feb. 11, 2000)
  IN000016 (Feb. 11, 2000)
  IN000047 (Feb. 11, 2000)
Ohio
  OH000001 (Feb. 11, 2000)
  OH000002 (Feb. 11, 2000)
  OH000003 (Feb. 11, 2000)
  OH000004 (Feb. 11, 2000)
  OH000012 (Feb. 11, 2000)
  OH000020 (Feb. 11, 2000)
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  OH000026 (Feb. 11, 2000)
  OH000027 (Feb. 11, 2000)
  OH000029 (Feb. 11, 2000)
  OH000035 (Feb. 11, 2000)
Wisconsin
  WI000008 (Feb. 11, 2000)
  WI000010 (Feb. 11, 2000)
  WI000018 (Feb. 11, 2000)
  WI000019 (Feb. 11, 2000)
  WI000021 (Feb. 11, 2000)
  WI000022 (Feb. 11, 2000)

Volume V

Kansas
  KS000006 (Feb. 11, 2000)
  KS000007 (Feb. 11, 2000)
  KS000018 (Feb. 11, 2000)
  KS000019 (Feb. 11, 2000)
  KS000020 (Feb. 11, 2000)
  KS000021 (Feb. 11, 2000)
  KS000022 (Feb. 11, 2000)
  KS000023 (Feb. 11, 2000)
  KS000026 (Feb. 11, 2000)
Louisiana
  LA000005 (Feb. 11, 2000)
  LA000014 (Feb. 11, 2000)
Texas
  TX000005 (Feb. 11, 2000)
  TX000010 (Feb. 11, 2000)
  TX000054 (Feb. 11, 2000)
  TX000069 (Feb. 11, 2000)
  TX000096 (Feb. 11, 2000)

Volume VI

Montana
  MT000003 (Feb. 11, 2000)

  MT000004 (Feb. 11, 2000)
  MT000005 (Feb. 11, 2000)
North Dakota
  ND000001 (Feb. 11, 2000)
  ND000002 (Feb. 11, 2000)
  ND000004 (Feb. 11, 2000)
  ND000027 (Feb. 11, 2000)
  ND000029 (Feb. 11, 2000)
  ND000049 (Feb. 11, 2000)
  ND000054 (Feb. 11, 2000)
  ND000055 (Feb. 11, 2000)
Oregon
  OR000001 (Feb. 11, 2000)
South Dakota
  SD000005 (Feb. 11, 2000)
  SD000006 (Feb. 11, 2000)
Washington
  WA000005 (Feb. 11, 2000)
  WA000007 (Feb. 11, 2000)
  WA000009 (Feb. 11, 2000)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 26 day of October 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–27989 Filed 11–2–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Notice of Meetings and Agenda

The Fall meetings of committees of the Labor Research Advisory Council will be held on November 14 and 16. The Committee on Occupational Safety and Health Statistics will meet on December 12, 2000, and an agenda will be provided at a later date. All of the meetings will be held in the Conference Center, of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Tuesday, November 14, 2000

9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 9

1. Progress of BLS research on disability measurement.

2. Overview of just-completed BLS longitudinal database (LDB), containing the employment and wages of virtually all business establishments in the U.S. linked back to 1990, and review of first tabulation from the LDB of job creation and job destruction by industry and firm size.

3. Occupational Employment Statistics (OES) research results.

a. Evaluation of OES interval mean estimation procedure.

b. Evaluation of OES procedures for estimating hourly and annual wages.

c. Comparison of OES and NCS estimates for Houston.

4. Discussion of agenda items for future meetings.

1:30 p.m.—Committee on Prices and Living Conditions Meeting Room 9

1. Update on program developments.
a. Consumer Price Index.
b. International Price Indexes.
c. Producer Price Indexes.
2. Discussion of agenda items for future meetings.

Thursday, November 16, 2000

9:30 a.m.—Committee on Productivity, Technology and Growth—Meeting Room 8

1. Schedule and assumptions for the 2000–2010 employment projections.

2. New multifactor productivity results: National Income and Product Accounts revisions, high tech capital, and purchased service inputs.

3. Planned multifactor productivity series for 3-digit manufacturing industries.

4. Incorporation of CPI–U–RS indexes into the productivity and costs measures for retail trade industries.

5. Discussion of agenda items for future meetings.

Committee on Foreign Labor Statistics

1. Comparability of BLS comparative manufacturing productivity measures.

2. Discussion of agenda items future meetings.

1:30 p.m.—Committee on Compensation and Working Conditions—Meeting Room 8

1. Employment Cost Index and National Compensation Survey enhancements.

2. Benefits data for union and nonunion workers.

3. Employer-provided educational assistance benefits.

4. Results of BLS pilot survey of stock options.

5. Discussion of agenda items for future meetings.

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on (Area Code 202) 691–5970.

Signed at Washington, D.C. this 25th day of October, 2000.

Katharine G. Abraham,

Commissioner.

[FR Doc. 00–28244 Filed 11–2–00; 8:45 am]

BILLING CODE 4510–24–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

October 30, 2000.

TIME AND DATE: 2 p.m., Thursday, November 9, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Target Industries, Inc., Docket Nos. PENN 97–170, etc. (Issues include whether the Secretary of Labor reasonably interpreted her regulations for main mine fans as applying to any fan whose shutdown would immediately impact mine or section ventilation, whether the operator was provided sufficient notice of the Secretary's interpretation of those

regulations, and whether substantial evidence supports the judge's conclusion that the operator's bleeder fans constituted main mine fans within the meaning of the Secretary's interpretation).

TIME AND DATE: 2 p.m., Thursday, November 30, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Excel Mining LLC, Docket Nos. KENT 99–171–R, etc. (Issues include whether the Secretary of Labor can determine compliance with the respirable dust standard for underground coal mines based on an average of multiple samples taken during a single shift).

TIME AND DATE: 2 p.m., Thursday, December 7, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Virginia Slate Co., Docket No. VA 99–8–M (Issues include whether the judge erred in finding that violations were not due to the operator's unwarrantable failure.).

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

[FR Doc. 00–28444 Filed 11–1–00; 3:43 pm]

BILLING CODE 6735–01–M

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Mississippi River Commission.

TIME AND DATE: Begin at 1:30 p.m. and adjourn by 4 p.m., November 27, 2000.

PLACE: Mississippi River Commission Headquarters Building, 1400 Walnut Street, Vicksburg, MS.

STATUS: Open to the public for observation but not for participation.

MATTER TO BE CONSIDERED: The Commission will consider the Wolf River, Memphis, Tennessee, Final Feasibility Report and Final Environmental Impact Statement.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

Frederick L. Clapp, Jr.,

Colonel, Corps of Engineers, Secretary, Mississippi River Commission.

[FR Doc. 00–28391 Filed 11–1–00; 1:43 pm]

BILLING CODE 3710–GX–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value.

Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 18, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business.

Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records

proposed for destruction). It also includes a brief description of the temporary records.

The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–00–5, 2 items, 2 temporary items). Records relating to the payment of survivor benefits to spouses and former spouses of members. Included are such records as election forms, cost and annuity estimates, and electronic copies of records created using electronic mail and word processing.

2. Department of the Air Force, Agency-wide (N1–AFU–00–6, 2 items, 2 temporary items). Records relating to tests and inspections of facility grounds and lightning protection systems. Files include sketches of grounding and lightning protection systems, inspection and test reports, and deficiency and repair reports. Also included are electronic copies of records created using electronic mail and word processing.

3. Department of the Army, Agency-wide (N1–AU–00–21, 3 items, 3 temporary items). Records relating to the airworthiness of Army aircraft. Included are such records as technical data, logs, test reports, airworthiness qualification statements, and electronic copies of documents created using electronic mail and word processing.

4. Department of the Army, Agency-wide (N1–AU–01–1, 1 item, 1 temporary item). Master file of the Military Personnel Transition Point Processing System II, an electronic information system used to support and facilitate the transition of soldiers from active duty status to retirement, discharge, or release from active duty. The system includes such information as rank, pay grade, command, service record, type and reason for separation, and related data.

5. Department of the Army, U.S. Criminal Investigation Command (N1–AU–01–2, 2 items, 2 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to reports accumulated by criminal investigation laboratories pertaining to tests of material which may be used as evidence or exhibits in investigations. This schedule also increases the retention period for recordkeeping copies of these files, which were previously approved for disposal.

6. Department of the Army, Agency-wide (N1–AU–01–5, 2 items, 2 temporary items). Master file and outputs of the In-Processing System, an electronic information system used to support and facilitate the in-processing of soldiers and family members to an installation. The system includes such information as readiness status, installation clearances, checklists, and related data.

7. Department of the Army, Agency-wide (N1–AU–01–6, 2 items, 2 temporary items). Master file and outputs of the Out-Processing System, an electronic information system used to support and facilitate the out-processing of soldiers and family members from an installation. The system includes such information as readiness status, installation clearance certificates, checklists, and related data.

8. Department of Defense, National Imagery and Mapping Agency (N1–537–01–1, 211 items, 211 temporary items). Paper and electronic records relating to logistics, supply, maintenance, and transportation, including electronic copies of documents created using electronic mail and word processing. Records relate to such matters as procurement, solid waste management, supply accounting and stock control, maintenance of equipment, warehousing and storage, travel and transportation, property disposal, motor vehicles, and the agency small business program.

9. Department of Energy, Agency-wide (N1–434–00–7, 6 items, 6 temporary items). Records relating to administrative and operational activities that involve environmental matters. Records pertain to such subjects as safety analyses, community environmental surveillance programs, and environmental program support. Also included are electronic copies of documents created using electronic mail and word processing. These records were initially included in Disposition Job N1–434–98–28, but were withdrawn for additional review.

10. Department of the Interior, Office of the Secretary (N1–48–01–1, 3 items, 1 temporary item). Tax returns and related documents filed by the Trans-Alaska Pipeline Liability Fund, a non-profit corporation responsible for settling claims from damages resulting from oil spills occurring before August 18,1990. Annual reports and minutes of the Fund's Board of Trustees are proposed for permanent retention.

11. Department of Justice, Bureau of Prisons (N1–129–00–36, 2 items, 1 temporary item). Electronic copies of documents created using electronic mail and word processing that are associated with the chronological files of the Assistant Director, Community Corrections and Detention Division. Recordkeeping copies of these files are proposed for permanent retention.

12. Department of Justice, Bureau of Prisons (N1–129–00–37, 5 items, 5 temporary items). Records of the National Office on Citizen Participation, including central office volunteer files, inactive program files, institutional files, subject files, and electronic copies of documents created using electronic mail and word processing.

13. Department of Justice, Bureau of Prisons (N1–129–00–38, 5 items, 5 temporary items). Records of the Detention Branch, including chronological files, files relating to facilities operated under contract with private firms or local governments, files relating to detained Mariel Cubans, and subject files relating to such matters as crimes committed by aliens, relations with other agencies regarding detained aliens, and inspections of jails. Also included are electronic copies of documents created using electronic mail and word processing.

14. Department of Justice, Bureau of Prisons (N1–129–00–39, 5 items, 3 temporary items). Records of the Privatization and Special Projects Branch, including privatization master files, privatization project files, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files relating to the transfer of inmates from the District of Columbia Department of Corrections to Federal custody are proposed for permanent retention.

15. Department of Justice, Bureau of Prisons (N1–129–00–40, 16 items, 14 temporary items). Records of the Community Corrections Branch. Included are such records as statement of work files, past performance files, community corrections subject files, correspondence, escape reports, incident reports, untimely release reports, population reports, program review files, program statement and operations memorandum files, training files and videotapes, juvenile subject files, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of quarterly reports of community corrections center utilization rates and quarterly field reports are proposed for permanent retention.

16. Department of the Treasury, Bureau of the Public Debt (N1–53–00–

12, 3 items, 2 temporary items). Security-related records consisting of forms used to report offenses and incidents that take place at entrances to agency facilities as well as forms used in connection with issuing identification badges for employees. Also included are records relating to certain Government investment loans, which are proposed for permanent retention.

17. Department of the Treasury, Bureau of the Public Debt (N1–53–00–5, 3 items, 1 temporary item) Video masters and duplicates of public service announcements used by the Savings Bond Marketing Office to promote the sale of Savings Bonds. Original film, film transfers, and a video copy of each announcement are proposed for permanent retention.

18. Department of the Treasury, Bureau of the Public Debt (N1–53–01–2, 12 items, 11 temporary items). Government Account Series (GAS) system and related records, including such records as the GAS master file, systems documentation, and hardcopy inputs and outputs used to initiate transactions, confirm requests, summarize daily or monthly activities, detect and correct accounting errors, and reconcile account balances. The GAS Daily Principal Outstanding Report—End of Year is proposed for permanent retention in hard copy. Data from GAS is imported into the agency's Public Debt Accounting and Reporting System, which was previously approved for permanent retention.

19. Department of the Treasury, Under Secretary (Domestic Finance) (N1–56–00–3, 19 items, 15 temporary). Records relating to the Office of the Assistant Secretary for Financial Institutions, Office of Government Sponsored Enterprise Policy, and Office of Financial Institutions Policy. The records include chronological files, administrative files, schedules of daily activities, and news clips and periodicals. Also included are electronic copies of records created using electronic mail and word processing. Recordkeeping copies of office subject files and schedules of daily activities of the Under Secretary and the Assistant Secretary are proposed for permanent retention.

20. Department of the Treasury, Under Secretary (Domestic Finance) (N1–56–01–1, 7 items, 7 temporary items). Records of the Office of Market Finance relating to the processing of requests from the Bureau of the Public Debt for securities pricing information, including the electronic master file, inputs, outputs, and system documentation. Also included are the Noon Investment Package, which consists of information exchanged with the Bureau of the Public Debt, as well as electronic copies of documents created using electronic mail and word processing.

21. Department of the Treasury, Financial Management Service (N1–425–01–1, 20 items, 19 temporary items). Electronic systems with related inputs, outputs, and system documentation relating to Government-wide accounting, including summary financial and budgetary operations of the Government and the collection of data on the Government's assets, liabilities, and the cost of Government operations. Also included are office chronological files and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of the annual report of the Central Accounting System are proposed for permanent retention.

22. Department of the Treasury, Financial Management Service (N1–425–01–2, 8 items, 8 temporary items). Records of the Office of the Assistant Commissioner for Federal Finance relating to the management of the Government's cash and credit programs, including bank master and bank operating records concerning the management and operation of financial services provided by banks for the Government and bank operating records for accounts pertaining to Individual Indian Monies. Also included are electronic copies of documents created using electronic mail and word processing.

23. Department of the Treasury, Financial Management Service (N1–425–01–3, 22 items, 22 temporary items). Electronic systems with related inputs, outputs, and system documentation relating to the disbursement of Federal payments, including social security payments and tax refunds, and the collection of debt owed the Federal Government. Also included are paper copies of returned checks, office chronological files, and electronic copies of documents created using electronic mail and word processing.

24. Department of the Treasury, Financial Management Service (N1–425–01–4, 67 items, 67 temporary items). Electronic systems with related inputs, outputs, and system documentation pertaining to Federal payments, claims, collections, and financial transactions, including check payment and reconciliation, debt recovery and accounting, collecting Government funds, and managing Individual Indian Money checks. Also included are electronic copies of documents created using electronic mail and word processing, copies of checks in all media, and paper records relating to check disbursement.

25. Inter-American Foundation, Office of Programs (N1–454–00–1, 7 items, 5 temporary items). Working papers, monitoring reports, and audits relating to grants. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of grant project files, including rejected proposals, are proposed for permanent retention.

26. Tennessee Valley Authority, Chief Operating Officer (N1–142–00–7, 4 items, 4 temporary items). Records relating to the operation of fuel plants, including temperature charts, pressure charts, and turbine supervisory charts. Also included are electronic copies of records created using electronic mail and word processing.

Dated: October 25, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–28245 Filed 11–2–00; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–90, issued to the Tennessee Valley Authority (TVA, the licensee), for operation of the Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee.

The proposed amendment would modify the WBN Technical Specifications (TS) to allow a one-time-only increase in the diesel generator Action Completion Time from 72 hours to 10 days. This allowance would facilitate potential repairs to an emergency diesel generator to improve reliability.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the

amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> (A) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> The diesel generators are designed as backup AC power sources in the event of loss of offsite power. The probability of occurrence of an accident is not increased as the diesel generators perform a function of accident mitigation only and cannot cause an accident. Similarly, the diesel generator itself would be out of service and could not cause other equipment to malfunction.
>
> The technical specifications currently would allow two emergency diesel generators of one train to be out of service for up to three days followed consecutively by two diesel generators of the opposite train to be out of service for three more days. Thus, the current specifications would allow two diesels to be unavailable for six days total. This proposed change would allow a single diesel generator to be out of service for ten days. This is not considered to be a significant departure from the current requirement. Further, the consequences of postulated accident with one diesel generator unavailable is enveloped by the current allowance for both trained generators unavailable.
>
> The cumulative consequences of an accident are not significantly increased as the increase in core damage frequency as a result of the additional Action Completion Time extension is non-risk significant. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> (B) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.
>
> The possibility for a new or different kind of accident from any accident previously evaluated does not exist as a result of the increase in Action Completion Time for the diesel generator, as the diesel generator performs a function of accident mitigation only and cannot result in the malfunction of other equipment while undergoing repairs.
>
> (C) The proposed amendment does not involve a significant reduction in a margin of safety.
>
> The calculated increase in the Action Completion Time for one diesel generator out of service shows a non-risk significant increase in the predicted core damage frequency (CDF). TVA concludes that the margin of safety has not been reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 4, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley Authority, ET 10H, 400 East Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 30, 2000, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 30th day of October 2000.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–28248 Filed 11–02–00; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 1 p.m., Monday, November 13, 2000; 8:30 a.m., Tuesday, November 14, 2000; 10 a.m., Tuesday, November 14, 2000.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: November 13 (Closed); November 14—8:30 a.m. (Open); 10 a.m. (Closed).

MATTERS TO BE CONSIDERED:

Monday, November 13—1 p.m. (Closed)

1. Financial Performance.
2. Fiscal Year 2001 Integrated Financial Plan.
3. Enhanced Security Capability.
4. International Mail Rates.
5. Quarterly eCommerce Update.
6. Personal Matters.
7. Compensation Issues.
8. Postal Rate Commission Opinion and Recommended Decision in Docket No. R2000–1, Omnibus Rate case.

Tuesday, November 14—8:30 a.m. (Open)

1. Minutes of the Previous Meetings, September 22, and October 2–3, 2000.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Quarterly Report on Service Performance.
4. Fiscal Year 2001 Operating Budget.
5. Capital Investment Plan.
6. Fiscal Year 2001 Financing Plan.
7. Tentative Agenda for the December 4–5, 2000, meeting in Washington, DC.

Tuesday, November 14—10 a.m. (Closed)

1. Continuation of Monday's closed agenda.

CONTACT PERSON FOR MORE INFORMATION: David G. Hunter, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

David G. Hunter,

Secretary.

[FR Doc. 00–28413 Filed 11–1–00; 1:42 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rule 11Ac1–3; SEC File No. 270–382; OMB Control No. 3235–0435]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 11Ac1–3 requires disclosure on each new account and on a yearly basis thereafter, on the annual statement, the firm's policies regarding receipt of payment for order flow from any market makers, exchanges or exchange members to which it routes customers' order in national market system securities for execution; and information regarding the aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm over the past year.

It is estimated that there are approximately 7,500 registered broker-dealers.[1] The staff estimates that the average number of hours necessary for each broker-dealer to comply with Rule 11Ac1–3 is fourteen hours annually. Thus, the total burden is 105,000 hours annually. The average cost per hour is approximately $85. Therefore, the total cost of compliance for broker-dealers is $8,925,000.

Records generated by forms pursuant to this rule must be kept for three years. The records required by this rule are mandatory to assist the Commission in its regulatory role. This rule does not involve the collection of confidential information. Please not that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 24, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28220 Filed 11–2–00; 8:45.am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

[Rule 17Ad–11; SEC File No. 270–261; OMB Control No. 3235–0274]

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

- Rule 17Ad–11 Reports Regarding Aged Record Differences, Buy-ins, and Failure to Post Certificate Detail to Master Securityholder Files

Rule 17Ad–11 requires approximately 150 transfer agents to report to issuers and the appropriate regulatory agency in the event that aged record differences exceed certain dollar value thresholds. An aged record difference occurs when an issuer's records do not agree with those of securityowners as indicated, for instance, on certificates presented to the transfer agent for purchase, redemption or transfer. In addition, the rule requires transfer agents to report to the appropriate regulatory agency in the event of a failure to post certificate detail to the master securityholder file within 5 business days of the time required by Rule 17Ad–10. Also, transfer agents must maintain a copy of each report prepared under Rule 17Ad–11 for a period of three years following the date of the report. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

Because the information required by Rule 17Ad–11 is already available to transfer agents, any collection burden for small transfer agents is minimal. The staff estimates that the average number of hours necessary to comply with Rule 17Ad–11 is one hour annually. The total burden is 150 hours annually for transfer agents, based upon past submissions.

The retention period for the recordkeeping requirement under Rule 17Ad–11 is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under rule 17Ad–11 is mandatory to assist the Commission and other are regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 30, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28263 Filed 11–2–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 6, 2000.

A closed meeting will be held on Wednesday, November 8, 2000 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matters of the close meeting scheduled Wednesday, November 8, 2000 will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: November 1, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–28352 Filed 11–1–00; 11:25 am]

BILLING CODE 8010–01–M

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[1] This estimate is based on FYE 1999 Focus Reports received by the Commission.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43484; File No. SR–BSE–00–17]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Fortune Indexes

October 26, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on October 12, 2000, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE intends to trade, via Unlisted Trading Privileges ("UTP"), Index Fund Shares based on the Fortune 500 and Fortune e-50 Indexes pursuant to Rule 19b–4(e) under the Act.[3] Accordingly, the BSE proposes to amend Chapter XXIV–B, *Index Fund Shares,* by adding Section 6, *Fortune Indexes,* to set forth various disclaimers of liability and warranties in connection with these Indexes and trading in Index Fund Shares. The text of the proposed rule change is available at the principal office of the BSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B. and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The BSE intends to trade, via UTP, Index Fund Shares based on the Fortune 500 and Fortune e-50 Indexes ("Indexes"), pursuant to rule 19b–4(e) under the Act.[4] Therefore, the BSE proposes to amend Chapter XXIV–B, *Index Fund Shares,* by adding Section 6, *Fortune Indexes,* to set forth various disclaimers of liability and warranties in connection with the Indexes and trading in Index Fund Shares. The proposed rule would state, among other things, that the Indexes are licensed for use by the Exchange in connection with the Index fund Shares; that the Index Fund Shares have not been passed on by Fortune for suitability for a particular use; and that the Index Fund Shares are not sponsored, endorsed, sold, or promoted by Fortune. The proposed rule would also state that Fortune does not warranty the accuracy or completeness of the Indexes or the data included therein, results to be obtained from use of the Indexes or such data, or fitness for a particular use with respect to the Indexes or such data.

2. Statutory Basis

The BSE believes that the proposed rule change is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Sections 6(b)(5) [6] in particular, in that it is designed to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest. The BSE also states that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–00–17 and should be submitted by November 24, 2000.

IV. Commission's Findings and Order Granting Acceleratred Approval of Proposed Rule Change

A. Generally

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act [8] because it will facilitate transactions in securities by setting forth certain disclaimers of liability with respect to Index Fund Shares based on the Fortune 500 and Fortune e-50 Indexes that will trade on the Exchange.[9]

The BSE has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act [10] for approving the proposed rule change prior to the thirtieth day after publication of the proposal in the **Federal Register**.[11] The Commission does not believe that this proposal raises any new regulatory issues and notes that the proposed rule change is nearly identical to others that have been previously approved by the Commission.[12] Therefore, the Commission finds that there is good cause for approving the proposed rule change prior to the thirtieth day after publication of the proposal in the **Federal Register**.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–BSE–00–17), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28223 Filed 11–2–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43483; File No. SR–CHX–00–33]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange; Incorporated Relating to the Trading of the street Tracks℠ Dow Jones Global Titans Index Fund

October 25, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2000, the Chicago Stock Exchange, Incorporated ("Exchange" or "CHX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to trade, pursuant to unlisted trading privileges, shares of the streetTRACKS℠ Dow Jones Global Titans Index™ Fund,[3] using the procedures outlines in Rule 19b–4(e) of the Act.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 21, 1996, the Commission approved a new listing standard, Article XXVIII, Rule 24, which allowed the Exchange to list and trade Investment Company Units.[4] In general, Investment Company Units represent an interest in a registered investment company that holds securities based on, or representing an interest in, an index or portfolio of securities.

Over time, the Commission has approved amendments to Article XXVIII, Rule 24, to permit the trading, pursuant to unlisted trading privileges, of investment company lists based on certain Morgan Stanley Capital International Indices ("WEBS℠," now called "iShares℠ MSCI Index Fund Series℠") and nine series of Select Sector SPDRs℠.[5]

On June 22, 2000, the Commission approved a proposed rule change that added a new interpretation to the CHX's Investment Company Units listing standard.[6] This new provision permits the Exchange to list or trade Investment Company Units udder the expedited procedures described in Rule 19b–4(e) under the Act, so long as those securities meet specific standards. The Exchange has used these procedures to trade, pursuant to unlisted trading privileges, several Investment Company Units, including series of the iShares Trust based on domestic stock indices.

Through this filing, the Exchange proposes to trade, pursuant to unlisted trading privileges, shares of the streetTRACKS ("Shares") Dow Jones Global Titans Index Fund (the "Fund"). The Fund is a series of the streetTRACKS Series Trust (the "Trust"), which is an open-end investment company.[7] As described below, these Investment Company Units are structurally similar to the Investment Company Units already approved for trading on the Exchange.

The Exchange has prepared the following information about the Fund based on the streetTRACKS Trust Prospectus (the "Prospectus") and Statement of Additional Information dated September 25, 2000, as well as a submission by the American Stock Exchange, LLC ("Amex"), in which it sought approval to list and trade these securities (the "Amex Submission").[8]

a. *The Dow Jones Global Titans Index.* The Dow Jones Global Titans Index (the "Index") is composed of 50 common stocks, which are chosen by the Dow Jones and Company (the "Dow"). As described in the Prospectus, a stock must, in the opinion of the Dow, meet all four of the following criteria to qualify as a candidate for the Index: (1) It must be a well established company with a solid financial situation and a broad client base; (2) it must be well known to global investors for either its long history of success or its widely used products or services; (3) it must be a market leader in its industry with either a dominant position or a competitive advantage; and (4) it must be among the largest of blue-chip companies in the global arena.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(e).

[4] 17 CFR 240.19b–4(e).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] In reviewing the proposed rule change, the Commission considered its potential impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] The Commission notes that it has previously approved a proposed rule change submitted by the BSE under Exchange Act Rule 19b–4, 17 CFR 240.19b–4(e), that established generic listing standards for Index Fund Shares that would permit the trading of, among other things, shares of the Fortune 500 and FORTUNE e-50 Indexes funds pursuant to UTP. *See* Exchange Act Release No. 34–42988 (June 28, 2000), 65 FR 42021 (July 7, 2000).

[10] 15 U.S.C. 78S(B)(2).

[11] In its initial submission to the Commission, the BSE inadvertently requested that the Commission grant accelerated *effectiveness* to the proposed rule change. The BSE has indicated that, instead, it requested accelerated *approval* of the proposal. Telephone conversation between Esther Radovsky, Listings Analyst, BSE, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on October 24, 2000.

[12] *See, e.g.,* Exchange Act Release No. 34–41664 (July 27, 1999), 64 FR 42424 (August 4, 1999) (approval of BSE rule change to, among other things, adopt certain disclaimers of liability with respect to Nasdaq–100 Index Fund Shares); Exchange Act Release NO. 34–41119 (February 26, 1999), 64 FR 11510 (March 9, 2000) (approval of Amex rule change to, among other things, adopt certain disclaimers of liability with respect to Nasdaq–100 Index Fund Shares); Exchange Act Release No. 34–35534 (March 24, 1995), 60 FR 16686 (March 31, 1995) (approval of Amex rule change to, among other things, adopt certain disclaimers of liability with respect to S&P MidCap 400 Index Fund Shares).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] "streetTRACKS" is a registered service mark of the State Street Corporation. "Dow Jones Global Titans Index" is a trademark of the Dow Jones & Co., Inc.

[4] *See* Securities Exchange Act Release No. 37589 (August 21, 1996), 61 FR 44370 (August 28, 1996) (SR–CHX–96–12).

[5] *See* Securities Exchange Act Release Nos. 39117 (September 22, 1997), 62 FR 50973 (September 29, 1997) (SR–CHX–96–14) (WEBS); and 40950 (January 15, 1999), 64 FR 3730 (January 25, 1999) (SR–CHX–98–31) (Select Sector SPDRs). "WEBBS" was a service mark of the Morgan Stanley Group, Inc. "iShares" is a service mark of the Barclays Global Investors. "MSCI Index Fund" is a trademark of the Morgan Stanley Capital International. "Select Sector SPDR" is a service mark of The McGraw-Hill Companies, Inc.

[6] *See* Securities Exchange Act Release No. 42975 (June 22, 2000), 65 FR 40712 (June 30, 2000) (SR–CHX–00–14).

[7] State Street Bank and Trust Company, through its State Street Global Advisors division, ("State Street") is the adviser to the Trust and responsible for management of the Fund. State Street is also the administrator, custodian and transfer agent for the Fund and may act as a lending agent for the Trust. State Street Capital Markets, LLC is the distributor of the Fund's Shares. The Depository Trust Company ("DTC") acts an securities depositary for the Shares.

[8] *See* Securities Exchange Act Release No. 43338 (September 25, 2000), 65 FR 59235 (October 4, 2000) (SR–Amex–00–53).

According to the Prospectus, in constructing the Global Titans Index, a multi-factor methodology is adopted. First, the 3,000 stocks of the Dow Jones Global Indexes are used as the Initial Pool to ensure that all candidates are investable, liquid and representative of the global markets. Market capitalization is then used as the first screen to create the Final Pool by selecting the top 100 companies. According to the Amex's filing, the Dow's rationale for this step is that market value is a universal measurement across industries, and also that its use is most appropriate for an index built for investment purposes. Every company in the final pool of 100 musts derive some revenue from outside its home country. This screen is instituted to ensure that all stocks in the Index selected are truly global companies.

The Prospectus notes that the next step in Index construction is to combine the Final Pool components' market capitalization rankings with their rankings according to four other indicators of size and leadership. These four indicators, two from the balance sheet and two from the income statement, are assets, book value, sales/revenue, and net profit. The combined rankings of these four fundamental factors determine the fundamental rank of each company. The fundamental rank and the market capitalization rank are used equally as the basis for selecting the Index components.[9]

For purposes of calculation of the Index value, securities for which the primary market is outside of the United States are valued based on the last sale price on the primary market. During periods when the primary market is closed, these securities are valued based on the last sale price, if any, of any corresponding American Depositary Receipt ("ADR").

b. *The streetTRACKS Dow Jones Global Titans Index Fund.* According to the Prospectus, the Fund's investment objective is to replicate as closely as possible, before expenses, the performance of the Index. The Fund uses a passive management strategy designed to track the performance of the Index. The Fund, using an "indexing" investment approach, attempts to replicate, before expenses, the performance of the Index. The Adviser seeks a correlation of 0.95 or better between the Fund's performance and the performance of the Index; a figure of 1.00 would represent perfect correlation. The Fund generally will invest in all of the stocks comprising the Index in proportion to their weighings in the Index. However, under various circumstances, it may not be possible or practicable to purchase all of those stocks in those weighings. In those circumstances, the Fund may purchase a sample of the stocks in the Index in proportions expected by the Adviser to replicate generally the performance of the Index as a whole. There may also be instances in which the Adviser may choose to overweight another stock in the Index, purchase securities not in the Index which the Adviser believes are appropriate to substitute for the Index Securities, or utilize various combination of other available investment techniques, in seeking to track accurately the Index. The Fund may sell stocks that are represented in the Index, or purchase stocks that are not yet represented in the Index, in anticipation of their removal from or addition to the Index. The Fund will normally invest at least 95% of its total assets in common stocks that comprise the Index.

The Prospectus confirms that the Fund will invest in foreign securities, including non-U.S. dollar-denominated securities traded outside of the United States and dollar-denominated securities of foreign issuers traded in the United States. Foreign securities also include investments such as ADRs, which are U.S. dollar-denominated receipts representing shares of foreign-based corporations. ADRs are issued by U.S. banks or trust companies, and entitle the holder to all dividends and capital gains that are paid out on the underlying foreign shares.

As described in the Amex Submission, as of August 31, 2000, the Index included 27 U.S. companies, 20 Western European companies and 3 Japanese companies, representing 68.17%, 27.45% and 4.38% of the Index weight, respectively. Forty-four Index components, representing 94.36% of the Index weight, are listed on the New York Stock Exchange, Inc. ("NYSE") or on the National Association of Securities Dealers Automated Quotations System ("Nasdaq"). Seventeen of the 23 non-U.S. companies in the Index have ADRs listed and traded on the NYSE. The following five non-U.S. companies in the Index, with a combined Index weight of 5.07%, have ADRs traded in the United States in the over-the-counter "Pink Sheet" market: Credit Suisse Group, Lloyds/TSB Group PLC, Nestle S.A., Roche Holding AG, and Siemens AG. ADRs for one non-U.S. company in the Index, Allianz AG Holding, are not currently available.

c. *Creation and Redemption of Fund Shares.* The Fund will issue and redeem Shares only in Creation Unit size aggregations, with 50,000 Shares in each Creation Unit. The Fund will issue and sell Shares through the distributor on a continuous basis at their net asset value. Following issuance, Shares are traded on the Exchange and on other exchanges like other equity securities by professionals, as well as retail and institutional investors.

In order to create (*i.e.*, purchase) Creation Units of the Fund, an investor must generally deposit a designated portfolio of equity securities constituting a substantial replication, or a representation, of the stocks included in the Index (the "Deposit Securities") and generally make a small cash payment referred to as the "Cash Component." The list of the names and the number of shares of the Deposit Securities is made available by the custodian through the facilities of the National Securities Clearing Corporation ("NSCC") immediately prior to the opening of business on the Amex. The Cash Component represents the difference between the net asset value of a Creation Unit and the market value of the Deposit Securities.

Orders must be placed in proper form by or through either (1) a "Participating Party," *i.e.*, a broker-dealer or other participant in the clearing process of the Continuous Net Settlement System of the NSCC; or (2) a DTC Participant, that, in either case, has entered into an agreement with the Trust, the distributor and the transfer agent, with respect to creations and redemptions of Creation Units. All orders must be placed for one or more whole Creation Units of Shares of the Fund and must be received by the distributor in proper form no later than the close of regular trading on the NYSE (ordinarily 4 p.m., New York time) in order to receive that day's closing net asset value per Share.

Shares may be redeemed only in Creation Units at their net value and only on a day the NYSE is open for business. The custodian makes available immediately prior to the opening of business on the Amex, through the facilities of the NSCC, the list of names and the number of Shares of the Fund's portfolio securities that will be applicable that day to redemption requests in proper form ("Fund Securities"). Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to creations of Creation Units. Unless cash redemptions are available or specified for the Funds, the redemption proceeds consist of the Fund Securities, plus cash in an amount equal to the difference between the net asset value ("NAV") of the Shares being redeemed as next determined after receipt by the transfer agent of a redemption request in proper form, and the value of the Fund Securities (the "Cash Redemption Amount"), less the applicable redemption fee.

Shares cannot be redeemed individually but must be redeemed in Creation Units.

d. *Availability of Information Regarding Fund Shares and the Index.* The Exchange understands that Amex, the primary exchange for these products, intends to disseminate, every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association ("CTA"), an updated value for Shares on a per Share basis. Amex has represented that this value will be based on last sale price disseminated by United States and applicable foreign exchange markets, the price of foreign issues being converted into U.S. dollars based on current currency exchange rates and/or reported ADR prices in the United States (in U.S. dollars).

The Exchange also understands that additional information will be available to the public, including the Shares outstanding and the Cash Component per Creation Unit size aggregation (which will be made available prior to the opening on the Amex) and the closing prices of the Fund's Deposit Securities (which is available from a variety of market data vendors). Moreover, as described above, the Fund will make available on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the cash balancing amount. Finally, the Exchange understands that the NAV for each Fund will be calculated and disseminated daily.

e. *Other Characteristics of the Fund.* Income dividend distributions, if any, are distributed to shareholders quarterly. Net capital gains are distributed at least annually. The Trust may declare and paid dividends more frequently to improve Index tracking or to comply with Internal Revenue Code distribution requirements. Distributions in cash may be invested automatically in additional whole Shares if the broker through which the investor purchased the Shares makes this option available.

Broker-dealers may make available the DTC book-entry Dividend Reinvestment Service for use by beneficial owners of the Fund through DTC participants for reinvestment of their dividend distributions. If this service is available and used, dividend distributions of both income and realized gains will be automatically reinvested in additional whole Shares issued by the Fund based on a payable date NAV.

f. *Trading of Fund Shares on the Exchange.* Fund Shares are subject to the criteria for initial and continued listing of Investment Company Units described in Article XXVIII, Rule 24.

The Exchange will require that a minimum of 100,000 Shares be outstanding when trading begins at the CHX. This number of Shares is comparable to the number of shares outstanding when other Investment Company Units or Portfolio Depositary Receipts began trading on the Exchange. The Exchange believes that the proposed minimum number of Shares required to be outstanding when trading begins on the Exchange is sufficient to provide market liquidity and to further the Fund's objective to seek to provide investment results that correspond generally to the price and yield performance of the Index. The Exchange understands that 150,000 Shares were outstanding when trading began on the Amex on September 29, 2000.

The minimum trading variation for the Fund will be $\frac{1}{64}$ of $1.00, until this security is converted to decimal pricing in accordance with the Decimals Implementation Plan for the Equities and Options Market submitted to the Commission in July, 2000.

Fund Shares are considered "securities" under the Rules of the Exchange and are subject to all applicable trading rules, including the provisions of Article XX, Rule 40 ("ITS" 'Trade-Throughs' and 'Locked Markets' "), which prohibit CHX members from initiating trade-throughs for ITS securities, as well as rules governing priority, parity and precedence of orders, market volatility related trading halt provisions and responsibilities of the assigned specialist firm. Exchange equity margin rules will apply.

Funds Shares are also subject to the Exchange's rules relating to trading halts due to extraordinary market volatility (Article IX, Rule 10A) and the Exchange's rule which allows Exchange officials to halt trading in specific securities, under certain circumstances (Article IX, Rule 10(b)). In exercising the discretion described in Article IX, Rule 10(b), appropriate Exchange officials may consider a variety of factors, including the extent to which trading is not occurring in a stock underlying the index or portfolio and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Exchange's surveillance procedures for Fund Shares will be similar to the procedures used for other Investment Company Units and will incorporate and rely upon existing CHX surveillance systems.

The Exchange will issue a circular to its members and member organizations, prior to the commencement of trading, alerting them to the characteristics of Fund Shares, including the fact that Shares are not individually redeemable, but are redeemable only in Creation Units. The circular with also confirm that investors purchasing Fund Shares will be required to receive a prospectus prior to or concurrently with the confirmation of a transaction in the Shares; will inform members that the procedures for purchases and redemptions of Shares in Creation Unit size are described in the Trust Prospectus; and will confirm for members that the Fund Shares are subject to existing Exchange rules relating to trading halts. Finally, the circular will inform members that before a member, member organization, or person associated with a member organization undertakes to recommend a transaction in the Fund, the member or member organization should make a determination that the Fund is suitable for the customer and the person making the recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and the special characteristics of the recommended transaction and is financially able to bear the risks of the recommended transaction.

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[9] As described in the Amex Submission, the Index methodology described above is subject to an annual review. A three-month window—March through June—is used for stock evaluation. The steps described above are repeated to build the Final Pool and to calculate the final ranking with respect to the four fundamental measures and weighted-average market value. Any non-components that fall into the top 25 of the new final ranking are added to the Index automatically, replacing the lowest ranked components. A 20% buffer zone rule is applied, meaning that any component stocks ranked higher than 20% above the Index's target number of stocks are retained, while those ranked lower than 20% above the target number are replaced by the top ranked non-component stocks.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)[10] of the Act, which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The CHX seeks to trade issues already trading on another exchange and believes that this increased competition among markets can benefit investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the CHX has given written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the rule change, or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[11] of the Act and Rule 19b–4(f)(6)[12] thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The CHX seeks to have the proposed rule change become operative on October 16, 2000, in order to allow the CHX to immediately trade, pursuant to unlisted trading privileges, shares of streetTRACKS Dow Jones Global Titans Index Fund. The Shares are already being traded on the Amex.

The Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change become operative immediately as of October 16, 2000.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statement with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–00–33 and should be submitted by November 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28221 Filed 11–2–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43485; File No. SR–ISE–00–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC, Relating to Fee Changes

October 26, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2000, the International Securities Exchange LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing various changes to its fee schedule: (i) To provide discounts for multiple "Click" terminals; (ii) to establish a fee for "trade review terminals"; (iii) to clarify the application of execution fee discounts; (iv) to reflect that the ISE collects its "membership" or access fee on a monthly, rather than quarterly, basis; and (v) to permit the ISE to collect its regulatory fee on an annual, rather than quarterly, basis. The text of the proposed rule change is available at the ISE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any

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[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C 78s(b)(30(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change.

[14] For puspoes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 73s(b)(1).

[2] 17 CFR 240.19b–4.

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to effect the following changes in the ISE's fees:

Discounts: A Click terminal is a device that ISE Electronic Access Members ("EAMs") can use to enter orders on the ISE. The current ISE fee schedule imposes a flat monthly fee of $500 per terminal and $250 for each application program interface ("API") associated with a terminal. This structure can act as a disincentive for EAMs to utilize multiple Click terminals. The ISE is adopting a tiered fee schedule with volume discounts for Clicks and APIs that would lower the software fees to half the current charges (from $500 to $250) for the sixth Click terminal and all subsequent terminals, and the API fee (from $250 to $100) for the sixth and subsequent APIs.

Trade review devices: These devices allow a member to "listen" to the broadcast of ISE messages confirming executions effected by the member. Members use these devices for analytical, hedging, risk management, back-office processing and similar purposes. The ISE is establishing monthly "trade review device" fees, including multiple-terminal discounts, that are the same as the Click fees: $500 for the first five terminals and $250 per terminal thereafter.

Execution Fees: The ISE fee schedule provides for lower execution fees as the Exchange's average daily volume (ADV) increases. There are discounts at ADV of 300,000, 500,000 and 700,000 contracts a day. The amendment to the fee schedule clarifies that the reduced fees apply only to executions above the break-points. For example, at ADV of 550,000 contracts; the $.21 fee will apply for the first 300,000 contracts; the $.17 fee will apply for the next 200,000 contracts; and the $.14 fee will apply for the last 50,000 contracts.

Membership Dues: ISE Rule 205 authorizes the Exchange to charge "membership dues," payable on the first day of a calendar quarter. The fee schedule, however, includes monthly "access fees," rather than specific membership dues. The ISE is amending ISE Rule 205 to reflect this, and is not proposing any changes to the access fees themselves.

Regulatory Fees: The ISE fee schedule contains a provision for an annual $3,500 regulatory fee. ISE Rule 208 currently states that this fee is to be collected on a quarterly basis. The ISE believes that it is an unnecessary administrative burden to bill for and collect this relatively small fee on a quarterly basis. Accordingly, the ISE is eliminating the word "quarterly" from this rule so that it can collect the fee on an annual basis. There are no changes to the fee itself.

The basis for this proposed rule change is the requirement under section 6(b)(4) of the Act[3] that an exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the ISE has designated the foregoing proposed rule change as a fee change pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] the proposal has taken effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal offices of the ISE. All submissions should refer to SR–ISE–00–08 and should be submitted by November 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28222 Filed 11–2–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43380; File Nos. SR–PHLX–00–86 and SR–PHLX–00–87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by the Philadelphia Stock Exchange, Inc. Relating to an Amendment to the Exchange's Payment for Order Flow Fee and a Rebate for Certain Fees Incurred

October 25, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 11, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" of the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

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[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

In SR–PHLX–00–86, the Phlx proposes to amend its payment for order flow program[3] that imposed a fee, effective, August 1, 2000, of $1.00 per contract on transactions by Phlx specialists and Registered Options Traders ("ROTs") in the Top 120 Options[4] traded on the Phlx. The effect of the amendment would be to exclude from the program, as of September 1, 2000, any transaction between a Phlx specialist or a Phlx ROT and a Phlx member firm trading in its proprietary account. The proposed amendment is effective as of September 1, 2000.[5]

In SR–PHLX–00–87, the Phlx proposes to rebate the fees that the Phlx ROTs and Phlx specialists incurred during the period from August 1, 2000, through August 31, 2000, when they traded with Phlx member firms that were effecting trades for their proprietary accounts and not on behalf of customers. The text of these proposed rule changes is available at the principal offices of the Phlx.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the Phlx included statement concerning the purpose of and basis for the proposed rule changes and discussed any comments it had received on them. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of SR–PHLX–00–86, is to amend the Phlx's payment for order flow fee program such that, effective September 1, 2000, the Phlx will not assess the $1.00 per contract fee on transactions in which a Phlx member firm, trading for its proprietary account, trade with a Phlx specialist or Phlx ROT. In SR–PHLX–00–87, the Phlx proposes to rebate the fees that Phlx specialists and ROTs incurred in executing such transactions with Phlx member firms during the period from August 1, 2000 through August 31, 2000.

The purpose of the Phlx's payment for order flow program is to generate a source of revenue that specialists may use to attract order flow in the Top 120 Options traded on the Phlx. The Phlx's payment for order flow program originally imposed a $1.00 fee on all transactions of specialists and ROTs in the Top 120 Options, other than ROT-to-ROT or specialist-to-ROT transactions. The Phlx believes that it was necessary for it to adopt this type of fee in order to maintain and enhance its competitive position. Effective September 1, 2000, the proposed rule change would exempt from the fee all transactions between a specialist or an ROT and a member firm trading for its proprietary account.[6]

The Phlx believes that it would not promote the goals of its payment for order flow program to collect the $1.00 fee from ROTs and specialists when they engage in transactions with Phlx member firms trading for their proprietary accounts. Any funds collected in connection with those trades would not be used to make payments to member firms for their proprietary order flow, because those are not the kind of transactions that the fee is designed to attract. The Phlx proposes to rebate to specialists and ROTs any fees that were imposed on them for their transactions with respect to the proprietary trading of Phlx member firms during the period from August 1, 2000 through August 31, 2000.

In sum, the Phlx's payment for order flow program, as amended by SR–PHLX–00–86, would impose the $1.00 fee on all transactions by specialists and ROTs in the Top 120 Options, with the exception of: (1) Transactions between ROTs; (2) transactions between a specialist and an ROT; and (3) transactions between a specialist or an ROT and a member firm acting for its proprietary account and not on behalf of a customer. The Exchange envisions that the persons who pay the fees will also participate in the order flow derived from the plan, amended as proposed. The Exchange believes that the plan, amended as proposed, will provide for the equitable allocation of reasonable fees among the Exchange's members because the specialists and ROTs who pay the fee should also receive the benefits of increased order flow. Moreover, the Exchange believes that the fee should promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by attracting more order flow to the Exchange. In the Exchange's view, this should result in increased liquidity, tighter markets, and more competition among exchange members. Accordingly, the Exchange believes that its proposals are consistent with and further the objectives of the Act, including sections 6(b)(4)[7] and 6(b)(5)[8] thereof.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The Phlx neither solicited nor received any written comments with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the Phlx has designated the foregoing proposed rule changes as fee changes pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(2) thereunder,[10] the proposals have taken effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule changes, the Commission may summarily abrogate them if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise

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[3] *See* Securities Exchange Act Release No. 43177 (Aug. 18, 2000), 65 FR 51889 (Aug. 25, 2000).

[4] A top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded on all U.S. options markets for the period January 1, 2000 through June 30, 2000, based on volume information provided by The Options Clearing Corporation. The Phlx will determine the Top 120 Options every six months, with the next measuring period commencing June 1, 2000 and ending on November 30, 2000. The proposed fee does not apply to index or currency options.

[5] The $1.00 fee is not eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues, charges, and other amounts that certain members owe to the Exchange. *See* Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000).

[6] The Phlx has also filed a proposed rule change to amend its payment for order flow program to exclude, effective October 1, 2000, any transactions between Phlx specialists or ROTs and broker-dealer orders. *See* SR–PHLX–00–88 (October 2, 2000). The Phlx also proposed to rebate the fees that were imposed upon specialists and ROTs for transactions of the type that would be excluded by virtue of SR–PHLX–00–88. *See* SR–PHLX–00–89 (October 4, 2000).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

in furtherance of the purposes of the Act.

IV. Solicitation of Comments

The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications between the Commission and any person relating to the proposed rule changes, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal offices of the Phlx. All submissions should refer to File Nos. SR–PHLX–00–86 and SR–PHLX–00–87, and should be submitted by November 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28224 Filed 11–2–00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43481; File Nos. SR–PHLX–00–88 and SR–PHLX–00–89]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by the Philadelphia Stock Exchange, Inc. Relating to an Amendment to the Exchange's Payment for Order Flow Fee and a Rebate for Certain Fees Incurred

October 25, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that the Philadelphia Stock Exchange, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") proposed rule changes SR–PHLX–00–88 and SR–PHLX–00–89 on October 2, 2000 and October 4, 2000, respectively, as described in Items I, II, and III below, which Items the Phlx has prepared. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

In SR–PHLX–00–88, the Phlx proposes to amend its payment for order flow program[3] that imposed a fee, effective August 1, 2000 of $1.00 per contract on transactions by Phlx specialists and Registered Options Traders ("ROTs") in the Top 120 Options[4] traded on the Phlx. The effect of the amendment would be to exclude from the program, as of October 1, 2000, any transaction between a Phlx specialist or a Phlx ROT and a broker-dealer order.[5] The proposed amendment is effective as of October 1, 2000.[6]

In SR–PHLX–00–89, the Phlx proposes to rebate the fees that the Phlx ROTs and Phlx specialists incurred during the period from August 1, 2000 through September 30, 2000, when they engaged in a transaction with a broker-dealer order, and not with the order of a customer. The text of these proposed rule changes is available at the principal offices of the Phlx.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filings with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on them. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of SR-PHLX–00–88 is to amend the Phlx's payment for order flow fee program such that, effective October 1, 2000, the Phlx would not assess the $1.00 per contract fee on transactions in which a Phlx specialist or Phlx ROT trades with a broker-dealer order. Moreover, in connection with SR–PHLX–00–89, the Phlx proposes to rebate the fees that Phlx specialists and ROTs incurred in executing such transactions with broker-dealers during the period from August 1, 2000 through September 30, 2000.

The purpose of the Phlx's payment for order flow program is to generate a source of revenue that specialists may use to attract order flow to the Phlx. The Phlx's payment for order flow program originally imposed a $1.00 fee on all transactions of specialists and ROTs in the Top 120 Options traded on the Phlx, other than ROT-to-ROT or specialist-to-ROT transactions.[7] The Phlx believes that it was necessary for it to adopt this type of fee in order to maintain and enhance its competitive position.

Proposed rule change SR–PHLX–00–88 would now exempt from the fee all transactions between a specialist or an ROT and a broker-dealer order. The Phlx believes that it would not promote the goals of the payment for order flow program to collect the $1.00 fee from an ROT or a specialist that engages in a transaction with a broker-dealer order, and not the order of a customer. Therefore, any funds collected in connection with those trades would not be used to make payments to broker-dealers for their proprietary order flow, because those are not the kind of transactions that the fee is designed to attract. Indeed, because the primary focus of the program, as amended, is to attract order flow from customers, the $1.00 fee will apply to transactions between specialists or ROTs and customers. In SR–PHLX–00–89, the Phlx proposes to rebate to specialists and ROTs any fees that were imposed on them with respect to such transactions with broker-dealers during the period from August 1, 2000 through September 30, 2000.

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43177 (Aug. 18, 2000), 65 FR 51889 (Aug. 25, 2000).

[4] A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded on all U.S. options markets for the period January 1, 2000 through June 30, 2000, based on volume information provided by The Options Clearing Corporation. The Phlx will determine the Top 120 Options every six months, with the next measuring period commencing June 1, 2000 and ending on November 30, 2000. The proposed fee does not apply to index or currency options.

[5] According to the Phlx, a broker-dealer order is an order, entered from other than the floor of the exchange, for any account: (i) In which the holder of a beneficial interest is a member or non-member broker-dealer; or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the acount of an ROT entered from off the floor.

[6] The $1.00 fee is not eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues, charges, and other amounts that certain members owe to the Exchange. *See* Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000).

[7] *See* Securities Exchange Act Release No. 43177 (Aug. 18, 2000), 65 FR 51889 (Aug. 25, 2000). The Phlx later filed a proposed rule change to amend its payment for order flow program in order to exclude from the program, as of September 1, 2000, any transactions between Phlx specialists or ROTs and Phlx member firms trading in their proprietary accounts. *See* SR–PHLX–00–86 (September 11, 2000). The Phlx also proposed to rebate the fees that were imposed upon specialists and ROTs for transactions of the type that would be excluded by virtue of SR–PHLX–00–86. *See* SR–PHLX–00–87 (September 11, 2000).

In sum, the Phlx's payment for order flow program, as amended, would impose the $1.00 fee on all transactions by specialists and ROTs in the Top 120 Options, with the exception of: (1) Transactions between ROTs, (2) transactions between a specialist and an ROT; (3) transactions between a specialist or ROT and a Phlx member firm acting for its proprietary account and not on behalf of a customer,[8] (4) transactions between a specialist and a broker-dealer order; and (5) transactions between an ROT and a broker-dealer order. The Exchange envisions that the persons who pay the fees will also participate in the order flow derived from the amended program. The Exchange believes that the program, amended as proposed, will provide for the equitable allocation of reasonable fees among the Exchange's members because the specialists and ROTs who pay the fee should also receive the benefits of increased order flow.

Moreover, the Exchange believes that the fee should promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by attracting more order flow to the Exchange. In the Exchange's view, this should result in increased liquidity, tighter markets, and more competition among exchange members. Accordingly, the Exchange believes that its proposals are consistent with and further the objectives of the Act, including Sections 6(b)(4)[9] and 6(b)(5)[10] thereof.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The Phlx neither solicited nor received written comments with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the Phlx has designated the foregoing proposed rule changes as fee changes pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(2) thereunder,[12] the proposals have taken effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule changes, the Commission may summarily abrogate them if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal offices of the Phlx. All submissions should refer to File Nos. SR–PHLX–00–88 and SR–PHLX–00–89 and should be submitted by November 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28225 Filed 11–2–00; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collection listed below has been submitted to OMB for clearance. Written comments and recommendations on the information collection would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed after this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

Statement for Determining Continuing Eligibility, Supplemental Security Income Payment—0960–0145. SSA uses Form SSA–8202–F6 to conduct low- and middle-error-profile (LEP–MEP) telephone or face-to-face interviews with Supplemental Security Income (SSI) recipients and representative payees. The information collected during the interview is used to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been and are still receiving the correct payment amount. The respondents are recipients of SSI benefits or their representative payees. This notice is being published again to include the burden for Form SSA–8202–OCR–SM.

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[8] *See* footnote 7, *supra*.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

	SSA–8202–F6	SSA–8202–OCR–SM
Number of Respondents	920,000	800,000
Frequency of Response	1	1
Average Burden Per Response (minute)	17	8
Estimated Annual Burden (hours)	260,667	106,667

(SSA Address), Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

(OMB Address), Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

Dated: October 30, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–28227 Filed 11–2–00; 8:45 am]

BILLING CODE 4190–29–U

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Administration (SSA).

ACTION: Notification of New Routine Use.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a(e)(4) and (11)), we are notifying the public of our intent to establish a new routine use of information maintained in the Privacy Act system of records entitled Master Files of Social Security Number (SSN) Holders and SSN Applications. The proposed new routine use allows SSA to verify SSNs for State bureau of vital statistics (BVS) in the States' Electronic Death Registration (EDR) process. The EDR process will assist SSA in making timely terminations of Social Security benefits in death cases.

DATES: We filed a report of the routine use proposal with the President of the Senate, the Speaker of the House of Representatives, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget on October 26, 2000. The proposed new routine use will become effective on December 5, 2000, unless we receive comments on or before that date which could result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia Smith, Office of Disclosure Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 965–1552 or E-mail at *patgrimmett@gov.com*.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Proposed New Routine Use

A. General

SSA received funding in fiscal year 1999 to enter into a contract with the National Association for Public Health Statistics and Information Systems (NAPHSIS) to develop standards and guidelines for States to implement an Electronic Death Registration (EDR) Process. EDR will result in significant programmatic and workyear savings for SSA, in that, SSA will receive more accurate and timely death reports from the States.

Under EDR, SSA's requirements are to receive a death report from the State within 24 hours of receipt in the State bureau of vital statistics (BVS) and to verify the Social Security number (SSN) at the beginning of the death registration process. The result of the verification will be that the states will allow SSA to take an immediate termination action on those verified numbers without independently verifying the accuracy of the report.

There are many participants in the death registration process including hospitals, medical examiners, coroners, funeral homes and local and State registrars. The EDR process will require the participant who collects the SSN to transmit the request for verification to the State BVS who will forward the request to SSA. In most states, funeral directors are responsible by State law for certifying the accuracy of that portion of the death certificate. SSA will send a "yes" or a code response if the SSN does not verify. The codes are:

- 1—SSN not in file (never issued to anyone)
- 2—Name and date of birth (DOB) match, sex code does not
- 3—Name and sex code match, DOB does not
- 4—Name matches, DOB and sex code do not
- 5—Name does not match, DOB and sex code not checked.

The BVS will, in turn, forward the response to the original requestor. This will allow the funeral director or whoever made the request a chance to obtain better information from the informant in cases where the number does not verify.

Because our records will not have any indication of death at the time the SSN verifications are requested, we must treat the individuals' records as if they are alive. We, therefore, are proposing to establish a new routine use under the Privacy Act to permit the verifications. The proposed routine use is applicable to the Privacy Act system of records entitled Master Files of Social Security Numbers (SSN) and SSN Applications and will appear as routine use number 30 in the notice of the system. The routine use provides for the following disclosure:

> Disclosures will be made to a State bureau of vital statistics (BVS) that is authorized by States to issue electronic death reports when the State BVS requests SSA to verify the Social Security number of an individual on whom an electronic death report will be filed after SSN verification.

B. Compatibility of the Proposed Routine Use

The Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and our disclosure regulation (20 CFR part 401) permits us to disclose information for routine uses; *i.e.*, disclose information about individuals without their consents for purposes compatible with the purpose for which the information is collected. Section 401.150 of the regulation (20 CFR 401.150) allows us to disclose information under a routine use to administer our programs. The SSN verifications that will be made under the proposed routine use would allow SSA to receive timely death information from the States that will result in timely termination of Social Security benefits when Social Security beneficiaries die. Thus, the proposed routine use meets the compatibility criteria of the Privacy Act and our disclosure regulation.

I. Effect of the Proposed Routine Use on the Individuals Rights

Under the proposed routine use SSN verifications will be provided to State BVS for individuals for whom the BVS is preparing an electronic death report. Since the individuals would be dead, there would be no adverse effects on individual rights. In the event that an SSN verification may be inadvertently provided for an individual who is alive, the individual's rights would be protected through an agreement with the State BVS that restricts their use or disclosure of such information.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 00–28226 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–25–U

DEPARTMENT OF STATE

[Public Notice No 3448]

Defense Trade Advisory Group; Notice of Open Meeting

The Defense Trade Advisory Group (DTAG) will meet in open session beginning at 8:30 a.m. on Tuesday, November 21, 2000, in Room F–3420 at the National Foreign Affairs Training Center (NFATC), 4000 Arlington Blvd., Arlington, VA. The membership of this advisory committee consists of private sector defense trade specialists, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on policies, regulations, and technical issues affecting defense trade.

As the DTAG has not met in plenary session for some time, this meeting is primarily organizational in nature and will focus on establishing future work programs.

Members of the public may attend the open session as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instructions.

As access to the Department of State facilities is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by COB Thursday, November 16, 2000. If notified after this date, the DTAG Secretariat cannot guarantee that State's Bureau of Diplomatic Security can complete the necessary processing required to attend the November 21 plenary.

Each non-member observer wishing to attend should provide his/her name, company or organizational affiliation, date of birth, and social security number to the DTAG Secretariat by fax to (202) 647–4232 (Attention: Mike Slack). A list will be made up for Diplomatic Security and the Reception Desk at the NFATC Visitor Center. Attendees must present a valid photo ID for entry.

FOR FURTHER INFORMATION CONTACT: Mike Slack, DTAG Secretariat, U.S. Department of State, Office of Regional Security and Arms Transfers (PM/RSAT), Room 7424 Main State, Washington, DC 20520–2422. Phone: (202) 647–2882, Fax (202) 647–9779.

Dated: October 30, 2000.

Timothy J. Dunn,

Executive Secretary, Defense Trade Advisory Group.

[FR Doc. 00–28269 Filed 11–2–00; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Agreements Filed; Weekly Receipts: Aviation Proceedings, Agreements Filed During the Week Ending September 15, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–7914.

Date Filed: September 11, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 0682 dated 12 September 2000, Mail Vote 084—Resolution 010e, TC3/TC31 Special Passenger Amending Resolution from Japan to USA/US Territories, Intended effective date: 15 September 2000.

Docket Number: OST–2000–7915.

Date Filed: September 11, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR–AFR 0119 dated 12 September 2000, Mail Vote 085—Resolution 010f, TC2 Europe-Africa Special Passenger Amending Resolution Fares between Durban and points in Europe, Intended effective date: 1 October 2000.

Docket Number: OST–2000–7939.

Date Filed: September 15, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR 0333 dated 12 September 2000, Within Europe Expedited Resolutions r1–r13, Minutes—PTC2 EUR 0332 dated 12 September 2000, Tables—None Intended effective date: 1 October 2000.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–28249 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending October 6, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–8065.

Date Filed: October 4, 2000.

Parties: Members of the International Air Transport Association.

Subject:

CTC COMP 0285 dated 26 May 2000
Expedited Resolutions 002nn, 015aa
CTC COMP 0305 dated 1 September 2000—technical correction
Intended effective date: 1 August 2000.

Docket Number: OST–2000–8066.

Date Filed: October 4, 2000.

Parties: Members of the International Air Transport Association.

Subject:

CTC COMP 0283 dated 26 May 2000
Expedited Composite Resolutions
Intended effective date: 1 August 2000.

Docket Number: OST–2000–8067.

Date Filed: October 4, 2000.

Parties: Members of the International Air Transport Association.

Subject:

CTC COMP 0288 dated 2 June 2000
Worldwide Area Resolutions
(USA/US Territories)
Intended effective date: 1 October 2000.

Docket Number: OST–2000–8075.

Date Filed: October 5, 2000.

Parties: Members of the International Air Transport Association.

Subject:

PTC23/TC123AFR–TC3 0107 dated 3 October 2000
Expedited Africa—TC3 Resolutions r1–r7
Intended effective date 1 November 2000.

Docket Number: OST–2000–8076.

Date Filed: October 5, 2000.

Parties: Members of the International Air Transport Association.

Subject:

PTC23/TC123 EUR–SWP 0046 dated 3 October 2000

PTC23/TC123 EUR–SWP 0047 dated 3 October 2000
Expedited Europe-South West Pacific Resolutions r1–r4
Intended effective date: 15 November 2000 and 1 January 2001.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–28251 Filed 11–02–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending September 29, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–8019.

Date Filed: September 25, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0449 dated 26 September 2000, Mail Vote 086—Resolution 010g, TC3 Special Passenger Amending Resolution between Korea and South East Asia, Intended effective date: 1 October 2000.

Docket Number: OST–2000–8020.

Date Filed: September 25, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC1 0155 dated 18 August 2000, TC1 Within South America Resolutions r1–r12, PTC1 0153 dated 18 August 2000, TC1 Caribbean Resolutions r1–r12, Minutes—PTC1 0158 dated 12 September 2000, Tables—PTC1 Fares 0045 dated 1 September 2000, TC1 Within South America Specified Fares Tables, PTC1 Fares 0044 dated 1 September 2000, TC1 Caribbean Specified Fares Tables Intended effective date: 1 January 2001.

Docket Number: OST–2000–8021.

Date Filed: September 25, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC1 0152 dated 18 August 2000, TC1 Areawide Resolutions r1–r7, PTC1 0154 dated 18 August 2000, TC1 Longhaul (except between USA and Chile), Resolutions r8–r–56, Minutes—PTC1 0158 dated 12 September 2000, PTC1 0159 dated 19 September 2000, TC1 Longhaul (USA-Chile) Policy Group Report, Tables—PTC1 Fares 0046 dated 1 September 2000, Intended effective date: 1 January 2001.

Docket Number: OST–2000–8022.

Date Filed: September 26, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR 0334 dated 19 September 2000, TC2 Within Europe Expedited Resolutions r1–r15, Minutes—PTC2 EUR 0332 dated 12 September 2000, intended effective date: 15 October 2000.

Docket Number: OST–2000–8023.

Date Filed: September 26, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR 0335 dated 19 September 2000, TC2 Within Europe Expedited Resolutions r1–r3, PTC2 EUR 0336 dated 19 September 2000, TC2 Within Europe Expedited Resolution 002LL r–4, PTC2 EUR 0337 dated 19 September 2000, TC2 Within Europe Expedited Resolutions r5–r9, Minutes—PTC2 EUR 0332 dated 12 September 2000, Tables—No Tables, Intended effective dates: 1 November 2000, 1 December 2000, 1 January 2001.

Docket Number: OST–2000–8024.

Date Filed: September 26, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR–JK 0057 dated 22 September 2000 and PTC23 EUR–JK 0058 dated 22 September 2000, Expedited Europe-Japan/Korea Resolutions, Intended effective date: 1 November 2000 and 1 January 2001.

Docket Number: OST–2000–8031.

Date Filed: September 28, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 0692 dated 29 September 2000, Mail Vote 087—TC2/TC23 Special Passenger Amending Resolution to/from Libya, Intended effective date: 15 October 2000.

Docket Number: OST–2000–8035.

Date Filed: September 29, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC23 ME–TC3 0103 dated 26 September 2000, Expedited Middle East-TC3 Resolutions r1–8, Intended effective date: 1 November 2000.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–28252 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 13, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–7559.

Date Filed: October 12, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 26, 2000.

Description: Application of Gemini Air Cargo, Inc. pursuant to Order 2000–9–24, applies for a certificate of public convenience and necessity to operate scheduled foreign air transportation of property and mail between points in the United States, on the one hand, and Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte, and Salvador de Bahia, Brazil, on the other; and beyond Brazil to Argentina, Uruguay, Paraguay, and Chile. Gemini also requests designation as the fourth U.S. scheduled all-cargo carrier to Brazil and asks the Department to allocate to Gemini the fourteen all-cargo frequencies that are presently available.

Docket Number: OST–2000–7559.

Date Filed: October 12, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 26, 2000.

Description: Application of Atlas Air, Inc. ("Atlas") pursuant to 49 U.S.C. 41102 and 14 CFR 302.201 *et seq.*, applies for a certificate of public convenience and necessity authorizing Atlas to engage in scheduled foreign air transportation of property and mail between a point or points in the United States, on the one hand, and Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte and Salvador de Bahia, Brazil, on the other, via intermediate points and beyond Brazil to Argentina, Uruguay, Paraguay and Chile. Atlas requests authorization to integrate this authority with its other all-cargo certificate and exemption authority, and to commingle traffic and services conducted pursuant to such authority, to the extent consistent with applicable agreements between the United States and foreign countries. Additionally, Atlas requests U.S. designation under the 1989 Air Transport Services Agreement between the United States and Brazil, as amended, and an award of seven weekly U.S.-Brazil all-cargo wide-body frequencies.

Docket Number: OST–2000–7559.

Date Filed: October 12, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 26, 2000.

Description: Application of Evergreen International Airlines, Inc. ("Evergreen") pursuant to Order 2000–9–24 and 14 CFR 302.201, *et seq.*, applies for a certificate of public convenience and necessity to provide scheduled foreign air transportation of property and mail between a point or points in the United States, on the one hand, and Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte, and Salvador de Bahia, Brazil, on the other, via intermediate points and beyond Brazil to Argentina, Chile, Uruguay and Paraguay. Evergreen also requests (i) an initial allocation of five weekly frequencies to operate its new Brazil service and (ii) authority to integrate U.S.-Brazil authority with Evergreen's other all-cargo certificate and exemption authority and to commingle traffic on services conducted pursuant to such authority, consistent with applicable agreements between the U.S. and foreign countries.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–28250 Filed 11–1–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 15, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1995–546.

Date Filed: September 13, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 4, 2000.

Description: Application of Bahamasair Holdings Limited ("Bahamasair") pursuant to 49 U.S.C. Section 41302 and Subpart B, further amends the carrier's pending application for renewal and amendment of its foreign air carrier permit so that it may provide foreign air transportation of persons, property, and mail between a point or points in The Bahamas and the coterminal points: (1) Atlanta, Georgia; (2) Boston, Massachusetts; (3) Charlotte, North Carolina; (4) Chicago, Illinois; (5) Detroit, Michigan; (6) Fort Lauderdale, Florida; (7) Miami, Florida; (8) New Orleans, Louisiana; (9) Newark, New Jersey; (10) New York, New York (LaGuardia); (11) Orlando, Florida; (12) Palm Beach, Florida; (13) Philadelphia, Pennsylvania; (14) Tampa, Florida; and (15) Washington, D.C. (Dulles).

Docket Number: OST–2000–7923.

Date Filed: September 13, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 4, 2000.

Description: Application of Delta Air Lines, Inc. ("Delta"), pursuant to Sections 41102 and 41108 and Subpart B, applies for a certificate of public convenience and necessity, authorizing Delta to provide scheduled foreign air transportation of persons, property and mail between Boston, Massachusetts, and London, England. Delta requests that the certificate issued by the Department include a route integration condition that authorizes Delta to combine service on this route with all other Delta services authorized by existing certificates and exemptions granted by the Department, to the extent permitted by applicable international agreements.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–28253 Filed 11–02–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 29, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–7121.

Date Filed: September 25, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 16, 2000.

Description: Application of AOM-Minerve, S.A. ("AOM") pursuant to 49 U.S.C. Section 41302 and Subpart B, requests an amendment of its foreign air carrier permit to include New Caledonia in its route description.

Docket Number: OST–2000–8015.

Date Filed: September 25, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 16, 2000.

Description: Application of Sun Air Express, LLC. pursuant to 49 U.S.C. 41738 and Subpart B, requests authority to engage in scheduled commuter passenger operations.

Docket Number: OST–2000–8029.

Date Filed: September 28, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 19, 2000.

Description: Application of Brendan Air, LLC ("Brendan Airways") pursuant to 49 U.S.C. 41102 and Subpart B, submits this application for a certificate of public convenience and necessity authorizing interstate and overseas charter air transportation of persons, property, and mail.

Docket Number: OST–2000–8030.

Date Filed: September 28, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 19, 2000.

Description: Application of Brendan Air, LLC ("Brendan Airways") pursuant to 49 U.S.C. Section and Subpart B, submits this application for a certificate of public convenience and necessity authorizing foreign charter air transportation of persons, property, and mail.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–28254 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending September 22, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–7956.

Date Filed: September 20, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 11, 2000.

Description: Application of Southeast Airlines, Inc. ("Southeast") pursuant to 49 U.S.C. 41102 and Subpart Q, applies for a certificate of public convenience and necessity authorizing Southeast to provide chartered foreign air transportation of persons, property and mail between any point or points in the United States, directly and via any intermediate point or points, and any point or points in the countries listed in Appendix A, and beyond to any point or points in third countries. Southeast also requests authority to integrate the service it provides under the certificate with its other authorized services, consistent with all applicable international agreements. Southeast also requests authority to add two additional DC–9 aircraft to its existing fleet of two.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–28255 Filed 11–02–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.905–1, Minimizing the Hazards From Propeller Blade and Hub Failures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.905–1, Minimizing the Hazards from Propeller Blade and Hub Failures. The AC describes methods acceptable to the Administrator for showing compliance with the airworthiness standards for propeller installations on transport category airplanes. The guidance provided in the AC supplements the engineering and operational judgment that must form the basis of any compliance findings on design precautions to minimize the hazards to an airplane if a propeller blade fails or is released by a hub failure.

DATES: Advisory Circular 25.905–1 was issued on September 27, 2000, by the Manager of the Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration.

HOW TO OBTAIN COPIES: You can get a paper copy of AC 25.905–1 by writing to U.S. Department of Transportation, Subsequent Distribution Center, SVC–121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, Maryland 20785. You also can find the AC on the Internet at *http://www.faa.gov/avr/air/airhome.htm,* at the link titled "Advisory Circulars" under the "Available Information" drop-down menu.

FOR FURTHER INFORMATION CONTACT: For technical issues, contact Michael Dostert, FAA, Transport Airplane Directorate, Aircraft Certification Service, Propulsion/Mechanical Systems Branch, ANM–112, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2132; fax (425) 227–1320; e-mail mike.dostert@faa.gov.

For other information contact: Jill DeMarco, FAA, Transport Airplane Directorate, Program Management Branch, ANM–114, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1313; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

On March 31, 2000, the FAA issued a notice of the availability of proposed Advisory Circular (AC) 25.905–X, "Minimizing the Hazards from Propeller Blade and Hub Failures." That notice was published in the **Federal Register** on April 11, 2000 (65 FR 19423), and requested public comment on the proposed AC document. Only one commenter filed comments to the proposed AC.

The commenter points out that, in the discussion of the "Purpose" of the AC, the FAA stated that the AC does not address hazards associated with unbalance created by blade release or similar failures. However, unbalance vibratory forces could be significant and can interfere with the required corrective actions. The commenter asks why the FAA did not cover this issue in the AC, and if we will address it in another AC.

We agree that imbalance is a critical issue following a propeller or hub failure. Structural issues and the flightcrew's ability to cope with the failure are of concern. We are considering separate action to address these issues. We have asked the Aviation Rulemaking Advisory Committee (ARAC) to review these issues and provide recommendations for further action.

Issued in Renton, Washington, on October 27, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28295 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on June 30, 2000, (65 FR, page 40716).

DATES: Comments must be submitted on or before December 4, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

1. *Title:* Representatives of the Administrator, 14 CFR part 183.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0033.

Forms(s) Affected Public: 4,840 respondents.

Abstract: Title 49, U.S.C. 44702, authorizes appointment of properly qualified private persons to be representatives of the Administrator for examining, testing, and certifying airmen for the purpose of issuing those individuals airmen certificates. The information collected is used to determine eligibility of the representatives.

Estimated Annual Burden Hours: 3,974 burden hours annually.

2. *Title:* Overflight Billing and Collection Customer Information Form.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0618.

Forms(s): N/A.

Affected Public: 600 respondents.

Abstract: This information is needed to obtain accurate billing information from carriers who fly in U.S. controlled airspace, but who do not take off or land in the U.S. and who will be charged overflight fees.

Estimated Annual Burden Hours: 50 burden hours annually.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 31, 2000.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 00–28297 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Future Flight Data Collection Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C., appendix 2), notice is hereby given for the Future Flight Data Collection Committee meeting to be held November 7, 2000, starting at 9:00 a.m. This meeting will be held at RTCA, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Welcome, Introductory and Administrative Remarks; (2) Review of Meeting Agenda; (3) Review Summary of Previous Meeting; (4) Receive report on the deliberations of Working Group 1 (Data Needs); (5) Receive report on the deliberations of Working Group 2 (Technology); (6) Other Business; (7) Establish Agenda for Next Meeting; (8) Date and Location of Next Meeting; (9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements, obtain information or pre-register for the committee should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036 (202) 833–9339 (phone); (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 23, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–28300 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 00–02–C–00–DEN To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Denver International Airport, Submitted by the City and County of Denver, Denver International Airport, Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Denver International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 4, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration, 26805 E. 58th Avenue, Suite 224, Denver, Colorado 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce Baumgartner, Manager of Aviation, at the following address: Denver International Airport, Maintenance and Engineering Department, Airport Office Building, 10th Floor, 8500 Pena Boulevard, Denver, Colorado 80249–6340.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Denver International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 342–1258, Denver Airports District Office, DEN–ADO; Federal Aviation Administration, 26805 E. 68th Avenue, Suite 224, Denver, Colorado 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 00–02–C–00–DEN to impose and use PFC revenue at Denver International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 20, 2000, the FAA determined that the application to impose and use the revenue from a PFC

submitted by the City and County of Denver, Denver International Airport, Denver, Colorado, was substantially complete with the requirements of section 158.25 of part 158. The FAA will approve or disapproved the application, in whole or in part, no later than January 18, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge-effective date: April 1, 2001.

Proposed charge-expiration date: October 31, 2008.

Total requested for approval: $223,572,000.

Brief description of proposed project: Impose and use: Runway 16R/34L completion; Industrial waste containment facilities; AGTS maintenance facility expansion; Construction of taxiway "EA"; Terminal mod 3E build-out—Public and non-exclusive systems; Construction of C–2 deicing pad; Impose only: Industrial waste management system—cargo area connection; Taxiway "L" (AA–EE) grading, paving, lighting and marking; CTAS center-terminal automated system; Concourse "A" east deicing/penalty box; Concourse "A" expansion—public areas; Common use terminal equipment; AGTS—new cars; Six additional gates.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Dedicated air ambulance services.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Denver International Airport.

Issued in Renton, Washington on October 20, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–28298 Filed 11–02–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Fort Lauderdale Hollywood International Airport, Fort Lauderdale, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fort Lauderdale Hollywood International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 4, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Marjan Mazza, MBA, Assistant to the Aviation Director of the Broward County Aviation Department at the following address: 320 Terminal Drive, 3rd floor, Fort Lauderdale, FL 33315.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Broward County Aviation Department under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Jennifer Ganley, P.E., Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822, (407) 812–6331, ext. 25. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fort Lauderdale Hollywood International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 26, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Broward County Aviation Department was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 13, 2001.

The following is a brief overview of the application.

PFC Application No.: 01–03–C–00–FLL.

Level of the proposed PFC: $3.00.

Proposed charge effective date: 11/01/07.

Proposed charge expiration date: 03/01/09.

Total estimated net PFC revenue: $27,841,586.

Brief description of proposed project(s):

Construct Concourse B
Construct Concourse B apron

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxis and commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Broward County Aviation Department.

Issued in Orlando, Florida on October 26, 2000.

Miguel Martinez,

Acting Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 00–28296 Filed 11–02–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lafayette Regional Airport, Lafayette, LA

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lafayette Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of

1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 4, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Gregory Roberts, Director of Aviation for Lafayette Regional Airport at the following address: Mr. Gregory Roberts, Director of Aviation, Lafayette Airport Commission, 200 Terminal Drive, Lafayette, LA 70508–2159.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lafayette Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 5, 2000 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in the whole or in part, no later than January 30, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 2001.

Proposed charge expiration date: February 1, 2004.

Total estimated PFC revenue: $2,323,000.

PFC application number: 01–03–C–00–LFT.

Brief description of proposed project(s):

Projects To Impose and Use PFC's

1. Taxiway L, Widening and Rehabilitation.
2. PFC Application Preparation and Administration.

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR Part 135 on demand air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Lafayette Regional Airport.

Issued in Fort Worth, Texas on October 5, 2000.

William J. Flanagan,
Manager, Airports Division.

[FR Doc. 00–27751 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7918]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice announces the FMCSA's receipt of applications from 65 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before December 4, 2000.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joe Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the office of the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

Sixty-five individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-

year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemptions will achieve the required level of safety.

Qualifications of Applicants

1. Henry Ammons, Jr.

Mr. Ammons, age 52, has had amblyopia in his right eye since childhood. His best corrected visual acuity is 20/20 in his left eye and 20/200 in his right eye. Mr. Ammons was examined in 2000, and his optometrist stated, "In my opinion, this man has sufficient vision to perform the driving tasks required to operate a commercial vehicle." In his application, Mr. Ammons reported that he has driven straight trucks for 1 year, accumulating 30,000 miles, and tractor-trailer combination vehicles for 31 years, accumulating 3.1 million miles. He holds a Washington Class A commercial driver's license (CDL). His official driving record for the last 3 years shows no accidents and one speeding violation in a CMV. He exceeded the speed limit by 10 mph.

2. Wayne A. Anderson

Mr. Anderson, 52, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in his right eye and 20/100 in his left eye. Mr. Anderson was examined in 1999, and his ophthalmologist stated, "I think his level of vision at this stage is sufficient to operate [a] commercial vehicle." Mr. Anderson stated that he has driven tractor-trailer combinations for 33 years, accumulating 2.6 million miles. He holds a Manitoba, Canada Class 1 license. His official driving record for the last 3 years shows no accidents and no convictions for moving violations in a CMV.

3. Glenn A. Babcock, Jr.

Mr. Babcock, 64, has a partial thickness hole at the left macula due to injury at age 4 or 5. The visual acuity of his right eye is 20/15–1 best-corrected, and of his left eye, 20/80 not correctable. His optometrist examined him in 1999, and stated, "I believe that Mr. Glen Babcock, Jr has sufficient vision to perform the tasks required to operate a commercial motor vehicle." Mr. Babcock reported that he has driven straight trucks for 15 years and 30,000 miles; tractor-trailer combinations for 35 years and 2.1 million miles; and buses for 5 years and 15,000 miles. He holds a Wisconsin Class ABC CDL, and has no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

4. Bobby J. Beall

Mr. Beall, 28, is aphakic in his left eye as a result of treatment for injuries sustained in 1994. His visual acuity is 20/20+ in the right eye, and 20/400 in the left eye. His optometrist examined him in 2000 and stated, "In my opinion, you have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Beall reported that he has driven straight trucks for the last 10 years, accumulating 100,000 miles, and tractor-trailer combination vehicles for the last 6 years, accumulating 90,000 miles. He holds a Class A CDL from Missouri and has no accidents or convictions for moving violations in a CMV on his driving record for the past 3 years.

5. Robert D. Bonner

Mr. Bonner, 51, has amblyopia in his right eye. His visual acuity in his left eye is 20/20 and in his right eye 20/200 best-corrected. He was examined in 2000, and his ophthalmologist stated, "I certify that he has sufficient vision to perform driving tasks and to operate a commercial vehicle." Mr. Bonner stated that he has driven tractor-trailer combination vehicles for 19 years, accumulating 790,000 miles. He holds a Washington Class A CDL. His official driving record shows no accidents and no moving violations in a CMV in the last 3 years.

6. James F. Bower

Mr. Bower, 62, has amblyopia in his right eye. His best-corrected visual acuity is 20/20 in the left eye and 20/200 in the right eye. In 2000 his optometrist examined him and affirmed, "In my medical opinion, Jim Bower has sufficient vision to perform the normal driving tasks required to operate a commercial vehicle." Mr. Bower submitted that he has 25 years experience driving tractor-trailer combinations over 3 million miles, and 46 years driving straight trucks over 46,000 miles. He holds a Class A CDL from Wyoming. His driving record for the last 3 years has no accidents or convictions for moving violations in a CMV.

7. Ben T. Brown

Mr. Brown, 50, has congenital esotropia of the left eye. His best-corrected visual acuity is 20/20 in his right eye and 20/200 in his left eye. He was examined in 1999 and his optometrist stated, "I feel that this patient can perform his duties as a commercial driver without difficulty. He has sufficient vision to be a safe driver." Mr. Brown reported that he has driven straight trucks for 5 years, accumulating 35,000 miles, and tractor-trailer combinations for 19 years, accumulating 855,000 miles. He holds a California Class A CDL and has no accidents or citations for moving violations in a CMV on his driving record for the past 3 years.

8. Terry L. Burgess

Mr. Burgess, 51, wears a prosthesis due to enucleation following a motor vehicle accident in the early 1970's. His corrected vision in the right eye is 20/25. An optometrist examined him in 2000 and stated, "Given the nature of the injury to the left eye I have concluded that Mr. Burgess' visual deficit is quite stable and is not degenerative. Thus, he is able to perform sufficiently while operating a commercial vehicle." Mr. Burgess stated that he has 3 years of experience driving tractor-trailers, totaling 63,000 miles. He holds a Michigan Type CA CDL and has had no accidents or moving violations in a CMV for the past 3 years.

9. William A. Burgoyne

Mr. Burgoyne, 61, has amblyopia in his right eye. His visual acuity is 20/15 best-corrected in the left eye and 20/400 in the left eye. Mr. Burgoyne was examined in 1999 and his optometrist stated, "For the past 19 years we have insisted that Mr. Burgoyne has the visual ability to drive any over the road vehicle. He should be allowed to continue his occupation as a truck driver." Mr. Burgoyne stated that he has 20 years of experience driving straight trucks, accumulating 3 million miles, and 10 years of experience driving tractor-trailer combinations, accumulating 1.5 million miles. He holds a Michigan Class A NT CDL, and his driving record for the last 3 years contains no accidents and no convictions for moving violations in a CMV.

10. David S. Carman

Mr. Carman, 37, has a large dense scar in the retina of his left eye due to a childhood infection. His visual acuity is 20/15 in his right eye and 20/200 best-corrected in his left eye. His optometrist examined him in 1999 and stated, "In my professional opinion, David Carman has vision sufficient to operate a commercial vehicle." Mr. Carman reported that he has driven straight trucks for 16 years totaling 320,000 miles. He holds a New Jersey Class B CDL, and his driving record for the last

3 years shows no accidents and one conviction for a moving violation in a CMV for "Failure to Obey Directional Signal."

11. Dennis J. Christensen

Mr. Christensen, 59, has had amblyopia resulting from anisometropia since birth. His best corrected vision is 20/20 in his left eye and 20/70 in his right eye. Following a 1999 examination, his optometrist stated, "It is my impression that Mr. Christensen has the visual performance to safely operate a commercial vehicle. There are no medical conditions that could compromise his visual performance or visual fields." Mr. Christensen reported that he has driven tractor-trailer combinations for 3 years, accumulating 300,000 miles. He holds a Minnesota Class A CDL and has had no accidents or convictions for moving violations in a CMV for the past 3 years.

12. David L. Davis

Mr. Davis, 41, has amblyopia in his right eye. His corrected visual acuities are 20/60 in his right eye and 20/20 in his left. Following a 2000 examination, his optometrist commented, "Because Mr. Davis' vision is 20/20 with both eyes open and his visual fields appear to be very good, it is my opinion, according to the findings in my exam, that Mr. Davis has sufficient vision to perform driving tasks required to operate a commercial vehicle." According to Mr. Davis, he has operated straight trucks for 21 years, accumulating 966,000 miles. A holder of a Class AM CDL from Georgia, he has no accidents or citations for moving violations in a CMV for the last 3 years.

13. Darrell B. Dean

Mr. Dean, 35, is blind in his left eye due to congenital cataracts with apparent glaucoma. His best-corrected vision in the right eye is 20/30. An ophthalmologist examined him in 1999 and stated, "From a visual standpoint, he is able to drive a commercial vehicle." Mr. Dean reported that he has driven straight trucks for 2 years and for 4,000 miles, and tractor-trailer combinations 12 years for 1.8 million miles. He holds an Oklahoma Class A CDL and has had no CMV accidents or convictions for moving violations for the past 3 years.

14. Don W. Dotson

Mr. Dotson, 45, has amblyopia in his left eye. His visual acuity is 20/20 best-corrected in the right eye and 20/200 in the left eye. Following a 1999 examination, his ophthalmologist stated, "I feel that Mr. Dotson is safe to perform commercial driving tasks and to operate a commercial vehicle." Mr. Dotson reports that he has operated straight trucks for 5 years, accumulating 157,000 miles, and tractor-trailer combinations for 8 years, accumulating 326,000 miles. He holds a Texas Class A CDL and has no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

15. Terrance D. Faust

Mr. Faust, 35, has amblyopia in his right eye. The visual acuity uncorrected in the right eye is 20/60, and in the left eye 20/20. An ophthalmologist examined Mr. Faust in 2000 and affirmed, "It is my medical opinion that you have sufficient visual ability to perform the driving tasks required to operate a commercial vehicle." According to Mr. Faust's application, he has driven 900,000 miles in straight trucks over 17 years, and 65,000 miles in tractor-trailer combination vehicles over 13 years. He holds a Class ABCDM CDL from Wisconsin. In the last 3 years he has had no accidents or convictions for moving violations in a CMV on his driving record.

16. Edgar E. French

Mr. French, 48, lost his right eye due to trauma approximately 15 years ago. The uncorrected visual acuity in his left eye is 20/20. As the result of an examination in 2000, his optometrist concluded, "As was written in my letter dated 7/17/00, the exam results for the left eye of Mr. Edgar French, in my opinion, do indicate that he can safely operate a commercial vehicle." Mr. French reports that he has 15 years and 945,000 miles of experience operating straight trucks. He holds a Class B CDL from Virginia, and there are no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

17. Glen T. Garrabrant

Mr. Garrabrant, 38, wears a prosthetic right eye due to ocular trauma in 1989. His visual acuity is 20/20 in his left eye. Following a 1999 examination his ophthalmologist stated, "In my opinion I feel that this patient has sufficient vision to perform any driving task required to operate a commercial vehicle." Mr. Garrabrant reported that he has driven straight trucks for 19 years totaling 1.2 million miles and tractor-trailer combination vehicles for 17 years totaling 1.4 million miles. He holds a New Jersey Class A CDL, and his official driving record shows no CMV accidents or convictions for moving violations during the last 3 years.

18. Doyle G. Gibson

Mr. Gibson, 50, has amblyopia in his right eye. His visual acuity, best-corrected, is 20/70 in the right eye and 20/15 in the left eye. Following a 1999 examination, his ophthalmologist stated, "I am not an expert on the requirements for operating a commercial vehicle. However, based on Mr. Gibson's successful record of driving with his current vision, I see no contraindication to continuing in his current capacity." Mr. Gibson reported that he has driven straight trucks and tractor-trailer combination vehicles for 30 years each, totaling 2.4 million miles driving straight trucks and 1.5 million miles driving tractor-trailer combination vehicles. He holds a Texas Class AM CDL, and his official driving record shows no CMV accidents or moving violations in the last 3 years.

19. Elias Gomez, Jr.

Mr. Gomez, 28, has amblyopia in his right eye. His visual acuity is 20/20 in his left eye and 20/200 best-corrected in his right eye. Following a 1999 examination, his ophthalmologist stated, "In my medical opinion, he has adequate vision to perform the driving tasks required to operate a commercial vehicle." Mr. Gomez stated that he has operated tractor-trailer combination vehicles for 3 years and a total of 360,000 miles. He holds a Texas Class A CDL, and his official driving record shows no accidents and one conviction for a moving violation in a CMV for "Fail to Yield Right-of-Way" over the last 3 years.

20. Jose E. Gonzalez

Mr. Gonzalez, 36, has amblyopia in his left eye. An eye exam in 1999 showed that the visual acuity in his right eye is 20/20, and in the left eye 20/200. As a result of the examination, his opthalmologist stated, "It is my opinion that Mr. Gonzalez has sufficient vision to perform the driving tasks required to operate a commercial vehicle." According to Mr. Gonzalez' application, he has driven straight trucks and tractor-trailer combinations for 15 years, accumulating 75,000 miles in the former and 1.2 million miles in the latter. He holds a Class AM CDL from Texas. In the last 3 years his driving record shows one accident in a CMV and one conviction for speeding in a CMV. The other driver was charged in the accident for "[f]ailed to control speed." He received the ticket on a separate occasion for exceeding the speed limit by 15 mph.

21. Anthony Grant

Mr. Grant, 37, has decreased vision in his left eye due to an accident in 1992. He was examined in 1999, and his optometrist found visual acuity to be 20/20 corrected in the right eye and 20/400 in the left eye. His optometrist stated, "In my opinion Mr. Grant should be able to drive a commercial vehicle." Mr. Grant reported that he has driven straight trucks for 7 years and 400,000 miles; tractor-trailer combination vehicles for 3 years and 78,000 miles; and buses for 2 years and 46,000 miles. He holds an Alabama Class D driver's license and has had no convictions for moving violations or accidents in a CMV during the last 3 years.

22. Joseph M. Graveline

Mr. Graveline, 35, has optic atrophy in his right eye due to an eye injury at age 13. His vision in the left eye is 20/20 and in the right eye 20/60. He was examined in 2000, and his optometrist stated, "I believe that Mr. Graveline has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Graveline reported that he has 4 years and 48,000 miles of experience driving straight trucks. He holds a Connecticut Class A CDL and has had no CMV accidents or convictions for moving violations for the past 3 years.

23. Johnny C. Hall

Mr. Hall, 48, had his left eye enucleated at age 7, after a penetrating injury to the eye. The visual acuity of his right eye is 20/20 without correction. The ophthalmologist who examined him in 2000 stated, "In my opinion, Mr. Hall has adequate vision to perform the driving tasks required to operate a commercial vehicle." According to his application, he has 20 years and 2.5 million miles experience operating tractor-trailer combinations, and 2 years and 250,000 miles experience operating straight trucks. He has a Florida Class A CDL, and there are no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

24. William N. Hicks

Mr. Hicks, 56, wears a prosthetic right eye due to an injury at age 2. He sees 20/25 out of his left eye. An ophthalmologist examined him in 2000 and stated, "I feel that he has sufficient vision in his left eye to meet the conditions for consideration for an exemption under controlling authority to drive a commercial vehicle." Mr. Hicks stated that he has 34 years of experience driving tractor-trailer combinations with 3.2 million miles driven. He holds a Texas Class A CDL and has had no accidents and two speeding convictions in a CMV during the past 3 years. Mr. Hicks exceeded the speed limit by 11 mph in one ticket and 8 mph in the other.

25. Robert K. Hodge

Mr. Hodge, 43, has had light perception only in his right eye since age 5 due to an injury. His optometrist examined him in 2000 and stated, "I certify, in my opinion, that Kent Hodge has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Hodge declared in his application that he has driven straight trucks for 6 years accumulating 72,000 miles, and tractor-trailer combinations for 9 years accumulating 900,000 miles. He holds a Mississippi Class A CDL. During the last 3 years his driving record shows that he has had no accidents or convictions for moving violations in a CMV.

26. William G. Holland

Mr. Holland, 51, has worn a prosthetic left eye for 12 years due to an injury. His visual acuity is 20/15 in his right eye. Following a 2000 examination, his optometrist stated, "It is my medical opinion that Mr. William Holland has vision sufficient to enable him to operate a commercial vehicle." Mr. Holland reported that he has driven tractor-trailer combination vehicles for 30 years and 3 million miles, and straight trucks for 5 years and 175,000 miles. He holds a California Class A CDL, and his official driving record shows no accidents or convictions for moving violations in a CMV for the past 3 years.

27. John R. Hughes

Mr. Hughes, 58, wears a left prosthesis due to an accident in 1956. The corrected visual acuity in his right eye is 20/20. An optometrist examined him in 2000, and stated, "I certify that in my medical opinion that John Hughes has sufficient vision to operate a commercial vehicle." Mr. Hughes reported that he has driven 350,000 miles during 7 years in a tractor-trailer, and 50,000 miles during one year in a straight truck. His Class AM CDL is from New York, and his driving record shows no accidents or convictions for moving violations in a CMV for the last 3 years.

28. Frank Inigarida

Mr. Inigarida, 59, has strabismic amblyopia in his right eye. The best-corrected visual acuity of his left eye is 20/20 and his right eye 20/60. Following a 1999 examination, his ophthalmologist certified, "In my medical opinion Mr. Inigarida is able to operate a commercial vehicle while wearing his glasses." According to Mr. Inigarida's application, he has driven straight trucks for 14 years, accumulating 420,000 miles, and tractor-trailer combination vehicles for 28 years, accumulating 1.4 million miles. He holds a Nevada Class A CDL. His official driving record shows no CMV accidents or convictions for moving violations in the last 3 years.

29. Alan L. Johnston

Mr. Johnston, 27, has occlusional amblyopia in his left eye. His visual acuity is 20/20 in the right eye and 20/400 corrected in the left eye. His optomestrist examined him in 1999, and noted, "P[atien]t sees well enough to operate a commercial vehicle." Mr. Johnston submitted that he has driven 10,000 miles and has 10 years' experience operating a straight truck, and has driven 180,000 miles and has 6 years' experience operating a tractor-trailer combination. He holds a Class A CDL from Illinois, and for the last 3 years his driving record shows that he has had no accidents or convictions for moving violations in a CMV.

30. David O. Kaiser, Sr.

Mr. Kaiser, 44, has anisometropic amblyopia in his right eye. Best-corrected visual acuity in the right eye is 20/400, and the left eye is 20/20 uncorrected. An optometrist examined him in 1999 and stated, "In my medical opinion, Mr. Kaiser, has a stable condition that is longstanding and will not interfere in his driving ability of a commercial vehicle." Mr. Kaiser stated that he has 23 years of experience driving tractor-trailer combinations with 1.1 million miles driven. He holds a Virginia Class B CDL and has had no accidents or convictions for moving violations in a CMV for the past 3 years.

31. Milena Kekerovic

Ms. Kekerovic, 47, has amblyopia in her left eye. The visual acuity of her right eye is 20/20 and of her left eye 20/200 without correction. Following an examination in 1999, her ophthalmologist affirmed, "Ms. Kekerovic has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Ms. Kekerovic submitted that she has driven tractor-trailer combinations for 16 years accumulating 1.9 million miles; and buses for 5 years accumulating 400,000 miles. A holder of a Class A CDL from Nevada, she has no accidents or convictions for moving violations in a CMV on her driving record for the last 3 years.

32. Mark J. Koscinski

Mr. Koscinski, 49, has a congenital retinal coloboma of the left eye. His visual acuity is 20/20 in the right eye and 20/400 in the left eye. An optometrist who examined him in 2000, stated, "I certify in my medical opinion that Mark Koscinski has sufficient vision to perform all driving tasks required to operate a commercial vehicle." Mr. Koscinski submitted that he has driven 450,000 miles and has 9 years' experience driving tractor-trailer combinations, and has driven 75,000 miles with 5 years' experience driving straight trucks. He holds a Nevada Class A CDL and has no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

33. John N. Lanning

Mr. Lanning, 41, has an amblyopic right eye with light perception only. His left eye is correctable to 20/25. An optometrist examined him in 2000 and stated, "As of his last eye exam in January 2000 his vision has remained stable and has not affected his ability to continue to perform his driving tasks operating a commercial vehicle." Mr. Lanning, who stated that he has driven tractor-trailers for 10 years and 1 million miles, has no accidents or convictions on his driving record for moving violations in a CMV during the last 3 years. He holds a California Class A CDL.

34. Robert C. Leathers

Mr. Leathers, 43, has light perception only in his left eye due to a traumatic injury in 1972. The best-corrected vision in his right eye is 20/20. Following a 1999 examination, his optometrist stated, "In my opinion, Mr. Leathers has been performing driving tasks with the same vision for twenty-seven years. This is evidence that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Leathers reported that he has driven tractor-trailer combination vehicles for 24 years and 691,000 miles, and straight trucks for 20 years and 70,000 miles. He holds a Missouri Class A CDL, and his official driving record shows no accidents or convictions for moving violations in a CMV for the past 3 years.

35. Richard L. Leonard

Mr. Leonard, 56, has amblyopia and esotropia in his left eye. In his right eye his vision is 20/20 uncorrected, while in his left his vision is 20/400 corrected. He was examined in 2000, and his optometrist certified by checking a box next to the word "Yes" after the question, "Does patient have sufficient vision to operate a commercial vehicle?" Mr. Leonard submitted that he has driven tractor-trailer combinations for 15 years and 1.1 million miles, and straight trucks for 10 years and 150,000 miles. He holds a Texas Class A CDL. His driving record shows that he had no convictions for moving violations and one accident in a CMV in the last 3 years. He was not charged in the accident; the other driver was charged with "Failed to Yield ROW'Stop Intersection."

36. Calvin E. Lloyd

Mr. Lloyd, 37, has amblyopia as a result of esotropia in his left eye. His best-corrected vision is 20/20 in his right eye and 20/200 in his left. Following a 2000 examination, his ophthalmologist certified, "Mr. Lloyd has been driving commercially for a number of years without incident. His good eye is corrected to 20/20 and he has very good peripheral vision in his amblyopic eye. These facts lead me to believe that there is no visual reason why he cannot perform as a commercial driver." Mr. Lloyd stated that he has driven straight trucks for 11 years and 330,000 miles, and tractor-trailer combination vehicles for 7 years and 420,000 miles. He holds a Tennessee Class AM CDL, and he has had no CMV accidents or convictions for moving violations in the past 3 years.

37. Roy E. Mathews

Mr. Mathews, 43, lost his right eye due to trauma in 1993. The best-corrected visual acuity of his left eye is 20/20. Following a 1999 examination, his ophthalmologist certified, "Mr. Mathews meets the credentials for a commercial drivers license and currently holds a commercial driver's license. So in my opinion he has sufficient vision to perform the driving task to operate a commercial vehicle."

Mr. Mathews states that he has driven tractor-trailer combination vehicles for 3 years, accumulating 324,000 miles. He holds a Florida Class A CDL. His official driving record shows no CMV accidents or convictions for moving violations in the last 3 years.

38. Jason B. Mazyck

Mr. Mazyck is a 27-year-old man whose left eye was diagnosed with amblyopia exanopsia, small angle esotropia, posterior staphyloma, and high myopic astigmatism present since birth. His corrected visual acuity is 20/20 in the right eye, and 20/200 in the left eye. An optometrist examined him in 1999 and reported, "In my opinion, Jason's visual system with the improved horizontal field of vision to the left from the contact lens is excellent for safe driving and operating a commercial vehicle." Mr. Mazyck has a Class D South Carolina driver's license. He stated that he has operated straight trucks for 4 years, accumulating 100,000 miles. His official State driving record shows no accidents or citations for moving violations in a CMV for the past 3 years.

39. William F. McCandless, Jr.

Mr. McCandless, 40, has amblyopia in his left eye. His best-corrected vision is 20/20 in his right eye and light perception only in his left. Following a 1999 examination, his optometrist stated, "His current vision is adequate for semi-tractor trailer driving." Mr. McCandless reported that he has accumulated 240,000 miles during 16 years of driving tractor-trailer combination vehicles. He holds a Florida Class A CDL. His official State driving record reveals no accidents or citations for moving violations in a CMV for the past 3 years.

40. James T. McGraw Jr.

Mr. McGraw, 42, has refractive amblyopia of the left eye. His visual acuity is 20/20 in the right eye and 20/200 in the left eye. An optometrist examined him in 1999 and stated, "It is clear that James T. McGraw, Jr. has sufficient vision to continue to perform the driving tasks required for a commercial vehicle." Mr. McGraw stated that he has driven straight trucks 1.1 million miles in 23 years and tractor-trailer combinations 1.1 million miles in 19 years. He holds a Pennsylvania Class A CDL and has had no CMV accidents or convictions for moving violations for the past 3 years.

41. Luther A. McKinney

Mr. McKinney, 44, has amblyopia in his left eye. His vision is 20/20 in the right eye and 20/200 in the left eye. According to a 2000 examination report, Mr. McKinney's optometrist stated, "With consideration to the results of today's examination, I would conclude that the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. McKinney reported that he has driven tractor-trailer combination vehicles for 21 years and a total of 2.5 million miles. He holds a Virginia Class A CDL. His official driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

42. Jose L. Melendez

Mr. Melendez, 57, has a macular scar in his right eye due to an injury at the

age of 16. His visual acuity in his left eye is 20/20 and 20/400 in the right. An ophthalmologist examined him in 1999 and stated, "He is visually capable of operating a commercial vehicle, and was also found to be within the State of Illinois requirements of vision to legally drive." Mr. Melendez reported that he has 5 years of experience driving straight trucks totaling 135,000 miles. He holds an Illinois Class A CDL and has had no CMV accidents or convictions for moving violations for the past 3 years.

43. Carl A. Michel, Sr.

Mr. Michel, 59, has amblyopia in the right eye. His best-corrected visual acuity is 20/20 in his left eye and 20/100 in his right eye. He was examined in 1999, and his ophthalmologist stated, "In my opinion the above person [Carl A. Michel] has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Michel stated that he has accumulated 4.2 million miles driving straight trucks for 42 years; 2.3 million miles driving tractor-trailer combination vehicles for 30 years; and 30,000 miles driving buses for 30 years. He holds a Maryland Class A CDL. For the past 3 years he has had no accidents or moving violations in a CMV.

44. Clarence M. Miles, Jr.

Mr. Miles, 41, has optic nerve atrophy of the right eye due to an accident at 5 years of age. He has no vision in that eye and 20/20 uncorrected in his other eye. The optometrist who examined him in 1999 stated, "In my medical opinion, this patient has sufficient vision to operate a commercial vehicle." Mr. Miles states that he has 8 years and 240,000 miles of experience driving straight trucks, and 3 years and 75,000 miles of experience driving tractor-trailer combinations. He holds an Oklahoma Class A CDL, and his driving record for the last 3 years shows no accidents or citations for moving violations in a CMV.

45. Robert A. Moss

Mr. Moss, 34, has amblyopia exanopsia in the left eye. Corrected visual acuities are 20/20 in the right eye and 20/200 in the left. His optometrist examined him in 2000 and determined, "There is no indication that Mr. Moss has insufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Moss stated that he has driven tractor-trailers for 12 years, accumulating 1.2 million miles, and straight trucks for one-half year, accumulating 10,000 miles. He has a Missouri Class A CDL and has a driving record free of convictions for moving violations and accidents in a CMV for the last 3 years.

46. Robert A. Murphy

Since 1980, Mr. Murphy, 54, has had scar tissue on his left eye due to an accident. His best-corrected visual acuity is 20/20 in his right eye and 20/70 in his left eye. In a 2000 examination, his ophthalmologist stated, "In my medical opinion Mr. Murphy has sufficient vision to perform the driving tasks required to operate a commercial vehicle." According to Mr. Murphy's application, he has operated straight trucks and tractor-trailer combination vehicles for 22 years each, accumulating 160,000 miles and 800,000 miles respectively. He holds a Kentucky Class DA CDL, and his official driving record shows no accidents or convictions for moving violations in a CMV for the last 3 years.

47. Dennis I. Nelson

Mr. Nelson, 48, wears a right prosthesis due to an injury received in childhood. His corrected visual acuity in the left eye is 20/15. An optometrist examined him in 2000 and certified, "In my opinion, Mr. Nelson does have sufficient vision to perform the driving tasks required to operate a commercial vehicle, particularly evidenced by his completely clean driving record for 30 years within the state of Wisconsin using commercial vehicles." Mr. Nelson reports that he has 30 years and 450,000 miles of experience each driving tractor-trailer combinations and straight trucks. He holds a Class ABCD CDL from Wisconsin and has no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

48. Martin D. Ortiz

Mr. Ortiz, 43, has anisometropic amblyopia in his right eye. His best corrected visual acuity is 20/100 in the right eye and 20/20 in the left eye. Mr. Ortiz was examined in 1999, and his optometrist certified, "In my medical opinion, he has sufficient vision to perform the driving tasks to operate a commercial vehicle." Mr. Ortiz holds a Class A CDL from California, and reported that he has 20 years of experience driving tractor-trailer combination vehicles totaling 1.7 million miles. His driving record has been clear of accidents and convictions of moving violations in a CMV for the past 3 years.

49. John J. Partenio

For the last 30 years, Mr. Partenio, 71, has had a macular scar in his right eye. His corrected visual acuity is 20/20 in the left eye and 20/200 in the right. As the result of a 2000 examination, his optometrist stated, "Mr. [Partenio] has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Partenio reported that he has 24 years of experience driving school buses and has driven 100,000 miles. He holds a New Jersey Class B CDL and has had no accidents or convictions for moving violations in a CMV for the past 3 years.

50. Henry C. Patton

Mr. Patton, 63, has amblyopia in his left eye. The corrected visual acuity in his right eye is 20/30++ and in his left, 20/200. Following a 2000 examination, Mr. Patton's optometrist stated, "I further certify, that Mr. Patton, in my medical opinion, has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Patton stated that he has 45 years of experience driving tractor-trailer combination vehicles for a total of 2.7 million miles. He holds a Colorado Class A CDL, and his official driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

51. Rance A. Powell

Mr. Powell, 30, has a large macular scar due to an injury in his left eye at age 6. His uncorrected vision in his right eye is 20/20, while his vision in his left eye is hand-motion only. Following a 2000 examination, his optometrist stated, "In my medical opinion, the vision deficiency in Mr. Powell's left eye is stable. He has excellent vision in his right eye, therefore I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Powell reported that he has driven straight trucks for 12 years for a total of 180,000 miles. He holds an Alabama Class AMV CDL, and his official driving record shows no accidents and one speeding conviction in a CMV during the last 3 years. He received the ticket for exceeding the speed limit by 11 mph.

52. John W. Purcell

Mr. Purcell, 47, acquired toxoplasmosis in his left eye at age 12. His visual acuity is 20/15 uncorrected in the right eye and 20/400 corrected in the left eye. Mr. Purcell was examined in 2000, and his ophthalmologist certified, "In my medical opinion, Mr. Purcell has full peripheral vision and has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Purcell stated that he has 20 years and 320,000 miles of experience operating straight trucks. He holds an Oregon Class C CDL and has had no accidents or convictions for moving violations in a CMV for the past 3 years.

53. Shannon E. Rasmussen

Mr. Rasmussen, 25, has an anisometropia hyperopia that resulted in amblyopia of the left eye. Best-corrected visual acuities measure 20/15–0 in the right eye and 20/50 in the left eye. As the result of a 2000 examination, his optometrist certified, "In my medical opinion, Shannon does have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Rasmussen reported that he has driven straight trucks and tractor-trailer combination vehicles for 7 years each, totaling 182,000 miles in the former and 245,000 miles in the latter. He holds a Class A CDL from the State of Wyoming and has no accidents or citations for moving violations in a CMV during the last 3 years.

54. Merlyn L. Rawson

At least 30 years ago, Mr. Rawson, 56, incurred irreversible damage to his left eye. A 2000 examination revealed that his corrected visual acuity is 20/20 in the right eye and 20/400 in the right eye. His optometrist noted, "Vision sufficient to perform driving tasks to operate a commercial vehicle." Mr. Rawson stated that he has 25 years of experience driving tractor-trailers for a total of 3.7 million miles, and 6 years of experience driving straight trucks for a total of 300,000 miles. He holds an Oregon Class A CDL. During the past 3 years he has had one speeding conviction and one accident in a CMV. He was not charged in the accident and exceeded the speed limit by 12 mph in the speeding ticket.

55. Thomas G. Raymond

Mr. Raymond, 39, has refractive amblyopia in his left eye. His uncorrected visual acuity is 20/20 in the right eye and 20/200 in the left. Following an examination in 2000, his optometrist certified, "In my opinion, Mr. Raymond is fully capable of operating a commercial vehicle." Mr. Raymond has driven tractor-trailer combination vehicles 910,000 miles in 6½ years. He holds a Class A CDL from Florida, and his driving record shows no accidents or convictions for moving violations in a CMV in the last 3 years.

56. James R. Rieck

Mr. Rieck, 29, has amblyopia in his left eye. The visual acuity in his right eye uncorrected is 20/15–, and in his left eye corrected, 20/400. His optometrist examined him in 1999 and certified, "It is my opinion that Mr. Rieck should have no difficulty performing the driving tasks required to operate a commercial vehicle." Mr. Rieck has driven tractor-trailer combinations for 4 years, accumulating 144,000 miles, and straight trucks for 9 months, accumulating 14,000 miles. He holds a Class AM1 CDL from California, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV. Although his license was suspended in 1997 for failure to maintain required liability insurance, the State of California set aside (canceled) the action after his insurance company sent proof that he had maintained his insurance.

57. Daniel J. Schaap

Mr. Schaap, 48, has a central scotoma in his left eye due to a toxoplasmosis scar that he has had since early childhood. A 1999 eye exam revealed that his best-corrected visual acuity is 20/20 in the right eye and 20/400 in the left eye. His optometrist stated, "Since all other aspects of his vision are normal, and since his driving record has been good, I believe he meets the visual requirements to operate a commercial vehicle." Mr. Schaap holds a Michigan Class CA CDL. He reported that he has driven tractor-trailer combinations for 27 years and 749,000 miles. His driving record for the past 3 years reflects no convictions for moving violations and two accidents in a CMV. Mr. Schaap was not found at fault in either accident. The other driver was charged in one accident. The other accident resulted when a retread blew on Mr. Schaap's tractor-trailer and pieces of tread hit another vehicle, breaking its windshield. Mr. Schaap was not charged with a violation in this incident.

58. Dennis J. Smith

Mr. Smith, 25, has refractive amblyopia in his right eye. His uncorrected visual acuity is 20/400 with the right eye and 20/20 with the left eye. In 2000, he underwent an examination by an optometrist who stated, "It is my professional opinion that Mr. Smith has sufficient vision to perform the driving tasks required to operate a commercial vehicle." According to Mr. Smith, he has driven straight trucks and tractor-trailer combination vehicles for 6 years each, accumulating 78,000 miles in each. He holds a Class A CDL from Colorado, and his driving record shows no accidents or convictions for moving violations in the last 3 years.

59. Garfield A. Smith

Mr. Smith, 52, has anisometropic amblyopia of the left eye. The best-corrected visual acuity is 20/20 in his right eye, and finger counting at 5 feet in his left eye. An optometrist examined him in 2000 and affirmed, "He does have sufficient vision to perform the driving tasks required to operate a commercial vehicle." According to Mr. Smith's application, he has driven straight trucks for 5 years, accumulating 50,000 miles, and tractor-trailer combinations for 30 years, accumulating 3 million miles. He holds a WV Class A CDL, and his driving record is clear of accidents and convictions for moving violations in a CMV during the last 3 years.

60. Gary L. Spelce

Mr. Spelce, 55, has hyperopia with astigmatism; presbyopia; and amblyopia in his left eye. His corrected visual acuity in the right eye is 20/20 and in the left eye, 20/50. Following a 1999 examination, his optometrist stated, "It is my optometric opinion that Mr. Spelce has sufficient vision to drive a commercial vehicle." Mr. Spelce stated that he has driven straight trucks for 20 years and 624,000 miles, and tractor-trailer combination vehicles for 10 years and 1 million miles. He holds a Texas Class AM CDL, and his official driving record shows no accidents or convictions for moving violations in a CMV for the last 3 years.

61. Frederick E. St. John

Mr. St. John is 42 years old and lost his left eye at age 7 due to an accident. His best-corrected vision in the right eye is 20/20. Following a 1999 examination, his optometrist stated, "In my opinion and in view of the fact that Fred has been driving a truck for 22 years (according to him) safely, Fred has sufficient vision to drive and operate a commercial vehicle." According to Mr. St. John, he has 22 years experience driving tractor-trailer trucks totaling 2.6 million miles. He has a Pennsylvania Class A CDL, and his driving record shows no accidents and one conviction for a moving violation of "FT Obey Sign/Traffic Control Device" in a CMV for the past 3 years.

62. Daniel R. Viscaya

Mr. Viscaya, 38, has been completely blind in his left eye since birth secondary to amblyopia and a dense post-subcapsular cataract. His right eye sees 20/20 and requires no correction. Subsequent to an examination in 2000, his optometrist certified, "It is my medical opinion that Mr. Viscaya's visual function is adequate to operate a

commercial vehicle." Mr. Viscaya stated that he has driven tractor-trailer combination vehicles for 4½ years, accumulating 567,000 miles. He holds a Class A CDL from North Carolina and has had no accidents or convictions for moving violations in a CMV for the last 3 years, according to his driving record.

63. Michael P. Walsh

Mr. Walsh, 41, is amblyopic in his right eye. His visual acuity with correction is 20/20 in the left eye and 20/200 in the right. He was examined in 2000, and his optometrist certified, "In my opinion the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Walsh submitted that he has operated straight trucks for 20 years and 1 million miles, and tractor-trailer combinations for 10 years and 520,000 miles. He holds a Class A XT CDL from Michigan. His driving record for the last 3 years shows no convictions for moving violations and one accident in a CMV. He was not charged in the accident. According to the accident report, the other driver crossed the middle double lines on a curve and struck Mr. Walsh's vehicle.

64. Jerry L. Whitefield

Mr. Whitefield, 49, has amblyopia in his left eye. The best-corrected vision in his right eye is 20/15, and in his left eye, 20/70. Following an examination in 2000, his optometrist stated, "I will certify that his right eye has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Whitefield submitted that he has operated tractor-trailer combination vehicles for 29 years, accumulating 2.9 million miles, and straight trucks for 4 years, accumulating 200,000 miles. He holds a Class A CDL from Oklahoma, and his driving record for the last 3 years contains no accidents or convictions for moving violations in a CMV.

65. Robert E. Wientjes

Mr. Wientjes, 59, has best-corrected vision in the right eye of 20/20 and the left eye 20/400. His left eye has had a central corneal scar since 1985. Following a 2000 examination, his ophthalmologist stated, "As Mr. Wientjes" vision has not changed in a number of years, I feel he has sufficient vision to operate a commercial vehicle, which he has done up until now." Mr. Wientjes reported that he has driven tractor-trailer combination vehicles for 30 years and a total of 1.1 million miles. He holds a Kentucky Class DA CDL. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA is requesting public comment from all interested persons on the exemption petitions and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable, but the FMCSA may publish in the **Federal Register** a notice of final determination at any time after the close of the comment period. In addition to late comments, the FMCSA will also continue to file in the docket relevant information which becomes available after the closing date. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 322, 31136 and 31315; and 49 CFR 1.73.

Issued on: October 30, 2000.

Clyde J. Hart, Jr.,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 00–28204 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–8203]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice announces the FMCSA's decision to renew the exemptions from the vision requirement in 49 CFR 391.41(b)(10), for nine individuals.

DATES: This decision is effective November 9, 2000. Comments from interested persons should be submitted by December 4, 2000.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joe Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

Nine individuals have requested renewal of their exemptions from the vision requirement in 49 CFR 391.41(b)(10) which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are Larry A. Dahleen, Earl D. Edland, Dale H. Hellman, Danny E. Hillier, Robert J. Johnson, Michael L. Manning, Gerald R. Rietmann, Jimmy E. Settle, and Hubert Whittenburg. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the FMCSA has evaluated the nine petitions for renewal on their merits and made a determination to extend their exemptions for a renewable 2-year period.

On October 9, 1998, the agency published a notice of final disposition announcing its decision to exempt 12 individuals, including these nine applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (63 FR 54519). The qualifications, experience, and medical condition of each applicant were stated and discussed in detail at 63 FR 30285, June 3, 1998. Three comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the petitions (63 FR 54519). The agency determined that exempting the individuals from 49 CFR 391.41(b)(10) was likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as the vision in each applicant's better eye continues to meet the standard specified in 391.41(b)(10). As a condition of the exemption, therefore, the agency imposed requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are as follows: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for an additional 2-year period. In accordance with 49 U.S.C. 31315 and 31136(e), each of the nine applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519) and each has requested timely renewal of the exemption. These nine applicants have submitted evidence showing that the vision in their better eye continues to meet the standard specified at 49 CFR 391.41(b)(10), and that the vision impairment is stable. In addition, a review of their records of safety while driving with their respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption for each renewal applicant.

Conclusion

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA extends the exemptions from the vision requirement in 49 CFR 391.41(b)(10) granted to Larry A. Dahleen, Earl D. Edland, Dale H. Hellman, Danny E. Hillier, Robert J. Johnson, Michael L. Manning, Gerald R. Rietmann, Jimmy E. Settle, and Hubert Whittenburg, subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Request for Comments

The FMCSA has evaluated the qualifications and driving performance of the nine applicants here and extends their exemptions based on the evidence introduced. The agency will review any comments received concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). While comments of this nature will be entertained at any time, the FMCSA requests that interested parties with information concerning the safety records of these drivers submit comments by December 4, 2000. All comments will be considered and will be available for examination in the docket room at the above address. The FMCSA will also continue to file in the docket relevant information which becomes available. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 322, 31136 and 31315; and 49 CFR 1.73.

Issued on: October 30, 2000.

Clyde J. Hart, Jr.,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 00–28205 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than January 2, 2001.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number ___." Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding: (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Special Notice For Repairs.

OMB Control Number: 2130–0504.

Abstract: The collection of information is used by state and Federal inspectors to remove freight cars or locomotives from service until they can be restored to a serviceable condition. It is also used by state and Federal inspectors to reduce the maximum authorized speed on a section of track until repairs can be made. Additionally, the collection of information provides railroads written notice that an inspector has recommended to the FRA Administrator to remove from service a section of track that is not safe to use at any speed. Railroads must return the required form after the necessary repairs have been made.

Form Number(s): FRA F 6180.8 and FRA F 6180.8a.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Estimated Annual Burden: 7 hours.

Status: Regular Review.

Title: Designation of Qualified Persons.

OMB Control Number: 2130–0511.

Abstract: The collection of information is used to prevent the unsafe movement of defective freight cars. Railroads are required to inspect the freight cars for compliance and to determine restrictions on the movement of defective cars.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Estimated Annual Burden: 40 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, D.C. on October 31, 2000.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–28290 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Northwest Corridor—Carrollton Line Light Rail Transit Project in Dallas, Farmers Branch, and Carrollton, TX

AGENCY: Federal Transit Administration, DOT

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and Dallas Area Rapid Transit (DART) have issued this notice to advise interested agencies and the public of their intent to prepare an Environmental Impact Statement (EIS) on the proposed Northwest Corridor-Carrollton Line Light Rail Transit (LRT) Project in Dallas, Farmers Branch, and Carrollton, Texas. The EIS will be prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended. The Dallas-Fort Worth region is currently designated as a serious non-attainment area for ozone by the Environmental Protection Agency.

The Northwest Corridor-Carrollton Line LRT Project is the product of the Northwest Corridor Major Investment Study (MIS) completed by DART in early 2000. The MIS identified a Locally Preferred Investment Strategy (LPIS), which included a light rail element with two service lines, the Carrollton Line and the DFW Line. The Carrollton Line is being advanced into the EIS phase of project development at this time. The DFW Line will be advanced into the EIS process at a later time when alignment and land use issues are resolved. A separate EIS is also being prepared for

a DART LRT extension in the Southeast Corridor of the Dallas metropolitan area.

DATES: *Comment Due Date:* Written comments on the scope of the alternatives and impacts to be considered should be sent to Kay Shelton, Project Manager by December 20, 2000. See **ADDRESSES** below.

Scoping Meetings: Three public scoping meetings will be held at the following locations and dates. Scoping material will be available at the meeting or in advance of the meeting DART and the cities of Dallas, Farmers Branch, and Carrollton will conduct public scoping meetings on the following dates and at the following locations:

Tuesday, December 5, 2000, 6:30 p.m., Bachman Recreation Center, 2750 Bachman Drive, Dallas, Texas
Thursday, December 7, 6:30 p.m., Farmers Branch Elementary School, 13521 Tom Field Road, Farmers Branch, Texas
Friday, December 8, 10 a.m.–1 p.m., DART Board Room, 1401 Pacific Avenue, Dallas, Texas

Interagency Coordination Meeting: DART will conduct an interagency coordination meeting with appropriate federal, state, and local agencies on the following date and at the following location: Wednesday, December 6, 2000, 1 p.m. to 3 p.m., DART Board Conference Room 1–C, 1401 Pacific Avenue, Dallas, Texas

ADDRESSES: *Written comments* on the project scope should be sent to Kay Shelton, DART Planning, P.O Box 660163, 1401 Pacific Avenue, Dallas, Texas 75266–7213. Telephone (214) 749–2841, Fax (214) 749–3662, E-mail: kshelton@dart.org.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Balleza, Community Planner, Federal Transit Administration, Region VI; Telephone (817) 978–0550.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and DART invite interested individuals, organizations, and federal, state, and local agencies to participate in refining the Carrollton LRT Line, including alignment and station locations. Comments should focus on identifying any significant social, economic, or environmental issues related to the alignment. Specific suggestions related to additional alternatives to be examined and issues to be addressed are welcome and will be considered in the final scope for the project. Scoping comments may be made at the scoping meetings or in writing no later than December 20, 2000. (see **DATES** and **ADDRESSES** above.)

Scoping comments should focus on identifying specific social, economic, or environmental impacts to be evaluated, and suggesting alternatives that are less costly or less environmentally damaging, which achieve similar transit objectives. Comments should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Additional information on the EIS process, alternatives, and impact issues to be addressed will be included in the "Scoping Information Document". Copies of the document will be available from DART immediately prior to the scoping meetings (see **DATES** and **ADDRESSES** above.)

II. Description of Study Area and Project Need

The Northwest Corridor Study Area includes a large part of northwest Dallas County. It extends from downtown Dallas on the south, to SH 121 on the west and north, to east of Marsh Lane and IH 35E on the east. The Major Investment Study's Locally Preferred Investment Strategy (LPIS) includes two rail lines, the D/FW Line and the Carrollton Line. Each of the two rail lines has independent utility in meeting transportation needs of the Study Area. The Carrollton Line is being advanced now into the Environmental Impact Statement (EIS) phase. The D/FW Line will be advanced into the EIS phase at a later time when land use and alignment issues are resolved.

The Northwest Corridor Major Investment Study defined and evaluated a range of project alternatives using a 4-step evaluation process. In addition to the No Build Alternative, a Transportation Systems Management (TSM) Alternative, Commuter Rail Alternatives, several variations of Light Rail Transit (LRT) Alternatives, and some alternatives that combined both LRT and Commuter Rail were considered. Based on work group and public input, and based on the technical analysis, the above-described build alternative was selected. While some alignment refinements will continue for the LPIS, the other alternatives considered during the MIS were dropped from further consideration. The EIS will consider the No Build Alternative in addition to Carrollton LRT Line as the Build Alternative (see ALTERNATIVES below).

The proposed project for environmental review consists of a light rail transit (LRT) line of approximately 17 miles. The LRT alignment begins in downtown Dallas and extends north from the existing LRT transitway mall beginning at a point between the West End Station and Union Station. The alignment will utilize a portion of the former Union Pacific Railroad (UPRR) right-of-way, sharing the corridor with Trinity Railway Express (TRE) commuter rail and freight rail operations between downtown Dallas and approximately Wycliff Avenue. The proposed LRT alignment crosses over Market Center Boulevard, continuing in the median of Harry Hines Boulevard. North of Inwood Road the LRT alignment turns east along Bomar Street and north at Denton Drive, then crosses under Mockingbird Lane near Denton Drive. Alignment options to serve Love Field will be considered during the EIS process, including continuing north on the former UPRR ROW, or an alignment that provides more direct access to the Love Field passenger terminal. North of Love Field, the alignment follows the UPRR ROW north through the cities of Farmers Branch and Carrollton, terminating in the vicinity of Frankford Road.

Eleven stations are proposed in the following vicinities: the new American Airlines Center (Victory), Market Center, Medical Center, Mockingbird/Love Field, Northwest Highway/Bachman Lake, Walnut Hill, Royal, Farmers Branch Park-and-Ride, Belt Line/Old Downtown Carrollton, North Carrollton Transit Center, and Frankford Road. The Carrollton Line and its associated stations provides the opportunity to serve several important regional activity centers, including downtown Dallas, American Airlines Center (Victory), the Stemmons (IH 35E)/Market Center business area, Medical Center area, Love Field Airport, and the suburban cities of Farmers Branch and Carrollton. The proposed rail line will provide numerous opportunities to interconnect the region's transit services, including DART's expanding LRT system, the Trinity Railway Express commuter rail operation, and DART's local and express bus service.

The corridor parallels IH 35E, one of the most congested highway corridors in the region. Regional growth has added to this congestion, especially employment growth in Dallas County, and population growth in northern Dallas, northeast Tarrant, and Denton Counties. In 2020, the northwest quadrant of Dallas County will account for 33.6 percent of employment in the entire Dallas-Fort Worth region. While covering only 6.4 percent of the region's land area, the study area is a large net importer of employees. In 1995, employment outnumbered population by over 200,000 jobs. In 2020, the surplus of jobs over population is expected to grow to more than 336,000.

Land use in the corridor consists of a major concentration of employment with residential uses occurring east of IH 35E and in the northern portions of the Study Area. Industrial and commercial land uses are primarily confined to land adjacent to IH 35E. Traffic volumes on IH 35E parallel to the Carrollton LRT Line are expected to be more than 300,000 vehicles per day in 2020, an increase of 30 percent from 1995 levels. The EPA has designated the Dallas-Fort Worth metropolitan area as a "serious" non-attainment area for the pollutant ozone.

The proposed LRT project is part of a multi-modal strategy that also incorporates bus service refinements, highway and HOV lane improvements, Transportation System Management/Travel Demand Management (TSM/TDM), and bicycle and pedestrian improvements. This strategy was developed during the preparation of the Northwest Corridor MIS completed by DART in early 2000.

III. Alternatives

The transportation alternatives proposed for consideration in this project area include:

No-Build Alternative—The No-Build Alternative involves no change to transportation services or facilities in the corridor beyond already committed projects.

Build Alternative—The Carrollton Line LRT project is approximately 17 miles in length and extends from the downtown Dallas West End area to Frankford Road in Carrollton. The alignment will use the former UPRR ROW, purchased by DART for future transit use in 1990, and surface streets where required to make key connections. The project will connect with the existing LRT system in the West End area of downtown and will operate in a shared use corridor with freight traffic and Trinity Railway Express commuter rail traffic for a distance of approximately two miles. The alignment will use a combination of surface streets and UPRR right-of-way in order to serve the Medical Center area and the Love Field environs (approximately three miles). North of the Love Field area, the alignment remains within the UPRR right-of-way to Frankford Road (12 miles). Where the alignment is within the UPRR right-of-way there will be potential shared use with freight traffic. Eleven (11) LRT Stations have been identified for service access. Two significant design options have been identified for evaluation during the EIS process: (1) Griffin alignment: an alignment between the proposed Victory Station and the Downtown Transit Mall via Griffin Street; and (2) Love Field: an alternative alignment to serve Love Field has been proposed, swinging east of the UPRR right-of-way and entering the Love Field Terminal area east of Cedar Springs Road.

IV. Probable Effects

The FTA and DART will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Impact areas to be addressed include: land use, zoning, and economic development; secondary development; land acquisition, displacements, and relocation of existing uses; historic, archaeological, and cultural resources; parklands and recreation areas; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems; water resources; energy; safety and security; utilities; traffic and transportation impacts. Potential impacts will be assessed for the long-term operation of each alternative and the short-term construction period. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified.

V. FTA Procedures

The EIS process will be performed in accordance with applicable laws and Federal Transit Administration regulations and guidelines for preparing an Environmental Impact Statement. The impacts of the project will be assessed, and, if necessary, the scope of the project will be revised or refined to minimize and mitigate any adverse impacts. After its publication, the draft EIS will be available for public review and comment. One or more public hearings will be held during the draft EIS public comment period. On the basis of the draft EIS and comments received, the project will be revised or further refined as necessary and the final EIS prepared.

Issued on: October 30, 2000.

Robert C. Patrick,

Regional Administrator.

[FR Doc. 00–28302 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on Transportation Improvements Within the Southeast Corridor in Dallas, TX

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and Dallas Area Rapid Transit (DART) have issued this notice to advise interested agencies and the public of their intent to prepare an Environmental Impact Statement (EIS) on the proposed Southeast Corridor Light Rail Transit (LRT) Project, in Dallas, Texas. The EIS will be prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended. The Dallas-Fort Worth region is currently designated as a serious non-attainment area for ozone by the Environmental Protection Agency.

The Southeast Corridor Light Rail Transit (LRT) Project is the product of the Southeast Corridor Major Investment Study (MIS), completed by DART in early 2000. The MIS identified a Locally Preferred Investment Strategy (LPIS), which included the light rail being advanced into the EIS phase of project development at this time. A separate EIS is also being prepared for a DART LRT extension in the Northwest Corridor of the Dallas metropolitan area.

DATES: *Comment Due Date:* Written comments on the scope of the alternatives and impacts to be considered should be sent to John Hoppie, Project Manager by December 20, 2000. See **ADDRESSES** below.

Scoping Meetings: Three public scoping meetings will be held at the following locations and dates. Scoping material will be available at the meeting or in advance of the meeting. DART will conduct public scoping meetings on the following dates and at the following locations:

Tuesday, November 28, 2000, from 6:30 p.m. to 9 p.m., Baylor—Tom Landry Center, 411 N. Washington Ave., Dallas, Texas
Wednesday, November 29, 2000, from 6:30 p.m. to 9 p.m., Martin Luther King Jr. Senior Center, 2922 Martin Luther King Jr. Blvd., Dallas, Texas
Thursday November 30, 2000, from 6:30 p.m. to 9 p.m., Pleasant Mound UMC, 8301 Bruton Rd., Dallas, Texas

Interagency Coordination Meeting: DART will conduct an interagency coordination meeting with appropriate federal, state, and local agencies on the following date and at the following location:

Wednesday, December 6, 2000, 10 a.m. to 12 p.m., DART Board Conference Room 1–C, 1401 Pacific Avenue, Dallas, Texas

ADDRESSES: *Written comments* on the project scope should be sent to John

Hoppie, Project Manager, DART Planning, P.O. Box 660163, 1401 Pacific Avenue, Dallas, Texas 75266. Telephone (214) 749–2525, Fax (214) 749–3670, E-mail: jhoppie@dart.org.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Balleza, Community Planner, Federal Transit Administration, Region VI; Telephone (817) 978–0550.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and DART invite interested individuals, organizations, and federal, state, and local agencies to participate in refining the Southeast Corridor LRT Line including alignment and station locations. Comments should focus on identifying any significant social, economic, or environmental issues related to the alignment. Specific suggestions related to additional alternatives to be examined and issues to be addressed are welcome and will be considered in the final scope for the project. Scoping comments may be made at the scoping meetings or in writing no later than December 20, 2000. (see **DATES** and **ADDRESSES** above.)

Scoping comments should focus on identifying specific social, economic, or environmental impacts to be evaluated, and suggesting alternatives that are less costly or less environmentally damaging, which achieve similar transit objectives. Comments should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Additional information on the EIS process, alternatives, and impact issues to be addressed will be included in the "Scoping Information Document". Copies of the document will be available from DART immediately prior to the scoping meetings (see **DATES** and **ADDRESSES** above.)

II. Description of Study Area and Project Need

The Southeast Corridor Light Rail Transit (LRT) Project includes 10.2 miles of LRT running on new double tracks in existing railroad corridors with some street running along Good Latimer and Parry Avenue. There are 9 LRT stations, including 6 with Park & Ride Lots (totaling just under 2000 parking spaces), and 2 with transfer facilities to other modes.

The Southeast Corridor Major Investment Study defined and evaluated a range of project alternatives using a two-phased evaluation process. In addition to the No Build Alternative, a Transportation Systems Management (TSM) Alternative, and several variations of Light Rail Transit (LRT) Alternatives were considered. Based on work group and public input, and based on the technical analysis, the above-described Build Alternative was selected. While some alignment refinements will continue for the Build Alternative, the other alternatives considered were dropped from further consideration. The EIS will consider the No Build Alternative in addition to Southeast LRT Line as the Build Alternative (see ALTERNATIVES below).

DART's Southeast Corridor contains a dynamic mix of land uses including a burgeoning, eclectic entertainment district; one of the region's most prestigious hospital facilities; a multi-faceted, 277 acre, cultural, historical, museum, and entertainment complex; and large areas of single-family and multi-family housing.

The existing corridor and station area development character in the Southeast Corridor has three distinct subareas:

(1) The Baylor HCS/Deep Ellum/Bryan Place is a redeveloping/revitalizing area of a previously urban core environment of warehouses and commercial uses into multi-family lofts, artists' studios, retail, and service businesses. The area is anchored by Baylor HCS. This area includes pedestrian oriented development. The Deep Ellum area has been designated a historic district. Hundreds of new housing units have been created through new construction or conversion of older buildings. This area is within the City of Dallas Intown Housing Program boundary, which is a local initiative aimed at increasing the vitality of the Central Business District by providing mixed income housing through joint ventures with private developers. (2) The South Dallas/Fair Park area is characterized by commercial/light industrial and loft apartments immediately west of Fair Park; a strip of commercial businesses along R.B. Cullum; and single-family residential with some apartments and duplexes to the south and west of Fair Park. Fair Park is a 277-acre city park, which is listed on the National Register of Historic Places. This area is one of the most transit dependent areas of the city. In the South Dallas/Fair Park area, several community-based organizations have on-going in-fill housing programs. (3) The Pleasant Grove/Buckner Terrace area is primarily composed of residential, industrial, and retail/commercial uses. The commercial activities are concentrated along Buckner Boulevard/Loop 12. This area contains a large amount of vacant land, which is dedicated parkland and/or located in the floodplain. Additionally, development of single-family residential housing in the Pleasant Grove and Buckner Terrace areas is filling the last remaining land for housing developments.

DART's 10.2-mile Southeast Corridor LRT extension, like its original 20-mile starter System, is contained entirely within the Dallas city limits. The University of North Texas Center for Economic Development and Research assessed the impacts of the DART LRT Starter System and estimated over $850 million has been invested in and around DART's new LRT stations. Development currently completed or planned at DART stations varies from a new hotel and mixed-use development downtown, to new residential and municipal facilities in a redevelopment area around the Cedars Station south of downtown Dallas.

Along with the previously mentioned transit supportive land use considerations, some of the other influencing conditions within the Southeast Corridor include:

Environmental Justice and Equity Issues—Within the 47 census tracts covering the Southeast Corridor study area, the majority of tracts have a higher percentage of minority and/or low-income population than the average for the county. Through the extensive public involvement and outreach efforts for the project, equity issues related to the South Dallas neighborhood and the Fair Park area have been identified. It is perceived by the neighborhoods that the needs of the community have been overshadowed or set aside for the economic benefit of Fair Park. Fair Park has expanded several times since its establishment; many times residences were purchased by the city to accommodate the expansion. Additionally, special events at the park's numerous venues can create traffic problems and congestion in the neighborhoods. In the Pleasant Grove area, equity issues related to transit service have been identified. Many residents perceive the Southeast Corridor as the last to receive LRT service it has been promised. However, DART services and the concept of LRT in the corridor are widely supported. The LRT project is seen as providing better transit service and a catalyst for economic development.

Station Area Economic Development Potential—Economic development potential of the terminus station was identified by the DART Board of Directors as one of the primary criteria to be used to compare two vastly different alternative alignments for the final two-mile segment of the LRT line. This further emphasizes the growing importance that DART is placing on economic development.

Historical Transit Service—The LRT alignment and station along Parry Avenue will be at near the ceremonial entrance to Fair Park. This alignment and station will reestablish similar service to the park that was provided by the Dallas Interurban Trolley system until the 1950's.

III. Alternatives

The transportation alternatives proposed for consideration in this project area include:

No-Build Alternative—The No-Build Alternative involves no change to transportation services or facilities in the corridor beyond already committed projects.

Build Alternative—The Southeast Corridor Project (including line, station locations and support facilities), consists of 10.2 miles of LRT running on new double tracks in existing railroad corridors with some street running in along Good Latimer and Parry Avenue. There are 9 potential LRT stations, including 6 with Park & Ride Lots (totaling just under 2000 parking spaces), and 2 with transfer facilities to other modes.

IV. Probable Effects

The FTA and DART will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Impact areas to be addressed include: land use, zoning, and economic development; secondary development; land acquisition, displacements, and relocation of existing uses; historic, archaeological, and cultural resources; parklands and recreation areas; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems; water resources; energy; safety and security; utilities; traffic and transportation impacts. Potential impacts will be assessed for the long-term operation of each alternative and the short-term construction period. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified.

V. FTA Procedures

The EIS process will be performed in accordance with applicable laws and Federal Transit Administration regulations and guidelines for preparing an Environmental Impact Statement. The impacts of the project will be assessed, and, if necessary, the scope of the project will be revised or refined to minimize and mitigate any adverse impacts. After its publication, the draft EIS will be available for public review and comment. One or more public hearings will be held during the draft EIS public comment period. On the basis of the draft EIS and comments received, the project will be revised or further refined as necessary and the final EIS prepared.

Issued on: October 30, 2000.

Robert C. Patrick,

Regional Administrator.

[FR Doc. 00–28301 Filed 11–2–00; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33938]

Adrian & Blissfield Rail Road Company—Acquisition Exemption—Michigan Department of Transportation

Adrian & Blissfield Rail Road Company (ADBF), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire (by purchase) approximately 19.3 miles of rail lines located in Lenawee County, MI, owned by the Michigan Department of Transportation (MDOT).

The lines to be acquired are as follows: (1) From east of Riga, MI, at the interchange with the Indiana and Ohio Railway, or its successor, north and west through Riga, Blissfield, Palmyra, Lenawee Junction, Grosvenor Junction, and Adrian, MI, to Porter Highway; (2) from Grosvenor Junction southwest approximately 1.7 miles; and (3) from Lenawee Junction north approximately .25 miles. The lines are described more specifically as follows: the Adrian Main Line Extension: (i) Between milepost 315.5 (Interchange with Indiana & Ohio Railway at Riga) and milepost 321.0 (Grosvenor Junction); (ii) between Grosvenor Junction milepost 0.0 and milepost 1.7; (iii) between milepost 321.0 (Grosvenor Junction) and milepost 325.5 (Lenawee Junction); (iv) between Lenawee Junction milepost 0.0 and milepost 0.25; and (v) between milepost 325.5 (Lenawee Junction) and milepost 332.85 (Porter Highway). ADBF certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its annual revenues will not exceed $5 million. ADBF currently operates over the lines.

The earliest the transaction could be consummated was October 25, 2000, the effective date of the exemption (7 days after the exemption was filed).

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33938, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kenneth J. Bisdorf, 2301 West Big Beaver Road, Suite 600, Troy, MI 48084–3329.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 25, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–28037 Filed 11–02–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 27, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 4, 2000 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0048.

Form Number: PD F 1851.

Type of Review: Extension.

Title: Request for Reissue of United States Savings Bonds/Notes in the Name of Trustee of Personal Trust Estate.

Description: The form is used to request reissue of savings bonds/notes in the Name(s) of the trustee(s) of a personal trust estate.

Respondents: Individuals or households.

Estimated Number of Respondents: 55,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 13,750 hours.

OMB Number: 1535–0068.

Form Number: None.

Type of Review: Extension.

Title: Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.

Description: The information is requested to establish an investor's Treasury Account; to dispose of securities upon the owner's request; and, to determine entitlement to securities.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 7,500.

Estimated Burden Hours Per Respondent: 7 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 8,775 hours.

OMB Number: 1535–0087.

Form Number: None.

Type of Review: Extension.

Title: Payment by Banks and Other Financial Institutions of United States Savings Bonds and Notes (Freedom Shares).

Description: Qualified financial institutions are authorized to redeem eligible savings bonds and notes, and receive settlement through the Federal Reserve check collection System.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 40,000.

Estimated Burden Hours Per Respondent: 4 seconds.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 77,467 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–28215 Filed 11–2–00; 8:45 am]

BILLING CODE 4810–40–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 23, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 4, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0236.

Form Number: IRS Form 11–C.

Type of Review: Extension.

Title: Occupational Tax and Registration Return for Wagering.

Description: Form 11–C is used to register persons accepting wagers (IRC section 4412). IRS uses this form to register the respondent, collect the annual stamp tax (IRC section 4411), and to verify that the tax on wagers is reported on Form 730.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/Recordkeepers: 11,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 hr., 24 min.
Learning about the law or the form.	57 min.
Preparing the form	2 hr., 3 min.
Copying, assembling, and sending the form to the IRS.	16 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 123,050 hours.

OMB Number: 1545–1093.

Regulation Project Number: IA–56–87 and IA–53–87 Final.

Type of Review: Extension.

Title: Minimum Tax—Tax Benefit Rule.

Description: Section 58(h) of the 1954 Internal Revenue Code provides that the Secretary shall provide for adjusting tax preference items where such items provided no tax benefit for any taxable year. This regulation provides guidance where tax preference items provided no tax benefit because of available credits and describes how to claim a credit or refund of minimum tax paid on such preferences.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: Other (one-time claim for credit or refund).

Estimated Total Reporting Burden: 40 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–28216 Filed 11–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 24, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 4, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0794.

Regulations Project Number: LR–311–81 Final (TD 7925).

Type of Review: Extension.

Title: Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time for Filing Information Returns of Owners, Officers and Directors of Foreign Corporations.

Description: Section 606 requires information returns with respect to certain foreign corporations and the

regulations provide the date by which these returns must be filed. Section 6656 provides penalties with respect to failure to properly satisfy tax deposit obligations and the regulations provide the method for applying for relief from these penalties.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 60,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 30,000 hours.

OMB Number: 1545–1098.

Regulation Project Number: FI–91–86; FI–90–86; FI–90–91; and FI–1–90 Final (TD 8428).

Type of Review: Extension.

Title: Arbitrage Restrictions on Tax-Exempt Bonds.

Description: This regulation requires state and local governmental issuers of tax-exempt bonds to rebate arbitrage profits earned on non-purpose investments acquired with the bond proceeds. Issuers are required to submit a form with the rebate. The regulations provide for several elections, all of which must be in writing.

Respondents: State, local or Tribal Government; Not-for-profit institutions.

Estimated Number of Respondents: 3,100.

Estimated Burden Hours Per Respondent: 2 hours, 46 minutes.

Frequency of Response: On occasion, Other (at most every 5 years).

Estimated Total Reporting Burden: 8,550 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–28217 Filed 11–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 27, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 4, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1096.

Form Number: IRS Form 9117.

Type of Review: Extension.

Title: Excise Tax Program Order Blank for Forms and Publications.

Description: Form 9117 allows taxpayers who must file Form 720 returns a systemic way to order additional tax forms and informational publications.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 15,000.

Estimated Burden Hours Per Respondent: 2 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–28218 Filed 11–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change—Michigan Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 3 to the Treasury Department Circular 570; 2000 Revision, published June 30, 2000, at 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7102.

SUPPLEMENTARY INFORMATION: Michigan Mutual Insurance Company, a Michigan corporation, has formally changed its name to Amerisure Mutual Insurance Company, effective June 20, 2000. The Company was last listed as an acceptable surety on Federal bonds at 65 FR 40890, June 30, 2000.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to Amerisure Mutual Insurance Company, Farmington Hills, Michigan. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $14,2[illegible]5,000 established for the Company as of July 1, 2000, remains unchanged until June 30, 2001.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2000 Revision, at page 40873 to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html*. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: October 27, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–28246 Filed 11–2–00; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Friday,
November 3, 2000

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 412 and 413

Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[HCFA–1069–P]

RIN 0938–AJ55

Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a prospective payment system for Medicare payment of inpatient hospital services provided by a rehabilitation hospital or by a rehabilitation unit of a hospital. This proposed rule would implement section 1886(j) of the Social Security Act (the Act), as added by section 4421 of the Balanced Budget Act of 1997 (Public Law 105–33) and as amended by section 125 of the Balanced Budget Refinement Act of 1999 (Public Law 106–113), which authorizes the implementation of a prospective payment system for inpatient rehabilitation hospitals and rehabilitation units. It also authorizes the Secretary to require rehabilitation hospitals and rehabilitation units to submit such data as the Secretary deems necessary to establish and administer the prospective payment system. The prospective payment system described in this proposed rule would replace the reasonable cost-based payment system under which the rehabilitation hospitals and rehabilitation units are currently paid.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 2, 2001.

ADDRESSES: Mail written comments (one original and three copies) to the following address ONLY:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1069–P, P.O. Box 8010, Baltimore, MD 21244–8010.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201; or Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the delivery addresses may be delayed and could be considered late.

FOR FURTHER INFORMATION CONTACT:

Robert Kuhl, (410) 786–4597 (General information).

Pete Diaz, (410) 786–1235 (Requirements for completing the Minimum Data Set for Post Acute Care (MDS–PAC), and other MDS–PAC issues).

Jacqueline Gordon, (410) 786–4517 (Payment system, the case-mix classification methodology, transition payments, relative weights/case-mix index, update factors, transfer policies, payment adjustments).

Nora Hoban, (410) 786–0675 (Calculation of the payment rates, relative weights/case-mix index, wage index, payment adjustments).

SUPPLEMENTARY INFORMATION:

Comments, Procedures, Availability of Copies, and Electronic Access

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1069–P.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Website address is: http://www.access.gpo.gov/nara/index.html.

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

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In addition, because of the many terms to which we refer by acronym in this proposed rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

ADL—Activities of Daily Living
BBA—Balanced Budget Act of 1997, Public Law 105–33
BBRA—Balanced Budget Refinement Act of 1999, Public Law 106–113
CMGs—case-mix groups
CMI—case-mix index
COS—Clinical Outcomes Systems
DRGs—diagnosis-related groups
FIM—functional independence measure
FIM—FRG-functional independence measurement-function related group
FRG—Function Related Group
FY—Federal fiscal year
HCFA—Health Care Financing Administration
HHAs—home health agencies
HMO—health maintenance organization
IRF—inpatient rehabilitation facilities
MDCN—Medicare Data Collection Network
MDS—PAC-Minimum Data Set for Post Acute Care
MedPAC—Medicare Payment Advisory Commission
MEDPAR—Medicare provider analysis and review
MPACT—MDS–PAC Tool—Minimum Data Set for Post Acute Care Tool
OASIS—Outcome and Assessment Information Set
ProPAC—Prospective Payment Assessment Commission
RICs—Rehabilitation Impairment Categories
SNF—skilled nursing facility
TEFRA—Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248
UDSmr—Uniform Data Set for medical rehabilitation
Y2K—Year 2000/Millennium

I. Background

When the Medicare statute was originally enacted in 1965, Medicare payment for hospital inpatient services was based on the reasonable costs incurred in furnishing services to Medicare beneficiaries. The statute was later amended by section 101(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97–248) to limit payment by placing a limit on allowable costs per discharge. Section 601 of the Social Security Amendments of 1983 (Public Law 98–21) added a new section 1886(d) to the Social Security Act (the Act) which replaced the reasonable cost-based payment system for most hospital inpatient services. Section 1886(d) of the Act provides for a prospective payment system for the operating costs of hospital inpatient stays effective with hospital cost reporting periods beginning on or after October 1, 1983.

Although most hospital inpatient services became subject to a prospective payment system, certain specialty hospitals were excluded from that system. As discussed in detail in section I.A.1 of this preamble, rehabilitation hospitals and distinct part rehabilitation units in hospitals were among the excluded facilities. Subsequent to the implementation of the hospital inpatient prospective payment system, both the number of excluded rehabilitation facilities, particularly distinct part units, and Medicare payments to these facilities grew rapidly. In order to control escalating costs, the Congress, through enactment of section 4421 of the Balanced Budget Act of 1997 (BBA) (Public Law 105–33) and section 125 of the Balanced Budget Refinement Act of 1999 (BBRA) (Public Law 106–113), provided for the implementation of a prospective payment system for inpatient rehabilitation facilities.

Section 4421 of the BBA amended the Act by adding section 1886(j), which authorizes the implementation of a prospective payment system for inpatient rehabilitation services. This proposed rule would implement a Medicare prospective payment system, as authorized by section 1886(j) of the Act, for inpatient rehabilitation hospitals and units. We refer to these inpatient rehabilitation hospitals and units as "inpatient rehabilitation facilities" or "IRFs" throughout this proposed rule.

The statute provides for the prospective payment system for IRFs to be implemented for cost reporting periods beginning on or after October 1, 2000. The statute also provides for a new prospective payment system for home health services for cost reporting periods beginning on or after October 1, 2000, along with modifications to the existing prospective payment systems for acute care hospitals and skilled nursing facilities.

Although we are working very hard to implement the extensive changes required by the statute, the demands of simultaneously implementing new prospective payment systems (for example, outpatient hospital and home health) and modifying existing payment systems are significant. The creation of each new payment system or modification to an existing payment system requires an extraordinary amount of lead time to develop and implement the necessary changes to our existing computerized claims processing systems. In addition, it requires additional time after implementation to ensure that these complex changes are properly administered. After an extensive analysis of the changes required to HCFA's systems, we have concluded that it is infeasible to implement the IRF prospective payment system as of October 1, 2000. Therefore, we plan to implement the IRF prospective payment system for cost reporting periods beginning on or after April 1, 2001. We believe that this implementation date is the earliest feasible date given the scope and magnitude of the implementation requirements associated with this and other mandated provisions.

In this proposed rule, we provide a number of discussions useful in understanding the development and implementation of the IRF prospective payment system. These discussions include the following:

- An overview of the current payment system for IRFs.
- A discussion of research on IRF patient classification systems and prospective payment systems, including prior and current research performed by the RAND Corporation.
- A discussion of statutory requirements for developing and implementing an IRF prospective payment system.
- A discussion of the proposed requirement that IRFs complete the Minimum Data Set for Post Acute Care (MDS–PAC) (a patient assessment instrument) as a part of the data collection deemed necessary by the Secretary to implement and administer the IRF prospective payment system.
- A discussion of the IRF patient classification system using case-mix groups (CMGs).
- A detailed discussion of the proposed prospective payment system including the relative weights and payment rates for each CMG, adjustments to the payment system, additional payments, and budget

neutrality requirements mandated by section 1886(j).

- An analysis of the impact of the IRF prospective payment system on the Federal budget and inpatient rehabilitation facilities, including small rural facilities.

Finally, we are proposing conforming changes to existing regulations as well as new regulations that are necessary to implement the proposed IRF prospective payment system.

A. Overview of Current Payment System for Inpatient Rehabilitation Facilities

1. Exclusion of Certain Facilities From the Hospital Inpatient Prospective Payment System

Although payment for operating costs of most hospital inpatient services became subject to a prospective payment system when the hospital inpatient prospective payment system was implemented in October 1983, certain types of specialty hospitals and units were excluded from that payment system. As set forth in section 1886(d)(1)(B) of the Act, the following hospitals were originally excluded from the hospital inpatient prospective payment system: psychiatric, rehabilitation, children's, and long-term care. Effective with cost reporting periods beginning on or after October 1, 1989 cancer hospitals were added to this list by section 6004(a) of the Omnibus Budget Reconciliation Act of 1989 Public Law (101–239). In addition, psychiatric and rehabilitation distinct part units of hospitals are excluded from the hospital inpatient prospective payment system.

These specialty hospitals were excluded by the Congress from the hospital inpatient prospective payment system because they typically treat cases that involve lengths of stay that are, on average, longer or more costly than would be predicted by the diagnosis related group (DRG) system and, therefore, could be systematically underpaid if the DRG system was applied to them. These exclusions were the result of concerns that DRGs—the classification system on which payment under the hospital inpatient prospective payment system is based—might not accurately account for the resource costs for the types of patients treated in those facilities.

The concern that DRGs might not accurately account for costs in excluded hospitals arose because the hospital inpatient prospective payment system was developed from the cost and utilization experience of general hospitals, which typically provide acute care for a variety of medical conditions. The hospital inpatient prospective payment system is a system of average-based payments that assume that some patient stays will consume more resources than the typical stay, while others will demand fewer resources.

Thus, an efficiently operated hospital should be able to deliver care to its Medicare patients for an overall cost that is at or below the amount paid under the hospital inpatient prospective payment system. In a *Report to Congress: Hospital Prospective Payment for Medicare* (1982), the Department of Health and Human Services stated that the "467 DRGs were not designed to account for these types of treatment" found in the four special classes of hospitals, and noted that "including these hospitals will result in criticism * * * (and) their application to these hospitals would be inaccurate and unfair."

Accordingly, this report to the Congress suggested that a DRG system might not work as well for these treatment classes as they did for other medical specialties. One concern was that the resource needs of patients in these excluded hospitals were not solely correlated with diagnoses. A second concern was that the mix of service intensities provided by these specialty hospitals significantly differed from that of general medical/surgical hospitals. The legislative history of the 1983 amendments to the Act stated that the "DRG system was developed for short-term acute care general hospitals and as currently constructed does not adequately take into account special circumstances of diagnoses requiring long stays." (Report of the Committee on Ways and Means, U.S. House of Representatives, to Accompany HR 1900, H.R. Rep. No. 98–25, at 141 (1983)).

Following enactment in April 1983 of the Social Security Amendments of 1983, we undertook a number of initiatives to ensure implementation of the hospital inpatient prospective payment system by October 1, 1983. Important activities included the publication of the rules and regulations for the hospital inpatient prospective payment system. The interim final rule was published in the September 1, 1983 **Federal Register** (48 FR 39752). We published a final rule in the January 3, 1984, **Federal Register** (49 FR 234) following a public comment period, evaluation of comments received, and formulation of responses to and regulatory revisions to the regulations based upon the comments. Updates and modifications of the regulations are published annually in the **Federal Register**. Together, the initial statutory mandate and the published regulations addressed several important program issues. One program issue was the implementation of the criteria for hospitals that are seeking to be excluded from the hospital inpatient prospective payment system under one of the specialty classes, including IRFs. The regulations concerning exclusion from the hospital inpatient prospective payment system, in part 412, subpart B, are discussed below.

2. Requirements for Inpatient Rehabilitation Facilities To be Excluded From the Hospital Inpatient Prospective Payment System

Under section 1886(d)(1)(B) of the Act, the prospective payment system for hospital inpatient operating costs set forth in section 1886(d) of the Act does not apply to several specified types of entities, including a rehabilitation hospital "as defined by the Secretary" or, "in accordance with regulations of the Secretary," a rehabilitation unit of a hospital which is a distinct part of the hospital "as defined by the Secretary." In general, existing regulations in part 412, subpart B provide that to be excluded from the hospital inpatient prospective payment system, an IRF must—(1) Have a provider agreement or be a unit in an institution that has in effect an agreement to participate as a hospital under part 489; and (2) except for newly participating hospitals seeking to be excluded, demonstrate that they serve an inpatient population of whom at least 75 percent require intensive rehabilitative services for the treatment of 1 or more of 10 specified conditions. The specified conditions are stroke, spinal cord injury, congenital deformity, amputation, major multiple trauma, hip fracture, brain injury, polyarthritis including rheumatoid arthritis, neurological disorders, and burns. Patients in IRFs require frequent physician involvement, rehabilitation nursing, and care from a coordinated group of professionals. (All IRFs that meet the requirements in §§ 412.23(b), 412.25, and 412.29 would be paid under the IRF prospective payment system proposed in this rule.)

3. Payment System Requirements Prior to the Balanced Budget Act of 1997

Hospitals that are excluded from the hospital inpatient prospective payment system are paid for inpatient operating costs under the provisions of section 1886(b) of the Act. Until the IRF prospective payment system is implemented, IRFs are paid on the basis of Medicare reasonable costs limited by a facility-specific target amount per discharge. Each facility has a separate

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payment limit or target amount that is calculated for that facility based on its cost per discharge in a base year, subject to caps. The target amount is adjusted annually by an update factor called the rate-of-increase percentage. Facilities whose costs are below their target amounts receive bonus payments equal to the lesser of half of the difference between costs and the target amount, up to a maximum of 5 percent of the target amount. For facilities whose costs exceed their target amounts, Medicare provides relief payments equal to half of the amount by which the hospitals costs exceeded the target amount up to 10 percent of the target amount. Facilities that experience a more significant increase in patient acuity can also apply for an additional amount under the regulations for Medicare exception payments.

4. Strengths and Weaknesses of the Current Payment System

Utilization of post-acute care services has grown rapidly in recent years. Since the implementation of the hospital inpatient prospective payment system, average length of stay in acute care hospitals has decreased and patients are increasingly being discharged to post-acute care settings such as IRFs, skilled nursing facilities (SNFs), home health agencies (HHAs), and long-term care hospitals to complete their course of treatment. The increased utilization of post-acute care providers, including excluded facilities, has fueled the rapid growth in payments in recent years. With increased utilization and the incentives associated with the reasonable-cost based payment system, discussed below, the number of IRFs has also increased significantly.

In its March 1999 Report to the Congress the Medicare Payment Advisory Commission (MedPAC) (formerly the Prospective Payment Assessment Commission (ProPAC)) stated, "Aggregate spending has increased at a fairly rapid pace, reflecting increased patient volume rather than increased payments per discharge. Aggregate Medicare operating payments to rehabilitation facilities rose 18 percent annually between 1990 and 1996, from $1.9 billion to $4.3 billion. Since 1990, payments per discharge have risen less than the rate of inflation, reaching $10,500 in 1996." (p. 90.) The MedPAC report explains that the—

> TEFRA system has remained in effect longer than expected partly because of difficulties in accounting for the variation in resource use across patients in exempted facilities. The unintended consequences of sustaining that system have included a steady growth in the number of prospective payment system-exempt facilities and a substantial payment inequity between older and newer facilities. In particular, the payment system encouraged new exempt facilities to maximize their costs in the base year to establish high cost limits. Once subject to its relatively high limit, a recent entrant could reduce its costs below its limit, resulting in reimbursement of its full costs. * * * By contrast, facilities that existed before they became subject to TEFRA could not influence their cost limits. Given the relatively low limits of older facilities, they are more likely to incur costs above their limits and thus receive payments less than their costs. (p. 72)

To address concerns such as the historical growth in payments and disparity in payments to existing and newly excluded hospitals and units, the BBA mandated several changes to the current payment system. These changes are outlined in section I.C.1 of this preamble. In addition, we and other organizations have conducted research since the inception of the hospital inpatient prospective payment system to determine if alternate prospective payment systems are feasible for these excluded hospitals.

B. Research for Alternate Prospective Payment Systems for Inpatient Rehabilitation Facilities Prior to the Balanced Budget Act of 1997

Below is a discussion of research projects and other analyses concerning prospective payment systems that are relevant to the development of the IRF prospective payment system that we are proposing to implement in this rule.

The methods and tasks that must be undertaken in order to develop an IRF prospective payment system include development of a patient classification system that accounts for differences in patient case mix. A patient classification system is developed by classifying patients into mutually exclusive groups based on similar clinical characteristics and similar levels of resource use. A factor to weight differences in patient case mix can be developed by measuring the relative difference in resource intensity among the different groups. We are proposing to implement a payment system that uses case-mix groups and weighting factors that account for the intensity of services delivered to IRF Medicare patients.

1. Early Studies

In October 1984, as mentioned in the 1987 Report to the Congress: Developing a Prospective Payment System for Excluded Hospitals (1987), the Medical College of Wisconsin and the RAND Corporation (RAND) began a joint effort to investigate the feasibility of a prospective payment system for excluded hospitals including IRFs. The RAND Corporation is a nonprofit institution with extensive health care background in improving policy and decision making through research and analysis. This joint effort was under a HCFA cooperative agreement with the RAND Corporation. The Medical College of Wisconsin collected data from a survey of patient records that included standard discharge data, diagnostic condition, functional status and other impairment measures, billing data, and facility information gathered from telephone interviews. RAND assisted in the design and analysis of the survey data and obtained a 20 percent sample of the HCFA patient billing file for FY 1984—the implementation year of the hospital inpatient prospective payment system.

The data were used to analyze the delivery systems of rehabilitation care. The Report to the Congress stated that care in IRFs "emphasizes the treatment of functional limitations and disability". Functional limitations could be measured by the patient's ability to perform activities of daily living such as locomotion, dressing, eating, bathing, etc. The patient's level of performing these activities of daily living is referred to as the patient's functional status. The results of this analysis showed that "diagnostic condition explained little, whereas functional status measures explained substantially more, of the variance in total charges for a rehabilitation stay." However, at the time of this analysis, a nationally-accepted set of functional status measures had not been developed for application in a classification system for IRFs.

2. Functional Status Studies

While numerous studies involved developing and assessing functional status, several researchers (for example, Batavia 1988; Johnston 1984) suggested using functional status as the basis for a rehabilitation payment system. Functional status, as measured by a patient's ability to perform activities of daily living and by mobility, can be evaluated at admission and discharge or any time during the stay. In addition, change in functional status (the difference in functional status from admission to discharge) can be measured.

Researchers evaluated several methods of using functional status at different stages of the patient's stay to develop a payment system. For the most part, the use of these methods resulted in payment systems that appeared to be inadequate in creating the proper incentives to care for high resource use patients and to produce quality outcomes. Basing a payment system on expected improvement in a patient's functional limitations requires a scale that is sensitive to changes in functional status. In addition, precise data describing the functional status of the patient would have to be collected on admission and at periodic intervals until discharge (Hosek et al.; 1986).

The development of a patient classification system for a case-mix adjusted prospective payment system was hindered by the lack of an appropriate and widely accepted functional status measure for inpatient rehabilitation. The functional independence measure (FIM) was developed to fill this need (Hamilton *et al.*, 1987). The functional independence measure addresses a patient's functional status covering six domains—self-care, sphincter control, mobility, locomotion, social cognition, and communication. There are two national sources of functional independence measures. The Uniform Data Set for Medical Rehabilitation (UDSmr) is operated within the Center for Functional Assessment Research, U. B. Foundation Activities, Inc. The UDSmr collects data on patient age, sex, living situation prior to hospitalization, the impairment that is the primary reason for admission to the IRF, and functional status at admission and discharge. It also includes patient admission and discharge information as well as hospital charges. The Clinical Outcomes System (COS) is operated by Caredata.com, Inc. (formerly Medirisk Inc.), located in Atlanta, Georgia. The COS contains the same type of patient information as UDSmr. However, we have been notified that the COS has been discontinued as of July 2000.

3. Studies on Patient Classification Systems

In 1991, Nancy Diane Harada presented a study in her dissertation titled "The Development of a Resource-Based Patient Classification Scheme for Rehabilitation." This study developed a clinically-based, diagnosis-specific patient classification system for rehabilitation hospital services. The final classification system in this study includes 33 patient classification groups. The patient classification groups are referred to as Rehabilitation Functional Related Groups.

Harada believed that, at the facility level, the rehabilitation functional related groups could be viewed as a managerial tool to monitor the quality of care, as well as the resources expended in the treatment of rehabilitation patients. From a policy perspective, use of the rehabilitation functional related groups could minimize the adverse incentives for IRFs to underserve certain groups that may arise from the lack of case-mix index adjusted payments in the current cost limit payment system. The results of this study found that rehabilitation functional related group methodology may provide an appropriate basis for the prospective payment of rehabilitation services.

Using FIM data reported to UDSmr, a team of researchers from the University of Pennsylvania developed a patient classification system, Function Related Groups (FRGs), referred to as the FIM–FRGs (Stineman *et al.*, 1994). The American Rehabilitation Association (currently known as the American Medical Rehabilitation Providers Association) funded the development of a prototype of function related groups. Further work and revisions were funded by the Agency for Health Care Research and Quality, formerly known as the Agency for Health Care Policy and Research and the National Center for Medical Rehabilitation Research at the National Institutes of Health.

As FIM–FRGs were refined, they were reframed using the International Classification of Impairments, Disabilities and Handicaps to ensure a better measure of the consumption of rehabilitation resources, prognosis, and outcome (Stineman, 1997). These classifications were designed to be related to the major categories of the DRGs and indirectly linked to the ICD–9–CM with focus on disabilities and impairment categorization.

This original work on a FIM–FRG patient classification system identified 21 clinically defined rehabilitation impairment categories (RICs) such as stroke, traumatic brain dysfunction, non-traumatic brain dysfunction, and non-traumatic spinal cord injury. The RICs were then subdivided into FIM–FRGs using the FIM motor score, FIM cognitive score, and age. Accordingly, the FIM–FRG patient classification system first sorted patients into a RIC and then used assessments of patient functional and cognitive abilities and age to classify them into a FIM–FRG.

4. HCFA-Sponsored Analysis by RAND

In 1994, we contracted with RAND for analyses designed to: (1) examine the stability of the original FRGs; (2) extend the FRGs to take account of previously unexamined cases (re-admissions), previously unused information (interrupted stays), and newly available data (Medicare data on comorbidities and complications); and (3) evaluate the performance of FRGs when cost rather than length of stay is used to form groups and when only Medicare cases rather than all cases are used to form groups.

RAND's analyses: (1) evaluated the suitability of the FIM–FRG patient classification system; (2) evaluated a prospective payment system for inpatient rehabilitation facilities based on the FIM–FRGs; and (3) prepared final reports describing the evaluation of the UDSmr, FIM, and FIM–FRGs. This analysis used more current data to replicate and update previous work performed by RAND in 1990.

Two data systems—the UDSmr and Medicare program information—were the primary sources for these analyses. UDSmr provided RAND with functional status and demographic information for rehabilitation discharge data on 139,360 cases from 352 IRFs from calendar year 1994. The Medicare program information included Medicare bill and cost report data for 1994.

The first step of the analysis involved matching UDSmr cases with Medicare records using patient and facility identifiers. Because patient and facility identifiers on the UDSmr records were encrypted, it was necessary to use a sophisticated matching probability technique to match Medicare records to a corresponding UDSmr case. In addition, several thousand of the Medicare discharges corresponded to part of an interrupted rehabilitation stay. For the purposes of this analysis, a rehabilitation stay interrupted by a single admission to an acute care hospital is treated as two rehabilitation discharges, one interrupted by two admissions to an acute care hospital is treated as three rehabilitation discharges, and so on. Using this definition of "interrupted stays", RAND stated that the 139,360 cases found in the UDSmr data corresponded to 144,719 Medicare discharges. A file with the matched patient data was created.

RAND then subjected this patient data to a rigorous and complex statistical algorithm to test the predictive power of resource use to classify these patients into RICs and corresponding FIM–FRGs. As a result, RAND recommended that the number of FRGs per RIC be limited to a maximum of 5 and proposed a total of 70 FRGs. Facility level data from the hospital cost report information system file was used to test the feasibility of using the resulting FIM–FRGs to develop an IRF prospective payment system.

The results of the RAND study were released in September 1997 and are contained in two reports available through the National Technical

Information Service (NTIS). The reports are—

- Classification System for Inpatient Rehabilitation Patients—A Review and Proposed Revisions to the Function Independence Measure-Function Related Groups, NTIS order number PB98–105992INZ; and
- Prospective Payment System for Inpatient Rehabilitation, NTIS order number PB98–106024INZ. These reports can be ordered by calling the NTIS sales desk at 1–800–553–6847 or by e-mail at *orders@ntis.fedworld.gov*.

RAND found that, with limitations, the FIM–FRGs were effective predictors of resource use based on the proxy measurement: length of stay. FRGs based upon FIM motor scores, cognitive scores, and age remained stable over time (prediction remained consistent between the 1990 and 1994 data). Researchers at RAND developed, examined, and evaluated a model payment system based upon FIM–FRG classifications that explains approximately 50 percent of patient costs and approximately 60 to 65 percent of costs at the facility level. Based on this analysis, RAND concluded that a rehabilitation prospective payment system using this model is feasible. RAND's design of a rehabilitation prospective payment system aimed to achieve the following three important goals:

- To provide hospitals with incentives for efficiency.
- To ensure access to high quality and appropriate care for all Medicare beneficiaries.
- To distribute Medicare payments to hospitals in an equitable way.

RAND needed to account adequately for each hospital's patient mix and for other appropriate factors that affect costs. This aspect of the analysis was based on the notion that Medicare should not pay hospitals more for inefficiency or even for a greater intensity of care than is typically received by patients with similar clinical characteristics and social support levels.

Two technical advisory panels provided advice concerning this research. The first panel reviewed the reliability of the FIM scoring process and the second panel provided guidance on the development of the patient classification system. These panels raised some major concerns about the FIM–FRG research.

First, the UDSmr data represented only 24 percent of IRFs and accounted for 40 percent of all Medicare cases in IRFs. Second, the UDSmr data over-represented free-standing rehabilitation hospitals and under-represented excluded units with a slight over-representation of teaching hospitals. Third, while the FIM–FRG system is a good predictor of length of stay, more work was needed to determine the system's ability to predict the intensity of services furnished during a stay. Fourth, hospital charges might not accurately reflect actual resource use in this context, so relative weights based on hospital charges might be distorted. This problem would be further exacerbated because there is evidence of unexplainable distorted charging patterns among facilities under the current payment limits, which have been in effect for a prolonged period of time.

5. Prospective Payment Assessment Commission Analysis for 1997 Report to Congress

In its 1997 Report to Congress, the Prospective Payment Assessment Commission (ProPAC) recommended that a prospective payment system for IRFs based on patient case mix should be implemented as soon as possible. ProPAC stated that RAND's work on the FIM–FRGs could be an adequate basis for prospective payment, and that implementation of a system in the near future is feasible. (ProPAC's March 1, 1997 report was published as Appendix F to our proposed rule "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates" published in the June 2, 1997 **Federal Register** (62 FR 29902).)

In response to this recommendation, we cited in our final rule "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates" published in the August 29, 1997, **Federal Register** (62 FR 45966), the concerns raised by the technical advisory panels and our review of the RAND analysis as issues that needed to be further addressed before implementing a prospective payment system using the FIM–FRG patient classification system. In addition, we stated that our preference is to focus on developing a coordinated payment system for post-acute care across all settings that relies on a core assessment tool. Accordingly, one of our goals in developing a prospective payment system would be that it is based on the characteristics of the patient and their needs rather than the characteristics or type of provider of care.

C. Requirements of the BBA and the BBRA for Inpatient Rehabilitation Facilities

1. Provisions for the Current Payment System

The following BBA provisions relating to the current payment system were explained in detail and implemented in our final rule published in the August 29, 1997 **Federal Register** (62 FR 45966).

Section 4411 describes the update of payments for specific fiscal years (FYs) using the market basket effective for cost reporting periods beginning on or after October 1, 1997.

Section 4412 describes the reduction of capital payments for FYs 1998 through 2002, effective October 1, 1997.

Section 4413 describes the provisions for rebasing a facility's target amount for cost reporting periods beginning during FY 1998.

Section 4414 describes the requirement to cap and update the rate-of-increase limits for cost reporting periods beginning on or after October 1, 1997.

Section 4415 describes the provisions regarding bonus and relief payments effective for cost reporting periods beginning on or after October 1, 1997.

Section 4419 eliminates the exemptions from the target amounts effective for cost reporting periods beginning on or after October 1, 1997.

2. Provisions for a Prospective Payment System

Section 4421(a) of the BBA amended the Act by adding a new section 1886(j) to the Act that provides for the implementation of a Medicare prospective payment system for all IRFs. For cost reporting periods beginning on or after the implementation date and before October 1, 2002, payment to IRFs will be based on a blend of—(1) the amount that would have been paid under Part A with respect to these costs if the prospective payment system were not implemented and (2) the IRF Federal prospective payment. For cost reporting periods beginning on or after October 1, 2002, IRFs will be paid under the fully implemented Federal prospective payment system.

Under the prospective payment system, rehabilitation facilities will be paid based on predetermined amounts. These prospective payments will encompass the inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not for costs of approved educational activities, bad debts, and other costs not subject to the provisions of the IRF prospective payment system. Covered rehabilitation services include services for which benefits are provided under Part A (the hospital insurance program) of the Medicare program.

Section 1886(j)(1)(A) of the Act provides that, notwithstanding section 1814(b) of the Act and subject to the provisions of section 1813 of the Act regarding beneficiary deductibles and coinsurance responsibility, the amount of payment for inpatient rehabilitation hospital services equals an amount determined under section 1886(j) of the Act. Sections 1886(j)(1)(A)(i) and (ii) of the Act provide for a transition phase covering cost reporting periods that begin during the first two Federal fiscal years under the prospective payment system. During this transition phase, IRFs will receive a payment rate comprised of a blend of the "TEFRA percentage" of the amount that would have been paid under Part A with respect to those costs if the prospective payment system had not been implemented, and the "prospective payment percentage" of payments using the IRF prospective payment system rate.

Section 1886(j)(1)(B) of the Act sets forth a requirement applicable to all facilities for the payment rates under the fully implemented system. Notwithstanding section 1814(b) of the Act and subject to the provisions of section 1813 of the Act regarding beneficiary deductibles and coinsurance responsibility, the amount of the payment with respect to the operating and capital costs of a rehabilitation facility for a payment unit in a cost reporting period beginning on or after October 1, 2002, will be equal to the per unit payment rate established under this prospective payment system for the fiscal year in which the payment unit of service occurs.

Sections 1886(j)(1)(C)(i) and (ii) of the Act set forth the applicable TEFRA and prospective payment rate percentages during the transition period. For a cost reporting period beginning on or after April 1, 2001 and before October 1, 2001, the "TEFRA percentage" is 66⅔ percent and "the prospective payment percentage" is 33⅓ percent; and on or after October 1, 2001, and before October 1, 2002, the "TEFRA percentage" is 33⅓ percent and "prospective payment percentage" is 66⅔ percent.

Section 1886(j)(1)(D) of the Act contains the definition of "payment unit." Until the passage of the BBRA, "payment unit" was defined by the statute as "a discharge, day of inpatient hospital services, or other unit of payment defined by the Secretary". However, section 125(a)(1) of the BBRA amended section 1886(j)(1)(D) of the Act by striking "day of inpatient hospital services, or other unit of payment defined by the Secretary." Accordingly, the payment unit utilized in the IRF prospective payment system will be a discharge.

Section 125(a)(3) of the BBRA also amended the Act by adding a new section 1886(j)(1)(E) to the Act that states: "(E) CONSTRUCTION RELATING TO TRANSFER AUTHORITY.—Nothing in this subsection shall be construed as preventing the Secretary from providing for an adjustment to payments to take into account the early transfer of a patient from a rehabilitation facility to another site of care." We invite comments on the proposed transfer policy discussed in section V. of this preamble.

Section 1886(j)(2)(A) of the Act, as added by the BBA, directed the Secretary to establish case-mix groups based on the factors as the Secretary deems appropriate, which may include impairment, age, related prior hospitalization, comorbidities, and functional capability of the patient. This section also requires the Secretary to establish a method of classifying specific patients in rehabilitation facilities within these groups. The BBRA amended section 1886(j)(2)(A)(i) of the Act to describe the classification system to read as follows: "Classes of patient discharges of rehabilitation facilities by functional-related groups (each in this subsection referred to as a 'case mix group'), based on impairment, age, comorbidities, and functional capability of the patient and such other factors as the Secretary deems appropriate to improve the explanatory power of functional independence measure-function related groups."

Section 1886(j)(2)(B) of the Act provides that the Secretary will assign each case-mix group a weighting factor reflecting the facility resources used for patients within the group as compared to patients classified within other groups.

Section 1886(j)(2)(C)(i) of the Act directs the Secretary to adjust "from time to time" the case-mix classifications and weighting factors "as appropriate to reflect changes in treatment patterns, technology, case-mix, number of payment units for which payment is made under this title, and other factors which may affect the relative use of resources." Such periodic adjustments shall be made in a manner so that changes in aggregate payments are a result of real changes in case-mix, not changes in coding that are unrelated to real changes in case-mix. Section 1886(j)(2)(C)(ii) of the Act provides that, if the Secretary determines that adjustments to the case-mix classifications or weighting factors resulted in (or are likely to result in) a change in aggregate payments that does not reflect real changes in case-mix, the Secretary shall adjust the per payment unit payment rate for subsequent years so as to eliminate the effect of the coding or classification changes.

Section 1886(j)(2)(D) of the Act authorizes the Secretary to require rehabilitation facilities to submit such data as the Secretary deems necessary to establish and administer the IRF prospective payment system.

Section 1886(j)(3)(A) of the Act describes how the prospective payment rate will be determined. A prospective payment rate will be determined for each payment unit for which an IRF is entitled to payment under the prospective payment system. The payment rate will be based on the average payment per payment unit for inpatient operating and capital costs of IRFs, using the most recently available data, and adjusted by the following factors:

- Updating the per-payment unit amount to the fiscal year involved by the applicable percentage increase (as defined by section 1886(b)(3)(B)(ii) of the Act) covering the period from the midpoint of the period for such data through the midpoint of fiscal year 2000 and by an increase factor specified by the Secretary for subsequent fiscal years;
- Reducing the rate by a factor equaling the proportion of Medicare payments under the prospective payment system as estimated by the Secretary based on prospective payment amounts which are additional payments relating to outlier and related payments;
- Accounting for area wage variations among IRFs;
- Applying the case-mix weighting factors; and
- Adjusting for such other factors as determined necessary by the Secretary to properly reflect variations in necessary costs of treatment among IRFs.

Section 1886(j)(3)(B) of the Act directs the Secretary to establish IRF prospective payment system payment rates during fiscal years 2001 and 2002 at levels such that, in the Secretary's estimation, total payments under the new system will equal 98 percent of the amount that would have been made for operating and capital costs in those years if the IRF prospective payment system had not been implemented. In establishing these payment amounts, the Secretary shall consider the effects of the prospective payment system on the total number of payment units from IRFs and other factors.

Section 1886(j)(3)(C) of the Act addresses the annual increase factor, to be applied beginning with FY 2001. This factor shall be based on an appropriate percentage increase in a market basket of goods and services comprising services for which payment is made under section 1886(j) of the Act.

Under section 1886(j)(4)(A) of the Act, the Secretary is authorized but not required to provide for an additional payment to a rehabilitation facility for patients in a case-mix group, based upon the patient being classified as an outlier based on an unusual length of stay, costs, or other factors specified by the Secretary. The amount of the additional payment must approximate the marginal cost of care above what otherwise would be paid and must be budget neutral. The total amount of the additional payments to IRFs under the prospective payment system for a fiscal year may not be projected to exceed 5 percent of the total payments based on prospective payment rates for payment units in that year.

Section 1886(j)(4)(B) of the Act establishes that the Secretary is authorized but not required to provide for adjustments to the payment amounts under the prospective payment system as the Secretary deems appropriate to take into account the unique circumstances of IRFs located in Alaska and Hawaii.

Section 1886(j)(5) of the Act provides for the Secretary to publish in the **Federal Register**, on or before August 1 of each fiscal year, the classifications and weighting factors for the IRF case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year.

Section 1886(j)(6) of the Act provides that the Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of IRFs' costs that are attributable to wages and wage-related costs, of the prospective payment rates for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the IRF compared to the national average wage level for such facilities. Additionally, the Secretary is required to make a budget-neutral update to the area wage adjustment factor no later than October 1, 2001, and at least once every 36 months thereafter. The budget neutral update is based on information available to the Secretary (and updated as appropriate) of the wages and wage-related costs incurred in furnishing rehabilitation services.

Sections 1886(j)(7)(A), (B), (C) and (D) of the Act establish that there shall be no administrative or judicial review under sections 1869 and 1878 of the Act or otherwise of the establishment of case-mix groups, of the methodology for the classification of patients within these groups, the weighting factors, the prospective payment rates, outlier and special payments and area wage adjustments.

Section 125(b) of the BBRA provides that the Secretary shall conduct a study of the impact on utilization and beneficiary access to services of the implementation of the IRF prospective payment system. A report on the study must be submitted to the Congress not later than 3 years after the date the IRF prospective payment system is first implemented.

D. Policy Objectives in Developing a Prospective Payment System for Inpatient Rehabilitation Facilities

In developing the prospective payment system for IRFs, we identified policy objectives to evaluate the relative merits of the various policy options considered. The objectives we identified include the following:

- The creation of a beneficiary-centered payment system that promotes quality of care, access to care, and continuity of care and is administratively feasible while controlling costs.
- The provision of incentives to furnish services as efficiently as possible without diminishing the quality of the care or limiting access to care.
- The creation of a payment system that is fair and equitable to facilities, beneficiaries, and the Medicare program.
- The IRF prospective payment system must be able to recognize legitimate cost differences among various settings furnishing the same service; and any patient classification system used to group patients and services should be based on clinically coherent categories and, at the same time, reflect similar resource use. This would limit opportunities to "upcode" or "game" the system.

In its March 1999 Report to the Congress, MedPAC recommended in detail the type of prospective payment system it believed should be implemented for IRFs. As will be discussed further in this proposed rule, MedPAC's recommendations share much with our approach and policy objectives for the development of an IRF prospective payment system. Both HCFA and MedPAC believe the IRF prospective payment system should include the use of a comprehensive patient assessment instrument such as the MDS-PAC. HCFA and MedPAC both seek sufficient data to devise a patient classification system that effectively predicts resource use. HCFA and MedPAC believe the prospective payment system should be based on reliable and valid payment weights using functional and other diagnostic data. We agree with MedPAC's recommendation to use a per discharge unit of payment. Also, there is a shared belief that a discharge-based system provides an inherent incentive to discharge patients prematurely, and that this impetus could be overcome by implementing sound transfer and short-stay policies as part of the prospective payment system. Accordingly, we have taken steps to initiate the appropriate research to meet our immediate needs in developing this proposed rule and in implementing an IRF prospective payment system, as well as to collect data for the future that may reflect actual facility resources used to meet the needs of Medicare beneficiaries.

E. Discussion of Evaluated Options for the Prospective Payment System for Inpatient Rehabilitation Facilities

We used the objectives identified above in section I.D. of the preamble to evaluate policy options under consideration. The IRF prospective payment system we are proposing consists of the following major components: the patient assessment instrument; the patient classification system; the unit of payment; and the data used to construct the payment rates. A brief discussion of the major issues and options considered in preparing this proposed rule follows.

1. Patient Assessment Instrument

Data from a patient assessment instrument will allow us to: (1) Group patients into a CMG for payment under the prospective payment system; and (2) monitor the effects the prospective payment system has on the access and the quality of patient care. We have reviewed the data elements of the UDSmr and COS instruments and the MDS–PAC. We are proposing to use the MDS–PAC because we believe it contains the data elements that will better enable us to implement and administer the IRF prospective payment system required by section 1886(j) of the Act. In section III of this preamble, we will discuss in detail the reasons for our proposal to use the MDS–PAC patient assessment instrument.

2. Patient Classification System

The patient classification system is another important component of the prospective payment system. We initially considered two primary patient classification systems—one similar to the hospital inpatient prospective payment system and the other similar to the one used in the skilled nursing facility prospective payment system. Ideally, we would like to maintain similar classification systems for those entities delivering comparable services. We recognize a unified classification system would have to recognize patient needs and facilitate appropriate compensation across various post-acute care settings. Section 125(a) of the BBRA mandated the use of a per discharge payment unit and established classes of patients by functional-related groups. Therefore, in implementing the IRF prospective payment system we will use CMGs, consistent with section 1886(j)(2) of the Act.

3. Unit of Payment

Under the provisions of section 1886(j)(1)(D) as added by the BBA, we considered using either a per diem or a per discharge unit of payment. The vast majority of rehabilitation episodes begin with an acute event. The goal of inpatient rehabilitation is functional improvement that will allow the patient to return to independent living in the community, and, as evidenced by ongoing research, the majority of cases are, in fact, discharged to a community setting. Further, a discharge is also the current unit of payment under the TEFRA payment system. Finally, as noted above, the BBRA amends the Act to provide that the "payment unit" under the IRF prospective payment system is the discharge. Therefore, we propose to use a per discharge payment unit in accordance with section 1886(j)(1)(D) of the Act.

4. Data Used to Construct Payment Rates

We gave careful consideration in deciding which data to use to create the proposed relative weights and payment rates. Two sources of data were considered: (1) Medicare bill and corresponding UDSmr/COS data; and (2) patient level staff time measurements. The methodology we are proposing to use to calculate the relative weights of each CMG attempts to account for the cost variations among rehabilitation facilities and focus on variations among patient types. Further, the payment rates we are proposing are established in a budget neutral manner in accordance with section 1886(j)(3)(B) of the Act. Section V of the preamble describes the methodology that we are proposing to use to develop relative weights and payment rates.

Under the current payment system, payment limits are based on historical costs in a base period. Accordingly, payments to a given facility for a given year might not accurately reflect the facility's actual costs in that year. Creating a new payment system based on costs that are a product of the existing payment methodology raises concerns that these costs may not adequately reflect actual resource use. In order to develop a prospective payment system that is more reflective of the actual costs of delivering care, further work is needed to identify these costs and the services and resources required by patients. The IRF data from calendar years 1996 and 1997 bills and FY 1997 cost reports contain the most recent available data we have to create the new IRF prospective payment system rates.

We will continue to explore other options, including the use of staff time measurements, later Medicare bill and UDSmr/COS data, and other data to improve the explanatory power of the CMGs and to derive payments that more directly reflect the resources used to produce services delivered in the IRFs.

F. Inpatient Rehabilitation Facility Prospective Payment System—General Overview

In accordance with the requirements of section 1886(j) of the Act, we are proposing to implement a prospective payment system for IRFs that will replace the current reasonable cost-based payment system. The new prospective payment system will utilize information from a patient assessment instrument to classify patients into distinct groups based on clinical characteristics and expected resource needs. Separate payments are calculated for each group with additional case and facility level adjustments applied, as described below.

1. Patient Assessment Provisions

We are proposing to require IRFs to complete the MDS–PAC patient assessment instrument for all Medicare patients admitted or discharged on or after April 1, 2001. In accordance with our proposed assessment schedule, the MDS–PAC would be completed on the 4th, 11th, 30th, and 60th day from the admission date of a Medicare patient and upon the discharge of a Medicare patient. In general, a 3-day observation period would be required prior to the completion of the MDS–PAC. Data from the MDS–PAC will be used to—

- Determine the appropriate classification of a Medicare patient into a CMG for payment under the prospective payment system (using data from only the MDS–PAC completed on the fourth day);
- Implement a system to monitor the quality of care furnished to Medicare patients; and
- Ensure that appropriate case-mix and other adjustments can be made to the proposed patient classification system.

A computerized MDS–PAC data collection system will be developed. Facilities will be required to input the MDS–PAC data into the data system. In general, this system consists of a computerized patient grouping software program (grouper software) and data transmission software.

Upon the discharge of the patient, the existing Medicare claim form will be completed with the appropriate CMG indicated on the claim form so that the prospective payment can be made. The operational aspects and instructions for completing and submitting Medicare claims under the IRF prospective payment system will be addressed in a Medicare Program Memorandum once the final system requirements are developed and implemented.

Further details about the MDS–PAC patient assessment instrument and data collection system are discussed in section III of this preamble.

2. Patient Classification Provisions

We are proposing a patient classification system that uses case-mix groups called CMGs. The CMGs classify patient discharges by functional-related groups based on a patient's impairment, age, comorbidities, and functional capability. We began the development of the CMGs by using the FIM–FRG classification system and, with the most recent data available, we identified clinical aspects of the FIM–FRG system that could be improved to increase the ability of the CMGs to predict resource use. Further details of the proposed CMG classification system are discussed in section IV of this preamble.

3. Payment Rate Provisions

The payment unit for the proposed IRF prospective payment system for Medicare patients will be a discharge. The payment rates will encompass inpatient operating and capital costs of furnishing covered inpatient rehabilitation hospital services, including routine, ancillary, and capital costs, but not the costs of bad debts or of approved educational activities.

Beneficiaries may be charged only for deductibles, coinsurance amounts, and

non-covered services (for example, telephone, and television, etc.). They may not be charged for the differences between the hospital's cost of providing covered care and the proposed Medicare prospective payment amount.

The prospective payment rates that we are proposing to implement are determined using relative weights to account for the variation in resource needs among CMGs. We would adjust the payment rates to account for area differences in hospital wages. We would update the per discharge payment amounts annually. During FYs 2001 and 2002, the prospective payment system will be "budget neutral", in accordance with the statute. That is, total payments for IRFs during these fiscal years will be projected to equal 98 percent of the amount of payments that would have been paid for operating and capital costs of IRFs had this new payment system not been enacted. This is discussed in detail in section V of this preamble.

Based on our analysis of the data, we are proposing to adjust the payment rates for facilities located in rural areas and for costs associated with treating low income patients.

We are proposing to make additional payments to IRFs for discharges meeting specified criteria as "outliers." For the purposes of this proposed rule, outliers are cases that have unusually high costs when compared to the cases classified in the same CMG. We are proposing outlier payments that are projected to equal 3 percent of total estimated payments.

In conjunction with an outlier policy, we are proposing payment policies regarding short stay cases and for cases that expire. In addition, we are proposing to implement a transfer policy, consistent with section 1886(j)(1)(E) of the Act, as added by the BBRA. (A detailed description of these policies appears in section V of the preamble.)

4. Implementation of the Prospective Payment System

The statute provides for a 2-year transition period. During that time, 2 payment percentages will be used to determine an IRF's total payment under the prospective payment system as follows. For a cost reporting period beginning on or after April 1, 2001 and before October 1, 2001, the total prospective payment will consist of 66⅔ percent of the amount based on the current payment system and 33⅓ percent of the proposed Federal prospective payment. For a cost reporting period beginning during FY 2002, the total prospective payment will consist of 33⅓ percent of the amount based on the current payment system and 66⅔ percent of the proposed Federal prospective payment. For cost reporting periods beginning on or after October 1, 2002, Medicare payment for IRFs will be determined entirely under the proposed Federal prospective payment methodology.

G. Applicability of the Inpatient Rehabilitation Facility Prospective Payment System

This proposed rule would not change the criteria for a hospital or hospital unit to be classified as a rehabilitation hospital or a rehabilitation unit that is excluded from the hospital prospective payment systems under sections 1886(d) and 1886(g) of the Act, nor would it revise the survey and certification procedures applicable to entities seeking this classification. Accordingly, for cost reporting periods beginning on or after April 1, 2001, hospitals or hospital units that are classified as rehabilitation hospitals or rehabilitation units under subpart B of part 412 of the regulations will be paid under the proposed IRF prospective payment system (except for IRFs that are paid under the special payment provisions at § 412.22(c) of the regulations) as described below.

The following rehabilitation hospitals and rehabilitation units, that are currently paid under section 1886(b) of the Act, would be paid under the proposed IRF prospective payment system for cost reporting periods beginning on or after April 1, 2001:

1. Excluded Rehabilitation Hospitals and Rehabilitation Units

We are proposing that the IRF prospective payment system apply to inpatient rehabilitation services furnished by Medicare participating entities that are classified rehabilitation hospitals or rehabilitation units under §§ 412.22, 412.23, 412.25, 412.29 and 412.30.

2. Excluded Rehabilitation Hospitals and Rehabilitation Units Outside the 50 States and the District of Columbia

Excluded rehabilitation hospitals and rehabilitation units located in Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Marianas, and the District of Columbia will be subject to the IRF prospective payment system.

The following hospitals are paid under special payment provisions, as described in § 412.22(c), and, therefore, are *not* subject to the proposed IRF prospective payment system rules:

- Veterans Administration hospitals.
- Hospitals that are reimbursed under State cost control systems approved under 42 CFR part 403.
- Hospitals that are reimbursed in accordance with demonstration projects authorized under section 402(a) of Public Law 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Public Law 92–603 (42 U.S.C. 1395b–1 (note)).

II. Current Research To Support the Establishment of the Inpatient Rehabilitation Prospective Payment System—Update of the RAND Analysis

A. Overview of the Updated Work for the Proposed Rule

In July 1999, we contracted with the RAND Corporation (RAND) to update their previous research discussed in section I of this proposed rule. The update included an analysis of FIM data, the FRGs, and the model rehabilitation prospective payment system using more recent data from a greater number of IRFs. The purpose of updating the previous research is to develop the underlying data necessary to assist us in designing, developing, implementing, monitoring, and refining the proposed Medicare IRF prospective payment system based on case-mix groups. In addition, RAND expanded the scope of their previous research to include the examination of several payment elements, such as comorbidities and facility-level adjustments, as well as focus on implementation issues, including evaluation and monitoring. The update is restricted to Medicare patient data and the payment system is designed for payment of Medicare inpatient operating and capital costs only.

Specifically, for this proposed rule, RAND performed the following tasks:

- Constructed an updated data file, using the most recent data available from UDSmr, COS, HCFA, and other data sources.
- Determined the extent to which the UDSmr and COS data are representative of the Medicare population.
- Identified factors or variables that may be used to help us design and implement the payment system.
- Developed data on the elements of the payment system regarding the patient classification system, relative weights and payment rates for each case-mix group, facility-level adjustments, and patient-level adjustments.
- Developed data to examine the joint performance of all of the payment system elements by simulating facility payments for our analysis of the impact of implementing the payment system.

- Developed data to assist in identifying specific issues in connection with implementing the payment system.
- Presented options regarding the design and development of a system to monitor the effects of the payment system and other changes in the health care market on IRFs and on other post-acute care providers, including home health agencies and skilled nursing facilities, by measuring factors such as access, utilization, quality, and cost of care.

B. Construction of Data File for Analysis

Using the methodology in its previous research, RAND constructed a data file that was used to develop the proposed CMG patient classification system and the resulting payment weights, rates, and payment adjustments using more recent data. The analysis of this data file forms the basis of our discussion on the patient classification methodology and the structure of the payment system proposed in this rule. We expect that further analysis of the data file and review of the comments that we receive in response to this proposed rule may result in refinements to some patient CMGs and corresponding weights and rates.

C. Description of Sources of the Data File

The essential sources of the data file are Medicare program information and patient case-mix data. The Medicare program information includes patient discharge files (patient demographic, clinical, and financial information) and facility-level files (facility characteristics and financial information). Patient case-mix data is collected by IRFs using a patient assessment instrument. We are proposing to require the use of the MDS–PAC patient assessment instrument that includes patient case-mix data similar to the data collected on the UDSmr and COS, as described in section III of this preamble. However, the availability of MDS–PAC data records is limited to the sample of providers that participated in the pilot and field tests during its development. Therefore, to initially establish the IRF prospective payment system, we will be using a larger number of data records (as compared to the 1994 data used in RAND's previous study) from UDSmr and COS to represent more adequately the total number of IRFs.

1. Medicare Program Data

For this proposed rule, RAND used calendar year 1996 and 1997 Medicare Provider Analysis and Review (MEDPAR) files. The MEDPAR file contains the records for all Medicare hospital inpatient discharges (including discharges for rehabilitation facilities). The data in the MEDPAR file include patient demographics (age, gender, race, residence zip code), clinical characteristics (diagnoses and procedures), and hospitalization characteristics (admission date, discharge date, days in intensive-care wards, charges by department, and payment information).

The Medicare cost report data is contained in the Health Care Provider Cost Report Information System (HCRIS). The cost report files contain information on facility characteristics, utilization data, and cost and charge data by cost center. For this proposed rule, RAND used the HCRIS file containing the most current available cost data for cost reporting periods beginning during FYs 1996 and 1997. Supplementary information to this file includes—(1) The wage data for the area in which an IRF is located, (2) data on the number of residents assigned to rehabilitation units and the distribution of resident time across inpatient and outpatient settings, (3) data on the number of Medicare cases at each IRF that represent Supplemental Security Income (SSI) beneficiaries, and (4) information about payments under the current reasonable cost payment system.

The Online Survey, Certification and Reporting System (OSCAR) file retains a list of all IRFs that are currently Medicare certified. For this proposed rule, RAND used the OSCAR file to identify instances in which we may be missing facility-level data.

2. Patient Case-Mix Data

We entered into agreements with the University at Buffalo Foundation Activities, Inc. and Caredata.com, Inc. to retrieve UDSmr and COS data, respectively, for RAND's updated research. For this proposed rule, RAND used both UDSmr and COS data that describe rehabilitation stays in participating hospitals for calendar years 1996 and 1997. The data include demographic descriptions of the patient (birth date, gender, zip code, ethnicity, marital status, living setting), clinical descriptions of the patient (condition requiring rehabilitation, ICD–9–CM diagnoses, functional independence measures at admission and discharge) and the hospitalization data (encrypted hospital identifier, admission date, discharge date, charges, payment source, and an indicator of whether this is the first rehabilitation hospitalization for this condition, a readmission, or a short stay for evaluation).

D. Description of the Methodology Used To Construct the Data File

Under a separate contract, we contracted with RAND in September 1998 to construct a data file that linked the 1996 and 1997 UDSmr and COS patient records with patient records on the respective MEDPAR files that describe the same discharge. Under this contract, RAND determined the Medicare provider number(s) that correspond to each UDSmr/COS facility code. Next, RAND matched the UDSmr/COS and MEDPAR patients within the paired facilities.

Because of the proprietary and sensitive nature of the UDSmr and COS patient records, certain data fields that specifically identify the patient and the servicing IRF were encrypted. Therefore, as in RAND's previous study (see section I of this preamble), it was necessary to subject the UDSmr, COS, and MEDPAR records to a sophisticated and complex matching probability technique. The result produces the most statistically valid match of patient/facility records and a data file that contains the characteristics of each Medicare beneficiary and his or her servicing IRF.

Because of the complex scope and nature of the matching technique used, we have included in Appendix A of this proposed rule a technical discussion of each step taken to create the data file. The tables contained in Appendix A show the actual effects of applying the matching technique on both the patient and facility records.

E. Representativeness of the Data File

It is extremely important to examine the quality of the resulting match, including the extent to which the linked MEDPAR and UDSmr/COS records are representative of the MEDPAR universe. After constructing the data file described in Appendix A, we believe that the file contains the best available data to construct a prospective payment system for all IRFs within the parameters of the statutory requirements. Our analysis of the data file allows us to develop the proposed CMG patient classification and payment system, described below in sections IV and V of this preamble.

F. Analyses To Support Future Adjustments to the Payment System

The principal goal of the analysis described above is to determine the extent to which measurable patient characteristics permit classification of patients into identifiable groups that accurately predict the use of resources in inpatient rehabilitation facilities. The

research to date indicates that CMGs are effective predictors of resource use as measured by proxies such as length of stay and charges. The use of these proxies is necessary because data that measures actual nursing and therapy time spent on patient care, and other resource use data, are not available. The scientifically structured collection of data on patient characteristics and patient-specific resource use may enhance our ability to refine the CMGs in a manner that supports our policy objectives for implementing a IRF prospective payment system. Accordingly, we have contracted with Aspen Systems Corporation to collect actual resource use data in a sample of IRFs. The data collected by Aspen will be submitted to RAND for analysis to determine if it can be used to support future refinements to the CMGs.

III. The Minimum Data Set for Post-Acute Care (MDS–PAC) Patient Assessment Instrument

A. Implementation of the MDS–PAC

Under section 1886(j)(2)(D) of the Act, "The Secretary is authorized to require rehabilitation facilities that provide inpatient hospital services to submit such data as the Secretary deems necessary to establish and administer the prospective payment system under this subsection." The collection of patient data is indispensable for the successful development and implementation of the IRF prospective payment system. A comprehensive, reliable system for collecting standardized patient assessment data is necessary for: (1) The objective assignment of Medicare beneficiaries to appropriate IRF CMGs; (2) the development of a system to monitor the effects of an IRF prospective payment system on patient care and outcomes; (3) the determination of whether future adjustments to the IRF CMGs are warranted; and (4) the development of an integrated system for post-acute care in the future.

The MDS–PAC is the standardized patient assessment instrument we are proposing to use under the IRF prospective payment system. We acknowledge that the nature of the patient data we would collect may evolve over time. We believe that the present structure of independent Medicare post-acute benefits, which includes payment systems, coverage requirements, and quality assessment instruments based primarily on site of care, may provide incentives that result in reduced access and choice for beneficiaries and may contribute to inappropriate care. As a result of this fragmentation in the payment and delivery of post-acute care under Medicare, we are reevaluating the payment and delivery of post-acute services with the objective of developing a more integrated approach focusing on the entire post-acute episode of care and each patient's care needs regardless of setting. We believe the MDS–PAC will help to move Medicare toward our long term objective of creating a more integrated post acute care payment and delivery system that facilitates improved quality, choice and access to care for beneficiaries.

Our goal of ultimately establishing a common system to assess patient characteristics and care needs for post-acute providers was endorsed by MedPAC in its March 1999 report to the Congress. MedPAC recommended that the Secretary collect a core set of patient assessment information across all post-acute settings. (Recommendation 5A). In the narrative supporting this recommendation, MedPAC "commends HCFA's development of the MDS–PAC and encourages its refinement and use. The instrument will facilitate greatly comparisons of patient characteristics and service use across inpatient post-acute settings. Insights gleaned from these data should inform future prospective payment system policies, as well as longer term policy considerations about post-acute care." We share MedPAC's opinion of the utility of a common patient data system across post-acute settings. We believe that future refinements in the design and application of the MDS–PAC will provide us with essential information to inform policy decisions related to post-acute care users and their characteristics, quality, and payment.

The implementation of the per-case prospective payment system based on the "functional-related group" methodology requires the use of a standardized data collection instrument that contains the elements required to classify a patient into a distinct CMG. To classify a patient into a distinct CMG the data collection instrument must first assign the patient into one of the various high level categories that are based principally on ICD–9–CM diagnoses plus some additional patient information. These high level categories are called Rehabilitation Impairment Categories. After that initial classification step a patient's comorbidity data (which is also based on the ICD–9–CM codes), the level of the patient's impairment as determined by the patient's motor and cognitive function scores, and the age of the patient are used to classify a patient into a distinct CMG within the higher level Rehabilitation Impairment Group. Additional data elements are required to identify the patient and for monitoring the quality of care furnished to patients in IRFs.

Several approaches to the collection of these data elements are available. These include—(a) the development of a new data collection instrument, the MDS–PAC (as proposed in this rule); (b) adoption of an instrument closely modeled on the Uniform Data Set for Medical Rehabilitation (UDSmr) and the Caredata.com Clinical Outcome Set (COS) that would contain the needed data elements exactly as they have been recorded in the past and as used in the development of the FIM–FRG classification of patients; and (c) the incorporation verbatim into the new instrument (MDS–PAC) of the UDSmr/COS data elements that are relevant to payment. We are proposing the first option, the MDS–PAC, for the reasons outlined in the section below.

1. Use of MDS as Foundation

The basis of the MDS–PAC system is the Minimum Data Set (MDS)/Resident Assessment Instrument (RAI). The MDS/RAI was one of the key provisions of the nursing home reform legislation enacted by the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. 100–203, and the first standardized assessment instrument that the Congress required to be used in a post-acute care setting. The MDS is a core set of screening and assessment elements, including common definitions and coding categories, which forms the foundation of a comprehensive assessment (the RAI). OBRA mandated that we develop the MDS and require its use for all residents of certified long-term care facilities as a condition of participating in Medicare or Medicaid.

We originally implemented the MDS/RAI in 1990 through 1991 in the approximately 17,000 certified long-term care facilities nationwide. The MDS/RAI has been used by long-term care facilities to assess all residents at specific points during their stay, regardless of payer source. Residents are assessed upon admission to the facility, after experiencing a significant change, and at least annually, with a review of key items required every 90 days. Regulations requiring all certified long-term care facilities to encode and transmit MDS data to the State and HCFA became effective June 22, 1998 ((62 FR 67174) "Resident Assessment In Long Term Care Facilities"). As of March 3, 2000, there were 23,829,196 records for 4,576,748 residents submitted to our national MDS repository.

Long-term care facilities use the assessment system as the basis of developing an individualized plan of care. However, the design of our long-term care facility payment and quality of care systems relies on use of the resident characteristic, health status, and service use information derived from the MDS to support a number of our programs. For example, the SNF prospective payment system implemented in July 1998 relies on MDS data to classify patients into the appropriate case-mix categories. In addition, in July 1999, we began to use MDS data to generate quality indicators for use in the long-term care facility survey process. Also, long-term care facilities may request real-time MDS-based quality indicator reports, from the HCFA-sponsored State-level MDS data system, that compare the facility's performance in key care areas with the performance of other facilities within the State. These reports can be used for internal quality assurance and improvement activities. Our Peer Review Organizations (PROs) are using MDS data to conduct long-term care facility quality improvement activities in a number of areas, including pain management, pressure ulcers, and urinary incontinence.

In keeping with our commitment to the nursing home industry to refine the MDS/RAI system over time to incorporate advances in assessment technology and changes in the nursing home population, we developed a second generation instrument, known as the MDS version 2. The MDS 2 was implemented nationally in 1996. Shortly thereafter, we agreed to begin work on a post-acute version of the MDS, in response to the long-term care industry's concerns that the MDS had not been constructed to address the characteristics and needs of the increasing numbers of short stay patients admitted to SNFs for rehabilitation and medically complex care.

Before we started work on the MDS–PAC, however, we made a policy decision that our goal was to establish a common instrument to assess patients receiving services by all Medicare institutional post-acute providers. This broadened the scope of the instrument to include freestanding rehabilitation hospitals and hospital-based rehabilitation units, as well as long-term care hospitals. Our policy decision was based on a belief that there is considerable overlap among the patient populations and services rendered by post-acute care providers. The March 1999 MedPAC report to Congress indicated that prior distinctions in the types of patients and services provided across settings have become less clear for a number of reasons (p. 82), and that lack of uniform patient-level data across settings severely restricts our ability to identify where differences and overlaps occur.

This hypothesis regarding the overlap of patient populations was tested by collecting MDS 2 data for patients of rehabilitation and long-term care hospitals and comparing that data with MDS records for SNF patients. The SNF database included records for long-stay nursing home residents who had been readmitted after a hospitalization and now qualified for a period of skilled care. There were 1,535 SNF patient records collected from initial MDS assessments in 1996. Of these patient records, 517 (34 percent) of the patients were expected to be discharged within 30 days of admission. An additional 248 (16 percent) were expected to be discharged in 31 to 90 days. For the remaining patient records, discharge status was unknown, not anticipated or (in a limited number of cases) the discharge variable was missing. This activity was also conducted in order to provide us with information about the characteristics, health status, and service utilization of rehabilitation and long-term care hospital patients, as part of our initial activities to inform development of the MDS–PAC.

Staff from participating rehabilitation hospitals, rehabilitation units of acute care hospitals, and long-term care hospitals were trained in the use of the MDS 2.0, and were asked to complete it for a sample of their newly admitted patients during June through October 1998. Data were received for 614 patients in 26 rehabilitation hospitals and units, and for 479 patients in 26 long-term care hospitals. Of the 52 providers participating in the baseline data collection, 38 were recruited using a random sample of Medicare-certified providers.

We found many similarities in the characteristics, health status, medical diagnoses, and service utilization patterns of SNF and rehabilitation hospital patients. We note that our focus groups indicated to us that many rehabilitation hospitals and self-proclaimed "subacute" SNFs have as a criteria for admission the patient's potential ability to be discharged from the facility within a certain time period. Thus, for comparative purposes we differentiated between the MDS records of SNF patients expected to be discharged and those of SNF patients not expected to be discharged. As illustrated below by Table 1C, patients in rehabilitation hospitals and SNF patients who were expected to be discharged demonstrated similar levels of activity of daily living (ADL) overall impairment, as measured by the MDS 2, while a greater number of SNF patients who were not expected to be discharged experienced impairment in "late loss" ADLs or were fully dependent.

TABLE 1C.—PERCENT OF PATIENTS WITH ADL IMPAIRMENT BY FACILITY TYPE

ADL score (hierarchical)	LTC hospital	Rehab hospital	SNF discharge expected	SNF discharge not expected
0—Independent	3.1	.8	4.2	3.4
1—Supervision	4.4	9.5	6.5	5.6
2—Limited	12.8	25.4	29.3	17.9
3—Early Loss ADL—extensive or dependent	4.2	14.8	8.2	9.8
4—Mid late loss ADL—extensive assistance late loss ADL	8.0	21.1	20.9	15.9
5—Mid late-some late loss ADL dependency	34.8	22.5	27.3	33.8
6—Full dependency	32.9	5.9	3.7	13.5

In addition, fewer SNF patients were reported to have symptoms of delirium as compared to rehabilitation hospital patients. While the number of SNF patients not expected to be discharged who experienced memory problems was higher, the overall cognitive performance score (a composite measure based on several MDS items) for patients across the four populations was remarkably similar, except for the higher number of long-term care hospital patients rated as a "6" (that is, very severely cognitively impaired). A comparison of cognitive impairment by facility type can be seen in Table 2C.

TABLE 2C.—PERCENT OF PATIENTS WITH COGNITIVE IMPAIRMENT BY FACILITY TYPE

Condition	LTC hospital	Rehab Hospital	SNF discharge expected	SNF discharge not expected
Delirium Symptoms—New				
Easily Distracted	12.0	15.4	3.1	1.7
Altered Perceptions	9.7	5.9	2.6	2.2
Disorganized Speech	8.8	10.5	2.4	2.2
Restlessness	13.6	8.9	2.0	3.0
Lethargy	14.4	9.2	4.0	4.0
Mental Function Varies	17.2	13.5	5.2	4.0
Cognitive Performance Scale				
0=Intact	40.5	49.3	46.0	17.9
1=Borderline Intact	14.3	13.6	16.7	17.6
2=Mild	7.2	10.2	12.0	11.3
3=Moderate	9.1	13.0	16.3	26.2
4=Moderate Severe	4.0	3.3	4.1	10.5
5=Severe	3.0	5.7	3.3	8.9
6=Very Severe	21.9	4.9	1.6	9.6
Memory				
Memory Problem—short term	32.8	36.2	37.0	61.0
Memory Problem—long-term	29.9	23.0	23.1	46.2
Memory Problem—situational	37.5	12.4		

We did not find significant differences across care settings in many of the disease diagnoses recorded in section I of the MDS, although long-term care hospital patients had more cases of diabetes, cardiac dysrhythmia, post heart surgery, peripheral vascular disease, paraplegia, respiratory conditions, renal failure, and antibiotic-resistant infections (Table 3C).

TABLE 3C.—PERCENT OF PATIENTS WITH SPECIFIC CONDITIONS BY FACILITY TYPE

Condition	LTC hospital	Rehab hospital	SNF discharge expected	SNF discharge not expected
Diseases				
Diabetes	37.0	25.0	27.0	24.2
Hyperthyroidism	0.4	0.7	0.7	0.3
Hypothyroidism	9.0	8.2	8.0	6.8
Arteriosclerotic heart disease	17.3	14.7	15.7	18.3
Cardiac dysrhythmia	21.1	11.3	14.7	17.2
Post heart surgery	24.0	13.0	6.9	6.2
CHF	23.0	8.5	21.6	22.9
Deep vein thrombosis	4.8	3.1	11.4	1.8
Hypertension	37.6	45.8	47.9	46.5
Hypotension	2.8	1.3	1.5	1.0
Peripheral vascular disease	15.0	9.0	8.6	6.0
Other cardiovascular disease	14.8	10.3	19.5	20.8
Arthritis	11.3	20.1	25.4	21.9
Hip fracture	6.7	11.6	14.1	7.4
Missing limb	5.4	4.9	3.0	3.5
Osteoporosis	7.1	3.6	8.0	10.5
Pathological bone fracture	1.3	1.8	1.0	1.5
Alzheimer's	1.5	0.5	4.1	12.3
Aphasia	2.3	6.5	3.8	7.2
CP	0.2	0.7	....	....
CVA	23.8	34.6	22.2	27.7
Other dementia	7.9	2.1	13.9	31.5
Hemiplegia/hemiparesis	12.9	27.8	8.8	10.1
MS	2.1	1.1	0.1	0.7
Paraplegia	3.0	2.1	0.3	0.3
Parkinson's	2.5	1.6	3.3	4.0
Quadriplegia	3.3	2.6	0.1	0.2
Seizure disorder	6.5	5.2	4.5	4.5
TIA	1.0	23	4.0	4.0
Traumatic brain injury	4.2	7.0	0.3	0.3
Anxiety disorder	4.6	5.2	7.8	6.6
Depression	10.2	14.4	14.6	13.6
Manic depression	0.8	1.1	0.9	0.7

TABLE 3C.—PERCENT OF PATIENTS WITH SPECIFIC CONDITIONS BY FACILITY TYPE—Continued

Condition	LTC hospital	Rehab hospital	SNF discharge expected	SNF discharge not expected
Schizophrenia	0.8	0.5	1.0	1.5
Asthma	3.5	3.1	2.0	1.5
Emphysema/COPD	29.0	10.1	19.3	17.2
Pulmonary failure	24.0	4.3		
Cataracts	2.9	3.3	6.5	5.5
Diabetic retinopathy	1.9	1.8	0.7	0.5
Glaucoma	3.8	2.9	5.9	4.0
Macular degeneration	1.5	0.7	1.2	0.8
Allergies	9.4	15.2	28.2	28.9
Anemia	15.7	11.9	18.2	19.5
Cancer	12.1	7.5	14.4	15.3
Renal failure	14.0	4.7	4.9	5.3
Amputated limb	5.4	5.0	N/A	N/A
Post surgery—elective hip	4.0	13.0		
Antibiotic resistant infection	16.7	2.8	1.0	0.5
Pneumonia	19.2	3.1	8.5	6.5
UTI	21.9	19.9	21.1	23.1
Bladder Continence				
Continent, no catheter	28.0	60.9	53.4	45.6
Continent, catheter	52.1	15.2	N/A	N/A
Some incontinence	50.8	31.6	36.6	54.4
Bowel Continence	48.0	75.0	71.3	47.9
Complications				
Inability to lie flat—loss of breath	44.0	6.5	6.9	6.2
Shortness of breath—exertion	52.0	21.7		
Shortness of breath—at rest	32.0	0.0		
Difficulty coughing/clearing airways	40.0	2.2	N/A	N/A
Recurrent respiratory infection	28.0	2.2		
Surgical wound	48.0	56.5		
Pain				
None	45.4	25.6	36.0	58.8
Less than daily	17.3	19.5	31.0	22.3
Daily	37.3	55.0	33.0	18.9
Health Complications				
Syncope	2.3	1.0	.07	0
Unsteady Gait	26.2	52.5	48.0	40.1
Limited ROM—Arm	20.7	9.3	6.3	12.5
Limited ROM—Hand	18.0	7.2	3.5	8.8
Limited ROM—Foot	26.4	10.5	5.7	14.7
Pressure Ulcers—Any (stage 1–4)	36.0	17.9	17.7	21.6
Expectations (Rehabilitation Potential)				
Patient believes self could be more independent	53.7	74.5	45.1	16.2
Staff believes patient could be more independent	59.1	76.4	50.9	31.3
Patient able to perform tasks slowly	26.1	33.9	12.7	12.4
Major difference in ADLs AM and PM	8.1	16.7	1.9	3.2
Behavior				
Wander	3.6	4.1	2.8	9.1
Verbally abusive	3.4	3.8	3.0	5.4
Physically abusive	1.8	2.1	1.4	5.9
Socially inappropriate	3.2	4.8	4.2	8.6
Resists care	12.2	6.6	9.8	16.3

The diagnostic profiles of patients in rehabilitation hospitals and SNFs were similar, although rehabilitation hospitals treated a higher percentage of patients with strokes, hemiplegia/hemiparesis, and traumatic brain injury and fewer patients with congestive heart failure and emphysema or chronic obstructive pulmonary disease. Both bladder and bowel continence levels were similar for rehabilitation hospital and SNF patients who were expected to be discharged. Pain levels for rehabilitation hospital and SNF patients were also similar overall, although more

SNF patients were reported to experience pain less frequently than daily and more rehabilitation hospital patients were assessed as having daily pain. Pressure ulcer rates for rehabilitation hospital and SNF patients were comparable, as were the number of patients with unsteady gait and limitations in range of motion. Rehabilitation hospitals reported a higher use of restraints. Rehabilitation hospital and SNF patients who were expected to be discharged had a similar number of behavioral symptoms, which were less overall as compared to the number of behavioral symptoms experienced by SNF patients not expected to be discharged.

These results confirmed anecdotal information reported by rehabilitation hospital and SNF clinicians during our focus groups. While Medicare coverage policies allow payment to SNFs for a wider range of patients than rehabilitation hospitals, both groups reported that their patient populations had changed over the past few years, leading to some convergence in the types of patients treated by rehabilitation hospitals and SNFs. Both reported a large increase in the number of comorbidities and clinical complexities for patients admitted primarily for rehabilitative services, saying that "uncomplicated" patients were no longer admitted for inpatient rehabilitation, (instead, for example, "uncomplicated" patients requiring rehabilitation after a hip fracture now generally receive therapy in their homes).

It is our view that any system used to classify rehabilitation patients should be based on the same measures of a patient's health status and care needs as are used in other segments of the post-acute care industry. However, for purposes of this proposed rule, we are most concerned that the classification instrument work well with IRF patients. Given our use of the MDS in SNFs, it is logical to extend an MDS-based system to IRFs.

We are developing version 3 of the MDS/RAI, which we envision as containing sections for specific populations (for example, traditional, long stay resident; short-stay patient; those receiving palliative or end of life care; and pediatrics).

2. Other Options

We recognized that many rehabilitation hospitals already use a patient assessment instrument that contains the functional independence measures (FIM). The FIM were developed by researchers who were funded by a consortium of rehabilitation professional associations and the Department of Education, at the State University of New York (SUNY) at Buffalo in the 1980s. The FIM are contained in a patient assessment instrument that is marketed by the Uniform Data System for Medical Rehabilitation (UDSmr) maintained by SUNY/Buffalo. Caredata.com Clinical Outcome System (COS) used to market a patient assessment instrument that contained the FIM, but we have been notified that Caredata.com has discontinued its business related to FIM reporting as of July 2000. The patient assessment instrument marketed by UDSmr is proprietary.

Many rehabilitation providers are clients of UDSmr. Our 1997 data shows that approximately 68 percent of Medicare patients had a UDSmr or COS data file, indicating that these patients were assessed with the FIM. There is extensive experience with the FIM contained in the UDSmr and COS patient assessment instruments and the uses of the FIM data. This is documented by a substantial list of publications produced both in the United States and overseas (for example, Sweden and Japan), by the developers of the system, and by independent investigators.

The developers of the FIM offer a certification course to train assessors in the use of the instruments. This results in very high rates of intra and inter rater reliability, with Cronbach alpha coefficients of more than 0.9 for both the motor and cognitive subscores. The Cronbach alpha coefficient is a statistical measure of inter-rater reliability with perfect reliability equal to 1.0. Therefore, a score of 0.9 indicates a very high level of inter-rater reliability.

The MDS-PAC is a modification of the MDS, the patient assessment instrument developed for use in nursing facilities. The principal objective of the MDS is to facilitate care planning through a description of the needs of the patient for services. In contrast, the principal objective of the FIM is to assess person level disability in the inpatient medical rehabilitation setting.

The strength of the FIM assessment instrument is that it is a well-evolved and extensively tested approach to the assessment of the critical components of care provided by IRFs, the impact on the patient improvement in functional capacity, and the purpose of the care provided by the IRFs. The variations among facilities in the difference between the observed and expected improvement in function are used as indicators of the quality and the effectiveness of the facilities. The organization that analyzes FIM data for providers generates benchmark data that allows IRFs to compare the outcome of their performance on the functional independence measures relative to other providers participating in the system.

One drawback of the FIM assessment instrument is that it is specifically focused on functional performance. Information is collected only on the matters directly related to functional performance and only at admission and discharge, and, when possible, 6 months after discharge. There is, therefore, a lack of detail on the needs of the patient or on the evolution of the condition of the patient during the course of the admission. However, given that the mean length of stay in an IRF is 15.81 days (median length of stay is 14 days), we are specifically soliciting comments on the benefits of mid-stay assessments.

We are not proposing to use the FIM assessment instruments marketed by either the UDSmr or COS as the basis for an IRF prospective payment, because of our desire to have a common measurement instrument across different post-acute provider settings. Our proposal to use an MDS-based approach comes from our conviction that the use of common item labels and definitions across different provider settings would be essential to monitoring patient care across different provider settings. While we recognize that there are differences between the MDS and the MDS–PAC, our intention is, at some point in the future, to reconcile these differences. Structuring the IRF assessment instrument consistent with the MDS would allow for comparison of patients across different institutional settings. The MDS–PAC collects information on many of the same activities or functional measures as the FIM but defines these activities more specifically in some cases. It would also help facilitate continuity of care in that comparable baseline data would accompany the patient's transfer from one setting to the other. Standardized information across provider types would also be extremely useful in comparing patient characteristics and potentially the appropriateness of care in different settings that serve the same populations. This is especially important since analysis by RAND (1997) shows that costs for the same services vary significantly by provider.

When we began to develop the MDS in the 1980s, the possibility of using the FIM ADL scoring schema was considered. However, field experience demonstrated that nursing home staff did not feel comfortable making the level of distinctions required in the FIM.

The FIM serve as a functional-based system designed to capture specific aspects of ADL performance. Therefore, the FIM's ability to measure items that are not functionally related, such as cognition, may be problematic. For example, in order to score communication on the FIM, compromises must be made to blend cognitive and performance ideas into a single construct. The scoring schema used in the MDS–PAC allows the instrument to describe a concept like communication from a functional performance perspective as well as from the cognitive perspective based on how much caregivers have to intervene to help compensate for the patient's communication deficits.

UDSmr requires that users of the FIM (for example, therapists) be trained. An evaluation of the FIM scoring will be performed by RAND before a final rule is published. FIM scoring rules assign the lowest (most dependent) value to missing data which is likely to bias scores downward, especially upon admission when data are more likely to be missing. The payment implications may generally be to place patients in a more service intensive CMG. The MDS–PAC addresses this by having a separate coding entry (8) for activities that do not occur rather than instructing users to code with the most dependent level.

An independent team of technical experts highlighted areas of concern regarding the FIM's accuracy in predicting costs for patient care. Panelists were concerned that the scoring of some items, such as cognitive functioning, gave raters a great deal of discretion in determining what evidence was used in the assessment and how often the behavior had occurred. These technical experts also agreed that a functional status assessment for payment purposes should be based on clinical observation of performance rather than on the rater's assessment of the patient's capacity to perform the task.

The MDS–PAC uses the same FIM constructs as were originally designed by the UDSmr team but rewords them in such a way so that these items better fit into the context of the MDS instrument. In addition, the item language and definitions and instructions are integrated into the instrument. The administration of the MDS–PAC at more than one point in a patient's stay will permit assessment of patient changes during that episode of treatment and may lead to possible refinements to the patient classification system.

We seek public comment on our proposal to use the MDS–PAC as the assessment instrument for the IRF prospective payment system, including: comments and supporting data regarding the additional burden and cost, if any, associated with this instrument; the suitability of the instrument for the rehabilitation setting and as a model for other post-acute care settings; views on whether the instrument has been properly tested and validated for industry-wide use; and the utility and reliability of the quality data items contained in the instrument.

3. Combining the MDS–PAC and the FIM

The MDS–PAC covers several topics, for example, nutrition, swallowing, and pain, that are either not included in the FIM or not covered in sufficient detail in the FIM for clinical assessment purposes, and that are not currently used in classifying patients for payment. An alternative to using the MDS–PAC would be to retain the non-payment items from the MDS–PAC and incorporate the FIM items for patient classification into CMGs. Because of our concerns, as outlined above (for example, compatibility with assessments in other settings), we have rejected this option for purposes of this proposed rule and propose to use payment-related questions that are compatible with the FIM.

However, the FIM assessment system has been under development since the mid 1980s and is currently recognized as a valid and reliable instrument to measure impairments in IRFs. The FIM are in current and increasing use in rehabilitation facilities, the data analysis being performed by UDSmr and by COS, with the data analysis organization depending on which of these two organizations the IRF has selected. Thus, there has been extensive training in and experience with the data elements, particularly the functional components, that enter into the construction of the CMGs. We will be testing whether the MDS–PAC results in patient classifications that are equivalent to the classifications that occurred with the FIMs (that is, the assessment instruments that were used to design the payment system).

If the tests show that patients are classified differently using the MDS–PAC, HCFA will, in the final rule, incorporate the phrasing, definitions, and order of the items required by the payment system, based on the FIM, replacing the proposed equivalent sections of the MDS–PAC. This would meet our objective to field the more extensive instrument to provide a more complete picture of the evolution of condition of the patient and of the care provided in the IRF, but also to retain confidence in the validity of the classification of the patient. Using the phrasing, definitions, and order of the items would minimize the effect on reliability and validity inherent in the design of new data collection instruments.

4. The MDS-PAC Development Process

Under contract, a team led by John N. Morris, Ph.D., at the Hebrew Rehabilitation Center for the Aged, began to develop the MDS-PAC in 1997. This team played a key role in designing the original MDS/RAI system and MDS 2.

The MDS–PAC development process relied on broad-based input from a large and diverse constituency, representing rehabilitation facilities, SNFs, long-term care hospitals, and the viewpoints of individual and corporate providers, clinical disciplines, consumers, States, other Federal agencies, and researchers. Examples of organizations representing rehabilitation providers and clinicians include the American Medical Rehabilitation Providers Association, the American Hospital Association (representing hospital-based rehabilitation units), the Federation of American Health Systems, the Commission on Accreditation of Rehabilitation Facilities, the National Head Injury Foundation, the Uniform Data System for Medical Rehabilitation, the Association of Academic Physiatrists, and the American Academy of Physical Medicine and Rehabilitation.

Representatives and staff of over 40 national organizations and agencies with a stake in the MDS–PAC were brought together in a technical expert panel, which met at the outset of the MDS–PAC development process, and at key intervals thereafter. The purpose of the technical expert panel was to provide us with advice on technical and operational issues associated with assessment of post-acute patients. We requested that technical expert panel representatives disseminate project information to their constituents, coordinate input from their members back to our project team, and assist with identifying facilities to participate in field testing of the instrument. We solicited comments from technical expert members on several drafts of the MDS–PAC, and also conducted a mailing that solicited comments from over 1100 facilities and individuals, identified in part by technical expert panel members. We also posted a project summary and various drafts of the MDS–PAC on our MDS web site. In addition, the project team reviewed the comments we received on the assessment instrument.

We began development of the MDS–PAC by gathering baseline information through focus groups, a provider survey, and collection of MDS data within rehabilitation hospitals/hospital-based units and long-term care hospitals. We held two focus groups, consisting of physicians, nurses, and therapists who were involved in patient assessment and care planning on a daily basis within rehabilitation hospitals and units, SNFs, and long-term care hospitals. The clinicians who participated in the focus groups were all nominated by the national associations representing rehabilitation hospitals, SNFs, and long-term care hospitals. The purpose of the focus groups was to solicit real-world input regarding current assessment and care planning practices for post-acute patients.

We also conducted a survey of SNF, rehabilitation hospital, and long-term care hospital providers to gather information about their patient populations; assessment and care planning practices, care processes, care delivery models, and the availability of various types of specialized staff. Facility staff were asked to comment on the perceived clinical utility of MDS items and each of the RAPs for their own patient populations. Providers participating in our focus groups were asked to pilot the questionnaire, which was subsequently refined. The questionnaire was then distributed to over 900 SNFs, rehabilitation hospitals and units, and long-term care hospitals that had requested information on the project or whose names we had received from associations participating on the technical expert panel. A total of 416 providers (224 SNFs, 131 rehabilitation hospitals or units, and 61 long-term care hospitals) responded to the survey during January through March 1998. A summary of these responses was presented during our March 1998 meeting with the technical expert panel.

Using the input gathered from our initial activities, we developed an initial draft of the MDS–PAC in September 1997. In developing the initial MDS–PAC draft, it is important to note that we did not start with the current MDS 2. Rather, we used a "bottom-up" approach to build the MDS–PAC. This means that we started by listing the various domains and issues that had been identified through our initial focus groups and provider survey as relevant for the post-acute patient. We then selected items to measure those specific issues from the MDS 2 or other HCFA assessment instruments, such as the Outcome and Assessment Information Set (OASIS) or the Uniform Needs Assessment Instrument. New items were developed for those areas in which no item currently existed within our group of assessment tools. In building and refining the MDS–PAC items we relied extensively on the input of clinical experts serving on, or identified by, our technical expert panel. Appendix B contains a summary of the survey items and the responses of the clinical experts.

The original MDS–PAC draft was refined through the production of 10 major draft revisions over a 2-year period. We solicited comments on various drafts through mailings to our technical expert panel, and to over 1100 providers that had been identified by the technical expert panel or otherwise indicated an interest in the project, as well as through posting of various drafts on our web site.

One of the guiding principles of our MDS–PAC development has been that the instrument had to include items that were compatible with the FIM and would result in the same patient classifications generated using the FIM. In nearly all instances, we did not simply insert the functional independence measures items into the MDS–PAC. Generally, the goal was to develop blended items that were consistent with the general MDS model and scales, but were also capable of generating the type and level of detail contained in a specific functional independence measure item. This work was conducted through extensive collaboration with Dr. Carl Granger, who was a member of our MDS–PAC technical expert panel, and his UDSmr team. Prior to our final rule, we will be conducting further research to determine whether the MDS–PAC will classify patients into the same CMGs as they would have been classified into using FIM.

5. Developmental Testing of the MDS–PAC

Drafts of the MDS–PAC were subjected to substantial field testing, to ensure it is both reliable and feasible for use as the patient data collection system needed to implement the IRF prospective payment system. Formal testing consisted of an initial pilot test, as well as two larger rounds of field testing, in rehabilitation hospitals and units, SNFs, and long-term care hospitals. In conducting research, a pilot test allows a preliminary trial of an instrument to discover and rectify any major problems before the main study begins. A pilot test uses a small study sample of facilities, whose results enable researchers to make last minute corrections and adjustments. A field test uses a larger sample and more formally delineated procedures and protocols.

In conducting our tests we worked with a number of providers that volunteered to participate either directly or through their provider associations. However, most of the participants in each of the testing rounds were recruited randomly from our listing of Medicare-certified providers maintained in the Online Survey and Certification Reporting System; we designed our sample to ensure that participating facilities varied in geographic location, size, etc.

Pilot testing of the MDS–PAC was conducted in September through October 1998, with a total of 20 providers (7 rehabilitation hospitals or units, 4 long-term care hospitals, 9 SNFs; 15 sites recruited randomly). A total of 161 assessments were completed as part of the pilot test, with 69 completed by rehabilitation hospitals, 68 by SNFs, and 24 by long-term care hospitals.

MDS–PAC testing consisted of a pilot test and two field tests. A total of 16 assessors participated in the pilot test conducted in IRFs and 96 and 75 assessors participated in the first and second field tests, respectively. The MDS–PAC was used to assess a total of 885 admissions and 345 discharges in these IRFs during this pilot and field testing. The average length of stay for these admissions was 18.9 days with a median of 16 days.

The initial field test occurred in January through April 1999, in 85 providers total (40 rehabilitation hospitals or units, 21 long-term care hospitals, 22 SNFs, and 2 facilities for which the above category was not properly recorded; 51 sites recruited randomly). A total of 1164 patients were assessed using draft 8 of the MDS–PAC, with 599 cases assessed in rehabilitation hospitals or units, 284 in SNFs and 281 in long-term care hospitals.

The second field test was conducted in June through September 1999, in a total of 57 providers (33 rehabilitation hospitals and units, 11 long-term care hospitals, 13 SNFs; 39 sites recruited randomly). A total of 462 cases were completed in the second field test, with 285 patients assessed by rehabilitation hospitals, 80 by SNFs, and 97 by long-term care hospitals.

Testing focused on the inter-rater reliability and clinical validity of MDS–PAC items, as well as the administrative feasibility and burden associated with completion of the assessment tool. Paired assessments were completed for a sample of cases during each of the field trials (N=171 assessments conducted using the June 30, 1999 version of the MDS–PAC used in field test 2) and reliability coefficients were calculated using a weighted Kappa statistic. Reliability measures whether the instrument would result in the same findings if it were administered at a later date or by a different person. The average reliability for the 315 items on the version of the MDS–PAC tested in the second field test (draft 9) was 0.78. A frequently cited standard in the research community, Fleiss (1975), establishes item reliability of 0.5 as acceptable, with levels of 0.75 or better considered as superior for tools of this nature. Reliability coefficients ranged from 0.51 for "repetitive health complaints" to 1.0 for several items.

Facility staff were asked to log the amount of time spent on each MDS–PAC assessment, and also categorize how that time was spent. There was general comparability across provider types in how time was spent. Review of the clinical record consumed the most time and interaction with the patient's physician or family was conducted by only a minority of assessors. Recognizing the learning curve associated with any new process, burden estimates were calculated for both the initial few cases completed by staff and subsequent cases after staff had become more familiar with the process (that is, after completing approximately 10 MDS–PAC assessments).

Rehabilitation hospital staff initially required a median of 105 minutes to complete the intake assessment and 85 minutes after they became familiar with the Version 9 MDS–PAC, as compared to the 85 and 77 minutes respectively, required by SNF staff. The time required to complete follow-up or discharge MDS–PAC assessments was also calculated, as these assessments involve fewer items than the initial MDS–PAC assessment. Rehabilitation hospital staff required a median of 75 minutes to complete the first few cases using this shorter assessment and 48 minutes after they completed approximately 10 cases. SNF staff spent a median of 50 minutes on the first few follow-up assessments they completed, and 45 minutes subsequently.

B. Overview of the MDS–PAC Assessment Process

1. Description of the MDS–PAC

We include, in Appendix BB of this proposed rule, the MDS–PAC Version 1, which we refer to throughout this preamble as the MDS–PAC. Appendix BBB contains the Item-by-Item Guide to the MDS–PAC, which consists of instructions for completing the MDS–PAC. The MDS–PAC that is included in Appendix BB is a modified version of the MDS–PAC that was the product of the previously described pilot and field testing. This modified version MDS–PAC reflects changes we made in order to ensure that the MDS–PAC items used to classify a patient into a CMG cover all of the same subjects as the functional independence measures items that were used to develop the classification system.

Before the final rule, we will conduct field testing of the modified MDS–PAC, Version 1, to establish its validity, reliability, and equivalence for payment. In addition, we will study a sample of facilities that are currently using UDSmr's FIM patient assessment instrument and the COS. These facilities will complete their instruments (either UDSmr's or COS) and the MDS–PAC on the same patient at the same time. Results of this paired assessment will be compared to determine the capability of the MDS–PAC instrument to accurately and consistently assign CMGs and whether the MDS–PAC assigns the same CMGs as the UDSmr/COS instrument would. If the results of this study do not indicate that the MDS–PAC accurately and consistently assigns CMGs as the UDSmr/COS instrument would, then the MDS–PAC will be redesigned to incorporate the phrasing, content, and coding conventions of the UDSmr/COS instruments. This study will be completed this fall by researchers from RAND, and the results will be incorporated into the final rule. The study and any modifications to the assessment instrument will be completed prior to the publication of the IRF prospective payment system final rule.

The MDS–PAC is a patient-centered assessment tool that emphasizes a patient's care needs, rather than the characteristics of the provider. The assessment instrument consists of 15 sections, each collecting different categories of patient information. These categories include identification and demographic information about the patient, as well as the following categories of information: cognition; communication; behavior and mood; functional status; bowel and bladder continence; diagnoses; medical complexities and other health conditions; oral and nutritional information; pain status information; information on procedures and services; functional prognosis; and resources for discharge.

2. Use of the MDS–PAC

We propose to require that IRFs use a standardized patient data collection assessment instrument for Medicare patients in IRFs, the MDS–PAC. We propose to require that IRFs must computerize and electronically report the MDS–PAC data.

Each year tens of thousands of Medicare patients are treated in IRFs. As discussed in more detail in section III.F. of this preamble, we propose that each of these patients would be assessed on the average at least of three times, with the MDS–PAC being used as the patient assessment instrument. Therefore, there will be a very large quantity of data collected and submitted to us each year. As a result, it would be unrealistic for us to perform a meaningful analysis of this large amount of data for payment, medical review, and quality monitoring purposes in the absence of the capability to use automated data collection. An analysis of MDS–PAC data would allow us to use MDS–PAC data in a manner similar to how we use SNF MDS data.

One use of SNF MDS data is to support quality of care monitoring. The SNF MDS data is reliable and effective in supporting early identification of potential quality of care problems. Early identification, in turn, helps to focus the survey process upon these identified problem areas.

Using MDS data we have developed indicators of the quality of care in SNFs. The quality of care indicators are used to support analytical evaluations of the quality of services that SNFs furnish. For example, we use MDS data to provide us with objective and detailed measures of the clinical status and care outcomes of residents in a SNF. In addition, quality of care indicators can be used to analyze the relationship between Medicare policy changes and quality of care.

Computerization of the MDS–PAC data would make it easier and more practical for an IRF to use the MDS–PAC data to classify a patient into a CMG. Electronic transmission of the MDS–PAC data by the IRF makes the creation of an MDS–PAC database feasible. An MDS–PAC database, in turn, permits the data to be accessed easily in various formats for different analytical purposes, which can be used to support the Medicare program's fraud and abuse efforts, for medical review purposes, and for uses similar to how the SNF MDS data is used.

We propose that beginning on April 1, 2001, IRFs must collect MDS–PAC data as part of the IRF's inpatient assessment process for patients who are receiving Medicare-covered Part A services. This MDS–PAC data collection requirement applies to Medicare beneficiaries who are already inpatients as of April 1,

2001, as well as beneficiaries admitted as inpatients on or after April 1, 2001. In addition, we propose that the IRFs must use the MDS–PAC to assess inpatients in accordance with the MDS–PAC assessment schedule specified in section III.F. of this preamble.

The IRFs would encode the MDS–PAC data by entering the MDS–PAC data into a computer software program. MDS–PAC records would be considered "locked" when they passed all HCFA-specified edits and were accepted by the MDS–PAC database to which the IRF transmitted its records.

We propose in § 412.610 that IRFs must also maintain all completed MDS–PAC assessments for the previous 5 years, either in a paper format in the patient's clinical record or in an electronic computer file format that can be easily obtained, because the assessments may be needed as part of a retrospective review conducted at the IRF for various purposes, for example, as part of the documentation that the IRF used to determine the medical necessity of the Medicare-covered services the IRF furnished. Also, completed MDS–PAC assessments that are available at the IRF could be beneficial to other entities that appropriately have access to these records (for example, a State or Federal agency conducting an investigation due to a complaint of patient abuse or a suspicion of fraud). In addition, retention of the MDS–PAC assessment by the IRF would provide a backup to the electronic database.

Data from the initial MDS–PAC assessment would be used to classify patients into a CMG. The CMG would correlate with the payment rate that the IRF receives for the Medicare-covered Part A services furnished by the IRF during the Medicare beneficiary's episode of care.

3. Transmission of the MDS–PAC Data

We propose that between February 1 and February 28, 2001, IRFs must complete a successful transmission of test MDS–PAC data to the HCFA MDS–PAC system. A successful transmission by the IRFs of test MDS–PAC data to the HCFA MDS–PAC system is necessary to determine connectivity with the system and to identify any transmission problems. The HCFA MDS–PAC system would transmit a test data feedback report to each IRF indicating that the test data transmission was either completely successful or experienced problems. The problems would be specified in the test data transmission report.

On March 1, 2001, the HCFA MDS–PAC system would begin to purge all test data from the system to allow for acceptance of production data, that is, data that would be associated with the MDS–PAC assessment schedule and CMG payment rates, as specified in sections III. F. and V. of this preamble.

For example:

February 1, 2001, to February 28, 2001—Period for transmission of test MDS–PAC data.

March 1, 2001, to March 7, 2001—The HCFA MDS–PAC system purges test data.

April 1, 2001—Assessments completed on or after this date must be transmitted as production data.

As specified in section III. I. of this preamble, we would provide training and technical support to the IRFs on administering and completing the MDS–PAC, as well as transmitting the MDS–PAC data.

C. The MDS–PAC Assessment and Medical Necessity

The initial MDS–PAC assessment would be used to classify each Medicare patient into a CMG, with the CMG being the basis for IRF payment. One principle governing appropriate Medicare payment and utilization of Medicare inpatient services is that there must be documentation establishing appropriate medical necessity for the inpatient services furnished to a patient.

When the data recorded on the MDS–PAC accurately reflect the patient's clinical status, they form the basis for documenting the medical necessity of the services furnished to the IRF Medicare inpatient. There may be cases in which a medical review (or other type of facility or patient review) questions the accuracy of the recorded MDS–PAC items and, by extension, the associated medical necessity of the services that the IRF furnished. In these cases, other documentation would be examined to verify the information recorded on the MDS–PAC, and the medical necessity for the services as indicated by the MDS–PAC. Other documentation that would support the accuracy of the recorded MDS–PAC information (and the medical necessity for the services furnished to the inpatient) must be recorded in the patient's medical record and could include, but is not limited to: (1) physician's orders; (2) physician's notes; (3) nursing notes; (4) notes from therapists; (5) diagnostic tests and their results; and (6) other associated information, such as social worker or case manager notes.

A patient's clinical status for a given time period, as indicated by a completed MDS–PAC form, must be verifiable and consistent with the clinical information independently or separately recorded in the patient's clinical record. Otherwise, inaccurately completed MDS–PAC assessments might be used to classify patients into CMGs that would, in turn, form the basis for Medicare payment for medically inappropriate or unnecessary services. We will continue to conduct medical review activities to verify and monitor the medical necessity of services furnished in conjunction with our continuing efforts to eliminate Medicare payment errors.

In proposed § 412.614, facilities will transmit each Medicare inpatient's MDS–PAC assessments to the HCFA MDS–PAC system, and submit claims for Medicare payment to the fiscal intermediary, in accordance with the current claims procedures. Payment to the IRF would be made according to the CMG recorded on the claim sent to the fiscal intermediary. We will have the capability to analyze the claim information against the transmitted MDS–PAC data. The results of this analysis may necessitate additional review of a particular claim and the associated MDS–PAC data to determine if payment was made accurately.

D. The MDS–PAC Assessment Reference Date

In § 412.610(c) we propose that each assessment would have a specific assessment reference date. The purpose of the assessment reference date is to establish a common temporal reference point for the care team participating in the patient's assessment. Although staff members may work on completing a patient's MDS–PAC on different days, establishment of the assessment reference date ensures the commonality of the assessment period (that is, "starting the clock"), so that all assessment items refer to the patient's objective performance and clinical status during the same period of time. The assessment reference date is a specific endpoint in the MDS–PAC assessment observation time period. Almost all MDS–PAC items refer to the patient's status over a continuous three calendar day time period, which is the observation time period.

During the patient's current hospitalization, an IRF must indicate on the MDS–PAC one of the following assessment reference dates—

- For the assessment that covers calendar days 1 through 3 of the patient's current hospitalization the date that is the third calendar day after the patient started being furnished Medicare-covered Part A services.
- For the assessment that covers calendar days 8 through 10 of the

patient's current hospitalization the date that is the 10th calendar day after the patient started being furnished Medicare-covered Part A services.

- For the assessment that covers calendar days 28 through 30 of the patient's current hospitalization the date that is the 30th calendar day after the patient started being furnished Medicare-covered Part A services.
- For the assessment that covers calendar days 58 through 60 of the patient's current hospitalization the date that is the 60th calendar day after the patient started being furnished Medicare-covered Part A services.
- For the assessment that must be completed when the patient stops receiving Medicare-covered Part A services but is not discharged from the IRF, the assessment reference date must be the actual date that the patient stops receiving Medicare-covered Part A services.
- For the assessment that is completed when the patient stops receiving Medicare-covered Part A services and is discharged from the IRF the assessment reference date must be the actual date of discharge from the patient rehabilitation facility.

The general concept is that the assessment reference date sets the designated endpoint of the common 3-day observation period, and the MDS–PAC items will usually refer back in time from this point. The assessment reference date establishes the end of the assessment time period that the clinician(s) will use for the data gathering. As specified in proposed § 412.606(c), these data are obtained through patient observation, patient interview, the clinical record or other means, in order for the clinician(s) to complete an MDS–PAC assessment that covers a given data-gathering time period.

For discharge assessments, the date when the patient either is discharged or stops receiving Medicare-covered Part A services is the assessment reference date. The observation time period includes either the date that the patient is discharged, or the date that the patient stops receiving Medicare-covered Part A services, along with the preceding 2 calendar days. In a situation when the discharge occurs unexpectedly, the clinical record would become a prime source of the data recorded on the MDS–PAC.

E. Performing the MDS–PAC Assessment

In § 412.606, we propose that Medicare beneficiaries who are inpatients of an IRF must be assessed by a professional clinician(s), and that the MDS–PAC must be used to perform the patient assessment. Because the MDS–PAC will be used to obtain a variety of assessment data, we believe that the assessment process should be a collaborative team effort, employing the clinical skills of a variety of professional clinicians.

The data recorded for a specific MDS–PAC item may be more accurate if the information used to record the data for that specific item was obtained by a professional clinician with specialized training related to that specific MDS–PAC item. A professional clinician may be a dietitian, an occupational therapist, a physical therapist, a physician, a practical (vocational) nurse, a registered nurse, a speech-language pathologist or a social worker.

For purposes of this proposed rule, we propose to incorporate the existing definition of a qualified dietitian specified in § 483.35(a)(2). For purposes of this proposed rule, we propose to incorporate the existing standard at § 482.56(a)(2) of who may perform occupational therapy and physical therapy as defining the terms occupational therapist and physical therapist. Section 482.56(a)(2) states that physical therapy and occupational therapy "must be provided by staff who meet the qualifications specified by the medical staff, consistent with State law." Therefore, an occupational therapist and a physical therapist are individuals who meet the qualifications of the provider's medical staff and State law.

A practical (vocational) nurse, a registered nurse, and a speech-language pathologist are individuals who meet the applicable definitions of § 484.4. For purposes of this proposed rule, an individual would be considered a social worker if that person meets either the definition in § 483.15(g)(3) or the one in § 483.430(b)(5)(vi), because these two sections define a social worker in terms of varying levels of education and experience.

For purposes of this proposed rule, we propose to define the term physician as an individual who is a doctor of medicine or osteopathy who is currently legally licensed to practice medicine and surgery by the State in which that function or action is performed.

Performing an MDS–PAC assessment is a process that involves patient interview, patient observation, and, if necessary, obtaining information from other sources, such as the clinical record or the patient's family. The data recorded on the MDS–PAC would be the result of that total assessment process, and the manner in which data is obtained for a specific MDS–PAC item would depend on a combination of the instructions on the MDS–PAC form itself, the Item-by-Item Guide to the MDS–PAC, and provisions set forth via rulemaking. Although different professional clinicians may be involved in the MDS–PAC assessment process, in order to ensure that the MDS–PAC assessment process is properly followed, we propose that only specific clinicians be authorized to sign item AB1a of the MDS–PAC.

In general, we believe that physicians, registered nurses, physical therapists, and occupational therapists are the only disciplines equipped with the education and experience to accurately assess the entire range of an individual's functional/motor performance and medical/clinical status. Additionally, the licensure requirements of some States restrict the human services disciplines that may perform a clinical assessment. Therefore, we propose that only an occupational therapist, a physical therapist, a physician, or a registered nurse be authorized to sign item AB1a of the MDS–PAC and provide the data for items AB1b thru AB1g of the MDS–PAC. Item AB1a is where the clinician who is attesting to the completion of the assessment signs. Items AB1b thru AB1g are the items that identify the clinician who signed item AB1a and the date that item AB1a was signed.

The clinician who signs item AB1a would be responsible for the accuracy and thoroughness of a specific patient's MDS–PAC assessment, and would be responsible for the accuracy of the date inserted in item AB1g. The signatures of other professional clinicians who contributed to the data recorded on the MDS–PAC would be recorded in item AB, lines 2a through item 2f.

The data for the MDS–PAC items that require the collection of data that is not associated with the observation of an activity by the patient can be obtained from the patient, the patient's clinical record, and, if necessary, from the patient's family. If the patient is uncooperative we believe that the data that is not associated with the observation of an activity by the patient can be obtained from the patient's clinical record, or other easily obtained documentation that contains patient information. We believe that the data for the MDS–PAC items related to the observation of a particular activity would always be recorded on the MDS–PAC, because these items allow for the recording of the data in different ways, including recording that the activity did not occur. For the items related to observation of a patient activity we want to emphasize that the clinician assessor should not require a patient to perform

an activity that in the clinician's professional judgment is clinically contraindicated or hazardous. The Item-by-Item Guide to the MDS–PAC in Appendix BBB contains information concerning observational techniques and provides more guidance for clinicians in performing the MDS–PAC assessment.

F. The MDS–PAC Assessment Schedule

1. General Rule

We propose in § 412.610 that an IRF Medicare patient be assessed by a clinician(s) using the MDS–PAC to gather and record the patient assessment data. The length of the patient's hospitalization would determine how many MDS–PAC assessments are required. Table 4C below, entitled "MDS–PAC Assessment Schedule and Associated Dates," illustrates the proposed MDS–PAC assessment schedule for the following "MDS–PAC Assessment Type": Day 4, Day 11, Day 30, and Day 60 assessments. The term "day" as used in the assessment schedule is a calendar day, and is counted as including the first day of the patient's current IRF hospitalization when the patient started receiving Medicare-covered Part A services, (which is generally the day of admission to the IRF). As specified in proposed § 412.620(a)(3), in general only data from the Day 4 assessment would determine the CMG classification that would in turn determine the payment that the IRF would receive for the entire episode of the patient's hospitalization. If a patient is not hospitalized in the IRF for the time period needed for the Day 4 assessment, then the patient's CMG would be determined as specified in section V.C. of this preamble.

TABLE 4C.—MDS–PAC ASSESSMENT SCHEDULE AND ASSOCIATED DATES

MDS–PAC assessment type	Hospitalization time period and observation time period*	MDS–PAC assessment reference date*	MDS–PAC must be completed by:*	Hospitalization episode covered by this assessment:	MDS–PAC must be encoded by:*	MDS–PAC must be transmitted by:*
Day 4	First 3 Days	Day 3	Day 4	Entire Hospitalization Time Period.	Day 10	Day 16
Day 11	Days 8 to 10	Day 10	Day 11		Day 17	Day 23
Day 30	Days 28 to 30	Day 30	Day 31		Day 37	Day 43
Day 60	Days 58 to 60	Day 60	Day 61		Day 67	Day 73

Currently, on the MDS–PAC, item B4 "Indicators of Delirium—Periodic Disordered Thinking/Awareness," requires an assessment time period that is 7 days in length. Item F1 "Bladder Continence," and item F4 "Bowel Continence" require an assessment time period that is 7 to 14 days in length. Therefore, the assessment time period and associated coding for these three items affect the dates for the "Hospitalization Time Period and Observation Time Period," the "MDS–PAC Assessment Reference Date," the "MDS–PAC Must Be Completed by:," the "MDS–PAC Must be Encoded By:," and the "MDS–PAC Must be Transmitted By:". As stated previously, we will be conducting additional testing of the MDS–PAC. This additional testing will determine if the assessment time period for items B4, F1, and F4 can be changed, or if the instructions on assessing these items should be changed. If our additional testing indicates that the assessment time periods or the instructions for assessing items B4, F1, and F4 should not be changed, then in the final rule we will change the proposed MDS–PAC assessment schedule and associated dates to reflect the current assessment time periods of these three items.

Table 4C represents the generic assessment schedule and other associated MDS–PAC dates. Table 5C.—Example Applying the MDS–PAC Assessment Schedule and Associated Dates, below is an example of how Table 4C would be applied using actual calendar dates. In Table 5C it is assumed that the patient was admitted on April 3, 2001.

TABLE 5C.—EXAMPLE APPLYING THE MDS–PAC ASSESSMENT SCHEDULE AND ASSOCIATED DATES

MDS–PAC assessment type	Hospitalization time period and observation time period	MDS–PAC assessment reference date	MDS–PAC must be completed by:	MDS–PAC must be encoded by:	MDS–PAC must be transmitted by:
Day 4	First 3 Days	4/5/01	4/6/01	4/12/01	4/18/01
Day 11	Days 8 to 10	4/12/01	4/13/01	4/19/01	4/25/01
Day 30	Days 28 to 30	5/2/01	5/3/01	5/9/01	5/15/01
Day 60	Days 58 to 60	6/1/01	6/2/01	6/8/01	6/14/01

Each patient is assessed by a clinician(s) using an MDS–PAC to perform a comprehensive assessment according to the schedule stated above. More than one clinician can contribute to completion of the MDS–PAC. We believe that MDS–PAC assessment accuracy would be enhanced if the data collected for an MDS–PAC item is collected by a clinician with specialized training and experience in the area of the data being collected. For example, although a registered nurse could fully assess all aspects of a patient and collect all the MDS–PAC data, a physical therapist or an occupational therapist has the specialized training which may contribute to a more accurate assessment of some neuro-muscular items. Our objective is to have data collected that would best reflect the patient's unique circumstances and clinical status during the assessment observation period, considering that an MDS–PAC item may provide for several possible responses and that the accuracy of patient assessment is contingent on the training and experience of the clinician assessor.

In section IV. of this preamble, we specify the MDS–PAC items that would be used to classify a patient into a specific CMG. We propose to require that data be collected not only for the items that would be used to classify a patient into a CMG, but also for any of the other MDS–PAC items for which data collection is appropriate according to one or more of the following: (1) the instructions on the MDS–PAC; (2) the Item-by-Item Guide to the MDS–PAC; and (3) applicable rulemaking provisions.

The example that follows, with "day" referring to a calendar day, illustrates a typical IRF's Medicare beneficiary hospitalization assessment schedule:

- Hospitalization Day 1. Patient admission day and the day that the IRF begins to furnish Medicare-covered Part A services. This is the day that starts the count as "day 1" when determining the assessment time periods for the MDS–PAC assessments.
- Hospitalization Day 3. The last day of the 1 through 3 calendar day assessment observation period and, as a general rule, the last day that can be used to set the assessment reference date for the initial (Day 4) MDS–PAC assessment.
- Hospitalization Day 4. The day by which the Day 4 MDS–PAC must be completed.
- Hospitalization Day 10. The last day of the 8 through 10 calendar day assessment observation period and, as a general rule, the last day that can be used to set the assessment reference date for the first re-assessment.
- Hospitalization Day 11. The day by which the Day 11 MDS–PAC must be completed.
- Hospitalization Day 30. The last day of the 28 through 30 calendar day assessment time period and, as a general rule, the last day that can be used to set the assessment reference date for the second re-assessment.
- Hospitalization Day 31. The day by which the Day 30 MDS–PAC must be completed.

In the above example, if the patient is instead discharged on day 22 of the hospitalization, then the discharge day is the assessment reference date.

2. Interrupted Stays

a. *Definition of an Interrupted Stay.*

As specified in proposed § 412.602 an interrupted stay is one in which an IRF patient is discharged from the IRF and returns to the same IRF within 3 calendar days. For purposes of the MDS–PAC assessment process, if a patient has an interrupted stay, then: (1) the initial CMG classification from the "initial" (Day 4) MDS–PAC assessment would remain in effect (no new initial MDS–PAC assessment would be performed); and (2) the required scheduled MDS–PAC update assessments must still be performed. A patient who returns to the same IRF more than 3 calendar days after being discharged is considered a "new" patient for purposes of the MDS–PAC assessment schedule process. Being considered a "new" patient for the MDS–PAC assessment schedule process means that a new Day 4 assessment needs to be performed. That new Day 4 assessment would determine a new CMG. That new CMG may or may not be the same CMG into which the patient classified prior to the interrupted stay.

In counting the 3 calendar day time period to determine the length of the interrupted stay, the first day of the start of the interrupted stay is counted as "day 1," with midnight of that day serving as the end of that calendar day. The 2 calendar days that immediately follow would be days 2 and 3. If the patient returns to the IRF by midnight of the third calendar day, then it would be determined that the patient had an interrupted stay of 3 calendar days or less.

When a patient has an interrupted stay, the interrupted stay must be documented on the MDS–PAC interrupted stay tracking form. The data recorded on the interrupted stay tracking form must be transmitted to the HCFA MDS–PAC system within 7 calendar days of the date the patient returns to the IRF.

b. Effect of an Interrupted Stay Upon the Assessment Schedule

When an interruption of a patient's IRF stay occurs it may affect the MDS–PAC—(1) assessment reference dates; (2) completion dates; (3) encoding dates; and (4) transmission dates.

As discussed in section III. D. of this preamble, the assessment reference date generally is the designated endpoint of the common 3-day observation period, and the MDS–PAC items will usually refer back in time from this point. Therefore, in order to set an assessment reference date, the patient must be an inpatient of the IRF during the 3-day observation time period. The 3-day observation time period must be continuous.

In order to facilitate the discussion that follows regarding the effect of an interrupted stay upon the assessment schedule Table 5C has been reproduced below.

TABLE 5C—EXAMPLE APPLYING THE MDS–PAC ASSESSMENT SCHEDULE AND ASSOCIATED DATES

MDS–PAC assessment type	Hospitalization time period and observation time period	MDS–PAC assessment reference date	MDS–PAC must be completed by:	MDS–PAC must be encoded by:	MDS–PAC must be transmitted by:
Day 4	First 3 Days	04/05/01	04/06/01	04/12/01	04/18/01
Day 11	Days 8 to 10	04/12/01	04/13/01	04/19/01	04/25/01
Day 30	Days 28 to 30	05/02/01	05/03/01	05/09/01	05/15/01
Day 60	Days 58 to 60	06/01/01	06/02/01	06/08/01	06/14/01

In Table 5C above, if an interruption of 3 calendar days or less occurred for any of the "MDS–PAC Assessment Type" assessment observation time periods (for example, the days specified in the "Hospitalization Time Period and Observational Time Period" column in the Table), then the associated assessment reference dates, MDS–PAC completion dates, MDS–PAC encoded by dates, and MDS–PAC transmitted by dates for that particular "MDS–PAC Assessment Type" would be shifted forward by the number of days that the patient was not an inpatient of the IRF.

We refer to Table 5C to illustrate the shifting forward of dates. With regard to the Day 4 assessment assume that the patient's stay began with admission to the IRF on April 3, 2001, but was interrupted on April 4, 2001, which would be day 2 of the patient's IRF hospitalization. The patient returned to the same IRF prior to midnight of April 6, 2001, and had an interrupted stay of 3 calendar days. The assessment reference date observation time period for the Day 4 assessment would be shifted to April 6, 7, and 8. (Without the interrupted stay, the Day 4 assessment reference date observation time period would have been April 3, 4, and 5, with the assessment reference date being April 5, 2001). Because of the interruption in stay, the MDS–PAC Day 4 assessment reference date would be reset to April 8, 2001. The Day 4 MDS–PAC completion date would be reset to April 9, 2001. The Day 4 "MDS–PAC Must Be Encoded By" date would be reset to April 15, 2001. The Day 4 "MDS–PAC Must Be Transmitted By" date would be reset to April 21, 2001.

Before this interrupted stay, the Day 11 assessment reference date was set to be day 10 of the patient's hospitalization, which would be April 12, 2001. Because of the shifting forward of the Day 4 assessment reference date from April 5, 2001, to April 8, 2001, the Day 11 assessment dates, and only the Day 11 assessment dates, would also be shifted forward. The Day 11 assessment reference date would then be April 15, 2001. The Day 11 MDS–PAC completion date would be reset to April 16, 2001. The Day 11 "MDS–PAC Must Be Encoded By" date would be reset to April 22, 2001. The Day 11 "MDS–PAC Must Be Transmitted By" date would be reset to April 28, 2001. When there is a shifting forward of the Day 4 or Day 11 assessment dates they would not affect the assessment timeframes for the subsequent (for example, Day 30 or Day 60) assessments, because the purpose of shifting forward an assessment due to an interruption in stay is to keep the time periods between assessments to at least 7 calendar days.

Again, we refer to Table 5C to illustrate the shifting forward of dates. Assume that for the Day 11 reassessment the patient, who was admitted to the IRF on April 3, 2001, started an interrupted stay on April 11, 2001, which would be day 9 of the patient's IRF hospitalization. (For this example, do not assume that the patient also had a Day 4 interrupted stay.) The patient returned to the same IRF prior to midnight of April 13, 2001, and had an interrupted stay of 3 calendar days. The assessment reference date observation time period for the Day 11 assessment would be shifted to April 13, 14, and 15. (Before the interrupted stay, the Day 11 assessment reference date observation time period was April 10, 11, and 12, with the assessment reference date being April 12, 2001.) Due to the interruption in stay, the MDS–PAC assessment reference date would be reset to April 15, 2001. The MDS–PAC completion date would be reset to April 16, 2001. The "MDS–PAC Must Be Encoded By" date would be reset to April 22, 2001. The "MDS–PAC Must Be Transmitted By" date would be reset to April 28, 2001. The various dates, as illustrated in Table 5C, for the Day 30 and Day 60 assessments would not be affected by the shifting forward of the Day 11 assessment associated dates. However, if the patient had an interrupted stay during the time period that is associated with the Day 30 or Day 60 assessment as indicated in the Table 5C column entitled "Hospitalization Time Period and Observation Time Period" then the same shifting forward methodology described above for the Day 11 assessment would apply.

3. MDS–PAC Dates Associated with the Discharge Assessment

As specified in proposed § 412.610(c)(5) and (6) the assessment reference date for the discharge assessment is the day when one of two events occurs first: (1) the day the patient is discharged from the IRF or (2) the day the patient ceases receiving Medicare-covered Part A inpatient rehabilitation services. The MDS–PAC assessment is performed only at the first point in time either of these events occur. There may be cases when a patient ceases receiving inpatient rehabilitation Medicare-covered services, but is not discharged from the IRF.

After the assessment reference date for the discharge MDS–PAC assessment is determined the completion date for the discharge MDS–PAC assessment must be set. As specified in proposed § 412.610(e)(2) the completion date for the discharge MDS–PAC assessment is the 5th calendar day in the period beginning with the discharge MDS–PAC assessment reference date. To count the 5 calendar days, count the discharge MDS–PAC assessment reference date as day 1 of the 5 calendar days. For example, if the MDS–PAC assessment reference date is May 1, 2000, then the MDS–PAC completion date would be May 5, 2000.

The method used to determine the completion date for the discharge MDS–PAC assessment is not the same method used to determine the completion date for the Day 4, Day 11, Day 30 or Day 60 MDS–PAC assessments. The reason for using a different method to determine the discharge MDS–PAC completion date is because of the definition of an interrupted stay. Previously we specified that after the patient returns to the IRF after an interrupted stay another Day 4 assessment is not performed, and the CMG into which the patient classified prior to starting the interrupted stay is still in effect. Therefore, in order to ensure that a clinician does not perform a discharge assessment on a patient who meets the criteria of an interrupted stay, it is necessary to make the completion date of the discharge MDS–PAC assessment a date that exceeds the interrupted stay defined time period. This safeguard prevents the performance of unnecessary MDS–PAC discharge assessments by the IRF.

In addition, any discharge MDS–PAC assessment that is transmitted to the HCFA MDS–PAC system is used by the system to indicate that a patient is no longer hospitalized in the IRF. Therefore, if a discharge assessment that is only associated with an interrupted stay is transmitted to the HCFA MDS–PAC system, it would result in the HCFA MDS–PAC system rejecting any subsequent update (either a Day 11, Day 30 or Day 60) assessments that are associated with the patient's continued hospitalization in the same IRF following an interrupted stay.

As specified in proposed § 412.610(e)(3) the discharge MDS–PAC "must be encoded by" date is the 7th calendar day in the period beginning with the discharge MDS–PAC completion date. To count the 7 calendar days, count the discharge MDS–PAC assessment completion date as day 1 of the 7 calendar days. For example, if the MDS–PAC assessment completion date is May 5, 2000, then the MDS–PAC must be encoded by date would be May 11, 2000.

As specified in proposed § 412.614(c) the discharge MDS–PAC "must be transmitted by" date is the 7th calendar day in the period beginning with the discharge MDS–PAC "must be encoded by" date. To count the 7 calendar days, count the discharge MDS–PAC assessment "must be encoded by" date as day 1 of the 7 calendar days. For example, if the MDS–PAC assessment must be encoded by date is May 11, 2000, then the MDS–PAC must be transmitted by date would be May 17, 2000.

Table 6C below illustrates the discharge MDS–PAC dates discussed above:

TABLE 6C.—EXAMPLE APPLYING THE MDS–PAC DISCHARGE ASSESSMENT DATES

MDS–PAC assessment type	Discharge date*	MDS–PAC assessment reference date	MDS–PAC must be completed on:	MDS–PAC must be encoded by:	MDS–PAC must be transmitted by:
Discharge Assessment	5/1/00	5/1/00	5/5/00	5/11/00	5/17/00

*This is either: (1) the day the patient is discharged from the IRF; or (2) the day the patient ceases receiving Medicare-coverred Part A inpatient rehabilitation services.

Data from recent studies indicate that the vast majority of patients are discharged from IRFs within the first twenty calendar days of their hospitalization. Therefore, we believe that, in most cases, IRFs would only perform three assessments under this proposal: The Day 4, Day 11, and the discharge assessment. Early data indicated that the mean length of stay was 18.9 days, that the median length of stay was 16 days, with a standard deviation of 13. More recent data from the RAND Institute indicates that the mean length of stay is 15.81 days, and that the median length of stay is 14 days. The recent RAND data also indicates that less than 9 percent of patients would require a Day 30 assessment and less than ½ of 1 percent of patients would require a Day 60 assessment. We are especially interested in Day 30 and Day 60 assessments because these cases will be very unusual when compared to the average length of stay; therefore, we want to understand what characteristics make these cases atypical. In addition, Day 30 assessment data may be useful in making any future CMG refinements; for example, providing outlier information after the IRF prospective payment system has been implemented. We are specifically soliciting comments on the benefits of performing interim assessments on days 11, 30, and 60.

4. Assessment Rule to Use If Medicare Beneficiaries Are Receiving IRF Services on the Effective Date of this Regulation

We propose a special MDS–PAC assessment rule for the Medicare beneficiaries who already are IRF patients on the date that this regulation becomes effective. For these patients we are proposing that only one MDS–PAC assessment must be performed. The one MDS–PAC assessment would be used to classify a patient into a CMG, and that CMG would determine the payment the IRF would receive for all the Part A services the IRF furnished to the patient during the patient's current hospitalization. For Medicare beneficiaries who already are IRF patients on the date that this regulation becomes effective the one MDS–PAC assessment would, as applicable, cover one of the following calendar day time periods and associated conditions: (1) When this regulation becomes effective if a patient currently hospitalized continues being an IRF patient for at least 3 calendar days, then the data for the MDS–PAC assessment items must be collected according to the instructions on the MDS–PAC form and the Item-by-Item Guide to the MDS–PAC. (2) When this regulation becomes effective if a patient currently hospitalized continues being an IRF patient for only 2 calendar days, then the data for the MDS–PAC assessment items that must be collected would pertain to only these 2 calendar days, unless the instructions on the MDS–PAC form and the Item-by-Item Guide to the MDS–PAC specify a shorter time period. (3) When this regulation becomes effective if a patient currently hospitalized continues being an IRF patient for only 1 or less than 1 calendar day then the data for the MDS–PAC assessment items that must be collected would pertain to 1 or less than 1 calendar day, unless the instructions on the MDS–PAC form and the Item-by-Item Guide to the MDS–PAC specify a shorter time period.

For this special MDS–PAC assessment we propose that, no later than 30 calendar days from the date this regulation becomes effective, all the following would apply—(1) the data for this special MDS–PAC assessment must be collected; (2) this special MDS–PAC must be completed; (3) the MDS–PAC data for this special assessment must be encoded; and (4) the MDS–PAC data for this special assessment must not only be transmitted to but also be accepted by the HCFA MDS–PAC system. We propose that if the IRF does not, as specified above, collect, complete, encode, and transmit the data for this special MDS–PAC assessment, then the IRF would receive no payment for any of the Part A services furnished to Medicare beneficiaries who already are IRF patients on the date that this regulation becomes effective.

5. What MDS–PAC Items Are Collected On Each Assessment

The MDS–PAC assessments must be performed according to the schedule specified previously. Table 7C's.—MDS–PAC Items Required by Type of Assessment, title indicates the data for each MDS–PAC item that we propose to require collecting for the Day 4, Day 11, Day 30, Day 60, and discharge assessments.

It should be noted that recording data on the MDS–PAC for a particular item may require, according to the instructions for that item on the MDS–PAC form, that the clinician not record data for certain other items. For example, the MDS–PAC instructions state that if data is recorded indicating a patient is comatose in item B1, the clinician assessing the patient must proceed from item B1 to item E1. This means that the data for the items between B1 and E1 are not recorded. (The term "update" in Table 7C below refers to the Day 11, Day 30, and Day 60 assessments. An "X" indicates that the MDS–PAC item is required for that assessment type.)

TABLE 7C.—MDS–PAC ITEMS REQUIRED BY TYPE OF ASSESSMENT

TABLE 7C.—MDS–PAC ITEMS REQUIRED BY TYPE OF ASSESSMENT—Continued

MDS–PAC Item	Assessment type		
	Admission	Update	Discharge
ITEM AA1 and ITEM A1. Legal Name of Patient	X	X	X
ITEM AA2 and ITEM A2. Admission Date (2a and, if applicable, also 2b)	X	X	X
ITEM AA3 and ITEM A3. Reason for Assessment	X	X	X
ITEM AA4. Assessment Reference Date	X	X	X
ITEM AA5a and AA5b. Discharge Status	....	....	X
ITEM AA6a and AA6b. Social Security (6a) and Medicare Numbers (6b)	X	X	X
ITEM AA7. Medical Record Number	X	X	X
ITEM AA8. Facility Provider Number (Both 8a and 8b)	X	X	X
ITEM AA9. Medicaid Number	X	X	X
ITEM AA10. Gender	X	X	X
ITEM AA11. BirthDate	X	X	X
ITEM AA12. Ethnicity/Race	X	X	X
ITEM AA13a and AA13b. Interrupted Stay* (Only appears on the interrupted stay tracking form. Record and submit data if applicable.).			
ITEM AA14a thru AA14f. Clinician Completing Assessment* (Only appears on the interrupted stay tracking form. Record and submit data if Item 13 data is recorded and submitted.).			
Item AB1a thru AB1g. Person Completing Assessment	X	X	X
Item AB2a thru AB2f. Signature of Staff Completing Part of the Assessment	X	X	X
ITEM A4. Admission Status	X	X	X
ITEM A5. Goals for Stay	X	X	X
ITEM A6. Admitted From	X	X	X
ITEM A7. Precipitating Event Prior to Admission	X	X	X
ITEM A8. Primary and Secondary Payment Source For Stay	X	X	X
ITEM A9. Marital Status	X	X	X
ITEM A10. Education	X	....	....
ITEM A11a and A11b. Language	X	X	X
ITEM A12. Dominant Hand	X	....	....
ITEM A13. Mental Health History	X	....	....
ITEM A14. Conditions Related to MR/DD Status	X	....	....
ITEM A15a thru A15e. Responsibility/Legal Guardian	X	....	....
ITEM A16a thru A16e. Advance Directives	X	....	....
ITEM B1. Comatose	X	X	X
ITEM B2a thru B2d. Memory/Recall Ability	X	X	X
ITEM B3a and B3b. Cognitive Skills for Daily Decision Making	X	X	X
ITEM B4a thru B4f. Indicators of Delirium-Periodic Disordered Thinking/Awareness	X	X	X
ITEM C1. Hearing	X	X	X
ITEM C2a thru C2e. Modes of Communication	X	X	X
ITEM C3a and C3b. Making Self Understood	X	X	X
ITEM C4. Speech Clarity	X	X	X
ITEM C5a and C5b. Ability to Understand Others	X	X	X
ITEM C6a and C6b. Vision	X	X	X
ITEM D1a thru D1k. Indicators of Depression, Anxiety, Sad Mood	X	X	X
ITEM D2. Mood Persistence	X	X	X
ITEM D3a thru D3e. Behavioral Symptoms	X	X	X
ITEM E1a thru E1l. 3-Day ADL Self-Performance	X	X	X
ITEM E2a thru E2l. ADL Assist codes	X	X	X
ITEM E3a and E3b. ADL Changes	X	X	X
ITEM E4a thru E4f. Instrumental Activities of Daily Living	X	X	X
ITEM E5. IADL Areas Now More Limited	X	X	X
ITEM E6a thru E6j. Devices/Aides	X	X	X
ITEM E7a and E7b. Stamina	X	X	X
ITEM E8a thru E8c. Walking and Stair Climbing	X	X	X
ITEM E9a and E9b. Balance Related to Transitions	X	X	X
ITEM E10a thru E10c. Neuro-musculoskeletal Impairment	X	X	X
ITEM F1a and F1b. Bladder Continence	X	X	X
ITEM F2a thru F2g. Bladder Appliance	X	X	X
ITEM F3. Bladder Appliance Support	X	X	X
ITEM F4. Bowel Continence	X	X	X
ITEM F5a thru F5d. Bowel Appliances	X	X	X
ITEM F6. Bowel Appliance Support	X	X	X
ITEM G1. Impairment Group	X	....	....
ITEM G2a thru G2aq. Other Diseases	X	X	X
ITEM G3a thru G3l. Infections	X	X	X
ITEM G4A and G4B. Other Current or More Detailed Diagnoses and ICD–9–CM Codes (Line "a" thru line "e" as applicable.)	X	X	X
ITEM G5. Complications/Co-Morbidities (Line "a" thru line "d" as applicable.)	X	X	X
ITEM H1. Vital Signs	X	X	X
ITEM H2a, H2b, H2d thru H2t, and H2w. Problem Conditions	X	X	X
ITEM H2c, H2u, and H2v. Problem Conditions	X	....	....
ITEM H3a thru H3h. Respiratory Conditions	X	X	X
ITEM H4a thru H4f. Pressure Ulcers	X	X	X
ITEM H5a and H5b. Other Skin Integrity	X	X	X

TABLE 7C.—MDS–PAC ITEMS REQUIRED BY TYPE OF ASSESSMENT—Continued

MDS–PAC Item	Assessment type		
	Admission	Update	Discharge
ITEM H5c. Other Skin Integrity	X		
ITEM H6a thru H6e. Other Skin Problems or Lesions Present	X	X	X
ITEM I1a and I1b. Pain Symptoms	X	X	X
ITEM I1c. Pain Symptoms	X		
ITEM J1a and J1b. Oral Problems	X	X	X
ITEM J2. Swallowing	X	X	X
ITEM J3a. Height	X		
ITEM J3b. Weight	X	X	X
ITEM J4a and J4b. Weight Change	X		
ITEM J5a and J5b. Parenteral or Enteral Intake	X	X	X
ITEM K1a thru K1e. Clinical Visits and Orders	X	X	X
ITEM K2a thru K2ai. Treatments and Services	X	X	X
ITEM K3a thru K3k. Nursing Practice or Restorative Care	X	X	X
ITEM K4a thru K4f. Therapy Services	X	X	X
ITEM K5a thru K5d. Devices and Restraints	X	X	X
ITEM L1a thru L1h. Functional Improvement Goals	X	X	X
ITEM L2a thru L2c. Attributes Relevant to Rehabilitation	X	X	X
ITEM L3a and L3b. Change over last 3 days	X	X	X
ITEM L4. Estimated Length of Stay from Date of Admission	X	X	X
ITEM M1a thru M1e. Available Social Supports	X	X	X
ITEM M2a and M2b. Caregiver Status	X		X
ITEM M3a and M3b. Living Arrangement	X	X	X

*Note: Data for items AA13 and AA14 would only be recorded and submitted to the HCFA MDS–PAC system if the patient has an interrupted stay according to how interrupted stay is defined in this preamble. This means each time the patient has an interrupted stay, as that term is defined in this preamble, data for items AA13 and AA14 would be recorded and submitted to the HCFA MDS–PAC system. The other items on the interrupted stay tracking form would also be submitted. However, these other interrupted stay tracking form items are identification information items that have previously been collected and recorded by the IRF clinician and, therefore, do not require collection as new items of data.

6. The MDS–PAC Completion Date

We propose in § 412.610(e) that for the Day 4, Day 11, Day 30, and Day 60 assessments that IRFs "complete" the MDS–PAC on the calendar day that follows the assessment reference date. Previously we discussed the completion date for the discharge assessment. For all assessments "completion" of the MDS–PAC means that accurate information has been recorded for each MDS–PAC item, and that the MDS–PAC has been signed and dated by the clinicians that recorded information on the MDS–PAC. It is our belief that the IRF clinician(s) can easily access or recall specific patient information if only a short period of time has elapsed, between the patient interview/patient observation time period and the recording of that information on the MDS–PAC.

7. Penalties for Late Assessments

In § 412.610(d) we propose that the MDS–PAC assessment is late if the assessment is not in accordance with the assessment reference date specification for the Day 4 assessment discussed previously in this preamble. If the MDS–PAC assessment is late then the IRF would either receive a reduced CMG-determined payment or no payment. If the MDS–PAC assessment is less than or equal to 10 calendar days late then the reduced CMG-determined payment would be a default rate. We propose to set the default rate at 25 percent less than the CMG-determined payment that the IRF would otherwise have received. If any assessment is more than 10 calendar days late, then the IRF would receive no payment for the Medicare-covered Part A services furnished.

G. Computerization of the MDS–PAC Data

1. Encoding the MDS–PAC Data

The data for all MDS–PAC assessments must be encoded. Encoding the data means entering the MDS–PAC data into the IRF's computer using appropriate software, including performing data edits. In § 412.610(e)(3), we propose that IRFs encode and edit the data for Medicare patients within 7 calendar days of the date that the MDS–PAC is completed. We propose to specify a maximum of 7 calendar days because we believe that this is a reasonable amount of time for IRFs to complete these tasks.

In determining the first day to count as being "within 7 calendar days of the date that the MDS–PAC is completed," the assessment completion date itself would be counted as "day 1" of the 7 calendar days. For example, if the MDS–PAC completion date is April 6, 2001, then the MDS–PAC must be encoded by April 12, 2001. As previously stated, MDS–PAC records are considered "locked" when they pass all HCFA-specified edits and are accepted by the MDS–PAC database to which the IRF transmits its records.

To encode the MDS–PAC data, the IRF may: use a commercial application from a private software vendor; develop its own data entry program based on our specifications; or use the free data entry and data transmission software program developed by HCFA, which is the MDS–PAC Tool (MPACT). The IRF will be able to download MPACT from our Inpatient Rehabilitation Facility Prospective Payment System website. The MPACT data entry tool accommodates standard HCFA edit specifications for MDS–PAC data.

It is preferable for the edits and corrections to be made as soon as possible after the assessment activity, because the clinician's recall of the patient assessment at that point is likely to be more detailed and easier to associate with any clinical notes related to the assessment. Therefore, it is reasonable to expect that IRFs will have the MDS–PAC data encoded, edited, and ready for transmission within 7 calendar days of the completion date. In addition, if the IRF chooses to use the MDS–PAC information in patient care planning, our timeframes would contribute to the facility's efforts to produce a current and workable plan of care.

IRFs will have flexibility in the process used to encode their data. Once the assessment is completed by the clinician(s), the data may be encoded by a clinician, or by a clerical staff member using a paper copy of a completed MDS–PAC, or by a data entry technician. Non-clinical staff may not assess patients or complete clinical assessment items. However, clerical staff or data entry operators may enter the MDS–PAC data that has been collected by the clinician into the computer.

In entering the data, IRFs must comply with requirements for safeguarding the confidentiality of patient identifiable information, as specified in section III.*I*.1. of this preamble. In addition, IRFs must train personnel with access to patient information to disclose that patient information only to those recipients who are authorized to have access to it.

On August 12, 1998, we published in the **Federal Register** a proposed rule entitled "Security and Electronic Signature Standards" (63 FR 43242), and on November 3, 1999, we published another proposed rule entitled "Standards for Privacy of Individually Identifiable Health Information" (64 FR 59918). When these proposed rules are published as final rules, the security and privacy criteria specified in these rules may supplement or supersede the security and privacy criteria specified in this proposed rule.

Once the IRF encodes the MDS–PAC information, the computer software is used to review and edit the data to create a file that will be transmitted to the HCFA MDS–PAC system. The software program edits are designed to help preclude the transmission of erroneous or inconsistent information.

2. Accuracy of the Encoded MDS–PAC Data

In § 412.610(f) we propose that the encoded MDS–PAC data must accurately reflect the patient's status at the time the data are collected. Because the patient's clinical status may change over time, the MDS–PAC data must accurately represent a patient's clinical status as of a particular assessment reference date. Before transmission, the IRF must ensure that the data items on the MDS–PAC paper copy match the encoded data that are sent to the HCFA MDS–PAC system. We are requiring that once the clinician(s) completes the MDS–PAC assessment, using either a paper copy of the MDS–PAC or an electronic version, the IRF must ensure that the data encoded into the computer and transmitted to the HCFA MDS–PAC system accurately reflects the data collected by the clinician. We will leave to the IRFs the development of methods that ensure the accuracy of the MDS–PAC data that is transmitted. However, it should be noted that because the policies of the IRF prospective payment system only apply to Medicare beneficiaries, the HCFA MDS–PAC system will reject all transmitted assessment data for which a non-Medicare payment source is indicated.

3. Transmission of the MDS–PAC Data

We will utilize the most current technology to secure the safety of the information transmitted to and from the HCFA MDS–PAC system. In § 412.614, we propose to require that the IRF electronically transmit to the HCFA MDS–PAC system accurate, complete, and encoded MDS–PAC data for each Medicare patient. We also propose that the data must be transmitted in a format that meets the general requirements specified in § 412.614. We believe that once the MDS–PAC data are encoded and edited, it is a relatively simple procedure to complete the preparation of the data for transmission to the HCFA MDS–PAC system. Therefore, we are proposing that encoded and edited data that has not previously been transmitted, must be transmitted within 7 calendar days of the day by which the data must be encoded by as specified in Table 4C "MDS–PAC Assessment Schedule and Associated Dates". In addition, the data must be transmitted in a manner that meets the locked data criteria previously discussed in this section of the preamble. At the end of the transmission file, an entry concerning the number of records being transmitted is required to complete the transmission process.

We believe that the 7 calendar day transmission requirement would support claim review efforts, because prompt transmission of MDS–PAC data would facilitate our ability to compare a claim promptly against the associated MDS–PAC data which, in turn, would enhance our ability to make any necessary adjustment to the IRF's payment amount in a timely manner. We will maintain a national MDS–PAC repository to which State Agencies, fiscal intermediaries and peer review organizations will have access. An adjustment to the IRF claim may be made if a discrepancy is discovered between what the MDS–PAC data indicated the CMG on the claim should be and what is actually on the claim.

The IRF must have a system that supports dial-up communications for the transmission of MDS–PAC data to the HCFA MDS–PAC system. The MDS–PAC data will be submitted to the HCFA MDS–PAC system via HCFA's Medicare Data Collection Network (MDCN). The MDCN is a secured private network. Specific instructions and telephone numbers will be provided to the IRFs to access the MDCN. For security purposes, there are two levels of user authentication required. To obtain access to the MDCN, the IRF must obtain an individual network-identification code for each person submitting the HCFA MDS–PAC data. This identification code is distributed by the HCFA system administrator or HCFA's agents. To obtain access to the HCFA MDS–PAC system, an IRF must also obtain a facility-identification code from the HCFA system administrator.

The IRF will transmit the MDS–PAC data via secured lines, and not via the Internet, to the HCFA MDS–PAC system, where the data will be checked to ensure it complies with HCFA MDS–PAC system data formatting specifications. The IRF will receive two reports, the initial and final validation reports. The initial validation report will notify the IRF if the submission is accepted or rejected. If the submission is rejected, the IRF is notified of the reason for the rejection. If the submission is accepted, the report alerts the IRF of any changes or discrepancies in the facility and vendor information. After the initial edit checks and acceptance of the file, the MDS–PAC data are validated to ensure that the data conforms to the HCFA specifications. If there are errors found in an assessment record, it will be rejected. Upon completion of the validation, the IRF receives the final validation report. This report includes the total number of assessment records submitted and the total number of assessment records rejected, as well as the total number of assessment records added to the database. The final validation also includes alert messages pertaining to an assessment record when appropriate; for example, "Assessment was submitted out of sequence."

In order to test transmission of MDS-PAC data using the HCFA MDS–PAC system IRFs must make a successful test transmission of test MDS–PAC data to the HCFA MDS–PAC system between February 1 and February 28, 2001. The initial test must include the following: (1) a transmission of MDS–PAC data that passes the HCFA edit checks built into the software program used by the IRF to encode the assessment data; and (2) a validation report back from the HCFA MDS–PAC system confirming transmission of data. This test data will not be included in the HCFA national repository. The test data are to contain MDS–PAC data on all Medicare inpatients, both newly admitted and those previously receiving care, that are inpatients during the test transmission time period.

If an IRF does not have Medicare inpatients receiving care during the specified test transmission time period, we propose that the IRF transmit test MDS–PAC data for Medicare inpatients that received care in the most recent 30 calendar day time period. This would require that these IRFs use the clinical record and professional clinical judgment to obtain the information required for the MDS–PAC items. In this way, these facilities could transmit test data in order to ascertain how well their system is functioning, and become familiar with entering data into the computerized version of the MDS–PAC. In order to both assist all IRFs in constructing MDS–PAC test data and to test the volume data capacity of the HCFA MDS–PAC system we may use and provide the IRFs with "dummy" MDS–PAC records or test data.

We will provide training to the IRFs on the MDS–PAC instrument (including any modification arising from research examining the equivalence of the MDS–PAC and the FIM for classifying patients), the HCFA provided MPACT, the data transmission process, and the interpretation of the validation reports. Training will be provided prior to the implementation of IRF prospective payment system. The most current MDS–PAC will be available on our HCFA Inpatient Rehabilitation Facility Prospective Payment System website. IRFs and software vendors will be able to access the website and download the most current MDS–PAC. In addition, the MPACT will be available on the HCFA Inpatient Rehabilitation Facility Prospective Payment System website, and IRFs and software vendors will be able to download the MPACT at no charge. This website will include the data specifications, data dictionaries, the Item-by-Item Guide to the MDS–PAC, and the IRF data submission procedures.

We may also post other educational materials for IRFs on the website. We intend the website to provide current information to IRFs, State agencies, software vendors, professional organizations, and consumers. We encourage vendors, IRFs, and other interested parties to review the website regularly for information and issues related to the IRF prospective payment system.

4. Late Transmission Penalty

In section III.G.2. of this preamble, we propose §§ 412.606 and 412.610 to require that MDS–PAC data be collected and transmitted not only for the items that would be used to classify a patient into a CMG, but also for the other MDS–PAC items, if collection and transmission of that data are appropriate according to one or more of the following: (1) the instructions on the MDS–PAC; (2) the Item-by-Item Guide to the MDS–PAC; and (3) applicable rulemaking provisions. In addition, if the IRF transmits MDS–PAC data for a particular patient that is not in accordance with the data record specifications, that data would be rejected by the HCFA MDS–PAC system. If the data is rejected by the HCFA MDS–PAC system, then the data is not "locked" as that term was defined previously, and the data must be re-transmitted.

We propose in § 412.614 to impose a penalty for an IRF's late transmission of MDS–PAC data to the HCFA MDS–PAC system. "Late transmission" means that the IRF did not transmit MDS–PAC data in accordance with the transmission timeframes previously specified in Table 4C of section III of this preamble. We propose that if the IRF transmits the MDS–PAC data late, then the IRF is either paid a reduced CMG-determined payment or no CMG-determined payment. If the IRF transmits the MDS–PAC data 10 or less calendar days late then the IRF would receive a payment that is 25 percent less than the CMG payment that the IRF would otherwise have received. If the MDS–PAC data is transmitted more than 10 calendar days late, then the IRF would receive no payment for the Medicare-covered Part A services furnished.

5. The MDS–PAC and Computer Software

In § 412.614(c) we propose that the IRF encode and transmit the MDS–PAC data using the MPACT software available from HCFA or other software that conforms to the HCFA standard data specifications, data dictionary, and other HCFA-specified data requirements, and that includes the MDS–PAC data items that match the most updated version of the MDS–PAC. HCFA's MPACT software will be able to be used for several purposes, such as to encode MDS–PAC data, to maintain IRF and patient-specific MDS–PAC information, to create export files to submit MDS–PAC data, and to test alternative software. MPACT software will provide comprehensive on-line help to users in encoding, editing, and transmitting the MDS–PAC data. Additionally, there will be a toll-free hotline to support this software product.

We caution IRFs that the MPACT software system would provide only the minimum requirements to encode and format the data. We will support these functions and applications; however, we do not intend to provide any other applications related to care planning, financial information, durable medical equipment, medications, or personnel issues. Software vendors are encouraged to use the MPACT software as a minimum system, until they have developed their own software to accommodate HCFA specifications and other applications useful for IRFs.

H. Quality Monitoring

Before we present our specific strategies for quality monitoring in IRFs, we want to discuss our conceptual framework for understanding and advancing quality in the setting of IRFs, as well as other post-acute settings. Quality of care is complex, sometimes difficult to define, and is multi-dimensional in nature. One dimension is that the care achieve its intended result, which in the context of the IRF setting is most often to improve the patient's functioning in order to foster more independent living. A second dimension of quality is the prevention of avoidable complications or other adverse events and minimizing the effects of adverse events. A third related dimension is to improve management of the patient's medical impairments, with the goal being to promote "improved" health as well as function, or at least to improve the management of the patient's medical conditions. In addition, it is also important to use data to identify other sentinel events that may potentially impact care negatively. Our specific quality monitoring processes should be developed in a way that supports this multi-dimensional view of quality.

The consequences of detecting quality of care problems may be varied and could include increasing educational efforts to beneficiaries to help them make better informed selections of providers, guiding investigators to survey institutions (including verification surveys performed in JCAHO-accredited facilities), and if the problem(s) is not remedied consideration of whether the IRF should be permitted to continue to participate in the Medicare program. An IRF's own staff may use quality of care information from the MDS–PAC for their own quality assurance and, ultimately, quality improvement activities. We also have the potential to develop refinements to the case-mix methodology which provide incentives for improving quality.

As our payment policies continue to evolve, our objective is to move forward

with a quality assessment and improvement agenda that is based on standardized data, beneficiaries' clinical characteristics, and patient care outcomes. To achieve that objective, we need to collect common data elements and develop standardized assessment tools that will enable us to focus on beneficiary care needs rather than the characteristics of the provider. We believe that the most important short-term goal of post-acute care quality monitoring is to assess the effects of implementing the changes in the payment system and the quality of post-acute care.

We are aware of MedPAC's concern that we may have only a limited ability to assess the impact of Medicare payment changes that either have been implemented or will soon be initiated—for example, the IRF prospective payment system. There is a need to enhance our ability to assess this impact in order to improve the policies associated with our Medicare prospective payment systems.

In the March 2000 MedPAC Report to Congress, MedPAC states that quality monitoring systems are important to ensure that payment systems are designed so that providers are responding appropriately to the system's incentives. MedPAC believes that such information could assist in tracking trends over time or provide an early warning of impending problems in quality. "Attaining any of these ends requires routine, systematic measurement of health care quality." (p. 62) We believe that the MDS–PAC is a first step towards developing such a measure.

The MDS–PAC is a multi-dimensional assessment instrument which provides a detailed picture of the patient. The non-payment related items in the instrument are necessary to provide a comprehensive inventory of patient factors that are necessary to monitor quality and risk adjust. This data can be used by facilities to identify patients at risk for adverse outcomes. In addition, MDS–PAC information may contribute to development of the patient care plan. Information collected can identify patients at risk for adverse outcomes, such as weight loss, aspiration, or pressure ulcers, and support the monitoring of these patients to prevent outcomes that might negatively impact patients' likelihood of optimal rehabilitation.

We believe that the MDS–PAC items are needed to monitor the impact of the IRF prospective payment system upon IRFs and beneficiaries, including beneficiary access to care. Section 125 of the BBRA directs the Secretary to conduct a monitoring study, and to submit a report to the Congress no later than 3 years from the date that the IRF prospective payment is implemented. To both monitor the impact of the IRF prospective payment system upon IRFs and beneficiaries, and support this BBRA-mandated report to the Congress, we need a data-driven monitoring system that would give us the capability to acquire objective (as opposed to anecdotal) data for analysis.

The MDS–PAC discharge assessment would provide data about a patient's clinical status at discharge, and give us the ability to compare a patient's clinical status at discharge with the patient's clinical status at the Day 4 assessment. Comparison of the patient's clinical status at Day 4 and at discharge would give us the data to analyze the relationship between any changes in the patient's clinical status and the quantity and effectiveness of the services the IRF furnished to the patient. That comparison would provide us with data that would indicate the quality of the IRF services furnished, and if an IRF was not furnishing the level of Medicare-covered services the patient needed.

Many studies have examined overall and condition-specific functional gain from admission to discharge as a measure of the effectiveness of a rehabilitation program. National benchmarks of functional gain have been used by providers to measure their performance relative to other facilities. In addition, some work has also been devoted to understanding providers' efficiency by linking measures of length of stay and functional gain.

Update assessments would yield the type of structured data that we can use to analyze the effectiveness of treatment services at a point in time when the services were still being furnished. Update assessments provide the information during treatment and allow measurement of changes in the patient's clinical status during a defined time period when the patient is still in treatment. We can then compare the patient's clinical status at that point in time to the patient's clinical status at either the Day 4 or discharge assessments, which would provide us with data about any changes in the patient's clinical status between the update assessments and these other assessments.

In essence, update assessments provide a "snapshot" of the patient while the patient is still being treated. This snapshot provides a method to analyze the changes in the patient's clinical status that are a result of the IRF services furnished either up to, or from, a predetermined point in the patient's hospitalization stay. The snapshot is similar to how a clinician evaluates a patient's reaction to treatment at points in time after the clinician has implemented a plan of care, and, therefore, the snapshot can be used by the IRF in a similar manner. Because we propose to mandate the data requirements for update assessments, the snapshot will provide us with the same structured and detailed data that is comparable across IRFs, permitting us to analyze clinical outcomes related to the IRF services furnished up to, and from, a predetermined point in time at one or many IRFs. The update assessments could also provide us with the some of the data needed to analyze the effectiveness of the services being furnished at more than just the time period between the patient's admission and discharge. That analysis could be used to evaluate the quality and quantity of services the IRF furnished at different periods of time during the patient's hospitalization.

The data associated with each MDS–PAC item would enhance our ability to monitor and, thus, safeguard the quality of care that beneficiaries receive. A quality of care improvement monitoring system that is based on the MDS–PAC data is consistent with other information-based quality monitoring programs, such as the ORYX process used by the Joint Commission on Accreditation of Health Care Organizations.

While only some MDS–PAC items would be used to determine the CMG, we believe that the data provided by MDS–PAC items are an essential first step in developing the type of quality monitoring system that both MedPAC and HCFA favor. Possible uses of the data could include: (1) strengthening existing quality assurance mechanisms; (2) generating indicators that would allow providers to assess their performance, and to compare it against benchmarks derived from standards of care or the performance of peers; and (3) creating a system that assists beneficiaries in making informed decisions when choosing among providers. In addition, MDS–PAC items may be useful in developing core measures that provide meaningful information on patient characteristics and outcomes across post-acute care settings.

1. Monitoring the IRF Prospective Payment System

We are planning a system that can be used to monitor access to rehabilitation facilities as well as to monitor the quality of the care delivered in these facilities. This will be done through the monitoring of payment for the care and the associated cost of the delivered care. Monitoring will include variables as length of IRF stay, percent of IRF discharges to SNF, long-term care hospital, or intensive outpatient rehabilitation program, change in motor function between admission and discharge, and the case-mix distribution of the facility. We plan to examine changes within "market areas" as well as individual facilities.

In addition, we will be developing a variety of methods for monitoring the impact of the IRF prospective payment system. Monitoring may describe changes in access to rehabilitation, in payments to rehabilitation facilities, in quality of care, and in the cost of rehabilitation care. This monitoring would also help to identify unintended changes in the operations of providers, and would help to identify refinements needed in the IRF prospective payment system. In addition, because the IRF prospective payment system may have effects on non-IRF providers, and because changes in the payment systems for other providers may affect IRFs once common core data elements are required across post-acute providers and linked with other data, the monitoring system could also describe changes in access, utilization, quality, and cost of care in different types of post-acute sites including but not limited to HHAs and SNFs. We could start these activities as early as 2002.

2. Quality Indicators

Quality indicators are markers that indicate either the presence or absence of potentially poor facility care practices or outcomes. The development of quality indicators depends on the collection and analysis of sufficient MDS–PAC data from a representative national sample. We are attempting to design a monitoring system that would not only describe quality indicators, but also show how they can be used together to obtain a clear description of access, outcomes, and cost in IRFs. Quality indicators will be developed around the different dimensions of quality discussed earlier in this section. We believe that quality indicators developed for individual IRFs would help identify the IRFs that require attention because they may be coding incorrectly or providing lower quality care. Analysis of the distribution of hospital indicators within specific classes of hospitals (for example, teaching hospitals, rural hospitals, etc.) would help us to evaluate whether facility level adjustments are warranted.

We currently have a contractor conducting analysis for purposes of developing quality indicators to be used in IRFs. Quality indicators are not direct measures of quality but rather point towards potential areas that require further investigation. Quality indicators identify the percent of a patient population with a certain condition and compare this percent to a state level and a national level. If a facility "flags" for scoring "high" on a particular quality indicator, this does not necessarily mean that the facility has a quality of care problem but simply that further focussed review of care practices may be required. Quality indicators have already been developed by the University of Wisconsin for use in SNFs and are being effectively used by State surveyors to target facilities for closer on-site review of care practices as well as by some nursing homes to identify potential problems within their facility.

We have already begun consideration of quality indicators that may be collected from MDS–PAC data to evaluate care delivered in IRFs. We agree with MedPAC's advice that quality monitoring efforts be closely coordinated across different types of post-acute care providers. We expect to develop measures to be applied across different settings. We anticipate that measures of functional improvement from admission to discharge will be examined. In addition, during 2000, the infrastructure to collect the data to identify quality indicators for IRFs will be under development. Field validation of these indicators is expected to begin in 2001. Once the indicators have been field tested, the State quality infrastructure can begin to utilize these data to monitor quality and to target facilities to survey for accreditation. The next step will be validation of the assessment data. Piloting the reporting of data will be ongoing during this time period. There is funding in the 2001 budget for analysis of the accuracy of the assessment data collected. "Tool kits" will be developed for targeted interventions to address common quality issues in these facilities. Examples of quality indicators currently being considered for IRFs are described below.

3. Functional Independence

The main goal of an IRF is to assist the patient in regaining his or her prior level of functional ability. A measure of the quality of a rehabilitation program is the patient's ability to function independently upon discharge to the community. Using MDS–PAC data, it will be possible to measure the percent of all cases discharged to the community who are functionally independent or whose functional status has improved at the time of discharge. Functional independence on the MDS–PAC would be measured using Section E of the instrument. The information collected in this section may be used by staff to calculate the Activities of Daily Living for Post-Acute Care (ADL–PAC) Summary Scale for each patient. The ADL–PAC computes patients' level of dependence on a scale from 0 (fully independent) to 6 (fully dependent). The scale considers level of dependence for each of the following activities: bed mobility, transfer between the bed and chair, locomotion, walking in facility, dressing upper body, dressing lower body, eating, toilet use, transfer to toilet, grooming and personal hygiene, bathing, transfer to and from the tub or shower. This information about the patient's levels of dependence on these various activities of daily living on admission, at intervals during the stay, and at discharge will be particularly useful to describe the patient's progress as a result of rehabilitation care. A patient's progress can be evaluated with respect to thresholds or milestones, developed after analysis of data collected during rehabilitation stays rather than based upon theoretical assumptions. The data will also assist in the development of quality indicators to predict the types of patients who have the best prognosis for improvement in rehabilitation programs. This information may also encourage referrals to IRFs for patients who might otherwise not have been referred. The data derived from functional information may also serve to better match patients with program characteristics to "fine tune" the delivery of rehabilitation services.

Additional variables on the MDS–PAC would allow the facility to consider factors which may affect a patient's ability to return to his or her previous level of functional ability or live independently in the community. Item E7 (stamina) helps staff predict how much therapy the patient can tolerate daily. This will impact the intensity of rehabilitation to help the patient regain functional independence. Assessment of stamina will likely affect a patient's ability to function independently once he or she is discharged back to the community. Items M1 (available social supports), M2 (caregiver status) and M3 (living arrangement) will help predict the characteristics of the community to which the patient is being discharged in order to make sure the environment is optimal to the patient's success. Finally,

item L2 (Attributes relevant to rehabilitation) measures whether a patient recognizes his or her limitations. This information will be important to determine whether the patient can function in the community and to determine how much help the patient will need, without taking risks that may cause a fall or other harmful events when not supervised.

Indicators based on functional gain will be useful in public reporting to help beneficiaries make more educated decisions about the facility from which they choose to receive care. In addition, Peer Review Organizations (PROs) can use the data from successful facilities to identify factors that are better at assisting patients in achieving functional independence and returning to the community. This information can be shared with other facilities to help improve their success rate as well.

4. Incidence of Pressure Ulcers

Pressure ulcers (also known as Decubitus Ulcers) are a problem in IRFs as well as in other post-acute and acute settings. In some situations the patient is admitted with these ulcers. Facilities cannot be held responsible for ulcers which were present upon admission, but if these ulcers increase in size or grade, or if new ulcers develop, this can be an indicator of poor quality of care.

Information about pressure ulcers would be collected in section H of the MDS–PAC. Information about bed mobility and transfer ability (items E1a and E1b), bladder incontinence (item F1a), and nutritional status (item J5a and J5b) is useful in identifying patients at high risk for developing new pressure ulcers. A pressure ulcer quality indicator could be used by the facility to institute such measures as staff training or more attention to techniques and equipment intended to prevent the development of pressure ulcers (such as frequent change of position of patients unable to move themselves and use of pressure relieving devices). In addition, quality indicators at the facility and State level can be compared to national averages for a better understanding of a facility's performance relative to its peers. Focused review will help identify which factors are contributing to the higher incidence of pressure ulcers. Analysis of MDS–PAC data can also be used to identify facilities that are successful in resolving and treating existing pressure ulcers. These facilities may have effective pressure ulcer reduction programs in place that can be shared with other facilities that are experiencing difficulty treating and reducing the incidence of pressure ulcers. Public reporting of the rate of pressure ulcers based on quality indicator information may help consumers make more informed choices when choosing a facility.

5. Falls Prevention

Falls prevention is an important component of a rehabilitation program and is critical to avoiding repeat hospitalizations which, in turn, will delay return to independence. Items in the MDS–PAC such as D3a and D3e on wandering and resisting care, item E9 on balance, and item H2 on dizziness and falls, provide critical information regarding fall risk to help facilities identify patients who may be at risk for falls. This indicator may also be used to identify facilities with poorer track records in fall avoidance. Information about falls prevention also provides information so that facilities serving different types of patients can be distinguished. PROs may also use these data to teach facilities how to better identify patients at risk for falls and set up programs to reduce the incidence of falls through such methods as low beds or better monitoring of at-risk patients.

As illustrated by these examples, there are several ways the quality information gathered through the MDS–PAC may be used. As noted, quality indicator data does not necessarily illustrate that a facility is providing a lower level of care, but this information can be useful to surveyors in targeting facilities for closer review of their patient care practices and facility layout. Quality indicators can also be used to identify facilities with best practices. Identifying how these facilities maintain a high-quality level of care may provide valuable information to assist facilities.

6. Quality Improvement

Quality assurance involves the establishment of standards and having a system to enforce compliance with these standards. Quality improvement fosters and facilitates continuous enhancement of whatever service or product an organization is engaged in or produces. The JCAHO require facilities to have quality improvement programs. Currently, the Medicare Conditions of Participation require hospitals to do quality assurance, which we believe can be supported with the information obtained from the MDS–PAC. The proposed change in the Medicare Conditions of Participation for Hospitals, proposed December 19, 1997, would require hospitals, including IRFs, to have quality improvement programs. Also, we are identifying opportunities in which PROs can use their expertise and skill mix to provide valuable information on quality improvement to post-acute providers. PROs have been working with SNFs for the past year, and feedback from facilities has indicated that the information shared by the PRO in a penalty-free environment has been valuable in helping facilities learn how to use the MDS to identify their own opportunities for quality improvement. In addition, many IRFs already have data-based quality improvement systems addressing some aspects of quality. PROs may build on their experience in SNFs and on the current experience of IRFs to become a resource on how to use information derived from the MDS–PAC to identify potential quality concerns. Quality improvement activities may include providing each facility with information derived from its MDS–PAC submissions for use in self-monitoring, providing facilities with information comparing their performance with that of their peers, and maintaining a clearinghouse of "best practices" that can be used by facilities to improve the quality of care they deliver.

IRFs may also use MDS–PAC data to generate quality indicators on their own and use this information to help them target specific problems within their facility or identify areas where quality improvement projects may be most effective. IRFs can also use the MDS–PAC to perform their own monitoring of changes in quality of care within the facility.

7. Consumer Information

We plan to use the comprehensive quality information derived from MDS–PAC for use in our public reporting strategy. MDS–PAC data, after appropriate evaluation and validation, can be used to inform consumers about the performance of facilities in their area so that they can make informed decisions when selecting a rehabilitation facility. In addition, information derived from MDS–PAC and the comparable information available in SNFs and other settings will help us understand which patients fare better in which types of post-acute settings, or even within subsets of IRFs, thus informing and shaping future long-term care quality initiatives.

As part of our efforts in designing a monitoring system, we are soliciting comments on whether we should also collect data related to medications and medication administration.

I. MDS–PAC Training and Technical Support for IRFs

We will provide educational and technical resources to IRFs, to support both implementation of the MDS–PAC assessment instrument and the computerization and transmission of the MDS–PAC data. We will provide training and technical support on the use of the MDS–PAC by clinical staff and on the use of MPACT software to encode and transmit MDS–PAC data.

Although we will be providing both initial and ongoing training and technical support, IRFs will probably find it advantageous to designate a staff member as an IRF trainer, in order to have in-house capability both to train newly hired staff, and to have a designated person who can serve as the in-house resource for other staff.

We would train and support the IRFs in the implementation of the IRF prospective payment system and automation of the MDS–PAC by—

- Training IRFs on MDS–PAC data set administration;
- Answering questions on the clinical aspects of the MDS–PAC and providing information to IRFs on the use of the MDS-PAC to determine CMGs;
- Providing training to State agency staff in using MDS–PAC data for survey activities;
- Training IRFs in interpreting validation reports;
- Providing information relative to hardware and software requirements; and
- Providing support for transmission of test data, supporting callers who request technical assistance, providing passwords to IRFs, and answering questions about the computer edits and reports.

1. Release of Information Collected Using the MDS–PAC

In § 412.616, we propose that the IRF and its agents must ensure the confidentiality of the information collected using the MDS–PAC in the same manner as all other information in the medical record, in accordance with the hospital conditions of participation at § 482.24(b)(3). The facility must ensure that information may be released only to authorized individuals and must ensure that unauthorized individuals cannot gain access to or alter patient records. Information must be released by the facility or its agent only in accordance with Federal or State laws, court orders or subpoenas. In addition, we propose that an agent acting on behalf of an IRF in accordance with a written contract with that IRF may only use the information for the purposes specified in the contract.

We believe that this provision will ensure that access to MDS–PAC data (paper copy as well as electronic data) is secured and controlled by the IRF, in accordance with Federal and State laws. We believe that proposed § 412.616 would provide an adequate safeguard against the unauthorized use of a patient's clinical record and the information it contains, regardless of form or storage method. As discussed in section III.G.1 of this preamble, however, the confidentiality provisions at proposed § 412.616 may be supplemented or superseded by the security and privacy requirements contained in the "Standards for Privacy of Individually Identifiable Health Information" regulation (64 FR 59918) and the "Security and Electronic Signature Standards" regulation (63 FR 43242), when they are finalized.

As with other regulations that result in the creation of a new system of records, we are in the process of developing a notice describing the new system of records that is unique to MDS–PAC. We have typically issued notices describing new systems of records in conjunction with the issuing of a final rule, rather than at the proposed rule stage. These notices, required by the Privacy Act of 1974, describe both the entities to whom identifiable and non-identifiable data can be routinely disclosed, as well as the safeguards that will protect the privacy and the security of the data. While each system of records notice is unique to the system and the data instrument, readers interested in understanding a recent approach are referred to the notice of the new system of records published June 18, 1999, (64 FR 32992) for the "Home Health Agency Outcome and Assessment Information Set (OASIS)." We would welcome comments on issues germane to the notice that we will develop for MDS–PAC.

J. Patient Rights

In § 412.608, we propose that, in order to receive payment for the Medicare IRF services furnished, the authorized clinician must inform the Medicare inpatient of the following rights with respect to the MDS–PAC assessment prior to performing the assessment. These rights include—

- The right to be informed of the purpose of the MDS-PAC data collection;
- The right to have any MDS–PAC information that is collected remain confidential and secure;
- The right to be informed that the MDS–PAC information will not be disclosed to others except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations;
- The right to refuse to answer MDS–PAC questions; and
- The right to see, review, and request changes on the MDS–PAC assessment.

We propose requiring the IRF ensure that a clinician documents in the Medicare patient's clinical record that the patient has been informed of the above patient rights. IRFs should note that the above patient rights are in addition to the patient rights specified under the conditions of participation for hospitals in § 482.13.

Our statements of patient rights with regard to the MDS–PAC would also be available via the HCFA Inpatient Rehabilitation Facility Prospective Payment System website. These statements may be revised in accordance with the Office of Management and Budget Paperwork Reduction Act re-approval process. Future revisions to these statements will be available via the HCFA Inpatient Rehabilitation Facility Prospective Payment System website, and in other instructional materials that we issue.

K. Medical Review Under the IRF Prospective Payment System

Under a discharge-based prospective payment system IRFs might have financial incentives to reduce the quality and quantity of services furnished to a patient. To monitor for any reduction in the quality or quantity of services IRFs furnish, medical review may be conducted on both a random and targeted basis. Targeting may include claim-specific data and patterns of case-mix upcoding, as well as the general issues of the medical need for the episode of care and technical eligibility. There will be the capability for both prepayment and post-payment medical review that will deny claims in total or adjust payment to the correct case mix. Medical review will validate MDS–PAC data items against clinical records.

IV. Case-Mix Group Case Classification System

A. Background

As discussed in section I.C.2. of this preamble, section 1886(j)(2)(A) of the Act requires the Secretary to establish a method of classifying patients in rehabilitation facilities within case-mix groups. Further, the Act, as amended by section 125 of the BBRA, requires the Secretary to establish classes of patient discharges of rehabilitation facilities by functional-related groups, based on impairment, age, comorbidities, functional capability of the patient, and other factors as the Secretary considers appropriate to improve the explanatory power of the functional independence measure-function related groups. Under

the classification system that we are proposing, as described at § 412.620(a), patients would be classified into case-mix groups called CMGs based on clinical characteristics and resource needs.

We began our efforts to establish an appropriate classification system by examining the FIM–FRGs, a classification methodology developed by Stineman *et al.* (1994) and extended to incorporate comorbidities in Carter, Relles, *et al.* (1997). In developing the proposed CMGs, we updated the earlier FIM–FRG analysis with more recent data from calendar years 1996 and 1997 Medicare bills as well as functional status measures from UDSmr and Caredata.com for the same calendar years (see Appendix A for a detailed description of the data used to create the CMGs). The results of using more recent data showed that the earlier FIM–FRG classification system continues to be an appropriate basis to predict resource use. Based on our analysis of the more recent data, we are proposing a classification system that reflects general enhancements, including: a refined set of rehabilitation impairment categories; a modified set of relevant comorbidities; groups for cases that expire; and other types of atypical discharges, such as short-stay cases.

B. Case-Mix Groups

1. General Description of the Case-Mix Groups

The data elements used to construct the proposed CMGs include rehabilitation impairment categories (RICs), functional status (both motor and cognitive), age, and comorbidities. We also used other factors to define the CMGs that allow us to improve the explanatory power of the groups. Specifically, we created CMGs to account for short-stays and expired cases. The CMGs are based on an analysis of the Medicare inpatient rehabilitation cases described in Appendix A of this proposed rule. We separated those cases that we believe received a typical, full course of inpatient rehabilitation care from those cases that may not have received a typical, full course of inpatient rehabilitation care such as transfer cases and special cases that are not transfers. As described below, (1) the analysis of cases that receive a typical, full course of inpatient rehabilitation care results in the construction of 21 RICs and 92 CMGs; and (2) the analysis of special cases that are not transfers results in the construction of 4 CMGs for cases that expire and 1 CMG for cases that have a length of stay of 3 days or less. In addition, as described in section V.B. of this preamble, the analysis of transfer cases results in a payment policy that is dependent on which CMG the patient is classified to prior to the patient's transfer.

2. Criteria for Establishing CMGs

We used the following criteria for establishing specific groups within the proposed classification system:

- Group cases that are clinically similar. To do this, we began with the 20 RICs defined by Stineman *et al.* (1997) and examined a variety of changes that were suggested might improve either clinical or resource homogeneity.
- Group cases that have similar resource needs. To do this, we used a statistical classification method, the Classification and Regression Trees (CART), to partition the cases within RICs into groups that are homogeneous with respect to resource use and functional impairment. Thus, each CMG consists of cases that have similar clinical and resource needs.
- Determine which comorbidities affect the cost of rehabilitation cases by RIC.

We describe in more detail the methodology that we used to construct the CMGs.

3. Rehabilitation Impairment Categories

The first partition in creating the CMGs is based on the RIC of the case. RICs are groups of codes that indicate the primary cause of the rehabilitation hospitalization and are clinically homogeneous. The patient is first grouped into a RIC based on the impairment identified in the data described above. Table 1D below lists the RICs used to define and construct the first partition of the inpatient rehabilitation cases.

The earlier RAND research of 1994 data resulted in 20 RICs. We analyzed RAND's statistical analysis of 1997 data, and that showed that the 1997 data performed as well as the 1994 data in predicting resource use in RICs 01 through 20 (except that the impairment code 14.9 "Status post major multiple fractures" grouped better in RIC 17). In addition, the 1997 data indicated the need to create a separate RIC for burn cases.

For the majority of CMGs, the RIC represents the first two digits of the CMG. Thus, in Table 2D below, CMGs 0101 through 0111 are cases that are classified to the stroke (01) RIC.

TABLE 1D.—REHABILITATION IMPAIRMENT CATEGORIES AND ASSOCIATED IMPAIRMENT GROUP CODES

Rehabilitation impairment category	Associated impairment group codes
01 Stroke (Stroke)	01.1 Left body involvement (right brain) 01.2 Right body involvement (left brain) 01.3 Bilateral Involvement 01.4 No Paresis 01.9 Other Stroke
02 Traumatic brain injury (TBI)	02.21 Open Injury 02.22 Closed Injury
03 Nontraumatic brain injury (NTBI)	02.1 Non-traumatic 02.9 Other Brain
04 Traumatic spinal cord (TSCI)	04.210 Paraplegia, Unspecified 04.211 Paraplegia, Incomplete 04.212 Paraplegia, Complete 04.220 Quadriplegia, Unspecified 04.2211 Quadriplegia, Incomplete C1–4 04.2212 Quadriplegia, Incomplete C5–8 04.2221 Quadriplegia, Complete C1–4 04.2222 Quadriplegia, Complete C5–8 04.230 Other traumatic spinal cord dysfunction

TABLE 1D.—REHABILITATION IMPAIRMENT CATEGORIES AND ASSOCIATED IMPAIRMENT GROUP CODES—Continued

Rehabilitation impairment category	Associated impairment group codes
05 Nontraumatic spinal cord (NTSCI)	04.110 Paraplegia, unspecified
	04.111 Paraplegia, incomplete
	04.112 Paraplegia, complete
	04.120 Quadriplegia, unspecified
	04.1211 Quadriplegia, Incomplete C1–4
	04.1212 Quadriplegia, Incomplete C5–8
	04.1221 Quadriplegia, Complete C1–4
	04.1222 Quadriplegia, Complete C5–8
	04.130 Other non-traumatic spinal cord dysfunction
06 Neurological (Neuro)	03.1 Multiple Sclerosis
	03.2 Parkinsonism
	03.3 Polyneuropathy
	03.5 Cerebral Palsy
	03.8 Neuromuscular Disorders
	03.9 Other Neurologic
07 Fracture of LE (FracLE)	08.11 Status post unilateral hip fracture
	08.12 Status post bilateral hip fractures
	08.2 Status post femur (shaft) fracture
	08.3 Status post pelvic fracture
08 Replacement of LE joint (ReplLE)	08.51 Status post unilateral hip replacement
	08.52 Status post bilateral hip replacements
	08.61 Status post unilateral knee replacement
	08.62 Status post bilateral knee replacements
	08.71 Status post knee and hip replacements (same side)
	08.72 Status post knee and hip replacements (different sides)
09 Other orthopedic (Ortho)	08.9 Other orthopedic
10 Amputation, lower extremity (AMPLE)	05.3 Unilateral lower extremity above the knee (AK)
	05.4 Unilateral lower extremity below the knee (BK)
	05.5 Bilateral lower extremity above the knee (AK/AK)
	05.6 Bilateral lower extremity above/below the knee (AK/BK)
	05.7 Bilateral lower extremity below the knee (BK/BK)
11 Amputation, other (AMP–NLE)	05.1 Unilateral upper extremity above the elbow (AE)
	05.2 Unilateral upper extremity below the elbow (BE)
	05.9 Other amputation
12 Osteoarthritis (OsteoA)	06.2 Osteoarthritis
13 Rheumatoid, other arthritis (RheumA)	06.1 Rheumatoid Arthritis
	06.9 Other arthritis
14 Cardiac (Cardiac)	09 Cardiac
15 Pulmonary (Pulmonary)	10.1 Chronic Obstructive Pulmonary Disease
	10.9 Other pulmonary
16 Pain Syndrome (Pain)	07.1 Neck pain
	07.2 Back pain
	07.3 Extremity pain
	07.9 Other pain
17 Major multiple trauma, no brain injury or spinal cord injury (MMT–NBSCI).	08.4 Status post major multiple fractures
	14.9 Other multiple trauma
18 Major multiple trauma, with brain or spinal cord injury (MMT–BSCI).	14.1 Brain and spinal cord injury
	14.2 Brain and multiple fractures/amputation
	14.3 Spinal cord and multiple fractures/amputation
19 Guillian Barre (GB)	03.4
20 Miscellaneous (Misc)	12.1 Spina Bifida*
	12.9 Other congenital
	13 Other disabling impairments
	15 Developmental disability
	16 Debility
	17.1 Infection
	17.2 Neoplasms
	17.31 Nutrition (endocrine/metabolic) with intubation/parenteral nutrition
	17.32 Nutrition (endocrine/metabolic) without intubation/parenteral nutrition
	17.4 Circulatory disorders
	17.51 Respiratory disorders—Ventilator Dependent
	17.52 Respiratory disorders—Non-ventilator Dependent
	17.6 Terminal care
	17.7 Skin disorders
	17.8 Medical/Surgical complications
	17.9 Other medically complex conditions
21 Burns (Burns)	11 Burns

*We are in the process of analyzing the effect of moving the few cases within this impairment category to one of the other spinal cord RICs (either 05 or 04 depending upon the "fit").

4. Functional Status Measures and Age

After using the RIC to define the first split among the inpatient rehabilitation cases, we used functional status measures and age to partition the cases further. We describe below the statistical methodology (Classification and Regression Trees or CART) that we used to incorporate a patient's functional status measures (motor score and cognitive score), and age into the construction of the proposed CMGs.

The CART methodology was used to split the rehabilitation cases further within each RIC. In general, CART can be used to identify statistical relationships among data and, using these relationships, construct a predictive model for organizing and partitioning a large set of data into smaller homogeneous groups. Further, in constructing the proposed CMGs, we analyzed the extent to which the independent variables (motor score, cognitive score, and age) help predict the value of the dependent variable (the log of the cost per case).

The CART methodology will ensure that the proposed CMGs recognize that patients with clinically distinct resource needs are treated separately in the classification and payment systems. CART is an iterative process that creates initial groups of patients then searches for ways to split the initial groups that may further decrease the clinical and cost variances within a group and increase the explanatory power of the CMGs. (Further information regarding this methodology can be found in the seminal literature on CART (Classification and Regression Trees, Leo Breiman, Jerome Friedman, Richard Olshen, Charles Stone, Wadsworth Inc., Belmont CA, 1984: pp 78–80.)

We also used a validation method to assess the predictive accuracy of the RICs and CMGs. Half of the 1996 and 1997 data described in Appendix A was used initially to create the CMGs. Once this was done, the other half of the data was used to test or validate the predictive accuracy of the CMGs. We concluded that the RICs and CMGs we are proposing are valid because the groups performed as well using the second half of the data as they did with the first half. The final definitions of the specific RICs and CMGs was based on 100 percent of the 1997 Medicare cost data with corresponding UDSmr/COS data.

As a result of this analysis, Table 2D lists 92 CMGs and their respective descriptions, including the motor and cognitive scores and age that will be used to classify discharges into CMGs. As described in section II.B. of this preamble, some CMGs may change based on further analysis of available data and comments we receive in response to this proposed rule.

5. Comorbidities

We found comorbidities have major effects on the cost of furnishing inpatient rehabilitation care. RAND's previous analysis, based on 1994 data, found that these comorbidities also increased the cost of furnishing inpatient rehabilitation care. A list of the major comorbidities appears in Appendix C of this proposed rule. A case has to have only one of the listed comorbidities to be classified as a case with comorbidity. We found that the presence of major comorbidities multiplies the expected resource use of a case by the same amount for each CMG in the same RIC.

We matched frequently occurring comorbidities to impairment categories in order to ensure that all of the chosen comorbidities are, in fact, relevant to the RIC. Providing rehabilitation services to a beneficiary with a total hip replacement can become both more complex and more costly if the beneficiary also has pneumonia. By contrast, some pulmonary diagnoses might be determined not to have a cost impact for beneficiaries with chronic obstructive pulmonary disease.

We found comorbidities to affect cost per case for some of the CMGs, but not all. When comorbidities substantially increased the average cost of the CMG and were determined to be clinically relevant, we developed CMG relative weights adjusted for comorbidities. We will continue to analyze the data to determine if refinements to the list of comorbidities in Appendix C are necessary. Further discussion of the effect of comorbidities is described in section V.A.2. of this preamble.

6. Analysis of Special Cases

We analyzed payment-to-cost ratios of special types of cases that were not transfer cases to determine if costs could be predicted. From this analysis, we believe that cases that expire and cases with a length of stay of 3 days or less (not including transfer cases) would be substantially "overpaid" if facilities receive the full CMG payment for these cases. To improve the explanatory power of the groups, we added four CMGs to account for cases that expire and one CMG for all cases that have a length of stay of 3 days or less (not including transfer cases). These types of special cases are further explained in section V.C. of this preamble. Therefore, the total number of proposed CMGs is 97 as shown in Table 2D.

7. Methodology To Classify Patients Into CMGs

Data from the MDS–PAC, described in section III of this preamble and specified in proposed § 412.620(a)(3) of the regulations, will be used to classify a patient into a CMG. In Table 3D, we have identified the specific MDS–PAC items that must be completed in order to classify a patient into a CMG and to effectively implement the proposed prospective payment system. (These items, along with other MDS–PAC items, will be used to administer, monitor, and analyze possible refinements to the proposed prospective payment system as described in section III of this preamble.) The MDS–PAC items will be used to establish the motor score, cognitive score, and age of the patient that corresponds with a specific CMG description.

8. Case Example To Classify a Patient Into a CMG

The following example illustrates how a Medicare beneficiary would be classified to a CMG under the proposed classification system. An 82 year old woman has a left total hip replacement because of osteoarthritis, and is admitted to the IRF because of the need for rehabilitation after the hip replacement surgery. The beneficiary is first classified into RIC 08: Replacement of Left Extremity Joint with Associated Impairment Group Code 08.51: Status Post Unilateral Hip Replacement.

Assessment

MDS–PAC SCORE

0 Independent in eating (MDS–PAC section E, 1g);
1 Requires set up to dress upper body (MDS–PAC section E, 1e);
5 Requires maximum assistance to dress lower body (MDS–PAC section E, 1f);
1 Requires set up for grooming (MDS–PAC section E, 1j);
2 Requires minimal assistance for bed mobility (MDS–PAC section E, 1b);
5 Requires maximum assistance for bed to chair transfer (MDS–PAC section E, 1b);
5 Requires maximum assistance for walking (MDS–PAC section E, 1d);
5 Requires maximum assistance for toilet transfer (MDS–PAC section E, 1i);
5 Requires maximum assistance for bathing (MDS–PAC section E, 1k);
6 Dependent shower transfer (MDS–PAC section E, 1k);
6 Dependent stair climbing (MDS–PAC section E, 8c); and
0 Independent bowel and bladder sphincter control (MDS–PAC section F, 1 and 4.

Total MDS–PAC Motor Score: 41

This motor score places the Medicare beneficiary in CMG 0802, which is "Replacement of lower extremity joint" with a motor score from 41–33. (See footnote at the bottom of Table 2D)

TABLE 2D.—DEFINITION OF CMGS

CMG number**	CMG description
0101	Stroke with motor score from 29–0
0102	Stroke with motor score from 34–30 and cognitive score from 27–135*
0103	Stroke with motor score from 40–35 and cognitive score from 28–35*
0104	Stroke with motor score from 34–30 and cognitive score from 5–26*
0105	Stroke with motor score from 40–35 and cognitive score from 5–27*
0106	Stroke with motor score from 45–41
0107	Stroke with motor score from 49–46
0108	Stroke with motor score from 55–50
0109	Stroke with motor score from 78–56 and patient is 84 years old or older
0110	Stroke with motor score from 60–56 and patient is 83 years old or younger
0111	Stroke with motor score from 78–61 and patient is 83 years old or younger
0201	Traumatic brain injury with motor score from 33–0 and cognitive score from 30–35*
0202	Traumatic brain injury with motor score from 33–0 and cognitive score from 5–29*
0203	Traumatic brain injury with motor score from 50–34 and cognitive score from 22–35*
0204	Traumatic brain injury with motor score from 50–34 and cognitive score from 5–21*
0205	Traumatic brain injury with motor score from 66–51
0206	Traumatic brain injury with motor score from 78–67
0301	Non-traumatic brain injury with motor score from 33–0 and cognitive score from 22–35*
0302	Non-traumatic brain injury with motor score from 33–0 and cognitive score from 5–21*
0303	Non-traumatic brain injury with motor score from 46–34
0304	Non-traumatic brain injury with motor score from 56–47
0305	Non-traumatic brain injury with motor score from 78–57
0401	Traumatic spinal cord injury with motor score from 36–0
0402	Traumatic spinal cord injury with motor score from 57–37
0403	Traumatic spinal cord injury with motor score from 74–58
0404	Traumatic spinal cord injury with motor score from 78–75
0501	Non-traumatic spinal cord injury with motor score from 23–0
0502	Non-traumatic spinal cord injury with motor score from 36–24
0503	Non-traumatic spinal cord injury with motor score from 45–37
0504	Non-traumatic spinal cord injury with motor score from 57–46
0505	Non-traumatic spinal cord injury with motor score from 78–58
0601	Neurological with motor score from 35–0
0602	Neurological with motor score from 45–36
0603	Neurological with motor score from 53–46
0604	Neurological with motor score from 78–54
0701	Fracture of lower extremity with motor score from 36–0
0702	Fracture of lower extremity with motor score from 45–37
0703	Fracture of lower extremity with motor score from 51–46
0704	Fracture of lower extremity with motor score from 78–52
0801	Replacement of lower extremity joint with motor score from 32–0
0802	Replacement of lower extremity joint with motor score from 41–33
0803	Replacement of lower extremity joint with motor score from 48–42
0804	Replacement of lower extremity joint with motor score from 78–49 and cognitive score from 34–35*
0805	Replacement of lower extremity joint with motor score from 55–50 and cognitive score from 5–33*
0806	Replacement of lower extremity joint with motor score from 78–56 and cognitive score from 5–33*
0901	Other orthopedic with motor score from 32–0
0902	Other orthopedic with motor score from 44–33
0903	Other orthopedic with motor score from 53–45
0904	Other orthopedic with motor score from 78–54
1001	Amputation, lower extremity with motor score from 38–0
1002	Amputation, lower extremity with motor score from 48–39
1003	Amputation, lower extremity with motor score from 78–49
1101	Amputation, non-lower extremity with motor score from 30–0
1102	Amputation, non-lower extremity with motor score from 44–31 and patient is 68 years old or older
1103	Amputation, non-lower extremity with motor score from 44–31 and patient is 67 years old or younger
1104	Amputation, non-lower extremity with motor score from 78–45
1201	Osteoarthritis with motor score from 42–0 and cognitive score from 34–35*
1202	Osteoarthritis with motor score from 42–0 and cognitive score from 5–33*
1203	Osteoarthritis with motor score from 54–43
1204	Osteoarthritis with motor score from 78–55
1301	Rheumatoid, other arthritis with motor score from 30–0
1302	Rheumatoid, other arthritis with motor score from 42–31
1303	Rheumatoid, other arthritis with motor score from 78–43
1401	Cardiac with motor score from 37–0
1402	Cardiac with motor score from 50–38
1403	Cardiac with motor score from 78–51
1501	Pulmonary with motor score from 40–0 and patient is 78 years old or older
1502	Pulmonary with motor score from 40–0 and patient is 77 years old or younger
1503	Pulmonary with motor score from 63–41
1504	Pulmonary with motor score from 78–64
1601	Pain syndrome with motor score from 41–0 and cognitive score from 33–35*
1602	Pain syndrome with motor score from 41–0 and cognitive score from 5–32*
1603	Pain syndrome with motor score from 78–42
1701	Major multiple trauma with brain or spinal cord injury with motor score from 48–0
1702	Major multiple trauma with brain or spinal cord injury with motor score from 78–49
1801	Major multiple trauma, with brain or spinal cord injury with motor score from 56–0
1802	Major multiple trauma, with brain or spinal cord injury with motor score from 78–57
1901	Guillian Barre with motor score from 36–0
1902	Guillian Barre with motor score from 47–37
1903	Guillian Barre with motor score from 78–48
2001	Miscellaneous with motor score from 21–0 and patient is 59 years old or older
2002	Miscellaneous with motor score from 31–22
2003	Miscellaneous with motor score from 36–32
2004	Miscellaneous with motor score from 21–0 and patient is 58 years old or younger
2005	Miscellaneous with motor score from 43–37 and patient is 65 years old or older
2006	Miscellaneous with motor score from 52–44 and patient is 65 years old or older
2007	Miscellaneous with motor score from 43–37 and patient is 65 years old or younger
2008	Miscellaneous with motor score from 78–53 and patient is 84 years old or older
2009	Miscellaneous with motor score from 59–53 and patient is 84 years old or younger
2010	Miscellaneous with motor score from 52–44 and patient is 65 years old or younger
2011	Miscellaneous with motor score from 78–60 and patient is 84 years old or younger
2101	Burns
5001	Short-stay cases, length of stay is 3 days or fewer
5101	Expired, orthopedic, short stay
5102	Expired, orthopedic, not short stay
5103	Expired, not orthopedic, short stay
5104	Expired, not orthopedic, not short stay

*In developing this example of scoring conventions, we have displayed only the FIM motor scores as MDS–PAC scores. We have not included the cognitive scores as MDS–PAC scores. We are currently studying the aggregation of the MDS-PAC variable into the FIM cognitive categories. RAND, our contractor, will be performing additional analysis on the cognitive scoring conventions, and we will be including this research in the final regulations.

**The first two digits of the CMG number from 01 to 21 correspond with a specific RIC number shown on Table 1D.

TABLE 3D.—CRITICAL MDS–PAC ITEMS

Section/item name	Item number
A. ITEMS FROM THE INTERRUPTED STAY TRACKING FORM	
SECTION AA. IDENTIFICATION INFORMATION:	
Legal Name of Patient	1a–1d
Admission Date	2a–2b
Social Security and Medicare Numbers	5a–6b
Facility Provider Number	8a–8b
Medicaid Number	9
Gender	10
Birthdate	11
Ethnicity/Race	12a–12f
Interrupted Stay	13a–13b
Clinician Completing Assessment	14b–14f
B. ITEMS FROM THE BASIC ASSESSMENT TRACKING FORM	
SECTION AA. IDENTIFICATION INFORMATION:	
Legal Name of Patient	1a–1d
Admission Date	2a–2b
Reason for Assessment	3
Assessment Reference Date	4
Discharge Status	5a–5b*
Social Security and Medicare Numbers	6a–6b
Facility Provider Number	8a–8b
Medicaid Number	9
Gender	10
Birthdate	11*
Ethnicity/Race	12a–12f
SECTION AB. ASSESSMENT ATTESTATION:	
Person Completing Assessment	1b–1g

TABLE 3D.—CRITICAL MDS–PAC ITEMS—Continued

Section/item name	Item number
C. ITEMS FROM COMPLETE ASSESSMENT (ASSESSMENT, READMISSION, DISCHARGE)	
SECTION A. DEMOGRAPHIC/ADMISSION INFORMATION HISTORY:	
Legal Name of Patient	1a–1d
Admission Date	2a–2b
Reason for Assessment	3
Admission Status	4
Goals for Stay	5a–5e
Admitted From	6
Precipitating Event Prior to Admission	7
Primary and Secondary Payment Source for Stay	8A–8B
Marital Status	9
Language	11
SECTION B. COGNITIVE PATTERNS:	
Comatose	1*
Memory/Recall Ability	2a–2d*
Cognitive Skills for Daily Decision Making	3a–3b*
Indicators of Delirium-Periodic Disorder Thinking/Awareness	4a–4f*
SECTION C. COMMUNICATION/VISUAL PATTERNS:	
Modes of Communication	2a–2e*
Making Self Understood	3a–3b*
Speech Clarity	4*
Ability to Understand Others	5a–5b*
SECTION E. FUNCTIONAL STATUS:	
3 Day ADL Self-Performance	1a–1l*
ADL Assist Codes	2a–2l*
ADL Changes	3
Devices and Aids	6a–6j*
Walking and Stair Climbing	8a–8c*
SECTION F. BLADDER/BOWEL MANAGEMENT:	
Bladder Continence	1a–1b*
Bladder Appliance	2a–2g*
Bladder Appliance Support	3*
Bowel Continence	4*
Bowel Appliances	5a–5d*
Bowel Appliance Support	6*
SECTION G. DIAGNOSES:	
Impairment Group	1*
Complications/Comorbidities	5a–5d*
SECTION M. RESOURCES FOR DISCHARGE:	
Living Arrangement	3a–3b (A–C)

*Must be recorded by category, variable, and item number; in order for a patient to be classified into a CMG.

9. Adjustment to the Case-Mix Groups

As described in proposed § 412.620(c) of the regulations and as provided by section 1886(j)(2)(c)(i) of the Act, we adjust the CMGs periodically to reflect changes in treatment patterns, technology, number of discharges, and other factors affecting the relative use of resources.

V. Payment Rates

The IRF prospective payment system proposed in this rule utilizes Federal prospective payment rates across 97 distinct CMGs. The Federal payment rates are established using a standard payment amount (referred to as the budget neutral conversion factor). A set of relative payment weights which account for the relative difference in resource use across the CMGs is applied to the budget neutral conversion factor, and finally a number of facility level and case level adjustments may apply. The facility level adjustments include those which account for geographic variation in wages (wage index), Disproportionate Share (DSH), and location in a rural area. Case level adjustments include those which apply for transfer, short-stay and outlier cases, as described later in this section.

The budget neutral conversion factor provides the basis for determining the CMG based Federal payment rates. It is a standardized payment amount that is based on average costs from a base period and also reflects the combined aggregate effects of the payment weights, various facility and case level adjustments, and other policies discussed in this section. Consequently, in discussing the methodology for development of the Federal payment rates, we begin by describing the various adjustments and factors which serve as the inputs used in establishing the budget neutral conversion factor. Accordingly, we propose to develop prospective payments for IRFs using the following major steps:

- Develop the CMG relative weights.
- Determine the payment adjustments.
- Calculate the budget neutral conversion factor minus 2 percent.
- Calculate the Federal CMG prospective payments.

A detailed description of each step and a discussion of our proposed transfer policy, phase-in implementation and other policies follows.

A. Development of CMG Relative Weights

1. Overview of Development of the CMG Relative Weights

As previously stated, one of the primary goals for the implementation of the proposed IRF prospective payment system is to pay each rehabilitation

facility an appropriate payment for the efficient delivery of the care required by its set of Medicare patients. The system must be able to account adequately for each facility's case-mix in order to ensure both fair distribution of Medicare payments and access to adequate care for beneficiaries whose care is provided at a higher cost. To accomplish these goals, payment for each case is adjusted for case-mix.

In this payment system, under proposed § 412.620(b)(1), relative weights are a primary element in accounting for the variance in cost per discharge and resource utilization among the payment groups. To ensure that beneficiaries classified to each CMG will have access to care and to encourage efficiency, we calculate a relative weight for each CMG that is proportional to the resources needed by an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2 will on average cost twice as much as cases in a CMG with a weight of 1.

To calculate the relative weights, we estimate operating (routine and ancillary services) and capital costs from inpatient rehabilitation facilities. Cost-to-charge ratios for ancillary services and per diem costs for routine services were obtained from the most recent available cost report data (FYs 1997, 1996, and/or 1995), charges were obtained from calendar year 1997 Medicare bill data, and corresponding functional measures were derived from the UDSmr/COS data. We omit data from rehabilitation facilities that are classified as all-inclusive providers from the calculation of the relative weights, as well as from the parameters that we use to define transfer cases, because these facilities are paid a single, negotiated rate per discharge and they do not maintain a charge structure.

For ancillary services, we calculate both operating and capital costs by converting charges from Medicare claims into costs using facility-specific, cost-center specific cost-to-charge ratios obtained from cost reports. Some departmental cost-to-charge ratios were missing or found to be outside a plausible range. We replace individual cost-to-charge ratios for all departments except anesthesiology when the values are either greater than 10, or less than 0.05. For anesthesiology, we replace the cost-to-charge ratio only when the value is greater than 10, or less than 0.01. The replacement value that we use for these aberrant cost-to-charge ratios is the mean value of the cost-to-charge ratio for the cost-center within the same type of hospital (either freestanding or unit).

For routine services, per diem operating and capital costs are used to develop the relative weights. In addition, per diem operating and capital costs for special care services are used to develop the relative weights. (Special care services are furnished in intensive care units. We note that fewer than 1 percent of rehabilitation days are spent in intensive care units.) Per diem costs are obtained from each facility's Medicare cost report data. We use per diem costs for routine and special care services because, unlike for ancillary services, cost-to-charge ratios cannot be obtained from Medicare data. To estimate the costs for routine and special care services included in developing the relative weights, we sum the product of routine cost per diem and Medicare inpatient days and the product of the special care per diem and the number of Medicare special care days.

We propose to use a hospital-specific relative value method to calculate relative weights. We believe this method allows us to account for more of the cross-facility variation in costs. Specifically, we remove the variation in costs across providers by converting a facility's cost for a case to a relative value based on the facility's case-mix index. The case-mix index is the average case weight (adjusted to eliminate the effect of comorbidities) for cases at a facility. Under the hospital-specific relative value method, costs are standardized at the facility level using facility-specific costs. Costs are standardized for each case by first dividing the adjusted cost for the case (which reflects comorbidities) by the average adjusted cost for the facility in which the case was treated. The average adjusted cost represents the average intensity of the health care services delivered by a particular facility. The resulting ratio is multiplied by the facility's own costliness (the facility's case-mix index) to determine the standardized cost for the case. The case-mix index accounts for the extent to which the intensity of the services is due to the needs of the facility's patients.

Because costs are standardized in this manner, costs for a beneficiary at a facility with high average costs are counted as less resource intensive than costs at a facility with low average costs. Therefore, the adjusted cost of an individual case more accurately reflects actual resource use for an individual facility. For example, a $7,000 case in a facility with an average adjusted cost of $10,000 reflects a higher level of relative resource use than a $7,000 case in a facility with the same case-mix, but an average adjusted cost of $20,000.

We used the following basic steps to calculate the relative weights in this proposed rule:

The first step in calculating the CMG weights is to estimate the effect that comorbidities have on costs. The second step is to adjust the cost of each Medicare discharge (case) to reflect the effects found in the first step. In the third step, the adjusted costs from the second step are used to calculate "relative adjusted weights" in each CMG using the hospital-specific relative value method described above. The final steps are to calculate the CMG relative weights by modifying the "relative adjusted weight" with the effects of the existence of a comorbidity and normalize the weights to 1.

We describe each of these steps in greater detail below.

2. Steps for Calculating the Relative Weights

Step 1—Estimate the effect of comorbidities on costs. In general, comorbidities are defined as additional medical conditions that increase the complexity of care delivered. For example, treatment for a beneficiary with a total hip replacement can become more complex if the beneficiary also has pneumonia. Because we found comorbidities to be significant predictors of costs in most RICs, we propose to calculate separate relative weights for cases in a given CMG with comorbidity and without comorbidity to reflect the additional costs incurred by cases classified with a comorbidity. We use regression analyses to determine if the weight for a Medicare discharge (case) should reflect the costs of comorbidities. Specifically, separate regression analyses are performed for each RIC. In the analysis, we found that not all comorbidities have the same effect on each RIC. Therefore, if coefficients by RIC are positive and significant and the comorbidity is deemed to be clinically relevant to the CMG, then we calculate separate relative weights for cases with comorbidity in Step 3 below.

Step 2—Adjust the costs of each discharge for the effects of comorbidities. The second step in the calculation of the weights is to adjust the resource use for each case to eliminate the effect of comorbidities. The adjusted cost (A) for a discharge, with values x for comorbidity is:

$$A = \text{cost per discharge}/\exp(a*x)$$

These adjusted cost for each discharge are then used to calculate the relative adjusted weight in each CMG k, w_k.

Step 3—Calculate the CMG relative weights adjusted for comorbidities, on an iterative basis. The process of calculating the CMG relative weights is iterative. First, we give an initial case-mix index value of 1 to each facility. Then, for each case, we calculate a facility-specific relative value by dividing the comorbidity-adjusted cost of the case by the average comorbidity-adjusted cost of all cases at the facility, and multiplying the result by the facility's case-mix index. The CMG-adjusted weights are then set in proportion to the average of the facility-specific relative values. The result is a new case-mix index for each facility and, therefore, new facility-specific, relative values. The process is continued until there is convergence between the weights produced at adjacent steps, for example, when the maximum difference is less than 0.0001. After the first iteration, statistical outliers are defined as cases that differ from the CMG mean by more than three standard deviations in the log scale of standardized cost. These outliers are removed. Discharges that meet the definition of a transfer case are treated as a fraction of a case. (See discussion of transfers in section V.B, below.) A relative weight for each relevant combination of CMG "with comorbidity" and "without comorbidity" is calculated using the following formula:

$W(k,x) = \exp(a^*x)w_k$

Where x equals 1 if the patient had one or more comorbidities or x equals 0 if no comorbidities were present. The variable (w_k) equals the comorbidity adjusted weight. If the coefficient (a) is not positive and significant as previously discussed in Step 1, then (a) will be set to equal 0 in the formula. This results in $\exp(a^*x)$, in the formula, to equal 1 and the weight (W) will equal (w_k).

Step 4—Calculate the weight by modifying the relative adjusted weight with the effects of comorbidity and normalizing the weights to 1.0. This step entails calculating a relative weight for each relevant combination of CMG and comorbidity. In this step, we determine the average cost per discharge for all the cases and use that value as the divisor to calculate the relative weights. For example, if the average cost per discharge across all discharges is $12,000, then the relative weight for a CMG with an average cost of $12,000 is 1, and the relative weight for a CMG with an average cost per discharge of $20,000 is 1.67. If "r" is the relative adjusted weight for a case in a CMG with a comorbidity given by:

$w = k\,r \exp(a^*x)$,

then k is determined so that the average value of w is 1.

Table 1E below lists the CMGs and their respective relative weights. The relative weights reflect the inclusion of cases with a very short interruption (return on day of discharge or either of the next 2 days). As stated previously, comorbidities were found to affect the cost of certain CMGs, but not all. Thus, the value for CMGs not affected by comorbidities is the same in both the "No Comorbidity" and the "With Comorbidity" columns. Information obtained from the first assessment (Day 4 assessment) will be used to determine the appropriate CMG and corresponding payment, including existence of a comorbidity. If a relevant comorbidity is indicated on this assessment, payment will be based on the relative weight from the comorbidity column. It should also be noted that Table 1E reflects cognitive scores that were derived from UDSmr/COS data.

TABLE 1E.—CMG RELATIVE WEIGHTS

CMG *	Definition (M=motor, C=cognitive, A=age)	Split by comorbidity	Average length of stay		Relative weight	
			No comorbidity	With comorbidity	No comorbidity	With comorbidity
0101	M = 29–0	Y	10.4	9.6	0.6058	0.6613
0102	M = 34–30 and C = 27–35	Y	12.0	11.4	0.7095	0.7746
0103	M = 40–35 and C = 28–35	Y	14.3	15.2	0.8605	0.9394
0104	M = 34–30 and C = 5–26	Y	14.2	16.7	0.8560	0.9344
0105	M = 40–35 and C = 5–27	Y	15.9	16.7	0.9620	1.0501
0106	M = 45–41	Y	17.7	17.2	1.0944	1.1947
0107	M = 49–46	Y	20.1	20.7	1.2630	1.3787
0108	M = 55–50	Y	22.7	21.2	1.4365	1.5682
0109	M = 78–56 and A >= 84	Y	24.0	24.9	1.5989	1.7455
0110	M = 60–56 and A <= 83	Y	25.9	23.4	1.6616	1.8139
0111	M = 78–61 and A <= 83	Y	29.5	29.6	1.9626	2.1425
0201	M = 33–0 and C = 30–35	N	9.4	9.4	0.5504	0.5504
0202	M = 33–0 and C = 5–29	N	13.3	13.3	0.8325	0.8325
0203	M = 50–34 and C = 22–35	N	16.0	16.0	0.9777	0.9777
0204	M = 50–34 and C = 5–21	N	18.3	18.3	1.1640	1.1640
0205	M = 66–51	N	22.3	22.3	1.4739	1.4739
0206	M = 78–67	N	31.6	31.6	2.2179	2.2179
0301	M = 33–0 and C = 22–35	Y	10.6	10.4	0.6399	0.7208
0302	M = 33–0 and C = 5–21	Y	13.5	13.3	0.8393	0.9454
0303	M = 46–34	Y	14.8	15.3	0.9467	1.0664
0304	M = 56–47	Y	19.2	19.3	1.2605	1.4198
0305	M = 78–57	Y	24.8	26.9	1.7517	1.9731
0401	M = 36–0	Y	12.6	10.3	0.7135	0.8560
0402	M = 57–37	Y	17.5	18.6	1.0506	1.2603
0403	M = 74–58	Y	26.6	25.5	1.7459	2.0944
0404	M = 78–75	Y	39.3	48.6	2.9252	3.5092
0501	M = 23–0	Y	8.4	8.2	0.4459	0.5528
0502	M = 36–24	Y	10.6	12.8	0.6197	0.7683
0503	M = 45–37	Y	13.5	15.7	0.8152	1.0107
0504	M = 57–46	Y	18.2	18.8	1.1515	1.4277
0505	M = 78–58	Y	25.9	30.2	1.7816	2.2089
0601	M = 35–0	Y	12.3	12.5	0.6971	0.7970
0602	M = 45–36	Y	15.2	15.6	0.9086	1.0389
0603	M = 53–46	Y	17.7	18.2	1.0633	1.2387
0604	M = 78–54	Y	21.4	22.6	1.3375	1.5292
0701	M = 36–0	Y	11.7	12.1	0.6525	0.7604
0702	M = 45–37	Y	14.3	15.5	0.8337	0.9716
0703	M = 51–46	Y	17.1	17.5	1.0129	1.1803
0704	M = 78–52	Y	19.6	20.9	1.1794	1.3743
0801	M = 32–0	Y	8.6	9.6	0.4822	0.5920
0802	M = 41–33	Y	10.1	11.3	0.5984	0.7346
0803	M = 48–42	Y	12.2	14.3	0.7464	0.9162
0804	M = 78–49 and C = 34–35	Y	13.5	16.8	0.8835	1.0845
0805	M = 55–50 and C = 5–33	Y	15.3	16.7	0.9540	1.1710
0806	M = 78–56 and C = 5–33	Y	18.4	21.2	1.1765	1.4441
0901	M = 32–0	Y	10.4	11.0	0.5587	0.6716
0902	M = 44–33	Y	13.3	14.5	0.7641	0.9185
0903	M = 53–45	Y	16.4	17.0	0.9685	1.1642
0904	M = 78–54	Y	20.0	19.7	1.2144	1.4597
1001	M = 38–0	Y	15.0	14.1	0.8488	0.9278
1002	M = 48–39	Y	18.2	17.5	1.1178	1.2219
1003	M = 78–49	Y	21.4	21.0	1.3785	1.5068
1101	M = 30–0	Y	10.6	9.6	0.6095	0.7489
1102	M = 44–31 and A >= 68	Y	13.4	13.5	0.8278	1.0171
1103	M = 44–31 and A <= 67	Y	17.4	17.8	1.0894	1.3386
1104	M = 78–45	Y	20.7	20.8	1.3232	1.6258
1201	M = 42–0 and C = 34–35	Y	10.7	12.1	0.5965	0.6847
1202	M = 42–0 and C = 5–33	Y	13.3	13.9	0.7181	0.8244
1203	M = 54–43	Y	16.4	17.0	0.9181	1.0540
1204	M = 78–55	Y	20.8	22.4	1.1492	1.3192
1301	M = 30–0	Y	11.3	11.2	0.5927	0.6859
1302	M = 42–31	Y	13.3	14.2	0.7116	0.8234
1303	M = 78–43	Y	18.0	19.1	1.0450	1.2093
1401	M = 37–0	Y	12.4	12.1	0.6511	0.7618
1402	M = 50–38	Y	15.4	16.4	0.9006	1.0537
1403	M = 78–51	Y	19.7	24.3	1.2689	1.4846
1501	M = 40–0 and A >= 78	Y	14.0	12.7	0.7741	0.8327
1502	M = 40–0 and A <= 77	Y	15.0	15.3	0.8529	0.9175
1503	M = 63–41	Y	19.2	19.6	1.1875	1.2774
1504	M = 78–64	Y	29.6	32.6	2.2797	2.4524
1601	M = 41–0 and C = 33–35	Y	11.0	10.6	0.6151	0.7313
1602	M = 41–0 and C = 5–32	Y	12.8	15.1	0.7257	0.8628
1603	M = 78–42	Y	15.9	16.0	0.9725	1.1562
1701	M = 48–0	Y	14.8	15.5	0.8513	1.0565
1702	M = 78–49	Y	22.5	24.9	1.3677	1.6974
1801	M = 56–0	N	16.7	16.7	0.9935	0.9935
1802	M = 78–57	N	29.5	29.5	2.0563	2.0563
1901	M = 36–0	N	11.5	11.5	0.7048	0.7048
1902	M = 47–37	N	18.0	18.0	1.0883	1.0883
1903	M = 78–48	N	31.4	31.4	2.0648	2.0648
2001	M = 21–0 and A >= 59	Y	9.2	8.8	0.5010	0.5604
2002	M = 31–22	Y	11.5	11.5	0.6435	0.7198
2003	M = 36–32	Y	13.0	13.0	0.7468	0.8353
2004	M = 21–0 and A <= 58	Y	13.9	11.2	0.7131	0.7977
2005	M = 43–37 and A >= 65	Y	14.4	14.4	0.8549	0.9562
2006	M = 52–44 and A >= 65	Y	16.5	17	1.0145	1.1348
2007	M = 43–37 and A < 65	Y	16.0	15.7	0.9998	1.1183
2008	M = 78–53 and A >= 84	Y	18.2	20.2	1.1359	1.2705
2009	M = 59–53 and A < 84	Y	19.8	19.9	1.2481	1.3960
2010	M = 52–44 and A < 65	Y	18.1	18.6	1.1570	1.2941
2011	M = 78–60 and A < 84	Y	23.2	24.3	1.4898	1.6664
2101	All burn cases	N	18.5	18.5	1.2863	1.2863
5001	Short stay cases—LOS is 3 days or fewer	N	2.6	2.6	0.1906	0.1906
5101	Expired orthopedic, short stay	N	7.1	7.1	0.4657	0.4657
5102	Expired orthopedic, not short stay	N	20.0	20.0	1.0777	1.0777
5103	Expired not ortho, short stay	N	8.4	8.4	0.5485	0.5485
5104	Expired not ortho, not short stay	N	25.1	25.1	1.5027	1.5027

* The first two digits of the CMG number from 01 to 21 correspond with a specific RIC number shown on Table 1D in section IV of this proposed rule.

B. Transfer Payment Policy

1. Background

We are proposing, under § 412.624(f), a transfer policy to provide for payments that more accurately reflect facility resources used and services delivered. We believe that it is important to minimize the inherent incentives specifically associated with the early transfer of patients in a discharge-based payment system. Without a transfer policy, we are concerned that incentives might exist for IRFs to discharge patients prematurely as well as admit patients that may not be able to endure intense inpatient therapy services. Patients might be transferred before receiving the typical, full course of inpatient rehabilitation, but the IRF would be paid the full CMG payment rate in the absence of a transfer policy. Accordingly, the transfer policy that we are proposing would reduce the full CMG payment rate when a Medicare beneficiary is transferred (as defined below).

2. Statutory Background

Section 125(a)(3) of the BBRA amended section 1886(j)(1) of the Act by adding a new paragraph (E) that states "Construction relating to transfer authority. "Nothing in this subsection shall be construed as preventing the Secretary from providing for an adjustment to payments to take into account the early transfer of a patient from a rehabilitation facility to another site of care."

The statute does not define "site of care". "Site of care" could be defined as an "institutional site" that includes other rehabilitation facilities, long-term care hospitals (as described in section 412.23(e) of the regulations), inpatient hospitals, and nursing homes that accept payment under Title 18 (the Medicare program) or Title 19 (the Medicaid program), or both. "Site of care" can also be defined as a "provider site" that is more encompassing and could include home health, outpatient rehabilitation, "day program" services, as well as the "institutional sites" listed above. For the purposes of our transfer policy, we are proposing to define site of care as an "institutional site", although we are considering the option to extend the definition of site of care to the "provider site" definition. Further, we are soliciting comments regarding the inclusion of nursing homes in the definition of site of care.

3. Criteria for Defining Transfer Cases

We propose that, in order for a discharge from an IRF to be classified as an early transfer, the length of stay for the discharge must be less than the average length of stay for non-transfer cases (cases in which the patient is discharged to the community and the length of stay is more than 3 days) in a given CMG (as shown in Table 1E in this section), and the patient must be discharged to another rehabilitation facility, a long term care hospital, an inpatient hospital, or a nursing home that accepts payment under either the Medicare program or the Medicaid program, or both.

We believe that under a prospective payment system, an IRF may, also, be inclined to discharge beneficiaries prematurely while increasing the volume and intensity of HHA and outpatient therapy services. We expect that some beneficiaries may require HHA or outpatient therapy services as a normal progression of care after their inpatient rehabilitation stay. However, we are concerned that intensive use of these therapy services could be inappropriately used as a substitute for several days of an intensive therapy program in the IRF. We are analyzing claims data to determine the extent to which we can distinguish among services that could be considered a substitution of care rather than an extension of the normal progression for inpatient rehabilitation care and to determine the frequency and intensity of both HHA and outpatient therapy services. Estimating the potential substitution of HHA therapy services is made more challenging because we have just developed the HHA prospective payment system and it is difficult to anticipate how therapy services will be delivered after implementation of that system.

Accordingly, we are not proposing to include HHA, outpatient therapy, and "day programs" in our transfer policy. However, we are considering including these services to the extent we can distinguish when HHA and outpatient therapy services are more intensive and used as a substitution for inpatient rehabilitation care. If we can determine that the care is used as a substitution rather than just the normal progression of care, we believe these types of intensive HHA and outpatient therapy services should be included as part of the transfer policy. Therefore, we specifically solicit comments on this option.

In addition, we will be developing a monitoring system that includes transfers or discharges from an IRF to "provider sites", previously referenced. This will include transfers or discharges from an IRF to skilled nursing facility, long term care facilities, home health agencies and inpatient hospitals. This system will include discharges and transfers from one IRF to a different IRF including situations where the transfer occurs between organizations of common ownership. Although currently it does not appear that this type of transfer occurs frequently, further analysis of data regarding this type of transfer between IRFs may warrant an adjustment to payments. Therefore, we are specifically soliciting comments on this monitoring system.

4. Transfer Case Payment

We believe that matching payment as closely as possible to expected costs is the best way to reduce opportunities for financial considerations to affect clinical decisions. We found a significant correlation between the length of a patient's stay and the cost of the services received. This correlation indicates that the average length of stay can be used as a proxy measure of a facility's resources needed to treat a specific diagnosis with rehabilitation services. Thus, a per-diem-based payment for the number of days of care prior to a transfer will allow us to pay providers more appropriately for the facility resources used and services delivered.

We propose to compute the per-diem-based payment for a transfer case as follows: First, calculate the unadjusted per-diem amount for each CMG (except the short-stay CMG) by dividing the average length of stay for non-transfer cases (those cases discharged to the community with a length of stay more than 3 days) in the CMG into the Federal prospective payment (with or without comorbidities) for that CMG. Next, multiply the CMG per-diem payment from the first step by the number of days that the beneficiary was in the IRF prior to their transfer. The result equals the unadjusted Federal prospective payment for the transfer case. See section V.D of this preamble for specific adjustments that are applicable to this Federal prospective payment. We solicit comments on the appropriateness of our proposed methodology for computing payments for transfer cases.

We will examine the distribution of costs to determine if and to what extent costs vary during the course of an episode. If costs vary during the course of an episode, an alternative transfer policy could be developed to better reflect the costs of care. The results of this analysis will be considered as well as the incentives inherent in an alternative transfer payment methodology.

C. Special Cases That Are Not Transfers

Section 1886(j)(3)(A)(v) of the Act permits us to adjust the payment rates by factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities.

Certain cases that have stays of less than the typical length of time and that receive less than the full course of rehabilitation treatment for a specific CMG would be paid inappropriately if the facility were to receive the full CMG payment. Further, because of the budget neutrality requirements, "overpayment" for these cases would reduce payments for all other cases that warrant full payment based on the rehabilitation services actually delivered. We discuss the special cases below in terms of the definitions, policy rationale, and the proposed payment methodology. The three subsets are short-stay outliers, cases that expire, and interrupted stays.

1. Short-Stay Outlier

We propose, under § 412.620(b)(2), to define a short-stay outlier as a case that has a length of stay of 3 days or fewer (regardless of the CMG) and that does not meet the definition of a transfer as discussed in section V.B. of this preamble. A short-stay may occur when a beneficiary receives less than the full course of rehabilitative treatment because he or she leaves the facility against medical advice. Another circumstance warranting classification as a short-stay outlier involves patients who are admitted to rehabilitation facilities but are unable to tolerate intensive rehabilitative services. These patients may be discharged home and be readmitted once they are able to tolerate intensive rehabilitative services (see the interrupted stay policy in section V.C.3. of this preamble, for further clarification regarding length of stay criteria), or they may be discharged and not readmitted because they remain unable to tolerate these services.

An incomplete assessment submitted when the patient's length of stay is 3 days or fewer is another example of a short-stay case. In this situation, the facility may not have the appropriate information to complete the MDS–PAC patient assessment. We believe that a payment adjustment is necessary to reduce incentives for facilities to complete an assessment with inadequate information. Further, we believe that providing a special payment for incomplete assessments neither encourages facilities to submit incomplete assessments without obtaining the appropriate information, nor severely penalizes providers that occasionally may be unable, despite good faith efforts, to complete assessments.

Making a short-stay outlier payment for these types of cases will allow us to counteract the incentives inherent in a discharge-based prospective payment system for this pattern to emerge. Payment-to-cost ratios for the cases described above show that if facilities receive a full CMG payment, they would be "overpaid" for the resources they have expended. One of the primary objectives of the prospective payment system is to provide incentives for facilities to become more efficient and, in doing so, to ensure that they can still receive adequate and appropriate payments. Because the rates are set to be budget neutral minus 2 percent, excessive payment for those cases that do not actually entail the full course of rehabilitative treatment would reduce payments for cases that warrant full payment based on the rehabilitation services delivered. A short-stay outlier policy would permit more equitable payment to those facilities that manage to increase efficiencies while still providing the full course of rehabilitative treatment.

We propose to pay short-stay outliers a relative weight of 0.1908. We computed this relative weight for short-stay outlier discharges by identifying all cases in which the length of stay is 3 days or fewer and the discharge does not meet the policy criteria to be considered a transfer. The relative weight for these cases is calculated in the same manner discussed previously, using the hospital-specific relative value methodology.

However, we believe that the considerations underlying the short-stay policy might also apply to cases with a length of stay greater than 3 days. More specifically, we note that some beneficiaries may have longer lengths of stay, and yet may not require intensive inpatient rehabilitative care, or may lack the capacity to participate in an intensive rehabilitation program. Therefore, we are also considering a short-stay policy that would encompass cases with a length of stay longer than 3 days. We are in the process of further analyzing claims data for Medicare beneficiaries to determine the most appropriate number of days to use in the definition of a short-stay case. If analysis of the data supports increasing the number of days for the short-stay criteria, we might adopt in the final rule a definition covering a longer period than the 3-day period. We specifically solicit comments on the appropriate time period for our short-stay criteria.

2. Cases That Expire

In general, cases that end in death would be substantially "overpaid" if facilities received the full CMG payment for these cases; even excluding all of the very short-stay cases with a length of stay of 3 days or fewer, the remaining expired cases as a whole would still be "overpaid". We analyzed payment-to-cost ratios and found that we can improve the accuracy of the payments if we split expired cases into two categories based on the RIC—one for orthopedic cases and one for all other types of RICs. We further find that splitting these cases based on length of stay also improves the accuracy of the payment system. Therefore, we propose, under § 412.620(b)(3), that, for expired cases where a beneficiary dies within 3 days from admission or fewer, the case would be classified into the short-stay CMG. We propose that, for expired cases with a length of stay greater than 3 days, the case would be classified into one of four CMGs, based on length of stay and whether or not the discharge falls within the orthopedic RIC. More specifically, one group includes orthopedic discharges with a length of stay of more than 3 days but less than or equal to the average length of stay for expired cases classified within the orthopedic RIC. The second group includes orthopedic discharges with a length of stay greater than the average length of stay for expired cases classified within the orthopedic RIC. The third group includes non-orthopedic discharges with a length of stay of more than 3 days but less than or equal to the average length of stay of expired cases that are not classified within the orthopedic RIC. The fourth group includes non-orthopedic discharges with a length of stay greater than the average length of stay of expired cases that are not classified within the orthopedic RIC. Relative weights for each expired CMG are calculated using the hospital-specific relative value methodology discussed previously in this preamble.

3. Interrupted Stay

We propose to define interrupted stay cases as those involving cases in which the beneficiary returns to the rehabilitation facility by midnight of the third day following a discharge. We propose to pay one discharge payment for these cases. The assessment from the initial stay would be used to determine the appropriate CMG.

D. Adjustments

Section 1886(j)(6) of the Act requires an adjustment to the Federal prospective payments to account for geographical wage variation. Section 1886(j)(3)(A)(v) of the Act confers broad discretion on the Secretary to adjust prospective payments "by such other factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities." Section 1886(j)(4) of the Act authorizes (but does not require) the Secretary to make specified payment adjustments (including an adjustment for outlier cases). In addition to the geographical wage adjustment, we propose to adjust payments for facilities located in rural areas. Further, we propose to adjust payments to reflect the percentage of low income patients. These adjustments and the proposed payment methodologies are discussed below.

1. Area Wage Adjustment

Section 1886(j)(6) of the Act specifies that payment rates under the IRF prospective payment system must be adjusted to account for geographic area wage variation. The statute requires the Secretary to adjust the labor-related portion of the prospective payment rates for area differences in wage levels by a factor reflecting the relative facility wage level in the geographic area of the rehabilitation facility compared to the national average wage level for these facilities. We propose, under § 412.624(e)(1), to adjust the payment rates for geographic wage variations using the following methodology.

To account for wage differences, we first identify the proportion of labor and non-labor components of costs. In general, the labor-related share is the sum of relative importances of wages, fringe benefits, professional fees, postal services, labor-intensive services, and a portion of the capital share from an appropriate market basket. We determine a labor-related share for rehabilitation facilities by first estimating the portion related to operating costs. We use the excluded market basket with capital to determine the labor-related share. The excluded market basket with capital is derived from available cost data for facilities including rehabilitation, long-term care, psychiatric, cancer, and children's hospitals. Using the excluded hospital market basket with capital, the labor-related share of operating costs is 67.03 percent in fiscal year 2001. Table 2E shows that the sum of the relative importance for wages and salaries, employee benefits, professional fees, postal services and all other labor intensive services equals 67.03 percent for FY 2001. The labor-related share of capital costs needs to be considered as well. The portion of capital attributed to labor is estimated to be 46 percent, the same percentage used for the hospital inpatient capital-related prospective payment system. Because the relative importance for capital is 9.285 percent of the excluded hospital with capital market basket in FY 2001, we multiply 46 percent by 9.285 percent to determine the labor-related share for capital costs in FY 2001, which is 4.271 percent. We add 4.271 percent for capital costs to 67.03 percent for operating costs to determine the total labor-related share. Thus, the labor-related share that we propose to use for rehabilitation facilities in FY 2001 is 71.301 percent as shown in the Table 2E below.

TABLE 2E.—TOTAL LABOR-RELATED SHARE

Cost category	Relative importance (%) FY 2001
Wages and salaries	48.895
Employee benefits	10.790
Professional fees	1.979
Postal services	0.245
All other labor intensive services	5.121
SUBTOTAL	67.03
Labor related share of capital	4.271
TOTAL	71.301

We note that a precedent exists for using this method to adjust for geographic differences in costs. Specifically, the labor-related portion for acute care hospitals is determined from cost report data, and is established in conjunction with the hospital operating market basket. We further validated the labor-related share by analyzing the results of the wage index coefficient derived from the regressions. The wage index coefficient allows us to approximate the labor-related portion of cost per case. The coefficient confirms that 71.301 percent is an appropriate labor-related share.

The labor-related portion of the unadjusted Federal payment is multiplied by a wage index value to account for area wage differences. We are proposing to use inpatient acute care hospital wage data to compute the wage indices. Wage data to compute IRF-specific wage indices are currently not available. We believe that the inpatient acute care hospital wage data reflect wage levels similar to those of post-acute care facilities, including IRFs. We believe that IRFs and other post-acute care facilities (such as, SNFs and HHAs) generally compete in the same labor market as inpatient acute care hospitals. (Inpatient acute care hospital data is currently being used to compute wage indices for the SNF and HHA prospective payment systems.) Accordingly, we believe that inpatient acute care hospital wage data is appropriate to use as a basis of computing the IRF wage index in accordance with section 1886(j)(6) of the Act.

The inpatient acute care hospital wage data that we propose to use includes the following categories of data associated with costs paid under the inpatient acute care hospital prospective payment system (as well as outpatient costs): salaries and hours from short-term, acute care hospitals, home office costs and hours, certain contract labor costs and hours, and wage-related costs. The wage data excludes the wages for services provided by teaching physicians, interns and residents, and nonphysician anesthetists under Medicare Part B, because these services are not covered under the IRF prospective payment system. These wages are currently being phased out of the hospital inpatient prospective payment system wage index over a 5-year period. The wage data used to compute the FY 2000 SNF and hospital wage indices are based on a blend of 80 percent of an average hourly wage that includes these costs and 20 percent of an average hourly wage that excludes these costs. Unlike the inpatient prospective payment system for acute care hospitals, a transition is unnecessary for IRF prospective payment system because payment for inpatient rehabilitation services has never been based on a wage index that includes data for these services. The difference across geographic areas between a wage index that uses the 80/20 blend and a wage index that excludes 100 percent of wages for teaching physicians, residents, and nonphysician anesthetists is less than 2 percent on average.

Consistent with the wage index methodologies in other prospective payment systems, we propose to divide hospitals into labor market areas. For purposes of defining labor market areas, we are proposing to define an urban area as a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), as defined by the Executive Office of Management and Budget. We are proposing to define a rural area as any area outside an urban area. For the purposes of computing the wage index for IRFs, the wage index values for urban and rural areas are determined without regard to geographic reclassification under section 1886(d)(8) or (d)(10) of the Act.

We are proposing to use an IRF wage index that is based on FY 1996 inpatient acute care hospital wage data. These data were also used to compute the FY 2000 hospital inpatient PPS wage indices. The FY 1997 inpatient acute care hospital wage data was used to develop the FY 2001 hospital wage index, and we will consider using this data for developing the final Federal prospective payments.

The proposed IRF wage indices are computed as follows:

- Compute an average hourly wage for each urban and rural area.
- Compute a national average hourly wage.
- Divide the average hourly wage for each urban and rural area by the national average hourly wage—the result is a wage index for each urban and rural area.

To calculate the adjusted facility payments, the prospectively determined Federal prospective payment is multiplied by the labor-related percentage (0.71301) to determine the labor-related portion of the Federal prospective payments. This labor-related portion is then multiplied by the applicable IRF wage index shown in Table 3E for urban areas and Table 4E for rural areas.

TABLE 3E.—WAGE INDEX URBAN AREAS

MSA	Urban area (Constituent counties or county equivalents)	Wage index
0040	Abilene, TX	0.8275
	Taylor, TX	
0060	Aguadilla, PR	0.3859
	Aguada, PR	
	Aguadilla, PR	
	Moca, PR	
0080	Akron, OH	1.0093
	Portage, OH	
	Summit, OH	
0120	Albany, GA	1.6055
	Dougherty, GA	
	Lee, GA	
0160	Albany-Schenectady-Troy, NY.	0.8751
	Albany, NY	
	Montgomery, NY	
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
0200	Albuquerque, NM	0.8366
	Bernalillo, NM	
	Sandoval, NM	
	Valencia, NM	
0220	Alexandria, LA	0.7960
	Rapides, LA	
0240	Allentown-Bethlehem-Easton, PA.	1.0226
	Carbon, PA	
	Lehigh, PA.	
	Northampton, PA.	
0280	Altoona, PA	0.9410
	Blair, PA	
0320	Amarillo, TX	0.8450
	Potter, TX	
	Randall, TX	
0380	Anchorage, AK	1.3010
	Anchorage, AK	
0440	Ann Arbor, MI	1.1354
	Lenawee, MI	
	Livingston, MI	
	Washtenaw, MI	
0450	Anniston, AL	0.8562
	Calhoun, AL	
0460	Appleton-Oshkosh-Neenah, WI.	0.9016
	Calumet, WI	
	Outagamie, WI	
	Winnebago, WI	
0470	Arecibo, PR	0.4871
	Arecibo, PR	
	Camuy, PR	
	Hatillo, PR	
0480	Asheville, NC	0.8969
	Buncombe, NC	
	Madison, NC	
0500	Athens, GA	0.9819
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	Atlanta, GA	1.0173
	Barrow, GA	
	Bartow, GA	
	Carroll, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	De Kalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	
	Gwinnett, GA	
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Pickens, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
0560	Atlantic City-Cape May	1.1469
	Atlantic City, NJ	
	Cape May, NJ	
0580	Auburn-Opelika, AL	0.7718
	Lee, AL	
0600	Augusta-Aiken, GA–SC	0.9091
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
	Edgefield, SC	
0640	Austin-San Marcos, TX	0.9112
	Bastrop, TX	
	Caldwell, TX	
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680	Bakersfield, CA	0.9622
	Kern, CA	
0720	Baltimore, MD	0.9614
	Anne Arundel, MD	
	Baltimore, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Annes, MD	
0733	Bangor, ME	0.9696
	Penobscot, ME	
0743	Barnstable-Yarmouth, MA	1.3573
	Barnstable, MA	
0760	Baton Rouge, LA	0.8782
	Ascension, LA	
	East Baton Rouge	
	Livingston, LA	
	West Baton Rouge	
0840	Beaumont-Port Arthur, TX	0.8715
	Hardin, TX	
	Jefferson, TX	
	Orange, TX	
0860	Bellingham, WA	1.1528
	Whatcom, WA	
0870	Benton Harbor, MI	0.8557
	Berrien, MI	
0875	Bergen-Passaic, NJ	1.2128
	Bergen, NJ	
	Passaic, NJ	
0880	Billings, MT	1.0154
	Yellowstone, MT	
0920	Biloxi-Gulfport-Pascagoula, MS.	0.7960
	Hancock, MS	
	Harrison, MS	
	Jackson, MS	
0960	Binghamton, NY	0.8689
	Broome, NY	
	Tioga, NY	
1000	Birmingham, AL	0.9009
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010	Bismarck, ND	0.7746
	Burleigh, ND	
	Morton, ND	
1020	Bloomington, IN	0.8694
	Monroe, IN	
1040	Bloomington-Normal, IL	0.9099
	McLean, IL	
1080	Boise City, ID	0.9144
	Ada, ID	
	Canyon, ID	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.	1.1327
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	
	Strafford, NH	
1125	Boulder-Longmont, CO	1.0030

TABLE 3E.—WAGE INDEX URBAN AREAS—Continued

MSA	Urban area (Constituent counties or county equivalents)	Wage index
	Boulder, CO	
1145	Brazoria, TX	0.8616
	Brazoria, TX	
1150	Bremerton, WA	1.1141
	Kitsap, WA	
1240	Brownsville-Harlingen-San Benito, TX.	0.9294
	Cameron, TX	
1260	Bryan-College Station, TX	0.8601
	Brazos, TX	
1280	Buffalo-Niagara Falls, NY	0.9549
	Erie, NY	
	Niagara, NY	
1303	Burlington, VT	1.0796
	Chittenden, VT	
	Franklin, VT	
	Grandlsle, VT	
1310	Caguas, PR	0.4596
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320	Canton-Massillon, OH	0.8770
	Carroll, OH	
	Stark, OH	
1350	Casper, WY	0.9286
	Natrona, WY	
1360	Cedar Rapids, IA	0.9082
	Linn, IA	
1400	Champaign-Urbana, IL	0.9225
	Champaign, IL	
1440	Charleston-North Charleston, SC.	0.9073
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480	Charleston, WV	0.9157
	Kanawha, WV	
	Putnam, WV	
1520	Charlotte-Gastonia-Rock Hill, NC–SC.	0.9471
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanly, NC	
	Union, NC	
	York, SC	
1540	Charlottesville, VA	1.0662
	Albemarle, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
1560	Chattanooga, TN–GA	0.9824
	Catoosa, GA	
	Dade, GA	
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
1580	Cheyenne, WY	0.8272
	Laramie, WY	
1600	Chicago, IL	1.0889
	Cook, IL	
	De Kalb, IL	
	Du Page, IL	
	Grundy, IL	
	Kane, IL	

TABLE 3E.—WAGE INDEX URBAN AREAS—Continued

MSA	Urban area (Constituent counties or county equivalents)	Wage index
	Kendall, IL	
	Lake, IL	
	McHenry, IL	
	Will, IL	
1620	Chico-Paradise, CA	1.0513
	Butte, CA	
1640	Cincinnati, OH–KY–IN	0.9424
	Dearborn, IN	
	Ohio, IN	
	Boone, KY	
	Campbell, KY	
	Gallatin, KY	
	Grant, KY	
	Kenton, KY	
	Pendleton, KY	
	Brown, OH	
	Clermont, OH	
	Hamilton, OH	
	Warren, OH	
1660	Clarksville-Hopkinsville, TN–KY.	0.8185
	Christian, KY	
	Montgomery, TN	
1680	Cleveland-Lorain-Elyria, OH.	0.9667
	Ashtabula, OH	
	Geauga, OH	
	Cuyahoga, OH	
	Lake, OH	
	Lorain, OH	
	Medina, OH	
1720	Colorado Springs, CO	0.9326
	El Paso, CO	
1740	Columbia MO	0.9072
	Boone, MO	
1760	Columbia, SC	0.9456
	Lexington, SC	
	Richland, SC	
1800	Columbus, GA–AL	0.8529
	Russell, AL	
	Chattanoochee, GA	
	Harris, GA	
	Muscogee, GA	
1840	Columbus, OH	0.9952
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880	Corpus Christi, TX	0.8648
	Nueces, TX	
	San Patricio, TX	
1890	Corvallis, OR	1.1217
	Benton, OR	
1900	Cumberland, MD–WV	0.8905
	Allegany MD	
	Mineral WV	
1920	Dallas, TX	0.9559
	Collin, TX	
	Dallas, TX	
	Denton, TX	
	Ellis, TX	
	Henderson, TX	
	Hunt, TX	
	Kaufman, TX	
	Rockwall, TX	
1950	Danville, VA	0.9167
	Danville City, VA	

TABLE 3E.—WAGE INDEX URBAN AREAS—Continued

MSA	Urban area (Constituent counties or county equivalents)	Wage index
	Pittsylvania, VA	
1960	Davenport-Moline-Rock Island, IA–IL.	0.8787
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000	Dayton-Springfield, OH	0.9478
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020	Daytona Beach, FL	0.9048
	Flagler, FL	
	Volusia, FL	
2030	Decatur, AL	0.8781
	Lawrence, AL	
	Morgan, AL	
2040	Decatur, IL	0.8380
	Macon, IL	
2080	Denver, CO	1.0202
	Adams, CO	
	Arapahoe, CO	
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120	Des Moines, IA	0.8793
	Dallas, IA	
	Polk, IA	
	Warren, IA	
2160	Detroit, MI	1.0310
	Lapeer, MI	
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	
	St. Clair, MI	
	Wayne, MI	
2180	Dothan, AL	0.7890
	Dale, AL	
	Houston, AL	
2190	Dover, DE	0.9445
	Kent, DE	
2200	Dubuque, IA	0.8620
	Dubuque, IA	
2240	Duluth-Superior, MN–WI	1.0279
	St. Louis, MN	
	Douglas, WI	
2281	Dutchess County, NY	1.0674
	Dutchess, NY	
2290	Eau Claire, WI	0.9030
	Chippewa, WI	
	Eau Claire, WI	
2320	El Paso, TX	0.9004
	El Paso, TX	
2330	Elkhart-Goshen, IN	0.9490
	Elkhart, IN	
2335	Elmira, NY	0.8634
	Chemung, NY	
2340	Enid, OK	0.8047
	Garfield, OK	
2360	Erie, PA	0.8880
	Erie, PA	
2400	Eugene-Springfield, OR	1.0715
	Lane, OR	
2440	Evansville-Henderson, IN–KY.	0.8329
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	

TABLE 3E.—WAGE INDEX URBAN AREAS—Continued

MSA	Urban area (Constituent counties or county equivalents)	Wage index
2520	Fargo-Moorhead, ND–MN	0.8721
	Clay, MN	
	Cass, ND	
2560	Fayetteville, NC	0.8594
	Cumberland, NC	
2580	Fayetteville-Springdale-Rogers, AR.	0.7768
	Benton, AR	
	Washington, AR	
2620	Flagstaff, AZ–UT	1.0470
	Coconino, AZ	
	Kane, UT	
2640	Flint, MI	1.1037
	Genesee, MI	
2650	Florence, AL	0.8020
	Colbert, AL	
	Lauderdale, AL	
2655	Florence, SC	0.8868
	Florence, SC	
2670	Fort Collins-Loveland, CO	1.0335
	Larimer, CO	
2680	Ft. Lauderdale, FL	1.0297
	Broward, FL	
2700	Fort Myers-Cape Cora, FL.	0.9056
	Lee, FL	
2710	Fort Pierce-Port St. Lucie, FL.	1.0116
	Martin, FL	
	St. Lucie, FL	
2720	Fort Smith, AR–OK	0.7936
	Crawford, AR	
	Sebastian, AR	
	Sequoyah, OK	
2750	Fort Walton Beach, FL	0.8816
	Okaloosa, FL	
2760	Fort Wayne, IN	0.9158
	Adams, IN	
	Allen, IN	
	De Kalb, IN	
	Huntington, IN	
	Wells, IN	
	Whitley, IN	
2800	Forth Worth-Arlington, TX	0.9673
	Hood, TX	
	Johnson, TX	
	Parker, TX	
	Tarrant, TX	
2840	Fresno, CA	1.0311
	Fresno, CA	
	Madera, CA	
2880	Gadsden, AL	0.8791
	Etowah, AL	
2900	Gainesville, FL	0.9879
	Alachua, FL	
2920	Galveston-Texas City, TX	0.9767
	Galveston, TX	
2960	Gary, IN	0.9494
	Lake, IN	
	Porter, IN	
2975	Glens Falls, NY	0.8707
	Warren, NY	
	Washington, NY	
2980	Goldsboro, NC	0.8432
	Wayne, NC	
2985	Grand Forks, ND–MN	0.9199
	Polk, MN	
	Grand Forks, ND	
2995	Grand Junction, CO	0.9102

TABLE 3E.—WAGE INDEX URBAN AREAS—Continued

MSA	Urban area (Constituent counties or county equivalents)	Wage index
	Mesa, CO	
3000	Grand Rapids-Muskegon-Holland, MI.	1.0151
	Allegan, MI	
	Kent, MI	
	Muskegon, MI	
	Ottawa, MI	
3040	Great Falls, MT	1.0582
	Cascade, MT	
3060	Greeley, CO	0.9667
	Weld, CO	
3080	Green Bay, WI	0.9224
	Brown, WI	
3120	Greensboro-Winston-Salem-High Point, NC.	0.9091
	Alamance, NC	
	Davidson, NC	
	Davie, NC	
	Forsyth, NC	
	Guilford, NC	
	Randolph, NC	
	Stokes, NC	
	Yadkin, NC	
3150	Greenville, NC	0.9451
	Pitt, NC	
3160	Greenville-Spartanburg-Anderson, SC.	0.9264
	Anderson, SC	
	Cherokee, SC	
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180	Hagerstown, MD	0.8946
	Washington, MD	
3200	Hamilton-Middletown, OH	0.9051
	Butler, OH	
3240	Harrisburg-Lebanon-Carlisle, PA.	0.9749
	Cumberland, PA	
	Dauphin, PA	
	Lebanon, PA	
	Perry, PA	
3283	Hartford, CT	1.1758
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
3285	Hattiesburg, MS	0.7723
	Forrest, MS	
	Lamar, MS	
3290	Hickory-Morganton-Lenoir, NC.	0.9219
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawba, NC	
3320	Honolulu, HI	1.1599
	Honolulu, HI	
3350	Houma, LA	0.7878
	Lafourche, LA	
	Terrebonne, LA	
3360	Houston, TX	0.9405
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	

TABLE 3E.—WAGE INDEX URBAN AREAS—Continued

MSA	Urban area (Constituent counties or county equivalents)	Wage index
3400	Huntington-Ashland, WV–KY–OH.	0.9659
	Boyd, KY	
	Carter, KY	
	Greenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	
3440	Huntsville, AL	0.8926
	Limestone, AL	
	Madison, AL	
3480	Indianapolis, IN	0.9802
	Boone, IN	
	Hamilton, IN	
	Hancock, IN	
	Hendricks, IN	
	Johnson, IN	
	Madison, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
3500	Iowa City, IA	0.9532
	Johnson, IA	
3520	Jackson, MI	0.8944
	Jackson, MI	
3560	Jackson, MS	0.8379
	Hinds, MS	
	Madison, MS	
	Rankin, MS	
3580	Jackson, TN	0.8701
	Chester, TN	
	Madison, TN	
3600	Jacksonville, FL	0.9020
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605	Jacksonville, NC	0.7944
	Onslow, NC	
3610	Jamestown, NY	0.7950
	Chautaqua, NY	
3620	Janesville-Beloit, WI	0.9677
	Rock, WI	
3640	Jersey City, NJ	1.1742
	Hudson, NJ	
3660	Johnson City-Kingsport-Bristol, TN–VA.	0.8949
	Carter, TN	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	
	Bristol City, VA	
	Scott ,VA	
	Washington, VA	
3680	Johnstown, PA	0.8589
	Cambria, PA	
	Somerset, PA	
3700	Jonesboro, AR	0.7316
	Craighead, AR	
3710	Joplin, MO	0.7766
	Jasper, MO	
	Newton, MO	
3720	Kalamazoo-Battlecreek, MI.	1.0098
	Calhoun, MI	
	Kalamazoo, MI	
	Van Buren, MI	
3740	Kankakee, IL	0.8699

TABLE 3E.—WAGE INDEX URBAN AREAS—Continued

MSA	Urban area (Constituent counties or county equivalents)	Wage index
	Kankakee, IL	
3760 ..	Kansas City, KS–MO	0.9281
	Johnson, KS	
	Leavenworth, KS	
	Miami, KS	
	Wyandotte, KS	
	Cass, MO	
	Clay, MO	
	Clinton, MO	
	Jackson, MO	
	Lafayette, MO	
	Platte, MO	
	Ray, MO	
3800 ..	Kenosha, WI	0.9139
	Kenosha, WI	
3810 ..	Killeen-Temple, TX	1.0078
	Bell, TX	
	Coryell, TX	
3840 ..	Knoxville, TN	0.9236
	Anderson, TN	
	Blount, TN	
	Knox, TN	
	Loudon, TN	
	Sevier, TN	
	Union, TN	
3850 ..	Kokomo, IN	0.9023
	Howard, IN	
	Tipton, IN	
3870 ..	La Crosse, WI–MN	0.9020
	Houston, MN	
	La Crosse, WI	
3880 ..	Lafayette, LA	0.8437
	Acadia, LA	
	Lafayette, LA	
	St. Landry, LA	
	St. Martin, LA	
3920 ..	Lafayette, IN	0.8913
	Clinton, IN	
	Tippecanoe, IN	
3960 ..	Lake Charles, LA	0.8056
	Calcasieu, LA	
3980 ..	Lakeland-WinterHaven, FL.	0.8919
	Polk, FL	
4000 ..	Lancaster, PA	0.9325
	Lancaster, PA	
4040 ..	Lansing-East Lansing, MI	1.0075
	Clinton, MI	
	Eaton, MI	
	Ingham, MI	
4080 ..	Laredo, TX	0.8421
	Webb, TX	
4100 ..	Las Cruces, NM	0.8606
	DonaAna, NM	
4120 ..	Las Vegas, NV–AZ	1.1285
	Mohave, AZ	
	Clark, NV	
	Nye, NV	
4150 ..	Lawrence, KS	0.8319
	Douglas, KS	
4200 ..	Lawton, OK	0.9645
	Comanche, OK	
4243 ..	Lewiston-Auburn, ME	0.8962
	Androscoggin ME	
4280 ..	Lexington, KY	0.8566
	Bourbon, KY	
	Clark, KY	
	Fayette, KY	
	Jessamine, KY	
	Madison, KY	
	Scott, KY	
	Woodford, KY	
4320 ..	Lima, OH	0.9010
	Allen, OH	
	Auglaize, OH	
4360 ..	Lincoln, NE	0.9723
	Lancaster NE	
4400 ..	Little Rock-North Little, AR.	0.8706
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420 ..	Longview-Marshall, TX	0.8841
	Gregg, TX	
	Harrison, TX	
	Upshur, TX	
4480 ..	Los Angeles-Long Beach, CA.	1.2103
	Los Angeles, CA	
4520 ..	Louisville, KY–IN	0.9415
	Clark, IN	
	Floyd, IN	
	Harrison, IN	
	Scott, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
4600 ..	Lubbock, TX	0.8512
	Lubbock, TX	
4640 ..	Lynchburg, VA	0.8906
	Amherst, VA	
	Bedford City, VA	
	Bedford, VA	
	Campbell, VA	
	Lynchburg City, VA	
4680 ..	Macon, GA	0.8501
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
	Twiggs, GA	
4720 ..	Madison, WI	0.9869
	Dane, WI	
4800 ..	Mansfield, OH	0.8575
	Crawford, OH	
	Richland, OH	
4840 ..	Mayaguez, PR	0.4729
	Anasco, PR	
	CaboRojo, PR	
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	
	San German, PR.	
4880 ..	McAllen-Edinburg-Mission, TX.	0.8208
	Hidalgo, TX	
4890 ..	Medford-Ashland, OR	1.0607
	Jackson, OR	
4900 ..	Melbourne-Titusville-Palm Bay, FL.	0.9405
	Brevard, FL	
4920 ..	Memphis, TN–AR–MS	0.8321
	Crittenden, AR	
	De Soto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
4940 ..	Merced, CA	1.0313
	Merced, CA	
5000 ..	Miami, FL	1.0368
	Dade, FL	
5015 ..	Middlesex-Somerset-Hunterdon, NJ.	1.1128
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	
5080 ..	Milwaukee-Waukesha, WI	0.9848
	Milwaukee, WI	
	Ozaukee, WI	
	Washington, WI	
	Waukesha, WI	
5120 ..	Minneapolis-St. Paul, MN–WI.	1.0979
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Sherburne, MN	
	Washington, MN	
	Wright, MN	
	Pierce, WI	
	St. Croix, WI	
5140 ..	Missoula, MT	0.9192
	Missoula, MT	
5160 ..	Mobile, AL	0.8171
	Baldwin, AL	
	Mobile, AL	
5170 ..	Modesto, CA	1.0233
	Stanislaus, CA	
5190 ..	Monmouth-Ocean, NJ	1.1332
	Monmouth, NJ	
	Ocean, NJ	
5200 ..	Monroe, LA	0.8315
	Ouachita, LA	
5240 ..	Montgomery, AL	0.7794
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
5280 ..	Muncie, IN	1.0533
	Delaware, IN	
5330 ..	Myrtle Beach, SC	0.8612
	Horry, SC	
5345 ..	Naples, FL	0.9955
	Collier, FL	
5360 ..	Nashville, TN	0.9368
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	
	Rutherford, TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380 ..	Nassau-Suffolk, NY	1.4087
	Nassau, NY	
	Suffolk, NY	
5483 ..	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT.	1.2260
	Fairfield, CT	
	New Haven, CT	
5523 ..	New London-Norwich, CT	1.2572

TABLE 3E.—WAGE INDEX URBAN AREAS—Continued

MSA	Urban area (Constituent counties or county equivalents)	Wage index
	New London, CT	
5560 ..	New Orleans, LA	0.9140
	Jefferson, LA	
	Orleans, LA	
	Plaquemines, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. James, LA	
	St. John The Baptist, LA	
	St. Tammany, LA	
5600 ..	New York, NY	1.4338
	Bronx, NY	
	Kings, NY	
	New York, NY	
	Putnam, NY	
	Queens, NY	
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640 ..	Newark, NJ	1.1729
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
	Warren, NJ	
5660 ..	Newburgh, NY–PA	1.1035
	Orange, NY	
	Pike, PA	
5720 ..	Norfolk-Virginia Beach-Newport News, VA–NC.	0.8483
	Currituck, NC	
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	Isle of Wight, VA	
	James City, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
	York, VA	
5775 ..	Oakland, CA	1.5277
	Alameda, CA	
	Contra Costa, CA	
5790 ..	Ocala, FL	0.9728
	Marion, FL	
5800 ..	Odessa-Midland, TX	0.8951
	Ector, TX	
	Midland, TX	
5880 ..	Oklahoma City, OK	0.8551
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	
5910 ..	Olympia, WA	1.1023
	Thurston, WA	
5920 ..	Omaha, NE–IA	1.0405
	Pottawattamie, IA	
	Cass, NE	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	
5945 ..	Orange County, CA	1.1720
	Orange, CA	
5960 ..	Orlando, FL	0.9845
	Lake, FL	
	Orange, FL	
	Osceola, FL	
	Seminole, FL	
5990 ..	Owensboro, KY	0.8199
	Daviess, KY	
6015 ..	Panama City, FL	0.9277
	Bay, FL	
6020 ..	Parkersburg-Marietta, WV–OH.	0.8503
	Washington, OH	
	Wood, WV	
6080 ..	Pensacola, FL	0.8529
	Escambia, FL	
	Santa Rosa, FL	
6120 ..	Peoria-Pekin, IL	0.8201
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160 ..	Philadelphia, PA–NJ	1.1076
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Salem, NJ	
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Montgomery, PA	
	Philadelphia, PA	
6200 ..	Phoenix-Mesa, AZ	0.9420
	Maricopa, AZ	
	Pinal, AZ	
6240 ..	Pine Bluff, AR	0.7777
	Jefferson, AR	
6280 ..	Pittsburgh, PA	0.9478
	Allegheny, PA	
	Beaver, PA	
	Butler, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
6323 ..	Pittsfield, MA	1.0173
	Berkshire, MA	
6340 ..	Pocatello, ID	0.9063
	Bannock, ID	
6360 ..	Ponce, PR	0.4970
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	
	Yauco, PR	
6403 ..	Portland, ME	0.9499
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440 ..	Portland-Vancouver, OR–WA.	1.1087
	Clackamas, OR	
	Columbia, OR	
	Multnomah, OR	
	Washington, OR	
	Yamhill, OR	
	Clark, WA	
6483 ..	Providence-Warwick-Pawtucket, RI.	1.0766
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	
6520 ..	Provo-Orem, UT	0.9916
	Utah, UT	
6560 ..	Pueblo, CO	0.8922
	Pueblo, CO	
6580 ..	Punta Gorda, FL	0.9620
	Charlotte, FL	
6600 ..	Racine, WI	0.9325
	Racine, WI	
6640 ..	Raleigh-Durham-Chapel Hill, NC.	0.9683
	Chatham, NC	
	Durham, NC	
	Franklin, NC	
	Johnston, NC	
	Orange, NC	
	Wake, NC	
6660 ..	Rapid City, SD	0.8415
	Pennington, SD	
6680 ..	Reading, PA	0.9496
	Berks, PA	
6690 ..	Redding, CA	1.1376
	Shasta, CA	
6720 ..	Reno, NV	1.0781
	Washoe, NV	
6740 ..	Richland-Kennewick-Pasco, WA.	1.1356
	Benton, WA	
	Franklin, WA	
6760 ..	Richmond-Petersburg, VA	0.9569
	Charles City County, VA	
	Chesterfield, VA	
	Colonial Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	
6780 ..	Riverside-San Bernardino, CA	1.1256
	Riverside, CA	
	San Bernardino, CA	
6800 ..	Roanoke, VA	0.7971
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820 ..	Rochester, MN	1.1619
	Olmsted, MN	
6840 ..	Rochester, NY	0.9066
	Genesee, NY	
	Livingston, NY	
	Monroe, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne, NY	
6880 ..	Rockford, IL	0.8885
	Boone, IL	
	Ogle, IL	
	Winnebago, IL	
6895 ..	Rocky Mount, NC	0.8837

TABLE 3E.—WAGE INDEX URBAN AREAS—Continued

MSA	Urban area (Constituent counties or county equivalents)	Wage index
	Edgecombe, NC	
	Nash, NC	
6920 ..	Sacramento, CA	1.2473
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960 ..	Saginaw-Bay City-Midland, MI.	0.9365
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980 ..	St. Cloud, MN	0.9525
	Benton, MN	
	Stearns, MN	
7000 ..	St. Joseph, MO	0.9046
	Andrews, MO	
	Buchanan, MO	
7040 ..	St. Louis, MO–IL	0.8943
	Clinton, IL	
	Jersey, IL	
	Madison, IL	
	Monroe, IL	
	St. Clair, IL	
	Franklin, MO	
	Jefferson, MO	
	Lincoln, MO	
	St. Charles, MO	
	St. Louis, MO	
	St. Louis City, MO	
	Warren, MO	
	Sullivan City, MO	
7080 ..	Salem, OR	1.0065
	Marion, OR	
	Polk, OR	
7120 ..	Salinas, CA	1.4900
	Monterey, CA	
7160 ..	Salt Lake City-Ogden, UT	0.9919
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200 ..	San Angelo, TX	0.7938
	Tom Green, TX	
7240 ..	San Antonio, TX	0.8429
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
	Wilson, TX	
7320 ..	San Diego, CA	1.2100
	San Diego, CA	
7360 ..	San Francisco, CA	1.4287
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	
7400 ..	San Jose, CA	1.3648
	Santa Clara, CA	
7440 ..	San Juan-Bayamon, PR	0.4698
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	
	Juncos, PR	
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	
	Yabucoa, PR	
7460 ..	San Luis Obispo-Atascadero-PasoRobles, CA.	1.0593
	San Luis Obispo, CA	
7480 ..	Santa Barbara-Santa Maria-Lompoc, CA.	1.0939
	Santa Barbara, CA	
7485 ..	Santa Cruz-Watsonville, CA.	1.4091
	Santa Cruz, CA	
7490 ..	Santa Fe, NM	1.0511
	Los Alamos, NM	
	Santa Fe, NM	
7500 ..	Santa Rosa, CA	1.3172
	Sonoma, CA	
7510 ..	Sarasota-Bradenton, FL	1.0022
	Manatee, FL	
	Sarasota, FL	
7520 ..	Savannah, GA	0.9995
	Bryan, GA	
	Chatham, GA	
	Effingham, GA	
7560 ..	Scranton-Wilkes-Barre-Hazleton, PA.	0.8442
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600 ..	Seattle-Bellevue-Everett, WA.	1.1376
	Island, WA	
	King, WA	
	Snohomish, WA	
7610 ..	Sharon, PA	0.8374
	Mercer, PA	
7620 ..	Sheboygan, WI	0.8299
	Sheboygan, WI	
7640 ..	Sherman-Denison, TX	0.9439
	Grayson, TX	
7680 ..	Shreveport-Bossier City, LA.	0.9126
	Bossier, LA	
	Caddo, LA	
	Webster, LA	
7720 ..	Sioux City, IA–NE	0.8552
	Woodbury, IA	
	Dakota, NE	
7760 ..	Sioux Falls, SD	0.8813
	Lincoln, SD	
	Minnehaha, SD	
7800 ..	South Bend, IN	0.9732
	St. Joseph, IN	
7840 ..	Spokane, WA	1.0898
	Spokane, WA	
7880 ..	Springfield, IL	0.8710
	Menard, IL	
	Sangamon, IL	
7920 ..	Springfield, MO	0.8062
	Christian, MO	
	Greene, MO	
	Webster, MO	
8003 ..	Springfield, MA	1.0488
	Hampden, MA	
	Hampshire, MA	
8050 ..	State College, PA	0.9212
	Centre, PA	
8080 ..	Steubenville-Weirton, OH–WV.	0.8716
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120 ..	Stockton-Lodi, CA	1.0571
	San Joaquin, CA	
8140 ..	Sumter, SC	0.8335
	Sumter, SC	
8160 ..	Syracuse, NY	0.9310
	Cayuga, NY	
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	
8200 ..	Tacoma, WA	1.1583
	Pierce, WA	
8240 ..	Tallahassee, FL	0.8529
	Gadsden, FL	
	Leon, FL	
8280 ..	Tampa-St. Petersburg-Clearwater, FL.	0.9136
	Hernando, FL	
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320 ..	Terre Haute, IN	0.8614
	Clay, IN	
	Vermillion, IN	
	Vigo, IN	
8360 ..	Texarkana, AR–TX	0.8101
	Miller, AR	
	Bowie, TX	
8400 ..	Toledo, OH	0.9764
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440 ..	Topeka, KS	0.9440
	Shawnee, KS	
8480 ..	Trenton, NJ	1.0180
	Mercer, NJ	
8520 ..	Tucson, AZ	0.8846
	Pima, AZ	
8560 ..	Tulsa, OK	0.8181
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600 ..	Tuscaloosa, AL	0.8104
	Tuscaloosa, AL	
8640 ..	Tyler, TX	0.9499
	Smith, TX	
8680 ..	Utica-Rome, NY	0.8370
	Herkimer, NY	
	Oneida, NY	
8720 ..	Vallejo-Fairfield-Napa, CA	1.3503
	Napa, CA	
	Solano, CA	
8735 ..	Ventura, CA	1.1603
	Ventura, CA	
8750 ..	Victoria, TX	0.8476
	Victoria, TX	
8760 ..	Vineland-Millville-Bridgeton, NJ.	1.0640
	Cumberland, NJ	
8780 ..	Visalia-Tulare-Porterville, CA.	1.0533
	Tulare, CA	
8800 ..	Waco, TX	0.8099
	McLennan, TX	
8840 ..	Washington, DC–MD–VA–WV.	1.1088
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Clarke, VA	
	Culpepper, VA	
	Fairfax, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Loudoun, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Prince William, VA	
	Spotsylvania, VA	
	Stafford, VA	
	Warren, VA	
	Berkeley, WV	
	Jefferson, WV	
8920 ..	Waterloo-Cedar Falls, IA	0.8597
	BlackHawk, IA	
8940 ..	Wausau, WI	0.9556
	Marathon, WI	
8960 ..	West Palm Beach-Boca, FL	1.0130
	Palm Beach, FL	
9000 ..	Wheeling, OH–WV	0.7662
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040 ..	Wichita, KS	0.9559
	Butler, KS	
	Harvey, KS	
	Sedgwick, KS	
9080 ..	Wichita Falls, TX	0.7743
	Archer, TX	
	Wichita, TX	
9140 ..	Williamsport, PA	0.8472
	Lycoming, PA	
9160 ..	Wilmington-Newark, DE–MD.	1.1000
	New Castle, DE	
	Cecil, MD	
9200 ..	Wilmington, NC	0.9818
	New Hanover, NC	
	Brunswick, NC	
9260 ..	Yakima, WA	1.0331
	Yakima, WA	
9270 ..	Yolo, CA	0.9833
	Yolo, CA	
9280 ..	York, PA	0.9255
	York, PA	
9320 ..	Youngstown-Warren, OH	1.0025
	Columbiana, OH	
	Mahoning, OH	
	Trumbull, OH	
9340 ..	Yuba City, CA	1.0787
	Sutter, CA	
	Yuba, CA	
9360 ..	Yuma, AZ	1.0040
	Yuma, AZ	

TABLE 4E.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage Index
Alabama	0.7467
Alaska	1.2175
Arizona	0.8625
Arkansas	0.7317
California	1.0066
Colorado	0.8915
Connecticut	1.2559
Delaware	0.9240
Florida	0.9089
Georgia	0.8176
Guam	
Hawaii	1.0853
Idaho	0.8707
Illinois	0.8122
Indiana	0.8493
Iowa	0.7976
Kansas	0.7513
Kentucky	0.8127
Louisiana	0.7456
Maine	0.8679
Maryland	0.8730
Massachusetts	1.1499
Michigan	0.8896
Minnesota	0.8743
Mississippi	0.7374
Missouri	0.7802
Montana	0.8479
Nebraska	0.8024
Nevada	0.9197
New Hampshire	0.9827
New Jersey[1]	
New Mexico	0.8472
New York	0.8604
North Carolina	0.8378
North Dakota	0.7662
Ohio	0.8746
Oklahoma	0.7332
Oregon	0.9966
Pennsylvania	0.8559
Puerto Rico	0.4299
Rhode Island[1]	
South Carolina	0.8353
South Dakota	0.7625
Tennessee	0.7738
Texas	0.7545
Utah	0.8998
Vermont	0.9518
Virginia	0.7991
Virgin Islands	
Washington	1.0548
West Virginia	0.8116
Wisconsin	0.8838
Wyoming	0.8955

[1] All counties within the State are classified urban.

The resulting wage-adjusted labor-related portion is added to the nonlabor related portion, resulting in a wage-adjusted payment. The following example illustrates how a Medicare fiscal intermediary would calculate the Adjusted Facility Federal prospective payment for inpatient rehabilitation facility services with a hypothetical Federal prospective payment of $10,000 for services provided in the rehabilitation facility located in Heartland, USA. The rehabilitation wage index value for facilities located in Heartland, USA is 1.0234. The labor-related portion (71.301 percent) of the Federal prospective payment is $7130.10=($10,000*71.301 percent), and the nonlabor related portion (28.699 percent) of the Federal prospective payment is $2869.90=($10,000*28.699 percent). Therefore, the wage-adjusted payment calculation, rounded to the nearest dollar is as follows:

$10,167=($7130.10*1.0234) + $2,869.90

2. General Specifications to Determine Other Adjustments

As indicated earlier, section 1886(j)(3)(A)(v) of the Act confers broad authority on the Secretary to adjust prospective payments "by such other factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities". To determine whether other payment adjustments are warranted for the IRF prospective payment system, we conducted extensive regression analysis of the relationship between IRF costs (including both operating and capital costs per case) and several factors that may affect costs. The appropriateness of potential payment adjustments are based on both cost effects estimated by regression analysis and other factors, including simulated payments that we discuss in section VIII.B.2. of this preamble.

Our analyses included 624 facilities for which cost and case-mix data were available. We estimated costs for each case by multiplying facility specific, cost-center specific cost-to-charge ratios by charges. Cost-to-charge ratios were obtained from FYs 1995, 1996, and/or 1997 cost report data and charges were obtained from the calendar years 1996 and 1997 Medicare claims data. The cost per case is calculated by summing all costs and dividing by the number of equivalent full cases. When we had cost per case data for both years, the number of cases and total costs are combined for both years. We accounted for the difference in the year by adjusting the 1996 cost per case by the case-weighted average change in cost per case between 1996 and 1997. Using the data from both years should provide more stability in the payment adjustments than would using data for a single year. When data for only one year are available, we use the costs and number of equivalent cases for that year.

Multivariate regression analysis is a standard way to examine facility cost variation and analyze potential payment adjustments. We looked at two standard models: (1) Fully specified explanatory models to examine the impact of all relevant factors that might potentially affect facility cost per case; and (2) payment models that examine the impacts of those factors specifically used to determine payment rates. The general specification for the multivariate regression is that the estimated average cost per case (the dependent variable) at the facility can be explained or predicted by several independent variables, including the case-mix index, the wage index for the facility, and a vector of additional explanatory variables that affect a facility's cost per case, such as its teaching program or the proportion of low-income patients. The case-mix index is the average of the CMG weights derived by the hospital-specific relative value method for each facility. Transfer cases are given a partial weight based on the ratio of the length of stay for the transfer to the average length of stay for nontransfer cases. Using the regression coefficients, we then simulated payments and calculated payment-to-cost ratios for different classes of hospitals, for specific combinations of payment policies.

We use payment variables from the hospital inpatient prospective payment system, including disproportionate share patient percentage, both capital and operating teaching variables (resident-to-average daily census and resident-to-bed ratios, respectively) as well as the teaching variable (resident-to-adjusted average daily census ratio) used in the analyses for the hospital outpatient prospective payment system, and variables to account for location in a rural or large urban area. A discussion of the major payment variables and our findings appears below.

3. Adjustments for Rural Location

We examined costs per case for both large urban and rural facilities. In the regression models, both explanatory and payment, the variable for rural facilities was positive and significant ($p<0.05$). The standardized cost per case for rural hospitals is 15 percent higher than the national average. On average, rural facilities tend to have fewer cases, a longer length of stay, and a higher average cost per case. The difference in costs becomes more evident when the average cost per case is standardized for the case-mix index and the wage index. In the regression models, large urban facilities were not significantly different from other urban facilities. We propose, under § 412.624(e)(3), to adjust for rural facilities by multiplying the payment by 1.1589. This adjustment was determined by using the coefficients derived from the regressions.

4. Adjustments for Indirect Teaching Costs

Facilities with major teaching programs tend to be located in large urban areas and have more cases, a higher case-mix and a higher proportion of low-income patients. We found that when only the payment variables that might warrant an adjustment (that is, DSH or rural/urban status, rather than for-profit/not for profit) under the prospective payment system are used in the regression models, the indirect teaching cost variable is not significant. We looked at different specifications for the teaching variable. We used a resident-to-average daily census ratio and a resident-to-bed ratio that we based on the estimated number of residents assigned to the inpatient area of the rehabilitation facility. We also used a resident-to-adjusted average daily census ratio based on the total number of residents at the hospital complex and outpatient as well as inpatient volume. We also looked for a teaching threshold. In all our payment regressions, the teaching variable was not significant. Therefore, we are not proposing an adjustment for indirect teaching costs.

5. Adjustments for Disproportionate Share of Low-Income Patients

We assessed the appropriateness of adjustments for facilities serving a disproportionate share of low income patients. We limited our analysis to the effects of serving low-income patients on costs per case, rather than a subsidy for uncompensated care.

We evaluated a facility-level adjustment that takes into account both the percentage of Medicare patients who are on Supplemental Security Income and the percentage of Medicaid patients who are not entitled to Medicare. As a facility's percentage of low income patients increases, there is an incremental increase in the facility's cost. This suggests that additional payments are appropriate. We propose to use the same measure of disproportionate patient percentage currently used for the acute care hospital inpatient prospective payment system. Payments for each facility would be adjusted to reflect the facility's disproportionate share percentage.

Section 4403(b) of the BBA requires HCFA to develop a Report to the Congress containing a formula for determining additional payment amounts to hospitals under section 1886(d)(5)(F) of the Act. In determining the formula, the Secretary must:

- Establish a single threshold for costs incurred by hospitals serving low-income patients.
- Consider the costs incurred in furnishing hospital services to individuals who are entitled to benefits under Part A of Medicare and who receive Supplemental Security Income benefits under Title XVI.
- Consider the costs incurred in furnishing hospital services to individuals who receive medical assistance under the State plan under the Medicare program and are not entitled to benefits under Part A of Medicare.

Further, MedPAC recommends including the costs of uncompensated care in calculating low-income shares and using the same formula to distribute payments to all facilities covered by prospective payments. In light of HCFA's current study of a new payment formula for determining adjustments for hospitals serving low income patients and MedPAC's recommendations, we will consider these study results and other information as it becomes available and potentially refine the DSH adjustment in the future so that we ensure that facilities are paid in the most consistent and equitable manner possible. At this time, we propose, under § 412.624(e)(2), to adjust each rehabilitation facility payment by the following formula to account for the cost of furnishing care to low income patients: ((.0001+DSH) raised to the power of .0905)/(.0001 raised to the power of .0905));

$$\text{Where DSH} = \frac{\text{Medicare SSI Days}}{\text{Total Medicare Days}} + \frac{\text{Medicaid, Non-Medicare Days}}{\text{Total Days}}$$

6. Adjustments for Alaska and Hawaii

Section 1886(j)(4)(B) provides that the Secretary is authorized but not required to take into account the unique circumstances of IRFs located in Alaska and Hawaii. There are currently three IRFs in Hawaii and one in Alaska. However, we have cost and case-mix data for only one of the facilities in Hawaii (982 cases) and the facility in Alaska (117 cases). In the absence of a cost-of-living adjustment, our simulations indicate that the facility in Hawaii may profit and the facility in Alaska may experience a loss. Due to the small number of cases, analyses of the simulation results are inconclusive regarding whether a cost-of-living adjustment would improve payment equity for these facilities. Therefore, we are not proposing an adjustment for rehabilitation facilities located in Alaska and Hawaii.

7. Adjustments for Cost Outliers

Section 1886(j)(4) of the Act specifies that the Secretary is authorized, but not required, to provide for additional payments for outlier cases. Further, section 1886(j)(4)(A)(iii) of the Act specifies that the total amount of the additional payments cannot be projected to exceed 5 percent of the total payments in a given year. Providing additional payments for costs that are beyond facilities' control can strongly improve the accuracy of the IRF prospective payment system in determining resource costs at the patient and facility level. In general, outlier payments reduce the financial risk which would otherwise be substantial because of the relatively small size of many rehabilitation facilities. These additional payments reduce the financial losses caused by treating patients who require more costly care and, therefore, will reduce the incentives to under serve these patients.

We considered various outlier policy options. Specifically, we examined outlier policies using 3, 4, and 5 percent of the total estimated payments. In order to determine the most appropriate outlier policy, we analyzed the extent to which the various options reduce financial risk, reduce incentives to underserve costly beneficiaries, and improve the overall fairness of the system. We believe an outlier policy of 3 percent will allow us to achieve a balance of the above stated goals. Additional increments of outlier payments reduce risk by successively smaller amounts. Further, additional amounts of outlier payments are funded by prospectively reducing the non-outlier payment rates in a budget neutral manner. Therefore, we propose an outlier policy of 3 percent of total estimated payments because we believe this option optimizes the extent to which we can protect vulnerable facilities, while still providing adequate payment for all other cases.

We propose, under § 412.624(e)(4), to make outlier payments for discharges whose estimated cost exceeds an adjusted threshold amount ($7,066 multiplied by the facility's adjustments) plus the adjusted CMG payment. Both the loss threshold and the CMG payment amount are adjusted for wages, rural location, and disproportionate share. The estimated cost of a case will be calculated by multiplying an overall facility-specific cost-to-charge ratio by the charge. Based on analysis of payment-to-cost ratios for outlier cases, and consistent with the marginal cost factor used under section 1886(d) of the Act, we propose to pay outlier cases 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the CMG payment and the loss amount of $7;066, as adjusted). The outlier threshold was calculated by simulating aggregate payments with and without an outlier policy, and applying an iterative process to determine a threshold that would result in outlier payments being equal to 3 percent of total payments under the simulation.

E. Calculation of the Budget Neutral Conversion Factor Minus Two Percent

1. Overview of Development of the Budget Neutral Conversion Factor

Section 1886(j)(3)(B) of the Act and proposed § 412.624(d) of the regulations specify that, for prospective payment units during FYs 2001 and 2002, the amount of total payments, including any payment adjustments under sections 1886(j)(4) and (6) of the Act, shall be projected to equal 98 percent of the amount of payments that would have been made during these fiscal years for operating and capital costs of rehabilitation facilities had section 1886(j) not been enacted.

We propose, under § 412.624(c)(1), to calculate the budget neutral conversion factor using the following steps:

Step 1—Update the latest cost report data to the midpoint of the year 2001.

Step 2—Estimate total payments under the current payment system.

Step 3—Calculate the average weighted payment per discharge amount under the current payment system.

Step 4—Estimate new payments under the proposed payment system without a budget neutral adjustment.

Step 5—Determine the budget neutral conversion factor.

2. Steps for Developing the Budget Neutral Conversion Minus 2 Percent

- Data Sources

The data sources that we propose under § 412.624(a)(1) to construct the budget neutral adjustment factor include the cost report data from FYs 1995, 1996, and 1997, a list obtained from the fiscal intermediaries of facility-specific target amounts applicable for providers that applied to rebase their target amount in fiscal year 1998, and calendar year 1996 and 1997 Medicare claims with corresponding UDSmr or COS data. We used data from 508 facilities to calculate the budget neutral conversion factor. These facilities represent those providers for which we had cost report data available from FYs 1995, 1996, and 1997. We used the 3 years cost report data to trend the data to the midpoint of the year 2001 based on the facilities' historical relationship of costs and target amounts. The FY 1995 cost report data was used to determine the update to be used for FY 1999, the FY 1996 cost report data was used to determine the update to be used for FY 2000, and the FY 1997 cost report data was used to determine the update to be used for FY 2001. We were unable to calculate payment under the current payment system for some inpatient rehabilitation facilities because cost report data were unavailable. We will attempt to obtain the most recent payment amounts for these facilities through their Medicare fiscal intermediary and we will consider using this data to construct the payment rates for the final rule. We will also examine the extent to which certain facilities, such as new facilities, are not included in the construction of the budget neutral conversion factor and consider the appropriateness of an adjustment to better reflect total estimated payments for IRFs.

Step 1—Update the latest cost report data to the midpoint of the year 2001. Section 1886(j)(3)(A)(i) of the Act and proposed § 412.624(b) of the regulations specify that the per-payment-unit amount is to be updated to the midpoint of the fiscal year 2000, using the weighted average of the applicable percentage increases provided under Section 1886(b)(3)(B)(ii) of the Act. The statute allows us more discretion in determining an appropriate methodology to update from the year 2000 to 2001. We propose, under § 412.624(c)(2), to update from the midpoint of the year 2000 to the midpoint of the year 2001 using the same methodology provided under Section 1886(b)(3)(B)(ii). We determine the appropriate update factor for each facility by using one of the four methodologies described below:

- For facilities with costs that equal or exceed their target amounts by 10 percent or more for the most recent cost reporting period for which information is available, the update factor is the market basket percentage increase; or
- For facilities that exceed their target by less than 10 percent, the update factor would be equal to the market basket minus .25 percentage points for each percentage point by which operating costs are less than 10 percent over the target (but in no case less than 0); or
- For facilities that are at or below their target but exceed two-thirds of the target amount, the update factor is the market basket minus 2.5 percentage points (but in no case less than 0); or
- For facilities that do not exceed two-thirds of their target amount, the update factor is 0 percent.

Step 2—Estimate total payments under the current payment system.

Operating payments are calculated using the following methodology:

Step 2a—We determine the facility-specific target amount, subject to the applicable cap on the target amounts for rehabilitation facilities. There are two national caps on the target amounts for rehabilitation facilities. We used the cap amounts published in the July 30, 1999 **Federal Register**. For older facilities certified before October 1, 1997, the applicable cap amount for FY 2000 is $14,654 for the labor-related share adjusted by the appropriate geographic wage index and added to $4,169 for the nonlabor-related share. For newer facilities certified on or after October 1, 1997, the cap amount applicable for FY 2000 is $12,574 for the labor-related share adjusted by the appropriate geographic wage index and added to $4,999 for the nonlabor-related share. These target amounts are then inflated to the midpoint of the year 2001 by applying the excluded hospital operating market basket.

Step 2b—We calculate the lower of the results of step 2a.

- The facility-specific target amount (including application of the cap) times the Medicare discharges (the ceiling) or;
- The facility average operating cost per case times Medicare discharges.

Payment for operating costs are determined by using one of the following methods:

- For facilities whose operating costs are lower than or equal to the ceiling, payment would be the lower of either the operating cost plus 15 percent of the difference between the operating cost and the ceiling or the operating costs plus 2 percent of the ceiling; or
- For facilities whose operating costs are more than 110 percent of the ceiling, payment would be the lower of either the ceiling multiplied by 1.10 or half of the difference between the 110 percent of the ceiling and the operating costs.
- For facilities whose operating costs are greater than the ceiling but less than 110 percent of the ceiling, payment would be the ceiling.

Step 2c—After operating payments are computed, we determine capital payments. Section 4412 of the BBA amended section 1886(g) of the Act by reducing capital payments that would otherwise be made for rehabilitation facilities. Payments for capital costs are made on a reasonable cost basis. The BBA mandated the reduction of capital payments by 15 percent. Therefore, we reduce capital payments for inpatient rehabilitation facilities or units by multiplying the costs by .85.

Step 2d—The next step in determining total payments under the current payment system is to add operating and capital payments. Section 1886(j)(1)(A) of the Act specifies that the IRF prospective payment system will include both operating and capital costs. Once appropriate payments for operating costs are determined (including bonus and penalty payments as appropriate), and after reductions are made for capital payments, we would add the operating costs and the reduced capital costs together.

Step 2e—The statute provides for the Secretary to adjust the rates so that the amount of total payments under this section are projected to equal 98 percent of the payments that would have been paid under this section in the absence of this new payment methodology. Payments made for cost reporting periods beginning on or after the implementation of this prospective payment system through FY 2002 are based on both the facility-specific payment and the Federal prospective payment that we propose in this regulation. Therefore under proposed § 412.624(d)(2), we reduce total estimated payments calculated under the current payment system to ensure that the 98 percent budget neutrality provision is applicable to all payments. In addition, total estimated payments are adjusted to reflect the estimated proportion of additional outlier payments, under proposed § 412.624(d)(1) and for coding and classification changes under proposed § 412.624(d)(3). These payments are the proposed numerator of the equation used to calculate the budget neutral adjustment.

Step 3—Calculate the average weighted payment per discharge amount under the current payment system. Once total payments are calculated under the current payment system, an average per discharge payment amount weighted by the number of Medicare discharges under the current payment system can be calculated. This is done by first determining the average payment per discharge amount under the current payment system for each facility. Cost report data are used to calculate each facility's average payment per discharge by dividing the number of discharges into the total payments. The next step is to determine the weighted average per discharge payment amount. To calculate this amount, we multiply the number of discharges from the Medicare bills (with corresponding UDSmr/COS data) by each facility's average payment per discharge amount. We then sum the amounts for all facilities and divide by the total number of discharges from the Medicare bills (with corresponding UDSmr/COS data) to derive an average payment per discharge amount that is weighted by the number of Medicare discharges.

Step 4—Estimate payments under the proposed payment system without a budget neutral adjustment. Payments under the proposed payment system are then simulated without a budget neutral adjustment. To do this, we multiply the following: each facility's case-mix index, the number of discharges from the Medicare bills (with corresponding UDSmr/COS data), the appropriate wage index, the rural adjustment (if applicable), an appropriate disproportionate share adjustment, and the weighted average per discharge payment amount computed in Step 3. Total payments for each facility are then added together. This total is the denominator in the calculation of the budget neutral adjustment.

Step 5—Determine the budget neutral conversion factor. The denominator of the budget neutral adjustment equation is the total estimated payments for the proposed prospective payment system without a budget neutral adjustment (the total amount calculated in Step 4). The budget neutral adjustment is calculated by dividing total reduced payments under the current payment system (the total amount calculated in Step 2) by estimated payments for the proposed prospective payment system. The resulting budget neutral adjustment is then multiplied by the average weighted per discharge payment amount under the current payment system to derive the budget neutral conversion factor.

Because we do not have UDSmr and COS data for all rehabilitation facilities, for the final rule we will further analyze the extent to which the data used to construct the budget neutral conversion factor accurately reflect the relationship between case-mix and cost. We are considering the use of weighted averages to more fully account for those types of facilities that may be under-represented with the given data.

Once the budget neutral conversion factor is calculated, the factor is further adjusted to include a behavioral offset. As previously stated, to calculate the budget neutral conversion factor, we had to estimate what would have been paid under the current payment system. However, due to the incentives for premature discharge inherent in the new payment system, we expect that differences in the utilization of these services might result. In the case of the proposed payment system, discharges to other settings of care may take place earlier than under the current payment system. This would result in lower payments under the current payment system for this care, which must be taken into account when computing budget neutral payment rates. Accounting for this effect through an adjustment is commonly known as a behavioral offset. The budget neutral conversion factor with a behavioral offset is $6,024. This represents a .64 percent (that is, sixty four hundredths of one percent) reduction in the budget neutral conversion factor otherwise calculated under the methodology described in the preceding pages. In determining this adjustment, we assumed that the IRFs would regain 15 percent of potential losses and augment payment increases by 5 percent through transfers occurring at or beyond the mean length of stay associated with CMG or home health care at any point.

F. Development of the Federal Prospective Payment

Once the relative weights for each CMG and the budget neutral conversion factor are calculated, the Federal prospective payments can be determined. Under proposed § 412.624(c)(4), these CMG payments are calculated by multiplying the budget neutral conversion factor by each of the CMG relative weights. The equation is as follows:

Federal Prospective Payment = CMG Relative Weight * Budget Neutral Conversion Factor

Table 5E displays the CMGs and the corresponding Federal prospective payments.

TABLE 5E.—FEDERAL PROSPECTIVE PAYMENTS

CMG	Without comorbidities	With comorbidities
0101	$3,649.34	$3,983.67
0102	4,274.03	4,666.19
0103	5,183.65	5,658.95
0104	5,156.54	5,628.83
0105	5,795.09	6,325.80
0106	6,592.67	7,196.87
0107	7,608.31	8,305.29
0108	8,653.48	9,446.84
0109	9,631.77	10,514.89
0110	10,009.48	10,926.93
0111	11,822.70	12,906.42
0201	3,315.61	3,315.61
0202	5,014.98	5,014.98
0203	5,689.66	5,689.66
0204	7,011.94	7,011.94
0205	8,878.77	8,878.77
0206	13,360.63	13,360.63
0301	3,854.76	4,342.10
0302	5,055.94	5,695.09
0303	5,702.92	6,423.99
0304	7,593.25	8,552.88
0305	10,552.24	11,885.95
0401	4,298.12	5,156.54
0402	6,328.81	7,592.05
0403	10,517.30	12,616.67
0404	17,621.40	21,139.42
0501	2,686.10	3,330.07
0502	3,733.07	4,628.24
0503	4,910.76	6,088.46
0504	6,936.64	8,600.46
0505	10,732.36	13,306.41
0601	4,199.33	4,801.13
0602	5,473.41	6,258.33
0603	6,525.80	7,461.93
0604	8,057.10	9,211.90
0701	3,930.66	4,580.65
0702	5,022.21	5,852.92
0703	6,101.71	7,110.13
0704	7,104.71	8,278.78
0801	2,904.77	3,566.21
0802	3,604.76	4,425.23
0803	4,496.31	5,519.19
0804	5,322.20	6,533.03
0805	5,746.90	7,054.10
0806	7,087.24	8,699.26
0901	3,365.61	4,045.72
0902	4,602.94	5,533.04
0903	5,834.24	7,013.14
0904	7,315.55	8,793.23
1001	5,113.17	5,589.07
1002	6,733.63	7,360.73
1003	8,304.08	9,076.96
1101	3,671.63	4,511.37
1102	4,986.67	6,127.01
1103	6,562.55	8,063.73
1104	7,970.96	9,793.82
1201	3,593.32	4,124.63
1202	4,325.83	4,966.19
1203	5,530.63	6,349.30
1204	6,922.78	7,946.86
1301	3,570.42	4,131.86
1302	4,286.68	4,960.16
1303	6,295.06	7,284.82
1401	3,922.23	4,589.08
1402	5,425.21	6,347.49
1403	7,643.85	8,943.23
1501	4,663.18	5,016.18
1502	5,137.87	5,527.02
1503	7,153.50	7,695.06
1504	13,732.91	14,773.26
1601	3,705.36	4,405.35
1602	4,371.62	5,197.51
1603	5,858.34	6,964.95
1701	5,128.23	6,364.36
1702	8,239.02	10,225.14
1801	5,984.84	5,984.84
1802	12,387.15	12,387.15
1901	4,245.72	4,245.72
1902	6,555.92	6,555.92
1903	12,438.36	12,438.36
2001	3,018.02	3,375.85
2002	3,876.44	4,336.08
2003	4,498.72	5,031.85
2004	4,295.71	4,805.34
2005	5,149.92	5,760.15
2006	6,111.35	6,836.04
2007	6,022.80	6,736.64
2008	6,842.66	7,653.49
2009	7,518.55	8,409.50
2010	6,969.77	7,795.66
2011	8,974.56	10,038.39
2101	7,748.67	7,748.67
5001	1,149.38	1,149.38
5101	2,805.38	2,805.38
5102	6,492.06	6,492.06
5103	3,304.16	3,304.16
5104	9,052.26	9,052.26

G. Examples of Computing the Adjusted Facility Prospective Payments

The Federal prospective payments, described above, will be adjusted to account for geographic wage variation, disproportionate share and, if applicable, facilities located in rural areas.

To illustrate the methodology that we propose to use for adjusting the Federal prospective payments, we provide the following example. One beneficiary is in rehabilitation facility A and another beneficiary is in rehabilitation facility B. Rehabilitation facility A has a disproportionate share adjustment of 1.0648, a wage index of 0.987, and is located in a rural area. Rehabilitation facility B has a disproportionate share amount of 1.1337, a wage index of 1.234, and is located in an urban area. Both Medicare beneficiaries are classified to CMG 0111 (without comorbidity). This CMG represents a stroke with motor scores in the 78–61 range and the patient is 83 years old or younger. To calculate the facility's total adjusted Federal prospective payment, we compute the wage adjusted Federal prospective payment and multiply the result by: the appropriate disproportionate share adjustment, and the rural adjustment (if applicable). Table 6E illustrates the components of the adjusted payment calculation.

TABLE 6E.—EXAMPLES OF COMPUTING A FACILITY'S FEDERAL PROSPECTIVE PAYMENT

		Facility A
Federal Prospective Payment (From Table 5E)	$11,822.70	$11,822.70
Labor Share (From Table 2E)	× .71301	× .71301
Labor Portion of Federal Payment	= $8,429.70	= $8,429.70
Wage Index (From Tables 3E or 4E)	× 0.987	× 1.234
Wage Adjusted Amount	$8,320.12	$10,402.25
Non-Labor Amount	+ $3,393.00	+ $3,393.00
Wage Adjusted Federal Payment	= $11,713.11	= $13,795.25
Rural Adjustment	× 1.1589	× 1.0000
Subtotal	= $13,574.33	= $13,795.25
DSH Adjustment	× 1.0648	× 1.1337
Total Adjusted Federal Prospective Payment	$14,453.94	$15,639.68

Thus, the adjusted payment for facility A will be $14,453.64 and the adjusted payment for facility B will be $15,639.68.

H. Computing Total Payments

As described in proposed § 412.626, for cost reporting periods beginning on or after April 1, 2001 and before October 1, 2001, payments will be based on 66⅔ percent of the facility specific payment and 33⅓ percent of the IRF adjusted facility Federal prospective payment. The facility specific payment is the amount the facility would have been paid if the prospective payment system had not been implemented. Medicare fiscal intermediaries will continue to compute the facility specific payment amount according to § 412.22(b) of the regulations and sections 1886(d) and (g) of the Act.

I. Method of Payment

A beneficiary will be classified into a CMG based on data obtained during the initial MDS–PAC assessment. The CMG will determine the Federal prospective payment the IRF will receive for the Medicare-covered Part-A services the IRF furnished during the Medicare beneficiary's episode of care. However, we are proposing, under § 412.632(a), that the payment be based on the submission of a discharge bill. This will allow us to account for the occurrence of an event during the stay which would result in a reclassification to one of the five special CMGs (for cases that expire or have a very short length of stay) or an adjustment to the payment to reflect an early transfer and determine if the case qualifies for an outlier payment. Accordingly, the CMG and other information to determine if an adjustment to the payment is necessary will be recorded by the IRF on the beneficiary's discharge bill and submitted to its Medicare fiscal intermediary for processing. The payment made represents payment in full, under proposed § 412.622(b), for inpatient operating and capital costs, but not for the costs of an approved medical education program, bad debts, or other costs not paid for under the proposed IRF prospective payment system.

Under the current payment system, (1) An IRF may be paid using the periodic interim payment (PIP) method described in § 413.64(h) of the regulations, (2) rehabilitation units are paid under the PIP method if the hospital of which they are a part is paid under § 412.116(b), and (3) IRFs may be eligible to receive accelerated payments as described in § 413.64(g) or for rehabilitation units under § 412.116(f). We presently see no reason to discontinue administratively our existing policy of allowing the PIP and accelerated payment methods under the prospective payment system for qualified IRFs, though we may choose to evaluate its continuing need in the future. Therefore, we are proposing to permit the continued availability of PIP and accelerated payments for services of IRFs paid under the prospective payment system at proposed paragraphs (b) and (e) of § 412.632 of the regulations.

For those services paid under the PIP method, the amount is based on estimated prospective payments for the year rather than on estimated cost reimbursement. An IRF receiving prospective payments, whether or not it received a PIP prior to receiving prospective payments, may receive a PIP if it meets the requirements in § 412.632 and receives approval by its intermediary. Likewise, if an intermediary determines that an IRF which received a PIP prior to receiving prospective payments is no longer entitled to receive a PIP, it will remove the IRF from the PIP method. As provided in § 412.632, intermediary approval of a PIP is conditioned upon the intermediary's best judgment as to whether payment can be made under the PIP method without undue risk of its resulting in an overpayment to the provider.

Excluded from the PIP amount are outlier payments that are paid in final upon the submission of a discharge bill. In addition, Part A costs that are not paid for under the IRF prospective payment system, including Medicare bad debts and costs of an approved educational program, will be subject to the interim payment provisions of the regulations at § 413.64.

Under the prospective payment system, if an IRF is not paid under the PIP method it may qualify to receive an accelerated payment. Under § 412.632, the IRF must be experiencing financial difficulties due to a delay by the intermediary in making payment to the IRF or there is a temporary delay in the IRF's preparation and submittal of bills to the intermediary beyond its normal billing cycle because of an exceptional situation. A request for an accelerated payment must be made by the IRF and approved by the intermediary and HCFA. The amount of an accelerated payment is computed as a percentage of the net payment for unbilled or unpaid covered services. Recoupment of an accelerated payment is made as bills are processed or by direct payment by the IRF.

J. Update to the Adjusted Facility Federal Prospective Payment

Under section 1886(j)(3)(C) of the Act and under proposed § 412.624(c)(3)(ii) of the regulations, future updates to the adjusted facility Federal prospective payments (budget neutral conversion factor) will include the use of an increase factor based on an appropriate percentage increase in a market basket of goods and services comprising services for which payment is made under the proposed IRF prospective payment system. This increase factor may be the market basket percentage increase described in section 1886(b)(3)(B)(iii) of the Act. A description of IRF market basket that we propose to use in developing an increase factor under section 1886(j)(3)(C) is found in Appendix D of this proposed rule.

VI. Provisions of the Proposed Rule

We are proposing to make a number of revisions to the regulations in order to implement the prospective payment system for inpatient rehabilitation facilities. We are proposing to make conforming changes in 42 CFR parts 412 and 413. We are proposing to establish a new subpart P in part 412, "Prospective Payment for Inpatient Rehabilitation Facilities". This subpart would implement section 1886(j) of the Act, which provides for the implementation of a prospective payment system for inpatient rehabilitation facilities. This subpart would set forth the framework for the inpatient rehabilitation facility prospective payment system, including the methodology used for the development of the payment rates and related rules. These revisions and others are discussed in detail below.

Section 412.1 Scope of Part

We are proposing to revise § 412.1 by redesignating paragraph (a) as paragraph (a)(1) and adding a paragraph (a)(2) that specifies that this part implements section 1886(j) of the Act by establishing a prospective payment system for the inpatient operating and capital costs of inpatient hospital services provided to Medicare beneficiaries by a rehabilitation hospital or rehabilitation unit for cost reporting periods beginning on or after April 1, 2001. As a result of our proposed changes to § 412.1, we would make a number of conforming changes to various sections of the regulations text. These changes include adding references to the inpatient hospital prospective payment systems as described in § 412.1(a)(1).

Currently, § 412.1(b) "Summary of content" describes the content of each subpart in part 412. To make this paragraph more user friendly, we would restructure the paragraph by dividing it into 12 subparagraphs. In addition, we would add references to § 412.1(a)(1)(where appropriate) and add a new subparagraph (b)(12) that summarizes the content of the new subpart P.

Section 412.20 Hospital Services to the Prospective Payment Systems

We propose to revise § 412.20 by revising paragraph (a) to add a reference to inpatient hospital prospective payment system, redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b). Section 412.20(b) would specify that effective for all cost reporting periods beginning on or after April 1, 2001, the services furnished by an inpatient rehabilitation hospital or rehabilitation unit specified in § 412.604 are paid for under the prospective payment system described in subpart P. We would also add a reference to § 412.1(a)(1) to the introductory text of § 412.20(c).

Section 412.22 Excluded Hospitals and Hospital Units: General Rules

We propose to revise §§ 412.22(a), (b), (e), and (h)(2) to add references to § 412.1(a)(1) or § 412.20 (b).

Section 412.23 Retroactive Adjustments for Incorrectly Excluded Hospital Units

We propose to revise the introductory text of §§ 412.23 and 412.23(b)(2) to add references to § 412.1(a)(1) and (a)(2). We propose to revise the introductory text of paragraph (b) to add references to § 412.1(a)(1) and (a)(2). We proposed to revise paragraphs (b)(8) and (b)(9) to specify that in order to be classified as a rehabilitation hospital a patient assessment instrument must be completed in accordance with § 412.606 for each Medicare patient admitted or discharged on or after April 1, 2001.

Section 412.25 Excluded Hospital Units: Common Requirements

We propose to revise §§ 412.25(a) and (e)(2) to add references to § 412.1(a)(1).

Section 412.29 Excluded Rehabilitation Units: Additional Requirements

We propose to revise the introductory text of § 412.29 to add a reference to § 412.1(a)(1) and (a)(2).

Section 412.116 Method of Payments

We propose to restructure and revise paragraph (a) by creating paragraphs (a)(1) and (a)(2). New paragraph (a)(2) would be revised to specify that payments for inpatient hospital services furnished by an excluded psychiatric or rehabilitation unit (not paid under the provisions of subpart P of this part) are made as described in § 413.64(a), (c), (d) and (e) of this chapter. We also propose to add a new paragraph (a)(3) that specifies how payments for inpatient hospital services are made to a qualified IRF.

Section 412.130 Retroactive Adjustments for Incorrectly Excluded Hospital Units

We would revise paragraphs (a)(1) and (a)(2) to add references to §§ 412.1(a)(1) and (a)(2). In addition, § 412.130 (a)(1) and (a)(2) would be revised to specify that for cost reporting periods on or after October 1, 1991, rehabilitation hospitals and units that were excluded from the prospective payment systems specified in § 412.1(a)(1) or paid under the inpatient rehabilitation prospective payment system, as a new rehabilitation hospital or unit will have its payments adjusted if the inpatient population actually treated in the hospital during the cost reporting period did not meet the requirements of § 412.23(b)(2). In § 412.130(b), we would add the provisions that specify that the intermediary adjusts the payment to the hospitals described in paragraph (a) of this section for cost reporting periods beginning on or after April 1, 2001 as follows:

- The intermediary calculates the difference between the amounts actually paid under subpart P of this part during the cost reporting period for which the hospital, unit, or beds were first classified as a new hospital, new unit, or newly added beds under subpart B of this part, and the amount that would have been paid under the prospective payment systems described in § 412.1(a)(1) for services furnished during that period.
- The intermediary makes a retroactive adjustment for the difference between the amount paid to the hospital under subpart P of this part and the amount that would have been paid under the prospective payment systems described in § 412.1(a)(1).

Subpart P Prospective Payment for Inpatient Rehabilitation Hospitals and Rehabilitation Units

We propose to reserve subparts N and O, and add a new subpart P.

Section 412.600 Basis and Scope of the Subpart

We are proposing to add a new § 412.600. Section 412.600(a) provides for the implementation of a pfospective payment system for inpatient rehabilitation facilities. In § 412.600(b), we would specify that this subpart sets forth the framework for the prospective payment system, including the methodology used for the development of payment rates and associated adjustments, the application of a transition phase, and related rules for inpatient rehabilitation facilities for cost reporting periods beginning on or after April 1, 2001.

Section 412.602 Definitions

In § 412.602, we are proposing the following definitions for purposes of this new subpart:

- Assessment reference date;
- Authorized clinician;
- Discharge;
- Encode;
- Functional-related groups;
- Interrupted stay;
- MDS–PAC;
- Outlier payment;
- Rural area
- Transfer; and
- Urban area.

Section 412.604 Conditions for Payment Under the Prospective Payment System for Inpatient Rehabilitation Facilities

In proposed § 412.604(a), we would specify that IRFs must meet the following general requirements to receive payment under the IRF prospective payment system:

- The IRF must meet the conditions of this section;
- If the IRF fails to comply with the provisions of the section then we can—
- Withhold (in full or in part) or reduce payment to the IRF; or
- Classify the IRF as an inpatient hospital subject to the inpatient hospital prospective payment system.

In proposed paragraph (b), we would specify that an IRF must meet the rehabilitation hospital or rehabilitation unit classification criteria set forth in §§ 412.22, 412.23(b) and 412.30 for exclusion from the inpatient hospital prospective payment system. In addition, we propose to specify that qualifying IRFs are subject to the payment provisions for the IRF prospective payment system.

Proposed paragraph (c) would specify that the IRF must complete a patient assessment instrument for each Medicare patient admitted or discharged on or after April 1, 2001.

Proposed paragraph (d) would specify the prohibited and permitted charges that can be imposed on Medicare beneficiaries. In proposed paragraph (d)(1), we would specify that an IRF may not charge a beneficiary for any services for which payment is made by Medicare, even if the IRF's costs are greater than the amount the facility is paid under the IRF prospective payment system. In addition, proposed paragraph (d)(2) would specify that an IRF receiving payment for a covered stay may charge the Medicare beneficiary or other person for only the applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87.

Proposed paragraph (e) would specify the following provisions for furnishing IRF services directly or under arrangements:

- Applicable payments made under the IRF prospective payment system are in full for all inpatient hospital services (as defined in § 409.10) other than physicians' services to individual patients (as specified in § 415.102(a)) which are reimbursable on a reasonable cost basis.
- Payment is not made to a provider or supplier other than the IRF, except for physicians' services reimbursable under § 405.550(b) and the services of an anesthetist employed by a physician reimbursable under § 415.102(a).
- The IRF must furnish all necessary covered services to the Medicare beneficiary directly or under arrangements (as defined in § 409.3).

Lastly, proposed paragraph (f) would specify that IRFs must meet the recordkeeping and cost reporting requirements of §§ 413.20 and 413.24.

Section 412.606 Patient Assessments

In proposed § 412.606, we set forth the requirements regarding patient assessment. Proposed § 412.606(a) would specify that at the time each Medicare patient is admitted the facility must have physician orders for the patient's care during his or her hospitalization. Proposed § 412.606(b) would specify that MDS–PAC is the instrument used to assess Medicare inpatients who are admitted on or after April 1, 2001, or were admitted before April 1, 2001, and are still inpatients as of April 1, 2001. In proposed § 412.606(c), we would specify that an inpatient rehabilitation facility's authorized clinician must perform a comprehensive, accurate, standardized, and reproducible assessment of each Medicare inpatient using the MDS–PAC. This assessment must be in accordance with the assessment schedule. A clinician must record appropriate and applicable data accurately and completely for each MDS–PAC item. The assessment process must include direct patient observation and communication with the patient; and when appropriate and to the extent feasible, patient data from the patient's physician(s), family, friends, the patient's clinical record and other sources. The authorized clinician must sign the MDS–PAC attesting to its completion and accuracy.

Section 412.608 Patients' Rights Regarding MDS–PAC Data Collection

Proposed § 412.608 specifies patient rights regarding MDS–PAC data collection. In proposed paragraph (a) we would specify the rights that a Medicare inpatient must be informed of by the IRF authorized clinician before an assessment can be performed. Proposed paragraph (b) would require the authorized clinician to document in the Medicare inpatient's clinical record that the patient was informed of the rights listed in paragraph (a). Proposed paragraph (c) specifies that the patient rights included in this section are in addition to the patient rights specified under the conditions of participation for hospitals in § 482.13.

Section 412.610 Assessment Schedule

In proposed § 412.610, we would specify the following:

- The start of the assessment schedule day count.
- The determination of the assessment reference date.
- The date when an MDS–PAC assessment reference is late.
- MDS–PAC completion and encoding dates.
- The accuracy of the MDS–PAC data.
- The length of time that an IRF has to retain MDS–PAC patient data sets.

Section 412.612 Coordination of MDS–PAC Data Collection

We proposed to add a new § 412.612. Paragraph (a) of this section would specify the responsibilities of the IRF's authorized clinician. Section 412.612(b) states that the IRF's authorized clinician must certify the accuracy and completion date of the MDS–PAC assessment by signing and dating the appropriate lines of section AB of the MDS–PAC. Proposed paragraph (c) specifies the signature requirements for any clinician who contributes data for an MDS–PAC item. Proposed paragraph (d) specifies the penalty for falsification of a patient assessment.

Section 412.614 Transmission of MDS–PAC Data

Proposed § 412.614 specifies the requirements for transmittal of MDS–PAC data that include the following:

- The format for submitting data.
- How the data is to be submitted.
- The timeframe for submitting data.
- The penalties for late transmission of data.

Section 412.616 Release of Information Collected Using the MDS–PAC

In proposed § 412.616, we specify that the IRF and its agents must ensure the confidentiality of the information collected using the MDS–PAC in the same manner as all other information in the medical record, in accordance with the hospital conditions of participation at § 482.24(b)(3). An IRF may release patient-identifiable information to an agent of the IRF only in accordance with a written contract under which the agent agrees not to use or disclose the information except for the purpose specified in the contract and only to the extent that the IRF itself is permitted to so under § 412.616(a).

Section 412.618 Interrupted Stay

In proposed § 412.618 (a), we specify that for purposes of the MDS–PAC assessment process, if a Medicare inpatient has an interrupted stay then the following applies:

- The initial case-mix group classification from the "initial" (Day 4) MDS–PAC assessment remains in effect.
- The required scheduled MDS–PAC Day 11, Day 30, Day 60, and discharge assessments must be performed.
- The authorized clinician must record the interrupted stay data on the interrupted stay tracking form of the MDS–PAC.
- The recorded and encoded interrupted stay data must be transmitted to the HCFA MDS–PAC system within 7 calendar days of the date that the Medicare patient returns to IRF. In proposed paragraph (d), we specify the revised assessment schedule. Proposed paragraph (d)(1) specifies that if the interrupted stay occurs before the Day 4 assessment, the assessment reference dates, completion dates, encoding dates, and data transmission for the Day 4 and Day 11 MDS–PAC assessments are advanced by the same number of calendar days as the length of the Medicare patient's interrupted stay. Proposed paragraphs (d)(2), (d)(3) and (d)(4), specify the provisions under which the Day 11, Day 30, and Day 60 are advanced in the same manner.

Section 412.620 Patient Classification System

Proposed § 412.620 specifies the classification methodology, weighting factors, and case-mix adjustments as they relate to the patient classification system.

Section 412.622 Basis of Payment

Proposed § 412.622(a), we would specify that under the prospective payment system, IRFs received a predetermined amount per discharge for inpatient services furnished to Medicare beneficiaries. This paragraph also specifies the basis for the amount of payment under the prospective system.

Proposed § 412.622(b) specifies that payments made under the prospective payment system represent payment in full for inpatient operating and capital costs associated with services furnished in an IRF, but not for the costs of an approved medical education program. Paragraph (b) also specifies the additional payments that an IRFs receive.

Section 412.624 Methodology for Calculating the Prospective Payment Rates

This proposed section specifies the methodology for calculating the prospective payment rates for IRFs. The items specified in this section are as follows:

- Proposed paragraph (a) specifies the data used to calculate the prospective payment rates;
- Proposed paragraph (b) specifies the methodology for calculating the Federal per discharge payment rates that includes—
- Determination of the per discharge payment rate; and
- Adjustments to the data.
- Proposed paragraph (c) specifies how the Federal prospective payment rates for IRFs will be determined. This includes the general rules, the update per discharge, the computation of the budget neutral conversion factor and the determination of the Federal prospective payment rate for each case-mix group.
- Proposed paragraph (d) specifies the adjustments to the budget neutral conversion factor. The adjustments include the following: (1) outlier payments; (2) budget neutrality; and (3) coding and classification changes.
- Proposed paragraph (e) specifies the calculation of the adjusted Federal prospective payment is computed for each discharge on the basis of the Federal prospective payment rate determined in paragraph (c) of this section and adjusted to account for area wage levels, payments for outliers, transfers, and other appropriate factors.

Section 412.626 Transition Period

Proposed § 412.626(a) specifies the duration of the transition period to IRF prospective payment system. It also specifies that IRFs will receive a payment that is comprised of a blend of the adjusted facility Federal prospective payment and the facility-specific payment. Proposed paragraph (b) specifies how the facility-specific payment is calculated.

Section 412.628 Publication of the Federal Prospective Payment Rates

Proposed § 412.628 specifies that we will publish information pertaining to the IRF prospective payment system effective for each fiscal year in the **Federal Register**. In addition, it specifies that the information regarding the IRF prospective payment system will be published on or before August 1 prior to the beginning of each fiscal year.

Section 412.630 Limitation on Review

Proposed § 412.630 specifies that administrative or judicial review under sections 1869 or 1878 of the Act, or otherwise, is prohibited with regard to the establishment of the methodology to classify a patient into the case-mix groups and the associated weighting factors, the unadjusted Federal per discharge payment rates, additional payments for outliers and special payments, and the area wage index.

Section 412.632 Method of Payment Under the Inpatient Rehabilitation Facility Prospective Payment System

Proposed § 412.632 specifies the method of payment under the inpatient rehabilitation facility prospective payment system. This section specifies the following:

- General rule for receiving payment, including exceptions;
- The requirements for periodic interim payments that include—
- Criteria for receiving periodic interim payments;
- Frequency of payments; and
- Termination of periodic interim payments;
- Interim payment for Medicare bad debts and for Part A costs not paid under the prospective payment system.
- Outlier payments.
- The requirements for accelerated payments that include—
- General rule regarding request for accelerated payments;
- Approval of request for accelerated payments;
- Amount of the accelerated payment; and

- Recovery of the accelerated payment.

Section 413.1 Introduction

We propose to revised § 413.1(d)(ii) to remove the reference to rehabilitation hospitals and units. We also propose to add a new § 413.1(d)(iv) that specifies that for cost reporting periods beginning on or before April 1, 2001, payment to rehabilitation hospitals and units that are excluded under subpart B of part 412 of this subchapter from the prospective payment system is on a reasonable cost basis in accordance with the provisions of § 413.40. In addition, we propose to add a new § 413.1(d)(v) that specifies that for cost reporting periods on or after April 1, 2001, payment to rehabilitation hospitals and units (as described in § 412.604) is based on the prospectively determined rates under the provisions of subpart P of part 412.

Section 413.40 Ceiling on the Rate of Increase in Hospital Costs

Section 413.40(a)(2)(i) specifies the types of facilities to which the ceiling on the rate of increase in hospital inpatient costs is not applicable. We propose to add a new paragraph § 413.40(a)(2)(i)(C) to specify that for cost reporting periods beginning on or after October 1, 2002, § 413.40 is not applicable to rehabilitation hospitals and rehabilitation units that meet the conditions for payment under § 412.604 and are paid under the prospective payment system for inpatient hospital services in accordance with section 1886(j) and subpart P of part 412.

We propose to revise § 413.40(a)(2)(ii) and to add (a)(2)(iii) to specify the cost reporting periods under which rehabilitation hospitals and units that are excluded from the prospective payment system specified in § 412.1(a)(1) meet the terms of this section

Section 413.64 Payment to Providers: Specific Rules

We propose to revise § 413.64 to include hospitals paid under the IRF prospective payment system and add a reference to § 412.1(a)(1).

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and we will respond to the comments in the preamble to the final rule.

VIII. Regulatory Impact Analysis

Section 804(2) of title 5, United States Code (as added by section 251 of Public Law 104–121), specifies that a "major rule" is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets.

We have examined the impacts of this proposed rule as required by Executive Order (EO) 12866, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the Regulatory Flexibility Act (RFA) (Public Law 96–354), and EO 13132 (Federalism). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This proposed regulation would be a major rule because the aggregate amount of savings is estimated to be 1.54 billion dollars over 7 years.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, businesses include small businesses, non-profit organizations and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Intermediaries and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or Tribal governments, in the aggregate, or by the private sector, of at least $100 million. This rule will not have an effect on the governments mentioned nor will it affect private sector costs, rather, the proposed rule will affect Medicare payments.

In addition, we examined this rule in accordance with Executive Order 13132 and determined that this proposed rule would not have any negative impact on the rights, roles, or responsibilities of State, local or Tribal governments.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

For these reasons, we are preparing analyses under the RFA and section 1102(b) of the Act because we determine, and we certify, that this proposed rule would have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. As discussed earlier in this preamble, we propose to adjust payments for facilities located in rural areas. Therefore, the impacts shown below reflect the adjustments that are designed to minimize or eliminate the negative impact that the prospective payment system would otherwise have on rural facilities.

A. Background

This proposed rule sets forth the prospective payments to be used to determine payments under the Medicare program for inpatient rehabilitation facilities.

While section 1886(j) of the Act specifies the basic methodology of constructing a case-mix adjusted prospective payment system, the statute does allow us some discretion in designing the key elements of the system, and we had some opportunity to consider alternatives for these elements. These include the patient assessment instrument, the patient classification methodology based on functional-related groups, and adjustments to the prospective payments. These elements, and alternatives that we considered, were discussed in detail earlier in the preamble of this proposed rule.

B. Anticipated Effects of This Proposed Rule

We discuss the impact of this proposed rule in terms of its fiscal impact on the budget and in terms of its

impact on providers. The estimated fiscal impact is discussed first.

1. Budgetary Impact

Under section 1886(j)(3)(B) of the Act, payment rates set forth in this proposed rule must be set at levels such that total payments under this prospective payment system are projected to equal 98 percent of the amount that would have been paid for operating and capital costs if this prospective payment system had not been implemented. The provision to implement the IRF prospective payment system is projected to save the Medicare program $1.54 billion over 7 years, as follows:

$60 million for FY 2001
$200 million for FY 2002
$220 million for FY 2003
$240 million for FY 2004
$250 million for FY 2005
$270 million for FY 2006
$300 million for FY 2007

2. Impacts on Providers

In order to understand the impact of the new prospective payment system on different categories of facilities, it is necessary to compare estimated payments under the current payment system (current payments) to estimated payments under the proposed prospective payment system (proposed prospective payments). To estimate the impacts among the various classes of providers it is imperative that current payments and proposed prospective payments contain similar inputs. More specifically, we simulate proposed prospective payments only for those providers that we are able to calculate current payment. Further, we calculate current payment only for those providers that we are able to simulate proposed prospective payments.

As previously stated in section V. of this preamble, we have both case-mix and cost data for 624 rehabilitation facilities. Data from these facilities were used to analyze the appropriateness of various adjustments to the Federal unadjusted payment rates. However, for the impact analyses shown in the following tables, we simulate payments for 505 facilities. These impacts reflect the estimated losses/gains among the various classifications of providers for FY 2001. The methodology used to update the data to the midpoint of FY 2001, necessitated the use of historical cost report data to determine the relationship of the facilities' costs and target amount. Thus, the number of providers reflects only those providers for which we had cost report data available from FYs 1995, 1996, and 1997 (see discussion in section V.E.1. of this proposed rule).

3. Calculation of Current Payments

To calculate current payments, cost report data is trended forward from the midpoint of the cost reporting period to the midpoint of FY 2001 using the methodology set forth in section V. of this preamble. To estimate current payments, we calculate operating payments for each rehabilitation facility in accordance with section 1886(b). Further, we compute capital payments by reducing reasonable costs by 15 percent, consistent with section 1886(g)(4) of the Act, as added by section 4412 of the BBA. To determine each facility's average per discharge payment amount under the current payment system, operating and capital payments are added together, and then the total payment is divided by the number of Medicare discharges from the cost reports. Total payments for each facility are then computed by multiplying the number of discharges from the Medicare bills (with corresponding UDSmr/COS data) by the average per discharge payment amount.

4. Calculation of Proposed Prospective Payments

To estimate payments under the proposed prospective payment system, we multiply each facility's case-mix index by the facility's number of Medicare discharges, the budget neutral conversion factor, the applicable wage index, a disproportionate share adjustment, and a rural adjustment, (if applicable). The specific adjustments follow:

- The wage adjustment is calculated as (.2897 + (.7103 × Wage Index)),
- The disproportionate share adjustment is calculated as:

((.0001 + Disproportionate Share) raised to the power of .0905)/(.0001 raised to the power of .0905)),

- The rural adjustment, if applicable, is calculated by multiplying payments by 1.1589.

After the proposed Federal rate payments are calculated for each facility, the appropriate percentages of the current payments and the proposed Federal rate payments are blended together to determine the appropriate amount for the first three years of implementation of the IRF prospective payment system. Specifically, for cost reporting periods beginning on or after implementation of the prospective payment system through FY 2001 we combine 66⅔ percent of the current payment amount with 33⅓ percent of the proposed Federal rate payment amount. For cost reporting periods beginning in FY 2002, we combine 33⅓ percent of the current payment amount with 66⅔ percent of the proposed Federal rate payment amount. For cost reporting periods beginning in FY 2003, we show the impacts of the fully phased-in IRF prospective payment amount. All payment simulations reflect data trended to the midpoint FY 2001. These data were not trended out to the midpoint of FYs 2002 or 2003.

Tables 1G, 2G, and 3G illustrate the aggregate impact of the proposed payment system among various classifications of facilities. The first column, Facility Classifications, identifies the type of facility. The second column identifies the number of cases. The third column lists the number of facilities of each classification type, and the fourth column is the ratio of proposed prospective payments to current payments. The impacts reflect the adjustments that we propose, including the specific geographic wage adjustment, the adjustment for rural facilities (if applicable), and a disproportionate share adjustment for all facilities.

TABLE 1G.—IMPACTS REFLECTING ⅓ OF PROPOSED PROSPECTIVE PAYMENTS PLUS ⅔ OF CURRENT PAYMENTS

Facility classifications	Number of cases	Number of Facilities	Proposed payment to current payment ratio
All Facilities	167390	505	0.98
Geographic Location			
Large Urban	69344	218	0.96
Other Urban	88232	238	0.98

TABLE 1G.—IMPACTS REFLECTING ⅓ OF PROPOSED PROSPECTIVE PAYMENTS PLUS ⅔ OF CURRENT PAYMENTS—Continued

Facility classifications	Number of cases	Number of Facilities	Proposed payment to current payment ratio
Rural	9814	49	1.00
Region			
New England	15320	37	0.98
Middle Atlantic	24937	46	0.98
South Atlantic	34845	79	0.99
East North Central	33018	120	0.98
East South Central	12344	26	1.00
West North Central	9175	44	0.98
West South Central	22995	73	0.95
Mountain	5659	25	0.96
Pacific	9097	55	0.99
Urban by Region			
Urban—New England	15202	36	0.98
Urban—Middle Atlantic	24351	43	0.98
Urban—South Atlantic	31314	72	1.00
Urban—East North Central	30993	108	0.98
Urban—East South Central	11849	24	0.99
Urban—West North Central	7979	36	0.98
Urban—West South Central	21929	64	0.95
Urban—Mountain	5349	22	0.96
Urban—Pacific	8610	51	0.99
Rural by Region			
Rural—New England	118	1	1.01
Rural—Middle Atlantic	586	3	1.01
Rural—South Atlantic	3531	7	0.99
Rural—East North Central	2025	12	1.03
Rural—East South Central	495	2	1.09
Rural—West North Central	1196	8	0.98
Rural—West South Central	1066	9	0.96
Rural—Mountain	310	3	1.02
Rural—Pacific	487	4	0.97
Type and Size of Facility			
Unit of acute hospital	101518	398	0.99
Average Daily Census < 10	12962	102	0.98
Average Daily Census 10–24	51783	211	0.99
Average Daily Census > 24	36773	85	0.99
Freestanding hospital	65872	107	0.96
Average Daily Census less than 25	3527	18	0.96
Average Daily Census 25–50	19248	40	0.97
Average Daily Census greater than 50	43097	49	0.96
Disproportionate Share			
Disproportionate share less than 10%	76374	197	0.98
Disproportionate share 10%–19%	56138	190	0.99
Disproportionate share 20%–29%	13308	58	0.98
Disproportionate share greater than 29%	7191	32	0.99
Missing	14379	28	0.97
Teaching Status			
Non-Teaching	132437	407	0.98
Resident to ADC less than 10%	26377	67	0.98
Resident to ADC 10%–19%	7309	20	0.97
Resident to ADC greater than 19%	1267	11	0.97
Alaska/Hawaii	1099	2	0.99

TABLE 2G.—IMPACTS REFLECTING ⅔ OF PROPOSED PROSPECTIVE PAYMENTS PLUS ⅓ OF CURRENT PAYMENTS

Facility classifications	Number of cases	Number of facilities	Proposed payment to current payment ratio
All Facilities	167390	505	0.98
Geographic Location			
Large Urban	69344	218	0.99
Other Urban	88232	238	0.97
Rural	9814	49	1.01
Region			
New England	15320	37	0.98
Middle Atlantic	24937	46	0.97
South Atlantic	34845	79	1.01
East North Central	33018	120	0.98
East South Central	12344	26	1.01
West North Central	9175	44	0.98
West South Central	22995	73	0.93
Mountain	5659	25	0.94
Pacific	9097	55	0.99
Urban by Region			
Urban—New England	15202	36	0.98
Urban—Middle Atlantic	24351	43	0.97
Urban—South Atlantic	31314	72	1.01
Urban—East North Central	30993	108	0.98
Urban—East South Central	11849	24	1.01
Urban—West North Central	7979	36	0.99
Urban—West South Central	21929	64	0.93
Urban—Mountain	5349	22	0.93
Urban—Pacific	8610	51	0.99
Rural by Region			
Rural—New England	118	1	1.04
Rural—Middle Atlantic	586	3	1.03
Rural—South Atlantic	3531	7	1.00
Rural—East North Central	2025	12	1.08
Rural—East South Central	495	2	1.20
Rural—West North Central	1196	8	0.97
Rural—West South Central	1066	9	0.95
Rural—Mountain	310	3	1.06
Rural—Pacific	487	4	0.96
Type and Size of Facility			
Unit of acute hospital	101518	398	1.00
Average Daily Census < 10	12962	102	0.99
Average Daily Census 10–24	51783	211	1.00
Average Daily Census > 24	36773	85	1.00
Freestanding hospital	65872	107	0.95
Average Daily Census less than 25	3527	18	0.93
Average Daily Census 25–50	19248	40	0.95
Average Daily Census greater than 50	43097	49	0.95
Disproportionate Share			
Disproportionate share less than 10%	76374	197	0.97
Disproportionate share 10%–19%	56138	190	0.99
Disproportionate share 20%–29%	13308	58	0.98
Disproportionate share greater than 29%	7191	32	1.01
Missing	14379	28	0.96
Teaching Status			
Non-Teaching	132437	407	0.98
Resident to ADC less than 10%	26377	67	0.99
Resident to ADC 10%–19%	7309	20	0.96
Resident to ADC greater than 19%	1267	11	0.95
Alaska/Hawaii	1099	2	1.00

TABLE 3G.—IMPACTS REFLECTING THE FULLY PHASED-IN PROSPECTIVE PAYMENTS

Facility classifications	Number of cases	Number of facilities	Proposed payment to current payment ratio
All Facilities	167390	505	0.98
Geographic Location			
Large Urban	69344	218	0.99
Other Urban	88232	238	0.97
Rural	9814	49	1.03
Region			
New England	15320	37	0.98
Middle Atlantic	24937	46	0.97
South Atlantic	34845	79	1.02
East North Central	33018	120	0.99
East South Central	12344	26	1.03
West North Central	9175	44	0.99
West South Central	22995	73	0.90
Mountain	5659	25	0.92
Pacific	9097	55	1.00
Urban by Region			
Urban—New England	15202	36	0.98
Urban—Middle Atlantic	24351	43	0.97
Urban—South Atlantic	31314	72	1.03
Urban—East North Central	30993	108	0.98
Urban—East South Central	11849	24	1.02
Urban—West North Central	7979	36	0.99
Urban—West South Central	21929	64	0.90
Urban—Mountain	5349	22	0.91
Urban—Pacific	8610	51	1.00
Rural by Region			
Rural—New England	118	1	1.07
Rural—Middle Atlantic	586	3	1.06
Rural—South Atlantic	3531	7	1.01
Rural—East North Central	2025	12	1.13
Rural—East South Central	495	2	1.31
Rural—West North Central	1196	8	0.97
Rural—West South Central	1066	9	0.93
Rural—Mountain	310	3	1.10
Rural—Pacific	487	4	0.96
Type and Size of Facility			
Unit of acute hospital	101518	398	1.01
Average Daily Census < 10	12962	102	0.99
Average Daily Census 10–24	51783	211	1.02
Average Daily Census > 24	36773	85	1.02
Freestanding hospital	65872	107	0.93
Average Daily Census less than 25	3527	18	0.91
Average Daily Census 25–50	19248	40	0.94
Average Daily Census greater than 50	43097	49	0.93
Disproportionate Share			
Disproportionate share less than 10%	76374	197	0.97
Disproportionate share 10%–19%	56138	190	1.00
Disproportionate share 20%–29%	13308	58	0.98
Disproportionate share greater than 29%	7191	32	1.03
Missing	14379	28	0.94
Teaching Status			
Non-Teaching	132437	407	0.98
Resident to ADC less than 10%	26377	67	0.99
Resident to ADC 10%–19%	7309	20	0.95
Resident to ADC greater than 19%	1267	11	0.94
Alaska/Hawaii	1099	2	1.00

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5. Costs Associated With The MDS-PAC

We propose that all IRFs furnishing Medicare-covered Part A services assess their Medicare patients using the standardized data set known as the MDS–PAC. Costs associated with MDS–PAC data collection and data reporting are related to both personnel and equipment. These two classes of costs include the costs associated with using the MDS–PAC to assess patients (MDS–PAC data collection costs), the IRF's costs to start the MDS–PAC process, and the IRF's ongoing costs after the MDS–PAC process has been initiated. It should be noted that many of the components of the costs associated with initiation of the MDS–PAC process and the IRF's ongoing costs are the same.

a. MDS–PAC Data Collection Costs

In calculating the cost to perform an MDS–PAC assessment we made the following assumptions: (1) That physicians, registered nurses, occupational therapists, or physical therapists are the only clinicians with the training to complete all, or the vast majority, of the MDS–PAC items. Other clinicians may contribute data to complete some MDS–PAC items. (2) That a physician would not record the data for all or most of the MDS–PAC items. We believe that the majority of the items would be completed by registered nurses, occupational therapists, or physical therapists.

We then applied the above assumptions to the following data:

- According to the Occupational Outlook Handbook of the Bureau of Labor Statistics, U.S. Department of Labor, the median earnings of registered nurses in 1998 were $40,690. That is equivalent to a median hourly wage of $19.56. ($40,690/52 weeks = $782.50/week. $782.50/40 hours = $19.5625).
- According to the Occupational Outlook Handbook of the Bureau of Labor Statistics, U.S. Department of Labor, the median earnings of occupational therapists in 1998 were $48,230. That is equivalent to a median hourly wage of $23.19. ($48,230/52 weeks = $927.50. $927.50/40 hours = $23.1875).
- According to the Occupational Outlook Handbook of the Bureau of Labor Statistics, U.S. Department of Labor, the median earnings of physical therapists in 1998 were $56,600. That is equivalent to a median hourly wage of $27.21. ($56,600/52 weeks = $1088.46/week. $1088.46/40 hours = $27.2115).
- According to the Occupational Outlook Handbook of the Bureau of Labor Statistics, U.S. Department of Labor, the median earnings of dietitians and nutritionists in 1998 were $35,020. That is equivalent to a median hourly wage of $16.84. ($35,020/52 weeks = $673.46/week. $673.46/40 hours = $16.8365).
- According to the Occupational Outlook Handbook of the Bureau of Labor Statistics, U.S. Department of Labor, the median earnings of social workers in 1998 were $30,590. That is equivalent to a median hourly wage of $14.71. ($30,590/52 weeks = $588.27/week. $588.27/40 hours = $14.7067).
- According to the Occupational Outlook Handbook of the Bureau of Labor Statistics, U.S. Department of Labor, the median earnings of speech-language pathologists and audiologists in 1998 were $43,080. That is equivalent to a median hourly wage of $20.71. ($43,080/52 weeks = $828.46/week. $828.46/40 hours = $20.7115).
- IRF staff familiar with the MDS–PAC that was the product of our pilot and field testing required a median of 85 minutes to complete an initial intake assessment.
- IRF staff familiar with the MDS–PAC that was the product of our pilot and field testing required a median of 48 minutes to complete an update assessment.
- According to one external source IRF staff familiar with the UDSmr FIM required a median of 20 minutes to complete the initial FIM instrument.
- According to another external source IRF staff familiar with the FIM required a range of 30 to 45 minutes to complete the FIM instrument. It was not specified if this was the UDSmr or COS instrument. Also, although it was not specified, we believe that this range of time was the time to complete an initial FIM assessment.
- It should be noted that the information from both external sources concerning the length of time it takes to complete the FIM instrument has not been verified.
- Our data indicates that in 1997 there were 359,032 IRF admissions and 1,123 IRFs. Therefore, there were an average of 319.70 admissions per IRF.

Based on the above data and assumptions, and depending on the type of clinician that completes all, or the vast majority, of the MDS–PAC items, the range of the incremental average cost difference per year per IRF to complete the initial MDS–PAC when compared to the initial FIM is illustrated in Table 4G below. In addition, considering the hourly wage rates specified above it would make no difference in cost if a dietitian or social worker completed all or most of the MDS–PAC items, and only a slight difference at the low end of the range if a speech-language pathologist completed all or most of the MDS–PAC items.

TABLE 4G.—RANGE OF INCREMENTAL COST—COMPARISON OF THE INITIAL MDS–PAC TO THE INITIAL FIM

Range of hourly wages per clinician	Minimum incremental time of 40 minutes—range of Incremental Cost per IRF per year	Maximum incremental time of 65 minutes—range of incremental cost per IRF per year
$19.56 (R.N.)	$4,169.02	$6,774.61
23.19 (O.T.)	4,942.72	8,031.86
27.21 (P.T.)	5,799.54	9,424.18

We believe that the FIM data are inconclusive, and we have several concerns and observations regarding the data. The data from both external sources were collected from a survey of a sample of IRFs. We do not know the size of one of the samples, and if either sample is representative of all IRFs. We do not know if the data are estimates of time or controlled measurements of time. Nor do we know the details of the survey method that was used to collect the data. The data may be biased at the source where the data was collected, that is, the sources of the data may be reflecting institutionalized biases when reporting their data. In addition, the data was reported by organizations with vested interests in the FIM, and they may have used a different approach than the one we used in estimating completion time of an assessment instrument. For example, we do not know whether they measured only the time necessary to enter information on the FIM form or also included—(1) the time it took to obtain information from the patient and/or clinical record; (2) the time it took to actually assess the patient; and (3) the time it took clinicians before filling out the FIM to apply clinical judgment, or to consult with other clinicians, or to examine the clinical record regarding their assessment observations. In addition, unlike the MDS–PAC estimates, the information from both external sources was survey information, instead of a controlled study. For the above reasons, when we conduct a test of the UDSmr, COS, and the MDS–PAC instruments we will include in the test measurements of the time it takes to complete each one.

Previously in this preamble we state that testing indicated that IRF staff familiar with the MDS–PAC can complete an update MDS–PAC in a median of 48 minutes. SNF staff familiar with the MDS–PAC can complete an update MDS–PAC in a median of 45 minutes.

Although we are proposing to require more items to be collected on an update assessment, the update assessment still requires less data collection than an initial assessment. Table 7C (found in section II of this preamble), entitled "MDS–PAC Items Required by Type of Assessment," listed the items that we propose be collected on the Day 4 (admission), update (Day 11, Day 30, Day 60), and the discharge assessments. Counting the items in each column gives a simple total of the items required on each type of assessment. The update assessment requires that 85.2 percent of the items on the initial assessment be addressed on the update assessment. The discharge assessment requires that 87.5 percent of the items on the initial assessment be addressed on the discharge assessment. Consequently, we believe that the time required by IRF staff to complete an update MDS–PAC assessment is likely more than 48 minutes but less than the time it takes to complete the initial MDS–PAC assessment. We do not have data that specifically states the time it takes to complete a patient's discharge FIM, which, in essence, is the patient's update FIM. Therefore, we cannot currently compare MDS–PAC update or discharge assessment completion times to FIM update or discharge assessment completion times.

Most patients would require a Day 11 update assessment, because our data indicates that the mean length of stay is 15.81 days and the median length of stay is 14 days. Patients would also require a discharge assessment. But our data indicates that less than 9 percent of patients would require a Day 30 assessment, and less than ½ of one percent of patients would require a Day 60 assessment.

b. Start-Up Costs

The IRF's costs to start the MDS–PAC process consists of material costs and personnel costs. Our data indicates that in 1997 there were 1,123 IRFs. As presented in detail in Table 5G below entitled "MDS–PAC IRF Start-up Costs" we estimate that the costs for all IRFs to start the MDS–PAC process, excluding the MDS–PAC data collection costs discussed above, to be approximately $5,121,722 to $5,247,498, which is equal to approximately $4,561 to $4,673 per IRF.

The costs presented below are based on the profile of an average IRF, because certain costs are constant regardless of the size of the IRF. For both start-up costs and on-going costs, cost estimates are based on an assumption that IRFs would perform the encoding and transmission functions themselves.

TABLE 5G.—MDS–PAC IRF START-UP COSTS

Task/equipment	Hours per IRF	Cost per IRF			Estimated number of staff per IRF to be trained	Total per IRF			National costs
Hard drive, printer, RAM, MODEM, Internet Browser.		$0[a]				$0[a]			None
Training on MDS–PAC data collection at initial assessment, update assessment, discharge assessment, and data auditing.	16	PT[b] $27/hr	OT[b] $23/hr	RN[b] $20/hr	1[c]	PT[d] $432	OT[e] $368	RN[f] $320	$359,360–$485,136[g]
	12	$23/hr (average cost of the 3 disciplines)			9[h]	$2,484[i]			$2,789,532[j]
Data Entry (encoding/transmission) training.	5.5	$12.50/hr[k]			1	$68.75[l]			$77,206.25[m]
Data Entry	96[n]	$1,200[o]				$1,200			$1,347,600[p]
Data Entry Audits[q]		$38[r]				$38			$42,674[s]
Data Transmissions—Staff time.	1	$150[t]				$150			$168,450[u]
Running the data edit check program @ 20 minutes per month and actual transmission by staff @ 40 minutes per month.									
Systems Maintenance		$100				$100			$112,300
Supplies		$200				$200			$224,600
Total									$5,121,722–$5,247,498

[a] We believe that all IRFs have the computer capability to process the MDS–PAC-related software.

[b] These are the 1998 median hourly wages for these occupations based on the US Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2000–2001 Edition*. We are providing a range of median hourly wages as the IRFs must determine the discipline specific clinician they will send to training.

[c] We expect the IRF to send a lead clinician to a HCFA sponsored training session and then that lead clinician would train the other IRF clinicians.

[d] 16 × $27.

[e] 16 × $23.

[f] 16 × $20.

[g] 1,123 × $320 to 1,123 × $432.

[h] This number represents the average number of clinicians per IRF that would require training. These clinicians would be trained in their facility.

[i] 12 hrs × $23/hr × 9 staff=$2,484.

[j] 1,123 × $2,484.

[k] We estimate that the hourly wage for data entry personnel is $12.50 per hour.

[l] 5.5 hrs × $12.50.

[m] 1,123 × $68.75.

[n] The average total of admissions per year per IRF is a approximately 320. We estimate that on average approximately 91 percent of IRF admissions will require 3 assessments. Approximately 9 percent of IRF admissions will require 4 assessments. This time includes data review and entry of 3 min. per assessment for up-front review & another 3 min. of post data entry review for a total of 6 min. 6 minutes × 291=1746 minutes/60=29.1 hrs × 3=87.3. 6 minutes × 29=174 minutes/60=2.9 hrs × 3=8.7 hrs. 87.3 + 8.7=96 hrs.

[o] We estimate an hourly rate for data entry costs of $12.50. 96 hrs × $12.50=$1200.

[p] 1,123 × $1200.

[q] We estimate a 15 minute monthly data entry audit for quality assurance purposes.

[r] $12.50 hr/4 × 12 months=$37.50 per year.

[s] 1,123 × $38.

[t] 1 hr × 12 (mos.) × $12.50/hr.

[u] 1,123 × $150.

Note: We anticipate that the IRFs will designate a lead licensed clinician to attend all training. That lead clinician would then provide training to other IRF staff.

(1) Computer Hardware and Software

Because we will supply to the IRFs free of charge the MDS–PAC software that performs the MDS–PAC process electronic functions, the IRFs will incur no software costs. We believe that IRFs possess the computer hardware capability to handle the MDS–PAC computerization, data transmission, and grouper software requirements. Our belief is based upon indications that— (1) Approximately 99 percent of hospital inpatient claims currently are submitted electronically; (2) close to 100 percent of IRFs submit their cost reports electronically; and (3) approximately 55 percent of IRFs submit FIMs electronically. Although we will supply the MPACT software, IRFs may incur costs, which we are not able to estimate, associated with making changes to their information management systems to incorporate the MPACT software. Therefore, we are specifically soliciting comments regarding MDS–PAC computerization issues.

IRFs have the option of purchasing data collection software that can be used to support other clinical or operational needs (for example, care planning, quality assurance, or billing) or other regulatory requirements for reporting patient information. However, we are developing an MDS–PAC data system (that is, MPACT) that would be available to IRFs at no charge through our website. MPACT would allow users to computerize their MDS–PAC assessment data and transmit the data in a HCFA-standard format to the HCFA MDS–PAC system. Therefore, IRFs that plan to use MPACT will need Internet access and a dial-up Internet Service Provider account in order to be able to download and install MPACT into their computer system. We believe that all IRFs currently have the capability to access the Internet. However, we are specifically soliciting comments from any IRFs that do not possess Internet access capability, in order for us to consider if we should make MPACT available to these facilities by some other means.

(2) Training

IRF staff will require training in performing MDS–PAC assessments, encoding assessments, preparing MDS–PAC data for electronic submission, and actually transmitting the data. We believe that the initial training of IRF personnel would require about 75.5 hours of staff time. We estimate training to cost an IRF approximately $1,242 for training of clinical staff, based on an average hourly payroll rate of $23 for licensed clinical staff. We estimate training to cost an IRF approximately $69 for training data entry staff, based on an average hourly payroll rate of $12.50 for data entry staff.

(3) Data Entry

IRFs have flexibility in choosing the data entry software used to computerize the MDS–PAC data, but the software must, at a minimum, perform the MPACT functions. In addition, when IRFs are performing data entry functions themselves, or contracting for the performance of these functions, the IRFs must ensure that performance of data entry complies with our requirement for safeguarding the confidentiality of clinical records.

IRFs must collect and transmit MDS–PAC data to the HCFA MDS–PAC system in accordance with the assessment schedule and transmission requirements specified elsewhere in this preamble. The data may be entered by an IRF staff member from a paper document completed by a licensed clinical staff member, or by a data entry operator under contract to the IRF to key in data. IRFs must allow time for data validation, preparation of data for transmission, and correction of returned records that failed checks by the HCFA MDS–PAC system. We estimate that an average IRF will incur a cost of an hourly rate for data entry of $12.50. This cost includes data review and entry, as well as a (recommended) 15 minute monthly data entry audit for quality assurance purposes.

(4) Data Transmission

MDS–PAC data would be transmitted to the HCFA MDS–PAC system. This system is similar to the ones that HHAs use to report OASIS data and that SNFs use to report MDS 2.0 data. IRF staff must also manage the data transmission function, correct transmission problems, and manage report logs and validation reports transmitted by the HCFA MDS–PAC system. We estimate that it will take about one additional hour of staff time to perform data transmission related tasks each month, including running a data edit check program. This staff time will cost an average-sized IRF about $150 per year based on an hourly rate of $12.50. IRFs will be able to transmit the MDS–PAC data using the toll-free MDCN line.

(5) Systems Maintenance

There are costs associated with normal maintenance related to computer equipment, such as the replacement of disk drives or memory chips. Typically, this maintenance is provided through warranty agreements with the original equipment manufacturer, system retailer, or a firm that provides computer support. These maintenance costs are estimated to average no more than $100 per year IRF.

(6) Supplies

Supplies necessary for collection and transmission of data, including forms, diskettes, computer paper, and toner, will vary according to the size of the IRF, the number of patients served, and the number of assessments conducted.

We anticipate that an average IRF with approximately $200 in costs for supplies.

c. Ongoing Costs

We wanted to differentiate between one-time start-up costs for the IRF and costs we believe the IRFs will incur on a regular, yearly basis. Therefore, Table 6G entitled "Agency Ongoing Costs" include only data that we consider will be a repeated cost to the IRF.

TABLE 6G.—MDS–PAC IRF ONGOING COSTS

Task/equipment	Hours per IRF	Cost per IRF	Estimated number of staff	Total per IRF	National costs
Data Entry	96[a]	$1,200[b]		$1,200	$1,347,600[c]
Data Entry Audit(d)		$38[e]	1	$38	$42,674[f]
Data Transmissions—Staff time Running the data edit check program @ 20 minutes per month and actual transmission by staff @ 40 minutes per month.	1	$150[g]		$150	$168,450[h]
Systems Maintenance		$100		$100	$112,300
Supplies		$200		$200	$224,600
Annual Training:					
Clinical	12	$20–27/hr[i]	1	$240–$324[j]	$269,520–$363,852[k]
Data Entry	12	12.50/hr[l]	1	$150[m]	$168,450[n]
Clinical[o]	2	$20–27/hr.	9	$360–$486	$404,280–$545,778
Total					$2,737,874–$2,973,704

[a] The average total of admissions per year per IRF is approximately 320. We estimate that on average approximately 91 percent of IRF admissions will require 3 assessments. Approximately 9 percent of IRF admissions will require 4 assessments. This time includes data review and entry of 3 min. per assessment for up-front review & another 3 min. of post data entry review for a total of 6 min. 6 minutes × 291=1746 minutes/60=29.1 hrs × 3=87.3. 6 minutes × 29=174 minutes/60=2.9 hrs × 3=8.7 hrs. 87.3 + 8.7=96 hrs.

[b] We estimate an hourly rate for data entry costs of $12.50. 96 hrs × $12.50=$1,200.

[c] 1,123 × $1,200.

[d] We estimate a 15 minute monthly data entry audit for quality assurance purposes.

[e] $12.50 hr/4 × 12 months=$37.50 per year.

[f] 1,123 × $38.

[g] 1 hr × 12 (mos.) × $12.50/hr.

[h] 1,123 × $150.

[i] Based on the 1998 U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2000–2001 Edition,* the median hourly wage for an RN is $20, $23 for an OT, and $27 for a PT. We are providing a range of median hourly wages as the IRFs must determine the discipline specific clinician they will send to training. We expect that the IRF will send one discipline specific clinician to a HCFA sponsored training session and then that individual would train the other IRF clinicians.

[j] 12 hours × $20 to 12 hours × $27.

[k] 1,123 × $240 to 1,123 × $324.

[l] We estimate that the hourly wage for data entry personnel is $12.50 per hour.

[m] 12 hours × $12.50.

[n] 1,123 × $150.

[o] This entry represents the average annual cost of IRF in-house training for the MDS–PAC.

Our data indicates that in 1997 there were 1,123 IRFs. Therefore, we estimate annual ongoing costs for an average-sized IRF, excluding MDS–PAC data collection costs discussed previously, to be approximately $2,438 to $2,648.

d. Conclusion

As discussed in detail above, IRFs will incur costs associated with the MDS–PAC process. Table 7G below is a further analysis of these costs.

TABLE 7G.—MDS–PAC COST PER CASE

[Based on IRFs currently completing a FIM instrument]

Col. 1	Percent of MDS–PAC items completed Col. 2	Maximum incremental clinician (physical therapist) cost per IRF (from table 4G) Col. 3	Total incremental maximum cost per IRF (Col. 2 times Col. 3) Col. 4	Average maximum incremental cost per case (Col. 4 divided by 320 average admissions per IRF) Col. 5
Assessment Type:				
Initial	100.00	$9,424.18	$9,424.18	$29.45
Update	[1] 85.20	9,424.18	8,029.40	25.09
Discharge	[2] 87.50	9,424.18	8,246.16	25.77
Average Estimated Cost to Complete MDS–PAC			25,699.74	80.31
Estimated Maximum MDS–PAC Start-up Cost per IRF [3]			4,673.00	14.60
Total Estimated Maximum first year Cost			30,372.74	94.91

[1] Assumes the time to complete each MDS–PAC item weighted equally at 1.000.

[2] Same as footnote 1.

[3] This amount is based on the maximum costs shown in Table 5G divided by 1,123 IRFs. This amount will decline after the first year of implementation to reflect the ongoing costs shown in Table 6G.

We assessed the relationship between the estimated cost of completing the MDS–PAC with an estimate of the average cost of one RIC. For analysis we used RIC 7: Hip Fractures. This RIC has an estimated average cost of $9,848 (based upon secondary analysis of data from 1996 and 1997 MEDPAR and cost reports). We compared the assumed cost for completing the initial, update and discharge assessments using the MDS–PAC. We found that the average maximum incremental cost per case of completing the MDS–PAC for one year, assuming the completion of three assessments represents approximately 0.008 per cent of the cost of the estimated average cost of RIC 7. We used a single RIC for comparison because there is a large variation of cost across RICs. We believe that the estimated costs of completing the MDS–PAC are well justified when considered within the context of the statutory requirement and the methodology needed to implement the IRF prospective payment system, the probability that the MDS–PAC process will lead to increased quality of care for IRF patients, as well as the potential uses of the automated data by the IRFs themselves, the States, fiscal intermediaries, and HCFA. Our cost estimates may actually overstate anticipated costs, because they do not take into account cost-savings that IRFs may achieve by improving their management information systems, as well as potential improvements in the quality of patients' clinical care resulting from improved care planning under the MDS–PAC assessment process.

C. Alternatives Considered

We propose to use the MDS–PAC as the patient assessment instrument instead of the patient assessment instruments marketed by UDSmr or COS. These other patient assessment instruments are used by approximately 56 percent of the IRFs. But these patient assessment instruments are not as precise in assessing patients as the MDS–PAC, because they do not collect as much detailed data as the MDS–PAC. For example, the MDS–PAC provides a better description of a patient's cognitive functioning (the processing of empirical factual concepts) than these other assessment instruments. The MDS–PAC is also better at assessing a patient's mood and behavior patterns, measures of a patient's emotional and psychological status. Nor do these other assessment instruments allow for collecting patient assessment data in sufficient detail to allow us to develop the IRF quality of care monitoring system that we need. In addition, we believe that neither of these other patient assessment instruments permits a comparison of patients across different settings of post-acute care as recommended by MedPAC.

In constructing our proposed assessment schedule we decided not to use the patient assessment schedules associated with the patient assessment instruments marketed by UDSmr or COS. These other patient assessment instruments are used to assess patients only upon admission and discharge. We believe that the data provided by our update assessments would yield the type of structured data that we can use to monitor the quality of treatment being furnished. We also propose not to use the FIM items exactly as they are contained in the patient assessment instruments of UDSmr or COS, or the MDS–PAC with the FIM payment items pasted in exactly as contained in the patient assessment instruments of UDSmr or COS. These two approaches were not selected as they would not support HCFA's long-term quality monitoring strategy nor the goal to establish a common core post-acute care assessment instrument. In addition, we propose not to collect only the assessment items that would be used to generate a case-mix group determined payment rate, because these few items do not provide the scope of information needed to monitor access to care, quality of care, and to determine if future adjustments to the payment system are needed.

However, as we discussed earlier in the preamble, the process for arriving at the number of elements on the MDS–PAC was based on a consensus of clinical expert panels, which focused on the scope of elements necessary to support both quality monitoring and payment. Similarly, our proposed assessment schedule, including the number of assessments performed, was designed to meet both payment and quality monitoring objectives of the MDS–PAC. Alternatives to the approaches we have proposed in this rule could include either a reduction in the number of elements on the instrument or in the number of assessments performed while maintaining the MDS–PAC's ability to facilitate both payment and comprehensive quality monitoring. We are specifically requesting comments on these facets of the patient assessment methodology.

In accordance with the provisions of Executive Order 12866 this regulation was reviewed by the Office of Management and Budget.

IX. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506 (c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the sections that contain information collection requirements (ICRs).

Section 412.23 Excluded Hospitals: Classifications

- Paragraph (b)(2) requires that, except in the case of a newly participating hospital seeking classification under this paragraph as a rehabilitation hospital for its first 12-month cost reporting period, as described in paragraph (b)(8) of this section, the entity show that during its most recent 12-month cost reporting period it served an inpatient population of whom at least 75 percent required intensive rehabilitative services for treatment of one or more specified conditions.
- Paragraph (b)(8) requires that a hospital seeking classification under this paragraph as a rehabilitation hospital, for the first 12-months cost reporting period that occurs after it becomes a Medicare participating hospital, may provide a written certification that the inpatient population it intends to serve meets the requirements of paragraph (b)(2) of this

section, instead of showing that it has treated this population during its most recent 12-month cost reporting period.

The information collection requirements of these two paragraphs of this section are currently approved under OMB approval number 0938–0358 (Psychiatric Unit Criteria Work Sheet, Rehabilitation Hospital Criteria Work Sheet, Rehabilitation Unit Criteria Work Sheet) through November 30, 2000. The proposed changes to the information collection requirements in these two paragraphs are clarifying changes.

Section 412.116 Method of Payment

Under 412.116 (b), *Periodic interim payments,* a hospital that meets the criteria in § 413.65(h) of this chapter may request in writing to receive periodic interim payments as described in this paragraph.

The burden associated with this provision is the time it takes a hospital to write its request for periodic interim payments. We estimate that 34 facilities would request these payments and that it would take each 1 hour to write and mail its request.

Sections 412.606 Patient Assessment and 412.610(c) Assessment Schedule

- Paragraph (a) of § 412.606 requires that at the time each Medicare patient is admitted the facility must have physician orders for the patient's immediate care.

This requirement is subject to the PRA. However, we believe that the burden associated with it is exempt as defined in 5 CFR 1320.3(b)(2), because the time, effort, and financial resources necessary to comply with the requirement are incurred by persons in the normal course of their activities.

- Paragraph (c) of § 412.606, *Comprehensive assessments,* requires that an IRF clinician initially and periodically perform a comprehensive, accurate, standardized, and reproducible assessment of each Medicare patient using the MDS–PAC as the patient assessment instrument and that the assessment process must include—
- Direct patient observation and communication with the patient; and
- When appropriate and to the extent feasible, patient data from the patient's physician(s), family, friends, and the patient's clinical record and other sources.
- Section 412.610(c), *Assessment reference dates,* requires assessments upon admission (Day 4); Day 11, Day 30, and Day 60; upon discharge or when the patient stops receiving part A benefits.

In 1997, there were approxiamtely 359,000 admissions to IRFs and there are 1,123 facilities, averaging 320 admissions annually. We estimate that it would take 85 minutes for the initial assessment and at least 48 minutes for each subsequent assessment.

Under these proposed rules, all Medicare beneficiaries would be assessed two times: upon admission and upon discharge. Sixty-six percent would be assessed on the 11th day as well. Fewer than 9 percent of Medicare beneficiaries in IRFs would also be assessed at 30 days. Fewer than ½ of a percent would require an assessment at 60 days.

Below is a chart showing burden.

Type of assessment	Estimated time for completion (in minutes)	Hours per year per facility (in hours)	Hours per year nationwide (in hours)
Admission (Day 4)	85	453	508,719
Day 11	48	169	189,787
Day 30	48	23	25,829
Day 60	48	1	1,123
Discharge	48	256	287,488
Total/Facility (5 assessment)		902	1,012,946

The total ongoing annual burden for all facilities for five assessments would be 902 hours × 1,123 or 1,012,946 hours.

We are also including training in our burden estimates: 16 hours to train the lead clinician and 12 hours to train the other clinicians (an average of 9). This totals 121,284 nationally for a one-time burden. We also estimate an on-going burden for training of 14 hours per IRF per year (15,722 nationally).

Section 412.608 Patient Rights Regarding MDS–PAC Data Collection.

Under paragraph (a) of this section, before performing an assessment of a Medicare inpatient using the MDS–PAC, an IRF clinician must inform the Medicare inpatient of the following patient rights:

- The right to be informed of the purpose of the MDS–PAC data collection;
- The right to have the MDS–PAC information collected kept confidential and secure;
- The right to be informed that the MDS–PAC information will not be disclosed to others, except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations;
- The right to refuse to answer MDS–PAC questions; and
- The right to see, review, and request changes on his or her MDS–PAC assessment.

Under paragraph (b) of this section, the IRF must ensure that the authorized clinician document in the patient's clinical record that the patient was informed of the patient rights specified in paragraph (a) of this section.

In accordance with paragraph (c) of this section, the patient rights specified in paragraph (a) of this section are in addition to the patient rights specified under the conditions of participation for hospitals in § 482.13.

We anticipate adding the burden of disclosure to IRF patients and documenting that disclosure to the burden in § 412.13 on hospitals furnishing a patient rights statements. The hospitals would be able to easily give both statements to patients upon admission, along with other required notifications. The burden for the general patient rights statement has not yet been approved but is under development. We have estimated that it would take each hospital 5 minutes to disclose the general hospital statement to each patient on admission. The disclosure of the IRF patients' rights statement would increase that time by an estimated 2 minutes.

Section 412.610 Assessment Schedule

Paragraph (g), *MDS–PAC record retention,* of this section requires that an IRF maintain all MDS–PAC patient data sets completed within the previous 5 years in a paper format in the patient's clinical record or in an electronic computer file that the inpatient rehabilitation facility can easily obtain.

We estimate that, for facilities that choose to file a paper copy, it would take the facility 5 minutes to print out, or copy, each assessment and file it in the patient's record. On average, each facility would need to obtain a copy of and file 882 assessments per year, equaling 74 hours. We cannot estimate how many facilities would choose to file paper copies. However, we are assuming that most facilities would choose to retain the assessments in an electronic format, which would not add to the paperwork burden. We request comments on the accuracy of this assumption concerning how many facilities will comply by retaining an electronic version.

Section 412.612 Coordination of MDS–PAC Data Collection.

Paragraph (b), *Certification,* of this section requires that the authorized clinician who has done at least part of the assessment certify the accuracy and completion date by signing and dating the appropriate lines of section AB of the MDS–PAC.

We estimate that it would take the authorized clinician approximately 10 minutes per assessment to determine to his or her satisfaction that the assessment is complete and to so certify. Eight hundred eighty-two assessments would equal 147 hours per year per facility, and 165,081 hours nationally.

Paragraph (c) of this section requires that any clinical who contributes data for an MDS–PAC item sign and date the appropriate lines of the MDS–PAC.

Under the definition of information in 5 CFR 1320.3(h)(1), "information" does not include such items as affidavits, oaths, affirmations, certifications, consents or acknowledgments, provided that they do not entail any burden other than that necessary to identify the respondent, the date, and the respondent's address. We believe that the signatures required by § 412.610(c) are acknowledgments identifying the signers (as persons furnishing a service) and are not information.

Section 412.614 Transmission of MDS–PAC Data

Paragraph (a), *Data format,* of this section requires that each IRF encode and transmit data—

- Using the computer program(s) available from HCFA; or
- Using a computer program(s) that conforms to the HCFA standard electronic record layout, data specifications, and data dictionary, includes the required MDS–PAC data set, and meets other HCFA specifications.

In accordance with paragraph (b), *How to transmit data,* of this section, each IRF must—

- Electronically transmit complete and encoded MDS–PAC data for each Medicare inpatient to the HCFA MDS–PAC system in accordance with the data format specified in paragraph (a) of this section; and
- Transmit data using electronic communications software that provides a direct telephone connection from the IRF to the HCFA MDS–PAC system.

IRFs would have to collect and transmit MDS–PAC data to the HCFA MDS—PAC system. The data may be entered by a IRF staff member from a paper document completed by a licensed clinical staff member, or by a data entry operator under contract to the IRF to key in data. IRFs would have to allow time for data validation, preparation of data for transmission, and correction of returned records that failed checks by the HCFA MDS–PAC system.

We estimate that an average IRF with 320 admissions per year will require 3 minutes for data review and entry per assessment for up-front review and another 3 minutes for data entry review for a total of 6 minutes. The burden of transmitting the data is contained in that 6 minutes. The yearly burden would be 96 hours per facility. (This burden also includes recommended 15 minute monthly data entry audit for quality assurance purposes.)

Other Data Transmission Functions

In addition to the burden of managing the data transmission function, IRF staff will have to correct transmission problems and manage report logs and validation reports transmitted by the HCFA MDS–PAC system. We estimate that it will take about one additional hour of staff time to perform data transmission related tasks each month, including running a data edit check program.

We estimate that it will require a one-time burden of 5.5 hours per hospital to train the personnel to be able to complete data transmission tasks. With 1,123 facilities, the national burden would be 6177 hours.

Section 412.616 Release of Information Collected Using the MDS–PAC

Under paragraph (b) of this section, a facility may release information that is patient-identifiable to an agent only in accordance with a written contract under which the agent agrees not to use or disclose the information except for the purposes specified in the contract and to the extent the facility itself is permitted to do so under § 412.616(a).

The burden associated with this ICR is the time required to include the necessary information in the contract. While this ICR is subject to the PRA, we believe the burden associated with it is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 412.618 Interrupted Stay

Paragraph (a) of this section requires that if a patient has an interrupted stay the facility must record interrupted stay data on the MDS–PAC interrupted stay tracking form.

We currently have no data on the incidence of interrupted stays. We estimate, however, that it would take no more than 5 minutes to complete a form. We request comments on the burden that completion of this form might impose.

Submission to OMB

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in §§ 412.23, 412.29, 412.116, and 412.606 through 412.618. These requirements are not effective until they have been approved by OMB.

If you have any comments on any of these information collection and record keeping requirements, please mail the original and 3 copies directly to the following:

Health Care Financing Administration,
 Office of Information Services,
 Standards and Security Group,
 Division of HCFA Enterprise
 Standards, Room N2–14–26, 7500
 Security Boulevard, Baltimore, MD
 21244–1850, Attn: Julie Brown
 HCFA–1069–P.
 and,
Office of Information and Regulatory
 Affairs, Office of Management and
 Budget, Room 10235, New Executive
 Office Building, Washington, DC
 20503, Attn: Allison Eydt, HCFA Desk
 Officer.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is proposed to be amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

A. Part 412 is amended as set forth below:

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

2. Section § 412.1 is revised to read as follows:

§ 412.1 Scope of part.

(a) *Purpose.* (1) This part implements sections 1886(d) and (g) of the Act by establishing a prospective payment system for the operating costs of inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983 and a prospective payment system for the capital-related costs of inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1991. Under these prospective payment systems, payment for the operating and capital-related costs of inpatient hospital services furnished by hospitals subject to the systems (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient hospital services (organ acquisition costs incurred by hospitals with approved organ transplantation centers, the costs of qualified nonphysician anesthetist's services, as described in § 412.113(c), and direct costs of approved nursing and allied health educational programs) is made on a reasonable cost basis. Payment for the direct costs of graduate medical education is made on a per resident amount basis in accordance with § 413.86 of this chapter. Additional payments are made for outlier cases, bad debts, indirect medical education costs, and for serving a disproportionate share of low-income patients. Under either prospective payment system, a hospital may keep the difference between its prospective payment rate and its operating or capital-related costs incurred in furnishing inpatient services, and the hospital is at risk for inpatient operating or inpatient capital-related costs that exceed its payment rate.

(2) This part implements section 1886(j) of the Act by establishing a prospective payment system for the inpatient operating and capital costs of inpatient hospital services furnished to Medicare beneficiaries by a rehabilitation hospital or rehabilitation unit that meets the conditions of § 412.604.

(b) *Summary of content.* (1) This subpart describes the basis of payment for inpatient hospital services under the prospective payment systems specified in paragraph (a)(1) of this section and sets forth the general basis of these systems.

(2) Subpart B sets forth the classifications of hospitals that are included in and excluded from the prospective payment systems specified in paragraph (a)(1) of this section, and sets forth requirements governing the inclusion or exclusion of hospitals in the systems as a result of changes in their classification.

(3) Subpart C sets forth certain conditions that must be met for a hospital to receive payment under the prospective payment systems specified in paragraph (a)(1) of this section.

(4) Subpart D sets forth the basic methodology by which prospective payment rates for inpatient operating costs are determined under the prospective payment system specified in paragraph (a)(1) of this section.

(5) Subpart E describes the transition rate-setting methods that are used to determine transition payment rates for inpatient operating costs during the first 4 years of the prospective payment system specified in paragraph (a)(1) of this section.

(6) Subpart F sets forth the methodology for determining payments for outlier cases under the prospective payment system specified in paragraph (a)(1) of this section.

(7) Subpart G sets forth rules for special treatment of certain facilities under the prospective payment system specified in paragraph (a)(1) of this section for inpatient operating costs.

(8) Subpart H describes the types, amounts, and methods of payment to hospitals under the prospective payment system specified in paragraph (a)(1) of this section for inpatient operating costs.

(9) Subpart K describes how the prospective payment system specified in paragraph (a)(1) of this section for inpatient operating costs is implemented for hospitals located in Puerto Rico.

(10) Subpart L sets forth the procedures and criteria concerning applications from hospitals to the Medicare Geographic Classification Review Board for geographic redesignation under the prospective payment systems specified in paragraph (a)(1) of this section.

(11) Subpart M describes how the prospective payment system specified in paragraph (a)(1) of this section for inpatient capital-related costs is implemented effective with reporting periods beginning on or after October 1, 1991.

(12) Subpart P describes the prospective payment system specified in paragraph (a)(2) of this section for rehabilitation hospitals and rehabilitation units and sets forth the general methodology for paying for the operating and capital costs of inpatient hospital services furnished by rehabilitation hospitals and rehabilitation units effective with cost reporting periods beginning on or after April 1, 2001.

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

3. Section 412.20 is amended by:

A. Revising paragraph (a).

B. Redesignating paragraph (b) as paragraph (c).

C. Adding a new paragraph (b).

D. Revising the introductory text of the redesignated paragraph (c).

§ 412.20 Hospital services subject to the prospective payment systems.

(a) Except for services described in paragraphs (b) and (c) of this section, all covered inpatient hospital services furnished to beneficiaries during subject cost reporting periods are paid under the prospective payment systems specified in § 412.1(a)(1).

(b) Effective for cost reporting periods beginning on or after April 1, 2001, covered inpatient hospital services furnished to Medicare beneficiaries by a rehabilitation hospital or rehabilitation unit that meet the conditions of § 412.604 are paid under the prospective payment system described in subpart P of this part.

(c) Inpatient hospital services will not be paid under the prospective payment systems specified in § 412.1(a)(1) under any of the following circumstances:

* * * * *

4. Section 412.22 is amended by:

A. Revising paragraphs (a) and (b).

B. Revising the introductory text of paragraph (e).

C. Revising the introductory text of paragraph (h)(2).

§ 412.22 Excluded hospitals and hospital units: General rules.

(a) *Criteria.* Subject to the criteria set forth in paragraph (e) of this section, a hospital is excluded from the prospective payment systems specified

in § 412.1(a)(1) of this part if it meets the criteria for one or more of the excluded classifications described in § 412.23.

(b) *Cost reimbursement.* Except for those hospitals specified in paragraph (c) of this section and § 412.20(b), all excluded hospitals (and excluded hospital units, as described in §§ 412.23 through 412.29) are reimbursed under the cost reimbursement rules set forth in part 413 of this subchapter, and are subject to the ceiling on the rate of hospital cost increases described in § 413.40 of this subchapter.

* * * * *

(e) *Hospitals within hospitals.* Except as provided in paragraph (f) of this section, for cost reporting periods beginning on or after October 1, 1997, a hospital that occupies space in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital, must meet the following criteria in order to be excluded from the prospective payment systems specified in § 412.1(a)(1):

* * * * *

(h) *Satellite facilities.* * * *

(2) Except as provided in paragraph (h)(3) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the prospective payment systems specified in § 412.1(a)(1) for any period:

* * * * *

5. Section 412.23 is amended by:

A. Revising the introductory text.

B. Revising the introductory text of paragraph (b).

C. Revising paragraphs (b)(2) introductory text, (b)(8), and (b)(9).

§ 412.23 Excluded hospitals: Classifications.

Hospitals that meet the requirements for the classifications set forth in this section are not reimbursed under the prospective payment systems specified in § 412.1(a)(1):

* * * * *

(b) *Rehabilitation hospitals.* A rehabilitation hospital must meet the following requirements to be excluded from the prospective payment systems specified in § 412.1(a)(1) and to be paid under the prospective payment system specified in § 412.1(a)(2):

* * * * *

(2) Except in the case of a newly participating hospital seeking classification under this paragraph as a rehabilitation hospital for its first 12-month cost reporting period, as described in paragraph (b)(8) of this section, show that during its most recent 12-month cost reporting period, it served an inpatient population of whom at least 75 percent required intensive rehabilitative services for treatment of one or more of the following conditions:

* * * * *

(8) A hospital that seeks classification under this paragraph as a rehabilitation hospital for the first full 12-month cost reporting period that occurs after it becomes a Medicare-participating hospital may provide a written certification that the inpatient population it intends to serve meets the requirements of paragraph (b)(2) of this section, instead of showing that it has treated that population during its most recent 12-month cost reporting period. The written certification is also effective for any cost reporting period of not less than one month and not more than 11 months occurring between the date the hospital began participating in Medicare and the start of the hospital's regular 12-month cost reporting period.

(9) For cost reporting periods beginning on or after October 1, 1991, if a hospital is excluded from the prospective payment systems specified in § 412.1(a)(1) or is paid under the prospective payment system specified in § 412.1(a)(2) for a cost reporting period under paragraph (b)(8) of this section, but the inpatient population it actually treated during that period does not meet the requirements of paragraph (b)(2) of this section, HCFA adjusts payments to the hospital retroactively in accordance with the provisions in § 412.130.

* * * * *

6. In § 412.25, paragraph (a) introductory text and paragraph (e)(2) introductory text are revised to read as follows:

§ 412.25 Excluded hospital units: Common requirements.

(a) *Basis for exclusion.* In order to be excluded from the prospective payment systems specified in § 412.1(a)(1), a psychiatric or rehabilitation unit must meet the following requirements.

* * * * *

(e) *Satellite facilities.* * * *

(2) Except as provided in paragraph (e)(3) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital unit that establishes a satellite facility must meet the following requirements in order to be excluded from the prospective payment systems specified in § 412.1(a)(1) for any period:

* * * * *

7. In § 412.29, the introductory text is revised to read as follows:

§ 412.29 Excluded rehabilitation units: Additional requirements.

In order to be excluded from the prospective payment systems described in § 412.1(a)(1) and to be paid under the prospective payment system specified in § 412.1(a)(2), a rehabilitation unit must meet the following requirements:

* * * * *

Subpart H—Payments to Hospitals Under the Prospective Payment Systems

8. In § 412.116, paragraph (a) is revised to read as follows:

§ 412.116 Method of payment.

(a) *General rule.* (1) Unless the provisions of paragraphs (b) and (c) of this section apply, hospitals are paid for hospital inpatient operating costs and capital-related costs for each discharge based on the submission of a discharge bill.

(2) Payments for inpatient hospital services furnished by an excluded psychiatric unit of a hospital (or by an excluded rehabilitation unit of a hospital for cost reporting periods beginning before April 1, 2001) are made as described in § 413.64(a), (c), (d), and (e) of this chapter.

(3) For cost reporting periods beginning on or after April 1, 2001, payments for inpatient hospital services furnished by a rehabilitation hospital or a rehabilitation unit that meets the conditions of § 412.604 are made as described in § 412.632.

* * * * *

9. In § 412.130, paragraphs (a)(1), (a)(2), and (b) are revised to read as follows:

§ 412.130 Retroactive adjustments for incorrectly excluded hospitals and units.

(a) *Hospitals for which adjustment is made.* * * *

(1) A hospital that was excluded from the prospective payment systems specified in § 412.1(a)(1) or paid under the prospective payment system specified in § 412.1(a)(2), as a new rehabilitation hospital for a cost reporting period beginning on or after October 1, 1991 based on a certification under § 412.23(b)(8) of this part regarding the inpatient population the hospital planned to treat during that cost reporting period, if the inpatient population actually treated in the hospital during that cost reporting period did not meet the requirements of § 412.23(b)(2).

(2) A hospital that has a unit excluded from the prospective payment systems specified in § 412.1(a)(1) or paid under the prospective payment system

specified in § 412.1(a)(2), as a new rehabilitation unit for a cost reporting period beginning on or after October 1, 1991, based on a certification under § 412.30(a) regarding the inpatient population the hospital planned to treat in that unit during the period, if the inpatient population actually treated in the unit during that cost reporting period did not meet the requirements of § 412.23(b)(2).

* * * * *

(b) *Adjustment of payment.* (1) For cost reporting periods beginning before April 1, 2001, the intermediary adjusts the payment to the hospitals described in paragraph (a) of this section as follows:

(i) The intermediary calculates the difference between the amounts actually paid during the cost reporting period for which the hospital, unit, or beds were first excluded as a new hospital, new unit, or newly added beds under subpart B of this part, and the amount that would have been paid under the prospective payment systems specified in § 412.1(a)(1) for services furnished during that period.

(ii) The intermediary makes a retroactive adjustment for the difference between the amount paid to the hospital based on the exclusion and the amount that would have been paid under the prospective payment systems specified in § 412.1(a)(1).

(2) For cost reporting periods beginning on or after April 1, 2001, the intermediary adjusts the payment to the hospitals described in paragraph (a) of this section as follows:

(i) The intermediary calculates the difference between the amounts actually paid under subpart P of this part during the cost reporting period for which the hospital, unit, or beds were first classified as a new hospital, new unit, or newly added beds under subpart B of this part, and the amount that would have been paid under the prospective payment systems specified in § 412.1(a)(1) for services furnished during that period.

(ii) The intermediary makes a retroactive adjustment for the difference between the amount paid to the hospital under subpart P of this part and the amount that would have been paid under the prospective payment systems specified in § 412.1(a)(1).

Subparts N and O—[Reserved]

10. Subparts N and O are added and reserved.

11. A new subpart P, consisting of §§ 412.600, 412.602, 412.604, 412.606, 412.608, 412.610, 412.612, 412.614, 412.616, 412.618, 412.620, 412.622, 412.624, 412.626, 412.628, 412.630, and 412.632 is added to read as follows:

Subpart P—Prospective Payment for Inpatient Rehabilitation Hospitals and Rehabilitation Units

Sec.

412.600 Basis and scope of subpart.
412.602 Definitions.
412.604 Conditions for payment under the prospective payment system for inpatient rehabilitation facilities.
412.606 Patient assessment.
412.608 Patient rights regarding MDS–PAC data collection.
412.610 Assessment schedule.
412.612 Coordination of MDS–PAC data collection.
412.614 Transmission of MDS–PAC data.
412.616 Release of information collected using the MDS–PAC.
412.618 Interrupted stay.
412.620 Patient classification system.
412.622 Basis of payment.
412.624 Methodology for calculating the Federal prospective payment rates.
412.626 Transition period.
412.628 Publication of the Federal prospective payment rates.
412.630 Limitation on review.
412.632 Method of payment under the inpatient rehabilitation facility prospective payment system.

Subpart P—Prospective Payment for Inpatient Rehabilitation Hospitals and Rehabilitation Units

§ 412.600 Basis and scope of subpart.

(a) *Basis.* This subpart implements section 1886(j) of the Act, which provides for the implementation of a prospective payment system for inpatient rehabilitation hospitals and rehabilitation units (in this subpart referred to as "inpatient rehabilitation facilities").

(b) *Scope.* This subpart sets forth the framework for the prospective payment system for inpatient rehabilitation facilities, including the methodology used for the development of payment rates and associated adjustments, the application of a transition phase, and related rules. Under this system, for cost reporting periods beginning on or after April 1, 2001, payment for the operating and capital costs of inpatient hospital services furnished by inpatient rehabilitation facilities is made on the basis of prospectively determined rates and applied on a per discharge basis.

§ 412.602 Definitions.

As used in this subpart—

Assessment reference date means the specific calendar day in the MDS–PAC assessment process that sets the designated endpoint of the common 3 day patient observation period, with most MDS–PAC assessment items usually referring back in time from this endpoint.

Authorized clinician means one of the following clinicians:

(1) An occupational therapist who meets the qualifications specified in § 482.56(a)(2) of this chapter.

(2) A physical therapist who meets the qualifications specified in § 482.56(a)(2) of this chapter.

(3) A physician who is a doctor of medicine or osteopathy and is licensed to practice medicine and surgery by the State in which the function or action is performed.

(4) A registered nurse as defined in § 484.4 of this chapter.

Discharge A Medicare patient in a inpatient rehabilitation facility is considered discharged when—

(1) The patient is formally released; or

(2) The patient dies in the inpatient rehabilitation facility.

Encode means entering data items into the fields of the computerized MDS–PAC software program.

Functional-related groups refers to the distinct groups under which inpatients are classified using proxy measurements of inpatient rehabilitation relative resource usage.

Interrupted stay means the period during which a Medicare inpatient is discharged from the inpatient rehabilitation facility and returns to the same inpatient rehabilitation facility within 3 consecutive calendar days. The 3 consecutive calendar days begin with the day of discharge.

MDS–PAC stands for the Minimum Data Set for Post Acute Care, a patient clinical assessment instrument.

Outlier payment means an additional payment beyond the standard Federal prospective payment for cases with unusually high costs.

Rural area means an area as defined in § 412.62(f)(1)(iii).

Transfer means the release of a Medicare inpatient from an inpatient rehabilitation facility to another inpatient rehabilitation facility, a short-term, acute-care prospective payment hospital, a long-term care hospital as described in § 412.23(e), or a nursing home that qualifies to receive Medicare or Medicaid payments.

Urban area means an area as defined in § 412.62(f)(1)(ii).

§ 412.604 Conditions for payment under the prospective payment system for inpatient rehabilitation facilities.

(a) *General requirements.* (1) An inpatient rehabilitation facility must meet the conditions of this section to receive payment under the prospective payment system described in this subpart for inpatient hospital services furnished to Medicare beneficiaries.

(2) If an inpatient rehabilitation facility fails to comply fully with these conditions with respect to inpatient hospital services furnished to one or more Medicare beneficiaries, HCFA may, as appropriate—

(i) Withhold (in full or in part) or reduce Medicare payment to the inpatient rehabilitation facility until the facility provides adequate assurances of compliance; or

(ii) Classify the inpatient rehabilitation facility as an inpatient hospital that is subject to the conditions of subpart C of this part and is paid under the prospective payment systems specified in § 412.1(a)(1).

(b) *Inpatient rehabilitation facilities subject to the prospective payment system.* An inpatient rehabilitation facility must meet the criteria to be classified as a rehabilitation hospital or rehabilitation unit set forth in §§ 412.23(b), 412.25, and 412.29 for exclusion from the inpatient hospital prospective payment systems specified in § 412.1(a)(1).

(c) *Completion of patient assessment instrument.* For each Medicare patient admitted or discharged on or after April 1, 2001, the inpatient rehabilitation facility must complete a patient assessment instrument in accordance with § 412.606.

(d) *Limitation on charges to beneficiaries.* (1) *Prohibited charges.* Except as provided in paragraph (d)(2) of this section, an inpatient rehabilitation facility may not charge a beneficiary for any services for which payment is made by Medicare, even if the facility's costs of furnishing services to that beneficiary are greater than the amount the facility is paid under the prospective payment system.

(2) *Permitted charges.* An inpatient rehabilitation facility receiving payment under this subpart for a covered hospital stay (that is, a stay that includes at least one covered day) may charge the Medicare beneficiary or other person only for the applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87 of this subchapter.

(e) *Furnishing of inpatient hospital services directly or under arrangement.* (1) The applicable payments made under this subpart are payment in full for all inpatient hospital services, as defined in § 409.10 of this chapter, other than physicians' services to individual patients reimbursable on a reasonable cost basis (in accordance with the criteria of § 415.102(a) of this subchapter).

(2) HCFA does not pay any provider or supplier other than the inpatient rehabilitation facility for services furnished to a Medicare beneficiary who is an inpatient, except for physicians' services reimbursable under § 405.550(b) of this chapter and services of an anesthetist employed by a physician reimbursable under § 415.102(a) of this subchapter.

(3) The inpatient rehabilitation facility must furnish all necessary covered services to the Medicare beneficiary either directly or under arrangements (as defined in § 409.3 of this subchapter).

(f) *Reporting and recordkeeping requirements.* All inpatient rehabilitation facilities participating in the prospective payment system under this subpart must meet the recordkeeping and cost reporting requirements of §§ 413.20 and 413.24 of this subchapter.

§ 412.606 Patient assessment.

(a) *Admission orders.* At the time that each Medicare patient is admitted, the inpatient rehabilitation facility must have physician orders for the patient's care during the time the patient is hospitalized.

(b) *Patient assessment instrument.* An inpatient rehabilitation facility must use the MDS–PAC instrument to assess Medicare inpatients who—

(1) Are admitted on or after April 1, 2001; or

(2) Were admitted before April 1, 2001, and are still inpatients as of April 1, 2001.

(c) *Comprehensive assessments.* (1) An inpatient rehabilitation facility's authorized clinician must perform a comprehensive, accurate, standardized, and reproducible assessment of each Medicare inpatient using the MDS–PAC as part of his or her patient assessment in accordance with the schedule described in § 412.610.

(2) A clinician employed or contracted by an inpatient rehabilitation facility must record appropriate and applicable data accurately and completely for each MDS–PAC item.

(3) The assessment process must include—

(i) Direct patient observation and communication with the patient; and

(ii) When appropriate and to the extent feasible, patient data from the patient's physician(s), family, friends, the patient's clinical record, and other sources.

(4) The authorized clinician, must sign the MDS–PAC attesting to its completion and accuracy.

§ 412.608 Patient rights regarding MDS–PAC data collection.

(a) Before performing an assessment using the MDS–PAC, an authorized clinician must inform the Medicare inpatient of the following patient rights:

(1) The right to be informed of the purpose of the MDS–PAC data collection;

(2) The right to have the MDS–PAC information collected be kept confidential and secure;

(3) The right to be informed that the MDS–PAC information will not be disclosed to others, except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations;

(4) The right to refuse to answer MDS–PAC questions; and

(5) The right to see, review, and request changes on his or her MDS–PAC assessment.

(b) The inpatient rehabilitation facility must ensure that an authorized clinician documents in the Medicare inpatient's clinical record that the patient was informed of the patient rights specified in paragraph (a) of this section.

(c) The patient rights specified in paragraph (a) of this section are in addition to the patient rights specified under the conditions of participation for hospitals in § 482.13 of this chapter.

§ 412.610 Assessment schedule.

(a) *General.* For each Medicare inpatient an inpatient rehabilitation facility must submit MDS–PAC assessment data that covers a time period that is in accordance with the assessment schedule specified in paragraph (c) of this section.

(b) *Starting the assessment schedule day count.* The first day that the inpatient is furnished Medicare-covered services during his or her current inpatient rehabilitation facility hospital stay is counted as day one of the MDS–PAC assessment schedule.

(c) *Assessment reference dates.* With respect to the patient's current hospitalization, an inpatient rehabilitation facility must indicate on the MDS–PAC one of the following assessment reference dates:

(1) *Day 4 MDS–PAC assessment.* For the assessment that covers calendar days 1 through 3 of the patient's current hospitalization, the date that is the 3rd calendar day after the patient started being furnished Medicare-covered Part A services.

(2) *Day 11 MDS–PAC assessment.* For the assessment that covers calendar days 8 through 10 of the patient's current hospitalization, the date that is the 10th calendar day after the patient started being furnished Medicare-covered Part A services.

(3) *Day 30 MDS–PAC assessment.* For the assessment that covers calendar days 28 through 30 of the patient's current hospitalization, the date that is the 30th calendar day after the patient

started being furnished Medicare-covered Part A services.

(4) *Day 60 MDS–PAC assessment.* For the assessment that covers calendar days 58 through 60 of the patient's current hospitalization, the date that is the 60th calendar day after the patient started being furnished Medicare-covered Part A services.

(5) *Discontinuation of Medicare-covered Part A services assessment.* For the assessment that is completed when the inpatient is not discharged from the inpatient rehabilitation facility but stops receiving Medicare-covered Part A services, the actual date that the inpatient stops receiving Medicare-covered Part A services.

(6) *Discharge assessment.* For the assessment that is completed when the Medicare inpatient is discharged from the inpatient rehabilitation facility, the actual date of discharge from the inpatient rehabilitation facility.

(d) *Late MDS–PAC assessment reference date.* If the MDS–PAC assessment reference date is entered later than the assessment reference date specified in paragraph (c)(1) of this section, the MDS–PAC assessment reference date is considered late.

(1) If the MDS–PAC assessment reference date is late by 10 calendar days or fewer, the inpatient rehabilitation facility receives a payment rate that is 25 percent less than the payment rate associated with a case-mix group.

(2) If the MDS–PAC assessment reference date is late by more than 10 calendar days, the inpatient rehabilitation facility receives no payment.

(e) *Completion and encoding dates.* (1) The Day 4, Day 11, Day 30, and Day 60 MDS–PAC assessments must be completed 1 calendar day after the MDS–PAC assessment reference date that is recorded on the MDS–PAC.

(2) The discharge MDS–PAC assessment must be completed on the 5th calendar day in the period beginning with the MDS–PAC assessment reference date.

(3) All MDS–PAC assessments must be encoded by the 7th calendar day in the period beginning with the MDS–PAC completion date that is recorded on the MDS–PAC.

(f) *Accuracy of the MDS–PAC data.* The encoded MDS–PAC assessment data must accurately reflect the patient's clinical status at the time of the MDS–PAC assessment.

(g) *MDS–PAC record retention.* An inpatient rehabilitation facility must maintain all MDS–PAC patient data sets completed within the previous 5 years in a paper format in the patient's clinical record or in an electronic computer file that the inpatient rehabilitation facility can easily obtain.

§ 412.612 Coordination of MDS–PAC data collection.

(a) *Responsibilities of the authorized clinician.* An inpatient rehabilitation facility's authorized clinician who has participated in performing an MDS–PAC patient assessment must have responsibility for—

(1) The accuracy and thoroughness of the patient's MDS–PAC assessment; and

(2) The accuracy of the date inserted in the attestation section of the MDS–PAC.

(b) *Certification.* An inpatient rehabilitation facility's authorized clinician must certify the accuracy and completion date of the MDS–PAC assessment by signing and dating the appropriate lines of the MDS–PAC.

(c) *Signatures.* Any clinician who contributes data for an MDS–PAC item must sign and date the appropriate lines of the MDS–PAC.

(d) *Penalty for falsification.* (1) Under Medicare an individual who knowingly and willfully—

(i) Certifies a material and false statement in a patient assessment is subject to a civil money penalty of not more than $1,000 for each assessment; or

(ii) Causes another individual to certify a material and false statement in a patient assessment is subject to a civil money penalty of not more than $5,000 for each assessment.

(2) Clinical disagreement does not constitute a material and false statement.

§ 412.614 Transmission of MDS–PAC data.

(a) *Data format.* The inpatient rehabilitation facility must encode and transmit data for each Medicare inpatient—

(1) Using the computerized version of the MDS–PAC available from HCFA; or (2) Using a computer program(s) that conforms to the HCFA standard electronic record layout, data specifications, and data dictionary, includes the required MDS–PAC data set, and meets other HCFA specifications.

(b) *How to transmit data.* The inpatient rehabilitation facility must—

(1) Electronically transmit complete and encoded MDS–PAC data for each Medicare inpatient to the HCFA MDS–PAC system in accordance with the data format specified in paragraph (a) of this section; and

(2) Transmit data using electronic communications software that provides a direct telephone connection from the inpatient rehabilitation facility to the HCFA MDS–PAC system.

(c) *Transmission dates.* All MDS–PAC assessments must be transmitted to HCFA MDS–PAC system by the 7th calendar day in the period beginning with the last permitted MDS–PAC encoding date.

(d) *Late transmission penalty.* (1) HCFA assesses a penalty when an inpatient rehabilitation facility does not transmit the required MDS–PAC data to the HCFA MDS–PAC system in accordance with the transmission timeframe in paragraph (c) of this section.

(2) If the actual MDS–PAC transmission date is later than the transmission date specified in paragraph (a) of this section the MDS–PAC data is considered late.

(i) If the MDS–PAC transmission date is late by 10 calendar days or fewer, the inpatient rehabilitation facility receives a payment rate that is 25 percent less than the payment rate associated with a case-mix group.

(ii) If the MDS–PAC transmission date is late by more than 10 calendar days, the inpatient rehabilitation facility receives no payment.

§ 412.616 Release of information collected using the MDS–PAC.

(a) *General.* An inpatient rehabilitation facility may release information from the MDS–PAC only as specified in § 482.24(b)(3) of this chapter.

(b) *Release to the inpatient rehabilitation facility's agent.* An inpatient rehabilitation facility may release information that is patient-identifiable to an agent only in accordance with a written contract under which the agent agrees not to use or disclose the information except for the purposes specified in the contract and only to the extent the facility itself is permitted to do so under paragraph (a) of this section.

§ 412.618 Interrupted stay.

For purposes of the MDS–PAC assessment process, if a Medicare patient has an interrupted stay the following applies:

(a) *Assessment requirements.* (1) The initial case-mix group classification from the Day 4 MDS–PAC assessment remains in effect (that is, no new Day 4 MDS–PAC assessment is performed).

(2) The required scheduled MDS–PAC Day 11, Day 30, and Day 60 assessments must be performed.

(3) When the patient is discharged, a discharge MDS–PAC assessment must be performed.

(b) *Recording and encoding of data.* The authorized clinician must record

the interrupted stay data on the interrupted stay tracking form of the MDS–PAC.

(c) *Transmission of data.* The data recorded on the interrupted stay tracking form must be transmitted to the HCFA MDS–PAC system within 7 calendar days of the date that the Medicare patient returns to the inpatient rehabilitation facility.

(d) *Revised assessment schedule.* (1) If the interrupted stay occurs before the Day 4 assessment, the assessment reference dates, completion dates, encoding dates, and data transmission dates for the Day 4 and Day 11 MDS–PAC assessments are advanced by the same number of calendar days as the length of the patient's interrupted stay.

(2) If the interrupted stay occurs after the Day 4 assessment and before the Day 11 assessment, then the assessment reference date, completion date, encoding date, and data transmission date for the Day 11 MDS–PAC assessment are advanced by the same number of calendar days as the length of the patient's interrupted stay.

(3) If the interrupted stay occurs after the Day 11 and before the Day 30 assessment, then the assessment reference date, completion date, encoding date, and data transmission date for the Day 30 MDS–PAC assessment are advanced by the same number of calendar days as the length of the patient's interrupted stay.

(4) If the interrupted stay occurs after the Day 30 and before the Day 60 assessment then the assessment reference date, completion date, encoding date, and data transmission date for the Day 60 MDS–PAC assessment are advanced by the same number of calendar days as the length of the patient's interrupted stay.

§ 412.620 Patient classification system.

(a) *Classification methodology.* (1) A patient classification system is used to classify patients in inpatient rehabilitation facilities into mutually exclusive case-mix groups.

(2) For the purposes of this subpart, case-mix groups are classes of Medicare patient discharges by functional-related groups that are based on a patient's impairment, age, comorbidities, functional capabilities, and other factors that may improve the ability of the functional-related groups to estimate variations in resource use.

(3) Data from Day 4 assessments under § 412.610(c)(1) are used to classify a Medicare patient into an appropriate case-mix group.

(b) *Weighting factors.* (1) *General.* An appropriate weight is assigned to each case-mix group that measures the relative difference in facility resource intensity among the various case-mix groups.

(2) *Short-stay outliers.* HCFA will determine a weighting factor or factors for patients that are discharged and not transferred within a number of days from admission as specified by HCFA.

(3) *Patients who expire.* HCFA will determine a weighting factor or factors for patients who expire within a number of days from admission as specified by HCFA.

(c) *Revision of case-mix group classifications and weighting factors.* HCFA may periodically adjust the case-mix groups and weighting factors to reflect changes in—

(1) Treatment patterns;

(2) Technology;

(3) Number of discharges; and

(4) Other factors affecting the relative use of resources.

§ 412.622 Basis of payment.

(a) *Method of payment.* (1) Under the prospective payment system, inpatient rehabilitation facilities receive a predetermined amount per discharge for inpatient services furnished to Medicare beneficiaries.

(2) The amount of payment under the prospective payment system is based on the Federal payment rate, including adjustments described in § 412.624 and, during a transition period, on a blend of the Federal payment rate and the facility-specific payment rate described in § 412.626.

(b) *Payment in full.* (1) The payment made under this subpart represents payment in full (subject to applicable deductibles and coinsurance as described in subpart G of part 409 of this subchapter) for inpatient operating and capital costs associated with furnishing Medicare covered services in an inpatient rehabilitation facility, but not for the cost of an approved medical education program described in §§ 413.85 and 413.86 of this chapter.

(2) In addition to payments based on prospective payment rates, inpatient rehabilitation facilities receive payments for the following—

(i) Bad debts of Medicare beneficiaries, as provided in § 413.80 of this chapter, and

(ii) A payment amount per unit for blood clotting factor provided to Medicare inpatients who have hemophilia.

§ 412.624 Methodology for calculating the Federal prospective payment rates.

(a) *Data used.* To calculate the prospective payment rates for inpatient hospital services furnished by inpatient rehabilitation facilities HCFA uses—

(1) The most recent Medicare data available, as of the date of establishing the inpatient rehabilitation facility prospective payment system, used to estimate payments for inpatient operating and capital costs made under part 413 under this subchapter;

(2) An appropriate wage index to adjust for area wage differences;

(3) An increase factor to adjust for the most recent estimate of increases in the prices of an appropriate market basket of goods and services included in covered inpatient rehabilitation services; and

(4) Patient assessment data described in § 412.606 and other data that account for the relative resource utilization of different patient types.

(b) *Determining the average costs per discharge for fiscal year 2000.* HCFA determines the average inpatient operating and capital costs per discharge for which payment is made to each inpatient rehabilitation facility using the available data under paragraph (a)(1) of this section. The cost per discharge is adjusted to fiscal year 2000 by an increase factor, described in paragraph (a)(3) of this section, under the update methodology described in section 1886(b)(3)(B)(ii) of the Act for each year through the midpoint of fiscal year 2000.

(c) *Determining the Federal prospective payment rates*—(1) *General.* The Federal prospective payment rates will be established using a standard payment amount referred to as the budget neutral conversion factor. The budget neutral conversion factor is a standardized payment amount based on average costs from a base year which reflects the combined aggregate effects of the weighting factors, various facility and case level adjustments and other adjustments.

(2) *Update the cost per discharge.* (i) HCFA applies the increase factor described in paragraph (a)(3) of this section to the facility's cost per discharge determined under paragraph (b) of this section to compute the cost per discharge for fiscal year 2001. Based on the updated cost per discharge, HCFA estimates the payments that would have been made to the facility for fiscal year 2001 under part 413 of this chapter without regard to the prospective payment system implemented under this subpart.

(ii) HCFA applies the increase factor described in paragraph (a)(3) of this section to the facility's fiscal year 2001 cost per discharge determined under paragraph (c)(2)(i) of this section to compute the cost per discharge for fiscal year 2002. Based on the updated cost per discharge, HCFA estimates the payments that would have been made to the facility for fiscal year 2002 under part 413 of this chapter without regard to the prospective payment system implemented under this subpart.

(3) *Computation of the budget neutral conversion factor.* The budget neutral conversion factor is computed as follows:

(i) *For fiscal years 2001 and 2002.* Based on the updated costs per discharge and estimated payments for fiscal years 2001 and 2002 determined in paragraphs (c)(2)(i) and (c)(2)(ii) of this section, HCFA computes a budget neutral conversion factor for fiscal years 2001 and 2002, as specified by HCFA, that reflects, as appropriate, the adjustments described in paragraph (d) of this section.

(ii) *For fiscal years after 2002.* The budget neutral conversion factor for fiscal years after 2002 will be the standardized payments for the previous fiscal year updated by the increase factor described in paragraph (a)(3) of this section including adjustments, described in paragraph (d) of this section, as appropriate.

(4) *Determining the Federal prospective payment rate for each case-mix group.* The Federal prospective payment rates for each case-mix group is the product of the weighting factors described in § 412.620(b) and the budget neutral conversion factor described in paragraph (c)(3) of this section.

(d) *Adjustments to the budget neutral conversion factor.* The budget neutral conversion factor described in paragraph (c)(3) of this section will be adjusted for—

(1) *Outlier payments.* HCFA determines a reduction factor equal to the estimated proportion of additional outlier payments described in paragraph (e)(4) of this section.

(2) *Budget neutrality.* HCFA adjusts the Federal prospective payment rates for fiscal years 2001 and 2002 so that aggregate payments under the prospective payment system are estimated to equal 98 percent of the amount that would have been made to inpatient rehabilitation facilities under part 413 of this subchapter without regard to the prospective payment system implemented under this subpart.

(3) *Coding and classification changes.* HCFA adjusts the budget neutral conversion factor for a given year if HCFA determines that revisions in case-mix classifications or weighting factors for a previous fiscal year (or estimates that such revisions for a future fiscal year) did result in (or would otherwise result in) a change in aggregate payments that are a result of changes in the coding or classification of patients that do not reflect real changes in case-mix.

(e) *Calculation of the adjusted Federal prospective payment.* For each discharge, an inpatient rehabilitation facility's Federal prospective payment is computed on the basis of the Federal prospective payment rate determined under paragraph (c) of this section. A facility's Federal prospective payment rate will be adjusted, as appropriate, to account for area wage levels, payments for outliers and transfers, and for other factors as follows:

(1) *Adjustment for area wage levels.* The labor portion of a facility's Federal prospective payment is adjusted to account for geographical differences in the area wage levels using an appropriate wage index. The application of the wage index is made on the basis of the location of the facility in an urban or rural area as defined in § 412.602.

(2) *Adjustments for low income patients.* HCFA adjusts the Federal prospective payment, on a facility basis, for the proportion of low income patients that receive inpatient rehabilitation services as determined by HCFA.

(3) *Adjustments for rural areas.* HCFA adjusts the Federal prospective payment by a factor, as specified by HCFA, to account for the higher costs per patient in facilities located in rural areas as defined in § 412.602.

(4) *Adjustment for high cost outliers.* HCFA provides for an additional payment to a facility if its estimated costs for a patient exceeds a fixed dollar amount (adjusted for area wage levels, and factors to account for treating low income patients and for rural locations) as specified by HCFA. The additional payment equals 80 percent of the difference between the estimated cost of the patient and the sum of the adjusted Federal prospective payment computed under this section and the adjusted fixed dollar amount.

(5) *Adjustments related to the MDS–PAC.* An adjustment to a facility's Federal prospective payment amount for a given discharge will be made if—

(i) The assessment reference date identified on the MDS–PAC as described in § 412.610(d) is late; and

(ii) The transmission of MDS–PAC data as described in § 412.614(d) is late.

(f) *Special payment provision for patients that are transferred.* (1) A facility's Federal prospective payment will be adjusted to account for a discharge of a patient who—

(i) Is transferred from the inpatient rehabilitation facility to another site of care,; and

(ii) Stays in the facility for a number of days that is less than the average length of stay for non-transfer cases in the case-mix group to which the patient is classified.

(2) HCFA calculates the adjusted Federal prospective payment for patients who are transferred in the following manner:

(i) By dividing the Federal prospective payment by the average length of stay for non-transfer cases in the case-mix group to which the patient is classified to equal the payment per day.

(ii) By multiplying the payment per day under paragraph (f)(2)(i) of this section by the number of days the patient stayed in the facility prior to being discharged to equal the unadjusted payment amount.

(iii) By applying the adjustments described in paragraphs (e)(1), (e)(2), and (e)(3) of this section to the unadjusted payment amount determined in paragraph (f)(2)(ii) of this section.

§ 412.626 Transition period.

(a) *Duration of transition period and proportions of the blended transition rate.* (1) For cost reporting periods beginning on or after April 1, 2001 through fiscal year 2002, inpatient rehabilitation facilities receive a payment comprised of a blend of the adjusted Federal prospective payment, as determined in § 412.624(e) or § 412.624(f) and, a facility-specific payment as determined in paragraph (b) of this section.

(i) For cost reporting periods beginning on or after April 1, 2001 and before fiscal year 2002, payment is based on 66⅔ percent of the facility-specific payment and 33⅓ percent of the adjusted Federal prospective payment.

(ii) For cost reporting periods beginning in fiscal year 2002, payment is based on 33⅓ percent of the facility-specific payment and 66⅔ percent of the adjusted Federal prospective payment.

(2) For cost reporting periods beginning with fiscal year 2003 and after, payment is based entirely on the adjusted Federal prospective payment.

(b) *Calculation of the facility-specific payment.* The facility-specific payment is equal to the payment for each cost reporting period in the transition period that would have been made without regard to this subpart. The facility's Medicare fiscal intermediary calculates the facility-specific payment for inpatient operating costs and capital costs in accordance with part 413 of this chapter.

§ 412.628 Publication of the Federal prospective payment rates.

HCFA publishes information pertaining to the inpatient rehabilitation facility prospective payment system effective for each fiscal year in the **Federal Register**. This information includes the unadjusted Federal payment rates, the patient classification system and associated weighting factors, and a description of the methodology and data used to calculate the payment rates. This information is published on or before August 1 prior to the beginning of each fiscal year.

§ 412.630 Limitation on review.

Administrative or judicial review under sections 1869 or 1878 of the Act, or otherwise, is prohibited with regard to the establishment of the methodology to classify a patient into the case-mix groups and the associated weighting factors, the unadjusted Federal per discharge payment rates, additional payments for outliers and special payments, and the area wage index.

§ 412.632 Method of payment under the inpatient rehabilitation facility prospective payment system.

(a) *General rule.* Subject to the exceptions in paragraphs (b) and (c) of this section, inpatient rehabilitation facilities receive payment under this subpart for inpatient operating costs and capital costs for each discharge only following submission of a discharge bill.

(b) *Periodic interim payments.* (1) *Criteria for receiving periodic interim payments.* (i) An inpatient rehabilitation facility receiving payment under this subpart may receive periodic interim payments (PIP) for Part A services under the PIP method subject to the provisions of § 413.64(h) of this subchapter.

(ii) To be approved for PIP, the inpatient rehabilitation facility must meet the qualifying requirements in § 413.64(h)(3) of this subchapter.

(iii) Payments to a rehabilitation unit are made under the same method of payment as the hospital of which it is a part as described in § 412.116.

(iv) As provided in § 413.64(h)(5) of this chapter, intermediary approval is conditioned upon the intermediary's best judgment as to whether payment can be made under the PIP method without undue risk of its resulting in an overpayment to the provider.

(2) *Frequency of payment.* For facilities approved for PIP, the intermediary estimates the inpatient rehabilitation facility's Federal prospective payments net of estimated beneficiary deductibles and coinsurance and makes biweekly payments equal to 1⁄26 of the total estimated amount of payment for the year. If the inpatient rehabilitation facility has payment experience under the prospective payment system, the intermediary estimates PIP based on that payment experience, adjusted for projected changes supported by substantiated information for the current year. Each payment is made 2 weeks after the end of a biweekly period of service as described in § 413.64(h)(6) of this subchapter. The interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if an inpatient rehabilitation facility receives interim payments for less than a full reporting period. These payments are subject to final settlement.

(3) *Termination of PIP*—(i) *Request by the inpatient rehabilitation facility.* Subject to paragraph (b)(1)(iii) of this section, an inpatient rehabilitation facility receiving PIP may convert to receiving prospective payments on a non-PIP basis at any time.

(ii) *Removal by the intermediary.* An intermediary terminates PIP if the inpatient rehabilitation facility no longer meets the requirements of § 413.64(h) of this chapter.

(c) *Interim payments for Medicare bad debts and for Part A costs not paid under the prospective payment system.* For Medicare bad debts and for costs of an approved education program and other costs paid outside the prospective payment system, the intermediary determines the interim payments by estimating the reimbursable amount for the year based on the previous year's experience, adjusted for projected changes supported by substantiated information for the current year, and makes biweekly payments equal to 1⁄26 of the total estimated amount. Each payment is made 2 weeks after the end of a biweekly period of service as described in § 413.64(h)(6) of this chapter. The interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if an inpatient rehabilitation facility receives interim payments for less than a full reporting period. These payments are subject to final cost settlement.

(d) *Outlier payments.* Additional payments for outliers are not made on an interim basis. The outlier payments are made based on the submission of a discharge bill and represent final payment.

(e) *Accelerated payments*—(1) *General rule.* Upon request, an accelerated payment may be made to an inpatient rehabilitation facility that is receiving payment under this subpart and is not receiving PIP under paragraph (b) of this section if the inpatient rehabilitation facility is experiencing financial difficulties because of the following:

(i) There is a delay by the intermediary in making payment to the inpatient rehabilitation facility.

(ii) Due to an exceptional situation, there is a temporary delay in the inpatient rehabilitation facility's preparation and submittal of bills to the intermediary beyond its normal billing cycle.

(2) *Approval of payment.* An inpatient rehabilitation facility's request for an accelerated payment must be approved by the intermediary and HCFA.

(3) *Amount of payment.* The amount of the accelerated payment is computed as a percentage of the net payment for unbilled or unpaid covered services.

(4) *Recovery of payment.* Recovery of the accelerated payment is made by recoupment as inpatient rehabilitation facility bills are processed or by direct payment by the inpatient rehabilitation facility.

B. Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l, 1395l(a), (i) and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart A—Introduction and General Rules

2. Section 413.1 is amended by:

A. Revising paragraph (d)(2)(ii).

B. Adding paragraphs (d)(2)(iv) and (d)(2)(v).

§ 413.1 Introduction.

* * * * *

(d) * * *

(2) * * *

(ii) Payment to children's, psychiatric, and long-term hospitals (as well as separate psychiatric units (distinct parts) of short-term general hospitals), that are excluded from the prospective payment systems under subpart B of part 412 of this subchapter, and hospitals outside the 50 States and the District of Columbia is on a reasonable cost basis, subject to the provisions of § 413.40.

* * * * *

(iv) For cost reporting periods beginning before April 1, 2001, payment to rehabilitation hospitals (as well as separate rehabilitation units (distinct parts) of short-term general hospitals), that are excluded under subpart B of part 412 of this subchapter from the prospective payment systems is on a reasonable cost basis, subject to the provisions of § 413.40.

(v) For cost reporting periods beginning on or after April 1, 2001, payment to rehabilitation hospitals (as well as separate rehabilitation units (distinct parts) of short-term general hospitals) that meet the conditions of § 412.604 of this chapter is based on prospectively determined rates under subpart P of part 412 of this subchapter.

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Subpart C—Limits on Cost Reimbursement

3. Section 413.40 is amended by:

A. Republishing the introductory text of paragraph (a)(2)(i).

B. Adding a new paragraph (a)(2)(i)(C).

C. Revising paragraph (a)(2)(ii).

D. Adding paragraph (a)(2)(iii).

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

(a) *Introduction.* * * *

(2) *Applicability.* (i) This section is not applicable to—

* * * * *

(C) Rehabilitation hospitals and rehabilitation units that are paid under the prospective payment system for inpatient hospital services in accordance with section 1886(j) of the Act and subpart P of part 412 of this subchapter for cost reporting periods beginning on or after October 1, 2002.

(ii) For cost reporting periods beginning on or after October 1, 1983, this section applies to—

(A) Hospitals excluded from the prospective payment systems described in § 412.1(a)(1) of this subchapter; and

(B) Psychiatric and rehabilitation units excluded from the prospective payment systems, as described in § 412.1(a)(1) of this chapter and in accordance with §§ 412.25 through 412.30 of this chapter, except as limited by paragraph (a)(2)(iii) of this section with respect to rehabilitation hospitals and rehabilitation units specified in §§ 412.23(b), 412.27, and 412.29 of this subchapter.

(iii) For cost reporting periods beginning on or after October 1, 1983 and before April 1, 2001, this section applies to rehabilitation hospitals and rehabilitation units that are excluded from the prospective payment systems described in § 412.1(a)(1) of this subchapter.

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Subpart E—Payments to Providers

4. In § 413.64 paragraph (h)(2)(i) is revised to read as follows:

§ 413.64 Payment to providers: Specific rules.

* * * * *

(h) *Periodic interim payment method of reimbursement*—* * *

(2) * * *

(i) Part A inpatient services furnished in hospitals that are excluded from the prospective payment systems, described in § 412.1(a)(1) of this chapter, under subpart B of part 412 of this chapter or are paid under the prospective payment system described in subpart P of part 412 of this chapter.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 18, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: September 29, 2000.

Donna E. Shalala,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Technical Discussion of Cases and Providers Used in RAND Analysis

This Appendix explains the methodology used to create the data file used to develop the proposed IRF prospective payment system. A general description of the process to create this data file is contained in section II of this proposed rule. RAND has performed the following analysis to match UDSmr, COS, and HCFA data files.

Table A shows that for 1996 and 1997, the MEDPAR files had over 12 million records per year. We are interested in a subset of these records: cases paid by Medicare as rehabilitation stays that were exempt from the acute care hospital PPS.

TABLE A.—NUMBER OF MEDPAR CASES AND FACILITIES

Calendar year	No. of cases	No. of facilities
1996	12,231,275	6,339
1997	12,263,463	6,257

Table B shows total 1996 and 1997 rehabilitation stays by type of provider (free-standing rehabilitation facility versus excluded unit of an acute care hospital). This was the "sampling" frame. In order to describe the IRF prospective payment system case-mix, RAND attached information from FIM instruments to each record in this frame, thereby obtaining "complete" records. To the extent that RAND was unable to add information to some records, it was important to know both how to and whether to weight the complete records so they would reflect the composition of the frame.

TABLE B.—NUMBER OF REHABILITATION MEDPAR CASES AND FACILITIES

Calendar year/type	No. of cases	No. of facilities
1996:		
Excluded unit	229,193	877
Free-standing	114,933	204
Total	344,126	1,081
1997:		
Excluded unit	240,491	911
Free-standing	118,541	212
Total	359,032	1,123

Note: Free-standing facilities have characters 3–6 of the Medicare provider number in the range 3025–3099. Patients receiving rehabilitation care in excluded units of acute care hospitals have a "provider code" of T in their MEDPAR records.

Table C shows the number of facilities and the number of UDSmr and COS records for calendar years 1996 and 1997.

TABLE C.—NUMBER OF UDSMR/COS RECORDS AND FACILITIES

Calendar year	Source	No. of records	No. of facilities
1996	UDSmr	225,069	533
	COS	44,478	159
1997	UDSmr	258,915	595
	COS	67,350	164

Matching MEDPAR and UDSmr/COS Facilities

The first step in the matching process is to link MEDPAR facilities to UDSmr/COS facilities. For each of these combinations, RAND counted the number of exact matches of MEDPAR and UDSmr/COS records based on admission date, discharge date, and zip code. Table D summarizes the results of this stage of the linking process. The number of facilities represented in our UDSmr/COS datasets is slightly more than half of all IRFs.

TABLE D.—NUMBERS OF UDSMR/COS FACILITIES LINKED TO MEDPAR FACILITIES

Calendar year/source	MEDPAR Unique [1]	MEDPAR Multiple [2]	Non-Rehab [3]	Total
1996:				
UDSmr	501	10	22	533
COS	67	8	84	159
1997:				
UDSmr	557	15	23	595
COS	68	18	78	164

[1] UDSmr/COS IRFs that appear to have a single MEDPAR provider.

[2] UDSmr/COS IRFs that appear to have more than one MEDPAR provider.

[3] UDSmr/COS IRFs that appear to be SNFs or long term care hospitals.

The UDSmr/COS data do not contain the Medicare beneficiary identifier, and therefore it was necessary to use a probabilistic matching algorithm based on characteristics of the beneficiary and the hospitalization. The matching was accomplished in a series of four steps:

(1) Identify match variables;

(2) Recode certain UDSmr/COS variables to be consistent with MEDPAR, create additional records for UDSmr interrupted stays, and eliminate duplicate cases;

(3) Run a match algorithm to link UDSmr/COS and MEDPAR records; and

(4) Choose a single MEDPAR case if it matches multiple UDSmr or COS cases.

Step 1: Identify Match Variables

A further search for matches only within the provider number and facility identifier pairings was performed. For free-standing facilities, an attempt was made to match all MEDPAR records to a UDSmr record.

For MEDPAR, in addition to facility identity, 6 variables were used to link the records: Admission date, discharge date, zip code, age at admission, sex, and race. For UDSmr/COS, the same information in a slightly recoded form was available (for example, birth date). An indicator of whether Medicare was the primary payor was used to determine how to set certain parameters for the matching algorithm.

Step 2: Create Additional UDSmr/COS Files

COS's coding of interrupted stays is similar to Medicare's: One record per rehabilitation episode; therefore, these records did not require any additional processing. UDSmr, however, codes multiple stays via a series of "transfer/return" dates on a single UDSmr record. To facilitate matching UDSmr and MEDPAR records, multiple records for interrupted stays were created with admission and discharge dates corresponding to the beginning and ending of each stay. The additional records were then given the same chance of matching MEDPAR records as any non-interrupted stay. For both UDSmr and COS files, there were some duplicate cases.

Table E shows the number of records present at the various stages of processing. The last column shows the number of cases that would be matched to MEDPAR.

TABLE E.—NUMBER OF UDSMR/COS RECORDS AT VARIOUS STAGES OF PROCESSING

Calendar year/source	No. of records		
	Original	After expansion	After duplicate elimination
1996:			
UDSmr	225,069	232,076	231,003
COS	44,478	44,478	44,375
1997:			
UDSmr	258,915	267,444	266,288
COS	67,350	67,350	67,082

Step 3: Match Discharges from MEDPAR and UDSmr/CareData

A match algorithm similar to the one used in Carter, Relles, et al. (1997) was run assuming that links are imperfect—any variable can be in error. A scoring function is developed, based on Bayes' Theorem, which gives the odds of a match based on how consistent variables tend to be for true matching and non-matching cases. A score of 2.00 or above has a high probability of identifying a match. The match statistics reported below assume that cutoff.

Step 4: Choose a Single MEDPAR Case for Multiple UDSmr/COS Matches

While the matching was unique within a facility/provider pair, some MEDPAR providers were paired with different facilities, as shown in Table F. Also, some UDSmr and COS facilities were the same: 6 overlaps in 1996, 7 in 1997.

TABLE F.—MEDPAR FACILITIES PAIRED WITH MULTIPLE FACILITIES

Source	Calendar year	No. of facilities
UDSmr	1996	5
UDSmr	1997	8
COS	1996	5
COS	1997	10

First, MEDPAR duplicate links were eliminated within each file, and then duplicate links were eliminated between UDSmr and COS files all within the same years. In all cases, the highest scores were kept. Table G provides results for cutoff score 2.0.

TABLE G.—NUMBER OF LINKED RECORDS AFTER DUPLICATION ELIMINATION

Calendar year/source	No. of Records, Cutoff Source ≥2.0			
	Multiple paired providers (a)	Total records	Duplicates eliminated (b)	Overlap eliminated (c)
1996:				
UDSmr	5	163,509	162,850	162,692
COS	5	27,664	27,630	26,197
1997:				
UDSmr	8	185,567	184,431	183,960
COS	10	42,219	41,980	38,722

Note: (a) Number of MEDPAR providers paired with more than one UDSmr/COS facility. (b) Multiple pairings can link the same MEDPAR record to more than one UDSmr/COS case. This step eliminates those multiple links, keeping the link with the highest match score. (c) the same MEDPAR provider might show up in both UDSmr and COS, again allowing the same MEDPAR record to match more than one UDSmr/COS case.

Quality of the Match

There are two aspects to evaluating the quality of the match. The first is whether we actually matched all of the cases. To evaluate this, we computed match rates for each of our populations: UDSmr, COS, and MEDPAR. The second aspect is the representativeness of the match for the entire population. To evaluate this, we compared patient and facility characteristics to both linked and full population, and considered whether some form of weighting would make those populations look sufficiently the same.

Match Rates

Table H suggests overall match rates in these UDSmr/COS facilities for the eligible RPPS population to be almost 90 percent. This was slightly higher than expected—the Carter, Relles, *et al.* (1997) match rates were about 86 percent.

TABLE H.—MEDPAR MATCH RATES, PROVIDERS WITH A FULL YEAR OF DATA

Source	Calendar year	MEDPAR cases	Matched cases	Percent matched
UDSmr	1996	155,502	136,056	87.5
UDSmr	1997	175,807	156,520	89.0
COS	1996	7,157	6,354	88.8
COS	1997	36,774	33,549	91.2

Note: Tabulations are for patients eligible for IRFPPS.

The UDSmr/COS.com files contain many cases not paid by Medicare, but the files provide an indication of whether Medicare is the primary payer. Restricting our attention to just these cases, we obtain the percentages shown in Table I.

TABLE I.—UDSMR/COS MATCH RATES FOR MEDICARE AS THE PRIMARY PAYER

Source	Calendar year	UDS/COS cases	Matched cases	Percent matched
UDSmr	1996	160,125	153,926	96.1
UDSmr	1997	179,179	171,885	95.9
COS	1996	28,767	26,857	93.4
COS	1997	44,172	41,168	93.2

Note: UDSmr/COS cases matching any Medicare case.

These match rates are also slightly higher than reported in Carter and Relles (1997), where a 93.7 percent rate was achieved for 1994 UDSmr data. We consider these match rates to be acceptable, within the limitations of information available.

Representativeness of Linked MEDPAR

For analytical purposes, lack of representativeness is most important for characteristics that are related to outcomes we are trying to model. For example, if costs for treating a patient in free-standing facilities differed from costs in excluded units of acute care hospitals, we would consider re-weighting the sample of linked cases to adjust our total cost estimates.

Representativeness of Linked MEDPAR Hospital Characteristics

This section addresses the extent to which the facilities present in the UDSmr/COS file are representative of the set of all facilities that provide inpatient rehabilitation care to Medicare beneficiaries, and the extent to which UDSmr/COS patients are representative of all Medicare IRFPPS-eligible patients. This analysis reflects the effects of the partial-year sample available for some UDSmr/COS facilities as well as the sampling of MEDPAR facilities. The MEDPAR records contain data from over 1,000 IRFs in each year. Table J divides these facilities into free-standing rehabilitation facilities (free-standing rehab) and excluded rehabilitation units of acute-care hospitals (excluded units). It presents the number of facilities in the linked MEDPAR sample, along with the total MEDPAR counts of rehabilitation patients at these facilities.

TABLE J.—COMPARISON OF NUMBER OF UDSMR/COS AND MEDPAR REHABILITATION FACILITIES, BY TYPE

Type of facility	1996			1997		
	UDS/COS[1]	Total MEDPAR[2]	Percent UDS/COS	UDS/COS[1]	Total MEDPAR[2]	Percent UDS/COS
Number of rehab facilities:						
Free-standing rehab	130	204	64	142	212	67
Excluded unit	435	877	50	489	911	54
Total	565	1,081	42	631	1,123	56
Number of rehab patients:						
Free-standing rehab	86,301	114,933	75	94,327	118,541	80
Excluded unit	130,623	229,193	57	150,787	240,491	63
Total	21[illegible],924	344,126	63	245,114	359,032	68

[1] Hospitals with at least one linked MEDPAR/UDSmr/COS rehabilitation record.
[2] Total (matched and unmatched) rehabilitation cases.

As shown in Table J, UDSmr/COS slightly over-represents free-standing rehabilitation facilities and slightly under-represents excluded units. The table also indicates UDSmr/COS's tendency to include larger facilities. In 1997, UDSmr/COS facilities represented 47 percent of the facilities, but served almost 70 percent of all MEDPAR IRF cases. Based on data found in the table, in 1997, UDSmr/COS free-standing facilities had an average of 792 patients, 532 more than other-MEDPAR free-standing facilities, and UDSmr/COS excluded units had an average of 365 patients, 185 more than other-MEDPAR excluded units.

Table K shows the distribution of UDSmr/COS IRFs by size. This shows both that free-standing facilities are larger than excluded units, and that UDSmr/COS IRFs tend to be larger than other MEDPAR facilities within type of facility.

TABLE K.—COMPARISON OF SIZES OF UDSMR/COS AND MEDPAR FACILITIES, BY TYPE OF FACILITY

No. of MEDPAR patients	1996				1997			
	Free-standing		Excluded Unit		Free-standing		Excluded Unit	
	UDS/COS	Other MEDPAR	UDS/COS	Other MEDPAR	UDS/COS	Other MEDPAR	UDS/COS	Other MEDPAR
1–100	2	23	30	97	4	24	33	105
101–200	14	9	139	140	14	7	143	126
201–300	14	2	105	102	11	5	123	103
301–400	14	10	59	48	17	9	65	40
401–500	8	9	38	27	12	7	52	29
501–1000	56	15	58	26	59	15	67	18
1001–2000	20	6	5	2	24	3	6	1
2001–3000	1	0	0	0	0	0	0	0
3001–4000	1	0	0	0	1	0	0	0
Total	130	74	435	442	142	70	489	422

Table L shows that there are some UDSmr/COS facilities in each region, although the southeast and mountain States appear to be slightly under represented.

TABLE L.—NUMBER AND PERCENTAGE OF MEDPAR REHABILITATION CASES FOR UDSMR/COS SAMPLE HOSPITALS, BY STATE

State	1996			1997		
	Total		Percent UDS/COS	Total		Percent UDS/COS
	UDS/COS	MEDPAR		UDS/COS	MEDPAR	
AL	7,135	7,839	91	8,338	8,654	96
AK	136	247	55	153	302	51
AR	2,829	6,581	43	3,338	6,973	48
AZ	2,261	3,672	62	2,334	4,084	57
CA	8,108	15,294	53	7,899	15,559	51
CO	1,306	4,757	27	2,786	4,263	65
CT	1,521	2,217	69	2,024	2,290	88
DC	133	1,097	12	104	996	10
DE	1,061	1,399	76	985	1,361	72
FL	17,143	23,021	74	18,734	23,630	79
GA	6,115	9,615	64	7,014	10,716	65

TABLE L.—NUMBER AND PERCENTAGE OF MEDPAR REHABILITATION CASES FOR UDSMR/COS SAMPLE HOSPITALS, BY STATE—Continued

State	1996			1997		
	Total		Percent UDS/COS	Total		Percent UDS/COS
	UDS/COS	MEDPAR		UDS/COS	MEDPAR	
HI	1,087	1,087	100	1,016	1,016	100
IA	1,264	1,264	100	1,404	1,404	100
ID	1,781	1,829	97	1,773	1,807	98
IL	8,044	14,953	54	9,191	14,894	62
IN	5,330	8,943	60	5,349	8,884	60
KS	874	3,224	27	786	3,333	24
KY	3,859	5,198	74	4,083	5,201	79
LA	3,338	9,206	36	5,071	10,061	50
MA	4,532	8,765	52	5,748	8,631	67
MD	667	867	77	574	715	80
ME	130	1,255	10	1,047	1,460	72
MI	13,470	16,523	82	14,090	17,255	82
MN	1,115	2,048	54	1,554	2,112	74
MO	3,349	9,788	34	4,414	10,513	42
MS	1,701	1,968	86	1,747	2,021	86
MT	878	878	100	766	766	100
NC	6,325	7,123	89	7,752	8,771	88
ND	1,564	1,821	86	1,356	1,636	83
NE	1,094	1,195	92	1,008	1,107	91
NH	1,320	2,310	57	1,442	2,505	58
NJ	10,010	11,234	89	10,637	11,083	96
NM	364	1,283	28	452	1,277	35
NV	0	2,230	0	0	2,303	0
NY	7,905	21,431	37	11,618	22,875	51
OH	8,992	11,837	76	10,175	13,888	73
OK	3,238	6,356	51	4,100	6,949	59
OR	824	1,179	70	728	1,184	61
PA	23,437	36,989	63	24,806	35,700	69
RI	1,379	2,247	61	1,517	2,307	66
SC	3,758	4,536	83	4,200	4,878	86
SD	1,684	2,096	80	1,702	2,101	81
TN	7,574	10,731	71	8,477	11,917	71
TX	19,498	33,619	58	22,551	36,616	62
UT	369	858	43	610	984	62
VA	4,924	6,738	73	5,628	7,235	78
VT	446	603	74	412	567	73
WA	3,726	3,753	99	3,584	3,608	99
WI	5,741	6,591	87	6,201	6,690	93
WV	3,480	3,497	100	3,553	3,574	99
WY	105	334	31	283	376	75
Total	216,924	344,126	63	245,114	359,032	68

Representativeness of Patient and Stay Characteristics

Table M compares demographic characteristics of all Medicare rehabilitation patients with the matched UDSmr/COS sample. Of all the characteristics examined, the UDSmr/COS sample of discharges appears very similar.

TABLE M.—PATIENT CHARACTERISTICS FOR MEDPAR REHABILITATION INPATIENTS, BY UDSMR/COS STATUS

Patient characteristic	1996			1997		
	UDS/COS	Other MEDPAR	Total MEDPAR	UDS/COS	Other MEDPAR	Total MEDPAR
Sample Size	171,626	172,500	344,126	206,032	153,000	359,032
Average Age	75.4	75.6	75.5	75.4	75.6	75.5
Age 0–50	2.6%	2.8%	2.7%	2.8%	3.0%	2.8%
Age 51–60	3.1%	3.1%	3.1%	3.2%	3.2%	3.2%
Age 61–70	20.1%	19.3%	19.7%	19.5%	18.9%	19.2%
Age 71–80	44.2%	42.8%	43.5%	43.9%	42.8%	43.4%
Age 81–90	26.9%	28.1%	27.5%	27.4%	28.2%	27.7%
Age 91+	3.2%	3.9%	3.5%	3.2%	4.0%	3.6%
Male	37.9%	37.3%	37.6%	38.0%	37.6%	37.8%
White	86.7%	85.8%	86.3%	86.6%	85.3%	86.1%
Black	9.8%	10.6%	10.2%	10.1%	10.9%	10.4%
In-hospital death	0.2%	0.6%	0.4%	0.3%	0.7%	0.4%

Table N compares resources used for linked UDSmr/COS stays with those for other Medicare rehabilitation patients. Average length of stay for UDSmr/COS cases is the same as for non-UDSmr/COS patients. However, for cases in free-standing hospitals, UDSmr/COS stays consume fewer resources: LOS and total charges are about 10 percent less:

TABLE N.—COMPARISON OF RESOURCE USE FOR MEDICARE REHABILITATION INPATIENTS, BY UDSMR/COS STATUS

Hospitalization characteristic	1996			1997		
	UDS/COS	Other MEDPAR	Total MEDPAR	UDS/COS	Other MEDPAR	Total MEDPAR
All hospitals:						
Sample size	171,626	172,500	344,126	206,032	153,000	359,032
Length of Stay (days)	16.20	16.20	16.20	15.70	15.70	15.70
Daily therapy charges	$360.00	$351.00	$355.00	$379.00	$368.00	$374.00
Total therapy charges	$5,960.00	$5,829.00	$5,894.00	$6,064.00	$5,924.00	$6,004.00
Total charges	$18,013.00	$18,790.00	$18,403.00	$18,348.00	$19,287.00	$18,748.00
Freestanding hospitals:						
Sample size	65,349	49,584	114,933	82,393	36,148	118,541
Length of Stay (days)	18.0	18.9	18.4	17.8	19.2	18.2
Daily therapy charges	$360.00	$387.00	$371.00	$384.00	$406.00	$391.00
Total therapy charges	$6,652.00	$7,605.00	$7,063.00	$7,002.00	$8,064.00	$7,325.00
Total charges	$19,443.00	$21,214.00	$20,207.00	$20,202.00	$22,541.00	$20,915.00

Note: UDSmr/COS case totals count matched cases, hence differ from Table J which counts matched and unmatched cases.

Appendix B: Variables Suggested for Exclusion from the MDS–PAC Instrument

During the pilot and field testings of versions 7–9 of the MDS–PAC, a number of assessors (Registered Nurses, Physical Therapists, or Occupational Therapists) were asked to rate which items on the MDS–PAC they would suggest dropping. Based on these findings, the MDS–PAC no longer includes 104 items that were originally field tested in Version 8 of the instrument. The table below describes the percentage of assessors by facility type (rehabilitation hospital or skilled nursing facility) who recommended dropping each of the MDS–PAC items displayed in the table. The table is broken down by the type of facility in which the assessor was employed. The items in the table below are the majority of the items that are now in the version of the MDS–PAC found in Appendix BB.

TABLE 1.—PERCENT OF ASSESSORS BY THE TYPE OF FACILITY WHO RECOMMENDED REMOVAL OF MDS–PAC ITEMS

MDS–PAC item No.	MDS–PAC item	Percent of assessors by facility-type who recommended removal of specific MDS–PAC items	
		Rehabilitation hospitals	Skilled nursing facilities
A1A	First Name	0	8.3
A1B	Middle Initial	0	8.3
A1C	Last Name	0	8.3
A1D	Jr/Sr	0	8.3
A3	Reason for Assessment	5.9	2.0
A5A	Medical Stabilization	5.8	10.0
A5B	Rehab/Functional Improvement	4.7	4.0
A5C	Recuperation	12.8	18.0
A5D	Monitor to Avoid Clinical Complication	9.2	6.0
A5E	Palliative Care	18.6	6.0
A6	Admitted from	6.5	4.8
A7A	Time of Onset of Precipitating Event	15.4	33.3
A7B	Reason Most Recent Acute Care Hospitalization	8.6	10.0
A8A	Primary Payment Source for Stay	2.3	4.0
A8B	Secondary Payment Source for Stay	5.7	8.2
A9	Marital Status	4.7	4.2
AA10	Gender	0	2.0
AA11	Birthdate	0	8.3
AA12A	American Indian/Alaskan Native	12.0	16.7
AA12B	Asian	12.0	16.7
AA12C	Black or African-American	12.0	16.7
AA12D	Native Hawaiian or Other Pacific Islander	12.0	16.7
AA12E	White	12.0	16.7
AA12F	Hispanic or Latino	15.4	16.7
AA13	Date of Reentry	12.9	14.3
A10	Education	10.3	6.0
A11A	Primary Language	1.2	2.0
A11B	Other Language	2.4	2.0
A12	Dominant Hand	9.2	50.0
A13	Mental Health History	12.3	4.9
A14	Conditions Related to MR/DD Status	12.5	25.0
A15A	Legal Guardian	7.5	5.0
A15B	Other Legal Oversight	7.5	5.0
A15C	Durable Power of Attorney/Health	7.5	5.0
A15D	Patient Responsible for Self	7.5	5.0

TABLE 1.—PERCENT OF ASSESSORS BY THE TYPE OF FACILITY WHO RECOMMENDED REMOVAL OF MDS–PAC ITEMS—Continued

MDS–PAC item No.	MDS–PAC item	Percent of assessors by facility-type who recommended removal of specific MDS–PAC items	
		Rehabilitation hospitals	Skilled nursing facilities
A16A	Living Will	11.5	2.0
A16B	Do Not Resuscitate	13.8	0
A16C	Do Not Hospitalize	16.1	4.1
A16D	Other Treatment Restrictions	13.8	2.0
A16E	None of the above	12.6	2.0
AA2A	Date of Entry	3.1	0
AA4	Assessment Reference Date	0	0
AA6A	Social Security #	3.4	0
AA6B	Medicare #	0	0
AA7	Medical Record &num	2.3	0
AA8A	State #	6.9	2.0
AA8B	Federal #	4.7	0
AA9	Medicaid #	1.2	0
B1	Comatose	14.8	0
B2A	Short-term Memory Ok	0	2.0
B2B	Long-term Memory Ok	0	2.0
B2C	Situational Memory Ok	8.2	0
B2D	Procedural Memory Ok	5.9	0
B3A	Decisions Regarding Tasks of Daily Life	2.3	0
B3B	Status Compared to 30 Days Ago	6.9	24.5
B4A	Easily Distracted	5.7	0
B4B	Periods of Altered Perception	5.7	2.0
B4C	Episodes of Disorganized Speech	5.7	4.1
B4D	Periods of Restlessness	5.7	2.0
B4E	Periods of Lethargy	6.1	0
B4F	Mental Function Varies over Course of Day	7.4	0
C1	Hearing	3.4	0
C2A	Hearing Aid	4.5	0
C2B	Lip Reading	4.9	0
C2C	Signs/Gestures/Jokes	5.7	0
C2D	Message to Express Needs	4.5	0
C2E	None of the Above	4.5	0
C3A	Expressing Information Content	1.1	22.4
C3B	Status Compared to 30 Days Ago	8.0	2.0
C2	Speech Clarity	0	0
C5A	Verbal Content	0	0
C5B	Status Compared to 30 Days Ago	7.0	22.4
C6A	See in Adequate Light W/Glasses	1.2	0
C6B	More Impaired in Vision	7.4	22.5
D1A	Patient Made Negative Statements	3.8	0
D1B	Persistent Anger W/Self or Others	3.8	0
D1C	Expressions of Unrealistic Fears	11.5	0
D1D	Repetitive Anxious Complaints	7.7	0
D1E	Repetitive Health Complaints	11.5	0
D1F	Sad, Pained, Facial Expressions	7.7	0
D1G	Crying, Tearfulness	3.8	0
D1H	Repetitive Physical Movements	11.5	0
D1IS	Insomnia/change in Sleep Patterns	3.8	0
D1J	W/draw from Activities of Interest	11.5	0
D1K	Reduced Social Interaction	7.7	0
D2	Mood Persistence	4.8	5.0
D3A	Wandering—Freq	3.4	0
D3B	Verbal Abuse Behavior—Freq	4.6	0
D3C	Physical Abuse Behavior—Freq	3.4	2.1
D3D	Social Inappropriate Behavior—Freq	3.4	2.1
D3E	Resists Care—Freq	3.4	0
E10AA	Leg—Joint	4.7	4.2
E10AB	Voluntary Motor Control Leg	5.1	2.6
E10AC	Intact Touch Leg	7.6	10.3
E10BA	Arm-Joint	4.7	4.2
E10BB	Voluntary Motor Control Arm	5.1	2.6
E10BC	Intact Touch Arm	7.6	10.3
E10CA	Trunk & Neck—Joint	7.0	4.2
E10CB	Vol. Motor Control—Trunk & Arm	7.6	2.6
E10CC	Intact Touch Trunk & Arm	8.9	10.3
E1A	Bed Mobility—3 Days	2.4	0

TABLE 1.—PERCENT OF ASSESSORS BY THE TYPE OF FACILITY WHO RECOMMENDED REMOVAL OF MDS–PAC ITEMS—Continued

MDS–PAC item No.	MDS–PAC item	Percent of assessors by facility-type who recommended removal of specific MDS–PAC items	
		Rehabilitation hospitals	Skilled nursing facilities
E1B	Transfer Bed/Chair—3 Days	2.4	2.0
E1C	Locomotion—3 Days	2.4	2.0
E1D	Walk in Corridor—3 Days	4.7	4.1
E1E	Dressing Upper Body—3 Days	2.4	0
E1F	Dressing Lower Body—3 Days	2.4	0
E1G	Eating—3 Days	2.4	0
E1H	Toilet Use—3 Days	2.4	0
E1I	Transfer Toilet—3 Days	2.3	4.1
E1J	Personal Hygiene—3 Days	2.3	0
E1K	Bathing—3 Days	2.4	0
E1L	Transfer Tub/shower—3 Days	4.7	4.1
E3	ADL Areas Now More Impaired	4.0	16.7
E4A	Meal Preparation—Now	4.5	23.4
E4C	Phone Use—Now	10.2	25.5
E4D	Medication Management—Now	4.5	31.9
E4E	Stairs—Now	4.5	23.4
E4F	Car Transfer—Now	5.7	23.4
E5	IADL Areas Now More Impaired	3.8	16.7
E6A	Cane/Crutch	0	0
E6B	Walker	2.3	0
E6C	Wheeled—Not Motorized	2.5	0
E6D	Adaptive Eating Utensil	0	9.1
E6E	Mechanical Lift	3.4	2.2
E6F	Orthotics/Prosthesis	0	18.2
E6G	Postural Support	3.4	2.2
E6H	Slide Board	3.4	2.2
E6I	Other Adaptive Device	2.3	2.2
E6J	None of Above	2.5	2.7
E7A	Hours of Physical Activity—past 24 Hrs	6.5	45.0
E7B	Hours of Physical Activity—30 Days Ago	29.4	50.0
E8A	Distance Walk W/o Sit Down—Consistently	4.6	8.3
E8B	Walking Support Provided	11.1	25.6
E9A	Moved from Seated to Standing	8.0	2.1
E9B	Turned Around Face Opposite Direction	14.8	8.3
F1A	Control of Urinary Bladder	0	0
F1B	Continence Compared to 30 Days Ago	4.5	22.4
F2A	External Catheter	1.1	0
F2B	Indwelling Catheter	2.3	4.1
F2C	Intermittent Cath	2.5	0
F2F	Pads, Briefs	3.7	0
F4	Bowel Continence	1.1	2.0
F5	Bowel Appliances	2.5	0
G2A	Diabetes Mellitus	0	8.3
G2AA	A Multiple Sclerosis	0	8.3
G2AB	Parkinson's Disease	0	8.3
G2AC	Quadriplegia	0	8.3
G2AD	Seizure Disorder	0	8.3
G2AE	Spinal Cord Dysfunction—Nontraumatic	0	8.3
G2AF	Spinal Cord Dysfunction—Traumatic	0	8.3
G2AG	Stroke	0	8.3
G2AH	Anxiety Disorder	0	8.3
G2AI	Depression	0	8.3
G2AJ	Other Psychiatric Disorder	0	8.3
G2AK	Asthma	0	8.3
G2AL	COPD	0	8.3
G2AM	Emphysema	0	8.3
G2AN	Cancer	4.2	8.3
G2AO	Post Surgery—Non Orthopedic	4.2	8.3
G2AP	Renal Failure	0	8.3
G2AQ	None of Above	0	8.3
G2B	Hypothyroidism	0	8.3
G2C	Cardiac Arrhythmias	0	8.3
G2D	Congestive Heart Failure	0	8.3
G2E	Coronary Artery Disease	0	8.3
G2F	Deep Vein Thrombosis	0	8.3
G2G	Hypertension	0	8.3

TABLE 1.—PERCENT OF ASSESSORS BY THE TYPE OF FACILITY WHO RECOMMENDED REMOVAL OF MDS–PAC ITEMS—Continued

MDS–PAC item No.	MDS–PAC item	Percent of assessors by facility-type who recommended removal of specific MDS–PAC items	
		Rehabilitation hospitals	Skilled nursing facilities
G2H	Hypotension	0	8.3
G2I	Peripheral Vascular Disease	0	8.3
G2J	Post Acute MI	0	8.3
G2K	Post Heart Surgery	0	8.3
G2L	Pulmonary Embolism	0	8.3
G2M	Pulmonary Failure	0	8.3
G2N	Other Cardiovascular Disease	0	8.3
G2O	Fracture—Hip	0	8.3
G2P	Fracture—Lower Extremity	0	8.3
G2Q	Fracture(s)—Other	0	8.3
G2R	Osteoarthritis	0	8.3
G2S	Osteoporosis	0	8.3
G2T	Rheumatoid Arthritis	0	8.3
G2U	Alzheimer's Disease	0	8.3
G2V	Aphasia or Apraxia	0	8.3
G2W	Cerebral Palsy	0	8.3
G2X	Dementia Other than Alzheimer's	0	8.3
G2Y	Hemiplegia/Hemiparesis	0	8.3
G3A	Antibiotic Resistant Infection	0	2.0
G3B	Cellulitis	0	2.5
G3C	Hepatitis	1.2	2.0
G3D	HIV/AIDS	1.2	2.0
G3E	Pneumonia	0	2.0
G3F	Osteomyelitis	0	2.0
G3G	Septicemia	1.2	2.0
G3H	Staphylococcus Infection	1.2	4.1
G3I	Tuberculosis (Active)	1.2	2.0
G3J	Urinary Tract Infection	0	2.0
G3K	Wound Infection	0	2.0
G3L	None of Above	0	2.0
G4AA	ICD–9–CM Diagnosis Code #1	10.8	4.2
G4AB	ICD–9–CM Code #1	8.4	4.2
G4BA	ICD–9–CM Diagnosis Code #2	10.8	4.2
G4BB	ICD–9–CM Code #2	8.4	4.2
G4CA	ICD–9–CM Diagnosis Code #3	11.0	4.2
G4CB	ICD–9–CM Code #3	8.5	4.2
G4DA	ICD–9–CM Diagnosis Code #4	11.0	4.2
G4DB	ICD–9–CM Code #4	8.5	4.2
G4EA	ICD–9–CM Diagnosis Code #5	12.2	4.2
G4EB	ICD–9–CM Code #5	9.8	4.2
H1	Vital Signs	4.6	12.5
H2A	Dizziness/Vertigo/Lightheaded	1.1	0
H2B	Fell in past 7 Days	1.1	4.1
H2C	Fell in past 8 to 180 Days	7.7	0
H3D	Advanced Cardiac Failure	9.1	10.2
H2E	Chest Pain/Pressure on Exertion	1.1	2.0
H2F	Chest Pain/Pressure at Rest	1.1	2.0
H2G	Edema—Generalized	1.1	2.0
H2H	Edema—Localized	2.3	2.0
H2I	Edema—pitting	3.4	2.1
H2J	Impaired Aerobic Capacity	3.4	2.0
H2K	Constipation	1.1	0
H2L	Dehydrated	3.4	0
H2M	Diarrhea	1.1	0
H2N	Internal Bleeding	3.8	0
H2O	Recurrent Nausea/Vomiting	2.3	0
H2P	Refuse/Inability to Take Liquids Orally	6.8	0
H2R	Fever	4.5	0
H2S	Hemi-neglect	4.5	0
H2T	Cachexia (Severe Malnutrition)	6.8	0
H2U	Morbid Obesity	3.4	0
H2V	End-stage Disease	4.5	0
H2W	None of Above	0	0
H3A	Inability to Lie Flat—Loss of Breath	2.3	0
H3B	Shortness of Breath—Exertion	3.4	0
H3C	Shortness of Breath—Rest	3.4	0

TABLE 1.—PERCENT OF ASSESSORS BY THE TYPE OF FACILITY WHO RECOMMENDED REMOVAL OF MDS–PAC ITEMS—Continued

MDS–PAC item No.	MDS–PAC item	Percent of assessors by facility-type who recommended removal of specific MDS–PAC items	
		Rehabilitation hospitals	Skilled nursing facilities
H3D	Oxygen Saturation	3.4	2.0
H3E	Diff Cough/clearing Airway	3.4	0
H3F	Recurrent Aspiration	2.3	0
H3G	Recurrent Aspiration Infection	4.9	0
H3H	None of Above	3.5	0
H4A	Highest Pressure Ulcer Stage	2.3	0
H4B	# of Current Pressure Ulcers	2.4	0
H4C	Length Multiplied by Width	4.7	12.2
H4D	Exudate Amount	4.7	12.2
H4E	Predominant Tissue	4.7	12.2
H4F	Total Push Score	4.7	10.4
H5A	# of Stasis Ulcers	3.4	0
H5B	# of Surgical Wounds	3.4	0
H5C	Ulcer Resolved/Healed	8.4	6.1
H6A	Burns	2.3	2.0
H6B	Open Lesions Excluding Foot	2.3	0
H6C	Rashes	1.1	0
H6D	Skin Tears or Cuts	1.1	0
H6E	None of Above	1.1	0
I1A	Freq Patient Complains of Pain	0	0
I1B	Intensity of Pain	0	0
I1C	Current Pain Status	7.3	26.8
J1A	Chewing Problem	1.2	0
J1B	Dental Problems	1.2	0
J2	Swallowing	1.2	0
J3A	Height in Inches	5.8	0
J3B	Weight in Pounds	7.0	0
J4A	Weight Loss	8.1	4.2
J4B	Weight Gain	8.2	4.2
J5A	Total Calories	3.5	0
J5B	Fluid Intake	4.6	0
K1A	Total # Physician Visits	21.6	22.4
K1B	# Times Phys/nurse Practitioner Called to Bedside	17.2	40.0
K1C	# Nurse Practitioner Visits	20.7	27.1
K1D	# Phys Asst Visits	20.7	29.2
K1E	# New or Changed Orders	14.9	22.4
K2AA	Diabetic Management	3.5	8.3
K2AB	At Dis—insulin Management	7.7	33.3
K2BA	Injections	7.7	8.3
K2BB	Injections at Discharge	8.3	20.0
K2CA	IV Antibiotics/meds	7.7	8.3
K2CB	At Dis—Iv Antibiotics/meds	7.7	33.3
K2DA	Application of Dressings	7.7	8.3
K2DB	Application of Dressings at Dis.	8.3	20.0
K2EA	Application of Ointments	7.7	8.3
K2EB	At Dis—Application of Ointments	7.7	33.3
K2GA	Nutrition/dehydration Intervention	7.7	8.3
K2GB	At Dis—nutrition/hydration Intervention	7.7	33.3
K2HA	Pressure Relieving Bed/Chair	3.8	8.3
K2HB	At Dis—Pressure Relieving Bed/Chair	7.7	33.3
K2IA	Turning and Repositioning	3.8	8.3
K2IB	At Dis—Turning and Repositioning	7.7	33.3
K2JA	Ulcer Care	7.7	8.3
K2JB	At Discharge—Ulcer Care	7.7	33.3
K2KA	Wound Care—Surgical	7.7	8.3
K2KB	At Dis—Wound Care Surgical	7.7	33.3
K2LA	Bladder Training	3.8	8.3
K2LB	At Dis—Bladder Training	8.3	20.0
K2MA	Scheduled Toileting	3.8	8.3
K2MB	At Dis—Scheduled Toileting	8.3	20.0
K2NA	Bowel Program	3.8	8.3
K2NB	At Dis—Bowel Program	8.3	20.0
K2OA	Cardiac Monitoring/Rehab	11.5	8.3
K2OB	At Dis—Cardiac Monitoring	7.7	33.3
K2PA	Cast(s)	11.5	8.3
K2PB	At Dis—Cast(s)	7.7	33.3

TABLE 1.—PERCENT OF ASSESSORS BY THE TYPE OF FACILITY WHO RECOMMENDED REMOVAL OF MDS–PAC ITEMS—Continued

MDS–PAC Item No.	MDS–PAC item	Percent of assessors by facility-type who recommended removal of specific MDS–PAC items	
		Rehabilitation hospitals	Skilled nursing facilities
K2QA	Continuous Positive Airway Pressure	11.5	8.3
K2QB	At Dis—Continuous Positive Airway Pressure	9.0	33.3
K2RA	Drains	3.8	0
K2RB	At Dis—Drains	7.7	31.7
K2SA	Dialysis	0	0
K2SB	At Dis—Dialysis	4.2	16.7
K2TA	Enteral Tube Feeding	0	0
K2TB	At Dis—Enteral Tube Feeding	6.5	31.7
K2UA	IV Line—Central	3.8	0
K2UB	At Dis—Central Iv Line	7.7	31.7
K2VA	IV Line—Peripheral	3.8	0
K2VB	At Dis—Peripheral Iv Line	7.7	31.7
K2WA	Ng Feeding Tube	0	0
K2WB	At Dis—NG Feeding Tube	6.4	31.7
K2XA	Oxygen	0	0
K2XB	At Dis—Oxygen	6.4	31.7
K2YA	Pain Management—Other than Drugs	7.7	0
K2YB	At Dis—Pain Management	7.7	31.7
K2ZA	Suctioning—Oral	0	0
K2ZB	At Dis—Suctioning—Oral	7.7	31.7
K2AAA	Suctioning—Tracheal	0	0
K2AAB	At Dis—Suctioning Tracheal	7.7	31.7
K2ABA	Tracheostomy Care	0	0
K2ABB	At Dis—Tracheostomy Care	6.4	31.7
K2ACA	Transfusion(s)	7.7	0
K2ACB	At Dis—Transfusion(s)	7.7	31.7
K2ADA	Ventilator or Respirator	7.7	0
K2ADB	At Dis—Vent. Or Resp.	9.0	31.7
K2AEA	Ventilator Weaning	7.7	0
K2AEB	At Dis—Ventilator Weaning	9.0	31.7
K2AFA	Train Family to Assist Patient	3.8	0
K2AFB	At Dis-Train Family to Assist Patient	6.4	31.7
K2AGA	Training in Health Maint	3.8	0
K2AGB	At Dis—Pat Train Skills Required after Discharge	6.4	31.7
K2AHA	Design and Implementation	3.8	0
K2AHB	At Dis—Social Service Design	7.7	31.7
K3AIA	None of Above	0	0
K3AIB	At Dis—None of Above	7.7	31.7
K3A	Range of Motion—Passive	4.5	8.2
K3B	Range of Motion—Active	4.5	8.2
K3C	Splint/Orthotic Assistance	4.5	8.2
K3D	Bed Mobility	4.5	8.2
K3E	Bladder/Bowel	3.4	8.2
K3F	Transfer	4.5	8.2
K3G	Walking	4.5	8.2
K3H	Dressing or Grooming	3.4	8.2
K3I	Eating or Swallowing	3.4	8.2
K3K	Communication	3.4	8.2
K4AA	Speech—Days Ordered	16.0	26.2
K4AB	Speech—Days Delivered	2.4	4.8
K4AC	Speech—Min Delivered	3.7	2.4
K4AD	Post Dis—Speech	4.0	18.0
K4BA	Ot—Days Ordered	17.3	26.2
K4BB	Ot—Days Delivered	2.4	4.8
K4BC	Ot—Min Delivered	2.5	2.4
K4BD	Post Dis—Ot	5.3	18.2
K4CA	Pt—Days Ordered	17.3	26.2
K4CB	Pt—Days Delivered	1.2	4.8
K4CC	Pt—Min Delivered	3.7	2.4
K4CD	Pt—Post Dis—Pt	5.3	18.2
K4DA	Resp. Therapy—Days Ordered	16.0	26.2
K4DB	Resp. Therapy—Days Delievered	2.4	4.8
K4DC	Resp. Therapy—Min. Delivered	3.7	2.4
K4DD	Post Dis—Resp.Therapy	4.0	18.2
K4EA	Psych Therapy—Days Ordered	18.5	26.2
K4EB	Psych Therapy—Days Delivered	3.7	4.8

TABLE 1.—PERCENT OF ASSESSORS BY THE TYPE OF FACILITY WHO RECOMMENDED REMOVAL OF MDS–PAC ITEMS—Continued

MDS–PAC Item No.	MDS–PAC item	Percent of assessors by facility-type who recommended removal of specific MDS–PAC items	
		Rehabilitation hospitals	Skilled nursing facilities
K4EC	Psych Therapy—Min Delivered	3.7	2.4
K4ED	Post Dis—Psych Therapy	6.7	18.2
K4FA	Therapeutic Recreation—Days Ordered	18.7	24.2
K3FB	Therapeutic Recreation—Days Delivered	1.3	3.0
K3FC	Therapeutic Recreation—Min Delivered	5.3	0
K3FD	Post Dis—Therapeutic Recreation	6.7	18.2
K5A	Full Bed Rails on Both Sides	5.1	0
K5B	Other Types of Side Rails Used	6.4	4.9
K5C	Trunk Restraint	6.4	0
K5D	Chair Prevents Rising	7.7	2.4
L1A	Bed Mobility/Transfer	6.9	10.2
L1B	Dressing	6.9	10.2
L1C	Eating	6.9	10.2
L1D	Locomotion	6.9	10.2
L1F	Medication Managment	6.8	14.3
L1G	Pain Management	6.8	10.2
L2A	Believe Is Capable of Incr Indep.	5.7	10.4
L2B	Unable to Recognize New Limits	8.0	10.4
L2C	Fails to Initiate/Continue Adls	9.2	10.4
L3A	Functional Status—Last 3 Days	9.2	12.2
L3B	Health Status—Last 3 Days	9.3	12.2
L4	Estimated Length of Stay	2.3	8.0
M1A	Emotional Support	0	8.3
M1B	Intermit Phys Support—less than Daily	0	8.3
M1C	Intermit Phys Support—Daily	0	8.3
M1D	Full Time Physical Support	0	8.3
M1E	All or Most of Nec Transportation	0	9.1
M2A	Family Overwhelmed by Pat. Illness	4.2	16.7
M2B	Family Relationship Require Great Deal of Staff Time	4.2	8.3
M3AA	Type of Residence—Pre	2.3	10.2
M3AB	Type of Residence—Discharge	0	10.0
M3AC	Temp. Type of Residence	5.0	12.5
M3BA	Lived With—Pre	2.5	10.6
M3BB	Live With—Disch	0	10.4
M3BC	Temp Live(d) With	5.3	13.2
N1C	Date Assessment Coord Signed	0	0

BILLING CODE 4120-03-P

APPENDIX BB Patient________________ Numeric Identifier________________

MINIMUM DATA SET — POST ACUTE CARE (MDS-PAC) — *Version 1.0*

INTERRUPTED STAY TRACKING FORM

SECTION AA. IDENTIFICATION INFORMATION

1.	LEGAL NAME OF PATIENT	a. (First) b. (Middle Initial) c. (Last) d. (Suffix)	
2.	ADMISSION DATE	a. *Date the stay began (date of initial admission)* ☐☐–☐☐–☐☐☐☐ Month Day Year b. *Date Medicare covered Part A stay began — If different than AA2a* ☐☐–☐☐–☐☐☐☐ Month Day Year	
6.	SOCIAL SECURITY AND MEDICARE NUMBERS [C in 1st box if non Med. no.]	a. Social Security Number ☐☐☐–☐☐–☐☐☐☐ b. Medicare number (or comparable railroad insurance number) ☐☐☐☐☐☐☐☐☐☐☐☐	
7.	MEDICAL RECORD NO.	☐☐☐☐☐☐☐☐☐☐☐☐	
8.	FACILITY PROVIDER NO.	a. State No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ b. Federal No. ☐☐☐☐☐☐☐☐☐☐☐☐	
9.	MEDICAID NO.	*["+" if pending, "N" if not a Medicaid recipient]* ☐☐☐☐☐☐☐☐☐☐☐☐☐☐	
10.	GENDER	1. Male 2. Female	☐
11.	BIRTHDATE	☐☐–☐☐–☐☐☐☐ Month Day Year	
12.	ETHNICITY/ RACE	*(CHECK all that apply)* *ETHNICITY* Hispanic or Latino a. ☐ *RACE* American Indian/Alaskan Native b. ☐ Asian c. ☐ Black or African American d. ☐ Native Hawaiian or other Pacific Islander e. ☐ White f. ☐	
13.	INTERRUPTED STAY	a. *Date/time departed from the rehabilitation unit/hospital* ☐☐–☐☐–☐☐☐☐ Month Day Year ☐☐–☐☐–☐☐ Hours Minutes AM/PM b. *Date/time returned to the rehabilitation unit/hospital* ☐☐–☐☐–☐☐☐☐ Month Day Year ☐☐–☐☐–☐☐ Hours Minutes AM/PM	
14.	CLINICIAN COMPLETING ASSESSMENT	a. SIGNATURE OF CLINICIAN ATTESTING TO THE ACCURACY OF THE DATES THE PATIENT DEPARTED FROM AND RETURNED TO THE REHABILITATION UNIT/HOSPITAL Printed Name b. (First) c. (Middle Initial) d. (Last) e. (Suffix) f. Credentials: 1. Physician 2. Registered nurse 3. Physical therapist 4. Occupational therapist	☐

APPENDIX BB Patient________________ Numeric Identifier________________

MINIMUM DATA SET — POST ACUTE CARE (MDS-PAC) — *Version 1.0*

• Assessment reflects activities *OVER LAST 3 DAYS* unless otherwise indicated

BASIC ASSESSMENT TRACKING FORM

SECTION AA. IDENTIFICATION INFORMATION

1.	LEGAL NAME OF PATIENT	a. (First) b. (Middle Initial) c. (Last) d. (Suffix)	
2.	ADMISSION DATE	a. *Date the stay began (date of initial admission)* ☐☐–☐☐–☐☐☐☐ Month Day Year b. *Date Medicare covered Part A stay began — If different than AA2a* ☐☐–☐☐–☐☐☐☐ Month Day Year	
3.	REASON FOR ASSESSMENT	1. Admission (covers first 3 days, completed on day 4) 2. Reassessment completed on day 11 3. Reassessment completed on day 30 4. Reassessment completed on day 60 5. Discharge assessment completed day 5 after discharge	☐
4.	ASSESSMENT REFERENCE DATE	*Assessment reference date—last day of the 3-day MDS-PAC observation period* ☐☐–☐☐–☐☐☐☐ Month Day Year	
5.	DISCHARGE STATUS	a. *Last day of stay* ☐☐–☐☐–☐☐☐☐ Month Day Year b. *If discharged, status at discharge* 0. Rehabilitation program complete for this stay and return not anticipated 1. Patient left, against medical advice, prior to completion of plan of care 2. Acute problem, discharge to acute hospital 3. Patient died	☐
6.	SOCIAL SECURITY AND MEDICARE NUMBERS [C in 1st box if non Med. no.]	a. Social Security Number ☐☐☐–☐☐–☐☐☐☐ b. Medicare number (or comparable railroad insurance number) ☐☐☐☐☐☐☐☐☐☐☐☐	
7.	MEDICAL RECORD NO.	☐☐☐☐☐☐☐☐☐☐☐☐	
8.	FACILITY PROVIDER NO.	a. State No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ b. Federal No. ☐☐☐☐☐☐☐☐☐☐☐☐	
9.	MEDICAID NO.	*["+" if pending, "N" if not a Medicaid recipient]* ☐☐☐☐☐☐☐☐☐☐☐☐☐☐	
10.	GENDER	1. Male 2. Female	☐
11.	BIRTHDATE	☐☐–☐☐–☐☐☐☐ Month Day Year	
12.	ETHNICITY/ RACE	*(CHECK all that apply)* *ETHNICITY* Hispanic or Latino a. ☐ *RACE* American Indian/Alaskan Native b. ☐ Asian c. ☐ Black or African American d. ☐ Native Hawaiian or other Pacific Islander e. ☐ White f. ☐	

SECTION AB. ASSESSMENT ATTESTATION

1.	PERSON COMPLETING ASSESSMENT	a. SIGNATURE OF CLINICIAN ATTESTING TO COMPLETION OF ASSESSMENT: Printed Name b. (First) c. (Middle Initial) d. (Last) e. (Suffix) f. Credentials: 1. Physician 2. Registered nurse 3. Physical therapist 4. Occupational therapist ☐ g. Date MDS-PAC signed as complete ☐☐–☐☐–☐☐☐☐ Month Day Year	

2a. Signatures of staff completing part of the assessment	Credentials	Sections	Date
b.			Date
c.			Date
d.			Date
e.			Date
f.			Date

APPENDIX BB Patient ______________________ Numeric Identifier ______________________

MINIMUM DATA SET — POST ACUTE CARE (MDS-PAC) — *Version 1.0*
FULL ASSESSMENT FORM (ASSESSMENT, REASSESSMENT, DISCHARGE)

SECTION A. DEMOGRAPHIC/ADMISSION INFORMATION HISTORY

- **Assessment reflects activities *OVER LAST 3 DAYS* unless otherwise indicated**

1.	LEGAL NAME OF PATIENT	a. (First) b. (Middle Initial) c. (Last) d. (Suffix)	
2.	ADMISSION DATE	*a. Date the stay began (date of initial admission)* ☐☐–☐☐–☐☐☐☐ Month Day Year *b. Date Medicare covered Part A stay began — if different than A2a* ☐☐–☐☐–☐☐☐☐ Month Day Year	
3.	REASON FOR ASSESSMENT	1. Admission (covers first 3 days, completed on day 4) 2. Reassessment completed on day 11 3. Reassessment completed on day 30 4. Reassessment completed on day 60 5. Discharge assessment completed day 5 after discharge	
4.	ADMISSION STATUS	0. First admission to inpatient rehabilitation services 1. Readmission to rehabilitation but not directly from other rehabilitation 2. Readmission directly from other rehabilitation	
5.	GOALS FOR STAY	*CODE indicate all that apply:* 0. No 1. Yes a. Medical stabilization ☐ b. Rehabilitation/Functional improvement ☐ c. Recuperation ☐ d. Monitoring to avoid clinical complication ☐ e. Palliative care ☐	
6.	ADMITTED FROM (At date of admission—A2)	1. Private home 2. Private apartment 3. Rented room 4. Board and care/group home 5. Assisted living 6. Homeless shelter 7. Transitional living 8. Long term care facility (nursing home) 9. Post acute care SNF 10. Acute care hospital—not rehabilitation unit 11. Rehabilitation unit (in acute hospital) 12. Rehabilitation hospital 13. Long term care hospital 14. Psychiatric hospital/unit 15. MR/DD facility (exclude group home) 16. Other hospital 17. Outpatient surgery center 18. Other	
7.	PRECIPITATING EVENT PRIOR TO ADMISSION	*a. Time of the onset of the precipitating event/problem that directly preceded admission into this facility (time from date of admission—item A2)* 0. Within last week 1. Within last 8 to 14 days 2. 15 to 30 days ago 3. 31 to 60 days ago 4. More than 60 days ago *b. Date of admission of most recent acute hospitalization (within last 90 days)* ☐☐–☐☐–☐☐☐☐ Month Day Year *c. Reason for most recent acute care hospitalization (within last 90 days)* 0. Not hospitalized at any time in last 90 days 1. New problem 2. Exacerbation 3. Both	
8.	PRIMARY AND SECONDARY PAYMENT SOURCE FOR STAY	0. None - No insurance coverage, no private pay 1. Medicare 2. Medicaid 3. CHAMPUS 4. Department of Veterans Affairs 5. Managed care/HMO—Medicare 6. Managed care/HMO—non-Medicare 7. Private insurance 8. Private pay—self or family 9. Workers' compensation 10. Other payment	A Prim ☐ B Sec ☐
9.	MARITAL STATUS	1. Never married 2. Married 3. Widowed 4. Separated 5. Divorced	
10.	EDUCATION (*Highest Level Completed*)	1. No schooling 2. 8th grade/less 3. 9th-11th grade 4. High school 5. Technical or trade school 6. Some college 7. Bachelor's degree 8. Graduate degree	
11.	LANGUAGE	*a. Primary Language* 0. English 1. Spanish 2. French 3. Other, specify in A11b b. If other, specify ☐☐☐☐☐☐☐☐☐	
12.	DOMINANT HAND	1. Right 2. Left 3. Unable to determine	
13.	MENTAL HEALTH HISTORY	*Patient's RECORD indicates history of mental retardation, mental illness, or developmental disability problem* 0. No 1. Yes	
14.	CONDITIONS RELATED TO MR/DD STATUS	1. Not applicable—no MR/DD 2. MR/DD with no organic condition 3. MR/DD with organic condition	
15.	RESPONSIBILITY/ LEGAL GUARDIAN	*(CHECK all that apply)* Legal guardian a. Other legal oversight b. Durable power of attorney/health care proxy c. Patient responsible for self d. *NONE OF ABOVE* e.	
16.	ADVANCE DIRECTIVES	*(CHECK all that apply that have supporting documentation)* Living will a. Do not resuscitate b. Do not hospitalize c. Treatment restrictions d. *NONE OF ABOVE* e.	

SECTION B. COGNITIVE PATTERNS

1.	COMATOSE	*Persistent vegetative state/no discernible consciousness* 0. No 1. Yes (IF YES, SKIP TO SECTION E)	
2.	MEMORY/ RECALL ABILITY (Over last 3 days)	*(CODE for recall of what was learned or known)* 0. Memory OK 1. Memory problem	
		a. Short-term memory OK—Seems/appears to recall after 5 minutes	
		b. Long-term memory OK—Seems/appears to recall long past	
		c. Situational memory OK—Both: recognizes staff names/faces frequently encountered AND knows location of places regularly visited (bedroom, dining room, activity room, therapy room)	
		d. Procedural memory OK—Can perform all or almost all steps in a multitask sequence without cues for initiation	
3.	COGNITIVE SKILLS FOR DAILY DECISION MAKING (Over last 3 days)	a. *Making decisions regarding tasks of daily life* 0. *INDEPENDENT*—Decisions consistent/reasonable/safe 1. *MODIFIED INDEPENDENCE*—Some difficulty in new situations only 2. *MINIMALLY IMPAIRED*—*In specific situations, decisions become poor or unsafe and cues/supervision necessary at those times* 3. *MODERATELY IMPAIRED*—Decisions consistently poor or unsafe, cues/supervision required at all times 4. *SEVERELY IMPAIRED*—Never/rarely made decisions	
		b. *Is now more impaired in decision making than prior to precipitating event (item A7a)* 0. No or unsure 1. Yes, more impaired today	
4.	INDICATORS OF DELIRIUM—PERIODIC DISORDERED THINKING/ AWARENESS (Over last 7 days)	*(CODE for behavior in the last 7 days.) (Note: Accurate assessment requires conversations with staff and family who have direct knowledge of patient's behavior over this time).* 0. Behavior not present 1. Behavior present, not of recent onset 2. Behavior present, over last 7 days appears different from patient's usual functioning (e.g., new onset or worsening)	
		a. **EASILY DISTRACTED**—(e.g., difficulty paying attention; gets sidetracked)	
		b. **PERIODS OF ALTERED PERCEPTION OR AWARENESS OF SURROUNDINGS**—(e.g., moves lips or talks to someone not present; believes he/she is somewhere else; confuses night and day)	
		c. **EPISODES OF DISORGANIZED SPEECH**—(e.g., speech is incoherent, nonsensical, irrelevant, or rambling from subject to subject; loses train of thought)	
		d. **PERIODS OF RESTLESSNESS**—(e.g., fidgeting or picking at skin, clothing, napkins, etc.; frequent position changes; repetitive physical movements or calling out)	
		e. **PERIODS OF LETHARGY**—(e.g., sluggishness; staring into space; difficult to arouse; little body movement)	
		f. **MENTAL FUNCTION VARIES OVER THE COURSE OF THE DAY**—(e.g., sometimes better, sometimes worse; behaviors sometimes present, sometimes not)	

SECTION C. COMMUNICATION/VISION PATTERNS (Over last 3 days)

1.	HEARING	*With hearing appliance, if used* 0. *HEARS ADEQUATELY*—No difficulty in normal conversation, social interaction, TV, phone 1. *MINIMAL DIFFICULTY*—Requires quiet setting to hear well 2. *HEARS IN SPECIAL SITUATIONS ONLY*—Speaker has to increase volume and speak distinctly 3. *HIGHLY IMPAIRED*—Absence of useful hearing	
2.	MODES OF COMMUNICATION	*(CHECK all used by patient to make needs known)* Hearing aid a. Lip reading b. Signs/gestures/sounds c. Writing messages to express or clarify needs d. *NONE OF ABOVE* e.	
3.	MAKING SELF UNDERSTOOD (Expression)	a. *Expressing information content—however able* 0. *UNDERSTOOD*—Expresses ideas without difficulty 1. *USUALLY UNDERSTOOD*—Difficulty finding words or finishing thoughts *BUT* if given time, little or no prompting required 2. *OFTEN UNDERSTOOD*—Difficulty finding words or finishing thoughts, prompting usually required 3. *SOMETIMES UNDERSTOOD*—Ability is limited to concrete requests 4. *RARELY/NEVER UNDERSTOOD*	
		b. *Is now more impaired in making self understood by others than was prior to precipitating event (item A7a)* 0. No or unsure 1. Yes, more impaired today	

APPENDIX BB Patient ______________________ Numeric Identifier ______________________

4.	SPEECH CLARITY	0. *CLEAR SPEECH*—Distinct, intelligible words 1. *UNCLEAR SPEECH*—Slurred, mumbled words 2. *NO SPEECH*—Absence of spoken words	
5.	ABILITY TO UNDERSTAND OTHERS (Comprehension)	a. *Understanding verbal information content (however able) with hearing appliance, if used* 0. *UNDERSTANDS*—Clear comprehension 1. *USUALLY UNDERSTANDS*—Misses some part/intent of message *BUT* comprehends most conversation with little or no prompting 2. *OFTEN UNDERSTANDS*—Misses some part/intent of message, with prompting can often comprehend conversation 3. *SOMETIMES UNDERSTANDS*—Responds adequately to simple, direct communication only 4. *RARELY/NEVER UNDERSTANDS*	
		b. *Is now more impaired in understanding others than was prior to precipitating event (item A7a)* 0. No or unsure 1. Yes, more impaired today	
6.	VISION	a. *Ability to see in adequate light and with glasses, if used* 0. *ADEQUATE*—Sees fine detail, including regular print, in newspapers/books 1. *IMPAIRED*—Sees large print, but not regular print in newspapers/books 2. *MODERATELY IMPAIRED*—Limited vision; not able to see newspaper headlines, but can identify objects 3. *HIGHLY IMPAIRED*—Object identification in question, but eyes appear to follow objects 4. *SEVERELY IMPAIRED*—No vision, eyes do not appear to follow objects *BUT* may report seeing light or colors only	
		b. *Is now more impaired in vision than was prior to precipitating event (item A7a)* 0. No or unsure 1. Yes, more impaired today	

SECTION D. MOOD AND BEHAVIOR PATTERN

1.	INDICATORS OF DEPRESSION, ANXIETY, SAD MOOD (Over last 3 days)	*(CODE for indicators observed in last 3 days, irrespective of the assumed cause)* 0. Indicator not exhibited in last 3 days 1. Exhibited on 1-2 of last 3 days 2. Exhibited on each of last 3 days	
		VERBAL EXPRESSIONS OF DISTRESS	
		a. **PATIENT MADE NEGATIVE STATEMENTS**—(e.g., "*Nothing matters; Would rather be dead than live this way; What's the use; Let me die*")	
		b. **PERSISTENT ANGER WITH SELF OR OTHERS**—(e.g., easily annoyed, anger at presence in post acute care, anger at care received)	
		c. **EXPRESSIONS OF WHAT APPEAR TO BE UNREALISTIC FEARS**—(e.g., fear of being abandoned, left alone, being with others, afraid of nighttime)	
		d. **REPETITIVE ANXIOUS COMPLAINTS/CONCERNS** (non-health related)—(e.g., persistently seeks attention/reassurance regarding therapy or others' schedules, meals, laundry, clothing, relationship issues, when family will visit)	
		e. **REPETITIVE HEALTH COMPLAINTS**—(e.g., persistently seeks medical attention, obsessive concern with body functions, obsessive concern with vital signs)	
		SAD, APATHETIC, ANXIOUS APPEARANCE	
		f. **SAD, PAINED, WORRIED FACIAL EXPRESSIONS**—(e.g., furrowed brows)	
		g. **CRYING, TEARFULNESS**	
		h. **REPETITIVE PHYSICAL MOVEMENTS**—(e.g., pacing, hand wringing, restlessness, fidgeting, picking)	
		SLEEP CYCLE ISSUES	
		i. **INSOMNIA/CHANGE IN USUAL SLEEP PATTERNS**	
		LOSS OF INTEREST	
		j. **WITHDRAWAL FROM ACTIVITIES OF INTEREST**—(e.g., no interest in long standing activities or being with family/ friends)	
		k. **REDUCED SOCIAL INTERACTION**—(e.g., less talkative, more isolated)	
2.	MOOD PERSISTENCE (Over last 3 days)	*One or more indicators of depressed, sad or anxious mood were not easily altered by attempts to "cheer up," console, or reassure the patient over last 3 days* 0. No mood indicators or always easily altered 1. Partially altered or easily altered on only some occasions 2. All aspects of mood not easily altered	
3.	BEHAVIORAL SYMPTOMS (Over last 3 days)	*(CODE for behavioral symptom frequency over the last 3 days)* 0. Behavior not exhibited in last 3 days 1. Behavior of this type occurred on 1 day 2. Behavior of this type occurred on 2 days 3. Behavior of this type occurred daily	
		a. **WANDERING**—Moved (locomotion) with no rational purpose, seemingly oblivious to needs or safety	
		b. **VERBALLY ABUSIVE BEHAVIORAL SYMPTOMS**—Others were threatened, screamed at, cursed at	
		c. **PHYSICALLY ABUSIVE BEHAVIORAL SYMPTOMS**—Others were hit, shoved, scratched, sexually abused	
		d. **SOCIALLY INAPPROPRIATE/DISRUPTIVE BEHAVIORAL SYMPTOMS**—Made disruptive sounds, noisiness, screaming, self-abusive acts, sexual behavior or disrobing in public, smeared/ threw food/feces, hoarding, rummaged through others' belongings	
		e. **RESISTS CARE**—Resisted taking medications/injections, ADL assistance, eating, or changes in position	

SECTION E. FUNCTIONAL STATUS

1.	**3 DAY ADL SELF-PERFORMANCE**—*(CODE for Performance Over All Shifts, for All Episodes, OVER LAST 3 DAYS)* (NOTE - for Bathing and Tub Transfer, code for most dependent single episode in this period) 0. *INDEPENDENT*—No help, setup or supervision —OR— Help, setup, or supervision provided only 1 or 2 times during period (with any task or subtask) 1. *SETUP HELP ONLY*—Article or device provided or placed within reach of patient 3 or more times 2. *SUPERVISION*—Oversight, encouragement or cuing provided 3 or more times during period —OR— Supervision (1 or more times) plus physical assistance provided only 1 or 2 times during period (for a total of 3 or more episodes of help or supervision) 3. *MINIMAL ASSISTANCE (LIMITED ASSISTANCE)*—Patient highly involved in activity; received physical help in guided maneuvering of limbs or other non-weight bearing assistance 3 or more times —OR— Combination of non-weight bearing help with more help provided only 1 or 2 times during period (for a total of 3 or more episodes of physical help) 4. *MODERATE ASSISTANCE (EXTENSIVE ASSISTANCE)*—Patient performed part of activity on own (50% or more of subtasks) *BUT* help of following type(s) provided 3 or more times: — Weight-bearing support (e.g., holding weight of limb, trunk) — Full staff performance of a task (some of time) or discrete subtask 5. *MAXIMAL ASSISTANCE*—Patient involved but completed less than 50% of subtasks on own (includes 2+ person assist), received weight bearing help or full performance of certain subtasks 3 or more times 6. *TOTAL ASSISTANCE (TOTAL DEPENDENCE)*—Full staff performance of activity during entire period 8. *ACTIVITY DID NOT OCCUR*—During entire period	
	a. **BED MOBILITY**—How patient moves to and from lying position, turns side to side, and positions body while in bed	
	b. **TRANSFER BED/CHAIR**—How patient moves between surfaces—to or from: bed, chair, wheelchair, standing position (EXCLUDE to/from bath/toilet)	
	c. **LOCOMOTION**—How patient moves between locations in his/her room and adjacent corridor on the same floor. If in wheelchair, how moves once in wheelchair	
	d. **WALK IN FACILITY**—How patient walks in room, corridor, or other place in facility	
	e. **DRESSING UPPER BODY**—How patient dresses and undresses (street clothes, underwear) above the waist, includes prostheses, orthotics, fasteners, pullovers, etc.	
	f. **DRESSING LOWER BODY**—How patient dresses and undresses (street clothes, underwear) from the waist down, includes prostheses, orthotics, belts, pants, skirts, shoes, and fasteners	
	g. **EATING**—How patient eats and drinks (regardless of skill), includes intake of nourishment by other means (e.g., tube feeding, total parenteral nutrition)	
	h. **TOILET USE**—How patient uses the toilet room (or commode, bedpan, urinal); cleanses self after toilet use or incontinent episode(s), changes pad, manages ostomy or catheter, adjusts clothes (EXCLUDE transfer toilet)	
	i. **TRANSFER TOILET**—How patient moves on and off toilet or commode	
	j. **GROOMING/PERSONAL HYGIENE**—How patient maintains personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face and hands (EXCLUDE baths and showers)	
	k. **BATHING**—How patient takes full-body bath/shower or sponge bath (EXCLUDE washing of back and hair and TRANSFER). Includes how each part of body is bathed: arms, upper and lower legs, chest, abdomen, perineal area. Code for most dependent episode	
	l. **TRANSFER TUB/SHOWER**—How patient transfers in/out of tub/shower. Code for most dependent episode	

2.	ADL ASSIST CODES (Code for most help in last 3 days)	0. Neither code applies 1. Weight bearing support with 1 limb 2. 2+ person physical assist				
		a. Bed mobility	☐	g. Eating	☐	
		b. Transfer bed/chair	☐	h. Toilet use	☐	
		c. Locomotion	☐	i. Transfer	☐	
		d. Walk in facility	☐	j. Grooming/personal hygiene	☐	
		e. Dressing upper body	☐	k. Bathing	☐	
		f. Dressing lower body	☐	l. Transfer tub/shower	☐	
3.	ADL CHANGES	a. *NUMBER of ADL areas (from E1 above) in which patient is now more limited in self performance than was prior to precipitating event (item A7a)*				
		b. *NUMBER of ADL areas (from E1 above) in which patient was independent prior to precipitating event (item A7a)*				

APPENDIX 8B Patient__________ Numeric Identifier__________

4.	**INSTRUMENTAL ACTIVITIES OF DAILY LIVING** (In last 24 hours of 3-day assessment period)	*CAPACITY TO PERFORM INSTRUMENTAL ACTIVITIES OF DAILY LIVING—If the patient had been required to carry out the activity as independently as possible, SPECULATE AND CODE for what you consider the patient's capacity (ability) would have been to perform the activity* 0. *INDEPENDENT*—Would have required no help, setup, or supervision 1. *SETUP HELP ONLY*—Would have only needed article/device placed within reach; patient could have performed on own 2. *SUPERVISION*—Would have required oversight, encouragement, or cuing 3. *LIMITED ASSISTANCE*—On some occasion(s) could have done on own, other times would have required help 4. *MODERATE ASSISTANCE*—While patient could have been involved, would have required presence of helper at all times, and would have performed 50% or more of subtasks on own 5. *MAXIMAL ASSISTANCE*—While patient could have been involved, would have required presence of helper at all times, and would have performed less than 50% of subtask on own 6. *TOTAL DEPENDENCE*—Full performance by other of activity would have been required at all times (no residual capacity exists)
		a. **MEAL PREPARATION**—How meals are prepared (e.g., planning meals, assembling ingredients, cooking, setting out food and utensils)
		b. **MANAGING FINANCES**—Paying for newspaper or TV service, using cafeteria
		c. **PHONE USE**—How telephone calls are made or received (using assistive devices such as large numbers or voice amplification as needed)
		d. **MEDICATION MANAGEMENT**—How medications are managed (e.g., remembering to take medicines, opening bottles, taking correct drug dosages, filling syringe, giving injections, applying ointments)
		e. **STAIRS**—How moves up and down stairs (e.g., one flight of steps, using hand rails as needed)
		f. **CAR TRANSFER**—How moves in and out of a car, opening door, sitting, and rising from seat
5.	**IADL AREAS NOW MORE LIMITED**	*NUMBER of IADL areas (from E4 above) in which patient is now more limited in self performance than was prior to precipitating event (item A7a)* 0. None 1. Some (1-3 IADL areas) 2. All or most (4-6 IADL areas)
6.	**DEVICES/ AIDS**	*(CHECK all that apply)* LOCOMOTION DEVICES Cane/Crutch a. Walker b. Wheelchair/scooter c. OTHER AIDS Adaptive eating utensil d. Mechanical lift e. Orthotics/prosthesis f. Postural support (while sitting) g. Slide board h. Other adaptive devices i. *NONE OF ABOVE* j.
7.	**STAMINA**	CODE: 0. None 1. Less than 1 hour per day 2. 1 to 2 hours per day 3. 2+ to 3 hours per day 4. 3+ to 4 hours per day 5. More than 4 hours per day A Last 24 hours — B Prior *Hours of physical activity at two points in time —examples of physical activity include exercise, therapy sessions, walking, house cleaning, grocery shopping (A) in last 24 hours and (B) immediately prior to precipitating event (item A7a)*
8.	**WALKING AND STAIR CLIMBING** (Note time frame)	a. Farthest distance walked without sitting down. Code for most consistent in last 24 hours 0. 150+ feet 1. 51-149 feet 2. 25-50 feet 3. 10-24 feet 4. Less than 10 feet 8. *ACTIVITY DID NOT OCCUR* b. Walking support provided. Code for most consistent in last 24 hours 0. None 1. Setup help only 2. Supervision 3. One person physical assistance 4. Two+ person physical assistance 8. *ACTIVITY DID NOT OCCUR*

8.	**WALKING AND STAIR CLIMBING** (Note time frame) (cont)	c. Stair climbing—Code for most dependent episode when activity attempted in last 24 hours [full flight = 12-14 stairs; partial flight = 4-6 stairs] *There are only three possible codes when patient does 4-6 stairs only (code = 2,5,6)* 0. *COMPLETE INDEPENDENCE*—Up and down full flight of stairs with NEITHER physical help NOR support device 1. *MODIFIED INDEPENDENCE*—Up and down full flight of stairs with NO *physical help and any of following:* *Use of one or more supportive devices* [support devices includes the required use of hand rails] OR Use of an appliance (i.e., cane, brace, prosthesis, walker) OR Excessive time to climb the stairs (3 or more times normal) 2. *SUPERVISION*—Up/down full flight of stairs with supervision or cuing -OR- up and down partial flight with NO physical help (device may or may not be used) 3. *MINIMAL ASSISTANCE*—Contact guard/steadying/assistance to go up/down full flight of stairs 4. *MODERATE ASSISTANCE*—Some weight bearing help to go up/down full flight of stairs, patient does most on own 5. *MAXIMAL ASSISTANCE*—Patient had limited involvement in going up/down full flight of stairs, staff perform more than 50% of effort -OR- receives physical help on partial flight of stairs 6. *TOTAL ASSISTANCE*—Did not go up/down 4-6 stairs (OR has 2-person assist) OR totally dependent 8. *ACTIVITY DID NOT OCCUR IN LAST 24 HOURS*
9.	**BALANCE RELATED TO TRANSITIONS** (Code for most dependent in last 24 hours)	*CODE:* 0. Smooth transition; stabilizes without assistance 1. Transition not smooth; but able to stabilize without assistance 2. Transition not smooth; unable to stabilize without assistance 8. *ACTIVITY DID NOT OCCUR* a. Moved from seated to standing position b. Turned around and faced the opposite direction
10.	**NEURO-MUSCULO-SKELETAL IMPAIRMENT** (Code for most limited in last 24 hours)	A. (*CODE for joint mobility/range of motion at joints listed (code for most impaired joint)*) 0. No impairment 1. Impairment on one side 2. Impairment on both sides B. (*CODE for voluntary motor control (active, coordinated, purposeful movement - code for most dependent joint)*) 0. No loss 1. Partial loss one side 2. Partial loss both sides 3. Full loss one side 4. Full loss both sides C. (*CODE for intact touch/sensation on extremity, i.e., tactile sense (use same codes as E10B)*) A B C a. Leg (hip, knee, ankle, foot) b. Arm (shoulder, elbow, wrist, hand) c. Trunk and neck

SECTION F. BLADDER/BOWEL MANAGEMENT

1.	**BLADDER CONTINENCE** (Code for last 7-14 days)	a. *Control of urinary bladder function (if dribbles, volume insufficient to soak through undergarments)* 0. *CONTINENT*—Complete control; DOES NOT USE any type of catheter or other urinary collection device 1. *CONTINENT WITH CATHETER*—Complete control with use of any type of catheter or urinary collection device that does not leak urine 2. *BIWEEKLY INCONTINENCE*—Incontinent episodes less than once a week (i.e., once in last 2 weeks) 3. *WEEKLY INCONTINENCE*—Incontinent episodes once a week 4. *OCCASIONALLY INCONTINENT*—Incontinent episodes 2 or more times a week but not daily 5. *FREQUENTLY INCONTINENT*—Tended to be incontinent daily, but some control present (i.e., on day shift) 6. *INCONTINENT*—Has inadequate control of bladder, multiple daily episodes all or almost all of time 8. *DID NOT OCCUR*—No urine output from bladder b. *Is now more impaired in bladder continence than was prior to precipitating event (item A7a)* 0. No or unsure 1. Yes, more impaired today
2.	**BLADDER APPLIANCE** (Code for last 24 hours)	*CODE:* 0. No 1. Yes a. External catheter b. Indwelling catheter c. Intermittent catheterization d. Medications for control e. Ostomy f. Pads, briefs g. Urinal, bedpan
3.	**BLADDER APPLIANCE SUPPORT** (Code for last 24 hours)	0. No appliances (in item F2) 1. Use of appliances, did not require help or supervision 2. Use of appliances, required supervision or setup 3. Minimal contact assistance (light touch only) 4. Moderate assistance; patient able to do 50% or more of sub-tasks involved in using equipment 5. Maximal assistance; patient able to do 25-49% of all sub-tasks involved in using the equipment 6. Total dependence

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4.	**BOWEL CONTINENCE** (Code for last 7-14 days)	0. *CONTINENT*— Complete control, does not use ostomy device 1. *CONTINENT WITH OSTOMY*—Complete control with use of an ostomy device that does not leak stool 2. *BIWEEKLY INCONTINENCE*—Incontinent episodes less than once a week (i.e., once in last 2 weeks) 3. *WEEKLY INCONTINENCE*—Incontinent episodes once a week 4. *OCCASIONALLY INCONTINENT*—2-3 times a week 5. *FREQUENTLY INCONTINENT*—4+ times a week but not all of time 6. *INCONTINENT*—All of time 8. *DID NOT OCCUR*— No bowel movement during the entire 14 day assessment period
5.	**BOWEL APPLIANCES** (Code for last 3 days)	*CODE:* 0. No 1. Yes a. Bedpan b. Enema c. Medication for control d. Ostomy
6.	**BOWEL APPLIANCE SUPPORT** (Code for last 24 hours)	0. No appliances (in item F5) 1. Use of appliances, did not require help or supervision 2. Use of appliances, required supervision or setup 3. Minimal contact assistance (light touch only) 4. Moderate assistance; patient able to do 50% or more of tasks 5. Maximal assistance; patient able to do 25-49% of all sub-tasks 6. Total dependence

SECTION G. DIAGNOSES

1.	**IMPAIRMENT GROUP**	*Refer to manual for coding of impairment group* __________ ☐☐☐☐.☐☐☐
2.	**OTHER DISEASES**	*CODE:* *[Blank]* Not present 1. Other primary diagnosis/diagnoses for current stay (not primary impairment) 2. Diagnosis present, receiving active treatment 3. Diagnosis present, monitored but no active treatment [If no disease in list, check G2aq *None of Above* item]
		ENDOCRINE a. Diabetes mellitus (250.00) b. Hypothyroidism (244.9) HEART/CIRCULATION c. Cardiac arrhythmias (427.9) d. Congestive heart failure (428.0) e. Coronary artery disease (746.85) f. Deep vein thrombosis (451.1) g. Hypertension (401.9) h. Hypotension (458.9) i. Peripheral vascular disease (arteries) (443.9) j. Post acute MI (within 30 days) (410.92) k. Post heart surgery (e.g., valve, CABG) (V45.81) l. Pulmonary embolism (415.1) m. Pulmonary failure (518.8) n. Other cardiovascular disease (429.2) MUSCULOSKELETAL o. Fracture - hip (V43.64) p. Fracture - lower extremity (812.40) q. Fracture(s) - other (829.0) r. Osteoarthritis (715.90) s. Osteoporosis (733.00) t. Rheumatoid arthritis (714.0) NEUROLOGICAL u. Alzheimer's disease (331.0)
		v. Aphasia or Apraxia (784.3,784.69) w. Cerebral palsy (343.9) x. Dementia other than Alzheimer's disease (290.0) y. Hemiplegia/hemiparesis — left side (342.90) z. Hemiplegia/hemiparesis — right side (342.90) aa. Multiple sclerosis (340) ab. Parkinson's disease (332.0) ac. Quadriplegia (344.00 - 344.09) ad. Seizure disorder (780.39) ae. Spinal cord dysfunction—non-traumatic (336.9) af. Spinal cord dysfunction—traumatic (952.9) ag. Stroke (CVA) (436) PSYCHIATRIC/MOOD ah. Anxiety disorder (300.00) ai. Depression (311) aj. Other psychiatric disorder (300.9) PULMONARY ak. Asthma (493.9) al. COPD (496) am. Emphysema (492.8) OTHER an. Cancer (199.1) ao. Post surgery - non-orthopedic, non-cardiac ([illegible]) ap. Renal failure (586) aq. *NONE OF ABOVE*
3.	**INFECTIONS**	*CODE:* *[Blank]* Not present 1. Other primary diagnosis/diagnoses for current stay (not primary impairment) 2. Diagnosis present, receiving active treatment 3. Diagnosis present, monitored but no active treatment *(If no infections, check NONE OF ABOVE item G3l)*
		a. Antibiotic resistant infection (e.g., methicillin resistant staph - (041.11), VRE - (041.9)) b. Cellulitis (682.9) c. Hepatitis (070.9) d. HIV/AIDS (042) e. Pneumonia (486) f. Osteomyelitis (730.2) g. Septicemia (038.9) h. Staphylococcus infection (other than item "G3a") (041.10) i. Tuberculosis (active) (011.90) j. Urinary tract infection (599.0) k. Wound infection (958.3, 998.59, 136.9) l. *NONE OF ABOVE*

4.	**OTHER CURRENT OR MORE DETAILED DIAGNOSES AND ICD-9-CM CODES** *(Any new diagnosis at reassessment or discharge is to be recorded here)*	A. *CODE ICD-9-CM diagnosis code* B. *CODE* 1. Other primary diagnosis/diagnoses for current stay (not primary impairment) 2. Diagnosis present, receiving active treatment 3. Diagnosis present, monitored but no active treatment A. ICD-9-CM — B a. __________ ☐☐☐☐.☐☐ b. __________ ☐☐☐☐.☐☐ c. __________ ☐☐☐☐.☐☐ d. __________ ☐☐☐☐.☐☐ e. __________ ☐☐☐☐.☐☐
5.	**COMPLICATIONS/ COMORBIDITIES**	*Code the ICD-9-CM diagnostic code. Refer to manual to code comorbidities.* DIAGNOSIS — ICD-9-CM a. __________ ☐☐☐☐.☐☐ b. __________ ☐☐☐☐.☐☐ c. __________ ☐☐☐☐.☐☐ d. __________ ☐☐☐☐.☐☐

SECTION H. MEDICAL COMPLEXITIES

1.	**VITAL SIGNS**	*Vital signs (pulse, BP, respiratory rate, temperature) Score for the most abnormal vital sign* 0. All vital signs were normal/standard (i.e., when compared to standard values) 1. Vital signs abnormal, but not on all days during assessment period 2. Vital signs consistently abnormal (on all days)
2.	**PROBLEM CONDITIONS** (In last 3 days)	*(CHECK all problems present in the last 3 days unless otherwise noted)* FALLS/BALANCE Dizziness/vertigo/light-headedness a. Fell (since admission or last assessment) b. Fell in 180 days prior to admission c. CARDIAC/PULMONARY Advanced cardiac failure (ejection fraction < 25%) d. Chest pain/pressure on exertion e. Chest pain/pressure at rest f. Edema - generalized g. Edema - localized h. Edema - pitting i. Impaired aerobic capacity/endurance (tires easily, poor task endurance) j. FLUID STATUS Constipation k. Dehydrated; output exceeds input; or BUN/Creat ratio > 25 l. Diarrhea m. Internal bleeding n. Recurrent nausea/vomiting o. Refusal/inability to take liquids orally p. OTHER Delusions/hallucinations q. Fever r. Hemi-neglect (inattention to one side) s. Cachexia (severe malnutrition) t. Morbid obesity u. End-stage disease, life expectancy of 6 or fewer months v. *NONE OF ABOVE* w.
3.	**RESPIRATORY CONDITIONS** (In last 3 days)	*(CHECK all problems present in the last 3 days)* Inability to lie flat due to shortness of breath a. Shortness of breath with exertion (e.g., taking a bath) b. Shortness of breath at rest c. Oxygen saturation < 90% d. Difficulty coughing and clearing airway secretions e. Recurrent aspiration f. Recurrent respiratory infection g. *NONE OF ABOVE* h.
4.	**PRESSURE ULCERS** (Code for last 24 hours)	a. *Highest current pressure ulcer stage* 0. No pressure ulcer (if no, skip to H5) 1. Any area of persistent skin redness (Stage 1) 2. Partial loss of skin layers (Stage 2) 3. Deep craters in the skin (Stage 3) 4. Breaks in skin exposing muscle or bone (Stage 4) 5. Not stageable (necrotic eschar predominant; no prior staging available) b. *Number of current pressure ulcers* SELECT THE CURRENT LARGEST PRESSURE ULCER TO CODE THE FOLLOWING—calculate three components (c through e) and code total score in f c. Length multiplied by width (open wound surface area) 0. 0 cm^2 1. <0.3 cm^2 2. 0.3–0.6 cm^2 3. 0.7–1.0 cm^2 4. 1.1–2.0 cm^2 5. 2.1–3.0 cm^2 6. 3.1–4.0 cm^2 7. 4.1–8.0 cm^2 8. 8.1–12.0 cm^2 9. 12.1–24.0 cm^2 10. > 24 cm^2 d. Exudate amount 0. None 1. Light 2. Moderate 3. Heavy

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4.	PRESSURE ULCERS (Code for last 24 hours) (cont)	e. Tissue type 0. Closed/resurfaced: The wound is completely covered with epithelium (new skin) 1. Epithelial tissue: For superficial ulcers, new pink or shiny tissue (skin) that grows in from the edges or as islands on the ulcer surface 2. Granulation tissue: Pink or beefy red tissue with a shiny, moist, granular appearance 3. Slough: Yellow or white tissue that adheres to the ulcer bed in strings or thick clumps or is mucinous 4. Necrotic tissue (eschar): Black, brown, or tan tissue that adheres firmly to the wound bed or ulcer edges	
		f. TOTAL PUSH SCORE (sum of above three items—c, d, and e)	
5.	OTHER SKIN INTEGRITY	a. Number of stasis ulcers in last 24 hours	
		b. Number of surgical wounds in last 24 hours	
		c. Ulcer resolved or healed in last 90 days 0. No or never had ulcer 1. Yes	
6.	OTHER SKIN PROBLEMS OR LESIONS PRESENT (Code for last 24 hours)	(CHECK all that apply)	
		Burns (second or third degree)	a.
		Open lesions other than rashes, cuts (e.g., cancer lesions, ulcers)	b.
		Rashes (e.g., intertrigo, eczema, drug rash, heat rash, herpes zoster)	c.
		Skin tears or cuts (other than surgery)	d.
		NONE OF ABOVE	e.

SECTION I. PAIN STATUS

1.	PAIN SYMPTOMS (In last 3 days)	(CODE the highest level of pain present in the last 3 days, even with treatments [Note - At minimum, patient must be asked about frequency and intensity])	
		a. FREQUENCY with which patient complains or shows evidence of pain 0. No pain 2. Daily - single shift 1. Less than daily 3. Daily - multiple shifts	
		b. INTENSITY of pain 0. No pain 2. Moderate 4. Times when pain is horrible 1. Mild 3. Severe or excruciating	
		c. Current pain status as compared to pain status prior to precipitating event (item A7a) 0. Same 1. Better 2. Worse 8. UNKNOWN	

SECTION J. ORAL/NUTRITIONAL STATUS (In last 3 days)

1.	ORAL PROBLEMS	CODE: 0. No 1. Yes	
		a. Chewing problem (e.g., poor mastication, immobile jaw, surgical resection, decreased sensation/motor control)	
		b. Dental problems (e.g., ill-fitting or lack of dentures, painful tooth, poor dental hygiene)	
2.	SWALLOWING	0. NORMAL—Safe and efficient swallowing of all diet consistencies 1. REQUIRES DIET MODIFICATION TO SWALLOW SOLID FOODS (mechanical diet or able to ingest specific foods only) 2. REQUIRES MODIFICATION TO SWALLOW SOLID FOODS AND LIQUIDS (puree, thickened liquids) 3. COMBINED ORAL AND TUBE FEEDING 4. NO ORAL INTAKE (NPO)	
3.	HEIGHT AND WEIGHT	Record (a.) height in inches and (b.) weight in pounds. Base weight on most recent measure in last 3 days; measure weight consistently in accordance with standard facility practice—e.g., in a.m. after voiding, before meal, with shoes off, and in nightclothes a. HT (inches) b. WT (pounds)	
4.	WEIGHT CHANGE	a. Weight loss—5 % or more in last 30 days 0. No or unknown 1. Yes, planned loss 2. Yes, unplanned loss	
		b. Weight gain—5 % or more in last 30 days 0. No or unknown 1. Yes, planned gain 2. Yes, unplanned gain	
5.	PARENTERAL OR ENTERAL INTAKE	a. The proportion of total calories the patient received through parenteral or tube feedings in the last 3 days 0. None 3. 51% to 75% 1. 1% to 25% 4. 76% to 100% 2. 26% to 50%	
		b. The average fluid intake per day by IV or tube in last 3 days 0. None 3. 1001 to 1500 cc/day 1. to 500 cc/day 4. 1501 to 2000 cc/day 2. 501 to 1000 cc/day 5. 2001 or more cc/day	

SECTION K. PROCEDURES/SERVICES (In last 3 days)

1.	CLINICAL VISITS AND ORDERS	Services in last 3 days	
		a. Total number of physician visits (by attending, consultant, etc.) in which patient was examined and MD notes written	
		b. Number of times physician or nurse practitioner called to bedside for emergency—e.g., cardiorespiratory arrest, hemorrhaging, to evaluate change in condition	
		c. Number of nurse practitioner visits in which patient examined and notes written	
		d. Number of physician assistant visits in which patient examined and notes written	
		e. Number of new or changed orders	

2. TREATMENTS AND SERVICES

A. Over the last 3 days, code for treatment frequency [either daily (code 3) or less than daily (code 2) or ordered, not yet implemented (code 1)] (If no treatments provided or ordered, check NONE OF ABOVE item K2ai)

[Blank] Did not occur, not ordered 2. Less than daily
1. Ordered, not yet implemented 3. Daily

B. RECORD AT DISCHARGE ASSESSMENT ONLY (A3 = 5), record whether patient will receive service after discharge
[Blank] No 1. Yes

	A	B		A	B
MEDICATION RELATED			r. Drains (cutaneous drains and other drains)		
a. Diabetic management			s. Dialysis		
b. Injections			t. Enteral feeding tube		
c. IV antibiotics/meds			u. IV line - central		
SKIN TREATMENT			v. IV line - peripheral		
d. Application of dressings			w. NG feeding tube		
e. Application of ointments, topical medications			x. Oxygen		
f. Debridement (chemical or surgical)			y. Pain management - other than drugs		
g. Nutrition/hydration intervention to manage skin problems			z. Suctioning - oral/nasopharyngeal		
h. Pressure relieving bed/chair			aa. Suctioning - tracheal		
i. Turning and repositioning			ab. Tracheostomy care		
j. Ulcer care			ac. Transfusion(s)		
k. Wound care - surgical			ad. Ventilator or respirator		
MANAGEMENT OF HEALTH PROBLEMS			ae. Ventilator weaning		
l. Bladder training			OTHER		
m. Scheduled toileting			af. Family training in assistance to patient in health measures or skills required after return to community		
n. Bowel program			ag. Patient training in health maintenance or skills required after return to community		
o. Cardiac monitoring/rehabilitation			ah. Design and implementation of discharge plan		
p. Cast(s)			ai. NONE OF ABOVE	ai.	ai.
q. Continuous or bi-level positive airway pressure (CPAP or BiPAP)					

3. NURSING PRACTICE OR RESTORATIVE CARE

Record the NUMBER OF DAYS each of the following restorative or practice techniques was provided to the patient for more than or equal to a total of at least 15 minutes per day in the last 3 days (Enter 0 if none or less than 15 min. daily)

a. Range of motion (passive)		f. Transfer	
b. Range of motion (active)		g. Walking	
c. Splint/orthotic assistance		h. Dressing or grooming	
TRAINING AND SKILL PRACTICE IN		i. Eating or swallowing	
d. Bed mobility		j. Amputation/prosthesis care	
e. Bladder/bowel		k. Communication	

4. THERAPY SERVICES (By qualified therapist or therapy assistant under direction of therapist)

Over the last 3 days, record the number of days and total minutes each of the following therapies was ordered [A], administered [B] (for at least 15 minutes a day) (Enter 0 if none or less than 15 min. daily) [Note—count only post admission therapies]

A. # of days treatment ordered during the last 3 days [MAX=3]
B. # of days administered for 15 minutes or more [MAX=3]
C. total # of minutes provided in last 3 days (or ordered if days administered = 0 and days ordered > 0)

D. RECORD AT DISCHARGE ASSESSMENT (A3 = 5), record whether patient will receive service after discharge
0. No 1. Yes

	DAYS Ordered	DAYS Administered	Minutes Delivered	Post Discharge
	A	B	C	D
a. Speech - language pathology and audiology services				
b. Occupational therapy				
c. Physical therapy				
d. Respiratory therapy				
e. Psychological therapy (by any licensed mental health professional)				
f. Therapeutic recreation				

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5.	DEVICES AND RESTRAINTS	(USE THE FOLLOWING CODES FOR LAST 3 DAYS) 0. Not used 3. Daily use - days only 1. Used less than daily 4. Night and day, but not constant 2. Daily use - night only 5. Constant use for full 24 hours (with periodic release)	
		a. Full bed rails on BOTH open sides of bed	
		b. Other types of side rails used (e.g., half rail, one side)	
		c. Trunk restraint	
		d. Chair prevents rising	

SECTION L. FUNCTIONAL PROGNOSIS

1. FUNCTIONAL IMPROVEMENT GOALS (Code for last 24 hours)

For all but discharge assessment—code for clinical staff expectations of patient goals in the areas listed below by time of discharge.

For discharge assessment, code for staff expectation of patient functional goal in the post discharge period.

0. No goal exists
1. Goal-improvement, full recovery to premorbid status anticipated
2. Goal-improvement, partial recovery anticipated
3. Goal-improvement, recovery uncertain
4. Goal-maintenance, prevention of further decline

ADLs		e. Toileting	
a. Bed mobility/transfer		OTHER	
b. Dressing		f. Medication management	
c. Eating		g. Pain control	
d. Locomotion		h. Managing finances	

2.	ATTRIBUTES RELEVANT TO REHABILITATION	CODE: 0. No 1. Yes 8. UNKNOWN	
		a. Patient believes he/she is capable of increased independence	
		b. Patient unable to recognize new limitations	
		c. Patient fails to initiate or to continue to carry out ADLs (once initiated) for which he/she has some demonstrated capability	
3.	CHANGE OVER LAST 3 DAYS	CODE: 0. Improved 1. About the same as at admission (or last assessment if this is not an admission assessment) 2. Worse	
		a. Change in overall functional status over last 3 days	
		b. Change in overall health status over last 3 days	
4.	ESTIMATED LENGTH OF STAY FROM DATE OF ADMISSION	How long patient is expected to stay in current setting prior to return to community (count from date of admission in item A2, including that day) 0. 1-6 days 4. 91 or more days 1. 7-13 days 5. Discharge to community not expected 2. 14-30 days 6. Expected discharge will be to another health 3. 31-90 days care setting - prior to return to community	

SECTION M. RESOURCES FOR DISCHARGE

1.	AVAILABLE SOCIAL SUPPORTS (Family/close friends)	CODE 0. No 1. Possibly yes 2. Definitely yes Presence of one or more family members (or close friends) who are willing and able to provide support after discharge	
		a. Emotional support	
		b. Intermittent physical support with ADLs or IADLs — less than daily	
		c. Intermittent physical support with ADLs or IADLs — daily	
		d. Full time physical support (as needed) with ADLs or IADLs	
		e. All or most of necessary transportation	
2.	CAREGIVER STATUS	CODE 0. No 1. Yes	
		a. Family (or close friend) overwhelmed by patient's illness	
		b. Family relationship(s) require unusual amounts of staff time	

3. LIVING ARRANGEMENT

A. CODE for permanent living arrangement prior to admission
B. CODE for permanent arrangement expected at discharge or actual discharge site if this is a discharge assessment (A3=5)
C. CODE for initial arrangement expected at discharge—if different than column M3B (otherwise, leave blank) or actual discharge site if this is a discharge assessment (A3=5)

	A Prior to adm	B Perm disch	C Temp disch
a. Type of residence 0. UNKNOWN 1. Private home 2. Private apartment 3. Rented room 4. Board and care/assisted living/group home 5. Homeless (with or without shelter) 6. Long-term care facility (nursing home) 7. Post acute care SNF 8. Hospice 9. Acute unit/hospital 10. Other			
b. Live(d) with 0. UNKNOWN 1. Alone 2. Spouse only 3. Spouse and other(s) 4. Child (not spouse) 5. Other relative(s) (not spouse or children) 6. Friends 7. Group setting 8. Personal care attendant 9. Other			

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Appendix BBB—Item-by-Item Guide to the Minimum Data Set for Post Acute Care (MDS–PAC)

1.1 Required Assessments and Associated Forms

The following rules apply to HCFA's MDS–PAC to be used by rehabilitation hospitals and rehabilitation units in acute care hospitals.

The content of the MDS–PAC patient assessment instrument is recorded on the following required forms:

The Minimum Data Set-Post Acute (MDS–PAC) is designed to be used for admission assessments, reassessments, and discharge assessments. These forms contain Section AA (Identification Information) through M (Resources for Discharge). There are three separate forms which are entitled "Basic Assessment Tracking Form", "Interrupted Stay Tracking Form", and "Full Assessment Form". Whenever an item is on all three forms, there will be no distinguishing notation. However, if an item(s) is (are) to be asked only on a particular form, there will be a statement in the "coding" section.

1.2 Overview to the Item-by-Item Guide to MDS–PAC

This Manual is to be used in conjunction with the MDS–PAC forms.

It provides information to facilitate completion of an accurate and uniform patient assessment. Item-by-item instructions focus on:

- The intent of items included on the MDS–PAC.
- Supplemental definitions and instructions for completing MDS–PAC items.
- Reminders of which MDS–PAC items require a different observation and information about the patient other than the standard 3-day observation period.
- Sources of information to be consulted in completing specific MDS–PAC items.
- Examples to illustrate MDS–PAC coding responses.

1.3 How Can This Manual Be Used?

Use this manual alongside the MDS–PAC forms, keeping the forms in front of you at all times. The MDS–PAC form itself contains a wealth of information. Learn to rely on it as a resource for many of the definitions and procedural instructions necessary for proper assessment. The amplifying information in this manual should facilitate successful use of the MDS–PAC forms.

Coding Conventions

- Dates—Where recording month, day, and year, enter two digits for the month and the day, but four digits for the year. For example, the third day of January in the year 1999 is recorded as:

0 1	0 3	1 9 9 9
Month	Day	Year

- The standard no-information code is either a "circled" dash or an "NA". This code indicates that all available sources of information have been exhausted; that is the information is *not available*, and despite exhaustive probing, it remains unavailable. The use of NA code is very limited. For example, "NA" cannot be used in Section E. If an activity has not occurred in the last 3 days, a code of "8" must be used.
- NONE OF THE ABOVE is a response item to several items (for example., G3, Infections, box l). Check this item where none of the responses apply; it should not be used to signify lack of information about the item.
- "Skip" Patterns—There are a few instances where scoring on one item will govern how scoring is completed for one or more additional items. The instructions direct the assessor to "skip" over the next item (or several items) and go on to another (for example, B1, Comatose, directs the assessor to "skip" to Section E. if B1 is answered "1"—Yes". The intervening items from B2–D3 would not be scored. If B1 was recorded as "0"—"No", then the assessor would continue with item B2.).

A useful technique for visually checking the proper use of the "skip" pattern instructions is to circle the "skip" instructions before going to the next appropriate item.

- The "8" code is for use in Section E., Functional Status. The use of this code is limited to situations where the ADL activity was not performed and therefore an objective assessment of the resident's performance is not possible. Its primary use is with bed-bound residents who neither transferred from bed nor moved between locations over the entire 3 day period of observation.

The items from the MDS–PAC forms are presented in a sequential basis in this manual. Each item is accompanied by a statement of intent (rationale for assessment), definitions, assessment processes, and coding instructions. Many items are accompanied by patient examples to illustrate coding concepts.

The chart that follows summarizes the recommended approach to assist you in becoming familiar with the MDS–PAC. The initial time investment in this multi-step review process will have a major payback on the quality of your patient assessments using the MDS–PAC.

Carefully review these item-by-item instructions. The time-frame of the assessment, the processes, the coding options and items have been developed to reflect the needs of post-acute patients.

Recommended Approach for Becoming Familiar With the MDS–PAC

(A) First, review the MDS–PAC forms.

- Notice how sections are organized and where information is to be recorded.
- Work through one section at a time.
- Examine item definitions and response categories.
- Review procedural instructions, time frames, and general coding conventions. Note that the assessment reflects activities over the last 3 days unless otherwise indicated.
- Are the definitions and instructions clear? Do they differ from current practice at your facility? What areas require further clarification?
- Complete the MDS–PAC assessment for a patient at your facility. Draw only on your knowledge of this individual. Enter the appropriate codes on the MDS–PAC form. Where your review could benefit from additional information, make note of that fact. Where might you secure additional information?

(B) Complete the initial pass through this manual.

- Go on to this step only after first reviewing the MDS–PAC form and trying to complete as many items as possible for a patient known to you.
- As you read this manual, clarify questions that arose as you used the MDS–PAC for the first time to assess a patient. Note sections of this manual that help to clarify coding and procedural questions you may have had.
- Once again, read the instructions that apply to a single section of the MDS–PAC. Make sure you understand this information before going on to another section. Review the test case you completed. Would you still code it the same way? It will take time to go through all this material. Do it slowly. Do not rush. Work through the Manual one section at a time.
- Are you surprised by any MDS–PAC definitions, instructions, or case examples? For example, do you understand how to code ADLs? Or Mood?
- Do any definitions or instructions differ from what you thought you learned when you reviewed the MDS–PAC form?
- Would you now complete your initial case differently?
- Are there definitions or instructions that differ from current practice patterns in your facility?
- Make notations next to any section(s) of this Manual you have questions about.

In a second pass through this manual, focus on issues that were more difficult or problematic in the first pass.

- Further familiarize yourself with definitions and procedures that differ from current practice patterns or seem to raise questions.
- Reread each of the case examples presented throughout this chapter.
- (D) The third pass through this manual will provide you with another opportunity to review the material in this manual.
- (E) Future use of information in this manual:

- Keep this manual at hand during the assessment process.
- Where necessary, review the intent of each item in question.
- This manual is a source of information. Use it to increase the accuracy of your assessments.

1.4 What Is the Standard Format Used in This Manual?

To facilitate completion of the MDS–PAC assessment and to ensure consistent interpretation of items, this manual presents the following types of information for many (but not all) items:

Intent: Reason(s) for including the item (or set of items) in the MDS–PAC, including discussions of how the information will be used by clinical staff to identify patient problems and develop the plan of care.

Definition: Explanation of key terms.

Process: Sources of information and methods for determining the correct response for an item. Sources include:

- Patient interview, observation, and examination.
- Clinical records, facility records, transmittal records (at admission), physician orders, laboratory data, medication records, treatment sheets, flow sheets (for example, vital signs, weights, intake and output), care plans, and any similar documents in the facility record system.
- Discussion with multidisciplinary facility staff—licensed and nonlicensed staff caregivers.
- Discussion with the patient's family, particularly during the admission assessment period, when available.
- Attending physician.

Coding: Proper method of recording each response, with explanations of individual response categories.

1.5 Item-by-Item Instructions for the MDS–PAC Forms

The item-by-item instructions follow the sequence of items on the HCFA MDS–PAC. This will facilitate your use of this guide as a reference tool.

Basic Assessment Tracking Form

Section AA. Identification Information

Intent: This section provides the key information to uniquely identify each patient as well as the reason for assessment.

1. Legal Name of Patient

Definition: Legal name in the clinical record. This must be the same as the patient's Medicare record legal name.

Coding: Use printed letters. Enter in the following order:

a. First Name.
b. Middle initial (leave blank if no middle name).
c. Last/Family Name.
d. Suffix—meaning Jr., Sr., III, etc.

2. Admission Date

a. Date the stay began.

Intent and Definition: For the current precipitating event/problem, this is the date when the patient first became a rehabilitation patient in your facility.

It is possible that a patient in a rehabilitative phase of care may be discharged from the rehabilitation facility and then admitted to an acute care hospital or unit. Admissions and "bed-hold" policies vary in different settings. A rehabilitation facility may choose to follow a facility specific policy and "close" the medical record of a patient that has an overnight stay in an acute care hospital, or to keep the chart "open" during this period of time. However, to be in compliance with Medicare regulations, if a patient has an overnight stay in an acute care hospital or unit, then for Medicare payment purposes the rehabilitation facility must discharge the patient.

For the purpose of the MDS–PAC, enter the date the person was first admitted to receive rehabilitative care for the current precipitating event/problem. This admission date should correspond with the admission date used by the billing office to initially begin this stay.

Process: Review the clinical record. If it is unclear on what date the stay for the current precipitating event/problem began, clarify with the admissions/business or medical record departments.

Coding: For a one digit month or day, place a zero in the box. For example: July 1, 2000, should be entered as follows:

0 7	0 1	2 0 0 0
Month	Day	Year

b. Date Medicare-covered Part A stay began.

Intent and Definition: For the current precipitating event/problem, this is the date of the current stay when the patient first started receiving Medicare-covered Part-A services in your facility. Complete this date only if this date is different than the date in item AA2A "Date the stay began."

It is possible that a patient in a rehabilitative phase of care may be discharged from the rehabilitation facility and then admitted to an acute care hospital or unit. Admissions and "bed-hold" policies vary in different settings. A rehabilitation facility may choose to follow a facility specific policy and "close" the medical record of a patient that has an overnight stay in an acute care hospital, or to keep the chart "open" during this period of time. However, to be in compliance with Medicare regulations, if a patient has an overnight stay in an acute care hospital or unit, then for Medicare payment purposes the rehabilitation facility must discharge the patient.

For the purpose of the MDS–PAC, enter the date the patient first started to be furnished Medicare-covered Part A services in your rehabilitation facility for the current precipitating event/problem. This date should correspond with the date used by the billing office to initially start billing Medicare for this stay.

Process: Review the clinical record. If it is unclear what date the person first started being furnished Medicare-covered Part A services for the current stay and for the current precipitating event/problem, clarify with the admissions/business or medical record departments.

Coding: For a one digit month or day, place a zero in the first box. For example: July 1, 2000, should be entered as follows:

0 7	0 1	2 0 0 0
Month	Day	Year

3. Reason for Assessment

Intent and Definition: To document the key reason for completing the MDS–PAC assessment.

Process: Calculate the length of time the patient has been receiving Medicare-covered Part A services during the current stay. Then determine the type of assessment for which the data must be collected and recorded on the MDS–PAC.

Coding: Code for appropriate assessment.

1. Admission assessment (covers first 3 days)—Completed on day 4.
2. Reassessment—Completed on day 11.
3. Reassessment—Completed on day 31.
4. Reassessment—Completed on day 61.
5. Discharge assessment—After the assessment reference date for the discharge MDS–PAC assessment is determined, the completion date for the discharge MDS–PAC assessment must be set. The completion date

for the discharge MDS–PAC assessment must be the fifth calendar day following the discharge MDS–PAC assessment reference date. To count the 5 calendar days following the discharge MDS–PAC assessment reference date count the discharge MDS–PAC assessment reference date as day 1 of the 5 calendar days. For example, if the MDS–PAC assessment reference date is May 1, 2000, then the MDS–PAC completion date would be May 5, 2000.

The following tables illustrate the relationship between the type of MDS–PAC assessment (the Day 4, Day 11, Day 30, Day 60, and discharge assessment), and the observation time period, the assessment reference date, and the MDS–PAC completion date. In addition, for each type of MDS–PAC assessment the tables depict the associated encoding date and by when the data for that type of assessment must be transmitted.

TABLE 1.—MDS–PAC ASSESSMENT SCHEDULE AND ASSOCIATED DATES

MDS–PAC assessment type	Hospitalization time period and observation time period	MDS–PAC assessment reference date	MDS–PAC must be completed by:	Hospitalization episode covered by this assessment:	MDS–PAC must be encoded by:	MDS–PAC must be transmitted by:
Day 4	First 3 Days	Day 3	Day 4	Entire Hospitalization Time Period.	Day 10	Day 16.
Day 11	Days 8 to 10	Day 10	Day 11		Day 17	Day 23.
Day 30	Days 28 to 30	Day 30	Day 31		Day 37	Day 43.
Day 60	Days 58 to 60	Day 60	Day 61		Day 67	Day 73.

Table 1 above represents the generic assessment schedule and other associated MDS–PAC dates. The term "day" refers to the number of calendar days during the patient's current hospitalization that the patient has been hospitalized as a Medicare Part-A patient.

Table 2 below is an example of how Table 1 would be applied using actual calendar dates. In Table 2 it is assumed that the patient was admitted on April 3, 2001.

TABLE 2.—EXAMPLE APPLYING THE MDS–PAC ASSESSMENT SCHEDULE AND ASSOCIATED DATES

MDS–PAC assessment type	Hospitalization time period and observation time period	MDS–PAC assessment reference date	MDS–PAC must be completed by:	MDS–PAC must be encoded by:	MDS–PAC must be transmitted by:
Day 4	First 3 Days	4/5/01	4/6/01	4/12/01	4/18/01
Day 11	Days 8 to 10	4/12/01	4/13/01	4/19/01	4/25/01
Day 30	Days 28 to 30	5/2/01	5/3/01	5/9/01	5/15/01
Day 60	Days 58 to 60	6/1/01	6/2/01	6/8/01	6/14/01

TABLE 3.—EXAMPLE APPLYING THE MDS–PAC DISCHARGE ASSESSMENT DATES

MDS–PAC assessment type	Discharge date*	MDS–PAC assessment reference date	MDS–PAC must Be completed on:	MDS–PAC must be encoded by:	MDS–PAC must be transmitted by:
Discharge Assessment	5/1/00	5/1/00	5/5/00	5/11/00	5/17/00

*This is either when the first of the following occurs: (1) The day the patient is discharged from the IRF, or (2) the day the patient ceases receiving Medicare-covered Part-A inpatient rehabilitation services.

4. Assessment Reference Date

Intent: To establish a common reference point for all staff participating in the patient's assessment. Although staff members may work on completing a patient's MDS–PAC on different days (for example, begin entering demographics on day 1 of admission, and complete functional assessment on day 3), establishment of the assessment reference date ensures the commonality of the assessment period. It starts the "clock" so that all assessment items refer to the patient's status, treatment regimen, and resource utilization during the same period of time. Many items require the "counting" of the number of treatments, visits, or procedures, making a common temporal reference point crucial for accuracy.

Definition: This is the last day in the MDS–PAC assessment process, that is, the last day of the 3-day MDS–PAC observation period. It is the designated endpoint of the observation period. In order to gain accurate information for the interdisciplinary team, it is essential for everyone to focus on the same time period (that is, for most items, this day and the two that preceded it.) It is from this date that all time references are measured. For a discharge assessment, including an unexpected discharge, see the explanation under "Process" below.

For instance, if an item indicates "in the past 3 days" this 3 day period is calculated from the last day of the MDS–PAC observation period (that is, the third day and the two days that preceded it.)

Process: Refer to item AA2—"Admission Date". The date entered in AA2b or if no date is entered in AA2b then the date entered in AA2a must be used to calculate the assessment reference date that must be used for the Day 4, Day 11, Day 30, or Day 60 assessments. The assessment reference date for the discharge assessment is the day when one of either of these two events occurs first: (1) The day the patient is discharged from the IRF, or (2) the day the patient ceases receiving Medicare-covered Part-A inpatient rehabilitation services. The MDS–PAC discharge assessment process is started only at the first point in time either of these events occur. There may be cases when a patient ceases receiving inpatient rehabilitation Medicare-covered services, but is not discharged from the IRF.

Coding: Beginning with the left-most box enter the month, day, and year of the assessment reference date. Do not leave any boxes blank. If the month or day contains only a single digit, place a "0" in the first box. For example: July 3, 2000, should be entered as follows:

0	7	0	3	2	0	0	0
Month		Day		Year			

5. Discharge Status

a. Last day of stay.

Intent and Definition: To establish the date when either of these two events occurs first: (1) The individual is discharged as an inpatient from the IRF and physically leaves the facility, or (2) the patient ceases receiving Medicare-covered Part-A inpatient rehabilitation services whether or not the patient physically leaves the facility.

Process: Consult the physician's orders. In cases when the patient is discharged "Against Medical Advice" (AMA) refer to the documentation in the clinical record progress notes and the physician's orders.

Coding: Beginning with the left-most box enter the month, day, and year of discharge. Do not leave any boxes blank. If the month or day contains only a single digit, place a "0" in the first box. For example July 26, 2000, should be entered as:

0	7	2	6	2	0	0	0
Month		Day		Year			

b. If discharged, status at discharge.

Intent: The intent of this item is to determine the patient's status upon discharge.

Definition: This is the patient's clinical and rehabilitation program status at discharge.

Process: Consult with members of the interdisciplinary team. Examine the documentation in the patient's clinical record. Talk to the patient and family if necessary.

Coding

0. Rehabilitation program complete for this stay and return not anticipated.
1. Patient left, against medical advice, prior to completion of plan of care.
2. Acute problem, discharge to acute hospital.
3. Patient died.

6. Social Security and Medicare Numbers

Intent: To record patient identifier numbers.

Process: Review the patient's medical record face sheet (usually at the front of the chart). To ensure accuracy, review a copy of the patient's Social Security (SS) card and Medicare card, if possible. In rare cases, the patient will have neither a Social Security number nor a Medicare number. When this occurs, another type of identification number may be used (for example, a railroad insurance number).

Coding: Begin printing one number per box starting with the left-most box. Recheck each number to be sure you have entered the digits in the correct order.

a. Enter the Social Security number as specified in the medical record or on the Social Security card.

b. Enter the Medicare number as indicated in the medical record. However, if the patient does not have a Medicare number but instead has a comparable railroad insurance number, then enter that number in these boxes and indicate that this is not a Medicare number by placing the letter "C" in first box of the "b" boxes.

7. Medical Record Number

Definition: A patient's identification number designated by the facility.

Process: Review the patient's medical record "face sheet" (usually at the front of the chart) for the medical record number. If the number is missing, obtain the number from the facility's Medical Records Department.

Coding: Begin printing one number per box starting with the left-most box. Recheck the number to be sure you have entered the digits in the correct order.

8. Facility Provider Number

Intent: To record the facility identifier numbers.

Definition: The identification numbers assigned to health care facilities by the Medicare and Medicaid programs. Some facilities will have only a Federal (Medicare) identification number; others will have Federal (Medicare) and State (Medicaid) identification numbers. "Medicaid only" facilities have a Federal as well as a State number. The Medicaid Federal number has a "letter" in the third box.

Process: Obtain the facility's Medicare and Medicaid numbers from the facility's business office. Once you have these numbers, they apply to all patients of that facility.

Coding: Begin printing one number per box starting with the left-most box. Recheck each number to be sure you have entered the digits in the correct order. Remember, there must be at least one provider number indicated, and there may be two, one for the state, one for the federal.

9. Medicaid Number

Intent: An identifying number for tracking purposes.

Process: Review the patient's medical record face sheet (usually at the front of the chart). Review a copy of the patient's Medicaid card to ensure accuracy, if possible.

Coding: Begin printing one number per box starting with the left-most box. Recheck the number to be sure you have entered the digits in the correct order.

- If the Medicaid application is pending, place a "+" in the first box.
- If the patient does not receive Medicaid benefits, place an "N" in the first box.

10. Gender

Coding

1. Male.
2. Female.

11. Birthdate

Coding: Beginning with the left-most box enter the month, day, and year of birth. If you do not know the patient's full birthdate you may enter a partial birthdate, but the partial birthdate must at least include the patient's year of birth. If the month or day contains only a single digit, place a "0" in the first box. For example: January 2, 1918 should be entered as:

0	1	0	2	1	9	1	8
Month		Day		Year			

Note: It's not unheard of to mistakenly enter today's date in this location. Make sure you have entered the date of birth.

12. Ethnicity/Race

Intent: The documentation of ethnicity and race per nationally established standards.

Process: Ask the patient and/or family member what best describes their race and ethnic background.

Coding: Check all that apply.

Ethnicity

a. Hispanic or Latino.

Race

b. American Indian/Alaskan Native.
c. Asian.
d. Black or African American.
e. Native Hawaiian or other Pacific Islander.
f. White.

13. Interrupted Stay

Note: This item only appears on the interrupted stay tracking form.

Intent and Definition: To track patients that have an interruption in their stay. An interrupted stay is one in which a patient is discharged from a rehabilitation facility and returns to the same rehabilitation facility in 3 calendar days or less. For purposes of the MDS–PAC assessment process, if a patient has an interrupted stay, then—(1) No new Day 4 MDS–PAC assessment would be performed; and (2) The required scheduled MDS–PAC update assessments must still be performed. Note: A patient that returns to the same rehabilitation facility more than 3 calendar days after being discharged is considered a "new" patient in terms of the MDS–PAC assessment schedule process.

In counting the 3 calendar day time period to determine the length of the interrupted stay, the first day of the start of the interrupted stay is counted as "day 1," with midnight of that day serving as the end of that calendar day. The next 2 calendar days that immediately follow would be days two and three. If the patient returns to the rehabilitation facility by midnight of the third calendar day, then it would be determined that the patient had an interrupted stay of 3 calendar days or less.

a. Date/time departed from the rehabilitation unit/hospital.

Process: Consult the clinical record, talk to physician and nursing staff.

Coding: If the patient has not had an interrupted stay, the boxes will remain blank. Otherwise, use all boxes. For a one-digit month or day, place a zero in the first box. July 31, 2000, should be entered as follows:

0	7	-	3	1	-	2	0	0	0
Month			Day			Year			

A time of 9:15 am should be entered as follows:

0	9	-	1	5	-	A	M
Hours			Minutes			AM/PM	

b. Date/time returned to the rehabilitation unit/hospital.

Process: Review the clinical record. If dates are unclear or unavailable, ask the admissions office or medical record department.

Coding: If patient has not had an interrupted stay, leave the boxes blank. Otherwise, use all the boxes. For a one-digit month or day, place a zero in the first box.

August 2, 2000, should be entered as follows:

0	8	-	0	2	-	2	0	0	0
Month			Day			Year			

A time of 2:30 pm should be entered as follows:

0	2	-	3	0	-	P	M
Hours			Minutes			AM/PM	

14. Clinician Completing Assessment

Note: This item only appears on the interrupted stay tracking form. This is NOT the same as Section AB "Assessment Attestation".

Intent: To ensure that the data recorded on the Interrupted Stay Tracking Form is accurate and submitted to the HCFA MDS–PAC system within 7 calendar days of the date recorded in item AA13b. The date recorded in item AA13b is "day 1" when starting to count the 7 calendar days in order to determine the 7 calendar day time period.

Definition: The clinician who signs item AA14a must be a physician, registered nurse, physical therapist, or occupational therapist.

Process: As necessary examine the clinical record, and consult with other members of the interdisciplinary care team to obtain the data needed prior to completing this item.

Coding: After signing your name print your name at AA14b to AA14e. Indicate your credentials in the box at AA14f.

Section AB. Assessment Attestation

1. Person Completing the Assessment

Intent and Definition: A licensed clinician who is a physician, registered nurse, physical therapist, or occupational therapist must sign and certify that—(1) The assessment is complete; and (2) The data recorded for the assessment items are to the best of his or her belief accurately recorded and accurately depict the patient's clinical status.

Process: Examine the MDS–PAC to determine if according to the instructions that the required data for each item has been accurately recorded.

Coding: The physician, registered nurse, physical therapist, or occupational therapist signs his/her name on line AB1a. The date that he or she signed the assessment as complete and accurate is entered in the boxes of AB1g and his/her name must be printed on the line that starts at AB1b. In the box for item AB1f enter the code number that identifies the type of licensed clinician signing item AB1a.

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2. Signatures of Staff Completing Part of the Assessment

Intent: Each individual who completes a portion of the assessment must sign and certify to the accuracy of the items he or she has completed.

Coding: On lines AB2a–AB2f each person who has completed any MDS–PAC item signs their name, writes their credentials, indicates what section(s) or item(s) he or she completed, and writes the date of his or her signature.

Section A. Demographic/Admission Information History

Intent: This section provides the key information to uniquely identify each patient as well as the reason for assessment.

1. Legal Name of Patient

Definition: Legal name in the clinical record. This must be the same as the patient's Medicare record legal name.

Coding: Use printed letters. Enter in the following order:

a. First Name.
b. Middle initial (leave blank if no middle name).
c. Last/Family Name.
d. Suffix—meaning Jr., Sr., III, etc.

2. Admission Date

a. Date the stay began.

Intent and Definition: For the current precipitating event/problem, this is the date when the patient first became a rehabilitation patient in your facility.

It is possible that a patient in a rehabilitative phase of care may be discharged from the rehabilitation facility and then admitted to an acute care hospital or unit. Admissions and "bed-hold" policies vary in different settings. A rehabilitation facility may choose to follow a facility specific policy and "close" the medical record of a patient that has an overnight stay in an acute care hospital, or to keep the chart "open" during this period of time. However, to be in compliance with Medicare regulations, if a patient has an overnight stay in an acute care hospital or unit, then for Medicare payment purposes the rehabilitation facility must discharge the patient.

For the purpose of the MDS–PAC, enter the date the person was first admitted to receive rehabilitative care for the current precipitating event/problem. This admission date should correspond with the admission date used by the billing office to initially begin this stay.

Process: Review the clinical record. If it is unclear what date the stay for the current precipitating event/problem began, clarify with the admissions/ business or medical record departments.

Coding: For a one digit month or day, place a zero in the box. For example: July 1, 2000, should be entered as follows:

0	7	0	1	2	0	0	0
Month		Day		Year			

b. Date Medicare-covered Part-A stay began.

Intent and Definition: For the current precipitating event/problem, this is the date of the current stay when the patient first started receiving Medicare-covered Part-A services in your facility. Complete this date only if this date is different than the date in item A2a "Date the stay began."

It is possible that a patient in a rehabilitative phase of care may be discharged from the rehabilitation facility and then admitted to an acute care hospital or unit. Admissions and "bed-hold" policies vary in different settings. A rehabilitation facility may choose to follow a facility specific policy and "close" the medical record of a patient that has an overnight stay in an acute care hospital, or to keep the chart "open" during this period of time. However, to be in compliance with Medicare regulations, if a patient has an overnight stay in an acute care hospital or unit, then for Medicare payment purposes the rehabilitation facility must discharge the patient.

For the purpose of the MDS–PAC, enter the date the patient first started to be furnished Medicare-covered Part-A services in your rehabilitation facility for the current precipitating event/problem. This date should correspond with the date used by the billing office to initially start billing Medicare for this stay.

Process: Review the clinical record. If it is unclear what date the person first started being furnished Medicare-covered Part A services for the current stay and for the current precipitating event/problem, clarify with the admissions/ business or medical record departments.

Coding: For a one digit month or day, place a zero in the first box. For example: July 1, 2000, should be entered as follows:

0	7	0	1	2	0	0	0
Month		Day		Year			

3. Reason for Assessment

Intent and Definition: To document the key reason for completing the MDS–PAC assessment.

Process: Calculate the length of time the patient has been receiving Medicare-covered Part-A services during the current stay. Then determine the type of assessment for which the data must be collected and recorded on the MDS–PAC.

Coding: Code for appropriate assessment.

1. Admission assessment (covers first 3 days)—Completed on day 4.
2. Reassessment—Completed on day 11.
3. Reassessment—Completed on day 31.
4. Reassessment—Completed on day 61.
5. Discharge assessment—After the assessment reference date for the discharge MDS–PAC assessment is determined, the completion date for the discharge MDS–PAC assessment must be set. The completion date for the discharge MDS–PAC assessment must be the fifth calendar day following the discharge MDS–PAC assessment reference date. To count the 5 calendar days following the discharge MDS–PAC assessment reference date count the discharge MDS–PAC assessment reference date as day 1 of the 5 calendar days. For example, if the MDS–PAC assessment reference date is May 1, 2000, then the MDS–PAC completion date would be May 5, 2000.

The following tables illustrate the relationship between the type of MDS–PAC assessment (the Day 4, Day 11, Day 30, Day 60, and discharge assessment), and the observation time period, the assessment reference date, and the MDS–PAC completion date. In addition, for each type of MDS–PAC assessment the tables depict the associated encoding date and by when the data for that type of assessment must be transmitted.

TABLE 1.—MDS–PAC ASSESSMENT SCHEDULE AND ASSOCIATED DATES

MDS–PAC assessment type	Hospitalization time period and observation time period	MDS–PAC assessment reference date	MDS–PAC must be completed on:	Hospitalization episode covered by this assessment:	MDS–PAC must be encoded by:	MDS–PAC must be transmitted by:
Day 4	First 3 Days	Day 3	Day 4	Entire Hospitalization Time Period.	Day 10	Day 16.
Day 11	Days 8 to 10	Day 10	Day 11		Day 17	Day 23.
Day 30	Days 28 to 30	Day 30	Day 31		Day 37	Day 43.
Day 60	Days 58 to 60	Day 60	Day 61		Day 67	Day 73.

Table 1 above represents the generic assessment schedule and other associated MDS—PAC dates. The term "day" refers to the number of calendar days during the patient's current hospitalization that the patient has been hospitalized as a Medicare Part A patient.

Table 2 below is an example of how Table 1 would be applied using actual calendar dates. In Table 2 it is assumed that the patient was admitted on April 3, 2001.

TABLE 2.—EXAMPLE APPLYING THE MDS–PAC ASSESSMENT SCHEDULE AND ASSOCIATED DATES

MDS–PAC assessment type	Hospitalization time period and observation time period	MDS–PAC assessment reference date	MDS–PAC must be completed by:	MDS–PAC must be encoded by:	MDS–PAC must be transmitted by:
Day 4	First 3 Days	04/05/01	04/06/01	04/12/01	04/18/01
Day 11	Days 8 to 10	04/12/01	04/13/01	04/19/01	04/25/01
Day 30	Days 28 to 30	05/02/01	05/03/01	05/09/01	05/15/01
Day 60	Days 58 to 60	06/01/01	06/02/01	06/08/01	06/14/01

TABLE 3.—EXAMPLE APPLYING THE MDS–PAC DISCHARGE ASSESSMENT DATES

MDS–PAC assessment type	Discharge date	MDS–PAC assessment reference date	MDS–PAC must be completed by:	MDS–PAC must be encoded by:	MDS–PAC must be transmitted by:
Discharge Assessment	5/01/00	5/01/00	5/05/00	5/11/00	5/17/00

*This is either when the first of the following occurs: (1) The day the patient is discharged from the IRF, or (2) the day the patient ceases receiving Medicare-covered Part-A inpatient rehabilitation services.

4. Admission Status

Intent: The purpose of this item is to determine if the patient has been previously admitted for rehabilitation of this problem.

Process: Talk to the patient and family if necessary. Review the medical record to determine what type of facility this patient has been admitted from.

Coding: Place the number of the most appropriate code in the box.

0. First admission to inpatient rehabilitation services.

1. Readmission to rehabilitation but not directly from other rehabilitation.

2. Readmission directly from other rehabilitation.

5. Goals for Stay

Intent: To document the expected outcomes of the patient's post acute care stay. It is possible and common to have more than one goal for the stay.

Definition: a. Medical stabilization—Patient's condition is unstable and requires frequent medical and nursing monitoring (for example, vital signs; drug levels; laboratory evaluation) and interventions (for example, titrating drug dosages; transfusions) in an effort to achieve a steady state/program of care.

b. Rehabilitation/Functional Improvement—Care is directed towards the attainment of baseline (or prior to the precipitating event) level of function in a selected area or areas, for example, activities of daily living, instrumental activities of daily living, cognitive status, communication status, or psychosocial functioning.

c. Recuperation—Care directed towards recovery from an illness by regaining health or strength. Often includes patient or family caregiver teaching to prepare for different level of care (for example, medication management; energy conservation; ostomy care).

d. Monitoring to avoid clinical complication—For a medically stable patient, care directed at systematic monitoring of the patient's condition through observation (that is, clinical signs and symptoms) and measurement of physical parameters (that is, lab values; respiratory function tests) with the intent of preventing complications associated with the patient's clinical condition.

e. Palliative care—A primary goal of care is to provide comfort and quality of life through the prevention and control of symptoms near the end of life. Palliative care often includes active treatment of associated conditions in an effort to promote a sense of well-being at the end of life (for example, antidepressant drugs/psychotherapy for depression; physical therapy as an adjunct to pain management and prevention of pressure ulcers; nutritional counseling).

Coding: Code each possible goal with one of the following responses, as appropriate:

0. No.

1. Yes.

6. Admitted From (At admission date A2)

Intent: To facilitate care planning by documenting the place from which the patient was admitted to the facility on the date recorded in item A2.

Definition: 1. Private home—Any house or condominium in the community whether owned by the patient or another person. Also included in this category are retirement communities, and independent housing for the elderly or disabled.

2. Private apartment—Any apartment in the community whether owned by the patient or another person.

3. Rented room—A rented room in a private house, boarding house, or hotel.

4. Board and care/group home—A non-institutional community residential setting that integrates a shared living environment with varying degrees of supportive services of the following types: supervision, home

health, homemaker, personal care, meal service, transportation, etc.

5. Assisted living—A housing option for older adults who need some assistance with activities of daily living (ADLs) but do not require 24-hour nursing care.

6. Homeless shelter—A community-based shelter for individuals who do not have a place to reside.

7. Transitional living—A community based supervised setting where individuals are taught skills so that they can live independently in the community.

8. Long term care facility (nursing home)—A licensed health facility that provides 24-hour skilled or intermediate nursing care.

9. Post acute care SNF—Facility (or designated beds within a SNF) dedicated to the care of patients with intense rehabilitative or clinically complex needs. Most patients are admitted to the post acute care facility from an acute hospital, or rehabilitation hospital. These patients will have a short, intense stay in the post acute care SNF.

10. Acute care hospital (not rehabilitation unit)—A facility licensed as an acute care hospital which focuses primarily on the diagnosis and treatment of acute medical (and in some cases psychiatric) disorders.

11. Rehabilitation unit (in acute care hospital)—A unit within an acute care hospital that focuses on the acute rehabilitation of individuals who have been functionally affected by disease or injury.

12. Rehabilitation hospital—A facility licensed as a rehabilitation hospital that focuses on the physical rehabilitation of individuals who have been functionally affected by disease or injury.

13. Long term care hospital—A facility licensed as a long-term care hospital. Included are hospitals that focus on the management of clinically complex patients, chronic medical needs, chronic disease, etc. (includes chronic disease hospitals, and long term acute care hospitals).

14. Psychiatric hospital/unit—A facility licensed as a psychiatric hospital or unit which focuses on the diagnosis and treatment of psychiatric disorders.

15. MR/DD facility (exclude group home)—A facility which specializes in the management and rehabilitation of individuals with mental retardation or developmental disorders. Examples include mental retardation or developmental disabilities facility (including MR/DD institutions) and intermediate care facilities for the mentally retarded (ICF/MRs).

16. Other hospital—Any other hospital not categorized above (may include in-patient hospice programs).

17. Outpatient surgery center—A stand-alone or hospital-affiliated outpatient surgery center designated to provide perioperative care (no inpatient beds). Includes same-day surgery units.

18. Other—Any other setting not categorized above.

Process: Review the medical record. If unavailable in medical record, ask patient or family.

Coding: Choose only one answer and enter the appropriate code in the box provided.

7. Precipitating Event Prior to Admission

a. Time of onset of the precipitating event or problem that directly preceded admission into this facility (time from admission date—item A2).

Intent: This item seeks to provide the care team with some perspective on the event that caused the admission.

Process: Review medical record for history of the event or problem using admission date to the facility (item A2) as a reference point. If necessary, clarify with patient or family.

Coding: Enter the number that best represents the time period in which the precipitating event occurred. This information is obtained only on admission, but must be coded and submitted to the HCFA MDS–PAC system for each subsequent (for example, the Day 11) assessment.

0. Within last week.

1. Within last 8–14 days.

2. 15–30 days ago.

3. 31–60 days ago.

4. More than 60 days ago.

b. Date of admission of most recent acute care hospitalization (within last 90 days).

Intent: This item (in addition to the next) gives perspective on the amount of time the patient spent in the hospital. If there was NO hospitalization in the last 90 days, leave this section blank and move on to item A8.

Process: Review the medical record. Hospital discharge summaries are the most efficient means to gather this information, if available. If unavailable, consult with patient or family.

Code: Enter the date of admission to the hospital in space provided. For a one-digit month or day, place a zero in the first box. For example: February 3, 1999, should be entered as:

0 2	0 3	1 9 9 9
Month	**Day**	**Year**

c. Reason for most recent acute care hospitalization (within last 90 days).

Definition: Hospitalization—The patient was formally admitted to an acute care hospital by a physician as an inpatient with an overnight stay. This category does not include day surgery or outpatient services.

New problem—A condition that is distinctly different or unrelated to any previously identified disease or condition of the patient.

Exacerbation—Recurrence or aggravation of symptoms or increase in the severity of a previously identified disease or condition.

Process: Review medical record. If necessary, clarify with patient or family.

Coding: Using the following codes, enter the number that best represents the reason the patient was most recently hospitalized.

0. Not Hospitalized at any time in last 90 days.

1. New problem.

2. Exacerbation.

3. Both (New Problem and Exacerbation).

8. Primary and Secondary Payment Sources for Stay (Per diem)

Intent: To document the payment source(s) that covers the daily per diem services for this post acute stay.

Definition: Per diem—Room, board, nursing services and other services included in the routine daily charge.

Process: Consult with the business or billing office to review current payment sources. Do not rely exclusively on information recorded in the patient's medical record (usually the face sheet at the front of the chart) as the patient's clinical condition may trigger different sources of payment during the stay. It's important to capture all methods of payment; usually business offices track such information.

Coding: Using the following list, enter the code which best indicates the primary and secondary payment sources in the appropriate boxes. In Column A, code for the primary payment source for the stay. In Column B, code for the secondary payment source for the stay.

Note: The code for Column B can't be the same as the code in Column A.

0. None—no insurance coverage, no private pay.

1. Medicare.

2. Medicaid.

3. CHAMPUS.

4. Department of Veterans Affairs.

5. Managed Care/HMO—Medicare.

6. Managed Care/HMO—non-Medicare.

7. Private insurance.

8. Private pay—self or family pays, includes private pay by patient or family.

9. Worker's Compensation.

10. Other payment—examples include Commission for the Blind, Alzheimer's Association.

9. Marital Status

Process: Ask patient or family member.

Coding: Choose the code that best describes the patient's current marital status. If the patient is in a "Common Law" marriage, enter code "2", Married. Common Law marriage—a couple who have been cohabitating and who consider themselves as being married, even though not legally married.

1. Never married.

2. Married.

3. Widowed.
4. Separated.
5. Divorced.

10. Education (Highest Level Completed)

Intent: To record the highest level of education the patient attained. Knowing this information is useful for assessment (for example, interpreting cognitive patterns or language skills), care planning (for example, deciding how to focus a planned recovery program), and planning for patient education in self-care skills.

Definition: The highest level of education attained.

1. No schooling: Patient/family state that patient received no formal schooling at all.
2. 8th grade or less: Patient attended school through 8th grade level or less.
3. 9th–11th grade: Patient completed school at 9th, 10th, or 11th grade.
4. High School: Patient obtained high school diploma—completed school through the twelfth grade or GED.
5. Technical or Trade School: Include schooling in which the patient received a non-degree certificate in any technical occupation or trade (for example, carpentry, plumbing, acupuncture, baking, secretarial, practical/vocational nursing, computer programming, etc.).
6. Some College: Includes completion of some college courses at a junior (community) college, associate's degree, or incomplete bachelor's degree.
7. Bachelor's degree: Includes any undergraduate bachelor's level college degree.
8. Graduate Degree: Master's degree or higher (M.S., Ph.D., M.D., J.D., etc.).

Note: If assessor has been unsuccessful in determining educational information, the assessor may use a "dash" symbol to indicate information not available.

Process: Ask the patient or family. If a part of your facility's standard intake record, review the patient's record.

Coding: Code for the best response. For MR/DD patients who have received special education services, code "2" (8th grade/less).

11. Language

Definition: (a.) Primary language—The language the patient primarily speaks or understands. If patient is unable to speak at the present time, code for language familiar to patient prior to the precipitating event.

Process: Determine patient's primary language by asking the patient or family. If a part of your facility's standard intake record, review the patient's record.

Coding: Given the choices provided, indicate what the patient identifies as their primary language.

0. English.
1. Spanish.
2. French.
3. Other, specify in A11b.

(b.) If the patient's primary language is other than English, Spanish, or French, enter 3 for Other in item A11a, and print the primary language in item A11b beginning in the left-most box.

12. Dominant Hand

Intent: To document which hand the patient considers to be the "dominant" hand. Knowing the patient's "handedness" can facilitate rehabilitation and assist in the detection of neurological and functional diagnoses.

Definition: The dominant hand describes what is usually referred to as "handedness" and reflects the area of the brain that is most dominant.

Process: Ask patient, family, or therapy staff.

Coding: Indicate which hand the individual has considered to be dominant since childhood. If an individual feels that both hands are equal (ambidextrous), enter code "3", unable to determine. Also use code "3" if you are unable to obtain this information from the patient, family or medical record.

If Right handed, code "1".
If Left handed, code "2".
If Unable to determine, code "3".

13. Mental Health History

Intent: To document a primary or secondary diagnosis of psychiatric illness or developmental disability.

Definition: Patient has one of the following:

- A schizophrenic, mood, paranoid, panic or other severe anxiety disorder; somatoform disorder, personality disorder; other psychotic disorder; or another mental disorder that may lead to chronic disability; but
- Not a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder;

AND

- The disorder results in functional limitations in major life activities that would be appropriate within the past 3 to 6 months for the individual's developmental stage;

AND

- The treatment history indicates that the individual has experienced either: (a) Psychiatric treatment more intensive than outpatient care more than once in the past 2 years (for example, partial hospitalization or inpatient hospitalization); or (b) within the last 2 years due to the mental disorder, experienced an episode of significant disruption to the normal living situation, for which formal supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials.

Process: Review the patient's record *only*. For a "Yes" response to be entered, there must be written documentation (that is, verbal reports from the patient or patient's family are not sufficient).

Coding: Enter "0" for No or "1" for Yes.

0. No.
1. Yes.

14. Conditions Related to MR/DD Status (Mental Retardation/Developmental Disabilities)

Intent: To document presence of mental retardation or developmental disabilities with and without organic conditions.

Process: Review the patient's record only. Condition must be documented in the clinical record. Examples of organic conditions related to MR/DD are rubella, prenatal infection, congenital syphilis, maternal intoxication, mechanical injury at birth, prenatal hypoxia, neuronal lipid storage diseases, phenylketonuria (PKU), neurofibromatosis, microcephalus, macroencephaly, meningomyelocele, congenital hydrocephalus, etc.

Coding: If organic condition is present, check if condition is related to MR/DD status present before age 22. When age of onset is not specified, assume that the condition meets this criterion AND is likely to continue indefinitely.

1. Not applicable—No MR/DD.
2. MR/DD with no organic condition.
3. MR/DD with organic condition.

15. Responsibility/Legal Guardian

Intent: To record who has responsibility for participating in decisions about the patient's health care, treatment, financial affairs, and legal affairs. Depending on the patient's condition, multiple options may apply. For example, a patient with moderate dementia may be competent to make decisions in certain areas, although in other areas a family member will assume decision-making responsibility. Or a patient may have executed a limited power of attorney to someone responsible only for legal affairs.

Definition: a. Legal guardian—Someone who has been appointed after a court hearing and is authorized to make decisions for the patient, including giving and withholding consent for medical treatment. Once appointed, the decision-making authority of the guardian may be revoked only by another court hearing.

b. Other legal oversight—Use this category for any other program in your State whereby someone other than the patient participates in or makes decisions about the patient's health care and treatment.

c. Durable power of attorney/health care—Documentation that someone other than the patient is legally responsible for health care decisions if the patient becomes unable to make decisions. This document may also provide guidelines for the agent or proxy decision-maker, and may include instructions concerning the patient's wishes for care. Unlike a guardianship, durable power of attorney/health care proxy terms can be revoked by the patient at any time.

d. Patient responsible for self—Patient retains responsibility for decisions. In the absence of guardianship or legal documents indicating that decision-making has been delegated to others, always assume that the patient is the responsible party.

e. NONE OF THE ABOVE.

Process: Legal oversight such as guardianship, durable power of attorney, and living wills are generally governed by state law. The descriptions provided here are for general information only. Refer to the law in your State and to the facility's legal counsel, as appropriate, for additional clarification.

Consult the patient and the patient's family. Review records. Where the legal oversight or guardianship is court ordered, a copy of the legal document must be included in the patient's record in order for the item to be checked on the MDS–PAC form.

Coding: Check all that apply.

16. Advance Directives

Intent: To document the existence of any legal directives to guide the health care team in making treatment decisions, whether made by the patient him/herself or a legal proxy. This documentation must be in the medical record to be considered current and binding. The absence of pre-existing directives for the patient provides an opportunity for a discussion by the clinical team with the patient and family regarding the patient's wishes. Any discrepancies between the patient's current stated wishes and what is said in legal documents in the patient's file should be resolved immediately.

Definition: a. Living will—A document specifying the patient's preferences regarding measures used to prolong life when there is a terminal prognosis.

b. Do not resuscitate—In the event of respiratory or cardiac failure, the patient, family or legal guardian has directed that no cardiopulmonary resuscitation (CPR) or other life-saving methods will be used to attempt to restore the patient's respiratory or circulatory function.

c. Do not hospitalize—A document specifying that the patient is not to be hospitalized even after developing a medical condition that usually requires hospitalization.

d. Treatment restrictions—The patient or responsible party (family or legal guardian) does not wish the patient to receive certain medical treatments. Examples include, but are not limited to: blood transfusion, tracheotomy, respiratory intubation, and restraints. Such restrictions may not be appropriate to treatments given for palliative reasons (for example, reducing pain or distressing physical symptoms such as nausea or vomiting). In these cases, the directive should be reviewed with the responsible party. Treatment restrictions could also include:

- *Feeding restrictions*—The patient or responsible party (family or legal guardian) does not wish the patient to be fed by artificial means (for example, tube, intravenous nutrition) if unable to be nourished by oral means.
- *Medication restrictions*—The patient or responsible party (family or legal guardian) does not wish the patient to receive life-sustaining medications (for example, antibiotics, chemotherapy).

e. NONE OF THE ABOVE.

Process: You will need to familiarize yourself with the legal status of each type of directive in your State. In some states only a health care proxy is formally recognized; other jurisdictions allow for the formulation of living wills and the appointment of individuals with durable power of attorney for health care decisions. Facilities should develop a policy regarding documents drawn in other states, respecting them as important expressions of the patient's wishes until their legal status is determined.

Review the patient's record for documentation of the patient's advance directives. Documentation must be available in the record for a directive to be considered current and binding.

Some patients at the time of admission may be unable to participate in decision-making. Staff should make a reasonable attempt to determine whether the new patient has ever created an advance directive (for example, ask family members, check with the primary physician). Lacking any directive, treatment decisions will likely be made in concert with the patient's closest family members or, in their absence or in case of conflict, through legal guardianship proceedings.

Coding: The following comments provide further guidance on how to code these directives. You will also need to consider State law, legal interpretations, and facility policy.

- The patient (or proxy) should always be involved in the discussion to ensure informed decision-making. If the patient's preference is known and the attending physician is aware of the preference, but the preference is not recorded in the record, check the MDS–PAC item only after the preference has been documented.
- If the patient's preference is in areas that require supporting orders by the attending physician (for example, do not resuscitate, do not hospitalize, feeding restrictions, other treatment restrictions), check the MDS–PAC item only if the document has been recorded or after the physician provides the necessary order. Where a physician's current order is recorded but patient's or proxy's preference is not indicated, discuss with the patient's physician and check the MDS–PAC item only after documentation confirming that the patient's or proxy's wishes have been entered into the record.
- If your facility has a standard protocol for withholding particular treatments from all patients (for example, no facility staff member may resuscitate or perform CPR on any patient; facility does not use feeding tubes), check the MDS–PAC item only if the advanced directive is the individual preference of the patient (or legal proxy), regardless of the facility's policy or protocol.

Coding: Check all that apply. If none of the directives are verified by documentation in the medical records, check NONE OF ABOVE.

Section B. Cognitive Patterns

Intent: To assess the patient's ability to think coherently, remember and organize thoughts into actions, including daily self-care activities. These items focus on the patient's functional performance, including demonstration of ability to remember recent and past events, to perform key decision making skills. This information can significantly contribute to the development of a post acute plan of care, including the discharge plan.

Questions about cognitive function and memory can be threatening or sensitive for some patients. Some may react defensively or get agitated and emotional if unable to remember or answer the questions. These are not uncommon reactions to "performance anxiety" and feelings of being exposed, embarrassed, or frustrated if the patient is aware that he or she cannot respond cogently. It is important to recognize these feelings and to be as supportive as possible.

It is important to establish an environment that enables the patient to function at their optimal level. The first few days of admission to a post acute setting can be overwhelming. Be sure to interview the patient in a private, quiet area (for example, limit distractions and interruptions as much as possible), and not in the presence of other patients or family, unless the patient would prefer that they stay. Using a non-judgmental approach to questioning will help create a needed sense of trust between the assessor and the patient. Clarify and validate your findings with the patient's family or other clinicians as needed. This input is especially important for those patients with limited communication skills or language barriers.

Engage the patient in general conversation to help establish rapport.

- Actively listen and observe for clues to help you structure your assessment. Remember that repetitiveness, inattention, rambling speech, defensiveness, or agitation may be challenging to deal with during an interview, but they provide important information about cognitive function.
- Be open, supportive, and reassuring during your conversation with the patient (for example, "Do you sometimes have trouble remembering things? Tell me what happens. We will try to help you").

If the patient becomes really agitated, sympathetically respond to his or her feelings of agitation and STOP discussing cognitive function. The information-gathering process does not need to be completed in one sitting during the three-day observation/assessment period but may be ongoing during the entire assessment period. Say to the agitated patient, for example, "Let's talk about something else now," or "We don't need to talk about that now. We can do it later". Observe the patient's cognitive performance over the next few hours and days and come back to ask more questions when he or she is feeling more comfortable.

1. Comatose

Intent: To record whether the patient's clinical record includes a documented neurological diagnosis of coma or persistent vegetative state.

Process: Review medical record for documentation.

Coding: Enter the appropriate number in the box.

If the patient has been diagnosed as comatose or in a persistent vegetative state, code "1" (Yes) and Skip to Section E. If the patient is not comatose, or is semi-comatose, code "0" (No) and proceed to the next item (B2).

2. Memory/Recall Ability

Intent: To determine a patient's ability to remember recent and past events (that is, short-term, long-term, situational and procedural memory).

Process: a. Short-term memory OK: Ask the patient to describe a recent event that both of you have had the opportunity to remember (you should be able to validate that patient's memory with your knowledge of such events). Examples include what the patient had for breakfast, when the last pain medication dosage was received, (you can validate the patient's recollection with information from the medical record). For persons with verbal communication deficits, non-verbal responses are acceptable (for example, when asked how many children visited today, they can correctly tap out a response of the appropriate number). If there is no positive indication of memory ability, code "1", Memory problem.

b. Long-term memory OK: Engage in conversation about past events that are meaningful to the patient (for example, family, hospitalization, work experience). Ask questions for which you can validate the answers (from your review of the medical record, general knowledge, the patient's family). For patients with limited communication skills, ask family members about their perception of the patient's memory. If the patient demonstrates difficulty remembering key events of long ago, code "1", Memory problem.

c. Situational memory OK: This item refers to two abilities that can be demonstrated by the patient within the facility: (1) The patient's ability to recognize the names and faces of staff whom they frequently encounter, AND (2) the patient's ability to remember the location of places regularly visited (for example, bedroom, meal room/dining area, activity room, therapy room). IMPORTANT: For coding purposes, the patient must demonstrate positive abilities in BOTH types of situations to be coded as "0", Memory OK. If she/he demonstrates difficulty in one or both areas code as "1", Memory problem.

- Recognize staff names and faces—The patient distinguishes staff caregivers from family members, strangers, visitors, and other patients. It is not necessary that the patient remembers all staff members' names, but to recognize them as staff caregivers (that is, nurse, therapist) vs. others.
- Remember the location of places regularly visited—The patient is able to locate or recognize key areas of the facility that they frequent regularly. It is not necessary for the patient to know his/her room number but he/she should be able to find the way to his room, recognize the purposes of particular rooms, etc.

d. Procedural Memory OK: This MDS–PAC item refers to the ability to perform sequential activities. Dressing is an example of such a task as it requires multiple steps to complete the entire task. The patient must be able to perform or remember to perform all or most all of the steps in order to be scored a "0" Memory O.K. If the patient demonstrates difficulty in two or more steps, code as "1" Memory Problem.

Coding: For each type of memory:

Code "0" in the box provided, if memory OK.

Code "1" in the box provided, if memory problem is demonstrated.

3. Cognitive Skills for Daily Decision Making

Intent: To record the patient's ability and actual performance in making every day decisions about tasks or activities of daily living. This item is especially important for assessment and care planning for 2 reasons: (1) The information can alert health care providers to new changes (decline or improvement) in the patient's cognitive function, and (2) the information can alert staff to a discrepancy between a patient's capacity for decision-making and their current level of performance, which may indicate that caregivers or family may be inadvertently fostering the patient's dependence. It may have an impact on the course of treatment outcomes and discharge plan.

For persons who have been acutely ill, it is important to determine the patient's "baseline" cognitive skills from some point prior to the current admission (Note: this instrument uses a time period prior to the assessment reference date [item AA4]), as well as his/her current skills (Note: the last 3 days, and the time immediately prior to precipitating event), so that the clinician can make a comparison for diagnostic and care planning purposes. Even slight deviations (decline) from baseline may be secondary to a variety of causes including: (1) The outcome of a recent acute event (for example, a primary neurological event such as a CVA; post anesthesia), (2) an evolving acute illness or exacerbation of disease (for example, infection; congestive heart failure; dehydration; drug effects or interactions; depression), or (3) a progression of a chronic neurological condition (for example, Alzheimer's disease; Huntington's disease). Detecting change is the first step in determining whether the change is due to a remediable condition or chronic decline. Likewise, follow-up measurements can provide an indication of success of treatment programs, prognosis for independent living, etc.

(a) Making decisions regarding tasks of daily life.

Process: This assessment should be conducted through conversation with direct care staff, a review of the clinical record (chart), in addition to personally observing and interacting with the patient [Note—this personal interaction can occur in the course of regular ongoing care activities; or it can be a part of a planned MDS–PAC interview/observation where a series of issues are reviewed—cognition, mood, ADLs, activities]. Your inquiry should focus on whether the patient is actively making choices, plans, and decisions, and not whether staff believe the patient might be capable of doing so. Remember, the intent of this item is to record what the patient is doing (performance). Where a health care provider or family member takes decision-making responsibilities away from the patient regarding tasks of everyday living or the patient does not participate in decision-making (which may happen when patients take on the "sick" role), consider the patient to have impaired performance in decision making. In this case document how they function now rather than your supposition of their capacity to function. Consult with family and health care providers where necessary to clarify patient decision making.

Coding: Enter the number that most accurately characterizes the patient's cognitive performance in making decisions regarding the tasks of daily life over the last three days.

0. Independent—The patient's decisions in planning and executing daily routines and making decisions were consistent, reasonable, safe, and organized reflecting lifestyle, culture, values.

1. Modified Independence—The patient was organized in daily routines and made safe decisions in familiar situations, but experienced some difficulty in decision-making when faced with new tasks or situations.

2. Minimally Impaired—For the most part, the patient was organized in daily routines and made safe decisions, but in specific situations the patient demonstrated poor decision-making skills requiring directions or cues or supervision at those times.

3. Moderately Impaired—The patient demonstrated poor decision making skills that could place his/her safety at risk. The patient needs reminders, cues and supervision in planning, organizing, correcting, and carrying out daily routines. Cues and supervision are required at all times.

4. Severely Impaired—The patient's decision making was severely impaired: the patient never (or rarely) makes decisions.

(b) Is now more impaired in decision making than prior to precipitating event (item A7a).

Intent: To record whether the patient is now more impaired than she/he was at a specified period in time prior to the precipitating event (that is, the current score to item B3a is higher that it would have been prior to the precipitating event).

Process. Through patient interview, family reports, or review of earlier clinical record, compare the patient's current skills in daily decision making with their skills immediately prior to the precipitating event [Item A7a].

Coding: Enter the number corresponding to the most appropriate response.

0. No or unsure.

1. Yes, more impaired today.

4. Indicators of Delirium—Periodic Disordered Thinking/Awareness

Intent: To assess and record behavioral signs that may indicate that delirium is present. The characteristics of delirium are usually manifested behaviorally, and therefore can be observed. For example, disordered thinking, a typical characteristic of delirium, may be first observed as rambling, irrelevant, or incoherent speech. Other typical behaviors are described in the definitions below.

Many acute conditions (for example, infections; congestive heart failure) and treatment (for example, polypharmacy; anesthesia; anticholinergic drugs) can have a deleterious effect on cognitive performance and the development of delirium, particularly in persons with the following risk factors: over age 80 years, prior history of cognitive impairment, recent hip fractures, complex medical conditions and drug regimens, recent hospitalization, and history or signs/symptoms of depression. The incidence rate of delirium among acute care hospital patients is as high as 41% and often occurs by day 2 through 6 of the hospitalization. Approximately 48–96% of patients continue to have some behavioral and cognitive symptoms by discharge. With the shortening of hospital stays, and the shift towards earlier discharge to post acute environments it is crucial for clinicians to identify and monitor for behavioral manifestations of delirium for two reasons: (1) to identify new or worsening signs that herald the onset of a treatable acute condition, and (2) to document the progression of changes over time for discharge planning.

Definition: a. Easily distracted—(for example, has difficulty paying attention, does not complete tasks or conversations without getting sidetracked)

b. Periods of altered perception or awareness of surroundings—(for example, moves lips or talks to someone not present; believes he/she is somewhere else; confuses night and day)

c. Episodes of disorganized speech—(for example, speech is incoherent nonsensical, irrelevant, rambling from subject to subject; loses train of thought)

d. Periods of restlessness—(for example, fidgeting or picking at skin, clothing, napkins, etc.; frequently changing positions; repetitive physical movements or calling out)

e. Periods of lethargy—(for example, sluggishness, staring into space; difficult to arouse; little body movement)

f. Mental function varies over the course of the day—(for example, alertness and behaviors vary during the course of the day, sometimes better, sometimes worse; sometimes present, sometimes not)

Process: Observe patient and interview staff.

Coding: Code for the patient's behavior in the last seven days regardless of what you believe the cause to be—focus on when the manifested behavior first occurred. Accurate assessment requires conversations with staff and family who have direct knowledge of patient's behavior over this time.

0. Behavior not present.

1. Behavior present, not of recent onset.

2. Behavior present over last 7 days appears different from the patient's usual functioning (for example, new onset or worsening).

Section C. Communication/Vision Patterns

Intent: To document the patient's sensory function (for example, ability to hear and see with assistive devices, if used, and/or environmental adjustments, if necessary) and ability to understand and communicate with others.

Communication—There are many possible causes for communication problems experienced by elderly and post acute patients. Some can be attributed to the aging process; others are associated with progressive physical and neurological disorders. Usually the communication problem is caused by more than one factor. For example, a patient might have aphasia as well as long standing hearing loss; or he might have dementia with word finding difficulties and a hearing loss. The patient's physical, emotional, and social situation may also complicate communication problems. Additionally, a noisy or isolating environment can inhibit opportunities for effective communication.

Deficits in ability to make one's self understood (expressive communication deficits) can include reduced voice volume and difficulty in producing sounds, or difficulty in finding the right word, making sentences, writing, and gesturing. Deficits in one's ability to understand (receptive communication deficits) can involve declines in hearing, comprehension (spoken or written), or recognition of facial expressions.

Vision—Visual limitations or difficulties may be related to the aging process as well as to diseases common in aged and chronically ill persons (for example, cataracts, glaucoma, macular degeneration, diabetic retinopathy, neurologic diseases). It is important to identify visual impairment. Some conditions may be treatable and reversible; others, though not reversible, may be managed by interventions aimed at maintaining or improving the patient's residual visual abilities. In the post acute setting, identifying and addressing visual impairment is an important part of preparing the patient for tasks related to self-care upon potential discharge to a more independent care setting (for example, reading medication and food labels; safely negotiating a living environment; using the stove).

1. Hearing

Intent: To evaluate the patient's ability to hear (with hearing appliance, if used, and/or environmental adjustments, if necessary) during the last 3-day period. Identifying impairments early in the post acute stay can facilitate the development of necessary adaptions for discharge. Often the environment can have an impact on the patient's ability to hear and must be considered in the assessment.

Process: If the patient has an adaptive hearing device/aid/appliance, evaluate hearing ability with the working device in place. Interview the patient (ask about hearing function) and observe for hearing function during your verbal interactions. Use a variety of observations to make your assessment (for example, one-on-one vs. group situations). Always be mindful of environmental factors that may influence your assessment (for example, call bells; vacuum cleaners; suctioning equipment; roommate's conversations; outside noises, etc.). If necessary to clarify exact hearing level, consult with the patient's family, primary caregivers, or speech or hearing specialists.

Be alert to what you have to do to communicate with the patient. For example, if you have to speak more clearly, use a louder tone, speak more slowly, or use more gestures, or if the patient needs to see your face to know what you are saying, or if you have to take the patient to a more quiet area to conduct the interview—all of these are cues that there is a hearing problem, and should be indicated in coding this section.

Coding: Enter the number that corresponds to the most correct response.

0. Hears adequately—The patient hears all normal conversational speech, social interaction, including when using the phone, and watching TV.

1. Minimal difficulty—The patient hears speech at conversational levels but has difficulty hearing when the environment is not quiet or when he/she is in group situations. Background noise affects hearing.

2. Hears in special situations only—The patient is hearing deficient but compensates and hears better when the speaker increases volume, adjusts his voice tone, and/or speaks distinctly; or the patient can hear only when the speaker's face is clearly visible.

3. Highly impaired/absence of useful hearing—The patient hears only some sounds and frequently fails to respond even when speaker adjusts tone and volume, speaks slowly and distinctly, or is positioned face-to-face with the patient. There is no comprehension of conversational speech, even when the speaker makes maximum adjustments.

2. Modes of Communication

Intent: To record the types of communication techniques (for example, alternative verbal or non-verbal techniques) used by the patient to make his or her needs or wishes known.

Definition: a. Hearing aid—An apparatus used by those with impaired hearing for amplifying sound.

b. Lip reading—Understanding spoken word by means of visualization of the speaker's mouth and lips.

c. Signs/gestures/sounds—This category includes non-verbal expressions used by the patient to communicate with others.

- Actions may include pointing to words, objects, people; facial expressions; using physical gestures such as nodding head twice for "yes" and once for "no" or squeezing another's hand in the same manner.
- Sounds may include grunting, banging, ringing a bell, etc.

d. Writing messages to express or clarify needs—Patient writes notes to communicate with others.

e. NONE OF THE ABOVE.

Process: Interact with the patient and observe for any reliance on non-verbal expression (physical gestures, such as pointing to objects), either in one-on-one communication or in group situations. Consult with the direct care staff from all shifts. For patient with limited communication skills, have staff ask patient's family if there are additional effective means of communication.

Coding: Check the boxes for each method used by the patient to communicate his or her needs. If the patient does not use any of the listed items, check NONE OF THE ABOVE.

3. Making Self Understood (Expression)

Intent: To document the patient's ability to express or communicate requests, needs, opinions, urgent problems, and social conversation, whether in speech, writing, sign language, or a combination of these. In order to monitor the patient's progress, the assessment reflects the patient's status at 2 points in time: over the last 3 days, and immediately prior to the precipitating event (A7a).

(a) Expressing information content—however able.

Process: Interact with the patient. Observe and listen to the patient's efforts to communicate with you using the assistive devices/modes of expression they would normally use to communicate. Consult with the primary caregivers (over all shifts), and speech-language pathologist, if possible, who will be able to report on observations of patient's interactions with others in different settings (for example, one-on-one, groups) and different circumstances (for example, when calm, when agitated) and different times of day. If direct care staff are uncertain and you require further clarification, consult with family members who frequently visit the patient (if such a person is present).

Coding: Enter the number corresponding to the patient's ability to make self understood over the last 3 days.

0. Understood—The patient expresses ideas clearly, without difficulty.

1. Usually Understood—The patient may have difficulty expressing ideas (finding words or finishing thoughts) but is able to make him/herself understood if the listener is patient and gives him/her time to express himself. Little or no prompting required by the listener.

2. Often Understood—The patient has difficulty finding the right words or finishing thoughts, resulting in delayed or incomplete responses. The patient usually requires some prompting/cuing by the listener to complete or clarify the message (make self understood).

3. Sometimes Understood—The patient has limited ability, but expresses simple, concrete requests regarding at least basic needs that would be generally understood (for example, food, drink, sleep, toilet, pain).

4. Rarely or Never Understood—The patient is not able to communicate effectively. At best, this communication is such that it required staff to interpret the meaning of highly individual, patient-specific sounds or body language (for example, indicated presence of pain or need to use the toilet).

(b) Is now more impaired in making self understood by others than was prior to precipitating event (item A7a).

Process: Through patient interview, family reports, or review of earlier clinical record compare patient's current ability to make self understood (last 3 days) with their ability prior to the precipitating event [Item A7a]).

Coding: Enter the number corresponding to the most appropriate response.

0. No, or unsure.

1. Yes, more impaired today.

4. Speech Clarity

Intent: To document the quality/intelligibility of the patient's speech (not the content or appropriateness).

Definition: Speech—the expression of articulate words.

Process: Throughout the course of the assessment the patient will have many opportunities to talk with you. Listen to the clarity of speech. To assess speech quality over the last 3 days also confer with primary caregivers.

Coding: Enter the number corresponding to the response which best describes the clarity and quality of the patient's speech in the last 3 days.

0. Clear speech—utters distinct, intelligible words.

1. Unclear speech—utters slurred or mumbled words.

2. No speech—absence of spoken words.

5. Ability to Understand Others (Comprehension)

Intent: To describe the patient's ability to comprehend information whether communicated to the patient orally, in writing, or in sign language or Braille. This item measures not only the patient's ability to hear messages but also to process and understand language. In order to monitor the patient's progress, the assessment reflects the patient's status at 2 points in time: the last 3 days, and immediately prior to a more distant precipitating event (A7a).

(a) Understanding verbal information content (however able) with hearing appliance, if used.

Process: Assess the patient using whatever assistive devices/methods (for example, hearing aids) that the patient would usually use in communicating with others. Interact with the patient. Throughout the assessment process and at other times observe the patient and determine his/her ability to comprehend your questions and statements. Try to observe the patient's interactions with others, in different situations and times of day. Consult with primary staff caregivers (over all shifts), and speech-language pathologist (if present) to clarify patient understanding at different times and in different settings. If direct care staff are uncertain and you require further clarification, consult with family member who frequently visits the patient (if such person is present).

Coding: Enter the number corresponding to the patient's ability to comprehend (understand others) over the last 3 days.

0. Understands—The patient clearly comprehends the speaker's message(s) and demonstrates this understanding through words or actions/behaviors.

1. Usually Understands—The patient may miss some part or intent of the message but comprehends most of it. The patient may have periodic difficulties integrating information but generally demonstrates comprehension, by responding in words or actions. Little or no prompting required.

2. Often Understands—The patient may miss some part or intent of the message. When the messenger(s) (staff or family) rephrase or simplify the message(s) or use gestures, and specifically inquires as to the patient's understanding of what is being communicated, the patient's comprehension is enhanced. This type of prompting occurs often.

3. Sometimes Understands—The patient demonstrates frequent difficulties integrating information and responds adequately only to simple and direct questions or directions/cues (for example, one-step commands such as "close your eyes")

4. Rarely/Never Understands—The patient demonstrates very limited ability to understand communication. Based on the patient's verbal and nonverbal responses, staff have difficulty determining whether the patient comprehends messages, or the patient can hear sounds but does not understand messages.

(b) Is now more impaired in understanding others than was prior to precipitating event (Item A7a).

Process: Through patient interview, family reports, or review of earlier clinical record compare patient's current ability to understand others (last 3 days) with their ability immediately prior to the precipitating event [Item A7a].

Coding: Enter the number corresponding to the most appropriate response.

0. No or unsure.

1. Yes, more impaired today.

6. Vision

Intent: To evaluate the patient's ability to see close objects in adequate lighting, using the patient's customary visual appliances for close vision (for example, glasses; contact lenses; magnifying glass). Adequate lighting is defined as the amount of light that is sufficient or comfortable for a person with normal vision.

Process: • Ask the patient about his or her visual abilities for close vision (for example, to see newsprint, menus, greeting cards), use of glasses, contact lenses, etc.

• To validate the patient's reported vision, ask the patient to look at regular-size print in a book or newspaper using whatever visual appliance he or she customarily uses for close vision (for example, glasses, magnifying glass). Then ask the patient to read a few words aloud, starting with larger headlines and ending with the finest, smallest print.

• Be sensitive to the fact that some patients are not literate or are unable to read English. In such cases, ask the patient to read aloud individual letters of different size print or numbers, such as dates or page numbers, or to name items in small pictures.

• If the patient is unable to communicate or follow your directions for testing vision, observe the patient's eye movements to see if his or her eyes seem to follow movement and objects. Though these are gross measurements of visual acuity, they may assist you in assessing whether the patient has any visual ability.

(a) Ability to see in adequate light and with glasses, if used.

Coding: Enter the code that best describes the patient's visual ability given adequate light and use of his/her customary visual aids.

0. Adequate—The patient sees fine detail, including regular print in newspapers/books.

1. Impaired—The patient sees large print, but not regular print in newspapers/books.

2. Moderately Impaired—The patient has limited vision, is not able to see newspaper headlines, but can identify objects in his or her environment.

3. Highly Impaired—The patient's ability to identify objects in his or her environment is in question, but eye movements appear to follow objects (for example, people walking by).

Note: Many patients with severe cognitive impairment are unable to participate in vision screening because they are unable to follow directions or are unable to tell you what they see. However, many such patients appear to "track" or follow moving objects in their environment with their eyes. For patients who appear to do this, use code "3", Highly Impaired. Even though these are gross measures, with our current limited technology, this is the best general assessment you can do under the circumstances.

4. Severely Impaired—The patient has no vision; reports seeing only light or colors, but eyes do not appear to follow objects (for example, people walking by).

(b) Is now more impaired in vision than was prior to precipitating event (Item A7a).

0. No or unsure.

1. Yes, more impaired today.

Section D. Mood and Behavior Patterns

Mood distress is a serious condition that is associated with significant morbidity and mortality. It may be precipitated by acute illness, loss of independence (whether temporary or permanent), a new diagnosis (possibly terminal), pain, effects of medications, etc. Although changes in mood and behavior can happen to anyone, persons at particular risk for disorders such as depression are those with prior history of mood disorders, mild to moderate cognitive impairment, pain, and unstable health conditions. Many clinicians and patients perceive changes in mood and behavior to be normal, expected reactions to crisis (for example, deteriorating health). Although such reactions are common, it is crucial to identify the particular signs of distress, assess the frequency of their occurrence, and determine whether they are easily altered. Then clinicians can develop an appropriate treatment plan based on the impact of the mood or behavioral indicators on the patient's quality of life and well-being, ability to participate in the post acute treatment and discharge plans, etc.

1. Indicators of Depression, Anxiety, Sad Mood

Intent: To record the frequency of indicators observed in the last 3 days, irrespective of the assumed cause of the indicator (behavior).

Definition: Feelings of psychic distress may be expressed directly by the patient who is depressed, anxious, or sad. However, direct statements such as "I'm so depressed" are often rare; signs must be often "teased" out by clinicians through observation and interview. Distress may be more commonly expressed in the following ways:

VERBAL EXPRESSIONS OF DISTRESS

a. Patient made negative statements—for example, "Nothing matters; Would rather be dead than live this way; What's the use; Let me die."

b. Persistent anger with self or others—for example, easily annoyed, anger at presence in post acute care, anger at care received.

c. Expressions of what appear to be unrealistic fears—for example, fear of being abandoned, left alone, being with others, afraid of nighttime.

d. Repetitive anxious complaints/concerns (non-health related)—for example, persistently seeks attention/reassurance regarding therapy or others' schedules, meals, laundry, clothing, relationship issues, when family will visit.

e. Repetitive health complaints—for example, persistently seeks medical attention, obsessive concern with body functions, obsessive concern with vital signs.

Distress may also be expressed non-verbally and identified through observation of the patient in the following areas during usual daily routines:

SAD, APATHETIC ANXIOUS APPEARANCE

f. Sad, pained, worried facial expressions—for example, furrowed brows.

g. Crying, tearfulness.

h. Repetitive physical movements—for example, pacing, hand wringing, restlessness, fidgeting, picking.

SLEEP CYCLE ISSUES

Distress can also be manifested in disturbed sleep patterns.

i. Insomnia/change in usual sleep patterns—for example, difficulty falling asleep, fewer or more hours of sleep than usual, waking up too early and unable to fall back to sleep.

LOSS OF INTEREST

These items refer to a change in the patient's usual pattern of behavior.

j. Withdrawal from activities of interest—for example, no interest in long standing activities or being with family/friends.

k. Reduced social interaction—for example, less talkative, more isolated.

Process: Initiate a conversation with the patient, being cognizant of earlier statements by (or observations of) the patient. Some patients are more verbal about their feelings than others and will either tell someone about their distress, or tell someone only when asked directly how they feel. For patients who verbalize their feelings, ask how long these conditions have been present. Other patients may be unable to articulate their feelings (that is, cannot find the words to describe how they feel, or lack insight or cognitive capacity). Observe the patient carefully for any indicator, both at the time of the planned assessment and in any direct contacts you may have with the patient during the three days covered by this assessment. Consult with direct-care staff over all shifts, if possible, or other clinicians who work with the patient, or family who have direct knowledge of the patient's typical and current behavior. Relevant information may also be found in the clinical record, although this can vary.

Coding: For each indicator apply one of the following codes based on interactions with and observations of the patient in the last 3 days. Remember, code regardless of what you believe the cause to be.

0. Indicator not exhibited in last 3 days.

1. Exhibited on 1–2 of last 3 days.

2. Exhibited on each of last 3 days.

2. Mood Persistence

Intent: To identify if one or more indicators of depressed, sad or anxious mood [Item D1] were easily altered by attempts to "cheer up", console, or reassure the patient over the last three days.

Process: The information on which to base this judgement is gathered as part of the conversations, observation, and record reviews for D1 (the individual indicators of mood state). The key factor here is the need to assess whether (when aggregated across the several mood indicators) the patient cannot be easily consoled, reassured or cheered up.

Coding: One or more indicators of depressed, sad or anxious mood were not easily altered by attempts to cheer up, console, or reassure the patient over last 3 days.

0. No mood indicators or always easily altered.

1. Partially altered or easily altered on only some occasions.

2. All aspects of mood not easily altered.

3. Behavioral Symptoms

Intent: To identify the frequency of behavioral symptoms over the last 3 days that cause distress to the patient, or are distressing or disruptive to other patients or staff members. Such behaviors include those that are potentially harmful to the patient, or disruptive in the environment, even if staff or other patients appear to understand or have adjusted to them (for example, "Mrs. R. doesn't mean anything by calling out. She does it because she's confused right now.")

Behavioral symptoms can be associated with an acute illness, a change in medication, or simply a response to or change in the environment. Acknowledging and documenting behavioral symptoms provides a basis for further evaluation, care planning, and delivery of consistent, appropriate care.

Note: Documentation of the patient's behavioral status in the medical record may not be accurate, valid, or complete, and it is not intended to be the only source of information. (See Process below). However, once the frequency and alterability of behavioral symptoms is determined, subsequent documentation should more accurately reflect the patient's status and response to interventions.

Definition: a. Wandering—Locomotion with no discernible, rational purpose. A wandering patient may be oblivious to his or her physical or safety needs. Wandering behavior should be differentiated from purposeful movement (for example, a hungry person moving about the unit in search of food). Wandering may be manifested by walking or by wheelchair use.

Do not include pacing back and forth as wandering behavior. If it occurs, it should be documented in Item D1h, "Repetitive physical movements".

b. Verbally Abusive Behavioral Symptoms—Other patients or staff were threatened, screamed at, or cursed at.

c: Physically Abusive Behavioral Symptoms—Other patients or staff were hit, shoved, scratched, or sexually abused.

d. Socially Inappropriate/Disruptive Behavioral Symptoms—Includes disruptive sounds, excessive noise, screams, self-abusive acts, sexual behavior or disrobing in public, smearing or throwing food or feces, hoarding, rummaging through others' belongings.

e. Resists care—Resists taking medications/injections, ADL assistance, help with eating, or changes in position. This category does not include instances where the patient has made an informed choice not to follow a course of care (for example, patient has exercised his or her right to refuse treatment, and reacts negatively if staff try to reinstate treatment).

Signs of resistance may be verbal or physical (for example, verbally refusing care, pushing caregiver away, scratching caregiver). These behaviors are not necessarily positive or negative, and their presence should prompt further investigation of their cause (for example, fear of pain, fear of falling, poor comprehension, anger, poor relationships, eagerness for greater participation in care decisions, past experience with medication errors and unacceptable care, desire to modify care being provided).

Process: Take an objective view of the patient's behavioral symptoms. The coding for this item focuses on the patient's actions, not intent. It is often difficult to determine the meaning behind a particular behavioral symptom. Therefore, it is important to record all behavioral symptoms. The fact that staff have become used to the behavior and minimize the patient's presumed intent ("He doesn't really mean to hurt anyone. He's just frightened.") is not pertinent to this coding. Does the patient manifest the behavioral symptom or not?

Observe the patient and how he/she responds to caregiver attempts to deliver care to him or her. Consult with staff who provide direct care on all three shifts. A symptomatic behavior may be present and might not be seen because it occurs during intimate care on another shift. Therefore, it is especially important to solicit input from direct caregivers (including nurse assistants) who have contact with the patient.

Simply relying on written notes in the patient record is not sufficient. You must be alert to the possibility that staff might not think to report a behavioral symptom if it is part of the unit norm (for example, staff are working with severely cognitively and functionally impaired patients (for example, in a head trauma unit) and are used to patients' wandering, noisiness, etc.). Focus staff attention on what has been the individual patient's actual behavior over the last three days. Finally, although it may not be complete, review the clinical record for documentation of behaviors you may not have seen, nor staff reported. When such a note is found, review the patient's status with staff. Is the note correct? Is it within the appropriate time frame of the record?

Coding: Behavioral symptom frequency in last 3 days.

Record the frequency of behavioral symptoms manifested by the patient across all three shifts.

Code "0" if the described behavioral symptom was not exhibited in last three days. This code applies to patients who have never exhibited the behavioral symptom or those who have previously exhibited the symptom but now no longer exhibit it, including those whose behavioral symptoms are fully managed by psychotropic drugs, or a behavior-management program. For example: A "wandering" patient who has not wandered in the last three days because he was restricted to bedrest and had a private duty nurse attending to him would be coded "0"—Behavioral symptom not exhibited in last three days.

Code "1" if the described behavioral symptom occurred on 1 day.

Code "2" if the described behavioral symptom occurred on 2 days.

Code "3" if the described behavioral symptom occurred daily or more frequently (that is, multiple times each day) in the last 3 days.

Section E. Functional Status

Patients in post-acute care settings will have acute (and often chronic) illnesses, and they will be subject to a variety of factors that can severely impact self-sufficiency. For example, cognitive deficits can limit a person's ability or willingness to initiate or participate in self-care or constrict understanding of the tasks required to complete the ADLs. A wide range of physical and neurological illnesses can adversely affect physical factors important to self-care such as stamina, muscle tone, balance, and bone strength. Side effects of medications and other treatments can also contribute to needless loss of self-sufficiency.

Individualized plans of care can be successfully developed only when the patient's self-performance has been accurately assessed, including the amount and type of support being provided to the patient by others.

For patients in post acute settings, the focus of the admission assessment is twofold: (1) to determine baseline functional performance levels, and (2) to determine if these levels have recently changed. This information will then be used as a basis for developing a plan of care (for example, targeted rehabilitation and other services) with the goal of leading the patient to an expeditious and coordinated discharge to home or a lower level of care.

1. Activities of Daily Living (ADL) Self-Performance Summary (Over Last Three Days)

Intent: To record a summary of the patient's self-care performance in activities of daily living (that is, what the patient actually did for himself or herself or how much verbal or physical help was required by staff members) during the last three days. This requires a review of all ADL activities over this period.

Definition: ADL SELF–PERFORMANCE—Measures what the patient actually did (not what he or she might be capable of doing) within each ADL category over all shifts for all episodes over the last three days according to a performance-based scale.

a. Bed Mobility—How patient moves to and from a lying position, turns side to side, and positions the body while in bed.

b. Transfer—Bed/Chair—How patient moves between surfaces-that is, to/from bed, chair, wheelchair standing position. This definition excludes movement to/from bath or toilet, which is coded under Transfer Toilet (item E1i) and Transfer Tub/Shower (item E1l).

c. Locomotion—How patient moves between locations in his/her room and adjacent corridor orr the same floor. If in wheelchair, locomotion is defined as self-sufficiency once in the chair.

d. Walk in Facility—How patient walks in different areas of the facility. For a patient who uses a wheelchair exclusively, this would be coded as "8" (Activity did not occur).

e. Dressing Upper Body—How patient dresses and undresses (street clothes, underwear) above the waist. Includes prostheses, orthotics, fasteners, pullovers, etc.

f. Dressing Lower Body—How patient dresses and undresses (street clothes, underwear) from the waist down. Includes prostheses, orthotics (for example, anti-embolic stockings), belts, pants, skirt, shoes and fasteners.

g. Eating—How patient eats and drinks (regardless of skill). Includes intake or nourishment by other means (for example, tube feeding, total parenteral nutrition).

h. Toilet Use—How patient uses the toilet room (or commode, bed pan, urinal), adjusts clothes before and after using toilet, manages perineal hygiene, changes pad, manages ostomy or catheter. (EXCLUDE transfer to toilet which is coded under item E1i, Transfer Toilet).

i. Transfer Toilet—How patient moves on and off toilet or commode or bedpan.

j. Grooming/Personal Hygiene—How patient maintains personal hygiene, including combing hair, brushing teeth, shaving, applying makeup; and washing/drying face and hands (EXCLUDE baths and showers which are coded in item E1k, Bathing).

k. Bathing—How patient takes full-body bath/shower or sponge bath (EXCLUDE washing of back and hair and TRANSFER [which is coded in item E1l, Transfer Tub/Shower]). Includes how each part of body is bathed: arms, upper and lower legs, chest, abdomen, perineal area. Note: For this item and item E1l below, you must code for most dependent episode.

l. Transfer Tub/Shower—How patient transfers in/out of tub/shower. Code for most dependent episode.

Process: In order to promote the highest level of functioning among patients, clinical staff must first identify what the patient actually does for himself or herself, noting when assistance is received and clarifying the types of assistance provided (verbal cuing, physical support, etc.)

A patient's ADL self-performance may vary from day to day, shift to shift, or within shifts. There are many possible reasons for these variations, including mood, medical condition, relationship issues (for example, willing to perform for a nurse assistant he or she likes), medications and changes in underlying functional capacity. The responsibility of the person completing the assessment is to capture the total picture of the patient's ADL self-performance over the 3-day period, 24 hours a day—that is, not only how the evaluating clinician sees the patient, but how the patient performs on other shifts as well.

In order to accomplish this, you will need to know about the multiple episodes of the activity over the last 3-days—for example, how the patient dressed and undressed the upper body yesterday, the day before yesterday, and the day before that. To gather this information, there are two obvious sets of people to talk with—the patient and direct care staff—and when you have these conversations, be sure to plan to discuss all ADLs (get the total picture)—that is, if possible, talk with the patient and direct care staff on all three shifts (including weekends) and review documentation used to communicate with staff across shifts.

Ask questions pertaining to all aspects of the ADL activity definitions. For example, when discussing Bed Mobility with a nurse assistant, be sure to inquire specifically how the patient moves to and from a lying position, how the patient turns from side to side, and how the patient positions himself or herself while in bed. A patient can be independent in one aspect of Bed Mobility yet require extensive assistance in another aspect. Be sure to consider each activity definition fully.

The wording used in each coding option is intended to reflect real-world situations, where slight variations are common. Where variations occur, the coding ensures that the patient is not assigned to an excessively independent or dependent category. For example, by definition, codes 0, 1, 2, and 3 (Independent, Set up Help only, Supervision; Minimal Assistance) permit one or two exceptions for the provision of heavier care. This is clinically useful and increases the likelihood that staff will code ADL Self-Performance items consistently and accurately.

The following chart provides general guidelines for recording accurate ADL Self-Performance.

Guidelines for Assessing (Item E1) ADL Self-Performance (Last 3 Days)

- The coding options for E1 record the patient's actual level of involvement in self-care and the type and amount of support actually received during the last three days—requiring that you have knowledge of all episodes of each of the ADLs (or as near as possible to all episodes).
- Do not record your assessment of the patient's capacity for involvement in self-care—that is, what you believe the patient might be able to do for himself or herself based on demonstrated skills or physical attributes. An assessment of functional prognosis is covered in Item L1 (Functional Improvement Goals by Discharge).
- Do not record the type and level of assistance that the patient "should" be receiving according to the written plan of care. The type and level of assistance actually provided may be quite different from what is indicated in the plan. Record what is actually happening.
- Engage direct care staff from all shifts who have cared for the patient over the last three days in discussions regarding the patient's ADL functional performance. Remind staff that the focus is on the last three days only. To clarify your own understanding and observations about each ADL activity (bed mobility, locomotion, transfer, etc.), ask probing questions, beginning with the general and proceeding to the more specific.
- When you are uncertain that the patient could perform the activity as described or conversely where you wonder why the patient is not more independant, observe a regularly scheduled session where this activity is carried out (for example, eating a meal, dressing in the morning). Observation will both help you to validate reported behaviors and will be useful as you go forward to care planning.

Here is a typical conversation between the RN and a nurse assistant regarding a patient's Bed Mobility assessment:

R.N. "Describe to me how Mrs. L positions herself in bed. By that I mean, once she is in bed, how does she move from sitting up to lying down, lying down to sitting up, turning side to side, and positioning herself?"
N.A. "She can lay down and sit up by herself, but I help her turn on her side."
R.N. "She lays down and sits up without any verbal instructions or physical help?"
N.A. "No, I have to remind her to use her trapeze every time. But once I tell her how to do things, she can do it herself." se supervision
R.N. "How do you help her turn side to side?"
N.A. "She can help turn herself by grabbing onto her siderail. I tell her what to do. But she needs me to lift her bottom and guide her legs into a good position."
R.N. "Do you lift her by yourself or does someone help you?"
N.A. "I do it by myself."
R.N. "How many times during the last three days did you give this type of help?"
N.A. "Every time she was turned."

Provided that ADL function in Bed Mobility was similar on all shifts, Mrs. L would receive an ADL Self-Performance (in the last three days) Code of "4".

Now review the first two exchanges in the conversation between the RN and the nurse assistant. If the RN did not probe further, he or she would not have received enough information to make an accurate assessment of either the patient's skills or the nurse assistant's actual workload, or whether the current plan of care was being implemented.

Coding: For each ADL category, code the appropriate response for the patient's actual performance during the last three days. Consider the patient's performance during all shifts, as function may vary. For example, for eating, a patient may receive 3 meals per day and two supplemental feedings. Thus, over 3 days, there would have been 15 feeding episodes. It is this performance experience that forms the basis for scoring item E1g.

0. Independent—No help, or set up or staff oversight/supervision –OR–help, setup or supervision provided only 1 or 2 times during period (with any task or subtask). [See examples of Setup Help in the box following these coding options.]

1. Setup Help Only—Article or device provided or placed within reach of patient 3 or more times. [See examples of Setup Help in the box following these coding options.]

2. Supervision—Oversight, encouragement, or cuing provided 3 or more times during period–OR–Supervision (1 or more times) plus physical assistance provided only 1 or 2 times during period (for a total of 3 or more episodes of help or supervision).

3. Minimal Assistance (Limited Assistance)—Patient highly involved in activity; received physical help in guided maneuvering of limbs or other non-weight bearing assistance 3 or more times –OR–Combination of non-weight bearing help with more help provided only 1 or 2 times during period (for a total of 3 or more episodes of physical help).

4. Moderate Assistance (Extensive Assistance)—Patient performed part of activity on own (50% or more of subtasks) BUT help of the following type(s) was provided 3 or more times:

- Weight-bearing support (for example, holding weight of one or both lower limbs, trunk).
- Full staff performance of a task (some of time) or discrete subtask.

5. Maximal Assistance—Patient involved but completed less than 50% of subtasks on own (includes 2 + person assist), received weight bearing help or full performance of certain subtasks 3 or more times.

6. Total Assistance (Total Dependence)—Full staff performance of the activity during the entire period.

8. Activity Did Not Occur—During the last three days, the ADL activity was not performed by the patient or staff. In other words, the specific activity did not occur at all.

For example: A patient who was restricted to bed for the entire three day period and was never transferred from the bed would receive a code of "8" for Transfer (Item E1b).

However, do not confuse a patient who is totally dependent in an ADL activity (Code 6—Total Dependence) with the activity itself not occurring. For example: A patient who receives tube feedings and no food or fluids by mouth is engaged in eating (receiving nourishment), and must be evaluated under the Eating category for his or her level of assistance in the process. A patient who is highly involved in giving himself a tube feeding is not totally dependent and should be coded as a "3."

Note: Each of these ADL Self-Performance scoring categories is exclusive. There is no overlap between categories. Changing from one self-performance category to another demands an increase or decrease in the number of times that help is provided.

There will be times when there is no one type or level of assistance provided to the patient 3 or more times during a three-day period. However the sum total of support of various types will be provided three or more times. In this case, code for the least dependent self-performance category where the patient received that level or more dependent support 3 or more times during the 3 day period. Please review the following example for clarification of this principle.

Examples of Setup Help

- For bed mobility—Handing the patient the bar on a trapeze apparatus.
- For transfer—Giving the patient a transfer board or locking/unlocking the wheels on a wheelchair for a safe transfer.
- For locomotion.

Walking—Handing the patient a walker or cane.

Wheeling—Locking/unlocking the brakes on the wheelchair or adjusting the foot pedals to facilitate foot motion while wheeling.

- For dressing—Retrieving clothes from closet and laying out on the patient's bed; handing the patient a shirt; retrieving a prosthesis or orthotic.
- For eating—Cutting meat and opening containers at meals; giving one food category at a time.
- For toilet use—Handing the patient a bedpan or placing articles necessary for changing ostomy appliance within reach.

- For personal hygiene—Providing a wash basin and grooming articles.
- For bathing—Placing bathing articles at tub side within the patient's reach; handing the patient a towel upon completion of the bath.

2. ADL Assist Codes

Intent: To identify and document the level of weight bearing ADL assistance provided to the patient over the last 3 days.

Definition: a. Bed mobility—How patient moves to and from lying position, turns side to side, and positions body while in bed.

b. Transfer bed/chair—How patient moves between surfaces-to or from: bed, chair, wheelchair, standing position (Exclude to or from bath or toilet).

c. Locomotion—How patient moves between locations in his/her room and adjacent corridor on the same floor. If in wheelchair, how the patient moves once in the wheelchair.

d. Walk in facility—How the patient walks in room, corridor, or other place in the facility.

e. Dressing upper body—How the patient dresses and undresses (street clothes, underwear) above the waist, includes prostheses, orthotics, fasteners, pullovers, etc.

f. Dressing lower body—How the patient dresses and undresses (street clothes, underwear) from the waist down, includes prostheses, orthotics, belts, pants, skirts, shoes, and fasteners.

g. Eating—How the patient eats and drinks (regardless of skill) includes intake of nourishment by other means (for example, tube feeding, total parenteral nutrition).

h. Toilet use—How patient uses the toilet room (or commode, bedpan, urinal), cleanses self after toilet use or incontinent episode(s), changes pad, manages ostomy or catheter, adjusts clothes (Exclude transfer to toilet).

i. Transfer/Toilet—How patient moves on and off toilet or commode

j. Grooming/Personal hygiene—How the patient maintains personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing and drying face, and hands (Excludes baths and showers).

k. Bathing—How patient takes full body bath or shower or sponge bath (Exclude washing of back and hair and transfer). Includes how each part of the body is bathed: arms, upper and lower legs, chest, abdomen, perineal area.

l. Transfer tub/shower—How the patient transfers in and out of the tub or shower.

Coding: Code for the most help in the last 3 days.

0. Neither code applies.
1. Weight bearing support with 1 limb (arm or leg).
2. 2+ person physical assist.

3. ADL Changes

Intent: In this item the assessor compares the patient's current ADL function to self performance prior to the precipitating event item A7a.

Definition: a. The number of ADL areas (listed under E1) in which the patient is now more impaired in self performance than was prior to the precipitating event (A7a) determines the appropriate coding.

b. The number of ADL areas (from E1 above) in which patient was independent prior to precipitating event (item A7a).

Coding: Place the appropriate number of ADL areas in box a and box b.

4. Instrumental Activities of Daily Living (IADLs)

Intent: The intent of these items is to examine the areas of function that are most commonly associated with independent living.

Process: The patient is to be questioned directly about his or her capacity to perform the usual activities around the home or community in the last 24 hours of a 3-day assessment period. If the patient performed or contributed to the performance of the IADL task during this period (meal preparation, medication management, etc) this performance should be considered when coding. However, be aware that a patient's partial involvement in an activity in the last 24 hours may not necessarily express that patient's full capacity to perform the task.

For example: A patient may have performed part of the medication management with assistance from staff. Staff assistance may have been provided because medication containers are different than what the patient was used to at home. The patient states that within the last 24 hours, he or she could have performed the medication task if he or she had been in his or her own home. In fact, the patient had been independent prior to admission, and there have been no cognitive or functional changes that might cause you to call the patient's judgement into question. The assessor would code E4d as "0" Independent.

In talking to the patient, you are both involved in a process of speculation about IADL activities that did not occur at the facility, leading to the assessor's active coding decision.

Definition: a. Meal preparation—How meals are prepared (for example, planning meals, assembling ingredients, cooking, setting out food and utensils.)

b. Managing finances—Paying for newspaper or TV service, using the cafeteria.

c. Phone Use—How telephone calls are made or received (using assistive devices such as large numbers on the telephone, voice amplification as needed.)

d. Medication Management—How medications are managed (for example, remembering to take medications, opening bottles, taking correct dosage of pills, filling syringe, giving injections, applying ointments.)

e. Stairs—How moves up and down stairs (for example, one flight of steps, using handrails as needed.)

f. Car Transfer—How patient moves in and out of a car. Includes opening door, sitting, and rising from seat.

Coding: CAPACITY TO PERFORM INSTRUMENTAL ACTIVITIES OF DAILY LIVING—If patient had been required to carry out the activity as independently as possible, SPECULATE AND CODE for what you would consider the patient's capacity (ability) would have been to perform the activity in the last 24 hours of the 3-day assessment period.

0. Independent—Would have required no help, setup or supervision.
1. Setup Help Only—Would have required help that would have been limited to providing or placing an article/device within reach of the patient; all other tasks would have been performed by the patient on his or her own.
2. Supervision—Would have required oversight, encouragement or cuing.
3. Limited Assistance—On some occasion(s) could have done on own, other times would have required help.
4. Moderate Assistance—While patient could have been involved, would have required presence of helper at all times, and would have performed 50% or more of subtasks on own.
5. Maximal Assistance—While patient could have been involved, would have required presence of helper at all times, and would have performed less than 50% of all subtasks on own.
6. Total Dependence—Full performance of the activity by other person would have been required at all times (no residual capacity exists).

5. IADL Areas Now More Limited

Intent: In this item the assessor compares the patient's current capacity to perform IADLs to self performance with IADLs prior to the precipitating event (Item A7a).

Process: Compare all the IADL capacity self performance area codes (for Items E4a–f) to the patient's function prior to the precipitating event. Determine the overall number of IADL areas that the patient is now more limited in.

Coding: Code for the most appropriate category.

0. None.
1. Some (1–3 IADL areas).
2. All or most (4–6 IADL areas).

6. Devices/Aids

Intent: To record the type of appliances, aids, or assistive devices the patient used over the last 3 days.

Definition: Locomotion Devices

a. Cane/crutch—A cane is a slender stick held in the hand and used for support during walking. Includes 3 or 4 prong canes. A crutch is a device for aiding a patient with walking. Usually it is a long staff with padded crescent-shaped portion at the top that is placed under the armpit.

b. Walker—A mobile device used to assist a patient with walking. Usually consists of a stable platform made of metal tubing that the patient grasps while taking a step. The patient then moves the walker forward and makes another step. Also check this item in those instances where the patient walks with a wheelchair or Meri-Walker for support. [For Meri-Walkers, if the patient is standing most of the time in the Meri-Walker and using it as a walker, code as a walker—if the patient sits in the Meri-Walker most of the time—code it as a wheelchair.]

c. Wheelchair/scooter—Includes use of a hand-propelled wheelchair as well as motorized chair or scooter, includes wheeling self and being wheeled by others.

Other Aids

d. Adaptive eating utensil—A device that is specially designed to help the patient be independent in eating. Some examples are, built-up spoon, rocker knife, plate guard, special mug.

e. Mechanical lift—A mechanical device such as a Hoyer lift, used to lift a patient.

f. Orthotics/prosthesis—An orthotic is a device added to the upper or lower extremities to stabilize or immobilize present deformity, protect against injury, or assist with function (for example, arm sling, finger splint). A prosthesis is a replacement of a missing body part by an artificial substitute, such as an artificial extremity. A device of a natural function.

g. Postural support (while sitting)—A device (pads, pillows, boards) used to maintain the patient's position while in a chair or wheelchair.

h. Slide Board—A flat surfaced board (usually polished to a smooth finish) used to help a patient transfer from bed to chair or chair to bed.

i. Other Adaptive Devices—Include assistive/adaptive devices such as trapezes, braces.

j. NONE OF THE ABOVE.

Process: Observe, interview patient or staff.

Coding: Check all that apply.

7. Stamina

Intent: Moderate physical activity in connection with activities of everyday life or chosen activities can help to keep patients fit in many ways. Below a certain threshold of activity, functional decline may be accelerated. Activities can include domestic IADLs (for example, light housework), or chosen physical activities (for example, recreation, going out to shop or walk).

It is necessary to understand if the patient is motivated, what the patient's needs may be, what barriers need to be overcome, and whether health education is needed.

Many people are interested in maintaining health. They usually know that lifestyle practices may be important, but they often need concrete information about how important their own life style is for health maintenance. For example, the patient may understand questions on walking and eating, but may not be willing to take corrective action.

Definition: Hours of physical activity at two points in time—examples of physical activity include exercise, therapy sessions, walking, house cleaning, grocery shopping: (A) in last 24 hours and (B) immediately prior to precipitating event (A7a).

Process: Talk to the patient and family members if required. In assessing patient self-involvement, confirm patient stamina estimates. Talk to staff. Determine performance in last 24 hours and prior to precipitating event (Item A7a) and code accordingly.

Coding: Note—Item E7 has two coding columns, Column A and Column B.

0. None.
1. Less than one hour per day.
2. 1 to 2 hours per day.
3. 2+ to 3 hours per day.
4. 3+ to 4 hours per day.
5. More than 4 hours per day.

8. Walking and Stair Climbing

Intent: Walking is a crucial activity when considering a discharge back to the community. The interdisciplinary team members need current information about the patient's walking ability. This knowledge will help the team in devising an accurate service delivery and care plan resulting in an expeditious and coordinated discharge home.

CODE for walking or stair climbing episode that represents the most consistent pattern over the last 24 hours of the 3-day assessment period (includes episodes during therapy, activities, etc.)

Process: Observe the patient and interview staff.

Coding: a. Farthest distance walked without sitting down.

0. 150+ feet.
1. 51–149 feet.
2. 25–50 feet.
3. 10–24 feet.
4. Less than 10 feet.
8. ACTIVITY DID NOT OCCUR.

b. Walking support provided.

0. None.
1. Set up help only.
2. Supervision.
3. One person physical assistance.
4. Two+ person physical assistance.
8. ACTIVITY DID NOT OCCUR.

c. Stair climbing.

Intent: This item gives an indication of the patients stamina as measured by stair-climbing activity.

Process: Talk with the patient and family member if necessary. Consult with therapy staff who have observed or assisted the patient in stair climbing activity in the last 24 hours.

Definition: A full flight of stairs consists of 12–14 stairs (steps). A partial flight of stairs consists of 4 to 6 stairs (steps).

Coding: Code for the most dependent episode of stair climbing activity when the activity attempted in the last 24 hours. Note: There are only three possible codes when the patient does 4–6 stairs (steps) only (code—2, 5, 6).

0. Complete Independence—Up and down full flight of stairs with NEITHER physical help NOR support device.

1. Modified Independence—Up and down full flight of stairs with NO physical help and any of following:

Use of one or more supportive devices (support devices includes the required use of hand rails).

OR Use of an appliance (that is, cane, brace, prosthesis, walker).

OR Excessive time to climb the stairs (3 or more times normal).

2. Supervision—Up/down full flight of stairs with supervision or cuing–OR–up and down partial flight with NO physical help (device may or may not be used).

3. Minimal Assistance—Contact guard/steadying/assistance to go up/down full flight of stairs.

4. Moderate Assistance—Some weight bearing help to go up/down full flights of stairs, patient does most on own.

5. Maximal Assistance—Patient had limited involvement in going up/down full flight of stairs, staff perform more than 50% of effort–OR–receives physical help on partial flight of stairs.

6. Total Assistance—Did not go up/down 4–6 stairs (OR has 2-person assist) OR totally dependent.

8. Activity did not occur in last 24 hours.

9. Balance Related to Transitions

Intent: Balance is a key component of a patient's ability to transfer from standing to seated position and from seated to standing position. Problems with stability involve provision of support (either staff member or device) to ensure a safe transfer. It is important to assess a person's ability to balance in order that interventions (strength training exercises, safety awareness, restorative nursing, nursing-based rehabilitation) can be implemented to prevent injuries and foster increased independence in the patient.

Process: Over the last 24 hours, assess how the patient: transfers from seated to standing position, or turns and faces the opposite direction. Because this assessment is to be based on the most dependent episode over the last 24 hours, base both on your own observations and reports of staff.

Definition: a. Moved from seated to standing position.

b. (While standing) turned around and faced the opposite direction.

Coding: Code for the most dependent in the last 24 hours.

0. Smooth transition; stabilizes without assistance.
1. Transition not smooth, but able to stabilize without assistance.
2. Transition not smooth, unable to stabilize without assistance.
8. ACTIVITY DID NOT OCCUR.

10. Neuro-musculo-skeletal Impairment

Process: Review the patient's record for documentation of impairment of this type. An obvious example of a patient with this problem is someone who is comatose. Other patients at high risk include those with quadriplegia, paraplegia, hemiplegia or hemiparesis, peripheral vascular disease and neurological disorders. In the absence of documentation in the clinical record, sensation can be tested in the following way:

- To test for pain, use a new safety pin or wooden "orange stick" (usually used for nail care). Always dispose of the pin or stick after each use to prevent contamination.
- Do not use pins with agitated or restless patients. Abrupt movements can cause injury.
- Ask the patient to close his or her eyes. If the patient cannot keep his or her eyes closed or cannot follow directions to close eyes, block what you are doing (in local areas of legs and feet) from view with a cupped hand or towel.
- Lightly press the pointed end of the pin or stick against the patient's skin. Do not press hard enough to cause pain, injury, or break in the skin. Use the pointed and blunt ends of the pin or stick alternately to test sensations on the patient's arms, trunk, and legs. Ask the patient to report if the sensation is "sharp" or "dull."
- Compare the sensations in symmetrical areas on both sides of the body.
- If the patient is unable to feel the sensation, or cannot differentiate sharp from dull, the area is considered desensitized to pain sensation.

- For patients who are unable to make themselves understood or who have difficulty understanding your directions, rely on their facial expressions (for example, wincing, grimacing, surprise), body motions (for example, pulling the limb away, pushing the examiner) or sounds (for example, "Ouch!") to determine if they can feel pain.

Definition: a. Leg (hip, knee, ankle, foot).
b. Arm (shoulder, elbow, wrist, hand).
c. Trunk and neck.

Coding: Code for the most limited in the last 24 hours.

A. Joint mobility/range of motion at joints listed (code for most impaired joint).

0. No impairment.
1. Impairment on one side.
2. Impairment on both sides.

B. Voluntary motor control (active, coordinated, purposeful movement—code for most dependent joint).

0. No loss.
1. Partial loss on one side.
2. Partial loss both sides.
3. Full loss one side.
4. Full loss both sides.

C. Intact touch/sensation on extremity (tactile sense) (Use same codes as E10B).

0. No loss.
1. Partial loss on one side.
2. Partial loss both sides.
3. Full loss one side.
4. Full loss both sides.

Section F. Bowel/Bladder Management

1. Bladder Continence

Intent: To describe the patient's pattern of bladder continence (control) over the last 7–14 days, and to compare current continence status to status prior to the current event which precipitated this post-acute stage. This information is key in care planning for incontinence.

Definition: Bladder Continence—Refers to control of urinary bladder function. This item describes the patient's bladder continence pattern even with scheduled toileting plans, continence training programs, or appliances. It does not refer to the patient's ability to toilet self—for example, a patient can receive extensive assistance in toileting and yet be continent, perhaps as a result of staff help. The patient's self-performance in toilet use is recorded in Item E1h.

Process: Complete your review in the following order. Remember to consider continence patterns over the last 7–14 day period, 24 hours a day, including weekends.

(1) Review the patient's clinical record and any urinary elimination (bladder) flow sheets (if available).

(2) Validate the accuracy of written records with the patient. Make sure that your discussions are held in private. Control of bladder function is a sensitive subject, particularly for patients that are struggling to maintain control. Many people with poor control problems will try to hide their problems out of embarrassment or fear of retribution. Others will not report the problem to staff because they mistakenly believe that incontinence is a natural part of aging or certain disease processes and that nothing can be done to reverse the problem. Despite these common reactions to incontinence, many patients are relieved when a health care professional shows enough concern to ask about the nature of the problem in a sensitive, straightforward manner.

(3) Validate continence patterns with people who know the patient well (for example, primary family member of a newly admitted patient, or direct care staff).

(4) When the information you have received is inconsistent and particularly if the staff report incontinence that is not reported by the patient, review for physical indications that the patient is in fact incontinent. This could include being present at scheduled toileting intervals, observing clothing, bed clothes, etc.

a. Control of urinary bladder function—(if patient dribbles, volume insufficient to soak through undergarments).

Coding: Choose the response that best reflects the patient's level of bladder continence in the last 7–14 days.

Code for the patient's actual bladder continence pattern—that is, the frequency with which the patient is wet and dry during the 7–14 day assessment period. Do not record the level of control the patient might have achieved under optimal circumstances. For bladder continence the difference between a "5" (Frequently Incontinent) and a "6" (Incontinent) is determined by the presence ("5") or absence ("6") of any bladder control.

0. Continent—Complete control; does not use any type of catheter or other urinary collection device.

1. Continent with Catheter—Complete control with any use of any type of catheter or urinary collection device that does not leak urine.

2. Biweekly Incontinence—Incontinent episodes less than once a week (that is, once in last 2 weeks).

3. Weekly Incontinence—Incontinent episodes once a week.

4. Occasionally Incontinent—Incontinent episodes 2 or more times a week, but not daily.

5. Frequently Incontinent—Tended to be incontinent daily, but some control present (that is, on day shift).

6. Incontinent—Has inadequate control of bladder, multiple daily episodes all or almost all of the time.

8. DID NOT OCCUR—No urine output from bladder.

b. Is now more impaired in bladder incontinence then was prior to precipitating event (item A7a).

Coding: 0. No, or unsure.
1. Yes, more impaired today.

2. Bladder Appliance.

Definition: a. External catheter (condom catheter)—A urinary collection appliance worn over the penis.

b. Indwelling catheter—A catheter that is maintained within the bladder for the purpose of continuous drainage of urine. This item includes catheters inserted through the urethra or via supra-pubic incision.

c. Intermittent catheterization—A catheter that is used periodically for draining urine from the bladder. This type of catheter is usually removed immediately after the bladder has been emptied. Includes intermittent catheterization whether performed by a licensed professional or by the patient. Catheterization may occur as one-time event (for example, to obtain a sterile specimen) or as part of a bladder emptying program (for example, every shift in a patient with an underactive or a contractile bladder muscle).

d. Medications for control—medications administered to the patient for the purpose of improving control of the bladder.

e. Ostomy—Any type of ostomy of the urinary tract.

f. Pads, briefs—Any type of absorbent disposable or reusable undergarment or item, whether worn by the patient (for example, diaper, adult brief) or placed on the bed or chair for protection from incontinence. Does not include the routine use of pads when a patient is never or rarely incontinent.

g. Urinals, bedpan—A urinal is a container into which a patient urinates. A bedpan is a pan-shaped device placed under a patient for collecting urine (and feces)

Process: Consult with the nursing staff and the patient. Be sure to ask about any items that are usually hidden from view because they are worn under street clothing (for example, pads or briefs). If necessary, check the clinical record.

Coding: Code for the last 24 hours.
0. No.
1. Yes.

3. Bladder Appliance Support

Intent: This item is designed to identify the type of assistance or support a patient needs in order to use any of the bladder appliances listed in F2.

Coding: Code for the level of bladder appliance support provided to the patient in the last 24 hours.

0. No appliances (in item F2).
1. Use of appliances, did not require help or supervision.
2. Use of appliances, required supervision or set up.
3. Minimal contact assistance (light touch only).
4. Moderate assistance—patient able to do 50% or more of subtasks involved in using equipment.
5. Maximal assistance—patient able to do 25–49% of all subtasks involved in using equipment.
6. Total dependence—patient requires assistance in all subtasks involved in using bladder equipment.

4. Bowel Continence

Process: The assessment for bowel continence should be completed simultaneously with the bladder continence review. This will thus include a review of the patient's clinical record and any bowel records (if available). Validate the accuracy of written records with the patient. Make sure that your discussions are held in private. Control of bowel function is a sensitive issue. Be sure to ask about the nature of the problem in a sensitive, straightforward manner.

- Validate continence patterns with people who know the patient well (for example, primary family member of newly admitted patient, direct care staff).
- Remember to consider continence patterns over the last 7–14 day period, 24 hours a day, including weekends.

Coding: Code for bowel continence over the last 7–14 days.

0. Continent—Complete control, does not use ostomy device.

1. Continent with Ostomy—Complete control with use of ostomy device that does not leak stool.

2. Biweekly Incontinence—Incontinent episodes less than once a week (that is, once in last two weeks).

3. Weekly Incontinence—Incontinent episodes once a week.

4. Occasionally Incontinent—2 to 3 times a week.

5. Frequently Incontinent—4+ times a week but not all of the time.

6. Incontinent—All of the time.

8.DID NOT OCCUR—No bowel movement during the entire 14-day assessment period.

5. Bowel Appliances

Definition: a. Bedpan—A bedpan is a pan-shaped device placed under a patient for collecting feces (and urine).

b. Enema—Introduction of solutions into the rectum and colon in order to stimulate bowel activity and to cause emptying of the lower intestine.

c. Medication for control—Medications administered to the patient for the pupose of improving control of the bowels. These medications can include laxatives, stool softeners, stimulants as well as anti-diarrheal preparations.

d. Ostomy—Any type of ostomy of the gastrointestinal tract.

Coding: Code for use of bowel appliances for the last 3 days.
0. No.
1. Yes.

6. Bowel Appliance Support

Intent: This item is designed to identify the type of assistance or support a patient needs in order to use any of the bowel appliances listed in F5.

Coding: Code for the level of bowel appliance support provided to the patient in the last 24 hours.

0. No appliances (in item F5).
1. Use of appliances, did not require help or supervision.
2. Use of appliances, required supervision or set up.
3. Minimal contact assistance (light touch only).
4. Moderate assistance—patient able to do 50 percent or more of subtasks involved in using equipment.
5. Maximal assistance—patient able to do 25–49 percent of all subtasks involved in using equipment.
6. Total dependence—patient requires assistance in all subtasks involved in using bowel equipment.

Section G. Diagnoses

1. Impairment Group

Intent: This item identifies the Impairment Group that best describes the primary reason for admission to the rehabilitation program.

Process: Consult with attending physician.

Coding: Each Impairment Group has been assigned a two-digit ID number, a decimal point, and a unique number (from one to four digits) for the subgroups. Code for the major diagnostic category of the patient by selecting the Impairment Group which best describes the condition requiring admission to rehabilitation. Then select a subgroup, if appropriate. Code as specifically as possible.

REHABILITATION IMPAIRMENT CATEGORIES AND ASSOCIATED IMPAIRMENT GROUP CODES

Rehabilitation impairment category	Associated impairment group codes
01 Stroke (Stroke)	01.1 Left body involvement (right brain). 01.2 Right body involvement (left brain). 01.3 Bilateral Involvement. 01.4 No Paresis. 01.9 Other Stroke.
02 Traumatic brain injury (TBI)	02.21 Open Injury. 02.22 Closed Injury.
03 Nontraumatic brain injury (NTBI)	02.1 Non-traumatic. 02.9 Other Brain.
04 04 Traumatic spinal cord (TSCI)	04.210 Paraplegia, Unspecified. 04.211 Paraplegia, Incomplete. 04.212 Paraplegia, Complete. 04.220 Quadriplegia, Unspecified. 04.2211 Quadriplegia, Incomplete C1–4. 04.2212 Quadriplegia, Incomplete C5–8. 04.2221 Quadriplegia, Complete C1–4. 04.2222 Quadriplegia, Complete C5–8. 04.230 Other traumatic spinal cord dysfunction.
05 Nontraumatic spinal cord (NTSCI)	04.110 Paraplegia, unspecified. 04.111 Paraplegia, incomplete. 04.112 Paraplegia, complete. 04.120 Quadriplegia, unspecified. 04.1211 Quadriplegia, Incomplete C1–4. 04.1212 Quadriplegia, Incomplete C5–8. 04.1221 Quadriplegia, Complete C1–4. 04.1222 Quadriplegia, Complete C5–8. 04.130 Other non-traumatic spinal cord dysfunction.
06 Neurological (Neuro)	03.1 Multiple Sclerosis. 03.2 Parkinsonism. 03.3 Polyneuropathy. 03.5 Cerebral Palsy. 03.8 Neuromuscular Disorders. 03.9 Other Neurologic.
07 Fracture of LE (FracLE)	08.11 Status post unilateral hip fracture. 08.12 Status post bilateral hip fractures. 08.2 Status post femur (shaft) fracture. 08.3 Status post pelvic fracture.
08 Replacement of LE joint (ReplLE)	08.51 Status post unilateral hip replacement. 08.52 Status post bilateral hip replacements. 08.61 Status post unilateral knee replacement. 08.62 Status post bilateral knee replacements. 08.71 Status post knee and hip replacements (same side). 08.72 Status post knee and hip replacements (different sides).
08 Other orthopedic (Ortho)	08.9 Other orthopedic.

REHABILITATION IMPAIRMENT CATEGORIES AND ASSOCIATED IMPAIRMENT GROUP CODES—Continued

Rehabilitation impairment category	Associated impairment group codes
10 Amputation, lower extremity (AMPLE)	05.3 Unilateral lower extremity above the knee (AK).
	05.4 Unilateral lower extremity below the knee (BK).
	05.5 Bilateral lower extremity above the knee (AK/AK).
	05.6 Bilateral lower extremity above/below the knee (AK/BK).
	05.7 Bilateral lower extremity below the knee (BK/BK).
11 Amputation, other (AMP–NLE)	05.1 Unilateral upper extremity above the elbow (AE).
	05.2 Unilateral upper extremity below the elbow (BE).
	05.9 Other amputation.
12 Osteoarthritis (OsteoA)	06.2 Osteoarthritis.
13 Rheumatoid, other arthritis (RheumA)	06.1 Rheumatoid Arthritis.
	06.9 Other arthritis.
14 Cardiac (Cardiac)	09 Cardiac.
15 Pulmonary (Pulmonary)	10.1 Chronic Obstructive Pulmonary Disease.
	10.9 Other pulmonary.
16 Pain Syndrome (Pain)	07.1 Neck pain.
	07.2 Back pain.
	07.3 Extremity pain.
	07.9 Other pain.
17 Major multiple trauma, no brain injury or spinal cord injury (MMT–NBSCI).	08.4 Status post major multiple fractures.
	14.9 Other multiple trauma.
18 Major multiple trauma, with brain or spinal cord injury (MMT–BSCI).	14.1 Brain and spinal cord injury.
	14.2 Brain and multiple fractures/amputation.
	14.3 Spinal cord and multiple fractures/amputation.
19 Guillian Barre (FB)	03.4.
20 Miscellaneous (Misc)	*12.1 Spina Bifida.
	12.9 Other congenital.
	13 Other disabling impairments.
	15 Developmental disability.
	16 Debility.
	17 Infection.
	17.2 Neoplasms.
	17.31 Nutrition (endocrine/metabolic) with intubation/parenteral nutrition.
	17.32 Nutrition (endocrine/metabolic) without intubation/parenteral nutrition.
	17.4 Circulatory disorders.
	17.51 Respiratory disorders—Ventilator Dependent.
	17.52 Respiratory disorders—Non-ventilator Dependent.
	17.6 Terminal care.
	17.7 Skin disorders.
	17.8 Medical/Surgical complications.
	17.9 Other medically complex conditions.
21 Burn (Burns)	11 Burns.

We are in the process of anayzing the effect of moving the few cases within this impairment category to one of the other spinal cord RICs (either 05 or 04 depending upon the "fit").

2. Other Diseases

Intent: To document the presence of diseases that have an impact or potential impact on the patient's overall function (physical, cognitive, mood and behavioral), treatment or discharge plans.

Definition: ENDOCRINE

a. Diabetes Mellitus 250.00—Any of several metabolic disorders characterized by abnormal insulin secretion and elevated blood glucose levels. Category includes insulin-dependent diabetes mellitus (IDDM) as well as other types (for example, non-insulin dependent diabetes mellitus [NIDDM], adult onset diabetes mellitus [AODM], gestational diabetes, and diabetes associated with particular conditions or medications).

b. Hypothyroidism 244.9—Under-activity of the thyroid gland (insufficiency of thyroid hormone) resulting in a decrease in the basal metabolic rate.

HEART/CIRCULATION

c. Cardiac arrhythmias 427.9—A disturbance in the cardiac electrical conduction system resulting in irregularities in heart rate and rhythm.

d. Congestive heart failure 428.0—A dysfunction that occurs when cardiac output is insufficient to meet the person's metabolic demands.

e. Coronary artery disease (CAD) 746.85—A narrowing of one or more of the coronary arteries by atherosclerotic plaque or vascular spasm; results in a decrease in oxygenated blood flow (ischemia) to the heart. Usually associated with angina.

f. Deep vein thrombosis 451.1—A condition in which a blood clot (thrombus) is formed in the deeper/larger veins, usually in the lower extremities.

g. Hypertension 401.9—A persistent elevation of systolic or arterial blood pressure. This category includes primary (essential) and secondary hypertension.

h. Hypotension 458.9—An absolute systolic blood pressure value of less than 90 mm Hg (or a decline of 20 mm Hg or greater in systolic blood pressure from the person's usual baseline, or a decline of 10 mm Hg or greater in diastolic blood pressure from the person's usual baseline). This category also includes orthostatic hypotension (a reduction ≥ 20 mm Hg in systolic blood pressure upon standing).

i. Peripheral vascular disease (arteries) 443.9—A variety of syndromes that result in decreased blood flow in the peripheral arterial vessels, usually of the lower extremities. This category includes arteriosclerosis obliterans, small vessel syndrome, Raynaud's phenomenon, arterial aneurysms (for example, thoracic, abdominal, popliteal), and temporal arteritis. Do not include deep vein thrombosis in this category; if present, use item G2f.

j. Post Acute MI (within 30 days) 410.92—The immediate period following the necrosis of myocardial tissue resulting from obstruction of a coronary artery.

k. Post heart surgery (for example, valve, CABG) V45.81—Cardiovascular surgery such

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as percutaneous transluminal coronary angioplasty (PTCA), coronary artery bypass graft (CABG), valve replacement, percutaneous balloon valvuloplasty.

l. Pulmonary embolism 415.1—Obstruction of one or more of the pulmonary arteries by a thrombus (blood clot).

m. Pulmonary failure 518.8—Failure of the respiratory system to meet oxygenation needs (severe hypoxemia).

n. Other cardiovascular disease 429.2—Any other cardiac diagnosis not coded elsewhere in Section G (for example, valvular heart disease).

MUSCULOSKELETAL

o. Fracture—hip V43.64—Hip fracture (for example, femoral neck; intertrochanteric; subcapital) that has been repaired via surgical arthroplasty or internal fixation. Category also includes fractures treated with traction that may have involved the surgical placement of pins. Also includes surgical hip replacement (for example, total or hemiarthroplasty) following fracture of the hip (for example, femoral neck; intertrochanteric; subcapital fractures, etc). Hips stabilized via open reduction and internal fixation (ORIF) with pins or screws would be included in this item.

p. Fracture—lower extremity 812.40—Any fracture of the lower extremity, other than hip fracture. Includes surgically and non-surgically treated fractures. Category does not include pathological fractures of the lower extremity; if the patient has a diagnosis of pathologic bone fracture of the lower extremity, code item G4.

q. Fracture(s)—other 829.0—Any other fracture type or location not captured in Section G.

r. Osteoarthritis 715.90—A progressive degenerative disease of joint cartilage and bone characterized by joint pain; may be accompanied by joint deformity and limitation of movement.

s. Osteoporosis 733.00—A metabolic bone disorder characterized by a loss of bone density resulting in weakened bones and susceptibility to fractures.

t. Rheumatoid Arthritis 714.0—A progressive degenerative joint disease characterized by recurrent inflammation of synovial tissue and joint deformities.

NEUROLOGICAL

u. Alzheimer's disease 331.0—A degenerative and progressive dementia that is diagnosed by ruling out other dementias and physiological reasons for the dementia.

v. Aphasia or Apraxia (784.3, 784.69)—Symptoms of neurological defects characterized by a difficulty or inability to express thoughts (in speech or writing) or comprehend language (aphasia), or a difficulty/inability to carry out purposeful movements or use objects properly due to a failure to identify them or understand their meaning (apraxia).

w. Cerebral Palsy 343.9—A group of nonprogressive muscular and motor disorders secondary to a neurological defect or trauma at birth.

x. Dementia other than Alzheimer's disease 290.0—Includes diagnosis of organic brain syndrome (OBS) or Chronic Brain Syndrome (CBS), senile dementia, multi-infarct dementia, and dementia related to other neurological diseases other than Alzheimer's Disease (for example., Picks, Creutzfeld-Jacob, Huntington's Disease).

y. Hemiplegia/hemiparesis left side 342.90—Paralysis/partial paralysis (temporary or permanent impairment of sensation, function, motion) of both limbs on left side of the body. Usually caused by cerebral hemorrhage, thrombosis, embolism, or tumor. There must be a diagnosis of hemiplegia or hemiparesis in the resident's record.

z. Hemiplegia/hemiparesis right side 342.90—Paralysis/partial paralysis (temporary or permanent impairment of sensation, function, motion) of both limbs on right side of body. Usually caused by cerebral hemorrhage, thrombosis, embolism, or tumor. There must be a diagnosis of hemiplegia or hemiparesis in the resident's record.

aa. Multiple sclerosis 340—A progressive central nervous system disease characterized by demyelination in brain and spinal cord resulting in various neurological symptoms (for example, paresthesias; motor disorders; diplopia or blindness; urinary incontinence); usually involves recurrent exacerbations and remissions.

ab. Parkinson's Disease 332.0—A progressive disease affecting the centers of the brain responsible for control and regulation of movement.

ac. Quadriplegia 344.00–344.09—Paralysis (temporary or permanent impairment of sensation, function, motion) of all four limbs. Usually caused by cerebral hemorrhage, thrombosis, embolism, tumor, or spinal cord injury. There must be a diagnosis of quadriplegia in the patient's record.

ad. Seizure Disorder 780.39—Disorder of cerebral function characterized by sudden attacks of altered consciousness, sensory changes, motor activity, or inappropriate behavior. May be focal (localized) or generalized.

ae. Spinal cord dysfunction—non-traumatic 336.9—A non-traumatic disorder affecting the spinal cord (for example, neoplasm; abscess; hematoma; neurologic manifestations of pernicious anemia; spina bifida); may be associated with pain, sensory impairment, abnormal reflexes, motor dysfunction.

af. Spinal cord dysfunction—traumatic 952.9—Alteration of neurological function (for example, motor, sensory, reflexes) secondary to compression or laceration of the spinal cord.

ag. Stroke (CVA) 436—A vascular insult to the brain that may be caused by intracranial bleeding, stenosis, thrombosis, infarcts, or emboli; may result in permanent neurological and physical dysfunction.

PSYCHIATRIC/MOOD

ah. Anxiety Disorder 300.00—A disorder characterized by prominent symptoms of anxiety or phobic avoidance. This category includes generalized anxiety disorder, panic disorder, phobias, obsessive-compulsive disorder, post-traumatic stress disorder, acute distress disorder, and other anxiety disorders (for example, due to general medical condition; substance-induced).

ai. Depression 311—A mood disorder often characterized by a depressed mood (for example, feels sad or empty; appears tearful), decreased ability to think or concentrate, loss of interest or pleasure in usual activities, insomnia or hypersomnia, loss of energy, change in appetite, feelings of hopelessness or worthlessness or guilt. May include thoughts of death or suicide.

aj. Other psychiatric disorders 300.9—Other diagnosed psychiatric disorders not coded elsewhere on this assessment (for example, psychotic disorders, such as anorexia, bulimia; eating disorders).

PULMONARY

ak. Asthma 493.9—Intermittent periods of wheezing and dyspnea as a result of variable and recurring airway obstruction.

al. COPD 496—A group of conditions resulting in generalized airway obstruction (particularly the small airways) associated with varying combinations of asthma, chronic bronchitis, and emphysema. May also be called COLD (chronic obstructive lung disease). This category also includes chronic restrictive lung diseases such as asbestosis.

Note: Do not code asthma or emphysema in this category if either of these are the patient's definitive diagnoses. If asthma only is present, code in item G2ak. If emphysema only is present, code in item G2am.

am. Emphysema 492.8—A specific chronic obstructive pulmonary disease which is characterized by destructive changes in the alveoli which reduce the surface area for gas exchange.

OTHER

an.Cancer 199.1—A diagnosis of a carcinoma characterized by a localized malignant tumor or abnormal cell growth that has not spread to other areas or systems of the body. This category also includes metastatic cancer—a diagnosis of a carcinoma characterized by a malignant tumor or abnormal cell growth that has spread to other areas or systems of the body.

ao. Post surgery-non-orthopedic, non-cardiac V50.9—Status post any surgical procedure not noted in Section G.

ap Renal Failure 586—Derangement and insufficiency of renal excretory and regulatory function. This category includes acute (ARF) and chronic renal failure (CRF).

aq. NONE OF THE ABOVE

Process: Review patient's current medical record (including current physician treatment orders and nursing care plans), referral information and hospital discharge summary. If the patient was admitted from an acute care or rehabilitation hospital, the discharge forms often list diagnoses and corresponding ICD–9–CM codes that were current during the hospital stay. If these diagnoses are still present, record them using the appropriate code to categorize the nature of the patient's treatment regimen.

There will be times when a particular diagnosis will not be documented in the medical record. If that is the case, accept statements by the patient that seem to have clinical validity, consult with the physician for confirmation, and initiate necessary physician documentation.

For example: If a new patient reports that he or she had a severe depression and was seeing a private psychiatrist in the community, this information may not have been documented in records accompanying the patient from an acute care hospital to the post acute setting.

Physician involvement in this part of the assessment process would be beneficial. The physician can be asked to review the items in Section G at the time of visit closest to the scheduled MDS–PAC assessment. Use this scheduled visit as an opportunity to ensure that "active" diagnoses are noted and "inactive" diagnoses are appropriately designated. This is also an important opportunity to share the entire assessment with the physician. It is the responsibility of clinical staff to solicit physician input. Inaccurate or missed diagnoses can be a serious impediment to care planning. Thus, share this section of the assessment with the physician and ask for his or her input.

Full physician review of the most recent assessment or ongoing input into the assessment currently being completed can be very useful to overall care planning. For the physician, the assessment completed by clinical staff can provide insights that would have otherwise not been possible. For clinical staff, the informed comments of the physician may suggest new avenues of inquiry, or help to confirm existing observations, or suggest the need for additional consultation and follow-up.

Record a diagnosis only if the disease is being treated or monitored; or has a relationship to current ADL status, cognitive status, behavior status, medical treatment, nursing monitoring, or risk of death. For example, do not place a code for item G2g (hypertension) if one episode occurred several years ago unless the hypertension is either currently being controlled with drug therapy, diet, biofeedback, etc., or is being regularly monitored for recurrence. Likewise gallbladder surgery that occurred 15 years ago would not be recorded in item G2ao (Post surgery—non-orthopedic, non-cardiac) unless it had a relationship to the patient's current health status.

Coding: Record all documented diagnoses in the appropriate category. Do not record any conditions that have been resolved and no longer affect the patient's functional status or care plan—leave the box blank. For each item that is present enter the most appropriate code to describe the patient's documented diagnosis.

[Blank] Not present.

1. Other primary diagnosis/diagnoses for current stay (not primary impairment). These are the diagnoses used to support and justify services being provided.

2. Diagnosis present, patient is receiving active treatment (for example, drug therapy; therapeutic rehabilitation services; laboratory monitoring); other medical or skilled nursing intervention (for example, wound care; IV antibiotics; suctioning).

3. Diagnosis present, patient monitored but condition is not being actively treated.

If none of the conditions in Section G2 apply, check NONE OF ABOVE (G2aq). If you have more detailed information available in the clinical record for a more definitive diagnosis than is provided in the list in Section G2, record the general diagnosis in Section G2 and then enter the more detailed diagnosis (with ICD–9–CM code) under Section G4.

3. Infections

Intent: To document the presence of infections that have an impact or potential impact on the patient's overall function (physical, cognitive, mood and behavioral), treatment and/or discharge plans.

a. Antibiotic resistant infection—any infection in which the bacteria have developed a resistance to the effective actions of an antibiotic (for example, Methicillin resistant staphylococcus aureus [MRSA 041.11], Vancomycin-resistant enterococcus [VRE 041.9]).

b. Cellulitis 682.9—inflammation of cellular or connective tissue, spreading as in erysipelas. The process of inflammation spreading throughout the tissue is called cellulitis.

c. Hepatitis 070.9—an inflammatory process in the liver usually caused by viral infection. This category includes acute and chronic viral hepatitis.

d. HIV/AIDS 042—Code this item only if—(A) there is supporting documentation in the medical record of (1) a positive blood test result for the Human Immunodeficiency Virus (HIV), or (2) a diagnosis of Acquired Immuno-deficiency Syndrome (AIDS), or (3) a diagnosis of AIDS-related complex (ARC); or (B) if the patient (or surrogate decision-maker) informs you of the presence of any of these diagnoses.

e. Pneumonia 486—an acute bacterial or viral infection of the lungs.

f. Osteomyelitis 730.2—an infection of bone, usually caused by bacteria or other pathogens. This category also includes infection of a surgically-implanted prosthesis.

g. Septicemia 038.9—clinical manifestations of bacterial infection of the circulatory system (bacteremia) associated with inadequate tissue perfusion (hypotension, renal failure and risk of death).

h. Staphylococcus infection (other than item "G3a" above) 041.10—any infection identified as staphylococcus by culture that is not considered to be resistant to antibiotic treatment.

i. Tuberculosis (active) 011.90—Diagnosis of active tuberculosis as evidenced by symptoms and/or currently receiving drug therapy (for example, isoniazid (INH), ethambutol, rifampin, cycloserine). Includes patients who have converted to PPD positive tuberculin status and are receiving drug treatment.

j. Urinary Tract Infection 599.0—includes chronic and acute symptomatic infection. Code only if there is supporting documentation or significant laboratory findings in the medical record, or the patient is currently being treated or evaluated for a UTI.

k. Wound Infection (958.3, 998.59, 136.9)—Category includes documentation of infection(s) of any type of wound (for example, surgical; traumatic; pressure ulcer) of any part of the body. Note: Report of wound culture may or may not be present in the medical record; diagnosis may be based on presence of drainage, erythema, edema, etc. around wound site.

l. NONE OF THE ABOVE.

Process: Review patient's medical record.

Coding: Record all documented diagnoses of infection(s) in the appropriate category. Do not record any conditions that have been resolved and no longer affect the patient's functional status or care plan—leave the box blank. For each item that is present enter the most appropriate code to describe the patient's documented diagnosis.

[Blank] Not present.

1. Other primary diagnosis/diagnoses for current stay. These are the diagnoses used to support and justify services being provided.

2. Diagnosis present, patient is receiving active treatment (drug therapy; therapeutic rehabilitation services; laboratory monitoring; other medical or skilled nursing intervention (for example, wound care; IV antibiotics; suctioning; respiratory therapy).

3. Diagnosis present, patient monitored but condition is not being actively treated.

If none of the conditions in Section G3 apply, check NONE OF ABOVE (G3l). If you have more detailed information available in the clinical record for a more definitive diagnosis than is provided in the list in Section G3, record the general diagnosis in Section G3 and then enter the more detailed diagnosis (with ICD–9–CM code) under Section G4.

For example: If the medical record states that the patient has "Pneumocystis carinii pneumonia" record the nature of this diagnosis in item G3e (Pneumonia) and then record the more specific diagnosis and ICD–9–CM code in Section G4.

4. Other Current or More Detailed Diagnoses and ICD–9 Codes

Intent: To identify and document conditions not listed in Items G1, G2 and G3 that have an impact or potential impact on the patient's current ADL status, mood and behavioral status, medical treatments, nursing monitoring, therapeutic rehabilitation, discharge plan or risk of death. Also, to record more specific designations for general disease categories listed in Sections G2 and G3.

Process: Review patient's current medical record, referral information and hospital discharge summary.

Coding: If the patient does not have any other or more detailed diagnoses documented, leave the boxes blank.

Enter the description of the diagnoses on the lines provided. For each diagnosis complete the following:

Write in diagnosis in lines "a" through "e".

Column A: enter the ICD–9–CM code for the diagnosis in the boxes, AND

Column B: enter the code (from the following codes) that best characterizes the diagnosis.

1. Other primary diagnosis/diagnoses for current stay (not primary impairment). These are the diagnoses used to support and justify services being provided.

2. Diagnosis present, patient is receiving active treatment (for example, drug therapy; therapeutic rehabilitation services; laboratory monitoring); other medical or skilled nursing intervention (for example, wound care; IV antibiotics; suctioning).

3. Diagnosis present, patient monitored but condition is not being actively treated.

Any new diagnosis at reassessment or discharge is to be recorded in G4.

5. Complications/Comorbidities

Intent: To identify and document comorbidities that may effect the patient's functional status or health.

Definition: "Complications, comorbid conditions, and high-risk medical disorders may occur with any Impairment Group when the occurrence delays or compromises rehabilitation by:

Existing prior to the rehabilitation program.

Occurring or existing during the rehabilitation program.

Causing subject transfer to acute care.

Causing subject death during the rehabilitation program" (Uniform Data System for Medical Rehabilitation, Guide for the Uniform Data Set for Medical Rehabilitation-Version 5.1, Appendix A: UDSmr Policy Regarding ICD–9 Coding, p. A19.) NOTE: HCFA has excluded from the definition of comorbidities the recording of diagnoses by Rehabilitation Impairment Category. For example, stroke is not a comorbidity for the stroke Rehabilitation Impairment Category, cardiac is not a comorbidity for the cardiac Rehabilitation Impairment Category. The "Rehabilitation Impairment Categories and Associated Impairment Group Codes" were discussed previously in this guide.

Process: Review the patient's medical record, referral information, hospital discharge summary, and consult with other clinical staff.

Coding: For the comorbidities to enter in lines G5a thru G5d including the ICD–9–CM codes refer to "Appendix C: List of Comorbidities" which is one of the appendixes of this proposed rule. If no comorbid condition exists write in the words "No comorbid condition" once and enter "0000.00" in the associated boxes.

Section H. Medical Complexities

Intent: To record clinical signs, symptoms, and conditions that affect or could affect the patient's health, functional, and psychosocial status and to identify risk factors for illness, accidents, and functional decline. Such factors need to be considered for treatment, rehabilitation, and discharge planning.

Definition: Medical complexities—include a number of indicators which help clinicians and others form a picture of the clinical intensity and level of service the patient receives in the post acute setting.

1. Vital Signs

Intent: To record the status of the patient's vital signs (that is, pulse; blood pressure; respiratory rate; temperature).

Definition: Abnormal vital signs—see ranges in box below.

Process: To interpret whether vital signs are within the range of "normal" usually requires an evaluation of several measurements rather than relying on a single value at one point in time. Therefore, review the results from the evaluation of the patient's vital signs over the past three days. In addition to reviewing vital signs, review the patient's clinical record, specifically, vital signs "flow sheets", and physician or nursing documentation in the medical record, referral sheet, or discharge summary.

Coding: Code for the "most abnormal" set of vital signs over the last 3 days.

0. All vital signs were normal/standard (that is, when compared to standard values).

1. Vital signs abnormal, but not on all days during assessment period.

2. Vital signs consistently abnormal (on all days).

2. Problem Conditions

Intent: To record clinical signs, symptoms, and conditions that affect or could affect the patient's health, functional, and psychosocial status and to identify risk factors for illness, accidents, and functional decline. Such factors need to be considered for treatment, rehabilitation, and discharge planning.

Process: Gather information from a variety of sources. Begin by reviewing the discharge referral record and current medical record, including laboratory data, consultation reports, and nursing observations. This will be the primary source of information. Check that it is complete by soliciting input from all members of the interdisciplinary team, including direct care providers (for example, certified nurse assistants). Finally, in your scheduled contact with the patient to assess other areas, interview, observe, and examine the patient to ensure nothing has been overlooked. Remember, you are reviewing problem conditions that have been present in the last 3 days.

Definition: FALLS/BALANCE

a. Dizziness/vertigo/lightheadedness—The patient has experienced the sensation of unsteadiness, that he or she is "turning", or that the surroundings are whirling/spinning around; or if the patient complained specifically of dizziness/vertigo/or lightheadedness in the last 3 days.

b. Fell (since admission or last assessment)—Patient/family reports or medical record or discharge summary indicates the patient fell since admission or since last assessment.

c. Fell in 180 days prior to admission—Patient/family reports or medical record or discharge summary indicates the patient fell in the 180 days prior to admission.

CARDIAC/PULMONARY

d. Advanced cardiac failure (ejection fraction <25 percent)—Check if EITHER documented cardiac disease with significant decrease in cardiac output (for example, documented ejection fraction <25 percent) in last 60 days OR diastolic dysfunction, as indicated by repeated episodes of heart failure with a normal ejection fraction).

e. Chest pain/pressure on exertion—The patient experiences any type of pain in the chest (or radiating to arm or jaw pain), which may be described as burning, pressure, stabbing, or discomfort, etc. associated with physical exertion.

f. Chest pain/pressure at rest—The patient experiences any type of pain in the chest (or radiating to arm or jaw pain), which may be described as burning, pressure, stabbing, or discomfort, etc. that starts spontaneously and without physical exertion (at rest).

g. Edema-generalized—Generalized abnormal pooling or accumulation of fluid in tissues throughout the body (not limited to specific site).

h. Edema-localized—Abnormal pooling or accumulation of fluid in specific tissues (for example, pedal edema; lymphedema of upper extremity).

i. Edema-pitting—Abnormal pooling or accumulation of fluid in tissues. Assessed by pressing the patient's skin firmly with the thumb for at least five seconds behind the medial malleolus, dorsum of the foot, or over the shin. If present, a "thumb print" will remain over the area of edema.

j. Impaired aerobic capacity/endurance (tires easily, poor task endurance)—A symptom characterized by a limited ability to sustain a period of exercise or exertion due to decreased cardiac or respiratory function (may be as a result of disease or deconditioning).

FLUID STATUS—It is often difficult to recognize when a frail, ill person is experiencing fluid overload that could precipitate congestive heart failure, or alternatively dehydration. Ways to monitor the problem, particularly in patients who are unable to recognize or report the common symptoms of fluid variation, are as follows:

k. Constipation—The patient passes two or fewer bowel movements per week, or strains more than one out of four times when having a bowel movement.

l. Dehydrated: output exceeds input (for example, BUN/creatinine ratio >25)—check this item if the patient's laboratory results reveal a blood urea nitrogen (BUN) to creatinine ratio greater than 25 OR if the patient has 2 or more of the following indicators.

- Patient's fluid intake is less than 2500 ml of fluids daily (water or liquids in beverages, water in food/supplements/parenteral nutrition, IV fluids).
- Patient has clinical signs of dehydration (for example, dry mucous membranes, decrease in skin elasticity).
- Patient's fluid loss exceeds the amount of fluids he or she takes in (for example, loss from vomiting, fever, diarrhea that exceeds fluid replacement)—review the Input and Output record;

m. Diarrhea—Frequent elimination of watery stools from any etiology (for example, diet, viral or bacterial infection).

n. Internal bleeding—Includes gastrointestinal and other types of intestinal bleeding. Bleeding may be frank (such as bright red blood) or occult (such as guaiac positive stools); any documented bleeding as diagnosed by GI evaluation or any evidence of current bleeding through rectal exam or guaiac testing. Could also include: hematuria (blood in urine); hemoptysis (coughing up blood); or severe epistaxis (nosebleed), etc. present over the last 3 days that did not spontaneously resolve or that occurred more than once.

o. Recurrent nausea/vomiting—Patient reports recurrent (more than one episode) sensations of having to vomit or actual regurgitation of stomach contents; code regardless of etiology (for example, drug side effect or toxicity; influenza; anxiety; obstruction; reaction to particular odors or sights).

p. Refusal/inability to take liquids orally—Patient either rejects intake of fluids (for example, liquids, jello, sorbets, etc.) as a conscious decision or pushes them away, OR has a physical condition that inhibits intake of oral liquids (for example, nausea/vomiting; dysphagia; severe candidiasis of oral mucosa, etc.).

OTHER

q. Delusions/Hallucinations—Delusions are fixed, false beliefs not shared by others that the patient holds even when there is obvious proof or evidence to the contrary (for example, belief he or she is terminally ill; belief that spouse is having an affair; belief that food served by the hospital/facility is poisoned).

Hallucinations are false perceptions that occur in the absence of any real stimuli. A hallucination may be auditory (for example, hearing voices), visual (for example, seeing people, animals), tactile (for example, feeling bugs crawling over skin), olfactory (for example, smelling fumes), or gustatory (for example, having strange tastes).

r. Fever—Rectal temperatures above 100°Fahrenheit (38°Celsius) are considered significant. Many frail patients have normally low rectal baseline temperatures (for example, 96°). A fever is present when the patient's temperature (°F) is 2.4 degrees greater than the baseline temperature.

s. Hemi-neglect (inattention to one side)—For example, patient denies that their left arm belongs to them, shaves only on one side of face, ignores items to their left.

t. Cachexia (severe malnutrition)—A condition of undernutrition and wasting that may occur in a variety of chronic diseases and malignancies.

u. Morbid Obesity—According to a National Institute of Health consensus panel, a body weight that is double (twice) the "ideal" body weight of standard height-weight tables OR 100 pounds (45 g) overweight.

Extremely obese persons are at great risk of serious disorders, including diabetes, hypertension, osteoarthritis, impairment in psychosocial well-being, and death from cardiovascular disease. (Refer to the latest (1983) Metropolitan Life Insurance Company standard height-weight table below to identify ideal/desirable body weights).

HEIGHT AND WEIGHT TABLE FOR WOMEN

Height (in feet and inches)	Small frame	Medium frame	Large frame
4'10"	102-111	109–121	118–131
4'11"	103–113	111–123	120–134
5'0"	104–115	113–126	122–137
5'1"	106–118	115–129	125–140
5'2"	108–121	118–132	128–143
5'3"	111–124	121–135	131–147
5'4"	114–127	124–138	134–151
5'5"	117–130	127–141	137–155
5'6"	120–133	130–144	140–159
5'7"	123–136	133–147	143–163
5'8"	126–139	136–150	146–167
5'9"	129–142	139–153	149–170
5'10"	132–145	142–156	152–173
5'11"	135–148	145–159	155–176
6'0"	138–151	148–162	158–179

HEIGHT AND WEIGHT TABLE FOR MEN

Height (in feet and inches)	Small frame	Medium frame	Large frame
5'2"	128–134	131–141	138–150
5'3"	130–136	133–143	140–153
5'4"	132–138	135–145	142–156
5'5"	134–140	137–148	144–160
5'6"	136–142	139–151	146–164
5'7"	138–145	142–154	149–168
5'8"	140–148	145–157	152–172
5'9"	142–151	148–160	155–176
5'10"	144–154	151–163	158–180
5'11"	146–157	154–166	161–184
6'0"	149–160	157–170	164–188
6'1"	152–164	160–174	168–192
6'2"	155–168	164–178	172–197
6'3"	158–172	167–182	176–202
6'4"	162–176	171–187	181–207

v. End-stage disease, life expectancy of 6 or fewer months—The intent of this item is to heighten staff awareness of the potential terminal nature of the patient's condition so that an appropriate course of care can be developed. In one's best clinical judgement, the patient in the final (end) stage of a disease process (for example, COPD; malignancy; cardiac disease; Alzheimer's disease, etc.) and has only six or fewer months to live. Although it is often difficult to make such a prognosis, this judgement should be substantiated by a physician and the presence of a deteriorating clinical course.

w. NONE OF THE ABOVE—The patient has not experienced any of the above conditions.

Coding: Check all problems present in the last three days, unless other time frames are indicated. If none apply, check NONE OF THE ABOVE.

3. Respiratory Conditions

Intent: To identify and record signs, symptoms or conditions of respiratory distress that could have a direct or indirect affect on the patient's ability to function, participate in rehabilitation and on the patient's plan of care, including discharge. More than one condition may apply.

Definition: a. Inability to lie flat due to shortness of breath—In the last 3 days the patient reported feeling "breathless" or short of breath (dyspneic), or has been observed to be short of breath, while lying supine; requires more than one pillow or has the head of the bed mechanically raised in order to breathe more comfortably.

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b. Shortness of breath with exertion—In the last 3 days the patient has reported becoming "breathless" or short of breath (dyspneic), or has been observed to be short of breath, even with mild exertion such as taking a bath, transferring from bed to chair, toileting.

c. Shortness of breath at rest—In the last three days the patient reported feeling "breathless" or short of breath (dyspneic), or was observed being short of breath, at rest (for example, sitting, talking).

d. Oxygen saturation < 90 percent—In the last 3 days the patient's oxygen saturation level (obtained by oximeter) was less than 90 percent (either while receiving or not receiving oxygen therapy).

e. Difficulty coughing and clearing airway secretions—In the last 3 days the patient reports or has been observed to be unable to cough effectively to expel respiratory secretions (for example, secondary to weakness, pain) or is unable to mobilize secretions or sputum from mouth (for example, secondary to dysphagia or pain) or tracheostomy (for example, secondary to viscosity of sputum; inability to physically remove secretions from tracheostomy entrance). Examples might include a post abdominal surgery patient unable to cough due to incisional pain, or a comatose patient that required suctioning to manage secretions.

f. Recurrent aspiration—In the last 3 days a patient with a history of at least one or more episodes of aspiration (inspiration) of fluids/food/secretions, etc. into lungs, exhibits clinical signs and symptoms of another episode. Recurrence often occurs in patients with swallowing difficulties or who receive tube feedings (that is esophageal reflux of stomach contents). Clinical indicators include productive cough, shortness of breath, wheezing. It is not necessary that there be X-ray evidence of lung aspiration for this item to be checked.

g. Recurrent Respiratory Infection—In the last 3 days patient with a history of respiratory infection (for example., pneumonia; bronchitis) with evidence of a recurrence (for example, prior infection not resolved with medical intervention; infection has been experienced multiple times).

h. NONE OF THE ABOVE—In the last 3 days none of the above conditions were present.

Process: Interview and observe the patient. Review the patient's medical record, including consultation reports by a respiratory therapist and laboratory data such as arterial blood gases (ABG's), as indicated.

Coding: Check all conditions that were present in the last three days. If no conditions apply, check NONE OF THE ABOVE.

4. Pressure Ulcers

Intent: To identify and document the presence, stage and number of pressure ulcers, and, if present, record the characteristics (that is the size, exudate, and predominant tissue) of the ulcer(s).

Definition: Pressure Ulcer—Any lesion caused by unrelieved pressure resulting in damage of underlying tissue. Pressure ulcers usually occur over bony prominences and are graded or staged to classify the degree of tissue damage observed (Agency for Health Care Policy Research, 1992).

Pressure Ulcer Stage—The following pressure ulcer staging definitions are consistent with the recommendations of the Agency for Health Care Policy Research (AHCPR, 1992) and the National Pressure Ulcer Advisory Panel (NPUAP, 1989). A shorter version of these definitions appear on the form as coding options for Items H4a (highest current pressure ulcer stage).

a. Highest current pressure ulcer stage.

0. No pressure ulcer.

1. (Stage 1) Any area of persistent skin redness.

2. (Stage 2) Partial loss of skin layers.

3. (Stage 3) Deep craters in the skin.

4. (Stage 4) Breaks in skin exposing muscle or bone.

5. Not stageable (necrotic eschar predominant, no prior staging available).

PUSH (Pressure Ulcer Healing Scale) Score—A tool to monitor pressure ulcer healing over time. The PUSH Score is measured by assessing wound size, amount of exudate, and characteristics of predominant tissue. The PUSH is used in Items 4c through 4f.

(a) Highest current pressure ulcer stage.

Intent: In conjunction with other items, to facilitate the monitoring of pressure ulcer healing or worsening over time.

Process: Examine the patient for pressure ulcers and determine pressure ulcer stage. Without a full body inspection, an ulcer can be missed. If the patient has more than one ulcer, determine which ulcer has the highest (worst) ulcer stage. This type of information may be found in referral records (including discharge summaries), clinical progress notes, flow sheets, or patient care plans. Review these records to determine the highest ulcer ever achieved for any ulcer the patient currently has.

Coding: Record the highest (worst) current pressure ulcer stage. If the predominant tissue of the ulcer is necrotic eschar, prohibiting accurate staging, code "5", Not Stageable (necrotic eschar predominant; no prior staging available). If the patient has no pressure ulcers, record "0" (No pressure ulcers) in the box provided.

(b) Number of current pressure ulcers.

Process: Examine the patient for pressure ulcers. Without a full body inspection, an ulcer can be missed. COUNT the number of pressure ulcers.

Coding: Record the number of pressure ulcers, including ulcers that cannot be accurately staged (that is, if the predominant tissue of the ulcer is necrotic eschar). If the patient has no pressure ulcers, record "0" (No pressure ulcers) in the box provided.

(c–f) PUSH Scale (Items c through f).

The next four items (c through f) represent the PUSH Scale 3.0 developed by the National Pressure Ulcer Advisory Panel (NPUAP, 1998) to monitor pressure ulcer healing over time. For purposes of this assessment there are three important things to remember for this section:

- The PUSH Scale (items "c" through "f") can only be calculated for ulcers of Stage 2 and higher OR for ulcers where necrotic eschar is the predominant tissue. If highest pressure ulcer stage is "0" or "1", enter code of "0" in c, d, e, and f.
- Select the LARGEST ulcer. Note: The largest ulcer may not necessarily be the ulcer with the highest ulcer stage.
- Although the PUSH Scale was designed to evaluate the healing of a pressure ulcer, its use in this assessment is to provide a "snapshot" of the status for the largest ulcer present at the time of the assessment. When tracked over time, we can know the highest PUSH score that characterizes the patient's pressure ulcer status.

(c) Length multiplied by width (open wound surface area).

Materials: You will need a centimeter ruler to measure the surface area of an open wound. Although it's not necessary, it is also helpful to use a calculator for multiplying ulcer measurements to calculate the total open wound surface area.

Process: • Using a centimeter ruler, measure the greatest length (head to toe) and the greatest width (side to side) of the ulcer margins (for example, the edges of the "open" areas). If necrotic eschar is the predominant tissue and the ulcer is not "open", measure from edge to edge of the eschar.

- Multiply these two measurements (length x width) to obtain an estimate of the surface area in square centimeters (cm^2). Do not guess! Always use a centimeter ruler and always use the same method each time the ulcer is measured.

Coding: Record the number that corresponds to the largest pressure ulcer's open wound surface area using the following codes:

0. 0 cm^2.
1. <0.3 cm^2.
2. 0.3–0.6 cm^2.
3. 0.7–1.0 cm^2.
4. 1.1–2.0 cm^2.
5. 2.1–3.0 cm^2.
6. 3.1–4.0 cm^2.
7. 4.1–8.0 cm^2.
8. 8.1–12.0 cm^2.
9. 12.1–24.0 cm^2.
10. >24 cm^2.

(d) Exudate amount.

Process: Estimate the amount of exudate (drainage) present after removal of the dressing and before applying any topical agent to the ulcer for the selected (largest) pressure ulcer.

Coding: Record the response that best estimates the amount of exudate (drainage).

0. None.
1. Light.
2. Moderate.
3. Heavy.

(e) Tissue Type.

Process: Inspect the selected (largest) pressure ulcer and note the tissue that occupies the majority of the ulcer bed. Divide the ulcer bed into four imaginary quadrants, each representing about ¼ of the original ulcer surface. Estimate the portion or amount of each tissue type on the ulcer. Determine the predominant tissue type on the ulcer.

Coding: Record the response that describes the most predominant tissue type.

0. Closed/Resurfaced—The wound is completely covered with epithelium (new skin).

1. Epithelial Tissue—For superficial ulcers, new pink or shiny tissue (skin) that grows in

from the edges or as islands on the ulcer surface.

2. Granulation Tissue—Pink or beefy red tissue with a shiny, moist, granular appearance.

3. Slough—Yellow or white tissue that adheres to the ulcer bed in strings or thick clumps/or is mucinous.

4. Necrotic tissue (eschar)—Black, brown or tan tissue that adheres firmly to the wound bed or ulcer edges and may be either firmer or softer than surrounding skin.

(f) Total PUSH (Pressure Ulcer Healing Scale) Score.

Process: Add up the scores from Items H4c (open wound surface area) + H4d (exudate amount) + H4e (tissue type). This sum represents the total PUSH Score.

Coding: Record the number that represents the Total PUSH Score in the box provided.

5. Other Skin Integrity

(a) Number of stasis ulcers (in the last 24 hours).

Definition: Stasis ulcer—An open lesion, usually of the ankle or lower third of the lower extremities, caused by chronic venous stasis or insufficiency. In the medical record one may also find this type of ulcer referred to as a "venous ulcer" or ulcer related to peripheral vascular disease (PVD).

Process: Examine the patient and review the clinical record. COUNT the number of stasis ulcers present in the last 24 hours.

Coding: Record the number of stasis ulcers in the box provided. If there are no stasis ulcers, code a "0" in the box.

(b) Number of surgical wounds (in the last 24 hours).

Definition: Surgical wounds—Includes healing and non-healing, open or recently closed (since onset of precipitating event in A7a) surgical incisions, skin grafts or drainage sites on any part of the body. This category does not include healed surgical sites or stomas.

Process: Examine the patient's body and COUNT the number of surgical wounds present in the last 24 hours.

Coding: Record the number of surgical wounds in the box provided. If there are no surgical wounds, code a "0" in the box.

(c) Ulcer resolved or healed in last 90 days.

Definition: Ulcer—For this item, the term ulcer refers to ANY lesion caused by pressure (that is, pressure ulcer; bedsore; decubitus ulcer) or venous stasis/insufficiency (that is, stasis ulcer).

Process: Review the patient's clinical record over the last 90 days for documentation of the presence of a pressure or stasis ulcer that has been healed (that is, closed/resurfaced; new tissue entirely covers the wound). Validate findings by examining the patient's body.

Coding: Record the most appropriate response to indicate that the patient had an ulcer that was resolved or healed in the last 90 days. If the patient did not have an ulcer that resolved in the last 90 days, use a code of "0" in the box. Note: The patient may still have other ulcers in various stages of healing.

0. No, or never had ulcer.

1. Yes.

6. Other Skin Problems or Lesions Present

Intent: To document the presence of skin problems other than ulcers or surgical wounds, and conditions that are risk factors for more serious problems.

Definition: a. Burns (second or third degree)—Includes burns from any cause (for example, heat, electricity, chemicals, radiation, or gases) that affects skin deeper than the epidermis or outermost layer of skin. This category does not include first degree burns (changes in skin color only).

b. Open lesions other than rashes, cuts (for example, cancer lesions, ulcers)—Any open area of the skin unrelated to pressure, venous stasis, surgery, trauma or rashes.

c. Rashes—Includes inflammation or eruption of the skin that may include change in color, spotting, blistering, etc. and symptoms such as itching, burning, or pain. Record rashes from any cause (for example, eczema, heat, drugs, bacteria, fungus, viruses [such as herpes zoster, chicken pox], parasites [such as scabies, lice], contact with irritating substances such as urine or detergents, allergies, etc.). Intertrigo refers to rashes (dermatitis) within skin folds.

d. Skin tears or cuts (other than surgery)—Any traumatic break in the skin penetrating to subcutaneous tissue not caused by surgical puncture or incision. Examples include lacerations, punctures wounds, etc.

e. NONE OF THE ABOVE.

Review the patient's record for documentation of impairment of this type. An obvious example of a patient with this problem is someone who is comatose. Other patients at high risk include those with quadriplegia, paraplegia, hemiplegia or hemiparesis, peripheral vascular disease and neurological disorders.

Process: Ask the patient if he or she has any problem areas. Ask the nurse assistant and examine the patient. Review the patient's record. You are assessing for skin problem areas present over the last 24 hours.

Coding: Check all that apply for the last 24 hours. If there is no evidence of such problems in the last 24 hours, check NONE OF THE ABOVE.

Section I. Pain Symptoms

Intent: The intent of this section is to identify other health conditions that have an impact on the patient's quality of life, health risks, and plan of care, including the discharge plan.

1. Pain Symptoms

Intent: To evaluate and record the presence, frequency and intensity of pain and how it is managed. Pain can impact the patient in many ways, including affecting his or her ability to meet established goals. It is essential that pain is assessed and an effective pain management plan put in place in order to optimize the patient's recovery and quality of life. Items I1a through I1b refer to pain in the last 3 days. In item I1c, how the patient's current perception of pain compares to pain status prior to precipitating event (item A7a). For care planning purposes these items can be used to determine the characteristics of the patient's pain and to monitor his or her response to pain management interventions.

Definition: Pain—pain refers to any type of physical pain or discomfort in any part of the body. Pain may be localized to one area, or may be more generalized. It may be acute or chronic, continuous or intermittent (comes and goes), or occur at rest or with movement. The pain experience is very subjective; pain is whatever the patient says it is. If the patient complains of pain, record that pain is present.

Pain assessment may depend on the observation of others (that is, cues), either because the patient does not complain, or is unable to verbalize or describe symptoms.

Process: This evaluation is based solely on the patient's perception of pain, or in cases where the patient has limited ability to communicate, staff's interpretation of behaviors that might indicate pain. Ask the patient to categorize the highest level of pain they have experienced over each time period.

Ask the patient if he or she has experienced any pain or discomfort in the last three days and ask him/her to describe it. If the patient states he or she has pain, take his or her word for it. Pain is a subjective experience.

Observe the patient for indicators of pain. Observation is particularly important in patients who are unable to communicate their experiences of pain. Indicators may include moaning, crying, and other vocalizations; wincing or frowning and other facial expressions; or body posture such as guarding/protecting an area of the body, lying very still or decreasing usual activities (to prevent pain from occurring).

In severely cognitively impaired patients, the pain experience is particularly difficult to discern. For example, in patients who cannot verbalize that they are feeling pain, discomfort may be manifested by behaviors such as calling out for help, pained facial expressions, refusing to eat, or striking out at a nurse assistant who tries to move them or touch a body part. Although such behaviors may not be solely indicative of pain, code for the frequency and intensity of symptoms if in your best clinical judgement it is possible that the behavior could be caused by the patient experiencing pain.

Ask nurse assistants and therapists who work with the patient if the patient had complaints or indicators of pain the last three days.

Coding: For each of the following items (I1a through I1b) code for the HIGHEST LEVEL OF PAIN the patient experienced in the last three days, even while receiving treatments.

a. FREQUENCY—Measures how often the patient experiences pain (reports or shows evidence of pain).

Codes: 0. No pain.

1. Pain less than daily.

2. Daily—single shift.

3. Daily—multiple shifts.

b. INTENSITY " Measures the level of pain as the patient perceives it (described or manifested by the patient). Use the following scale to indicate the level of pain experienced:

Codes: 0. No pain.

1. Mild pain—Although the patient experiences some ("a little") pain he or she is usually able to carry on with daily routines, socialization, or sleep.

2. Moderate pain—Patient experiences "a medium" amount of pain.

3. Severe pain—Patient experiences intense pain.

4. Times when pain is horrible or excruciating—Worst possible pain the person can imagine.

c. CURRENT PAIN STATUS as compared to pain status prior to precipitating event item (A7a). Patient's experience of pain NOW as compared to pain status prior to precipitating event. Note: If the patient has no pain now and no pain prior to precipitating event (item A7a), code "0", same.

Coding: 0. Same.

1. Better.

2. Worse.

8. UNKNOWN—The patient is unable to describe how the pain compares OR there is no available information in the clinical record or via family or professional caregivers.

Section J. Oral/Nutritional Status

1. Oral Problems

Intent: To record any oral or nutritional problems in the last 3 days.

Definition: a. Chewing Problem—Inability to chew regular food easily and without pain or difficulties, regardless of cause (for example, poor mastication, immobile jaw, recent oral surgery, temporomandibular joint pain, decreased sensation/motor control).

b. Dental Problem—Upon exam and interview of the patient, problems with teeth are identified (for example, ill—fitting or lack of dentures, painful tooth, poor dental hygiene).

Process: Examine and interview the patient—this is the crucial part of the process, without this examination, oral problems often go undetected. Review clinical records. Talk to the nurse assistants who have recently helped the patient with his/her ADL's.

Coding: Record the most appropriate response in the box provided. Code "0" for No and "1" for Yes.

2. Swallowing

Intent: The ability to swallow safely can be affected by many disease processes and functional decline. Alterations in one's ability to swallow can result in choking and aspiration, both of which can cause morbidity and mortality. Often patients with swallowing difficulties require altered consistencies of food and fluids OR may not be able to ingest nutrition by mouth. This item details the diet consistencies and modifications in place to address swallowing difficulties.

Process: Observe patient. Review the patient's clinical record, including MD, dietitian and Speech Language Pathology notes if applicable.

Coding: Using the codes provided, indicate which item best describes the dietary prescriptions to address swallowing difficulties.

0. Normal—Safe and efficient swallowing of all diet consistencies.

1. Requires diet modification to swallow solid foods (mechanical diet or able to ingest specific foods only).

2. Requires modification to swallow solid foods and liquids (puree, thickened liquids).

3. Combined oral and tube feeding [tube feeding (via NGT, GT, JT), and some oral intake]

4. No oral intake (NPO)

3. Height and Weight

Intent: To establish a height and weight in order to monitor nutrition and hydration status over time, to establish a baseline to monitor changes in weight over time.

Process: Base weight on the most recent measure in the last 3 days. Utilize your facility's standard of practice to ensure consistency in measuring weights (for example, in a.m. after voiding, before breakfast, with shoes off and in night clothes).

Coding: Record in "box a."—Height in inches and in "box b"—Weight in pounds.

4. Weight Change

Intent: To assess any presence of weight loss or gain.

Process: Review clinical record, weight records, and dietary notes to assess weight history. Since patient may have only been in your facility a few days, it may be difficult to obtain accurate factual information. Utilize patient and family interview to determine appropriate coding.

a. Weight Loss.

Definition:Weight loss in percentages (for example, 5 percent or more in last 30 days).

Process: New admission " Ask the patient or family about weight changes over the last 30 days. Consult physician, review transfer documentation and compare with admission weight. Calculate weight loss in percentages during the specified time periods.

Current patient " Review the clinical records and compare current weight with weights of 30 days ago. Calculate weight loss in percentages during the specified time periods.

Coding: 0. No or unknown.

1. Yes, planned loss.

2. Yes, unplanned loss.

b. Weight Gain.

Definition: Weight gain in percentages (for example, 5 percent or more in last 30 days).

Process: New admissions—Ask the patient or family about weight changes over the last 30 days. Consult physician, review transfer documentation and compare with admission weight. Calculate weight gain during the specified time periods.

Current weight " Review the clinical records and compare current weight with weights of 30 days ago. Calculate weight gain during the specified time periods.

Coding: 0. No or unknown.

1. Yes, planned gain.

2. Yes, unplanned gain.

5. Parenteral or Enteral Intake

Intent: To record the proportion of all calories received, and the average fluid intake, through parenteral or tube feeding in the last 3 days.

a. The proportion of total calories the patient received through parenteral or tube feedings in last 3 days.

Definition:Proportion of total calories received—the proportion of all calories ingested during the last 3 days that the patient actually received (not just ordered) by parenteral or tube feedings. Determined by calorie count.

Process: Review clinical record, particularly the intake flow sheets. Consult with the dietitian who can derive a calorie count received from parenteral or tube feedings.

Coding: Code for the best response. If the patient took no food or fluids by parenteral or tube feedings, or took just sips of fluid, code "0" (None).

0. None.

1. 1 percent to 25 percent.

2. 26 percent to 50 percent.

3. 51 percent to 75 percent.

4. 76 percent to 100 percent.

b. Average fluid intake per day by IV or tube in last 3 days.

Definition: Average fluid intake per day by IV or tube in last 3 days refers to the actual amount of fluid the patient received by these modes (not the amount ordered).

Process: Review the Intake and Output record from the last 3 days. Add up the total amount of fluid received each day by IV and/or tube feedings only. Divide the total fluid intake during this time by 3. This will give you the average of fluid intake per day.

Coding: Code for the average number of cc's of fluid the patient received per day by IV or tube in last 3 days.

Codes: 0. None.

1. to 500 cc/day.

2. 501 to 1000 cc/day.

3. 1001 to 1500 cc/day.

4. 1501 to 2000 cc/day.

5. 2001 or more cc/day.

Section K. Procedures/Services

Intent: To document the service, treatments, procedures and devices the patient received over the last 3 days.

1. Clinical Visits and Orders

Intent: To document the number of physician, nurse practitioner, and physician assistant visits in which the patient was examined and notes written, as well as the number of order changes in the last 3 days.

Process: Review the medical record, including physician, nurse practitioner, and physician assistant orders over the last 3 days. See specific processes under each of the following definitions:

Definition: a. Total number of physician visits (by attending, consultant, etc.) in which the patient was examined and MD notes written—This category also includes any primary care or consulting osteopath, podiatrist or dentist. Review the medical record and add up the total number of physician visits the patient had in the last three days. Count only those where the patient was actually seen and examined/assessed by the physician as indicated by physician notes specifically indicating findings/results of the examination. Examination/assessment may be a partial or full exam that occurs at the facility or physician's office/clinic. This category does not include exams conducted in an emergency room.

b. Number of times physician or nurse practitioner called to bedside for emergency (for example, cardiorespiratory arrest, hemorrhaging, to evaluate change in condition)—Once again the physician category also includes bedside visits for emergencies by MD, osteopath, podiatrist, or dentist.

c. Number of nurse practitioner (NP) visits in which patient examined and notes written—Review the medical record and add up the total number of NP visits the patient had in the last 3 days. Count only those where the patient was actually seen and examined/assessed as indicated by NP notes specifically indicating findings/results of the examination.

d. Number of physician assistant (PA) visits in which patient examined and notes written—Review the medical record and add up the total number of PA visits the patient had in the last 3 days. Count only those where the patient was actually seen and examined/assessed as indicated by PA notes specifically indicating findings/results of the examination.

e. Number of new or changed orders—Includes written, telephone, fax, or consultation orders for new or altered treatment. Does NOT include admission orders, return admission orders or renewal orders without changes. Does include orders for lab tests. Review the physician order sheet in the medical record and add up the total amount of new or changed orders by M.D., osteopath, podiatrist, dentist, NP or PA.

Coding: For each clinical visit or order, record how often it was provided to the patient in the last 3 days.

2. Treatments and Services

Intent: To document the following:

- Column A—over the last 3 days, code for treatment frequency [either daily (Code 3) or less than daily (Code 2) or ordered, not yet implemented (Code 1)].
- Column B—Record whether patient will receive service after discharge.

Process: *Column A*—Review patient's plan of care with the primary caregiver, and review the current medical record, referral information and hospital discharge summary. Use the following coding instructions to indicate how often each of these services was provided in the last 3 days. Note: These treatments and services must either be ordered by a physician or performed by a licensed professional and documented appropriately.

Column B—This column is to be completed ONLY at the discharge assessment (Item AA3 = 5). Review the patient's plan of care with the primary caregiver, and review the current medical record. Use the coding instructions for Column B (below) to indicate whether the patient will receive the service/treatment after discharge

Coding: *Column A*—For each treatment or service indicate how often it was provided to the patient in the last 3 days. If none of these treatments were provided, check NONE OF ABOVE (Item K2aiA, located in the bottom right hand corner of Section K2, Treatments and Services). For any activity that did not occur, or was not ordered, leave the box next to that item blank. Code for most intense treatment on any one day using the following codes:

[Leave blank] if treatment did not occur, not ordered.

Code "1" If the treatment was ordered, but has not yet been implemented.

Code "2" If the treatment occurred less than daily.

Code "3" If the treatment occurred daily.

Column B—For each treatment or service ("a" through "ah") indicate whether the patient will receive it after discharge. Leave "Blank" for No, Code "1" for Yes. This information is obtained on a Discharge Assessment only.

Definition: MEDICATION RELATED

a. Diabetic management—Involves a variety of activities centered around stabilization of blood sugar, including determining sliding scale insulin dosages, and blood sugar monitoring. In order to use codes 1–3 in Column A, there must be documentation of changes in type of insulin, insulin dosing, or reports/documentation of blood sugar levels.

b. Injections—Subcutaneous, intramuscular, or intradermal injections of any type of medication, antigen, or vaccine. Although antigens and vaccines are considered "biologicals" and not medication per se, it is important to track when they are given in order to monitor for systemic reactions. This category does not include intravenous fluids or medications. If the patient received IV medications, record in Item K2c. (If the patient received IV fluids, record in Item J5b).

c. IV antibiotics/medications—Administration of antibiotics or other medications by means of infusion therapy. Includes any drug or biological (for example, contrast material) given by intravenous push or drip through a central or peripheral port. Does not include a saline or heparin flush to keep a heparin lock patent, or IV fluids without medication.

SKIN TREATMENT

d. Application of dressing—Includes dry gauze dressings, dressings moistened with saline or other solutions, transparent dressings, hydrogel dressings, and dressings with hydrocolloid or hydroactive particles.

e. Application of ointments, topical medications—Includes ointments or medications used to treat a skin condition (for example, cortisone, antifungal preparations, chemotherapeutic agents, etc.). This definition does not include ointments used to treat non-skin conditions (for example, nitropaste for chest pain).

f. Debridement (chemical or surgical)—Chemical debridement is the process of removing dirt or dead tissue from a wound or burn using chemical agents or dressing change products to promote wound healing. Surgical debridement is the process of surgically removing dirt or dead tissue from a wound or burn to promote wound healing.

g. Nutritional/hydration intervention to manage skin problems—Any nutritional intervention whose purpose is to promote wound healing (for example, high protein drinks, TPN/PPN).

h. Pressure relieving bed/chair—Pressure relieving devices for the bed include air fluidized, low airloss therapy beds, flotation, water, or bubble mattress or pad placed on the bed. Do not include egg crate mattresses in this category. Pressure relieving devices for the chair include gel, air (for example, Roho) or other cushioning placed on a chair or wheelchair. Do not include egg crate cushions in this category.

i. Turning and repositioning—Includes a continuous, consistent program for changing the patient's position and realigning the body.

j. Ulcer Care—Includes any intervention for treating an ulcer at any ulcer stage. Examples include use of dressings, chemical or surgical debridement, wound irrigations, and hydrotherapy.

k. Wound care (surgical)—Includes any intervention for treating or protecting any type of surgical wound. Examples of care include topical cleansing, wound irrigation, application of microbial ointments, dressings of any type, suture removal, and warm soaks or heat application.

MANAGEMENT OF HEALTH PROBLEMS

l. Bladder training—A planned program aimed at assessing and treating bladder incontinence.

m. Scheduled toileting—A plan whereby staff members at scheduled times either take the patient to the toilet room, or give the patient a urinal, or remind the patient to go to the toilet. Includes habit training or prompted voiding.

n. Bowel program—A planned program aimed at treating bowel incontinence. A bowel program also includes a program of planned bowel elimination as with patients with spinal cord injury.

o. Cardiac monitoring/Rehabilitation—Cardiac monitoring includes electrical surveillance of heart rates and patterns either through EKG or telemetry. Rehabilitation is a formalized program focusing on regaining function and endurance that has been limited by either a chronic or acute cardiac disease.

p. Cast(s)—A device used to immobilize limbs or joints to promote healing or as a treatment for various musculoskeletal problems.

q. Continuous or bi-level positive airway pressure (CPAP or BiPAP)—Assistive breathing device which provides the patient with a continuous flow of air throughout the breathing cycle.

r. Drains (cutaneous drains and other drains)—A heavy gauged tube used to remove air, fluid, or exudate from a body cavity or wound (exclude chest tubes).

s. Dialysis (includes hemodialysis and peritoneal dialysis)—Hemodialysis is a method for removing unwanted byproducts from the blood of patients with renal insufficiency or failure through the use of a machine (dialyzer). Peritoneal dialysis (CAPD) is a method of removing unwanted by-products from the body through the instillation of dialysate into the peritoneal cavity and using the abdominal wall as a filter.

t. Enteral Feeding Tube—Any tube inserted into the gastrointestinal tract for the purpose of nutrition, hydration, or medication administration. (This includes, jejunostomy, gastrostomy, and PEG tubes).

u. IV line-Central—A catheter which is placed in the more "central" veins such as subclavian, jugular, or superior vena cava, for the purpose of monitoring, and administration of medications and fluids. This item includes the insertion, discontinuation, and maintenance of this IV line, including dressing changes, evaluation for patency, assessment for adverse effects (for example, infection), and flushes.

v. IV line-peripheral—A catheter which is placed in a peripheral vein (usually hand or arm) for administration of medications and fluids. This item includes the insertion, discontinuation, and maintenance of this IV line, including dressing changes, evaluation for patency; assessment for adverse effects (for example, infiltration; infection; cellulitis) and flushes.

w. NG feeding tube—A tube inserted through the nose and extending into the stomach.

x. Oxygen—Either the intermittent or continuous use of oxygen to support, promote or maintain vital functions and comfort.

y. Pain management other than drugs—Any documented non-pharmaceutical intervention designed to decrease or alleviate pain. Examples may include (but are not limited to) acupuncture, relaxation therapy, hypnosis, TENS therapy.

z. Suctioning-oral/nasopharyngeal—Removing secretions or other matter from the respiratory system through the mouth or nose.

aa. Suctioning-tracheal—Removing secretions or other matter from the respiratory system through a tracheostomy.

ab. Tracheostomy care—The process of maintaining a clean and functioning tracheostomy, includes assessing the surrounding skin, changing dressing around tracheostomy tube, cleaning and changing inner cannula, monitoring cuff pressures, and securing the tracheostomy tube.

ac. Transfusion(s)—Giving whole blood or blood component (for example, red blood cells) to replace blood loss through injury, surgery, or disease.

ad. Ventilator or respirator—Assures adequate ventilation in patients who are, or who may become, unable to support their own respiration. Includes any type of electrically or pneumatically powered closed system mechanical ventilatory support devices.

ae. Ventilator weaning—Any patient who was in the process of being weaned off the ventilator or respirator in the last 3 days should be coded under this definition.

OTHER

af. Family training in assistance to patient in health measures or skills required after return to the community—Any documented family teaching to support the patient's discharge home. Examples include, but are not limited to, observing for signs of declining health (for example, hypoglycemia; cognitive change; new or worsening urinary incontinence); administering medications; observing for drug side effects or adverse drug reactions; providing ostomy care or dressing changes; coaching strength training exercises; assisting in transferring and locomotion; providing appropriate verbal/physical cues for feeding; how to label closets and drawers so patient can retrieve clothes; application of behavioral management techniques; when to report change or request assistance.

ag. Patient training in health maintenance or skills required after return to community—Any documented patient teaching to support the patient's discharge home. Examples include, but are not limited to, recognizing and reporting signs of declining health (for example, hypoglycemia; cognitive change; new or worsening urinary incontinence); self-administration of medications; recognizing and reporting drug side effects or adverse drug reaction; recording adherence to strength training exercises; self-ostomy care; how the Lifeline emergency response system works; how to access help in an emergency.

ah. Design and implementation of discharge plan—Discharge plan developed by the interdisciplinary team; includes making the necessary arrangements and contacts with community services.

ai. NONE OF THE ABOVE—Code if the patient has received NONE of the treatments or services above.

3. Nursing Practice or Restorative Care

Intent: To determine the extent to which the patient receives nursing rehabilitation or restorative services from other than specialized therapy staff (for example, occupational therapist, physical therapist, etc.). Rehabilitative or restorative care refers to nursing interventions that promote the patient's ability to adapt and adjust to living as independently and safely as is possible. This concept actively focuses on achieving and maintaining optimal physical, mental, and psychosocial functioning.

Skill practice in such activities as walking and mobility, dressing and grooming, eating and swallowing, transferring, amputation care, and communication can improve or maintain function in physical abilities and ADLs and prevent further impairment.

Definition: Rehabilitation/restorative care—Included are nursing interventions that assist or promote the patient's ability to attain his or her maximum functional potential. This item does not include procedures or techniques carried out by or under the direction of qualified therapists, as identified in item K4. In addition, to be included in this section, a rehabilitation or restorative practice must meet all of the following additional criteria:

- Measurable objectives and interventions must be documented in the care plan and in the clinical record.
- Evidence of periodic evaluation by licensed nurse must be present in the clinical record.
- Nurse assistants/aides must be trained in the techniques that promote patient involvement in the activity.
- These activities are carried out or supervised by members of the nursing staff. Sometimes under licensed nurse supervision, other staff and volunteers will be assigned to work with specific patients.
- This category does not include exercise groups with more than four patients per supervising helper or caregiver.

Definition: a. Range of motion (passive)—The extent to which, or the limits between which, a part of the body can be passively moved around a fixed point, or joint. Passive range of motion exercise is a program of movements to maintain flexibility and useful motion in the joints of the body.

b. Range of motion (active)—Exercises performed by a patient, with cuing or supervision by staff, that are planned, scheduled, and documented in the clinical record.

c. Splint or orthotic assistance—Assistance can be of 2 types: (1) where staff provide verbal and physical guidance and direction that teaches the patient how to apply, manipulate, and care for an orthotic device or splint, or (2) where staff have a scheduled program of applying and removing a splint or brace, assess the patient's skin and circulation under the device, and reposition the limb in correct alignment. These sessions are planned, scheduled, and documented in the clinical record.

Training and skill practice—Activities including repetition, physical or verbal cuing, and task segmentation provided by any staff member or volunteer under the supervision of a licensed nurse.

d. Bed mobility—Activities used to improve or maintain the patient's self-performance in moving to and from a lying position, turning side to side, and positioning him or herself in bed.

e. Bladder/Bowel—Activities used to improve or maintain the patient's self-performance in bladder and bowel evacuation (includes ostomy care).

f. Transfer—Activities used to improve or maintain the patient's self-performance in moving between surfaces or planes either with or without assistive devices.

g. Walking—Activities used to improve or maintain the patient's self-performance in walking, with or without assistive devices.

h. Dressing or grooming—Activities used to improve or maintain the patient's self-performance in dressing and undressing, bathing and washing, and performing other personal hygiene tasks.

i. Eating or swallowing—Activities used to improve or maintain the patient's self-performance in feeding oneself food and fluids, or activities used to improve or maintain the patient's ability to ingest nutrition and hydration by mouth.

j. Amputation/prosthesis care—Activities used to improve or maintain the patient's self-performance in putting on and removing a prosthesis, caring for the prosthesis, and providing appropriate hygiene at the site where the prosthesis attaches to the body (for example, leg stump or eye socket).

k. Communication—Activities used to improve or maintain the patient's self-performance in using newly acquired functional communication skills or assisting the patient in using residual communication skills and adaptive devices.

Process: Review the clinical record and the current care plan. Consult with facility staff. Look for rehabilitation, restorative care schedule, assignment, and implementation record sheet on the nursing unit.

Coding: For the last three days, enter the number of days on which the technique, procedure, or activity was practiced for a total of at least 15 minutes during each day (24-hour period). The 15 minutes does not have to occur all at once. Remember that persons with dementia learn skills best through repetition that occurs multiple times per day. Review for each activity throughout the 24-hour period. Enter zero "0" if none, or if the service was provided for less than 15 minutes per day in the last 3 days.

4. Therapy Services

This item involves therapies that occurred after admission to the facility and meet the following criteria: (1) were ordered by a physician, (2) were performed by a qualified therapist (that is, one who meets state credentialing requirements) OR (3) were performed by therapy assistant under the direction of the therapist.

The therapy treatment may occur either inside or outside the facility. Includes only therapies based on a therapist's assessment and treatment plan that is documented in the patient's clinical record.

Intent: To record the (A) total number of days treatment was ordered in the last 3 days, (B) number of days administered (for 15 minutes or more), (C) total number of minutes each of the following therapies was provided in the last 3 days (or ordered if days administered =0 and days ordered >0), and (D) whether the patient will receive the service after discharge. Note: In order for therapy minutes to be recorded in the most precise 15 minute increment, either the physician's order or the therapist's plan of care must indicate minutes of therapy ordered by the physician or recommended in the therapist's plan of care.

Definition: a. Speech-language pathology, audiology services—Services that are provided by a qualified speech-language pathologist.

b. Occupational therapy—Therapy services that are provided or directly supervised by a qualified occupational therapist. A qualified occupational therapy assistant may provide therapy but not supervise others (aides or volunteers) giving therapy. Include services provided by a qualified occupational therapy assistant who is employed by.(or under contract to) the facility only if he or she is under the direction of a qualified occupational therapist.

c. Physical therapy—Therapy services that are provided or directly supervised by a qualified physical therapist. A qualified physical therapy assistant may provide therapy but not supervise others (aides or volunteers) giving therapy. Include service provided by a qualified physical therapy assistant who is employed by (or under contract to) the facility only if he or she is under the direction of a qualified physical therapist.

d. Respiratory therapy—Included are coughing, deep breathing, administration of heated nebulizers, aerosol treatments, and mechanical ventilation, etc., which must be provided by a qualified professional (that is, trained nurse, respiratory therapist). This item does not include use of hand-held medication dispensers. Count only the time that the qualified professional spends with the patient. For high intensity respiratory patients who receive 24° respiratory care, have a discussion with the therapist to get an estimate of the actual amount of time spent at the bedside providing care.

e. Psychological therapy by any licensed mental health professional—Therapy given by any licensed mental health professional, such as a psychiatrist, psychologist, psychiatric nurse, or psychiatric social worker.

f. Therapeutic recreation—Therapy ordered by a physician that provides therapeutic stimulation beyond the general activity program in a facility. The physician's order must include a statement of frequency, duration and scope of the treatment. Such therapy must be provided by a state licensed or nationally certified Therapeutic Recreation Specialist or Therapeutic Recreation Assistant. The Therapeutic Recreation Assistant must work under the direction of a Therapeutic Recreation Specialist.

Process: Review the patient's clinical record and consult with each of the qualified therapists.

Coding: For Boxes (Columns) A, B and C count only post-admission therapies (given in/or outside the facility).

Column A: Days ordered—In the first column, enter the number (#) of days the treatment was ordered during the last three days. Enter "0" if none. Maximum code is "3".

Column B: Days administered—In the second column, enter the number (#) of days the therapy was administered for at least 15 minutes or more in the last three days. Enter "0" if none. Maximum code is "3".

Column C: Minutes delivered—In the third column, enter the total number (#) of minutes the particular therapy was provided in the last 3 days. The time should include only the actual treatment time (not time waiting, writing reports, or conducting an evaluation). Enter total number of minutes ordered if days administered (K4B) = 0 and days ordered (K4A) > 0. Enter "0" if the therapy was not ordered or administered. [Note—Enter cumulative time over all 3 days even when total time on a day (or days) was less than 15 minutes].

Column D: Post Discharge Therapy—Code at discharge assessment only (A3=5). Record whether the patient will receive the therapy service after discharge. Code "0" for No, or "1" for Yes. This information is obtained on a Discharge Assessment only.

5. Devices and Restraints

Intent: To record the frequency, over the last three days, with which the patient was restrained by any of the devices listed below at any time during the day or night.

Definition: This category includes the use of any device (for example, physical or mechanical device, material, or equipment attached or adjacent to the patient's body) that the patient cannot easily remove and that restricts freedom of movement or normal access to his or her body. If device is used as an "enabler," you still must code device in this item.

a. Full bed rails—Full rails may be one or more rails along both sides of the patient's bed that block three-quarters to the whole length of the mattress from top to bottom. This definition also includes beds with one side placed against the wall (prohibiting the patient from entering and exiting on that side) and the other side blocked by a full rail (one or more rails). A veil screen (used in pediatric units) or veil bed is included in this category.

b. Other types of side rails used (for example, one-side half rail, one-side full rail, two-sided half rails).

c. Trunk restraint—Includes any device or equipment or material that the patient cannot easily remove (for example, vest or waist restraint).

d. Chair prevents rising—Any type of chair with locked lap board or chair that places patient in a recumbent position that restricts rising or a chair that is soft and low to the floor (for example, bean bag chair). Includes "comfort cushions" (for example, lap buddy), "merry walkers."

Process: Check the patient's clinical records and restraint device flow sheets. Consult nursing staff. Observe the patient.

Coding: For each device type, enter the code that best describes the pattern of restraint or device use for the last 3 days:

0. Not used in last three days
1. Used, but used less than daily in last three days
2. Daily use—night only in the last three days
3. Daily use—days only in the last three days
4. Night and day use, but not constant use in the last three days
5. Constant use for full 24 hours (with periodic release) during the last three days

Section L. Functional Prognosis

Intent: A major goal of post acute care is to rehabilitate the patient to a level of function and health that enables return to the patient's previous living arrangement or, if not appropriate, to the most independent living arrangement possible. Developing plans of care to achieve this goal and prepare for post-discharge needs requires (1) establishing individualized goals in specific areas of function and health, (2) estimating the degree to which the patient will improve, (3) evaluating the patient's and family's individual needs, values, motivation for participation in rehabilitation, and (4) estimating the rate of patient change (and goal achievement) and length of stay. This section asks the interdisciplinary team to take this information and make some predictions on rehabilitation prognosis. These predictions are essential in planning services needed during the stay as well as upon discharge.

1. Functional Improvement Goals

Intent: This section looks at some key functional areas, and asks staff to make a prediction whether the patient will meet these goals in the indicated time frame.

Definition: ADLs

a. Bed mobility/transfer—Goals that involve how patient moves to and from a lying position, turns side to side, and positions body while in bed. Also includes goals involving how patient moves between surfaces—to or from: bed, chair, wheelchair.

b. Dressing—Goals that involve how the patient dresses and undresses (street clothes and underwear) including prostheses, orthotics, fasteners, pullovers, belts, pants, skirts, and shoes.

c. Eating—Goals centering on how the patient eats and drinks (regardless of skill). This includes intake of nourishment by other means (for example, tube feeding, total parenteral nutrition).

d. Locomotion—Goals involving how the patient moves between locations in his/her room and adjacent corridor on the same floor. If patient uses a wheelchair, the goals would involve how the patient moves once the patient is in the wheelchair.

e. Toileting—Goals that involve how the patient uses the toilet room (or commode, urinal, bedpan), cleanses himself/herself after toilet use or incontinent episode(s), changes pads, manages ostomy or catheter, and adjusts clothes. This item does include goals centering on transfers on and off the toilet or commode.

OTHER

f. Medication Management—Goals involving how the patient manages medications (remembering to take medications, opening bottles, taking correct drug dosages, filling syringe, giving injections, applying ointments).

g. Pain Control—Goals involving the control (cessation or mitigation) of pain by the patient. Pain control goals could involve both pharmacologic and non-pharmacologic interventions.

h. Managing Finances—In the inpatient environment this includes goals involving financial activities such as paying for the newspaper, paying for TV service. When considering home discharge, this item involves paying bills, managing checking account, or bank account.

Process: Using your best clinical judgment, code each of these functional areas using the scale described below. A review of the physician orders, notes and plans of care would be essential in this process to confirm what goals have been established.

Coding: Choose the response that best reflects the clinical staff's prognosis for goal attainment in each of the specified areas in the last 24 hours. Code for the most aggressive goal in each area. For admission assessment and reassessment, code for clinical staff expectations of patient goals in the areas listed below by time of discharge. For discharge assessments, code for staff expectation of patient functional goal in the post discharge period.

0. No goal exists—There is currently no goal in the patient's plan of care that aims to improve or maintain the patient's current functional performance or health (in the area specified) in the area indicated.

1. Goal—improvement, full recovery to premorbid status anticipated—Goals for improvement in the area specified have been set, and clinical staff project that the patient will improve to the level of function or health (in the area specified) that he or she experienced prior to the precipitating event (Item A7a).

2. Goal—improvement, partial recovery anticipated—Goals for improvement in the specified area have been set, but given the patient's current status and availability of services within the expected length of stay, clinical staff project that the patient will not improve to the level of function or health (in the area specified) he or she experienced prior to the precipitating event (Item A7a).

3. Goal—improvement, recovery uncertain—Goals for improvement in the specified area have been set, but given the patient's current health, functional or emotional status, clinical staff are unable to determine if the patient will partially or fully return to the level of function or health (in the specified area) he or she experienced prior to the precipitating event (Item A7a).

4. Goal—maintenance, prevention of further decline—Goals for maintenance (preservation) of function or health in the specified area have been set, and clinical staff project that the patient will meet maintenance goals as evidenced by NO further deterioration in function or health (in the area specified).

2. Attributes Relevant to Rehabilitation

Intent: The intent of this section is to measure the patient's and his or her family's motivation to participate in the rehabilitation program and goals. This is essential to establish the patient and the patient's support system's participation in the established plan of care. When conflicts arise, the plan of care needs to be modified to reflect efforts to resolve these conflicts. For example, if the patient is in the post-acute setting for rehabilitation after a stroke, but is "refusing rehabilitation," this issue becomes the primary issue to deal with rather than the fact that the patient's mobility is limited.

Definition: a. Patient believes he/she is capable of increased independence—The patient states that he/she has the capacity to improve or be more independent (albeit with therapeutic support) or demonstrates this belief by actively participating in rehabilitative programming.

b. Patient unable to recognize new limitations—The patient lacks insight into the level of his/her altered function; may use poor judgement, thereby placing self at safety risk; may resist participation in therapeutic programming aimed at improving function or compensating for deficits.

c. Patient fails to initiate or to continue to carry out ADLs (once initiated) for which he/she has some demonstrated capability—The patient refrains from participating in self-care in one or more ADL areas in which he/she has shown self-care abilities.

Process: Interview the patient. Get a sense of what his/her goals are from this post-acute admission. Also discuss what the patient's family or support person's perceptions are. Observe the patient's behavior and participation in plan of care. Are there differences in the Care Plan goals established by the team and the patient's and family's goals?

Coding: Indicate "0" for No, "1" for Yes, or "8" for Unknown in the box corresponding to each item, indicating that they have been observed, verbalized or documented in the last 3 days.

3. Change Over the Last 3 Days

Intent: To evaluate and predict the rate in which the patient will progress toward his or her established goals.

Process: Obtain information via review of the medical record, staff and patient interview.

Definition: a. Change in overall functional status over last 3 days.

b. Change in overall health status over last 3 days.

Coding: From the following codes, choose the response that best reflects your best clinical judgement of the patient's rate of overall functional and health status change over the last 3 days.

0. Improved.
1. About the same as at admission (or last assessment if this is not an admission assessment).
2. Worse.

4. Estimated Length of Stay From Date of Admission

Intent: It is essential to put a time frame around established goals in the plan of care. The guiding time frame in this process is the anticipated length of stay. This is established based on a number of factors including but not limited to, diagnosis, functional ability and prognosis, medical complications, support systems, patient motivation, and anticipated living arrangement and payor source. All this information must be taken into consideration when making a prediction.

Process: Use a chart review, patient/support system interview, or obtain interdisciplinary clinical input to code for the anticipated length of stay.

Coding: Starting from (and including) the date entered in AA2b or if AA2b is blank AA2a (Admission Date), using your best clinical judgement, determine the patient's expected length of stay in the current setting prior to returning to a community setting. Choose the response that best reflects the anticipated time frame.

0. 1–6 days.
1. 7–13 days.
2. 14—30 days.
3. 31—90 days.
4. 91 or more days.
5. Discharge to community not expected—It is anticipated that the patient will never return to the community, even if they are transferred to another facility. This category also includes patients who are expected to die during this admission.
6. Expected discharge will be to another health care setting prior to return to community—Examples include transfer to nursing facility with eventual discharge to the community.

Section M. Resources for Discharge

Intent: In this section some key elements related to discharge planning are addressed. Before formulating a discharge plan, the resources available to support the patient's discharge home should be evaluated based on the patient's current needs. In conjunction with previous sections of the assessment, these items lay the ground work for developing a realistic discharge/transition plan.

1. Available Social Supports

Intent: To identify the availability of family or friends to provide support during the post-acute phase and after discharge.

Process: Information should be obtained through patient/family interview and through medical record review. Determine if there is any indication that family or close friends are present and available. Privately employed caregivers would not be coded in this item.

Definition: a. Emotional Support—The provision of encouragement, comfort, attentive listening.

b. Intermittent physical support with ADLs or IADLs—less than daily—The provision of "hands on" assistance to the patient with personal care, transfers, mobility, or doing housework, shopping etc, on a less than daily basis.

c. Intermittent physical support with ADLs or IADLs—daily—The provision of "hands on" assistance to the patient with personal care, transfers, mobility, or doing housework, shopping etc., on a daily basis (for example, once a day), but not full time.

d. Full time physical support (as needed) with ADLs or IADLs—The provision of "hands on" assistance to the patient with personal care, transfers, mobility, or doing housework, shopping etc., on a daily basis full time.

e. All or most of necessary transportation—Includes providing transportation by driving patient in a car (or other motorized vehicle) OR accompanying patient using bus, subway, or other public transportation.

Coding: Ask if one or more family members/close friends are willing and able to provide support after discharge. Enter the most appropriate response next to the type of support. Enter "0" for No, "1" for Possibly yes, and "2" for Definitely Yes.

2. Caregiver Status

Intent: The following items identify issues with the patient's family or informal caregivers in preparation for discharge. Often, when a family member needs post-acute care, the entire family is affected. It is important to determine how the caregiver(s) is coping, whether he/she requires additional supports, or if he/she is willing and able to provide the patient with extended care in their home.

Process: Interview the patient and family/caregiver, as well as staff who are closely involved with the patient's care. Review medical record, including Social Service notes.

Coding: Enter a "0" for "No", and a "1" for "Yes" in the box next to each statement that applies to the patient and their care givers/family.

0. No.

1. Yes.

a. Family (or close friend) overwhelmed by patient's illness.

b. Family relationship(s) require unusual amounts of staff time.

3. Living Arrangement

Intent: The intent of this item is to establish the permanent living arrangement both prior to admission [A] and that which is expected after discharge [B]. If the initial arrangement expected at discharge is different than column M3B—code in column C for Temporary Discharge arrangement (A3 = 5).

Process: Obtain information through patient and family interview. Medical record review may also be helpful.

Definition: a. Type of residence.

0. Unknown.

1. Private home—Any house or condominium in the community whether owned by the patient or another person. Also included in this category are retirement communities, and independent housing for the elderly or disabled.

2. Private apartment—Any apartment in the community whether owned by the patient or another person.

3. Rented Room—A rented room either part of a private house or a boarding room establishment.

4. Board and Care/assisted living/group home—An alternative housing option which integrates shared living environment with some degree of supportive services such as home health services, personal care, meal service, transportation.

5. Homeless (with or without shelter)—Person does not have a residence—lives out on streets, woods, etc. or uses a community based shelter for individuals who do not have a residential address.

6. Long Term Care Facility (nursing home)—A residence that provides 24-hour skilled or intermediate nursing care.

7. Post Acute Care SNF—Facility (or designated beds within a SNF) dedicated to the care of patients with intense rehabilitative or clinically complex needs. Most patients are admitted to the post acute care facility from an acute hospital, or rehabilitation hospital. These patients will have a short, intense stay in the post acute care SNF.

8. Hospice—An interdisciplinary program of palliative care and support services that addresses the physical, social, spiritual, and financial needs of terminally ill patients and their families.

9. Acute unit/hospital—A facility licensed as an acute care hospital or unit. Patients in acute care may receive comprehensive and complex diagnostic services, treatments, and surgery.

10. Other—Any other setting not categorized above.

b. Live(d) with.

0. Unknown.

1. Alone—Living with a pet is coded as living alone.

2. Spouse only—If patient is living as married (common law marriage) with another person, use this code.

3. Spouse and others—husband or wife, and other family members, friends, boarders.

4. Child—Lives with child, no spouse present.

5. Other relative(s)—Not spouse or children.

6. Friends.

7. Group setting—An alternative housing option which integrates a shared living environment with some degree of supportive services such as home health services, personal care, meal service, transportation.

8. Personal Care Attendant—A health care worker either hired by an agency or the patient himself. This worker is trained to provide the patient with help in ADL's and other types of assistance.

9. Other—Any other living arrangement not categorized above.

Process: Review the medical record. Consult the patient and family. This is meant to measure permanent placement. If a patient is going to be discharged to a skilled nursing facility for a short period of time, and then discharged back to their home, the permanent living arrangement would be either 1 or 2 depending on home service arrangements.

Coding: a. Type of residence—

- In Column A—indicate the type of residence where the patient permanently resided prior to admission.
- In Column B—indicate the type of residence where the patient is expected to permanently reside after discharge.
- In Column C—indicate the type of residence where the patient is expected to temporarily reside initially after discharge. Code this item only if this arrangement is different than that coded in Column B.

b. Lived with—

- In Column A—indicate with whom the patient permanently resided prior to admission.
- In Column B—indicate with whom the patient is expected to permanently reside after discharge.
- In Column C—indicate with whom the patient is expected to temporarily reside initially after discharge. Code this item only if this arrangement is different than that coded in Column B.

Appendix C: List of Comorbidities

ICD9 code No.	Abbreviated code title
011	Pulmonary tuberculosis*
011.0	TB of lung, infiltrative
011.00	TB lung infiltr-unspec
011.01	TB lung infiltr-no exam
011.02	TB lung infiltr-exm unkn
011.03	TB lung infiltr-micro DX
011.04	TB lung infiltr-cult DX
011.05	TB lung infiltr-histo DX
011.06	TB lung infiltr-oth test
011.1	TB of lung, nodular
011.10	TB lung nodular-unspec
011.11	TB lung nodular-no exam
011.12	TB lung nodul-exam unkn
011.13	TB lung nodular-micro DX
011.14	TB lung nodular-cult DX
011.15	TB lung nodular-histo DX
011.16	TB lung nodular-oth test
011.2	TB of lung w cavitation
011.20	TB lung w cavity-unspec
011.21	TB lung w cavity-no exam
011.22	TB lung cavity-exam unkn
011.23	TB lung w cavit-micro DX
011.24	TB lung w cavity-cult DX
011.25	TB lung w cavit-histo DX
011.26	TB lung w cavit-oth test
011.3	Tuberculosis of bronchus
011.30	TB of bronchus-unspec
011.31	TB of bronchus-no exam
011.32	TB of bronchus-exam unkn
011.33	TB of bronchus-micro DX
011.34	TB of bronchus-cult DX
011.35	TB of bronchus-histo DX
011.36	TB of bronchus-oth test
011.4	TB fibrosis of lung
011.40	TB lung fibrosis-unspec
011.41	TB lung fibrosis-no exam
011.42	TB lung fibros-exam unkn
011.43	TB lung fibros-micro DX
011.44	TB lung fibrosis-cult DX
011.45	TB lung fibros-histo DX
011.46	TB lung fibros-oth test
011.5	TB bronchiectasis
011.50	TB bronchiectasis-unspec
011.51	TB bronchiect-no exam
011.52	TB bronchiect-exam unkn
011.53	TB bronchiect-micro DX
011.54	TB bronchiect-cult DX
011.55	TB bronchiect-histo DX
011.56	TB bronchiect-oth test
011.6	Tuberculous pneumonia
011.60	TB pneumonia-unspec
011.61	TB pneumonia-no exam
011.62	TB pneumonia-exam unkn
011.63	TB pneumonia-micro DX
011.64	TB pneumonia-cult DX
011.65	TB pneumonia-histo DX
011.66	TB pneumonia-oth test
011.7	Tuberculous pneumothorax
011.70	TB pneumothorax-unspec
011.71	TB pneumothorax-no exam
011.72	TB pneumothorx-exam unkn
011.73	TB pneumothorax-micro DX
011.74	TB pneumothorax-cult DX
011.75	TB pneumothorax-histo DX
011.76	TB pneumothorax-oth test
011.8	Pulmonary TB nec
011.80	Pulmonary TB nec-unspec
011.81	Pulmonary TB nec-no exam
011.82	Pulmon TB nec-exam unkn
011.83	Pulmon TB nec-micro DX
011.84	Pulmon TB nec-cult DX
011.85	Pulmon TB nec-histo DX
011.86	Pulmon TB nec-oth test
011.9	Pulmonary TB nos
011.90	Pulmonary TB nos-unspec
011.91	Pulmonary TB nos-no exam
011.92	Pulmon TB nos-exam unkn
011.93	Pulmon TB nos-micro DX
011.94	Pulmon TB nos-cult DX
011.95	Pulmon TB nos-histo DX
011.96	Pulmon TB nos-oth test
012	Other respiratory TB*
012.0	Tuberculous pleurisy
012.00	TB pleurisy-unspec
012.01	TB pleurisy-no exam
012.2	TB pleurisy-exam unkn
012.3	TB pleurisy-micro DX
012.04	TB pleurisy-cult DX
012.5	TB pleurisy-histolog DX
012.6	TB pleurisy-oth test
012.1	TB thoracic lymph nodes
012.10	TB thoracic nodes-unspec
012.11	TB thorax node-no exam
012.12	TB thorax node-exam unkn
012.13	TB thorax node-micro DX
012.14	TB thorax node-cult DX
012.15	TB thorax node-histo DX
012.16	TB thorax node-oth test
012.2	Isolated trach/bronch TB
012.20	Isol tracheal TB-unspec
012.21	Isol tracheal TB-no exam
012.22	Isol trach TB-exam unkn
012.23	Isolat trach TB-micro DX
012.24	Isol tracheal TB-cult DX
012.25	Isolat trach TB-histo DX
012.26	Isolat trach TB-oth test
012.3	Tuberculous laryngitis
012.30	TB laryngitis-unspec
012.31	TB laryngitis-no exam
012.32	TB laryngitis-exam unkn
012.33	TB laryngitis-micro DX
012.34	TB laryngitis-cult DX
012.35	TB laryngitis-histo DX
012.36	TB laryngitis-oth test
012.8	Respiratory TB nec
012.80	Resp TB nec-unspec
012.81	Resp TB nec-no exam
012.82	Resp TB nec-exam unkn
012.83	Resp TB nec-micro DX
012.84	Resp TB nec-cult DX
012.85	Resp TB nec-histo DX
012.86	Resp TB nec-oth test
013	CNS tuberculosis*
013.0	Tuberculous meningitis
013.00	TB meningitis-unspec
013.01	TB meningitis-no exam
013.02	TB meningitis-exam unkn
013.03	TB meningitis-micro DX
013.04	TB meningitis-cult DX
013.05	TB meningitis-histo DX
013.06	TB meningitis-oth test
013.1	Tuberculoma of Meninges
013.10	Tubrclma meninges-unspec
013.11	Tubrclma mening-no exam
013.12	Tubrclma menin-exam unkn
013.13	Tubrclma mening-micro DX
013.14	Tubrclma mening-cult DX
013.15	Tubrclma mening-histo DX
013.16	Tubrclma mening-oth test
013.2	Tuberculoma of brain
013.20	Tuberculoma brain-unspec
013.21	Tubrcloma brain-no exam
013.22	Tubrclma brain-exam unkn
013.23	Tubrcloma brain-micro DX
013.24	Tubrcloma brain-cult DX
013.25	Tubrcloma brain-histo DX
013.26	Tubrcloma brain-oth test
013.3	TB abscess of brain
013.30	TB brain abscess-unspec
013.31	TB brain abscess-no exam
013.32	TB brain absc-exam unkn
013.33	TB brain absc-micro DX
013.34	TB brain abscess-cult DX
013.35	TB brain absc-histo DX
013.36	TB brain absc-oth test
013.4	Tuberculoma spinal cord
013.40	Tubrclma sp cord-unspec
013.41	Tubrclma sp cord-no exam
013.42	Tubrclma sp cd-exam unkn
013.43	Tubrclma sp crd-micro DX
013.44	Tubrclma sp cord-cult DX
013.45	Tubrclma sp crd-histo DX
013.46	Tubrclma sp crd-oth test
013.5	TB abscess spinal cord
013.50	TB sp crd abscess-unspec
013.51	TB sp crd absc-no exam
013.52	TB sp crd absc-exam unkn
013.53	TB sp crd absc-micro DX
013.54	TB sp crd absc-cult DX
013.55	TB sp crd absc-histo DX
013.56	TB sp crd absc-oth test
013.6	TB encephalitis/myelitis
013.60	TB encephalitis-unspec
013.61	TB encephalitis-no exam
013.62	TB encephalit-exam unkn
013.63	TB encephalitis-micro DX
013.64	TB encephalitis-cult DX
013.65	TB encephalitis-histo DX
013.66	TB encephalitis-oth test
013.8	CNS tuberculosis nec
013.80	CNS tb nec-unspec
013.81	CNS tb nec-no exam
013.82	CNS tb nec-exam unkn
013.83	CNS tb nec-micro DX
013.84	CNS tb nec-cult DX
013.85	CNS tb nec-histo DX
013.86	CNS tb nec-oth test
013.9	CNS tuberculosis nos
013.90	CNS tb nos-unspec
013.91	CNS tb nos-no exam
013.92	CNS tb nos-exam unkn
013.93	CNS tb nos-micro DX
013.94	CNS tb nos-cult DX
013.95	CNS tb nos-histo DX
013.96	CNS tb nos-oth test
014	Intestinal tb*
014.0	tuberculous peritonitis
014.00	TB peritonitis-unspec
014.01	TB peritonitis-no exam
014.02	TB peritonitis-exam unkn
014.03	TB peritonitis-micro DX
014.04	TB peritonitis-cult DX
014.05	TB peritonitis-histo DX
014.06	TB peritonitis-oth test
014.8	Intestinal tb nec
014.80	Intestinal tb nec-unspec
014.81	Intestin tb nec-no exam
014.82	Intest tb nec-exam unkn
014.83	Intestin tb nec-micro DX
014.84	Intestin tb nec-cult DX
014.85	Intestin tb nec-histo DX
014.86	Intestin tb nec-oth test
015	TB of bone and joint*
015.0	TB of vertebral column
015.00	TB of vertebra-unspec
015.01	TB of vertebra-no exam
015.02	TB of vertebra-exam unkn
015.03	TB of vertebra-micro DX
015.04	TB of vertebra-cult DX
015.05	TB of vertebra-histo DX
015.06	TB of vertebra-oth test
015.1	TB of hip
015.10	TB of hip-unspec
015.11	TB of hip-no exam
015.12	TB of hip-exam unkn
015.13	TB of hip-micro DX
015.14	TB of hip-cult DX
015.15	TB of hip-histo DX
015.16	TB of hip-oth test
015.2	TB of knee
015.20	TB of knee-unspec
015.21	TB of knee-no exam
015.22	TB of knee-exam unkn
015.23	TB of knee-micro DX
015.24	TB of knee-cult DX
015.25	TB of knee-histo DX
015.26	TB of knee-oth test
015.5	TB of limb bones
015.50	TB of limb bones-unspec
015.51	TB limb bones-no exam
015.52	TB limb bones-exam unkn
015.53	TB limb bones-micro EX
015.54	TB limb bones-cult DX
015.55	TB limb bones-histo DX
015.56	TB Limb bones-oth test
015.6	TB of mastoid
015.60	TB of mastoid-unspec
015.61	TB of mastoid-no exam
015.62	TB of mastoid-exam unkn
015.63	TB of mastoid-micro DX
015.64	TB of mastoid-cult DX
015.65	TB of mastoid-histo DX
015.66	TB of mastoid-oth test
015.7	TB of bone nec
015.70	TB of bone nec-unspec
015.71	TB of bone nec-no exam
015.72	TB of bone nec-exam unkn
015.73	TB of bone nec-micro DX
015.74	TB of bone nec-cult DX
015.75	TB of bone nec-histo DX
015.76	TB of bone nec-oth test
015.8	TB of joint nec
015.80	TB of joint nec-unspec
015.81	TB of joint nec-no exam
015.82	TB joint nec-exam unkn
015.83	TB of joint nec-micro DX
015.84	TB of joint nec-cult DX
015.85	TB of joint nec-histo DX
015.86	TB of joint nec-oth test
015.9	TB of bone & joint nos

ICD9 code No.	Abbreviated code title
015.90	TB bone/joint nos-unspec
015.91	TB bone/jt nos-no exam
015.92	TB bone/jt nos-exam unkn
015.93	TB bone/jt nos-micro DX
015.94	TB bone/jt nos-cult DX
015.95	TB bone/jt nos-histo DX
015.96	TB bone/jt nos-oth test
016	Genitourinary TB*
016.0	TB of kidney
016.00	TB of kidney-unspec
016.01	TB of kidney-no exam
016.02	TB of kidney-exam unkn
016.03	TB of kidney-micro DX
016.04	TB of kidney-cult DX
016.05	TB of kidney-histo DX
016.06	TB of kidney-oth Test
016.1	TB of bladder*
106.10	TB of bladder-unspec
016.11	TB of bladder-no exam
016.12	TB of bladder-exam unkn
016.13	TB of bladder-micro DX
016.14	TB of bladder-cult DX
016.15	TB of bladder-histo DX
016.16	TB of bladder-oth test
106.2	TB of ureter
016.20	TB of ureter-unspec
016.21	TB of ureter-no exam
016.22	TB of ureter-exam unkn
016.23	TB of ureter-micro DX
016.24	TB of ureter-cult DX
016.25	TB of ureter-histo DX
016.26	TB of ureter-oth test
016.3	TB of urinary organ nec
016.30	TB urinary nec-unspec
016.31	TB urinary nec-no exam
016.32	TB urinary nec-exam unkn
016.33	TB urinary nec-micro DX
016.34	TB urinary nec-cult DX
016.35	TB urinary nec-histo DX
016.36	TB urinary nec-oth test
016.4	TB of epididymis
016.40	TB epididymis-unspec
016.41	TB epididymis-no exam
016.42	TB epididymis-exam unkn
016.43	TB epididymis-micro DX
016.44	TB epididymis-cult DX
016.45	TB epididymis-histo DX
016.46	TB epididymis-oth test
016.5	TB male genital org nec
016.50	TB male genit nec-unspec
016.51	TB male gen nec-no exam
016.52	TB male gen nec-ex unkn
016.53	TB male gen nec-micro DX
016.54	TB male gen nec-cult DX
016.55	TB male gen nec-histo DX
016.56	TB male gen nec-oth test
016.6	TB of ovary and tube
016.60	TB ovary & tube-unspec
016.61	TB ovary & tube-no exam
016.62	TB ovary/tube-exam unkn
016.63	TB ovary & tube-micro DX
016.64	TB ovary & tube-cult DX
016.65	TB ovary & tube-histo DX
016.66	TB ovary & tube-oth test
016.7	TB female genit org nec
016.70	TB female gen nec-unspec
016.71	TB fem gen nec-no exam
016.72	TB fem gen nec-exam unkn
016.73	TB fem gen nec-micro DX
016.74	TB fem gen nec-cult DX
016.75	TB fem gen nec-histo DX
016.76	TB fem gen nec-oth test
016.9	Genitourinary TB nos
016.90	GU TB nos-unspec
016.91	GU TB nos-no exam
016.92	GU TB nos-exam unkn
016.93	GU TB nos-micro DX
016.94	GU TB nos-cult DX
016.95	GU TB nos-histo DX
016.96	GU TB nos-oth test
017	Tuberculosis nec*
017.0	TB skin & subcutaneous
017.00	TB skin/subcutan-unspec
017.01	TB skin/subcut-no exam
017.02	TB skin/subcut-exam unkn
017.03	TB skin/subcut-micro DX
017.04	TB skin/subcut-cult DX
017.05	TB skin/subcut-histo DX
017.06	TB skin/subcut-oth Test
017.1	Erythema nodosum in TB
017.10	Erythema nodos TB-unspec
017.11	Erythem nodos TB-no exam
017.12	Erythem nod TB-exam unkn
017.13	Erythem nod TB-micro DX
017.14	Erythem nodos TB-cult DX
017.15	Erythem nod TB-histo DX
017.16	Erythem nod TB-oth test
017.2	TB of periph lymph node
017.20	TB periph lymph-unspec
017.21	TB periph lymph-no exam
017.22	TB periph lymph-exam unk
017.23	TB periph lymph-micro DX
017.24	TB periph lymph-cult DX
017.25	TB periph lymph-histo DX
017.26	TB periph lymph-oth test
017.3	TB of eye
017.30	TB of eye-unspec
017.31	TB of eye-no exam
017.32	TB of eye-exam unkn
017.33	TB of eye-micro DX
017.34	TB of eye-cult DX
017.35	TB of eye-histo DX
017.36	TB of eye-oth test
107.4	TB of ear
017.40	TB of ear-unspec
017.41	TB of ear-no exam
017.42	TB of ear-exam unkn
017.43	TB of ear-micro DX
017.44	TB of ear-cult DX
017.45	TB of ear-histo DX
017.46	TB of ear-oth test
017.5	TB of thyroid gland
017.50	TB of thyroid-unspec
017.51	TB of thyroid-no exam
017.52	TB of thyroid-exam unkn
017.53	TB of thyroid-micro DX
017.54	TB of thyroid-cult DX
017.55	TB of thyroid-histo DX
017.56	TB of thyroid-oth test
017.6	TB of adrenal gland
017.60	TB of adrenal-unspec
017.61	TB of adrenal-no exam
017.62	TB of adrenal-exam unkn
017.63	TB of adrenal-micro DX
017.64	TB of adrenal-cult DX
017.65	TB of adrenal-histo DX
017.66	TB of adrenal-oth test
017.7	TB of spleen
017.70	TB of spleen-unspec
017.71	TB of spleen-no exam
017.72	TB of spleen-exam unkn
017.73	TB of spleen-micro DX
017.74	TB of spleen-cult DX
017.75	TB of spleen-histo DX
017.76	TB of spleen-oth test
017.8	TB of esophagus
017.80	TB esophagus-unspec
017.81	TB esophagus-no exam
017.82	TB esophagus-exam unkn
017.83	TB esophagus-micro DX
017.84	TB esophagus-cult DX
017.85	TB esophagus-histo DX
017.86	TB esophagus-oth test
017.9	TB of organ nec
017.90	TB of organ nec-unspec
017.91	TB of organ nec-no exam
017.92	TB organ nec-exam unkn
017.93	TB of organ nec-micro DX
017.94	TB of organ nec-cult DX
017.95	TB of organ nec-histo DX
017.96	TB of organ nec-oth test
018	Miliary tuberculosis*
018.0	Acute miliary TB
018.00	Acute miliary TB-unspec
018.01	Acute miliary TB-no exam
018.02	AC miliary TB-exam unkn
018.03	AC miliary TB-micro DX
018.04	Acute miliary TB-cult DX
018.05	AC miliary TB-histo DX
018.06	AC miliary TB-oth test
018.8	Miliary TB nec
018.80	Miliary TB nec-unspec
018.81	Miliary TB nec-no exam
018.82	Miliary TB nec-exam unkn
018.83	Miliary TB nec-micro DX
018.84	Miliary TB nec-cult DX
018.85	Miliary TB nec-histo DX
018.86	Miliary TB nec-oth test
018.9	Miliary tuberculosis nos
018.90	Miliary TB nos-unspec
018.91	Miliary TB nos-no exam
018.92	Miliary TB nos-exam unkn
018.93	Miliary TB nos-micro DX
018.94	Miliary TB nos-cult DX
018.95	Miliary TB nos-histo DX
018.96	Miliary TB nos-oth test
027.0	Listeriosis
027.1	Erysipelothrix infection
027.2	Pasteurellosis
027.8	Zoonotic bact dis nec
027.9	Zoonotic bact dis nos
036.0	Meningococcal meningitis
036.2	Meningococcemia
036.3	Meningococc adrenal synd
036.40	Meningococc carditis nos
036.42	Meningococc endocarditis
036.43	Meningococc myocarditis
037	Tetanus
038.0	Streptococcal septicemia
038.1	Staphylococc septicemia
038.10	Staphylcocc septicem nos
038.11	Staph aureus septicemia
038.19	Staphylcocc septicem nec
038.2	Pneumococcal septicemia
038.3	Anaerobic septicemia
038.4	Gram-neg septicemia nec
038.40	Gram-neg septicemia nos
038.41	H. influenae septicemia
038.42	E coli septicemia
038.43	Pseudomonas septicemia
038.44	Serratia septicemia
038.49	Gram-neg septicemia nec
038.8	Septicemia nec
038.9	Septicemia nos
042	Human immuno virus dis
052.0	Postvaricella encephalit
052.1	Varicella pneumonitis
053.0	Herpes zoster meningitis
054.3	Herpetic encephalitis

ICD9 code No.	Abbreviated code title
054.5	Herpetic septicemia
054.72	H Simplex meningitis
054.79	H Simplex Complicat nec
055.0	Postmeasles Encephalitis
055.1	Postmeasles Pneumonia
070.20	Hpt B acte coma wo dlta
070.21	Hpt B acte coma w dlta
070.22	Hpt B chrn coma wo dlta
070.23	Hpt B chrn coma w dlta
070.41	Hpt C acute w hepat coma
070.42	Hpt DLT wo b w hpt coma
070.43	Hpt E w hepat coma
070.44	Chrnc hpt C w hepat coma
070.49	Oth vrl hepat w hpt coma
070.06	Viral hepat nos w coma
072.1	Mumps meningitis
072.2	Mumps encephalitis
072.3	Mumps pancreatitis
079.5	Retrovirus
090.42	Congen syph meningitis
093.20	Syphil endocarditis nos
093.82	Syphilitic myocarditis
094.2	Syphilitic meningitis
094.87	Syph rupt cereb aneurysm
098.89	Gonococcal inf site nec
112.4	Candidiasis of lung
112.5	Disseminated candidiasis
112.81	Candidal endocarditis
112.83	Candidal meningitis
114.2	Coccidioidal meningitis
115	Histoplasmosis*
115.1	Histoplasma capsulatum
115.00	Histoplasma capsulat nos
115.01	Histoplasm capsul mening
115.02	Histoplasm capsul retina
115.03	Histoplasm caps pericard
115.04	Histoplasm caps endocard
115.05	Histoplasm caps pneumon
115.09	Histoplasma capsulat nec
115.1	Histoplasma duboisii
115.10	Histoplasma duboisii nos
115.11	Histoplasm dubois mening
115.12	Histoplasm dubois retina
115.13	Histoplasm dub pericard
115.14	Histoplasm dub endocard
115.15	Histoplasm dub pneumonia
115.19	Histoplasma duboisii nec
115.9	Histoplasmosis, unspec
115.90	Histoplasmosis nos
115.91	Histoplasmosis meningit
115.92	Histoplasmosis retinitis
115.93	Histoplasmosis pericard
115.94	Histoplasmosis endocard
115.95	Histoplasmosis pneumonia
115.99	Histoplasmosis nec
130.0	Toxoplasm meningoenceph
130.3	Toxoplasma myocarditis
130.4	Toxoplasma pneumonitis
136.3	Pneumocystosis
204.00	Act lym leuk w/o rmsion
205.00	Act myl leuk w/o rmsion
206.00	Act mono leuk w/o rmsion
207.00	Act erth/erylk w/o rmson
208.00	Act leuk uns cl w/o rmsn
260	Kwashiorkor
261	Nutritional marasmus
262	Oth severe malnutrition
277.00	Cystic fibros w/o ileus
277.01	Cystic fibrosis w ileus
286.0	Cong factor viii diord
286.1	Cong factor ix disorde
286.6	Defibrination syndrome
320.0	Hemophilus meningitis
320.1	Pneumococcal meningitis
320.2	Streptococcal meningitis
320.3	Staphylococc meningitis
320.7	Mening in oth bact dis
320.81	Anaerobic meningitis
320.82	Mningts gram-neg bct nec
320.89	Meningitis oth spcf bact
320.9	Bacterial meningitis nos
321.0	Cryptococcal meningitis
321.1	Mening in oth fungal dis
321.4	Meningit d/t sarcoidosis
321.8	Mening in oth nonbac dis
324.0	Intracranial abscess
324.1	Intraspinal abscess
324.9	CNS abscess nos
345.11	Gen CNV epil w intr epil
345.3	Grand mal status
348.1	Anoxic brain damage
376.01	Orbital cellulitis
376.02	Orbital periostitis
376.03	Orbital osteomyelitis
398.0	Rheumatic myocarditis
403.01	Mal hyp ren w renal fail
404.01	Mal hyper hrt/ren w chf
404.03	Mal hyp hrt/ren w chf&rf
410.01	Ami anterolateral, init
410.11	Ami anterior wall, init
410.21	Ami inferolateral, init
410.31	Ami inferopost, initial
410.41	Ami inferior wall, init
410.51	Ami lateral nec, initial
410.61	True post infarct, init
410.71	Subendo infarct, initial
410.81	Ami nec, initial
410.91	Ami nos, initial
415.1	Pulmon embolism/infarct
415.11	Iatrogen pulm emb/infarc
415.19	Pulm embol/infarct nec
421.0	AC/subac bact endocard
421.1	AC endocardit in oth dis
421.9	AC/subac endocardit nos
422.0	AC myocardit in oth dis
422.90	Acute myocarditis nos
422.91	Idiopathic myocarditis
422.92	Septic myocarditis
422.93	Toxic myocarditis
422.99	Acute myocarditis nec
427.41	Ventricular fibrillation
427.5	Cardiac arrest
430	Subarachnoid hemorrhage
431	Intracerebral hemorrhage
432.0	Nontraum extradural hem
432.1	Subdural hemorrhage
433.01	OCL bslr art w infrct
433.11	OCL crtd art w infrct
433.21	OCL vrtb art w infrct
433.31	OCL mlt bi art w infrct
433.81	OCL spcf art w infrct
433.91	OCL art nos w infrct
434.01	CRBL thrmbs w infrct
434.11	CRBL emblsm w infrct
434.91	CRBL art ocl nos w infrc
436	CVA
440.23	ATH ext ntv art ulcrtion
440.24	ATH ext ntv art gngrene
441.0	Dissecting aneurysm
441.00	DSCT of aorta unsp site
441.01	DSCT of thoracic aorta
441.02	DSCT of abdominal aorta
441.03	DSCT of thoracoabd aorta
441.1	RUPTUR thoracic aneurysm
441.3	RUPT abd aortic aneurysm
441.5	RUPT aortic aneurysm nos
441.6	Thoracoabd aneurysm rupt
446.3	Lethal midline granuloma
451.89	Thrombophlebitis nec
452	Portal vein thrombosis
453	OTH venous thrombosis*
453.0	BUDD-Chiari syndrome
453.1	Thrombophlebitis migrans
453.2	Vena cava thrombosis
453.3	Renal vein thrombosis
464.11	AC tracheitis w obstruct
464.21	AC laryngotrach w obstr
464.31	AC epiglottitis w obstr
466.1	Acute bronchiolitis
480.0	Adenoviral pneumonia
480.1	RESP syncyt viral pneum
480.2	Parinfluenza viral pneum
480.8	Viral pneumonia nec
480.9	Viral pneumonia nos
481	Pneumococcal pneumonia
482	Oth bacterial pneumonia*
482.0	K. pneumoniae pneumonia
482.1	Pseudomonal pneumonia
482.2	H.influenzae pneumonia
482.3	Streptococcal pneumonia
482.30	Streptococcal pneumn nos
482.31	Pneumonia strptococcus A
482.32	Pneumonia strptococcus B
482.39	Pneumonia oth strep
482.4	Staphylococcal pneumonia
482.40	Staphylococcal pneu nos
482.41	Staph aureus pneumonia
482.49	Staph pneumonia nec
482.8	Bacterial pneumonia nec
482.81	Pneumonia anaerobes
482.82	Pneumonia e coli
482.83	Pneumo oth grm-neg bact
482.84	Legionnaires' disease
482.89	Pneumonia oth spcf bact
482.9	Bacterial pneumonia nos
483	Pneumonia: organism nec*
483.0	Pneu mycplsm pneumoniae
483.1	Pneumonia d/t chlamydia
483.8	Pneumon oth spec orgnsm
484	Pneum in oth infec dis*
484.1	Pneum w cytomeg incl dis
484.3	Pneumonia in whoop cough
484.5	Pneumonia in anthrax
484.6	Pneum in aspergillosis
484.7	Pneum in oth sys mycoses
484.8	Pneum in infect dis nec
485	Bronchopneumonia org nos
486	Pneumonia, organism nos
487	Influenza*
487.0	Influenza with pneumonia
506.0	Fum/vapor bronc/pneumon
506.1	Fum/vapor ac pulm edema
507.0	Food/vomit pneumonitis
507.1	Oil/essence pneumonitis
507.8	Solid/liq pneumonit nec
510.0	Empyema with fistula
510.9	Empyema w/o fistula
511.1	Bact pleur/effus not tb
513.0	Abscess of lung
513.1	Abscess of mediastinum
514	Pulm congest/hypostasis
515	Postinflam pulm fibrosis
518.3	Pulmonary eosinophilia
518.5	Post traum pulm insuffic
518.81	Acute respiratry failure
519.2	Mediastinitis
528.3	Cellulitis/abscess mouth
530.4	Perforation of esophagus
530.82	Esophageal hemorrhage

ICD9 code No.	Abbreviated code title
531.00	AC stomach ulcer w hem
531.01	AC stomac ulc w hem-obst
531.10	AC stomach ulcer w perf
531.11	AC stom ulc w perf-obst
531.20	AC stomac ulc w hem/perf
531.21	AC stom ulc hem/perf-obs
531.40	CHR stomach ulc w hem
531.41	CHR stom ulc w hem-obstr
531.50	CHR stomach ulcer w perf
531.51	CHR stom ulc w perf-obst
531.60	CHR stomach ulc hem/perf
531.61	CHR stom ulc hem/perf-ob
532.00	AC duodenal ulcer w hem
532.01	AC duoden ulc w hem-obst
532.10	AC duodenal ulcer w perf
532.11	AC duoden ulc perf-obstr
532.20	AC duoden ulc w hem/perf
532.21	AC duod ulc hem/perf-obs
532.40	CHR duoden ulcer w hem
532.41	CHR duoden ulc hem-obstr
532.50	CHR duoden ulcer w perf
532.51	CHR duoden ulc perf-obst
532.60	CHR duoden ulc hem/perf
532.61	CHR duod ulc hem/perf-ob
533.00	AC peptic ulcer w hemorr
533.01	AC peptic ulc w hem-obst
533.10	AC peptic ulcer w perfor
533.11	AC peptic ulc w perf-obs
533.20	AC peptic ulc w hem/perf
533.21	AC pept ulc hem/perf-obs
533.40	CHR peptic ulcer w hem
533.41	CHR peptic ulc w hem-obs
533.50	CHR peptic ulcer w perf
533.51	CHR peptic ulc perf-obst
533.60	CHR pept ulc w hem/perf
533.61	CHR pept ulc hem/perf-ob
534.00	AC marginal ulcer w hem
534.01	AC margin ulc w hem-obst
534.10	AC marginal ulcer w perf
534.11	AC margin ulc w perf-obs
534.20	AC margin ulc w hem/perf
534.21	AC marg ulc hem/perf-obs
534.40	CHR marginal ulcer w hem
534.41	CHR margin ulc w hem-obs
534.50	CHR marginal ulc w perf
534.51	CHR margin ulc perf-obst
534.60	CHR margin ulc hem/perf
534.61	CHR marg ulc hem/perf-ob
535.01	Acute gastritis w hmrhg
535.11	ATRPH gastritis w hmrhg
535.21	GSTR Mcsl Hyprt w hmrg
535.31	ALCHL Gstritis w hmrhg
535.41	OTH SPF Gastrt w hmrhg
535.51	GSTR/DDNTS NOS w hmrhg
535.61	Duodenitis w hmrhg
537.4	Gastric/Duodenal fistula
537.83	Angio Stm/dudn w hmrhg
540.0	AC Append w peritonitis
557.0	AC VASC insuff intestine
562.02	DVRTCLO SML Int w hmrhg
562.03	DVRTCLI SML Int w hmrhg
562.12	DVRTCLO colon w hmrhg
562.13	DVRTCLI colon w hmrhg
567.0	Peritonitis in infec dis
567.1	Pneumococcal peritonitis
567.2	Suppurat peritonitis nec
567.8	Peritonitis nec
567.9	Peritonitis nos
569.60	Colstomy/enter comp nos
569.61	Colosty/enterost infectn
569.69	Colstmy/enteros comp nec
569.83	Perforation of intestine
569.85	Angio intes w hmrhg
570	Acute necrosis of liver
572.0	Abscess of liver
572.4	Hepatorenal syndrome
573.4	Hepatic infarction
575.4	Perforation gallbladder
576.3	Perforation of bile duct
577.2	Pancreat cyst/pseudocyst
579.3	Intest postop nonabsorb
580.0	AC proliferat nephritis
580.4	AC rapidly progr nephrit
580.81	AC nephritis in oth dis
580.89	Acute nephritis nec
580.9	Acute nephritis nos
583.4	Rapidly prog nephrit nos
584.5	Lower nephron nephrosis
584.6	AC renal fail, cort necr
584.7	AC ren fail, medull necr
584.8	AC renal failure nec
584.9	Acute renal failure nos
590.2	Renal/perirenal abscess
596.6	Bladder rupt, nontraum
659.30	Septicemia in labor-unsp
659.31	Septicem in labor-deliv
665.00	Prelabor rupt uter-unsp
665.01	Prelabor rupt uterus-del
665.03	Prelab rupt uter-antepar
665.10	Rupture uterus nos-unsp
665.11	Rupture uterus nos-deliv
669.10	Obstetric shock-unspec
669.11	Obstetric shock-deliver
669.12	Obstet shock-deliv w p/p
669.13	Obstetric shock-antepar
669.14	Obstetric shock-postpart
669.30	AC ren fail w deliv-unsp
669.32	AC ren fail-deliv w p/p
669.34	AC renal failure-postpar
673.00	OB air embolism-unspec
673.01	OB air embolism-deliver
673.02	OB air embol-deliv w p/p
673.03	OB air embolism-antepart
673.04	OB air embolism-postpart
673.10	Amniotic embolism-unspec
673.11	Amniotic embolism-deliv
673.12	Amniot embol-deliv w p/p
673.13	Amniotic embol-antepart
673.14	Amniotic embol-postpart
673.20	OB pulm embol nos-unspec
673.22	Pulm embol nos-del w p/p
673.23	Pulm embol nos-antepart
673.24	Pulm embol nos-postpart
673.30	OB pyemic embol-unspec
673.31	OB pyemic embol-deliver
673.32	OB pyem embol-del w p/p
673.33	OB pyemic embol-antepart
673.34	OB pyemic embol-postpart
673.80	OB pulmon embol nec-unsp
673.81	Pulmon embol nec-deliver
673.82	Pulm embol nec-del w p/p
673.83	Pulmon embol nec-antepar
673.84	Pulmon embol nec-postpar
674.00	Puerp cerebvasc dis-unsp
682	Other cellulitis/abscess*
682.0	Cellulitis of face
682.1	Cellulitis of neck
682.22	Cellulitis of trunk
682.3	Cellulitis of arm
682.4	Cellulitis of hand
682.5	Cellulitis of buttock
682.6	Cellulitis of leg
682.7	Cellulitis of foot
682.8	Cellulitis, site nec
765.01	Extreme immatur <500G
765.02	Extreme immatur 500–749G
765.03	Extreme immatur 750–999G
781.7	Tetany
785.51	Cardiogenic shock
785.59	Shock w/o trauma nec
799.1	Respiratory arrest
958.0	Air embolism
958.1	Fat embolism
958.5	Traumatic anuria
996.02	Malfunc prosth hrt valve
996.61	React-cardiac dev/graft
996.62	React-oth vasc dev/graft
996.63	React-nerv sys dev/graft
996.64	React-indwell urin cath
996.66	React-inter joint prost
996.67	React-oth int ortho dev
996.69	React-int pros devic nec
997.62	Infection amputat stump
998.0	Postoperative shock
998.3	Postop wound disruption
998.5	Postoperative infection
998.6	Persist postop fistula
999.1	Air embol comp med care
V440	Tracheostomy status
V451	Renal dialysis status
V461	Dependence on respirator

*Denotes this is a category rather than a code.

Appendix D—The IRF Market Basket

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor (for purposes of setting prospective payment system rates) based on a market basket index. The proposed market basket includes both operating and capital costs of rehabilitation facilities (that is, freestanding rehabilitation hospitals and rehabilitation hospital units). The index currently used for operating costs for rehabilitation facilities is the excluded hospital market basket. This market basket is based on 1992 cost report data and includes Medicare participating rehabilitation, long term care, psychiatric, cancer, and children's hospitals. Since freestanding rehabilitation hospitals are a component of the excluded hospital market basket, this index most closely reflects the cost shares of rehabilitation facilities. Because the excluded hospital market basket only includes operating costs, we are proposing to use the excluded hospital market basket with the addition of a capital portion to the index. We provide a brief explanation of the methodology used to develop our proposed index for rehabilitation facilities. We refer to this index as the excluded hospital (with capital) market basket. In the following discussion we describe: the methodology used to determine the operating portion of the market basket, the methodology used to determine the capital portion of the market basket, and additional analyses that help support the extent to which rehabilitation cost shares are reflected in the market basket that we are proposing.

The operating portion of the excluded hospital market basket consists of major cost categories and their respective weights. The major cost categories include wages, benefits, drugs, and a residual. The weights for the major cost categories are developed from the Medicare cost reports for FY 1992. The cost report data used includes those hospitals excluded from the inpatient hospital prospective payment system where the Medicare average length of stay is within 15 percent (higher or lower) of the total facility average length of stay. Limiting the sample in this way provides a more accurate reflection of the structure of costs for Medicare. The detailed cost categories are derived from the Asset and Expenditure Survey, 1992 Census of Service Industries, by the Bureau of the Census, Economics and Statistics Administration, U.S. Department of Commerce. This is used in conjunction with the 1992 Input-Output Tables published by the Bureau of Economic Analysis, U.S. Department of Commerce. A more detailed description of the development of this index can be found in our final rule, Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates; published in the **Federal Register** at 62 FR 45965–45996, on August 29, 1997.

As previously stated, the market basket we are proposing needs to reflect both operating and capital costs. Capital costs include depreciation, interest, and other capital-related costs. The cost categories for the capital portion of the market basket that we are proposing is developed in a similar manner as those for the inpatient hospital prospective payment system capital input price index, which is explained in the August 30, 1996 **Federal Register**. We calculated weights for capital costs, using the same set of Medicare cost reports used to develop the operating share for excluded hospitals. The resulting capital weight for the 1992 base year is 9.080 percent.

Because capital is consumed over time, depreciation and interest costs in the current year reflect both current and previous capital purchases. We use vintage weighting of current and previous capital price changes to capture this effect. Vintage weighting, which is explained in the August 30, 1996 **Federal Register** (61 FR 46197 through 46203), is the process of weighting price changes for individual years in proportion to that year's share of total purchases still being consumed.

In order to vintage weight the capital portion of the index as described above, the average useful life of both assets and debt instruments (for example, a loan, bond, or promissory note) needs to be developed. For depreciation expenses, the useful life of fixed and movable assets is calculated from the Medicare cost reports for excluded hospitals, including freestanding rehabilitation hospitals. The average useful life for fixed assets is 21 years and the average useful life for movable assets is 13 years. For interest expenses, we use the same useful life of debt instruments used in the hospital prospective payment system capital input price index. We believe that this useful life is appropriate, because it reflects the average useful life of hospital issuances of commercial and municipal bonds from all hospitals, including rehabilitation facilities. The average useful life of interest expense is determined to be 22 years. After the useful life is determined, a set of weights is calculated by determining the average proportion of depreciation or interest expense incurred during any given year during the useful life. This information is developed using the Medicare cost reports. These calculations are the same as those described for the inpatient hospital prospective payment system capital input price index in the August 30, 1996 **Federal Register**. The price proxies for each of the capital cost categories are the same as those used for the inpatient hospital prospective payment system capital input price index. The cost categories, price proxies, and base-year fiscal year 1992 weights for the excluded hospital (with capital) market basket are presented in Table 1. The vintage weights for the index are presented in Table 2.

TABLE 1.—HCFA EXCLUDED HOSPITAL INPUT PRICE INDEX WITH CAPITAL (FY 1992) STRUCTURE AND WEIGHTS

Cost category	Price/wage variable	Weights (%) Base-year: 1992
TOTAL		100.000
Compensation		57.935
Wages and Salaries	HCFA Prospective payment system Occupational	47.417
Employee Benefits	HCFA Prospective payment system	10.519
Professional fees: Non-Medical	ECI—Compensation: Prof. & Tech	1.908
Utilities		1.523
Electricity	WPI—Commercial Electric Power	0.916
Fuel Oil, Coal, etc	WPI—Commercial Natural Gas	0.365
Water and Sewerage	CPI–U—Water & Sewage	0.243
Professional Liability Insurance	HCFA—Prof. Liab. Prem	0.983
All Other Products and Services		28.572
All Other Products		22.027
Pharmaceuticals	WPI—Prescription Drugs	2.791
Food: Direct Purchase	WPI—Processed Foods	2.155
Food: Contract Service	CPI–U—Food Away fr. Home	0.998
Chemicals	WPI—Industrial Chemicals	3.413
Medical Instruments	WPI—Med. Inst. & Equip	2.858
Photographic Supplies	WPI—Photo Supplies	0.364
Rubber and Plastics	WPI—Rub. & Plast. Products	4.423
Paper Products	WPI—Convert. Paper and Paperboard	1.984
Apparel	WPI—Apparel	0.809
Machinery and Equipment	WPI—Mach. & Equipment	0.193
Miscellaneous Products	WPI—Finished Goods	2.029
All Other Services		6.544
Telephone	CPI–U—Telephone Services	0.574
Postage	CPI–U—Postage	0.268
All Other: Labor Intensive	ECI—Compensation: Service Workers	4.945
All Other: Non-Labor Intensive	CPI–U—All Items (Urban)	0.757
Capital-Related Costs		9.080
Depreciation		5.611
Fixed Assets	Boeckh-Institutional Construction: 21 year useful life	3.570
Movable Equipment	WPI—Machinery & Equipment: 13 year useful life	2.041
Interest Costs		3.212
Non-profit	Avg. Yield Municipal Bonds: 22 year useful life	2.730
For-profit	Avg, Yield AAA Bonds: 22 year useful life	0.462
Other Capital-Related Costs	CPI–U—Residential Rent	0.257

*The wage and benefit proxies are a blend of 10 employment cost indices (ECI). A detailed discussion of the price proxies can be found in the August 30, 1996 FEDERAL REGISTER final rule.

TABLE 2.—HCFA EXCLUDED HOSPITAL INPUT PRICE INDEX WITH CAPITAL (FY 1992) VINTAGE WEIGHTS

Year	Fixed assets (21 year weights)	Movable assets (13 year weights)	Interest: capital-related (22 year weights)
1	0.0201	0.0454	0.0071
2	0.0225	0.0505	0.0082
3	0.0225	0.0562	0.0100
4	0.0285	0.0620	0.0119
5	0.0301	0.0660	0.0139
6	0.0321	0.0710	0.0161
7	0.0336	0.0764	0.0185
8	0.0353	0.0804	0.0207
9	0.0391	0.0860	0.0244
10	0.0431	0.0923	0.0291
11	0.0474	0.0987	0.0350
12	0.0513	0.1047	0.0409
13	0.0538	0.1104	0.0474
14	0.0561		0.0525
15	0.0600		0.0590
16	0.0628		0.0670
17	0.0658		0.0742
18	0.0695		0.0809
19	0.0720		0.0875
20	0.0748		0.0931
21	0.0769		0.0993
22			0.1034
Total	1.0000	1.0000	1.0000

We further analyzed the extent to which the weights in the excluded hospital (with capital) market basket that we are proposing reflects the cost weights in rehabilitation hospitals; particularly since more than 50 percent of excluded hospitals are psychiatric hospitals. For this purpose, we conducted an analysis comparing the cost weights of rehabilitation hospitals to the cost weights for excluded hospitals. We analyzed the variations of major costs, such as wages, drugs, and capital for rehabilitation and excluded hospitals. This analysis showed that while these weights differed slightly between rehabilitation hospitals and excluded hospitals, the difference is very small. When these weights are substituted into the market basket structure for sensitivity analysis, the effect is never more than 0.2 percentage points in any given year. This difference is less than the 0.25 percentage point criteria that determines whether a forecast error adjustment under the inpatient hospital prospective payment system is warranted. We conducted this analysis in both the base year (FY 1992), and for the most recent set of cost reports (FY 1997) to determine if the difference in weights changed over time. Again, the differences were very small. Based on this analysis, we concluded that using the excluded hospital (with capital) market basket for the IRF prospective payment system will provide a reasonable measure of the price changes facing rehabilitation hospitals. We request comments on any other data sources that may be available to provide detailed cost category information on rehabilitation hospitals, or on data sources for cost categories in rehabilitation units.

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Part III

Environmental Protection Agency

Revisions to the Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000); Notice

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-6893-6]

Revisions to the Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: EPA is announcing the availability of final revisions to the Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000) (hereafter "2000 Human Health Methodology") published pursuant to section 304(a)(1) of the Clean Water Act (CWA). The 2000 Human Health Methodology supersedes the existing Guidelines and Methodology Used in the Preparation of Health Effect Assessment Chapters of the Consent Decree Water Criteria Documents, published by EPA in November 1980 (USEPA, 1980) (hereafter "1980 AWQC National Guidelines" or "1980 Methodology"). Today's Notice is intended to support the requirements of section 304(a)(1) of the CWA that EPA periodically revise criteria for water quality to accurately reflect the latest scientific knowledge on the kind and extent of all identifiable effects on health and welfare that may be expected from the presence of pollutants in any body of water, including ground water. These revisions are prompted by the many significant scientific advances that have occurred during the past 20 years in such key areas as cancer and noncancer risk assessments, exposure assessments, and bioaccumulation assessments. These revisions are not regulations and do not impose legally-binding requirements on EPA, States, Tribes, or the public.

DATES: Technical Support Documents (TSD) on exposure assessment guidance and bioaccumulation guidance applicable to the 2000 Human Health Methodology are expected to become available early in calendar year 2001.

ADDRESSES: The 2000 Human Health Methodology is published in the document entitled, Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000). This document is available on the EPA website at *www.epa.gov/OST/humanhealth*. A Technical Support Document (TSD) volume on risk assessments applicable to the 2000 Human Health Methodology is also available from the website. Materials in the public docket will be available for public inspection and copying during normal business hours at the Office of Water Docket, 401 M St., SW, Washington, DC 20460 by appointment only. Appointments may be made by calling (202) 260–3027 and requesting item W–97–20. A reasonable fee will be charged for photocopies.

FOR FURTHER INFORMATION CONTACT: Denis R. Borum, Health and Ecological Criteria Division (4304), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; (202) 260–8996; borum.denis@epa.gov.

SUPPLEMENTARY INFORMATION: This Supplementary Information Section is organized as follows:

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  G. How will EPA use the Human Health Methodology?
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I. Background Information

A. What are Human Health Ambient Water Quality Criteria?

Human health ambient water quality criteria (AWQC) are numeric values for pollutant concentrations in ambient waters considered to be protective of human health. The criteria are developed under section 304(a) of the Clean Water Act (CWA) and are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Protective assumptions are made regarding the potential human exposure intakes. These criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water. Section 304(a)(1) of the CWA requires EPA to develop and publish, and from time to time revise, criteria for water quality accurately reflecting the latest scientific knowledge. The criteria are used by States and authorized Tribes to establish water quality standards and ultimately provide a basis for controlling discharges or releases of pollutants. The criteria also provide guidance to EPA when promulgating Federal regulations under CWA Section 303(c) when such actions are necessary.

In 1980, we published AWQC (*i.e.*, Section 304(a) criteria) for 64 pollutants/pollutant classes and provided a methodology for deriving the criteria. The 1980 AWQC National Guidelines for developing human health AWQC addressed three types of endpoints: noncancer, cancer and organoleptic (taste and odor) effects. Criteria for the protection against noncancer and cancer effects were estimated by using risk assessment-based procedures, including extrapolation from animal toxicity or human epidemiological studies. Basic human exposure assumptions were applied to the criterion equation. When using cancer as the critical risk assessment endpoint, which was assumed not to have a threshold, the AWQC were presented as concentrations associated with specified incremental lifetime risk levels. When using noncancer effects as the critical endpoint, the AWQC reflected an assessment of a "no-effect" level, based on an assumption of a threshold for noncancer effects.

B. How Is the Human Health Methodology Used?

The Methodology is used by EPA to derive or revise its section 304(a) criteria. It provides the detailed means for developing the water quality criteria, including systematic procedures for evaluating cancer risk, noncancer health effects, human exposure, and bioaccumulation potential in fish. This Methodology is also guidance for States and authorized Tribes to help them establish water quality criteria to protect human health. States and authorized Tribes must develop water quality standards that include designated uses and water quality criteria necessary to support those uses.

C. Why Was the Methodology Revised?

EPA periodically revises water quality criteria to ensure that they reflect the latest scientific knowledge on the kind and extent of all identifiable effects on health and welfare that may be expected from the presence of pollutants in any body of water, including ground water. Since 1980, many significant scientific advances have occurred which prompt revisions to the Methodology. Specifically, advances in such key areas as cancer and noncancer risk assessments, exposure assessments, and bioaccumulation make the revisions appropriate at this time. We therefore updated the Methodology to provide States and authorized Tribes with the most current procedures to reflect these changes in risk and exposure assessment. States and authorized Tribes can use the Methodology to modify their water quality criteria, as appropriate, to ensure that their criteria are protective of designated uses.

Another reason for these revisions is the need to address differences in the risk assessment and risk management approaches used by the EPA Office of Water for the derivation of AWQC—under the authority of the CWA—and Maximum Contaminant Level Goals (MCLGs)—under the authority of the Safe Drinking Water Act (SDWA). Three notable differences in these revisions include the treatment of chemicals designated as Group C possible human carcinogens under the 1986 Guidelines for Carcinogen Risk Assessment (USEPA, 1986a), the consideration of non-water sources of exposure when setting an AWQC or MCLG for a noncarcinogen, and cancer risk ranges.

1. *Group C Chemicals*. Chemicals classified as Group C—*i.e.*, possible human carcinogens'under the existing (1986) EPA cancer classification scheme have been typically classified as such for any of the following reasons.

(1) Carcinogenicity has been documented in only one test species and/or only one cancer bioassay, and the results do not meet the requirements of "sufficient evidence."

(2) Tumor response is of marginal statistical significance due to inadequate design or reporting.

(3) An agent causes benign, but not malignant, tumors and no response in a variety of short-term tests for mutagenicity.

(4) There are responses of marginal statistical significance in a tissue known to have a high or variable background rate.

The 1986 Guidelines for Carcinogen Risk Assessment (hereafter "1986 cancer guidelines") specifically recognized the need for flexibility with respect to quantifying the risk of Group C agents (USEPA, 1986a). The 1986 cancer guidelines noted that agents judged to be in Group C, possible human carcinogens, may generally be regarded as suitable for quantitative risk assessment, but that case-by-case judgments may be made for them.

EPA has historically treated Group C chemicals differently under the CWA and the SDWA. It is important to note that the 1980 AWQC National Guidelines for setting AWQC under the CWA predated EPA's carcinogen classification system, which was proposed in 1984 and finalized in 1986 (USEPA, 1984, 1986a). The 1980 AWQC National Guidelines did not explicitly differentiate among agents with respect to the weight of evidence for characterizing them as likely to be carcinogenic to humans. For all pollutants judged as having adequate data for quantifying carcinogenic risk—including those now classified as Group C—AWQC were derived based on cancer incidence data. In the November 1980 **Federal Register** Notice, we emphasized that the AWQC for carcinogens should state that the recommended concentration for maximum protection of human health is zero. At the same time, the criteria published for specific carcinogens presented water concentrations for these pollutants corresponding to individual lifetime cancer risk levels in the range of 10^{-7} to 10^{-5} (ranging from one case in a population of ten million to one case in a population of one hundred thousand).

In the development of national primary drinking water regulations under the SDWA, EPA is required to promulgate a health-based MCLG for each contaminant. Our policy has been to set the MCLG at zero for chemicals with strong evidence of carcinogenicity associated with exposure from water. For chemicals with limited evidence of carcinogenicity, including many Group C agents, the MCLG was usually obtained using a Reference Dose (RfD) based on its noncancer effects with the application of an additional factor of 1 to 10. If valid noncancer data for a Group C agent were not available to establish an RfD, but adequate data were available to quantify the cancer risk, then the MCLG was based upon a nominal lifetime excess cancer risk calculation in the range of 10^{-6} to 10^{-5} (ranging from one case in a population of one million to one case in a population of one hundred thousand). Even in those cases where the RfD approach has been used for the derivation of the MCLG for a Group C agent, the drinking water concentrations associated with excess cancer risks in the range of 10^{-6} to 10^{-5} were also provided for comparison.

It should also be noted that in actions taken under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA's pesticides program has applied both of these methods for addressing Group C chemicals and finds both methods (quantified "C's" and nonquantified "C's") applicable on a case-by-case basis. Unlike the drinking water program, however, the pesticides program does not add an extra uncertainty factor to account for potential carcinogenicity when using the RfD approach.

The EPA is in the process of revising its cancer guidelines, including its descriptions of human carcinogenic potential. Once final guidelines are published, they will be the basis for assessment under this Methodology. In the meanwhile, the 1986 cancer guidelines are used and extended with principles discussed in EPA's 1999 Guidelines for Carcinogen Risk Assessment—Review Draft (hereafter "1999 draft revised cancer guidelines"). These principles arise from scientific discoveries about cancer made in the last 15 years and from EPA policy of recent years supporting full characterization of hazard and risk both for the general population and potentially sensitive groups such as children. These principles are incorporated in recent and ongoing assessments such as the reassessment of dioxin, consistent with the 1986 cancer guidelines. Until final guidelines are published, information is presented to describe risk under both the 1986 guidelines and the 1999 draft revisions. To bring in new science and characterization principles, draft revisions have weight-of-evidence narratives for hazard characterization that use consistent descriptive terms (USEPA, 1999a). In order to provide some measure of consistency in an otherwise free-form, narrative characterization, standard descriptors are utilized as part of the hazard narrative to express the conclusion regarding the weight of evidence for carcinogenic hazard potential. There are five standard hazard descriptors: "carcinogenic to humans", "likely to be carcinogenic to humans", "suggestive evidence of carcinogenicity but not sufficient to assess human carcinogenic potential", "data are inadequate for an assessment of human carcinogenic potential", and "not likely to be carcinogenic to humans." Each standard descriptor may be applicable to a wide variety of data sets and weights of evidence and are presented only in the context of a weight-of-evidence narrative. Furthermore, more than one conclusion may be reached for a pollutant. For instance, using a descriptor in context, a narrative could say that a pollutant is likely to be carcinogenic by inhalation exposure and not likely to be carcinogenic by oral exposure.

In the 2000 Human Health Methodology, we quantify those pollutants considered "carcinogenic to humans" or "likely to be carcinogenic to humans." In practice, even though the terminology of the 1999 draft revised cancer guidelines differs, this is the approach currently used by the EPA pesticides program.

2. *Consideration of Non-water Sources of Exposure.* The 1980 AWQC National Guidelines for setting AWQC recommended that contributions from non-water sources, namely air and non-fish dietary intake, be subtracted from the Acceptable Daily Intake (ADI), thus reducing the amount of the ADI "available" for water-related sources of intake. In practice, however, when calculating human health criteria, those other exposures were generally not considered because reliable data on those exposure pathways were not available. Consequently, the AWQC were usually derived such that drinking water and fish ingestion accounted for the entire ADI (now called RfD).

Through the mid-1980s, the drinking water program generally used a similar "subtraction" method in the derivation of MCLGs, albeit inconsistently. More recently, the drinking water program has used a "percentage" method in the derivation of MCLGs for noncarcinogens. In this approach, the percentage of total exposure typically accounted for by drinking water is applied to the RfD to determine the maximum amount of the RfD apportioned to drinking water reflected by the MCLG value. This percentage is called the relative source contribution (RSC). In using this percentage procedure, the drinking water program also applies a ceiling of 80 percent of the RfD and a floor of 20 percent of the RfD. That is, the MCLG cannot account for more than 80 percent of the RfD, nor less than 20 percent of the RfD.

The drinking water program usually takes a conservative approach to public health by applying an RSC factor of 20 percent to the RfD when adequate exposure data do not exist, assuming that the major portion (80 percent) of the total exposure comes from other sources, such as diet.

The 2000 Human Health Methodology includes guidance for routine consideration of non-water sources of exposure [both ingestion exposures (*e.g.*, food) and exposures other than the oral route (*e.g.*, inhalation)] via an approach called the Exposure Decision Tree. RSC estimates will be made by EPA using this approach, which allows for use of either subtraction or percentage methods, depending on chemical-specific circumstances, within the 20 to 80 percent range described above.

3. *Cancer Risk Ranges.* In addition to the different risk assessment approaches discussed above for deriving AWQC and MCLGs for Group C agents, there have been different risk management approaches by the drinking water and ambient surface water programs on using lifetime excess risk values when setting health-based criteria for carcinogens. The surface water program historically derived AWQC for carcinogens that generally corresponded to lifetime excess cancer risk levels of 10^{-7} to 10^{-5}. The drinking water program has set MCLGs for Group C agents based on a slightly less stringent risk range of 10^{-6} to 10^{-5}, while MCLGs for chemicals with strong evidence of carcinogenicity (that is, classified as Group A (known) or B (probable) human carcinogen) are set at zero. The drinking water program is now following the 1999 draft revised cancer guidelines to determine the type of low-dose extrapolation based on mode of action.

It is also important to note that under the drinking water program, for those substances having an MCLG of zero, enforceable Maximum Contaminant Levels (MCLs) have generally been promulgated to correspond with cancer risk levels ranging from 10^{-6} to 10^{-4}. Unlike AWQC and MCLGs which are strictly health-based criteria, MCLs are developed with consideration given to the costs and technological feasibility of reducing contaminant levels in water to meet those standards.

The 2000 Human Health Methodology states that EPA will publish its national 304(a) water quality criteria at a 10^{-6} risk level, which we consider to be appropriate for the general population. Again, consistent with the 1999 draft revised cancer guidelines, there are no more alphanumeric categories. We will only quantify those considered "carcinogenic to humans" or "likely to be carcinogenic to humans." We are increasing the degree of consistency between the drinking water and ambient water programs, given somewhat different requirements of the CWA and SDWA. We will use the same hazard characterizations of dose-response.

B. What Specific Scientific Advances Have Occurred Since 1980?

Since 1980, EPA risk assessment practices have evolved significantly in all of the major Methodology areas: cancer and noncancer risk assessments; exposure assessments; and bioaccumulation. EPA first published guidelines on cancer risk assessment in 1986. EPA published Proposed Guidelines for Carcinogen Risk Assessment in 1996 (hereafter "1996 proposed cancer guidelines"; USEPA, 1996a). These were recently revised following review by the Agency's Science Advisory Board (SAB) and receipt of their comments in May 1999. The most recent document is the July 1999 draft revised cancer guidelines (USEPA, 1999a). The 1999 draft revised cancer guidelines discuss the use of mode of action (MOA) information to support both the identification of carcinogens and the selection of procedures to characterize risk at low, environmentally relevant exposure levels. They also address the development of new procedures to quantify cancer risks at low doses to replace the current default use of the linearized multistage (LMS) model. In noncancer risk assessment, we are moving toward the use of the benchmark dose (BMD) and other dose-response methodologies in place of the traditional NOAEL approach to estimate an RfD concentration or other point of departure (POD) divided by an uncertainty factor (UF). In addition, several risk assessment guidelines have been published. For example, in 1986 EPA published Guidelines for Mutagenicity Risk Assessment (USEPA, 1986b). In 1991, EPA published the Guidelines for Developmental Toxicity Risk Assessment (USEPA, 1991a), and in 1996, it published the Guidelines for Reproductive Toxicity Risk Assessment (USEPA, 1996b). In 1998, EPA also published the Guidelines for Neurotoxicity Risk Assessment (USEPA, 1998a). In May 1999, EPA published the Draft Guidance for Conducting Health Risk Assessment of Chemical Mixtures (USEPA, 1999b). In addition, the Agency is developing a framework for cumulative risk assessment, and the Office of Pesticide Programs has developed draft guidance for assessing cumulative risk of common mechanism pesticides and other substances.

In 1986, EPA made available to the public the Integrated Risk Information System (IRIS). IRIS is a database that contains risk information on the cancer and noncancer effects of chemicals. The IRIS assessments represent EPA scientific consensus positions across the Agency's program offices and regional offices.

In exposure analysis, several new studies have addressed water consumption and fish tissue consumption. These exposure studies provide a more current and comprehensive description of national, regional and special population consumption patterns that we reflected in the 1998 Draft Water Quality Criteria Methodology: Human Health (hereafter "1998 draft Methodology revisions"; USEPA, 1998c). In addition, more formalized procedures are available to account for human exposure to multiple sources when setting health goals such as AWQC that have previously addressed only one exposure source. The Exposure Factors Handbook was updated in 1997 (USEPA, 1997a). In 1992, we published the revised Guidelines for Exposure Assessment (USEPA, 1992a), which describe general concepts of exposure assessment, including definitions and associated intake rate parameters, and provide guidance on planning and conducting an exposure assessment. In 1986, the Agency published the Total Exposure Assessment Methodology (TEAM) Study: Summary and Analysis, Volume I, Final Report (USEPA, 1986c), which presents a process for conducting comprehensive evaluation of human exposures. The Agency has recently developed a revised relative source contribution (RSC) policy for assessing total human exposure to a contaminant and apportioning the RfD among the media of concern for use in deriving or revising AWQC. In 1997, we developed Guiding Principles for Monte Carlo Analysis (USEPA, 1997b). Also in 1997, we published the Policy for Use of Probabilistic Analysis in Risk Assessment (USEPA, 1997c; see *http://www.epa.gov/ncea/mcpolicy.htm*). The Monte Carlo guidance document can be applied to exposure assessments and risk assessments. The Agency has moved toward the use of a bioaccumulation factor (BAF) to reflect the uptake of a contaminant from all sources (*e.g.*, ingestion, sediment) by fish and shellfish, rather than just from the water column as reflected by the use of a bioconcentration factor (BCF) in the 1980 Methodology. We have developed detailed procedures and guidelines for estimating BAF values for use in deriving or revising AWQC.

C. What Process Did EPA Follow in Revising the Methodology?

We began by developing (along with other Federal agencies, State health organizations, Canadian health agencies, academies, environmental and industry groups, and consulting organizations) an issues paper that described the 1980 Methodology, discussed areas that needed strengthening, and recommended revisions. The paper was distributed for review and comment and was examined at a national workshop, where more than 100 participants discussed critical issues. Based on individual expertise, attendees were assigned to specific technical workgroups. The workgroups' topics included cancer risk, noncancer risk, exposure, microbiology, minimum data and bioaccumulation in fish.

A summary document based on the workshop recommendations was submitted for review and comment by the EPA SAB. Once final comments and revisions were received from the SAB, the recommendations were again reviewed at a meeting of the Federal-State Toxicology and Risk Analysis Committee, where state representatives presented their opinions on the preliminary draft recommendations. (A more detailed chronology of this process was provided with the 1998 draft Methodology revisions.)

EPA subsequently developed the 1998 draft Methodology revisions (USEPA, 1998c) and the Ambient Water Quality Criteria Derivation Methodology Human Health Technical Support Document (TSD) (USEPA, 1998d) that provides greater detail on the Methodology guidance—including case study examples, data tables, and other supporting information. These were published in the **Federal Register** in August 1998. A four-month public comment period followed. In May of 1999, a fifteen-member independent peer review workshop was held, and a public stakeholder meeting followed. The 2000 Human Health Methodology reflects, in part, the input received from the public and peer review experts, in addition to more recent scientific information and science policies since the 1998 draft publication.

F. What Are the Major Revisions to the Methodology?

The major revisions are in four assessment areas: Noncancer, cancer, exposure and bioaccumulation. Equations have been developed for deriving AWQC, which include parameters relevant to those four assessment areas. These parameters are derived from scientific analysis, science policy and risk management decisions.

For noncarcinogens, the process for deriving a level of exposure considered to be without appreciable risk of effect—known as the Reference Dose (RfD) value—has evolved over time.

- EPA has developed guidance on assessing noncarcinogenic effects of chemicals and for the RfD derivation.
- The Methodology revisions recommend consideration of other issues related to the RfD process including integrating reproductive/developmental, immunotoxicity, and neurotoxicity data into the calculation.
- EPA is recommending the use of quantitative dose-response modeling for the derivation of RfDs.
- EPA has provided additional guidance (in its Risk Assessment TSD) to allow States and authorized Tribes greater flexibility in conducting their own risk assessments.

For carcinogen (cancer) risk assessment, more sophisticated methods for determining the likely mechanism that causes human carcinogenicity are being recommended, as well as consideration of all biological information (rather than just tumor findings) and full risk characterization for the general population as well as sensitive groups such as children.

Changes in the area of exposure assessment include the following.

- States and authorized Tribes are encouraged to use local studies on fish consumption that better reflect local intake patterns and choices.
- EPA will recommend default fish consumption values for the general population, recreational fishers and subsistence fishers.
- A factor to account for other sources of exposure, such as food and air, is included when deriving AWQC for noncarcinogens and for carcinogens based on a nonlinear low-dose extrapolation (*i.e.*, water and fish consumption are not the only exposures considered).

The 2000 Human Health Methodology places greater emphasis on the use of BAFs compared to the 1980 Methodology for estimating potential human exposure to contaminants via the consumption of contaminated fish and shellfish.

- BAFs reflect the accumulation of chemicals by aquatic organisms from all surrounding media (water, food, sediment). Compared with BCFs, which reflect chemical accumulation by aquatic organisms from water only, BAFs are considered to be better predictors of chemical accumulation by fish and shellfish for chemicals where exposure from food and sediment is important (*e.g.*, highly persistent, hydrophobic chemicals).
- EPA gives preference to the use of high quality field data over laboratory or model-derived estimates of BAFs, since field data best reflect factors that can affect the extent of bioaccumlation (*e.g.*, chemical metabolism, food web structure).

G. How Will EPA Use the Human Health Methodology?

Our future role in developing AWQC for the protection of human health will include the following.

- Further refinement of the Methodology as the science and EPA's science policies evolve;
- Development of revised AWQC for pollutants of high priority and national importance (including, but not limited to chemicals that bioaccumulate, such as PCBs, dioxin, and mercury); and
- Development or revision of AWQC for some additional priority pollutants.

We plan to fully update the most environmentally important criteria developed in 1980 (or those updated as part of the 1992 National Toxics Rule (NTR)). Partial updates of substantially more criteria may be warranted. We encourage States and authorized Tribes to use the 2000 Human Health Methodology to develop or revise AWQC to reflect local conditions. EPA believes that AWQC inherently require several risk management decisions that are, in many cases, better made at the State or Tribal level (*e.g.*, selection of specific fish consumption rates or target risk levels). We will continue to develop and update necessary toxicology and exposure data needed for the derivation of AWQC that may not be practical for the States or Tribes to obtain. More information on implementation issues and the effect of the 2000 Human Health Methodology on States and authorized Tribes is discussed below.

II. Implementation Issues

Water quality standards consist of designated uses, water quality criteria to protect those uses, a policy for antidegradation, and general policies for application and implementation. As part of the water quality standards triennial review process defined in section 303(c)(1) of the CWA, States and authorized Tribes are responsible for maintaining and revising water quality standards. Section 303(c)(1) requires States and authorized Tribes to review, and modify if appropriate, their water quality standards at least once every three years.

A. How Does EPA Use Its Recommended 304(a) Water Quality Criteria?

EPA's recommended 304(a) water quality criteria form the basis for Agency decisions, both regulatory and nonregulatory, until superseded by EPA publication of new or revised 304(a) water quality criteria. For example, these criteria are used in the following ways: (1) As guidance to States and authorized Tribes in adopting water quality standards; (2) as guidance to EPA in promulgating Federal water quality standards; (3) in establishing National Pollutant Discharge Elimination System (NPDES) water quality-based permit limits, where the criteria have been adopted by a State or authorized Tribe or promulgated by EPA; and (4) for all other purposes of Section 304(a) criteria under the Act. It is important to emphasize again two distinct purposes which are served by the 304(a) criteria. The first is as guidance to the States and Tribes in the development and adoption of water quality criteria which will protect designated uses. The second is as the basis for promulgation of Federal water quality standards for States or authorized Tribes when such action is necessary.

B. What Water Quality Criteria Must a State or Authorized Tribe Adopt Into Its Water Quality Standards?

States and authorized Tribes must adopt water quality criteria that protect designated uses. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or components to protect the designated uses. Criteria may be expressed in either narrative or numeric form. States and authorized Tribes have four options when adopting water quality criteria for which EPA has published 304(a) criteria. They can establish numerical values based on 304(a) criteria, 304(a) criteria modified to reflect site-specific conditions, other scientifically defensible methods, or establish narrative criteria where numeric criteria cannot be determined. (See 40 CFR 131.11.)

EPA's recommended 304(a) water quality criteria for States and authorized Tribes to use as guidance in adopting water quality standards consistent with Section 303(c) of the Act and the implementing Federal regulations at 40 CFR part 131 are contained in EPA's last compilation of National Recommended Water Quality Criteria (USEPA, 1998e) (corrected in USEPA, 1999c). In the future, we will be publishing new and revised 304(a) water quality criteria based upon the 2000 Human Health Methodology for pollutants of high priority and national importance. Because the revision of existing 304(a) human health criteria to reflect the 2000 Human Health Methodology will take time, EPA encourages States and authorized Tribes to make appropriate changes to their existing numerical, pollutant-specific criteria in their water quality standards to reflect this new Methodology prior to publication of a revised 304(a) criteria where they determine that such actions are necessary. For example, a pollutant of concern in a particular State may not be a high priority on the national level and revision of the national 304(a) criteria may not occur for several years. In this case, the State or a group of States, might choose to use this new Methodology to revise their water quality standards prior to EPA publication of a revised 304(a) criteria for that pollutant. EPA will recognize criteria that are revised pursuant to the 2000 Human Health Methodology as scientifically defensible and promptly approve such revised criteria as enforceable elements of State or Tribal water quality standards.

Once a new or revised 304(a) criteria reflecting this new Methodology is published, EPA expects States and authorized Tribes to reassess their water quality standards and, where necessary, establish new or revised water quality criteria consistent with one of the four options described above. Because of the critical role that human health ambient water quality criteria play in protecting human health, EPA will work with States and authorized Tribes to revise existing water quality standards promptly following EPA publication of revised section 304(a) criteria.

C. May States and Authorized Tribes Adopt Water Quality Criteria Based on Local Conditions?

In keeping with their primary responsibility in establishing water quality standards, we encourage States and authorized Tribes to develop and adopt water quality criteria to reflect local and regional conditions. States and authorized Tribes will have access to EPA regional, laboratory, and headquarters staff when help is needed to interpret today's Human Health Methodology and to make critical risk assessment decisions. For the purpose of deriving criteria based on the 2000 Human Health Methodology, EPA is publishing default values for risk level, fish intake, drinking water intake, and body weight. Default BAF values and RSC factor values will be published as chemical-specific criteria are developed or revised. (Other RSC estimates will be made when data are adequate to make them.) We believe these default values result in water quality criteria protective of the general population, and we will use these values when deriving 304(a) criteria. States and authorized Tribes may use other values more representative of local conditions if data have been collected supporting the alternative values. However, when establishing a numerical value based on a 304(a) criterion modified to reflect site-specific conditions, or water quality criteria based on other scientifically defensible methods, we strongly caution States and authorized Tribes not to selectively apply data in order to ensure water quality criteria less stringent than EPA's 304(a) criteria. Such an approach would inaccurately characterize risk.

D. What Cancer Risk Level Should States and Authorized Tribes Use When Establishing Water Quality Criteria?

In deriving 304(a) criteria based on the 2000 Human Health Methodology or when promulgating Federal water quality standards under section 303(c) of the CWA, EPA intends to use a 10^{-6}[1] cancer risk level, which we believe reflects an appropriate target risk level for the general population. EPA acknowledges that at any given cancer risk level for the general population, those segments of the population that are more highly exposed face a higher relative risk. For example, if fish are contaminated at a level allowed by criteria derived on the basis of a risk level of 10^{-6}, individuals consuming up to 10 times the assumed fish consumption rate would still be protected at a 10^{-5} risk level. States and authorized Tribes have the flexibility to adopt water quality criteria that result in a risk level higher than 10^{-6}, up to the 10^{-5} level. EPA recommends adoption of such criteria if the State or Tribe has identified the most highly exposed subpopulation within the State or Tribe, has demonstrated that the chosen cancer risk level is protective of the most highly exposed subpopulations, and has completed all necessary public participation. EPA notes that special scientific circumstances and assessment of natural contaminants may lead to numbers outside the 10^{-6} to 10^{-5} risk range. (For additional discussion on this issue, including restrictions on selection of a cancer risk level, refer to the response on the comment for cancer risk ranges summarized in Section III of this Notice, below.)

E. How Does the Review and Approval of State and Tribal Water Quality Standards Rule Affect Water Quality Criteria Adopted by States and Authorized Tribes?

Consistent with the Review and Approval of State and Tribal Water Quality Standards rule revision (USEPA, 2000a), water quality criteria adopted into law or regulation by States and authorized Tribes prior to May 30, 2000, are in effect for CWA purposes unless superseded by replacement Federal water quality standards (see, for example, the National Toxics Rule, 40 CFR 131.35; Water Quality Standards for Idaho, 40 CFR 131.35). Water quality criteria adopted into law or regulation by States and authorized Tribes after May 30, 2000, are in effect for CWA purposes only after EPA approval of any new or revised water quality standards.

F. While EPA is Re-Evaluating a 304(a) Criterion, What Criterion Is in Effect?

Until such time as EPA reevaluates the 304(a) criteria, subjects the criteria to appropriate peer review, and subsequently publishes revised 304(a) criteria, the existing 304(a) criteria remain in effect for the purposes of EPA review of State and Tribal water quality standards under section 303(c). Where EPA has not published a revision of a

304(a) criteria reflecting the 2000 Human Health Methodology, EPA will not require the revision of State water quality standards to reflect this new Methodology. As noted above, however, EPA will assist those States or Tribes that choose to use the new Methodology to revise their existing water quality standards prior to publication of a revised criteria under section 304(a).

G. What Design Stream Flow Should Be Used to Implement Human Health Criteria?

Human health criteria represent ambient pollutant concentrations that are acceptable based on a lifetime (70 years) of exposure. Accordingly, discharges of pollutants should be regulated such that criteria will not be exceeded under stream conditions that represent long-term average conditions. Current EPA guidance recommends the use of the long-term harmonic mean flow to implement criteria for carcinogens and the 30Q5 flow to implement criteria for noncarcinogens (USEPA, 1991b). The harmonic mean flow is the sum of the reciprocals of individual flow measurements divided into the total number of individual flow measurements, and the 30Q5 flow is defined by the lowest 30-day average that has an expected return frequency of once every five years. With today's Human Health Methodology, EPA is revising its guidance to recommend harmonic mean flow be used to implement both carcinogen and noncarcinogen human health criteria. Harmonic mean flow should be used to implement human health criteria because, by and large, human health criteria are designed to protect an individual over a lifetime of exposure. As stated in the 1998 draft Methodology revisions, we are not recommending the development of additional water quality criteria similar to the drinking water health advisories that focus on acute or short-term effects. These are not seen as routinely having a meaningful role in the water quality criteria and standards program because the chronic health effects associated with chemical contaminants are usually the most sensitive health endpoint. Human health criteria based on cancer potencies and risk levels are based on models that extrapolate animal data to a human lifetime. Similarly, a human noncancer criterion is based on an RfD, which is an acceptable daily exposure over a lifetime. Therefore, we have attempted to match the longest stream flow averaging period (using harmonic mean) with the criterion which is protective over a human lifetime.

In rare instances where a human health criterion or value is based on a short-term toxicological effect (*i.e.*, the critical effect upon which the criterion/value is based is significantly less than lifetime and may be an acute effect), the design flow should be adjusted accordingly. This does not pertain to RfDs in which a short-term study has been used as the RfD basis and an uncertainty factor has been used to account for less than lifetime study results; that is, the short-term study has been used to estimate a lifetime RfD value. This pertains only to those situations where the critical effect is a short-term effect (and where no additional uncertainty factor has been used to account for less than lifetime exposure). A good example of this is EPA's RfD for nitrate. The critical effect, upon which the RfD is based, is toxicity to infants after a short-term exposure. In this case, harmonic mean flow would be an inappropriate design flow for such a short-term effect. In this case, a 7Q10 or a 4Q3 design flow may be more appropriate.

H. What Is the Relationship Between the Agency's Recommended Section 304(a) Water Quality Criteria and Drinking Water Standards?

EPA recommends that States and authorized Tribes use this 2000 Human Health Methodology to develop their own AWQC for all pollutants of concern using the latest scientifically defensible data and principles. Sources of scientifically defensible data include published toxicological literature or recent EPA assessments, including those that underlie IRIS values, the most recently published recommended Section 304(a) water quality criteria or the most recently promulgated SDWA MCLGs.

When adopting water quality criteria to protect CWA Section 101(a) fishable uses, States and authorized Tribes need to ensure such criteria adequately address fish consumption as an exposure route.

When States and authorized Tribes do not develop their own AWQC, EPA recommends that States and authorized Tribes use the most recently published recommended Section 304(a) water quality criteria for "water and organisms" based on this new Human Health Methodology to protect CWA Section 101(a) fishable uses and waters designated for drinking water. This ensures that the water quality criteria adequately address fish consumption, bioaccumulation and drinking water uses.

When EPA publishes the annual compilation of new and revised national recommended Section 304(a) water quality criteria, those criteria represent the Agency's most current recommended Section 304(a) water quality criteria and should be used by States and authorized Tribes when reviewing their water quality standards.

When States and authorized Tribes do not develop their own AWQC, and there are no recommended Section 304(a) water quality criteria for a pollutant of concern, or the recommended Section 304(a) water quality criteria have not yet been revised based on this new Human Health Methodology[1]:

1. For a pollutant for which EPA has published a recommended Section 304(a) water quality criterion for "water and organisms" based on the 1980 Methodology and for which EPA has not promulgated an MCLG, EPA will recognize the current Section 304(a) water quality criterion, or a criterion that is developed or revised pursuant to the 2000 Human Health Methodology and approved by EPA.

2. For a pollutant for which EPA has published a recommended Section 304(a) water quality criterion for "water and organisms" based on the 1980 Methodology and for which EPA has more recently promulgated an MCLG, EPA generally recommends the MCLG for noncarcinogenic pollutants, or a criterion derived by recalculating the MCLG at an acceptable cancer risk level (*i.e.*, a level within the range of 10^{-6} to 10^{-5}, as specifically discussed in Section II.D, which notes that special scientific circumstances and assessment of natural contaminants may lead to numbers outside the to 10^{-6} to 10^{-5} risk range).

3. For a pollutant for which EPA has not published a recommended Section 304(a) water quality criterion for "water and organisms" and for which EPA has promulgated an MCLG, EPA generally recommends the MCLG for noncarcinogenic pollutants, or a criterion derived by recalculating the MCLG at an acceptable cancer risk level (*i.e.*, a level within the range of 10^{-6} to 10^{-5}, as specifically discussed in Section II.D, which notes that special scientific circumstances and assessment of natural contaminants may lead to numbers outside the 10^{-6} to 10^{-5} risk range).

EPA no longer recommends that an MCL be used where consideration of available treatment technology, costs, or availability of analytical methodologies has resulted in an MCL that is less protective than an MCLG.

States and authorized Tribes continue to have the flexibility to adopt water quality criteria that are more protective than EPA's recommendations, as long as such criteria are protective of the designated uses and scientifically defensible.

I. How Are Health Risks to Children Considered in the Methodology?

In recognition that children have a special vulnerability to many toxic substances, EPA's Administrator directed the Agency in 1995 to explicitly and consistently take into account environmental health risks to infants and children in all risk assessments, risk characterizations and public health standards set for the United States. On April 21, 1997, President Clinton signed Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks," which assigned a high priority to addressing risks to children. In May 1997, EPA established the Office of Children's Health Protection to ensure the implementation of the President's Executive Order (E.O.). Circumstances where risks to children should be considered in the context of the 2000 Human Health Methodology are discussed in the Noncancer Section (in terms of developmental and reproductive toxicity) and in the Exposure Section (for appropriate exposure intake parameters).

All of EPA's risk assessment guidelines should be consulted when conducting a risk assessment to ensure that information from studies on carcinogenesis and other health effects are considered together in the overall characterization of risk. This is particularly important in the case in which a precursor effect to tumor is also a precursor or endpoint of other health effects and is used in dose-response assessment. The overall characterization of risk will be the basis for carrying out assessments of instances in which fetuses, infants, or children are at risk.

III. Summary of Comments Received on the 1998 Draft Methodology Revisions and EPA's Responses

A. Implementation

1. Application of Human Health Water Criteria Within Mixing Zones

Comments—Commenters stated that human health criteria should start with the local relevant fish consumption rates and then make adjustments to reflect the actual relevant fish consumption rate related to the discharge and the mixing zone. It was also suggested that implementation in the NPDES program inherently needs a translator mechanism to adjust the standards to reflect actual consumption associated with allowed mixing zones.

Response—Application of human health water criteria within a mixing zone is not within the scope of this Methodology. At this time, EPA's current recommendations regarding the application of human health criteria within mixing zones are contained in the Technical Support Document for Water Quality-Based Toxics Control (USEPA, 1991b) and the Water Quality Standards Handbook (USEPA, 1994). We also note that mixing zones are an optional policy that not every State and authorized Tribe has adopted into their water quality standards. For States and Tribes that have authorized mixing zones, the designated uses of a waterbody as a whole must be maintained and protected.

2. Application of Human Health Water Quality Criteria to Marine Waters

Comment—A question was raised as to whether human health water quality criteria are applicable to marine waters, given the vastness of most marine waters.

Response—EPA believes human health water quality criteria should be applied to near-shore waters (specifically within a three-mile limit) wherever dischargers are located to protect aquatic food organisms, but not to include the drinking water consumption parameter. These water quality criteria are then used to derive permit limits that will ensure water quality criteria are not exceeded within the vicinity of an outfall. This protects organisms that are sessile and other organisms that may be attracted to the effluent and that are food sources. In the absence of data specific to the coastal site indicating that particular marine species are impacted by those discharges, we recommend our human health criteria to protect coastal waters. [Note: EPA's recommended national default fish intake value, which excludes marine species, supports this position. Estuarine species that are more likely to be found in near-shore waters are included in the default intake value. Potential exposure from open-ocean marine species are not ignored; the marine species exposure pathway can be accounted for as part of the RSC factor.]

3. Cancer Risk Range

Comments—Many comments were received on the appropriateness of the cancer risk range. Numerous commenters stated that the permissible range and recommended default of 10^{-6} are appropriate and approved of the range's consistency with other Agency programs. EPA was asked to reconcile the statements that both 10^{-6} and 10^{-5} are acceptable for the general population, that 10^{-6} is appropriate for promulgation of Federal water quality standards under Section 303(c) given that we have said 10^{-5} is appropriate for the Great Lakes, and that a 10^{-6} risk level along with a 17.8 g/day fish intake assumption will protect the highest consumers at a 10^{-4} risk level. Other comments are listed as follows.

- The Methodology should use a 10^{-5} risk level.
- 10^{-6} represents a change in the acceptable risk level.
- The 10^{-6} risk level represents a binding regulatory constraint that will provide no State flexibility.
- 10^{-5} is used by most States, and EPA should retain this default because the Agency has not determined that it is inadequate.
- A range of 10^{-4} to 10^{-5} is advocated.

In addition, we received comments that allowing highly exposed groups to potentially experience cancer risks an order of magnitude higher than the general population is unjust and disregards Native American treaty rights. A commenter supported the idea that a 10^{-4} risk level can be protective and believed highly exposed populations are few in number. Another stated that the cancer risk range should apply to total contaminants (*i.e.*, a cumulative cancer risk ceiling). It was cautioned that the concept of relative risk could result in selection of inappropriate target populations and intake rates. Others agreed that States and authorized Tribes should have the flexibility to select cancer risk levels as risk management decisions and requested that EPA explicitly state that it will support risk levels chosen by a Tribal authority, while another requested the flexibility without requiring involved demonstrations specific to the subpopulation at issue. A commenter recommended changes in EPA's Methodology to ensure that the resulting water quality criteria are more applicable to exposed populations. Others asked EPA to indicate the percentile of the exposed population that would meet the 10^{-6} risk level.

Response—With the 1980 Methodology, EPA presented three separate 304(a) criteria for carcinogens at risk levels corresponding to 10^{-7}, 10^{-6}, and 10^{-5} for States and authorized Tribes to choose from. However, the 10^{-7} risk level has not been used by any State or authorized

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[1] New criteria and criteria revised under this new Methodology are published annually as the "Compilation of National Recommended Water Quality Criteria and EPA's Process for Deriving New and Revised Criteria" at www.epa.gov/ost/standards/.

Tribe when adopting water quality standards. Furthermore, since that time, EPA's guidance and regulatory actions have utilized a 10^{-6} risk level as an appropriate target risk for the general population.

With the 2000 Human Health Methodology, our position is that both 10^{-6} and 10^{-5} are appropriate targets for health protection of the general population and that highly exposed populations should not exceed a 10^{-4} risk level. We also note that special scientific circumstances and assessment of natural contaminants may lead to numbers outside the 10^{-6} to 10^{-5} range. However, we are not automatically assuming that 10^{-5} will protect "the highest consumers" at the 10^{-4} risk level. One commenter referred to specific data indicating high intake levels that would not satisfy such an assumption. Nor are we advocating that States and authorized Tribes automatically establish criteria based on assumptions for highly exposed population groups at the 10^{-4} risk level. We acknowledge that fish consumption rates vary considerably, especially among subsistence populations, as is evident from the studies summarized in the Exposure TSD. Indeed, it is the variation of fish consumption among these population groups that could make either 10^{-5} or 10^{-6} protective of those groups at a 10^{-4} risk level. Specifically, if a State adopted a criterion based on a 10^{-5} risk level and a 17.5 g/day consumption rate, a high-end subsistence consumption of 1,750 g/day would exceed a 10^{-4} risk level.

It is important to understand that criteria for carcinogens are based on chosen risk levels that inherently reflect, in part, the exposure parameters used to derive those values. Therefore, changing the exposure parameters will also change the risk. Specifically, the incremental cancer risk levels are *relative*, meaning that any given criterion associated with a particular cancer risk level is also associated with specific exposure parameter assumptions (*i.e.*, intake rates, body weights). When these exposure values change, so does the relative risk. As we have previously indicated for a criterion derived on the basis of a cancer risk level of 10^{-6}, individuals consuming up to 10 times the assumed fish intake rate would not exceed a 10^{-5} risk level. Similarly, individuals consuming up to 100 times the assumed rate would not exceed a 10^{-4} risk level. Thus, for a criterion based on EPA's default fish intake rate (now 17.5 g/day, based on the most recent survey data) and a risk level of 10^{-6}, those consuming a pound of fish per day would potentially experience between a 10^{-5} and a 10^{-4} risk level (closer to a 10^{-5} risk level). Even if a criterion were based on high-end intake rates and the relative risk of 10^{-6}, then an average fish consumer would not exceed a cancer risk level of approximately 10^{-8}. The point here is that the risks for different population groups are not the same.

EPA believes that the adoption of a 10^{-6} or 10^{-5} target risk level, both of which States and authorized Tribes have historically chosen, represents a generally acceptable health protection decision, noting again that special scientific circumstances or assessments of natural contaminants may necessitate additional considerations. EPA recommends adoption of water quality standards that include water quality criteria based on either the 10^{-5} or 10^{-6} risk level if the State or authorized Tribe has identified the most highly exposed subpopulation, has demonstrated that the chosen risk level is adequately protective of the most highly exposed subpopulation, and has completed all necessary public participation. States and authorized Tribes also have flexibility in how they demonstrate this protectiveness and obtain such information. A State or authorized Tribe may use existing information as well as collect new information in making its determination as to an appropriate level of protection. In addition, if a State or authorized Tribe does not believe that the 10^{-6} risk level adequately protects highly exposed subpopulations, water quality criteria based on a more stringent risk level may be adopted. However, we are now adding that a generally specific analysis should be made and presented to ensure that highly exposed groups do not exceed a target 10^{-4} risk level. In cases where fish consumption among highly exposed population groups is of a magnitude that such a 10^{-4} risk level would be exceeded, a more protective risk level should be chosen. These determinations should be made by the State or authorized Tribe and are subject to EPA's review under Section 303 of the CWA. Guidance on choosing appropriate exposure parameters is discussed in both the 2000 Human Health Methodology and the Exposure Assessment TSD.

Given the relatively significant variation in fish consumption rates, EPA intends to derive Section 304(a) criteria at the 10^{-6} risk level, based on an intake rate of 17.5 g/day. We believe that basing our 304(a) criteria on general U.S. population exposures is most appropriate, given their use as a default value for the nation as a whole. Most States have, in fact, already adopted a 10^{-6} risk level with their criteria for carcinogens, not the 10^{-5} risk level claimed by one commenter. This default would, in turn, be protective for fish intakes of up to 1,750 g/day at the 10^{-4} risk level. However, in the Exposure Assessment TSD, EPA has recommended that States and authorized Tribes give priority to identifying and adequately protecting the most highly exposed population by adopting more stringent criteria, if the State or authorized Tribe determines that the highly exposed population would not be adequately protected by criteria based on protecting the general population. States and authorized Tribes have the option to derive their criteria at a 10^{-6} risk level, as EPA will do with its 304(a) criteria. They also have the flexibility to combine the 10^{-6} risk level with fish consumption rates for highly exposed population groups. Thus, States and authorized Tribes may choose to adopt criteria that are more protective than EPA's 304(a) criteria. We intend to support the health protection decisions made by States and authorized Tribes as long as they use the risk range that EPA has stated here and in the 2000 Human Health Methodology. EPA has made reasonable and conservative assumptions in choosing exposure parameters with the goal of protecting the majority of the population. However, we do not believe it is possible to calculate the exact percentile of the population that would be protected at a given risk level in terms of the overall combination of exposure parameters. We emphasize that the criteria are derived to be protective, not predictive of an exact percentile of the total population that is protected.

Regarding the use of a 10^{-5} risk level in the Great Lakes Water Quality Initiative (GLI), the criteria values were based on fish consumption estimates that reflected intake data among sportfishers, a group that consumes more fish than the general population. Again, we recommend that States and authorized Tribes base their criteria on more highly exposed population groups, if they would not be adequately protected by criteria based on intake rate estimates for the general population. Regarding the application of a cumulative cancer ceiling, the commenter has misunderstood EPA's policy when setting 304(a) criteria for carcinogenic effects based on linear low-dose extrapolation. With these carcinogens, the AWQC are set with respect to the incremental lifetime risk posed by the substance in water and are

not being set on an individual's total cancer risk from all sources of exposure.

4. Coordinating the Human Health Methodology With Other EPA Programs

Comments—Numerous commenters recommended that the Methodology revisions be coordinated with the drinking water program (specifically, MCLs/MCLGs required under the SDWA) and believed that the drinking water portion of AWQC and MCLGs should be equivalent. Several commenters stated that the burden of achieving health goals should be borne by dischargers and other polluters, not by water users or the environment. Commenters also recommended that EPA use MCLs when AWQC are less protective or for chemicals when AWQC do not exist. Another recommended that an additional margin of safety be included if the MCL were used, in particular for chemicals not effectively removed by conventional drinking water treatment, and also stated that neither the availability of MCLs or MCLGs should deter development of AWQC. Some commenters believed that the use of an MCLG is an acceptable alternative for chemicals of drinking water concern because, like the AWQC, it is a health-based value. However, others recommended that MCLGs not be used when they are more stringent than AWQC because they are not regulatory standards. Two commenters stated that EPA should not abandon its policy of setting AWQC for carcinogens at zero for "maximum protection of human health" and recommended that the "Group C" chemicals also have AWQC set at zero (referring to non-zero MCLs as inconsistent with the intent of a zero MCLG). However, other commenters recommended that AWQC be set at one-half of the MCL when the MCLG is zero, at a 10^{-6} risk level, or by calculating both and choosing the lower of the two. Two commenters urged EPA to unify the national Human Health Methodology with the GLI guidance. Another discussed microbial pathogens and, in addition to recommending development of criteria for specific microbial contaminants, recommended coordination with the drinking water program [i.e., the SDWA's Candidate Chemical List (CCL)] and stated that microbial criteria need to be set for more than recreational waters.

Response—EPA intends to continue deriving AWQC that include a drinking water pathway, applicable to waters that are potential sources of drinking water, and agrees that the drinking water component of AWQC should be consistent with the MCLG (if one has been established). Therefore, we intend to use a similar methodology for deriving AWQC and MCLGs. We also intend to coordinate with the Agency's safe drinking water program when prioritizing chemicals for AWQC derivation/revision (see also response to Comment A.11, Proposed Chemical List). Regarding the relationship between AWQC and the drinking water MCLs and MCLGs, we have clearly stated our position in the **Federal Register** Notice for the 1998 draft Methodology revisions (USEPA, 1998c) on this relationship and our approach to considering when an MCL or MCLG may be appropriate to use in lieu of AWQC. That discussion is excerpted in the 2000 Human Health Methodology document, along with clarification of our policy on the circumstances and limitations under which either should be used. We do not necessarily assume that a chemical's concentrations in ambient waters and drinking water are equivalent but are aware that chemicals may not be effectively removed by conventional drinking water treatment.

Commenters who referred to EPA's abandonment of its policy of setting AWQC for carcinogens at zero have substantively misstated our policy based on both the 1980 Methodology for deriving AWQC and our 1998 draft Methodology revisions, and are directed to the **Federal Register** Notice cited above. We did state in our 1980 Methodology that for the maximum protection of human health from potential carcinogenic effects, the ambient water concentration should be zero, based on an assumption of a linear dose-response relationship at low doses. The 1980 Methodology also indicated that zero levels may not have been attainable at that time. This remains the case at present. The combination of background levels of carcinogens from natural sources and global background levels from anthropogenic sources make attainment of zero levels for many potential carcinogens impossible. In addition, more recent and sophisticated toxicological information on carcinogenicity suggests modes of action, for carcinogens that would lead to nonlinear low-dose extrapolation. Note that the 1980 Methodology preceded the Agency's original 1986 cancer guidelines, which are now being revised. We are maintaining our policy to derive AWQC for carcinogens to correspond to incremental lifetime cancer risk levels, applying a risk management policy that ensures a reasonable level of protection for the general population.

When EPA developed the methodology to derive human health criteria for the waters of the Great Lakes System, the Agency was mindful of the need for consistency with the planned changes in the Human Health Methodology presented today for deriving national AWQC for the protection of human health. Throughout the 1998 draft Methodology revisions, references were made to comparisons of the two methodologies, especially whenever differences occur due to regional exposure assumptions made for the Great Lakes System. The GLI guidance consisted of water quality criteria, detailed methodologies to develop criteria for additional pollutants, implementation procedures, and antidegradation policies and procedures tailored to the Great Lakes system; these reflected the unique nature of the Great Lakes ecosystem. Those States and authorized Tribes are to use the GLI methodology to establish criteria for the waters of the Great Lakes system, which allows appropriate flexibility to States and authorized Tribes to develop equitable strategies to control pollution sources and to promote pollution prevention practices. The 2000 Human Health Methodology is undertaken pursuant to Section 304 of the CWA, and is independent of, and does not supersede, the GLI. Although consistency in State water quality standards programs is an important goal for EPA, we also recognize that it is necessary to provide appropriate flexibility to States and Tribes, both Great Lakes States and non-Great Lakes States, in the development and implementation of place-based water quality programs. Recognition of a general need for flexibility is not incompatible with the requirements for the Great Lakes States and Tribes established in Section 118(c)(2) of the CWA. We have harmonized the two, where appropriate, while maintaining parameters and provisions that are appropriate for Great Lakes-specific criteria.

EPA has identified development of microbial water quality criteria as part of its strategy to control waterborne microbial disease, by controlling pathogens in waterbodies and by protecting designated uses, such as recreation and public water supplies. The program fosters an integrated approach in order to protect both ground-water and surface water sources. EPA plans to conduct additional monitoring for *Cryptosporidium parvum and Escherichia coli*, and determine action plans in accordance with the results of this monitoring.

5. Designated Uses

Comments—Commenters indicated that designated uses for waterbodies that cross State boundaries and that fail to take into account downstream uses may effectively prohibit downstream waters from being used as a water supply; the AWQC should reflect the use of a waterbody as a drinking water source unless the use patterns of the entire waterbody indicate that this is not a current or future possibility.

Response—EPA regulations at 40 CFR 131.10(b) state:

> In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.

We believe this requirement is sufficient to address the concerns raised by the commenter and to ensure downstream uses are maintained and protected.

6. Developing National 304(a) Criteria

Comments—Commenters stated that EPA should not derive national 304(a) AWQC and stated their preference for regional measurements, and that national 304(a) criteria could be overly stringent or underprotective from State to State. Instead, they recommended that EPA simply provide specific "algorithms" to force States to develop their own criteria. However, they also said that EPA should develop a single criterion for each chemical based on the most relevant toxic endpoint and appropriate target population. A commenter recommended that EPA develop criteria for both cancer and noncancer endpoints because their comparative protectiveness may not be clear until permit limit design flows are determined. Another commenter stated that relying on default parameter values would inhibit the process for developing criteria/implementing standards because the regulated community will not accept such criteria. Two commenters stated that the amount of information on adverse impacts to water quality, fish, birds, wildlife, and human health warrants regulatory action to eliminate those toxicants. They recommended that EPA include all biotic pathways using the water source, including wildlife and plant life, and advocated protecting cultural and religious uses. A commenter stated that limited information exists for development of criteria in arid regions and that resources would be better spent gaining knowledge on the impacts of chemicals in regional watersheds. Another questioned how AWQC can be derived when ambient levels are below analytical detection limits. Several commenters supported the derivation of fish tissue criteria.

Response—Section 304(a) of the CWA requires EPA to develop national water quality criteria recommendations for States and authorized Tribes to use as guidance in adopting water quality standards. It is not an option for EPA to ignore this requirement. As such, the national 304(a) criteria that EPA periodically publishes are generally applicable to the nation's waters. Although we encourage States and authorized Tribes to use the Methodology to develop criteria based on local/regional information and believe that water quality criteria reflecting such local conditions are desirable, we have not abandoned our obligations under the CWA. The commenter should be aware that States have adopted EPA's recommended 304(a) criteria. Furthermore, in contrast to another commenter's suggestion, under the CWA, 304(a) criteria are not enforceable regulations; these criteria are guidance and do not impose legally binding requirements.

States and Tribes always have the option to undertake their own evaluations to develop water quality criteria, as long as such criteria are consistent with the CWA and the implementing Federal regulations. States have derived water quality criteria for their waters in the absence of EPA guidance and may continue to do so. However, the recommended criteria serve as guidance to States and authorized Tribes, and EPA cannot force States or Tribes to conduct their own evaluations. We are well aware that the resources and expertise within States and Tribal authorities vary greatly and, while encouraging them to pursue their own criteria development programs, we anticipate that many will continue to rely on our expertise and recommended 304(a) criteria. We included guidance on site-specific modifications for States and authorized Tribes to derive their own water quality criteria and will expand this information as part of the TSD volumes for the 2000 Human Health Methodology.

Although we have provided numerous default parameter values for different population groups, we intend to derive or revise AWQC based on the most sensitive health endpoint and the population group most relevant for that endpoint. Regarding measurable levels of chemicals in the water column, the CWA clearly states that limitations in analytical methods will not be considered when deriving AWQC. Rather, the AWQC represent health-based considerations only. However, analytical method limitations are taken into account in the implementation of water quality standards. We believe that deriving AWQC based on fish tissue concentrations may be appropriate in some instances to overcome this problem when there is a health concern for that chemical (for greater discussion of fish tissue criteria, see response to Comment F.7). Regarding cancer versus noncancer endpoints, it is EPA policy to develop criteria for the most sensitive endpoint in order to be protective of both potentially relevant cancer and noncancer effects. EPA intends to continue this practice. Regarding design flows, see the response on this issue under Comment A.9. Finally, these Methodology revisions apply to the protection of human health only. Other EPA efforts to develop methods and criteria for the protection of birds or other wildlife are not part of this guidance and will not be addressed here. Considerations such as religious or cultural uses cannot be quantitatively factored into the AWQC equation for setting pollutant criteria values.

7. Developing Organoleptic Criteria

Comments—Commenters suggested that EPA should provide guidance for States to develop organoleptic criteria for ambient waters that are sources of drinking water, and develop specific organoleptic criteria. Taste and odor are strongly associated with consumer perceptions and confidence in water quality. They suggested that EPA should provide organoleptic criteria and allow States to make decisions about their use. Others stated that organoleptic criteria should not be developed because they are not relevant to protection of human health and because they should only be considered for drinking water standards.

Response—The 2000 Human Health Methodology is focused on deriving toxicity-based criteria because they, not organoleptic criteria, are directly related to potential adverse human health effects. We have received much support for our position on this issue since initiating the Methodology revisions. EPA acknowledges that if organoleptic effects (*i.e.*, objectionable taste and odor) cause people to reject the water and its designated uses, then the public is effectively deprived of the natural resource. EPA encourages the development of organoleptic criteria when States and Tribes believe they are needed to protect designated uses and have indicated this in the 2000 Human Health Methodology.

8. Establishing EPA's Most Recent Federally Recommended Water Quality Criteria

Comment—A commenter stated that the proposed California Toxics Rule (CTR) established EPA's most recent federally recommended water quality criteria, and because EPA did not propose to promulgate arsenic in the CTR, there is no federally recommended water quality criterion for arsenic.

Response—With regard to arsenic and the Agency's policy on applicable 304(a) criteria, EPA clearly stated in the 1998 draft Methodology revisions that until such time as the Agency re-evaluates a chemical and subsequently publishes revised chemical-specific 304(a) criteria, the existing criteria remain in effect. Although the 2000 Human Health Methodology represents improvements to the 1980 Methodology, EPA believes that the existing 304(a) criteria are fundamentally sound from a scientific standpoint. We have long supported this position. Our recommended water quality criterion for arsenic remains the value published in EPA's Goldbook in 1986 (USEPA, 1986d) and promulgated in 1992 as part of the NTR. Federal promulgations for individual States take into account the needs of the individual State and site-specific conditions of waterbodies within the State. Federally promulgated water quality standards for a State may not always result in water quality criteria that are nationally applicable. We understand there has been some confusion regarding the current recommended water quality criteria in light of State-specific promulgations, and as a result, in 1998, we published National Recommended Water Quality Criteria (USEPA, 1998b) to clarify our national recommendations. This list will be updated approximately on an annual basis to contain our most current recommended water quality criteria for States and authorized Tribes to use as guidance in adopting water quality standards.

9. Flows

Comment—Comments received suggested that EPA should adequately consider and account for regional differences, such as highly variable flows, lower exposures, and lack of fish habitat due to no-flow conditions in many Southwestern washes (*i.e.*, waterbody flow only following a storm event).

Response—EPA believes there is sufficient flexibility in the current regulatory program for States to modify designated uses and water quality criteria to protect those uses to address the conditions that exist in waterbodies such as intermittent streams and washes. Modifications to the water quality standards program are unwarranted at this time.

10. Implementation on a Waterbody Basis

Comment—Commenters stated that human health criteria should be met within the waterbody on a long-term average basis instead of short-term maximums never to be exceeded. It was recommended that States be able and even encouraged to develop site-specific standards for waterbodies to reflect relevant fish consumption rates.

Response—The 2000 Human Health Methodology incorporates long-term exposure into the development of water quality criteria. Determination of when human health criteria are met within the waterbody is beyond the scope of this document. However, EPA guidance addresses this issue (USEPA, 1991b). We recommend harmonic mean flow to calculate permit limits and taking the geometric mean of ambient water samples to determine attainment. Both of these recommendations account for the long-term exposure effects of chemical water quality criteria.

EPA recommends that States develop site-specific water quality criteria to reflect relevant fish consumption rates. We have published default fish consumption rates in the Methodology as recommendations to States and Tribes in adopting water quality standards when a State or Tribe lacks information on local fish consumption rates. EPA's preference, however, is that States and Tribes adopt human health criteria reflecting local fish consumption rates.

11. Proposed Chemical List

Comments—Commenters suggested that EPA integrate the AWQC prioritization process with the drinking water program (*i.e.*, with the Candidate Contaminant List). Other comments suggested that EPA's short list of pollutants (for revision) would result in a greater burden for States that will need to develop more criteria. EPA was asked to strengthen efforts to develop criteria for persistent chemicals and to add endocrine disruptors. It was pointed out that the short priority list published in the 1998 draft Methodology revisions includes numerous banned pesticides. Additional chemicals and microbial contaminants for EPA to consider in its prioritization of criteria to revise/develop are suggested, as follows:

Atrazine
Benzo(a)pyrene
Chlordane
Cryptosporidium parvum strains
Cyanazine
Endrin
Giardia lamblia
Heptachlor
Heptachlor epoxide
Hexachlorobenzene
Methyl-tertiary-butyl-ether (MTBE)
Lead
Other PAHs (specifically advocated use of Relative Potency Factors)
Total Organic Carbon (TOC)
Toxaphene

Response—We will evaluate all suggested pollutants based on the following factors: relative toxicity; occurrence in fish tissue, water, and sediments (frequency as well as concentration levels); and for chemicals, information on the chemical's bioaccumulation. This strategy, previously published in the 1998 draft Methodology revisions, received general support, and we will consider these suggestions along with priorities identified by both the Office of Pesticide Programs and the Office of Ground Water and Drinking Water, and other input received from States and Tribes. Regarding a State's need to revise more criteria, see the response to Comment A.13, Revising Existing 304(a) Criteria.

12. Publishing Existing 304(a) Criteria Information

Comments—EPA received support for its proposal to occasionally publish a list of its criteria and information on revisions or new criteria in progress. Some commenters stated that EPA should publish a list in the **Federal Register** annually, and one suggested that EPA post any changes during the interim on the Agency's website. It was also suggested that EPA should identify which criteria were changed and why. One commenter stated that a timeframe of 3 to 5 years is more appropriate because little is likely to change in just one year. Another commenter expressed support for publishing an annual list of EPA drinking water regulations and health advisories.

Response—EPA believes that regular updates on its website are the most efficient way to make accurate information available to the public. We hope this will be helpful for States and authorized Tribes in reviewing and revising their water quality standards during the triennial reviews required under 40 CFR 131. We will consider further the circumstances and frequency with which **Federal Register** publications may be used. The commenter who referred to drinking water standards and health advisories misunderstood EPA's intention, which is to publish a list annually on the

304(a) water quality criteria similar to that done for the drinking water program.

13. Revising Existing 304(a) Criteria

Comments—EPA received support for revising its Methodology and for providing clear indication of the scientific components versus the science policy components. Commenters supported the idea of EPA revising criteria based on partially updated components of the criteria equations. One expressed a preference for comprehensive revisions but also stated that partial updates should be done as soon as possible, referring to components such as fish consumption rates and "interspecies conversion of doses" as those that can automatically be inserted, thereby enabling revision of all criteria within a week of effort. [**Note:** It is unclear whether the commenter is referring to the new body weight/surface area scaling factor or something else by the term "interspecies conversion of doses," because it is not specified.] A commenter stated that as any component is updated, so should the criteria. Another suggested that EPA partially revise all criteria for the components that current information would allow. On the other hand, a commenter stated that EPA should not revise criteria based on the new scaling factor or other pieces of data, but should conduct literature searches for new available data applicable to the Methodology. Other comments were that priority should be given to chemicals with significant new toxicity information; the use of partial updates is not scientifically sound, will produce overly conservative criteria, and restricts the public's right to comment; and all revision actions should be subject to public review and comment.

Response—EPA ideally seeks to conduct re-evaluations of every component used in the derivation of 304(a) criteria before revising any criteria. However, we have discussed updating a limited number of 304(a) criteria over the course of the next several years based on one or more components of the criteria equation (a "partial update") rather than a complete set of components, realizing that updating some of these (*e.g.*, the BAF, the exposure parameters) is not as time- or resource-intensive as completing a toxicological evaluation. Recent actions taken by EPA represent this option; both the NTR and the GLI were partial updates. We intend to focus our limited resources on revising (either partially or completely) those pollutants that we consider highest priority in terms of both toxicological concern and frequency of occurrence.

EPA has indicated that it does not believe it is desirable to revise criteria based on piecemeal information, such as the interspecies scaling factor, when there may be other information (*e.g.*, new toxicity studies) that could also change the risk assessment and, thus, the criteria. We have also cautioned the States and Tribes not to selectively apply data or methods that would inaccurately characterize risk (*e.g.*, in order to ensure a water quality criterion that is less stringent than an EPA 304(a) criterion). For a water quality criterion revision based on a partial update to be considered acceptable to EPA, a component of the criterion (*e.g.*, the toxicological risk assessment) would need to be comprehensive (*e.g.*, a new or revised RfD or cancer dose-response assessment, as opposed to simply a new scaling factor), should stand alone and be based on new national or local data. A toxicological update should be on a weight-of-all-of-the-evidence basis, as called for under EPA's risk assessment guidelines. This should incorporate the latest published toxicological literature and risk assessment approaches. States or authorized Tribes seeking to establish ambient water quality criteria are urged to continue using the IRIS noncancer and cancer risk assessments if they cannot conduct a complete evaluation to update toxicological values.

The Agency has developed an improved process that it intends to use when deriving new criteria or conducting a major reassessment of existing criteria. The process is intended to provide expanded opportunities for public input and to make the process more efficient. When deriving new criteria or when initiating a major reassessment of existing criteria, we will publish a notice in the **Federal Register** and on the EPA website announcing our assessment or reassessment of the pollutant. References relied on will be provided, and we will solicit additional data or information useful in deriving new or revised criteria. After input is received and evaluated, we will develop draft recommended water quality criteria. Next, EPA will initiate an independent external peer review of the draft criteria. The public will also be able to submit views on issues of science pertaining to the information used in deriving the draft criteria. We will then revise the draft criteria as necessary, incorporating peer review and public input, and announce the availability of the final water quality criteria in the **Federal Register** and on the EPA website. In addition to developing new criteria and conducting major reassessments of existing criteria, EPA also from time to time will partially revise criteria based on new information pertaining to individual, stand-alone components of the criteria. Because such recalculations normally result only in changes to single parameters of the criteria (not in the underlying scientific methodologies) and reflect peer-reviewed data, EPA will typically publish such recalculated criteria directly as the Agency's recommended water quality criteria. If substantial revision is done, we will follow the process of peer review and public input outlined above. Further discussion of this process can be found in the **Federal Register** Notice compilation of recommended water quality criteria and notice of process for new and revised criteria (USEPA, 1998e).

14. State Evaluation of Data Supporting Criteria

Comment—One commenter asserted that "states should be allowed to critically evaluate all data and disregard data that, for one reason or another, are unrepresentative or unreliable" and further asserted that States should be allowed to critically review EPA's published 304(a) criteria and to decline to adopt any criteria they feel are inappropriate.

Response—EPA disagrees with underlying assumptions of the comment. EPA's 304(a) criteria are guidance. States and authorized Tribes may develop their own scientifically defensible, peer-reviewed criteria. Moreover, States and any other interested parties have the opportunity to participate in development of water quality criteria published under Section 304(a) of the Act. Prior to publishing any new or revised 304(a) criteria, EPA provides stakeholders with an opportunity to review and provide scientific views. EPA maintains that at the time of publishing of new or revised 304(a) criteria, the criteria are scientifically defensible and establish guidance to States for adopting water quality standards under section 303(c) of the Act. Under 40 CFR 131.11, States continue to have the option of adopting water quality criteria based on 304(a) criteria modified to reflect site-specific conditions, or other scientifically defensible methods.

15. Streamlined Approach to Developing Criteria Documents

Comment—EPA received support for the streamlined format used in the example criteria documents published in 1998.

Response—We acknowledge this support.

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16. Treaty Rights and Trust Obligations/Government-to-Government Relations

Comments—Commenters recommend EPA fully incorporate treaty rights and Federal trust obligations to Indian tribes in its national AWQC guidelines. It was reiterated that EPA has an obligation to maintain government-to-government relations with Tribal Governments.

Response—As stated in the 1998 draft Methodology revisions, "risk levels and criteria need to be protective of tribal rights under federal law (*e.g.*, fishing, hunting, or gathering rights) that are related to water quality." We believe the best way to ensure that Tribal treaty and other rights under Federal law are met, consistent with Federal trust responsibility, is to address these issues at the time EPA reviews water quality standards submissions.

B. General Policy

1. AWQC Derivation Equation Errors

Comments—Commenters pointed out that the term "RSC" (relative source contribution) in the Linear Cancer Effects equation of the 1998 draft Methodology revisions was incorrect and should have been "RSD" (risk-specific dose).

Response—The commenters are correct; this was a misprint and should have been RSD for the linear equation.

2. Chronic Human Health Effects Assumption

Comments—EPA received support for its assumption that, by and large, AWQC are set to protect against long-term (chronic) human health effects.

Response—We acknowledge the commenter's support.

3. Protectiveness of the Methodology

Comments—A commenter stated that inherent uncertainties in EPA's risk assessments make them useless and that EPA must adopt the most conservative methodologies in order to protect human health, while also acknowledging the presence of uncertainties in assessing adverse health impacts. They suggested that EPA should tighten regulations for chemicals of national priority, develop criteria for additional priority chemicals, and take the most conservative approach regarding reproductive and developmental effects. Other commenters advocated that EPA incorporate pollution prevention policies into its risk assessment methodologies. One commenter asked EPA to provide guidance to States for developing AWQC less restrictive than AWQC for the general public, and suggested that engineering and administrative controls could reduce exposures. Another stated that the population groups identified represent appropriate categories and that the corresponding default parameter values are reasonable. The same commenter advocated use of the same percentile value for each default parameter ("*e.g.*, 95th percentile"). Another commenter recommended that EPA determine distributions of exposure in order to assess whether a significant subgroup is more highly exposed than the general population, especially in the context of the chosen exposure parameter values. Others stated that the general population should not be targeted and that EPA should instead target the population group most at risk, or that protection of health should apply to all humans. Commenters also expressed uncertainty over the segment of the population that the AWQC are designed to protect, and questioned whether EPA would evaluate all subpopulations for all chemicals. Two commenters requested an analysis of the overall impact that each parameter has on the criteria and how that relates to the conservativeness of the estimated risk, with one criticizing EPA for not conducting probabilistic analyses of exposures or other methods to evaluate the interaction of exposure parameters. This commenter stated that the Agency has used "high confidence-level" values for all parameter values and, therefore, the AWQC are "inordinately conservative." Furthermore, EPA should specify the level of protection within the high-end proportion of the general population (*e.g.*, "the 95% level") and adjust the exposure parameter values within "their defined distributions." Concern was expressed that the flexibility regarding infants and children (*i.e.*, for developmental effects) conflicted with the fact that chronic lifetime effects cover persons when they are children and adults. A commenter recommended consideration of tissue effects, as well as organ-level effects. Another stated that increasingly strict criteria/discharge limits represent regulatory environmental injustice, and that discharges in effluent-dependent streams are necessary for trees, vegetation, and wildlife.

Response—EPA believes that it has made appropriately conservative assumptions in conducting risk assessments where uncertainties exist. Furthermore, for this effort we will rely on the Agency's peer-reviewed, published risk assessment methodologies, which incorporate procedures to address uncertainties in the risk assessments. We will continue to make the most appropriate risk management decisions when developing or revising criteria, including determining pollutants of high priority. EPA does consider tissue-level effects in addition to organ-level effects when conducting its risk assessments. We acknowledge the comment regarding integrating pollution prevention policies with our risk assessment methodologies and specifically discuss this in the context of CWA goals in the 2000 Human Health Methodology. We also believe that we have selected appropriate default parameter values. Regarding the idea of criteria that are less restrictive than EPA's 304(a) criteria, a State or authorized Tribe would have such flexibility as long as it could clearly demonstrate that the criteria it calculated would be protective of its population. Such alternate assessments and the resulting proposed State or Tribal standard would be subject to EPA's triennial review process. Furthermore, the AWQC are health-based criteria, and therefore potential effects of engineering and administrative controls are not part of criteria.

By and large, the AWQC are derived to protect most of the overall population from chronic adverse health effects. However, States and authorized Tribes also need to understand that there are RfD's based on developmental or other short-term adverse health effects, perhaps where an exposure of one day could result in the effect. Long-term averaging of exposure would not be appropriate in such circumstances. States and authorized Tribes are also encouraged to consider protecting population groups that they determine are at greater risk and, thus, would be more protected using alternative exposure assumptions. We do not intend to derive multiple criteria for all subpopulation groups for every chemical. The commenter who discussed probabilistic analyses has misunderstood EPA procedures. We have used median and mean values, and percentile estimates, not high confidence-level values, as suggested by the commenter. We also disagree that the resulting criteria represent inordinately high levels of conservativeness. In general, we are doing what the commenter recommended about targeting the overall protection at the high end of the general population, even though the criteria have not been subjected to an assessment of whether a 95% level has been achieved (as recommended by the commenter). Although we have not subjected the parameter values chosen to a rigorous analysis, we have not used high-end percentiles for all parameters. The assumed body weight value used is an arithmetic mean, as are the RSC intake estimates of other exposures, when data are available. The BAF component data values are based on median (*i.e.*, 50th percentile) values. The drinking water and fish intake values are 90th percentile estimates. We believe this will result in water quality criteria that will be protective of a majority of the population. That is our goal. The commenter has not provided a method that would allow us to determine the overall percentile associated with the criteria calculations. EPA has provided additional language in the 2000 Human Health Methodology to clarify the population the AWQC are intended to protect.

Finally, if EPA determined that pregnant mothers/fetuses or young children are the population basis of a chemical's RfD or POD/UF, then we would derive our 304(a) criteria using exposure parameter values for that subgroup. This would be relevant only for less-than-lifetime exposure situations and, therefore, does not conflict with the fact that chronic health effects potentially reflect a person's exposure during both childhood and adult years.

4. Setting Criteria to Protect Both Fish and Drinking Water Versus Fish Only

Comments—EPA received strong support for deriving one AWQC value to protect both drinking water and fish intakes and another to protect for fish intakes only, given that the designated uses of waterbodies vary and drinking water may not be a designated use. One commenter stated that in addition to these two types of criteria, EPA should also develop criteria for water ingestion only. They indicated that waters may exist where fishing and consumption of fish are not relevant but water ingestion is relevant. Furthermore, they pointed out that EPA's Advanced Notice of Proposed Rulemaking for Water Quality Standards discussed protection for aquatic life and, therefore, stated that flexibility is needed so that fish consumption is not inappropriately applied to all waters. A commenter questioned whether ambient waters that are fished are also sources of drinking water, and whether contaminant levels in the two water types could be equivalent. Others stated that the drinking water pathway should not be included in the AWQC, given the way AWQC are implemented (*e.g.*, AWQC apply to waste water discharges and MCLs apply to public drinking water system exposures) and that MCLs may consider affordability and treatability. A commenter stated that AWQC to protect fish/shellfish are not justified and should be dealt with under other regulatory programs (*e.g.*, the Food Quality Protection Act).

Response—EPA believes that AWQC should include a drinking water pathway to protect waters designated as potable water sources. (Also see EPA's response to Comment A.4 regarding the relationship between MCLs/MCLGs and AWQC, Coordinating the Human Health Methodology With Other EPA Programs.) EPA strongly disagrees that AWQC to protect humans exposed through consumption of fish/shellfish should not be developed. Ensuring the protection of human health from consumption of contaminated fish and shellfish is clearly within the requirements of the CWA. We do not believe that 304(a) criteria to protect drinking water uses only are particularly useful, because by and large, State and Tribal standards for human health are set to protect waters with multiple designated uses, not merely drinking water use. The water quality standards program also protects aquatic life. The 2000 Human Health Methodology will not change our requirement to apply aquatic life criteria to protect aquatic species where they are more sensitive (*i.e.*, when human health criteria would not be protective enough) or where human health via fish or water ingestion is not an issue.

5. Setting Criteria to Protect Against Multiple Exposures From Multiple Chemicals

Comments—Several commenters thought EPA should consider multiple chemical exposures when setting AWQC and consider these exposures additive, at a minimum, while using information on synergistic impacts from the combination of chemicals. Commenters also suggested that certain Native American Tribes may have significant confounding factors (not specified) to be considered with any synergistic assessment. A commenter suggested that the cancer risk range apply to total contaminants or that a cumulative cancer ceiling be established. Another stated that the suggested alternate approach to account for inhalation and ingestion exposures (via the RfD and RfC equation) regardless of the target organ/endpoint was inconsistent with EPA's guidance on the use of hazard indices (HIs) and hazard quotients (HQs) to evaluate multiple noncarcinogenic toxicants. Commenters also questioned whether all exposure routes exhibit the same toxicity or stated that inhalation exposures should be disregarded if the pollutant in question does not affect the same endpoint.

Response—Assuming that all multiple exposures from multiple chemicals are additive, as the commenters suggest, is not scientifically sound unless they exhibit the same toxic endpoints and modes of action. We are aware of the complex issues and implications of cumulative risk and are developing an overall approach at the Agency-wide level. In particular, the Agency's program offices are engaged in ongoing discussions on how to address the great complexities, methodological challenges, data adequacy needs, and other information gaps, as well as the science policy and risk management decisions that will need to be made, as we pursue developing a sound strategy and, eventually, specific guidance for addressing cumulative risks. As previously indicated, the Agency is developing a framework for cumulative risk assessment, and the Office of Pesticide Programs has developed draft guidance for assessing cumulative risk of common mechanism pesticides and other substances. We have added discussion about the concept of cumulative risk and the state of the science in the 2000 Human Health Methodology and its TSDs. As a matter of internal policy, we are committed to refining the Methodology as advances in relevant aspects of the science improve. Regarding the alternate approach to use the HI/HQ equation (combining RfDs and RfCs), we do not intend to use this approach to combine chemicals when deriving criteria at this time. We requested comment on this as an alternate method to consider inhalation exposures for a given chemical, but would not consider its use in situations where existing information indicates that ingestion exposures and inhalation exposures affect different target organs. EPA intends to consider the comparative toxicity between exposure routes for Section 304(a) water quality criteria and has encouraged States and Tribes to do so. For the recommended national 304(a) criteria, cumulative risk approaches will not work since the mixture of pollutants present in water is inherently site-specific.

6. Uncertainty with the Derivation of 304(a) Criteria

Comment—Comments suggested that cumulative uncertainty guidance should be included in the Methodology, including a maximum acceptable uncertainty level.

Response—Establishing a maximum level of acceptable uncertainty is not part of the Methodology and will not be

factored into the decision of whether to develop or revise 304(a) criteria. However, issues regarding uncertainties with the risk assessments, exposure assessments, and bioaccumulation assessments will be addressed in the risk characterization sections of future criteria documents.

7. Toxicity Equivalency Factors (TEFs) for Dioxin-like Compounds

Comments—Several commenters addressed the use of TEFs for dioxin-like and other mixtures and classes of compounds. They believed the TEF approach has only limited application in risk assessment. Commenters indicated that complexities of the biology argue strongly against any more than limited and very cautious use of the TEF approach for assessment of human health from exposure to dioxin-like compounds.

Response—EPA agrees that there is a limitation to TEF use and that caution should be exercised when using it. More guidance can be found in the Guidance for Conducting Health Risk Assessment of Chemical Mixtures (USEPA, 1999b) and the Health Assessment for 2,3,7,8–Tetrachlorodibenzo-p-dioxin (TCDD) and Related Compounds, Internal Review Draft, February 14, 2000; Part II, Chapter 9: Toxicity Equivalency Factors (TEFs) for Dioxin and Related Compounds (USEPA, 2000b).

C. Cancer

1. Acceptable Risk Level for Carcinogens

Comments—Comments were received suggesting that regulations should be tightened or that AWQC for all carcinogens including the Groups C compounds (possible human carcinogens) should be set at zero, while others believed that cancer potency factors may overestimate actual risk. Some suggested the actual risk may be much lower, perhaps as low as zero, particularly for chemicals for which human carcinogenicity information is lacking. Comments also addressed the EPA cancer risk range for deriving AWQC.

Response—Regarding the permissible cancer risk range, see response to Comment A.3, Cancer Risk Range.

2. ED10 (central estimate) versus LED10 (lower bound on dose)

Comments—Several commenters preferred the use of ED10 over LED10 as the POD or BMD.

Response—The 1999 draft revised cancer guidelines provided a rationale for the selection of PODs. EPA's 1999 draft revisions provide for the use of the LED10. The EPA Science Advisory Board (SAB) suggests harmonization of the LED10 between the BMD approach for noncancer assessments and cancer assessments. The SAB also recommends reporting both the LED and ED (see USEPA, 1999d).

3. Group C Contaminants

Comments—One commenter stated that Group C compounds are treated differently under the SDWA and the CWA and wanted clarification on development of AWQC for Group C contaminants. Also, an "integrated approach" was suggested in evaluating nonlinear carcinogen and noncarcinogen assessments. However, the commenter's approach was to determine tentative AWQC for the contaminant as both a noncarcinogen and a carcinogen at 10^{-6} risk, and then choose the lower of the two values (*i.e.*, RfD vs. 10^{-6} risk) for setting the AWQC. Another commenter stated that integrating nonlinear and noncarcinogen assessments proposed by EPA is reasonable and it may be possible to replace this in the future with the categorical regression approach.

Response—The 1999 draft revised cancer guidelines require risk assessors to use the best science and consider mode of action in selecting an appropriate model to use. Under the 1999 draft revised cancer guidelines, Group C will no longer exist. The linear approach is used when there is insufficient information on mode of action, or the mode-of-action information indicates that the dose-response curve at the low dose is or is expected to be linear. The default approach for nonlinearity is to use a margin of exposure analysis. However, when the mode of action suggests both linear and nonlinear approaches, then both methods will be applied and considered. As for the integrated approach, EPA currently is working to increase the harmonization of both cancer and noncancer risk assessments. In the 2000 Human Health Methodology, we will only quantify cancer risks for those chemicals considered "carcinogenic to humans" or "likely to be carcinogenic to humans."

4. Guidance on Carcinogen Risk Assessment

Comments—Several commenters supported EPA's 996 proposed cancer guidelines. They endorsed the proposed guidelines for considering all scientific data and using the latest information, including weight of evidence, mode of action, margin of exposure, and a nonlinear approach for certain contaminants. They thought the new approach is more in line with recent advances in understanding carcinogenesis. However, they requested more guidance on how and when to apply the cancer guidelines.

Response—We will provide more guidance when the guidelines are finalized.

5. Hexachlorobutadiene (HCBD)

Comments—Comments stated that EPA should not propose AWQC for HCBD before the 1999 draft revised cancer guidelines are final. Furthermore, for HCBD, there is inconsistency between the statement in the 1998 **Federal Register** (Appendix VI) and that in the example HCBD criteria document.

Response—The Agency is considering the comment and will postpone completion of the AWQC for HCBD until more recent data can be incorporated. In reference to the risk assessment of the chemical, the discrepancy is minor. The 1998 Methodology states that both linear and nonlinear approaches will be used by EPA. The criteria document presents both approaches.

Note: EPA also will postpone completion of the criteria for 1,3-dichloropropene. Because of the large volume of new scientific information available for acrylonitrile, additional effort will be necessary to review the material. Therefore, EPA will not complete the criterion for acrylonitrile at this time. For the same reason, we are not addressing the comments on this chemical at the present time.

6. Integration of Analyses for Cancer and Noncancer Effects

Comments—Commenters supported integration and harmonizing procedures for risk assessment of cancer and noncancer effects in ambient water and drinking water programs.

Response—EPA agrees that it is a good idea to use an integrated approach to assess both cancer and noncancer effects. Currently, EPA has Agency-wide efforts to investigate harmonization of cancer and noncancer risk assessments.

7. Margin of Exposure (MOE) Analysis

Comments—Commenters requested that EPA provide more guidance on how to do MOE analysis and how to select the MOE. They also requested a comparison of the BMD with the LED10.

Response—Guidance will be provided either in the final Guidelines for Carcinogen Risk Assessment or in a separate document from the Agency's Risk Assessment Forum in the future.

8. MOE Approach to Applying Uncertainty Factors (UFs)

Comments—A commenter disagreed with the proposal to apply a UF to account for the severity of a precursor effect. Another commenter opposed applying a UF of no less than 0.1 when humans are less sensitive than animals.

Response—The Agency will develop more specific guidance on the MOE approach, as recommended by the SAB in 1999. The guidance will be peer reviewed and published separately as part of the Agency's implementation activity for these guidelines.

9. MOE and MOP

Comments—Commenters seemed confused regarding MOE and MOP ("margin of protection," as defined by a commenter). They defined MOE = MOP = POD/RfD and claimed that the calculated MOEs for chemicals based on nonlinear low-dose extrapolation are 100 times higher than those for carcinogens based on linear low-dose extrapolation, and claimed that the MOE is implicitly linear and, thus, is an inadequate approach to dealing with "nonlinear" carcinogens.

Response—There is a significant misunderstanding on the part of the commenters. The MOE is defined as the POD (*i.e.*, NOAEL or LOAEL or LED10) divided by the environmental level of interest (actual exposure or possible criterion). The MOE approach is recommended for chemicals that have a nonlinear low-dose response. For carcinogens with a linear low-dose response, we estimate the slope of the line drawn between zero and the LED10, and use the equation presented in the Methodology to estimate the concentration in water for human heath protection (10^{-6} is the recommended risk level). EPA does not recommend using any formula such as the one presented [*i.e.*, MOE = (POD) /(RfD)] to estimate MOE for carcinogens with a linear low-dose response.

10. Oral Scaling Factor for Dose Adjustment

Comments—Several commenters endorsed EPA's use of the body weight raised to the three-quarters power as the scaling factor. It was also suggested that, if available, chemical-specific data should take precedence over the generic default scaling factor.

Response—EPA agrees.

11. Toxic Endpoints

Comments—A commenter stated that EPA should make clear in its Methodology that it intends to take into consideration the toxic actions of the individual chemicals for which criteria are being established so that an appropriate target population and consumption rate can be selected. The commenter suggested that if the critical toxic endpoint of a chemical is cancer or other chronic disease, then use of the adult population and long-term consumption rates are appropriate to develop the AWQC. However, if the most sensitive toxic endpoint of a chemical of interest is acute reproductive effects, it may be more appropriate to use short-term consumption rates and exposure parameters that are relevant for women of childbearing age in developing the AWQC.

Response—EPA agrees.

12. Weight-of-Evidence Narrative and Classification System

Comments—A commenter expressed support for the use of narrative statements, but found the guidance on the weight-of-evidence narrative to be overly general and confusing. They suggested that some sort of classification system such as the alphanumeric should be retained. They also stated that without such a system, practical use of the weight-of-evidence approach will be more difficult, particularly for States that do not have strong expertise and sufficient resources in the application of health-based risk assessment.

Response—Current revisions to the cancer guidelines and the use of descriptors and narratives have been endorsed by the SAB and other commenters and will be included in assessments and final guidelines because they provide important information to the risk manager that a number or letter cannot convey.

D. Noncancer

1. Benchmark Dose Methodology

Comments—Commenters supported the flexibility of having the NOAEL/LOAEL/UF, categorical regression, and benchmark options for derivation of an RfD but pointed out a variety of concerns or factors for EPA to consider as it revises the BMD guidance.

Commenters suggested that the BMD methodology will eventually have a prominent role in risk assessment, but checks and balances need to be set to ensure that it is applied intelligently and with a healthy scepticism for its results, especially those that vary significantly from the results of the conventional NOAEL/LOAEL approach. The following specific recommendations were presented for EPA's consideration:

- Prohibit extrapolations without some mechanistic foundation. Permit interpolation only within the experimental dose range, for example, between NOAELS and LOAELS.
- Present a range of BMD estimates from the use of multiple-dose models, including models with thresholds just below LOAELS; estimates with the high-dose results dropped sequentially from the analysis; and multiple response rates (*i.e.*, 1%, 5%, and 10% response rates as well as the response rate associated with the experimental detection limit).
- Estimate the BMD using several confidence bounds.
- Compare the results of the alternative modeling approaches and reconcile discrepancies.

Other comments are summarized in the following paragraphs.

The BMD methodology lacks a mechanistic basis. There is no connection between the mechanisms of action that underlie the observed responses. Because the methodology is devoid of a mechanistic basis, its use needs to be restricted to the observable range. Extrapolations below the lowest nonzero dose of a study have no scientific foundation. However, it is acknowledged that some extrapolation of the data below the observable range is inevitable.

An additional critique was that high-dose effects influence low-dose estimates. The curve fitting involved in estimation of the mathematical dose-response relationship permits the responses at the high end of the dose range to influence the estimated responses at the low end of that range. This will occur whether or not the high-dose observations are mechanistically related to the responses at low doses. Furthermore, response and dose estimates are model dependent. In some cases, both central estimates and lower-bound estimates of doses associated with various response rates are known to be highly unstable and fluctuate significantly in response to minor data manipulations or assumptions.

More research is needed on implementation of the benchmark model. Guidelines for selecting appropriate models/benchmark responses, handling lack of fit, or selecting a single benchmark dose when more than one is calculated should be developed by EPA to assist States and other users in implementing this methodology.

The central estimate rather than the lower bound on dose should be used as the POD for benchmark modeling. Such an approach provides greater opportunity to compare effect doses among chemicals. Uncertainty associated with wide confidence limits can be accommodated in other portions of the risk assessment process. Furthermore, the most recent peer review of the BMD methodology (USEPA, 1996c) recommended use of the ED10 rather than the LED10.

Use of the benchmark model could introduce additional conservatism into the derivation of an RfD. Certain benchmark models as applied to developmental toxicity endpoints are substantially more conservative, on average, than the corresponding NOAELs. Using the benchmark approach in such a circumstance will introduce additional unjustified conservatism in the standard-setting process.

Caution should be taken when using different methods for RfD determination; that is, the degree of human health protection should be comparable from different methods. Because the BMD and categorical regression are relatively new methods, more studies are needed to compare the RfDs derived using the typical NOAEL/UF approach and those derived using the BMD and categorical regression methods.

EPA should closely coordinate adopting BMDs for noncancer endpoints under the Human Health Methodology with other Agency programs so that the policy is implemented identically throughout the Agency. However, because the benchmark approach makes better use of all data, the Agency should continue to work on its development.

Response—EPA agrees with the concerns regarding widespread application of the benchmark approach without consideration of the many factors addressed by commenters. The AWQC guidelines do not prescribe use of the benchmark approach in the derivation of an RfD. The guidelines allow the use of either the NOAEL/UF, benchmark, or categorical regression approaches. The risk assessor can select the approach most suitable to the available data. Accordingly, if the data do not support derivation of a BMD, then the NOAEL/UF approach can be selected for the RfD derivation rather than the benchmark approach. In addition, when selecting the appropriate equation for derivation of the BMD, one should consider goodness-of-fit along with the impact of high doses on the model results, confidence interval domains, and consistency of the dose-response pattern with the mode of action.

We do not anticipate that either of the new approaches, benchmark or categorical regression, will soon completely replace the NOAEL/UF approach. Both of the new approaches require more extensive data than the NOAEL/UF approach, and in many cases the data required to apply the methodology will not be available.

EPA is developing technical guidance that will assist in determining whether or not a particular data set is compatible with the BMD approach. Use of BMD methods involves fitting mathematical models to dose-response data obtained primarily from toxicology studies. When considering available models to use for a BMD analysis, it is important to select the model that best fits the data and is the most biologically appropriate. EPA has developed software following several years of research and development, expert peer review, public comment, subsequent revision and quality assurance testing. The software (BMDS, Version 1.2) can be downloaded from *http://www.epa.gov/ncea/bmds.htm*. BMDS facilitates these operations by providing simple data-management tools, a comprehensive help manual and online help system, and an easy-to-use interface to run multiple models on the same dose-response data.

As part of this software package, EPA has endorsed sixteen (16) different models that are appropriate for the analysis of dichotomous (quantal) data (Gamma, Logistic, Log-Logistic, Multistage, Probit, Log-Probit, Quantal-Linear, Quantal-Quadratic, Weibull), continuous data (Linear, Polynomial, Power, Hill) and nested developmental toxicology data (NLogistic, NCTR, Rai & Van Ryzin). Results from all models include a reiteration of the model formula and model run options chosen by the user, goodness-of-fit information, the BMD, and the estimate of the lower-bound confidence limit on the benchmark dose (BMDL). Model results are presented in textual and graphical output files which can be printed or saved and incorporated into other documents.

2. Categorical Regression

Comments—Commenters expressed reservations regarding use of the categorical regression methodology. They stated that the methodology presents difficulties in that it requires distinction of diverse endpoints and definition of severity categories, not as they apply to the animal studies, but as they apply to human health effects. Commenters also stated that categorical regression would allow the Agency to consider several endpoints simultaneously rather than use data for only the most sensitive endpoint. Some commenters believed that the major limitation of the approach is the need for classifying effects into categories (mild, moderate, frank).

Other commenters believed regression analysis offers attractive advantages but does not seem well enough developed at the present time to be incorporated into the Methodology. They suggested that because the approach makes better use of all data, the Agency should continue to work on its development. They also stated that when the data indicate that one of the new methodologies is clearly superior to the NOAEL/LOAEL/UF approach, it should be utilized.

Response—As stated in the response on BMD above, EPA does not anticipate that either of the new approaches, benchmark or categorical regression, will soon replace the NOAEL/UF approach. Both new approaches require more extensive data than the NOAEL/UF approach, and in many cases the data required by the methodology will not be available. We agree that the categorical regression methodology is less well developed than the benchmark method. However, we also anticipate that the number of chemicals evaluated with this approach will grow over time. Including the categorical regression methodology among the available options in the 2000 Human Health Methodology provides an opportunity for its application in appropriate situations.

3. Integrated Approach

Comments—Commenters stated that an integrated approach to assessing both cancer and noncancer effects for substances that are carcinogenic has merit, particularly when the systemic effects of concern occur at very low doses. However, they believed it is unclear how the nonlinear cancer assessment and the noncancer assessment would differ if the tumors were considered secondary to the systemic toxicity upon which the RfD is based. They stated that such considerations become more important when the systemic toxicity is unrelated to tumor formation, as in the case of lead and mercury. Some indicated that because EPA recommends different design flows to account for exposure scenarios that are appropriate for carcinogenic and systemic effects, the Methodology should develop and adopt similar criteria for both carcinogenic and systemic effects when appropriate. Some further stated that for some waters and pollutants, it will not become clear whether the systemic or carcinogenic criterion is more protective until the limits are developed using the different design flows. This was not previously a concern because a single human health design flow was used in most locales.

Response—The 2000 Human Health Methodology is not a stand-alone methodology. It depends on established or proposed Agency risk assessment guidelines for cancer and noncancer endpoints. We do not have the latitude to change Agency-wide risk assessment guidelines through the AWQC Methodology. Any changes must first be made to the supporting documents (*e.g.*, 1999 draft revised cancer guidelines, RfD methodology).

4. Integrated Risk Information System (IRIS)

Comments—Concern was expressed that EPA does not update the IRIS files in a timely manner. States use these assessments for their risk assessment work and do not have the resources to perform the types of detailed consensus risk assessment done under the IRIS process, according to comments received. They additionally pointed out that many IRIS assessments are more than 10 years old and suggested that EPA should update these assessments on a 3- to 5-year cycle.

Response—We realize the importance of the IRIS program and dedicate a portion of our resources to preparation of IRIS documentation for regulated chemicals. However, competing priorities throughout the Agency limit the effort that can be expended on IRIS by program offices and by the IRIS program.

5. NOAEL/LOAEL Approach

Comment—A commenter called attention to the facts that the NOAEL/LOAEL/UF approach is the current approach for establishing an RfD and that many present regulatory values are based on this approach. They stated that use of newer techniques that account for severity of effects and sample size seems reasonable, as long as the new techniques have been extensively reviewed and have wide acceptability among practitioners. However, the commenter also said that in some cases, the data needed to use the newer techniques may not be available, in which case it seems entirely appropriate to use the NOAEL/LOAEL approach as a default.

Response—See our responses to Comments D.1 and D.2, the benchmark dose and categorical regression comments, respectively.

6. Nonthreshold Approach for Noncarcinogens

Comments—The Agency requested comments on the suitability of using a nonthreshold approach for noncancer endpoints. Although open to the concept, commenters stated that a threshold should be considered the norm and a nonthreshold approach should be applied only if there are substantial scientific data supportive of a nonthreshold mechanism of toxicity. They stated that when receptor interactions are a component of the response, it is important that EPA differentiate between the receptor binding that might be without a threshold and subsequent biological responses such as enzyme induction or frank toxicity that would be expected to exhibit threshold dose-response relationships.

An additional concern was the use of nickel as an example of a chemical without a threshold. It was pointed out that double-blind studies indicate that there is a threshold for dermatological responses to nickel even in sensitized individuals.

Response—The Agency made modifications to the recommendations regarding a threshold approach for noncarcinogens, most specifically using lead as an example rather than nickel. We incorporated the commenters' suggestions in making the revisions.

7. RfD Range

Comments—The concept of establishing a range around the calculated RfD from which an alternative RfD might be selected in certain circumstances received considerable comment from the public. The primary criticism was the lack of a scientific basis for the breadth of the range and its correlation to the net uncertainty factor/modifying factor (UF/MF) product. The comments are summarized below.

The span of the range as described by EPA seems to be arbitrary and without any scientific support. It would be useful for the Agency to analyze a substantial number of past RfD determinations using the ranges the Agency has proposed to see whether they make practical sense. The Agency should provide more examples on how the factors that are to be considered in selecting a point within the range (i.e., bioavailability differences, sensitive populations, and slope of the dose-response curve) are related to the magnitude of the proposed range. Scientific data should be gathered and presented to support the use of these factors in influencing the range.

The Agency should give serious consideration to the possibility that the ranges of uncertainty surrounding the point estimate are not symmetrical. In particular cases, it may well be that most of the RfD uncertainty is on the high side of the point estimate.

The proposal to use a range is inconsistent with the purpose of the RfD. The proposal to use a range rather than a point value for the RfD would lead to the potential for double counting uncertainty. The UFs and MFs presently applied in calculation of the RfD allow for many of the factors that are presented as justifying selection of a point within a range as an alternative to the calculated RfD.

The range for the RfD would create more problems than it would prevent. The RfD, by nature, cannot be used to calculate the risk at a given level of exposure and is essentially a safety estimate that should be expressed as a single point estimate. The definition of the RfD recognizes the uncertainty in this assessment. The proposed approach would be difficult to implement, create unnecessary confusion and controversy regarding the RfD, and could result in prolonged unproductive debates between parties with differing interests.

If EPA chooses to define a range, the range should be developed by the scientists undertaking the RfD development. If a range is used, it is also strongly recommended that it be accompanied by detailed guidance on the factors for choosing a point estimate within the range. The uncertainty surrounding the point estimate of an RfD will be different for each chemical and study and should be clearly stated in any revised RfD.

An advantage of the range is that it would make more apparent to States the uncertainty in the RfD and the flexibility that now exists surrounding its use in the regulatory context. However, it is preferable to retain the presentation as a single point value but provide in accompanying text substance-specific information such as steepness of the dose-response curve that States can use in deriving standards based on other than the default single point RfD.

A range is useful to a risk manager or other decision-maker because actions can be taken with greater confidence in how likely it is that adverse health effects will be manifest at a particular point concentration. For example, slightly exceeding the MCL of 1 mg/L for nitrite with a UF of 1 is more likely to result in adverse health effects upon exposure than slightly exceeding a guideline of 70 μg/L for MTBE with a UF of 10,000.

Some of the factors EPA recommends in selecting a point within an RfD range should be used in determining the RfD itself rather than for deviating from it after it is derived. These include the seriousness and reversibility of the effect, whether it is based on a LOAEL, and bioavailability within humans. The issue of considering the presence or absence of sensitive segments of the population is impractical and inappropriate in deriving an ambient water quality standard. EPA should delete this option and understand that States generally set water quality standards on a statewide level. It is impractical to ascertain whether infants or pregnant women live near and consume fish or water from a particular waterbody. It is not practical from an administrative standpoint to set different, separate standards for each waterbody.

The Agency should provide guidance regarding the development of scientific rationales for departure from the default RfD. The Agency should provide a methodology for deriving the range, along with supporting examples, and subject that methodology to peer review before using the concept in developing AWQC.

Response—EPA agrees that the method used to quantify the range from which an alternative to the calculated RfD can be chosen is not based on specific scientific or statistical data. It is purely an equal partitioning of a default, 10-fold uncertainty factor into four equal quarter log segments.

It is important to note that the range around the calculated RfD only establishes a domain from which a risk assessor can select a single point to use as an alternative to the RfD for a specific circumstance. The 2000 Human Health Methodology criteria for using a point within the range other than the calculated RfD when calculating AWQC clearly require the State to provide a detailed justification for that decision.

One example of a situation where a point other than the calculated RfD might be applied would be where there is a difference in the bioavailability of the contaminant in the water component of the AWQC as opposed to the fish component. In such an instance, the decreased bioavailability from fish tissues could be used to support selection of an alternative value greater than the calculated RfD if the critical study were one where the contaminant had been administered through drinking water. Most inorganic contaminants, particularly divalent cations, have bioavailability values of 20 percent or less from a food matrix, but are much more available (about 80 percent or higher) from drinking water. Accordingly, the external dose necessary to produce a toxic internal dose would likely be higher for a study where the exposure occurred through the diet rather than the drinking water. As a result, the RfD from a dietary study would likely be higher than that for the drinking water study if equivalent external doses were used.

The exposures considered in deriving AWQC include fish (food) and water. Thus, one might be able to justify an alternative value to the RfD point estimate that was slightly higher than the RfD estimate in cases where the NOAEL that was the basis for the RfD came from a drinking water study, but slightly lower than the RfD estimate if the NOAEL came from a dietary study.

Several commenters suggested that there would be value in applying the range concept to several relevant RfD values and then to evaluate the results. The range concept was considered in the peer review of the 1998 draft Methodology revisions, and the peer reviewers had many of the same concerns regarding the range. The revised Risk Assessment TSD gives examples of how one could justify an alternate RfD value that was lower or higher than the RfD estimate.

8. Severity of Effects

Comments—Several commenters supported consideration of severity of effects in determining AWQC, although there was considerable diversity in the opinions expressed, as follows.

Some believed that there was no science behind use of different UFs (*i.e.*, 3, 10) in making intraspecies decisions based on severity of effect. Some stated that EPA should provide a methodology that will define a severity scale prior to adopting use of severity in deriving RfDs and associated AWQC. Others commented that the severity scale could be alphanumeric, similar to that used for carcinogens under the EPA 1986 cancer guidelines, and the severity rating could be presented along with the RfD value. However, any severity scale must also consider whether it is consistent with the definition of an RfD as a dose below which no adverse effects are anticipated to occur in exposed populations.

Other commenters believed that making adjustments in the RfD value for severity of effects only confounds regulatory policy with toxicological science, and the Agency should explore alternative approaches to the problem of differences in severity of various toxicological endpoints. The Agency should not have considered severity in calculating an RfD because this practice could result in double counting of uncertainty. Severity should be considered in selection of a UF only when the RfD is based on a LOAEL. If the NOAEL were used, concerns for severity should be reflected in the MF.

Response—There are several situations in which EPA has considered the severity of effect in selection of the UF. The Risk Assessment TSD cites zinc as an example. The LOAEL used in establishing the RfD for zinc was a change in the activity of the enzyme superoxide dismutase. This effect compromises the ability of the individual to avoid damage to macromolecules, such as proteins and polynucleotides, in the presence of free radical oxygen. Although clearly adverse, this effect is not as severe as tissue necrosis or impaired organ function. Thus, a UF of 3 was used rather than the default of 10 for the adjustment of a LOAEL to a NOAEL. The nutritional requirements for zinc relative to the RfD supported the use of a UF of less than 10 in this instance.

As monitoring of molecular biomarkers of toxicity increases, the number of situations will most likely increase in which a LOAEL is early enough in the progression toward overtly adverse effects that factors of less than 10 can be used for the RfD calculation and will be supported by mode of action data. Past EPA practice is consistent with the suggestion that severity be considered where the RfD is based on a LOAEL and that an MF be used, if the data warrant, when calculating from a NOAEL.

We do not believe that establishing a scale for severity is necessary at this time. It would be extremely difficult to establish a scale for rating toxicological endpoints that could be easily applied to the spectrum of endpoints monitored in more recent toxicological studies. The present flexibility in UFs and MFs provides ample opportunity for severity adjustment.

9. Stochastic Modeling

Comments—Commenters encouraged EPA to use a stochastic approach (Monte Carlo and/or Latin square modeling) for setting RfDs. The commenters stated that this would allow EPA to better "quantify the uncertainties and separate them from the variability in the data." They believed such methods would provide a sounder, more quantitative approach to determining whether a range of RfD values is needed.

Response—The guidelines for determination of the RfD are based on previously published, Agency-wide guidelines. The suggestion to use a stochastic approach has been noted and will be considered in the context of the Agency revisions to its risk assessment guidelines. Revisions to fundamental Agency guidelines are beyond the scope of the AWQC Methodology.

10. Synergistic Effects

Comment—Several commenters encouraged the Agency to consider multiple exposures to various chemicals and persistent bioaccumulative toxicants when establishing AWQC. For substances that do not persist or bioaccumulate in the environment, or do not cause reproductive, developmental, or neurological effects, EPA's risk assessment methodologies were deemed in need of reconsideration. However, as part of the reconsideration, EPA was asked to apply best science on synergistic impacts from exposures to a combination of chemicals. Other comments suggested sensitive subpopulations, such as Native American Tribes and other susceptible populations, may have significant confounding, underlying health problems that must be recognized with any synergistic assessment.

Commenters also stated that EPA should give specific attention to certain categories of contaminants: persistent organic pollutants and endocrine disruptors. The commenters identified two aspects to consider in applying this recommendation: (1) Individual contaminants with a similar mode of action whose cumulative effects may reach an unacceptable level; and (2) selection of specific biologic endpoints to use as the basis of an RfD. They also believed that tissue effects are valid measures of injury and should be used in addition to organ-level effects in people and biota. It was also considered important to include immunological, reproductive/developmental, and neurological effects to derive RfDs.

Response—The Risk Assessment TSD encourages States to consider synergistic and additive effects of individual chemicals in mixtures when establishing AWQC. The HI approach is suggested and described for situations where the chemicals have the same effect by similar modes of action. The Risk Assessment TSD also acknowledges that methods are not presently available for evaluating risk from mixtures where the individual chemicals have dissimilar health effects and recommends that chemicals in such mixtures be evaluated individually. Specific recommendations are found in EPA's Draft Guidance for Conducting Health Risk Assessment of Chemical Mixtures published in May 1999 (USEPA, 1999b).

The 2000 Human Health Methodology accommodates concerns regarding persistent bioaccumulative toxicants primarily through use of bioaccumulation factors in the calculation. Situations in which ambient waters may contain a group of chemicals that are persistent and bioaccumulative and have additive or synergistic effects can in some cases be factored into the HI approach. The description of the treatment of mixtures in the TSD was expanded to encourage States to consider persistence, bioaccumulation, and mixtures concerns in their risk assessments. The references to Agency mixtures guidelines were updated to include the most recent draft of the mixtures guidelines.

11. Target Population Adjustments

Comments—EPA was asked to consider the characteristics of the target population when determining AWQC. Commenters suggested that when the chemical is a carcinogen, it is appropriate that the target population consist only of residents of the United States. In cases where the effect is an acute reproductive effect, the commenters believed it is appropriate to specify adult women as the target population and to use short-term consumption rates and exposure parameters.

Response—The default input parameters for determining AWQC for human health apply to lifetime exposures and the adult population of the United States. However, the equations used for the calculation provide the flexibility to use body weight, water intake, and fish intake parameter values that are specific to other target populations.

12. Uncertainty and Modifying Factors

Comment—Additional guidance was requested on factors to consider in selecting UFs, particularly a UF for an incomplete database.

Response—In revisions to the Risk Assessment TSD for the 2000 Human Health Methodology, we increased the number of examples given to illustrate how UFs were selected in establishing RfDs included in the IRIS.

Comment—The suggestion was made to replace the interspecies UFs with a body weight to the three-quarters power and thereby harmonize the cancer and noncancer approaches.

Response—The peer reviewers of the 1998 draft Methodology revisions also suggested harmonizing the cancer and noncancer approaches with regard to the use of the body weight to the three-quarters power. This can be accomplished only through changes to the Agency documents on which the methodologies presented in the 2000 Human Health Methodology are based. The Agency currently is working on harmonizing the cancer and noncancer methodologies.

In addition, as pointed out by the peer reviewers, a body weight to the three-quarters power conversion adjusts for allometric differences between laboratory animals and humans. It does not reflect toxicodynamic differences between species that must still be included when adjusting for interspecies differences. The use of the scaling factor cannot totally replace the interspecies UF.

Comment—Another comment requested EPA to adopt more rigorous quantitatively supportable methods such as PBPK models to replace the more arbitrary and less well founded use of numerical scaling factors identified in UFs and MFs.

Response—The revisions to the Methodology clearly support use of toxicokinetic modeling when the data are available and use of the modeled data in lieu of the toxicokinetic portion of the interspecies UF.

13. Use of Less-Than-90-Day Studies in Determining an RfD

Comments—In general, commenters agreed with the scientific review board that false-negatives might result from use of less-than-90-day studies to develop an RfD. It was suggested that EPA evaluate data sets for groups of chemicals for which there are both chronic and less-than-90-day studies and compare RfDs. Any comparison of chronic and less-than-90-day studies should consider the purpose for which the less-than-90-day studies were conducted and whether they provide evidence relevant to the results of longer term experiments. A commenter agreed with the scientific review board that any RfD based on a less-than-90-day study should be used only temporarily.

Other comments pointed out that the Great Lakes methodology allowed use of less-than-90-day studies for determining an RfD but required a duration UF of 30 rather than 10. This factor when combined with a 10 for intraspecies variability and a 10 for interspecies variability would yield a total UF of 3,000, the maximum that is said to support RfD derivation. The commenter believed very few situations would qualify to use less-than-90-day studies, but their use should be allowed as long as the total UF is 3,000 or less.

Additional comments stated that reproductive, developmental, immunotoxicological, and neurotoxicity data provide an appropriate basis for determining an RfD even if they come from studies of less-than-90-day duration. However, one commenter also urged that data must be collected using methods of sufficient accuracy and validity. It was also emphasized that evaluations should be conducted to determine how dose-response relationships developed for these toxic effects, particularly immunotoxicity, are related to modifications in function and evidence of overt pathology.

Response—In several instances, the Agency has developed an RfD based on data from studies of less-than-90-day duration (*e.g.*, nitrite, zinc), particularly where the data were from humans and evaluated endpoints of chronic as well as acute significance. Data from less-than-90-day studies of reproductive, developmental, immunotoxicological, and neurotoxicity data are also considered appropriate for an RfD if they identify the critical effect. However, such data are used for RfD determination only when supported by a rather complete database and a good understanding of the mode of action. The Agency does not use data from less-than-90-day studies purely because they are the only available data. When the database is inadequate to support an RfD determination, no RfD is calculated.

E. Exposure Assessment

Default Intakes

1. Assumption That All of the Drinking Water Consumed Is Contaminated at the Criteria Level

Comment—A commenter questioned the assumption that all drinking water consumed has been contaminated to the maximum extent allowed by the criteria.

Response—Refer to response on this same issue for Comment E.2, Assumption That All Fish Consumed Is Contaminated at the Criteria Level.

2. Assumption That All Fish Consumed Is Contaminated at the Criteria Level and All Fish May Come from One Waterbody

Comments—Commenters questioned the assumption that all fish consumed have been contaminated to the maximum extent allowed by the criteria. They state the assumption that all of the 17.8 g/day (now 17.5 g/day) could come from one source is unrealistic, and that EPA should specify ways to adjust the fish intake rates to reflect a *contaminated fish* consumption rate.

Response—As required under Section 304(a) of the CWA, EPA develops water quality criteria that reflect the latest scientific knowledge on effects of pollutants on human health. The Agency's recommended 304(a) water quality criteria are used by States and authorized Tribes to adopt enforceable water quality standards including designated uses of a waterbody consistent with Section 101(a) of the CWA (*e.g.*, fishing, swimming, propagation of aquatic life, recreation). In developing the 2000 Human Health Methodology, we have made assumptions about exposure to contamination from eating fish taken from surface waters of the United States. The purpose of the assumptions is to ensure that if criteria are met in a waterbody designated with the uses specified in Section 101(a) of the CWA, fish consumers can safely eat fish from that waterbody. In addition to the assumption that 17.5 g of fish are consumed per day based on the most recent U.S. Department of Agriculture (USDA) survey data (a value reflecting the 90th percentile of the general population), EPA also assumes that fish and shellfish are taken from water with pollutants present at the criteria level. In order to ensure that people can safely eat fish from waters designated with Section 101(a) uses, it is necessary to assume that all of the consumed fish is taken from waterbodies at the criteria level (*i.e.*, contaminated to the maximum safe level).

We recognize that fishing patterns (*i.e.*, extent and location of fishing) and the degree to which fish and shellfish bioaccumulate contaminants from waters across the United States may differ from the exposure assumptions used to calculate national 304(a) water quality criteria. However, the degree and frequency of such variation are not clearly known, and these potential differences do not relieve EPA from its CWA obligations to develop national water quality criteria (which States and authorized Tribes may modify) that are protective for the general population. Furthermore, we note that not all of these differences would lead to less restrictive (higher) AWQC. For example, some subpopulations may consume fish at a higher rate than the 17.5 g/day assumed in the national 304(a) criteria, and bioaccumulation might occur to a higher degree than the central tendency assumptions used in calculating the national default BAF. As indicated above, EPA believes that the data do not exist to enable us to account reliably for the myriad of spatial and temporal differences in fishing patterns and bioaccumulation and subsequent differences in exposure to fish contaminants at the national level. In addition, we have not received information from any stakeholder that would allow us to make such fine distinctions. Our goal is to ensure that populations who rely on a particular waterbody as the predominant source of their fish and shellfish are adequately protected, thus protecting the designated use of that waterbody. For these reasons, we believe that these assumptions are appropriate for the development of 304(a) criteria. Where States and Tribes have concerns regarding the level of protection afforded by EPA's national 304(a) criteria, we encourage States and authorized Tribes to make appropriate adjustments to reflect local conditions affecting fish consumption and bioaccumulation. Guidance for making such modifications is provided in the 2000 Human Health Methodology.

3. Body Weight Assumptions

Comments—Numerous comments were submitted on issues regarding the adequacy of the body weight default values recommended in the 1998 draft Methodology revisions and what age-based body weight categories are appropriate. Several commenters stated the proposed default body weights were appropriate and that the 70 kg default for adults is appropriate. One commenter stated that the difference between 70 kg and the 65 kg value for women of childbearing age is so small that to distinguish between the two is unimportant. Another believed that the recommended children's body weights are sufficient and that finer age categories would not be useful at this time. However, other commenters addressed the potential need to use finer age-category body weights if it is known that the adverse health endpoint affects a particular age group sensitive at that developmental stage, and one commenter stated that the broad-age default (*i.e.*, for 0- to 14-year-olds) would be inappropriate for an infant. Another commenter pointed out that the default assumption for children ages 1 to 3 (*i.e.*, 10 kg) is too low compared with data from EPA's Exposure Factors Handbook. Other comments advocated that EPA specifically define the percentile value associated with the defaults or recommended that EPA not specify default body weights for children.

Response—We believe it is useful to provide default parameters for various population groups of concern, where possible, and have received support for this from States and from the recent peer review workshop panel. The difference between the general adult default body weight and the weight for women of childbearing age is statistically significant and, therefore, we are providing this value for situations where the critical health endpoint is an *in utero* developmental effect. All parameters used for an exposure evaluation should reflect the specific population group of concern.

As stated in the 1998 draft Methodology revisions, EPA has not provided finer age group defaults for children because the fish intake data do not permit breakouts other than the broader age category. However, in spite of this limitation, we have included finer age group body weights for State and Tribal use (when they have local or regional fish intake data that allow for their use) in the Exposure Assessment TSD. In most cases, we have indicated the specific percentile from each data source for the default value chosen (based on the surveys used and not in the context of the total population because data are not available to conclusively describe the entire population), but we have clarified this in the 2000 Human Health Methodology. Associating a derived criterion with a specific percentile is not possible because such a quantitative descriptor would require more detailed distributional exposure and dose information than is available.

EPA acknowledges that the proposed value of 10 kg for a child ages 1 to 3 is lower than the values reported in the Exposure Factors Handbook (USEPA, 1997a). The 2000 Human Health Methodology uses default body weight values based on the more recent NHANES III data. Contrary to the one commenter's suggestion, the data were not chosen to overestimate exposures; we intended to choose the average body weight as a default. In all cases (*i.e.*, for the adult, childbearing woman, children aged one to ten, and infant/toddler categories), we chose average (mean) body weight values as defaults and do not believe these are overly conservative.

4. Combining Consumption Intakes and Body Weights

Comments—Several commenters stated that when possible or where appropriate, the intake values and body weight data should be combined to generate a ratio/correlation of consumption to body weight, in order to provide better estimates. One commenter requested that EPA consider deriving a 95th percentile value of the water consumption to body weight ratio as the basis for the national 304(a) criteria. However, the opposite opinion was also expressed; that is, several commenters supported the use of separate parameters in the derivation equation. One commenter stated that, based on mean intake and body weight rates in EPA's Exposure Factors Handbook, differences in fish and water intakes between pregnant women and adults in general are so insignificant that they are not worth distinguishing. Opinion was also expressed that differences in intake rates per unit body weight can be more significant for children. EPA was cautioned to make sure that if differences in body weight are considered for different age groups, then the variation of intake by each specific group also needs to be considered.

Response—EPA agrees that the intake rates and body weights for the specific population groups should match (*e.g.*, a body weight for women of childbearing age should be matched with a drinking water intake assumption for women of childbearing age). However, we believe that the exposure parameter choices should be based on the population of concern, regardless of how small the change in the resulting criterion might be compared with a general adult population default. We also believe that there is not always a direct relationship between consumption and body weight. When EPA presented the issue for review by the Agency's SAB, they provided the following advice:

> In theory it would be better to develop standards on a per kilogram body weight basis. However, in practice the results are not different enough to make much difference in the magnitude of AWQCs. In particular, data should not be rejected because individual body weights are not available, and funds should not be allocated for collecting such data since no conceivable benefit would accrue.

EPA has also received input from its State stakeholders regarding potential confusion over combining the two parameters. Most believe that the difference in accuracy is negligible but that the difficulty in associating the units of mg/kg-BW/day with a meal size, especially for public communication and understanding, is great and, therefore, not particularly useful. Several stakeholders believed that if the data were combined as part of a study, or if a strong, demonstrated correlation between intake and body weight exists, the combined parameter should be used. We have evaluated recent information on both drinking water intake and fish intake from the 1994 to 1996 CSFII data and have assessed the differences between the two units of measure—including an emphasis on the differences that result with smaller age categories and drinking water consumption rates for children when mL/kg-BW/day are used (USEPA 2000c,d). [**Note:** SAB's comment on the unavailability of individual body weights is not an issue with the CSFII; that is, this information is available.] EPA intends to base its national 304(a) criteria on the separate intake values and body weights because of the strong input received from its State stakeholders. However, we have also provided tables in the final Exposure Assessment TSD of all fish/population categories for both g/day and mg/kg-BW/day, if States or Tribes prefer their use. The TSD will also provide examples on deriving criteria using either, including identifying situations where the latter estimate may provide substantively more accurate estimates. Additionally, the TSD will provide tables listing comparable values in mg/kg-BW/day (fish) or mL/kg-BW/day (drinking water).

5. Combining Fish Intake and Body Weights

Comments—Several commenters recommended the use of separate fish intake and body weight assumptions because of clarity, familiarity among the States, and data availability. Specifically, the option of combining these values was not considered practical because most studies do not provide such information, even if potentially more accurate. Furthermore, it was suggested that this complicates the derivation process or introduces error (an example was cited), and States and Tribes have the flexibility to use intake values other than the default values provided. Another commenter stated that there is a direct proportional relationship between fish consumption and body weight and that selection of the 90th to 95th percentile value of fish consumption per unit body weight is an appropriate basis for deriving the criteria.

Response—EPA agrees that the use of separate fish intakes and body weights is more easily understood and provides reasonable and protective default estimates. For additional discussion, see our response to Comment E.4, Combining Consumption Intakes and Body Weights. We do not agree that there is necessarily a direct relationship between fish intake and body weight, especially in the context of intake on a per-unit-body-weight basis.

6. Default Drinking Water Intake Rates

Comments—One commenter stated that EPA has overestimated the amount of untreated surface water consumed by the population. However, another commenter believed that the 2 L/day rate is reasonable. A commenter stated that drinking water intake rates in hot, arid climates may be higher than the recommended default rate. Numerous commenters stated that incidental water ingestion should not be considered in deriving AWQC or that it is unimportant. One called for empirical data to support its use and believed that

EPA has implied that incidental ingestion occurs every day. However, other commenters believed that this route should be considered for waters not designated as drinking water sources. One of these requested that EPA provide additional guidance on incidental ingestion relevant to acute toxicity and exposures. Another recommended that EPA evaluate the circumstances to determine whether the incidental ingestion rate would make a difference. A commenter recommended that EPA use a 30 mL/hour assumption in cases where short-term effects may be considered in criteria derivation. One commenter stated that the 10 mL/day value would be too restrictive for use in all nonpotable waterbodies and would conflict with existing State guidance on incidental ingestion.

Response—EPA acknowledges that much of the population consumes water from public water supplies that receive treatment. However, we intend to continue including the drinking water exposure pathway in deriving AWQC for the reasons clearly stated in the 1998 draft Methodology revisions. Refer to that discussion for clarification on this issue [see **Federal Register** Notice, August 14, 1998; Appendix III, C.1.(b)]. We encourage States and Tribes to use alternative intake rates if they believe that water consumption is higher in arid climates than the recommended default rate. We have not assumed that incidental ingestion occurs every day. We have estimated an averaged rate based on available study information. When initiating the process to revise the methodology, several stakeholders identified recreational or accidental water ingestion as a potential health concern. A couple of States have indicated that they already have established incidental ingestion rates for use in developing water quality criteria. EPA agrees that the averaged amount is negligible and will not have any impact on the chemical criteria values representative of both water and fish ingestion. The lack of impact would likely also be true for chemical criteria based on fish consumption only, unless the chemical exhibits no bioaccumulation potential. However, we believe that the issue could be important for the development of microbial contaminant water quality criteria, and for either chemical or microbial criteria for States where recreational uses such as swimming and boating are substantially higher than a national average would indicate. Although we will not use the incidental ingestion intake parameter when deriving our 304(a) national chemical criteria, we will leave the guidance language in the final Exposure Assessment TSD in order to assist States and authorized Tribes that face situations where this intake parameter would be of significance.

7. Default Fish Intake Rates

Comments—EPA received strong support for its hierarchy of preferences regarding fish intake values; that is, use of local or regional studies, and studies characterizing similar populations and/or geography, over default values. EPA also received support for encouraging decisions on intake rates to be made at the State or Tribal level. EPA generally received support for its default fish consumption rates, including the national 304(a) criteria value of 17.8 g/day (now 17.5 g/day based on the 1994–96 CSFII data). There was support for the new default rates as more accurately representing current levels of fish consumption among the general population than the old assumption of 6.5 g/day. Support was also received for providing the variety of default values to protect highly sensitive or highly exposed population groups. One commentor advocated that EPA clearly state that using the 90th percentile value is a risk management decision. However, others stated that EPA has overestimated fish consumption for the population at large. A commenter stated that EPA should use the intake value that its Superfund program utilizes (*i.e.*, 54 g/day). EPA also received support for the default of 86.3 g/day for subsistence fishers (now 142.4 g/day based on the most recent USDA survey data). Some commenters disagreed with the use of a subsistence default as contrary to the purpose of AWQC (while conceding its use for site- or region-specific criteria) or recommended that EPA caution against the use of subsistence values without risk management decisions balancing risk benefits and costs. One commenter stated that subsistence populations are very rare and cannot generally be defined by socioeconomic factors and, thus, EPA's assumption of 86.3 g/day may be over-or underprotective. Several commenters stated their support for the subsistence default but also advocated that EPA should require States to consult with Tribes in order to select an adequate fish consumption rate. Other comments expressed the opinion that a Tribe would be obligated to use EPA's default value if the Tribe could not conduct its own survey or expressed concern over the extrapolation of data from the general population to subsistence populations. Several commenters questioned EPA's choice in selecting a value to represent the 90th percentile of the general population, in contrast to selecting average values for sportfishers and subsistence fishers. A commenter stated that the assumption of 17.8 g/day as a default for sport anglers was not supported by peer-reviewed studies and contradicts the EPA's Exposure Factors Handbook. Another commented that because 17.8 g/day is recommended to represent the general population, it should not be used to represent sportfishers and indicated that 39 g/day may be more appropriate. Other comments advocated the use of actual sportfisher/subsistence population data or making sure that the defaults chosen appropriately correspond to these groups.

Two commenters stated that the recommended values for children and women of childbearing age were overly conservative and inappropriate because developmental effects would not result from short-term exposures. However, another commenter stated that evidence on reproductive/developmental effects should make EPA take the most conservative approach to protect pregnant women, fetuses, and young children. Other commenters found these values acceptable and believed that the approach is consistent with EPA developmental toxicity guidelines. One commenter noted that single meal or short-term consumption for these groups could easily exceed the EPA defaults. Other comments cautioned EPA to make sure that the exposure assumptions to protect against developmental health effects be used only with chemicals causing acute toxicity, or believed the defaults are unrealistically high and favored an averaged daily equivalent (mean or median value). Two commenters believed that basing both national and regional criteria on a fish consumption rate in the 90th to 95th percentile would be most appropriate, and one stated that the high-end percentile should be used with rates for children and women of childbearing age to protect against reproductive or developmental effects. Another commented that criteria to protect subsistence fishers or pregnant women should be left to the States and Tribes to consider. Still another suggested that EPA develop special fish consumption rates for populations that consume much higher amounts than average and, thus, not be overly conservative in its default assumptions. Two commenters questioned EPA's assumption that children consume more fish on a body weight basis than adults, and one commenter advocated use of childhood fish consumption rates. Concern was also expressed that all of the default rates assume that consumers eat from a single source only, and that the RSC factor results in a double-counting of fish intake rates. One commenter said that EPA should not establish default values. Finally, one commenter advocated using mean consumption rates (not the 90th percentile) if the Agency intends on retaining its RSC factor.

Response—EPA acknowledges the support for the default fish intake rates. Our national 304(a) water quality criteria serve as guidance to States and authorized Tribes, who must in turn adopt legally enforceable water quality criteria into water quality standards. States and authorized Tribes have the option to develop their own criteria and the flexibility to base those criteria on population groups that they determine to be at potentially greater risk because of higher exposures, yet, EPA cannot oblige the States to specific consulting agreements because, again, criteria are guidance, not enforceable regulations, and do not impose legally binding requirements. Therefore, we recommend that States and Tribes give priority to identifying and adequately protecting their most highly exposed population by adopting more stringent criteria, if the State or Tribe determines that the highly exposed populations would not be adequately protected by criteria based on the general population. In all cases, States and authorized Tribes have the flexibility to use local or regional data that they believe to be more indicative of the population's fish consumption—instead of EPA's default rates—and we strongly encourage the use of these data. In most instances, using alternate fish intake rates should not be difficult, once the value has been determined, in that the criteria calculation is performed by substituting the State/Tribal intake rate in place of EPA's default rate. We believe that the assumption of 17.5 g/day (again, based on the recent 1994–96 CSFII data) will protect a majority of the population of consumers of fresh/estuarine finfish and shellfish, especially population groups who rely on a particular waterbody for most or all of their fresh/estuarine intake. It is our goal to utilize an intake rate that represents more of the population than would a central tendency value. Thus, we intend to derive our national 304(a) criteria using this 90th percentile assumption, based on the updated analysis of the 1994–96 CSFII data. EPA also acknowledges that other Agency programs may utilize different default assumptions. In the case of the Superfund program, the value used (54 g/day) represents a default used for recreational fishers. It reflects total fish consumption from both marine and fresh/estuarine sources; however, it includes only finfish, not shellfish. As such, it cannot be directly compared to our default based on the general population for finfish and shellfish from fresh/estuarine sources only. [*Note*: The comparable 90th percentile CSFII value from the 1994–96 data, if marine species were included, would be 74.87 g/day.] For the AWQC program, EPA believes it has selected an appropriate, not overly conservative default value, given the goals of the CWA and the criteria program.

For the rationale stated above, we strongly believe that providing a default rate for subsistence fishers is important for States and Tribes, if they choose to use it in lieu of their own study data. We disagree with the commenter that the concept is contrary to the purpose of AWQC. Moreover, the commenter appears to have incorrectly assumed that EPA would base its national 304(a) water quality criteria on the subsistence fishers intake value. We intend to base our national criteria on the recommended value for the general population. We emphasized in our 1998 draft Methodology revisions that States and Tribes should consider developing criteria based on highly exposed populations when those populations would not be adequately protected by criteria based on the general population. This is, in fact, consistent with the purpose of AWQC. We also acknowledge that there is variation in fish consumption patterns, especially among subsistence fishers. For the purpose of providing one national intake rate for subsistence fishers, we believe that the value of 142.4 g/day (an estimated national average value based on comparing the CSFII 1994–96 data with subsistence fisher studies) is appropriate. Although the exact percentile represented by the arithmetic mean varies from survey to survey, we believe this value is more appropriate and protective than a median or central tendency value—which we cautioned against using in the 1998 draft Methodology revisions, because median values in the available short-duration surveys may be zero. However, as indicated above, EPA strongly encourages the use of site or regional-specific studies instead of this default value, and the State's/Tribe's discretion in considering higher intake rates than an arithmetic mean. We reemphasize here our four-preference hierarchy, which is designed to give States and Tribes more options than simply conducting a survey or using our default. EPA's national 304(a) criteria are health-based values only and are not intended to account for cost/benefit analyses. As indicated in our 1998 draft Methodology revisions, risk management decisions regarding balancing risk benefits should be made at the State or Tribal level.

EPA believes it is appropriate to offer default fish intake rates for children and women of childbearing age for States and authorized Tribes to consider if exposures resulting in health effects in children or developmental effects in fetuses are of primary concern. We have recommended a 90th percentile from the 1994–96 CSFII for this potential situation, in order to protect a majority of these population groups. As stated in the 1998 draft Methodology revisions, EPA is not recommending the development of additional water quality criteria, similar to the drinking water health advisories, which focus on acute or short-term effects because these are not seen routinely as having a meaningful role in the water quality standards program. However, we disagree with the commenter that developmental effects cannot result from short-term exposures. To the contrary, we believe there may be instances where the consideration of acute or subchronic toxicity and exposure in the derivation of AWQC is warranted—specifically when such toxicity and exposure are the basis of an RfD, not a chronic effect. Only in this situation would EPA consider such a basis for its national 304(a) criteria. Using long-term consumption rates to evaluate potential developmental effects would not accurately reflect meal size and would be inappropriate for use in such assessments. The separate distribution of short-term (*i.e.*, consumers-only) consumption estimates represents the amount of fish an individual consumes in a day, or multiple days in a short time period, if the person eats fish on that day. The consumers-only consumption estimate approximates a serving size for women of childbearing age or for children. The intent is to characterize consumption over a very short period of time, not as an average or per capita value over a longer period of time. We recommend the use of the short-term (consumers-only) consumption values in assessing developmental risks to children or women of childbearing age However, we intend to routinely base our national 304(a) criteria on the recommended fish intake rate for the general population. One commenter appears to have incorrectly assumed that EPA would normally base its national criteria on

acute toxicity scenarios. EPA acknowledges that it may have overstated the likelihood that children are more highly exposed in terms of the frequency of their consumption of freshwater and estuarine fish, although this may certainly be true for various subpopulation groups. However, the CSFII data clearly show that children do consume more fish per unit body weight than do adults. Therefore, as stated above, we believe it is useful to provide intake defaults to States and authorized Tribes for children, and we have specifically used childhood fish consumption rates (to the extent allowable by the CSFII data) as advocated by the commenter.

EPA disagrees with the comment that the sportfisher default assumption (*i.e.*, that 17.5 g/day based on the 1994–96 CSFII data represents average consumption rates for this population group) is not supported by available studies or by the Exposure Factors Handbook. The value of 17.5 g/day falls within the range of mean values from sportfisher/angler studies reviewed by EPA. The Exposure Factors Handbook indicates that mean intakes from recreational freshwater studies ranged from 5 to 17 g/day, with mean values from the key West *et al.* studies used in the GLI between 12.1 and 16.7 g/day (USEPA, 1997a). Furthermore, the default rate recommended here for the AWQC is representative of consumption of both freshwater and estuarine fish species, not freshwater species only. We are also aware that some of the sportfisher studies that support higher estimates (*e.g.*, 39 g/day) include marine species.

EPA's fish intake assumption is that all of the consumed fish is taken from one particular waterbody. This is to ensure that any population can safely eat fish from waters designated for fishing, including those who may rely on a single source for their fish (for additional discussion on this issue, see response to Comment E.2, Assumption That All Fish Consumed Is Contaminated at the Criteria Level).

EPA disagrees with the idea that using a 90th percentile value as a default is inappropriate because of the RSC factor. The RSC is used to account for other sources of exposure and, thus, is independent of potential exposures from fresh/estuarine fish. The fresh/estuarine species are not double-counted, as the commenter suggests. (For additional discussion on RSC, refer to the responses in the RSC section below.)

8. Effect of Cooking on the Contaminant Concentration

Comments—Commenters stated that the concept of changes in contaminant level caused by cooking is important to recognize. They recommended that a loss from cooking should be accounted for and that EPA should provide factors in order to calculate this loss into criteria. However, one commenter did not believe that increases caused by cooking should be factored into criteria. One commenter stated that it is not appropriate to assume no loss as a default when no data exist to account for it. Another recommended that the chemical structure be assumed as constant before and after cooking. One commenter stated that the relevance of cooking methods is not clear.

Response—EPA has stated its intention to assume no loss from cooking unless there are adequate data to characterize such a loss. We are aware of some studies on cooking loss and provide reference to quantified information in the 2000 Human Health Methodology. However, we believe it is important to consider both losses and gains in the chemical contaminant from cooking. EPA has also received input from several States regarding the difficulty in making such adjustments on a routine basis. We continue to evaluate this issue in the context of the national 304(a) criteria. We believe that providing guidance on making such adjustments may be useful in the Exposure Assessment TSD volume for States or Tribes that wish to modify their criteria accordingly. However, EPA does not intend to provide specific cooking loss default factors.

9. Inclusion of Marine Species in the Default Rate

Comments—A commenter stated that coastal States have a need to derive water quality criteria for saline waters under their jurisdiction and, therefore, requested additional consideration of marine fish consumption. Another commenter requested that EPA provide greater clarification on its policy not to include marine species, again believing that States and Tribes need to include this in their criteria development.

Response—In the 1998 draft Methodology revisions, EPA recommended inclusion of fresh/estuarine species only for the intake parameter, and accounting for the intake of marine species as part of the RSC. We consider this appropriate because the 304(a) water quality criteria are applicable to discharges from fresh and estuarine waters, not deep marine waters. EPA's 304(a) water quality criteria apply to navigable waters of the United States up the three miles off-shore. However, EPA also says that coastal States and authorized Tribes could consider total fish consumption (fresh/estuarine and marine species) when appropriate for protecting the population of concern. It is important that the marine intake component not be double-counted with the RSC estimate. We maintain our default policy decision and the flexibility afforded to a State or authorized Tribe to base its criteria on alternative assumptions.

10. Precision of the Drinking Water Parameter

Comments—A commenter interpreted EPA's discussion on significant figures as indicating that the drinking water intake should not be factored into that determination because the number represents a science policy value. The commenter also requested that EPA specify a level of protection represented by the AWQC.

Response—The commenter has misunderstood EPA's discussion in the 1998 draft Methodology revisions on significant figures; they have extended the discussion to an evaluation of overall criteria conservativeness via statistical analysis. We stated that the AWQC should not necessarily always be limited to one significant figure because the 2 L/day drinking water value, although supported by data, represents a science policy decision. The discussion only addresses the issue of significant figures, not characterization of criteria protectiveness. For discussion of the issue regarding the population protected by the criteria level, refer to the response for Comment B.3, Protectiveness of the Methodology.

11. Redesignation of Salmon as a Marine Species

Comments—Some commenters disagreed with EPA's reclassification of salmon to the marine category. They stated that EPA has ignored salmon biology and life history, that salmon is an anadromous species, and that salmon eggs, fry, and juveniles take up chemicals. Commenters specifically criticized EPA for ignoring steelhead salmon's life history. Three commenters thought the redesignation is reasonable. One had no objection to the redesignation for threshold toxicants but did object for carcinogenic effects based on a linear low-dose extrapolation, because it would not account for exposures of salmon to ubiquitous chemicals (*e.g.*, PCBs) contributing a substantial portion to total exposure. Another commenter who supported the redesignation advocated flexibility regarding coastal sportfisher consumption.

Response—EPA has not ignored the life history of salmon. We provided information on the known biology and life history of the species consumed that were included in the CSFII survey, the basis of the default values, in our 1998 draft Methodology revisions. The term anadromous generally refers to a species that spawns in fresh water or near-fresh water and then migrates into the ocean to grow to maturity. It can also refer to an ocean species that spawns in fresh/near-fresh waters. The life cycles of anadromous species vary as to whether they remain in fresh/near-fresh waters until they die or whether they return to ocean waters after spawning. As such, the description provided by EPA in the 1998 draft Methodology revisions is correct and does not conflict with the term anadromous. The CSFII food codes for salmon do not indicate the source of the salmon (*e.g.*, land-locked freshwater, farm-raised, or wild). We based our allocation of salmon between freshwater and marine habitats on commercial landings data provided by the National Marine Fisheries Service for the period 1989–1991. All landings of Pacific salmon, including chum, coho, king, pink, or sockeye, were assigned to the marine habitat. All land-locked Great Lakes salmon and farmed salmon received the classification of fresh water. The resulting apportionment for salmon was 1.18% to the fresh-water habitat and 98.82% to the marine habitat. We believe this is appropriate for our national default intake rates.

EPA understands that steelhead salmon, also known as steelhead trout (*Oncorhynchus mykiss*), is an oceangoing version of rainbow trout with a complicated life history, and may spend a significant portion of its lifetime in fresh waters. States and authorized Tribes have the flexibility to use different assumptions in deriving their water quality criteria, as we stated in the 1998 draft Methodology revisions. That is, States and authorized Tribes could make alternative assumptions to specifically account for steelhead salmon intake. We strongly encourage States and authorized Tribes to do so, as reflected by the recommended fish intake hierarchy of preferences. However, we do not intend to ignore the contribution from salmon in the calculation of our 304(a) criteria. We recommended accounting for this as part of the RSC, thereby ensuring that the criteria would account for the contribution of a contaminant from marine salmon.

12. Studies on Sportfishers and Subsistence Fishers

Comments—Two commenters stated that in summarizing various sportfisher and subsistence fisher studies, EPA failed to provide direction on how States or Tribes can use and interpret the information. One commenter requested additional guidance on the use of local data while cautioning about such data's reliability. Commenters also listed errors, discrepancies, or missing information from numerous studies that appear in the 1998 draft TSD. One commenter recommended separating studies by type, population, and basis for consumption rate (presumably referring to habitat designations of fish), along with providing comments on the studies. Another stated that many angler studies are biased because the respondents are more "avid" in their fishing habits, and a study of fresh-water anglers from Maine might serve better as the basis of EPA's default for sportfishers.

Response—It is EPA's intention to provide summaries of various studies for States and Tribes to consider using and, as such, the Agency is merely providing information, not critiquing or endorsing particular studies. We do not intend to rank the studies because there are significant differences in the purposes and limitations of each study, in addition to the fact that consumption rates vary significantly throughout the country. Therefore, any particular study may be most appropriate to the State or Tribe's particular circumstances. However, we are committed to providing accurate information and intend to correct errors or missing information that would make the summaries of greater use to States and Tribes. We have reviewed the commenters' listed errors or omissions and made appropriate changes. EPA disagrees that any of the sportfisher studies are biased from "avidity" among recreational anglers. Although the rates may vary significantly from study to study, the studies specifically sample fishing patterns of these groups and are the most appropriate data for prospective use by States and Tribes. We considered the Maine angler study along with the others presented in the 1998 draft TSD to evaluate the range of mean values before recommending the default value. However, we do not believe this particular study is necessarily best suited for deriving a national default value. Just as with EPA's national 304(a) criteria, States and Tribes always have the flexibility to use other local- or regional-specific studies. We have provided additional guidance on how to consider the studies included in the Exposure Assessment TSD.

13. USDA Continuing Survey of Food Intake by Individuals (CSFII)

Comments—Some commenters believed that the CSFII data are appropriate for deriving AWQC and supported their use in the hierarchy of choices. Others stated that the CSFII data are not appropriate because they include marine species, and combine recreationally and commercially acquired species. One commenter suggested that a significant fraction of the default rate would include farm-raised fish, which would not bioaccumulate the same as wild fish. One commenter stated that the default inappropriately assumes consumption from a single waterbody. Two commenters stated that the CSFII data are biased toward individuals consuming large quantities of fish (assuming constant consumption every day and failing to consider those people who consume less frequently). One of these stated that the CSFII assumes that participants who did not eat fish during the study period are not fish eaters. Several commenters recommended that longer term studies be used, one specifically stating the difficulty in estimating the upper end of the distribution. Comments also referred to or recommended data from NPD Research Inc. or the Tuna Research Institute, presumably referring to the National Purchase Diary (NPD). One commenter assumed that the CSFII default estimates exclude individuals who consume fish but did not report consumption during the sampling period. Another questioned dividing reported consumption by the days of the survey and incorporating nonconsumption. Instead, this commenter recommended using the positive values only ("acute consumers") for determining default intake rates, which it believed to be consistent with the concept of identifying the population to be protected. One commenter also indicated that intake rates do not vary significantly for fish obtained from different sources—that is, fresh or marine waters. Another stated that the CSFII data assume short-term consumption is representative of long-term consumption. One commenter advocated that EPA use probabilistic methods to derive AWQC.

Response—The comments are incorrect about the exclusion of respondents who did not report fish consumption during the CSFII sampling period. The general population,

recreational fisher, and subsistence fisher default values all include both CSFII respondents who reported eating fish during the sampling period and respondents who reported zero consumption (what the commenter referred to as "non-consumers"). The CSFII mean values are not biased. Specifically, the intraindividual variation does not bias estimates of the mean intake of the population. The estimates of the upper percentiles of per capita fish consumption based on the short sampling period data may be biased upward, thereby resulting in a conservative estimate of risk. However, the extent to which this is overestimated is not knowable. We note that we did not rely exclusively on the CSFII data; rather, the data were analyzed with those from other studies (especially for recreational fisher and subsistence fisher estimates) to evaluate and corroborate our decision. We believe the CSFII data are representative of fish intake rates among the general population. As part of the CSFII analysis, sampling weights were adjusted to account for nonresponse and were subsequently reweighted using regression techniques that calibrated the sample to match characteristics correlated with eating behavior.

EPA generated mean and percentile estimates of daily average per capita fish consumption based on the USDA 1994–96 CSFII. The strengths of this survey for supporting estimates of per capita food consumption are twofold. First, the survey design is structured to obtain a statistically representative sample of the U.S. population. Second, the survey is designed to record daily intakes of foods and nutrients and to support estimation of food consumption. These features are in direct alignment with the objective of producing current, per capita fish consumption estimates for the U.S. population. The 1994–96 CSFII collected two non-consecutive days of food consumption data from a sample of 11,912 individuals in the 50 states and the District of Columbia. The method employed to collect dietary intake data also strengthened the CSFII design for supporting per capita consumption estimates. For example, the survey was administered by an interviewer on both days of data collection. For these reasons, we believe that the 1994–96 CSFII is the best source of data on a nationwide basis for estimating fish consumption by the U.S. population.

The NPD study was conducted over 25 years ago. The NPD is the basis of the 6.5 g/day default value that EPA has historically used for fresh/estuarine fish consumption. We have received consistently strong input from many of our stakeholders (including States and Tribes) who consider the 6.5 g/day value inadequate and advocate the use of much more recent data. The Agency also believes that such an update is needed. We are not aware of any subsequent major survey conducted during a 30-day period as was done by the NPD. The Agency does not believe that the year-long study of 29 people mentioned by one commenter is appropriate to use for a national default value. The use of probabilistic methods was discussed earlier in our response to Comment B.3, Protectiveness of the Methodology.

EPA also believes that its discussion of identifying population groups to protect is not contradicted by its combining positive and zero values to estimate long-term or average consumption. We reiterate here that we believe the summation of the amounts of fish consumed by each individual across the 2-day reporting period for the CSFII 1994–96 data (formerly a 3-day reporting period), followed by dividing that total individual consumption by 2, is a reasonable approach to estimating average consumption. The CSFII did not specifically ask questions on whether respondents consume fish or how often and, therefore, it is not possible to distinguish fish consumers from fish nonconsumers. EPA is aware from other major surveys that most people consume fish—at least episodically—and, therefore, believes that using the positive and zero values from the CSFII is a reasonable method of estimating average intake. We contrast this to using only the subset of survey responses where fish was actually consumed as a method to estimate an "acute consumer," that is, to provide an estimate of the amount of fish consumed in the context of acute or short-term exposures (not in the context of average or long-term exposures).

The commenters are also incorrect about the inclusion of marine species. The proposed default rates for the general population, as well as for children and women of childbearing age, are based on freshwater and estuarine species only. The CSFII study does include marine species and EPA has additionally provided States and Tribes with these data in the Exposure Assessment TSD; however, they are not included in the default estimates of national freshwater and estuarine fish consumption. According to the CSFII data, most persons in the general population appear to consume more marine species than fresh/estuarine species. However, EPA supports State/Tribal use of local or regional data that indicate otherwise. We have not made any specific assumptions regarding farm-raised fish and their contribution to the default intake rate, nor have we received any information that would allow us to characterize (or discount) the amount that farm-raised fish contributes to the national default value or to differentiate bioaccumulation levels.

14. Use of Uncooked or As Consumed Fish Weight for Default Intake Rates

Comments—One commenter stated that either raw weight or cooked weight can be appropriate as long as the effect of cooking on the contaminant is accounted for. Some commenters stated that the cooked weights are the most technically defensible, because they are the basis for the consumption estimates. However, others believed the default intakes should be adjusted to reflect uncooked weights, with one commenter concerned that a cooked weight would result in incomplete accounting of exposure to threshold toxicants. One commenter also pointed out the difficulty of making appropriate adjustments to the BAF because of uncertainties in concentration levels of contaminant due to cooking and that many cooking techniques result in retention of fish fluids. Another commenter stressed the need to use uncooked weights in order to be consistent with fish tissue studies and BAF values. One commenter expressed concern that use of cooked weights would produce an inadequately protective criterion for mercury, while another believed that cooked values introduce a source of uncontrolled variability.

Response—We have considered the pros and cons of using uncooked/as consumed weights on several levels. First, the intake parameters of the criteria derivation equation are intended to capture ingestion—that is, what people actually consume and are exposed to. By and large, people consume cooked fish, and if raw shellfish or sushi was consumed by the CSFII respondents, those intakes were included in the as consumed weights. This assumption is also consistent with the dietary estimates based on prepared foods (not raw commodities) that are made by both EPA's pesticide program and the Food and Drug Administration (FDA) Total Diet Study program. We also considered the "consistency" issue in the context of the fact that the CSFII survey respondents estimated the weight of fish that they consumed. Similar to the CSFII, EPA's GLI was based on a consumption survey of fish intakes for prepared meals. EPA additionally considered the effect of the cooking process. There are comparatively few chemicals for which measurements are available, and the process is complicated further by the different parts of a fish where the chemical may accumulate, the method of preparation, and how the cooking process may transform the chemical. What is certain is that the mass of the contaminant will either remain constant or be reduced. The resulting concentration is harder to predict. In the 1998 draft Methodology revisions, we recommended the use of as consumed weights and an adjustment of the bioaccumulation factor for cooking loss, if information was available. Otherwise, we recommended using the as consumed weight along with the full bioaccumulation factor (unadjusted for cooking loss), which would produce slightly more stringent AWQC. We have also received input from stakeholders regarding potential confusion over the fact that uncooked weights are used in the Agency's fish advisory program and that having two sets of values may prove confusing to States and Tribes, as well as the general public. Furthermore, the measures of a contaminant in fish tissue samples that would be applicable to either compliance monitoring or the permitting program are related to the uncooked fish weights.

Therefore, EPA has reconsidered its position based on these facts and despite the fact that the as consumed values more accurately represent actual intake, we will derive our national 304(a) criteria on the uncooked weight fish intakes. The approach of using an uncooked weight in the calculation will result in somewhat more stringent AWQC (studies indicate that, typically, the weight loss in cooking is about 20%). We will also provide guidance on site-specific modifications in the Exposure Assessment TSD. Specifically, we will describe an alternative approach for calculating the AWQC using the as consumed weight (again, more directly associated with exposure and risk) which is subsequently adjusted by the approximate 20% cooking loss to a resultant uncooked equivalent. Thus, the AWQC conversion to an uncooked equivalent can be consistently used between State/Tribal standards programs and still represent the same relative risk as the as consumed value. It is important to understand that the two approaches will not result in the same AWQC value. Whereas the as consumed approach is more scientifically rigorous and represents a more direct translation of the as consumed risk to the uncooked equivalent, it may be too intensive a process to expect of State and Tribal organizations whose resources are already constrained.

Relative Source Contribution (RSC)

15. Default Percentages and RSC Floor of 20% and Ceiling of 80%

Comments—A commenter criticized EPA's recommended RSC default rate in the face of uncertainty about other routes of exposure. Another commenter considered the ceiling of 80% to be a redundant uncertainty factor. Other comments suggested the use of an 80% RSC for bioaccumulative chemicals so that the contribution from fish consumption would not be underestimated, did not support the range of 20% to 80%, or requested additional justification for the assignments of 20%, 50%, or 80%.

Response—EPA has recommended using the 20% RSC default when routes of water exposure other than oral or sources of exposure other than fish and water are anticipated, but adequate data are lacking to quantify those exposures. When data are adequate, they should be used instead of the default. If it can be demonstrated that other sources and routes of exposure are not anticipated for the chemical in question (based on information about its known/anticipated uses and chemical/physical properties), then the 80% ceiling is recommended. The ceiling is intended to provide adequate protection for those who experience exposures (from any or several sources) higher than available data indicate. For many of the chemical contaminants that EPA evaluates, data are not available on multipathway exposures. It is possible that as we progress with our development of a cumulative risk policy, we may find an 80% RSC to be underprotective. This concern was expressed during the scientific peer review workshop on the Methodology. One commenter misunderstood the application of lower ceilings (*i.e.*, 50%, 20%) when existing information indicates no other media-specific uses or sources. Also, some chemicals that bioaccumulate in fish also bioaccumulate in other meat and dairy products (*e.g.*, dioxins). Therefore, to simply assume an 80% default in all cases would not be appropriate. The RSC approach allows for an apportionment of 80% when information indicates that other exposures are not relevant for the chemical being evaluated. EPA has added discussion in the final Methodology to address these situations and to better explain the application of the lower ceilings.

16. Duplication of Fish Intake Assumptions

Comments—Commenters stated that applying an RSC factor results in a double-counting of fish from other sources.

Response—The commenters are incorrect. The fish intake default used in the equation accounts for fresh and estuarine species only. The RSC factor potentially applies to nonfish dietary intake, air exposures, and marine fish species. To protect humans who additionally consume marine species of fish, the marine portion should be considered as part of the "other sources of exposure," that is, part of the RSC or dietary value. EPA specifically emphasized in the 1998 draft Methodology revisions that States and authorized Tribes need to ensure, when evaluating overall exposure to a contaminant, that the marine fish intake is not double-counted with the dietary intake estimate used. This applies if the State or authorized Tribe chooses to account for total fish consumption (*i.e.*, fresh/estuarine and marine species) in the fish intake parameter used in the AWQC equation.

17. Exposure Route Differences

Comments—EPA received support for its rationale on accounting for differences in bioavailability and absorption between exposure routes when data are available, and assuming equal rates when data are absent.

Response—We acknowledge this support.

18. Need for an RSC Factor/Considering Multiple Routes of Exposure

Comments—Commenters supported the greater emphasis on RSC, including the use of empirical data. Some stated that EPA should give full consideration to multiple routes of exposure (*i.e.*, ingestion, inhalation, dermal), with emphasis on the variety of water-related activities, cultural practices, and lifestyles. Several commenters pointed to published studies on assessing inhalation and dermal exposures, and two commenters advocated that EPA determine when there is a need to factor in these exposures, based on available information on the chemical. One commenter stated that there are circumstances where inhalation exposures can be a significant portion of total exposure (*e.g.*, for some chemicals during showering). However, another suggested that consideration of inhalation and dermal exposures is premature. Two commenters stated that uncertainty factors, severity of effects, essentiality, and additive/synergistic

effects should be factored into the RfD apportionment, with one believing that this should also include the option of developing less stringent criteria when there is great uncertainty in the data. Five commenters stated that they believe the RSC/Exposure Decision Tree concepts represent an unnecessary safety factor or should not be considered. One suggested that the water quality criterion should relate only to water exposures. Two commenters suggested that factoring in other exposures is "penalizing" the AWQC and makes them overall environmental exposure criteria. Another questioned the need to apportion the RfD, but focused on drinking water regulations, stating that accounting for other sources of exposure would likely have no benefit, presumably due to conservatism in the RfD derivation (yet acknowledging that those uncertainty factors are independent of the exposure assessment). Several commenters recommended that EPA reconsider the SAB's advice not to routinely apportion the RfD. Others believed that the RSC should be used only for site-specific criteria, or that States should have the flexibility to make adjustments for local conditions. Two commenters also stated that the Exposure Decision Tree is unclear, is overly complicated, or has unrealistic data requirements. Another stated that the approach is generally desirable but that EPA needs to provide a greater and more easy-to-follow explanation of the rationale, indicating policy judgments where they occur. However, other commenters supported the Decision Tree approach for its facilitation of identifying the decisions necessary to select the most appropriate RSC value and considered it scientifically valid. One commenter cautioned that if probabilistic analysis techniques are used, their application must be valid and underlying assumptions clearly indicated. Commenters expressed the need for data to avoid the 20% default, others stated that defaults should be avoided altogether, and one recommended a 100% RSC for highly bioaccumulative chemicals. One of the supporters believed that the approach is a reasonable compromise between avoiding problematic increases in exposures to substances and not setting unduly restrictive requirements. A commenter questioned how new data would be considered in the context of RSCs based on older data. Another recommended that non-zero values for other exposure sources not be assumed unless a significant number of samples are positive. It was also recommended that EPA coordinate the RSC policy with other Agency programs.

Response—EPA disagrees that the RSC represents an excessive or unnecessary safety factor. The purpose of the RSC is to ensure that the level of a chemical allowed by a criterion or multiple criteria, when combined with other identified sources of exposure common to the population of concern, will not result in exposures that exceed the RfD or POD/UF. The policy of considering multiple sources of exposure when deriving health-based criteria has become common in EPA's program office risk characterizations and criteria and standard-setting actions. Since the SAB expressed concerns in 1993, numerous Agency workgroups have evaluated the appropriateness of factoring in such exposures and concluded that it is important for adequately protecting human health. Consequently, Agency policy has evolved significantly over the last 6 years. Various EPA program initiatives and policy documents regarding aggregate exposure and cumulative risk have been developed, and include consideration of inhalation and dermal exposures. Additionally, accounting for other exposures has been discussed in recent mandates (*e.g.*, the Food Quality Protection Act) and, thus, is becoming a requirement for the Agency. The RSC approach has been shared with other EPA offices, and efforts to coordinate policies on aggregate exposure, where appropriate, have begun. EPA intends to continue developing guidance on the RSC issue and guidance to address the concern that human health may not be adequately protected if criteria allow for higher levels of exposure that, combined, may exceed the RfD or POD/UF. We also intend to refine the 2000 Human Health Methodology in the near future to incorporate guidance on inhalation and dermal exposures. As stated previously, we are required to derive water quality criteria under Section 304(a) of the CWA and do not intend to derive site-specific criteria for individual waterbodies. However, States and authorized Tribes do have the flexibility to make different exposure and RSC estimates based on local data.

Uncertainty factors used in the derivation of the RfD to account for intra-and interspecies variability and the incompleteness of the toxicity dataset(s)/animal studies are specifically relevant to the chemical's internal toxicological action, irrespective of the sources of exposure to humans. The Agency's policy is to consider and account for other sources of exposure in order to set protective health criteria. We disagree that uncertainty in the data should result in less stringent criteria. However, we have provided additional clarification on the guidance allowing less stringent assumptions when multiple sources of exposure are not anticipated.

The adequacy requirements for the Exposure Decision Tree are not unduly restrictive. The ideas of representativeness, quality assurance, and sampling size are fundamental to properly conducted monitoring studies. Furthermore, the minimal requirement of samples to make an (at least, nominally) acceptable estimate of average and high-end exposure from that relative source (*i.e.*, 45 samples) is not unreasonable guidance. EPA also believes that the number of decision points in the Decision Tree for any particular chemical are not excessive. We have provided additional discussion in the 2000 Human Health Methodology in order to clarify numerous issues on the Decision Tree approach, including the discussion on the use of defaults. We believe that probabilistic techniques are potentially appropriate for use and agree that they must be valid, appropriately applied, and clearly presented.

Regarding changes in ambient chemical concentrations that would affect the RSC calculation, States and authorized Tribes have the opportunity to make changes in their water quality standards during triennial reviews, and EPA would evaluate those changes based on information submitted with the proposed changes. Similarly, EPA would consider changes to AWQC when significant changes in sources of exposure occur that affect the default values.

19. Use of RSC With Carcinogenic Effects Based on Linear Low-Dose Extrapolation

Comments—A commenter advocated the use of an RSC factor with carcinogenic effects based on linear low-dose extrapolation in order to account for other sources of exposure.

Response—EPA does not apply the RSC to carcinogenic effects based on linear low-dose extrapolation because the AWQC are being determined with respect to the incremental lifetime cancer risk posed by a substance's presence in the exposure sources relevant to the specific criterion, not in terms of an individual's total cancer risk from all sources of exposure. In the case of carcinogens based on nonlinear low-dose response extrapolation or a noncancer endpoint where a threshold is assumed to exist, non-water exposures (*i.e.*, non-drinking water and non-fish ingestion exposures, and inhalation or dermal exposures) are considered when deriving the AWQC. The rationale for this approach has been that for pollutants with effect thresholds, the objective of the AWQC is to ensure that an individual's total exposure does not exceed that threshold level. Health-based and medium-specific criteria values for carcinogens based on a linear low-dose extrapolation typically vary from other medium-specific criteria values in terms of the concentration value, and often the associated risk level. Therefore, the RSC concept could not apply unless all risk assessments for a particular carcinogen based on a linear low-dose extrapolation used the same concentration value and same risk level; that is, an apportionment would need to be based on a single risk concentration value and level.

20. Use of Subtraction or Percentage Methods in RSC Apportionment

Comments—One commenter advocated the subtraction method instead of the percentage method for RfD apportionment, and advocated the use of central tendency values. This commenter criticized the percentage method as irrational and likely to produce overly stringent criteria. In addition, it was stated that the percentage method would allow criteria that could result in exposure levels that exceed the RfD when combined exposures are high. Other commenters expressed concern over basing the RSC on current levels of contamination. However, one believed that the percentage apportionment was reasonable given the difficulty in alternative apportionment methods (for example, an apportionment that would minimize the costs of reducing total exposure to/below a certain amount). One commenter suggested using a multiple default system.

Response—The first commenter has significantly misunderstood EPA's policy goals. The argument against use of the percentage approach is based on the idea that the maximum possible amount of chemical concentration, after subtracting other sources, should be allocated to drinking water criteria or standards. This is not EPA's goal nor is it stated in any relevant mandate. The rationale of deliberately removing the entire cushion between precriteria levels (*i.e.*, actual levels) and the RfD, and thereby setting criteria at the highest levels short of exceeding the RfD, is counter to the goals of the CWA for maintaining and restoring the nation's waters. It is also directly counter to Agency policies, explicitly stated in numerous programs, regarding pollution prevention. EPA has advocated that it is good health policy to set criteria such that exposures are kept low when current levels are already low. The subtraction method generally results in prospective criteria values for a contaminant in a particular medium at significantly higher levels than the percentage method and, in this respect, is contradictory to these Agency goals. In fact, many chemicals have existing levels in environmental media, based on available monitoring data, substantially lower (compared with the RfD) than the resulting criteria allow. This is the case with most of the theoretical examples that one commenter provided to refute the method.

The Agency has modified its policy with the Exposure Decision Tree approach to allow use of the subtraction method when multiple media criteria are not relevant. The Agency RSC Workgroup recommended that, although combined exposures above the RfD may or may not present an actual health risk, a combination of health standards exceeding the RfD may not be sufficiently protective. Therefore: (1) Maintaining total exposure below the RfD is a reasonable health goal; (2) there are circumstances where health-based criteria for a chemical should not exceed the RfD (either alone or in combination); and (3) the best way to prevent exceedance of the RfD is to apportion it when multiple health criteria are relevant to a given chemical. We believe that the percentage method is rational in the context of the above goals when multiple media criteria are at issue. However, as a commenter suggested, the percentage method does not simply depend only on the amount of the contaminant in the prospective criterion source. It is not a set amount. It is intended to reflect health considerations, the relative contribution of other sources, and the likelihood for ever-changing levels in each of those multiple sources (due to ever-changing sources of emissions and discharges). The percentage method does not break any "logical link," as a commenter suggested (the commenter referenced an unpublished report from discussions prior to the development of the Exposure Decision Tree approach). EPA is interested in knowing the amounts of current exposures, including water, and is always cognizant of their relationship to the RfD (one commenter suggested that EPA does not compare actual exposures to the RfD; this comparison is always known). We have historically evaluated chemicals in the context of their current levels (*i.e.*, ambient levels prior to either criteria development or regulatory activity). Evaluating these levels, along with the hazard identification, has historically formed the basis for prioritization and whether the Agency would pursue criteria or standards development. We disagree with the comment that criteria should be set without regard to the actual level of the contaminant. Actual levels are advocated by a commenter for use with the subtraction method. In the case of multiple criteria for a given chemical, the commenter's claim that the subtraction method will ensure that "an individual's exposure to a chemical does not exceed the RfD" is not necessarily guaranteed if criteria for other media allow for concentrations in environmental media that, combined, may result in exposures greater than the RfD. EPA acknowledges that the percentage approach outcome varies depending on the magnitude of current exposures, and we have sought to provide greater clarification on this policy issue in the 2000 Human Health Methodology. Of course, depending on the levels from each source, the subtraction method can also produce unstable values—that is, they could vary from very high, to moderate, to very low, even to a negative number.

As previously indicated, probabilistic analyses are appropriate when they are validated techniques that are applied correctly and supported by adequate data. However, much of the time, the amount of data available to describe distributions of exposure from various known sources to the U.S. population—for use in setting nationwide criteria—is inadequate to support meaningful probabilistic analyses. Nevertheless, rather than simply using a default value in every instance, the Agency attempts to compare exposure intakes based on available data to estimate their relative contribution to the total—given that understanding the degree to which their concentrations vary, or making any distributional analysis, is not possible. When multiple criteria are at issue, the criteria values are based on the best available information, with an assumption that there may be enough relative variability such that an apportionment (relating that percentage to the RfD) is a reasonable way of accounting for the uncertainty regarding that variability. Again, in the context of making an estimate of potential national exposures, there is great uncertainty in the range of exposures, and as previously stated, the goal is not to allow a water criterion to use up the "space" between the total exposure and the RfD. An example of the percentage apportionment's potential use is when pesticides are at issue. It does not make sense to allow the water criterion to use up that space when (in terms of the chemical's intended uses) the dietary route is obviously the "direct" source of exposure. When the course of pesticide tolerance-setting activities may, over time, vary the exact amount of the RfD taken up, an apportionment may also be best for pesticide program planning. The Exposure Decision Tree has allowed for the use of the subtraction approach when only one criterion is relevant. Also, given the future need to develop cumulative risk policies, the subtraction method in these cases could be a short-lived option.

Finally, one commenter incorrectly assumed that the percentage method would allow criteria that could result in exposure levels that exceed the RfD when combined exposures are high. Again, this commenter incorrectly assumed that EPA is not aware of the relationship of the estimated exposures to the RfD. The Exposure Decision Tree approach states that, in these situations, a risk management decision would be made in order to reduce exposures to levels that would prevent exceedance of the RfD. We have provided greater clarification on this issue in the 2000 Human Health Methodology. We have also provided clarification on the use of central tendency values when estimating exposures, which we do not believe to be fully adequate for protection of human health when setting national 304(a) criteria.

F. Bioaccumulation

1. Use of Bioaccumulation Factors (BAFs) in General

Comments—Overall, commenters were not adverse to incorporating bioaccumulation into criteria derivation, but were concerned with the methodology EPA proposed to use. Most comments received were focused on the general use of BAFs. Because of the site-specific nature that BAFs can take, several commenters are concerned with applying national BAFs developed from a limited set of data and array of aquatic systems, or from a model, to all waterbodies in the United States. Some commenters did not agree with EPA's proposed BAF tiered hierarchy. These commenters stated that EPA should not derive single national BAFs because there is substantial variation among waterbodies in factors that influence bioaccumulation (*e.g.*, food chain, metabolism, bioavailability, loading history). They recommended that BAFs be calculated on a site-specific basis, or that field-derived BAFs be used in conjunction with modeled BAFs in a weight-of-evidence approach to select a final BAF. Some commenters also wanted the BAF guidance to more clearly state how it applies to different groups of compounds (*e.g.*, nonionic organics, ionic organics, metals, organometallics). Several commenters did agree with EPA that field-derived BAFs better reflect potential exposure to chemicals from all sources than BCFs and incorporate factors in the field (*e.g.*, food chain, metabolism, chemical loading history, temperature) that can affect bioaccumulation.

Response—Although EPA acknowledges there are site-specific factors that affect bioaccumulation, we disagree that national BAFs should not be derived. For some pollutants (*e.g.*, PCBs, methylmercury), biomagnification through the food chain can be substantial. Using a BCF, which only accounts for exposure from the ambient water, could substantially underestimate the potential exposure to humans for some chemicals and result in criteria that are underprotective of the designated uses. Since publishing the 1980 Methodology, there has been a growing body of scientific knowledge that clearly supports the observation that bioaccumulation and biomagnification occur and are important exposure issues to consider for many highly hydrophobic organic compounds and certain organometallics (Russell *et al.*, 1999; Fisk *et al.*, 1998; USEPA, 1998d; Watras and Bloom, 1992; Oliver and Niimi, 1988; Swackhammer and Hites, 1988; Niimi, 1985; Oliver and Niimi, 1983). For highly persistent and bioaccumulative chemicals that are not easily metabolized, BCFs do not reflect what the science indicates. For this group of chemicals, bioaccumulation (*i.e.*, accumulation of a chemical in aquatic biota from all routes of exposure) should be accounted for in the derivation of water quality criteria in order to protect against unacceptable risks from contaminated biota. The use of properly derived BAFs will enable chemical exposure from all sources to be accounted for in water quality criteria. The lack of national BAFs would greatly hinder the development of water quality criteria because many States and authorized Tribes may not have the resources to develop site-specific BAFs. We continue to believe that using national BAFs is the most scientifically valid approach to deriving national AWQC.

EPA acknowledges that data available to derive national BAFs and to validate the overall bioaccumulation methodology are primarily limited to persistent, hydrophobic chemicals from selected locations (*e.g.*, Lake Ontario, Green Bay, Bayou d'Inde, Hudson River). However, we believe these chemicals and sites encompass a reasonable range of chemicals, locations, and ecosystems from which to evaluate the appropriateness of the bioaccumulation methodology. To obtain better representation of lotic (*e.g.*, river) systems, we also performed evaluation of the predictive BAF methods with PCB, pesticide, and chlorinated benzene data from the Hudson River and Fox River/Green Bay. In the vast majority of comparisons between the predicted BAFs and field-measured BAFs using all four methods, the predicted BAFs were in very good agreement with the field-measured BAFs. We further acknowledge commenters' concerns that certain portions of the methodology may not be applicable to some types of chemicals. As a result, we have developed additional guidance that restricts some aspects of the methodology to certain types of chemicals. For example, we have revised the 1998 draft Methodology revisions to remove the use of K_{ow}×FCM to estimate BAFs for chemicals that have been consistently shown to be metabolized substantially in aquatic biota (*e.g.*, certain PAHs) and have clearly differentiated which methods apply to ionizable chemicals and which do not.

We also recognize that there were some uncertainties in the 1998 draft Methodology revisions on how the BAF methodology would be applied both nationally and on a site-specific basis. In response to this, we made substantial revisions to the 1998 draft bioaccumulation methodology which we believe makes the revised methodology applicable on a national basis. First, we improved the readability and guidance presented in the bioaccumulation methodology based on public and peer reviewers' comments. Specifically, we separated guidance for developing national BAFs from guidance for developing site- or region-specific BAFs and revised the Methodology document to make it more clear to the reader on how EPA will derive national BAFs. Second, EPA expanded the guidance for deriving site- or region-specific BAFs to better enable such adjustments to be made by States and authorized Tribes. For example, we updated, expanded, and made more accessible the databases used to develop national values for lipid content in aquatic biota and organic carbon content in water. Third, we plan to develop detailed guidance to assist States and authorized Tribes in designing and conducting field studies to measure site-specific BAFs and BSAFs (biota-sediment accumulation factors). This guidance will specify our recommendations for how, when, where, and how often one should sample water, biota, and sediment for producing reliable measurements of BAFs and BSAFs.

In addition to improved clarity and expanded guidance, EPA believes the changes we made to the national BAF methodology address concern indicated by some public commenters about uncertainty in various aspects of the methodology. We believe the changes we have made reduce the uncertainty in several components of the national BAF methodology. For example, development of separate procedures for deriving BAFs for different chemical classes (*e.g.*, high vs. low hydrophobicity, high vs. low metabolism in biota, ionic vs. nonionic organics) will reduce uncertainty in national BAFs and simplify procedures. As part of these revisions, we recommended that K_{ow}-based estimates of BAFs and food chain multipliers (FCMs) not be used for nonionic organics that are known to be metabolized substantially in targeted biota (*e.g.*, some PAHs). Restrictions have also been placed on the use of the BSAF methodology so that the method is used for the chemicals for which it is most appropriate.

We clearly recognize that even with these revisions incorporated into the national BAF methodology, significant uncertainty might exist in the assessment and application of national BAFs at some sites throughout the United States because of the influence of site-specific factors. Therefore, we have more clearly indicated that development of site-specific BAFs is encouraged and supported when it can be shown that a national BAF is inappropriate, or when a State or authorized Tribe prefers to derive a site-specific BAF.

EPA agrees with commenters that in some cases it may be appropriate to derive a BAF using several of the recommended methods (Methods 1–4), with the final BAF chosen using a weight-of-evidence approach. We have provided general guidance on the assessment of uncertainty in using field-measured BAFs (and BAFs derived using the other methods) when deriving national BAFs. However, we do not believe that the mere existence of uncertainty means that national BAFs (and resulting national 304(a) water quality criteria) cannot be implemented effectively throughout the United States. For more than two decades, we have developed and implemented our national 304(a) water quality criteria (aquatic life and human health) through State, Tribal, and on occasion, Federal water quality standards programs. Implementation of this program has relied on the use of national 304(a) criteria as a cornerstone but has evolved to allow the use of procedures to modify national criteria by States and authorized Tribes where appropriate. EPA's national bioaccumulation methodology is consistent with this programmatic practice, by enabling States and authorized Tribes to readily adopt national 304(a) water quality criteria into standards (based on National BAFs) that achieve the CWA goals of protecting public health while also allowing site- or State-specific adjustments in situations where national AWQC may be considered overprotective or in some cases, underprotective.

Comments—Some commenters questioned the application of the BAF prediction approaches (Tiers 2–4; referred to as Methods 2–4 in the revised Methodology) on a national scale because the data used to validate the approaches and develop predicted BAFs come primarily from chemical partitioning relationships observed from a limited set of studies (*e.g.*, Great Lakes region).

Response—EPA agrees that the locations for which the BAF methodology has been fully applied are limited in number (*e.g.*, Lake Ontario, Green Bay). To address this concern, we have conducted additional assessments and comparisons among the bioaccumulation approaches (Methods 1–4) to further validate their usefulness and have validated the methods using other locations (*e.g.* Bayou d'Inde, LA, Fox River/Green Bay, Hudson River, NY). We acknowledge that a model prediction is not a perfect simulation of what occurs in a natural aquatic ecosystem and that uncertainty exists in the BAFs. However, this does not invalidate the usefulness of models validated using data from the Great Lakes and Hudson River in predicting bioaccumulation in other ecosystems. Results of analyses that support using a predictive bioaccumulation approach for a variety of chemicals and aquatic ecosystems can be found in Burkhard et al. (1997), Burkhard (1998), Oliver and Niimi (1988), Swackhammer and Hites (1988), and Oliver and Niimi (1983). Data from these studies clearly indicate that the food web is a dominate exposure route for many highly hydrophobic chemicals and that use of BCFs only underestimates exposure. EPA's proposed BAF methodology does account for some site-specific differences in bioaccumulation (an issue expressed by commenters) by considering factors such as percent lipid in the fish consumed and the freely dissolved concentration of the chemical in the ambient water (*i.e.*, a baseline BAF). This allows a BAF developed from one set of data and location(s) to be "normalized" and applied to another location. We believe the approach in the 2000 Human Health Methodology appropriately balances protectiveness with the uncertainties surrounding the science currently available to predict bioaccumulation. Comparisons of field-measured and predicted BAFs demonstrate agreement within an order of magnitude in the vast majority of cases, and often within a factor of two to five. Burkhard (1998) observed good agreement between measured and predicted BAFs for the Lake Ontario food web using the Gobas and Thomann food web models. For individual commonly detected PCBs and chlorinated pesticides, the BAFs estimated using the two Gobas and Thomann models were on average within a factor of 1.2 and 2.5 of the observed (*i.e.* field-measured) BAFs, respectively (Burkhard 1998). The overall uncertainties in each of these two bioaccumulation models (expressed as the ratio of the 90th to 10th percentile predicted BAF for each model) were a factor 3.6 and 4.0 for the Gobas and Thomann models, respectively (Burkhard 1998). Furthermore, Burkhard et al. (1997) reported that predicted BAFs (using EPA's national BAF methodology) were within a factor of 5 for 94% (n=32, using laboratory measured BCFs and FCMs) and 90% (n=48, using predicted K_{ow}s and FCMs) in Bayou d'Inde (Lake Charles, LA). These data comparisons show the good predictability of the methods used in the national BAF methodology. Should States or authorized Tribes have information to suggest that a national BAF is inappropriate for their situation, the 2000 Human Health Methodology specifically allows and encourages development of site-specific BAFs. With this in mind, we will be developing guidance on how to collect and interpret field data for the purpose of deriving site-specific field BAFs. This guidance will specifically address major sources of variability, including spacial and temporal factors and species life history.

Finally, to further address concerns that the predictive approaches used to derive BAFs may not be applicable at a

national scale, we revised the 1998 draft Methodology to clarify and limit for which chemicals and under what conditions BAFs based on Methods 2 to 4 are most applicable. For example, chemicals were grouped into broad categories based on their persistence and bioaccumulation potential (*e.g.*, high vs. low hydrophobicity, high vs. low biota metabolism, ionic vs. nonionic), and we have limited the use of predicted BAF approaches to selected groups of chemicals for which the data reasonably support their use (*i.e.*, highly hydrophobic chemicals that are not expected to be metabolized appreciably). The national BAF methodology was also changed to indicate that for those chemicals with sufficient data to indicate they are metabolized, model-predicted BAFs are not recommended; rather, field BAFs or laboratory BCFs are recommended. The use of the BSAF methodology has been restricted to chemicals that are highly hydrophobic (*e.g.*, log $K_{ow} \geq 4$).

EPA believes these revisions to the 1998 draft Methodology have improved the Methodology and have addressed many of the commenters' concerns and questions about uncertainty in applying the various approaches and BAFs on a national scale.

Comments—One commenter suggested that it is "scientifically indefensible to use the field-measured BAF procedure to derive BAFs for benthic systems." They commented that in a benthic-based aquatic food web, the water column concentration of a chemical is not directly related to aquatic organism exposure potential for that chemical. Therefore, their view is that a field-measured BAF may over- or underestimate bioaccumulation in benthic-based systems.

Response—EPA acknowledges that the concentration of a chemical in the water column is not directly related to what pelagic organisms (*i.e.*, fish) are exposed to in a benthic-based system. However, the concentrations of a chemical in water, sediment, and fish are interconnected, although they may not be equally partitioned into each compartment, and residues in fish can be predicted equally well using either a sediment or water concentration as the starting basis. In the revised TSD on Bioaccumulation, the relationships between BAFs and BSAFs have been shown more clearly in order to demonstrate this interconnectedness. In the BAF methodology, we are assessing exposure through all routes (*i.e.*, from water, sediment, and contaminated food) in the aquatic ecosystem. By including all routes of exposure, the BAFs do not assume simple water-fish partitioning; rather they are an overall expression of the total bioaccumulation using the concentration of the chemical in water column as a reference point. Thus, a field-measured BAF or BASF at any given time is reflective of historic chemical loadings and bioaccumulation that has occurred. EPA does agree that a BAF may change over time because of differential chemical loadings; however, some frame of reference has to be chosen as the starting point to assess bioaccumulation. EPA has chosen to use the water concentration as that reference point. Science has shown that bioaccumulation occurs and is an important exposure pathway to humans for many chemicals, and EPA cannot ignore bioaccumulation in development of its AWQC simply because variability and uncertainty exist. In situations where chemical loadings are highly variable or are reduced substantially, EPA believes that a field-measured BAF will still be predictive of what will bioaccumulate in fish until the concentrations in sediments and benthic organisms are reduced enough to lead to reduced bioaccumulation. In situations such as this, a revised site-specific field BAF can be developed to reflect the change in chemical loading and partitioning.

This issue of field-measured BAFs and benthic-based food webs was also brought up in public comments made at the stakeholders meeting held in May 1999. At that time, we asked commenters if they could recommend another approach to assess bioaccumulation in benthic-based systems. No other approaches were suggested. We have concluded that in the absence of any other approaches, field-derived BAFs are good predictors of bioaccumulation because they integrate biological, chemical, and physical factors that influence bioaccumulation.

2. Guidance for Deriving Field Bioaccumulation Factors (BAFs)

Comments—Several commenters agreed with EPA that field-derived BAFs should take precedence over modeled BAFs. However, many commenters discussed the need for guidance on how to collect and review field data so that high-quality, field-based BAFs can be derived. Commenters noted that there are numerous site-specific biological, chemical, and physical factors that affect bioaccumulation, which should be considered during design of field sampling programs.

Response—We agree that properly derived field BAFs should take precedence over modeled BAFs; we have clearly indicated in the 2000 Human Health Methodology that this is our preferred approach for deriving a BAF. We also acknowledge that, as with any field measurement, there can be errors in determining field-measured BAFs. In the development of national BAFs, EPA will attempt to minimize potential errors or uncertainties by carefully screening the data based on the criteria outlined in the Bioaccumulation TSD. Furthermore, an additional validation of national BAFs will be conducted as part of the external peer review process that occurs for all published 304(a) water quality criteria. We continue to assert that for many chemicals, a field-measured BAF is a better gauge of what is occurring in nature than a laboratory-measured or predicted BCF; the BAF measures the actual effects of bioavailability, concentration in the water or sediment, growth dilution, metabolism, and biomagnification rather than predicting them through use of a model. We do agree with commenters concerned about the difficulty of collecting and interpreting field-measured BAFs; however, we believe that States and Tribes can adequately design and interpret field studies. To assist them in this task, we will be developing guidance concerning field data collection and interpretation for site-specific field-measured BAFs and BSAFs.

3. Use of Biota-Sediment Accumulation Factors (BSAFs)

Comments—Several commenters stated that the use of the BSAF approach for deriving a BAF is inappropriate. Some comments centered around the perceived lack of validation and peer review of the BSAF approach, and others focused on the relationship between the water column concentration of a chemical and its sediment concentration, represented by the factor Π_{socw}. One commenter noted that the BSAF method is simply a means to predict a water concentration of a chemical of interest from the sediment concentration of that chemical, the water and sediment concentration of a reference chemical(s), and the ratio of K_{ow} for the chemical of interest and the reference chemical(s). A commenter indicated that loading history of a given chemical directly affects what the value of Π_{socw} would be at any given time, and that Π_{socw}/K_{ow} (disequilibrium ratio) for the chemical in question and the reference chemical has to be constant under the assumptions of the BSAF approach. The commenter stated, however, that Π_{socw}/K_{ow} will not be constant because of differential loading histories, and that because the concentration of the chemical of interest cannot be measured in water, the assumptions about Π_{socw}/K_{ow} cannot be verified. In their view this made the use of BSAFs invalid.

Response—The method of predicting BAFs from BSAFs has been evaluated for certain pesticides, PCBs, chlorinated benzenes, and dioxins using two data sets from Lake Ontario (Oliver and Niimi,1988;USEPA, 1990) and one from Green Bay (USEPA, 1992b). EPA has also recently completed further evaluation of this method for certain PCB congeners, pesticides, and chlorinated benzenes in Lakes Ontario, Green Bay, and the Hudson River. This additional evaluation and validation work is included in the Bioaccumulation TSD. The evaluations show that in the vast majority of situations, the BSAFs predict field-measured BAFs very well.

EPA agrees with the commenter who noted that the BSAF method is structured to predict water concentrations for chemicals that cannot be measured for the purpose of directly measuring a field BAF. However, the BSAF method is more important for its ability to capture the net effect of biomagnification, food web structure, hydrophobicity, bioavailability factors, and metabolism on a specific chemical's net potential for bioaccumulation. The BSAF method is needed to predict BAFs for chemicals with nondetectable and difficult-to-predict concentrations in water (*e.g.*, dioxins). No alternative methods to predict BAFs for such chemicals were identified by either public commenters or peer reviewers. The BSAF method equation has been modified (see below) in the Bioaccumulation TSD to clarify the essential data components of the method. The revised BSAF equation shows that measured concentrations in water and surface sediment, not a complete BSAF, are needed for the reference chemical. The equation also shows that a measured BSAF for the chemical of interest is the most important component for determination of a BAF when the concentration in water cannot be measured.

EPA agrees with commenters that the BSAF method should not be used for all organic chemicals that may be addressed through the 2000 Human Health Methodology, and accordingly have restricted application of the method to nonionic organic chemicals with log K_{ow}s ≥ 4.0. We have also provided more specific guidance on selection of reference chemicals and use of multiple reference chemicals to secure the most accurate estimate of a chemical's BAF.

One commenter contended that the BSAF approach for deriving BAFs is seriously flawed. The concern is that the approach is valid only if a reference chemical (chemical r) can be found with a sediment-water fugacity ratio (which represents the differential partitioning of a chemical between water and sediment) equal to that of the chemical for which the BAF is being determined (chemical of interest). The commenter contends that the BSAF approach could validly be used only if it could be shown that the fugacity ratio is a constant for the chemical of interest and the reference chemical. The commenter submitted figures to demonstrate conceptually that two chemicals with radically different loading histories will have dissimilar fugacity ratios. EPA disagrees that in order for the BSAF to work, the fugacity ratio has to be constant, but does agree that in order to best use the BSAF approach, a general knowledge of chemical loading histories to an ecosystem is needed to help provide a basis for choosing appropriate reference chemicals. Such information may be obtained from chemical production records, historical fish residue monitoring data, or dated sediment core analysis. We recognize that due to various factors (loading histories, microbial degradation, etc.) fugacity ratios for both chemical (i) and (r) may shift over time, leading to the potential for temporal variability of sediment-water distributions of nonpolar organic chemicals. Although it was not shown explicitly in the 1998 draft TSD, an important benefit of the BSAF approach is that it can account precisely for such differences in sediment-water distributions of nonpolar organic chemicals. The BSAF method is robust to the extent that the choice of reference chemicals is based on meeting the sediment-to-water fugacity ratio condition: That the ratios be similar—they do not have to be constant. The extent that these ratios for chemicals with log K_{ow}s ≥ 4 may change with chemical loading over long periods of time after sediments become contaminated, and thereby contribute to small shifts in BSAFs and larger shifts in BAFs, is an issue of possible concern that EPA recognized in the 1998 draft TSD. EPA noted on page 188 of the TSD (USEPA, 1998d) that "BSAFs measured for systems with new chemical loadings or rapid increases in loadings may be unreliable due to underestimation of steady-state C_{soc}s."

To better address the water-to-sediment relationship issue, EPA has revised the equations that serve as the basis for deriving a BSAF. In the revised equations, a factor $D_{i/r}$ has been added, which is defined as the ratio of the fugacity gradient (modeled as Π_{socw}/K_{ow}) between sediment and water for chemical (i) in comparison to that of a reference chemical (r). The revised equations are as follows:

$$\frac{\left(\prod_{socw}\right)_i}{\left(K_{ow}\right)_i} = \left(D_{i/r}\right)\frac{\left(\prod_{socw}\right)_r}{\left(K_{ow}\right)_r} \qquad (1)$$

$$\text{thus, } \left(\prod_{socw}\right)_i = \frac{\left(D_{i/r}\right)\left(\prod_{socw}\right)_r\left(K_{ow}\right)_i}{\left(K_{ow}\right)_r}$$

By definition, Π_{socw} can be used to relate chemical i's BSAF to its BAF_{ℓ}^{fd}:

$$\left(\prod_{socw}\right)_i = \frac{\left(C_{soc}\right)_i}{\left(C_w^{fd}\right)_i} = \frac{\left(\mathrm{BAF}_{\ell}^{fd}\right)_i}{(\mathrm{BSAF})_i} \qquad (2)$$

$$\text{thus, } \left(\mathrm{BAF}_{\ell}^{fd}\right)_i = (\mathrm{BSAF})_i\left(\prod_{socw}\right)_i$$

By substituting rearranged Equation 1 into rearranged Equation 2:

$$\left(\mathrm{BAF}_{\ell}^{fd}\right)_i = (\mathrm{BSAF})_i\,\frac{\left(D_{i/r}\right)\left(\prod_{socw}\right)_r\left(K_{ow}\right)_i}{\left(K_{ow}\right)_r} \qquad (3)$$

where:

$(\mathrm{BAF}_{\ell}^{fd})_i$ = BAF expressed on a freely dissolved and lipid-normalized basis for chemical of interest "i".

$(\mathrm{BSAF})_i$ = Biota-sediment accumulation factor for chemical of interest "i".

$(C_{soc})_i$ = Concentration of chemical of interest "i" in sediment normalized to sediment organic carbon.

$(C_{soc})_r$ = Concentration of a reference chemical in sediment normalized to sediment organic carbon.

$(C_w^{fd})_i$ = Concentration of chemical of interest "i" freely dissolved in water.

$(C_w^{fd})_r$ = Concentration of the reference chemical freely dissolved in water.

$D_{i/r}$ = ratio between Π_{socw}/K_{ow} for chemicals "i" and "r" (normally chosen so $D_{i/r} = 1$).

$(K_{ow})_i$ = octanol-water partition coefficient for chemical of interest "i".

$(K_{ow})_r$ = octanol-water partition coefficient for the reference chemical "r".

$(\Pi_{socw})_i$ = sediment organic carbon to water freely dissolved concentration ratio of chemical of interest "i".

$(\Pi_{socw})_r$ = sediment organic carbon to water freely dissolved concentration ratio of reference chemical "r".

Equation 3 is intended to provide an improved representation of how the BSAF method/model works. By using $D_{i/r}$, the new equation accounts for differences in sediment to water column concentrations that might exist between the chemical of interest and the reference chemical because of factors such as loading histories or degradation. Unlike one commenter's analysis, in which an equation was derived without the BAF or BSAF, equation 3 shows these quantities as central to the model; that is, the BSAF is measured and then transformed into a BAF by estimating the chemical's Π_{socw}/K_{ow}. This model could alternatively be described as a determination of $(C_w^{fd})_i$ from a measured value of $(C_{soc})_i$ combined with a measured value of $(C_{\ell})_i$ to give an accurate measure of $(\mathrm{BAF}_{\ell}^{fd})_i$. However, we believe that equation 3 best describes the BSAF method as allowing measured BSAFs to be transformed into BAF_{ℓ}^{fd}s for the specific purpose of developing either national or a site-specific water quality criteria when directly measured BAF_{ℓ}^{fd}s cannot be obtained.

When good-quality data are available for reference chemicals (r) that should have equal or similar sediment-water fugacity ratios as a chemical (i) whose $(\mathrm{BAF}_{\ell}^{fd})_S$ cannot be measured directly, then $D_{i/r} = 1$. When $D_{i/r} \leq 1$, it may be estimated based on properties of the chemicals and knowledge of their loading histories to the ecosystem. Equation 3 provides a greater degree of flexibility for use of the BSAF method than the original equation. This flexibility highlights a logical stepwise transition from measured to fully modeled site-specific BAFs that can incorporate estimates of $D_{i/r}$ through fate modeling, should interested parties choose to do so. In such a situation, if the uncertainty associated with choice of $D_{i/r}$ is perceived to be too great, a determination of a site-specific $(\mathrm{BAF}_{\ell}^{fd})_i$, which still takes advantage of measured values of $(C_{\ell})_i$ and $(C_{soc})_i$, could be accomplished if a mass balance model, specifically calibrated with $(C_{\ell})_i$ and $(C_{soc})_i$, is used to predict $(C_w^{fd})_i$. Such an approach would be time consuming and expensive but would allow prediction of $(\mathrm{BAF}_{\ell}^{fd})_i$ over time as a function of changes in $(\Pi_{socw})_i$ associated with anticipated changes in mass loading of the chemical into an ecosystem. In cases where the intended use of the site-specific criterion is to determine permit conditions or establish a TMDL, a mass balance model presumably would have to be developed, and thus use of the model for providing a $(\mathrm{BAF}_{\ell}^{fd})_i$ would not require an extraordinary effort. However, as with the BSAF method, it should be noted that mass balance model predictions of $C_w^{fd}{}_i$ also cannot be directly validated through measurements. EPA's appreciation for the value of hybrid models comes from recognition that incorporation of measured bioaccumulation potentials, including those provided by the BSAF method, are especially advantageous for those chemicals with transformation rates, such as metabolism throughout the food chain, that are presently not accurately known or incorporated into mechanistic bioaccumulation models.

Finally, we disagree with the circular argument that the BSAF approach has "extremely limited utility" because "it will not be possible to demonstrate that Π_{socw}/K_{ow} is a constant" because Π_{socw}/K_{ow} cannot be measured directly for one chemical. The inherent limitation for validation of a predicted BAF because of the inability to measure the concentration of freely dissolved chemical in water (C_w^{fd}) applies to any approach/model available and is not a just criterion for rejection of a BAF method. Validation may be based on the ability of the BAF to predict concentrations in fish from predicted values of C_w^{fd}. Data from the Great Lakes clearly show that such predictions are possible, and accurate (USEPA, 1998d). It should also be noted that during the external peer review of the BSAF approach, the peer reviewers stated "for the chemicals examined (persistent and bioaccumulative), extrapolation to other circumstances may be reasonable," thereby disagreeing with public commenters. EPA believes that restricting the use of the BSAF method to highly hydrophobic chemicals, clarifying the use of reference chemicals, elaborating on the primacy of the sediment-water fugacity equivalence condition for use of the method, and validation with additional data sets alleviates concerns about using this new method.

4. Dissolved Organic Carbon (DOC) and Particulate Organic Carbon (POC)

Comments—Two comments were received on the DOC/POC approach used to determine the bioavailable fraction of organic chemicals in surface water and sediments. Rather than solely use default organic carbon values, commenters wanted to the ability to select DOC/POC values they believe are more representative of their waterbody type or site-specific conditions.

Response—In the 2000 Human Health Methodology, EPA allows use of site-specific DOC and POC data when normalizing the BAF to organic carbon content. One can either conduct studies to generate the necessary site-specific data or modify the national organic carbon database to their particular site and conditions. To facilitate the latter, we have updated and expanded the organic carbon database used to develop the national default POC/DOC values to enable the regulated community to choose which values best represent their site conditions and will provide defensible site-specific DOC and POC estimates. The national DOC/POC database will be made available for use by all States, Tribes, and other members of the regulated community.

5. Fish Lipid Content

Comments—A commenter stated that lipid content can affect the results of the Gobas model used to derive national default FCMs. The commenter noted that the model is relatively insensitive to fish lipid content but more sensitive to benthic invertebrate lipid content. They believed this should be considered in the development of FCMs.

Response—EPA agrees that lipid content can affect the results of the Gobas model and is only using the Gobas model with default lipid values to derive national BAFs when there are no data to derive a field-measured BAF. In cases where a State or authorized Tribe has site-specific data on fish lipid content, the revised methodology allows input of those site-specific data to estimate bioaccumulation. Furthermore, to facilitate the generation of site-specific lipid values, we have updated and expanded the lipid database used to develop the national default values based on a whole range of organisms commonly consumed by persons in the United States. We will include additional guidance for States and authorized Tribes on how to adapt the national default lipid values to reflect State and local consumption patterns. To enable such adaptions, EPA will make the raw data available to States and authorized Tribes.

6. Use of Food Chain Multipliers (FCMs)

Comments—Several commenters stated that the use of model-derived FCMs (Gobas 1993) to calculate a BAF from either a BCF or a K_{ow} (Methods 3 and 4) is inappropriate. The commenters noted issues with several of the default input parameters (*e.g.*, food web, lipid, Π_{socw}, temperature). The primary concern of commentors is that Gobas model-based national default FCMs do not account for site-specific factors that influence bioaccumulation, such as food web structure, nor does the current use of the model account for metabolism. Commenters expressed concern that use of default FCMs in predictive approaches may lead to overestimates of bioaccumulation. Some commenters preferred the use of field-based FCMs or direct use of the Gobas model, which allows for input of site-specific data and metabolism rates if available, rather than uses of model-derived default FCMs.

Response—EPA is using a state-of-the-art food web model for deriving FCMs, which incorporates the latest thinking and knowledge on the processes occurring in aquatic food webs. Commenters suggested that the assumptions used in constructing these models are not appropriate. We recognize that any modeling formulation of contaminant behavior in aquatic food webs requires simplification of a very complex biological system in order to assemble a tractable model. These simplifications do not imply or mean that our scientific understanding of all processes occurring in food webs is complete. As documented in the scientific literature, these simplifications provide reasonable model formulations with good predictive power. The suggestion that every modeling assumption has to be completely understood and validated under all circumstances before using or constructing a useful modeling tool is unreasonable. EPA has performed a detailed analysis of the importance and sensitivities of individual input parameters for food web models and of the overall uncertainties associated with predictions from food web models (Burkhard 1998). We have provided a discussion in the Bioaccumulation TSD of the Gobas model and implications that uncertainties in their respective input parameters have on derived FCMs. EPA has retained the use of Gobas model to derive default FCMs.

To address national versus site-specific concerns expressed by some commenters, the methodology has been revised to separate the BAF methodology into national and site-specific guidance. The national methodology for deriving national BAFs retains the use of default FCMs based on a mixed benthic/pelagic food web and national averages of various model input values. We believe this food web is the most broadly applicable food web encountered in nature; its use results in FCMs that are midway between pure benthic and pure pelagic structures. The revised guidance includes a brief discussion of the uncertainties associated with our selection of the mixed benthic/pelagic food web. In the site-specific guidance, the 2000 Human Health Methodology provides guidance on which of EPA's recommended FCMs to use depending on the situation. In addition, we encourage direct use of the Gobas model by stakeholders so that changes could be made to the default food web inputs to reflect site-specific factors that influence bioaccumulation, and also encourage derivation of field-based FCMs. States and authorized Tribes have the option to generate site-specific FCMs by conducting site-specific field studies, reviewing published literature, or using other scientifically defensible models.

Although several commenters criticized the national application of the Gobas model because metabolism rate is set equal to zero, the peer review panel acknowledged EPA's position that there are currently no acceptable methods available to adequately determine species and chemical-specific metabolism rates for use in the Gobas model. Because EPA agrees that for certain chemicals metabolism can be an important factor in bioaccumulation, the revised methodology does not use FCM-based predictions for chemicals that are expected to be metabolized substantially. To assist users of the 2000 Human Health Methodology in determining for which chemicals or groups of chemicals metabolism should be of little concern, we have developed a table of chemicals that are not substantially metabolized or are likely very slowly metabolized. This table has been put in the Bioaccumulation TSD. The table is not all inclusive because there are numerous chemicals (*e.g.*, hundreds of thousands in use commercially today) for which few or no metabolism data exist, but is representative of chemicals or groups of chemicals that are likely to be commonly encountered in aquatic systems. When metabolism is suspected, users of the 2000 Human Health Methodology might be more inclined to use or develop field data and/or measure a BCF in the laboratory in these situations. It should also be noted that in the future, should appropriate chemical and species-specific metabolism data become available, the Gobas model can incorporate it with little effort.

Finally, EPA partially agrees with commenters that certain procedures of the 1998 draft Methodology revisions (*e.g.*, K_{ow} and FCM-predicted BAFs) might lead to overestimates of BAFs for certain types of pollutants, such as those that are metabolized substantially to chemical forms not addressed by the AWQC. In response to this issue, and as discussed previously, additional guidance and limitations have been placed on several of the procedures in the revised methodology. However, EPA does not agree with the notion that our methodology would lead to a general over prediction for all BAFs. We use central tendencies where possible for all inputs in the Gobas model, and a geometric mean BCF for chemicals that have more than one BCF for a given trophic level. Thus, we know of no reason why laboratory-measured BCFs multiplied by a FCM would always result in overestimates of BAFs, or why the BSAF and K_{ow} * FCM-predicted BAFs applied to highly hydrophobic contaminants that do not metabolize substantially would be biased a priori toward overestimating BAFs. These views are supported by information in the 1998 TSD (Exhibits 2.4.1, 2.4.3 and 2.4.6 for BSAFs), Burkhard *et al.* (1997) for the K_{ow}*FCM method, and information presented in the Bioaccumulation TSD.

7. Fish Tissue Criteria

Comments—A few commenters suggested that for selected highly bioaccumulative chemicals that are difficult to measure in water, criteria based on fish tissue concentration may be more appropriate than ambient water column concentration criteria.

Response—Regarding fish tissue criteria, EPA agrees that the development of human health criteria for highly bioaccumulative chemicals which are expressed in terms of tissue residues in aquatic organisms is worthy of consideration. However, such tissue residue criteria would still require a mechanism to relate chemical loads and concentrations in water and sediments to concentrations in tissues of appropriate aquatic organisms (*i.e.*, bioaccumulation factors or bioaccumulation models). EPA is presently exploring the feasibility of developing tissue-based criteria and is evaluating numerous issues associated with implementation of tissue-based criteria. At an appropriate in the future, EPA will consider development of additional guidance on tissue residue criteria pending the outcome of this evaluation.

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This Notice finalizes revisions to EPA's 1980 Methodology for the development of water quality criteria to protect human health. The revisions reflect scientific advancements since 1980 in a number of areas, including cancer and noncancer risk assessments, exposure assessments and bioaccumulation. The revised Methodology provides guidance to States, Tribes, and the public on the approach that EPA expects to take in developing recommended human health criteria. The revised Methodology also provides guidance to States and Tribes that they may use in developing human health criteria as part of their water quality standards; States and Tribes use such standards in implementing a number of environmental programs, including setting discharge limits in NPDES permits. The revised Methodology does not substitute for the Clean Water Act or EPA's regulations; nor is it a regulation itself. Thus, the revised Methodology cannot impose legally-binding requirements on EPA, States, Tribes or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA and State/Tribal decision-makers retain the discretion to use different, scientifically defensible, methodologies to develop human health criteria on a case-by-case basis that differ from this guidance where appropriate. EPA may change the Methodology in the future through intermittent refinements as advances in science or changes in Agency policy occur.

This criteria Methodology incorporates scientific advancements made over the past two decades. The use of this Methodology is an important component of the Agency's efforts to improve the quality of the Nation's waters. EPA believes the Methodology will enhance the overall scientific basis of water quality criteria. Further, the Methodology should help States and Tribes address their unique water quality issues and risk management decisions, and afford them greater flexibility in developing their water quality programs.

Dated: October 24, 2000.

J. Charles Fox,

Assistant Administrator for Water.

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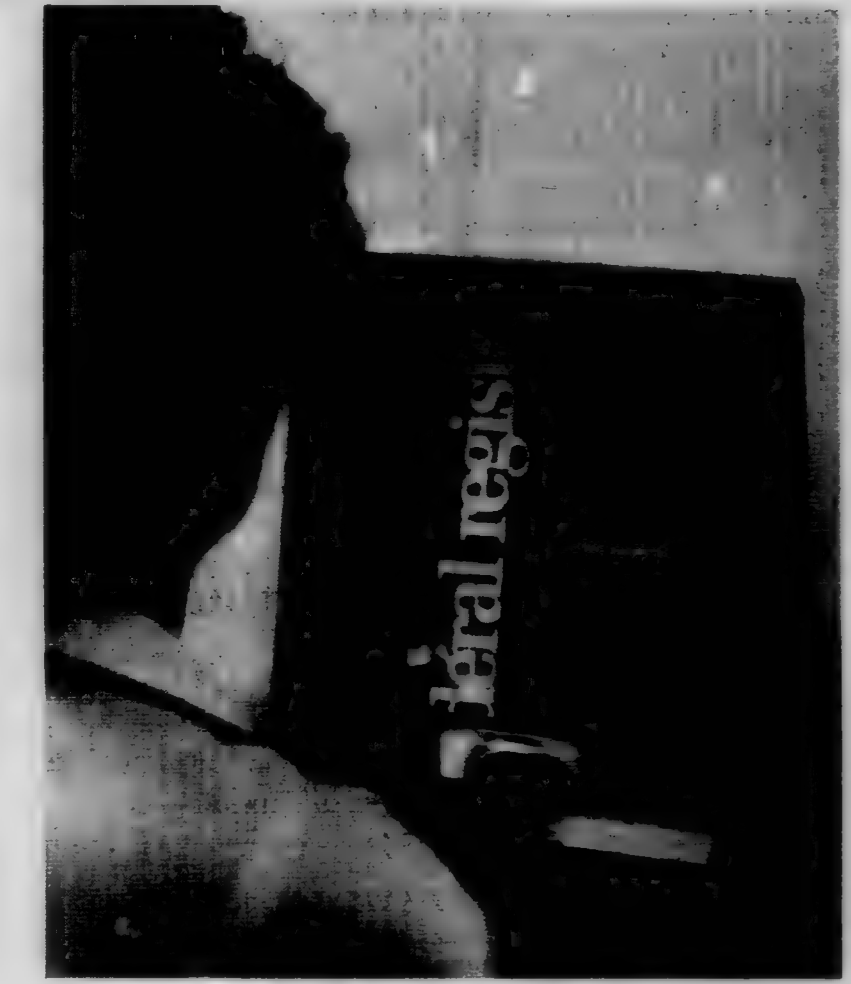

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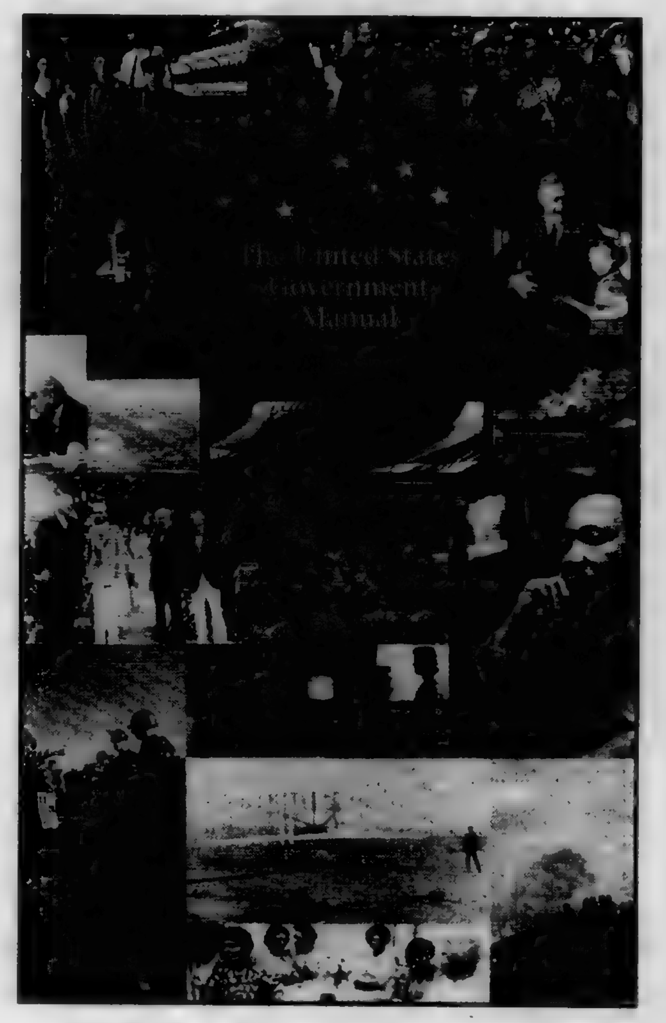

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The President

Presidential Determination No. 2001–03 of October 28, 2000

Determination to Waive Attachment Provisions Relating to Blocked Property of Terrorist-List States

Memorandum for the Secretary of State [and] the Secretary of the Treasury

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 2002(f) of H.R. 3244, "Victims of Trafficking and Violence Protection Act of 2000," (approved October 28, 2000), I hereby determine that subsection (f)(1) of section 1610 of title 28, United States Code, which provides that any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S. App. 5(b), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1702), and proclamations, orders, regulations, and licenses issued pursuant thereto, be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state claiming such property is not immune from the jurisdiction of courts of the United States or of the States under section 1605(a)(7) of title 28, United States Code, would impede the ability of the President to conduct foreign policy in the interest of national security and would, in particular, impede the effectiveness of such prohibitions and regulations upon financial transactions. Therefore, pursuant to section 2002(f) of H.R. 3244, the "Victim's of Trafficking and Violence Protection Act of 2000," I hereby waive subsection (f)(1) of section 1610 of title 28, United States Code, in the interest of national security. This waiver, together with the amendment of subsection (f)(2) of the Foreign Sovereign Immunities Act and the repeal of the subsection (b) of section 117 of the Treasury and General Government Appropriations Act, 1999, supersedes my prior waiver of the requirements of subsections (a) and (b) of said section 117, executed on October 21, 1998.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, October 28,2000.

[FR Doc. 00–28533
Filed 11–03–00; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 65, No. 215
Monday, November 6, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV–00–326]

Processed Fruits and Vegetables

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations governing inspection and certification for processed fruits, vegetables, and processed products made from them by increasing by approximately three to nine percent fees charged for the inspection services. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services under the Agricultural Marketing Act of 1946. The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Act of 1937 would also be affected.

EFFECTIVE DATE: November 19, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Rodeheaver, Branch Chief, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, DC 20090–6456, telephone (202) 720–4693, or e-mail *James.Rodeheaver@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined not significant for purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. Also, pursuant to the requirements of the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The Processed Products Branch (PPB) of the Fruit and Vegetable Programs, AMS, has and will continue to seek out cost savings opportunities and implement appropriate changes to reduce its costs. Such actions can provide alternatives to fee increases. The fee schedule was last revised on October 4, 1998 (63 FR 50745). However, even with such efforts, the existing fee schedule will not generate sufficient revenues to cover lot, year round, and less than year round inspection program costs and sustain an adequate reserve balance. PPB programs for lot, year round, and less than year round will have obligations in FY 2000 of approximately $12.9 million, necessitating a reserve of $4.3 million. The current reserve is $2.6 million. Current revenue projections for FY 2000 without a fee increase are $12.0 million while program costs increase to approximately $13.1 million in FY 2001. These cost increases will result primarily from increases in salaries and benefits. Accounting for a significant portion of the total operating budget, salaries rose from 3.54 to 4.02 percent, effective January 1999, increasing the cost of operating these programs by $295,000. A 4.8 percent pay increase effective January 1, 2000, increased program costs another $385,000. The revenue projections, that include final fees, are $13.5 million for FY 2001. The final fee increase of approximately 3 to 9 percent, should result in an estimated approximately $1.0 million in FY 2001 and should enable PPB to cover its costs and re-establish adequate program reserves.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. This action would increase user fee revenue generated under the lot inspection program and the year round and less than year round inspection programs by approximately $1,020,000 annually. This action is authorized under the AMA of 1946 [see 7 U.S.C. 1622(h)] which provides that the Secretary of Agriculture assess and collect "such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *".

There are more than 1,250 users of PPB's lot, and less than year round and year round inspection services (including applicants who must meet import requirements,[1] inspections which amount to under 2 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). There will be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this rule. PPB has not identified any other federal rules which may duplicate, overlap or conflict with this final rule.

Inspection services covered by this final rule are voluntary, except when required for certain imported commodities under 7 CFR Parts 944 and 999. The total fees charged to users of these services vary with usage. The impact on all businesses, including small entities, is very similar. Further, even though fees will be increased, the amount of the increase is small (three to nine percent), and should not significantly affect these entities. Finally, except for those applicants who are required to obtain inspections in connection with certain imports these businesses are under no obligation to use these inspection services.

Executive Order 12988

The rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect and will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

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[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–604), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect.

Currently, there are 4 processed commodities subject to 8e import regulations: canned ripe olives, dates, prunes, and processed raisins. A current listing of the regulated commodities can be found under 7 CFR Parts 944 and 999.

Final Action

The AMA authorizes official inspection, grading, and certification for processed fruits, vegetables, and processed products made from them. The AMA provides that the Secretary collect reasonable fees from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This rule will amend the schedule for fees for inspection services rendered to the processed fruit and vegetable industry to reflect the costs necessary to operate the program.

AMS regularly reviews its user fee programs to determine if the fees are adequate. While PPB continues to pursue opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover lot, less than year round and year round inspection program costs while maintaining an adequate reserve balance.

PPB programs for lot, year round, and less than year round will have obligations in FY 2000 of approximately $12.9 million, necessitating a reserve of $4.3 million. The current reserve is $2.6 million. Current revenue projections for FY 2000 without a fee increase are $12.0 million while program costs increase to approximately $13.1 million in FY 2001. These cost increases will result primarily from increases in salaries and benefits. Accounting for a significant portion of the total operating budget, salaries rose from 3.54 to 4.02 percent, effective January 1999, increasing the cost of operating these programs by $295,000. A 4.8 percent pay increase effective January 1, 2000, increased program costs another $385,000. The revenue projections, that include final fees, are $13.5 million for FY 2001. The final fee increase of approximately 3 to 9 percent, should result in an estimated approximately $1.0 million in FY 2001 and should enable PPB to cover its costs and re-establish adequate program reserves.

Based on the aforementioned analysis of increasing program costs, AMS is increasing the fees relating to lot inspection service and the fees for less than year round and year round inspection services. For inspection services charged under § 52.42, overtime and holiday work would continue to be charged as provided in that section. For inspection services charged on a contract basis under § 52.51 overtime work would also continue to be charged as provided in that section. The following fee schedule compares current fees and charges with final fees and charges for processed fruit and vegetable inspection as found in 7 CFR §§ 52.42–52.51. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 52.42 are:

Current	Final
43.00/hr	$47.00/hr.

Charges for travel and other expenses as found in § 52.50 are:

Current	Final
$43.00/hr	$47.00/hr.

Charges for year-round in-plant inspection services on a contract basis as found in § 52.51(c) are:

(1) For inspector assigned on a year-round basis:

Current	Final
$35.00/hr	$36.00/hr.

(2) For inspector assigned on less than a year-round basis: Each inspector:

Current	Final
$45.00/hr	$48.00/hr.

Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis as found in § 52.51 (d) are

(1) Each inspector:

Current	Final
$45.00/hr	$48.00/hr.

A notice of proposed rulemaking was published in the **Federal Register** (65 FR 39824) on June 28, 2000, with a 60-day comment period. The comment period closed on August 28, 2000. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Agricultural Marketing Service. Two comments were received regarding this proposed rule.

The first, from a student, concerned with the specific cost-reducing alternatives considered by AMS to offset salary increases, inflation and to maintain fiscal stability in the program. The second comment was from a processor, which urged that we reduce the rate of the proposed increase by applying cost savings.

AMS is continually seeking ways to reduce costs to the industry and increase operational efficiency. Since the last fee increase for processed fruit and vegetable grading and certification services in October 1998, AMS downsized a field office to an inspection point, closed three inspection points, eliminated several grading and clerical positions, and postponed filling several vacated positions. These steps have resulted in a cumulative cost saving of approximately $561,500.

The processor expressed concern with the rate of the fee increase, characterizing it as "very steep." The commenter indicated that the rate increases exceeded inflation since 1998 and that its own hourly rate for its manufacturing personnel and its selling prices have not risen as much as the fee rates over the past two years. The processor concluded that the cost burden of the fee increases to manufacturers would be substantial and noted that over the past ten years the hourly fee has increased from $28.00 per hour to $48.00. The commenter observed that the rate of increase would exceed wage increases in that time frame.

As discussed above, the AMA provides that AMS collect reasonable fees from users of the services to cover, as nearly as practicable, the costs of the services rendered. While cost increases may result primarily from increases in salaries and benefits, other overhead costs such as rent and materials are also covered. The fees proposed in this rulemaking appropriately reflect the cost of providing the services rendered. Actually, the rate of the proposed increase is below the average rate of increase for these services since 1989. Since December 1989, fees increased by an annualized rate of about 4.13 percent. The proposed increase will represent an annualized increase of only about 1.9 percent. Further, we will continue our efforts to reduce costs to the industry and increase efficiencies whenever possible.

With regard to the commenter's concerns regarding the application of overtime charges, the proposed fee increase does not change the way overtime is charged for both hourly and contract fees. AMS has numerous service options available with respect to duration, regularity of hours, and fees for inspection services. The Agency is available to work with applicants for services to select the type of service which most efficiently meets its needs.

In light of the continuing need to maintain the AMS grading program on a financially sound basis, AMS has decided to proceed with the fee increase as set forth in the proposal.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) the fiscal year 2000 reserve balance of the program's trust fund is under the desired level necessary to ensure an adequate reserve balance; (2) the fee change adopted herein should be implemented as soon as possible to begin replenishing the operating reserve and bring revenue in line with costs; and (3) the fee increase is to be effective November 19, 2000.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 7 U.S.C. 1621—1627.

§ 52.42 [Amended]

2. In § 52.42, the figure "$43.00" is revised to read "$47.00".

§ 52.50 [Amended]

3. In § 52.50, the figure "$43.00" is revised to read "$47.00".

§ 52.51 [Amended]

4. In § 52.51, paragraph (c)(1), the figure "$35.00" is revised to read "$36.00", in paragraph (c)(2), the figure "$45.00" is revised to read "$48.00", and in paragraph (d)(1), the figure "$45.00" is revised to read "$48.00".

Dated: November 1, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–28414 Filed 11–3–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–076–1]

Imported Fire Ant; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the imported fire ant regulations because infestations of imported fire ant have been discovered in additional areas in Tennessee. This action will quarantine two new counties and additional portions of four other counties. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States. We are also making nonsubstantive changes to the description of other quarantined areas in Tennessee to make them easier to understand.

DATES: This interim rule is effective November 6, 2000. We invite you to comment on this docket. We will consider all comments that we receive by January 5, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–076–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238

Please state that your comment refers to Docket No. 00–076–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Milberg, Operations Officer, PPQ, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–5255.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10 and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

The imported fire ant, *Solenpsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant, which is not native to the United States, feeds on crops and builds large, hard mounds that damage farm and field machinery. The regulations are intended to prevent the imported fire ant from spreading throughout its ecological range within the country.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with the imported fire ant. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

In § 301.81–3, paragraph (e) lists quarantined areas. We are amending § 301.81–3(e) by adding portions of Maury and Sequatchie Counties, TN, changing the status of Lewis County, TN, from partially to completely infested, and revising quarantine boundaries in Giles, Lincoln, and Monroe Counties, TN, to incorporate additional infested areas. We are taking this action because recent surveys conducted by APHIS and State and county agencies revealed that the imported fire ant has spread to these areas.

We are also amending § 301.81–3(e) by simplifying the descriptions of quarantined areas in Decatur, Franklin, Haywood, Henderson, Marshall, and Moore Counties, TN, to make them easier to understand and use. These changes are nonsubstantive and do not change the boundaries. See the rule portion of this document for specific descriptions of the new quarantined areas and the simplified boundary descriptions. Interested parties may also view a map showing the imported fire ant infested areas in the continental United States on the Internet at http://www.aphis.usda.gov/ppq/maps/fireant.jpg.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of imported fire ant into noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause to under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule is necessary because infestations of imported fire ant have been discovered in additional areas in Tennessee. This action will quarantine two new counties and additional portions of four other counties. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the imported fire ant into noninfested areas of the United States.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

Affected entities in the quarantined areas include nurseries and greenhouses, farm equipment dealers, construction companies, and all those who sell, process, or move regulated articles from and through quarantined areas. It is now necessary to treat and certify all regulated articles before moving them from the newly quarantined areas.

Economic Analysis for Giles, Lewis, Lincoln, and Monroe Counties, TN

In an interim rule published in the **Federal Register** and effective on May 11, 2000 (65 FR 30337–30341, Docket No. 00–007–1), we amended the regulations by adding all or part of 35 counties in Arkansas, North Carolina, and Tennessee to the list of quarantined areas. On August 24, 2000 we published in the **Federal Register** (65 FR 51516–51517, Docket No. 00–007–2) a document that affirmed that interim rule as a final rule. In our August 24, 2000, affirmation, we included an analysis that considered the economic effects that were expected to result from the addition of the 35 partially or completely infested counties to the list of regulated areas. Among the partially infested counties considered in that analysis were Giles, Lewis, Lincoln, and Monroe Counties, TN. We are now changing the status of these four counties from partially to completely infested because recent surveys conducted by APHIS and State and county agencies revealed that the imported fire ant has spread throughout these counties. At this time, further economic analysis for these four counties is not necessary because the analysis contained in our August 24, 2000, affirmation provided information on affected entities for the entirety of each partially infested county. That analysis concluded that the May 11, 2000, interim rule would not have a significant economic impact on a substantial number of small entities in Giles, Lewis, Lincoln, and Monroe Counties, and that conclusion is appropriate for the purposes of this interim rule as well.

Economic Analysis for Maury and Sequatchie Counties, TN

According to the 1997 Census of Agriculture, the market value of agricultural products produced in Maury and Sequatchie Counties was more than $32 million. Seventy percent of these sales are attributable to livestock sales and the remaining 30 percent to crop sales, which include nursery and greenhouse crops. Therefore, there is a large agricultural economy at risk due to the potential of the imported fire ant to damage crops and injure or even kill livestock.

Specifically, in 1997, the value of sales from nursery and greenhouse crops produced in these two counties was $614,000. Nurseries and greenhouses, as well as farm equipment dealers, construction companies, and those who sell, process, or move regulated articles from and through quarantined areas, will be affected by this rule. The availability of various treatments, which, in most cases, permit the movement of regulated articles with minimal additional cost, can minimize the adverse effects on entities that move regulated articles outside of the regulated areas.

According to the Small Business Administration's (SBA) Office of Advocacy, regulations create economic disparities when they have a significant economic impact on a substantial number of small entities. The SBA defines a small agricultural producer as one that generates less than $500,000 of annual sales. Additionally, to be considered small by the SBA's definition, an equipment dealer or agricultural service company must generate less than $5 million in annual sales.

Maury and Sequatchie Counties include at least 569 entities that could be affected by the changes in regulations, and the majority of these entities are small according to the SBA's definition. Producers in Maury and Sequatchie Counties received $8,855,000 from crop, including greenhouse and nursery, sales in 1997.

The estimated annual cost of imposing a quarantine on these counties is very small in comparison to the benefit gained through agricultural sales. For example, the value of a "standard" sized tractor-trailer load of nursery plants ranges from $10,000 to $250,000. The treatment cost for this "standard" shipment of plants is only around $200. An average treatment cost, then, is between 2 percent and 0.8 percent per standard plant shipment. In contrast to the potential losses associated with an imported fire ant infestation, these treatment costs are not significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this program. The assessment provides a basis for the conclusion that the methods employed to regulate the imported fire ant will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant

Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: Title IV, Pub. L 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293, and Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400, 7 U.S.C. 1421 note.

2. In § 301.81–3, paragraph (e), under TENNESSEE, the list of quarantined areas is amended by adding, in alphabetical order, entries for Maury and Sequatchie Counties and by revising the entries for Decatur, Franklin, Giles, Haywood, Henderson, Lewis, Lincoln, Marshall, Monroe, and Moore Counties to read as follows:

§ 301.81–3 Quarantined areas.

* * * * *

(e) * * *

TENNESSEE

* * * * *

Decatur County. That portion of the county lying south of Interstate Highway 40.

* * * * *

Franklin County. That portion of the county lying south and east of a line beginning at the intersection of State Highway 50 and the Moore/Franklin County line; then east along State Highway 50 to U.S. Highway Alt. 41; then north and east along U.S. Highway Alt. 41 to the Franklin/Grundy/Marion County line.

Giles County. That portion of the county lying south of a line beginning at the intersection of State Highway 129 and the Giles/Marshall County line; then west along State Highway 129 to U.S. Highway 31; then west along an imaginary line to the Lawrence/Giles County line.

* * * * *

Haywood County. That portion of the county lying south of Interstate Highway 40.

Henderson County. That portion of the county lying south of Interstate Highway 40.

* * * * *

Lewis County. The entire county.

Lincoln County. The entire county.

* * * * *

Marshall County. That portion of the county lying south of a line beginning at the intersection of State Highway 129 and the Giles/Marshall County line; then east along State Highway 129 to U.S. Highway Alt. 31; then north along U.S. Highway Alt. 31 to State Highway 50; then southeast along State Highway 50 to the Marshall/Lincoln County line.

Maury County. That portion of the county lying south and west of a line beginning at the intersection of the Lewis/Maury County line and Mount Joy Road; then east along Mount Joy Road to State Highway 243; then northeast along State Highway 243 to Dry Creek Road; then south along Dry Creek Road to the Maury/Lawrence County line.

* * * * *

Monroe County. That portion of the county lying south of a line beginning at the intersection of the Loudon/Monroe County line and State Highway 68; then southeast along State Highway 68 to U.S. Highway 411; then northeast along U.S. Highway 411 to the Monroe/Loudon County line; also the entire cities of Sweetwater, Madisonville, and Vonore, TN.

Moore County. That portion of the county lying south of State Highway 50.

* * * * *

Sequatchie County. That portion of the county lying south of a line beginning at the intersection of the Grundy/Sequatchie County line and State Highway 399; then northeast along State Highway 399 to State Highway 8/111; then northeast along an imaginary line to the Sequatchie/Bledsoe County line.

* * * * *

Done in Washington, DC, this 1st day of November 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–28362 Filed 11–3–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV00–947–1 FIR]

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, Except Malheur County; Suspension of Handling, Reporting, and Assessment Collection Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, with a minor change, the provisions of an interim final rule suspending for the 2000–2001 and future seasons the minimum grade, size, quality, maturity, pack, inspection, and other related requirements prescribed under the Oregon-California potato marketing order. This rule also suspends all reporting and assessment collection requirements. The marketing order regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County, and is administered locally by the Oregon-California Potato Committee (Committee). This rule will reduce industry-operating expenses.

EFFECTIVE DATE: December 6, 2000.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204–2807; telephone: (503)

326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Marketing Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties in California, and in all counties in Oregon, except Malheur County, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule continues the current suspension. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the suspension of the minimum grade, size, quality, maturity, pack, inspection, and other related requirements prescribed under the Oregon-California potato marketing order. It also suspends all reporting and assessment collection requirements. The marketing order regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County, and is administered locally by the Oregon-California Potato Committee. This rule will reduce industry expenses, as it decides whether the marketing order should be continued.

Section 947.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety of potatoes grown in the production area during any period. Section 947.51 authorizes the modification, suspension, or termination of regulations issued under part 947. Termination or suspension authority also is specified in § 947.71.

Section 947.60 provides that whenever potatoes are regulated pursuant to § 947.52, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. The cost of inspection and certification is borne by handlers.

Prior to the 1999–2000 season, minimum grade, size, quality, maturity, and pack requirements for potatoes regulated under the order were specified in § 947.340 *Handling Regulation* [7 CFR part 947.340]. This regulation, with modifications and exemptions for different varieties and types of shipments, provided that all potatoes grade at least U.S. No. 2; be at least 2 inches in diameter or weigh at least 4 ounces, and be not more than moderately skinned. Additionally, potatoes packed in cartons had to be U.S. No. 1 grade or better, with an additional tolerance allowed for internal defects, or U.S. No. 2 grade weighing at least 10 ounces. Section 947.340 also included waivers of inspection procedures, reporting and safeguard requirements for special purpose shipments, and a minimum quantity exemption of 19 hundredweight per day. Related provisions appear in the regulations at § 947.130, *Special Purpose Certificates—application and issuance;* § 947.132 *Reports;* § 947.133 *Denial and appeals;* and § 947.134 *Establishment of list of manufacturers of potato products.*

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Oregon-California potatoes that have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its March 31, 2000, meeting, the Committee recommended suspending the handling and inspection regulations and related sections for the 2000–2001 and future seasons. It also recommended that all reporting and assessment collection requirements be suspended, too. The Committee requested that this rule be effective on July 1, 2000, which is the date shipments of the 2000 Oregon-California potato crop began.

The objective of the handling and inspection requirements is to ensure that only acceptable quality potatoes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived. It would like to further assess this matter during the 2000–2001 and future seasons.

Potato prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Therefore, the Committee continues to explore various alternatives for reducing costs.

The Committee recommended suspending the handling regulations for a one-year trial from July 1, 1999, through June 30, 2000. The Committee was concerned that the elimination of current requirements could possibly result in lower quality potatoes being shipped to fresh markets. Also, there was some concern that the Oregon-California potato industry could lose sales to other potato producing areas that were covered by quality and inspection requirements. For these reasons, the Committee recommended the one-year suspension of the requirements for the 1999–2000 marketing season.

The Committee believes that this one-year trial was successful and recommended continuing the suspension of the handling and inspection requirements indefinitely. Last season's suspension was implemented by the Department with an interim final rule published in the **Federal Register** on June 25, 1999 (64 FR 34113), and finalized on September 13, 1999 (64 FR 49352). Continuation of the suspension for the 2000–2001 and subsequent seasons will enable the Committee to further study the impacts on the industry and consider appropriate actions for ensuing seasons.

This rule enables handlers to ship potatoes without regard to the minimum grade, size, quality, maturity, pack, and inspection requirements, and continues to decrease handler costs associated with inspection. This rule does not restrict handlers from seeking inspection on a voluntary basis. The Committee will continue to evaluate the effects of removing the minimum requirements on marketing and on producer returns at its annual spring meetings.

Consistent with the suspension of § 947.340, this rule also suspends §§ 947.120, 947.123, 947.130, 947.132, 947.133, and 947.134 of the rules and regulations in effect under the order. Sections 947.120 and 947.123 provide authority for hardship exemptions from inspection and certification, and establish reporting and recordkeeping requirements when such exemptions are in place. Sections 947.130, 947.132, 947.133, and 947.134 are safeguard and reporting provisions of the order that are applicable to special purpose shipments when inspection and certification requirements are in place. Section 947.125 regarding minimum quantity assessment exemptions, and § 947.180 regarding monthly assessment reports expired by their own terms on June 30, 2000.

The September 13, 1999, interim final rule also established reporting requirements for the 1999–2000 season so the Committee could obtain information on which to collect assessments. In previous seasons, it had obtained this information from inspection reports. However, these reports were eliminated with the suspension of mandatory inspection. The reporting requirements will not be needed during the 2000–2001 and future seasons because the Committee recommended that no assessments be collected from handlers during these seasons.

Section 947.247 of the marketing order previously prescribed an assessment rate of $0.004 per hundredweight of assessable potatoes for the Oregon-California Potato Committee. Authorization to assess potato handlers enables the Committee to incur expenses that are necessary to administer the marketing order. With the suspension of handling, inspection, and reporting requirements, a limited Committee budget will be needed for program administration during the 2000–2001 and future seasons. For 2000–2001, the Committee recommended a budget of $2,000 for management and its spring meetings. It has about $10,000 in operating reserves to cover approved Committee expenses.

In the interim final rule published July 10, 2000 (65 FR 42275), §§ 947.125 regarding minimum quantity assessment exemptions and 947.180 regarding monthly assessment reports were included in the list of sections to be suspended. As previously mentioned, these sections expired by their own terms on June 30, 2000, and, thus, did not need to be suspended by the interim final rule. This final rule modifies the list of suspended provisions accordingly.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of Oregon-California potatoes who are subject to regulation under the marketing order and approximately 450 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

The Committee estimates that about 83 percent of the handlers ship under $5,000,000 worth of Oregon-California potatoes and about 17 percent of the handlers ship over $5,000,000 worth of Oregon-California potatoes on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Oregon-California potato producers, average annual producer receipts are approximately $294,000, excluding receipts from other sources. In view of the foregoing, it can be concluded that the majority of handlers and producers of Oregon-California potatoes may be classified as small entities.

At its March 31, 2000, meeting, the Committee recommended suspending the handling and related regulations. It also recommended suspending all reporting and assessment collection regulations. The Committee requested that this rule be effective on July 1, 2000, which is the date shipments of the 2000 Oregon-California potato crop began. This rule allows the Oregon-California potato industry to market potatoes without minimum grade, size, quality, maturity, pack, and inspection requirements.

The objective of the handling requirements is to ensure that only acceptable quality potatoes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived.

Potato prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Therefore, the Committee continues to explore various alternatives for reducing costs. The Committee recommended suspending the handling regulations for a one-year trial from July 1, 1999, through June 30, 2000. The Committee was concerned that the elimination of the handling requirements could possibly result in lower quality potatoes being shipped to fresh markets. Also, there was some concern that the Oregon-California potato industry could lose sales to other potato producing areas that were covered by quality and inspection requirements. For these reasons, the Committee recommended the one-year suspension of the requirements for the 1999–2000 marketing season.

The Committee believes that this one-year trial was successful and recommended continuing the suspension that was finalized by the Department on September 13, 1999 (64 FR 49352). This will enable the Committee to further study the impacts of the suspension and consider appropriate actions for ensuing seasons.

This rule enables handlers to ship potatoes without regard to the minimum grade, size, quality, maturity, pack, inspection, and related requirements, and continues to decrease handler costs associated with inspection. This rule does not restrict handlers from seeking inspection on a voluntary basis. The Committee will continue to evaluate the effects of removing the minimum requirements on marketing and on producer returns at its annual spring meetings.

The Committee anticipates that this rule will not negatively impact small businesses. This rule suspends minimum grade, size, quality, maturity, pack, and inspection requirements. Further, this rule allows handlers and producers the choice to obtain inspection for potatoes, as needed, thereby reducing costs for the industry. The total cost of inspection and certification for fresh shipments of Oregon-California potatoes during the 1998–99 marketing season was estimated at $600,000. The 1998–99 marketing season was the most recent year for mandatory inspection. This is approximately $20,000 per handler. The Committee expects, however, that most handlers will continue to have some of their potatoes inspected and certified by the Federal-State Inspection Service.

The suspension of the assessment collection requirements for the 2000–2001 and future seasons also will result in some cost savings. Assessment collections during the 1999–2000 season totaled $25,500. Absent the suspension of § 947.247, assessments collected during the 2000–2001 season would have been about $26,000, according to Committee estimates.

The Committee investigated the use of other types of inspection programs as another option to reduce the cost of inspection, but believed they were not viable at this time.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178. Suspension of all of the reporting requirements is expected to reduce the reporting burden on small or large Oregon-California potato handlers by almost 300 hours, and should further reduce industry expenses. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Oregon-California potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the March 31, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on July 10, 2000. Copies of this rule were mailed by the Committee's staff to all Committee members. In addition, the rule was made available through the Internet by the Office of the **Federal Register**. That rule provided for a 60-day comment period which ended September 8, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the regulations suspended by this action no longer tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 947 which was published at 65 FR 42275 on July 10, 2000, is adopted as a final rule with the following change:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§§ 947.120, 947.123, 947.130, 947.132, 947.133, 947.134, 947.141, 947.247, 947.340 [Suspended]

2. In Part 947, §§ 947.120, 947.123, 947.130, 947.132, 947.133, 947.134, 947.141, 947.247, and 947.340 are suspended in their entirety effective July 1, 2000.

Dated: October 31, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–28334 Filed 11–3–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV00–966–1 IFR]

Tomatoes Grown in Florida; Change in Size Designation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule increases the maximum diameter of the 6x6 numeric size designation currently prescribed under the Florida tomato marketing order (order). The order regulates the handling of tomatoes grown in Florida and is administered locally by the Florida Tomato Committee (Committee). The maximum diameter will be increased by $\frac{2}{32}$ of an inch, from $2\frac{27}{32}$ inches to $2\frac{29}{32}$ inches. This change will allow handlers to pack slightly larger tomatoes in a 6x6 container, and provide them with greater flexibility when packing tomatoes. The increased flexibility is expected to increase the number and availability of containers of 6x6 tomatoes, which are often in short supply.

DATES: Effective November 8, 2000; comments received by January 5, 2001 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in certain designated counties in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the order, tomatoes produced in the production area and shipped to fresh market channels outside the regulated area are required to meet grade, size, inspection, and container requirements. These requirements apply during the period October 10 through June 15 each year. Current requirements include a minimum grade of U.S. No. 2 and a minimum size of $2\frac{9}{32}$ inches in diameter. Current pack and container requirements outline the types of information that need to appear on a container, weight restrictions, and other requirements containers must meet.

Section 966.52 of the order provides authority for the modification, suspension, and termination of regulations. It includes the authority to establish and modify size and pack requirements for tomatoes grown in the defined production area and handled under the order.

Section 966.323 of the order's rules and regulations specifies the handling regulations for Florida tomatoes. Section 966.323(a)(2)(i) currently specifies that all tomatoes packed by a registered handler must meet a minimum size requirement of $2\frac{9}{32}$ inches in diameter. That section also requires that all such tomatoes must be sized with proper equipment in one of three numeric size designations with specified ranges of diameter. Tomatoes designated as "6x7" must be a minimum of $2\frac{9}{32}$ inches in diameter and a maximum of $2\frac{19}{32}$. These are the smallest tomatoes marketed. Tomatoes, other than producer field-packed tomatoes, designated as "6x6" must be a minimum of $2\frac{17}{32}$ inches in diameter and a maximum of $2\frac{27}{32}$ inches in diameter. Tomatoes designated as "5x6" must be a minimum of $2\frac{25}{32}$ inches in diameter with no maximum size requirement. These are the largest size marketed. To allow for variation incident to proper sizing, not more than a total of 10 percent, by count, of the tomatoes in the lot may be smaller than the specified minimum diameter or larger than the maximum diameter.

This rule increases the maximum diameter currently prescribed for size 6x6 tomatoes by $\frac{2}{32}$ of an inch, from $2\frac{27}{32}$ inches to $2\frac{29}{3}$ inches. This change will allow handlers the option of packing slightly larger tomatoes in a 6x6 container. This increased flexibility in packing tomatoes is expected to allow handlers to pack some of the smaller 5x6 tomatoes into 6x6 containers. This is expected to increase the number and availability of containers of 6x6 tomatoes, which are often in short supply, and improve the uniformity of the 5x6-sized tomatoes. The Committee unanimously recommended this change at a meeting held on September 6, 2000.

Based on an analysis of markets and demands of buyers, the Committee believes that this increase in the maximum diameter for size 6x6 tomatoes will improve the marketing of Florida tomatoes, provide handlers with additional flexibility in packing tomatoes, and help improve grower returns. Recent industry trends have been toward shipping larger tomatoes. In response to a strong consumer demand, new commercial tomato varieties have been planted to produce bigger tomatoes and have resulted in more large sized tomatoes being shipped. Because of this demand, production of larger tomatoes has been a popular method of improving returns among producers as it also increases total yields. Increasing the 6x6 maximum diameter will provide handlers the option of shifting the smallest sized tomatoes in a 5x6 pack to a 6x6 pack. By making this shift, handlers will be able to increase the average size in both the 6x6 and the 5x6 pack.

The $\frac{2}{32}$ inch increase in the maximum diameter of the 6x6-size designation results in a $\frac{4}{32}$ overlap in the maximum diameter of the 6x6 and the minimum size for the 5x6. Tomatoes at the bottom of the 5x6 size can either be packed as 5x6 tomatoes or as 6x6 tomatoes. According to the Committee, this will provide for greater distribution of tomato shipments throughout the two size designations, enabling handlers to make better decisions on which size of tomatoes to pack. Such packing decisions could depend on specific buyer or market demands, on general crop size, or on prices.

Shifting the smallest sizes from the 5x6 pack to the 6x6 pack would increase the average size in both the 6x6 and the 5x6 packs. It would move larger tomatoes into the 6x6 pack while providing space for additional larger tomatoes in the 5x6 pack. This would lower the count of tomatoes for each pack as well. In its discussions, the Committee recognized that buyers prefer larger tomatoes and a lower count per box. With buyer preferences trending toward larger sized tomatoes, the Committee believes that having this option could help grower returns.

This change also makes more tomatoes available to fill the 6x6 pack. In past years, there have been shortages of this pack due to tomato size. Committee members stated that during the past season there were periods when the tomatoes were sizing so well they were having trouble packing many 6x6 packs. The Committee recognized that there is a strong demand for the 6x6 pack and that it brings a favorable price, occasionally equal to or above the price for a 5x6 pack. Therefore, the Committee believes that it is important to continue to supply this market. With the option of shifting slightly larger tomatoes into the 6x6 pack, handlers will have more flexibility to move tomatoes to meet market demand. This will be particularly beneficial when the majority of tomatoes are sizing well.

In addition, the Committee also believes that raising the maximum diameter for the 6x6 pack could improve the uniformity of tomato in the 5x6 pack. While increasing the maximum diameter of the 6x6 pack does increase the size range, the increase is only by $\frac{2}{32}$ of an inch. Further, shifting the smaller sizes from a 5x6 pack to the 6x6 pack could improve the uniformity of the 5x6 pack, which is expected to be viewed as a benefit to buyers.

Because there is no upper limit on size for a 5x6 pack, there can be a considerable variation in size. With newer tomato varieties producing larger fruit, the size variance in containers of 5x6 tomatoes has grown. This size variation is particularly evident with the smaller sizes in the pack. By having the opportunity to shift the smaller sizes to the 6x6 pack, handlers will be able to improve the uniformity of their 5x6 packs. This is particularly important because the 5x6 pack usually commands the best price in the market, faces the most competition, and is the most popular size.

During the 1999–2000 season, approximately 58 percent of the Florida tomatoes sold were 5x6 packs, and about 28 percent were sold as 6x6's. Increasing the maximum diameter size of the 6x6 by $\frac{2}{32}$ inch will give handlers the flexibility to reduce the number of smaller sized tomatoes packed in the 5x6-size designation.

A study conducted by Dr. John J. VanSickle at the University of Florida indicates that increasing the maximum diameter could result in an increase in the prices received for Florida tomatoes. The study indicates that if 1 percent of the smallest 5x6 size tomatoes are shifted into the smaller size categories, then prices for 5x6 size tomatoes could increase by .25 percent. With regard to 6x6 size tomatoes, the study indicates that the prices could increase by .15 percent. The increase in price would occur because of the redistribution of larger sized tomatoes into the smaller size designations, which is a response to consumer demand for a more consistent pack and slightly larger tomatoes.

Committee members do not believe that this change will create any confusion on the part of buyers. Rather, they stated that this change will allow handlers more opportunity to address the demands of their buyers.

Consumers and buyers are demanding a slightly larger tomato. Smaller tomatoes with a less uniform pack have poor consumer acceptance, especially in chain stores. This change provides handlers with some flexibility to adjust the size composition and uniformity of their packs to address the needs of their customers.

This change does not affect the current exemption provided to producer field packed tomatoes as long as the containers are designated as 6x6 and larger. Specifically, field packed tomatoes designated as size 6x6 and larger are not subject to the maximum diameter specified in the order's rules and regulations for 6x6 sized tomatoes (65 FR 8247, February 18, 2000).

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including tomatoes, imports of that commodity must meet the same or comparable requirements. However, the Act does not authorize the imposition of container requirements on imports, when such requirements are in effect under a domestic marketing order. Florida tomatoes must be packed in accordance with three specified size designations, and tomatoes falling into different size designations may not be commingled in a single container. These pack restrictions do not apply to imported tomatoes. Therefore, no change is necessary in the tomato import regulation as a result of this action.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of Florida tomatoes who are subject to regulation under the marketing order and approximately 130 tomato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.201).

Committee data indicates that approximately 20 percent of the Florida tomato handlers handle 80 percent of the total volume. Based on the industry and Committee data, the average annual price for fresh Florida tomatoes during the 1999–2000 season was $6.89 per 25-pound carton or equivalent, and total fresh shipments for the 1999–2000 season were 58,006,721 25-pound equivalent cartons of tomatoes. Based on this information, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes may also be classified as small entities.

This rule increases the maximum diameter requirement for size 6x6 tomatoes currently prescribed in the order's handling regulations. It increases the maximum diameter for size 6x6 tomatoes by $\frac{2}{32}$ of an inch, from $2\frac{27}{32}$ inches to $2\frac{29}{32}$ inches, and will allow handlers the option of packing slightly larger tomatoes in a 6x6 container. With this increased flexibility, handlers will be able to better meet consumer demand for larger tomatoes, while providing greater returns to growers. The Committee unanimously recommended this change. Authority for this action is provided in § 966.52.

If the handlers take advantage of the increased packing flexibility, they would incur direct costs associated with the purchase of new sizing belts. Sizing belts convey and size fruit during the packing process. Depending on the amount of use, sizing belts can last a season or may need to be replaced two to three times a season. Estimated prices associated with these purchases could range from $450.00 for a small handler to $19,000 for very large handlers. While there are short-term costs associated with the new maximum diameter of the 6x6 sizing designation, the benefits are expected to outweigh the costs. Moreover, changing sizing belts is a routine action since they have to be regularly replaced depending on use. These costs are expected to be minimal relative to the benefits expected, and in relation to normal operating costs and procedures.

A study conducted by Dr. John J. VanSickle at the University of Florida estimates that a shift of 1 percent of 5x6 tomatoes into the smaller size categories would increase the prices for 5x6-size tomatoes by .25 percent. For 6x6's, the price could increase by .15 percent. The increase in price would occur in response to consumer demand for packs with slightly larger tomatoes.

This change is designed to provide handlers with more flexibility as to how sizes are packed. Because of this, handlers can choose to continue to pack as they have without making any adjustments due to this rule change. Purchasing new equipment is not necessary to remain in compliance with order provisions. Therefore, this rule places the decision with the individual handler as to whether the costs are outweighed by the benefits.

Individual seasons and different periods during the same season can present a fair amount of variability in production and size. This change provides handlers with some additional flexibility when packing for size to allow handlers to make some adjustments in order to maximize returns and to service customer demand. This rule will provide the opportunity for handlers to make adjustments based on market conditions. This should have a positive effect on returns.

The Committee recommended these changes to improve the marketing of Florida tomatoes. The opportunities and benefits of this rule are expected to be equally available to all tomato handlers and growers regardless of their size of operation. This action will have a beneficial impact on producers and handlers since it will allow tomato handlers more flexibility in making tomatoes available to meet consumer needs consistent with crop and market conditions.

The Committee discussed alternatives to this recommendation, including leaving the regulations as currently issued. All Committee members agreed that this change would be helpful in improving pack appearance and in providing handlers some additional flexibility. Therefore, the Committee voted to make this change rather than leave the size designation for 6×6 unchanged.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 8, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Marketing Subcommittee met on August 21, 2000, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the size requirements currently prescribed under the Florida tomato marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The regulatory period for the 2000–2001 shipping season began October 10 and the changes should be in place as close to the beginning of the season as possible; (2) Florida tomato handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and interested parties had an opportunity to provide input; (3) the packing flexibility afforded handlers can be utilized as they see fit, they will not need additional time to comply with the regulation; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 966.323 [Amended]

2. In § 966.323, the table to paragraph (a)(2)(i) is amended by removing "$2\frac{27}{32}$" and adding "$2\frac{29}{32}$" in its place.

Dated: October 31, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–28332 Filed 11–3–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–130–AD; Amendment 39–11954; AD 2000–22–08]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires inspections of certain components, and corrective action, if necessary. The actions specified by this AD are intended to prevent deterioration and deformation of the mass-balance weights of the aileron, which could affect the surface balance of the aileron and result in loss of aileron control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 11, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Satish Lall, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6082; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Model EMB–120 series airplanes, was published in the **Federal Register** on July 17, 2000 (65 FR 44013). That action proposed to require inspections of certain components, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that approximately 28 U.S.-registered airplanes will be required to measure the gap between the mass-balance weights and aileron hinge attachment. It will take approximately 2 work hours per airplane to accomplish the required measurement, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required measurement on U.S. operators is estimated to be $3,360, or $120 per airplane, per inspection cycle.

The FAA estimates that approximately 230 U.S.-registered airplanes will be required to inspect the mass-balance weights to detect any cavity, hole, or delamination. It will take approximately 8 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $110,400, or $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–22–08 Empresa Brasileira de Aeronautica S.A. (Embraer): Amendment 39–11954. Docket 2000–NM–130–AD.

Applicability: Model EMB–120 series airplanes, serial numbers 120–0001 through 120–0333 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent deterioration and deformation of the mass-balance weights of the aileron, which could affect the surface balance of the aileron and result in loss of aileron control and consequent reduced controllability of the airplane, accomplish the following:

Measurement of Clearance and Corrective Actions

(a) For airplanes having serial numbers 120–0291, 120–0294, and 120–0296 through 120–0333 inclusive: Within 150 flight hours after the effective date of this AD, measure the clearance between the aileron mass-balance weights and attach fittings on the left and right sides of the airplane, in accordance with PART I of the Accomplishment Instructions of EMBRAER Service Bulletin 120–27–0077, Change No. 01, dated October 24, 1997.

(1) If the clearance is within the acceptable limits described in the service bulletin, thereafter, repeat the measurement at intervals not to exceed 1,000 flight hours until the actions required by paragraph (b) of this AD have been accomplished.

(2) If the clearance is outside the acceptable limits described in the service bulletin, prior to further flight, replace the affected mass-balance weight with a new, improved mass-balance weight, in accordance with PART III of the Accomplishment Instructions of the service bulletin. Such replacement terminates the requirement to accomplish paragraph (b) of this AD.

Detailed Visual Inspection and Follow-On Actions

(b) For all airplanes: Within 2,000 flight hours after the effective date of this AD, perform a one-time detailed visual inspection of the aileron mass-balance weights to detect any cavity, hole, or delamination, in accordance with PART II of the Accomplishment Instructions of EMBRAER Service Bulletin 120–27–0077, Change No. 01, dated October 24, 1997. Such inspection constitutes terminating action for the repetitive inspections required by paragraph (a)(1) of this AD for airplanes subject to paragraph (a) of this AD.

(1) If no cavity, hole, or delamination is detected: Prior to further flight, perform a one-time detailed visual inspection to detect white powder on the surface of the mass-balance weights, in accordance with PART II of the Accomplishment Instructions of the service bulletin. If any white powder is found, remove the white powder in accordance with the service bulletin.

(2) If any cavity, hole, or delamination is found, prior to further flight, replace the affected mass-balance weight with a new, improved mass-balance weight, in accordance with PART III of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with EMBRAER Service Bulletin 120–27–0077, Change No. 01, dated October 24, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 98–01–02, dated January 15, 1998.

Effective Date

(f) This amendment becomes effective on December 11, 2000.

Issued in Renton, Washington, on October 24, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–27789 Filed 11–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–348–AD; Amendment 39–11955; AD 2000–22–09]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, that requires inspection of certain components, and corrective action, if necessary. The actions specified by this AD are intended to prevent loosening of the locknut holding the main landing gear (MLG) piston to the ramrod, which could result in detachment of the MLG piston from the ramrod and loss of hydraulic control of the MLG. This action is intended to address the identified unsafe condition.

DATES: Effective December 11, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on August 29, 2000 (65 FR 52371). That action proposed to require inspection of certain components, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 59 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $3,540, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–22–09 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]. Amendment 39–11955. Docket 99–NM–348–AD.

Applicability: Model Jetstream 4101 airplanes, certified in any category; on which any APPH main landing gear (MLG) retract actuator having part number AIR86496, any suffix, is installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loosening of the locknut holding the MLG piston to the ramrod, which could result in detachment of the MLG piston from the ramrod and loss of hydraulic control of the MLG, accomplish the following:

Inspection and Corrective Actions

(a) Within 18 months after the effective date of this AD: Inspect the airplane records to determine the overhaul status and number of landings on the left and right MLG retract actuators, and inspect the actuators for the presence of ink mark "32–03," in accordance with Jetstream Service Bulletin J41–32–068, Revision 1, dated May 12, 2000.

(1) If both actuators have been overhauled and ink mark "32–03" is present on each actuator, no further action is required by this AD.

(2) For any actuator that has been overhauled but does not have ink mark "32–03" present on the actuator: Within 2 years after the effective date of this AD, accomplish all applicable corrective actions for that actuator (including inspection of locknut peening, lockwasher replacement, and ink marking), in accordance with Part 3 or Part 4, as applicable, of the Accomplishment Instructions of the service bulletin.

(3) For any actuator that has not been overhauled: Prior to further flight, or prior to the accumulation of 8,000 total landings on that actuator, whichever occurs later, replace the actuator with an overhauled actuator having ink mark "32–03" present, in accordance with Part 1 or Part 2, as applicable, of the Accomplishment Instructions of the service bulletin.

Note 2: Jetstream Service Bulletin J41–32–068, Revision 1, dated May 12, 2000, refers to APPH Service Bulletin AIR86496–32–03, Revision 2, dated March 2000, as an additional source of service information for the inspection of locknut peening and the lockwasher replacement.

Spares

(b) As of the effective date of this AD, no APPH MLG retract actuator having P/N AIR86496, any suffix, may be installed on any airplane unless the actuator is marked with ink mark "32–03."

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Jetstream Service Bulletin J41–32–068, Revision 1, dated May 12, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 007–09–99.

Effective Date

(f) This amendment becomes effective on December 11, 2000.

Issued in Renton, Washington, on October 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–27946 Filed 11–3–00; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Part 335

RIN 3220–AB44

Sickness Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations under the Railroad Unemployment Insurance Act (RUIA) to permit a "nurse practitioner" to execute a statement of sickness in support of payments of sickness benefits under the RUIA. The Board does not currently accept statements executed by a nurse practitioner, which in some cases may delay payment of benefits.

EFFECTIVE DATE: This final rule is effective November 6, 2000.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, General Attorney, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 335.2(a)(2) of the Board's regulations provides that in order to be entitled to sickness benefits under the RUIA, a claimant must provide a "statement of sickness". Section 335.3(a) of this part lists the individuals from whom the Board will accept a statement of sickness. That list does not currently include nurse practitioners. Nurse practitioners offer health care to people throughout the United States. Their practice emphasizes health promotion and maintenance, disease prevention, and the diagnosis and management of acute and chronic diseases. Nurse practitioners are registered nurses with advanced education and clinical expertise that qualifies them to diagnose and treat illnesses and injuries. Under current regulations, the Board does not accept a statement of sickness or supplemental statement of sickness from a nurse practitioner. A claimant who submits a statement of sickness signed by a nurse practitioner is informed that the statement may not be accepted and is required to get a new one signed by an individual listed in § 335.3(a). This is administratively costly and delays the payment of sickness benefits. Thus, the Board is adding "nurse practitioner" to the list of individuals from whom it will accept a statement of sickness.

The Board published this rule as a proposed rule on May 5, 2000 (65 FR 26161), and invited comments by July 5, 2000. No comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory analysis is required. The information collections contemplated by this part have been approved by the Office of Management and Budget under control number 3220–0039.

List of Subjects in 20 CFR Part 335

Railroad employees, Railroad unemployment insurance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II of the Code of Federal Regulations as follows:

PART 335—SICKNESS BENEFITS

1. The authority citation for part 335 continues to read as follows:

Authority: 45 U.S.C. 362(i) and 362(l).

2. Section 335.3(a) is amended as follows:

(a) remove "or" at the end of paragraph (a)(9),

(b) remove the period and add "; or" at the end of paragraph (a)(10), and

(c) add a new paragraph (a)(11) to read as follows:

§ 335.3 Execution of statement of sickness and supplemental doctor's statement.

(a) * * *

(11) A nurse practitioner.

* * * * *

Dated: October 27, 2000.

By Authority of the Board,

Beatrice Ezerski,

For the Board, Secretary to the Board.

[FR Doc. 00–28316 Filed 11–3–00; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 349

RIN 3220–AB25

Finality of Decisions Regarding Unemployment and Sickness Insurance Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board adopts regulations pertaining to the finality of decisions under the Railroad Unemployment Insurance Act (Act). The present rules dealing with finality of decisions under that statute are incomplete and are contained in a Board Order which is not readily available to the public. Therefore, the Board has determined that the present rules should be revised and published as a regulation.

EFFECTIVE DATE: This rule is effective November 6, 2000.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Senior Attorney, Railroad Retirement Board, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Board's rules and procedures regarding the finality of decisions with respect to benefits under the Railroad Unemployment Insurance Act are presently contained in a Board Order, which is not readily available to the public. Also the Board Order does not contain any time limits on reopening. The regulation addresses the finality of benefit decisions. This final rule is similar to part 261 of the Board's regulations on reopening of decisions under the Railroad Retirement Act (20 CFR 261).

Section 349.1 describes who may open a final decision issued by the agency. Section 349.2 describes when a final decision may be reopened. A final decision may be reopened within 12 months of the date of notice of such decision for any reason. A final decision may also be reopened within 4 years of the date of notice if new and material evidence is furnished or if the decision was not reasonably consistent with the evidence of record at the time the decision was made. A decision may be reopened at any time if the decision was obtained by fraud or similar fault, or if the decision was that the employee was not a qualified employee and is later found to be one because of a correction in his or her record of compensation, or if the decision was wholly or partially unfavorable to a claimant, but only to correct clerical error or an error that appears on the face of the evidence that was considered when the decision was made. See § 349.2(c).

Section 349.3 provides that a change of legal interpretation or administrative ruling upon which a decision was based is not a basis for reopening.

Section 349.4 provides that a decision may be reopened after the 1 year and 4 year time limits set forth in § 349.2 if the Board had begun an investigation within those time limits. However, if the Board does not diligently pursue the investigation, the agency will not reopen the decision if the decision was favorable to the claimant.

Sections 349.5–349.7 are procedural and provide that if a decision is reopened, the claimant will be given notice and will have a right to reconsideration and/or a hearing. Any hearing shall be conducted in accordance with part 320 of the Board's regulations (20 CFR 320).

Finally, § 349.8 provides that the three-member Board has the discretion to reopen or not to reopen any decision under these regulations.

The Board published this rule as a proposed rule on April 20, 2000 (65 FR 21164–21165) and invited comments by June 19, 2000. No comments were received. Accordingly, the proposed rule is adopted as a final rule without change.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 349

Railroad employees, Railroad unemployment insurance.

For the reasons set out in the preamble, the Railroad Retirement Board adds a new part 349 to 20 CFR Chapter II as follows:

PART 349—FINALITY OF DECISIONS REGARDING UNEMPLOYMENT AND SICKNESS INSURANCE BENEFITS

Sec.
349.1 Reopening and revising decisions.
349.2 Conditions for reopening.
349.3 Change of legal interpretation or administrative ruling.
349.4 Late completion of timely investigation.
349.5 Notice of revised decision.

349.6 Effect of revised decision.
349.7 Time and place to request a review and/or hearing on revised decision.
349.8 Discretion of the three-member Board to reopen or not to reopen a final decision.

Authority: 45 U.S.C. 355 and 362(l).

§ 349.1 Reopening and revising decisions.

(a) This part sets forth the Board's rules governing finality of decisions with respect to benefits under the Railroad Unemployment Insurance Act. After the expiration of the time limits for review as set forth in part 320 of this chapter, decisions may be reopened and revised only under the conditions described in this subpart, by the bureau, office or entity that made the earlier decision or by a bureau, office, or other entity at a higher level which has the claim properly before it. Whether a final decision is reopened or not reopened is solely within the discretion of the Board.

(b) A *final decision*, as that term is used in this part, means any decision under § 320.5 of this chapter where the time limit for review, as set forth in part 320 of this chapter or in the Railroad Unemployment Insurance Act, has expired.

(c) *Reopening* a final decision under this part means a conscious determination on the part of the agency to reconsider an otherwise final decision for purposes of revising that decision.

(d) *New and material evidence*, as that phrase is used in this part, means evidence which was unavailable to the agency at the time the decision was made, and which the claimant could not reasonably have been expected to have submitted at that time.

§ 349.2 Conditions for reopening.

A final decision may be reopened:

(a) Within 12 months of the date of the notice of such decision, for any reason;

(b) Within four years of the date of the notice of such decision:

(1) If there is new and material evidence; or

(2) If the decision was not reasonably consistent with the evidence of record at the time of adjudication.

(c) At any time if:

(1) The decision was obtained by fraud or similar fault;

(2) The decision was that the claimant was not a qualified employee, and he or she is now qualified because compensation was credited to the employee's record of compensation in accordance with part 211 of this chapter:

(i) To correct errors apparent on the face of the compensation record;

(ii) To enter items transferred by the Social Security Administration which were credited under the Social Security Act when they should have been credited to the employee's railroad retirement compensation record; or

(iii) To correct errors made in the allocation of earnings to individuals or periods which would have made him or her a qualified employee at the time of the decision if the earnings had been credited to his or her earnings record at that time;

(3) The decision is wholly or partially unfavorable to a claimant, but only to correct a clerical error or an error that appears on the face of the evidence that was considered when the decision was made.

§ 349.3 Change of legal interpretation or administrative ruling.

A change of legal interpretation or administrative ruling upon which a decision is based does not render a decision erroneous and does not provide a basis for reopening.

§ 349.4 Late completion of timely investigation.

(a) A decision may be revised after the applicable time period in §§ 349.2(a) or (b) expires if the Board begins an investigation into whether to revise the decision before the applicable time period expires and the agency diligently pursues the investigation to the conclusion. The investigation may be based on a request by a claimant or on action by the Board.

(b) *Diligently pursued* for purposes of this section means that in view of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if the investigation is concluded and, if necessary, the decision is revised within six months from the date the investigation began.

(c) If the investigation is not diligently pursued to its conclusion, the decision will be revised if a revision is applicable and if it is favorable to the claimant. It will not be revised if it would be unfavorable to the claimant.

§ 349.5 Notice of revised decision.

(a) When a decision is revised, notice of the revision will be mailed to the parties to the decision at their last known address. The notice will state the basis for the revised decision and the effect of the revision. The notice will also inform the parties of the right to further review.

(b) If a hearings officer or the three-member Board proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, all parties will be notified in writing of the proposed action. If a revised decision is issued by a hearings officer, any party may request that it be reviewed by the three-member Board, or the three-member Board may review the decision on its own initiative.

§ 349.6 Effect of revised decision.

A revised decision is binding unless:

(a) The revised decision is being reconsidered or appealed in accord with part 320 of this chapter;

(b) The three-member Board reviews the revised decision; or

(c) The revised decision is further revised consistent with this part.

§ 349.7 Time and place to request a review and/or hearing on revised decision.

A party to a revised decision may request, as appropriate, further review of the decision in accordance with the rules set forth in part 320 of this chapter. Further review or a hearing will be held according to the rules set forth in part 320 of this chapter.

§ 349.8 Discretion of the three-member Board to reopen or not to reopen a final decision.

In any case in which the three-member Board may deem proper, the Board may direct that any decision, which is otherwise subject to reopening under this part, shall not be reopened or direct that any decision, which is otherwise not subject to reopening under this part, shall be reopened.

Dated: October 26, 2000.

By Authority of the Board.

Beatrice Ezerski,
Secretary to the Board.

[FR Doc. 00–28211 Filed 11–3–00; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8862]

RIN 1545–AI32

Stock Transfer Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to Treasury Decision 8862, which was published in the **Federal Register** on Monday, January 24, 2000

(65 FR 3589). The corrections relate to the stock transfer rules under section 367(b).

DATES: Effective February 23, 2000.

FOR FURTHER INFORMATION CONTACT: Mark D. Harris, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 367 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

PART 1—INCOME TAXES

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.367(b)–0 [Corrected]

Par. 2. In § 1.367(b)–0, the entry for § 1.367(b)–1(c)(5) is revised to read as follows:

§ 1.367(b)–0 Table of contents.

* * * * *

§ 1.367(b)–1 * * *

(c) * * *

(5) Abbreviated notice provision for shareholders that make the election described in § 1.367(b)–3(c)(3).

* * * * *

§ 1.367(b)–1 [Corrected]

Par. 3. Section 1.367(b)–1, the heading for paragraph (c)(5) is revised to read as follows:

§ 1.367(b)–1 Other transfers.

* * * * *

(c) * * *

(5) *Abbreviated notice provision for shareholders that make the election described in § 1.367(b)–3(c)(3).* * * *

* * * * *

§ 1.367(b)–2 [Corrected]

Par. 4. Section 1.367(b)–2 is amended as follows:

1. Paragraph (c)(1)(i) is amended by removing the language "corporation, and" and adding "corporation; and" in its place.

2. Paragraph (e)(4) *Example 3*, the penultimate sentence, the language "56" is removed and "356" is added in its place.

3. Revising the introductory text of paragraph (f)(4).

4. Revising the penultimate sentence of paragraph (j)(2)(i).

The revisions read as follows:

§ 1.367(b)–2 Definition and special rules.

* * * * *

(f) * * *

(4) *Closing of taxable year.* In a reorganization described in paragraph (f)(1) of this section, the taxable year of the foreign transferor corporation shall end with the close of the date of the transfer and, except as otherwise required under the Internal Revenue Code (*e.g.* section 1502 and the regulations thereunder), the taxable year of the acquiring corporation shall end with the close of the date on which the transferor's taxable year would have ended but for the occurrence of the reorganization if—

* * * * *

(j) * * *

(2) * * *

(i) * * * The exchange gain or loss recognized under this paragraph (j)(2)(i) will increase or decrease the exchanging shareholder's adjusted basis in the stock of the foreign corporation, including for purposes of computing gain or loss realized with respect to the stock on the transaction. * * *

* * * * *

§ 1.367(b)–3 [Corrected]

Par. 5. Section 1.367(b)–3 is amended as follows:

1. Revising paragraph (b)(2).

2. In paragraph (d)(1), the first sentence, the language "Unused foreign tax credits allowable to the foreign acquired corporation under section 906" is removed and "Excess foreign taxes under section 904(c) allowable to the foreign acquired corporation under section 906" is added in its place.

The revision reads as follows:

§ 1.367(b)–3 Repatriation of foreign corporate assets in certain nonrecognition transactions.

* * * * *

(b) * * *

(2) *United States shareholder.* For purposes of this section (and for purposes of the other section 367(b) regulation provisions that specifically refer to this paragraph (b)(2)), the term *United States shareholder* means any shareholder described in section 951(b) (without regard to whether the foreign corporation is a controlled foreign corporation), and also any shareholder described in section 953(c)(1)(A) (but only if the foreign corporation is a controlled foreign corporation as defined in section 953(c)(1)(B) subject to the rules of section 953(c)).

* * * * *

§ 1.367(b)–4 [Corrected]

Par. 6. Section 1.367(b)–4 is amended as follows:

1. In paragraph (a) the language "another" is removed in the first sentence and "a" is added in its place.

2. A new sentence is added after the first sentence of paragraph (a).

3. Paragraph (b)(1)(i)(B)(*2*) is revised.

4. Revising the first sentence of paragraph (d) (1).

The addition and revisions read as follows:

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by foreign corporation in certain nonrecognition transactions.

(a) * * * This section applies notwithstanding that the foreign acquiring corporation and the foreign acquired corporation may be the same corporation (such as in a section 368(a)(1)(E) reorganization). * * *

(b) * * *

(1) * * *

(i) * * *

(B) * * *

(*2*) Immediately after the exchange, the foreign acquiring corporation or the foreign acquired corporation (if any, such as in a transaction described in section 368(a)(1)(B) and/or section 351), is not a controlled foreign corporation as to which the United States person described in paragraph (b)(1)(i)(A) of this section is a section 1248 shareholder.

* * * * *

(d) * * * (1) *In general.* If income is not required to be included under paragraph (b) of this section in a section 367(b) exchange described in paragraph (a) of this section (non-inclusion exchange) then, for purposes of applying section 367(b) or 1248 to subsequent exchanges and subject to the limitation of § 1.367(b)–2(d)(3)(iii) (in the case of a transaction described in § 1.367(b)–3), the determination of the earnings and profits attributable to an exchanging shareholder's stock received in the non-inclusion exchange shall include a computation that refers to the exchanging shareholder's pro rata interest in the earnings and profits of the foreign acquiring corporation (and, in the case of a stock transfer, the foreign acquired corporation) that accumulate after the non-inclusion exchange, as well as its pro rata interest in the earnings and profits of the foreign acquired corporation that accumulated before the non-inclusion exchange. * * *

* * * * *

§ 1.367(b)–5 [Corrected]

Par. 7. Section 1.367(b)–5 is amended as follows:

1. Paragraph (a)(1) is amended by revising the first sentence.
2. Paragraph (f) is revised.
3. Paragraph (g), *Example 1*(ii)(B), the second sentence is amended by removing the language "$60 and $0" and by adding "$0 and $60" in its place.
4. Revising the fourth sentence of paragraph (g), *Example 1*(ii)(C) by removing the language "from FC".
5. Adding two new sentences after the fourth sentence of paragraph (g), *Example 1*(ii)(C).
6. Adding a new sentence at the end of paragraph (g), *Example 2*(ii)(C).

The additions and revisions read as follows:

§ 1.367(b)–5 Distributions of stock described in section 355.

(a) * * * (1) *Scope*. This section provides rules relating to a distribution described in section 355 (or so much of section 356 as relates to section 355) and to which section 367(b) applies. * * *

* * * * *

(f) *Exclusion of deemed dividend from foreign personal holding company income*. In the event an amount is included in income as a deemed dividend by a foreign corporation under paragraph (c) or (d) of this section (including amounts received as an intermediate-owner under the rule of § 1.367(b)–2(e)(2)), such deemed dividend shall not be included as foreign personal holding company income under section 954(c).

(g) * * *

Example 1. * * *

(ii) * * *

(C) * * * Under § 1.367(b)–2(e)(2), the $20 deemed dividend is considered as having been paid by FC to FD, and by FD to USS, immediately prior to the distribution. Under paragraph (f) of this section, the deemed dividend is not included by FD as foreign personal holding company income under section 954(c). * * *

Example 2. * * *

(ii) * * *

(C) * * * Under paragraph (f) of this section, the deemed dividend is not included by FD as foreign personal holding company income under section 954(c).

Dale D. Goode,

Federal Register Liaison, Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 00–28433 Filed 11–3–00; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

RIN 0651–AB05

Changes To Implement Eighteen-Month Publication of Patent Applications; Correction

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office (Office) published a final rule in the **Federal Register** of September 20, 2000, revising the rules of practice in patent cases to implement the eighteen-month publication provisions of the American Inventors Protection Act of 1999. This document corrects two errors in that final rule.

EFFECTIVE DATE: November 29, 2000.

FOR FURTHER INFORMATION CONTACT: *Concerning this rule:* Robert W. Bahr by telephone at (703) 308–6906, or by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr.

SUPPLEMENTARY INFORMATION: The Office published a final rule in the **Federal Register** of September 20, 2000 (65 FR 57023), entitled "Changes to Implement Eighteen-Month Publication of Patent Applications." This document corrects errors in § 1.55 and § 1.99 as discussed below.

Section 1.55(a) should refer to "35 U.S.C. 119(a) through (d) and (f), 172, and 365(a) and (b)" rather than "35 U.S.C. 119(a) through (d), 172, and 365(a)" (references to 35 U.S.C. 119(f) and 365(b) were inadvertently omitted). Section 1.55(c) should refer to "35 U.S.C. 119(a) through (d) and (f), and 365(a)" rather than "35 U.S.C. 119(a) through (d) and 365(a)" (a reference to 35 U.S.C. 119(f) was inadvertently omitted).

Section 1.99(f) should not include its last sentence ("[N]o further submission on behalf of the member of the public will be considered, unless such submission raises new issues which could not have been earlier presented.").

In rule FR Doc. 00–23822, published on September 20, 2000 (65 FR 57023), make the following corrections:

§ 1.55 [Corrected]

1. On page 57053, in the third column, in § 1.55, in paragraph (a) introductory text, in lines 5 and 6, correct "119(a) through (d), 172, and 365(a)" to read "119(a) through (d) and (f), 172, and 365(a) and (b);" and on page 57054, in the first column, in § 1.55, in paragraph (c) introductory text, in each of lines 4, 9, and 19, correct "119(a)–(d) or 365(a)" to read "119(a) through (d) and (f), or 365(a)".

§ 1.99 [Corrected]

2. On page 57056, in the second column, in § 1.99, in paragraph (f), in lines 14 through 19, remove the sentence "No further submission on behalf of the member of the public will be considered, unless such submission raises new issues which could not have been earlier presented."

Dated: October 30, 2000.

Albin F. Drost,

Acting General Counsel.

[FR Doc. 00–28315 Filed 11–3–00; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[FRL–6896–9]

RIN 2040–AD66

Identification of Approved and Disapproved Elements of the Great Lakes Guidance Submission From the State of Wisconsin, and Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA published the final Water Quality Guidance for the Great Lakes System (the Guidance) on March 23, 1995. Section 118(c) of the Clean Water Act (CWA) requires the Great Lakes States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin to adopt within two years of publication of the final Guidance (*i.e.*, March 23, 1997) minimum water quality standards, antidegradation policies and implementation procedures that are consistent with the Guidance, and to submit them to EPA for review and approval. Each of the Great Lakes States made those submissions.

Today, EPA is taking final action on the Guidance submission of the State of Wisconsin. EPA's final action consists of approving those elements of the State's submission that are consistent with the Guidance, disapproving those elements that are not consistent with the Guidance, and specifying in a final rule the elements of the Guidance that apply in the portion of Wisconsin within the Great Lakes System where the State either failed to adopt required elements or adopted elements that are inconsistent with the Guidance.

DATES: 40 CFR 132.6(f), (h)-(j) is effective on December 6, 2000. 40 CFR 132.6(g) is effective on February 5, 2001. To the extent this action, or portion thereof, is subject to judicial review pursuant to section 509(b) of the Clean Water Act, 33 U.S.C. 1369(b), it is considered issued for purposes of judicial review as 1 p.m., Eastern Standard time on November 20, 2000, as provided in 40 CFR 23.2.

ADDRESSES: The public docket for EPA's final actions with respect to the Guidance submission of the State of Wisconsin is available for inspection and copying at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 by appointment only. Appointments may be made by calling Mery Jackson-Willis (telephone 312–886–3717).

FOR FURTHER INFORMATION CONTACT: Mark Morris (4301), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue., NW, Washington, DC 20460 (202–260–0312); or Mery Jackson-Willis, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 (312–353–3717).

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Potentially Affected Entities

Entities potentially affected by today's action are those discharging pollutants to waters of the United States in the Great Lakes System in the State of Wisconsin. Potentially affected categories and entities include:

Category	Examples of potentially affected entities
Industry	Industries discharging to waters within the Great Lakes System as defined in 40 CFR 132.2 in Wisconsin.
Municipalities	Publicly-owned treatment works discharging to waters within the Great Lakes System as defined in 40 CFR 132.2 in Wisconsin.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding regulated entities likely to be affected by these final actions. This table lists the types of regulated entities that EPA believes could be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this final action, you should examine the definition of "Great Lakes System" in 40 CFR 132.2 and examine 40 CFR 132.2 which describes the part 132 regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

On March 23, 1995, EPA published the Guidance. See 60 FR 15366; 40 CFR part 132. The Guidance establishes minimum water quality standards, antidegradation policies, and implementation procedures for the waters of the Great Lakes System in the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. Specifically, the Guidance specifies numeric criteria for selected pollutants to protect aquatic life, wildlife and human health within the Great Lakes System and provides methodologies to derive numeric criteria for additional pollutants discharged to these waters. The Guidance also contains minimum implementation procedures and an antidegradation policy.

Soon after being published, the Guidance was challenged in the U.S. Court of Appeals for the District of Columbia Circuit. On June 6, 1997, the Court issued a decision upholding virtually all of the provisions contained in the 1995 Guidance. *American Iron and Steel Institute, et al.* v. *EPA* (*AISI*), 115 F.3d 979 (D.C. Cir. 1997). The Court vacated the human health criterion for polychlorinated biphenyls (PCBs) and the acute aquatic life criterion for selenium, and the provisions of the Guidance "insofar as it would eliminate mixing zones for [bioaccumulative chemicals of concern (BCCs)] and impose [water quality-based effluent limitations (WQBELs)] upon internal facility waste streams." 115 F.3d at 985. On October 9, 1997, EPA published a document revoking the PCB human health criteria pursuant to the Court's decision. 62 FR 52922. On April 23, 1998, EPA published a second document amending the 1995 Guidance to remove the BCC mixing zone provisions from 40 CFR part 132 (found in procedure 3.C. of appendix F) and to remove language in the Pollutant Minimization Program provisions (procedure 8.D. of appendix F) that might imply that permitting authorities are required to impose WQBELs on internal waste streams or to specify control measures to meet WQBELs. 63 FR 20107. On June 2, 2000, EPA published a third document withdrawing the acute criteria for selenium. 65 FR 35283.

40 CFR 132.4 requires the Great Lakes States to adopt water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System consistent with the Guidance or be subject to EPA promulgation. 40 CFR 132.5(d) provides that, where a State makes no submission to EPA, the Guidance shall apply to discharges to waters in that State upon EPA's publication of a final rule indicating the effective date of the part 132 requirements in that jurisdiction.

On July 1, 1997, the National Wildlife Federation filed suit alleging that EPA had a non-discretionary duty to promulgate the Guidance for any State that failed to adopt standards, policies and procedures consistent with the Guidance. *National Wildlife Federation* v. *Browner*, Civ. No. 97–1504–HHK (D.D.C.). EPA negotiated a consent decree providing that the EPA Administrator must sign, by February 27, 1998, a **Federal Register** document making 40 CFR part 132 effective in any State in the Great Lakes Basin that failed to make a submission to EPA by that date under 40 CFR part 132. However, all of the Great Lakes States made complete submissions to EPA on or before the February deadline. On March 2, April 14, April 20 and April 28, 1998, EPA published in the **Federal Register** documents of its receipt of each of the States' Great Lakes Guidance submissions and a solicitation of public comment on the National Pollutant Discharge Elimination System (NPDES) portions of those submissions. 63 FR 10221; 63 FR 18195; 63 FR 19490; 63 FR 23285.

40 CFR 132.5(f) provides that, once EPA completes its review of a State's submission, it must either publish notice of approval of the State's submission in the **Federal Register** or issue a letter notifying the State that EPA has determined that all or part of its submission is inconsistent with the CWA or the Guidance, and identify any changes needed to obtain EPA approval. If EPA issues a letter to the State making findings of inconsistencies, the State then has 90 days to make the necessary

changes. If the State fails to make the necessary changes, EPA must publish a document in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of the Guidance that will apply to discharges within the State.

On November 15, 1999, the National Wildlife Federation and the Lake Michigan Federation filed suit alleging that EPA had a non-discretionary duty to take action on the Great Lakes States' Guidance submissions. *National Wildlife Federation* v. *Browner*, Civ. No. 99–3025–HHK (D.D.C.). EPA negotiated a consent decree providing that EPA must sign a **Federal Register** document by July 31, 2000, taking the action required by 40 CFR 132.5 on the Guidance submissions of the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Pennsylvania; and **Federal Register** documents by September 29, and October 31, 2000, taking the action required by 40 CFR 132.5 on the Guidance submissions of the States of New York and Wisconsin, respectively. Today's **Federal Register** document fulfills EPA's obligations under that Consent Decree with respect to the State of Wisconsin. EPA has completed its final actions with respect to the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Pennsylvania. EPA notes that Wisconsin's Guidance submission may contain provisions that revise its NPDES program or water quality standards in areas or with respect to regulated entities not covered by the Guidance. EPA is not taking action at this time to either approve or disapprove any such provisions.

EPA has conducted its review of the Wisconsin's submission in accordance with the requirements of section 118(c)(2) of the CWA and 40 CFR part 132. Section 118 requires that States adopt policies, standards and procedures that are "consistent with" the Guidance. EPA has interpreted the statutory term "consistent with" to mean "as protective as" the corresponding requirements of the Guidance. Thus, the Guidance gives States the flexibility to adopt requirements that are not the same as the Guidance, provided that the State's provisions afford at least as stringent a level of environmental protection as that provided by the corresponding provision of the Guidance. In making its evaluation, EPA has considered the language of each State's standards, policies and procedures, as well as any additional information provided by the State clarifying how it interprets or will implement its provisions.

Where EPA has promulgated a final rule that identifies a provision of the Guidance that shall apply in Wisconsin, EPA explains below its reasons for concluding that Wisconsin failed to adopt requirements that are consistent with the Guidance. Additional explanation of EPA's conclusions are contained in EPA's correspondence with Wisconsin (identified in relevant sections below) where EPA initially identified inconsistencies in the State's submission, as well in documents prepared for Wisconsin entitled, "Wisconsin Provisions Being Approved as Being Consistent With the Guidance," "Analysis of Whether Wisconsin Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps Taken By Wisconsin in Response to EPA's 90-Day Letter." Notice of the availability of EPA's correspondence with Wisconsin was published in the **Federal Register** and EPA has considered all public comments received regarding any conclusions as to whether Wisconsin had adopted provisions consistent with the Guidance.

In this proceeding, EPA has reviewed the State's submission to determine its consistency with 40 CFR part 132. EPA has not reopened part 132 in any respect, and today's action does not affect, alter or amend in any way the substantive provisions of part 132. To the extent any members of the public commented during this proceeding that any provision of part 132 is unjustified as a matter of law, science or policy, those comments are outside the scope of this proceeding.

With regard to those elements of the State submission being approved by EPA, EPA is approving those provisions as amendments to Wisconsin's NPDES permitting program under section 402 of the CWA and as revisions to Wisconsin's water quality standards under section 303 of the CWA. Today's document identifies those approved elements. Additional explanations of EPA's review of and conclusions regarding Wisconsin's submission, including the specific State provisions that EPA is approving, are contained in the administrative record for today's actions in documents prepared for Wisconsin entitled, "Wisconsin Provisions Being Approved as Being Consistent With the Guidance," "Analysis of Whether Wisconsin Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps Taken By Wisconsin in Response to EPA's 90-Day Letter."

C. Today's Final Action

On June 13, 2000, EPA issued a letter notifying the Wisconsin Department of Natural Resources (WDNR) that, while the State of Wisconsin had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the standards, policies and procedures adopted by the State were not consistent with corresponding provisions of the Guidance. On June 22, 2000, EPA published in the **Federal Register** a notice of and solicitation of public comment on its June 13, 2000 letter. 65 FR 38830. EPA has completed its review of all public comments on the June 13, 2000, letter and has determined that, with the exceptions described below, Wisconsin has adopted requirements consistent with all aspects of the Guidance. Specifically, Wisconsin has adopted requirements consistent with, and EPA is therefore approving those elements of the State's submissions which correspond to: the definitions in 40 CFR 132.2; the water quality criteria for the protection of aquatic life, human health and wildlife in Tables 1–4 of part 132, with three exceptions as described below; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in appendices B—D; the antidegradation policy in appendix E; and the implementation procedures in appendix F, with three exceptions described below. As explained more fully below, Wisconsin has not adopted requirements consistent with (1) the acute and chronic aquatic life criteria in Table 1 of part 132 for copper and nickel, and the chronic aquatic life criterion in Table 2 of part 132 for endrin and selenium, (2) the provisions governing total maximum loads in procedure 3 in appendix F to 40 CFR part 132, (3) the provisions governing consideration of intake pollutants in determining reasonable potential and establishing WQBELs in paragraphs D and E of procedure 5 in appendix F to 40 CFR part 132, and (4) the provisions for determining reasonable potential for whole effluent toxicity set forth in paragraph D of procedure 6 in appendix F to 40 CFR part 132.

EPA's June 13, 2000, letter concluded that some of the provisions that EPA is now approving authorized the State to act consistent with the Guidance, but provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. Subsequent to that letter, WDNR provided additional materials, including an Addendum to its Memorandum of Agreement (MOA) with EPA regarding the State's approved NPDES program in which WDNR commits to always exercise its discretion under those provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its MOA or risk EPA objection to permits and even program withdrawal. These materials have demonstrated to EPA that the State will implement its program (with the exceptions identified below) consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled "Wisconsin Provisions Approved as Being Consistent With the Guidance," "Analysis of Whether Wisconsin Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps Taken By Wisconsin in Response to EPA's 90-Day Letter."

EPA has determined that Wisconsin's acute and chronic aquatic life criteria for copper and nickel in Wis. Adm. Code NR 105, Tables 2 and 6 are not consistent with those in Tables 1 and 2 of part 132; and chronic aquatic life criterion for endrin in Wis. Adm. Code NR 105, Table 5 is not consistent with that in Table 2 to 40 CFR part 132. With respect to copper and nickel, Wisconsin acknowledged in an October 11, 2000, letter to EPA that it made mathematical errors which resulted in criteria that were higher than (less protective than) criteria that Wisconsin believes would have been consistent with the Guidance had the errors not been made. Wisconsin also acknowledged that it did not consider certain toxicological data incorporated into the Guidance criterion in deriving its chronic aquatic life criterion for endrin, which in turn resulted in a criterion that is less stringent than that required by the Guidance. Wisconsin intends to initiate rulemaking to correct these errors, but will be unable to complete that rulemaking before October 31, 2000, which is the date by which EPA is required under its Consent Decree with the National Wildlife Federation and the Lake Michigan Federation to take final action on Wisconsin's submission.

Based upon the above, EPA finds that Wisconsin has failed to adopt acute and chronic aquatic life criteria for copper and nickel consistent with those in Tables 1 and 2 of part 132, and has failed to adopt a chronic aquatic life criterion for endrin consistent with that in Table 2 to 40 CFR part 132, as required by 40 CFR 132.3. EPA, therefore, disapproves Wisconsin's acute and chronic aquatic life criteria for copper and nickel in Wis. Adm. Code NR 105, Tables 2 and 6, and chronic aquatic life criterion for endrin in Wis. Adm. Code NR 105, Table 5, to the extent they apply to waters of the Great Lakes System, and has determined that the acute and chronic aquatic life criteria for copper and nickel in Tables 1 and 2 of part 132 and the chronic aquatic life criterion for endrin in Table 2 to 40 CFR part 132 shall apply to the waters of the Great Lakes System in the State of Wisconsin.

As noted above, Wisconsin intends to initiate rulemaking to adopt criteria that are consistent with those in the Guidance for these three parameters. EPA will work closely with WDNR to insure that these criteria will be consistent with the Guidance. WDNR will then submit its criteria to EPA for review pursuant to section 303(c) of the CWA, and, if EPA approves those revisions, EPA will revise its regulations so that the Guidance criteria will no longer apply to the waters within the Great Lakes System in the State of Wisconsin.

EPA is also disapproving Wisconsin's failure to adopt and submit to EPA a chronic aquatic life water quality criterion for selenium. 40 CFR 132.3(b) mandates that each Great Lakes State adopt numeric water quality criteria that are consistent with the chronic water quality criteria for the protection of aquatic life contained in Table 2 of part 132 (or with site-specific modifications of those criteria adopted in accordance with the Guidance). Table 2 contains a chronic water quality criterion for selenium of 5 micrograms per liter (μg/L). Currently, Wisconsin's water quality standards do not contain a chronic aquatic life criterion for selenium. The absence of any water quality criterion in Wisconsin's standards to ensure the protection of aquatic life from chronic adverse effects due to selenium is inconsistent with the Guidance.

EPA did not identify the omission of the selenium criterion from the State's submission in its June 13, 2000, letter to the State, but subsequently became aware of this deficiency very near the close of this proceeding. Because the absence of the selenium criterion is clearly inconsistent with the Guidance, and in light of EPA's obligation under the consent decree in *National Wildlife Federation* v. *Browner*, Civ. No. 99–3025–HHK (D.D.C.), EPA has taken final action on the entirety of the State's submission, including the omission of the chronic aquatic life criterion for selenium. EPA recognizes however, that it has not previously notified the State of EPA's conclusion regarding the selenium criterion, and provided the 90-day period contemplated in EPA regulations for the State to take corrective action. To provide the State with this opportunity, EPA has established an effective date for the selenium criterion in today's rule of 90 days from today. If Wisconsin corrects this deficiency and adopts a selenium criterion consistent with the Guidance during this period, EPA will take action to withdraw the selenium criterion prior to its effective date. If the State does not take corrective action in this time frame, the selenium criterion in today's rule will go into effect 90 days from today. As with the other aspects of today's rule, if the State subsequently cures this deficiency and adopts a criterion for selenium that is approved by EPA, EPA will amend today's rule to remove the selenium criterion.

EPA also has determined that procedure 3 in appendix F to 40 CFR part 132 shall apply with regard to development of total maximum daily loads (TMDLs) for the Great Lakes System in the State of Wisconsin. EPA has made this determination because Wisconsin simply has not adopted specific requirements for developing TMDLs in the Great Lakes System that correspond to those in procedure 3 of appendix F. Wisconsin has enacted a statutory requirement at Wis. Stat. 283.83(3), and has adopted a regulatory requirement at Wis. Adm. Code NR 106.11, that generally require WDNR to develop TMDLs. Wisconsin also has adopted at Wis. Adm. Code NR 212 detailed regulatory requirements for how WDNR must develop TMDLs for a number of pollutants that are not subject to the Guidance (see Table 5 of 40 CFR part 132). However, Wisconsin has not adopted similar, detailed provisions governing development of TMDLs for pollutants that are subject to the Guidance (*i.e.*, all pollutants other than those in Table 5 of 40 CFR part 132).

Given the complete absence of any specific requirements governing development of TMDLs in the Great Lakes System in Wisconsin for pollutants subject to the Guidance, it is necessary for EPA to specify that the provisions of procedure 3 of appendix F to 40 CFR part 132 apply in the Great Lakes System in the State of Wisconsin. EPA notes that this promulgation has no effect on the chemical-specific reasonable potential procedures at Wis. Adm. Code NR 106.05 and 106.06(1), (3)–(5), & (7)–(10) which EPA approves as being consistent with the reasonable potential procedures in paragraphs A through C and F of procedure 5 in appendix F to 40 CFR part 132. These State procedures, therefore, apply in the

Great Lakes System in the State of Wisconsin for purposes of developing wasteload allocations in the absence of a TMDL and developing preliminary effluent limitations in making chemical-specific reasonable potential determinations.

EPA also has determined that two provisions in Wisconsin's rules, Wis. Adm. Code NR 106.06(06) and Wis. Adm. Code NR 106.10(1), are inconsistent with procedure 5 in appendix F to 40 CFR part 132. Section 301(b)(1)(C) of the CWA requires all NPDES permits to include effluent limitations more stringent than technology-based limits when necessary to meet State water quality standards in the receiving waterbody. To implement this requirement, EPA has established a two-step water quality-based permitting approach. A discharge of pollutants must first be evaluated to determine whether it will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard (*i.e.*, whether the discharge poses "reasonable potential"). 40 CFR 122.44(d)(1)(i) and (ii). If reasonable potential exists, then the discharge must be subject to water quality-based effluent limitation that will ensure "the level of water quality to be achieved by limits on point sources * * * is derived from, and complies with all applicable water quality standards." 40 CFR 122.44(d)(1)(vii)(A). Procedure 5 of the Guidance implements, and elaborates on, these requirements. It requires the permitting authority to characterize pollutant levels in a discharge, and determine whether those levels, if left uncontrolled, would cause, or have the reasonable potential to cause, or contribute to a violation of water quality standards. See procedure 5.A–C. If the permitting authority makes an affirmative reasonable potential determination, it must impose water quality-based effluent limitations ("WQBELs") to ensure compliance with water quality standards. See procedure 5.F.2.

One of the principal issues considered in the development of the Guidance was the appropriate approach for establishing wasteload allocations for point sources (upon which WQBELs are based) where the "background" levels of the pollutant in a waterbody exceed applicable water quality criteria for that pollutant. The proposed Guidance included a requirement to set the wasteload allocation at zero, in the absence of a multiple source TMDL, for any pollutant discharged into a waterbody already exceeding water quality criteria for that pollutant. See procedures 3A.C.4 and 3B.C.3 (58 FR 21046, April 16, 1993). This "high background" provision was not included in the final Guidance because the Agency concluded that a multitude of factors would need to be considered in establishing wasteload allocations and WQBELs in this situation. See Supplemental Information Document for the Water Quality Guidance for the Great Lakes System (EPA, 3/23/95) ("SID") at 285. Possible permitting approaches discussed in the SID ranged from prohibiting the discharge of the pollutant altogether to allowing no greater than discharge at the criteria itself (*i.e.*, "criteria end-of-pipe"). See SID at 339.

EPA also addressed "high background" pollutants by establishing specialized provisions for discharges of pollutants contained in a facility's intake water ("intake pollutants") in paragraphs D and E of procedure 5. Where a facility removes water with high background pollutant levels and then subsequently discharges the same level of pollutants back into the same waterbody, the discharge does not pose environmental concerns comparable to where a facility introduces pollutants into the waterbody for the first time.

Procedure 5.D allows a finding that a water quality-based effluent limit is not needed for a particular pollutant that originates in the intake water and simply passes through the facility and is discharged without any adverse effect (that would not have occurred had the intake pollutant stayed in-stream). Among other things, eligibility for this finding under the Guidance requires a showing that:

i. The facility withdraws 100 percent of the intake water containing the pollutant from the same body of water into which the discharge is made;

ii. The facility does not contribute any additional mass of the identified intake pollutant to its wastewater;

iii. The facility does not alter the identified intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutants were left in-stream;

iv. The facility does not alter the identified intake pollutant concentration, as defined by the permitting authority, at the edge of the mixing zone, or at the point of discharge if a mixing zone is not allowed, as compared to the pollutant concentration in the intake water, unless the increased concentration does not cause or contribute to an excursion above an applicable water quality standard; and

v. The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the identified intake pollutant were left in-stream.

If an intake pollutant does not meet the above five criteria and effluent limitations are needed, paragraph E of procedure 5 allows a facility to discharge the same mass and concentration of pollutants that are present in its intake water (*i.e.*, "no net addition"), provided the discharge is to the same body of water and certain other conditions are met. Under the Guidance, an intake pollutant is from the same body of water if the intake pollutant "would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee." Procedure 5.D.2.b. EPA determined that allowing discharge at background levels, even though above applicable criteria, would be both environmentally protective and consistent with the requirements of the CWA where a pollutant is simply being moved from one part of the waterbody to another that it would have reached in any event. However, if the pollutant is from a different body of water, "no net addition" limitations are not available because, in such a case, the facility is introducing a pollutant to a waterbody for the first time (*i.e.*, the pollutant would not be introduced to the waterbody but for the discharge). Because the waterbody is already exceeding applicable water quality criteria the Guidance requires a more stringent approach to ensure the discharge does not exacerbate the water quality standards violation—*i.e.*, effluent limitations based on the most stringent applicable water quality criterion for the receiving water. See procedure 5.E.4.

Wisconsin's regulations contain a provision that addresses discharges into waters where background levels exceed applicable water quality criteria. Wis. Adm. Code NR 106.06(6). If 10 percent of a pollutant to be discharged by a facility is from the same body of water as the discharge, Wisconsin's procedure requires that permit limitations for the entire discharge be set at background levels, except that more stringent limitations may be established when the existing treatment system has a demonstrated cost-effective ability to achieve regular and consistent compliance with a limitation more stringent than the representative background concentration. Wis. Adm. Code NR 106.06(6)(c). Where at least 90 percent of the wastewater is from groundwater or a drinking water supply, the permitting authority is to establish limits equal to the lowest applicable water quality criteria, except that limitations up to background levels are allowed if reasonable, practical or otherwise required steps are taken to minimize the level of the pollutant discharged. Wis. Adm. Code NR 106.06(6)(a) and (b). In either situation, the department may allow alternative limitations, including limitations above background levels, in the form of numerical limits, monitoring requirements, or a cost-effective pollutant minimization plan. Wis. Adm. Code NR 106.06(6)(d).

Wisconsin's approach differs significantly from, and is not as protective as, procedure 5 of the Guidance. Most importantly, procedure 5 only allows effluent limitations to be set above water quality criteria at "background" levels (*i.e.*, "no net addition" limitations under procedure 5.E) for intake pollutants that are taken from, and returned to, the same body of water. Any pollutants transferred from a different body of water must meet limitations based on the most stringent applicable water quality criterion. See procedure 5.E.4. Where a facility's discharge combines pollutants from the same and different bodies of water, effluent limitations may be derived using flow-weighting to reflect the two permitting approaches. See procedure 5.E.5. Wisconsin's procedure, on the other hand, effectively allows any facility covered by its provision to discharge its entire waste stream at background levels (and potentially even higher in accordance with Wis. Adm. Code NR 106.06(d)), regardless of whether the pollutant originated from the same body of water, a different body of water, or the facility generated the pollutant itself. Indeed, Wisconsin's procedure would even allow the permit writer to not include effluent limitations at all. Because Wisconsin's procedure allows the permitting authority to adopt less stringent effluent limitations than would be allowed by the Guidance, and even allows the permitting authority to not include any effluent limitations in situations where the Guidance would require one, the State's procedure is inconsistent with the Guidance.

Wisconsin's approach is also inconsistent with the fundamental principles underlying the Guidance permitting procedures. The Guidance allows effluent limitations at "background" levels for intake pollutants from the same body water because, in that circumstance, "the discharge containing the identified intake pollutant of concern effectively has no impact on the receiving water that would not otherwise occur if the pollutant were left in stream." See SID at 370. In contrast, Wisconsin's approach allows facilities to discharge pollutants that were not previously in the waterbody (pollutants either generated by the facility itself or intake pollutants from a different body of water), and to do so at levels greater than the applicable water quality criteria. Since the receiving waterbody is already exceeding applicable water quality criteria, such discharges have the strong potential to exacerbate the water's non-compliance with standards, and permits authorizing such discharges would not meet the underlying requirement to establish effluent limitations that ensure water quality achieved by point sources derives from and complies with water quality standards. 40 CFR 122.44(d)(1)(vii)(A).

This conclusion is not changed by the fact that Wisconsin's procedures provide for limitations to be set at levels below background based on practicability considerations, as provided in Wis. Adm. Code NR 106.06(6)(b) and (c)2. The CWA does not contain an exception to the requirement to meet water quality standards based on considerations of technical feasibility. To the contrary, the Act requires discharges to meet technology-based requirements and "*any more stringent* limitations, including those necessary to meet water quality standards." CWA section 301(b)(1)(C) (emphasis added). When EPA developed the Guidance, EPA expressly evaluated and rejected Wisconsin's approach on the grounds that it would "substitute the feasibility of pollution control for consideration of water quality standards as the basis for deriving WQBELs." See SID at 352. Procedure 5 of the Guidance does not permit loosening of water quality-based effluent limitations based on consideration of feasibility. Therefore, Wisconsin's procedure is not as protective as the Guidance.

Finally, the Wisconsin approach is not as protective as the Guidance because it fails to include the important restrictions contained in the Guidance to ensure that all possible adverse impacts that could result from the discharge of intake pollutants are considered in determining whether limits are needed. The Guidance prohibits "no net addition" limitations where the facility alters the intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutant were left in-stream, or the timing and location of the discharge would increase the adverse effects of the pollutants. Procedures 5.D.3.b.iii and v; 5.E.3.a. The absence of these restrictions in the Wisconsin submission is inconsistent with the Guidance.

For the reasons described above, EPA finds that Wis. Adm. Code NR 106.06(6) is inconsistent with procedure 5 of appendix F of 40 CFR part 132.

EPA also finds Wisconsin's cooling-water exemption at Wis. Adm. Code NR 106.10(1) to be inconsistent with the intake pollutant procedures of the Guidance. That provision prohibits the NPDES permitting authority from imposing WQBELs on discharges of non-contact cooling waters, which do not contain additives. Even when additives are used, Wis. Adm. Code NR 106.10(1) categorically prohibits the permitting authority from imposing WQBELs for "compounds at a rate and quantity necessary to provide a safe drinking water supply, or the addition of substances in similar type and amount to those substances typically added to a public drinking water supply." Wisconsin's rules do not contain any of the limitations set forth in the Guidance at paragraph 5.3.b of appendix F discussed above, which ensure that all potential environmental effects are considered in regulating the discharge of intake pollutants.

Nothing in the Guidance allows for a categorical exclusion for non-contact cooling water discharges (with or without additives) from the need for evaluating whether WQBELs are needed to ensure compliance with water quality standards. A major premise of the provisions in the Guidance pertaining to determining reasonable potential in paragraphs A–C of procedure 5, as well as the intake pollutants addressed by paragraphs D and E, is that decisions on the need for, and calculation of, WQBELs must occur on a case-by-case basis because there is no way to categorically determine that a particular group of discharges will have the same impact on any particular body of water. Without such an evaluation, it is not possible to make a reliable determination that limitations are being imposed that are needed to meet water quality standards, as required by section 301(b)(1)(C) of the CWA. EPA recognizes that it is possible to develop a framework for considering classes of discharges based upon their common characteristics (e.g., certain categories of non-contact cooling water) that accounts for the factors identified in the Guidance to determine whether their discharge will cause or has the reasonable potential to cause or contribute to an exceedance of water quality standards. This is evidenced by EPA's approval of once-through non-contact cooling water provisions in other Great Lakes States. Wisconsin, however, has not tailored its procedure in this manner or supplied any analysis why the exempt category of discharges never require the imposition of WQBELs. Instead, the State has provided a broad, blanket exemptions from water quality-based permitting requirements for non-contact cooling water discharges regardless of the impacts on the receiving water of those discharges. EPA clearly stated that it would not consider such exemptions consistent with the Guidance. See SID at 384–85. EPA, therefore, finds that Wisconsin's non-contact cooling water provisions at Wis. Adm. Code NR 106.06(10)(1) are not consistent with the Guidance.

Based upon the above, EPA disapproves the provisions at Wis. Adm. Code NR 106.06(6) and Wis. Adm. Code NR 106.06(10)(1) to the extent they apply to waters of the Great Lakes System as inconsistent with procedure 5 in appendix F of 40 CFR part 132 and has determined that paragraphs D and E of procedure 5 in appendix F to 40 CFR part 132 shall apply to the waters of the Great Lakes System in the State of Wisconsin. As described in the record for today's action, EPA has approved Wisconsin's basic procedure at Wis. Adm. Code NR 106.05 for determining reasonable potential for specific chemicals as consistent with the Guidance, and that procedure will continue to govern reasonable potential determinations by the State within the Great Lakes System. In light of EPA's disapproval of Wis. Adm. Code NR 106.06(6) and Wis. Adm. Code NR 106.06(10)(1), those provisions are not an effective component of the State's NPDES program within the Great Lakes System and cannot serve as the basis for making reasonable potential determinations and establishing effluent limitations in issuing NPDES permits. See 40 CFR 123.63(b)(4) (NPDES program revisions are effective upon approval by EPA). Therefore, discharges of pollutants will be governed by the State's reasonable potential procedures in Wis. Adm. Code NR 106.05, subject to the flexibility available under the intake pollutant procedures contained in today's rule.

EPA also has determined that Wisconsin's provisions at Wis. Adm. Code NR 106.08(5) for determining reasonable potential for a discharge to cause or contribute to an exceedance of Wisconsin's narrative criteria at Wis. Adm. Code NR 102.04(1) prohibiting the discharge of toxic substances in toxic amounts are inconsistent with paragraph D of procedure 6 in appendix F to 40 CFR part 132. The Guidance procedure for evaluating reasonable potential for whole effluent toxicity (WET) is based on comparing a projected 95th percentile WET value at a 95 percent confidence level with the acute and chronic WET criteria after accounting for any available dilution. In most cases where there is quantifiable effluent data, EPA's procedure will project an effluent value greater than the maximum observed value (using factors to account for effluent variability and size of the data set) to characterize the reasonable worst case effluent. This conservative approach is designed to ensure that WQBELs are imposed when there is a reasonable potential for toxicity, taking into account the effluent variability and the size of the data set, even if no toxicity has actually been observed.

In evaluating State reasonable potential procedures for WET, EPA looked for an equivalent level of protection to that provided by the Guidance procedure. In the case of a procedure to determine when a WQBEL is needed, one important consideration is whether the alternative procedure would indicate the need for a WQBEL in similar situations to those that would trigger a WQBEL under paragraph D of procedure 6.

Wisconsin's procedures at Wis. Adm. Code NR 106.08(5) rely on the comparison of the geometric mean toxicity multiplied by the fraction of the available toxicity values that fail WET requirements to derive a WET reasonable potential factor (RPF). If the calculated RPF is greater than 0.3, a limit is required. Because effluent monitoring results are averaged under the Wisconsin approach, the importance of individual sample showing high levels of toxicity is diminished in determining the need for a limit. Indeed, Wisconsin's procedure would allow the State to not impose a limit even where actual toxicity has been observed in WET tests on the effluent, a result clearly inconsistent with the Guidance. Wisconsin's regulation also allows the permit writer not to even undertake a reasonable potential analysis if there are fewer than five data points to calculate the RPF, while the Guidance requires a reasonable potential analysis where even where there is only one data point. Each of these characteristics of the Wisconsin procedure means that it is possible to reach a determination that a limit is not necessary even when an actual observed value would violate potential permit limits. This is clearly inconsistent with paragraph D of procedure 6.

Based upon the above, EPA finds that Wisconsin has failed to adopt procedures governing WET reasonable potential consistent with those in paragraph D of procedure 6 in appendix F to 40 CFR part 132. EPA, therefore, disapproves Wisconsin's provisions at Wis. Adm. Code NR 160.08(5) to the extent they apply to waters of the Great Lakes System, and has determined that the provisions in paragraph D of procedure 6 in appendix F to 40 CFR part 132 shall apply for discharges into the Great Lakes System in the State of Wisconsin.

As noted above, EPA, in this document, is not taking action to approve or disapprove portions of Wisconsin's Guidance submission pertaining to NPDES permitting and water quality standards issues that are not addressed by the Guidance. Therefore, EPA is not taking action under section 118 with regard to the following issue. However, EPA wishes to describe its understanding with regard to one aspect of Wisconsin's submission that is not addressed by the Guidance. Specifically, Wis. Adm. Code NR 106.07(6)(c) provides that effluent levels that are below the level of quantification (LOQ) are generally deemed to be in compliance with WQBELs that are below the LOQ. EPA expressed concern in its June 13, 2000, letter to Wisconsin that, to the extent this provision suggested that effluent levels that exceeded the WQBEL but that were below the LOQ would be deemed to be in compliance with the WQBEL, this provision would be inconsistent with the requirement in paragraph A of procedure 8 in appendix F to 40 CFR part 132 that such WQBELs must be specified in the NPDES permit as the enforceable effluent limit.

WDNR has clarified that, consistent with the Guidance, it is required to specify the WQBEL in the permit as the enforceable limit in these situations and that Wis. Adm. Code NR 106.07(6)(c) only relates to the exercise by WDNR of its enforcement discretion, not the authority of the federal government or third parties in a citizen suit to enforce the WQBEL as calculated. Moreover, WDNR has agreed in an addendum to its MOA with EPA that it will not include the language of Wis. Adm. Code NR 106.07(6)(c) in NPDES permits. Given WDNR's clarification regarding the meaning of Wis. Adm. Code NR 106.07(6)(c), EPA no longer believes that Wis. Adm. Code NR 106.07(6)(c) is relevant to the question of whether WDNR has adopted requirements consistent with the Guidance, and so EPA is not taking action at this time to either approve or disapprove that provision. EPA notes that revisions to State NPDES programs do not become

effective until approved by EPA (40 CFR 123.62(b)(4)), that EPA has concerns regarding the appropriateness of the State's limitation on its own enforcement authority, and that WDNR intends to review and potentially revise its rules to address EPA's concerns.

D. Public Comments

EPA received public comments from two commenters in response to its **Federal Register** notice of the availability of its June 13, 2000 letter to the State of Wisconsin. EPA has responded to those comments in a document entitled "EPA's Response to Comments Regarding the Great Lakes Guidance Submission of the State of Wisconsin" that has been included as part of the record in this matter. The following is a summary of EPA's responses to the significant points of these comments.

Comment: One commenter asserted that EPA should have provided the public with 90 days, rather than 45, to comment on EPA's June 13, 2000, letter to the State of Wisconsin setting forth EPA's initial views regarding whether Wisconsin had adopted requirements consistent with the Guidance.

Response: The final rule being promulgated by EPA makes certain provisions of 40 CFR part 132 applicable to the Great Lakes System in Wisconsin. Those provisions were adopted after publication of a proposed rule for public comment. See 58 FR 20802 (April 16, 1993). EPA is not modifying those provisions, but merely making them effective in accordance with 40 CFR 132.5(f)(2). Therefore, the public had a full opportunity to comment on the contents of today's rule. Moreover, EPA provided public notice of the availability of, and solicited comment on, the NPDES portions of Wisconsin's Guidance submission in a **Federal Register** document (63 FR 10221) dated March 2, 1998. In a **Federal Register** document (65 FR 38830) dated June 22, 2000, EPA subsequently provided notice of the availability of its June 13, 2000, letter to Wisconsin in which EPA provided (a) detailed explanations of the bases for its findings that the State had not adopted provisions consistent with certain provisions of the Great Lakes Guidance and (b) its preliminary conclusions that, with the exception of those findings, the State had adopted provisions consistent with the Guidance. EPA also solicited comment on all aspects of this letter, and has considered and responded to all comments received before taking today's final action. EPA has complied with all applicable public participation requirements, and believes that the 45 day period for commenting on its June 13, 2000, letter to Wisconsin was adequate.

Comment: One commenter asserts that EPA's treatment of intake pollutants in the Guidance is technically flawed and economically unachievable because they could require the treatment of up to one billion gallons per day of non-contact cooling water at a power plant. According to the commenter, the power plant in such a scenario would have to either install wastewater treatment equipment at a cost of tens or hundreds of millions of dollars or to shut down. The commenter asserts that a better approach would be to determine the sources of the background pollutants of concern and to determine if there are other technically and economically feasible options for improving water quality.

Response: To the extent this commenter is asserting that the Guidance itself improperly addresses intake pollutants, EPA reiterates that it has not reopened the Guidance for revisions and therefore such comments are not within the scope of EPA's current action, which is to determine whether Wisconsin has submitted provisions consistent with the Guidance.

EPA is disapproving the Wisconsin provision that prohibits WQBELs for non-contact cooling water as being inconsistent with the Guidance for the reasons stated above. EPA believes the commenter's conclusion that power plants will have to treat billions of gallons of water or shut down is speculative and overstated. EPA expects that in many cases, especially where no additives are used, once-through non-contact cooling water will qualify for intake pollutant relief under the Guidance provisions being promulgated for application to discharges to the Great Lakes Basin in Wisconsin. In any case, the application of the intake pollutant procedures of the Guidance to a particular discharger is fundamentally a site-specific evaluation. The particular characteristics of a facility's intake water and effluent, the manner in which the intake pollutants are handled by the facility and the resulting effect of that handling on the potential adverse effects of such pollutants in the receiving water, as well as the nature of the receiving water itself, all must be considered to determine what regulatory controls, if any, are needed under the Guidance. Thus, without a full record, it is not possible for us to address fully the concerns raised by this commenter, or predict how the rule being promulgated today will apply to any particular facility.

In addition, there are two other mechanisms set forth in the Guidance for addressing the commenter's concern. First, as EPA explained in several places in the SID, the best means for States and Tribes to address comprehensively the root causes of non-attainment of water quality standards is the TMDL development process. See, e.g., SID at 347. (The SID has been included in the record for EPA's determination with respect to Wisconsin's Guidance submission.) The TMDL procedures for the Great Lakes System are set forth in procedure 3 of appendix F to 40 CFR part 132. Second, any existing discharger into the Great Lakes System can apply for a variance from water quality standards where the discharger believes that requiring compliance with necessary water quality based effluent limitations "would result in substantial and widespread economic and social impact." See 40 CFR 131.10(g)(6). EPA adopted the intake pollutant procedures in the Guidance as an additional, permit-based mechanism for dealing with simple removal and transfer of pollutants from one part of a waterbody to another, but availability of this mechanism does not preclude use of other means of adjusting water quality standards or a particular discharger's load reduction responsibilities.

Comment: One commenter asserts that Wisconsin's approach to addressing WET, which the commenter describes as being one that relies upon permittees unilaterally (or in a cooperative fashion with the WDNR) taking voluntary measures to reduce toxicity rather than upon imposition of effluent limitations to control WET, is consistent with or superior to that in the Guidance. According to the commenter, Wisconsin's voluntary approach to addressing WET is superior to an approach that requires imposition of effluent limitations because effluent limitations can actually hinder a permittee's ability to address toxicity problems. The commenter asserts that this is because exceedances of permit limits can have serious legal consequences that can often divert the technical staff of both the regulatory agency and the permittee away from doing the technical work necessary to identify and address the causes of toxicity in the permittee's effluent.

Response: Paragraph C of procedure 6 in appendix F to 40 CFR part 132 requires imposition of WQBELs for WET whenever an effluent is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any numeric WET criterion or narrative criterion within a State's water quality standards (*i.e.*, whenever there is "reasonable potential"). Paragraph D of procedure 6 sets forth procedures for determining reasonable potential for WET.

Wisconsin's rules at Wis. Adm. Code NR 106.08(1), consistent with paragraph C of procedure 6, requires that WDNR "shall establish [WET] testing requirements and limitations whenever necessary to meet applicable water quality standards as specified in [Wis. Adm. Code] chs. NR 102 to 105 as measured by exposure of aquatic organisms to an effluent and specified effluent dilutions." For the reasons explained above, Wisconsin's procedures for determining reasonable potential (*i.e.*, for determining whether WET limitations are "necessary to meet applicable water quality standards") are clearly not consistent with paragraph D of procedure 6 because, among other things, it is possible under Wisconsin's procedures to reach a determination that a WQBEL is not necessary even when an actual observed value would violate potential permit limits.

The commenter's premise is that imposition of WQBELs is actually harmful to the environment because the commenter believes that imposition of WQBELs results in an expenditure of resources that could otherwise be used addressing toxicity problems. The commenter, therefore, concludes that Wisconsin's inadequate WET reasonable potential should be approved precisely because it does not result in imposition of WQBELs.

EPA does not agree with the commenter's premise that imposition of WQBELs is somehow harmful to the environment, and the commenter has provided nothing other than vague, conclusory assertions to support the premise. Instead, EPA believes that the procedure that determines whether or not a permit includes a WQBEL for a particular pollutant or parameter (the reasonable potential procedure) is a critical element for determining the level of protection that will be achieved when implementing a water quality standard. Where a reasonable potential procedure is not as protective as the Guidance, a State's WET program cannot be considered to achieve the same level of protection as the Guidance.

EPA also notes that in addition to the requirements of procedure 6 of the Guidance itself, section 301(b)(1)(C) of the CWA requires "limitation[s] * * * necessary to meet any applicable water quality standard." Moreover, EPA's regulations implementing section 301(b)(1)(C) at 40 CFR 122.44(d)(1)(iv) and (v) require that NPDES permits contain "effluent limits for whole effluent toxicity" or chemical-specific limits in lieu of WET limits, whenever there is reasonable potential that a discharge will cause or contribute to an in-stream excursion above a numeric criterion for WET or a narrative criterion of no toxics in toxic amounts. Therefore, the CWA and EPA's implementing regulations require permitting authorities to impose WQBELs for WET when there has been a reasonable potential finding, and EPA does not believe it would be consistent with the CWA and EPA regulations to approve an alternative approach that omits this fundamental requirement. EPA notes that, in appropriate cases, a permitting authority can include a compliance schedule for the WQBEL that would allow for additional monitoring and identification and reduction of toxicants, followed by a reassessment of the need for a limit or the identification of a specific toxicant rather than WET that could be subject to a WQBEL.

Comment: One commenter asserts that EPA has failed to present technical evidence that the Guidance WET reasonable potential statistical procedure is technically valid. Specifically, the commenter asserts that EPA has not presented any information to prove that WET data follow a log-normal distribution.

Response: The CWA requires the States to adopt policies, standards and procedures that are consistent with the Guidance promulgated by EPA. 33 U.S.C. 118(c)(2)(C). EPA has reviewed Wisconsin's submission to determine its consistency with the Guidance but has not reopened any provision of the Guidance in our review. The public had a full opportunity to provide its views on the statistical procedure for determining WET reasonable potential in paragraph D of procedure 6 during the rulemaking establishing the Guidance, and the time period for challenging the Guidance has passed. See 33 U.S.C. 509(b). Therefore, this comment does not provide a basis for allowing Wisconsin to adopt WET reasonable potential procedures that are inconsistent with those in the Guidance.

EPA further notes, in response to the comment regarding whether it is appropriate to assume that WET data follow a log-normal distribution, that although the States have flexibility to adopt approaches that make different assumptions about the distribution of WET data than is assumed in procedure 6, no one has presented EPA with an analysis identifying a different distribution or statistical method that fits WET data better, either in general or in a particular case. More fundamentally, however, for the reasons explained above, the procedure submitted by Wisconsin does not address in any manner the underlying premise of procedure 6: that effluent quality is variable and, therefore, a method for assessing WET data must account for the likelihood that the maximum value in a particular data set is less than the true maximum that is likely to be experienced by the environment as a result of the discharge. EPA, therefore, concludes that Wisconsin's approach is inconsistent with the Guidance.

Comment: One commenter asserts that EPA is asking Wisconsin to adopt TMDL rules that did not exist when the Wisconsin rules were being revised.

Response: EPA promulgated the Guidance at 40 CFR part 132 on March 23, 1995. Wisconsin subsequently engaged in a proceeding to adopt requirements consistent with the Guidance, and Wisconsin did indeed revise its rules in that time period in an effort to be consistent with the Guidance. EPA, therefore, does not agree that the Guidance required Wisconsin to adopt rules that did not exist when the Wisconsin rules were being revised.

E. Consequences of Today's Action

As a result of today's action, the Guidance provisions specified in today's rule apply in the Great Lakes System in Wisconsin until such time as the State adopts requirements consistent with the specific Guidance provisions at issue, and EPA approves those State requirements and revises the rule so that the provisions no longer apply in Wisconsin.

II. "Good Cause" Under the Administrative Procedure Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553 (b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA finds it unnecessary and contrary to the public interest. Today's rule does not promulgate any new regulatory provisions. Rather, in accordance with the procedures in 40 CFR 132.5(f), today's rule identifies the provisions of 40 CFR part 132 promulgated previously by EPA that shall apply to discharges in Wisconsin within the Great Lakes

System. Those provisions have already been subject to a notice of proposed rulemaking, and publication of a new proposed rule is therefore unnecessary. See 58 FR 20802 (April 16, 1993). In addition, while EPA's approval/disapproval decisions described in this document do not constitute rulemaking, EPA has nonetheless received substantial public comment on these decisions. See 63 FR 10221 (March 2, 1998) (notice of receipt of State Guidance submission and request for comment); 65 FR 38830 (June 22, 2000) (notice of letter identifying inconsistencies and request for comment). EPA also believes the public interest is best served by fulfilling the CWA's requirements without further delay and publication of a notice of proposed rulemaking therefore would be contrary to the public interest. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, as described in Section II, above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, because this action does not promulgate any new requirements, but only makes certain existing provisions of 40 CFR part 132 effective in Wisconsin, it does not impose any new costs. The costs of 40 CFR part 132 were considered by EPA when it promulgated that regulation. Therefore, today's rule does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA, or significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the State, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2). 40 CFR 132.6(f), (h)–(j) is effective on December 6, 2000. 40 CFR 132.6(g) is effective on February 5, 2001.

List of Subjects in 40 CFR Part 132

Environmental protection, Administrative practice and procedure, Great Lakes, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 31, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth above, EPA amends 40 CFR part 132 as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

1. The authority citation for part 132 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 132.6 is amended by adding paragraphs (f) through (i) to read as follows:

§ 132.6 Application of part 132 requirements in Great Lakes States and Tribes.

* * * * *

(f) Effective December 6, 2000, the acute and chronic aquatic life criteria for copper and nickel in Tables 1 and 2 of this part and the chronic aquatic life criterion for endrin in Table 2 of this part shall apply to the waters of the Great Lakes System in the State of Wisconsin.

(g) Effective February 5, 2001, the chronic aquatic life criterion for selenium in Table 2 of this part shall apply to the waters of the Great Lakes System in the State of Wisconsin.

(h) Effective December 6, 2000, the requirements of procedure 3 in appendix F of this part shall apply for purposes of developing total maximum daily loads in the Great Lakes System in the State of Wisconsin.

(i) Effective December 6, 2000, the requirements of paragraphs D and E of procedure 5 in appendix F of this part shall apply to discharges within the Great Lakes System in the State of Wisconsin.

(j) Effective December 6, 2000, the requirements of paragraph D of procedure 6 in appendix F of this part shall apply to discharges within the Great Lakes System in the State of Wisconsin.

Dated: October 31, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–28419 Filed 11–3–00; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 63

RIN 0925–AA11

Traineeships

AGENCY: National Institutes of Health, HHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is amending the regulations governing traineeships to add conditions under which NIH may terminate traineeship awards and revise the authorities for the awards.

EFFECTIVE DATE: This final rule is effective on December 6, 2000.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, National Institutes of Health, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20852; telephone 301–496–4607 (not a toll-free number; Fax 301–402–0169; or E-mail (jm40z@nih.gov)). For information about traineeship awards contact James Alexander, Acting Director, Office of Education, Office of Intramural Research, National Institutes of Health, Building 10, Room 1C–129, 10 Center Drive, MSC 1158, Bethesda, MD 20892–1158; telephone 301–496–2427 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 405(b)(1)(C) of the Public Health Service (PHS) Act, as amended, authorizes the Secretary, acting through the directors of the national research institutes of NIH, to conduct and support research training for which fellowship support is not provided under section 487 of the PHS Act, and which is not residency training of physicians or other health professionals. The Director, NIH, has similar authority under section 402(b)(13) of the PHS Act. Additionally, section 485D(a) of the PHS Act authorizes the Director of the National Center for Complementary and Alternative Medicine to support research training; section 472 of the PHS Act authorizes the award of traineeships in medical library science and related fields; and section 413(b)(3) of the PHS Act authorizes the Director of the National Cancer Institute (NCI), in carrying out the National Cancer Program, to support appropriate programs of education and training (including continuing education and laboratory and clinical research training). Unlike the NIH authority set forth in section 405(b)(1)(C) of the PHS Act, the NCI authority does not exclude residency training. Under these authorities, NIH awards research traineeships to qualified individuals. The regulations codified at 42 CFR part 63 govern these traineeships. NIH revised the regulations in their entirety, February 27, 1995 (60 FR 10718).

NIH proposed amendments to Part 63 in a notice of proposed rulemaking (NPRM) published in the **Federal Register**, October 30, 1998 (63 FR 58336). The NPRM provided for a 60-day comment period. The comment period expired December 29, 1998. NIH received no comments. Consequently, except for minor clarifying and editorial changes, the final regulations described below are the same as those proposed in October 1998.

In these final regulations, NIH is revising § 63.9 by amending paragraph (b) to add scientific misconduct as a ground for termination and by adding new paragraphs (c) and (d), which add conviction of a felony and certain other criminal offenses and programmatic changes or lack of funds, respectively, as grounds for termination.

Additionally, NIH is amending the authority citation by adding a reference to section 413(b)(3) of the PHS Act pertaining to the National Cancer Program that was inadvertently excluded from the proposed rule and removing the reference to section 485B(b) of the PHS Act and the parallel U.S. Code citation to reflect the renaming of the National Center for Human Genome Research as the National Human Genome Research Institute (NHGRI), effective January 27, 1997 (62 FR 3900). As a result of the establishment of this new research institute, the current reference to section 485B is redundant and unnecessary. The current references to the National Center for Human Genome Research and section 485B of the PHS Act in § 63.1 and § 63.2 are also redundant and unnecessary as a result of the renaming. Consequently, NIH is removing the references to the National Center for Human Genome Research and section 485B of the PHS Act in paragraph (a) of § 63.1 and in the definitions set forth in § 63.2 of the terms "award," "awardee," "director," and "traineeship." Also NIH is adding to § 63.2 the definition of "misconduct in science," as set forth in the PHS regulations governing the responsibility of awardees and applicants for dealing with misconduct in science, 42 CFR part 50, subpart A.

Finally, NIH is revising the references set forth in unnumbered paragraphs 8, 9, and 10 of § 63.10 to comply with **Federal Register** format requirements.

NIH provides the following statements as public information.

Executive Order 12866

The Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) reviewed this rule as required under Executive Order 12866, Regulatory Planning and Review. The OMB deemed it to be not significant, as defined under the Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant impact on a substantial number of small entities. The Director, NIH, certifies that the changes in the traineeship regulations will not have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act, is not required.

Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. We reviewed the rule as required under the Order and determined that it does not have any federalism implications. The Director, NIH, certifies that the changes in the traineeships regulations will not have an effect on the States or on the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

This rule does not contain any information collection requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) numbered program affected by this rule is: 93.140—Intramural Research Training Award.

List of Subjects in 42 CFR Part 63

Grant programs—health, Health professions, Libraries, Manpower training programs, Medical research, Students.

Dated: August 3, 2000.

Ruth L. Kirschstein,

Principal Deputy Director, National Institutes of Health.

Accordingly, part 63 of title 42 of the Code of Federal Regulations is amended as set forth below.

PART 63—TRAINEESHIPS

1. The authority citation for part 63 is revised to read as follows:

Authority: 42 U.S.C. 216, 282(b)(13), 284(b)(1)(C), 285a–2(b)(3), 286b–3, 287c–21(a).

2. Section 63.1 is revised to read as follows:

§ 63.1 To what programs do these regulations apply?

(a) The regulations in this part apply to research traineeships awarded by the Director, NIH, each director of a national research institute of NIH, the Director of the National Library of Medicine, and the Director of the National Center for Complementary and Alternative Medicine, or their designees, pursuant to sections 402(b)(13), 405(b)(1)(C), 413(b)(3), 472, and 485(D)(a) of the Act, respectively.

(b) The regulations of this part do not apply to research training under the National Research Service Award Program governed by 42 CFR part 66 or to the Mental Health Traineeship Program governed by 42 CFR part 64a.

(c) Except as otherwise permitted under section 413(b)(3) of the Act, the regulations of this part do not apply to residency training of physicians or other health professionals.

3. Section 63.2 is amended by revising the definitions of "Award," "Awardee," "Director," and "Traineeship," and adding in alphabetical order a new definition of "Misconduct in science," to read as follows:

§ 63.2 Definitions.

* * * * *

Award means an award of funds under sections 402(b)(13), 405(b)(1)(C), 413(b)(3), 472, 485D(a), or other sections of the Act which authorize research training or traineeships.

Awardee means an individual awarded a traineeship under sections 402(b)(13), 405(b)(1)(C), 413(b)(3), 472, 485D(a), or other sections of the Act which authorize research training or traineeships.

Director means the Director, NIH, the director of a national research institute of NIH, the Director of the National Library of Medicine, and the Director of the National Center for Complementary and Alternative Medicine, or any official of NIH to whom the authority involved has been delegated.

* * * * *

Misconduct in science shall have the same meaning as prescribed in § 50.102 of this chapter.

* * * * *

Traineeship means an award under the regulations of this part to a qualified individual for that person's subsistence and other expenses during the period that person is participating in the research training approved under the award.

4. Section 63.9 is revised to read as follows:

§ 63.9 How may NIH terminate awards?

The Director may terminate a traineeship at any time:

(a) Upon written request of the awardee; or

(b) If it is determined that the awardee has committed misconduct in science, is ineligible, or has materially failed to comply with the terms and conditions of the award or to carry out the purpose for which the award was made; or

(c) If the awardee is convicted of a felony, or an offense involving any illegal drug or substance, or any offense involving a lack of financial integrity or business honesty; or

(d) Because of programmatic changes or lack of funds.

5. Section 63.10 is amended by removing the last three entries in the list of policies and regulations and adding three new entries in their place to read as follows:

§ 63.10 Other HHS regulations and policies that apply.

* * * * *

59 FR 14508 (March 28, 1994)—NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research. (**Note:** Interested persons should contact the Office of Research on Women's Health, NIH, Room 201, Building 1, MSC 0161, Bethesda, MD 20892–0161; telephone 301–402–1770 (not a toll-free number) to obtain copies of this policy.)

59 FR 34496 (July 5, 1994)—NIH Guidelines for Research Involving Recombinant DNA Molecules. (**Note:** Interested persons should contact the Office of Biotechnology Activities, NIH, Suite 323, 6000 Executive Boulevard, MSC 7010, Bethesda, MD 20892–7010; telephone 301–496–9838 (not a toll-free number) to obtain copies of the policy.)

"Public Health Service Policy on Humane Care and Use of Laboratory Animals" (Revised September 1986), Office of Laboratory Animal Welfare, NIH. (**Note:** Interested persons should contact the Office of Laboratory Animal Welfare, NIH, Rockledge Building I, 6705 Rockledge Drive, Suite 1050, MSC 7982, Bethesda, MD 20892–7982; telephone 301–496–7163 (not a toll-free number) to obtain copies of the policy.)

[FR Doc. 00–28341 Filed 11–3–00; 8:45 am]

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Proposed Rules

Federal Register

Vol. 65, No. 215

Monday, November 6, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–RM/STD–98–440]

RIN 1904–AA77

Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of October 5, 2000, regarding Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards. This correction revises the cost increase of a typical air conditioner, clarifies the conclusions on the emerging technology analysis, clarifies terminology in the discussion of niche products and corrects the docket number.

FOR FURTHER INFORMATION CONTACT: Dr. Michael E. McCabe, (202) 586–0854, e-mail: michael.e.mccabe@ee.doe.gov, or Edward Levy, Esq., (202) 586–9507, e-mail: edward.levy@hq.doe.gov.

Correction

In proposed rule document 00–25336, appearing on page 59590, in the issue of Thursday, October 5, 2000, the following corrections should be made:

(1) The Docket Line should appear as set forth above.

(2) On page 59590 in the first column of the **ADDRESSES** section, the first sentence is corrected to the following:

> Please submit written comments, oral statements, and requests to speak at the public hearing to: Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps, Docket No. EE–RM/STD/STD–98–440, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

(3) On page 59591 in the second column, in the third paragraph, the second sentence is corrected to the following:

> For example, while the initial cost of a typical central air conditioner would increase by $213 to $274 or about 10–12%, the higher efficiency equipment would save enough over its life to pay for the increase in the price of the equipment plus an extra $45.

(4) On page 59599, the second column, in the third paragraph, the first sentence is corrected to the following:

> The emerging technology analysis based on reverse engineering information seems to confirm that, of the technologies considered, only variable capacity compressors and variable speed fan motors have the potential to be cost effective options for providing additional efficiency compared to today's established technologies.

(5) On page 59610, the third column, in the last paragraph, the first sentence is corrected to the following:

> The Department encourages comments regarding whether the proposed standards concerning small-duct high-velocity, vertically-packaged wall-mounted equipment, and through-the-wall equipment provide a significant advantage to those products versus competing products, whether they are sufficient to preserve the unique features of those products, and whether improvements in the definitions are needed to prevent loopholes.

Issued in Washington, DC, on October 31, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 00–28370 Filed 11–3–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Chapter VII

[Docket No. 001013285–0285–01]

Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BXA is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by November 30, 2000.

ADDRESSES: Written comments (three copies) should be sent to Kirsten Mortimer, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Bureau of Export Administration, Telephone: (202) 482–5400. Copies of the current Annual Foreign Policy Report to the Congress are available at our website: *http://www.bxa.doc.gov* and copies may also be requested by calling the Office of Strategic Trade and Foreign Policy Controls.

SUPPLEMENTARY INFORMATION:

The current foreign policy controls maintained by the Bureau of Export Administration (BXA) are set forth in the Export Administration Regulations (EAR), parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Special Country Controls). These controls apply to: high performance computers (§ 742.12); significant items (SI): hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§ 742.15 and § 744.9); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); regional stability commodities and equipment (§ 742.6); equipment and related technical data used in the design, development, production, or use of missiles (§ 742.5 and § 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§ 742.2 and § 744.4); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§ 744.6); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 746.2, 746.3, 746.5, and 746.7); and, Libya (§§ 744.8 and 746.4). Attention is also given in this context to the controls on nuclear-related commodities and technology (§ 744.2 and § 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), August 10, 1999 (64 FR 44101, August 13, 1999) and August 3, 2000 (65 FR 48347, August 8, 2000). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls, requesting public comments on such controls, and submitting a report to Congress.

In January 2000, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;
2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;
3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;
4. The reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;
5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and
6. The ability of the United States to enforce the controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in industry information relating to the following:

1. Information on the effect of foreign policy controls on sales of U.S. products to third countries (i.e., those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy controls.
2. Information on controls maintained by U.S. trade partners (i.e., to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations)?
3. Information on licensing policies or practices by our foreign trade partners which are similar to U.S. foreign policy controls, including license review criteria, use of conditions, requirements for pre and post shipment verifications (preferably supported by examples of approvals, denials and foreign regulations.
4. Suggestions for revisions to foreign policy controls that would (if there are any differences) bring them more into line with multilateral practice.
5. Comments or suggestions as to actions that would make multilateral controls more effective.
6. Information that illustrates the effect of foreign policy controls on the trade or acquisitions by intended targets of the controls.
7. Data or other information as to the effect of foreign policy controls on overall trade, either for individual firms or for individual industrial sectors.
8. Suggestions as to how to measure the effect of foreign policy controls on trade.
9. Information on the use of foreign policy controls on targeted countries, entities, or individuals.

BXA is also interested in comments relating generally to the extension or revision of existing foreign policy controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

Copies of the public record concerning these regulations may be requested from: Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–0637. This component does not maintain a separate public inspection facility. Requesters should first view BXA's website (which can be reached through *http://www.bxa.doc.gov*). If requesters cannot access BXA's website, please call the number above for assistance.

Daniel O. Hill,

Acting Assistant Secretary for Export Administration.

[FR Doc. 00–28440 Filed 11–3–00; 8:45 am]

BILLING CODE 3510–33–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1026

Standards of Conduct for Outside Attorneys Practicing Before the Consumer Product Safety Commission; Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission is proposing to amend its regulations to add a new part addressing the behavior of attorneys on matters before the Commission. The behavior of attorneys who represent clients in

Commission adjudicative proceedings is governed by 16 CFR part 1025. The new part would cover attorney behavior in any matter before the Commission other than an adjudication. It would also establish the procedure for addressing allegations against attorneys.

DATES: Written comments in response to this notice of proposed rulemaking must be received by the Commission January 5, 2001.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland; Telephone (301) 504–0800. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "NPR for Outside Attorneys."

FOR FURTHER INFORMATION CONTACT: Melissa V. Hampshire, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980 ext. 2208; facsimile (301) 504–0403; email mhampsh@cpsc.gov.

SUPPLEMENTARY INFORMATION:

Purpose and Scope

The Commission does not have rules governing the behavior of attorneys outside the context of a formal adjudication. As a result, the Commission is unable to take agency action against attorneys who are alleged to have acted in a manner prohibited by the State or District of Columbia bar disciplinary rules applicable to the attorney, unless an administrative complaint has been filed in the matter.

The Commission conducts the majority of its business outside of adjudicatory proceedings. For example, compliance staff often negotiate with attorneys during an investigation or inquiry about a product, on a voluntary corrective action plan for that product, and, if necessary, on a civil penalty with respect to that product. Other Commission staff deal with attorneys on these and other matters, including regulatory proceedings pursuant to the statutes the Commission administers. If an attorney acts in a prohibited manner in these or similar contexts, the Commission cannot now sanction such conduct. The proposed new part is intended to address this gap in the regulations.

The Commission is proposing a rule[1] to govern attorney conduct in any matter where Commissioners or Commission staff are acting in their official capacities, outside the context of adjudications.

Definitions

The proposed rule defines "prohibited conduct" as action by an attorney in a manner prohibited by the state or District of Columbia disciplinary rules applicable to the attorney or otherwise in bad faith. Attorneys are subject to sanction if the prohibited conduct occurs when no administrative case is filed, or prior to the filing of an administrative complaint, or afterwards when an administrative action is settled but the staff may be negotiating a recall or civil penalty. Similarly, the proposed rule is intended to cover regulatory matters or any other activities between attorneys on the one hand and a Commissioner or Commission staff acting in their official capacities on the other hand.[2]

Actual contact with a Commissioner or the Commission staff is not required for an attorney to be sanctioned for prohibited conduct. For example, under the proposed rule, an attorney who knowingly destroys documents that are relevant to a staff investigation on a particular product would be subject to sanction by the Commission.

Procedures

The new rule includes procedures for addressing allegations of prohibited conduct by attorneys. Under the proposal, all allegations would be dealt with during a (potentially) three-stage procedure.

First Stage

During the first stage, the staff refers an allegation to the General Counsel who would have discretion to determine how it should be dealt with. The General Counsel could review the allegation and then (i) decide to close the matter, (ii) conduct an informal investigation and decide to close the matter or (iii) conduct an informal investigation and issue a show cause order to the attorney.

The General Counsel may decide, based on a review of the allegation, that an informal investigation is unnecessary. For this reason, the General Counsel has discretion to close the matter without any further action. In addition, if the matter is closed without investigation, the General Counsel has discretion to notify or not notify the attorney of the allegation. For example, if the allegation is frivolous and the attorney is unaware of it, the General Counsel may decide to close it without even informing the attorney that the allegation was made. The General Counsel's decision to close the matter in this instance is final and nonreviewable.

The proposed regulation also permits the General Counsel to conduct an informal investigation during the first stage (without compiling a record) to determine if a more formal proceeding against the attorney is warranted. An informal investigation may include contact between the General Counsel and the CPSC staff, the attorney, counsel for the attorney, or anyone else who has information concerning the allegation. If the General Counsel closes the matter after an such an investigation, he or she must notify the attorney. The General Counsel's decision to close the matter is final and nonreviewable.

If the General Counsel determines, after conducting an informal investigation, that a further proceeding is necessary, a show cause order will be issued to the attorney. Although the General Counsel may close the matter without conducting an informal investigation, as noted above, the proposed regulation requires the General Counsel, as a matter of fairness, to conduct such an investigation before issuing a show cause order.

Second Stage

If the General Counsel does issue a show cause order to the attorney, the second stage of the proceeding begins. The attorney receives notice of the right to make written submissions and/or oral presentations about the allegation and notice of the right to counsel. The responsibility for investigating the allegation is with the General Counsel. No discovery will be permitted. An oral presentation shall be held if requested by the attorney. All oral presentations will be transcribed.

The General Counsel will determine the number and identity of witnesses, the length of testimony, and the admissibility and number of exhibits.

At the conclusion of the second stage, the General Counsel will make a determination, based on all the information, whether to forward a recommendation for sanction to the Commission. If the General Counsel determines not to forward a sanction recommendation to the Commission, the matter is closed and nonreviewable and the General Counsel will inform the attorney and the Executive Director in writing.

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[1] The Commission voted 2–1 to propose this rule. Commissioner Gall voted against proposing the rule. Her dissenting statement is available from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001. Commissioner Moore voted in favor of publishing the rule but filed a separate statement. His statement is also available from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001.

[2] Misconduct by Agency employees is dealt with under internal personnel rules.

Third Stage

If the General Counsel recommends a sanction, he or she will forward the record to the Commission. Under the proposed regulation, the record consists of all information submitted by the parties during the second stage including at the oral presentation, as well as transcripts of the oral presentation, any exhibits and the sanction recommendation. The Commission reviews the record and either imposes a sanction or closes the matter. The Commission may impose one of the listed sanctions or any other sanction deemed appropriate. For example, the Commission may decide that an attorney's conduct does not warrant public censure, but some other lesser sanction.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act ("RFA"), when an agency issues a proposed rule it generally must prepare an initial regulatory flexibility analysis describing the impact the proposed rule is expected to have on small entities. 5 U.S.C. 603. The RFA does not require a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small business entities. 5 U.S.C. 605(b). Because the proposed regulation governs only attorney conduct, the Commission certifies that it will not have a significant effect on a substantial number of small entities.

Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed rule for outside attorneys. Because this proposed rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1026

Administrative practice and procedure, Attorneys.

Accordingly, 16 CFR Part 1026 is added to read as follows:

PART 1026—RULES AND REGULATIONS

Sec.

1026.1 Purpose and scope.
1026.2 Definitions.
1026.3 Prohibited conduct.
1026.4 Procedure.
1026.5 Sanctions.
1026.6 Information disclosure.

Authority: 15 U.S.C. 2051–2084, 1261–1278, 1191–1204, 1471–1476, 1211–1214.

§ 1026.1 Purpose and Scope.

The behavior of attorneys who represent clients in Commission adjudicative proceedings is governed by 16 CFR part 1025; *see* 16 CFR 1025.66. This part 1026 governs the behavior of attorneys in any matter before the Commission other than an adjudicative proceeding.

§ 1026.2 Definitions.

For purposes of this part only:

(a) *CPSC staff* means any Commissioner or employee of the Consumer Product Safety Commission. Because the Commissioners may have direct and individual contacts with attorneys, they are included in the definition of CPSC staff in this part. This definition does not alter or affect any other law or regulation.

(b) *Attorney* means any attorney at law who is admitted to practice before the highest court of any State or the District of Columbia.

(c) *Matter before the Commission* means any activity where the CPSC staff is acting in its official capacity.

§ 1026.3. Prohibited conduct.

On a matter before the Commission, no attorney may act in a manner prohibited by the state or District of Columbia bar disciplinary rules applicable to the attorney or otherwise in bad faith. Such action constitutes "prohibited conduct."

§ 1026.4 Procedure.

The following three-stage procedure will be used to determine whether an attorney has engaged in prohibited conduct:

(a)(1) The first stage begins when CPSC staff refers an allegation of prohibited conduct to the General Counsel, with notice to the Commission's Executive Director. The General Counsel may summarily close the matter of alleged prohibited conduct without conducting an informal investigation. If so, the General Counsel will inform the Executive Director, but has the discretion to inform or not inform the attorney.

(2) If the General Counsel does not summarily close the matter, the General Counsel will conduct an informal investigation, after informing the attorney of the allegation and of his or her right to counsel.

(i) The informal investigation may include contact between the General Counsel and the CPSC staff, the attorney, counsel for the attorney, or anyone else who has information concerning the allegation.

(ii) Information gathered during this informal investigation stage will not be made part of the record of the proceeding, unless it is reintroduced during the second stage.

(3) Following the informal investigation, the General Counsel will review all available information and decide whether to issue an order requiring the attorney to show cause why he or she should not be sanctioned or close the matter. If the General Counsel closes the matter, the General Counsel will inform the attorney and the Executive Director in writing of that decision.

(b)(1) The second stage begins when the General Counsel issues a show cause order to the attorney. The order will provide a copy of the allegation and inform the attorney of his or her right to respond in writing and/or orally to the allegation. The General Counsel will send copies of the show cause order to the Executive Director and to the CPSC staff who referred the allegation. The General Counsel will establish a tentative date for oral presentations, in consultation with the attorney and CPSC staff, and a subsequent deadline for written submissions.

(2) During the second stage:

(i) No discovery is permitted.

(ii) The attorney may be represented by counsel.

(iii) An oral presentation shall be held, if requested by the attorney. Any oral presentations will be transcribed.

(iv) The General Counsel has the authority to make a determination with respect to any issue related to the oral presentation not addressed by this part including the number and identity of witnesses, the length of testimony and the 11 admissibility and number of exhibits at any presentation.

(v) Witnesses at the oral presentation may include the attorney, the CPSC staff, or any other person with information about the allegation. If a witness refuses to appear voluntarily, the General Counsel may ask the Commission to issue a subpoena under 15 U.S.C. 2076(b)(3). The attorney may ask the General Counsel to ask the Commission to issue subpoenas to witnesses.

(3) The General Counsel will review the information in the written

submissions and oral presentations (if any), and then decide whether to forward a recommendation for sanction to the Commission. If the General Counsel decides not to forward a written sanction recommendation, the matter is closed, and the General Counsel will inform the attorney and the Executive Director in writing.

(4) The General Counsel's decision to close the matter during the first or second stage is final and nonreviewable.

(c)(1) The third stage begins when the General Counsel forwards the record to the Commission. The record will consist of the complaint, all information submitted in writing during the second stage or at the oral presentation, exhibits, the transcript of any oral presentation, and the General Counsel's written sanction recommendation. The Commission will review the record and decide to impose a sanction or close the matter. The Secretary of the Commission will inform the attorney and the Executive Director in writing of the decision.

(2) At the beginning of the third stage, the General Counsel will designate a lawyer employed by the Commission and not involved in the matter to advise the Commission.

(3) The Executive Director and the General Counsel may designate someone employed by the Commission to act for them at any stage under this procedure.

§ 1026.5 Sanctions.

(a) The following are possible sanctions against an attorney for prohibited conduct:

(1) Censure. Issue a public censure to the attorney that describes the misconduct.

(2) Suspension. Suspend the attorney, for a designated period of time, from participation in any matter before the Commission.

(3) Permanent Exclusion. Permanently bar the attorney from participation in any matter before the Commission.

(4) Other. Any sanction deemed appropriate by the Commission.

(b) If any sanction is imposed, the General Counsel will notify all state and District of Columbia bars before which the attorney is admitted to practice.

§ 1026.6 Information disclosure.

Information disclosure under this section is governed by the provisions of the Freedom of Information Act and 16 CFR Part 1015.

Dated: October 30, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–28202 Filed 11–3–00; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 905]

RIN 1512–AA07

Long Island Viticultural Area (2000R–170P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area to be known as "Long Island," located in Nassau and Suffolk counties, New York. This viticultural area encompasses the two existing appellations, "The Hamptons" and "North Fork of Long Island," as well as the addition of the remaining areas of Nassau and Suffolk counties. This proposal is the result of a petition filed by Richard Olsen-Harbich on behalf of Raphael Winery and the Petrocelli Family, as well as Karen Meredith of Broadfields. Mr. Olsen-Harbich believes that the region he refers to as "Long Island" possesses viticultural conditions which are distinguishable from the rest of New York State and the bordering areas of New Jersey and Connecticut.

DATES: Written comments must be received by January 5, 2001.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, (Attention: Notice No. 905). See "Public Participation" section of this notice if you want to comment by facsimile or e-mail.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–9347).

SUPPLEMENTARY INFORMATION:

1. Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) on August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692), which added a new part 9 to 27 CFR, American Viticultural Areas, for providing the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

What Is the Definition of an American Viticultural Area?

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required to Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

2. Long Island Petition

ATF has received a petition from Richard Olsen-Harbich on behalf of Raphael Winery, the Petrocelli Family, and Karen Meredith of Broadfields, proposing to establish a viticultural area in Nassau and Suffolk counties, New York, to be known as "Long Island." This proposed viticultural area encompasses the two existing appellations, "The Hamptons, Long Island" and "North Fork of Long Island," as described in 27 CFR 9.101 and 9.113, as well as the remaining areas of Nassau and Suffolk counties, New York. The proposed area does not include Kings County (Brooklyn) or Queens County, New York.

The proposed area encompasses approximately 1,170 square miles or 749,146 acres. Over 2,500 acres of vineyards are currently planted in the proposed "Long Island" viticultural area and the area presently boasts thirty-eight vineyard and/or winery businesses.

What Name Evidence Has Been Provided?

The petitioner offered the following as evidence that the name "Long Island" refers to the proposed area. The name "Long Island" has been in continuous use from 1616 to the present to represent the island on which the proposed viticultural area is located. However, the *Long Island Travel Guide* (1997) states that the name "Long Island" is commonly known to mean Nassau and Suffolk counties exclusively. Also, the 1999 *Long Island Almanac* (33rd ed.) covers Nassau and Suffolk counties only.

According to the petitioner, the *Bell Atlantic White Pages* lists approximately 1,150 business telephone listings in Suffolk and Nassau counties using the term "Long Island." By comparison, the *White Pages* in Brooklyn and Queens reflect almost no usage of the term "Long Island" to describe businesses located there. In addition, the petitioner submitted, as evidence, several maps, newspaper, and magazine articles which refer to the proposed viticultural area as "Long Island."

What Boundary Evidence Has Been Provided?

The petitioner has submitted, as boundary evidence, the following maps on which the name "Long Island" prominently appears:

1. U.S.G.S. Map (New York, N.Y.; N.J.; Conn. 1960 (revised 1979));
2. U.S.G.S. Map (Hartford, Conn.; N.Y.; N.J.; Mass. 1962 (revised 1975)); and
3. U.S.G.S. Map (Providence, R.I.; Mass.; Conn.; N.Y. 1947 (revised 1969)).

The proposed "Long Island" viticultural area is located on the eastern part of Long Island, New York. The proposed area is surrounded by the Queens County line on the west, Long Island Sound to the north, the Atlantic Ocean to the south and Block Island Sound and Fishers Island Sound to the east.

Long Island, New York, has four counties: Kings (commonly known as Brooklyn), Queens, Nassau, and Suffolk. The petitioner contends that the appropriate western boundary for the proposed area is the Queens County line because Kings and Queens counties are not suitable for viticultural purposes. The petitioner states that commercial farms no longer exist in Kings or Queens counties and that these counties are densely populated urban areas. In addition, the name "Long Island" is used in common parlance to refer to the Nassau and Suffolk counties exclusively.

What Evidence Relating to Geographical Features Has Been Provided?

- Soil: The soils of the proposed "Long Island" viticultural area are glacial in origin. The petitioner asserts that in general, the soils of the proposed area contain a greater percentage of sand and gravel and a lower percentage of silt, loam and clay than in the soil associations and series found in bordering areas. According to the petitioner, soils in the proposed area also lack any real percentage of natural limestone when compared to surrounding regions. The petitioner asserts that the soils of the proposed area are more acidic and make an agricultural liming program indispensable to any vineyard operation. Because of this factor, the soils of the proposed area are also slightly lower in natural fertility and water-holding capacity than neighboring areas. According to the petitioner, this difference in soil types leads to a very unique and distinct "terroir" for the proposed area—sandy loams will warm up faster, drain better, and allow deeper root penetration than soils in bordering areas, which contain greater amounts of silt, clay and rock.

The soils of the proposed "Long Island" viticultural area are fairly uniform in that they are predominately glacial till and glacial outwash in nature, are very low in organic matter, and contain few, if any, large mineral deposits or exposed rock formations. Many of the soil series including the Wallington, Sudbury, Scio, Montauk, Plymouth and Riverhead Soil Series are common throughout the entire proposed area.

The petitioner states that one of the most distinctive features of the proposed "Long Island" viticultural area is the vast quantity of sandy loam soil deposited during the Pleistocene Epoch of the Quarternary Period. This soil was deposited during the last four major glacial stages of this Epoch. From oldest to youngest they are: Nebraskan, Kansan, Illoian, and Wisconsin. Because of this, the area between the surface soil and bedrock areas is several hundred feet.

By contrast, the nearest surface bedrock begins near the Queens County line. Some areas of Queens show exposed bedrock formations while the bedrock layer in the proposed "Long Island" viticultural area can be as much as 500 feet below the surface. For this reason, the soils found in Queens County are much shallower than the typical soils found in the proposed area and are not suitable for growing grapes. In addition, Queens County, which is considered part of New York City, is completely urbanized and contains essentially no agricultural land. The petitioner states that most of the soil series now identified in Queens are known as anthropgenic soils. These soils are described as having properties that are dominantly derived from human activities. Out of the 30 soil types found in the region of Queens County, only three are also found in the proposed "Long Island" viticultural area.

- Topography and Terrain: The petitioner states that the proposed "Long Island" viticultural area is unique from its bordering regions in that it lacks any real undulations, rock outcrops or muckland areas. By contrast, the Highland Basin, located immediately to the west-northwest of the proposed area and encompassing the areas of northern New Jersey, the Hudson Highlands region of southern New York (including Manhattan, Westchester, the Bronx, and parts of Brooklyn and Staten Island), and upland parts of Connecticut, is a rugged, hilly-to-mountainous terrain. Similarly, the Newark and Atlantic Basins, located directly to the northeast and southwest of the proposed area, contain characteristic sedimentary sandstones and mudrocks that usually bear a red or brownish appearance from an abundance of iron oxide minerals (hematite and limonite). None of these geologic formations exist in the proposed area.
- Climate: The petitioner states that the moderating influence of the proposed "Long Island" viticultural area's surrounding water is evident in the temperature data. In terms of average temperatures, the proposed area shows the highest average annual winter temperature compared to the surrounding areas. The proposed area's average low temperature over thirty years is 43.5 degrees Fahrenheit (43.5 °F), 2.5 °F warmer than the area of Westchester County and downstate New York, and 2.2 °F warmer annually than

the average from New Jersey. The proposed area is also over 4 °F warmer on average than Connecticut.

The petitioner states that the proposed "Long Island" viticultural area also has the least extreme winter low temperatures than its surrounding areas with the lowest average being −5.67 °F. New Jersey was 1.63 °F colder at −7.3 °F. Westchester/Downstate New York and Connecticut were seen to have winter low temperatures considerably colder than the proposed area. Connecticut can experience temperatures as low as −13.5 °F which is 7.83 °F colder than the proposed area. Westchester/Downstate New York proved to be the coldest with low temperatures reaching −15.3 °F in some years which is 9.63 °F colder than the proposed area.

According to the petitioner, based on the standard University of California at Davis (UCD) temperature summation definition of climatic regions or zones, the proposed "Long Island" viticultural area would appear to fall into high Region II (less than 3,000 degree days). Connecticut on the average is a borderline Region II with some years having Region I (less than 2,500 degree days) conditions. New Jersey is solidly classified as a Region III (less than 3,500 degree days), with some locations approaching Region IV (less than 4000 degree days) status in warmer years. The proposed area historically has an average of 166 more degree-days than Westchester/Downstate NY and as much as 324 more degree-days than Connecticut.

The petitioner states that on average, the proposed "Long Island" viticultural area experiences 204 frost-free days during the growing season. This is 31 days longer than New Jersey, 37 days longer than Westchester/Downstate NY and as much as 50 days longer than the Connecticut average. The proposed area can therefore have as much as four to seven weeks more growing season than any of the surrounding land masses.

The petitioner states that on an average annual basis, the proposed "Long Island" viticultural area has the lowest levels of precipitation of all the surrounding areas with 42 inches annually. The annual difference is 3.4 inches less than Westchester/Downstate NY, 3.8 inches less than New Jersey and 4.1 inches less than Connecticut. The reason for this difference is attributed to the moderating influence of Long Island Sound waters.

3. Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

The proposed regulations will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement or approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

4. Public Participation

Who May Comment on This Notice?

ATF requests comments from all interested parties. In addition, ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

Can I Review Comments Received?

Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of the Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. For information on filing a Freedom of Information Act request for a copy of the comments, please refer to the internet address: http://www.atf.treas.gov/about/foia/foia.htm.

Will ATF Keep My Comments Confidential?

ATF will not recognize any comment as confidential. All comments and materials will be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We will also disclose the name of any person who submits a comment.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

How Do I Send Facsimile Comments?

You may submit comments by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be on paper 8½″ × 11″ in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-Mail) Comments?

You may submit comments by e-mail by sending the comments to nprm@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on not more than three pages, 8½″ × 11″ in size.

We will not acknowledge receipt of e-mail. We will treat comments submitted by e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF internet web site at http://www.atf.treas.gov.

5. Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division,

Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.170 to read as follows:

§ 9.170 Long Island

(a) Name. The name of the viticultural area described in this section is "Long Island."

(b) Approved Maps. The appropriate maps for determining the boundary of the Long Island viticultural area are three United States Geological Survey (U.S.G.S.) topographic maps (Scale: 1:250,000). They are titled:

(1) "New York, N.Y.; N.J.; Conn.," 1960 (revised 1979);

(2) "Hartford, Conn.; N.Y.; N.J.; Mass.," 1962 (revised 1975); and

(3) "Providence, R.I.; Mass.; Conn.; N.Y.," 1947 (revised 1969).

(c) Boundaries. The Long Island viticultural area includes approximately 1,170 square miles or 749,146 acres and is made up of the counties of Nassau and Suffolk, New York, including all off shore islands in those counties.

Approved: October 27, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–28361 Filed 11–3–00; 8:45 am]

BILLING CODE 4810–31–P

Notices

Federal Register
Vol. 65, No. 215
Monday, November 6, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Amendment of the Notice of the Availability of the Fiscal Year 2001 Solicitation for Applications for the National Research Initiative Competitive Grants Program

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of amendment of the notice of the availability of the solicitation for applications for the fiscal year 2001 National Research Initiative Competitive Grants Program.

SUMMARY: This notice amends the announcement of the availability of the fiscal year (FY) 2001 solicitation for applications, which is titled the "NRI Program Description," for the National Research Initiative (NRI) Competitive Grants Program published at 65 FR 54989, September 12, 2000.

In accordance with the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for FY 2001, which provides less funding for the NRI in FY 2001 than was anticipated at the time the availability of the FY 2001 solicitation for applications was announced, this amendment revises the estimated amounts of funds available in the following research categories (PREVIOUSLY ANTICIPATED FY 2001 funding (PREV) and CURRENTLY ANTICIPATED FY 2001 (CUR) funding, rounded to the $0.1M, follows in parentheses):

- Natural Resources and the Environment (PREV:$19.1M, CUR:$16.4M)
- Nutrition, Food Quality, and Health (PREV:$14.9M, CUR:$16.8M)
- Plant Systems (PREV:$38.2M, CUR:$32.4M)
- Animal Systems (PREV:$27.0M, CUR:$23.0M)
- Markets, Trade, and Policy (PREV:$4.3M, CUR:$3.7M)
- New Products and Processes (PREV:$7.6M, CUR:$6.5M)

As a result the following Program Areas will not be funded, and proposals for these Program Areas should not be submitted:

- Ecosystem Science (Program Code 23.0)
- Plant Genome (Program Code 52.1)
- Animal Genome: Basic Reagents and Tools (Program Code 43.1)

Although the Plant Genome program (52.1) will not be offered this fiscal year, the Plant Genetic Mechanisms program (52.2) will expand its research areas of support to now include functional genomics, quantitative trait loci analysis, comparative mapping, and all renewal applications that could have been submitted to the Plant Genome program.

Additionally, proposals that address the President's Food Safety Initiative (www.foodsafety.gov/~fsg/isiback.html) are encouraged for all the relevant NRI Program Areas.

A fair distribution of resources between research on animal systems and plants is being sought through increased opportunity for animal-related research in the food safety area, and opportunity in other programs relevant to animal systems such as agricultural systems, markets and trade, food characterization/process/product research, water resources, and pest biology.

DATES: This amendment does not alter the original deadlines for receipt of proposals set forth previously in the Notice of the Availability of the Solicitation for Applications published on September 12, 2000 (65 FR 54989).

FOR FURTHER INFORMATION CONTACT: USDA/CSREES/NRI, Stop 2241, 1400 Independence Ave., SW, Washington, D.C. 20250–2241. Phone: (202) 401–5022. E-mail: nricgp@reeusda.gov.

SUPPLEMENTARY INFORMATION:

NRI Deadline Dates

The following fixed dates have been established for proposal submission deadlines within the NRI. To be considered for funding in any fiscal year, proposals must be transmitted by the date listed below (as indicated by postmark or date on courier bill of lading). When the deadline date falls on a weekend or Federal holiday, transmission must be made by the following business day.

Programs offered in any fiscal year depend on availability of funds and deadlines may be delayed due to unforeseen circumstances. Consult the pertinent NRI notice in the **Federal Register**, the NRI Program Description, or the NRI home page (www.reeusda.gov/nri) for up-to-date information.

Postmarked dates	Program codes	Program areas
November 15	22.1	Plant Responses to the Environment
	25.0	Soils and Soil Biology
	26.0	Watershed Processes and Water Resources
	31.0	Improving Human Nutrition for Optimal Health
	51.9	Biology of Weedy and Invasive Plants
	80.1	Research Career Enhancement Awards
	80.2	Equipment Grants
	80.3	Seed Grants
	100.0	Agricultural Systems
December 15	52.2	Plant Genome Mechanisms
	53.0	Plant Growth and Development
	61.0	Markets and Trade
	62.0	Rural Development
	71.1	Food Characterization/Process/Product Research
	71.2	Non-Food Characterization/Process/Product Research
January 15	32.0	Food Safety
	32.1	Epidemiological Approaches for Food Safety
	41.0	Animal Reproduction
	44.0	Animal Health and Well-Being
	51.2	Entomology and Nematology
	51.7	Biologically Based Pest Management
	51.8	Biology of Plant-Microbe Associations
	73.0	Improved Utilization of Wood and Wood Fiber
February 15	42.0	Animal Growth and Nutrient Utilization
	43.0	Animal Genome and Genetic Mechanisms
	54.3	Plant Biochemistry

Done at Washington, D.C., this 31st day of October 2000.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 00–28510 Filed 11–3–00; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of application filing deadline.

SUMMARY: The Rural Utilities Service (RUS) announces its Distance Learning and Telemedicine Program application window for funding during fiscal year (FY) 2001. For FY 2001, $25 million in grants and $300 million in loans will be made available for distance learning and telemedicine projects serving rural America. The funding will be provided in three categories: (1) $15 million will be available for grants; (2) $200 million will be available for loans; and (3) $110 million will be available for combination grants and loans ($10 million in grants paired with $100 million in loans).

DATES: All applications for grants must be postmarked no later than Friday, March 2, 2001, to be eligible for FY 2001 grant funding. Applications for FY 2001 loans or combination loans and grants may be submitted at anytime up to September 30, 2001, and will be processed on a first-come, first-serve basis.

ADDRESSES: Applications are to be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1550, Room 2845, Washington, DC 20250–1550. Applications should be marked "Attention: Director, Advanced Services Division, Telecommunications Program."

FOR FURTHER INFORMATION CONTACT: Orren E. Cameron, Director, Advanced Services Division, Telecommunications Program, Rural Utilities Service, STOP 1550, 1400 Independence Avenue, SW., Washington, DC 20250–1590, Telephone (202) 690–4493, Facsimile (202) 720–1051.

SUPPLEMENTARY INFORMATION: For FY 2001, $15 million in grants, a combination of $10 million in grants paired with $100 million in loans, and $200 million in loans will be made available for distance learning and telemedicine projects.

RUS encourages early submission of grant applications to determine whether all required items specified in 1703.125 are clearly in form, identifiable, and complete. RUS will examine, provide comment, and return applications that include items that would disqualify them from further consideration for modification if they are submitted by Friday, February 2 2001. All applications for grants must be postmarked no later than Friday, March 2, 2001, to be eligible for FY 2001 grant funding. Each application will be reviewed for completeness in accordance with 7 CFR part 1703, subparts D, E, F, and G. Ineligible applications will be returned within 15 working days of receipt.

Notice is hereby given that under 7 CFR 1703.124, 1703.133, and 1703.143, RUS has determined the maximum amount of an application for a grant that will be considered for funding in FY 2001 as $500,000. The maximum amount for a loan, generally, that will be considered for funding in FY 2001 is $10 million. However, RUS may fund a project greater than $10 million subject to the project's feasibility and the availability of loan funds.

Applications for financial assistance must be submitted in accordance with 7 CFR part 1703, subparts D, E, F, and G, which establish the policies and procedures for submitting an application for financial assistance. These subparts and an application guide to assist in the preparation of applications are available on the Internet at the following address: "http://www.usda.gov/rus/telecom/dlt/dltpublications.htm". Application guides may also be requested from RUS by contacting one of the following Area Offices: Eastern Area, USDA—RUS, Phone: (202) 690–4673; Northwest Area, USDA—RUS, Phone: (202) 720–1025; Southwest Area, USD–RUS, Phone: (202) 720–0800.

Christopher A. McLean,

Administrator, Rural Utilities Service.

[FR Doc. 00–28388 Filed 11–3–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Notice of Extension of Time Limit for Preliminary Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: November 6, 2000.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder at (202) 482–0189, Office of AD/CVD Enforcement I, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On December 28, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea, covering the period November 1, 1998, through October 31, 1999 (64 FR 72644). On July 11, 2000, the Department extended the time limit for completion of the preliminary results by 66 days, or until no later than October 6, 2000. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Antidumping Administrative Review*, 65 FR 44521 (July 18, 2000). On October 2, 2000, we extended the time limit for completion of the preliminary results by an additional 28 days, or until no later than November 3, 2000. *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Notice of Extension of Time Limit for Preliminary Results of Administrative Review*, 65 FR 59823 (October 6, 2000).

Extension of Preliminary Results of Review

We determine that due to limited administrative resources and the need for further analysis of the complex issues present in this review (*e.g.*, date of sale, level of trade, and CEP offset), it is not practicable to complete the preliminary results of this review within the previously extended time limit. Therefore, the Department is fully extending the time limits for completion of the preliminary results until no later than November 29, 2000.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 31, 2000.

Richard W. Moreland,

Deputy Assistant Secretary, Import Administration, Group I.

[FR Doc. 00–28428 Filed 11–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–816]

Certain Cut-to-Length Carbon Steel Plate From Germany: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Rescission of the Antidumping Duty Administrative Review for the Period August 1, 1999 through July 31, 2000.

SUMMARY: On October 2, 2000, in response to a request made by Bethlehem Steel Corporation and U.S. Steel Group, a unit of USX Corporation (collectively, the "Petitioners"), the Department of Commerce ("Department") published the notice of initiation of an antidumping duty administrative review on certain cut-to-length carbon steel plate ("plate") from Germany, for the period August 1, 1999 through July 31, 2000. Because the Petitioners have withdrawn their request for review, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATES: November 6, 2000.

FOR FURTHER INFORMATION CONTACT: Robert A. Bolling or James Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–3434 and 202–482–0159, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

Background

On August 31, 2000, the Petitioners requested that the Department conduct an administrative review for the period August 1, 1999 through July 31, 2000, of Reiner Brach GmbH & Co. ("Reiner Brach") a producer/exporter of the subject merchandise from Germany. October 2, 2000, the Department published a notice of initiation of the antidumping administrative review on plate from Germany, in accordance with 19 CFR 351.221(c)(1)(i). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 65 FR 58733 (October 2, 2000). On September 28, 2000, the Petitioners withdrew their request for review.

Rescission of Review

Pursuant to Departmental regulations, the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). The Petitioners withdrawal of their request for review was within the 90-day time limit; accordingly, we are rescinding the administrative review for the period August 1, 1999 through July 31, 2000, and will issue appropriate assessment instructions to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation. This determination is issued in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Act.

Dated: October 31, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 00–28427 Filed 11–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received a request from China Kingdom Import & Export Co., Ltd. (China Kingdom), Shouzhou Huaxiang Foodstuffs Co., Ltd. (Shouzhou), Coastal (Jiang Su) Foods Co., Ltd. (Coastal), and Shanghai Taoen International Trading Co., Ltd. (Shanghai Taoen) to conduct new shipper administrative reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930 and 19 CFR 351.214(d) of the Department's current regulations, we are initiating these new shipper administrative reviews.

EFFECTIVE DATE: November 6, 2000.

FOR FURTHER INFORMATION CONTACT: Abdelali Elouaradia or Samantha Denenberg, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1374 or (202)482–1386, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR Part 351(2000).

Background

On September 29, 2000, the Department received timely requests, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for new shipper administrative reviews of this antidumping duty order which has a September anniversary month and a March semi-anniversary month.

Initiation of Review

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), in its September 29, 2000 request for review, China Kingdom certified that it did not export the subject merchandise to the United States during the period of investigation (POI) and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), China Kingdom further certified that its export activities are not controlled by the central government of the PRC.

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), in its September 29, 2000 request for review, Shouzhou certified that it did not export the subject merchandise to the United States during POI and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Shouzhou further certified that its export activities are not controlled by the central government of the PRC.

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), in its September 29, 2000 request for review, Coastal certified that it did not export the subject merchandise to the United States during the POI and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Coastal further certified that its export activities are not controlled by the central government of the PRC.

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), in its September 29, 2000 request for review, Shanghai Taoen certified that it did not export the subject merchandise to the United States during the POI and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Shanghai Taoen further certified that its export activities are not controlled by the central government of the PRC. All of the above requests also included all documentation required under 19 CFR 351.214(b)(2)(iv).

In accordance with section 751(a)(2)(B) and 19 CFR 351.214(d), we are initiating new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC.

In accordance with 19 CFR 351.214(g)(1)(i)(A) of the Department's regulations, the period of review (POR) for a new shipper review initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the semiannual anniversary month. Therefore, the POR for these new shippers is:

Antidumping duty proceeding	Period to be reviewed
Freshwater Crawfish Tail Meat from the PRC, A–570–848:	
China Kingdom Import & Export Co., Ltd	9/01/99–8/31/00
Shouzhou Huaxiang Foodstuffs Co., Ltd	9/01/99–8/31/00
Coastal (Jiang Su) Foods Co., Ltd	9/01/99–8/31/00
Shanghai Taoen International Trading Co., Ltd	9/01/99–8/31/00

Concurrent with the publication of this initiation notice, we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the companies listed above, until the completion of the review. This action is in accordance with 19 CFR 351.214(e).

The interested parties must submit applications for disclosure of business proprietary information under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: October 31, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–28429 Filed 11–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received on or before January 5, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy/Military Community and Family Policy/Office of Educational Opportunity), ATTN: Ms. Ollie M. Smith, Ballston Towers #3, Room 917, 4015 Wilson Blvd., Arlington, VA 22203–5190.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 696–1702, ext 111.

Title, associated form, and OMB control number: The Public and Community Service (PACS) Registry Programs, DD Forms 2580, 2581 and 2581–1; OMB Number 0704–0324.

Needs and Uses: This information collection requirement is used to enroll Service members retiring under the Temporary Early Retirement Authority (TERA) program in Public and Community Service (PACS). In accordance with 10 U.S.C. 1143(c), the Public and Community Service (PACS) Registry provides registered PACS organizations with information regarding the availability of individuals with interest in working in a PACS organization. The forms associated with this information collection, DD Forms 2580, 2581, and 2581–1, are used in support of the Department of Defense Programs for public service employment assistance.

Affected public: Business or other for-profit; not-for-profit institutions; Federal, local and State government.

Annual burden hours: 1,500 hours.

Number of respondents: 150.

Responses per respondent: 1.

Average burden per response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection is required to satisfy Public Law 102–484, The Defense Department's Fiscal Year 1993 Authorization Act, October 23, 1992, which directed the Secretary of Defense to maintain a public and community service registry in which separating Service members would be encouraged to enter. DD Forms 2580, 2581 and 2581–1 are used to support this effort.

Dated: October 31, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–28319 Filed 11–3–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, form, and OMB number: Non-Prior Service and Prior Service Accessions; AETC Forms 1319, 1325, and 1419; OMB Number 0701–0079.

Type of request: Extension.

Number of respondents: 110,231.

Responses per respondent: 1.

Annual responses: 110,231.

Average burden per response: 37 minutes (average).

Annual burden hours: 69,105.

Needs and uses: The information collection requirement is necessary for recruiters to determine applicant qualifications when conducting an interview. Information from the interview will determine if additional documents on law violations, citizenship verification, and education are needed. Applicants who have reached a certain age, marital status, or classification are required to submit financial information. Respondents are civilian non-prior and prior service personnel applying for enlistment into the Air force as enlisted members. The completed forms are used by the recruiter to establish the eligibility status of applicants.

Affected public: Individuals or Households.

Frequency: On Occasion.

Respondent's obligation: Required to Obtain or Retain Benefits.

OMB desk officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 31, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–28318 Filed 11–3–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DoD Healthcare Quality Initiative Review Panel

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: On October 26, 2000, the DoD Healthcare Quality Initiatives Review Panel published a notice of an upcoming meeting (65 FR 64204). This notice is being published to change the meeting dates due to the Federal holiday on November 10th.

DATES: November 8 & 9, 2000.

ADDRESSES: Sheraton Crystal City, 1800 Jefferson Davis Hwy, Arlington, VA 22202.

TIME: November 8th, 8 am to 5:30 pm; November 9th, 8 am to 5:30 pm.

FOR FURTHER INFORMATION CONTACT: Contact Gia Edmonds at (703) 933–8325.

Dated: October 30, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–28321 Filed 11–3–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the United States Commission on National Security/21st Century

AGENCY: Department of Defense, Office of the Undersecretary of Defense (Policy)

ACTION: Notice of closed meetings.

SUMMARY: The United States Commission on National Security/21st Century will meet in closed session on November 13 and December 7, 2000. The Commission was originally chartered by the Secretary of Defense on 1 July 1998 (charter revised on 18 August 1999) to conduct a comprehensive review of the early twenty-first century global security environment; develop appropriate national security objectives and a strategy to attain these objectives; and recommend concomitant changes to the national security apparatus as necessary.

The Commission will meet in closed session on November 13 and December 7, 2000, to review draft sections of its Phase Three report. By Charter, the Phase Three report is to be delivered to the Secretary of Defense no later than February 16, 2001.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C., Appendix II], it is anticipated that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1)(1988), will be presented throughout the meetings, and that, accordingly, the meetings will be closed to the public.

DATES: Monday November 13, 2000, and Thursday December 7, 2000, 8:30 a.m.–5 p.m.

ADDRESSES: November 13, 2000, at the Institute for Defense Analysis, 1801 North Beaureagard St., Alexandria, VA 22311, and on December 7, 2000, at a place to be determined.

FOR FURTHER INFORMATION CONTACT: Contact Dr. Keith A. Dunn, National Security Study Group, Suite 532, Crystal Mall 3, 1931 Jefferson Davis Highway, Arlington, VA 22202–3805. Telephone 703–602–4175.

Dated: October 31, 2000.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–28320 Filed 11–3–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents cover a wide variety of technical arts including: An anti-armor projectile with an autonomous, attachable, precursor warhead and a ceramic ferroelectric composite material with enhanced electronic properties.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Ceramic Ferroelectric Composite Materials with Enhanced Electronic Properties BSTO–MG Based Compound-Rare Earth Oxide.

Inventors: Luna H. Chiu, Louise C. Sengupta, Steven Stowell, Somnath Sengupta and Jennifer Synowcdzynski.

Patent Number: 6,074,971.

Issued Date: June 13, 2000.

Title: Anti-Armour Projectile with Autonomous, Attachable, Precursor Warhead.

Inventor: Ameer G. Mikhail.

Patent Number: 6,109,185.

Issued Date: August 29, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055, tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–28389 Filed 11–3–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

This patent covers a wide variety of technical arts including: A wide dynamic range RF mixer using wide bandgap semiconductors such as SiC.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using and/or selling devices or processes covered by this patent.

Title: Wide Dynamic Range RF Mixers Using Wide Bandgap Semiconductors.

Inventors: Christian Fazi and Philip G. Neudeck

Patent Number: 6,111,452.

Issued Date: August 29, 2000.

FOR FURTHER INFORMATION CONTACT: Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, MD 20783–1197; tel: (301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–28390 Filed 11–3–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council (FICC), and invites people to participate. Notice of this meeting is required under section 644(c) of the Individuals with Disabilities Education Act (IDEA) and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities. The FICC will attend to ongoing work including reports from committees and task forces. A Policy Forum on Every Child Deserves a Medical Home sponsored by the FICC Integrated Service Committee, will be held on Thursday, December 14, from 9 a.m.–12 noon in the Barnard Auditorium, U.S. Department of Education, 400 Maryland Ave., SW., Washington, DC 20202. The meeting is open to the public.

DATE AND TIME: FICC Meeting: Thursday, December 14, 2000 from 1:30 p.m. to 4:30 p.m.

ADDRESSES: U.S. Department of Education, Barnard Auditorium, 400 Maryland Avenue, SW., Washington, DC 20202 (near the Federal Center Southwest and L'Enfant metro stops).

FOR FURTHER INFORMATION CONTACT: Bobbi Stettner-Eaton or Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202, Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 644(c) of the Individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

The meeting of the FICC is open to the public and is physically accessible. Anyone requiring accommodations such as an interpreter, materials in Braille, large print, or cassette please call Obral Vance at (202) 205–5507 (voice) or (202) 205–9754 (TDD) ten days in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal Holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–28323 Filed 11–3–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education, Department of Education; Meeting

ACTION: Notice of meeting.

SUMMARY: This notice provides the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIME: November 19, 2000, 12 p.m. to 4:30 p.m.

ADDRESSES: Sheraton San Diego Hotel & Marina, 1380 Harbor Island Drive, San Diego, CA. Telephone: (619) 692–2200.

FOR FURTHER INFORMATION CONTACT: Don Fischer, U.S. Department of Education, 1990 K Street NW., Washington, DC 20006–8544. Telephone: (202) 502–7500 or by e-mail: donald__fischer@ed.gov Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Title VII, Part B, section 742 of the Higher Education Amendments of 1998 (20 U.S.C. 1138a). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and procedures for grant awards.

On Sunday, November 19, 2000, from 1 p.m. to 4:30 p.m. the Board will meet in open session. The proposed agenda for the open portion of the meeting will include an overview of the Fund's program status and special initiatives.

On Sunday, November 19, 2000, from 12 p.m. to 1 p.m. the meeting will be closed to the public for the purpose of discussing Comprehensive Program grant applications, including both funded and unfunded applications. This portion of the meeting will be closed under the authority of section 10(d) of the Federal Advisory Act (Pub. L. 92–463; 5 U.S.C.A. Appendix 2). Because the review and discussion of applications and the qualifications of proposed staff to work on these grants are likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, and to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session, this portion of the meeting should be closed to the public as provided for by exemptions 4 and 6 of 5 U.S.C. 552 (b)(c).

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, 8th Floor, 1990 K Street NW., Washington, DC 20006–8544 from the hours of 8 a.m. to 4:30 p.m.

Claudio R. Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–28423 Filed 11–3–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the Office of Civilian Radioactive Waste Management information collection listed at the end of this notice to the Office of Management and Budget (OMB)-for review and revision under section 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

The entry contains the following information: (1) the collection numbers and title; (2) a summary of the collection of information, including the sponsor (i.e., the Department of Energy component), current OMB document number (if applicable), type of request (i.e, new, revision, extension, or reinstatement), and response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits), (3) a description of the need and proposed use of the information; (4) a description of the likely respondents; and (5) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

DATES: Comments must be filed on or before December 6, 2000. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The OMB DOE Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 426–1104, FAX at (202) 426–1081, or e-mail at Grace.Sutherland@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Form NWPA–830R C "Delivery Commitment Schedule."
2. Office of Civilian Radioactive Waste Management (NWPA); OMB Number 1901–0260; Reinstatement of a currently approved collections; Voluntary.
3. NWPA's "Delivery Commitment Schedule" is designed for contract holders to designate the facility where DOE will accept their fuel, the number of assemblies to be accepted, and the mode of transportation to ship the assemblies. The information collected will be used to determine the Federal waste management system configuration.
4. Business or other for-profit
5. 2,664 hours (5.19 hours per response x 4.38 responses per year x 117 respondents).

Statutory Authority: Section 3506(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., October 31, 2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–28371 Filed 11–3–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–542–001]

ANR Pipeline Company; Notice of Compliance Filing

October 31, 2000.

Take notice that, on October 23, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, to be effective March 27, 2000.

Substitute Third Revised Sheet No. 160A

ANR states that this filing is made in compliance with the Commission's Order dated October 11, 2000 in the captioned proceeding.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385,211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http;//www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28384 Filed 11–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–63–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 31, 2000.

Take notice that on October 24, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing to come part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of November 1, 2000:

Forty-first Revised No. 28
Ninth Revised Sheet No. 262
Eighth Revised Sheet No. 395
Third Revised Sheet No. 466
Third Revised Sheet No. 475

On April 17, 1995, Columbia filed an Offer of Settlement (Settlement) with the Federal Energy Regulatory

Commission (Commission) in Docket No. GP94–02, *et al.* The Commission in an order dated June 15, 1995 (71 FERC ¶ 61,337) approved the Settlement. Pursuant to Article X of the Settlement, Columbia was permitted to collect $10 million as full and complete satisfaction of any right it may have to recover Gas Supply Realignment Costs, Order No. 500/528 Costs, overriding royalties, and all Producer Contract Rejection Costs (collectively referred to as GSR Costs).

Columbia states that the instant filing address Columbia's collection of $1 million in GSR Costs, plus FERC interest, from its Rate Schedule ITS customers. Specifically, commencing February 1, 1996, Columbia began collecting the GSR Coasts from Rate Schedule ITS Customers via a $0.01/Dth surcharge (Article X Surcharge). The Article X Surcharge was to remain in effect until Columbia had collected the $1 million in GSR Costs, plus FERC interest from ITS Rate Schedule customers.

As of October 31, 2000, Columbia will have over-recovered its allowed recover of $1 million by approximately $20,000. Accordingly, Columbia proposes to remove the Article X Surcharge effective November 1, 2000. The tariff sheets filed herewith will accomplish that.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28374 Filed 11–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT01–4–000]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

October 31, 2000.

Take notice that on October 26, 2000, Dauphin Island Gathering Partners (DIGP) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of October 23, 2000.

First Revised Sheet No. 247

DIGP states that this filing is submitted to reflect a change in the World Wide Web address of DIGP's Internet Web Site. DIGP has revised Sheet No. 247 to reflect DIGP's current World Wide Web address of www.digp.defs.com

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28380 Filed 11–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–65–000]

Destin Pipeline Company, L.L.C.; Notice of Revenue Crediting Report

October 31, 2000.

Take notice that on October 26, 2000 Destin Pipeline Company, L.L.C. (Destin) submitted its Annual Revenue Crediting Provision Report pursuant to Section 14.2 of the General Terms and Conditions of Destin's FERC Gas Tariff—Original Volume No. 1. This section requires Destin to either refund or surcharge amounts received from the resolution of imbalances with its shippers and interconnected pipelines, and, any incidential gas sales or purchases necessary to operate the system over a twelve-month period. For the twelve-month period ended August 31, 2000, Destin received monies in excess of the amounts paid.

Accordingly, Destin is issuing checks, concomitant with its filing, to refund the net receipts based on each shipper's proportionate share of the quantities transported for the same twelve-month period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 7, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28376 Filed 11–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT01–3–000]

El Paso Natural Gas Company; Notice of Cancellation of Tariff Sheet

October 31, 2000.

Take notice that on October 25, 2000, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 1, with an effective date of November 25, 2000. El Paso states that this tariff sheet is being filed to cancel its sales tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28379 Filed 11–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–5–001]

Mid Louisiana Gas Company; Notice of Compliance Filing

October 31, 2000.

Take notice that on October 26, 2000, Mid Louisiana Gas Company (Mid Louisiana) filed under protest the following revised tariff sheets to provide for imbalance trading and netting in compliance with the Commission's Order No. 587–L. As mandated by such order, the revised tariff sheets are to be effective as of November 1, 2000.

Second Revised Sheet No. 133
Second Revised Sheet No. 134
Fourth Revised Sheet No. 135
Original Sheet No. 135A
Original Sheet No. 135B
Original Sheet No. 135C
First Revised Sheet No. 136
First Revised Sheet No. 137, and
Second Revised Sheet No. 138

Mid Louisiana states that it has served copies of the filing upon each of its jurisdictional customers and applicable State agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28372 Filed 11–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–4–001]

Midcoast Interstate Transmission, Inc.; Notice of Compliance Filing

October 31, 2000.

Take notice that on October 26, 2000, Midcoast Interstate Transmission, Inc. (MIT) filed under protest the following revised tariff sheets to provide for imbalance trading and netting in compliance with the Commission's Order No. 587–L, as reaffirmed by the Commission's October 11, 2000 Order herein. As mandated by Order No. 587–L, the revised tariff sheets are to be effective as of November 1, 2000.

Original Sheet No. 83C
Fourth Revised Sheet No. 84
Third Revised Sheet No. 85
Original Sheet No. 85A
Original Sheet No. 85B
Original Sheet No. 85C
Third Revised Sheet No. 86

MIT states that it is serving copies of the filing upon all its jurisdictional customers and applicable State agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28385 Filed 11–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–62–000]

Mississippi River Transmission Corporation; Notice of Realignment Costs

October 31, 2000.

Take notice that on October 24, 2000, pursuant to Section 16 3(g)(i) of Mississippi River Transmission Corporation's (MRT) General Terms and Conditions to its FERC Gas Tariff, MRT tendered for filing a statement related to the recovery of Gas Supply Realignment Costs (GSRC) for the period of November 1, 1998 through July 31, 2000.

Specifically, MRT states that according to Section 16.3(g)(1) MRT is required to file within 90 days of July 31, 2000 a reconciliation report, reflecting GSRC recovery and true-up for the period of November 1998 through July 2000. MRT states that MRT did not collect any GSRC during that time period, and that there is no recovery to report and reconcile. MRT further states it will file a report and reconcile the collection of the current GSRC recovery, effective September 1, 2000 through November 30, 2000 within 90 days of the termination of such recovery.

MRT states that a copy of this filing is being mailed to each of MRTs customers, all parties to the proceeding and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 7, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this following are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28373 Filed 11–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–11–00]

Lester C. Reed, Complainant, v. Georgia Power Company, Respondent; Notice of Complaint

October 31, 2000.

Take notice that on October 27, 2000, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure, 18 CFR 385.206, Lester C. Reed filed a complaint regarding certain actions and inactions by the Georgia Power Corporation in the operation of the Sinclair Dam (Project No. 1951) that are alleged to be in violation of its operating license. These actions and inactions allegedly damaged Mr. Reed and numerous citizens of the United States by reducing their enjoyment of the Project and reducing home values. Mr. Reed is requesting that the Commission enforce the provisions of the license agreement, institute procedures to prevent re-occurrence of the non-compliance, order payment of damages to the citizens and communities who were damaged by Georgia Power's alleged negligence in failing to follow the provisions of the license agreement and apply sanctions, monetary and non-monetary, to Georgia Power for failure to follow the operating license.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before November 16, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before November 16, 2000. Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/dorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28378 Filed 11–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–64–000]

Southern Natural Gas Company; Notice of Compliance Filing

October 31, 2000.

Take notice that on October 25, 2000, Southern Natural Gas Company (Southern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume 1, the following revised tariff sheets, with an effective date of December 1, 2000:

Sixth Revised Sheet No. 142

Southern states that the revised tariff sheet is being filed in conjunction with the Commission's Order No, 587–L. Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–L, 65 FR 41873 (July 7, 2000), FERC Stats. & Regs. Regulations 31,100 (June 30, 2000).

Southern stated that its current tariff and system procedures are in compliance with Order No. 587–L, but that it is filing this enhancement to be consistent with the newly proposed GISB standards. Specifically, the attached tariff sheet provides for a seventeen day trading period after the end of the month for the netting and trading of imbalances. It also contains specific procedures allowing Shippers to maintain a standing request for Southern to post a Shipper's imbalances on a monthly basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28375 Filed 11–03–00; 8:45 am]

BILLING CODE 6717–1–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP93–162–010 and CP88–391–025]

Transcontinental Gas Pipe Line Corporation; Notice of Cash Out Report

October 31, 2000.

Take notice that on October 26, 2000, Transcontinental Gas Pipe Line Corporation (Transco) filed its annual report of cash-out purchases for the period August 1, 1999 through July 31, 2000. Transco states that the report is being filed to comply with the cash-out provisions in Section 15 of the General Terms and Conditions of Transco's FERC Gas Tariff.

Transco states that the report shows that for the annual cash-out period ending July 31, 2000, Transco had a net overrecovery of $11,422,274. Transco has carried forward a net underrecovery of $13,346,248 from the previous twelve-month period. This results in a net underrecovery cash-out balance of $1,923,974, excluding carrying charges, as of July 31, 2000.

Transco states that in accordance with Section 15 of its tariff it will carry forward such net underrecovery to offset any net overrecovery that may occur in future cash-out periods.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 7, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28382 Filed 11–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–10–000, et al.]

Doswell Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

October 26, 2000.

Take notice that the following filings have been made with the Commission:

1. Doswell Limited Partnership

[Docket No. EG01–10–000]

Take notice that on October 24, 2000, Doswell Limited Partnership (Doswell) filed with the Commission an application for redetermination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations. Doswell has previously been determined to be an EWG. This filing is occasioned by two nonmaterial changes in fact. First, Doswell's upstream ownership structure has changed. Second, Doswell has plans to finance, construct and own a new electric generation facility located adjacent to the existing Doswell Complex in Hanover County, Virginia.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Cleco Evangeline LLC

[Docket No. EL01–9–000]

Take notice that on October 24, 2000, Cleco Evangeline LLC tendered for filing a request for waiver of the Commission's open access transmission tariff and OASIS requirements to the extent required in connection with Cleco Evangeline LLC's ownership of interconnection facilities (generation step-up transformers and 138 kV bus facilities) located at the plant site where Cleco Evangeline LLC's generators are located.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Denver City Energy Associates, L.P.

[Docket No. ER97–4084–007]

Take notice that on October 17, 2000, Denver City Energy Associates, L.P. (DCE) filed a Report of Changes in Status and Updated Market Power Analysis, notifying the Commission of certain changes in its affiliation with various generating companies, as a result of indirect acquisitions and dispositions by its affiliates. DCE also noted that it has changed its principal place of business and that none of its affiliates currently holds an interest in electric generating capacity for which construction commenced on or before July 9, 1996.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. GEN~SYS Energy

[Docket No. ER97–4335–005]

Take notice that on October 20, 2000, GEN~SYS Energy (GEN~SYS) submitted an updated market power analysis.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. West Georgia Generating Company L.P.

[Docket No. ER00–2965–003]

Take notice that on October 18, 2000, West Georgia Generating Company (West Georgia), an Exempt Wholesale Generator that owns and operates a 640 MW electric generation plant in Thomastown, Georgia, tendered for filing a confidential copy and redacted copies of a Negotiated Contract for the Purchase of Firm Capacity and Energy between Cataula Generating Company L.P., a predecessor in interest to West Georgia Generating Company L.P., and Georgia Power Company (the Agreement). The purpose of the filing was to provide corrected designations under Order No. 614, FERC Stats. and Regs. ¶31,096 (2000), as required by the letter order issued in these dockets on September 21, 2000.

West Georgia requests that the Agreement be permitted to become effective June 1, 2000.

Comment date: November 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. West Georgia Generating Company L.P.

[Docket No. ER00–2966–003]

Take notice that on October 18, 2000, West Georgia Generating Company (West Georgia), an Exempt Wholesale Generator that owns and operates a 640 MW electric generation plant in Thomastown, Georgia, tendered for filing a confidential copy and redacted copies of a Power Purchase Agreement between West Georgia Generating Company L.P. and Municipal Electric Authority of Georgia (the Agreement). The purpose of the filing was to provide corrected designations under Order No. 614, FERC Stats. and Regs. ¶31,096 (2000), as required by the letter order issued in these dockets on September 21, 2000.

West Georgia requests that the Agreement be permitted to become effective June 1, 2000.

Comment date: November 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. The Dayton Power and Light Company

[Docket No. ER01–182–000]

Take notice that on October 23, 2000, The Dayton Power and Light Company (Dayton) submitted service agreement establishing The Detroit Edison Company as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon The Detroit Edison Company and the Public Utilities Commission of Ohio.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER01–183–000]

Take notice that on October 23, 2000, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2).

Wisconsin Electric respectfully requests an effective date of October 23, 2000 to allow for economic transactions.

Copies of the filing have been served on Madison Gas and Electric Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: November 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Potomac Power Resources, Inc.

[Docket No. ER01–202–000]

Take notice that on October 23, 2000, Potomac Power Resources, Inc. tendered for filing pursuant to Rule 205 of the Federal Power Act an application for authorization to sell capacity, energy and ancillary services at market-based rate and requests for waivers of certain regulations and blanket approvals.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. A. R. Mullinax

[Docket No. ID–3588–000]

Take notice that on October 12, 2000, A. R. Mullinax filed an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Officer: Duke Energy Corporation.

Director: Pantellos Corporation.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Mobile Energy Services Company, L.L.C.

[Docket No. QF01–13–000]

Take notice that on October 25, 2000, Mobile Energy Services Company, L.L.C. (MESC), filed an Application with the Commission. The Application seeks a determination that a cogeneration facility owned and operated by MESC qualifies as a qualifying cogeneration facility. MESC is an Alabama limited liability company that owns and operates a gas-fired combined cycle cogeneration facility rated at approximately 110–MW (gross) capacity. Copies of this application have been served upon the Alabama Public Service Commission and the Securities and Exchange Commission.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http:// www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–28324 Filed 11–3–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–71–023]

Transcontinental Gas Pipe Line Corporation; Notice of ISS Revenue Sharing Refund Report

October 31, 2000.

Take notice that on October 25, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refund report showing that on October 24, 2000, Transco submitted ISS revenue sharing refunds (total principal and interest amount of $219,309.14) to all affected shippers in Docket Nos. RP97–71 and RP97–312.

Section 8 of Transco's Rate Schedule ISS1 provides that, during the effectiveness of the Docket No. RP97–71 rate period, which began on May 1, 1997, Transco shall refund annually 75% of all revenues collected associated with the inventory charge portion of the Rate Schedule ISS rate in excess of $756,696 to (1) maximum rate firm transportation and maximum rate interruptible transportation Buyers who pay storage costs for Hester or Eminence, or both (2) Rate Schedule ESS Buyers and (3) Rate Schedule WSS-Open Access Buyers (collectively, Eligible Shippers).

Transco states that it has calculated that the refund amount for the annual period from May 1, 1999 through April 30, 2000 equals $219,309.14. Pursuant

to Section 8 of Rate Schedule ISS, Transco refunded that amount to Eligible Shippers based on each Eligible Shipper's actual fixed cost contribution as a percentage of the total fixed cost contribution of all such Eligible Shippers (exclusive of the fixed cost contribution pertaining to service purchased by Seller from third parties).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 7, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http:// www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http:// www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28383 Filed 11–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

October 31, 2000.

Take notice that the following hydroelectric license application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 1895–007.

c. *Date filed:* June 29, 1998.

d. *Applicant*: South Carolina Electric and Gas Company.

e. *Name of Project:* Columbia Hydroelectric Project.

f. *Location:* On the Broad River and Congaree River in the City of Columbia and Richland County, South Carolina. The project occupies no federal lands.

g. *Filed Pursuant to:* Federal Power Act, 15 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kristina Massey, Senior Engineer, South Carolina Electric & Gas Company, 111 Research Drive, Columbia, SC 29203, telephone (803) 217–9198.

i. *FERC Contact:* Any questions on this notice should be addressed to Charles R. Hall, telephone (202) 219–2853, or E-mail address chales.hall@ferc.fed.us.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice. All documents (original and eight copies) should be filed with David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell/htm.

k. This application has been accepted, and is now ready for environmental analysis.

l. *The project consists of the following existing facilities:* (1) a 1,021-foot-long, 14-foot-high timber crib diversion dam; (2) a 265-acre reservoir in the Broad River upstream from the diversion dam; (3) an 85-acre, 10-foot-wide, 3.5-mile canal; (4) a 210-foot-long, granite-block masonry canal intake structure, containing 12 manually operated vertical lift gates to control the flow of water into the canal; (5) a granite-block masonry canal spillway containing two 12-foot-wide Taintor gates separated by a 208-foot-long stoplog section; (6) a granite-block and brick masonry powerhouse, containing seven turbin-generator units with a total installed capacity of 10,600 kilowatts, and other appurtenances. The project is estimated to generate an average of 48 million kilowatthours (kWh) annually. The dam and existing project facilities are owned by the applicant.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice. Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

o. All filings must (1) bear in all capital letter the title "COMMENTS", "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing: and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–28381 Filed 11–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

November 1, 2000.

The following notice of meeting is published pursuant to section 3(a) of the

Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: November 8, 2000, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, telephone (202) 208–0400; for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

753rd—Meeting November 8, 2000; Regular Meeting (10:00 a.m.)

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
  DOCKET# ER00–3638, 000, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC. AND NEW ENGLAND POWER POOL
CAE–2.
  DOCKET# ER00–3668, 000, COMMONWEALTH EDISON COMPANY
CAE–3.
  DOCKET# ER00–3675, 000, NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL
CAE–4.
  DOCKET# ER00–3672, 000, THE DETROIT EDISON COMPANY AND DTE ENERGY TRADING, INC.
CAE–5.
  DOCKET# ER00–3671, 000, ENTERGY SERVICES, INC.
  OTHER#S ER00–2621, 000, ENTERGY SERVICES, INC.
CAE–6.
  DOCKET# ER00–3251, 000, EXELON GENERATION COMPANY, L.L.C.
  OTHER#S ER97–3954, 012, UNICOM POWER MARKETING, INC.
  ER97–3954, 013, UNICOM POWER MARKETING, INC.
  ER98–380, 012, HORIZON ENERGY COMPANY
  ER98–380, 013, HORIZON ENERGY COMPANY
  ER98–1734, 002, COMMONWEALTH EDISON COMPANY
  ER98–1734, 003, COMMONWEALTH EDISON COMPANY
  ER99–754, 004, AMERGEN ENERGY COMPANY, L.L.C.
  ER99–754, 005, AMERGEN ENERGY COMPANY, L.L.C.
  ER99–1872, 002, PECO ENERGY COMPANY
  ER99–1872, 003, PECO ENERGY COMPANY
  ER00–1030, 001, AMERGEN VERMONT, L.L.C.
  ER00–1030, 002, AMERGEN VERMONT, L.L.C.
  ER00–2429, 001, UNICOM ENERGY INC.
  ER00–2429, 002, UNICOM ENERGY INC.
  ER00–3251, 001, EXELON GENERATION COMPANY, L.L.C.
CAE–7.
  DOCKET# ER96–3146, 000, WEST PENN POWER COMPANY
  OTHER#S ER96–3146, 001; WEST PENN POWER COMPANY
  ER96–3146, 002, WEST PENN POWER COMPANY
  ER96–3146, 003, WEST PENN POWER COMPANY
CAE–8.
  DOCKET# ER00–3635, 000, PECO ENERGY COMPANY
CAE–9.
  DOCKET# ER00–3688, 000, AMERICAN ELECTRIC POWER SERVICE CORPORATION
CAE–10.
  OMITTED
CAE–11.
  DOCKET# ER00–845, 000, SOUTHERN CALIFORNIA EDISON COMPANY
  OTHER#S ER00–845, 001, SOUTHERN CALIFORNIA EDISON COMPANY
CAE–12.
  DOCKET# EC00–131, 000, EDISON SAULT ELECTRIC COMPANY
CAE–13.
  DOCKET# ER00–1947, 001, ENTERGY SERVICES, INC.
CAE–14.
  DOCKET# ER00–2445, 002, PJM INTERCONNECTION, L.L.C.
  OTHER#S EL00–74, 002, PJM INTERCONNECTION, L.L.C.
CAE–15.
  DOCKET# EL00–110, 000, DOMINION NUCLEAR CONNECTICUT, INC.
CAE–16.
  DOCKET# ER00–3577, 000, NEW ENGLAND POWER POOL
CAE–17.
  DOCKET# ER00–3591, 000, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
  OTHER#S ER00–1969, 001, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
  ER00–3591, 001, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Consent Agenda—Markets, Tariffs and Rates—Gas

CAG–1.
  DOCKET# CP98–133, 005, VECTOR PIPELINE L.P.
  OTHER#S CP98–133, 006, VECTOR PIPELINE L.P.
  CP98–134, 004, VECTOR PIPELINE L.P.
  CP98–134, 005, VECTOR PIPELINE L.P.
  CP98–135, 004, VECTOR PIPELINE L.P.
  RP00–586, 000, VECTOR PIPELINE L.P.
CAG–2.
  DOCKET# RP00–571, 000, RELIANT ENERGY GAS TRANSMISSION COMPANY
CAG–3.
  OMITTED
CAG–4.
  OMITTED
CAG–5.
  DOCKET# PR00–18, 000, GREAT LAKES ENERGY PARTNERS, L.L.C.
CAG–6.
  DOCKET# RP96–347, 018, NORTHERN NATURAL GAS COMPANY
CAG–7.
  DOCKET# RP00–264, 000, NORTHERN NATURAL GAS COMPANY
CAG–8.
  DOCKET# RP00–448, 001, WYOMING INTERSTATE COMPANY, LTD.
CAG–9.
  DOCKET# RP00–447, 001, COLORADO INTERSTATE GAS COMPANY
CAG–10.
  OMITTED
CAG–11.
  OMITTED
CAG–12.
  DOCKET# RP00–162, 006, PANHANDLE EASTERN PIPE LINE COMPANY
  OTHER#S RP00–162, 005, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–13.
  DOCKET# RS92–11, 028, TEXAS EASTERN TRANSMISSION CORPORATION
  OTHER#S RP94–299, 005, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–14.
  DOCKET# RM96–1, 014, STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES
  OTHER#S RP01–32, 000, TRANSCOLORADO GAS TRANSMISSION COMPANY
  RP01–33, 000, QUESTAR PIPELINE COMPANY
  RP01–34, 000, OVERTHRUST PIPELINE COMPANY
  RP01–37, 000, EQUITRANS, L.P.
  RP01–38, 000, COLORADO INTERSTATE GAS COMPANY
  RP01–39, 000, WYOMING INTERSTATE COMPANY, LTD.
  RP01–40, 000, COVE POINT LNG LIMITED PARTNERSHIP
  RP01–41, 000, YOUNG GAS STORAGE COMPANY, LTD.
  RP01–43, 000, EASTERN SHORE NATURAL GAS COMPANY
  RP01–44, 000, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
  RP01–45, 000, TOTAL PEAKING SERVICES, L.L.C.
  RP01–46, 000, CARNEGIE INTERSTATE PIPELINE COMPANY
  RP01–47, 000, VIKING GAS TRANSMISSION COMPANY
  RP01–48, 000, EGAN HUB PARTNERS, L.P.
  RP01–49, 000, ALGONQUIN LNG, INC.
  RP01–50, 000, PORTLAND NATURAL GAS TRANSMISSION SYSTEM
  RP01–51, 000, CROSSROADS PIPELINE COMPANY
  RP01–52, 000, SOUTHWEST GAS STORAGE COMPANY
  RP01–53, 000, GREAT LAKES GAS TRANSPORT, LLC
  RP01–55, 000, WESTGAS INTERSTATE, INC.

  RP01–57, 000, MIGC, INC.
  RP01–58, 000, GRANITE STATE GAS TRANSMISSION, INC.
CAG–15.
  DOCKET# PR00–17, 000, TRANSOK, LLC

CONSENT AGENDA—MISCELLANEOUS

CAM–1.
  DOCKET# RM99–8, 001, PRESERVATION OF RECORDS OF PUBLIC UTILITIES AND LICENSEES, NATURAL GAS COMPANIES, AND OIL PIPELINE COMPANIES
CAM–2. OMITTED

CONSENT AGENDA—ENERGY PROJECTS—HYDRO

CAH–1.
  DOCKET# P–459, 108, UNION ELECTRIC COMPANY, D/B/A AMERENUE
CAH–2.
  DOCKET# P–2842, 029, CITY OF IDAHO FALLS, IDAHO
  OTHER#S P–553, 066, CITY OF SEATTLE, WASHINGTON P–619 077 CITY OF SANTA CLARA, CALIFORNIA
  P–637, 015, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON
  P–943, 068, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON
  P–1417, 052, THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT
  P–1862, 041, CITY OF TACOMA, WASHINGTON
  P–2000, 019, NEW YORK POWER AUTHORITY
  P–2016, 033, CITY OF TACOMA, WASHINGTON
  P–2042, 009, PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON
  P–2101, 057, SACRAMENTO MUNICIPAL UTILITY DISTRICT
  P–2144, 020, CITY OF SEATTLE, WASHINGTON
  P–2145, 035, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON
  P–2149, 072, PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY, WASHINGTON
  P–2216, 037, NEW YORK POWER AUTHORITY
  P–2409, 098, CALAVERAS COUNTY WATER DISTRICT
  P–2442, 032, CITY OF WATERTOWN, NEW YORK
  P–2685, 006, NEW YORK POWER AUTHORITY
  P–2705, 012, CITY OF SEATTLE, WASHINGTON
  P–2952, 061, CITY OF IDAHO FALLS, IDAHO
  P–2959, 076, CITY OF SEATTLE, WASHINGTON
  P–2997, 019, SOUTH SUTTER WATER DISTRICT
  P–3083, 085, OKLAHOMA MUNICIPAL POWER AUTHORITY
  P–3190, 009, CITY OF SANTA CLARA, CALIFORNIA
  P–3193, 009, CITY OF SANTA CLARA, CALIFORNIA
  P–6842, 097, CITIES OF ABERDEEN AND TACOMA, WASHINGTON
  P–10551, 069, CITY OF OSWEGO, NEW YORK
CAH–3.
  DOCKET# P–2197, 035, ALCOA POWER GENERATING, INC.
CAH–4.
  DOCKET# P–459, 109, UNION ELECTRIC COMPANY, D/B/A AMERENUE CONSENT AGENDA—ENERGY PROJECTS—CERTIFICATES
CAC–1. DOCKET# CP00–446, 000, MONTANA POWER COMPANY
CAC–2. DOCKET# CP00–82, 001, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAC–3. DOCKET# CP96–557, 001, GREEN CANYON GATHERING COMPANY
CAC–4. DOCKET# CP99–604, 001, SOUTHERN NATURAL GAS COMPANY
CAC–5. DOCKET# RP00–220, 001, TOWN OF NELIGH, NEBRASKA V. KINDER MORGAN INTERSTATE GAS TRANSMISSION, L.L.C. AND K N ENERGY, A DIVISION OF KINDER MORGAN, INC.

ENERGY PROJECTS—HYDRO AGENDA

H–1. RESERVED

ENERGY PROJECTS—CERTIFICATES AGENDA

C–1. RESERVED

MARKETS, TARIFFS AND RATES—ELECTRIC AGENDA

E–1. DOCKET# RM98–4, 000, REVISED FILING REQUIREMENTS UNDER PART 33 OF THE COMMISSION'S REGULATIONS

ORDER ON FINAL RULE.

MARKETS, TARIFFS AND RATES—GAS AGENDA

G–1. RESERVED

David P. Boergers,
Secretary.

[FR Doc. 00–28493 Filed 11–2–00; 11:30 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6894–9]

Notice of Request for Pre-Proposals for Projects To Be Funded From the Water Quality Cooperative Agreement Allocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting pre-proposals from States, Tribal governments, universities, non-profits, and other eligible entities interested in applying for Federal assistance for Water Quality Cooperative Agreements under the Clean Water Act Section 104(b)(3). EPA Headquarters will award an estimated $3.9 million to eligible applicants through assistance agreements ranging in size from $10,000 up to $500,000 for innovative projects/demonstrations/studies that have maximum transferability or can be used as models relating to the prevention, reduction, and elimination of water pollution. The Agency intends to make available at least $200,000 per year of the annual appropriation Water Quality Cooperative Agreements, from FY 2001 through FY 2005, for projects which address cooling water intake issues to include technical and environmental studies.

DATES: EPA will consider all pre-proposals received on or before 5 pm Eastern Time November 27, 2000. Pre-proposals received after the due date, may be reviewed at EPA's discretion.

ADDRESSES: It is preferred that pre-proposals be electronically mailed (E-mailed) to *WQCA2001@EPA.GOV.* If mailed through the postal service or other means, three copies should be sent to: Barry Benroth, 4204M, WQCA2001, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

For Overnight Delivery the following address must be used: Barry Benroth, 4204M, WQCA2001, U.S. Environmental Protection Agency, Room 7324 J, ICC Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Barry Benroth by telephone at 202–564–0672 or by E-mail at benroth.barry@epa.gov.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Request for Pre-Proposals?

The Office of Wastewater Management, Office of Water at EPA Headquarters is requesting pre-proposals from States, Tribes, local governments, non-profit organizations and other eligible entities under the Clean Water Act Section 104(b)(3) for unique and innovative projects that address the requirements of the National Pollutant Discharge Elimination Systems (NPDES) program with special emphasis on wet weather activities, *i.e.,* storm water, combined sewer overflows, sanitary sewer overflows, and concentrated animal feeding operations as well as projects that enhance the ability of the regulated community to deal with non-traditional pollution problems in priority watersheds.

An organization whose pre-proposal is selected for Federal assistance must complete an EPA Application for Assistance, including the Federal SF–

424 form (Application for Federal Assistance, see 40 CFR 30.12 and 31.10).

Has Office of Wastewater Management, Office of Water, EPA Headquarters Identified High Priority Areas for Consideration?

The Office of Wastewater Management at EPA Headquarters has identified several project areas for priority consideration to the extent they are for research, investigations, experiments, training, demonstrations, surveys and studies related to the causes, effects, extent, prevention, reduction, and elimination of water pollution:

Concentrated Animal Feeding Operations

Alternative markets for excess manure

Voluntary Comprehensive Nutrient Management Plans for Animal Feeding

Operations with 300 to 500 animal units

Wet Weather (Sanitary Sewer Overflows (SSOs), Combined Sewer Overflows (CSOs), Storm Water)

Water quality-based CSO program (including Use Attainability Analysis)

Integration of CSO, SSO, and storm water requirements

Measuring the effectiveness of storm water Best Management Practices (BMPs)

Trends analysis of load reductions due to implementation of storm water BMPs

Storm water monitoring techniques

Estimating quantified benefits of enhanced sewer performance (*e.g.*, reduced backups)

Quantifying the impacts of sewage overflows

Evaluation of impacts of peak wet weather flows on Publicly Owned Treatment Works (POTW)

Capacity, Management, Operations and Maintenance (CMOM) of POTWs

Inflow/Infiltration reduction

Sewer rehabilitation methods

National Pollutant Discharge Elimination System (NPDES) Programs

Stakeholder watershed approaches

Nutrient trading

Watershed integration of NPDES programs

Innovative Permit Writing Tools

Pretreatment

Performance measures

Facilitation of innovative technology transfer

Pretreatment on the Mexican Border

Environmental Management System (EMS)

Benefits and impacts of EMS

EMS adoption by public agencies

Non-Governmental Organizations participation in EMS projects

Cooling Water Intake Structures (Clean Water Act, Section 316(b))

Innovative technologies that reduce impingement and entrainment of aquatic organisms into cooling water intakes

Ecological effects of cooling water intake structures on aquatic environments

Effectiveness of ecological restoration activities in reducing the impact of cooling water intake structures on the aquatic environment

Infrastructure Funding Related to

Asset Management

Operations and Maintenance (O&M) issues for small communities

Capacity Building for Tribes/Native Villages/Environmental Justice

Biosolids

Demonstrations of regional biosolids approaches

Food crop applications on biosolids and/or reclaimed water (assessments, research, demonstrations analyses)

Onsite/Decentralized Systems

State-level adoption of EPA management guidelines

Overcoming institutional, regulatory and funding barriers to implementation of decentralized options

Development of tools to assist communities with conducting comprehensive, watershed-wide assessments of risks associated with decentralized wastewater systems

Water Use Efficiency

EPA may also consider other project areas for funding to the extent authorized by CWA sec. 104(b)(3) and to the extent funds are available for such project areas.

Statutory Authority, Applicable Regulations, and Funding Level

Funding is authorized under the provisions of the Clean Water Act Sec. 104(b)(3), 33 U.S.C. 1254(b)(3).

The regulations governing the award and administration of Water Quality Cooperative Agreements are 40 CFR Part 30 (for institutions of higher learning, hospitals, and other non-profit organizations) and 40 CFR Part 31 (for States, Tribes, local governments, intertribal consortia, and interstate agencies). In addition, EPA expects to promulgate final rules in the near future that will include program specific regulations for Water Quality Cooperative Agreements to States, Tribes, local governments, interstate agencies and intertribal consortia. When the rules are finalized, they will be codified at 40 CFR Part 35 Subparts A and B.

Total funding available for award by Headquarters will depend on EPA's appropriation for Fiscal Year 2001; however, it is estimated that $3.9 million will be available for funding approved projects. The average size of an award is anticipated to be approximately $100,000.

Should funding available for award remain reasonably stable or increase in future years, the Agency intends to reserve $1 million ($200,000 per year of the annual amount available) over the next five years to support projects and studies on cooling water intake structures.

Pre-Proposal Format and Contents

Pre-proposals should be limited to three pages. Full application packages should not be submitted at this time. The following format should be used for all pre-proposals:

Name of Project:

Point of Contact: (Individual and Organization Name, Address, Phone Number, Fax Number, E-mail Address)

Is this a Continuation of a Previously Funded Project (if so, please provide the status of the current grant or cooperative agreement):

Proposed Award Amount:

Proposed Awardee Cost Share: (Cost sharing is not required)

Description of General Budget Proposed to Support Project:

Project Description: (Should not exceed two pages of single-spaced text)

Expected Accomplishments or Product, with Dates, and Interim Milestones: This section should also include a discussion of a communication plan for distributing the project results to interested parties.

Describe How the Project Meets the Evaluation Criteria Specified Below:

EPA Pre-Proposal Evaluation Criteria

EPA will consider pre-proposals based on the following criteria:

- The relationship of the proposed project to the priorities identified in this notice.
- How well the project proposes to address a nationally important need, issue, or interest.
- Communication plan to transfer results of the project to other potentially interested parties.
- How well the project furthers the goal of the Clean Water Act to prevent, reduce, and eliminate water pollution.
- Leverage of other resources (*e.g.* cost share, participation by other organizations) as part of the proposed approach.
- Cost effectiveness of the proposal.
- Compliance with directions for submittal contained in this notice.

EPA may consider applications even if all criteria are not fully met, provided the proposed projects meet the applicable statutory and regulatory requirements and funds are available for such projects.

Eligible Applicants

Eligible applicants for assistance agreements under section 104(b)(3) of the Clean Water Act are State water pollution control agencies, Tribal governments, interstate agencies, and other public or non-profit private agencies, institutions, and organizations.

Application Procedure

Electronic transmittal of pre-proposals is preferred to facilitate the review process. Hard copies are acceptable. Please send three copies of the pre-proposal if it is not electronically transmitted.

Schedule of Activities

This is the estimated schedule of activities for review of proposals and notification of selections:

November 27, 2000—Pre-proposals due to EPA.

December 18, 2000—Initial approvals identified and sponsors of projects selected for funding will be requested to submit a formal application package.

Dated: October 26, 2000.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 00–28017 Filed 11–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6897–7]

National Environmental Justice Advisory Council; Notification of Meeting and Public Comment Period(s) Open Meetings

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, we now give notice that the National Environmental Justice Advisory Council (NEJAC), along with the various subcommittees, will meet on the dates and times described below. All times noted are Eastern Standard Time. All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are *not* available from the NEJAC. The NEJAC and the subcommittee meetings will take place at the Hyatt Regency Crystal City Hotel, 2700 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting dates are as follows: December 11, 2000 through December 14, 2000. This is the third in a series of focused policy issue meetings for the NEJAC. To help prepare for this specific focused policy issue meeting the following background information is provided:

Request

The Charter for the National Environmental Justice Advisory Council (NEJAC) states that NEJAC shall provide independent advice to the Administrator on areas relating to environmental justice including, among other things, "advice for improving how EPA and others participate, cooperate, and communicate within the Agency and between other Federal agencies, State, or local governments, Federally recognized Tribes, EJ leaders, interest groups, and the public." The Agency, through the Office of Environmental Justice (OEJ), requests that the NEJAC convene a focused and issue-oriented public meeting in Arlington, VA to receive comments, discuss, and analyze a major public policy issue. The Agency, furthermore, requests that the NEJAC produce a comprehensive report on the differing views, interests, concerns, and perspectives expressed by the stakeholder participants on the issue, and provide advice and recommendations for the Agency's review and consideration.

Issue

What progress has the Federal government made towards integrating environmental justice into its policies, programs, and activities consistent with existing laws and Executive Order 12898?

Background

Developing integrated strategies plays a vital role for achieving environmental justice for all Federal agencies and is consistent with the missions of those agencies. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," represents an important first step towards realizing the goal of achieving environmental justice throughout the Federal government.

The Executive Order requires that each Federal agency shall, to the greatest extent practicable and permitted by law, make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects on minority and low-income populations. Specifically, the Executive Order directs Federal agencies to:

(1) Develop a strategic plan to integrate environmental justice into their activities;

(2) Conduct activities in a manner that ensures that they do not have the effect of excluding people and groups from public participation opportunities or the benefits of such activities;

(3) Include diverse segments of the population in studies involving human health and environmental hazards;

(4) Collect, maintain and analyze information on consumption patterns of populations who rely principally on fish and wildlife for subsistence;

(5) Enhance public participation opportunities and the accessibility of meetings and documents; and,

(6) Develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

Purpose

Much can be gained from an examination of the successes, failures and challenges encountered by Federal agencies in integrating environmental justice during the past 6½ years. While there have been significant accomplishments and important initiatives, attempts to integrate environmental justice also have encountered tremendous barriers and challenges. A thoughtful examination will prove invaluable for understanding how future strategies for integrating environmental justice can be made more effective.

NEJAC's examination of environmental justice implementation throughout the Federal government should be forward-looking. The analysis should identify lessons learned from implementation of the Executive Order and make recommendations for future efforts to address environmental justice. Since issues of environmental justice are often complex, multi-faceted and cross-cutting, they require new approaches on the part of the Federal government. Coordinated interagency strategies are critical, including the development of community-based interagency demonstration projects.

NEJAC will examine interagency environmental justice implementation in two basic areas: (1) Progress and lessons gained from individual agency implementation; and, (2) development of collaborative interagency strategies.

Meeting

Registration for the NEJAC meeting will begin on Monday, December 11, 2000 at 8 a.m. The full NEJAC will convene Monday, December 11, 2000, and Tuesday, December 12, 2000 from 9 a.m. to 5 p.m. Business will include a series of panels with expert testimony on the focused policy issue, a review of ongoing NEJAC activities and a discussion of new business items. A public comment period dedicated to the focused policy issue is scheduled for Monday evening, December 11, 2000, from 6:30 p.m. to 9:30 p.m. On Tuesday evening, December 12, 2000, a second public comment period for overall environmental justice issues is scheduled from 6:30 p.m. to 9:30 p.m. The following Subcommittees will meet on Wednesday, December 13, 2000, from 9 a.m. to 6 p.m.: Air and Water; Enforcement; Health and Research; Indigenous Peoples; International; and Waste and Facility Siting. The full NEJAC will reconvene Thursday, December 14, 2000, from 9 a.m. to 5 p.m. to wrap up all business requiring Executive Council action. All times shown are Eastern Time.

Any member of the public wishing additional information on the subcommittee meetings should contact the specific Designated Federal Official at the telephone number listed below.

Subcommittee	Federal Official and Telephone Number
Enforcement	Ms. Shirley Pate 202/564–2607
Health & Research	Ms. Brenda Washington 202/564–5781 Ms. Aretha Brockett 202/260–3810
International	Ms. Wendy Graham 202/564–6602
Indigenous Peoples	Mr. Danny Gogal 202/564–2576
Waste/Facility Siting	Mr. Kent Benjamin 202/260–2822
Air & Water	Mr. Wil Wilson 202/564–1954 Ms. Alice Walker 202/260–1919

Members of the public who wish to participate in one of the public comment periods should pre-register by December 1, 2000. Individuals or groups making oral presentations during the public comment period will be limited to a total time of five minutes. Only one representative from a community, organization, or group will be allowed to speak. Any number of written comments can be submitted for the record. The suggested format for individuals making public comment should be as follows:

Request To Make Public Comment Speaker's Template

NAME OF SPEAKER: ____________________
NAME OF ORGANIZATION/COMMUNITY: ____________________
ADDRESS/PHONE/FAX/EMAIL: ____________________
DESCRIPTION OF CONCERN: ____________________
RECOMMENDATIONS/DESIRED OUTCOME: ____________________

If you wish to submit written comments of any length (at least 50 copies), they should also be received by December 1, 2000. Comments received after that date will be provided to the Council as logistics allow. All information should be sent to the address or fax number cited below.

Registration

Pre-registration for all attendees is recommended. To receive a registration form, call the number listed below or visit the web site. Correspondence concerning registration should be sent to Ms. Victoria Robinson of Tetra Tech Environmental Management, Inc. at: 1881 Campus Commons, Suite 200, Reston, VA 20191, phone: 703/390–0641 or fax: 703/391–5876. Hearing-impaired individuals or non-English speaking attendees wishing to arrange for a sign language or foreign language interpreter, may make appropriate arrangements using these numbers also. In addition, NEJAC offers a toll-free Registration Hotline at 1–888/335–4299. For on-line registration, you may visit the Internet site: *http://es.epa.gov/oeca/main/ej/nejac/index.html.*

Dated: October 31, 2000.

Charles Lee,

Designated Federal Official, National Environmental Justice Advisory Council.

[FR Doc. 00–28420 Filed 11–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6896–6]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Final Project Agreements and Response to comments for the Metropolitan Water Reclamation District of Greater Chicago and the Louisville and Jefferson County Metropolitan Sewer District.

SUMMARY: EPA is announcing the signing of the Project XL Final Project Agreement (FPA) for the Metropolitan Water Reclamation District of Greater Chicago and Louisville and Jefferson County Metropolitan Sewer District.

DATES: The FPA for the Metropolitan Water Reclamation District of Greater Chicago was signed on August 30, 2000 and the FPA for the Louisville and Jefferson County Metropolitan Sewer District was signed on September 28, 2000.

ADDRESSES: To obtain copies or to make inquiries about the Final Project Agreements, Fact Sheets, or public comments received contact the following individuals: Matthew Gluckman, 312–8986–6089, U.S. EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604, (*gluckman.matthew@epa.gov*) for the Metropolitan Water Reclamation District of Greater Chicago; and Melinda Mallard-Greene, 404–562–9771, U.S. EPA Region IV, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104 (mallard.melinda@epa.gov) for the Louisville and Jefferson County Metropolitan Sewer District. In addition, public files on each of the projects are located at each of the EPA

regional offices listed. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, Regional and Headquarters contacts, application information and descriptions of existing XL projects and proposals is available via the Internet at http://www.epa.gov/ProjectXL.

SUPPLEMENTARY INFORMATION: Final Project Agreements are voluntary agreements developed by project sponsors, stakeholders, the State in which the project is located and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282) and November 1, 1995 (60 FR 55569) gives regulated sources the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits.

EPA announced the availability and requested comments on the Metropolitan Water Reclamation District of Greater Chicago Draft FPA on July 24, 2000 (65 FR 45601) and on the Louisville and Jefferson County Metropolitan Sewer District Draft FPA on August 29, 2000 (65 FR 52427) in the **Federal Register**. Descriptions of the projects are contained in each of the **Federal Register** notices. Comments and responses to comments on these projects are available via the Internet at http://www.epa.gov/ProjectXL.

Dated: October 11, 2000.

Elizabeth A. Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. 00–28417 Filed 11–3–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6897–3]

Proposed CERCLA Administrative Agreements; Cannons Engineering Corporation Superfund Sites

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of two proposed administrative agreements for recovery of past and projected future response costs at four Superfund sites. The agreements resolve claims of the Environmental Protection Agency ("EPA") against the settling parties under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and section 7003 of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. 6973. The settling parties are the United States Navy ("Navy") and the United States Coast Guard ("Coast Guard"). The four Superfund sites are the Cannons Engineering Corporation Site in Bridgewater, Massachusetts; the Cannons Engineering/Plymouth Harbor Site in Plymouth, Massachusetts; the Gilson Road Site in Nashua, New Hampshire; and the Tinkham's Garage Site in Londonderry, New Hampshire. The Commonwealth of Massachusetts and the State of New Hampshire are also parties to these agreements.

The Navy is a larger volume Potentially Responsible Party ("PRP"). Under the agreement with the Navy, the Navy will pay a total of approximately $2,850,000, of which $1,578,912 will be paid to the Hazardous Substance Superfund, $39,000 will be paid to the Commonwealth of Massachusetts, and $1,232,088 will be paid to the State of New Hampshire. The Navy will also pay interest on these amounts, accruing as of December 14, 1998. With respect to one of the four Sites, EPA retains its right to pursue its claims against the Navy at the Nashua Site if costs at that Site exceed a specified amount.

The Coast Guard is a *de minimis* PRP. Under this *de minimis* agreement with the Coast Guard, the Coast Guard will pay a total of approximately $207,562.82, of which $172,587.64 will be paid to the Hazardous Substance Superfund, $28,940.35 will be paid to the Commonwealth of Massachusetts, and $6,034.83 will be paid to the State of New Hampshire. The Coast Guard will also pay interest on these amounts, accruing as of November 24, 1999. Under this agreement, the Department of the Interior and the National Oceanic and Atmospheric Administration agree not to bring claims under CERCLA against the Coast Guard for natural resource damages with respect to these Sites.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to these two agreements. EPA will consider all comments received and may modify or withdraw its consent to these agreements if comments received disclose facts or considerations which indicate that the agreements are inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the EPA Records Center, 1 Congress Street, Boston, MA 02114–2023 (Telephone No. 617–918–1440). Commenters may request an opportunity for a public meeting in the affected areas in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments and requests for a public meeting in the affected areas must be submitted on or before December 6, 2000.

ADDRESSES: The proposed agreements are available for public inspection at the EPA Records Center, 1 Congress Street, Boston, MA 02114–2023 (Telephone No. 617–918–1440). A copy of the proposed agreements may be obtained from Audrey Zucker, U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100 (SES), Boston, MA 02114–2023, (617) 918–1788. Comments should reference the Cannons Engineering Corporation Superfund Sites and EPA Docket No. 1–2000–0033 (Settling Party: U.S. Navy) or EPA Docket No. 1–2000–0032 (Settling Party: U.S. Coast Guard), and should be addressed to Audrey Zucker, U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100 (SES), Boston, MA 02114–2023.

FOR FURTHER INFORMATION CONTACT: Audrey Zucker, U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100 (SES), Boston, MA 02114–2023, (617) 918–1788.

Dated: August 2, 2000.

Patricia L. Meaney,

Director, Office of Site Remediation and Restoration, EPA-New England.

[FR Doc. 00–28416 Filed 11–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6896–5]

Public Water System Supervision Program; Primary Enforcement Responsibility Approval for the Navajo Nation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision and opportunity for hearing.

This public notice is issued pursuant to section 1413 of the Safe Drinking Water Act ("Act") and section 142.10 of the National Primary Drinking Water Regulation (40 CFR part 142).

An application has been received from the Navajo Nation, through the Director, Navajo Nation Environmental Protection Agency, requesting that the Navajo Nation Environmental Protection

Agency be granted primary enforcement responsibility for the public water systems within the Navajo Nation pursuant to section 1413 of the Act.

Section 1451 of the Act and 40 CFR 142.72 authorize EPA to delegate to Indian tribes primary enforcement responsibility for public water systems, pursuant to section 1413 of the Act, if the Indian tribe meets the following criteria:

(A) The Indian Tribe is recognized by the Secretary of the Interior and has a governing body carrying out substantial governmental duties and powers;

(B) The functions to be exercised by the Indian Tribe are within the area of the Tribal Government's jurisdiction; and

(C) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of (the Act) and of all applicable regulations.

Section 1451(b)(1) of the Act, 42 U.S.C. 300j–11(b)(1), see also 40 CFR 142.72.

Pursuant to section 1451 of the Act and 40 CFR 142.72, EPA has determined that the Navajo Nation, through the Navajo Nation Environmental Protection Agency, is eligible to apply for primary enforcement responsibility for public water systems within the Navajo Nation. EPA has also determined that the Navajo Nation, through the Navajo Nation Environmental Protection Agency has met all conditions of the Act and regulations promulgated pursuant to the Act for the assumption of primary enforcement responsibility for public water systems within the Navajo Nation. Specifically the Navajo Nation:

(1) Has adopted drinking water regulations which are no less stringent than the National Primary Drinking Water Regulations;

(2) Has adopted and will implement adequate procedures for the enforcement of such regulations, including adequate monitoring, sanitary surveys, inspections, plan review, inventory of water systems, and adequate certified laboratory availability;

(3) Will keep such records and make such reports as required;

(4) If it permits variances or exemptions from the requirements of its regulations, will issue such variances and exemptions in accordance with the provisions of the National Primary Drinking Water Regulations; and

(5) Has adopted and can implement an adequate plan for the provision of safe drinking water under emergency conditions.

All interested parties are invited to submit written comments or to request a public hearing on EPA's determination. Written comments and/or requests for a public hearing must be submitted by December 6, 2000 to the Regional Administrator at the address shown below.

Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If a substantial request for public hearing is made by December 6, 2000, a public hearing will be held. The Regional Administrator will give further notice in the **Federal Register** and a newspaper or newspapers of general circulation within the Navajo Nation of any hearing to be held pursuant to a request submitted by an interested party, or on her own motion. Notice of the hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Notice will be sent to the person requesting the hearing and to the Navajo Nation. Notice of the hearing will include a statement of the purpose of the hearing, information regarding the time and location for the hearing, and the address and telephone number of an office at which interested persons may obtain further information concerning the hearing.

After receiving the record of the hearing, the Regional Administrator will issue an order affirming or rescinding the determination. If the determination is affirmed, it shall become effective as of the date of the order.

If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become effective on December 6, 2000.

Based on the language of section 1413 of the Act, EPA has long implemented the determination to approve a state, and now a tribal, application for primary enforcement responsibility for public water systems as an "adjudication" rather than a "rulemaking" under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq*. The same is true of applications for state and tribal program revisions. For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq*. Under the RFA, whenever a federal agency proposes or promulgates a rule under section 553 of the APA, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency must prepare a regulatory flexibility analysis for the rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the agency does not certify the rule, the regulatory flexibility analysis must describe and assess the impact of a rule on small entities affected by the rule.

Even if a state or tribal primary enforcement responsibility application or revision were a "rule" subject to the RFA, EPA would certify that the approval or revision of the state's or the tribe's program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve a primary enforcement responsibility application or revision merely recognizes a program that has already been enacted as a matter of state or tribal law. It would, therefore, impose no additional obligations upon those subject to the state's or tribe's program. Accordingly, the Regional Administrator would certify that the approval of primary enforcement responsibility of the Navajo Nation, if a "rule," would not have a significant economic impact on a substantial number of small entities.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, at the following offices: Navajo Nation Environmental Protection Agency, Fairground Building No. W–008–042, Window Rock, Arizona 86515; and EPA, Region IX, Water Division, Drinking Water Office (WTR–6), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: To submit comments or request further information, contact Danny Collier, Region IX, at the San Francisco address given above; telephone (415) 744–1856.

(Sections 1413 and 1451 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g–2 and 311j–11; and 40 CFR 142.10 and 142.72)

Dated: October 23, 2000.

Felicia Marcus,

Regional Administrator, Region 9.

[FR Doc. 00–28418 Filed 11–3–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission; Comments Requested

October 27, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 5, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060-xxxx.

Title: Section 95.1303—Authorized Locations.

Form No.: N/A.

Type of Review: New.

Respondents: Business or other for-profit, not-for-profit institutions, Farms, State, Local or Tribal government.

Number of Respondents: 15.

Estimated Time Per Response: .25 hours.

Total Annual Burden: 3.75 hours.

Total Annual Cost: No annual cost burden on respondents from either capital or start-up costs.

Needs and Uses: The rule requires anyone intending to operate a Multi-Use Radio Service (MURS) unit in a manner that could cause radio interference to the Arecibo Observatory to notify the Observatory either in writing or electronically of the geographical coordinates of the unit 45 days prior to commencing operation of the unit. The rule is needed to protect the Observatory from harmful radio interference.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28354 Filed 11–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval.

October 26, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 6, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0700.

Title: Open Video Systems Provisions.

Form Number: FCC 1275.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and State, Local or Tribal Government.

Number of Respondents: 748.

Estimated Time Per Response: 0.25 to 20 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 3,910 hours.

Total Annual Costs: None.

Needs and Uses: Section 302 of the Telecommunications Act of 1996 provides for specific entry options for entities wishing to enter the video programming marketplace, one option being to provide cable service over an "Open Video System" ("OVS"). On April 15, 1997, the Commission released a Fourth Report and Order, FCC 97–130, which clarified various OVS rules and modified certain OVS filing procedures.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28355 Filed 11–3–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part

225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 30, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713.

1. *Capital City Bank Group, Inc.*, Tallahassee, Florida; to merge with First Bankshares of West Point, Inc., West Point, Georgia, and thereby indirectly acquire First National Bank of West Point, West Point, Georgia.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001.

1. *1st Financial Bancshares, Inc.*, Shawnee Mission, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Centerville State Bank, Centerville, Kansas.

In connection with this application, Meader Insurance Agency, Inc., Waverly, Kansas; has applied to acquire 13.1 percent of the voting shares of 1st Financial Bancshares, Inc., Shawnee Mission, Kansas.

Board of Governors of the Federal Reserve System, October 31, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28322 Filed 11–3–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10 a.m. (EST), November 13, 2000.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the October 10, 2000, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Semiannual review of status of audit recommendations.
4. Quarterly investment policy review.
5. Annual ethics briefing.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: November 1, 2000.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 00–28459 Filed 11–1–00; 4:45 pm]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: General Services Administration.

ACTION: Notice of a new system of records subject to the Privacy Act of 1974.

SUMMARY: The General Services Administration (GSA) is providing notice of the establishment of a new record system, Acquisition Career Management Information System (ACMIS) (GSA/OAP–2). The new system will collect information to track, verify, update, and manage the careers of Federal employees in acquisition occupations and to manage the funds and the size and strength of the Federal acquisition workforce.

DATES: Comments on the new system must be provided December 6, 2000. The new system will become effective without further notice on December 6, 2000, unless comments dictate otherwise.

ADDRESSES: Address comments to: Marilyn Geldzahler, Federal Acquisition Institute (MVI), General Services Administration, 1800 F Street, NW, Washington, DC 20405; or to GSA Privacy Act Officer, General Services Administration, CAI, 1800 F Street, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Marilyn Geldzahler at the above address, or telephone (202) 208–1314.

GSA/OAP–2

SYSTEM NAME:

Acquisition Career Management Information System (ACMIS).

SYSTEM LOCATION:

The system is maintained for GSA under contract. Contact the System Manager for additional information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees in acquisition and contracting jobs, including personnel in the 1100 occupational series, contracting officers, and other employees performing acquisition, contracting, and procurement functions for Federal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed for managing the careers and training of employees in the Federal acquisition occupational field. Records may include but are not limited to: (1) Biographical data such as name, birth date, and educational level; (2) work related data such as service computation date and retirement information, duty station, occupational series and grade, and Social Security Number; and (3) training records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 37 of the Office of Federal Procurement Policy Act (41 U.S.C. 433).

PURPOSES:

To establish and maintain an electronic system to facilitate the career management of Federal employees in acquisition occupations; to ensure that employees meet mandated training requirements; and to effectively manage training funds and the size and qualifications of the Federal acquisition workforce. The system provides to management and to employees in the system up-to-date information on employee certification levels, qualification standards, academic degrees, mandatory and other pertinent training, and warrant status.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM.

System information may be accessed and used by employees themselves and their supervisors, designated analysts and managers, and training centers, to track, verify, and update system information. Designated program managers will use the information to manage training funds and the size and strength of the Federal acquisition workforce.

Information from this system also may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the General Accounting Office (GAO) in accordance with their responsibilities for evaluating Federal programs.

e. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

f. To a requesting Federal agency in connection with the hiring, retaining, or promotion of an employee where the information is relevant and necessary for the decision.

g. To authorized officials of the agency that provided the information for inclusion in ACMIS.

h. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

All records are stored electronically in web-based computer format.

RETRIEVABILITY:

Records are retrievable by name and/or Social Security Number. Group records are retrieved by organizational code.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act. Access is limited to authorized individuals with passwords, and the database is maintained behind a firewall certified by the National Computer Security Association.

RETENTION AND DISPOSAL:

System records are retained and disposed of according to GAS records maintenance and disposition schedules and the requirements of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Acquisition Institute (MVI), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if the system contains information about them should contact the system manager at the above address.

RECORD ACCESS PROCEDURE:

Individuals wishing to access their own records may do so by password. Requests for access also may be directed to the system manager.

CONTESTING RECORD PROCEDURE:

Individuals in the system may amend their own records online, or, as appropriate, request their manager or supervisor to amend the record.

RECORD SOURCE CATEGORIES:

The sources for information in the system are the individuals for whom the records are maintained, the supervisors of those individuals, existing agency systems, and the Office of the Personnel Management's (OPM) Central Personnel Data File (CPDF).

Dated: October 25, 2000.

Daniel K. Cooper,

Director, Information Management Division.

[FR Doc. 00–28366 Filed 11–3–00; 8:45 am]

BILLING CODE 6820–31–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60 Day–01–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c)(2)(A) of the Paperwork reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects:

Reader Evaluations of Public Health Assessments and Consultation Products—Reinstatement with Changes—This is a request for a three-year reinstatement with changes of OMB 0923–0016, Reader Evaluations of Public Health Assessments and Consultation Products. The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to perform health assessments for each facility on the National Priorities List and for releases of facilities where individuals have been exposed to a hazardous substance. In addition, ATSDR provides consultations on health issues relating to exposure to hazardous or toxic substances to officials at the Environmental Protection Agency (EPA), and state and local government. The principal audiences for these products are health professionals at the federal, state, and local levels, staff in public libraries and repositories, interested private sector organizations and groups, and members of the public.

In order to make ATSDR products such as health assessments, consultations, exposure investigations, and fact sheets timely and relevant, ATSDR staff developed a survey questionnaire (OMB 0923–0016) to get readers' opinions and evaluations. The survey will be inserted and mailed in each public health assessment. In addition, electronic surveys will be sent to clients and partners requesting ATSDR health consultations and exposure investigations within one month following delivery of product or service. The survey collects information on (a) affiliation of users, (b) timeliness and effectiveness of these products, and (c) practical utility of these products.

The reader evaluation surveys provide important feedback that enables ATSDR staff to maintain the utility, integrity and standards of its products. Gathering client feedback ensures that appropriate information is included in these documents and assists in maintaining medical and scientific usefulness. The information will be used to maintain customer satisfaction with these products. There is no cost to respondents.

The estimate annual burden is 172 hours.

Respondents	Number of respondents	Responses per respondent	Avg. burden response (in hrs.)	Total burden (in hrs.)
ATSDR clients and partners	300	1	0.25	75
Librarians	180	1	0.12	22
Individuals completing questionnaires	200	1	0.25	50
Individuals who received but did not complete questionnaires	100	1	0.25	25

Dated: October 30, 2000.

Kathy Cahill,

Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–28363 Filed 11–03–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–06–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Jail STD Prevalence Monitoring System—New—National Center for HIV, STD, and TB Prevention (NCHSTP)

Proposes a 3-year clearance for data collection of the standardized record layout for the Jail STD Prevalence Monitoring System. This system consists of test data compiled for persons entering corrections facilities. The standard data elements were created in response to the need to systematically assess morbidity in persons entering corrections facilities who are at high risk for STDs and who often do not seek medical care in mainstream medical settings.

Use of these standard data elements will improve surveillance of STDs by allowing for systematic assessment of a high risk population, taking advantage of already computerized data. States that compile data from corrections facilities are encouraged to participate in the system. The estimated annualized burden is 1248 hours.

Respondents	Number of respondents	Average Number of forms/ respondent	Number of responses/ respondent	Average burden/response (in hrs.)
State/local health departments	65	16	1	1.2

Dated: October 30, 2000.

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–28436 Filed 11–03–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Case Plan Section 422,471(a)(16), 475(5)(A) of the Social Security Act.

OMB No.: 0980–0140.

Description: Under section 471(a)(16) of title IV–E of the Social Security Act (the Act), in order for States to be eligible for payments they must have an approved State plan which provides for the development of a case plan (as defined in section 475(1)) for each child receiving foster care maintenance payments, and provides a case review system which meets the requirements in section 475(5) and 475(6). Through the meeting of these requirements, the State also complies, in part, with title IV–B, section 422(b)(10) of the Act (as of 4/1/96), which assures certain protections for children in foster care.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondents	Average burden hours per response	Total burden hours
Case Plan	714,056	1	2.62	1,870,827
Estimated Total Annual Burden Hours:				1,870,827

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 30, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–28317 Filed 11–3–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 16, 2000, 9:30 a.m. to 7 p.m.

Location: Quality Suites Hotel, Potomac Rooms II and III, Three Research Ct., Rockville, MD.

Contact Person: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, ext. 176, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12513. Please call the Information Line or access the Internet (http://www.fda.gov/cdrh/panelmtg.html for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations on: (1) The design of clinical trials for devices to prevent stroke, to treat stroke, and to provide neurological protection after stroke; and (2) the design of clinical studies for temperature control devices to provide neurological protection.

Procedure: On November 16, 2000, from 10 a.m. to 7 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 9, 2000. On November 16, 2000, oral presentations from the public will be scheduled between approximately 11 a.m. and 11:30 a.m. for the discussion of the design of clinical studies for devices to prevent stroke, to treat stroke, and to provide neurological protection after stroke, and between approximately 4:30 p.m. and 5 p.m. for the discussion of the design of clinical studies for temperature control devices to provide neurological protection. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 9, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On November 16, 2000, from 9:30 a.m. to 10 a.m., the meeting will be closed to permit FDA to present to the committee trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) regarding pending issues and applications.

FDA regrets that it was unable to publish this notice 15 days prior to the November 16, 2000, Neurological Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Neurological Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 31, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–28445 Filed 11–1–00; 4:34 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Comparative Medicine.

Date: November 20, 2000.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John D. Harding, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0810.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: October 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–28337 Filed 11–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Teleconference Review of R25 application.

Date: December 6, 2000.

Time: 12:00 pm to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301)435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–28335 Filed 11–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: November 3, 2000.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIGMS, Office of Scientific Review, Natcher Building, Room 1AS19, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Arthur L. Zachary, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13H, Bethesda, MD 20892, (301) 594–2886, zacharya@nigms.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–28336 Filed 11–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Teleconference Review of 1 R13 application.

Date: December 6, 2000.

Time: 11:00 a.m to 12:00 pm.

Agenda: To review and evaluate grant application.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E0#, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864,

Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–28338 Filed 11–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Review of U54 applications.

Date: December 4–5, 2000.

Time: 7:30 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: 8120 Wisconsin Avenue, Vesailles IV Room, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301)534–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 30, 2000.

LaVerne Y. Stringfield

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–28339 Filed 11–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MBRS Review Subcommittee B.

Date: November 15–16, 2000.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Michael A. Sesma, PhD, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS19, 45 Center Drive, Bethesda, MD 20892, (301) 594–2048.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 27, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–28340 Filed 11–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Meeting of the Advisory Committee on Alternative Toxicological Methods

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Toxicology Program (NTP) Advisory Committee on Alternative Toxicological Methods, U.S. Public Health Service. The meeting will be held from 9 a.m. to 5 p.m. on November 28, 2000 in the Director's Board Room, National Library of Medicine, National Institutes of Health Campus, Building 38, 8600 Rockville Pike, Bethesda, Maryland 20894. The entire meeting is open to the public and time is planned for persons who would like to make public comments. Although not required, pre-registration is preferred to assist in planning for adequate space. To pre-register for this meeting, please contact Dr. Mary S. Wolfe, NTP Executive Secretary, P. O. Box 12233, A3–07, NIEHS, Research Triangle Park, North Carolina 27709, telephone: 919–541–3971 and FAX: 919–541–0295. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, are asked to notify the contact person listed below in advance of the meeting.

Background

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services has established an Advisory Committee on Alternative Toxicological Methods. The Committee functions to provide advice on the activities and priorities of the NTP Center and the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and to provide advice on ways to foster partnership activities and productive interactions among all stakeholders. The Advisory Committee is composed of knowledgeable representatives drawn from academia, industry, public interest organizations, other state and Federal agencies, and the international community [**Federal Register:** September 15, 1997 (Volume 62, Number 178, Page 48290)]

Agenda

The agenda for the November 28th session will consist of presentations on recent and proposed activities of the NTP Center and ICCVAM. The Committee will discuss issues relating to processes and priorities and recommendations relevant to the validation of new and revised toxicological testing methods. Information on methods that will be discussed is available on the Internet at: *http://iccvam.niehs.nih.gov.*

Preliminary Agenda—National Toxicology Program Advisory Committee on Alternative Toxicological Methods, National Library of Medicine, Building 38, NIH Campus, Bethesda, MD, November 28, 2000

Tuesday, November 28, 2000

9 a.m.
  Opening Comments
  Update on the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods and ICCVAM Activities
  Implementation of ICCVAM Recommended Methods
  Report on the Peer Review of the Revised Up-and-Down Procedure (UDP) for Assessing Acute Oral Toxicity (July 25, 2000)
  Public Comments
  12:15 p.m. Lunch Break
  1:15 p.m.
  I. Report on the International Workshop on In Vitro Methods for Assessing Acute Systemic Toxicity (October 17–20, 2000)
  II. Report on the Expert Panel Meeting on the Frog Embryo Teratogenesis Assay—Xenopus (FETAX)
  Committee Discussion on Future Directions and Related Issues
  Public Comments
  5 p.m. Adjourn

A detailed agenda with meeting schedule and the Committee roster will be available prior to the meeting on the NTP web site (http://ntp-server.niehs.nih.gov) or by contacting the NTP Executive Secretary, at the address given above. Summary minutes will also be available subsequent to the meeting by contacting the address above.

Solicitation of Public Comment

The Advisory Committee on Alternative Toxicological Methods meeting is open to the public, and time is reserved for any interested individual/group (limit one speaker per group) to give oral comments on the activities, directions, or priorities of the Center and/or on any of the agenda items discussed at the meeting. In order to facilitate planning for the meeting, persons wishing to make an oral presentation are asked to notify the Executive Secretary prior to the meeting at the address given above; however, registration for public comments will also be available on-site at the meeting. A person registering to make comments will be asked to provide his/her name, affiliation, mailing address, phone, fax, e-mail and supporting organization (if any).

Written comments can accompany or be provided in lieu of making oral comments. All comments must include name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization (if any) and should be sent to the Executive Secretary at the address given above.

Dated: October 25, 2000.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 00–28342 Filed 11–3–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–11]

Order of Succession

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Assistant Secretary for Fair Housing and Equal Opportunity designates the Order of Succession for the office of Fair Housing and Equal Opportunity. This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Fair Housing and Equal Opportunity, published at 65 FR 16952 (March 30, 2000).

EFFECTIVE DATE: August 3, 2000.

FOR FURTHER INFORMATION CONTACT: Deborah R. Harrison, Administrative Officer, Office of Fair Housing and Equal Opportunity, Budget and Administrative Support Division, Department of Housing and Urban Development, Room 5124, 451 7th Street, SW., Washington, DC 20410, (202) 708–2701. (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Fair Housing and Equal Opportunity is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Fair Housing and Equal Opportunity when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d. This publication supersedes the Order of Succession notice on March 30, 2000 at 65 FR 16952.

Accordingly, the Assistant Secretary for Fair Housing and Equal Opportunity designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Fair Housing and Equal Opportunity is not available to exercise the powers or perform the duties of the Office of Assistant Secretary for Fair Housing and Equal Opportunity, the following officials within the Office of Fair Housing and Equal Opportunity are hereby designated to exercise the powers and perform the duties of the Office:

(1) General Deputy Assistant Secretary;
(2) Deputy Assistant Secretary for Operations and Management;
(3) Deputy Assistant Secretary for Enforcement and Program;
(4) Deputy Assistant Secretary for Economic Development;
(5) Director, Office of Enforcement;
(6) Director, Policy and Program Evaluation Staff;
(7) Director, Office of Programs;
(8) Director, Field Oversight Staff; and
(9) Director, Office of Management and Planning

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Fair Housing and Equal Opportunity, published at 65 FR 16952 (March 30, 2000).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. Sec. 3535(d).

Dated: August 3, 2000.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 00–28310 Filed 11–3–00; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–14]

Order of Succession

AGENCY: Office of the Assistant Secretary for Public Affairs, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Deputy Secretary for the Department of Housing and Urban Development designates the Order of Succession for the Office of Public Affairs.

EFFECTIVE DATE: October 27, 2000.

FOR FURTHER INFORMATION CONTACT: Virginia Kelly Ackermen, Senior Attorney, Procurement and Administrative Law, Office of General Counsel, Department of Housing and Urban Development, Room 10180, 451 7th Street, SW, Washington, DC 20410, (202) 708–0622. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION: The Deputy Secretary for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Public Affairs when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d.

Accordingly, the Deputy Secretary designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Public Affairs is not available to exercise the powers or perform the duties of the Office of Assistant Secretary for Public Affairs, the following officials within the Office of Public Affairs are hereby designated to exercise the powers and perform the duties of the Office:

(1) Deputy Assistant Secretary for Public Affairs
(2) Deputy Assistant Secretary for Strategic Planning
(3) Director, Press Operations
(4) Senior Public Affairs Specialist, Managing Editor

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. Sec. 3535(d).

Dated: October 27, 2000.

Saul N. Ramirez, Jr.,

Deputy Secretary, Department of Housing and Urban Development.

[FR Doc. 00–28311 Filed 11–3–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–13]

Order of Succession

AGENCY: Office of the Assistant Secretary for Congressional and Intergovernmental Relations, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Deputy Secretary for the Department of Housing and Urban Development designates the Order of Succession for the Office of Congressional and Intergovernmental Relations. This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Congressional and Intergovernmental Relations, published at 60 FR 22404 (May 5, 1995).

EFFECTIVE DATE: October 10, 2000.

FOR FURTHER INFORMATION CONTACT: Virginia Kelly Ackermen, Senior Attorney, Procurement and Administrative Law, Office of General Counsel, Department of Housing and Urban Development, Room 10180, 451 7th Street, SW, Washington, DC 20410; (202) 708–0622. (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION: The Deputy Secretary for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Congressional and Intergovernmental Relations when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998, 5 USC 3345–3349d. This publication supersedes the Order of Succession notice on May 5, 1995 at 60 FR 22404.

Accordingly, the Deputy Secretary designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Congressional and Intergovernmental Relations is not available to exercise the powers or perform the duties of the Office of Assistant Secretary for Congressional and Intergovernmental Relations, the following officials within the Office of Congressional and Intergovernmental Relations are hereby designated to exercise the powers and perform the duties of the Office:

(1) Deputy Assistant Secretary for Intergovernmental Relations;
(2) Deputy Assistant Secretary for Strategic Planning.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Assistant Secretary of Administration, published at 60 FR 22404 (May 5, 1995).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. Sec. 3535(d).

Dated: October 10, 2000.

Saul N. Ramirez, Jr.,

Deputy Secretary, Department of Housing and Urban Development.

[FR Doc. 00–28312 Filed 11–3–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–12]

Order of Succession

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Assistant Secretary for Public and Indian Housing designates the Order of Succession for the Office of Public and Indian Housing. This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Public and Indian Housing, published at 65 FR 51015 (August 22, 2000).

EFFECTIVE DATE: August 23, 2000.

FOR FURTHER INFORMATION CONTACT: John Opitz, Assistant General Counsel for

Procurement and Administrative Law, Department of Housing and Urban Development, Room 10180, 451 7th Street, SW, Washington, DC 20410, (202) 708–0622. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Public and Indian Housing is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Public and Indian Housing when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d. This publication supersedes the Order of Succession notice on August 22, 2000 at 65 FR 51015.

Accordingly, the Assistant Secretary for Public and Indian Housing designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Public and Indian Housing is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Public and Indian Housing, the following officials within the Office of Public and Indian Housing are hereby designated to exercise the powers and perform the duties of the Office:

(1) General Deputy Assistant Secretary for Public and Indian Housing;

(2) Deputy Assistant Secretary for Public and Assisted Housing Delivery;

(3) Deputy Assistant Secretary for Policy, Program and Legislative Initiatives;

(4) Deputy Assistant Secretary for Public Housing Investments;

(5) Deputy Assistant Secretary for Troubled Agency Recovery.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Public and Indian Housing, published at 65 FR 51015 (August 22, 2000).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. Sec. 3535(d).

Dated: August 23, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–28313 Filed 11–3–00; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–814216

Applicant: Mark A. Holmgren, Santa Barbara, California

The applicant requests a permit to take (harass by survey, locate and monitor nests, capture, mark, band, and release) the southwestern willow flycatcher (*Empidonax traillii extimus*) and take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and scientific research through out each species range in California for the purpose of enhancing their survival.

Permit No. TE–032209

Applicant: Guam Department of Agriculture, Division of Aquatic and Wildlife Resources, Mangilao, Guam

The applicant requests a permit to take (collect eggs, hatchlings, and adults; band; collect blood samples; and apply radio transmitters) the Mariana crow (*Corvus kubaryi*) in conjunction with captive propagation, translocation, and release on the island of Rota, in the Commonwealth of the Northern Mariana Islands, and Guam for the purposes of enhancing its survival. These activities have previously been authorized under subpermit GDAWR–4.

Permit No. TE–032711

Applicant: Timothy Ziesmer, Bodega, California

The applicant requests a permit to take (capture) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with population studies thoughout the species range in California for the purpose of enhancing its survival.

Permit No. TE–016591

Applicant: Wendy Weber, Hayward, California

The permittee requests a permit amendment to take (capture) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) and the Alameda whipsnake (*Masticophis lateralis euryxanthus*) in conjunction with surveys and population studies thoughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–832262

Applicant: Department of Parks and Recreation, San Luis Obispo, California

The permittee requests a permit amendment to take (locate) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with habitat enhancement in San Luis Obispo, California for the purpose of enhancing its survival.

Permit No. TE–032713

Applicant: California Department of Transportation, Clovis, California

The applicant requests a permit to take (harass by survey, collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys throughout each species' range in California for the purpose of enhancing their survival.

Permit No. TE–034299

Applicant: Psomas, Costa Mesa, California

The applicant requests a permit to take (harass by survey, locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys and scientific research through out each species range in California for the purpose of enhancing its survival.

Permit No. TE–034293

Applicant: Bureau of Reclamation, Klamath Falls, Oregon

The applicant requests a permit to take (capture and sacrifice) the shortnose sucker (*Chasmistes brevirostris*) and the Lost River sucker (*Deltistes luxatus*) in conjunction with population and ecological studies throughout each species range for the purpose of enhancing their survival. These activities were previously authorized under subpermit BUETM–3.

Permit No. TE–003483

Applicant: Biological Resources Division, Pacific Island Ecosystems Research Center, Hawaii National Park, Hawaii

The permittee requests a permit amendment to take (locate and monitor nests) the nene goose (*Branta sandivcensis*) in conjunction with population estimates and ecological studies throughout the species range within the Hawaiian Islands, for the purpose of enhancing its survival.

Permit No. TE–032726

Applicant: Nevada Division of Wildlife, Reno, Nevada

The applicant requests a permit to: take (capture, remove biological samples, translocate, and release) the Devil's Hole pupfish (*Cyprinodon diabolis*) in conjunction with genetic research; take (capture, remove biological samples, and transport) the Pahranagat roundtail chub (*Gila robusta jordani*); take (capture, mark, transfer, and release) the Pahrump poolfish (*Empetrichthys latos latos*); take (capture, release, or kill) the Ash Meadows speckled dace (*Thinichthys osculus nevadensis*); and take (hold, mark, transfer, and release) the woundfin (*Plagopterus argentissimus*) in conjunction with population management and scientific research; and take (capture, rear, mark, and release) the razorback sucker (*Xyrauchen texanus*) in conjunction with an established recovery program throughout each species' range for the purpose of enhancing their survival. These activities were previously authorized under subpermit NDOW–15.

DATES: Written comments on these permit applications must be received on or before December 6, 2000.

ADDRESSES: Written data or comments should be submitted to the Chief-Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: October 27, 2000.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–28364 Filed 11–3–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–00–1020–PB]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on January 25 and 26, 2001, at the Holiday Inn Express Conference Center, in the Neptune Room, 1100 California N.E., Socorro, New Mexico 87801. There will be an optional all day field trip on Wednesday, January 24, 2001. Transportation will be provided for RAC members. The optional field trip will be organized by the Socorro Field Office of the BLM. The Field Tour will leave from the Holiday Inn Express at 8:00 a.m. The first stop will be The Box Special Management Area to visit the renowned rock climbing recreation area. Significant use has led the Socorro Field Office to enter into an extensive contracted cultural survey that will test, record, and mitigate significant cultural properties that are currently threatened by recreational users. There will follow a stop at Datil Well Campground before seeing the Horse Mountain urban interface hazardous fuels reduction project. Socorro Field Office is dedicated to protecting the sensitive natural resources within the Wildlife Study Area, and to protecting the rural homeowners in the area from potential catastrophic wildfire. The tour will proceed to Pelona Mountain to see how prescribed fire projects over the last seven or eight years minimized potentially catastrophic effects that were likely to have been evident during this summer's 32,000 acre Chance wildfire. Land exchange consolidation efforts and easement acquisitions will also be viewed along the way as will issues relative to access along a current powerline. The last stop will be at the Kellogg Canyon watershed project in which BLM and the USFS have worked cooperatively to complete fire and watershed restoration projects. Those interested may continue on to the proposed site of the Camino Real International Heritage Center and the Bosque del Apache Wildlife Refuge to see the birds return at dusk. In case of bad weather, there is an alternate plan for the tour. The meeting on Thursday, January 25, 2001, will start at 8:00 a.m. and will end about 5:00 p.m. The draft agenda for the RAC meeting includes agreement on the meeting agenda, any RAC comments on the draft minutes of the last RAC meeting on October 11 through 13, 2001, in Silver City, New Mexico, and a check-in from the RAC members. The focus of the meeting will be on all aspects of wildfire. Presentations will include discussion. Invited speakers are: Dr. Carl Edminster of the Rocky Mountain Research Station in Flagstaff, Arizona; Doug Boykin, District Forester with New Mexico Forestry and Resources Conservation Division in Socorro; Brad Vierra, President, New Mexico Archaeological Council; Tom Swetnam of the Tree Ring Laboratory at the University of Arizona; Bob Lee, Fire Management Officer, of the New Mexico State Office of the BLM, and Dave Heft, Wildlife Biologist and Dan Huisjen, Fire Management Officer, of the Socorro BLM Field Office.

The three established RAC Subcommittees may have late afternoon or evening meetings on Wednesday, January 24, after the optional field trip, or on Thursday, January 25, after the meeting. The exact time and location of possible Subcommittee meetings will be established by the Chairperson of each Subcommittee and be available to the public following the field trip on Wednesday, January 24, and during the RAC meeting on Thursday, January 25, for that evening. That information will also be available at the desk of the Holiday Inn Express on those two days.

On Friday, January 26, the meeting starts at 8:00 a.m. and will end about 3:00 pm. The ending time of 3:00 p.m. may be changed depending on the work remaining for the RAC. The meeting is open to the public, and starting at 2:45 p.m. on Thursday, January 25, 2001, there will be an additional 15 minute Public Comment Period for members of the public who are not able to be present for the regular Public Comment Period on Friday, January 26, to address the RAC. The meeting on Friday, January 26, will start at 8:00 a.m. with a review of the agenda thus far. At 8:15 a.m. are scheduled RAC Subcommittee Reports from the Urban and Open Space Subcommittee, the Roads and Trails Subcommittee, and the Oil and Gas Subcommittee. The regular Public Comment Period for the Public to address the RAC is on Friday, January 26, 2001, from 10:00 a.m. to 12:00 noon. The RAC may reduce or extend the end time of 12:00 noon depending on the number of people wishing to address the RAC. Anyone wishing to address the RAC should be present at the 10:00 a.m. starting time. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people wish to address the RAC, but usually not more than 15 minutes. At the completion of public comments, the RAC may continue discussion on its agenda items. Scheduled at 1:00 p.m. are the BLM State of the Field Office Reports, presented by the Field Office Managers.

These reports are followed by RAC discussions and any RAC recommendations, development of draft agenda items, selection of a location for the next RAC meeting and a RAC assessment of the current meeting.

FOR FURTHER INFORMATION CONTACT: Mary White, New Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7404.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: October 31, 2000.

M.J. Chávez,

State Director.

[FR Doc. 00–28365 Filed 11–3–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET, HAG01–0026; OR–52315]

Notice of Proposed Withdrawal Correction, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This notice corrects an error in the legal description in the notice of proposed withdrawal published in 65 FR 59464, dated October 5, 2000, FR Doc. 00–25555. The land described as the E½NE¼ of sec. 12, T. 31 S., R. 1 E., Willamette Meridian, should read, W½NE¼ of sec. 12, T. 31 S., R. 1 E., Willamette Meridian.

Dated: October 27, 2000.

Sherrie L. Reid,

Acting Chief, Branch Realty and Records Services.

[FR Doc. 00–28331 Filed 11–3–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission Two Hundred Thirty-First Meeting; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Thursday, November 16, 2000.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1:00 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of minutes of previous meeting (September 22, 2000)
3. Reports of Officers
4. Committee Reports
   Nickerson Committee—B. Boleyn
   ORV Subcommittee—E. Francis
5. Superintendent's Report
   Dune Shacks
   Penniman House
   USGS Water Study
   PWC Update
   Salt Pond Visitor Center
   "Soundscape" Director's Order
   Highlands Center
   News from Washington
6. Old Business
   Advisory Commission Handbook
7. New Business
8. Agenda for next meeting—January 5, 2001
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: October 23, 2000.

Maria Burks,

Superintendent.

[FR Doc. 00–28314 Filed 11–3–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 28, 2000. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by November 21, 2000.

Paul R. Lusignan,

Acting Keeper of the National Register.

ARIZONA

Yavapai County

Joslin and Whipple Historic District, S. Mt. Vernon, Virginia, Washington, and Arizona Sts., Prescott, 00001387

Whipple Heights Historic District, E. Gurley, N. Virginia and Washington, E. Moeller Sts., Prescott, 00001388

ARKANSAS

Cross County

Wittsburg Store and Gas Station, (Arkansas Highway History and Architecture MPS) Cty Rd 739, Wittsburg, 00001386

GEORGIA

Gwinnett County

Adair, Isaac, House, 1235 Chandler Rd., Lawrenceville, 00001390

Spalding County

Spalding County Courthouse—Spalding County Jail, 232 E. Broad St., Griffin, 00001389

MARYLAND

Baltimore Independent city

Parker Metal Decoration Company Plant, 333 W. Ostend St., Baltimore, 00001391

Montgomery County

Wiley—Ringland House, 4722 Dorset Ave., Chevy Chase, 00001392

MASSACHUSETTS

Hampden County

Quadrangle—Mattoon Historic District (Boundary Increase), Byers, Pearl, Spring and Salem Sts., Springfield, 00001393

Worcester County

Boulevard Diner, (Diners of Massachusetts MPS) 155 Shrewsbury St., Worcester, 00001394

Hubbardston Town Common Historic District, Main and Brigham Sts., Hubbardston, 00001396

Ted's Diner (Diners of Massachusetts MPS), 67 Main St., Milford, 00001395

MISSISSIPPI

Harrison County

JOSEPHINE (Shipwreck), Address Restricted, Biloxi, 00001402

Madison County

Sedgewood Plantation, 2607 Virlilia Rd., Canton, 00001400

Winston County

Foster—Fair House, 507 S. Columbus Ave., Louisville, 00001401

MISSOURI

Monroe County

St. Jude's Episcopal Church, 301 N. Main St., Monroe City, 00001397

St. Louis Independent city

Louderman Building, 317 N. Eleventh St., St. Louis (Independent City), 00001399

Phipps—Wallace Store Building, 312–316 N. Eighth St., St. Louis (Independent City), 00001398

NEBRASKA

Sioux County

Wind Springs Ranch Historic and Archeological District, Wind Springs Creek Valley, Scottsbluff, 00001403

NEW JERSEY

Cumberland County

Landis Theatre—Mori Brothers Building, 830–834 Landis Ave., Vineland, 00001405

Gloucester County

Rulon, John C., House, 428 Kings Highway, Swedesboro, 00001404

Monmouth County

Palace Amusements, 201–207 Lake Ave., Asbury, 00001406

NEW YORK

Cattaraugus County

Leon United Methodist Church, Jct. of NY 6 and NY 62, Leon, 00001413

Cortland County

Tarbell Building, 2 Cortland St., Marathon, 00001408

Dutchess County

Barrett, Oliver, House, Reagan Rd., Millerton, 00001416

Dakin—Coleman Farm, Coleman Station Rd., Millerton, 00001421

Wheeler, Thomas N., Farm, Indian Lake Rd., Millerton, 00001417

Erie County

Wile, M., and Company Factory Building, 77 Goodell St., Buffalo, 00001419

Greene County

Old Episcopal Manse, NY 23, Main St., Prattsville, 00001415

Montgomery County

Windfall Dutch Barn, Clinton Rd., jct. with Ripple Rd., Salt Springville, 00001411

Onondaga County

Fabius Village Historic District, Roughly bounded by N. West St., Mill St., Keeney St. and Fabius Town Line, Fabius, 00001409

Orange County

Bloomer—Dailey House and Balmville Tree, 83 Balmville Rd., Balmville, 00001420

Kellogg, The, House (Cornwall MPS), Old Pleasant Hill Rd., Cornwall, 00001414

Oswego County

Oswego County Courthouse, East Bridge St., Oswego, 00001418

St. Lawrence County

Lisbon Railroad Depot, 6936 Cty Rd. 10, Lisbon, 00001422

Sullivan County

Ohave Shalom Synagogue, Mauric Rose St., Woodridge, 00001412

South Fallsburg Hebrew Association Synagogue, North St., South Fallsburg, 00001410

Tompkins County

St. John's Episcopal, (Historic Churches of the Episcopal Diocese of Central New York MPS) 1504 Seventy Six Rd., Speedsville, 00001407

Ulster County

Gardiner School, 2340 NY44/55, Gardiner, 00001423

Van Keuren, Benjamin House Ruin, Off of Bruyn Turnpike, Shawangunk, 00001424

NORTH CAROLINA

Harnett County

Averasboro Battlefield Historic District, Roughly bounded by Cape Fear R., NC 1780, the Black R., NC 1801, Erwin, 00001425

Randolph County

Liberty Historic District, Roughly along W of Norfolk & Southern RR bet. Butler Ave. and W. Patterson Ave., inc. the 100 blk. of W. Swannanoa St., Liberty, 00001426

OREGON

Multnomah County

Villa St. Rose, 597 N. Dekum St., Portland, 00001427

PENNSYLVANIA

Jefferson County

United States Post Office—Punxsutawney, 201 N. Findley St., Punxsutawney, 00001428

TENNESSEE

Maury County

Cleburne Jersey Farm (Historic Family Farms in Middle Tennessee MPS), 2319 Sugar Ridge Rd., Spring Hill, 00001430

Shelby County

Mid-South Coliseum, 996 Early Maxwell Blvd., Memphis, 00001429

VIRGINIA

Albemarle County

Mount Walla, 604 Poplar Springs Rd., Scottsville, 00001442

Clarke County

Millwood Colored School, 1610 Millwood Rd., Boyce, 00001431

Goochland County

Byrd Presbyterian Church, 2229 Dogtown Rd., Goochland, 00001438

Greene County

Beadles House, 515 Greene Acres Rd., Stanardsville, 00001433

Hanover County

Church Quarter, 12432 Old Ridge Rd., Doswell, 00001436

Hopewell Independent city

Beacon Theatre, 401 N. Main St., Hopewell, 00001434

Lynchburg Independent city

Centerview, 1900 Memorial Ave., Lynchburg, 00001435

Norfolk Independent city

Berkley North Historic District, Roughly bounded by Bellamy Ave., Pescara Creek, Berkley Ave., and I–464, Norfolk, 00001440

Page County

Strickley—Louderback House, 1001 Old Farm Rd., Shenandoah, 00001441

Pulaski County

Calfee Athletic Field, Washington and Pierce Aves., SE, Pulaski, 00001432

Radford Independent city

Glencoa, First St., Radford, 00001439

WASHINGTON

King County

Cedar River Watershed Cultural Landscape, 1990 Cedar Falls Rd. SE, North Bend, 00001443
Shawnee House, 11608 SW Shawnee Rd., Vashon, 00001449

Pierce County

Perkins Building, 1101 A St., Tacoma, 00001444

Spokane County

Rosebush House, 3318 N. Marguerite Rd., Spokane, 00001446
Salvation Army Building, 245 W. Main Ave., Spokane, 00001445

Walla Walla County

Buemeister, Max, Building, 27 W. Main, Walla Walla, 00001448

Whatcom County

United States Border Station at Sumas, Washington, 131 Harrison St., Sumas, 00001447

WISCONSIN

Dodge County

Weyenberg Shoe Factory, 913 N. Spring St., Beaver Dam, 00001452

Oconto County

Mountain School, 14330 Hwy W West, Mountain, 00001453

A request for REMOVAL has been made for the following resource:

WASHINGTON

Whatcom County

1201 Roeder Ave. Bellingham, 81000594

[FR Doc. 00–28426 Filed 11–3–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University of Denver Department of Anthropology and Museum of Anthropology professional staff and a contract physical anthropologist in consultation with representatives of the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; Navajo Nation, Arizona, New Mexico and Utah; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah and Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah; and the Zuni Tribe of the Zuni Reservation, New Mexico.

In 1932, human remains representing one individual were recovered from a site near La Veta, Huerfano County, CO, by Dr. E.B. Renaud of the University of Denver Department of Anthropology, and his assistant, Charlie Steen. No known individuals were identified. No funerary objects are present.

Dr. Renaud was taken to the remains by Karl Gilbert of the U.S. Forest Service. Dr. Renaud collected the long bones of the skeleton and reported, but did not collect, numerous glass beads associated with the remains. At the U.S. Forest Service office in La Veta, CO, Dr. Renaud examined the skull of the remains and a series of associated funerary objects that had been collected by John Durant in the winter of 1931–32. These funerary objects included one Barrett flintlock gun dated 1848, three metal arrow points, one saddle buckle, five saddle rings, one piece of copper, one spoon, and one stone pipe. Dr. Renaud was given the skull, which he took along with the long bones to the University of Denver. Currently, the university is in possession of eight long bones. The skull has not been located.

The date on the gun previously associated with the remains demonstrates that this individual died in the mid to late 19th century. At that time, south central Colorado, including Huerfano County, was the territory of the Eastern Bands of the Ute. This geographic association is confirmed by the oral testimony given in consultation, and is supported by ethnographical and historical evidence. Dr. Renaud's notes include a 1932 interview with Mr. I. Blasquez, a resident of La Veta since 1863, who also confirmed that the Ute lived in the La Veta area in the mid-19th century.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Also, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Skull Valley Band of Goshute Indians of Utah; the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah; and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah.

This notice has been sent to officials of the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; Navajo Nation, Arizona, New Mexico and Utah; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah and Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah; and the Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator at the University of Denver Department of Anthropology and Museum of Anthropology, 2000 Asbury, Sturm Hall S–146, Denver, CO 80208–2406, email jbernste@du.edu, telephone (303) 871–2543, before December 6, 2000. Repatriation of the human remains to the Skull Valley Band of Goshute Indians of Utah; the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah; and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah may begin after that date if no additional claimants come forward.

Dated: October 30, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–28425 Filed 11–3–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Intent to prepare an Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) on the Imperial Irrigation District/San Diego County Water Authority Water Conservation and Transfer Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Amended Notice of Intent to Prepare a Joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS).

SUMMARY: The Fish and Wildlife Service (Service) intends to be a cooperating agency (pursuant to 40 CFR section 1501.6) in the Bureau of Reclamation's (Bureau) preparation of a joint EIR/EIS pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The joint EIR/EIS will be developed for: (1) the conservation and transfer of water from Imperial Irrigation District (IID) to the San Diego County Water Authority (SDCWA), the Coachella Valley Water District (CVWD) and/or the Metropolitan Water District of Southern California (MWD) and (2) approval of a Habitat Conservation Plan, and issuance of an incidental take permit, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, including consideration of conservation measures or plans addressing State-listed species.

This notice is being furnished pursuant to the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR section 1501.22). Pursuant to regulations at 40 CFR (sections 1501.7 and 1508.22), the Bureau, as lead agency pursuant to NEPA, and the Service, as the Federally authorized permitting agency, are seeking suggestions and information from other agencies and the public on the scope of issues and alternatives to be considered in preparation of the joint EIR/EIS pertaining to possible issuance of a Federal incidental take permit. To satisfy both NEPA and CEQA, the Service, as a cooperator, with the Bureau as the Federal lead agency and IID as the State lead agency are conducting this additional scoping process for the preparation of the environmental documents.

DATES: In order to expedite the planning process, the above agencies request all scoping comments on this notice be received by December 6, 2000.

ADDRESSES: You should address written comments to Ms. Nancy Gilbert, Assistant Field Supervisor, Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. You may also send comments by facsimile to (760) 431–9618.

FOR FURTHER INFORMATION: Contact Ms. Carol Roberts, Salton Sea Coordinator, or Mr. Pete Sorensen, Division Chief, at the above Carlsbad address or by telephone at (760) 431–9440. Persons wishing to obtain background material may contact Mr. Steve Knell of the Imperial Irrigation District at 333 E. Barioni Blvd., P.O. Box 937, Imperial California 92251, or by telephone at (760) 339–9266.

SUPPLEMENTARY INFORMATION: The Bureau is publishing this notice to amend the September 27, 1999 Notice of Intent (see 64 FR 52102) to provide public notice that the project EIR/EIS will include an evaluation of the impacts associated with the potential issuance of an incidental take permit. This was not specifically addressed in the initial Notice of Intent provided for the project. The Habitat Conservation Plan will cover a broad array of activities including: water conservation, water conveyance and drainage, operation and maintenance, system improvements, miscellaneous activities, and third party activities required to achieve the conservation and transfer of up to 300,000 acre-feet of water per year from IID to the SDCWA and to meet the voluntary cap on IID's water use of 3.1 million acre-feet per year from the Colorado River. Up to 100,000 acre-feet of the water conserved by IID may be transferred to the CVWD and/or MWD, instead of SDCWA, as part of the proposed Quantification Settlement Agreement on the Colorado River. The EIR/EIS will evaluate transfer volumes up to 400,000 acre-feet per year. The IID (Applicant) intends to request an incidental take permit for up to 96 listed (Federal and State) and unlisted species of concern (fish, wildlife, and plants) under specific provisions of the permit. In the case of unlisted species, the permit will provide coverage should these species be listed in the future. The Plan will cover all areas of IID's water delivery and collection system from the Imperial Dam on the Colorado River throughout the Imperial Valley (approximately 470,000 acres) into the Salton Sea.

Availability of Documents

During the comment period the documents will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday) at the Service's Carlsbad Fish and Wildlife Office, the Imperial Irrigation District headquarters in Imperial, and the San Diego County Water Authority office in San Diego. Availability of the draft EIR/EIS for public review and comment will be announced and noticed in the local media and by a **Federal Register** notice.

Background

IID is an irrigation district formed under California law which provides irrigation water and power to the lower southeastern portion of the California desert. IID was established in 1911 to deliver Colorado River water to lands within the Imperial Valley, California for agriculture, domestic, industrial and other beneficial uses. IID maintains a complex system of delivery canals, laterals, and drains which serve approximately 470,000 acres of intensive agriculture. The project area is approximately bounded by the All-American Canal to the south, the East Highline Canal to the east, the Westside Main Canal to the west, and the Salton Sea to the north. Agricultural drainage flows into the New and Alamo Rivers and into the Salton Sea, a designated repository for agricultural drainage.

On April 29, 1998, IID and SDCWA executed an agreement for the conservation and transfer of up to 300,000 acre-feet of Colorado River water per year from IID to SDCWA. As part of the project, IID intends to implement a conservation program that includes the participation of Imperial Valley land owners and tenants so that on-farm as well as system based conservation can be implemented to achieve the required level of conservation. This transfer is a key part of the California 4.4 Plan that will result in California water agencies using only their 4.4 million acre-foot apportionment of the Colorado River. California is currently diverting up to 5.2 million acre-feet of Colorado River water per year. Subsequent negotiations with other Colorado River water rights holders in California have resulted in a proposed Quantification Settlement Agreement among IID, MWD, and CVWD which would reduce the maximum amount of conserved water transferred to SDCWA to 200,000 acre-feet per year and would provide for the transfer of the additional 100,000 acre-feet to the CVWD and the MWD.

A joint EIR/EIS is being prepared by the Bureau and the IID with the Service as a cooperating agency to address the impacts associated with the project and with permit issuance for the project. Additional information on the project can be found in the original Notice of Intent published at 64 FR 52102. Scoping meetings were held in response to that Notice of Intent on October 12–20, 1999, and no additional scoping meetings are planned in response to this notice.

Section 9 of the Endangered Species Act and the Service regulations prohibit the "take" of threatened or endangered wildlife. Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). Harm may include significant habitat modification that actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding and sheltering [50 CFR 17.3(c)]. The Service, however, may issue permits to take endangered and/or threatened wildlife incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and threatened species are found at 50 CFR 17.22 and 17.32.

In anticipation of applying for an incidental take permit the IID is developing a Habitat Conservation Plan. Accordingly, under section 10 of the Endangered Species Act, the Service may issue a permit to the IID authorizing the take of listed and unlisted species incidental to the otherwise lawful conservation and transfer of up to 300,000 acre-feet of Colorado River water per year to the SDCWA, the CVWD, and the MWD, and additional conservation necessary to achieve the IID's voluntary cap of 3.1 million acre-feet/year on their use of Colorado River water.

The permit application will include a Habitat Conservation Plan (Plan) and an Implementation Agreement that define the responsibilities of all parties under the Plan. IID's Plan will cover roughly the area along the length of the All-American Canal and north of the All-American Canal to the Salton Sea bounded on the east by the East Highline Canal and on the west by the Westside Main Canal. The Plan will identify the species proposed for coverage under the Plan including federally-listed species for which take would be granted at the time of permit issuance as well as other species of concern for which take would be granted should those species be listed in the future. The Plan also describes alternatives to the action and includes measures to minimize and mitigate impacts to species covered in the Plan. The Plan will address minimization and mitigation using both a habitat based and a species by species approach. The joint EIR/EIS will consider IID's proposed project (Proposed Action Alternative) along with other alternatives and the No Action Alternative. Under the Proposed Action Alternative the Service would review IID's incidental take permit application under section 10(a)(1)(B) of the Endangered Species Act.

Environmental review of the Plan will be conducted in accordance with the requirements of the 1969 National Environmental Policy Act as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act regulations (40 CFR parts 1500–1508), other appropriate regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with section 1501.7 of the National Environmental Policy Act to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the joint EIR/EIS.

The Service will utilize the joint EIR/EIS in its evaluation of the permit application, the Habitat Conservation Plan, Implementing Agreement, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If the Service determines that the requirements have been met, the Service will issue a permit for the incidental take of the covered listed species.

Dated: October 30, 2000.

Robert W. Johnson,

Regional Director.

[FR Doc. 00–28431 Filed 11–3–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–474 and 475 (Review)]

Chrome-Plated Lug Nuts From China and Taiwan

Determinations

On the basis of the record[1] developed in these subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty orders on chrome-plated lug nuts from China and Taiwan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on August 2, 1999 (64 FR 41949) and determined on March 22, 2000, that it would conduct full reviews (65 FR 16632, March 29, 2000). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 14, 2000 (65 FR 37408). The hearing, originally scheduled for August 31, 2000, was canceled due to lack of interest by the parties.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 25, 2000. The views of the Commission are contained in USITC Publication 3362 (October 2000), entitled Chrome-Plated Lug Nuts from China and Taiwan: Investigations Nos. 731–TA–474 and 475 (Review).

Issued: October 31, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–28394 Filed 11–3–00; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–703 and 705 (Review)]

Furfuryl Alcohol From China and Thailand

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on furfuryl alcohol from China and Thailand.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on furfuryl alcohol from China and Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: October 30, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2000, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (65 F.R. 50003, August 16, 2000). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on February 12, 2001, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on March 1, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 21, 2001. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 23, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is February 21, 2001. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is March 12, 2001; witness testimony must be filed no later than three days before the hearing.

In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before March 12, 2001. On March 29, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 2, 2001, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: October 31, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–28395 Filed 11–3–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Rights Division

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of extension of currently approved information collection; Nondiscrimination on the Basis of Disability in State and Local Government Services (Transition Plan).

The Department of Justice, Civil Rights Division, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 4, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days of public comment until December 6, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding this item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information

(1) Type of information collection. Extension of Currently Approved Collection.

(2) The title of the form/collection. Nondiscrimination on the Basis of Disability in State and Local Governments Services (Transition Plan).

(3) The agency form number and applicable component of the Department sponsoring the collection. No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: State and Local or Tribal Government. Under title II of the Americans with Disabilities Act, State and local governments are required to operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities ("Program accessibility"). If structural changes to existing facilities are necessary to accomplish program accessibility, a public entity that employs 50 or more persons must develop a "transition plan" setting forth the steps necessary to complete the structural changes. A copy of the transition plan must be made available for public inspection.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 6,000 respondent at 8 hours per transition plan.

(6) An estimate of the total public burden (in hours) associated with the collection: 48,000 hours annual burden.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: October 31, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–28327 Filed 11–3–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Civil Rights Division

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of extension of currently approved information collection; Nondiscrimination on the Basis of Disability in State and Local Government Services (Certification).

The Department of Justice, Civil Rights Division, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 4, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until December 6, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of Currently Approved Collection.

(2) *The title of the form/collection:* Nondiscrimination on the Basis of Disability in State and Local Government Services (Certification).

(3) *The agency form number and applicable component of the Department sponsoring the collection:* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Under title III of the Americans with Disability Act, on the application of a State or local government, the Assistant Attorney General for Civil Rights (or his or her designee) may certify that a State or local building code or similar ordinance that establishes accessibility requirements (Code) meets or exceeds the minimum requirements of the ADA for accessibility and usability of "places of public accommodation" and "commercial facilities."

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 respondents per year at 32 hours per certification.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 320 hours annual burden.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: October 31, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–28328 Filed 11–3–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Civil Rights Division

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of extension of currently approved information collection; Nondiscrimination on the Basis of Disability in State and Local Government Services (Certification).

The Department of Justice, Civil Rights Division, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 4, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until December 6, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ) Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information:* Extension of Currently Approved Collection.

(2) *The title of the form/collection:* Nondiscrimination on the Basis of Disability in State and Local Government Services (Certification).

(3) *The agency form number and applicable component of the Department sponsoring the collection:* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Under title III of the Americans with Disabilities Act, on the application of a State or local government, the Assistant Attorney General for Civil Rights (or his or her designee) may certify that a State or local building code or similar ordinance that establishes accessibility requirements (Code) meets or exceeds the minimum requirements of the ADA for accessibility and usability of "places of public accommodation" and "commercial facilities."

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 respondents per year at 32 hours per certification.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 320 hours annual burden.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: October 31, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–28329 Filed 11–3–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Civil Rights Division

Agency Information Collection Activities: Proposed collection; comment request

ACTION: Notice of Extension of Currently Approved Information Collection.

Title II of the Americans with Disabilities Act of 1990/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

The Department of Justice, Civil Rights Division, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 4, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until December 6, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) Type of information collection. Extension of Currently Approved Collection.

(2) The title of the form/collection. Title II of the Americans with Disabilities Act/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

(3) The agency form number and applicable component of the Department sponsoring the collection. No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: Individuals alleging discrimination by public entities based on disability. Under title II of the Americans with Disability Act, an individual who believes that he or she has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint. Any Federal agency that receives a complaint of discrimination by a public entity is required to review the complaint to determine whether it has jurisdiction under section 504. If the agency does not have jurisdiction, it must determine whether it is the designated agency responsible for complaints filed against that public entity. If the agency does not have jurisdiction under section 504 and is not the designated agency, it must refer the complaint to the Department of Justice. The Department of Justice then must refer the complaint to the appropriate agency.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 5,000 respondents per year at 0.75 hours per complaint form.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,750 hours annual burden.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: October 31, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–28330 Filed 11–3–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Extension of a Currently Approved Collection; Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders Stakeholder Survey.

The Department of Justice, Office of Juvenile Justice and Delinquency Prevention, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 18, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until December 6, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1221, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders Stakeholder Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None; Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Key community stakeholders engaged in the Comprehensive Strategy initiative in their state. Other: None. 42 U.S.C. 5653 authorizes the Office of Juvenile Justice and Delinquency Prevention to collect information on all aspects of the juvenile justice system and juvenile offenders. This survey will collect critical information on the relationship between community and State-level contextual factors and the Comprehensive Strategy planning and implementation processes. The survey will also document the progress and obstacles of implementing Comprehensive Strategy in select communities and the lessons learned in the planning process. The survey will take at most 1 hour and 30 minutes to complete and cover the stakeholders' experiences with the Comprehensive Strategy initiative.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 250 respondents in 25 sites at 1 hour and 30 minutes per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 375 hours including all respondents.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: October 31, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–28326 Filed 11–3–00; 8:45 am]

BILLING CODE 4410–18–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on November 11, 2000. The meeting will begin at 10 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Marriott at Metro Center, 775 12th Street, NW, Washington, D.C

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Board's meeting of September 18, 2000.
3. Approval of the minutes of the executive session of the Board's meeting of September 18, 2000.
4. Scheduled Public Speakers.
   Esther Lardent, ABA Director of the Pro Bono Center
   Bonnie Allen, National Legal Aid & Defender Association
   John Russenello, Russenello Research
5. Chairman's Report.
6. Members' Report.
7. Inspector General's Report.
8. President's Report.
9. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
10. Consider and act on the report of the Board's Operations and Regulations Committee.
11. Consider and act on the report of the Board's Annual Performance Reviews Committee.
12. Consider and act on the employment status of the President and Inspector General.

Closed Session

13. Briefing[1] by the Inspector General on the

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[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine

Continued

activities of the Office of Inspector General.
14. Staff presentation on corporate insurance issues.
15. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

16. Consider and act on other business.
17. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

Dated: November 1, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 00–28460 Filed 11–1–00; 4:56 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors, Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on November 10, 2000. The meeting will begin at 11:30 a.m. and continue until the Committee concludes its agenda.

LOCATION: Marriott at Metro Center, 775 12th Street, NW, Washington, D.C.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of September 18, 2000.
3. Staff report on the status of actions relating to 45 CFR Part 1628 (Recipient Fund Balances) and the proposed Property Acquisition and Management Manual.
4. Consider and act on potential rulemaking action implementing the findings of the Erlenborn Commission.
5. Consider and act on Report of the Regulations Review Task Force.
6. Consider and act on other business.
7. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

Dated: November 1, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 00–28461 Filed 11–1–00; 4:56 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors, Ad Hoc Committee on Performance Reviews of the President and Inspector General

TIME AND DATE: The Ad Hoc Committee on Performance Reviews of the President and Inspector General of the Legal Services Corporation's Board of Directors will meet on November 10, 2000. The meeting will begin at 9:30 a.m. and continue until conclusion of the committee's agenda.

LOCATION: Marriott at Metro Center, 775 12th Street, NW, Washington, D.C.

STATUS OF MEETING: Except for approval of the committee's agenda and any miscellaneous business that may come before the committee, the meeting will be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) & (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.

Closed Session

2. Conduct a performance appraisal of the President of the Corporation.
3. Conduct a performance appraisal of the Inspector General of the Corporation.

Open Session

4. Consider and act on other business.
5. Public comment

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway at (202) 336–8800.

Dated: November 1, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 00–28462 Filed 11–1–00; 4:56 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors, Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on November 10, 2000. The meeting will begin at 2 p.m. and continue until the Committee concludes its agenda.

LOCATION: Marriott at Metro Center, 775 12th Street, NW, Washington, D.C.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of September 17, 2000.
3. Staff presentation on LSC's efforts to define, measure and ensure quality in the services provided by LSC grantees and through state justice communities.
4. Report by Danilo Cardona, Director of the Office of Compliance & Enforcement, and Mike Genz, Director of the Office of Program Performance, on the progress of LSC's Results Project.
5. Staff report on the 2001 conference on client-centered legal services.
6. Presentation by Ester Lardent, on behalf of the ABA's Standing Committee on Legal Aid and Indigent Defendants, on corporate *pro bono*.
7. Update by Randi Youells, Vice President for Programs, on Competition and State Planning.
8. Consider and act on other business.
9. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

Dated: November 1, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 00–28463 Filed 11–1–00; 4:56 pm]

BILLING CODE 7050–01–P

Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, November 16, 2000, and Friday, November 17, 2000, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC. The meeting is tentatively scheduled to begin at 10:00 a.m on November 16, and at 9:00 a.m. on November 17.

Topics for discussion include: draft report to Congress on risk adjustment; draft report to Congress on post-surgical recovery care centers; Medicare issues in rural areas including access to care; analysis of costs for hospital services in rural areas; coinsurance for hospital outpatient department services; updating Medicare payments for physician services; methods for determining payment adequacy and updates for hospital inpatient services; technology costs and hospital inpatient and outpatient services; and payments to skilled nursing facilities.

Agendas will be mailed on November 7, 2000. The final agenda will be available on the Commission's website (www.MedPAC.gov)

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 00–28430 Filed 11–3–00; 8:45 am]

BILLING CODE 6820–SW–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

November 1, 2000.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given the National Council on the Humanities will meet in Washington, DC on November 16–17, 2000.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from the gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on November 16–17, 2000, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on November 16, 2000 will be as follows:

Committee Meetings

9–10:30 a.m.
  (Open to the Public)
  Policy Discussion
  Education Program, Room M–07
  Federal/State Partnership, Room 507
  Preservation and Access/Challenge Grants, Room 415
  Public Programs, Room 420
  Research Programs, Room 315
  (Closed to the Public)
  Discussion of specific grant applications and programs before the Council
10:30 a.m. until adjourned
  Education Programs, Room M–07
  Federal/State Partnership, Room 507
  Preservation and Access/Challenge Grants, Room 415
  Public Programs, Room 420
  Research Programs, Room 315
1:30–2:30 p.m.
  Jefferson Lecture and National Humanities Medals Committee Meeting, Room 430

The morning session on November 17, 2000 will convene at 9 a.m., in the 1st Floor Council Room, M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting

Reports

A. Introductory Remarks and Presentations
B. Staff Report
C. Reports on Policy and General Matters
  1. Overview
  2. Research Programs
  3. Education Programs
  4. Public Programs
  5. Federal/State Partnership
  6. Preservation and Access/Challenge Grants
  7. Jefferson Lecture/Humanities Medals
  8. Long-Term Projects

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Ms. Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Laura S. Nelson,

Advisory Committee, Management Officer.

[FR Doc. 00–28360 Filed 11–3–00; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice of Establishment

The Deputy Director of the National Science Foundation has determined that the establishment of the Business and Operations Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Business and Operations Advisory Committee.

Nature/Purpose: The committee will be strictly advisory and will advise the Chief Financial Officer and the Chief Information Officer of the National Science Foundation concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

NSF Contact: Ms. Joanna Rom, Senior Advisor, Office of Budget, Finance and Award Management, National Science Foundation, 4201 Wilson Boulevard, Suite 405, Arlington, VA 22230. Telephone: (703) 292–8200.

Dated: October 31, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28396 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biological Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings of the Advisory Panel for Biological Infrastructure (1215):

1. *Date and Time:* November 29—December 1, 2000, 8:30 am—5 pm.

Contact Person: Gerald Selzer, Program Director Biological Instrumentation and Instrument Development, National Science Foundation, Rm. 615, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 292–8470.

2. *Date and Time:* December 13–14, 2000, 8:30 am—5 pm.

Contact Person: Mary McKitrick, Program Director, Biological Research Collections, Division of Biological Infrastructure, 4201 Wilson Boulevard, Room 615, Arlington, VA 22230. Telephone (703) 292–8470.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 31, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28407 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date and Time: November 28, 2000; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 830, Arlington, VA.

Type of Meeting: Closed.

Contact Person: A. Frederick Thompson and Nicholas L. Clesceri, Program Directors, Division of Bioengineering and Environmental Systems, National Science Foundation; 4201 Wilson Boulevard; Arlington, Virginia 22230. Telephone: (703) 292–8320.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Environmental Engineering 2001 CAREER proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 27, 2000

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28410 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: December 4–5, 2000; 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Rooms 340 & 390, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Dr. Richard Fragaszy, Program Director, Geomechanics and Geotechnical Systems, Division of Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Boulevard, Room 545, Arlington, VA 22230. Telephone: (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 Unsolicited Review Panel as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 31, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28398 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205)

Date and Time: December 4–5, 2000; 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Rooms 330 & 380, Arlington, Virginia

Type of Meeting: Closed.

Contact Person: Dr. Clifford Astill, Program Director, Geoenvironmental Engineering and Geohazards Mitigation. Division of Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Boulevard, Room 545, Arlington, VA 22230. Telephone: (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 Unsolicited Review Panel as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 31, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28399 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following Meeting.

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date/Time: December 7–8, 2000; 8 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 850, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Joy Pauschke, Program Director, network for Earthquake Engineering Simulation, Division of Civil and Mechanical Systems, National Science Foundation, Room 545, Arlington, VA 22230. Telephone: (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 Mechanics and Structures of Materials and Surface Engineering and Material Design Review as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 31, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28401 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel in Earth Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Proposals Review Panel in Earth Sciences (1569).

Date and Time: November 29–December 1, 2000, 8 a.m. to 6 p.m.

Place: IRIS PASSCAL Instrument Center, New Mexico Institute of Mining and Technology, Socorro, New Mexico.

Type of Meeting: Closed.

Contact Person: Dr. Daniel F. Weill, Program Director, Instrumentation & Facilities Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 292–8558.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Instrumentation & Facilities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 31, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28404 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings of the Special Emphasis Panel in Electrical and Communications Systems (1196):

Date and Time: November 13, 2000; 8:30 a.m. to 5 p.m.

Contact Person: [illegible]. Filbert Bartoli, Program Director, Division of Electrical and Communications Systems, National Science Foundations, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230. Telephone: (703) 292–8339.

Agenda: To review and evaluate CAREER (MEMS) proposals submitted in response to program announcement NSF 00–89 as part of the selection process for awards.

Date and Time: November 28–29, 2000; 8:30 a.m. to 5 p.m.

Contact Person: Dr. Kishan Baheti, Program Director, Control, Networks and Computational Intelligence (CNCI), Division of Electrical and Communications Systems, National Science Foundations, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230. Telephone: (703) 292–8339.

Agenda: To review and evaluate research proposals in the CNCI program as part of the selection process for awards.

Place: National Science Foundation, Room 680, 4201 Wilson Boulevard, Arlington, VA.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b(c), (4) and (6) the Government in the Sunshine Act.

Dated: October 27, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28411 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59).

Date/Time: December 7, 2000; 4:30 pm to 9 pm. December 8, 2000; 8 am to 6 pm. December 9, 2000; 8 am to 3 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Susan Snyder, Program Director, Division of Elementary, Secondary and Informal Education, The National Science Foundation; Room 885, 4201 Wilson Boulevard, Arlington, VA, 22230 (703) 292–8620.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Teacher Enhancement and Instructional Materials Development Program for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 27, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28409 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–1–M.

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers (173).

Date and Time: December 7–8, 8:30 a.m.–5:30 p.m.

Place: National Science Foundation, Room 580, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Ms. Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8384.

Purpose of Meeting: to provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Research Experiences for Undergraduates Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 31, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28402 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date & Time: December 11, 2000, 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Lawrence Brandt, Digital Government Program, Division of Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230, Telephone: (703) 292–8980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Digital Government Program proposals submitted in response to the program announcement (NSF 99–103).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 31, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28400 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date & Time: February 2, 2001, 8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1150 & 1105, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Carl Smith, Research Experiences for Undergraduates, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 292–8980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Research Experiences for Undergraduates proposals submitted in response to the program announcement (NSF 00–107).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 27, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28408 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–1–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: November 2–3, 2000; 9 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 814, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Larry S. Scadden, Program Directors, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8636.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSE for financial support.

Agenda: To review and evaluate formal proposals submitted to the Program for Persons with Disabilities.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 27, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28412 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–1–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (1203).

Dates & Times: November 17, 2000, 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1060, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Carmen Huber, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4939.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for support for the FY 2001 Research Experiences for Undergraduates (REU) Sites proposals submitted for the Division of Materials Research.

Reason for Closing: The proposals being evaluated include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c),'(4) and (6) of the Government in the Sunshine Act.

Dated: October 31, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28403 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: November, 29–December 1, 2000; 8:30 a.m. until 5 p.m.

Place: Room 320, 330, & 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Drs. Henry Warchall, Deborah F. Lockhart, Benjamin M. Mann, John Stufken, and Joe Jenkins, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8870.

Purpose of Meeting: To provide advice and recommendations concerning proposal submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Fluid Dynamics Panel, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 31, 2000.

Karen J. York,

Committee Manager Officer.

[FR Doc. 00–28397 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings of the Special Emphasis Panel in Physics (1208):

Date/Time: December 5, 2000; 8 a.m.–6 p.m.

Place: Sate University of New York at Stony Brook.

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear, Division of Physics, National Science Foundation, 4201 Wilson Boulevard, Room 1015, Arlington, VA 22230. Telephone: (703) 292–7377,

Purpose of Meeting: To review the scientific program of the nuclear physics laboratory and experimental group at SUNY Stony Brook.

Date/Time: December 18–19, 2000; 8 a.m.–6 p.m.

Place: Indiana University Cyclotron Facility, Indiana University.

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, Division of Physics, National Science Foundation, 4201 Wilson Boulevard, Room 1015, Arlington, VA 22230. Telephone: (703) 292–7377.

Purpose of Meeting: To review the scientific program of the nuclear physics experimental group at Indiana University.

Date/Time: January 8–10, 2001; 8 a.m.–5:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 320, Arlington, VA.

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, Division of Physics, National Science Foundation, 4201 Wilson Boulevard, Room 1015, Arlington, VA 22230. Telephone: (703) 292–7377.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Nuclear Physics Program for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closings: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 31; 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28405 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Social, Behavioral, and Economic Sciences (#1766).

Date/Time: January 4–5, 2001; 8 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Rooms 360, 3365, and 360, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Ms. Susan Parris, Program Manager, International Research Fellowship Program, Division of International Programs, National Science Foundation, 4201 Wilson Boulevard, Room 935, Arlington, VA 22230, (703) 306–1711.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate applications to the International Research Fellowship Program submitted in response to the program announcement (NSF 00141).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 31, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28406 Filed 11–3–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission, (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information Pertaining to the Requirement to be Submitted:

1. *The title of the information collection:* 10 CFR Part 95—Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.
2. *Current OMB approval number:* None.
3. *How often the collection is required:* On occasion.
4. *Who is required or asked to report:* NRC-regulated facilities and other organizations requiring access to NRC-classified information.
5. *The number of annual respondents:* 8.
6. *The number of hours needed annually to complete the requirement or request:* 443.
7. *Abstract:* NRC-regulated facilities and other organizations are required to provide information and maintain

records to ensure that an adequate level of protection is provided to NRC-classified information and material.

Submit, by January 5, 2001, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: http://www.nrc.gov/NRC/PUBLIC/OMB/index.html. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 30th day of October, 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–28357 Filed 11–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

In the Matter of Amergen Energy Company, LLC (Clinton Power Station); Exemption

I

AmerGen Energy Company, LLC (AmerGen, the licensee) is the holder of Facility Operating License No. NPF–62 which authorizes operation of the Clinton Power Station (CPS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a boiling water reactor located on the licensee's CPS site in DeWitt County, Illinois.

II

The U.S. Nuclear Regulatory Commission (NRC) has established requirements in Appendix G of Part 50 to Title 10, Code of Federal Regulations (10 CFR Part 50, Appendix G), to protect the integrity of the reactor coolant pressure boundary in nuclear power plants. This Appendix to Part 50 requires the pressure-temperature (P–T) limits for an operating plant to be at least as conservative as those that would be generated if the methods of Appendix G to Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (Appendix G to the Code) were applied. The methodology of Appendix G to the Code postulates the existence of a sharp surface flaw in the reactor pressure vessel (RPV) that is normal to the direction of the maximum applied stress. For materials in the beltline and upper and lower head regions of the RPV, the maximum flaw size is postulated to have a depth that is equal to one-fourth of the thickness and a length equal to 1.5 times the thickness. For the case of evaluating RPV nozzles, the surface flaw is postulated to propagate parallel to the axis of the nozzle's corner radius. The basic parameter in Appendix G to the Code for calculating P–T limit curves is the stress intensity factor, K_I, which is a function of the stress state and flaw configuration. The methodology requires that licensees determine the reference stress intensity (K_{Ia}) factors, which vary as a function of temperature, from the reactor coolant system (RCS) operating temperatures, and from the adjusted reference temperatures (ARTs) for the limiting materials in the RPV. Thus, the critical locations in the RPV beltline and head regions are the ¼-thickness (¼T) and ¾-thickness (¾T) locations, which correspond to the points of the crack tips if the flaws are initiated and grown from the inside and outside surfaces of the vessel, respectively. Regulatory Guide (RG) 1.99, Revision 2, provides an acceptable method of calculating ARTs for ferritic RPV materials; the methods of RG 1.99, Revision 2, include methods for adjusting the ARTs of materials in the beltline region of the RPV, where the effects of neutron irradiation may induce an increased level of embrittlement in the materials.

The methodology of Appendix G requires that P–T curves must satisfy a safety factor of 2.0 on primary membrane and bending stresses during normal plant operations (including heatups, cooldowns, and transient operating conditions), and a safety factor of 1.5 on primary membrane and bending stresses when leak rate or hydrostatic pressure tests are performed on the RCS. Table 1 to 10 CFR Part 50, Appendix G, provides the staff's criteria for meeting the P–T limit requirements of Appendix G to the Code and 10 CFR Part 50, Appendix G.

By letter dated August 25, 2000, as supplemented September 21, October 14, and October 25, 2000, AmerGen submitted a license amendment request to update the P–T limit curves for CPS. In the submittals, AmerGen also requested NRC approval for exemptions to use Code Cases N–588 and N–640 as methods that would allow AmerGen to deviate from complying with the requirements in 10 CFR Part 50, Appendix G, for generating the P–T limit curves.

Code Case N–588

AmerGen has requested, pursuant to 10 CFR 50.60(b), an exemption to use Code Case N–588 as the basis for evaluating the axial and circumferential welds in the CPS RPV. The current methods of appendix G to the Code mandate consideration of an axial flaw in full penetration RPV welds, and thus, for circumferential welds, dictate that the flaw be oriented transverse to the axis of the weld. Postulation of an axial flaw in a circumferential weld is unrealistic because the length of the flaw would extend well beyond the girth of the circumferential weld and into the adjoining base metal material. Industry experience with the repair of weld indications found during preservice inspection, and data taken from destructive examination of actual vessel welds, confirms that any remaining flaws are small, laminar in nature, and do not transverse the weld bead orientation. Therefore, any potential defects introduced during the fabrication process, and not detected during subsequent nondestructive examinations, would only be expected to be oriented in the direction of weld fabrication. For circumferential RPV welds, the methods of the Code Case therefore postulate the presence of a flaw that is oriented in a direction parallel to the axis of the weld (*i.e.*, in a circumferential orientation).

An analysis provided to the American Society of Mechanical Engineers (ASME) Code's Working Group on Operating Plant Criteria (WGOPC) (in which Code Case N–588 was developed) indicated that if an axial flaw is postulated on a circumferential weld, then based on the correction factors for membrane stress (M_m) given in the Code Case for the inside diameter circumferential (0.443) and axial (0.926) flaw orientations, it is equivalent to applying a safety factor of 4.18 on the pressure loading under normal operating conditions.[1] Appendix G to the Code only requires that a safety factor of 2 be placed on the contribution of the pressure load in the case of an axially-oriented flaw in an axial weld, shell plate, or forging. By postulating a circumferentially-oriented flaw on a circumferential weld and using the appropriate correction factor, the margin of 2 is maintained for the stress integrity calculation for the circumferential weld. Consequently, the staff determined that the postulation of an axially-oriented flaw on a circumferential RPV weld adds a level of conservatism in the P–T limits that goes beyond the margins of safety required by 10 CFR Part 50, Appendix G, and by Appendix of the Code. For this reason, the methods of the Code Case reduce the applied stress intensities for primary membrane and bending stresses in circumferential flaws by a factor of approximately 2 (≈0.926/0.443).[2] This is realistic since the postulated circumferential flaw in the vessel will propagate if a stress is applied in a direction normal to the axis of the flaw (*i.e.*, by application of an axially oriented stress that results in Mode I crack propagation of the circumferential flaw). Such tensile stresses in the RPVs are typically about half the magnitudes of the corresponding membrane stresses.

Application of Code Case N–588 will only matter if the Code Case is applied for the case where a circumferential weld is the most limiting material in the beltline region of the boiling water reactor (BWR) designed RPV. Since application of the Code Case methods allow licensees to reduce the stress intensities attributed to the circumferential weld, the net effect of the Code Case would allow AmerGen to use the next most limiting base metal or axial weld material in the RPV as the basis for evaluating the vessel and generating the P–T limit curves, if the circumferential weld (girth weld) is the most limiting material in the beltline region of the vessel. In this case, the Code Case is relevant to the evaluation of the CPS RPV, because the CPS RPV is limited by Circumferential Weld AE (Material Heat 76492).[3]

WGOPC has concluded that application of Code Case N–588 to plant P–T limits are still sufficient to ensure the structural integrity of RPVs during plant operations. The staff has concurred with WGOPC's determination and has previously granted exemptions to use Code Case N–588 for the Quad Cities Nuclear Power Station (NRC letter to Commonwealth Edison dated February 4, 2000). In the staff's letter of February 4, 2000, the staff concluded that the procedure in Appendix G to the Code was developed for axially oriented flaws and that such a procedure was physically unrealistic and overly conservative for postulating flaws of this orientation in a circumferential weld. The staff also concluded that relaxation of the requirements of Appendix G to the Code by application of Code Case N–588 is acceptable and would maintain, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety for the Quad Cities RPVs and reactor coolant pressure. AmerGen's proposal to use Code N–588 for generation of the CPS P–T limit curves is predicated on the same technical basis as was used for generation of the Quad Cities P–T limits. The staff therefore concludes that Code Case N–588 is acceptable for application to the CPS P–T limits. Hence, the staff concurs that relaxation of the ASME Section XI, Appendix G, requirements by application of ASME Code Case N–588 is acceptable for CPS and would maintain, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

Code Case N–640

AmerGen has requested, pursuant to 10 CFR 50.60(b), an exemption to use ASME Code Case N–640 (previously designated as Code Case N–626) as the basis for establishing the P–T limit curves. Code Case N–640 permits application of the lower bound static initiation fracture toughness value equation (K_{Ic} equation) as the basis for establishing the curves in lieu of using the lower bound crack arrest fracture toughness value equation (i.e., the K_{Ia} equation, which is based on conditions needed to arrest a dynamically propagating crack, and which is the method invoked by Appendix G to Section XI of the ASME Code). Use of the K_{Ic} equation in determining the lower bound fracture toughness in the development of the P–T operating limits curve is more technically correct than the use of the K_{Ia} equation since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{Ic} equation appropriately implements the use of the static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The staff has required use of the initial conservatism of the K_{Ia} equation since 1974 when the equation was codified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, additional knowledge has been gained about RPV materials. Therefore, the lower bound static fracture toughness K_{Ic} equation provides an acceptable method for calculating P–T limits. In addition, P–T curves based on the K_{Ic} equation will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations.

Generating the RCS P–T limit curves developed in accordance with Appendix G to the Code, without the relief provided by ASME Code Case N–640, would unnecessarily require the RPV to be maintained at a temperature exceeding 212 °F during the pressure test. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in primary containment. Implementation of the proposed curves, as allowed by ASME Code Case N–640, provides an adequate margin of safety and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted at a lower coolant temperature. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served.

WGOPC has concluded that application of Code Case N–640 to plant P–T limits are still sufficient to ensure the structural integrity of RPVs during plant operations. The staff has concurred with ASME's determination and has previously granted exemptions to use Code Case N–640 for the Quad

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[1] The margin of safety of 4.18 is arrived at by dividing 0.926 by 0.443 and then multiplying by the required safety factor of 2.

[2] The Code Case accomplishes this by reducing the M_m factors for circumferential welds that are used for calculations of the stress intensities attributed to primary membrane stresses (K_{Im}) and primary bending stresses (K_{Ib}). As stated previously, for RPVs with wall thicknesses in the range of 4.0–12.0 inches, the M_m factor for circumferential welds is 0.443. This is the normal wall thickness range for GE designed boiling water reactors.

[3] The most limiting ¼T material for the generation of the CPS P–T limits is Circumferential Weld AE (Material Heat 76492). According to the AmerGen submittal of August 25, 2000, this weld has a ¼T RT_{NDT} value at 32 EFPY of 55°F. Application of Code Case N–588 will change the basis for evaluating the vessel to the next most limiting plate or vertical weld material, which according to AmerGen is material heat 3P4955 (used to fabricate vertical welds BE, BF, and BG, which according to AmerGen have a ¼T RT_{NDT} value at 32 EFPY of 51°F).

Cities Nuclear Power Station (NRC letter to Commonwealth Edison dated February 4, 2000). In the letter of February 4, 2000, the staff concluded that application of Code Case N–640 would not significantly reduce the safety margins required by 10 CFR part 50, Appendix G, and would eliminate steam vapor hazards by allowing inspections in the primary containment to be conducted at a lower coolant temperature. The staff also concluded that relaxation of the requirements of Appendix G to the Code by application of Code Case N–640 is acceptable and would maintain, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety for the Quad Cities RPVs and reactor coolant pressure boundary. AmerGen's proposal to use Code N–640 for generation of the CPS P–T limit curves is predicated on the same technical basis as was used for generation of the Quad Cities P–T limits. The staff therefore concludes that Code Case N–640 is acceptable for application to the CPS P–T limits. Hence, the staff concurs that relaxation of the ASME Section XI, Appendix G, requirements by application of ASME Code Case N–640 is acceptable for CPS and would maintain, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff accepts the licensee's determination that the exemption would be required to approve the use of Code Cases N–588 and N–640. The staff examined the licensee's rationale to support the exemption requests and concurred that the use of the code cases would meet the underlying intent of these regulations. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR Part 50, Appendix G; Appendix G of the Code; and Regulatory Guide 1.99, Revision 2, the staff concludes that application of the code cases as described would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the staff concludes that requesting exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Cases N–588 and N–640 may be used to revise the P–T limits for Clinton Power Station.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants AmerGen Energy Company, LLC, exemption from the requirements of 10 CFR Part 50, Section 50.60(a) and 10 CFR Part 50, Appendix G, for Clinton Power Station.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (65 FR 61204). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of October 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing, Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–28358 Filed 11–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Nominations of New Members of the Advisory Committee on the Medical Uses of Isotopes

AGENCY: Nuclear Regulatory Commission.

ACTION: Call for Nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is re-advertising for nominations for the position of health care administrator on the Advisory Committee on the Medical Uses of Isotopes (ACMUI).

DATES: Nominations are due on or before January 5, 2001.

ADDRESSES: Submit nominations to: The Office of Human Resources, Attn: Ms. Joyce Riner, Mail Stop T2D32, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION, CONTACT: Betty Ann Torres, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–415–0191.

SUPPLEMENTARY INFORMATION: The ACMUI advises the NRC on policy and technical issues that arise in regulating the medical use of byproduct material. Responsibilities include providing comments on changes in NRC rules, regulations, and guidance documents concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; providing technical assistance in licensing, inspection, and enforcement cases; and bringing key issues to the attention of NRC for appropriate action.

ACMUI members possess the medical and technical skills needed to address evolving issues. Currently, the ACMUI membership consists of the following: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) medical physicist in nuclear medicine unsealed byproduct material; (d) a therapy physicist; (e) a radiation safety officer; (f) a nuclear pharmacist; (g) two radiation oncologists; (h) health care administrator; (i) patients' rights and care advocate; (j) Food and Drug Administration representative; and (k) state representative.

The NRC is inviting nominations for the position of health care administrator on the ACMUI. The term of the individual currently occupying the health care administrator position ends September 30, 2001.

Nominees must include four copies of their resumes, describing their educational and professional qualifications, and provide their current addresses and telephone numbers.

Committee members serve a 3-year term, with possible reappointment to an additional 3-year term.

Nominees must be U.S. citizens and be able to devote approximately 80 hours per year to committee business. Members will be compensated and reimbursed for travel (including per-diem in lieu of subsistence) and secretarial and correspondence expenses unless the member is a full-time Federal employee. Full-time Federal employees are only reimbursed for travel expenses. Nominees will undergo a security background check and will be required to complete

financial disclosure statements to avoid conflict-of-interest issues.

Dated at Washington, DC, this 31st Day of October, 2000.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer, Office of the Secretary of the Commission.

[FR Doc. 00–28356 Filed 11–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1671]

Standard Review Plan for the Recertification of the Gaseous Diffusion Plants Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Because of significant changes resulting from previous public comment, the Nuclear Regulatory Commission (NRC) is offering the opportunity for additional public review and comment on the revised Section 6.0, "Technical Safety Requirements," and Section 8.0, "Nuclear Criticality Safety," of the draft report NUREG–1671 entitled, "Standard Review Plan for the Recertification of the Gaseous Diffusion Plants." (GDPs)

DATES: Submit comment to the address listed below by December 6, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm during Federal workdays.

Draft NUREG–1671 is available for inspection and copying for a fee at the NRC public document room (PDR), located at the NRC's headquarters building, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. A copy of the draft revised Sections 6.0 and 8.0 may also be obtained from the NRC's website for the Division of Fuel Cycle Safety and Safeguards at: *http://www.nrc.gov/NMSS/FCSS/fcssindex.html* or from the Agency's document management system, called ADAMS, at: *http://www.nrc.gov/NRC/ADAMS/index.html.*

FOR FURTHER INFORMATION CONTACT: Christopher Tripp, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7733.

Dated at Rockville, Maryland, this 25th day of October, 2000.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Chief, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–28359 Filed 11–3–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24719; File No. 812–11982]

AIG Life Insurance Company, et al.

October 30, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company. Act of 1940 (the "Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

APPLICANTS: AIG Life Insurance Company ("AIG"), Variable Account I ("Variable Account"), American International Life Assurance Company of New York ("AIL") and AIG Equity Sales Corp. ("AIGESC").

SUMMARY OF APPLICATION: Applicants seek an order of exemption pursuant to Section 6(c) of the Act to the extent necessary to permit the recapture, under specified circumstances, of credits applied to premium payments made under the flexible premium deferred variable annuity contract described herein that AIG will issue through the Variable Account (the "Contract"), as well as other contracts that AIG or AIL may issue in the future through their existing or future separate accounts ("Other Accounts") that are substantially similar in all material respects to the Contract ("Future Contracts"). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, AIG, whether existing or created in the future, that serves as distributor or principal underwriter for the Contract or Future Contracts ("Affiliated Broker-Dealers").

FILING DATE: The application was filed on February 17, 2000, and was amended and restated on October 10, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on November 21, 2000, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o AIG Life Insurance Company, One Alico Plaza, Wilmington, Delaware 19801, Attn: Kenneth D. Walma, Esq.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. AIG is a stock life insurance company organized under the laws of Pennsylvania and reorganized under the laws of Delaware. AIG is a subsidiary of American International Group, Inc., which is a holding company for a number of companies engaged in the international insurance business, both life and general, in approximately 130 countries and jurisdictions around the world.

2. The Variable Account was established in 1986 by AIG as a segregated asset account under Delaware law for the purpose of funding variable annuity contracts issued by AIG. It is registered with the Commission as unit investment trust under the Act (File No. 811–5301). The Variable Account will fund the variable benefits available under the Contract. The offering of the Contract is registered under the Securities Act of 1933 (File No. 333–93709).

3. That portion of the assets of the Variable Account that is equal to the reserves and other Contract liabilities

with respect to the Variable Account is not chargeable with liabilities arising out of any other business of AIG. Any income, gains or losses, realized or unrealized, from assets allocated to the Variable Account are, in accordance with the Contract, credited to or charged against the Variable Account, without regard to other income, gains or losses of AIG.

4. AIL is a stock life insurance company organized under the laws of New York and incorporated in 1962. Like AIG, AIL is a subsidiary of American International Group, Inc.

5. AIGESC is the principal underwriter for the Variable Account and the distributor of the Contract. AIGESC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD. The Contract is sold by insurance agents appointed by AIG who are also registered representatives of AIGESC or registered broker/dealers that have entered into distribution agreements with AIGESC. AIGESC is a wholly-owned subsidiary of American International Group, Inc.

6. The Contract may be purchased with a minimum initial premium payment of $2,000. An owner may make additional payments of at least $1,000 at any time or pay scheduled subsequent premiums of $100 or more per month by enrolling an automatic investment plan.

7. Owners of the Contract may allocate their premium payments among seventeen investment options—sixteen variable investment options and one fixed investment option. Each subaccount of the Variable Account invests in shares in one of the variable investment options, which are corresponding portfolios of the Alliance Variable Products Series Fund, Inc. The fixed investment option is part of AIG's guaranteed account and earns a minimum of 3% interest. AIG, at a later date, may decide to create additional subaccounts to invest in any additional funding media as may now or in the future be available. AIG, from time to time, also may combine or eliminate subaccounts, or transfer the assets to and from subaccounts.

8. The Contract has the following charges: (i) a surrender charge as a percentage of the premium surrendered declining from 6% in premium years 1 and 2 to 0% in premium year 8; (ii) a $30 annual contract maintenance fee (waived if the value of the Contract is at least $50,000); (iii) a mortality and expense risk charge of 1.25%; (iv) an administrative charge of 0.15% (v) a distribution charge of 0.20%; (vi) a transfer fee of $10 after the first twelve transfers during a contract year; (vii) optional death benefit charges; and (viii) any applicable state premium tax.

9. The Contract provides for various death benefit alternatives—a traditional death benefit and two optional death benefits. In addition, an owner may select the accidental death benefit. If an owner elects an optional death benefit or the accidental death benefit, AIG will assess a daily charge against the assets in the Variable Account equal to an annual charge as follows:

Annual Ratchet Plan	0.10%.
Equity Assurance Plan.	0.70% (owner's attained age 0–59). 0.20% (owner's attained age 60 and over).
Accidental Death Benefit.	0.05%.

10. AIG will credit an extra amount to the Contract (the "Credit") equal to a maximum of 4% of an owner's premium payment. AIG will allocate the Credit pro rata among the investment options in the same proportion as the corresponding premium payment. AIG will fund Credits from its general account assets and intends to recover the cost through charges imposed under the Contract. AIG may discontinue offering Credits on additional premium payments at its discretion.

11. The Credit is not part of the amount an owner will receive if he or she exercises the free look provision. Credits applied within twenty-four months prior to the date of death are not included in amounts payable as a death benefit. Likewise, Credits applied within twenty-four months prior to a surrender are not included in the amount payable upon surrender. If an owner makes a partial surrender during the twenty-four month period following receipt of a Credit, except as part of the Contract's systematic withdrawal program, AIG will reduce the Credit in the same proportion as the partial surrender bears to the value of the Contract and deduct the amount of the reduction from the value of the Contract. Only Credits paid within twenty-four months prior to the partial surrender are subject to reduction.

12. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent deemed necessary to permit AIG to issue the Contract, which provides for a Credit upon receipt of a premium payment, and to recapture the Credit in the following instances: (i) when an owner exercises the Contract's free look provision; (ii) when a death benefit is payable within twenty-four months after receipt of a Credit; and (iii) when a surrender is requested within twenty-four months after receipt of a Credit.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions requested with respect to the Contract and any Future Contracts funded by the Variable Account or Other Accounts that are underwritten or distributed by AIGESC or Affiliated Broker-Dealers. Applicants undertake that Future Contracts will be substantially similar in all material respects to the Contract. Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Subsection (i) of Section 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants submit that the recapture of the Credit under the circumstances set forth in the application would not deprive an owner of his or her proportionate share of the issuer's current net assets. An owner's interest in a Credit allocated to his or her Contract value upon receipt of an initial premium payment is not vested until the applicable free look period has expired without return of the Contract. Similarly, Applicants state that an owner's interest in the amount of any Credit allocated within twenty-four months prior to the date of the death or the date of the surrender also is not vested. Unless and until the amount of any Credit is vested, Applicants submit that AIG retains the right and interest in the Credit, although not in the earnings attributable to that amount. Thus, Applicants argue that when AIG recaptures any Credit, it is merely retrieving its own assets, and the owner has not been deprived of a proportionate share of the Variable Account's assets because his or her interest in the Credit has not vested.

4. In addition, Applicants state that permitting an owner to retain a Credit under a Contract upon the exercise of the free look provision would not only be unfair, but would also encourage individuals to purchase a Contract, with no intention of keeping it. and return it for a quick profit.

5. Furthermore, Applicants state that the recapture of Credits applied within twenty-four months prior to the date of death or the date of surrender is designed to provide AIG with a measure of protection against anti-selection. The risk here is that, rather than spreading premium payments over a number of years, an owner might make very large premium payments shortly before death or surrender, thereby leaving AIG little time to recover the cost of the Credits. As noted earlier, the amount recaptured equals the Credits provided by AIG from its general account assets, and any gain would remain a part of the owner's Contract value.

6. Applicants represent that it is not administratively feasible to track a Credit in the Variable Account after the Credit is applied. Accordingly, the asset-based charges applicable to the Variable Account will be assessed against the entire amount held in the Variable Account, including the Credit, during the free look period and the twenty-four month recapture periods. As a result, during such periods, the aggregate asset-based charges assessed against an owner's Contract value will be higher than those that would be charged if the owner's Contract value did not include the Credit.

7. Applicants represent that the Credit will be attractive to and in the interest of investors because it will permit owners to put up to 104% of their premium payment to work for them in the selected subaccounts. In addition, the owner will retain any earnings attributable to the Credits, as well as the principal amount of the Credit once vested.

8. Applicants further submit that the recapture of any Credit only applies in relation to the risk of anti-selection against AIG. In the context of the death benefit and surrender described in the application, anti-selection can generally be described as a risk that owners take undue advantage of the credit feature. AIG provides the Credit from its general account on a guaranteed basis and generally expects to recover its costs, including Credits, while a Contract is in force. The right to recapture Credits applied to premium payments made with twenty-four months prior to the date of death or the date of surrender protects AIG against the risk that an owner will purchase a Contract or make larger premium payments shortly before death or surrender knowing that the contingency that triggers payment of a benefit is likely or about to occur and leave AIG little time to recover the costs of the credits. With respect to refunds paid upon the return of the Contract during the free look period, the amount payable by AIG must be reduced by the amount of the Credit. Otherwise, investors could purchase a Contract for the sole purpose of exercising the free look provision and making a quick profit.

9. Applicants assert that the provisions for recapture of Credits under the Contract do not violate Sections 2(a)(32) and 27(i)(2)(A) of the Act. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from Section 2(a)(32) and 27(i)(2)(A), to the extend deemed necessary, to permit the recapture of any Credit under the circumstances summarized herein, without the loss of relief from Section 27 provided by Section 27(i).

10. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuers' prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

11. AIG's recapture of the Credit might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Variable Account. Applicant assert, however, that the recapture of the Credit does not violate Section 22(c) or rule 22c–1. Applicants argue that the recapture of the Credit does not involve either of the evils that Rule 22c–1 was intended to eliminate the reduce as far as reasonably practicable, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. See Adoption of Rule 22c–1 under the 1940 Act, Investment Company Release No. 5519 (Oct. 16, 1968). To effect a recapture of a Credit, AIG will redeem interests in a Contract at a price determined on the basis of the current accumulation unit value(s) of the subaccount(s) to which the owner's Contract value is allocated. The amount recaptured will equal the amount of the Credit that AIG paid out of it general account assets. Although the owner will be entitled to retain any investment gain attributable to the Credit, the amount of that gain will be determined on the basis of the current accumulation unit value of the applicable subaccounts. Thus, no dilution will occur upon the recapture of the Credit. Applicants also argue that the second harm that Rule 22c–1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recaptured the Credit under the Contract.

12. Applicants assert that their request for an order that applies to the Variable Account and any Other Account established by AIG or AIL, in connection with the issuance of the Contract and Future Contracts, is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative's expenses and maximizing the efficient use of Applicants' resources. Applicants state that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in the application. Applicants assert that having Applicant

file additional applications would impair Applicants' ability to take advantage of business opportunities as they arise. Further, Applicants state that if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in the application described herein, investors would not receive any benefit or additional protection thereby.

Conclusion

Applicants assert, based on the grounds summarized above, that their exemptive requests meet the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28325 Filed 11–3–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43492; File No. SR–NASD–00–64]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Regulatory Element of the Continuing Education Requirements

October 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend NASD Rule 1120(a) to permit the in-firm delivery of the Regulatory Element of the Continuing Education Requirements. Currently, this computer-based training program can be administered to registered persons only at the location of an outside vendor. Below is the text of the proposed rule change. Proposed new language is in italics.

1000. Membership, Registration and Qualification Requirements * * *

1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with the Association. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(a) Regulatory Element

(1) through (5) No change

(6) In-Firm Delivery of the Regulatory Element Members will be permitted to administer the continuing education Regulatory Element program to their registered persons by instituting an in-firm program acceptable to the Association.

The following procedures are required:

(A) Principal/Officer In-Charge. The firm has designated a principal to be responsible for the in-firm delivery of the Regulatory Element.

(B) Site Requirements.

(i) The location of all delivery sites will be under the control of the firm.

(ii) Delivery of Regulatory Element continuing education all take place in an environment conducive to training. (Examples: a training facility, conference room or other area dedicated to this purpose would be appropriate. Inappropriate locations would include a personal office or any location that is not or cannot be secured from traffic and interruptions.)

(iii) Where multiple delivery terminals are placed in a room, adequate separation between terminals will be maintained.

(C) Technology Requirements. The communication links and firm delivery computer hardware must comply with standards defined by the Association or its designated vendor.

(D) Supervision.

(i) The firm's Written Supervisory Procedures must contain the procedures implemented to comply with the requirements of in-firm delivery of the Regulatory Element continuing education.

(ii) The firm's Written Supervisory Procedures must identify the principal designated pursuant to Rule 1120(a)(6)(A) and contain a list of individuals authorized by the firm to serve as proctors.

(iii) Firm locations for delivery of the Regulatory element continuing education will be specifically listed in the firm's Written Supervisory Procedures.

(E) Proctors.

(i) All sessions will be proctored by an authorized person during the entire Regulatory Element session. Proctors must be present in the session room or must be able to view the person(s) sitting for Regulatory Element continuing education through a window or by video monitor.

(ii) The individual responsible for proctoring at each administration will sign a certification that required procedures have been followed, that no material from Regulatory Element continuing education has been reproduced, and that no candidate received any assistance to complete the session. Such certification may be part of the sign-in log required under Rule 1120(a)6)(F).

(iii) Individual serving as proctors must be persons registered with an SRO and supervised by the designated principal for purposes of in-firm delivery of the Regulatory Element continuing education.

(iv) Proctors will check and verify the identification of all individuals taking Regulatory Element continuing education.

(F) Administration.

(i) All appointments will be scheduled in advance using the procedures and software specified by the Association to communicate with the Association's system and designated vendor.

(ii) The firm/proctor will conduct each session in accordance with the administrative appointment scheduling procedures established by the Association or its designated vendor.

(iii) A sign-in log will be maintained at the delivery facility. Logs will contain the date of each session, the name and social security number of the individual taking the session, that required identification was checked, the sign-in time, the sign-out time, and the name of the individual proctoring the session. Such logs are required to be retained pursuant to SEC Rules 17a–3 and 17a–4.

(iv) No material will be permitted to be utilized for the session nor may any session-related material be removed.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(v) Delivery sites will be made available for inspection by the SROs.

(vi) Before commencing in-firm delivery of the Regulatory Element continuing education, members are required to file with their Designated Examining Authority ("DEA"), a letter of attestation (as specified below) signed by a principal executive officer or executive representative, attesting to the establishment of required procedures addressing principal in-charge, supervision, site, technology, proctors, and administrative requirements. Letters filed with NASD Regulation, Inc. should be sent to Member Regulation, Continuing Education Department, 9509 Key West Avenue, Rockville, MD 20850.

Letter of Attestation for In-Firm Delivery of Regulatory Element Continuing Education

[Name of member] has established procedures for delivering Regulatory Element continuing education on its premises. I have determined that these procedures are reasonably designed to comply with SRO requirements pertaining to in-firm delivery of Regulatory Element continuing education, including that such procedures have been implemented to comply with principal/officer in-charge, supervision, site, technology, proctors, and administrative requirements.

Signature

____

Printed name

____

Title [Must be signed by a Principal Executive Officer (or Executive Representative) of the firm]

____

Date

(b) Firm Element No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Regulatory Element is a 3½ hour computer-based training program that currently can only be administered to registered persons at the location of an outside vendor. NASD Rule 1120(a) requires that each registered person, who is not exempt from the Rule, complete the Regulatory Element on the occurrence of his or her second registration anniversary and every three years thereafter. On each occasion, the training must be completed within 120 days after the registered person's anniversary date. A registered person who has not completed the Regulatory Element within the prescribed time period is deemed to be inactive until the Regulatory Element has been fulfilled, and may not conduct, or be compensated for, activities requiring a securities registration.

The Securities Industry/Regulatory Council on Continuing Education ("Council") is responsible for the oversight of the continuing education program for the securities industry. The Council's duties include recommending and helping to develop specific content and questions for the Regulatory Element, and minimum core curricule for the Firm Element. The Council is comprised of 14 representatives from a broad cross section of broker/dealers, six self-regulatory organizations, including the NASD. The Council, working with representatives from the North American Securities Administrators Association, and with the knowledge of the Council's SEC liaisons, has developed a model under which broker/dealers may deliver the Regulatory Element computer-based training on firm premises. The model requires that the broker/dealer meet certain conditions for in-firm delivery relating to computer hardware and to the security of the training delivery environment. The proposed amendments to Rule 1120(a) encapsulate the delivery requirements as specified by the Council. Firms of any size may take advantage of the in-firm delivery procedures.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[3] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will facilitate registered persons' satisfying their obligations to meet the Regulatory Element of the continuing education requirement.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to this proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–64 and should be submitted by November 27, 2000.

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[3] 15 U.S.C. 78o–3(b)(6).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28386 Filed 11–3–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 194; ATM Data Link Implementation

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 194 meeting to be held November 28–30 (and December 1, if needed) 2000, starting at 9 a.m. The meeting will be held at RTCA, 1140 Connecticut Ave., NW, Suite 1020, Washington, DC 20036.

The agenda will include:

November 28

9 a.m. Plenary Session

(1) Review Agenda
(2) Review/Approve Previous Meeting Summary
(3) Presentation by the U.S. Representative to the ICAO Review of the General Concept of Separation Panel (RGCSP)
(4) Working Group Reports
(5) Presentation of WG–2's document, DO–XXX: "Implementation Requirements for Services Integrating Flight Operations and Air Traffic Management Using Addressed Data Link"

1 p.m.

(6) Working Groups meet:
  (a) WG–1, Data Link Ops Concept & Implementation Plan
  (b) WG–2, Flight Operations and ATM Integration
  (c) WG–3, Human Factors
  (d) WG–4, Service Provider Interface

November 29

(7) Working Groups 1–4 continue

November 30

9 a.m. Plenary Session

(8) Develop Plenary Consensus approval of WG–2's document, DO–XXX: "Implementation Requirements for Services Integrating Flight Operations and Air Traffic Management Using Addressed Data Link"
(9) Working Group Reports:
  (e) Includes presentation of WG–4 draft working paper for plenary review
(10) Other Business
(11) Date and Location of Next Meeting
(12) Closing

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 30, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–28441 Filed 11–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2000–8194]

Agency Information Collection Activities; Request for Comments; Renewed Approval of Seven Information Collections

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew seven information collections which are summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 5, 2001.

ADDRESSES: You may mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to 202/493–2251; or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number in this notice's heading as well as the OMB control number referencing the specific information collection that is being addressed. All comments may be examined and copied at the above address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you desire a receipt you must include a self-addressed stamped envelope or postcard or, if you submit your comments electronically, you may print the acknowledgment page.

PUBLIC COMMENTS INVITED: You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the FHWA's performance; (2) the accuracy of estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of these information collections.

SUPPLEMENTARY INFORMATION:

1. *Title:* Bid Price Data.

OMB Control Number: 2125–0010 (Expiration Date: March 31, 2001).

Abstract: Information collected on Form FHWA–45, Bid Price Data, is needed for the FHWA to monitor changes in purchasing power of the Federal-aid construction dollar. FHWA follows these trends so that changes in highway construction prices can be measured and funding level recommendations to Congress can be justified. The Federal share of the cost of certain projects constructed by the States in advance of regular apportionments is adjusted based on the bid price index (Title 23 United States Code 115). Form FHWA–45 is prepared for Federal-aid highway construction contracts greater than $0.5 million in the 50 States plus Washington, DC, and Puerto Rico. Data is reported on six major items of highway construction, together with the total materials and labor costs of the project, taken from the bid tabulation of construction items submitted by the lowest or winning bidder to the State Transportation Department. The State Transportation Departments furnish copies of the bid tabulation to the FHWA that uses the data to produce the national FHWA bid price index and related statistics.

Respondents: 52 State Transportation Departments, including the District of Columbia and Puerto Rico.

Frequency: The data is collected by the States and submitted to FHWA one time, within two weeks after the project has been awarded.

Estimated Total Annual Burden: 975 hours. There are approximately 1,300 annual projects that require about 37 of the State DOTs to complete the form. It takes an average of 45 minutes for each form.

For Further Information Contact: Ms. Claretta Duren, 202–366–4636, Department of Transportation, Federal Highway Administration, Infrastructure Core Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

2. *Title:* Highway Safety Improvement Programs.

OMB Control Number: 2125–0025 (Expiration Date: March 31, 2001).

Abstract: Under Sections 130(g) and 152(g) of Title 23, United States Code, each State is required to report annually to the Secretary of Transportation on the progress being made in implementing the Highway Safety Improvement Programs (Highway-Rail Grade Crossings and Hazard Elimination) and on the effectiveness of these programs. This information provides FHWA with a means for monitoring the effectiveness of these programs. It will also be used by the Congress for determining funding levels for the Highway Safety Improvement Programs and for modifying these programs. States are also required under Sections 130(d) and 152(a) of Title 23 to conduct and systematically maintain surveys to determine highway-rail grade crossings in need of improvements and to identify hazardous highway locations, sections, and elements. These surveys are the basis for establishing priorities for corrective measures, for scheduling improvements, and for evaluating the effectiveness of improvements. The States collect safety information by surveying highway-rail grade crossings and public roads for potential safety hazards. In addition, motor vehicle crash data, traffic volume data, and other highway inventory data are used by the States to identify hazards and determine which hazards would be the most cost-effective to improve.

Respondents: 52 State Transportation Departments, including the District of Columbia and Puerto Rico.

Frequency: Annually.

Estimated Total Annual Burden: 10,400 hours. It is estimated that each State, the District of Columbia and Puerto Rico spends 200 hours to provide this information to the FHWA.

For Further Information Contact: Mr. Kenneth Epstein, 202–366–2157, Department of Transportation, Federal Highway Administration, Safety Core Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

3. *Title:* Planning and Research Program Administration.

OMB Control Number: 2125–0039 (Expiration Date: April 30, 2001).

Abstract: Under the provisions of Title 23, United States Code, Section 505, two percent of Federal-aid highway funds in certain categories that are apportioned to the States are set aside to be used only for State planning and research (SPR funds). At least 25 percent of the SPR funds apportioned annually must be used for research, development, and technology transfer activities. In accordance with government-wide grant management procedures, a grant application must be submitted for these funds. In addition, recipients must submit periodic progress and financial reports. In lieu of Standard Form 424, Application for Federal Assistance, the FHWA uses a work program as the grant application. This includes a scope of work and budget for activities to be undertaken with FHWA planning and research funds during the next one- or two-year period. The information contained in the work program includes task descriptions, assignments of responsibility for conducting the work effort, and estimated costs for the tasks. This information is necessary to determine how FHWA planning and research funds will be utilized by the State Transportation Departments and if the proposed work is eligible for Federal participation. The content and frequency of submission of progress and financial reports specified in 23 CFR part 420 are as specified in OMB Circular A–102 and the companion common grant management regulations.

Respondents: 52 State Transportation Departments, including the District of Columbia and Puerto Rico.

Estimated Total Annual Burden: 29,120 hours (560 hours per respondent).

For Further Information Contact: Mr. Tony Solury, 202–366–5003, Department of Transportation, Federal Highway Administration, Planning and Environment Core Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

4. *Title:* Structure Inventory and Appraisal Sheet.

OMB Control Number: 2125–0501 (Expiration Date: April 30, 2001).

Abstract: The collection of the bridge information contained on the Structure Inventory and Appraisal Sheet (SI&A) is necessary to satisfy the requirements of Title 23 United States Code 144 and 151, and the Code of Federal Regulations, 23 Highways—Part 650, Subpart C—National Bridge Inspection Standards and Subpart D—Highway Bridge Replacement and Rehabilitation Program. The National Bridge Inspection Standards (NBIS) require bridge inspection and reporting at regular intervals for all bridges located on public roads. The NBIS information is used as a basis for setting priorities for the replacement or rehabilitation of bridges under the Highway Bridge Replacement and Rehabilitation Program (HBRRP) and for apportioning HBRRP funds to the States for bridge replacement or rehabilitation. In addition, the information is used for strategic national defense needs and for preparing the report to Congress on the status of the Nation's highway bridges and funding under the HBRRP.

Respondents: 52 State Transportation Departments, including the District of Columbia and Puerto Rico.

Frequency: Biannual inspections and annual reporting.

Estimated Total Annual Burden: 540,000 hours. The average burden is two hours to complete each SI&A sheet on the approximate 270,000 bridges that are inspected annually. The total bridge inventory (rounded to 600,000) requires biannual inspections; approximately 10 percent, or 30,000 of the 300,000 bridges that are inspected each year receive an extended inspection. Some States voluntarily inspect bridges more frequently; however, these estimates do not include this information.

For Further Information Contact: Mr. Ray McCormick, 202–366–4675, Department of Transportation, Federal Highway Administration, Infrastructure Core Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

5. *Title:* Emergency Relief Funding Applications.

OMB Control Number: 2125–0525 (Expiration Date: May 31, 2001).

Abstract: Section 125 of Title 23 United States Code requires States to submit applications to the FHWA for emergency relief (ER) funds. The ER funds are established for the repair or reconstruction of Federal-aid highways and Federal roads which have suffered serious damage by natural disasters over a wide area or serious damage from catastrophic failures. The information is needed for the FHWA to fulfill its statutory obligations regarding funding determinations on emergency work to repair highway facilities. The requirements covering the FHWA ER program are contained in 23 CFR part 668.

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[4] 17 CFR 200.30–3(a)(12).

Respondents: 52 State Transportation Departments, including the District of Columbia and Puerto Rico.

Frequency: As required.

Estimated Total Annual Burden: 5,000 hours. 200 hours per application for an average of 30 annual applications.

For Further Information Contact: Mr. Mohan Pillay, 202–366–4655, Department of Transportation, Federal Highway Administration, Infrastructure Core Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

6. Title: Preparation and Execution of the Project Agreement and Modifications

OMB Control Number: 2125–0529 (Expiration Date: May 31, 2001).

Abstract: Formal agreements between State transportation departments and the FHWA are required for Federal-aid highway projects. These agreements, referred to as "project agreements" are written contracts between the State and the Federal government that define the extent of work to be undertaken and commitments made concerning a highway project. In a notice of proposed rulemaking (NPRM), published on August 31, 2000 (65 FR 52962), the FHWA proposed actions that would update and modify existing requirements to reflect statutory changes to the project agreement process mandated by section 1305 of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107). This FHWA proposal would combine the authorization of work and execution of the project agreement for a Federal-aid project into a single action. We do not expect the basic requirement for a project agreement to change, nor do we expect changes to the current information collection burden estimates as a result of this proposal. Nonetheless, the FHWA will consider any comments received to the NPRM regarding these information collections before issuance of a final rule in this matter. A final rule would reflect any necessary changes to 23 CFR 630, subpart A. Thus, the FHWA's current submission to OMB seeking approval to renew this information collection will not reflect any revised estimates in burdens. The estimates set forth below are based on current regulations.

Respondents: 50 State Transportation Departments, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Territories of Guam, the Virgin Islands and American Samoa

Estimated Total Annual Burden: 12,040 hours. There are an average of 215 annual agreements per respondent. Each agreement requires approximately one hour to complete.

For Further Information Contact: Mr. Jack Wasley, 202–366–4658, Department of Transportation, Federal Highway Administration, Infrastructure Core Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

7. Title: Nationwide Survey of "Public Roads" Readers

OMB Control Number: 2125–0562 (Expiration Date: May 31, 2001)

Abstract: "Public Roads" is a bimonthly magazine published by the FHWA. The FHWA conducts periodic surveys of its readers to improve the quality and content of the magazine. Executive Order 12862 requires all agencies to identify their customers, survey their satisfaction with current services, set standards for service and measure results against them. A nationwide census of readers was conducted in 1995 to establish benchmarks to gauge overall reader satisfaction and to measure, in particular, satisfaction with significant changes that had been made in the magazine's design and content, subject scope, and audience. The results of ongoing surveys will form the basis of a major, direct-mail campaign to increase the number of paid subscribers.

Respondents: Approximately 1,500 paid and complementary subscribers to "Public Roads" magazine.

Frequency: Biennially.

Estimated Total Annual Burden: 375 hours. The average burden per response is 15 minutes.

For Further Information Contact: Ms. Martha Soneira, 202–493–3468, Department of Transportation, Federal Highway Administration, Research, Development and Technology Service Business Unit, Turner-Fairbank Highway Research Center, 6300 Georgetown Pike, McLean, VA 22101. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: October 31, 2000.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 00–28345 Filed 11–03–00; 8:45 am]

BILLING CODE 65-60-50-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Blue Ridge Scenic Railway Company

[Docket Number FRA–2000–8132]

The Blue Ridge Scenic Railway Company of Blue Ridge, Georgia, has petitioned for a permanent waiver of compliance for one passenger coach from the requirements of the Safety Glazing Standards, 49 CFR Part 223, which requires certified glazing in all windows and a minimum of four emergency windows. The railroad indicates that the car is used in tourist service over 13 miles of track between Blue Ridge and McCaysville, Georgia, at a speed not to exceed 15 mph. The railroad indicates that there is no freight operated over this line, which is in a rural area along the Toccoa River.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires

an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2000–8132) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC, 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room Pl–401 (Plaza Level), 400 Seventh Street SW, Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC, on November 1, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–28442 Filed 11–3–00; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSAC–96–1, Notice No. 21]

Railroad Safety Advisory Committee (RSAC); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

SUMMARY: FRA is updating its announcement of RSAC's working group activities to reflect the current status of working group activities.

FOR FURTHER INFORMATION CONTACT: Trish Paolella or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Ave., NW, Mailstop 25, Washington, DC 20590, (202) 493–6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards Program Development, FRA, 1120 Vermont Ave., NW, Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports on December 17, 1999 (64 FR 70756). The fifteenth full Committee meeting was held September 14, 2000 at the Association of American Railroads Conference Center in Washington, D.C.

Since its first meeting in April of 1996, the RSAC has accepted sixteen tasks. Status for each of the tasks is provided below:

Task 96–1—Revising the Freight Power Brake Regulations. This Task was formally withdrawn from the RSAC on June 24, 1997. FRA published an NPRM on September 9, 1998, reflective of what FRA had learned through the collaborative process. Two public hearings were conducted and a technical conference was held. The date for submission of written comments was extended to March 1, 1999. The final rule is in review and clearance. Contact: Thomas Hermann (202) 493–6036.

Task 96–2—Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213). This task was accepted April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on July 3, 1997, (62 FR 36138). The final rule was published in the **Federal Register** on June 22, 1998 (63 FR 33991). The effective date of the rule was September 21, 1998. A task force was established to address Gage Restraint Measurement System (GRMS) technology applicability to the Track Safety Standards. A GRMS amendment to the Track Safety Standards was approved by the full RSAC in a mail ballot during August. The final rule amendment will be published in the **Federal Register**. Contact: Al MacDowell (202) 493–6236.

Task 96–3—Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220). This Task was accepted on April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on June 26, 1997 (62 FR 34544). The final rule was published on September 4, 1998 (63 FR 47182), and was effective on January 2, 1999. Contact: Gene Cox (202) 493–6319.

Task 96–4—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulations task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. Contact: Grady Cothen (202) 493–6302.

Task 96–5—Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230). This Task was assigned to the Tourist and Historic Working Group on July 24, 1996. Consensus was reached and an NPRM was published on September 25, 1998 (63 FR 51404). A public hearing was held on February 4, 1999, and recommendations were developed in response to comments received. The final rule was published on November 17, 1999 (64 FR 62828). Contact: George Scerbo (202) 493–6349.

Task 96–6—Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240). This Task was accepted on October 31, 1996, and a Working Group was established. Consensus was reached and an NPRM was published on September 22, 1998. The Working Group met to resolve issues presented in public comments. The RSAC recommended issuance of a final rule with the Working Group modifications. The final rule was published November 8, 1999 (64 FR 60966). Contact: John Conklin (202) 493–6318.

Task 96–7—Developing Roadway Maintenance Machine (On-Track Equipment) Safety Standards. This task was assigned to the existing Track Standards Working Group on October 31, 1996, and a Task Force was established. The Task Force finalized a proposed rule which was approved by the full RSAC in a mail ballot in August. The NPRM will be published in the Federal Register. Contact: Al MacDowell (202) 493–6236.

Task 96–8—This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, Locomotive Crashworthiness & Working Conditions. This Planning Task was accepted on October 31, 1996. A Planning Group was formed and reviewed the report, grouping issues into categories, and prepared drafts of the task statements for Tasks 97–1 and 97–2.

Task 97–1—Developing crashworthiness specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. This Task was accepted on

June 24, 1997. A Task Force on engineering issues was established by the Working Group on Locomotive Crashworthiness to review collision history and design options and additional research was commissioned. The Working Group reviewed results of the research and is drafting performance-based standards for freight and passenger locomotives to present to the RSAC for consideration. Review of collision data for use in the regulatory evaluation was completed in September. Contact: Sean Mehrvazi (202) 493–6237.

Task 97–2—Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. This Task was accepted June 24, 1997. A draft sanitation NPRM has been circulated for approval of working group, with ballots requested by November 3. The Cab Working Group met in October to begin finalizing work on a noise exposure standard and will be meeting in November to complete a draft NPRM. The Cab Working Group has also considered issues related to cab temperature, and is expected to consider additional issues (such as vibration) in the future. Contact: Brenda Hattery (202) 493–6326.

Task 97–3—Developing event recorder data survivability standards. This Task was accepted on June 24, 1997. An Event Recorder Working Group and Task Force have been established and are actively meeting. A draft proposed rule is being reviewed. Contact: Edward English (202) 493–6321.

Task 97–4 and Task 97–5—Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

Task 97–6—Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems. These three tasks were accepted on September 30, 1997, and assigned to a single Working Group. A Data and Implementation Task Force, formed to address issues such as assessment of costs and benefits and technical readiness, completed a report on the future of PTC systems. The report was accepted as RSAC's Report to the Administrator at the September 8, 1999, meeting. The Standards Task Force, formed to develop PTC standards, developed draft recommendations for performance-based standards for processor-based signal and train control standards. The NPRM was approved by consensus at the full RSAC meeting held on September 14, 2000. The NPRM will be published in the **Federal Register**. Contact: Grady Cothen (202) 493–6302.

Task 97–7—Determining damages qualifying an event as a reportable train accident. This Task was accepted on September 30, 1997. A working group was formed to address this task and conducted their initial meeting on February 8, 1999. The working group designed a survey form to collect specific data about damages to railroad equipment. The survey started on August 1 and will end January 31, 2001. The working group is scheduled to meet in December 2000. Contact: Robert Finkelstein (202) 493–6280.

Task 00–1—Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing or inspecting rear end marking devices. A working group has been formed and held its first meeting on October 16–18, 2000. Contact: Doug Taylor (202) 493–6255.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on November 1, 2000.

George Gavalla,

Associate Administrator for Safety.

[FR Doc. 00–28443 Filed 11–3–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Child Passenger Protection Education Grants

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Announcement of grants for child passenger protection education.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a grant program under Section 2003(b) of the Transportation Equity Act for the 21st Century (TEA–21) to implement child passenger protection programs that are designed to prevent deaths and injuries to children, educate the public concerning the proper installation of child restraints, and train child passenger safety personnel concerning child restraint use. This notice solicits applications from the States, the District of Columbia, Puerto Rico, the U.S. Territories and the Indian Tribes through the Secretary of the Interior.

DATES: Applications must be received by the office designated below on or before December 15, 2000.

ADDRESSES: Applications must be submitted to the appropriate National Highway Traffic Safety Administration Regional Administrator.

FOR FURTHER INFORMATION CONTACT: For program issues contact Ms. Joan Catherine Tetrault, State and Community Services, NSC–01, NHTSA, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–2121. For legal issues contact Mr. John Donaldson, Office of the Chief Counsel, NCC–30, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION:

Background

Motor vehicle crashes remain the leading cause of unintentional injury-related deaths among children for every age from 6 to 14 years, despite an eight percent decline in the motor vehicle occupant death rate for children under age 15 from 1988 to 1999. During the same time period, the motor vehicle occupant nonfatal injury rate among children under age 15 has increased by seven percent. Motor vehicle injuries and fatalities occur when children ride unrestrained or are improperly restrained. This grant program is intended to help reduce injuries and deaths by educating the public about the importance of correctly installing and using child safety seats, booster seats and seat belts.

1. Children Riding Unrestrained

Approximately 20–25 percent of children ages 1 through 15 years ride unrestrained. Child safety seats reduce the risk of fatal injury in a crash by 71 percent for infants (less than 1 year old) and by 54 percent for toddlers (1–4 years old). In 1999, there were 550 occupant fatalities in passenger motor vehicles among children under 5 years of age. Of those 550 fatalities, an estimated 291 (53 percent) were totally unrestrained. The problem of riding unrestrained is not limited to infants and young children. From 1975 through 1999, the lives of an estimated 4,500 children were saved by the use of child restraints (child safety seats or adult safety belts). Among children under age 15 who were killed as occupants in motor vehicle crashes in 1999, 61 percent were not using safety restraints at the time of the collision.

Examination of the demographics of children killed in motor vehicle crashes (for which the most recent available year is 1995) shows that safety restraint use differs markedly by race. For example, while somewhat less than half (43.3%) of white children up to age 9 riding in passenger motor vehicles were using safety restraints at the time of their deaths, that was true of only about one-quarter (28.2%) of black children. Native American children under age 15 have a motor vehicle occupant death rate twice that of white children. (Injury and fatality data for other minority groups is currently being collected.) Restraint use is also lower in rural areas and low-income communities. Lack of access to affordable child safety seats and booster seats contributes to a lower usage rate among low-income families. However, research shows that 95 percent of low-income families who own a child safety seat use it. Improving access to affordable child restraint systems and educating parents and care givers about proper installation and use are key components to improving use rates in these communities.

1. Misuse of Child Safety Seats and Improper Seating Positions

In 1998, 97 percent of infants (children under age 1) were restrained while riding in motor vehicles, as were 91 percent of children ages 1 to 5. However, it is estimated that approximately 80 percent of children who are placed in child safety seats are improperly restrained. Furthermore, adult safety belts do not adequately protect children ages 4 to 8 (about 40 to 80 pounds) from injury in a crash. Although car booster seats are the best way to protect them, only six percent of booster-age children are properly restrained in car booster seats.

In addition, there is a high risk of severe injury or fatality to children riding in the front seat of vehicles equipped with a passenger side air bag, due to the deployment force of the air bag. However, even if the air bag is shut off or there is no air bag, the back seat is the safest place for children to ride. Under no circumstances should a parent place a rear-facing infant seat in front of an air bag. It is estimated that children ages 12 and under are 36 percent less likely to die in a crash if seated in the rear seat of a passenger vehicle.

Child passenger safety professionals, educators, emergency personnel and others need to be adequately trained on all aspects of child restraint use in order to help reduce the problems of misuse and encourage the safest seating positions for children riding in motor vehicles. In addition, parents and caregivers need easily accessible locations where they can receive information on choosing the correct child safety seat for their child, and identifying which child safety seats are compatible with various types of passenger motor vehicles. Parents and caregivers also need to know how to properly install a child safety seat and how to properly secure their child into that seat.

With these concerns in mind, the Transportation Equity Act for the 21st Century (TEA–21), which the President signed into law on June 9, 1998, established a grant program under Section 2003(b) of Title 23, United States Code, to promote child passenger protection education and training.

Grants for Child Passenger Protection

Section 2003(b) provides Federal funds to States for activities that are designed to prevent deaths and injuries to children; educate the public concerning the design, selection, placement, and installation of child restraints; and train and retrain child passenger safety professionals, police officers, fire and emergency medical personnel, and other educators concerning all aspects of child restraint use. A State may expend the funds itself or elect to distribute some or all of the funds to carry out the public education and training activities as grants to political subdivisions of the State or appropriate private entities. States are encouraged to direct funds obtained through this grant program to organizations that can deliver training and education to ensure positive impact in minority and low income communities where lack of child passenger protection is especially severe. Section 2003(b) provides that the Federal share of the cost of a program carried out with the grant funds is not to exceed 80 percent. A State that receives a grant must submit a report describing the program activities carried out with the funds.

Application Procedures

A. Use of Funds

To be eligible for funding under Section 2003(b), a State must submit an application that addresses how the State will implement child passenger protection programs that meet each of the three requirements listed below. For the education and training components, the grant application must identify expected program accomplishments, such as the estimated number of public education messages to be distributed (*e.g.* public service announcements or printed materials) and the type of audience to be targeted by these messages (*e.g.* minority or low-income communities); the estimated number of and type of training classes conducted and the individuals or groups to be trained (*e.g.* representing minority, rural or low-income communities); the number of child safety seat clinics or check-ups performed; and the number of fitting stations established. A State is encouraged to identify the proposed locations of child safety seat clinics, check-ups and fitting stations, specifying the target population to be served.

Specifically, the State must implement a child passenger protection program that:

1. Is designed to prevent deaths and injuries to children. The State should provide a statement describing how its program supports efforts to prevent deaths and injuries to children.

2. Educates the public on all aspects of child passenger safety. The public education program may include strategies that emphasize a continuum of child restraint from infancy to age 16, increase use among targeted populations (*e.g.*, minority, rural, low-income, or special needs populations), or develop and implement child safety seat clinics and/or permanent locations where consumers can have child safety seats and booster seats inspected. Additional information under public education may be included relevant to proper use of child restraint systems, booster seats and FMVSS 225—a standardized child safety seat system known as Lower Anchors and Tethers for Children (LATCH).

At a minimum, the public education program must:

(a) Provide a summary of the information that the State intends to include or develop in the public education program. The information must address at least the following topics:

- All aspects of proper installation of child restraints using standard seat belt hardware, supplemental hardware, and modification devices (if needed), including special installation techniques;
- Appropriate child restraint design, selection, and placement [NHTSA interprets this to include instruction about proper seating positions for children in air bag equipped vehicles]; and
- Harness threading and harness adjustment on child restraints.

(b) Include a description of the public education information methods that the State intends to employ, how these messages will be delivered to the target population, and expected accomplishments. The methods could include billboards, public service announcements, and published materials. It is also important to deliver this information in the language of the targeted group.

3. Trains and retrains child passenger safety professionals, police officers, fire and emergency medical personnel, and other educators concerning all aspects of child restraint use. At a minimum, States should include in the application a description of or reference to the curricula that the State will use to train and retrain child passenger safety experts to reach the targeted population and expected accomplishments.

All persons selected for training and retraining as child passenger safety professionals should achieve and maintain at least some minimum standards of expertise. In collaboration with several partners, NHTSA has developed several model curricula including: "Mobilizing America to Buckle Up Children" and "Operation Kids" for law enforcement officers; and the "Standardized Child Passenger Safety Training Program" for child passenger safety professional candidates. States are not restricted to using only these curricula, but States are encouraged to incorporate the learning objectives of these courses into the training and retraining provided to child passenger safety experts. Funding for this grant program is intended to help States develop and sustain adequate cadres of persons with technical expertise in child passenger protection who will directly serve the public through child safety seat clinics, checkpoints, workshops, fitting stations and other training and educational opportunities.

A. Certification

The State must submit certifications that: (i) It will use the funds awarded under this grant program exclusively to implement a child passenger protection program in accordance with the requirements of Section 2003(b) of P.L. 105–178 (TEA–21); (ii) It will administer the funds in accordance with 49 CFR Part 18 and OMB Circular A–87; and (iii) It will provide to the NHTSA Regional Administrator no later than 15 months after the grant award a report of activities carried out with grant funds and accomplishments to date.

B. Eligibility Requirements

Eligibility is limited to the 50 States, the District of Columbia, Puerto Rico, the U.S. Territories (which include the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands) through their Governor's Office of Highway Safety, and Indian Tribes through the Secretary of the Interior.

Award Procedures

The amount available for this program in fiscal year 2001 is $7,500,000. In FY 2000, NHTSA awarded $7.5 million to 47 states, the District of Columbia, Puerto Rico, 4 U.S. Territories and the Indian Nations. A new application is required to seek an award of fiscal year 2001 funds. Awards to applicants meeting the requirements of this notice will be made based upon the formula used for Section 402 apportionment, subject to the availability of funds. The amount awarded to each State qualifying under this program shall be determined by multiplying the amount appropriated for this grant program for the fiscal year by the ratio that the amount of funds apportioned to each such State under 23 U.S.C. 402 for the fiscal year bears to the total amount of funds apportioned to all such States under Section 402 for such fiscal year. Applicants will be required to submit to NHTSA within 30 days of notification that an award is made, a program cost summary (HS Form 217) obligating the Section 2003(b) funds to child passenger protection education programs. The Federal funding share may not exceed 80% of the program cost, and States should clearly identify their share in the program cost summary (HS Form 217).

Each State must submit one original and two copies of the application package to the appropriate NHTSA Regional Administrator. Only complete application packages submitted by a Governor's Highway Safety Representative and received on or before December 15, 2000 will be considered for funding in fiscal year 2001.

Report Requirements

A State that receives a grant must submit a report describing the activities carried out with the grant funds and the accomplishments to date. The report must be submitted to the NHTSA Regional Administrator no later than 15 months after the grant is awarded.

At a minimum, the report must contain the following:

(a) Describe how the State's child passenger protection program is supporting efforts to prevent deaths and injuries to children.

(b) For the education component, the report must identify program accomplishments, such as:

- A summary of the public education methods developed and how programs were delivered to the targeted population.
- The number of public education messages distributed (*e.g.* public service announcements or printed materials) and the type of audience targeted by those messages (*e.g.* minority or low-income communities);
- The number of child safety seat clinics or check-ups performed, and the number of fitting stations established. A State must also include the locations of child safety seat clinics, check-ups and fitting stations, specifying the target population served.

(c) For the training component, the report must include:

- The number of and type of training classes conducted and the individuals or groups trained (*e.g.* representing minority, rural or low-income communities);
- A description of or reference to the curricula that were used to train and retrain child passenger safety experts.
- The number of child passenger safety technicians and instructors certified during the grant period.

NHTSA Publications Available To Support Public Education

A number of NHTSA publications are available through the *Traffic Safety Materials Catalog* that address child passenger safety program topics. These materials may be ordered from the NHTSA web site at >HTTP://WWW.NHTSA.DOT.GOV< or contacting the Media and Marketing Division, NTS–21 by fax at (202) 493–2062.

Issued on: November 1, 2000.

Sue Bailey,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 00–28344 Filed 11–3–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–8201; Notice 1]

Subaru of America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance Regarding Headlamp Lens Marking

Subaru of America, Inc., of Cherry Hill, New Jersey, has determined that certain headlamp lens assemblies manufactured by North American Lighting, Inc., are not in full compliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, reflective devices, and associated equipment." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Subaru has petitioned for a determination that this

noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

FMVSS No. 108 establishes the performance and equipment requirements for lamps, reflective devices and associated equipment. Under S7.5(g) of FMVSS No. 108, the lens of each replaceable bulb headlamp shall bear permanent marking in front of each replaceable light source with which it is equipped that states the official light source type designation.

Under S7.8.5.3(f)(2), the lens shall have a mark or markings identifying the optical axis of the headlamp visible from the front of the headlamp when installed on the vehicle, to assure proper horizontal and vertical alignment.

Approximately 87 headlamp lens assemblies manufactured by North American Lighting, Inc., for use in Model Year 2000 Subaru Legacy and Outback vehicles were installed on production vehicles from October 5, 1999, through December 5, 1999. During the manufacturing process, "headlamp assemblies were assembled with lens covers with the wrong marking specification required under FMVSS 108, S7.5(g) and FMVSS 108, S7.8.5.3(f)(2)."

Because there are two different headlamp designs, a 2-bulb version and a 1-bulb version, both the same shape, there are two different lenses that are molded. The manufacturing process for assembling these headlamps mismatched the 2-bulb lens and 1-bulb lens assemblies resulting in the noncompliance.

Subaru stated that the installation of the incorrect lens in the 2-bulb and 1-bulb headlamp assemblies does not result in performance variations in beam light patterns resulting in the noncompliances with FMVSS 108.

Subaru's supporting data, views and arguments are as follows:

> (1) Headlamp aiming performed during the manufacturing process does not rely on lens marking for beam pattern alignment. The result is proper alignment regardless of the mismatch in headlamp assembly lens.
>
> (2) The rate of replacement for headlamp bulbs within the 3/36 warranty period is 0.6 percent. The remaining parts demand for headlamp bulbs is due to collision which results in purchase and installation of new headlamp assemblies not containing the noncompliance.
>
> (3) Installation of replacement headlamp bulbs is outlined in the Service Manual for Subaru Legacy vehicles. The Service Manual procedure for alignment of the headlamp does not rely on the markings found in noncompliance, but rather references the center marking on the bulb.
>
> (4) Incorrect lens assembly installation results in the following light performance variations:
>
> 2-bulb lens on 1-bulb assembly: slight decrease in long range visibility, but within FMVSS performance requirements.
>
> 1-bulb lens on 2-bulb assembly: Slight broadening of the beam pattern. Vertical alignment specification variation does not exceed 0.57 degrees plus/minus specified aiming.
>
> (5) There is a small possibility that consumers would purchase replacement bulbs for non-dealer installation based on the incorrect marking. However, the incorrect bulb will not install in the headlamp assembly irrespective of the incorrect marking. Additionally, the owner's manual provides the correct specification for replacement bulbs required.

Subaru also submitted data which show the difference in beam patterns of the four possible bulb combinations in the two lamp housings. The data are in the docket for this application.

The petitioner has indicated that the noncompliances will not result in any safety, reliability or serviceability concern for the operator of a subject motor vehicle.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to : U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: December 6, 2000.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: November 1, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–28343 Filed 11–03–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 209X)]

Camp Lejeune Railroad Company—Discontinuance of Service Exemption—in Onslow County, NC

On October 17, 2000, Camp Lejeune Railroad Company (CL), a wholly owned subsidiary of Norfolk Southern Railway Company, filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over 5.5 miles of rail line extending between milepost CK–2.5 at Camp Lejeune and milepost CK–8.0 at Marine Junction, in Onslow County, NC. CL operated the line under a lease from the United States Government that expired in August 1999. The line traverses U.S. Postal Service Zip Codes 28542 and 28547.

The line does not contain federally granted rights-of-way. However, the right-of-way is owned by the United States Government. Any documentation in CL's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co. Abandonment Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 2, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub-No. 209X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) James R. Paschall, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510. Replies to the CL petition are due on or before November 27, 2000.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment or discontinuance proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 30, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–28392 Filed 11–3–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–252936–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–252936–96 (TD 8780), Rewards for Information Relating to Violations of Internal Revenue Laws (§ 301.7623–1).

DATES: Written comments should be received on or before January 5, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Rewards for Information Relating to Violations of Internal Revenue Laws.

OMB Number: 1545–1534.

Regulation Project Number: REG–252936–96.

Abstract: The regulations explain the procedure for submitting information that relates to violations of the internal revenue laws. The regulations also require a person claiming a reward for information to provide, in certain circumstances, identification of evidence that the person is the proper claimant.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 3 hr.

Estimated Total Annual Burden Hours: 30,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 26, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–28435 Filed 11–3–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Friday, December 8, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Friday, December 8, 2000, 6:00 p.m. to 9:00 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9:00 p.m. on Friday, December 8, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201.

The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 27, 2000.

M. Cathy Vanhorn,

Director, CAP, Communications & Liaison, Taxpayer Advocate Service.

[FR Doc. 00–28434 Filed 11–3–00; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 65, No. 215

Monday, November 6, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

Correction

In notice document 00–27158 beginning on page 63251 in the issue of Monday, October 23, 2000, make the following corrections:

1. On page 63252, in the first column, under the heading "**Burden Statement** " in the second paragraph, in the 19th line, "come burden" should read "some burden".

2. On the same page, in the second column, under the heading "Non-Liquid Alternative Fuels", in the sixth line, "5/6 + 133 hours" should read "5/6 = 133 hours".

[FR Doc. C0–27158 Filed 11–3–00. 8:45 am]

BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-2

[FPMR Amendment A–56]

RIN 3090–AH32

Payments to GSA for Supplies and Services Furnished Government Agencies

Correction

In rule document 00–27653 on page 64372 in the issue of Friday, October 27, 2000, make the following correction:

On page 64372, in the second column, under the heading " **PART 101–2–[REMOVED]**", in the third line "496(c)" should read "486(c)".

[FR Doc. C0–27653 Filed 11–3–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–47–AD; Amendment 39–11511; AD 2000–01–13]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

Correction

In rule document 00–1193, beginning on page 2864, in the issue of Wednesday, January 19, 2000, make the following corrections:

§39.13 [Corrected]

1.On page 2864, in the third column, in the sixth line from the bottom, remove the word "should".

2. On page 2865, the table is corrected to read as follows:

Engine Model	Part	Engine Manual Part Number	FPI per Manual Section	Inspection
	Nomenclature			
7/7A/7AH/7F, 7H/7J/20/20J	All Fan Hubs	646028 (or the equivalent, customized versions, 770407 and 770408).	72–31–04	02
7/7A/7AH/7F, 7H/7J/20/20J	All HPT 1st Disks	646028 (or the equivalent customized versions, 770407 and 770408).	72–51–02	01
7/7A/7AH/7F, 7H/7J/20/20J	All HPT 2nd Disks	646028 (or the equivalent customized versions, 770407 and 770408).	72–51–02	03
59A/70A	All Fan Hubs	754459	72–31–00	Heavy Maintenance Check
59A/70A	All HPT 1st Disks	754459	72–51–02	Heavy Maintenance Check
59A/70A	All HPT 2nd Disks	754459	72–51–02	Heavy Maintenance Check
7Q/7Q3	All Fan Hubs	777210	72–31–00	03
7Q/7Q3	All HPT 1st Disks	777210	72–51–06	01
7Q/7Q3	All HPT 2nd Disks	777210	72–51–07	01
7R4	All Fan Hubs	785058, 785059 and 789328	72–31–00	03
7R4	All HPT 1st Disks	785058, 785059 and 789328	72–51–06	01
7R4	All HPT 2nd Disks	785058, 785059 and 789328	72–51–07	01

[FR Doc. C0–1193 Filed 11–3–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 00-74]

RIN 1515-AC79

Refund of Duties Paid on Imports of Certain Wool Products

Correction

In proposed rule document 00–27522 beginning on page 64178 in the issue of Thursday, October 26, 2000, make the following corrections:

§10.184 [Corrected]

1. On page 64184, in the second column, in §10.184(d), in the final paragraph, in the first line"(1) *Documentation required where the*" should read "(2) *Documentation required where the*".

2. On the same page, in the third column, in §10.184, in the fifth paragraph, the first line "(B) A completed Customs Form (CF)" should read "(C) A completed Customs Form (CF)".

3. On page 64186, in the third column, in §10.184(g), in the last paragraph, the first line "(1)*Place to file.* A claim for a refund" should read "(2) *Place to file.* A claim for a refund".

4. On page 64187, in the first column, in §10.184(g), in the second paragraph, the first line "(2) *Documentation. (i) Where the*" should read "(3) *Documentation. (i) Where the*".

[FR Doc. C0–27522 Filed 11–3–00; 8:45 am]

BILLING CODE 1505–01–D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
November 6, 2000

Part II

Department of Housing and Urban Development

24 CFR Part 1003

Revision to the Application Process for the Indian Community Development Block Grants Program for Indian Tribes and Alaska Native Villages; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1003

[Docket No. FR–4612–P–01]

RIN 2577–AC22

Revision to the Application Process for the Indian Community Development Block Grants Program for Indian Tribes and Alaska Native Villages

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations for the Indian Community Development Block Grants program for Indian Tribes and Alaska Native Villages (the "ICDBG" program). These amendments will permit the incorporation of the ICDBG grant application and selection procedures into HUD's SuperNOFA process. The SuperNOFA approach, in which the great majority of HUD's competitive funds are announced in one document, is designed to simplify the application process, bring consistency and uniformity to the application and selection process, and accelerate the availability of funding. In addition to the SuperNOFA-related amendments, this proposed rule would amend the ICDBG program regulations to remove certain obsolete regulatory provisions and to clarify program requirements.

DATES: *Comments Due Date:* December 6, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jacqueline Kruszek, Office of Grants Management, Office of Native American Programs, Department of Housing and Urban Development, Suite 3390, 1999 Broadway, Denver, CO 80202, telephone (303) 675–1690, extension 3306 (this is not a toll-free telephone number). Hearing or speech-impaired persons may access this telephone number via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Ms. Kruszek may also be contacted via e-mail at: Jacqueline_A._Kruszek@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. The ICDBG Program

The Indian Community Block Grant Program for Indian Tribes and Alaskan Native Villages (commonly referred to as the ICDBG program) provides eligible grantees with direct grants for use in developing viable Indian and Alaskan Native communities, including decent housing, a suitable living environment, and economic opportunities, primarily for low- and moderate-income persons. HUD's regulations implementing the ICDBG program are located in 24 CFR part 1003. The program is administered by the Office of Native American Programs (ONAP) in HUD's Office of Public and Indian Housing.

ICDBG funds are distributed as annual competitive grants. Funds are allocated to each of the six Area ONAPs, so applicants compete for funding only with other tribes or eligible Indian entities within their area. All federally recognized Indian Tribes and Alaskan Native Villages are eligible to participate in the ICDBG program. Projects funded by the ICDBG program must primarily benefit low- and moderate-income persons. ICDBG funds may be used to improve housing stock, provide community facilities, improve infrastructure, and expand job opportunities by supporting the economic development of the communities, especially by nonprofit tribal organizations or local development corporations.

B. This Proposed Rule—Conforming the ICDBG Grant Application Procedures With HUD's SuperNOFA Process

This proposed rule would amend the ICDBG program regulations in 24 CFR part 1003. Specifically, the rule proposes to make several amendments to subpart D of these regulations, which establishes the ICDBG grant application and selection process. The principal reason for the proposed changes is that they would allow or facilitate the integration of the application process for the ICDBG program into HUD's SuperNOFA process.

In Fiscal Year 1998, HUD first published its first Super Notice of Funding Availability (SuperNOFA). The SuperNOFA approach, in which the great majority of HUD's competitive funds are announced in one document, is designed to simplify the application process, bring consistency and uniformity to the application and selection process, and accelerate the availability of funding. Equally important, the SuperNOFA approach is designed to increase the ability of applicants to consider and apply for funding under a wide variety of HUD programs. The most creative and novel element of the SuperNOFA is that it places heavy emphasis on the coordination of activities assisted by HUD funds to provide (1) greater flexibility and responsiveness by potential grantees in meeting local housing and community development needs, and (2) greater flexibility for eligible applicants to determine what HUD program resources best fit the community's needs.

The most recent SuperNOFA, published on February 24, 2000 (65 FR 9322), included 39 grant categories within programs operated and administered by HUD. However, the application process for funding under the ICDBG program has been implemented through separate stand-alone NOFAs. This was based, in part, on a determination that the considerations for grant award were substantially different for the ICDBG program when compared with those included in the SuperNOFA. Based upon closer review, HUD has determined that the SuperNOFA process, especially as it has evolved in the last two years, affords the degree of flexibility necessary to address important distinctions in funding considerations (such as project specific thresholds), while at the same time providing a framework within which application simplification procedures may be implemented.

Certain regulatory changes are required in order to permit the incorporation of the ICDBG program in the SuperNOFA process. Accordingly, HUD is issuing this proposed rule to revise the ICDBG program regulations at 1003.301 and § 1003.303, which establish the ICDBG application selection and rating procedures.

II. SuperNOFA Related Amendments

The most significant SuperNOFA related amendments that would be made by this proposed rule are as follows:

A. Use of SuperNOFA Rating Factors (§ 1003.303)

Current § 1003.303 (entitled "Project rating") establishes three separate rating categories: housing, community facilities, and economic development. Further, § 1003.303 establishes specific rating criteria for these categories (although some categories share similar criteria). The requirements for separate

rating categories and related criteria based on the type of project are inconsistent with SuperNOFA requirements and procedures. Therefore, this proposed rule would amend § 1003.303 to provide for the use of the five uniform rating factors used in the SuperNOFA. Additional details regarding the rating factors would be provided in the ICDBG component of the SuperNOFA. The five rating factors are:

1. *Capacity.* This factor will address the applicant's organizational resources necessary to successfully implement the proposed activities in a timely manner.

2. *Need/Extent of the problem.* This factor will address the extent to which there is a need for the proposed project to address a documented problem among the intended beneficiaries.

3. *Soundness of approach.* This factor will address the quality and cost effectiveness of the proposed project, the commitment to sustain the proposed activities, and the degree to which the proposed project provides other benefits to community members.

4. *Leveraging of resources.* This factor will address the level of tribal resources and resources from other entities that are used in conjunction with ICDBG funds to support the proposed project. HUD will evaluate the level of non-ICDBG resources based on the percentage of non-ICDBG resources provided relative to project costs.

5. *Comprehensiveness and coordination.* This factor will address the extent to which the applicant's proposed activities are consistent with the strategic plans or policy goals of the community and further on-going priorities and activities of the community.

B. Conforming Changes to ICDBG Selection Process (§ 1003.301)

As a result of the proposed amendments to § 1003.303 described above, certain conforming changes must be made to § 1003.301, which establishes the ICDBG selection process. These conforming changes are as follows:

1. *Revised threshold requirements (§ 1003.301(a)).* Paragraph (a) of § 1003.301 establishes the threshold requirements for applicants of ICDBG funding. This proposed rule would amend § 1003.301(a) by removing the threshold requirements regarding community development appropriateness, applicant capacity, and applicant performance. The threshold requirements set forth in these paragraphs will more appropriately be incorporated in the SuperNOFA rating factors. As described above, the SuperNOFA will contain ICDBG specific rating factors to award points based on the capacity of the applicant and the soundness of the applicant's approach. These rating factors will address, to the extent necessary, the threshold requirements currently contained in paragraph (a).

In several instances the current threshold requirements have proven unnecessary, and will not be included in the SuperNOFA rating factors. For example, HUD has determined that current § 1003.301(a)(1)(ii), which requires that the proposed project be appropriate for the intended use, is unnecessary. In addition, the housing assistance threshold requirement contained in current § 1003.301(a)(3)(ii) has never been invoked. Given the changes brought about by the Native American Housing Assistance and Self-Determination Act of 1996, (25 U.S.C. 4101 *et seq.*) (NAHASDA), it is unlikely that this requirement would be a consideration. (HUD's regulations implementing NAHASDA are located at 24 CFR part 1000.)

The proposed rule would retain a revised version of the threshold requirement contained in current paragraph (a)(3)(iii) regarding outstanding obligations. Specifically, the proposed rule would continue to provide that an applicant that has an outstanding ICDBG obligation to HUD that is arrears, or has not agreed to a repayment schedule, will be disqualified from the ICDBG competition. The proposed rule, however, would revise existing paragraph (a)(3)(iii) by removing the language regarding the effects of the applicant's failure to respond to a non-monetary audit finding in a satisfactory manner. This requirement will be included in the SuperNOFA capacity rating factor. The wording of current § 1003.301(a)(3)(iii) would also be revised to provide that the outstanding obligation need not only be the result of an audit finding but could also be the result of a determination of expenditure ineligibility made through another process (such as HUD monitoring).

2. *Removal of reference to former rating categories (§ 1003.301(c)).* The proposed rule would also make a necessary conforming change to current § 1003.301(c), which regards the rating of ICDBG applications. Specifically, the proposed rule would remove the references to the rating categories, consistent with the changes made to § 1003.303.

III. Other Streamlining and Clarifying Amendments to ICDBG Regulations

In addition to the SuperNOFA-related amendments, HUD has taken the opportunity provided by this proposed rule to make several streamlining and clarifying amendments to 24 CFR part 1003. These proposed amendments are non-substantive, but remove obsolete regulatory language and clarify existing program requirements. These changes are as follows:

A. Clarification Regarding Approval of Individual Grant Amounts (§ 1003.100(b)(2))

Section 1003.100(b)(2) identifies the factors that an Area ONAP may take into account in approving a grant amount less than the requested amount. This proposed rule would revise § 1003.100(b)(2) to clarify that the Area ONAP may consider the reasonableness of the project costs in making this determination.

B. Rating of Applications by Area ONAPs (§ 1003.301(c))

The wording of existing § 1003.301(c) would be amended to remove the requirement that applications be rated by each Area ONAP. Although fund allocation and competition for these funds would be made for and limited to each Area ONAP jurisdiction, HUD wishes the flexibility to consider such options as a national rating panel to help expedite the funding approval process.

IV. Justification for 30-Day Comment Period

In general, it is HUD's policy that notices of proposed rulemaking are to afford the public not less than 60 days for submission of comments, in accordance with its regulations on rulemaking in 24 CFR part 10. However, HUD has determined that there is good cause to reduce the public comment period for this proposed rule to 30 days. As discussed in more detail earlier in this preamble, the proposed regulatory amendments are necessary to permit the incorporation of the ICDBG grant application and selection procedures into HUD's SuperNOFA process. Inclusion in the SuperNOFA will greatly benefit ICDBG program applicants. The SuperNOFA process simplifies and brings consistency to the application procedures for the majority of HUD's competitive funding programs. The SuperNOFA's promotion of coordination and comprehensive planning also provides greater flexibility to potential grantees in meeting local housing and community development needs, and allows for the delivery of a wider more integrated array of services.

HUD wishes to ensure that the proposed regulatory amendments are effective in time to ensure inclusion of the ICDBG program in the Fiscal Year 2001 SuperNOFA. Provision of the customary 60-day public comment period has the potential to delay the rulemaking process and might jeopardize the incorporation of the ICDBG program in the SuperNOFA process. The reduced 30-day comment period will help to ensure that ICDBG program participants are not deprived of the benefits conveyed by participation in the SuperNOFA.

HUD also notes that it provided Indian tribes and Alaska Native Villages the opportunity to comment on the substance of the proposed regulatory changes during the development of this proposed rule. HUD received 7 comments on the proposed revisions, all in support of the regulatory changes and the incorporation of the ICDBG program requirements in the SuperNOFA process. Accordingly, the reduced 30-day comment period will not unduly restrict the ability of ICDBG program participants to express their views on this proposed rule, since they have already been afforded an opportunity to comment on the regulatory changes. Further, the comments received by HUD indicate that the proposed regulatory changes are not controversial, and are supported by most Indian Tribes and Alaska Native Villages.

For the above reasons, HUD has determined that the 30-day comment period for this proposed rule should provide sufficient notice and opportunity for interested entities to comment. However, HUD recognizes the importance of public comment in the development of its regulations, and welcomes public comment on the proposed rule. All public comments will be considered in the development of the final rule.

V. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(2) of the Department's regulations, the amendments made by this proposed rule would not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. To the extent that the proposed amendments have an impact on small Indian Tribes and Alaskan Native Villages, it will be to reduce burden and expedite the ICDBG funding process. As described more fully in the preamble, the amendments made by this proposed rule will permit the incorporation of the ICDBG program application and selection procedures into HUD's highly successful SuperNOFA process. The inclusion of the ICDBG program in the SuperNOFA will simplify the ICDBG application process, conform the ICDBG application and selection procedures with those of other HUD competitive grant programs, and accelerate the availability of funding. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number for the Indian Community Development Block Grant program is 14.862.

List of Subjects in 24 CFR Part 1003

Alaska, Community development block grants, Grant programs—housing and community development, Indians, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 1003 to read as follows:

PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

1. The authority citation for 24 CFR part 1003 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301 *et seq.*

2. Revise 1003.100(b)(2) to read as follows:

§ 1003.100 General.

* * * * *

(b) * * *

(2) *Individual grant amounts.* An Area ONAP may approve a grant amount less than the amount requested. In doing so, the Area ONAP may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives, the reasonableness of the project costs, and the administrative capacity of the applicant to complete the activities in a timely manner.

3. Revise § 1003.301 to read as follows:

§ 1003.301 Selection process.

(a) *Threshold requirement.* An applicant that has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the competition.

(b) *Application rating.* NOFAs will define and establish weights for the selection criteria, will specify the maximum points available, and will describe how point awards will be made.

3. Revise § 1003.303 to read as follows:

§ 1003.303 Project rating.

Each project included in an application that meets the threshold requirements shall be competitively rated within each Area ONAP's jurisdiction under the five following rating factors. Additional details regarding the rating factors will be provided in the periodic NOFAs.

(a) *Capacity.* This factor will address the applicant's organizational resources necessary to successfully implement the proposed activities in a timely manner.

(b) *Need/Extent of the problem.* This factor will address the extent to which there is a need for the proposed project to address a documented problem among the intended beneficiaries.

(c) *Soundness of Approach.* This factor will address the quality and cost effectiveness of the proposed project, the commitment to sustain the proposed activities, and the degree to which the proposed project provides other benefits to community members.

(d) *Leveraging of resources.* This factor will address the level of tribal resources and resources from other entities that are used in conjunction with ICDBG funds to support the proposed project. HUD will evaluate the level of non-ICDBG resources based on the percentage of non-ICDBG resources provided relative to project costs.

(e) *Comprehensiveness and coordination.* This factor will address the extent to which the applicant's proposed activities are consistent with the strategic plans or policy goals of the community and further on-going priorities and activities of the community.

Dated: October 10, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–28309 Filed 11–3–00; 8:45 am]

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Federal Register

Monday,
November 6, 2000

Part III

The President

Memorandum of October 31, 2000—Report to the Congress Regarding Conditions in Burma and U.S. Policy Toward Burma

Federal Register
Vol. 65, No. 215
Monday, November 6, 2000

Presidential Documents

Title 3—

The President

Memorandum of October 31, 2000

Report to the Congress Regarding Conditions in Burma and U.S. Policy Toward Burma

Memorandum for the Secretary of State

Pursuant to the requirements set forth under the heading "Policy Toward Burma" in section 570(d) of the Fiscal Year 1997 Foreign Operations Appropriations Act, as contained in the Omnibus Consolidated Appropriations Act (Public Law 104–208), a report is required every 6 months following enactment concerning:

1) progress toward democratization in Burma;

2) progress on improving the quality of life of the Burmese people, including progress on market reforms, living standards, labor standards, use of forced labor in the tourism industry, and environmental quality; and

3) progress made in developing a comprehensive, multilateral strategy to bring democracy to and improve human rights practices and the quality of life in Burma, including the development of a dialogue between the State Peace and Development Council (SPDC) and democratic opposition groups in Burma.

You are hereby authorized and directed to transmit the report fulfilling these requirements for the period March 27, 2000, through September 28, 2000, to the appropriate committees of the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, October 31, 2000.

[FR Doc. 00–28603
Filed 11–03–00; 8:51 am]
Billing code 4710–10–M

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  - McDonnell Douglas; comments due by 11-13-00; published 9-27-00
  - McDonnell Douglass; comments due by 11-13-00; published 9-27-00
  - Rolls-Royce plc; comments due by 11-13-00; published 9-14-00
- Airworthiness standards:
  - Special conditions—
    - British Aerospace Jetstream 4101 Series airplanes; comments due by 11-13-00; published 10-11-00
- Class D airspace; comments due by 11-13-00; published 9-29-00

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Federal Highway Administration

- Engineering and traffic operations:
  - Truck size weight—
    - Truck length and width exclusive devices; comments due by 11-16-00; published 8-18-00

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

- Motor vehicle safety standards:
  - Advanced glazing materials; comments due by 11-16-00; published 7-19-00
  - School bus safety; small business impacts; comments due by 11-13-00; published 9-27-00

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Research and Special Programs Administration

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Surface Transportation Board

- Practice and procedure:

  - Combinations and ownership—
    - Major rail consolidation procedures; comments due by 11-17-00; published 10-3-00

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Customs Service

- Articles conditionally free, subject to reduced rates, etc.:
  - Wool products; limited refund of duties
    - Correction; comments due by 11-16-00; published 11-6-00
- Tariff-rate quotas:
  - Wool products; limited refund of duties; comments due by 11-16-00; published 10-26-00

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Fiscal Service

- Treasury certificates of indebtedness, notes, and bonds; State and local government series:
  - Securities; electronic submission of subscriptions, account information, and redemption; comments due by 11-13-00; published 9-13-00

TREASURY DEPARTMENT

Internal Revenue Service

- Income taxes:
  - Partnerships; treatment of controlled foreign corporation's distributive share of partnership income; guidance under subpart F; comments due by 11-14-00; published 9-20-00
  - Tax shelter rules; modification; cross-reference; comments due by 11-14-00; published 8-16-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 209/P.L. 106–404
Technology Transfer Commercialization Act of 2000 (Nov. 1, 2000; 114 Stat. 1742)

H.R. 2607/P.L. 106–405
Commercial Space Transportation Competitiveness Act of 2000 (Nov. 1, 2000; 114 Stat. 1751)

H.R. 2961/P.L. 106–406
International Patient Act of 2000 (Nov. 1, 2000; 114 Stat. 1755)

H.R. 3069/P.L. 106–407
Southeast Federal Center Public-Private Development Act of 2000 (Nov. 1, 2000; 114 Stat. 1758)

H.R. 3671/P.L. 106–408
Fish and Wildlife Programs Improvement and National Wildlife Refuge System Centennial Act of 2000 (Nov. 1, 2000; 114 Stat. 1762)

H.R. 4068/P.L. 106–409
Religious Workers Act of 2000 (Nov. 1, 2000; 114 Stat. 1787)

H.R. 4110/P.L. 106–410
To amend title 44, United States Code, to authorize appropriations for the National Historical Publications and Records Commission for fiscal years 2002 through 2005. (Nov. 1, 2000; 114 Stat. 1788)

H.R. 4320/P.L. 106–411
Great Ape Conservation Act of 2000 (Nov. 1, 2000; 114 Stat. 1789)

H.R. 4635/P.L. 106–412
To authorize the exchange of land between the Secretary of the Interior and the Director of Central Intelligence at the George Washington Memorial Parkway in McLean, Virginia, and for other purposes. (Nov. 1, 2000; 114 Stat. 1795)

H.R. 4850/P.L. 106–413
Veterans' Compensation Cost-of-Living Adjustment Act of 2000 (Nov. 1, 2000; 114 Stat. 1798)

H.R. 5164/P.L. 106–414
Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Nov. 1, 2000; 114 Stat. 1800)

H.R. 5234/P.L. 106–415
To amend the Hmong Veterans' Naturalization Act of 2000 to extend the applicability of that Act to certain former spouses of deceased Hmong veterans. (Nov. 1, 2000; 114 Stat. 1810)

H.J. Res. 122/P.L. 106–416
Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Nov. 1, 2000; 114 Stat. 1811)

S. 406/P.L. 106–417
Alaska Native and American Indian Direct Reimbursement Act of 2000 (Nov. 1, 2000; 114 Stat. 1812)

S. 1296/P.L. 106–418
Lower Delaware Wild and Scenic Rivers Act (Nov. 1, 2000; 114 Stat. 1817)

S. 1402/P.L. 106–419
Veterans Benefits and Health Care Improvement Act of 2000 (Nov. 1, 2000; 114 Stat. 1822)

S. 1455/P.L. 106–420
College Scholarship Fraud Prevention Act of 2000 (Nov. 1, 2000; 114 Stat. 1867)

S. 1705/P.L. 106–421
Castle Rock Ranch Acquisition Act of 2000 (Nov. 1, 2000; 114 Stat. 1870)

S. 1707/P.L. 106–422
To amend the Inspector General Act of 1978 (5 U.S.C. App.) to provide that certain designated Federal entities shall be establishments under such Act, and for other purposes. (Nov. 1, 2000; 114 Stat. 1872)

S. 2102/P.L. 106–423
Timbisha Shoshone Homeland Act (Nov. 1, 2000; 114 Stat. 1875)

S. 2412/P.L. 106–424
National Transportation Safety Board Amendments Act of 2000 (Nov. 1, 2000; 114 Stat. 1883)

S. 2917/P.L. 106–425
Santo Domingo Pueblo Claims Settlement Act of 2000 (Nov. 1, 2000; 114 Stat. 1890)

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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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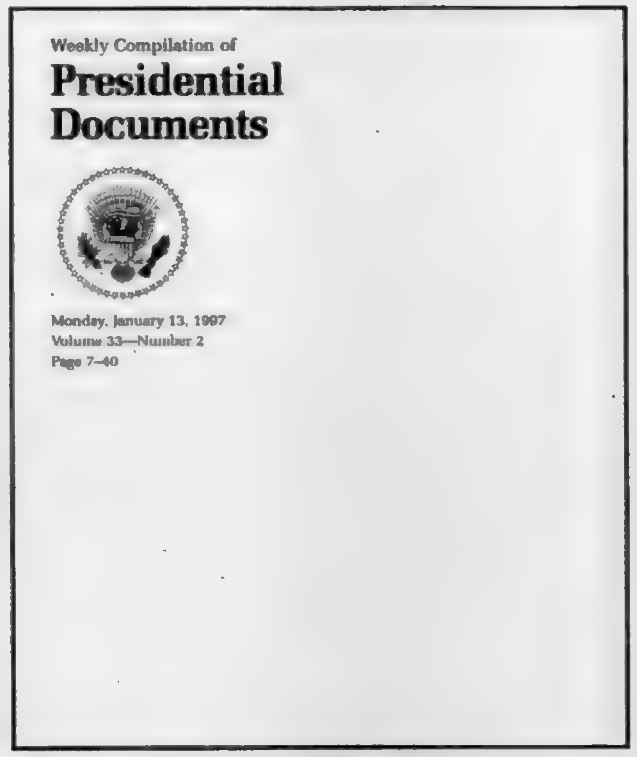

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV00–905–2 FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirements for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule relaxes the minimum size requirements for red seedless grapefruit grown in Florida and for red seedless grapefruit imported into the United States from size 48 ($3\frac{9}{16}$ inches diameter) to size 56 ($3\frac{5}{16}$ inches diameter). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, recommended this change for Florida red seedless grapefruit. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This change allows handlers and importers to ship size 56 red seedless grapefruit, and is expected to maximize grapefruit shipments to fresh market channels.

EFFECTIVE DATE: November 13, 2000.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule also is issued under section 8e of the Act, which provides that whenever certain specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This contributes to stable marketing conditions in the interest of growers, handlers, and consumers, and helps increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1. The current minimum size requirement for domestic shipments is size 56 (at least $3\frac{5}{16}$ inches in diameter) through November 12, 2000, and size 48 ($3\frac{9}{16}$ inches in diameter), thereafter. The current minimum size for export shipments is size 56 throughout the year.

This final rule relaxes the minimum size requirement for domestic shipments from size 48 ($3\frac{9}{16}$ inches in diameter) to size 56 ($3\frac{5}{16}$ inches in diameter). Absent this change, the minimum size reverts to size 48 ($3\frac{9}{16}$ inches in diameter) on November 13, 2000. This change allows handlers and importers to continue to ship size 56 red seedless grapefruit, and it is expected to maximize grapefruit shipments to fresh market channels. The Committee met on May 26, 2000, and unanimously recommended this action.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR part 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). This rule adjusts Table I to establish a minimum size of 56 ($3\frac{5}{16}$ inches diameter). Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR part 944.106). This rule also adjusts § 944.106 to establish a minimum size of 56. Export requirements for Florida red seedless grapefruit are not changed by this rule.

In the past, the Committee recommended relaxing the minimum size for red seedless grapefruit to size 56 in one year intervals. Rather than continuing to make this recommendation each year, the Committee recommended relaxing the minimum size for red seedless grapefruit from size 48 ($3\frac{9}{16}$ inches in diameter) to size 56 ($3\frac{5}{16}$ inches in diameter) on a continuous basis. In making this recommendation, the Committee recognized that the reasoning behind past recommendations to relax the minimum size to size 56 would most probably continue to exist at least into the foreseeable future.

As in the past, the Committee considered supply and demand in making its recommendation. Since the 1994–95 season, the production of red seedless grapefruit has been somewhere between 28.1 and 31.4 million $1\frac{3}{5}$ bushel boxes each year. Future production is expected to be near or below this range.

The Committee expects fresh market demand to continue to be sufficient to permit the shipment of size 56 red seedless grapefruit. The Committee believes that domestic markets have been developed for size 56 fruit and that the industry should continue to supply those markets. This size relaxation enables Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule is expected to have a beneficial impact on producers and handlers because it permits Florida grapefruit handlers to make available the sizes of fruit needed to meet consumer needs. Matching the sizes with consumer needs is consistent with current and anticipated demand, and maximizes shipments to fresh market channels.

For the grapefruit industry, it is important to maximize shipments to the fresh market. This is especially true for red seedless grapefruit because the returns for processing are negligible. On-tree returns for processed red seedless grapefruit averaged \$.17 per $1\frac{3}{5}$ bushel box from 1994 through 1999. In many cases, this is below the cost of production. Comparatively, the average on-tree return is \$3.32 for fresh shipments during the same period.

For the years 1994 through 1999, fresh domestic shipments of red seedless grapefruit averaged 16.7 million $\frac{4}{5}$ bushel cartons per season. Of these shipments, approximately 2.9 percent were size 56. The average f.o.b. price for size 56 red seedless grapefruit was \$5.22 during the 1998–99 season. Combining this price with the average volume of size 56 calculates an approximate market value of \$2.5 million for size 56 red seedless grapefruit.

During the first 11 weeks of the season, beginning with the third week in September, the Committee has been using a volume regulation to limit the volume of small red seedless grapefruit that can enter the fresh market. The Committee has used this regulation for the past three seasons, and has recommended using it again for the current season. The Committee believes the percentage size regulation has been helpful in reducing the negative effects of having size 56 red seedless grapefruit available on the domestic market, and that no other restrictions on size 56 are needed.

Therefore, based on available information, the Committee unanimously recommended that the minimum size for shipping red seedless grapefruit to the domestic market should be size 56. This minimum size change pertains to the domestic market, and does not change the minimum size for export shipments, which will remain at size 56. The largest market for size 56 red seedless grapefruit is for export. Additionally, importers will be favorably affected by this change since the relaxation of the minimum size regulation also applies to imported grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule will relax the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). This rule relaxes the minimum size requirement for imported red seedless grapefruit to $3\frac{5}{16}$ inches in diameter (size 56), to reflect the relaxation being made under the order for red seedless grapefruit grown in Florida.

Handlers in Florida shipped approximately 33,650,000 $\frac{4}{5}$ bushel cartons of grapefruit to the fresh market during the 1999–2000 season. Of these cartons, about 18,463,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 16,172,000 cartons. Imports totaled about 456,470 cartons in 1999. Imports account for less than five percent of domestic grapefruit shipments.

During the period January 1, 1999, through December 31, 1999, imports of grapefruit totaled 19,400,000 pounds (approximately 456,470 cartons). Recent yearly data indicate that imports from May through November are typically negligible. Future imports should not vary significantly from the 19,400,000 pounds figure. The Bahamas were the principal source of imported grapefruit, accounting for 93 percent of the total. Israel, Mexico and Turkey supplied remaining imports. Most imported grapefruit enters the United States from November through May.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit handlers who are subject to regulation under the order, and approximately 11,000 growers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms, which include grapefruit handlers and importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000.

Based on the industry and Committee data for the 1999–2000 season, the average annual f.o.b. price for fresh Florida red seedless grapefruit was around \$7.52 per $\frac{4}{5}$ bushel carton, and total fresh shipments for the 1999–2000 season are estimated at 25.6 million cartons of red seedless grapefruit. Approximately 25 percent of all

handlers handled 70 percent of Florida grapefruit shipments. In addition, many of those handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 69 percent of grapefruit handlers could be considered small businesses under SBA's definition. The majority of handlers, importers, and growers may be classified as small entities.

During the period January 1, 1999, through December 31, 1999, imports of grapefruit totaled 19,400,000 pounds (approximately 456,470 cartons). Recent yearly data indicate that imports from May through November are typically negligible. Future imports should not vary significantly from the 19,400,000 pounds. The Bahamas were the principal source of imported grapefruit, accounting for 93 percent of the total. Israel, Mexico, and Turkey supplied remaining imports. Most imported grapefruit enters the United States from November through May.

This rule relaxes the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 ($3\frac{9}{16}$ inches in diameter) to size 56 ($3\frac{5}{16}$ inches in diameter). Absent this rule, the minimum size requirement for domestic shipments will revert to size 48 on November 13, 2000. The Committee believes that domestic markets have been developed for size 56 red seedless grapefruit and that the industry should continue to supply those markets. This change allows handlers and importers to continue to ship size 56 red seedless grapefruit, and it is expected to maximize shipments to fresh market channels. The Committee unanimously recommended this action. Section 905.306 specifies the minimum grade and size requirements for different varieties of fresh Florida grapefruit. Authority for this action is provided in § 905.52 of the order.

This action provides for the continued shipment of size 56 red seedless grapefruit. This change is not expected to increase costs associated with the order requirements, or the grapefruit import regulation. This rule is expected to have a positive impact on affected entities. This rule benefits producers and handlers by making available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated demand, and provides for the maximization of shipments to fresh market channels. The opportunities and benefits of this rule are expected to be equally available to all grapefruit handlers, growers, and importers regardless of their size of operation.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Because this rule changes the minimum size for domestic red seedless grapefruit shipments, a similar change is also applicable to imported grapefruit. Therefore, this rule also relaxes the minimum size for imported red seedless grapefruit to size 56. This regulation benefits importers to the same extent that it benefits Florida grapefruit producers and handlers because it continues to allow shipments of size 56 red seedless grapefruit into U.S. markets.

The Committee considered one alternative to this action. The Committee discussed relaxing the minimum size to size 56 for one year, as in the past, rather than on a continuous basis. Members said that, rather than discussing the issue each year and recommending a change, they preferred to make the change effective on a continuous basis. They also stated that should they ever want to increase the minimum size, they could meet and recommend the change to the Secretary. Therefore, the option of relaxing the minimum size for one year was rejected.

This final rule relaxes size requirements under the marketing order for Florida citrus Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large red seedless grapefruit handlers and importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Further, no public comments were received concerning the proposal which addressed the initial regulatory flexibility analysis.

In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 26, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on October 2, 2000 (65 FR 58672). Copies of the rule were mailed or sent via facsimile to all Committee members and red seedless grapefruit handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 15-day comment period ending October 17, 2000, was provided to allow interested persons to respond to the proposal. No comments were received during the comment period in response to the proposal. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) so handlers and importers can continue to ship size 56 red seedless grapefruit after November 12, 2000. Further, handlers are aware of this relaxation, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR part 905 and 944 are amended as follows:

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

2. In § 905.306, the table in paragraph (a) is amended by removing both lines for the entry for "Seedless, red" and adding in their place the following:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
* *	* *	* *	*
Grapefruit			
* *	* *	* *	*
Seedless, red	On and after 11/13/00	U.S. No. 1	3$^{5}/_{16}$
* *	* *	* *	*

PART 944—FRUITS; IMPORT REGULATIONS

3. In § 944.106, the table in paragraph (a) is amended by removing both lines for the entry for "Seedless, red" and adding in their place the following:

§ 944.106 Grapefruit import regulation.

(a) * * *

Grapefruit classification (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
* *	* *	* *	*
Seedless, red	On and after 11/13/00	U.S. No. 1	3$^{5}/_{16}$
* *	* *	* *	*

Dated: October 31, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–28333 Filed 11–6–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–51–AD; Amendment 39–11960; AD 2000–20–51]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2000–20–51, which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company (RHC) Model R22 helicopters by individual letters. This AD requires checking the yoke half assembly (yoke) for any crack and replacing a cracked yoke assembly before further flight. This AD also requires replacing certain yokes with airworthy yokes before further flight after January 1, 2001. This AD is prompted by the discovery of cracks in the yoke. The actions specified by this AD are intended to detect crack formation and growth, which could result in separation of the yokes from the main rotor drive shaft and subsequent loss of control of the helicopter.

DATES: Effective November 22, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–20–51, issued on October 4, 2000, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 8, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–51–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

FOR FURTHER INFORMATION CONTACT: Fredrick A. Guerin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On October 4, 2000, the FAA issued Emergency AD 2000–20–51, for RHC Model R22 helicopters, which requires checking the yoke for any crack and replacing a cracked yoke assembly before further flight. The Emergency AD also requires replacing certain yokes with airworthy yokes before further flight after January 1, 2001. That action was prompted by the discovery of cracks in the yokes. The cracked yokes were still in service and functioned for an unknown duration. Several lots of the yokes were machined from 2024-T3 aluminum billet, which has poor stress corrosion properties in the transverse grain directions. Clamping the yokes in place causes a preload tension in areas that have exposed transverse grain. When these areas are exposed to a corrosive environment, such as salty air, stress corrosion causes crack formation and growth. This condition, if not corrected, could result in separation of the yokes from the main rotor drive shaft and subsequent loss of control of the helicopter.

The FAA has reviewed RHC R22 Service Bulletin SB–88A, dated September 13, 2000, which describes procedures for determining the lot number for yokes, P/N A203–5, and replacing any affected yoke with yoke, P/N A203–7.

Since the unsafe condition described is likely to exist or develop on other RHC Model R22 helicopters of the same type design, the FAA issued Emergency AD 2000–20–51 to detect crack formation and growth, which could result in separation of the yokes from the main rotor drive shaft and subsequent loss of control of the helicopter. The AD requires the following:

- Before further flight and thereafter before the first flight of each day, check the identified area of each yoke for a crack. The visual check required by the AD may be performed by an owner/operator (pilot) but must be entered into the aircraft records showing compliance with paragraph (a) of the AD in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). The AD allows a pilot to perform this check because it involves only a visual check for a crack in the yoke and can be performed equally well by a pilot or a mechanic.
- If a yoke has a crack, before further flight, replace the yokes with airworthy yokes, P/N A203–7. Both yokes must be replaced with yoke, P/N A203–7.
- Before further flight after January 1, 2001, determine the lot identifier for each yoke, P/N A203–5, and replace any affected yokes, P/N A203–5, with yokes, P/N A203–7.

Determining that the installed yokes are not in the lots affected by this AD or replacing both yokes, P/N A203–5, with yokes, P/N A203–7, is terminating action for the requirements of this AD. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, checking the yoke for any crack and replacing any cracked yoke are required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 4, 2000 to all known U.S. owners and operators of RHC Model R22 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. However, one minor editorial correction is made in this AD. The note concerning existing alternative methods of compliance was incorrectly numbered in the emergency AD. This AD corrects that Note number as NOTE 3. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 1305 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.3 work hour per helicopter to check both yokes and 0.5 work hour to replace both yokes. The average labor rate is $60 per work hour. Required parts will cost approximately $150 per helicopter (two yokes). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $258,390, assuming each helicopter is inspected once and both yokes are replaced on all helicopters.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–51–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2000–20–51 Robinson Helicopter Company: Amendment 39–11960. Docket No. 2000–SW–51–AD.

Applicability: Model R22 helicopters, with a yoke half assembly (yoke), Part number(P/

N) A203–5, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a yoke, separation of a yoke from the main rotor drive shaft, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight and thereafter before the first flight of each day, check each yoke for a crack. See Figure A.

(b) If a yoke is cracked, before further flight, replace the yokes with airworthy yokes, P/N A203–7. Both yokes must be replaced with yokes, P/N A203–7.

(c) Before further flight after January 1, 2001,

(1) Determine the Lot identifier of each yoke.

(2) If the Lot identifier is from 24 through 43, if it is a letter code, or if it is illegible, replace yokes, P/N A203–5, with airworthy yokes, P/N A203–7. Yoke, P/N A203–7, cannot be installed with yoke, P/N A203–5.

Note 2: Robinson Helicopter Company R22 Service Bulletin SB–88A, dated September 13, 2000, pertains to the subject of this AD.

(d) The visual check required by paragraph (a) may be performed by an owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with paragraph (a) in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

BILLING CODE 4910-13-P

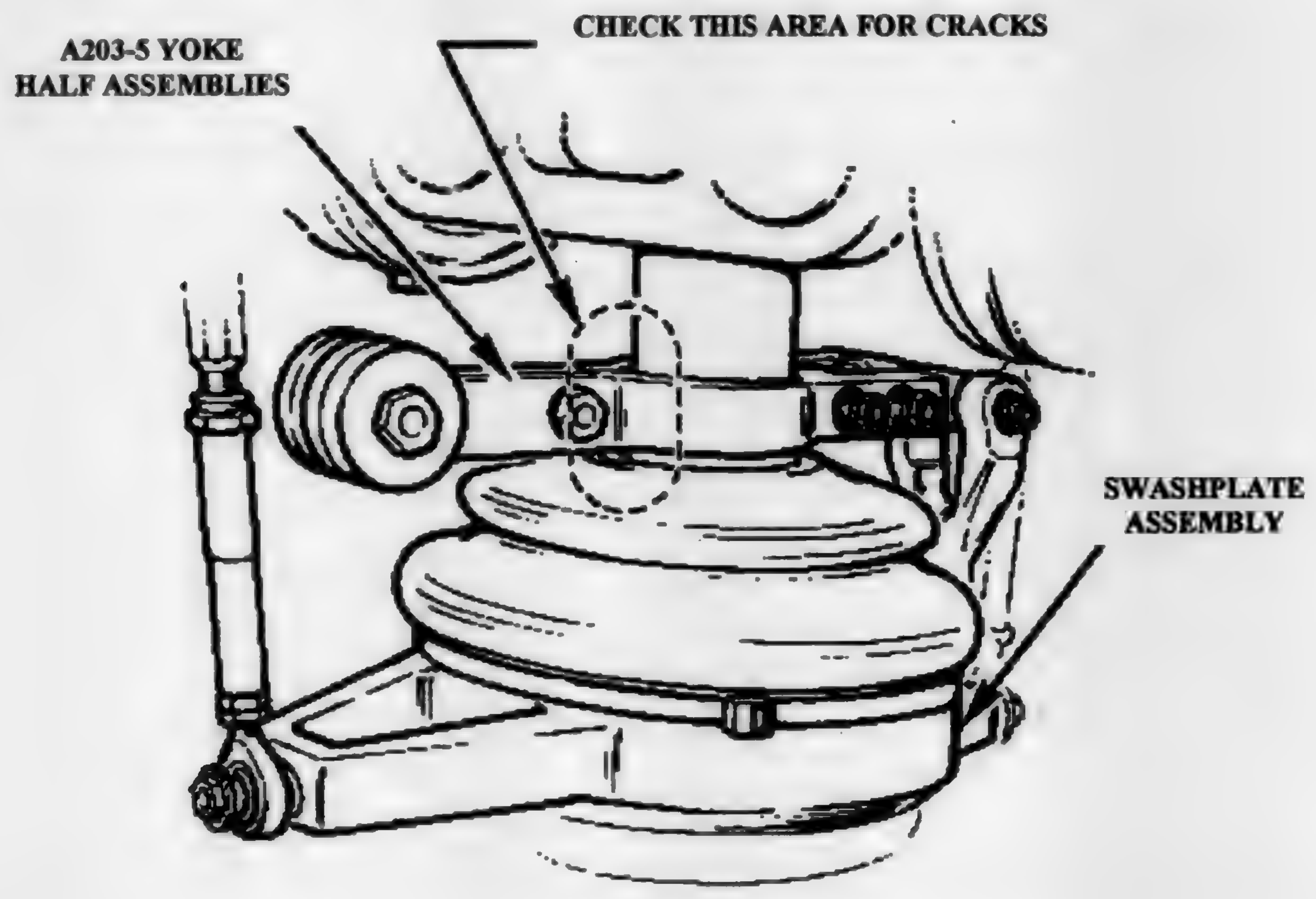

Figure A

BILLING CODE 4910-13-C

(e) Determining that the installed yokes, P/N A203–5, are not in the lots affected by this AD, or replacing yokes, P/N A203–5, with yokes, P/N A203–7, is terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(g) Special flight permits will not be issued.

(h) This amendment becomes effective on November 22, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–20–51, issued October 4, 2000, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on October 27, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–28236 Filed 11–6–00; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–136–AD; Amendment 39–11962; AD 2000–22–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200B, –200C, –200F, and –300 Series Airplanes Delivered in or Modified Into the Stretched Upper Deck Configuration

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, –200B, –200C, –200F, and –300 series airplanes delivered in or modified into the stretched upper deck configuration. This action requires a one-time inspection to detect chafing between certain engine thrust control cables and certain cable penetration holes, and follow-on actions, if necessary. This action is necessary to prevent chafing and failure of engine thrust control cables, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective November 22, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of April 24, 2000 (65 FR 14838, March 20, 2000).

Comments for inclusion in the Rules Docket must be received on or before January 8, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–136–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–136–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dionne Krebs, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2250; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On March 10, 2000, the FAA issued AD 2000–05–30, amendment 39–11640 (65 FR 14838, March 20, 2000), applicable to certain Boeing Model 747 series airplanes, to require repetitive inspections to detect discrepancies of the cables, fittings, and pulleys of the engine thrust control cable installation; replacement, if necessary; and, for certain airplanes, certain preventative actions on the engine thrust control cable installation. That action was prompted by reports of failure of engine thrust control cables. The requirements of that AD are intended to prevent such failures, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane.

Paragraph (g) of AD 2000–05–30 requires, for certain Model 747–100B series airplanes with a stretched upper deck (SUD), a detailed visual inspection and measurement of the clearance between certain engine thrust control cables and the cable penetration holes, and follow-on corrective actions, if necessary. Since the issuance of AD 2000–05–30, the FAA has determined that certain other Model 747 series airplanes delivered with or modified to have a SUD are subject to the same unsafe condition as the Model 747–100B SUD airplanes identified in paragraph (g) of the existing AD. Therefore, the FAA finds that further rulemaking is necessary to prevent chafing and failure of engine thrust control cables, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane, on all affected airplanes.

Explanation of Relevant Service Information

The FAA has previously reviewed and approved Boeing Service Bulletin 747–53–2327, Revision 2, dated September 24, 1998. That service bulletin describes procedures for repetitive inspections of certain upper deck floor beams to detect cracking, and repair of any cracks found or reinforcement of those floor beams. The service bulletin also describes procedures for a detailed inspection and measurement of the clearance between the engine thrust control cables and the cable penetration holes in that area, and modification of the holes or replacement of the plate, if necessary.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent chafing and failure of engine thrust control cables, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between This AD and Relevant Service Bulletin

Operators should note that, although Boeing Service Bulletin 747–53–2327 describes procedures for inspection of certain upper deck floor beams, and repair of any cracks found or reinforcement of those floor beams, as applicable, this AD requires only the detailed visual inspection and measurement of the clearance between the engine thrust control cables and the cable penetration holes in that area. The inspection, repair, and reinforcement of certain upper deck floor beams are mandated by AD 92–24–07, amendment 39–8412 (57 FR 53436, November 10, 1992). The detailed visual inspection and measurement of the clearance between the engine thrust control cables and the cable penetration holes was incorporated into the service bulletin after AD 92–24–07 was issued. Therefore, the FAA is requiring that part of the service bulletin in this AD. In addition, for airplanes on which insufficient clearance is measured, this AD adds an additional inspection of the cable for wear in that area using procedures referenced in Appendix 1 (including Figure 1) of this AD and would require replacement of the cable, if necessary.

Operators also should note that the effectivity listing of Boeing Service Bulletin 747–53–2327, Revision 2, includes Boeing Model 747–400 series airplanes. However, the actions required by this AD are not applicable to Model 747–400 series airplanes, so those airplanes are not included in the applicability of this AD.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–136–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–22–15 Boeing: Amendment 39–11962. Docket 2000–NM–136–AD.

Applicability: Model 747–100, –200B, –200C, –200F, and –300 series airplanes; certificated in any category; equipped with Pratt & Whitney Model JT9D–3 or –7 series engines, General Electric Model CF6–45 or –50 series engines, or Rolls-Royce Model RB211–524B, C, or D series engines; delivered in or modified into the stretched upper deck (SUD) configuration; and having angle assemblies with Boeing part numbers 015U0454–63 and 015U0454–64 installed at body station 970.

Note 1: Model 747–100 SUD series airplanes on which paragraph (g) of AD 2000–05–30 has been accomplished are not required to comply with this AD.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and failure of engine thrust control cables, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane, accomplish the following:

Inspection/Modification/Replacement

(a) Within 18 months after the effective date of this AD, perform a detailed visual inspection and measure the clearance between the engine thrust control cables and the cable penetration holes, in accordance with the Cable Chafing Inspection of the Accomplishment Instructions of Boeing Service Bulletin 747–53–2327, Revision 2, dated September 24, 1998. If insufficient clearance exists, as specified in the service bulletin, prior to further flight, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the cable penetration holes or replace the plate, as applicable, in accordance with Figure 7 of the service bulletin.

(2) Perform a detailed visual inspection of the engine thrust control cables in the area of the plate to detect wear and broken wires in accordance with Appendix 1 (including Figure 1) of this AD. If any wear is within the criteria contained in Appendix 1 (including Figure 1) of this AD, no further action is required by this paragraph. If any wear outside the criteria contained in Appendix 1 (including Figure 1) of this AD is found, prior to further flight, replace the cable with a new cable, in accordance with the procedures described in the Boeing 747 Maintenance Manual.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.".

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Except as provided by paragraph (a)(2) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–53–2327, Revision 2, dated September 24, 1998. This incorporation by reference was approved previously by the Director of the **Federal Register** as of April 24, 2000 (65 FR 14838, March 20, 2000). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on November 22, 2000.

APPENDIX 1—THRUST CONTROL CABLE INSPECTION PROCEDURE

1. Detailed Visual Inspection To Detect Wear

A. Perform a detailed visual inspection of the engine thrust control cables in the area of the plate to detect wear.

B. Replace the cable assembly if any of the following criteria are met:

(1) One cable strand had worn wires where one wire cross section is decreased by more than 40 percent (see Figure 1).

(2) A kink is found.

(3) Corrosion is found.

2. Inspection To Detect Broken Wires

A. To check for broken wires, rub a cloth along the length of the cable. The cloth catches on broken wires.

B. Replace the cable assembly if any of the following criteria are met.

(1) Replace the 7x7 cable assembly if there are two or more broken wires in 12 continuous inches of cable or there are three or more broken wires anywhere in the total cable assembly.

(2) Replace the 7x19 cable assembly if there are four or more broken wires in 12 continuous inches of cable or there are six or more broken wires anywhere in the total cable assembly.

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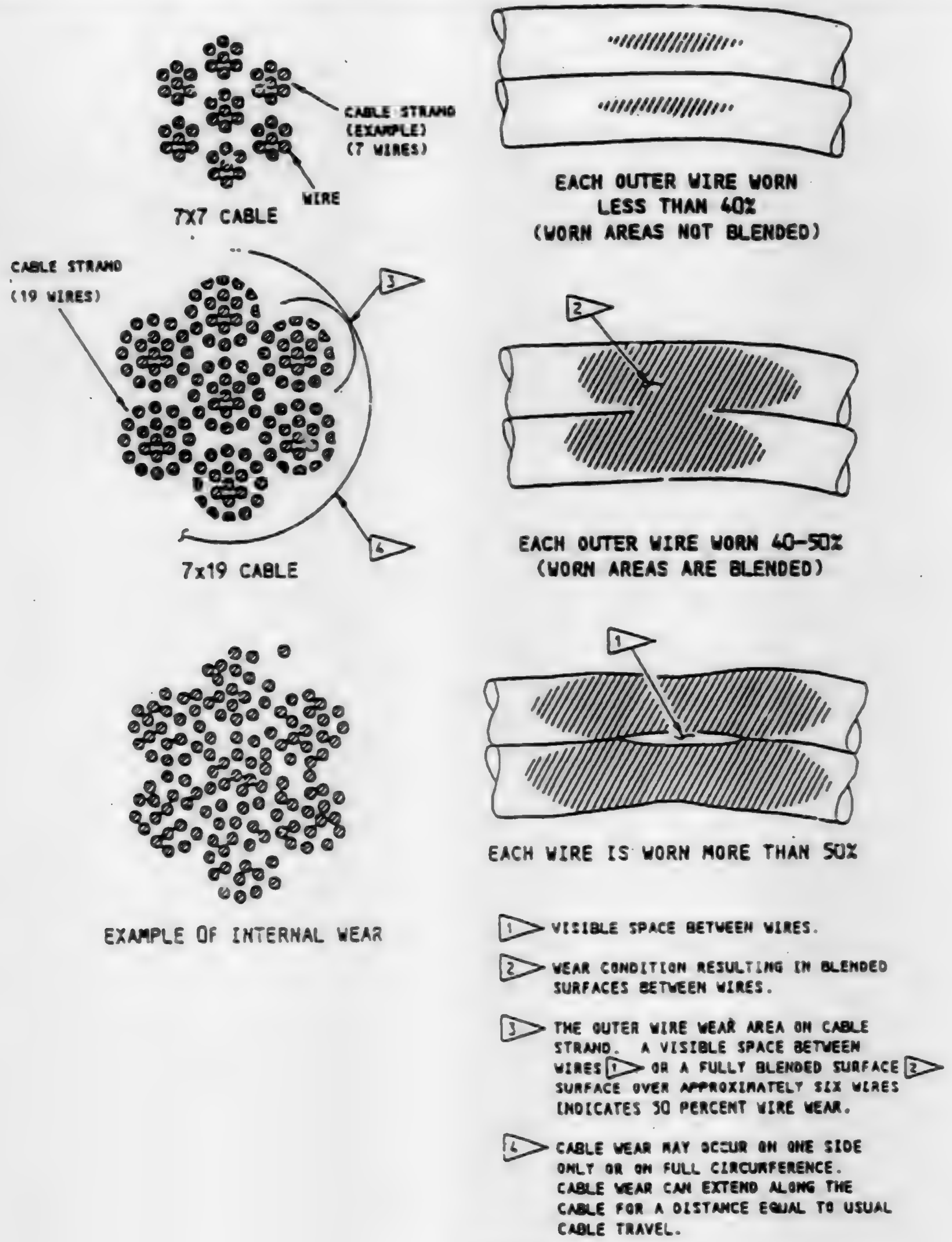

1 VISIBLE SPACE BETWEEN WIRES.

2 WEAR CONDITION RESULTING IN BLENDED SURFACES BETWEEN WIRES.

3 THE OUTER WIRE WEAR AREA ON CABLE STRAND. A VISIBLE SPACE BETWEEN WIRES 1 OR A FULLY BLENDED SURFACE 2 SURFACE OVER APPROXIMATELY SIX WIRES INDICATES 50 PERCENT WIRE WEAR.

4 CABLE WEAR MAY OCCUR ON ONE SIDE ONLY OR ON FULL CIRCUMFERENCE. CABLE WEAR CAN EXTEND ALONG THE CABLE FOR A DISTANCE EQUAL TO USUAL CABLE TRAVEL.

FIGURE 1

Issued in Renton, Washington, on October 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28233 Filed 11–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–01–AD; Amendment 39–11966; AD 2000–15–21 R1]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Inc.—Manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD) that applies to Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters, manufactured by Bell Helicopter Textron Inc. (BHTI) for the Armed Forces of the United States, and requires removing and replacing certain main rotor mast (mast) assemblies. This amendment corrects a part number that was published incorrectly in the existing AD. This amendment is prompted by the discovery of that error. The actions specified by this AD are intended to prevent fatigue failure of the mast and subsequent loss of control of the helicopter.

EFFECTIVE DATE: November 22, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: AD 2000–15–21, Amendment 39–11854, applicable to Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters, which were manufactured by BHTI for the Armed Forces of the United States, was published in the **Federal Register** on August 9, 2000 (65 FR 48605). That AD requires removing and replacing certain mast assemblies.

After that AD was issued, the FAA discovered that the mast assembly part numbers listed in the applicability section are 205–011–450–001 and –005; the correct mast assembly part numbers are 204–011–450–001 and –005.

The FAA has determined that this revision will neither increase the economic burden on any operator nor increase the scope of the AD, therefore, no additional comments were solicited and this AD is being issued with the same requirements previously imposed but with the correct part number.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11854 (65 FR 48605, August 9, 2000), and by adding a new airworthiness directive to read as follows:

2000–15–21 R1 Firefly Aviation Helicopter Services (Previously Erickson Air Crane Co.); Garlick Helicopters, Inc.; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Tamarack Helicopters, Inc. (Previously Ranger Helicopter Services, Inc.); Robinson Air Crane, Inc.; Williams Helicopter Corporation (Previously Scott Paper Co.) Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Arrow Falcon (Previously Utah State University); Western International Aviation, Inc.; and U.S. Helicopter, Inc.: Amendment 39–11966. Docket No. 2000–SW–01–AD. Revises AD 2000–15–21, Amendment 39–11854.

Applicability: Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters, manufactured by Bell Helicopter Textron Inc. (BHTI) for the Armed Forces of the United States, with a main rotor mast (mast) assembly, part number (P/N) 204–011–450–001 or –005, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 25 hours time-in-service, unless accomplished previously.

To prevent fatigue failure of the mast and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove any mast assembly, P/N 204–011–450–001 or –005, from service. Replace it with an airworthy mast assembly. Neither mast assembly, P/N 204–011–450–001 nor 204–011–450–005, is eligible for installation on any affected helicopter.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on November 22, 2000.

Issued in Fort Worth, Texas, on October 30, 2000.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–28437 Filed 11–7–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–204–AD; Amendment 39–11956; AD 2000–22–10]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes, that currently requires various inspections to detect discrepancies of the elevator servo tab and spring tab hinge fittings of the horizontal stabilizer, and follow-on corrective actions, if necessary. This amendment clarifies certain fiberscopic inspection and replacement procedures, and corrective actions; revises the applicability of the existing AD; and adds an inspection procedure for the servo tab center hinge fittings to detect the presence of washers for both attaching fasteners, and follow-on corrective actions, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. The actions specified in this AD are intended to prevent the linkage of the elevator servo tab or spring tab hinge fittings from separating from the horizontal stabilizer, which could result in loss of control of the airplane.

DATES: Effective November 22, 2000.

The incorporation by reference of Embraer Service Bulletin 145–55–0024, dated May 25, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of November 22, 2000.

Comments for inclusion in the Rules Docket must be received on or before December 7, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–204–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–204–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Viswa Padmanabhan, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6049; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On February 15, 2000, the FAA issued AD 2000–04–09, amendment 39–11591 (65 FR 9217, February 24, 1000), applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes, to require various inspections to detect discrepancies of the elevator servo tab and spring tab hinge fittings of the horizontal stabilizer, and follow-on corrective actions, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions required by that AD are intended to prevent the linkage of the elevator servo tab or spring tab hinge fittings from separating from the horizontal stabilizer, which could result in loss of control of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, has received new information regarding the corrective action necessary to address this unsafe condition. As a result, the DAC has issued the following Brazilian airworthiness directives:

- 1999–09–01R2, dated May 1, 2000, supersedes Brazilian airworthiness directive 1999–09–01R1, dated October 25, 1999. This new revision was issued to specify repetitive inspection intervals and final rework of certain components. Part III of this revision specifies that, for certain Model EMB–135 and EMB–145 series airplanes, certain modifications of the elevator mass balance assembly and control column nose-up spring modifications, in accordance with Embraer Service Bulletin (S.B.) 145–27–0034, must be completed before accomplishment of the rework specified in Part III of S.B. 145–55–0022, Change 01, dated January 25, 2000.
- 2000–05–01, dated May 25, 2000, corrects any possible misinterpretation of the replacement procedures included in Brazilian airworthiness directive 1999–09–01R2, and in alert S.B. 145–55–A022 and S.B. 145–55–0022.

Reports indicated that loose hinge fittings were found, which was attributed to the incorrect application of the attachment fasteners to the tab upper skin. It is considered that the loss of fitting rigidity could cause damage to the other fasteners in the tab spar. Reports also indicated that some of the fasteners (which attach the spring-tab actuating arm to the tab upper skin and the servo-tab actuating linkage hinge to the tab lower skin) were not replaced with fasteners having a washer, because the collar conformation of those fasteners was found to be correct. In addition, maintenance records revealed that such fasteners may not have been replaced on certain airplanes. As a result of these findings, the DAC issued the previously referenced Brazilian airworthiness directives to clarify that all attachment fasteners must be installed with a washer, and that the fasteners must be replaced independently of the installation condition (even if the collar conformation is found to be "correct").

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section

21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Relevant Service Information

Embraer has issued the following service information:

- Service Bulletin 145–55–0022, Change 02, dated May 4, 2000, adds a fiberscopic inspection in Part II of the Accomplishment Instructions to detect the presence of a washer; and installation of a washer, if necessary. Part III of this service bulletin revises certain rework procedures (including rework and installation of the elevator servo and spring tabs; and reidentification, static balancing, and installation of the elevator). This rework procedure also specifies that, for certain airplanes, the modification specified by Embraer S.B. 145–27–0034 must be accomplished before Part III of S.B. 145–55–0022, Change 02, is accomplished. Accomplishment of the actions specified in Part III of S.B. 145–55–0022, Change 02, eliminates the need for the repetitive inspections.
- Service Bulletin 145–55–0024, dated May 25, 2000, adds a fiberscopic inspection of the attachment of the servo tab center hinge fitting to the tab skin in Part II of the Accomplishment Instructions of this service bulletin. This inspection specifies detecting the presence of washers under the collar bases of both attaching fasteners, in the inner side of the tab skin; and corrective actions, if necessary. Procedures include additional action to clarify certain replacement procedures that were specified in alert S.B. 145–55–A022, Change 01, dated October 7, 1999, and Change 02, dated October 8, 1999. Such action specifies that any discrepant fastener must be replaced with a new fastener having a washer, and that the action if required to be accomplished independently of the installation condition. In addition, S.B. 145–55–0024 specifies that operators report any discrepancy found during inspections of elevator spring tab and servo tab hinge fittings that are specified in Part I of the Accomplishment Instructions of the service bulletin.
- Service Bulletin 145–27–0034, Change 01, dated August 5, 1998, revises procedures for replacing the elevator mass-balance weight assembly and nose-up spring. Procedures also revise static balancing and weight and balance, add new mass-balance weight and its attachment bolt, and delete the instruction for checking the backlash.

The DAC mandated compliance with the preceding service bulletins, and issued previously referenced Brazilian airworthiness directive 1999–09–01R2 in order to assure the continued airworthiness of these airplanes in Brazil.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 2000–04–09 to continue to require various inspections to detect discrepancies of the elevator servo tab and spring tab hinge fittings of the horizontal stabilizer, and follow-on corrective actions, if necessary. This amendment clarifies certain fiberscopic inspection and replacement procedures, and corrective actions; revises the applicability of the existing AD; and adds an inspection procedure for the servo tab center hinge fittings to detect the presence of washers for both attaching fasteners, and follow-on corrective actions. This amendment also provides for optional terminating action for the repetitive inspections. In addition, this amendment requires that operators report to the manufacturer any discrepancy found during any detailed visual inspection accomplished in accordance with S.B. 145–55–0024, dated May 25, 2000. This AD requires accomplishment of actions specified in the service bulletin described previously, except as discussed below.

Differences Between This AD, Brazilian Airworthiness Directives, and Related Service Information

Operators should note that, although the previously referenced Brazilian airworthiness directives and Embraer service information specify that certain rework actions are required, this AD provides those actions as optional. The FAA has determined that such action may be required in subsequent rulemaking action to provide sufficient time for public comment.

Explanation of Changes to the Applicability of AD 2000–04–09

The applicability of AD 2000–04–09 included all of the serial numbers for Model EMB–135 and EMB–145 series airplanes, as listed in alert S.B. 145–55–A022, Change 02, dated October 8, 1999. However, this AD revises the applicability of this AD to those airplanes listed in S.B. 145–55–0022, Change 02, dated May 4, 2000, or S.B. 145–55–0024, dated May 25, 2000, and those airplanes on which the elevator servo tabs and spring tabs have been replaced in accordance with alert S.B. 145–55–A022, Change 02, dated October 8, 1999, or S.B. 145–55–0022, Change 01, dated January 25, 2000.

Interim Action

This AD is considered to be interim action. The FAA is currently considering requiring the rework of all elevator servo and spring tabs, which will constitute terminating action for the repetitive inspections required by this AD action. However, such action will be proposed in a separate rulemaking action since the compliance time for the rework is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.

- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–204–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11591 (65 FR 9217, February 24, 2000), and by adding a new airworthiness directive (AD), amendment 39–11956, to read as follows:

2000–22–10 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–11956. Docket 2000–NM–204–AD. Supersedes AD 2000–04–09, Amendment 39–11591.

Applicability: Model EMB–135 and EMB–145 series airplanes, certificated in any category, as listed in Embraer Service Bulletin 145–55–0022, Change 02, dated May 4, 2000, or Embraer Service Bulletin 145–55–0024, dated May 25, 2000; and those airplanes on which the elevator servo tabs and spring tabs have been replaced in accordance with Embraer Alert Service Bulletin 145–55–A022, Change 02, dated October 8, 1999, or Embraer Service Bulletin 145–55–0022, dated October 20, 1999.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent disconnection of the elevator spring tab or servo tab hinge from their attachments, which could result in loss of elevator control and reduced controllability of the airplane, accomplish the following:

Detailed Visual Inspection

(a) Within 20 flight hours after the effective date of this AD, perform a detailed visual inspection of the hinge fittings of the left and right elevator spring tabs and servo tabs to detect any discrepancy (including incorrect attachment of the hinge fittings; signs of scratches on painted surfaces of the tab spar; detachment of hinge fitting from the tab; and relative movement and gap between hinge fittings and tab spars, and between the spring tab spar or skin) in accordance with Part I of the Accomplishment Instructions of Embraer Service Bulletin (S.B.) 145–55–0024, dated May 25, 2000.

Note 2: Inspections accomplished prior to the effective date of this amendment, in accordance with Part I of the Accomplishment Instructions of S.B. 145–55–0022, dated October 20, 1999, or Change 01, dated January 25, 2000, or alert S.B. 145–55–A022, Change 02, dated October 8, 1999, are considered acceptable for compliance with the requirements of paragraph (a) of this AD.

(1) If no discrepancy is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 100 flight hours until accomplishment of either paragraph (b) or (c) of this AD.

(2) If any discrepancy is detected, prior to further flight, accomplish the action specified by either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace any discrepant elevator tab with a new tab in accordance with the service bulletin, and repeat the detailed visual inspection thereafter at intervals not to exceed 100 flight hours until accomplishment of either the actions required by paragraph (b) or the optional terminating action specified by paragraph (c) of this AD.

Note 3: The inspection and fastener replacement actions required by paragraph (b) of this AD do not constitute terminating action for the requirements of this AD, but only extend the inspection intervals from 100 to 400 flight hours.

(ii) Perform the optional terminating action specified by paragraph (c) of this AD.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Inspection and Fastener Replacement

(b) Within 400 flight hours after the effective date of this AD, perform a one-time detailed visual inspection, using a fiberscope, of the servo tab center hinge fitting to the tab skin to detect any discrepancy (including the absence of washers under the collar bases of both attaching fasteners, and incorrect fastener connection) in accordance with Part II of the Accomplishment Instructions of S.B. 145–55–0024, dated May 25, 2000.

(1) If no discrepancy is detected, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 400 flight hours until accomplishment of the optional terminating action specified by paragraph (c) of this AD.

(2) If any discrepancy is detected, prior to further flight, replace, one at a time, each affected fastener with a new fastener having a washer, in accordance with the service bulletin. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 400 flight hours until accomplishment of the optional terminating action specified by paragraph (c) of this AD.

Note 5: Replacement of the attaching fasteners one at a time will avoid the loss of the servo tab or spring tab hinge fittings position.

Optional Terminating Action

(c) Rework (including installation of the elevator servo and spring tabs; and reidentification, static balancing, and installation of the elevator) of all elevator servo and spring tabs in accordance with Part III of the Accomplishment Instructions of S.B. 145–055–0022, Change 02, dated May 4, 2000, constitutes terminating action for the repetitive inspections required by this AD. Model EMB–135 and EMB–145 series airplanes having serial numbers 145004 through 145043, must accomplish the modifications specified by S.B. 145–27–0034, Change 01, dated August 5, 1998, prior to the rework specified by this paragraph.

Note 6: Modifications of certain airplanes specified in paragraph (c) of this AD, accomplished before the effective date of this amendment, in accordance with S.B. 145–27–0034, dated April 3, 1998, are considered acceptable for compliance with the modification requirement in paragraph (c) of this AD.

Reporting Requirement

(d) Submit a report of inspection findings for any discrepancy detected during any inspection required by paragraph (a) of this AD to Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil; at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which any inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing any detailed visual inspection required by paragraph (a) of this AD.

(2) For airplanes on which any inspection has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–04–09, amendment 39–11591, are approved as alternative methods of compliance with this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The inspections shall be done in accordance with Embraer Service Bulletin 145–55–0024, dated May 25, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 8: The subject of this AD is addressed in Brazilian airworthiness directives 1999–09–01R2, dated May 1, 2000, and 2000–05–01, dated May 25, 2000.

Effective Date of This AD

(h) This amendment becomes effective on November 22, 2000.

Issued in Renton, Washington, on October 27, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28087 Filed 11–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–121–AD; Amendment 39–11958; AD 2000–22–12]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires replacement of the existing wire between certain circuit breakers with an improved wire. The actions specified by this AD are intended to prevent overheating of the wire between certain circuit breakers, which could result in smoke emissions in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Effective December 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carla Worthey, Program Manager, Program Management & Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6062; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes, was published in the **Federal Register** on

July 31, 2000 (65 FR 46671). That action proposed to require replacement of the existing wire between certain circuit breakers with an improved wire.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 240 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required action, and that the average labor rate is $60 per work hour. Required parts will cost approximately $8 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $30,720, or $128 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–22–12 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–11958. Docket 2000–NM–121–AD.

Applicability: Model EMB–120 series airplanes, serial numbers 120003, 120004, 120006 through 120308 inclusive, 120310, 120312 through 120314 inclusive, 120316 through 120323 inclusive, and 120325 through 120330 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the wire between certain circuit breakers, which could result in smoke emissions in the cockpit, accomplish the following:

Wire Replacement

(a) At the next scheduled maintenance inspection ("A"-check), but no later than 400 flight hours after the effective date of this AD: Replace the existing wire between circuit breakers 0304 and 0358 with a wire coded W200–1063–12, in accordance with EMBRAER Service Bulletin 120–30–0028, dated August 25, 1997.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Atlanta ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement shall be done in accordance with EMBRAER Service Bulletin 120–30–0028, dated August 25, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 97–11–01, dated November 25, 1997.

Effective Date

(e) This amendment becomes effective on December 12, 2000.

Issued in Renton, Washington, on October 27, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28088 Filed 11–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–1–AD–1; Amendment 39–11959; AD 2000–22–13]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 430 helicopters that requires calibration of the fuel quantity indicating system. This amendment is prompted by an operator report of an inaccurate fuel quantity indicating system. The actions specified by this AD are intended to prevent an inaccurate fuel quantity indicating system reading, engine flameout due to fuel starvation, and a subsequent forced landing.

DATES: Effective December 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Madej, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD for BHTC Model 430 helicopters was published in the **Federal Register** on August 9, 2000 (65 FR 48643). That action proposed to require calibration of the fuel quantity indicating system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 50 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,000.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2000–22–13 Bell Helicopter Textron Canada: Amendment 39–11959. Docket No. 2000-SW–11-AD.

Applicability: Model 430 helicopters, serial numbers 49001 through 49059, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required at the next scheduled fuel system calibration or at the next annual inspection, whichever occurs first, unless accomplished previously.

To prevent an inaccurate fuel quantity indicating system reading, engine flameout due to fuel starvation, and a subsequent forced landing, accomplish the following:

(a) Calibrate the fuel quantity indicating system in accordance with steps 1 through 21 of the Accomplishment Instructions, Bell Helicopter Textron Alert Service Bulletin No. 430–99–13, dated December 13, 1999 (ASB).

(b) Insert BHT–430-MM–10, Chapter 95, Revision 2, dated December 10, 1999, into the Maintenance Manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) Calibrate the fuel quantity indicating system in accordance with steps 1 through 21 of the Accomplishment Instructions, Bell Helicopter Textron Alert Service Bulletin No. 430–99–13, dated December 13, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 12, 2000.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2000–04, dated February 8, 2000.

Issued in Fort Worth, Texas, on October 27, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–28235 Filed 11–6–00; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB54

Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers; Amendment to the Capital Charge on Unsecured Receivables Due From Foreign Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission. ("Commission") is amending its net capital rule to expand the exemption from the five percent capital charge that a futures commission merchant ("FCM") or introducing broker is required to take against unsecured foreign broker receivables in computing its adjusted net capital.[1]

EFFECTIVE DATE: December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW, Washington, DC 20581; telephone (202) 418–5495; electronic mail *tsmith@cftc.gov;* or Henry J. Matecki, Financial Audit and Review Branch, Division of Trading and Markets, Commodity Futures Trading Commission, 300 South Riverside Plaza, Suite 1600 North, Chicago, IL 60606; telephone (312) 353–6642; electronic mail *hmatecki@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Rule Amendments

On August 28, 2000, the Commission published for comment proposed amendments to Rule 1.17(c)(5)(xiii) ("proposing release").[2] The comment period expired on September 27, 2000. No comments were received. Accordingly, the Commission is adopting the amendments as proposed.

Commission Rule 1.17(c)(5)(xiii) requires an FCM or IBI, in computing its adjusted net capital, to take a five percent capital charge on any unsecured receivables resulting from commodity futures and option transactions executed on foreign boards of trade and which are due from foreign brokers that are not registered with the Commission as FCMs or with the Securities and Exchange Commission ("SEC") as securities brokers or dealers.[3] As more fully set forth in the proposing release, Rule 1.17(c)(5)(xiii) currently permits an FCM or IBI to exclude from the five percent capital charge that portion of the unsecured receivable that represents amounts required to be on deposit to maintain futures and option positions transacted on foreign boards of trade. Deposits in excess of required margin or performance bond are subject to the capital charge. In addition, to be exempt from the capital charge, the receivable must be due from a foreign broker that has received confirmation of "comparability relief" in accordance with a Commission order issued under Rule 30.10 and the margin deposits must be held by the foreign broker itself, another foreign broker that has received confirmation of Rule 30.10 "comparability relief," or at a depository that qualifies as a depository pursuant to Rule 30.7 and which is located within the same jurisdiction as either foreign broker.[4]

The amendments being adopted herein increase the maximum amount eligible for exclusion from the five percent capital charge to the greater of: 150 percent of the amount immediately required to support futures and option transactions in an account; or 100 percent of the maximum amount required to support futures and option transactions at any time during the preceding six-month period. The amendments are intended to provide FCMs and IBIs with greater flexibility with respect to their cash and risk management while also reducing costs associated with frequent transfers of excess margin funds out of foreign brokers in order to avoid the five percent capital charge.

The amendments also eliminate the requirement that an FCM or IBI be responsible for monitoring the ultimate destination of margin funds deposited with a Rule 30.10 foreign broker in order for such funds to qualify for the exemption from the capital charge. As set forth in the proposing release, by granting Rule 30.10 "comparability relief" to a foreign broker, the Commission has made a determination that the foreign broker is subject to a regulatory structure that is comparable to the structure imposed on entities that operate on U.S. futures exchanges. Of particular relevance is that the Commission, as part of the Rule 30.10 petition process, assesses the extent to which a foreign broker is subject to a regulatory program that imposes bona fide minimum financial requirements on its regulatees or members and that provides for the protection of customers by the segregation of funds and bankruptcy rules.[5] The Commission's determination that these standards and protections exist and are enforced supports an easing of the capital charge.

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in adopting rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities.[6] The Commission previously has determined that registered FCMs are not small entities for the purposes of the RFA.[7] With respect to IBIs, the Commission stated that it is appropriate to evaluate within the context of a particular rule whether some or all introducing broker should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[8] The amendments to Rule 1.17(c)(5)(xiii) expanding the amount of funds that may be excluded from the foreign brokers receivable capital charge do not impose additional requirements on an IBI. Therefore, the Chairman, on behalf of the Commission, certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (Supp. I 1995), imposes certain requirements on federal agencies (including the Commission) to review rules and rule amendments to evaluate the information collection burden that they impose on the public. The Commission believes that the amendments to Rule 1.17(c)(5)(xiii) will impose a minimal information collection burden on the public, namely those FCMs and IBIs who wish to take advantage of the exemption will be required to maintain a record of the margins required to be on deposit with a foreign broker over the preceding six month period. However, this burden is believed to be minimal when compared to the capital savings to be generated by the exclusion of increased amounts from the capital charge.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4(b), 4f, 4g, and 8a(5) thereof, 7 U.S.C. 6(b), 6d, 6g, and 12a(5), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority. 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k,6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.17 is amended by revising paragraph (c)(5)(xiii) to read as follows:

§1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(c) * * *

(5) * * *

(xiii) Five percent of all unsecured receivables includable under paragraph (c)(2)(ii)(D) of this section used by the applicant or registrant in computing "net capital" and which are not due from:

(A) A registered futures commission merchant;

(B) A broker or dealer that is registered as such with the Securities and Exchange Commission; or

(C) A foreign broker that has been granted comparability relief pursuant to §30.10 of this chapter, *Provided, however,* that the amount of the unsecured receivable not subject to the five percent capital charge is no greater than 150 percent of the current amount required to maintain futures and option positions in accounts with the foreign broker, or 100 percent of such greater amount required to maintain futures and option positions in the accounts at any time during the previous six-month period, and *Provided, that,* in the case of customer funds, such account is treated in accordance with the special requirements of the applicable Commission order issued under §30.10 of this chapter.

* * * * *

Issued in Washington, DC, on November 1, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–28492 Filed 11–6–00; 8:45 am]

BILLING CODE 6351–01–M

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[1] An introducing broker ("IB") is required to maintain minimum adjusted net capital of $30,000, unless the IB has entered into a guarantee agreement with an FCM in the form prescribed in the Commission's rules. The industry has commonly distinguished between such IBs as Guaranteed IBs and Independent IBs ("IBIs"), the latter being subject to the $30,000 minimum capital requirement. The rule changes being adopted herein affect those IBs identified as IBIs.

[2] 65 FR 52051 (August 28, 2000).

[3] Commission regulations cited herein may be found at 17 CFR Ch. I (2000).

[4] Under Rule 30.10 and Appendix A thereto, the Commission may exempt a foreign firm from compliance with certain Commission rules provided that a comparable regulatory system exists in the firm's home country and that certain safeguards are in place to protect U.S. customers, including an information-sharing arrangement between the Commission and the firm's home country regulator or self-regulatory organization ("SRO"). Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight, the Commission issues an order granting general relief subject to certain conditions. Foreign firms seeking confirmation of this relief must make certain representations set forth in the Rule 30.10 order issued to the regulator or SRO from the firm's home country. Appendix C to Part 30 lists those foreign regulators and SROs that have been issued a Rule 30.10 order by the Commission.

Rule 30.7(c) sets forth acceptable depositories for funds deposited by U.S. customers with foreign brokers for futures and option trading on foreign boards of trade.

[5] The specific elements examined in evaluating whether a particular foreign regulatory program provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Rule 30.10 are set forth in Appendix A to Part 30.

[6] 47 FR 18618–18621 (April 30, 1982).

[7] 47 FR 18619–1820.

[8] 48 FR 35248, 35275–78 (August 3, 1983).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Enrofloxacin, Silver Sulfadiazine Emulsion

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Bayer Corp., Agriculture Division, Animal Health. The NADA provides for veterinary prescription use of an enrofloxacin/silver sulfadiazine otic emulsion to treat otitis externa in dogs.

DATES: This rule is effective November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

SUPPLEMENTARY INFORMATION: Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201, filed NADA 141–176 that provides for veterinary prescription use of BAYTRIL® (0.5 % enrofloxacin/1.0% silver sulfadiazine) Otic Emulsion for the treatment of otitis externa in dogs. The NADA is approved as of September 29, 2000, and the regulations are amended in 21 CFR part 524 by adding new section 524.802 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning September 29, 2000, because the application contains substantial evidence of effectiveness of the drug involved, or any studies of animal safety, required for approval of the application and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 524.802 is added to read as follows:

§ 524.802 Enrofloxacin, silver sulfadiazine emulsion.

(a) *Specifications.* Each milliliter contains 5 milligrams (mg) enrofloxacin and 10 mg silver sulfadiazine.

(b) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

(c) *Conditions of use—Dogs*—(1) *Amount.* 5 to 10 drops for dogs weighing 35 pounds (lb) or less and 10 to 15 drops for dogs weighing more than 35 lb; applied twice daily for up to 14 days.

(2) *Indications for use.* For the treatment of otitis externa in dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the extra-label use of this drug in food-producing animals.

Dated: October 26, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–28520 Filed 11–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinate and Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved decoquinate and chlortetracycline (CTC) Type A medicated articles to make two-way combination Type B and Type C medicated feeds for calves, beef and nonlactating dairy cattle used for prevention of coccidiosis, treatment of bacterial enteritis, and treatment of bacterial pneumonia.

DATES: This rule is effective November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–147 that provides for use of Deccox® (27.2 grams per pound g/lb) and ChlorMax™ (50, 65, or 70 g/lb CTC) Type A medicated articles to make combination drug Type B and Type C medicated feeds for calves, beef and nonlactating dairy cattle. The combination Type C feeds are for prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*, for treatment of bacterial enteritis caused by *Escherichia coli*, and for treatment of bacterial pneumonia caused by *Pasteurella multocida* organisms susceptible to CTC. The NADA is approved as of September 29, 2000, and the regulations are amended in the table in 21 CFR 558.195(d) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.195 is amended in the table in paragraph (d) by adding an entry following the indication for "Cattle" at the 13.6 to 27.2 grams per ton decoquinate dose level and before the entry for "Cattle" at the 13.6 to 535.7 grams per ton dose level, to read as follows:

§ 558.195 Decoquinate.

* * * * *

(d) * * *

Decoquinate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	* *	* *	*
	Chlortetracycline approximately 400, varying with body weight and feed consumption to provide 10 mg/lb of body weight per day.	Calves, beef and nonlactating dairy cattle: prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*, for treatment of bacterial enteritis caused by *Escherichia coli*, and for treatment of bacterial pneumonia caused by *Pasteurella multocida* organisms susceptible to chlortetracycline.	Feed Type C feed to provide 22.7 mg decoquinate and 1 g chlortetracycline/100 lb body weight (0.5 mg/kg)/day for not more than 5 days. Type C feed may be prepared from Type B feed containing 535.8 to 5,440 g/ton decoquinate and 6,700 to 80,000 g/ton chlortetracycline. When consumed, feed 22.7 mg decoquinate/100 lb body weight/day for a total of 28 days to prevent coccidiosis. Withdraw 24 hours prior to slaughter. Do not feed to calves to be processed for veal. Do not feed to animals producing milk for food.	046573
*	*	* *	* *	*

Dated: October 26, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–28524 Filed 11–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Farnam Companies, Inc. The ANADA provides for use of pyrantel tartrate in horse feed for the prevention and control of various species of internal parasites.

DATES: This rule is effective November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Farnam Companies, Inc., 301 West Osborn, Phoenix, AZ 85013–3928, is sponsor of ANADA 200–282 that provides for use of CONTINUEX™ (pyrantel tartrate) Daily Dewormer. The ANADA provides for use of pyrantel tartrate in horse feed for the prevention and control of various species of internal parasites. The ANADA is approved as a generic copy of Pfizer Inc.'s NADA 140–819 for STRONGID® 48. ANADA 200–282 is approved as of September 26, 2000, and the regulations are amended in 21 CFR 558.485 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.485 is amended by adding paragraph (a)(29) to read as follows:

§ 558.485 Pyrantel tartrate.

(a) * * *

(29) To 017135: 48 grams per pound, paragraph (e)(2) of this section.

* * * * *

Dated: October 26, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–28523 Filed 11–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600 and 606

[Docket No. 97N–0242]

Biological Products: Reporting of Biological Product Deviations in Manufacturing

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation requiring licensed

manufacturers of biological products to report errors and accidents in manufacturing that may affect the safety, purity, or potency of a product. FDA also is amending the current good manufacturing practice (CGMP) regulations for blood and blood components to require establishments involved in the manufacture of blood and blood components, including licensed manufacturers, unlicensed registered establishments and transfusion services, to report biological product deviations in manufacturing. The final rule requires licensed manufacturers, unlicensed registered blood establishments, and transfusion services who had control over the product when a deviation occurred to report to FDA the biological product deviation if the product has been distributed. The final rule also establishes a 45-day reporting period. FDA is issuing the final rule as part of a retrospective review under Executive Order 12866 of significant FDA regulations to improve the effectiveness of FDA's regulatory program.

DATES: This rule is effective May 7, 2000.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 23, 1997 (62 FR 49642), FDA published a proposed rule to amend the requirements for reporting errors and accidents in manufacturing biological products in § 600.14 (21 CFR 600.14). The proposed rule would also have added § 606.171 and expanded the requirement for reporting of errors and accidents in the manufacturing of biological products to include unlicensed registered blood establishments and transfusion services. FDA provided 90 days for comments on the proposed rule.

FDA is extending a reporting requirement to establishments defined in 21 CFR 607.3(c) that manufacture blood and blood components. Such establishments include unlicensed registered blood establishments and transfusion services (hereinafter referred to as "unlicensed blood establishments"). FDA believes this action is necessary because it has observed an increase in the number of product recalls initiated by unlicensed blood establishments due to biological product deviations in manufacturing that were not reported voluntarily to the agency. FDA is also narrowing the scope of the reporting requirement as discussed in section II of this document to those reports that are necessary to protect the public health, while relieving industry of some reporting burden. FDA also believes the reporting requirement will address concerns, identified by the Office of Inspector General of the Department of Health and Human Services, that: (1) Error and accident reports required under § 600.14 were not being submitted in a timely manner; and (2) unlicensed blood establishments were not obligated to submit such reports.

II. Highlights of the Final Rule

In response to comments received on the proposed rule, FDA has revised several substantive provisions of the proposed rule. FDA has replaced the term "error and accident"with the term "biological product deviation." In §§ 600.14(b) and 606.171(b), the final rule more clearly describes the types of events, now termed "biological product deviations," that must be reported to FDA. These are events which may affect the safety, purity, or potency of a distributed biological product and which represent either a deviation from CGMP, applicable regulations, applicable standards, or established specifications, or are unforeseen or unexpected.

In an effort to reduce the reporting burden on both industry and the agency, while protecting the public health, FDA has changed the threshold for when a deviation must be reported. As proposed, a licensed manufacturer or unlicensed blood establishment would have reported deviations related to products "made available for distribution." The final rule focuses on deviations involving distributed products only, because such deviations may involve products administered to patients, and therefore present the greatest risk to public health.

FDA defines the terms "distributed" and "control" to make clear that the reporting requirement applies only to distributed product. The final rule defines "distributed" as meaning the biological product has left the control of the licensed manufacturer or unlicensed blood establishment; or the licensed manufacturer has provided Source Plasma or any other blood component for use in the manufacture of a licensed product. "Control" is defined as having responsibility for maintaining a product's continued safety, purity, and potency, and compliance with applicable product and establishment standards and CGMP requirements.

If the product never leaves the control of the licensed manufacturer or unlicensed blood establishment, no biological product deviation report (BPDR) should be filed. However, the licensed manufacturer or unlicensed blood establishment who discovers a biological product deviation before the product has left its control must investigate the deviation. Such an obligation exists independent of this rule. For example, under CGMP, a licensed manufacturer must thoroughly investigate unexplained discrepancies and batch failures, including the failure of a product to meet specifications, and must document the discovery, investigation, and followup taken (parts 211 and 820 (21 CFR parts 211 and 820)). Manufacturers of in vitro products licensed under section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262) must investigate the cause of nonconformities related to product, processes, and the quality system, and identify the action needed to correct and prevent recurrence of nonconforming product and other quality problems (§ 820.100). The CGMP regulations applicable to licensed and unlicensed blood establishments provide, "A thorough investigation, including the conclusions and follow-up, of any unexplained discrepancy or the failure of a lot or unit to meet any of its specifications shall be made and recorded" (§ 606.100(c) (21 CFR 606.100(c))). FDA will monitor internal quality assurance (QA) procedures through routine inspections.

In § 600.14(a)(2)(i), FDA has limited the exception to the reporting requirement for manufacturers of in vitro diagnostic products to manufacturers who only manufacture in vitro diagnostic products that are not licensed under section 351 of the PHS Act. Manufacturers of such products continue to have reporting obligations under 21 CFR part 803. Establishments that manufacture both in vitro diagnostic products licensed under section 351 of the PHS Act and unlicensed medical devices will be required to report under § 600.14 only those events which may affect the safety, purity, or potency of the licensed product.

In § 600.14(a)(2)(iii), FDA is clarifying the reporting requirement for licensed manufacturers of biological products when the manufacturer, as part of its license application, is approved to manufacture Source Plasma or any other blood component for further manufacture of other biological products. When a biological product deviation occurs during the manufacture of the Source Plasma or

any other blood component, the BPDR must be submitted under § 606.171. When a biological product deviation occurs after the manufacture of that Source Plasma or any other blood component and during the manufacture of another biological product, the BPDR is submitted under § 600.14. When a licensed manufacturer provides Source Plasma or any other blood component for use in the manufacture of another licensed biological product, such Source Plasma or any other blood component has been distributed under § 606.3(k).

FDA also is clarifying the reporting responsibilities of licensed manufacturers and unlicensed blood establishments who contract out certain manufacturing steps. A manufacturer who contracts with another person to perform any manufacturing step but who retains control over the product is still responsible for reporting under the rule even if the deviation occurred or was discovered at the contract establishment. Sections 600.14(a)(1) and 606.171(a)(1) make explicit that licensed manufacturers and unlicensed blood establishments must establish, maintain, and follow a procedure for receiving from their contractors the information necessary to fulfill their reporting requirements.

FDA is retaining the proposed 45-day reporting time in the final rule but is clarifying that the 45-day time period runs from the date that the manufacturer, its agent, or another person performing a manufacturing, holding, or distribution step under the manufacturer's control, first discovers information reasonably suggesting a reportable event has occurred. FDA is also adding a requirement in §§ 600.14(d) and 606.171(d) that licensed manufacturers and unlicensed blood establishments use Form FDA–3486 to report biological product deviations. This form is available in paper form and also on the Internet. Sections 600.14(e) and 606.171(e) indicate where and how the BPDR form should be submitted.

Finally, FDA has written the final rule using plain language in accordance with the presidential memorandum on plain language in government writing, dated June 1, 1998. FDA has adopted the plain language approach to make its written communications with the public more accessible and understandable. As a result, FDA is expanding § 600.14 and 606.171 in the final rule to address the following: (1) Who must report, (2) What must be reported, (3) When must the report be submitted, (4) How must the report be submitted, and (5) Where must the report be sent?

III. Comments on the Proposed Rule and FDA Responses

FDA received 98 comments on the proposed rule. The comments were submitted by manufacturers, blood establishments, trade associations, professional associations, Department of Defense, and individuals. In addition, the Office of Management and Budget (OMB) forwarded to FDA a number of comments it received on the proposed rule. Thirty-two comments supported FDA's goal of creating a standardized reporting system to identify biological product deviations in manufacturing and recognized the importance to blood safety of requiring prompt reporting of biological product deviations in the manufacture of blood and blood components. Fifteen comments objected to the proposed rule. Several comments, mostly those from transfusion services and pharmaceutical entities, objected to a mandatory reporting requirement being applied to them. Several expressed concerns that the reporting burden would be overwhelming.

In general, the comments expressed specific concerns about the scope and content of the proposed rule and requested clarification of certain definitions. FDA summarizes and responds to each of the received comments in the following sections.

A. General Comments

(Comment 1) Twenty-one comments questioned the public health benefit of the proposed rule and asked FDA to further define its public health and safety objective. Many of the comments suggested that the reporting system overlapped existing QA programs and was, therefore, unnecessary.

The objectives of the biological product deviation reporting requirement are to: (1) Enable FDA to respond when public health may be at risk, (2) expedite reporting of biological product deviations in manufacturing, (3) provide FDA with uniform data to track trends that may indicate broader threats to the public health, (4) create a uniform reporting requirement that can be enforced against noncomplying entities, and (5) help ensure licensed manufacturers and unlicensed blood establishments are taking appropriate actions to investigate and correct biological product deviations.

The reporting system will enable the agency to evaluate and monitor blood establishments in response to detected deviations, and regularly alert field staff and blood establishments with trend analysis of the types of deviations reported. Under the existing rule, there were two impediments to the success of the reporting process: (1) Error and accident reports were not being submitted in a timely manner by establishments, and (2) there was no assurance that unlicensed blood establishments were submitting reports.

The reporting system is not intended to overlap QA programs. Instead, it provides FDA with information that an individual establishment's QA program may not detect. For example, if an event occurs once a year in every establishment, it may not appear significant to any single establishment. The reporting system will allow FDA to recognize the significance of that event in a timely fashion and to take appropriate action to protect the public health. Reporting of biological product deviations will enable FDA to identify areas in which further regulation or guidance is needed to assist licensed manufacturers and unlicensed blood establishments in decreasing the occurrence of these events.

(Comment 2) Fifty comments wanted to know how FDA will use or analyze the information and what procedure FDA will use to respond to reports received under the rule. Two comments stated that the reports should not be used as a basis for issuing a Form FDA–483.

A BPDR alone will not be a basis for issuing a Form FDA–483. Form FDA–483 is a list a list of observations noted during an FDA inspection and issued to the firm at the conclusion of the inspection. The firm is expected to respond to the observations and make the necessary corrections. First, this information will aid FDA, licensed manufacturers, and unlicensed blood establishments in appropriately targeting QA efforts to improve product quality and reduce manufacturing problems. In addition to reviewing reports upon receipt at FDA, FDA will review all reports during routine inspections and examine all manufacturing deviations, not merely reportable deviations, to ensure that the establishment has followed all established standard operating procedures (SOP's) related to investigation, followup, and reporting of deviations. Secondly, the BPDR's will inform FDA about specific problems licensed manufacturers and unlicensed blood establishments encounter in the manufacture of biological products. FDA intends to provide this data to industry, in accordance with its responsibility to safeguard trade secrets and confidential commercial information. FDA already provides this kind of data in fiscal quarter summaries, available to the public by mail, facsimile, and Internet. Thirdly, these reports will identify areas needing future guidance from the agency. FDA will issue such guidance in accordance with its good guidance practices (GGP's).

A BPDR alone will not be a basis for issuing a Form FDA–483. However, a documented failure to follow CGMP or other regulatory compliance problem connected to a deviation may become an observation on a Form FDA–483. For example, an investigator may include an observation under one of the following conditions: (1) The deviation reoccurs because of inadequate corrective action, (2) investigation of the deviation is inadequate, or (3) the deviation represents an underlying systemic problem in the operation. Significant CGMP deficiencies related to a BPDR may also become the subject of a Form FDA–483 observation. Of course, an investigator may include the failure to file a BPDR as an observation on a Form FDA–483.

(Comment 3) Several comments expressed concern that FDA would not have the resources to handle the reports submitted under the proposed rule.

After reviewing the comments to the proposed rule, FDA has worked actively to reduce the burden of reporting on licensed manufacturers, unlicensed blood establishments, and the agency under the final rule. FDA has refocused the final rule to require reports only for distributed products. FDA is also developing a standardized format for reporting, which will not only streamline the process for the reporter, but also allow FDA to process the reports more efficiently. FDA believes that the reporting requirement under the final rule will not present an undue burden on licensed manufacturers, unlicensed blood establishments, or the agency.

(Comment 4) Three comments asked how FDA would enforce the proposed rule.

In 1983, through a memorandum of understanding (MOU), the Healthcare Financing Administration (HCFA) and FDA coordinated all federally authorized inspections of unlicensed blood establishments in order to minimize duplication of effort and to reduce the burden on affected facilities. HCFA and FDA will use their usual enforcement tools available under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) and the PHS Act (42 U.S.C. 201 *et seq.*). The agencies will review compliance with the reporting requirements during inspections. If upon inspection of a licensed manufacturer or unlicensed blood establishment, the inspecting agency discovers the establishment is not complying with the biological product deviation reporting requirement, or the requirements for investigation and followup, the inspecting agency may take further enforcement action, as warranted.

(Comment 5) One comment questioned whether biological product deviation reports would be subject to the Freedom of Information Act (FOIA) and, accordingly, available to the media or public and whether reporting could cause disclosure of confidential information.

BPDR's would be subject to disclosure under the provisions of the FOIA and the implementing regulations in 21 CFR part 20. FDA will appropriately purge all nondisclosable information prior to the release of the reports.

(Comment 6) Seven comments requested that FDA obtain additional data and hold a public meeting before implementing a final rule. One comment suggested proceeding with a demonstration project first.

In addition to following the normal rulemaking process, FDA has discussed the rule in various public forums. FDA believes interested parties have been given ample opportunity to express their views on the proposed rule. A "demonstration program" is unnecessary because this is not a new program, but a revision and updating of an existing program with which most licensed manufacturers have experience. However, FDA may engage in further public discussion to provide guidance to industry concerning what constitutes a reportable deviation within the parameters of the final rule.

(Comment 7) Three comments requested that FDA develop guidance for the proposed rule.

FDA agrees that guidance to industry would be helpful. FDA has developed draft guidance regarding those events it would expect to be reported under this rule. The draft guidance recognizes that licensed manufacturers and unlicensed blood establishments may shoulder a wide range of responsibilities in manufacturing. A manufacturer of licensed biological products would be in control of the product for more steps in manufacturing than a small hospital transfusion service. Accordingly, the draft guidance describes specific guidance for each type of licensed manufacturer and unlicensed blood establishment. The notice of availability for the draft guidances specific for licensed manufacturers of products other than blood and blood components, and licensed and unlicensed blood establishments will issue in the **Federal Register** in the near future.

(Comment 8) FDA received several comments from industry that extending the reporting requirement to unlicensed entities in proposed § 606.171 imposed an unnecessary burden on these entities.

FDA indicated in proposing this regulation that one of its primary objectives was to make the biological product deviation reporting requirement applicable to all blood establishments, whether licensed manufacturers, unlicensed registered blood establishments, or transfusion services. In the proposed rule, FDA stated that reports from the full spectrum of establishments engaged in manufacturing and distribution of blood and blood components were necessary to effectively evaluate and monitor the blood industry. FDA continues to believe that a mandatory reporting requirement is necessary for all establishments involved in blood and blood product manufacturing and is establishing the biological deviation reporting requirement as part of the CGMP regulations, which these establishments must follow.

B. Scope

(Comment 9) One comment recommended FDA adopt a single mechanism for reporting all errors and accidents, adverse events, etc., for all blood products, medical devices and all drugs, and eliminate all other reporting programs, voluntary or mandatory.

FDA recognizes that the reporting programs for biological products, human drugs, and medical devices have varying requirements. What is reported, and how it is reported, are different under the different systems. These differences are intentional. For example, the adverse event reporting (AER) and medical device reporting systems focus on patient impact. The starting point for reporting, therefore, is often patient reaction to a product. In contrast, biological product deviation reporting focuses on the manufacturing process as it may affect the safety, purity, and potency of the product. FDA anticipates that information submitted in BPDR's will improve product quality and may help reduce the incidence of adverse patient outcomes without undue burden on licensed manufacturers and unlicensed blood establishments.

(Comment 10) Five comments stated that the proposed rule should apply only to blood and blood products and should not extend to biotechnology products. These comments argued that the need to revise error and accident regulations for biotechnology products is not clear because there does not exist a pattern of recalls for these products. The comments stated that the recall guidelines in part 7 (21 CFR part 7) and the AER system (21 CFR 600.80) are adequate to ensure the safety and quality of biotechnology products.

The regulatory scheme for biotechnology products has always included recall guidelines (part 7), AER, and error and accident reporting (§ 600.14). These three programs, each designed to serve different objectives, have worked together to ensure the safety and quality of biotechnology products. Adverse experience reporting focuses on patient outcomes. Consequently, the type and specificity of the information reported as adverse experiences differs substantially from that required in biological product deviation reports. Under the recall provisions of part 7, manufacturers notify FDA when they voluntarily remove products from the marketplace that are in violation of the laws administered by FDA. The biological product deviation regulations are designed to gather information about the events that give rise to defective or potentially defective products and provide FDA with an essential tool to monitor potential risks to public health and to facilitate a response when necessary.

Section 600.14, in its current form, requires error and accident reporting by all licensed biological product manufacturers, including manufacturers of biotechnology products. This rule would not impose new requirements on such manufacturers. In fact, by limiting reporting to biological product deviations involving distributed products, the new rule would decrease the preexisting burden on such manufacturers. FDA believes the revised reporting requirement is necessary to ensure that all manufacturers understand their reporting requirements, to expedite biological product deviation reporting, and to enable FDA to monitor accurately the safety of biological products.

(Comment 11) Ten comments requested that transfusion centers not be regulated to the same extent as blood collection centers and the pharmaceutical industry under the proposed rule. Of these, five comments proposed that the reporting guidelines themselves be specific to each type of establishment. Six comments called for definitions or examples specific to transfusion service practice and two comments called for separate data collection forms.

FDA believes that in order to achieve an accurate overview of the industry, it is most useful to impose the same reporting requirement on all blood establishments, including transfusion centers. However, FDA recognizes that different regulated entities may need specific guidance on how the biological deviation reporting requirement will apply to them. FDA is issuing guidance to support the final rule that will include examples specific to blood and source plasma collection centers, pharmaceutical and biological device manufacturers, and transfusion services. FDA also developed a biological product deviation reporting form. FDA believes one form for all the entities covered under the rule will facilitate processing of the reports and will aid reporters in providing the necessary information. The agency will provide separate instructions on completing and submitting the biological product deviation reporting form.

(Comment 12) Eight comments asked how the biological product deviation reporting requirement will affect the new drug application (NDA) Field Alert Report regulations under 21 CFR 314.81(b)(1) and several comments recommended harmonizing these regulations.

The BPDR's will have little, if any affect on the NDA Field Alert regulations. The NDA Field Alert regulations are applicable only to those products that are approved for marketing under the provisions of part 314 (21 CFR part 314), and not to drug products subject to licensing under the PHS Act. FDA has harmonized a number of regulations for certain biotechnology products where products regulated as biological products subject to licensure are similar to products subject to regulation as new drugs. See § 601.2(c) (21 CFR 601.2(c)) for a list of such biotechnology products and § 314.70(g), 601.2(c)(1) and (c)(2), and 601.12 (21 CFR 601.12) for examples of harmonization.

For these biotechnology products, a total of 13 error and accident reports were submitted under § 600.14 in the fiscal year (FY) 1999. Because FDA believes this is a very small burden to industry, FDA has determined that reports for such biotechnology products should continue to be submitted consistent with the requirements for other biological products under § 600.14 of the final rule. This will allow the Center for Biologics Evaluation and Research (CBER) to keep all reports in a single data base and will facilitate the overall assessment of its biological product deviation reporting program. If the level of reporting or the needs of the agency change, FDA will reconsider whether to harmonize its reporting requirements for biotechnology products.

(Comment 13) Twenty-two comments recommended developing a tiered system of reporting based on the severity of the deviation in which serious errors or accidents would be reported and all other errors and accidents would be handled through internal QA programs.

FDA considers any biological product deviation that may affect the safety, purity, and potency of a product to be "serious." However, deviations that are discovered before distribution pose less of a threat to the public health because no patient would receive the product, and because the licensed manufacturer or unlicensed blood establishment's QA procedures worked to prevent the distribution of product subject to that biological product deviation. Accordingly, FDA has established an approach to reporting biological product deviations that limits reporting to events that involve distributed products and that may affect the safety, purity, or potency of the product.

(Comment 14) Eighteen comments recommended adopting an alternative reporting system such as the medical event reporting system for transfusion medicine (MERS–TM).

MERS–TM, a voluntary reporting system, was designed as a standard method for collection and analysis of event reports for blood establishments to implement as part of their QA system. The MERS–TM is designed to capture all manufacturing errors and accidents, including those "near miss" events that may be discovered by the blood establishment prior to distribution of the product. While FDA believes that the MERS–TM system is useful in reporting "near miss" events on a voluntary basis, FDA is limiting the requirement for reporting to biological product deviations affecting distributed products.

C. Definitions

(Comment 15) Forty-five comments requested clarification of the definition of the terms "errors and accidents" in proposed §§ 600.3(hh) and 606.3(k). Several of these comments suggested alternative language.

FDA is clarifying the regulations by eliminating the terms "error and accident." The classification of events as an "error" or "accident" is immaterial to the purposes underlying the rule and appears to have caused confusion. Consequently, FDA has revised the rule to focus the reporting requirement on events that represent a deviation from CGMP, applicable regulations, applicable standards or established specifications, or represent unexpected or unforeseeable events, which may affect the safety, purity, or potency of a distributed product. Such events are reportable regardless of whether or not they are considered "errors" or "accidents." In the final rule, FDA has termed such events "biological product deviations" and described what constitutes a biological product deviation in §§ 600.14(b) and 606.171(b).

(Comment 16) Three comments suggested that the reporting requirement in proposed §§ 600.3(hh)(1) and 606.3(k)(1) should be limited to deviations from CGMP and that extending it to "applicable standards" or "established specifications" was beyond the FDA's jurisdiction.

FDA disagrees with the suggestion that such matters are beyond FDA's jurisdiction. As set out in §§ 600.14(b) and 606.171(b), licensed manufacturers and unlicensed blood establishments must submit a BPDR only if the deviation "may affect the safety, purity, or potency" of a product, and if other reporting criteria are met. Events affecting the safety, purity, and potency of biological products fall squarely within FDA's jurisdiction. Moreover, the PHS Act requires FDA to consider "standards designed to assure that the biological product continues to be safe, pure, and potent" (42 U.S.C. 262(a)(2)(B)(i)(II)).

(Comment 17) Thirty-two comments requested clarification of the definition of "made available for distribution" in proposed §§ 600.3(ii) and 606.3(l). Thirty-seven comments requested that the definition be amended to limit the scope of the proposed rule to reporting of deviations which occur after a product has been distributed, and six comments asked that "made available for distribution" be defined by each facility based on their established process controls.

FDA agrees with the comments that suggested that the scope be limited to those products that have been distributed and has written the final rule to reflect this. FDA considers all events that may affect the safety, purity, or potency of a biological product to be significant, whether prior to or after distribution. Limiting the reporting requirement to distributed products will reduce the burden of reporting on licensed manufacturers, unlicensed blood establishments, and on FDA, while not sacrificing public safety.

Licensed manufacturers and unlicensed blood establishments remain obligated to document, investigate and followup any event that may affect the safety, purity, or potency of a biological product under CGMP regulations, whether the event is reportable under this rule or not. FDA will continue to monitor both reportable and nonreportable events and corrective actions through inspections.

(Comment 18) One comment stated the term "made available for distribution" in proposed §§ 600.3(ii) and 606.3(l) is ambiguous in relation to intermediates since at each intermediate state the product may be released for further processing.

FDA has clarified the final rule by limiting reporting of biological product deviations to distributed products, i.e., they have left the licensed manufacturer or unlicensed blood establishment who controlled the product at the time the deviation occurred; or the licensed manufacturer has provided Source Plasma or any other blood component for use in the manufacture of a licensed product.

D. Who Must Report?

(Comment 19) One comment asked for clarification on how FDA will apply this regulation to cooperative manufacturing arrangements, including shared and contract manufacturers.

Under § 600.14, it is the licensed manufacturer who must report biological product deviations. That is because, up until the time the product is distributed, it is the license holder who is responsible for maintaining the continued safety, purity, and potency of the biological product, for compliance with applicable product and establishment standards, and for compliance with CGMP. If the license holder arranges for another manufacturer to perform a manufacturing step, that manufacturing step is performed under the license holder's control, and the license holder must report biological product deviations that occur during that manufacturing step. In shared manufacturing situations, where two or more manufacturers operate under their own license, each manufacturer would report a biological product deviation that occurred when the product was in its control; i.e., when the first shared manufacturer completes his manufacturing step and sends the product to the second shared manufacturer for additional manufacturing, the product is considered distributed by the first shared manufacturer.

Section 606.171 applies to all blood establishments, including licensed establishments, unlicensed registered blood establishments, and transfusion services. The rule requires the blood establishment that has control over a product when a blood product deviation occurs to report to FDA. If a blood establishment contracts a manufacturing step to another facility, or enters into a shared manufacturing agreement, the establishment responsible for maintaining the continued safety, purity, and potency of the product and for compliance with applicable product and establishment standards, and for compliance with CGMP, must submit a BPDR for any deviation occurring while the biological product is under its control.

(Comment 20) One comment suggested FDA require both the blood bank or transfusion service who receives a defective product from a licensed manufacturer and the licensed manufacturer to report biological product deviations to ensure the effectiveness of the reporting process.

In the final rule, FDA has attempted to eliminate duplicate reporting by regulated entities. The licensed manufacturer or unlicensed blood establishment who had control over the product when the deviation occurred is in the best position to provide the necessary information to FDA. Therefore, under the final rule, the licensed manufacturer or unlicensed blood establishment who had control over the product when the deviation occurred is responsible for reporting. Consignees should report product deficiencies to the licensed manufacturer or unlicensed blood establishment and assist in the investigation of the product's deficiencies, if necessary.

Example 1: An unlicensed blood establishment pools 10 units of cryoprecipitate and affixed an incorrect, extended expiration date. The unlicensed blood establishment issues the pooled cryoprecipitate to a patient. The unlicensed blood establishment would be required to submit a BPDR to FDA because: (1) The product did not meet CGMP; (2) the unlicensed blood establishment had control of the product when the deviation occurred; (3) the deviation may have affected the safety, purity, and potency of the product for the patient; and (4) the product was distributed.

Example 2: An unlicensed blood establishment receives a unit of irradiated red blood cells from a licensed manufacturer and issues the product to a patient requiring irradiated red blood cells. The licensed manufacturer of the blood product subsequently notifies the unlicensed blood establishment that the unit was improperly irradiated. The licensed manufacturer, not the unlicensed blood establishment, is required to submit a BPDR to FDA because: (1) The product did not meet CGMP; (2) the deviation

occurred under the control of the licensed manufacturer; (3) the deviation may affect the safety, purity, and potency of the product; and (4) the licensed manufacturer distributed the product to the unlicensed blood establishment.

E. What Kind of Events Are Reportable?

(Comment 21) Forty-two comments stated that FDA provided insufficient information about what events must be reported in proposed §§ 600.14 and 606.171. Numerous comments also expressed concern regarding the examples of what events to report that FDA provided in the preamble to the proposed rule. Ten comments asked for information on what not to report. Seven comments asked FDA to provide specific examples of events to be reported by hospital-based transfusion services.

In response to these comments, FDA has changed the final rule to limit reportable events to those involving distributed products. As discussed in comment seven of this document, FDA developed guidance that will provide specific examples of reportable events as those events relate to the various regulated entities. FDA considered these comments in developing its guidance.

(Comment 22) Two comments asked whether the proposed rule was limited to manufacturing activities or whether it included nonmanufacturing events such as testing, storage, labeling, and recordkeeping.

FDA disagrees with the interpretation that testing, storage, labeling, and recordkeeping are not manufacturing activities. The term "manufacture" is defined in 21 CFR 600.3(u) as "all steps in propagation or manufacture and preparation" and includes, for example, filling, testing, labeling, packaging, and storage.

The final rule further states in §§ 600.14(b) and 606.171(b) that any event, and information relevant to the event, associated with manufacturing, to include testing, processing, packing, labeling, or storage, or with the holding, or distribution, must be reported if they meet the other criteria. If a recordkeeping error may have affected the safety, purity, and potency of the product and meets the other criteria in §§ 600.14(b) and 606.171(b), it is reportable under the regulations.

(Comment 23) One comment asked how a licensed manufacturer or unlicensed blood establishment would distinguish between an error and accident that would be reportable from any unexplained discrepancies or in-process or final specification investigations conducted under § 211.192 or other regulation, which would not have to be reported.

The requirements to investigate discrepancies under § 211.192 and to report product deviations under §§ 600.14 and 606.171 are not mutually exclusive. Under § 211.192, manufacturers are required to investigate any unexplained discrepancies or failure to meet in-process or final product specifications. The CGMP regulations applicable to blood establishments provide, "A thorough investigation, including the conclusions and follow-up, of any unexplained discrepancy or the failure of a lot or unit to meet any of its specifications shall be made and recorded" (§ 606.100(c)). If during the investigation the criteria described in §§ 600.14(b) and 606.171(b) are met, a BPDR is required.

(Comment 24) One comment asked whether the biological product deviation reporting requirement applied to validation batches submitted in support of a biologics license application (BLA), or to materials submitted under an investigative new drug application (IND).

Under §§ 600.14 and 606.171, biological product deviations related to products under an IND would not be reportable unless the product was licensed for another intended use. However, information related to the deviation may be required to be reported under the IND regulations in 21 CFR part 312. Biological product deviations related to validation batches would not be reportable unless the products were distributed after receipt of a biologics license.

(Comment 25) One comment asked if the submission of a supplement for reprocessing would preclude the submission of a BPDR.

The submission of a supplement for reprocessing would not preclude the submission of a BPDR. If a product has been distributed and a licensed manufacturer or unlicensed blood establishment determines that a biological product deviation has occurred, then the licensed manufacturer or unlicensed blood establishment must submit a BPDR whether or not it subsequently reprocesses the product. If the licensed manufacturer or unlicensed blood establishment discovers a biological product deviation before it distributes the product, and subsequently reprocesses and distributes the affected product, no BPDR would be required as long as the reprocessed product was unaffected by the original deviation.

F. What Type of Information Do Licensed Manufacturers and Unlicensed Blood Establishments Report?

(Comment 26) Two comments requested that FDA delete any reference to "disposition of the product" from the information that is to be reported under the rule because this information would not be available within the 45-day time requirement.

FDA believes licensed manufacturers and unlicensed blood establishments will usually know the disposition of the product within the 45-day reporting period. Licensed manufacturers and unlicensed blood establishments should know if the product was shipped to another facility, destroyed, quarantined, designated for reprocessing, disposed of in some other manner, or, in many cases, administered to a patient.

(Comment 27) Seventeen comments recommended that if the product has been subject to recall, then the recall should be the instrument for reporting the disposition of the product.

FDA disagrees. FDA believes information on the disposition of the product and retrieval efforts are important in analyzing the impact of reported deviations on the public and should be submitted in BPDR's. The information required for the BPDR is not as extensive as the recall information voluntarily provided to the district. The information regarding final disposition does not need to be complete by the time the BPDR is submitted. By obtaining as much information as possible on the disposition of a product at the time the report is submitted, FDA will be able to perform appropriate followup action. The draft guidance document will further describe the required information to be reported in the BPDR.

(Comment 28) One comment asked if FDA would require licensed manufacturers and unlicensed blood establishments to consider previous and subsequent lots in investigating any lot that instigated a BPDR.

The regulations in this final rule do not affect the manner in which a biological product deviation is investigated. The obligation to investigate a biological product deviation is part of the CGMP regulations for biological drug products and biological devices, including blood and blood components. The CGMP requirements for blood establishments, whether licensed or unlicensed, require blood establishments to thoroughly investigate discrepancies (§ 606.100(c)) and to maintain and make available to FDA appropriate records of such investigation, conclusions, and followup (§§ 606.100(c) and 606.160(b)(7)(iii) (21 CFR 606.160(b)(7)(iii))). Licensed manufacturers subject to drug CGMP (§§ 211.192 and 211.198) and medical device manufacturers (see § 820.100) are similarly obligated to investigate, correct, and record findings related to biological product deviations. Under these existing regulations FDA expects the licensed manufacturer or unlicensed blood establishment to determine what impact the deviation may have had on other product lots and take appropriate corrective action. These regulations do not mandate the manner of investigation by a licensed manufacturer or unlicensed blood establishment but require that the investigation be complete.

G. When to Report

(Comment 29) Twenty-three comments stated that 45-calendar days to report a biological product deviation as proposed in §§ 600.14(a) and 606.171 is not enough time since licensed manufacturers and unlicensed blood establishments must analyze and correct the deviation prior to reporting. One comment suggested that fewer than 45 days to report would be better.

In adopting a 45-day time requirement, FDA looked at the history of reporting under the prior regulations and determined that 45 days was a reasonable period given the importance of timely reporting. The agency reviewed the reports submitted during FY 1997 through 1999 and an average of 73 percent of the reports was received within 45 days.

Licensed manufacturers and unlicensed blood establishments should not wait to report biological product deviations until after completing their corrective actions. Rather, licensed manufacturers and unlicensed blood establishments should submit BPDR's as soon as possible but no later than 45 days after the date that the licensed manufacturer or unlicensed blood establishment, its agent, or another person performing a manufacturing, holding, or distribution step under the manufacturer's or establishment's control, first discovers information reasonably suggesting a reportable event has occurred. The reports should include information on the intended followup to be taken if followup is not completed prior to submission of the report. To facilitate timely reporting by licensed manufacturers and unlicensed blood establishments, FDA is providing guidance on how to report as well as a standardized form for reporting.

(Comment 30) Fourteen comments requested clarification as to when the 45-day reporting time limit begins. Several of these comments offered various possible starting dates.

In response to these comments, FDA has clarified the 45-day time requirement in the final rule. The 45 days commence on "the date (the licensed manufacturer or unlicensed blood establishment, its agent, or another person who performs a manufacturing, holding, or distribution step under the control of the licensed manufacturer or unlicensed establishment) acquire(s) information reasonably suggesting that a reportable event has occurred." For example, if a manufacturer contracted with a third party to receive and process its customer complaints, that third party would be the manufacturer's agent for purposes of this rule, and the 45 days would begin to run upon the agent's receipt of information reasonably suggesting a reportable event has occurred.

(Comment 31) Four comments recommended adopting a hierarchy for when to report based on the potential risk of the deviation. For example, one comment suggested errors with substantial risk be reported within 45 days, errors with moderate risk be reported when the internal investigation is complete and errors with minimal risk be reported in an annual report.

FDA has adopted a simpler approach based on the potential public health risk of the event. Biological product deviations involving distributed products must be reported within 45 days. Biological product deviations that are discovered before the product leaves the control of the licensed manufacturer or unlicensed blood establishments are nonreportable, but reviewable during routine inspections, because such events present significantly less public health risk.

H. How to Report

(Comment 32) Forty-seven comments requested a standardized format for reporting biological product deviations and several of these submitted a proposed form. Fourteen comments requested one form for hospital-based transfusion centers and a separate form for blood collection centers and pharmaceutical manufacturers. Seventeen comments requested FDA to develop means for electronic reporting. One comment suggested FDA supply forms to blood suppliers.

FDA recognizes the need for a standardized method for reporting biological product deviations. FDA has developed a form for licensed manufacturers and unlicensed blood establishments to use to report under the final rule and is issuing guidance including instructions for completing the biological product deviation reporting form. FDA also has developed an electronic format for reporting. The agency has taken into consideration the comments and sample forms submitted in devising the biological product deviation reporting form. The agency also is requesting comments to the docket from the public on the report form and the instructions for preparing the report in accordance with the Paperwork Reduction Act of 1995. The agency is making the form available in various ways, including the FDA website at http://www.fda.gov/cber and the CBER FAX information system at 1–888–CBER–FAX.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104094). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze whether a rule may have a significant impact on a substantial number of small entities and, if it does, to analyze regulatory options that would minimize the impact. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any one year.

The agency has determined that the final rule is a significant action as defined in section 3, paragraph (f)(4) of Executive Order 12866. We have also determined that this rule will not result in aggregate expenditures for State, local, and tribal governments, or the private sector of $100 million in any one year. Based on FDA's analysis using available data, the agency does not anticipate that the rule will result in a significant impact on a substantial number of small entities.

A. Estimated Economic Impact

The rule will have an impact on licensed manufacturers and unlicensed blood establishments as described in table 1 of this document. All of these types of establishments will experience both a one-time cost impact to make changes to their recordkeeping systems and reporting procedures, as well as an annual cost impact associated with the ongoing reporting of product deviations that are encountered. Table 1 below summarizes these two components of cost impact. The rule is estimated to have an aggregate one-time cost impact of $8,131,648 and an annual cost impact of $340,319. These estimates are detailed in the discussion that follows.

TABLE 1.—SUMMARY OF ESTIMATED COST IMPACT OF THE RULE

Industry Affected	Total One-Time Cost	Total Annual Cost
Licensed Manufacturers (Other than Blood and Blood Components)		
111 Manufacturers of biologics	$348,096	($1,803)[1]
Subtotal for manufacturers of biologics	$348,096	($1,803)[1]
Blood Establishments		
Licensed blood establishments	$727,552	($286,395)[1]
2,800 Registered blood establishment	$4,390,400	$95,397
3,400 Transfusion services	$2,665,600	$533,120
Subtotal for blood establishments	$7,783,552	$342,122
Total Cost Impact	$8,131,648	$340,319

[1] Use of parenthesis indicates savings.

Based on the agency's registration data base, there are an estimated 111 licensed biologics manufacturers, 232 licensed blood establishments, and 2,800 unlicensed registered blood establishments. Based on data from the HCFA, there are estimated to be 3,400 transfusion services currently in operation. Such manufacturers and establishments currently conduct some QA activities. The impact of the final rule reflects the change in these ongoing activities that would be required by the rule.

B. One-Time Costs for Affected Establishments

Licensed biologics manufacturers must comply with part 211 or part 820; and licensed and unlicensed blood establishments must comply with parts 211 and 606 (21 CFR part 606), which encompasses a variety of QA activities embodied in CGMP's, to include investigating problems, performing followup, and recordkeeping.

The proposed rule stated that FDA had no precise estimates of the one-time cost for preparation and/or revision of the SOP, staff training, and time spent making the report. The agency expected that such activities would require an average of 2 hours to create an SOP for submitting error and accident reports, and approximately 1 hour to review and update existing SOP's at the establishments that have been reporting. The majority of the comments from industry stated that the estimates were underestimated. However, only a couple of comments, based on their experience, suggested a range of timeframes from 20 hours to a few days to develop and implement a new SOP. FDA has reassessed the time for staff review of the requirements of the rule, establishing or making adjustments to current systems and procedures, and for staff training. These estimates are discussed below.

Licensed biologics manufacturers currently have recordkeeping systems and QA systems in place. These establishments are estimated to incur a one-time cost for staff review of the requirements of the rule, and accompanying modifications to current systems and procedures, and for staff training in the use of modified procedures. FDA estimates that these activities may require a total of 80 hours of staff time. Using an estimated hourly wage rate of $39.20,[1] the total one-time cost for these manufacturers is estimated to be $348,096 ($39.20 × 80 × 111).

For blood establishments, the changes made in response to the rule are expected to vary according to whether the establishment is currently licensed. The 232 licensed blood establishments are currently required to report the product deviations under § 606.14. These facilities are likely to have systems in place for keeping record of product deviations, and will not be expected to have to establish a new reporting system. However, the licensed blood establishments are also likely to handle the majority of product deviation reports, because these facilities account for an estimated 90 percent of the total volume of U.S. blood collections. The licensed blood establishments will need to allocate staff time for a one-time review of the rule and some modifications to their current recordkeeping system and reporting procedures. In addition, these facilities will allocate a few hours of training time to review the reporting changes with staff who will be involved in the reporting of product deviations to FDA. FDA estimates that these activities may require a total of 80 hours of staff time. Using an estimated hourly wage rate of $39.20, the total one-time cost for these manufacturers is estimated to be $727,552 ($39.20 x 80 x 232).

The 2,800 registered blood establishments that are not licensed are estimated to account for about 10 percent of total U.S. blood collections, and currently perform product deviation reporting on a voluntary but less consistent basis. It is anticipated that the registered blood establishments will allocate staff time to establish a recordkeeping system for reportable product deviations involving products. In addition, the registered blood establishments will allocate staff time to modify current SOP's to comply with the biological product deviation reporting required by the rule, and to review the SOP changes with the staff who will be involved in reporting these deviations to FDA. FDA estimates that these activities will require an average of 40 hours of staff time per facility. Using an estimated hourly wage rate of $39.20, the total one-time cost for these establishments is estimated to be $4,390,400 ($39.20 x 40 x 2,800).

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[1] This estimated wage rate is based on the rate of $37.98 used in the proposed rule published in 1997, inflation-adjusted to 1999.

Transfusion services currently perform a variety of QA activities, but report product deviations to FDA on a voluntary and very limited basis. Transfusion services currently must comply with 42 CFR 493.1273(a). This regulation requires transfusion services to comply with parts 606 and 640 (21 CFR part 640) provisions, which includes keeping records of errors and accidents, transfusion reaction reports and complaints, with a record of investigation and followup. These establishments are expected to allocate staff time to review the requirements of the rule, modify current SOP's to comply with the biological product deviation reporting requirements, and train appropriate staff in using the modified procedures. This one-time effort is estimated to involve approximately 20 hours of staff time per facility, yielding an estimated cost of $2,665,600 ($39.20 x 20 x 3,400) for transfusion services. Based on the estimates for licensed and unlicensed blood establishments, the total one-time cost for blood and blood component manufacturers is $7,783,552 ($727,552 + $4,390,400 + $2,665,600).

C. Annual Costs for Affected Establishments

In addition to the cost of establishing modified systems and procedures, unlicensed blood establishments will experience some annual costs associated with ongoing reporting of product deviations that fit the criteria specified in the rule. Those costs are estimated below.

Licensed manufacturers and unlicensed blood establishments will be required to report to FDA product deviations when: (1) The event is associated with the manufacturing, to include testing, processing, packing, labeling, and storage, or with the holding or distribution of a licensed biological product, or a licensed or unlicensed blood or blood component; (2) the deviation occurs in the licensed manufacturer or unlicensed blood establishment's facility or in another facility while the product remains in the control of the licensed manufacturer or unlicensed blood establishment; (3) the deviation may affect the safety, purity, or potency of that product, and either represents a deviation from CGMP, applicable regulations, applicable standards, or established specifications; or represents an unexpected or unforeseeable event; and (4) the deviation involves a distributed product.

When a manufacturer becomes aware of a reportable product deviation, the manufacturer investigates the deviation, records the deviation, and performs followup. FDA estimates that the establishment will allocate an additional 2 hours of staff time to prepare and submit a report to FDA. In the comments on the proposed rule, FDA received one comment that suggested the agency's estimate of 30 minutes to file a report was reasonable for the filing task itself, but would not cover the time needed to prepare the report. Other comments stated that their establishments average 4, 6, or 8 hours to prepare a report, but some comments also explained that these hours included investigations, followup, and SOP revision. FDA agrees that 30 minutes would not reflect the anticipated time for preparing, in addition to filing, the report. The reporting to FDA required in this rule does not introduce additional requirements for recordkeeping, investigation, and followup of manufacturing problems and deviations beyond what is required under CGMP requirements. Therefore, the estimated time for complying with this final rule does not include recordkeeping, investigation, and followup of a biological product deviation.

Licensed manufacturers already report a broad range of product deviations to FDA. This range includes all deviations in products made available for distribution, and has not previously been limited to those products actually distributed. Under the existing regulation, a total of 93 biologics manufacturing deviations were reported to FDA in 1999. Since the new rule limits the criteria for reporting, FDA estimates that reporting will be 25 percent reduced, yielding an estimated total of 70 reports (93 x (1090.25)) rather than the current 93 reports. Based on the estimate of 2 hours to complete and file a report, FDA estimates a total savings of $1,803 ((93–70) × 2 × $39.20).

Under the current rule, a total of 14,611 blood and blood component errors and accidents were reported by licensed blood establishments to FDA in FY 1999. These facilities are also estimated to account for approximately 90 percent of all blood and plasma collections, totaling approximately 26 million units, or 23,400,000 (0.90 x 26,000,000) units processed by licensed blood establishments. The current rate of reporting per unit of blood collected and processed is thus 6.24 ((14,611/23,400,000) x 10,000) per 10,000 units. Under the final rule, FDA estimates that reporting for these facilities will be reduced by 25 percent, reducing the total reports to 10,958 ((1090.25) x 14,611) or a rate of 4.68 (10,958/23,400,000 x 10,000) per 10,000 units of collection. This translates to a projected savings of $286,395 ((14,611–10,958) × 2 × $39.20)).

Assuming a deviation reporting rate of 4.68 per 10,000 units for those unlicensed registered blood establishments that account for approximately 10 percent of the total blood collections of 26 million units, the agency estimates that unlicensed registered blood establishments will incur new annual costs of $95,397 (0.10 x 26,000,000 x (4.68/10,000) x 2 x $39.20) to make an estimated 1,217 reports. This translates to an increased annual cost of approximately $34.07 ($95,397/2,800) per unlicensed registered blood establishment.

Transfusion services will be newly required to report product deviations that meet the criteria specified in the rule. The annual cost to transfusion services for this reporting requirement is based on the voluntary annual reporting rate of transfusion services for FY 99, i.e., two reports per transfusion service. This reporting rate is supported by the estimate of BPDR's per hospital per year by bedsize calculated in table 2 of this document. The reporting by the transfusion service is estimated to involve approximately 2 hours of staff time at the transfusion facility. As noted earlier, this rule does not require new investigations of such reports. Records of investigations and followup to address problems with the manufacturing process are already required as part of the CGMP for blood and blood components. FDA therefore estimates the total cost of annual reporting by transfusion services to be $533,120 (3,400 x 2 x 2 x $39.20). This translates to an increased annual cost of approximately $156.80 per transfusion service.

In summary, the annual cost impact of the rule is estimated to be $342,122 (($95,397 + $533,120)—$286,395) for licensed and unlicensed blood establishments, and a net savings of $1,803 for licensed manufacturers of biological products other than blood and blood components.

D. Impact on Small Entities

The agency does not anticipate that the final rule will have a significant impact on a substantial number of small business establishments. However, because of the limits of available data, the agency is uncertain about the number of small entities affected and the actual extent of current product deviations at these facilities that would trigger reporting and determine the cost impact. Since the agency received no comments supported by data regarding the estimated impact on small entities in the proposed rule, the following

analysis is based on the limited data available.

The licensed manufacturers and unlicensed blood establishments affected by the final rule are included under the major Standard Industrial Code (SIC) group 80 for providers of health services. According to section 601 of the Regulatory Flexibility Act of 1980, the term "small entity" encompasses the terms "small business," "small organization," and "small governmental jurisdiction." According to the Small Business Administration (SBA), a small business within the blood industry is an enterprise with less than $5 million in annual receipts. A small organization is a not-for-profit enterprise which is independently owned and operated and is not dominant in its field. A "small governmental jurisdiction" generally means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. Because the rule would reduce reporting requirements for currently licensed facilities, FDA has focused the following small business analysis on those blood collection facilities and transfusion services that will be newly required to report these product deviations, and are therefore expected to incur new costs.

E. Impact on Small Blood and Blood Component Manufacturers

The FDA registry of blood establishments does not provide an indication of the size of the registered entities. Although uncertain, it is likely that some smaller facilities may experience significant costs as a result of compliance with the final rule. According to the 1996 directory of the American Association of Blood Banks (AABB), only 34 regional and community blood centers have annual revenues of less than $5 million and each collect no more than 30,000 donations per year. With an estimated rate of 4.68 product deviation reports per 10,000 units collected [see annual cost estimates in section IV.C of this document], this would imply an estimated 14 product deviation reports (4.68 x 3) per smaller blood center per year, and associated cost of $1,098 ($39.20 x 2 x 14 reports). The one-time cost for these facilities is expected to be similar to the unlicensed registered blood establishments estimate involving 40 hours of staff time, thus $1,568 ($39.20 x 40) per facility.

F. Impact on Small Transfusion Service Facilities

Hospital transfusion services are expected to be the primary entity affected by the requirements, but the extent of the small business impact is uncertain. Although the details of manufacturing activities at transfusion services are not available, FDA examined other data to develop a preliminary assessment of small business impact. The size of U.S. hospitals varies substantially. The 1998 American Hospital Association (AHA) survey data indicate a total of 5,134 U.S. registered community hospitals grouped into 8-bedsize categories. The average annual revenues for facilities in these bedsize categories range from approximately $5.5 million to $513 million. However, since many hospitals are not-for-profit or are operated by State and local governments, the SBA annual receipt criteria for small businesses would not apply to these facilities. Of the 5,134 U.S. community hospitals included in the AHA report 1,330 are under the control of State and local government, 3,045 are nonprofit institutions and the remaining 759 are reported to be investor-owned.

The number of hospitals that would meet at least one of the various SBA definitions for small entities is uncertain. According to the AHA statistics for 1998, the smallest reported hospital size category includes 262 hospitals with 6 to 24 beds, and total gross revenues of $1.43 billion, yielding average revenues of $5.46 million. FDA assumes that the 11 facilities reported to be investor-owned within this bedsize category could qualify as small entities. Although it is possible that all nonprofit hospitals may qualify as small entities, it appears that a number of facilities might be excluded from that definition because they are reported to be hospitals in a system. According to the AHA survey definition, "hospitals in a system" refer to those "hospitals belonging to a corporate body that owns and/or manages health provider facilities or health-related subsidiaries; the system may also own non-health-related facilities." The AHA currently has record of 1,592 hospitals that are nonfederal and nonprofit (including State and local government controlled) that are hospitals in a system. If these facilities were excluded, FDA estimates that 2,783 [1,330 State & local + 3,045 nonprofit—1,592 in-a-system] nonfederal, nonprofit hospitals may qualify as small entities. Thus, a total of 2,794 [2,783 + 11] hospitals might qualify as small entities.

The following analysis of potential impact by size of hospital suggests that, regardless of hospital size, the cost impact of product deviation reporting will be limited if the number of deviation reports per facility is proportionate to the utilization of blood transfusions implied by relative number of inpatient surgeries performed by hospitals in different size categories. Table 2 of this document estimates the percentage of all inpatient hospital surgeries, based on the number of inpatient surgeries reported to AHA as performed by hospitals in different bedsize categories. This percentage is used to estimate a share of the total reports that would be made by hospitals in each category. The estimated number of product deviation reports per hospital within a bedsize category is based on the total projected number of reports and the percentage of inpatient surgeries reported for hospitals within each size category.

TABLE 2.—ESTIMATES OF BPDR'S PER HOSPITAL PER YEAR BY BEDSIZE CATEGORY

Bedsize Category	Nonfederal Hospitals	Estimated Percent Inpatient Surgeries	Estimated Share of 1,217 Product Deviation Reports	Estimated Reports per Hospital[1]
6 to 24	262	0.21	2.6	0
25 to 49	906	2.02	24.6	0
150 to 99	1,128	6.03	73.3	0
100 to 199	1,338	19.36	235.9	0
200 to 299	692	20.99	255.4	0
300 to 399	361	16.24	197.6	1
400 to 499	196	12.17	148.1	1
500 +	251	22.97	279.5	1

[1] Rounded to the nearest whole number.

The cost impact of product deviation reporting is based on the table 2 estimates of reports per hospital and the earlier estimate of one-time cost of $784 (20 hours x $39.20) per hospital to modify systems and SOP's for recordkeeping and reporting. Based on the low expected volume of reports per hospital, the agency found that the estimated annual reporting cost, as a percentage of average annual facility revenues, approached zero for hospitals in every bedsize category. This suggests that the relative cost impact may be quite limited, across hospitals of different sizes, if the number of BPDR's required per hospital is proportionate to the number of inpatient surgeries performed by hospitals in different size categories.

G. Expected Benefits of the Rule

As described in the preamble, the benefits of the rule relate to the safety of biological products and protection of the public health. The final rule focuses on the subset of risk events in which the product is actually distributed and the cause of the problem is related to steps in the manufacturing process, that may affect the safety, purity, and potency of the product. FDA needs to receive timely reports of such events in order to quickly address problems, and provide updated industry guidance to assure continued product safety and good manufacturing practice. The requirements provide FDA with the ability to detect broader risks that extend beyond the reach of a single manufacturer or hospital's QA systems and staff resources.

In addition to these public health benefits, the final rule benefits licensed manufacturers in terms of a reduced level of reporting and streamlining the reporting process by providing a standardized report form that may be submitted electronically. Reporting requirements are now focused more narrowly on product deviations that represent more immediate risks.

V. The Paperwork Reduction Act of 1995

This final rule contains information collection requirements that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Biological Products: Reporting of Biological Product Deviations in Manufacturing.

Description: FDA is amending the current regulations that require licensed manufacturers of biological products to report to FDA errors and accidents in manufacturing; and adding regulations requiring unlicensed blood establishments to report certain biological product deviations in the manufacture of blood and blood components. Under this final rule, a licensed manufacturer or unlicensed blood establishment must submit a report to FDA based on the following criteria: (1) The event is associated with the manufacturing, to include testing, processing, packing, labeling, and storage, or with the holding or distribution, of a licensed biological product, or a licensed or unlicensed blood or blood component; (2) the deviation occurs in the licensed manufacturer or unlicensed blood establishment's facility or in another facility while the product remains in the control of the licensed manufacturer or unlicensed blood establishment; (3) the deviation may affect the safety, purity, or potency of that product and either represents deviation from CGMP, applicable regulations, applicable standards, or established specifications; or represents an unexpected or unforeseeable event; and (4) the deviation involves a distributed product. The agency is requiring a 45-calendar day reporting timeframe and is making available to industry a standardized format for reporting biological deviations in manufacturing that may be submitted either by hard copy or electronically.

Authority is given to the agency to issue regulations for the efficient enforcement of the act under section 701 of the act (21 U.S.C. 371) and to inspect all establishments responsible for manufacturing biological products (section 704 of the act (21 U.S.C. 374) and 42 U.S.C. 262). FDA regards biological product deviation reporting to be an essential tool in its directive to protect public health by establishing and maintaining surveillance programs that provide timely and useful information.

Description of Respondents: Licensed manufacturers of biological products, unlicensed registered blood establishments, and transfusion services.

As required by section 3506(c)(2)(B) of the PRA, FDA provided an opportunity for public comment on the information collection requirements of the proposed rule (62 FR 49642). Nine letters of comment on the information collection requirements were submitted to OMB. Most of the comments submitted to OMB were the same as those submitted directly to FDA in response to the proposed rule. FDA's responses to these comments are found in section III of this document. Responses to additional comments in the letters received by OMB that were not addressed in section III of this document are addressed in the following paragraphs.

(Comment 33) One comment to OMB and 24 comments submitted to the docket state that the estimated time of 0.5 hours to complete a deviation report is underestimated. Several of these comments further state that their establishments currently average about 4 to 6, or 6 to 8 hours for preparing a deviation report under § 600.14. One comment states that "[A] single investigation in our institution may take four hours per incident as we thoroughly investigate, report, change SOP's or processes if indicated, and follow-up to ensure that changes were implemented and work as intended."

FDA agrees that the burden is underestimated and is adjusting the "hours per response" estimate in table 3 from 0.5 hours to 2 hours based on: (1) Information from industry representatives about typical reporting procedures, (2) the issuance of guidance that will assist industry in identifying reportable events, and (3) the availability of a standardized report form. The standardized report form, and the ability to submit a report electronically, should streamline the process and improve the quality of time. Activities such as investigating, changing SOP's or processes, and followup are currently required under parts 211, 606, and 820 and, therefore, are not included in the burden calculation for the separate requirement of submitting to FDA a deviation report.

(Comment 34) Two comments state that in determining the estimated time for completing and submitting a deviation report, FDA may not have met its statutory obligations under the PRA because it used anecdotal evidence, that is not representative of current practices.

When FDA seeks information from industry to estimate burden for a proposed rule, the agency ordinarily contacts fewer than 10 representatives. If FDA requested information from 10 or more industry representatives, the agency would be required to prepare a separate burden analysis and seek OMB approval before it could ask for such information. Although less than 10 persons usually do not represent the majority of the industry, the comment period for the proposed rule provides the opportunity for all interested persons to comment on the estimated burden. For this final rule, FDA considered all of the comments received regarding the estimated burden numbers and, in response, adjusted the estimates.

(Comment 35) Another comment states that the added hourly burden of generating these reports may compromise the ability of hospitals to provide optimal technical support for blood transfusion activities.

The requirement for reporting has not changed for licensed manufacturers. Licensed manufacturers are currently required to report errors and accidents under § 600.14, and the agency recommended reporting of errors and accidents by unlicensed blood establishments in a memorandum to registered blood establishments dated March 20, 1991. Unlicensed registered blood establishments and transfusion services are required under 42 CFR 493.1273(a) to comply with CGMP regulations set forth at parts 606 and 640, and specifically with § 606.100(c) for the investigation and followup of any unexplained discrepancy or the failure of a lot or unit to meet any of its specifications, and with § 606.160(b)(7)(iii) for recordkeeping requirements for errors and accidents. The only additional requirement under this final rule is that the unlicensed registered blood establishment or transfusion service submit a report based on this recordkeeping of deviations. FDA estimates that preparing and submitting one report would involve only 2 hours, and that only two reports would be submitted per year by an unlicensed registered blood establishment or transfusion service. The estimated total burden per year is only 4 hours per establishment. Therefore, FDA concludes that the final rule should not affect a hospital's ability to provide optimal technical support for blood transfusion activities.

(Comment 36) One comment notes that the paper-based reporting system that is now being used by FDA does not provide a format from which reported information can be entered into a usable data base without a great deal of difficulty and expense.

FDA agrees with the comment and has prepared a standardized form for reporting deviations in manufacturing a biological product (BPDR, Form FDA–3486) that may be downloaded from CBER's website or received by facsimile. After completion, the form is sent to the identified address in § 600.14(e). In an effort to expedite and simplify reporting, FDA also is providing to industry the opportunity to complete and submit a Form FDA–3486 electronically. The establishment may insert the requested information into the appropriate fields online and submit the report through the Internet.

(Comment 37) One comment notes that FDA estimates that there are no capital costs or operation and maintenance costs associated with the proposed rule. The comment noted that these terms are undefined.

The agency considers capital costs or operation and maintenance costs to be costs other than those needed for usual and customary business practice. FDA believes there are no capital costs or operation and maintenance costs associated with the maintenance of files and records because respondents should have the facilities and the infrastructure for recordkeeping and retention as part of their usual and customary practice. The final rule provides for the use of a standardized reporting form, which will be available for convenience on CBER's website. For those establishments that do not have access to the Internet, the form may also be accessed and submitted by facsimile or mail. Therefore, the purchase of computer equipment and Internet access would not be necessary in order to comply with this rule.

A. Estimated Annual Reporting Burden

The 54,208 total hours estimated in table 3 of this document are based on information from FDA's data bases and CBER's annual summary on error and accident reporting for FY 1999. In calculating the reporting burden for the revised § 600.14 in this final rule, FDA found that approximately 111 licensed manufacturers of biological products other than blood and blood components submitted 93 error and accident reports in FY 1999 under the current § 600.14. In calculating the reporting burden for § 606.171 under this final rule, FDA found that approximately 232 licensed manufacturers of blood and blood components, including Source Plasma, submitted 14,611 error and accident reports.

In calculating the burden for unlicensed registered blood establishments and transfusion services under the new § 606.171, FDA found that 48 establishments of the estimated 2,800 unlicensed registered blood establishments voluntarily submitted 94 error and accident reports; and 15 of the estimated 3,400 transfusion services voluntarily submitted 28 error and accident reports. Based on this voluntary reporting rate, each of the 6,200 unlicensed blood establishment is expected to submit no more than 2 reports annually, totaling 12,400 reports annually.

Licensed manufacturers of blood and blood components collect 90 percent of the nation's blood supply. Accordingly, the estimated total number of reports submitted annually by each licensed blood establishment is greater than the total number of reports submitted by each unlicensed blood establishment.

In the proposed rule, the agency estimated that industry would expend 58,393.5 hours to submit approximately 116,787 total annual responses. In the final rule, FDA estimates that it will take 54,208 hours to submit 27,104 total annual responses. The decrease in total reports submitted annually is due to the more narrow scope in the final rule, which requires BPDR's only for distributed products.

B. Estimated One-Time Burden for Implementation of Rule

FDA has estimated a total of 207,440 hours as a one-time burden for performing the following activities: Staff review of the requirements of the rule, establishing or making adjustments to current systems and SOP's, and staff training. As previously discussed in section IV.B of this document, the estimated one-time burden to perform these activities would be 80 hours for each licensed manufacturer of biological products and licensed manufacturer of blood and blood components, 40 hours for each unlicensed registered blood establishment, and 20 hours for each transfusion service.

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
600.14[2]	111	0.8	93	2	186

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
606.171[3]	232	62.9	14,611	2	29,222
606.171[4]	6,200	2	12,400	2	24,800
Total	6,543		27,104		54,208
One-Time Burden[5]					
Licensed manufacturers[2]	111	1	111	80	8,880
Licensed manufacturers[3]	232	1	232	80	18,560
Unlicensed registered blood establishments	2,800	1	2,800	40	112,000
Transfusion services	3,400	1	3,400	20	68,000
Total					207,440

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Licensed manufacturers of biological products other than blood and blood components
[3] 1ALicensed manufacturers of blood and blood components, including Source Plasma
[4] Unlicensed registered blood establishments and transfusion services
[5] One-time burden activities: Staff review of the requirements of the rule, establishing or making adjustments to current systems and SOP's, and staff training

The information collection requirements of the final rule have been submitted to OMB for review. Prior to the effective date of the final rule, FDA will publish a document in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection requirements in the final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

List of Subjects

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 600 and 606 are amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

1. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

2. Amend § 600.3 by adding paragraphs (hh) and (ii) to read as follows:

§ 600.3 Definitions.

* * * * *

(hh) *Distributed* means the biological product has left the control of the licensed manufacturer.

(ii) *Control* means having responsibility for maintaining the continued safety, purity, and potency of the product and for compliance with applicable product and establishment standards, and for compliance with current good manufacturing practices.

3. Revise § 600.14 to read as follows:

§ 600.14 Reporting of biological product deviations by licensed manufacturers.

(a) *Who must report under this section?* (1) You, the manufacturer who holds the biological product license and who had control over the product when the deviation occurred, must report under this section. If you arrange for another person to perform a manufacturing, holding, or distribution step, while the product is in your control, that step is performed under your control. You must establish, maintain, and follow a procedure for receiving information from that person on all deviations, complaints, and adverse events concerning the affected product.

(2) Exceptions:

(i) Persons who manufacture only in vitro diagnostic products that are not subject to licensing under section 351 of the Public Health Service Act do not report biological product deviations for those products under this section but must report in accordance with part 803 of this chapter;

(ii) Persons who manufacture blood and blood components, including licensed manufacturers, unlicensed registered blood establishments, and transfusion services, do not report biological product deviations for those products under this section but must report under § 606.171 of this chapter;

(iii) Persons who manufacture Source Plasma or any other blood component and use that Source Plasma or any other blood component in the further manufacture of another licensed biological product must report:

(A) Under § 606.171 of this chapter, if a biological product deviation occurs during the manufacture of that Source Plasma or any other blood component; or

(B) Under this section, if a biological product deviation occurs after the manufacture of that Source Plasma or any other blood component, and during manufacture of the licensed biological product.

(b) *What do I report under this section?* You must report any event, and information relevant to the event, associated with the manufacturing, to include testing, processing, packing, labeling, or storage, or with the holding or distribution, of a licensed biological product, if that event meets all the following criteria:

(1) Either:

(i) Represents a deviation from current good manufacturing practice, applicable regulations, applicable standards, or established specifications that may affect the safety, purity, or potency of that product; or

(ii) Represents an unexpected or unforeseeable event that may affect the safety, purity, or potency of that product; and

(2) Occurs in your facility or another facility under contract with you; and

(3) Involves a distributed biological product.

(c) *When do I report under this section?* You should report a biological product deviation as soon as possible but you must report at a date not to exceed 45-calendar days from the date you, your agent, or another person who performs a manufacturing, holding, or distribution step under your control, acquire information reasonably suggesting that a reportable event has occurred.

(d) *How do I report under this section?* You must report on Form FDA–3486.

(e) *Where do I report under this section?* You must send the completed Form FDA–3486 to the Director, Office of Compliance and Biologics Quality (HFM–600), Center for Biologics Evaluation and Research, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, by either a paper or an electronic filing:

(1) If you make a paper filing, you should identify on the envelope that a BPDR (biological product deviation report) is enclosed; or

(2) If you make an electronic filing, you may submit the completed Form FDA–3486 electronically through CBER's website at www.fda.gov/cber.

(f) *How does this regulation affect other FDA regulations?* This part supplements and does not supersede other provisions of the regulations in this chapter. All biological product deviations, whether or not they are required to be reported under this section, should be investigated in accordance with the applicable provisions of parts 211 and 820 of this chapter.

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

4. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

5. Amend § 606.3 by adding paragraphs (k) and (l) to read as follows:

§ 606.3 Definitions.

* * * * *

(k) *Distributed* means:

(1) The blood or blood components have left the control of the licensed manufacturer, unlicensed registered blood establishment, or transfusion service; or

(2) The licensed manufacturer has provided Source Plasma or any other blood component for use in the manufacture of a licensed biological product.

(l) *Control* means having responsibility for maintaining the continued safety, purity, and potency of the product and for compliance with applicable product and establishment standards, and for compliance with current good manufacturing practices.

6. Amend § 606.160 by revising paragraph (b)(7)(iii) to read as follows:

§ 606.160 Records.

* * * * *

(b) * * *

(7) * * *

(iii) Biological product deviations.

* * * * *

7. Add § 606.171 to subpart I to read as follows:

§ 606.171 Reporting of product deviations by licensed manufacturers, unlicensed registered blood establishments, and transfusion services.

(a) *Who must report under this section?* You, a licensed manufacturer of blood and blood components, including Source Plasma; an unlicensed registered blood establishment; or a transfusion service who had control over the product when the deviation occurred, must report under this section. If you arrange for another person to perform a manufacturing, holding, or distribution step, while the product is in your control, that step is performed under your control. You must establish, maintain, and follow a procedure for receiving information from that person on all deviations, complaints, and adverse events concerning the affected product.

(b) *What do I report under this section?* You must report any event, and information relevant to the event, associated with the manufacturing, to include testing, processing, packing, labeling, or storage, or with the holding or distribution, of both licensed and unlicensed blood or blood components, including Source Plasma, if that event meets all the following criteria:

(1) Either:

(i) Represents a deviation from current good manufacturing practice, applicable regulations, applicable standards, or established specifications that may affect the safety, purity, or potency of that product; or

(ii) Represents an unexpected or unforeseeable event that may affect the safety, purity, or potency of that product; and

(2) Occurs in your facility or another facility under contract with you; and

(3) Involves distributed blood or blood components.

(c) *When do I report under this section?* You should report a biological product deviation as soon as possible but you must report at a date not to exceed 45-calendar days from the date you, your agent, or another person who performs a manufacturing, holding, or distribution step under your control, acquire information reasonably suggesting that a reportable event has occurred.

(d) *How do I report under this section?* You must report on Form FDA–3486.

(e) *Where do I report under this section?* You must send the completed Form FDA–3486 to the Director, Office of Compliance and Biologics Quality (HFM–600), 1401 Rockville Pike, suite 200N, Rockville MD, 20852–1448 by either a paper or electronic filing:

(1) If you make a paper filing, you should identify on the envelope that a BPDR (biological product deviation report) is enclosed; or

(2) If you make an electronic filing, you may submit the completed Form FDA–3486 electronically through CBER's website at www.fda.gov/cber.

(f) *How does this regulation affect other FDA regulations?* This part supplements and does not supersede other provisions of the regulations in this chapter. All biological product deviations, whether or not they are required to be reported under this section, should be investigated in accordance with the applicable provisions of parts 211, 606, and 820 of this chapter.

Dated: June 8, 2000.

Margaret M. Dotzel

Associate Commissioner for Policy

[FR Doc. 00–28133 Filed 11–3–00; 8:45 am]

BILLING CODE 4160–00–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 808 and 820

[Docket No. 00N–1561]

Exemption From Federal Preemption of State and Local Cigarette and Smokeless Tobacco Requirements; Revocation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking its regulation governing the exemption from Federal preemption of State and local medical device requirements for the sale and distribution of cigarettes and smokeless tobacco to children and adolescents. This action is being taken in response to the Supreme Court Decision of March 21, 2000, in which the court held that Congress has not given FDA the authority to regulate tobacco products as customarily marketed. On March 31, 2000, FDA removed its regulations restricting the sale and distribution of cigarettes and smokeless tobacco to children and adolescents. Because these regulations are not in effect, the State requirements are not preempted. Therefore, FDA is revoking its regulations exempting the State and local requirements from preemption. This rule is also adding a regulation that was inadvertently removed in a previous document.

DATES: This rule is effective November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Rosa M. Gilmore, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2970.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1996 (61 FR 44398), FDA issued a final regulation restricting the sale and distribution of cigarettes and smokeless tobacco to children and adolescents. In the **Federal Register** of November 28, 1997 (62 FR 63271), FDA issued a final rule granting exemption from preemption under section 521 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k) for certain cigarette and smokeless tobacco requirements in Alabama, Alaska, and Utah. These requirements were preempted under section 521 of the act because they were different from FDA's requirements but they could be exempted because they were more stringent than FDA's requirements.

On March 21, 2000, in *Food and Drug Administration* vs. *Brown & Williamson Tobacco Corp.*, et al., the Supreme Court ruled that Congress has not granted FDA jurisdiction to regulate tobacco products as customarily marketed. In accordance with this ruling, the agency issued a final rule in the **Federal Register** of March 31, 2000 (65 FR 17135), removing its regulations restricting the sale and distribution of cigarettes and smokeless tobacco to children and adolescents. The agency inadvertently failed to remove the regulations granting exemptions from Federal preemption for these three States. Because the FDA regulations are not in effect, the State requirements are not preempted and may remain in effect. The agency also inadvertently removed § 820.1(e) (21 CFR 820.1(e)) (65 FR 17135). Section 820.1(e) did not relate to tobacco. Therefore, it is being added in this rule.

List of Subjects

21 CFR Part 808

Intergovernmental relations, Medical devices.

21 CFR Part 820

Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 808 and 820 are amended as follows:

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

1. The authority citation for 21 CFR part 808 continues to read as follows:

Authority: 21 U.S.C. 360j, 360k, 371.

§ 808.51 [Removed]

2. Remove § 808.51.

§ 808.52 [Removed]

3. Remove § 808.52.

§ 808.94 [Removed]

4. Remove § 808.94.

PART 820—QUALITY SYSTEM REGULATION

5. The authority citation for 21 CFR part 820 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, 383.

6. Section 820.1 is amended by adding paragraph (e) to read as follows:

§ 820.1 Scope.

* * * * *

(e) *Exemptions or variances.* (1) Any person who wishes to petition for an exemption or variance from any device quality system requirement is subject to the requirements of section 520(f)(2) of the act. Petitions for an exemption or variance shall be submitted according to the procedures set forth in § 10.30 of this chapter, the FDA's administrative procedures. Guidance is available from the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850, U.S.A., telephone 1–800–638–2041 or 1–301–443–6597, FAX 301–443–8818.

(2) FDA may initiate and grant a variance from any device quality system requirement when the agency determines that such variance is in the best interest of the public health. Such variance will remain in effect only so long as there remains a public health need for the device and the device would not likely be made sufficiently available without the variance.

Dated: October 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28522 Filed 11–6–00; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK57

VA Payment for Non-VA Public or Private Hospital Care and Non-VA Physician Services That Are Associated With Either Outpatient or Inpatient Care

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends our medical regulations concerning VA payment for non-VA public or private hospital care provided to eligible VA beneficiaries. This document also amends our medical regulations concerning VA payment for non-VA physician services that are associated with either outpatient or inpatient care provided to eligible VA beneficiaries at non-VA facilities. With certain exceptions, these payments have been based on Medicare methodology. Sometimes VA can negotiate contracts with hospitals or physicians or with their agents to reduce the payment amounts. This document amends these regulations to allow VA to make lower payments based on such negotiations.

DATES: *Effective Date:* November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Tony Guagliardo, Health Administration Service, (10C3), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8307. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Administrative Procedure Act

This document allows VA to pay hospitals and physicians the amount that they on their own or through agents have negotiated to receive from VA. Accordingly, this document reflects contract actions that are exempt from the prior notice-and-comment and delayed effective date provisions of 5 U.S.C. 553.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would affect only a small portion of the business of the affected entities. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal domestic assistance numbers for the programs affected by this rule are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record-keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 31, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. In § 17.55, a new paragraph (k) is added; and the authority citation at the end of the section is revised, to read as follows:

§ 17.55 Payment for authorized public or private hospital care.

* * * * *

(k) Notwithstanding other provisions of this section, VA, for public or private hospital care covered by this section, will pay the lesser of the amount determined under paragraphs (a) through (j) of this section or the amount negotiated with the hospital or its agent.

(Authority: 38 USC 513, 1703, 1728; § 233 of P. L. 99–576)

3. Remove the undesignated center heading immediately before § 17.56.

4. In § 17.56, a new paragraph (e) is added to read as follows:

§ 17.56 Payment for non-VA physician services associated with outpatient and inpatient care provided at non-VA facilities.

* * * * *

(e) Notwithstanding other provisions of this section, VA, for physician services covered by this section, will pay the lesser of the amount determined under paragraphs (a) through (d) of this section or the amount negotiated with the physician or the physician's agent.

(Authority: 38 U.S.C. 513, 38 U.S.C. 1703, 38 U.S.C. 1728)

5. Add an undesignated center heading immediately before § 17.57 to read as follows:

Use of Community Nursing Home Care Facilities.

[FR Doc. 00–28472 Filed 11–06–00; 8:45 am]

BILLING CODE 8320-01-P

LEGAL SERVICES CORPORATION

45 CFR Part 1628

Recipient Fund Balances

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Corporation's rule on recipient fund balances to provide the Corporation with more discretion to determine whether to permit a recipient to maintain a fund balance of up to 25% of its LSC support for a particular reporting period and to specify a limited number of extraordinary and compelling circumstances for which LSC has discretion to permit a recipient to maintain a fund balance in excess of 25% of its LSC support. The final rule also adds additional requirements and limitations applicable to waiver requests and the use of excess fund balances. Finally, the rule is restructured for clarity and for consistency with other Corporation regulations.

EFFECTIVE DATE: This final rule is effective on December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, Legal Services Corporation, 750 First Street, NE.—Suite 1000, Washington, DC 20002–4250; 202–336–8800.

SUPPLEMENTARY INFORMATION: On September 11, 1998, the Operations and Regulations Committee ("Committee") of the Legal Services Corporation ("LSC" or "the Corporation") Board of Directors ("Board") met to consider proposed revisions to the Corporation's rule governing recipient fund balances, 45 CFR part 1628. The Committee adopted a proposed rule that was published in the **Federal Register** for public comment at 63 FR 56591 (October 22, 1998). Nineteen comments were received and considered by the Corporation.

Following the close of the comment period, the Committee met on February 21, 1999, to review the public comment on the proposed rule. No action was taken on the proposed rule at that time as the Committee was advised by the Corporation's staff that additional time was needed to consider fully a number of issues raised by the public comment and to formulate informed recommendations for the Committee's consideration in adopting a final rule.

The Committee was briefed by staff on two issues raised by one commenter which challenged the legal sufficiency of the proposed rulemaking and the legal authority for the Corporation to permit any carryover of fund balances by recipients. The commenter's legal sufficiency claim was mistakenly based on the Administrative Procedures Act, a law which does not apply to LSC rulemaking, and a similarly erroneous allegation that the public record failed to include certain "factual information" on which LSC relied—or, in the eyes of the commenter, should have relied—in developing the proposed rule. As explained to the Committee, the preamble to the proposed rule properly incorporated by reference information which was already a matter of public record and readily made these materials and any other factual information available to the public upon request. The commenter further asserted that the Corporation's proposed fund balance provisions were contrary to federal law, specifically relying on the Office of Management and Budget Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (OMB Circular A–110). Contrary to the commenter's assertion, OMB Circular A–110 expressly authorizes the recipients to carry forward unobligated balances to subsequent funding periods. OMB Circular A–110, § _.25(e)(3), 58 FR 62992, 62999 (November 29, 1993).

On June 11, 1999, the Committee again met to consider public comments on the proposed rule. The Committee adopted a number of revisions to the rule, but deferred action on the final rule pending additional staff research into the policies and practices of other agencies awarding federal grants and contracts with regard to extraordinary and compelling circumstances for the carryover of an excess fund balance. The Committee took under consideration the need to permit a fund balance in excess of its 25% limitation in extraordinary cases, where a recipient received a large, lump-sum infusion of funds, for example, from the sale of real property, insurance proceeds, or a court-awarded judgment. Where such funds are derived from the past expenditure of LSC funds, they may, because of the amount or timing of their receipt, cause a fund balance in excess of 25% of the recipient's total LSC support for that year. In particular, the Committee sought additional information from staff on the policies adopted by federal agencies with regard to grantee fund balances and whether fund balances in excess of 25% of a grantee's annual federal support are ever permitted, and, if so, under what circumstances.

On November 19, 1999, the Committee met to consider the staff's report on the outstanding issues raised at its last meeting and to again receive public comment. The Committee was advised that in 1993, OMB Circular A–110, the governing authority for most federal grants to non-profit organizations, was amended to expand the authority of discretionary grantees to undertake certain types of administrative actions without prior agency approval, including the ability to carry forward unobligated fund balances into a subsequent funding period (58 FR 62992, November 29, 1993). Having reviewed the regulations and policies issued by more than twenty federal agencies under the amended OMB guidelines, LSC staff advised the Committee that the Corporation's proposed fund balance policies were more strict than those adopted by most federal agencies. Few federal agencies employ a cap on the amount of funds that may be carried over by a grantee, with or without prior agency approval. Most agencies require notification of fund balances, and some reserve the discretion to disallow the carryover or to offset it against future grant funds under particular circumstances, such as when it exceeded 25% of the grant award, or the grantee was at high risk of failure to comply with statutory requirements. Staff also provided the Committee with a breakout of the fund balances reported by recipients for fiscal year 1997, the most recent, complete data available. After considering the staff report and taking other public comment on the rule, the Committee made a number of additional revisions to the rule and voted to recommend to the Board that the rule as revised be adopted as a final rule. On November 20, 1999, the Board did adopt as final the rule as revised and reported by the Committee.

This final rule is intended to provide the Corporation with more discretion to determine whether to permit a recipient to maintain a fund balance of up to 25% of its LSC support for a particular period and sets forth the requirements and limitations applicable to waiver requests and the uses of fund balances. The final rule also authorizes the Corporation to exercise its discretion to waive the 25% cap on excess fund balances in three specific circumstances when extraordinary and compelling reasons exist for such a waiver. Finally, the rule is restructured for clarity and consistency with other LSC regulations.

A section-by-section analysis is provided below.

Section-by-Section Analysis

Section 1628.1 Purpose

The final rule adopts the revisions to this section as proposed. Those revisions deleted or moved parts of the section because they were not statements of the purpose of the rule. As revised, the purpose of the rule is stated as setting forth the Corporation's policies and procedures for recipient fund balances. The final rule retains the underlying intent of the current rule which is to ensure the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance to eligible clients.

Section 1628.2 Definitions

The proposed rule clarified and updated the meaning of three of the current terms to make them consistent with other changes in LSC regulations, and retained a fourth term without change.

In the final rule, "excess fund balance" has been added as a defined term for clarity. "Excess fund balance" is defined to mean the amount of a recipient's LSC fund balance that exceeds the amount the recipient is authorized to retain under the regulation.

As proposed, the term "LSC support" was defined as the sum of three amounts: (1) The recipient's LSC carryover funds from the prior fiscal year; (2) the amount of the recipient's LSC grant for the year in question; and (3) any LSC derivative income earned by the recipient during the year in question. In the final rule, the Corporation has deleted a recipient's prior year carryover funds from the definition of LSC support. As pointed out during the comment period, including carryover funds in LSC support could artificially inflate the amount of funds permitted to be carried over under the percentage ceilings used in the rule. As this result was not intended by the Corporation, the reference to the prior year's carryover funds has been deleted and the remaining components of the definition of "LSC support" renumbered accordingly. The language was further amended to make clear the fiscal year being referenced and that one-time and special purpose grants were not to be included in the definition of "LSC support" as either financial assistance or derivative income. The rules governing fund balances for one-time and special purpose grants are discussed in more detail in § 1628.3(g) below.

The final rule replaces the defined term "fund balance amount" with "fund balance" for ease of use and clarity. Other minor language changes were also incorporated for clarity. The final definition makes clear that a "fund balance" is the amount by which LSC support, together with the prior year's carryover amount of LSC Funds, exceeds the recipient's expenditures of LSC Funds, including capital acquisitions, as these amounts are reported in the recipient's annual audit. Some commenters recommended doing away with the term "fund balance" altogether as that term is inconsistent with generally accepted accounting principles set forth in the Statement of Financial Accounting Standards (FASB) No. 117, Financial Statements for Not-for-Profit Organizations. The current FASB Statement No. 117 speaks in terms of three categories of "net assets" rather than fund accounting. This issue was addressed by the Corporation in 1997 when it republished its Accounting Guide for LSC Recipients (August, 1997) following the FASB Statement No. 117 change. To permit the separate reporting of LSC revenue and expenditures, while at the same time adhering to Statement No. 117, Section 2–4 of LSC's Accounting Guide requires separate reporting, preferably through a supplemental schedule to be attached to audited financial statements prepared in accordance with FASB Statement No. 117. The supplemental schedule details the receipt and expenditure of LSC funds and permits the calculation of the LSC "fund balance." Therefore, the final rule retains the term "fund balance."

The final rule retains the meaning of the term "fund balance percentage" but has revised the language to be consistent with its use as a defined term. The fund balance percentage is the percentage ratio of the LSC fund balance to the recipient's LSC support.

The final rule adopts without change the proposed definition of "recipient," which was updated to reflect the current law limiting grants for financial assistance to those authorized by § 1006(a)(1)(A) of the LSC Act and to be consistent with the meaning of the term as defined elsewhere in the regulations.

Section 1628.3 Policy

The proposed rule restructured this section to consolidate statements of general policy on recipient fund balances in this section and to move provisions that dealt more with procedure to other sections of the rule

Paragraph (a) states the Corporation's long-standing policy that recipients may, without any prior LSC approval, retain a fund balance of up to 10% of their LSC support. While this policy has not changed from the current rule, the Corporation received significant comment urging that the ceiling on fund balances be raised. A number of commenters argued that their own accountants or auditors recommended higher fund balance retention in the interests of sound financial management for nonprofit corporations. The commenters, however, differed on the appropriate level for such fund balances, with recommendations ranging as low as one month's operating expenses to three or six months of expenses, or even higher. The majority of the recipients that commented suggested increasing the fund balance which could be retained without specific LSC approval to between 15% and 25% of LSC support. Several commenters noted that their other funders generally did not permit their funds to be included in fund balances, making the inclusion of LSC funds for this purpose more critical for the recipient's stability as an ongoing enterprise and to ease the transition for the recipient should it lose some or all of its LSC funding.

The Corporation has retained the 10% ceiling on the level of fund balances that recipients may carryover without specific LSC approval. The Corporation was not convinced by the comments that a higher level was either necessary or appropriate at this time. The primary purpose of LSC funding is to enable the recipient to provide a maximum of high quality legal assistance to eligible clients, rather than to underwrite the long term fiscal stability of the recipient. There is an inherent tension between the purpose of the grant funds and the non-expenditure of these funds solely to underwrite the entity's viability as an ongoing enterprise. Nothing in the comments persuades the Corporation that an amount in excess of the current 10% ceiling is necessary.

In 1980, the GAO was critical of fund balances between 20% and 31% of a recipient's annual grant. While OMB introduced more flexibility into grantee administration of its federal funding through its amendments to Circular A–110, there is no empirical evidence that the GAO criticisms of fund balances for LSC recipients are any less valid today. Nor have the commenters demonstrated any compelling need for higher fund balances. Additionally, large fund balances could create the potential for misuse of such funds. In 1997, the last year for which complete records were available, recipients carried over $17.9 million in LSC funding, compared to $49.6 million in non-LSC funding. The data further reflect that most recipients report carry over of funds and that, of those that do, the majority carried over significantly more non-LSC funds than LSC funds. These data tend to refute the argument of the commenters that LSC funds are necessary for an adequate fund balance because of the general lack of non-LSC funds available for this purpose. Nor does the Corporation adhere to the principle underlying these claims, that LSC funds should be used to underwrite a recipient's financial stability when other funders will not do so. Especially with the advent of competitive grants, LSC would prefer to have its grants go to client service rather than to reserve funds for grant transition activities and needs. Where such needs exist, LSC can provide the necessary funding.

Paragraph (b) permits recipients to request a waiver from LSC to retain a fund balance of up to 25% of their LSC support. Such waivers are granted at the discretion of LSC and require a showing of special circumstances to justify the waiver. As discussed above, several commenters sought a fund balance ceiling of 25% or higher to be automatic, rather than by waiver. However, the Corporation disagreed with these comments and has retained the ceiling of 10% for fund balances which can be retained without prior LSC approval, and up to 25% only upon a waiver request to LSC, supported by a showing of special circumstance. Consistent with the proposed rulemaking, however, LSC has relaxed somewhat the showing required to obtain a waiver for a fund balance of up to 25% of a recipient's LSC support. The particular standards are discussed below in § 1628.4.

In the final rule, the Corporation has added a new paragraph (c) which permits a recipient to request a waiver to retain a fund balance in excess of 25% of their LSC support in extraordinary and compelling circumstances. The rule further limits "extraordinary and compelling circumstances" by specifying only three possible sources for such funds: (1) An insurance reimbursement; (2) the sale of real property; and (3) the receipt of monies from a lawsuit in which the recipient was a party.

Although the Corporation did not find it necessary or appropriate to raise the ceilings in effect for routine fund balance carryovers or waivers, it was swayed by the comments concerning unusual and compelling circumstances which could arise that may justify retention of a fund balance in excess of 25% of a recipient's LSC support. In general these circumstances arise when there is a sudden and unexpected infusion of funds which are derived from prior LSC grant funds but are not part of the current year's funding. By their nature, these funds may be substantial in amount. Instances discussed included the settlement of an insurance claim resulting in the payment to the recipient of a large insurance reimbursement; the receipt of a substantial amount as proceeds from the sale of real property; or, the receipt of an award based on a judgment or settlement in a lawsuit to which the recipient was a party. In these cases, because of the timing of the receipt of the funds or the amount of such funds or both, it may be more prudent to permit the recipient to carryover the funding into the next fiscal year, even if the amount of the carryover will exceed 25%, than to require the recipient to spend the funds in the fiscal year received. The recipient can better plan and find the best use for the funds, rather than being forced into a hasty expenditure simply to avoid the limitation on the carryover of fund balances and the resultant surrender of the excess fund balances to the Corporation.

The Committee considered using a standard of "extraordinary and compelling" for these waivers with the three specific circumstances discussed as examples. However, it was felt that more guidance was required to avoid erosion of the standard. Therefore, the Board ultimately decided to limit the permissible circumstances for these extraordinary waivers to the three conditions which have in the past been known to give rise to the sudden infusion of large sums, and hence may precipitate the need for a waiver. By limiting the circumstances justifying such waivers, the Corporation intends to provide notice to recipients of the limited types of circumstance in which extraordinary excess fund balances will be tolerated, thereby avoiding any misunderstanding, abuse, or erosion of the standard.

In the final rule, proposed paragraph (c) is relettered as (d) and otherwise retains the policy that the granting of any waiver request is at the discretion of the Corporation. The final rule makes explicit that the discretion to grant a waiver applies to both requests for waivers of up to 25% of a recipient's LSC support and for waivers in excess of 25%. In addition, the final rule refers to the criteria in § 1628.4(d) which governs the Corporation's exercise of its waiver discretion.

In the final rule, proposed paragraph (d) is relettered as (e) and continues to state that, absent a waiver, a fund balance in excess of 10% of LSC support is to be repaid to the Corporation. In addition, the final rule continues the policy requiring repayment to LSC of any amount in excess of the amount permitted under a waiver granted by the Corporation. As suggested during the comment period, the two sentences describing the alternative means of repayment have been moved to the section on procedures (see § 1628.4(c)).

In the final rule, proposed paragraph (e) is relettered as (f), but is otherwise unchanged. It continues to clarify LSC policy that the recovery of excess fund balances does not constitute a termination of funds under Part 1606 of the Corporation's regulations.

Finally, the final rule reletters paragraph (f) as (g) and retains the substance of the proposed rule to make clear that one-time and special purpose grants awarded by the Corporation are not subject to the fund balance rules in this part, are not part of the calculation of fund balances pursuant to this rule, but are to be separately accounted for and reported. The rule also continues LSC's policy that unexpended funds from one-time and special purpose grants must be returned to the Corporation at the end of the grant term unless the Corporation has approved the expenditure of those funds in writing. The Corporation Office of Compliance and Enforcement is planning to update the LSC Accounting Guide to reflect the revisions to the rule, including treatment of one-time and special purpose grants as provided for in this provision.

Section 1628.4 Procedure

This section sets out the procedures applicable to recipient fund balances. It has been revised to provide the basis on which the Corporation will exercise its discretion to grant a waiver of an excess fund balance and the requirements which are intended to ensure careful oversight by the Corporation of a recipient's fund balances. The procedures apply to both waivers of the 10% ceiling for a fund balance of up to 25% of a recipient's LSC support and waivers of the 25% ceiling in extraordinary and compelling circumstances. The final rule consolidates the procedural requirements in the current rule in this section and updates those requirements as necessary.

Paragraph (a) of the final rule sets out the timeframe for recipients whose fund balance exceeds the 10% ceiling to request a waiver from the Corporation and the required content of such waiver requests. The final rule provides a recipient with 30 days from the submission of the recipient's annual financial audit in which to request a waiver. By tying the waiver request to the submission date for the recipient's annual financial audit, the Corporation intends to place recipients on notice of a fixed date for such requests. As used in this paragraph, the submission date for the recipient's annual financial audit is the date on which such audit is due to be submitted to the Corporation, which is currently specified in the LSC Audit Guide as 120 days from the close of the grantee's fiscal year.

Several comments urged that the rule provide for advance or preliminary approvals. According to the comments, advance approval would permit better fiscal planning and would allow the expenditure of fund balances earlier in the following fiscal year. Although these concerns have merit, approval is by definition based on the amount of fund balance indicated in the recipient's audit, and that audit is not available until after the end of the fiscal year. This rule does not preclude the recipient's request for a Corporation action on a waiver prior to the close of the fiscal year, it simply does not require the Corporation to provide for advance approval. The Corporation already has a practice of providing informal guidance to recipients who inquire early about their anticipated fund balances. This practice will continue to be available to recipients, but need not be required by regulation.

Paragraph (a) of the final rule incorporates the content of waiver requests which was specified in paragraph (c) of the proposed rule. The final rule continues to require that waiver requests specify: (1) The fund balance as reported in the recipient's annual audit; (2) the reason for the excess fund balance; (3) the recipient's plans for use of the excess fund balance; (4) the fund balance, if any, that the recipient projects for the current fiscal year; and (5) the circumstances justifying retention of the excess fund balance. The Corporation revised item (3) to delete the proposed reference to a Technology Investment Plan and other specific requirements related to information technology systems. The Corporation decided there was insufficient support for singling out information technology systems for special treatment under its fund balance rules. The need to acquire or update the hardware or software related to a recipient's information technology systems is simply one example of equipment or property acquisition for which an excess fund balance may be used. Other stylistic and clarifying language changes have been made, including expanding the reference to circumstances in item (5) to include both the special circumstances required to justify the retention of an excess fund balance of up to 25% of the recipient's LSC support and the extraordinary and compelling circumstances specified in § 1628.3(c) necessary to justify retention of a fund balance in excess of 25% of the recipient's LSC support.

The Corporation proposed in paragraph (b) of this section to identify its obligations to consider the recipient's final audit, fund balance statements, and waiver requests, if any, and to provide timely written notice to the recipient of any fund balance amount to be recovered and the method of recovery. In the final rule, the scope of paragraph (b) was narrowed to focus on the Corporation's obligation to respond in a timely fashion to a recipient's request for a waiver or to notify the recipient that the excess fund balance must be repaid to the Corporation. In addition, the final rule requires that the Corporation respond within 45 days of its receipt of a waiver request. The 45 day period for the Corporation's decision and response to a waiver request was deemed reasonable and necessary because of the likelihood that multiple requests would be submitted at about the same time each year. In this regard, the written response to a waiver request or notice of demand for repayment of the excess fund balance may be provided by the Corporation by physical delivery, such as regular mail, or electronically, such as e-mail, when feasible. Either method is likewise acceptable for the submission of waiver requests.

The final rule contains a new paragraph (c) which consolidates the information previously located in paragraph (b) (discussed above) concerning the timeliness of repayment notices and in the policy section (see § 1628.3(e), *supra*) concerning the methods of repayment. The final rule continues to require written notice of repayment of an excess fund balance at least 30 days prior to the date when repayment is due. Furthermore, the final rule continues to authorize the Corporation to decide, after consultation with the recipient, on the method of repayment. Two repayment methods are contemplated: a lump sum payment or a pro rated deduction from the recipient's monthly grant payments spread over a specified number of months. Irrespective of the recovery method used, however, the recipient should generally expect the recovery to be complete within the term of the current grant.

Paragraph (d) of the proposed rule stated that excess fund balances could not be expended by the recipient prior to approval by the Corporation of a waiver request. This paragraph has been deleted from the final rule as unnecessary and redundant. It remains the policy of the Corporation that a recipient needs to obtain LSC's approval of a waiver request before it may expend any excess fund balances.

In the final rule, proposed paragraph (e) is relettered as paragraph (d) and continues to identify the standards governing the Corporation's decision to grant a waiver request. The overarching standard continues to be that recipients provide high quality legal assistance to clients in an effective and economical manner. While prohibiting excess fund balances promotes this purpose, regulated use of carryover funds under certain circumstances is also consistent with this purpose. Based on changing needs and the Corporation's experience with fund balances since 1984, the standards enumerated in paragraph (d) are intended to reflect both generally and specifically the circumstances under which the Corporation may grant a fund balance waiver.

The first standard under paragraph (d) garnered the most comment. The Corporation had proposed relaxing the standard from "emergencies, or unusual or unexpected occurrences, or extraordinary circumstances" to "emergencies, unusual or unexpected occurrences, or circumstances" which give rise to an excess fund balance. Commenters generally approved the broader discretion available to the Corporation under the proposed standard. According to the commenters, justifiable reasons for waiving the 10% ceiling on fund balance retention exist which do not rise to the current standard of "extraordinary circumstances." One commenter, however, critiqued the proposed standard as too lax and feared it may result in a *de facto* increase in the ceiling on fund balances from 10% to 25%.

In the final rule, the standard has been changed to refer to the "circumstances giving rise to the existence of a fund balance in excess of 10% of LSC support set out in § 1628.3(b) or (c)." Thus, the final standard incorporates by reference the need for "special circumstances" to justify a waiver to retain an excess fund balance of up to 25% of a recipient's LSC support and "extraordinary and compelling circumstances" as specified in § 1628.3(c) to justify a waiver for a fund balance in excess of 25% of a recipient's LSC support. For waivers of up to 25% of LSC support, the Corporation has more flexibility and discretion than under the current standard to grant a waiver, while at the same time requiring a showing of a special circumstance to avoid such waivers from becoming the norm. Moreover, to obtain a waiver in excess of 25% of LSC support, the recipient must demonstrate that one of the three circumstances specified in § 1628.3(c) gave rise to the excess fund balance in order to show extraordinary and compelling circumstances to justify a waiver. Thus, the ability of a recipient to obtain a waiver to retain a fund balance in excess of 25% of its LSC support is narrowly circumscribed.

Moreover, the circumstances giving rise to the excess fund balance remain but one of four factors to be considered by the Corporation in granting or denying a waiver request. The final rule retains without change two factors from the current rule: the special needs of clients and the recipient's financial management record. The final factor combines subparagraphs (3) and (4) of the proposed rule into a single subparagraph (3) in the final rule. As revised, subparagraph (3) in the final rule retains authority for the Corporation to consider the recipient's need for a cash reserve for payments to private attorneys participating in the recipient's private attorney involvement ("PAI") program and adds language authorizing the consideration of the recipient's need to acquire equipment or property or for other expenditures which are reasonable and necessary for the performance of the LSC grant. The additional language, in part, replaces the proposed rule's subparagraph (4) which separately stated as a factor the recipient's need for a cash reserve to replace or update information technology systems. Only a few comments addressed the technology issue and a review of past fund balance requests and prior approval requests under Part 1630 (Cost standards and procedures) indicated no need for a specific regulatory factor related solely to information technology systems. The language in the final rule is expected to provide the Corporation with sufficient discretion and flexibility to deal with a variety of requests for waivers, not merely those related to information technology systems. For example, a cash reserve in a coming fiscal year may be needed to acquire new property or to acquire equipment that may make the program more accessible to handicapped clients, or for additional staff necessary to handle an anticipated influx of clients due to changes in medical, housing or other benefits adversely impacting on the client community.

In the final rule, the proposed new paragraph (f) is re-lettered as paragraph (e), and its substantive provisions for tighter controls on the use of fund balances by recipients are retained without change. Thus, the Corporation's written approval of waiver request will specify the time period within which the excess fund balance must be expended and the uses for which the funds may be expended. In specifying the time period for the expenditure of any excess fund balances, the Corporation's written approval will indicate whether the expenditure may be permitted beyond the end of the current fiscal year.

The final rule retains as paragraph (f) the current and proposed requirements for the separate reporting of any excess fund balance retained by a recipient for expenditure pursuant to an approved waiver request. Revisions to this paragraph clarify that approved excess fund balances should be reported separately by natural line item in the current fiscal year's audited financial statements. "Natural line item" or "natural expense classification" is a term of art in the accounting field which means the itemizing of expenses according to the kinds of economic benefits received by incurring the expense. Examples of natural line items or natural expense classifications include salaries and wages, employee benefits, supplies, rent, and utilities. See the American Institute of Certified Public Accountants Audit and Accounting Guide for Not-for-Profit Organizations, June 1, 1996 edition, Glossary, at 367.

Finally, in the final rule, a new paragraph (g) has been added. Paragraph (g) requires recipients to inform the Corporation of and seek its guidance with respect to changes in the conditions on the timing or purposes for the expenditure of excess fund balances as set out in the Corporation's written approval of a waiver request. The new paragraph is intended to place recipients on notice of their obligation to inform LSC of changes in circumstances which make compliance with the terms and conditions of their waiver difficult or impossible, for example, uncontrollable delays in settling on the purchase of new property, sudden and unexpected market changes that may alter the economics of a planned purchase, or newly emergent priorities for which the expenditure should be redirected. The Corporation will then provide the recipient with guidance on whether the change in the purpose of the expenditure or the need for more time for the expenditure, or both, warrants a change in the conditions for the waiver. Failure of a recipient to notify the Corporation and obtain approval for changes in its waiver conditions could result in any nonconforming expenditures being treated as a questioned cost by the Corporation under Part 1630.

Section 1628.5 Fund Balance Deficits

The final rule retains with only minor technical or clarifying changes the provisions of the current rules governing recipient deficits. Deficits continue to be discouraged and use of LSC funds to liquidate a deficit requires prior Corporation approval. Absent prior approval, LSC funds used for this purpose will result in a questioned cost. Only a few conforming language changes have been made to this section.

List of Subjects in 45 CFR Part 1628

Administrative practice and procedures, Legal services

For reasons set forth in the preamble, LSC revises 45 CFR Part 1628 to read as follows:

PART 1628—RECIPIENT FUND BALANCES

Sec.
1628.1 Purpose.
1628.2 Definitions.
1628.3 Policy.
1628.4 Procedures.
1628.5 Fund balance deficits.

Authority: 42 U.S.C. 2996e(b)(1)(A), 2996f (a)(3).

§ 1628.1 Purpose

The purpose of this part is to set out the Corporation's policies and procedures applicable to recipient fund balances. The Corporation's fund balance policies are intended to ensure the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance to eligible clients.

§ 1628.2 Definitions.

(a) *Excess fund balance* means a recipient's LSC fund balance that exceeds the amount a recipient is permitted to retain under this part.

(b) *LSC support* means the sum of:

(1) The amount of financial assistance awarded by the Corporation to the recipient for the fiscal year included in the recipient's annual audited financial statement, not including one-time and special purpose grants; and

(2) Any LSC derivative income, as defined in § 1630.2(c), earned by the recipient for the fiscal year included in the recipient's annual audited financial statement, not including derivative income from one-time and special purpose grants.

(c) The LSC *fund balance* is the excess of LSC support plus the prior year carryover amount over expenditures of LSC funds (including capital acquisitions), as each is reported in the recipient's annual financial statements.

(d) The *fund balance percentage* is the amount of the LSC fund balance expressed as a percentage of the recipient's LSC support.

(e) *Recipient,* as used in this part, means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

§ 1628.3 Policy.

(a) Recipients are permitted to retain from one fiscal year to the next LSC fund balances up to 10% of their LSC support.

(b) Recipients may request a waiver to retain a fund balance up to a maximum of 25% of their LSC support for special circumstances.

(c) Recipients may request a waiver to retain a fund balance in excess of 25% of a recipient's LSC support only for the following extraordinary and compelling circumstances when the recipient receives an insurance reimbursement, the proceeds from the sale of real property, or a payment from a lawsuit in which the recipient was a party.

(d) A waiver pursuant to paragraph (b) or (c) of this section may be granted at the discretion of the Corporation pursuant to the criteria set out in § 1628.4(d).

(e) In the absence of a waiver, a fund balance in excess of 10% of LSC support shall be repaid to the Corporation. If a waiver of the 10% ceiling is granted, any fund balance in excess of the amount permitted to be retained shall be repaid to the Corporation.

(f) A recovery of an excess fund balance pursuant to this part does not constitute a termination under 45 CFR part 1606. *See* § 1606.2(c)(2)(ii).

(g) One-time and special purpose grants awarded by the Corporation are not subject to the fund balance policy set forth in this part. Revenue and expenses relating to such grants shall be reflected separately in the audit report submitted to the Corporation. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses related to such grants as a part of the audit report. No funds provided under a one-time or special purpose grant may be expended subsequent to the expiration date of the grant without the prior written approval of the Corporation. Absent approval from the Corporation, all unexpended funds under such grants shall be returned to the Corporation.

§ 1628.4 Procedures.

(a) Within 30 days of the submission to LSC of its annual audited financial statements, a recipient may request a waiver of the 10% ceiling on LSC fund balances. The request shall specify:

(1) The LSC fund balance as reported in the recipient's annual audited financial statements;

(2) The reason(s) the excess fund balance resulted;

(3) The recipient's plan for disposition of the excess fund balance during the current fiscal year;

(4) The amount of fund balance projected to be carried forward at the close of the recipient's current fiscal year; and

(5) The special circumstances justifying the retention of the excess fund balance up to 25%, or the extraordinary and compelling circumstances set out in § 1628.3(c) justifying a fund balance in excess of 25%.

(b) Within 45 days of receipt of the recipient's waiver request submitted pursuant to paragraph (a) of this section, the Corporation shall provide a written response to the request and a written notice to the recipient of any fund balance due and payable to the Corporation as well as the method for repayment.

(c) In the event that repayment is required, the Corporation shall give written notice 30 days prior to the effective date for repayment. Repayment shall be in a lump sum or by pro rata deductions from the recipient's grant checks for a specific number of months. The Corporation shall determine which of the specified methods of repayment is reasonable and appropriate in each case after consultation with the recipient.

(d) The decision of the Corporation regarding the granting of a waiver shall be guided by the statutory mandate requiring the recipient to provide high quality legal services in an effective and economical manner. In addition, the Corporation shall consider the following factors:

(1) Emergencies, unusual or unexpected occurrences, or the circumstances giving rise to the existence of a fund balance in excess of 10% of LSC support set out in § 1628.3(b) or (c);

(2) the special needs of clients;

(3) The need to retain a cash reserve for payments to private attorneys participating in the recipient's private attorney involvement (PAI) program; for acquisition of equipment or property; or for other expenditures which are reasonable and necessary for the performance of the LSC grant; and

(4) The recipient's financial management record.

(e) The Corporation's written approval of a request for a waiver shall require that the recipient use the funds it is permitted to retain within the time period set out in the approval and for the purposes approved by the Corporation.

(f) Excess fund balances approved by the Corporation for expenditure by a recipient shall be separately reported by natural line item in the current fiscal year's audited financial statements. This may be done by establishing a separate fund or by providing a separate supplemental schedule as part of the audit report.

(g) The recipient shall promptly inform and seek guidance from the Corporation when it determines a need for any changes to the conditions on timing or purposes set out in the Corporation's written approval of a recipient's request for a waiver.

§ 1628.5 Fund balance deficits.

(a) Sound financial management practices such as those set out in Chapter 3 of the Corporation's Accounting Guide for LSC Recipients should preclude deficit spending. Use of current year LSC grant funds to liquidate deficit balances in the LSC fund from a preceding period requires the prior written approval of the Corporation.

(b) Within 30 days of the submission of the recipient's annual audit, the recipient may apply to the Corporation for approval of the expenses associated with the liquidation of the deficit balance in the LSC fund.

(c) In the absence of approval by the Corporation, expenditures of current year LSC grant funds to liquidate a deficit from a prior year shall be identified as questioned costs under 45 CFR part 1630.

(d) The recipient's request must specify the same information relative to the deficit LSC fund balance as that set forth in § 1628.4(a)(1) and (2). Additionally, the recipient must develop and submit a plan approved by its governing body describing the measures which will be implemented to prevent a recurrence of a deficit balance in the LSC fund. The Corporation reserves the right to require changes in the submitted plan.

(e) The decision of the Corporation regarding acceptance of these deficit-related costs shall be guided by the statutory mandate requiring the recipient to provide high quality legal services performed in an effective and economical manner. Special consideration will be given for emergencies, unusual occurrences, or other special circumstances giving rise to a deficit balance.

Dated: October 31, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs.

[FR Doc. 00–28473 Filed 11–06–00; 8:45 am]

BILLING CODE 7050-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 83–484; FCC 00–386]

Repeal or Modification of the Personal Attack and Political Editorial Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerns repeal of the personal attack and political editorial rules for broadcast licensees and cable system operators. This order repeals the broadcast and cable personal attack and political editorial rules. The order also vacates the Commission's earlier Order and Request to Update Record which had suspended for 60 days the personal attack and political editorial rules. The U.S. District Court of Appeals, D.C. Circuit, by order of October 11, 2000 directed the Commission to repeal the rules, noting that the Commission may institute a new rulemaking proceeding to determine whether, consistent with constitutional constraints, the public interest requires the personal attack and political editorial rules.

DATES: This rule is effective October 26, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cyndi Thomas, Policy and Rules Division, Mass Media Bureau, at (202) 418–2600.

SUPPLEMENTARY INFORMATION: This is a summary of the *Order* in MM Docket No. 83–484, FCC 00–386, adopted October 26, 2000; released October 26, 2000. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY–A257, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW., Room CY–B402, Washington, DC. The complete text is also available under the file name fcc00386.pdf on the Commission's Internet site at *www.fcc.gov.*

Synopsis of Order

1. Pursuant to the D.C. Circuit Court of Appeals' order in *Radio-Television News Directors Association* v. *FCC,* No. 98–1305, slip op. (D.C. Cir. Oct. 11, 2000) (*RTNDA*), the Commission hereby repeals §§ 73.1920 and 73.1930 of our rules, 47 CFR 73.1920, 73.1930, the broadcast personal attack and political editorial rules. Further, in light of these actions, the Commission vacates its *Order and Request to Update Record* released October 4, 2000 (FCC 00–360) (65 FR 60387, October 11, 2000) and terminate this proceeding.

2. The Commission also repeals the personal attack and political editorial rules that apply to cable television operators. 47 CFR 76.209(b), (c), and (d). Although these rules were not specifically cited in the proceeding before the Court of Appeals in *RTNDA,* they are identical to those rules in all material respects. The potential elimination of these rules was raised in a Notice of Proposed Rule Making in MM Docket No. 83–331, 48 FR 26471 (June 8, 1983), and was specifically addressed in a 1996 request for further information in the instant docket, MM Docket No. 83–484, 48 FR 28295 (June 21, 1983). Given the delay in concluding these proceedings and the Court of Appeals' decision, the Commission also vacates these identical cable television rules placed at issue in MM Docket No. 83–331. The Commission does so on the procedural grounds set forth in the Court of Appeals' decision in *RTNDA,* without expressing any conclusion as to the substantive issues underlying these rules. As the Court of Appeals noted, "[o]f course, the Commission may institute a new rule-making proceeding to determine whether, consistent with constitutional constraints, the public interest requires the personal attack and political editorial rules." *RTNDA,* slip op. at 4. With respect to the personal attack and political editorial rules, "these are issues that the court has yet to decide." *Id.*

Ordering Clauses

3. Sections 73.1920, 73.1930 and 76.209(b), (c), and (d) of the Commission's rules, 47 CFR 73.1920, 73.1930, 76.209(b), (c), (d) are repealed.

4. The Commission's rules are amended as set forth.

5. The *Order and Request to Update Record,* FCC 00–360 (rel. Oct. 4, 2000) is vacated.

6. This proceeding is terminated.

7. This action is taken pursuant to sections 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303.

List of Subjects

47 CFR Part 73

Radio, television broadcasting.

47 CFR Part 76

Cable television service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 73 and 76 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.1920 [Removed]

2. Section 73.1920 is removed.

§ 73.1930 [Removed]

3. Section 73.1930 is removed.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

4. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

5. Sections 76.209 is revised to read as follows:

§ 76.209 Fairness doctrine; personal attacks; political editorials.

A cable television system operator engaging in origination cablecasting shall afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

Note to § 76.209: See public notice, "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance," 29 FR 10415.

[FR Doc. 00–28353 Filed 11–6–00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 96–86; FCC 00–348]

Development of Operational Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission adopts a revised band plan for the Public Safety 700 MHz band, which is twenty-four megahertz of spectrum allocated for public safety services at 764–776 MHz and 794–806 MHz ("the 700 MHz band"). This new plan represents an improved layout and will promote better assignment and operational possibilities for the public safety community. The Commission also adopts technical criteria to protect certain global navigation satellite systems (GNSS). The agency designates channels for mutual aid purposes in the public safety bands below 512 MHz to improve interoperability capabilities for public safety entities that operate in these existing bands.

DATES: Effective December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Peter Daronco *pdaronco@fcc.gov* or Karen Franklin *kfrankli@fcc.gov,* at (202) 418–0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This document is a summary of the Commission's Third Memorandum Opinion and Order (Third MO&O) and Third Report and Order (Third R&O), FCC 00–348 in WT Docket No. 96–86, adopted on September 18, 2000, and released on October 10, 2000. The full text of this Third MO&O and Third R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037. The full text may also be downloaded at *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Summary of the Third MO&O and the Third R&O

1. *Band Plan.* The Third MO&O addresses the remaining issues raised in the petitions for reconsideration of the First Report and Order (First R&O) in WT Docket No. 96–86, 63 FR 58645, November 2, 1998, which are granted to the extent indicated and are otherwise denied. On reconsideration, the Commission revises the band plan adopted in the First R&O to reposition the location of the narrowband and wideband channel groups for the general use, interoperability, and reserve spectrum and to designate 48 narrowband channels (24 channel pairs) for low power use for on-scene communication. Among the limitations imposed on use of these frequencies, the maximum effective radiated power (ERP) on these channels is limited to 2 watts. Additionally, applications for 18 of the channel pairs are subject to the regional planning process where the regional planning committee will determine the most appropriate low power application(s) on these channels and the frequency coordinators will be responsible for providing appropriate interference protection. The other 6 channel pairs will be licensed on a nationwide, itinerant basis. A Commission license will be required for operation on any of the low power channels.

2. In the Third R&O portion of this combined item, the Commission addresses designation and licensing issues for spectrum reserved in the First R&O to be subject to the Third Notice of Proposed Rule Making (Third NPRM) in WT Docket No. 96–86, 63 FR 58685, November 2, 1998. The Commission designates 2.4 MHz of spectrum, all narrowband channels for statewide, geographic-area licenses. The governor, or designee, of each state has the option until December 31, 2001, to apply for all or part of this 2.4 MHz of spectrum under a state license. Whatever spectrum has not been applied for by December 31, 2001, will revert to General Use public safety and will be administered by the relevant RPC. Each state license will be granted subject to the condition that the state certifies, on or before each applicable benchmark date, that it is providing or prepared to provide "substantial service" as set forth in the new § 90.529 of the Commission's Rules. The Commission reserves 6.2 MHz of the 24 MHz allocated for public safety for future developments in broadband technologies. Of the 6.2 MHz reserved, 0.8 MHz is set-aside pending resolution of interoperability guard band issues raised in the Fourth Notice of Proposed Rulemaking (Fourth NPRM) in WT Docket No. 96–86, 65 FR 51788, August 2, 2000. The remaining 5.4 MHz of the 700 MHz band are grouped into four segments of 1.35 MHz each located between the narrowband and wideband segments and reserved for future developments in broadband technologies.

3. *Protection of Satellite-Based Global Systems.* The Commission designates 794–806 MHz band for mobile-to-base communications because; in part, of its proximity to the adjacent 806–824 MHz band and in an effort to facilitate unit-to-unit operations in the 700 MHz and 800 MHz bands. The Commission also adopted specific emission limits for equipment operating in the 1559–1610 MHz band that will sufficiently protect aeronautical radionavigation operations. Outside of the 1559–1610 MHz band, the Commission's traditional standard (*i.e.,* generally 43 + 10 log P) will apply.

4. *Interoperability Below 512 MHz.* The Commission designates 5 VHF channels in the 150–174 MHz band and 4 UHF channel pairs in the 450–512 MHz band for nationwide interoperability use. For existing licensees operating on these channels, the Commission provides a transition period through January 1, 2005, after which these licensees will be secondary to interoperability communication. Under our Rules, an entity must have a license to operate a base or control station on these interoperability channels. Mobile operation, however, is permitted on these channels without an individual license (*i.e.,* a blanket licensing approach). Public safety licensees who are eligible to hold a part 90 license, or who are otherwise licensed under part 90 of our Rules, can operate mobile units on these interoperability channels without an individual license. Additionally, as suggested in comments, we also will require, as of January 1, 2005, every newly certified public safety mobile radio unit to have the capacity to transmit and receive on at least one nationwide interoperability channel (*i.e.,* the calling channel) in the band in which it is operating. For licensing and administration of these interoperability channels, the Commission will rely on the four public safety frequency coordinators, who we envision will jointly develop an interoperability plan regarding the management and nationwide use of these interoperability channels, perhaps in concert with the group(s) tasked with administering the interoperability channels in the 700 MHz band. Additionally, the Commission designates two channels in the 156–162 MHz band for interoperability purposes in thirty-three inland Economic Areas and adopts criteria for licensing on these channels, including frequency coordination. Until general interoperability provisions can be made with Canada and Mexico, interoperability operations within the Canadian and Mexican border areas will need to be coordinated on an individual basis with these countries in the usual manner.

Third Supplemental Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix A of the *Second Notice of Proposed Rulemaking* (Second NPRM) 62 FR 60199, November 7, 1999 issued in this proceeding. The Commission sought written public comments on the proposals in the Second NPRM, including comments on the IRFA. No comments were filed in direct response to the IRFA. Subsequently, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix A of the First R&O issued in this proceeding. A Supplemental Final Regulatory Flexibility Analysis, (*SFRFA*) was incorporated in Appendix A of the *Memorandum Opinion and Order on Reconsideration,* (First MO&O) 64 FR 60123, November 4, 1999, issued in this proceeding. A Second Supplemental Final Regulatory Flexibility Analysis *Second SFRFA* was incorporated in Appendix A of the Second Memorandum Opinion and Order (Second MO&O) issued in this proceeding. The *Third Supplemental Final Regulatory Flexibility Analysis* (Third SFRFA) contained in this *Third MO&O* supplements the information contained in the FRFA, First SFRFA, and Second SFRFA and is limited to matters raised on reconsideration or clarification with regard to the First R&O and addressed in this Third MO&O. This Third SFRFA conforms to the RFA.

I. Need for, and Objectives of, the Third MO&O

1. In this Third MO&O, we address the multiple Petitions for Reconsideration and/or Clarification filed in connection with the First R&O in this docket that established a band plan and adopted service rules in the newly-reallocated public safety spectrum at 764–776 MHz and 794–806 MHz ("the 700 MHz band"). This Third MO&O presents our decisions in response to those various portions of the petitions that address the: (i) Band plan

for the 700 MHz band, and (ii) low power narrowband devices for on-scene communication.

2. In the Third MO&O, we revise the band plan adopted in the First R&O to reposition the location of the narrowband and wideband channel groups for the general use, interoperability, and reserve spectrum. We also modify the adopted narrowband general use channel plan by designating forty-eight narrowband channels for low power use for on-scene communication. These clarifications are needed in order to promote efficient spectrum usage and flexibility.

II. Summary of Significant Issues Raised by Public Comments in Response to the FRFA

3. No comments were filed in direct response to the FRFA.

III. Description and Estimate of Numbers of Small Entities Affected by Rule Amendment

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration ("SBA"). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities.

5. *Public Safety Radio Pool Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Spectrum in the 700 MHz band for public safety services is governed by 47 U.S.C. 337; there are approximately 127,540 licensees within these services. Non-Federal governmental entities as well as private businesses are licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity. The rule changes adopted in this Third MO&O could affect public safety entities who wished to utilize frequencies in the low power pool for uses such as on-scene firefighting communications and various other short-range communications systems which would be developed for 700 MHz band equipment.

6. *Radio and Television Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

7. *Television Stations.* This proceeding will affect full service TV station licensees (Channels 60–69), TV translator facilities, and low power TV ("LPTV") stations. The SBA defines a TV broadcasting station that has no more than $10.5 million in annual receipts as a small business. TV broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by TV to the public, except cable and other pay TV services. Included in this industry are commercial, religious, educational, and other TV stations. Also included are establishments primarily engaged in TV broadcasting and which produce taped TV program materials. Separate establishments primarily engaged in producing taped TV program materials are classified under another SIC number. There were 1,509 TV stations operating in the Nation in 1992. That number has remained fairly constant as indicated by the approximately 1,551 operating TV broadcasting stations in the Nation as of February 28, 1997. For 1992, the number of TV stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments. There are currently 95 full service analog TV stations, either operating or with approved construction permits on channels 60–69.

8. In the *DTV Proceeding,* we adopted a Digital Television ("DTV") Table, which provides only 15 allotments for digital television stations on channels 60–69 in the continental United States. There are seven DTV allotments in channels 60–69 outside the continental United States. Thus, the rules will affect approximately 117 TV stations; approximately 90 of those stations may be considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-TV affiliated companies. We recognize that the rules may also impact minority-owned and women-owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0 percent) of 1,221 commercial TV stations in the United States. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9 percent) of 1,342 commercial and non-commercial TV stations in the United States.

9. There are currently 4,977 TV translator stations and 1,952 LPTV stations. Approximately 1,309 low power TV and TV translator stations are on channels 60–69 which could be affected by policies in this proceeding. The Commission does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of TV stations are designated under this analysis as potentially small businesses.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

10. The only compliance requirement that is newly imposed by this Third MO&O is that we now require applicants for channels which where once reserved and are now available for low power licensing to go through the regional planning committee (RPC) process, including frequency coordination. RPCs will be responsible for determining the most appropriate low power application(s) on these channels and the frequency coordinators will be responsible for providing appropriate interference protection.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

12. *Channel Plans.* We appropriately decided to modify the narrowband and wideband interoperability channeling plans to permit the use of efficient transmitter combiners for common antennas. This revision lowers costs for public safety entities. Thus, these rule changes will benefit all public safety entities, including small entities. On the other hand, denying these petitions was not a viable alternative because maintaining the channel plan adopted in the First R&O would have increased costs for public safety entities, including small entities, by precluding the use of combiners. Additionally, our decision grouping the reserve spectrum into four segments of 1.35 MHz each located between the narrowband and wideband segments offers improved flexibility to accommodate future requirements that are unforeseen at this time. These rule changes will have future benefits for all public safety entities, including small entities.

13. *Low Power Channels.* Our decision allocating channels nationwide for low power mobile operations offers improved flexibility for the public safety community to meet specialized, on-scene communication requirements. Thus, these rule changes will benefit all public safety entities, including small entities. Moreover, designating the twenty-four pairs as low power channels nationwide will lower costs for equipment manufacturers and public safety users, including small entities, as will our decision to exempt these low power devices from the interoperability capability, digital modulation, and trunking requirements. The regional planning and frequency coordination process that we apply to the "regional" channels and the licensing process that we apply to all of these channels are necessary to minimize interference. We minimized burdens by exempting the nationwide, itinerant channels from regional planning and frequency coordination. This exemption benefits all public safety entities including small entities, resulting in reduced costs and improved operational flexibility to meet on-scene communication requirements. We also note that about half of the new low power channels were previously general use channels and thus already subject to regional planning, frequency coordination, and licensing under the First R&O. Other alternatives were not changing the rule and/or requiring regional planning and frequency coordination for all of the low power channels. Our decision reflects a balance between the need to minimize interference and the need for operational flexibility.

14. By establishing this low power designation, we ease the economic burden, of funding communications systems in the new 700 MHz band, on public safety agencies, including small entities, that forego purchasing more expensive high power equipment when less expensive low-power equipment meets their short distance communications needs. We also ease the burden on equipment manufacturers, including small entities, because this low power designation provides flexibility to produce high-power equipment, low-power equipment, or both. Moreover, exempting this low power equipment from the interoperability capability requirement will quicken the type certification process for manufacturers of this low power equipment.

Report to Congress

The Commission will send a copy of the Third MO&O, including the Third Supplemental Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to SBREFA. A copy of the Third MO&O including the Third Supplemental Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**. In addition, the Commission will send a copy of the Third MO&O, including this Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), Initial Regulatory Flexibility Analysis (collectively referred to as "IRFAs") were incorporated in the Notice of Proposed Rule Making (Public Safety NPRM) 61 FR 25185, May 20, 1996, the Second Notice of Proposed Rule Making (Second NPRM) and the Third Notice of Proposed Rulemaking (Third NPRM) in Docket 96–86. The Commission sought written public comments on the proposals in the Public Safety NPRM, Second NPRM, and Third NPRM, including comments on the IRFAs. No comments on the IRFAs were received. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

1. Need for, and Objective of, the Third R&O.

15. In the Third R&O portion of this combined item, we address technical, designation and licensing issues for the spectrum that we reserved in the First R&O to be "subject to the Third NPRM". In addition, we adopt technical criteria for 700 MHz band operations to protect satellite-based global navigation systems ("GNSS") from harmful interference and establish measures to promote interoperability on public safety channels below 512 MHz. These are crucial developmental steps towards the flexible regulatory framework needed to meet vital current and future public safety communications needs.

I. Summary of Significant Issues Raised by Public Comments in Response to the IRFAs

16. Based on the comments submitted generally by small entities, the Commission found that the rules we proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses. Therefore, the IRFAs solicited comments on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. No comments were submitted directly in response to the IRFAs; however, as described in Section V, we have taken into account all general comments received which addressed the impact on small entities.

II. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

17. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (i) is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the

SBA. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities.

18. *Public Safety Radio Pool Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Spectrum in the 700 MHz band for public safety services is governed by 47 U.S.C. 337; there are approximately 127,540 licensees within these services. Non-Federal governmental entities as well as private businesses are licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity. The rule changes adopted in this Third MO&O could affect public safety entities who wished to utilize frequencies in the low power pool for uses such as on-scene firefighting communications and various other short-range communications systems which would be developed for 700 MHz band equipment. As required by the Regulatory Flexibility Act (RFA), Initial Regulatory Flexibility Analysis (collectively referred to as "IRFAs") were incorporated in the Public Safety Notice, the Second Notice and the Third Notice in Docket 96–86. The Commission sought written public comments on the proposals in the Public Safety NPRM, Second NPRM, and Third NPRM, including comments on the IRFAs. No comments on the IRFAs were received. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

19. *Radio and Television Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

20. *Television Stations.* This proceeding will affect full service TV station licensees (Channels 60–69), TV translator facilities, and low power TV (LPTV) stations. The SBA defines a TV broadcasting station that has no more than $10.5 million in annual receipts as a small business. TV broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by TV to the public, except cable and other pay TV services. Included in this industry are commercial, religious, educational, and other TV stations. Also included are establishments primarily engaged in TV broadcasting and which produce taped TV program materials. Separate establishments primarily engaged in producing taped TV program materials are classified under another SIC number.

21. There were 1,509 TV stations operating in the Nation in 1992. That number has remained fairly constant as indicated by the approximately 1,551 operating TV broadcasting stations in the Nation as of February 28, 1997. For 1992, the number of TV stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments. There are currently 95 full service analog TV stations, either operating or with approved construction permits on channels 60–69. In the *DTV Proceeding,* we adopted a Digital Television ("DTV") Table which provides only 15 allotments for DTV stations on channels 60–69 in the continental United States. There are seven DTV allotments in channels 60–69 outside the continental United States. Thus, the rules will affect approximately 117 TV stations; approximately 90 of those stations may be considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-TV affiliated companies. We recognize that the rules may also impact minority-owned and women-owned stations, some of which may be small entities. In 1995, minorities owned and controlled [illegible] (3.0 percent) of 1,221 commercial TV stations in the United States. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9 percent) of 1,342 commercial and non-commercial TV stations in the United States. There are currently 4,977 TV translator stations and 1,952 LPTV stations. Approximately 1,309 low power TV and TV translator stations are on channels 60–69 which could be affected by policies +in this proceeding. The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of TV stations are designated under this analysis as potentially small businesses. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

III. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

22. This Third R&O adopts some rules that will entail additional compliance requirements. These three additional requirements may have an effect on small entities. First, we adopt additional technical criteria for 700 MHz band operations. These new requirements are enacted in order to protect satellite-based global navigation systems from harmful interference. Although this requirement may result in increases in manufacturing costs, including for small manufacturing entities, and may result in higher equipment costs, including for small entities, this modification is essential due to safety concerns related to GNSS operations. Second, we establish measures to promote interoperability on public safety channels below 512 MHz. After January 1, 2005, applications for equipment certification will only be granted for mobile and portable transmitters operating on public safety frequencies in the 150–174 MHz and/or 450–470 MHz bands that are capable of operating on at least one nationwide public safety interoperability channel designated in the band(s) in which the equipment operates. Although this requirement may result in increases in manufacturing costs, including for small manufacturing entities, and may result in higher equipment costs, including for small entities, this modification is essential to improve interoperability capabilities in existing public safety bands for public safety entities, including small entities, that operate in these bands. Lastly, we also require applicants for interoperability channels designated in the 156–162 MHz band (in thirty-three inland VHF public coast areas (VPC)) to complete the frequency coordination process. This process requires applicants to pay fees to frequency coordinators. These fees are generally based on the number of sites, frequencies, and complexity of the coordination process. The adoption of these rules is crucial in order to minimize the potential for interference among the varied users of these channels.

IV. Steps Taken Tto Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

23. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

24. *State License.* We designate 2.4 MHz of the 700 MHz band for licensing directly to each state. The rules we adopt will preclude all non-state entities from being licensed for the designated state license frequencies. Most commenters agreed that licensing states for this amount of spectrum (for state agency use) is reasonable. We also include provisions to ensure that this spectrum will become available for "general use" if a given state either (i) declines to apply for a state license or (ii) fails to provide or be prepared to provide "substantial service" by certain benchmark dates. Additionally, we amend § 90.179 to allow states to share the use of the 2.4 MHz of spectrum with local and other public safety entities, which removes an impediment to small entities accessing this spectrum under sharing agreements with states. We considered a variety of alternative approaches for the use and licensing of the reserve spectrum. We declined to adopt an alternative "State Licensing" approach under which states—rather than regional planning committees—would manage state, local, and Federal use of all or most of the 8.8 MHz of spectrum reserved subject to the Third NPRM. While there were no comments specifically responding to the IRFAs, we considered numerous comments that raised the concern that licensing states for the entire amount would designate the spectrum in a manner deleterious to small entities. Accordingly, we designated an appropriate amount of spectrum for state use instead of designating all of the reserve spectrum to manage. We also believe our decision to allocate the same 2.4 MHz nationwide will benefit small entities because they will not face the possibility of interference on a variety of frequencies from their parent state as well as from adjoining states.

25. *GNSS Protection Criteria.* The technical solutions we adopt to protect certain global navigation satellite systems ("GNSS") will impact all manufacturers of equipment that operates in the 700 MHz public safety band. This includes even small manufacturing entities. However, as discussed in the Third Report and Order, these limits are necessary to protect GNSS operations, including Global Orbiting Navigation Satellite Systems and Global Positioning System in accordance with international requirements. Moreover, Congress directed the Commission to "protect the integrity of the [GPS] frequency spectrum against interference and disruption." Nevertheless, we have attempted to minimize, to the extent possible, the effect of these additional technical requirements.

26. *Interoperability below 512 MHz.* We establish measures to promote interoperability on public safety channels below 512 MHz by designating specific channels in each band for nationwide interoperability purposes. We did this because the record demonstrated the need for improved interoperability capabilities below 512 MHz. This designation requires that existing licensees on these channels operate on a secondary basis to interoperability communication. In order to minimize the impact of these rules, we "grandfathered" these licensees on a secondary basis only to interoperability communication rather than ordering them to vacate the channels or use them exclusively for interoperability purposes. We also provide these licensees a transition period, until January 1, 2005. We selected the "least licensed channels" in each band to minimize the economic impact arising from the need to designate interoperability channels in these existing public safety bands. Additionally, after January 1, 2005, applications for equipment certification will only be granted for mobile and portable transmitters operating on public safety frequencies in these bands that are capable of operating on at least one nationwide public safety interoperability channel designated in the band(s) in which the equipment operates. We provide a similar transition period for equipment manufacturers in order to minimize the impact of these rules. This transition period will allow small manufacturing entities, in particular, an opportunity to plan for this new requirement. The alternative of not adopting this interoperability capability requirement was not acceptable because of the need to improve public safety interoperability below 512 MHz. Lastly, we also require applicants for interoperability channels designated in the 156–162 MHz band (in thirty-three inland VHF public coast areas (VPC)) to complete the frequency coordination and licensing process. We briefly considered the alternative of not requiring frequency coordination for these channels. This was unacceptable because of the potential for interference among the varied users of these channels.

27. As discussed in the Third R&O, we note that one reason for establishing measures to promote interoperability below 512 MHz is to assist public safety entities, including small entities, that cannot afford to or do not want to purchase equipment in the new 700 MHz public safety band, wherein 2.6 megahertz of spectrum is designated for nationwide interoperability. We also attempted to minimize burdens on public safety entities, including small entities, by not requiring that existing public safety licensees apply-for and be licensed to operate mobile and portable transmitters on the nationwide interoperability channels in the existing public safety bands below 470 MHz.

Report to Congress

The Commission will send a copy of the Third R&O, including this Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to SBREFA. A copy of the Third R&O including the Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**. In addition, the Commission will send a copy of the Third R&O, including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

1. Authority for issuance of this Third Memorandum Opinion and Order and Third Report and Order is contained in sections 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of

1934, as amended, 47 U.S.C. 154(i), 302, 303(f) and (r), 332, 337.

2. Pursuant to 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(f) and (r), 332, 337 that part 90 of the Commission's Rules, 47 CFR part 90, is amended as set forth in the rule changes, effective December 7, 2000 of this Third MO&O and Third R&O

3. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Third MO&O and Third R&O, including the Supplemental Final and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.1 is amended by revising paragraph (b), to read as follows:

§ 90.1 Basis and purpose.

* * * * *

(b) *Purpose.* This part states the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. These rules do not govern the licensing of radio systems belonging to and operated by the United States.

3. Section 90.7 is amended by adding definitions for *Interoperability* and *State* to read as follows:

§ 90.7 Definitions.

* * * * *

Interoperability. An essential communication link within public safety and public service wireless communications systems which permits units from two or more different entities to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results.

* * * * *

State. Any of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, and Guam.

* * * * *

4. Section 90.20 is amended in paragraph (c)(3) in the table under Megahertz by revising the entries for 151.130, 151.1375, 151.145, 154.445, 154.4525, 155, 745, 155.7525, 155.760, 158.730, 158.7375, 158.745, 159.465, 159.4725, 453.200, 453.20625, 453:2125, 453.21875, 453.225, 453.450, 453.45625, 453.4625, 453.46875, 453.475, 453.700, 453.70625, 453.7125, 453.71875, 453.725, 453.850, 453.85625, 453.8625, 453.86875, 453.875, 458.200, 458.20625, 458.2125, 458.21875, 458.225, 458.450, 458.45625, 458.4625, 458.46875, 458.475, 458.700, 458.70625, 458.7125, 458.71875, 458.725, 458.850, 458.85625, 458.8625, 458.86875, 458.875 and by adding paragraphs (d)(80) through (d)(83) and paragraph (g) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
	Megahertz		
*	*	*	*
151.130	do	28, 81	PH
151.1375	do	27, 28, 80	PH
151.145	do	28, 81	PO
*	*	*	*
154.445	do	28, 81	PF
154.4525	do	27, 28, 80.	PF
*	*	*	*
155.745	do	81	PX
155.7525	do	27, 80, 83	PX
155.760	do	81	PX
*	*	*	*
158.730	do	81	PP
158.7375	do	27, 80	PP
158.745	Base or mobile	81	PX
*	*	*	*
159.465	do	81	PO
158.4725	do	27, 80	PO
*	*	*	*
453.200	do	81	PX
453.20625	do	44, 82	PX
453.2125	do	27, 80, 83	PX
453.21875	do	44, 82	PX
453.225	do	81	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
*	*	*	*
453.450	do	81	PX
453.45625	do	44, 82	PX
453.4625	do	27, 80	PX
453.46875	do	44, 82	PX
453.475	do	81	PX
*	*	*	*
453.700	do	81	PX
453.70625	do	44, 82	PX
453.7125	do	27, 80	PX
453.71875	do	44, 82	PX
453.725	do	81	PX
*	*	*	*
453.850	do	81	PX
453.85625	do	44, 82	PX
453.8625	do	27, 80	PX
453.86875	do	44, 82	PX
453.875	do	81	PX
*	*	*	*
458.200	do	81	PX
458.20625	do	44, 82	PX
458.2125	do	27, 80, 83	PX
458.21875	do	44, 82	PX
458.225	do	81	PX
*	*	*	*
458.450	do	81	PX
458.45625	do	44, 82	PX
458.4625	do	27, 80	PX
458.46875	do	44, 82	PX
458.475	do	81	PX
*	*	*	*
458.700	do	81	PX
458.70625	do	44, 82	PX
458.7125	do	27, 80	PX
458.71875	do	44, 82	PX
458.725	do	81	PX
*	*	*	*
458.850	do	81	PX
458.85625	do	44, 82	PX
458.8625	do	27, 80	PX
458.86875	do	44, 82	PX
458.875	do	81	PX
*	*	*	*

(d) * * *

(80) After December 7, 2000 this frequency is available primarily for public safety interoperability only communications. Stations licensed prior to December 7, 2000 may continue to use this frequency on a co-primary basis until January 1, 2005. After January 1, 2005, all operations will be secondary to co-channel interoperability communications.

(81) After December 7, 2000 new stations will only be licensed with an authorized bandwidth not to exceed 11.25 kHz. Licensees authorized prior to December 7, 2000 may continue to use bandwidths wider than 11.25 kHz on a co-primary basis until January 1, 2005. After January 1, 2005, all stations operating with an authorized bandwidth greater than 2006. 11.25 kHz will be secondary to adjacent channel interoperability operations.

(82) This frequency is reserved for assignment only in support of, and on a secondary basis to, nationwide interoperability use.

(83) This interoperability frequency is dedicated for the express purpose of nationwide interoperability calling.

* * * * *

(g) Former public correspondence working channels in the maritime VHF (156–162 MHz) band allocated for public safety use in 33 inland Economic Areas.

(1) We define service areas in the marine VHF (156–162 MHz) band by forty-two geographic areas called VHF Public Coast Service Areas (VPCSAs). See § 80.371(c)(1)(ii) of this chapter (Public correspondence frequencies). VPCSAs are based on, and composed of one or more of, the U.S. Department of Commerce's 172 Economic Areas (EAs). See 60 Fed Reg. 13114 (Mar. 10, 1995). You may inspect and copy maps of the

EAs and VPCSAs at the FCC Reference Center, Room CY A–257, 445 12th St., S.W., Washington, DC 20554. These maps and data are also available on the FCC website at *http://www.fcc.gov/oet/info/maps/areas/*. We number public correspondence channels in the maritime VHF (156–162 MHz) band as channels 24 to 28 and channels 84 to 88. Each channel number represents a channel pair. See § 80.371(c) of this chapter.

(2) We allocated two contiguous 25 kHz public correspondence channels in the maritime VHF (156–162 MHz) band for public safety use in 33 VPCSAs that are not near major waterways. These 33 VPCSAs are located in an inland region stretching from the western Great Plains to eastern California and Oregon. Each of these 33 inland VPCSAs corresponds to a single EA. Channel pairs 25, 84, and 85 are paired 25 kHz bandwidth channels as set forth in paragraph (g)(2)(i) Table A of this section. In each of the 33 inland VPCSAs/EAs listed in paragraph (g)(2)(i)Table B of this section, two of these three channel pairs are allocated for public safety use by entities eligible for licensing under paragraph (a) of this section.

(i) Channel Numbers and Corresponding Center Frequencies, and Certified Coordinators Table A as follows:

TABLE A.—LIST OF CHANNEL NUMBERS AND CORRESPONDING CENTER FREQUENCIES, AND CERTIFIED COORDINATORS

Channel No.	Mobile station transmit center frequency in MHz	Base station transmit center frequency in MHz	Coordinator
25	157.250	161.850	PX
84	157.225	161.825	PX
85	157.275	161.875	PX

(ii) Channels Allocated for Public Safety Use in 33 Inland VPCSAs/Eas Table B as follows:

TABLE B.—LIST OF CHANNELS ALLOCATED FOR PUBLIC SAFETY USE IN 33 INLAND VPCSAS/EAS

VHF public coast service area	Name	Economic area	Public safety channel pairs
10	Grand Forks	110	25, 84
11	Minot	111	25, 84
12	Bismarck	112	25, 84
13	Aberdeen	114	25, 84
14	Rapid City	115	25, 84
15	North Platte	121	25, 84
16	Western Oklahoma	126	25, 85
17	Abilene	128	25, 85
18	San Angelo	129	25, 85
19	Odessa-Midland	135	25, 85
20	Hobbs	136	25, 85
21	Lubbock	137	25, 85
22	Amarillo	138	25, 85
23	Santa Fe	139	25, 84
24	Pueblo	140	25, 84
25	Denver-Boulder-Greeley	141	25, 84
26	Scottsbluff	142	25, 84
27	Casper	143	25, 84
28	Billings	144	25, 84
29	Great Falls	145	25, 84
30	Missoula	146	25, 84
31	Idaho Falls	148	25, 85
32	Twin Falls	149	25, 85
33	Boise City	150	25, 84
34	Reno	151	25, 84
35	Salt Lake City-Ogden	152	25, 85
36	Las Vegas	153	25, 84
37	Flagstaff	154	25, 84
38	Farmington	155	25, 84
39	Albuquerque	156	25, 84
40	El Paso	157	25, 85
41	Phoenix-Mesa	158	25, 84
42	Tucson	159	25, 84

(3) The channels pairs set forth in Table B paragraph (g)(2)(ii) of this section are designated primarily for the purpose of interoperability communication.

(4) Channel pairs 25, 84, and 85 as listed in Table B paragraph (g)(2)(ii) of this section were formerly allocated and assigned (under § 80.371(c) (1997) of this chapter) as public correspondence working channels in the maritime VHF 156–162 MHz band; these channels were also shared (under former § 90.283 (1997) of this chapter) with private land radio mobile stations including grandfathered public safety licensees). Thus, there are grandfathered licensees nationwide (maritime and private land mobile radio stations, including by rule waiver) operating on these channels both inside and outside of the 33 EAs listed in Table B paragraph (g)(2)(ii) of this section

(5) All applicants and licensees under this paragraph must comply with the relevant technical sections under this part unless otherwise stated in this paragraph (g) of this section using the following standards and procedures:

(i) Provide evidence of frequency coordination in accordance with § 90.175. Public safety coordinators except the Special Emergency Coordinator are certified to coordinate applications for the channels pairs set forth in Table B paragraph (g)(2)(ii) (*i.e.*, letter symbol PX under paragraph (c)(2) of this section).

(ii) Station power, as measured at the output terminals of the transmitter, must not exceed 50 Watts for base stations and 20 Watts for mobile stations, except in accordance with the provisions of paragraph (g)(5)(vi) of this section. Antenna height (HAAT) must not exceed 122 meters (400 feet) for base stations and 4.5 meters (15 feet) for mobile stations, except in accordance with paragraph (g)(5)(vi) of this section. Antenna height (HAAT) must not exceed 122 meters (400 feet) for base stations and 4.5 meters (15 feet) for mobile stations, except in accordance with paragraph (g)(5)(vi) of this section. Such base and mobile channels shall not be operated on board aircraft in flight.

(iii) Frequency protection must be provided to other stations in accordance with the following guidelines for each channel and for each area and adjacent area:

(A) Protect coast stations licensed prior to July 6, 1998, by the required separations shown in Table C below.

(B) Protect stations described in paragraph (g)(4) of this section, by frequency coordination in accordance with § 90.175 of this part.

(C) Protect public safety stations granted under paragraph (g) of this section by frequency coordination in accordance with § 90.175 of this part.

(D) *Where the Public safety designated channel is not a Public Safety designated channel in an adjacent EA:* Applicants shall engineer base stations such that the maximum signal strength at the boundary of the adjacent EA does not exceed 5 dBμV/m.

(iv) The following table, along with the antenna height (HAAT) and power (ERP), must be used to determine the minimum separation required between proposed base stations and co-channel public coast stations licensed prior to July 6, 1998 under Part 80 of this chapter. Applicants whose exact ERP or HAAT are not reflected in the table must use the next highest figure shown.

TABLE C.—REQUIRED SEPARATION IN KILOMETERS (MILES) OF BASE STATION FROM PUBLIC COAST STATIONS

Base Station Characteristics					
HAAT	ERP (watts)				
Meters (feet)	400	300	200	100	50
15 (50)	138 (86)	135 (84)	129 (80)	129 (80)	116 (72)
30 (100)	154 (96)	151 (94)	145 (90)	137 (85)	130 (81)
61 (200)	166 (103)	167 (104)	161 (100)	153 (95)	145 (90)
122 (400)	187 (116)	177 (110)	183 (114)	169 (105)	159 (99)

(v) In the event of interference, the Commission may require, without a hearing, licensees of base stations authorized under this section that are located within 241 kilometers (150 miles) of a co-channel public coast, I/LT, or grandfathered public safety station licensed prior to July 6, 1998, or an international border, to reduce power, decrease antenna height, and/or install directional antennas.

Mobile stations must be operated only within radio range of their associated base station.

(vi) Applicants seeking to be licensed for stations exceeding the power/antenna height limits of the table in paragraph (g)(5)(iv) of this section must request a waiver of that paragraph and must submit with their application an interference analysis, based upon an appropriate, generally-accepted terrain-based propagation model, that shows that co-channel protected entities, described in paragraph (g)(5)(iii) of this section, would receive the same or greater interference protection than the relevant criteria outlined in paragraph (g)(5)(iii) of this section.

5. Section 90.35 is amended in paragraph (b)(3) in the table under Megahertz by revising the entries for 159.480 and adding paragraph (c)(82) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(b) * * *

(3) * * *

INDUSTRY BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
Megahertz			
* * * * * * *			
159,480	do	8, 82	IP
* * * * * * *			

(c) * * *

(82) After December 7, 2000 new stations will only be licensed with an authorized bandwidth not to exceed 11.25 kHz. Licensees authorized prior to December 7, 2000 may continue to use bandwidths wider than 11.25 kHz on a co-primary basis until January 1, 2005. After January 1, 2005, all stations operating with an authorized bandwidth greater than 11.25 kHz will be secondary to adjacent channel public safety interoperability operations. (*See* § 90.20(c)(3)).

* * * * *

6. Section 90.175 is amended by adding paragraphs (i)15 and (i)(16) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(i) * * *

(15) Applications for a state license under § 90.529.

(16) Applications for narrowband low power channels listed for itinerant use in § 90.531(b)(4).

* * * * *

7. Section 90.179 is amended by revising paragraph (g) to read as follows:

§ 90.179 Shared use of radio stations.

* * * * *

(g) Notwithstanding paragraph (a) of this section, licensees authorized to operate radio systems on Public Safety Pool frequencies designated in § 90.20 may share their facilities with Federal Government entities on a non-profit, cost-shared basis. Such a sharing arrangement is subject to the provisions of paragraphs (b), (d), and (e) of this section. State governments authorized to operate radio systems under § 90.529 may share the use of their systems (for public safety services not made commercially available to the public) with any entity that would be eligible for licensing under § 90.523 and Federal government entities.

8. Section 90.203 is amended by adding paragraph (j)(1) to read as follows:

§ 90.203 Certification Required.

* * * * *

(j) * * *

(1) Applications for certification received on or after January 1, 2005, for mobile and portable transmitters designed to transmit voice on public safety frequencies in the 150–174 MHz band will be granted only if the mobile/portable equipment is capable of operating on the nationwide public safety interoperability calling channel in the 150–174 MHz band. (See § 90.20(c), (d) of this part.) Applications for certification received on or after January 1, 2005, for mobile and portable transmitters designed to transmit voice on public safety frequencies in the 450–470 MHz band will be granted only if the mobile/portable equipment is capable of operating on the nationwide public safety interoperability calling channel in the 450–470 MHz band. (See § 90.20(c), (d) of this part.)

* * * * *

9. Section 90.529 is added to read as follows:

§ 90.529 State License.

(a) Narrowband channels designated as state channels in § 90.531 are licensed to each state (as defined in § 90.7) as follows:

(1) Each state that chooses to take advantage of the spectrum designated as state channels must file an application for up to 2.4 megahertz of this spectrum no later than December 31, 2001. For purposes of this section, the elected chief executive (Governor) of each state, or his or her designee, shall be deemed the person authorized to apply for the State License.

(2) What ever part of this 2.4 megahertz that a state has not applied for by December 31, 2001, will revert to General Use and be administered by the relevant RPC (or RPCs in the instances of states that encompass multiple RPCs).

(b) Each state license will be granted subject to the condition that the state certifies on or before each applicable benchmark date that it is:

(1) providing or prepared to provide "substantial service" to one-third of their population or territory by January 1, 2012, *i.e.*, within five years of the date that incumbent broadcasters are required to relocate to other portions of the spectrum;

(2) providing or prepared to provide "substantial service" to two-thirds of their population or territory by January 1, 2017, *i.e.*, within ten years of the date that incumbent broadcasters are required to relocate to other portions of the spectrum.

(c) The Commission will deem a state "prepared to provide substantial service" if the licensee certifies that a radio system has been approved and funded for implementation by the deadline date. "Substantial service" refers to the construction and operation of 700 MHz facilities by public safety entities providing service which is sound, favorable , and substantially above a level of mediocre service which just might minimally warrant renewal.

(d) If a state licensee fails to meet any condition of the grant the state license is modified automatically to the frequencies and geographic areas where the state certifies that it is providing substantial service.

(e) Any recovered state license spectrum will revert to General Use. However, spectrum licensed to a state under a state license remains unavailable for reassignment to other applicants until the Commission's database reflects the parameters of the modified state license.

10. Section 90.531 is amended by revising paragraphs (b)(1) through (b)(3) and (c)(1) through (c)(3) and adding paragraph (b)(4) through (b)(6) to read as follows:

§ 90.531 Band plan.

(b) * * *

* * * * *

(1) *Narrowband interoperability channels.* The following narrowband channels are designated for nationwide interoperability licensing and use: 23, 24, 39, 40, 63, 64, 79, 80, 103, 104, 119, 120,143, 144, 159, 160, 183, 184, 199, 200, 223, 224, 239, 240, 263, 264, 279, 280, 303, 304, 319, 320, 641, 642, 657, 658, 681, 682, 697, 698, 721, 722, 737, 738, 761, 762, 777, 778, 801, 802, 817, 818, 841, 842, 857, 858, 881, 882, 897, 898, 921, 922, 937, 938, 983, 984, 999, 1000, 1023, 1024, 1039, 1040, 1063, 1064, 1079, 1080, 1103, 1104, 1119, 1120, 1143, 1144, 1159, 1160, 1183, 1184, 1199, 1200, 1223, 1224, 1239, 1240, 1263, 1264, 1279, 1280, 1601, 1602, 1617, 1618, 1641, 1642, 1657, 1658, 1681, 1682, 1697, 1698, 1721, 1722, 1737, 1738, 1761, 1762, 1777, 1778, 1801, 1802, 1817, 1818, 184, 1842, 1857, 1858, 1881, 1882, 1897, 1898.

(2) *Narrowband reserve channels.* The following narrowband channels are undesignated and reserved pending further Commission action in WT Docket No. 96–86 *(proceeding pending)*: 21, 22, 37, 38, 61, 62, 77, 78, 101, 102, 117, 118, 141, 142, 157, 158, 181, 182, 197, 198, 221, 222, 237, 238, 261, 262, 277, 278, 301, 302, 317, 318, 643, 644, 659, 660, 683, 684, 699, 700, 723, 724, 739, 740, 763, 764, 779, 780, 803, 804, 819, 820, 843, 844, 859, 860, 883, 884, 899, 900, 923, 924, 939, 940, 981, 982, 997, 998, 1021, 1022, 1037, 1038, 1061, 1062, 1077, 1078, 1101, 1102, 1117, 1118, 1141, 1142, 1157, 1158, 1181, 1182, 1197, 1198, 1221, 1222, 1237, 1238, 1261, 1262, 1277, 1278, 1603, 1604, 1619, 1620, 1643, 1644, 1659, 1660, 1683, 1684, 1699, 1700, 1723, 1724, 1739, 1740, 1763, 1764, 1779, 1780, 1803, 1804, 1819,1820, 1843, 1844, 1859, 1860, 1883, 1884, 1899, 1900.

(3) *Narrowband low power channels subject to regional planning.* The following narrowband channels are designated for low power use for on-scene incident response purposes using mobiles and portables subject to Commission-approved regional planning committee regional plans. Transmitter power must not exceed 2 watts (ERP): Channels 1–8 paired with Channels 961–968, and Channels 949–958 paired with Channels 1909–1918.

(4) *Narrowband low power itinerant channels.* The following narrowband channels are designated for low power use for on-scene incident response purposes using mobiles and portables. These channels are licensed nationwide for itinerant operation. Transmitter power must not exceed 2 watts (ERP): Channels 9–12 paired with Channels 969–972 and Channels 959–960 paired with Channels 1919–1920.

(5) *Narrowband state channel.* The following narrowband channels are designated for direct licensing to each state (including U.S. territories, districts, and possessions): 25–36, 65–76, 105–116, 145–156, 185–196, 225–236, 265–276, 305–316, 645–656, 685–696, 725–736, 765–776, 805–816, 845–856, 885–896, 925–936, 985–996, 1025–1036, 1065–1076, 1105–1116, 1145–1156, 1185–1196, 1225–1236, 1265–1276, 1605–1616, 1645–1656, 1685–1696, 1725–1736, 1765–1776, 1805–1816, 1845–1856, 1885–1896.

(6) *Narrowband general use channels.* All narrowband channels established in paragraph (b) of this section, other than those listed in paragraphs (b)(1), (b)(2), (b)(4) and (b)(5) of this section are designated for assignment to public safety eligibles subject to Commission-approved regional planning committee regional plans.

(c) * * *

(1) *Wideband interoperability channels.* The following wideband channels are designated for nationwide interoperability licensing and use: 28–30, 37–39, 46–48, 73–75, 83–84, 91–93, 148–150, 157–159, 166–168, 193–195, 202–204, 211–213.

(2) *Wideband reserve channels.* The following wideband channels are reserved: 1–27, 94–120, 121–147, 214–240.

(3) *Wideband general use channels.* All wideband channels established in paragraph (c), except for those listed in paragraphs (c)(1) and (c)(2) of this section, are designated for assignment to public safety eligibles subject to Commission-approved regional planning committee regional plans.

* * * * *

11. Section 90.535 is amended by revising paragraph (a) to read as follows:

§ 90.535 Modulation and spectrum usage efficiency requirements.

* * * * *

(a) All transmitters in the 764–776 MHz and 794–806 MHz frequency bands must use digital modulation. Mobile and portable transmitters may have analog modulation capability only as a secondary mode in addition to its primary digital mode. Mobile and portable transmitters that only operate on the low power channels designated in §§ 90.531(b)(3), 90.531(b)(4), are exempt from this digital modulation requirement.

* * * * *

12. Section 90.537 is revised to read as follows:

§ 90.537 Trunking requirement.

All systems using six or more narrowband channels in the 764–776 MHz and 794–806 MHz frequency bands must be trunked systems. Nationwide interoperability channels listed in § 90.531(b)(1), and the narrowband low power channels listed in §§ 90.531(b)(3), 90.531(4), are not counted as narrowband channels for the purposes of this trunking requirement.

13. Section 90.541 is amended by adding paragraph (d) to read as follows:

§ 90.541 Transmitting power limits.

* * * * *

(d) Transmitters operating on the narrowband low power channels listed in §§ 90.531(b)(3), 90.531(b)(4), must not exceed 2 watts (ERP).

14. Section 90.543 is amended by adding paragraphs (e) and (f) to read as follows:

§ 90.543 Emission limitations.

* * * * *

(e) For operations in the 764 to 776 MHz and 794 to 806 MHz bands, all emissions including harmonics in the band 1559–1610 MHz shall be limited to −70 dBW/MHz equivalent isotropically radiated power (EIRP) for wideband signals, and −80 dBW EIRP for discrete emissions of less than 700 Hz bandwidth. For the purpose of equipment authorization, a transmitter shall be tested with an antenna that is representative of the type that will be used with the equipment in normal operation.

(f) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

15. Section 90.547 is revised to read as follows:

§ 90.547 Interoperability channel capability requirement.

Mobile and portable transmitters operating in the 764–776 MHz and 794–806 MHz frequency bands must be capable of operating on all of the designated nationwide narrowband interoperability channels pursuant to standards adopted by the Public Safety National Coordination Committee and approved by the Commission. Mobile and portable transmitters that only operate on the low power channels designated in §§ 90.531(b)(3), 90.531(b)(4), are exempt from this interoperability channel capability requirement.

[FR Doc. 00–28348 Filed 11–6–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 991223347-9347; I.D. 102600C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Recreational Fishery Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishery closure; request for comments.

SUMMARY: NMFS announces changes to the recreational fishery for lingcod, within the Pacific Coast groundfish fishery. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), is intended to protect lingcod.

DATES: Changes to management measures are effective 0001 hours (local time) November 2, 2000, unless modified, superseded, or rescinded. These changes are effective until the effective date of the 2001 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. Comments on this rule will be accepted through November 22, 2000.

ADDRESSES: Submit comments to Donna Darm, Acting Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070; or Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko (Northwest Region, NMFS) 206-526-6140.

SUPPLEMENTARY INFORMATION: The following change to current lingcod management measures for waters off California was recommended by the Pacific Fishery Management Council (Council,) in consultation with the State of California, at its September 11-15, 2000, meeting in Sacramento, CA, and by the California Fish and Game Commission (Commission) at its October 19-20, 2000, meeting in San Diego, CA.

On October 6, 2000, NMFS published a document in the **Federal Register** announcing inseason changes to trip limits for Pacific coast groundfish (65 FR 59752). The preamble to that document discussed the possibility of further inseason actions to close certain fisheries off California, pending decisions made in the Commission's October meeting.

At its October 19-20, 2000, meeting, the Commission discussed whether fishery closures were necessary for the months of November and December to protect overfished and depleted species (bocaccio, lingcod, canary rockfish, cowcod). The best available information used by the Commission indicated that the coastwide lingcod optimum yield (OY) would be exceeded by October 31, 2000. Since the weather in central and southern California often remains conducive to recreational fishing throughout the year, the Commission decided to close the recreational lingcod fishery within State waters (0-3 nm offshore) for November and December in order to prevent further landings of lingcod. The Commission also asked NMFS to set complementary regulations for Federal waters (3-200 nm offshore).

At its September 2000 meeting, the Council had asked NMFS to coordinate with the State of California to implement Federal management measures consistent with those of the State. Consistent with the Council's request and to ensure that the lingcod fishery conforms with the lingcod overfished species rebuilding plan, this action implements the Commission's recommendations on a lingcod fishery closure within Federal waters off California. Previously, the Council had asked NMFS to close the recreational fishery for lingcod off Washington State. Therefore, all commercial fisheries for lingcod are closed in November and December. Oregon's recreational fishery for lingcod remains open, but landings are expected to be minimal due to rough winter weather constraining fishing opportunities.

NMFS Actions

For the reasons stated here, NMFS concurs with the Council's recommendations and announces the following changes to the 2000 annual management measures (65 FR 221, January 4, 2000, as amended at 65 FR 4169, January 26, 2000; 65 FR 17805, April 5, 2000; 65 FR 25881, May 4, 2000; 65 FR 31283, May 17, 2000; 65 FR 33423, May 23, 2000; and 65 FR 45308, July 21, 2000) as follows:

In Section IV, under D. Recreational Fishery, paragraph (1) (b) is revised to read as follows:

IV. NMFS Actions

D. Recreational Fishery

* * * * *

(1) * * *

(b) lingcod. Recreational fishing for lingcod off the coast of California is closed from [insert date of filing for public inspection with the Office of the Federal Register] through December 31, 2000.

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP and the annual specifications and management measures and emergency rule published at 65 FR 221 (January 4, 2000) and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries (AA), NOAA, finds good cause to waive the requirement to provide prior notice and comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because this action is necessary to protect an overfished species that is managed under a rebuilding plan, and affording additional advance notice would reduce the agency's ability to protect that overfished species. In addition, the affected public had the opportunity to comment on these actions at the September 11-15, 2000, Council meeting and at the October 19-20, 2000, Commission meeting. Accordingly, the AA finds good cause exists to waive the 30-day delay in effectiveness.

These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 1, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–28534 Filed 11–2–00; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register
Vol. 65, No. 216
Tuesday, November 7, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–102–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC—8—100, -200, and —300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. This proposal would require inspection to determine the orientation of the Wiggins fuel couplers of the fuel tank vent line and scavenge line in the right wing at station 249, and follow-on corrective actions. This action is necessary to prevent contact between the nuts of the Wiggins fuel couplers and the stiffener on the access panel of the upper surface of the right wing, which could compromise the lightning protection of the fuel tank of the right wing in the event of a lightning strike, and could result in possible fuel tank explosion. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 7, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–102–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–102–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. TCAA advises that it received a report indicating that a Wiggins fuel coupler had come in contact with the stiffener of the wing access panel at wing station 249.

Investigation revealed that the Wiggins fuel couplers in the right wing of both the fuel tank vent line and scavenge line had been installed incorrectly, with the nut of each coupler facing the outboard side of the wing, rather than the inboard side. This incorrect installation allowed contact between one nut of the coupler and the stiffener on the access panel of the upper surface of the right wing. Such contact could compromise the lightning protection of the fuel tank of the right wing in the event of a lightning strike, and could result in possible fuel tank explosion.

Explanation of Relevant Service Information

The manufacturer has issued Bombardier Alert Service Bulletin A8–28–32, dated January 14, 2000, which describes procedures for a one-time general visual or x-ray inspection to determine the orientation of the Wiggins fuel couplers of the fuel tank vent line and scavenge line in the right wing at station 249. For airplanes on which the couplers are oriented correctly, the alert service bulletin describes procedures for rework of the stiffener on the access panel of the upper surface of the right wing. For airplanes on which any incorrectly oriented coupler is found, the alert service bulletin describes procedures for removal of the coupler and a one-time detailed visual inspection to detect damage of that coupler.

For airplanes on which no damaged coupler is found, the alert service bulletin describes procedures for reinstallation of the coupler in the correct orientation and rework of the stiffener on the access panel of the upper surface of the right wing. However, for airplanes on which any damaged coupler is found, the alert service bulletin describes procedures for blending out the damage and performing a detailed visual inspection of the fuel coupler for cracks; and reinstallation of the coupler in the correct orientation and rework of the stiffener on the access panel of the upper surface of the right wing, or replacement of the coupler with a new or serviceable coupler in the correct orientation and rework the stiffener on the access panel of the upper surface of the right wing, if necessary.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCAA classified this alert service bulletin as mandatory and issued Canadian airworthiness directive CF–2000–05, dated February 28, 2000, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCAA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between This Proposed AD and Relevant Service Information

Operators should note that certain compliance times specified in this proposed AD differ from those specified in the alert service bulletin:

- For airplanes having correctly oriented fuel couplers, the alert service bulletin recommends reworking the stiffener within 5,000 flight hours after the initial inspection. The Canadian airworthiness directive requires the rework "at the next convenient maintenance opportunity but not later than the next 'C' check or 5,000 hours flight time after the effective date of this directive, whichever occurs first." However, this proposed AD would require the rework for these airplanes within 5,000 flight hours after the effective date of the AD.
- For airplanes having incorrectly oriented fuel couplers, the alert service bulletin also recommends reworking the stiffener within 5,000 flight hours of the initial inspection. However, this proposed AD requires the rework for these airplanes prior to further flight after detecting the incorrect orientation.

In developing the compliance times for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the compliance times specified in the Canadian airworthiness directive. In light of these factors, the FAA finds that its proposed compliance times for the rework represent the appropriate intervals of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 195 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the actions (inspection) specified in Part A of the alert service bulletin, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $11,700, or $60 per airplane.

It would take approximately 2 work hours per airplane to accomplish the actions (rework) specified in Part B of the alert service bulletin, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $23,400, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2000–NM–102–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes having serial numbers 003 through 540 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent contact between the nuts of the Wiggins fuel couplers and the stiffener on the access panel of the upper surface of the right wing, which could compromise the lightning protection of the fuel tank of the right wing in the event of a lightning strike, and could result in possible fuel tank explosion, accomplish the following:

General Visual or X-ray Inspection

(a) Within 90 days after the effective date of this AD: Perform a one-time general visual or x-ray inspection to determine the orientation of the Wiggins fuel couplers of the fuel tank vent line and scavenge line in the right wing at station 249, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–28–32, dated January 14, 2000.

Action for Airplanes Having Correctly Oriented Fuel Couplers

(b) For airplanes on which the orientation of all Wiggins fuel couplers is found to be correct, as specified in Bombardier Alert Service Bulletin A8–28–32, dated January 14, 2000: Within 5,000 flight hours after the effective date of this AD, rework the stiffener on the access panel of the upper surface of the right wing in accordance with Part B of the Accomplishment Instructions of the alert service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Actions for Airplanes Having an Incorrectly Oriented Fuel Coupler

(c) For airplanes on which the orientation of any Wiggins fuel coupler is incorrect, as specified in Bombardier Alert Service Bulletin A8–28–32, dated January 14, 2000: Prior to further flight, remove the incorrectly oriented Wiggins fuel coupler, and perform a one-time detailed visual inspection to detect damage of the fuel coupler, in accordance with Part A of the Accomplishment Instructions of the alert service bulletin.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no damage is found: Prior to further flight, reinstall the Wiggins fuel coupler in the correct orientation, as specified in the alert service bulletin, and rework the stiffener on the access panel of the upper surface of the right wing, in accordance with Part B of the Accomplishment Instructions of the alert service bulletin. No further action is required by this AD.

(2) If any damage is found, prior to further flight, blend out the damage and perform a detailed visual inspection of the fuel coupler for cracks, in accordance with the alert service bulletin.

(i) If no crack is found, and blending CAN be accomplished to meet the limits specified in the Accomplishment Instructions of the alert service bulletin: Prior to further flight, reinstall the Wiggins fuel coupler in the correct orientation, as specified in the alert service bulletin, and rework the stiffener on the access panel of the upper surface of the right wing, in accordance with Part B of the Accomplishment Instructions of the alert service bulletin. No further action is required by this AD.

(ii) If any crack is found, or if blending CANNOT be accomplished to meet the limits specified in the Accomplishment Instructions of the alert service bulletin: Prior to further flight, replace the Wiggins fuel coupler with a new or serviceable coupler in the correct orientation, as specified in the alert service bulletin, and rework the stiffener on the access panel of the upper surface of the right wing, in accordance with Part B of the Accomplishment Instructions of the alert service bulletin. No further action is required by this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–05, dated February 28, 2000.

Issued in Renton, Washington, on November 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28481 Filed 11–06–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

14 CFR Part 285

[Docket No. 000831249–0249–01]

RIN 0693–ZA39

National Voluntary Laboratory Accreditation Program; Operating Procedures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of proposed rulemaking: request for comments.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, requests comments on proposed amendments to regulations pertaining to the operation of the National Voluntary Laboratory Accreditation Program (NVLAP). NIST proposes to revise the NVLAP procedures to ensure continued consistency with international standards and guidelines currently set forth in the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 17025:1999, General requirements for the competence of testing and calibration laboratories, and ISO/IEC Guide 58:1993, Calibration and testing laboratory accreditation systems—General requirements for operation and recognition, thereby facilitating and promoting acceptance of test and calibration results between countries to avoid barriers to trade. Provisions in this regard will facilitate cooperation between laboratories and other bodies, assist in the exchange of information

and experience and in the harmonization of standards and procedures, and establish the basis for national and international mutual recognition arrangements.

In addition, NIST proposes to reorganize and simplify part 285 for ease of use and understanding. While the existing regulations accurately set forth the NVLAP procedures, the regulations themselves are complex and difficult to understand. In an effort to simplify the format and make the regulations more user friendly, NIST proposes to rewrite in plain English and consolidate sections previously contained in subparts A through C of part 285.

DATES: Submit comments on or before January 8, 2001.

ADDRESSES: Address all comments concerning this proposed rule to David F. Alderman, Chief, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2140, Gaitehrsburg, MD 20899–2140.

FOR FURTHER INFORMATION CONTACT: David F. Alderman, Chief, National Voluntary Laboratory Accreditation Program, 301–975–4016.

SUPPLEMENTARY INFORMATION:

Background

Part 285 of title 15 of the Code of Federal Regulations sets out procedures and general requirements under which the National Voluntary Laboratory Accreditation Program (NVLAP) operates as an unbiased third party to accredit both testing and calibration laboratories.

The NVLAP procedures were first published in the **Federal Register** as part 7 of title 15 of the Code of Federal Regulations (CFR) (41 FR 8163, February 25, 1976). On June 2, 1994, the procedures were redesignated as part 285 of title 15 of the CFR, expanded to include accreditation of calibration laboratories, and updated to be compatible with conformity assurance and assessment concepts, including the provisions contained in ISO/IEC Guide 25:1990, General requirements for the competence of calibration and testing laboratories (59 FR 22742, May 3, 1994).

Description and Explanation of Proposed Changes

The National Institute of Standards and Technology proposes to revise 15 CFR Part 285 to ensure continued consistency with international standards and guidelines. At this time, the management and technical requirements of the new standard, ISO/IEC 17025:1999, General requirements for the competence of testing and calibration laboratories, and the internationally accepted requirements for accrediting bodies, including those found in ISO/IEC Guide 58:1993, Calibration and testing laboratory accreditation systems—General requirements for operation and recognition, are applicable; however, the proposed revisions include provisions allowing for updated versions and replacements of these documents. ISO/IEC 17025:1999 supersedes and replaces ISO/IEC Guide 25:1990, upon which the current NVLAP accreditation criteria are based.

In addition, NIST proposes to reorganize the simplify part 285 for ease of use and understanding. While the existing regulations accurately set forth the NVLAP procedures, the regulations themselves are complex and difficult to understand. In an effort to simplify the format and make the regulations more user friendly, NIST proposes to rewrite in plain English and consolidate sections previously contained in subparts A through C of part 285. Since the consolidated format does not require subparts, NIST proposes to remove subparts A through C. The removal of these subparts will not alter the operations of NVLAP, but will promote ease of use and facilitate understanding of the program's operations.

To ensure continued consistency with applicable international standards and guidelines, NIST proposes to remove subpart D, Conditions and Criteria for Accreditation, and to apply the conditions and criteria contained in the applicable internationally accepted documents as they are revised from time to time, as set forth in new section 285.14, Criteria for Accreditation.

Request for Comments

The Director of the National Institute of Standards and Technology, United States Department of Commerce, requests comments on proposed changes to regulations found at 15 CFR Part 285 pertaining to the National Voluntary Laboratory Accreditation Program.

Persons interested in commenting on the proposed regulations should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at the Department of Commerce Central Reference and Records Inspection Facility, room 6022, 14th and Constitution Ave. NW, Washington, DC 20230.

Classification Section

Paperwork Reduction Act

This proposed rule contains information collection requirements subject to the Paperwork Reduction Act. The collection has been forwarded to the Office of Management and Budget (OMB) for approval under the Act. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, no collection of information subject to the requirements of the Act, Unless that collection of information displays a currently valid OMB control number. The information collected will be used by NVLAP to help assess laboratory compliance with the applicable criteria. Responses to the collection of information are required for a laboratory to be considered for NVLAP accreditation. Confidentiality of the information submitted will be handled in accordance with § 285.2 of this proposed rule. It is estimated that the annual public burden for the collection will average 2.75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503 (Attention: NIST Desk Officer).

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) the regulation is procedural and has no impact on any entity unless that entity chooses to participate, in which case, the cost to any participant is the same, small cost ($500/application; other associated costs cannot be projected because they are dependent upon in which LAP an entity is participating, and in some cases LAPs have not yet been established) for any size participant; (2) access to NVLAP's

accreditation system is not conditional upon the size of a laboratory or membership of any association or group, nor are there undue financial conditions to restrict participation; and (3) the technical components of NVLAP, that is, the specific technical criteria that individual laboratories are accredited against, are not significantly changed by this proposal.

List of Subjects in 15 CFR Part 285

Laboratories, Measurement standards, Reporting and recordkeeping requirements, Voluntary standards

Dated: October 30, 2000.

Karen H. Brown,

Deputy Director.

For reasons set forth in the preamble, it is proposed that 15 CFR. chapter II, be amended by revising part 285 to read as follows:

PART 285—NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM

Sec.

285.1 Purpose.
285.2 Confidentiality.
285.3 Referencing NVLAP accreditation.
285.4 Establishment of laboratory accreditation programs (LAPs) within NVLAP.
285.5 Termination of a LAP.
285.6 Application for accreditation.
285.7 Assessment.
285.8 Proficiency testing.
285.9 Granting accreditation.
285.10 Renewal of accreditation.
285.11 Changes to scope of accreditation.
285.12 Monitoring visits.
285.13 Denial, suspension, revocation or termination of accreditation.
285.14 Criteria for accreditation.
285.15 Obtaining documents.

Authority: 15 U.S.C. 272 et seq.

§ 285.1 Purpose.

The purpose of Part 285 is to set out procedures and general requirements under which the National Voluntary Laboratory Accreditation Program (NVLAP) operates as an unbiased third party to accredit both testing and calibration laboratories. Supplementary technical and administrative requirements are provided in supporting handbooks and documents as needed, depending on the criteria established for specific Laboratory Accreditation Programs (LAPs).

§ 285.2 Confidentiality.

To the extent permitted by applicable laws, NVLAP will protect the confidentiality of all information obtained relating to the application, on-site assessment, proficiency testing, evaluation, and accreditation of laboratories.

§ 285.3 Referencing NVLAP accreditation.

The term *NVLAP* (represented by the NVLAP logo) is a federally registered certification mark of the National Institute of Standards and Technology and the federal government, who retain exclusive rights to control the use thereof. Permission to use the term and/or logo is granted to NVLAP-accredited laboratories for the limited purposes of announcing their accredited status, and for use on reports that describe only testing and calibration within the scope of accreditation. NIST reserves the right to control the quality of the use of the term *NVLAP* and of the logo itself.

§ 285.4 Establishment of laboratory accreditation programs (LAPs) within NVLAP.

NVLAP establishes LAPs in response to legislative actions or to requests from private sector entities and government agencies. For legislatively mandated LAPs, NVLAP shall establish the LAP. For requests from private sector entities and government agencies, the Chief of NVLAP shall analyze each request, and after consultation with interested parties through public workshops and other means shall establish the requested LAP if the Chief of NVLAP determines there is need for the requested LAP.

§ 285.5 Termination of a LAP.

(a) The Chief of NVLAP may terminate a LAP when he/she determines that a need no longer exists to accredit laboratories for the services covered under the scope of the LAP. In the event that the Chief of NVLAP proposes to terminate a LAP, a notice will be published in the **Federal Register** setting forth the basis for that determination.

(b) When a LAP is terminated, NVLAP will no longer grant or renew accreditations following the effective date of termination. Accreditations previously granted shall remain effective until their expiration date unless terminated voluntarily by the laboratory or revoked by NVLAP. Technical expertise will be maintained by NVLAP while any accreditation remains effective.

§ 285.6 Application for accreditation.

A laboratory may apply for accreditation in any of the established LAPs. The applicant laboratory shall provide a completed application to NVLAP, pay all required fees and agree to certain conditions as set forth in the NVLAP Application for Accreditation, and provide a quality manual to NVLAP (or a designated NVLAP assessor) prior to the assessment process.

§ 285.7 Assessment.

(a) *Frequency and scheduling.* Before initial accreditation, during the first renewal year, and every two years thereafter, an on-site assessment of each laboratory is conducted to determine compliance with the NVLAP criteria.

(b) *Assessors.* NVLAP shall select qualified assessors to evaluate all information collected from an applicant laboratory pursuant to § 285.6 of this part and to conduct the assessment on its behalf at the laboratory and any other sites where activities to be covered by the accreditation are performed.

(c) *Conduct of assessment.* (1) Assessors use checklists provided by NVLAP so that each laboratory receives an assessment comparable to that received by others.

(2) During the assessment, the assessor meets with management and laboratory personnel, examines the quality system, reviews staff information, examines equipment and facilities, observes demonstrations of testing or calibrations, and examines tests or calibration reports.

(3) The assessor reviews laboratory records including resumes, job descriptions of key personnel, training, and competency evaluations for all staff members who routinely perform, or affect the quality of the testing or calibration for which accreditation is sought. The assessor need not be given information which violates individual privacy, such as salary, medical information, or performance reviews outside the scope of the accreditation program. The staff information may be kept in the laboratory's official personnel folders or separate folders that contain only the information that the NVLAP assessor needs to review.

(4) At the conclusion of the assessment, the assessor conducts an exit briefing to discuss observations and any deficiencies with the authorized representative who signed the NVLAP application and other responsible laboratory staff.

(d) *Assessment report.* At the exit briefing, the assessor submits a written report on the compliance of the laboratory with the accreditation requirements, together with the completed checklists, where appropriate.

(e) *Deficiency notification and resolution.* (1) Laboratories are informed of deficiencies during the on-site assessment, and deficiencies are documented in the assessment report (see paragraph (d) of this section).

(2) A laboratory shall, within thirty days of the date of the assessment report, provide documentation that the specified deficiencies have either been corrected and/or a plan of corrective actions as described in the NVLAP handbooks.

(3) If substantial deficiencies have been cited, NVLAP may require an additional on-site assessment, at additional cost to the laboratory, prior to granting accreditation. All deficiencies and resolutions will be subject to thorough review and evaluation prior to an accreditation decision.

(4) After the assessor submits their final report, NVLAP reviews the report and the laboratory's response to determine if the laboratory has met all of the on-site assessment requirements.

§ 285.8 Proficiency testing.

(a) NVLAP proficiency testing is consistent with the provisions contained in ISO/IEC Guide 43 (Parts 1 and 2), Proficiency testing by interlaboratory comparisons, where applicable, including revisions from time to time. Proficiency testing may be organized by NVLAP itself or a NVLAP-approved provider of services. Laboratories must participate in proficiency testing as specified for each LAP in the NVLAP program handbooks.

(b) *Analysis and reporting.* Proficiency testing data are analyzed by NVLAP and reports of the results are made known to the participants. Summary results are available upon request to other interested parties; e.g., professional societies and standards writing bodies. The identity and performance of individual laboratories are kept confidential.

(c) *Proficiency testing deficiencies.* (1) Unsatisfactory participation in any NVLAP proficiency testing program is a technical deficiency which must be resolved in order to obtain initial accreditation or maintain accreditation.

(2) Proficiency testing deficiencies are defined as, but not limited to, one or more of the following:

(i) Failure to meet specified proficiency testing performance requirements prescribed by NVLAP;

(ii) Failure to participate in a regularly scheduled "round" of proficiency testing for which the laboratory has received instructions and/or materials;

(iii) Failure to submit laboratory control data as required; and

(iv) Failure to produce acceptable test or calibration results when using NIST Standard Reference Materials or special artifacts whose properties are well-characterized and known to NIST/NVLAP.

(3) NVLAP will notify the laboratory of proficiency testing deficiencies and actions to be taken to resolve the deficiencies. Denial or suspension of accreditation will result from failure to resolve deficiencies.

§ 285.9 Granting accreditation.

(a) The Chief of NVLAP is responsible for all NVLAP accreditation actions, including granting, denying, renewing, suspending, and revoking any NVLAP accreditation.

(b) Initial accreditation is granted when a laboratory has met all NVLAP requirements. One of four accreditation renewal dates (January 1, April 1, July 1, or October 1) is assigned to the laboratory and is usually retained as long as the laboratory remains in the program. Initial accreditation is granted for a period of one year; accreditation expires and is renewable on the assigned date.

(c) Renewal dates may be reassigned to provide benefits to the laboratory and/or NVLAP. If a renewal date is changed, the laboratory will be notified in writing of the change and any related adjustment in fees.

(d) when accredition is granted, NVLAP shall provide to the laboratory a Certificate of Accredition and a Scope of Accreditation.

§ 285.10 Renewal of accredition.

(a) An accredited laboratory must submit both its application for renewal and fees to NVLAP prior to expiration of the laboratory's current accreditation to avoid a lapse in accreditation.

(b) On-site assessments of currently accredited laboratories are performed in accordance with the procedures in § 285.7. If deficiencies are found during the assessment of an accredited laboratory, the laboratory must follow the procedures set forth in § 285.7(e)(2) of this part or face possible suspension or revocation of accreditation.

§ 285.11 Changes to scope of accreditation.

A laboratory may request in writing changes to its Scope of Accreditation. If the laboratory requests additions to its Scope, it must meet all NVLAP criteria for the additional tests or calibrations, types of tests or calibrations, or standards. The need for an additional on-site assessment and/or proficiency testing will be determined on a case-by-case basis.

§ 285.12 Monitoring visits.

(a) In addition to regularly scheduled assessments, monitoring visits may be conducted by NVLAP at any time during the accreditation period. They may occur for cause or on a random selection basis. While most monitoring visits will be scheduled in advance with the laboratory, NVLAP may conduct unannounced monitoring visits.

(b) The scope of a monitoring visit may range from checking a few designated items to a complete review. The assessors may review deficiency resolutions, verify reported changes in the laboratory's personnel, facilities, or operations, or administer proficiency testing, when appropriate.

§ 285.13 Denial, suspension, revocation or termination of accreditation.

(a) A laboratory may at any time voluntarily terminate its participation and responsibilities as an accredited laboratory by advising NVLAP in writing of its desire to do so.

(b) If NVLAP finds that an accredited laboratory does not meet all NVLAP requirements, has violated the terms of its accreditation, or does not continue to comply with the provisions of these procedures, NVLAP may suspend the laboratory's accreditation, or advise of NVLAP's intent to revoke accreditation.

(1) If a laboratory's accreditation is suspended, NVLAP shall notify the laboratory of that action stating the reasons for and conditions of the suspension and specifying the action(s) the laboratory must take to have its accreditation reinstated. Conditions of suspension will include prohibiting the laboratory from using the NVLAP logo on its test or calibration reports, correspondence, or advertising during the suspension period in the area(s) affected by the suspension.

(2) NVLAP will not require a suspended laboratory to return its Certificate and Scope of Accreditation, but the laboratory must refrain from using the NVLAP logo in the area(s) affected until such time as the problem(s) leading to the suspension has been resolved. When accreditation is reinstated, NVLAP will authorize the laboratory to resume testing or calibration activities in the previously suspended area(s) as an accredited laboratory.

(c) If NVLAP proposes to deny or revoke accreditation of a laboratory, NVLAP shall inform the laboratory of the reasons for the proposed denial or revocation and the procedure for appealing such a decision.

(1) The laboratory will have thirty days from the date of receipt of the proposed denial or revocation letter to appeal the decision to the Director of NIST. If the laboratory appeals the decision to the Director of NIST, the proposed denial or revocation will be stayed pending the outcome of the appeal. The proposed denial or

revocation will become final through the issuance of a written decision to the laboratory in the event that the laboratory does not appeal the proposed denial or revocation within the thirty-day period.

(2) If accreditation is revoked, the laboratory may be given the option of voluntarily terminating the accreditation.

(3) A laboratory whose accreditation has been revoked must cease use of the NVLAP logo on any of its reports, correspondence, or advertising related to the area(s) affected by the revocation. If the revocation is total, NVLAP will instruct the laboratory to return its Certificate and Scope of Accreditation and to remove the NVLAP logo from all test or calibration reports, correspondence, or advertising. If the revocation affects only some, but not all of the items listed on a laboratory's Scope of Accreditation, NVLAP will issue a revised Scope that excludes the revoked area(s) in order that the laboratory might continue operations in accredited areas.

(d) A laboratory whose accreditation has been voluntarily terminated, denied or revoked, may reapply and be accredited if the laboratory:

(1) Completes the assessment and evaluation process; and

(2) Meets the NVLAP conditions and criteria for accreditation.

§ 285.14 Criteria for accreditation.

The requirements for laboratories to be recognized by the National Voluntary Laboratory Accreditation Program as competent to carry out tests and/or calibrations are contained in clauses 4 and 5 of ISO/IEC 17025, General requirements for the competence of testing and calibration laboratories, including revisions from time to time.

§ 285.15 Obtaining documents.

(1) Application forms, NVLAP handbooks, and other NVLAP documents and information may be obtained by contacting the NVLAP, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 2140, Gaithersburg, Maryland 20899–2140; phone: 301–975–4016; fax: 301–926–2884; e-mail: nvlap@nist.gov.

(b) Copies of all ISO/IEC documents are available from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, New York, 10036; phone: 212–642–4900; fax: 212–398–0023; web site: <www.ansi.org>. You may inspect copies of all applicable ISO/IEC documents at the National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 820 West Diamond Avenue, Room 297, Gaithersburg, MD.

[FR Doc. 00–2857 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Extension of Time To File Annual Reports for Commodity Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule amendments.

SUMMARY: Commodity Futures Trading Commission ("Commission") Rules 4.22(c) and (d)[1] require that commodity pool operators ("CPOs") distribute annual reports containing specified information, certified by an independent public accountant, to each pool participant within 90 calendar days after the end of the pool's fiscal year.[2] The proposed revisions to Rule 4.22 would permit CPOs to file a claim for an extension of time to file the pool's annual report where the pool is invested in other collective investment vehicles, and the CPO's independent accountant cannot obtain the information necessary to comply with the rule in a timely manner.

DATES: Comments must be received by December 7, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to "Extension of Time to File Annual Reports for Commodity Pools."

FOR FURTHER INFORMATION CONTACT: Kevin P. Walek, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5463; electronic mail: "kwalek@cftc.gov".

SUPPLEMENTARY INFORMATION:

I. Background

Commission Rule 4.22(c) requires a CPO to distribute to pool participants, and file with the Commission, an Annual Report containing specified financial information for each pool that it operates. The annual report requirement is intended to ensure that the CPO is dealing fairly with its participants and to provide a mechanism to facilitate the Commission's inspection of the registrant's operations. Rule 4.22(d) requires that an independent public accountant certify the financial statements contained in the Annual Report. The CPO must file this certified Annual Report within 90 days of the close of the pool's fiscal year. Rule 4.22(f) currently allows CPOs to apply for extensions of the 90-day time requirement where the CPO cannot distribute the report in the required time period without "substantial undue hardship." The Commission has had the benefit of the assistance of National Futures Association ("NFA") in processing these requests.

In recent years, the number of extensions has risen dramatically.[3] The majority of such requests are made by CPOs of commodity pools that invest in other collective investment vehicles. (These commodity pools are commonly referred to as "funds of funds.") The CPOs of these funds of funds have explained that they cannot obtain the information necessary for their independent public accountants to finish auditing the pools' financial statements by the time specified in Rule 4.22(c). In order to complete the audit of the financial statements of the pool, the independent public accountant needs information establishing the value of the pool's material investments. These investments may be in a number of collective investment vehicles, such as other commodity pools, securities funds, or hedge funds, both domestic and offshore. The information that the independent accountant requires is frequently unavailable until the collective investment vehicles complete their own certified financial statements. Thus, in many cases, the CPO cannot obtain the information its independent accountant requires about the collective investment vehicle in time for the pool's Annual Report to be prepared, audited, and distributed by the due date.

Due to the increasing number of requests for extensions of time to file annual reports for funds of funds, the Commission proposes to amend its regulations to make these extensions available on a standardized basis. In order to treat similarly situated pools fairly and equitably, the Commission proposes that the rules contained herein apply whether or not a CPO was previously granted an extension of time to file the annual reports of funds of funds. As detailed in the next section, CPOs would file the initial notice, containing specified representations, in advance of the annual report's due date for the first year the extension is claimed. In subsequent years, the representations could be made in a statement filed at the same time as the pool's Annual Report.

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[1] Commission rules referred to herein can be found at 17 CFR Ch. I (2000).

[2] Rule 4.7(b)(3) provides the requirements for annual report filings for pools for which exemption from the specific requirements of Rules 4.22(c) and (d) has been claimed pursuant to Rule 4.7(b)(3)(i).

[3] For filing year 1998 there were more than 200 such extensions and for filing year 1999 there were over 300 such extensions.

II. Description of the Proposed Extension

The proposed extension provisions would be added to existing Rule 4.22(f), which will be reorganized and renumbered, as discussed further below. The salient features of the extension provisions are proposed to be included in Rule 4.22(f)(2) as follows.

Subparagraph (i) requires that the pool's first notice claiming the extension be filed within 90 days after the end of the pool's fiscal year (the normal deadline for filing the annual report). Subparagraph (ii) requires that the CPO identify itself and the pool for which the request is being made. Subparagraph (iii) requires that the CPO indicate the date by which it intends to file and distribute the annual report, which date must be no more than 150 calendar days after the end of the pool's fiscal year (that is, a maximum extension of 60 days). Thus, the CPO must analyze the circumstances related to the operation of its pool and specify the period for which relief is needed. Commission staff have reviewed past requests and found that, in general, the requested extension period ranged from 30 to 60 days. Thus, the Commission believes that up to a 60 day extension should be sufficient in most situations. Subparagraph (iv) requires that the CPO provide, as part of the notice, specified representations demonstrating the need for the extension. The CPO will not be required to obtain a written statement from the independent accountant selected to audit the pool confirming that information in the CPO's notice. The CPO will be required to name the independent accountant who has informed the CPO of the necessity of that information. Subparagraph (v) provides that, in subsequent years, the requisite representations may be made in a statement filed at the same time as the annual report. Finally, subparagraph (vi) requires that the CPO responsible for the pool's operation sign the notice or statement.

III. Technical Changes to Rule 4.22(f)

The new fund of funds extension provisions are proposed to be added as Rule 4.22(f)(2). Existing Rule 4.22(f) would be retained. Current subsections 4.22(f)(1), 4.22(f)(2) and 4.22(f)(3) are proposed to be renumbered as subsections 4.22(f)(1)(i) through (iii), respectively.

IV. Additional Consideration Regarding Rule 4.7 Entities

Pursuant to Commission Rule 4.7, CPOs of pools whose participants are limited to qualified eligible persons[4] may claim exemption from certain Part 4 requirements. Among the provisions from which the CPO may claim relief is the requirement that the exempt pool's financial statements distributed to pool participants be certified by an independent public accountant. In the experience of Commission staff, most CPOs operating pools for which relief under Rule 4.7 has been claimed nonetheless obtain certified financial statements to include in their annual report. The Commission does not wish to discourage this practice. Therefore, CPOs may claim the relief provided in proposed Rule 4.22(f)(2) without regard to whether they have claimed relief pursuant to Rule 4.7. This point is clarified in proposed Rule 4.22(f)(2).

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[5] The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.[6] Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the rule amendments proposed herein, if adopted, will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

Proposed Rule 4.22(f)(2) affects information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget for its review. Collection of Information Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants, OMB Control Number 3038–0005.

The expected effect of the proposed rule will be to increase the burden previously approved by OMB for this collection of information by 175 hours. Specifically, the burden associated with proposed Rule 4.22(f)(2) is expected to be increased by 175 hours:

Estimated number of respondents (after proposed extension): 350.

Annual responses by each respondent: 1.

Estimated average hours per response: 0.5.

Annual reporting burden: 175.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235 New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission. The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street N.W., Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 4

Brokers, Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular sections 2(a)(1), 4l, 4m, 4n, 4o, and 8a, 7 U.S.C. 2, 6l, 6m, 6n, 6o, and 12(a), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Section 4.22 is amended by:

a. redesignating paragraphs (f)(1) introductory text, (f)(1)(i), (f)(1)(ii), (f)(1)(iii), and (f)(1)(iv) as (f)(1)(i) introductory text, (f)(1)(i)(A), (f)(1)(i)(B), (f)(1)(i)(C), and (f)(1)(i)(D);

b. redesignating paragraphs (f)(2) introductory text, (f)(2)(i), and (f)(2)(ii) as (f)(1)(ii) introductory text, (f)(1)(ii)(A), and (f)(1)(ii)(B);

c. redesignating paragraphs (f)(3) introductory text, (f)(3)(i), and (f)(3)(ii) as (f)(1)(iii) introductory text, (f)(1)(iii)(A), and (f)(1)(iii)(B); and

d. adding a new paragraph (f)(2) to read as follows:

§ 4.22 Reporting to pool participants.

* * * * *

(f) * * *

(2) In the event a commodity pool operator finds that it cannot obtain information necessary to prepare certified financial statements for a pool that it operates within the time specified in either paragraph (c) of this section or §4.7(b)(3)(i), as a result of the pool investing in another collective investment vehicle, it may claim an extension of time under the following conditions:

(i) The commodity pool operator must, within 90 calendar days of the end of the pool's fiscal year, file a notice with National Futures Association and the Commission, except as provided in paragraph (f)(2)(v) of this section.

(ii) The notice must contain the name, main business address, main telephone number and the National Futures Association registration identification number of the commodity pool operator, and name and the identification number of the commodity pool.

(iii) The notice must state the date by which the Annual Report will be distributed and filed (the "Extended Date"), which must be no more than 150 calendar days after the end of the pool's fiscal year. The Annual Report must be distributed and filed by the Extended Date.

(iv) The notice must include representations by the commodity pool operator that:

(A) The pool for which the Annual Report is being prepared has investments in one or more collective investment vehicles (the "Investments");

(B) The commodity pool operator has been informed by the certified public accountant selected to audit the commodity pool's financial statements that specified information establishing the value of the Investments is necessary in order for the accountant to render an opinion on the commodity pool's financial statements. The notice must include the name of the accountant; and

(C) The information specified by the accountant cannot be obtained in sufficient time for the Annual Report to be prepared, audited, and distributed before the Extended Date.

(v) For each fiscal year following the filing of the notice described in paragraph (f)(2)(i) of this section, the commodity pool operator may claim the extension of time by filing a statement containing the representations specified in paragraph (f)(2)(iv) of this section, at the same time as the pool's annual report.

(vi) Any notice or statement filed pursuant to paragraph (f)(2) of this section must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

* * * * *

Issued in Washington, D.C. on October 31, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–28367 Filed 11–6–00; 8:45 am]

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[4] The criteria for qualified eligible persons are contained in Rule 4.7(a), as amended effective August 4, 2000 (65 FR 67848 (August 4, 2000)).

[5] 47 FR 18618–18621 (April 30, 1982).

[6] 47 FR 18619–18620.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 00N–1545]

Applications for FDA Approval to Market a New Drug; Proposed Revision of Postmarketing Reporting Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations describing postmarketing reporting requirements to implement certain provisions of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). The proposed changes apply to drug products that are life supporting, life sustaining, or intended for use in the prevention of a serious disease or condition and that were not originally derived from human tissue and replaced by a recombinant product. The proposed rule would implement provisions of the Modernization Act by requiring an applicant who is the sole manufacturer of one of these products to notify FDA at least 6 months before discontinuing manufacture of the drug product.

DATES: Submit written comments by February 5, 2001.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance for industry referred to in this proposed rule. Submit written requests for single copies of the guidance referred to in this proposal to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, FAX 1–888–CBERFAX or 301–827–3844. Send two self-addressed adhesive labels to assist the office in processing your request. Requests should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Andrea C. Masciale, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 21, 1997, President Clinton signed into law the Modernization Act (Public Law 105–115). Section 131 of the Modernization Act amends the Federal Food, Drug, and Cosmetic Act (the act) by codifying new section 506C (21 U.S.C. 356c). Section 506C of the act requires manufacturers who are the sole manufacturers of certain drug products to notify us (FDA) at least 6 months before discontinuing manufacture of the products. We may reduce the 6-month notification period if good cause exists for the reduction. Under section 506C of the act, we must provide information to the public about the product discontinuance. The proposed revisions to our postmarketing reporting requirements described in this notice are intended to implement these new provisions of the act.

A presidential memoradum on plain language (June 1, 1998) directs each agency to write regulations that are simple and easy to understand. As a result, we prepared this proposed regulation consistent with our plain language initiative. Please send any comments you have on the clarity of the regulations to the Dockets Management Branch (address above).

II. Section 506C of the Act

Section 506C(a) of the act requires sole manufacturers of a drug product that meets the following three criteria to notify us at least 6 months before discontinuing manufacture of the product:

1. The product must be life supporting, life sustaining, or intended for use in the prevention of a debilitating disease or condition;
2. The product must have been approved under section 505(b) or (j) of the act (21 U.S.C. 355(b) or (j)); and
3. The product must not have been originally derived from human tissue and replaced by a recombinant product.

Under section 506C(b) of the act, we may reduce the 6-month notification period required under section 506C(a) if the manufacturer who seeks our reduction of the notification period certifies to us that good cause exists for the reduction. Section 506C(b) of the act provides examples of situations where good cause exists as follows:

- A public health problem may result from continuation of manufacturing for the 6-month period;
- A biomaterials shortage prevents the continuation of manufacturing for the 6-month period;
- A liability problem may exist for the manufacturer if the manufacturing is continued for the 6-month period;
- Continuation of the manufacturing for the 6-month period may cause substantial economic hardship for the manufacturer;
- The manufacturer has filed for bankruptcy under chapter 7 or 11 of title 11, United States Code (11 U.S.C. 701 *et seq.* and 1101 *et seq.*); or
- The manufacturer can stop making the product but still distribute it to satisfy existing market need for 6 months.

Section 506C(c) of the act requires us to distribute, to the maximum extent practicable, information to the public about the discontinuation of products described in section 506C(a).

III. Description of the Proposed Rule

A. Notification Requirements

Section 314.81(b)(3)(iii) (21 CFR 314.81(b)(3)(iii)) of our current regulations requires all applicants to notify us when they withdraw a drug product from sale in the United States. This notification must take place within 15 days of the withdrawal.

As described above, under section 506C(a) of the act, the sole manufacturer of a drug product that meets the following three criteria must notify us at least 6 months before discontinuing manufacture of the product:

1. The product must be life supporting, life sustaining, or intended for use in the prevention of a debilitating disease or condition;
2. The product must have been approved under section 505(b) or (j) of the act; and
3. The product must not have been originally derived from human tissue and replaced by a recombinant product.

We are proposing to amend our postmarketing reporting regulations in § 314.81 to implement these new statutory requirements. Proposed § 314.81(b)(3)(iii) would state that applicants who are sole manufacturers of these drug products must notify us at least 6 months before discontinuing manufacture of the products.

Under this proposal, a life supporting or life sustaining drug would be a drug product that is essential to, or that yields information that is essential to, the restoration or continuation of a bodily function important to the continuation of human life. This definition of a life sustaining or life supporting product has been adapted from our regulations governing medical devices (21 CFR 860.3(e)). The Center for Devices and Radiological Health, in adopting the medical device interpretation of life sustaining or life supporting product (43 FR 32988, July 28, 1978), noted its reliance on the legislative history of the 1976 Medical Device Amendments to the act (Public Law 94–295) regarding the definition and application of the term (H. Rept. 94–1090, Medical Device Amendments, May 6, 1976 (Committee of Conference), p. 56).

We interpret the phrase "debilitating disease or condition," as stated in section 506C(a) of the act, to mean serious disease or condition. The use of the phrase "serious disease or condition" is consistent with other regulations (e.g., Accelerated Approval of New Drugs and Biological Products for Serious or Life-Threatening Illnesses (21 CFR parts 314 subpart H and 601 subpart E) (accelerated approval rule)) and policy statements (e.g., guidance for industry, "Fast Track Drug Development Programs—Designation, Development, and Application Review" (October 1998) (fast track guidance)). As discussed in the preamble to the proposed accelerated approval rule (57 FR 13234, April 15, 1992), determination of the seriousness of a condition is a matter of judgment, but generally is based on its impact on such factors as survival, day-to-day functioning, or the likelihood that the disease, if left untreated, will progress from a less severe condition to a more serious one. The fast track guidance elaborates on our current approach to determining whether a disease or condition is serious by providing several examples of situations in which a drug would be considered to prevent a serious disease or condition. The fast track guidance is available at the CDER and CBER addresses above.

By the terms of the statute, the requirements of section 506C of the act are limited to products that we have approved under the authority of section 505(b) or (j) of the act. To implement this limitation, products we have approved under the authority of section 351 of the Public Health Service Act (42 U.S.C. 262) would not be covered by this proposed regulation.

To implement the last requirement of section 506C(a) of the act, the proposed rule specifically excludes from the notification requirements a manufacturer whose product was originally derived from human tissue and was subsequently replaced by a recombinant product.

B. Reduction in the Discontinuance Notification Period

Under section 506C(b) of the act, we may reduce the 6-month notification period if we find good cause for the reduction, generally as established by manufacturer certification that good cause exists for the reduction.

FDA is proposing § 314.91 to implement section 506C(b) of the act. Proposed § 314.91 would allow the agency to reduce for good cause the 6-month notification period required under proposed § 314.81(b)(3)(iii)(*a*). Under proposed § 314.91(b), we can reduce the 6-month discontinuance notification period when we find good cause exists for the reduction. We may find good cause exists based on information certified by an applicant in a written request for a reduction of the discontinuance notification period. In limited circumstances, we also may find good cause exists based on information already known to us. These circumstances can include the withdrawal of the drug from the market based upon formal regulatory action (e.g., under the procedures described 21 CFR 314.150) for the publication of a notice of opportunity for a hearing describing the basis for the proposed withdrawal of a drug from the market) or resulting from consultations between the applicant and us. To assist a manufacturer in requesting a reduction in the notification period, proposed § 314.91(c)(1) provides a template for certification that good cause exists.

Proposed § 314.91 repeats the examples in section 506C of the act and describes the information an applicant must provide FDA to establish good cause:

- To certify that a public health problem may result from continuation of manufacturing for the 6-month period, a manufacturer would need to describe in detail the potential threat to the public health (proposed § 314.91(d)(1)).
- To certify that a biomaterials shortage prevents the continuation of manufacturing for the 6-month period, the manufacturer would need to: (1) Describe in detail the steps it has taken to try to secure an adequate supply of biomaterials to enable manufacturing during the 6-month period, and (2) explain why the biomaterials could not be secured (proposed § 314.91(d)(2)).
- To certify that a liability problem may exist for the manufacturer if the manufacturing is continued for the 6-month period, the manufacturer would need to explain to the agency in detail the potential liability problem (proposed § 314.91(d)(3)).
- To certify that continuation of the manufacturing for the 6-month period may cause substantial economic hardship for the manufacturer, the manufacturer would need to describe in detail the financial impact on the company of manufacturing the drug product for 6 more months (proposed § 314.91(d)(4)).
- To certify that the manufacturer has filed for bankruptcy under chapter 7 or 11 of title 11, United States Code, the manufacturer would need to send the agency documentation of the filing or proof that the filing occurred (proposed § 314.91(d)(5)).
- To certify that the manufacturer can stop making the product but still distribute it to satisfy existing market need for 6 months, the manufacturer would need to describe in detail its processes: (1) To determine market need and (2) to ensure distribution for the 6-month period (proposed § 314.91(d)(6)).

A manufacturer may also establish good cause by other circumstances (proposed § 314.91(d)(7)). To certify that other circumstances establish good cause, the manufacturer would need to fully explain to us the need for a reduction in the 6-month notification period.

In assessing a manufacturer's assertion that good cause exists to warrant a reduction in the notification period, we may consider information in the certification and other information already available to us.

C. Disclosure of Discontinuance Information to the Public

As noted above, section 506C(c) of the act states that to the maximum extent practicable, we are to distribute information to the public about the discontinuation of products described in section 506C(a).

To implement section 506C(c) of the act, we are proposing § 314.81(b)(3)(iii)(*d*). Under this regulation, we would publicly disclose a list of the drugs that will be discontinued under the rule. The listing of discontinued products would include:

- The brand and generic name, the manufacturer, and indication(s) of the drug product;
- Whether a reduction in the notification period was granted by the agency under proposed § 314.91;
- If applicable, the reason(s) for a notification period of less than 6 months; and
- Any additional information the agency may have regarding anticipated product availability.

The proposed rule would require this information to be distributed through posting on the Internet and notice in the **Federal Register** (proposed § 314.81(b)(3)(iii)(*c*)).

IV. Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule may have a significant impact on a substantial number of small entities, an agency must consider alternatives that would minimize the economic impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires agencies to prepare a written assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

We believe that this proposed rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866 and in these two statutes. As shown below, the proposed rule will result in minimal additional costs to industry. As a result, the proposed rule is not significant as defined by the Executive Order. We have further determined, as described below, that the proposed rule would affect only about one manufacturing firm per year. Therefore, the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and will not require further analysis under the Regulatory Flexibility Act. The Unfunded Mandates Reform Act does not require us to prepare a statement of costs and benefits for the proposed rule because the proposed rule in any 1-year expenditure would not exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $110 million.

The proposed rule would require that manufacturers of certain drug products notify the agency at least 6 months before discontinuing their manufacture. As explained in section V of this document, the regulatory conditions that trigger this requirement occur only infrequently. Based on agency experience, we estimate that such circumstances would occur no more than once per year. Moreover, the proposed notification requirement would impose a significant burden only when market conditions deteriorate so quickly that firms could not foresee the desired action 6 months in advance. Most pharmaceutical firms rely on established long-term marketing plans.

For those very few instances where a manufacturer needs to discontinue production and could not provide 6-months notice, the proposed rule permits us to reduce the notification period for good cause. Manufacturers can request a reduced notification period by submitting a written certification, based on considerations such as public health, legal liability, biomaterial shortage, or substantial economic hardship. A certification of substantial economic hardship would need to demonstrate that the reduced notification period was necessary to avoid substantial economic hardship to the manufacturer.

V. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (44 U.S.C. 3501–3520) (the PRA), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, we are publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, we invite comment on: (1) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Applications for FDA Approval to Market a New Drug; Proposed Revision of Postmarketing Reporting Requirements

Description: The proposed rule would implement section 506C of the act and would require applicants who are the sole manufacturers of certain drug or biologic products to notify us at least 6 months before discontinuing the manufacture of the product. For the rule to apply, a product would need to meet the following three criteria:

1. The product must be life supporting, life sustaining, or intended for use in the prevention of a debilitating disease or condition;
2. The product must have been approved by FDA under section 505(b) or (j) of the act; and
3. The product must not have been originally derived from human tissue and replaced by a recombinant product.

The proposed rule would allow us to reduce the 6-month notification period if we find good cause for the reduction. An applicant would be able to request that we reduce the notification period by certifying that good cause for the reduction exists. Under the proposed rule, we would also publicly disclose information about the drugs that are discontinued under the rule. Existing regulations, which appear in 21 CFR part 314, establish postmarketing reporting requirements for approved drugs. Current § 314.81(b)(3)(iii) (OMB Control No. 0910–0001), which would be renumbered § 314.81(b)(3)(iv) under the proposed rule, requires an applicant to notify us within 15 days of withdrawing a drug product from sale. This proposed rule would add two new reporting requirements.

A. Notification of Discontinuance

Under the proposed rule, at least 6 months before an applicant intends to discontinue manufacture of a product, the applicant would need to send us written notification of the discontinuance. For drugs regulated by CDER, the applicant would send notification to the director of the division in CDER that is responsible for the application, with one copy to the CDER Drug Shortage Coordinator and one copy to CDER's Drug Listing Branch. For drugs regulated by CBER, the applicant would send notification to the Director of CBER. We would require that the notification be sent to these offices to ensure that our efforts regarding the discontinuation of the product are commenced in a timely manner. We intend to work with members of the industry and with the applicant during the 6-month notification period to ease patient transition from the drug that will be discontinued to alternate therapy.

B. Certification of Good Cause

We may reduce the 6-month notification period if we find good cause for the reduction. As described in section 506C(b) of the act and proposed § 314.91, an applicant would be able to establish good cause by submitting written certification to the director of the division in CDER that is responsible for the application, with one copy to the CDER Drug Shortage Coordinator and one copy to CDER's Drug Listing Branch or, for drugs regulated by CBER, to the Director of CBER, that:

- A public health problem may result from continuation of manufacturing for the 6-month period (proposed § 314.91(d)(1));
- A biomaterials shortage prevents the continuation of manufacturing for the 6-month period (proposed § 314.91(d)(2));
- A liability problem may exist for the manufacturer if the manufacturing is continued for the 6-month period (proposed § 314.91(d)(3));
- Continuation of the manufacturing for the 6-month period may cause substantial economic hardship for the manufacturer (proposed § 314.91(d)(4));
- The manufacturer has filed for bankruptcy under chapter 7 or 11 of title 11, United States Code (proposed § 314.91(d)(5));
- The manufacturer can stop making the product but still distribute it to satisfy existing market need for 6 months (proposed § 314.91(d)(6)); or
- Other good cause exists for a reduction in the notification period (proposed § 314.91(d)(6)).

With each certification described above, the applicant would need to describe in detail the basis for the applicant's conclusion that such circumstances exist. We would require that the written certification that good cause exists be submitted to the offices identified above to ensure that our efforts regarding the discontinuation take place in a timely manner.

Description of Respondents: An applicant who is the sole manufacturer and who intends to discontinue marketing of a drug product that: (1) Is life supporting, life sustaining, or intended for use in the prevention of a debilitating disease or condition; (2) was approved by FDA under section 505(b) or (j) of the act; and (3) was not originally derived from human tissue and replaced by recombinant product.

Burden Estimate: Table 1 of this document provides an estimate of the annual reporting burden for notification of product discontinuance and certification of good cause under this proposed rule.

Notification of Discontinuance: Based on data collected from the CDER drug shortage coordinator, CDER review divisions, and CBER review offices in fiscal year (FY) 1999, one applicant discontinued manufacture of one product meeting the criteria of section 506C of the act. Each applicant meeting the criteria would be required under proposed § 314.81(b)(3)(iii) to notify the agency of the discontinuance at least 6 months before manufacturing ceased. Although the procedures for notifying the agency that are set forth in the proposed rule were not in place in FY 1999, we estimate that the number of manufacturers who would be required to notify us of discontinuance would remain the same. Therefore, the number of respondents is estimated to be one. The total annual responses are the total number of notifications of discontinuance that are expected to be submitted to CDER or CBER in a year. In FY 1999, an applicant would have been required to notify us of one product discontinuance under the proposed procedures. We estimate that the total annual responses will remain the same, averaging one response per respondent. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a notification of product discontinuance, including the time it takes to gather and copy the statement. Based on experience in working with applicants regarding similar collections of information, we estimate that approximately 2 hours on average would be needed per response. Therefore, we estimate that 2 hours will be spent per year by respondents notifying us of a product discontinuance under these proposed regulations.

Certification of Good Cause: Based on data collected from the CDER drug shortage coordinator, CDER review divisions, and CBER review offices in FY 1999, one applicant discontinued manufacture of one product meeting the criteria of section 506C of the act. Each applicant would have the opportunity under proposed § 314.91 to request a reduction in the 6-month notification period by certifying to us that good cause exists for the reduction. We do not expect that each eligible applicant will certify that good cause exists for a reduction. Furthermore, the number of applicants who would be in a position to request a reduction is quite small. Therefore, the number of respondents is estimated to be one. The total annual responses are the total number of notifications of discontinuance that are expected to be submitted to us in a year. We estimate that the total annual responses will remain small, averaging one response per respondent. The hours per response is the estimated number of hours that a respondent would spend preparing the detailed information certifying that good cause exists for a reduction in the notification period, including the time it takes to gather and copy the documents. Based on experience in working with applicants regarding similar collections of information, we estimate that approximately 16 hours on average would be needed per response. Therefore, we estimate that 16 hours will be spent per year by respondents certifying that good cause exists for a reduction in the 6-month notification period under proposed § 314.91.

We invite comments on this analysis of information collection burdens.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Notification of discontinuance (proposed § 314.81(b)(3)(iii))	1	1	1	2	2
Certification of good cause (proposed § 314.91)	1	1	1	16	16
Total					18

[1] There are no capital costs or operating and maintenance costs associated with this collection.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), we have submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments on this information collection by December 7, 2000, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

VI. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the order, and, consequently, a federalism summary impact statement is not required.

VII. Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposal by February 5, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IX. Electronic Access

Copies of the guidance for industry referred to in this proposed rule are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 314 be amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

1. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 356a, 356b, 356c, 371, 374, 379e.

2. Section 314.81 is amended by redesignating paragraph (b)(3)(iii) as (b)(3)(iv); by removing from newly redesignated paragraph (b)(3)(iv)(*c*) the phrase "(b)(3)(iii)" and adding in its place the phrase "(b)(3)(iv)"; and by adding new paragraph (b)(3)(iii) to read as follows:

§ 314.81 Other postmarketing reports.

* * * * *

(b) * * *

(3) * * *

(iii) *Notification of discontinuance.* (*a*) An applicant who is the sole manufacturer of an approved drug product must notify FDA in writing at least 6 months prior to discontinuing manufacture of the drug product if:

(*1*) The drug product is life supporting, life sustaining, or intended for use in the prevention of a serious disease or condition; and

(*2*) The drug product was not originally derived from human tissue and replaced by a recombinant product.

(*b*) For drugs regulated by the Center for Drug Evaluation and Research (CDER), the notification required by paragraph (b)(3)(iii)(*a*) of this section must be sent to the director of the division responsible for the application as identified to the applicant under § 314.440(a)(1). The applicant must send one copy of the notification to the Drug Shortage Coordinator, at the address of the Director of CDER, and one copy of the notification to the Drug Listing Branch. For drugs regulated by the Center for Biologics Evaluation and Research (CBER), the notification required by paragraph (b)(3)(iii)(*a*) of this section must be sent to the Director of CBER.

(*c*) FDA will publicly disclose a list of all drug products to be discontinued under paragraph (b)(3)(iii)(*a*) of this section. If the notification period is reduced under § 314.91, the list will state the reason(s) for such reduction and the anticipated date that manufacturing will cease.

* * * * *

3. Section 314.91 is added to read as follows:

§ 314.91 Obtaining a reduction in the discontinuance notification period.

(a) *What is the discontinuance notification period?* The discontinuance notification period is the 6-month period required under § 314.81(b)(3)(iii)(*a*). The discontinuance notification period begins when an applicant who is the sole manufacturer of certain products notifies FDA that it will discontinue manufacturing the product. The discontinuance notification period ends when manufacturing ceases.

(b) *When can FDA reduce the discontinuance notification period?* FDA can reduce the 6-month discontinuance notification period when it finds good cause exists for the reduction. FDA may find good cause exists based on information certified by an applicant in a request for a reduction of the discontinuance notification period. In limited circumstances, FDA may find good cause exists based on information already known to the agency. These circumstances can include the withdrawal of the drug from the market based upon formal FDA regulatory action (e.g., under the procedures described in § 314.150 for the publication of a notice of opportunity for a hearing describing the basis for the proposed withdrawal of a drug from the market) or resulting from the applicant's consultations with the agency.

(c) *How can an applicant request a reduction in the discontinuance notification period?* (1) The applicant must certify in a written request that, in its opinion and to the best of its knowledge, good cause exists for the reduction. The applicant must submit the following certification:

The undersigned certifies that good cause exists for a reduction in the 6-month notification period required in § 314.81(b)(3)(iii)(*a*) for discontinuing the manufacture of (*name of the drug product*). The following circumstances establish good cause (*one or more of the circumstances in paragraph (d) of this section*).

(2) The certification must be signed by the applicant or the applicant's attorney, agent (representative), or other authorized official. If the person signing the certification does not reside or have a place of business within the United States, the certification must contain the name and address of, and must also be signed by, an attorney, agent, or other authorized official who resides or maintains a place of business within the United States.

(3) For drugs regulated by the Center for Drug Evaluation and Research (CDER), the certification must be submitted to the director of the division that is responsible for the application as identified to the applicant under § 314.440(a)(1). One copy of the certification must be sent to the Drug Shortage Coordinator, at the address of the Director of CDER, and one copy of the certification must be sent to the Drug Listing Branch. For drugs regulated by the Center for Biologics Evaluation and Research (CBER), the certification must be submitted to the Director of CBER.

(d) *What circumstances and information can establish good cause for a reduction in the discontinuance notification period?* (1) A public health problem may result from continuation of manufacturing for the 6-month period. This certification must include a detailed description of the potential threat to the public health.

(2) A biomaterials shortage prevents the continuation of the manufacturing for the 6-month period. This certification must include a detailed description of the steps taken by the applicant in an attempt to secure an adequate supply of biomaterials to enable manufacturing to continue for the 6-month period and an explanation of why the biomaterials could not be secured.

(3) A liability problem may exist for the manufacturer if the manufacturing is continued for the 6-month period. This certification must include a detailed description of the potential liability problem.

(4) Continuation of the manufacturing for the 6-month period may cause substantial economic hardship for the manufacturer. This certification must include a detailed description of the financial impact of continuing to manufacture the drug product over the 6-month period.

(5) The manufacturer has filed for bankruptcy under chapter 7 or 11 of title 11, United States Code (11 U.S.C. 701 *et seq.* and 1101 *et seq.*). This certification must be accompanied by documentation of the filing or proof that the filing occurred.

(6) The manufacturer can continue distribution of the drug product to satisfy existing market need for 6 months. This certification must include a detailed description of the manufacturer's processes to ensure such distribution for the 6-month period.

(7) Other good cause exists for the reduction. This certification must include a detailed description of the need for a reduction.

Dated: October 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28519 Filed 11–6–00; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Financial Management Service

31 CFR Part 205

Public Meetings on Proposed Revisions to the Regulations Implementing the Cash Management Improvement Act

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of public meetings.

SUMMARY: On October 12, 2000 the Financial Management Service (FMS) published a notice of proposed rule making (NPRM) to revise the regulations at 31 CFR Part 205 implementing the Cash Management Improvement Act of 1990 (65 FR 60796). These regulations govern the transfer of funds between the Federal Government and States for certain Federal assistance programs. As a next step in the process, FMS is holding public meetings to seek input on all aspects of the NPRM. All parties in attendance may give a prepared statement and/or raise questions in the meetings.

DATES: The public meetings will be held on November 30, 2000 in San Francisco, CA and on December 8, 2000 in Washington, DC. Persons desiring to attend must register by November 22, 2000. See supplementary information section on how to register.

ADDRESSES: The first meeting will be held in San Francisco at FMS' San Francisco Regional Financial Center, 390 Main Street, in Conference Rooms A 7 B on the 6th Floor at 10 a.m. (PST).

The second meeting wil be held in Washington, DC at the General Services Administration Building, 7th and D Streets (SW), in the GSA Auditorium at 10 a.m. (EST).

FOR FURTHER INFORMATION CONTACT: Oscar S. Oña, at (202) 874–6799, Martha Thomas Mitchell, at (202) 874–6757, or Matt Helfrich, at (202) 874–6754.

SUPPLEMENTARY INFORMATION:

Background

The Cash Management Improvement Act (CMIA) was enacted to create greater efficiency and equity in the exchange of funds between the Federal Government and the States. Prior to the enactment of CMIA, Federal agencies expressed concerns that States were drawing down funds well in advance of the time those funds were needed by the States. States, on the other hand, expressed concerns about having to pay out their own funds in advance of receiving funds from the Federal Government.

CMIA, which requires the heads of executive agencies to provide for the timely disbursement of Federal funds in accordance with regulations prescribed by the Secretary of the Treasury, has three major provisions designed to address these issues:

- States and Federal agencies must minimize the time between transfer of funds from the U.S. Treasury and the clearance of funds out of the accounts of a State.
- The Secretary of the Treasury shall enter into a Treasury-State Agreement with each State which specifies the funds transfer procedures for Federal assistance programs.
- In general, States and the Federal Government are respectively entitled to interest when the other fails to make a funds transfer in a timely fashion. States owe the Federal Government interest for the time Federal funds are in State accounts before they are spent for Federal assistance program purposes. The Federal Government owes a State interest if the State disburses its own funds with obligational authority before receiving Federal funds.

The notice of proposed rule making (NPRM) updates the existing regulation based upon eight years of program implementation experience (since the issuance of Part 205) on the part of States, Federal program agencies, the General Accounting Office and the Department of the Treasury. The concerns of all stakeholders were considered in drafting the NPRM. The proposed changes are:

- The NPRM raises the default dollar thresholds that determine which programs are subject to CMIA's interest provisions. This allows States to make fewer programs subject to subpart A of the rule, reducing the administrative burden of tracking smaller dollar volume programs, but retaining coverage of the large dollar programs. A State retains the option of retaining or expanding program coverage by applying a lower dollar threshold amount.
- The NPRM makes Treasury-State Agreements (TSAs) effective until terminated instead of being valid for one to five years. This provision enables FMS and States to smooth the high-volume renegotiation process that exists due to 47 States sharing July 1 as the first day of the fiscal year. By reducing the number of renegotiations each year, FMS and States can focus resources on efficient CMIA implementation.
- The NPRM eliminates restrictions on allowable funding techniques. States and FMS can agree to any funding technique that meets certain requirements, including reimbursable funding.
- The CMIA provides that a State is entitled to interest if it disburses its own funds for program purposes in accordance with Federal law, Federal regulation, or Federal-State agreement. Some agencies require States to obtain agency approval of certain expenditures. Those requirements may be set forth in a Federal law, Federal regulation, or Federal-State Agreement. The NPRM requests comment on the nature and operation of agency approval requirements that currently are in place.
- The NPRM proposes that funds transfers requested by States and later allowed by Federal agencies for program reasons by subject to the interest provisions of CMIA. Disallowed fund transfers are not addressed by the current CMIA regulation. The NPRM specifically seeks comment on the implementation of this provision.
- The NPRM incorporates previously issued Policy Statements into the regulation. Over the past seven years, FMS has issued a number of Policy Statements clarifying proper CMIA implementation. This draft integrates the relevant Policy Statements into the body of the regulation. Outdated Policy Statements have been discarded.
- The NPRM raises the refund transaction exemption threshold to $50,000 (from $10,000). Adequate coverage will be maintained and the administrative burden of tracking small dollar amounts will be eliminated.
- The NPRM requires that all transfers of Federal funds be conducted in accordance with the Debt Collection Improvement Act (DCIA) of 1996. All Federal funds transactions must be conducted via Electronic Funds Transfer (EFT).
- The NPRM has been reformatted in accordance with the Administration's "Plan Language" Executive Memorandum issued on June 1, 1998. The regulation has been rewritten in a manner to make it easier to understand.

How to Register: Any person desiring to attend either of the two public meetings must register for the meetings by November 22, 2000. Requests to present a prepared statement at the public meetings should be made at the time of registration. This request should include the topic(s) which will be addressed, along with a brief description of the statement.

Any restrictions on the length of the prepared statement will depend on the number of requests received. The FMS staff will acknowledge receipt of requests to present a prepared statement and will inform participants of the schedule for presentation.

Registration for both public meetings can be completed through the Internet. The CMIA webpage, found *http://www.fms.treas.giv/policymia*, will provide an online registration form, allowing all interested parties to register for either public meeting. Registration can also be done by any of the following means: via email by sending your request to cmiasignup@fms.treas.gov; by facsimile transmission to fax number (202) 874–6965; by phone by calling Martha Thomas Mitchell at (202) 874–6757 or Oscar S. Oña at (202) 874–6799; by written request sent to Martha Thomas Mitchell-Public Meetings, Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 404F, 401 14th Street, SW, Washington, DC 20227, or hand delivered on business days between 9:00 a.m. and 5:00 p.m.

Please be sure to include your name and contact phone number, which meeting you will attend, and the organization or agency you represent.

Requests to present a prepared statement at either meeting should be made at the time of registration. The online registration form will provide a field to specify whether you would like to participate. The topic to be addressed in the testimony should be disclosed, as well as a brief description of issues which will be discussed. Requests to present a statement should also be disclosed in conjunction with registration via email, fax, mail, or telephone.

Please notify Oscar S. Oña, at (202) 874–6799 by November 22, 2000 if auxiliary aids or services are needed, including an interpreter or handicapped access.

Dated: November 2, 2000.

Bettsy Lane,

Assistant Commissioner, Federal Finance Financial Management Service.

[FR Doc. 00–28579 Filed 11–6–00; 8:45 am]

BILLING CODE 4810–35–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6896–7]

RIN 2060–AH13

National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for municipal solid waste (MSW) landfills. The proposed rule is applicable to both major and area landfill sources, and contains the same requirements as the Emission Guidelines and New Source Performance Standards (EG/NSPS) for MSW landfills. The proposed rule adds startup, shutdown, and malfunction (SSM) requirements, adds operating condition deviations for out-of-bounds monitoring parameters, and changes the reporting frequency for one type of report.

The proposed rule fulfills the requirements of section 112(d) of the Clean Air Act (CAA), which requires the Administrator to regulate emissions of hazardous air pollutants (HAP) listed in section 112(b), and helps implement the Urban Air Toxics Strategy developed under section 112(k) of the CAA. The intent of the standards is to protect the public health by requiring new and existing sources to control emissions of HAP to the level reflecting the maximum achievable control technology (MACT). The HAP emitted by MSW landfills include, but are not limited to, vinyl chloride, ethyl benzene, toluene, and benzene. Each of the HAP emitted from MSW landfills can cause adverse health effects provided sufficient exposure. For example, vinyl chloride can adversely affect the central nervous system and has been shown to increase the risk of liver cancer in humans, while benzene is known to cause leukemia in humans.

DATES: *Comments.* Submit comments on or before January 8, 2001.

Public Hearing: If anyone contacts the EPA requesting to speak at a public hearing by November 27, 2000, a public hearing will be held on December 7, 2000.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A–98–28, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will begin at 10:00 a.m. and will be held at EPA's Office of Administration Auditorium in Research Triangle Park, North Carolina, or an alternate site nearby.

Docket. Docket No. A–98–28 for this proposal and associated Docket No. A–88–09 contain supporting information used in developing the standards. These dockets are located at the U.S. EPA, 401 M Street SW, Washington, DC 20460, in Room M–1500, Waterside Mall (ground floor, central mall), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Laur, Waste and Chemical Processes Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5256, facsimile number (919) 541–0246, electronic mail (e-mail) address laur.michele@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: Docket No. A–98–28. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it "Confidential Business Information". Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Michele Laur, c/o OAQPS Document Control Officer (Room 740B), U.S. EPA, 411 W. Chapel Hill Street, Durham, NC 27701. Do not submit CBI electronically.

The EPA will disclose information identified as "Confidential Business Information" only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact JoLynn Collins, Waste and Chemical Processes Group, Emission Standard Division (MD–13), U.S. EPA, Research Triangle Park, NC

27711, telephone (919) 541–5671, at least 2 days in advance of the public hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this action. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this action are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this action is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industry: Air and water resource and solid waste management.	924110	9511	Solid waste landfills.
Industry: Refuse systems—solid waste landfills	562212	4953	Solid waste landfills.
State, local, and Tribal government agencies	562212 924110	4953	Solid waste landfills; Air and water resource and solid waste management.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 63.1935 and 63.1940 of proposed subpart AAAA. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline

The information presented in the preamble is organized as follows:

I. Introduction and Background Information
  A. What is the source of authority for development of NESHAP?
  B. What criteria are used in the development of NESHAP?
  C. What are the health effects associated with municipal solid waste landfills?
II. Summary of the Proposed Rule
  A. What source categories are affected by this proposed rule?
  B. What are the primary sources of emissions and what are the emissions?
  C. What is the affected source?
  D. What would the proposed rule require?
  E. When would I have to begin complying with the proposed rule?
  F. Are new and existing sources defined differently for purposes of the proposed rule than for the EG/NSPS and what is the effect of this difference?
  G. How must I demonstrate compliance?
III. Rationale for the Proposed Rule
  A. How did EPA select the affected source?
  B. How did EPA determine the basis and level of the proposed rule for existing and new major sources?
  C. How did EPA determine the standard for area sources?
  D. Why is NMOC used as a surrogate for HAP?
  E. How did EPA select the format of the standard?
  F. How did EPA determine the requirements of the proposed rule?
  G. What is the basis for the startup, shutdown, and malfunction, and monitoring and reporting requirements?
  H. How did EPA determine compliance dates?
  I. What are some of the special issues affecting MSW landfills?
IV. Summary of the Environmental, Energy, and Economic Impacts
V. Administrative Requirements
  A. Executive Order 12866—Regulatory Planning and Review
  B. Executive Order 13132—Federalism
  C. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments
  D. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
  E. Unfunded Mandates Reform Act
  F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
  G. Paperwork Reduction Act
  H. National Technology Transfer and Advancement Act

Abbreviations and Acronyms Used in This Document

ASCII—American Standard Code for Information Interchange
CAA—Clean Air Act
CBI—Confidential Business Information
CEMS—continuous emissions monitoring systems
CFR—Code of Federal Regulations
CMS—continuous monitoring system
EPA—Environmental Protection Agency
EG—emission guidelines
FR—Federal Register
GACT—generally available control technology
HAP—hazardous air pollutants
ICR—Information Collection Request
kg/year—kilograms per year
m^3—cubic meters
MACT—maximum achievable control technology
mg/dscm—milligrams per dry standard cubic meter
mg/m^3—milligrams per cubic meter
Mg/year—megagrams per year
MSW—municipal solid waste
NAICS—North American Industrial Classification System
NESHAP—national emission standards for hazardous air pollutants
ng/dscm—nanograms per dry standard cubic meter
NMOC—nonmethane organic compounds
NSPS—new source performance standards
NTTAA—National Technology Transfer and Advancement Act
OAQPS—Office of Air Quality Planning and Standards
OMB—Office of Management and Budget
OP—Office of Policy
PCS—petroleum contaminated soils
PMACT—presumptive maximum achievable control technology
ppmv—parts per million by volume
Pub. L.—Public Law
RCRA—Resource Conservation and Recovery Act
RFA—Regulatory Flexibility Act
SBREFA—Small Business Regulatory Enforcement Fairness Act
SIC—Standard Industrial Classification
SSM—startup, shutdown, and malfunction
TTN—Technology Transfer Network
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code
VOC—volatile organic compounds

I. Introduction and Background Information

The proposed subpart AAAA is based on the emission guidelines and new source performance standards in 40 CFR part 60, subparts Cc and WWW, with some additional requirements, and further ensures the reduction of HAP emissions from MSW landfills. The additional requirements above and beyond the EG/NSPS are provisions for a SSM plan with the associated records and reports, reporting of operating condition deviations for out-of-range monitoring parameters, and one type of annual report required by the EG/NSPS is required to be submitted every 6 months instead of once a year.

A. What Is the Source of Authority for Development of NESHAP?

Under section 112(d) of the CAA, we are required to regulate major sources of the 188 HAP listed in section 112(b). On July 16, 1992, we published a list of industrial source categories, which included MSW landfills, that emit one or more of these HAP. We must promulgate standards for the control of emissions of HAP from both new and existing major source MSW landfills. For "major" source MSW landfills (those that emit 10 tons per year (tpy) or more of a listed pollutant or 25 tpy or more of a combination of pollutants), the CAA requires us to develop standards that require the application of MACT.

Under section 112(k) of the CAA, EPA developed a strategy to control emissions of HAP from area sources in urban areas, identifying 33 HAP that present the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. Municipal solid waste landfills were listed as one of the 29 area source categories on July 19, 1999 because 13 of the listed HAP are emitted from MSW landfills (64 FR 38706).

B. What Criteria Are Used in the Development of NESHAP?

The CAA requires NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable for new and existing major sources. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that all major hazardous air pollutant emission sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each category. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost, nonair quality health and environmental impacts, and energy requirements.

Finally, the CAA allows NESHAP to reflect an alternative standard for area sources. The alternative standard provides for the use of generally available control technologies (GACT) or management practices to reduce emissions of HAP.

C. What Are the Health Effects Associated With Municipal Solid Waste Landfills?

The proposed rule ensures reductions of emissions of nearly 30 HAP including, but not limited to, vinyl chloride, ethyl benzene, toluene, and benzene. The degree of adverse effects to human health from exposure to these HAP can range from mild to severe. The extent and degree to which the human health effects may be experienced are dependent upon the ambient concentration observed in the area (as influenced by emission rates, meteorological conditions, and terrain); the frequency of and duration of exposures; characteristics of exposed individuals (genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population; and pollutant-specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence).

Vinyl Chloride. Acute (short-term) exposure to high levels of vinyl chloride in air has resulted in central nervous system (CNS) effects, such as dizziness, drowsiness, and headaches in humans. Chronic (long-term) exposure to vinyl chloride through inhalation and oral exposure in humans has resulted in liver damage. There are human and animal studies showing adverse effects which raise a concern about potential reproductive and developmental hazards to humans from exposure to vinyl chloride. Cancer is a major concern from exposure to vinyl chloride via inhalation. Vinyl chloride exposure has been shown to increase the risk of a rare form of liver cancer in humans. The EPA has classified vinyl chloride as a Group A, known human carcinogen.

Ethyl Benzene. Acute exposure to ethyl benzene in humans results in respiratory effects, such as throat irritation and chest constriction, irritation of the eyes, and neurological effects such as dizziness. Chronic exposure to ethyl benzene by inhalation in humans has shown conflicting results regarding its effects on the blood. Animal studies have reported effects on the blood, liver, and kidneys from chronic inhalation exposure to ethyl benzene. No information is available on the developmental or reproductive effects of ethyl benzene in humans, but animal studies have reported developmental effects, including birth defects in animals exposed via inhalation. The EPA has classified ethyl benzene in Group D, not classifiable as to human carcinogenicity.

Toluene. Acute inhalation of toluene by humans may cause effects to the CNS, such as fatigue, sleepiness, headache, and nausea, as well as irregular heartbeat. Repeated exposure to high concentrations may induce loss of coordination, tremors, decreased brain size, involuntary eye movements, and impaired speech, hearing, and vision. Chronic inhalation exposure of humans to lower levels of toluene also causes irritation of the upper respiratory tract, eye irritation, sore throat, nausea, dizziness, headaches, and difficulty with sleep. Studies of children of pregnant women exposed by inhalation to toluene or to mixed solvents have reported CNS problems, facial and limb abnormalities, and delayed development. In addition, inhalation of toluene during pregnancy may increase the risk of spontaneous abortion. The EPA has developed a reference concentration of 0.4 milligrams per cubic meter for toluene. Inhalation of this concentration or less over a lifetime would be unlikely to result in adverse noncancer effects. No data exist that suggest toluene is carcinogenic. The EPA has classified toluene in Group D, not classifiable as to human carcinogenicity.

Benzene. Acute inhalation exposure of humans to benzene may cause drowsiness, dizziness, headaches, as well as eye, skin, and respiratory tract irritation, and, at high levels, unconsciousness. Chronic inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells and aplastic anemia, in occupational settings. Reproductive effects have been reported for women exposed by inhalation to high levels, and adverse effects on the developing fetus have been observed in animal tests. Increased incidence of leukemia (cancer of the tissues that form white blood cells) has been observed in humans occupationally exposed to benzene. The EPA has classified benzene as a Group A, known human carcinogen.

The proposed rule reduces nonhazardous air pollutant volatile organic compound (VOC) emissions as well. Emissions of VOC have been associated with a variety of health and welfare impacts. Volatile organic compound emissions, together with nitrogen oxides, are precursors to the formation of tropospheric ozone, or smog. Exposure to ambient ozone is responsible for a series of public health impacts, such as alterations in lung capacity; eye, nose, and throat irritation; nausea; and aggravation of existing respiratory disease. Ozone exposure can also damage forests and crops.

II. Summary of the Proposed Rule

The proposed rule contains the same requirements as the EG/NSPS, plus SSM definition and reporting of deviations for out-of-range monitoring parameters. Also, the proposed rule requires compliance reporting every 6 months while the EG/NSPS requires annual reporting.

A. What Source Categories Are Affected by This Proposed Rule?

The proposed rule applies to all MSW landfills that are major sources or are co-located with a major source, and some landfills that are area sources. However, most requirements are proposed to take effect when landfills emit equal to or greater than 50 megagrams per year (Mg/year) nonmethane organic compounds (NMOC) and have a design capacity equal to or greater than 2.5 million Mg and 2.5 million cubic meters (m^3).

We estimate that all MSW landfills that are major sources of HAP have a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 and emit or will emit 50 Mg/yr or greater of NMOC. Therefore the requirements of the proposed rule would apply to all MSW landfill major sources. Several MSW landfill area sources would also be subject to the requirements of these proposed standards.

B. What Are the Primary Sources of Emissions and What Are the Emissions?

The majority of emissions of HAP at MSW landfills come from the natural anaerobic (without air) decomposition of municipal solid waste. Typical municipal solid waste contains household and commercial rubbish, paints, solvents, pesticides, and adhesives, which contain numerous organic compounds. During the decomposition process, landfill gas is generated. This gas is primarily composed of methane and carbon dioxide. The organic compounds in the decomposing waste are stripped from the waste by these gases and transported to the surface, or the organic compounds travel underground to other locations prior to their release.

A second but significantly lesser source of emissions of HAP comes from the collection, storage and treatment of landfill leachate. Landfill leachate is a liquid generated during the waste decomposition process. This liquid contains a much smaller concentration of the same HAP contained in landfill gas. During collection, storage and treatment, small amounts of HAP may volatilize to the air or may come in contact with groundwater.

Regardless of the emission pathway, it is the decomposition of organic-containing solid waste that is the source of the HAP. Landfills have been identified as the source of nearly 30 HAP, including but not limited to toluene, ethyl benzene, vinyl chloride and benzene. Estimated uncontrolled emissions from all landfills can be as high as 36,000 tpy.

C. What Is the Affected Source?

The affected source is the entire municipal solid waste landfill in a contiguous geographical space where household waste is placed in or on the land and consists of one or more cells that are under common ownership or control. The facility may receive household waste as well as other types of Resource Conservation and Recovery Act (RCRA) Subtitle D waste. The affected source may also include equipment for the collection and control of landfill gas or leachate.

D. What Would the Proposed Rule Require?

This proposed rule does not apply to landfills with a design capacity less than 2.5 million Mg or 2.5 million m^3 or that emit less than 50 Mg/yr of NMOC; these landfills continue to remain subject to the provisions of the EG/NSPS as applicable. Landfills with a design capacity of greater than or equal to 2.5 million Mg and 2.5 million m^3 and that emit at least 50 Mg/yr NMOC also would continue to be subject to the EG/NSPS as applicable, but there are additional requirements in this proposed rule that would apply. Listed below are the requirements of the proposed rule that are beyond the EG/NSPS requirements.

You would be required to meet the SSM requirements that are listed in the general provisions to 40 CFR part 63. You would develop and implement a written SSM plan that describes, in detail, the procedures for operating and maintaining the collection and control system and the continuous monitoring system (CMS) during periods of startup, shutdown, and malfunction (§ 63.6(e)(3)). There are also recordkeeping and reporting requirements for SSM incidents.

The proposed rule would also require you to operate the control device within the operating parameter boundaries as described in § 60.758(c)(1) and to continuously monitor control device operating parameters. Compliance with the operating limits is demonstrated when monitoring data show that the gas control devices are operating within the established operating parameter range. Compliance also occurs when data quality is sufficient to constitute a valid hour of data in a 3-hour block period.

For the proposed rule, deviations occur when a source's 3-hour average falls outside the established boundaries. A deviation also occurs when more than 1 hour in a 3-hour average is considered invalid. Monitoring data are insufficient to calculate a valid hourly average if measured values are unavailable for more than one 15-minute period within the hour. If such a deviation occurs, then the source may be in violation of operating conditions (that is, in violation of proper operation and maintenance of a control device). However, consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSM plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e). (It should be noted that the EG/NSPS limits the duration of startup, shutdown or malfunction. See § 60.755(e).)

With one exception, the proposed rule will also require you to submit the reports that are specified in 40 CFR part 60, subpart WWW, or in the Federal plan, the EPA-approved State plan, or the Tribal plan that implements 40 CFR part 60 subpart Cc, whichever is applicable. As an exception, the report required in § 60.757(f) would be submitted every 6 months rather than annually. This report pertains to the value and duration that control devices were operating in out-of-bounds conditions, the duration of periods when the landfill gas stream was diverted from the control device(s), the location of areas that exceed the 500 parts per million methane concentration limit, and the dates of installation and location of each added well or collection system expansion.

E. When Would I Have To Begin Complying With the Proposed Rule?

If your landfill is a new affected source, you would need to comply with the proposed rule by [the effective date of the final rule] or at the time you begin operating, whichever occurs last. If your landfill is an existing affected source, you would need to comply with the proposed rule by 1 year after [the effective date of the final rule]. The compliance dates and time line for the EG/NSPS are unaffected by this proposed rule. It is important to note that to be in compliance with the proposed rule, you must follow the requirements of the EG/NSPS; and you must comply with the additional requirements included in proposed subpart AAAA.

F. Are New and Existing Sources Defined Differently for Purposes of the Proposed Rule Than for the EG/NSPS and What Is the Effect of This Difference?

Yes, there is a difference. For the proposed rule, a new affected source is one that commenced construction or reconstruction (defined in 40 CFR part 63, subpart A) after November 7, 2000. An existing affected source is any affected source that is not a new source, that is, any source that commenced construction on or before November 7, 2000 and accepted waste at anytime since November 8, 1987.

For purposes of the NSPS, a new source is each MSW landfill for which construction, modification, or reconstruction commenced on or after May 30, 1991. For purposes of the EG, an existing source is any MSW landfill that is not a new source and has accepted waste since November 8, 1987.

Because regulatory impacts can vary based on these different definitions, it is important for sources to know how they are defined and the regulatory implications for each rule that applies to them. The regulatory implications of new versus existing source determination for sources affected by the EG/NSPS are well understood, unaffected by this proposed rule, and, thus, will not be discussed further here. The regulatory implications of new versus existing source determination for sources affected by this proposed rule are limited to compliance timing. While new sources must comply with the proposed subpart by the publication date of the final rule or at the time they begin operating, existing sources must comply with the proposed subpart within 1 year of the publication of the final rule.

G. How Must I Demonstrate Compliance?

You must demonstrate compliance by meeting the requirements in the EG/NSPS and by maintaining monitoring parameters within acceptable ranges. In addition, you must submit reports every 6 months which must include any notifications of deviations from the monitoring parameter values. You must develop and implement a written SSM plan according to the provisions in § 63.6(e)(3). If you take action during a SSM event, you must keep records for that SSM event which demonstrate that you followed the procedures specified in the SSM plan. You must submit a report every 6 months if the action is consistent with the SSM plan. However, if the action is not consistent with the SSM plan, you must notify EPA within 2 days of the SSM event and must follow up with a letter within 7 days of the event (§ 63.10(d)(5)(ii)).

III. Rationale for the Proposed Rule

A. How Did EPA Select the Affected Source?

Selection of the affected source defines the boundary of the unit to which the proposed rule applies. This definition is used in combination with the term "reconstruction", defined in § 63.2, to determine when an "existing source" becomes a "new source".

The affected source can be narrowly or broadly defined. If narrowly defined, identification as a new source may occur sooner. By contrast, identification may be delayed or never occur if the affected source is broadly defined.

A change to new source status can result in the application of more stringent control requirements or a shorter time to comply. Since the reconstruction of an existing source may result in greater emissions of HAP, it may be desirable to require greater or earlier control.

During the development of the proposed rule, we considered the impact of a narrow and broad affected source definition. This evaluation took into consideration the nature of the source category, noting that landfills do not reconstruct in the same sense as defined in § 63.2. In addition, we noted that this proposal requires the same level of control for new and existing sources. Based on this evaluation, we decided to broadly define the affected source.

B. How Did EPA Determine the Basis and Level of the Proposed Rule for Existing and New Major Sources?

To determine the basis and level of control for existing and new major sources, we gathered readily available data on the physical, operational, and emission characteristics of landfills. In addition, we made site visits to 20 landfills in seven States to further characterize the source and the control technologies in use. From these data, we developed a database for MSW landfills.

1. How Did EPA Determine the MACT Floor?

To determine the MACT floor for existing sources, we used collected data to estimate emissions, determine major and area source status, and identify controls currently in use at landfills. We determined the source status for 9,539 landfills based on maximum uncontrolled emission estimates from landfill gas. We estimated 1,140 facilities are, or will be, major sources of HAP.

Similarly, we used maximum NMOC emission estimates and landfill capacity data to determine the number of landfills subject to the landfill gas collection and control requirements of the EG/NSPS. We identified 1,312 facilities subject to the EG/NSPS level of control. We determined that the 1,140 major sources are a subset of the EG/NSPS facilities. Since substantially greater than 12 percent of the existing major sources apply this level of control, we determined that the MACT floor for existing sources is the EG/NSPS level of control.

To determine the MACT floor for new sources, we tried to locate information identifying gas control technologies that are more effective than the controls required by the EG/NSPS. We were unable to locate any information identifying any landfill gas emissions control technologies that are more effective in reducing HAP emissions than the controls required under the EG/NSPS for MSW landfills. Because no better controls are available, the EG/NSPS is the emission control achieved in practice by the best controlled similar source and, therefore, is also the MACT floor for new sources.

The EG/NSPS do not address emissions from landfill wastewater. Landfill wastewater emissions were evaluated for the proposed rule because emissions of HAP are possible at any point in a landfill wastewater collection, storage, and treatment system that is open to the atmosphere. However, we have found no information on the prevalence or effectiveness of any practices that may reduce air emissions from wastewater collection and treatment at landfills. As a result, we have been unable to identify a MACT floor for landfill wastewater emission points.

Limited data are available to characterize the potential emissions of HAP from landfill wastewater. However, the available data indicate that volatile concentrations of HAP in landfill wastewater are low. We developed emission estimates for HAP using several worst case assumptions, such as assuming that all HAP from landfill wastewater would volatilize and be released to the atmosphere, and using median reported HAP concentrations and maximum estimates of all wastewater produced at landfills. Even with these conservative assumptions, we estimate that total nationwide emissions from wastewater operations at all of the landfills in the United States are no more than 57 tpy of HAP. We expect that this estimate is high for the reasons stated. When considering that there are more than 10,000 landfills in the United States, the amount of HAP released from any one landfill's wastewater operations would be very small. We estimate that emissions from landfill wastewater represent no more than 0.4 percent of the combined landfill gas-wastewater emissions.

Metal HAP, including mercury, may be emitted from landfills and would not be controlled by the EG/NSPS control technologies. No controls for emissions of metal HAP have been demonstrated for landfill gas or landfill gas combustion technologies. Therefore, the MACT floor for metal HAP is no control.

2. How Did EPA Consider Beyond-the-Floor Options?

The EG/NSPS requirements for landfill gas collection and emissions reductions are the best available control for landfill gas. Therefore, there were no options to consider that were more stringent than the MACT floor for landfill gas control. The gas collection system required by the EG/NSPS (described in § 60.753) is designed to capture as much landfill gas as possible and requires several parameters to be monitored to ensure this, including pressure, nitrogen or oxygen concentration, temperature, and surface methane concentration. There are no data indicating that collection systems are in use that are more effective than those required by the EG/NSPS.

Similarly, there are no known technologies that can regularly achieve reduction efficiencies greater than those specified in the EG/NSPS. The EG/NSPS regulations require 98 percent reduction efficiency for NMOC, or a maximum outlet concentration of 20 parts per million by volume (ppmv) if an enclosed combustion device is used. These reduction efficiencies can be regularly achieved by several types of control technologies with proper operation.

Because there are no collection and control technologies more stringent than the EG/NSPS, MACT for both existing and new sources is the same as the MACT floor, that is the control level of the EG/NSPS.

We have been unable to identify a MACT floor for landfill wastewater because we have not found information on the prevalence of any practices that may reduce air emissions from wastewater collection and treatment. Therefore, we were unable to consider control options, and we propose that the MACT not include any control requirements or emission limits for these operations. As previously stated, emissions from landfill wastewater are expected to be minimal, no more than 0.4 percent of all landfill emissions.

The EG/NSPS do not require control of emissions of metal HAP, and no capture devices or controls for metals have been demonstrated for landfill gas or for landfill gas combustion technologies. For this reason, the MACT floor and the MACT for control of metal HAP at new and existing major source landfills are no control, and no other options were considered.

C. How Did EPA Determine the Standard for Area Sources?

The CAA requires control of area sources listed pursuant to section 112(c). Under section 112(k), we must consider regulation of any listed area source category and ultimately regulate enough such categories to account for 90 percent of the aggregate emissions of the identified HAP. We are proposing to regulate some area source landfills, but do not believe that all area source landfills warrant regulation to meet the requirements of section 112(k).

Area sources may be controlled using MACT or GACT. To determine control requirements for area sources, we reviewed the area sources and their emissions profile and are proposing to apply GACT to these sources. For MSW area source landfills that are 2.5 million Mg and 2.5 million m^3 or greater in design capacity, and that emit 50 Mg per year or more of NMOC (or approximately 5.9 Mg of HAP per year), EPA has selected GACT to be the same as MACT. The EG/NSPS already cover these sources, so requiring GACT does not impose additional control burdens on these sources. Additionally, as discussed in the previous section, there are no control options more stringent than those required by the EG/NSPS.

For MSW landfills smaller than 2.5 million Mg or 2.5 million m^3, or that emit less than 50 Mg per year of NMOC, this proposal requires no control for area sources. These landfills are costly to control, and they emit relatively little HAP. During the development of the EG/NSPS, we also made a decision not to control these smaller landfills. As discussed in the preamble to the EG/NSPS (61 FR 9916), the design capacity exemption of 2.5 million Mg or 2.5 million m^3 excludes those landfills that can least afford the cost of landfill gas collection and control systems, for example, small businesses and, particularly, municipalities. Furthermore, the analysis for the EG/NSPS found that a more stringent design capacity exemption level would increase the number of landfills required to apply control, while only achieving an additional 25 percent NMOC emissions reduction. The emission rate cutoff of 50 Mg per year of NMOC, in conjunction with the design capacity exemption, required control of less than 5 percent of all landfills (at the time of EG/NSPS promulgation), but reduced NMOC emissions by approximately 53 percent.

Other reasons for exempting the smaller area source landfills from control requirements exist. For example, many existing area source MSW landfills are closed (82 percent were closed as of January 1999). Landfill emissions are at their highest level within the year right after closure and then begin to decrease steadily. Thus, landfills are a unique emissions source, because they have naturally diminishing emissions over time. It makes little sense to require expensive controls for small, closed area source landfills when their emissions are low and will decrease over time. As emissions decrease, there would be a dramatic decrease in the average cost effectiveness per Mg of NMOC reduction achieved through control of small, closed area source landfills.

Most new landfills will be much larger than the design capacity cutoff of 2.5 million Mg and 2.5 million m^3. Economies-of-scale make it cheaper to operate larger facilities, thus encouraging companies and municipalities to build ever larger landfills that receive waste from larger areas. Whereas waste was previously moved not much farther than 15 miles from point-of-origin to the landfill, it now moves an average of 45 miles, and the trend is increasing. The effect of this will be to ensure that future facilities will be very large to be cost competitive.

D. Why Is NMOC Used As a Surrogate for HAP?

The proposed rule would require the collection and control of landfill gas, which is the same pollutant regulated by the EG/NSPS. By volume, landfill gas is approximately 50 percent methane, 50 percent carbon dioxide, and less than 1 percent of many different NMOC. Nonmethane organic compounds include VOC, HAP, and odorous compounds. Therefore, by collecting and controlling landfill gas, HAP emitted by landfills are collected and controlled. To reduce the burden and complexity of measuring and monitoring the various HAP, NMOC is specified as a surrogate in the proposed rule for determining the applicability of collection and control of HAP emissions. Nonmethane organic compounds are an appropriate surrogate for HAP because all HAP are contained in the NMOC portion of landfill gas. Also, landfill owners and operators are already required to estimate NMOC under the EG/NSPS. It is not necessary to increase the burden by requiring specific HAP measurements.

E. How Did EPA Select the Format of the Standard?

Section 112(d) of the CAA requires that emission standards for control of HAP be prescribed unless, in the judgement of the Administrator, it is not feasible to prescribe or enforce emission standards. Section 112(h) identifies two conditions under which it is not considered feasible to prescribe or enforce emission standards: (1) If the HAP cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or (2) if the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitation. If it is not feasible to prescribe or enforce emission standards, then the Administrator may instead promulgate design, equipment, work practice, and operational standards, or a combination of these.

We concluded that the format used in the EG/NSPS was appropriate for the proposed rule for this source category for the same reasons the format was selected for the EG/NSPS. An emission standard is not appropriate for gas collection system design because it is not feasible to measure gas generated versus gas collected at a landfill, and then to determine what performance a collection system is achieving. Monitoring of surface concentration alone will not demonstrate the fraction of gas that is collected, nor will it determine whether the system is designed and performing optimally. However, monitoring surface concentrations will indicate when cover maintenance and well adjustments should be made, as well as when additional wells should be added to the collection system. Surface monitoring also provides a safeguard against uncertainties in determining the area of influence of the wells.

Because an emission standard is not feasible for gas collection, a design and operational standard was set under the EG/NSPS for gas collection systems. The specifications for active collection systems do not give prescriptive design specifications, but they do present criteria on which to base a collection system design plan. The EG/NSPS set an emission standard for the control devices because once gas is collected, the destruction efficiency of a control device can be established.

F. How Did EPA Determine the Requirements of the Proposed Rule?

To determine the requirements of the proposed rule, the EPA compared the two statutory authorities that regulate landfills. Landfills are already regulated in the EG/NSPS under authority of section 111 of the CAA. The proposed rule would regulate landfills as required under section 112. We compared the requirements of section 112, which requires regulations to control HAP, to the requirements of section 111, which regulates the emissions of landfill gas pursuant to the EG/NSPS. We determined that there are no better controls than the collection and control system required by the EG/NSPS. Therefore, the proposed rule incorporates the control requirements of the EG/NSPS as MACT. The next step was to determine if the rules promulgated under section 111 met all the section 112 rule requirements.

We compared the general provisions developed for regulations under these two CAA sections. The essential differences between the section 111 general provisions and the section 112 general provisions are the SSM provisions, continuous parameter monitoring data being a measure of compliance with the operating conditions, and reporting of deviations every 6 months as opposed to annual reporting. Therefore, the proposed rule contains the provisions of the EG/NSPS, plus the provisions discussed above from section 112.

G. What Is the Basis for the Startup, Shutdown, and Malfunction and Monitoring and Reporting Requirements?

In the proposed rule, we have included the recordkeeping requirements in the 40 CFR part 63 general provisions (59 FR 12408, March 16, 1994) requiring operators to develop a plan for how gas collection and control systems would be operated during SSM events, and how malfunctioning gas collection and control systems would be repaired. We believe that it is appropriate to require compliance on a continual basis for sources that emit HAP. We require a SSM plan because deviations occur during SSM events, that is, air pollution is emitted in quantities greater than anticipated by the applicable standards. The plan is a means to minimize the emissions to the extent possible.

Deviations from the requirements of the standards are typically direct indications of noncompliance with the emission standards, and, therefore, are directly enforceable. Therefore, an owner or operator must demonstrate that the SSM plan was followed during an SSM event that has caused the deviation to certify compliance with the emission standards.

You must keep records of all periods of SSM events of gas collection and control equipment and all measurements taken during these periods. This approach is consistent with the requirement that control systems be operated at all times, but it allows special situations to occur, such as unpredicted and reasonably unavoidable failures of air pollution control systems, when it is technically impossible to properly operate these systems.

Rules developed under section 112 of the CAA typically include monitoring strategies that incorporate the concepts of enhanced monitoring that were established in section 114(a)(3) of the CAA. This approach is designed to ensure that monitoring procedures developed for section 112 standards provide data that can be used to determine compliance with applicable standards, including emission standards.

For the proposed rule, continuous emissions monitoring systems (CEMS) are not appropriate. We considered use of CEM but found them to be infeasible due to the lack of CEM technology for landfill sources regulated by the proposed rule. Therefore, we established operating parameters that must be continuously monitored to determine a facility's compliance status.

To determine compliance status, parameters must be monitored with a frequency that will allow the source owner or operator to certify whether compliance is continuous or intermittent for each recordkeeping period associated with the applicable emission limitation or standard. For the proposed rule, control device operating parameters will be directly enforceable and will be used to determine a source's compliance status.

H. How Did EPA Determine Compliance Dates?

The compliance date for existing sources is required by section 112(i)(3) of the CAA to be as "* * * expeditiously as practicable, but in no event later than 3 years after the effective date * * *." We are proposing a compliance date of 1 year after publication of the final rule for existing sources. One year was chosen because much of the effort required to comply with the proposed rule is already taken into account under compliance with the EG/NSPS. The only additional requirement under the proposed rule will be for a source to prepare a SSM plan and prepare to submit reports every 6 months rather than annually under the EG/NSPS. We consider 1 year sufficient time to make these adjustments. Also, the additional requirements do not go into effect until a landfill has met the collection control applicability criteria of the EG/NSPS (design capacity of equal to or greater than 2.5 million Mg and 2.5 million m^3 and emit equal to or greater than 50 Mg/yr of NMOC). This may result in certain sources having additional time to prepare for compliance with the proposed rule.

The compliance date for new sources must be the effective date of the final rule as required by section 112(i)(1) of the CAA. Section 112(d)(10) provides that regulations promulgated under section 112(d) are effective upon publication. However, although a new source must be in compliance by the effective date of the final rule, a majority of the provisions of the proposed rule will only apply to landfills with a design capacity of equal to or greater than 2.5 million Mg and 2.5 million m^3, and will not take effect until a source emits equal to or greater than 50 Mg/year of NMOC, and is required to install controls under the EG/NSPS.

Because of the large number of landfills, the nature of landfills history, and the fact that emissions steadily decrease after closure, we determined that an applicability date was needed to make the proposed rule manageable. November 8, 1987 was chosen as that date for the reasons outlined in the preamble of the proposed EG/NSPS (56 FR 24468, May 30, 1991).

I. What Are Some of the Special Issues Affecting MSW Landfills?

1. Petroleum Contaminated Soil

The majority of emissions of HAP at MSW landfills come from the biodegradation of the municipal solid waste in the landfill in the form of landfill gas emissions. However, some landfills may also emit HAP from volatilization of HAP contained in their surface covers if they use petroleum contaminated soils (PCS) as cover material.

Available information indicates several States allow the use of PCS as daily cover, but we do not know how many landfills actually use PCS. Also, most States impose some level of restriction on the use of PCS, such as limiting concentration of total petroleum hydrocarbons allowed in the soil, but those restrictions appear to be based on water quality concerns and vary by State, or sometimes on a case-by-case basis within a State.

Additionally, it appears that PCS used at landfills may be declining. It appears that most PCS used at landfills are obtained from the excavation and remediation of underground storage tanks. Available information indicates that the number of underground storage tanks that are being excavated for removal is declining and that, in many instances, States are simply allowing the excavated soil to be returned to the excavation site. Therefore, we believe that the amount of PCS available for use as cover material at landfills is declining. Finally, little is known about control of air emissions from PCS in use at landfills, but available information indicates that there is little or no control. An important consideration in this matter is one of overall emissions. Again, evidence indicates that the majority of air emissions from PCS may occur during excavation, storage, and transport prior to entering the boundaries of a landfill for use as cover material.

We are soliciting comment about the use of PCS at MSW landfills. Specifically, we are interested in any information regarding the amount of PCS used and the number of landfills using them, as well as levels of contamination (in terms of total petroleum hydrocarbon concentrations or total benzene, toluene, ethyl benzene, and xylene). On the basis of our current information on emissions and controls for landfilling PCS, we do not consider this a landfill issue. We plan to evaluate PCS in the context of a future MACT standard for site remediation activities.

2. Mercury Emissions From Landfills

We are also seeking information with respect to mercury emissions from landfills. Municipal solid waste landfills receive refuse that contains mercury in organic and inorganic forms. Common wastes that contain mercury that are routinely disposed of in landfills include thermometers, batteries, light switches, thermostats, and fluorescent lights. Mercury has been identified as one of the many HAP present in landfill gas. Furthermore, mercury has been identified in emissions from the working face of landfills, that is, it is emitted from waste being deposited at the surface of the landfill prior to burial. Mercury emissions have also been measured in trucks transporting waste to landfills and in waste transfer containers, such as dumpsters and curbside waste carts. Thus, it is clear that mercury is emitted from MSW prior to the waste entering landfills.

Insufficient data are available to us to adequately characterize the concentrations of mercury in landfill gas, the emissions of mercury in fugitive landfill gas, and in residuals from landfill gas combustion devices. Although we have concluded that the MACT floor for mercury control is no control, we are interested in characterizing mercury in landfill gas because of its bioaccumulative capacity and known health effects. We specifically request comment or data on mercury concentrations in landfill gas, mercury emissions from fugitive landfill gas, and from landfill gas control devices.

3. Bioreactor Operation of Landfills

Conventional MSW landfills currently practice "dry tomb" operations. Dry tomb operations means the infiltration of liquids into the solid waste stream is minimized. This can be accomplished by placement of bottom and side liners and by placement of a low permeability final cap over the waste. In addition, some sites install and operate systems to remove leachate produced during the natural biodegradation process. The rationale for using this method was minimization of groundwater contamination. The method also resulted in a slower biodegradation process and reduced landfill gas.

A newer concept, bioreactor operation, is gaining interest in the solid waste industry. In contrast to conventional landfilling, bioreactor operation attempts to maximize liquid infiltration of the solid waste stream by leachate recirculation and in some cases by the introduction of other liquids. Bioreactor landfill operations can take one of two forms, aerobic or anaerobic, each with its own potential benefits and risks. In general, the rationale for using either or both of these methods is the potential achievement of improved environmental and economic benefits such as:

- More rapid biodegradation and earlier stabilization of waste;
- Extended use of current sites and reduced need for new sites;
- Improved quality of leachate and reduced risk of groundwater contamination; and
- Earlier and more rapid generation of landfill gas resulting in more economical energy recovery.

While we agree that some environmental benefits may result from either or both forms of bioreactor operation at landfills, we are concerned about the potential impact on public health and the environment.

The operation of a landfill as an aerobic bioreactor requires the injection of air along with the addition of liquids. This operation may result in the rapid decomposition of waste, the generation of large quantities of gases such as carbon dioxide, and increased internal landfill temperature. During this type of operation, there is potential for fugitive emissions of VOC and HAP unless aggressive steps are taken to collect and control these emissions. In addition, the combination of air in the waste stream and increased internal landfill temperature could increase the potential for a landfill fire. Once started, landfill fires are difficult to extinguish and potentially lead to increased release of dioxin/furan emissions from the combustion of municipal solid waste. Active prevention of landfill fires may need to include frequent monitoring of landfill temperatures, as well as the development of a contingency plan should a fire occur. If the potential for a fire is great enough, it may be inappropriate to allow aerobic bioreactor operation.

The operation of a landfill as an anaerobic bioreactor may result in generation of landfill gas, including methane, sooner after waste deposition and at a more rapid rate than with conventional landfilling. Current solid waste Federal rules, 40 CFR part 60, subparts Cc and WWW, do not require the collection and control of landfill gas unless the site is 2.5 million Mg in size and has estimated NMOC emissions of 50 Mg per year or more. The NMOC emissions estimate is based on a methane generation rate, k, derived from conventional landfilling data. The use of this "k" value may not be appropriate under bioreactor landfill operations since the methane generation rate is expected to be much greater under these conditions. A value greater than the current regulatory value, 0.05 per year, may be more appropriate. In addition, sites currently required to control landfill gas need not control it until the waste is 2 years old in closed cells or cells at final grade, or 5 years old in active cells. The timing of gas collection and control was based on conventional landfilling practices. This timing may not be appropriate under anaerobic bioreactor operations. To prevent increased emissions, it may be more appropriate to delay liquid addition until a final cap is in place or until gas collection and control has begun, regardless of the age of the waste in active or closed cells.

There are little data available on full scale anaerobic bioreactor landfill operations and even less data on aerobic bioreactor landfill operations. In addition, a great deal of uncertainty exists regarding the health and environmental impacts associated with each form of bioreactor operation. Current solid waste Federal rules may not adequately address the health and environmental impacts associated with either form of bioreactor operation. Therefore, EPA requests comment on amending the NSPS to require the application of collection and control systems to aerobic bioreactor cells, and require the use of a higher "k" value for anaerobic bioreactor cells which could result in the installation and operation of collection and control systems sooner after waste deposition in these cells.

IV. Summary of Environmental, Energy, and Economic Impacts

We foresee minimal economic impacts to major sources because all of these landfills are currently required to comply with the EG/NSPS. The proposed rule would only impose a requirement to prepare a SSM plan, the recordkeeping and reporting requirements for SSM events, and semiannual reports instead of annual reports. The expected annual cost to affected major source landfills is only $1,700 (1998 dollars), which represents less than 0.001 percent of the tipping fees collected by an average sized landfill. For more information on the economic impacts of the proposed standards, refer to the economic impact analysis in the docket.

We also foresee no environmental, energy, or economic impacts for collection and control of landfill gas to area source landfills. As with major source landfills, all area source landfills subject to the proposed rule are already required to implement the EG/NSPS. Area source landfills that are too small to trigger the EG/NSPS applicability are not subject to control under the proposed standards and, therefore, will not incur impacts.

The additional requirements for the SSM plan and the semiannual report are projected to affect approximately 1,309 MSW landfills in the first year. The estimated average annual burden for industry for the first 3 years after promulgation of the final rule would be 39,276 person-hours annually. There will be $13,128 of operation and maintenance costs associated with monitoring or recordkeeping during the first 3 years.

It is possible that a source exists that is major but is not subject to the collection and control requirements of the EG/NSPS. This could occur if a landfill does not meet the EG/NSPS collection and control applicability criteria, and the contribution of emissions of HAP from collocated operations causes the full source to emit at major source levels. We do not have any data to indicate that this situation exists, and we believe that this situation is unlikely to occur. Therefore, no impacts were assessed for this category of facilities.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant", and therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed rule is not a "significant regulatory action" because it will not have an annual effect on the economy of $100 million or more and it does not impose any additional control requirements above the 1996 EG/NSPS. The EPA considered the 1996 EG/NSPS to be "significant" because the 1996 EG/NSPS were expected to have an annual effect on the economy in excess of $100 million. The EPA submitted the 1996 EG/NSPS to OMB for review (61 FR 9905, March 12, 1996). However, the proposed rule is projected to have no significant impact above the 1996 EG/NSPS. Consequently, the proposed rule is not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications". "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government". Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement. The federalism summary impact statement must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from its federalism official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

The proposed rule for MSW landfills will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The EPA has concluded that the proposed rule may create a mandate on a number of city and county governments, and the Federal government would not provide the funds necessary to pay the direct costs incurred by these city and county governments in complying with the mandate. However, the proposed rule does not impose any additional control costs or result in any additional control requirements above those considered during promulgation of the 1996 EG/NSPS. In developing the 1996 EG/NSPS, EPA consulted extensively with State and local governments to enable them to provide meaningful and timely input in the development of that rulemaking. Because the control requirements of the proposed rule are substantially the same as those developed in 1996, these previous consultations still apply. For a discussion of EPA's consultations with State and local governments, the nature of the governments' concerns, and EPA's position supporting the need for the specific control requirements included in both the EG/NSPS and the proposed rule, see the preamble to the 1996 EG/NSPS (60 FR 9918, March 12, 1996). Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule.

C. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities".

The proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to the proposed rule.

D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

The proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because it is based on technology performance and not on health and safety risks. Furthermore, as no alternative technologies exist that would provide greater stringency at a reasonable cost, the results of any children's health analysis would have no impact on the stringency decision.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the proposed rule for any year has been estimated to be less than $2.2 million. Thus, the proposed rule is not subject to the requirements of section 202 and 205 of the UMRA. In addition, the EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small government. Therefore, the proposed rule is not subject to the requirements of section 203 of the URMA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certified that the rule will not have a significant impact or a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of the proposed rule, small entities are defined as: (1) A small business that is primarily engaged in the collection and disposal of refuse in a landfill operation as defined by SIC codes 4953 and 5911 with annual receipts less than 6 million dollars; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000, and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rule for MSW landfills on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that small entities will experience little impact since this proposed rule will rely on the requirements specified in 40 CFR part 60, subparts Cc and WWW. Additional requirements for the proposed rule are limited to a slight increase in the reporting frequency of some reports and the development of a SSM plan. This increase in requirements leads to an increase in annual costs to each affected landfill of only $1,700 (1998 dollars), an increase of less than 0.001 percent of the tipping fees taken in by a landfill of average size nationally. Hence, the estimated impacts to small communities, organizations, and firms from the proposed rule should be insignificant. For more information on the economic impacts of the proposed rule, refer to the economic impact analysis in the docket.

Although the proposed rule for MSW landfills will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. To that end, we have evaluated the operational practices, collection systems and control systems required by 40 CFR part 60, subparts Cc and WWW, for co-control environmental benefits. Since the requirements in 40 CFR part 60, subparts Cc and WWW, adequately address the emissions of HAP while controlling landfill gas, we are using these same requirements with only a slight increase in reporting activity/frequency for this rulemaking. In addition to the reduction effort, we have performed a number of outreach activities to interact with small entities during the development of the proposed rule. We have held formal stakeholder meetings. We have presented rule related information at national conferences sponsored by the trade organizations for these entities, and we requested the establishment of an electronic link between the International City/County Management Association website and our rule development website. Through the efforts discussed above, small entities have been engaged in the development of the proposed rule. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments or issues related to such impacts.

G. Paperwork Reduction Act

An Information Collection Request (ICR) document has been prepared for the proposed rule by EPA (ICR No. 1938.01) and submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* A copy may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Office of Environmental Information, Collection Strategies Division, U.S. Environmental Protection Agency (2137), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA (ICR Tracking No. 1938.01)". Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 7, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by December 7, 2000. The final rule will respond to any OMB or public comments on the information

collection requirements contained in the proposed rule.

The information would be used by the EPA to ensure that the requirements for the proposed rule are implemented properly and are complied with on a continuous basis. Records and reports are necessary to enable EPA to identify MSW landfills that may not be in compliance with this standard. Based on reported information, EPA would decide which landfills should be inspected and what records or processes should be inspected. The records that owners or operators of MSW landfills maintain would indicate to EPA whether personnel are operating and maintaining control equipment properly.

The proposed rule is projected to affect approximately 1,309 MSW landfills in the first year. The estimated average annual burden for industry for the first 3 years after promulgation of the proposed rule would be 39,276 person-hours annually. There will be $13,128 of operation and maintenance costs associated with monitoring or recordkeeping during the first 3 years. The estimated average annual burden, over the first 3 years, for the implementing agency would be 21,105 hours with a cost of $843,150 (including travel expenses) per year.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

H. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113), all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies such as EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable VCS.

The proposed rule references 40 CFR part 60, subpart WWW—Standards of Performance for Municipal Solid Waste Landfills. Since there are no new standard requirements in the proposed rule, and there are no new technical standard requirements resulting from specifying subpart WWW in this proposal, EPA is not proposing/adopting any VCS in the proposed rule.

The EPA takes comment on proposed compliance demonstration requirements in the proposed rule and specifically invites the public to identify potentially-applicable VCS. Commenters should also explain why the proposed rule should adopt these VCS in lieu of EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR part 63, appendix A was used).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations.

Dated: October 31, 2000.

Carol M. Browner,

Administrator.

For the reasons cited in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is proposed to be amended by adding a new subpart AAAA to read as follows:

Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

Sec.

What This Subpart Covers

63.1930 What is the purpose of this subpart?
63.1935 Am I subject to this subpart?
63.1940 What parts of my facility does this subpart cover?
63.1945 When do I have to comply with this subpart?
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63.1960 How is compliance determined?
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Notifications, Reports and Records

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Other Requirements and Information

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63.1990 What definitions apply to this subpart?

Tables

Table 1 of subpart AAAA—Part 63 General Provisions Applicable Paragraphs

What This Subpart Covers

§ 63.1930 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for existing and new municipal solid waste (MSW) landfills. This subpart requires all landfills to meet the requirements of 40 CFR part 60, subpart Cc or WWW. This subpart also requires landfills to meet the startup, shutdown, and malfunction (SSM) requirements of the general provisions of this part and provides that compliance with the operating conditions are demonstrated by parameter monitoring results that are within the specified ranges. It also includes additional reporting requirements.

§ 63.1935 Am I subject to this subpart?

Yes, if you own or operate a MSW landfill that is a major source, is co-located with a major source, or is an area source that meets the design capacity and control criteria specified in the 40 CFR Part 60 new source performance standards (NSPS), you must collect and control landfill gas according to the requirements specified in the NSPS. In addition, each area source subject to this subpart is required to obtain a title V permit. Finally, most of the requirements of this subpart will not take effect until your landfill emits equal to or greater than 50 Mg/yr NMOC and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3.

§ 63.1940 What parts of my facility does this subpart cover?

(a) The affected source for this subpart is each new or existing MSW landfill that has accepted waste at anytime since November 8, 1987, or has additional design capacity available for future waste deposition.

(b) An affected source is a new source if you commenced construction or reconstruction after November 7, 2000. An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(c) An affected source is existing if it is not new.

§ 63.1945 When do I have to comply with this subpart?

(a) If your landfill is a new affected source, you must comply with this subpart by [DATE OF PUBLICATION OF FINAL RULE] or at the time you begin operating, whichever occurs last.

(b) If your landfill is an existing affected source, you must comply with the standards by [DATE ONE YEAR AFTER PUBLICATION OF THE FINAL RULE].

§ 63.1950 When am I no longer required to comply with this subpart?

You are no longer required to comply with the requirements of this subpart when you are no longer required to apply controls as specified in § 60.752(b)(2)(v) of 40 CFR part 60, subpart WWW, or the Federal plan or EPA-approved and effective State plan or Tribal plan that implements 40 CFR part 60, subpart Cc, whichever is applicable.

Standards

§ 63.1955 What requirements must I meet?

(a) You must fulfill one of the requirements in paragraph (a)(1) or (2) of this section, whichever is applicable:

(1) Comply with the requirements of 40 CFR part 60, subpart WWW.

(2) Comply with the requirements of the Federal plan or EPA-approved and effective State plan or Tribal plan that implements 40 CFR part 60, subpart Cc.

(b) If you are required by § 60.752(b)(2) of 40 CFR part 60, subpart WWW, the Federal plan, EPA approved State or Tribal plan, to install a collection and control system, you must comply with the general provisions specified in Table 1 of this subpart.

General and Continuing Compliance Requirements

§ 63.1960 How is compliance determined?

Compliance is determined in the same way it is determined for 40 CFR part 60, subpart WWW, including performance testing, monitoring of the collection system, and continuous parameter monitoring. In addition, continuous parameter monitoring data, collected under § 60.756(b)(1), (c)(1), and (d), of 40 CFR part 60, are used to demonstrate compliance with the operating conditions for control systems. If a deviation occurs, you have failed to meet the control device operating conditions described in this subpart and have deviated from the requirements of this subpart. Finally, you must develop and implement a written SSM plan according to the provisions in § 63.6(e)(3). A copy of the SSM plan must be maintained on site. Failure to write, implement, or maintain a copy of the SSM plan is a deviation from the requirements of this subpart.

§ 63.1965 What is a deviation?

(a) A deviation occurs when the control device operating parameter boundaries described in 40 CFR 60.758(c)(1) are exceeded.

(b) A deviation occurs when 1 hour or more of the hours during the 3-hour block averaging period does not constitute a valid hour of data due to insufficient monitoring data. An hour of monitoring data are insufficient if measured values are unavailable for more than one 15-minute period within the hour.

(c) A deviation occurs when a SSM plan is not developed, implemented, or maintained on site.

§ 63.1970 Are there any deviations that are not considered out of compliance?

Yes, consistent with 40 CFR 60.755(e), §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSM plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

§ 63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?

Averages are calculated in the same way as they are calculated in 40 CFR part 60, subpart WWW, except that the data collected during the events listed in paragraphs (a), (b), (c), and (d) of this section are not to be included in any average computed under this subpart:

(a) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments.

(b) Startups.

(c) Shutdowns.

(d) Malfunctions.

Notifications, Records, and Reports

§ 63.1980 What records and reports must I keep and submit?

(a) Keep records and reports as specified in 40 CFR part 60, subpart WWW, or in the Federal plan, EPA-approved State plan or Tribal plan that implements 40 CFR part 60, subpart Cc, whichever is applicable with one exception. You must submit the annual report described in 40 CFR 60.757(f) every 6 months.

(b) You must also keep records and reports as specified in the general provisions of 40 CFR part 60 and this part as shown in Table 1 of this subpart. Applicable records in the general provisions include items such as SSM plans and the SSM reports.

Other Requirements and Information

§ 63.1985 Who enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency as well as the U.S. EPA has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as follows. Approval of alternatives to the standards in § 63.1955. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

§ 63.1990 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, 40 CFR part 60, subparts A, Cc, and WWW; 40 CFR part 62, subpart GGG, and subpart A of this part, and this section as follows:

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit), or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, operating limit, or visible emission limit.

EPA-approved State plan means a State plan that EPA has approved based on the requirements in 40 CFR part 60, subpart B, to implement and enforce 40 CFR part 60, subpart Cc. An approved State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

Federal plan means the EPA plan to implement 40 CFR part 60, subpart Cc, for existing municipal solid waste landfills located in States and Indian country where State plans or Tribal plans are not currently in effect. On the effective date of an EPA-approved State or Tribal plan, the Federal plan no longer applies. The Federal plan is found at 40 CFR part 62, subpart GGG.

Modification means as increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion.

Municipal solid waste landfill means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes (see § 257.2 of this chapter) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads. A municipal solid waste landfill may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion.

Tribal plan means a plan submitted by a tribal authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 to implement and enforce 40 CFR part 60, subpart Cc.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

TABLE 1 OF SUBPART AAAA—PART 63 GENERAL PROVISIONS APPLICABLE PARAGRAPHS

[As stated in § 63.1955(b), you must comply with the General Provisions requirements according to the following table]

Part 63 citation	Description	Explanation
63.1(a) except (a)(7)	Applicability: general applicability of NESHAP in this part.	Affected sources are already subject to the provisions of paragraphs (a)(10)–(12) of this section through the same provisions under 40 CFR part 60, subpart A.
63.1(b)	Applicability determination for stationary sources.	Affected sources are already subject to the provisions of paragraph (b)(2) of this section through the same provisions under 40 CFR part 60, subpart A.
63.1(e)	Applicability of permit program before a relevant standard has been set under this part.	
63.2	Definitions	
63.4	Prohibited activities and circumvention	Affected sources are already subject to the provisions of paragraph (b) of this section through the same provisions under 40 CFR part 60, subpart A.
63.5(b)	Requirements for existing, newly constructed, and reconstructed sources.	Affected sources are already subject to the provisions of paragraph (b)(2) of this section through the same provisions under 40 CFR part 60, subpart A.
63.6(e)	Operation and maintenance requirements, SSM provisions.	Affected sources are already subject to the provisions of paragraph (e)(2) of this section through the same provisions under 40 CFR part 60, subpart A.
63.6(f)	Compliance with nonopacity emission standards.	Affected sources are already subject to the provisions of paragraphs (f)(1) and (2)(i) of this section through the same provisions under 40 CFR part 60, subpart A.
63.10(b)(2)(i)–(v)	General recordkeeping requirements	
63.10(d)(5)	If actions taken during a SSM are consistent with the procedures in the SSM plan, this information shall be included in a semi-annual SSM report. Any time an action taken during a SSM is not consistent with the SSM plan, the source shall report actions taken within 2 working days after commencing such actions, followed by a letter 7 days after the event.	

TABLE 1 OF SUBPART AAAA—PART 63 GENERAL PROVISIONS APPLICABLE PARAGRAPHS—Continued

[As stated in §63.1955(b), you must comply with the General Provisions requirements according to the following table]

Part 63 citation	Description	Explanation
63.12(a)	These provisions do not preclude the State from adopting and enforcing any standard, limitation, etc., requiring permits, or requiring emissions reductions in excess of those specified.	
63.15	Availability of information and confidentiality ...	

[FR Doc. 00–28415 Filed 11–6–00; 8:45 am]

BILLING CODE 6560-50-P

Notices

Federal Register
Vol. 65, No. 216
Tuesday, November 7, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 2, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Marketing Order Regulations the Handling of Spearmint Oil Produced in the Far West, MO 985.

OMB Control Number: 0581–0065.

Summary of Collection: The marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area to work together to solve marketing problems that cannot be solved individually. The Far West spearmint marketing order regulates the handling of spearmint oil produced in the Washington, Idaho, Oregon, and designated parts of Nevada and Utah. The order authorizes the issuance of allotment provisions for producers and regulates the quantities of spearmint oil handled and has the authority for research and development. Under the Agriculture Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), industries enter into marketing order programs. Agricultural Marketing Service (AMS) may act as the Secretary's agent to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

Need and Use of the Information: The Committee has the authorization to require producers, handlers, and processors submit certain information as provided by the order, rules and regulations. Various forms relating to spearmint supplies, shipments, and dispositions, and used and required to effectively carry out the purpose of the Act and order. The committee periodically reviews reports and forms to ensure that they are understandable, easy to fill out, and only the minimum of information necessary is reported. The information collected is used by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff, and employees of the Committee. Timing and frequency of the various reports has evolved to meet the needs of the industry and minimize the burden on the reporting public. Collecting data less frequently would eliminate data needed to keep the spearmint oil industry and the Secretary abreast of changes at the state and local level.

Description of Respondents: Business of other for-profit; Farms, Federal Government, State, Local or Tribal Government.

Number of Respondents: 217.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annual; Biennially.

Total Burden Hours: 162.

Farm Service Agency

Title: 7 CFR 1941–A, Operating Loan Policies, procedures and Authorizations.

OMB Control Number: 0560–0162.

Summary of Collection: The Consolidated Farm and Rural Development Act (7 U.S.C. 1941) (CONACT) authorizes the Secretary of Agricultural and Farm Service Agency (FSA) to make and ensure loans to farmers and ranchers and to administer the provision of the CONACT applicable to the Farm Loan Program. The information is require to ensure that the agency provides assistance to applicants who have reasonable prospectus of repaying the government and meet statutory eligibility requirements. This assistance enables family farm operators to use their land, labor, and other resources and to improve their living and financial conditions so that they can eventually obtain credit elsewhere.

Need and Use of the Information: The information is needed for FSA loan approval officials to evaluate an applicant's eligibility, and to determine if the operation is economically feasible and the security offered in support of the loan is adequate. FSA relies on current information to carry out the business of the program as intended and to protect the government's interest. A variety of forms will be used to collect the information. If the information were not collected, or collected less frequently, the Agency would be: (1) Unable to make an accurate eligibility and financial feasibility determination on respondent's request for new loans as required by the CONTACT; and (2) unable to meet the Congressionally mandated mission of loan program.

Description of Respondents: Farms; Business or other for-profit; Federal Government; Individuals or households.

Number of Respondents: 49,492.

Frequency of Responses: Reporting; Other: As needed.

Total Burden Hours: 6,014.

Farm Service Agency

Title: Loan Deficiency Payments.

OMB Control Number: 0560–0129.

Summary of Collection: The Federal Agriculture Improvement and Reform Act of 1996 provide authorization for loan deficiency payments that are implemented by the following regulations (1) 7 CFR Part 147, for upland cotton loan deficiency payments; (2) 7 CFR Part 1421 for rice, oilseeds, wheat, and feed grain loan deficiency payments; (3) 7 CFR Part 1425 for Commodity Credit Corporation (CCC) approved cooperative marketing associations. The Farm Service Agency (FSA), administers the marketing assistance loan and loan deficiency payment programs. Loan deficiency payment provisions are intended to reduce quantities of loan collateral delivered to CCC and are made available when the loan rate for the commodity is greater than the announced repayment rate or world market price.

Need and Use of the Information: County FSA Committees are responsible for approving and disapproving loan deficiency payment requests. Producers provide the necessary information applicable to the request and must meet certain eligibility requirements in accordance with the regulations. Potential applicants may use the approved OMB forms for FSA that will be posted on Internet Forms Website along with instructions for completing the forms. The information collected is needed to determine loan deficiency payment quantities and payment amounts, verify producer and commodity eligibility, and to ensure that only eligible producers receive loan deficiency payments. If the data were collected less frequently, the statutes could not be implemented as authorized.

Description of Respondents: Farm; Business or other for-profit; Individuals or households.

Number of Respondents: 2,035,000.

Frequency of Responses: Reporting: Other (per request).

Total Burden Hours: 3,825,000.

Farm Service Agency

Title: Certified Mediation Program.

OMB Control Number: 0560–0165.

Summary of Collection: The Farm Service Agency (FSA) is amending its Agricultural Loan Mediation (AMP) regulations to implement the requirements of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (the 1994 Act). P.L. 103–354, October 13, 1994, amended Section 501 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101) by striking "an agricultural loan mediation program" and inserting "a mediation program". The regulation provides a mechanism to States to apply for and obtain matching funds grants from USDA. The grant funds help States supplement administrative operating funds needed to administer their agricultural mediation programs. FSA will collect information by mail, phone, fax, and in person.

Need and Use of the Information: FSA will collect information to ensure matching grant funds are used only to pay for eligible costs necessary for the operation and administration of the State mediation programs, consistent with the the statutory purposes of the program. If information were not collected, this would result in improper administration and appropriation of Federal grant funds.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 25.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 775.

Foreign Agricultural Service

Title: Foreign Donation of Agricultural Commodities.

OMB Control Number: 0551–0035.

Summary of Collection: The Federal Agriculture Improvement and Reform Act of 1996, Section 416(b) of the Agriculture Act of 1949, and the Food for Progress Act of 1985 require reporting on food aid programs. The Department of Agriculture programs provide American food assistance to needy people overseas. Assistance may be provided through U.S. Private Voluntary Organizations, agricultural trade organizations, cooperatives, eligible foreign governments, intergovernments organizations, and private entities. The Cooperating Sponsors who elect to participate in food aid programs are required to submit a plan of operation and initial budget to receive approval. Once approval, the Foreign Agricultural Service (FAS) enters into an agreement with the Cooperating Sponsor. Cooperating Sponsors may submit information to FAS in hard copy, electronically (on diskette or through the Internet), or via fax.

Need and Use of the Information: FAS will collect information to determine whether the Cooperating Sponsor has complied with the agreement and to assess the value of the programs. The information allows FAS to make a determination whether future programming should be implemented with Cooperating Sponsors. If the information were not collected it would be more difficult to determine the accountability and compliance of the Cooperating Sponsors.

Description of Respondents: Not for-profit institutions; Business or other for-profit.

Number of Respondents: 241.

Frequency of Responses: Recordkeeping; Reporting: Semi-annually.

Total Burden Hours: 38,827.

Rural Housing Service

Title: Farm Labor Housing Technical Assistance Grants.

OMB Control Number: 0575–0181.

Summary of Collection: The Housing Act of 1949 gives the Rural Housing Service (RHS) the authority to make loans for the construction of farm labor housing (Section 514) and the authority to provide financial assistance (grants) to eligible private and public nonprofit agencies (Section 516). RHS will award three grants one from each geographic region, Eastern, Central and Western Regions. Eligibility for grants is limited to private and pubic nonprofit agencies. These grants will be awarded based on the qualifications of the applicants and their formal application.

Need and Use of the Information: RHS staff in the National Office and Rural Development field offices will collect information from applicants and grant recipients to determine their eligibility for a grant, project feasibility, to select grant proposals for funding, and to monitor performance after grants have been awarded. The Three respondents, who are awarded grants, are required to provide RHS with quarterly performance reports throughout the 3-year grant period. The respondents are not required to retain records for more than three years. Failure to collect this information could result in the improper use of Federal funds; difficulties in determining eligibility and selections of qualified applicants; and monitoring performance during the grant period.

Description of Respondents: Not-for-profit institutions; State, Local, and Tribal Government.

Number of Respondents: 12.

Frequency of Responses: Recordkeeping; Reporting: Annually and Quarterly.

Total Burden Hours: 303.

National Agricultural Statistics Service

Title: Supplemental Qualifications Statement.

OMB Control Number 0535–0209.

Summary of Collection: The Department of Agriculture has an Interagency Agreement with the Office of Personnel which provides the National Agricultural Statistics Service (NASS) with the authority to examine, rate, and certify applications for

agricultural statistician positions. Accordingly, in addition to resumes, curriculum vitae, and the standard Optional Application for Federal Employment, NASS has created a Supplemental Qualifications Statement (SQS) for agricultural statistician and mathematical statistician positions. The SQS allows applicants the opportunity to describe their achievements or accomplishments as they relate to the required knowledge, skills, and abilities.

Need and Use of the Information: The SQS provides applicants with information related to how they will be measured for a position and what kinds of information will be used to evaluate those abilities. NASS personnel specialist will use the information on the SQS to evaluate and rate the applicant's accomplishments or achievements. Ultimately, the information is used by the selecting official as one of the criteria in the selection process.

Description of Respondents: Individuals or households.

Number of Respondents: 50.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 150.

Farm Service Agency

Title: Facsimile Signature Authorization and Verification.

OMB Control Number: 0560–0203.

Summary of Collection: U.S. Department of Agriculture (USDA), Farm Service Agency (FSA) is seeking alternative service delivery processed that will reduce the necessity for USDA Service Center customers to travel to a Service Center to provide information and sign documents. One of the alternatives being implemented is to accept information provided via telefacsimile. Each of the USDA Service Center agencies (Farm Service Agency, Natural Resources Conservation Service, and Rural Development Agencies) will share the signature on the FSA–237 (Facsimile Signature Authorization and Verification) forms to eliminate redundant collection of the same data. FSA will collect information using form FSA–237.

Need and Use of the Information: FSA will collect the name and signature and identification number from Service Center customers. The information collected will be used to verify the authenticity of signatures on documents provided to USDA service centers via telefacsimile. Failure to collect and maintain the original signature will limit USDA's ability to offer the telefacsimile alternative to its Service Center customers.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 866,089.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 17,322.

Rural Development Services

Title: 7 CFR 1956–B, Debt Settlement—Farm Programs and Multiple Family Housing.

OMB Control Number: 0575–0118.

Summary of Collection: The Farm Service Agency's Farm Loan Program provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. The Rural Housing Service (RHS) provides supervised credit in the form of Multi-Family Housing (Housing Act of 1949) loans to provide eligible persons with economically designed and constructed rental or cooperative housing and related facilities suited to the living requirements. This regulation defines the requirements for debt settlement and the factors the agency considers in approving or rejecting the offer submitted by the borrowers.

Need and Use of the Information: The information submitted by the borrowers is used to determine if acceptance of the settlement offers on debts owed is in the best interest of the Government. If the information were not collected, outdated and inaccurate information would cause increased losses to the government.

Description of Respondents: Farms; Individuals or households; Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 2,900.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 24,650.

Rural Utilities Service

Title: 7 CFR 1792, Subpart C—Seismic Safety of New Building Construction.

OMB Control Number: 0572–0099.

Summary of Collection: Seismic hazards present a serious threat to people and their surroundings. These hazards exist in most of the United States, not just on the West Coast. Unlike hurricanes, times and location of earthquake cannot be predicted. Most earthquake strike without warning and, if of substantial strength, strike with great destructive forces. To reduce risks to life and property from earthquake, Congress enacted the Earthquake Hazards Reduction Act of 1977 (Public Law 95–124, 42 U.S.C. 7701 *et seq.*) and directed the establishment and maintenance of an effective earthquake reduction program. As a result, the National Earthquake Hazards Reduction Program (NEHRP) was established. The objectives of the NEHRP include the development of technologically and economically feasible design and construction methods to make both new and existing structures earthquake resistant, and the development and promotion of model building codes. 7 CFR part 1792, subpart C, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utilities Service (RUS) or the Rural Telephone Bank (RTB) or through lien accommodations or subordinations approved by RUS or RTB.

Need and Use of the Information: RUS will collect information on the project designation and owners' name; name of architectural/engineering firm; name and registration number (for the State in which the building project is located) of the certifying architect or engineer; purpose and location of the facility; seismic factor for the building location; the code identity and date of the model code used for the design and construction of the building project(s); total square footage of the building project; total cost of the building project; and estimated cost of the structural systems affected by the requirements of 7 CFR part 1792, Subpart C.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 525.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 00–28542 Filed 11–6–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2:00 p.m., Thursday, November 16, 2000.

PLACE: Room 0204, South Building, Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Current telecommunications industry issues.
2. Status of PBO planning.

3. Contracts for financial and legal advisors to the Privatization Committee.
4. Allowance for loan losses reserve.
5. Schedule for stockholders' meeting in year 2001.
6. Administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9:00 a.m., Friday, November 17, 2000.

PLACE: Room 104–A, The Williamsburg Room, Department of Agriculture, 12th Jefferson Drive, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Report on board election results.
3. Oath of office.
4. Election of board officers: Chairperson, Vice Chair, Secretary, and Treasurer.
5. Action on Minutes of the August 4, 2000, board meeting.
6. Report on loans approved in FY 2000.
7. Report on financial activity for FY 2000.
8. Report on the allowance for loan losses reserve.
9. Privatization Committee report.
10. Consideration of resolution to reestablish the Privatization Committee.
11. Consideration of resolution to approve Anthony Haynes to serve as the Deputy Governor of the Bank.
12. Establish date and location of next board meeting.
13. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: November 2, 2000.

Anthony C. Haynes,

Acting Governor, Rural Telephone Bank.

[FR Doc. 00–28662 Filed 11–3–00; 2:43 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Information for Certification Under FAQ 6 of the Safe Harbor Privacy Principles

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 35068 (2)(A)).

DATES: Written comments must be submitted on or before January 8, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Jeff Rohlmeier, Trade Development, Room 2011, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–1614 and fax number: (202) 501–2548.

SUPPLEMENTARY INFORMATION:

I. Abstract

In response to the European Commission Directive on Data Protection that restricts transfers of personal information from Europe to countries whose privacy practices are not deemed "adequate," the U.S. Department of Commerce has developed a "safe harbor" framework that will allow U.S. organizations to satisfy the European Directive's requirements and ensure that personal data flows to the United States are not interrupted. In this process, the Department of Commerce repeatedly consulted with U.S. organizations affected by the European directive and interested non-government organizations.

On July 27, 2000, the European Commission issued its decision, in accordance with Article 25.6 of the Directive, that the Safe Harbor Privacy Principles provide adequate privacy protection. The safe harbor framework bridges the differences between the European Union (EU) and U.S. approaches to privacy protection. Under the safe harbor privacy framework, information is being collected in order to create a list of the organizations that have self-certified to the Principles.

Organizations that have signed up to this list are deemed "adequate" under the Directive and do not have to provide further documentation to European officials. This list will be used by European Union organizations to determine whether further information and contracts will be needed for a U.S. organization to receive personally identifiable information. The decision to enter the safe harbor is entirely voluntary. Organizations that decide to participate in the safe harbor must comply with the safe harbor's requirements and publicly declare that they do so.

To be assured of safe harbor benefits, an organization needs to self certify annually to the Department of Commerce, in writing, that it agrees to adhere to the safe harbor's requirements, which includes elements such as notice, choice, access, and enforcement. It must also state in its published privacy policy statement that it adheres to the safe harbor.

This list will be used by European Union organizations to determine whether further information and contracts will be needed by a U.S. organization to receive personally identifiable information. It will be used by the European Data Protection Authorities to determine whether a company is providing "adequate" protection, and whether a company has requested to cooperate with the Data Protection Authority.

The list will also be accessed when there is a complaint logged in the EU against a U.S. organization, and used by the Federal Trade Commission and the Department of Transportation to determine whether a company is part of the safe harbor. It will be accessed if a company is practicing "unfair and deceptive" practices and has misrepresented itself to the public. In addition, the list will be used by the Department of Commerce and the European Commission to determine if organizations are signing up to the list on a regular basis.

II. Method of Collection

The information collection form will be provided via the Internet at *http://www.export.gov/SafeHarbor* and by mail to requesting U.S. firms.

III. Data

OMB Number: 0625–0239.

Form Number: N/A.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,500.

Estimated Time Per Response: 20 minutes—website; and 40 minutes—letter.

Estimated Total Annual Burden Hours: 550 hours.

Estimated Total Annual Costs to Public: $19,0250.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 1, 2000.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–28474 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice from Brazil; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Irina Itkin, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0656.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Amendment to Final Results

In accordance with section 751(a) of the Act, on October 11, 2000, the Department published the final results of the 1998–1999 administrative review on frozen concentrated orange juice (FCOJ) from Brazil, in which we determined that U.S. sales of FCOJ from Brazil were made at less than normal value (65 FR 60406). On October 12, 2000, we received an allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from the respondent, Citrovita Agro Industrial Ltda./Cambuhy MC Industrial Ltda./Cambuhy Citrus Comercial e Exportadora (collectively "Citrovita"), that the Department made a ministerial error in its final results. We received comments on this allegation from the petitioners on October 18, 2000.

After analyzing Citrovita's submission and the petitioners' comments, we have determined, in accordance with 19 CFR 351.224, that a ministerial error was made in our final margin calculations for Citrovita. Specifically, we find that we failed to apply the proper U.S. dollar/Brazilian real exchange rate from January 13, 1999, through April 2, 1999, as outlined in the Concurrence Memorandum dated May 30, 2000. For a detailed discussion of the ministerial error, as well as the Department's analysis, see the memorandum to Louis Apple from the Team, dated October 31, 2000.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final results of the 1998–1999 antidumping duty administrative review on FCOJ from Brazil. The revised dumping margin is as follows:

Exporter/manufacturer	Original final margin percentage	Revised final margin percentage
Citrovita Agro Industrial Ltda./Cambuhy MC Industrial Ltda./Cambuhy Citrus Comercial e Exportadora	25.87	14.77

Scope of the Review

The merchandise covered by this review is FCOJ from Brazil. The merchandise is currently classifiable under item 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and for customs purposes. The Department's written description of the scope of this proceeding remains dispositive.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 31, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28565 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Preliminary Results and Preliminary Partial Recission of Antidumping Duty Administrative Reviews and Notice of Intent Not To Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Preliminary Partial Recission of Antidumping Duty Administrative Reviews and Notice of Intent Not To Revoke in Part of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China.

SUMMARY: The Department of Commerce ("the Department") has preliminarily determined that sales by the respondents in these reviews covering the period February 1, 1999 through January 31, 2000, have been made below normal value ("NV"). If these preliminary results are adopted in our final results of reviews, we will instruct the U.S. Customs Service ("Customs") to assess antidumping duties on all appropriate entries.

The Department invites interested parties to comment on these preliminary results.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Frank Thomson or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International

Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4793, and 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR Part 351 (1999).

Period of Review

The period of review ("POR") is February 1, 1999 through January 31, 2000.

Background

On February 19, 1991, the Department published in the **Federal Register** (56 FR 6622) the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles ("certain heavy forged hand tools" or "HFHTs"), from the People's Republic of China ("PRC"). On February 14, 2000, the Department published in the **Federal Register** (65 FR 7348) a notice of opportunity to request administrative reviews of these antidumping duty orders. On February 28, 2000, four exporters of the subject merchandise requested that the Department conduct administrative reviews of their exports of the subject merchandise. Specifically, Tianjin Machinery Import & Export Corporation ("TMC") requested that the Department conduct administrative reviews of its exports of HFHTs within the axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks classes or kinds of merchandise. Shandong Huarong General Group Corporation ("Shandong Huarong") requested that the Department conduct an administrative review of its exports of HFHTs within the bars/wedges class or kind of merchandise. Liaoning Machinery Import & Export Corporation ("LMC") requested that the Department conduct an administrative review of its exports of HFHTs within the bars/wedges class or kind of merchandise. Shandong Machinery Import & Export Corporation ("SMC") requested that the Department conduct administrative reviews of its exports of HFHTs within the axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks classes or kinds of merchandise.

In addition, on February 29, 2000, the petitioner, O. Ames Co., requested that the Department conduct administrative reviews of exports within all four classes of subject merchandise by TMC, Fujian Machinery & Equipment Import & Export Corp. ("FMEC"), Shandong Huarong, LMC, and SMC. The Department published a notice of initiation of these reviews on March 30, 2000 (65 FR 16875).

The Department is conducting these administrative reviews in accordance with section 751 of the Act.

Partial Recission

In its June 12, 2000, Section A questionnaire response, Shandong Huarong stated that during the POR, it sold only subject merchandise within the bars/wedges and axes/adzes classes or kinds of merchandise. Therefore, Shandong Huarong requested that it be excluded from the review of the hammers/sledges and picks/mattocks classes or kinds of merchandise. Based on our review of U.S. import data obtained from Customs indicating no shipments of hammers/sledges and picks/mattocks, we are preliminarily rescinding our review of Shandong Huarong with respect to sales within these classes or kinds of merchandise.

Furthermore, in its June 12, 2000, Section A questionnaire response, LMC noted that during the POR it sold only HFHTs within the bars/wedges class or kind of merchandise. Based upon our review of U.S. import data obtained from Customs indicating no shipments of axes/adzes, hammers/sledges and picks/mattocks, we are preliminarily rescinding our review of LMC with respect to sales within these classes or kinds of merchandise.

Scope of Reviews

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule ("HTS") subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these orders is dispositive.

Intent Not To Revoke

In their February 28, 2000 requests for review, TMC, Shandong Huarong, and LMC submitted timely requests that the Department revoke the order on certain classes or kinds of HFHTs with respect to their sales of this merchandise. Specifically, TMC requested that we revoke the orders with respect to its sales of hammers/sledges and picks/mattocks, Shandong Huarong requested that we revoke the order with respect to its sales of bars/wedges, and LMC requested that we revoke the order with respect to its sales of bars/wedges.

Section 351.222(b)(2) of the Department's regulations notes that the Secretary may revoke an antidumping order in part if the Secretary concludes, inter alia, that one or more exporters or producers covered by the order have sold the merchandise at not less than NV for a period of at least three consecutive years. Thus, in determining whether a requesting party is entitled to a revocation inquiry, the Department must determine that the party received zero or *de minimis* margins for three years forming the basis for the request. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands*, 65 FR 742, 743 (January 6, 2000). *See* also the preamble of the Department's latest revision of the revocation regulation stating: "The threshold requirement for revocation continues to be that respondent not sell at less than normal value for at least three consecutive years . . ." The respondents provided certifications pursuant to 19 CFR 351.222(e) indicating that they based their revocation requests on the results of the instant reviews and the preceding two administrative reviews. However, with

respect to the classes or kinds of merchandise for which they requested revocation, none of these respondents received zero or *de minimis* margins in each of the reviews upon which they based their revocation request. *See, e.g., Heavy Forged Hand Tools From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews*, 65 FR 50499 (August 18, 2000). Consequently, we preliminarily find that TMC, Shandong Huarong and LMC do not qualify for partial revocation of the orders based upon section 351.222(b) of the Department's regulations.

Verification

Following the publication of these preliminary results, we intend to verify, as provided in section 782(i) of the Act, sales and cost information submitted by respondents, as appropriate. At that verification, we will use standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original source documentation containing relevant information. We plan to prepare verification reports outlining our verification results and place these reports on file in the Central Records Unit, room B099 of the main Commerce building ("CRU-Public File").

Duty Absorption

On February 29, 2000, petitioner requested that the Department conduct a duty absorption inquiry in order to determine whether antidumping duties had been absorbed by a foreign producer or exporter subject to the order. However, the Department's invitation for such requests only applies to certain administrative reviews of orders that were in effect before January 1995. For transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's antidumping regulations provides that the Department will make a duty-absorption determination, if requested, for any administrative review initiated in 1996 or 1998. This approach ensures that interested parties will have the opportunity to request a duty-absorption determination prior to the time for sunset review of the order under section 751(c) on entries for which the second and fourth years following an order have already passed. Because the antidumping duty orders on HFHTs from the PRC have been in effect since 1991, they are "transition orders" in accordance with section 751(c)(6)(C) of the Tariff Act. However, since this administrative review was not initiated in 1996 or 1998, the Department will not make a duty absorption determination.

Separate Rates Determination

To establish whether a company operating in a non-market economy ("NME") is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) *("Sparklers")*, as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) *("Silicon Carbide")*. Under this test, NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587 and *Sparklers* 56 FR at 20589.

In the final results of the 1998–1999 reviews of HFHTs, the Department granted separate rates to Shandong Huarong, SMC, LMC, and TMC. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China*, 65 FR 43290 (July 13, 2000) *("Hand Tools")*. While these four companies received separate rates in previous segments of these proceedings, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of any separate rate the respondent received in the past. *See Manganese Metal From the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12441 (March 13, 1998). In the instant reviews, these companies submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted in these reviews by Shandong Huarong, SMC, LMC, and TMC includes government laws and regulations on corporate ownership, business licences, and narrative information regarding the companies' operations and selection of management. This evidence is consistent with the Department's findings in previous reviews and supports a finding that control of companies in the PRC has been decentralized and that the respondent companies' operations are, in fact, autonomous from the PRC government. We therefore preliminarily determine that these companies continue to be entitled to separate rates.

With respect to FMEC, since it has not provided any information on the record in this review, we preliminarily determine that FMEC did not establish its entitlement to a separate rate.

Facts Available

(1) Separate Rates Facts Available

In the instant review, SMC, FMEC, and Shandong Huarong failed to provide certain information requested by the Department. SMC failed to provide sales and factor of production information regarding its sales of axes/adzes, bars/wedges and picks/mattocks. FMEC failed to respond to the Department's questionnaire at all. Shandong Huarong failed to provide sales and factor of production information regarding its sales of axes/adzes. In accordance with section 776(b) of the Act, the Department has determined that the use of adverse facts available is appropriate for purposes of determining the preliminary dumping margins for the classes or kinds of subject merchandise for which SMC and Shandong Huarong failed to provide information.

Section 776(a)(2) of the Act provides that:

> if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information

but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Moreover, section 776(b) of the Act provides that:

> if the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.

Consistent with section 776(a)(2)(B) of the Act, where SMC (axes/adzes, bars/wedges and picks/mattocks) and Shandong Huarong (axes/adzes) failed to provide requested information, we based the preliminary margins on facts available. In the instant case, SMC chose not to provide certain information requested by the Department.[1] Section 782(c)(1) of the Act is not applicable for SMC because it did not notify the Department that it could not respond and did not suggest an alternative form by which to respond. Section 782(e) of the Act is not applicable because no information was ever provided. Therefore, we have determined for SMC for axes/adzes, bars/wedges and picks/mattocks that use of the facts available is appropriate.

In the instant case, Shandong Huarong did not respond to the Department's questionnaire regarding axes/adzes. In its June 12, 2000 questionnaire response, Shandong Huarong stated that it did not have access to the required information to participate in the review on axes/adzes. We informed Shandong Huarong, in our August 31, 2000 supplemental questionnaire, that if it did not report its sales of axes/adzes, then these sales would be subject to the facts available for purposes of determining a dumping margin for the preliminary results. In its September 18, 2000 supplemental response, Shandong Huarong claimed that its supplier factory refused to provide the information on axes/adzes. *See* Shandong Huarong's September 18, 2000 questionnaire response at page 1. Section 782(c)(1) of the Act is not applicable for Shandong Huarong because it did not suggest an alternative form by which to respond. Regarding Shandong Huarong's supplier, because factors data for Shandong Huarong's U.S. sales were not provided by its supplier with regard to axes/adzes, we preliminarily determine that such party did not demonstrate that it cooperated to the best of its ability. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Notice of Intent To Revoke Order in Part*, 65 FR 41944, 41946–41947 (July 7, 2000). Section 782(e) of the Act is not applicable because no information was ever provided. Therefore, we have determined for Shandong Huarong's sales of axes/adzes that use of the facts available is appropriate. We intend to issue further supplemental requests for information regarding the factory's refusal to provide information on axes/adzes after the preliminary results.

Pursuant to section 776(b) of the Act, we have determined that SMC and the supplier of Shandong Huarong have failed to cooperate to the best of their ability with respect to the classes or kinds of merchandise discussed above. Accordingly, we have used an adverse inference in selecting facts available separate rate margin for the classes or kinds of merchandise for which SMC and Shandong Huarong failed to provide information and have not cooperated to the best of their ability. As outlined in section 776(b) of the Act, adverse facts available may include reliance on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review under section 751 of the Act or determination under section 753 of the Act; or (4) any other information placed on the record. Specifically, we based SMC's preliminary margin for bars/wedges, axes/adzes, and picks/mattocks, and Shandong Huarong's preliminary margin for axes/adzes on the highest margin for each respective class or kind of merchandise from this or any prior segment of this proceeding— 1998–1999 POR: axes/adzes (70.15 percent), bars/wedges (139.31 percent), picks/mattocks (98.77 percent) and 1999–2000 POR: hammers/sledges (72.04 percent). *See Ferro Union* v. *United States* 44 F. Supp. 2 1310 (CIT 1999) ("*Ferro Union*"). With respect to FMEC, we preliminarily determine that FMEC is not entitled to a separate rate and will be subject to the PRC country-wide rates, which are based on adverse facts available. *See Separate Rates Determination* above; and *Country-Wide Rates Facts Available* below.

(2) Country-Wide Rates Facts Available

The Department has determined that the use of facts available is appropriate for purposes of establishing the country-wide rate for these preliminary results of reviews, pursuant to section 776(a)(2)(B) of the Act. The Act provides that the administering authority shall use facts otherwise available when an interested party "fails to provide such information by the deadlines for the submission of the information or in the form and manner requested." On June 1, 2000, the Department sent a questionnaire to the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") in order to collect information relevant to the calculation of the PRC-wide rate. MOFTEC did not respond to our questionnaire.

Section 776(b) of the Act authorizes the Department to use adverse facts available whenever it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Because MOFTEC did not respond to our questionnaire or direct us to send the questionnaire to any other party, and because FMEC failed to respond to the Department's questionnaire, we preliminarily determine that these entities did not act to the best of their ability to comply with our requests. Therefore, pursuant to section 776(b) of the Act, we are relying on adverse facts available to determine the margins for the PRC-wide entity. When applicable, for adverse facts available for the PRC-wide rates we have applied the PRC-wide rates as follows—1998–1999 POR: axes/adzes (70.15 percent), bars/wedges (139.31 percent), picks/mattocks (98.77 percent) and 1999–2000 POR: hammers/sledges (72.04 percent)—because they are the highest rates from any segment of these proceedings with respect to each class or kind of merchandise.

Corroboration

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action ("SAA") (H.R. Doc. 103–316 (2nd Sess. 1994) states that "corroborate" means to determine that the information used has probative value. *See* SAA at *870*. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See Grain-Oriented Electrical Steel From Italy; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. Accordingly, for each class or kind of HFHTs for which we have resorted to adverse facts available, we have used the highest margin from this or any prior segment of the proceeding as the margin for these preliminary results because there is no evidence on the record indicating that such margins are not appropriate as adverse facts available.

Classification of U.S. Sales as Export Price ("EP") vs. Constructed Export Price ("CEP")

For respondents SMC, LMC, and Shandong Huarong, we calculated an EP for sales to the United States because the first sale was made before the date of importation and the use of CEP was not otherwise warranted. Sales classification (EP vs. CEP) is an issue that requires further analysis for one respondent, TMC, because its affiliate in the United States, CMC T.M., performs some selling functions in the United States for TMC's sales. Specifically, CMC T.M. finds new U.S. customers, transmits purchase orders from U.S. customers to TMC, receives and processes warranty claims, and provides technical service. However, the sales documentation on the record in these reviews indicates that the material terms of TMC's U.S. sales were established in the PRC between TMC and the unaffiliated U.S. purchaser. Specifically, we have found the following facts from analyzing TMC's questionnaire responses: (1) First contact with a U.S. customer may be made either by TMC or CMC T.M., (2) all contracts are signed by TMC in the PRC, (3) TMC arranges for shipping and other services in the PRC, (4) TMC issues the invoice directly from the PRC to the U.S. customer, (5) title passes from TMC to the U.S. customer upon shipment from the PRC, and (6) TMC accepts payment from the U.S. customer. Given these facts, we preliminarily determine that these sales were made in the PRC by TMC and, thus, should be treated as EP transactions.

Export Price

In accordance with section 772(a) of the Act, the Department calculated an EP for sales to the United States for all respondents because the first sale was made before the date of importation and the use of CEP was not otherwise warranted. When appropriate, we made deductions from the selling price to unaffiliated parties for ocean freight, marine insurance and foreign inland freight. Each of these services, with one exception, was either provided by a NME vendor or paid for using a NME currency. Thus, we based the deduction for these movement charges on surrogate values. *See Normal Value* section of this notice. The one exception referred to above concerns ocean freight. Each respondent reported that a market economy vendor provided ocean freight for a portion of their U.S. sales and that they paid for this service using a market economy currency. Therefore, for all sales, we applied the reported market economy ocean freight expense in calculating EP.

We valued marine insurance using the rate in effect in India which was reported in the public version of the questionnaire response placed on the record in *Stainless Steel Wire Rod From India; Final Results of Administrative Review*, 63 FR 48184 (September 9, 1998) ("*India Wire Rod*"). We valued foreign brokerage and handling using the rate reported in the questionnaire response in *India Wire Rod*. The sources used to value foreign inland freight are identified below in the *Normal Value* section of this notice.

To account for inflation or deflation between the time period that the freight, brokerage, and insurance rates were in effect and the POR, we adjusted the rates using the wholesale price indices ("WPI") for India as published in the International Monetary Fund's ("IMF") publication, *International Financial Statistics. See Memorandum From Frank Thomson Regarding Surrogate Values Used for the Preliminary Results of the Ninth Administrative Reviews of Certain Heavy Forged Hand Tools From the People's Republic of China*, (October 31, 2000), ("*Surrogate Value Memorandum*"), which is on file in the CRU-Public File.

Normal Value

For exports from NMEs, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production ("FOP") methodology if (1) the subject merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value. Section 351.408 of the Department's regulations sets forth the Department's methodology for calculating the NV of merchandise from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as an NME. Since none of the parties to these proceedings contested such treatment in these reviews, we calculated NV in accordance with section 773(c) of the Act and section 351.408 of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOP utilized in producing HFHTs include, but are not limited to: (A) Hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOP, to the extent possible, using the costs of the FOP in a market economy that is (A) at a level of economic development comparable to the PRC, and (B) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product, the growth rate in per capita income, and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. *See Memorandum From*

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[1] SMC noted in its supplemental questionnaire response that it has chosen to participate in this review only with respect to sales of hammers/sledges and that it understands that its sales of subject merchandise other than hammers/sledges will be subject to the Department's use of facts available.

Jeff May, Director, Office of Policy, to Thomas Futtner, Acting Office Director, AD/CVD Enforcement Group II, dated August 31, 2000, which is on file in the CRU-Public File.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value FOP using surrogate values that were in effect during the POR. However, this data was not available. Therefore, we utilized surrogate values that were in effect during periods prior to the POR, and adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices for India that were reported in the IMF's publication, *International Financial Statistics*. We valued the FOP as follows:

(1) We valued direct materials used to produce HFHTs (i.e., steel, steel scrap, paint, wood handles, resin glue, fibreglass handles and anti-rust oil) and the steel scrap generated from the production of HFHTs (except as noted below) using the rupee per metric ton or rupee per kilogram value of imports that entered India during the period February 1998 through January 1999 as published in the *Monthly Statistics of the Foreign Trade of India,* Volume II—Imports ("*Indian Import Statistics*"). We valued steel for SMC using the company's average reported purchase price because it purchased steel from a market economy vendor using a market economy currency. For wood handles, resin glue and fibreglass handles, we used the rupee per metric ton or rupee per kilogram value of imports that entered India during the period February 1998 through July 1998 as published in the *Indian Import Statistics*.

(2) We valued labor using a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3). This rate is identified on the Import Administration's web site (*See* http://ia.ita.doc.gov/wages/).

(3) We derived ratios for factory overhead, selling, general and administrative ("SG&A") expenses, and profit using information reported for 1992–1993 in the January 1997 *Reserve Bank of India Bulletin*. From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

(4) We valued packing materials, including cartons, pallets, iron straps, anti-damp paper, anti-rust paper, plastic strips, iron knots, plastic bags, iron wire, and metal clips, using the rupee per metric ton or rupee per kilogram value of imports that entered India during the period February 1998 through January 1999 as published in *Indian Import Statistics*. We valued hessian cloth (a packing material) using the rupee per kilogram value of imports that entered India during the period April 1998 through January 1999 as published in *Indian Import Statistics*.

(5) We valued coal using the price of steam coal in India in 1996 as reported in the International Energy Agency's publication, *Energy Prices and Taxes,* Second Quarter 1999 ("*EPT*").

(6) We valued electricity using the 1997 Indian electricity prices for industrial use as reported in *EPT*.

(7) We used the following sources to value truck and rail freight services incurred to transport direct materials, packing materials, and coal from the suppliers of the inputs to the factories producing HFHTs:

Truck Freight: If a respondent used its own trucks to transport material or subject merchandise, we valued freight services using the average cost of operating a truck, which we calculated from information published in *The Times of India* on April 24, 1994. If a respondent did not use its own trucks or the respondent did not state that it used its own trucks, we valued freight services using the rates reported in an August 1993 cable from the U.S. Embassy in India to the Department. *See Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China,* 58 FR 48833 (September 20, 1993).

Rail Freight: We valued rail freight services using the April 1995 rates published by the Indian Railway Conference Association. These rates were used in *Brake Drums and Brake Rotors*. For further discussion of the surrogate values used in these reviews, *see Surrogate Value Memorandum,* dated October 31, 2000, which is on file in the CRU-Public File.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine that the following margins exist for the period February 1, 1999 through January 31, 2000:

Manufacturer/exporter	Margin (percent)
Shandong Huarong General Group Corporation:	
Axes/Adzes	70.15
Bars/Wedges	0.44
Liaoning Machinery Import & Export Corporation:	
Bars/Wedges	0.01
Tianjin Machinery Import & Export Corporation:	
Axes/Adzes	31.11
Bars/Wedges	0.64
Picks/Mattocks	3.48
Hammers/Sledges	72.04
Shandong Machinery Import & Export Corporation:	
Axes/Adzes	70.15
Bars/Wedges	139.31
Picks/Mattocks	98.77
Hammers/Sledges	2.64
PRC-wide rates:	
Axes/Adzes	70.15
Bars/Wedges	139.31
Picks/Mattocks	98.77
Hammers/Sledges	72.04

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of these preliminary results. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). We will issue a memorandum detailing the dates of a hearing, if any, and deadlines for submission of case briefs/written comments and rebuttal briefs or rebuttals to written comments, limited to issues raised in such briefs or comments, after verification. Parties who submit arguments are requested to submit with the argument (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. The Department will issue the final results of these administrative reviews, which will include the results of its analysis of issues raised in interested party comments, within 120 days of publication of these preliminary results.

The final results of these reviews shall be the basis for the assessment of antidumping duties on entries of merchandise covered by these reviews and for future deposits of estimated duties.

Duty Assessment Rates

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we

have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. For those respondents or classes or kinds of merchandise with margins based on facts available, we based the importer-specific assessment rates on the facts available margin percentages. These importer-specific rates will be assessed uniformly on all entries of each importer that were made during the POR. In accordance with 19 CFR 351.106 (c)(2), we will instruct Customs to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis, i.e.,* less than 0.5 percent. The Department will issue appraisement instructions directly to Customs.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above which have separate rates (Shandong Huarong, LMC, SMC and TMC) will be the rates for those firms established in the final results of these administrative reviews for the classes or kinds of merchandise listed above; (2) for any previously reviewed PRC or non-PRC exporter with a separate rate not covered in these reviews, the cash deposit rates will be the company-specific rates established for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the final results of these reviews; and (4) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 31, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28571 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–840]

Manganese Metal From the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China.

SUMMARY: The Department of Commerce is currently conducting an administrative review of the antidumping duty order on manganese metal from the People's Republic of China. The period of review is February 1, 1999 through January 31, 2000. This review covers imports of subject merchandise from four producers/exporters.

We have preliminarily determined that sales have been made below normal value. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the U.S. price and normal value.

We have also determined that the review of China National Electronics Import & Export Hunan Company should be rescinded.

We invite interested parties to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Greg Campbell or Suresh Maniam, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2239 or (202) 482–0176, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department of Commerce's (Department's) regulations are to 19 CFR Part 351 (April 1999).

Background

On February 14, 2000, the Department published in the **Federal Register** an *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 65 FR 7348 (February 14, 2000).

In accordance with 19 CFR 351.213(b)(2), on February 29, 2000, the petitioner, Eramet Marietta Inc., requested that we conduct an administrative review of this order covering China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation (CMIECHN/CNIECHN), Minmetals Precious and Rare Minerals Import & Export Company (Minmetals), London & Scandinavian Metallurgical Co. Ltd./Shieldalloy Metallurgical Corporation (LSM/SMC),[1] Sumitomo Canada, Ltd. (SCL), and China National Electronics Import & Export Hunan Company (CEIEC). On February 29, 2000, the co-petitioner, Kerr-McGee Chemical, LLC (Kerr-McGee), likewise requested that we conduct an administrative review of this order covering CMIECHN/CNIECHN, Minmetals, CEIEC, LSM, and SCL.

On March 30, 2000, we published a notice of initiation of this antidumping duty administrative review of the companies named by the petitioners. *See Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 65 FR at 16875. On June 9, 2000, we issued questionnaires to the companies. On June 19, 2000, SCL informed the

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[1] SMC is the affiliated U.S. importer of manganese metal from the U.K. reseller LSM.

Department that, given the small volume of merchandise it entered during the period of review (POR), SCL would not participate in this review. CEIEC made a submission on June 23, 2000, certifying that it did not sell or ship subject merchandise to the United States during the POR. CMIECHN/CNIECHN and Minmetals submitted their questionnaire responses by July 24, 2000, and their supplemental responses by September 19, 2000. LSM/SMC submitted its questionnaire responses by July 24, 2000, and their supplemental responses by September 12, 2000. On August 29, 2000, Eramet Marietta informed the Department that, because it intended to close its manganese metal operations by year-end, it was withdrawing as a domestic interested party in this case.

Preliminary Rescission of Review in Part

As stated above in the *Background* section, CEIEC notified the Department that it had not made any U.S. sales of subject merchandise during the POR. Entry data provided by the U.S. Customs Service (Customs) confirms that there were no POR entries from CEIEC of manganese metal.[2] Therefore, consistent with the Department's regulations and practice,[3] we are preliminarily rescinding this review with respect to CEIEC.

Scope of Review

The merchandise covered by this review is manganese metal, which is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms and sizes of manganese metal are included within the scope of this administrative review, including metal flake, powder, compressed powder, and fines. The subject merchandise is currently classifiable under subheadings 8111.00.45.00 and 8111.00.60.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Separate Rates

It is the Department's standard policy to assign all exporters of the merchandise subject to review in nonmarket economy (NME) countries a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589. A *de facto* analysis of absence of government control over exports is based on four factors—whether the respondent: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *see also Sparklers*, 56 FR at 20589.

In the *Notice of Amended Final Determination and Antidumping Duty Order; Manganese Metal from the People's Republic of China* 61 FR 4415 (February 6, 1996) (*LTFV Investigation*), we determined that there was *de jure* and *de facto* absence of government control of each company's export activities and determined that each company warranted a company-specific dumping margin. For the POR, CMIECHN/CNIECHN and Minmetals responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final determination in the *LTFV Investigation* and both CMIECHN/CNIECHN and Minmetals continue to demonstrate an absence of government control, both in law and in fact, with respect to their companies' exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.*

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that if an interested party: (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form requested, (3) significantly impedes a proceeding under the antidumping statute, or (4) provides information that cannot be verified, the Department shall use, subject to section 782(d), facts available in reaching the applicable determination.

1. Application of Facts Available

On June 19, 2000, SCL informed the Department that, given the small volume of merchandise it entered during the POR, SCL would not participate in this review. We preliminarily determine that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of facts otherwise available is appropriate for SCL because it did not submit a response to our questionnaire issued to it on June 9, 2000.

2. Use of Adverse Facts Available

In selecting from among the facts available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See Statement of Administrative Action* (SAA), H.R. Doc. 103–316 at 870 (1994). To examine whether the respondent "cooperated" by "acting to the best of its ability" under section 776(b) of the Act, the Department considers, *inter alia*, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–53820 (October 16, 1997).

As discussed above, SCL failed to respond to the Department's questionnaire. Thus, we have determined that SCL withheld information that we requested and significantly impeded the antidumping proceeding. Without information from SCL, the Department is unable to review SCL's entries and calculate an assessment rate for those entries. We therefore find that SCL has not acted to the best of its ability to comply with our

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[2] *See Memorandum to the Case File; Confirmation of No Shipment by CEIEC* (October 31, 2000).

[3] *See* 19 CFR 351.213(d)(3); *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 46763 (September 5, 1996).

requests for information. Accordingly, consistent with section 776(b) of the Act, we have applied adverse facts available to this company.

3. Corroboration of Secondary Information

In this review, we are using as adverse facts available the PRC-wide rate (143.32 percent) determined for non-responding exporters involved in the *LTFV Investigation*. This margin, which is the highest rate determined in any segment of this proceeding, represents the highest margin in the petition, as modified by the Department for the purposes of initiation. *See Initiation of Antidumping Duty Investigation: Manganese Metal from the People's Republic of China*, 59 FR 61869 (December 2, 1994) (*LTFV Initiation*). It is also the rate currently applicable to all PRC exporters that do not have separate rates.

Information derived from the petition constitutes secondary information within the meaning of the SAA. *See* SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. The SAA at 870, however, states further that "the fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference." In addition, the SAA at 869, emphasizes that the Department need not prove that the facts available are the best alternative information.

The PRC-wide rate being used in this proceeding as adverse facts available was previously corroborated. *See Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 64 FR 49447 (September 13, 1999). We have no new information that would lead us to reconsider that decision.

Export Price

For U.S. sales made by CMIECHN/CNIECHN and Minmetals we calculated an export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States.

For these sales, we calculated export price based on the price to unaffiliated purchasers. We deducted an amount, where appropriate, for foreign inland freight, ocean freight, and marine insurance.

For U.S. sales made by LSM/SMC, we calculated a constructed export price (CEP), in accordance with section 772(c) of the Act, because the subject merchandise was sold by an affiliated importer in the United States after importation into the United States. We calculated CEP based on the packed, ex-warehouse prices from the U.S. subsidiary to unaffiliated customers. We made deductions, where appropriate, from the starting price for CEP for international freight from the United Kingdom to the United States, U.K. inland freight, marine insurance, U.S. customs duties, U.S. brokerage, U.S. inland freight, and U.S. freight to the unaffiliated purchaser. In accordance with section 772(d)(1) of the Act, we made further deductions from the starting price for CEP for the following selling expenses that related to economic activity in the United States: credit expenses and indirect selling expenses, including inventory carrying costs. In accordance with section 772(d)(3) of the Act, we have also deducted from the starting price an amount for profit. Finally, since the sales made by SMC to the unaffiliated purchaser were further manufactured products, we further deducted, in accordance with section 772(d)(2), the following costs associated with the further manufacturing: material, labor, overhead, packing, general and administrative expenses, and interest expense.

Normal Value

1. Nonmarket-Economy Status

For the calculation of dumping margins for merchandise originating in NME countries, section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. In accordance with section 771(18)(c)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Furthermore, available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Therefore, we treated the PRC as a NME country for purposes of this review and calculated NV for the two PRC exporters CMIECHN/CNIECHN and Minmetals by valuing the factors of production in a comparable market-economy country which is a significant producer of comparable merchandise.

With regard to NV for LSM/SMC's sales, the statute directs that,

> Where the subject merchandise is exported to the United States from an intermediate country, normal value shall be determined in the intermediate country, except that normal value may be determined in the country of origin if—
>
> (A) the producer knew at the time of the sale that the subject merchandise was destined for exportation;
>
> (B) the subject merchandise is merely transshipped through the intermediate country;
>
> (C) sales of the foreign like product in the intermediate country do not satisfy the conditions of paragraph (1)(c); or
>
> (D) the foreign like product is not produced in the intermediate country.

See Section 773(a)(3) of the Act.

Information from the petition and on the record of prior administrative reviews has established the United Kingdom does not produce the foreign like product. Parties to this review have submitted no evidence suggesting that this situation has changed. Thus, at least one of the above statutory criteria (*i.e.*, criterion D) has been met. Therefore, to determine whether LSM/SMC's sales were sold at prices below NV, we have determined NV in the PRC, the country of origin. Furthermore, because the country of origin is the PRC, consistent with section 773(c)(1) of the Act we have constructed a NV based on PRC factors of production. As a result, the NV for LSM/SMC is the same as the NV for CMIECHN/CNIECHN.[4]

2. Surrogate-Country Selection

In accordance with section 773(c)(4) of the Act and section 351.408(b) of our regulations, we preliminarily determine that India is comparable in terms of economic development to the PRC.[5] In addition, India is a significant producer of comparable merchandise. Therefore, for this review, we have selected India as the surrogate country and have used publicly available information relating to India, unless otherwise noted, to value the various factors of production.

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[4] For a more in-depth discussion of these issues, *see Memorandum to Richard W. Moreland; Third-County Resellers and Treatment of SG&A and Movement Expenses* (October 25, 2000).

[5] *See Memorandum to Susan Kuhbach from Jeff May; Non-Market-Economy Status and Surrogate Country Selection* (June 12, 2000), a public copy of which is available in the Central Records Unit.

3. Factors-of-Production Valuation

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include but are not limited to the following elements: (1) hours of labor required; (2) quantities of raw materials used; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining potential surrogate values, we selected, where possible, the publicly available value which was: (1) an average non-export value; (2) representative of a range of prices within the POR or closest in time to the POR; (3) product-specific; and (4) tax-exclusive. Where we could not obtain a POR-representative price for an appropriate surrogate value, we selected a value in accordance with the remaining criteria mentioned above which was the closest in time to the POR. In accordance with this methodology, we have valued the factors as follows.[6]

We valued manganese Ore 1 using a POR price quotation for carbonate manganese ore submitted by the petitioner. We valued Ore 2 using an average of two POR price quotations from Indian manganese ore producers. We adjusted these prices for Ore 1 and Ore 2 to account for the reported manganese content of the ore used in the PRC manufacture of the subject merchandise and to account for the differences in transportation distances.

To value various process chemicals used in the production of manganese metal, we used prices obtained from the following Indian sources: *Indian Chemical Weekly* (February 1999 through January 2000), the *Monthly Statistics of Foreign Trade of India, Volume II—Imports* (April 1998 through August 1998) (*Import Statistics*), as well as price quotations from various Indian chemicals producers. Where necessary, we adjusted these values to reflect inflation up through the POR using an Indian wholesale price index (WPI) published by the International Monetary Fund (IMF). Additionally, we adjusted these values, where appropriate, to account for differences in chemical content and to account for freight costs incurred between the suppliers and manganese metal producers.

We have derived a surrogate value for electricity based on electricity price data published by the Center for Monitoring Indian Economy (CMIE) and on an electricity-specific price index published by the Reserve Bank of India.

To value the labor input, consistent with 19 CFR 351.408(c)(3), we used the regression-based estimated wage rate for the PRC as calculated by the Department.[7]

We have derived ratios for selling, general, and administrative expenses (SG&A), factory overhead, and profit based on aggregated financial data published by the CMIE for the Indian nonferrous metals industry.

For most packing materials values, we used per-unit values based on data from the *Import Statistics*. For metal drums, however, we used a price quote from an Indian drum manufacturer. We made further adjustments, where necessary, to these packing material values to account for freight costs incurred between the PRC supplier and manganese metal producers.

To value rail freight, we relied on rate tables published by the Indian Railway Conference Association. To value truck freight, we used a price quotation from an Indian freight provider. With regard to ocean freight, where a company had reported that it incurred ocean freight expenses in market economy currency, from a market economy provider through a market economy agent, we used the reported expenses to value all ocean freight costs reported by that company.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margins exist for the period February 1, 1999, through January 31, 2000:

Manufacturer/exporter	Margin
CMIECHN/CNIECHN	27.18
Minmetals	19.70
LSM/SMC	13.33
SCL	143.32

Because we are rescinding the review with respect to CEIEC, the company-specific rate for that company remains unchanged.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held approximately 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue a notice of final results of this administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to the Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

Cash Deposit Requirements

To calculate the cash-deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of manganese metal entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for CMIECHN/CNIECHN, Minmetals, LSM/SMC, and SCL will be the rates established in the final results of this administrative review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for CEIEC, which we determined to be entitled to a separate rate in the *LTFV Investigation* but which did not have shipments or entries to the United States during the POR, the rate will continue to be the currently-applicable rate of 11.77 percent, (3) for non-PRC exporters of subject merchandise from the PRC not specifically listed above, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter;[8] and (4) for all other PRC exporters, the cash deposit rate will be 143.32 percent.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 31, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28569 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DS–P

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[6] For a more detailed explanation of the methodology used in calculating various surrogate values, *see Memorandum to the File from Case Team; Calculations for the Preliminary Results* (October 31, 2000).

[7] *See* the ITA website at *http://ia.ita.doc.gov/wages/*

[8] *See e.g., Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 64 FR 49447 (September 13, 1999); *Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 62 FR 23758, 23760 (May 1, 1997); *Sparklers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 61 FR 39630, 39631 (July 30, 1996).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–810; A–475–816; A–588–835; A–580–825]

Final Results of Expedited Sunset Reviews: Oil Country Tubular Goods From Argentina, Italy, Japan, and Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Reviews: Oil Country Tubular Goods from Argentina, Italy, Japan, and Korea.

SUMMARY: On July 3, 2000, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on oil country tubular goods from Argentina, Italy, Japan, and Korea (65 FR 41053) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate and adequate substantive responses filed on behalf of U.S. Steel Group, a unit of USX Corporation, IPSCO Tubulars, Inc., Lone Star Steel Company, Maverick Tube Corporation, Newport Steel and Koppel Steel Divisions of NS Group, Grant-Prideco, and North Star Steel Ohio (collectively, "domestic interested parties"), and inadequate responses (in the Italy, Japan, and Korea cases, no responses) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Results of Reviews* section of this notice.

FOR FURTHER INFORMATION CONTACT: John P. Maloney, Jr. or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1503 or (202) 482–3330, respectively.

EFFECTIVE DATE: November 7, 2000.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (*"Sunset Regulations"*), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On July 3, 2000, the Department initiated sunset reviews of the antidumping duty orders on oil country tubular goods ("OCTG") from Argentina, Italy, Japan, and Korea (65 FR 41053), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of U.S. Steel group, a unit of USX Corporation, IPSCO Tubulars, Inc., Lone Star Steel Company, Maverick Tube Corporation, Newport Steel and Koppel Steel Divisions of NS Group, Grant-Prideco, and North Star Steel Ohio (collectively, "domestic interested parties"), within the applicable deadline (July 18, 2000) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as manufacturers, producers, or wholesalers in the United States of a domestic like product.

On August 2, 2000, we received substantive responses on behalf of domestic interested parties and, in the Argentina case, on behalf of Siderca SAIC ("Siderca"). Siderca is an interested party pursuant to section 771(9)(A) of the Act as a foreign producer and exporter of the subject merchandise.

On August 7, 2000, we received rebuttal comments on behalf of domestic interested parties in response to Siderca's comments.

Scope of Review of Oil Country Tubular Goods From Argentina

Oil country tubular goods are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited-service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this review are currently classified in the following Harmonized Tariff

Schedule of the United States (HTSUS) subheadings: 7304.20.20, 7304.20.40, 7304.20.50, 7304.20.60, 7304.20.80, 7304.39.00, 7304.51.50, 7304.20.70, 7304.59.60, 7304.59.80, 7304.90.70, 7305.20.40, 7305.20.60, 7305.20.80, 7305.31.40, 7305.31.60, 7305.39.10, 7305.39.50, 7305.90.10, 7305.90.50, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, 7306.20.80, 7306.30.50, 7306.50.50, 7306.60.70, 7306.90.10. The HTSUS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

Scope of Review of Oil Country Tubular Goods From Italy

Oil country tubular goods are hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this review are currently classified in the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

Scope of Review of Oil Country Tubular Goods From Japan

Oil country tubular goods are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited-service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this review are currently classified in the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7304.21.30.00, 7304.21.60.30, 7304.21.60.45, 7304.21.60.60, 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

Scope of Review of Oil Country Tubular Goods From Korea

Oil country tubular goods are hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this review are currently classified in the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

History of the Orders

In the original investigations, covering the period January 1, 1994, through June 30, 1994, the Department determined the following dumping margins: 1.36 percent for Siderca, the Argentine respondent, and 1.36 percent for "all others" (60 FR 33539); 49.78 percent for Dalmine S.p.A. ("Dalmine"), Acciaierie Tubificio Arvedi S.p.A., and General Sider Europa S.p.A., the Italian respondents, and 49.78 percent for "all others" (60 FR 33558); 44.20 percent for Nippon Steel Corporation and Sumitomo Metal Industries, Ltd. ("Sumitomo"), the Japanese respondents, and 44.20 percent for "all others" (60 FR 33560); and 12.17 percent for Union Steel Manufacturing Company, one of the Korean respondents,[1] and 12.17 percent for "all others" (60 FR 33561).

The Department has not conducted an administrative review of the orders on OCTG from Argentina or Italy since the issuance of these orders. However, there have been two administrative reviews of the order on OCTG from Japan. In the first, covering the period February 2, 1995, though July 31, 1996, NKK Corporation of Japan was assigned a margin of 44.20 percent. In the second, covering the period August 1, 1997, through July 31, 1998, Sumitomo was assigned a margin of 0.00 percent. In addition, there have been two administrative reviews of the order on OCTG from Korea. In the first, covering the period August 1, 1996, through July 31, 1997, SeAH Steel Corporation ("SeAH") was assigned a margin of 2.93 percent. In the second, covering the period August 1, 1997, through July 31, 1998, SeAH was assigned a margin of 15.02 percent.

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[1] Hyundai Steel Pipe Company, Ltd., the other respondent, was excluded from the antidumping duty order. *See Antidumping Duty Order: Oil Country Tubular goods from Korea.* 61 FR 41057, 41058 (August 11, 1995).

Analysis of Comments Received

All issues raised by parties to these sunset reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Assistant Secretary for Import Administration, dated October 31, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail were the orders revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http:/ia.ita.doc.gov/frn, under the heading "October 2000." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on oil country tubular goods from Argentina, Italy, Japan, and Korea would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Country	Manufacturer/exporter	Margin (percent)
Argentina	Siderca SAIC	1.36
	All Others	1.36
Italy	Dalmine S.p.A.	49.78
	Acciaierie Tubificio Arvedi S.p.A.	49.78
	General Sider Europa S.p.A.	49.78
	All Others	49.78
Japan	Nippon Steel Corporation	44.20
	Sumitomo Metal Industries, Ltd.	44.20
	All Others	44.20
Korea	Union Steel Manufacturing Co.	12.17
	All Others [2]	12.17

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year ("sunset") reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 31, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28566 Filed 11–6–00; 8:45 am]

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[2] Hyundai Steel Pipe Company, Ltd., a respondent in the investigation, was excluded from the antidumping duty order. *See Antidumping Duty Order: Oil Country Tubular Goods from Korea*, 61 FR 41057, 41058 (August 11, 1995).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Preliminary Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a timely request from two manufacturer/exporters and the petitioners,[1] on March 30, 2000, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China with respect to China Processed Food Import & Export Co., Gerber Food (Yunnan) Co., Ltd., Mei Wei Food Industry Co., Ltd., and Tak Fat Trading Co. The periods of review are August 5, 1998, through January 31, 2000, for China Processed Food Import & Export Co. and Gerber Food (Yunnan) Co., Ltd., and May 7, 1998, through January 31, 2000, for Mei Wei Food Industry Co., Ltd. and Tak Fat Trading Co.[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 65 FR 16875 (March 30, 2000).

As a result of these reviews, the Department of Commerce has preliminarily determined that dumping margins exist for exports of the subject merchandise for the covered periods.

On March 31, 2000, the Department of Commerce published a notice of initiation of a new shipper antidumping duty review of Raoping Xingyu Foods Co., Ltd. covering the period August 5, 1998, through January 31, 2000. On June 30, and August 17, 2000, the Department of Commerce published the preliminary and final results, respectively, for exports by Mei Wei Food Industry Co., Ltd. and Tak Fat Trading Co. on an expedited basis. Therefore, this notice constitutes a preliminary results of administrative

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[1] The petitioners are the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Toughkenamon, PA; Monterey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

[2] Because of an affirmative critical circumstance finding, liquidation was suspended 90 days prior to publication of the preliminary less-than-fair-value investigation for these companies.

review for China Processed Food Import & Export Co. and Gerber Food (Yunnan) Co., Ltd. and a preliminary results of new shipper review for Raoping Xingyu Foods Co., Ltd.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with their arguments (1) a statement of the issues and (2) a brief summary of the arguments.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

SUPPLEMENTARY INFORMATION: For the three respondents that submitted full responses to the antidumping questionnaire for these reviews and have been found preliminarily to be entitled to a separate rate, we have preliminarily determined that U.S. sales have been made below normal value. If these preliminary results are adopted in our final results of these reviews, we will instruct the Customs Service to assess antidumping duties on all appropriate entries on an importer-specific or entry-specific basis, as applicable (*see* "Assessment Rates" section of this notice for further discussion).

Background

On February 19, 1999, the Department published in the **Federal Register** (64 FR 8308) an antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC). On February 14, 2000, the Department published in the **Federal Register** (65 FR 7348) a notice of opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC covering the period August 5, 1998, through January 31, 2000. On February 22, 2000, the Department received a timely request from Raoping Xingyu Foods Co., Ltd. (Raoping), in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for a new shipper review of this antidumping duty order. On February 29, 2000, the petitioners requested, in accordance with 19 CFR 351.213, that we conduct an administrative review of exports of certain preserved mushrooms from the PRC to the United States by China Processed Food Import & Export Co. (CPF), Gerber Food (Yunnan) Co. (Gerber), Mei Wei Food Industry Co., Ltd. (Mei Wei), and Tak Fat Trading Co. (Tak Fat). CPF and Gerber also requested on February 28, 2000, that we conduct administrative reviews of their respective exports. On March 17, 2000, Raoping agreed to waive the time limits in order that the Department, pursuant to 19 C.F.R 351.214(j)(3), may conduct this review concurrently with the first annual administrative review of this order.

On March 29, 2000, the Department issued the antidumping questionnaire to CPF, Gerber, Raoping, Mei Wei, and Tak Fat. On March 30, 2000, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC (65 FR 16875). On March 31, the Department published a notice of initiation of a new shipper antidumping duty review with respect to Raoping (65 FR 17257). We received responses to the antidumping questionnaire during April and May 2000.

On May 10, 2000, the Department provided the parties an opportunity to submit publicly available information (PAI) for consideration in these preliminary results.

On June 30, 2000, we published separate preliminary results on an expedited basis for Mei Wei and Tak Fat who did not respond to the Department's questionnaire (65 FR 40609). On August 17, 2000, the Department published the final results for exports by Mei Wei and Tak Fat (65 FR 50183), on an expedited basis.

The Department issued supplemental questionnaires to the respondents during June and July 2000. In July and August 2000, the Department received supplemental questionnaire responses from the respondents.

On August 7, 2000, the petitioner requested that the Department rescind the instant review as to CPF claiming that, at this stage of the administrative review, substantial record evidence establishes that CPF had no entries of subject merchandise in the United States during the period of review (POR). On September 19, 2000, CPF argued that rescission is unwarranted because the Department's regulations do not make rescission mandatory under these circumstances and the Department has already spent substantial resources investigating CPF. The Department has not rescinded this review with respect to CPF because the sale by CPF to the United States was made during the POR and the entry information for this sale is part of the record of this review. *See* "Rescission Request" section below for further discussion.

During the period August 31 through September 6, 2000, we conducted verifications of Raoping, Raoping's producer, Raoping Yucun Canned Foods Factory (Raoping Yucun), and Gerber. We issued verification reports on September 29, 2000, for the Raoping companies, and on October 2, 2000, for Gerber.

The Department is conducting these reviews in accordance with section 751 of the Act.

Rescission Request

Under section 351.213(e) of the Department's regulations, an administrative review normally will cover, as appropriate, sales, exports, *or* entries of the subject merchandise made during the particular period under review. There is no requirement that both the sale and the entry corresponding to the particular sale both occur within the POR in order to review that sale/entry; however, we must be able to assess antidumping duties on entries, rather than sales, as a result of that review. Under section 351.213(d)(3) of the Department's regulations, the Department may rescind an administrative review, in whole or only with respect to a particular producer or exporter, if it concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be. *See e.g.*, Certain Preserved Mushrooms from Chile: Final Rescission of Antidumping Duty Administrative Review, *63 FR 43292, 43292–43293 (July 13, 2000), where the Department rescinded the entire review because at least one respondent reported that it did not export the subject merchandise during the POR and U.S. Customs import statistics confirmed that there were no U.S. imports/entries of such merchandise by respondents or any other company during the POR. See Manganese Metal from the People's Republic of China; Preliminary Results and Partial Rescission of Antidumping Administrative Review*, 64 FR 10986, 10986–10987 (March 8, 1999) (in which case the Department rescinded a review with respect to two exporters, one of

which reported it made one sale during the previous POR which it believed was to be entered into the United States during the POR, but the Department could not establish, for duty assessment purposes, that it in fact was subsequently entered into the United States). In this case, CPF sold and exported the subject merchandise during the POR and placed information on the record indicating that the corresponding entry into the U.S. Customs territory was made shortly after the POR. Therefore, this case is properly distinguished from those cited above, and we do not find that recission of this administrative review with respect to CPF is appropriate in this instance. As stated in the "Assessment Rates" section of this notice, we intend to issue entry-specific liquidation instructions for each respondent (CPF and Raoping) whose sale and entry occurred in different PORs.

Scope of Review

The products covered by this review are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this review are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this review are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this review are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[3]

The merchandise subject to this review is classifiable under subheadings 2003.1000.27, 2003.1000.31, 2003.1000.37, 2003.1000.43, 2003.1000.47, 2003.1000.53, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States ("HTS"). Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. In this case, each respondent has requested a separate company-specific rate. Both Gerber and Raoping are either wholly or majority foreign-owned companies; therefore, we determined that no further separate rate analysis is required for these companies. CPF is wholly owned by China National Cereals, Oils, & Foodstuffs Import & Export Corp., which in turn is owned by "all the people." In the less-than-fair-value (LTFV) investigation we determined that CPF was eligible for a separate rate. As stated in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*) and in the *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22545 (May 8, 1995) (*Furfuryl Alcohol*), ownership of the company by "all the people" does not require the application of a single rate. Accordingly, CPF is eligible for consideration of a separate rate.

The Department's separate rate test to determine whether the exporters are independent from government control is not concerned, in general, with macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See e.g., Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents have placed on the record a number of documents to demonstrate absence of de jure control, including the "Foreign Trade Law of the People's Republic of China" and the "Company Law of the People's Republic of China."

In prior cases, the Department has analyzed these laws and found that they establish an absence of *de jure* control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472 (October 24, 1995); *see also Furfuryl Alcohol*. We have no new information in this proceeding which would cause us to reconsider this determination.

Accordingly, we preliminarily determine that, within the preserved mushroom industry, there is an absence of *de jure* government control over exporting pricing and marketing decisions of firms.

2. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide* and *Furfuryl Alcohol*.

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[3] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order.

CPF asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and obtain loans. Additionally, CPF's questionnaire responses indicate that company-specific pricing during the POR does not suggest coordination among exporters. Furthermore, our analysis of CPF's questionnaire responses reveals no other information indicating government control. This information supports a preliminary finding that there is an absence of *de facto* governmental control of CPF's export functions. Consequently, we preliminarily determine that CPF has met the criteria for the application of a separate rate.

Fair Value Comparisons

To determine whether sales of the subject merchandise by each respondent to the United States were made at LTFV, we compared the export price to the normal value, as described in the "Export Price" and "Normal Value" sections of this notice, below.

Export Price

We used export price methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and constructed export price methodology was not otherwise indicated.

1. CPF, Gerber, and Raoping

We calculated export price based on packed, free on board (FOB) foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling in the PRC, in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in a NME currency, we based those charges on surrogate rates from India (*see* "Surrogate Country" section below). To value foreign inland trucking charges and foreign brokerage and handling expenses, we used November 1999 Indian freight companies' and freight forwarders' price quotes, respectively, obtained by the Department in other antidumping duty proceedings.

The petitioners claim that Raoping's sale is not a *bona fide* transaction due to the circumstances surrounding the sale which are described in the Department's September 29, 2000, sales verification report. In prior cases the Department has considered factors such as timing, sale price, transportation costs, other expenses borne by the importer, and whether the merchandise was resold by the importer at a loss to determine whether a sale was a *bona fide* transaction. *See Certain Cut-to-Length Carbon Steel Plate from Romania*, 63 FR 47232 (September 4, 1998) and *American Silicon Technologies* v. *United States*, CIT Slip Op. 00–84 (July 17, 2000).

While we verified that the price for the sale under review is higher than that of certain subsequent sales of the same merchandise to the same customer, there is no evidence on the record to support a conclusion that the price for the reviewed sale is not commercially reasonable or was not a result of arm's-length bargaining, nor is there any record evidence that the importer resold the merchandise at a loss. Furthermore, the transportation costs and other expenses borne by the importer based on the respondent's reported terms of sale are consistent with those incurred by other importers of the subject merchandise in this administrative review and the LTFV investigation. In addition, while the sale occurred shortly before the end of the POR, the timing of the transaction is not a basis in and of itself to render the transaction not *bona fide*. Therefore, absent evidence to the contrary, we have determined Raoping's sale to be a *bona fide* transaction for purposes of this review.

Normal Value

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of overall economic development and are significant producers of the subject merchandise (*see* Memorandum dated April 19, 2000). According to the available information on the record, we have determined that India meets the statutory requirements for an appropriate surrogate country for the PRC. Accordingly, we have calculated NV using Indian values for the PRC producers' factors of production, except, as noted below, in certain instances where an input was sourced from a market economy and paid for in a market economy currency. We have obtained and relied upon PAI wherever possible.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in the PRC which produced mushrooms for the exporters which sold mushrooms to the United States during the POR. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian values, where possible.

Where appropriate, we recalculated the reported mushroom consumption factor for purchased brined mushrooms to an amount equivalent to consumption of fresh mushrooms. Specifically, for Gerber, we made this adjustment based on the fresh mushroom consumption used in its own production of brined mushrooms. For Raoping, which only consumed purchased brined mushrooms in its production of the subject merchandise, as facts available, we applied an estimated adjustment factor based on information obtained from the U.S. industry. As in the LTFV investigation, we made these adjustments because we were unable to identify a surrogate value for brined mushrooms (*see* below).

We made the following additional adjustments to the reported factors of production:

China Processed

1. We adjusted all factors of production reported by China Processed's supplier, Yu Xing Fruit and Vegetable Development Co., Ltd. (Yu Xing), to reflect a drained-weight basis, using data in China Processed's questionnaire responses.

2. We recalculated Yu Xing's reported tin plate consumption (used to make cans) by dividing total reported POR tin plate consumption by the POR preserved mushrooms production amount. We made this adjustment in order to reflect a drained-weight mushroom basis, and to insure that all tin plate consumed, including waste, was accounted for.

Gerber

1. We incorporated Gerber's pre-verification revisions and our verification findings.

2. We added an additional amount of electricity consumption to account for production-related electricity not included in Gerber's factor reporting, based on our verification findings. *See* Memorandum entitled *Gerber Preliminary Results Margin Calculation*, dated October 31, 2000.

Raoping reported that it purchased cans from a market-economy supplier (*i.e.*, a Hong Kong trading company) and paid for them in U.S. dollars. The petitioners point out that Raoping did not demonstrate that the cans were actually manufactured in a market economy. However, Raoping did show that the material was obtained from a market-economy supplier and that it paid for the material in a market-economy currency. Further, we found no evidence at verification to indicate that the cans were not actually produced in a market economy. Accordingly, we have valued Raoping's consumption of cans and lids based on the U.S. dollar prices it paid for them to the Hong Kong supplier. As appropriate, for these imported materials, we calculated PRC brokerage and inland freight from the port to the factory using surrogate rates from India. We valued the remaining factors using PAI from India, except where noted below. Where a producer did not report the distance between the material supplier and the factory, as facts available, we used either the distance to the nearest seaport (if an import value was used as the surrogate value for the factor) or the farthest distance reported for a supplier of any agricultural or chemical input, as appropriate.

The selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. Wherever possible and appropriate, we used non-producer specific prices in accordance with the preamble to the Department's regulations at 62 FR 27296, 27366 (May 19, 1997). As appropriate, we adjusted input prices to reflect delivered values. For those values not contemporaneous with the POR and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics. A complete analysis of the surrogate values may be found in the Preliminary Determination Valuation Memorandum from the Team to the File (Preliminary Determination Valuation Memorandum), dated October 31, 2000.

We valued the major material inputs used in the production of the subject merchandise using the following sources. For fresh and brined mushrooms, we used the simple average of the fresh mushrooms prices quoted in the Indian publication *The Economic Times* during the POR. We valued cans for Gerber using the weighted-average per-piece value derived from the notes to the Indian producer Agro Dutch Industries, Ltd.''s 1998–1999 and 1999–2000 financial statements. We valued tin plate for CPF using the Commodity Trade Statistics published by the United Nations Statistics Division (United Nations Statistics).

For other raw materials and packing materials, such as growing inputs, chemicals, and cardboard cartons, we derived unit values from Indian preserved mushroom producers' financial statements, the *Monthly Trade Statistics of Foreign Trade of India, Volume II—Imports* (Indian Import Statistics), or the Indian publication *Chemical Weekly*.

We valued calcium super phosphate and calcium phosphate using the U.S. price quoted in the U.S. publication *Chemical Marketing Reporter* because it was the only information on the record for these inputs.

For certain materials reportedly consumed in small quantities, such as cotton wadding, HCHO, and single super phosphate, we were unable to identify appropriate surrogate values. Therefore, we have not included these factors in our preliminary results normal value calculation.

Raoping claimed that it resold scrap can material but failed to provide documentation at verification to demonstrate that the scrap material was actually resold. Therefore, we have not made an offset deduction to the surrogate cost of production for can scrap because Raoping has not met the burden under 19 CFR 351.401(b) to demonstrate its entitlement to the offset.

We valued labor based on a regression-based wage rate in accordance with 19 CFR 351.408(c)(3).

To value electricity, we used the average rupees/kilowatt hour derived from four Indian preserved-mushroom producing companies' annual reports for April 1998 through March 1999. In certain recent cases (*e.g., Notice of Final Results of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China*, 65 FR 30067, 30067–8 (May 10, 2000)), the Department has used publicly available information based on an aggregate of Indian state and regional electricity rates in order to fulfill the regulatory preference for valuing electricity. In the instant review, we preliminarily determined it appropriate to use an alternative methodology based on the contemporaneity and specificity of the data employed as well as other factors. *See* Preliminary Determination Valuation Memorandum for further discussion. We based the value of coal on the average of the rupees/metric ton rate of "Coal (for steam raising)" from Polychem, Ltd.''s annual report for April 1998 through March 1999 and the United Nations Statistics. We did not value water separately because it appeared to be included in factory overhead.

We based our calculation of factory overhead (including water), SG&A expenses, and profit on the simple average of the corresponding data of three Indian preserved mushroom producers whose production and sales activity is mostly preserved mushrooms and other food products who were profitable during the POR.

To value truck freight rates, we used November 1999 Indian freight companies' price quotes discussed in the "Export Price" section above. With regard to rail freight, we based our calculation on information from the *Indian Railway Conference Association*.

The United States Court of Appeals for the Federal Circuit's (CAFC's) decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (CAFC 1997) requires that we revise our calculation of source-to-factory surrogate freight for those material inputs that are based on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory or from the domestic supplier to the factory on an import-specific basis.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for the August 5, 1998, through January 31, 2000 POR are as follows:

Manufacturer/producer/exporter	Margin percent
Gerber Food (Yunnan) Co., Ltd.	99.69
China Processed Food Import & Export Co.	0.00
Raoping Xingyu Foods Co., Ltd.	42.77

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter.

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. See 19 CFR 351.310(c). Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 35 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of these administrative reviews, including the results of its analysis of issues raised in any written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit additional publicly available information to value the factors of production for the final results of these reviews until 20 days after publication of these results, unless a written request for an extension is received and granted.

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews. The final results of these reviews shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries for any importer for whom the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). For assessment purposes, we intend to calculate entry-specific *ad valorem* duty assessment rates (for CPF and Raoping whose sale and entry occurred in different PORs) or importer-specific *ad valorem* duty assessment rates (for Gerber) based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered; or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative and new shipper reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each reviewed company will be that established in the final results of these reviews, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC manufacturers or exporters will continue to be 198.63 percent, the "PRC-Wide" rate made effective by the LTFV investigation; and (4) for all non-PRC exporters, the cash deposit rate will continue to be 198.63 percent, the "PRC-Wide" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

These administrative and new shipper reviews and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 31, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28568 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–809; A–351–826; A–428–820; A–475–814]

Final Results of Expedited Sunset Reviews: Seamless Pipe From Argentina, Brazil, Germany, and Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of final results of expedited sunset reviews: seamless pipe from Argentina, Brazil, Germany, and Italy

SUMMARY: On July 3, 2000, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on seamless pipe from Argentina, Brazil, Germany, and Italy (65 FR 41053), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate and adequate substantive responses filed on behalf of U.S. Steel Group, a unit of USX Corporation and Vision Metals, Inc., domestic interested parties, and inadequate response (in the Argentina, Brazil, and Germany cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Becky J. Hagen or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1277 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On July 3, 2000, the Department initiated sunset reviews of the antidumping duty orders on Seamless Pipe from Argentina, Brazil, Germany, and Italy (65 FR 41053), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of U.S. Steel group, a unit of USX Corporation, and Vision Metals, Inc. (collectively, "domestic interested parties"), within the applicable deadline (July 19, 2000) specified in section 351.218(d)(1)(i) of the Sunset Regulations. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as manufacturers, producers, or wholesalers in the United States of a domestic like product.

On August 2, 2000, we received substantive responses on behalf of domestic interested parties and Dalmine S.p.A. ("Dalmine"). Dalmine is an interested party in the Italian case pursuant to section 771(9)(A) of the Act as a foreign producer and exporter of the subject merchandise. We also received a statement of waiver of participation from the sole respondent in the German case, Mannesmannrohren-Werke AG and Mannesmann Pipe & Steel Corporation (collectively "Mannesmann") on August 2, 2000.

On August 7, 2000, we received rebuttal comments on behalf of domestic interested parties in response to Dalmine's substantive response. On August 10, 2000, we accepted additional comments.

Scope of Reviews of Seamless Pipe from Argentina, Germany, and Italy

The sunset reviews on imports from Argentina, Germany, and Italy cover small diameter seamless carbon and alloy standard, line, and pressure pipes ("seamless pipes") produced to the ASTM A–335, ASTM A–106, ASTM A–53, and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of these reviews also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. For purposes of these reviews, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe, or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes. The seamless pipes subject to these reviews are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS). The following information further defines the scope of these reviews, which covers pipes meeting the physical parameters described above: Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification. Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of these reviews includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this review. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application. For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A-333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this review.

Specifically excluded from these reviews are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5l specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of these reviews, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from these reviews are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Scope of Review on Brazil

The sunset review on imports from Brazil covers small diameter seamless carbon and alloy standard, line and pressure pipes (seamless pipes) produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this review also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification.

For purposes of this review, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to this review are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the HTSUS. The following information further defines the scope of this review, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1,000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard. Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers. The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications. The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this review. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application. For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this review. Specifically excluded from this review are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this review, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG review, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this review are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review (amended as indicated below) is dispositive. Excluded from the review, as a result of a changed circumstances review (63 FR 37338 (July 10, 1998)) are the following: shipments of seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness or manufacturing process (hot-finished or cold-drawn) that (1) has been cut into lengths of six to 120 inches, (2) has had the inside bore ground to a smooth surface, (3) has had multiple layers of specially formulated corrosion resistant glass permanently baked on at temperatures of 1,440 to 1,700 degrees Fahrenheit in thicknesses from 0.032 to 0.085 inch (40 to 80 mils), and (4) has flanges or other forged stub ends welded on both ends of the pipe. The special corrosion resistant glass referred to in this definition may be glass containing by weight (1) 70 to 80 percent of an oxide of silicone, zirconium, titanium or cerium (Oxide Group RO sub2), (2) 10 to 15 percent of an oxide of sodium, potassium, or lithium (Oxide Group RO), (3) from a trace amount to 5 percent of an oxide of either aluminum, cobalt, iron, vanadium, or boron (Oxide Group R sub2 O sub3 , or (4) from a trace amount to 5 percent of a fluorine compound in which fluorine replaces the oxygen in any one of the previously listed oxide groups. These glass-lined pressure pipes are commonly manufactured for use in glass-lined equipment systems for processing corrosive or reactive chemicals, including acrylates, alkanolamines, herbicides, pesticides, pharmaceuticals and solvents. The glass-lined pressure pipes subject to the changed circumstances review are currently classifiable under subheadings 7304.39.0020, 7304.39.0024 and 7304.39.0028 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and U.S. Customs' purposes only. The written description of the excluded products remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these sunset reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memorandum") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated October 31, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail were the orders revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading "October 2000." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on Seamless Pipe from Argentina, Brazil, Germany, and Italy would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Country	Manufacturer/exporter	Margin (percent)
Argentina	Siderca S.A.I.C.	108.13
	All Others	108.13
Brazil	Mannesmann S.A.	124.94
	All Others	124.94
Germany	Mannesmannrohren-Werke AG	57.72
	All Others	57.72
Italy	Dalmine	1.27
	All Others	1.27

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year ("sunset") reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 31, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28567 Filed 11–6–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054; A–588–604]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Reviews.

SUMMARY: In response to requests by the petitioner and two respondents, the

Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A–588–604), and of the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A–588–054). The review of the A–588–054 finding covers two manufacturers/exporters of the subject merchandise to the United States during the period October 1, 1998, through September 30, 1999. The review of the A–588–604 order covers three manufacturers/exporters and the period October 1, 1998, through September 30, 1999.

We preliminarily determine that sales of TRBs have been made below the normal value (NV) for all respondents. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between United States price and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Deborah Scott (NTN or NSK), Patricia Tran (Koyo Seiko), or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone : (202) 482–2657, (202) 482–2704, or (202) 482–0649, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Rounds Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 1, 2000).

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1976 the Treasury Department published in the **Federal Register** (41 FR 34974) the antidumping finding on TRBs from Japan (the A–588–054 case), and on October 6, 1987 the Department published the antidumping duty order on TRBs from Japan (the A–588–604 case) (52 FR 37352). On October 20, 1999, the Department published the notice of "Opportunity to Request Administrative Review" for both TRB cases covering the period October 1, 1998 through September 30, 1999 (64 FR 56485).

In accordance with 19 CFR 351.213 (b)(1), the petitioner, the Timken Company (Timken), requested that we conduct a review of Koyo Seiko Co., Ltd. (Koyo) and NSK Ltd. (NSK) in both the A–588–054 and A–588–604 cases. Timken also requested that we conduct a review of NTN Corporation (NTN) in the A–588–604 TRB case. In addition, NTN requested that the Department conduct a review in the A–588–604 case and NSK requested that the Department conduct a review in both the A–588–604 and A–588–054 cases. On December 3, 1999, we published in the **Federal Register** a notice of initiation of these antidumping duty administrative reviews covering the period October 1, 1998 through September 30, 1999 (64 FR 67846).

Because it was not practicable to complete these reviews within the normal time frame, on May 26, 2000, we published in the **Federal Register** our notice of the extension of the time limits for both the A–588–054 and A–588–604 reviews (65 FR 34148). This extension established the deadline for these preliminary results of October 31, 2000.

Scope of the Reviews

Imports covered by the A–588–054 finding are sales or entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.15.

Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 finding are not included within the scope of this order, except those manufactured by NTN. This merchandise is currently classifiable under HTS item numbers 8482.20.00, 8482.91.00, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.80. The HTS item numbers listed above for both the A–588–054 finding and the A–588–604 order are provided for convenience and Customs purposes. The written description remains dispositive.

The period for each 1998–99 review is October 1, 1998, through September 30, 1999. The review of the A–588–054 finding covers TRB sales by two manufacturers/exporters (Koyo and NSK). The review of the A–588–604 order covers TRBs sales by three manufacturers/exporters (Koyo, NTN, and NSK).

Verification

As provided in section 782(i) of the Tariff Act, we verified information provided by NTN and Koyo, using standard verification procedures, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, on file in Room B–099 in the main Commerce building.

Use of Facts Available

In accordance with section 776(a)(2)(B) of the Tariff Act, in these preliminary results we find it necessary to use partial facts available in those instances where a respondent did not provide us with certain information necessary to conduct our analysis. This occurred with respect to certain sales and cost information Koyo failed to report for its sales of U.S. further-manufactured merchandise subject to the A–588–604 order.

On February 11, 2000, Koyo requested that it not be required to submit a response to Section E of our questionnaire regarding its U.S. further-manufactured sales. We informed Koyo on April 11, 2000 that it was required to supply further-manufacturing data by responding to section E of the Department's questionnaire by May 2, 2000. Koyo did not provide section E data, as requested by our questionnaire. Therefore, as in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part,* 65 FR 11767 (March 6, 2000) (1997–98 TRB Final), we have preliminarily determined that, pursuant to section 776(a)(2)(B) and 776(b) of the Tariff Act, it is appropriate to make an inference adverse to the interests of Koyo because it failed to cooperate by not responding to the Department's request for information.

Section 776(a)(2)(b) of the Tariff Act provides that the Department will, subject to section 782(d), use the facts otherwise available in reaching a determination if a respondent fails to provide necessary information "by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782" [of the Tariff Act]. Despite requests for information related to further processing in both our original and supplemental questionnaires, Koyo neglected to submit this information in the form and manner requested by the Department. Section 782(c)(1) of the Tariff Act does not apply in this instance since Koyo did not provide a full explanation of why it was not able to submit the further processing information requested in section E, nor did it suggest an alternative form in which it could submit section E data. Moreover, pursuant to section 782(d), Koyo was specifically informed that it was required to submit section E, yet it failed to do so and failed to provide any explanation of this deficiency. Finally, under section 782(e) the Department concludes that Koyo's information, absent section E, is too incomplete to serve as a reliable basis for this determination, and that Koyo has not acted to the best of its ability (see discussion below). Because we did not receive the further processing data we requested either in the form and manner outlined in section E or in an acceptable alternative format by our established deadline, we determine that the use of facts available is appropriate in this case for Koyo.

The Department is authorized, under section 776(b) of the Tariff Act, to use an inference that is adverse to the interest of a party if the Department finds that the party has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. We examined whether Koyo had acted to the best of its ability in responding to our requests for information. We took into consideration the fact that, as an experienced respondent in reviews of the TRB orders as well as the separate order covering antifriction bearings, it can reasonably be expected to know which types of information we request in each review. Because Koyo has submitted to the Department in previous TRB reviews complete further-manufacturing responses, we have determined that it failed to act to the best of its ability in providing the data we requested and that adverse inferences are warranted. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of the Antidumping Duty Administrative Reviews and Termination in Part* 61 FR 25200 (May 20, 1996). As a result, we have used the highest rate determined for Koyo from any prior segment of the A–588–604 proceedings as partial adverse facts available, which is secondary information within the meaning of section 776(c) of the Tariff Act. See 19 CFR 351.308(c)(1)(iii).

Section 776(c) of the Tariff Act provides that the Department shall, to the extent practicable, corroborate secondary information used as facts available from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (see H.R. Doc. 103–316, Vol. 1, at 870 (1994); 19 CFR 351.308(d)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review, 60 FR 49567 (February 22, 1996), where we disregarded the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin).

For these preliminary results, we have examined the history of the A–588–604 case and have determined that 41.04 percent, the rate we calculated for Koyo in the 1993–94 A–588–604 review, is the highest rate for this firm in any prior segment of the A–588–604 order. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Administrative Review and Termination in Part,* 63 FR 20585 (April 27, 1998). In the absence of information on the administrative record that application of this 41.04 percent rate would be inappropriate, that the margin is not relevant, or that leads us to re-examine this rate as adverse facts available in the instant review, we find the margin reliable and relevant. As a result, for these preliminary results we have applied as adverse facts available, a margin of 41.04 percent to Koyo's further-manufactured U.S. sales.

Export Price and Constructed Export Price

Because all of Koyo's and NSK's sales and certain of NTN's sales of subject merchandise were first sold to unaffiliated purchasers after importation into the United States, in calculating U.S. price for these sales we used constructed export price (CEP) as defined in section 772(b) of the Tariff Act. We based CEP on the packed, delivered price to unaffiliated purchasers in the United States. We made deductions, where appropriate, for discounts, billing adjustments, freight allowances, and rebates. Pursuant to section 772(c)(2)(A) of the Tariff Act, we reduced this price for movement expenses (Japanese pre-sale inland freight, Japanese post-sale inland freight, international air and/or ocean freight, marine insurance, Japanese brokerage and handling, U.S. inland freight from the port to the warehouse, U.S. inland freight from the warehouse to the customer, U.S. duty, post-sale warehousing, pre-sale warehousing, and U.S. brokerage and handling). We also reduced the price, where applicable, by an amount for the following expenses incurred in the selling of the merchandise in the United States pursuant to section 772(d)(1) of the Tariff Act: commissions to unaffiliated parties, U.S. credit, payments to third parties, U.S. repacking expenses, and indirect selling expenses (which included, where applicable, inventory carrying costs, indirect advertising expenses, and indirect technical services expenses). Finally, pursuant to section 772(d)(3) of the Tariff Act, we further reduced U.S. price by an amount for profit to arrive at CEP.

In the instant review NTN claimed an offsetting adjustment to its U.S. indirect selling expenses to account for "the interest expense incurred financing antidumping duty deposits." See NTN's April 28, 2000 Supplemental Questionnaire Response at C–6 and C–7. Because we have long maintained, and continue to maintain, that antidumping duties, and cash deposits of antidumping duties, are not expenses that we should remove from U.S. indirect selling expenses, we have continued to deny such an adjustment. See, *e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 63860, 63865 (November 17, 1998) (1996–97 TRB Final).

Because certain of NTN's sales of subject merchandise were made to unaffiliated purchasers in the United States prior to importation into the United States and the CEP methodology was not indicated by the facts of record, in accordance with section 772(a) of the Tariff Act we used export price (EP) for these sales. We calculated EP as the packed, delivered price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Tariff Act, we reduced this price, where applicable, by Japanese pre-sale inland freight, Japanese post-sale inland freight, international air and/or ocean freight, marine insurance, Japanese brokerage and handling, U.S. brokerage and handling, U.S. duty, and U.S. inland freight.

Where appropriate, in accordance with section 772(d)(2) of the Tariff Act, the Department also deducts from CEP the cost of any further manufacture or assembly in the United States, except where the special rule provided in section 772(e) of the Tariff Act is applicable. Section 772(e) of the Tariff Act provides that, where the subject merchandise is imported by a person affiliated with the exporter or producer and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, and if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise sold by the exporter or producer to an unaffiliated person. If there is not a sufficient quantity of such sales to provide a reasonable basis for comparison, or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine CEP. See sections 772(e)(1) and (2) of the Tariff Act. In judging whether the use of identical or other subject merchandise is appropriate, the Department must consider several factors, including whether it is more appropriate to use another "reasonable basis." Under some circumstances, we may use the standard methodology as a reasonable alternative to the methods described in sections 772(e)(1) and (2) of the Tariff Act. In deciding whether it is more appropriate to use the standard methodology, we have considered and weighed the burden on the Department in applying the standard methodology as a reasonable alternative and the extent to which application of the standard methodology will lead to more accurate results. The burden on the Department of using the standard methodology may vary from case to case depending on factors such as the nature of the further-manufacturing process and the finished products. The increased accuracy gained by applying the standard methodology will vary significantly from case to case, depending upon such factors as the amount of value added in the United States and the proportion of total U.S. sales that involve further manufacturing. In cases where the burden on the Department is high, it is more likely that the Department will determine that potential gains in accuracy do not outweigh the burden of applying the standard methodology. Thus, the Department likely will determine that application of the standard methodology is not more appropriate than application of the methods described in paragraphs 772(e)(1) and (2), or some other reasonable alternate methodology. By contrast, if the burden is relatively low and there is reason to believe the standard methodology is likely to be more accurate, the Department is more likely to determine that it is not appropriate to apply the methods described in paragraphs 772(e)(1) or (2) of the Tariff Act in lieu of the standard methodology. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews*, 62 FR 47452, 47455 (September 9, 1997) (1995–96 TRB Prelim).

NTN imported subject merchandise (TRB parts) which was further processed in the United States. NTN further manufactured the imported scope merchandise into merchandise of the same class or kind as merchandise within the scope of the A–588–604 order. Based on information provided by NTN in its January 10, 2000 and January 14, 2000 letters to the Department, we first determined whether the value added in the United States was likely to exceed substantially the value of the subject merchandise. We estimated the value added based on the differences between the averages of the prices charged to the first unaffiliated U.S. customer for the final merchandise sold (finished TRBs) and the averages of the prices paid by the affiliated party for the subject merchandise (imported TRB parts), and determined that the value added was likely to exceed substantially the value of the imported TRB parts.

We then examined whether it would be appropriate to use sales of identical or other subject merchandise to unaffiliated persons as a basis for comparison, as stated under paragraphs 772(e)(1) and (2) of the Tariff Act. Based on the information provided by NTN in Exhibit A–1 of its February 11, 2000 questionnaire response and its January 10, 2000 and January 14, 2000 letters, we determined that sales of identical or other subject merchandise to unaffiliated persons were in sufficient quantity for the purpose of determining dumping margins for NTN's imported TRBs which were further manufactured in the United States prior to resale. Furthermore, the proportion of NTN's further-manufactured merchandise to its total imports of subject merchandise was relatively low. In NTN's case, any potential gains in accuracy obtained by examining NTN's further-manufactured sales are outweighed by the burden of the applying the standard methodology. Accordingly, it would be appropriate to apply one of the methodologies specified in the statute with respect to NTN's imported TRB parts. Therefore, we have used the weighted-average dumping margins we calculated on NTN's sales of identical or similar subject merchandise to unaffiliated persons in the United States. See 19 CFR 351.402(c).

With respect to Koyo, while we determined that the value added to the United States was likely to exceed the value of the imported products, we have determined that the use of either of the two proxies specified in the statute is not appropriate. *See* Facts Available section for further information.

No other adjustments were claimed or allowed.

Normal Value

A. Viability

Based on (1) the fact that each company's quantity of sales in the home market was greater than five percent of its sales to the U.S. market and (2) the absence of any information that a particular market situation in the exporting country does not permit a proper comparison, we determined that the quantity of the foreign like product for all respondents sold in the exporting country was sufficient to permit a proper comparison with the sales of subject merchandise to the United States, pursuant to section 773(a) of the Tariff Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Tariff Act, we based NV on the prices at which the foreign like products were first sold for consumption in Japan.

B. Arm's-Length Sales

For all respondents we have excluded from our analysis those sales made to affiliated customers in the home market which were not at arm's length. We determined the arm's-length nature of home market sales to affiliated parties by means of our 99.5 percent arm's-length test in which we calculated, for each model, the percentage difference between the weighted-average prices to the affiliated customer and all unaffiliated customers and then calculated, for each affiliated customer, the overall weighted-average percentage difference in prices for all models purchased by the customer. If the overall weighted-average price ratio for the affiliated customer was equal to or greater than 99.5 percent, we determined that all sales to this affiliated customer were at arm's length. Conversely, if the ratio for a customer was less than 99.5 percent, we determined that all sales to the affiliated customer were not at arm's length because, on average, the customer paid less than unaffiliated customers for the same merchandise. Therefore, we excluded all sales to the customer from our analysis. Where we were unable to calculate an affiliated customer ratio because identical merchandise was not sold to both affiliated and unaffiliated customers, we were unable to determine if these sales were at arm's length and, therefore, excluded them from our analysis (*see Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 63 FR 30185 (June 3, 1998)).

C. Cost of Production Analysis

Because we disregarded sales made at prices below the cost of production (COP) in our last completed A–588–054 review for Koyo and NSK, and in our last completed A–588–604 review for NTN, Koyo, and NSK, we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review for these companies may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Tariff Act (*see 1997–98 TRB Final*). Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by NTN for the A–588–604 case and by Koyo and NSK for both TRB cases.

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A) and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment. We relied on the home market sales and COP information provided by Koyo, NTN, and NSK except in those instances where the data was not appropriately quantified or valued (see company-specific preliminary results analysis memoranda).

After calculating COP, we tested whether home market sales of TRBs were made at prices below COP within an extended period of time in substantial quantities and whether such prices permit the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts, or rebates.

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of a respondent's home market sales for a model are at prices less than the COP, we do not disregard any below-cost sales of that model because we determine that the below-cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of a respondent's home market sales of a given model are at prices less than COP, we disregard the below-cost sales because they are (1) made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Tariff Act, and (2) based on comparisons of prices to weighted-average COPs for the POR, were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Tariff Act.

The results of our cost test for Koyo, NTN, and NSK indicated that for certain home market models less than 20 percent of the sales of the model were at prices below COP. We therefore retained all sales of these home market models in our analysis and used them as the basis for determining NV. Our cost test for these respondents also indicated that within an extended period of time (one year, in accordance with section 773(b)(2)(B) of the Tariff Act), for certain home market models, more than 20 percent of the home market sales were sold at prices below COP. In accordance with section 773(b)(1) of the Tariff Act, we therefore excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

D. Product Comparisons

For all respondents we compared U.S. sales with contemporaneous sales of the foreign like product in the home market. We considered bearings identical on the basis of nomenclature and determined most similar TRBs using our sum-of-the-deviations model-match methodology which compares TRBs according to the following five physical criteria: inside diameter, outside diameter, width, load rating, and Y2 factor. We used a 20 percent difference-in-merchandise (difmer) cost deviation cap as the maximum difference in cost allowable for similar merchandise, which we calculated as the absolute value of the difference between the U.S. and home market variable costs of manufacturing divided by the total cost of manufacturing of the U.S. product.

E. Level of Trade

To the extent practicable, we determined NV for sales at the same level of trade as the U.S. sales (either EP or CEP). When there were no sales at the same level of trade, we compared U.S. sales to home market sales at a different level of trade. The NV level of trade is that of the starting-price sales in the home market. When NV is based on constructed value (CV), the level of trade is that of the sales from which we derived SG&A and profit.

To determine whether home market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales were at a different level of trade and the differences affected price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we made a level-of-trade adjustment under section 773(a)(7)(A) of the Tariff Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We determined that for respondents Koyo and NSK, there were two home market levels of trade and one U.S. level of trade (CEP). Because there was no home market level of trade equivalent to the U.S. level(s) of trade for Koyo and NSK, and because NV for these firms represented a price more remote from the factory than CEP, we made a CEP offset adjustment to NV. For NTN we found that there were three home market levels of trade and two (EP and CEP) levels of trade in the U.S. Because there were no home market levels of trade equivalent to NTN's CEP level of trade, and because NV for NTN represented a price more remote from the factory than CEP, we made a CEP offset adjustment to NV in our CEP comparisons. We also determined that NTN's EP level of trade was equivalent to one of NTN's home market levels of trade. Because we determined that there was a pattern of consistent price differences due to differences in levels of trade, we made a level of trade adjustment to NV for NTN in our EP comparisons where the U.S. EP sale matched to a home market sale at a different level of trade. For more detailed company-specific descriptions of our level-of-trade analyses for these preliminary results, see the preliminary results analysis memoranda to Robert James, on file in Import Administration's Central Records Unit, Room B–099 of the main Commerce building.

F. Home Market Price

We based home market prices on the packed, ex-factory or delivered prices to affiliated purchasers (where an arm's-length relationship was demonstrated) and unaffiliated purchasers in the home market. We made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act, and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. For comparison to EP we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments to NV by deducting home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP calculations. No other adjustments were claimed or allowed.

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a contemporaneous home market match for the U.S. sale. We calculated CV based on the cost of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with 772(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses. To the extent possible, we calculated CV by level of trade, using the selling expenses and profit determined for each level of trade in the comparison market. Where appropriate, we made COS and level of trade adjustments to CV in accordance with section 773(a)(8) of the Tariff Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset commissions in EP and CEP comparisons.

Preliminary Results of Review

As a result of our reviews, we preliminarily determine the following weighted-average dumping margins exist for the period October 1, 1998, through September 30, 1999, to be as follows:

Manufacturer/Exporter	Margin (percent)
For the A–588–054 Case:	
Koyo Seiko	14.86
NSK	16.60
For the A–588–604 Case:	
Koyo Seiko	17.94
NTN	12.96
NSK	7.75

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of these administrative reviews, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of the review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of TRBs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash-deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall not require a deposit of estimated antidumping duties;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be 18.07 percent for the A–588–054 case, and 36.52 percent for the A–588–604 case (*see Preliminary Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan and Tapered Roller Bearings, Four Inches or less in Outside Diameter, and Components Thereof, From Japan*, 58 FR 51061 (September 30, 1993)).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: October 30, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28570 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Florida, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–021. *Applicant:* University of Florida, Gainesville, FL 32611–6400. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 65 FR 58046, September 27, 2000. *Order Date:* February 11, 2000.

Docket Number: 00–028. *Applicant:* Ernest Orlando Lawrence Berkeley National Laboratory, Berkeley, CA 94720. *Instrument:* Electron Microscope, Model JEM–3010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 65 FR 58046, September 27, 2000. *Order Date:* May 8, 2000.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–28572 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program; Announcement of a Public Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a Regional Meeting to learn more about the Advanced Technology Program (ATP). ATP partners with industry on high-risk, high technology research in technologies ranging from advanced manufacturing to medicine and from advanced materials to microelectronics. The Regional Meeting will provide an opportunity for participants to share ideas on the program with ATP staff.

DATES: The Conference will be held on November 13, 2000, from 1 to 5:30 p.m. The Regional Meeting will continue on November 14, 2000, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Wyndham Baltimore Inner Harbor Hotel, 101 West Lafayette Street, Baltimore, Maryland 21201. The hotel can be reached at (410) 752–1100.

FOR FURTHER INFORMATION CONTACT: For further information, you may telephone Linda Engelmeier at (301) 975–6026 or e-mail: LindaEngelmeier@nist.gov.

SUPPLEMENTARY INFORMATION: The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 278n), amended by the American Technology Preeminence Act of 1991 (Pub. L. 102–245), directed the establishment of ATP. The purpose of the ATP is to assist United States businesses to carry out research and development on high risk, high pay-off, emerging and enabling technologies.

The Regional Meeting will open with a Conference detailing the new application process for receiving cost-sharing funds. Additionally, the Conference will include a session on "Research Policy on Human and Animal Subjects" and the requirements that must be met should funding be provided by ATP for projects that impact humans or animals.

The second day of the Regional Meeting will include a number of workshops related to funding. They are: (1) Federal R&D Funding Opportunities where five federal agencies will provide an overview of their programs; (2) a State/University Panel will discuss strategic investments and the availability of state matching funds; (3) a dialogue with previous ATP awardees will take place that provides insights into how to successfully apply; and (4) a venture capital panel. Participants will be able to share issues and ask questions during these sessions. There will also be two scientific panels in which an overview of nanotechnology and therapeutic biotechnology will be provided by experts.

Information on the meeting agenda and the registration requirements can be found at the ATP website at: www.atp.nist.gov/regionalmeeting. There is no fee for the Conference on November 13, 2000. There is a registration fee of $100.00 on November 14, 2000 to cover costs of meals and materials.

Dated: October 31, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–28578 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101300A]

Marine Mammals; File No. 984-1587-00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Terrie Williams, Department of Biology, EMS-A316, University of California at Santa Cruz, Santa Cruz, California 95064, has been issued a permit to maintain Atlantic bottlenose dolphins (*Tursiops truncatus*) and California sea lions (*Zalophus californianus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213 (562/980-4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Simona Roberts, 301/713-2289.

SUPPLEMENTARY INFORMATION: On September 6, 2000, notice was published in the **Federal Register** (65 FR 53988) that a request for a scientific research permit had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: November 1, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–28576 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Brazil and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Aggregate Limit	
200–227, 237, 239pt. [1], 300–326, 331–348, 350–352, 359pt. [2], 360–363, 369–D [3], 369pt. [4], 400–431, 433–438, 440–448, 459pt. [5], 464, 469pt. [6], 600–629, 631, 633–652, 659pt. [7], 666, 669–P [8], 669pt. [9] and 670, as a group.	643,018,626 square meters equivalent.
Sublevels within the aggregate	
218	7,990,249 square meters.
219	29,171,510 square meters.
225	13,982,938 square meters.
300/301	10,836,617 kilograms.
313	67,103,910 square meters.
314	10,986,596 square meters.
315	32,959,787 square meters.
317/326	29,963,440 square meters.
334/335	215,015 dozen.
336	119,455 dozen.
338/339/638/639	2,150,160 dozen.
342/642	633,101 dozen.
347/348	1,552,893 dozen.
350	240,917 dozen.
361	1,624,564 numbers.
363	34,672,119 numbers.
369–D	774,394 kilograms.
410/624	15,980,502 square meters of which not more than 2,815,508 square meters shall be in Category 410.
433	19,544 dozen.
445/446	76,564 dozen.
604	758,563 kilograms of which not more than 579,760 kilograms shall be in Category 604–A [10].
607	7,043,803 kilograms.
647/648	716,721 dozen.
669–P	2,581,318 kilograms.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 359pt.: all HTS numbers except 6406.99.1550.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369pt.: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[5] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[7] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[8] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[9] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[10] Category 604–A: only HTS number 5509.32.0000.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 21, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factor for merged Categories 338/339/638/639 is 10 (square meters equivalent/category unit).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28553 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Bulgaria

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bulgaria and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Bulgaria and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month limit
410/624	3,285,088 square meters of which not more than 877,262 square meters shall be in Category 410.
433	13,939 dozen.
435	25,094 dozen.
442	16,261 dozen.
444	76,108 numbers.
448	28,721 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated September 13, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28554 Filed 11–06–00 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Colombia and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following restraint limits:

Category	Twelve-month limit
315	31,133,065 square meters.
443	133,983 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 21, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28555 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech Republic

October 26, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Czech Republic and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1998). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 26, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in the Czech Republic and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following limits:

Category	Twelve-month restraint limit
410	1,667,875 square meters.
433	6,550 dozen.
435	4,309 dozen.
443	79,852 numbers.
624	2,775,300 square meters.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 4, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28556 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 8, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 50495, published on September 17, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on November 8, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
433	25,129 dozen.
443	153,683 numbers.
444	74,797 numbers.
633	173,013 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28558 Filed 11–00–06; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

October 26, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Egypt and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 26, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Egypt and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Fabric Group 218–220, 224–227, 313–O [1], 314–O [2], 315–O [3], 317–O [4] and 326–O [5], as a group.	143,846,941 square meters.
Sublevels within Fabric Group	
218	2,508,000 square meters.
219	33,843,975 square meters.
220	33,843,975 square meters.
224	33,843,975 square meters.
225	33,843,975 square meters.
226	33,843,975 square meters.
227	33,843,975 square meters.
313–O	62,147,235 square meters.
314–O	33,843,975 square meters.
315–O	39,743,284 square meters.
317–O	33,843,975 square meters.
326–O	2,508,000 square meters.
Levels not in a group	
300/301	13,392,305 kilograms of which not more than 4,200,297 kilograms shall be in Category 301.
338/339	3,754,030 dozen.
340/640	1,555,242 dozen.
369–S	1,969,419 kilograms.
448	20,076 dozen.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 21, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28557 Filed 11–06–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Egypt

November 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The limit for Categories 338/339 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 57867, published on October 27, 1999.

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 21, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on November 7, 2000, you are directed to increase the limit for Categories 338/339 to 3,784,857 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28559 Filed 11–06–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hungary and exported during the period January 1, 2001 through December 31, 2001 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2001 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
351/651	348,589 dozen.
410	981,177 square meters.
433	18,607 dozen.
434	15,788 dozen.
435	27,289 dozen.
443	174,791 numbers.
444	56,385 numbers.
448	24,117 dozen.
604	1,725,323 kilograms.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 4, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28548 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kuwait

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Kuwait and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2001 period. The 2001 level for Category 361 is zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kuwait and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	357,527 dozen.
341/641	196,640 dozen.
361	–0–

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1999.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 10, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28549 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of November 7, 1997, as amended and extended by exchange of notes on June 22, 2000 and July 5, 2000, between the Governments of the United States and the Former Yugoslav Republic of Macedonia establishes limits for certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period January 1, 2001 through December 31, 2001.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the notice and letter to the Commissioner of Customs published in the **Federal Register** on December 14, 1999 (see 64 FR 69746).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of November 7, 1997, as amended and extended by exchange of notes on June 22, 2000 and July 5, 2000, between the Governments of the United States and the Former Yugoslav Republic of Macedonia, you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month limit
433	21,861 dozen.
434	10,930 dozen.
435	29,835 dozen.
443	183,854 numbers.
448	65,582 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia. These limits do not apply to products entered under the Outward Processing Program.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 14, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the letter to the Commissioner of Customs, dated December 8, 1999 (see 64 FR 69746).

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28550 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Levels for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

October 26, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing levels under the North America Free Trade Agreement.

EFFECTIVE DATE: January 1, 2001

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In order to implement Annex 300–B of the North American Free Trade Agreement (NAFTA), restrictions and consultation levels for certain cotton, wool and man-made fiber textile products from Mexico are being established for the period beginning on January 1, 2001 and extending through December 31, 2001.

These restrictions and consultation levels do not apply to NAFTA originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the NAFTA. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under Harmonized Tariff Schedule of the United States item 9802.00.90.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to implement levels for the 2001 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 26, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the North American Free Trade Agreement (NAFTA), between the Governments of the United States, the United Mexican States and Canada, you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels:

Category	Twelve-month limit
410	397,160 square meters.
433	11,000 dozen.
443	197,390 numbers.
611	1,267,710 square meters.

The levels set forth above are subject to adjustment pursuant to the provisions of Annex 300–B of the NAFTA.

Products in the above categories exported during 2000 shall be charged to the applicable category levels for that year (see directive dated October 6, 1999) to the extent of any unfilled balances. In the event the levels established for that period have been exhausted by previous entries, such products shall be charged to the levels set forth in this directive.

The foregoing levels do not apply to NAFTA originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the NAFTA. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under Harmonized Tariff Schedule of the United States item 9802.00.90.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28551 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 8, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 338 and 339 are being increased for special shift, reducing the limit for Categories 638/639 to account for the special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68335, published on December 7, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, as amended on June 30, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on November 8, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Specific limits	
338	6,712,797 dozen.
339	2,052,852 dozen.
638/639	348,638 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28560 Filed 11–06–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Poland

October 26, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Poland and exported during the period January 1, 2001 through December 31, 2001 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2001 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 26, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
335	261,115 dozen.
338/339	2,812,017 dozen.
410	2,819,220 square meters.
433	19,909 dozen.
434	10,859 dozen.
435	14,210 dozen.
443	236,815 numbers.
611	8,037,351 square meters.
645/646	411,760 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 4, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28552 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Qatar and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2001 period.

A description of the textile and apparel categories in terms of HTS

numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	572,874 dozen.
341/641	264,404 dozen.
347/348	652,195 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 10, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28543 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Singapore and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
222	647,036 kilograms.
237	331,861 dozen.
239pt. [1]	223,410 kilograms.
331	589,417 dozen pairs.
334	85,126 dozen.
335	256,060 dozen.
338/339	1,710,196 dozen of which not more than 999,454 dozen shall be in Category 338 and not more than 1,111,269 dozen shall be in Category 339.
340	1,196,883 dozen.
341	300,957 dozen.
342	185,203 dozen.
347/348	1,198,311 dozen of which not more than 748,943 dozen shall be in Category 347 and not more than 582,513 dozen shall be in Category 348.
435	7,217 dozen.
604	1,071,991 kilograms.
631	694,517 dozen pairs.
634	324,996 dozen.
635	332,581 dozen.
638	1,193,658 dozen.
639	3,872,566 dozen.
640	255,165 dozen.
641	416,201 dozen.
642	425,468 dozen.
645/646	183,077 dozen.
647	744,765 dozen.
648	1,620,471 dozen.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

The limits set forth above are subject to adjustment pursuant to the provisions of the

ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 4, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28544 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Slovak Republic and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Slovak Republic and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001 in excess of the following limits:

Category	Twelve-month restraint limit
410	435,557 square meters.
433	12,165 dozen.
435	18,375 dozen.
443	101,630 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated September 21, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28545 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Thailand and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits. Carryforward used will be charged to the 2001 limits as it is used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended, and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001.

Category	Twelve-month restraint limit
Level not in a Group	
239pt.[1]	2,338,152 kilograms.
Levels in Group I	
200	1,526,022 kilograms.
218	23,503,767 square meters.
219	8,138,793 square meters.
300	6,104,095 kilograms.
301–P[2]	6,104,095 kilograms.
301–O[3]	1,220,821 kilograms.
313–O[4]	28,485,773 square meters.
314–O[5]	65,110,336 square meters.
315–O[6]	40,693,959 square meters.
317–O/326–O[7]	17,083,718 square meters.
363	26,451,074 numbers.
369–D[8]	290,963 kilograms.
369–S[9]	406,939 kilograms.
604	952,100 kilograms of which not more than 610,409 kilograms shall be in Category 604–A[10].
607	4,069,393 kilograms.
611–O[11]	13,557,514 square meters.
613/614/615	61,501,381 square meters of which not more than 35,810,685 square meters shall be in Categories 613/615 and not more than 35,810,685 square meters shall be in Category 614.
617	22,208,831 square meters.
619	9,156,140 square meters.
620	9,156,140 square meters.
625/626/627/628/629	17,937,902 square meters of which not more than 14,242,886 square meters shall be in Category 625.
669–P[12]	8,582,688 kilograms.
Group II	
237, 331–348, 350–352, 359–H[13], 359pt.[14], 431, 433–438, 440, 442–448, 459pt.[15], 631, 633–652, 659–H[16], 659pt.[17], 831, 833–838, 840–858 and 859pt.[18], as a group.	373,347,279 square meters equivalent.
Sublevels in Group II	
331/631	2,221,105 dozen pairs.
334/634	793,533 dozen.
335/635/835	630,756 dozen.
336/636	406,939 dozen.
338/339	2,260,810 dozen.
340	366,246 dozen.
341/641	864,747 dozen.
342/642	752,839 dozen.
345	386,593 dozen.
347/348/847	1,063,128 dozen.
351/651	305,204 dozen.
359–H/659–H	1,785,277 kilograms.
433	10,068 dozen.
434	12,428 dozen.
435	56,472 dozen.
438	18,641 dozen.
442	21,647 dozen.
638/639	2,664,526 dozen.
640	671,449 dozen.
645/646	406,939 dozen.
647/648	1,448,705 dozen.

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[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 301–P: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

[3] Category 301–O: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.

[4] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[5] Category 314–O: all HTS numbers except 5209.51.6015.

[6] Category 315–O: all HTS numbers except 5208.52.4055.

[7] Category 317–O: all HTS numbers except 5208.59.2085; Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[8] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[9] Category 369–S: only HTS number 6307.10.2005.

[10] Category 604–A: only HTS number 5509.32.0000.

[11] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[12] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[13] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[14] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.90.2060 (Category 359–H); and 6406.99.1550.

[15] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[16] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[17] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540.

[18] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directives dated December 1, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factors for merged Categories 359–H/659–H and 638/639 are 11.5 and 12.96, respectively.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28546 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

November 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously for carryforward, carryforward used, carryover, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68336, published on December 7, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 2000 and extends through December 31, 2000.

Effective on November 7, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
Levels in Group I	
300	5,596,806 kilograms.
363	26,344,301 numbers.
369–D[2]	297,912 kilograms.
611–O[3]	12,184,476 square meters.
613/614/615	55,897,655 square meters of which not more than 32,944,512 square meters shall be in Categories 613/615 and not more than 32,944,512 square meters shall be in Category 614.
619	9,161,425 square meters.
620	9,518,343 square meters.
669–P[4]	8,764,290 kilograms.
Group II	
237, 331–348, 350–352, 359–H[5], 359pt.[6], 431, 433–438, 440, 442–448, 459pt.[7], 631, 633–652, 659–H[8], 659pt.[9], 831, 833–838, 840–858 and 859pt.[10], as a group.	371,312,509 square meters equivalent.
Sublevels in Group II	
331/631	2,268,102 dozen pairs.
334/634	717,945 dozen.
335/635/835	592,348 dozen.
338/339	2,653,046 dozen.
340	389,802 dozen.
341/641	938,731 dozen.
347/348/847	1,077,944 dozen.
351/651	323,226 dozen.
435	64,571 dozen.
438	21,315 dozen.
442	24,752 dozen.
638/639	2,564,025 dozen.
640	593,719 dozen.
647/648	1,457,982 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[4] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[5] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[6] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.96.2060 (Category 359–H); and 6406.99.1550.

[7] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540.

[10] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28561 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Turkey and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits. The limits for certain categories have been reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the period January 1, 2001 through December 31, 2001, in excess of the following levels of restraint:

Category	Restraint limit
Fabric Group	
219, 313–O[1], 314–O[2], 315–O[3], 317–O[4], 326–O[5], 617, 625/626/627/628/629, as a group.	225,851,478 square meters of which not more than 51,611,668 square meters shall be in Category 219; not more than 63,080,926 square meters shall be in Category 313–O; not more than 36,701,630 square meters shall be in Category 314–O; not more than 49,317,818 square meters shall be in Category 315–O; not more than 51,611,668 square meters shall be in Category 317–O; not more than 5,734,628 square meters shall be in Category 326–O, and not more than 34,407,781 square meters shall be in Category 617.
Sublevel in Fabric Group	
625/626/627/628/629	23,233,855 square meters of which not more than 9,293,541 square meters shall be in Category 625; not more than 9,293,541 square meters shall be in Category 626; not more than 9,293,541 square meters shall be in Category 627; not more than 9,293,541 square meters shall be in Category 628; and not more than 9,293,541 square meters shall be in Category 629.
Limits not in a group	
200	2,177,696 kilograms.
300/301	10,017,781 kilograms.
335	457,807 dozen.
336/636	1,078,390 dozen.
338/339/638/639	6,343,877 dozen of which not more than 5,709,490 dozen shall be in Categories 338–S/339–S/638–S/639–S[6].
340/640	1,857,095 dozen of which not more than 528,181 dozen shall be in Categories 340–Y/640–Y[7].
341/641	1,833,968 dozen of which not more than 641,889 dozen shall be in Categories 341–Y/641–Y[8].
342/642	1,200,472 dozen.
347/348	6,531,380 dozen of which not more than 2,271,897 dozen shall be in Categories 347–T/348–T[9].
350	643,270 dozen.
351/651	1,028,478 dozen.
352/652	3,724,660 dozen.
361	2,162,686 numbers.
369–S[10]	2,245,602 kilograms.
410/624	1,152,389 square meters of which not more than 806,673 square meters shall be in Category 410.
448	39,542 dozen.
604	2,731,552 kilograms.
611	68,334,865 square meters.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[7] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[8] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[9] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[10] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated November 9, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28547 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of Proposed Funding Priorities for Fiscal Years 2001–2002 for a National Center on Accessible Education-Based Information Technology, the Disability and Business Technical Assistance Centers, and a Traumatic Brain Injury Data Collection Center.

SUMMARY: We propose funding priorities for a National Center on Accessible Education-Based Information Technology, the Disability and Business Technical Assistance Centers (DBTACs), and a Traumatic Brain Injury (TBI) Data Collection Center under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years (FY) 2001–2002. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities. This notice contains proposed priorities under the Americans with Disabilities Act (ADA) Technical Assistance Projects and the Disability and Rehabilitation Research Projects and Centers Program.

DATES: We must receive your comments on or before December 7, 2000.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3414, Switzer Building, Washington, DC. 20202–2645. Comments may also be sent through the Internet: donna_nangle@ed.gov

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in Room 3414, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance To Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed priorities would address the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The authority for the programs to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764). Regulations governing these programs are found in 34 CFR part 350.

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute.

The proposed priorities refer to NIDRR's Long Range Plan (the Plan). The Plan can be accessed on the World Wide Web at: *http://www.ed.gov/legislation/FedRegister/other/1999–12/68576.html*.

Priorities on the ADA and Accessible Education-Based Information Technology (IT)

Public Law 101–336, the Americans with Disability Act (ADA), enacted on July 26, 1990, prohibits discrimination against individuals with disabilities in employment, public accommodations, transportation, State and local government, and telecommunications. In October 1991, and again in October 1996, NIDRR awarded five-year grants to establish 10 regional Disability and Business Technical Assistance Centers (DBTACs). These centers provide technical assistance and training on all of the requirements of the ADA to covered entities and individuals with responsibilities and rights under the ADA. Currently, there is one DBTAC in each of the 10 Department of Education regions. For FY 2001 NIDRR is proposing to fund 10 new DBTACs that will maintain the current level of effort on providing information and technical assistance on the ADA as well as add a special emphasis in the area of education-based information technology (IT). The purpose of this special emphasis is to assist covered educational entities in providing children, youth, and adults with disabilities with access to IT.

NIDRR is proposing two priorities toward this end. The first establishes a national center on accessible education-based IT that will operate in collaboration with the DBTACs and will provide support and guidance on education-based accessible IT technical assistance activities. The second proposed priority establishes 10 new DBTACs and delineates the technical assistance and training activities required of them to promote the successful implementation of the ADA, including those activities related to the special emphasis on educational institutions and accessible IT.

For the purposes of these priorities, and consistent with the Clinger-Cohen Act of 1996, information technology is defined to include any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. It includes computer hardware, software, networks, and peripherals as well as many electronic and communications devices commonly used in offices. Education-based IT refers to any IT that is used by either students or employees of educational entities, including, but not limited to, teachers, administrators, and administrative staff.

Proposed Priority 1: National Center on Accessible Education-based IT

Background

IT plays a critical role in all educational settings. Regardless of their age, students who cannot access IT are operating at a significant disadvantage to their peers who can. Recent reports suggests that, regardless of age, educators and students with disabilities face significant IT accessibility issues ("Computer and Internet Use Among People with Disabilities," Dr. Stephen Kaye, Disability Statistics Center, University of California-San Francisco, published by NIDRR, U.S. Department of Education, March 2000; and "What are the Barriers to Use of Advanced Telecommunications for Students with Disabilities in Public Schools," Issue Brief published by the National Center for Education Statistics, U.S. Department of Education, NCES 2000–42, January 2000). These issues can be broken down into two types: legal and technological.

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability in any program or activity of recipients of Federal financial assistance. Virtually all school districts receive Federal funds and have been required to comply with section 504 for many years. The ADA extends this prohibition to a wider range of educational entities; however, with some exceptions, the ADA does not impose any major new requirements on school districts and other educational entities that receive Federal funds and are covered by section 504.

The ADA requires virtually all educational entities to ensure that persons with disabilities are not excluded from participation in, or denied the benefits of, its services, programs, and activities. This includes all aspects of the instructional environment, employment relationships, and services carried out by contractors. When IT is part of the programs, services, or activities provided by the educational entity, those entities have an obligation to ensure that the hardware and software that make up those technologies are accessible to all users. In some instances, educational entities may be unaware of their legal obligation to provide accessible IT to persons with disabilities who enroll or seek to enroll in their programs. Similarly, persons with disabilities may be unaware that they are entitled under the ADA to access the IT of the educational entity.

It may also be the case that educational entities do not have the information they need to either purchase accessible IT, or adapt the IT they have so that it is accessible to students or employees with disabilities. Both the responsible party within the educational entity (*e.g.*, the procurement officer, related services personnel, the teacher, or the computer lab director) and the student, or employee with a disability, may be unaware that accessible IT exists and can be purchased, or that adaptations may be made to the existing IT to provide accessibility. When a student or employee with a disability uses assistive technology (*e.g.*, an augmentative communication device), the technological problem may involve identifying the proper interface between the educational entity's IT and the student or employee's assistive technology. In these instances information and technical assistance can aid the educational entity to provide accessible IT.

Some educational entities may also be required to comply with the standards for accessible technology to be issued by the Access Board, as required by Section 508 of the Rehabilitation Act. Section 508 requires Federal agencies and departments to ensure equal access to electronic and information technology for individuals with disabilities comparable to those who do not have disabilities, unless such a requirement would cause an undue burden. The Assistive Technology Act (AT Act) requires that States receiving assistance, including sub-recipients of AT Act funds, under the AT State Grants program comply with the requirements of section 508, including the standards developed by the Access Board. Each State must determine whether entities such as colleges and universities or local and intermediate school districts are considered part of the State and therefore, must comply with Section 508 and the standards as published by the Access Board.

Proposed Priority

We propose to establish a National Center on Accessible Education-Based IT to assist educational entities in providing persons with disabilities with accessible IT. The Center must:

(1) Develop new materials and reformat or reprint existing materials to assist educational entities to understand and fulfill their legal obligations to provide accessible IT. These materials may include, but are not limited to, the ADA self-evaluation guide for schools, section 504 and ADA guidance for educational entities, technical materials on IT access, consumers guide to accessible IT, and technical IT standards;

(2) Conduct a national information dissemination campaign to raise awareness on accessible education-based IT and inform target audiences on the availability of technical assistance from the DBTACs and others. This campaign may include, but is not

limited to, print and electronic ads, newsletters, presentations at national conferences, and regular electronic communication with national organizations to update them on legal and technological developments;

(3) Promote the procurement by educational entities of accessible information technology that meets the standards for section 508 or universal design principles;

(4) Coordinate with and provide training, materials, and technical assistance to the DBTACs in support of their technical assistance efforts to educational entities on accessible IT;

(5) Provide training, materials, and technical assistance to the U.S. Department of Education's various IT initiatives including, but not limited to, the Regional Technology in Education Consortia, Comprehensive Regional Assistance Centers, the Technology Literacy Challenge Fund, Community Technology Centers, and the Preparing Tomorrow's Teachers to Use Technology Programs in order to promote accessibility by persons with disabilities; and

In carrying out these activities, the National Center on Accessible Education-based IT must:

- Include in its primary target audience elementary and secondary institutions, and postsecondary educational entities including, but not limited to, institutions of higher education, proprietary schools (particularly those offering IT training), and adult education programs;
- Coordinate with NIDRR's Rehabilitation Engineering Research Centers (RERCs) on Information Technology Access and Telecommunications Access, and also with NIDRR's Information Technology Technical Assistance and Training Center;
- Coordinate with relevant Federal agencies responsible for the administration of public laws that address access to and usability of education-based IT for persons with disabilities including, but not limited, to the General Services Administration, the Access Board, the Federal Communications Commission, the Department of Justice, and offices within the Department of Education including the Rehabilitation Services Administration, the Office of Special Education Programs, and the Office for Civil Rights;
- Develop and maintain a web site to assist educational entities to understand and fulfill their legal obligations related to accessible IT; and
- Provide information and technical assistance consistent with other IT accessibility laws, including, but not limited to, section 508 of the Rehabilitation Act.

Proposed Priority 2: Disability and Business Technical Assistance Centers

Background

Covered entities and individuals with responsibilities and rights under the ADA continue to need technical assistance on the ADA. The demand for technical assistance services from the DBTACs has remained high since 1992 (see Table 1), a trend that will likely continue indefinitely.

TABLE 1.—SUMMARY OF SELECTED DBTAC TECHNICAL ASSISTANCE AND TRAINING ACTIVITIES FROM FY 1992 THROUGH FY 1999

Fiscal year	Number of 800 line calls	Number of people trained	Number of technical assistance efforts	Number of hard copy materials disseminated
1992	20,000	30,759	40,313	188,842
1993	61,000	63,341	79,964	539,511
1994	75,700	56,800	127,736	698,040
1995	90,400	64,870	152,395	901,878
1996	88,500	64,502	135,000	1,800,000
1997	91,534	70,000	180,909	785,695
1998	92,312	86,000	157,126	1,082,294
1999	90,839	74,500	170,865	1,014,057

Source: Annual Reports of NIDRR's ADA Technical Assistance Grantees FY 1992–FY 1999

In many instances, the nature of the technical assistance that the DBTACs provide today is more complex than the technical assistance they provided in the years shortly after the passage of the ADA. This is a result of covered entities seeking to stay current with the growing body of legal precedents as well as standards and policy guidance issued by responsible Federal agencies. However, there are still many covered entities that need information on the most fundamental requirements of the law. Subsequently, DBTACs must continue to provide basic information about the ADA as well as respond to more complex requests for technical assistance and training.

In order to be effective, it is virtually imperative that the DBTACs exploit the benefits of IT and stay current with new developments in the field. For example, the DBTACs use web-based programs to carry out distance learning activities in order to increase access to and participation in their information dissemination efforts. In FY 1999 the DBTACs and the ADA Program Assistance Coordinator's web sites received over 870,001 visits. While there will always be a need to distribute hard copies of materials, the DBTACs receive increasing numbers of requests for electronic copies of these same materials. They also respond to technical questions, provide training, and participate in cooperative efforts related to ADA technical assistance activities using electronic media. To carry out a wide variety of electronic and web-based technical assistance and training activities, the DBTACs' staffs must have a sufficiently high level of expertise on IT.

The DBTACs provide a wide range of technical assistance services such as referrals, consultation, and information dissemination. They also issue newsletters and information briefs, and participate in discussion groups on the Internet. The DBTACs address the needs of non-English populations by distributing materials that have been translated into other languages and employing bilingual information specialists when appropriate. Table 2 indicates the recipient groups of the DBTACs technical assistance, training, and materials distribution activities in FY 1999.

TABLE 2.—SUMMARY OF PERCENTAGE OF TECHNICAL ASSISTANCE, TRAINING, AND MATERIALS DISTRIBUTED TO TARGET AUDIENCE BY DBTACS IN FY 1999

Target Audience	Technical assistance (percent)	Training (percent)	Materials distribution (percent)
Disability Entities	50	44	45
Businesses	31	24	30
Public Entities	14	23	18
Other	5	9	7

Source: Annual Report of NIDRR's ADA Technical Assistance Grantees FY 1999.

In addition, the DBTACs carry out public awareness activities on the ADA and the services provided by the DBTACs through a variety of means including, but not limited to, radio and television appearances, presentations at conferences, and the production of materials for newspaper and magazine articles. When it enhances their technical assistance activities, the DBTACs also disseminate ADA research findings generated by NIDRR-sponsored grantees and others.

In order to tailor their efforts to State and local needs and maximize their resources, DBTACs also work to increase the capacity of State and local organizations to provide technical assistance, disseminate information, provide training, and promote awareness of the ADA. The DBTACs have established at least one affiliate in every State. These affiliates carry out their activities in collaboration with coalitions of organizations interested in promoting the implementation of the ADA. In addition, the DBTACs support and collaborate with Centers for Independent Living (CILs) to assist them in implementing the ADA through the provision of technical assistance and training.

The DBTACs rely, to the maximum extent possible, on existing Federally-approved materials and, through a systematic process of quality control, ensure the legal sufficiency and accuracy of the information disseminated by the Centers and their affiliates. DBTAC services and activities are accessible to all individuals with disabilities, and all of the materials they distribute are available in alternate formats. The DBTACs also share a national toll-free telephone number that automatically connects the caller with the DBTAC serving the caller's area code. Further, the DBTACs meet semi-annually to coordinate their activities and receive briefings from Federal agencies with responsibilities under the ADA. They also evaluate their technical assistance efforts using the ADA Impact Measurement System (AIMS). AIMS uses a follow-up telephone survey and a postcard survey to measure the impact that the DBTACs' technical assistance has had on its customers and their level of satisfaction with the services that the DBTACs provided. AIMS is currently maintained by one of the DBTACs. The proposed priority includes an optional activity authorizing a DBTAC to maintain AIMS over the proposed project period. From among those DBTAC applicants who propose to maintain AIMS over the project period, the application evaluation process will select one successful applicant to carry out this activity.

Since 1991, the DBTACs have provided technical assistance and training to educational entities on their responsibilities under the ADA. In 1994, NIDRR funded a training project on the ADA for schools and supported the U.S. Department of Education Office for Civil Rights' development and publication of an ADA self-evaluation guide for public elementary and secondary schools. A toll-free ADA hotline specifically for school systems, that originated with the schools training project, is still in operation through the Region I DBTAC. The special emphasis that is being placed on the DBTACs to provide technical assistance on accessible IT to educational entities represents an expansion of their technical assistance efforts. In those instances where the requisite assistance is a matter of helping the entity to understand its legal obligation, NIDRR expects the DBTACs to provide accurate information to the educational entity on the requirements of the ADA. In those instances where the requisite assistance is technical and involves assisting the entity to procure, create, adapt, maintain or evaluate the accessibility of their IT, NIDRR expects the DBTACs to possess the requisite technical expertise or develop partnerships with agencies and organizations who have the necessary technical expertise.

The DBTACs routinely receive inquiries that involve disability-related laws or disability rights laws other than the ADA. In some of these instances, the inquiry concerns the interaction between the ADA and disability-related laws such as the Family and Medical Leave Act or the Worker's Compensation Act. In other instances, individuals with a disability may believe that their civil rights have been violated, but are not sure of the controlling authority. For example, individuals with a disability may want to know about their landlord's responsibility to make their apartment accessible. In this case, in order to provide appropriate technical assistance, the DBTAC must be sufficiently familiar with not only the ADA, but also the Fair Housing Act. Thus to respond directly or to refer the inquirer to an expert source of technical assistance, the DBTACs must be knowledgeable about a wide array of disability-related or disability rights laws.

Proposed Priority

We propose to establish a Regional DBTAC in each of the Department of Education 10 regions to facilitate implementation of the ADA. Each center must:

(1) Provide technical assistance and training and disseminate information to individuals and entities with responsibilities and rights under the ADA on the ADA's requirements as well as developments in case law, policy, and implementation;

(2) Increase the capacity of organizations, at the State and local level, including CILs, to provide technical assistance and training on, disseminate information on, and promote awareness of the ADA;

(3) Promote awareness of the ADA and the availability of services provided by the DBTACs, other NIDRR-sponsored ADA grantees, and other Federal information sources on the ADA;

(4) Provide technical assistance and training and disseminate information on legal obligations of educational entities to provide accessible IT to students and employees;

(5) Provide technical assistance to educational entities to enable them to

conduct self-evaluations on the accessibility of their IT;

(6) Provide technical assistance, either directly or through referral, on how to make existing IT accessible and ensure that new IT acquisitions are accessible;

(7) Promote "best practices" by encouraging educational entities to purchase IT consistent with the standards issued by the Access Board under Section 508 or universal design principles, regardless of whether they have a legal obligation to do so;

(8) Provide information to CILs, Parent Training Information Centers, and the Regional Resource Centers on accessible education-based IT; and

(9) Form regional partnerships among Assistive Technology Act grantees, RERCs, Office of Special Education Programs' technology grantees, and other pertinent educational organizations and agencies to guide, coordinate, and if appropriate, carry out technical assistance activities in each region.

In carrying out these activities each DBTAC must:

- Involve individuals with disabilities, parents or other family members of individuals with disabilities, in all phases of the design and operation of the DBTAC to the maximum extent possible;
- Be knowledgeable about a wide array of disability-related or disability rights laws including, but not limited to, sections 504 and 508 of the Rehabilitation Act, the Individuals with Disabilities Education Act, the Air Carriers Access Act, section 255 of the Telecommunications Act, section 188 of the Workforce Investment Act, the Fair Housing Act, the Family and Medical Leave Act, the AT Act, and the Worker's Compensation Act;
- Coordinate its activities with the National Center on Accessible Education-based IT, and Federal agencies including, but not limited to, the Department of Justice, the Equal Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission, the Access Board, the Department of Education's Office for Civil Rights, the President's Committee on Employment of Persons with Disabilities, the National Council on Disability, and other offices within the Department of Education including the Rehabilitation Services Administration, and the Office of Special Education Programs;
- Provide performance accountability data on a monthly and annual basis as requested by NIDRR;
- Distribute services and resources equitably—taking into account population and size—among each State in its region;
- Address the needs of non-English speaking populations; and

Include in their target audience for activities (4), (5), (6), and (7): elementary and secondary institutions, and postsecondary educational entities including, but not limited to, institutions of higher learning, proprietary schools (particularly those offering IT training), and adult education programs.

In carrying out its evaluation activities, a DBTAC may maintain the ADA Impact Measurement System.

Proposed Additional Selection Criterion for the DBTACs and the National Center on Accessible Education-Based IT Priorities

We will use the selection criteria in 34 CFR 350.54 to evaluate applications under this program. In evaluating applications for the DBTACs and the National Center on Accessible Education-based IT and, we will also use the following factor under the project staff criterion. In determining the quality of the project staff, we will consider the extent to which key personnel have expert knowledge about state-of-the-art IT to conduct all proposed activities.

Disability and Rehabilitation Research Project and Centers Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to:

(a) Develop methods, procedures, and rehabilitation technology that maximizes the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities; and

(b) Improve the effectiveness of services authorized under the Act.

Proposed Priority 3: Traumatic Brain Injury (TBI) Data Center

Background

An estimated 5.3 million Americans currently live with disabilities resulting from brain injury. The Centers for Disease Control (CDC) estimates that approximately 80,000 Americans experience the onset of disabilities resulting from TBI each year. The three leading causes of TBI are motor vehicle crashes, violence, and falls, particularly among the elderly. As stated in the 1998 National Institutes of Health (NIH) Consensus Conference, "TBI may result in lifelong impairment of an individual's physical, cognitive, and psychosocial functioning."

In 1987, NIDRR established the National Traumatic Brain Injury Model Systems (TBIMS) Program by funding four research and demonstration projects to conduct research on comprehensive, multidisciplinary rehabilitation services to persons who experience TBI. This number expanded to 17 projects in 1998. The multi-project TBIMS program is designed to study the course of recovery and outcomes following the delivery of a coordinated system of care. (Additional information on TBIMS can be found at *http://www.tbims.org).* The TBIMS database currently contains over 2,000 cases and supports clinical research and research on outcomes including employment, community integration, and quality of life. Through a complex data collection and retrieval program, the TBIMS projects are capable of analyzing different system components to provide information on project cost effectiveness and benefits. Data is collected throughout the rehabilitation process and at specified follow up periods following discharge from the rehabilitation facility.

The parameters of the database are determined collaboratively by TBIMS project directors, in consultation with NIDRR. A syllabus describing the current data elements may be obtained from Donna Nangle at the contact information previously listed. Expansion of the number of projects has broadened the representation of subjects in terms of geographic distribution, ethnic group membership, and socioeconomic status.

In the past, data from the TBIMS database has been largely restricted to the use of TBIMS researchers. Recent Federal regulations (see March 16, 2000, 65 FR 14416–14418) outline conditions under which outside parties may request access to the data under the auspices of the Freedom of Information Act. In addition, there is increased interest in expanding the use of this data in conjunction with population-based data to further research on TBI by the larger research community. Both activities require development of guidelines that ensure subject confidentiality, protect the identity of individual projects, and support use of the data in rigorous research efforts.

Historically, the data center has been funded as a supplement to one of the projects in the TBIMS. We propose to establish a separate TBI data center to maintain this information.

Proposed Priority

We propose to establish a data center for the purpose of managing and facilitating the use of information collected by the TBIMS projects on individuals with traumatic brain injury. The data center must:

(1) Establish and maintain a database repository for data from TBIMS projects while providing for confidentiality, quality control, and data retrieval capabilities, using cost-effective and user-friendly technology;

(2) Ensure data quality, reliability, and integrity by providing training and technical assistance to TBIMS projects on data collection procedures, data entry methods, and use of study instruments;

(3) Provide consultation to NIDRR and directors and staff of the TBIMS projects on utility and quality of data elements;

(4) Support efforts to improve the research findings of the TBIMS projects by providing statistical and other consultation regarding the national database;

(5) Facilitate dissemination of information generated by the TBIMS projects, including statistical information, scientific papers, and consumer materials;

(6) Evaluate the feasibility of linking and comparing TBIMS data to population-based data sets, such as the CDC State-based injury surveillance data and provide technical assistance for such linkage, as appropriate; and

(7) Develop guidelines to provide access to TBIMS data by individuals and institutions, ensuring that data are available in accessible formats for persons with disabilities.

In carrying out these purposes, the center must:

- Demonstrate knowledge of culturally appropriate methods of data collection, including understanding of culturally sensitive measurement approaches; and
- Collaborate with other NIDRR funded projects, e.g., the Model Spinal Cord Injury and Burn Injury Model System Data Centers, regarding issues such as database development and maintenance, center operations, and data management.

Proposed Additional Selection Criterion

We will use the selection criteria in 34 CFR 350.54 to evaluate applications under these programs. The maximum score for all the criteria is 100 points; however, we will also use the following criterion so that up to an additional 10 points may be earned by an applicant for a total possible score of 110 points.

Up to 10 points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under these absolute priorities. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

Thus, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for these priorities. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Applicable Program Regulations: 34 CFR part 350.

Program Authority: 29 U.S.C. 762(g) and 764.

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http://ocfo.ed.gov/fedreg.htm
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Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.133D, Americans with Disabilities Act Technical Assistance Projects and 84.133A, Disability and Rehabilitation Research Project and Centers Program)

Dated: November 2, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–28528 Filed 11–06–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: Subject to timely enactment of legislation to reinstate the antitrust defense under section 252 of the Energy Policy and Conservation Act, a meeting of the Industry Advisory Board to the International Energy Agency will be held on November 14, 2000, at the headquarters of the IEA in Paris, France in connection with a meeting of the IEA's Standing Group on Emergency Questions.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: Subject to timely enactment of legislation to reinstate the antitrust defense under section 252 of the Energy Policy and Conservation Act (EPCA), the following meeting notice is provided, in accordance with section 252(c)(1)(A)(i) of the EPCA (42 U.S.C. 6272(c)(1)(A)(i)):

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on November 14, 2000, beginning at approximately 9 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA on November 14, including a preparatory encounter among company representatives on November 14 from approximately 9 a.m. to 9:15 a.m.

The Agenda for the preparatory encounter among company representatives is to elicit views regarding items on the SEQ's Agenda. The Agenda for the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following Agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 99th Meeting
3. SEQ Work Program
    - The Year 2001 Work Program of the SEQ
4. Follow-up to the Governing Board Decision of October 26
    - Measures to Ensure Compliance with IEA Stockholding Commitments
    - Alternative Criteria for Use of Emergency Stocks
5. Emergency Response Preparedness
    - Report on Results of Special Data Collection on Stocks and Refinery Operations
    - Report on the Communications Test
    - Arrangements for Preparedness Checklist and Country Profiles
    - Reports on Recent Test/Drawdown/Sale Operations by the United States, Japan and Germany
    - United States Heating Oil Reserves
6. Policy and Legislative Developments in Member Countries
    - Status of United States EPCA

- Revision to Oil Emergency Policies and Procedures of the United Kingdom
- Status of the new Dutch Stockholding Law
- Follow-up to Biarritz meeting of European Union Heads of State
- Other

7. Current IAB Activities (subject to reinstatement of EPCA's antitrust defense)
8. Emergency Reserve Issues
    - Progress Report of the Working Group on Unavailable Stocks
9. Policy and Legislative Developments in Candidate Countries
    - Emergency Response Review of Korea
    - Recent Developments in Korea
    - Other
10. Oil Security Developments in Member Countries
    - China-Japan Stockholding Symposium of October 17–18
    - APEC Initiatives on Stockholding
    - Other Initiatives and Events
11. Emergency Data System and Related Questions
    - Monthly Oil Statistics July 2000
    - Base Period Final Consumption 3Q99—2Q00
12. Emergency Reference Guide
    - Update of Emergency Contact Points List
13. Other Business
    - Dates of future SEQ Meetings and the Millennium Conference on Oil Security Strategy
    - Reminder of submission of comments on:

    Transition from CERM (Coordinated Emergency Response Measures) to IEP (International Energy Program) Procedures

    First Draft of Questionnaire for Next Review Cycle

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, November 2, 2000.

Mary Anne Sullivan,

General Counsel.

[FR Doc. 00–28536 Filed 11–6–00; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Subcommittee on Generation IV Technology Planning of the Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Subcommittee on Generation IV Technology Planning of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: November 16, 2000, 9 a.m.–Noon.

ADDRESSES: J W Marriott, National Place, 1331 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 393–2000. Public Meeting to be held in the Cannon Room.

FOR FURTHER INFORMATION CONTACT: Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy (DOE), NE–1, 1000 Independence Avenue, SW., Washington DC 20585, Telephone Number 202–586–0136, E-mail: Norton.Haberman@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The Subcommittee on Generation IV Technology Planning of the Nuclear Energy Research Advisory Committee has been requested to provide the Director of the Office of Nuclear Energy, Science and Technology with guidance on DOE's effort to prepare a Generation IV technology roadmap. The broad objectives of the Generation IV program are to develop nuclear energy systems that exceed today's state-of-the-art technology in terms of enhanced nuclear safety, minimization of waste generation, increased proliferation resistance and superior economics. The subcommittee will consider the views of individuals and organizations about specific goals that should be included in the roadmap as well as recommendations as to research and development activities that should be addressed.

Tentative Agenda

Thursday, November 16, 2000.

The agenda for this meeting will be dependent on the responses to this Notice.

Public Participation

The meeting is open to the public on a first-come, first-served basis. Written statements may also be filed with the committee before or after the meeting. Members of the public who wish to make oral statements should contact Norton Haberman at the address or telephone number listed above. Such statements should be limited to five minutes. Requests to make oral statements must be made and received five days prior to the meeting. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room. 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington DC on November 2, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–28500 Filed 11–6–00; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Secretary of Energy Advisory Board—Openness Advisory Panel; Department of Energy.

SUMMARY: This notice announces a meeting of the Secretary of Energy Advisory Board's Openness Advisory Panel. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES: Friday, November 17, 2000, 9 a.m.–3:30 p.m.

ADDRESSES: U.S. Department of Energy, Program Review Center (Room 8E–089), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTE: Members of the public are requested to contact the Office of the Secretary of Energy Advisory Board at (202) 586–7092 in advance of the meeting to expedite their entry to the Forrestal Building on the day of the meeting. Public participation is welcomed.

FOR FURTHER INFORMATION CONTACT: Mary Louise Wagner, Executive Director or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Openness Advisory Panel is to provide advice to the Secretary of Energy Advisory Board regarding the status and strategic direction of the Department's classification and declassification policies and programs, and other aspects of the Department's ongoing Openness Initiative. The Panel's work will help institutionalize the Department's Openness Initiative.

Tentative Agenda

The agenda for the November 17 meeting has not been finalized but will include a discussion of the results of the Openness Advisory Panel's community relations pilot reviews conducted at the Fernald Environmental Management site, Lawrence Berkeley National Laboratory and Lawrence Livermore National Laboratory. In addition, the Openness Advisory Panel will review and discuss a draft report documenting the findings and recommendations of the OAP's Community Relations Pilot Review Members of the Public wishing to comment on issues before the Openness Advisory Panel will have an opportunity to address the Panel during a scheduled public comment period.

A final agenda will be available at the meeting.

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the Openness Advisory Panel and submit written comments or comment during the scheduled public comment periods. The Chairman of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C. the Panel welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Panel will make every effort to hear the views of all interested parties. You may submit written comments to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on November 2, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–28498 Filed 11–6–00; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Teleconference Meeting

AGENCY: Secretary of Energy Advisory Board. Department of Energy.

SUMMARY: This notice announces a open teleconference meeting of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation. The purpose of the teleconference is to discuss the final findings and recommendations of the Secretary of Energy Advisory Board's National Ignition Facility Laser System Task Force, a subcommittee of the Secretary of Energy Advisory Board.

Note: Copies of the draft final report of the National Ignition Facility Laser System Task Force may be obtained from the following internet address http://www.hr.doe.gov/seab/ or by contacting the Office of the Secretary of Energy Advisory Board at (202) 586–7092.

DATES: Monday, November 20, 2000, 1:30 PM–3:00 PM, Eastern Standard Time.

ADDRESSES: Participants may call the Office of the Secretary of Energy Advisory Board at (202) 586–7092 to reserve a teleconference line and receive a call-in number. Public participation is welcomed. However, the number of teleconference lines are limited and are available on a first come basis.

FOR FURTHER INFORMATION CONTACT: Mary Louise Wagner, Executive Director, or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary of Energy Advisory Board (The Board) is to provide the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its subcommittees provide timely, balanced, and authoritative advice to the Secretary of Energy on the Department's management reforms, research, development, and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy. The National Ignition Facility Laser System Task Force, a subcommittee of the Secretary of Energy Advisory Board, was formed to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on options to complete the National Ignition Facility (NIF) Project; to recommend the best technical course of action; and to review and assess the risks of successfully completing the NIF Project. The NIF Laser System Task Force was tasked to focus on the engineering and management aspects of the proposed method for accomplishing the assembly and installation of the NIF laser system; to review the full scope of assembly and installation and the ability, within the proposed approach, to achieve the cleanliness requirements established for the operation of the laser. The Task Force's review was also to address: (1) The engineering viability of the proposed assembly and activation method; (2) the assembly and installation cleanliness protocols; (3) the management structure; and (4) the adequacy of the cost estimating methodology. On October 19, 2000 the NIF Laser System Task Force completed their review and approved their final report.

On November 20, the Board will conduct a teleconference to discuss the findings and recommendations contained in the final report of the NIF Laser System Task Force. These findings and recommendations address the engineering and management aspects of the proposed method for accomplishing the assembly and installation of the NIF laser system.

Tentative Agenda

Monday, November 20, 2000

1:30 pm–1:40 pm—Welcome and Opening Remarks—Mr. Andrew Athy, Chairman of the Secretary of Energy Advisory Board
1:40 pm–2:00 pm—Overview of the National Ignition Facility Laser System Task Force's Final Findings

and Recommendations—Dr. John McTague, NIF Laser System Task Force Chairman

2:00 pm–2:30 pm—Public Comment Period

2:30 pm–3:00 pm—Board Review and Comment and Action—Mr. Andrew Athy, Chairman of the Secretary of Energy Advisory Board

3:00 pm–Adjourn

This tentative agenda is subject to change.

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the Secretary of Energy Advisory Board and submit written comments or comment during the scheduled public comment period. The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its open teleconference meeting, the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written comments to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

A copy of the minutes and a transcript of the open teleconference meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on November 2, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–28499 Filed 11–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC00–538–001]

Information Collection Submitted for Review and Request for Comments

November 1, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of June 15, 2000 (65 FR 37533) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before December 7, 2000.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW., Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at *mike.miller@ferc.fed.us*.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–538 "Gas Pipeline Certificate: Section 7(a) Mandatory Initial Service"

(2) *Sponsor:* Federal Energy Regulatory Commission.

(3) *Control No.:* OMB No. 1902–0061. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory collection requirement.

(4) *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the natural Gas Act (NGS). The information reported under Commission identifier FERC–538 is filed in accordance with Sections 7(a), 10(a) and 16 of the NGA (15 U.S.C. 717–717W). Under the NGA when a local distribution company or municipality makes an application, a natural gas pipeline company may be ordered by the Commission to extend or improve transportation facilities, establish physical connections to serve the entity, and sell natural gas to the applicant. Filings in accordance with Section 7(a) of the NGA are to contain all information necessary to advise the Commission fully concerning the service which the applicant has requested the Commission direct a natural gas pipeline company to provide. Included in the information to be provided should be a description of any improvement or extension of facilities which the natural gas pipeline company will be required to make in connection with the requested service, the applicant's present and proposed operations, construction, service, and sales in order to enable the applicant to engage in the local distribution of natural gas.

5. *Respondent Description:* The respondent universe currently comprises on average, 1 applicant for initial service.

6. *Estimated Burden:* 240 total burden hours, 1 respondent, 1 response annually, 240 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 240 hours ÷ 2,080 hours per year × $115,357 per year = $13,310.

Statutory Authority: Sections 7(a), 10(a), and 16 of the Natural Gas Act (NGA), (15 U.S.C. 717–717w).

David P. Boergers,

Secretary.

[FR Doc. 00–28466 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–19–000]

Chinook Pipeline Company; Notice of Application

November 1, 2000.

Take notice that on October 26, 2000, Chinook Pipeline Company (Chinook Pipeline), 2400, 645–7th Avenue, SW., Calgary, Alberta, Canada T2P 4G8, filed an application in Docket No. CP01–19–000, for a Presidential Permit and for authority under Section 3 of the Natural Gas Act to construct, connect, maintain and operate certain natural gas facilities at the border of the United States and Canada in Blaine County, Montana. The application was filed pursuant to Part 153 of the Commission's Regulations (18 CFR 153). The facilities will be used to export up to 15,000 Mcf per day of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). The name, address, and telephone/fax numbers of the applicant's representative, to whom correspondence and communications concerning this application should be address is: Wade J. McGowan, Chinook Pipeline Company, 2400, 645–7th Avenue, SW., Calgary, Alberta, Canada T2P 4G8, (403) 265–1200 (Phone) or (403) 265–1300 (Fax).

Chinook Pipeline is a wholly owned subsidiary of Xeno. Inc. (Xeno), a Montana Corporation. The proposed facilities are part of Chinook Pipeline's proposed project to construct, own and operate a 15.7 mile long, six-inch diameter gas pipeline from Xeno's existing Battle Creek natural gas plant in Blaine County, Montana, to the U.S.-Canada border. The proposed pipeline will cross the international boundary and connect to a receipt point at Loomis, Saskatchewan. This receipt point will be constructed by Many Islands Pipeline, a subsidiary of TransGas of Regina, Saskatchewan.

Chinook Pipeline requests that the Commission expeditiously grant the authorizations herein requested so as to enable it to construct and commence service through the proposed border crossing facilities as soon as possible, in order to begin service for the upcoming 2000–2001 winter heating season.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 22, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http;//www.ferc.fed.us/efi/doorbell.htm.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure provided for, unless otherwise advised, it will be unnecessary for Chinook Pipeline to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–28465 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–12–000]

Gregory & Beverly Swecker, Complainants v. Midland Power Cooperative, Respondent; Notice of Complaint

November 1, 2000.

Take notice that on October 30, 2000, Gregory & Beverly Swecker (Complainants) filed a complaint against Midland Power Cooperative (Respondent). The complainants are requesting the Federal Energy Regulatory Commission (Commission) to determine Midland Power Cooperative's full avoided cost.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before November 20, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before November 20, 2000. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28501 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–180–001, et al.]

New York Independent System Operator, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 27, 2000.

Take notice that the following filings have been made with the Commission:

1. New York Independent System Operator, Inc.

[Docket Nos. ER01–180–001 and ER01–181–001]

Take notice that on October 24, 2000, the New York Independent System Operator, Inc. (NYISO), tendered for filing a Notice of Correction in the above captioned proceedings. The Notice of Correction explained that due to an administrative error, revised tariff sheets that should have been included in the NYISO's October 20, 2000 filing in Docket No. ER01–180–000 were mistakenly included in the NYISO's October 20, 2000 filing in Docket No. ER01–181–000. Similarly, revised tariff sheets that should have been included in the NYISO's October 20, 2000 filing in Docket No. ER01–181–000 were mistakenly included in the NYISO's October 20, 2000 filing in Docket No. ER01–180–000. Accordingly, the Notice of Correction included corrected versions of the two filings and new notices in both proceedings.

A copy of this filing was served upon all parties in Docket No. ER00–3038–000, Docket Nos. ER00–3591–000 and ER00–3591–001, Docket Nos. ER97–1523–000, OA97–470–000 and ER97–4324–000, not consolidated, and on all other parties who have executed Service Agreements under the NYISO's Open Access Transmission Tariff or Market Administration and Control Area Services Tariff.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC (AE Supply)

[Docket No. ER00–3568–001]

Take notice that on October 23, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (AE Supply), tendered for filing Original Sheet Nos. 7 through 35 to AE Supply's Rate Schedule No. 7.

AE Supply has requested a waiver of notice to make the rate schedule change effective on August 1, 2000, or on a date determined by the Commission.

Copies of the filing have been provided to the customer and to the West Virginia Public Service Commission.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Georgia-Pacific Corporation

[Docket No. ER00–3604–001]

Take notice that on October 23, 2000, Georgia-Pacific Corporation (G-P), tendered for filing FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 1, in compliance with Order No. 614, Designation of Electric Rate Schedules, 99 FERC ¶61,352.

G-P requests that this tariff be made effective October 18, 2000, in accordance with its Petition filed with the Commission on September 7, 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. The Dayton Power and Light Company

[Docket No. ER00–3641–001]

Take notice that on October 24, 2000, The Dayton Power and Light Company (DP&L), tendered for filing an amended Wholesale Market Based Rate Tariff and a pro forma Service Agreement to comply with Order 614.

DP&L seeks it originally requested effective date of September 15, 2000 for all of the tariff sheets submitted with this filing.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket No. ER01–177–000]

Take notice that on October 19, 2000, Arizona Public Service Company (APS) tendered for filing Quarterly Refund payments to eligible wholesale customers under the Company's Fuel Cost Adjustment Clause (FAC).

A copy of this filing has been served upon the affected parties, the California Public Utilities Commission, and the Arizona Corporation Commission.

Customer name	APS-FPC/FERC rate schedule
Electrical District No. 3	12
Tohono O'odham Utility Authority [1]	52
Arizona Electric Power Cooperative	57
Wellton-Mohawk Irrigation and Drainage District	58
Arizona Power Authority	59
Colorado River Indian Irrigation Project	[2] 65
Electrical District No. 1	68
Arizona Power Pooling Association	70
Town of Wickenburg	74
Southern California Edison Company	120
Electrical District No. 6	126
Electrical District No. 7	128
City of Page	134
Electrical District No. 8	140
Aguila Irrigation District	141
McMullen Valley Water Conservation and Drainage District	142
Tonopah Irrigation District	143
Citizens Utilities Company	[2] 207
Harquahala Valley Power District	153
Buckeye Water Conservation and Drainage District	155
Roosevelt Irrigation District	158
Maricopa County Municipal Water Conservation District	168
City of Williams	192
San Carlos Indian Irrigation Project	201
Maricopa County Municipal Water Conservation District at Lake Pleasant	209

[1] Formerly Papago Utility Tribal Authority.

[2] APS–FPC/FERC Rate Schedule in effect during the refund period.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Ameren Services Company

[Docket No. ER01–184–000]

Take notice that on October 23, 2000, Ameren Services Company (Ameren Services) tendered for filing a Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Newton, Illinois. Ameren Services asserts that the purpose of the Agreement is to permit Ameren Services to provide transmission service to the City of Newton, Illinois pursuant to Ameren's Open Access Tariff.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Indiana Gas and Electric Company

[Docket No. ER01–185–000]

Take notice that on October 23, 2000, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing the following agreement concerning the provision of electric service as an umbrella service agreement under its market-based Wholesale Power Sales Tariff:

Wholesale Energy Service Agreement dated October 12, 2000, by and between Southern Indiana Gas and Electric Company and El Paso Merchant Energy, L.P.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–186–000]

Take notice that on October 20, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Southern Energy Marketing, Inc. (now Southern Company Energy Marketing L.P., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 48.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–187–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Energy and Constellation Power Source (now Constellation Power Source, Inc.), FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 95.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–188–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Energy and El Paso Energy Marketing Company (now, El Paso Merchant Energy, L.P.), FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 91.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–189–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Service, Inc. and AYP Energy, Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 58.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–190–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Energy and American Electric Power Service Corporation, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 92.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–191–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and PECO Energy Company, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 11.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–192–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Energy and GPU Advanced Resources, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 86.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–193–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Energy and DTE Co-Energy LLC, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 89.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–194–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Long Island Lighting Company (now Long Island Lighting Co. d/b/a LIPA through buyer's agent Keyspan Energy Trading Services LLC), FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 3.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Southern Indiana Gas and Electric Company

[Docket No. ER01–195–000]

Take notice that on October 23, 2000, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing Service Agreements for Firm and Non-Firm Transmission Service under Part II of its Transmission Services Tariff with Alliance Energy Services Partnership and with H.Q. Energy Services (U.S.) Inc.

Copies of the filing were served upon each of the parties to the Service Agreements.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER01–200–000]

Take notice that on October 23, 2000, Cinergy Services, Inc. (Services), Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI) (collectively, Cinergy) tendered for filing a notice of termination of the Operating Agreement, dated March 2, 1994, by and among CG&E, PSI and Services. The Operating Agreement is designated as Cinergy Operating Companies Rate Schedule FERC No. 1.

Cinergy has requested that termination take effect on December 31, 2000.

Copies of the filing were served on the affected state commissions and the other persons identified on the service list attached to the filing.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Central Power and Light Company

[Docket No. ER01–201–000]

Take notice that on October 23, 2000, Central Power and Light Company (CPL), tendered for filing revised Facility Schedule No. 7 to the Interconnection Agreement between CPL and Medina Electric Cooperative, Inc. (Medina).

CPL requests an effective date for revised Facility Schedule No. 7 of June 15, 2000. Accordingly, CPL requests waiver of the Commission's notice requirements.

CPL states that a copy of the filing was served on Medina and the Public Utility Commission of Texas.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Deseret Generation & Transmission Co-operative

[Docket No. ER01–203–000]

Take notice that on October 23, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing two executed firm point-to-point service agreements with Deseret Generation & Transmission Co-operative, Inc.'s Merchant Function (Deseret Merchant) under Deseret's open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of November 1, 2000. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret Merchant has been provided a copy of this filing.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. PJM Interconnection, L.L.C.

[Docket No. ER01–204–000]

Take notice that on October 23, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing revised pages to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., to modify the confidentiality provisions in Section 18.17 of that agreement relating to the procedures for the release of confidential information.

PJM requests a waiver of the Commission's 60-day notice requirement and to permit an effective date of October 24, 2000.

Copies of this filing were served upon all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Xcel Energy Services Inc.

[Docket No. ER01–205–000]

Take notice that on October 23, 2000, Xcel Energy Services Inc. (Xcel Energy Services), tendered for filing (i) a market-based tariff to enable it to make market-based rate sales on behalf of Northern States Power Company, Northern States Power Company (Wisconsin), Public Service Company of Colorado (PSCo), and Southwestern Public Service Company (SPS) (collectively the Xcel Operating Companies) in any combination including singly, (ii) an amended version of the PSCo Rate Schedule for Market-Based Power Sales; (iii) an amended version of the SPS Rate Schedule for Market-Based Power Sales; and (iv) an updated market-power analysis for the Xcel Operating Companies and e prime.

Xcel Energy Services has requested that the various tariffs be made effective on October 24, 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Minnesota Power, Inc.

[Docket No. ER01–206–000]

Take notice that on October 23, 2000, Minnesota Power, Inc., tendered for filing a signed Service Agreement with Alliant Energy Corporate Services, Inc., under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Newark Bay Cogeneration Partnership, L.P.

[Docket No. ER01–207–000]

Take notice that on October 23, 2000, Newark Bay Cogeneration Partnership, L.P., (Newark Bay), an Exempt Wholesale Generator that owns and operates an electric generation plant near Newark, New Jersey, tendered for filing a Power Marketing Agreement with El Paso Merchant Energy, L.P., in the above-captioned docket.

Newark Bay requests that the Agreement be permitted to become effective September 27, 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Delmarva Power & Light Company

[Docket No. ER01–209–000]

Take notice that on October 23, 2000, Delmarva Power & Light Company (Delmarva), tendered for filing revised rate schedules between Delmarva and each of the Delaware Cities of Lewes, Milford, Newark, and New Castle and the Delaware Towns of Middletown, Clayton, and Smyrna (collectively, the Municipalities). Delmarva also tendered for filing a revised rate schedule between Delmarva and the Delaware Municipal Electric Corporation (DEMEC).

Delmarva requests that the Commission waive its notice of filing requirements to allow all of the revised rate schedules to become effective retroactively as of January 1, 2000 because the revisions provide for reductions in the charges to the customers.

Copies of the filing were served upon the Municipalities, DEMEC, and the state commission of Delaware.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Tucson Electric Power Company

[Docket No. ER01–208–000]

Take notice that on October 24, 2000, Tucson Electric Power Company (Tucson) submitted for filing a revision to its Open Access Transmission Tariff (OATT) in order to include the Protocols Manual of the Arizona Independent Scheduling Administrator Association.

Tucson requests an effective date of date of November 1, 2000.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. PJM Interconnection, L.L.C.

[Docket No. ER01–210–000]

Take notice that on October 24, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing revised pages to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., and the PJM Open Access Transmission Tariff to permit the reallocation of Fixed Transmission Rights to network service customers on an annual basis.

PJM requests an effective date of December 24, 2000 for the amendments.

Copies of this filing were served upon all PJM members and the state electric regulatory commissions in the PJM control area.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Duke Energy Trenton, LLC

[Docket No. ER01–211–000]

Take notice that on October 24, 2000, Duke Energy Trenton, LLC (Duke Trenton), tendered for filing an Electric Energy and Ancillary Service Sales Agreement by and between Duke Energy Trenton, LLC and Duke Energy Trading and Marketing, LLC.

Duke Trenton requests an effective date for the Service Agreement of September 28, 2000.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Consumers Energy Company

[Docket No. ER01–212–000]

Take notice that on October 24, 2000, Consumers Energy Company (Consumers) tendered for filing executed Firm and Non-Firm Point to Point Transmission Service Agreements with Quest Energy (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreements have effective dates of October 20, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Duke Energy Morro Bay, LLC

[Docket No. ER01–213–000]

Take notice that on October 24, 2000, Duke Energy Morro Bay, LLC (Duke Morro Bay), tendered for filing an Electric Energy and Ancillary Service Sales Agreement by and between Duke Energy Morro Bay, LLC and Duke Energy Trading and Marketing, LLC.

Duke Morro Bay requests an effective date for the Service Agreement of September 28, 2000.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Duke Energy Moss Landing, LLC

[Docket No. ER01–214–000]

Take notice that on October 24, 2000, Duke Energy Moss Landing, LLC (Duke Moss Landing), tendered for filing an Electric Energy and Ancillary Service Sales Agreement by and between Duke Energy Moss Landing, LLC and Duke Energy Trading and Marketing, LLC.

Duke Moss Landing requests an effective date for the Service Agreement of September 28, 2000.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Duke Energy South Bay, LLC

[Docket No. ER01–215–000]

Take notice that on October 24, 2000, Duke Energy South Bay, LLC (Duke South Bay), tendered for filing an Electric Energy and Ancillary Service Sales Agreement by and between Duke Energy South Bay, LLC and Duke Energy Trading and Marketing, LLC.

Duke South Bay requests an effective date for the Service Agreement of September 28, 2000.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Duke Energy Casco Bay, LLC

[Docket No. ER01–216–000]

Take notice that on October 24, 2000, Duke Energy Casco Bay, LLC (Duke Casco Bay), tendered for filing an Electric Energy and Ancillary Service Sales Agreement by and between Duke Energy Casco Bay, LLC and Duke Energy Trading and Marketing, LLC.

Duke Casco Bay requests an effective date for the Service Agreement of September 28, 2000.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Maine Electric Power Company

[Docket No. ER01–219–000]

Take notice that on October 24, 2000, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Umbrella Non-Firm Point-to-Point Transmission Service entered into with NRG Power Marketing Inc. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO–FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. GEN~SYS Energy

[Docket No. EC01–9–000]

Take notice that on October 20, 2000, GEN~SYS Energy tendered for filing an application under Section 203 of the Federal Power Act for approval for a change of control of GEN~SYS Energy. GEN~SYS Energy has served copies of this filing on the United States Department of Agriculture Rural Utilities Service and the Mid-Continent Area Power Pool.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/ online/rims.htm* (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

David P. Boergers,

Secretary.

[FR Doc. 00–28464 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2203–007]

Alabama Power Company; Notice of Availability of Final Environmental Assessment

November 1, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for license amendment for the Holt Project, located on the Black Warrior River in Tuscaloosa County, Alabama and has prepared a Final Environmental Assessment (FEA) for the project.

Copies of the FEA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The FEA may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

For further information, contact Steve Kartalia at (202) 219–2942.

David P. Boergers,

Secretary.

[FR Doc. 00–28469 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2731–020 & 2737–002 Vermont]

Central Vermont Public Service Corporation; Notice of Availability of Final Environmental Assessment

November 1, 2000.

In accordance with the National Environmental Policy Act of 1969, and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for new license for the continued operation of the Weybridge and Middlebury Lower Hydroelectric Projects located on Otter Creek, in the towns of Middlebury and Weybridge, Addison County, Vermont, and has prepared a Final Environmental Assessment (FEA) for the projects. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the projects, evaluated comments filed in response to the issuance of the Draft Environmental Assessment (DEA), and has concluded that approval of the projects, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The FEA may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm*. Please call (202) 208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 00–28470 Filed 11–06–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–471–000]

Wyoming Interstate Company, Ltd.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Medicine Bow Lateral Loop Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

November 1, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Wyoming Interstate Pipeline Company, Ltd.'s (WIC) proposed Medicine Bow Lateral Loop Project in Weld County, Colorado and Laramie, Platte, and Converse Counties, Wyoming.[1] The Medicine Bow Lateral Loop Project would involve the construction and operation of about 155 miles of 36-inch-diameter pipeline and addition of about 7,170 horsepower (hp) of compression. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a WIC representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable

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[1] WIC's application under section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations was filed on September 26, 2000.

agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" should have been attached to the project notice WIC provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website *www.ferc.fed.us*.

This Notice of Intent (NOI) is being sent to landowners along WIC's proposed route; Federal, state, and local government agencies; national elected officials; regional environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and the Commission's list of parties to the proceeding. Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally, with this NOI we are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated WIC's proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described below.

Summary of the Proposed Project

WIC's proposed action consists of:

- About 155 miles of 36-inch-diameter pipeline, extending south from WIC's existing Douglas Compressor Station in Converse County, Wyoming to WIC's existing Cheyenne Compressor Station in Weld County, Colorado. This new pipeline would loop[2] WIC's existing 24-inch-diameter lateral pipeline;
- Adding a 7,170 hp Solar Taurus 60S–C404 turbine compressor unit to WIC's Douglas Compressor Station; and
- Increasing the capacity of WIC's Medicine Bow measurement facilities at the Douglas Compressor Station and the Spearpoint measurement facilities at the Cheyenne Compressor Station.

The proposed facilities would allow WIC to increase capacity along this portion of its system from 380 million decatherms per day (MDth/d) of natural gas to 1,055 MDth/d. The loop would transport coal bed methane produced in the Power River Basin south to WIC's existing mainline.

The general location of WIC's facilities is shown on the map attached as appendix 1.[3]

Land Requirements for Construction

Construction of WIC's proposed facilities would affect a total of about 2,684 acres of land. Following construction, about 939 acres would be retained as permanent right-of-way. The remaining 1,745 acres of temporary work space would be restored and allowed to revert to its former use.

The nominal construction right-of-way for the loop would be 100 feet wide, with 50 feet retained as permanent right-of-way. About 87 percent of the route of the loop would abut or overlap existing easements, including the permanent right-of-way for WIC's existing 24-inch-diameter lateral and adjacent power line rights-of-way. The loop would deviate away from existing rights-of-way in multiple segments, totaling 36 miles, because of terrain constraints, landowner requests, or to avoid impacts on sensitive environmental areas, such as the Oregon Trail.

The proposed aboveground facilities would consist of a new compressor unit, to be contained within an extension of the existing compressor building at WIC's Douglas Compressor Station. Construction for this new unit would disturb about 8 acres, of which 4 acres would be required for operation of the facility. The Medicine Bow and Spearpoint measurement facilities would be expanded within the existing yards for the Douglas and Cheyenne Compressor Stations, respectively, with about 1 acre of land disturbed by construction, but no additional land required for operation. New pig launcher and receiver facilities would be installed within the Douglas and Cheyenne Compressor Station yards, and within the permanent right-of-way at Block Valve No. 7. Eight other new block valves would be installed within the permanent right-of-way for the pipeline.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[4] to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by WIC. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils.

—Shallow topsoil depth
—Erosion prone soils

- Water Resources and Wetlands.

—Crossing 26 perennial and 27 intermmittent streams
—Crossing 62 wetlands

- Vegetation and Wildlife.

—Crossing 1.5 miles of forest

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[2] A loop is a segment of pipeline that is installed adjacent to an existing pipeline and connected to it on both ends. The loop allows more gas to be moved through the pipeline system.

[3] The appendices referenced in this notice are not being printed in the *Federal Register*. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and File Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] "Us," "we," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

—Potential impacts on cold water fisheries

- Threatened and Endangered Species

—Potential impacts on 4 federally listed species, including the Bald eagle, Black-footed ferret, Preble's meadow jumping mouse, and Ute ladies'-tresses

- Cultural Resources

—Potential impacts on 72 cultural resources, including the Oregon Trail

—Native American concerns

- Land Use

—Impacts on about 21 miles of public lands

—Impacts on about 133 miles of rangeland

- Air and Noise Quality

—Impacts on local air quality and noise environment as a result of the addition of the new compressor unit

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas/Hydro Group, PJ–11.3;
- Reference Docket No. CP00–471–000; and
- Mail your comments so that they will be received in Washington, DC on or before December 8, 2000. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

(If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be removed from the environmental mailing list.)

Public Scoping Meetings and Site Visit

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings the FERC will conduct in the project area. The locations and times for these meetings are listed below.

Monday, December 4, 2000, 7 pm: Best Western Hitching Post Inn, Rm. CCR East, 1700 W. Lincolnway, Cheyenne, WY 82001, (307) 638–3301

Tuesday, December 5, 2000, 7 pm: 4H Community Bldg., Platte County Fairgrounds, 59 Antelope Gap Rd., Wheatland, WY 82201, (307) 322–9504

Wednesday, December 6, 2000, 7 pm: Best Western Douglas Inn, Riverbend Ballroom, 1450 Riverbend Rd., Douglas, WY 82633, 307–358–9790

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. WIC representatives will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EA. A transcript of each meeting will be made so that your comments will be accurately recorded.

On December 4, 5, and 6, 2000, we will also be conducting a site visit to the project area. This would be an on-the-ground inspection, conducted by automobile on public roads, or where access to private property has been granted (specific locations to be determined later). Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs identified at the end of this notice for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 15 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–28471 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 1, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-Project Use of Project Lands

b. *Project No.*: P–1494–218

c. *Date Filed*: October 3, 2000

d. *Applicant*: Grand River Dam Authority

e. *Name of Project*: Pensacola Project

f. *Location*: The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact*: Bob Sullivan, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC Contact*: Shannon Dunn at *shannon.dunn@ferc.fed.us*, or telephone (202) 208–0853.

j. *Deadline for filing comments, motions, or protests*: December 3, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (P:–1494–218) on any comments or motions filed. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

k. *Description of Project*: Grand River Dam Authority, licensee for the Pensacola Project, requests approval to grant permission to The Queens, LLC to dredge approximately 76,000 cubic yards of material to increase water depth for riverboats and for future installation of docks. The proposed projects is on Grand Lake in section 22, Township 25 North, Range 23 East, Delaware County.

l. *Locations of the application*: A copy of the application is available for inspection and reduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS","RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–28467 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To Surrender License

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of License.

b. *Project No.:* P–1986–010.

c. *Date Filed:* September 29, 2000.

d. *Applicant:* Oregon Trail Electric Consumers Cooperative, Inc. (Oregon Trail).

e. *Name of Project:* Rock Creek Hydroelectric Project.

f. *Location:* The project is located on Rock Creek, a tributary of the Powder River, in Baker County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David Justice, Oregon Trail Electric Consumers Cooperative, Inc., 4005 23rd Street, Baker City, Oregon 97814.

i. *FERC Contact:* Shannon Dunn at *shannon.dunn@ferc.fed.us,* or telephone (202) 208–0853.

j. *Deadline for filing comments, motions, or protests:* December 3, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–1986–010) on any comments or motions filed. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

k. *Description of Project:* Oregon Trail requests to surrender its license for the Rock Creek Hydroelectric Project No. 1986. The project consists of: (a) a five-foot-tall, 70-foot-long concrete diversion dam/intake structure on Rock Creek; (b) an 8,800-foot-long wooden flume; (c) a 15-foot-tall, 500-foot-long earthfill dam; (d) a 2,720-foot-long penstock; (e) a powerhouse containing two 400 kW generators; (f) a tailrace returning flows to Rock Creek; and appurtenant facilities.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,
Secretary.

[FR Doc. 00–28468 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00688; FRL–6754–7]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: There will be a 1–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to an assessment of scientific information concerning Starlink corn. The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Paul Lewis at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on November 28 from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Rosslyn Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209. The telephone number for the Holiday Inn Rosslyn Hotel is (703) 807–2000.

Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your request must identify docket control number OPP–00688 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Designated Federal Official, Office of Science Coordination and Policy, (7101C), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons interested in biotechnology and food plus issues related to the evaluation of allergens. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* A meeting agenda is currently available; EPA's primary background documents should be available the week of November 6, 2000. In addition, the Agency may provide additional documents as the material becomes available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr.

To access information about the meeting go directly to the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap and select **Federal Register** notice announcing this meeting.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00688. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to Starlink corn, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. In addition, the Agency may provide additional documents as the material becomes available. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy. Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in This Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00688 in the subject line on the first page of your request. Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advance written request to the person listed under **FOR FURTHER INFORMATION CONTACT**, interested persons may be permitted by the Chair of the FIFRA Scientific Advisory Panel to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc.). There is no limit on the extent of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements at the meeting should contact the person listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies of their presentation and/or remarks to the Panel. The

Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request electronically by e-mail to: "opp-docket@epa.gov." Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00688. You may also file a request on line at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

On October 25, 2000, Aventis CropScience USA, LP (Aventis) submitted new information in support of its petition (PP 9F5050) (PF–867B) for an exemption from the requirement of a tolerance for the genetically engineered "plant-pesticide" in StarLink corn plant-pesticide in *Bacillus thuringiensis* subsp. *tolworthi* Cry9c protein and the genetic material (DNA) necessary for the production of this protein. While the original petition requested an exemption covering both the DNA and Cry9C protein in all food commodities, this submission limits the request only to foods made from StarLink corn. The Aventis submission specifically addresses the potential allergenicity of the Cry9C protein that may be present in human food made from StarLink corn, a line of genetically modified corn developed by Aventis.

On October 31, 2000, EPA issued a Notice in the **Federal Register** announcing receipt of the Aventis submission and the opportunity for the public to comment on the submission (65 FR 65245) (FRL–6754–3). This notice also indicated that EPA intended to hold a public meeting of a group of external independent scientists to conduct a peer review of scientific issues raised by the Aventis submission.

Today's notice announces the date, location and purpose of that public meeting, topics for discussion and provides additional information of the procedures that will be used in this meeting. This will be a 1–day meeting of the FIFRA Scientific Advisory Panel. The purpose of this FIFRA SAP meeting is to consider the potential allergenicity, sensitization and dietary exposure of Starlink corn.

B. Panel Report

The Agency anticipates that the Panel's report of their recommendations will be available as soon as possible but no later than December 1, 2000. The Panel's report will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of this document.

List of Subjects

Environmental protection.

Dated: November 3, 2000.

Steven K. Galson,
Director, Office of Science Coordination and Policy, Office of Prevention, Pesticides, and Toxic Substances.

[FR Doc. 00–28643 Filed 11–3–00; 12:07 p.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6897–9]

Notice of Availability for Draft EPA Guidelines for Management of Onsite/Decentralized Wastewater Systems and Guidance Manual Outline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: The EPA published a document in the **Federal Register** on October 6, 2000, concerning a request for comments on the draft EPA Guidelines for Management of Onsite/Decentralized Wastewater Systems and Guidance Manual Outline. The document contained an incorrect signature block title.

FOR FURTHER INFORMATION CONTACT: Joyce Hudson, 202–260–1290.

Correction

In the **Federal Register** of October 6, 2000, 65 FR 59841, in the first column, correct the signature block title for J. Charles Fox to read:

J. Charles Fox,
Assistant Administrator for Office of Water.

Dated: October 26, 2000.

J. Charles Fox,
Assistant Administrator for Office of Water.

[FR Doc. 00–28517 Filed 11–6–00; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 9, 2000, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

1. Approval of Minutes

October 12, 2000 (Open and Closed)

2. Report

Report on Corporate Approvals

3. New Business

A. Other

Corporate and Chartering Approvals

B. ACA Restructures

AgChoice Farm Credit, ACA

Carolina Farm Credit, ACA

Central Kentucky Agricultural Credit Association

Farm Credit of Southwest Florida, ACA

Closed Session[*]

4. Report

OSMO Report

Dated: November 2, 2000.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–28644 Filed 11–3–00; 2:22 pm]

BILLING CODE 6705–02–M

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[*] Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–31–I (Auction No. 31); DA 00–2404]

Auction of Licenses in the 747–762 and 777–792 MHz Bands Scheduled for March 6, 2001; Comment Sought on Modifying the Calculation for Determining Minimum Accepted Bids and Changing the Provisions Concerning "Last and Best" Bids

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on modifying the calculation for determining minimum accepted bids and changing the provisions concerning "last and best" bids.

DATES: Comments are due on or before November 15, 2000, and reply comments are due on or before November 22, 2000.

ADDRESSES: An original and four copies of all pleadings must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., TW–A325, Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT:

Walter D. Strack, Bureau Chief Economist, Wireless Telecommunications Bureau, (202) 418–0600;

Evan Kwerel, Senior Economist, Office of Plans and Policy, (202) 418–2030;

Howard Davenport, Auctions Attorney; Craig Bomberger, Auctions Analyst; or Karen Wrege, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released November 2, 2000. The complete text of the public notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036; (202) 857–3800. It is also available on the Commission's web site at http://www.fcc.gov.

I. General

1. On July 3, 2000, the Wireless Telecommunications Bureau ("Bureau") announced the procedures for implementing package bidding for Auction No. 31. *See Auction No. 31 Package Bidding Procedures Public Notice*, 65 FR 43361 (July 13, 2000). After further analysis and testing, we have determined that it may be appropriate to make further refinements: (i) To the calculation for determining minimum accepted bids; and (ii) to the provisions that allow a bidder that wishes to drop out of the auction to have an opportunity to make "last and best" bids on licenses and packages.

II. Calculation for Determining Minimum Accepted Bid

2. With regard to determining minimum accepted bids, we adopted the following three-part calculation: The minimum accepted bid for any license or package will be the greatest of: (i) The minimum opening bid, (ii) the bidder's own previous high bid on that package plus x%, where the Bureau will specify the value of x in each round; or (iii) the number of bidding units for the license or package multiplied by the lowest $/bidding unit on any provisionally winning package in the last five rounds.

3. We initially adopted part (iii) of the formula so that bids have a reasonable chance of becoming part of the provisionally winning set and because it was simple to implement for the then-scheduled auction date of September 6, 2000. Based on our initial experimental testing, we are concerned that part (iii) of the minimum accepted bid formula may not be sufficiently refined to discourage parking strategies, which could excessively delay the completion of the auction.

4. Several commenters responding to the *Auction No. 31 Package Bidding Comment Public Notice*, 65 FR 35636 (June 5, 2000) suggested an alternative approach to determining minimum accepted bid amounts, which they claimed would be more likely to ensure serious bids and help address the threshold problem. This approach would allocate among non-provisionally winning bids the total increase in revenue needed to tie the provisional winners. One of the commenters, Paul Milgrom, defines the "shortfall" associated with a license or package as the difference between the revenue of the provisionally winning bid set and the maximum total revenue associated with the set of bids that includes that particular license or package. He defines the "deficit" for the license or package as the shortfall multiplied by that package or license's proportion of the [non-provisionally winning] bidding units. In other words, the deficit is an allocation of the shortfall to the particular license or package in proportion to its share of bidding units relative to those associated with bids that were not part of the provisionally winning set, but are part of the set that maximizes revenue when including the particular license or package. Milgrom suggests that the minimum acceptable bid should be the greater of 50% of the deficit or the bidder's own previous high bid on that package plus x%. Alternatively, Pekec and Rothkopf propose allocating the shortfall in proportion to the bid amounts instead of the bidding units. Pekec and Rothkopf would permit bids at less than this amount but would only give activity credit for such a bid if it was the highest bid for that license or package.

5. We propose to replace part (iii) of the minimum accepted bid formula with a percentage of the deficit as defined by Milgrom because it better approximates the amount of a bid that could become part of the provisionally winning set. We propose to set the percentage initially at 100 percent. We would retain the discretion to adjust the percentage of the deficit during the course of the auction to provide control over the pace of the auction. We believe that allocating the shortfall according to bidding units as opposed to bid amounts reduces the risk that bidders might attempt to bid up the prices of licenses or packages they do not wish to acquire in order to increase the share of the shortfall allocated to those licenses or packages. We seek comment on this proposal.

6. To account for the possibility that there can be more than one set of bids that yields the same shortfall for a given bid, we propose to choose the shortfall set that includes the most provisionally winning bidding units. Once such a shortfall set is determined, the deficit for the bid of interest is determined by multiplying the shortfall by the ratio of bidding units associated with the bid to the total non-provisionally winning bidding units in the set. This approach is likely to produce new bids with a realistic chance of becoming part of the provisionally winning set because it does not allocate any of the shortfall to provisional winners or to bids that were simple ties with provisionally winning bids but not chosen as provisional winners.

7. To illustrate the proposed new method for calculating part (iii) of the minimum accepted bid formula, consider the following example: Suppose that in round x the provisionally winning set is a set of two packages: one nationwide package of the 10 MHz licenses and another nationwide package of the 20 MHz licenses. The revenue for this set is $500,000,000.

Suppose that the last time Bidder A bid on the Northeast 10 MHz license was in round y when he made a bid of $30,000,000. To determine the minimum accepted bid amount in round x+1 for Bidder A for the Northeast 10 MHz license, we begin by calculating the shortfall for that license. This is calculated by forcing Bidder A's $30,000,000 bid from round y into the solution set for round x, allowing that bid to partner with all other bids by Bidder A in the considered bid set from round y, and making it mutually exclusive with all of Bidder A's bids not in round y. Assume that the maximum revenue obtained by forcing this bid into the solution set is $400,000,000. Therefore, the shortfall for this bid is $100,000,000 ($500,000,000 − $400,000,000).

Next, to address the possibility of multiple shortfall sets, we solve an optimization problem that maximizes the number of provisionally winning bidding units from round x in the shortfall set with the added constraints that the maximum revenue equals $400,000,000 and that Bidder A's bid on the 10 MHz license must be in the solution. Suppose that the solution set for this optimization problem includes, in addition to Bidder A's 10 MHz Northeast license, the package of nationwide 20 MHz licenses that was in the provisionally winning set, and one or more other packages making up the remaining five 10 MHz licenses. Since provisionally winning bids have no shortfall, we would allocate the shortfall only among those bids in the shortfall set that are not in the provisionally winning set.

The total bidding units from non-provisionally winning bids is 6 × 14,000,000 = 84,000,000 bidding units. Since Bidder A's bid has 14,000,000 of the 84,000,000 bidding units, 14,000,000/84,000,000, or ⅙, the shortfall would be allocated to Bidder A's bid on the Northeast 10 MHz license. Thus, the minimum accepted bid increment for Bidder A's bid using this calculation would be $100,000,000/6 = $16,667,000 (rounded to the nearest thousand), making part (iii) of the new minimum accepted bid for this license $46,667,000 for Bidder A ($16,667,000 + $30,000,000 (Bidder A's previous bid)).

Part (i) of the minimum accepted bid formula would be the minimum opening bid for this license ($14,000,000), and part (ii) would be x% more than this bidder's previous bid amount (assuming x = 10, $33,000,000). Part (iii) yields the maximum value among the three alternatives; accordingly, Bidder A's minimum accepted bid for this license in the next round would be $46,667,000.

8. We propose an exception to the modified minimum accepted bid formula for new packages. For operational considerations (running the optimization solver only between rounds), we propose that part (iii) of the formula for the initial minimum accepted bid for a new package created during the auction will continue to be calculated by multiplying the number of bidding units in the package by the lowest $/bidding unit of any provisionally winning bid in the last five rounds.

This exception will not apply to bids for the global package, however. In that case we will apply the three-part calculation as modified herein because the shortfall and deficit are so simple to calculate. Because a bid for the global package could never become a provisional winner unless it equals the maximum revenue from the previous round, we propose that the initial minimum accepted bid of a global package will be a percentage of the maximum revenue from the previous round. We seek comment on this proposal.

III. "Last and Best" Bids

9. In the *Auction No. 31 Package Bidding Procedures Public Notice*, we adopted a procedure by which bidders that wish to drop out of the auction would have the opportunity before they drop out to make a "last and best" bid on any license or package for which they remain eligible. We adopted this procedure in part to allow bidders to bid the maximum amount they are willing to pay for a package regardless of how the Commission sets the minimum accepted bid.

We propose to modify this procedure to allow bidders to pursue contingent bidding strategies. In mock auctions we conducted for software testing, there were bidders who wanted to provide a "last and best" bid on every license or package they wanted but did not have the opportunity to do so because some of their bids were mutually exclusive. Allowing two rounds of "last and best" bids would give bidders this flexibility.

Specifically, we propose to allow bidders to make two sets of mutually exclusive last and best bids. In determining the provisionally winning bid(s), the round solver would consider these two sets of mutually exclusive bids, as well as any of the bidder's bids that remain in the provisionally winning set. The bidder who chooses this option would not be permitted to make any further bids during the auction. We seek comment on this proposal to modify the "last and best" bid procedures.

IV. Filing Comments

10. Comments should refer to the DA number on this *Public Notice*, DA 00–2404. *See* 47 CFR 1.51(c). In addition, one copy of each comment must be delivered to each of the following locations:

(1) the Commission's duplicating contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, N.W., Washington, DC 20036;

(2) Office of Media Relations, Public Reference Center, 445 Twelfth Street, S.W., CY–A257, Washington, DC 20554;

(3) Rana Shuler, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 445 Twelfth Street, S.W., 4–A628, Washington, DC 20554.

Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, CY-A257, 445 12th Street, S.W., Washington, DC 20554.

11. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. *See* 47

CFR 1.1200(a), 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Federal Communications Commission.

Margaret Wiener,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–28608 Filed 11–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

November 2, 2000.

Open Commission Meeting, Thursday, November 9, 2000

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 9, 2000, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Common Carrier	Title: 2000 Biennial Regulatory Review—Telecommunications Service Quality Reporting Requirements. Summary: The Commission will consider a Notice of Proposed Rule Making concerning measures to streamline and reform its service quality monitoring program.
2	Common Carrier	Title: 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations (CC Docket No. 99–216). Summary: The Commission will consider a Report and Order concerning streamlining and privatizing the detailed regulations in Part 68 of the rules relating to the attachment of terminal equipment to the public switched telephone network.
3	Wireless Telecommunications and Office of Engineering and Technology.	Title: Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets. Summary: The Commission will consider a Notice of Proposed Rule Making concerning the promotion of secondary market mechanisms to facilitate efficient use of wireless spectrum in the public interest.
4	Office of Engineering and Technology and Wireless Telecommunications.	Title: Principles for Encouraging the Development of Secondary Markets for Spectrum. Summary: The Commission will consider a Policy Statement setting forth guiding principles for the promotion of secondary market mechanisms to facilitate efficient use of wireless spectrum in the public interest.
5	Wireless Telecommunications	Title: Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended (WT Docket No. 99–87); Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies (RM–9332); Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz (RM–9405); and Petition for Rule Making of The American Mobile Telecommunications Association (RM–9705). Summary: The Commission will consider a Report and Order and Further Notice of Proposed Rule Making regarding the Balanced Budget Act of 1997's statutory revisions to section 309(j) of the Communications Act of 1934, as amended, which governs the Commission's competitive bidding authority, and certain Petitions for Rule Making proposing revisions to the licensing rules for the public safety and private radio services.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is http://www.itsdocs.com/.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28605 Filed 11–3–00; 11:25 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, November 7, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's receivership and supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: November 3, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–28604 Filed 11–3–00; 11:21 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1347–DR]

Arizona; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arizona (FEMA–1347–DR), dated October 27, 2000, and related determinations.

EFFECTIVE DATE: October 27, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 27, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Arizona, resulting from severe storms and flooding beginning on October 21, 2000 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.* (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Arizona.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.
>
> The State Emergency Management Agency (SEMA) will manage the Public Assistance operation, including project eligibility reviews, process control, and resource allocation. FEMA will retain obligation authority, the final approval of environmental and historic preservation reviews, and will assist SEMA to the extent that such assistance is necessary and is specifically requested by SEMA.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David Fukutomi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arizona to have been affected adversely by this declared major disaster:

La Paz and Maricopa Counties for Individual Assistance.

Cochise, La Paz, and Santa Cruz Counties for Public Assistance.

All counties within the State of Arizona are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers(CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–28489 Filed 11–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1346–DR]

Michigan; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Michigan (FEMA–1346–DR), dated October 17, 2000, and related determinations.

EFFECTIVE DATE: October 17, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 17, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Michigan, resulting from severe storms and flooding on September 10–11, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.* (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Michigan.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later determined to be warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Suzanne Schmitt of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Michigan to have been affected adversely by this declared major disaster:

Wayne County for Individual Assistance.

All counties within the State of Michigan are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–28490 Filed 11–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1346–DR]

Michigan; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Michigan, (FEMA–1346–DR), dated October 17, 2000, and related determinations.

EFFECTIVE DATE: October 27, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Michigan is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 17, 2000:

Oakland County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–28491 Filed 11–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 22, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. William Elton Kennedy, MerRouge, Louisiana, and William Edward Pratt, Bastrop, Louisiana; both to acquire voting shares of American National Bancshares, Inc., Ruston, Louisiana, and thereby indirectly acquire voting shares of American Bank of Ruston, N.A., Ruston, Louisiana.

Board of Governors of the Federal Reserve System, November 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28530 Filed 11–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 1, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Innes Street Financial Corporation, Salisbury, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank, Inc. (also known as Citizens Bank, FSB), Salisbury, North Carolina, upon the conversion of Citizens Bank FSB.

B. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Firstrust Corporation, New Orleans, Louisiana; to acquire 100 percent of the voting shares of Metro Bank, Kenner, Louisiana.

2. PAB Bankshares, Inc., Valdosta, Georgia; to acquire 100 percent of the

voting shares of FCB Interim Bank, Ocala, Florida.

Board of Governors of the Federal Reserve System, November 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28531 Filed 11–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 22, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Covenant Bancgroup, Inc., Leeds, Alabama; to engage *de novo* through its subsidiary, Raymond James Financial Services, St. Petersburg, Florida, in agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, November 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28529 Filed 11–6–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1563]

Draft Guidance for Industry on Carcinogenicity Study Protocol Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Carcinogenicity Study Protocol Submissions." This document is intended to provide guidance on the types of information the Center for Drug Evaluation and Research relies on when evaluating protocols for animal carcinogenicity studies.

DATES: Submit written comments on the draft guidance by February 5, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5476.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Carcinogenicity Study Protocol Submissions." The draft guidance describes the kind of information the agency relies on when evaluating special protocols for animal carcinogenicity studies.

The Prescription Drug User Fee Act of 1992 (PDUFA) was reauthorized in November 1997 (PDUFA 2). In conjunction with PDUFA 2, FDA agreed to specific performance goals (PDUFA goals) for activities associated with the development and review of products in human drug applications as defined in section 735(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g(1)). The PDUFA goals for special protocol assessment and agreement provide that, upon request, FDA will evaluate within 45 days certain protocols and issues relating to the protocols to assess whether they are adequate to meet scientific and regulatory requirements identified by the sponsor. Protocols for animal carcinogenicity studies are eligible for this special protocol assessment. This draft guidance is intended to facilitate the agency's review of animal carcinogenicity study protocols.

This draft guidance is being issued consistent with FDA's good guidance practices (65 FR 56468, September 19, 2000). The draft guidance represents the agency's current thinking on carcinogenicity study protocol submissions. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28521 Filed 11–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0790]

Final Guidance for Industry: The Use of Published Literature in Support of New Animal Drug Approval; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#106) entitled "The Use of Published Literature in Support of New Animal Drug Approval." The final guidance is intended to fulfill the section of the FDA Modernization Act of 1997 (FDAMA) that requires the agency to issue guidance to clarify the circumstances in which published matter may be the basis for approval of a supplemental application. The final guidance also clarifies the circumstances in which published literature may be the basis for approval of an original application. The final guidance is intended to provide specific advice on when FDA may be able to rely on published literature, with or without the submission of underlying data, to support new animal drug approvals.

DATES: Submit written comments at any time.

ADDRESSES: Submit written requests for single copies of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on this final guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the final guidance may be obtained on the Internet at *http://www.fda.gov/cvm/fda/TOCs/guideline.html*.

FOR FURTHER INFORMATION CONTACT: Gail L. Schmerfeld, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20850, 301–594–1620, e-mail: *gschmer1@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 19, 2000 (65 FR 20997), FDA published the draft guidance entitled "The Use of Published Literature in Support of New Animal Drug Approval" giving interested persons until July 18, 2000, to submit comments. No comments were received.

Section 403(b) of FDAMA (Public Law 105–115) requires FDA to issue guidances to clarify the requirements for, and facilitate the submission of data to support, the approval of supplemental applications for articles approved under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) or section 351 of the Public Health Service Act (42 U.S.C. 262). This provision includes a requirement that FDA publish guidance to clarify circumstances in which published matter may be the basis for approval of a supplemental application.

This final guidance for industry clarifies the circumstances in which published literature may be the basis for approval of both original and supplemental new animal drug applications. Specifically, the final guidance describes the circumstances under which FDA could rely on published literature without access to the underlying data and the circumstances under which the applicant should provide additional information about a published study.

II. Significance of Guidance

This final guidance represents the agency's current thinking with regard to the use of published literature in support of new animal drug approval. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of the applicable statutes and regulations. The agency has developed this final guidance in accordance with the agency's good guidance practices published in the **Federal Register** of September 19, 2000 (65 FR 56468), which set forth the policies and procedures for the development, issuance, and use of guidance documents.

III. Comments

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. FDA will periodically review the comments in the docket and, where appropriate, will amend the guidance. The public will be notified of any such amendments through a notice in the **Federal Register**.

Dated: October 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28448 Filed 11–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Children's Hospital Graduate Medical Education Program (OMB No. 0915–0247)

Public Law 106–129 amended the Public Health Service Act to provide for the support of graduate medical education (GME) in children's hospitals. The provision authorizes payments for direct and indirect expenses associated with operating approved GME programs. Section 340E(c)(1) of the PHS Act, as amended, states that the amount determined under this subsection for payments for direct medical expenses for a fiscal year is equal to the product of (a) the updated per resident amount as determined, and (b) the average number of FTE residents in the hospital's approved graduate medical residency training programs as determined under section 1886(h)(4) of the Social Security Act during the fiscal year. Section 340E(d)(2) requires the Secretary to determine the appropriate amount of indirect medical education for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs to a children's hospital by considering variations in case mix among children's hospitals, and the hospitals' number of FTE residents in approved training programs.

Administration of the Children's Hospital Graduate Medical Education

Program relies on the reporting of the number of full-time equivalent residents in applicant children's hospital training programs to determine the amount of direct and indirect expense payments to participating children's hospitals. Indirect expense payments will also be derived from a formula that requires the reporting of case mix index information from participating children's hospitals.

Hospitals will be requested to submit such information in an annual application. The statute also requires reconciliation of the estimated numbers of residents with the actual number determined at the end of the fiscal year. Participating children's hospitals would be required to complete an adjusted report to correct such information on an annual basis.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Form name	Number of respondents	Responses per respondents	Total responses	Hrs. per response	Total hour burden	Wage rate ($/hr)	Total hour cost ($)
HRSA–99–1:	54	1	54	99.9	5,395	45	242,775
(Annual)	54	1	54	8	432	45	19,440
(Reconciliation).							
HRSA–99–2 (IME)	54	1	54	14	756	45	34,020
HRSA–99–4 Required GPRA Tables	54	1	54	28	1,512	45	68,040
Total	54		54		8,095		364,275

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, 725 17th St., NW., New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 31, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–28449 Filed 11–06–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The National Health Service Corps (NHSC) Scholarship Program Deferment Request Forms and Associated Reporting Requirements (OMB No. 0915–0179)—Revision

The National Health Service Corps (NHSC) Scholarship Program was established to assure an adequate supply of trained primary care health professionals to the neediest communities in the Health Professional Shortage Areas (HPSAs) of the United States. Under the program, allopathic physicians, osteopathic physicians, dentists, nurse practitioners, nurse midwives, physician assistants, and, if needed by the NHSC program, students of other health professionals are offered the opportunity to enter into a contractual agreement with the Secretary under which the Public Health Service agrees to pay the total school tuition, required fees and a stipend for living expenses. In exchange, the scholarship recipient agrees to provide full-time clinical services at a site in a federally designated HPSA.

Once the scholars have met their academic requirements, the law requires that individuals receiving a degree from a school of medicine, osteopathic medicine or dentistry be allowed to defer their service obligation for a maximum of 3 years to complete approved internship, residency or other advanced clinical training. The Deferment Request Form provides the information necessary for considering the period and type of training for which deferment of the service obligation will be approved.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Deferment Request Forms	600	1	1	600
Letters of Intent and Request	100	1	1	100
Total	700			700

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 31, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–28450 Filed 11–06–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The National Health Service Corps (NHSC) Scholarship Program In-School Worksheets (New)

The National Health Service Corps (NHSC) Scholarship Program was established to help alleviate the geographical and specialty maldistribution of physicians and other health practitioners in the United States. Under this program, health professional students are offered scholarships in return for services in a federally-designated Health Professional Shortage Area (HPSA). If awarded an NHSC Scholarship, the Program requires the schools and the awardees to review and complete data collection worksheets for each year that the student is a NHSC Scholar.

The Data Sheet requests that the NHSC Scholar review the form for the accuracy of information such as social security number, contact information, current curriculum, and date of graduation. If the information is inaccurate, the scholar makes the necessary changes directly on the form. If the inaccurate information pertains to the curriculum or date of graduation, the scholar will make changes directly on the form and include written notification from the school.

The Verification Sheet is sent to the school along with a list of the NHSC scholars who are enrolled for the current academic year. The schools verify and/or correct the enrollment status of each of the scholars on the list.

The Contact Sheet requests contact information for pertinent school officials. This information is used by the NHSC Scholarship Program for future contacts with the schools.

The estimated burden is as follows:

Form name	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Data Sheet	800	1	10 mins	134
Verification Sheet	300	1	10 mins	50
Contact Sheet	550	1	10 mins	92
Total	1,350			276

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 1, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–28525 Filed 11–6–00; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: An Evaluation of PASRR and Mental Health Services for Persons in Nursing Facilities—New

SAMHSA's Center for Mental Health Services is sponsoring an assessment of the effectiveness of the Preadmission Screening and Resident Review (PASRR) program, which is a required component of every State's Medicaid plan. Data will be collected from administrators and staff in 24 nursing facilities in four states (six facilities per state). In addition, data will be collected from a total of 100 residents of nursing facilities in two of the states. Data collection for this evaluation will be conducted over a 4-month period.

Nursing facility variables of interest include the following: availability of mental health services; change in condition procedures; alternative placement procedures; and experience with PASRR. Variables of interest for the nursing facility residents include: mental health symptomotology functioning, and mental health service access. Data will be entered and managed electronically. The total estimated respondent burden is summarized in the table below.

Respondent	Number of respondents	Responses/ respondent	Average burden/response (hrs.)	Total burden (hrs.)
Nursing Facility Residents	100	1	.5	50
Nursing Facility Administrators	24	1	1	24
Nursing Facility Staff	48	1	1	48
Total	172			122

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated. October 31, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–28476 Filed 11–6–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Ballast Water and Shipping Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice announces a meeting of the Ballast Water and Shipping Committee of the Aquatic Nuisance Species Task Force. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION:**

DATES: The Committee will meet from 9 a.m. to 4 p.m., Tuesday, November 21, 2000.

ADDRESSES: The meeting will be held at the National Oceanic Atmospheric Administration (NOAA) complex, SSMC–II, Room 2358, 1305 East West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: LT Mary Pat McKeown, U.S. Coast Guard, Chair, Ballast Water and Shipping Committee, at 202–267–0500 or by email at mmckeown@comdt.uscg.mil or Sharon Gross, Executive.Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: sharon_gross@fws.gov

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Ballast Water and Shipping Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741). Topics to be addressed at this meeting include: continued discussion on the development of standards for ballast water; discussion on membership of the committee including addition of new members; and discussion and recommendations for committee vision and goals.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and the Chair of the Ballast Water and Shipping Committee at the Environmental Standards Division, Office of Operations and Environmental Standards, U.S. Coast Guard (G–MSO–4), 2100 Second Street, SW, room 1309, Washington, DC 20593–0001. Minutes for the meetings will be available at these locations for public inspection during regular business hours, Monday through Friday.

Dated: November 2, 2000.

Cathleen I. Short,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 00–28508 Filed 11–6–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR section 1501.4 and section 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Amoco Pipeline Company, Pipeline Activity, SEA No. P–12255 (G–21277).	Viosca Knoll, Block 823, Lease OCS–G 21277, 55 to 80 miles offshore Pascagoula, Mississippi.	09/20/00
CXY Energy Offshore, Inc., Exploration Activity, SEA No. N–6849.	Viosca Knoll Area, Block 565, Lease OCS–21154, 53 miles south of Baldwin County, Alabama.	09/01/00
Chevron U.S.A., Development Activity, SEA No. R–3490	Viosca Knoll Area, Blocks 251, 252, and 208; Leases OCS–G 10930, 13982, and 13981, 30 miles south of Mobile County, Alabama.	10/05/00
Murphy Exploration and Production Company, Exploration Activity, SEA No. R–3470.	South Timbalier Area, Block 86, Lease OCS–G 0605, 25 miles from the nearest coastline.	5/09/00
Chevron U.S.A., Development Activity, SEA No. R–3454	Destin Dome Area, Blocks 1 and 2, Leases OCS–G 6397 and 6398, 18 miles south of Baldwin County, Alabama.	10/12/00
Murphy Exploration and Production Company, Exploration Activity, SEA No. S–5236.	South Timbalier Area, Block 86, Lease OCS–G 0605, 25 miles from the nearest shoreline.	07/10/00

Activity/operator	Location	Date
Newfield Exploration Company, Structure Removal Activity, SEA No. ES/SR 00–102.	East Cameron Area, Block 45, Lease OCS–G 3287, 20 miles south/southeast of Grand Chenier, Louisiana.	07/10/00
Murphy Exploration and Production Company, Structure Removal Activity, SEA No. ES/SR 00–103.	Ship Shoal Area, Block 134, Lease OCS–G 5201, 39 miles southwest of Cocodrie, Louisiana.	07/28/00
Murphy Exploration and Production Company, Structure Removal Activity, SEA No. ES/SR 00–104.	Ship Shoal Area, Block 135, Lease OCS–G 3164, 60 miles southwest of Cocodrie, Louisiana.	07/28/00
ATP Oil and Gas Corporation, Structure Removal Activity, SEA No. ES/SR 00–105.	West Cameron Area, Block 425, Lease OCS–G 11796, 74 miles south of Cameron Parish, Louisiana.	07/27/00
Shell Offshore, Inc., Structure Removal Activity, SEA Nos. ES/SR 00–106 through 00–111.	High Island Area, Blocks 135, 160, and 119; Leases OCS–G 0741, 0743, and 14882; 25 to 26 miles south of Jefferson County, Texas.	08/03/00
Shell Offshore, Inc., Structure Removal Activity, SEA Nos. ES/SR 00–112 and 00–113.	High Island Area, Blocks 136 and 161, Leases OCS–G 0742 and 0744, 24 to 26 miles from the Texas coastline.	08/01/00
Basin Exploration, Inc., Structure Removal Activity, SEA No. ES/SR 00–114.	West Cameron Area, Block 45, Lease OCS–G 0300, 6 miles south of Cameron Parish, Louisiana.	08/04/00
Chevron U.S.A., Structure Removal Activity, SEA No. ES/SR 00–115.	South Timbalier Area, Block 52, Lease OCS–G 1241, 14 miles south of Terrebonne Parish, Louisiana.	06/11/00
Kerr-McGee Oil and Gas Corporation, Structure Removal Activity, SEA Nos. ES/SR 00–116 through 00–118.	Ship Shoal Area, Block 28, Lease OCS–G 0346, 8 miles south of Terrebonne Parish, Louisiana.	08/21/00
Chevron U.S.A., Structure Removal Activity, SEA No. ES/SR 00–119.	South Marsh Island Area, Block 60, OCS–G 3145, 55 miles south of Iberia Parish, Louisiana.	08/29/00
Chevron U.S.A., Structure Removal Activity, SEA No. ES/SR 00–120.	Viosca Knoll Area, Block 70, Lease OCS–G 16532, 22 miles south of Jackson County Mississippi.	09/06/00
El Paso Production, Structure Removal Activity, SEA No. ES/SR 00–121.	East Cameron Area, Block 280,Lease OCS–G 13590, 84 miles south of Cameron Parish, Louisiana.	09/07/00
AGIP Petroleum Co. Inc., Structure Removal Activity, ES/SR 00–122.	South Marsh Island Area, Block 250, Lease OCS–G 12901, 15 miles south of Iberia Parish, Louisiana.	09/19/00
Ocean Energy, Inc., Structure Removal Activity, SEA No. ES/SR 00–[illegible]3.	Mustang Island Area, Block 831, Lease OCS–G 3043, 29 miles east of Kleberg County, Texas.	10/04/00

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: November 1, 2000.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 00–28477 Filed 11–6–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order.
(2) Roll call. Confirm quorum.
(3) Approval of summary of meeting minutes for November 15–17,1999 meeting in Fairbanks.
(4) Review agenda.
(5) Superintendent's Welcome.
(6) Introductions of Guests and Agency Staff.
(7) Review Commission Role and Purpose.
(8) Superintendent's Management and Research Update.
(9) Public and agency comments.
  a. Correspondence.
(10) Old Business.
  a. October 2000 SRC Chair's Meeting Report.
  b. Review Public Comments on the Gates of the Arctic National Park and Preserve Draft Subsistence Management Plan.
  c. Hunting Plan Recommendation 99–01 (Customary Trade)—Review public, Regional Council and Local Advisory Committee comments.
(11) New Business.
  a. Review Federal Subsistence Board and Regional Advisory Council actions.
  b. Federal Subsistence Fisheries Management Update.
  c. Western Arctic Caribou Working Group Update.
  d. SRC Work Session (Draft letters/Outreach).
(12) SRC Elections for Chair and Vice Chair.
(13) Set time and place of next SRC meeting.
(14) Adjournment.

DATES: The meeting will be held from 8:30 a.m. to 5 p.m. on Tuesday, November 14 and 8:30 a.m. to 5 p.m. on Wednesday, November 15, 2000.

LOCATION: The meeting will be held at Sophie Station Hotel, 1717 University Ave., Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Dave Mills, Superintendent and Jeff Mow, Subsistence Manager, 201 First Avenue, Doyon Bldg., Fairbanks, Alaska 99701. Phone (907) 456–0578.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487 and operate in accordance with the provisions of the Federal Advisory Committees Act.

John Quinley,

Acting Regional Director.

[FR Doc. 00–28575 Filed 11–6–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Joshua Tree National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Joshua Tree National Park Advisory Commission (Commission) will be held from 10 am (PDT) until 2 pm on Friday, December 1, 2000, at the Black Rock Interagency Fire Center at 9800 Black Rock Canyon Road, Black Rock Campground, in the city of Yucca Valley, California. The Commission will hear reports by the Climbing Committee, the Park Wilderness Steering Committee, the Park Trails Program, the Park Road Construction Project, the Park FY2001 Budget and the Joshua Tree Fund.

The Commission was established by Public Law 103–433, section 107 to advise the Secretary concerning the development and implementation of a new or revised comprehensive management plan Joshua Tree National Park.

Members of the Commission include:

Mr. Chuck Bell	Planner.
Ms. Cyndie Bransford	Recreational Climbing Interest.
Ms. Marie Brashear	Mining Interest.
Mr. Gary Daigneault	Property Owner/Business Interest.
Hon. Kathy Davis	County of San Bernardino.
Mr. John Freter	Property Owner Interest.
Mr. Brian Huse	Conservation.
Mr. Julian McIntyre	Conservation.
Mr. Roger Melanson	Equestrian Interest.
Mr. Ramon Mendoza	Native American Interest.
Ms. Leslie Mouriquand	Planner.
Mr. Richard Russell	All Wheel Drive Vehicle Interest.
Ms. Lynne Shmakoff	Property Owner Interest.
Hon. Roy Wilson	County of Riverside.
Mr. Gilbert Zimmerman	Tourism.

The meeting is open to the public and will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. For copies, please contact Superintendent, Joshua Tree National Park, 74485 National Park Drive, Twentynine Palms, California 92277 at (760)367–5502.

Dated: October 31, 2000.

Ernest Quintana,

Superintendent.

[FR Doc. 00–28573 Filed 11–6–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting: The Christmas Pageant of Peace

The National Park Service is seeking public comments and suggestions on the planning of the 2000 Christmas Pageant of Peace, which opens on December 11, 2000, on the Ellipse (President's Park), south of the White House. The meeting will be held at 11 a.m. on Friday, November 17, in room 234 of the National Capital Region Building, at 1100 Ohio Drive, SW, Washington, DC (East Potomac Park).

Persons who would like to comment at the meeting should notify the National Park Service by November 15 by calling the White House Visitor Center weekdays between 9 a.m. and 4 p.m. at (202) 208–1631. Written comments may be sent to the Park Manager, White House Visitor Center, 1100 Ohio Drive, SW, Washington, DC 20252, and can be accepted until November 14.

Dated: November 1, 2000.

Stan E. Lock,

Deputy Director, White House Liaison.

[FR Doc. 00–28574 Filed 11–6–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Solano Project—Lake Berryessa; Napa, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) is initiating a formal Visitor Services Planning effort for the Lake Berryessa Recreation Area. Reclamation intends to prepare an environmental impact statement (EIS) for implementing the provisions of the plan. The purpose of the Visitor Services Plan is to determine the type and level of commercial facilities and services that are necessary and appropriate for future long term operations. The current concession contracts expire in 2009 and the Visitor Services Plan will be used as a basis for future concession prospectuses.

DATES: Formal public scoping meetings are scheduled for May 2001. Notice of the specific dates and locations of the meetings will appear at future date.

ADDRESSES: Mail comments on the existing facilities, possible issues and alternatives and requests to participate in public scoping meetings to Mr. Bruce Wadlington at the address below. You may also submit requests and comments by sending electronic mail (e-mail) to: *bwadlington@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Wadlington, Mid-Pacific Regional Concessions Manager, Central California Area Office, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630; telephone: Folsom (916) 989–7175, Berryessa (707) 966–2111 ext. 108 (TDD (916) 989–7285).

SUPPLEMENTARY INFORMATION:

Background

Lake Berryessa was created as part of the Solano Project with the completion of Monticello Dam in 1957. In 1958, Reclamation and the County of Napa entered into an agreement for the County to assume management responsibilities for the lake. A Public Use Plan (PUP) was developed by the National Park Service in 1959 to guide Reclamation and the County in development of the recreational facilities at the lake. In 1975, Reclamation resumed direct management of Lake Berryessa as a result of Title VI of the Reclamation Development Act of October 27, 1974 (Public Law 93–493), which authorizes Reclamation to provide for the protection, use, and enjoyment of the aesthetic and recreational values at Lake Berryessa. In 1987 a new planning process began to develop an updated management document for the lake. A Reservoir Area Management Plan (RAMP) was developed to provide guidance for Reclamation in management issues which were not mentioned in the PUP and to assist Reclamation in administering the lake and concession areas. Reclamation completed a final EIS for the RAMP in 1993.

Presently there are seven (7) concessionaires authorized by Reclamation to provide commercial support services to visitors to Lake Berryessa. These concession contracts have been in effect since the late 1950's. All the contracts will expire by 2009. Reclamation also administers two day-use areas and a public launching facility, as well as numerous roadside turnouts and trails. The eastside of the lake has been designated a State Wildlife Area and is managed cooperatively by Reclamation and the California Department of Fish and Game.

Visitor Services Plan

The Visitor Services Plan will identify and develop the requirements, terms, and conditions for new competitive concession contracts that will be developed by the Federal Government. Some of the issues to be addressed in the plan include day-use needs, long-term and short-term recreational vehicle and trailer sites, campground development, marina development, consolidation or expansion of operations, new services development and construction, retention or removal of existing facilities, food and beverage service needs, overnight lodging facilities, and support for marine based activities, *i.e.*, fishing (individual and tournament), swimming, water skiing, etc.

Public Involvement and Planning Schedule

The time frame for completion of this plan is 18 to 24 months. Formal Public Scoping meetings are scheduled to be held in May 2001. The draft EIS is expected to be completed by November 2001. The final EIS is scheduled to be released in March 2002.

Anyone interested in more information concerning the plan, or who has an interest in the future development of Lake Berryessa as related to this planning effort or has suggestions as to significant environmental issues, should contact Mr. Bruce Wadlington as provided above. A web site has been established to provide additional information regarding plan progress and public comment at: *http://www.mp.usbr.gov/berryessa.*

Dated: October 20, 2000.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 00–28454 Filed 11–06–00; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the exemption of coal extraction incidental to the extraction of other minerals at 30 CFR Part 702.

DATES: Comments on the proposed information collection must be received by January 8, 2001, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@smre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR 702, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, 30 CFR Part 702.

OMB Control Number: 1029–0089.

Summary: This part implements the requirement in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which grants an exemption from the requirements of SMCRA to operators extracting not more than 16⅔ percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the regulatory authorities to make that determination.

Bureau Form Number: None.

Frequency of Collection: Once and annually thereafter.

Description of Respondents: Producers of coal and other minerals.

Total Annual Responses: 61.

Total Annual Burden Hours: 513.

Dated: November 2, 2000.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–28563 Filed 11–6–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with the Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America and the State of Louisiana Department of Environmental Quality* v. *Acadia Woods Add. #2 Sewer Co., et al., Defendants, and Total Environmental Solutions, Inc., Intervening Defendant*, Civil Action No. 6:98–0687, was lodged on October 23, 2000, with the United States District Court for the Western District of Louisiana, Lafayette-Opelousas Division. The Consent Decree addresses relief sought by the United States on behalf of the United States Environmental Protection Agency ("EPA") under the Clean Water Act ("CWA"), 33 U.S.C. 1251, *et seq.*, with respect to numerous, ongoing, violations of the CWA and applicable National Pollutant Discharge Elimination System ("NPDES") permits at more than 170 package sewage treatment plants ("STPs") in Louisiana owned and formerly operated by Johnson Properties, Inc., its numerous subsidiaries and affiliates, Glenn Johnson, and Darren K. Johnson (collectively, the "Original Defendants").

The Consent Decree has been signed by Total Environmental Solutions, Inc., ("TESI"), a wholly-owned subsidiary of South Louisiana Electric Cooperative Association ("SLECA"). TESI is a corporation newly created by SLECA to purchase all of the assets of the corporate Original Defendants, and is not connected with the Original Defendants. On October 25, 2000, TESI filed a motion to intervene as a defendant in the above-captioned action for the purpose of placing the STPs on the compliance schedule set forth in the Consent Decree.

The Original Defendants failed to comply with a 1998 Consent Decree requiring them to bring the STPs into compliance. In March 1999, the District Court replaced the management of the corporate Original Defendants with a receiver. Also in March 1999, the corporate Original Defendants commenced a proceeding under Chapter 11 of the Bankruptcy Code, entitled *In re Johnson Properties*, No 99–10437, in the United States Bankruptcy Court for the Middle District of Louisiana. The Bankruptcy Court appointed the receiver as trustee. After a hearing on plan conformation, the Bankruptcy Court concluded that sale of the STPs to a qualified buyer willing to invest in repairs and capital improvements would serve to advance the objective of causing the STPs to comply with the CWA. Under the confirmed plan of reorganization, all of the STPs will be sold to TESI. In the Consent Decree, TESI agrees to a schedule for performing repairs and improvements and for reaching compliance at all of the STPs. If TESI complies with the Consent Decree, it will not be liable for penalties if the STPs exceed permitted effluent limitations during certain defined periods.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, PO Box 7611, Washington, DC 20044, and should refer to *United States* v. *Acadia Woods Add. #2 Sewer Co.*, DOJ Ref. No. 90–5–1–1–4375.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 800 Lafayette Street, Lafayette, Louisiana 70501; the Region 6 office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, refer to the referenced case and enclose a check in the amount of $13.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker B. Smith,

Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–28538 Filed 11–6–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that a proposed consent decree embodying a settlement in *United States* v. *Akzo Nobel Chemicals, Inc. and CK Video Corporation,* Civil Action No. 00–0908–RV–M, was lodged on October 10, 2000, with the United States District Court for the Southern District of Alabama.

The United States seeks reimbursement of response costs incurred by the United States Environmental Protection Agency ("EPA"), pursuant to section 107 of CERCLA, 42 U.S.C. 9607, in response to releases of hazardous substances at the Stauffer Chem (LeMoyne Plant) Superfund Site (the "Site"), which is located near Mobile, Alabama.

Under the proposed consent decree, the Settling Parties, Akzo Nobel Chemical, Inc. and CK Witco Corporation have agreed to address groundwater and subsurface soil contamination on Site in the area designated by EPA as the Operable Unit #2 ("OU #2"). The remedial action selected from EPA's Record of Decision of OU #2 will be the construction, operation, and maintenance of an in-situ soil flushing system, which will operate in tandum with an existing groundwater treatment system, OU #1. OU #2 will significantly expand the range of groundwater and soil remediation of OU #1 by extending the treated areas of the Site reached by the treatment system and enhancing the capture, acceleration of the migration, and removal of contaminants. Monitoring and reporting of the subsurface soil for cyanide and thiocyanate will continue throughout the affected areas on an annual basis to determine if contaminants are moving into the groundwater in a controlled manner and are affectively being captured and treated by the total groundwater treatment system. The Settling Parties also agree to reimburse the Agency for 100% of past and future response and oversight costs.

The Department will receive, for a period of thirty (30) days from the date of this publication, comments relating to the propose consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S.

Department of Justice, Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Akzo Nobel Chemicals, Inc. and CK Witco Corporation*, DOJ Ref. #90–11–2–912/1.

The proposed consent decree may be examined at the EPA Region 4 Superfund Records Center, 61 Forsyth Street, 11th Floor, SW, Atlanta, Georgia 30303–8960, and at the Office of the United States Attorney for the Southern District of Alabama, 169 Dauphin Street, Suite 200, Mobile, Alabama 36602. A copy of the proposed consent decree may be also be obtained by mail from the Department of Justice Consent Decree Library, Box 7611, Washington, DC 20044–7611. In requesting a copy, please refer to the referenced case and enclosed a check in the amount of $34.50 (25 cents per page reproduction costs) payable to the Consent Decree Library. A copy of the decree, exclusive of the parties' signature pages and attachments, may be obtained for $10.00.

Bruce Gelber,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 00–28539 Filed 11–6–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 206–2000]

Privacy Act of 1974 (5 U.S.C. 552a) As Amended by The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503)

This notice is published in the **Federal Register** in accordance with the requirements of the Privacy Act, as amended by the Computer Matching and Privacy Protection Act of 1988 (CMPPA) (5 U.S.C. 552a(e)(12)). The Immigration and Naturalization Service (INS), Department of Justice (the source agency), is participating in a computer matching program with the Minnesota Department of Economic Security (MNDES) (the recipient agency). This matching activity will permit the recipient agency to confirm the immigration status, and therefore eligibility status, of alien applicants for, or recipients of, unemployment compensation. Immigration status will be verified under the "Systematic Alien Verification for Entitlements (SAVE)" program as required by the Immigration Reform and Control Act (ICRA) of 1986 (Pub. L. 99–603).

Section 121(c) of the Immigration Reform and Control Act (IRCA) of 1986 amends Section 1137 of the Social Security and other statutes to require agencies which administer the Federal entitlement benefits programs designated within IRCA as amended, to use the INS verification system to determine eligibility. Accordingly, through the use of user identification codes and passwords, authorized persons from these agencies may electronically access the database of an INS system of records entitled "Alien Status Verification Index, Justice/INS–009." From its automated records system, the MNDES may enter electronically into the INS database the alien registration number of the applicant or recipient. This action will initiate a search of the INS database for a corresponding alien registration number. When such a number is located, MNDES will receive electronically from the INS database the following data upon which to determine eligibility: alien registration number, last name, first name, data of birth, country of birth (not nationality), social security (if available), date of entry, immigration status data, and employment eligibility data. In accordance with 5 U.S.C. 552a(p), MNDES will provide the alien applicant with 30 days notice and an opportunity to contest any adverse finding before final action is taken against that alien because of ineligible immigration status as established through the computer match.

The Department of Justice's Data Integrity Board has approved a new computer matching agreement pursuant to the above-named computer matching program. Matching activities under this new agreement will be effective 30 days after publication of this computer matching notice in the **Federal Register**, or 40 days after a report concerning the computer matching program has been transmitted to the Office of Management and Budget (OMB), and transmitted to Congress along with a copy of the agreement, whichever is later. The agreement (and matching activity) will continue for a period of 18 months from the effective date unless, within 3 months prior to the expiration of the agreement, the Data Integrity Board approves a one-year extension pursuant to 5 U.S.C. 552a(o)(2)(D).

In accordance with 5 U.S.C. 552a(o)(2)(A) and (r), the required report is being provided to the OMG, and to the Congress together with a copy of the agreement.

Inquiries may be addressed to Kathy Riddle, Procurement Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530.

Dated: October 26, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 00–28540 Filed 11–6–00; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Republic Services, Inc. and Allied Waste Industries, Inc., Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement have been filed with the U.S. District Court for the District of Columbia in *United States* v. *Republic Services, Inc. and Allied Waste industries, Inc.*, No. 1:00CV02311. The civil antitrust Complaint, filed on September 27, 2000, alleges that the Republic Services, Inc.'s ("Republic") acquisition of Allied Waste Industries, Inc.'s Akron/Canton, Ohio small container commercial waste hauling assets would substantially lessen competition in the waste collection industry in the Akron/Canton, Ohio market in violation of section 7 of the Clayton Act, 15 U.S.C. 18. The Akron/Canton market is defined as the cities of Akron and Canton, Ohio and counties of Summit, Stark and Portage, Ohio. The proposed Final Judgment, filed at the same time as the Complaint, requires Republic to divest its Akron/Canton, Ohio small container commercial waste collection assets.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and the Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC (telephone: 202–514–2481) and at the office of the Clerk of the U.S. District Court for the District of Columbia, Washington, DC. Copies of

these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Allied" means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Republic" means defendant Republic Service, Inc., a Delaware corporation with its headquarters in Ft. Lauderdale, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Relevant Akron/Canton Assets" means Republic's front-end loader truck small container commercial routes 91, 92, 94, 96, and 97 that serve Summit, Stark, and Portage counties, Ohio.

Relevant Akron/Canton Assets includes, with respect to each of Republic's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies); and all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route.

II. Objectives

The Final Judgment filed in this case is meant to ensure Republic's prompt divestiture of the Relevant Akron/Canton Assets for the purpose of establishing one or more viable competitors in the commercial waste hauling business, to remedy the effects that the United States alleges would otherwise result from Republic's acquisition of certain Allied assets. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Relevant Akron/Canton Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Republic; and that competition is maintained during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transactions sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Republic represents that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Republic shall preserve, maintain, and operate the Relevant Akron/Canton Assets as independent, ongoing, economically viable competitive businesses, with management, sales, and operations of such assets held entirely separate, distinct, and apart from the other operations of Republic. Republic shall not coordinate the marketing of, or negotiation or terms of sale by, any Relevant Akron/Canton Asset with its other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, or thirty (30) days after the entry of this Order, whichever is later, Republic will inform the United States of the steps Republic has taken to comply with this Hold Separate Stipulation and Order.

B. Republic shall take all steps necessary to ensure that (1) the Relevant Akron/Canton Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the commercial waste hauling business; (2) the management of the Relevant Akron/Canton Assets will not be influenced by Republic; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Akron/Canton Assets will be kept separate and apart from Republic's other operations. Republic's influence over the Relevant Akron/Canton Assets shall be limited to that necessary to carry out defendant Republic's obligations under this Hold Separate Stipulation and Order and the proposed final Judgment.

C. Republic shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Akron/Canton Assets, and shall maintain at 2000 or at previously approved levels for 2001, whichever are higher, all promotional, advertising, sales, technical assistance, marketing, and merchandising support for the Relevant Akron/Canton Assets.

D. Republic shall provide sufficient working capital to maintain the Relevant Akron/Canton Assets as economically viable and competitive, ongoing businesses, consistent with the requirements of Section V (A) and (B).

E. Republic shall take all steps necessary to ensure that the Relevant

Akron/Canton Assets are fully maintained in operable condition at no lower than their current capacity or sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Akron/Canton Assets.

F. Republic shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Relevant Akron/Canton Assets.

G. Republic shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Relevant Akron/Canton Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order. Republic shall not hire, transfer, terminate, or otherwise alter the salary agreements for any Republic employee who, on the date of Republic's signing of this Hold Separate Stipulation and Order, either: (1) Works with a Relevant Akron/Canton Asset, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Akron/Canton Assets are divested pursuant to the terms of the final Judgment, the Relevant Akron/Canton Assets shall be managed by Raul Rodriguez. Mr. Rodriguez shall have complete managerial responsibility for the Relevant Akron/Canton Assets, subject to the provisions of this Order and the proposed Final Judgment. In the event that Mr. Rodriguez is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Republic fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

J. Republic shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the proposed Final Judgment or until further order of the Court.

Dated: October 27, 2000

For Plaintiff, United States of America.

Arthur A. Feiveson,
IL Bar #3125793, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0901.

For Defendant Republic Services, Inc.

Paul B. Hewitt,
Akin, Gump, Strauss, Hauer & Feld, 1333 New Hampshire Avenue, NW, Suite 400, Washington, DC 20036, (202) 887–4120.

For Defendant Allied Waste Industries, Inc.

Tom D. Smith,
Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113, (202) 879–3971

Order

It Is So Ordered on this __ day of __2000.______,

United States District Judge

Pursuant to LCvR7.1(k), the following are the attorneys entitled to be notified of the entry of the Order

Arthur A. Fieveson, Esq., United States Department of Justice, Antitrust Division, Litigation II, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Paul B. Hewitt, Esq., Akin, Gump, Strauss, Hauer & Feld, 1333 New Hampshire Avenue, NW., Suite 400, Washington, DC 20036.

Tom D. Smith, Esq., Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW., Washington, DC 20001–2113

Final Judgment

Whereas, plaintiff, the United States of America, having filed its Complaint in this action on September 27, 2000, and plaintiff and defendants, Republic Services, Inc. ("Republic") and Allied Waste Services, Inc., ("Allied"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of the Relevant Republic Assets by Republic to assure that competition is not substantially lessened;

And Whereas, the United States requires Republic to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestitures required below, can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or other injunctive provisions contained below;

Now Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed:*

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. "Acquirer" or "Acquirers" means the entity or entities to whom Republic divests the Relevant Republic Assets.

B. "Allied" means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Hauling" means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers.

D. "MSW" means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.*, waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

E. "Relevant Republic Assets" means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies; and if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages). It also includes all intangible assets, including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route or asset.

Relevant Republic Assets includes the following: Republic's front-end loader truck small container routes (hereinafter, "commercial routes") 91, 92, 94, 96, and 97 that serve Summit, Stark, and Portage counties, Ohio.

F. "Republic" means defendant Republic Services, Inc., a Delaware corporation with its headquarters in Ft. Lauderdale, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

G. "Small container commercial waste collection service" means the business of collecting MSW from commercial and industrial accounts, usually in "dumpsters" (i.e., a small container with one to ten cubic yards of storage capacity), and transporting or "hauling" such waste to a disposal site by use of a front- or rear-end loader truck. Typical commercial waste collection customers include office and apartment buildings and retail establishments (e.g., stores and restaurants).

III. Applicability

A. This Final Judgment applies to Republic and Allied, as defined above, and all other persons in active concert or partipation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Republic shall require, as a condition of the sale or other disposition of all or substantially all of its assets, or of lesser business units that include defendant's Relevant Republic Assets, that the Acquirer or Acquirers agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Republic is hereby ordered and directed, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Relevant Republic Assets in a manner consistent with this Final Judgment to an Acquirer(s) acceptable to the United States in its sole discretion. Republic agrees to use its best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously and timely as possible. The United States, in its sole discretion, may agree to an extension of this time period of up to sixty (60) calender days, and shall notify the Court in such circumstances.

B. In accomplishing the divestitures ordered by this Final Judgment. Republic promptly shall make known, by usual and customary means, the availability of the Relevant Republic Assets. Republic shall inform any person making an inquiry regarding a possible purchase of the Relevant Republic Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Republic shall also offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Relevant Republic Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. Republic shall make available such information to the United States at the same time that such information is made available to any other person.

C. Republic shall provide the Acquirer(s) and the United States information relating to the personnel involved in the operation and management of the Relevant Republic Assets to enable the Acquirer to make offers of employment. Republic and Allied will not interfere with any negotiations by the Acquirer(s) to employ any Republic employee whose primary responsibility is the operation or management of the Relevant Republic Assets.

D. Republic shall permit prospective Acquirer(s) of the Relevant Republic Assets to have reasonable access to personnel and to make inspections of the physical facilities; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Republic shall warrant to all Acquirers of the Relevant Republic Assets that each asset will be operational on the date of sale.

F. Republic and Allied shall not take any action that will impede in any way the permitting, operation, or divestiture of the Relevant Republic Assets.

G. Republic shall warrant to the Acquirer(s) of the Relevant Republic Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the divestiture of the Relevant Republic Assets, Republic and Allied will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits or applications for permits or licenses relating to the operation of the Relevant Republic Assets.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Relevant Republic Assets, and shall be accomplished in such a way to satisfy the United States, in its sole discretion, that the Relevant Republic Assets can and will be used by the Acquirer(s) as part of a viable, ongoing waste hauling business. Divestiture of the Relevant Republic Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Relevant Republic Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment.

(1) Shall be made to an Acquirer or Acquirers that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the waste hauling business; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer or Acquirers and Republic gives Republic or Allied the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If Republic has not divested the Relevant Republic Assets within the time period specified in Section IV(A), Republic shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Relevant Republic Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Republic Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer or Acquirers acceptable to the United States at such price on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other power as this Court deems appropriate. Subject to Section V(D) of this Final

Judgment, the trustee may hire at the cost and expense of Republic any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Republic and Allied shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Republic or Allied must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of Republic, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Republic and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Relevant Republic Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Republic shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Republic shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Republic and Allied shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contracted or made an inquiry about acquiring any interest in the Relevant Republic Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Relevant Republic Assets.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Republic or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Republic. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Relevant Republic Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer or Acquirers, any other third party, or the trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer or Acquirers, any third party, and the trustee, whichever is later, the United States shall provide written notice to Republic and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, Republic shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Republic and Allied shall take no action that would jeopardize the divestitures ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture(s) has been completed under Section IV or V, Republic shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Republic Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Republic has taken to solicit buyers for the Relevant Republic Assets, and to provide required

information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Republic, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Republic shall deliver to the United States and affidavit that describes in reasonable detail all actions Republic has taken and all steps Republic has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Republic shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Republic's earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Republic shall keep all records of all efforts made to preserve and divest the Relevant Republic Assets until one year after such divestiture(s) has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at plaintiff's option demand defendants provide copies of, all books, ledgers, accounts, records and documents in the possession or control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the interviewees' reasonable convenience and without restraint or interference by defendants.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar day notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Republic may not reacquire any part of the Relevant Republic Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

United States District Judge

[File No. 1:00 CV 2311]

Judge: Ricardo M. Urbina.
Deck Type: Antitrust.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on September 27, 2000, seeking to enjoin the acquisition of certain waste hauling assets by Republic Services, Inc. ("Republic") from Allied Waste Industries, Inc. ("Allied"). Republic and Allied had entered into agreements pursuant to which Republic would acquire waste hauling assets from Allied in the Akron/Canton, Ohio area. The Complaint alleges that the likely effects of these acquisitions would be to substantially lessen competition for waste collection services in the Akron/Canton area in violation of Section 7 of the Clayton Act, 15 U.S.C. Section 18, resulting in consumers paying higher prices and receiving fewer services for the collection of waste.

At the time the Complaint was filed, the United States also filed a proposed Final Judgment and a Hold Separate Stipulation and Order that would permit Republic to complete its acquisition of the Allied assets, provided divestitures of certain waste collection assets are accomplished in such a way as to preserve competition in the market. Under the proposed Final Judgment, which is explained more fully below, Republic is required within 120 days after September 27, 2000, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest as viable, ongoing business operations certain waste hauling assets in the Akron/Canton area. Under the terms of the Hold Separate Stipulation and Order, Republic is required to take certain steps to ensure that the assets to be divested will be preserved and held separate from Republic's other assets and businesses until the divestiture is accomplished. Republic has appointed, subject to the United States' approval, an individual to manage the assets to be divested and ensure the defendants' compliance with the requirements of the proposed Final Judgment and Hold Separate Order.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the

Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Republic, with revenues of approximately $1.8 billion in its 1998 fiscal year, is engaged in providing waste collection and disposal services throughout the United States. Allied, with revenues in 1999 of approximately $6 billion, is the nation's second-largest waste hauling and disposal company, operating throughout the United States. Pursuant to a Put/Call Agreement dated December 6, 1999 and a Letter Agreement dated August 1, 2000, Republic will acquire from Allied certain waste-hauling and disposal assets in the Akron/Canton area. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States on September 27, 2000.

B. The Competitive Effects of the Transaction

Waste collection firms, or "haulers," contract to collect municipal solid waste ("MSW") from residential and commercial customers; they transport the waste to private and public disposal facilities (e.g., transfer stations, incinerators and landfills), which, for a fee, process and legally dispose of waste. In the Akron/Canton area, Republic and Allied compete in operating small container waste collection routes and waste disposal facilities.

Small container commercial waste collection service is the collection of MSW from commercial businesses such as office and apartment buildings and retail establishments (e.g., stores and restaurants) for shipment to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize commercial accounts into special routes, and use specialized equipment to store, collect and transport waste from these accounts to approved disposal sites. This equipment—one to ten cubic yard containers for waste storage, plus front-end and rear-end loader trucks for collection and transportation—is uniquely well suited for the provision of small container commercial waste collection service. Providers of other types of waste collection services (e.g., residential and roll-off services) are not good substitutes for small container commercial waste collection firms. In their waste collection efforts, other firms use different waste storage equipment (e.g., garbage cans or semi-stationary roll-off containers) and different trucks (e.g., side-load trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect or transport waste generated by commercial accounts, and hence, are rarely used on small container commercial waste collection routes. For purposes of antitrust analysis, the provisions of small container commercial waste collection services constitutes a line of commerce, or relevant service, for analyzing the effects of the acquisition.

The Complaint alleges that the provision of small container commercial waste collection services takes place in compact, highly localized geographic markets. It is expensive to ship waste long distances in either collection or disposal operations. To minimize transportation costs and maximize the scale, density and efficiency of their waste collection operations, small container commercial waste collection firms concentrate their customers and collection routes in small areas. Firms with operations concentrated in a distant area cannot easily compete against firms whose routes and customers are locally based. Sheer distance may significantly limit a distant firm's ability to provide commercial waste collection service as frequently or conveniently as that offered by local firms with nearby routes. Also, local commercial waste collection firms have significant cost advantages over other firms, and can profitably increase their charges to local commercial customers without losing significant sales to firms outside the area.

Applying that analysis, the Complaint alleges that the Akron/Canton, Ohio area constitutes a section of the country, or relevant geographic market, for the purpose of assessing the competitive effects of a combination of Republic and Allied in the provision of small container commercial waste collection services. The Akron/Canton area includes the Cities of Akron and Canton, Ohio; and Summit, Stark and Portage counties, Ohio. In the Akron/Canton area, Republic's acquisition of Allied's assets would reduce from four to three the number of major firms competing in small container commercial waste collection service. After the acquisition, Republic would control approximately 35% of the total market revenue, which exceeds $25 million annually.

New entry into this market would be difficult and time consuming and is unlikely to be sufficient to constrain any post-merger price increase. Many customers of commercial waste collection firms have entered into long-term contracts, tying them to a market incumbent for indefinitely long periods of time. In competing for uncommitted customers, market incumbents can price discriminate, i.e., selectively (and temporarily) change unbeatably low prices to customers targeted by entrants, a tactic that would strongly discourage a would-be competitor from competing for such accounts, which, if won, may be unprofitable to serve. Taken together, the prevalence of long-term contracts and the ability of market incumbents to price discriminate substantially increases any would-be new entrant's costs and the time necessary for it to build its customer base and obtain efficient scale and route density to become an effective competitor in the market.

The Complaint alleges that a combination of Republic and Allied in Akron/Canton would likely lead to an increase in prices charged to consumers of small container commercial waste collection services. The acquisition would diminish competition by enabling the few remaining competitors to engage more easily, frequently and effectively in coordinated pricing interaction that harms consumers.

III. Explanation of the Proposed Final Judgment

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in small container commercial waste collection services in the Akron/Canton area by establishing a new, independent and economically viable competitor in the markets. The proposed Final Judgment requires Republic, within 120 days after September 27, 2000, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable, ongoing business or businesses its small container commercial waste collection assets (e.g., routes, trucks, containers, and customer lists) relating to the Akron/Canton market to a purchaser acceptable to the United States in its sole discretion.

These assets must be divested in such a way as to satisfy the United States that the operaitons can and will be operated by the purchaser or purchasers as a viable, ongoing business that can compete effectively in the relevant

market. Republic must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

In the event that Republic does not accomplish the divestiture within the above-described period, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Republic will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth its efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The relief sought in the Akron/Canton area will maintain the pre-acquisition structure of the market and thereby ensure that consumers of small container commercial waste collection services will continue to receive the benefits of competition—lower prices and better service.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response to the United States will be filed with the Court and published in the**Federal Register.** Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Republic and Allied. The United States could have continued the litigation and sought preliminary and permanent injunctions against Republic's acquisition of the Allied assets. The United States is satisfied, however, that the divestiture of hauling assets will preserve competition for small container commercial waste collection services in the Akron/Canton area. To this end, the United States is convinced that the proposed relief, once implemented by the Court, will prevent Republic's acquisition of the Allied assets from having adverse competitive effects.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally an individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[1] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61.508 at 71.980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462

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[1] 119 Cong. Rec. 24,598 (1973) *see also United States* v. *Gillette Co.* 406 F. Supp. 713, 715 (D. Mass. 1975), *aff'd sub nom. Maryland* v. *United States*, 406 U.S. 1001 (1983). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, *see* 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, at 8–9 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6535, 6538.

(9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981)); *see also Microsoft*, 56 F.3d 1448 (D.C. cir. 1995). Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest'"[3]

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relation to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case," *Microsoft*, 56 F.3d at 1459. Because "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id. at 1459–60.*

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: October 23, 2000.

Respectfully submitted.

Arthur A. Feiveson,

IL Bar #3125793, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0901.

[Civil No. 00 2311]

Filed: 9/27/00.

Certificate of Service

I hereby certify that copies of the Competitive Impact Statement have been served upon Republic Services, Inc. and Allied Waste Industries, Inc. by U.S. mail, postage prepaid, to the attorneys listed below, this 23rd day of October, 2000.

Counsel for Defendant Allied Waste Industries, Inc., Tom D. Smith, Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113.

Counsel for Defendant Republic Services, Inc., Paul B. Hewitt, Akin. Gump, Strauss, Hauer & Feld, 1333 New Hampshire Avenue, NW, Suite 400, Washington, DC 20036.

Arthur A. Feiveson,

IL Bar #3125793, U.S. Department of Justice, Antitrust Division, Suite 3000, 1401 H Street, NW, Washington, DC 20530, (202) 307–0901.

[FR Doc. 00–28541 Filed 11–6–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), DOJ.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board. The CJIS Advisory Policy Board is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI CJIS Division and thereafter, make appropriate recommendations to the FBI Director. The topics to be discussed will include CJIS System Enhancement Strategy Group (SESG) recommendations for prioritization of system enhancements, Data systems for policing in the 21st century, Secondary Dissemination of National Crime Information Center (NCIC) Wanted Person File Data and Name-based criminal history records. Discussion will also include the status on the CJIS Development and Enhancement Strategy Team (C-Dest), Integrated Automated Fingerprint Identification System (IAFIS) latent fingerprint connectivity, the National Crime Prevention and Privacy Compact, and other issues related to the IAFIS, NCIC, Law Enforcement Online, National Instant Criminal Background Check System (NICS), and Uniform Crime Reporting Programs.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the FBI's CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Roy Weise, Unit Chief, Programs Development Section (304) 625–2730, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed not more than 15 minutes to present a topic.

DATES AND TIMES: The Advisory Policy Board will meet in open session from 9 a.m. until 5 p.m. on December 12–13, 2000.

ADDRESSES: The meeting will take place at the Tampa Convention Center, 333 South Franklin Street, Tampa, Florida, telephone (813) 274–8422.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Lori A. Kemp, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone (304) 625–2619, facsimile (304) 625–5090.

Dated: October 27, 2000.

Thomas E. Bush, III,

Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 00–28455 Filed 11–6–00; 8:45 am]

BILLING CODE 4410–02–M

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[2] *Bechtel Corp.*, 648 F.2d at 666 (citations omitted and emphasis added); *see BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broad Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *s* v. *Gillette Co.*, 406 F. Supp. at 716; *see also United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984).

[3] *United States* v. *American Tel. and Tel. Co.*, 552 F.Supp. 131, 150 (D.D.C. 1982) (citations omitted) *quoting Gillette Co.*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F.Supp. 619, 622 (W.D. Ky. 1985).

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts as preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension to the collection of information on the Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 8, 2001.

ADDRESSES: Comments and questions regarding the collection of information on Form ETA 9033, Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports, should be directed to Dale M. Ziegler, Chief, Division of Foreign Labor Certifications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, D.C. 20210; (202) 693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

1. Background

The information collection is required due to amendments to section 258 of the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (INA). The amendments created a prevailing practice exception to the general prohibition on the performance of longshore work by alien crewmembers in U.S. ports. Under the prevailing practice exception, before any employer may use alien crewmembers to perform longshore activities in U.S. ports, it must submit an attestation to ETA containing the elements prescribed by the INA.

The INA further requires that the Department make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation it has received.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

In order for the Department to meet its statutory responsibilities under the INA there is a need for an extension of an existing collection of information pertaining to employers' seeking to use alien crewmembers to perform longshore activities in U.S. ports.

Because the prevailing practice exception remains in the Statute, ETA is requesting a one-hour marker as a place holder for this collection of information. ETA has not received any attestations under the prevailing practice exception within the last two years. An information collection request will be submitted to increase the burden should activities recommence.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports.

OMB Number: 1205–0309.

Agency Number: Form ETA 9033.

Recordkeeping: Annually.

Affected Public: Businesses or other for-profit.

Total Responses: 1.

Average Time Per Response: 4 hours.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $100 per response.

Comment Language: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 1st day of November 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 00–28513 Filed 11–6–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications For 2000 Under The Federal Unemployment Tax Act

On October 31, 2000, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers who make contributions to State unemployment funds to obtain certain credits against their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Dated: November 1, 2000.

Raymond L. Bramucci,

Assistant Secretary of Labor.

Secretary of Labor

Washington

October 31, 2000.

The Honorable Lawrence H. Summers,
Secretary of the Treasury,
Washington, DC 20220,

Dear Secretary Summers: Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending on October 31, 2000. One is required with respect to the normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986 (IRC), and the other is required with respect to the additional tax credit by Section 3303 of the IRC. Both certifications list all 53 jurisdictions.

Sincerely,
Alexis M. Herman.

Enclosures.

Certification of States to the Secretary of the Treasury, Pursuant to Section 3304 of the Internal Revenue Code of 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 2000, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Lousiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 2000.
Alexis M. Herman,
Secretary of Labor.

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant To Section 3303(b)(1) of The Internal Revenue Code of 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 2000:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Dalaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 2000.

Alexis M. Herman,
Secretary of Labor.

[FR Doc. 00–28512 Filed 11–6–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the Work Schedules Supplement to the Current Population Survey (CPS), to be conducted in May 2001. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before January 8, 2001.

ADDRESSES: Send comments to Ausie B. Grigg, Jr., BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE, Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Ausie B. Grigg, Jr., BLS Clearance Officer, telephone number 202–691–7628. (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment for over 50 years. Collection of labor force data through the CPS is necessary to meet the requirements in Title 29, United States Code, Sections 1 and 2. Over the past several decades, the economy of the United States has been undergoing a fundamental restructuring. Advances in computer and communications technology have increasingly enabled some workers to perform part or all of their work at home. The growth of this phenomenon represents an important development in this country's labor markets. This supplement will provide a substantial and objective set of data about work at home and work in home-based businesses. It will provide valuable information on the work schedules of employed persons, that is, the beginning and ending times of work, type of shift worked, and calendar days worked. It also will provide information about employed persons who do work at home. Work schedule supplements have been conducted since the 1970s. Questions on home-based work were included in May 1985, May 1991, and May 1997. A key purpose of the May 2001 collection is to gather updated information on these topics. In particular, it is widely believed that the number of persons who work at home is growing rapidly, and the May 2001 supplement will provide information that will help researchers gauge the extent to which this group is expanding and provide additional detail on the nature of this work activity. More generally, the May 2001 Work Schedule Supplement will be used by BLS researchers and others to examine the changes in work schedules and work at home that are taking place over time.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

OMB clearance is being sought for the Work Schedules Supplement to the CPS.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: Work Schedules Supplement to the CPS.

OMB Number: 1220–0119.

Affected Public: Households.

Total Respondents: 58,000.

Frequency: Monthly.

Total Responses: 58,000.

Average Time Per Response: 4.5 Minutes.

Estimated Total Burden Hours: 4,350 Hours.

Total Burden Cost (capital/startup): $0

Total Burden Cost (operating/maintenance): $0

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 31st day of October, 2000.

W. Stuart Rust, Jr.,
Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 00–28511 Filed 11–6–00; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[IA–00–032]

In the Matter of Hiram J. Bass; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Hiram J. Bass was formerly employed as the Measuring and Test Equipment (M&TE) Program Administrator by Tennessee Valley Authority (TVA or Licensee). The Licensee is the holder of License Nos. DPR–33, DPR–52, DPR–68, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50 on December 20, 1973, August 2, 1974, and August 18, 1976, respectively. The licenses authorize the operation of the Browns Ferry Nuclear Plant Units 1, 2, and 3 (BFN or facility) in accordance with the conditions specified therein. The facility is located on the Licensee's site in Athens, Alabama.

II

On September 21, 1999, the Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) initiated an investigation to determine whether Hiram J. Bass deliberately failed to issue and/or disposition nonconformance evaluations as required by site procedures while employed as the M&TE Program Administrator at the facility. The NRC also conducted an inspection of this issue during the period April 2 through June 24, 2000. The results of this investigation and inspection were documented in NRC Inspection Report 50–259/00–03, 50–260/00–03, 50–296/00–03, issued on July 27, 2000, and our letter to Mr. Bass dated July 31, 2000.

As background, certain M&TE used at BFN is calibrated on a regular basis by TVA's Central Laboratory Field Testing Services (CLFTS). When CLFTS identifies an instrument that is out of tolerance, that information is forwarded to the BFN Maintenance Department, M&TE Group. The M&TE Program Administrator is responsible for issuing and ensuring disposition of each nonconformance evaluation for M&TE found to be out of tolerance. The purpose of a nonconformance evaluation is, among other reasons, to initiate the facility review process to ensure that plant components have not been negatively affected by the out-of-tolerance M&TE, and to initiate action to address plant components that have been affected.

BFN Technical Specification 5.4.1, BFN Site Standard Practice Procedure (SSP)–6.7, Control of Measuring and Test Equipment, Revision 8A, effective May 27, 1997 through June 1, 1998, and TVA Standard Programs and Processes Procedure (SPP)–6.4, Measuring and Test Equipment, Revision 0, effective May 29, 1998, through August 15, 1999, together require nonconformance evaluations to be issued and dispositioned for conditions such as lost M&TE or standards, out-of-tolerance M&TE or plant standards, damaged or otherwise defective M&TE or plant standards, and disassembled M&TE or plant standards.

In June 1999, a BFN self-assessment of the M&TE program revealed that several out-of-tolerance M&TE items did not have nonconformance evaluations initiated by BFN. Further TVA review determined that, from June 1997 to June

1999, approximately 500 nonconformance evaluations were not properly issued and/or dispositioned for components tested or inspected using the out-of-tolerance M&TE. When questioned by TVA and subsequently by the NRC OI, Mr. Bass failed to explain why the large number of nonconformance evaluations had not been issued and/or dispositioned. On June 21, 1999, following questions by TVA regarding this matter, Mr. Bass resigned from TVA.

The NRC's investigation and inspection of this matter concluded that Mr. Bass deliberately failed to issue and/or disposition nonconformance evaluations on test equipment that was out-of-tolerance, in accordance with BFN Technical Specification required Licensee procedures.

The NRC informed Mr. Bass by certified letter dated July 31, 2000, of the results of the NRC's investigation and inspection of this matter, and provided Mr. Bass the opportunity to respond to this matter or request a predecisional enforcement conference. Receipt of the letter by Mr. Bass was verified by his signature on the certified mail return receipt. The NRC has attempted to contact Mr. Bass by telephone on numerous occasions; however, to date he has not responded to the NRC's July 31, 2000 letter.

III

Based on the above, the NRC has concluded that Mr. Bass engaged in deliberate misconduct from approximately June 1997 to June 1999, by deliberately failing to adhere to Technical Specification 5.4.1 required Licensee procedures related to out of tolerance measuring and test equipment (M&TE).

These actions constituted a violation of 10 CFR 50.5(a)(1), which prohibits an individual from engaging in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or order or any term, condition or limitation of any license issued by the Commission. As defined by 10 CFR 50.5(c)(2), deliberate misconduct means an intentional act or omission that the person knows constitutes a violation of a requirement, procedure, or instruction of a licensee; in this case Technical Specification 5.4.1. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements. Mr. Bass' conduct raises serious doubt about his trustworthiness and reliability; particularly whether he can be relied upon to comply with NRC requirements in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Bass were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Bass be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of his resignation from the Licensee (June 21, 1999). Additionally, Mr. Bass is required to notify the NRC of his first employment after the prohibition period ends and all subsequent employment in NRC-licensed activities for a period of three years following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Bass' conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 50.5, it is hereby ordered, effective immediately, that:

1. Hiram J. Bass is prohibited for three years from the date of his resignation, June 21, 1999, from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Bass is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of three years after the three year period of prohibition has expired, Mr. Bass shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement (OE), U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Bass shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Bass of good cause.

V

In accordance with 10 CFR 2.202, Hiram J. Bass must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Bass or other person adversely affected relies and the reasons as to why the Order should not have been issued.

Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Associate General Counsel for Hearings, Enforcement & Administration at the same address, to the Regional Administrator, NRC Region II, 61 Forsyth Street, SW, Suite 23T85, Atlanta, GA, 30303, and to Mr. Bass, if the answer or hearing request is by a person other than Mr. Bass.

If a person other than Mr. Bass requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Bass or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Bass may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated: Dated this 27th day of October 2000.

R.W. Borchardt,

Director, Office of Enforcement.

[FR Doc. 00–28496 Filed 11–06–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Energy Co.; Palisades Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–20, issued to Consumers Energy Company (the licensee), for operation of the Palisades Plant, located in Van Buren County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the expiration date of the Operating License from "midnight on March 14, 2007" to "midnight on March 24, 2011." Palisades is currently licensed to operate 40 years commencing with the issuance of the construction permit on March 14, 1967. At present, the Facility Operating License expires at midnight on March 14, 2007. The licensee seeks an extension of the license term to allow Palisades to operate until 40 years from the issuance of its Provisional Operating License. The Provisional Operating License for Palisades was issued on March 24, 1971. This action would extend the period of operation to the full 40 years provided by the Atomic Energy Act and the Code of Federal Regulations.

The proposed action is in accordance with the licensee's application for license amendment dated April 27, 2000.

The Need for the Proposed Action

The proposed action is needed to allow the licensee to continue to operate Palisades for 40 years from the date of issuance of the Provisional Operating License. This extension of 4 years and 10 days would permit Palisades to operate for the full 40-year design-basis lifetime, consistent with the Commission's policy stated in a memorandum dated August 16, 1982, from William Dircks, Executive Director for Operations, to the Commissioners, and as evidenced by the issuance of more than 50 such extensions to other licensees.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that extending Facility Operating License No. DPR–20 for 4 years and 10 days would not create any new or unreviewed environmental impacts. This change does not involve any physical modifications to Palisades and there are no new or unreviewed environmental impacts that were not considered as part of the Final Environmental Statement (FES) related to operation of Palisades, dated June 1972, as supplemented by a final addendum (NUREG–0343), dated February 1978, related to an increase in core power level, and as supplemented by an environmental assessment (EA) dated October 22, 1990, related to conversion of the Provisional Operating License to a 40-year full-term Facility Operating License, which concluded that an FES supplement was not necessary. Evaluations for the FES, as supplemented by the final addendum and by the EA, considered a 40-year operating life. The considerations involved in the NRC staff's determination are discussed below.

Radiological Impacts of the Hypothetical Design-Basis Accidents

The offsite exposure from releases during postulated accidents was evaluated and found acceptable during the operating license stage and subsequent license amendments. This type of evaluation involves four issues: (1) Type and probability of postulated accidents, (2) the radioactive material releases calculated for each accident, (3) the assumed meteorological conditions, and (4) population size and distribution in the vicinity of Palisades. The NRC staff has concluded that neither the type and probability of postulated accidents nor the radioactive material releases calculated for each accident would change through the proposed extended operation. As discussed in Sections 2.5.5 and 2.5.6 of Palisades' Updated Final Safety Analysis Report (UFSAR), more recent meteorological data collected onsite (1983 to 1997 for short-term and 1988 to 1993 for long-term atmospheric dispersion potentials) since issuance of the Operating License have resulted in generally more favorable atmospheric dispersion estimates such that the earlier analyses of the offsite consequences of postulated radiological releases to the atmosphere remain bounding. A comparison of the 1980 population in the UFSAR with the actual 1990 census data shows a 3.5-percent decline in the permanent resident population within 10 miles of Palisades. Using 1990 census data and recent surveys to establish the possible transient population, the licensee found that the maximum probable population within the 10-mile Emergency Planning Zone has declined from that shown in the UFSAR for 1980. The 1998 estimated population for the 13 cities and townships within 10 miles of Palisades declined by 1 percent from the 1990 census. These declining trends are expected to continue such that the population for the period 2007 through 2011 should be well within the previous FES and UFSAR projections. There are no changes to the current exclusion area, low population zone, and nearest population center distance, and the licensee will continue to meet the requirements of 10 CFR 100.11(a) for the proposed license term extension. Also, there is no expected change in land usage during the license terms that would affect offsite dose calculations. Therefore, cumulative exposure to the general public due to a design-basis accident would be within the bounds of the original projections because of the lower than projected population and improved meteorological conditions for the site and surrounding area.

Accordingly, the NRC staff concludes that the proposed action will not significantly change previous conclusions regarding the potential environmental effects of offsite releases from postulated accident conditions.

Radiological Impacts of Annual Releases and Occupational Exposures

On an annual basis, the licensee submits an Occupational Radiation Exposure Report to the NRC. The data in these reports show that the collective occupational exposure at Palisades is in a declining trend. The 3-year annual average collective occupational exposure at Palisades has dropped from about 270 person-rem/year in 1996 to about 161 person-rem/year in 1999. Through continued implementation of As Low As Is Reasonably Achievable (ALARA) and other programs, and by continuing to apply new techniques as they are developed by the industry, the licensee expects to minimize occupational exposure for Palisades during the period of the license extension. The licensee projects that the collective occupational exposure at Palisades for the period of 2007 to 2011 will average 125 person-rem/year. Based on its review of historical radiation exposure data at Palisades, the licensee's continued implementation of ALARA, and the licensee's continued compliance with the requirements of 10 CFR Part 20, the NRC staff concludes that the occupational exposures will continue to decline, and therefore, exposures during the proposed extended period will remain below the exposures experienced during Palisades' previous years of operation.

In accordance with Palisades' Technical Specifications (TSs), the licensee has established several radiation monitoring programs, including a program that follows 10 CFR Part 50, Appendix I, guidelines to maintain radiation doses ALARA to members of the public. The Appendix I guidelines establish radioactive design/dose objectives for liquid and gaseous offsite releases, including iodine particulate radionuclides. In addition, routine releases to the environment are governed by 10 CFR Part 20, which states that such releases should be ALARA. Each year, the licensee submits an Annual Radioactive Effluent Release and Waste Disposal Report that provides an annual assessment of the radiation dose as a result of radioactive liquid and gaseous effluents released from Palisades. These reports show that release of radioactive liquids and gases have historically been only a small percentage of the Appendix I guidelines. As a result of the continued implementation of the ALARA program, offsite exposures can be expected to remain lower than the Appendix I guidelines and FES estimates. These reports also discuss the types and quantity of solid radioactive waste (radwaste) processed during the year and shipped to a licensed offsite low-level waste disposal facility in another state. Solid radwaste typically includes dry active waste, evaporator bottom contents, spent resins and filters, and irradiated hardware. The volume of solid radwaste shipped from Palisades has historically been consistent with that projected in the FES (2100 to 10,000 cubic feet per year). The volume of radwaste generated at Palisades due to the processing of radioactive liquids (filters and resins), and due to routine maintenance on equipment, has decreased significantly since the late 1980's due, in part, to the processing of dry active waste by incineration. The licensee continues to pursue waste volume reduction technology to minimize impacts associated with radwaste management. Therefore, the NRC staff concludes that the additional solid radwaste generated and processed during the extended period of operation will continue to be consistent with the types and quantities previously projected in the FES.

In accordance with Palisades' TSs, the licensee has an established Radiological Environmental Monitoring Program by which it monitors the effect of operation of its facility upon the environment. This is accomplished by continuously measuring radiation levels and airborne radioactive material levels and periodically measuring amounts of radioactive materials in samples at various locations surrounding Palisades. Continued environmental monitoring and surveillance under the program ensure early detection of any increase in exposures over the proposed extended operation.

Accordingly, the NRC staff concludes that the radiological impact upon the public due to the proposed extended operation would not increase over that previously evaluated in the FES and the occupational exposures will be consistent with the industry average and in accordance with 10 CFR Part 20.

The NRC staff has reviewed the environmental impacts attributable to the transportation of spent fuel and waste from the Palisades site. With respect to the normal conditions of transport and possible accidents in transport, the NRC staff finds that the environmental impacts are bounded by those identified in Table S–4, "Environmental Impact of Transportation of Fuel and Waste to and from One Light Water-Cooled Nuclear Power Reactor," of 10 CFR Part 51.52 for burnup levels up to 60,000 megawatt-days per metric ton of uranium (MWd/MTU) and 5 weight percent U-235 enrichment (53 FR 6040 and 53 FR 30355). The NRC staff concludes that the environmental impact related to the transportation of fuel and waste remains low and is not significantly increased by the change in the expiration date of the Operating License.

Based upon the conservative population estimate in the FES dated November 1973 and EAs dated February 26 and June 7, 1990, low radiological exposure from plant releases during normal operation and postulated accidents, and the environmental monitoring program, the NRC staff concludes that the radiological impact on the public due to the proposed action would not be significant and the conclusions of the FES would remain valid.

Environmental Impact of the Uranium Fuel Cycle

Palisades is currently operating in its 15th fuel cycle. Fuel enrichments (batch average) have ranged from a minimum of 1.65 weight percent U-235 up to 4.02 weight percent U-235. Palisades is presently licensed to store fuel with enrichments up to 4.4 weight percent U-235. To date, the maximum burn-up of any single fuel assembly has been 51,500 MWd/MTU. In its generic EA dated February 29, 1988 (53 FR 6040), the NRC staff concluded that the environmental impact of extended fuel irradiation up to 60,000 MWd/MTU and increased enrichment up to 5 weight percent are bounded by the impacts reported in Table S–4 of 10 CFR 51.52. Thus, this generic assessment is bounding for the Palisades Plant.

The total projected number of fuel cycles remaining before the current Facility Operating License expiration date (March 14, 2007) is five. The proposed extended operation will increase the number of complete fuel cycles by about 3 to a total of 22 based on projected cycle lengths. The total number of discharged fuel assemblies, including a full core discharge at the end of the current Operating License expiration date, is projected to be 1453. The licensee projects that the total number of spent fuel assemblies, including a full core discharge at the end of the 40-year operating life, would be between 1577 and 1625. Thus, the proposed extended operation involves the generation, interim storage, and ultimate disposal of up to an additional 172 spent fuel assemblies.

To provide for the storage of additional spent fuel assemblies beyond the licensed capacity of the Palisades spent fuel pool, the licensee began using dry storage in 1993 under a general license in accordance with 10 CFR part 72 (Docket No. 72–7). The licensee projects that the proposed extended operation will result in an additional 126 fuel assemblies in dry fuel storage. Licensed dry fuel storage has provided, and will continue to provide, sufficient extra spent fuel storage capacity to accommodate the spent fuel storage needed for 40 years of operation.

Based on the above, the NRC staff concludes that there are no significant changes in the environmental impact related to the uranium fuel cycle due to the proposed extended operation of Palisades.

Nonradiological Impacts

The NRC relies upon the State of Michigan, Department of Environmental Quality (MDEQ), for regulation of nonradiological matters involving water quality and aquatic biota. The State of Michigan has reviewed and considered the environmental impacts of Palisades' water discharge in its issuance of the National Pollutant Discharge Elimination System (NPDES) permit and renewals. The NPDES permit contains requirements necessary to comply with State and Federal water pollution control laws, and is audited by MDEQ and the U.S. Environmental Protection Agency. On October 1, 1999, MDEQ renewed the NPDES permit for Palisades (NPDES Permit No. MI0001457) with an effective date of November 1, 1999, and an expiration date of October 1, 2003. The licensee expects the MDEQ to renew and issue NPDES permits about every 4 years until expiration of the Operating License. Because the licensee will continue to abide by the NPDES permits, there will be no significant nonradiological impact on the environment with regard to liquid discharges from Palisades as a result of extending the expiration date of the Operating License. Also, the proposed action does not involve any historic sites. Therefore, the NRC concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the "no action" alternative). Denial of the application would result in no significant improvement in environmental impacts, but could result in nonradiological environmental effects due to airborne effluents from nonnuclear plants that would be required to operate in order to replace the power supplied by Palisades. The environmental impacts of the proposed action and the alternative action are otherwise similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the FES, as supplemented, for Palisades.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the Michigan State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of no Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 27, 2000. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 31st day of October 2000.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–28494 Filed 11–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 6, 13, 20, 27, December 4, and 11, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 6

There are no meetings scheduled for the Week of November 6.

Week of November 13—Tentative

Wednesday, November 15, 2000

10:00 a.m. Briefing by the Executive Branch (Closed-Ex. 1)

Friday, November 17

9:25 a.m. Affirmation Session (Public Meeting) (If needed)
9:30 a.m. Briefing on Risk-Informed Regulation Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790)

This meeting will be webcast live at the Web address–*www.nrc.gov/live.html*

Week of November 20—Tentative

There are no meetings scheduled for the Week of November 20.

Week of November 27—Tentative

Monday, November 27, 2000

9:00 a.m. (Briefing by DOE on Plutonium Disposition Program and MOX Fuel Fabrication Facility Licensing (Public Meeting) (Contact: Drew Persinko, 301–415–6522)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 4—Tentative

Monday, December 4

1:55 p.m. Affirmation Session (Public Meeting) (If needed)
2:00 p.m. Briefing on License Renewal Generic Aging Lessons Learned (GALL) Report, Standard Review Plan (SRP), and Regulatory Guide (Public Meeting) (contact: Chris Grimes, 301–415–1183)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 11—Tentative

There are no meetings scheduled for the Week of December 11.

The Schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: November 3, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–28669 Filed 11–3–00; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guides; Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability; Correction.

SUMMARY: This document corrects a notice relating to the availability of Draft Regulatory Guides DG–1102 and DG–1103, appearing in the **Federal Register** on October 31, 2000 (65 FR 65024). This action is necessary to correct the accession numbers listed in the notice for viewing the electronic copies of the draft guides.

FOR FURTHER INFORMATION CONTACT: John P. Segala, Division of Systems Safety and Analysis, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–7162 (e-mail: *jps1@nrc.gov*).

In the **Federal Register** dated October 31, 2000, page 65024, second column, third paragraph, fourth sentence, the third and fourth lines are corrected to read as follows: ML003756180 for DG–1102 and ML003756467 for DG–1103.

Dated at Rockville, Maryland, this 1st day of November, 2000.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 00–28497 Filed 11–6–00; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Plan for Using Risk Information in the Materials and Waste Arenas: Case Studies

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff is developing an approach for using risk information in the nuclear materials regulatory process. As part of this effort, the NRC staff has developed a plan for using risk-informed approaches in the nuclear materials and waste arenas. The plan employs case studies to examine the use of risk information in the nuclear materials and waste arenas.

The purpose of the case studies is: (1) To illustrate what has been done and what could be done in the materials and waste arenas to alter the regulatory approach in a risk-informed manner; and (2) to establish a framework for using a risk-informed approach in the materials and waste arenas. A draft of the plan was published in the **Federal Register** (65 FR 54323, September 7, 2000). On September 21, 2000, the NRC staff held a public meeting to communicate the draft plan to the public and to receive feedback. The meeting was open to the public and all interested parties were welcomed to attend and provide comments. The meeting was held from 9 a.m. to 12 noon in the U.S. Nuclear Regulatory Commission Auditorium in Rockville, Maryland. Based on the comments received at the public meeting and on comments from members of the Office of Nuclear Materials Safety and Safeguards Risk Steering Group, the NRC staff has revised and finalized the plan. The final plan is provided below in its entirety.

Plan for Using Risk Information in the Materials and Waste Arenas: Case Studies

1. Background

In SECY–99–100, "Framework for Risk-Informed Regulation in the Office of Nuclear Material Safety and Safeguards (NMSS)," dated March 31, 1999, the Nuclear Regulatory Commission (NRC) staff proposed a framework for risk-informed regulation in the materials and waste arenas. On June 28, 1999, the Commission approved the staff's proposal. In the associated staff requirements memorandum, the Commission approved the staff's recommendation to implement a five-step process consisting of:

(1) Identifying candidate regulatory applications that are amenable to expanded use of risk assessment information;
(2) Making a decision on how to modify a regulation or regulated activity;
(3) Changing current regulatory approaches;
(4) Implementing risk-informed approaches; and
(5) developing or adapting existing tools and techniques of risk analysis to the regulation of nuclear materials safety and safeguards.

Step one of the five-step process will be accomplished by applying screening criteria to regulatory application areas as a means to identify the candidate regulatory applications. To be a candidate for expanded use of risk information in the materials and waste arenas, regulatory application areas must meet the screening criteria.

As part of the staff's effort to use an enhanced public participatory process in developing the framework, the staff held a public workshop in Washington, DC, on April 25 and 26, 2000. The staff published draft screening criteria in a **Federal Register** Notice (65 FR 14323, March 16, 2000) announcing the workshop. The purpose of the first part of the workshop was to solicit public comment on the draft screening criteria and their applications. The purpose of the second part of the workshop was to solicit public input for the process of developing safety goals for nuclear materials and waste applications.

The workshop included participation by representatives from NRC, Environmental Protection Agency, Department of Energy, Occupational Safety and Health Administration, Organization of Agreement States, Health Physics Society, Nuclear Energy Institute, environmental and citizen groups, licensees, and private consultants. A consensus among the workshop participants was that case studies and iterative investigations would be useful for the following purposes: (1) To test the screening criteria; (2) to show how the application of risk information has affected or could affect a particular area of the regulatory process; and (3) to develop safety goal parameters and a first draft of safety goals for each area.

2. Purpose

The purpose of the case studies is: (1) To illustrate what has been done and what could be done in the materials and waste arenas to alter the regulatory approach in a risk-informed manner; and (2) to establish a framework for using a risk-informed approach in the materials and waste arenas by testing the draft screening criteria, and determining the feasibility of safety goals. Once the screening criteria have been tested using a spectrum of case studies, the criteria can be modified as appropriate, placed in final form, and established as part of the framework for prioritizing the use of risk information in materials and waste regulatory applications.

The case studies will be used to begin the process of developing safety goals for applications in the materials and waste arenas. Specifically, safety goal parameters (*e.g.*, public, worker, acute fatality, latent fatality, injury, property damage, environment damage, safeguards, absolute vs. relative) should be identified in each study. Each case study will determine the feasibility of safety goals in that area. If feasible, a first draft of safety goals will be developed. The case studies will also be used to check for and test any existing risk-informed framework (*e.g.*, defense-in-depth) in the material and waste arenas.

All case studies will have these general objectives. However, certain case studies may have specialized objectives. For example, as one type of test of the screening criteria, a case study will be chosen in an area that the staff intuitively feels might not pass the screening criteria. These additional objectives are discussed in the case study outline which is included in this plan.

The intent of the case studies is *not* to reopen or reassess previous decisions made by the staff and the Commission. The information gained by performing the case studies may impact future decisions to be made by the staff and the Commission.

Questions have been developed for each case study to answer. Answering these questions will guide the case studies to meet the objectives outlined below. Each case study will be of limited scope, but collectively, the case studies will cover a broad spectrum of regulatory applications in the materials and waste arenas. The case studies have been selected in areas that the staff believes would specifically help in establishing a framework, as well as areas that would help to set the groundwork for establishing safety goals.

3. Objectives

Case studies will have the following objectives:

Objective 1: Produce a final version of screening criteria for the materials and waste arenas.
Objective 2: Illustrate how the application of risk information has improved or could improve a particular area of the regulatory process in the materials and waste arenas.
Objective 3: Determine the feasibility of safety goals in a particular area. If feasible, develop safety goal parameters, and a first draft of safety goals. If infeasible, document the reasons.
Objective 4: Identify methods, data, and guidance needed to implement a risk-informed regulatory approach.

4. Draft Screening Criteria

Draft screening criteria were published in **Federal Register** Notices announcing the April 2000 workshop and a September 2000 public meeting (65 FR 14323, 03/16/00, and 65 FR 54323, 09/07/00, respectively). On the basis of comments received at the workshop, the public meeting, and discussions with the NMSS Risk Steering Group, the criteria have been revised.

The revised draft screening criteria are as follows:

(1) Would a risk-informed regulatory approach help to resolve a question with respect to maintaining or improving the activity's safety?
(2) Could a risk-informed regulatory approach improve the efficiency or the effectiveness of the NRC[1] regulatory process?
(3) Could a risk-informed regulatory approach reduce unnecessary regulatory burden for the applicant or licensee?
(4) Would a risk-informed approach help to effectively communicate a regulatory decision or situation?

If the answer to any of the above is yes, proceed to additional criteria; if not, the activity is considered to be screened out.

(5) Does information (data) and analytical models exist that are of sufficient quality or could they be reasonably developed to support risk-informing a regulatory activity?

If the answer to criterion 5 is yes, proceed to additional criteria; if not, the activity is considered to be screened out.

(6) Can startup and implementation of a risk-informed approach be realized at a reasonable cost to the NRC,[1] applicant or licensee, and/or the public, and provide a net benefit? The net benefit will be considered to apply to the public, the applicant or licensee, and the NRC.[1] The benefit to be considered can be improvement of public health and safety, improved protection of the environment, improved regulatory efficiency and effectiveness, improved communication to the public, and/or reduced regulatory burden (which translates to reduced cost to the public.)

If the answer to criterion 6 is yes, proceed to additional criteria; if not, the activity is considered to be screened out.

(7) Do other factors exist (*e.g.*, legislative, judicial, adverse stakeholder reaction) which would preclude changing the regulatory approach in an area, and therefore, limit the utility of implementing a risk-informed approach?

If the answer to criterion 7 is no, a risk-informed approach may be implemented; if the answer is yes, the activity may be given additional consideration or be screened out.

5. Measures of Success

Success of the case studies will be measured by the following:

(1) If, based on the testing of the draft screening criteria, final screening criteria are established, the case studies will collectively meet Objective 1.
(2) If a case study can illustrate how the application of risk information has affected or could affect and improve a particular area of the regulatory process, the case study will meet Objective 2.
(3) If a case study can determine the feasibility of establishing safety goals, and if feasible, develop the necessary safety goal parameters and a first draft of goals, the case study will meet Objective 3.
(4) If a case study can develop the risk-informed regulatory approach sufficient to define the methods, data, and guidance needed and the feasibility of developing them, the case study will meet Objective 4.

When completed, the staff will present the results of the spectrum of case studies to the Commission.

6. Case Study Outline

I. Revise draft screening criteria based on workshop and other suggestions (completed prior to September 21, 2000, meeting).
II. Meet with the NRC historian and other appropriate individuals (NRC and non-NRC) for perspectives and insights on the materials and waste regulatory history.
III. Review tables from the NRC–EPA risk harmonization effort and other sources such as the National Academy of Sciences study to uncover any implicit objectives (goals) under the existing regulatory framework. Glean insights on any potential underlying safety goals.
IV. Case Study Areas:
    A. Gas Chromatographs (new and old designs, the line between general licenses and specific licenses for almost identical devices is

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[1] For those regulatory processes in which Agreement States are involed, this criterion is applicable to Agreement States.

unclear—illustrate how the application of risk information could improve a particular area of the regulatory process).

B. Fixed Gauges (some are specifically licensed, and others are under a general license; regulatory criteria for general versus specific license are not based on risk—illustrate how the application of risk information could improve a particular area of the regulatory process; also, this could be a test case for a safety goal on property damage).

C. Site Decommissioning—the study may focus on certain decommissioning incidents and certain selected sites (elements of implied safety goals may be found in Commission decisions).

D. Uranium Recovery Facilities (gaps in the regulations may be found; helpful in testing the screening criteria; if determined to be a good candidate for using risk, develop and use risk information for new part 41 rulemaking effort).

E. Radioactive Material Transportation (elements of existing, implicit safety goals may be found in Commission decisions; public confidence and communication issue).

F. Part 76 (decide to use expanded risk information for gaseous diffusion plants or document the reasons why risk information will not improve the regulatory process in this area—contrast with new Part 70 approach; this decision-making process will be a good test for the draft screening criteria and will help establish consistency in applying risk information across materials and waste programs; also, possibly an area to look at chemical risk).

G. Spent Fuel Interim Storage (study probabilistic hazards analysis exemptions and proposed rulemaking—implicit safety goals may be found; public confidence issues and burden considerations).

H. Static Eliminators (public confidence issue; risk communication issue—regulatory changes were made even though perceived risk was low).

V. Case Study Structure:

A. Develop a set of questions for all case studies to answer.

B. Select a case-specific contact in each NMSS Division; obtain agreement with the Divisions on participation.

C. Public meeting to announce our plan for case studies (September 21, 2000).

D. Make any necessary revisions to plan based on input from public meeting.

E. Develop detailed approach and timeline for each case study including the need and level of involvement of contractor support.

F. Begin work on case studies.

G. Test screening criteria for each case study.

H. Answer all questions for each case study.

I. Meet with case-specific stakeholders as input to case studies.

J. Develop recommendations for safety goals (will be done in parallel with above).

K. Document results.

L. Conduct public meeting to present results of case studies.

M. Inform Commission of results.

VI. Assess the outcome and develop a plan to move forward.

7. Draft Questions for Case Studies

7.1. Screening Criteria Analysis/Risk Analysis Questions

(1) What risk information is currently available in this area? (Have any specific risk studies been done?)

(2) What is the quality of the study? (Is it of sufficient quality to support decision-making.)

(3) What additional studies would be needed to support decision-making and at what cost?

(4) How is/was risk information used and considered by the NRC and licensee in this area?

(5) What is the societal benefit of this regulated activity?

(6) What is the public perception/acceptance of risk in this area?

(7) What was the outcome when this application was put through the draft screening criteria? Did this application pass any of the screening criteria? Does the outcome seem reasonable? Why or why not?

7.2 Safety Goal Analysis Questions

(1) What is the basis for the current regulations in this area (*e.g.*, legislative requirements, international compatibility, historical events, public confidence, undetermined, etc.)?

(2) Are there any explicit safety goals or implicit safety goals embedded in the regulations, statements of consideration, or other documents (an example would be the acceptance of a regulatory exemption based in part on a risk analysis and the outcome)?

(3) What was the basis for the development of the strategic goals, performance goals, measures and metrics? How are they relevant/applicable to the area being studied and how do they relate/compare with the regulatory requirements? How would they relate to safety goals in this area?

(4) Are there any safety goals, limits, or other criteria implied by decisions or evaluations that have been made that are relevant to this area?

(5) If safety goals were to be developed in this area, would tools/data be available for measurement?

(6) Who are/were the populations at risk?

(7) What are/were, and what could be/have been, the various consequences to the populations at risk?

(8) What parameters should be considered for the safety goals (*e.g.*, workers vs. public, individual vs. societal, accidents vs. normal operations, acute vs. latent fatality or serious injury, environmental and property damage)?

(9) On the basis of the answers to the questions above, would it be feasible to develop safety goals in this regulatory area?

(10) What methods, data results, safety goals, or regulatory requirements would be necessary to make it possible to risk-inform similar cases?

7.3 Questions Upon Developing Safety Goals

(1) Are the current regulations sufficient in that they reflect the objectives of the draft goals? Would major changes be required?

(2) Would the regulations need to be tightened?

(3) Are the regulations overly conservative and/or too prescriptive with respect to the goals?

(4) If these were the safety goals, what decisions would be made?

(5) Would these goals be acceptable to the public?

ADDRESSES: Copies of this plan are available on the Internet at http://www.nrc.gov/NMSS/IMNS/riskassessment.html. Submit written requests for single copies of this plan to the U. S. Nuclear Regulatory Commission, Office of Nuclear Materials Safety and Safeguards, Risk Task Group, MS T–8–A–23, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Marissa Bailey, Mail Stop T–8–A–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–7648; Internet: *MGB@NRC.GOV*.

Dated at Rockville, MD, this 1st day of November 2000.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Section Chief, Risk Task Group, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–28415 Filed 11–6–00; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments Are Invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarify of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection:

Public Service Pension Questionnaire; OMB 3220–0136.

Public Law 95–216 amended the Social Security Act of 1977 by providing, in part, that spouse or survivor benefits may be reduced when the beneficiary is in receipt of a pension based on employment with a Federal, State, or local government unit. Initially, the reduction was equal to the full amount of the government pension. Public Law 98–21, changed the reduction to two-thirds of the amount of the government pension. Sections 4(a)(1) and 4(f)(1) of the Railroad Retirement Act (RRA) provides that an spouse or survivor annuity should be equal in amount to what the annuitant would receive if entitled to a like benefit from the Social Security Administration. Therefore, the public service pension (PSP) reduction provision applies to RRA annuities.

Regulations pertaining to the collection of evidence relating to public service pensions or worker's compensation paid to spouse or survivor applicants or annuitants are found in 20 CFR 219.64c. The RRB utilizes Form G–208, Public Service Pension Questionnaire, and Form G–212, Public Service Monitoring Questionnaire, to obtain information used to determined whether an annuity reduction is in order. Completion is voluntary. However, failure to complete the forms could result in the nonpayment of benefits. One response is requested of each respondent.

The RRB proposes to revise Form G–208 to request additional information regarding service time worked under the Federal Employee Retirement System (FERS). Additional nonburden impacting, editorial and reformatting changes, which include enhanced instructions intended to make the form easier to complete, are also proposed. The RRB also proposes minor non burden impacting editorial changes to Form G–212. The completion time for the G–208 is estimated at 15 minutes. The completion time for the G–212 is estimated at 3 minutes. The RRB estimates that approximately 1,700 Form G–208's and 1,000 Form G–212's are completed annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (212) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–28456 Filed 11–6–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–2; SEC File No. 270–442; OMB Control No. 3235–0498.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–12 under the Securities Exchange Act of 1934 is the reporting rule tailored specifically for OTC derivatives dealers, and Form X–17A–5IIB, the Financial and Operational Combined Uniform Single Report, is the basic document for reporting the financial and operational condition of OTC derivatives dealers.

At this point there is only one registered OTC derivatives dealer, however it is anticipated to affect approximately six (and possibly up to ten) OTC derivatives dealers within the next three years, Rule 17a–12 requires OTC derivatives dealers to file quarterly Financial and Operational Combined Uniform Single Reports (FOCUS)—Form X–17A–5IIB.[1] Rule 17a–12 also requires that OTC derivatives dealers file audited financial statements annually. The staff estimates that the average amount of time necessary to prepare and file the information required by the proposed rule is eighty hours per OTC derivatives dealer[2] with each spending an additional one hundred hours on the annual audit for a total of 180 hours per OTC derivatives dealer annually. Thus the staff estimates that the total number of hours necessary for six OTC derivatives dealers to comply with the requirements of Rule 17a–12 on an annual basis is 1,080 hours.[3]

The staff believes that financial reporting specialists will prepare the FOCUS IIB Report and supporting Schedules, compliance personnel may review the reports to assure compliance with applicable rules, and accountants will prepare the audited annual reports. The staff estimates that the hourly salary of a financial reporting specialist is $72.40 per hour,[4] the hourly salary of a compliance manager is $82.50 per hour,[5] and the hourly salary of a compliance manager is $51.60 per hour.[6] Based upon these numbers, the total cost of compliance for six respondents is $65,950.00 per year.[7]

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[1] Form X–17a–5 [17 CFR 249.617].

[2] Based upon an average of 4 responses per year and an average of 20 hours spent preparing each response.

[3] Or, 1,800 hours annually for 10 OTC derivatives dealers to comply.

[4] Per Securities Industry Association (SIA) Management and Professional Earnings. Table 011 (Financial Reporting Manager) + 35% overhead (based on end-of-year 1998 figures).

[5] SIA Management and Professional Earnings. Table 051 (Compliance Manager + 35% overhead (based on end-of-year 1998 figures).

[6] SIA Management and Professional Earnings. Table 003 (Senior Accountant) + 35% overhead (based on end-of-year 1998 figures).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: October 31, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28503 Filed 11–6–00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 29; SEC File No. 270–169; OMB Control No. 3235–0149.
Rule 83; SEC File No. 270–82; OMB Control No. 3235–0181.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 29, Filing of Reports to State Commissions, concerns reports to state commissions by registered holding companies and their subsidiaries. The rule requires that a copy of each annual report submitted by any registered holding company or any of its subsidiaries to a state commission covering operations not reported to the Federal Energy Regulatory Commission be filed with the Securities and Exchange Commission no later than ten days after such submission.

The information collected under Rule 29 permits the Commission to remain current on developments that are reported to state commissions, but that might not be reported to the Commission otherwise. This information is beneficial to the liaison the Commission maintains with state governments and also is useful in the preparation of annual reports to the U.S. Congress under Section 23 of the Public Utility Holding Company Act of 1935.

The title of Rule 83 is Exemption In the Case of Transactions With Foreign Associates. It authorizes exemption from the cost standard of section 13(b) of the Public Utility Holding Company Act of 1935 for services provided to associated foreign utility companies.

Rule 83 requires a registered holding company system that wishes to avail itself of this exemption from Section 13(b) to submit an application, in the form of a declaration, to the Commission. The Commission will grant the application if, by reason of the lack of any major interest of holders of securities offered in the United States in servicing arrangements affecting such serviced subsidiaries, such an application for exemption is necessary or appropriate in the public interest or for the protection of investors.

Rules 29 and 83 do not create a recordkeeping or retention burden on respondents. These rules do, however, contain reporting and filing requirements. Rule 29 imposes a reporting burden of about .25 hours for each of sixty-two respondents, each of which makes one submission annually. The total annual burden is fifteen and one-half hours. Rule 29 imposes no cost burdens.

Since the Commission has received no applications under Rule 83 recently, it is estimated the burden of Rule 83 as zero.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Directory, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: October 30, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28505 Filed 11–6–00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ad–13; SEC File No. 270–263; OMB Control No. 3235–0275.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

- Rule 17Ad–13, Annual Study and Evaluation of Internal Accounting Control

Rule 17Ad–13 requires approximately 200 registered transfer agents to obtain an annual report on the adequacy of internal accounting controls. In addition, transfer agents must maintain copies of any reports prepared pursuant to Rule 17Ad–13 plus any documents prepared to notify the Commission and appropriate regulatory agencies in the event that the transfer agent is required to take any corrective action. These recordkeeping requirements assist the

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[7] (19 hours × $72.40 × 4 filings per year) + (1 hour × $82.50 per hour × 4 filings per year) + (100 hours × $51.60 × 1 filing per year) × six (6) OTC derivatives dealers. The total cost for ten (10) respondents would be $109,924.00 per year.

Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. Small transfer agents are exempt from Rule 17Ad–13.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–13 is one hundred seventy-five hours annually. The total burden is 35,000 hours annually for transfer agents, based upon past submissions. The average cost per hour is approximately $60. Therefore, the total cost of compliance for transfer agents is $1,300,000.

The retention period for the recordkeeping requirement under Rule 17Ad–13 is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under Rule 17Ad–13 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, DC 20549. Comments must be submitted to OMB within thirty days of this notice.

Dated: November 1, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28502 Filed 11–6–00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 10b–10; SEC File No. 270–389; OMB Control No. 3235–0444.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 10b–10 requires broker-dealers to convey basic trade information to customers regarding their securities transactions. This information includes: the date and time of the transaction, the identity and number of shares bought or sold, and the trading capacity of the broker-dealer. Depending on the trading capacity of the broker-dealer, the Rule requires the disclosure of commissions as well as markup and markdown information. For transactions in debt securities, the Rule requires the disclosure of redemption and yield information. The Rule potentially applies to all of the approximately 5,300 firms registered with the Commission that effect transactions on behalf of customers.

The confirmations required by Rule 10b–10 are generally processed through automated systems. It takes approximately 1 minute to generate and send a confirmation. It is estimated that broker-dealers spend 56 million hours per year complying with rule 10b–10.

The Commission staff estimates the costs of producing and sending a confirmation to be approximately 89 cents. The amount of confirmations sent and the cost of sending each confirmation varies from firm to firm. Smaller firms generally send fewer confirmations than larger firms because they effect fewer transactions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 31, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28504 Filed 11–6–00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24720]

Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940

October 31, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October, 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 27, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Time Horizon Funds [File No. 811–9024]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 20, 1999, applicant transferred it assets to Nations Asset Allocation Fund, a portfolio of The Nations Institutional Reserves, based on net asset value. Expenses of $232,024 incurred in connection with the reorganization were paid by applicant's investment adviser, Bank of America, and/or its affiliates.

Filing Dates: The application was filed on September 26, 2000, and amended on October 25, 2000.

Applicant's Address: 103 Bellevue Parkway, Wilmington, Delaware 19809.

Morgan Stanley Aggressive Equity Fund, Inc. [File No. 811-8504]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make any public offering or engage in business of any kind.

Filing Dates: The application was filed on August 17, 2000, and amended on October 24, 2000.

Applicant's Address: c/o Morgan Stanley Dean Witter Investment Management, Inc., 1221 Avenue of the Americas, New York, New York 10020.

Nationwide Investing Foundation [File No. 811-435]; Nationwide Investing Foundation II [File No. 811-4436]; Financial Horizons Investment Trust [File No. 811-5559]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On May 9, 1998, each applicant transferred its assets to Nationwide Mutual Funds (F/K/A Nationwide Investing Foundation III) based on net asset value. Expenses of $198,784, $216,597 and $167,098, respectively, were incurred in connection with the reorganizations, with each applicant paying 50% of their respective expenses and Nationwide Advisory Services, Inc., applicants' investment adviser, paying the remaining 50%.

Filing Date: The applications were filed on September 22, 2000.

Applicants' Address: One Nationwide Plaza, Columbus, Ohio 43215.

Merrill Lynch Emerging Tigers Fund, Inc. [File No. 811-7135]; Merrill Lynch Middle East/Africa Fund, Inc. [File No. 811-7155]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On May 22, 2000, applicants transferred their assets to Merrill Lynch Dragon Fund, Inc. and Merrill Lynch Developing Capital Markets Fund, Inc., respectively, based on net asset value. Expenses of $188,907 were incurred in connection with the reorganization of Merrill Lynch Emerging Tigers Fund, Inc., of which applicant paid $113,581 and Merrill Lynch Investment Managers L.P., investment adviser to each applicant, paid the remaining $75,326. Expenses of $145,384 were incurred in connection with the reorganization of Merrill Lynch Middle East/Africa Fund, Inc., of which applicant paid $75,484 and applicant's investment adviser paid the remaining $69,900.

Filing Date: The applications were filed on September 29, 2000.

Applicants' Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

The Bradford Funds, Inc. [File No. 811-5682]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By August 16, 2000, applicant had made final liquidating distributions to its shareholders based on net asset value. Expenses of $100,710 were incurred in connection with the liquidation, of which applicant paid $53,407 and PaineWebber Group, Inc. paid the remaining $47,303.

Filing Date: The application was filed on September 28, 2000.

Applicant's Address: 600 Fifth Avenue, New York, New York 10020.

MuniHoldings Insured Fund III, Inc. [File No. 811-9285]; MuniHoldings Insured Fund IV, Inc. [File No. 811-9557]

Summary: Each applicant, a closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On August 14, 2000, each applicant transferred its assets to MuniHoldings Insured Fund II, Inc. based on net asset value. Each holder of each applicant's auction market preferred stock ("AMPS") received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $159,320 and $85,316, respectively, were incurred in connection with the reorganizations and were paid by the acquiring fund.

Filing Date: The applications were filed on October 6, 2000.

Applicant's Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

Virginia Daily Municipal Income Fund, Inc. [File No. 811-9006]

Summary: Applicant seeks an order declaring it has ceased to be an investment company. On September 22, 2000, applicant made its final liquidating distribution to its shareholders based on net asset value. Expenses of $3,000 incurred in connection with the liquidation were paid by Reich & Tan Asset Management L.P., applicant's investment adviser.

Filing Date: The application was filed on October 3, 2000.

Applicant's Address: 600 Fifth Avenue, New York, New York 10020.

Reich & Tang Equity Fund, Inc. [File No. 811-4148]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 16, 2000, applicant transferred its assets to Delafield Fund, Inc., based on net asset value. Expenses of $64,357 incurred in connection with the reorganization were paid by Reich & Tang Asset Management L.P., applicant's investment adviser.

Filing Date: The application was filed on October 6, 2000.

Applicant's Address: 600 Fifth Avenue, New York, New York 10020.

Fidelity Advisor Korea Fund, Inc. [File No. 811-8608]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 30, 2000, applicant transferred its assets to Fidelity Advisor Korea Fund, a series of Fidelity Advisor Series VIII, an open-end investment company, based on net asset value. Expenses of $138,170 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on September 22, 2000.

Applicant's Address: 82 Devonshire Street, Boston Massachusetts 02109.

Hyperion 1999 Term Trust, Inc. [File No. 811-6483]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 2, 1999, applicant made a final liquidating distribution to its shareholders based on net asset value. Distributions payable to unlocated shareholders are being held by EquiServe. Amounts that are unclaimed will eventually escheat to the various states. Expense of $2,120,389 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on September 20, 2000.

Applicant's Address: One Liberty Plaza, 165 Broadway, New York, New York 10006.

Gradison-McDonald Cash Reserves Trust [File No. 811-2618]; Gradison Growth Trust [File No. 811-3760]; Gradison Custodian Trust [File No. 811-5198]; Gradison-McDonald Municipal Custodian Trust [File No. 811-6705]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By April 6, 1999, each applicant had transferred its assets to a corresponding series of The Victory Portfolios based on net asset value. Expenses of approximately $658,050, $593,457, $57,930, and $61,926, respectively, incurred in connection with each reorganization were paid by BISYS Fund Services Ohio Inc., Key Corp and The Victory Portfolios.

Filing Dates: Each application was filed on September 23, 1999, and amended on August 18, 2000.

Applicant's Address: 580 Walnut Street, Cincinnati, Ohio 45202.

American Diversified Funds, Inc. [File No. 811-3434]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 17, 1999, applicant transferred its assets to Orbitex Growth Fund, a series of the Orbitex Group of Funds, based on net asset value. Expenses of $36,663 incurred in connection with the reorganization were paid by Orbitex Management, Inc., investment adviser to the acquiring fund.

Filing Dates: The application was filed on August 28, 2000, and amended on October 10, 2000.

Application's address: c/o Orbitex Group of Funds, 410 Park Avenue, New York, New York 10022.

USAllianz Funds [File No. 811-9489]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made a public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Dates: The application was filed on September 18, 2000, and amended on October 5, 2000.

Applicant's Address: 3435 Stelzer Road, Columbus, Ohio 43219.

CrestFunds, Inc. [File No. 811-4620]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By May 24, 1999, applicant had transferred its assets to STI Classic Funds based on net asset value. Expenses of $580,272 incurred in connection with the organization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on October 13, 2000.

Applicant's Address: 300 East Lombard Street, Baltimore, Maryland 21202.

Global Small Cap Fund Inc. [File No. 811-7814]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 27, 2000, applicant transferred its assets to PaineWebber Global Equity Fund, a series of PaineWebber Investment Trust, based on net asset value. Expenses of $256,900 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on October 19, 2000.

Applicant's Address: 51 West 52nd Street, New York, New York 10019-6114.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-28506 Filed 11-6-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 65 FR 65034, October 31, 2000.

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: October 25, 2000.

CHANGE IN THE MEETING: Cancellation of meeting.

The closed meeting scheduled for Thursday, November 2, 2000 at 11:00 a.m. has been cancelled.

Dated: November 2, 2000.

Jonathan G. Katz,
Secretary.

[FR Doc. 00-28561 Filed 11-2-00; 4:16 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [to be published]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW, Washington, DC.

DATE PREVIOUSLY ANNOUNCED: November 1, 2000.

CHANGE IN THE MEETING: Cancellation of Meeting.

The closed meeting scheduled for Wednesday, November 8, 2000 at 11 a.m. has been cancelled.

Dated: November 2, 2000.

Jonathan G. Katz,
Secretary.

[FR Doc. 00-28625 Filed 11-3-00; 12:49 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43501; File No. SR-NASD-00-45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Interpretation Regarding ACT Risk Management Charges, and to Clarify the ACt Risk Management Function

October 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 31, 2000, the National Association of Securities Dealers ("NASD"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to NASD Rules 7010 and 6150. The purpose of the proposal is to issue an interpretation regarding Automated Confirmation Transaction Service ("ACT") risk management charges and a clarification regarding the ACT risk management function. Below is the text of the proposed rule change. Proposed new language is in italics.

Rule 7010. System Services

(a)-(f) No change.

(g) Automated Confirmation Transaction Service

The following charges shall be paid by the participant for use of the Automated Confirmation Transaction Service (ACT):

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] On August 17, 2000, Nasdaq minor, technical changes to the proposed rule change, none of which were substantive in nature, and none which required the filing of a formal amendment. Telephone conversation among Mary N. Revell, Associate General Counsel, Office of General Counsel, Nasdaq, and Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC and Joseph P. Morra, Special Counsel, Division, SEC.

Transaction Related Charges:

No change.

Risk Management Charges: $0.035/side and $17.25/month per correspondent firm (maximum $10,000/month per correspondent firm)

IM–7010–1; Risk Management Charges

All clearing brokers are provided access to the ACT risk management function for which they are assessed the charges detailed above, unless exempted under the provision detailed below.

Self-clearing brokers are not required to pay risk management charges.

Clearing brokers that are effectively self-clearing with respect to certain correspondents may seek relief from the requirement to pay ACT risk management charges for trades cleared on behalf of these correspondents. A firm is "effectively self-clearing" if it clears for affiliated correspondents that are wholly or majority owned by a common corporate parent, which will be solely liable for any credit problems encountered by the affiliates. Such a firm may choose not to utilize the ACT risk management function for trades cleared on behalf of affiliated correspondents and may seek relief from ACT risk management charges by submitting a letter to Nasdaq containing the following:

(1) a detailed description of the firm's corporate structure showing that all affiliates are wholly or majority owned by a common corporate parent;

(2) a statement that the firm will use an internal risk management capability to monitor the trading activities and risk exposure of its affiliated correspondents and meet its financial and operational obligations under the federal securities laws and NASD rules that provides risk management functions comparable to those provided by ACT as described in Rule 6150;

(3) an acknowledgment that the firm will no longer utilize the ACT risk management function for trades cleared for these affiliated correspondents; and

(4) a request for relief from ACT risk management charges. After reviewing the letter to ensure that it addresses all the above elements, Nasdaq will:

(1) instruct the NASD Finance Department to cease assessing ACT risk management charges on trades cleared by the firm on behalf of its affiliated correspondents;

(2) notify ACT that the firm will no longer utilize the ACT risk management function for the affiliated correspondents' trades; and

(3) inform NASD Regulation of this new arrangement.

* * * * *

Rule 6150. ACT Risk Management Functions

Self-clearing brokers, corresponding clearing brokers, and executing brokers, whether they utilize the ACT risk management function or not, are required to report all clearing-eligible transactions to ACT for ACT risk management functions. The ACT system will provide the following risk management capabilities to clearing brokers that have executed an ACT Participants Risk Management Agreement:

(a)–(g) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq including statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

1. *Purpose*

ACT is an automated trade reporting and reconciliation service that speeds the post-execution steps of price and volume reporting, comparison, and clearing of pre-negotiated trades completed in Nasdaq, OTC Bulletin Board, and other over-the-counter securities. ACT handles transactions negotiated over the phone or executed through any of Nasdaq's automated trading services. It also manages post-execution procedures for transactions in exchange-listed securities that are traded off-board in the Nasdaq InterMarket. Participation in ACT is mandatory for NASD members that are members of a clearing agency registered with the SEC, that have a clearing arrangement with such a member, or that participate in any of Nasdaq's trading services. An integral part of ACT is the risk management function.

The ACT risk management function provides firms that clear for other firms with the capability to establish acceptable levels of credit for their introducing firms. ACT risk management also enables clearing brokers to monitor buy/sell trading activity of their introducing firms, establish trading thresholds, allow/inhibit large trades, add/delete clearing relationships, and access a real-time database of correspondent trading activity.[4] Clearing brokers providing clearing services to correspondent firms are assessed risk management charges of $0.035 per trade and $17.25 per month per correspondent firm. Nasdaq recently adopted a new rule, limiting this charge to a maximum of $10,000 per month per correspondent.[5] Self-clearing brokers without correspondents have no reason to utilize the ACT risk management function, given their lack of exposure, and are not assessed risk management charges.

The ACT service was implemented for self-clearing firms in March 1990.[6] The ACT service for clearing firms and their executing correspondents, including the risk management function, was implemented in October 1990;[7] the ACT risk management service charge was implemented in November 1990.[8]

Recently, Nasdaq received two inquiries from clearing brokers seeking relief from the ACT risk management charges for trades cleared for affiliated correspondents. These clearing firms have entered into new relationships with previously unaffiliated broker-dealer firms. As a result, all of the affiliated firms, including the clearing firm and the correspondent firm(s), are wholly or majority owned by a common corporate parent, which will be solely liable for any credit problems encountered by the affiliated firms. The clearing firm in such an arrangement has an internal risk management system that allows it to monitor the capital exposure of the consolidated entities. These clearing firms have represented to Nasdaq that they believe they are effectively self-clearing firms, and should be treated as such for purposes of application of the requirement to pay ACT risk management charges.

Nasdaq believes there is merit to this position, and proposes to issue a responsive interpretation regarding ACT risk management charges. The proposed interpretation would reiterate Nasdaq's long-standing position that clearing brokers are required to pay ACT risk management charges and that self-clearing brokers are not required to pay these charges. The interpretation would further state that firms that are effectively self-clearing are not required to pay ACT risk management charges, subject to the provisions set forth in the interpretation. Nasdaq supports the view that a firm that clears for affiliated correspondents that are wholly or majority owned by a common corporate parent, which will be solely liable for any credit problems encountered by the affiliates, should be effectively considered self-clearing. Nasdaq believes that such a firm should be able to choose whether or not to participate in the ACT risk management function with respect to trades cleared on behalf of the affiliates, as long as it has an effective internal risk management system.

Under the interpretation, a firm that chooses not to participate in the ACT risk management function will be able to seek an exemption from the ACT risk management charge for trades cleared on behalf of affiliated correspondents by submitting a letter to Nasdaq. The letter must describe in detail the clearing firm's ownership structure, state that the firm will use an internal risk management capability to monitor the trading activities and risk exposure of its affiliated correspondents and meet its financial and operational obligations under the federal securities laws and NASD rules that provides risk management functions comparable to those provided by ACT, acknowledge that it will no longer utilize the ACT risk management function for trades cleared for its affiliates, and request an exemption from the ACT risk management charge. After reviewing the letter to ensure that it addresses all of the above, Nasdaq will instruct the NASD Finance Department that it should no longer assess ACT risk management charges on trades cleared by the firm on behalf of its affiliates, notify ACT that the firm will no longer utilize the ACT risk management function for the affiliated correspondents' trades, and inform NASD Regulation of this new arrangement.

Nasdaq proposes to make the interpretation effective immediately after SEC approval. Firms that submit a satisfactory letter to Nasdaq requesting relief from ACT risk management charges within 90 days of the effective date of the interpretation will no longer be assessed future ACT risk management charges and will receive a credit for any such fees paid for ACT risk management services after April 1, 2000. Firms that request relief from ACT risk management charges 90 days or more after the effective date of the interpretation will not be assessed ACT risk management charges beginning on the first day of the first month after a satisfactory letter is received by Nasdaq.

Nasdaq also proposes to revise NASD Rule 6150, ACT Risk Management Functions, to explicitly state that clearing brokers and executing brokers must report all clearing-eligible transactions to ACT for risk management functions. This transaction information is included in Nasdaq's real-time database of correspondent trading activity. Submission of complete clearing information to ACT is essential in order for Nasdaq to be able to generate accurate ACT risk management function reports and alerts.

Nasdaq is proposing this revision to respond to arguments that have been made by member firms that participation in ACT risk management is optional. Nasdaq believes those member firms have based their position on an erroneous interpretation of a sentence in a Notice to Members ("NTM") issued in 1990 announcing SEC approval of the ACT risk management functions. In pertinent part, NTM 90–80 states:

> Using ACT Risk Management, *clearing firms can choose* to monitor purchase and sale activity, establish dollar thresholds for the trading day, examine large trades, establish and delete clearing relationships, and develop an internal database through a real-time data feed of correspondent activity. (Emphasis added.)

This sentence establishes that clearing firms can choose to use any of the available ACT risk management functions to monitor correspondent activity; it does not mean that participation in ACT risk management is optional. Nasdaq's long-standing position is that clearing firm participation in ACT risk management is mandatory. However, to resolve any ambiguities, Nasdaq is proposing to revise NASD Rule 6150, ACT Risk Management Functions, to make this requirement explicit.

2. *Statutory Basis*

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system and, in general, to protect investors and the public interest. The proposed rule change also is consistent with Section 15A(b)(5) of the Act[10] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (9) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–45 and should be submitted by November 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 00–28507 Filed 11–6–00; 8:45 am]

BILLING CODE 8010–01–M

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[4] *See* NASD Rule 6150.

[5] *See* Securities Exchange Act Release No. 42984 (June 27, 2000), 65 FR 41119 (July 3, 2000) (SR–NASD–00–35).

[6] *See* Securities Exchange Act Release No. 27229 (Sept. 8, 1989), 54 FR 38484 (Sept. 18, 1989) (SR–NASD–89–25).

[7] *See* Securities Exchange Act Release No. 28563 (Oct. 26, 1990), 55 FR 46120 (Nov. 1, 1990) (SR–NASD–89–25).

[8] *See* Securities Exchange Act Release No. 28595 (Nov. 5, 1990), 55 FR 47161 (Nov. 9, 1990) (SR–NASD–90–57).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78o–3(b)(5).

[11] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment.

The specific amendments proposed in this notice are summarized as follows: (1) proposed amendment to address aggravating conduct associated with the unlawful supplementation of the salary of certain federal employees and to consolidate §§ 2C1.3 (Conflict of Interest), 2C1.4 (Payment or Receipt of Unauthorized Compensation), and 2C1.5 (Payments to Obtain Public Office) to simplify overall guideline application for covered offenses; (2) proposed amendment to § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) to increase the base offense level and to replace the minimum offense level for manufacturing offenses with a two-level enhancement; (3) proposed amendment to § 2H3.1 (Interception of Communications or Eavesdropping) to address several offenses relating to the unlawful disclosure and/or inspection of tax return information; and (4) proposed amendments that address four circuit conflicts as follows: (A) proposed amendment to § 1B1.2 (Applicable Guidelines) to provide that a factual statement made by a defendant at a plea colloquy is not a stipulation for purposes of § 1B1.2(a) unless that statement is agreed to as part of the plea agreement; (B) two options for amending § 2A2.2 (Aggravated Assault) to clarify that (i) both the base offense level and the weapon use enhancement in § 2A2.2(b)(2) shall apply to aggravated assaults that involve a dangerous weapon with intent to cause bodily injury; and (ii) instruments, such as a car or chair, that ordinarily are not used as weapons may qualify as dangerous weapons for purposes of § 2A2.2(b)(2) if the defendant involves them in the offense with the intent to cause bodily injury; (C) proposed amendment to § 2F1.1 (Fraud and Deceit) to provide for application of the enhancement in § 2F1.1(b)(4)(A) if either (i) the defendant falsely represented that the defendant was an employee of a covered organization or a government agency; or (ii) the defendant, an employee of a covered organization or a government agency, represented that the defendant was acting solely for the benefit of the organization or agency when, in fact, the defendant intended to divert all or part of that benefit (for example, for the defendant's personal gain); and (D) proposed amendment to § 3B1.2 (Mitigating Role) to provide that a defendant in a drug trafficking offense whose role was limited to transporting or storing drugs and who was accountable only for the drugs the defendant personally transported or stored, is not precluded from receiving a mitigating role adjustment, even in a single defendant case.

DATES: Written public comment should be received by the Commission not later than January 8, 2001.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, D.C. 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The proposed amendments are presented in this notice in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part for comment and suggestions for alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions for how the Commission should respond to those issues.

Reports and other additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's website at www.ussc.gov.

Authority: 28 U.S.C. 994 (a), (o), (p), (x); USSC Rules of Practice and Procedure 4.3, 4.4.

Diana E. Murphy,
Chair.

Proposed Amendment: Unauthorized Compensation

1. Synopsis of Proposed Amendment

This proposed amendment addresses the issue of whether, and to what extent, the guideline offense levels should be increased in § 2C1.4, the guideline for offenses in 18 U.S.C. 209 involving the unlawful supplementation of the salary of various federal employees. The proposed amendment (A) adds a cross reference to the bribery and gratuity guidelines, in order to account for aggravating conduct; and (B) consolidates the unauthorized compensation guideline (§ 2C1.4) with the conflict of interest guideline (§ 2C1.3) and the guideline covering payments to obtain public office (§ 2C1.5), to promote ease of application.

The Commission began to focus on this issue in 1998 when it promulgated an amendment to § 2C1.4 to delete outdated, erroneous background commentary. That commentary, first written in 1987, described the offenses covered by the guideline as misdemeanors punishable by imprisonment for not more than one year. In fact, however, the penalties for 18 U.S.C. 209 offenses were changed in 1989. The applicable penalties, under 18 U.S.C. 216, became (1) imprisonment for not more than one year; or (2) imprisonment for not more than five years, if the defendant willfully engaged in the conduct constituting the offense.

The increased statutory penalties under 18 U.S.C. 216 implicate the question of whether guideline penalties under §§ 2C1.3 and 2C1.4 should be increased correspondingly, particularly if the current guideline penalty structure inadequately takes into account aggravating conduct associated with these offenses.

The guideline covering offenses in 18 U.S.C. 209, § 2C1.4, has a base offense level of level 6 and no additional enhancements that take into account aggravating conduct. From FY91 through FY99, a total of 73 cases were sentenced under § 2C1.4. Because of the low offense levels associated with this guideline, all of the defendants sentenced under § 2C1.4 received probation.

Moreover, the increased statutory penalty in 18 U.S.C. 216 (namely, the five-year statutory maximum for willful conduct) applies not only to offenses under 18 U.S.C. 209 but also to bribery, graft, and conflict of interest offenses under 18 U.S.C. 203, 204, 205, 207, and 208, all of which are covered by the conflict of interest guideline, § 2C1.3. That guideline has a base offense level of level 6 and a four-level enhancement if the offense involved actual or planned harm to the government. From FY91 through FY99, a total of 71 cases were sentenced under § 2C1.3, and only 10 of those cases received the enhancement for actual or planned harm to the government.

Commission staff review of the cases sentenced under §§ 2C1.3 and 2C1.4 revealed that many of those cases actually involved a bribe or a gratuity. In other words, many of these defendants likely could have been charged under a bribery or gratuity statute (most likely 18 U.S.C. 201) and sentenced under the more serious bribery (§ 2C1.1) or gratuity (§ 2C1.2) guideline but were convicted under the less serious statutes and sentenced under the less severe guidelines (i.e., §§ 2C1.3 and 2C1.4).

The following proposed amendment is intended to address these issues by (A) adding a cross reference from § 2C1.4 to the bribery and gratuity guidelines, in order to account for aggravating conduct; and (B) consolidating the unauthorized compensation guideline with the conflict of interest guideline and the guideline covering payments to obtain public office, to promote ease of application. First, in order to more adequately account for aggravating conduct prevalent in these cases (i.e., the presence of a bribe or a gratuity), the proposed amendment provides a cross reference to § 2C1.1 (in the case of a bribe) or § 2C1.2 (in the case of a gratuity), which will apply on the basis of the underlying conduct; i.e., as a sentencing factor rather than a count of conviction factor.

Second, in order to simplify overall guideline operation, the proposed amendment consolidates §§ 2C1.3 (Conflict of Interest), 2C1.4 (Payment or Receipt of Unauthorized Compensation), and 2C1.5 (Payments to Obtain Public Office). Although the elements of the offenses of conflict of interest (currently covered by § 2C1.3) and unauthorized compensation (currently covered by § 2C1.4) differ in some ways, the gravamen of the offenses is similar—unauthorized receipt of a payment in respect to an official act. The base offense levels for both guidelines are identical. However, the few cases in which these guidelines were applied usually involved a conflict of interest offense that was associated with a bribe or gratuity.

The guideline covering payments to obtain public office, § 2C1.5, is also consolidated under the proposed amendment. Offenses involving payment to obtain public office generally, but not always, involve the promised use of influence to obtain public appointive office. Also, such offenses need not involve a public official (see, for example, the second paragraph of 18 U.S.C. 211). The current offense level for all such offenses is level 8. The two statutes to which § 2C1.5 applies (18 U.S.C. 210 and 211) are both Class A misdemeanors. Under the proposed consolidation, the base offense level would be level 6, but the higher base offense level of § 2C1.5 would be taken into account by a two-level enhancement in subsection (b)(1)(B) covering conduct under 18 U.S.C. 210 and the first paragraph of 18 U.S.C. 211. There is one circumstance in which a lower offense level may result and one circumstance in which a higher offense level may result. The offense level for conduct under the second paragraph of 18 U.S.C. 211 (the prong of § 211 that does not pertain to the promise or use of influence) is reduced from level 8 to level 6. On the other hand, conduct that involves a bribe of a government official will result in an increased offense level (level 10 or greater, compared to level 8) under the proposed cross reference.

Proposed Amendment

Section 2C1.3 is amended in the title by inserting "; Payment or Receipt of Unauthorized Compensation; Payments to Obtain Public Office" after "Interest".

Section 2C1.3(b) is amended by striking subdivision (1) in its entirety and inserting the following:

"(1) (Apply the greater):

(A) if the offense involved actual or planned harm to the government, increase by 4 levels; or

(B) if the offense involved (i) the payment, offer, or promise of any money or thing of value in consideration for the use of, or promise to use, any influence to procure an appointive federal position for any person; or (ii) the solicitation or receipt of any money or thing of value in consideration of the promise of support, or use of influence, in obtaining an appointive federal position for any person, increase by 2 levels.".

Section 2C1.3 is amended by adding after subsection (b) the following new subsection:

"(c) Cross Reference

(1) If the offense involved a bribe or gratuity, apply § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) or § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), as appropriate, if the resulting offense level is greater than determined above.".

The Commentary to § 2C1.3 captioned "Statutory Provisions" is amended by inserting ", 209, 210, 211, 1909" after "208".

The Commentary to § 2C1.3 captioned "Application Note" is amended in Note 1 by inserting "Abuse of Position of Trust.—" before "Do not".

The Commentary to § 2C1.3 is amended by striking the background note in its entirety.

Sections 2C1.4 and 2C1.5 are deleted in their entirety.

Proposed Amendment: Counterfeiting Offenses

2. Synopsis of Proposed Amendment

This proposed amendment (A) increases the base offense level in § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) from level 9 to level 10; (B) replaces the minimum offense level of level 15 for manufacturing offenses with a two-level enhancement; and (C) proposes to delete commentary that suggests that the manufacturing adjustment does not apply if the defendant "merely photocopies".

First, the amendment increases the base offense level from level 9 to level 10. Setting the base offense level at level 10 for counterfeiting crimes promotes proportionality in sentencing for counterfeiting vis-a-vis other, similar economic crimes. For example, fraud crimes sentenced under § 2F1.1 (Fraud and Deceit) receive a base offense level of level 6 and almost invariably (roughly 85% of the time) two additional levels for "more than minimal planning." Thus, before any "loss" enhancement is applied, fraud defendants are routinely at a minimum of level 8. Placing the base offense level for counterfeiting at level 10 recognizes that counterfeiting causes greater harm than fraud in its most basic form in that counterfeiting undermines public confidence in the currency and causes the government to spend great sums of money to build anti-counterfeiting safeguards into the currency.

Second, the amendment replaces the minimum offense level of level 15 for manufacturing offenses with a two-level enhancement. Replacing the minimum offense level of level 15 with a two-level enhancement has a double benefit. First, it eliminates the cliff inherent in setting a sentencing minimum. Specifically, the existing minimum of level 15 for manufacturing activity takes all defendants who engage in manufacturing to level 15 regardless of the economic harm caused. This means that the manufacturer of twenty dollars worth of counterfeit, who many would contend does not deserve to be sentenced at offense level 15, receives the same sentence as the manufacturer of seventy thousand dollars worth of counterfeit. In the context of a system which recognizes the magnitude of economic harm caused as a prime determinant of relative culpability, this disproportionate grouping of all manufacturers at level 15 is neither logical nor desirable.

A second benefit of this change is that, unlike the current guideline, which provides no incremental punishment for manufacturers of more than seventy thousand dollars in counterfeit, the proposed two-level enhancement provides reasonable incremental punishment for all manufacturers. Such a result also fosters the central goal of proportionate sentencing.

Third, the amendment proposes to delete the language in Application Note 4 that suggests, as a minority of courts have interpreted it, that the manufacturing adjustment does not apply if the defendant "merely photocopies". That application note was intended to make the minimum offense level for manufacturing offenses inapplicable to notes that are so obviously counterfeit that they are unlikely to be accepted. Particularly with the advent of digital technology, it cannot be said that photocopying necessarily produces a note so obviously counterfeit as to be impassible.

Proposed Amendment

Section 2B5.1(a) is amended by striking "9" and inserting "10".

Section 2B5.1(b)(2) is amended by striking "and the offense level as determined above is less than 15, increase to level 15" and inserting "increase by 2 levels".

The Commentary to § 2B5.1 captioned "Application Notes" is amended in Note 4 by striking "merely photocopy notes or otherwise".

Issue for comment: The Commission invites comment on whether it should amend § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) to include an enhancement (e.g., a two-level enhancement) for counterfeiting offenses that involve "sophisticated means". If so, what conduct should constitute "sophisticated means" in the context of counterfeiting offenses? For example, should the use of technology, such as digital counterfeiting, generally be considered sophisticated? Alternatively, are there particular forms of technology, such as particular forms of digital counterfeiting, that would be considered sophisticated for purposes of an enhancement?

Proposed Amendment: Tax Privacy

3. Synopsis of Proposed Amendment

This amendment proposes to address several offenses relating to unlawful disclosure and/or inspection of tax return information. The amendment proposes to (A) amend the Statutory Index to refer most of those offenses to the guideline covering eavesdropping and interception of communications, § 2H3.1; and (B) amend § 2H3.1 to add a three-level decrease in the base offense level for the least serious types of offense behavior.

The pertinent offenses are:

(A) 26 U.S.C. 7213(a)(1)–(3), and (5), which makes it unlawful for federal and state employees and certain other people willfully to disclose any tax return or tax return information (for a maximum term of imprisonment of five years);

(B) 26 U.S.C. 7213(d), which makes it unlawful for any person willfully to divulge tax-related computer software (for a maximum term of imprisonment of five years);

(C) 26 U.S.C. 7213A, which makes it unlawful for federal employees and certain other persons willfully to inspect any tax return or tax return information (for a maximum term of imprisonment of one year); and

(D) 26 U.S.C. 7216, which makes it unlawful for any person engaged in the business of preparing tax returns knowingly or recklessly to disclose any information furnished to that person in connection with preparation of a return (for a maximum term of imprisonment of one year).

The following proposed amendment refers these offenses to § 2H3.1 and provides for a three-level downward adjustment in the base offense level for the least serious types of offense behavior, *i.e.*, the inspection (but not disclosure) of tax return information, and the reckless or knowing disclosure of information collected by a tax preparer in preparation of a tax return. The proposed amendment also (A) adds, in bracketed form, an application note to make clear that an adjustment for abuse of position of trust may apply; and (B) makes a technical change in subsection (b)(1) that is not intended to have substantive effect.

Proposed Amendment

Section 2H3.1 is amended in the title by striking "or" and inserting a semicolon after "Communications"; and by inserting "; Disclosure of Tax Return Information" after "Eavesdropping".

Section 2H3.1 is amended by striking subsection (a) in its entirety and inserting the following:

"(a) Base Offense Level:

(1) 9; or

(2) 6, if the offense involved only (A) inspection, but not disclosure, of a tax return or tax return information; or (B) a knowing or reckless disclosure of information furnished to a tax return preparer in connection with the preparation of a tax return.".

Section 2H3.1(b)(1) is amended by striking "conduct" and inserting "offense".

The Commentary to § 2H3.1 captioned "Statutory Provisions" is amended by inserting "26 U.S.C. §§ 7213(a)(1)–(a)(3), (a)(5), (d), 7213A, 7216;" after "2511;".

The Commentary to § 2H3.1 captioned "Application Note" is amended by striking "Note" and inserting "Notes"; by redesignating Note 1 as Note 2; and by inserting the following as new Note 1:

"1. Definitions.—For purposes of this guideline, 'tax return' and 'tax return information' have the meaning given the terms 'return' and 'return information' in 26 U.S.C. § 6013(b)(1) and (2), respectively.".

The Commentary to § 2H3.1 captioned "Application Notes" (as re-captioned by this amendment) is amended in redesignated Note 2 (formerly Note 1) by inserting "Satellite Cable Transmissions.—" before "If the".

[The Commentary to § 2H3.1 captioned "Application Notes" (as re-captioned by this amendment) is amended by adding at the end the following:

"3. Abuse of Position of Trust.—A defendant who used a special skill or abused a position of trust in the commission of the offense may be subject to an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). For example, a federal or state employee who unlawfully disclosed a tax return or tax return information in violation of 26 U.S.C.

7213(a) or (b) may have occupied a position of public trust, as described in Application Note 1 of § 3B1.3, and may have used that position to significantly facilitate the commission of the offense.".]

The Commentary to § 2H3.1 captioned "Background" is amended by adding at the end the following additional paragraph:

"This section also refers to conduct relating to the disclosure and inspection of tax returns and tax return information, which is proscribed by 26 U.S.C. 7213(a)(1)–(3), (5), (d), 7213A, and 7216. These statutes provide for a maximum term of imprisonment of five years for most types of disclosure of tax return information.".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "26 U.S.C. 7212(b)" the following new lines:

"26 U.S.C. 7213(a)(1) 2H3.1
26 U.S.C. 7213(a)(2) 2H3.1
26 U.S.C. 7213(a)(3) 2H3.1
26 U.S.C. 7213(a)(5) 2H3.1
26 U.S.C. 7213(d) 2H3.1
26 U.S.C. § 7213A 2H3.1"; and by inserting after the line referenced to "26 U.S.C. 7215" the following new line:
"26 U.S.C. 7216 2H3.1".

Proposed Amendment: Circuit Conflict Concerning Stipulations

4. Synopsis of Proposed Amendment:

This proposed amendment addresses the circuit conflict regarding whether admissions made by the defendant during his guilty plea hearing, without more, can be considered "stipulations" for purposes of § 1B1.2(a). *Compare, e.g., United States* v. *Nathan,* 188 F. 3d 190, 201 (3d Cir. 1999) (statements made by defendants during the factual-basis hearing for a plea agreement do not constitute "stipulations" for the purpose of this enhancement; a statement is a stipulation only if it is part of a defendant's written plea agreement or if both the government and the defendant explicitly agree at a factual-basis hearing that the facts being placed on the record are stipulations that might subject the defendant to § 1B1.2(a)), *with United States* v. *Loos,* 165 F. 3d 504, 508 (7th Cir. 1998) (the objective behind § 1B1.2(a) is best answered by interpreting "stipulations" to mean any acknowledgment by the defendant that the defendant committed the acts that justify use of the more serious guideline, not in the formal agreement).

The proposed amendment represents a narrow approach to the majority view that a factual statement made by the defendant during the plea colloquy must be made as part of the plea agreement in order to be considered a stipulation for purposes of § 1B1.2(a). This approach lessens the possibility that the plea agreement will be modified during the course of the plea proceeding without providing the parties, especially the defendant, with notice of the defendant's potential sentencing range.

Proposed Amendment

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 1 in the third sentence of the first paragraph of Note 1 by inserting "(written or made orally on the record)" after "agreement".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 1 by striking the first two sentences of the third paragraph and inserting: "As set forth in the first paragraph of this note, an exception to this general rule is that if a plea agreement (written or made orally on the record) contains a stipulation that establishes a more serious offense than the offense of conviction, the guideline section applicable to the stipulated offense is to be used. A factual statement made by the defendant during the plea proceeding is not a stipulation for purposes of subsection (a) unless such statement was agreed to as part of the plea agreement.".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 1 in the third paragraph by striking "The sentence that may" and inserting "The sentence that shall".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 1 in the second sentence of the fourth paragraph by striking "cases where" and inserting "a case in which".

Proposed Amendment: Circuit Conflict Concerning Aggravated Assault

5. Synopsis of Proposed Amendment

This proposed amendment addresses the circuit conflict regarding whether the four-level enhancement in subsection (b)(2)(B) of § 2A2.2 (Aggravated Assault) for use of a dangerous weapon during an aggravated assault is impermissible double counting in a case in which the weapon that was used was a non-inherently dangerous weapon. *Compare e.g., United States* v. *Williams,* 954 F.2d 204, 205–08 (4th Cir. 1992) (applying the dangerous weapon enhancement for defendant's use of a chair did not constitute impermissible double counting even though the use of the chair increased the defendant's offense level twice: first by triggering application of the aggravated assault guideline and second as the basis for the dangerous weapon enhancement), *with United States* v. *Hudson,* 972 F.2d 504, 506–07 (2d Cir. 1992) (in a case in which the use of an automobile caused the crime to be classified as an aggravated assault, the court may not enhance the base offense level under § 2A2.2(b) for use of the same non-inherently dangerous weapon).

This amendment presents two options. Both options address the circuit conflict by clarifying in the aggravated assault guideline that (A) both the base offense level of level 15 and the weapon use enhancement in subsection (b)(2) shall apply to aggravated assaults that involve a dangerous weapon with intent to cause bodily harm; and (B) instruments, such as a car or chair, that ordinarily are not used as weapons may qualify as a dangerous weapon for purposes of subsection (b)(2) when the defendant involves them in the offense with the intent to cause bodily harm.

The difference between the options is that, unlike Option One, Option Two proposes other substantive changes in the aggravated assault guideline to address additional problems with the guideline. Specifically, Option Two attempts more explicitly and thoroughly than Option One to address one of the key issues underlying the circuit conflict, *i.e.*, what conduct is incorporated in the base offense level. The aggravated assault guideline covers three types of aggravated assault: felonious assaults that involve any one of the following: (A) Serious bodily injury; (B) a dangerous weapon with intent to cause bodily harm; and (C) intent to commit another felony. See Application Note 1 of § 2A2.2. Unlike the current guideline, which has one base offense level of level 15 for all types of aggravated assault, Option Two provides for each type of aggravated assault a base offense level that is intended to cover that type of assault in its most basic form, unaccompanied by further aggravated conduct. Accordingly, Option Two provides two alternative base offense levels: (A) Level 19, if the offense involved serious bodily injury; and (B) level 15, otherwise (*i.e.*, if the offense involved either an intent to commit another felony or a dangerous weapon with the intent to cause bodily injury).

The base offense level of level 19 for offenses under 18 U.S.C. 113(a)(6) (assaults resulting in serious bodily injury) achieves the same offense level as should be achieved under the current guideline by application of the base offense level and the serious bodily injury enhancement in subsection (b)(3)(B). However, FY 1999 data show that 16 percent of the 63 cases that involved a conviction under 18 U.S.C. 113(a)(6) either received no bodily injury enhancement or received an enhancement lower than the four-level enhancement required for serious bodily injury. Therefore, either there may be confusion about what conduct the base offense level incorporates for these types of aggravated assaults or application of the serious bodily injury enhancement is being avoided in cases in which it is warranted. Incorporating the serious bodily injury enhancement into the base offense level may help to ameliorate these concerns.

Proposed Amendment

Option 1

The Commentary to § 2A2.2 captioned "Application Notes" is amended in Note 1 by inserting "Definitions.—For purposes of this guideline:" before " 'Aggravated assault' "; by striking "do bodily harm" and inserting "cause bodily injury"; by striking the comma after "frighten)" and inserting "with that weapon;"; by striking the comma before "or (C)" and inserting a semicolon; and by adding at the end the following paragraphs:

'Brandished,' 'bodily injury,' 'firearm,' 'otherwise used," 'permanent or life-threatening bodily injury,' and 'serious bodily injury,' have the meaning given those terms in § 1B1.1, Application Note 1.

"Dangerous weapon' has the meaning given that term in § 1B1.1, Application Note 1. For purposes of this guideline, and pursuant to that application note, 'dangerous weapon' includes any instrument that is not ordinarily used as a weapon (*e.g.*, a car, a chair, or an ice pick) if such an instrument is involved in the offense with the intent to commit bodily injury.

'More than minimal planning,' has the meaning given that term in § 1B1.1, Application Note 1.

The Commentary to § 2A2.2 captioned "Application Notes" is amended by striking Notes 2 and 3 in their entirety and inserting the following:

"2. Aggravating Factors.—This guideline covers felonious assaults that are more serious than minor assaults because of the presence of certain aggravating factors, *i.e.*, serious bodily injury, the involvement of a dangerous weapon with intent to cause bodily injury, and the intent to commit another felony.

An assault that involves the presence of a dangerous weapon is aggravated in form when the presence of the dangerous weapon is coupled with the intent to cause bodily injury. In such a case, the base offense level and the weapon use enhancement in subsection (b)(2) take into account different aspects of the offense. The base offense level takes into account the presence of the dangerous weapon (regardless of the manner in which the weapon was involved) and the fact that the defendant intended to cause bodily injury. Subsection (b)(2), on the other hand, takes into account the manner in which the dangerous weapon was involved in the offense. Accordingly, in a case involving a dangerous weapon with intent to cause bodily injury, the court shall apply both the base offense level and subsection (b)(2).

3. More than Minimal Planning.—For purposes of subsection (b)(1), waiting to commit the offense when no witnesses were present would not alone constitute more than minimal planning. However, luring the victim to a specific location or wearing a ski mask to prevent identification would constitute more than minimal planning.".

The Commentary to § 2A2.2 captioned "Background" is amended in the first paragraph by adding at the end the following:

"This guideline also covers attempted manslaughter and assault with intent to commit manslaughter. Assault with intent to commit murder is covered by § 2A2.1 (Assault with Intent to Commit Murder). Assault with intent to commit rape is covered by § 2A3.1 (Criminal Sexual Abuse)."; and by striking the second paragraph in its entirety and inserting the following:

"There are a number of federal provisions that address varying degrees of assault and battery. For example, if the assault is upon a federal officer while engaged in or on account of the performance of official duties, the maximum term of imprisonment pursuant to 18 U.S.C. 111(a)(2) is three years. If a deadly or dangerous weapon is used in the assault on a federal officer, or if the assault results in bodily injury, the maximum term of imprisonment is ten years. If a dangerous weapon is used to assault a person who is not a federal officer, and the weapon was used with the intent to do bodily harm, without just cause or excuse, the maximum term of imprisonment pursuant to 18 U.S.C. 113(a)(3) also is ten years. If an assault results in serious bodily injury, the maximum term of imprisonment pursuant to 18 U.S.C. 113(a)(6) is ten years, unless the injury constitutes maiming by scalding, corrosive, or caustic substances pursuant to 18 U.S.C. 114, in which case the maximum term of imprisonment is twenty years.".

Option 2:

Section 2A2.2 is amended by striking subsection (a) in its entirety and inserting the following: "(a) Base Offense Level (Apply the greater):

(1) 19, if the offense involved serious bodily injury; or

(2) 15, otherwise.".

Section 2A2.2 is amended by striking subsection (b)(3) in its entirety and inserting the following:

"(3) (A) If subsection (a)(1) applies, and the victim sustained (i) permanent or life-threatening bodily injury, increase by 2 levels; or (ii) an injury that is between serious bodily injury and permanent or life-threatening bodily injury, increase by 1 level. However, the cumulative enhancements from this subdivision and subsection (b)(2) shall not exceed 5 levels.

(B) If subsection (a)(2) applies, and the victim sustained (i) bodily injury, increase by 2 levels; or (ii) an injury between bodily injury and serious bodily injury, increase by 3 levels.".

The Commentary to § 2A2.2 captioned "Application Notes" is amended in Note 1 by inserting 'Definitions.'For purposes of this guideline:" before "'Aggravated assault'"; by striking "do bodily harm" and inserting "cause bodily injury"; by striking the comma after "frighten)" and inserting "with that weapon;"; by striking the comma before "or (C)" and inserting a semicolon; and by adding at the end the following paragraphs:

'Brandished,' 'bodily injury,' 'firearm,' 'otherwise used,' 'permanent or life-threatening bodily injury,' and 'serious bodily injury,' have the meaning given those terms in § 1B1.1, Application Note 1.

'Dangerous weapon' has the meaning given that term in § 1B1.1, Application Note 1. For purposes of this guideline, and pursuant to that application note, 'dangerous weapon' includes any instrument that is not ordinarily used as a weapon (*e.g.*, a car, a chair, or an ice pick) if such an instrument is involved in the offense with the intent to commit bodily injury.

'More than minimal planning,' has the meaning given that term in § 1B1.1, Application Note 1.

The Commentary to § 2A2.2 captioned "Application Notes" is amended by striking Notes 2 and 3 in their entirety and inserting the following:

"2. Aggravating Factors.—This guideline covers felonious assaults that are more serious than minor assaults because of the presence of certain aggravating factors, *i.e.*, serious bodily injury, the involvement of a dangerous weapon with intent to cause bodily injury, and/or the intent to commit another felony.

An assault that involves the presence of a dangerous weapon is aggravated in form when the presence of the dangerous weapon is coupled with the intent to cause bodily injury. In such a case, the base offense level and the weapon use enhancement in subsection (b)(2) take into account different aspects of the offense. The base offense level takes into account the presence of the dangerous weapon (regardless of the manner in which the weapon was involved) and the fact that the defendant intended to cause bodily injury. Subsection (b)(2), on the other hand, takes into account the manner in which the dangerous weapon was involved in the offense. Accordingly, in a case involving a dangerous weapon with intent to cause bodily injury, the court shall apply both the base offense level and subsection (b)(2).

3. More than Minimal Planning.—For purposes of subsection (b)(1), waiting to commit the offense when no witnesses were present would not alone constitute more than minimal planning. However, luring the victim to a specific location or wearing a ski mask to prevent identification would constitute more than minimal planning.".

The Commentary to § 2A2.2 captioned "Background" is amended in the first paragraph by adding at the end the following:

"This guideline also covers attempted manslaughter and assault with intent to commit manslaughter. Assault with intent to commit murder is covered by § 2A2.1 (Assault with Intent to Commit Murder). Assault with intent to commit rape is covered by § 2A3.1 (Criminal Sexual Abuse)."; and by striking the second paragraph in its entirety and inserting the following:

"There are a number of federal provisions that address varying degrees of assault and battery. For example, if the assault is upon a federal officer while engaged in or on account of the performance of official duties, the maximum term of imprisonment pursuant to 18 U.S.C. 111(a)(2) is three years. If a deadly or dangerous weapon is used in the assault on a federal officer, or if the assault results in bodily injury, the maximum term of imprisonment is ten years. If a dangerous weapon is used to assault a person who is not a federal officer, and the weapon was used with the intent to do bodily harm, without just cause or excuse, the maximum term of imprisonment pursuant to 18 U.S.C. § 113(a)(3) also is ten years. If an assault results in serious bodily injury, the maximum term of imprisonment pursuant to 18 U.S.C. 113(a)(6) is ten years, unless the injury constitutes maiming by scalding, corrosive, or caustic substances pursuant to18 U.S.C. § 114, in which case the maximum term of imprisonment is twenty years.".

Proposed Amendment: Circuit Conflict Concerning Certain Fraudulent Misrepresentations

6. Synopsis of Proposed Amendment

This proposed amendment resolves a circuit conflict regarding the scope of the enhancement in subsection (b)(4)(A) of § 2F1.1 (Fraud and Deceit) for misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency. Specifically, the conflict concerns whether the misrepresentation applies only in cases in which the defendant does not have any authority to act on behalf of the covered organization or government agency or if it applies more broadly (i.e., to cases in which the defendant, who has a legitimate connection to the covered organization or government agency, misrepresents that the defendant was acting solely on behalf of the organization or agency). *Compare e.g., United States* v. *Marcum* 16 F.3d 599 (4th Cir. 1994) (enhancement appropriate even though defendant did not misrepresent his authority to act on behalf of the organization but rather only misrepresented that he was conducting an activity wholly on behalf of the organization), *with United States* v. *Frazier*, 5 F.3d 1105 (10th Cir. 1995) (application of the enhancement is limited to cases in which the defendant exploits his victim by claiming to have authority which in fact does not exist).

The proposed amendment provides for application of the enhancement if (A) the defendant falsely represented that the defendant was an employee of a covered organization or a government agency; or (B) the defendant was an employee of a covered organization or a government agency who represented that the defendant was acting solely for the benefit of the organization or agency when, in fact, the defendant intended to divert all or part of that benefit (for example, for the defendant's personal gain). Under either scenario, it is the representation that enables the defendant to commit the offense. To avoid double counting in the case of an employee described in clause (B) who also holds a position of trust, the proposed amendment provides an application note instructing the court not to apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) if the same conduct forms the basis both for the enhancement in § 2F1.1(b)(4)(A) and the adjustment in § 3B1.3.

The proposed amendment also addresses the issue of the embezzler who works for a covered organization or government agency. The proposed amendment provides that embezzlement of funds by an employee of a covered organization or government agency, without more, is not sufficient to trigger application of the enhancement. However, such an employee who also holds a position of trust may be subject to an adjustment pursuant to § 3B1.3.

Proposed Amendment

The Commentary to § 2F1.1 captioned "Application Notes" is amended by striking Note 5 in its entirety and inserting the following:

5. Misrepresentation.—Subsection (b)(4)(A) applies in any case in which (A) the defendant represented that the defendant was an employee or authorized agent of a charitable, educational, religious, or political organization, or government agency when, in fact, the defendant was not such an employee or agent; or (B) the defendant was an employee or agent of the organization or agency and represented that the defendant was acting solely to obtain a benefit for the organization or agency, when in fact, the defendant intended to divert all or part of that benefit (e.g., for the defendant's personal gain). Subsection (b)(4)(A) would apply, for example, to the following:

(A) A defendant who solicits contributions for a non-existent famine relief organization.

(B) A defendant who solicits donations from church members by falsely claiming to be a fund raiser for a religiously affiliated school.

(C) A defendant, chief of a local fire department, who conducts a public fund raiser representing that the purpose of the fund raiser is to procure sufficient funds for a new fire engine when, in fact, the defendant diverts some of the funds for the defendant's personal benefit.

If the conduct that forms the basis for an enhancement under subsection (b)(4)(A) is the only conduct that forms the basis for an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill), do not apply an adjustment under § 3B1.3.

The embezzlement of funds alone is not sufficient to warrant application of subsection (b)(4)(A). The embezzled funds must have been solicited pursuant to a misrepresentation that the defendant was acting to obtain a benefit for the organization or agency. However, if a defendant who embezzles funds holds a position of public or private trust, § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.".

Proposed Amendment: Circuit Conflict Concerning Certain Drug Defendants and Mitigating Role

7. Synopsis of Proposed Amendment

This amendment proposes to resolve a circuit conflict regarding whether application of § 3B1.2 (Mitigating Role) is precluded (i.e., without the necessity of applying the guideline to the facts) in the case of a single defendant drug courier if the defendant's base offense level is determined solely by the quantity personally handled by the defendant and that quantity constitutes all of the defendant's relevant conduct. *Compare e.g., United States* v. *Isaza-Zapata*, 148 F.3d 236, 241 (3d. Cir. 1998) (defendant who pleaded guilty to importing heroin was sentenced based on amounts in his personal possession, but if he can meet the requirements of § 3B1.2 he is entitled to the reduction upon appropriate proof) *with United States* v. *Isienyi*, 207 F.3d 390 (7th Cir. 2000) (defendant pleaded guilty to one count of importing a specified quantity of heroin; held defendant ineligible for a mitigating role adjustment when his offense level consisted only of amounts he personally handled).

The proposed amendment adopts the view that such a defendant, in a single defendant case, is not precluded from receiving a mitigating role adjustment.

In addition to resolving the circuit conflict, the proposed amendment (A) incorporates commentary from the Introduction to Chapter Three, Part B (Role in the Offense) that there must be more than one participant before application of a mitigating role adjustment may be considered; (B) incorporates the definition of "participant" found in the aggravating role guideline; (C) amends commentary to indicate that the mitigating role adjustment ordinarily is not warranted if the defendant receives a lower offense level than warranted by the actual criminal conduct because, for example, the defendant was convicted of a less serious offense or otherwise was held accountable under a plea for a lesser quantity of drugs than warranted by the defendant's actual conduct; (D) deletes commentary language that the minimal role adjustment is intended to be used infrequently; and (E) makes technical amendments to the guideline (such as the addition of headings for, and the reordering of, application notes in the commentary) that are intended to have no substantive impact on the guideline.

Proposed Amendment

The Commentary to § 3B1.2 captioned "Application Notes" is amended in Note 1 by inserting "Minimal Participant.—" before "Subsection (a)"; and by inserting "described in Application Note 3(A)" before "who plays".

The Commentary to § 3B1.2 captioned "Application Notes" is amended in Note 3 by striking "For purposes of § 3B1.2(b), a minor participant means any participant" and inserting "Minor Participant.—Subsection (b) applies to a defendant described in Application Note 3(A)".

The Commentary to § 3B1.2 is amended by striking Notes 2 and 4 in their entirety; by redesignating Notes 1 and 3 as Notes 4 and 5, respectively; and by inserting before redesignated Note 4 (formerly Note 1) the following:

"1. Definition.—For purposes of this guideline, 'participant' has the meaning given that term in Application Note 1 of § 3B1.1 (Aggravating Role).

2. Requirement of Multiple Participants.—This guideline is not applicable unless more than one participant was involved in the offense. See the Introductory Commentary to this Part (Role in the Offense). Accordingly, an adjustment under this guideline may not apply to a defendant who is the only defendant convicted of an offense unless that offense involved other participants in addition to the defendant and the defendant otherwise qualifies for such an adjustment.

3. Applicability of Adjustment.—

(A) Substantially Less Culpable than Average Participant.—This section provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant.

However, a reduction for a mitigating role under this section ordinarily is not warranted in the case of a defendant who has received an offense level lower than the offense level warranted by the defendant's actual criminal conduct (because, for example, the defendant was convicted of a less serious offense or was held accountable for a quantity of drugs less than what the defendant otherwise would have been accountable under § 1B1.3 (Relevant Conduct)). In such a case, the defendant is not substantially less culpable than a defendant whose only conduct involved the less serious offense. For example, if a defendant whose actual conduct involved a minimal role in the distribution of 25 grams of cocaine (an offense having a Chapter Two offense level of level 14 under § 2D1.1) is convicted of simple possession of cocaine (an offense having a Chapter Two offense level of level 6 under § 2D2.1), no reduction for a mitigating role is warranted because the defendant is not substantially less culpable than a defendant whose only conduct involved the simple possession of cocaine.

(B) Fact-Based Determination.—The determination whether to apply subsection (a) or subsection (b), or an intermediate adjustment, involves a determination that is heavily dependent upon the facts of the particular case. As with any other factual issue, the court, in weighing the totality of the circumstances, is not required to find, based solely on the defendant's bare assertion, that such a role adjustment is warranted.

(C) Applicability to Certain Defendants.—A defendant who is convicted of a drug trafficking offense, whose role in that offense was limited to transporting or storing drugs and who, based on the defendant's criminal conduct, is accountable under § 1B1.3 (Relevant Conduct) only for the quantity of drugs the defendant personally transported or stored is not precluded from receiving an adjustment under this guideline.".

The Commentary to § 3B1.2 is amended by striking the background in its entirety.

Issues for Comment: The Commission invites comment on the following:

(1) With respect to a defendant whose role in a drug offense is limited to transporting or storing drugs, should the Commission, as an alternative to the proposed amendment, preclude such a defendant from receiving any mitigating role adjustment under § 3B1.2? Alternatively, should the Commission provide that such a defendant may qualify only for a minor role adjustment, but not a minimal role adjustment?

(2) Should the example in proposed Application Note 3(C) (*i.e.,* that a defendant whose role in a drug trafficking offense is limited to transporting or storing drugs and who is accountable under § 1B1.3 (Relevant Conduct) only for the quantity of drugs the defendant personally transported or stored is not precluded from receiving a mitigating role adjustment) be broadened to make clear that the rule is intended to cover defendants convicted of offenses other than drug trafficking offenses who have a similarly limited role in the offense? Specifically, should the example be expanded to make clear that the rule is intended to apply to a defendant who has a similarly limited role in any offense and who is accountable under § 1B1.3 only for that portion of the offense for which the defendant was personally involved?

[FR Doc. 00–28564 Filed 11–6–00; 8:45 am]

BILLING CODE 2210–40–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before January 8, 2001.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to James Rivera, Senior Program Analyst, Office of Disaster, Small Business Administration, 409 3rd Street, S. W., Suite 6050.

FOR FURTHER INFORMATION CONTACT: James Rivera, Senior Program Analyst, 202–205–6734 or Curtis B. Rich, Management Analyst, (202)205–7030.

SUPPLEMENTARY INFORMATION:

Title: Disaster Business Loan Application.

Form No's: 5, 739A and 1368.

Description of Respondents: Small Businesses.

Annual Responses: 16,853.

Annual Burden: 48,561.

Title: Disaster Survey Worksheet.

Form No: 987.

Description of Respondents: Individuals, Businesses, and Public Officials within an area requesting a Disaster Declaration.

Annual Responses: 4,000.

Annual Burden: 332.

Curtis B. Rich,

Acting Chief, Administrative Information Branch.

[FR Doc. 00–28452 Filed 11–6–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9J35]

State of Alaska

Kenai Peninsula Borough and the contiguous Boroughs of Matanuska-Susitna and Lake and Peninsula, together with the Regional Educational Attendance Area #10 (Chugach) and the Municipality of Anchorage, in the State of Alaska, constitute an economic injury disaster area due to severe storms and flooding in September of 1995 that resulted in a low return of sockeye salmon to their spawning grounds in the lower Kenai River during the year 2000. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on July 24, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: October 24, 2000.

Kris Swedin,

Acting Administrator.

[FR Doc. 00–28453 Filed 11–6–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3291; Amendment #3]

State of Idaho

In accordance with information received from the Federal Emergency Management Agency, dated October 20, 2000, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage caused by this disaster from October 31, 2000 to November 30, 2000.

All other information remains the same, i.e., the deadline for filing applications for economic injury is June 1, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 25, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–28451 Filed 11–6–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 3450]

Proposed Protocol on Rail Equipment to the Draft Convention Sponsored by UNIDROIT on International Mobile Equipment Finance; Meeting Notice

AGENCY: Department of State.

ACTION: The International Finance Study Group of the State Department's Advisory Committee on Private International Law will meet to review a proposed protocol on rail equipment to the draft UNIDROIT convention on equipment finance, and its effect on cross-border financing and trade involving the railway industry. The meeting will be held in Washington, D.C. on Tuesday, November 14, 2000 at the Association of American Railroads Conference Center (4th floor).

Agenda

The meeting will cover the purpose and concepts of the proposed UNIDROIT Convention on international interests in mobile equipment; the application of asset-based financing to railway equipment; the recent meeting of the ICAO Legal Committee at Montreal on the proposed Convention in relation to aircraft and the draft Aircraft Equipment Protocol, and other international developments relevant to rail finance.

Comments will be requested on draft provisions of the proposed Rail Equipment Protocol. The intersection with recent revisions to the Uniform Commercial Code in the United States will be examined, along with personal property laws of Canada, Mexico and other countries as time permits, as well as related draft conventions and model national laws on secured financing, including work underway at UNCITRAL (the United Nations Commission on International Trade Law) on receivables financing and the OAS (Organization of American States) on a model Inter-American national law on secured financing.

Background

The United States has been an active participant in negotiations on a proposed multilateral convention (UNIDROIT Convention) to provide for the creation and enforceability of international secured finance interests in mobile equipment, including, at this stage, aircraft, to be followed by rail equipment and space and satellite equipment. A Rail Working Group authorized by UNIDROIT has undertaken work on the current draft protocol on provisions specific to rail equipment financing. Provision may be made at a future date for protocols on other categories of equipment, such as containers, construction and agricultural equipment, certain types of vessels, etc. Other international bodies participate as appropriate. Completion of the basic Convention and aircraft protocol is expected by mid-2001. Completion of the protocol on rail equipment is expected to follow.

The proposed Convention and equipment specific protocols together are intended to provide comprehensive international rules on financing interests in such equipment and could thus stimulate the development of these industries in many countries as well as increase the capacity of many countries to finance such equipment through private sector capital markets. This can enhance infrastructure growth, as well as reduce reliance on direct government funding or use of sovereign debt, which in turn would facilitate privatization and market development.

Key features of the draft Convention include the creation of internationally enforceable interests pursuant to the Convention; providing for regional or international computer-based registry systems for notice of finance interests; provisions on assignments of such interests; priorities based on filing; and optional provisions on key finance issues such as default remedies, insolvency, etc. Proposed new registration systems for rail finance authorized under the protocol are intended to facilitate processes, equivalent to that utilized in North America, to support asset-based finance in other regions, and may provide for linkage between registration systems to facilitate cross-border finance and the export of such equipment.

Attendance

The meeting will be held on Tuesday, November 14, 2000, from 10 a.m. to 3 p.m. at the offices of the Association of American Railroads (AAR), Conference Center (4th floor) 50 "F" Street, NW, Washington, D.C. 20001. The meeting is open to the public. Persons wishing to attend should contact Peter Bloch, Department of Transportation, Office of General Counsel, (202) 366–9183, fax 366–9188; Louis P. Warchot at AAR at 202–639–2500, fax 639–2868; or Harold Burman, Department of State, Office of Legal Adviser (L/PIL), at 202–776–8421, fax 776–8482, email pildb@his.com, not later than Friday, November 10.

Documents

Basic Convention drafts on mobile equipment and the aircraft protocol are available at www.UNIDROIT.org, scroll to "news". Revised versions will be available shortly which reflect recent changes; the changes do not affect the basic structure or the purpose of the operative provisions. The draft Rail Equipment Protocol is available from the AAR or the Office of Legal Adviser, or may be provided to attendees by fax on request.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law, United States Department of State.

[FR Doc. 00–28645 Filed 11–3–00; 1:21 pm]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Committee of Chairs of the Industry Sector and Functional Advisory Committees

AGENCY: Office of the United States Trade Administrative

ACTION: Notice of Meeting.

SUMMARY: The Committee of Chairs of the Industry Sector and Functional Advisory Committees will hold a meeting on November 28, 2000, from 2:00 p.m. to 4:00 p.m. The meeting will be closed to the public from 2:00 p.m. to 3:15 p.m., and opened to the public from 3:15 p.m. to 4:00 p.m. to discuss the review of the Trade Advisory Committee System.

DATES: The meeting is scheduled for November 28, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the Office of the U.S. Trade Representative, Conference Room 1, located at 1724 F.Street, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Sylvia Prosak, (202) 482–3268, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, or Dominic Bianchi, Office of the United States Trade Representative, 1724 F. St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the Committee of Chairs will present their report on recommendations for reform of the Trade Advisory System.

Dominic Bianchi,

Acting Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 00–28518 Filed 11–6–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Southcentral, Alaska

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Amended Notice of Intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this amended notice to advise the public that an environmental impact statement will not be prepared for the proposed Copper River Highway project in Southcentral, Alaska.

ADDRESSES: Federal Highway Administration, Alaska Division, 709 West 9th Street, Room 851, P.O. Box 21648, Juneau, Alaska 99802–1648.

FOR FURTHER INFORMATION CONTACT: Tim Haugh, Environmental/Right-of-Way Specialist, Federal Highway Administration, Alaska Division Office, P.O. Box 21648, Juneau, Alaska, 99802–1648.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Alaska Department of Transportation and Public Facilities (ADOT&PF) have agreed to terminate the preparation of the Copper River Highway Environmental Impact Statement (EIS). This EIS was to study a proposed highway route, along the old Copper River and Northwest Railroad right-of-way, which would connect the City of Cordova to the Alaskan highway system. In September 2000, the Alaska Department of Transportation and Public Facilities made a decision to not pursue the proposed highway project, thus this notice is to rescind the earlier notice, which was published in the **Federal Register** on February 27, 1992. Letters describing the termination of the Copper River Highway Environmental Impact Statement will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed an interest in or are known to have an interest in this action. This information will be published in various newspapers throughout the State of

Alaska in affected regions and posted on-line on the Alaska Department of Transportation and Public Facilities home page (www.dot.state.ak.us). No formal public meetings or hearings are scheduled. Comments concerning the proposed action should be directed to the Federal Highway Administration at the address provided above.

Dated: October 30, 2000.

David C. Miller,

Division Administrator.

[FR Doc. 00–28457 Filed 11–6–00; 8:45 am]

BILLING CODE 4910–EM–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–00–8228]

Session of the United Nations Economic Commission for Europe World Forum for the Harmonization of Vehicle Regulations

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice regarding upcoming UN/ECE WP.29 Session in Geneva, Switzerland.

SUMMARY: The UN/ECE World Forum for the Harmonization of Vehicle Regulations (UN/ECE WP.29) will hold its one hundred and twenty second session on November 7–10, 2000. The purpose of this notice is to inform the public that NHTSA will not be ready at that session in Geneva to submit its recommendations concerning the establishment of priorities under the 1998 Global Agreement. Further, NHTSA has decided that holding a public meeting to discuss the upcoming November session is not warranted.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Abraham, Director, Office of International Policy and Harmonization, NPP–01, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2114. Fax: (202) 366–2559.

SUPPLEMENTARY INFORMATION:

I. NHTSA's Final Recommendations

The United Nations Economic Commission for Europe (UN/ECE) Agreement Concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts Which Can Be Fitted and/or Used on Wheeled Vehicles (1998 Global Agreement) has entered into force on August 25, 2000. In anticipation of the agreement's entry into force, the National Highway Traffic Safety Administration (NHTSA) issued a notice on July 12, 2000, seeking public comments on its preliminary recommendations for the first motor vehicle safety technical regulations or aspects of regulations to be considered for establishment under the 1998 Global Agreement.

In the notice (published July 18, 2000; 65 Fed. Reg. 44565), NHTSA categorized its recommendations into two main groups: (1) priority recommendations and (2) other recommendations. The priority items included generally those foreign standards and/or aspects of those standards that may represent best current safety practices from existing national and regional regulations, and whose addition to the existing Federal Motor Vehicle Safety Standard (FMVSS) would improve the level of vehicle safety in the U.S. In the notice, the agency stated that, in allocating its resources, it will give priority to the recommendations in this category.

The "Other Recommendations" group comprised those U.S. standards or aspects of those standards that may represent best current safety practices and should be therefore considered by other contracting parties to the 1998 Global Agreement in the establishment of global technical regulations.

In addition to the above mentioned categories, the notice also referred to the suggestions that had been received by the United Nations' Economic Commission for Europe World Forum for Harmonization of Vehicle Regulations (WP.29) from the governments of Japan and the Russian Federation and various industry and consumer groups. These suggestions are posted in the NHTSA docket (NHTSA–00–7638).

In the notice, NHTSA sought comments on its preliminary recommendations. It specifically asked whether any changes should be made to its list of preliminary recommendations and whether any of the standards listed in the proposals submitted to WP.29 by other governments and by non-governmental organizations should be added to NHTSA's list. In addition, NHTSA asked whether the agency's rulemaking priority activities under the Vehicle Safety Act and those under WP.29 should be linked, and if so, to what extent?

NHTSA received comments from Advocates for Highway and Auto Safety, the Alliance of Automobile Manufacturers, Flat Glass Manufacturers Association of Japan, Honda, the International Organization of Motor Vehicle Manufacturers (OICA), the Rubber Manufacturers Association, and Toyota.

NHTSA had anticipated completing its consideration of the public comments and publishing a revised list of recommendations prior to the November 7–10, 2000 meeting of WP.29 so that it could formally present its recommendations to WP.29 at that meeting. However, the agency has not completed its analysis of the comments and will not be ready to make such a proposal at the November 2000 meeting. The agency anticipates completing its analysis and publishing the final list prior to the March 2001 meeting and then submitting it at that meeting.

II. Upcoming November 7–10, 2000 WP.29 Meeting

In its Statement of Policy on Agency Policy Goals and Public Participation in the Implementation of the 1998 Agreement on Global Technical Regulations (published August 23, 2000; 65 Fed. Reg. 51236), NHTSA stated that it would hold periodic public meetings on its activities under the 1998 Global Agreement. It said further that if the extent of recent and anticipated significant developments concerning those activities so warrant, NHTSA would hold a public meeting within the 60-day period before each of the three sessions of WP.29 held annually.

NHTSA decided that holding a public meeting before the November WP.29 meeting was not warranted. Although NHTSA anticipates that the first meeting of the Executive Committee of the 1998 Global Agreement will take place during this session, that meeting will not address the setting of priorities or the establishing of particular standards under that Agreement. The meeting will focus instead on discussing the administrative procedures that will be followed in implementing the 1998 Global Agreement such as the working of the Compendium, meeting time for the Executive Committee, etc. The technical regulations listed on the agenda are those being considered under the 1958 Agreement. For information purposes, NHTSA has placed the agenda for the November 2000 meeting in the docket for this notice.

Issued on November 2, 2000.

Julie Abraham,

Director, Office of International Policy and Harmonization.

[FR Doc. 00–28532 Filed 11–02–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33950]

Jefferson Terminal Railroad Co.—Acquisition and Operation Exemption—Crown Enterprises, Inc.

Jefferson Terminal Railroad Co. (Jefferson), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Crown Enterprises, Inc. (Crown)[1] and operate approximately 1.2 miles of rail line (line). The line runs from crossing number Conrail 534 350 T (Jefferson Avenue) through crossing number 859 375 A (Freud Avenue) to the Detroit River in the area of track identified as the Conrail Shared Assets Dearborn Division Terminal East Branch between Jefferson Avenue milepost 0.0TE, through the Freud Street Crossings, mileposts 0.40TE, 0.38TE, and 0.36TE, and continuing on to the Detroit River, in Detroit, MI.[2]

The transaction was expected to be consummated immediately after the effective date of the exemption. The earliest the transaction could be consummated was October 26, 2000, 7 days after the exemption was filed.[3]

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33950, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Daniel C. Sullivan, Esq., Sullivan & Hincks, 122 W. 22nd Street, Suite 350, Oak Brook, IL 60523.

Board decisions and notices are available on our website at "*www.stb.dot.gov.*"

Decided: October 31, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–28393 Filed 11–6–00; 8:45 am]

BILLING CODE 4915–00–P

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[1] Jefferson identifies Crown as an affiliate company.

[2] Jefferson reports that the line is located in the rail complex formerly known as the River Yard but that it was designated as a Shared Asset Area pursuant to a transaction approved by the Board, and consummated by the parties on June 1, 1999. *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998).

[3] Jefferson notes that, as the owner of a lateral branch line, it has made application to Conrail, Inc. (Conrail) under 49 U.S.C. 11103 to reopen a pre-existing switch immediately south of Freud Avenue and west of Canal Street to allow Jefferson to connect with Conrail. Jefferson further notes that it will commence operations upon the reopening of the switch by Conrail. Jefferson also anticipates eventual use of a car ferry to move at least new automobiles across the Detroit River between the United States and Canada.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 05 (Rev. 18)]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of authority.

SUMMARY: The specific order of succession and designation to act as Commissioner of Internal Revenue Service. The text of the delegation order appears below.

FOR FURTHER INFORMATION CONTACT: Joann L. Buck, Chief of Staff, Room 3310, 1111 Constitution Avenue, NW., Washington, DC 20037, (202) 622–1320 (not a toll-free call).

Delegation of Authority

[Order Number 05 (Rev. 18)]

Effective Date: October 2, 2000.

Order of Succession and Designation

To Act as Commissioner of Internal Revenue

Authority: To act as and to perform the functions of the Commissioner of Internal Revenue in the event of an enemy attack on the United States, the disability of the Commissioner, his/her absence from the main Treasury relocation Site, or if there is a vacancy in the office, thus insuring the continuity of the functions of the office.

Delegated to: The following officials in the specific sequence listed:

Deputy Commissioner
Assistant Deputy Commissioner (Operations)
Assistant Deputy Commissioner (Modernization)
Chief, Communications and Liaison
Commissioner, Small Business/Self-Employed Division
Commissioner, Wage and Investment Division
Commissioner, Tax Exempt/Government Entities Division
Commissioner, Large/Mid-Size Business Division
Deputy Commissioner, Small Business/Self-Employed Division
Deputy Commissioner, Wage and Investment Division
Deputy Commissioner, Tax Exempt/Government Entities Division
Deputy Commissioner, Large/Mid-Size Business Division
Chief, Agency-Wide Shared Services
Chief, Appeals
Chief, Criminal Investigation
Chief Information Officer

Redelegation: In the absence of these officials, the first available Compliance Director.

Sources of Authority: Treasury Order 150–10, Treasury Order 150–25.

This Order supersedes Delegation Order No. 5 (Rev. 17), effective October 15, 1999.

Dated: October 4, 2000.

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 00–28526 Filed 11–6–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 264]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of authority.

SUMMARY: Authority to Offer and Accept Settlement Offers and to Execute Closing Agreements Made under the Targeted Jobs Tax Credit Initiative.

FOR FURTHER INFORMATION CONTACT: Robert Wheeler, Health and Welfare Branch, Office of Division Counsel/Associate Chief Counsel (Tax-Exempt and Government Entities), CC:TEGE:EB:HW, Room 5203, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–6060 (not a toll-free call).

Delegation of Authority

[Order No.: 264]

Effective Date: September 15, 2000.

Authority To Offer and Accept Settlement Offers and To Execute Closing Agreements Made Under the Targeted Jobs Tax Credit Initiative

Authority: In cases under their jurisdiction, to accept or make settlement offers and to execute closing agreements to effect such settlement offers, regardless of liability sought to be compromised, made under

Announcement 2000–58, subject to the prior written review and approval by the Retail Industry Technical Advisor (or his or her designee).

Delegated to: Examination Branch Chiefs in the District offices and Territory Managers in Large and Mid-Sized Business and Small Business/Self-Employed divisions.

Redelegation: This authority may not be redelegated.

Sources of Authority: Treasury Order Nos. 150–07, 150–09, and 150–10 and the authority contained in IRC 7121 to offer and accept written settlement offers and execute closing agreements, relating to federal tax matters that are the subject of Announcement 2000–58, Targeted Jobs Tax Credit Settlement Initiative, 2000–30 I.R.B. 135 (July 24, 2000).

Ratification: To the extent that authority previously exercised consistent with this Order may require ratification, it is hereby approved and ratified.

Dated: October 5, 2000.

Stuart L. Brown,

Chief Counsel.

Dated: October 16, 2000.

Bob Wenzel,

Deputy Commissioner, Operations.

[FR Doc. 00–28527 Filed 11–6–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Bond of Indemnity to the United States of America.

DATES: Written comments should be received on or before January 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Special Bond of Indemnity to the United States of America.

OMB Number: 1535–0062.

Form Number: PD F 2966.

Abstract: The information is requested to support a request for refund of the purchase price of savings bonds purchased in a chain letter scheme.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 665.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–28482 Filed 11–6–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request By Owner For Reissue of United States Savings Bonds/Notes To Add Beneficiary Or Coowner, Eliminate Beneficiary Or Decedent, Show Change Of Name, And/Or Correct Error In Registration.

DATES: Written comments should be received on or before January 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request By Owner For Reissue Of United States Savings Bonds/Notes To Add Beneficiary Or Coowner, Eliminate Beneficiary Or Decedent, Show Change Of Name, And/Or Correct Error In Registration.

OMB Number: 1535–0023.

Form Number: PD F 4000.

Abstract: The information is requested to support a request for reissue and to indicate the new registration required.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 600,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 300,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–28483 Filed 11–6–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application by Preferred Creditor for Disposition Without Administration Where Deceased Owner's Estate Includes United States Registered Securities And/Or Related Checks In An Amount Not Exceeding $500.

DATES: Written comments should be received on or before January 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION: *Title:* Application By Preferred Creditor For Disposition Without Administration Where Deceased Owner's Estate Includes United States Registered Securities And/Or Related Checks In An Amount Not Exceeding $500.

OMB Number: 1535–0042.

Form Number: PD F 2216.

Abstract: The information is requested to support a request for payment by a preferred creditor of a decedent's estate.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or Businesses.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 835.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–28484 Filed 11–6–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Authorization for purchase and request for change of United States Savings Bonds.

DATES: Written comments should be received on or before January 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Authorization For Purchase And Request For Change United States Savings Bonds.

OMB Number: 1535–0111.

Form Numbers: SB 2104, 2152, 2153, 2205, 2253, 2272, and 2305.

Abstract: The information is requested to support a request by employees to authorize employers to allot funds from their pay for the purchase of savings bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 1,600,000.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 33,333.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–28485 Filed 11–06–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Regulations governing the offering of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

DATES: Written comments should be received on or before January 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION: *Title:* Regulations Governing The Offering Of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

OMB Number: 1535–0127.

Abstract: The information is requested to establish an investor account, issue and redeem securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business.

Estimated Number of Respondents: 37.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 20.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–28486 Filed 11–6–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Regulations governing U.S. Treasury Certificates of Indebtedness—State and Local Government Series.

DATES: Written comments should be received on or before January 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION: *Title:* Regulations Governing United States Treasury Certificates Of Indebtedness—State and Local Government Series, Unites States Treasury Notes—State and Local Government Series, and United States Treasury Bonds—State and Local Government Series.

OMB Number: 1535–0091.

Abstract: The information is requested to establish an investor account, issue and redeem securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or local governments.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 167.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–28487 Filed 11–6–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Subscription For Purchase and Issue of U.S. Treasury Securities, State and Local Government Series.

DATES: Written comments should be received on or before January 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION: *Title:* Subscription For Purchase And Issue Of U.S. Treasury Securities—State And Local Government Series.

OMB Number: 1535–0092.

Form Number: PD F 4144

Abstract: The information is requested to establish accounts for the owners of securities of State and Local Government Series.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or Local Government.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–28488 Filed 11–6–00; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Tuesday,
November 7, 2000

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determinations of Whether Designation of Critical Habitat is Prudent for 81 Plants and Proposed Designations for 76 Plants From the Islands of Kauai and Niihau, Hawaii; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG71

Endangered and Threatened Wildlife and Plants; Determinations of Whether Designation of Critical Habitat Is Prudent for 81 Plants and Proposed Designations for 76 Plants From the Islands of Kauai and Niihau, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of determinations of whether designation of critical habitat is prudent.

SUMMARY: We, the U.S. Fish and Wildlife Service, have reconsidered our findings concerning whether designating critical habitat for 81 federally protected plant species currently found on the islands of Kauai and Niihau is prudent. A total of 95 species historically found on these two islands were listed as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1996. Some of these species may also occur on other Hawaiian islands. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the species.

Due to litigation, we reconsidered our previous prudency determinations for the 95 plants. From this review, we are proposing that critical habitat is prudent for 76 of these species because the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks of designation. We are proposing that the designation of critical habitat is not prudent for five species. The remaining 14 species historically found on Kauai and/or Niihau, no longer occur on these islands. However, these species do occur on other islands, so proposed prudency determinations will be made in future rules addressing plants on those islands.

This proposed rule also proposes designation of critical habitat for the 76 species. Twenty-three critical habitat units, covering a total of 24,539.23 hectares (60,636.42 acres), are proposed for designation on the islands of Kauai and Niihau.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the proposed designations. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We must receive comments from all interested parties by December 7, 2000. Public hearing requests must be received by December 22, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to KAandNIcrithab pr@fws.gov.

(3) You may hand-deliver written comments to our Pacific Islands Office at 300 Ala Moana Blvd., Room 3–122, Honolulu, HI.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Office.

FOR FURTHER INFORMATION CONTACT: Christa Russell, Coordinator for Listing and Recovery of Plants and Invertebrates, Pacific Islands Office (see **ADDRESSES** section) (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

We, the U.S. Fish and Wildlife Service (Service), have reconsidered our findings concerning whether designating critical habitat for 81 federally protected plants from the islands of Kauai and Niihau, Kauai County, Hawaii, is prudent. In the Lists of Endangered and Threatened Plants (50 CFR 17.12), there are 95 plant species that, at the time of listing, were found on the islands of Kauai and Niihau (Table 1). Currently, 55 of these species are endemic to the islands of Kauai and/or Niihau, while 24 species are known from one or more other islands, as well as Kauai and/or Niihau. Two species (*Melicope quadrangularis* and *Phyllostegia waimeae*) are thought to be extinct since they have not been seen recently in the wild and no viable genetic material of these species is known to exist. The remaining 14 species, *Acaena exigua, Achyranthes mutica, Ctenitis squamigera, Diellia erecta, Diplazium molokaiense, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Mariscus pennatiformis, Phlegmariurus mannii, Phlegmariurus nutans, Silene lanceolata, Solanum incompletum*, and *Vigna o-wahuensis*, are known only from historical records (pre-1970) on Kauai and/or Niihau, or from undocumented observations, or are no longer extant in the wild on these islands. These species do occur on other islands, however.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 95 SPECIES FROM KAUAI AND NIIHAU

Species	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
Acaena exigua (liliwai)	H				C		
Achyranthes mutica (NCN)	H				C		
Adenophorus periens (NCN)	C	H	C	R	R	C	
Alectryon macrococcus (mahoe)	C	C	C		C		
Alsinidendron lychnoides (kuawawaunohu)	C						
Alsinidendron viscosum (NCN)	C						
Bonamia menziesii (NCN)	C	C	H	C	C	C	
Brighamia insignis (olulu)	C						Ni(C).
Centaurium sebaeoides (awiwi)	C	C	C	C	C		
Chamaesyce halemanui (akoko)	C						
Ctenitis squamigera (pauoa)	H	C	H	C	C		
Cyanea asarifolia (haha)	C						
Cyanea recta (haha)	C						

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 95 SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
Cyanea remyi (haha)	C						
Cyanea undulata (haha)	C						
Cyperus trachysanthos (pu ukaa)	C	C	H	H			Ni(C).
Cyrtandra cyaneoides (mapele)	C						
Cyrtandra limahuliensis (haiwale)	C						
Delissea rhytidosperma (NCN)	C						
Delissea rivularis (NCN)	C						
Delissea undulata (NCN)	C				H	C	Ni(H).
Diellia erecta (NCN)	H	C	C	H	C	C	
Diellia pallida (NCN)	C						
Diplazium molokaiense (NCN)	H	H	H	H	C		
Dubautia latifolia (kahalapehu)	C						
Dubautia pauciflorula (naenae)	C						
Euphorbia haeleeleana (akoko)	C	C					
Exocarpos luteolus (heau)	C						
Flueggea neowawraea (mehamehame)	C	C	H		C	C	
Gouania meyenii (NCN)	C	C					
Hedyotis cookiana (awiwi)	C	H	H			H	
Hedyotis st.-johnii (NCN)	C						
Hesperomannia lydgatei (NCN)	C						
Hibiscadelphus woodii (hau kuahiwi)	C						
Hibiscus brackenridgei (mao hau hele)	H	C	H	C	C	C	Ka(R).
Hibiscus clayi (kokio ulaula)	C						
Hibiscus waimeae ssp. hannerae (kokio keokeo)	C						
Ischaemum byrone (Hilo ischaemum)	R	H	C		C	C	
Isodendrion laurifolium (aupaka)	C	C					
Isodendrion longifolium (aupaka)	C	C					
Isodendrion pyrifolium (wahine noho kula)		H	H	H	H	C	Ni(H).
Kokia kauaiensis (kokio)	C						
Labordia lydgatei (kamakahala)	C						
Labordia tinifolia var. *wahiawaensis* (kamakahala)	C						
Lipochaeta fauriei (nehe)	C						
Lipochaeta micrantha (nehe)	C						
Lipochaeta waimeaensis (nehe)	C						
Lobelia niihauensis (NCN)	C	C					Ni(H).
Lysimachia filifolia (NCN)	C	C					
Mariscus pennatiformis (NCN)	H	H			C	H	NW (C).
Melicope haupuensis (alani)	C						
Melicope knudsenii (alani)	C				C		
Melicope pallida (alani)	C	C					
Melicope quadrangularis (alani)	H						
Munroidendron racemosum (NCN)	C						
Myrsine linearifolia (kolea)	C						
Nothocestrum peltatum (aiea)	C						
Panicum niihauense (NCN)	C						Ni(H).
Peucedanum sandwicense (makou)	C	C	C		C		
Phlegmariurus mannii (wawaeiole)	H				C	C	
Phlegmariurus nutans (wawaeiole)	H	C					
Phyllostegia knudsenii (NCN)	C						
Phyllostegia waimeae (NCN)	H						
Phyllostegia wawrana (NCN)	C						
Plantago princeps (ale)	C	C	C		C	H	
Platanthera holochila (NCN)	C	H	C		C		
Poa mannii (NCN)	C						
Poa sandvicensis (NCN)	C						
Poa siphonoglossa (NCN)	C						
Pritchardia aylmer-robinsonii (wahane)							Ni(C).
Pritchardia napaliensis (loulu)	C						
Pritchardia viscosa (loulu)	C						
Pteralyxia kauaiensis (kaulu)	C						
Remya kauaiensis (NCN)	C						
Remya montgomeryi (NCN)	C						
Schiedea apokremnos (NCN)	C						
Schiedea helleri (NCN)	C						
Schiedea kauaiensis (NCN)	C						
Schiedea membranacea (NCN)	C						
Schiedea nuttallii (NCN)	C	C	R		R		
Schiedea spergulina var. *leiopoda* (NCN)	C						

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 95 SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
Schiedea spergulina var. *spergulina* (NCN)	C						
Schiedea stellarioides (NCN)	C						
Sesbania tomentosa (ohai)	C	C	C	H	C	C	NW, Ka, Ni (H).
Silene lanceolata (NCN)	H	C	C	H		C	
Solanum incompletum (popolo ku mai)	H		H	H	H	C	
Solanum sandwicense (popolo aiakeakua)	C	H					
Spermolepis hawaiiensis (NCN)	C	C	C	C	C	C	
Stenogyne campanulata (NCN)	C						
Vigna o-wahuensis (NCN)		H	C	C	C	C	Ni (H), Ka (C).
Viola helenae (NCN)	C						
Viola kauaiensis var. *wahiawaensis* (nani wai ale)	C						
Wilkesia hobdyi (iliau)	C						
Xylosma crenatum (NCN)	C						
Zanthoxylum hawaiiense (ae)	C		C	H	C	C	

KEY
C (Current)—population last observed within the past 30 years.
H (Historical)—population not seen for more than 30 years.
R (Reported)—reported from undocumented observations.

The plants considered in this rule were listed as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. These not-prudent determinations, along with the not-prudent determinations for 150 other Hawaiian plants, were challenged in *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency determinations for 245 listed plant species in Hawaii. On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002. To comply with the Court's order, between now and April 30, 2002, we plan to publish seven rules that will include proposed determinations of whether critical habitat is prudent, along with designations if appropriate. Each rule, arranged by island or island group (Kauai and Niihau; Maui and Kahoolawe; Lanai; Molokai; Northwest Hawaiian Islands; Hawaii; Oahu), will contain the proposed prudency determination and, when appropriate, proposed designations of critical habitat for each plant species known to occur from that island or group of islands. This determination and proposed rule for 79 plants currently found on the islands of Kauai and Niihau responds to the court order. The proposed prudency determinations for *Melicope quadrangularis* and *Phyllostegia waimeae*, which appear to be no longer extant in the wild, will also be made in this rule. The proposed prudency determinations and, if appropriate, critical habitat designation for the 14 species that no longer occur on Kauai and/or Niihau, but do occur on other islands, will be made in subsequent rules (Table 2).

TABLE 2.—LIST OF PROPOSED RULES IN WHICH PRUDENCY DETERMINATIONS AND CRITICAL HABITAT DESIGNATIONS/NON DESIGNATIONS WILL BE PROPOSED FOR THE 14 SPECIES THAT NO LONGER OCCUR ON KAUAI OR NIIHAU

Species	Proposed rule in which prudency will be proposed	Proposed rule in which critical habitat designations/non designations will be discussed
Acaena exigua	Maui and Kahoolawe	Maui and Kahoolawe.
Achranthes mutica	Hawaii	Hawaii.
Ctenitis squamigera	Maui and Kahoolawe	Maui and Kahoolawe; Lanai; Oahu.
Diellia erecta	Maui and Kahoolawe	Maui and Kahoolawe; Molokai; Hawaii; Oahu.
Diplazium molokaiense	Maui and Kahoolawe	Maui and Kahoolawe.
Hibiscus brackenridgei	Maui and Kahoolawe	Maui and Kahoolawe; Lanai; Hawaii; Oahu.
Ischaemum byrone	Maui and Kahoolawe	Maui and Kahoolawe; Molokai; Hawaii.
Isodendrion pyrifolium	Hawaii	Hawaii.
Mariscus pennatiformis	Maui and Kahoolawe	Maui and Kahoolawe; NW Hawaiian Islands; Hawaii.
Phlegmariurus mannii	Maui and Kahoolawe	Maui and Kahoolawe; Hawaii.
Phlegmariurus nutans	Oahu	Oahu.
Silene lanceolata	Molokai	Molokai; Hawaii; Oahu.
Solanum incompletum	Hawaii	Hawaii.
Vigna o-wahuensis	Maui and Kahoolawe	Maui and Kahoolawe; Lanai; Molokai; Hawaii.

The Islands of Kauai and Niihau

Because of its age and relative isolation, levels of floristic diversity and endemism are higher on Kauai than on any other island in the Hawaiian archipelago. However, the vegetation of Kauai has undergone extreme alterations because of past and present land use. Land with rich soils was

altered by the early Hawaiians, and more recently, converted to agricultural use or pasture (Gagne and Cuddihy 1999). Intentional or inadvertent introduction of nonnative plant and animal species has also contributed to the reduction of native vegetation on the island of Kauai. Native forests are now limited to the upper elevation mesic (moist) and wet regions within Kauai's conservation district. The land that supports the 79 extant plant taxa is owned by various private parties, the State of Hawaii (including State parks, forest reserves, and natural area reserves), and the United States of America. Most of the taxa included in this proposed rule persist on steep slopes, precipitous cliffs, valley headwalls, and other regions where unsuitable topography has prevented agricultural development or where inaccessibility has limited encroachment by nonnative plant and animal species.

Niihau's relative isolation and severe environmental conditions have produced a few endemic species. Unfortunately, human disturbance, primarily ungulate ranching, has drastically changed the vegetation and hydrologic parameters of the island, leaving few of the native vegetation communities. Niihau has been privately owned since 1864 and access has been and continues to be restricted (Department of Geography 1998). Therefore, current information on plant locations and population status is extremely limited.

Discussion of the 79 Extant Plant Taxa

Species Endemic to Kauai and Niihau

Alsinidendron lychnoides

Alsinidendron lychnoides, a member of the pink family (Caryophyllaceae), is a weakly climbing or sprawling woody, at least at the base, subshrub with a dense covering of fine glandular hairs throughout. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by the weakly climbing or sprawling habit, color of the sepals, number of flowers per cluster, and size of the leaves. It is closely related to *Alsinidendron viscosum*, which differs primarily in having narrower leaves, fewer capsule valves, and fewer flowers per cluster (Wagner *et al.* 1999).

This species was observed with fruits during February (USFWS 1998a). No additional life history information for this species is currently available.

Historically, *Alsinidendron lychnoides* was found on the east rim of Kalalau Valley near Keanapuka, the western and southeastern margins of the Alakai Swamp, and southwest of the Swamp near Kaholuamano on the island of Kauai. Currently, there are a total of four populations with a total of six individual plants (HINHP Database 1999). This species is extant on State-owned land in the Alakai Swamp, including the Alakai Wilderness Preserve, and on State-owned land on the west and east rims of Kalalau Valley (Geographic Decision Systems International (GDSI) 1999). This latter population occurs on the boundary of Hono O Na Pali Natural Area Reserve (NAR) and Na Pali Coast State Park (61 FR 53070; GDSI 1999).

Alsinidendron lychnoides typically grows in montane wet forests dominated by *Metrosideros polymorpha* (ohia) and *Cheirodendron* sp. (olapa), or by *M. polymorpha* and *Dicranopteris linearis* (uluhe), trailing on the ground or on other vegetation, and at elevations between 1,100 and 1,320 m (3,610 and 4,330 ft). Associated plant species include *Carex* sp. (No Common Name (NCN)), *Cyrtandra* sp. (haiwale), *Machaerina* sp. (uki), *Vaccinium* sp. (ohelo), *Peperomia* sp. (ala ala wai nui), *Hedyotis terminalis* (manono), *Astelia* sp. (painiu), and *Broussaisia arguta* (kanawao) (61 FR 53070).

The major threats to this species are competition from the aggressive alien plant species *Rubus argutus* (prickly Florida blackberry); habitat degradation by feral pigs (*Sus scrofa*); trampling by humans; risk of extinction from naturally occurring events (such as landslides or hurricanes); and by reduced reproductive vigor due to the small number of extant individuals (61 FR 53070).

Alsinidendron viscosum

Alsinidendron viscosum, a member of the pink family (Caryophyllaceae), is a weakly climbing or sprawling subshrub densely covered with fine glandular hairs. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by the weakly climbing or sprawling habit, color of the sepals, number of flowers per cluster, and size of the leaves. It is closely related to *Alsinidendron lychnoides*, which differs primarily in having wider leaves and more capsule valves and flowers per cluster (Wagner *et al.* 1999).

Alsinidendron viscosum was observed in flower during January, February, and April 1995 (USFWS 1998a). No additional life history information for this species is currently available.

Historically, *Alsinidendron viscosum* was found at Kaholuamano, Kokee, Halemanu, Nawaimaka, and Waialae areas of northwestern Kauai. Currently, there are a total of four populations containing a total of 98 individuals on the island of Kauai (HINHP Database 1999). These populations are reported on the ridge between Waialae and Nawaimaka Valleys, in the same general area on a north-facing ridge in Nawaimaka Valley, along the Mohihi-Waialae Trail, and along the Ditch Trail in the Kokee area on State and privately owned lands (61 FR 5307; GDSI 1999).

Alsinidendron viscosum is typically found at elevations between 820 and 1,200 m (2,700 and 3,940 ft), on steep slopes in *Acacia koa* (koa)-*Metrosideros polymorpha* lowland or montane mesic or wet forest. Associated plant species include *Alyxia olivaeformis* (maile), *Bidens cosmoides* (poola nui), *Bobea* sp. (ahakea), *Carex* sp., *Coprosma* sp. (pilo), *Dodonaea viscosa* (aalii), *Gahnia* sp. (NCN), *Ilex anomala* (aiea), *Melicope* sp. (alani), *Pleomele* sp. (hala pepe), *Psychotria* sp. (kopiko), and *Schiedea stellarioides* (61 FR 53070).

The major threats to this species are destruction of habitat by feral pigs and goats (*Capra hircus*); competition with the alien plant species *Rubus argutus*, *Lantana camara* (lantana), and *Melinis minutiflora* (molasses grass); and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and from reduced reproductive vigor, due to the small number of extant populations and individuals (61 FR 53070).

Brighamia insignis

Brighamia insignis, a member of the bellflower family (Campanulaceae), is an unbranched plant with a succulent stem that is bulbous at the bottom and tapers toward the top, ending in a compact rosette of fleshy leaves. This short-lived perennial species is a member of a unique endemic Hawaiian genus with only one other species, *B. rockii*, presently known only from Molokai, from which it differs by the color of its petals, its shorter calyx lobes, and its longer flower stalks (59 FR 9304; Lammers 1999).

Current reproduction is not thought to be sufficient to sustain populations, with poor seedling establishment due to competition with alien grasses as the limiting factor (59 FR 9304). Pollination by native sphingid moths (Sphingidae family) is likely; however, pollination failure is common, due to either a lack of pollinators or a reduction in genetic variability. The flower structure appears to favor outcrossing (pollination between different parent plants). Some vegetative cloning has been observed and flower and leaf size appear to be dependent on moisture availability (59 FR 9304). Seeds of this species are undoubtedly dispersed by gravity.

Although they may be blown for short distances, they are not obviously adapted for wind dispersal, being ovoid to ellipsoid, smooth, and lacking any sort of wing or outgrowth (USFWS 1995).

Historically, *Brighamia insignis* was known from the headland between Hoolulu and Waiahuakua Valleys along the Na Pali Coast on the island of Kauai, and from Kaali Spring on the island of Niihau. Currently, there are a total of five populations containing a total of 45–65 individuals on the islands of Kauai and Niihau (HINHP Database 1999). It is reported on State and privately owned lands along the Na Pali Coast within or on the boundary of the Hono O Na Pali NAR, in Hoolulu, Waiahuakua, and the Haupu Range on the island of Kauai, and on the island of Niihau (GDSI 1999; HINHP Database 1999; Steve Perlman, National Tropical Botanical Garden (NTBG), pers. comm. 2000; USFWS 1995).

Brighamia insignis is found from sea level to 480 m (1,575 ft) elevation on rocky ledges with little soil or on steep sea cliffs in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in.). Associated native plant taxa include *Artemisia* sp. (ahinahina), *Chamaesyce celastroides* (akoko), *Canthium odoratum* (alahee), *Eragrostis variabilis* (kawelu), *Heteropogon contortus* (pili grass), *Hibiscus kokio* (kokio), *Hibiscus saintjohnianus* (kokio), *Lepidium serra* (anaunau), *Lipochaeta succulenta* (nehe), *Munroidendron racemosum*, and *Sida fallax* (ilima) (59 FR 9304).

The major threats to this plant are browsing and habitat degradation by feral goats; human disturbance; fire; the Carmine spider mite (*Tetranychus cinnabarinus*); a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of individuals; restricted distribution; reduced reproductive vigor; and competition from alien plant species such as *Melinis minutiflora*, *Setaria gracilis* (yellow foxtail), *Sporobolus africanus* (smutgrass), *Lantana camara*, *Psidium cattleianum* (strawberry guava), *Psidium guajava* (common guava), *Kalanchoe pinnata* (air plant), *Ageratum conyzoides* (maile hohono), and *Stachytarpheta dichotoma* (owi) (59 FR 9304).

Chamaesyce halemanui

Chamaesyce halemanui, a member of the spurge family (Euphorbiaceae), is a scandent (climbing) shrub. It is distinguished from closely related species by its decussate leaves, persistent stipules, more compact flower clusters, shorter stems on cyathia, and smaller capsules (57 FR 20580; Koutnik 1987; Koutnik and Huft 1999).

Little is known about the life history of *Chamaesyce halemanui*. Although the plant is a short-lived perennial, its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Chamaesyce halemanui* was found in Kauhao and Makaha Valleys in the Na Pali-Kona Forest Reserve, Mahanaloa Valley in Kuia NAR, the Halemanu drainage in Kokee State Park, and Olokele Canyon on the island of Kauai (HINHP Database 1999; Ken Wood, NTBG, *in litt.* 1999). Currently, there is a total of seven populations, with 88 to 139 individuals, at Kohua Ridge, Makaha Valley, Waialae Ridge, and the Halemanu drainage, all State-owned land (HINHP Database 1999; K. Wood, *in litt.* 1999; GDSI 1999).

Chamaesyce halemanui is typically found on the steep slopes of gulches in mesic *Acacia koa* forests at an elevation of 660 to 1,100 m (2,165 to 3,610 ft). Associated native species include *Metrosideros polymorpha*, *Alphitonia ponderosa* (kauila), *Antidesma platyphyllum* (hame), *Bobea brevipes* (ahakea lau lii), *Cheirodendron trigynum* (olapa), *Coprosma* sp., *Diospyros sandwicensis* (lama), *Dodonaea viscosa*, *Elaeocarpus bifidus* (kalia), *Hedyotis terminalis*, *Kokia kauaiensis*, *Melicope haupuensis*, *Pisonia* sp. (papala kepau), *Pittosporum* sp. (ho awa), *Pleomele aurea* (hala pepe), *Psychotria mariniana* (kopiko), *P. greenwelliae* (kopiko), *Pouteria sandwicensis* (alaa), *Santalum freycinetianum* (iliahi), and *Styphelia tameiameiae* (pukiawe) (57 FR 20580).

The major threats to this species are competition from alien plants, such as *Lantana camara*, *Psidium cattleianum*, and *Stenotaphrum secundatum* (St. Augustine grass); habitat degradation by feral pigs; restricted distribution; small population size; increased potential for extinction resulting from naturally occurring events, such as landslides or hurricanes; and depressed reproductive vigor (57 FR 20580).

Cyanea asarifolia

Cyanea asarifolia, a member of the bellflower family (Campanulaceae), is a sparingly branched shrub. This short-lived perennial species is distinguished from others of the genus that grow on Kauai by the shape of the leaf base, the leaf width in proportion to the length, and the presence of a leaf stalk (59 FR 9304; Lammers 1999).

Little is known about the life history of *Cyanea asarifolia*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Cyanea asarifolia* was known only from above the bed of Anahola Stream on Kauai (HINHP Database 1999). Currently, two populations with a total of 9 to 11 total individuals are reported from the headwaters of the Wailua River in central Kauai on State-owned land (HINHP Database 1999; GDSI 1999).

This species typically grows in pockets of soil on sheer rock cliffs in lowland wet forests at an elevation of approximately 330 to 730 m (1,080 to 2,400 ft). Associated plant taxa include ferns, *Hedyotis elatior* (awiwi), *Machaerina angustifolia* (uki), *Metrosideros polymorpha*, *Touchardia latifolia* (olona), and *Urera glabra* (opuhe) (59 FR 9304).

The major threats to this species are a risk of extinction from naturally occurring events, such as hurricanes and rock slides, and/or reduced reproductive vigor due to the small number of existing individuals; introduced slugs; rodents (*Rattus rattus* and *Mus musculus*); and habitat degradation by feral pigs (59 FR 9304).

Cyanea recta

Cyanea recta, a member of the bellflower family (Campanulaceae), is an unbranched shrub with densely hairy flowers. This short-lived perennial species is distinguished from other species in the genus that grow on Kauai by the following collective characteristics: horizontal or ascending inflorescence, narrowly elliptic leaves 12 to 28 cm (4.7 to 11 in.) long, flat leaf margins, and purple berries (Lammers 1999).

No life history information for this species is currently available.

Historically, *Cyanea recta* was found in upper Hanalei Valley, Waioli Valley, Hanapepe Valley, Kalalau cliffs, Wainiha Valley, Makaleha Mountains, Limahuli Valley, Power line Trail, and the Lehua Makanoe-Alakai area on the island of Kauai. Currently, there is a total of eight populations, with between 599 and 609 individuals, on State and private lands in the following areas: upper Waioli Valley, Wainiha Valley, Makaleha Mountains, Limahuli Valley, and the Wahiawa Bog area, Iliiliula drainage, and the back of Hanalei Valley (GDSI 1999; HINHP Database 1999).

Cyanea recta grows in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland, usually in gulches or on slopes, and typically from 400 to 1,200 m (1,310 to 3,940 ft) elevation. Associated native plant species include *Dicranopteris linearis*, *Psychotria* sp., *Antidesma* sp. (hame), *Cheirodendron platyphyllum* (lapalapa), *Cibotium* sp. (hapuu), and *Diplazium* sp. (NCN) (61 FR 53070).

The major threats to this species are bark removal and other damage by rats (*Rattus* sp.); habitat degradation by feral pigs; browsing by goats; unidentified slugs that feed on the stems; and competition with the alien plant species *Blechnum occidentale* (blechnum fern), *Lantana camara*, *Rubus rosaefolius* (thimbleberry), *Clidemia hirta* (Koster's curse), *Crassocephalum crepidioides* (NCN), *Deparia petersenii* (NCN), *Erechtites valerianaefolia* (fireweed), *Melastoma candidum* (NCN), *Paspalum conjugatum* (Hilo grass), *Sacciolepis indica* (Glenwood grass), and *Youngia japonica* (Oriental hawksbeard) (61 FR 53070).

Cyanea remyi

Cyanea remyi, a member of the bellflower family (Campanulaceae), is a shrub with generally unbranched, unarmed (lacking prickles) stems which are hairy toward the base. This short-lived perennial species is distinguished from others in the genus that grow on Kauai by its shrubby habit, relatively slender, unarmed stems, smooth or minutely toothed leaves, densely hairy flowers, the shape of the calyx lobes, length of the calyx and corolla, and length of the corolla lobe relative to the floral tube (Lammers 1999).

No life history information for this species is currently available.

Currently, there are seven known populations with a total of 294–384 plants on the island of Kauai (HINHP Database 1999; K. Wood, *in litt.* 1999). *Cyanea remyi* is reported from Waioli Valley, at the base of Mount Waialeale, in the Wahiawa Mountains near Hulua, on the summit plateau of the Makaleha Mountains, and in Limahuli Valley, on State and privately owned lands (Lammers and Lorence 1993; HINHP Database 1999; K. Wood, *in litt.* 1999; GDSI 1999).

Cyanea remyi is usually found in lowland wet forest or shrubland at an elevation of 360 to 930 m (1,180 to 3,060 ft). Associated plant species include *Antidesma* sp., *Cheirodendron* sp., *Diospyros* sp. (lama), *Broussaisia arguta*, *Metrosideros polymorpha*, *Freycinetia arborea* (ieie), *Hedyotis terminalis*, *Machaerina angustifolia*, *Perrottetia sandwicensis* (olomea), *Psychotria hexandra* (kopiko), and *Syzygium sandwicensis* (ohia ha) (61 FR 53070).

The major threats to this species are competition with the alien plant species *Erechtites valerianaefolia*, *Paspalum conjugatum*, *Psidium cattleianum*, *Rubus rosaefolius*, and *Melastoma candidum;* habitat degradation by feral pigs; browsing by feral goats; predation by rats; unidentified slugs that feed on the stems; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of remaining populations (61 FR 53070).

Cyanea undulata

Cyanea undulata is an unbranched (or the stem is occasionally forked) shrub or undershrub with fine rust-colored hairs covering the lower surface of the leaves (Lammers 1999).

Native members of the Campanulaceae (bellflower) family, including the genus *Cyanea*, are generally believed to have adapted to pollination by native nectar-eating passerine birds, such as the Hawaiian "honeycreepers." The long, tubular, slightly curved flowers of *C. undulata* fit this model, but field observations are lacking. The fleshy orange fruits of this species are adapted for bird dispersal like other species of *Cyanea*. Although recognized as a short-lived perennial species, specific details of the life history of this species, such as growth rates, age plants begin to flower, and longevity of plants, are unknown. *Cyanea undulata* is found in pristine, undisturbed, and uninvaded sites, often on shady stream banks or on steep to vertical slopes that are prone to erosion or landslides (Lorence and Flynn 1991; USFWS 1994).

Historically, *Cyanea undulata* was known only from the Wahiawa Bog area on Kauai. Currently, one population with a total of 28 plants is reported on privately owned land between 630 to 800 m (2,070 to 2,625 ft) elevation along the bank of a tributary of the Wahiawa Stream in the Wahiawa Drainage (HINHP Database 1999; GDSI 1999).

The primary threats to this species include competition with the alien plant species *Psidium cattleianum*, *Melastoma candidum*, *Rhodomyrtus tomentosa* (rose myrtle), *Clidemia hirta*, *Melaleuca quinquenervia* (paperbark tree), *Stachytarpheta dichotoma*, *Rubus rosaefolius*, *Elephantopus mollis* (NCN), *Erechtites valerianefolia*, *Youngia japonica*, *Pluchea carolinensis* (sourbush), *Oplismenus hirtellus* (basketgrass), *Paspalum conjugatum*, *Paspalum urvillei* (Vasey grass), *Sacciolepis indica*, *Setaria gracilis*, *Deparia petersenii*, and *Cyathea cooperi* (Australian tree fern); trampling by feral pigs; landslides; seed predation by rats; herbivory by introduced slugs; loss of pollinators; hurricanes; decreased reproductive vigor; restricted distribution; and extinction due to unforseen circumstances because of small population size (USFWS 1994; 56 FR 47695).

Cyrtandra cyaneoides

Cyrtandra cyaneoides, a member of the African violet family (Gesneriaceae), is an erect or ascending, fleshy, usually unbranched shrub with opposite toothed leaves which have impressed veins on the lower surface that are sparsely covered with long hairs. This short-lived perennial species differs from others of the genus that grow on Kauai by being a succulent, erect or ascending shrub and having a bilaterally symmetrical calyx that is spindle-shaped in bud and falls off after flowering, leaves with a wrinkled surface, 40 to 55 cm (16 to 22 in.) long and 22 to 35 cm (9 to 14 in.) wide, and berries with shaggy hairs (Wagner *et al.* 1999).

No life history information for this species is currently available.

Historically, *Cyrtandra cyaneoides* was known to occur only along the trail to Waialae Valley on Kauai (61 FR 53070). It is currently known from four populations on private and State lands with a total of 352 to 452 individuals at Namolokama above Lumahai Valley, the Makaleha Plateau, Wainiha Valley, and upper Waioli Valley (GDSI 1999; HINHP Database 1999).

Cyrtandra cyaneoides typically grows on steep slopes or cliffs near streams or waterfalls in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *M. polymorpha* and *Dicranopteris linearis* between 550 and 1,220 m (1,800 and 4,000 ft) elevation. Associated native species include *Perrottetia sandwicensis*, *Pipturus* sp. (mamaki), *Bidens* sp. (ko oko olau), *Psychotria* sp., *Pritchardia* sp. (loulu), *Freycinetia arborea*, *Cyanea* sp. (haha), *Cyrtandra limahuliensis*, *Diplazium sandwichianum* (NCN), *Gunnera* sp.(ape ape), *Coprosma* sp., *Stenogyne* sp. (NCN), *Machaerina* sp., *Boehmeria grandis* (akolea), *Pipturus* sp., *Cheirodendron* sp., *Hedyotis terminalis*, and *Hedyotis tryblium* (NCN) (61 FR 53070).

The major threats to this species are competition with alien plant species such as *Paspalum conjugatum*, *Rubus rosaefolius*, *Deparia petersenii*, and *Drymaria cordata* (pipili); predation of seeds by rats; reduced reproductive vigor and a risk of extinction from naturally occurring events, such as landslides and hurricanes, due to the small number of populations; and habitat degradation by feral pigs (61 FR 53070).

Cyrtandra limahuliensis

Cyrtandra limahuliensis, a member of the African violet family (Gesneriaceae), is an unbranched or few-branched shrub with moderately or densely hairy leaves. The following combination of characteristics distinguishes this short-lived perennial species from others of the genus: the leaves are usually hairy (especially on lower surfaces), the usually symmetrical calyx is tubular or funnel-shaped and encloses the fruit at maturity, and the flowers are borne singly (Wagner *et al.* 1999).

Little is known about the life history of *Cyrtandra limahuliensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Cyrtandra limahuliensis* was known from three locations on Kauai: Wainiha Valley, Lumahai Valley, and near Kilauea River (HINHP Database 1999). Currently, a total of 13 populations containing 928–1,029 plants are reported on private and State lands in Wainiha Valley, Limahuli Valley, Waipa Valley, on Mount Kahili, along the north fork of Wahiawa Stream, along Anahola Stream, Waioli Valley, and near Powerline Trail. However, it has been estimated that the total number of plants on Kauai may be as high as a few thousand (HINHP Database 1999; GDSI 1999).

This species typically grows along streams in lowland wet forests at elevations between 245 and 915 m (800 and 3,000 ft). Associated taxa include *Antidesma* sp., *Cyrtandra kealiea* (haiwale), *Pisonia* sp., *Pipturus* sp., *Cibotium glaucum* (hapuu), *Eugenia* sp. (nioi), *Hedyotis terminalis, Dubautia* sp. (na ena e), *Boehmeria grandis, Touchardia latifolia, Bidens* sp., *Hibiscus waimeae* (kikio ke okeo), *Charpentiera* sp. (papala), *Urera glabra, Pritchardia* sp., *Cyanea* sp., *Perrottetia sandwicensis, Metrosideros polymorpha, Dicranopteris linearis, Gunnera kauaiensis* (apeape), and *Psychotria* sp. (59 FR 9304).

The major threats to this species are competition from alien plant species (*Psidium cattleianum, Paspalum conjugatum, Melastoma candidum, Psidium guajava, Hedychium flavescens* (yellow ginger), *Rubus rosaefolius, Youngia japonica, Erechtites valerianefolia, Blechnum occidentale,* and *Clidemia hirta*); habitat degradation by feral pigs; natural landslides; and hurricanes (59 FR 9304).

Delissea rhytidosperma

Delissea rhytidosperma, a member of the bellflower family (Campanulaceae), is a branched shrub with lance-shaped or elliptic toothed leaves. This short-lived perennial species differs from other taxa of the genus by the shape, length, and margins of the leaves and by having hairs at the base of the anthers (Lammers 1999).

Little is known about the life history of *Delissea rhytidosperma*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Delissea rhytidosperma* was known from as far north as Wainiha and Limahuli Valleys, as far east as Kapaa and Kealia, and as far south as Haupu Range and between the elevations of 120 and 915 m (400 and 3,000 ft) on the island of Kauai (HINHP Database 1999). Currently, three populations, on State and private lands, with a total of 20 individuals are reported from the Haupu range, Mahanaloa Valley, and Limahuli Valley (HINHP Database 1999; GDSI 1999).

This species generally grows in diverse lowland mesic forests or Acacia koa-dominated lowland dry forests that have well-drained soils with medium-to fine-textured subsoil. Associated native plant taxa includes *Euphorbia haeleeleana, Psychotria hobdyi* (kopiko), *Pisonia* sp., *Pteralyxia* sp. (kaulu), *Dodonaea viscosa, Cyanea* sp., *Hedyotis* sp. (NCN), *Dianella sandwicensis* (ukiuki), *Diospyros sandwicensis, Styphelia tameiameiae,* and *Nestegis sandwicensis* (olopua) (59 FR 9304).

The major threats to this species are predation and/or habitat degradation by mule or black-tailed deer (*Odocoileus hemionus columbianus*), feral pigs, and goats; herbivory by rats and introduced slugs; fire; and competition with the alien plants *Lantana camara, Passiflora ligularis* (sweet granadilla), *Cordyline fruticosa* (ti), and *Passiflora mollissima* (banana poka); and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; USFWS 1995).

Delissea rivularis

Delissea rivularis, a member of the bellflower family (Campanulaceae), is a shrub, unbranched or branched near the base, with hairy stems and leaves arranged in a rosette at the tips of the stems. This short-lived perennial species is distinguished from others of the genus by the color, length, and curvature of the corolla, shape of the leaves, and presence of hairs on the stems, leaves, flower clusters, and corolla (Lammers 1999).

No life history information for this species is currently available.

Historically, *Delissea rivularis* was found at Waiakealoha waterfall, Waialae Valley, Hanakoa Valley, and Kaholuamanu on the island of Kauai (61 FR 53070). Currently, this species is known from two populations with a total of 40 individuals (HINHP Database 1999; K. Wood, *in litt.* 1999). One population is reported in the upper Hanakoa Valley stream area on State land within the Hono O Na Pali NAR between 1,100 to 1,220 m (3,610 to 4,000 ft) elevation, while the other is reported in the upper Hanakapiai drainage, on privately owned land (HINHP Database 1999; GDSI 1999; K. Wood *in litt.* 1999).

Delissea rivularis is found on steep slopes in *Metrosideros polymorpha-Cheirodendron trigynum* montane wet or mesic forest, near streams. Associated native species include *Broussaisia arguta, Carex* sp., *Coprosma* sp., *Melicope clusiifolia* (kolokolo mokihana), *Melicope anisata* (mokihana), *Psychotria hexandra, Dubautia knudsenii* (na ena e), *Diplazium sandwichianum, Hedyotis foggiana* (NCN), *Ilex anomala,* and *Sadleria* sp. (amau) (61 FR 53070).

The major threats to this species are competition with the encroaching alien plant *Rubus argutus*; habitat destruction by feral pigs; predation by rats; and reduced reproductive vigor and a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of remaining individuals (61 FR 53070; USFWS 1998a).

Diellia pallida

Diellia pallida, a member of the spleenwort family (Aspleniaceae), is a plant that grows in tufts of three to four light green, lance-shaped fronds along with a few persistent dead ones. This short-lived perennial species differs from others of this endemic Hawaiian genus by the color and sheen of the midrib, the presence and color of scales on the midrib, and the frequent fusion of sori (Wagner 1952, 1987).

Little is known about the life history of *Diellia pallida*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Diellia pallida was known historically from Halemanu on the island of Kauai (59 FR 9304). Currently, there is a total of five populations with 20–25 individuals in Koaie Canyon, Mahanaloa Valley, and Makaha Valley, all on State-owned land (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

This species grows on bare soil on steep, rocky, dry slopes in lowland mesic forests, from 520 to 915 m (1,700 to 3,000 ft) in elevation. Associated native plant taxa include *Acacia koa, Alectryon macrococcus, Antidesma platyphyllum, Metrosideros polymorpha, Myrsine lanaiensis* (kolea), *Zanthoxylum dipetalum* (ae), *Tetraplasandra kauaiensis* (ohe ohe), *Psychotria mariniana, Carex meyenii* (NCN), *Diospyros hillebrandii* (lama), *Hedyotis knudsenii* (NCN), *Canthium odoratum, Pteralyxia kauaiensis, Nestegis sandwicensis, Alyxia olivaeformis, Wilkesia gymnoxiphium* (iliau), *Alphitonia ponderosa, Styphelia tameiameiae,* and *Rauvolfia sandwicensis* (hao) (59 FR 9304).

The major threats to this species include competition with the alien plants *Lantana camara, Melia azedarach* (Chinaberry), *Stenotaphrum secundatum, Oplismenus hirtellus, Aleurites moluccana* (kukui) and *Cordyline fruticosa*; predation and habitat degradation by feral goats, pigs, and deer; fire; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304).

Dubautia latifolia

Dubautia latifolia, a member of the aster family (Asteraceae), is a diffusely branched, woody perennial vine with leaves which are conspicuously net-veined, with the smaller veins outlining nearly square areas. A vining habit, distinct petioles, and broad leaves with conspicuous net veins outlining squarish areas separate this from closely related species (Carr 1982b, 1985, 1999a).

Individual plants of this species do not appear to be able to fertile themselves. Since at least some individuals of *Dubautia latifolia* require cross-pollination, the wide spacing of individual plants (*e.g.*, each 0.5 km (0.3 mi) apart) may pose a threat to the reproductive potential of the species. The very low seed set noted in plants in the wild indicates a reproductive problem, possibly asynchronous flowering. Seedling establishment is also rare and young plants are rarely seen. *Dubautia latifolia* experiences seasonal vegetative decline during the spring and summer, often losing most of its leaves. New growth and flowering occur in the fall with fruits developing in November. Pollinators and seed dispersal agents are unknown (Carr 1982b; USFWS 1995).

Historically, *Dubautia latifolia* was found in the Makaha, Awaawapuhi, Waialae, Kawaiula, and Kauhao Valleys of the Na Pali-Kona Forest Reserve, Nualolo Trail and Valley in Kuia NAR, Halemanu in Kokee State Park, along Mohihi Road in both Kokee State Park and Na Pali-Kona Forest Reserve, along the Mohihi-Waialae Trail on Mohihi and Kohua ridges in both Na Pali-Kona Forest Reserve and Alakai Wilderness Preserve, and at Kaholuamanu on the island of Kauai (Carr 1982b; HINHP Database 1999; GDSI 1999). Currently, there are a total of 24 populations containing between 59–70 individuals on State and privately owned lands in all of the aforementioned areas, except Halemanu and Kaholuamanu (HINHP Database 1999 GDSI 1999; K. Wood, *in litt.* 1999).

This species typically grows on gentle to steep slopes in well drained soil and in semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha*, at elevations of 800 to 1,220 m (2,625 to 4,000 ft). Commonly associated native species are *Pouteria sandwicensis, Dodonaea viscosa, Nestegis sandwicensis, Diplazium sandwichianum, Elaeocarpus bifidus, Claoxylon sandwicense* (po ola), *Bobea* sp., *Pleomele* sp., *Antidesma* sp., *Cyrtandra* sp., *Xylosma* sp. (maua), *Alphitonia ponderosa, Coprosma waimeae* (olena), *Dicranopteris linearis, Hedyotis terminalis, Ilex anomala, Melicope anisata, Psychotria mariniana,* and *Scaevola* sp. (naupaka) (59 FR 9304).

The threats to this species include competition from the alien plants *Passiflora mollissima, Rubus argutus, Lonicera japonica* (Japanese honeysuckle), *Acacia mearnsii* (black wattle), *Hedychium* sp. (ginger), *Erigeron karvinskianus* (daisy fleabane), and *Psidium cattleianum*; damage from trampling and grazing by feral pigs and deer; vehicle traffic and road maintenance; seasonal dieback; small number of extant individuals; and restricted distribution (59 FR 9304).

Dubautia pauciflorula

Dubautia pauciflorula, a member of the aster family (Asteraceae), is a somewhat sprawling shrub or erect small tree with narrowly lance-shaped or elliptic leaves clustered toward the ends of the stems. The tiny, 2–4 flowered heads distinguish this short-lived perennial species from its relatives (Carr 1985, 1999a).

Few details are known about the life history of any *Dubautia* species under natural conditions. Certain species produce viable seed when self-pollinated (self-fertile), although others fail to do so (self-infertile). Low pollinator numbers resulting in reduced cross-pollination and consequently low numbers of viable seeds could explain the small population sizes. Because of their structure and small size, flowers of *D. pauciflorula* are presumably pollinated by small generalist insects, although field observations are lacking. The bristle-like pappus crowning the fruit probably represents an adaptation for wind dispersal. Very little is known about the life cycle of this species, including growth rates, longevity of the plants, and number of years the plants remain reproductive (56 FR 47695; Carr 1985; USFWS 1994).

Historically and currently, this species is found only on State and privately owned lands in the Wahiawa Drainage on Kauai (HINHP Database 1999; GDSI 1999). There are a total of four populations containing 52 individual plants. These populations are found in lowland wet forest at elevations between 670–700 m (2,200–2,300 ft) (HINHP Database 1999).

The threats to this plant include direct competition with the alien plant species such as *Psidium cattleianum* and *Melastoma candidum*, and potential threats from *Rhodomyrtus tomentosa, Clidemia hirta, Melaleuca quinquenervia, Stachytarpheta dichotoma, Rubus rosaefolius, Elephantopus mollis, Erechtites valerianefolia, Youngia japonica, Pluchea carolinensis, Oplismenus hirtellus, Paspalum conjugatum, Paspalum urvillei, Sacciolepis indica, Setaria gracilis, Deparia petersenii,* and *Cyathea cooperi*; trampling by feral pigs; landslides and erosion; restricted distribution; and hurricanes (56 FR 47695; USFWS 1994).

Exocarpos luteolus

Exocarpos luteolus, a member of the sandalwood family (Santalaceae), is a moderately to densely branched shrub with knobby branches and leaves which are either minute scales or typical leaves. This short-lived perennial species is distinguished from others of the genus by its generally larger fruit with 4 indentations and by the color of the receptacle and fruit (Wagner *et al.* 1999).

Little is known about the life history of *Exocarpos luteolus*. This species tends to grow at habitat edges where there is adequate light (USFWS 1995). Flowering cycles, pollination vectors, seed dispersal agents, longevity, other specific environmental requirements, and limiting factors are unknown.

Historically, *Exocarpos luteolus* was known from three locations on Kauai: Wahiawa Bog, Kaholuamanu, and Kumuwela Ridge (HINHP Database

1999). Currently, there is a total of nine populations containing 69–70 individual plants (HINHP Database 1999; K. Wood, *in litt.* 1999). This species has a scattered distribution on State and privately owned lands and is reported on Kumuwela Ridge; in Kauaikanana Valley; near Honopu Trail; Waialae; on the rim of Kalalau Valley within or on the boundary of Kokee State Park; on Kamalii Ridge in Kealia Forest Reserve; in the Na Pali Kona Forest Reserve; Alakai Swamp; and in the Wahiawa Mountains (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

This species is found at elevations between 475 and 1,290 m (1,560 and 4,220 ft) in a variety of habitats: wet areas bordering swamps; on open, dry ridges; and lowland or montane, *Metrosideros polymorpha*-dominated wet forest communities (59 FR 9304). Associated species include *Acacia koa*, *Cheirodendron trigynum*, *Pouteria sandwicensis*, *Dodonaea viscosa*, *Pleomele aurea*, *Psychotria mariniana*, *Psychotria greenwelliae*, *Bobea brevipes*, *Hedyotis terminalis*, *Elaeocarpus bifidus*, *Melicope haupuensis*, *Dubautia laevigata* (na ena e), *Dianella sandwicensis*, *Poa sandvicensis*, *Schiedea stellarioides*, *Peperomia macraeana* (ala ala wai nui), *Claoxylon sandwicense*, *Santalum freycinetianum*, *Styphelia tameiameiae*, and *Dicranopteris linearis* (59 FR 9304; USFWS 1995).

The major threats to this species are feral goats and pigs; competition with the alien plants *Erigeron karvinskianus*, *Acacia mearnsii*, *Corynocarpus laevigata* (karakanut), *Myrica faya* (firetree), and *Rubus argutus*; seed predation by rats; fire; and erosion (59 FR 9304; USFWS 1995).

Hedyotis st.-johnii

Hedyotis st.-johnii, a member of the coffee family (Rubiaceae), is a succulent perennial herb with slightly woody, trailing, quadrangular stems and fleshy leaves clustered towards the base of the stem. This species is distinguished from related species by its succulence, basally clustered fleshy leaves, shorter floral tube, and large leafy calyx lobes when in fruit (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis st.-johnii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Currently, there are a total of six populations, containing 223–278 individuals, on State owned land on the Na Pali coast of Kauai: between Kalalau and Honopu beaches, in Nualolo Valley, Nualolo Kai, at Miloli'i Beach, and in Polihale (HINHP Database 1999; GDSI 1999).

This plant grows in the crevices of north-facing, near-vertical coastal cliff faces within the spray zone (below 75 m (250 ft)). The associated vegetation is sparse dry coastal shrubland and includes species such as the native *Myoporum sandwicense* (naio), *Eragrostis variabilis*, *Lycium sandwicense* (ohelo kai), *Heteropogon contortus*, *Artemisia australis* (ahinahina), and *Chamaesyce celastroides* (56 FR 49639).

The major threats to this species are herbivory and habitat degradation by feral goats; competition from alien plant species, especially *Pluchea carolinensis*; landslides; fire; trampling and grazing by cattle (*Bos taurus*); and a risk of extinction due to naturally occurring events, such as landslides or hurricanes, as well as decreased reproductive vigor because of the small population sizes and restricted distribution (56 FR 49639; USFWS 1995).

Hesperomannia lydgatei

Hesperomannia lydgatei, a member of the aster family (Asteraceae) is a sparsely branched small long-lived perennial tree with alternately arranged, lance-shaped or elliptic leaves (Wagner *et al.* 1999).

Little is known about the life history of *Hesperomannia lydgatei*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Hesperomannia lydgatei* was found in the Wahiawa Mountains of Kauai. Currently, this species is known from State and privately owned lands in the Wahiawa and Waioli Stream areas. There are a total of four populations containing a total of 214 individual plants (GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999).

Hesperomannia lydgatei is found at elevations between 410–915 m (1,345–3,000 ft) along stream banks in rich brown soil and silty clay in *Metrosideros polymorpha* or *M. polymorpha-Dicranopteris linearis* lowland wet forest with one or more of the following associated native plant species: *Adenophorus* sp. (Pendant fern), *Antidesma* sp., *Broussaisia arguta*, *Cheirodendron* sp., *Elaphoglossum* sp. (Ekaha), *Freycinetia arborea*, *Hedyotis terminalis*, *Labordia lydgatei*, *Machaerina angustifolia*, *Peperomia* sp., *Pritchardia* sp., *Psychotria hexandra*, and *Syzygium sandwicensis* (HINHP Database 1999; USFWS 1994).

Threats to the species include alien plants; feral goats; rats; landslides; and erosion (USFWS 1994).

Hibiscadelphus woodii

Hibiscadelphus woodii, a member of the mallow family (Malvaceae), is a small branched, long-lived perennial tree with a rounded crown. *H. woodii* differs from the other Kauai species by differences in leaf surface and characteristics of the whirled leaves or bract and flower color (Lorence and Wagner 1995; Bates 1999).

Flowering material has been collected in March, April, and September, but no fruit set has been observed in spite of efforts to manually outcross and bag the flowers. A museum specimen of a liquid-preserved flower has been identified that contains three adult Nitidulidae beetles, probably an endemic species. The damage by these larvae may be responsible for the observed lack of fruit set in *Hibiscadelphus woodii* (Lorence and Wagner 1995; USFWS 1998a). No additional life history information for this species is currently available.

Hibiscadelphus woodii has been found only at the site of its original discovery on State owned land in Kalalau Valley, within the Na Pali Coast State Park on Kauai; only nine trees of this species are known (HINHP Database 1999; K. Wood, *in litt.* 1999; GDSI 1999).

Hibiscadelphus woodii is found at elevations around 915 m (3,000 ft) on basalt talus or cliff walls in *Metrosideros polymorpha* montane mesic forest. These forests contain one or more of the following associated native plant species: *Bidens sandwicensis* (ko oko olau), *Artemisia australis*, *Melicope pallida*, *Dubautia* sp., *Lepidium serra*, *Lipochaeta* sp. (nehe), *Lysimachia glutinosa* (kolokolo kuahiwi), *Carex meyenii*, *Chamaesyce celastroides* var. *hanapepensis*, *Hedyotis* sp., *Nototrichium* sp. (kului), *Panicum lineale* (NCN), *Myrsine* sp. (kolea), and the federally endangered species *Stenogyne campanulata*, *Lobelia niihauensis*, and *Poa mannii* (61 FR 53070; HINHP Database 1999; Lorence and Wagner 1995).

Major threats to *Hibiscadelphus woodii* are habitat degradation by feral goats and pigs; competition from the alien plant species *Erigeron karvinskianus*; nectar robbing by Japanese white-eye (*Zosterops japonicus*), an introduced bird; and a risk of extinction from naturally occurring events (*e.g.*, rock slides) and reduced reproductive vigor due to the small number of existing individuals at the only known site (61 FR 53070; Lorence and Wagner 1995).

Hibiscus clayi

Hibiscus clayi, a member of the mallow family (Malvaceae), is a long-lived perennial shrub or small tree. This species is distinguished from other native Hawaiian members of the genus by the lengths of the calyx, calyx lobes, and capsule and by the margins of the leaves (Bates 1999).

Little is known about the life history of *Hibiscus clayi*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Hibiscus clayi* was known from scattered locations on Kauai: the Kokee region on the western side of the island, Moloaa Valley to the north, Nounou Mountain in Wailua to the east, and as far south as Haiku near Halii Stream (HINHP Database 1999). At this time, only the population on State and privately owned lands in the Nounou Mountains, with a total of four trees, is known to be extant (HINHP Database 1999; GDSI 1999).

Hibiscus clayi generally grows on slopes (230 to 350 m (750 to 1,150 ft) elevation) in *Acacia koa* or *Diospyros* sp.-*Pisonia* sp.-*Metrosideros polymorpha* lowland dry or mesic forest with *Hedyotis acuminata* (au), *Pipturus* sp., *Psychotria* sp., *Cyanea hardyi* (haha), *Artemisia australis*, or *Bidens* sp. (59 FR 9304; HINHP Database 1999).

The major threat to this species is competition with alien plants, principally *Psidium cattleianum*. In addition, *Araucaria columnaris* (Norfolk Island pine) has been planted in the area of the Nounou Mountain population. This aggressive alien tree may prevent regeneration of native plants in the understory. The close proximity of most of the *Hibiscus clayi* plants to a hiking trail makes them susceptible to human disturbance. Feral pigs also pose a potential threat to the species. Lastly, the small total number of existing individuals makes the species susceptible to extinction due to naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor (59 FR 9304; HINHP Database 1999).

Hibiscus waimeae ssp. hannerae

Hibiscus waimeae ssp. *hannerae*, a member of the mallow family (Malvaceae), is a gray-barked tree with star-shaped hairs densely covering its leaf and flower stalks and branchlets. The long-lived perennial species is distinguished from others of the genus by the position of the anthers along the staminal column, length of the staminal column relative to the petals, color of the petals, and length of the calyx. Two subspecies, ssp. *hannerae* and ssp. *waimeae*, both endemic to Kauai, are recognized. Subspecies *hannerae* is distinguishable from ssp. *waimeae* by its larger leaves and smaller flowers (Bates 1999).

No life history information for this species is currently available.

Historically, *Hibiscus waimeae* ssp. *hannerae* was known from Kalihiwai and adjacent valleys, Limahuli Valley, and Hanakapiai Valley (Bates 1999; HINHP Database 1999). This subspecies is no longer extant at Kalihiwai. Currently, there are two populations containing 7 individuals on State and privately owned lands in the Limahuli and Hanakapiai Valleys (HINHP Database 1999; GDSI 1999).

Hibiscus waimeae ssp. *hannerae* grows between 190 and 560 m (620 and 1,850 ft) elevation. It is found in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest or in *Pisonia* sp.-*Charpentiera elliptica* (papala) lowland wet or mesic forest with *Antidesma* sp., *Psychotria* sp., *Pipturus* sp., *Bidens* sp., *Bobea* sp., *Sadleria* sp., *Cyrtandra* sp. *Cyanea* sp., *Cibotium* sp., *Perrottetia sandwicensis*, and *Syzygium sandwicensis* (USFWS 1998a; Bates 1999; HINHP Database 1999).

Major threats to *Hibiscus waimeae* ssp. *hannerae* are habitat degradation by feral pigs, competition with alien plant species, and a risk of extinction from naturally occurring events (e.g., landscapes and hurricanes) and/or reduced reproductive vigor due to the small number of remaining populations (61 FR 53070; HINHP Database 1999).

Kokia kauaiensis

Kokia kauaiensis, a member of the mallow family (Malvaceae), is a small tree. This long-lived perennial species is distinguished from others of this endemic Hawaiian genus by the length of the bracts surrounding the flower head, number of lobes and the width of the leaves, the length of the petals, and the length of the hairs on the seeds (Bates 1999).

No life history information for this species is currently available.

Historically, *Kokia kauaiensis* was found at seven scattered populations on northwestern Kauai (HINHP Database 1999). Currently, there are a total of 11 populations with 179 to 184 individuals, found in Paaiki, Mahanaloa, Kuia, Kalalau, and Pohakuao Valleys, Na Pali Coast State Park, and the Koaie Stream branch of Waimeae Canyon, all on State-owned land (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

Kokia kauaiensis typically grows in diverse mesic forest between 350 to 660 m (1,150 to 2,165 ft) elevation. Associated species include *Bobea* sp., *Acacia koa*, *Diospyros sandwicensis*, *Hedyotis* sp., *Pleomele* sp., *Xylosma* sp., *Isodendrion* sp. (aupaka), *Pisonia* sp., *Nestegis sandwicensis*, *Syzygium sandwicensis*, *Antidesma* sp., *Alyxia olivaeformis*, *Pouteria sandwicensis*, *Streblus pendulinus* (aiai), *Canthium odoratum*, *Nototrichium* sp., *Pteralyxia kauaiensis*, *Dicranopteris linearis*, *Hibiscus* sp. (aloalo), *Flueggea neowawraea*, *Rauvolfia sandwicensis*, *Melicope* sp., *Diellia laciniata* (palapalai lau lii), *Tetraplasandra* sp. (ohe ohe), *Chamaesyce celastroides*, *Lipochaeta fauriei*, *Dodonaea viscosa*, *Santalum* sp. (iliahi), *Claoxylon* sandwicense, and *Metrosideros polymorpha* (USFWS 1998a; Bates 1999; HINHP Database 1999; K. Wood, *in litt.* 1999).

Competition with and habitat degradation by invasive alien plant species, substrate loss from erosion, habitat degradation and browsing by feral goats and deer, and seed predation by rats are the major threats affecting the survival of *Kokia kauaiensis* (Wood and Perlman 1993; USFWS 1998a; HINHP Database 1999).

Labordia lydgatei

Labordia lydgatei, a member of the Logania family (Loganiaceae), is a much-branched perennial shrub or small tree with sparsely hairy, square stems. The small size of the flowers and capsules borne on sessile inflorescences distinguish it from other members of the genus growing in the same area (Wagner *et al.* 1999).

Immature fruits were seen on two plants during surveys in 1991 and 1992 by botanists from NTBG, and remnants of old fruiting bodies were seen on another, suggesting that the plants are self-fertile. It is also suspected that the fruits of this species are adapted for bird dispersal. Due to a lack of bird or other native pollinators, pollination may be inhibited (USFWS 1994). Microhabitat requirements for seed germination and growth may also be extremely specific. Virtually nothing is known about the life history or ecology of this species.

This species was originally known from the Wahiawa Drainage, Waioli Stream Valley, and Makaleha Mountains on Kauai (HINHP Database 1999). *Labordia lydgatei* is currently known from six populations, consisting of 37 individual plants, located on State and privately owned lands along one of the tributaries of the Wahiawa Stream, as well as in Limahuli and Lumahai Valleys (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

Labordia lydgatei is found in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest at elevations between 635 and 855 m (2,080 to 2800 ft). Associated native plants include *Psychotria* sp., *Hedyotis terminalis* sp., *Cyanea* sp., *Cyrtandra* sp., *Labordia hirtella* (NCN), *Antidesma platyphyllum* var. *hildebrandi, Syzygium sandwicensis, Ilex anomala,* and *Dubautia knudsenii* (USFWS 1994; HINHP Database 1999; K. Wood, *in litt.* 1999).

Competition from alien plants poses the greatest threat to the survival of *Labordia lydgatei* (56 FR 47695). Additional threats include habitat degradation from feral pigs; rats, a potential seed predator; landslides and erosion; and a lack of dispersal, germination or pollination agents (USFWS 1994).

Labordia tinifolia var. *wahiawaensis*

Labordia tinifolia var. *wahiawaensis,* a member of the Logania family (Loganiaceae), is a shrub or small tree with hairless, cylindrical young branches. This long-lived perennial species differs from others of the genus by having a long common flower cluster stalk, hairless young stems and leaf surfaces, transversely wrinkled capsule valves, and corolla lobes usually 1.7 to 2.3 mm (0.1 in.) long (Wagner *et al.* 1999). Three varieties of *Labordia tinifolia* are recognized: var. *lanaiensis* on Lanai and Molokai; var. *tinifolia* on Kauai, Oahu, Molokai, Maui, and Hawaii; and var. *wahiawaensis,* endemic to Kauai. Variety *wahiawaensis* is distinguished from the other two by its larger corolla (Wagner *et al.* 1999).

No life history information for this subspecies is currently available.

Labordia tinifolia var. *wahiawaensis* is only known from one population with a total of 20–30 individual plants on private land in the Wahiawa Drainage in the Wahiawa Mountains from (GDSI 1999; HINHP Database 1999).

Labordia tinifolia var. *wahiawaensis* grows along streambanks in lowland wet forests dominated by *Metrosideros polymorpha* at elevations between 300 to 920 m (985 to 3,020 ft), with *Cheirodendron* sp., *Dicranopteris linearis, Cyrtandra* sp., *Antidesma* sp., *Psychotria* sp., *Hedyotis terminalis,* or *Athyrium microphyllum* (HINHP Database 1999).

The primary threats to the remaining individuals of *Labordia tinifolia* var. *wahiawaensis* are competition with alien plants, habitat degradation by feral pigs, trampling by humans, and a risk of extinction from catastrophic random events or reduced reproductive vigor due to the small number of individuals in a single population (61 FR 53070).

Lipochaeta fauriei

Lipochaeta fauriei, a member of the aster family (Asteraceae), is a perennial herb with somewhat woody, erect or climbing stems. This short-lived perennial species differs from other species on Kauai by having a greater number of disk and ray flowers per flower head, longer ray flowers, and longer leaves and leaf stalks (Gardner 1976, 1979; USFWS 1995; Wagner *et al.* 1985, 1999).

Little is known about the life history of *Lipochaeta fauriei.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically and currently, *Lipochaeta fauriei* is known from Olokele Canyon on Kauai (Gardner 1979, HINHP Database 1999). This species is now also found on State and privately owned lands in Poopooiki, Haeleele, and Hikimoe Valleys (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999). Currently there is a total of four populations with 132 individuals (HINHP Database 1999; K. Wood, *in litt.* 1999). A population in Koaie Canyon previously thought to be *L. fauriei* was later identified as *L. subcordata* (USFWS 1995).

This species grows most often in moderate shade to full sun and is usually found on the sides of steep gulches in diverse lowland mesic forests between 480 and 900 m (1,575 and 2,950 ft) elevation (Wagner *et al.* 1999). Associated native plant taxa include *Myrsine lanaiensis, Euphorbia haeleeleana, Acacia koa, Pleomele aurea, Sapindus oahuensis* (lonomea), *Nestegis sandwicensis, Dodonaea viscosa, Psychotria mariniana, Psychotria greenwelliae, Kokia kauaiensis, Diospyros* sp. and *Hibiscus waimeae* (HINHP Database 1999; K. Wood, *in litt.* 1999).

Major threats to *Lipochaeta fauriei* are predation and habitat degradation by feral goats and pigs, and competition with invasive alien plants. Fire is also a significant threat to *L. fauriei* due to the invasion of *Melinis minutiflora,* a fire-adapted grass that creates unnaturally high fuel loads. The small total number of individuals makes the species susceptible to extinction from naturally occurring events, such as landslides or hurricanes; and/or reduced reproductive vigor (59 FR 9304; USFWS 1995; HINHP Database 1999).

Lipochaeta micrantha

Lipochaeta micrantha, a member of the aster family (Asteraceae), is a somewhat woody short-lived perennial herb. The small number of disk florets separates this species from the other members of the genus on the island of Kauai. The two recognized varieties of this species, var. *exigua* and var. *micrantha,* are distinguished by differences in leaf length and width, degree of leaf dissection, and the length of the ray florets (Gardner 1976, 1979; Wagner *et al.* 1999).

Little is known about the life histories of *Lipochaeta micrantha* var. *exigua* or *L. m.* var. *micrantha.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Lipochaeta micrantha* var. *exigua* was only known from the Haupu Range on Kauai. Currently, three populations of *L. m.* var. *exigua,* with 102–112 individuals, are known from privately owned land in the vicinity of Haupu Range and southwest of Hokunui summit (HINHP 1999; GDSI 1999). Historically, *L. m.* var. *micrantha* was known from Olokele Canyon, Hanapepe Valley, and the Koloa District on Kauai (HINHP Database 1999). Currently, this variety is only known from three populations totalling 56 to 66 individuals in the Koaie branch of Waimeae Canyon (State owned land) (HINHP 1999; GDSI 1999).

Lipochaeta micrantha var. *exigua* grows on cliffs, ridges, or slopes in grassy, shrubby or dry mixed communities between 305–430 m (1,000–1,400 ft) elevation with *Artemisia australis, Bidens sandvicensis, Plectranthus parviflorus* (ala ala wai nui), *Chamaesyce celastroides, Diospyros* sp., *Canthium odoratum, Neraudia* sp., *Pipturus* sp., *Hibiscus kokio, Sida fallax, Eragrostis* sp. (kawelu), *and Lepidium bidentatum* (anaunau) (USFWS 1995; HINHP 1999). *Lipochaeta micrantha* var. *micrantha* grows on basalt cliffs, stream banks, or level ground in mesic or diverse *Metrosideros polymorpha-Diospyros* sp. forest between 610–720 m (2,000–2,360 ft) elevation with *Lobelia niihauensis, Chamaesyce celastroides* var. *hanapepensis, Neraudia kauaiensis, Rumex* sp. (dock or sorrel), *Nototrichium* sp., *Artemisia* sp., *Dodonaea viscosa, Antidesma* sp., *Hibiscus* sp., *Xylosma* sp., *Pleomele* sp., *Melicope* sp., *Bobea* sp., and *Acacia koa* (USFWS 1995; HINHP 1999).

The major threats to both varieties of *Lipochaeta micrantha* are habitat degradation by feral pigs and goats, and

competition with alien plant species, such as *Lantana* camara, *Pluchea carolinensis, Erigeron karvinskianus,* and *Stachytarpheta dichotoma.* The species is also threatened by extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing populations (Lorence and Flynn 1991; USFWS 1995; HINHP Database 1999).

Lipochaeta waimeaensis

Lipochaeta waimeaensis, a member of the aster family (Asteraceae), is a low growing, somewhat woody, short-lived perennial herb. This species is distinguished from other *Lipochaeta* on Kauai by leaf shape and the presence of shorter leaf stalks and ray florets (Gardner 1976, 1979; Wagner *et al.* 1999).

Little is known about the life history of *Lipochaeta waimeaensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Lipochaeta waimeaensis is known only from the original site of discovery along the rim of Kauai's Waimeae Canyon on State and privately owned lands. There are no more than 100 individuals (HINHP Database 1999; GDSI 1999).

This population grows on eroded soil on a precipitous, shrub-covered gulch in a diverse lowland mesic forest between 350 and 400 m (1,150 and 1,310 ft) elevation with *Dodonaea viscosa* and *Lipochaeta connata* (nehe) (HINHP Database 1999; Wagner *et al.* 1999).

The major threats to *Lipochaeta waimeaensis* are competition from alien plants and habitat destruction by feral goats, whose presence exacerbates the existing soil erosion problem at the site. The single population, and thus the entire species, is threatened by extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304).

Melicope haupuensis

Melicope haupuensis, a member of the citrus family (Rutaceae), is a small long-lived perennial tree. Unlike other taxa of this genus on Kauai, the exocarp and endocarp are hairless and the sepals are covered with dense hairs (Stone *et al.* 1999).

Little is known about the life history of *Melicope haupuensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

For 62 years, *Melicope haupuensis* was known only from the site of its original discovery on the north side of Haupu Ridge on Kauai (HINHP Database 1999). This population is now gone. The species is now known from single trees at three separate locations on State owned land (along the banks of Koaie Stream in Waimeae Canyon, Awaawapuh, and Honopu) (GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999).

Melicope haupuensis grows on moist talus slopes in *Metrosideros polymorpha*-dominated lowland mesic forests or *Metrosideros polymorpha-Acacia koa* montane mesic forest at elevations between 375 and 1,075 m (1,230 to 3,530 ft). Associated species include *Dodonaea viscosa, Diospyros* sp., *Psychotria mariniana, P. greenwelliae, Melicope ovata* (alani), *M. anisata, M. barbigera* (alani), *Dianella sandwicensis, Pritchardia minor* (loulu), *Tetraplasandra waimeae* (oheohe), *Claoxylon sandwicensis, Cheirodendron trigynum, Pleomele aurea, Cryptocarya mannii* (holio), *Pouteria sandwicensis, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus,* and *Antidesma* sp. (HINHP Database 1999).

Habitat degradation by feral goats and competition with invasive alien plant taxa are the major threats to *Melicope haupuensis.* In addition, this species may be susceptible to the black twig borer (*Xylosandrus compactus*). The existence of only three known trees constitutes an extreme threat of extinction from naturally occurring events, such as landslides or hurricanes, or reduced reproductive vigor (59 FR 9304; Hara and Beardsley 1979; Medeiros *et al.* 1986; HINHP Database 1999).

Munroidendron racemosum

Munroidendron racemosum, a member of the ginseng family (Araliaceae), is a small tree with a straight gray trunk crowned with spreading branches. This long-lived perennial species is the only member of a genus endemic to Hawaii. The genus is distinguished from other closely related Hawaiian genera of the family by its distinct flower clusters and corolla (Constance and Affolter 1999).

Reproduction occurs year-round, with flowers and fruits found throughout the year. Self pollination is assumed to occur since viable seeds have been produced by isolated individuals. Pollinators have not been observed, but insect pollination is likely. Dispersal mechanisms are unknown (USFWS 1995).

Historically, *Munroidendron racemosum* was known from scattered locations throughout the island of Kauai (HINHP Database 1999). Populations are now known from the Na Pali Coast within Na Pali Coast State Park and Hono O Na Pali NAR, in the Poomau and Koaie branches of Waimeae Canyon, in the Haupu Range area, and on Nounou Mountain. There are currently 15 known populations with a total of 56 to 98 individuals on State and privately owned lands (HINHP Database 1999; GDSI 1999).

Munroidendron racemosum is typically found on steep exposed cliffs or on ridge slopes in coastal to lowland mesic forests between 120 and 400 m (395 and 1,310 ft) elevation (Lowrey 1999). Associated plant taxa include *Pisonia umbellifera* (papala kepau), *Canavalia galeata* (awikiwiki), *Sida fallax, Brighamia insignis, Canthium odoratum, Psychotria* sp., *Nestegis sandwicensis, Tetraplasandra* sp., *Bobea timonioides* (ahakea), *Rauvolfia sandwicensis, Pleomele* sp., *Pouteria sandwicensis,* and *Diospyros* sp. (59 FR 9304; Gagne and Cuddihy 1999; HINHP Database 1999).

The major threat to *Munroidendron racemosum* is competition with alien plant species, such as *Aleurites moluccana, Psidium guajava, Lantana camara,* and *Leucaena leucocephala.* Other threats include habitat degradation by feral goats, fire, and fruit predation by rats. In addition, a mature, cultivated tree was observed being killed by an introduced insect of the long-horned beetle family (Cerambycidae) and there is the potential of the beetle attacking and damaging or killing wild trees. Because each population of this species contains only a small number of trees, and the total number of individuals is less than 100, the species is threatened by extinction from naturally occurring events, such as landslides or hurricanes, and reduced reproductive vigor (59 FR 9304; USFWS 1995; HINHP Database 1999).

Myrsine linearifolia

Myrsine linearifolia, a member of the myrsine family (Myrsinaceae), is a branched shrub. This long-lived perennial species is distinguished from others of the genus by the shape, length, and width of the leaves, length of the petals, and number of flowers per cluster (Wagner *et al.* 1999).

No life history information for this species is currently available.

Historically, *Myrsine linearifolia* was found at scattered locations on Kauai: Olokele Valley, Kalualea, Kalalau Valley, Kahuamaa Flat, Limahuli-Hanakapiai Ridge, Koaie Stream, Pohakuao, Namolokama Summit

Plateau, and Haupu (HINHP Database 1999). There are currently eight populations with 360 to 421 individuals on State and privately owned lands (GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999). The populations are found in Kalalau Valley, Kahuamaa Flat, Limahuli Valley, Hanakapiai Ridge, Koaie Stream, Pohakuao, Namolokama Summit Plateau, and the Wahiawa Drainage (HINHP Database 1999; K. Wood, *in litt.* 1999).

Myrsine linearifolia typically grows from 585 to 1,280 m (1,920 to 4,200 ft) elevation, in diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest, with *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominant species (Wood and Perlman 1993; HINHP Database 1999). Plants growing in association with this species include *Dubautia* sp., *Cryptocarya mannii, Sadleria pallida* (amau), *Myrsine* sp., *Syzygium sandwicensis, Machaerina angustifolia, Freycinetia arborea, Hedyotis terminalis, Cheirodendron* sp., *Bobea brevipes, Nothocestrum* sp. (aiae), *Melicope* sp., *Eurya sandwicensis* (anini), *Psychotria* sp., *Lysimachia* sp. (kolokolo kuahiwi), and native ferns (61 FR 53070; HINHP Database 1999; K. Wood, *in litt.* 1999).

Competition with alien plants, such as *Erigeron karvinskianus, Lantana camara, Rubus argutus, Psidium cattleianum, Rubus rosaefolius,* and *Kalanchoe pinnata,* and habitat degradation by feral pigs and goats are the major threats to *Myrsine linearifolia* (61 FR 53070).

Nothocestrum peltatum

Nothocestrum peltatum, a member of the nightshade family (Solanaceae), is a small tree with ash-brown bark and woolly stems. The usually peltate leaves and shorter leaf stalks separate this species from others in the genus (Symon 1999).

Although plants of this long-lived perennial species have been observed flowering, they rarely set fruit. This could be the result of a loss of pollinators, reduced genetic variability, or an inability to fertilize itself (59 FR 9304). Little else is known about the life history of *Nothocestrum peltatum.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Nothocestrum peltatum* was known from Kauai at Kumuwela, Kaholuamanu, and the region of Nualolo (HINHP Database 1999). This species is now known from a total of nine populations with 19 individuals, located near the Kalalau Lookout area, Kalalau Valley, Awaawapuhi and Makaha Valleys, Waimeae Canyon, Nualolo, and Kawaiula, all on State owned land; the species may occur on or near land under Federal jurisdiction in Kokee State Park (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

This species generally grows in rich soil on steep slopes in montane mesic or lowland mesic or wet forest dominated by *Acacia koa* or a mixture of *Metrosideros polymorpha* and *A. koa* between 915 and 1,220 m (3,000 and 4,000 ft) elevation. Associated plants include *Antidesma* sp., *Dicranopteris linearis, Bobea brevipes, Elaeocarpus bifidus, Alphitonia ponderosa, Melicope anisata, M. barbigera, M. haupuensis, Pouteria sandwicensis, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis, Claoxylon sandwicensis, Cheirodendron trigynum, Psychotria mariniana, P. greenwelliae, Hedyotis terminalis, Ilex anomala, Xylosma* sp., *Cryptocarya mannii, Coprosma* sp., *Pleomele aurea, Diplazium sandwicensis, Broussaisia arguta,* and *Perrottetia sandwicensis* (Sohmer and Gustafson 1987; HINHP Database 1999; K. Wood, *in litt.* 1999).

Competition with alien plants, such as *Passiflora mollissima, Lantana camara, Rubus argutus,* and *Erigeron karvinskianus,* and habitat degradation by feral pigs, deer, and red jungle fowl (*Gallus gallus*) constitute the major threats to *Nothocestrum peltatum.* This species is also threatened by fire, risk of extinction from naturally occurring events (*e.g.,* landslides or hurricanes), and reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; HINHP Database 1999).

Panicum niihauense

Panicum niihauense, a member of the grass family (Poaceae), is a perennial bunchgrass with unbranched culms (aerial stems). This short-lived perennial species is distinguished from others in the genus by the shape of the inflorescence branches, which are erect, and the arrangement of the spikelets, which are densely clustered (Davids 1999).

Little is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Panicum niihauense was known historically from Niihau and one location on Kauai (HINHP Database 1999). Currently this species is only known from the Polihale State Park area on State and privately owned land, and may occur on or near the federally owned Pacific Missile Range Facility (PMRF) on Kauai (GDSI 1999). The single population of 23 individuals is found scattered in sand dunes in a coastal shrubland at elevations of 100 m (330 ft) or less (HINHP Database 1999). Associated plant taxa include *Dodonaea viscosa, Cassytha filiformis* (kaunaoa pehu), *Sporobolus* sp., *Scaevola sericea* (naupaka kahakai), *Sida fallax,* and *Vitex rotundifolia* (kolokolo kahakai) (HINHP Database 1999).

Primary threats to *Panicum niihauense* are destruction by off-road vehicles, competition with alien plant taxa, and a risk of extinction from naturally occurring events (e.g., landslides or hurricanes) and reduced reproductive vigor due to the small number of individuals in the one remaining population (61 FR 53108; HINHP Database 1999).

Phyllostegia knudsenii

Phyllostegia knudsenii, a member of the mint family (Lamiaceae), is an erect herb or vine. This short-lived perennial species is distinguished from others in the genus by its specialized flower stalk; it differs from the closely related *P. floribunda* by often having four flowers per group (Wagner *et al.* 1999).

No life history information for this species is currently available.

Until 1993, *Phyllostegia knudsenii* was only known from the site of its original discovery made in the 1800s from the woods of Waimeae on Kauai (Sherff 1935; HINHP Database 1999; Wagner *et al.* 1999). There are currently two known populations with a total of 8 to 17 individuals on State owned land in Koaie Canyon (HINHP Database 1999; GDSI 1999; K. Wood, in litt. 1999).

Phyllostegia knudsenii is found in *Metrosideros polymorpha* lowland mesic or wet forest between 865–975 m elevation (2,840–3,200 ft) (HINHP Database 1999). Associated species include *Perrottetia sandwicensis, Cyrtandra kauaiensis* (hai wale), *Cyrtandra paludosa* (hai wale), *Elaeocarpus bifidus, Claoxylon sandwicensis, Cryptocarya mannii, Ilex anomala, Myrsine linearifolia, Bobea timonioides, Selaginella arbuscula* (lepelepeamoa), *Diospyros sp., Zanthoxylum dipetalum, Pittosporum* sp., *Tetraplasandra* sp., *Pouteria sandwicensis,* and *Pritchardia minor* (61 FR 53070).

Major threats to *Phyllostegia knudsenii* include habitat degradation by feral pigs and goats, competition with alien plants, and a risk of extinction from naturally occurring events (e.g., landslides and hurricanes) and reduced reproductive vigor due to the small number of individuals in the only known population (61 FR 53070; USFWS 1998a).

Phyllostegia wawrana

Phyllostegia wawrana, a member of the mint family (Lamiaceae), is a perennial vine that is woody toward the base and has long, crinkly hairs along the stem. This short-lived perennial species can be distinguished from the related *P. floribunda* and *P. knudsenii,* by its less specialized flower stalk (Wagner *et al.* 1999).

Seeds were observed in the wild in August (USFWS 1998a). No additional life history information for this species is currently available.

Phyllostegia wawrana was reported to be found at Hanalei on Kauai in the 1800s and along Kokee Stream in 1926. Currently, populations are reported in the Makaleha Mountains, Honopu Valley, and Hanakoa Valley. A total of four populations with 29–49 individuals are found on State and privately owned lands. In addition, this species may occur on or near land under Federal jurisdiction in Kokee State Park (HINHP Database 1999; GDSI 1999

This species grows between 780 and 1,200 m elevation (2,560 to 3,940 ft) in *Metrosideros polymorpha*-dominated lowland or montane wet or mesic forest with *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominant species (HINHP Database 1999). Associated species include *Delissea rivularis, Diplazium sandwichianum, Vaccinium* sp., *Broussaisia arguta, Myrsine lanaiensis, Psychotria* sp., *Dubautia knudsenii, Scaevola procera* (naupaka kuahiwi), *Gunnera* sp., *Pleomele aurea, Claoxylon sandwicense, Elaphoglossum* sp., *Hedyotis* sp., *Sadleria* sp., and *Syzygium sandwicensis* (61 FR 53070; HINHP Database 1999).

Major threats to *Phyllostegia wawrana* include habitat degradation by feral pigs and competition with alien plant species, such as *Rubus rosaefolius, Passiflora mollissima, Rubus argutus, Melastoma candidum, Erigeron karvinskianus,* and *Erechtites valerianefolia* (61 FR 53070; USFWS 1998a).

Poa mannii

Poa mannii, a member of the grass family (Poaceae), is a perennial grass with short rhizomes (underground stems) and erect, tufted culms. All three native species of *Poa* in the Hawaiian Islands are endemic to the island of Kauai. *Poa mannii* is distinguished from both *P. siphonoglossa* and *P. sandvicensis* by its fringed ligule and from *P. sandvicensis* by its shorter panicle branches (O'Connor 1999).

Little is known about the life history of *Poa mannii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, this species was found in Olokele Gulch on Kauai (O'Connor 1999). Currently, there is a total of six populations with 163–168 individuals on State owned land in Kalalau Valley, Makaha Valley, Koaie Valley, and Waialae Valley (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

This species typically grows on cliffs, rock faces, or stream banks in lowland or montane wet, mesic, or dry *Metrosideros polymorpha* forests or *Acacia koa-M. polymorpha* montane mesic forest at elevations between 460 and 1,150 m (1,510 and 3,770 ft). Associated species include *Chamaesyce celastroides* var. *hanapepensis, Artemisia australis, Bidens sandwicensis, Lobelia sandwicensis* (NCN), *Wilkesia gymnoxiphium, Eragrostis variabilis, Panicum lineale, Mariscus phloides* (NCN), *Luzula hawaiiensis* (NCN), *Carex meyenii, C. wahuensis* (NCN), *Cyrtandra wawrae* (haiwale), *Exocarpos luteolus, Labordia helleri* (kamakahala), *Nototrichium* sp., *Hedyotis terminalis, Melicope anisata, M. barbigera, M. pallida, Pouteria sandwicensis, Schiedea membranacea, Diospyros sandwicensis, Psychotria mariniana, P. greenwelliae, Kokia kauaiensis, Alectryon macrococcus, Antidesma platyphyllum, Bidens cosmoides, Dodonaea viscosa,* and *Schiedea amplexicaulis* (NCN) (59 FR 56330; HINHP Database 1999; K. Wood, *in litt.* 1999).

Poa mannii survives only in very steep areas that are inaccessible to goats, suggesting that goat herbivory may have eliminated this species from more accessible locations, as is the case for other rare plants from northwestern Kauai. Threats to *P. mannii* include habitat damage, trampling, and browsing by feral goats, and competition with invasive alien plants. *Erigeron karvinskianus* has invaded Kalalau, Koaie, and Waialae Valleys, three of the areas where *P. mannii* occurs. *Lantana camara* threatens all known populations, and *Rubus argutus* threatens the populations in Kalalau and Waialae Valleys. *Poa mannii* is also threatened by fire, and reduced reproductive vigor and/or extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of existing populations and individuals (59 FR 56330).

Poa sandvicensis

Poa sandvicensis is a perennial grass (family Poaceae) with densely tufted, mostly erect culms. *Poa sandvicensis* is distinguished from closely related species by its shorter rhizomes, shorter culms which do not become rush-like with age, closed and fused sheaths, relatively even-edged ligules, and longer panicle branches (O'Connor 1999).

Little is known about the life history of *Poa sandvicensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, this species was known from six areas on the island of Kauai: the rim of Kalalau Valley in Na Pali Coast State Park; Halemanu and Kumuwela Ridges and Kauaikanana drainage in Kokee State Park; Awaawapuhi Trail in Na Pali-Kona Forest Reserve; Kohua Ridge/Mohihi drainage in both the Forest Reserve and Alakai Wilderness Preserve; and Kaholuamanu (57 FR 20580; Hitchcock 1922; HINHP Database 1999). Hillebrand's (1888) questionable reference to a Maui locality is most likely an error (57 FR 20580; Hitchcock 1922). Currently, there is a total of nine populations with 1,841 individuals occurring on State and privately owned lands (GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999). *Poa sandvicensis* is known to be extant at the rim of Kalalau Valley in Na Pali Coast State Park; Awaawapuhi Trail, Kumuwela Ridge and Kauaikanana drainage in Kokee State Park; and Kohua Ridge and Mohihi drainage (HINHP Database 1999).

Poa sandvicensis grows on wet, shaded, gentle to usually steep slopes, ridges, and rock ledges in semi-open to closed, mesic to wet, diverse montane forest dominated by *Metrosideros polymorpha,* at elevations of 1,035 to 1,250 m (3,400 to 4,100 ft) (HINHP Database 1999). Associated native species include *Dodonaea viscosa, Dubautia* sp., *Coprosma* sp., *Melicope* sp., *Dianella sandwicensis, Alyxia olivaeformis, Bidens* sp., *Dicranopteris linearis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Acacia koa, Psychotria* sp., *Hedyotis* sp., *Scaevola* sp., *Cheirodendron* sp., and *Syzygium sandwicensis* (57 FR 20580; HINHP Database 1999).

The greatest immediate threats to the survival of *Poa sandvicensis* are competition from alien plants, such as *Erigeron karvinskianus, Rubus argutus, Passiflora mollissima* and *Hedychium* sp.; erosion caused by feral pigs and goats; and State forest reserve trail maintenance activities and human recreation. In addition, naturally occurring events could constitute a threat of extinction or reduced reproductive vigor due to the species' small population size with its limited gene pool (57 FR 20580; USFWS 1995).

Poa siphonoglossa

Poa siphonoglossa is a perennial grass (family Poaceae). It differs from *P. sandvicensis* principally by its longer culms, lack of a prominent tooth on the ligule, and shorter panicle branches. *Poa siphonoglossa* has extensive tufted and flattened culms that cascade from banks in masses. Short rhizomes, long culms, closed and fused sheaths, and lack of a tooth on the ligule separate *P. siphonoglossa* from *P. mannii* and other closely related species (O'Connor 1999).

Little is known about the life history of *Poa siphonoglossa*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Poa siphonoglossa* was known from five sites on the island of Kauai: Kohua Ridge in Na Pali-Kona Forest Reserve; near Kaholuamanu; Kaulaula Valley in Puu Ka Pele Forest Reserve; Kuia Valley; and Kalalau (HINHP Database 1999). Currently, there are a total of five populations with 50 individuals on State owned land in three of these historic areas: Kohua Ridge, Kuia Valley, and Kalalau (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

Poa siphonoglossa typically grows on shady banks near ridge crests in mesic *Metrosideros polymorpha* forest between about 1,000 to 1,200 m (3,280 and 3,940 ft) elevation (Hitchcock 1922; HINHP Database 1999). Associated species include native species such as *Acacia koa, Psychotria* sp., *Scaevola* sp., *Alphitonia ponderosa, Zanthoxylum dipetalum, Tetraplasandra kauaiensis, Dodonaea viscosa, Hedyotis* sp., *Melicope* sp., *Vaccinium* sp., *Styphelia tameiameiae, Carex meyenii, C. wahuensis*, and *Wilkesia gymnoxiphium* (57 FR 20580).

The primary threat to the survival of *Poa siphonoglossa* is habitat degradation and/or herbivory by feral pigs and deer. The alien plant *Rubus argutus* invading Kohua Ridge constitutes a probable threat to that population (HINHP Database 1999). A limited gene pool and potential for one disturbance event to destroy the majority of known individuals are also serious threats to this species (57 FR 20580; USFWS 1995).

Pritchardia aylmer-robinsonii

Pritchardia aylmer-robinsonii of the palm family (Arecaceae) is a fan-leaved tree about 7 to 15 m (23 to 50 ft) tall. This species is distinguished from others of the genus by the thin leaf texture and drooping leaf segments, tan woolly hairs on the underside of the petiole and the leaf blade base, stout hairless flower clusters that do not extend beyond the fan-shaped leaves, and the smaller spherical fruit (Read and Hodel 1999).

Historically, *Pritchardia aylmer-robinsonii* was found at three sites in the eastern and central portions of the island of Niihau. Trees were found on Kaali Cliff and in Mokouia and Haao Valleys at elevations between 70 and 270 m (230 and 885 ft) on privately owned land (HINHP Database 1999; GDSI 1999). The most recent observations indicate that two plants still remain on Kaali Cliff (Read and Hodel 1999).

The substrate in the seepage area where this species currently occurs is rocky talus (HINHP Database 1999). Native plants that have been found in the area include *Brighamia insignis, Cyperus trachysanthos, Lipochaeta lobata* var. *lobata* (nehe), and *Lobelia niihauensis* (HINHP Database 1999). Originally a component of the coastal dry forest, this species now occurs only in a rugged and steep area where it receives some protection from grazing animals (61 FR 41020).

The species is threatened by habitat degradation and/or herbivory by cattle, feral pigs, and goats and seed predation by rats. Small population size, limited distribution, and reduced reproductive vigor makes this species particularly vulnerable to extinction (61 FR 41020).

Pritchardia napaliensis

Pritchardia napaliensis, a member of the palm family (Arecaceae), is a small palm with about 20 leaves and an open crown. This species is distinguished from others of the genus that grow on Kauai by having about 20 flat leaves with pale scales on the lower surface that fall off with age, inflorescences with hairless main axes, and globose fruits less than 3 cm (1.2 in.) long (Read and Hodel 1999).

No life history information for this species is currently available.

Pritchardia napaliensis is known from four populations with 159–179 individuals on State owned land in Hoolulu and Waiahuakua Valleys in the Hono O Na Pali NAR and Alealau in Kalalau Valley (within or close to the boundaries of Hono O Na Pali NAR and Na Pali Coast State Park), Kauai (HINHP Database 1999; GDSI 1999; K. Wood *in litt.* 1999).

Pritchardia napaliensis typically grows in areas from 150 to about 1,160 m (500 to about 3,800 ft) elevation in a wide variety of habitats ranging from lowland dry to mesic forests dominated by *Diospyros* sp. or montane wet forests dominated by *Metrosideros polymorpha* and *Dicranopteris linearis* (61 FR 53070; HINHP Database 1999). Several associated plant species besides those mentioned above include *Rauvolfia sandwicensis, Elaeocarpus bifidus, Syzygium sandwicensis, Cibotium* sp., *Canthium odoratum, Vaccinium dentatum* (ohelo), *Dubautia knudsenii, Alsinidendron lychnoides, Poa sandvicensis, Phyllostegia electra* (NCN), *Stenogyne purpurea* (NCN), *Melicope peduncularis* (alani), *Pouteria sandwicensis, Lipochaeta connata* var. *acris* (nehe), *Nesoluma polynesicum* (keahi), *Santalum freycinetianum, Pteralyxia kauaiensis, Wilkesia gymnoxiphium, Boehmeria grandis, Pleomele* sp., *Psychotria* sp., *Cheirodendron trigynum*, and *Ochrosia* sp. (holei) (HINHP Database 1999).

Major threats to *Pritchardia napaliensis* include habitat degradation and grazing by feral goats and pigs; seed predation by rats; and competition with the alien plants, such as *Kalanchoe pinnata, Erigeron karvinskianus, Lantana camara, Psidium guajava*, and possibly *Cordyline fruticosa*. The species is also threatened by vandalism and over-collection. In 1993 near the Wailua River, the Hawaiian Department of Fish and Wildlife (DOFAW) constructed a fenced enclosure around 39 recently planted *P. napaliensis* individuals. Shortly after being planted, the fence was vandalized and the 39 plants were removed (A. Kyono, pers. comm. 2000; Craig Koga, DOFAW, *in litt.* 1999). Also, because of the small number of remaining populations and individuals, this species is susceptible to a risk of extinction from naturally occurring events, such as landslides or hurricanes, and from reduced reproductive vigor (61 FR 53070).

Pritchardia viscosa

Pritchardia viscosa, a member of the palm family (Arecaceae), is a small palm 3 to 8 m (10 to 26 ft) tall. This species differs from others of the genus that grow on Kauai by the degree of hairiness of the lower surface of the leaves and main axis of the flower cluster, and length of the flower cluster (Read and Hodel 1999).

Historically, *Pritchardia viscosa* was known only from a 1920 collection from Kalihiwai Valley on the island of Kauai (HINHP Database 1999). It was not seen again until 1987, when Robert Read observed it in the same general area as the type locality, off the Powerline Road at 510 m (1,680 ft) elevation (61 FR 53070; HINHP Database 1999). Currently, there is one population with three individuals on privately owned

land (HINHP Database 1999; GDSI 1999).

The plants are found in a *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest with *Nothocestrum* sp., *Bobea* sp., *Antidesma* sp., *Cibotium* sp., and *Psychotria* sp. (61 FR 53070).

Psidium cattleianum and alien grasses, such as *Paspalum conjugatum*, are major threats to *Pritchardia viscosa* because these alien plants are effective competitors for space, light, nutrients, and water. Rats eat the fruit of *Pritchardia viscosa* and are, therefore, a serious threat to the reproductive success of this species. At least one of the remaining mature trees has been damaged by spiked boots used either by a botanist or seed collector to scale the tree. In mid-1996, a young plant and seeds from mature *Pritchardia viscosa* plants were removed from the only known location of this species. Because of this past activity, it is reasonable to assume that these plants are threatened by over-collection and vandalism (A. Kyono, pers. comm. 2000; C. Koga, *in litt.* 1999). Also, because of the small numbers of individuals in the only known population, this species is susceptible to extinction since a single naturally occurring event (e.g., a hurricane) could destroy all remaining plants (61 FR 53070).

Pteralyxia kauaiensis

Pteralyxia kauaiensis, a member of the dogbane family (Apocynaceae), is a long-lived perennial tree 3 to 8 m (10 to 26 ft) tall. The leaves are dark green and shiny on the upper surfaces, but pale and dull on the lower surfaces. This species differs from the only other taxa of this endemic Hawaiian genus in having reduced lateral wings on the seed (Lamb 1981; St. John 1981; Wagner *et al.* 1999).

Little is known about the life history of *Pteralyxia kauaiensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Pteralyxia kauaiensis* was known from the Wahiawa Mountains in the southern portion of Kauai (HINHP Database 1999). This species is now known from 20 populations, with a total of 478–505 individuals in the following scattered locations on private, State lands, and perhaps on or near Federal land: Mahanaloa-Kuia Valley in Kuia NAR; Haeleele Valley; Na Pali Coast State Park; Limahuli Valley; the Koaie branch of Waimeae Canyon; Haupu Range; Wailua River; and Moloaa Forest (59 FR 9304; Wagner *et al.* 1999; HINHP Database 1999; K. Wood, *in litt.* 1999). There is also an undocumented sighting of one individual at Makaleha, above the town of Kapaa (59 FR 9304).

This taxon is typically found in diverse mesic or wet forests at an elevation of 250 to 610 m (820 to 2,000 ft) (Wagner *et al.* 1999). Associated species include *Acacia koa, Alphitonia ponderosa, Antidesma* sp., *Alectryon macrococcus, Bobea timonioides, Canthium odoratum, Cyanea* sp., *Caesalpinia kauaiensis* (uhiuhi), *Carex* sp., *Charpentiera elliptica, Claoxylon sandwicense, Delissea* sp. (NCN), *Dodonaea viscosa, Dianella sandwicensis, Diplazium sandwichianum, Diospyros* sp., *Euphorbia haeleeleana, Freycinetia arborea, Gardenia remyi* (nanu), *Gahnia* sp., *Hedyotis terminalis, Hibiscus* sp., *Kokia kauaiensis, Metrosideros polymorpha, Myrsine lanaiensis, Nesoluma polynesicum, Neraudia kauaiensis, Nestegis sandwicensis, Pisonia sandwicensis* (papala kepau), *Peperomia macraeana, Poa sandwicensis, Pipturus* sp., *Pouteria sandwicensis, Pritchardia* sp., *Psychotria mariniana, Pleomele* sp., *Rauvolfia sandwicensis, Syzygium sandwicensis, Schiedea stellarioides, Styphelia tameiameiae, Santalum freycinetianum, Tetraplasandra* sp., *Xylosma hawaiiense* (maua), and *Zanthoxylum dipetalum* (59 FR 9304; HINHP Database 1999).

The major threats to *Pteralyxia kauaiensis* are habitat destruction by feral animals and competition with introduced plants. Animals affecting the survival of this species include feral goats and pigs, and, possibly, rats, which may eat the fruit. Fire could threaten some populations. Introduced plants competing with this species include *Psidium guajava, Erigeron karvinskianus, Aleurites moluccana, Lantana camara, Psidium cattleianum*, and *Cordyline fruticosa* (59 FR 9304; USFWS 1995; HINHP Database 1999).

Remya kauaiensis

Remya kauaiensis, one of three species of a genus endemic to the Hawaiian Islands, is in the aster family (Asteraceae). *Remya kauaiensis* is a small short-lived perennial shrub, about 90 cm (3 ft) tall, with many slender, sprawling branches which are covered with a fine tan fuzz near their tips. The leaves, coarsely toothed along the edges, are green on the upper surface while the lower surface is covered with a dense mat of fine white hairs (Wagner *et al.* 1999).

Seedlings of this taxon have not been observed. Flowers have been observed in April, May, June, and August, and are probably insect-pollinated. Seeds are probably wind or water-dispersed. *Remya kauaiensis* may be self-incompatible (56 FR 1450; Herbst 1988; USFWS 1995).

Historically, this species was found in the Na Pali Kona Forest Reserve at Koaie, Mohihi, Kalalau, Makaha, Nualolo, Kawaiula, Kuia, Honopu, Awaawapuhi, Kopakaka, and Kauhao, on Kauai (HINHP Database 1999). There are currently 14 known populations with a total of 78–86 individuals on State owned land (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999). One known population of *Remya kauaiensis* grows on the steep cliffs below the rim of Kalalau Valley, which, although at the edge of a mesic forest, receives considerably more moisture than do the other populations of the species (56 FR 1450). Other populations are scattered throughout the drier ridges of Northwest Kauai and in Waimeae Canyon (HINHP Database 1999; K. Wood, *in litt.* 1999).

Remya kauaiensis grows chiefly on steep, north or northeast-facing slopes between 850 to 1,250 m (2,800 to 4,100 ft) in elevation. It is found primarily in *Acacia koa-Metrosideros polymorpha* lowland mesic forest with *Chamaesyce* sp. (akoko), *Nestegis sandwicensis, Diospyros* sp., *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Schiedea membranacea, Psychotria mariniana, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis*, and *Claoxylon sandwicensis* (56 FR 1450; Herbst 1988; HINHP Database 1999).

The primary threats to *Remya kauaiensis* include herbivory and habitat degradation by feral goats, pigs, cattle, and deer, and competition from alien plant species. Other threats include erosion, fire, and risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of remaining populations and individuals (56 FR 1450; USFWS 1995).

Remya montgomeryi

The genus *Remya*, in the aster family (Asteraceae), is endemic to the Hawaiian Islands. *Remya montgomeryi* was discovered in 1985 by Steven Montgomery on the sheer, virtually inaccessible cliffs below the upper rim of Kalalau Valley, Kauai. It is a small short-lived perennial shrub, about 90 cm (3 ft) tall, with many slender, sprawling to weakly erect, smooth branches. The leaves are coarsely toothed along the edges, and are green on the upper as well as lower surfaces (Wagner *et al.* 1999).

Seedlings of this taxon have not been observed. Flowers have been observed in April, May, June, and August, and are probably insect-pollinated. Seeds are probably wind or water-dispersed. *Remya montgomeryi* may be self-incompatible (56 FR 1450; Herbst 1988).

Remya montgomeryi is known only from Kauai. Three populations with 143 individuals are reported on State owned land on the rim of Kalalau Valley and Koaie Canyon. This species may also occur on or near land under Federal jurisdiction in Kokee State Park (Herbst 1988; GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999).

Remya montgomeryi grows between elevation of 850 to 1,250 m (2,800 to 4,100 ft), primarily on steep, north or northeast-facing slopes or stream banks near waterfalls in *Metrosideros polymorpha* mixed mesic forest and cliffs. Associated plants include *Lysimachia glutinosa, Lepidium serra, Boehmeria grandis, Poa mannii, Stenogyne campanulata, Myrsine linearifolia, Bobea timonioides, Ilex anomala, Zanthoxylum dipetalum, Claoxylon sandwicensis, Tetraplasandra* sp., *Artemisia* sp., *Nototrichium* sp., *Cyrtandra* sp., *Dubautia plantaginea* (na ena e), *Sadleria* sp., *Cheirodendron* sp., *Scaevola* sp., and *Pleomele* sp. (HINHP Database 1999; K. Wood, *in litt.* 1999).

The primary threats to *Remya montgomeryi* are herbivory and habitat degradation by feral goats, pigs, cattle, and deer, and competition from alien plant species. Other threats include erosion, fire, and an increased risk of extinction from naturally occurring events (e.g., landslides or hurricanes) by virtue of the extremely small size of the populations and their limited distribution. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the known individuals (56 FR 1450; USFWS 1995).

Schiedea apokremnos

Schiedea apokremnos is a low, branching short-lived perennial shrub 20 to 50 cm (8 to 20 in.) tall, of the pink family (Caryophyllaceae). The leaves are oppositely arranged, oblong, and somewhat fleshy and glabrous. *Schiedea apokremnos* is distinguished from related species by shorter sepals, nectaries, and capsules (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea apokremnos*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Schiedea apokremnos has been collected from Nualolo Kai, Kaaweiki Ridge, and along a 10.5 km (6.5 mi) long section of the Na Pali coast including Milolii Valley, Kalalau Beach, Kaaalahina and Manono ridges, Haeleele ridge, and, as far north as, Pohakuao Valley, all on the island of Kauai (HINHP Database 1999). Currently, the species is extant at all locations except Nualolo Kai, although the Kalalau and Milolii populations have not been revisited for over six years. The Kaaweiki population is in Puu Ka Pele Forest Reserve and the Haeleele ridge population is in Polihale State Park, while all others are in Na Pali Coast State Park (56 FR 49639). There is currently a total of five populations containing 311 to 1,251 individuals on State owned lands (HINHP Database 1999; GDSI 1999).

Schiedea apokremnos grows in the crevices of near-vertical coastal cliff faces, from 60 to 330 m (200 to 1,080 ft) in elevation. The species grows in sparse dry coastal shrub vegetation along with *Heliotropium* sp. (ahinahina), Bidens sp., *Artemisia australis, Lobelia niihauensis, Wilkesia hobdyi, Lipochaeta connata, Myoporum sandwicense, Canthium odoratum, Peperomia* sp. and *Chamaesyce* sp. (56 FR 49639; HINHP Database 1999).

The restriction of this species to inaccessible cliffs suggests that goat herbivory may have eliminated them from more accessible locations. The greatest current threat to the survival of *Schiedea apokremnos* is still herbivory and habitat degradation by feral goats, as well as competition from the alien plants *Leucaena leucocephala* (koa haole) and *Hyptis pectinata* (comb hyptis), and trampling (trails) by humans. Given the small size of most populations, restricted distribution, and limited gene pool, depressed reproductive vigor may be serious threats to the species. Some *S. apokremnos* individuals are functionally female and must be cross-pollinated to set seed. This reproductive strategy may be ineffective in populations with few individuals (56 FR 49639; USFWS 1995). In addition, a single environmental disturbance (such as a landslide or fire) could destroy a significant percentage of the extant individuals.

Schiedea helleri

Schiedea helleri, a member of the pink family (Caryophyllaceae), is a short-lived perennial vine. The stems, smooth below and minutely hairy above, are usually prostrate and at least 15 cm (6 in.), long with internodes at least 4 to 15 cm (1.6 to 6 in.) long. The opposite leaves are somewhat thick, triangular, egg-shaped to heart-shaped, conspicuously three-veined, and nearly hairless to sparsely covered with short, fine hairs, especially along the margins. This species is the only member of the genus on Kauai that grows as a vine (Wagner *et al.* 1999).

Three plants were observed flowering in February (USFWS 1998a). No additional life history information for this species is currently available.

Schiedea helleri was originally found only at a single location above Waimeae, at Kaholuamano on the island of Kauai, over 100 years ago (HINHP Database 1999). In 1993, this species was discovered on a steep wall above a side stream off Mohihi Stream, approximately 5.6 km (3.5 mi) north of the original location (61 FR 53070). Recently, a small population was discovered along the Mohihi-Waialeale Trail, and plants were found in Nawaimaka Valley (HINHP Database 1999; K. Wood, *in litt.* 1999). There is currently a total of two populations with 53–63 individuals on State owned land (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

Schiedea helleri is found on ridges and steep cliffs in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha-Cheirodendron* sp. montane wet forest, or *Acacia koa-M. polymorpha* montane mesic forest between 1,065–1,100 m (3,490–3,610 ft) elevation (HINHP Database 1999; K. Wood, *in litt.* 1999). Other native plants growing in association with this species include *Dubautia raillardioides* (na ena e), *Scaevola procera, Hedyotis terminalis, Syzygium sandwicensis, Melicope clusifolia, Cibotium* sp., *Broussaisia arguta, Cheirodendron* sp., *Cyanea hirtella* (haha), *Dianella sandwicensis, Viola wailenalenae* (pamakani), and *Poa sandvicensis* (HINHP Database 1999; K. Wood, *in litt.* 1999).

Competition with the noxious alien plant *Rubus argutus* and a risk of extinction from naturally occurring events (e.g., landslides or hurricanes) and reduced reproductive vigor due to the small number of extant individuals, are serious threats to *Schiedea helleri* (61 FR 53070).

Schiedea kauaiensis

Schiedea kauaiensis, a member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. The green, sometimes purple-tinged leaves are opposite, narrowly egg-shaped or lance-shaped to narrowly or broadly elliptic. Lacking petals, the perfect flowers are borne in open branched inflorescences, and are moderately

covered with fine, short, curly, white hairs. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by its habit, larger leaves, the hairiness of the inflorescence, the number of flowers in each inflorescence, larger flowers, and larger seeds (Wagner *et al.* 1999).

Little is known about the life history of this taxon. Fruit and flowers have been observed in July and August, and flowering material has been collected in September (USFWS 1998a). There is no evidence of regeneration from seed under field conditions. Reproductive cycles, longevity, specific environmental requirements and limiting factors are unknown.

Historically, *Schiedea kauaiensis* was known from the northwestern side of Kauai, from Papaa to Mahanaloa. It was thought to be extinct until the two currently known populations in Mahanaloa and Kalalau Valleys, with a total of 18 individuals, were found (HINHP Database 1999; K. Wood, *in litt.* 1999). Both populations occur on State land—the Mahanaloa Valley population within Kuia NAR and the Kalalau Valley population within Na Pali Coast State Park (GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999).

Schiedea kauaiensis typically grows in diverse mesic to wet forest on steep slopes between 680–790 m elevation (2,230–2,590 ft) (HINHP Database 1999). Associated plant taxa include *Psychotria mariniana, P. hexandra, Canthium odoratum, Pisonia* sp., *Microlepia speluncae* (NCN), *Exocarpos luteolus, Diospyros* sp., *Peucedanum sandwicense*, and *Euphorbia haeleeleana* (61 FR 53108; HINHP Database 1999).

Threats to *Schiedea kauaiensis* include habitat degradation and/or destruction by feral goats, pigs, and cattle; competition from several alien plant taxa; predation by introduced slugs and snails; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the low number of individuals in only two known populations. *Schiedea kauaiensis* is also potentially threatened by fire (61 FR 53108; USFWS 1998a; HINHP Database 1999).

Schiedea membranacea

Schiedea membranacea, a member of the pink family (Caryophyllaceae), is a perennial herb. The unbranched, fleshy stems rise upwards from near the base and are somewhat sprawling. During dry seasons, the plant dies back to a woody, short stem at or beneath the ground surface. The oppositely arranged leaves are broadly elliptic to egg-shaped, generally thin, have five to seven longitudinal veins, and are sparsely covered with short, fine hairs. The perfect flowers have no petals, are numerous, and occur in large branched clusters. This short-lived perennial species differs from others of the genus that grow on Kauai by having five-to seven-nerved leaves and a herbaceous habit (Wagner *et al.* 1999).

Plants marked in Mahanaloa Gulch on Kauai in 1987 were alive in 1997, despite Hurricane Iniki. However, there was no evidence of recruitment in the population, despite the production of abundant seed during all years of observation (1987, 1994–1997) (USFWS 1998a). Introduced snails have been observed feeding on flowers and developing seed capsules, and garlic snails (*Oxychilus alliarius*) were common near the plants. It seems very likely that introduced molluscs are responsible for the failure of recruitment. Under greenhouse conditions, this species, as well as other *Schiedea* species, is extremely sensitive to slugs and snails, further suggesting that the introduction of these alien species has had detrimental effects on *Schiedea* species in natural conditions. In addition, research suggests that this species largely requires outcrossing for successful germination and survival to adulthood (USFWS 1998a). Pollinators for *Schiedea membranacea* are unknown, since none have been seen during the daytime, and none were observed during one set of night observations (USFWS 1998a).

Schiedea membranacea is known from the western side of the island of Kauai, at Mahanaloa-Kuia, Paaiki, Kalalau, Nualolo Wainiha, and Waialae Valleys (including Kuia NAR and Na Pali Coast State Park) (61 FR 53070; Wood and Perlman 1993; HINHP Database 1999). There is currently a total of nine populations containing 199–203 individuals, on State and privately owned lands. This species may also occur on or near land under Federal jurisdiction in Kokee State Park (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

This species is typically found on cliffs and cliff bases in mesic or wet habitats, open to closed lowland, montane shrubland, or forest dominated by *Acacia koa, Pipturus* sp. or *Metrosideros polymorpha* between 520 and 1,160 m (1,700 and 3,800 ft) elevation. Associated native plants species include *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Hibiscus waimeae, Psychotria mariniana, Canthium odoratum, Pisonia sp., Perrottetia sandwicensis, Scaevola procera, Sadleria cyatheoides* (amau), *Diplazium sandwicensis, Thelypteris sandwicensis, Boehmeria grandis, Dodonaea viscosa, Myrsine sp.,Bobea brevipes, Alyxia olivaeformis, Psychotria greenwelliae, Pleomele* sp., *Alphitonia ponderosa, Joinvillea ascendens* ssp. *ascendens* (ohe), *Athyrium sandwicensis* (akolea), *Machaerina angustifolia, Cyrtandra paludosa, Touchardia latifolia, Thelypteris cyatheoides* (kikawaio), *Lepidium serra, Eragrostis variabilis, Remya kauaiensis, Lysimachia kalalauensis* (NCN), *Labordia helleri, Mariscus pennatiformis, Asplenium praemorsum* (NCN), and *Poa sandvicensis* (61 FR 53070; HINHP Database 1999).

Habitat degradation by feral goats, and pigs, and deer; competition with the alien plant species *Erigeron karvinskianus, Lantana camara, Rubus argutus, R. rosaefolius, Psidium cattleianum, Ageratina riparia* (Hamakua pamakani), and *Passiflora mollissima;* loss of pollinators; and landslides are the primary threats to *Schiedea membranacea*. Based on observations indicating that snails and slugs may consume seeds and seedlings, it is likely that introduced molluscs also represent a major threat to this species (61 FR 53070; Wood and Perlman 1993; USFWS 1998a).

Schiedea spergulina var. leiopoda and Schiedea spergulina var. spergulina

Schiedea spergulina, a member of the pink family (Caryophyllaceae), is a short-lived perennial subshrub. The opposite leaves are very narrow, one-veined, and attached directly to the stem. The flowers are unisexual, with male and female flowers on different plants. Flowers occur in compact clusters of three. The capsular fruits contain nearly smooth, kidney-shaped seeds. Of the 22 species in this endemic genus, only two other species have smooth seeds. *Schiedea spergulina* differs from those two in having very compact flower clusters. The two weakly defined varieties differ primarily in the degree of hairiness of the inflorescences, with *S. s.* var. *leiopoda* being the less hairy of the two (Wagner *et al.* 1999).

Little is known about the life histories of either *Schiedea spergulina* var. *leiopoda* or *Schiedea spergulina* var. *spergulina*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Schiedea spergulina* var. *leiopoda* was found on a ridge on the east side of Hanapepe on Kauai (HINHP Database 1999). One population with 35–50 individuals is now known to grow in Lawai Valley on Kauai on privately owned land (HINHP Database 1999; GDSI 1999).

Schiedea spergulina var. *spergulina* was historically found in Olokele Canyon, but is now known only from Kalalau rim and Waimeae Canyon on Kauai. A total of three populations numbering over 200 individuals is reported on State and privately owned lands. However, it has been estimated that this species may number in the thousands on Kauai (USFWS 1995; HINHP Database 1999; GDSI 1999).

Both varieties of *Schiedea spergulina* are usually found on bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland mesic forest at elevations between 180 and 800 m (590 and 2,625 ft) (59 FR 9304; Wagner *et al.* 1999). Associated plants include *Bidens sandvicensis, Doryopteris* sp. (kumuniu), *Peperomia leptostachya* (ala ala wai nui), *Plectranthus parviflorus, Heliotropium* sp., and *Nototrichium sandwicense* (kului) (59 FR 9304; Lorence and Flynn 1991; USFWS 1995; HINHP Database 1999).

The major threats to *Schiedea spergulina* var. *leiopoda* are habitat destruction by feral goats and competition with alien plants such as *Leucaena leucocephala, Lantana camara,* and *Furcraea foetida* (Mauritius hemp). Individuals have also been damaged and destroyed by rock slides. This variety is potentially threatened by pesticide use in nearby sugarcane fields, as well as a risk of extinction from naturally occurring events (e.g., hurricanes) and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; Lorence and Flynn 1991; USFWS 1995).

Schiedea spergulina var. *spergulina* is threatened by competition with alien plant taxa, including *Erigeron karvinskianus, Lantana camara, Melia azedarach,* and *Triumfetta semitriloba* (Sacramento bur). The area in which this variety grows is used heavily by feral goats, and there is evidence that plants are being browsed and trampled (59 FR 9304; Lorence and Flynn 1991; HINHP Database 1999).

Schiedea stellarioides

Schiedea stellarioides, a member of the pink family (Caryophyllaceae), is a slightly erect to prostrate subshrub with branched stems. The opposite leaves are very slender to oblong-elliptic, and one-veined. This short-lived perennial species is distinguished from others of the genus that grow on Kauai by the number of veins in the leaves, shape of the leaves, presence of a leaf stalk, length of the flower cluster, and shape of the seeds (Wagner *et al.* 1999).

Plants were observed flowering in the field in February (USFWS 1995). No additional life history information for this species is currently available.

Historically, *Schiedea stellarioides* was found at the sea cliffs of Hanakapiai Beach, Kaholuamano-Opaewela region, the ridge between Waialae and Nawaimaka Valleys, and Haupu Range on the island of Kauai (HINHP Database 1999). This species is now found only at the ridge between Waialae and Nawaimaka Valleys on State land, just 0.8 kilometer (0.5 mile) northwest of the Kaholuamano-Opaewela region and in upper Kawaiiki (K. Wood, *in litt.* 1999; HINHP Database 1999). There is a total of two populations with 400 individuals on State owned land (HINHP Database 1999; K. Wood, *in litt.* 1999; GDSI 1999).

Schiedea stellarioides is found on steep slopes in closed *Acacia koa-Metrosideros polymorpha* lowland to montane mesic forest or shrubland between 610 and 1,120 m (2,000 and 3,680 ft) elevation. Associated plant species include *Nototrichium* sp., Artemisia sp., *Dodonaea viscosa, Melicope* sp., *Dianella sandwicensis, Bidens cosmoides, Mariscus* sp., and *Styphelia tameiameiae* (61 FR 53070; HINHP Database 1999).

The primary threats to this species include habitat degradation and herbivory by feral pigs and goats, competition with the alien plants *Melinis minutiflora* and *Rubus argutus,* and a risk of extinction of the two remaining population from naturally occurring events, such as landslides or hurricanes (61 FR 53070).

Stenogyne campanulata

Stenogyne campanulata, a member of the mint family (Lamiaceae), is described as a vine with four-angled, hairy stems. A short-lived perennial species, *Stenogyne campanulata* is distinguished from closely related species by its large and very broadly bell-shaped calyces that nearly enclose the relatively small, straight corollas, and by small calyx teeth that are half as long as wide (Weller and Sakai 1999).

Little is known about the life history of *Stenogyne campanulata*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Stenogyne campanulata is known from one to three populations with 22–32 individuals which were originally discovered on the cliffs of Kalalau to below Puu o Kila, on State-owned land in the Na Pali Coast State Park (GDSI 1999; HINHP Database 1999).

Stenogyne campanulata grows on the rock face of a nearly vertical, north-facing cliff in diverse lowland or montane mesic forest at an elevation of 1,085 m (3,560 ft). The associated shrubby vegetation includes native species such as *Heliotropium* sp., *Lepidium serra, Lysimachia glutinosa, Perrottetia sandwicensis,* and *Remya montgomeryi* (57 FR 20580; Weller and Sakai 1999).

The restriction of this species to virtually inaccessible cliffs suggests that herbivory by feral goats may have eliminated it from more accessible locations. Goat herbivory and habitat degradation remain the primary threat. Feral pigs have disturbed vegetation in the vicinity of these plants. Erosion caused by feral goats or pigs exacerbates the potential threat of landslides. *Erigeron karvinskianus* and *Rubus argutus* are the primary alien plants threatening *Stenogyne campanulata*. The small number of individuals and its restricted distribution are serious potential threats to the species. The limited gene pool may depress reproductive vigor, or a single environmental disturbance such as a landslide could destroy all known extant individuals (57 FR 20580).

Viola helenae

Viola helenae is a small, unbranched perennial subshrub with an erect stem in the violet family (Violaceae). The hairless leaves are clustered on the upper part of the plant and are lance-shaped with a pair of narrow, membranous stipules (leaf-like structures) below each leaf. The small, pale lavender or white flowers are produced on stems either singly or in pairs in the leaf axils. The fruit is a capsule that splits open at maturity, releasing the pale olive brown seeds (St. John 1989; Wagner *et al.* 1999).

Little is known about the life history and ecology of *Viola helenae*. Wagner *et al.* (1999) stated that the flowers are all chasmogamous (open at maturity for access by pollinators) and not cleistogamous (remain closed and self-fertilize in the bud) as in certain other violets. Therefore, it is likely that its flowers require pollination by insects for seed set. Mature flowering plants do produce seed; however, seed viability may be low and microhabitat requirements for germination and growth may be very specific. Seeds planted at NTBG on Kauai failed to germinate, although they may not have been sufficiently mature when collected and violet seeds are often very slow to germinate. The seeds are jettisoned when the capsule splits open, as in most species of the genus (USFWS 1994).

Historically, *Viola helenae* was known from four populations, two along either branch of the Wahiawa Stream on Kauai (56 FR 47695). Currently, there are five known populations, with a total of 137 individual plants, on privately owned land within the Wahiawa Drainage (GDSI 1999; HINHP Database 1999; USFWS 1994). This species is found in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest growing on stream banks or adjacent valley bottoms in light to moderate shade between 610–855 m elevation (2,000–2,800 ft) (USFWS 1994; HINHP Database 1999).

Threats include competition from alien plant species, including *Psidium cattleianum, Melastoma candidum,* potentially *Melaleuca quinquenervia, Stachytarpheta dichotoma, Rubus rosaefolius, Elephantopus mollis, Erechtites valerianefolia,* and various alien grasses; trampling and browsing damage by feral pigs; landslides and erosion; and hurricanes (56 FR 47695; USFWS 1994).

Viola kauaiensis var. *wahiawaensis*

Viola kauaiensis, a member of the violet family (Violaceae), is a short-lived perennial herb with upward curving or weakly rising, hairless, lateral stems. The species is distinguished from others of the genus by its nonwoody habit, widely spaced kidney-shaped leaves, and by having two types of flowers: conspicuous, open flowers and smaller, unopened flowers. Two varieties of the species are recognized, both occurring on Kauai: var. *kauaiensis* and var. *wahiawaensis. Viola kauaiensis* var. *wahiawaensis* is distinguished by having broadly wedge-shaped leaf bases (USFWS 1998a;Wagner *et al.* 1999).

Five Viola kauaiensis var. wahiawaensis plants were observed in flower in December 1994 (USFWS 1998a). No additional life history information for this species is currently available.

Viola kauaiensis var. *wahiawaensis* is known only from two populations in the Wahiawa Mountains of Kauai with a total of 13 individual plants on State and privately owned lands (HINHP Database 1999; GDSI 1999). This taxon is not known to have occurred beyond its current range.

Viola kauaiensis var. *wahiawaensis* is found in open montane bog or wet shrubland between 640 and 865 m (2,100 and 2,8[illegible]0 ft) elevation. It is found to be associated with *Metrosideros polymorpha, Dicranopteris linearis, Diplopterygium pinnatum* (NCN) and *Syzygium sandwicensis* (61 FR 53070; Lorence and Flynn 1991; USFWS 1998a; HINHP Database 1999).

The primary threats to *Viola kauaiensis* var. *wahiawaensis* are a risk of extinction from naturally occurring events, such as landslides or hurricanes, and from reduced reproductive vigor due to the small number of existing populations and individuals; habitat degradation through the rooting activities of feral pigs; and competition with alien plants, such as *Juncus planifolius* (NCN) and *Pterolepis glomerata* (NCN) (61 FR 53070; Lorence and Flynn 1991; USFWS 1994; HINHP Database 1999).

Wilkesia hobdyi

Wilkesia hobdyi, a member of the sunflower family (Asteraceae), is a short-lived perennial shrub which branches from the base. The tip of each branch bears a tuft of narrow leaves growing in whorls joined together into a short sheathing section at their bases. The cream-colored flower heads grow in clusters (St. John 1971; Carr 1982a, 1999b).

This species is probably pollinated through outcrossing and is probably self-incompatible. Insects are the most likely pollinators. In 1982, Carr reported that reproduction and seedling establishment were occurring and appeared sufficient to sustain the populations. Flowering was observed most often in the winter months, but also during June. Fruits may be dispersed when they stick to the feathers of birds. Densities reach one plant per square meter (approximately one square yard) in localized areas, and hybridization with *Wilkesia gymnoxiphium* may be occurring (Carr 1982a).

First collected in 1968 on Polihale Ridge, Kauai, this species was not formally described until 1971 (St. John 1971). Currently, there are seven populations with a total of 336 to 401 individuals (HINHP Database 1999; GDSI 1999). This species occurs on State and privately owned lands and may occur on or near land Federal land or land under Federal jurisdiction on Makaha Ridge and in Kokee State Park (GDSI 1999). There are populations in the Puu Ka Pele Forest Reserve, growing on the north-facing, nearly vertical rock outcrops near the summits of the adjacent Polihale and Kaaweiki ridges (HINHP Database 1999). There are also plants growing on a cliff face in Waiahuakua Valley, on the boundary between the Hono O Na Pali NAR and the Na Pali Coast State Park, approximately 16 km (10 mi) northeast of the other populations (HINHP Database 1999).

Wilkesia hobdyi grows on coastal dry cliffs or very dry ridges from 275 to 400 m (900 to 1,310 ft) in elevation. The associated native vegetation includes *Artemisia* sp., *Wilkesia gymnoxiphium, Lipochaeta connata, Lobelia niihauensis, Peucedanum sandwicense, Hibiscus kokio* ssp. *saint johnianus* (kokio), *Canthium odoratum, Peperomia* sp., *Myoporum sandwicense, Sida fallax, Waltheria indica* (uhaloa), *Dodonaea viscosa,* and *Eragrostis variabilis* (57 FR 27859; USFWS 1995; Wagner *et al.* 1999).

The greatest immediate threats to the survival of this species are habitat disturbance and browsing by feral goats. Although the low number of individuals and their restricted habitat could be considered a potential threat to the survival to the species, the plant appears to have vigorous reproduction and may survive indefinitely if goats were eliminated from its habitat. Fire and extinction through naturally occurring events, such as landslides or hurricanes, could also be threats to the survival of the species (57 FR 27859; USFWS 1995).

Xylosma crenatum

Xylosma crenatum is a dioecious (plant bears only male or female flowers, and must cross-pollinated with another plant to produce viable seed) long-lived perennial tree in the flacourtia family (Flacourtiaceae). The tree grows up to 14 m (45 ft) tall and has dark gray bark. The somewhat leathery leaves are oval to elliptic-oval, with coarsely toothed edges and moderately hairy undersides. More coarsely toothed leaf edges and hairy undersides of the leaves distinguish *X. crenatum* from the other Hawaiian member of this genus (Wagner *et al.* 1999).

Little is known about the life history of *Xylosma crenatum*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Xylosma crenatum* was known from two sites on Kauai: along upper Nualolo Trail in Kuia NAR and along Mohihi Road between Waiakoali and Mohihi drainages in Na Pali-Kona Forest Reserve (57 FR 20580). Currently, this species is extant on State and privately owned lands in Honopu Valley in Kokee State Park; Nawaimaka Valley in Na Pali-Kona Forest Reserve; and Mahanaloa Valley, and may occur on or near land under Federal jurisdiction in the same areas. There are a total of three populations with eight individual plants total (USFWS 1995; HINHP Database 1999; GDSI 1999).

Xylosma crenatum is known from diverse *Acacia koa-Metrosideros polymorpha* montane wet or mesic forests and *M. polymorpha-Dicranopteris linearis* montane wet forests between 975 to 1,065 m (3,200 to 3,490 ft) elevation. The species is sometimes found along stream banks and within a planted conifer grove. The species is associated with *Tetraplasandra kauaiensis, Hedyotis terminalis, Pleomele aurea, Ilex anomala, Claoxylon sandwicense, Myrsine alyxifolia* (kolea), *Nestegis sandwicensis, Streblus pendulinus, Psychotria* sp., *Diplazium sandwichianum, Pouteria sandwicensis, Scaevola procera, Coprosma* sp., *Athyrium sandwichianum, Touchardia latifolia, Dubautia knudsenii, Cheirodendron* sp., *Lobelia yuccoides* (NCN), *Cyanea hirta* (haha), *Poa sandwicensis,* and *Diplazium sandwichianum* (57 FR 20580; USFWS 1995; HINHP Database 1999).

The small number of individuals and scattered distribution makes this species vulnerable to human or natural environmental disturbance. *Xylosma crenatum* is also threatened by competition from alien plants, particularly *Psidium guajava.* In addition, feral pigs may threaten this species (57 FR 20580; USFWS 1995; HINHP Database 1999).

Multi-Island Species

Adenophorus periens.

Adenophorus periens, a member of the Grammitis family (Grammitidaceae), is a small, pendant, epiphytic (not rooted on the ground) fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna margins, by the pinnae being at right angles to the midrib axis, by the placement of the sori on the pinnae, and the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens,* which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores are dispersed by wind, possibly by water, and perhaps on the feet of birds or insects (Linney 1989). Spores lack a thick resistant coat which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between the seasons, there seems to be no evidence of seasonality in growth or reproduction. *Adenophorus periens* appears to be susceptible to volcanic emissions and/or resultant acid precipitation (Linney 1989). Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not available.

Historically, *Adenophorus periens* was reported from Kauai, Oahu, Lanai, Maui, and Hawaii Island (59 FR 56333; HINHP Database 1999). Currently, it is known from several locations on Kauai, Molokai, and Hawaii (HINHP Database 1999). On Kauai, there is a total of seven populations on private and State owned lands, with 84–89 individuals, that occur on the boundary of Hono O Na Pali NAR and Na Pali Coast State Park at the head of Hanakoa drainage; Waioli Valley; Wainiha Valley; Kealia Forest Reserve; and in the Wahiawa drainage (GDSI 1999; HINHP Database 1999).

This species, an epiphyte usually growing on *Metrosideros polymorpha* trunks, is found in *M. polymorpha-Cibotium glaucum* lowland wet forest, open *M. polymorpha* montane wet forest, and *M. polymorpha-Dicranopteris linearis* lowland wet forests at elevations between 400 and 1,265 m (1,310 and 4,150 ft) (59 FR 56333). It is found in habitats of well-developed, closed canopy providing deep shade and high humidity (Linney 1989). Associated native species include *Athyrium sandwicensis, Broussaisia arguta, Cheirodendron trigynum, Cyanea* sp., *Cyrtandra* sp., *Freycinetia arborea, Hedyotis terminalis, Labordia hirtella, Machaerina angustifolia, Psychotria* sp., *P. hexandra,* and *Syzygium sandwicensis* (59 FR 56333; Linney 1989).

The threats to this species on Kauai include habitat degradation by feral pigs and goats, and competition with the alien plant *Psidium cattleianum* (59 FR 56333; HINHP Database 1999).

Alectryon macrococcus var. *macrococcus*

Alectryon macrococcus, a member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis,* both trees with reddish-brown branches and net-veined paper- or leather-like leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. The underside of the leaf has dense brown hairs, persistent in *A. m.* var. *auwahiensis,* but only on leaves of young *A. m.* var. *macrococcus* plants. The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.5 cm (0.9 in.) or more in diameter (Wagner *et al.* 1999).

Alectryon macrococcus is a relatively slow-growing, long-lived tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of *Alectryon macrococcus.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown.

Currently, *Alectryon macrococcus* var. macrococcus occurs on State owned land in Waimeae Canyon and in Na Pali Coast State Park on Kauai. A total of six populations of 68–83 individuals is known (GDSI 1999; K. Wood, *in litt.* 1999). This variety is also found on Oahu, Molokai, and West Maui. (57 FR 20772). *Alectryon macrococcus* var. *auwahiensis* is found only on leeward east Maui and will be reviewed further in a subsequent rule (Medeiros *et al.* 1986; HINHP Database 1999).

The habitat of *Alectryon macrococcus* var. *macrococcus* on Kauai is *Diospyros* sp.-*Metrosideros polymorpha* lowland mesic forest, *M. polymorpha* mixed mesic forest, and *Diospyros* sp. mixed mesic forest on dry slopes or in gulches, between elevations of 360–1,070 m (1,180–3,510 ft) (57 FR 20772; Wagner *et al.* 1999). Associated native plants include *Psychotria* sp., *Pisonia* sp., *Xylosma* sp., *Streblus pendulinus, Hibiscus* sp., *Antidesma* sp., *Pleomele* sp., *Acacia koa, Melicope knudsenii, Hibiscus waimeae, Pteralyxia* sp., *Zanthoxylum* sp., *Kokia kauaiensis, Rauvolfia sandwicensis, Nestegis sandwicensis, Myrsine lanaiensis, Canthium odoratum, Canavalia* sp. (awikiwiki), *Alyxia olivaeformis, Nesoluma polynesicum, Munroidendron racemosum, Caesalpinia kauaiensis, Tetraplasandra* sp., *Pouteria sandwicensis,* and *Bobea timonioides* (57 FR 20772; HINHP Database 1999).

Alectryon macrococcus var. *macrococcus* on Kauai is threatened by feral goats and pigs; the alien plant species *Melinis minutiflora, Schinus terebinthifolius* (Christmasberry), and *Psidium cattleianum;* damage from the black twig borer; seed predation by rats and mice (*Mus domesticus*); fire; depressed reproductive vigor; seed predation by insects (probably the endemic microlepidopteran *Prays* cf. *fulvocanella*); loss of pollinators; and, due to the very small remaining number of individuals and their limited distribution, natural or human-caused environmental disturbances which could easily be catastrophic (57 FR 20772).

Bonamia menziesii

Bonamia menziesii, a member of the morning-glory family (Convolvulaceae), is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and

petioles, and rounder leaves (Austin 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Bonamia menziesii* was known from the following general areas: scattered locations on Kauai, the Waianae Mountains of Oahu, scattered locations on Molokai, one location on West Maui, and eastern Hawaii (HINHP Database 1999). Currently, it is known from Kauai, Oahu, Lanai, Maui, and Hawaii. On Kauai, there are seven total populations with 37 individuals on State and privately owned lands in Kalalau Valley; scattered across the north coast from Paaiki Valley to Milolii Ridge; in Kawaiula Valley; in Haiku; in Hipalau Valley; in Mount Kahili; on Hono O Na Pali NAR; and in Wahiawa drainage. However, it has been estimated that the total number of populations and individuals on Kauai may be as high as a dozen populations with thousands of individuals (HINHP Database 1999; GDSI 1999; USFWS 1999; K. Wood, *in litt.* 1999).

Bonamia menziesii is found in dry, wet, or mesic forest at elevations between 150 and 850 m (500 and 2,800 ft) (59 FR 56333; Austin 1999). Associated species include *Metrosideros polymorpha, Canthium odoratum, Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Hedyotis terminalis, Melicope anisata, M. barbigera, Myoporum sandwicense, Nestegis sandwicense, Pisonia* sp., *Pittosporum* sp., *Pouteria sandwicensis,* and *Sapindus oahuensis* (HINHP Database 1999; USFWS 1999).

The primary threats to this species on Kauai include habitat degradation and possible predation by feral pigs and goats, deer, and cattle; competition with a variety of alien plants; and fire (59 FR 56333).

Centaurium sebaeoides

Centaurium sebaeoides, a member of the gentian family (Gentianaceae), is an annual herb with fleshy leaves and stalkless flowers. This species is distinguished from *C. erythraea* (bitter herb), which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.* 1999).

Centaurium sebaeoides has been observed flowering in April. It is possible that heavy rainfall induces flowering. Populations are found in dry areas, and plants are more likely to be found following heavy rains (USFWS 1999).

Historically and currently, *Centaurium sebaeoides* is known from scattered localities on the islands of Kauai, Oahu, Molokai, Lanai, and Maui (HINHP Database 1999). Currently on Kauai, there are a total of three populations with 22–52 individuals on State owned land (HINHP Database 1999; GDSI 1999). This species is found at Kalalau Beach, seacliffs at Pohakuao, and Awaawapuhi Valley (HINHP Database 1999).

Centaurium sebaeoides typically grows in volcanic or clay soils or on cliffs in arid coastal areas below 250 m (820 ft) elevation (56 FR 55770; Wagner et al. 1999). Associated species include *Artemisia* sp., *Bidens* sp., *Chamaesyce celastroides, Dodonaea viscosa, Fimbristylis cymosa* (mau u aki aki), *Heteropogon contortus, Jaquemontia ovalifolia* (pa uohi iaka), *Lipochaeta succulenta, L. heterophylla* (nehe), *L. integrifolia* (nehe), *Lycium sandwicense, Lysimachia mauritiana* (kolokolo kuahiwi), *Mariscus phloides, Panicum fauriei* (NCN), *P. torridum* (kakonakona), *Scaevola sericea, Schiedea globosa* (NCN), *Sida fallax,* and *Wikstroemia uva-ursi* (akia) (56 FR 55770; Medeiros *et al.* 1999).

The major threats to this species on Kauai include habitat degradation by feral goats and cattle; competition from the alien plant species *Casuarina equisetfolia* (paina), *Casuarina glauca* (saltmarsh), *Leucaena leucocephala, Prosopis pallida* (kiawe), *Schinus terebinthifolius, Syzygium cumini* (Java plum), and *Tournefortia argentea* (tree heliotrope); trampling by humans on or near trails; and fire (56 FR 55770; Medeiros *et al.* 1999; USFWS 1999).

Cyperus trachysanthos

Cyperus trachysanthos, a member of the sedge family (Cyperaceae), is a perennial grass-like plant with a short rhizome. The culms are densely tufted, obtusely triangular in cross section, tall, sticky, and leafy at the base. This species is distinguished from others in the genus by the short rhizome, the leaf sheath with partitions at the nodes, the shape of the glumes, and the length of the culms (Koyama 1999).

Little is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Cyperus trachysanthos* was known on Niihau, Kauai, scattered locations on Oahu, Molokai, and Lanai (HINHP Database 1999). It is no longer extant on Molokai and Lanai. Currently, this species is reported from the Nualolo Valley on Kauai and west of Mokouia Valley on Niihau. There are two known populations, with about 300 individuals on the island of Kauai and an unknown number of individuals on Niihau (HINHP Database 1999; GDSI 1999).

Cyperus trachysanthos is usually found in wet sites (mud flats, wet clay soil, or wet cliff seeps) on coastal cliffs or talus slopes at elevations between 3 and 160 m (10 and 525 ft). *Hibiscus tiliaceus* (hau) is often found in association with this species (61 FR 53108; Koyama 1999).

On Kauai, the threats to this species are a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of populations. The threats on Niihau are unknown (61 FR 53108; USFWS 1999).

Delissea undulata ssp. *kauaiensis*

Delissea undulata, a member of the bell flower family (Campanulaceae), is an unbranched, palm-like, woody-stemmed perennial tree, with a dense cluster of leaves at the tip of the stem. One or two knob-like structures often occur on the back of the flower tube. The three recognized subspecies are distinguishable on the basis of leaf shape and margin characters: *D. undulata* ssp. *kauaiensis,* leaf blades are oval and have a flat-margin with sharp teeth; *D. undulata* ssp. *niihauensis,* leaf blades are heart shaped and have a flat-margin with shallow, rounded teeth; and *D. undulata* ssp. *undulata,* leaf blades are elliptic to lance-shaped and wavy-margin with small, sharply pointed teeth. This species is separated from the other closely related members of the genus by its large flowers and berries and broad leaf bases (Lammers 1999).

On the island of Hawaii, *Delissea undulata* ssp. *undulata* was observed in flower and fruit (immature) in August and outplanted individuals were observed in flower in July (61 FR 53124). No other life history information is currently available for any of the three varieties.

Historically and currently, *Delissea undulata* ssp. *kauaiensis* is known only from Kauai. Currently, there is one known population of five individuals on state owned land in the Kuia NAR (GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999). *Delissea undulata* ssp. *niihauensis* was known only from Niihau, but is now considered extinct (HINHP Database 1999; Lammers 1999). *Delissea undulata* ssp. *undulata* was known from southwestern Maui and western Hawaii. Currently, this variety occurs only on the island of Hawaii (61 FR 53124; HINHP Database 1999).

Delissea undulata ssp. *kauaiensis* occurs in open dry or mesic *Sophora chrysophylla* (mamane) and

Metrosideros polymorpha forest at elevations of about 610–1,740 m (2,000–5,700 ft). Associated native species include *Diospyros sandwicensis*, *Dodonaea viscosa*, *Psychotria mariniana*, *P. greenwelliae*, *Santalum ellipticum* (iliahialo e), *Nothocestrum breviflorum* (aiea), and *Acacia koa* (Lammers 1999).

The threats to this subspecies on Kauai are feral goats, pigs, and cattle; small population size; competition with the alien plants *Passiflora mollissima* and *Senecio mikanioides* (German ivy); fire; introduced slugs; seed predation by rats and introduced game birds; and a risk of extinction due to random naturally occurring events, such as landslides or hurricanes (USFWS 1996).

Euphorbia haeleeleana

Euphorbia haeleeleana, a member of the spurge family (Euphorbiaceae), is a dioecious tree with alternate papery leaves. This short-lived perennial species is distinguished from others in the genus in that it is a tree, whereas most of the other species are herbs or shrubs, as well as by the large leaves with prominent veins (Wagner *et al.* 1999).

Individual trees of *Euphorbia haeleeleana* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed. *Euphorbia haeleeleana* sets fruit between August and October (Wagner *et al.* 1999; USFWS 1999). Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Euphorbia haeleeleana is known historically and currently from northwestern Kauai and the Waianae Mountains of Oahu (61 FR 53108; USFWS 1999; HINHP Database 1999; K. Wood, *in litt.* 1999). On Kauai, there is a total of 14 populations with 522–593 individuals occurring on State and privately owned lands (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999). It is found on valley slopes and cliffs along Kauai's northwestern coast from Pohakuao to Haeleele Valley and Hipalau Valley within Waimeae Canyon, including Kuia NAR and the Na Pali Coast State Park (HINHP Database 1999; K. Wood, *in litt.* 1999).

Euphorbia haeleeleana is usually found in lowland mixed mesic or dry forest that is often dominated by *Metrosideros polymorpha*, *Acacia koa*, or *Diospyros* sp. This plant is typically found at elevations between 205 and 670 m (680 and 2,200 ft), but a few populations have been found up to 870 m (2,860 ft). Associated plants include *Acacia koaia* (koaia), *Antidesma platyphyllum*, *Carex meyenii*, *Carex wahuensis*, *Claoxylon* sp., *Diplazium sandwichianum*, *Dodonaea viscosa*, *Erythrina sandwicensis* (wiliwili), *Kokia kauaiensis*, *Pisonia sandwicensis*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psychotria mariniana*, *P. greenwelliae*, *Pteralyxia sandwicensis*, *Rauvolfia sandwicensis*, *Reynoldsia sandwicensis* (ohe), *Sapindus oahuensis*, *Tetraplasandra kauaiensis*, and *Xylosma* sp. (61 FR 53108).

Threats to this species on Kauai include habitat degradation and/or destruction by deer, feral goats, and pigs; seed predation by rats; fire; and competition with alien plants (61 FR 53108; USFWS 1999).

Flueggea neowawraea

Flueggea neowawraea, a member of the spurge family (Euphorbiaceae), is a large dioecious tree with white oblong pores covering its scaly, pale brown bark. This long-lived perennial species is the only member of the genus found in Hawaii and can be distinguished from other species in the genus by its large size, scaly bark, the shape, size, and color of the leaves, flowers clustered along the branches, and the size and shape of the fruits (Linney 1982; Neal 1965; Hayden 1999; USFWS 1999).

Individual trees of *Flueggea neowawraea* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed (Hayden 1999). Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Flueggea neowawraea* was known from Kauai, Oahu, Maui, Molokai, and Hawaii Island (Hayden 1999; HINHP Database 1999). Currently, it is known from Kauai, Oahu, east Maui, and Hawaii. On Kauai, this species is reported from Limahuli Valley, Kalalau, Pohakuao, and the Koaie and Poomau branches of Waimeae Canyon. There is a total of nine populations with 56 individuals occurring on State and privately owned lands. However, it has been estimated that the total number of individuals may be slightly over 100 (HINHP Database 1999; GDSI 1999; USFWS 1999; K. Wood, *in litt.* 1999).

Flueggea neowawraea occurs in dry or mesic forests at elevations of 250 to 1,000 m (820 to 3,280 ft) (Hayden 1999). Associated native plant species include *Alectryon macrococcus*, *Bobea timonioides*, *Charpentiera* sp., *Caesalpinia kauaiense*, *Hibiscus* sp., *Melicope* sp., *Myrsine lanaiensis*, *Metrosideros polymorpha*, *Munroidendron racemosum*, *Tetraplasandra* sp., *Kokia kauaiensis*, *Isodendrion* sp., *Pteralyxia kauaiensis*, *Psychotria mariniana*, *Diplazium sandwichianum*, *Freycinetia arborea*, *Nesoluma polynesicum*, *Diospyros* sp., *Antidesma pulvinatum* (hame), *A. platyphyllum*, *Canthium odoratum*, *Nestegis sandwicensis*, *Rauvolfia sandwicensis*, *Pittosporum* sp., *Tetraplasandra* sp., *Pouteria sandwicensis*, *Xylosma* sp., *Pritchardia* sp., *Bidens* sp., and *Streblus pendulinus* (59 FR 56333; HINHP Database 1999; USFWS 1999).

The threats to this species on Kauai include the black twig borer; habitat degradation by feral pigs, goats, deer, and cattle; competition with alien plant species; fire; small population size; depressed reproductive vigor; and a potential threat of predation on the fruit by rats (59 FR 56333; HINHP Database 1999; USFWS 1999).

Gouania meyenii

Gouania meyenii, a member of the buckthorn family (Rhamnaceae), is a shrub with entire, papery leaves. This short-lived perennial species is distinguished from the two other Hawaiian species of *Gouania* by its lack of tendrils on the flowering branches, the absence of teeth on the leaves, and the lack or small amount of hair on the fruit (Wagner *et al.* 1999).

Gouania meyenii flowers from March to May. Seed capsules develop in about 6 to 8 weeks. Plants appear to live about 10 to 18 years in the wild (USFWS 1998b). No other information exists on specific environmental requirements or limiting factors.

Historically, *Gouania meyenii* was known only from Oahu (HINHP Database 1999; Wagner *et al.* 1999). Currently, this species is found on Oahu and two locations on State and privately owned lands on Kauai: the Na Pali-Kona Forest Reserve and in Koaie Canyon. There is a total of three populations with nine individuals (56 FR 55770; GDSI 1999; HINHP Database 1999).

This species typically grows on rocky ledges, cliff faces, and ridge-tops in dry shrubland or *Metrosideros polymorpha* lowland mesic forest at elevations between 490 to 880 m (1,600 to 2,880 ft) (56 FR 55770; HINHP Database 1999; Wagner *et al.* 1999). Associated plants include *Dodonaea viscosa*, *Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis*, *Bidens* sp., *Carex meyenii*, *Diospyros* sp., *Lysimachia* sp., and *Senna gaudichaudii* (kolomona) (56 FR 55770; HINHP Database 1999).

Threats to *Gouania meyenii* on Kauai include competition from the alien

plants *Schinus terebinthifolius*, *Melinis minutiflora*, and *Psidium cattleianum*; fire; habitat degradation by feral pigs and goats; and the small number of extant populations and individuals (56 FR 55770; USFWS 1998b).

Hedyotis cookiana

Hedyotis cookiana, a member of the coffee family (Rubiaceae), is a small shrub with many branches and papery-textured leaves which are fused at the base to form a sheath around the stem. This short-lived perennial species is distinguished from other species in the genus that grow on Kauai by being entirely hairless (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis cookiana*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Hedyotis cookiana* was known from the islands of Hawaii, Kauai, Molokai, and Oahu (HINHP Database 1999). Currently, it is only known from one population of 60–80 individuals on State land within Hono O Na Pali NAR in Waiahuakua Valley on Kauai (GDSI 1999; HINHP Database 1999).

This species generally grows in streambeds or on steep cliffs close to water sources in lowland wet forest communities (59 FR 9304). *Hedyotis cookiana* is believed to have formerly been much more widespread on several of the main Hawaiian Islands at elevations between 170 and 370 m (560 and 1,210 ft) (Wagner *et al.* 1999).

The threats to this species on Kauai are risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of individuals in the only known population; flooding; competition with alien plants; and habitat modification by feral pigs and goats (59 FR 9304; USFWS 1995; HINHP Database 1999).

Isodendrion laurifolium

Isodendrion laurifolium, a member of the violet family (Violaceae), is a slender, straight shrub with few branches. The short-lived perennial species is distinguished from others in the genus by its leathery, oblong-elliptic or narrowly elliptic lance-shaped leaves (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Isodendrion laurifolium* is known from scattered locations on Kauai and Oahu (HINHP Database 1999). Currently, this species is found on Kauai in the following locations: Paaiki, Kawaiula, Haeleele, Makaha, Poopooiki, and Kuia Valleys (including Kuia NAR), and the Koaie branch of Waimeae Canyon (GDSI 1999; HINHP Database 1999). There are a total of eight populations with 132–143 individuals, on State-owned land (HINHP Database 1999; GDSI 1999; USFWS 1999).

Isodendrion laurifolium is usually found between 490 and 820 m (1,600 and 2,700 ft) in elevation in diverse mesic forest, or rarely wet forest, dominated by *Metrosideros polymorpha*, *Acacia koa* or *Diospyros* sp. with *Kokia kauaiensis*, *Streblus* sp., *Elaeocarpus bifidus*, *Canthium odoratum*, *Antidesma* sp., *Xylosma hawaiiense*, *Hedyotis terminalis*, *Pisonia* sp., *Nestegis sandwicensis*, *Dodonaea viscosa*, *Euphorbia haeleeleana*, *Pleomele* sp., *Pittosporum* sp., *Melicope* sp., *Claoxylon sandwicense*, *Alphitonia ponderosa*, *Myrsine lanaiensis*, and *Pouteria sandwicensis* (HINHP Database 1999).

The primary threats to *Isodendrion laurifolium* on Kauai are habitat degradation by feral goats, pigs and deer, and competition with alien plants (61 FR 53108; HINHP Database 1999; USFWS 1999).

Isodendrion longifolium

Isodendrion longifolium, a member of the violet family (Violaceae), is a slender, straight shrub. Hairless, leathery, lance-shaped leaves distinguish this species from others in the genus (Wagner *et al.* 1999).

Little is known about the life history of this short-lived perennial species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically and currently, *Isodendrion longifolium* is known from scattered locations on Kauai and Oahu (61 FR 53108; Lorence and Flynn 1991, 1993; HINHP Database 1999; USFWS 1999). On Kauai, this species is reported from Limahuli Valley, Mt. Kahili, Hanakapiai-Hoolulu Ridge, near Peapea, east of Haupu Peak, Wainiha-Manoa drainage, Hanapepe drainage, Kawaiula Valley, Kalalau Valley, Wahiawa Mountains, upper Waioli Valley, and Honopu. There is a total of 16 populations containing between 472–522 individual plants on State and privately owned lands. This species may also occur on or near land under Federal jurisdiction in Kokee State Park (HINHP Database 1999; GDSI 1999).

Isodendrion longifolium is found on steep slopes, gulches, and stream banks in mixed mesic or wet *Metrosideros polymorpha* forest, usually between 410 and 760 m (1,345 and 2,500 ft) elevation (61 FR 53108). Associated plants include *Dicranopteris linearis*, *Eugenia* sp., *Diospyros* sp., *Pritchardia* sp., *Canthium odoratum*, *Melicope* sp., *Cheirodendron* sp., *Ilex anomala*, *Pipturus* sp., *Hedyotis fluviatilis* (kamapua a), *Peperomia* sp., *Bidens* sp., *Nestegis sandwicensis*, *Syzygium sandwicensis*, *Cibotium* sp., *Bobea brevipes*, *Antidesma* sp., *Cyanea hardyi*, *Cyrtandra* sp., *Hedyotis terminalis*, *Peperomia* sp., *Perrottetia sandwicensis*, *Pittosporum* sp., and *Psychotria* sp. (61 FR 53108; Lorence and Flynn 1993; HINHP Database 1999; USFWS 1999).

The major threats to *Isodendrion longifolium* on Kauai are habitat degradation or destruction by feral goats and pigs, and competition with various alien plants (61 FR 53108; Lorence and Flynn 1993; HINHP Database 1999; USFWS 1999).

Lobelia niihauensis

Lobelia niihauensis, a member of the bellflower family (Campanulaceae), is a small, branched shrub. This short-lived perennial species is distinguished from others in the genus by lacking or nearly lacking leaf stalks, the magenta-colored flowers, the width of the leaf, and length of the flowers (Rock 1919, Lammers 1999).

Lobelia niihauensis flowers in late summer and early fall. Fruits mature a month to six weeks later. Plants are known to live as long as 20 years (USFWS 1998b).

Historically, *Lobelia niihauensis* was known from Oahu, Niihau, and western (Limahuli Valley to near the Hanapepe River) and eastern (Nounou Mountain and the Haupu Range) Kauai (HINHP Database 1999). It is now known to be extant only on Kauai and Oahu (HINHP Database 1999). On Kauai, 12 populations containing 456–1,406 individuals can be found on State and privately owned lands in Waimeae Canyon, on Polihale Ridge, along the Na Pali Coast, and in the Haupu Range (USFWS 1998b; HINHP Database 1999; GDSI 1999).

Lobelia niihauensis typically grows on exposed, mesic shrubland or coastal dry cliffs at elevation of 100 to 830 m (330 to 2720 ft) (HINHP Database 1999, Lammers 1999). Associated native plants include *Eragrostis* sp., *Bidens* sp., *Plectranthus parviflorus*, *Lipochaeta* sp., *Lythrum* sp., *Wilkesia hobdyi*, *Hibiscus kokio* ssp. *saint johnianus*, *Nototrichium* sp., *Schiedea apokremnos*, *Chamaesyce celastroides*, *Charpentiera* sp., and *Artemisia* sp. (HINHP Database 1999; USFWS 1998b).

On Kauai, the major threats to this species are habitat degradation and browsing by feral goats and competition from alien plants (56 FR 55770).

Lysimachia filifolia

Lysimachia filifolia, a member of the primrose family (Primulaceae), is a small shrub. This short-lived perennial species is distinguished from other taxa of the genus by its leaf shape and width, calyx lobe shape, and corolla length (Wagner *et al.* 1999).

Little is known about the life history of *Lysimachia filifolia*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Lysimachia filifolia* was known only from the upper portion of Olokele Valley on Kauai. This species is now also known from Oahu, and the "blue hole" area of Waialeale, Kauai (USFWS 1995; HINHP Database 1999). There is currently one population containing a total of 20–75 individuals on State owned land on Kauai (USFWS 1995; HINHP Database 1999; GDSI 1999).

This species typically grows on mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests at elevations of 245 to 680 m (800 to 2,230 ft). Associated plants include mosses, ferns, liverworts, *Machaerina* sp., *Heteropogon contortus*, and *Melicope* sp. (59 FR 9304; USFWS 1995; HINHP Database 1999; Wagner *et al.* 1999).

The major threats to *Lysimachia filifolia* on Kauai include competition with alien plant species; feral pigs; and the risk of extinction on Kauai from naturally occurring events (*e.g.*, landslides and hurricanes), due to the small number of individuals in the only known population (59 FR 9304; HINHP Database 1999).

Melicope knudsenii

Melicope knudsenii, a member of the citrus family (Rutaceae), is a tree with smooth gray bark and yellowish brown to olive-brown hairs on the tips of the branches. The long-lived perennial species is distinguished from *M. haupuensis* and other members of the genus by the distinct carpels present in the fruit, a hairless endocarp, a larger number of flowers per cluster, and the distribution of hairs on the underside of the leaves (*Stone et al.* 1999).

Little is known about the life history of *Melicope knudsenii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically and currently, *Melicope knudsenii* is known from Maui and Kauai (59 FR 9304; USFWS 1995; HINHP Database 1999). On Kauai, this species is known from five populations on State owned land, with a total of six individuals, in the Koaie drainage of Waimeae Canyon and the upper Kuia Valley (USFWS 1995; GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999).

Melicope knudsenii grows on forested flats or talus slopes in lowland dry to montane mesic forests at elevations of about 450 to 1,000 m (1,480 to 3,280 ft) with *Dodonaea viscosa, Antidesma* sp., *Metrosideros polymorpha, Hibiscus* sp., *Myrsine lanaiensis, Diospyros* sp., *Rauvolfia sandwicensis, Bobea* sp., *Nestegis sandwicensis, Hedyotis* sp., *Melicope* sp., *Psychotria* sp., or *Pittosporum kauaiensis* and *Xylosma* sp. (USFWS 1995; HINHP Database 1999; Stone *et al.* 1999).

The major threats to *Melicope knudsenii* on Kauai include competition with the alien plant, *Lantana camara;* habitat degradation by feral goats and pigs; fire; black twig borer; and the risk of extinction on Kauai from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals and populations (59 FR 9304; USFWS 1995).

Melicope pallida

Melicope pallida, a member of the citrus family (Rutaceae), is a tree with grayish white hairs and black, resinous new growth. The long-lived perennial species differs from *M. haupuensis, M. knudsenii*, and other members of the genus by presence of resinous new growth, leaves folded in clusters of three, and fruits with separate carpels (Stone *et al.* 1999).

Little is known about the life history of *Melicope pallida*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically and currently, *Melicope pallida* is known from Oahu and Kauai (USFWS 1995; HINHP Database 1999; D.W. Mathias, U.S. Navy *in litt.* 1999). On Kauai, the species is currently known in the following locations: Kalalau Valley and rim, Limahuli Valley, Koaie Stream in Waimeae Canyon, Pohakuao Valley, and Awaawapuhi Valley to Honopu Valley (59 FR 9304; K. Wood, *in litt.* 1999; HINHP Database 1999). There is a total of five populations with 181 individuals on State owned land (USFWS 1995; HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999), although the status of the one individual in Limahuli Valley is unknown (USFWS 1995).

Melicope pallida usually grows on steep rock faces in lowland to montane mesic to wet forests or shrubland at an elevation 490 to 915 m (1,600 to 3,000 ft) (59 FR 9304; Lorence and Flynn 1991; Stone *et al.* 1999). Associated plant taxa include *Dodonaea viscosa, Lepidium serra, Pleomele* sp., *Boehmeria grandis, Coprosma* sp., *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Schiedea membranacea, Psychotria mariniana, Dianella sandwicensis, Pritchardia minor, Chamaesyce celastroides* var. *hanapepensis, Nototrichium* sp., *Carex meyenii, Artemisia* sp., *Abutilon sandwicense, Alyxia olivaeformis, Dryopteris unidentata* (kumunui), *Metrosideros polymorpha, Pipturus albidus* (mamaki), *Sapindus oahuensis, Tetraplasandra* sp., and *Xylosma hawaiiense* (59 FR 9304; USFWS 1995; HINHP Database 1999).

The major threats to *Melicope pallida* are habitat destruction by feral goats and pigs; the black twig borer; fire; susceptibility to extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing populations; and competition with alien plant taxa (59 FR 9304; Hara and Beardsley 1979; Medeiros *et al.* 1986; USFWS 1995; HINHP Database 1999).

Peucedanum sandwicense

Peucedanum sandwicense, a member of the parsley family (Apiaceae), is a parsley-scented, sprawling herb. Hollow stems arise from a short, vertical stem with several fleshy roots. This short-lived perennial species is the only member of the genus in the Hawaiian Islands, one of three genera of the family with taxa endemic to the island of Kauai. This species differs from the other Kauai members of the parsley family in having larger fruit and pinnately compound leaves with broad leaflets (Constance and Affolter 1999).

Little is known about the life history of *Peucedanum sandwicense*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically and currently, *Peucedanum sandwicense* is known from Molokai, Maui, and Kauai (HINHP Database 1999). Discoveries in 1990 extended the known distribution of this species to the Waianae Mountains on the island of Oahu (59 FR 9304). Additionally, a population is known from State-owned Keopuka Rock, an islet off the coast of Maui. On Kauai, there are a total of 14 populations on

State and privately owned lands, containing between 238–339 individuals, in Kuia NAR, on the boundary of Na Pali Coast State Park and Hono O Na Pali NAR between Hanakapiai and Hoolulu Valleys, the mouth of the Hanakapiai Stream, in Waiahuakua Valley, Hoolulu Valley, Limahuli Valley, Waimeae Canyon, Kalalau trail, Kaaalahina Ridge, Hanakoa Valley, Haupu, Mahanaloa Valley, and Pohakuao (USFWS 1995; HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

This species grows in mixed shrub coastal dry cliff communities or diverse mesic forest from sea level to above 915 m (3,000 ft). It is associated with *Hibiscus kokio, Brighamia insignis, Bidens* sp., *Artemisia* sp., *Lobelia niihauensis, Wilkesia gymnoxiphium, Canthium odoratum, Dodonaea viscosa, Psychotria* sp., *Acacia koa, Kokio kauaiensis, Carex meyenii, Panicum lineale, Chamaesyce celastroides, Eragrostis* sp., *Diospyros* sp., and *Metrosideros polymorpha* (59 FR 9304; Constance and Affolter 1999; HINHP Database 1999).

The major threats to *Peucedanum sandwicense* on Kauai include competition with introduced plants; habitat degradation and browsing by feral goats and deer; and trampling and trail clearing (Hanakapiai population) (59 FR 9304; USFWS 1995; HINHP Database 1999).

Plantago princeps

Plantago princeps, a member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. This short-lived perennial species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, *anomala, laxiflora, longibracteata*, and *princeps*, are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown. However, individuals have been observed in fruit from April through September (USFWS 1999).

Historically, *Plantago princeps* was found on the islands of Hawaii, Kauai, Maui, Molokai, and Oahu. It no longer occurs on the island of Hawaii. Two varieties of the species, totaling seven populations, with 500–572 individuals, are extant on the island of Kauai, on both State and privately owned lands (HINHP Database 1999; GDSI 1999). Historically on Kauai, *Plantago princeps* var. *anomala* was reported from a ridge west of Hanapepe River. Currently, this variety is found on Mt. Kahili, upper Pohakuao (near Puu Ki), and from the south rim and upper reaches of Kalalau Valley. *Plantago princeps* var. *longibracteata* was historically known from Hanalei, the Wahiawa Mountains, and Hanapepe Falls. Currently, populations are known from Namolokama, Iliiliula drainage, Wainiha Valley, Waioli Valley, and Waialeale (59 FR 56333; GDSI 1999; HINHP Database 1999; USFWS 1999).

Plantago princeps is typically found on steep slopes, rock walls, or at bases of waterfalls in mesic to wet *Metrosideros polymorpha* forest from 480 to about 1,100 m (1,575 to 3,610 ft) in elevation (Wagner *et al.* 1999). Associated plant species include *Dodonaea viscosa, Psychotria* sp., *Dicranopteris linearis, Cyanea* sp., *Hedyotis* sp., *Melicope* sp., *Xylosma* sp., *Pleomele* sp., *Machaerina angustifolia, Athyrium* sp., *Bidens* sp., *Eragrostis* sp., *Lysimachia filifolia, Pipturus* sp., *Cyrtandra* sp., and *Dubautia plantaginea*, as well as *Exocarpos luteolus, Poa siphonoglossa, Nothocestrum peltatum, Remya montgomeryi*, and *Stenogyne campanulata*, and the threatened *Myrsine linearifolia* (HINHP Database 1999; USFWS 1999).

The primary threats to *Plantago princeps* on Kauai are herbivory and habitat degradation by feral pigs and goats, and competition with various alien plant species. Ungulate herbivory is especially severe, with numerous observations of *P. princeps* individuals exhibiting browse damage (61 FR 53108; USFWS 1999).

Platanthera holochila

Platanthera holochila, a member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance to egg-shaped, and the greenish-yellow flowers occur in open spikes. This short-lived perennial is the only species of this genus that occurs in the Hawaiian Islands (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Platanthera holochila* was known from the Alakai Swamp, Kaholuamano area, and the Wahiawa Mountains on Kauai, and scattered locations on Oahu, Molokai, and Maui (HINHP Database 1999). Currently, *P. holochila* is extant on Kauai, Molokai, and Maui (HINHP Database 1999). On Kauai, there are one to two populations with nine individuals reported on State and privately owned lands in the Alakai Swamp (HINHP Database 1999; GDSI 1999).

Platanthera holochila is found in montane *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed bog between 1,050 and 1,600 m (3,450 and 5,245 ft) elevation. Associated native plants include *Myrsine denticulata* (kolea), *Cibotium* sp., *Coprosma ernodeoides* (kukaenene), *Oreobolus furcatus* (NCN), *Styphelia tameiameiae*, and *Vaccinium* sp. (61 FR 53108; USFWS 1999).

The primary threats to *Platanthera holochila* on Kauai are habitat degradation and/or destruction by feral cattle and pigs; competition with alien plants; and a risk of extinction on Kauai from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor, due to the small number of remaining populations and individuals. Predation by introduced slugs may also be a potential threat to this species (61 FR 53108; USFWS 1999).

Schgiedea nuttallii

Schiedea nuttallii, a member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. This long-lived perennial species is distinguished from others in this endemic Hawaiian genus by its habit, length of the stem internodes, length of the inflorescence, number of flowers per inflorescence, and smaller leaves, flowers, and seeds (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea nuttallii*. Based on field and greenhouse observations, it is hermaphroditic (Weller and Sakai 1999). Plants on Oahu have been under observation for 10 years, and they appear to be long-lived. *Schiedea nuttallii* appears to be an outcrossing species. Under greenhouse conditions, plants fail to set seed unless hand pollinated, suggesting that this species requires insects for pollination. Fruits and flowers are abundant in the wet season but can be found throughout the year (USFWS 1999).

Historically and currently, *Schiedea nuttallii* is known from Kauai and Oahu (61 FR 53108; HINHP Database 1999). In addition, it was also reported from Molokai and Maui (USFWS 1999). Currently on Kauai, one population with 10–50 individuals is reported from east of Haupu Peak on privately owned land. The status of individuals previously found in the Limahuli Valley is currently unknown (HINHP Database 1999; GDSI 1999; USFWS 1999).

Schiedea nuttallii typically grows in diverse lowland mesic *Metrosideros polymorpha* forest at elevations between 415 and 790 m (1,360 and 2,590 ft). Associated plants include *Antidesma* sp., *Psychotria* sp., *Perrottetia sandwicensis, Pisonia* sp., and *Hedyotis acuminata* (USFWS 1999).

Schiedea nuttallii is threatened on Kauai by habitat degradation and/or destruction by feral pigs, goats, and possibly deer; competition with several alien plants; landslides; predation by the black twig borer; and a risk of extinction from naturally occurring events (e.g., landslides or hurricanes) and/or reduced reproductive vigor, due to the small number of individuals in the only known population (61 FR 53108; USFWS 1999). Based on observations that indicate that introduced snails and slugs may consume seeds and seedlings, it is likely that introduced molluscs also represent a major threat to this species (61 FR 53108; USFWS 1999).

Sesbania tomentosa

Sesbania tomentosa, a member of the pea family (Fabaceae), is typically a sprawling short-lived perennial shrub, but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets which are usually sparsely to densely covered with silky hairs. The flowers are salmon color tinged with yellow, orange-red, scarlet or rarely, pure yellow coloration. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that populations at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year (USFWS 1999). Other aspects of this plant's life history are unknown.

Currently, *Sesbania tomentosa* occurs on at least six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and in the Northwestern Hawaiian Islands (Nihoa and Necker). Although once found on Niihau and Lanai, it is no longer extant on these islands (59 FR 56333; GDSI 1999, USFWS 1999; HINHP Database 1999). On Kauai, *S. tomentosa* is known from two populations, with eight individuals, from the Polihale State Park area (State land) and may extend onto privately owned land and the PMRF (Federal land) (HINHP Database 1999; GDSI 1999).

Sesbania tomentosa is found on sandy beaches, dunes, soil pockets on lava, and along pond margins (Geesink *et al.* 1999; USFWS 1999). It commonly occurs in coastal dry shrublands and grasslands, but is also known from open *Metrosideros polymorpha* forests and mixed coastal dry cliffs in lower elevations (HINHP Database 1999). Associated plant species include *Sida fallax, Scaevola sericea, Dodonaea viscosa, Heteropogon contortus, Myoporum sandwicense*, and *Sporobolus virginicus* (akiaki) (HINHP Database 1999; USFWS 1999).

The primary threats to *Sesbania tomentosa* on Kauai are habitat degradation caused by competition with various alien plant species; lack of adequate pollination; seed predation by rats, mice and, potentially, alien insects; fire; and destruction by off-road vehicles and other human disturbances (59 FR 56333; USFWS 1999).

Solanum sandwicense

Solanum sandwicense, a member of the nightshade family (Solanaceae), is a large sprawling shrub. The younger branches are more densely hairy than older branches and the oval leaves usually have up to 4 lobes along the margins. This short-lived perennial species differs from others of the genus in having dense hairs on young plant parts, a greater height, and its lack of prickles (Sohmer and Gustafson 1987; Symon 1999).

Little is known about the life history of *Solanum sandwicense*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Solanum sandwicense* was known from both Oahu and Kauai (59 FR 9304; USFWS 1995; HINHP Database 1999; K. Wood, *in litt.* 1999). Currently, this species is only known from Kauai (Joan Yoshioka, The Nature Conservancy of Hawaii (TNCH), pers. comm. 2000). On Kauai, this species was reported from locations in the Kokee region bounded by Kalalau Valley, Milolii Ridge, and extending to the Hanapepe River (USFWS 1995; HINHP Database 1999). Currently, *Solanum sandwicense* is only known from eight populations of 13–14 individual plants on private and State lands (Kokee and Na Pali Coast State Parks), and may occur on or near land under Federal jurisdiction in Kokee State Park (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

This species is typically found in open, sunny areas at elevations between 760 and 1,220 m (2,500 and 4,000 ft) in diverse lowland or montane mesic forests or occasionally in wet forests (HINHP Database 1999; Symon 1999). Associated plant taxa include *Alphitonia ponderosa, Ilex anomala, Xylosma* sp., *Athyrium sandwicensis, Syzygium sandwicensis, Bidens cosmoides, Dianella sandwicensis, Poa siphonoglossa, Carex meyenii, Hedyotis* sp., *Coprosma* sp., *Dubautia* sp., *Pouteria sandwicensis, Cryptocarya mannii, Acacia koa, Metrosideros polymorpha, Dicranopteris linearis, Psychotria* sp., and *Melicope* sp. (59 FR 9304; USFWS 1995; HINHP Database 1999).

The major threats to populations of *Solanum sandwicense* on Kauai are habitat degradation by feral pigs, and competition with alien plant taxa (*Passiflora mollissima, Rubus argutus, Psidium cattleianum, Hedychium gardnerianum* (kahili ginger), and *Lonicera japonica*); fire; human disturbance and development; and a risk of extinction from naturally occurring events (*e.g.*, landslides or hurricanes) and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; USFWS 1995; HINHP Database 1999).

Spermolepis hawaiiensis

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Spermolepis hawaiiensis* was known from the islands of Kauai, Oahu, Lanai, and Hawaii (HINHP Database 1999). Currently, it is found on Kauai, Oahu, Molokai, Lanai, West Maui, and Hawaii (59 FR 56333; GDSI 1999; HINHP Database 1999). On Kauai, this species has been observed on State and private land in the Koaie branch and other unspecified locations within Waimeae Canyon, Hanapepe at Kapahili Gulch, and Hipalau (HINHP Database 1999). There are two known populations with four individuals total on Kauai. However, it has been estimated that the total number of plants on Kauai may be as high as a few thousand (HINHP Database 1999; GDSI 1999; USFWS 1999).

Spermolepis hawaiiensis is known from various vegetation types, including *Metrosideros polymorpha* forest and *Dodonaea viscosa* lowland dry shrubland, at elevations from about 305 to 610 m (1,000 to 2,000 ft). Associated plant species include *Eragrostis variabilis, Bidens sandvicensis, Schiedea spergulina, Lipochaeta* sp., *Cenchrus agrimonioides* (kamanomano), *Sida fallax, Doryopteris* sp., and the Federally listed endangered *Gouania hillebrandii* (HINHP Database 1999; USFWS 1999).

The primary threats to *Spermolepis hawaiiensis* on Kauai are habitat degradation by feral goats; competition with various alien plants; and erosion, landslides, and rockslides due to natural weathering which result in the death of individual plants, as well as habitat destruction (59 FR 56333; USFWS 1999).

Zanthoxylum hawaiiense

Zanthoxylum hawaiiense is a medium-size tree with pale to dark gray bark, and lemon-scented leaves in the rue family (Rutaceae). Alternate leaves are composed of three small triangular-oval to lance-shaped, toothed leaves (leaflets) with surfaces usually without hairs. A long-lived perennial tree, *Zanthoxylum hawaiiense* is distinguished from other Hawaiian members of the genus by several characteristics: three leaflets all of similar size, one joint on lateral leaf stalk, and sickle-shape fruits with a rounded tip (Stone *et al.* 1999).

No life history information is currently available for this species.

Historically, *Zanthoxylum hawaiiense* was known from five islands: Kauai, Molokai, Lanai, Maui, and Hawaii. Currently, *Zanthoxylum hawaiiense* is found on Kauai, Molokai, Maui, and Hawaii. On Kauai, this species is only known from a single individual on State owned land in Waimeae Valley (HINHP Database 1999; GDSI 1999).

Zanthoxylum hawaiiense is reported from lowland dry or mesic forests, or montane dry forest, at elevations between 550 and 1,740 m (1,800 and 5,700 ft) (Stone *et al.* 1999). This species is typically found in forests dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis* (59 FR 10305; HINHP Database 1999). Other associated species include *Pleomele auwahiensis* (halapepe), *Antidesma platyphyllum, Pisonia* sp., *Alectryon macrococcus, Charpentiera* sp., *Melicope* sp., *Dodonaea viscosa, Streblus pendulinus, Myrsine lanaiensis*, and *Sophora chrysophylla* (HINHP Database 1999).

The threats to *Zanthoxylum hawaiiense* on Kauai include competition with the alien plant species (*Melia azedarach, Lantana camara*, and *Pennisetum setaceum* (fountain grass)); fire; human disturbance; and risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of individuals in the only known population (59 FR 10305; USFWS 1996).

A summary of populations and landownership for these 81 plants species on Kauai and Niihau is given in Table 3.

TABLE 3.—SUMMARY OF POPULATIONS AND LANDOWNERSHIP FOR 81 SPECIES ON KAUAI AND NIIHAU

Species	Number of current populations	Landownership		
		Federal	State	Private
Adenophorus periens	7		X	X
Alectryon macrococcus	6		X	
Alsinidendron lychnoides	4		X	
Alsinidendron viscosum	4		X	X
Bonamia menziesii	7		X	X
Brighamia insignis	5		X	X
Centaurium sebaeoides	3		X	
Chamaesyce halemanui	7		X	
Cyanea asarifolia	2		X	
Cyanea recta	8		X	X
Cyanea remyi	7		X	X
Cyanea undulata	1			X
Cyperus trachysanthos	2		X	X
Cyrtandra cyaneoides	4		X	X
Cyrtandra limahuliensis	13		X	X
Delissea rhytidosperma	3		X	X
Delissea rivularis	2		X	X
Delissea undulata	1		X	
Diellia pallida	5		X	
Dubautia latifolia	24		X	X
Dubautia pauciflorula	4		X	X
Euphorbia haeleeleana	14		X	X
Exocarpos luteolus	9		X	X
Flueggea neowawraea	9		X	X
Gouania meyenii	3		X	X
Hedyotis cookiana	1		X	
Hedyotis st.-johnii	6		X	
Hesperomannia lydgatei	4		X	X
Hibiscadelphus woodii	1		X	
Hibiscus clayi	1		X	X
Hibiscus waimeae ssp. hannerae	2		X	X

TABLE 3.—SUMMARY OF POPULATIONS AND LANDOWNERSHIP FOR 81 SPECIES ON KAUAI AND NIIHAU—Continued

Species	Number of current populations	Landownership		
		Federal	State	Private
Isodendrion laurifolium	8		X	
Isodendrion longifolium	16	X	X	X
Kokia kauaiensis	11		X	
Labordia lydgatei	6		X	X
Labordia tinifolia var.	1			X
Lipochaeta fauriei	4		X	X
Lipochaeta micrantha	6		X	X
Lipochaeta waimeaensis	1		X	X
Lobelia niihauensis	12		X	X
Lysimachia filifolia	1		X	
Melicope haupuensis	3		X	
Melicope knudsenii	5		X	
Melicope pallida	5		X	
Melicope quadrangularis (extinct)	0			
Munroidendron racemosum	15		X	X
Myrsine linearifolia	8		X	X
Nothocestrum peltatum	9	X	X	
Panicum niihauense	1	X	X	X
Peucedanum sandwicense	14		X	X
Phyllostegia knudsenii	2		X	
Phyllostegia waimeae (extinct)	0			
Phyllostegia wawrana	4	X	X	X
Plantago princeps	7		X	X
Platanthera holochila	1–2		X	X
Poa mannii	6		X	
Poa sandvicensis	9		X	X
Poa siphonoglossa	5		X	
Pritchardia aylmer-robinsonii	1			X
Pritchardia napaliensis	4		X	
Pritchardia viscosa	1			X
Pteralyxia kauaiensis	20	X	X	X
Remya kauaiensis	14		X	
Remya montgomeryi	3	X	X	
Schiedea apokremnos	5		X	
Schiedea helleri	2		X	
Schiedea kauaiensis	2		X	
Schiedea membranacea	9	X	X	X
Schiedea nuttallii	1			X
Schiedea spergulina var. *leiopoda*	1			X
Schiedea spergulina var. *spergulina*	3		X	X
Schiedea stellarioides	2		X	
Sesbania tomentosa	2	X	X	X
Solanum sandwicense	8	X	X	X
Spermolepis hawaiiensis	2		X	X
Stenogyne campanulata	1–3		X	
Viola helenae	5			X
Viola kauaiensis var. *wahiawaensis*	2		X	X
Wilkesia hobdyi	7	X	X	X
Xylosma crenatum	3	X	X	X
Zanthoxylum hawaiiense	1		X	

Previous Federal Action

Federal action on these plants began as a result of Section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Adenophorus periens*, *Alectryon macrococcus* (as *A. macrococcum* var. *macrococcum* and *A. mahoe*), *Bonamia menziesii*, *Brighamia insignis* (as *B. citrina* var. *napaliensis* and *B. insignis*), *Chamaesyce halemanui* (as *Euphorbia halemanui*), *Delissea rhytidosperma*, *Dubautia latifolia* (as *D. latifolia* var. *latifolia*), *Exocarpos luteolus*, *Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscus clayi* (as *H. clayi* and *H. newhousei*), *H. waimeae* ssp. *hannerae* (as *H. waimeae*), *Kokia kauaiensis*, *Lipochaeta fauriei*, *L. micrantha* (as *L. exigua*), *Lobelia niihauensis*, *Melicope haupuensis* (as *Pelea haupuensis*), *M. knudsenii* (as *P. multiflora*), *M. pallida* (as *P. leveillei* and *P. pallida*), *Melicope quadrangularis* (*Pelea quadrangularis*), *Myrsine linearifolia* (as *M. linearifolia* var. *linearifolia*), *Nothocestrum peltatum*, *Peucedanum sandwicense* (as *P. kauaiense*), *Phyllostegia knudsenii*, *Plantago princeps* (as *P. princeps* var. *elata*, *P.* var. *laxifolia*, and *P.* var. *princeps*), *Poa sandvicensis*, *Pritchardia aylmer-robinsonii*, *Sesbania tomentosa* (as *S. hobdyi* and *S. tomentosa* var. *tomentosa*). *Solanum sandwicense* (as *S. hillebrandii* and *S. kauaiense*), *Viola helenae*, *V. kauaiensis* var. *wahiawaensis*, *Wilkesia hobdyi*, *Xylosma crenatum* (as *Antidesma crenatum*), and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *citiodora*), were considered to be endangered; *Delissea rivularis*, *Diellia pallida* (as *Diellia laciniata*), *Labordia lydgatei*, *Lipochaeta micrantha*, *L. waimeaensis*, *Lysimachia filifolia*, *Schiedea membranacea*, and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *hawaiiense* and *Z. hawaiiense* var. *velutinosum*) were considered to be threatened; and *Delissea undulata* (as *D. undulata* var. *argutidenta* and *D. undulata* var. *undulata*), *Gouania meyenii*, *Hedyotis cookiana*, *Melicope knudsenii* (as *Pelea knudsenii* and *P. tomentosa*), *Munroidendron racemosum* (as *M. racemosum* var. *macdanielsii*), *Plantago princeps* (as *P. princeps* var. *acaulis*, *P. princeps* var. *denticulata*, and *P. princeps* var. *queleniana*), and *Remya kauaiensis* were considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of Section 4(c)(2) (now Section 4(b)(3)) of the Act, and gave notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to Section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa, except for *Diellia pallida* considered to be endangered or thought to be extinct,. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over two years old be withdrawn. A one-year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), and September 30, 1993 (58 FR 51144).

A summary of the status categories for these 81 plant species in the 1980–1993 notices of review can be found in Table 4(a) and a summary of the listing actions can be found in Table 4(b).

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 81 PLANT SPECIES FROM KAUAI AND NIIHAU

Species	Federal Register notice of review			
	1980	1985	1990	1993
Adenophorus periens	C1	C1	C1	
Alectryon macrococcus	C1	3C	C1	
Alsinidendron lychnoides		C1*		C2
Alsinidendron viscosum		C1*	3A	
Bonamia menziesii	C1	C1	C1	
Brighamia insignis	C1	C1	C1	
Centaurium sebaeoides			C1	
Chamaesyce halemanui	C1	C1	C1	
Cyanea asarifolia			C1	
Cyanea recta			3A	
Cyanea remyi.				
Cyanea undulata			3A	
Cyperus trachysanthos				C2
Cyrtandra cyaneoides				C2
Cyrtandra limahuliensis			C1	
Delissea rhytidosperma	C1	C1	C1	
Delissea rivularis	C2	C2	3A	
Delissea undulata	C1	C1*	C1*	
Diellia pallida			C1*	
Dubautia latifolia	C1	C1	C1	
Dubautia pauciflorula			C1	
Euphorbia haeleeleana	C1	C1	C1	
Exocarpos luteolus		C1	C1	
Flueggea neowawraea	C1	C1	C1	
Gouania meyenii	3A	3A	C1	
Hedyotis cookiana	3A	3A	C1	
Hedyotis st.-johnii	C1	C1	C1	
Hesperomannia lydgatei	C1	C1	C1	
Hibiscadelphus woodii.				
Hibiscus clayi	C1	C1	C1	
Hibiscus waimeae ssp. *hannerae*	3C	3C	C2	C2
Isodendrion laurifolium	C1	C1	C1	C2
Isodendrion longifolium	C1	C1	C1	C2
Kokia kauaiensis	C2	C2	C2	C2
Labordia lydgatei	C2	C2	C2	
Labordia tinifolia var. *wahiawaensis.*				
Lipochaeta fauriei	C1*	C1*	C1	
Lipochaeta micrantha	C1	C1	C1	
Lipochaeta waimeaensis	C1	C1	C1	
Lobelia niihauensis	C1	C1	C1	
Lysimachia filifolia	C2	C2	C1	
Melicope haupuensis	C1	C1	C1	

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 81 PLANT SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Federal Register notice of review			
	1980	1985	1990	1993
Melicope knudsenii	C1*	C1*	C1	
Melicope pallida			C1*	
Melicope quadrangularis	C1	C1	C1*	
Munroidendron racemosum	C1	C1	C1	
Myrsine linearifolia	C1	C1	C2	C2
Nothocestrum peltatum	C1	C1	C1	
Panicum niihauense				C2
Peucedanum sandwicense	C2	C2	C2	
Phyllostegia knudsenii	C1	C1	3A	
Phyllostegia waimeae			C1	
Phyllostegia wawrana			3A	
Plantago princeps	C2	C2	C1	
Platanthera holochila	C1	C1	C1	C2
Poa mannii	C1	C1	C1*	
Poa sandvicensis	C1	C1	C1	
Poa siphonoglossa	C1	C1	C1	
Pritchardia aylmer-robinsonii	C1	C1	C1	
Pritchardia napaliensis			C2	C2
Pritchardia viscosa			C2	C2
Pteralyxia kauaiensis	C1	C1	C1	
Remya kauaiensis	C1*	C1*		
Remya montgomeryi.				
Schiedea apokremnos		C1	C1	
Schiedea helleri		C1*	3A	
Schiedea kauaiensis.				
Schiedea membranacea	C2	C2	C2	C2
Schiedea nuttallii				C2
Schiedea spergulina var. *leiopoda*		C1	C1*	
Schiedea spergulina var. *spergulina*		C1	C1	
Schiedea stellarioides		C1*	3A	
Sesbania tomentosa	C1*	C1*	C1	
Solanum sandwicense	C1*	C1*	C1	
Spermolepis hawaiiensis			C1	
Stenogyne campanulata			C1	
Viola helenae	C1	C1	C1	
Viola kauaiensis var. *wahiawaensis*	C1	C1	C2	C2
Wilkesia hobdyi	C1	C1		
Xylosma crenatum	C2	C2	C1	
Zanthoxylum hawaiiense	C1	C1	C1	

Key:

C1: Taxa for which the Service has on file enough substantial information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.

C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.

C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.

3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.

3C: Taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat.

Federal Register Notice of Review.

1980: 45 FR 82479; 1985: 50 FR 39525; 1990: 55 FR 6183; 1993: 58 FR 51144.

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 81 PLANT SPECIES FROM KAUAI AND NIIHAU

Species	Federal status	Proposed rule		Final rule	
		Date	Federal Register	Date	Federal Register
Adenophorus periens	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333.
Alectryon macrococcus	E	05/24/1991	56 FR 23842	05/15/1992	57 FR 20772.
Alsinidendron lychnoides	E	09/25/1995	60 FR 49359	10/10/1996	56 FR 53070.
Alsinidendron viscosum	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Bonamia menziesii	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333.
Brighamia insignis	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Centaurium sebaeoides	E	09/28/1990	55 FR 39664	10/29/1991	56 FR 55770.
Chamaesyce halemanui	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580.
Cyanea asarifolia	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Cyanea recta	T	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Cyanea remyi	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Cyanea undulata	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695.
Cyperus trachysanthos	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108
Cyrtandra cyaneoides	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Cyrtandra limahuliensis	T	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Delissea rhytidosperma	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Delissea rivularis	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Delissea undulata	E	06/27/1994	59 FR 32946	10/10/1996	61 FR 53124.
Diellia pallida	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Dubautia latifolia	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580.
Dubautia pauciflorula	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695.
Euphorbia haeleeleana	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108.
Exocarpos luteolus	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Flueggea neowawraea	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333.
Gouania meyenii	E	09/28/1990	55 FR 39664	10/29/1991	56 FR 55770.
Hedyotis cookiana	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Hedyotis st.-johnii	E	08/03/1990	55 FR 31612	09/30/1991	56 FR 49639.
Hesperomannia lydgatei	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695.
Hibiscadelphus woodii	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Hibiscus clayi	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Hibiscus waimeae ssp. *hannerae*	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Isodendrion laurifolium	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108.
Isodendrion longifolium	T	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108.
Kokia kauaiensis	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Labordia lydgatei	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695.
Labordia tinifolia var. *wahiawaensis*	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Lipochaeta fauriei	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Lipochaeta micrantha	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Lipochaeta waimeaensis	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Lobelia niihauensis	E	09/28/1990	55 FR 39664	10/29/1991	56 FR 55770.
Lysimachia filifolia	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Melicope haupuensis	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Melicope knudsenii	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Melicope pallida	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Melicope quadrangularis	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Munroidendron racemosum	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Myrsine linearifolia	T	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Nothocestrum peltatum	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Panicum niihauense	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108.
Peucedanum sandwicense	T	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Phyllostegia knudsenii	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Phyllostegia waimeae	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Phyllostegia wawrana	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Plantago princeps	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333.
Platanthera holochila	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108.
Poa mannii	E	04/07/1993	58 FR 18073	11/10/1994	59 FR 56330.
Poa sandvicensis	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580.
Poa siphonoglossa	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580.
Pritchardia aylmer-robinsonii	E	12/17/1992	57 FR 59970	08/07/1996	61 FR 41020.
Pritchardia napaliensis	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Pritchardia viscosa	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Pteralyxia kauaiensis	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Remya kauaiensis	E	10/02/1989	54 FR 40447	01/14/1991	56 FR 1450.
Remya montgomeryi	E	10/02/1989	54 FR 40447	01/14/1991	56 FR 1450.
Schiedea apokremnos	E	08/03/1990	55 FR 31612	09/30/1991	56 FR 49639.
Schiedea helleri	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Schiedea kauaiensis	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108.
Schiedea membranacea	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Schiedea nuttallii	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108.
Schiedea spergulina var. *leiopoda*	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Schiedea spergulina var. *spergulina*	T	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Schiedea stellarioides	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Sesbania tomentosa	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333.
Solanum sandwicense	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Spermolepis hawaiiensis	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333.
Stenogyne campanulata	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580.
Viola helenae	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695.
Viola kauaiensis var. *wahiawaensis*	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Wilkesia hobdyi	E	10/02/1989	54 FR 40444	06/22/1992	57 FR 27859.
Xylosma crenatum	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580.
Zanthoxylum hawaiiense	E	12/17/1992	57 FR 59951	03/04/1994	59 FR 10305.

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 81 PLANT SPECIES FROM KAUAI AND NIIHAU—Continued

Key: E = Endangered; T = Threatened.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was not prudent because it would not benefit the plant and/or would increase the degree of threat to the species.

These not prudent determinations were challenged in *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Haw. 1988). On March 9, 1998, the United States District Court for the District of Hawaii, directed us to review the prudency determinations for 245 listed plant species in Hawaii, including these 81 species. Among other things, the court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (2 F. Supp. 2d 1283–1285). For example, the court suggested that, before concluding critical habitat would not be prudent, the Service should consider whether designation might prevent an inadvertent act of destruction by educating the public.

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species (*Id.* at 1286–88). In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that, substantively, designation establishes a "uniform protection plan" prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public and State and local governments and affords them an opportunity to participate in the designation (*Id.* at 1288). The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public and State and local governments of the listing and of the areas that are essential to the species' conservation, the court found that although no Federal activity may be occurring on private property at present, there may be such activity in the future (*Id.* at 1285–88).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (24 F. Supp. 2d 1074). This rule responds to the court's order.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received over 100 responses from individuals, non-profit organizations, county governments, the State of Hawaii's Division of Forestry and Wildlife, and Federal agencies (U.S. Department of Defense (Army, Navy, Air Force)). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While many of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80% opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it will cause economic hardship, negatively impact cooperative projects, polarize relationships with hunters, or potentially increase the occurrences of trespassing or vandalism on private lands. In addition, commenters cited a lack of information on the biological and ecological needs of these plants which may lead to designation based on insufficient data. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

On October 5, 1999, we mailed letters to over 160 landowners on the islands of Kauai and Niihau requesting any information considered germane to the management of any of the 245 plants on his/her property. The letters contained a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the plants that may be on his/her property, and a handout containing general information on critical habitat. We received 25 written responses to our landowner mailing with varying types of information on their current land management activities. These responses included information on: the presence of fences or locked gates to restrict public access; access to the respondent's property by hunters or if hunting is allowed on the property; ongoing weeding and rat control programs; and the propagation and/or planting of native plants. Some respondents stated that the plants of concern were not on her/his property. Only a few respondents expressed support for the designation of critical habitat. We held three open houses on the island of Kauai, at the Waimea Community Center, the Kauai War Memorial Convention Hall in Lihue, and the Kilauea Neighborhood Center, on October 19–21, 1999, respectively, to meet one-on-one with local landowners and other interested members of the public. A total of forty-eight people attended the three open houses.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat

designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. In 50 CFR 402.02, "jeopardize the continued existence" (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation, and management plans, and through section 7 consultations and section 10 permits.

A. Prudency Redetermination

As previously stated, designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for each species, we analyzed the potential threats and benefits for each species in accordance with the court's order. Two species, *Phyllostegia waimeae* and *Melicope quadrangularis,* both endemic to the island of Kauai, are no longer extant in the wild. *Phyllostegia waimeae* was last collected in 1969 and no individuals were seen in two subsequent visits (1991 and 1992) to the last known location (Wagner *et al.* 1999; K. Wood, pers. comm. 2000). *Melicope quadrangularis* was last observed in the Wahiawa drainage area in 1991. This species has not been seen in surveys of this area subsequent to Hurricane Iniki in 1992 (S. Perlman and K. Wood, pers. comm. 2000). In addition, neither species is known to be in storage or under propagation. Therefore, we believe both species may be extinct. Under these circumstances, we propose that designation of critical habitat for *Phyllostegia waimeae* and *Melicope quadrangularis* is not prudent because such designation would be of no benefit to these species. If either species is rediscovered we may revise this proposal to incorporate or address new information as new data becomes available (*See* 16 U.S.C. § 1532 (5)(B); 50 CFR 424.13(f)).

Due to low numbers of individuals and/or populations and their inherent immobility, the other 79 plants may be vulnerable to unrestricted collection, vandalism, or disturbance. We examined the evidence currently available for each of these taxa and found specific evidence of vandalism, disturbance, and/or the threat of unrestricted collection for three species of *Pritchardia,* the native palm, on Kauai and Niihau. At the time of listing we determined that designation of critical habitat was not prudent for *Pritchardia napaliensis, P. aylmer-robinsonii,* and *P. viscosa* because it would increase the degree of threat from vandalism or collecting, and would provide no benefits (60 FR 53070). At that time, we had information that at least one of the remaining adult plants has been damaged by spiked boots used either by a botanist or seed collector to scale these trees (61 FR 53070). Since publication of the listing rule, we learned of additional instances of vandalism, collection, and commercial trade involving these three species of *Pritchardia.* In 1993, the State's DOFAW planted 39 young *Pritchardia napaliensis* plants within a fenced exclosure near the Wailua River. A short time after this, the fence was vandalized and all 39 plants were removed (A. Kyono, pers. comm. 2000; Craig Koga, DOFAW, **in litt.** 1999). In mid-1996, a young plant and seeds of *Pritchardia viscosa* were removed from the only known location of this species (A. Kyono, pers. comm. 2000; C. Koga, *in litt.* 1999). Recently we received information on the commercial trade in palms conducted through the internet (Grant Canterbury, USFWS, *in litt.* 2000). Several nurseries advertise and sell seedlings and young plants, including 13 species of Hawaiian *Pritchardia.* Seven of these species are federally protected, including *Pritchardia aylmer-robinsonii* and *P. napaliensis.*

In light of this information, we believe that designation of critical habitat would likely increase the threat to these three species of *Pritchardia* on Kauai and Niihau from vandalism or collection. These plants are easy to identify, and they are attractive to collectors of rare palms either for their personal use or to trade or sell for personal gain (Johnson 1996). The final listing rules for these three species contained only general information on their distribution, but the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these species more vulnerable to incidents of vandalism or collection, and, therefore, contribute to the decline of these species and make recovery more difficult (61 FR 53070).

In addition, we believe that designation would not provide significant benefits that would outweigh these increased risks. First, *Pritchardia napaliensis* and *P. viscosa* do not occur on Federal land, and the State lands where they are found are zoned for conservation. Some of the plants are on lands set aside in perpetuity to conserve their natural flora and fauna, or as geological sites (State of Hawaii natural area reserves) (HRS § 195–1). In addition, these species are found in areas that are remote and accessible only by four-wheel drive (*Pritchardia viscosa* only), foot, boat, or helicopter. It is, therefore, unlikely that the lands on which these species are found will be developed. Since there do not appear to be any actions in the future that would involve a Federal agency, designation of critical habitat would not provide any additional protection to the species than they do not already have through listing alone. If, however, in the future any Federal involvement did occur, such as through the permitting process or funding by the U.S. Department of Agriculture, the U.S. Department of Interior, the Corps through section 404 of the Clean Water Act, the U.S. Federal Department of Housing and Urban Development or the Federal Highway Administration, the actions would be subject to consultation under section 7 of the Act.

Pritchardia aylmer-robinsonii is only found on Niihau, which is presently zoned for agriculture. There are no hotels, resorts, or other commercial development on the island. Public access to the island is not generally authorized by the landowner. Most of the people living on this island (fewer than 300) are employed in ranching activities (Department of Geography 1998). While future activities on the island are unknown, it is unlikely that the land on which this species is found will be developed. Future projects that would require Federal permitting or funding such as those mentioned above are particularly unlikely on this privately owned island. Although access to the island has been and continues to be restricted, *P. aylmer-robinsonii* is endemic only to Niihau, so any commercial availability indicates that collection, either with or without the land owner's permission, has occurred in the past and may still be occurring.

We acknowledge that critical habitat designation, in some situations, may provide some value to the species, for example, by identifying areas important for conservation and calling attention to those areas in need of special protection. However, for these three species, we believe that the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection. Given all of the above considerations, we propose that designation of critical habitat for *Pritchardia aylmer-robinsonii, P. napaliensis,* and *P. viscosa* is not prudent.

We examined the evidence available for the other 76 taxa and have not, at this time, found specific evidence of taking, vandalism, collection or trade of these taxa or of similar species. Consequently, while we remain concerned that these activities could potentially threaten these 76 plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied; (2) focusing conservation activities; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of these 76 species, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. At least eleven of these species are reported on or near Federal lands (see Table 3), where actions are subject to section 7 consultation. Although a majority of the species considered in this rule are located exclusively on non-Federal lands with limited Federal activities, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by these species would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There would also be some educational or informational benefits to the designation of critical habitat. Benefits of designation would include the notification of land owners, land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

Therefore, we propose that designation of critical habitat is prudent for these 76 plant species: *Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyanea undulata, Cyperus trachysanthos, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Diellia pallida, Dubautia latifolia, Dubautia pauciflorula, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hesperomannia lydgatei, Hibiscadelphus woodii, Hibiscus clayi, Hibiscus waimeae* ssp. *hannerae, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lobelia niihauensis, Lysimachia filifolia, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phyllostegia knudsenii, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea helleri, Schiedea kauaiensis, Schiedea membranacea, Schiedea nuttallii, Schiedea spergulina* var. *leiopoda, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Sesbania tomentosa, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne campanulata, Viola helenae, Viola kauaiensis* var. *wahiawaensis, Wilkesia hobdyi, Xylosma crenatum,* and *Zanthoxylum hawaiiense.*

B. Primary Constituent Elements

In accordance with section 4(b)(2) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Very little is known about the specific physical and biological requirements of most of these 76 species. Therefore, we have defined primary constituent elements on the basis of general habitat features of the areas in which the species currently occur, such as the plant community associated with the listed species and the species' physical location (*e.g.*, steep rocky cliffs, talus slopes, stream banks, and elevation). Areas outside the currently known occupied areas (*e.g.*, potentially suitable unoccupied habitat) may be important to the recovery of most of these 76 species. However, in most cases, we have not included such areas in the proposed designations for these species because of our limited knowledge of the historical range (*i.e.*, the geographical area they once occupied but from which they are now absent) and our lack of information on the physical or biological features essential for the conservation of a species. The Service considers reintroduction (the planting of propagated individuals or seedlings into an area) to be an acceptable method to try to achieve plant species recovery. Native plant reintroductions are, however, difficult and successful efforts are not common. We do not know enough about these 76 species to identify areas where reintroductions are likely to be successful. We will continue to support experimental efforts to reintroduce species. Such reintroduction work may lead to the need to designate unoccupied habitat in the future to provide additional protection to the reintroduced plants. The areas we are currently proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of the 76 plant species.

The plant communities given in the following descriptions of primary constituent elements are based upon biological and physical features such as predominant plant species, associated plant species, elevation, precipitation, and soil types and/or parent material. Descriptions of these Hawaiian plant communities are found in Gagne and Cuddihy (1999).

Species Endemic to Kauai

The currently known primary constituent elements of critical habitat for *Alsinidendron lychnoides* are:

(1) montane wet forests

(a) dominated by *Metrosideros polymorpha* and *Cheirodendron* sp., or by *M. polymorpha* and *Dicranopteris linearis,* and

(b) containing one or more of the following native plant species: *Carex* sp., *Cyrtandra* sp., *Machaerina* sp., *Vaccinium* sp., *Peperomia* sp., *Hedyotis terminalis, Astelia* sp., or *Broussaisia arguta;* and

(2) elevations between 1,100 and 1,320 m (3,610 and 4,330 ft).

The currently known primary constituent elements of critical habitat for *Alsinidendron viscosum* are:

(1) steep slopes

(a) in *Acacia koa-Metrosideros polymorpha* lowland, montane mesic, or wet forest, and

(b) containing one or more of the following native plant species: *Alyxia olivaeformis, Bidens cosmoides, Bobea* sp., *Carex* sp., *Coprosma* sp., *Dodonaea viscosa, Gahnia* sp., *Ilex anomala, Melicope* sp., *Pleomele* sp., *Psychotria* sp., or *Schiedea stellarioides;* and

(2) elevations between 820 and 1,200 m (2,700 and 3,940 ft).

The currently known primary constituent elements of critical habitat for *Chamaesyce halemanui* are:

(1) steep slopes of gulches

(a) in mesic *Acacia koa* forests, and

(b) containing one or more of the following native plant species: *Metrosideros polymorpha, Alphitonia ponderosa, Antidesma platyphyllum, Bobea brevipes, Cheirodendron trigynum, Coprosma* sp., *Diospyros sandwicensis, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Kokia kauaiensis, Melicope haupuensis, Pisonia* sp., *Pittosporum* sp., *Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Pouteria sandwicensis, Santalum freycinetianum,* or *Styphelia tameiameiae;* and

(2) elevations between 660 to 1,100 m (2,165 to 3,610 ft).

The currently known primary constituent elements of critical habitat for *Cyanea asarifolia* are:

(1) pockets of soil on sheer rock cliffs

(a) in lowland wet forests, and

(b) containing one or more of the following native plant species: *Hedyotis elatior, Machaerina angustifolia, Metrosideros polymorpha, Touchardia latifolia,* or *Urera glabra;* and

(2) elevations between 330 to 730 m (1,080 to 2,400 ft).

The currently known primary constituent elements of critical habitat for *Cyanea recta* are:

(1) gulches or slopes

(a) in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland, and

(b) containing one or more of the following native plant species: *Antidesma* sp., *Cheirodendron platyphyllum, Cibotium* sp., *Dicranopteris linearis, Diplazium* sp., or *Psychotria* sp.; and

(2) elevations between 400 to 1,200 m (1,310 to 3,940 ft).

The currently known primary constituent elements of critical habitat for *Cyanea remyi* are:

(1) lowland wet forest or shrubland and containing one or more of the following native plant species: *Antidesma* sp., *Cheirodendron* sp., *Diospyros* sp., *Broussaisia arguta, Metrosideros polymorpha, Freycinetia arborea, Hedyotis terminalis, Machaerina angustifolia, Perrottetia sandwicensis, Psychotria hexandra,* or *Syzygium sandwicensis;* and

(2) elevations between 360 and 930 m (1,180 and 3,060 ft).

The currently known primary constituent elements of critical habitat for *Cyanea undulata* are:

(1) pristine, undisturbed sites along shady stream banks or steep to vertical slopes; and

(2) elevations between 630 to 800 m (2,070 to 2,625 ft).

The currently known primary constituent elements of critical habitat for *Cyrtandra cyaneoides* are:

(1) steep slopes or cliffs near streams or waterfalls

(a) in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *M. polymorpha* and *Dicranopteris linearis,* and

(b) containing one or more of the following native species: *Perrottetia sandwicensis, Pipturus* sp., *Bidens* sp., *Psychotria* sp., *Pritchardia* sp., *Freycinetia arborea, Cyanea* sp., *Cyrtandra limahuliensis, Diplazium sandwichianum, Gunnera* sp., *Coprosma* sp., *Stenogyne* sp., *Machaerina* sp., *Boehmeria grandis, Pipturus* sp., *Cheirodendron* sp., *Hedyotis terminalis,* or *Hedyotis tryblium;* and

(2) elevations between 550 and 1,220 meter (1,800 and 4,000 ft).

The currently known primary constituent elements of critical habitat for *Cyrtandra limahuliensis* are:

(1) stream banks

(a) in lowland wet forests, and

(b) containing one or more of the following native plant species: *Antidesma* sp., *Cyrtandra kealiea, Pisonia* sp., *Pipturus* sp., *Cibotium glaucum, Eugenia* sp., *Hedyotis terminalis, Dubautia* sp., *Boehmeria grandis, Touchardia latifolia, Bidens* sp., *Hibiscus waimeae, Charpentiera* sp., *Urera glabra, Pritchardia* sp., *Cyanea* sp., *Perrottetia sandwicensis, Metrosideros polymorpha, Dicranopteris linearis, Gunnera kauaiensis,* or *Psychotria* sp.; and

(2) elevations between 245 and 915 m (800 and 3,000 ft).

The currently known primary constituent elements of critical habitat for *Delissea rhytidosperma* are:

(1) well-drained soils with medium or fine-textured subsoil

(a) in diverse lowland mesic forests or *Acacia koa* dominated lowland dry forests, and

(b) containing one or more of the following native species: *Euphorbia haeleeleana, Psychotria hobdyi, Pisonia* sp., *Pteralyxia* sp., *Dodonaea viscosa, Cyanea* sp., *Hedyotis* sp., *Dianella sandwicensis, Diospyros sandwicensis, Styphelia tameiameiae,* or *Nestegis sandwicensis;* and

(2) elevations between 120 and 915 m (400 and 3,000 ft).

The currently known primary constituent elements of critical habitat for *Delissea rivularis* are:

(1) steep slopes near streams

(a) in *Metrosideros polymorpha—Cheirodendron trigynum* montane wet or mesic forest, and

(b) containing one or more of the following native plant species: *Broussaisia arguta, Carex* sp., *Coprosma* sp., *Melicope clusiifolia, M. anisata, Psychotria hexandra, Dubautia knudsenii, Diplazium sandwichianum, Hedyotis foggiana, Ilex anomala,* or *Sadleria* sp.; and

(2) elevations between 1,100 to 1,220 m (3,610 to 4,000 ft).

The currently known primary constituent elements of critical habitat for *Diellia pallida* are:

(1) bare soil on steep, rocky, dry slopes

(a) in lowland mesic forests, and

(b) containing one or more of the following native plant species: *Acacia koa, Alectryon macrococcus, Antidesma platyphyllum, Metrosideros polymorpha, Myrsine lanaiensis, Zanthoxylum dipetalum, Tetraplasandra kauaiensis, Psychotria mariniana, Carex meyenii, Diospyros hillebrandii, Hedyotis knudsenii, Canthium odoratum, Pteralyxia kauaiensis, Nestegis sandwicensis, Alyxia olivaeformis, Wilkesia gymnoxiphium, Alphitonia ponderosa, Styphelia tameiameiae,* or *Rauvolfia sandwicensis;* and

(2) elevations between 520 to 915 m (1,700 to 3,000 ft).

The currently known primary constituent elements of critical habitat for *Dubautia latifolia* are:

(1) gentle or steep slopes on well drained soil

(a) in semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha,* and

(b) containing one or more of the following native plant species: *Pouteria sandwicensis, Dodonaea viscosa, Nestegis sandwicensis, Diplazium sandwicensis, Elaeocarpus bifidus, Claoxylon sandwicense, Bobea* sp., *Pleomele* sp., *Antidesma* sp., *Cyrtandra* sp., *Xylosma* sp., *Alphitonia ponderosa, Coprosma waimeae, Dicranopteris linearis, Hedyotis terminalis, Ilex anomala, Melicope anisata, Psychotria mariniana,* or *Scaevola* sp.; and

(2) elevations between 800 to 1,220 m (2,625 to 4,000 ft).

The currently known primary constituent elements of critical habitat for *Dubautia pauciflorula* are:

(1) lowland wet forest within stream drainages; and

(2) elevations between 670–700m (2,200–2,300 ft).

The currently known primary constituent elements of critical habitat for *Exocarpos luteolus* are:

(1) wet areas bordering swamps and open, dry ridges

(a) in lowland or montane *Metrosideros polymorpha* dominated wet forest communities, and

(b) containing one or more of the following native plant species: *Acacia koa, Cheirodendron trigynum, Pouteria sandwicensis, Dodonaea viscosa, Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus, Melicope haupuensis, Dubautia laevigata, Dianella sandwicensis, Poa sandwicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Santalum freycinetianum, Styphelia tameiameiae,* or *Dicranopteris linearis;* and

(2) elevations between 475 and 1,290 m (1,560 and 4,220 ft).

The currently known primary constituent elements of critical habitat for *Hedyotis st.-johnii* are:

(1) crevices of north-facing, near-vertical coastal cliff faces within the spray zone

(a) in sparse dry coastal shrubland, and

(b) containing one or more of the following native plant species: *Myoporum sandwicense, Eragrostis variabilis, Lycium sandwicense, Heteropogon contortus, Artemisia australis or Chamaesyce celastroides;* and

(2) elevations below 75 m (250 ft).

The currently known primary constituent elements of critical habitat for *Hesperomannia lydgatei* are:

(1) stream banks with rich brown soil and silty clay

(a) in *Metrosideros polymorpha* or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest, and

(b) containing one or more of the following associated native plant species: *Adenophorus* sp., *Antidesma* sp., *Broussaisia arguta, Cheirodendron* sp., *Elaphoglossum* sp., *Freycinetia arborea, Hedyotis terminalis, Labordia lydgatei, Machaerina angustifolia, Peperomia* sp., *Pritchardia* sp., *Psychotria hexandra,* and *Syzygium sandwicensis;* and

(2) elevations between 410–915 m (1,345–3,000 ft).

The currently known primary constituent elements of critical habitat for *Hibiscadelphus woodii* are:

(1) basalt talus or cliff walls

(a) in *Metrosideros polymorpha* montane mesic forest, and

(b) containing one or more of the following associated native plant species: *Bidens sandwicensis, Artemisia australis, Melicope pallida, Dubautia* sp., *Lepidium serra, Lipochaeta* sp., *Lysimachia glutinosa, Carex meyenii, Chamaesyce celastroides* var. *hanapepensis, Hedyotis* sp., *Nototrichium* sp., *Panicum lineale, Myrsine* sp., *Stenogyne campanulata, Lobelia niihauensis,* or *Poa mannii;* and

(2) elevations around 915 m (3,000 ft).

The currently known primary constituent elements of critical habitat for *Hibiscus clayi* are:

(1) slopes

(a) in *Acacia koa* or *Diospyros* sp.-*Pisonia* sp.-*Metrosideros polymorpha* lowland dry or mesic forest, and

(b) containing one or more of the following associated native plant species: *Hedyotis acuminata, Pipturus* sp., *Psychotria* sp., *Cyanea hardyi, Artemisia australis,* or *Bidens* sp.; and

(2) elevations between 230 to 350 m (750 to 1,150 ft).

The currently known primary constituent elements of critical habitat for *Hibiscus waimeae* ssp. *hannerae* are:

(1) *Metrosideros polymorpha-Dicranopteris linearis* or *Pisonia* sp., *Charpentiera elliptica* lowland wet or mesic forest and containing one or more of the following associated native plant species: *Antidesma* sp., *Psychotria* sp., *Pipturus* sp., *Bidens* sp., *Bobea* sp., *Sadleria* sp., *Cyrtandra* sp., *Cyanea* sp., *Cibotium* sp., *Perrottetia sandwicensis,* or *Syzygium sandwicensis;* and

(2) elevations between 190 and 560 m (620 and 1,850 ft).

The currently known primary constituent elements of critical habitat for *Kokia kauaiensis* are:

(1) diverse mesic forest containing one or more of the following associated native plant species: *Acacia koa, Metrosideros polymorpha, Bobea* sp., *Diospyros sandwicensis, Hedyotis* sp., *Pleomele* sp., *Pisonia* sp., *Xylosma* sp., *Isodendrion* sp., *Syzygium*

sandwicensis, Antidesma sp., *Alyxia olivaeformis, Pouteria sandwicensis, Streblus pendulinus, Canthium odoratum, Nototrichium* sp., *Pteralyxia kauaiensis, Dicranopteris linearis, Hibiscus* sp., *Flueggea neowawraea, Rauvolfia sandwicensis, Melicope* sp., *Diellia laciniata, Tetraplasandra* sp., *Chamaesyce celastroides, Lipochaeta fauriei, Dodonaea viscosa, Santalum* sp., *Claoxylon* sp., or *Nestegis sandwicensis;* and

(2) elevations between 350–660 m (1,150–2,165 ft).

The currently known primary constituent elements of critical habitat for *Labordia lydgatei* are:

(1) *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest containing one or more of the following associated native plant species: *Psychotria* sp., *Hedyotis terminalis* sp., *Cyanea* sp., *Cyrtandra* sp., *Labordia hirtella, Antidesma platyphyllum var. hillebrandii, Syzygium sandwicensis, Ilex anomala,* or *Dubautia knudsenii;* and

(2) elevations between 635 and 855 m (2,080 to 2,800 ft).

The currently known primary constituent elements of critical habitat for *Labordia tinifolia* var. *wahiawaensis* are:

(1) streambanks

(a) in lowland wet forests dominated by *Metrosideros polymorpha,* and

(b) containing one or more of the following associated species: *Cheirodendron* sp., *Dicranopteris linearis, Cyrtandra* sp., *Antidesma* sp., *Psychotria* sp., *Hedyotis terminalis,* or *Athyrium microphyllum;* and

(2) elevations between 300 to 920 m (985 to 3,020 ft).

The currently known primary constituent elements of critical habitat for *Lipochaeta fauriei* are:

(1) moderate shade to full sun on the sides of steep gulches

(a) in diverse lowland mesic forests, and

(b) containing one or more of the following native species: *Diospyros* sp., *Myrsine lanaiensis, Euphorbia haeleeleana, Acacia koa, Pleomele aurea, Sapindus oahuensis, Nestegis sandwicensis, Dodonaea viscosa, Psychotria mariniana, Psychotria greenwelliae, Kokia kauaiensis,* or *Hibiscus waimeae;* and

(2) elevations between 480 to 900 m (1,575 to 2,950 ft).

The currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *exigua* are:

(1) cliffs, ridges, or slopes

(a) in grassy, shrubby or dry mixed communities, and

(b) containing one or more of the following associated native plant species: *Artemisia australis, Bidens sandvicensis, Plectranthus parviflorus, Chamaesyce celastroides, Diospyros* sp., *Canthium odoratum, Neraudia* sp., *Pipturus* sp., *Hibiscus kokio, Sida fallax, Eragrostis* sp., *or Lepidium bidentatum;* and

(2) elevations between 305–430 m (1,000–1,400 ft).

The currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *micrantha* are:

(1) basalt cliffs, stream banks, or level ground

(a) in mesic or diverse *Metrosideros polymorpha-Diospyros* sp. forest, and

(b) containing one or more of the following associated native plant species: *Lobelia niihauensis, Chamaesyce celastroides* var. *hanapepensis, Neraudia kauaiensis, Rumex* sp., *Nontrichium* sp., *Artemisia* sp., *Dodonaea viscosa, Antidesma* sp., *Hibiscus* sp., *Xylosma* sp., *Pleomele* sp., *Melicope* sp., *Bobea* sp., and *Acacia koa;* and

(2) elevations between 610–720 m (2,000–2,360 ft).

The currently known primary constituent elements of critical habitat for *Lipochaeta waimeaensis* are:

(1) extremely steep, shrub-covered gulches

(a) in diverse lowland forest, and

(b) containing the native species *Dodonaea viscosa* or *Lipochaeta connata;* and

(2) elevations between 350 to 400 m (1,150 to 1,310 ft).

The currently known primary constituent elements of critical habitat for *Melicope haupuensis* are:

(1) moist talus slopes

(a) in *Metrosideros polymorpha* dominated lowland mesic forests, or *Metrosideros polymorpha-Acacia koa* montane mesic forest and

(b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Diospyros* sp., *Psychotria mariniana, P. greenwelliae, Melicope ovata, M. anisata, M. barbigera, Dianella sandwicensis, Pritchardia minor, Tetraplasandra waimeae, Claoxylon sandwicensis, Cheirodendron trigynum, Pleomele aurea, Cryptocarya mannii, Pouteria sandwicensis, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus,* or *Antidesma* sp; and

(2) elevations between 375 to 1,075 m (1,230 to 3,530 ft).

The currently known primary constituent elements of critical habitat for *Munroidendron racemosum* are:

(1) steep exposed cliffs or ridge slopes

(a) in coastal or lowland mesic forest, and

(b) containing one or more of the following associated plant taxa including: *Pisonia umbellifera, Canavalia galeata, Sida fallax, Brighamia insignis, Canthium odoratum, Psychotria* sp., *Nestegis sandwicensis, Tetraplasandra* sp., *Bobea timonioides, Rauvolfia sandwicensis, Pleomele* sp., *Pouteria sandwicensis,* or *Diospyros* sp.; and

(2) elevations between 120 to 400 m (395 to 1,310 ft).

The currently known primary constituent elements of critical habitat for *Myrsine linearifolia* are:

(1) diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest

(a) with *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and

(b) containing one or more of the following associated native plant species: *Dubautia* sp., *Cryptocarya mannii, Sadleria pallida, Myrsine* sp., *Syzygium sandwicensis, Machaerina angustifolia, Freycinetia arborea, Hedyotis terminalis, Cheirodendron* sp., *Bobea brevipes, Nothocestrum* sp., *Melicope* sp., *Eurya sandwicensis, Psychotria* sp., *Lysimachia* sp., or native ferns; and

(2) elevations between 585 to 1,280 m (1,920 to 4,200 ft).

The currently known primary constituent elements of critical habitat for *Nothocestrum peltatum* are:

(1) fertile soil on steep slopes

(a) in montane or lowland mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha,* and

(b) containing one or more of the following associated native plant species: *Antidesma* sp., *Dicranopteris linearis, Bobea brevipes, Elaeocarpus bifidus, Alphitonia ponderosa, Melicope anisata, M. barbigera, M. haupuensis, Pouteria sandwicensis, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra Kauaiensis, Claoxylon sandwicensis, Cheirodendron trigynum, Psychotria mariniana, P. greenwelliae, Hedyotis terminalis, Ilex anomala, Xylosma* sp., *Cryptocarya mannii, Coprosma* sp., *Pleomele aurea, Diplazium sandwicensis, Broussaisia arguta,* or *Perrottetia sandwicensis;* and

(2) elevations between 915 to 1,220 m (3,000 to 4,000 ft).

The currently known primary constituent elements of critical habitat for *Panicum niihauense* are:

(1) sand dunes

(a) in coastal shrubland, and

(b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Cassytha filiformis, Scaevola sericea, Sida fallax, Vitex rotundifolia,* or *Sporobolus* sp.; and

(2) elevations of 100 m or less (330 ft).

The currently known primary constituent elements of critical habitat for *Phyllostegia knudsenii* are:

(1) *Metrosideros polymorpha* lowland mesic or wet forest containing one or more of the following associated native plant species: *Perrottetia sandwicensis, Cyrtandra kauaiensis, Cyrtandra paludosa, Elaeocarpus bifidus, Claoxylon sandwicensis, Cryptocarya mannii, Ilex anomala, Myrsine linearifolia, Bobea timonioides, Selaginella arbuscula, Diospyros* sp., *Zanthoxylum dipetalum, Pittosporum* sp., *Tetraplasandra* sp., *Pouteria sandwicensis,* or *Pritchardia minor;* and

(2) elevations between 865–975 m (2,840–3,200 ft).

The currently known primary constituent elements of critical habitat for *Phyllostegia wawrana* are:

(1) *Metrosideros polymorpha* dominated lowland or montane wet or mesic forest

(a) with *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and

(b) containing one or more of the following associated native plant species: *Delissea rivularis, Diplazium sandwichianum, Vaccinium* sp., *Broussaisia arguta, Myrsine lanaiensis, Psychotria* sp., *Dubautia knudsenii, Scaevola procera, Gunnera* sp., *Pleomele aurea, Claoxylon sandwicense, Elaphoglossum* sp., *Hedyotis* sp., *Sadleria* sp., and *Syzygium sandwicensis;* and

(2) elevations between 780–1,210 m (2,560–3,920 ft).

.The currently known primary constituent elements of critical habitat for *Poa mannii* are:

(1) cliffs, rock faces, or stream banks

(a) in lowland or montane wet, dry, or mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* montane mesic forest, and

(b) containing one or more of the following associated native plant species: *Alectryon macrococcus, Antidesma platyphyllum, Bidens cosmoides, Chamaesyce celastroides* var. *hanapepensis, Artemisia australis, Bidens sandwicensis, Lobelia sandwicensis, Wilkesia gymnoxiphium, Eragrostis variabilis, Panicum lineale, Mariscus phloides, Luzula hawaiiensis, Carex meyenii, C. wahuensis, Cyrtandra wawrae, Dodonaea viscosa, Exocarpos luteolus, Labordia helleri, Nototrichium* sp., *Schiedea amplexicaulis, Hedyotis terminalis, Melicope anisata, M. barbigera, M. pallida, Pouteria sandwicensis, Schiedea membranacea, Diospyros sandwicensis, Psychotria mariniana, P. greenwelliae,* or *Kokia kauaiensis;* and

(2) elevations between 460 and 1,150 m (1,510 and 3,770 ft).

The currently known primary constituent elements of critical habitat for *Poa sandvicensis* are:

(1) wet, shaded, gentle or steep slopes, ridges, or rock ledges

(a) in semi-open or closed, mesic or wet, diverse montane forest dominated by *Metrosideros polymorpha,* and

(b) containing one or more of the following associated native species: *Dodonaea viscosa, Dubautia* sp., *Coprosma* sp., *Melicope* sp., *Dianella sandwicensis, Alyxia olivaeformis, Bidens* sp., *Dicranopteris linearis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Acacia koa, Psychotria* sp., *Hedyotis* sp., *Scaevola* sp., *Cheirodendron* sp., or *Syzygium sandwicensis;* and

(2) elevations between 1,035 to 1,250 m (3,400 to 4,100 ft).

The currently known primary constituent elements of critical habitat for *Poa siphonoglossa* are:

(1) shady banks near ridge crests

(a) in mesic *Metrosideros polymorpha* forest, and

(b) containing one or more of the following associated native plant species: *Acacia koa, Psychotria* sp., *Scaevola* sp., *Alphitonia ponderosa, Zanthoxylum dipetalum, Tetraplasandra Kauaiensis, Dodonaea viscosa, Hedyotis* sp., *Melicope* sp., *Vaccinium* sp., *Styphelia tameiameiae, Carex meyenii, Carex wahuensis,* or *Wilkesia gymnoxiphium;* and

(2) elevations between 1,000 to 1,200 m (3,300 and 3,940 ft).

The currently known primary constituent elements of critical habitat for *Pteralyxia kauaiensis* are:

(1) diverse mesic or wet forests containing one or more of the following associated plant taxa: *Pisonia sandwicensis, Euphorbia haeleeleana, Charpentiera elliptica, Pipturus* sp., *Neraudia kauaiensis, Hedyotis terminalis, Pritchardia* sp., *Gardenia remyi, Syzygium* sp., *Pleomele* sp., *Cyanea* sp., *Hibiscus* sp., *Kokia kauaiensis, Alectryon macrococcus, Canthium odoratum, Nestegis sandwicensis, Bobea timonioides, Rauvolfia sandwicensis, Nesoluma polynesicum, Myrsine lanaiensis, Caesalpinia Kauaiensis, Tetraplasandra* sp., *Acacia koa, Styphelia tameiameiae, Dodonaea viscosa, Gahnia* sp., *Freycinetia arborea, Psychotria mariniana, Diplazium sandwichianum, Zanthoxylum dipetalum, Carex* sp., *Delissea* sp., *Xylosma hawaiiense, Alphitonia ponderosa, Santalum freycinetianum, Antidesma* sp., *Diospyros* sp., *Metrosideros polymorpha, Dianella sandwicensis, Poa sandwicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense,* or *Pouteria sandwicensis;* and

(2) elevations between 250 to 610 m (810 to 2,000 ft).

The currently known primary constituent elements of critical habitat for *Remya kauaiensis* are:

(1) steep, north or northeast facing slopes

(a) in *Acacia koa-Metrosideros polymorpha* lowland mesic forest, and

(b) containing one or more of the following associated native plant species: *Chamaesyce* sp., *Nestegis sandwicensis, Diospyros* sp., *Hedyotis terminalis, Melicope* ssp., *Pouteria sandwicensis, Schiedea membranacea, Psychotria mariniana, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis* or *Claoxylon sandwicensis;* and

(2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

The currently known primary constituent elements of critical habitat for *Remya montgomeryi* are:

(1) steep, north or northeast-facing slopes, cliffs, or stream banks near waterfalls

(a) in *Metrosideros polymorpha* mixed mesic forest, and

(b) containing one or more of the following associated native plant species: *Lysimachia glutinosa, Lepidium serra, Boehmeria grandis, Poa mannii, Stenogyne campanulata, Myrsine linearifolia, Bobea timonioides, Ilex anomala, Zanthoxylum dipetalum, Claoxylon sandwicensis, Tetraplasandra* sp., *Artemisia* sp., *Nototrichium* sp., *Cyrtandra* sp., *Dubautia plantaginea, Sadleria* sp., *Cheirodendron* sp., *Scaevola* sp., or *Pleomele* sp.; and

(2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

The currently known primary constituent elements of critical habitat for *Schiedea apokremnos* are:

(1) crevices of near-vertical coastal cliff faces

(a) in sparse dry coastal shrub vegetation, and

(b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Chamaesyce* sp., *Bidens* sp., *Artemisia australis, Lobelia niihauensis, Wilkesia hobdyi, Lipochaeta connata, Myoporum sandwicense, Canthium odoratum,* or *Peperomia* sp.; and

(2) elevations between 60 to 330 m (200 to 1,080 ft).

The currently known primary constituent elements of critical habitat for *Schiedea helleri* are:

(1) ridges and steep cliffs

(a) in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, or *Metrosideros polymorpha-Cheirodendron* sp. montane wet forest, or *Acacia koa-Metrosideros polymorpha* montane mesic forest, and

(b) containing one or more of the following associated native plant species: *Dubautia raillardioides, Scaevola procera, Hedyotis terminalis, Syzygium sandwicensis, Melicope clusifolia, Cibotium* sp., *Broussaisia arguta, Cheirodendron* sp., *Cyanea hirtella, Dianella sandwicensis, Viola wailenalenae,* or *Poa sandwicensis;* and

(2) elevations between 1,065–1,100 m (3,490–3,610 ft).

The currently known primary constituent elements of critical habitat for *Schiedea kauaiensis* are:

(1) steep slopes

(a) in diverse mesic or wet forest, and

(b) containing one or more of the following associated plant taxa: *Psychotria mariniana, Psychotria hexandra, Canthium odoratum, Pisonia* sp., *Microlepia speluncae, Exocarpos luteolus, Diospyros* sp., *Peucedanum sandwicense,* or *Euphorbia haeleeleana;* and

(2) elevations between 680–790 m (2,230–2,590 ft).

The currently known primary constituent elements of critical habitat for *Schiedea membranacea* are:

(1) cliffs or cliff bases

(a) in mesic or wet habitats,

(b) in lowland, or montane shrubland, or forest communities dominated by *Acacia koa, Pipturus* sp. or *Metrosideros polymorpha,* and

(c) containing one or more of the following associated native plant species: *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Hibiscus waimeae, Psychotria mariniana, Canthium odoratum, Pisonia* sp., *Perrottetia sandwicensis, Scaevola procera, Sadleria cyatheoides, Diplazium sandwicensis, Thelypteris sandwicensis, Boehmeria grandis, Dodonaea viscosa, Myrsine* sp., *Bobea brevipes, Alyxia olivaeformis, Psychotria greenwelliae, Pleomele* sp., *Alphitonia ponderosa, Joinvillea ascendens* ssp. *ascendens, Athyrium sandwichianum, Machaerina angustifolia, Cyrtandra paludosa, Touchardia latifolia, Thelypteris cyatheoides, Lepidium serra, Eragrostis variabilis, Remya kauaiensis, Lysimachia kalalauensis, Labordia helleri, Mariscus pennatiformis, Asplenium praemorsum,* or *Poa sandvicensis;* and

(2) elevations between 520 and 1,160 m (1,700 and 3,800 ft).

The currently known primary constituent elements of critical habitat for *Schiedea spergulina* var. *leiopoda* are:

(1) bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases

(a) in diverse lowland mesic forests, and

(b) containing one or more of the following native plants: *Bidens sandvicensis, Doryopteris* sp., *Peperomia leptostachya,* or *Plectranthus parviflorus;* and

(2) elevations between 180 and 800 m (590 and 2,625 ft).

The currently known primary constituent elements for *Schiedea spergulina* var. *spergulina* are:

(1) bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases

(a) in diverse lowland mesic forests, and

(b) containing one or more of the following associated plant taxa: *Heliotropium* sp., or *Nototrichium sandwicense;* and

(2) elevations between 180 and 800 m (590 and 2,625 ft).

The currently known primary constituent elements of critical habitat for *Schiedea stellarioides* are:

(1) steep slopes

(a) in closed *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest or shrubland, and

(b) containing one or more of the following native plant species: *Nototrichium* sp., *Artemisia* sp., *Dodonaea viscosa, Melicope* sp., *Dianella sandwicensis, Bidens cosmoides, Mariscus* sp., or *Styphelia tameiameiae;* and

(2) elevations between 610 and 1,120 m (2,000 and 3,680 ft).

The currently known primary constituent elements of critical habitat for *Stenogyne campanulata* are:

(1) rock faces of nearly vertical, north-facing cliffs

(a) in diverse lowland or montane mesic forest, and

(b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Lepidium serra, Lysimachia glutinosa, Perrottetia sandwicensis,* or *Remya montgomeryi;* and

(2) an elevation of 1,085 m (3,560 ft).

The currently known primary constituent elements of critical habitat for *Viola helenae* are:

(1) stream banks or adjacent valley bottoms with light to moderate shade in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest; and

(2) elevations between 610–855 m (2,000–2,800 ft).

The currently known primary constituent elements of critical habitat for *Viola kauaiensis* var. *wahiawaensis* are:

(1) open montane bog or wet shrubland containing one or more of the following native plant species: *Dicranopteris linearis, Diplopterygium pinnatum, Syzygium sandwicensis,* or *Metrosideros polymorpha;* and

(2) elevations between 640 and 865 m (2,100 and 2,840 ft).

The currently known primary constituent elements of critical habitat for *Wilkesia hobdyi* are:

(1) coastal dry cliffs or very dry ridges containing one or more of the following associated native plant species: *Artemisia* sp., *Wilkesia gymnoxiphium, Lipochaeta connata, Lobelia niihauensis, Peucedanum sandwicensis, Hibiscus kokio* ssp. *saint johnianus, Canthium odoratum, Peperomia* sp., *Myoporum sandwicense, Sida fallax, Waltheria indica, Dodonaea viscosa,* or *Eragrostis variabilis;* and

(2) elevations between 275 to 400 m (900 to 1,310 ft).

The currently known primary constituent elements of critical habitat for *Xylosma crenatum* are:

(1) diverse *Acacia koa -Metrosideros polymorpha* montane mesic forest, or *M. polymorpha-Dicranopteris linearis* montane wet forest, or *A. koa -M. polymorpha* montane wet forest, and containing one or more of the following associated native plant species: *Tetraplasandra kauaiensis, Hedyotis terminalis, Pleomele aurea, Ilex anomala, Claoxylon sandwicense, Myrsine alyxifolia, Nestegis sandwicensis, Streblus pendulinus, Psychotria* sp., *Diplazium sandwichianum, Pouteria sandwicensis, Scaevola procera, Coprosma* sp., *Athyrium sandwichianum, Touchardia latifolia, Dubautia knudsenii, Cheirodendron* sp., *Lobelia yuccoides, Cyanea hirta, Poa sandwicensis,* or *Diplazium sandwichianum;* and

(2) elevations between 975 to 1,065 m (3,200 to 3,490 ft).

Multi Island Species

The currently known primary constituent elements of critical habitat for *Adenophorus periens* on Kauai are:

(1) well-developed, closed canopy that provides deep shade or high humidity

(a) in *Metrosideros polymorpha-Cibotium glaucum* lowland wet forests, open *M. polymorpha* montane wet forest, or *M. polymorpha-Dicranopteris linearis* lowland wet forest, and

(b) containing one or more of the following native plant species: *Athyrium sandwicensis, Broussaisia* sp., *Cheirodendron trigynum, Cyanea* sp., *Cyrtandra* sp., *Dicranopteris linearis, Freycinetia arborea, Hedyotis terminalis, Labordia hirtella, Machaerina angustifolia, Psychotria* sp., *Psychotria hexandra,* or *Syzygium sandwicensis;* and

(2) elevations between 400 and 1,265 m (1,310 and 4,150 ft).

The currently known primary constituent elements of critical habitat for *Alectryon macrococcus* on Kauai are:

(1) dry slopes or gulches

(a) in *Diospyros* sp.-*Metrosideros polymorpha* lowland mesic forest, *M. polymorpha* mixed mesic forest, or *Diospyros* sp. mixed mesic forest, and

(b) containing one or more of the following native plant species: *Nestegis sandwicensis, Psychotria* sp., *Pisonia* sp., *Xylosma* sp., *Streblus pendulinus, Hibiscus* sp., *Antidesma* sp., *Pleomele* sp., *Acacia koa, Melicope knudsenii, Hibiscus waimeae, Pteralyxia* sp., *Zanthoxylum* sp., *Kokia Kauaiensis, Rauvolfia sandwicensis, Myrsine lanaiensis, Canthium odoratum, Canavalia* sp., *Alyxia olivaeformis, Nesoluma polynesicum, Munroidendron racemosum, Caesalpinia kauaiense, Tetraplasandra* sp., *Pouteria sandwicensis,* or *Bobea timonioides;* and

(2) elevations between 360 to 1,070 m (1,180 to 3,510 ft).

The currently known primary constituent elements of critical habitat for *Bonamia menziesii* on Kauai are:

(1) dry, mesic or wet forests containing one or more of the following native plant species: *Metrosideros polymorpha, Canthium odoratum, Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Hedyotis terminalis, Melicope anisata, Melicope barbigera, Myoporum sandwicense, Nestegis sandwicense, Pisonia* sp., *Pittosporum* sp., *Pouteria sandwicensis,* or *Sapindus oahuensis;* and

(2) elevations between 150 and 850 m (500 and 2,800 ft).

The currently known primary constituent elements of critical habitat for *Brighamia insignis* on both Kauai and Niihau are:

(1) rocky ledges with little soil or steep sea cliffs

(a) in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in.), and

(b) containing one or more of the following native plant species: *Artemisia* sp., *Chamaesyce celastroides, Canthium odoratum, Eragrostis variabilis, Heteropogon contortus, Hibiscus kokio, Hibiscus saintjohnianus, Lepidium serra, Lipochaeta succulenta, Munroidendron racemosum,* or *Sida fallax;* and

(2) elevations between sea level and 480 m (1,575 ft).

The currently known primary constituent elements of critical habitat for *Centaurium sebaeoides* on Kauai are:

(1) volcanic or clay soils or cliffs

(a) in arid coastal areas, and

(b) containing one or more of the following native plant species: *Artemisia* sp., *Bidens* sp., *Chamaesyce celastroides, Dodonaea viscosa, Fimbristylis cymosa, Heteropogon contortus, Jaquemontia ovalifolia, Lipochaeta succulenta, Lipochaeta heterophylla, Lipochaeta integrifolia, Lycium sandwicense, Lysimachia mauritiana, Mariscus phloides, Panicum fauriei, P. torridum, Scaevola sericea, Schiedea globosa, Sida fallax,* or *Wikstroemia uva-ursi;* and

(2) elevations below 250 m (800 ft).

The currently known primary constituent elements of critical habitat for *Cyperus trachysanthos* on both Kauai and Niihau are:

(1) wet sites (mud flats, wet clay soil, or wet cliff seeps)

(a) on coastal cliffs or talus slopes, and

(b) containing the native plant species *Hibiscus tiliaceus*; and

(2) elevations between 3 and 160 m (10 and 525 ft).

The currently known primary constituent elements of critical habitat for *Delissea undulata* on Kauai are:

(1) dry or mesic open *Sophora chrysophylla-Metrosideros polymorpha* forests containing one or more of the following native plant species: *Diospyros sandwicensis, Dodonaea viscosa, Psychotria mariniana, P. greenwelliae, Santalum ellipticum, Nothocestrum breviflorum,* or *Acacia koa*; and

(2) elevations between 610–1,740 m (2,000–5,700 ft).

The currently known primary constituent elements of critical habitat for *Euphorbia haeleeleana* on Kauai are:

(1) lowland mixed mesic or dry forest

(a) that is often dominated by *Metrosideros polymorpha, Acacia koa,* or *Diospyros* sp., and

(b) containing one or more of the following native plant species: *Acacia koaia, Antidesma platyphyllum, Claoxylon* sp., *Carex meyenii, Carex wahuensis, Diplazium sandwichianum, Dodonaea viscosa, Erythrina sandwicensis, Kokia kauaiensis, Pleomele aurea, Psychotria mariniana, P. greenwelliae, Pteralyxia sandwicensis, Rauvolfia sandwicensis, Reynoldsia sandwicensis, Sapindus oahuensis, Tetraplasandra Kauaiensis, Pouteria sandwicensis, Pisonia sandwicensis,* or *Xylosma* sp.; and

(2) elevations between 205 and 670 m (680 and 2,200 ft).

The currently known primary constituent elements of critical habitat for *Flueggea neowawraea* on Kauai are:

(1) dry or mesic forests containing one or more of the following native plant species: *Alectryon macrococcus, Bobea timonioides, Charpentiera* sp., *Caesalpinia kauaiense, Hibiscus* sp., *Melicope* sp., *Metrosideros polymorpha, Myrsine lanaiensis, Munroidendron racemosum, Tetraplasandra* sp., *Kokia kauaiensis, Isodendrion* sp., *Pteralyxia kauaiensis, Psychotria mariniana, Diplazium sandwichianum, Freycinetia arborea, Nesoluma polynesicum, Diospyros* sp., *Antidesma pulvinatum, A. platyphyllum, Canthium odoratum, Nestegis sandwicensis, Rauvolfia sandwicensis, Pittosporum* sp., *Tetraplasandra* sp., *Pouteria sandwicensis, Xylosma* sp.; *Pritchardia* sp., *Bidens* sp., or *Streblus pendulinus*; and

(2) elevations of 250 to 1,000 m (820 to 3,280 ft).

The currently known primary constituent elements of critical habitat for *Gouania meyenii* on Kauai are:

(1) rocky ledges, cliff faces, or ridge tops

(a) in dry shrubland or *Metrosideros polymorpha* lowland mesic forest, and

(b) containing one or more of the following native plant species: *Dodonaea viscosa, Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis, Bidens* sp., *Carex meyenii, Diospyros* sp., *Lysimachia* sp., or *Senna gaudichaudii*; and

(2) elevations between 490 to 880 m (1,600 to 2,880 ft).

The currently known primary constituent elements of critical habitat for *Hedyotis cookiana* on Kauai are:

(1) streambeds or steep cliffs close to water sources in lowland wet forest communities; and

(2) elevations between 170 and 370 m (560 and 1,210 ft).

The currently known primary constituent elements for *Isodendrion laurifolium* on Kauai are:

(1) diverse mesic or wet forest

(a) dominated by *Metrosideros polymorpha, Acacia koa,* or *Diospyros* sp., and

(b) containing one or more of the following associated native plant species: *Kokia kauaiensis, Streblus* sp., *Elaeocarpus bifidus, Canthium odoratum, Antidesma* sp., *Xylosma hawaiiense, Hedyotis terminalis, Pisonia* sp., *Nestegis sandwicensis, Dodonaea viscosa, Euphorbia haeleeleana, Pleomele* sp., *Pittosporum* sp., *Melicope* sp., *Claoxylon sandwicense, Alphitonia ponderosa, Myrsine lanaiensis,* or *Pouteria sandwicensis*; and

(2) elevations between 490 and 820 m (1,600 and 2,700 ft).

The currently known primary constituent elements of critical habitat for *Isodendrion longifolium* on Kauai are:

(1) steep slopes, gulches, or stream banks

(a) in mesic or wet *Metrosideros polymorpha* forests, and

(b) containing one or more of the following native species: *Dicranopteris linearis, Eugenia* sp., *Diospyros* sp., *Pritchardia* sp., *Canthium odoratum, Melicope* sp., *Cheirodendron* sp., *Ilex anomala, Pipturus* sp., *Hedyotis fluviatilis, Peperomia* sp., *Bidens* sp., *Nestegis sandwicensis, Cyanea hardyi, Syzygium* sp., *Cibotium* sp., *Bobea brevipes, Antidesma* sp., *Cyrtandra* sp., *Hedyotis terminalis, Peperomia* sp., *Perrottetia sandwicensis, Pittosporum* sp., or *Psychotria* sp.; and

(2) elevations between 410 to 760 m (1,345 to 2,500 ft).

The currently known primary constituent elements of critical habitat for *Lobelia niihauensis* on Kauai are:

(1) exposed mesic mixed shrubland or coastal dry cliffs containing one or more of the following associated native plant species: *Eragrostis* sp., *Bidens* sp., *Plectranthus parviflorus, Lipochaeta* sp., *Lythrum* sp., *Wilkesia hobdyi, Hibiscus kokio* ssp. *saint johnianus, Nototrichium* sp., *Schiedea apokremnos, Chamaesyce celastroides, Charpentiera* sp., or *Artemisia* sp.; and

(2) elevations between 100 to 830 m (330 to 1,400 ft).

The currently known primary constituent elements of critical habitat for *Lysimachia filifolia* on Kauai are:

(1) mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests and containing one or more of the following associated native plant species: mosses, ferns, liverworts, *Machaerina* sp., *Heteropogon contortus,* or *Melicope* sp.; and

(2) elevations between 240 to 680 m (800 to 2,230 ft).

The currently known primary constituent elements of critical habitat for *Melicope knudsenii* on Kauai are:

(1) forested flats or talus slopes

(a) in lowland dry or montane mesic forests, and

(b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Antidesma* sp., *Metrosideros polymorpha, Xylosma* sp., *Hibiscus* sp., *Myrsine lanaiensis, Diospyros* sp., *Rauvolfia sandwicensis, Bobea* sp., *Nestegis sandwicensis, Hedyotis* sp., *Melicope* sp., *Psychotria* sp., or *Pittosporum Kauaiensis*; and

(2) elevations between 450 to 1,000 m (1,480 to 3,300 ft).

The currently known primary constituent element of critical habitat for *Melicope pallida* on Kauai are:

(1) steep rock faces

(a) in lowland or montane mesic or wet forests or shrubland, and

(b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Lepidium serra, Pleomele* sp., *Boehmeria grandis, Coprosma* sp., *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Schiedea membranacea, Psychotria mariniana, Dianella sandwicensis, Pritchardia minor, Chamaesyce celastroides* var. *hanapepensis, Nototrichium* sp., *Carex meyenii, Artemisia* sp., *Abutilon sandwicense, Alyxia olivaeformis, Dryopteris* sp., *Metrosideros polymorpha, Pipturus albidus, Sapindus oahuensis, Tetraplasandra* sp., or *Xylosma hawaiiense*; and

(2) elevations between 490 to 915 m (1,600 to 3,000 ft).

The currently known primary constituent elements of critical habitat for *Peucedanum sandwicense* on Kauai are:

(1) cliff habitats

(a) in mixed shrub coastal dry cliff communities or diverse mesic forest and,

(b) containing one or more of the following associated native plant species: *Hibiscus kokio, Brighamia insignis, Bidens* sp., *Artemisia* sp., *Lobelia niihauensis, Wilkesia gymnoxiphium, Canthium odoratum, Dodonaea viscosa, Psychotria* sp., *Acacia koa, Kokio kauaiensis, Carex meyenii, Panicum lineale, Chamaesyce celastroides, Eragrostis* sp., *Diospyros* sp., or *Metrosideros polymorpha*; and

(2) elevations from sea level to above 915 m (3,000 ft).

The currently known primary constituent elements of critical habitat for *Plantago princeps* on Kauai are:

(1) steep slopes, rock walls, or bases of waterfalls

(a) in mesic or wet *Metrosideros polymorpha* forest, and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Psychotria* sp., *Dicranopteris linearis, Cyanea* sp., *Hedyotis* sp., *Melicope* sp., *Dubautia plantaginea, Exocarpos luteolus, Poa siphonoglossa, Nothocestrum peltatum, Remya montgomeryi, Stenogyne campanulata, Xylosma* sp., *Pleomele* sp., *Machaerina angustifolia, Athyrium* sp., *Bidens* sp., *Eragrostis* sp., *Lysimachia filifolia, Pipturus* sp., *Cyrtandra* sp., or *Myrsine linearifolia*; and

(2) elevations between 480 to 1,100 m (1,580 to 3,610 ft).

The currently known primary constituent elements of critical habitat for *Platanthera holochila* on Kauai are:

(1) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed bog and containing one or more of the following associated native plants: *Myrsine denticulata, Cibotium* sp., *Coprosma ernodeoides, Oreobolus furcatus, Styphelia tameiameiae,* or *Vaccinium* sp.; and

(2) elevations between 1,050 and 1,600 m (3,450 and 5,245 ft).

The currently known primary constituent elements of critical habitat for *Schiedea nuttallii* on Kauai are:

(1) diverse lowland mesic forest, often with *Metrosideros polymorpha* dominant and containing one or more of the following associated native plant species: *Antidesma* sp. *Psychotria* sp., *Perrottetia sandwicensis, Pisonia* sp., or *Hedyotis acuminata*; and

(2) elevations between 415 and 790 m (1,360 and 2,590 ft).

The currently known primary constituent elements of critical habitat for *Sesbania tomentosa* on Kauai are:

(1) sandy beaches, dunes, soil pockets on lava, or pond margins

(a) in coastal dry shrublands, or open *Metrosideros polymorpha* forests, or mixed coastal dry cliffs, and

(b) containing one or more of the following associated native plant species: *Sida fallax, Heteropogon contortus, Myoporum sandwicense, Sporobolus virginicus, Scaevola sericea* or *Dodonaea viscosa*; and

(2) elevations between sea level and 12 m (0 and 40 ft).

The currently known primary constituent elements of critical habitat for *Solanum sandwicense* on Kauai are:

(1) open, sunny areas

(a) in diverse lowland or montane mesic or wet forests, and

(b) containing one or more of the following associated plants: *Alphitonia ponderosa, Ilex anomala, Xylosma* sp., *Athyrium sandwicensis, Syzygium sandwicensis, Bidens cosmoides, Dianella sandwicensis, Poa siphonoglossa, Carex meyenii, Hedyotis* sp., *Coprosma* sp., *Dubautia* sp., *Pouteria sandwicensis, Cryptocarya mannii, Acacia koa, Metrosideros polymorpha, Dicranopteris linearis, Psychotria* sp., or *Melicope* sp.; and

(2) elevations between 760 and 1,220 m (2,500 and 4,000 ft).

The currently known primary constituent elements of critical habitat for *Spermolepis hawaiiensis* on Kauai are:

(1) *Metrosideros polymorpha* forests or *Dodonaea viscosa* lowland dry shrubland containing one or more of the following associated plant species: *Eragrostis variabilis, Bidens sandvicensis, Schiedea spergulina, Lipochaeta* sp., *Cenchrus agrimonioides, Sida fallax, Doryopteris* sp., or *Gouania hillebrandii*; and

(2) elevations of about 305 to 600 m (1,000 to 2,000 ft).

The currently known primary constituent elements of critical habitat for *Zanthoxylum hawaiiense* on Kauai are:

(1) lowland dry or mesic forests, or montane dry forest

(a) dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis*, and

(b) containing one or more of the following associated plant species: *Pleomele auwahiensis, Antidesma platyphyllum, Pisonia* sp., *Alectryon macrococcus, Charpentiera* sp., *Melicope* sp., *Streblus pendulinus, Myrsine lanaiensis, Sophora chrysophylla*, or *Dodonaea viscosa*; and

(2) elevations between 550 and 730 m (1,800 and 2,400 ft).

C. Methods for Selection of Areas for Proposed Critical Habitat Designations

As discussed above, very little is known about the specific physical and biological requirements of most of the 76 species. Therefore, we have defined the primary constituent elements based on the general habitat features of the areas in which the plants currently occur, such as the type of plant community the plants are growing in, their physical location (*e.g.*, steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of the 76 plant species.

Critical habitat may also include areas outside the area currently occupied by a species when it is determined that such areas are essential to the conservation of the species. 16 U.S.C. § 1532(5)(A)(ii). For example, this may include potentially suitable unoccupied habitat that is important to the recovery of the species. However, except for areas within the Alakai Swamp, as discussed later, we have not included such areas in the proposed designations for these 76 species due to our limited knowledge of the historical range (the geographical area outside the area presently occupied by the species) and our lack of more detailed information on the specific physical or biological features essential for the conservation of the species. This would include those features that would be needed, for instance, to determine where to reintroduce a species. Although, we consider reintroduction (the planting of propagated individuals or seedlings into an area) to be an acceptable method to try to achieve plant species recovery, native plant reintroductions are difficult and successful efforts are not common. We will continue to support experimental efforts to reintroduce species that may provide us with additional information on the physical and biological features essential to the conservation of these species. If necessary, unoccupied habitat could be designated in the future to provide additional protection to reintroduced plants.

The historical (pre-1970) or even some post-1970 records for a species may be based on herbarium specimens that contain only the most rudimentary collection information, such as only the name of the island from which the specimen was collected or a general place name (*e.g.*, east Kauai, Na Pali coast, Waimea, Hanalie). In the main Hawaiian Islands, climatic and ecological conditions, such as rainfall, elevation, slope, and aspect, may vary dramatically within a relatively short distance. Therefore, a simple place name would not provide adequate information on the specific physical and biological features of the area where the plant specimen was collected.

The apparent unpredictable distribution of Hawaiian plant species also makes it difficult to designate potentially suitable unoccupied habitat. For example, a species may be known from northern and southern locations on an island, but not from intervening locations in similar habitat. Based on the best available information, we may be unable to determine whether the species once occurred in the intervening areas and disappeared prior to Polynesian or European times (thus never having been collected or documented there) or simply never occurred there.

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of the 76 plant species. This information included site-specific species information from the Hawaii Natural Heritage Program (HINHP) and our rare plant database, species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum, recent biological surveys and reports, our recovery plans for these 76 species, discussions with botanical experts, and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (Plant Recovery Committee) (see below) (HINHP 1999, Plant Recovery Committee 1998, USFWS 1994, 1995, 1996, 1998a, 1998b, 1999; S. Perlman, pers. comm. 2000; Derral Herbst, Bishop Museum, pers. comm., 2000; Warren L. Wagner, Smithsonian Institution, pers. comm., 2000; CPC *in litt.*1999).

In 1994, the Plant Recovery Committee initiated an effort to identify and map habitat it believed to be necessary for the recovery of 282 endangered and threatened Hawaiian plant species. The Plant Recovery Committee identified areas on most of the islands in the Hawaiian chain, and in 1999, we published a description of these areas in our *Recovery Plan for the Multi-Island Plants* (USFWS 1999). The Plant Recovery Committee expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research findings may also lead to additional refinements (Plant Recovery Committee 1998).

Because the Plant Recovery Committee identified essential habitat areas for all listed, proposed, and candidate plant species, as well as evaluated if these essential habitat areas would provide for habitat requirements of other species the Service is monitoring, the Plant Recovery Committee's mapping of habitat is distinct from the regulatory designation of critical habitat. These habitat maps are a planning tool to focus conservation efforts on the areas that may be most important to the conservation of Hawaii's listed species and other non-listed plants.

For the 76 plant species on Kauai and Niihau, currently occupied habitat was examined and critical habitat boundaries were delineated so that locations with a high density of endangered and threatened plants (multi-species units) were clearly depicted. However, these multi-species critical habitat units are not homogeneous or uniform in nature. The variable topography of the Hawaiian Islands necessitate the creation of critical habitat units that often encompassed a number of plant community types.

When developing critical habitat units, every current (post-1970) location of every plant specimen was delineated within a 586 m (1,924 ft) radius circle,

in order to insure enough area to provide for the proper ecological functioning of the habitat immediately supporting the plant. Due to inaccuracies in mapping locations, it has been determined that the actual location of the plant specimen is within 536 m (1,760 ft) of the center of the delineated circle. The 536 m (1,760 ft) distance is consistent with standard mapping methodology for rare species used by the HINHP (1996). An additional 50 m (164 ft) included in the delineated circle to be consistent with the guidelines identified in the recovery plans for these species for minimum-sized exclosures for rare plants (USFWS 1994, 1995, 1996, 1998a, 1998b, 1999). In cases of isolated species locations, an area with a radius of roughly 586 m (1,924 ft) is proposed as critical habitat (HINHP 1996; USFWS 1994, 1995, 1996, 1998a, 1998b, 1999).

In areas with multiple species locations, critical habitat units were developed as follows.

—Known current locations of each plant specimen were delineated using the guidelines explained above (Figure 1(a)).

—The perimeter boundaries of individual circular areas were connected to form unit area boundaries (Figure 1(b)).

—Unit area boundaries were delineated to follow significant topographic features (50 CFR § 424.12(c)) such as coastlines, ridgelines, and valleys (Figure 1(c)).

Figure 1(a)

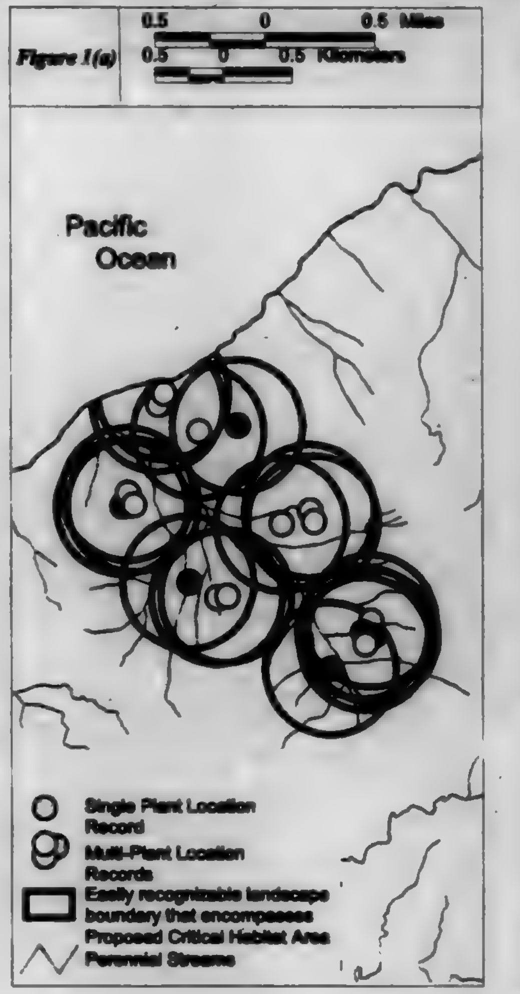
0.5
0
0.5 Miles
0.5
0
0.5 Kilometers
Pacific Ocean
Single Plant Location Record
Multi-Plant Location Records
Easily recognizable landscape boundary that encompasses Proposed Critical Habitat Area
Perennial Streams

Figure 1(b)

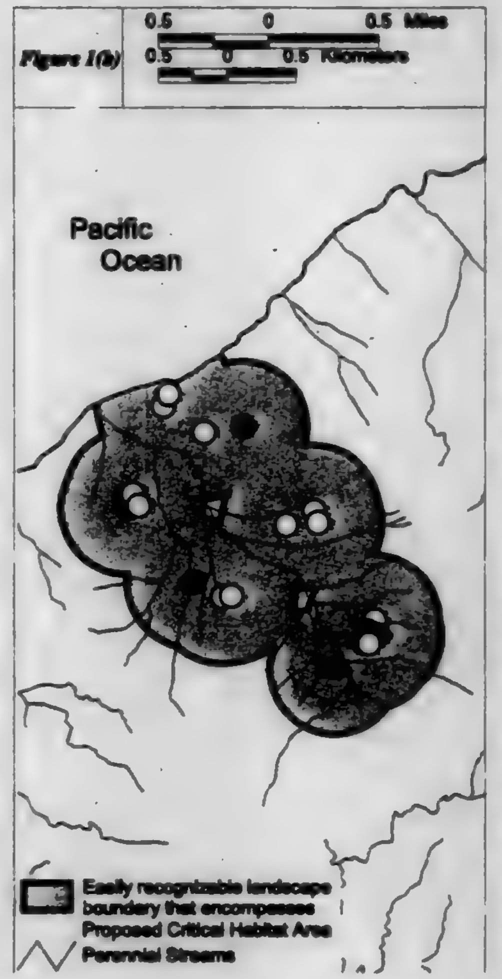
0.5
0
0.5 Miles
0.5
0
0.5 Kilometers
Pacific Ocean
Easily recognizable landscape boundary that encompasses Proposed Critical Habitat Area
Perennial Streams

Figure 1(c)

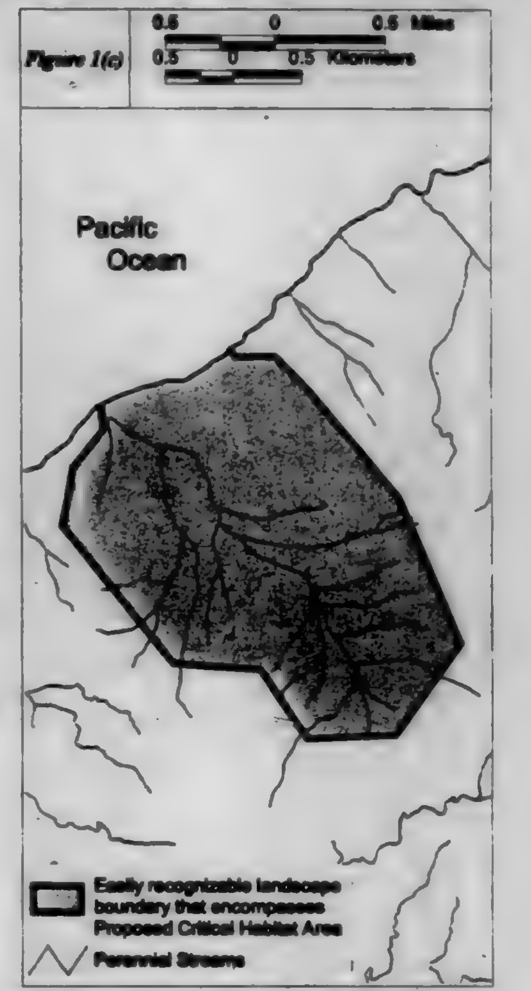
0.5
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0.5 Miles
0.5
0
0.5 Kilometers
Pacific Ocean
Easily recognizable landscape boundary that encompasses Proposed Critical Habitat Area
Perennial Streams

This delineation method was used to facilitate identification of boundary lines and to aid in implementation of on-the-ground conservation measures. When delineating critical habitat units, we made an effort to avoid developed areas such as towns, agricultural lands, and other lands unlikely to contribute to the conservation of the 76 species. Existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunications equipment, arboreta and gardens, heiaus (indigenous place of worship, shrine), and other man-made features, do not contain, and are not likely to develop, constituent elements. Therefore, unless a Federal action related to these existing features or structures indirectly affected nearby habitat containing the primary constituent elements, such features or structures would not be included in the critical habitat designation and therefore, not be impacted by the designation of critical habitat.

The only exception to this methodology are the units in the Alakai Swamp area (units H, I, and T). The Alakai Swamp is a contiguous watershed that, due to its largely boggy condition, is sensitive to disturbances. The relatively level cap rock formation of the Alakai plateau has allowed clay-like soils to accumulate in this area and produce bogs and large forested areas with hydrated (wet) soil. Where water has completely saturated the soils, many of the common native plants, such as *Metrosideros polymorpha*, *Vaccinium* sp., *Styphelia tameiameiae*, and *Coprosma* sp., are severely stunted and give way to species adapted specifically to bog environments (Carlquist 1980). Patterns of water drainage in the Alakai are critical to the maintenance of plant habitats and plant community diversity in this ecosystem (Mueller-Dombois and Fosberg 1998). Changes in water flow patterns or forest cover can lead to long-term shifts in plant habitat used by *Exocarpos luteolus* and *Platanthera holochila*, the two federally listed plant species known from this area. *Platanthera holochila* is restricted to the bog habitats within the Alakai Swamp where fewer than ten individuals exist. *Exocarpos luteolus* is typically associated with habitat edges where ecological conditions such as availability of light and moisture changes rapidly over short distances. These types of habitats cover comparatively small areas that are scattered throughout the Alakai Swamp landscape. In addition, individual areas may disappear or be created over time depending on changes in seasonal patterns of rainfall or water drainage, or rooting pigs which can alter these edge landscapes and open them to invasive nonnative weeds, such as *Juncus* sp. that can exclude native plants.

Because the habitats required by these two listed species are likely dispersed throughout the Alakai Swamp, we believe this area should be managed as a cohesive ecological unit in order to insure enough area to provide for the proper ecological functioning of the habitat immediately supporting the plants. Smaller areas where these species now occur may simply dry up or become too wet to sustain them. In addition, the current known locations of these two listed species may not represent all extant locations. The Alakai Swamp area is extremely rugged and difficult to survey, and remnant populations may occur in remote areas of the Swamp. Therefore, it is possible that the entire swamp is occupied habitat, but to the extent portions are not currently occupied, maintenance of the swamp's ecosystem is essential to the conservation of these species. Designation of an inclusive areas is also consistent with 50 CFR 424.12(d) which allows for several habitats that each meet the requirements for designation to be designated at one unit.

All currently occupied sites containing one or more of the primary constituent elements considered essential to the conservation of the 76 plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on the plants at these sites including published reports and surveys; annual performance reports; forestry management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and, section 7 consultations. Additionally, each public (*i.e.*, any county, state, or Federal government office holdings) and private landowner on Kauai and Niihau with a known occurrence of one of the 76 species was contacted by mail. We reviewed all information received during the public comment period, in response to our landowner mailing and at open houses held at three locations on Kauai from October 19–21, 1999. When clarification was required on the information provided to us, we followed up with a telephone contact. Because of the large amount of land on Kauai under State of Hawaii jurisdiction, we personally met with staff from the Kauai DOFAW and Kauai State Parks to discuss their current management for the plants on their lands. In addition, we contacted the State's Department of Hawaiian Home Lands regarding management for the plants on lands under their jurisdiction.

If an area being considered for designation as critical habitat is not in need of additional special management or protection and it is certain to remain so in the future, the area does not meet the definition in section 3(5)(A) of the Act. In order to make the determination that an area is not in need of special management considerations or protection, we must find that the management efforts are certain to be implemented and effective so as to contribute to the recovery of the species. Any such area must be specifically managed for the species and have a net conservation benefit for the species. In this case, we considered whether the management would reduce the threats to the species.

In determining and weighing the relative significance of the threats that would need to be addressed in management plans or agreements, we considered the following:

- The factors that led to the listing of the species, as described in the final rules for listing each of the species. For all or nearly all endangered and threatened plants in Hawaii, the major threats include adverse impacts due to nonnative plant and animal species. Direct browsing, digging, and trampling by ungulates, including pigs, goats, cattle, sheep, and deer, and direct competition from nonnative plants have led to the decline of Hawaii's native flora (Smith 1985; Stone 1985; Wagner *et al.* 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Vitousek 1992; Loope in Mac *et al.* 1998; USFWS 1994, 1995, 1996, 1998a, 1998b, 1999). Ungulate activity in most areas results in an increase of nonnative plants since most of these nonnative plants are able to colonize disturbed areas more quickly and effectively than Hawaii's native plants (Smith 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Mack 1992; Tunison *et al.* 1992; USFWS 1994, 1995, 1996, 1998a, 1998b, 1999).
- The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in the Service's recovery plans for the 76 species (USFWS 1994, 1995, 1996, 1998a, 1998b, 1999), the 1998 Plant Recovery Committee report ("Habitat Essential to the Recovery of Hawaiian Plants") to the Service (Plant Recovery Committee 1998), the June 1999 Plant Recovery Committee draft "Integrated Plan for the Conservation of Hawaii's Unique Plants and the Ecosystems They Depend Upon" (Plant Recovery Committee in prep.), and in various other documents and publications relating to plant conservation in Hawaii (Mueller-Dombois 1985; Smith 1985; Stone 1985; Cuddihy and Stone 1990; Stone *et al.* 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) nonnative plant control; (3) rodent control; (4) invertebrate pest control; (5) fire control; (6) maintenance of genetic material of the endangered and threatened plants species; (7) propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance. It should be noted, however, that, on a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants:

- Feral ungulate control;
- Nonnative plant control;
- Rodent control;
- Invertebrate pest control;
- Fire control;
- Maintenance of genetic material of the endangered and threatened plant species;
- Propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of the species;
- Ongoing management of the wild, outplanted, and augmented populations;
- Maintenance of natural pollinators and pollinating systems, when known;
- Habitat management and restoration in areas deemed essential for the recovery of the species;
- Monitoring of the wild, outplanted, and augmented populations;
- Rare plant surveys;
- Control of human activities/access.

As shown in Table 3, the 76 species of plants occur on Federal, State, and private lands on the islands of Kauai and Niihau. In addition to the information in our files, we received various amounts and types of information on the conservation management actions occurring on these lands. In response to our two public notices, letters to the landowners, open houses, and meetings, many landowners reported that they are not conducting conservation management actions on their lands, while others provided information on various activities, such as fencing, weeding, and control of human access.

Management occurring on the U.S. military lands on the island of Kauai currently consists of restricting human access and mowing landscaped areas. Since these actions alone are not sufficient to address relevant threats facing the listed plant species, these lands are included in the proposed critical habitat units for the following plant species: *Panicum niihauense*, *Sesbania tomentosa*, *Pteralyxia kauaiensis*, *Wilkesia hobdyi*, *Isodendrion longifolium*, *Nothocestrum peltatum*, *Phyllostegia wawrana*, *Remya montgomeryi*, *Schiedea membranacea*, *Solanum sandwicense*, and *Xylosma crenatum*.

The State lands on the island of Kauai that harbor many of the 76 plant species are administered by the Department of Hawaiian Home Lands (DHHL) and the Department of Land and Natural Resources (DLNR). DLNR lands are made up of State Parks, Forest Reserves, Natural Area Reserves, and the Alakai Wilderness Preserve. The Division of Forestry and Wildlife administers all of these lands, except the State parks, which are administered by the Division of State Parks. DLNR also manages the DHHL lands on the island of Kauai. Although the State conducts some conservation management actions on these lands and provides access to others who are conducting such activities, there are no comprehensive management plans for the long-term conservation of endangered and threatened plants on these lands and no assurances that management actions will be implemented. Therefore, we cannot, at this time, find that management on State lands is adequate to exclude them from designation as critical habitat.

The Service received 25 responses from the over 160 private landowners who received letters inquiring about management actions on their lands. The main activities being conducted by several of these landowners are weeding, control of human access, and planting of native species. We are aware of only a few private landowners who are drafting management plans for their areas. Without such plans and assurances that the plans will be implemented, we are unable to find that the lands in question do not require special management or protection.

For the 76 species for which designation of critical habitat is prudent, we know of no areas at this time that do not require special management considerations or protection. However, if we receive information during the public comment period that any of the lands within the proposed designations are actively managed to promote the conservation and recovery of these listed species, in accordance with long term conservation management plans or agreements, and there are assurances that the proposed management actions will be implemented and effective, we can consider this information when making a final determination of critical habitat.

In summary, the proposed critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of the 76 plant species and the special management needs of the species, and are based on the best scientific and commercial information available and described above. We acknowledge that we have incomplete information regarding many of the primary biological and physical requirements for these species, but the Act and relevant court orders require us to proceed with designation at this time based on the available information, however limited. As new information accrues, and in conjunction with our listing priority guidance and available budget, we may reevaluate if additional areas warrant critical habitat designation. We anticipate that comments received through the public review process and from any public hearings, if requested, will provide additional information in our decision-making process.

The approximate areas of proposed critical habitat by land ownership are shown in Table 5. Proposed critical habitat includes habitat for 76 species predominantly in northwestern Kauai, with smaller units scattered in other portions of the island and two small units in the northwestern portion of Niihau. Lands proposed are under private, State, and Federal jurisdiction (owned and leased lands), with Federal lands including lands managed by the Department of Defense. Lands proposed as critical habitat have been divided into 21 units (Kauai A through Kauai U) on Kauai and 2 units (Niihau A and Niihau B) on Niihau. A brief description of each unit is presented below.

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, KAUAI COUNTY, HAWAII

Unit name	State	Private	Federal	Total
Kauai A	N/A	120.79 hectares (298.34 acres)	N/A	120.79 hectares (298.34 acres).
Kauai B	139.32hectares (344.27 acres)	2.91 hectares (7.18 acres)	N/A	142.23 hectares (351.45 acres).
Kauai C	N/A	123.92 hectares (306.20 acres)	N/A	123.92 hectares (306.20 acres).

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, KAUAI COUNTY, HAWAII—Continued

Unit name	State	Private	Federal	Total
Kauai D	N/A	124.68 hectares (308.08 acres)	N/A	124.68 hectares (308.08 acres).
Kauai E	N/A	116.72 hectares (288.42 acres)	N/A	116.72 hectares (288.42 acres).
Kauai F	352.05hectares (869.91 acres)	591.05 hectares (1,460.49 acres)	N/A	943.10 hectares (2,330.40 acres).
Kauai G	6,052.12 hectares (14,954.79 acres)	316.27 hectares (781.50 acres)	3.67 hectaries (9.06 acres)	6,372.06 hectares (15,745.35 acres).
Kauai H	3,877.20 hectares (9,580.55 acres)	68.49 hectares (169.25 acres)	N/A	3,945.69 hectares (9,749.80 acres).
Kauai I	4,042.80 hectares (9,989.77 acres)	1,067.95 hectares (2,638.91 acres)	N/A	5,110.75 hectares (12,628.67 acres).
Kauai J	328.79 hectares (812.43 acres)	102.48 hectares (253.22 acres)	72.78 hectares (179.83 acres)	504.05 hectares (1,245.48 acres).
Kauai K	N/A	820.76 hectares (2,028.09 acres)	N/A	820.76 hectares (2,028.09 acres).
Kauai L	215.40 hectares (532.24 acres)	1,466.89 hectares (3,624.69 acres)	N/A	1,682.29 hectares (4,156.93 acres).
Kauai M	N/A	482.16 hectares (1,191.42 acres)	N/A	482.16 hectares (1,191.42 acres).
Kauai N	286.14 hectares (707.06 acres)	N/A	N/A	286.14 hectares (707.06 acres).
Kauai O	188.93 hectares (466.85 acres)	53.86 hectares (133.08 acres)	N/A	242.79 hectares (599.93 acres).
Kauai P	456.62 hectares (1,128.30 acres)	254.82 hectares (639.66 acres)	N/A	711.44 hectares (1,757.96 acres).
Kauai Q	58.35 hectares (144.18 acres)	195.35 hectares (482.71 acres)	N/A	253.70 hectares (626.89 acres).
Kauai R	694.10 hectares (1,715.13 acres)	521.49 hectares (1,288.60 acres)	N/A	1,215.59 hectares (3,003.73 acres).
Kauai S	119.08 hectares (294.26 acres)	N/A	N/A	119.08 hectares (294.26 acres).
Kauai T	200.57 hectares (495.63 acres)	438.01 hectares (a,082.32 acres)	N/A	638.58 hectares (1,577.95 acres).
Kauai U	392.21 hectares (969.15 acres)	N/A	N/A	392.21 hectares (969.15 acres).
Niihau A	N/A	93.79 hectares (231.76 acres)	N/A	93.79 hectares (231.76 acres).
Niihau B	N/A	96.76 hectares (239.09 acres)	N/A	96.76 hectares (239.09 acres).
Total	17,403.68 hectares (43,004.52 acres)	7059.10 hectares (17,443.01 acres)	76.45 hectares (188.89 acres)	24,539.23 hectares (60,636.42 acres).

Descriptions of Critical Habitat Units

Kauai A

The proposed Kauai A provides critical habitat for one species: *Cyrtandra limahuliensis*. This unit contains a total of 120.79 hectares (ha) (298.34 acres (ac)) on privately owned land. The natural features found in this unit are portions of the floor and western wall of Lumahai Valley and portions of the Lumahai River. This unit is bound on the west by the western wall of Lumahai Valley and on the east by the eastern wall of Lumahai Valley.

Kauai B

The proposed Kauai B provides critical habitat for two species: *Lipochaeta waimeaensis* and *Spermolepis hawaiiensis*. This unit contains a total of 142.23 ha (351.45 ac). The lands contained within this unit are owned by the State of Hawaii and by private landowners. The natural features found within this unit are portions of the following areas: western wall of Waimea Canyon, Huluhulunui Ridge, Hukipo Ridge, and the Waimea River. This unit is bounded on the northeast and east by Waimea Canyon; on the west by Kapilimao Valley; and on the south by Hukipo Ridge.

Kauai C

The proposed Kauai C provides critical habitat for one species: *Schiedea spergulina* var. *leiopoda*. This unit contains a total of 123.92 ha (306.20 ac) of privately owned land. The natural features found within this unit are portions of the Lawai Valley and Lawai Stream. To the east of the unit is the Niukapu Heiau; to the south is Lawai Bay; to the north are the Lawai Homesteads; and to the northwest is Kalaheo town.

Kauai D

The proposed Kauai D provides critical habitat for one species: *Solanum sandwicense*. This unit totals 124.68 ha (308.08 ac) on land owned by a single private entity within the State's Na Pali-Kona Forest Reserve. The most evident natural feature found in this area is a portion of the Mokuone Stream.

Kauai E

The proposed Kauai E provides critical habitat for *Brighamia insignis*. This unit contains a total of 116.72 ha (288.42 ac), all within the Haupu Mountain Range. The area contained in this unit is owned by a private entity. The natural features found in this unit are Keopaweo Peak and portions of the north facing slope of the Haupu Mountain Range. This area is bounded on the north by Huleia Stream.

Kauai F

The proposed Kauai F provides critical habitat for 12 species: *Adenophorus periens, Cyrtandra limahuliensis, Delissea rhytidosperma, Flueggea neowawraea, Hesperomannia lydgatei, Hibiscus waimeae* ssp. *hannerae, Isodendrion longifolium, Labordia lydgatei, Lobelia niihauensis, Myrsine linearifolia, Peucedanum sandwicense,*and *Pteralyxia kauaiensis*. This unit contains a total of 943.10 ha (2,330.40 ac) of land owned by the State of Hawaii and private owners. A very small portion of this unit is found in the State's Hono o Na Pali Natural Area Reserve. The natural features contained within this unit are Kulanaililia Peak, portions of Manoa Stream, Pohakukane Peak, portions of Haena Valley, portions of the Wainiha Pali, portions of Wainiha Valley, Hono o Na Pali Peak, Limahuli Falls, Limahuli Valley and Stream, Maunapulua Peak, Maunahou Peak, Makana Peak, and portions of Hanakapiai Valley and Stream. This unit is bounded on the east by Wainiha Pali and Valley; on the west by Hanakapiai Valley; on the southwest by the Kauai G; and on the north by Haena State Park, the Pacific Ocean, and Haena town.

Kauai G

The proposed Kauai G provides critical habitat for 48 species: *Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Cyperus trachysanthos, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Diellia pallida, Dubautia latifolia, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hibiscadelphus woodii, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Lipochaeta fauriei, Lobelia niihauensis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Peucedanum sandwicense, Phyllostegia wawrana, Plantago princeps, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea kauaiensis, Schiedea membranacea, Schiedea spergulina* var. *spergulina, Solanum sandwicense, Stenogyne campanulata, Wilkesia hobdyi*, and *Xylosma crenatum*. This unit contains a total of 6,372.06 ha (15,745.35 ac). The lands contained within this unit are owned by the State of Hawaii, private land owners, and owned or leased by the United States Department of Defense (U.S. Navy and U.S. Air Force). Portions of this unit are contained within the State's Hono o Na Pali Natural Area Reserve, Kuia Natural Area Reserve, Na Pali-Kona Forest Reserve, Kokee Air Force Station, Kokee State Park, and Puu Ka Pele Forest Reserve. The natural features found in this unit are portions of Kopakaka Ridge; portions of Makaha Ridge and Valley; Milolii Ridge; portions of Kauhao Valley; Paaiki Valley; Poopooiki Valley; Kuia Valley; Mahanaloa Valley; Kawaiula Valley; Milolii Valley; portions of Kaahole Valley; Nualoolo Valley and Stream; Awaawapuhi Valley; Honopu Valley; Makaha Point; Keawanui Point; Makuaiki Point; Alapii Point; Puanaiea Point; Nakeikionaiwi Falls; Kalepa Ridge; Kainamanu Peak; Kalahu; Nianiau; Kalalau Beach, Valley, and Stream; Kanakou; Puu Ki; Kaaalahina Ridge; Keanapuka; Alealau; Manono Ridge; Hanakoa Valley and Stream; Pohakukumano; Waiahuakua; Waiahuakua Stream; Pohakea; Hoolulu Stream; Puu okila; Pihea; Moaalelele; portions of Hanakapiai Stream and Valley; Kaunouhua Ridge; and Kahuamaa Flat. This area is bounded on the north and northeast by the Pacific Ocean; on the northeast by Kauai F; on the southeast by Kauai H; and on the south by Kauai I.

Kauai H

The proposed Kauai H provides critical habitat for four species: *Alsinidendron lychnoides, Exocarpos luteolus, Myrsine linearifolia,* and *Platanthera holochila*. This unit contains a total of 3,945.69 ha (9,749.80 ac) on State and private lands. Portions of this area are contained within the State's Na Pali-Kona Forest Reserve, Alakai Wilderness Preserve, Halelea Forest Reserve, and Kokee State Park. The natural features found in this unit are portions of the Kawaikoi Stream; most of the Alakai Swamp; portions of Kaunuohua Ridge; Pihea Peak; Waiakoali Stream; Koali Peak; portions of Kawaiiki Ridge; portions of Kawaiiki Valley; portions of Koaie Stream; portions of Waialae Stream; portions of Loli River; portions of Halepaakai Stream; and portions of Halehaha Stream. This unit is bounded on the northeast by Kauai K; on the west by Kauai I; and on the south by Opaewela Valley.

Kauai I

The proposed Kauai I provides critical habitat for 36 species: *Alectryon macrococcus, Alsinidendron viscosum, Chamaesyce halemanui, Diellia pallida, Dubautia latifolia, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Isodendrion laurifolium, Kokia kauaiensis, Lipochaeta fauriei, Lipochaeta micrantha, Lobelia niihauensis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Peucedanum sandwicense, Phyllostegia knudsenii, Phyllostegia wawrana, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea helleri, Schiedea membranacea, Schiedea spergulina var. spergulina, Schiedea stellarioides, Solanum sandwicense, Spermolepis hawaiiensis, Xylosma crenatum,* and *Zanthoxylum hawaiiense*. This unit contains a total of 5,110.75 ha (12,628.68 ac). The unit contains areas owned by the State of Hawaii and private owners. Portions of this unit are found within the State's Puu Ka Pele Forest Reserve, Na Pali-Kona Forest Reserve, Kokee State Park, Waimea Canyon State Park, and Alakai Wilderness Preserve. The natural areas found in this unit are upper portions of Awini Stream, portions of Kokee Stream, portions of Waipoo falls, Kaou, portions of Loli River, portions of Waiahulu Stream, portions of Poomau Stream, portions of Kohua Ridge, portions of Kaluahaula Ridge, portions of Koaie Stream and Canyon, portions of Hipalau Valley, Poo Kaena Peak, portions of Oneopaewa Valley, portions of Waimea Canyon, portions of Waimea River, portions of Nawaimaka Valley and Stream, Waialae Falls, portions of Kapukapala Ridge, Kipalau Valley, a small portion of the Alalaki Swamp, Waineke Swamp, Kumuwela Ridge, portions of Maluapopoki Stream, portions of Koliee Stream, portions of Elekeninui Stream, portions of Noe Stream, portions of Elekeniiki Stream, Puu Kaohelo Peak, portions of Kauaikinuna Stream, portions of Mohihi Stream, Haeleele Ridge, portions of Haeleele Valley, portions of Kaulaula Valley, Kawaiiki Ridge, Kumuwela Ridge, portions of Wahana Valley, Kaluahaulau Ridge, and portions of Kawaiiki Valley. Kauai H is bordered by Kauai I to the east and northeast. The Na Pali coastline is to the north, northwest, and west of the boundaries. The remainder of the Alakai Swamp is to the east and northeast.

Kauai J

The proposed Kauai J provides critical habitat for six species: *Hedyotis st.-johnii, Lobelia niihauensis, Panicum niihauense, Schiedea apokremnos, Sesbania tomentosa,* and *Wilkesia hobdyi*. This unit contains a total of 504.05 ha (1,245.48 ac) on Federal, State, and privately owned land. Portions of this unit are contained within the State's Puu Ka Pele Forest Reserve, Polihale State Park, and the Pacific Missile Range Facility. The natural features and landmarks found in this area are Polihale Spring, Kapaula Heiau, and the lower portions of Haeleele Valley, Hikimoe Valley, Kaaweiki Ridge, Kauhao Ridge, Kaaweiki Ridge, and Polihale Ridge. This area is bounded on the east by the Pacific Ocean.

Kauai K

The proposed Kauai K provides critical habitat for 7 species: *Adenophorus periens, Cyanea recta, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Labordia lydgatei, Plantago princeps,* and *Schiedea membranacea*. This unit contains a total of 820.76 ha (2,028.09 ac). The areas contained in this unit are owned by the State of Hawaii. Portions of this unit are found within the State's Halelea Forest Reserve. The natural features found in this area are the back portions of Lumahai Valley and River, Mahinakehau Ridge, the back portions of Wainiha Valley and River, and sections of the Wainiha Pali.

Kauai L

The proposed Kauai L provides critical habitat for 14 species: *Adenophorus periens, Bonamia menziesii, Cyanea remyi, Cyanea undulata, Cyrtandra limahuliensis, Dubautia pauciflorula, Exocarpos luteolus, Hesperomannia lydgatei, Isodendrion longifolium, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Myrsine linearifolia, Viola helenae,* and *Viola kauaiensis* var. *wahiawaensis*. This unit contains a total of 1,682.29 ha (4,156.93 ac). The lands contained within this unit are owned by the State of Hawaii and private owners. Portions of this unit are contained within the State's Lihue-Koloa Forest Reserve. The natural features and landmarks found in this area are portions of Hanapepe Valley, Kapalaoa Peak, Hulua Peak, portions of Wahiawa Stream, Kanaele Swamp, Kahili Peak, Laauhihaihai Peak, Kalualea Peak, Puu Kolo Peak, portions of Wainonoia Stream, and Puuauuka Peak. This unit is bounded on the south by Alexander Reservoir and on the west by Hanapepe Valley and Stream.

Kauai M

The proposed Kauai M provides critical habitat for eight species: *Brighamia insignis, Delissea rhytidosperma, Isodendrion longifolium, Lipochaeta micrantha, Munroidendron racemosum, Peucedanum sandwicense, Pteralyxia kauaiensis,* and *Schiedea nuttallii*. This unit contains a total of 482.16 ha (1,191.42 ac) on privately owned lands within the Haupu Mountain Range. The natural features found within this unit are Haupu Peak, Naluakeina Peak, and Queen Victoria's profile. A length of 1,730.72 m of the Haupu Range ridgeline to the west and 2,036.42 m of the Haupu Range ridgeline to east of Haupu Peak are included in this unit. This unit is bound on the north by Kipu; on the southeast by Kipu Kai; and on the southwest by Mahaulepu.

Kauai N

The proposed Kauai N provides critical habitat for two species: *Hibiscus clayi* and *Munroidendron racemosum*. This unit contains a total of 286.14 ha (707.06 ac). The area found in the Nonou Forest Reserve, owned by the State of Hawaii. The natural features found within this unit are the Nonou Mountain Range, Sleeping Giant, and Nonou Peak. This unit is bounded on the east by Wailua; on the south by the Wailua River; on the southwest by the Wailua Homesteads; and on the north by the Twin Reservoirs.

Kauai O

The proposed Kauai O provides critical habitat for 2 species: *Cyrtandra limahuliensis* and *Cyanea recta*. This unit contains a total of 242.79 ha (599.93 ac) on State and privately owned lands. This unit is found within the State's Kealia and Lihue-Koloa Forest Reserves. The natural features found in this area are Kupakanui Falls, Kualapa Peak, portions of Keahua Stream, and portions of Waipunaea Stream.

Kauai P

The proposed Kauai P provides critical habitat for 10 species: *Adenophorus periens, Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Hesperomannia lydgatei, Isodendrion longifolium, Labordia lydgatei, Myrsine linearifolia,* and *Plantago princeps*. This unit contains a total of 711.44 ha (1,757.96 ac). The lands contained within this unit are owned by the State of Hawaii and private owners. Portions of this unit are contained within the State's Halelea Forest Reserve. The natural features found in this unit are the Mamalohoa Peak, Waiopa, Namolokama Mountains, Kaliko, portions of the Lumahai River, portions of the eastern wall of the Lumahai Valley, portions of the Waioli Stream, portions of the back of Waioli Valley, portions of the western wall of Hanalei Valley, and Puu Manu. This unit is bounded on the north by Waioli Valley; on the east by Hanalei Valley; and on the west and south by Lumahai Valley.

Kauai Q

The proposed Kauai Q provides critical habitat for two species: *Cyrtandra limahuliensis* and *Pteralyxia kauaiensis*. This unit contains a total of 253.70 ha (626.89 ac). The areas contained in this unit are owned by the State of Hawaii and a private entity. Portions of this unit are contained within the State's Halelea Forest Reserve. The natural features found in this unit are the back of Waipa Valley, portions of Waipo Stream, Kapailu Peak, Waiokihi Peak, and Kapalikea Peak. The area is bounded on the west and southwest by Lumahai Valley and on the east by Waioli Valley.

Kauai R

The proposed Kauai R provides critical habitat for 8 species: *Adenophorus periens, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Labordia lydgatei,* and *Phyllostegia wawrana*. This unit contains a total of 1,215.59 ha (3,003.73 ac) of State and privately owned land. Portions of this unit are found within the State's Moloaa, Kealia, and Lihue-Koloa Forest Reserves. The natural features found in this area are portions of Makaleha Mountains and Stream, portions of Kaumoku Stream, Mt. Namahana, Keoiki Peak, portions of Anahola Stream, Kahili Peak, the Pinnacle, Leleiwi Peak, Ke Ana Kolea Falls, Puu Awa Peak, and Puu Eu Peak.

Kauai S

The proposed Kauai S provides critical habitat for *Exocarpos luteolus*. This unit contains 119.08 ha (294.26 ac) of State owned land within the Kealia and Lihue-Koloa Forest Reserves. The natural features found in this area are portions of Kamalii Ridge and Kamahuna Peak, and portions of Moalepe and Makaleha Streams.

Kauai T

The proposed Kauai T provides critical habitat for 7 species: *Cyanea asarifolia, Cyanea remyi, Cyrtandra limahuliensis, Labordia lydgatei, Lysimachia filifolia, Plantago princeps,* and *Pteralyxia kauaiensis*. This unit contains a total of 638.58 ha (1,577.95 ac). The areas contained in this unit are owned by the State of Hawaii, as well as private owners. The area included in this unit are found within the State's Lihue-Koloa Forest Reserve and Alakai Wilderness Preserve. The natural features found in this unit are Mt. Waialeale and portions of Iliiliula Stream, the north Fork of the Wailua River, the most eastern section of the Alakai Swamp, and the Hanalei River.

Kauai U

The proposed Kauai U provides critical habitat for 7 species: *Alectryon macrococcus, Euphorbia haeleeleana, Isodendrion laurifolium, Lipochaeta fauriei, Poa siphonoglossa, Pteralyxia kauaiensis,* and *Remya kauaiensis*. This unit contains a 392.21 ha (969.15 ac) of land owned by the State of Hawaii. Portions of this unit are found within the State's Puu Ka Pele Forest Reserve, as well as containing portions of Haeleele Ridge and Valley, portions of Polihale Ridge, and portions of Kaulaula Valley.

Niihau A

Niihau A provides critical habitat for *Cyperus trachysanthos* on Niihau. This unit contains 93.79 ha (231.76 ac) of land owned by a private entity. The entire unit falls within the Keawanui watershed and contains the lower portions of Kanaio and Mokouia Valleys.

Niihau B

Niihau B provides critical habitat for *Brighamia insignis* on Niihau. This unit contains a total of 96.76 ha (239.09 ac) of privately owned land. This entire unit falls within the Keawanui watershed and contains the Kaali Cliffs.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species and avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat a description and evaluation of those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. When determining whether any of these activities may adversely modify critical habitat, we base our analysis on the effects of the action on the entire critical habitat area and not just on the portion where the activity will occur. Adverse effects on constituent elements or segments of critical habitat do not result in an adverse modification determination unless that loss, when added to the environmental baseline, is likely to appreciably diminish the capability of the critical habitat to satisfy essential requirements of the species. In other words, activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of any of the 76 plant species is appreciably reduced.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery (50 CFR 402.02). Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species (50 CFR 402.02).

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned when the habitat is occupied by the species. The purpose of designating critical habitat is to contribute to a species' conservation, which by definition equates to survival and recovery. Section 7 prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of the listed species, thus providing a regulatory means of ensuring that Federal actions within critical habitat are considered in relation to the goals and recommendations of any existing recovery plan for the species concerned. As a result of the direct link between critical habitat and recovery, the prohibition against destruction or adverse modification of the critical habitat should provide for the protection of the critical habitat's ability to contribute fully to a species' recovery.

Activities on lands being proposed as critical habitat for these 76 species or activities that may indirectly affect such lands and that are conducted by a Federal agency, are funded by a Federal agency, or require a permit from a Federal agency will be subject to the section 7 consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of any one of the 76 species is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy habitat defined as a primary constituent element, including but not limited to: overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting, bulldozing, construction, road building, mining, or herbicide application); introducing or enabling the spread of nonnative species; or actions that pose a risk of fire;

(2) Water diversion or impoundment, groundwater pumping, or other activity that alters water quality or quantity to an extent that wet forest or bog vegetation is significantly affected; and

(3) Recreational activities that appreciably degrade vegetation.

Actions affected by designation of critical habitat may include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development on private or State lands requiring permits from other Federal agencies, such as Housing and Urban Development;

(3) Military training or similar activities of the U.S. Department of Defense (Navy and Air Force) on their lands or lands under their jurisdiction at Makaha Ridge, Pacific Missile Range Facility at Barking Sands, and Kokee Air Force Station;

(4) The release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(5) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act;

(6) Construction of communication sites licensed by the Federal Communications Commission; and

(7) Activities not previously mentioned that is funded or authorization by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Defense, Department of Transportation, Department of Energy, Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration) or any other Federal agency.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see ADDRESSES section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits should be directed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits at the same address.

Consideration of Economic and Other Relevant Impacts

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude such areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will reopen the comment period for 30 days at that time to accept comments on the economic analysis or further comments on the proposed rule.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

The Service invites comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed or protected, we may exclude such areas from the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the recovery of the species.

In determining whether a management effort is likely to be implemented, we would generally consider: (a) whether a management plan or agreement exists, which specifies the management actions being implemented, or to be implemented, the schedule for implementation, the responsible party(ies), and the funding source(s), or other resources necessary to implement the actions, are available with a high level of certainty that the funding will be provided; and (b) the authority and long-term commitment of the party(ies) to the agreement or plan to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands.

In determining whether an action is likely to be effective, we would generally consider: (a) whether the plan specifically addresses the management needs, including reduction of threats of the species; (b) whether such actions have been successful in the past; (c) whether there are provisions for monitoring and assessment of the effectiveness of the management actions; (d) and whether adaptive management principles have been incorporated into the plan.

We are aware that the State of Hawaii and some private landowners are considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Kauai. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat adequately provide for the recovery of the species. We are also soliciting comments on whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements, *etc.*) should be excluded from critical habitat and, if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation would outweigh any threats to these species due to designation;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532(5));

(3) Specific information on the amount and distribution of habitat for *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperma*, *Delissea rivularis*, *Delissea undulata*, *Diellia pallida*, *Dubautia latifolia*, *Dubautia pauciflorula*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus waimeae* spp. *hannerae*, *Isodendrion laurifolium*, *Isodendrion longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeaensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Melicope quadrangularis*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothocestrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phyllostegia knudsenii*, *Phyllostegia waimeae*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandvicensis*, *Poa siphonoglossa*, *Pritchardia aylmer-robinsonii*, *Pritchardia napaliensis*, *Pritchardia viscosa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobdyi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other relevant impacts resulting from the proposed designations of critical habitat, including any impacts on small entities or families; and

(6) Economic and other potential values associated with designating critical habitat for the 76 plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values," and reductions in administrative costs).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see ADDRESSES). If you are sending comments by electronic mail (e-mail), please submit them in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: 1018–AG71" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Pacific Islands Office at phone number 808/541–3441. Please note that the e-mail address (KAandNIcrithab pr@fws.gov) will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the "Supplementary Information" section of the preamble helpful in understanding the document? (5) Are the detailed scientific descriptions of the plants helpful, and (6) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

1. Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this action was submitted for review by the Office of Management and Budget (OMB). We are in the process of preparing an economic analysis to determine the economic consequences of designating the specific areas identified as critical habitat. If our economic analysis reveals that the economic impacts of designating any area as critical habitat outweigh the benefits of designation, we may exclude those areas from consideration, unless such exclusion will result in the extinction of the species.

(a) Even though we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this proposed rule will have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore, we do not believe a cost-benefit and economic analysis pursuant to EO 12866 is required.

These 76 plants were listed as endangered or threatened species between the years 1991 and 1996. With the possible exception of portions of the Alakai Swamp, the areas proposed for critical habitat are currently occupied by one or more of these species. Under section 7 of the Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; designation does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Section 7 also requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience, due to the limited number of individuals and populations, and limited range, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat for any of these 76 species would also likely cause "jeopardy" to that species. Accordingly, the designation of currently occupied areas as critical habitat would not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal involvement in their actions are not restricted by the designation of critical habitat. It is possible that some unoccupied habitat in the Alakai Swamp has been proposed as critical habitat. However, the Alakai Swamp is unlikely to be developed because it is a designated State wilderness preserve, and therefore, any possible inclusion of unoccupied habitat that might not otherwise be covered by section 7 is unlikely to have an economic impact.

(b) This proposed rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of these 76 plant species since their listing between 1991 and 1996. The prohibition against adverse modification of critical habitat would not be expected to impose any additional restrictions to those that currently exist because all proposed critical habitat is occupied, with the exception, possibly, of portions of the Alakai Swamp.

(c) This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition resulting from critical habitat designation will have any incremental effects.

(d) This proposed rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

2. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this proposed rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 5 (see "Methods for Selection of Areas for Proposed Critical Habitat Designations") we have designated property owned by Federal and State governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development on private or State lands requiring permits from other Federal agencies such as Housing and Urban Development;

(3) Military training or similar activities of the U.S. Department of Defense (Navy and Air Force) on their lands or lands under their jurisdiction;

(4) The release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(5) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act;

(6) Construction of communication sites licensed by the Federal Communications Commission;

(7) Activities not previously mentioned that are funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Defense, Department of Transportation, Department of Energy, Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration) or any other Federal agency.

Many of these activities authorized or funded by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed in section 1 above, these actions are currently required to comply with the protections of the Act that are triggered by listing, such as avoiding jeopardy to these species, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current State restrictions concerning

take of listed threatened or endangered plant species remain in effect, and this proposed rule will have no additional restrictions.

3. Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This proposed rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in section 1, these actions are currently subject to equivalent requirements through the listing protections of the species, and no further restrictions are anticipated.

(b) This proposed rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

5. Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The proposed rule will not increase or decrease the current restrictions on private property concerning take of these 76 plant species. We do not anticipate that property values will be affected by the critical habitat designations. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with State law and with the continued survival of the plant species.

6. Federalism

In accordance with Executive Order 13132, the proposed rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the 76 plant species would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what Federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultation to occur.

7. Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act. The proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the 76 plant species.

8. Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required.

9. National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Ecoregion Office (see ADDRESSES section).

Authors

The primary authors of this notice are Stacy Jorgensen, Christa Russell, Michelle Stephens, and Marigold Zoll (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entries for "*Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyanea undulata, Cyperus trachysanthos, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Dubautia latifolia, Dubautia pauciflorula, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hesperomannia lydgatei, Hibiscadelphus woodii, Hibiscus clayi, Hibiscus waimeae spp. hannerae, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Labordia lydgatei, Labordia tinifolia var. wahiawaensis, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lobelia niihauensis, Lysimachia filifolia, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phyllostegia knudsenii, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea helleri, Schiedea kauaiensis, Schiedea*

membranacea, Schiedea nuttallii, Schiedea spergulina var. leiopoda, Schiedea spergulina var. spergulina, Schiedea stellarioides, Sesbania tomentosa, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne campanulata, Viola helenae, Viola kauaiensis var. *wahiawaensis, Wilkesia hobdyi, Xylosma crenatum,* and *Zanthoxylum hawaiiense*" under "FLOWERING PLANTS" and "*Adenophorus periens* and *Diellia pallida*" under "FERNS AND ALLIES" to read as follows:

17.12(h) Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Alectryon macrococcus.	Mahoe	U.S.A. (HI)	Sapindaceae	E	467	17.96(a)	NA
*	*	*	*	*	*	*	
Alsinidendron lychnoides.	Kuawawaenohu	U.S.A. (HI)	Caryophyllaceae	E	590	17.96(a)	NA
Alsinidendron viscosum.	None	U.S.A. (HI)	Caryophyllaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Bonamia menziesii	None	U.S.A. (HI)	Convolvulaceae	E	559	17.96(a)	NA
Brighamia insignis	'Olulu	U.S.A. (HI)	Campanulaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Centaurium sebaeoides.	'Awiwi	U.S.A. (HI)	Gentianaceae	E	448	17.96(a)	NA
*	*	*	*	*	*	*	
Chamaesyce halemanui.	None	U.S.A. (HI)	Euphorbiaceae	E	464	17.96(a)	NA
*	*	*	*	*	*	*	
Cyanea asarifolia	Haha	U.S.A (HI)	Campanulaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Cyanea recta	Haha	U.S.A (HI)	Campanulaceae	T	590	17.96(a)	NA
Cyanea remyi	Haha	U.S.A (HI)	Campanulaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Cyanea undulata	Haha	U.S.A. (HI)	Campanulaceae	E	436	17.96(a)	NA
*	*	*	*	*	*	*	
Cyperus trachysanthos.	Pu'uka'a	U.S.A. (HI)	Cyperaceae	E	592	17.96(a)	NA
*	*	*	*	*	*	*	
Cyrtandra cyaneoides	Mapele	U.S.A. (HI)	Gesneriaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Cyrtandra limahuliensis.	Ha'iwale	U.S.A. (HI)	Gesneriaceae	T	530	17.96(a)	NA
*	*	*	*	*	*	*	
Delissea rhytidosperma.	None	U.S.A. (HI)	Campanulaceae	E	530	17.96(a)	NA
Delissea rivularis	'Oha'	U.S.A. (HI)	Campanulaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Delissea undulata	None	U.S.A. (HI)	Campanulaceae	E	593	17.96(a)	NA
*	*	*	*	*	*	*	
Dubautia latifolia	Na'ena'e'	U.S.A. (HI)	Asteraceae	E	464	17.96(a)	NA
Dubautia pauciflorula	Na'ena'e'	U.S.A. (HI)	Asteraceae	E	436	17.96(a)	NA
*	*	*	*	*	*	*	
Euphorbia haeleeleana.	'Akoko	U.S.A. (HI)	Euphorbiaceae	E	592	17.96(a)	NA
*	*	*	*	*	*	*	
Exocarpos luteolus	Heau	U.S.A. (HI)	Santalaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Flueggea neowawraea.	Mehamehame	U.S.A. (HI)	Euphorbiaceae	E	559	17.96(a)	NA
*	*	*	*	*	*	*	
Gouania meyenii	None	U.S.A. (HI)	Rhamnaceae	E	448	17.96(a)	NA
*	*	*	*	*	*	*	
Hedyotis cookiana	'Awiwi	U.S.A. (HI)	Rubiaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Hedyotis st.-johnii	Na Pali beach hedyotis.	U.S.A. (HI)	Rubiaceae	E	441	17.96(a)	NA
*	*	*	*	*	*	*	
Hesperomannia lydgatei.	None	U.S.A. (HI)	Asteraceae	E	436	17.96(a)	NA
*	*	*	*	*	*	*	
Hibiscadelphus woodii.	Hau kuahiwi	U.S.A. (HI)	Malvaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Hibiscus clayi	Clay's hibiscus	U.S.A. (HI)	Malvaceae	E	530	17.96(a)	NA
Hibiscus waimeae spp. hannerae.	Koki'o ke'oke'o	U.S.A. (HI)	Malvaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Isodendrion laurifolium.	Aupaka	U.S.A. (HI)	Violaceae	E	592	17.96(a)	NA
Isodendrion longifolium.	Aupaka	U.S.A. (HI)	Violaceae	T	592	17.96(a)	NA
*	*	*	*	*	*	*	
Kokia kauaiensis	Koki'o	U.S.A. (HI)	Malvaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Labordia lydgatei	Kamakahala	U.S.A. (HI)	Loganiaceae	E	436	17.96(a)	NA
Labordia tinifolia var. *wahiawaensis.*	Kamakahala	U.S.A. (HI)	Loganiaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Lipochaeta fauriei	Nehe	U.S.A. (HI)	Asteraceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Lipochaeta micrantha	Nehe	U.S.A. (HI)	Asteraceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Lipochaeta waimeaensis.	Nehe	U.S.A. (HI)	Asteraceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Lobelia niihauensis	None	U.S.A. (HI)	Campanulaceae	E	448	17.96(a)	NA
*	*	*	*	*	*	*	
Lysimachia filifolia	None	U.S.A. (HI)	Primulaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Melicope haupuensis	Alani	U.S.A. (HI)	Rutaceae	E	530	17.96(a)	NA
Melicope knudsenii	Alani	U.S.A. (HI)	Rutaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Melicope pallida	Alani	U.S.A. (HI)	Rutaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Munroidendron racemosum.	None	U.S.A. (HI)	Araliaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Myrsine linearifolia	Kolea	U.S.A. (HI)	Myrsinaceae	T	590	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Nothocestrum peltatum.	'Aiea	U.S.A. (HI)	Solanaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Panicum niihauense	Lau 'ehu	U.S.A. (HI)	Poaceae	E	592	17.96(a)	NA
*	*	*	*	*	*	*	
Peucedanum sandwicense.	Makou	U.S.A. (HI)	Apiaceae	T	530	17.96(a)	NA
*	*	*	*	*	*	*	
Phyllostegia knudsenii.	None	U.S.A. (HI)	Lamiaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Phyllostegia wawrana	None	U.S.A. (HI)	Lamiaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Plantago princeps	Laukahi kuahiwi	U.S.A. (HI)	Plantaginaceae	E	559	17.96(a)	NA
Platanthera holochila	None	U.S.A. (HI)	Orchidaceae	E	592	17.96(a)	NA
*	*	*	*	*	*	*	
Poa mannii	Mann's bluegrass	U.S.A. (HI)	Poaceae	E	558	17.96(a)	NA
*	*	*	*	*	*	*	
Poa sandvicensis	Hawaiian bluegrass	U.S.A. (HI)	Poaceae	E	464	17.96(a)	NA
Poa siphonoglossa	None	U.S.A. (HI)	Poaceae	E	464	17.96(a)	NA
*	*	*	*	*	*	*	
Pteralyxia kauaiensis	Kaulu	U.S.A. (HI)	Apocynaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Remya kauaiensis	None	U.S.A. (HI)	Asteraceae	E	413	17.96(a)	NA
*	*	*	*	*	*	*	
Remya montgomeryi	None	U.S.A. (HI)	Asteraceae	E	413	17.96(a)	NA
*	*	*	*	*	*	*	
Schiedea apokremnos.	Ma'oli'oli	U.S.A. (HI)	Caryophyllaceae	E	441	17.96(a)	NA
*	*	*	*	*	*	*	
Schiedea helleri	None	U.S.A. (HI)	Caryophyllaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Schiedea kauaiensis	None	U.S.A. (HI)	Caryophyllaceae	E	592	17.96(a)	NA
*	*	*	*	*	*	*	
Schiedea membranacea.	None	U.S.A. (HI)	Caryophyllaceae	E	590	17.96(a)	NA
Schiedea nuttallii	None	U.S.A. (HI)	Caryophyllaceae	E	592	17.96(a)	NA
*	*	*	*	*	*	*	
Schiedea spergulina var. *leiopoda.*	None	U.S.A. (HI)	Caryophyllaceae	E	530	17.96(a)	NA
Schiedea spergulina var. *spergulina.*	None	U.S.A. (HI)	Caryophyllaceae	T	530	17.96(a)	NA
Schiedea stellarioides	Laulihilihi (Ma'oli'oli)	U.S.A. (HI)	Caryophyllaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Sesbania tomentosa	'Ohai	U.S.A. (HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*	*	
Solanum sandwicense.	'Aiakeakua, popolo	U.S.A. (HI)	Solanaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Spermolepis hawaiiensis.	None	U.S.A. (HI)	Apiaceae	E	559	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Stenogyne campanulata.	None	U.S.A. (HI)	Lamiaceae	E	464	17.96(a)	NA
*	*	*	*	*	*	*	
Viola helenae	None	U.S.A. (HI)	Violaceae	E	436	17.96(a)	NA
Viola kauaiensis var. *wahiawaensis.*	Nani wai'ale'ale	U.S.A. (HI)	Violaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Wilkesia hobdyi	Dwarf iliau	U.S.A. (HI)	Asteraceae	E	473	17.96(a)	NA
Xylosma crenatum	None	U.S.A. (HI)	Flacourtiaceae	E	464	17.96(a)	NA
*	*	*	*	*	*	*	
Zanthoxylum hawaiiense.	A'e	U.S.A. (HI)	Rutaceae	E	532	17.96(a)	NA
*	*	*	*	*	*	*	
FERNS AND ALLIES							
Adenophorus periens	Pendant kihi fern	U.S.A. (HI)	Grammitidaceae	E	559	17.96(a)	NA
*	*	*	*	*	*	*	
Diellia pallida	None	U.S.A. (HI)	Aspleniaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	

3. In § 17.96, redesignate paragraph (a) as paragraph (b); revise heading of newly designated paragraph (b) to read "Single-species critical habitat—flowering plants"; and add a new paragraph (a) to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Unit Descriptions and Maps of multiple-species critical habitat units.*

(1) Hawaii.

(i) Maps and critical habitat unit descriptions.

(A) Kauai.

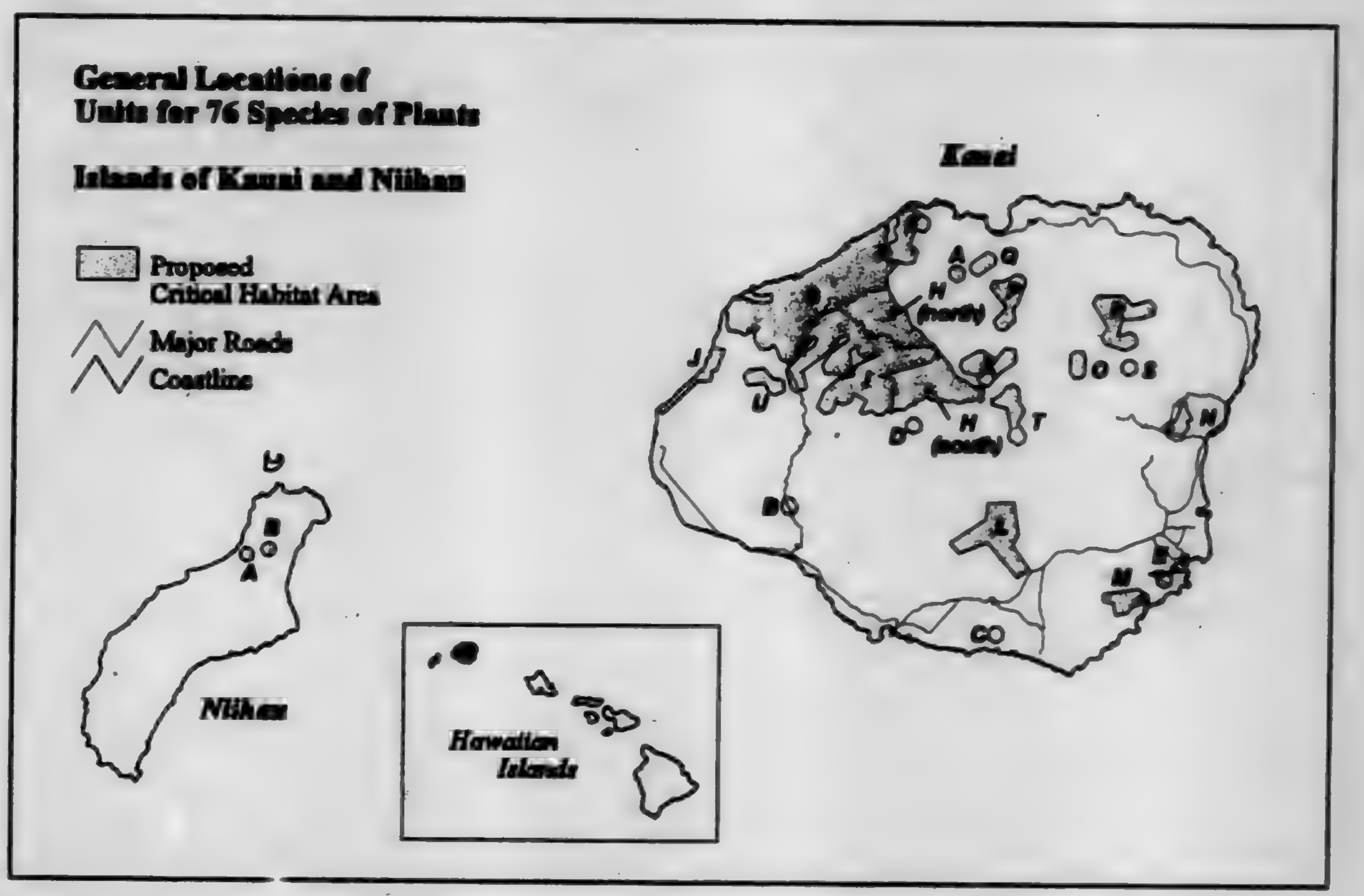
General Locations of Units for 76 Species of Plants
Islands of Kauai and Niihau
Proposed Critical Habitat Area
Major Roads
Coastline
Kauai
A
Q
H (north)
H (south)
J
U
D
T
O
S
N
B
L
M
E
C
Niihau
B
A
Hawaiian Islands

Critical habitat units with multiple species are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). Distances are provided in meters and miles.

Kauai A (121 ha; 298 ac)

Unit consists of seven boundary points with the following coordinates: 443666, 2452051; 443998, 2452413; 444554, 2452401; 444886, 2452015; 444832, 2451423; 444282, 2451133; 443696, 2451454.

Note: Map follows:

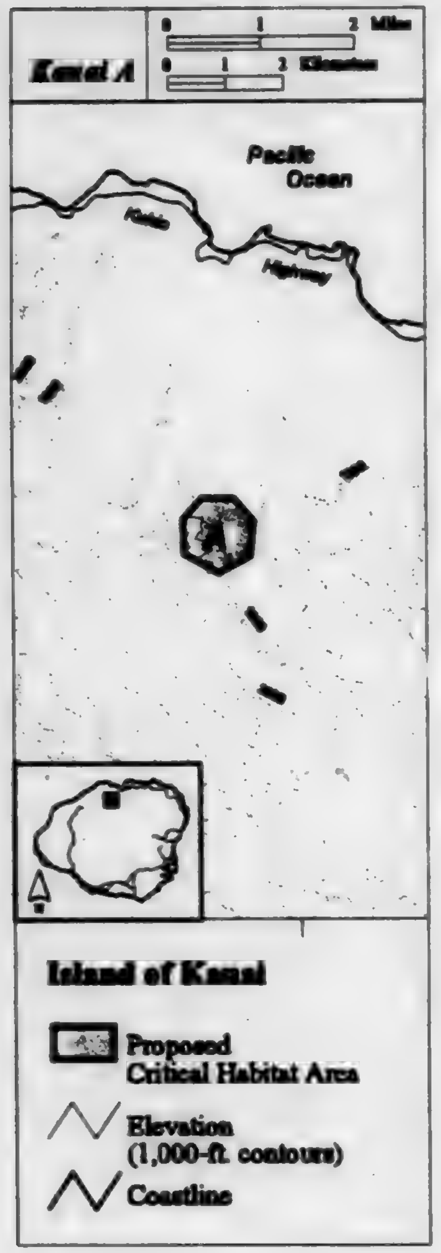
Kauai A
0 1 2 Miles
0 1 2 Kilometers
Pacific Ocean
Kuhio Highway
Island of Kauai
Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai B (142 ha; 351 ac)

Unit consists of eight boundary points with the following coordinates: 429954, 2432936; 430228, 2433024; 430792, 2432813; 431050, 2432278; 431007, 2431901; 430646, 2431556; 429966, 2431685; 429725, 2432253.

Note: Map follows:

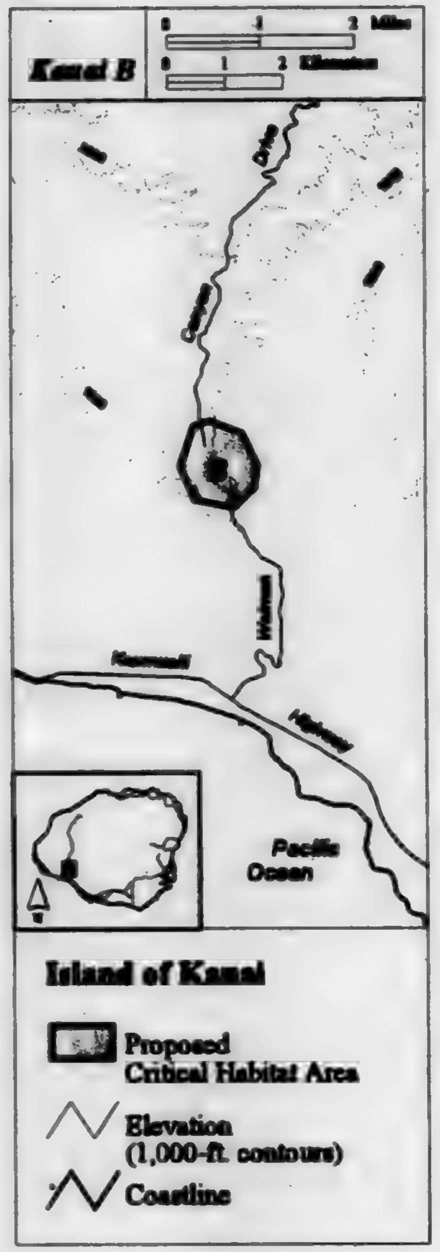
Kauai B
0 1 2 Miles
0 1 2 Kilometers
Kaumualii Highway
Pacific Ocean
Island of Kauai
Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai C (124 ha; 306 ac)

Unit consists of seven boundary points with the following coordinates: 447275, 2421965; 447607, 2422327; 448163, 2422315; 448481, 2421928; 448450, 2421347; 447896, 2421028; 447268, 2421332.

Note: Map follows:

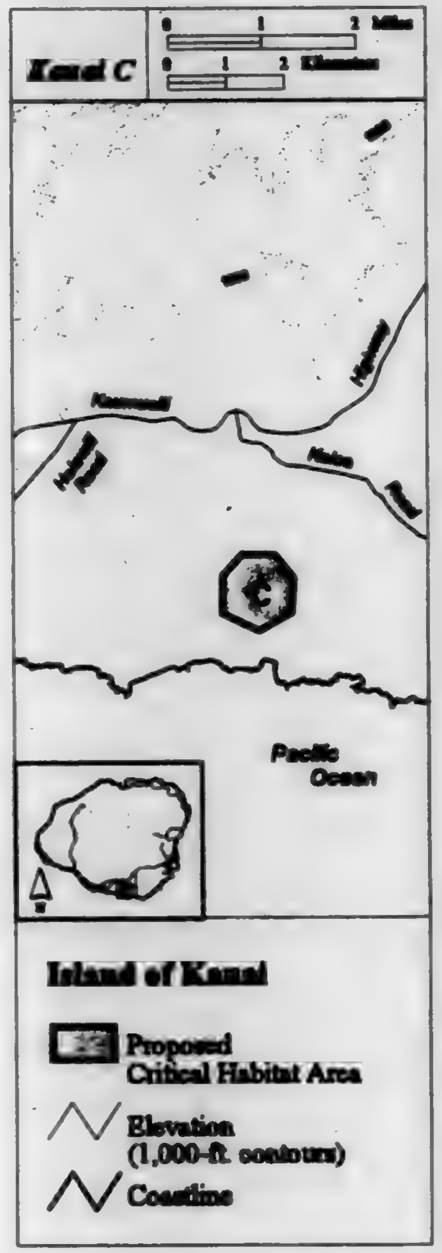
Kauai C
0 1 2 Miles
0 1 2 Kilometers
Kaumualii
Highway
Road
Pacific Ocean
Island of Kauai
Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai D (125 ha; 308 ac)

Unit consists of seven boundary points with the following coordinates: 440157, 2439356; 440489, 2439719; 441045, 2439706; 441377, 2439320; 441355, 2438717; 440773, 2438438; 440155, 2438734.

Note: Map follows:

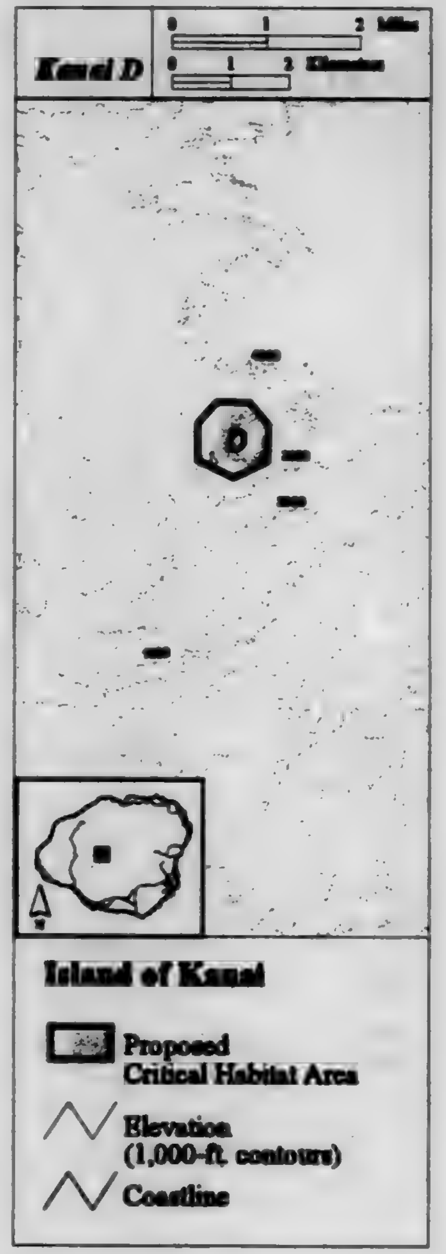
Kauai D
0 1 2 Miles
0 1 2 Kilometers
D
Island of Kauai
Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai E (117 ha; 288 ac)

Unit consists of seven boundary points and the intermediate coastline with the following coordinates: 462461, 2426866; 462686, 2426588; 462598, 2425988; 462047, 2425726; 461453, 2426032; 461432, 2426617; 461741, 2426979.

Note: Map follows:

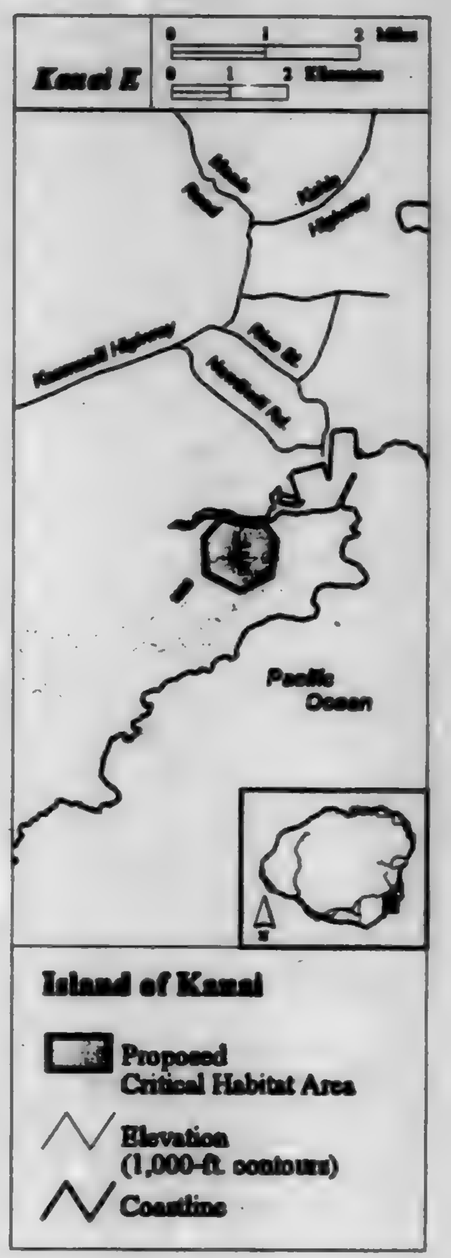
Kauai E
0 1 2 Miles
0 1 2 Kilometers
Kuhio Highway
Kaumualii Highway
Pacific Ocean
Island of Kauai
Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai F (943 ha; 2,330 ac)

Unit consists of twenty-seven boundary points and the intermediate coastline with the following coordinates: 439582, 2457190; 439646, 2457137; 439870, 2457165; 440480, 2457164; 440855, 2456992; 441585, 2456539; 441928, 2456203; 441875, 2455686; 441477, 2455265; 440747, 2455513; 440294, 2454127; 440678, 2454002; 440939, 2453662; 440687, 2452786; 440011, 2452638; 439324, 2452794; 438821, 2452909; 438249, 2453179; 438122, 2453607; 438356, 2454207; 439171, 2454579; 439213, 2454955; 439014, 2455248; 439053, 2455692; 439249, 2455858; 439274, 2456481; 439060, 2456669.

Note: Map follows:

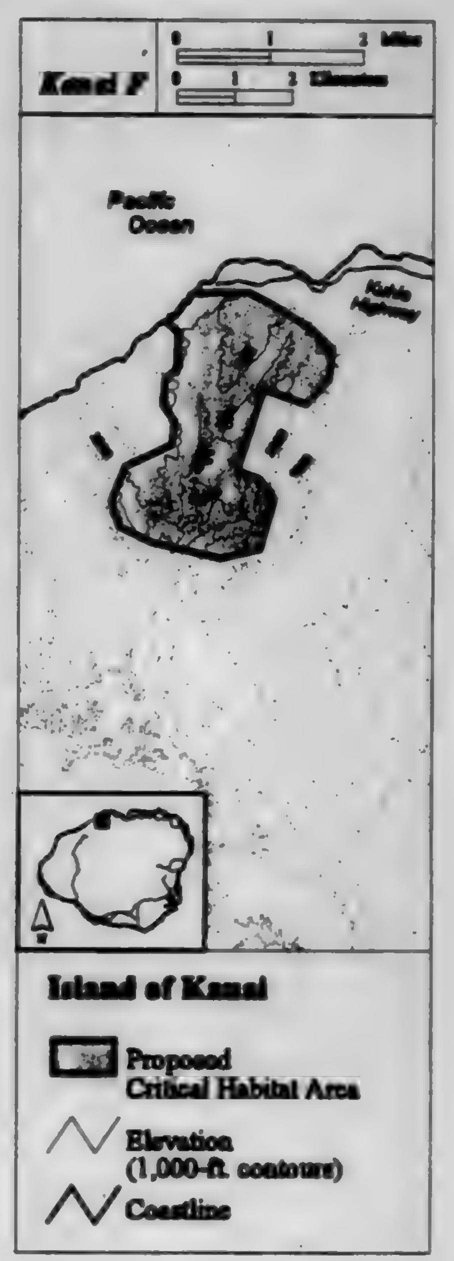
Kauai F
0 1 2 Miles
0 1 2 Kilometers
Pacific Ocean
Kuhio Highway
Island of Kauai
Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai G (6,372 ha; 15,752 ac)

Unit consists of sixty-one boundary points and two intermediate stretches of coastline with the following coordinates: 438237, 2456026; 438340, 2455904; 438452, 2455418; 438302, 2455008; 438227, 2454336; 438356, 2454207; 438122, 2453607; 438249, 2453179; 438821, 2452909; 439324, 2452794; 439098, 2452402; 438390, 2451683; 438377, 2451066; 438479, 2450630; 438081, 2450611; 437856, 2450386; 437196, 2450236; 436686, 2450327; 436206, 2450012; 435576, 2449428; 435171, 2449398; 434571, 2449188; 434346, 2448873; 433716, 2448589; 433056, 2448274; 432606, 2447884; 431976, 2447600; 431571, 2447195; 431376, 2446520; 431001, 2446041; 430881, 2445501; 430956, 2445096; 430506, 2444616; 430055, 2444390; 429511, 2444515; 429264, 2445339; 428958, 2445710; 428546, 2445373; 427836, 2445411; 427275, 2446121; 427275, 2446869; 427649, 2447167; 427163, 2447392; 427051, 2446869; 426453, 2446532; 426005, 2446794; 425182, 2446869; 424958, 2447466; 425033, 2448288; 424734, 2448475; 424703, 2448535; 425519, 2449626; 425631, 2449559; 426331, 2449614; 427201, 2449297; 428060, 2449185; 428733, 2449372; 428696, 2449969; 427986, 2449820; 427327, 2449846; 427036, 2450343.

Note: Map follows:

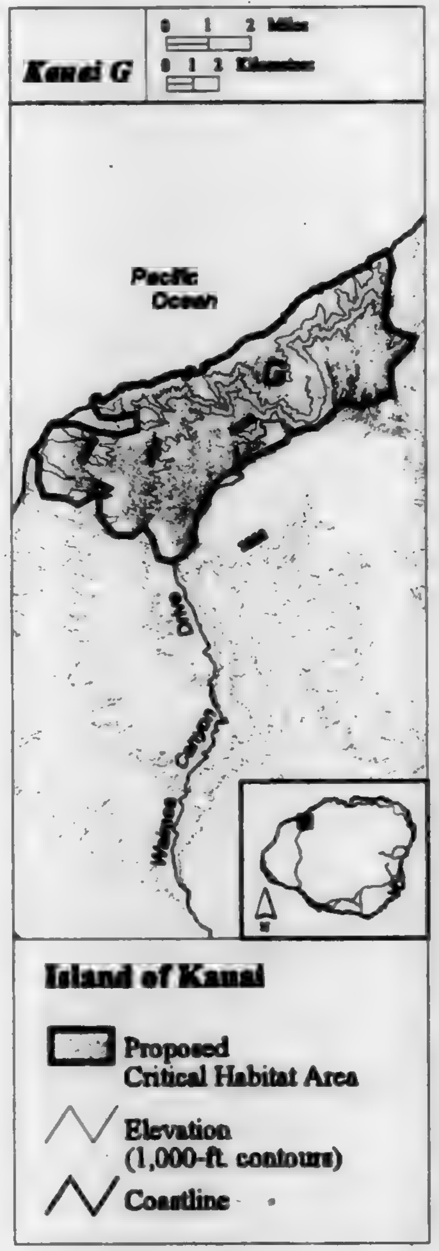

Kauai H North (1,893 ha; 4,678 ac)

Unit consists of thirty boundary points with the following coordinates: 438479, 2450630; 438530, 2450411; 439197, 2449222; 439559, 2448851; 439963, 2448868; 440449, 2447452; 441231, 2446950; 441832, 2446159; 442326, 2445855; 441941, 2445618; 441564, 2445724; 440439, 2445635; 439481, 2445574; 439012, 2445981; 438755, 2446540; 437858, 2446764; 437473, 2446353; 436897, 2446435; 436567, 2446737; 436399, 2447492; 435795, 2447718; 434346, 2448873; 434571, 2449188; 435171, 2449398; 435576, 2449428; 436206, 2450012; 436686, 2450327; 437196, 2450236; 437856, 2450386; 438081, 2450611.

Note: Map follows:

Kauai H South (2,053 ha; 5,072 ac)

Unit consists of thirty-six boundary points with the following coordinates: 442681, 2445377; 443901, 2444045; 443929, 2443735; 444310, 2443141; 445138, 2442798; 445835, 2442346; 446429, 2442286; 446674, 2441998; 446559, 2441513; 446662, 2441347; 446394, 2441140; 446090, 2441397; 445534, 2441154; 445380, 2441414; 445147, 2441167; 444455, 2440991; 444124, 2441223; 443707, 2441132; 443023, 2441344; 442289, 2441224; 441900, 2441577; 441650, 2441573; 441526, 2441372; 441085, 2441150; 440912, 2440914; 440464, 2440832; 440002, 2440430; 439021, 2440374; 438871, 2440154; 438599, 2440452; 438983, 2440918; 438956, 2441522; 439226, 2442251; 439011, 2443004; 437912, 2443251; 442140, 2444430.

Note: Map follows:

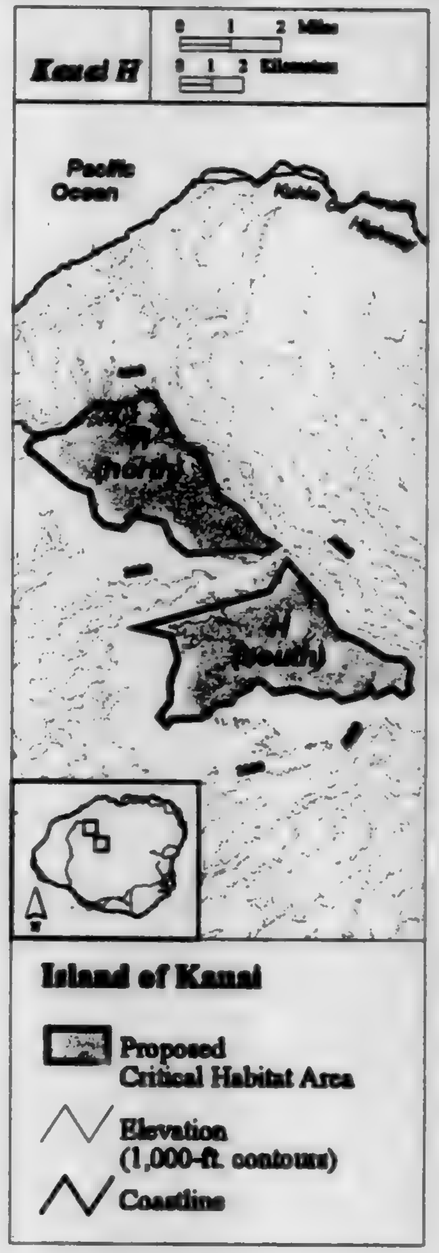

Kauai I (5,111 ha; 12,629 ac)

Unit consists of seventy-five boundary points with the following coordinates: 442326, 2445855; 442681, 2445377; 442140, 2444430; 437912, 2443251; 439011, 2443004; 439226, 2442251; 438956, 2441522; 438983, 2440918; 438599, 2440452; 438182, 2440018; 437639, 2439989; 437237, 2440320; 436456, 2440043; 436254, 2440270; 436809, 2441177; 435666, 2441725; 435498, 2441102; 434893, 2440850; 434168, 2441070; 433936, 2440283; 433268, 2440018; 432676, 2440585; 433230, 2441908; 434465, 2443017; 435654, 2443235; 435682, 2443786; 435977, 2444109; 437779, 2444969; 437565, 2445246; 436658, 2444679; 436091, 2445059; 435939, 2445705; 435335, 2445271; 435492, 2443672; 435074, 2443340; 433280, 2443372; 433030, 2444063; 433773, 2445154; 435198, 2446208; 435150, 2446635; 434429, 2446408; 434277, 2445895; 433180, 2444874; 431397, 2443543; 431758, 2442201; 431027, 2441811; 430463, 2442072; 430035, 2443613; 431367, 2445115; 432329, 2445592; 432614, 2446180; 432320, 2446465; 431417, 2445364; 430956, 2445096; 430881, 2445501; 431001, 2446041; 431376, 2446520; 431571, 2447195; 431976, 2447600; 432606, 2447884; 433056, 2448274; 433716, 2448589; 434346, 2448873; 435795, 2447718; 436399, 2447492; 436567, 2446737; 436897, 2446435; 437473, 2446353; 437858, 2446764; 438755, 2446540; 439012, 2445981; 439481, 2445574; 440439, 2445635; 441564, 2445724; 441941, 2445618.

Note: Map follows:

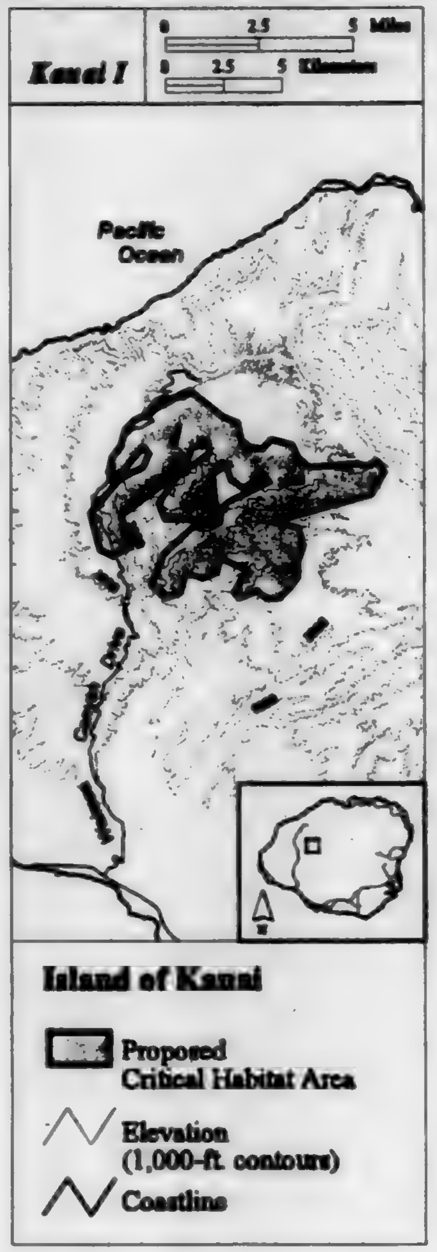
Kauai I
0 2.5 5 Miles
0 2.5 5 Kilometers
Pacific Ocean
Island of Kauai
Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai J (504 ha; 1,245 ac)

Unit consists of eight boundary points and the intermediate coastline with the following coordinates: 423814, 2445432; 424802, 2445255; 424177, 2443625; 423776, 2443508; 423659, 2442716; 422590, 2442656; 419640, 2439894; 419295, 2440404.

Note: Map follows:

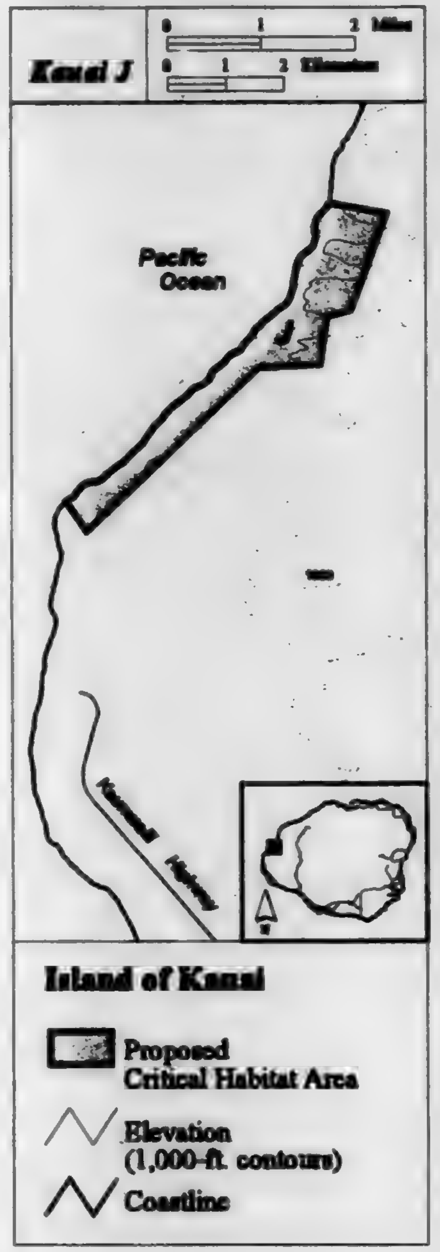
Kauai J
0 1 2 Miles
0 1 2 Kilometers
Pacific Ocean
Kaumualii Highway
Island of Kauai
Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai K (821 ha; 2,028 ac)

Unit consists of fifteen boundary points with the following coordinates: 448086, 2443601; 447030, 2442449; 446492, 2442508; 446087, 2442992; 446126, 2443364; 444940, 2443559; 444633, 2444048; 444772, 2444564; 446167, 2445324; 446631, 2445322; 447605, 2444633; 448415, 2445609; 449238, 2445413; 449406, 2444618; 449057, 2444228.

Note: Map follows:

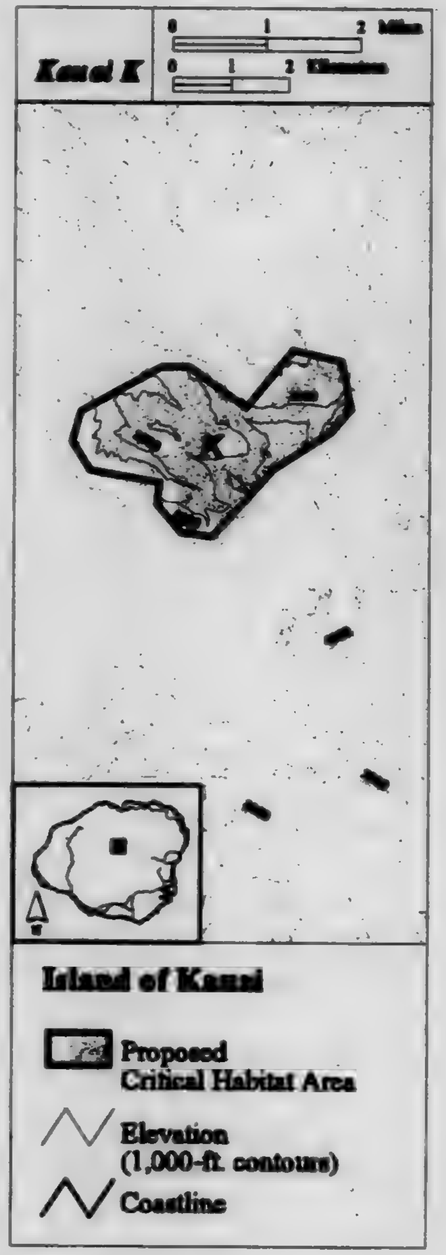
Kauai K
0 1 2 Miles
0 1 2 Kilometers
Island of Kauai
Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai L (1,682 ha; 4,157 ac)

Unit consists of eleven boundary points with the following coordinates: 443963, 2429307; 446972, 2431287; 447094, 2432620; 449275, 2432701; 449659, 2430034; 449235, 2429166; 450649, 2427126; 449602, 2426473; 447114, 2429408; 444745, 2428502; 443963, 2429287.

Note: Map follows:

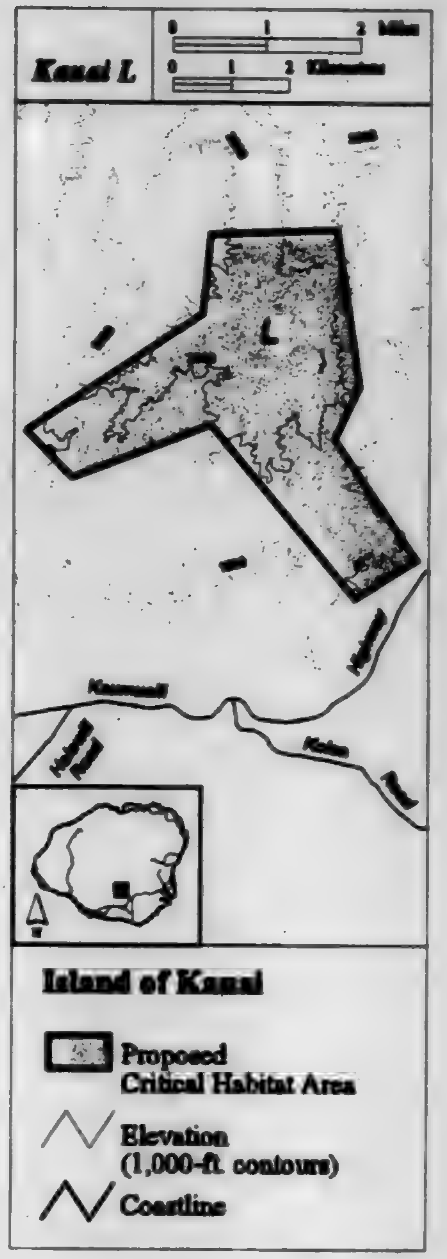
Kauai L
0 1 2 Miles
0 1 2 Kilometers
Kaumualii
Highway
Koloa Road
Island of Kauai
Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai M (482 ha; 1,191 ac)

Unit consists of nine boundary points with the following coordinates: 456911, 2424542; 456931, 2425122; 459885, 2425581; 460651, 2425063; 460751, 2424475; 459457, 2424224; 458932, 2423556; 457954, 2423431; 457777, 2424372.

Note: Map follows:

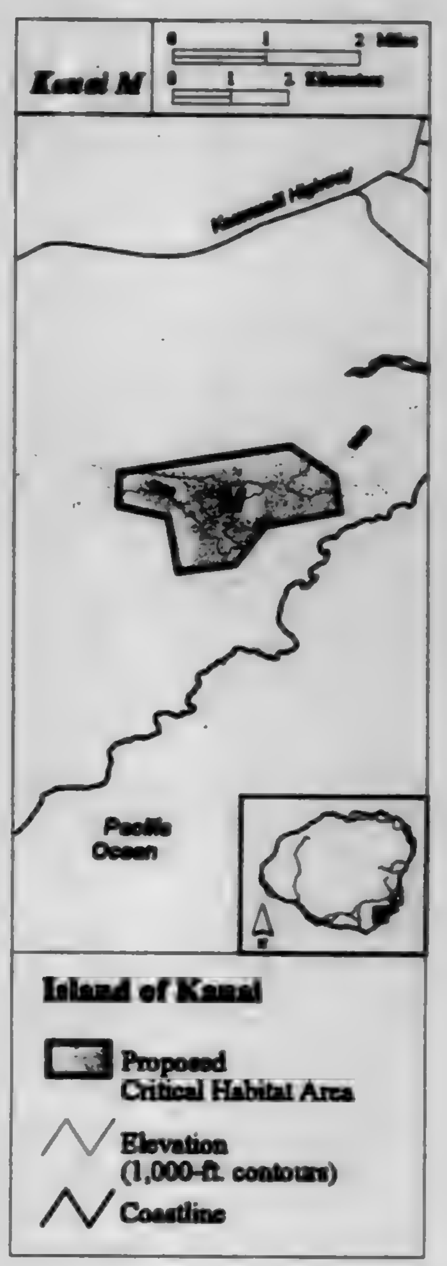
Kauai M
0 1 2 Miles
0 1 2 Kilometers
Kaumualii Highway
Pacific Ocean
Island of Kauai
Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai N (286 ha; 707 ac)

Unit consists of sixteen boundary points with the following coordinates: 462502, 2438596; 462104, 2438973; 462578, 2439445; 462918, 2439799; 462987, 2440106; 463169, 2440475; 463176, 2440747; 463392, 2440968; 463540, 2441156; 463704, 2441235; 463768, 2440728; 464252, 2439811; 463789, 2439644; 463956, 2439085; 463831, 2438883; 463365, 2438375.

Note: Map follows:

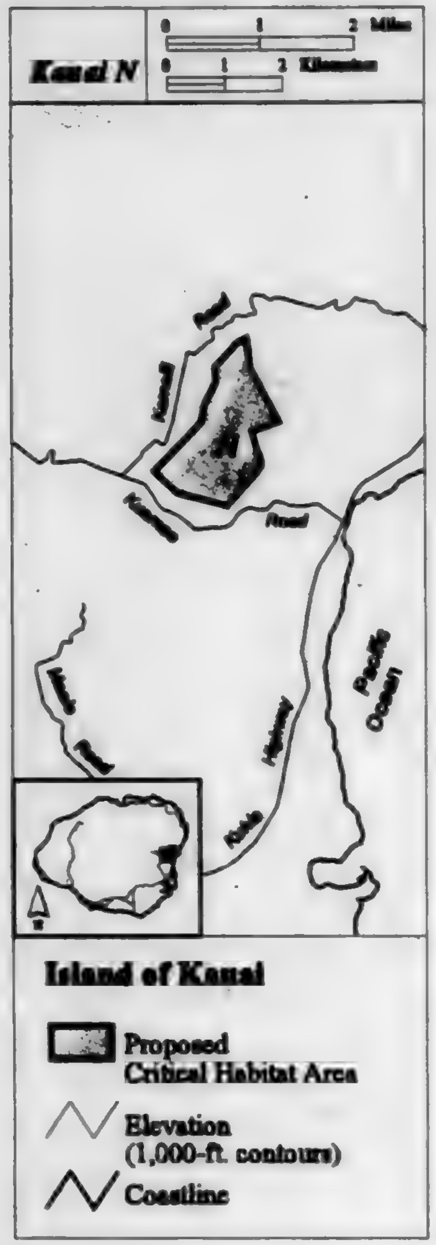
Kauai N
0 1 2 Miles
0 1 2 Kilometers
Road
Highway
Pacific Ocean
Island of Kauai
▨ Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai O (243 ha; 600 ac)

Unit consists of eight boundary points with the following UTM coordinates: 454357, 2445398; 454986, 2445311; 455160, 2444765; 455113, 2443528; 454847, 2443199; 454234, 2443189; 453902, 2443647; 453926, 2445083.

Note: Map follows:

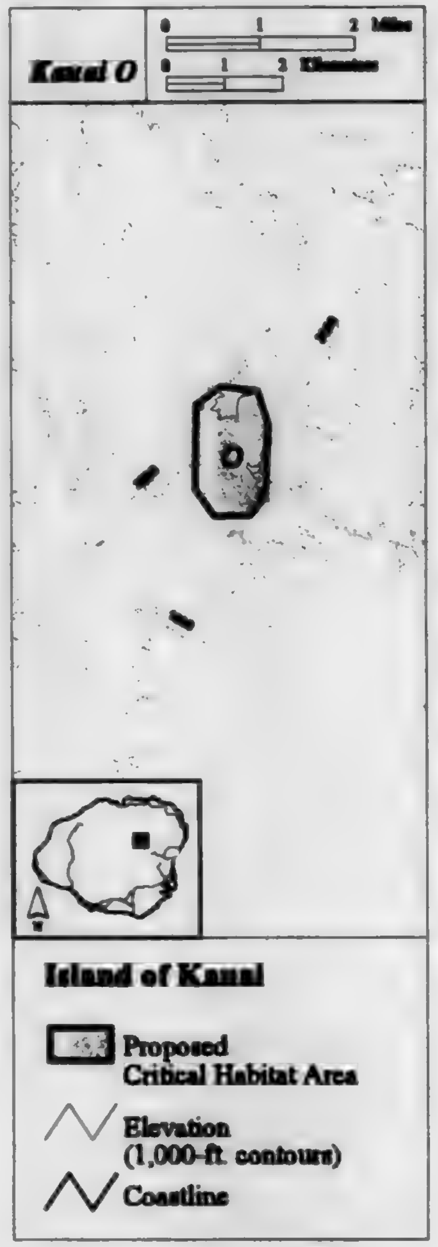
Kauai O
0 1 2 Miles
0 1 2 Kilometers
Island of Kauai
▨ Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai P (711 ha; 1,758 ac)

Unit consists of thirteen boundary points with the following coordinates: 447753, 2447225; 447428, 2447829; 448470, 2448968; 447125, 2450677; 447365, 2451166; 448229, 2451166; 449288, 2451766; 449752, 2451666; 450073, 2451227; 449432, 2449395; 449073, 2448924; 449147, 2447868; 448339, 2447084.

Note: Map follows:

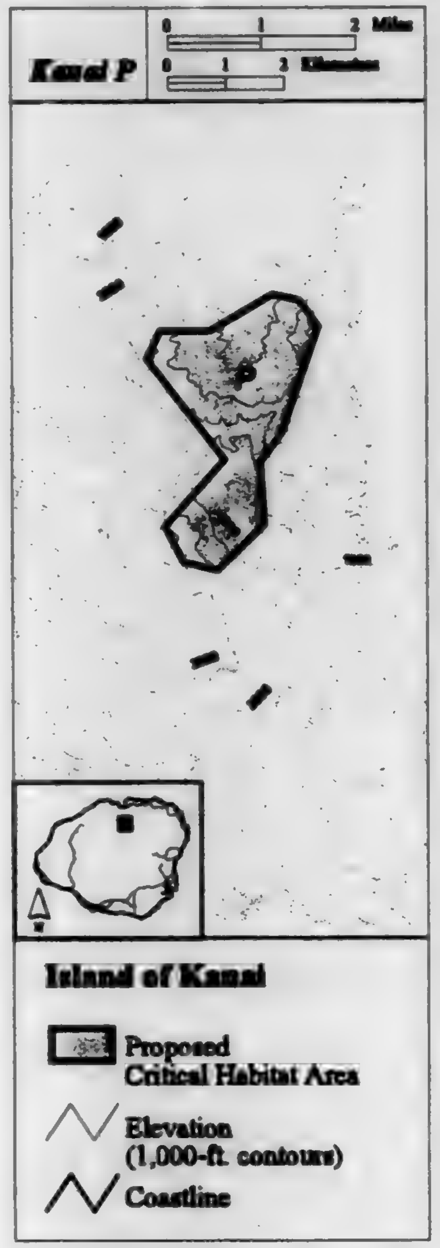
Kauai P
0 1 2 Miles
0 1 2 Kilometers
Island of Kauai
▨ Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai Q (254 ha; 627 ac)

Unit consists of eight boundary points with the following coordinates: 445509, 2452732; 446856, 2453623; 447285, 2453489; 447596, 2453084; 447448, 2452593; 446079, 2451669; 445560, 2451860; 445359, 2452315.

Note: Map follows:

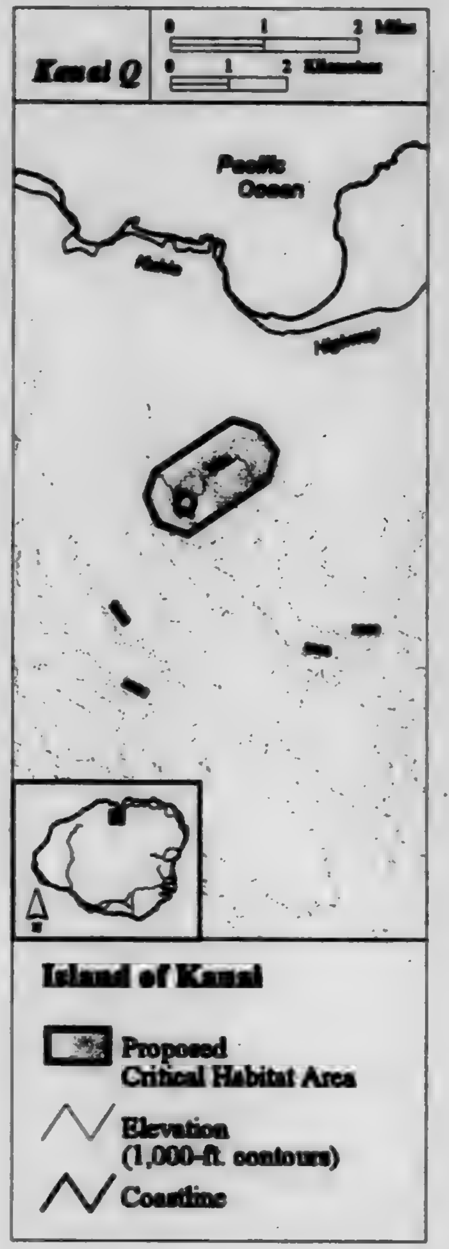
Kauai Q
0 1 2 Miles
0 1 2 Kilometers
Pacific Ocean
Highway
Island of Kauai
▨ Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai R (1,216 ha; 3,004 ac)

Unit consists of twenty boundary points with the following coordinates: 455777, 2449394; 456131, 2450017; 458344, 2450005; 459083, 2449224; 460578, 2449637; 461026, 2449189; 460925, 2448495; 459811, 2448172; 458204, 2448066; 457900, 2446720; 458214, 2446760; 458887, 2446950; 459348, 2446748; 459490, 2446382; 459454, 2446075; 459242, 2445757; 458486, 2445521; 456838, 2445992; 456525, 2446628; 457057, 2447386.

Note: Map follows:

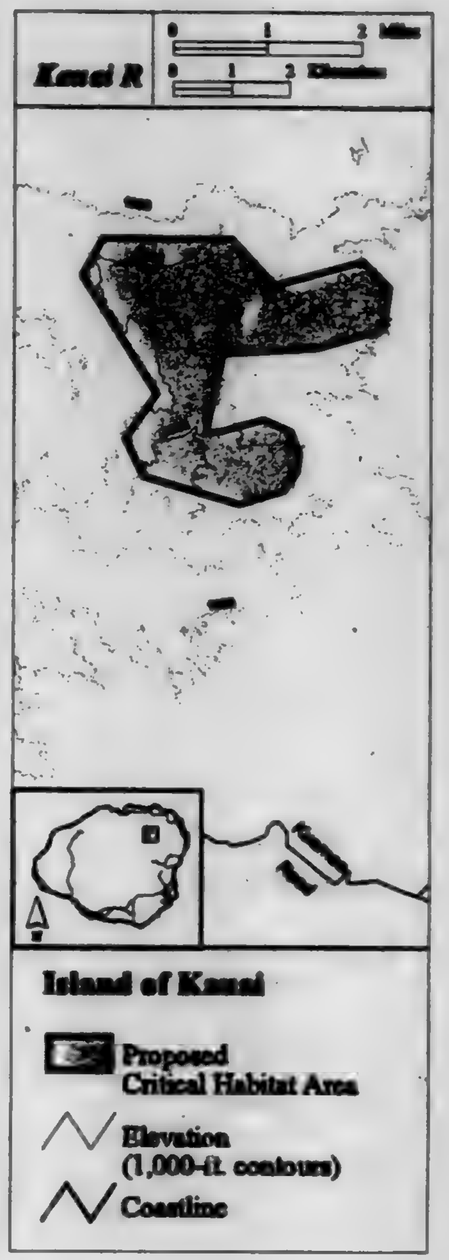
Kauai R
0 1 2 Miles
0 1 2 Kilometers
Road
Island of Kauai
▨ Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai S (119 ha; 294 ac)

Unit consists of eight boundary points with the following coordinates: 458569, 2444612; 459074, 2444680; 459466, 2444364; 459486, 2443810; 459152, 2443495; 458687, 2443427; 458285, 2443787; 458273, 2444282.

Note: Map follows:

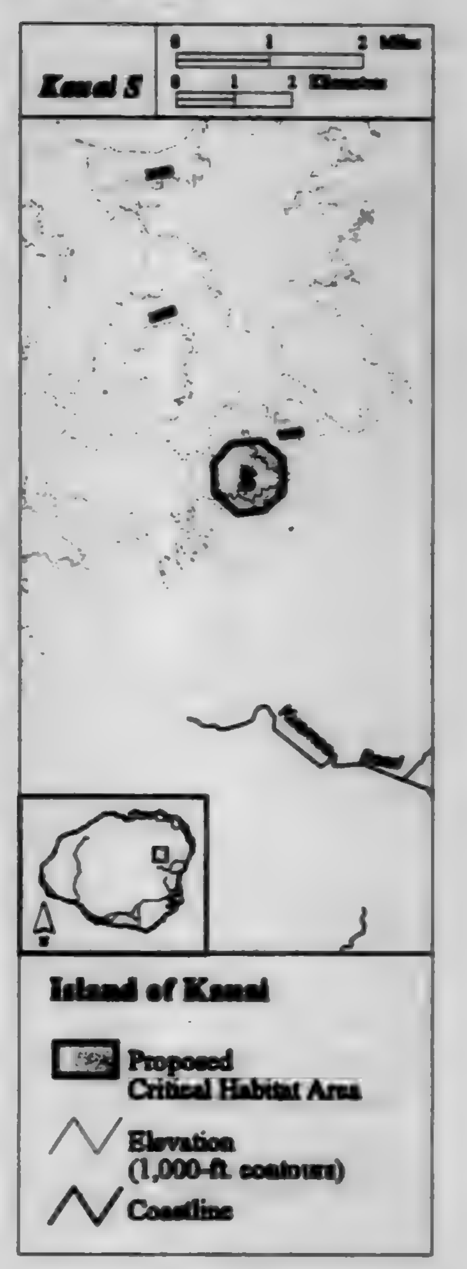
Kauai S
0 1 2 Miles
0 1 2 Kilometers
Road
Island of Kauai
▨ Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai T (639 ha; 1,578 ac)

Unit consists of sixteen boundary points with the following coordinates: 448552, 2442388; 449125, 2442584; 449589, 2442204; 449663, 2440988; 450101, 2440410; 449514, 2439343; 450217, 2438368; 450068, 2437872; 449597, 2437516; 448836, 2437971; 448762, 2438443; 448960, 2438905; 448605, 2440584; 447306, 2440964; 447381, 2441287; 448241, 2441890.

Note: Map follows:

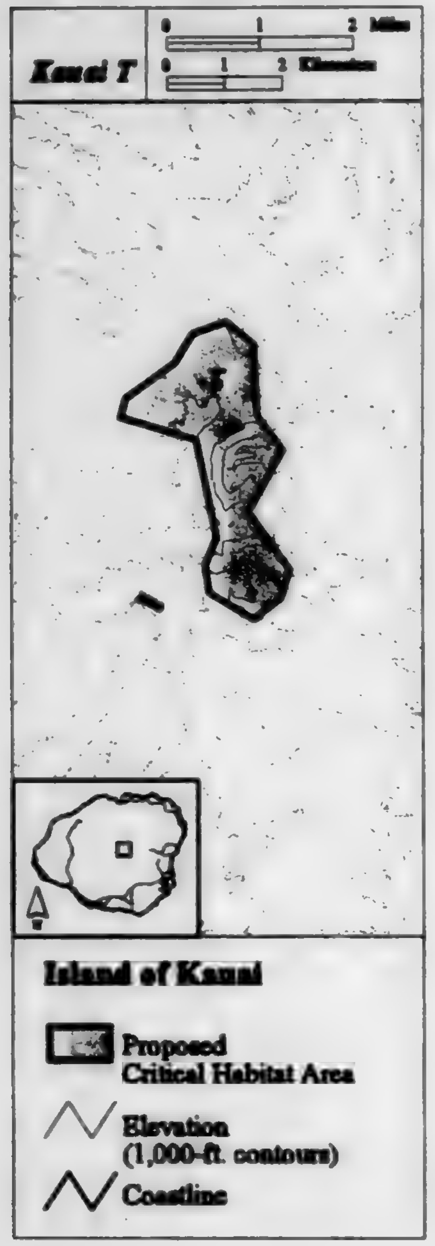
Kauai T
0 1 2 Miles
0 1 2 Kilometers
Island of Kauai
Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Kauai U (392 ha; 969 ac)

Unit consists of eleven boundary points with the following coordinates: 426882, 2443616; 428076, 2443787; 428971, 2442855; 429381, 2442944; 429822, 2442698; 429881, 2441922; 429083, 2441549; 428635, 2441781; 428233, 2442549; 426763, 2442385; 426465, 2443191.

Note: Map follows:

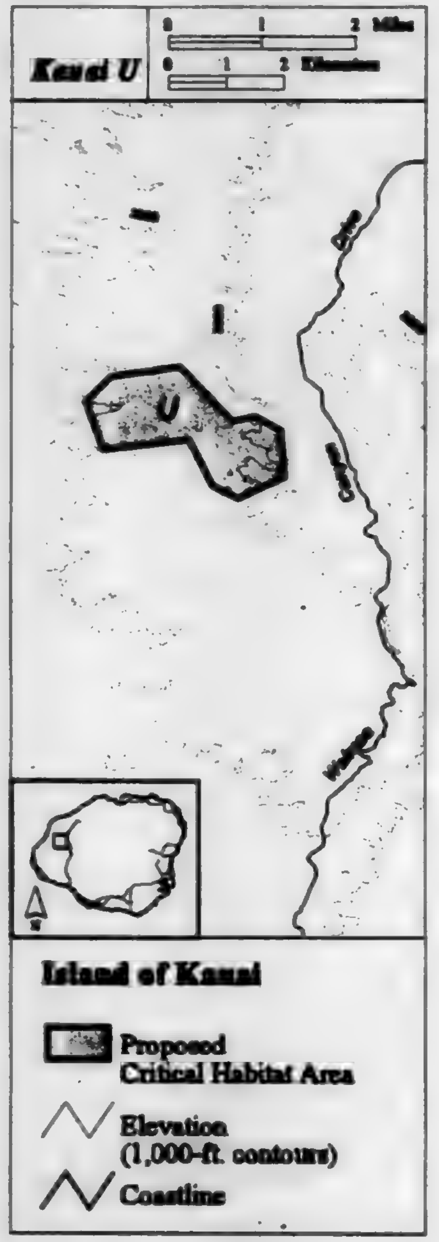
Kauai U
0 1 2 Miles
0 1 2 Kilometers
Island of Kauai
Proposed Critical Habitat Area
Elevation (1,000-ft. contours)
Coastline

Protected Species Within Each Critical Habitat Unit of Kauai

Kauai units	Species
A	*Cyrtandra limahuliensis.*
B	*Lipochaeta waimeaensis* and *Spermolepis hawaiiensis.*
C	*Schiedea spergulina* var. *leiopoda.*
D	*Solanum sandwicense.*
E	*Brighamia insignis.*
F	*Adenophorus periens, Cyrtandra limahuliensis, Delissea rhytidosperma, Flueggea neowawraea, Hesperomannia lydgatei, Hibiscus waimeae* ssp. *hannerae, Isodendrion longifolium, Labordia lydgatei, Lobelia niihauensis, Myrsine linearifolia, Peucedanum sandwicense,* and *Pteralyxia kauaiensis.*
G	*Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Cyperus trachysanthos, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Diellia pallida, Dubautia latifolia, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hibiscadelphus woodii, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Lipochaeta fauriei, Lobelia niihauensis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Peucedanum sandwicense, Phyllostegia wawrana, Plantago princeps, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea kauaiensis, Schiedea membranacea, Schiedea spergulina* var. *spergulina, Solanum sandwicense, Stenogyne campanulata, Wilkesia hobdyi,* and *Xylosma crenatum.*
H	*Alsinidendron lychnoides, Exocarpos luteolus, Myrsine linearifolia,* and *Platanthera holochila.*
I	*Alectryon macrococcus, Alsinidendron viscosum, Chamaesyce halemanui, Diellia pallida, Dubautia latifolia, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Isodendrion laurifolium, Kokia kauaiensis, Lipochaeta fauriei, Lipochaeta micrantha, Lobelia niihauensis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Peucedanum sandwicense, Phyllostegia knudsenii, Phyllostegia wawrana, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea helleri, Schiedea membranacea, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Solanum sandwicense, Spermolepis hawaiiensis, Xylosma crenatum,* and *Zanthoxylum hawaiiense.*
J	*Hedyotis st.-johnii, Lobelia niihauensis, Panicum niihauense, Schiedea apokremnos, Sesbania tomentosa,* and *Wilkesia hobdyi.*
K	*Adenophorus periens, Cyanea recta, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Labordia lydgatei, Plantago princeps,* and *Schiedea membranacea.*
L	*Adenophorus periens, Bonamia menziesii, Cyanea remyi, Cyanea undulata, Cyrtandra limahuliensis, Dubautia pauciflorula, Exocarpos luteolus, Hesperomannia lydgatei, Isodendrion longifolium, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Myrsine linearifolia, Viola helenae,* and *Viola kauaiensis* var. *wahiawaensis.*
M	*Brighamia insignis, Delissea rhytidosperma, Isodendrion longifolium, Lipochaeta micrantha, Munroidendron racemosum, Peucedanum sandwicense, Pteralyxia kauaiensis,* and *Schiedea nuttallii.*
N	*Hibiscus clayi* and *Munroidendron racemosum.*
O	*Cyrtandra limahuliensis* and *Cyanea recta.*
P	*Adenophorus periens, Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Hesperomannia lydgatei, Isodendrion longifolium, Labordia lydgatei, Myrsine linearifolia,* and *Plantago princeps.*
Q	*Cyrtandra limahuliensis* and *Pteralyxia kauaiensis.*
R	*Adenophorus periens, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Labordia lydgatei, Phyllostegia wawrana.*
S	*Exocarpos luteolus.*
T	*Cyanea asarifolia, Cyanea remyi, Cyrtandra limahuliensis, Labordia lydgatei, Lysimachia filifolia, Plantago princeps,* and *Pteralyxia kauaiensis.*
U	*Alectryon macrococcus, Euphorbia haeleeleana, Isodendrion laurifolium, Lipochaeta fauriei, Poa siphonoglossa, Pteralyxia kauaiensis,* and *Remya kauaiensis.*

(B) Niihau.

Critical habitat units with multiple species are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). Distances are provided in meters and miles.

Niihau A (94 ha; 232 ac)

Area consists of seven boundary points with the following coordinates: 385256, 2427495; 384807, 2427285; 384358, 2427494; 384230, 2427972; 384607, 2428421; 385100, 2428379; 385384, 2427974.

Note: Map follows:

Niihau B (97 ha; 239 ac)

Area consists of eight boundary points with the following coordinates: 387204, 2428323; 387067, 2427946; 386719, 2427745; 386241, 2427873; 386032, 2428321; 386169, 2428698; 386618, 2428908; 387067, 2428699.

Note: Map follows:

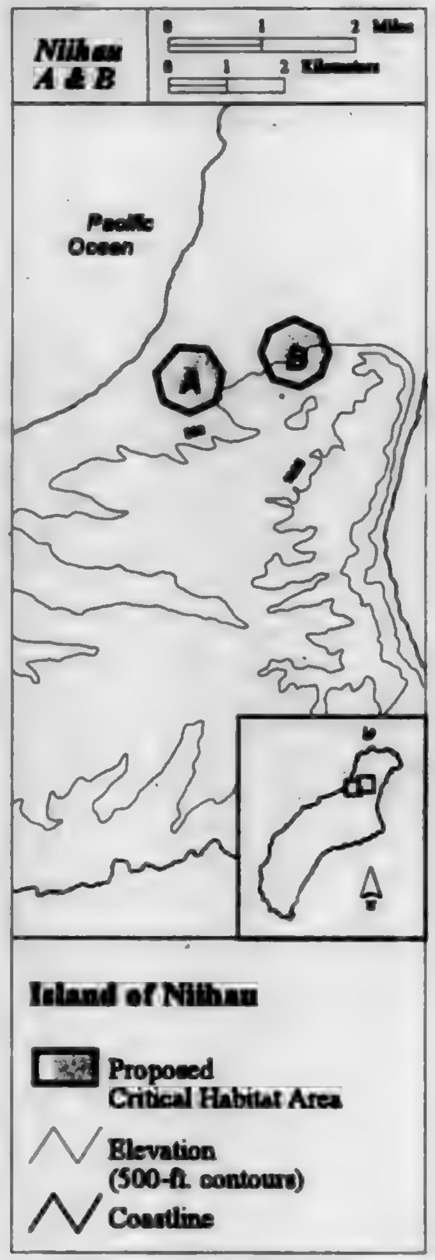

PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT ON NIIHAU

Niihau units	Species
A	*Cyperus trachysanthos.*
B	*Brighamia insignis.*

(ii) Hawaiian plants—Constituent elements.

(A) Flowering plants.

Family Apiaceae: *Peucedanum sandwicense* (makou)

Kauai F, G, I, and M, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Peucedanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) cliff habitats (a) in mixed shrub coastal dry cliff communities or diverse mesic forest and (b) containing one or more of the following associated native plant species: *Hibiscus kokio, Brighamia insignis, Bidens* sp., *Artemisia* sp., *Lobelia niihauensis, Wilkesia gymnoxiphium, Canthium odoratum, Dodonaea viscosa, Psychotria* sp., *Acacia koa, Kokio kauaiensis, Carex meyenii, Panicum lineale, Chamaesyce celastroides, Eragrostis* sp., *Diospyros* sp., or *Metrosideros polymorpha;* and (2) elevations from sea level to above 915 m (3,000 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (no common name)

Kauai B and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Spermolepis hawaiiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* forests or *Dodonaea viscosa* lowland dry shrubland containing one or more of the following associated plant species: *Eragrostis variabilis, Bidens sandvicensis, Schiedea spergulina, Lipochaeta* sp., *Cenchrus agrimonioides, Sida fallax, Doryopteris* sp., or *Gouania hillebrandii*; and (2) elevations of about 305 to 610 m (1,000 to 2,000 ft).

Family Apocynaceae: *Pteralyxia kauaiensis* (kaulu)

Kauai F, G, I, M, Q, T, and U, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Pteralyxia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) diverse mesic or wet forests containing one or more of the following associated plant taxa: *Pisonia sandwicensis, Euphorbia haeleeleana, Charpentiera elliptica, Pipturus* sp., *Neraudia kauaiensis, Hedyotis terminalis, Pritchardia* sp., *Gardenia remyi, Syzygium* sp., *Pleomele* sp., *Cyanea* sp., *Hibiscus* sp., *Kokia kauaiensis, Alectryon macrococcus, Canthium odoratum, Nestegis sandwicensis, Bobea timonioides, Rauvolfia sandwicensis, Nesoluma polynesicum, Myrsine lanaiensis, Caesalpinia kauaiensis, Tetraplasandra* sp., *Acacia koa, Styphelia tameiameiae, Dodonaea viscosa, Gahnia* sp., *Freycinetia arborea, Psychotria mariniana, Diplazium sandwichianum, Zanthoxylum dipetalum, Carex* sp., *Delissea* sp., *Xylosma hawaiiense, Alphitonia ponderosa, Santalum freycinetianum, Antidesma* sp., *Diospyros* sp., *Metrosideros polymorpha, Dianella sandwicensis, Poa sandwicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense,* or *Pouteria sandwicensis*; and (2) elevations between 250 to 610 m (820 to 2,000 ft).

Family Araliaceae: *Munroidendron racemosum* (no common name)

Kauai G, I, M, and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Munroidendron racemosum* on Kauai. Within these units the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep exposed cliffs or ridge slopes (a) in coastal or lowland mesic forest and (b) containing one or more of the following associated plant taxa: *Pisonia umbellifera, Canavalia galeata, Sida fallax, Brighamia insignis, Canthium odoratum, Psychotria* sp., *Nestegis sandwicensis, Tetraplasandra* sp., *Bobea timonioides, Rauvolfia sandwicensis, Pleomele* sp., *Pouteria sandwicensis,* or *Diospyros* sp.; and (2) elevations between 120 to 400 m (395 to 1,310 ft).

Family Asteraceae: *Dubautia latifolia* (na'ena'e)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Dubautia latifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) gentle or steep slopes on well drained soil in (a) semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and (b) containing one or more of the following native plant species: *Pouteria sandwicensis, Dodonaea viscosa, Nestegis sandwicensis, Diplazium sandwichianum, Elaeocarpus bifidus, Claoxylon sandwicense, Bobea* sp., *Pleomele* sp., *Antidesma* sp., *Cyrtandra* sp., *Xylosma* sp., *Alphitonia ponderosa, Coprosma waimeae, Dicranopteris linearis, Hedyotis terminalis, Ilex anomala, Melicope anisata, Psychotria mariniana,* or *Scaevola* sp.; and (2) elevations between 800 to 1,220 m (2,625 to 4,000 ft).

Family Asteraceae: *Dubautia pauciflorula* (na'ena'e)

Kauai L, identified in the legal description in (a)(1)(i)(A), description above, constitutes critical habitat for *Dubautia pauciflorula* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) lowland wet forest within stream drainages; and (2) elevations between 670–700 m (2,200–2,300 ft).

Family Asteraceae: *Hesperomannia lydgatei* (no common name)

Kauai F, L, and P, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Hesperomannia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) stream banks with rich brown soil and silty clay (a) in *Metrosideros polymorpha* or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest and (b) containing one or more of the following associated native plant species: *Adenophorus* sp., *Antidesma* sp., *Broussaisia arguta, Cheirodendron* sp., *Elaphoglossum* sp., *Freycinetia arborea, Hedyotis terminalis, Labordia lydgatei, Machaerina angustifolia, Peperomia* sp., *Pritchardia* sp., *Psychotria hexandra,* and *Syzygium sandwicensis*; and (2) elevations between 410–915 m (1,345–3,000 ft).

Family Asteraceae: *Lipochaeta fauriei* (nehe)

Kauai G, I, and U, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Lipochaeta fauriei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) moderate shade to full sun on the sides of steep gulches (a) in diverse lowland mesic forests and (b) containing one or more of the following native species: *Diospyros* sp., *Myrsine lanaiensis, Euphorbia haeleeleana, Acacia koa, Pleomele aurea, Sapindus oahuensis, Nestegis sandwicensis, Dodonaea viscosa, Psychotria mariniana, Psychotria greenwelliae, Kokia kauaiensis,* or *Hibiscus waimeae*; and (2) elevations between 480 and 900 m (1,575 and 2,950 ft).

Family Asteraceae: *Lipochaeta micrantha* (nehe)

Kauai I and M, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Lipochaeta micrantha* on Kauai. Within these units the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *exigua* are habitat components that provide: (1) cliffs, ridges, or slopes (a) in grassy, shrubby or dry mixed communities and (b) containing one or more of the following associated native plant species: *Artemisia australis, Bidens sandvicensis, Plectranthus parviflorus, Chamaesyce celastroides, Diospyros* sp., *Canthium odoratum, Neraudia* sp., *Pipturus* sp., *Hibiscus kokio, Sida fallax, Eragrostis* sp., or *Lepidium bidentatum*; and (2) elevations between 305–430 m (1,000–1,400 ft).

Within these units, the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *micrantha* are habitat components that provide: (1) basalt cliffs, stream banks, or level ground (a) in mesic or diverse *Metrosideros polymorpha-Diospyros* sp. forest and (b) containing one or more of the following associated native plant species: *Lobelia niihauensis, Chamaesyce celastroides* var. *hanapepensis, Neraudia kauaiensis, Rumex* sp., *Nontrichium* sp. (kului), *Artemisia* sp., *Dodonaea viscosa, Antidesma* sp., *Hibiscus* sp., *Xylosma* sp., *Pleomele* sp., *Melicope* sp., *Bobea* sp., and *Acacia koa*; and (2) elevations between 610–720 m (2,000–2,360 ft).

Family Asteraceae: *Lipochaeta waimeaensis* (nehe)

Kauai B, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Lipochaeta waimeaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) precipitous, shrub-covered gulch (a) in diverse lowland forest and (b) containing the native species *Dodonaea viscosa* or *Lipochaeta connata*; and (2) elevations between 350 and 400 m (1,150 and 1,310 ft).

Family Asteraceae: *Remya kauaiensis* (no common name)

Kauai G, I, and U, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Remya kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep, north or northeast facing slopes (a) in *Acacia koa-Metrosideros polymorpha* lowland mesic forest and (b) containing one or more of the following associated native plant species: *Chamaesyce* sp., *Nestegis sandwicensis, Diospyros* sp., *Hedyotis terminalis, Melicope* ssp., *Pouteria sandwicensis, Schiedea membranacea, Psychotria mariniana, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis,* or *Claoxylon sandwicensis*; and (2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

Family Asteraceae: *Remya montgomeryi* (no common name)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Remya montgomeryi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep, north or northeast-facing slopes, cliffs, or stream banks near waterfalls (a) in *Metrosideros polymorpha* mixed mesic forest and (b) containing one or more of the following associated native plant species: *Lysimachia glutinosa, Lepidium serra, Boehmeria grandis, Poa mannii, Stenogyne campanulata, Myrsine linearifolia, Bobea timonioides, Ilex anomala, Zanthoxylum dipetalum, Claoxylon sandwicensis, Tetraplasandra* spp., *Artemisia* sp., *Nototrichium* sp., *Cyrtandra* sp., *Dubautia plantaginea, Sadleria* sp., *Cheirodendron* sp., *Scaevola* sp., or *Pleomele* sp.; and (2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

Family Asteraceae: *Wilkesia hobdyi* (dwarf iliau)

Kauai G and J, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Wilkesia hobdyi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) coastal dry cliffs or very dry ridges containing one or more of the following associated native plant species: *Artemisia* sp., *Wilkesia gymnoxiphium, Lipochaeta connata, Lobelia niihauensis, Peucedanum sandwicensis, Hibiscus kokio* ssp. *saint johnianus, Canthium odoratum, Peperomia* sp., *Myoporum sandwicense, Sida fallax, Waltheria indica, Dodonaea viscosa,* or *Eragrostis variabilis*; and (2) elevations between 275 to 400 m (900 to 1,310 ft).

Family Campanulaceae: *Brighamia insignis* ('olulu)

Kauai E, G, and M, identified in the legal descriptions in (a)(1)(i)(A), and Niihau B, identified in the legal descriptions in (a)(1)(i)(B), constitute critical habitat for *Brighamia insignis* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) rocky ledges with little soil or steep sea cliffs (a) in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in.) and (b) containing one or more of the following native plant species: *Artemisia* sp., *Chamaesyce celastroides, Canthium odoratum, Eragrostis variabilis, Heteropogon contortus, Hibiscus kokio, Hibiscus saintjohnianus, Lepidium serra, Lipochaeta succulenta, Munroidendron racemosum,* or *Sida fallax*; and (2) elevations between sea level to 480 m (1,575 ft) elevation.

Family Campanulaceae: *Cyanea asarifolia* (haha)

Kauai R and T, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyanea asarifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) pockets of soil on sheer rock cliffs (a) in lowland wet forests and (b) containing one or more of the following native plant species: *Hedyotis elatior, Machaerina angustifolia, Metrosideros polymorpha, Touchardia latifolia,* or *Urera glabra*; and (2) elevations between 330 to 730 m (1,080 to 2,400 ft).

Family Campanulaceae: *Cyanea recta* (haha)

Kauai K, O, P, and R, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyanea recta* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) gulches or slopes (a) in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland and (b) containing one or more of the following native plant species: *Dicranopteris linearis, Psychotria* sp., *Antidesma* sp., *Cheirodendron platyphyllum, Cibotium* sp., or *Diplazium* sp.; and (2) elevations between 400 to 1,200 m (1,310 to 3,940 ft).

Family Campanulaceae: *Cyanea remyi* (haha)

Kauai L, P, R, and T, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyanea remyi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) lowland wet forest or shrubland and containing one or more of the following native plant species: *Antidesma* sp., *Cheirodendron* sp., *Diospyros sp., Broussaisia arguta, Metrosideros polymorpha, Freycinetia arborea, Hedyotis terminalis, Machaerina angustifolia, Perrottetia sandwicensis, Psychotria hexandra,* or *Syzygium sandwicensis*; and (2) elevations between 360 to 930 m (1,180 to 3,060 ft).

Family Campanulaceae: *Cyanea undulata* (haha)

Kauai L, identified in the legal descriptions in (a)(1)(i)(A), constitutes critical habitat for *Cyanea undulata* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) pristine, undisturbed sites along shady stream banks or steep to vertical slopes; and (2) elevations between 630 to 800 m (2,070 to 2,625 ft).

Family Campanulaceae: *Delissea rhytidosperma* (no common name)

Kauai F, G, and M, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Delissea rhytidosperma* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) well-drained soils with medium or fine-textured subsoil (a) in diverse lowland mesic forests or *Acacia koa* dominated lowland dry forests and (b) containing one or more of the following native species: *Euphorbia haeleeleana, Psychotria hobdyi, Pisonia* sp., *Pteralyxia* sp., *Dodonaea viscosa, Cyanea* sp., *Hedyotis* sp., *Dianella sandwicensis, Diospyros sandwicensis, Styphelia tameiameiae,* or *Nestegis sandwicensis;* and (2) elevations between 120 and 915 m (400 and 3,000 ft).

Family Campanulaceae: Delissea rivularis ('oha)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Delissea rivularis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep slopes near streams (a) in *Metrosideros polymorpha—Cheirodendron trigynum* montane wet or mesic forest and (b) containing one or more of the following native plant species: *Broussaisia arguta, Carex* sp., *Coprosma* sp., *Melicope clusiifolia, M. anisata, Psychotria hexandra, Dubautia knudsenii, Diplazium sandwichianum, Hedyotis foggiana, Ilex anomala,* or *Sadleria* sp.; and (2) elevations between 1,100 to 1,220 m (3,610 to 4,000 ft).

Family Campanulaceae: *Delissea undulata* (no common name)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Delissea undulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) dry or mesic open *Sophora chrysophylla-Metrosideros polymorpha* forests containing one or more of the following native plant species: *Diospyros sandwicensis, Dodonaea viscosa, Psychotria mariniana, P. greenwelliae, Santalum ellipticum, Nothocestrum breviflorum,* or *Acacia koa;* and (2) elevations between 610–1,740 m (2,000–5,700 ft).

Family Campanulaceae: *Lobelia niihauensis* (no common name)

Kauai F, G, I, and J, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Lobelia niihauensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) exposed mesic mixed shrubland or coastal dry cliffs containing one or more of the following associated native plant species: *Eragrostis* sp., *Bidens* sp., *Plectranthus parviflorus, Lipochaeta* sp., *Lythrum* sp., *Wilkesia hobdyi, Hibiscus kokio* ssp. *saint johnianus, Nototrichium* sp., *Schiedea apokremnos, Chamaesyce celastroides, Charpentiera* sp., or *Artemisia* sp.; and (2) elevations between 100 to 830 m (330 to 2720 ft).

Family Caryophyllaceae: *Alsinidendron lychnoides* (kuawawaenohu)

Kauai G and H, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Alsinidendron lychnoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) montane wet forests (a) dominated by *Metrosideros polymorpha* and *Cheirodendron* sp., or by *Metrosideros polymorpha* and *Dicranopteris linearis* and (b) containing one or more of the following native plant species: *Carex* sp., *Cyrtandra* sp., *Machaerina* sp., *Vaccinium* sp., *Peperomia* sp., *Hedyotis terminalis, Astelia* sp., or *Broussaisia arguta;* and (2) elevations between 1,100 and 1,320 m (3,610 and 4,330 ft).

Family Caryophyllaceae: *Alsinidendron viscosum* (no common name)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Alsinidendron viscosum* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep slopes (a) in *Acacia koa-Metrosideros polymorpha* lowland, montane mesic, or wet forest and (b) containing one or more of the following native plant species: *Alyxia olivaeformis, Bidens cosmoides, Bobea* sp., *Carex* sp., *Coprosma* sp., *Dodonaea viscosa*, *Gahnia* sp., *Ilex anomala, Melicope* sp., *Pleomele* sp., *Psychotria* sp., or *Schiedea stellarioides;* and (2) elevations between 820 and 1,200 m (2,700 and 3,940 ft).

Family Caryophyllaceae: *Schiedea apokremnos* (ma'oli'oli)

Kauai G and J, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Schiedea apokremnos* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) crevices of near-vertical coastal cliff faces (a) in sparse dry coastal shrub vegetation and (b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Chamaesyce* sp., *Bidens* sp., *Artemisia australis, Lobelia niihauensis, Wilkesia hobdyi, Lipochaeta connata, Myoporum sandwicense, Canthium odoratum,* or *Peperomia* sp.; and (2) elevations between 60 to 330 m (200 to 1,080 ft).

Family Caryophyllaceae: *Schiedea helleri* (no common name)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea helleri* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) ridges and steep cliffs (a) in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, or *Metrosideros polymorpha-Cheirodendron* sp. montane wet forest, or *Acacia koa-Metrosideros polymorpha* montane mesic forest, and (b) containing one or more of the following associated native plant species: *Dubautia raillardioides, Scaevola procera, Hedyotis terminalis, Syzygium sandwicensis, Melicope clusifolia, Cibotium* sp., *Broussaisia arguta, Cheirodendron sp., Cyanea hirtella, Dianella sandwicensis, Viola wailenalenae,* or *Poa sandvicensis;* and (2) elevations between 1,065–1,100 m (3,490–3,610 ft).

Family Caryophyllaceae: *Schiedea kauaiensis* (no common name)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea kauaiensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep slopes (a) in diverse mesic or wet forest and (b) containing one or more of the following associated plant taxa: *Psychotria mariniana, Psychotria hexandra, Canthium odoratum, Pisonia* sp., *Microlepia speluncae, Exocarpos luteolus, Diospyros* sp., *Peucedanum sandwicense,* or *Euphorbia haeleeleana;* and (2) elevations between 680–790 m (2,230–2,590 ft).

Family Caryophyllaceae: *Schiedea membranacea* (no common name)

Kauai G, I, and K, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Schiedea membranacea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) cliffs or cliff bases (a) in mesic or wet habitats, (b) in lowland, or montane shrubland, or forest communities dominated by *Acacia koa, Pipturus* sp. or *Metrosideros polymorpha* and (c) containing one or more of the following associated native plant species: *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Hibiscus waimeae, Psychotria mariniana, Canthium odoratum, Pisonia* sp., *Perrottetia sandwicensis, Scaevola procera, Sadleria cyatheoides, Diplazium sandwicensis, Thelypteris sandwicensis, Boehmeria grandis, Dodonaea viscosa, Myrsine* sp., *Bobea brevipes, Alyxia olivaeformis, Psychotria greenwelliae, Pleomele* sp., *Alphitonia ponderosa, Joinvillea ascendens* ssp. *ascendens, Athyrium sandwichianum, Machaerina angustifolia, Cyrtandra paludosa, Touchardia latifolia, Thelypteris cyatheoides, Lepidium serra, Eragrostis variabilis, Remya kauaiensis, Lysimachia kalalauensis, Labordia helleri, Mariscus pennatiformis, Asplenium praemorsum,* or *Poa sandvicensis;* and (2) elevations between 520 and 1,160 m (1,700 and 3,800 ft).

Family Caryophyllaceae: *Schiedea nuttallii* (no common name)

Kauai M, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea nuttallii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) diverse lowland mesic forest, often with *Metrosideros polymorpha* dominant, containing one or more of the following associated native plant species: *Antidesma* sp, *Psychotria* sp., *Perrottetia sandwicensis, Pisonia* sp., or *Hedyotis acuminata;* and (2) elevations between 415 and 790 m (1,360 and 2,590 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *leiopoda* (no common name)

Kauai C, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea spergulina* var. *leiopoda* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases (a) in diverse lowland mesic forests and (b) containing one or more of the following native plants: *Bidens sandvicensis, Doryopteris* sp., *Peperomia leptostachya,* or *Plectranthus parviflorus;* and (2) elevations between 180 and 800 m (590 and 2,625 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *spergulina* (no common name)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Schiedea spergulina* var. *spergulina* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases (a) in diverse lowland mesic forests and (b) containing one or more of the following associated plant taxa: *Heliotropium* sp., or *Nototrichium sandwicense;* and (2) elevations between 180 and 800 m (590 and 2,625 ft).

Family Caryophyllaceae: *Schiedea stellarioides* (laulihilihi (ma‘oli‘oli))

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea stellarioides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep slopes (a) in closed *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest or shrubland and (b) containing one or more of the following native plant species: *Nototrichium* sp., *Artemisia* sp., *Dodonaea viscosa, Melicope* sp., *Dianella sandwicensis, Bidens cosmoides, Mariscus* sp., or *Styphelia tameiameiae;* and (2) elevations between 610 and 1,120 m (2,000 and 3,680 ft).

Family Convolvulaceae: *Bonamia menziesii* (no common name)

Kauai G and L, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Bonamia menziesii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) dry, mesic or wet forests containing one or more of the following native plant species: *Metrosideros polymorpha, Canthium odoratum, Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Hedyotis terminalis, Melicope anisata, Melicope barbigera, Myoporum sandwicense, Nestegis sandwicense, Pisonia* sp., *Pittosporum* sp., *Pouteria sandwicensis,* or *Sapindus oahuensis;* and (2) elevations between 150 and 850 m (500 and 2,800 ft).

Family Cyperaceae: *Cyperus trachysanthos* (pu‘uka‘a)

Kauai G, identified in the legal descriptions in (a)(1)(i)(A), and Niihau A, identified in the legal descriptions in (a)(1)(i)(B), constitute critical habitat for *Cyperus trachysanthos* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) wet sites (mud flats, wet clay soil, or wet cliff seeps) (a) on coastal cliffs or talus slopes and (b) containing the native plant species *Hibiscus tiliaceus;* and (2) elevations between 3 and 160 m (10 and 525 ft).

Family Euphorbiaceae: *Chamaesyce halemanui* (no common name)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Chamaesyce halemanui* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep slopes of gulches (a) in mesic *Acacia koa* forests and (b) containing one or more of the following native plant species: *Metrosideros polymorpha, Alphitonia ponderosa, Antidesma platyphyllum, Bobea brevipes, Cheirodendron trigynum, Coprosma* sp., *Diospyros sandwicensis, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Kokia kauaiensis, Melicope haupuensis, Pisonia* sp., *Pittosporum* sp., *Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Pouteria sandwicensis, Santalum freycinetianum,* or *Styphelia tameiameiae;* and (2) elevations between 660 to 1,100 m (2,165 to 3,610 ft).

Family Euphorbiaceae: *Euphorbia haeleeleana* (‘akoko)

Kauai G, I, and U, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Euphorbia haeleeleana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) lowland mixed mesic or dry forest that (a) is often dominated by *Metrosideros polymorpha, Acacia koa,* or *Diospyros* sp. and (b) containing one or more of the following native plant species: *Acacia koaia, Antidesma platyphyllum, Claoxylon sp., Carex meyenii, Carex wahuensis, Diplazium sandwichianum, Dodonaea viscosa, Erythrina sandwicensis, Kokia kauaiensis, Pleomele aurea, Psychotria mariniana, P. greenwelliae, Pteralyxia sandwicensis, Rauvolfia sandwicensis, Reynoldsia sandwicensis, Sapindus oahuensis, Tetraplasandra kauaiensis, Pouteria sandwicensis, Pisonia sandwicensis,* or *Xylosma* sp.; and (2) elevations between 205 and 670 m (680 and 2,200 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mehamehame)

Kauai F, G, and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Flueggea neowawraea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) dry or mesic forests containing one or more of the following native plant species: *Alectryon macrococcus, Bobea timonioides, Charpentiera* sp., *Caesalpinia kauaiense, Hibiscus* sp., *Melicope* sp., *Metrosideros polymorpha, Myrsine lanaiensis, Munroidendron racemosum, Tetraplasandra* sp., *Kokia kauaiensis, Isodendrion* sp., *Pteralyxia kauaiensis, Psychotria mariniana, Diplazium sandwichianum, Freycinetia arborea, Nesoluma polynesicum, Diospyros* sp., *Antidesma pulvinatum, A. platyphyllum, Canthium odoratum, Nestegis sandwicensis, Rauvolfia sandwicensis, Pittosporum* sp., *Tetraplasandra* sp., *Pouteria sandwicensis, Xylosma* sp., *Pritchardia* sp., *Bidens* sp., or *Streblus pendulinus;* and (2) elevations of 250 to 1,000 m (820 to 3,280 ft).

Family Fabaceae: *Sesbania tomentosa* (‘ohai)

Kauai J, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Sesbania tomentosa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) sandy beaches, dunes, soil pockets on lava, or pond margins (a) in coastal dry shrublands, or open *Metrosideros polymorpha* forests, or mixed coastal dry cliffs, and (b) containing one or more of the following associated native plant species: *Sida fallax, Heteropogon contortus, Myoporum sandwicense, Sporobolus virginicus, Scaevola sericea,* or *Dodonaea viscosa;* and (2) elevations between sea level and 12 m (0 and 40 ft).

Family Flacourtiaceae: *Xylosma crenatum* (no common name)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Xylosma crenatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) diverse *Acacia koa-Metrosideros polymorpha* montane mesic forest, or *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, or *Acacia koa-Metrosideros polymorpha* montane wet forest, and containing one or more of the following associated native plant species: *Tetraplasandra kauaiensis, Hedyotis terminalis, Pleomele aurea, Ilex anomala, Claoxylon sandwicense, Myrsine alyxifolia, Nestegis sandwicensis, Streblus pendulinus, Psychotria* sp., *Diplazium sandwichianum, Pouteria sandwicensis, Scaevola procera, Coprosma* sp., *Athyrium sandwichianum, Touchardia latifolia, Dubautia knudsenii, Cheirodendron* sp., *Lobelia yuccoides, Cyanea hirta, Poa sandwicensis,* or *Diplazium sandwichianum;* and (2) elevations between 975 to 1,065 m (3,200 to 3,4900 ft).

Family Gentianaceae: *Centaurium sebaeoides* (‘awiwi)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Centaurium sebaeoides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) volcanic or clay soils or cliffs (a) in arid coastal areas and (b) containing one or more of the following native plant species; *Artemisia* sp., *Bidens* sp., *Chamaesyce celastroides, Dodonaea viscosa, Fimbristylis cymosa, Heteropogon contortus, Jaquemontia ovalifolia, Lipochaeta succulenta, Lipochaeta heterophylla, Lipochaeta integrifolia, Lycium sandwicense, Lysimachia mauritiana, Mariscus phloides, Panicum fauriei, P. torridum, Scaevola sericea, Schiedea globosa, Sida fallax,* or *Wikstroemia uva-ursi;* and (2) elevations above 250 m (800 ft).

Family Gesneriaceae: *Cyrtandra cyaneoides* (mapele)

Kauai K, P, and R, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyrtandra cyaneoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep slopes or cliffs near streams or waterfalls (a) in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis* and (b) containing one or more of the following native species: *Perrottetia sandwicensis, Pipturus* sp., *Bidens* sp., *Psychotria* sp., *Pritchardia* sp., *Freycinetia arborea, Cyanea* sp., *Cyrtandra limahuliensis, Diplazium sandwichianum, Gunnera* sp., *Coprosma* sp., *Stenogyne* sp., *Machaerina* sp., *Boehmeria grandis, Pipturus* sp., *Cheirodendron* sp., *Hedyotis terminalis,* or *Hedyotis tryblium;* and (2) elevations between 550 and 1,220 meter (1,800 and 4,000 ft).

Family Gesneriaceae: *Cyrtandra limahuliensis* (ha‘iwale)

Kauai A, F, K, L, O, P, Q, R, and T, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyrtandra limahuliensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) stream banks (a) in lowland wet forests and (b) containing one or more of the following native plant species: *Antidesma* sp., *Cyrtandra kealiea, Pisonia* sp., *Pipturus* sp., *Cibotium glaucum, Eugenia* sp, *Hedyotis terminalis, Dubautia* sp., *Boehmeria grandis, Touchardia latifolia, Bidens* sp., *Hibiscus waimeae, Charpentiera* sp., *Urera glabra, Pritchardia* sp., *Cyanea* sp., *Perrottetia sandwicensis, Metrosideros polymorpha, Dicranopteris linearis, Gunnera kauaiensis,* or *Psychotria* sp.; and (2) elevations between 245 and 915 m (800 and 3,000 ft).

Family Lamiaceae: *Phyllostegia knudsenii* (no common name)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Phyllostegia knudsenii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* lowland mesic or wet forest containing one or more of the following associated native plant species: *Perrottetia sandwicensis, Cyrtandra kauaiensis, Cyrtandra paludosa, Elaeocarpus bifidus, Claoxylon sandwicensis, Cryptocarya mannii, Ilex anomala, Myrsine linearifolia, Bobea timonioides, Selaginella arbuscula, Diospyros* sp., *Zanthoxylum dipetalum, Pittosporum* sp., *Tetraplasandra* spp., *Pouteria sandwicensis,* or *Pritchardia minor;* and (2) elevations between 865–975 m (2,840–3,200 ft).

Family Lamiaceae: *Phyllostegia wawrana* (no common name)

Kauai G, I, and R, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Phyllostegia wawrana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* dominated lowland or montane wet or mesic forest with (a) *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and (b) containing one or more of the following associated native plant species: *Delissea rivularis, Diplazium sandwichianum, Vaccinium* sp., *Broussaisia arguta, Myrsine lanaiensis, Psychotria* sp., *Dubautia knudsenii, Scaevola procera, Gunnera* sp., *Pleomele aurea, Claoxylon sandwicense, Elaphoglossum* sp., *Hedyotis* sp., *Sadleria* sp., and *Syzygium sandwicensis;* and (2) elevations between 780–1,210 m (2,560–3,920 ft).

Family Lamiaceae: *Stenogyne campanulata* (no common name)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Stenogyne campanulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) rock faces of nearly vertical, north-facing cliffs (a) in diverse lowland or montane mesic forest and (b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Lepidium serra, Lysimachia glutinosa, Perrottetia sandwicensis, or Remya montgomeryi;* and (2) an elevation of 1,085 m (3,560 ft).

Family Loganiaceae: *Labordia lydgatei* (kamakahala)

Kauai F, K, L, P, R, and T, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Labordia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest containing one or more of the following associated native plant species: *Psychotria* sp., *Hedyotis terminalis* sp., *Cyanea* sp., *Cyrtandra* sp., *Labordia hirtella, Antidesma platyphyllum* var. *hillebrandii, Syzygium sandwicensis, Ilex anomala,* or *Dubautia knudsenii;* and (2) elevations between 635 and 855 m (2,080 to 2,800 ft).

Family Loganiaceae: *Labordia tinifolia* var. *wahiawaensis* (kamakahala)

Kauai L, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Labordia tinifolia* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) streambanks (a) in lowland wet forests dominated by *Metrosideros polymorpha* and (b) containing one or more of the following associated species: *Cheirodendron* sp., *Dicranopteris linearis, Cyrtandra* sp, *Antidesma* sp., *Psychotria* sp., *Hedyotis terminalis,* or *Athyrium microphyllum;* and (2) elevations between 300 to 920 m (985 to 3,020 ft).

Family Malvaceae: *Hibiscadelphus woodii* (hau kuahiwi)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hibiscadelphus woodii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) basalt talus or cliff walls (a) in *Metrosideros polymorpha* montane mesic forest and (b) containing one or more of the following associated native plant species: *Bidens sandwicensis, Artemisia australis, Melicope pallida, Dubautia* sp., *Lepidium serra, Lipochaeta* sp., *Lysimachia glutinosa, Carex meyenii, Chamaesyce celastroides* var. *hanapepensis, Hedyotis* sp., *Nototrichium* sp., *Panicum lineale, Myrsine* sp., *Stenogyne campanulata, Lobelia niihauensis,* or *Poa mannii;* and (2) elevations around 915m (3,000 ft).

Family Malvaceae: *Hibiscus clayi* (Clay's hibiscus)

Kauai N, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hibiscus clayi* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) slopes (a) in *Acacia koa* or *Diospyros* sp.-*Pisonia* sp.-*Metrosideros polymorpha* lowland dry or mesic forest and (b) containing one or more of the following associated native plant species: *Hedyotis acuminata, Pipturus* sp., *Psychotria* sp., *Cyanea hardyi, Artemisia australis,* or *Bidens* sp.; and (2) elevations between 230 to 350 m (750 to 1,150 ft).

Family Malvaceae: *Hibiscus waimeae* ssp. *hannerae* (koki'o ke'oke'o)

Kauai F, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hibiscus waimeae* ssp. *hannerae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* or *Pisonia* sp.-*Charpentiera elliptica* lowland wet or mesic forest and containing one or more of the following associated native plant species: *Antidesma* sp., *Psychotria* sp., *Pipturus* sp., *Bidens* sp., *Bobea* sp., *Sadleria* sp., *Cyrtandra* sp., *Cyanea* sp., *Cibotium* sp., *Perrottetia sandwicensis,* or *Syzygium sandwicensis;* and (2) elevations between 190 and 560 m (620 and 1,850 ft).

Family Malvaceae: *Kokia kauaiensis* (koki'o)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Kokia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) diverse mesic forest containing one or more of the following associated native plant species: *Acacia koa, Metrosideros polymorpha, Bobea* sp., *Diospyros sandwicensis, Hedyotis* sp., *Pleomele* sp., *Pisonia* sp., *Xylosma* sp., *Isodendrion* sp., *Syzygium sandwicensis, Antidesma* sp., *Alyxia olivaeformis, Pouteria sandwicensis, Streblus pendulinus, Canthium odoratum, Nototrichium* sp., *Pteralyxia kauaiensis, Dicranopteris linearis, Hibiscus* sp., *Flueggea neowawraea, Rauvolfia sandwicensis, Melicope* sp., *Diellia laciniata, Tetraplasandra* sp., *Chamaesyce celastroides, Lipochaeta fauriei, Dodonaea viscosa, Santalum* sp., *Claoxylon* sp., or *Nestegis sandwicensis*; and (2) elevations between 350–660 m (1,150–2,165 ft).

Family Myrsinaceae: *Myrsine linearifolia* (kolea)

Kauai F, G, H, I, L, and P, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Myrsine linearifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest with (a) *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and (b) containing one or more of the following associated native plant species: *Dubautia* sp., *Cryptocarya mannii, Sadleria pallida, Myrsine* sp., *Syzygium sandwicensis, Machaerina angustifolia, Freycinetia arborea, Hedyotis terminalis, Cheirodendron* sp., *Bobea brevipes, Nothocestrum* sp., *Melicope* sp., *Eurya sandwicensis, Psychotria* sp., *Lysimachia* sp., or native ferns; and (2) elevations between 585 to 1,280 m (1,920 to 4,200 ft).

Family Orchidaceae: *Platanthera holochila* (no common name)

Kauai H, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Platanthera holochila* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed bog containing one or more of the following associated native plants: *Myrsine denticulata, Cibotium* sp., *Coprosma ernodeoides, Oreobolus furcatus, Styphelia tameiameiae,* or *Vaccinium* sp.; and (2) elevations between 1,050 and 1,600 m (3,450 and 5,245 ft).

Family Plantaginaceae: *Plantago princeps* (laukahi kuahiwi)

Kauai G. K, P, and T, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Plantago princeps* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes, rock walls, or bases of waterfalls (a) in mesic or wet *Metrosideros polymorpha* forest and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Psychotria* sp., *Dicranopteris linearis, Cyanea* sp., *Hedyotis* sp., *Melicope* sp., *Dubautia plantaginea, Exocarpos luteolus, Poa siphonoglossa, Nothocestrum peltatum, Remya montgomeryi, Stenogyne campanulata, Xylosma* sp., *Pleomele* sp., *Machaerina angustifolia, Athyrium* sp., *Bidens* sp., *Eragrostis* sp., *Lysimachia filifolia, Pipturus* sp., *Cyrtandra* sp., or *Myrsine linearifolia*; and (2) elevations between 480 to 1,100 m (1,580 to 3,610 ft).

Family Poaceae: *Panicum niihauense* (lau "ehu)

Kauai J, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Panicum niihauense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) sand dunes (a) in coastal shrubland and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Cassytha filiformis, Scaevola sericea, Sida fallax, Vitex rotundifolia,* or *Sporobolus* sp.; and (2) elevations of 100 m or less (330 ft).

Family Poaceae: *Poa mannii* (Mann's bluegrass)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Poa mannii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) cliffs, rock faces, or stream banks (a) in lowland or montane wet, dry, or mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* montane mesic forest and (b) containing one or more of the following associated native plant species: *Alectryon macrococcus, Antidesma platyphyllum, Bidens cosmoides, Chamaesyce celastroides* var. *hanapepensis, Artemisia australis, Bidens sandwicensis, Lobelia sandwicensis, Wilkesia gymnoxiphium, Eragrostis variabilis, Panicum lineale, Mariscus phloides, Luzula hawaiiensis, Carex meyenii, C. wahuensis, Cyrtandra wawrae, Dodonaea viscosa, Exocarpos luteolus, Labordia helleri, Nototrichium* sp., *Schiedea amplexicaulis, Hedyotis terminalis, Melicope anisata, M.*

barbigera, M. pallida, Pouteria sandwicensis, Schiedea membranacea, Diospyros sandwicensis, Psychotria mariniana, P. greenwelliae, or *Kokia kauaiensis*; and (2) elevations between 460 and 1,150 m (1,510 and 3,770 ft).

Family Poaceae: *Poa sandvicensis* (Hawaiian bluegrass)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Poa sandvicensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) wet, shaded, gentle or steep slopes, ridges, or rock ledges (a) in semi-open or closed, mesic or wet, diverse montane forest dominated by *Metrosideros polymorpha* and (b) containing one or more of the following associated native species: *Dodonaea viscosa, Dubautia* sp., *Coprosma* sp., *Melicope* sp., *Dianella sandwicensis, Alyxia olivaeformis, Bidens* sp., *Dicranopteris linearis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Acacia koa, Psychotria* sp., *Hedyotis* sp., *Scaevola* sp., *Cheirodendron* sp., or *Syzygium sandwicensis;* and (2) elevations between 1,035 to 1,250 m (3,400 to 4,100 ft).

Family Poaceae: *Poa siphonoglossa* (no common name)

Kauai G, I, and U, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Poa siphonoglossa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) shady banks near ridge crests (a) in mesic *Metrosideros polymorpha* forest and (b) containing one or more of the following associated native plant species: *Acacia koa, Psychotria* sp., *Scaevola* sp., *Alphitonia ponderosa, Zanthoxylum dipetalum, Tetraplasandra kauaiensis, Dodonaea viscosa, Hedyotis* sp., *Melicope* sp., *Vaccinium* sp., *Styphelia tameiameiae, Carex meyenii, Carex wahuensis,* or *Wilkesia gymnoxiphium;* and (2) elevations between 1,000 to 1,200 m (3,300 and 3,900 ft).

Family Primulaceae: *Lysimachia filifolia* (no common name)

Kauai T, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Lysimachia filifolia* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests and containing one or more of the following associated native plant species: mosses, ferns, liverworts, *Machaerina* sp., *Heteropogon contortus,* or *Melicope* sp.; and (2) elevations between 240 to 680 m (800 to 2,230 ft).

Family Rhamnaceae: *Gouania meyenii* (no common name)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Gouania meyenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) rocky ledges, cliff faces, or ridge tops (a) in dry shrubland or *Metrosideros polymorpha* lowland mesic forest and (b) containing one or more of the following native plant species: *Dodonaea viscosa, Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis, Bidens* sp., *Carex meyenii, Diospyros* sp., *Lysimachia* sp., or *Senna gaudichaudii;* and (2) elevations between 490 to 880 m (1,600 to 2,880 ft).

Family Rubiaceae: *Hedyotis cookiana* ('awiwi)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hedyotis cookiana* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) streambeds or steep cliffs close to water sources in lowland wet forest communities; and (2) elevations between 170 and 370 m (560 and 1,210 ft).

Family Rubiaceae: *Hedyotis st.-johnii* (Na Pali beach Hedyotis)

Kauai G and J, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for Hedyotis st.-johnii on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) crevices of north-facing, near-vertical coastal cliff faces within the spray zone (a) in sparse dry coastal shrubland and (b) containing one or more of the following native plant species: *Myoporum sandwicense, Eragrostis variabilis, Lycium sandwicense, Heteropogon contortus, Artemisia australis* or *Chamaesyce celastroides*; and (2) elevations above 75 m (250 ft).

Family Rutaceae: *Melicope haupuensis* (alani)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Melicope haupuensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) moist talus slopes (a) in *Metrosideros polymorpha* dominated lowland mesic forests or *Metrosideros polymorpha-Acacia koa* montane mesic forest and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Diospyros* sp., *Psychotria mariniana, P. greenwelliae, Melicope ovata, M. anisata, M. barbigera, Dianella sandwicensis, Pritchardia minor, Tetraplasandra waimeae, Claoxylon sandwicensis, Cheirodendron trigynum, Pleomele aurea, Cryptocarya mannii, Pouteria sandwicensis, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus,* or *Antidesma* sp; and (2) elevations between 375 to 1,075 m (1,230 to 3,530 ft).

Family Rutaceae: *Melicope knudsenii* (alani)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Melicope knudsenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) forested flats or talus slopes (a) in lowland dry or montane mesic forests and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Antidesma* sp., *Metrosideros polymorpha, Xylosma* sp., *Hibiscus* sp., *Myrsine lanaiensis, Diospyros* sp., *Rauvolfia sandwicensis, Bobea* sp., *Nestegis sandwicensis, Hedyotis* sp., *Melicope* sp., *Psychotria* sp., or *Pittosporum kauaiensis*; and (2) elevations between 450 to 1,000 m (1,480 to 3,300 ft).

Family Rutaceae: *Melicope pallida* (alani)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Melicope pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep rock faces (a) in lowland or montane mesic or wet forests or shrubland and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Lepidium serra, Pleomele* sp., *Boehmeria grandis, Coprosma* sp., *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Schiedea membranacea, Psychotria mariniana, Dianella sandwicensis, Pritchardia minor, Chamaesyce celastroides* var *hanapepensis, Nototrichium* sp., *Carex meyenii, Artemisia* sp., *Abutilon sandwicense, Alyxia olivaeformis, Dryopteris* sp., *Metrosideros polymorpha, Pipturus albidus, Sapindus oahuensis, Tetraplasandra* sp., or *Xylosma* *hawaiiense*; and (2) elevations between 490 to 915 m (1,600 to 3,000 ft).

Family Rutaceae: *Zanthoxylum hawaiiense* (a'e)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Zanthoxylum hawaiiense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) lowland dry or mesic forests, or montane dry forest, (a) dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis*, and (b) containing one or more of the following associated plant species: *Pleomele auwahiensis, Antidesma platyphyllum, Pisonia* sp., *Alectryon macrococcus, Charpentiera* sp., *Melicope* sp., *Streblus pendulinus, Myrsine lanaiensis, Sophora chrysophylla,* or *Dodonaea viscosa*; and (2) elevations between 550 and 730 m (1,800 and 2,400 ft).

Family Santalaceae: *Exocarpos luteolus* (heau)

Kauai G, H, I, L, and S, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Exocarpos luteolus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) wet places bordering swamps; open, dry ridges (a) in lowland or montane *Metrosideros polymorpha* dominated wet forest communities and (b) containing one or more of the following native plant species: *Acacia koa, Cheirodendron trigynum, Pouteria sandwicensis, Dodonaea viscosa, Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus, Melicope haupuensis, Dubautia laevigata, Dianella sandwicensis, Poa sandwicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Santalum freycinetianum, Styphelia tameiameiae,* or *Dicranopteris linearis;* and (2) elevations between 475 and 1,290 m (1,560 and 4,220 ft).

Family Sapindaceae: *Alectryon macrococcus* (mahoe)

Kauai G, I, and U, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Alectryon macrococcus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) dry slopes or gulches (a) in *Diospyros* sp.-*Metrosideros polymorpha* lowland mesic forest, *Metrosideros polymorpha* mixed mesic forest, or *Diospyros* sp. mixed mesic forest, (b) containing one or more of the following native plant species: *Nestegis sandwicensis, Psychotria* sp., *Pisonia* sp., *Xylosma* sp., *Streblus pendulinus, Hibiscus* sp., *Antidesma* sp., *Pleomele* sp., *Acacia koa, Melicope knudsenii, Hibiscus waimeae, Pteralyxia* sp., *Zanthoxylum* sp., *Kokia kauaiensis, Rauvolfia sandwicensis, Myrsine lanaiensis, Canthium odoratum, Canavalia* sp., *Alyxia oliviformis, Nesoluma polynesicum, Munroidendron racemosum, Caesalpinia kauaiense, Tetraplasandra* sp., *Pouteria sandwicensis,* or *Bobea timonioides;* and (2) elevations between 360 to 1,070 m (1,180 to 3,510 ft).

Family Solanaceae: *Nothocestrum peltatum* ('aiea)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Nothocestrum peltatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) rich soil on steep slopes (a) in montane or lowland mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha,* and (b) containing one or more of the following associated native plant species: *Antidesma* sp., *Dicranopteris linearis, Bobea brevipes, Elaeocarpus bifidus, Alphitonia ponderosa, Melicope anisata, M. barbigera, M. haupuensis, Pouteria sandwicensis, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis, Claoxylon sandwicensis, Cheirodendron trigynum, Psychotria mariniana, P. greenwelliae, Hedyotis terminalis, Ilex anomala, Xylosma* sp., *Cryptocarya mannii, Coprosma* sp., *Pleomele aurea, Diplazium sandwicensis, Broussaisia arguta,* or *Perrottetia sandwicensis;* and (2) elevations between 915 to 1,220 m (3,000 to 4,000 ft).

Family Solanaceae: *Solanum sandwicense* ('aiakeaakua, popolu)

Kauai D, G, and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Solanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) open, sunny areas (a) in diverse lowland or montane mesic or wet forests and (b) containing one or more of the following associated plants: *Alphitonia ponderosa, Ilex anomala, Xylosma* sp., *Athyrium sandwicensis, Syzygium sandwicensis, Bidens cosmoides, Dianella sandwicensis, Poa siphonoglossa, Carex meyenii, Hedyotis* sp., *Coprosma* sp., *Dubautia* sp., *Pouteria sandwicensis, Cryptocarya mannii, Acacia koa, Metrosideros polymorpha, Dicranopteris linearis, Psychotria* sp., or *Melicope* sp.; and (2) elevations between 760 and 1,220 m (2,500 and 4,000 ft).

Family Violaceae: *Isodendrion laurifolium* (aupaka)

Kauai G, I, and U, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Isodendrion laurifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) diverse mesic or wet forest (a) dominated by *Metrosideros polymorpha, Acacia koa,* or *Diospyros* sp. and (b) containing one or more of the following associated native plant species: *Kokia kauaiensis, Streblus* sp., *Elaeocarpus bifidus, Canthium odoratum, Antidesma* sp., *Xylosma hawaiiense, Hedyotis terminalis, Pisonia* sp., *Nestegis sandwicensis, Dodonaea viscosa, Euphorbia haeleeleana, Pleomele* sp., *Pittosporum* sp., *Melicope* sp., *Claoxylon sandwicense, Alphitonia ponderosa, Myrsine lanaiensis,* or *Pouteria sandwicensis;* and (2) elevations between 490 and 820 m (1,600 and 2,700 ft).

Family Violaceae: *Isodendrion longifolium* (aupaka)

Kauai F, G, L, M, and P, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Isodendrion longifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep slopes, gulches, or stream banks (a) in mesic or wet *Metrosideros polymorpha* forests and (b) containing one or more of the following native species: *Dicranopteris linearis, Eugenia* sp., *Diospyros* sp., *Pritchardia* sp., *Canthium odoratum, Melicope* sp., *Cheirodendron* sp., *Ilex anomala, Pipturus* sp., *Hedyotis fluviatilis, Peperomia* sp., *Bidens* sp., *Nestegis sandwicensis, Cyanea hardyi, Syzygium* sp., *Cibotium* sp., *Bobea brevipes, Antidesma* sp., *Cyrtandra* sp., *Hedyotis terminalis, Peperomia* sp., *Perrottetia sandwicensis, Pittosporum* sp., or *Psychotria* sp.; and (2) elevations between 410 to 760 m (1,345 to 2,500 ft).

Family Violaceae: *Viola helenae* (no common name)

Kauai L, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Viola helenae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) stream banks or adjacent valley bottoms with light to moderate shade in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest; and (2) elevations between 610–855 m (2,000–2,800 ft).

Family Violaceae: *Viola kauaiensis* var. *wahiawaensis* (nani wai'ale'ale)

Kauai L, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Viola kauaiensis* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) open montane bog or wet shrubland containing one or more of the following native plant species: *Dicranopteris linearis, Diplopterygium pinnatum, Syzygium sandwicensis,* or *Metrosideros polymorpha;* and (2) elevations between 640 and 865 m (2,100 and 2,840 ft).

(B) Ferns and Allies.

Family Aspleniaceae: *Diellia pallida* (no common name)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Diellia pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) bare soil on steep, rocky, dry slopes (a) in lowland mesic forests and (b) containing one or more of the following native plant species: *Acacia koa, Alectryon macrococcus, Antidesma platyphyllum, Metrosideros polymorpha, Myrsine lanaiensis, Zanthoxylum dipetalum, Tetraplasandra kauaiensis, Psychotria mariniana, Carex meyenii, Diospyros hillebrandii, Hedyotis knudsenii, Canthium odoratum, Pteralyxia kauaiensis, Nestegis sandwicensis, Alyxia olivaeformis, Wilkesia gymnoxiphium, Alphitonia ponderosa, Styphelia tameiameiae,* or *Rauvolfia sandwicensis;* and (2) elevations between 530 to 915 m (1,700 to 3,000 ft).

Family Grammitidaceae: *Adenophorus periens* (pendant kihi fern)

Kauai F, G, K, L, P, and R, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Adenophorus periens* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) well-developed, closed canopy that provides deep shade or high humidity (a) in *Metrosideros polymorpha-Cibotium glaucum* lowland wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest, and (b) containing one or more of the following native plant species: *Athyrium sandwicensis, Broussaisia* sp., *Cheirodendron trigynum, Cyanea* sp., *Cyrtandra* sp., *Dicranopteris linearis, Freycinetia arborea, Hedyotis terminalis, Labordia hirtella, Machaerina angustifolia, Psychotria* sp., *Psychotria hexandra,* or *Syzygium sandwicensis;* and (2) elevations between 400 and 1,265 m (1,310 and 4,150 ft).

* * * * *

Dated: August 24, 2000.

Stephen C. Saunders,

Assistant Secretary for Fish and Wildlife and Parks.

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Part III

Department of Housing and Urban Development

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24 CFR Part 888

Section 8 Housing Assistance Payments Program; Contract Rent Annual Adjustment Factors, Fiscal Year 2001; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

[Docket No. FR–4626–N–01]

Section 8 Housing Assistance Payments Program; Contract Rent Annual Adjustment Factors, Fiscal Year 2001

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Revised Contract Rent Annual Adjustment Factors.

SUMMARY: This Notice announces revised Annual Adjustment Factors (AAFs) for adjustment of Section 8 contract rents on housing assistance payment contract anniversaries from October 1, 2000. The AAFs are based on a formula using data on residential rent and utilities cost changes from the most current Bureau of Labor Statistics Consumer Price Index (CPI) survey and from HUD's Random Digit Dialing (RDD) rent change surveys.

EFFECTIVE DATE: October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Operations Division, Office of Rental Assistance, Office of Public and Indian Housing [(202) 708–0477], for questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Allison Manning, Office of Special Needs Assistance Programs, Office of Community Planning and Development, (202) 708–1234, for questions regarding the Single Room Occupancy Moderate Rehabilitation program; Frank M. Malone, Acting Director, Office of Asset Management and Disposition, Office of Housing (202) 708–3730, for questions relating to all other Section 8 programs; and Lynn A. Rodgers, Economic and Market Analysis Division, Office of Policy Development and Research, (202) 708–0590, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Hearing-or speech-impaired persons may contact the Federal Information Relay Service at 1–800–877–8339 (TTY). (Other than the "800" TTY number, the above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This Notice explains how AAFs are applied to various Section 8 programs.

The first section of the Notice identifies to which programs and under what circumstances AAFs apply. The second section explains when and how to apply the statutory 1 percent reduction to AAFs. The third section describes the actual adjustment procedures.

Next the Notice explains the content and applicability of the two AAF tables included in this Notice and provides detailed information on the geographical coverage of each AAF area. The Notice then explains how to apply AAFs to manufactured home space rentals in the Section 8 tenant-based certificate program.

The Notice closes with a brief explanation of how HUD calculates AAFs.

I. Applicability of AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payments programs, during the term of the HAP contract. There are three categories of Section 8 programs that use the AAFs:

Category 1—The Section 8 new construction and substantial rehabilitation programs and the moderate rehabilitation program.

Category 2—The Section 8 loan management (LM) and property disposition (PD) programs.

Category 3—The Section 8 tenant-based certificate program, the project-based certificate program and the project-based voucher program.

Each Section 8 program category uses the AAFs differently. The specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the following cases:

- AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are based on the applicable state-by-state operating cost adjustment factor (OCAF) published by HUD; the OCAF is applied to the previous year's contract rent minus debt service.
- AAFs are not used for the Section 8 tenant-based voucher program. (However, AAFs are used for the Section 8 project-based voucher program and project-based certificate program.)
- AAFs are not used for budget-based rent adjustments. Contract rents for projects receiving Section 8 subsidies under the loan management program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the property disposition program (24 CFR part 886, subpart C) are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 207.19(e). Budget-based adjustments are used for most Section 8/202 projects.

Under the Section 8 moderate rehabilitation program (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent. For the other covered programs, the AAF is applied to the whole amount of the contract rent.

II. Use of Reduced AAF

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by .01:

- For all tenancies in the Section 8 tenant-based certificate program. (This program is being converted to the Section 8 tenant-based voucher program. See 24 CFR 982.502. The last tenancies under the tenant-based certificate program will terminate by September 29, 2001.)
- For all tenancies assisted in the Section 8 project-based certificate program.
- In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

To implement the law, HUD publishes two separate AAF Tables, contained in Schedule C, Tables 1 and 2 of this notice. Each AAF in Table 2 has been computed by subtracting 0.01 from the annual adjustment factor in Table 1.

III. Adjustment Procedures

This section of the notice is intended to provide a broad description of adjustment procedures. Technical details and requirements are described in HUD notices. The notices are issued by the Office of Housing and the Office of Public and Indian Housing.

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for three program categories:

- The Section 8 new construction and substantial rehabilitation programs (including the Section 8 state agency program); and the moderate rehabilitation programs (including the moderate rehabilitation single room occupancy program).
- The Section 8 loan management (LM) Program (Part 886, Subpart A) and property disposition (PD) Program (Part 886 Subpart C).
- The Section 8 certificate program (including the tenant-based certificate and the project-based certificate program) and the Section 8 project-based voucher program.

HUD has not yet issued regulations for the Section 8 project-based voucher program. At this time, the project-based voucher program is administered in accordance with the PBC program regulations, and contract rents are adjusted in the same manner as in the Section 8 PBC program.

Category 1: Section 8 New Construction, Substantial Rehabilitation and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published FMR.

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (i.e., unless the contract rent is reduced by comparability):

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (LM; Part 886, Subpart A) and Property Disposition Program (PD; Part 886 Subpart C)

At this time, rent adjustment by the AAF in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Certificate Program (tenant-based and project-based) and the Section 8 Project-based Voucher Program

The same adjustment procedure is used for rent adjustment in

(1) The tenant-based certificate program (24 CFR 983.519),

(2) The project-based certificate program (24 CFR part 983),

(3) The project-based voucher program (24 CFR part 983). The following procedures are used:

- The Table 2 AAF is always used; the Table 1 AAF is not used.
- The Table 2 AAF is always applied before determining comparability (rent reasonableness).
- Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.

AAF Tables

The AAFs are contained in Schedule C, Tables 1 and 2 of this notice. There are two columns in each table. The first column is used to adjust contract rent for units where the highest cost utility is included in the contract rent—i.e., where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent—i.e., where the tenant pays for the highest cost utility.

AAF Areas

Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

- For the metropolitan parts of the ten HUD regions exclusive of CPI areas;
- For the nonmetropolitan parts of these regions; and
- For separate metropolitan AAF areas for which local CPI survey data are available.

With the exceptions discussed below, the AAFs shown in Schedule C use the Office of Management and Budget's (OMB) most current definitions of metropolitan areas. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for AAF areas because of their close correspondence to housing market area definitions.

The exceptions are for certain large metropolitan areas, where HUD considers the area covered by the OMB definition to be larger than appropriate for use as a housing market area definition. In those areas, HUD has deleted some of the counties that OMB had added to its revised definitions. The following counties are deleted from the HUD definitions of AAF areas:

Metropolitan area	Deleted counties
Chicago, IL	DeKalb, Grundy and Kendall Counties.
Cincinnati-Hamilton, OH–KY–IN	Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.
Dallas, TX	Henderson County.
Flagstaff, AZ–UT	Kane County, UT.
New Orleans, LA	St. James Parish.
Washington, DC–VA–MD–WV	Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia.

Separate AAFs are listed in this publication for the above counties. They and the metropolitan area of which they are a part are identified with an asterisk (*) next to the area name. The asterisk indicates that there is a difference between the OMB metropolitan area and the HUD AAF area definition for these areas.

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the appropriate HUD regional Metropolitan or Nonmetropolitan AAFs are used.

The AAF area definitions shown in Schedule C are listed in alphabetical order by State. The associated HUD region is shown next to each State name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan CPI areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. Listed after the metropolitan CPI areas (in those states that have such areas) are the non-CPI metropolitan and nonmetropolitan counties of each State. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the Table as "STATE: Hawaii," which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the Pacific/Hawaii Nonmetropolitan AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey; all other areas in Alaska use the Northwest/Alaska Nonmetropolitan AAFs.

Section 8 Certificate Program AAFs for Manufactured Home Spaces

For a manufactured home space rental in the Section 8 tenant-based certificate program, the AAFs in this publication identified as "Highest Cost Utility Included" are to be used to adjust the rent to owner for the manufactured home space. The applicable AAF is determined by reference to the geographic listings contained in Schedule C, as described in the preceding section.

How Factors Are Calculated

For Areas With CPI Surveys

(1) Changes in the shelter rent and utilities components were calculated based on the most recent CPI annual average change data.

(2) The "Highest Cost Utility Included" column in Schedule C was calculated by weighting the rent and utility components with the corresponding components from the 1990 Census.

(3) The "Highest Cost Utility Excluded" column in Schedule C was calculated by eliminating the effect of heating costs that are included in the rent of some of the units in the CPI surveys.

For Areas Without CPI Surveys

(1) HUD used random digit dialing (RDD) regional surveys to calculate AAFs. The RDD survey method is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone calls, and process the responses. RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts of the 10 HUD regions, a total of 20 surveys.

(2) The change in rent with the highest cost utility included in the rent was calculated using the average of the ratios of gross rent in the current year RDD survey divided by the previous year's for the respective metropolitan or nonmetropolitan parts of the HUD region.

(3) The change in rent with the highest cost utility excluded (*i.e.*, paid separately by the tenant) was calculated in the same manner, after subtracting the median values of utilities costs from the gross rents in the two years. The median cost of utilities was determined from the units in the RDD sample which reported that all utilities were paid by the tenant.

Other Matters

Environmental Impact

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.19(c)(6).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance programs (Section 8) is 14.156.

Accordingly, the Department publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments Programs as set forth in the following tables which will not appear in the Code of Federal Regulations.

Dated: October 25, 2000.

Andrew Cuomo,

Secretary.

BILLING CODE 4210-62-P

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 080300

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.012	1.016	New England Nonmetropolitan	1.012	1.016
New York/New Jersey Metropolitan	1.005	1.010	New York/New Jersey Nonmetropolitan	1.008	1.014
Mid-Atlantic Metropolitan	1.010	1.013	Mid-Atlantic Nonmetropolitan	1.007	1.012
Southeast Metropolitan	1.017	1.022	Southeast Nonmetropolitan	1.010	1.012
Midwest Metropolitan	1.013	1.017	Midwest Nonmetropolitan	1.011	1.016
Southwest Metropolitan	1.011	1.015	Southwest Nonmetropolitan	1.008	1.010
Great Plains Metropolitan	1.013	1.017	Great Plains Nonmetropolitan	1.008	1.012
Rocky Mountain Metropolitan	1.020	1.022	Rocky Mountain Nonmetropolitan	1.009	1.010
Pacific/Hawaii Metropolitan	1.022	1.025	Pacific/Hawaii Nonmetropolitan	1.011	1.013
Northwest/Alaska Metropolitan	1.009	1.010	Northwest/Alaska Nonmetropolitan	1.006	1.006
STATE Hawaii	1.000	1.000	PMSA Akron, OH	1.013	1.020
MSA Anchorage, AK	1.019	1.027	PMSA Ann Arbor, MI	1.030	1.030
MSA Atlanta, GA	1.029	1.033	PMSA Atlantic-Cape May, NJ	1.021	1.028
PMSA Baltimore, MD	1.030	1.031	PMSA Bergen-Passaic, NJ	1.030	1.035
*COUNTY Berkeley, WV	1.030	1.032	PMSA Boston, MA-NH	1.034	1.041
PMSA Boulder-Longmont, CO	1.059	1.064	PMSA Brazoria, TX	1.032	1.042
PMSA Bremerton, WA	1.039	1.043	PMSA Bridgeport, CT	1.029	1.036
PMSA Brockton, MA	1.034	1.041	*COUNTY Brown, OH	1.022	1.032
*Chicago, IL	1.035	1.043	*Cincinnati, OH-KY-IN	1.026	1.031
*COUNTY Clarke, VA	1.030	1.022	PMSA Cleveland-Lorain-Elyria, OH	1.013	1.020
*COUNTY Culpeper, VA	1.030	1.032	*Dallas, TX	1.036	1.042

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 080300

	HIGHEST COST INCLUDED	UTILITY EXCLUDED		HIGHEST COST INCLUDED	UTILITY EXCLUDED
PMSA Danbury, CT	1.030	1.035	*COUNTY De Kalb, IL	1.033	1.044
PMSA Denver, CO	1.058	1.064	PMSA Detroit, MI	1.030	1.030
PMSA Dutchess County, NY	1.030	1.035	PMSA Fitchburg-Leominster, MA	1.034	1.041
PMSA Flint, MI	1.030	1.030	PMSA Fort Lauderdale, FL	1.008	1.011
PMSA Fort Worth-Arlington, TX	1.035	1.042	*COUNTY Gallatin, KY	1.021	1.033
PMSA Galveston-Texas City, TX	1.031	1.043	PMSA Gary, IN	1.031	1.046
*COUNTY Grant, KY	1.022	1.032	PMSA Greeley, CO	1.058	1.064
*COUNTY Grundy, IL	1.031	1.045	PMSA Hagerstown, MD	1.030	1.032
PMSA Hamilton-Middletown, OH	1.025	1.031	*COUNTY Henderson, TX	1.030	1.043
PMSA Houston, TX	1.033	1.042	*COUNTY Jefferson, WV	1.030	1.032
PMSA Jersey City, NJ	1.031	1.034	PMSA Kankakee, IL	1.030	1.046
MSA Kansas City, MO-KS	1.031	1.038	*COUNTY Kendall, Il	1.034	1.044
PMSA Kenosha, WI	1.033	1.044	*COUNTY King George, VA	1.030	1.032
PMSA Lawrence, MA-NH	1.033	1.042	PMSA Los Angeles-Long Beach, CA	1.033	1.036
PMSA Lowell, MA-NH	1.034	1.041	PMSA Manchester, NH	1.034	1.041
PMSA Miami, FL	1.008	1.011	PMSA Middlesex-Somerset-Hunterdon, NJ	1.030	1.035
PMSA Milwaukee-Waukesha, WI	1.017	1.020	MSA Minneapolis-St. Paul, MN-WI	1.038	1.039
PMSA Monmouth-Ocean, NJ	1.030	1.035	PMSA Nashua, NH	1.034	1.041
PMSA Nassau-Suffolk, NY	1.030	1.035	PMSA New Bedford, MA	1.034	1.041
PMSA New Haven-Meriden, CT	1.030	1.035	PMSA New York, NY	1.031	1.034
*COUNTY Westchester, NY	1.031	1.034	PMSA Newark, NJ	1.030	1.035

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 080300

	HIGHEST COST INCLUDED	UTILITY EXCLUDED		HIGHEST COST INCLUDED	UTILITY EXCLUDED
PMSA Newburgh, NY-PA	1.030	1.035	PMSA Oakland, CA	1.068	1.070
*COUNTY Ohio, IN	1.022	1.032	PMSA Olympia, WA	1.039	1.043
PMSA Orange County, CA	1.034	1.036	*COUNTY Pendleton, KY	1.022	1.032
PMSA Philadelphia, PA-NJ	1.020	1.028	PMSA Pittsburgh, PA	1.014	1.021
PMSA Portland-Vancouver, OR-WA	1.021	1.022	PMSA Portsmouth-Rochester, NH-ME	1.034	1.041
PMSA Racine, WI	1.016	1.020	PMSA Riverside-San Bernardino, CA	1.031	1.036
MSA St. Louis, MO-IL	1.009	1.013	PMSA Salem, OR	1.021	1.022
MSA San Diego, CA	1.063	1.066	PMSA San Francisco, CA	1.068	1.070
PMSA San Jose, CA	1.068	1.070	PMSA Santa Cruz-Watsonville, CA	1.067	1.070
PMSA Santa Rosa, CA	1.067	1.070	PMSA Seattle-Bellevue-Everett, WA	1.041	1.043
PMSA Stamford-Norwalk, CT	1.030	1.035	PMSA Tacoma, WA	1.040	1.043
MSA Tampa-St. Petersburg-Clearwater, FL	1.022	1.025	PMSA Trenton, NJ	1.030	1.035
PMSA Vallejo-Fairfield-Napa, CA	1.067	1.070	PMSA Ventura, CA	1.033	1.036
PMSA Vineland-Millville-Bridgeton, NJ	1.019	1.029	*COUNTY Warren, VA	1.030	1.032
*Washington, DC-MD-VA	1.031	1.031	PMSA Waterbury, CT	1.030	1.035
PMSA Wilmington-Newark, DE-MD	1.021	1.028	PMSA Worcester, MA-CT	1.034	1.041

SCHEDULE C - TABLE 2 - CONTRACT RENT AAF5

PREPARED ON 080300

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.002	1.006	New England Nonmetropolitan	1.002	1.006
New York/New Jersey Metropolitan	1.000	1.000	New York/New Jersey Nonmetropolitan	1.000	1.004
Mid-Atlantic Metropolitan	1.000	1.003	Mid-Atlantic Nonmetropolitan	1.000	1.002
Southeast Metropolitan	1.007	1.012	Southeast Nonmetropolitan	1.000	1.002
Midwest Metropolitan	1.003	1.007	Midwest Nonmetropolitan	1.001	1.006
Southwest Metropolitan	1.001	1.005	Southwest Nonmetropolitan	1.000	1.000
Great Plains Methropolitan	1.003	1.007	Great Plains Nonmetropolitan	1.000	1.002
Rocky Mountain Metropolitan	1.010	1.012	Rocky Mountain Nonmetropolitan	1.000	1.000
Pacific/Hawaii Metropolitan	1.012	1.015	Pacific/Hawaii Nonmetropolitan	1.001	1.003
Northwest/Alaska Metropolitan	1.000	1.000	Northwest/Alaska Nonmetropolitan	1.000	1.000
STATE Hawaii	1.000	1.000	PMSA Akron, OH	1.003	1.010
MSA Anchorage, AK	1.009	1.017	PMSA Ann Arbor, MI	1.020	1.020
MSA Atlanta, GA	1.019	1.023	PMSA Atlantic-Cape May, NJ	1.011	1.018
PMSA Baltimore, MD	1.020	1.022	PMSA Bergen-Passaic, NJ	1.020	1.025
*COUNTY Berkeley, WV	1.020	1.022	PMSA Boston, MA-NH	1.024	1.031
PMSA Boulder-Longmont, CO	1.049	1.054	PMSA Brazoria, TX	1.022	1.032
PMSA Bremerton, WA	1.029	1.033	PMSA Bridgeport, CT	1.019	1.026
PMSA Brockton, MA	1.024	1.031	*COUNTY Brown, OH	1.012	1.022
*Chicago, IL	1.025	1.033	*Cincinnati, OH-KY-IN	1.016	1.021
*COUNTY Clarke, VA	1.020	1.022	PMSA Cleveland-Lorain-Elyria, OH	1.003	1.010
*COUNTY Culpeper, VA	1.020	1.022	*Dallas, TX	1.026	1.032

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 080300

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA Danbury, CT	1.020	1.025	*COUNTY De Kalb, IL	1.023	1.034
PMSA Denver, CO	1.048	1.054	PMSA Detroit, MI	1.020	1.020
PMSA Dutchess County, NY	1.020	1.025	PMSA Fitchburg-Leominster, MA	1.024	1.031
PMSA Flint, MI	1.020	1.020	PMSA Fort Lauderdale, FL	1.000	1.001
PMSA Fort Worth-Arlington, TX	1.025	1.032	*COUNTY Gallatin, KY	1.011	1.023
PMSA Galveston-Texas City, TX	1.021	1.033	PMSA Gary, IN	1.021	1.036
*COUNTY Grant, KY	1.012	1.022	PMSA Greeley, CO	1.048	1.054
*COUNTY Grundy, IL	1.021	1.036	PMSA Hagerstown, MD	1.020	1.022
PMSA Hamilton-Middletown, OH	1.015	1.021	*COUNTY Henderson, TX	1.020	1.033
PMSA Houston, TX	1.023	1.032	*COUNTY Jefferson, WV	1.020	1.022
PMSA Jersey City, NJ	1.021	1.024	PMSA Kankakee, IL	1.020	1.036
MSA Kansas City, MO-KS	1.021	1.028	*COUNTY Kendall, Il	1.024	1.034
PMSA Kenosha, WI	1.023	1.034	*COUNTY King George, VA	1.020	1.022
PMSA Lawrence, MA-NH	1.023	1.032	PMSA Los Angeles-Long Beach, CA	1.023	1.026
PMSA Lowell, MA-NH	1.024	1.031	PMSA Manchester, NH	1.024	1.031
PMSA Miami, FL	1.000	1.001	PMSA Middlesex-Somerset-Hunterdon, NJ	1.021	1.025
PMSA Milwaukee-Waukesha, WI	1.007	1.010	MSA Minneapolis-St. Paul, MN-WI	1.029	1.029
PMSA Mormouth-Ocean, NJ	1.020	1.025	PMSA Nashua, NH	1.024	1.031
PMSA Nassau-Suffolk, NY	1.020	1.025	PMSA New Bedford, MA	1.024	1.031
PMSA New Haven-Meriden, CT	1.020	1.025	PMSA New York, NY	1.021	1.024
*COUNTY Westchester, NY	1.021	1.024	PMSA Newark, NJ	1.020	1.025

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 080300

	HIGHEST COST UTILITY			HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED		INCLUDED	EXCLUDED
PMSA Newburgh, NY-PA	1.020	1.025	PMSA Oakland, CA	1.058	1.060
*COUNTY Ohio, IN	1.012	1.022	PMSA Olympia, WA	1.029	1.033
PMSA Orange County, CA	1.024	1.026	*COUNTY Pendleton, KY	1.012	1.022
PMSA Philadelphia, PA-NJ	1.010	1.018	PMSA Pittsburgh, PA	1.004	1.011
PMSA Portland-Vancouver, OR-WA	1.011	1.013	PMSA Portsmouth-Rochester, NH-ME	1.024	1.031
PMSA Racine, WI	1.006	1.010	PMSA Riverside-San Bernardino, CA	1.022	1.026
MSA St. Louis, MO-IL	1.000	1.003	PMSA Salem, OR	1.011	1.013
MSA San Diego, CA	1.053	1.056	PMSA San Francisco, CA	1.058	1.060
PMSA San Jose, CA	1.058	1.060	PMSA Santa Cruz-Watsonville, CA	1.058	1.060
PMSA Santa Rosa, CA	1.057	1.060	PMSA Seattle-Bellevue-Everett, WA	1.031	1.033
PMSA Stamford-Norwalk, CT	1.021	1.025	PMSA Tacoma, WA	1.030	1.033
MSA Tampa-St. Petersburg-Clearwater, FL	1.012	1.015	PMSA Trenton, NJ	1.020	1.025
PMSA Vallejo-Fairfield-Napa, CA	1.057	1.060	PMSA Ventura, CA	1.023	1.026
PMSA Vineland-Millville-Bridgeton, NJ	1.009	1.019	*COUNTY Warren, VA	1.020	1.022
*Washington, DC-MD-VA	1.021	1.021	PMSA Waterbury, CT	1.020	1.025
PMSA Wilmington-Newark, DE-MD	1.011	1.018	PMSA Worcester, MA-CT	1.024	1.031

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

ALABAMA (SOUTHEAST)

METROPOLITAN COUNTIES

Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Lee, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

NONMETROPOLITAN COUNTIES

Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, Dekalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

ALASKA (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES

MSA	Anchorage, AK:	Anchorage

NONMETROPOLITAN COUNTIES

Aleutian East, Aleutian West, Bethel, Dillingham, Lake & Peninsula, Northwest Arctic, Nome, Pr. Wales-Outer Ketchikan, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukon-Koyukuk, Bristol Bay, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Matanuska-Susitna, North Slope, Sitka

ARIZONA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES

Coconino, Maricopa, Mohave, Pima, Pinal, Yuma

NONMETROPOLITAN COUNTIES

Apache, Cochise, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

ARKANSAS (SOUTHWEST)

METROPOLITAN COUNTIES

Benton, Crawford, Craighead, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

NONMETROPOLITAN COUNTIES

Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

CALIFORNIA (PACIFIC/HAWAII)

CPI AREAS: COUNTIES

PMSA	Los Angeles-Long Beach, CA:	Los Angeles
PMSA	Oakland, CA:	Alameda, Contra Costa
PMSA	Orange County, CA:	Orange
PMSA	Riverside-San Bernardino, CA:	Riverside, San Bernardino
MSA	San Diego, CA:	San Diego
PMSA	San Francisco, CA:	Marin, San Francisco, San Mateo
PMSA	San Jose, CA:	Santa Clara
PMSA	Santa Cruz-Watsonville, CA:	Santa Cruz
PMSA	Santa Rosa, CA:	Sonoma
PMSA	Vallejo-Fairfield-Napa, CA:	Napa, Solano
PMSA	Ventura, CA:	Ventura

METROPOLITAN COUNTIES

Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

NONMETROPOLITAN COUNTIES

Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

COLORADO (ROCKY MOUNTAIN)

CPI AREAS: COUNTIES
PMSA Boulder-Longmont, CO: Boulder
PMSA Denver, CO: Adams, Arapahoe, Denver, Douglas, Jefferson
PMSA Greeley, CO: Weld

METROPOLITAN COUNTIES
El Paso, Larimer, Mesa, Pueblo

NONMETROPOLITAN COUNTIES
Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma

CONNECTICUT (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Bridgeport, CT
Fairfield County part: Bridgeport city, Easton town, Fairfield town, Monroe town, Shelton city, Stratford town, Trumbull town
New Haven County part: Ansonia city, Beacon Falls town, Derby city, Milford city, Oxford town, Seymour town

PMSA Danbury, CT
Fairfield County part: Bethel town, Brookfield town, Danbury city, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
Litchfield County part: Bridgewater town, New Milford town, Roxbury town, Washington town

PMSA New Haven-Meriden, CT
Middlesex County part: Clinton town, Killingworth town
New Haven County part: Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, North Haven town, Woodbridge town

PMSA Stamford-Norwalk, CT
Fairfield County part: Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town

PMSA Waterbury, CT
Litchfield County part: Bethlehem town, Thomaston town, Watertown town, Woodbury town
New Haven County part: Middlebury town, Naugatuck borough, Prospect town, Southbury town, Waterbury city, Wolcott town

PMSA Worcester, MA-CT
Windham County part: Thompson town

METROPOLITAN COUNTIES
Hartford County part: Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford city, Manchester town, Marlborough town, New Britain city, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town
Litchfield County part: Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town
Middlesex County part: Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown city, Portland town, Old Saybrook town
New London County part: Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London city, North Stonington town, Norwich city, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Waterford town, Colchester town, Lebanon town
Tolland County part: Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
Windham County part: Ashford town, Canterbury town, Chaplin town, Plainfield town, Windham town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NONMETROPOLITAN COUNTIES
Hartford County part: Hartland town
Litchfield County part: Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part: Chester town, Deep River town, Essex town, Westbrook town
New London County part: Lyme town, Voluntown town
Tolland County part: Union town
Windham County part: Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Wilmington-Newark, DE-MD: New Castle

METROPOLITAN COUNTIES
Kent

NONMETROPOLITAN COUNTIES
Sussex

DIST. OF COLUMBIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
District of Columbia

FLORIDA (SOUTHEAST)

CPI AREAS: COUNTIES
PMSA Fort Lauderdale, FL: Broward
PMSA Miami, FL: Miami-Dade
MSA Tampa-St. Petersburg-Clearwater, FL: Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES
Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

NONMETROPOLITAN COUNTIES
Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington

GEORGIA (SOUTHEAST)

CPI AREAS: COUNTIES
*Atlanta, GA: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton

METROPOLITAN COUNTIES
Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, Mcduffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

NONMETROPOLITAN COUNTIES
Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early, Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock, Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, Mcintosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

HAWAII (PACIFIC/HAWAII)

CPI AREAS: COUNTIES	
STATE Hawaii:	Hawaii, Honolulu, Kauai, Maui

IDAHO (NORTHWEST/ALASKA)

METROPOLITAN COUNTIES

Ada, Bannock, Canyon

NONMETROPOLITAN COUNTIES

Adams, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

ILLINOIS (MIDWEST)

CPI AREAS: COUNTIES	
*Chicago, IL:	Cook, Dupage, Kane, Lake, McHenry, Will
*COUNTY De Kalb, IL:	Dekalb
*COUNTY Grundy, IL:	Grundy
PMSA Kankakee, IL:	Kankakee
*COUNTY Kendall, Il:	Kendall
MSA St. Louis, MO-IL:	Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES

Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

NONMETROPOLITAN COUNTIES

Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, Mcdonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson

INDIANA (MIDWEST)

CPI AREAS: COUNTIES	
*Cincinnati, OH-KY-IN:	Dearborn
PMSA Gary, IN:	Lake, Porter
*COUNTY Ohio, IN:	Ohio

METROPOLITAN COUNTIES

Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

NONMETROPOLITAN COUNTIES

Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

IOWA (GREAT PLAINS)

METROPOLITAN COUNTIES

Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

NONMETROPOLITAN COUNTIES

Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont,

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SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

IOWA (Cont.)

Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

KANSAS (GREAT PLAINS)

CPI AREAS: COUNTIES	
MSA Kansas City, MO-KS:	Johnson, Leavenworth, Miami, Wyandotte

METROPOLITAN COUNTIES

Butler, Douglas, Harvey, Sedgwick, Shawnee

NONMETROPOLITAN COUNTIES

Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson

KENTUCKY (SOUTHEAST)

CPI AREAS: COUNTIES	
*Cincinnati, OH-KY-IN:	Boone, Campbell, Kenton
*COUNTY Gallatin, KY:	Gallatin
*COUNTY Grant, KY:	Grant
*COUNTY Pendleton, KY:	Pendleton

METROPOLITAN COUNTIES

Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

NONMETROPOLITAN COUNTIES

Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mccreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

LOUISIANA (SOUTHWEST)

METROPOLITAN COUNTIES

Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Ouachita, Plaquemines, Rapides, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Terrebonne, Webster, West Baton Rouge

NONMETROPOLITAN COUNTIES

Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, West Carroll, West Feliciana, Winn

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MAINE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Portsmouth-Rochester, NH-ME	
York County part:	Berwick town, Eliot town, Kittery town, South Berwick town, York town

METROPOLITAN COUNTIES

Androscoggin County part:	Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town
Cumberland County part:	Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town
Penobscot County part:	Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town
Waldo County part:	Winterport town
York County part:	Buxton town, Hollis town, Limington town, Old Orchard Beach

NONMETROPOLITAN COUNTIES

Aroostook
Franklin
Hancock
Kennebec
Knox
Lincoln
Oxford
Piscataquis
Sagadahoc
Somerset
Washington

Androscoggin County part:	Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
Cumberland County part:	Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Penobscot County part:	Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation, Whitney unorg., Winn town, Woodville town
Waldo County part:	Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town
York County part:	Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND (MID-ATLANTIC)

CPI AREAS: COUNTIES

PMSA Baltimore, MD:	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city
PMSA Hagerstown, MD:	Washington
*Washington, DC-MD-VA:	Calvert, Charles, Frederick, Montgomery, Prince George's

PMSA Wilmington-Newark, DE-MD: Cecil

METROPOLITAN COUNTIES

Allegany

NONMETROPOLITAN COUNTIES

Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MASSACHUSETTS (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH	
Bristol County part:	Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Essex County part:	Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town
Middlesex County part:	Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton cit North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city
Norfolk County part:	Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town
Plymouth County part:	Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
Suffolk county part:	Boston city, Chelsea city, Revere city, Winthrop town Worcester County part: Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town

PMSA Brockton, MA	
Bristol County part:	Easton town, Raynham town
Norfolk County part:	Avon town
Plymouth County part:	Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town

PMSA Fitchburg-Leominster, MA	
Middlesex County part:	Ashby town
Worcester County part:	Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town
PMSA Lawrence, MA-NH	
Essex County part:	Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town

PMSA Lowell, MA-NH	
Middlesex County part:	Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town

PMSA New Bedford, MA	
Bristol County part:	Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Plymouth County part:	Marion town, Mattapoisett town, Rochester town

PMSA Worcester, MA-CT	
Hampden County part:	Holland town
Worcester County part:	Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MASSACHUSETTS (NEW ENGLAND) cont.

METROPOLITAN COUNTIES

Barnstable County part:	Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
Berkshire County part:	Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Bristol County part:	Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town,Somerset town, Swansea town, Westport town
Franklin County part:	Sunderland town
Hampden County part:	Agawam town, Chicopee city, East Longmeadow town, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town
Hampshire County part:	Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town

NONMETROPOLITAN COUNTIES

Dukes	
Nantucket	
Barnstable County part:	Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire County part:	Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Franklin County part:	Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Hampden County part:	Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire County part:	Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Worcester County part:	Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN (MIDWEST)

CPI AREAS: COUNTIES

PMSA Ann Arbor, MI:	Lenawee, Livingston, Washtenaw
PMSA Detroit, MI:	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
PMSA Flint, MI:	Genesee

METROPOLITAN COUNTIES

Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

NONMETROPOLITAN COUNTIES

Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

CPI AREAS: COUNTIES

MSA Minneapolis-St. Paul, MN-WI:	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES

Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NONMETROPOLITAN COUNTIES

Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, Mcleod, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

MISSISSIPPI (SOUTHEAST)

METROPOLITAN COUNTIES

Desoto, Forrest, Hancock, Harrison, Hinds, Jackson, Lamar, Madison, Rankin

NONMETROPOLITAN COUNTIES

Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

MISSOURI (GREAT PLAINS)

CPI AREAS: COUNTIES

MSA Kansas City, MO-KS:	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
MSA St. Louis, MO-IL:	Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

METROPOLITAN COUNTIES

Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

NONMETROPOLITAN COUNTIES

Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard,Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

MONTANA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES

Cascade, Missoula, Yellowstone

NONMETROPOLITAN COUNTIES

Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Mccone, Meagher, Mineral, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

NEBRASKA (GREAT PLAINS)

METROPOLITAN COUNTIES

Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

NONMETROPOLITAN COUNTIES

Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEVADA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

NEW HAMPSHIRE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH

Rockingham County part:	Seabrook town, South Hampton town

PMSA Lawrence, MA-NH

Rockingham County part:	Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town

PMSA Lowell, MA-NH

Hillsborough county pt:	Pelham town

PMSA Manchester, NH

Hillsborough county pt:	Bedford town, Goffstown town, Manchester city, Weare town
Merrimack county part:	Allenstown town, Hooksett town
Rockingham county part:	Auburn town, Candia town, Londonderry town

PMSA Nashua, NH

Hillsborough county pt:	Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town

PMSA Portsmouth-Rochester, NH-ME

Rockingham County part:	Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town
Strafford County part:	Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

NONMETROPOLITAN COUNTIES

Belknap
Carroll
Cheshire
Coos
Grafton
Sullivan

Hillsborough County part:	Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Merrimack County part:	Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham County part:	Deerfield town, Northwood town, Nottingham town,
Strafford County part:	Middleton town, New Durham town, Strafford town

NEW JERSEY (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Atlantic-Cape May, NJ:	Atlantic, Cape May
PMSA Bergen-Passaic, NJ:	Bergen, Passaic
PMSA Jersey City, NJ:	Hudson
PMSA Middlesex-Somerset-Hunterdon, NJ:	Hunterdon, Middlesex, Somerset
PMSA Monmouth-Ocean, NJ:	Monmouth, Ocean
PMSA Newark, NJ:	Essex, Morris, Sussex, Union, Warren
PMSA Philadelphia, PA-NJ:	Burlington, Camden, Gloucester, Salem
PMSA Trenton, NJ:	Mercer

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEW JERSEY (Cont.)

PMSA Vineland-Millville-Bridgeton, NJ:	Cumberland

NEW MEXICO (SOUTHWEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, Debaca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

NEW YORK (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Dutchess County, NY :	Dutchess
PMSA Nassau-Suffolk, NY:	Nassau, Suffolk
PMSA New York, NY:	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
*COUNTY Westchester, NY:	Westchester
PMSA Newburgh, NY-PA:	Orange

METROPOLITAN COUNTIES
Albany, Broome, Cayuga, Chautauqua, Chemung, Erie, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

NORTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

NONMETROPOLITAN COUNTIES
Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, Mcdowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

NORTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, Mcintosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams

OHIO (MIDWEST)

CPI AREAS: COUNTIES

PMSA Akron, OH:	Portage, Summit
*COUNTY Brown, OH:	Brown
*Cincinnati, OH-KY-IN:	Clermont, Hamilton, Warren
PMSA Cleveland-Lorain-Elyria, OH:	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
PMSA Hamilton-Middletown, OH:	Butler

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

OHIO (MIDWEST) cont.

METROPOLITAN COUNTIES

Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

NONMETROPOLITAN COUNTIES

Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne, Williams, Wyandot

OKLAHOMA (SOUTHWEST)

METROPOLITAN COUNTIES

Canadian, Cleveland, Comanche, Creek, Garfield, Logan, Mcclain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES

Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

OREGON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES

PMSA Portland-Vancouver, OR-WA:	Clackamas, Columbia, Multnomah, Washington, Yamhill
PMSA Salem, OR:	Marion, Polk

METROPOLITAN COUNTIES

Benton, Jackson, Lane

NONMETROPOLITAN COUNTIES

Baker, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

PENNSYLVANIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

PMSA Newburgh, NY-PA:	Pike
PMSA Philadelphia, PA-NJ:	Bucks, Chester, Delaware, Montgomery, Philadelphia
PMSA Pittsburgh, PA:	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES

Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

NONMETROPOLITAN COUNTIES

Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

RHODE ISLAND (NEW ENGLAND)

METROPOLITAN COUNTIES

Bristol County part:	Barrington town, Bristol town, Warren town
Kent County part:	Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town
Newport County part:	Jamestown town, Little Compton town, Tiverton town
Providence County part:	Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city

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SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

RHODE ISLANE (CONT.)

Washington County part:	Charlestown town, Exeter town, Hopkinton town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town, Westerly town

NONMETROPOLITAN COUNTIES

Newport County part:	Middletown town, Newport city, Portsmouth town
Washington County part:	New Shoreham town

SOUTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES

Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry, Lexington, Pickens, Richland, Spartanburg, Sumter, York

NONMETROPOLITAN COUNTIES

Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, Mccormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

SOUTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES

Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES

Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman, Marshall, Mccook, Mcpherson, Meade, Mellette, Miner, Moody, Perkins,Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach

TENNESSEE (SOUTHEAST)

METROPOLITAN COUNTIES

Anderson, Blount, Carter, Cheatham, Chester, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES

Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson Giles, Grainger, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Mcminn, Mcnairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

TEXAS (SOUTHWEST)

CPI AREAS: COUNTIES

PMSA Brazoria, TX:	Brazoria
*Dallas, TX:	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
PMSA Fort Worth-Arlington, TX:	Hood, Johnson, Parker, Tarrant
PMSA Galveston-Texas City, TX:	Galveston
*COUNTY Henderson, TX:	Henderson
PMSA Houston, TX:	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

METROPOLITAN COUNTIES

Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson, Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, Mclennan, Midland, Nueces, Orange, Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

TEXAS (Cont.)

NONMETROPOLITAN COUNTIES

Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt, Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, Mcmullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

UTAH (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES

Davis, Kane, Salt Lake, Utah, Weber

NONMETROPOLITAN COUNTIES

Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

VERMONT (NEW ENGLAND)

METROPOLITAN COUNTIES

Chittenden County part:	Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city
Franklin County part:	Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town
Grand Isle County part:	Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES

Addison	
Bennington	
Caledonia	
Essex	
Lamoille	
Orange	
Orleans	
Rutland	
Washington	
Windham	
Windsor	
Chittenden County part:	Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Franklin County part:	Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle County part:	Alburg town, Isle La Motte town, North Hero town

VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

*COUNTY Clarke, VA:	Clarke
*COUNTY Culpeper, VA:	Culpeper
*COUNTY King George, VA:	King George
*COUNTY Warren, VA:	Warren

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

VIRGINIA (MID-ATLANTIC) cont.

CPI AREAS: COUNTIES

*Washington, DC-MD-VA:	Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

METROPOLITAN COUNTIES

Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

NONMETROPOLITAN COUNTIES

Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

WASHINGTON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES

PMSA	Bremerton, WA:	Kitsap
PMSA	Olympia, WA:	Thurston
PMSA	Portland-Vancouver, OR-WA:	Clark
PMSA	Seattle-Bellevue-Everett, WA:	Island, King, Snohomish
PMSA	Tacoma, WA:	Pierce

METROPOLITAN COUNTIES

Benton, Franklin, Spokane, Whatcom, Yakima

NONMETROPOLITAN COUNTIES

Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

WEST VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

*COUNTY Berkeley, WV:	Berkeley
*COUNTY Jefferson, WV:	Jefferson

METROPOLITAN COUNTIES

Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

NONMETROPOLITAN COUNTIES

Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, Mcdowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming

WISCONSIN (MIDWEST)

CPI AREAS: COUNTIES

PMSA	Kenosha, WI:	Kenosha
PMSA	Milwaukee-Waukesha, WI:	Milwaukee, Ozaukee, Washington, Waukesha
MSA	Minneapolis-St. Paul, MN-WI:	Pierce, St. Croix
PMSA	Racine, WI:	Racine

METROPOLITAN COUNTIES

Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

WISCONSIN (Cont.)

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

WYOMING (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Laramie, Natrona

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

PACIFIC ISLANDS (PACIFIC/HAWAII)

NONMETROPOLITAN COUNTIES
American Samoa, Guam, Northern Mariana Islands, Palau

PUERTO RICO (SOUTHEAST)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grande, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

NONMETROPOLITAN COUNTIES
Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culebra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

VIRGIN ISLANDS (SOUTHEAST)

NONMETROPOLITAN COUNTIES
Virgin Island

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Federal Register

Tuesday,
November 7, 2000

Part IV

Department of Defense

Department of the Army, Corps of Engineers

Environmental Protection Agency

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act; Notice

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[FRL–6890–3]

Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act

AGENCIES: Corps of Engineers, Department of the Army, DOD; Environmental Protection Agency; Fish and Wildlife Service, Interior; and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Army Corps of Engineers (Corps), Environmental Protection Agency (EPA), Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) are issuing final policy guidance regarding the use of in-lieu-fee arrangements for the purpose of providing compensation for adverse impacts to wetlands and other aquatic resources. Compensatory mitigation projects are designed to replace aquatic resource functions and values that are adversely impacted under the Clean Water Act Section 404 and Rivers and Harbors Act Section 10 regulatory programs. These mitigation objectives are stated in regulation, the 1990 Memorandum of Agreement on mitigation between Environmental Protection Agency (EPA) and the Department of the Army, the November 28, 1995, Federal Guidance on the Establishment, Use and Operation of Mitigation Banks ("Banking Guidance"), and other relevant policy. The advent of in-lieu-fee approaches to mitigation has highlighted the importance of several fundamental objectives that the agencies established for determining what constitutes appropriate compensatory mitigation. The purpose of this memorandum is to clarify the manner in which in-lieu-fee mitigation may serve as an effective and useful approach to satisfy compensatory mitigation requirements and meet the Administration's goal of no overall net loss of wetlands. This in-lieu-fee guidance elaborates on the discussion of in-lieu-fee mitigation arrangements in the Banking Guidance by outlining the circumstances where in-lieu-fee mitigation may be used, consistent with existing regulations and policy.

EFFECTIVE DATE: The effective date is October 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Chowning (Corps) at (202) 761–4614; Ms. Lisa Morales (EPA) at (202) 260–6013; Mr. Mark Matusiak (FWS) at (703) 358–2183; Ms. Susan-Marie Stedman (NMFS) at (301) 713–2325.

SUPPLEMENTARY INFORMATION: This notice publishes interagency guidance regarding the use of in-lieu-fee arrangements for the purpose of providing compensation for adverse impacts to wetlands and other aquatic resources. Any comments or questions on the document may be directed to the persons listed above in the section entitled: **FOR FURTHER INFORMATION CONTACT.**

Dated: October 20, 2000.

Michael L. Davis,

Deputy Assistant Secretary (Civil Works), Department of the Army.

Dated: October 20, 2000.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds, Environmental Protection Agency.

Dated: October 31, 2000.

Jamie Clark,

Director, Fish and Wildlife Service, Department of the Interior.

Dated: October 25, 2000.

Scott B. Gudes,

Deputy Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, Department of Commerce.

Memorandum to the Field

Subject: Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act

I. Purpose

Compensatory mitigation projects are designed to replace aquatic resource functions and values that are adversely impacted under the Clean Water Act Section 404 and Rivers and Harbors Act Section 10 regulatory programs. These mitigation objectives are stated in regulation, the 1990 Memorandum of Agreement on mitigation between Environmental Protection Agency (EPA) and the Department of the Army, the November 28, 1995, Federal Guidance on the Establishment, Use and Operation of Mitigation Banks ("Banking Guidance"), and other relevant policy. The advent of in-lieu-fee approaches to mitigation has highlighted the importance of several fundamental objectives that the agencies established for determining what constitutes appropriate compensatory mitigation. The purpose of this memorandum is to clarify the manner in which in-lieu-fee mitigation may serve as an effective and useful approach to satisfy compensatory mitigation requirements and meet the Administration's goal of no overall net loss of wetlands. This in-lieu-fee guidance elaborates on the discussion of in-lieu-fee mitigation arrangements in the Banking Guidance by outlining the circumstances where in-lieu-fee mitigation may be used, consistent with existing regulations and policy.

II. Background

A. "In-lieu-fee" mitigation occurs in circumstances where a permittee provides funds to an in-lieu-fee sponsor instead of either completing project-specific mitigation or purchasing credits from a mitigation bank approved under the Banking Guidance.

B. A fundamental precept of the Section 404(b)(1) Guidelines is that no discharge of dredged or fill material in waters of the U.S. may be permitted unless appropriate and practicable steps have been taken to minimize all adverse impacts associated with the discharge. (40 CFR 230.10(d)) Specifically, the Section 404(b)(1) Guidelines establish a mitigation sequence, under which compensatory mitigation is required to offset wetland losses after all appropriate and practicable steps have been taken to first avoid and then minimize wetland impacts. Compliance with these mitigation sequencing requirements is an essential environmental safeguard to ensure that CWA objectives for the protection of wetlands are achieved. The Section 404 permit program relies on the use of compensatory mitigation to offset unavoidable wetlands impacts by replacing lost wetland functions and values.

C. The agencies further clarified their mitigation policies in a Memorandum of Agreement (MOA) between the EPA and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines (February 6, 1990). That document reiterates that "the Clean Water Act and the Guidelines set forth a goal of restoring and maintaining existing aquatic resources. The Corps will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources, and for wetlands, will strive to achieve a goal of no overall net loss of values and functions." Moreover, the MOA clarifies that mitigation "should be undertaken, when practicable, in areas adjacent or contiguous to the discharge site," and that "if on-site compensatory mitigation is not practicable, off-site compensatory mitigation should be undertaken in the same geographic area if practicable (i.e., in close proximity and, to the extent possible, the same watershed)." As outlined in the MOA, the agencies have also agreed that "generally, in-kind compensatory mitigation is preferable to out-of-kind." The MOA further states that mitigation banking may be an acceptable form of compensatory mitigation. The agencies recognize the general preference for restoration over other forms of mitigation, given the increased chance for ecological success.

D. Pursuant to these standards, project-specific mitigation for authorized impacts has been used by permittees to offset unavoidable impacts. Project-specific mitigation generally consists of restoration, creation, or enhancement of aquatic resources that are similar to the aquatic resources of the impacted area, and is often located on the project site or adjacent to the impact area. Permittees providing project specific mitigation have a U.S. Army Corps of Engineers (Corps) approved mitigation plan detailing the site, source of hydrology, types of aquatic resource to be restored, success criteria, contingency measures, and an annual reporting requirement. The mitigation and monitoring plan becomes part of the Section 404 authorization in the form of a special condition. The permittee is responsible for complying with all terms and conditions of the authorization and would be in violation of their authorization if the mitigation did not comply with the approved plan.

E. In 1995, the agencies issued the Banking Guidance. Consistent with that guidance, permittees may purchase mitigation credits from an approved bank. Mitigation banks will generally be functioning in advance of project impacts and thereby reduce the temporal losses of aquatic functions and values and reduce uncertainty over the ecological success of the mitigation. Mitigation banking instruments are reviewed and approved by an interagency Mitigation Banking Review Team (MBRT). The MBRT ensures that the banking instrument appropriately addresses the physical and legal characteristics of the bank and how the bank will be established and operated (*e.g.* classes of wetlands and/or other aquatic resources proposed for inclusion in the bank, geographic service area where credits may be sold, wetland classes or other aquatic resource impacts suitable for compensation, methods for determining credits and debits). The bank sponsor is responsible for the operation and maintenance of the bank during its operational life, as well as the long-term management and ecological success of the wetlands and/or other aquatic resources, and must provide financial assurances.

F. The Banking Guidance describes in-lieu-fee mitigation as follows: ". . . in-lieu-fee, fee mitigation, or other similar arrangements, wherein funds are paid to a natural resource management entity for implementation of either specific or general wetland or other aquatic resource development project, are not considered to meet the definition of mitigation banking because they do not typically provide compensatory mitigation in advance of project impacts. Moreover, such arrangements do not typically provide a clear timetable for the initiation of mitigation efforts. The Corps, in consultation with the other agencies, may find circumstances where such arrangements are appropriate so long as they meet the requirements that would otherwise apply to an offsite, prospective mitigation effort and provides adequate assurances of success and timely implementation. In such cases, a formal agreement between the sponsor and the agencies, similar to a banking instrument, is necessary to define the conditions under which its use is considered appropriate."

III. Use of In-Lieu-Fee Mitigation in the Regulatory Program

In light of the above considerations and in order to ensure that decisions regarding the use of in-lieu-fee mitigation are made more consistently with existing provisions of agency regulations and permit policies, the following clarification is provided. It is organized in a tiered manner to reflect and incorporate the agencies' broader mitigation policies, and is based on relative assurances of ecological success.

A. *Impacts Authorized Under Individual Permit:* In-lieu-fee agreements may be used to compensate for impacts authorized by individual permit if the in-lieu-fee arrangement is developed (or revised, if an existing agreement), reviewed, and approved using the process established for mitigation banks in the Banking Guidance. MBRTs should review applications from such in-lieu-fee sponsors to ensure that such agreements are consistent with the Banking Guidance.

B. *Impacts Authorized Under General Permit:* As a general matter, in-lieu-fee mitigation should only be used to compensate for impacts to waters of the U.S. authorized by a Section 404 general permit, as described below:

1. *Where "On-site" Mitigation Is Available and Practicable:* As a general matter, compensatory mitigation that is completed on or adjacent to the site of the impacts it is designed to offset (*i.e.*, project-specific mitigation done by permittees consistent with Corps approved mitigation plans) is preferable to mitigation conducted off-site (*i.e.*, mitigation bank or in-lieu-fee mitigation). The agencies' preference for on-site mitigation, indicated in the 1990 Memorandum of Agreement on mitigation between the EPA and the Department of the Army, should not preclude the use of a mitigation bank or in-lieu-fee mitigation when there is no practicable opportunity for on-site compensation, or when use of a bank or in-lieu-fee mitigation is environmentally preferable to on-site compensation, consistent with the provisions in paragraph 2 below.

2. *Where "On-site" Mitigation Is Not Available or Practicable:* Except as noted below in a. or b., where on-site mitigation is not available, practicable, or determined to be less environmentally desirable, use of a mitigation bank is preferable to in-lieu-fee mitigation where permitted impacts are within the service area of a mitigation bank approved to sell mitigation credits, and those credits are available. Use of a mitigation bank is also preferable over in-lieu-fee mitigation where both the available in-lieu-fee arrangement and the service area of an approved mitigation bank are outside of the watershed of the permitted project impacts, unless the mitigation bank is determined on a case by case basis to not be practicable and environmentally desirable.

a. *Where Mitigation Bank Does Not Provide "In-kind" Mitigation:* In those circumstances where wetlands impacts proposed for general permit authorization are within the service area of an approved mitigation bank with available credits, but the impacted wetland type is not identified by the Mitigation Banking Instrument for compensation within such bank, then the authorized impact may be compensated through an in-lieu-fee arrangement, subject to the considerations described in Section IV below, if the in-lieu-fee arrangement would provide in-kind restoration as mitigation.

b. *Where Mitigation Bank Does Not Provide Restoration, Creation, or Enhancement Mitigation:* In those circumstances where wetlands impacts proposed for general permit authorization are within the service area of an approved mitigation bank, but the only available credits are through preservation, then the authorized impact may be compensated through an in-lieu-fee arrangement subject to the considerations described in Section IV below, if the in-lieu-fee arrangement would provide in kind restoration as mitigation.

IV. Planning, Establishment, and Use of In-lieu-fee Mitigation Arrangements

This section describes the basic considerations that should be addressed for any proposed use of in-lieu-fee mitigation to offset unavoidable impacts associated with a discharge authorized under a general permit described in Section III above.

A. Planning Considerations

1. *Qualified Organizations:* Given the goal to ensure long-term mitigation success, the Corps, in consultation with the other Federal agencies, should carefully evaluate the demonstrated performance of natural resource management organizations (*e.g.*, governmental organizations, land trusts) prior to approving them to manage in-lieu-fee arrangements. In fact, given the unique strengths and specialties of such organizations, it may be useful for the Corps, in consultation with other Federal resource agencies, to establish formal arrangements with several natural resource management organizations to ensure there are sufficient options to effectively replace lost functions and values. In any event, in-lieu-fee arrangements and subsequent modifications should be made in consultation with the other Federal agencies and only after an opportunity for public notice and comment has been afforded.

2. *Operational Information:* Those organizations considered qualified to implement formal in-lieu-fee arrangements should work in advance with the Corps to ensure that authorized impacts will be offset fully on a project-by-project basis consistent with Section 10/404 permit requirements. As detailed in the paragraphs that follow, organizations should supply the Corps with information in advance on (1) potential sites where specific restoration projects or types of restoration projects are planned, (2) the schedule for implementation, (3) the type of mitigation that is most ecologically appropriate on a particular parcel, and (4) the financial, technical, and legal mechanisms to ensure long-term mitigation success. The Corps should ensure that the formal in-lieu-fee arrangements and project authorizations contain distinct provisions that clearly state that the legal responsibility for ensuring mitigation terms are satisfied fully rests with the organization accepting the in-lieu-fee. In-lieu-fee sponsors should be able to demonstrate approval of all necessary State and local permits and authorizations. In-lieu-fee sponsors (*e.g.*, State) should notify the Corps and MBRT if the service area of any mitigation bank overlaps the jurisdiction in which their in-lieu-fees may be spent.

3. *Watershed Planning:* Local watershed planning efforts, as a general matter, identify wetlands and other aquatic resources that have been degraded and usually have established a prioritization list of restoration needs. In-lieu-fee mitigation projects should be planned and developed to address the specific resource needs of a particular watershed.

4. *Site Selection:* The Federal agencies and in-lieu-fee sponsor should give careful consideration to the ecological suitability of a site for achieving the goal and objectives of compensatory mitigation (*e.g.*, posses the physical, chemical and biological characteristics to support the desired aquatic resources and functions, preferably in-kind restoration or creation of impacted aquatic resources). The location of the site relative to other ecological features, hydrologic sources, and compatibility with adjacent land uses and watershed management plans shall be considered by the Federal agencies during the evaluation process.

5. *Technical Feasibility:* In-lieu-fee mitigation should be planned and designed to be self-sustaining over time to the extent possible. The techniques for establishing aquatic resources must be carefully selected. The restoration of historic or substantially degraded aquatic resources (*e.g.*, prior-converted cropland, farmed wetlands) utilizing proven techniques increases the likelihood of success and typically does not result in the loss of other valuable resources. Thus, restoration should be the first option considered for siting in-lieu-fee mitigation. This guidance recognizes that in some circumstances aquatic resources must be actively managed to ensure their sustainability. Furthermore, long-term maintenance requirements may be necessary and appropriate in some cases (*e.g.*, to maintain fire dependent habitat communities in the absence of natural fire, to control invasive exotic plant species). Proposed mitigation techniques should be well-understood and reliable. When uncertainties surrounding the technical feasibility of a proposed mitigation technique exist, appropriate arrangements may be phased-out or reduced once the attainment of prescribed performance standards is demonstrated. In any event, a plan detailing specific performance standards should be submitted to ensure the technical success of the project can be evaluated.

6. *Role of Preservation:* As described in the Banking Guidance, simple purchase or "preservation" of existing wetlands may be accepted as compensatory mitigation only in exceptional circumstances. Mitigation credit may be given when existing wetlands and/or other aquatic resources are preserved in conjunction with restoration, creation or enhancement activities, and when it is demonstrated that the preservation will augment the functions of the restored, created or enhanced aquatic resource.

7. *Collection of Funds:* Funds collected under any in-lieu-fee arrangement should be used for replacing wetlands functions and values and not to finance non-mitigation programs and priorities (*e.g.*, education projects, research). Funds collected should be based upon a reasonable cost estimate of all funds needed to compensate for the impacts to wetlands or other waters that each permit is authorized to offset. Funds collected should ensure a minimum of one-for-one acreage replacement, consistent with existing regulation and permit conditions. Land acquisition and initial physical and biological improvements should be completed by the first full growing season following collection of the initial funds. However, because site improvements associated with in-lieu-fee mitigation may take longer to initiate, initial physical and biological improvements may be completed no later than the second full growing season where (1) initiation by the first full growing season is not practicable, (2) mitigation ratios are raised to account for increased temporal losses of aquatic resource functions and values, and (3) the delay is approved in advance by the Corps.

8. *Monitoring and Management:* The in-lieu-fee sponsor is responsible for securing adequate funds for the operation and maintenance of the mitigation sites. The wetlands and/or other aquatic resources in the mitigation site should be protected in perpetuity with appropriate real estate arrangements (*e.g.*, conservation easements, transfer of title to Federal or State resource agency or non-profit conservation agency). Such arrangements should effectively restrict harmful activities (*e.g.*, incompatible uses) that might otherwise jeopardize the purpose of the compensatory mitigation. In addition, there should be appropriate schedules for regular (*e.g.*, annual) monitoring reports to document funds received, impacts permitted, how

funds were disbursed, types of projects funded, and the success of projects conducted under the in-lieu-fee arrangement. The Corps, in conjunction with other Federal and State agencies, should evaluate the reports and conduct regular reviews to ensure that the arrangement is operating effectively and consistent with agency policy and the specific agreement. The Corps will track all uses of in-lieu-fee arrangements and report those figures by public notice on an annual basis.

B. Establishment of In-Lieu-Fee Agreements

A formal in-lieu-fee agreement, consistent with the planning provisions above, should be established by the sponsor with the Corps, in consultation with the other agencies. It may be appropriate to establish an "umbrella" arrangement for the establishment and operation of multiple sites. In such circumstances, the need for supplemental information (*e.g.*, site specific plans) should be addressed in specific in-lieu-fee agreements. The in-lieu-fee agreement should contain:

1. a description of the sponsor's experience and qualifications with respect to providing compensatory mitigation;
2. potential site locations, baseline conditions at the sites, and general plans that indicate what kind of wetland compensation can be provided (*e.g.*, wetland type, restoration or other activity, proposed time line, *etc.*);
3. geographic service area;
4. accounting procedures;
5. methods for determining fees and credits;
6. a schedule for conducting the activities that will provide compensatory mitigation or a requirement that projects will be started within a specified time after impacts occur;
7. performance standards for determining ecological success of mitigation sites;
8. reporting protocols and monitoring plans;
9. financial, technical and legal provisions for remedial actions and responsibilities (*e.g.*, contingency fund);
10. financial, technical and legal provisions for long-term management and maintenance (*e.g.*, trust); and
11. provision that clearly states that the legal responsibility for ensuring mitigation terms are fully satisfied rests with the organization accepting the fee.

In cases where initial establishment of in-lieu-fee compensatory mitigation involves a discharge into waters of the United States requiring Section 10/404 authorization, submittal of a Section 10/404 application should be accompanied by the in-lieu-fee agreement.

V. General

A. *Effect of Guidance.* This guidance does not change the substantive requirements of the Section 10/404 regulatory program. Rather, it interprets and provides guidance and procedures for the use of in-lieu fee mitigation consistent with existing regulations. The policies set out in this document are not final agency action, but are intended solely as guidance. The guidance is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. This guidance does not establish or affect legal rights or obligations, establish a binding norm on any party and it is not finally determinative of the issues addressed. Any regulatory decisions made by the agencies in any particular matter addressed by this guidance will be made by applying the governing law and regulations to the relevant facts.

B. *Definitions.* Unless otherwise noted, the terms used in this guidance have the same definitions as those terms in the Banking Guidance. Note that as part of the Administration's Clean Water Action Plan, the Federal agencies have proposed a tracking system to more accurately account for wetland losses and gains that includes definitions of terms such as restoration used in wetland programs. Future notice will be given when these definitions will be applied to Section 10/404 regulatory program.

C. *Effective Date.* This guidance is effective immediately on the date of the last signature below. Therefore, existing in-lieu-fee arrangements or agreements should be reviewed and modified as necessary in light of the above.

D. *Conversion to Banks:* If requested by the in-lieu-fee sponsor, the Corps, in conjunction with the other Federal agencies, will provide assistance and recommendations on the steps necessary to convert individual in-lieu-fee arrangements to mitigation banks, consistent with the Banking Guidance.

E. *Future Revisions.* The agencies are supporting a comprehensive, independent evaluation of the effectiveness of compensatory mitigation by the National Academy of Sciences. The technical results of this evaluation are expected to be used by the public to improve the quality of wetlands and aquatic resource restoration, creation, and enhancement. The agencies will take note of the results of this evaluation and other relevant information to make any necessary revisions to guidance on compensatory mitigation, to ensure the greatest opportunity for ecological success of restored, created, and enhanced wetlands and other aquatic resources. At a minimum, a review of the use of this guidance will be initiated no later than 12 months after the effective date.

Michael L. Davis,
Deputy Assistant Secretary (Civil Works), Department of the Army.

Robert H. Wayland III,
Director, Office of Wetlands, Oceans, and Watersheds Environmental Protection Agency.

Jamie Clark,
Director, Fish and Wildlife Service, Department of the Interior.

Scott B. Gudes,
Deputy Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, Department of Commerce.

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Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 2 et al.
Federal Acquisition Regulation; Preference for U.S.-Flag Vessels; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 12, 32, 47, and 52

[FAR Case 1999–024]

RIN 9000–AI97

Federal Acquisition Regulation; Preference for U.S.-Flag Vessels

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) regarding the applicability of statutory requirements for use of U.S.-flag vessels in the transportation of supplies by sea. The FAR presently waives these requirements for subcontracts for the acquisition of commercial items.

DATES: Interested parties should submit comments in writing on or before January 8, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: farcase.1999–024@gsa.gov.

Please submit comments only and cite FAR case 1999–024 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 1999–024.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2631 and 46 U.S.C. 1241(b) provide a preference for use of U.S.-flag vessels for ocean transportation of supplies purchased under Government contracts. FAR Part 12 presently waives the requirements of 46 U.S.C. 1241(b) for subcontracts for the acquisition of commercial items. This rule proposes to amend FAR Part 12 by adding 10 U.S.C. 2631 to the list of laws inapplicable to subcontracts for the acquisition of commercial items, since civilian agencies may buy supplies for use of military departments. However, this rule modifies FAR Parts 12, 47, and associated clauses, to limit the types of subcontracts for which the waiver of cargo preference statutes is applicable. The rule is intended to ensure compliance with cargo preference statutes if ocean cargoes are clearly destined for Government use, while avoiding disruption of commercial delivery systems.

This rule also deletes the existing Alternate II of the clause, 52.247–64, as unnecessary and replaces it with a new Alternate II. The rule adds two definitions, *i.e.*, "contingency operation" and "humanitarian or peacekeeping operation" to define terms used in the definition of "simplified acquisition threshold", Part 32, Subpart 47.5, and the clause at 52.247–64. These changes are consistent with previously issued guidance from OFPP.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most entities providing ocean transportation are not small business concerns. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–024), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule will increase the flowdown of FAR clause 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels, to certain commercial subcontracts. This information collection requirement is currently approved by the Office of Management and Budget under OMB Control Number 9000–0061, which also covers other transportation related information collection requirements. We anticipate an increase of 9,000 responses per year as a result of this proposed rule, and a corresponding increase of 900 burden hours per year.

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .05 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 65,000.

Responses per respondent: 21.

Total annual responses: 1,385,990.

Preparation hours per response: .05 hours.

Total response burden hours: 65,870.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than January 8, 2001 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVR), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control Number 9000–0061, FAR Case 1999–024, Preference for U.S.-Flag Vessels, in all correspondence.

List of Subjects in 48 CFR Parts 2, 12, 32, 47, and 52

Government procurement.

Dated: November 2, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 12, 32, 47, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 12, 32, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding the definitions "Contingency operation" and "Humanitarian or peacekeeping operation", and by revising the definition "Simplified acquisition threshold" to read as follows:

2.101 Definitions.

* * * * *

Contingency operation means a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under 10 U.S.C. 688, 12301(a), 12302, 12304, 12305, or 12406; chapter 15 of 10 U.S.C.; or any other provision of law during a war or during a national emergency declared by the President or Congress (10 U.S.C. 101(a)(13)).

* * * * *

Humanitarian or peacekeeping operation means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing (10 U.S.C. 2302(8) and 41 U.S.C. 259(d)(2)(B)).

* * * * *

Simplified acquisition threshold means $100,000, except that in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation, the term means $200,000.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 12.504 by redesignating paragraphs (a)(1) through (a)(11) as (a)(2) through (a)(12), respectively; by adding a new paragraph (a)(1); and by revising newly designated paragraph (a)(11) to read as follows:

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(1) 10 U.S.C. 2631, Transportation of Supplies by Sea (except for the types of subcontracts listed at 47.504(d)).

* * * * *

(11) 46 U.S.C. 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see subpart 47.5) (except for the types of subcontracts listed at 47.504(d)).

* * * * *

PART 32—CONTRACT FINANCING

32.1103 [Amended]

4. Amend section 32.1103 in paragraph (e) by removing "10 U.S.C. 101(a)(13)" and adding "2.101" in its place.

PART 47—TRANSPORTATION

5. Amend section 47.504 by revising paragraph (d) to read as follows:

47.504 Exceptions.

* * * * *

(d) Subcontracts for the acquisition of commercial items or commercial components (see 12.504(a)(1) and (a)(11)). This exception does not apply to—

(1) Grants-in-aid shipments, such as agricultural and food-aid shipments;

(2) Shipments covered under 46 App. U.S.C. 1241–1, such as those generated by Export-Import Bank loans or guarantees;

(3) Subcontracts under—

(i) Government contracts or agreements for ocean transportation services; or

(ii) Construction contracts; or

(4) Shipments of commercial items that are—

(i) Items the contractor is reselling or distributing to the Government without adding value (see FAR 12.501(b)). Generally, the contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment; or

(ii) Shipped in direct support of U.S. military—

(A) Contingency operations;

(B) Exercises; or

(C) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

6. Revise section 47.507 to read as follows:

47.507 Contract clauses.

(a)(1) Insert the clause at 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels, in solicitations and contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954. (For application of the Cargo Preference Act of 1954, see 47.502(a)(3), 47.503(a), and 47.504.)

(2) If an applicable statute requires, or if it has been determined under agency procedures, that the supplies to be furnished under the contract must be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.502(a)(1) and 47.503(b)), use the clause with its Alternate I.

(3) Except for contracts or agreements for ocean transportation services or construction contracts, use the clause with its Alternate II if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military—

(i) Contingency operations;

(ii) Exercises; or

(iii) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(b) The contracting officer may insert in solicitations and contracts, under agency procedures, additional appropriate clauses concerning the vessels to be used.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Amend section 52.212–5 by revising the date of the clause, the introductory text of paragraph (e), and paragraph (e)(4) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Date)

* * * * *

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by addenda to this paragraph to establish the reasonableness of prices under part 15), in a subcontract for commercial items or commercial components—

* * * * *

(4) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241 and 10 U.S.C. 2631). (Flowdown

required in accordance with paragraph (d) of the clause in the contract entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels" (FAR 52.247–64)); and

* * * * *

(End of clause)

8. Amend section 52.244–6 by revising the date of the clause and paragraph (c)(4) to read as follows:

52.244–6 Subcontracts for Commercial Items and Commercial Components.

* * * * *

Subcontracts for Commercial Items and Commercial Components (Date)

* * * * *

(c) * * *

(4) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241 and 10 U.S.C. 2631). (Flowdown required in accordance with paragraph (d) of the clause in this contract entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels" (FAR 52.247–64).)

* * * * *

(End of clause)

9. Amend section 52.247–64 by—

a. Revising the date of the clause;

b. Removing "The" from the beginning of the introductory text of paragraph (a) and adding "Except as provided in paragraph (e) of this clause, the" in its place;

c. Removing the period at the end of paragraph (d) and adding ", except those described in paragraph (e)(4)." in its place;

d. Removing "and" at the end of paragraph (e)(2);

e. Removing the period at the end of paragraph (e)(3) and adding "; and" in its place;

f. Adding paragraph (e)(4); and

g. Revising Alternates I and II to read as follows:

52.247–64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

* * * * *

Preference for Privately Owned U.S.-Flag Commercial Vessels (Date)

* * * * *

(e) * * *

(4) Subcontracts or purchase orders for the acquisition of commercial items unless—

(i) This contract is—

(A) A contract or agreement for ocean transportation services; or

(B) A construction contract; or

(ii) The supplies being transported are—

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military—

(*1*) Contingency operations;

(*2*) Exercises; or

(*3*) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

* * * * *

Alternate I (Date). As prescribed in 47.507(a)(2), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Except as provided in paragraphs (b) and (e) of this clause, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify the Contracting Officer and request (1) authorization to ship in foreign-flag vessels, or (2) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by the Contracting Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.

Alternate II (Date). As prescribed in 47.507(a)(3), substitute the following paragraph (e) for paragraph (e) of the basic clause:

(e) The requirement in paragraph (a) does not apply to—

(1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Subcontracts or purchase orders under this contract for the acquisition of commercial items unless the supplies being transported are—

(i) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(ii) Shipments in direct support of U.S. military—

(A) Contingency operations;

(B) Exercises; or

(C) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations. (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.)

[FR Doc. 00–28562 Filed 11–6–00; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.J. Res. 123/P.L. 106–426

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Nov. 3, 2000; 114 Stat. 1897)

H.J. Res. 124/P.L. 106–427

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Nov. 4, 2000; 114 Stat. 1898)

H.J. Res. 84/P.L. 106–428

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Nov. 4, 2000; 114 Stat. 1899)

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–374–AD; Amendment 39–11957; AD 2000–22–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires modification of the canted pressure deck drain system in the wheel well of the main landing gear (MLG). This amendment is prompted by reports of ice accumulation on the aileron control cables and on the MLG door and door seal during flight, due to fluid entering the canted pressure deck area, leaking into the MLG wheel well, and freezing. The actions specified by this AD are intended to prevent such ice accumulation, which could render one of the aileron control systems and/or the MLG doors inoperative, resulting in reduced controllability of the airplane.

DATES: Effective December 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the **Federal Register** on February 4, 2000 (65 FR 5455). That action proposed to require modification of the canted pressure deck drain system in the wheel well of the main landing gear (MLG).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

One commenter supports the proposed AD.

Request To Accept Alternative Methods of Compliance

One commenter, the airplane manufacturer, requests that the FAA revise the proposed AD to reference certain other service bulletins as acceptable methods of compliance with the proposed AD, in lieu of accomplishment of Boeing Service Bulletin 767–51A0020, Revision 1, dated July 22, 1999. (Paragraph (a) of the proposed AD cites Revision 1 as the appropriate source of service information for the actions specified in that paragraph.) The commenter states that accomplishment of Boeing Service Bulletin 767–53–0059, dated November 12, 1992 (which describes a one-time pressure check of the seals of the canted pressure deck), along with either Boeing Service Bulletin 767–51–0014, dated August 2, 1990 (which describes relocation of the vent holes for the pressure-operated drain lines), or Boeing Service Bulletin 767–51–0019, dated June 27, 1996 (which describes relocation of drain outlets from the MLG wheel wells to the heat shields of the ram air outlets), will prevent ice accumulation on the aileron control cables and the MLG door and seal as effectively as incorporation of Boeing Service Bulletin 767–51A0020.

The FAA partially concurs with the commenter's request. The FAA concurs that accomplishment of Boeing Service Bulletin 767–53–0059 and Boeing Service Bulletin 767–51–0014 or 767–51–0019 would adequately prevent ice accumulation on the aileron control cables. The FAA also finds that accomplishment of Boeing Service Bulletins 767–53–0059 and 767–51–0019 adequately prevents ice accumulation on the main landing gear door and seal. However, the FAA finds that accomplishment of Boeing Service Bulletins 767–53–0059 and 767–51–0014 does not adequately prevent ice accumulation on the MLG door and seal. Therefore, the FAA finds that accomplishment of Boeing Service Bulletins 767–53–0059 and 767–51–0019, but not Boeing Service Bulletin 767–51–0014, is acceptable for compliance with the requirements of paragraph (a) of this AD. A new "Note 3" has been added to this AD (and renumbered subsequent notes accordingly) to state the acceptable means of compliance.

The same commenter requests that the FAA revise paragraph (a) of the proposed AD to allow accomplishment of the modification in accordance with the original issue of Boeing Alert Service Bulletin 767–51A0020, dated November 19, 1998, or Revision 1. The commenter notes that airplanes modified per the original issue do not require additional work because Revision 1 only clarifies certain work instructions.

The FAA concurs with the intent of the commenter's request, but notes that "Note 2" of the proposed AD already states that modification in accordance with the original issue of the service bulletin prior to the effective date of this AD is acceptable for compliance with paragraph (a) of this AD. Therefore, no change to the final rule is necessary in this regard.

Request To Extend Compliance Time

Three commenters request that the FAA extend the compliance time for the proposed modification beyond 24 months. One commenter requests that the FAA extend the compliance time to 36 months to allow for delivery of necessary parts. Another commenter requests that the FAA extend the compliance time to 60 months to allow for accomplishment of the modification during a major maintenance visit, such as a "D"-check. The commenter that requests extension of the compliance time to 60 months justifies its request based on the fact that there have been very few in-service problems related to freezing of the aileron control cables on Model 767 series airplanes, and on design changes that have been made related to potential ice accumulation on the aileron control cables.

The FAA concurs with the first commenter's request to extend the compliance time from 24 months to 36 months. This extension will allow a 12-month lead time for affected operators to obtain the parts necessary for the modification. The FAA finds that such an extension will not adversely affect safety, and this determination is based in part on the justifications cited by the second commenter. However, the FAA finds that extension of the compliance time to 60 months, as requested by the second commenter, would not ensure accomplishment of the modification required by this AD on all affected airplanes in a timely manner. Paragraph (a) of this final rule has been revised accordingly.

Another commenter requests extension of the compliance time to 48 months to allow time for accomplishment of another service bulletin that the commenter notes may be required to be accomplished concurrently with the modification in this AD (see the "Request to Clarify Requirements" section of this document, below). The FAA does not concur with this commenter's request to extend the compliance time for this AD to 48 months. As explained below, the service bulletin with which the commenter is concerned is not required by this AD; thus, no extension of the compliance time is necessary in this regard.

Request To Clarify Requirements

Two commenters question whether Boeing Service Bulletin 767–53–0059, dated November 12, 1992, must be incorporated concurrently with the proposed modification. The commenters note that Section 1.B. ("Concurrent Requirements") of Boeing Service Bulletin 767–51A0020, Revision 1, states that accomplishment of Boeing Service Bulletin 767–53–0059 is required for certain airplanes, but Section 1.D. ("Description"), Note 4, of Boeing Service Bulletin 767–51A0020, Revision 1, states that accomplishment of Boeing Service Bulletin 767–53–0059 is *recommended* for those airplanes. The commenters request that the FAA revise the proposed AD to clarify whether Boeing Service Bulletin 767–53–0059 is required.

The FAA concurs that clarification is indeed necessary. The FAA has determined that accomplishment of Boeing Service Bulletin 767–53–0059 is not required by this AD because the modification in accordance with Boeing Service Bulletin 767–51A0020 corrects the conditions addressed by Boeing Service Bulletin 767–53–0059. Because the proposed rule did not directly reference Boeing Service Bulletin 767–53–0059, the FAA finds that no change to the final rule is necessary in this regard. However, operators should note that, as stated previously, accomplishment of Boeing Service Bulletins 767–53–0059 and 767–51–0019 is acceptable for compliance with this AD, in lieu of accomplishment of Boeing Service Bulletin 767–51A0020.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 716 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 278 airplanes of U.S. registry will be affected by this AD, that it will take approximately 15 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $6,623 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $2,091,394, or $7,523 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–22–11 Boeing: Amendment 39–11957. Docket 99–NM–374–AD.

Applicability: Model 767 series airplanes, line numbers 1 through 723 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice accumulation on the aileron control cables and/or main landing gear (MLG) door and door seal during flight, which could render one of the aileron control systems and/or the MLG doors inoperative, resulting in reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 36 months after the effective date of this AD: Modify the canted pressure deck drain system in the wheel well of the MLG, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–51A0020, Revision 1, dated July 22, 1999.

Note 2: Modification of the canted pressure deck drain system accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–51A0020, dated November 19, 1998, is considered acceptable for compliance with the modification specified in this AD.

Note 3: Accomplishment of the actions specified in both Boeing Service Bulletins 767–53–0059, dated November 12, 1992, and 767–51–0019, dated June 27, 1996, is acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 767–51A0020, Revision 1, dated July 22, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on December 13, 2000.

Issued in Renton, Washington, on October 27, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28089 Filed 11–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–04–AD; Amendment 39–11961; AD 2000–22–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, that currently requires repetitive radiographic and ultrasonic or eddy current inspections, and modification of the upper cap of the front spar of the left and right engine pylons, if necessary. This amendment requires new, improved x-ray and eddy current inspections to detect cracks of the upper cap of the front spar of the left and right engine pylons, and repetitive inspections or corrective actions, if necessary. This amendment also requires modification of the subject area, which constitutes terminating action for the repetitive inspection requirements. This amendment is prompted by additional reports of fatigue cracking in the subject area of these airplanes. The actions specified by this AD are intended to prevent failure of the upper cap of the front spar of the engine pylons due to fatigue cracking, and consequent reduced structural integrity of the airplane.

DATES: Effective December 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 77–14–19, amendment 39–2971, which is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes, was published in the **Federal Register** on July 5, 2000 (65 FR 41385). The action proposed to continue to require radiographic and ultrasonic or eddy current inspections. The action also proposed to require new, improved x-ray and eddy current inspections to detect cracks of the upper cap of the front spar of the left and right engine pylons, and repetitive inspections or corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Compliance Time

One commenter has no objection to the proposed AD. However, the commenter requests that the compliance time of 3,600 flight hours specified in paragraph (b) of the proposed AD be extended to at least 3,860 flight hours. The commenter states that such an extension would allow operators to accomplish the required inspections during regularly scheduled maintenance and to avoid special routing of airplanes to a maintenance facility.

The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered the safety implications and normal maintenance schedules for timely accomplishment of the inspections. In consideration of these items, as well as the additional reports of fatigue cracking in the subject area of the upper cap of the front spar of the left and right engine pylons, the FAA has determined that prior to the accumulation of 8,000 total flight hours, or within 3,600 flight hours after the effective date of this AD, whichever occurs later, represents an appropriate interval of time allowable wherein the inspections can be accomplished during scheduled maintenance intervals for the majority of affected operators, and an acceptable level of safety can be maintained.

Delete Paragraph (f) of the Proposed AD

One commenter states that paragraph (f) of the proposed AD is misleading, because it discusses the terminating action as it relates to AD 96–10–11, amendment 39–9618 (61 FR 24675, May 16, 1996), but does not address the repetitive inspections. Paragraph (g) of AD 96–10–11 excludes the actions specified in McDonnell Douglas Service Bulletin 54–30, Revision 4, dated March 25, 1991. Another commenter points out that the requirements related to McDonnell Douglas Service Bulletin 54–30, Revision 4, of AD 96–10–11 have been superseded.

From these comments, the FAA infers that the commenters are requesting that paragraph (f) of the proposed AD be deleted. The FAA concurs. The FAA has reviewed the requirements of AD 96–10–11 and determined that McDonnell Douglas Service Bulletin 54–30, Revision 4, dated March 25, 1991, is not required by that AD. Paragraph (a) of AD 77–14–19, which is retained in this AD, references Douglas Service Bulletin 54–30, dated January 19, 1977, as the appropriate source of service information for accomplishment of the inspection requirements. Note 2 of this AD references later revisions of that service bulletin that are considered acceptable for compliance with the inspections required by paragraph (a) of this AD. Accomplishment of the requirements of paragraph (e) of this AD constitutes terminating action for the requirements of this AD. Therefore, the FAA finds that paragraph (f) of the proposed AD is not necessary. The FAA has revised the final rule accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 809 Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 572 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 77–14–19, and retained in this AD, take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $411,840, or $720 per airplane, per inspection cycle.

The new inspection that is required in this AD action will take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour.

Based on these figures, the cost impact of this inspection required by this AD on U.S. operators is estimated to be $411,840, or $720 per airplane, per inspection cycle.

The new modification that is required in this AD action will take approximately 110 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $30,496 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $21,218,912, or $37,096 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–2971, and by adding a new airworthiness directive (AD), amendment 39–11961, to read as follows:

2000–22–14 McDonnell Douglas: Amendment 39–11961. Docket 2000–NM–04–AD. Supersedes AD 77–14–19, Amendment 39–2971.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes; as listed in McDonnell Douglas Service Bulletin DC9–54–030, Revision 06, dated November 11, 1999; certificated in any category; except for those airplanes on which Special Change Notification 1269A, dated August 11, 1965, or Service Rework Drawing SR09540004, Change "E," dated September 21, 1992, Change "F," dated April 19, 1995, Change "G," dated May 6, 1997, or Change "H," dated July 12, 1997, has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance

of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the front spar attachment and upper cap of the engine pylons due to fatigue cracking, and consequent reduced structural integrity of the airplane, accomplish the following:

Repetitive Inspections

(a) Prior to the accumulation of 9,800 total flight hours, or within the next 1,800 flight hours after August 23, 1977 (the effective date of AD 77–14–19, amendment 39–2971), whichever occurs later, unless accomplished previously within the last 1,800 flight hours, accomplish the radiographic and ultrasonic or eddy current inspections in accordance with the instructions in Douglas Service Bulletin 54–30, dated January 19, 1977. Repeat the inspection thereafter at intervals not to exceed 3,600 flight hours. For those operators who have conducted only the radiographic inspections in accordance with Douglas All Operators Letter AOL 9–835, dated October 30, 1974, perform the ultrasonic or eddy current inspections, and thereafter, the radiographic and ultrasonic or eddy current inspection in accordance with the requirements of this AD, as applicable.

Note 2: Inspections accomplished prior to the effective date of this AD in accordance with McDonnell Douglas Service Bulletin 54–30, Revision 1, dated June 29, 1977, Revision 2, dated October 27, 1978, Revision 3, dated April 30, 1986, or Revision 4, dated March 25, 1991; or McDonnell Douglas Service Bulletin DC9–54–030, Revision 05, dated August 26, 1999, or Revision 06, dated November 11, 1999; are considered acceptable for compliance with the inspections required by paragraph (a) of this AD.

Initial Inspections and Follow-On/Corrective Action

(b) For airplanes on which the modification specified in paragraph (e) of this AD has not been accomplished: Prior to the accumulation of 8,000 total flight hours or within 3,600 flight hours after the effective date of this AD, whichever occurs later, perform x-ray and eddy current inspections to detect cracks of the upper cap of the front spar of the left and right engine pylons, in accordance with McDonnell Douglas Service Bulletin DC9–54–030, Revision 06, dated November 11, 1999. Accomplishment of these inspections constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

No Crack Detected: Repetitive Inspections

(c) If no crack is detected during any inspection required by paragraph (a) or (b) of this AD, repeat the inspections thereafter at intervals not to exceed 3,600 flight hours until the modification required by paragraph (e) of this AD is accomplished.

Any Crack Detected: Modification

(d) If any crack is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, accomplish the modification specified in paragraph (e) of this AD.

Terminating Modification

(e) Except as provided by paragraph (d) of this AD, prior to the accumulation of 100,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the upper cap of the front spar of the left and right engine pylons in accordance with McDonnell Douglas Service Bulletin DC9–54–030, Revision 06, dated November 11, 1999. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

Note 3: Accomplishment of the modification of the upper cap of the front spar of the left and right engine pylons prior to the effective date of this AD in accordance with Douglas Service Bulletin 54–30, Revision 4, dated March 25, 1991, or McDonnell Douglas Service Bulletin DC9–54–030, Revision 5, dated August 26, 1999; is considered acceptable for compliance with the modification specified in paragraph (e) of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The actions specified in paragraphs (b) and (e) of this AD shall be done in accordance with McDonnell Douglas Service Bulletin DC9–54–030, Revision 06, dated November 11, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on December 13, 2000.

Issued in Renton, Washington, on October 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28234 Filed 11–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–152–AD; Amendment 39–11963; AD 2000–22–16]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace (Jetstream) Model 4101 airplanes, that requires a functional check of the rudder pedals to ensure full and free movement at all rudder pedal positions, and modification of the forward rudder pedal boxes. The actions specified by this AD are intended to prevent restricted movement of the rudder pedals due to structural interference, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on August 29, 2000 (65 FR 52373). That action proposed to require a functional check of the rudder pedals to ensure full and free movement at all rudder pedal positions, and modification of the forward rudder pedal boxes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 58 British Aerospace (Jetstream) Model 4101 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the functional check, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,480, or $60 per airplane.

It will take approximately 6 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $20,880, or $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–22–16 British Aerospace Regional Aircraft (Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited): Amendment 39–11963. Docket 2000–NM–152–AD.

Applicability: All Model Jetstream 4101 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent restricted movement of the rudder pedals due to structural interference, which could result in reduced controllability of the airplane, accomplish the following:

Functional Check

(a) Within 60 days after the effective date of this AD, perform a functional check of the left and right rudder pedals to ensure full and free movement at all rudder pedal positions, in accordance with Part 1 of the Accomplishment Instructions of Jetstream Alert Service Bulletin J41–A27–055, dated March 10, 2000. If any restriction in rudder pedal movement is found, prior to further flight, accomplish the modification required by paragraph (b) of this AD.

Modification

(b) Within 8 months after the effective date of this AD, modify the forward pedal boxes (including moving the rudder pedals and measuring clearances between the rod attachment bolt and the flange of the floor channel; correcting any incorrect clearances; and repeating the functional check of the rudder pedals specified in paragraph (a) of this AD) in accordance with Part 2 of the Accomplishment Instructions of Jetstream Alert Service Bulletin J41–A27–055, dated March 10, 2000.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Jetstream Alert Service Bulletin J41–A27–055, dated March 10, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 002–03–2000.

Effective Date

(f) This amendment becomes effective on December 13, 2000.

Issued in Renton, Washington, on October 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28232 Filed 11–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 62

RIN 1219–AA53

Health Standards for Occupational Noise Exposure; Correction

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Correcting amendment.

SUMMARY: The Mine Safety and Health Administration published in the **Federal Register** of Monday, September 13, 1999, (64 FR 49548) the final rule relating to the health standards for occupational noise exposure. This document contains a correction to that document.

DATES: Effective on November 8, 2000.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910 (not a toll-free call).

SUPPLEMENTARY INFORMATION: As published, the final rule contains an error which needs to be corrected.

Accordingly, 30 CFR part 62 is corrected by making the following correcting amendment:

PART 62—OCCUPATIONAL NOISE EXPOSURE

1. The authority citation for part 62 is revised to read as follows:

Authority: 30 U.S.C. 811.

Appendix to Part 62 [Amended]

2. In the Appendix to part 62, in the note to Table 62–1, the formula for T is revised to read as follows:

$T = 8/2^{(L-90)/5}$

Dated: November 1, 2000.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 00–28586 Filed 11–7–00; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–047–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is approving an amendment to the Maryland regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland proposed the amendment to make its program no less effective than the federal regulations regarding procedures for financing abandoned mine land reclamation projects that involve the incidental extraction of coal. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: November 8, 2000.

FOR FURTHER INFORMATION CONTACT: George Rieger, Program Manager, OSM, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2153; E-mail:grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 18, 1982, **Federal Register** (47 FR 7214). You can find subsequent actions concerning conditions of approval and program amendments at 30 CFR 920.12, 920.15, and 920.16.

II. Submission of the Amendment

By letter dated July 10, 2000 (Administrative Record No. MD–582–00), Maryland submitted the proposed amendment to its regulatory program pursuant to the federal regulations at 30 CFR 732.17(b). Maryland proposed the amendment to make its program no less effective than the federal regulations at 30 CFR 707.5, 707.10, 874.10, and 874.17. These sections of the federal regulations describe procedures for financing abandoned mine land reclamation projects that involve the incidental extraction of coal. Maryland proposed to change the definition of the term, "Government-Financed Construction" at Code of Maryland Regulation (COMAR) 26.20.12.02 B(1)(a) by adding the phrase, "Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Environment Article, Title 15, Subtitle 11 Annotated Code of Maryland and 30 CFR Subchapter R."

Maryland also added new section .04 to COMAR 26.20.12. This section is titled, "Government Funded Reclamation Projects." The proposed rulemaking was published in the August 14, 2000, **Federal Register** (65 FR 49524). The public comment period closed on September 13, 2000. No one requested an opportunity to speak at a public hearing, so no hearing was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendments to the Maryland regulatory program.

The first change Maryland is making to its program is the modification of the definition of the term, "Government-Financed Construction" at COMAR 26.20.12.02 B(1)(a). Maryland added the phrase, "Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Environment Article, Title 15, Subtitle 11 Annotated Code of Maryland and 30 CFR Subchapter R." to the end of the definition. This phrase is substantially the same as a phrase from the term, "Government-financed construction" from the federal regulations at 30 CFR 707.5. The Director is approving the change because it makes Maryland's definition of government-financed construction no less effective than the federal regulations with regard to abandoned mine land reclamation projects that are funded at less than 50% of funds appropriated from a government financing agency's budget or obtained from general revenue bonds.

The second change Maryland is making to its program is the addition of section .04 to COMAR 26.20.12. This section is titled, "Government Funded Reclamation Projects."

Subsection A provides that when the Bureau is considering an abandoned mine land reclamation project as government-financed construction and the level of funding will be less than 50 percent of the total cost because of planned coal extraction, the Bureau shall determine the likelihood:

(1) That nearby or adjacent mining activities may create new environmental problems or adversely affect existing environmental problems at the site.

The Director finds that this paragraph is substantively the same as the federal regulation at 30 CFR 874.17(a)(2). This paragraph is approved.

(2) That reclamation activities at the site may adversely affect nearby or adjacent mining activities.

The Director finds that this paragraph is substantively the same as the federal regulation at 30 CFR 874.17(a)(3). This paragraph is approved.

(3) Of the coal being mined under a permit issued in accordance with Environment Article, Title 15, Subtitle 5, Annotated Code of Maryland.

The Director finds that this paragraph is substantively the same as the federal regulation at 30 CFR 874.17(a)(1). This paragraph is approved.

Subsection B provides that the determination under paragraph A(3) of this regulation shall take into account available information, such as:

(1) Coal reserves from existing mine maps or other sources;

(2) Existing environmental conditions;

(3) All prior mining activity on or adjacent to the site;

(4) Current and historic coal production in the area; and

(5) Any known or anticipated interest in the mining site.

The Director finds that these paragraphs are substantively the same as the federal regulations at 30 CFR 874.17(a)(1) (i)–(v). These paragraphs are approved.

Subsection C provides that if the Bureau decides to proceed with the reclamation project after making the determinations under section A of these regulations, the Bureau shall:

(1) Determine the limits on any coal refuse, coal waste or other coal products which may be extracted under this regulation; and

(2) Delineate the boundaries of the abandoned mine land reclamation project.

The Director finds that these paragraphs are substantively the same as 30 CFR 874.17(b)(1) and (b)(2). These paragraphs are approved.

Subsection D provides that the Bureau shall include documentation in the abandoned mine land project file for the:

(1) Determinations made under sections A and C of this regulation;

(2) Information taken into account in making the determinations; and

(3) Names of the persons making the determinations.

The Director finds that these paragraphs are substantively the same as the federal regulations at 30 CFR 874.17(c)(1)–(3). These paragraphs are approved.

Subsection E provides that for each abandoned mine land reclamation project to be approved under this regulation, the Bureau shall:

(1) Characterize the site in terms of mine drainage, active slides, and the slide prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of Environment Article, Title 15, Subtitle 11, Annotated Code of Maryland and 30 CFR Subchapter R;

(3) Develop specific-site reclamation requirements, including performance bonds, when appropriate, in accordance with State procedures; and

(4) Require the contractor conducting the reclamation to provide, prior to the time the reclamation project begins, applicable documents that clearly authorize the extraction of coal and payment of royalties.

The Director finds that these paragraphs are substantively the same as the federal regulations at 30 CFR 874.17(d)(1)–(4). These paragraphs are approved.

Subsection F provides that the Bureau shall require a reclamation contractor who extracts coal beyond the limits of the incidental coal specified in § C(2) of this regulation to obtain a permit for the coal in accordance with Environment Article, Title 15, Subtitle 5, Annotated Code of Maryland. The Director finds that this subsection is substantively the same as the federal regulation at 30 CFR 874.17(e). This subsection is approved.

IV. Summary and Disposition of Comments

Federal Agency Comments

On July 20, 2000, we asked for comments from various federal agencies who may have an interest in the Maryland amendment (Administrative Record Number MD–582–01). On August 2, 2000, (Administrative Record Number MD–582–02), we sent a corrected amendment to the same federal agencies and again asked for their comments. Maryland corrected the original amendment submission by adding the phrase, "and 30 CFR Subchapter R" to the end of paragraph E.(2).

We solicited comments in accordance with section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations. Comments were solicited from the U.S. Department of Agriculture, United States Fish and Wildlife Service's Chesapeake Bay Field Office, Corps of Engineers, U.S. Department of Labor, and Advisory Council on Historic Preservation. No comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(i), OSM is required to solicit comments from the EPA, and, pursuant to 30 CFR 732.17(h)(11)(ii), obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). By letter dated July 20, 2000, we requested comments and concurrence from EPA (Administrative Record Number MD 582–01) on the state's proposed amendment of July 10, 2000 (Administrative Record Number MD 582–00). EPA replied to our letter on August 3, 2000 (Administrative Record Number MD 582–03) and indicated that the proposed amendment complies with the Clean Water Act.

Public Comments

No comments were received in response to our request for public comments.

V. Director's Decision

Based on the findings above we are approving the amendments to the Maryland program. This final rule is being made effective immediately to expedite the state program amendment process and to encourage states to bring their programs into conformity with the federal standards without undue delay. Consistency of state and federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The state submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 10, 2000.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 920.25 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * *
July 10, 2000	November 8, 2000	COMAR 26.20.12.02 B(1)(a) revision to the definition of "government-financed contruction." COMAR 26.20.12.04, Addition of subsection 04, "Government Funded Reclamation Projects."

[FR Doc. 00–28618 Filed 11–7–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–105]

RIN 2115–AE47

Drawbridge Operation Regulations: Atlantic Intracoastal Waterway, Key Largo, Monroe County, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: Commander, Seventh Coast Guard District is temporarily changing the regulations of the Jewfish Creek Drawbridge at Key Largo across the Atlantic Intracoastal Waterway, mile 1134.1 in Key Largo, Florida, until January 25, 2001. This temporary rule allows the Jewfish Creek Drawbridge at Key Largo to maintain single leaf operations with one-hour advance notice and a twelve-hour advance notification to the bridge tender to provide a double leaf opening until January 25, 2001. This is necessary to allow for repairs.

DATES: This temporary rule is effective from November 2, 2000 to January 25, 2001. Comments must be received by November 30, 2000.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–00–105] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, Florida, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. It was impracticable to publish an NPRM, because there was insufficient time remaining after we were notified of the dates of the repairs to follow normal rulemaking procedures.

Further, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. A delayed effective date is impracticable as repairs on the bridge are already underway.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for the rulemaking [CGD07–00–105], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received. We may change this temporary rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address under **ADDRESSES**, explaining why one would be beneficial. If the Coast Guard determines that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Jewfish Creek Drawbridge at Key Largo, mile 1134.1, across the Atlantic Intracoastal Waterway, has a vertical clearance of 11 feet at mean high water and a horizontal clearance of 80 feet between fenders. The existing operating regulations in 33 CFR 117.261(qq) require the bridge to open on signal; except that from 10:00 a.m. until sunset, Thursday through Sunday and Federal holidays, the draw need open only on the hour and half hour.

The Florida Department of Transportation notified the Coast Guard on October 18, 2000, that repairs to the bridge were in progress and scheduled to be completed by January 25, 2001. The repairs require that the Jewfish Creek Bridge be able to maintain single leaf operations with one-hour advance notice. However a double leaf opening can be provided with a twelve-hour advance notification provided to the bridge tender.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be minimal because of the limited duration of the rule, as well as the provision for double leaf openings with advance notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule will have a significant economic effect upon a substantial number of small entities. "Small entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: owners or operators of vessels intending to transit the Atlantic Intracoastal Waterway at mile 1134. Although this temporary rule will be in effect for two and one-half months, some vessel traffic can still pass through the single leaf, and others can make advance requests for double leaf openings.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From November 2, 2000 to January 25, 2001, § 117.261(qq) is suspended and a new paragraph (uu) is added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(uu) *Jewfish Creek, mile 1134, Key Largo.* The draw may operate on single leaf with one-hour advance notice from November 2, 2000 until January 25, 2001 unless twelve hours advance notice for a double leaf opening is provided to the bridge tender.

Dated: October 27, 2000.

G.W. Sutton,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District Acting.

[FR Doc. 00–28647 Filed 11–7–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–237]

Drawbridge Operation Regulations: Kennebec River, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Carlton Bridge, mile 14.0, across the Kennebec River between Bath and Woolwich, Maine. This deviation from the regulations allows the bridge owner to require at least a one-hour advance notice for bridge openings from 7:30 a.m. to 4:30 p.m., Monday through Friday, October 11, 2000 through November 15, 2000. This action is necessary to facilitate the safety of construction workers performing rehabilitation construction at the bridge.

DATES: This deviation is effective from October 11, 2000, through November 15, 2000.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Carlton Bridge, at mile 14.0, across the Kennebec River has a vertical clearance in the closed position of 10 feet at mean high water and 16 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.525.

The bridge owner, Maine Department of Transportation (MDOT), requested a temporary deviation from the drawbridge operating regulations to facilitate the safety of construction workers performing rehabilitation repairs at the bridge. Sufficient time is needed to activate the operating machinery, and clear the bridge of construction workers and construction equipment.

This deviation to the operating regulations allows the owner of the Carlton Bridge to require at least a one-hour advance notice for bridge openings, from 7:30 a.m. to 4:30 p.m., Monday through Friday, October 11, 2000, through November 15, 2000.

The bridge owner did not provide the required thirty-day notice to the Coast Guard for this deviation; however, this deviation was approved because the repairs are necessary in order to keep the bridge operating and prevent an unscheduled closure due to component failure.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 23, 2000.

Gerald M. Davis,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 00–28646 Filed 11–7–00; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 64

[CC Docket No. 94–129; FCC 00–135]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the amendments to certain liability rules in our slamming proceeding. We believe these modifications will strengthen the deterrent effect of our slamming liability rules, while addressing concerns raised with respect to the previous administrative procedures. The First Order on Reconsideration was published in the **Federal Register** on August 3, 2000. Some of the rules contained information collection requirements.

DATES: Sections 1.719(a) through (d), 64.1110(a) and (b), 64.1140(a) and (b), 64.1150(a) through (d), 64.1160(b) through (f), and 64.1170(b) through (f) published at 65 FR 47678 (August 3, 2000), were approved by the Office of Management and Budget (OMB) on October 3, 2000 and will become effective on November 28, 2000.

FOR FURTHER INFORMATION CONTACT: Michele Walters or Dana Walton-Bradford, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On May 3, 2000, the Commission released a First Order on Reconsideration (Order), 65 FR 47678 (August 3, 2000), that adopted revised slamming liability rules, granting in part petitions for reconsideration of our *Section 258 Order*, 64 FR 7763 (February 16, 1999). Specifically, the revised rules provide that slamming disputes between consumers and unauthorized carriers may be brought before appropriate state commissions or this Commission, in cases where the state has not opted to administer our rules, rather than before authorized carriers. The Commission also modified the liability rules that apply when a consumer has paid charges to a slamming carrier. In such instances, our new rules require slamming carriers to pay 150% of the collected charges to the authorized carrier, which, in turn, will pay the consumer 50% of his or her original payment. Finally, the Commission sets forth certain notification requirements to facilitate carriers' compliance with the liability rules. The Commission believes these modifications will strengthen the deterrent effect of the slamming liability rules, while addressing concerns raised with respect to the previous administrative procedures. A summary of the Order was published in the **Federal Register**. See 65 FR 47678 (August 3, 2000). Some of the rules contained information collection requirements that required OMB approval. On October 3, 2000, OMB approved the information collections. See OMB No. 3060–0787. The rule amendments adopted by the Commission in the Order will take effect on November 28, 2000. This publication satisfies the statement in the Order that the Commission would publish a document in the **Federal Register** announcing the effective date of the rules.

List of Subjects

47 CFR Part 0

Classified information, Freedom of information, Reporting and recordkeeping.

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Telecommunications.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28607 Filed 11–7–00; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 65, No. 217

Wednesday, November 8, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV00–927–3]

Winter Pears Grown in Oregon and Washington; Hearing on Proposed Amendment of Marketing Agreement and Order No. 927

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 927, hereinafter referred to as the "order." The order regulates the handling of winter pears grown in Oregon and Washington. The purpose of the hearing is to receive evidence on amendments proposed by the Winter Pear Control Committee (Committee), which is responsible for local administration of the order. The proposals include amending the order to add the word "maturity" to the list of attributes that may be regulated; to provide for container regulations and marking requirements; and to allow alternates from the same district and group (growers or handlers) to serve when a member and that member's alternates are unable to attend a committee meeting.

DATES: The hearing date will begin at 9:00 a.m. in Portland, Oregon, on November 29, 2000.

ADDRESSES: The hearing will be held at the Sheraton Portland Airport Hotel, 8235 NE Airport Way, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 205–2830, Fax: (202) 205–6632.

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Committee proposes three amendments as summarized below.

1. Amend the order to add the word "maturity" to the list of attributes that may be regulated in § 927.51.

2. Amend the order to authorize container and marking regulation. This would encompass capacity, weight, dimensions, and packing of the container, or containers, which may be used in packaging or handling of pears. To remain consistent with this amendment, § 927.5, the definition of size, will be revised to remove the specific reference to a western standard pear box with its dimensions.

3. Allow an alternate member from the same district and group (handler or grower) to serve in a member's place and stead in the event that both a member of the Committee and the Committee member's alternates are unable to attend a Committee meeting.

The Committee works with the Department in administering the order. These proposals have not received the approval of the Secretary of Agriculture.

The Committee believes that the proposed changes would improve the administration, operation, and functioning of the order.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS) proposes to allow such conforming changes to the order which may be necessary as a result of the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding, The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 927

Marketing agreements, Reporting and recordkeeping requirements, Winter pears.

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Winter Pear Control Committee:

Proposal No. 1

Amend § 927.51 by adding a new paragraph (a)(3) to read as follows:

§ 927.51 Issuance of regulations; and modification suspension, or termination thereof.

(a) * * *

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in packaging or handling of pears.

* * * * *

Revise § 927.5 to read as follows:

§ 927.5 Size

Size means the number of pears which can be packed in a standard pear box when packed in accordance with the packing requirements of the U.S. Standards for Pears (part 51 of this title), or as such standards hereafter may be modified or as "size" may be more specifically defined in a regulation issued under this part.

Proposal No. 2

Revise § 927.28 to read as follows:

§ 927.28 Alternates for members of the Control Committee.

The first alternate for a member shall act in the place and stead of the member for whom he/she is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his or her first alternate shall act as a member until a successor for the member is selected and has qualified. The second alternate for a member shall serve in the place and stead of the member for whom he/she is an alternate whenever both the member and his/her first alternate are unable to serve. In the event that both a member of the Control Committee and that member's alternates are unable to attend a Control Committee meeting, the member or the Control Committee may designate any other alternate member from the same district and group (handler or grower) to serve in that member's place and stead.

Proposal No. 3

Amend § 927.51 by revising paragraph (a)(1) to read as follows:

927.51 Issuance of regulations; and modification suspension, or termination thereof.

(a) * * *

(1) May limit the total quantity of any grade, size, quality, maturity, or combination thereof, of any variety of pears grown in any district and may prescribe different requirements applicable to shipments to different export markets; or

* * * * *

The Fruit and Vegetable Programs, Agricultural Marketing Service, submitted the following proposal:

Proposal No. 4

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: November 2, 2000.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 00–28659 Filed 11–7–00; 8:45 am]

BILLING CODE 3410–02–U

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102 and 104

[Notice 2000–19]

Rulemaking Petition: Reporting by Political Action Committees Notice of Disposition

AGENCY: Federal Election Commission.

ACTION: Notice of Disposition of Petition for Rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking filed on September 20, 1999 by the Project on Government Oversight ("POGO"). The Petition urged the Commission to revise various rules concerning reports filed by political action committees ("PACs"). The Commission has decided not to initiate a rulemaking in response to the Petition at this time. The Petition is available for inspection in the Commission's Public Records Office, through its FAXLINE service, and on its website, www.FEC.gov.

DATES: November 2, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Mai T. Dinh, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On September 20, 1999, the Commission received a Petition for Rulemaking from POGO. The Petition urged the Commission to take six actions with regard to reports filed by PACs by revising various sections in 11 CFR parts 100, 102, and 104.

The Commission published a Notice of Availability ("NOA") on the Petition on October 13, 1999, 64 FR 55440. The NOA stated that several of the recommended actions address Commission internal procedures that are not properly the subject of rulemaking. Therefore, the Commission sought comments only on the four suggested actions that can be addressed through rulemaking.

The Commission received twenty-one timely comments and four late comments in response to the NOA from twenty-four commenters. Detailed comments were submitted by Congresswoman Carolyn B. Maloney; Democracy Advocate, U.S. Public Interest Research Group; Money and Politics Iowa; Institute for Social Justice; University of Maryland Department of Government and Politics; Michigan Citizen Action; Ohio Citizen Action; Common Cause; Center for Responsive Government; University of Akron's Ray C. Bliss Institute of Applied Politics; and Project on Government Oversight. In addition to these comments, the Commission received comments expressing general support for the Petition from two individuals and substantially similar comments from eleven commenters including Colby College, Illinois Legislative Studies Center Sunshine Project, and Government Accountability Project. On November 2, 2000, the Commission voted to decline to open a new rulemaking in response to the Petition at this time for reasons stated below.

A. Issues on Which Comments Were Sought in the NOA

In the NOA, the Commission identified four recommendations in the Petition that were appropriate for rulemaking and sought comments on these recommendations. The issues on which comments are sought include (1) revising 11 CFR 100.6 to require PACs to list, as an affiliated organization on their Statement of Organization, any soft money account to which they forward checks; (2) revising 11 CFR 102.9(a)(3) to require candidates who receive PAC contributions to maintain records that list each PAC's full name and Commission identification number, and revising 11 CFR 100.12 to require them to include this information on their FEC reports; (3) revising 11 CFR 104.8(d)(4) to require PACs to notify the Commission within ten days of receiving a returned contribution; and (4) revising 104.13(a)(2) to require PACs to notify candidates within ten days of any in-kind contribution.

All of the commenters expressed support for the Petition and encouraged the Commission to adopt all six of POGO's recommendations through rulemaking. The commenters who submitted the substantially similar comments stated that the Commission should initiate a new rulemaking project to correct problems with reporting by PACs because "proper disclosure is at the core of what the Commission should be doing, making these reforms vital to the continued integrity of the FEC." Other commenters characterized the recommendations as "common-sense," "simple bookkeeping procedures," "minor," or "technical", that would improve the Commission's operations and the reporting and disclosure procedures resulting in more accurate information. Three commenters also supported these recommendations because they would make campaign finance information more understandable to the public. Three commenters made detailed comments on one specific recommendation. Their comments are discussed below.

1. Soft Money Accounts

The Petition suggested that the Commission amend section 100.6 to require "federal PACs [to] list as an affiliated organization on their statement of organization or amendment thereto, any soft money account(s) to which it forwards checks." The Commission has concluded that it would be more appropriate to address this issue, if at all, in the context of the soft money rulemaking project rather than in a separate rulemaking project.

2. Eliminate Irregular PAC Names

The Petition recommended that the FEC require PACs and political committees to use the PACs' full names and PAC FEC identification numbers when making, receiving, or reporting PAC contributions. POGO pointed to the FEC's PACRONYMS publication, a guide to PAC names, as illustrative of the need for use of uniform names. The Petition suggested that amendments to sections 102.9(a)(3), 102.10, and 100.12 would achieve this result. The Commission has amended its forms and electronic filing software to allow all political committees to include the names and FEC identification numbers of political committees on Schedule A on a voluntary basis.

3. Candidates Report Returned Contributions

The Petition urged the Commission to amend section 104.8(d)(4) to require PACs to notify the Commission of a returned contribution within ten days of the PAC's receipt of the returned contribution. Three commenters included comments specific to this recommendation. They expressed concerns about the impact of the lack of such notice on candidates who refuse to accept PAC contributions. The commenters argued that these candidates may be unfairly challenged by the press or the public on their assertions that they do not accept PAC contributions if a PAC reports making a contribution but does not report in a more timely manner that the contribution was returned.

Generally, the Federal Election Campaign Act ("FECA") requires unauthorized committees to file their reports to the Commission on a monthly basis, or on a quarterly basis during an election year, and on a semi-annual basis during a non-election year. *See* 2 U.S.C. 434(a)(4), 11 CFR 104.5(c). Nothing in the FECA requires unauthorized committees to report returned contributions within ten days of receipt. Therefore, an amendment to the FECA would be necessary before the Commission could amend its rules to require reporting returned contributions within ten days.

4. Notify Candidates of All "In-Kind" Contributions

The Petition suggested that the Commission amend section 104.13(a)(2) to require PACs to notify candidates of all "in-kind" services provided to the candidate within ten days of providing the services. Nothing in the FECA requires unauthorized committees to notify candidates when they make in-kind contributions. Consequently, a statutory amendment would be needed before the Commission could impose a new ten day reporting requirement on unauthorized committees.

B. Issues Not Appropriate for Rulemaking

The Petition also contains three recommendations that the Commission concluded could not be implemented through rulemaking.[1] See NOA, 64 FR 55440 (October 13, 1999). Further discussion of these recommendations follows below.

1. Compare PAC Disbursements With Candidate Receipts

The Petition recommended that the FEC compare PAC disbursements with candidate receipts and adopt procedural steps to trigger Requests for Additional Information ("RFAI") if there are discrepancies above a certain dollar amount. While the Commission recognizes the POGO's concerns, this recommendation goes to internal procedures and is not an appropriate subject for rulemaking.

2. Group FEC Data by Two and Six-year Campaign Cycles

The Petition recommended that the FEC's system in the Public Record Office and on the Internet allow users to list contributions by individuals and PACs on an election-cycle basis. The recent amendment to FECA contained in the Treasury and General Government Appropriations Act, 2000, Public Law 106–58, 106th Cong., Section 640, 113 Stat. 430 (1999), mandating election-cycle reporting provided the authorization for the Commission to amend its regulations to implement election-cycle reporting. The Commission has published final rules at 11 CFR part 104, 65 FR 42619 (July 11, 2000), and has revised its forms to implement election-cycle reporting for authorized committees. *See id.* at 42620–42623 (Explanation and Justification of the final rules for Election Cycle Reporting by Authorized Committees). It is also in the process of converting to election-cycle reporting, which should allow retrieval of information on an election-cycle basis.

3. Eliminate Duplicate Entries

POGO stated that its report highlighted the problem of duplicate entries in the Commission's databases. To address this problem, the Petition suggested that the Commission's systems identify transactions that appear to be duplicates and that the Reports Analysis Division send out request for additional information notices to clarify the duplication. As stated above, the Commission's internal procedures, including RFAI notices, are not an appropriate subject for rulemaking. However, the Commission notes that the upcoming expansion of its electronic filing program may eliminate many duplicate entries.

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[1] The Petition's first recommendation actually contained two separate recommendations—first, to compare PAC disbursements with candidate receipts and second, to require PACs to list soft money accounts as affiliated organizations. The second recommendation was included among the list of recommendations on which the Commission sought comments in the NOA.

C. Additional Issues Not Included in the Petition

Two commenters included three additional suggestions in their comments on the Petition. They are: (1) Implement better enforcement tools such as random audits, the publication of a list of committees who file incomplete reports, and a schedule of fees for non-compliance; (2) require electronic filing for all committees; and (3) require Senate candidates to file reports directly with the FEC. One of these commenters also added another recommendation requiring multi-candidate entities to issue separate checks to each separate recipient. Because these suggestions are beyond the scope of the Petition for Rulemaking, the Commission will not initiate a new rulemaking project in response to these additional recommendations. In addition, some of the suggestions, such as random audits, are beyond the Commission's statutory authority.

However, the Commission has implemented or is about to implement new programs and procedures since the publication of the NOA that address several of these issues. The new Administrative Fines program, 65 FR 31787 (May 19, 2000) (to be codified at 11 CFR part 111, subpart B), that went into effect in July, 2000, will assess civil money penalties in accordance with the schedules of penalties on political committees who fail to file their reports in a timely manner. The Commission will also require political committees whose annual contributions or expenditures exceed or are expected to exceed $50,000 to file their reports electronically beginning in January, 2001. 65 FR 38415 (June 21, 2000) (to be codified at 11 CFR 104.18). However, electronic filing cannot be extended to all political committees absent further amendments to the FECA. A legislative change would also be needed for senatorial candidates to file directly with the FEC. However, the Secretary of the Senate has automated the transfer of information from the Senate Public Records' Office to the FEC and the information can be viewed in electronic form on the Commission's website at www.FEC.gov.

While the Commission has decided not to initiate a new rulemaking in response to this petition, changes the Commission is making to its operations, computer systems, forms, and regulations, as described above, will further POGO's goal of enhancing timely and accurate dissemination of campaign finance information to the public. Accordingly, no further action on the Petition for Rulemaking will be taken at this time. *See* 11 CFR 200.4.

Dated: November 2, 2000.

Darryl R. Wold,

Chairman, Federal Election Commission.

[FR Doc. 00–28601 Filed 11–7–00; 8:45 am]

BILLING CODE 6715–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

8(a) Business Development/Small Disadvantaged Business Status Determinations

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In order to make the award of contracts under the 8(a) Business Development program a more attractive procurement alternative in today's streamlined Federal Government procurement environment, the Small Business Administration (SBA) proposes to amend its current 8(a) regulations to permit SBA to delegate to procuring agencies its authority to accept requirements for the 8(a) program.

DATES: Comments must be submitted on or before January 8, 2001.

ADDRESSES: Written comments should be addressed to Linda Williams, Associate Administrator for Policy, Planning, and Liaison, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Delorice Ford, Associate Administrator for 8(a) Business Development, at (202) 205–6416.

SUPPLEMENTARY INFORMATION: The Federal Streamlining Act of 1994 dramatically changed the way the Federal Government buys its goods and services. In today's changing procurement environment, there are increasingly larger contract opportunities that often are not suitable for small businesses to perform as prime contractors. Agencies are also using streamlined procurement practices such as multiple award contracts, Government-Wide Acquisition Contracts (GWACs), Federal supply schedules, and credit card purchases. At the same time, the 8(a) Business Development (BD) program contract mechanisms have not been modernized to successfully link-up with the acquisition vehicles authorized by procurement reform. The impact is fewer contract opportunities for 8(a) Program Participants.

In order to make the award of contracts under the 8(a) BD program a more attractive procurement alternative and to strengthen the effectiveness of the 8(a) BD program, SBA proposes to make the offer and acceptance of requirements for award through the 8(a) BD program simpler and faster. Specifically, SBA proposes to amend its current 8(a) regulations to permit SBA to delegate to procuring agencies its authority to accept requirements for the 8(a) program. This change would reduce the administrative burden on procuring agencies and allow SBA to refocus its efforts on providing business development, including contract assistance, to Program Participants. SBA believes that this change would make the 8(a) program more attractive by reducing the 8(a) procurement leadtime by up to twelve days.

SBA would continue to determine eligibility for the award of 8(a) contracts, but would do so on an annual rather than on a contract-by-contract basis. SBA would maintain the listing of firms that are eligible for the award of 8(a) contracts in PRO-Net. In addition, SBA would require Program Participants to notify SBA of any changes in ownership, control, social disadvantage or economic disadvantage in order to ensure that PRO-Net is kept current regarding any firm's continued eligibility for 8(a) awards. A procuring agency could accept SBA's PRO-Net designation and accept a specific 8(a) requirement on behalf of a Program Participant so determined to be eligible.

By delegating its authority to accept requirements for award through the 8(a) program to procuring activities, SBA could better meet the business development aspects of the 8(a) BD program and would be in a better position to comply with a recent recommendation in the July 2000 General Accounting Office (GAO) report titled, *SBA Could Better Focus its 8(a) Program to Help Firms Obtain Contracts* (GAO/RCED–00–196). GAO recommended that SBA work with its district offices to place priority on helping inform Program Participants about contracting opportunities, assisting Participants with contracts at Federal agencies, and becoming more involved with Participants as they seek and negotiate contracts. The proposed change would allow SBA to use the resources currently expended on accepting requirements and determining eligibility on a contract-by-contract basis to provide much needed business development assistance to Participants, including training on the Federal contracting process, to enhance their competitive viability.

Compliance With Executive Orders 13132, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Chapter 3501 et seq.)

SBA certifies that this rule is not a "significant" regulatory action under Executive Order 12866.

SBA has determined that this rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. SS 601–612. The rule would not impose any requirements and would not otherwise affect the kinds of procurement requirements that can be available for award through the 8(a) BD program. It would merely make a procedural change to SBA's current regulations that would authorize SBA to delegate its authority to procuring agencies where appropriate.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule would not impose new reporting or record keeping requirements.

For purposes of Executive Order 13132, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12978, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

List of Subjects in 13 CFR Part 124

Government procurement; Hawaiian natives; Minority businesses; Reporting and recordkeeping requirements; Technical assistance.

Accordingly, for the reasons set forth above, SBA proposes to amend Title 13, Code of Federal Regulations (CFR), as follows:

PART 124—[AMENDED]

1. The authority citation for 13 CFR part 124 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

2. Section 124.502 would be amended by adding new paragraph (d) to read as follows:

§ 124.502 How does an agency offer a procurement to SBA for award through the 8(a) BD program?

* * * * *

(d) Where SBA has delegated its authority to accept requirements for award through the 8(a) BD program to a procuring activity, the procuring activity need not send an offering letter to SBA. In such a case, the procuring activity must ensure that the information set forth in paragraph (c) of this section is contained in its contracting file.

3. Section 124.503(i) would be revised to read as follows:

§ 124.503 How does SBA accept a procurement for award through the 8(a) BD program?

* * * * *

(i) *Delegation of acceptance authority to procuring activities.* (1) SBA may delegate its authority to accept requirements for award through the 8(a) BD program to procuring activities where appropriate.

(2) Where SBA delegates its authority to accept requirements for award through the 8(a) BD program to a procuring activity, the procuring activity may rely on SBA's determination that a particular Program Participant is eligible for award as set forth in Pro-Net.

(3) Where SBA has delegated its 8(a) contract execution authority to a procuring activity but has not delegated its authority to accept requirements for award through the 8(a) BD program to such activity, the procuring activity must still offer and SBA must still accept all requirements intended to be awarded as 8(a) contracts, except as provided in paragraph (a)(4)(i) of this section.

Dated: November 2, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–28584 Filed 11–7–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–234]

RIN 2115–AE47

Drawbridge Operation Regulations; Fort Point Channel, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations for the Northern Avenue Bridge, mile 0.1, across the Fort Point Channel at Boston, Massachusetts. This proposed rule would revise the drawbridge operating regulations to provide bridge openings during times the bridge previously did not open and also place the bridge on an advance notice basis during times when there have been few requests to open the bridge. This action is expected to better meet the present needs of navigation.

DATES: Comments must reach the Coast Guard on or before January 8, 2001.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except, Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–00–234 , indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Northern Avenue Bridge, mile 0.1, across the Fort Point Channel has a vertical clearance of 7 feet at mean high water and 17 feet at mean low water in the closed position. The existing operating regulations in 33 CFR 117.599 require the bridge to open on signal from 6 a.m. to 8 p.m. From 8 p.m. to 6 a.m., the bridge need not open for the passage of vessels.

The Coast Guard received a request to change the operating regulations from a commercial tour boat operator and the mariners located at a marina upstream from the Northern Avenue Bridge. The mariners requested that the bridge be crewed and available to open for vessel traffic after 8 p.m. during the boating season. The bridge presently does not open from 8 p.m. to 6 a.m., daily.

The Coast Guard published a notice of temporary deviation and request for comments on April 27, 2000, in order to test an expanded operating schedule for the bridge and to provide immediate relief for the mariners during the summer of 2000. The deviation required the bridge to open on signal from 6 a.m. to 8 p.m. and from 8 p.m. to 6 a.m. to open on signal if at least a two-hour advance notice was provided by calling the number posted at the bridge. The Coast Guard received four letters in favor of expanding the operating hours for the bridge.

After the comment period for the deviation concluded on September 30, 2000, the Coast Guard had discussions regarding the expansion of the operating hours for the bridge with officials from the City of Boston, the owner of the bridge. As a result of these discussions, the bridge owner agreed to crew the bridge additional hours as well as provide openings on an advance notice basis during times when the bridge is not crewed. The following scheduled was established:

> From May 1 through October 31, the draw shall open on signal from 7 a.m. to 11 p.m. From 11 p.m. to 7 a.m. the draw shall open on signal if at least a two-hour advance notice is given by calling the number posted at the bridge.
>
> From November 1 through April 30, the draw shall open on signal from 7 a.m. to 3 p.m. From 3 p.m. to 7 a.m. the draw shall open on signal if at least a twenty-four hours advance notice is given by calling the number posted at the bridge.

The Coast Guard believes this is a reasonable operating schedule because the mariners will now be able to get bridge openings during the times the bridge is crewed or upon the required advance notice, and the bridge owner will not be required to crew the bridge during periods when there have been few requests to open the bridge.

Discussion of Proposal

The existing requirement that the bridge need not open for vessel traffic from 8 p.m. to 6 a.m., without any advance notice requirement, does not meet the reasonable needs of navigation based upon recent requests from mariners to expand the operating hours of the bridge. Mariners should be able to obtain bridge openings anytime one is necessary with the exception of cases where a demonstrated offsetting benefit is derived.

A typical example of an offsetting benefit would be closing a bridge to vessel traffic during the vehicular traffic rush hour time period and allowing vehicular traffic to pass unimpeded in an effort to balance the needs of both modes of transportation. Conversely, bridge owners should not be required to crew bridges during time periods when there have been few or no requests to open a bridge.

The Coast Guard believes that crewing the bridge an additional three hours at night during the boating season and the addition of an advance notice concept for all the periods the bridge is not crewed is reasonable and satisfies both the needs of navigation and the needs of the bridge owner.

The Coast Guard; therefore, proposes to revise the operating regulations listed at 33 CFR 117.599 for the Northern Avenue Bridge across the Fort Point Channel to require the Northern Avenue Bridge, mile 0.1, at Boston, to operate as follows:

(a) From May 1 through October 31, the draw would open on signal from 7 a.m. to 11 p.m. From 11 p.m. to 7 a.m. the draw would open on signal if at least a two-hour advance notice is given by calling the number posted at the bridge.

(b) From November 1 through April 30, the draw would open on signal from 7 a.m. to 3 p.m. From 3 p.m. to 7 a.m. the draw would open on signal if at least a twenty-four hours advance notice is given by calling the number posted at the bridge.

It is expected that this rule will better meet the present needs of navigation.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, Feb. 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge will be crewed at times to meet the needs of navigation and will be on an advance notice basis during the times when there have been few requests to open the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that the bridge will better meet the present needs of navigation and will not be crewed unnecessarily during times when there have been few requests to open the bridge.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it

qualifies and how and to what degree this rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.599 is revised to read as follows:

§ 117.599 Fort Point Channel.

The draw of the Northern Avenue Bridge, mile 0.1, at Boston, shall operate as follows:

(a) From May 1 through October 31, the draw shall open on signal from 7 a.m. to 11 p.m. From 11 p.m. to 7 a.m. the draw shall open on signal if at least a two-hour advance notice is given by calling the number posted at the bridge.

(b) From November 1 through April 30, the draw shall open on signal from 7 a.m. to 3 p.m. From 3 p.m. to 7 a.m. the draw shall open on signal if at least a twenty-four hours advance notice is given by calling the number posted at the bridge.

Dated: October 23, 2000.

Gerald M. Davis,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 00–28648 Filed 11–7–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

46 CFR Parts 25 and 27

[USCG 2000–6931]

RIN 2115–AF53

Fire-Suppression Systems and Voyage Planning for Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to improve the safety of towing vessels by requiring the installation of fixed fire-extinguishing systems in their engine rooms, and by requiring their owners or operators, and their masters, to ensure that voyage plans are complete before they commence their trips with any barge in tow. These rules would reduce the number of uncontrolled fires in engine rooms, and other fire-related or operational mishaps on towing vessels. As a result, they would save lives, diminish property damage, and reduce the associated threats to the environment and maritime commerce.

DATES: Comments must reach the Coast Guard on or before March 8, 2001.

ADDRESSES: To make sure your comments and related material do not enter the docket [USCG 2000–6931] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, call Mr. Randall Eberly, P. E., Project Manager, telephone 202–267–1861. For questions on viewing, or submitting material to, the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [USCG 2000–6931] and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing, to the Docket Management Facility at the address under **ADDRESSES**. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change these rules in view of the comments.

Public Meeting

The Coast Guard plans to hold a public meeting during the comment period for this SNPRM, at a place and time announced in a later notice in the **Federal Register**. Persons may ask for more than one meeting by writing to the Docket Management Facility at the address under **ADDRESSES**. The request should include the reasons why more than one meeting would be beneficial. If it determines that added opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold more than one meeting at places and times announced by a later notice in the **Federal Register**.

Background and Purpose

On January 19, 1996, the tugboat SCANDIA, towing the oil barge NORTH CAPE, caught fire five miles off the coast of Rhode Island. The crew could not control the fire, and without power they were unable to prevent the barge carrying 4 million gallons of oil from grounding and spilling about a quarter of its contents into the coastal waters. The spill led Congress to amend 46 U.S.C. 4102, in section 902 of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324) (the Authorization Act), so as to direct that the Secretary of Transportation prescribe rules on fire-suppression systems for vessels towing single-hull non-self-propelled tank vessels.

On October 6, 1997, the Coast Guard published a Notice of Proposed Rulemaking (NPRM), Safety of Towing Vessels [CGD 97–064] (62 FR 52057), that proposed fire-suppression measures for all towing vessels but not the mandatory installation of fixed fire-extinguishing systems. Instead, the NPRM proposed alternatives that comprised fire-detection systems, semi-portable fire extinguishers, training of crewmembers, and fixed or portable fire pumps for the protection of existing towing vessels and for new towing vessels under 24 meters in length, regardless of the cargoes transported. The NPRM proposed these measures after we had reviewed data on casualties that revealed 105 reported fires in the engine rooms of towing vessels between 1992 and 1996. Each of these fires represented a potential obstruction to maritime commerce and each resulted in property damage. Many in fact resulted in total constructive losses of the vessels, and several necessitated the use of outside resources to bring the distressed vessels under control. Also, the Towing Safety Advisory Committee (TSAC) recommended that any proposed rules apply to all towing vessels, regardless of type of cargo, so that operators could maintain flexibility over the cargoes that they may tow.

The TSAC also recommended that the rules apply only to vessels 12 meters in length or longer. However, application only to such vessels did not meet the mandate in the Authorization Act, which did not distinguish among vessels by length. The Act, instead, required the installation of fire-suppression systems on vessels that tow single-hull non-self-propelled tank vessels. Vessels less than 12 meters in length can and often do tow such tank vessels. Moreover, the Coast Guard is concerned that a significant fire could occur on any towing vessel, regardless of length or cargo.

On October 19, 1999, we published an Interim Rule on Fire Protection Measures for Towing Vessels [USCG 1998–4445] (64 FR 56257). For all towing vessels except those specifically exempted, that Rule requires general-alarm systems, internal communication systems, fire-detection systems, and remote fuel-shutoffs; sets standards for fuel systems; and states criteria for monthly drills. It does not address the remainder of the fire-protection measures proposed in the NPRM; it defers those that relate to manual fire-fighting. Those are the subjects of this Supplemental Notice of Proposed Rulemaking (SNPRM). The intent of this SNPRM is to reconsider requirements for manual fire-fighting equipment versus the installation of fixed fire-extinguishing systems for all towing vessels. The Coast Guard does not anticipate that this SNPRM will delete or modify any of the other measures required by the Interim Rule. A separate Final Rule [USCG 1998–4445] published on August 28, 2000 (65 FR 52043), accomplished minor changes to the Interim Rule.

Statutory Mandate

Section 902 of the Authorization Act furnishes the authority for these proposed rules. It directs the Coast Guard, after consultation with the TSAC, and after taking into consideration the characteristics, methods of operation, and nature of service of towing vessels, to consider requiring the installation, maintenance, and use of a fire-suppression system or other measures on towing vessels. These measures are to provide adequate assurance that fires on board towing vessels "can be suppressed under reasonably foreseeable circumstances". The Act further directs that, in particular, the Coast Guard develop rules for the installation "of a fire-suppression system or other measures to provide adequate assurance that a fire on board a towing vessel that is towing a non-self-propelled tank vessel can be suppressed under reasonably foreseeable circumstances". (46 U.S.C. 4102(f)(1))

Discussion of Requirements

These Rules Would Apply to Most Towing Vessels.

These rules would prescribe that most towing vessels—

- Be fitted with fixed fire-extinguishing systems for the protection of their engine rooms; and
- Not proceed on trips or voyages before plans for those trips or voyages are complete.

Towing vessels that engage only in assistance towing, pollution response, or fleeting duties in limited geographical areas would be exempt from the measures in this SNPRM. Yet all other towing vessels, not just those over a certain length or those that tow non-self-propelled tank vessels, would be subject to those measures. Owners of existing towing vessels would, nevertheless, have five years after the effective date of these rules to install the required fixed fire-extinguishing systems. The voyage-planning requirement would likely go into force on the effective date of these rules.

Requirement for a Fixed Fire-Extinguishing System: What Factors Were Considered in Determining This Approach?

In the NPRM, we proposed several manual fire-fighting measures for existing vessels rather than specify fixed fire-extinguishing systems. Those measures included semi-portable fire extinguishers, fire pumps and hoses, and fire axes. We proposed them because we were concerned that gaseous fixed fire-extinguishing systems may not be effective on existing vessels. Every one of those systems requires an airtight enclosure to build up and maintain the necessary concentration of the extinguishing agent. Many existing towing vessels are constructed with engine rooms that may not be sufficiently airtight to accomplish this.

We were also concerned that, without proper containment, the extinguishing agent could leak into occupied areas and harm the crew. When we published the NPRM, the only approved extinguishing agent available was carbon dioxide, which is not acceptable for use in occupied areas or in areas where its accidental release could threaten adjacent occupied areas. During the comment period for the NPRM, however, several respondents reminded us of existing technical criteria for the design of total-flooding fire-extinguishing systems to protect even enclosed spaces that cannot be made entirely airtight. Partly open spaces can be successfully protected by providing enough added extinguishing agent to compensate for the quantity of gas that escapes from uncloseable openings during the discharge. Other respondents felt that we should require not only fixed fire-extinguishing systems but also the necessary bulkheads and decks, or sealing measures, to properly enclose engine rooms and make the systems effective.

After both a review of the public comments and our further analysis, we have decided to change our approach to fire protection, and propose to require fixed fire-extinguishing systems, instead of manual fire-fighting equipment, for the protection of all engine rooms. We decided this out of concern for the safety of the crews of towing vessels. If we had continued with our original approach, we would have made it necessary for the crews to enter burning engine rooms for manual fire-fighting. Towing vessels normally operate with minimal manning. There might not be enough crewmembers available to effectively and safely fight a fire, and those that tried would be exposed to an environment that is dangerous to their health. We discuss this concern further when we explain why we would apply these rules to all vessels. Also, training in basic and advanced marine fire-fighting is essential for anyone fighting a fire on any vessel. Anyone assigned to such a duty would need to complete periodic refresher-training courses as well.

We propose the use of any one of three types of fixed fire-extinguishing systems. We are specifically inviting the public to comment on this approach. By allowing a choice among the three, we expect, we will enable operators of towing vessels to select a form of protection that will be effective onboard their vessels.

Alternative Agents: Why Are We Proposing new Types of Extinguishing Systems?

Our further review of the proposed rules for fixed fire-extinguishing systems led us to carefully examine the possibility of exposing the crew to harmful extinguishing agents. Since publishing the NPRM, we have issued type approvals to several manufacturers whose systems use FM–200 and Inergen as the extinguishing agents. These agents serve as replacements for Halon 1301, previously in use onboard ships. The use of Halon 1301 presented an acceptable risk to human exposure. Despite this, its use was restricted in 1987 because, being an ozone-depleting substance, it presented an unacceptable risk to the atmosphere. Each of the new agents that we are proposing is both harmless to the atmosphere and safe for human exposure. Engine rooms protected by any of them would pose less risk to the crewmembers in adjacent areas in case of an accidental release. Technical information explaining the design and installation of fixed fire-extinguishing systems that use them appears in Standard 2001 of the National Fire Protection Association (NFPA).

Water-mist fire-extinguishing systems are another alternative that we are considering for engine rooms of towing vessels. These systems represent recent technology that uses very fine droplets of water as the extinguishing agent. Unlike traditional automatic sprinkler systems, these systems spray water as droplets, and leave very little residual water after the fire is extinguished. The fire-extinguishing ability of these systems is comparable or superior to that of traditional sprinkler systems. They are also safe for human exposure. Technical information explaining their design and installation appears in NFPA Standard 750. We are proposing standards for them based on full-scale tests we conducted to develop the criteria for protecting engine rooms. We expect that, by the time these rules become final, water-mist systems approved by the Coast Guard will be commercially available. Our proposed design criteria are based on selected parts of Circular 913 of the Maritime Safety Committee of the International Maritime Organization (IMO MSC/Circ. 913), "Guidelines for the Approval of Fixed Water-based Local Application Fire-fighting Systems for Machinery Spaces of Category A," supplemented by technology developed in our research. Public comment on these criteria is especially welcome. Our current intent is to approve water-mist systems that meet the following criteria:

1. The water-mist system must be a local-application system that covers the entire engine room with a uniform grid of pendant nozzles located about 1 meter below the topmost grating or overhead, as applicable. The distance from the nozzles to the deck plating of the engine room must be within the tested limits for separation between hazard and nozzle.
2. More nozzles must be installed to protect obstructed hazards such as fuel lines and fittings, as specified by the manufacturer.
3. More nozzles must be installed to protect bilges greater than 0.75 meter in depth, as specified by the manufacturer.
4. The system must be an open-head, deluge-type one with a manual release. This release must be located outside a main exit from the engine room, and another must be located at the engineering control booth or station, if there is one.
5. The storage cylinders and controls of the system must be located outside the engine room, or, if inside, at a site shielded from direct exposure to fire from below.
6. The system must be self-contained and must require no external source of power.
7. Operation of the system must cause the ventilation fans and fuel pumps of the engine room to shut down.
8. Release of the system must involve two separate acts: break glass—pull handle; open door—pull handle; or equivalent.
9. The system must successfully pass the fire-test protocols in IMO MSC/Circ. 913, "Guidelines for the Approval of Fixed Water-based Local Application Fire-fighting Systems for Machinery Spaces of Category A."
10. Testing of components must accord with the following provisions of Appendix A of IMO MSC/Circ. 728, "Revised Test Method for Equivalent Water-Based Fire-extinguishing Systems for Machinery Spaces of Category A and Cargo Pumprooms contained in MSC/Circ. 668":

3.4 Water flow and distribution.
3.6 Strength of body.
3.11 Corrosion.
3.16 Resistance to vibration (Plus functional test in 3.5.2 only).
3.22 Clogging.

11. The storage cylinders of the system must hold enough water to let the system operate at full flow for at least 10 minutes.
12. The system must have a backup 40-mm (1.5-inch) fire-department connection somewhere on the open

deck not likely to be exposed to a fire in the engine room.

13. An independent laboratory must approve the water-mist system.

The rules proposed here would require that a fixed fire-extinguishing system be installed in the engine room. They would not specify the types of systems that are acceptable. Instead, they would rely on the definition for the term "fixed fire extinguishing system" that was previously stated in the Interim Rule on Fire Protection Measures for Towing Vessels [USCG 1998–4445] (64 FR 56257). The definition does not appear in the regulatory text of this SNPRM, because it has already been adopted in final form. It is repeated here, however, for continuity:

Fixed Fire-Extinguishing System means a carbon-dioxide system that satisfies 46 CFR subpart 76.15; a manually-operated clean-agent system that satisfies NFPA 2001 and is approved by the Commandant; or a manually-operated water-mist system that satisfies NFPA 750 and is approved by the Commandant.

Safety of Crewmembers of Towing Vessels: What About the Use of Manual Fire-Fighting on Towing Vessels?

Many of the respondents who submitted comments on the NPRM criticized our proposed requirements for manual fire-fighting equipment. Their primary concern was for the safety of the crewmembers expected to fight the fires. They argued that manual fire-fighting would meet with limited success on engine-room fires, for a number of reasons. To begin with, the crew would need self-contained breathing apparatus and personal protective gear (which the proposed rule would not have required). Beyond this, the crew would need practical training in marine fire-fighting, including the use of semi-portable fire extinguishers and manual hose-streams. Then, effective fire-fighting would entail a minimum of trained fire-fighters on board the vessel whenever it is operating. Our review of typical manning on towing vessels indicates that there are too few people on board the vessels to both fight expected fires and safely operate the vessels. NFPA Standard 1500, "Fire Department Occupational Safety and Health Program," recommends limiting fire-fighting by the number of persons available on the scene. For interior fire-fighting in particular, the standard recommends that at least four fire-fighters be available. Many towing vessels do not carry crews of four or more persons. A fire in the engine room of a towing vessel presents a higher risk than a typical fire in a building because of the presence of combustible liquids within the steel casing of the engine room. Unlike a typical fire in a building, which can be attacked from the street level, a fire in the engine room of a towing vessel must be attacked from above. A fire party trying to enter an engine room from above to extinguish such a fire will encounter extremely high temperatures and vision-obscuring smoke and toxic gases. By contrast, a fixed fire-extinguishing system is installed with its operating controls located outside the engine room. The crew does not need to enter the burning space to activate it.

Ultimately, this SNPRM proposes that all towing vessels—other than those exempted by 46 CFR 27.100(b)—carry fixed fire-extinguishing systems after the effective date of any eventual rules, to protect their engine rooms.

Discussion of Comments and Changes

The Coast Guard received a total of 54 letters to the docket, and remarks at the public meetings in St. Louis, MO, and Newport, RI, which generally reiterate the written comments. Taken together, there are about 208 comments to the public docket of the NPRM on the Safety of Towing Vessels. The 67 comments relating to systems for anchoring and barge retrieval we addressed in an Interim Rule (63 FR 71754 (December 30, 1998)) on Emergency Control Measures for Tank Barges (USCG 1998–4443). Comments relating to fire-protection measures we addressed in another Interim Rule (64 FR 56257 (October 19, 1999)), on Fire-Protection Measures for Towing Vessels (USCG 1998–4445). We received comments related to this SNPRM, though not submitted to this docket, from six respondents who submitted comments relating to the Interim Rule on fire-protection measures. We address their comments here. The remaining comments concerned methods and equipment for suppressing fires: fixed fire-extinguishing systems; fire pumps, hydrants, and hoses; semi-portable fire extinguishers; fire axes; and muster lists. We address them, as well as voyage planning, here as well.

Fixed Fire-Extinguishing Systems

Some public respondents argue that the proposed requirements should apply only to certain towing vessels. They believe that only towing vessels that transport barges laden with oil or similar hazardous substances, or that travel on routes where ecologically sensitive areas are under threat, should have to install fire-extinguishing equipment.

The nature of the cargo being transported on a barge does not affect the likelihood of its towing vessel's suffering an engine-room fire with associated risk to the crew. Also, towing vessels may take turns transporting barges laden with different materials or may travel on different routes. It is neither practical nor feasible to restrict their service in accordance with the commodities transported on their barges or the routes they may travel. It is therefore necessary to protect the engine rooms on all towing vessels against fire.

Another respondent stated that the proposed requirement for a fixed fire-extinguishing system that stops the main engines could cause greater danger than allowing the master to ground the vessel. He notes that, in inland service, a controlled grounding can safely situate the vessel before fire-fighting begins.

We agree that, in certain instances, emergency maneuvering of the vessel may be necessary before fire-fighting begins; but that does not mean these proposed rules should change. There is no way to predict exactly how a fire will develop. The master and crew must respond to it as it does develop. The immediate concern may well be to move the vessel to a different heading or a safe site before trying to extinguish the fire. In other cases the first step may be to try to control or extinguish the fire. If some means of fire suppression is installed on the vessel, the master is free to respond in the sequence he or she decides is best.

Fire Pumps, Hydrants, and Hoses

The NPRM proposed detailed standards for fire pumps, hydrants, and hoses to be installed on board all towing vessels so that their crews could manually extinguish engine-room fires. Many respondents criticized our standards for fire pumps as "overstated and * * * difficult to comply with." Many feared that our stringent standards for rates of both waterflow and pressure would entail the replacement of numerous existing smaller pumps that have proved adequate thus far. Still others recommended against the use of portable pumps because of difficulties stowing, deploying, and operating them. Many correctly pointed out that the proposed fire pump or the generators used to power it would have to be stowed or even installed in the engine room. If a significant fire occurred there, the pump or the generator would be damaged before fire-fighting commenced. Finally, some expressed the opinion that towing vessels with approved fixed fire-extinguishing systems are adequately protected and should not also have to carry fire

pumps. Because we agree with this view, we have dropped all proposed requirements for fixed and portable fire pumps, hydrants, and hoses.

Semi-Portable Fire Extinguishers

The NPRM would have required either a B–III or B–V semi-portable fire extinguisher on every towing vessel, linked to the size of the vessel. Many respondents criticized the use of manual equipment over their concerns for the crewmembers' safety. Others argued that, unless the semi-portable extinguisher were located outside the engine room, a fire would damage it before it could be used. Still others recommended that several small extinguishers could substitute for a single large one. Because we have decided to require fixed fire-extinguishing systems instead of manual fire-fighting equipment, we have dropped all proposed requirements for semi-portable extinguishers. The proposed § 27.325 would have required that every new towing vessel 24 meters or longer in length must have a fixed fire-extinguishing system and an approved B–V semi-portable extinguisher. Because of our misgivings over the use of manual fire-fighting equipment by the crewmembers, we have also dropped the proposal for semi-portable fire extinguishers for this category of new vessels.

Fire Axes

The NPRM would have required that fire axes be available on board all towing vessels. These axes help in manual fire-fighting and overhaul. Yet several respondents questioned the need for them.

We have reconsidered, and have concluded that, because this rule proposes the use of fixed fire-extinguishing systems instead of manual fire-extinguishing measures, fire axes are no longer necessary. These rules would not require them.

Muster Lists

The NPRM called for muster lists that would assign specific duties to each crewmember during a fire. In the Interim Rule, we instead decided to require, and did require, that crewmembers participate in regular drills. This ensures that crewmembers know the locations and operations of all onboard fire-extinguishing equipment and of related shutdowns of fuel and ventilation.

We suspect that the requirement for periodic drills will prove more beneficial than one for mere muster lists would, because crewmembers will learn the locations and operations of the equipment and shutdowns installed aboard their vessels. This SNPRM, therefore, proposes no requirements for muster lists.

Voyage Planning

Six letters included comments from respondents about voyage planning. We will address all of them here.

One respondent recommended that the Coast Guard require that up-to-date copies of tables of tides and currents be available for ready reference during every voyage. These and several others are already mandatory under 33 CFR 164.72(b).

Two respondents doubted whether we could adequately address voyage planning by a Navigation and Vessel Inspection Circular (NVIC). Their skepticism is well-founded. Since a NVIC is unenforceable, it affords none of the needed leverage over the operators who do not observe these basic requirements of good marine practice. Therefore, with this SNPRM, the Coast Guard is proposing an actual requirement. However, we do plan to work with the TSAC in developing a NVIC on voyage planning to provide guidance to assist with thorough implementation of this requirement.

One respondent suggested adding to voyage plans for every towing vessel—

- Updated charts and publications concerning the accuracy, dependability, and functioning of available navigational aids;
- Identification of environmentally sensitive areas planned for by Area Committees formed under 33 U.S.C. 1321(j)(4);
- Bar-crossing procedures that contain criteria for "go" or "no go" and that address security of the barge and towing vessel; and
- Appropriate checks of navigational equipment before getting under way and entering pilotage waters.

The Coast Guard partly agrees. A requirement for the carriage of updated charts and publications on towing vessels already exists, in 33 CFR 164.72(b), and we are here proposing a requirement for their use. Each owner or operator, and each master, would have to consider charted hazards to navigation and known environmentally sensitive areas (noted on charts or maps) in voyage and trip plans under these rules. Any such requirement by its very nature should be broadly applicable (nationwide) and general. A NVIC developed in cooperation with the TSAC would provide details for trip and voyage plans as guidelines.

Two respondents stated that the proposed voyage-planning requirements would neither promote consistency nor be enforceable.

We disagree. This SNPRM proposes a general rule applicable nationwide. A NVIC would address specific regional circumstances. A rule and a NVIC together, widely disseminated and available for all companies and masters to use and follow, would render voyage-planning standards enforceable and consistent. The Ports and Waterways Safety Act contains the legislative authority to require voyage planning on uninspected towing vessels. That statute allows the Coast Guard to promulgate such a requirement for vessels operating on the navigable waters of the United States. In 1998, Congress amended the definition of "navigable waters of the United States" to include the waters of the territorial sea out to 12 nautical miles from the baseline. (33 U.S.C. 1222(5), 43 U.S.C. 1331) We would change the applicability of proposed rule 33 CFR 164.80 to require voyage plans on all uninspected towing vessels operating on the navigable waters of the United States.

Fuel Systems for Portable Pumps on Existing Vessels

During the comment period for the NPRM, we received a comment regarding proposed 46 CFR 27.340(c), Fuel restrictions. This paragraph would have restricted towing vessels, except for outboard engines, to the use of bunker C or diesel fuel. The comment urged us to allow the use of gasoline as fuel for portable fire pumps.

We do not want to encourage the use or storage of gasoline onboard towing vessels, because of its low flashpoint and potential for ignition. Anyway, the rules proposed here no longer contemplate portable fire pumps for the protection of engine rooms. Instead, they contemplate fixed fire-extinguishing systems for that. We have, therefore, not done what the comment urged.

Incorporation by Reference

The material that we would incorporate by reference appears in proposed 46 CFR 27.227. It is already available for inspection at room 1308 of Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, 20593–0001. Copies of it would be available from one of the sources listed in 46 CFR 27.102. Before publishing a binding rule, we would submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This rulemaking is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order.

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket for inspection or copying where indicated under **ADDRESSES**. A summary of the Evaluation follows:

This Evaluation addresses rules mandated by Section 902 of the Authorization Act. This SNPRM would require the installation of fixed fire-extinguishing systems on board towing vessels. Such systems would serve to reduce the number of uncontrolled engine-room fires. This SNPRM would also require voyage plans for all transits of towing vessels with any barges in tow. When fully implemented, the measures outlined in this SNPRM should significantly reduce the likelihood of deaths, injuries, and environmental and property damage resulting from fires on board and other casualties to towing vessels.

The net cost-effectiveness of this SNPRM would be $5,754 per barrel of pollution avoided. The net cost-effectiveness of the fixed fire-extinguishing systems would be $9,889 per barrel of pollution avoided, while the net cost-effectiveness of voyage-planning would be −$70 per barrel of pollution avoided.

Summary of Costs

The present value of the total cost of these rules over the 13-year period of analysis would be $115,915,169 ($109,809,202 for fixed fire-extinguishing systems + $6,105,967 for voyage planning = $115,915,169). The present value of the total benefit (or avoided costs) would be $30,007,645 ($23,467,869 from fixed fire-extinguishing systems and $6,539,776 from voyage planning). Therefore, the net cost would be $85,907,525 in 2000 dollars ($115,915,169 minus $30,007,645 = $85,907,525). In return, the measures contained in this SNPRM would prevent 14,925 barrels of pollution.

Cost for Voyage Planning

This SNPRM would require the master of a non-exempted towing vessel to complete a voyage plan before he or she made a voyage, transit, or trip (lasting at least 12 hours from homeport or point of origin) on navigable waters of the United States. Voyage planning is already mandatory for vessels towing oil-laden tank barges within the First Coast Guard District and, to some extent, for other towing vessels.

The master of the towing vessel validates the voyage plan before the voyage, transit, or trip. He or she ensures that the voyage plan is followed, or, if changes to the plan are considered during the voyage, that the plan is modified or updated before the changes are carried out.

We estimate that it would take the master of the vessel, on average, around 30 minutes (or 0.5 hour) to prepare a voyage plan for each transit. The average daily billing rate for the master is $350, based on a twelve-hour day. This translates to a cost of $14.58 to prepare a voyage plan. [($350/12 hours) × 0.5 hour = $14.58.] An average towing vessel (with barge in tow) completes about 120 non-exempt trips each year. Thus, the 4,467 non-exempt towing vessels complete about 536,040 trips each year (4,467 vessels × 120 trips/vessel = 536,040 trips).[1] The Coast Guard estimates that 90 percent of towing vessels (and consequently, 90 percent of voyages) already are in compliance with the voyage-planning requirement. Therefore, we estimate that 10 percent (or 53,604) of the voyages currently are not, and without the requirement would continue to not be.

The annual cost of voyage planning would be $781,725 ($14.58/voyages × 53,604 voyages = $781,725). Over the 13-year period of analysis, the total cost of voyage planning is $6,105,967 in 2000 dollars.

Cost for Fixed Fire-Extinguishing Systems

The total cost of the requirement for a fixed fire-extinguishing system is the sum of the cost to purchase and install the system, the cost to annually maintain and test the system, and any revenue that may be lost while a vessel is out of service to have the system installed. The present value of the total cost of the requirement of the fixed fire-extinguishing system would be $109,809,202 ($93,686,251 for purchase and installation + $11,119,576 for annual maintenance and testing + $5,503,375 for lost revenue = $109,809,202).

Cost To Purchase and Install

Using our database, the Marine Safety Management System (MSMS), we estimate that there are 6,421 documented towing vessels; from there, we further estimate that 4,467 of those are not exempt from this rulemaking. From sources in industry, we estimate that 77 percent (or 3,440) of the 4,467 non-exempt vessels do not have fixed fire-extinguishing systems (FFES). Consequently, we estimate that during the 5-year phase-in period 3,440 towing vessels would have to purchase and install FFESs.

The cost to purchase and install a FFES varies with the length of the vessel. We estimate that the average cost to each of the 2,339 small vessels (less than 24 meters in length) would be $25,000. The average cost to each of the 1,101 large vessels (greater than or equal to 24 meters in length) would be $55,000. We recognize that the cost to retrofit some of the large vessels may be over $100,000; however, the average would be $55,000. The combined cost to the 3,440 vessels would be $119,009,814 [(2,339 × $25,000) + (1,101 × $55,000) = $60,536,784 + $58,473,030 = $119,009,814].

The 3,440 vessels would have five years each to purchase and install a FFES; and the average annual cost for a vessel from 2002 through 2006 to purchase and install one would be $23,801,963 ($119,009,814/5 = $23,801,963).

Each year, we expect, 18 new vessels would purchase and install FFESs. We also expect that 68 percent (or 12) of the new vessels would be small and that 32 percent (or 6) would be large, for a total cost of $622,800 [(12 × $25,000) + (6 × $55,000) = $622,800]. However, we also expect that the population of vessels would remain constant. Consequently, each year during the 5-year phase-in period, we expect that 670 existing vessels and 18 new vessels would purchase and install them (670 + 18 = 688). Over the 13-year period of analysis, therefore, the present value of the total cost for towing vessels to purchase and install them would be $93,686,251 (in 2000 dollars).

Cost To Maintain and Test

A FFES needs maintenance and testing in accordance with the manufacturer's design manual. This maintenance and testing would involve an overall check of the system, functional testing of the system's operating controls and alarms, and a check of the cylinders that supply the fire-extinguishing agent, to verify that the weight and pressure of the stored agent fall within prescribed limits.

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[1] Currently, vessels that tow oil-laden tank barges in the First District must complete voyage plans. Although we could subtract the 250 towing vessels that operate in the First District from the total population, we do not, because we assume that those 250 may tow freight barges as well.

The Coast Guard estimates that the average cost for maintenance and testing of a FFES would be $600 per year. Over the 13-year period of analysis, therefore, the present value of the total cost to maintain and test these systems annually would be $ 11,119,576 in 2000 dollars.

Cost of Revenue Lost

Although there would be a 5-year phase-in period, which should give each owner the flexibility to schedule the installation of a FFES, some owners may lose revenue. However, the ability to avoid losing revenue on the flexibility may depend upon the number of towing vessels owned as well. While a vessel is out of service to have an FFES installed, an owner of more than one towing vessel may be able to put another vessel into service. Thus, the revenue lost by one vessel could become the revenue gained by another vessel, and the owner might not lose revenue.

Thus, we estimated that the expected revenue lost by each vessel depends upon the size of the vessel and the number of vessels owned. See the following Table (we assume that new vessels would not lose revenue, because each would have a FFES installed before going into service):

Number of non-exempted towing vessels owned	Expected revenue lost by each small vessel	Expected revenue lost by each large vessel
1	4,000	9,000
2	3,200	7,200
3	1,600	3,600
4	800	1,800
5 or more	0	0

We estimate that, during each year of the 5-year phase-in period, 670 existing vessels would each purchase and install a FFES. From a sample of 3,328 non-exempt towing vessels, we found the following distribution:

Number of non-exempted towing vessels owned	Expected revenue lost by each small vessel	Expected revenue lost by each large vessel
1	60.5	21.6
2	14.6	10.4
3	8.7	9.3
4	3.9	5.5
5 or more	12.3	53.2
Total	100.0	100.0

From our MSMS database, we expect that 68 percent of these vessels are small and 32 percent are large. Furthermore, we expect that 21.6 percent belong to fleets of one, 10.4 percent to fleets of two, 9.3 percent to fleets of three, 5.5 percent to fleets of four, and 53.2 percent to fleets of five or more. From all this, we estimate that 670 vessels altogether would lose revenue of $1,305,696 each year during the 5-year phase-in period. Over the period of analysis, the present value of the total revenue lost would be $5,503,375.

Summary of Benefits

Benefits for Voyage-Planning

A team of analysts identified cases between January 1, 1992, and December 31, 1996, that involved the grounding, sinking, capsizing, allision, or loss of control of towing vessels. The team determined that 40 of those cases could have had their losses reduced with voyage planning.[2] These 40 provided the pool from which the team estimated the expected benefits. On average, voyage planning would have reduced the probability of a casualty by 15 percent. We used that percentage to estimate the losses avoided by the voyage planning.

Over the 13-year period of analysis (2002–2014), we estimate that the present value of damages, deaths, and injuries avoided would be $6,539,776 in 2000 dollars ($5,263,336 for damages avoided + $1,265,364 for deaths or missing persons avoided + $11,076 for injuries avoided = $6,539,776).

Given that the present value of the total cost of voyage planning would be $6,105,967, the total cost of pollution avoided by voyage planning would be $986 per barrel ($986/barrel = $6,105,967/6,194 barrels = $986 per barrel). With the present value of the net cost of voyage planning being −$433,809, the net cost of pollution avoided would be −$70 per barrel [−$70/barrel = ($6,105,967–$6,539,776)/6,194 barrels]. See Table 1.

TABLE 1.—COST-EFFECTIVENESS OF VOYAGE PLANNING

Present Value of Cost of Voyage Planning	$6,105,967
Barrels of Pollution Avoided by Voyage Planning	6,194
Cost Per Barrel of Pollution Avoided	$986
Present Value of Avoided Costs of Voyage Planning	$6,539,776
Net Cost of Voyage Planning	−$433,809[3]
Net Cost per Barrel of Pollution Avoided	−$70[4]

Benefits for Fixed Fire-Extinguishing Systems

Before estimating the damages avoided by fixed fire-extinguishing systems, we subtracted voyage-planning benefits for any case of a casualty that involved an engine-room fire and that would have realized benefits from voyage planning in order to avoid double-counting of benefits. To estimate the average annual damages avoided by fixed fire-extinguishing systems for those cases where voyage planning would confer a first-tier benefit, we multiplied the average annual damages of $3,550,058 by 0.85, then by 0.42, and obtained a figure of $1,267,371 per year.[5] In those cases where fire suppression would confer the first-tier benefit, average annual damages avoided by fixed fire-extinguishing systems would be $2,464,958 ($5,868,947/year × 0.42 = $2,464,958/year). The combined average annual damage avoided by the systems would be $3,732,329 ($1,267,371 in cases when voyage planning would come first + $2,464,958 in those when the systems themselves would come first = $3;732,329).

We assume that 20 percent of the vessels would purchase and install fixed fire-extinguishing systems each year over the five-year phase-in period, so the annual benefit in damages avoided would increase from $746,466 the first year to $3,732,328 in the fifth and later years. Over the 13-year period of analysis, the present value of the total benefit from damage avoided to vessels and property would be $23,045,648 in 2000 dollars.

From 1992 through 1996 there were 7 minor injuries and 5 serious ones.[6] The amount society would be willing to pay to avoid these injuries is $814,050 ($37,800 to avoid the 7 minor injuries + $776,250 to avoid the 5 serious injuries = $814,050). As these injuries occurred over a five-year period, their average annual value was $162,810 ($814,050/5 = $162,810).

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[2] The small number of cases during the five-year period supports the Coast Guard's estimate that 90 percent of the vessels currently prepare and follow voyage plans.

[3] Because net cost is negative, the voyage-planning requirement has a positive net benefit.

[4] As the present value total benefit of voyage planning is greater than the present value total cost of voyage planning, the net cost is negative, at −$433,809. In turn, the net cost per barrel of pollution avoided is negative. When net cost per barrel of pollution avoided is −$70, that means each barrel of pollution avoided is associated with a net benefit of $70.

[5] Recall that voyage planning reduces potential benefits by 15 percent; thus, only 85 percent remains. On average, a fixed fire-extinguishing system should reduce damages by 42 percent when effective.

[6] The 12 injuries came from 6 cases.

We would expect fixed fire-extinguishing systems to reduce these injuries by 42 percent. So, they reduce injuries by $68,380 per year ($162,810 × 0.42 = $68,380).[7] Over the 13-year period of analysis, the present value of the total benefit from injuries avoided would be $422,221 in 2000 dollars.

The MSMS database contains a table that shows the gallons of oil and other hazardous materials spilled "out of water" and "in waterways". Of the 105 cases used to determine the benefits of fixed fire-extinguishing systems, 5 involved pollution. A total of 19,791 barrels were spilled during the five-year period from 1992 through 1996.

We estimate that fixed fire-extinguishing systems would reduce these spills by 42 percent. Before we calculated benefits from the systems, we deducted the benefits from voyage planning (when appropriate, to avoid double counting). Over the 13-year period of analysis, the systems should reduce pollution by 8,731 barrels.

Total Benefit and Cost-Effectiveness of Fixed Fire-Extinguishing Systems

Over the 13-year period of analysis, the present value of the avoided costs of fixed fire-extinguishing systems would be $23,467,869 in 2000 dollars ($23,045,648 for damages avoided + $422,221 for avoided injuries = $23,467,869).

The present value of the total cost of fixed fire-extinguishing systems would be $109,809,202. Because, we estimate, the requirement would reduce pollution by 8,731 barrels, the cost per barrel of pollution avoided would be $12,577 ($12,577/barrel = $109,809,202/8,731 barrels). The net cost of the requirement would be $86,341,334 ($109,809,202 − $23,467,869 = $86,341,334). Thus, the net cost-effectiveness would be $9,889 per barrel ($9,889/barrel = $86,341,334/8,731 barrels). See Table 2.

TABLE 2.—COST-EFFECTIVENESS OF FIXED FIRE-EXTINGUISHING SYSTEMS

Cost of Fixed Fire-Extinguishing Systems (PV)	$109,809,202
Barrels of Pollution Avoided	8,731
Cost per Barrel of Pollution Avoided	12,577
Cost Avoided of Systems (PV)	23,467,869
Net Cost of Systems	86,341,334
Net Cost per Barrel of Pollution Avoided	9,889

Total Avoided Cost of Rule

The present value of the total avoided cost of this rulemaking, we estimate, would be $30,007,645 in 2000 dollars ($6,539,776 from voyage planning + $23,467,869 from fixed fire-extinguishing systems = $30,007,645).

Cost-Effectiveness of Rule

Over the 13-year period of analysis, we estimate, the present value of the total cost of these rules would be $115,915,169 ($109,809,202 for fixed fire-extinguishing systems + $6,105,967 for voyage planning = $115,915,169). These rules would reduce pollution by 14,925 barrels (8,731 barrels avoided by the systems + 6,194 barrels avoided by voyage planning = 14,925 barrels). Consequently, the cost per barrel of pollution avoided by these rules (or the cost-effectiveness of these rules) would be $7,766 ($7,766 = $115,915,169/14,925 barrels).

Over the 13-year period of analysis, the present value of the total avoided cost of these rules would be $30,007,645 ($23,467,869 for the fixed fire-extinguishing systems + $6,539,776 for voyage planning = $30,007,645). The net cost of these rules would be $85,907,525 ($115,915,169—$30,007,645 = $85,907,525). The net cost per barrel is $5,756 = $85,907,525/14,925 barrels. See Table 3.

TABLE 3.—COST-EFFECTIVENESS OF RULE

Cost of Rule (PV)	$115,915,169
Barrels of Pollution Avoided by Rule	14,925
Cost per Barrel of Pollution Avoided	7,766
Avoided Cost of Rule (PV)	30,007,645
Net Cost of Rule	85,907,525
Net Cost per Barrel of Pollution Avoided	5,756

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601–612], the Coast Guard considers the economic impact on small entities of each proposed rule for which a general notice of proposed rulemaking is required. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

From our analysis (copy available in the docket), we concluded that the requirement of fixed fire-extinguishing systems might have a significant economic impact on a substantial number of small entities. Consequently, by establishing a five-year phase-in period for the systems, we would provide flexibility and accommodation for small entities affected. This would give small entities the time needed to explore markets, plan, and schedule installations during normal downtimes.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this SNPRM so they can better evaluate its effects on them and participate in the rulemaking. If these proposed rules would affect your small business or organization, and if you have questions about their provisions or your options for compliance, please call Mr. Randall Eberly (for questions on fire-extinguishing systems), telephone 202–267–1861, or Mr. Robert Spears (for questions on voyage planning), telephone 202–267–1099.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

These proposed rules would not provide for a collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

Federalism

These proposed rules would revise the rules at 33 CFR part 164 that address voyage planning for towing vessels. They would also revise those at 46 CFR parts 25 and 27 that address fixed fire-extinguishing systems, their equipment, and its operation and maintenance on towing vessels. We have analyzed these

rules under Executive Order 13132, Federalism.

It is well settled that States are precluded from regulation in categories that are reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703(a), 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels) are within the field foreclosed from State regulation. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke*, 120 S. Ct. 1135, 2000 U.S. LEXIS 1895 (March 6, 2000).) These rules fall into those covered categories, thereby precluding States from regulation. Because States may not promulgate rules within these categories, preemption is not an issue under E.O. 13132.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 [2 U.S.C. 1531–1538] requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year.

While several State and local governments operate some towing vessels, entities in the private sector own and operate most of the affected ones. This SNPRM would not directly affect tribal governments. The total burden of Federal mandates that these rules would impose would be about $115,915,169 (present value of the total cost over the 13-year period of analysis). Therefore, these rules would not impose an unfunded mandate. Although they would not result in an annual expenditure of $100,000,000, we do discuss their effects elsewhere in the preamble.

Taking of Private Property

These proposed rules would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Reform of Civil Justice

These proposed rules meet applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed these proposed rules under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. These rules are not economically significant and do not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of these proposed rules and concluded that under Figure 2–1, paragraphs (34)(c) and (d) of Commandant Instruction M16475.1C, these rules are categorically excluded from further environmental documentation. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part, 164

Equipment, Incorporation by reference, Marine safety, Navigation safety, Vessels.

46 CFR Part 25

Fire-extinguishing equipment, Incorporation by reference, Life preservers, Marine safety, Vessels.

46 CFR Part 27

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 164, and 46 CFR parts 25 and 27, as follows:

PART 164—NAVIGATION SAFETY REGULATIONS

1. Revise the citation of authority for part 164 to read as follows:

Authority: 33 U.S.C. 1222(5), 1223, 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

2. Amend § 164.78 by revising paragraphs (a)(6) and (7) and adding paragraph (a)(8) to read as follows:

§ 164.78 Navigation under way; Towing vessels.

(a) * * *

(6) Knows the speed and direction of the current, set, and drift, and knows the tidal state for the area to be transited;

(7) Proceeds at a speed prudent for the weather, visibility, density of traffic, draft of tow, possibility of wake damage, speed of the current, and local speed-limits; and

(8) Monitors the trip or voyage plan required by § 164.80.

* * * * *

3. Amend § 164.80 by adding paragraph (c) to read as follows:

§ 164.80 Tests, inspections, and voyage planning.

* * * * *

(c) The owner or operator, and the master, of each towing vessel employed to tow a barge or barges must ensure the development of a voyage plan for each intended trip or voyage with the barge or barges, on the navigable waters of the United States, as defined in 33 U.S.C. 1222(5). The voyage plan must take into account all pertinent information, and be complete before the vessel embarks on a trip or voyage of more than 12 hours. The master must check the planned route for proximity to hazards and known environmentally sensitive areas (noted on charts or maps) before the trip or voyage starts. During a trip or voyage, if anyone in authority decides to deviate substantially from that route, then the master or mate must ensure the development of a plan for the new route before the vessel does deviate from the plan for the current route. Each plan must consider—

(1) Applicable information from up-to-date nautical charts and publications including Coast Pilot, Coast Guard Light List, and Coast Guard Local Notice to Mariners for each port of departure and for each port of call (destination);

(2) Current and forecasted weather, including visibility, wind, and sea state from each port of departure to each port of call;

(3) Data on tides and tidal currents for each port of departure and destination, as well as for ports of call, and on river stages, with forecasts, if applicable;

(4) Forward and after drafts of the barge or barges and under-keel and vertical clearances (air-gaps) for all bridges, ports, and mooring or berthing areas;

(5) Appropriate pre-departure checks;

(6) Calculated speeds and estimated times of arrival at proposed waypoints;

(7) Communication contacts at Vessel Traffic Services (if applicable), bridges, and facilities, and port-specific requirements for VHF radio;

(8) Any standing orders (for instance, closest points of approach, special conditions, and critical maneuvers); and

(9) Whether the vessel has sufficient power to control the tow under all foreseeable circumstances.

PART 25—REQUIREMENTS

4. The citation of authority for part 25 continues to read as follows:

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[7] Voyage planning would not confer a first-tier benefit in these cases. Consequently, we do not subtract voyage-planning benefits before estimating fire-suppression benefits.

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4302; 49 CFR 1.46.

5. Revise § 25.30–15 to read as follows:

§ 25.30–15 Fixed fire-extinguishing systems.

(a) When a fixed fire-extinguishing system is installed, it must be of a type approved or accepted by the Commandant (G–MSE) or the Commanding Officer, U.S. Coast Guard Marine Safety Center.

(b) If the system is of a carbon-dioxide type, then it must be designed and installed in agreement with the applicable provisions of subpart 76.15 of part 76 of subchapter H (Passenger Vessels) of this chapter.

PART 27—TOWING VESSELS

6. Revise the citation of authority for part 27 to read as follows:

Authority: 46 U.S.C. 3306, 4102 (as amended by Pub. L. 104–324, 110 Stat. 3947); 49 CFR 1.46.

§ 27.220 [Removed]

7. Remove the heading of § 27.220.

§ 27.221 [Removed]

8. Remove the heading of § 27.221.

§ 27.225 [Removed]

9. Remove the heading of § 27.225.

10. Add § 27.227 to read as follows:

§ 27.227 What type of fire-extinguishing equipment is required on an existing towing vessel?

(a) Each existing towing vessel must comply with subpart 25.30 of this part.

(b) By [Insert date 5 years after the effective date of the final rule] you must have a fixed fire-extinguishing system in the engine room of your vessel. You must keep the system tested and maintained in accordance with the manufacturer's approved design manual. An existing fire-extinguishing system satisfies this requirement if—

(1) It uses carbon dioxide as an extinguishing agent and has been inspected and certified as meeting subpart 76.15 of part 76 of this subchapter or NFPA 12, "Carbon Dioxide Extinguishing Systems," by a Registered Professional Engineer or by a classification society recognized under 46 CFR part 8, subpart B; or

(2) It uses Halon 1301 as an extinguishing agent and has been inspected and certified as meeting either guidance of the Coast Guard for such systems onboard inspected vessels or NFPA 12A, "Halon 1301 Fire Extinguishing Systems," by a Registered Professional Engineer or by a classification society recognized under 46 CFR part 8, subpart B.

§ 27.235 [Removed]

11. Remove the heading of § 27.235.

§ 27.240 [Removed]

12. Remove the heading of § 27.240.

§ 27.320 [Removed]

13. Remove the heading of § 27.320.

§ 27.321 [Removed]

14. Remove the heading of § 27.321.

§ 27.325 [Removed]

15. Remove the heading of § 27.325.

§ 27.326 [Removed]

16. Remove the heading of § 27.326.

17. Add § 27.327 to read as follows:

§ 27.327 What type of fire-extinguishing equipment is required on a new towing vessel?

(a) Each new towing vessels must comply with subpart 25.30 of part 25 of this subchapter.

(b) You must have a fixed fire-extinguishing system in the engine room of your vessel. You must keep the system tested and maintained in accordance with the manufacturer's approved design manual.

§ 27.345 [Removed]

18. Remove the heading of § 27.345.

§ 27.350 [Removed]

19. Remove the heading of § 27.350.

Dated: October 13, 2000.

R.C. North,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–28585 Filed 11–7–00; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2364; MM Docket No. 00–204; RM–9983]

Radio Broadcasting Services; Blairsville, Georgia

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by M. Terry Carter and Douglas Sutton, Jr, /dba/ Tugart Communications requesting the allotment of Channel 234A to Blairsville, Georgia as the community's first local aural transmission service. Channel 236A can be allotted to Blairsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.9 kilometers (6.2 miles) north of city reference coordinates. The coordinates for Channel 236A at Blairsville are 34–57–51 North Latitude and 83–37–49 West Longitude.

DATES: Comments must be filed on or before December 11, 2000, and reply comments on or before December 26, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows, John F. Garzilgia, Esq, Pepper & Corazzini, LLP, 1776 K Street, NW., Suite 200, Washington, DC 20006–2334 (Counsel for Tugart Communications, petitioner)

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–000; adopted October 11, 2000 and released October 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Blairsville, Channel 234A.

Federal Communications Commission,

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28688 Filed 11–7–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–167; FCC 00–344]

Children's Television; Obligations of Digital Television Broadcasters

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on a range of issues related to application of our existing children's programming rules to digital broadcasting. This document focuses primarily on two areas: the obligation of commercial television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees limit the amount of advertising in children's programs.

In addition, this document seeks comment on how to address the issue of the airing in programs viewed by children promotions that may be inappropriate for children to watch. Although this document seeks comment largely on challenges unique to the digital area, it also discusses several issues that apply equally to analog and digital broadcasting.

DATES: Comments are due on or before December 18, 2000; reply comments are due on or before January 17, 2001. Written comments by the public on the proposed information collections are due December 18, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before January 8, 2001.

ADDRESSES: Address all comments concerning this proposed rule to the Commission's Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy and Rules Division, Mass Media Bureau, (202) 418–2130. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the *Notice of Proposed Rulemaking* ("*NPRM*"), MM 00–167; FCC 00–344 adopted September 14, 2000; released October 5, 2000. The full text of the Commission's *NPRM* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. SW., Washington, DC. The complete text of this *NPRM* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., NW., Washington, DC 20036.

Paperwork Reduction Act

This *NPRM* contains a proposed new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB comments are due 60 days from date of publication of this *NPRM* in the **Federal Register**.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.

Title: NPRM—Children's Television Obligations of Digital Television Broadcasters.

Form No: FCC Form 398.

Type of Review: Revision of Existing Collection.

Respondents: Business or other for-profit.

Number of Respondents for FCC 398: 1,250.

Number of Respondents for Section 73.673: 1,225.

Estimated Time Per Response for FCC 398: 6 hours.

Estimated Time Per Response for Section 73.673: 1 minute per program and 6 minutes per program to publishers of program guides.

Total Annual Burden: 68,219 hours.

Total Annual Costs: $469,600.

The estimated time, burden and costs are based upon the existing burdens for the FCC 398 (3060–0754) and Section 73.673 (3060–0750). This burden in those collections could increase depending on what requirements are ultimately adopted.

Needs and Uses: This *NPRM* invites comments on how the existing children's educational television programming obligations and limitations should be interpreted and adapted to apply to digital broadcasters in light of the new capabilities made possible by that technology. This *NPRM* also seeks comments on what steps the FCC might take to increase public awareness of the availability of core programming and how to locate it. The current obligations consist of the FCC 398 which is required to be filed by commercial television broadcast stations each quarter.

This form is used to provide information on the efforts of commercial television stations to provide children's educational and informational programs aired to meet its obligation under the Children's Television Act of 1990 (CTA). The FCC 398 assists in efforts by the public and the Commission to monitor station compliance with the CTA.

In addition, Section 73.673 requires commercial TV broadcasters to identify programs specifically designed to educate and inform children at the beginning of the program and to provide information identifying such programs and the age groups for which they are intended to publishers of program guides. Depending on what requirements are ultimately adopted, there may be an increase in the burden for these collections.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. We issue this *NPRM* to seek comment on a range of issues related to the obligation of digital television ("DTV") broadcasters to serve children. We focus in this proceeding primarily on two areas: the obligation of television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees limit the amount of advertising in children's programs. Although we seek comment largely on challenges unique to the digital area, we also explore several issues that children's advocates have raised about children's educational and informational programming more generally.

II. Background

2. American children spend a considerable amount of time watching television. Recent data show that children in this country spend, on average, almost three hours a day watching television. In view of the significant role that television plays in the lives of children, this medium has great potential to contribute to children's development. As Congress has stated, "[i]t is difficult to think of an interest more substantial than the promotion of the welfare of children who watch so much television and rely upon it for so much of the information they receive."

3. For over 30 years, the Commission has recognized that, as part of their obligation as trustees of the public's airwaves, broadcasters must provide programming that serves the special needs of children. The Commission's efforts to promote programming for children began in 1960 with the statement that children were one of the several groups whose programming needs television licensees must meet to fulfill their community public interest responsibilities. In 1974, the Commission instituted a wide ranging inquiry into children's programming and advertising practices, which led to publication of the *Children's Television Report and Policy Statement* ("*1974 Policy Statement*").

The Commission concluded that broadcasters have "a special obligation" to serve children and stated its expectation that licensees would increase the number of programs aimed at children in specific age groups. The Commission also concluded that children are more "trusting and vulnerable to commercial 'pitches' than adults" and that children "cannot distinguish conceptually between programming and advertising." The Commission stated its expectation that the industry would eliminate "host selling" and product "tie-ins," use separation between programs and commercials during children's programming, and honor the industry's voluntary advertising guidelines for children's programs.

4. Later in the 1970s, the Commission undertook further study of the availability of educational programming for children. Finding that the industry had failed to respond to its earlier call for improvements, the Commission considered formal regulation. In 1984, however, the Commission decided not to establish quantitative program requirements for broadcasters, relying instead on market forces to ensure a sufficient supply of educational programming for children.

Following this decision, the amount of children's educational programming aired by commercial television stations decreased markedly. Also in 1984, the Commission repealed the commercial guidelines for children's programming, leading to an increase in the amount of commercial matter broadcast during children's programming.

5. In 1990, Congress enacted the Children's Television Act of 1990 ("CTA"). The CTA imposes two principal requirements. First, commercial television broadcast licensees and cable operators must limit the amount of commercial matter that may be aired during children's programs to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.

Second, the CTA requires that, in its review of television broadcast renewal applications, the Commission must consider whether commercial television licensees have complied with the commercialization limits, and whether all television broadcast licensees have served "the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." In enacting the CTA, Congress found that, while television can benefit society by helping to educate and inform children, there are significant market disincentives for commercial broadcasters to air children's educational and informational programming. The objective of Congress in enacting the CTA was to increase the amount of educational and informational programming on television.

6. The Commission first promulgated rules implementing the CTA in 1991. The Commission determined that the statutory children's programming commercial limits would apply to programs originally produced and broadcast for an audience of children 12 years old and under. Commercial matter was defined as "air time sold for purposes of selling a product." In other words, the advertiser must give some valuable consideration either directly or indirectly to the broadcaster as an inducement for airing the material.

The Commission also reaffirmed and clarified its long-standing policy that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a "program-length commercial"). Television licensees are required to certify their compliance with the commercial limits as part of their license renewal application, and must maintain records sufficient to permit substantiation of the certification.

7. In August 1996, the Commission adopted its current educational programming rules enforcing the CTA. (*See* Policies and Rules Concerning Children's Television Programming, 61 FR 43981, August 27, 1996). The Commission's rules include several measures to improve public access to information about the availability of programming "specifically designed" to serve children's educational and informational needs (otherwise known as "core" programming).

These measures include a requirement that licensees identify core programming at the time it is aired and in information provided to publishers of television programming guides. Licensees are required to designate a children's liaison at the station responsible for collecting comments on the station's compliance with the CTA. Licensees must also prepare and place in their public inspection files a quarterly Children's Television Programming Report identifying their core programming and other efforts to comply with their educational programming obligations.

8. In addition, our rules establish a definition of "core" programming. "Core" programming is defined as regularly scheduled, weekly programming of at least 30 minutes, aired between 7:00 a.m. and 10:00 p.m., that has serving the educational and informational needs of children ages 16 and under as a significant purpose. The program must be identified as core programming when it is aired and in information provided to program guide publishers.

9. Finally, to provide certainty to broadcasters about how to comply with the CTA and to facilitate fair and efficient processing of the CTA portion of broadcasters' renewal applications, the Commission also adopted a processing guideline. Under this guideline, a broadcaster can receive staff-level approval of the CTA portion of its renewal application by airing at least three hours per week of programming that meets the definition of "core" educational programming.

Alternatively, a broadcaster can receive staff-level renewal by showing that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of core programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming. Licensees not meeting these criteria will have their license renewal applications referred to the Commission.

10. We seek comment today on how these existing children's television obligations, developed with analog technology in mind, should be adapted to apply to digital television broadcasting. Digital television is a new technology for transmitting and receiving broadcast television signals that delivers better pictures and sound, uses the broadcast spectrum more efficiently, and offers a range of possible applications. DTV broadcasters will have the technical capability and regulatory flexibility to: Air high definition TV (HDTV); "multicast," that is, to send as many as 4–6 digital "standard-definition television" (SDTV) signals; or provide "ancillary or supplementary services," including video and data services that are potentially revenue-producing, such as subscription television, computer software distribution, data transmissions, teletext, interactive services, and "time-shifted" video programming. Broadcasters could choose to shift back and forth among these different DTV modes—HDTV, SDTV, and new video/information services—during a single programming day. To facilitate the transition from analog to digital television, Congress directed the Commission to grant a second channel for each full-service television licensee in the country to be used for digital broadcasting during the period of conversion to an all-digital broadcast service.

11. In December 1999, we released a *Notice of Inquiry* ("*NOI*"), 65 FR 4211, January 26, 2000, to commence collecting views on how the public interest obligations of television broadcasters should change in the digital era. As we observed in the *NOI*, both Congress and the Commission have recognized that digital television broadcasters have an obligation to serve the public interest. Congress stated in section 336 of the Communications Act that "[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity."

In implementing section 336, the Commission required that broadcasters air a "free digital video programming service the resolution of which is comparable to or better than that of today's service, and aired during the same time period that their analog channel is broadcasting." The Commission also reaffirmed that "digital broadcasters remain public trustees with a responsibility to serve the public interest," and stated that "existing public interest requirements continue to apply to all broadcast licensees."

12. We recognize that the CTA is written broadly to apply to television broadcast licensees and that there is nothing in the CTA itself, nor the legislative history, to suggest that the statutory requirement, or the regulations promulgated thereunder, should be limited to analog broadcasters. Indeed, the objectives of the CTA—*e.g.*, to increase the amount of educational and information broadcast television programming available to children and to protect children from overcommercialization of programming—would apply equally to the digital broadcasting context.

Given this, and in light of explicit congressional intent expressed in section 336 to continue to require digital broadcasters to serve the public interest, we conclude that digital broadcasters are subject to all of the CTA's commercial limits and educational and informational programming requirements. Digital broadcasters must also continue to comply with our policies regarding program-commercial separation, host selling, and program-length commercials. The purpose of this proceeding is to determine how these requirements should be interpreted and adapted with respect to digital broadcasting in light of the new capabilities made possible by that technology.

13. We request comment herein on a variety of issues related to application of our existing children's programming rules to digital broadcasting. We also invite comment on a number of specific proposals offered by commenters responding to the *NOI*, and on some of the views expressed by the President's Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters ("Advisory Committee").

As we indicated in the *NOI*, the Advisory Committee, representing a broad cross-section of interests from industry, academia, and public interest organizations, submitted a report in 1998 containing recommendations on the public interest obligations digital television broadcasters should assume. Although the Advisory Committee focused on many issues beyond the scope of this proceeding, we will discuss some of the recommendations of the committee and of individual participants that relate to children's television.

III. Issues and Request for Comment

A. Educational and Informational Programming

14. *Background*. One of the questions we posed in the *NOI* is how public interest obligations generally, including the obligation to provide children's educational and informational programming, apply to a DTV broadcaster that chooses to multicast. We also asked how we should take into account the fact that DTV broadcasters have the flexibility to vary the amount and quality of broadcast programming they offer throughout the day. For example, a broadcaster could air 4 SDTV channels from 8 a.m. to 3 p.m., switch to two higher definition channels from 3 p.m. to 8 p.m., and finish with one HDTV channel for prime-time and late-night programming.

Different broadcasters are likely to provide a different overall combination of broadcast hours and quality. We also note that DTV broadcasters may choose to devote a portion of their spectrum to either non-video services, such as datacasting, or to subscription broadcast services available only to viewers who pay a fee, consistent with the requirement that they provide at least one free, over-the-air video program service to viewers.

15. *Discussion*. Our current three-hour children's core educational programming processing guideline applies to DTV broadcasters. We invite comment, however, on how the guideline should be applied in light of the myriad of possible ways that broadcasters may choose to use their DTV spectrum.

Should the processing guideline apply to only one digital broadcasting program stream, to more than one program stream, or to all program streams the broadcaster chooses to provide? Should the guideline apply only to free broadcast services, or also to services offered for a fee? In this regard, we note that the CTA requires that television broadcast licensees serve the educational and informational needs of children "through the licensee's *overall* programming, including programming specifically designed to serve such needs." How should we interpret this phrase in terms of digital broadcasters' requirement to provide educational programming?

16. We also ask how the existing three-hour guideline would be best applied in the digital context. Commenters responding to questions posed in the *NOI* offer a number of suggestions as to how the processing guideline could be adapted to apply in a multicast environment. We welcome comment on these specific proposals, outlined, as well as other suggestions for ways our guideline should be interpreted and adapted with respect to digital broadcasting. We also seek comment on when any new requirements that relate to digital broadcasting should become effective.

17. *Proportional Hours*. One approach, suggested by Children Now and People for Better TV, is that each digital television broadcaster be required to provide an amount of weekly core programming that is proportional to the three hour per week quantitative guideline. Specifically, these commenters propose that DTV broadcasters be required to devote three percent of their programmable broadcast hours per week to core educational programming.

This three percent figure is derived by dividing the current 3 hour guideline by 105, or the total number of hours/week available for core programming during the 7 a.m. to 10 p.m. broadcast window (15 hours/day times 7 days/week equals 105 hours/week). Under this approach, to derive their quantitative core programming obligation, broadcasters would calculate their total digital broadcast hours per week, multiply that total by 3 percent, and round up to the closest five-tenths as half-hour segments are the smallest unit for programming under the definition of core programming. Broadcasters would be required to report this calculation in their quarterly Children's Television Programming Reports, which would determine the broadcaster's core programming obligation for the following quarter.

18. In light of the range of possible technical qualities available with DTV technology, from SDTV to HDTV with different datacasting and interactive capabilities included, we also invite comment on whether we should require broadcasters to provide core educational programming in a certain technical format. One approach would be to require broadcasters to use for core programming a technical format that is consistent with the overall quality of the broadcaster's other programming. Our concern in this regard is to ensure that broadcasters not segregate core programming consistently to the lowest possible audio/visual quality offered by the broadcaster.

19. The Children Now proportional hours proposal raises a number of questions. If we were to impose a 3 percent core programming obligation, what kind of programming should be included for purposes of calculating the overall number of hours of core programming a DTV broadcaster would be required to provide? Should the percent requirement apply only to free video programming (*e.g.*, 3 percent of all free video programming must be core), or should the percent also apply to datacasting (*e.g.*, 3 percent of all free video programming and datacasting must be core)? Should subscription programming be included in the calculation? Should the 3 percent figure apply to a DTV broadcasters' total amount of programming, or to each programming stream?

In addition, how should we address how core programming should be distributed on the broadcaster's channels? Should we require broadcasters to air their core programming on their "primary" channel, or allow them the flexibility to decide how that programming should be distributed over their various program streams? We invite comment on the proportional hours proposal and on these related issues.

20. *Pay or Play*. Children Now also suggests that, as a corollary to their proportional hours proposal, the Commission could adopt a "Pay or Play" model to allow digital broadcasters maximum flexibility in meeting their core programming obligation. Under this approach, once the core programming obligation is quantified, broadcasters would have the choice of meeting these obligations either through their own programming or by paying other networks or channels to air these hours for them, or a combination of both. Children Now points out that this model could promote partnerships among commercial broadcasters or among commercial and non-commercial broadcasters in a given market, and could provide much needed support to public broadcasters who have a strong commitment to core programming.

Children Now also notes, however, that, under such a model, children's programming could be limited to public broadcasting or to less popular commercial stations, resulting in less exposure to such programming for children. Another concern is that commercial broadcasters may not pay public broadcasters or less successful commercial broadcasters enough to fund high quality children's programming which could, in the end, result in an overall reduction in the quality of core programs. We note that the Commission's rules currently allow broadcasters, under certain conditions, to meet their CTA obligation by sponsoring core programs aired on another station in the same market. We invite comment on the "Pay or Play" approach and the advantages and disadvantages of adopting such a model for educational programming.

21. *Menu Approach*. The Center for Media Education, filing jointly with nine other individuals and public interest organizations (collectively referred to herein as "CME *et al.*"), urges the Commission to adopt children's guidelines that impose additional obligations on broadcasters, but provide them with flexibility in meeting these obligations. CME *et al.* argues that the current amount of three hours-per-week of core programming is insufficient in light of the added capacity multicasting offers.

Specifically, CME *et al.* proposes that digital broadcasters have the option of satisfying their children's programming obligation by providing, at their option, some combination of the following: (1) Additional "core" educational and informational programming; (2) broadband or datacasting services to local schools, libraries, or community centers that serve children; or (3) support for the production of children's educational programming by local public stations or other noncommercial program producers, such as the National Endowment for Children's Programming. CME *et al.* points out that public television stations could use additional funding to create new children's educational programs that take advantage of DTV's enhanced capabilities. CME *et al.* would not require that DTV broadcasters air core programs on each of their program streams, but instead would permit the creation of specialized channels where core programming could be more easily located by children and parents.

22. We invite comment on the CME *et al.* proposal and, more generally, on the concept of offering broadcasters a choice of ways they can meet their obligation under the CTA. If we were to adopt a

menu approach, are there other types of obligations, apart from those suggested by CME *et al.*, that we should allow broadcasters to choose from? One option would be to allow broadcasters to undertake additional outreach efforts to make parents and others aware of the availability of core programs and how to identify and locate them. If we were to include this as an option in a menu approach, what kind of outreach efforts should we require?

23. *Daily Core Programming Obligation*. The Advisory Committee Report describes another approach regarding the obligation of digital broadcasters to air children's programming that would require digital broadcasters to air no less than 1 hour of children's educational programming each day on the broadcaster's main channel. We invite comment generally on this proposal.

24. *Other Digital Improvements*. Finally, we ask commenters to address whether the advanced capabilities of digital broadcasting can be used in other ways to help implement the CTA. One approach would be to require broadcasters to use datacasting to make available during a core program information explaining why the program is considered to qualify as "core."

Another option would be to require broadcasters to provide additional content ratings information on core programs from independent sources, such as public interest groups that rate educational children's programming. Such information could be provided through a direct link to the internet where the content ratings information could be accessed. We seek comment on these proposals, as well as other suggestions for how digital capacity could be used to help improve our existing children's programming requirements.

B. Preemption

25. *Background*. Related to the issue of how the children's educational and informational programming obligation will apply in the digital age is the issue of how we will treat preemptions of core programs by DTV broadcasters. To qualify as "core programming" for purposes of the three-hour-per-week processing guideline, the Commission requires that a children's program be "regularly scheduled," that is, a core children's program must "be scheduled to air at least once a week" and "must air on a regular basis."

In adopting its current educational programming rules, the Commission stated that television series typically air in the same time slot for 13 consecutive weeks, although some episodes may be preempted for programs such as breaking news or live sports events. The Commission noted that programming that is aired on a regular basis is more easily anticipated and located by viewers, and can build loyalty that will improve its chance for commercial success. The Commission stated that it would leave to the staff to determine, with guidance from the full Commission as necessary, what constitutes regularly scheduled programming and what level of preemption is allowable.

26. Since the adoption of the Children's Programming *Report and Order* ("*R&O*"), 61 FR 43981, August 27, 1996, the ABC, CBS, and NBC networks have requested flexibility to reschedule episodes of core programs that are preempted by live network sports events without adversely affecting the program's status as "regularly scheduled." Separate requests have been made in connection with each of the 1997–98, 1998–99, and 1999–2000 television seasons. For two of these seasons, the Mass Media Bureau has allowed the networks limited flexibility in preempting core children's programming.

Specifically, within certain limitations, the Bureau advised that preempted core programs could count toward a station's core programming obligation if the program were rescheduled. The Bureau also indicated that it would revisit this limited flexibility regarding preempted core programming based on the level of preempted programs, the rescheduling and broadcast of the preempted programs, the impact of promotions and other steps taken by the stations to make children's educational programming a success.

27. The Commission requires licensees, in their quarterly Children's Television Programming Reports, to identify for each core program the number of times the program was preempted and rescheduled. In another *R&O* adopted today, the Commission revised its quarterly Children's Television Programming Report to make the preemption information in that report clearer and to collect information on the reason for each preemption as well as the licensee's efforts to promote the rescheduled program. The purpose of these changes is to collect more complete data regarding the level of preemption of core programs and station practices in rescheduling these programs. This data will in turn allow the FCC and others to better monitor the impact of preemptions on the availability of core programs.

28. *Discussion*. As noted, the Commission required that programming must be "regularly scheduled" to qualify under the three-hour guideline. This requirement was based on the fact that programming that is aired on a regular basis is more easily anticipated and located by viewers, and therefore more likely to be seen by its intended audience. Although acknowledging that preemption might occur, the Commission expected that preemption of core programming would be rare. The Mass Media Bureau staff has recently reviewed a random sample of the Children's Television Programming Reports, and determined that the average preemption rate by stations affiliated with the largest networks during the past two years is nearly 10%, and has been as high as 25% during a quarter when a network had a large number of sports programming commitments.

Given this level of preemption, we believe we should consider whether we should adopt another approach to preemptions in the digital context to ensure that our preemption policy does not thwart the goals of the CTA. DTV broadcasters will have the option of airing multiple streams of programming simultaneously, thus increasing their flexibility to either avoid preempting core programs or to reschedule such programs to a regular "second home." Given this capability, are there ways in which the Commission could revise its preemption policies to simplify or eliminate the need for networks to seek approval of their planned preemption and rescheduling practices for each television season, and to streamline licensees' recordkeeping and reporting requirements?

One approach would be to fashion a rule that would provide clear guidance to digital broadcasters on the meaning of the requirement that a "core" program be "regularly scheduled." Such a rule could cover the number of times a core program could be preempted and still count toward the three-hour-per-week processing guideline, and/or the efforts that must be made to reschedule and promote preempted programs in order for these programs to contribute toward the core programming guideline. If we were to adopt such a rule, should we continue to exempt from the requirement that core programs be rescheduled core programs preempted for breaking news?

We request comment generally on all of these issues, and on how we could refine and clarify our definition of "regularly scheduled" to address the issue of preempted core programs in the digital age. We also ask commenters to address specifically the kind of rescheduling practices and promotion of rescheduled programs that we could require from digital broadcasters consistent with our goal of ensuring that viewers can anticipate and locate the rescheduled program.

For example, should a station be allowed to shift a preempted core program to another digital program stream? If so, should we require that the substitute program stream be of the same technical quality as the stream on which the program is regularly scheduled? Should we permit a preempted program to be shifted from a free to a pay program stream?

C. Commercial Limits

29. *Background*. Another issue posed by the transition from analog to digital broadcasting is how the Commission's children's programming advertising limits and policies will apply to DTV broadcasters. By converging internet capabilities with broadcasting, digital television permits a new level of interactivity between broadcasters, advertisers, and viewers. This capability offers great potential for enhancing the educational value of children's programs by, for example, permitting children to click on icons that appear on the screen during the program which take them to websites with more in-depth information about the topics covered in the program.

However, the interactive capabilities of DTV also allow for the direct sale of goods and services over the television. This capability presents marketers with new opportunities to reach children, which raises concerns in light of the difficulty young children have in distinguishing commercials from programming and the particular vulnerability of children to advertising.

30. *Discussion: Application of Existing Commercial Limits Rules and Policies to DTV*. We seek comment both on how the limits on the amount of commercial matter in children's programming should apply in this digital environment and how we should interpret with respect to DTV broadcasters the policies set forth in the *1974 Policy Statement* on children's programming. One question that arises is whether children's advertising limits and policies should apply only to free over-the-air channels, or to all digital channels both free and pay? We raised this issue in our *NOI*, where we asked whether a licensee's public interest obligations apply to its ancillary and supplementary services, and asked commenters to address the relevance of section 336 in this regard.

31. CME *et al.* expresses the view that the existing advertising restrictions, including the separations, host-selling, and program-length commercial policies, should apply to all digital programs directed to children ages 12 and under, regardless of the program stream on which they are offered. Thus, CME *et al.* argues that these policies should apply when children are watching video programs, regardless of whether the channel is free or pay. We request comment on this view.

32. In addition, CME *et al.* proposes that the Commission prohibit all direct links to commercial websites during children's programming. We invite comment on this proposal. Should the Commission prohibit the use of digital television interactivity capability in children's programs to sell products? Is such a prohibition appropriate in light of the unique ability of children to be influenced by commercial matter and their difficulty distinguishing commercials from other programming? If commercial links are freely available in programs not subject to our commercial limits (*e.g.*, programs directed at adults and children over the age of 12), would prohibiting them or restricting them in programming directed to children ages 12 and under make this programming less desirable and thus less likely to be selected by children?

Should we make a distinction between websites that carry only commercial products, and websites that also offer educational information related to the program? If we permit certain kinds of direct commercial links during children's programs, should such links be permitted to appear during the program itself, or be limited to appearing during commercials adequately separated from program material as required by our separations policy? In addition, if we were to allow the use of direct commercial links, should we limit the duration of time they appear on the screen? How should the appearance of a commercial link be counted in calculating the number of commercial minutes for purposes of our commercial limits?

Finally, if we allow certain kinds of direct commercial links, should we prohibit links to websites that sell products associated with the program in which the links appear under our program-length commercial policy, or links to websites where the program host is used to sell products? We invite commenters to address all of these issues, as well as any other issues related to the use of direct website links during children's programming.

33. *Definition of Commercial Matter*. We also invite commenters to address a broader question related to our restriction on the duration of advertising during children's programming. This is an issue that arises with respect to both analog and digital broadcasting. Under our current policy, the limitation of 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays applies to "commercial matter." "Commercial matter" is defined to exclude certain types of program interruptions from counting toward the commercial limits, including promotions of upcoming programs that do not contain sponsor-related mentions, public service messages promoting not-for-profit activities, and air-time sold for purposes of presenting educational and informational material.

We have observed that there is a significant amount of time devoted to these types of announcements in children's programming. As a result, the amount of time devoted to actual program material is often far less than the limitation on the duration of commercial matter alone might suggest. For example, in an hour-long weekend program, only 10.5 minutes may be devoted to commercial matter, leaving 49.5 minutes for actual program material. In fact, however, many programs contain far less than this amount of actual program time as a result of numerous other interruptions that do not count toward the commercial limit restriction.

34. We invite comment on whether the Commission should revise its definition of "commercial matter" to include some or all of these types of program interruptions that do not currently contribute toward the commercial limits. We note that some of the types of program interruptions currently excluded from the commercial limits may contain information valuable to children, such as promotion of upcoming educational programs or certain types of public service messages. Should we require that the time devoted to these announcements nonetheless count toward the commercial limits to maximize the amount of time devoted to program material and reduce the time taken by interruptions? This might prove especially beneficial for educational and informational programs, where it would increase the amount of time available for delivering educational messages. The issue of the total time taken by program interruptions in children's programs arises in both the analog and digital world. If we were to revise our definition, is there any reason to apply the new definition only to digital broadcasting?

Finally, we ask commenters to address whether our ability to revise this definition is restricted by the CTA and its legislative history. The CTA itself does not define the phrases "commercial matter" or "advertising." Both the House and Senate Reports state that "[t]he Committee intends that the definition of 'commercial matter' . . . be consistent with the definition used by the Commission in its Former FCC Form 303." We seek comment on whether we must apply the definition of "commercial matter" in the way defined on former FCC Form 303 for purposes of administering the CTA.

D. Promotions

35. *Background*. Another issue we raised in the *NOI* relates to the airing, in programs viewed by children, of promotions for other upcoming programs that may be unsuitable for children to watch because either the promotions themselves or the programs they refer to contain sexual or violent content or inappropriate language. This is another issue that arises with respect to both analog and digital broadcasting. The Commission staff has received many informal complaints from members of the public and children's advocates about inappropriate promotions in programs viewed by children.

We asked in the *NOI* whether the ratings of programs promoted by broadcasters should be consistent with the ratings of the program during which the promotions run. We note that the broadcast, cable, and motion picture industries have voluntarily agreed to rate video programming that contains sexual, violent, or other indecent material and to broadcast signals containing these ratings so that these programs can be screened by "V-Chip" technology available in television sets. The ratings identify the age group for which a particular program is appropriate and when the program contains violence, sexual content, or suggestive or coarse language.

36. *Discussion*. We again invite commenters to address this issue. Are there steps the FCC can take to ensure that programs designed for children or families do not contain promotions for broadcast, cable or theater movies or other age-inappropriate product promotions that are unsuitable for children to watch?

One option would be to require that promotions themselves be rated and encoded so they can be screened by V-Chip technology. Yet another option would be to require that promotions be rated and that programs with a significant child audience contain only promotions consistent with the rating of the program in which they appear. We invite comment on these and other approaches that might be used to address this issue.

37. We recognize that the current ratings system was adopted by the broadcast, cable, and motion picture industries voluntarily, and was found acceptable by the Commission. Would it be preferable to urge the industry itself to make a voluntarily commitment to take steps to protect against the airing of inappropriate promotions in children's programs?

As we noted, the issue of inappropriate promotions in children's programming arises with respect to both analog and digital programming. If we were to take steps to address this issue, should these steps be limited to digital broadcasting or should they apply to analog broadcasting as well? Does DTV technology offer any additional capability that could be used to address this issue in digital broadcasting?

E. Other Steps To Improve Educational Programming

38. We seek further information on children's television viewing habits, and in particular empirical evidence concerning the extent to which they watch designated educational and informational programming. We note that the Annenberg Public Policy Center has annually evaluated the educational and informational programming provided by networks and certain individual stations. We seek further information including the audience share of such programs and, in particular, the audience share of educational and informational programming contrasted with that of other programming for children.

We additionally seek information on stations' and networks' efforts to promote educational and informational programming to children and parents. Are stations promoting this programming? How and where? Is the programming being promoted during network prime time programming? During children's programming? Is the promotion effective?

Studies of the effectiveness of the three-hour-per-week processing guideline show that parents continue to be unaware of the availability of educational programming and continue to fail to identify core programs. We invite commenters to address what steps the FCC might take to increase public awareness of the availability of core programming and how to locate it. Should the FCC require that broadcasters promote core programs? If so, what kind of requirement should we impose? Should we require promotion during prime time or other specific day parts? Should we require stations to air PSAs about the value of educational programming and the meaning of the E/I icon? Are there other steps we could take apart from establishing a rule for promotions and PSAs?

Should the FCC itself undertake promotional efforts to highlight and publicize core educational programming? Apart from the issue of public awareness, are there other steps the FCC could take to improve the quality of educational programming? We invite comment on all of these questions and welcome other suggestions for ways to improve both the quality and public awareness of educational and informational children's programming.

IV. Conclusion

39. We institute this proceeding to examine how our existing children's educational programming rules and our preemption policies should be adapted to apply to digital broadcasters. Our goal is to ensure that, as we transition from analog to digital television, children and parents continue to have access, as Congress intended, to an ample supply of educational and informational programming specifically designed for children. We also seek comment on how the current limitations on advertising in children's programming should be applied to DTV broadcasters in light of the new capabilities offered by digital technology. Our objective in this effort is to ensure that children continue to be protected from overcommercialization on television.

Finally, we raise a number of issues related to the definition of "commercial matter" for purposes of the commercial limits for children's programs, promotions of programs for more mature audiences aired during children's programs, and other steps the Commission could take to help improve the availability of educational and informational programming. These latter issues arise in both the analog and digital worlds. We seek comment on all of the issues we have raised herein, and welcome other ideas commenters may have to achieve our objectives.

V. Administrative Matters

40. *Comments and Reply Comments*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before December 18, 2000 and reply comments on or before January 17, 2001. Comments may be

filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

41. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form, <your e-mail address.>" A sample form and directions will be sent in reply.

42. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW.; TW–A325, Washington, DC 20554.

43. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, SW.; 2–C221, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number (MM Docket No. 00–167), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette.

The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, SW.; CY–B402, Washington, DC 20554.

44. *Ex Parte Rules*. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. *See* generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

45. *Initial Regulatory Flexibility Analysis*. With respect to this *NPRM*, an Initial Regulatory Flexibility Analysis ("IRFA") is contained in Appendix B. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an IRFA of the possible economic impact on small entities of the proposals contained in this *NPRM*. Written public comments are requested on the IRFA. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *NPRM*, and should have a distinct heading designating them as responses to the IRFA.

46. *Initial Paperwork Reduction Act Analysis*. This *NPRM* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this *NPRM*, as required by the Paperwork Reduction Act of 1996. Public and agency Comments are due at the same time as other comments on the *NPRM*.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, SW., Room C–1804, Washington, DC 20554, or via the Internet to *jboley@fcc.gov*; and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov*.

VI. Ordering Clauses

47. This *NPRM* is issued pursuant to the authority contained in Sections 4(i), 303, 307, and 336(d) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 307, and 336(d), and in the Children's Television Act of 1990.

48. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Initial Regulatory Flexibility Act Analysis

49. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 ("RFA"), the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals contained in this *NPRM*. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *NPRM*, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Commission shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA, 5 U.S.C. 603(a).

A. Need for and Objectives of the Proposed Rules

Our goal in commencing this proceeding is to seek comment on how the existing children's educational television programming obligations and limitations on advertising in children's programs should be interpreted and adapted to apply to digital television broadcasting in light of the new capabilities made possible by that technology. In seeking comment on what steps the FCC might take to address the issue of the airing of promotions inappropriate for children in programs viewed by children, our goal is to protect children from programming with inappropriate sexual or violent content or suggestive or coarse language. We also invite comment on a number of specific proposals offered by commenters responding to the *NOI* in MM Docket No. 99–360.

50. We invite comment on how the children's core educational programming processing guideline should be applied to DTV broadcasters that choose to multicast. For example, we ask whether the guideline should apply to only one digital broadcasting program stream, to more than one program stream, or to all program streams the broadcaster chooses to provide.

We also ask whether the guideline should apply only to free broadcast services or also to pay services, and whether a three-hour guideline is sufficient in light of the additional program capacity made available by digital technology. We also seek comment on whether the Commission's policies regarding preemption of core programs should be revised in view of the greater programming capacity available to DTV broadcasters.

51. With respect to the children's programming advertising limits and policies, we ask whether these rules and policies should apply to both free and pay program streams. We also seek comment on how these rules and policies should be interpreted in light of the interactive capabilities made possible by digital technology. For example, we ask whether we should permit the use of direct commercial website links in children's programs and, if so, whether we should limit the duration of time they appear on the screen. We also ask how such links should be treated under our program-length commercial and host-selling policies.

52. We also invite comment on a broader question related to the advertising limits that arises with respect to both analog and digital broadcasting. Specifically, we ask whether the Commission should revise its definition of "commercial matter" to include types of program interruptions that do not currently contribute toward the commercial limits, such as certain program promotions.

53. In addition, we invite comment on how to address the issue of the airing in programs viewed by children of promotions for other upcoming programs that may be unsuitable for children to watch because either the promotions themselves or the programs they refer to contain sexual or violent content. This is an issue that arises with respect to both analog and digital broadcasting.

54. Finally, we invite commenters to address what steps the FCC might take to increase public awareness of the availability of core programming and how to locate it. We also ask whether there are other steps the FCC could take, apart from the issue of public awareness, to improve the quality of educational programming by, for example, seeking legislation to establish a mechanism to fund the production of high-quality educational and informational programming.

B. Legal Basis

Authority for the actions proposed in the *NPRM* may be found in Sections 4(i) and 303, 307, and 336(d) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 307, and 336(d), and in the Children's Television Act of 1990.

C. Recording, Recordkeeping, and Other Compliance Requirements

The *NPRM* invites comment on how the existing children's educational television programming requirements and children's commercial limits should apply to digital broadcasters. The *NPRM* also invites comment on whether the Commission should revise its definition of "commercial matter" to include types of program interruptions in children programs that do not currently contribute toward the commercial limits. We also ask what steps the FCC might take to address the issue of the airing in programs viewed by children of promotions for other upcoming programs that may be unsuitable for children to watch because either the promotions themselves or the programs they refer to contain sexual or violent content or suggestive or coarse language.

D. Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules

The rules under consideration in this proceeding do not overlap, duplicate, or conflict with any other rules.

F. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632.

A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.

55. Small TV Broadcast Stations. The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts.

56. The children's educational and informational programming requirements apply to commercial and noncommercial television stations. There are approximately 1,243 existing commercial television stations and 373 existing noncommercial television stations of all sizes that may be affected by the proposals contained in this *NPRM* related to our educational and informational programming requirements. The children's commercial limits apply to commercial television broadcasters and cable operators. Thus, in addition, there are approximately 10,500 cable systems of all sizes that could be affected by the proposals in the *NPRM* related to the children's commercial limits.

G. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

57. This *NPRM* invites comment generally on a number of issues related to application of the existing children's television programming requirements to digital broadcasters, and asks commenters to address various proposals advanced by commenters responding to the *NOI* in this proceeding. We seek comment on whether there is any significant impact on small entities that might result from any of these proposals. Any significant alternatives presented in the comments will be considered.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28610 Filed 11–7–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 99128355–0305–03; I.D. 101200F]

RIN 0648–AM50

Fisheries of the Northeastern United States; Proposed 2001 Fishing Quotas for Atlantic Surf Clams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2001 fishing quotas for Atlantic surf clams, ocean quahogs, and Maine mahogany ocean quahogs; request for comments.

SUMMARY: NMFS issues proposed quotas for the Atlantic surf clam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2001. Regulations governing these fisheries require NMFS to propose for public comment specifications for the 2001 fishing year. The intent of this action is to propose allowable harvest levels of Atlantic surf clams and ocean quahogs from the exclusive economic zone and an allowable harvest level of Maine mahogany ocean quahogs from the waters north of 43°50'N. lat. in 2001.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on December 8, 2000.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and the Essential Fish Habitat Assessment, are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is accessible via the Internet at http://www.nero.gov/ro/doc/nr.htm.

Written comments on the proposed specifications should be sent to the Regional Administrator. Mark on the outside of the envelope, "Comments—2001 Clam and Quahog Specifications." Comments may also be sent via facsimile (fax) to (978)281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

Send comments on any ambiguity or unnecessary complexity arising from the language used in this proposed rule to Patricia A. Kurkul, Regional Administrator.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Anderson, Fishery Management Specialist, 978–281–9226.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan (FMP) for the Atlantic Surf Clam and Ocean Quahog Fisheries directs NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow fishing to continue at that level for at least 10 years for surf clams and for 30 years for ocean quahogs. While staying within this constraint, the Council policy is to also consider the economic benefits of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481, May 19, 1998) added Maine mahogany ocean quahogs to the management unit and provide that a small artisanal fishery for ocean quahogs in the waters north of 43°50' N. lat. will have an annual quota with an initial amount of 100,000 Maine bushels (bu) (35,240 hectoliters (hL)) within a range of 17,000 to 100,000 Maine bu (5,991 hL to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery.

The fishing quotas must be in compliance with overfishing definitions for each species. The overfishing definition for ocean quahogs is based on a control rule, which requires a biomass target of ½ virgin biomass or 2 billion lb (907,200 mt) of meats (200 million bu); a fishing mortality rate (F) target of F0.1 = 0.02; a biomass threshold of ½ biomass target, or 1 billion lb (453,600 mt) of meats (100 million bu); and a fishing mortality threshold of F25% = 0.042. The current biomass is estimated to be around 3.3 billion lb (1.6 million mt) of meats (330 million bu), or about 80 percent of the virgin biomass, and current F is estimated to be 0.02. NMFS approved the overfishing definition for ocean quahogs contained in Amendment 12 to the FMP, but disapproved the proposed overfishing definition for surf clams because it was based only on surf clams from the Northern New Jersey area and did not take into account the entire range of the resource. The December 1999 Stock Assessment Review Committee (SARC) proposed an overfishing definition for surf clams, which the Council reviewed and approved at its March 2000 meeting. The Council-approved definition has a biomass target of ½ of current biomass as a proxy for FMSY (1.4 billion lb, or 640 thousand mt, or 82.4 million bu); a biomass threshold of ½ of the proxy for BMSY (700 thousand lb or 320 thousand mt); a fishing mortality threshold of FMSY, where the current best proxy for FMSY is the natural mortality rate (M) (0.15), and requires that the F target will always be set less than the F threshold and that it will be the F associated with the Council-selected quota (approximately 0.03 for 2001). This new overfishing definition for surf clams will be submitted to the Secretary for approval in Amendment 13, which the Council anticipates will be completed in early 2001.

In proposing these quotas, the Council considered the available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas closed to fishing. This information was presented in a written report prepared by the Council staff. The proposed quotas for the 2001 Atlantic surf clam, ocean quahog, and Maine mahogany ocean quahog fisheries are shown in the following table. The status quo levels for 2000 for both the regular ocean quahog and the Maine mahogany ocean quahog will be maintained, but the surf clam quota will be increased by 11 percent, from 2.565 million bu to 2.85 million bu (1.366 million hL to 1.518 million hL).

PROPOSED 2001 SURF CLAM/OCEAN QUAHOG QUOTAS

Fishery	2001 final quotas (bu)	2001 final quotas (hL)
[1]Surf clam	2,850,000	1,518,000
[1]Ocean quahog	4,500,000	2,396,000
[2]Maine mahogany quahog	100,000	35,240

[1] 1 bushel = 1.88 cubic ft. = 53.24 liters

[2] 1 bushel = 1.2445 cubic ft. = 35.24 liters

Surf Clams

The Council recommended a 2001 quota of 2.850 million bu (1.518 million hL) for surf clams, an 11-percent increase over the 2000 quota and the first change since 1995. This level of quota is reflective of the quota levels that existed during the first 5 years of the Individual Transferable Quota (ITQ) system (1990 to 1994). The most recent biological assessments (from the 1997 and 1999 surveys) indicate the resource is healthy, composed of many age classes, and can safely sustain increased harvests. However, the assessments noted that the majority of the surf clam catch is derived from one area (Northern New Jersey) and cautioned that careful consideration should be given to implementing a stock-wide quota increase in order to avoid localized depletion of the surf clam stock. In addressing this concern, the Council has recommended only a slight increase of the surf clam quota. Due to recent evidence of sufficient recruitment, it is felt that this level of quota will not harm the long-term sustainability of the resource. In 1999, the F associated with a quota of 2.565 million bu (1.366 million hL) was approximately 0.02; this slight quota increase may increase the F to at most 0.03.

The proposed quota takes into account analysis of surf clam abundance that was part of the 30th Northeast Regional Stock Assessment Workshop (SAW 30). SAW 30 utilized data from the 1999 surf clam survey, which included work to estimate dredge efficiency. Results from the 1999 survey and assessment corroborate those of the 1997 survey and assessment and provided the Council the opportunity to safely increase the quota.

The Council continues to assume that none of the surf clams on Georges Bank (approximately one quarter of the total resource) will be available in the near future for harvesting because of paralytic shellfish poisoning. This area has been closed to the harvest of clams and other shellfish since 1989, and the Council and NMFS have no reason to believe that it will reopen in the near future.

Ocean Quahogs

The Council recommended a 2001 quota of 4.5 million bu (2.396 million hL) for ocean quahogs. This quota would be identical to that adopted for the past 2 years, but an increase of 13 percent from the 1998 quota level. The FMP specifies that the quota level must comply with the ocean quahog overfishing definition.

The 1999 quota yielded an F of approximately 0.02, compared with the F threshold of 0.04 contained in the overfishing definition. The specific F associated with the 2001 quota is expected to be close to the F in 1999 because a similar proportion of the biomass remains unexploited.

The Atlantic surf clam and ocean quahog quotas are specified in standard bushels of 53.24 liters per bushel, while the Maine mahogany ocean quahog quota is specified in "Main" bushels of 35.24 liters per bushel. Because Maine mahogany ocean quahogs are the same species as ocean quahogs, both fisheries are combined and share the same ocean quahog overfishing definition. When the two quota amounts are added, the total allowable harvest is still lower than the level that would result in overfishing for the entire stock, as previously defined in the ocean quahog overfishing definition.

The Council proposed a 2001 ocean quahog quota based on the analysis of abundance for that species found in the draft report of the 31st Northeast Regional Stock Assessment Workshop (SAW 31), concluded in August 2000. Similar to surf clams, SAW 31 and the assessment from the 1997 survey (SAW 27) included work to estimate dredge efficiency and showed a significant increase in the estimate of ocean quahog biomass. Although 36 percent of the resource is located on Georges Bank, SAW 31 did not question whether Georges Bank would ever be reopened. The resource is of sufficient size overall that the proportion of ocean quahogs that exists on Georges Bank is not necessary to meet the Council's 30-year supply policy. It is estimated that, even when excluding the ocean quahog resource portion on Georges Bank, around 80 percent of the virgin biomass remains after 2 decades of harvesting these long-lived creatures.

Although SAW 31 showed that the ocean quahog quota could have been increased beyond the 2000 quota level, the Council did not recommend any change for 2001 because of four major factors: (1) The 1999 quota was not constraining to the industry; (2) nearly all industry members supported the 4.5-million bu (2.396- million hL) harvest level; (3) repeated concern was expressed by the industry over the continued lack of apparent ocean quahog recruitment south of Georges Bank; and (4) unless prices or technology changes significantly in the near future, it is unlikely that the ocean quahog fishery extractions in the past are sustainable because those extractions have been dependent on rich virgin beds.

The Council recommended that the Maine mahogany ocean quahog quota remain unchanged from the 2000 quota level at 100,000 Maine bu (35,240 hL) for 2001. There has been no attempt yet to develop and conduct a scientific survey of the extent of the Maine resource. From the information currently available, maintaining the quota at its current maximum level for another year will not seriously constrain the fishery or endanger the resource. To increase the quota beyond the current maximum level of 100,000 bu (35,240 hL) will require a scientific survey and assessment led by the State of Maine.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an Initial Regulatory Flexibility Analysis (IRFA) in section 5.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the **SUPPLEMENTARY INFORMATION** section. A summary of the IRFA follows:

In 1999, a total of 45 vessels reported harvesting surf clams or ocean quahogs from Federal waters under an ITQ system. Average 1999 gross income from surf clam harvests was $646,701 per vessel. Average 1999 gross income from ocean quahog harvests was $691,316 per vessel. In the small artisanal fishery for ocean quahogs in Maine, 38 vessels reported harvests in the clam logbooks, with an average value of $68,097 per boat. All of these vessels are small entities. The Council recommends no change in the 2001 quotas for ocean quahogs or Maine mahogany ocean quahogs from their present 2000 quotas of 4.500 and 0.100 million bu (2.396 million hL and 35,240 hL), respectively. The Council recommends an 11-percent increase in the surf clam quota from 2.565 million bu to 2.85 million bu (1.366 million hL to 1.518 million hL).

Since the 1999 harvest level of 3.772 million bu (2.0 million hL) for ocean quahogs is below the 2001 proposed quota and the Council assumes that no changes in fishing effort or yield-to-effort will take place in 2000, the Council believes that the 2001 proposed quota will yield a surplus quota available to vessels participating in the ocean quahog fishery. In addition, the Maine mahogany quahog fishery 1999 harvest level of 0.094 million Maine bu (33,134 hL) is slightly below the 2001 proposed quota, and preliminary landings reports for 2000 suggest that the Maine fishery may reach the 0.100-million Maine bu (35,240 hL) quota level allocated to the fishery before the year ends. However, fishermen may continue harvesting after the mahogany quahog is reached, provided they purchase allocation from the ITQ portion of the ocean quahog fishery.

In the case of the surf clam fishery, nearly 99 percent, or 2.538 million bu (1.351 million hL), of the 1999 allocation of 2.565-million bu (1.366-million hL) quota was harvested. Preliminary trends for 2000 suggest that the quota will likely be harvested this year as well. Due to the scarcity of dense ocean quahog beds inshore, the surf clam industry has been increasingly shifting its focus away from the harvesting of ocean quahogs and has begun harvesting an increased number of surf clams. Therefore, the Council believes that the market can now absorb the 2001 proposed quota increase of 11 percent.

The Council analyzed four ocean quahog quota alternatives, in addition to the preferred 4.500-million bu (2.396-million hL) option, including 4.000, 4.250, 4.750, and 6.000 million bu (2.129, 2.263, 2.529, and 3.195 million hL). The minimum allowable quota specified in the current OY range is 4.0 million bu (2.129 million hL) of ocean quahogs. Adoption of this quota would represent a 12-percent decrease from the current 4.5-million bu (2.396-million hL) quota and, assuming the entire quota is harvested, a 6.1-percent increase in harvest from the 1999 harvest level of 3.770 million bu (2.0 million hL). This alternative would take the most conservative approach to managing the fishery that is currently available to the Council. Adopting the maximum allowable quota of 6.000 million bu (3.195 million hL) for ocean quahogs would represent a 33-percent increase in allowable harvest and a 59-percent increase in landings from 1999, assuming all the quota is taken. The industry does not have a market available to absorb such a massive increase in landings and may not have the vessel capacity necessary to harvest a quota this large. All of the alternatives, including the preferred alternative, would yield increased revenues relative to revenues from actual landings.

The Council identified four surf clam quota alternatives in addition to the preferred alternative of 2.850 million bu (1.518 million hL), including 1.850, 2.365, 2.565, and 3.400 million bu (0.985, 1.259, 1.366, and 1.810 million hL). The minimum allowable quota specified in the current OY range is 1.850 million bu (0.985 million hL) of surf clams. Adoption of this quota would represent a 28-percent decrease from the current 2.565-million bu (1.366-million hL) quota, and a 27-percent decrease from the 1999 harvest level of 2.538 million bu (1.351 million hL). Assuming that demand is price elastic, a reduction in quota of this magnitude would have a substantially negative impact on overall exvessel revenues. Adoption of the 2.365-million bu (1.259-million hL) quota would most likely have a limited impact on small entities, since it is identical to 1998 base year landings of 2.365 million bu (1.259 million hL). Adopting the maximum allowable quota of 3.40 million bu (1.810 million hL) for surf clams would allow for a 33-percent increase in harvest. The preferred alternative allows for the 11-percent increase of 2.565 to 2.85 million bu (1.366 million hL to 1.518 million hL). In summation, the Council determined that the only alternative that would significantly negatively impact revenues to vessels is the 1.850-million bu (0.985-million hL) alternative for surf clams. The status quo quota and the slight reduction alternative would be restrictive and have a slight impact on revenues. The resource can support the 11-percent increase in landings proposed in the preferred alternative, and the industry believes it can utilize this additional product and thus have a beneficial impact for the Nation.

The FMP specifies that the maximum quota for Maine mahogany ocean quahogs is 100,000 Maine bu (35,240 hL) and that an increase of the quota would require a scientific survey and stock assessment of the Maine mahogany ocean quahog resource. An assessment has not been completed, and, therefore, the Council did not look at higher alternative quotas for this fishery. The Council staff analyzed two smaller Maine mahogany ocean quahog quota alternatives, in addition to the preferred 100,000-Maine bu (35,240-hL) option, including 50,000 Maine bu (17,624 hL) and 72,466 Maine bu (25,543 hL). Maine mahogany ocean quahog fishermen may supplement their quota by purchasing or renting ocean quahog quota from ITQ holders. Therefore, any quota below the 1999 landing level of 93,938 bu (33,112 hL) would most likely cause a decrease in revenues to individual vessels, while a quota greater than that level could cause an increase.

Nine to 12 processors participated in the surf clam and ocean quahog fisheries. However, five firms are responsible for the vast majority of purchases in the exvessel market and sale of processed clam products in appropriate wholesale markets. Impacts to surf clams and ocean quahog processors would most likely mirror the impacts of the various quotas to vessels as discussed above. Revenues earned by processors would be derived from the wholesale market for clam products, and, since a large number of substitute products (i.e., other food products) are available, the demand for processed clam products is likely to be price elastic and revenues, resulting in revenue increases or decreases with changes in price.

In 2000, surf clam allocation holders totaled 106, while 65 firms or individuals held ocean quahog allocation. If the recommended quotas are accepted (i.e., no change from 2000 quotas on ocean quahogs, Maine mahogany ocean quahogs, and a slight increase of 11 percent for surf clams), it is likely that impacts to allocation holders or buyers will be minimal. Theoretically, increases in quota would most likely benefit those who must purchase quota through lower prices (values) and negatively impact sellers of quota because the quota would be reduced in value. Decreases in quota would most likely have an opposite effect.

This proposed rule would not impose any new reporting, recordkeeping, or other compliance requirements. Therefore, the costs of compliance would remain unchanged.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule. Such comments should be sent to Patricia A. Kurkul, the Regional Administrator (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 1, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–28675 Filed 11–7–00; 8:45 am]

BILLING CODE: 3510–22–S

Notices

Federal Register
Vol. 65, No. 217.
Wednesday, November 8, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Determination of Total Amounts and Quota Period for Tariff-Rate Quotas for Raw Cane Sugar and Certain Imported Sugars, Syrups, and Molasses

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice establishes the aggregate quantity of 1,362,000 metric tons, raw value, of raw cane sugar that may be entered under subheading 1701.11.10 of the Harmonized Tariff Schedule of the United States (HTS) during fiscal year (FY) 2000, with 227,000 metric tons held in reserve for possible allocation. This notice also establishes the aggregate quantity of 60,000 metric tons (raw value basis) for certain sugars, syrups, and molasses that may be entered under subheading 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS during FY 2000.

EFFECTIVE DATE: November 8, 2000.

ADDRESSES: Inquiries may be mailed or delivered to the Important Policy and Programs Division Director, Foreign Agriculture Service, AgStop 1021, South Building, U.S. Department of Agriculture, Washington, D.C. 20250–1021 or e-mail at *williamsdj@fas.usda.gov.*

FOR FURTHER INFORMATION CONTACT: David Williams (Team Leader, Import Policy and Programs Division), 202–720–2916.

SUPPLEMENTARY INFORMATION: Paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS provides in pertinent part as follows:

> The aggregate quantity of raw cane sugar entered, or withdrawn from warehouse for consumption, under subheading 1701.11.10, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 1,117,195 metric tons, as shall be established by the Secretary of Agriculture (hereinafter referred to as "the Secretary"), and the aggregate quantity of sugars, syrups, and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 and 2106.90.44, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 22,000 metric tons, as shall be established by the Secretary. With either the aggregate quantity for raw cane sugar or the aggregate quantity for sugars, syrups, and molasses other than raw sugar, the Secretary may reserve a quota quantity for the importation of specialty sugars as defined by the United States Trade Representative.

These provisions of paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS authorize the Secretary of Agriculture to establish the total amounts (expressed in terms of raw value) for imports of raw cane sugar and certain other sugars, syrups, and molasses that may be entered under the subheadings of the HTS subject to the lower tier of duties of the tariff-rate quotas (TRQs) for entry during the fiscal year beginning October 1. Allocations of the quota amounts among supplying countries and areas will be made by the United States Trade Representative.

Notice

I hereby give notice, in accordance with paragraph (a) of additional U.S. note 5 to chapter 17 of the HTS, that an aggregate quantity of up to 1,362,000 metric tons, raw value, or raw cane sugar described in subheading 1701.11.10 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 1999, through September 30, 2000. Of this quantity, 1,135,000 metric tons is immediately available, to be allocated by the United States Trade Representative, and the remaining 227,000 metric tons will be held in reserve for possible allocation if warranted by market conditions.

I will issue Certificates of Quota Eligibility (CQEs) to allow the Philippines, Brazil, and the Dominican Republic to ship up to 25 percent of their respective initial country allocations at the low-tier tariff during each quarter of FY 2000. Australia, Guatemala, Argentina, and Peru will be allowed to ship up to 50 percent of their respective initial country allocations in the first six months of FY 2000. Unentered allocations, during any quarter or six month period, may be entered in any subsequent period. For all other countries, CQEs corresponding to their respective country allocations may be entered at the low-tier tariff at any time during the fiscal year. If additional country allocations result from the reserved TRQ quantity, they may be entered subsequent to their announcement by the United States Trade Representative.

I have further determined, in accordance with paragraph (a) of additional U.S. note 5 to chapter 17 of the HTS, that an aggregate quantity of up to 60,000 metric tons, raw value, of certain sugars, syrups, and molasses described in subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 or the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 1999 through September 30, 2000. I have further determined that out of this quantity of 60,000 metric tons, the quantity of 14,656 metric tons, raw value, is reserved for the importation of specialty sugars. These TRQ amounts may be allocated among supplying countries and areas by the United States Trade Representative.

Mexico's access to the U.S. market under the North American Free Trade Agreement (NAFTA) is established at 25,000 metric tons raw value. That access is for either raw or refined sugar, but total access under the refined sugar allocation and the raw-sugar allocation is not to exceed 25,000 metric tons. Mexico's access for either a raw or refined sugar is established pursuant to Annex 703.2 of the NAFTA.

Signed at Washington, D.C. on October 30, 2000.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 00–28661 Filed 11–7–00; 8:45 am]

BILLING CODE 3410–10–M

AMTRAK REFORM COUNCIL

Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of Special Public Business Meeting in New York, New York.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997 (Reform Act), the Amtrak Reform Council (ARC) gives notice of a

special public meeting of the Council on Thursday, November 16, 2000. The meeting will begin at 1 p.m. The Council's agenda includes a discussion of the staff's working paper on Amtrak and the Northeast Corridor infrastructure; and a discussion of the staff's summary of the Council's outreach meetings, as well as other items proposed by the Council staff.

DATES: The Business Meeting will be held on Thursday, November 16, 2000 from 1 p.m. to 6 p.m. This meeting is open to the public.

ADDRESSES: The Business Meeting will take place in the New York State Public Service Commission, Department of Public Service, New York City Branch at One Penn Plaza, in New York, New York 10019. The location is between Seventh and Eighth Avenue and has street entrances on West 33rd and West 34th Street. The meeting will take place in the Boardroom on the eighth floor. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, SW., Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061. For information regarding ARC's upcoming events, the agenda for meetings, the ARC's First Annual Report, information about ARC Council Members and staff, and much more, you can also visit the Council's website at www.amtrakreformcouncil.gov.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (Reform Act), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the Reform Act provides: that the Council is to monitor cost savings from work rules established under new agreements between Amtrak and its labor unions; that the Council submit an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after a specified period, the Council has the authority to determine whether Amtrak can meet certain financial goals specified under the Reform Act and, if it finds that Amtrak cannot, to notify the President and the Congress.

The ARAA prescribes that the Council is to consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and the leadership of the Congress. Members serve a five-year term.

Issued in Washington, DC—November 2, 2000.

Thomas A. Till,

Executive Director.

[FR Doc. 00–28598 Filed 11–7–00; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF COMMERCE

[I.D. 110200B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Vessels Operating in Internal Waters.

Form Number(s): None.

OMB Approval Number: 0648-0329.

Type o f Request: Regular submission.

Burden Hours: 36.

Number of Respondents: 6.

Average Hours Per Response: 30 minutes.

Needs and Uses: Foreign fishing vessels engaged in processing and support of U.S. fishing vessels within the internal waters of a state, in compliance with the terms and conditions set by the authorizing governor, are required to report the tonnage and location of fish received from U.S. vessels. This reporting is required by the Magnuson-Stevens Fishery Conservation and Management Act. Weekly reports are submitted to the NMFS Regional Administrator to allow monitoring of the quantity of fish received by foreign vessels.

Affected Public: Business and other for-profit organizations.

Frequency: Weekly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: November 1, 2000.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–28679 Filed 11–7–00; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

[I.D. 110300A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Antarctic Marine Living Resources Conservation and Management Measures.

Form Number(s): None.

OMB Approval Number: 0648-0194.

Type of Request: Regular submission.

Average Hours Per Response: 28 hours for a new or exploratory fishery application, 30 minutes for a harvesting permit application, 1 minute for a radio report, 12 minutes for a transshipment permit application, 30 minutes for a dealer permit application, 15 minutes for an import ticket, 30 minutes for a re-export permit application, 3 minutes for a catch document from an importer, 10 minutes for a catch document from a re-exporter, 15 minutes for a catch document from a harvester.*Burden Hours*: 149.

Number of Respondents: 62.

Needs and Uses: Pursuant to the Antarctic Marine Living Resources Convention Act of 1984, NOAA supports the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). CCAMLR meets annually to adopt conservation and management measures. These include harvesting restrictions, import controls, and data reporting requirements. As a member of CCAMLR, the United States is obligated to put these measures into effect.

Affected Public: Business and other for-profit organizations, individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: November 1, 2000.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–28681 Filed 11–7–00; 8:45am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (1999) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of November 2000, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Periods
Antidumping Duty Proceedings	
Argentina:	
A–357–405—Barbed Wire & Barbless Fencing Wire	11/1/99–10/31/00
A–357–007—Carbon Steel Wire Rod*	11/1/99–12/31/99
Brazil:	
A–351–809—Circular Welded Non-Alloy Steel Pipe	11/1/99–10/31/00
Japan:	
A–588–038—Bicycle Speedometers*	11/1/99–12/31/99
A–588–813—Light Scattering Instruments*	11/1/99–12/31/99
Mexico:	
A–201–805—Circular Welded Non-Alloy Steel Pipe	11/1/99–10/31/00
Singapore:	
A–559–502—Light-Walled Rectangular Pipe & Tube*	11/1/99–12/31/99
Republic of Korea:	
A–580–809—Circular Welded Non-Alloy Steel Pipe	11/1/99–10/31/00
Taiwan:	
A–583–814—Circular Welded Non-Alloy Steel Pipe	11/1/99–10/31/00
A–583–826—Collated Roofing Nails	11/1/99–10/31/00
The People's Republic of China:	
A–570–850—Collated Roofing Nails	11/1/99–10/31/00
A–570–831—Fresh Garlic	11/1/99–10/31/00
A–570–826—Paper Clips	11/1/99–10/31/00
A–570–811—Tungsten Ore Concentrates*	11/1/99–12/31/99
Venezuela:	
A–307–805—Circular Welded Non-Alloy Steel Pipe*	11/1/99–12/31/99
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
Japan:	
A–588–090—Certain Small Electric Motors of 5 to 150 Horsepower*	11/1/99–12/31/99
Mexico:	
A–201–820—Fresh Tomatoes	11/1/99–10/31/00
Singapore:	
C–559–001—Refrigeration Compressors*	11/1/99–12/31/99
Ukraine:	
A–823–805—Silicomanganese**	10/1/99–9/30/00

*Order revoked effective 01/01/2000, as a result of sunset review.

**In the opportunity notice published on October 20, 2000 (65 FR 63057), the country listed for silicomanganese was incorrect. The correct country for that product is listed above.

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of November 2000. If the Department does not receive, by the last day of November 2000, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

November 2, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 00–28682 Filed 11–7–00; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–810]

Initiation of Antidumping Duty Investigation: Solid Agricultural Grade Ammonium Nitrate From Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 8, 2000.

FOR FURTHER INFORMATION CONTACT: Melani Miller or Jarrod Goldfeder, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0116 and (202) 482–0189, respectively.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR Part 351 (April 1999).

The Petition

On October 13, 2000, the Department of Commerce ("the Department") received a petition filed in proper form by the Committee for Fair Ammonium Nitrate Trade ("the petitioner"), whose members are domestic producers of solid agricultural grade ammonium nitrate. The Department received supplemental information to the petition on October 27, 2000.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of solid agricultural (or fertilizer) grade ammonium nitrate from Ukraine are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department initiate (*see Determination of Industry Support for the Petition* section below).

Scope of Investigation

For purposes of this investigation, the products covered are solid, fertilizer grade ammonium nitrate products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate). The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 3102.30.00.00. Although the HTSUS subheadings are provided for convenience and for purposes of the U.S. Customs Service, the written description of the merchandise under investigation is dispositive.

This scope is identical to the scope used in the Department's investigation of solid fertilizer grade ammonium nitrate from the Russian Federation. *See Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*, 65 FR 42669 (July 11, 2000) ("*Ammonium Nitrate from Russia*"). Nevertheless, during our review of the petition, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27296, 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit ("CRU") at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

Period of Investigation

Section 351.204(b) of the Department's regulations states that, in the case of a nonmarket economy country, in an investigation, the Department normally will examine merchandise sold during the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed. The regulations further state that the

Department may examine merchandise sold during any additional or alternate period it concludes is appropriate.

Following the above noted guidelines from section 351.204(b) of the Department's regulations, the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed would be the second and third fiscal quarters of 2000, April through September 2000.

For this investigation, the petitioner has requested that the Department either modify or expand the period of investigation ("POI") to include the first fiscal quarter of 2000, January through March 2000. The petitioner argues that the ammonium nitrate industry is highly seasonal and that the volume of ammonium nitrate shipments is directly linked to agricultural cycles; specifically, demand and imports are higher during the spring planting season which runs from February through June. The petitioner notes that the Department has recognized the seasonality of the ammonium nitrate market in *Ammonium Nitrate from Russia*. Moreover, the petitioner points out that calendar year 2000 import data for Ukraine supports the conclusion that the first quarter 2000 should be included in the POI. According to the petitioner, the data shows that imports of ammonium nitrate from Ukraine have increased dramatically in the first two quarters of 2000 as compared to prior years. If only the second and third quarters were examined, the petitioner alleges that the Department would have a much more limited number of sales on which to make its determination.

The Department is considering the petitioner's arguments on this matter and will make a determination on whether to expand the normal POI as established by section 351.204(b) of the Department's regulations, April 1 through September 30, 2000, as the investigation proceeds.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry," has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins in "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the *Scope of Investigation* section above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this dometsic like product definition.

The Department has determined that the petition contains adequate evidence of industry support; therefore, polling is unnecessary. *See Initiation Checklist* at Industry Support. To the best of the Department's knowledge, the producers who support the petition account for more than 50 percent of the production of the domestic like product. Additionally, no interested party pursuant to section 771(b)(A), (C), (D), (E) or (F) of the Act has expressed opposition on the record to the petition. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which our decision to initiate this investigation is based. Should the need arise to use any of this information in our preliminary or final determination for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

The petitioner identified four potential Ukrainian exporters and producers of solid agricultural grade ammonium nitrate. The petitioner based export price on official U.S. import statistics for the period January through June 2000. From these starting prices, the petitioner deducted foreign inland freight and foreign brokerage and handling. The petitioner based foreign inland freight on Indian rail rates as referenced by the Department at its online Document Library (Index of Factor Values). The foreign brokerage and handling charges were also based on the Department's Index of Factor Values. Both the inland freight and brokerage and handling rates were adjusted for inflation using the Indian Wholesale Price Index ("WPI") as published in the *International Financial Statistics* of the International Monetary Fund.

The petitioner asserts that the Department considers Ukraine to be a nonmarket economy country ("NME") and, therefore, constructed normal value based on the factors of production ("FOP") methodology pursuant to section 773(c) of the Act. In previous cases, the Department has determined that Ukraine is an NME. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754 (November 19 1997) and *Steel Concrete Reinforcing Bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine, and Venezuela*, 65 FR 45754 (July 25, 2000). In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. As of the date of initiation of this proceeding, the NME status of Ukraine has not been revoked by the Department and, therefore, remains in effect. Accordingly, the normal value of the product appropriately is based on FOP valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of Ukraine's NME status and the granting of separate rates to individual exporters.

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[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petitions*, 56 FR 32376, 32380–81 (July 16, 1991).

For the factors of production, the petitioner used publicly available factor information from a Russian ammonium nitrate producer taken from *Ammonium Nitrate from Russia*. The petitioner stated that it was unable to gain access to any specific information regarding the factors of production for any Ukrainian ammonium nitrate producer and was, thus, unable to furnish information on Ukrainian FOP.

According to the petitioner, the use of the Russian producer's public factors provides a sound basis for estimation of Ukrainian factors because (1) both the Ukrainian and Russian ammonium nitrate plants use the same type of production process, and (2) Ukrainian and Russian ammonium nitrate plants use the same types of production technology. Thus, the petitioner has taken the position that, for purposes of the petition, the producers in Ukraine use the same inputs in the same quantities as do producers in Russia. Because data regarding the quantities of inputs used by Ukrainian producers was not reasonably available to the petitioner, and because the petitioner has provided information showing that the Russian and Ukrainian ammonium nitrate industries are substantially similar, we have accepted the use of the Russian factor information.

The petitioner selected India as the most appropriate surrogate market economy. In accordance with section 773(c)(4) of the Act, the petitioner valued factors of production, where possible, using Indian data. Labor was valued using the regression-based wage rate for Ukraine provided by the Department in accordance with section 351.408(c)(3) of the Department's regulations. Natural gas and electricity were valued using values from a 1998–1999 public annual report of an Indian producer of merchandise similar to the subject merchandise. Pursuant to the Department's past practice, the petitioner valued synthetic gas, purge gas, and hydrogen using "natural gas equivalents" (*see Ammonium Nitrate from Russia*) Catalysts and other auxiliary materials were valued using United Nations import data for India. One auxiliary material, lilamine, for which the petitioner could not find a public Indian surrogate value was valued using information from a domestic ammonium nitrate producer. For factory overhead, selling, general and administrative expenses, and profit, the petitioner applied ratios derived from information gathered from the same 1998–1999 public annual report that it used to value natural gas and electricity. Where no contemporaneous values could be found, the non-contemporaneous values used were adjusted to the comparison period to take inflation into account.

Based on a comparison of export price to normal value, as adjusted by the Department, the information in the petition and other information reasonably available to the Department indicates weighted-average dumping margins of between 222 and 285 percent. A description of the adjustments which the Department made to petitioner's calculations are contained in the *Initiation Checklist*.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of solid agricultural grade ammonium nitrate from Ukraine are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, ITC data and information gathered during *Ammonium Nitrate from Russia*, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist* at 4 and 5.

Allegation of Critical Circumstances

The petitioner has alleged that critical circumstances exist with regard to imports of solid, agricultural grade ammonium nitrate from Ukraine. To support its allegation, the petitioner provided evidence in the petition showing, among other things, a trend of increased imports of the subject merchandise during the period January to June 2000. Specifically, the petitioner contends that ammonium nitrate imports from Ukraine surged from no imports in 1999 to 155,398 short tons during the time period from January through June 2000.

The petitioner also provided evidence suggesting a history of dumping, and, alternatively, that the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the merchandise was being sold at less than fair value and that there was likely to be material injury as a result. The petitioner contends that, though there is not currently an existing antidumping order on Ukrainian ammonium nitrate, the European Union has made a preliminary determination that dumping is taking place in the European Union of ammonium nitrate from Ukraine. This, in the petitioner's view, provides evidence of a history of dumping.

Additionally, consistent with the Department's practice of reviewing the margins supported in the petition as evidence of importer knowledge, the petitioner notes that the petition margin of 285% is well above the standard 25% threshold. Finally, the petitioner argues that the timing of Ukraine's entrance into the U.S. ammonium nitrate market (immediately following the Department's January 7, 2000, preliminary determination that Russian ammonium nitrate was sold in the United States at less than normal value and the rapid decline of imports of ammonium nitrate from Russia), along with the significant increase in volume of imports and the adverse pricing effects these imports had, provides evidence that importers knew, or should have known, that Ukrainian ammonium nitrate imports were likely to cause injury to the domestic industry.

Based on these allegations, we will investigate this matter further and will make a preliminary critical circumstances determination based on available information at the appropriate time in accordance with section 351.206 of the Department's regulations. *See Initiation Checklist* at 9.

Request for an Expedited Preliminary Determination

The petitioner has requested that, in accordance with the Department's June 8, 2000, policy bulletin regarding expedited antidumping duty investigations, the Department issue an expedited preliminary determination in this investigation. *See* Department Policy Bulletin No. 00.1 "Expedited Antidumping Duty Allegations" ("policy bulletin", which can be found on the Department's web page at *http://ia.ita.doc.gov*. The policy bulletin lays out specific criteria that the Department will consider in deciding whether to expedite an investigation, including evidence of an extraordinary surge in imports prior to the filing of the petition, evidence of significant import penetration, evidence of an unusually high dumping margin or recent declines

in import prices, whether there are prior determinations of dumping against the same product (or class of product) from the subject country in the United States or in other countries, and whether the Department's resources permit it to expedite the preliminary determination.

The petitioner alleges that there has been a surge of "unfairly traded imports" of ammonium nitrate from Ukraine at "unprecedented levels" and that Ukrainian producers have captured U.S. market share through "aggressive and persistent underselling." The petitioner further alleges that, after the U.S. industry received relief in June 2000 via a suspension agreement in *Ammonium Nitrate from Russia*, U.S. importers simply made Ukraine a "replacement" source for Russian ammonium nitrate. The petitioner claims that the product is highly seasonal and that early relief is needed to avoid losing sales during the critical spring 2001 growing season.

We are setting aside a period for parties to comment on the petitioner's request for an expedited preliminary determination. The Department encourages all parties to submit such comments no later than November 13, 2000. Comments should be addressed to the Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. We intend to make a determination on the petitioner's request for an expedited preliminary determination by November 16, 2000.

Initiation of Antidumping Investigation

Based on our examination of the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of solid agricultural grade ammonium nitrate from Ukraine are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of Ukraine.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by November 27, 2000, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of solid fertilizer grade ammonium nitrate from Ukraine. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published in accordance with section 777(i) of the Act.

Dated: November 3, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–28683 Filed 11–7–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110200E]

Survey to Measure Effectiveness of Community-Oriented Policing for ESA Enforcement

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 8, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dayna Matthews, National Marine Fisheries Service, 510 Desmond Drive S.E., Suite 103, Lacey, WA 98503 (360-753-4409).

SUPPLEMENTARY INFORMATION:

I. Abstract

The objective of the survey is to evaluate the success of the NMFS Office for Law Enforcement community-oriented policing program for Endangered Species Act (ESA) enforcement for anadromous species in the Pacific Northwest.

II. Method of Collection

The information will be gathered through both voluntary self-administered surveys and in-depth interviews.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; Federal government; State, local, or tribal government.

Estimated Number of Respondents: 880.

Estimated Time Per Response: 20 minutes for a survey, 80 minutes for an interview.

Estimated Total Annual Burden Hours: 375.

Annual Cost to Public: $700.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 1, 2000.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–28680 Filed 11–7–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103000E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Skate Oversight Committee and Skate Advisory Panel in November, 2000. Recommendations from these committees will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The Skate Advisory Panel meeting will held on Thursday, November 30, 2000, at 8:30 a.m. and the Skate Oversight Committee will join them at 9:30 a.m.

ADDRESSES: The meeting will be held at the Ramada Inn, 936 West Main Road, Middletown, RI 02842; telephone: (401) 846-7600

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465-0492.

SUPPLEMENTARY INFORMATION: This is the first meeting for the newly-established Skate Advisory Panel. Advisors will meet to review advisory panel policies and elect a chairman. The Skate Committee will join them for a workshop on skate species identification. There will be a presentation of the final Skate Stock Assessment and Fishery Evaluation (SAFE) Report and development and approval of a scoping document for Skate Fishery Management Plan. The committee will review a timeline for scoping.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: November 2, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–28678 Filed 11–7–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103000F]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Advisory Panel Selection Committee (closed), Controlled Access Committee, Marine Reserves Committee, Dolphin Wahoo Committee and the South Atlantic Board. Joint meetings of the Snapper Grouper Committee and Advisory Panel, the Law Enforcement Committee and Advisory Panel, and the Red Drum Committee and the South Atlantic Board will also be held. Public comment periods will be held on the proposed Dolphin Wahoo Fishery Management Plan (FMP) and any framework changes to the Snapper Grouper FMP. There will also be a Council Session.

DATES: The meetings will be held from November 27-December 1, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Atlantic Beach Hotel, 2717 West Fort Macon Road, Atlantic Beach, NC 28512; telephone: 1-800-624-8875 or (252) 240-1155, fax: (252) 240-1452.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571-4366; fax: (843) 769-4520; email: kim.iverson@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

November 27, 2000, 1:30 p.m. - 5:30 p.m.- Joint Snapper Grouper Committee and Advisory Panel Meeting;

The Snapper Grouper Committee and Advisory Panel will meet jointly to review snapper grouper species assessments and reports, review the Compliance Report, review framework items including the use of powerheads, quota overruns and other items as necessary. The Committee and Advisory Panel will also hear a report on the status of the red porgy assessment and projections peer review.

November 28, 2000, 8:30 a.m. - 10 a.m.- Joint Snapper Grouper Committee and Advisory Panel Meeting (continued);

The Snapper Grouper Committee and Advisory Panel will meet to develop Committee recommendations for ranking marine reserves criteria and for the National Artificial Reef Plan.

November 28, 2000, 10 a.m. to 12 noon- Marine Reserves Committee Meeting;

The Marine Reserves Committee will meet to develop recommendations on the Gray's Reef Memorandum of Understanding (MOU), discuss development of a strategy to incorporate Gray's Reef in the Council's marine reserve process, review and develop comments and recommendations on the NMFS draft White Paper, develop recommendations for ranking marine reserves criteria and review the status of a closed area lawsuit in the Gulf of Mexico.

November 28, 2000, 1:30 p.m. - 3:30 p.m.- Dolphin Wahoo Committee Meeting;

The Dolphin Wahoo Committee will meet to review the actions of the Caribbean and Gulf of Mexico Councils regarding the Dolphin Wahoo FMP and revisions to the FMP specific to the other Council's actions.

November 28, 2000, 3:30 p.m. - 5 p.m.- Joint Red Drum Committee and South Atlantic Board Meeting;

The Red Drum Committee will meet jointly with the South Atlantic Board to receive a briefing on the process for transferring red drum management to the Atlantic States Marine Fisheries Commission (ASMFC) and provide directions to staff.

November 29, 2000, 8:30 a.m. - 10:30 a.m.- South Atlantic Board Meeting;

The South Atlantic Board will meet to discuss the coordination of fish contaminant sampling and hear presentations on the 2001-05 management plan, trawl survey results and the data management web page and data access items.

November 29, 2000, 10:30 a.m. - 12 noon- Advisory Panel Selection Committee Meeting (closed session);

The Advisory Panel Selection Committee will meet to review

membership applications and develop recommendations.

November 29, 2000, 1:30 p.m.- 5:30 p.m. - Controlled Access Committee Meeting;

The Controlled Access Committee will meet to hear a NMFS presentation on vessel capacity issues and develop recommendations, review options for rock shrimp controlled access and develop recommendations to staff.

November 30, 2000, 8:30 a.m. - 12 noon- Joint Law Enforcement Committee and Advisory Panel Meeting;

The Law Enforcement Committee and Advisory Panel will meet to hear reports on the South Carolina/NMFS cooperative law enforcement grant and the status of Congressional funding for law enforcement, develop recommendations for ranking marine reserve criteria, review the status of Vessel Monitoring Systems in the Southeast, discuss law enforcement benefits of requiring the use of vessel operator permits, review options for rock shrimp controlled access, hear a report on NOAA General Counsel enforcement related activities, review the Compliance Report and discuss the law enforcement aspects of the use of powerheads.

November 30, 2000, 1:30 p.m. - 5:15 p.m.- Council Session.

From 1:30 p.m. - 1:45 p.m., the Council will call the meeting to order, adopt the agenda and approve minutes from the September 2000 meeting.

From 1:45 p.m. - 2:30 p.m., the Council will hold a public comment period on any proposed changes to the Dolphin Wahoo FMP (beginning at 1:45 p.m.), hear a report from the Dolphin Wahoo Committee and as necessary modify the FMP and re-approve it for submission to the Secretary of Commerce.

From 2:30 p.m.- 3 p.m., the Council will hear a report from the Law Enforcement Committee including their recommendations for ranking marine reserves criteria.

From 3 p.m. - 3:45 p.m., the Council will hold a public comment period on any Council proposed framework changes to the Snapper Grouper FMP (beginning at 3:00 p.m.), hear a report from the Snapper Grouper Committee and make a decision on framework actions.

From 3:45 p.m. - 4:15 p.m., the Council will hear a report from the Marine Reserves Committee, consider the Gray's Reef MOU, develop a strategy to incorporate Gray's Reef in the Council's marine reserve process and develop comments and recommendations on the NMFS draft White Paper.

From 4:15 p.m. - 4:45 p.m., the Council will hear a report from the Controlled Access Committee and develop comments on vessel capacity issues.

From 4:45 p.m. - 5:15 p.m., the Council will hear a report from the Advisory Panel Selection Committee and appoint new advisory panel members (closed session).

December 1, 2000, 8:30 a.m.- 12 noon - Council Session

From 8:30 a.m. - 9 a.m., the Council will hear a report from the Red Drum Committee and provide directions to staff.

From 9 a.m. - 9:15 a.m., the Council will hear a report from staff updating economic activities and issues.

From 9:15 a.m. - 9:30 a.m., the Council will hear a report from staff updating social activities and issues.

From 9:30 a.m. - 10 a.m., the Council will hear a report on the status of the Bluefish FMP from the Mid-Atlantic Fishery Management Council.

From 10 a.m. - 10:30 a.m., the Council will hear a presentation on the NMFS Southeast Regional Office's permit program.

From 10:30 a.m. - 11 a.m., the Council will hear a presentation on Endangered Species Act Section 7 Consultations from the NMFS.

From 11 a.m. - 11:10 a.m., the Council will hear an update on the Atlantic Coastal Cooperative Statistics Program.

From 11:10 a.m. - 11:20 a.m., the Council will hear a report on the Ecosystem Management Workshop.

From 11:20 a.m. - 11:30 a.m., the Council will hear NMFS Status Reports on 2000/01 Mackerel Framework, the resubmitted Calico Scallop FMP and the resubmitted Sargassum FMP. Council will also hear NMFS Status Reports on Landings for Atlantic king mackerel, Gulf king mackerel (eastern zone), Atlantic Spanish mackerel, Snowy grouper & Golden tilefish, wreckfish, greater amberjack and south Atlantic Octocorals.

From 11:30 p.m.- 12 noon, Council will hear agency and liaison reports and discuss other business and upcoming meetings.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 20, 2000.

Dated: November 2, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–28677 Filed 11–7–00; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

November 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Special shift from Categories 647/648 to Categories 347/348 is being partially canceled, raising the limit for Categories 647/648 and lowering the limit for Categories 347/348.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 54870, published on October 8, 1999.

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on November 9, 2000, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
347/348	2,136,774 dozen.
647/648	4,194,354 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–28619 Filed 11–7–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

November 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, and Memorandum of Understanding (MOU) dated July 13, 2000 between the Governments of the United States and Nepal establish limits for the period January 1, 2001 through December 31, 2001.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended; and the Memorandum of Understanding dated July 13, 2000 between the Governments of the United States and Nepal, you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
336/636	306,848 dozen.
340	402,896 dozen.
341	1,119,397 dozen.
342/642	351,638 dozen.
347/348	907,501 dozen.
363	8,206,100 numbers.
369–S [1]	1,012,958 kilograms.
640	202,775 dozen.
641	457,208 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Nepal.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 4, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28620 Filed 11–7–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Pakistan and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

Carryforward and special carryforward that has been applied to the 2000 limits is being deducted from the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following limits:

Category	Twelve-month restraint limit
Specific limits	
219	10,949,710 square meters.
226/313	152,943,035 square meters.
237	532,553 dozen.
239pt. [1]	2,299,956 kilograms.
314	7,963,424 square meters.
315	99,102,766 square meters.
317/617	42,794,104 square meters.
331/631	3,083,839 dozen pairs.
334/634	297,421 dozen.
335/635	485,768 dozen.
336/636	639,065 dozen.
338	5,706,342 dozen.
339	1,711,644 dozen.
340/640	805,673 dozen of which not more than 319,532 dozen shall be in Categories 340–D/640–D [2].
341/641	958,597 dozen.
342/642	474,456 dozen.
347/348	1,001,593 dozen.
351/651	402,836 dozen.
352/652	1,065,108 dozen.
359–C/659–C [3]	1,917,195 kilograms.
360	6,471,237 numbers.
361	7,524,693 numbers.
363	53,077,350 numbers.
369–F/369–P [4]	3,021,271 kilograms.
369–R [5]	14,911,513 kilograms.
369–S [6]	922,416 kilograms.
613/614	30,284,124 square meters
615	32,217,147 square meters.
625/626/627/628/629	99,085,556 square meters of which not more than 49,542,779 square meters shall be in Category 625; not more than 49,542,779 square meters shall be in Category 626; not more than 49,542,779 square meters shall be in Category 627; not more than 10,250,231 square meters shall be in Category 628; and not more than 49,542,779 square meters shall be in Category 629.
638/639	544,072 dozen.
647/648	1,031,540 dozen.
666–P [7]	862,142 kilograms.
666–S [8]	4,564,280 kilograms.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0046, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[5] Category 369–R: only HTS number 6307.10.1020.

[6] Category 369–S: only HTS number 6307.10.2005.

[7] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[8] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 1, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28621 Filed 11–7–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

November 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 51961, published on September 27, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 21, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Slovak Republic and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000.

Effective on November 9, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
410	377,196 square meters.
433	14,130 dozen.
443	118,050 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28622 Filed 11–7–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

November 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the United Arab Emirates and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC). Some limits have been reduced for carryforward used.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 2001 period. The 2001 levels for Categories 315 and 361 are zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notices 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001 in excess of the following levels of restraint:

Category	Twelve-month restraint limit
219	1,637,918 square meters.
226/313	2,800,880 square meters.
315	–0–.
317	45,183,883 square meters.
326	2,644,035 square meters.
334/634	333,803 dozen.
335/635/835	229,149 dozen.
336/636	289,295 dozen.
338/339	780,379 dozen of which not more than 520,252 dozen shall be in Categories 338–S/339–S [1].
340/640	483,793 dozen.
341/641	448,188 dozen.
342/642	356,059 dozen.
347/348	579,711 dozen of which not more than 289,855 dozen shall be in Categories 347–T/348–T [2].
351/651	255,916 dozen.
352	471,777 dozen.
361	–0–.
363	8,813,448 numbers.
369–O [3]	822,558 kilograms.
369–S [4]	122,684 kilograms.
638/639	333,803 dozen.
647/648	478,452 dozen.
847	300,424 dozen.

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[2] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[4] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 10, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28623 Filed 11–7–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the Republic of Uruguay

November 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Uruguay and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334	203,284 dozen.
335	174,998 dozen.
410	3,044,954 square meters of which not more than 1,739,976 square meters shall be in Category 410–A [1] and not more than 2,803,289 square meters shall be in Category 410–B [2].
433	18,182 dozen.
434	27,125 dozen.
435	54,782 dozen.
442	38,753 dozen.

[1] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.05 5516.34.0510 and 6301.20.0

[2] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 21, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28624 Filed 11–7–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 8, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 2, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Evaluation of the State Grants Program and Teacher Recruitment Grants Program of Title II of the Higher Education Act.

Frequency: Annually.

Affected Public:

Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,200.

Burden Hours: 1,000.

Abstract: In 1999, the federal government funded a major effort toward increasing teacher quality through the State Grants Program and Teacher Recruitment Grants Program. Together, the programs allow states, institutions of higher education, and/or local education agencies to increase the quality of the teacher workforce through certification reform, recruitment efforts, alternative certification routes, and accountability measures. This evaluation looks at both programs to determine how federal funds were spent, what issues arose in implementing the programs, and the impact of the programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–28602 Filed 11–7–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy Office

Notice of Competitive Financial Assistance for the Office of Energy Efficiency and Renewable Energy

AGENCY: EERE, Department of Energy.

ACTION: Notice of competitive financial assistance solicitation.

SUMMARY: The Department of Energy (DOE) announces a competitive solicitation for applications for grants and cooperative agreements for information dissemination, public outreach, training, and related technical analysis and technical assistance activities involving renewable energy and energy efficiency. It is estimated that funding of approximately FY2001 $2 to $3 million will be available under renewable energy programs, and FY2001 $3 to $4 million will be available under energy efficiency programs for awards under this solicitation in fiscal year 2001. Areas of interest involving renewable energy include wind, hydrogen, and geothermal technologies. Energy efficiency areas of interest include energy efficiency in the transportation, buildings, and industrial sectors. The awards may be for a period of six months to three years. Proposals will be

subject to the objective merit review procedures for the Office of Energy Efficiency and Renewable Energy (EERE). Eligible applicants for this solicitation are profit organizations, non-profit institutions and organizations, state and local governments, universities, individuals, Native American organizations, and Alaskan Native Corporations.

ADDRESSES: The formal solicitation document, which will include greater detail about specific program areas of interest, application instructions, and evaluation criteria, is expected to be issued mid-November 2000. The solicitation will include specific funding totals for each program area of interest. Application due dates for the various program areas will be staggered throughout January 2001, and applications will be processed by three DOE procurement offices to expedite awards. Prospective applicants under the following Program Areas of Interest will be encouraged to submit a pre-application not longer than two pages, no later than 11:30 p.m. Eastern Standard Time on Friday, December 1, 2000: Program Area 1D, Office of Power Technologies—Electric Utility Restructuring: Information Dissemination, Technical Analysis and Outreach Activities; Program Area 4, Office of Building Technology, State and Community Programs—Information Dissemination, Outreach and Related Technical Analysis; Program Area 6A, Office of the Assistant Secretary for Energy Efficiency and Renewable Energy—Technology and Systems Integration: Information Dissemination, Outreach and Related Analysis; and Program Area 6B, Office of the Assistance Secretary for Energy Efficiency and Renewable Energy—International Energy Efficiency and Renewable Energy: Technical Assistance to Support Clean Energy Development. Those submitting pre-applications will be notified within approximately 14 days whether all or part of their project is encouraged or discouraged for further consideration.

The formal solicitation document will be disseminated electronically as solicitation number DEPS01–01EE10781 through the Department's Current Business Opportunities of the Headquarters Procurement Services Homepage located at www.pr.doe.gov/solicit.html and the Industry Interactive Procurement System (IIPS) Homepage located at http://doe-iips.pr.doe.gov. The IIPS system have become the primary way for the Office of Headquarters Procurement Services to conduct competitive acquisitions and financial assistance transactions. IIPS provides the medium for disseminating solicitations, receiving financial assistance applications and proposals, evaluating, and awarding various instruments in a paperless environment.

To get more information about IIPS and to register your organization, go to *http://doe-iips.pr.doe.gov*. Follow the link on the IIPS home page to the Secure Services page. Registration is a prerequisite to the submission of an application, and applicants are encouraged to register as soon as possible. A help document, which describes how IIPS works, can be found at the bottom of the Secure Services page.

FOR FURTHER INFORMATION CONTACT: Contact the U.S. Department of Energy, Office of Headquarters Procurement Services, Attention MA–542 (Barry Page, EERE–2001), 1000 Independence Ave., SW., Washington, DC 20585, telephone number 800–683–0751, or e-mail at: eere.grants@pr.doe.gov. Questions or comments should be categorized as administrative or financial assistance related. Administrative questions or comments relate only to the operation of IIPS. All questions or comments should be directed to the attention of Mr. Barry Page. The preferred method of submitting questions and/or comments is through e-mail. Only questions and comments submitted to Mr. Page will be considered. Questions and/or comments requiring coordination with EERE program officials will be directed by DOE personnel to the cognizant offices internally through IIPS.

SUPPLEMENTARY INFORMATION: The Office of EERE supports DOE's strategic objectives of increasing the efficiency and productivity of energy use, while limiting environmental impacts; reducing the vulnerability of the U.S. economy to disruptions in energy supplies; ensuring that a competitive electric utility industry is in place that can deliver adequate and affordable supplies with reduced environmental impacts; supporting U.S. energy, environmental, and economic interests in global markets; and delivering leading-edge technologies. A key component of this program is the support of information dissemination, public outreach, training and related technical analysis and technical assistance activities to: (1) Stimulate increased energy efficiency in transportation, buildings, and industry and increased use of renewable energy; and (2) accelerate the adoption of new technologies to increase energy efficiency and the use of renewable energy. The purpose of this solicitation is to further these objectives through financial assistance in the following areas:

Office of Power Technologies (OPT)—The primary mission of this Office is to lead the national effort to develop solar and other renewable energy technologies and to accelerate their acceptance and use on a national and international level. Also, OPT develops advanced high temperature superconducting power equipment and energy storage systems, addresses advanced technology needs for transmission and distribution systems, and provides information and technical assistance on electric utility restructuring issues. Financial assistance applications will be requested for information dissemination, public outreach, and related technical analysis activities involving several specific renewable technologies such as wind, hydrogen and geothermal technologies. Also, proposals will be requested to perform the following activities: information dissemination, technical assistance, and outreach relating to electric utility restructuring; and co-sponsorship of conferences involving the power technologies sector.

Office of Industrial Technologies (OIT)—The mission of this Office is to improve the energy efficiency and pollution prevention performance of U.S. industry. The Office has a particular focus on nine industries, including the aluminum, steel, metal casting, glass, forest and paper products, chemicals, petroleum refining, agriculture, and mining industries. At the national level, the Office has successfully facilitated the development of industry visions and technology roadmaps with these nine industries. Financial assistance applications will be requested to support information dissemination and outreach to facilitate multi-States implementation of the Industries of the Future program.

Office of Transportation Technologies (OTT)—The mission of this Office is to support the development and use of advanced transportation vehicles and alternative fuel technologies which will reduce energy demand, particularly for petroleum; reduce criteria pollutant emissions and greenhouse gas emissions; and enable the U.S. transportation industry to sustain a strong competitive position in domestic and world markets. Financial assistance applications will be requested to conduct workshops and conferences related to the Clean Cities Program and to provide technical assistance and outreach to Western Hemispheric countries to promote the adoption of Clean Cities Programs or similar volunteer programs to expand the use of alternative fuels and alternative fuel technologies.

Office of Building Technology, State and Community Programs (BTS)—The mission of this Office is to develop, promote, and integrate energy technologies and practices to make buildings more efficient and affordable and communities more livable. Financial assistance applications will be requested to support information dissemination, public outreach, and related technical analysis activities for the following BTS priorities: Addressing the efficient and renewable energy technology information deficit among commercial building constructors, owners, and managers; promoting energy efficiency and renewable energy utilization as a public value for residential builders and home buyers; increasing the availability of energy efficient school design, retrofit and technical resource information for school board members and school administrators; preparing the building trades, building operators, and building managers for the new generation of efficient and renewable energy technologies; promoting the widespread installation of dedicated compact fluorescent lamp fixtures; and strengthening the *Rebuild America Program* through outreach activities with stakeholder organizations representing facility managers, business officials, and policy makers at colleges and universities, State and local governments, elementary and secondary schools, and public and other-low-income housing.

Federal Energy Management Program (FEMP)—The mission of this Program is to assist agencies in achieving the federal energy management goals and to disseminate information to states, local governments and the public on innovative approaches to the use of energy. Financial assistance will be requested to support several specific program areas such as a national lighting certification program for lighting professionals.

The *Office of the Assistant Secretary for EERE* has the overall management responsibility for the entire Office of EERE, including the OPT, OTT, OIT, BTS, and the Federal Energy Management Program (FEMP). Financial assistance applications will be requested to support information dissemination, outreach, and related analysis activities under Program Area 6A, Technology and Systems Integration: Information Dissemination, Outreach, and Related Analysis, for projects which have the objectives to:

(1) Encourage the design, development, and adoption of energy efficiency and/or renewable energy systems that incorporate two or more technologies, or incorporate technology(ies) supported by at least two DOE program offices (including at least one from EERE), and that have identified potential for multiple applications across sectors;

(2) Stimulate greater technology integration and systems integration activities, including multi-application product development (a) within the energy efficiency and renewable energy sector (*e.g.*, multi-feedstock/multi-product biorefineries; distributed power generation technologies, applications, and grid interface issues; combined heat-and-power systems; industrial, commercial, and district-energy concepts; on-site clean fuel production and automotive fueling systems; and active/passive commercial building energy management systems); and (b) between EERE and the fossil energy sector (*e.g.*, coal/biomass co-firing; higher efficiency natural gas technologies; multi-fuel micro-turbines; carbon extraction and sequestration technologies);

(3) Encourage the design, development, and adoption of EERE technology-based strategies for accomplishing environmental and human health objectives under the Clean Air Act and other environmental laws and policies, particularly at the State and local government level;

(4) Encourage the use of Geographical Information Systems (GIS) and other computer-assisted analytical, planning, and decision-support tools to assist communities to evaluate the energy, environmental, and economic impacts and costs of various options for energy generation, distribution, and use; and

(5) Develop financial risk and liability models for investments in EERE technologies and systems in order to assist investors and other stakeholders to evaluate financial risk exposure resulting from energy investment choices.

In addition, financial assistance applications will be requested to support region-wide technical assistance activities in developing countries and countries in transition to support the development of human and institutional capabilities related to EERE by governmental entities, not-for-profit organizations, and industry organizations. The region-wide activities must encompass one of the following regions: Latin America, Africa, South Asia, or Eastern Europe, and encompass several countries within that region.

Million Solar Roofs Initiative (MSRI)—The purpose of the MSRI is to spur the installation of solar energy systems on one million U.S. buildings by 2010. The initiative seeks to catalyze market demand through the elimination of barriers to the use of solar energy systems on buildings and the establishment of State and Community Partnerships. Applications will be requested under this solicitation to develop information, training, and workshops to assist in the elimination of specific barriers. A separate solicitation providing direct support to Million Solar Roofs State and Community Partnerships will be issued by the Golden Field Office not later than January 2001.

Additional information about the programs of the Office of EERE can be obtained at the Office's Internet site at *http://www.eren.doe.gov/ee.html.*

Issued in Washington, DC on November 2, 2000.

Arnold A. Gjerstad,

Director, Program Services Division, Office of Headquarters Procurement Services.

[FR Doc. 00–28628 Filed 11–7–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11541–000 Idaho]

Atlanta Power Station; Notice of Meeting

November 2, 2000.

A telephone conference will be convened by staff of the Office of Energy Projects on December 6, 2000, at 1 p.m. eastern standard time. The purpose of the meeting is to discuss the operation of the upstream fishway and the design of the downstream fish screen structure as suggested by the U.S. Department of the Interior Fish and Wildlife Service (FWS) in their comments on the draft environmental assessment of the Atlanta project. Also, the meeting will clarify issues that need to be addressed in the Final Environmental Assessment.

Any person wishing to be included in the telephone conference should contact Gaylord W. Hoisington at (202) 219–2756 or e-mail at gaylord.hoisington@ferc.fed.us. Please notify Mr. Hoisington by November 30,

2000, if you want to be included in the telephone conference.

David P. Boergers,

Secretary.

[FR Doc. 00–28633 Filed 11–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–254–003]

Dauphin Island Gathering Partners; Notice of Refund Report

November 2, 2000.

Take notice that on October 30, 2000, Dauphin Island Gathering Partners (DIGP) tendered for filing its refund report in Docket Nos. RP00–254–000 and RP00–254–001.

DIGP states that this filing and the refunds were made to comply with the Commission's May 23, 2000 Letter Order. DIGP states that refunds were paid on August 30, 2000 and October 12, 2000.

DIGP states that copies of this filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 9, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28637 Filed 11–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–012]

Dominion Transmission, Inc.; Notice of Negotiated Rate Filing

November 2, 2000.

Take notice that on October 27, 2000, Dominion Transmission, Inc. (DTI) tendered for filing to the Commission the following tariff sheets for disclosure of a recently negotiated transaction with Allegheny Energy Unit 1 and 2, L.L.C.:

First Revised Sheet No. 1300
Second Revised Sheet No. 1404
Original Sheet No. 1405

DTI requests an effective date of November 1, 2000, for the agreement.

DTI states that the transaction includes a negotiated rate. Further, because the transaction includes a provision that may be a material deviation from the form of service agreement included in DTI's tariff, DTI has also filed the letter agreement between the parties.

DTI states that copies of the filing have been served on all parties on the official service list, DTI's customers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20462, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc,fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28635 Filed 11–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–013]

Dominion Transmission, Inc.; Notice of Tariff Filing

November 2, 2000.

Take notice that on October 27, 2000, Dominion Transmission, Inc. (DTI) tendered for filing the following tariff sheets for disclosure of a recently negotiated transaction with PSEG Power New York, Inc.:

Second Revised Sheet No. 1300
First Revised Sheet No. 1405
Original Sheet No. 1406

DTI requests an effective date of November 1, 2000, for the agreement.

DTI states that the transaction includes a negotiated rate. Further, because the transaction includes a provision that may be a material deviation from the form of service agreement included in DTI's tariff, DTI has also filed the letter agreement between the parties.

DTI states that copies of the filing have been served on all parties on the official service list, DTI's customers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28636 Filed 11–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–033]

Koch Gateway Pipeline Company; Notice of Negotiated Rate Filing

November 2, 2000.

Take notice that on October 30, 2000, Koch Gateway Pipeline Company (Koch) filed with the Commission contracts between Koch and the following companies for disclosure of recently negotiated rate transactions. As shown on the contracts, Koch requests an effective date of November 1, 2000.

Special Negotiated Rate Between Koch Gateway Pipeline and Dynergy Gas Transportation
Koch Gateway Pipeline and Laclede Gas Company

Koch states that it has served copies of this filing upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28634 Filed 11–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–66–000]

Koch Gateway Pipeline Company Notice of Proposed Changes to FERC Gas Tariff

November 2, 2000.

Take notice that on October 30, 2000, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective November 1, 2000.

Koch states that the purpose of this filing is to make the necessary changes in Koch's tariff to reflect the implementation of Internet communication.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 8888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,
Secretary.

[FR Doc. 00–28641 Filed 11–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–257–004]

Ozark Gas Transmission, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2000.

Take notice that on October 27, 2000, Ozark Gas Transmission, L.L.C. (Ozark) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective on November 1, 2000.

Substitute First Revised Sheet No. 13
First Revised Sheet No. 17
First Revised Sheet No. 46
First Revised Sheet No. 47
First Revised Sheet No. 80

Ozark states that the purpose of this filing is to place into effect settlement rates on an interim basis pending Commission approval of the Offer of Settlement that was filed with the Commission in this proceeding on October 27, 2000, which proposes to resolve all issues in this proceeding and is supported by the majority of the parties hereto.

Ozark further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions and all persons on the official service list for the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28638 Filed 11–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–408–000]

Ozark Gas Transmission, L.L.C. Notice of Proposed Changes in FERC Gas Tariff

November 2, 2000.

Take notice that October 27, 2000, Ozark Gas Transmission, L.L.C. (Ozark) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following pro forma revised tariff sheets, to be effective on a date to be determined by the Commission pursuant to Order No. 637.

First Revised Sheet No. 106
Original Sheet No. 106B

Ozark also requested that it be permitted to withdraw the following pro forma tariff sheets previously filed in this proceeding:

First Revised Sheet No. 106
Original Sheet No. 106B

Ozark states that the purpose of this filing is to amend its proposed penalty revenue crediting mechanism in accordance with the terms of the Offer of Settlement in its Section 4 general rate case which was filed on October 27, 2000 in Docket No. RP00–257–000. Ozark further states that the Settlement requires it to propose in this proceeding a penalty revenue crediting mechanism whereby monthly actual penalty revenues will be allocated to non-offending firm shippers in proportion to their monthly fixed cost contribution to Ozark's revenue requirements, shippers incurring a penalty during a particular month will not be eligible to receive an allocation of penalty revenues for that month and shippers will receive allocated monthly penalty credits through annual refunds.

Ozark further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions and all persons on the official service list for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR http://www.ferc.fed.us/efi/doorbell. htm.

David P. Boergers,
Secretary

[FR Doc. 00–28639 Filed 11–07–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–569–001]

Portland Natural Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2000.

Take notice that on October 27, 2000, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to become effective March 27, 2000:

Substitute First Revised Sheet No. 351
Substitute First Revised Sheet No. 352
Substitute First Revised Sheet No. 354
Substitute First Revised Sheet No. 355

PNGTS states that the purpose of this filing is to comply with the requirements of the Commission's October 19, 2000 order in this proceeding.

PNGTS states that copies of the filing were mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,
Secretary.

[FR Doc. 00–28640 Filed 11–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–200–000, et al.]

Cinergy Services, Inc., et al. Electric Rate and Corporate Regulation Filings

October 30, 2000.

Take notice that the following filings have been made with the Commission:

1. Cinergy Services, Inc.

[Docket No. ER01–200–000]

On October 23, 2000, Cinergy Services, Inc. (Services), Cincinnati Gas & Electric Company (CG&E), and PSI Energy, Inc. (collectively, Cinergy) filed a notice of termination of the Operating Agreement, dated March 2, 1994, by and among CG&E, PSI, and Services. The Operating Agreement is designated as Cinergy Operating Companies Rate Schedule FERC No. 1. Cinergy has requested that termination take effect on December 31, 2000.

In its filing, Cinergy states that it intends to commence a dialogue with affected parties regarding potential alternatives that might allow the Operating Agreement to be replaced with a new agreement(s) that continues some level of coordinated generation operations, but, at, the same time, adequately reflects the changed circumstances associated with the initiation of retail choice in Ohio. Cinergy also states that it believes the Commission can play a important role in facilitating the conference.

To initiate these discussions, a conference will be held at 1:00 EST on November 6, 2000, at the Columbia Club, Boardroom, 121 Monument Circle, Indianapolis, Indiana. The Commission's Dispute Resolution Service will be present to help facilitate the conference. The conference will address, among other matters, whether a third party neutral should be assigned to the process.

All parties are invited to attend. If a party has any questions regarding the conference, please call John S. Moot at (202) 371–7310, or Richard Miles at 1 (877) FERC ADR (337–2237) or (202) 208–0702.

2. PacifiCorp

[Docket No. EC01–8–000]

Take notice that PacifiCorp, on October 16, 2000, tendered for filing in accordance with Section 203 of the Federal Power Act and 18 CFR part 33 of the Commission's Rules and Regulations, an application seeking an order authorizing PacifiCorp to sell to PPM One LLC, a PacifiCorp affiliate, specified transmission facilities associated with PacifiCorp's sale of three wind generation facilities located in Riverside County, California. The application also seeks Federal Energy Regulatory Commission authorization for the assignment of the current PacifiCorp-Southern California Edison Company wholesale distribution agreement and the assignment of the current PacifiCorp-California Independent System Operator participating generator agreement to purchaser.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Calpine Corporation; Dighton Power Associates L.P.; Rumford Power Associates L.P.; Tiverton Power Associates L.P.

[Docket No. EC01–10–000]

Take notice that on October 23, 2000, Calpine Corporation (Calpine), Dighton Power Associates L.P. (Dighton), Rumford Power Associates L.P. (Rumford), and Tiverton Power Associates L.P. (Tiverton) (jointly, Applicants) submitted for filing an application under section 203 of the Federal Power Act for authorization for the transfer of certain general and limited partnership interests in Dighton, Rumford, and Tiverton from affiliates of Energy Management, Inc. to Calpine or its affiliates.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Edison Company

[Docket No. ER01–220–000]

Take notice that on October 25, 2000, Commonwealth Edison Company (ComEd), tendered for filing an unexecuted Short-Term Firm Transmission Service Agreement with LG&E Energy Marketing Inc. (LGE) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of October 1, 2000, for the agreement with LGE, and accordingly, seeks waiver of the Commission's notice requirements.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Alliant Energy Corporate Services Inc.

[Docket No. ER01–222–000]

Take notice that on October 25, 2000, Alliant Energy Corporate Services Inc. (ALTM), tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Dynegy Power Marketing, Inc. (DYPM).

ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of October 24, 2000.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER00–3788–000]

Take notice that on October 25, 2000, Commonwealth Edison Company (ComEd), tendered for filing revisions to the Network Service Agreements filed with the Commission on September 29, 2000 in the above-referenced docket.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Central Illinois Light Company

[Docket No. ER00–3386–001]

Take notice that on October 25, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, made a compliance filing with the Commission concerning an Interconnection Agreement with Bio-Energy Partners for Generation Interconnection and Parallel Operation.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota Company); Northern States Power Company (Wisconsin Company)

[Docket No. ER00–3663–001]

Take notice on October 25, 2000, Xcel Energy Services, Inc., in compliance with FERC Order No. 614, tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Madison Gas & Electric Company (Customer).

Comment date: November-15, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Tucson Electric Power Company

[Docket No. ER01–208–000]

Take notice that on October 25, 2000, Tucson Electric Power Company (Tucson), tendered an errata to its October 24, 2000 Revised Open Access Transmission Tariff Filing.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Tampa Electric Company

[Docket No. ER01–217–000]

Take notice that on October 25, 2000, Tampa Electric Company (Tampa Electric) tendered for filing a service agreement with Cargill Fertilizer, Inc. (Cargill Fertilizer) for non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of October 25, 2000, for the tendered service agreement, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Cargill Fertilizer and the Florida Public Service Commission.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Corp.

[Docket No. ER01–218–000]

Take notice that on October 25, 2000, Wisconsin Electric Power Corp. tendered for filing with the Federal Energy Regulatory Commission pursuant to Section 35.13 of the Commission's Regulations, 18 CFR 35.13, one revised version of its FERC Electric Tariff Second Revised Volume No. 2 and five new service schedules (Schedules F,G, H, I, and J) pursuant to which Wisconsin Electric Power Corp., will offer five new power services at "up to" cost-based rates. The new services offered will be Dynamic Regulation and Frequency Response Service, Energy Imbalance Service, Dynamic Capacity and Energy Service, Spinning Reserve Service, and Supplemental Reserve Service. The services will be "off-system" versions of the services currently available to Wisconsin Electric Power Co.'s customers under Wisconsin Energy Corporation Operating Companies' open access transmission tariff, FERC Electric Tariff First Revised Volume No. 1.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of New Mexico

[Docket No. ER01–221–000]

Take notice that on October 25, 2000, Public Service Company of New Mexico (PNM), tendered for filing an executed Transaction Confirmation Agreement (dated October 13, 2000) under Service Schedule B to the Western Systems Power Pool (WSPP) Agreement, defining services to be provided between PNM and Utah Associated Municipal Power Systems (UAMPS). The Transaction Confirmation Agreement is filed pursuant to WSPP requirements to file any agreement more than one year in duration, and PNM is requesting an effective date of October 1, 2000. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to UAMPS, to the general counsel of WSPP, and to the New Mexico Public Regulation Commission.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Reliant Energy Shelby County, LP

[Docket No. ER01–223–000]

Take notice that on October 25, 2000, Reliant Energy Shelby County, LP (Reliant Shelby County), tendered for filing a Master Commodity Sale Agreement between Reliant Energy Services, Inc. (RES) as agent for Reliant Shelby County and Wisconsin Electric Power Company (WEPCO) establishing WEPCO as a customer under Reliant Shelby County's market-based rate tariff.

Reliant Shelby County requests an effective date of October 2, 2000 for the service agreement.

Reliant Shelby County states that a copy of the filing was served on WEPCO.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Duquesne Light Company

[Docket No. ER01–224–000]

Take notice that on October 25, 2000, Duquesne Light Company (DLC), tendered a Service Agreement dated October 24, 2000 with The Detroit Edison Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds The Detroit Edison Company as a customer under the Tariff.

DLC requests an effective date of October 24, 2000 for the Service Agreement.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Duquesne Light Company

[Docket No. ER01–225–000]

Take notice that on October 25, 2000, Duquesne Light Company (DLC), tendered a Service Agreement dated October 24, 2000 with The Detroit Edison Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds The Detroit Edison Company as a customer under the Tariff.

DLC requests an effective date of October 24, 2000, for the Service Agreement.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. California Independent System Operator Corporation

[Docket No. ER01–226–000]

Take notice that on October 25, 2000, the California Independent System Operator Corporation, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Energy 2001, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on Energy 2001, Inc., and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective October 11, 2000.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. California Independent System Operator Corporation

[Docket No. ER01–227–000]

Take notice that on October 25, 2000, the California Independent System Operator Corporation, tendered for filing a Participating Generator Agreement between the ISO and Energy 2001, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on Energy 2001, Inc., and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective October 11, 2000.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Consumers Energy Company

[Docket No. ER01–229–000]

Take notice that on October 25, 2000, Consumers Energy Company (Consumers) tendered for filing executed Firm and Non-Firm Point to Point Transmission Service Agreements with Nordic Marketing, LLC (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreements have effective dates of September 26, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Energy Company

[Docket No. ER01–235–000]

Take notice that on October 25, 2000, Consumers Energy Company (Consumers), tendered for filing executed Firm and Non-Firm Point to Point Transmission Service Agreements with Wisconsin Electric Power Company (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreements have effective dates of October 23, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/ online/rims.htm* (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,
Secretary.
[FR Doc. 00–28597 Filed 11–07–00; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES01–7–000, et al.]

NorthWestern Corporation, et al. Electric Rate and Corporate Regulation Filings

November 1, 2000

Take notice that the following filings have been made with the Commission:

1. NorthWestern Corporation

[Docket No. ES01–7–000]

Take notice that on October 25, 2000, NorthWestern Corporation submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt with maturities of one year or less, including commercial paper, in an amount not to exceed $500 million at any one time.

NorthWestern Corporation also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Dominion Resources, Inc. and Consolidated Natural Gas Company

[Docket Nos. EC99–81–004 and MG00–6–004]

Take notice that on October 27, 2000, Dominion Resources, Inc. and Consolidated Natural Gas Company filed a response to an October 17, 2000, Commission data request that was issued by Commission staff under delegated authority.

Comment date: November 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Lee Power Partners, L.L.C.

[Docket No. EG01–12–000]

Take notice that on October 27, 2000, Lee Power Partners, L.L.C. (Applicant) filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant is a Delaware limited liability company and is owned by an indirect subsidiary of GPU, Inc. and an indirect subsidiary of El Paso Energy Corporation. Applicant is developing a combined cycle gas-fueled generating plant with a nominal 715 MW net capacity in Lee County, Mississippi, near the city of Saltillo (the Facility) and will make sales of electric energy and capacity at wholesale from that Facility. Applicant's business offices are located at 1100 Louisiana Street, Houston, TX 77002.

Copies of the application have been served upon the Mississippi Public Service Commission, the New Jersey Board of Public Utilities, the Pennsylvania Public Utility Commission, and the Securities and Exchange Commission.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. MEP Flora Power, L.L.C.

[Docket No. EG01–13–000]

Take notice that on October 30, 2000, MEP Flora Power, L.L.C., an indirect wholly owned subsidiary of UtiliCorp United Inc., tendered for filing an Application for Determination of Exempt Wholesale Generator Status.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Duke Energy Washoe, L.L.C.

[Docket No. ER01–241–000]

Take notice that on October 26, 2000, Duke Energy Washoe, L.L.C. (Duke Washoe), tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1. Duke Washoe seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Washoe also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities.

Duke Washoe seeks an effective date sixty (60) days from the date of filing for its proposed rate schedules.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Southwest Power Pool, Inc.

[Docket No. ER01–242–000]

Take notice that on October 27, 2000, Southwest Power Pool, Inc. (SPP), on behalf of its members, tendered for filing on behalf of its members, submits revised pages to the currently effective version of its tariff (SPP Tariff) intended to reflect a name change from Central & South West Corporation, Inc. (Public Service Company of Oklahoma and Southwestern Electric Power Company) or Central & South West Services to Public Service Company and Southwestern Electric Power Company, Subsidiaries of American Electric Power, Inc. (AEP West), as well as a decrease in the rates, the revenue requirement, and the loss factor for service associated with AEP West. In addition, SPP has submitted the revisions to its Tariff required by Order No. 614.

SPP seeks an effective date of November 1, 2000, for these changes.

Copies of this filing have been served on all affected state commissions, SPP customers, and SPP members.

Comment date: November 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Rayburn Country Electric Cooperative, Inc.

[Docket No. ER01–243–000]

Take notice that on October 27, 2000, Rayburn Country Electric Cooperative, Inc. (Rayburn Electric), tendered for filing proposed changes in its FERC Electric Service Tariff, Rate Schedule WP–2, Sheet No. 11, that would allow Rayburn Electric to retain margin adjustment refund amounts owed to its Members and use those amounts to offset future increases in the cost of purchased power to its Members.

Rayburn Electric proposes this change to mitigate the rate increase which will occur as a result of Rayburn Electric's obligations under a new purchased power agreement.

Copies of the filing were served upon Rayburn Electric's Members (as reflected on Attachment C of the filing).

Comment date: November 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. PJM Interconnection, L.L.C.

[Docket No. ER01–244–000]

Take notice that on October 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the PJM Open Access Transmission Tariff (PJM Tariff) to include in the PJM Tariff the Small Resource Interconnection Procedure Manual which contains expedited procedures pursuant to Section 36.12 of the PJM Tariff for the interconnection of generation resources less than 10 megawatts, and requested cancellation of pages to the PJM Tariff and the Amended and Restated

Operating Agreement of PJM Interconnection, L.L.C., setting forth the Customer Load Reduction Pilot Program that terminated pursuant to PJM Interconnection, Inc., 92 FERC ¶ 61,059 (2000) on September 30, 2000.

PJM requests an effective date of December 27, for the amendments and the cancellation.

Copies of this filing were served upon all members of PJM and each state electric utility regulatory commission in the PJM control area.

Comment date: November 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Rockingham Power, L.L.C.

[Docket No. ER01–245–000]

Take notice that on October 27, 2000, Rockingham Power, L.L.C. (Rockingham), tendered for filing a proposed tariff for Emergency Redispatch Service. The tariff sets forth the compensation for the dispatch of the Rockingham generating facility by Duke Energy Corp., during emergencies.

Rockingham requests that the notice requirements set forth in Rule 35.3(a) be waived to the extent required to allow the tariff to become effective as of October 28, 2000.

Comment date: November 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Green Mountain Power Corporation

[Docket No. ER00–246–000]

Take notice that on October 27, 2000, Green Mountain Power Corporation (GMP), tendered a for filing a notice of cancellation and a service agreement for Burlington Electric Department to take service under its Firm Point-to-Point Transmission Service tariff.

Copies of this filing have been served on each of the affected parties, the Vermont Public Service Board and the Vermont Department of Public Service.

Comment date: November 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER01–247–000]

Take notice that on October 27, 2000, Virginia Electric and Power Company (Virginia Power or Company), tendered for filing proposed Attachment N to its Open Access Transmission Tariff that prescribes the procedures that Virginia Power will employ with respect to requests to interconnect new generators within the Virginia Power transmission system or to increase the capacity of generators that are already interconnected with the System.

Virginia Power requests that the Commission waive its notice requirements to allow the preceding to become effective on October 27, 2000.

Copies of the filing were served upon Virginia Power's jurisdictional customers and the Virginia State Corporation Commission.

Comment date: November 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Corporation

[Docket No. ER01–248–000]

Take notice that on October 27, 2000, the Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 14 to its partial requirements service agreement with Manitowoc Public Utilities (MPU). Supplement No. 14 provides MPU's contract demand nominations for January 2001—December 2005, under WPSC's W–2A partial requirements tariff and MPU's applicable service agreement.

The company states that copies of this filing have been served upon MPU and to the State Commissions where WPSC serves at retail.

Comment date: November 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Citizens Communications Company

[Docket No. ER01–249–000]

Take notice that on October 27, 2000, Citizens Communications Company, tendered for filing an Agreement to sell to Select Energy, Inc. a portion of its energy entitlement pursuant to the Firm Energy Contract between NEPOOL Phase II Participants and HydroQuebec, dated October 4, 1984.

A copy of this filing was served on Select Energy, Inc. In addition, a copy of the rate schedule is available for inspection at the offices of Citizens' Vermont Electric Division during regular business hours.

Comment date: November 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Calpine Power Services Company, Calpine Energy Services, L.P.

[Docket No. ER01–250–000]

Take notice that on October 27, 2000, Calpine Power Services Company (CPSC) and Calpine Energy Services, L.P. (CES), tendered for filing a request that the applicable rate schedule be amended to reflect the assignment of CPSC's membership in the WSPP to its affiliate, CES. Such assignment is allowed under Section 14 of the WSPP Agreement.

CPSC and CES state that a copy of this filing was served upon the General Counsel of the WSPP.

Comment date: November 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Engage Energy America Corp.

[Docket No. ER01–251–000]

Take notice that on October 27, 2000, Engage Energy America Corp. submitted a Notice of Succession pursuant to 18 CFR 35.16 and 131.51 of the Commission's regulations. Westcoast Gas Services Delaware (America) Inc. (WGSI Delaware) has changed its name to Engage Energy America Corp. and effective September 27, 2000, succeeded to WGSI Delaware's Rate Schedule FERC No. 1, Market-Based Rate Schedule filed in Docket No. ER00–3315–000, which was effective September 1, 2000.

Comment date: November 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Edison Sault Electric Company

[Docket No. ER01–252–000]

Take notice that on October 27, 2000, Edison Sault Electric Company (Edison Sault), tendered for filing a Certificate of Concurrence assenting to and concurring in a Joint Operating Agreement between Wisconsin Electric Power Company (Wisconsin Electric), and Edison Sault. The Joint Operating Agreement was filed by Wisconsin Electric on October 27, 2000. The purpose of the Joint Operating Agreement is to allow Wisconsin Electric and Edison Sault to coordinate their electricity supply activities, and to authorize Wisconsin Electric to serve as Edison Sault's agent with respect to the provision of certain electricity supply services.

Copies of this filing were served upon Cloverland Electric Cooperative, the Michigan Public Service Commission, and the Wisconsin Public Service Commission.

Comment date: November 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/ online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–28595 Filed 11–07–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–10–000, et al.]

Puget Sound Energy Inc., et al. Electric Rate and Corporate Regulation Filings

October 31, 2000.

Take notice that the following filings have been made with the Commission:

[Docket No. EL01–10–000]

1. Puget Sound Energy, Inc.

Take notice that on October 26, 2000, Puget Sound Energy, Inc. (PSE), tendered for filing a Complaint against all jurisdictional sellers of energy and/or capacity at wholesale into electric energy and/or capacity markets in the Pacific Northwest, including parties to the Western Systems Power Pool Agreement (the WSPP Agreement).

In its Complaint, PSE petitions the Commission for an order capping the prices at which sellers subject to Commission jurisdiction, including sellers of energy or capacity under the WSPP Agreement, may sell capacity or energy into the Pacific Northwest's wholesale power markets. Specifically, PSE seeks an order that caps the prices for wholesale sales of energy or capacity into the Pacific Northwest at a level equal to the lowest cap on prices established, ordered, or permitted by the Commission for wholesale purchases in or wholesale sales of energy or capacity to or though markets operated by the California Independent System Operator Corporation or the California Power Exchange Corporation.

The Complaint seeks a refund effective date, to the extent any refund is called for, of sixty days after the filing of the Complaint.

Copies of this filing were served upon parties to the WSPP, and transmitted electronically to the WSPP for posting on its website (*www.wspp.org*) and for electronic distribution to all parties to the WSPP Agreement.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint shall also be filed on or before November 16, 2000.

2. Madison Windpower, LLC

[Docket No. EG01–11–000]

Take notice that on October 25, 2000, Madison Windpower, LLC (Madison), tendered for filing information with respect to a change in facts relative to its status as an exempt wholesale generator and a demonstration that such change does not affect such status pursuant to Section 32(a) of the Public Utility Holding Company Act of 1935, as amended and Section 365.8 of the Commission's regulations.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. UtiliCorp United Inc.

[Docket No. ES01–4–001]

Take notice that on October 18, 2000, UtiliCorp United Inc. submitted an amendment to its application seeking a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment date: November 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No: ER01–233–000]

Take notice that on October 26, 2000, Cinergy Services, Inc. (Cinergy) and Continental Energy Services tendered for filing a request for cancellation of Service Agreement No. 204, under Cinergy Operating Companies, Cost-Based Power Sales Tariff—CB, FERC Electric Tariff Original Volume No. 6.

Cinergy requests an effective date of October 13, 2000.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Solar Turbines Incorporated

[Docket No. ER00–3400–001]

Take notice that on October 26, 2000, Solar Turbines Incorporated (Solar), tendered for filing with the Commission a Compliance filing intended to comply with the Commission's September 26, 2000 Order. That Order required Solar to file the appropriate Tariff sheets containing designations in accordance with Order 614, within thirty (30) days.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Docket No. ER01–31–001]

Take notice that on October 26, 2000, the Arizona Public Service Company tendered for filing proposed revisions to Arizona Public Service Company's fuel adjustment clause.

A copy of this filing has been served the all parties on the service list.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. PJM Interconnection, L.L.C.

[Docket No. ER01–240–000]

Take notice that on October 26, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing the following executed agreements: (i) An umbrella service agreement for network integration transmission service under state required retail access programs for Sempra Energy Solutions (Sempra), (ii) an umbrella service agreement for short-term firm point-to-point transmission service for The New Power Company (New Power), (iii) an umbrella service agreement for non-firm point-to-point transmission service for New Power, and (iv) an umbrella service agreement for network integration transmission service under state required retail access programs for New Power.

Copies of this filing were served upon Sempra, New Power, and the state commissions within the PJM control area.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas City Power & Light Company Docket No.

[Docket No. ER01–239–000]

Take notice that on October 26, 2000, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreements dated October 20, 2000 by KCPL. KCPL proposes an effective date of January 1, 2000. This Agreement provides for the rates and charges for Firm Transmission Service by KCPL for wholesale transactions.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Northwest Regional Transmission Association

[Docket No. ER01–238–000]

Take notice that on October 26, 2000, the Northwest Regional Transmission Association (NRTA), tendered for filing a First Revised Sheet No. 53 (superseding Original Sheet No. 53) of the Governing Agreement of the Northwest Regional Transmission Association (NRTA). This filing revises NRTA's filing of August 23, 2000 under Docket No. ER99–4508–001, by which NRTA submitted its entire Governing Agreement (including an index of customers) as "Northwest Regional Transmission Organization First Revised Electric Rate Schedule FERC No.1" in compliance with Order No. 614, Docket No. RM99–12–000, 90 FERC ¶ 61,352, issued March 31, 2000. The reason for filing the revised sheet is that the identification of one of NRTA's members, Citizens Power LLC, has changed because Citizens Power LLC was acquired by and merged into Edison Mission Marketing & Trading, Inc. effective as of September 1, 2000.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER01–237–000]

Take notice that on October 25, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing the Seventh Amendment to the Power Coordination, Interchange and Transmission Service Agreement (PCITA) between Entergy Arkansas, Inc. and the City of Conway, dated October 12, 2000. The Amendment to the PCITA modifies Exhibit A to the PCITA by establishing a new point of delivery.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Company

[Docket No. ER01–234–000]

Take notice that on October 26, 2000, Arizona Public Service Company (APS), tendered for filing umbrella Service Agreements to provide Short-Term Firm and Non-Firm Point-to-Point Transmission Service to Conectiv Energy Supply, Inc., under APS' Open Access Transmission Tariff.

A copy of this filing has been served on Conectiv Energy Supply, Inc., and the Arizona Corporation Commission.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER01–231–000]

Take notice that on October 24, 2000, Cinergy Services, Inc. (Cinergy) and Illinova Energy Partners, Inc., tendered for filing a request for cancellation of Service Agreements No. 207, under Cinergy Operating Companies, Market-Based Power Sales Tariff—MB, FERC Electric Tariff Original Volume No. 7.

Cinergy requests an effective date of October 13, 2000.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER01–230–000]

Take notice that on October 26, 2000, Cinergy Services, Inc. (Cinergy) and Montaup Electric Company tendered for filing a request for cancellation of Service Agreements No. 44, under Cinergy Operating Companies, Market-Based Power Sales Tariff—MB, FERC Electric Tariff Original Volume No. 7.

Cinergy requests an effective date of October 13, 2000.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER01–232–000]

Take notice that on October 26, 2000, Cinergy Services, Inc. (Cinergy) and Montaup Electric Company tendered for filing a request for Cancellation of Service Agreement No. 44, under Cinergy Operating Companies, Cost-Based Power Sales Tariff—CB, FERC Electric Tariff Original Volume No. 6.

Cinergy requests an effective date of October 13, 2000.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Central Maine Power Company

[Docket No. ER01–228–000]

Take notice that on October 25, 2000, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (the Commission) regulations, 18 CFR 35.12 an executed interconnection agreement between CMP and S.D. Warren Company.

The executed interconnection agreement is intended to replace and supersede the unexecuted interconnection agreement filed by CMP on March 30, 2000.

As such, CMP is requesting that the executed interconnection agreement become effective March 1, 2000.

Copies of this filing have been served upon the Commission, the Maine Public Utilities Commission, and S.D. Warren Company.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power & Light Company

[Docket No. ER93–465–026

Take notice that on October 25, 2000, Florida Power & Light Company (FPL), tendered for filing a refund report in the above-captioned dockets.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER00–2854–000]

Take notice that on October 25, 2000, Entergy Services, Inc., tendered for filing revisions to its Amendment to the System Agreement filed with the Commission on June 15, 2000 in the above-referenced docket.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/ online/rims.htm* (call 202–208–2222 for assistance).

Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–28596 Filed 11–7–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene and Protests

November 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license.

b. *Project No.:* 2232–413.

c. *Dated Filed:* October 3, 2000.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* In the Beaver Dam Creek area of Lake Wylie, on the Catawba River, in Lancaster, York, and Fairfield Counties, South Carolina and Gaston, Lincoln, and Burke Counties, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Mr. Joe Hall, Duke Power, P.O. Box 1006, Charlotte, NC 28201–1006, (704) 382–8576.

i. *FERC Contact:* Michael Spencer, michael.spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing comments, motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The licensee requests an amendment to its license to: (1) Grant an easement to the City of York for a parcel of project land containing a total of 0.52 acres for construction of a raw water intake and a 360-foot-long, 28-inch-diameter pipeline; and (2) grant an easement to the City of York for a 6 million gallons per day maximum water withdrawal rate through the facility.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–28630 Filed 11–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application:* Amendment of License.

b. *Project No.:* 6641–038.

c. *Date Filed:* July 21, 2000.

d. *Applicant:* City of Marion, Kentucky, and Smithland Hydroelectric Partners.

e. *Name of Project:* Smithland.

f. *Location:* The project is located on the Ohio River in Livingston County, Kentucky, at the U.S. Army Corps of Engineers' Smithland Lock and Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* City of Marion, Kentucky, and Smithland Hydroelectric Partners, 120 Calumet Ct., Aiken, SC 29803, (803) 642–2749.

i. *FERC Contact:* Any questions on this notice should be addressed to Dave Snyder at (202) 219–2385.

j. *Deadline for filing comments and/or motions:* December 8, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the Project Number (6641–038) on any comments or motions filed.

k. *Description of Filing:* Pursuant to § 4.200(c) and § 4.202(a) of the Commission's Rules of Practice and Procedure (18 CFR), the City of Marion, Kentucky, and Smithland Hydroelectric Partners, request, among other things, an extension of time until June 2005 to complete construction of the Smithland Project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–28631 Filed 11–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application:* Amendment of License.

b. *Project No.:* 10228–015.

c. *Date Filed:* July 21, 2000.

d. *Applicant:* Cannelton Hydroelectric Project, L.P.

e. *Name of Project:* Cannelton.

f. *Location:* The project is located on the Ohio River in Hancock County, Kentucky, at the U.S. Army Corps of Engineers' Cannelton Locks and Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Cannelton Hydroelectric Project, L.P., 120 Calumet Ct., Aiken, SC 29803, (803) 642–2749.

i. *FERC Contact:* Any questions on this notice should be addressed to Dave Snyder at (202) 219–2385.

j. *Deadline for filing comments and/or motions:* December 8, 2000. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the Project Number (10228–015) on any comments or motions filed.

k. *Description of Filing:* Pursuant to § 4.200(c) and § 4.202(a) of the Commission's Rules of Practice and Procedure (18 CFR), Cannelton Hydroelectric Project, L.P., requests, among other things, an extension of time until December 2005 to complete construction of the Cannelton Project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–28632 Filed 11–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Rates for the Central Valley and California-Oregon Transmission Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Rates.

SUMMARY: The Western Area Power Administration (Western) is proposing new rates for Central Valley Project (CVP) firm power, power scheduling, scheduling coordinator, transmission, California-Oregon Transmission Project (COTP) transmission, and CVP ancillary services. The current rates expire September 30, 2002. The current power rates are insufficient due to significant increases in the prices of energy in the California electric markets. Proposing new rates for all the services listed above extends the rates for these services through the end of the current CVP Power Marketing Plan.

A rate increase will provide sufficient revenue to repay all annual costs, including interest expense, and repay required investment within the allowable period. Rate impacts are detailed in a rate brochure to be provided to all interested parties. The proposed new rates are scheduled to go into effect on April 1, 2001, and will remain in effect through December 31, 2004, which is the end of the current CVP Power Marketing Plan. This **Federal Register** notice initiates the public process to replace the existing approved rates that expire September 30, 2002.

Western previously proposed rates that were published in the **Federal Register**, March 3, 2000. The publication of this **Federal Register** notice rescinds those proposed rates. Western will disregard all public input associated with the rescinded proposed rates.

DATES: The consultation and comment period will begin November 8, 2000 and will end December 29, 2000. Western will present a detailed explanation of these new proposed rates at a public information forum scheduled for November 17, 2000, beginning at 1 p.m. Pacific Standard Time (PST), at the Sierra Nevada Regional Office. Western will receive oral and written comments at a public comment forum scheduled for December 13, 2000, beginning at 1 p.m. PST, at the Sierra Nevada Regional Office. Western must receive all comments by the end of the consultation and comment period to assure consideration of the comments.

ADDRESSES: Send written comments to Mr. Jerry W. Toenyes, Regional Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, e-mail toenyes@wapa.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Dietz, Rates Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4453, e-mail ddietz@wapa.gov.

SUPPLEMENTARY INFORMATION: With the publication of this notice Western is withdrawing the previously proposed rates published on March 3, 2000 (65 FR 11569). Due to significant unexpected increases in the prices of energy in the California electric markets, the rates proposed in the March 3, 2000, **Federal Register** notice would be insufficient to recover the project costs. Therefore, Western rescinds those proposed rates and will disregard all public input associated with the rescinded proposed rates.

This **Federal Register** notice will initiate the public process to replace the existing approved rates that expire September 30, 2002. The proposed new rates for CVP firm power are designed to recover an annual revenue requirement that includes the investment repayment, interest, purchase power costs, transmission, operation and maintenance expense, and any charges or credits associated with the creation, termination, or modification to any tariff, contract, or schedule approved by the Federal Energy Regulatory Commission (FERC). A cost-of-service study allocates the projected annual revenue requirement for firm power between capacity and energy.

The capacity revenue requirement includes: (i) 100 percent of capacity purchase costs; (ii) 50 percent of the investment repayment; (iii) 50 percent of the interest expense; (iv) 50 percent of the operation and maintenance expense allocated to power; and (v) 100 percent of CVP and COTP transmission expense. Projected CVP and COTP transmission revenue and 50 percent of projected CVP project use revenue reduce the annual costs that determine the capacity revenue requirement.

The energy revenue requirement includes: (i) 100 percent of energy purchase costs; (ii) 50 percent of the investment repayment; (iii) 50 percent of the interest expense; and (iv) 50 percent of the operation and maintenance expense allocated to power. Projected surplus power revenue and 50 percent of projected CVP project use revenue reduce annual costs to determine the energy revenue requirement.

The resulting capacity/energy revenue requirement split varies from 30 percent allocated to capacity from April 1, 2001, through September 30, 2001, to 15 percent allocated to capacity from October 1, 2004, through December 31, 2004. The average capacity/energy revenue requirement split for the rate period is 22 percent to capacity and 78 percent to energy. The variation in the capacity/energy revenue requirement split is due to fluctuations in energy purchase costs and seasonal CVP hydro generation.

Western also developed new proposed rates for CVP firm power with the transmission revenue requirement removed from the firm power revenue requirement. These rates would apply if Western joins the California Independent System Operator (CAISO) and if the CAISO uses the transmission revenue requirement to develop a regional transmission rate. Western has not made a decision on joining the CAISO. The decision to join the CAISO is not part of this rate adjustment public process. These new proposed power rates with the transmission revenue requirement removed are designed to recover an annual revenue requirement that includes investment repayment, interest, purchase power, operation and maintenance expense, and any charges or credits associated with the creation, termination, or modification to any tariff, contract, or schedule approved by FERC.

A cost-of-service study allocates projected annual revenue requirement for firm power between capacity and energy. The capacity revenue requirement includes: (i) 100 percent of capacity purchase costs; (ii) 50 percent of the investment repayment; (iii) 50 percent of the interest expense; and (iv) 50 percent of the operation and maintenance expense allocated to power.

Fifty percent of the projected CVP project use revenue reduces the annual cost to determine the capacity revenue requirement. The energy revenue requirement includes: (i) 100 percent of energy purchase costs; (ii) 50 percent of the investment repayment; (iii) 50 percent of the interest expense; and (iv) 50 percent of the operation and maintenance expense allocated to power. Projected surplus power revenue and 50 percent of the projected CVP project use revenue reduce the annual cost to determine the energy revenue requirement.

The resulting capacity/energy revenue requirement split varies from 24 percent allocated to capacity from April 1, 2001, through September 30, 2001, to 11 percent allocated to capacity from October 1, 2004, through December 31, 2004. The average capacity/energy revenue requirement split for the rate period is 17 percent to capacity and 83 percent to energy. The variation in the capacity/energy revenue requirement split is due to fluctuations in energy purchase costs and seasonal CVP hydro generation.

For both sets of firm power rates described above, Western will pass through to its customers any additional costs or credits that may be charged or credited to Western as the result of the creation, termination, or modification of any tariff, contract, schedule or other documents approved by FERC. When possible, Western will pass through directly to each customer FERC approved costs or credits in the same manner Western receives these costs or credits. If the FERC approved costs or credits are charged to Western in such a way that a direct pass through to each customer is not possible, Western will distribute the FERC approved costs or credits to each customer in a manner consistent with the rate design used in developing the proposed rates.

The new proposed rates for CVP firm power and the applicable revenue requirement split between capacity and energy are in Table 1.

TABLE 1.—PROPOSED FIRM POWER RATES

Effective period	Total composite mills/kWh	Capacity $/kWmonth	Energy mills/kWh	Capacity/energy split
04/01/01 to 09/30/01	22.71	3.81	15.99	30/70
10/01/01 to 09/30/02	26.16	3.34	20.64	21/79
10/01/02 to 09/30/03	26.96	3.48	21.24	21/79
10/01/03 to 09/30/04	26.46	3.41	20.85	21/79
10/01/04 to 12/31/04	29.62	2.96	25.06	15/85

The proposed rates for CVP firm power with the transmission revenue requirement removed and applicable revenue requirement split between capacity and energy are in Table 1A.

TABLE 1A.—PROPOSED FIRM POWER RATES WITH THE TRANSMISSION REVENUE REQUIREMENT REMOVED FROM THE FIRM POWER REVENUE REQUIREMENT

Effective period	Total composite mills/kWh	Capacity $/kWmonth	Energy mills/kWh	Capacity/energy split
04/01/01 to 09/30/01	21.04	2.86	15.99	24/76
10/01/01 to 09/30/02	24.74	2.48	20.64	17/83
10/01/02 to 09/30/03	25.57	2.63	21.24	17/83
10/01/03 to 09/30/04	25.08	2.57	20.85	17/83
10/01/04 to 12/31/04	28.22	2.05	25.06	11/89

The Deputy Secretary of the Department of Energy (DOE), approved the existing Rate Schedule CV–F9 for CVP commercial firm power on September 19, 1997 (Rate Order No. WAPA–77, 62 FR 50924, September 29, 1997). FERC confirmed and approved the rate schedule on January 8, 1998, under FERC Docket No. EF97–5011–000 (82 FERC ¶ 62,006). The existing Rate Schedule CV–F9 became effective on October 1, 1997, for the period ending September 30, 2002. Under Rate Schedule CV–F9, the composite rate on October 1, 2000, is 18.56 mills per kilowatthour (mills/kWh), the base energy rate is 10.51 mills/kWh and the capacity rate is $3.81 per kilowattmonth (kWmonth).

The proposed rates for CVP firm power will result in an overall composite rate increase of approximately 22 percent on April 1, 2001, when compared with the current CVP commercial firm power rates under Rate Schedule CV–F9. Table 2 provides a comparison of the current rates in Rate Schedule CV–F9 and the proposed rates along with the percentage change in the rates.

TABLE 2.—COMPARISON OF CURRENT AND PROPOSED RATES

Effective period	Total composite rate	Percent change	Capacity $/kW month	Percent change	Energy mills/kWh	Percent change
Percentage Change in Firm Power Rates						
Current Rate Schedule						
Existing 10/01/00 to 09/30/01	18.56	....	3.81	....	10.51	....

TABLE 2.—COMPARISON OF CURRENT AND PROPOSED RATES—Continued

Effective period	Total composite rate	Percent change	Capacity $/kW month	Percent change	Energy mills/kWh	Percent change
Proposed Rates						
04/01/01 to 09/30/01	22.71	22	3.81	0	15.99	52
10/01/01 to 09/30/02	26.16	41	3.34	−12	20.64	96
10/01/02 to 09/30/03	26.96	45	3.48	−9	21.24	102
10/01/03 to 09/30/04	26.46	43	3.41	−10	20.85	98
10/01/04 to 12/31/04	29.62	60	2.96	−22	25.06	138

The proposed rates for CVP firm power with the transmission revenue requirement removed will result in an overall composite rate increase of approximately 13 percent on April 1, 2001, when compared with the current CVP commercial firm power rates under Rate Schedule CV–F9. Table 2A provides a comparison of the current rates in Rate Schedule CV–F9 and the proposed rates with the Transmission Revenue Requirement removed along with the percentage change in the rates.

TABLE 2A.—COMPARISON OF CURRENT AND PROPOSED RATES WITH THE TRANSMISSION REVENUE REQUIREMENT REMOVED[1]

Effective period	Total composite rate	Percent change	Capacity $/kW month	Percent change	Energy mills/kWh	Percent change
Percentage Change in Firm Power Rates						
Current Rate Schedule						
Existing 10/01/00 to 09/30/01	18.56	....	3.81	....	10.51	....
Proposed Rates With the Transmission Revenue Requirement Removed						
04/01/01 to 09/30/01	21.04	13	2.88	−25	15.99	52
10/01/01 to 09/30/02	24.74	33	2.48	−35	20.64	96
10/01/02 to 09/30/03	25.57	38	2.63	−31	21.24	102
10/01/03 to 09/30/04	25.08	35	2.57	−33	20.85	98
10/01/04 to 12/31/04	28.22	52	2.05	−46	25.06	138

[1] These rates do not include the cost of transmission; therefore, the customer is required to buy transmission at an additional cost.

Adjustment Clauses Associated With the Proposed Rates for CVP Firm Power

Power Factor Adjustment

This provision in Rate Schedule CV–F9 will remain the same under the proposed rates for CVP firm power.

Low Voltage Loss Adjustment

This provision in Rate Schedule CV–F9 will remain the same under the proposed rates for CVP firm power.

Revenue Adjustment

The Revenue Adjustment Clause (RAC) provides for a comparison between the projected net revenues in the rate adjustment power repayment study to the actual net revenues. If the actual net revenue is more than the projected net revenue, CVP preference customers receive a credit. If actual net revenue is less than the projected net revenue, CVP preference customers may pay a surcharge, if needed, to make a minimum investment payment. The limit for the RAC credit or surcharge is $20 million, plus any purchase power contract adjustments during the fiscal year (FY) for which the RAC is being calculated.

The RAC is calculated annually and the associated distribution of the RAC credit or surcharge occurs during a 9-month period on power bills issued January through September. For customers whose RAC credits cannot be fully credited through nine equal monthly amounts, Western has the option to increase the RAC credit during August and September. The FY 2001 RAC calculation will be based on the net revenue for FY 2001, including revenues and expenses for October 2000 to March 2001, which is outside of the rate adjustment period. A RAC will be calculated for October through December 2004. The maximum RAC credit or surcharge for October through December 2004 is $10 million plus purchase power contract adjustments applied to the April to September 2005 bills.

Proposed Rate for Power Scheduling Service

The proposed rate for power scheduling service is $76.65 per hour and is based on costs incurred to provide the service. Power scheduling service provides for scheduling resources to meet load and reserve requirements.

Proposed Rate for Scheduling Coordinator Service

The proposed rate for scheduling coordinator service is $76.65 per hour and is based on costs incurred to provide the service. Scheduling coordinator service provides scheduling, real-time dispatching, and financial settlements with the CAISO and/or power exchanges.

Proposed Formula Rate for CVP Transmission

The proposed formula rate for firm CVP transmission includes two components:

Component 1: Transmission revenue requirement/(CVP capacity + total transmission capacity under long-term contracts). Component 1 is the ratio of Western's transmission revenue requirement to the sum of the maximum operating capacity of the Northern CVP power plants under normal operating conditions (CVP capacity) and the total transmission capacity under long-term contracts between Western and other parties. Northern CVP power plants are J.F. Carr, Folsom, Keswick, Nimbus, Shasta, Spring Creek, and Trinity.

Component 2: Pass through of any transmission-related costs or credits incurred by Western due to electric industry restructuring or other changes in the industry. The costs or credits in component 2, as well as any changes to these costs or credits, will be passed through to each appropriate transmission customer.

Western will revise the rate from component 1 based on updated data as of April 30 of each year. Western will also revise the rate from component 1 if there is a change in component 1 of the CVP firm transmission rate of at least $.05 per kWmonth. The estimated rate resulting from the proposed formula rate for firm CVP transmission for April to September 2001 is $0.70 per kWmonth, a 37-percent increase from the existing rate of $0.51 per kWmonth, under Rate Schedule CV–FT3. Based on a contract agreement to provide transmission service in the future, the estimated rate resulting from the proposed formula rate for firm CVP transmission for FY 2002 is $.56 per kWmonth, a 10-percent increase from the existing rate of $.51 per kWmonth.

The estimated rate resulting from the proposed formula rate for nonfirm CVP transmission service for April to September 2001 is 1.00 mill/kWh. The proposed formula rate for nonfirm CVP transmission is based on the same two components used in the proposed formula rate for firm CVP transmission. A revision to the nonfirm rate resulting from component 1 will occur whenever component 1 of the firm transmission rate is revised. If the rates from the proposed formula rate are higher than other transmission rates in California, firm or nonfirm transmission service for 1 year or less may be sold at lower rates.

The proposed formula rate for CVP transmission service is based on a revenue requirement that recovers: (i) The costs for facilities that support the transfer capability of the CVP transmission system (excluding generation facilities and radial lines); (ii) the nonfacilities costs allocated to transmission; and (iii) any transmission-related costs or credits incurred by Western due to electric industry restructuring or other changes in the industry. The proposed formula rate includes Western's cost for scheduling, system control and dispatch service, and reactive supply and voltage control service associated with the transmission service. The proposed formula rate is applicable to existing CVP firm transmission service and future point-to-point transmission service.

Proposed Rate for Transmission of CVP Power by Others

Western will pass through transmission service costs or credits it incurs for delivering CVP power over a third party's transmission system to the requesting CVP customer. Rates under this schedule will be automatically adjusted as third party transmission costs or credits are adjusted.

Proposed Formula Rate for Network Integration Transmission

If Western offers network integration transmission service, it will be consistent with FERC Order No. 888. The proposed formula rate is the product of the network customer's load ratio share times one-twelfth of the annual network integration transmission revenue requirement. The load ratio share is the network customer's hourly load coincident with Western's monthly CVP transmission system peak minus the coincident peak for all firm CVP (including reserved capacity) point-to-point transmission service, plus the reserved capacity of all firm point-to-point transmission service customers.

The proposed formula rate for network integration transmission service is based on a revenue requirement that recovers: (i) The costs for facilities that support the transfer capability of the CVP transmission system (excluding generation facilities and radial lines); (ii) the nonfacilities costs allocated to transmission; and (iii) any transmission-related costs or credits incurred by Western due to electric industry restructuring or other changes in the industry. The proposed formula rate includes Western's cost for scheduling, system control and dispatch service, and reactive supply and voltage control service needed to provide the transmission service.

Proposed Formula Rate for COTP Transmission

The proposed formula rate for COTP transmission includes two components:

Component 1: Transmission Revenue Requirement/Western's share of COTP Seasonal Capacity. Component 1 is the ratio of the transmission revenue requirement to Western's share of COTP seasonal capacity. Western will update the rate resulting from component 1 at least 15 days before the start of each California-Oregon Intertie rating season. Seasonal definitions for summer, winter, and spring are June through October, November through March, and April through May, respectively.

Component 2: Pass through of any transmission-related costs or credits incurred by Western due to electric industry restructuring or other changes in the industry. The costs or credits in component 2, as well as any changes to these costs or credits, will be passed through to each appropriate transmission customer.

The estimated rates resulting from the proposed formula rate for firm COTP transmission service for April 2001 to March 2002 are: Summer—$0.94 per kWmonth, winter—$1.12 per kWmonth, and spring—$1.00 per kWmonth. These rates resulting from the proposed formula rate result in a 30-percent decrease during the summer, a 16-percent decrease during the winter, and a 25-percent decrease during the spring compared to the existing rate of $1.34 per kWmonth.

The proposed formula rate for nonfirm COTP transmission is based on the same two components used in the proposed formula rate for firm COTP transmission. The estimated rates resulting from the proposed formula rate for nonfirm transmission service for April 2001 to March 2002 are: Summer—1.29 mills/kWh, winter—1.54 mills/kWh, and spring—1.37 mills/kWh. These rates for nonfirm COTP transmission service result in an 11-percent decrease during the summer, a 6-percent increase during the winter, and a 5-percent decrease during the spring compared to the existing rate of 1.45 mills/kWh. If the rates from the proposed formula rate are higher than other transmission rates in California, firm or nonfirm transmission service for 1 year or less may be sold at lower rates.

Rates resulting from the proposed formula rate for COTP transmission service are based on a revenue requirement that recovers: (i) Western's share of costs for facilities that support the transfer capability of the COTP; (ii) Western's share of the nonfacilities costs allocated to transmission; and (iii) any transmission-related costs or credits incurred by Western due to electric industry restructuring or other changes in the industry. The rates resulting from the proposed formula rate include Western's cost for scheduling, system control and dispatch service, and reactive supply and voltage control service associated with transmission service. The proposed formula rate would apply to existing COTP transmission service and future point-to-point transmission service.

Proposed Rates for Ancillary Services

Western will provide ancillary services, subject to availability, at the proposed rates in Table 3. Western designed these proposed rates to recover only the costs it incurs for providing the service(s). If these cost-based rates are higher than other ancillary service rates in California, sales of ancillary services of 1 year or less may be sold at lower rates.

TABLE 3.—PROPOSED RATES FOR ANCILLARY SERVICES

Ancillary service type	Rate
Transmission Scheduling, System Control and Dispatch Service—required to schedule movement of power through, out of, within, or into a control area.	Appropriate transmission rates include Western's cost.
Reactive Supply and Voltage Control Service—reactive power support provided from generation facilities necessary to maintain transmission voltages within acceptable limits of the system.	Appropriate transmission rates include Western's cost.
Regulation and Frequency Response Service—provides generation to match resources and loads on a real-time continuous basis.	Monthly: $2.496 per kWmonth. Weekly: $0.574 per kWweek. Daily: $0.082 per kWday.
Energy Imbalance Service—provied when a difference occurs between the scheduled and actual delivery of energy to a load or from a generation resource within a control area over a single month.	*Within Limits of deviation Band:* Accumulated deviations are to be corrected or eliminated within 30 days. Any net deviations that are accumulated at the end of the month (positive or negative) are to be exchanged with like hours of energy or charged at the composite rate for CVP firm power then in effect.
Hourly Deviation (MW)—net scheduled amount of energy for the hour minus the hourly net metered (actual delivered) amount.	*Outside Limits of Deviation Band:* (i) *Positive Deviations*—the greater of no charge, or any additional cost incurred. (ii) *Negative Deviations*—during on-peak hours, the greater of 3 times the proposed rates for CVP firm power or any additional cost incurred. During off-peak hours, the greater of the proposed rates for CVP firm power or any additional cost incurred.
Spinning Reserve Service—provides capacity available the first 10 minutes to take load and is synchronized with the power system.	Monthly: $2.946 per kWmonth. Weekly: $0.672 per kWweek. Daily: $0.096 per kWday. Hourly: $0.0040 per kWh.
Supplemental Reserve Service—provides capacity not synchronized, but can be available to service loads within 10 minutes.	Monthly: $2.491 per kWmonth. Weekly: $0.574 per kWweek. Daily: $0.082 per kWday. Hourly: $0.0034 per kWh.

Since the proposed rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, Western will hold both a public information forum and a public comment forum. After reviewing public comments, Western will recommend provisional rates for approval on an interim basis by the DOE Deputy Secretary.

These proposed rates for the CVP and COTP are established pursuant to the DOE Organization Act, 42 U.S.C. 7101–7352; the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts that specifically apply to the projects involved.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator; and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memoranda, or other documents made or kept by Western for developing the proposed rates are available for inspection and copying at the Sierra Nevada Regional Office, 114 Parkshore Drive, Folsom, California.

Regulatory Procedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of a proposed rulemaking. Western has determined that this action does not require a Regulatory Flexibility analysis since it is a rulemaking involving rates or services for public property.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*; Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: October 16, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–28626 Filed 11–07–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Salt Lake City Area Integrated Projects Firm Power Rate Formula Adder

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rates.

SUMMARY: The Western Area Power Administration's (Western) Colorado River Storage Project (CRSP) Management Center (MC) is proposing a rate formula adder to the existing rate for firm long-term sales of Salt Lake City Area Integrated Projects (SLCA/IP) power. The SLCA/IP consists of the CRSP, Collbran, and Rio Grande Projects which were integrated for marketing and ratemaking purposes on October 1, 1987. The CRSP described here includes two CRSP participating projects which have power facilities, Dolores and Seedskadee Projects.

In the long term, the existing SLCA/IP composite rate of 17.57 mills/kilowatthour (kWh) is sufficient to pay for all costs including operation, maintenance, replacement, and interest expenses and to repay investment and irrigation assistance obligations within the required period. CRSP MC staff will continue to monitor the long-term firm power rate for the SLCA/IP to determine if a long-term rate adjustment will need to be placed into effect.

The proposed rate formula adder is needed to provide additional revenue in the CRSP Basin Fund, a revolving fund in the United States Treasury, to pay for near-term purchase power costs and to increase the working capital in the CRSP Basin Fund. The proposed rate formula adder scheduled to go into effect on February 1, 2001, will remain in effect until September 30, 2003, or until superseded by another rate adjustment, whichever occurs first. This **Federal Register** notice initiates the formal process for the proposed rate formula adder.

DATES: The consultation and comment period will begin when this **Federal Register** notice is published and will end December 8, 2000. Public information forum and public comment forum meeting dates are scheduled for these locations:

1. Public information forum—November 20, 2000, 10:30 a.m., Salt Lake City, Utah; Public comment forum—November 20, 2000, 2 p.m., Salt Lake City, Utah.

2. Public information forum—November 21, 2001, 10:30 a.m., Phoenix, Arizona; Public comment forum—November 21, 2001, 2 p.m., Phoenix, Arizona.

ADDRESSES: The address for the Salt Lake meetings is at the Sheraton Hotel (formerly the Hilton), 150 West 500 South, Salt Lake City, Utah. The address for the meetings in Phoenix is Western Area Power Administration, Desert Southwest Region, 615 South 43rd Avenue, Phoenix, Arizona. Written comments may be sent to: Mr. Dave Sabo, CRSP Manager, CRSP Management Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, e-mail sabo@wapa.gov. Western should receive written comments by the end of the consultation and comment period to be assured they are considered. Oral comments will be received at the public comment meetings.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Loftin, Rates Manager, CRSP Management Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, telephone (801) 524–6380, e-mail loftinc@wapa.gov, or visit CRSP MC's home page at: www.wapa.gov/crsp/crsp.htm.

SUPPLEMENTARY INFORMATION: The existing long-term rate for SLCA/IP firm power is designed to recover an annual revenue requirement based on repaying power investment; paying interest, purchased power, operation, maintenance, and replacement expenses; and repaying irrigation assistance costs, as required by law.

The Deputy Secretary of the Department of Energy (DOE) approved the existing Rate Schedule SLIP–F6 for SLCA/IP firm power on March 23, 1998 (Rate Order No. WAPA–78). The Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedule on July 17, 1998, in FERC Docket No. EF98–5171–000. The existing Firm Power Rate Schedule expires on March 31, 2003. Under Rate Schedule SLIP–F6, the energy rate is 8.10 mills/kWh, and the capacity rate is $3.44 per kilowattmonth (kWmonth). The composite rate (revenue requirements per kWh usage) is 17.57 mills/kWh.

The proposed rate formula adder is needed to provide additional revenue to fund near-term purchased power costs and to increase the working capital balance in the CRSP Basin Fund. Higher-than-normal purchased power expenses have resulted from lower-than-expected hydrology conditions, higher-than-normal purchase power prices, and the summer test release for endangered fish from Glen Canyon Dam (GCD).

The rate formula adder will be applied during the next 3 fiscal years (FY) from February 1, 2001, through September 30, 2003. The following proposed formulas will be used to determine the rate formula adder:

(1) BB + ER—PP—O&M = EB
  BB = CRSP Basin Fund balance at the beginning of the FY
  ER = expected revenues for the current FY
  PP = estimated purchase power costs which could include non-reimbursable purchase power costs
  O&M = operation and maintenance expenses which includes non-reimbursable expenses, replacements, and transmission expenses
  EB = CRSP Basin Fund balance at the end of the FY
(2) RB—EB = RN
  RB = minimum required balance in the CRSP Basin Fund at the end of the FY (FY 2001 = $35 million, FY 2002 = $50 million, FY 2003 = $60 million)
RN = additional revenue needed

The RN is divided by the projected energy sales as shown in the existing ratesetting study to determine the additional composite rate needed.

RATE FORMULA ADDER ESTIMATED BY FISCAL YEAR
[$1,000,000]

	FY 2001 February 1, 2001-September 30, 2001	FY 2002 October 1, 2001-September 30, 2002	FY 2003 October 1, 2002-September 30, 2003
Beginning Balance	45.2	35.0	50.0
Expected Revenue[1]	140.0	140.0	140.0
Expected Costs:			
Purchased Power[2]	108.8	108.8	108.8
OM&R[3]	79.1	79.1	79.1
Unbudgeted Costs[4]	2.0	2.0	2.0
Total Costs	189.9	189.9	189.9
Ending Balance	(4.7)	(14.9)	0.1
Minimum Required Balance	35.0	50.0	60.0
Revenue Needed	39.7	64.9	59.9
Rate Adder Needed:[5]			
Composite (mills/kWh)	11.02	10.52	9.70

[1] Current revenue based on FY 1999 Sales and Revenue Report.
[2] Based on latest 10/20/00 estimate.
[3] As currently budgeted (2002). Includes budgeted Recovery Implementation Program costs.
[4] Cost required by recent HR 2348, legislation, Upper Colorado Fish Recovery Program.
[5] Based on power sales as projected in existing rate PRS (FY 1997).

Based upon the most recent data available at the time of this publication, the proposed rate formula adder for FY 2001 (which is proposed to be effective February 1, 2001) is expected to be an additional 5.1 mills/kWh for energy and $2.17 per kWmonth for capacity. The proposed composite rate adder is 11.02 mills/kWh.

At the end of FY 2001, an update of the data in the rate formula adder will indicate the adder for the following FY. At the end of the Winter Season each year, FY data and current projections will be reviewed to determine if the FY rate formula adder needs to be revised. If needed, a mid-FY revision to the adder would be made at this time. The Winter Season is the period from October 1 to March 31. The Summer Season is the period from April 1 to September 30. The rate formula adder calculations that are updated each FY will provide for an increase in the CRSP Basin Fund working capital balance until it reaches $60 million by the end of FY 2003. Customers will be notified in September of each year as to the next FY rate formula adder. In March of each year, the customers will be notified if a mid-FY revision is required. The rate formula adder will be charged by adding an additional capacity and energy rate to the SLIP–F6 rate. The table below displays the existing rate and the estimated rate formula adders for the next 3 FYs.

TOTAL SLCA/IP FIRM POWER RATE ESTIMATED BY FISCAL YEAR

	FY 2001 February 1, 2001-September 30, 2001			FY 2002 October 1, 2001-September 30, 2002		FY 2003 October 1, 2002-September 30, 2003	
	Existing rate	Adder	Total	Adder	Total	Adder	Total
Energy rate (mills/kWh)	8.1	5.1	13.2	4.8	12.9	4.5	12.6
Capacity rate ($/kWmonth)	3.44	2.17	5.61	2.07	5.51	1.91	5.35
Composite rate (mills/kWh)	17.57	11.02	28.59	10.52	28.09	9.70	27.27

At the public information forums on November 20 and 21, 2000, in Salt Lake City and Phoenix, CRSP MC staff will explain in detail the rate formula adder and its application for the period of February 1, 2001, through September 30, 2001, and also provide estimates for the following 2 FYs.

The proposed rate formula adder is highly dependent upon hydrology conditions of the Upper Colorado River Basin, volatility of purchased power prices, potential of continuing test flows this summer at GCD, and the CRSP Basin Fund cash balance. A discussion of these issues follows.

Hydrology Conditions

Water year (WY) 2000 ended on September 30, 2000. The unregulated inflow to Lake Powell during the run-off season was 4.35 million acre-feet (maf) or 56 percent of average.

Hydrological assumptions are used in preparing estimates for generation from the SLCA/IP facilities. This, combined with contractual commitments, gives Western its purchased power requirements. Releases assumed by Western for the Winter Season 2001 are from the 24-month study prepared by the Bureau of Reclamation in October 2000. For the Summer Season 2001, Western assumed an amount of water release which, when added to the Winter season releases, totaled 8.23 maf from GCD. Summer releases were patterned by month using a dry-year pattern. For all other SLCA/IP power facilities, the Reclamation 24-month study was used.

Purchased Power Prices

Western may need to purchase electrical power from other utilities to support its minimum contractual commitment referred to as Sustainable Hydro Power (SHP). Given the water conditions previously described, Western developed estimates of the purchased power amounts required to provide the SHP amounts for each season. For the Winter Season 2001, Western included purchased power prices for which Western has already contracted. For the Summer Season 2001, Western's estimates of purchased power prices were derived from the New York Merchantile Exchange's (NYMEX) Palo Verde Electricity futures prices at the time the analysis was prepared.

Test Flows

Test flows at GCD are possible again next summer, as a result of an obligation the Bureau of Reclamation has under the conditions of a biological opinion (a requirement under the Endangered Species Act). Test flows occur in minimum-flow years. The probability of such an occurrence in FY 2001 is 34 percent.

CRSP Basin Fund Cash Balance

The CRSP Basin Fund ended FY 2000 with a balance of about $42.5 million in cash. The lower-than-normal balance was mainly due to the high cost of purchased power prices during July, August, and September 2000. The need to purchase additional power.was compounded by the low environmental test flows from GCD.

Purchase arrangements for energy needed to meet contractual obligations have been made for the Winter Season 2001. These purchases were at much higher costs than normal and adversely affected the CRSP Basin Fund's cash flow. Monthly revenues into the CRSP Basin Fund normally run from $10 million to $14 million per month; expenditures for purchased power are now at these levels. Any spending on transmission, replacements, and operation and maintenance costs will result in a negative cash flow during months when purchased energy costs are equivalent to or greater than revenue inflows.

In the event of another year where hydrology conditions are significantly below average and where low test flows from GCD are required, the CRSP Basin Fund working capital would be insufficient at the present rate.

Procedural Requirements

Since the proposed rate formula adder constitutes a major rate adjustment as defined at 10 CFR 903.2, both public information forums and public comment forums will be held. However, the consultation and comment period has been shortened because of the financial hardship faced by the CRSP Basin Fund. After reviewing public comments, Western will recommend that the proposed rate formula adder or a revised proposed rate formula adder be approved on an interim basis by the DOE Deputy Secretary.

The proposed rate formula adder to the SLCA/IP firm power rates is being established pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101–7352; the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the projects involved.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of DOE delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary. Existing DOE procedures for public participation in power rate adjustments are found at 10 CFR part 903.

Availability of Information

All studies, comments, letters, memorandums, or other documents made or kept by Western for developing the proposed rates are and will be made available for inspection and copying at the CRSP Management Center, located at 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1534.

Regulatory Procedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from Congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: October 27, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–28627 Filed 11–7–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34225A; FRL–6753–2]

Diazinon; Revised Pesticide Risk Assessment; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a public meeting to present the revised risk assessment for the organophosphate pesticide diazinon to interested stakeholders. This public meeting, called a "Technical Briefing," will provide an opportunity for stakeholders to learn about the data, information, and methodologies that the Agency used in revising its risk assessment for diazinon. In addition, representatives of the Department of Agriculture (USDA) will also provide ideas on possible risk management for diazinon.

DATES: The technical briefing will be held on, December 5, 2000, from 1:00 p.m. to 5:00 p.m.

ADDRESSES: The technical briefing will be held at the Radisson Hotel, Old Town Alexandria, 901 N. Fairfax St., Alexandria, VA 22314, (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: By mail: Ben Chambliss, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8174; e-mail address: *chambliss.ben@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in technical briefings on organophosphate pesticides, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register**listings at *http://www.epa.gov/fedrgstr/*.

To access information about organophosphate pesticides, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at *http://www.epa.gov/pesticides/op/*. In addition, a brief summary of the diazinon revised risk assessment is now available at *http://www.epa.gov/pesticides/op/status.htm/*, as well as in paper as part of the public version of the official record as described in Unit I.B.2.

2. *In person*. The Agency has established an official record under docket control number OPP–34225A. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This document announces the Agency's intention to hold a technical briefing for the organophosphate pesticide, diazinon. The Agency is presenting the revised risk assessments for diazinon to interested stakeholders. This technical briefing is designed to provide stakeholders with an opportunity to become even more informed about an organophosphate's risk assessment. EPA will describe in detail the revised risk assessment: Including the major points (e.g., contributors to risk estimates); how public comment on the preliminary risk assessment affected the revised risk assessment; and the pesticide use information/data that was used in developing the revised risk assessment. Stakeholders will have an opportunity to ask clarifying questions. In addition, representatives of the USDA will provide ideas on possible risk management.

The technical briefing is part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998 as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessment and risk management decisions. EPA and USDA began implementing this pilot process in August 1998 in response to Vice President Gore's directive to increase transparency and opportunities for stakeholder consultation.

On the day of the technical briefing, in addition to making copies available at the meeting site, the Agency will also release for public viewing the diazinon revised risk assessments and related documents to the Public Information and Records Integrity Branch and the OPP Internet web site that are described in Unit I.B.1. In addition, the Agency will issue a **Federal Register** notice to provide an opportunity for a 60–day public participation period during which the public may submit risk management and mitigation ideas and recommendations and proposals for transition.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: October 24, 2000.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–28422 Filed 11–07–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–980; FRL–6750–2]

Notice of Filing Pesticide Petitions to Establish Tolerances for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–980, must be received on or before December 8, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–980 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda DeLuise, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460; telephone number: (703) 305–5428; e-mail address: *deluise.linda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Eamples of potentially affected entities
Industry	111	Crop production
....	112	Animal production
....	311	Food manufacturing
....	32532	Pesticide manufacturing

This listing is not intended to be ehaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket control number PF–980. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, ecluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–980 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, ecluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–980. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed ecept in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Eplain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, eplain how you arrived at the estimate that you provide.

5. Provide specific eamples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 25, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petitions summaries verbatim without editing it in any way. The petitions summaries announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemicals residues or an eplanation of why no such method is needed.

1. FMC Corporation

PP 0F6207

EPA has received a pesticide petition PP 0F6207 from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.418 by establishing tolerances for residues of the insecticide zeta-cypermethrin (±-a-Cyano(3-phenoxyphenyl)methyl (±) cis, trans 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the raw agricultural commodities (RAC): wheat, grain at 0.15 parts per million (ppm); wheat, forage, at 2.5 ppm; wheat, hay at 6.0 ppm; wheat, straw at 6.5 ppm; wheat, bran at 0.20 ppm; sorghum, grain, at 0.50 ppm; sorghum, forage at 0.10 ppm; sorghum, fodder at 1.5 ppm; tomatoes at 0.10 ppm; peppers at 0.30 ppm; peas and beans (dried, succulent, and edible podded) at 0.50 ppm; soybeans at 0.05 ppm; poultry, meat at 0.05 ppm; poultry, meat by-products at 0.05 ppm; poultry, fat at 0.05 ppm and, eggs at 0.05 ppm; meat of cattle, goats, hogs, horses, and, sheep at 0.3 ppm; fat of cattle, goats, hogs, horses, and sheep at 0.30 ppm; and, milk, fat at 0.2 ppm (reflecting 0.01 ppm in whole milk).

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of cypermethrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled cypermethrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method*. There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (gas chromatography with electron capture detection (GC/ECD).

3. *Magnitude of residues*. Crop field trial residue data from studies conducted at the maimum label rates for wheat, sorghum, peas, beans, soybeans, tomatoes, and peppers show that the proposed zeta-cypermethrin tolerances on wheat, grain at 0.15 ppm; wheat, forage, at 2.5 ppm; wheat, hay at 6.0 ppm; wheat, straw at 6.5 ppm; wheat, bran at 0.20 ppm; sorghum, grain, at 0.50 ppm; sorghum, forage at 0.10 ppm; sorghum, fodder at 1.5 ppm; tomatoes at 0.10 ppm; peppers at 0.30 ppm; peas, and beans (dried, succulent, and edible podded) at 0.50 ppm; soybeans at 0.05 ppm; will not be eceeded when the zeta-cypermethrin products labeled for these uses are used as directed.

B. Toxicological Profile

1. *Acute toxicity*. For the purposes of assessing acute dietary risk, FMC has used the no observed adverse effect level (NOAEL) of 10.0 milligrams/kilograms (mg/kg)/day from the zeta-cypermethrin acute neurotoxicityy study in rats. The lowest effect level (LEL) of 50.0 mg/kg/day was based on clinical signs. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicty*. The following genotoxicity tests were all negative: *In vivo* chromosomal aberration in rat bone marrow cells; *in vitro* cytogenic chromosome aberration; unscheduled DNA synthesis; chinese hampster ovary/hypoanthine guanine phophoribosyl transferase (CHO/HGPRT) mutagen assay; weakly mutagenic; gene mutation (Ames).

3. *Reproductive and developmental toxicity*. No evidence of additional sensitivity to young rats was observed following prenatal or postnatal exposure to zeta-cypermethrin.

i. A 2—generation reproductive toxicity study with zeta-cypermethrin in rats demonstrated a NOAEL of 7.0 mg/kg/day and a LOAEL of 27.0 mg/kg/day for parental/systemic toxicity based on body weight, organ weight, and clinical signs. There were no adverse effects in reproductive performance. The NOAEL for reproductive toxicity was considered to be ≤45.0 mg/kg/day (the highest dose tested).

ii. A developmental study with zeta-cypermethrin in rats demonstrated a maternal NOAEL of 12.5 mg/kg/day and a LOAEL of 25 mg/kg/day based on decreased maternal body weight gain, food consumption and clinical signs. There were no signs of developmental toxicity at 35.0 mg/kg/day, the highest dose level tested.

iii. A developmental study with cypermethrin in rabbits demonstrated a maternal NOAEL of 100 mg/kg/day and a LOAEL of 450 mg/kg/day based on decreased body weight gain. There were no signs of developmental toxicity at 700 mg/kg/day, the highest dose level tested.

4. *Subchronic toxicity*. Short- and intermediate-term toxicity. The NOAEL of 10.0 mg/kg/day based on clinical signs at the LEL of 50.0 mg/kg/day in the zeta-cypermethrin acute neurotoxicity study in rats would also be used for short- and intermediate-term MOE calculations (as well as acute, discussed in (1) above).

5. *Chronic toxicity*— i. The reference dose (RfD) of 0.005 mg/kg/day for zeta-cypermethrin is based on a NOAEL of 1.0 mg/kg/day from a cypermethrin dog chronic study and an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). The endpoint effect of concern was based on gastrointestinal disturbances.

ii. Cypermethrin is classified as a Group C chemical (possible human carcinogen with limited evidence of carcinogenicity in animals) based upon limited evidence for carcinogenicity in female mice; assignment of a Q* has not been recommended.

6. *Animal metabolism*. The metabolism of cypermethrin in animals is adequately understood. Cypermethrin has been shown to be rapidly absorbed, distributed, and excreted in rats when administered orally. Cypermethrin is metabolized by hydrolysis and oidation.

7. *Metabolite toxicology*. The Agency has previously determined that the metabolites of cypermethrin are not of toxicological concern and need not be included in the tolerance epression.

8. *Endocrine disruption*. No special studies investigating potential estrogenic or other endocrine effects of cypermethrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that cypermethrin has an adverse effect on the endocrine system.

C. Aggregate exposure

1. *Dietary exposure*—i. *Food*. Permanent tolerances, in support of registrations, currently eist for residues of zeta- cypermethrin on cottonseed, pecans, lettuce, head, onions, bulb, cabbage, and, livestock commodities of cattle, goats, hogs, horses, and sheep (along with the associated meat and milk tolerances). For the purposes of assessing the potential dietary exposure for these eisting and the subject proposed tolerances, FMC has utilized available information on anticipated residues, monitoring data and percent crop treated as follows:

a. *Acute exposure and risk*. Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. For the purposes of assessing acute dietary risk for zeta-cypermethrin, FMC has used the NOAEL of 10.0 mg/kg/day from the zeta-cypermethrin acute neurotoxicity study in rats. The LEL of 50.0 mg/kg/day was based on clinical signs. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the margins of exposure (MOE) are significantly greater than the EPA standard of 100 for all subpopulations. The 95th percentile of exposure for the overall U.S. population was estimated to be 0.000630 mg/kg/day (margin of exposure (MOE) of 15884); 99th percentile 0.002184 mg/kg/day (MOE of 4577); and 99.9th percentile 0.010260 mg/kg/day (MOE of 974). The 95th percentile of exposure for all infants <1 year old was estimated to be 0.000599 mg/kg/day (MOE of 16682); 99th percentile 0.005656 mg/kg/day (MOE of 1768); and 99.9th percentile 0.029094 mg/kg/day (MOE of 343). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.000172 mg/kg/day (MOE of 58054); 99th percentile 0.000967 mg/kg/day (MOE of 10336); and 99.9th percentile 0.004937 mg/kg/day (MOE of 2025). The 95th percentile of exposure for non-nursing infants < 1 year old (the most highly exposed population subgroup) was estimated to be 0.000760 mg/kg/day (MOE of 13155); 99th percentile 0.011082 mg/kg/day (MOE of 902); and 99.9th percentile 0.032957 mg/kg/day (MOE of 303). The 95th percentile of exposure for children 1 to 6 years old and children 7 to 12 years old was estimated to be, respectively, 0.000936 mg/kg/day (MOE of 10681) and 0.000644 mg/kg/day (MOE of 15524); 99th percentile 0.002768 mg/kg/day (MOE of 3612) and 0.001945 (MOE of 5141); and 99.9th percentile 0.012752 mg/kg/day (MOE of 784) and 0.006688 (MOE of 1495). The 95th percentile of exposure for females (13+/nursing) was estimated to be 0.000602 mg/kg/day (MOE of 16602); 99th percentile 0.002340 mg/kg/day (MOE of 4273); and 99.9th percentile 0.011387 mg/kg/day (MOE of 878). Therefore, FMC concludes that the acute dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

b. *Chronic exposure and risk*. The RfD of 0.0125 mg/kg/day for zeta-cypermethrin is based on a NOAEL of 1.0 mg/kg/day from a cypermethrin dog chronic study and an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). The endpoint effect of concern was based on gastrointestinal disturbances. A chronic dietary exposure/risk assessment has been performed for zeta-cypermethrin using the above RfD. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into the analysis to estimate the anticipated residue contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000151 mg/kg body weight (bwt)/day and utilize 3.0% of the RfD for the overall U. S. population. The ARC for nursing infants (<1 year) and non-nursing infants (<1 year) (subgroup most highly exposed) are estimated to be 0.000024 mg/kg bwt/day and 0.000335 mg/kg bwt/day and utilizes 0.5% and 6.7% of the RfD, respectively. The ARC for children 1-6 years old and children 7-12 years old are estimated to be 0.000285 mg/kg bwt/day and 0.000168 mg/kg bwt/day and utilizes 5.7 percent and 3.4 percent of the RfD, respectively. The ARC for females (13+/nursing) are estimated to be 0.000144 mg/kg bwt/day and utilizes 2.9 percent of the RfD. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100 percent of the RfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

ii. *Drinking water*. Laboratory and field data have demonstrated that cypermethrin is immobile in soil and will not leach into groundwater. Other data show that cypermethrin is virtually insoluble in water and etremely lipephilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in groundwater at depths of 1 and 2 meters are essentially zero (<<0.001 parts per billion(ppb)). Surface water concentrations for pyrethroids were estimated using PRZM3 and exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maimum concentration predicted in the simulated pond was 0.052 parts per billion. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues are not epected to occur in drinking water.

2. *Non-dietary exposure*. Zeta-cypermethrin is registered for agricultural crop applications only, therefore non-dietary exposure assessments are not warranted.

D. Cumulative Effects

In consideration of potential cumulative effects of cypermethrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by cypermethrin would be cumulative with those of other chemical compounds; thus only the potential risks of cypermethrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for the EPA to consider concerning potential cumulative effects of cypermethrin consistent with the schedule established by EPA on August 4, 1997 (62 FR 42020) (FRL–5734–6) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population*. Based on a complete and reliable toxicology database, the RfD for zeta-cypermethrin is 0.005 mg/kg/day, based on a NOAEL of 1.0 mg/kg/day from the cypermethrin dog chronic study and an uncertainty factor of 200. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into an analysis to estimate the Anticipated Residue Contribution (ARC) for 26 population subgroups. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000151 mg/kg body weight (bwt)/day and utilize 3.0 percent of the RfD for the overall U. S. population. The ARC for nursing infants (<1 year) and non-nursing infants (<1 year) (subgroup most highly exposed) are estimated to be 0.000024 mg/kg bwt/day and 0.000335 mg/kg bwt/day and utilizes 0.5 percent and 6.7 percent of the RfD, respectively. The ARC for children 1-6 years old and children 7-12 years old are estimated to be 0.000285 mg/kg bwt/day and 0.000168 mg/kg bwt/day and utilizes 5.7 percent and 3.4 percent of the RfD, respectively. The ARC for females (13+/nursing) are estimated to be 0.000144 mg/kg bwt/day and utilizes 2.9 percent of the RfD. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100 percent of the RfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the aggregate risk assessment, does not appear to be of concern. For the purposes of assessing acute dietary risk for zeta-cypermethrin, FMC has used the NOAEL of 10.0 mg/kg/day from the zeta-cypermethrin acute neurotoxicity study in rats. The LEL of 50.0 mg/kg/day was based on clinical signs. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the margins of exposure (MOE) are significantly greater than the EPA standard of 100 for all subpopulations. The 95th percentile of exposure for the overall U. S. population was estimated to be 0.000630 mg/kg/day (MOE of 15884); 99th percentile 0.002184 mg/kg/day (MOE of 4577); and 99.9th. percentile 0.010260 mg/kg/day (MOE of 974). The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.000599 mg/kg/day (MOE of 16682); 99th percentile 0.005656 mg/kg/day (MOE of 1768); and 99.9th percentile 0.029094 mg/kg/day (MOE of 343). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.000172 mg/kg/day (MOE of 58054); 99th percentile 0.000967 mg/kg/day (MOE of 10336); and 99.9th percentile 0.004937 mg/kg/day (MOE of 2025). The 95th percentile of exposure for non-nursing infants < 1 year old (the most highly exposed population subgroup) was estimated to be 0.000760 mg/kg/day (MOE of 13155); 99th percentile 0.011082 mg/kg/day (MOE of 902); and 99.9th percentile 0.032957 mg/kg/day (MOE of 303). The 95th percentile of exposure for children 1 to 6 years old and children 7 to 12 years old was estimated to be, respectively, 0.000936 mg/kg/day (MOE of 10681) and 0.000644 mg/kg/day (MOE of 15524); 99th percentile 0.002768 mg/kg/day (MOE of 3612) and 0.001945 (MOE of 5141); and 99.9th percentile 0.012752 mg/kg/day (MOE of 784) and 0.006688 (MOE of 1495). The 95th percentile of exposure for females (13+/nursing) was estimated to be 0.000602 mg/kg/day (MOE of 16602); 99th percentile 0.002340 mg/kg/day (MOE of 4273); and 99.9th percentile 0.011387 mg/kg/day (MOE of 878). Therefore, FMC concludes that there is reasonable certainty that no harm will result from acute exposure to zeta-cypermethrin.

2. *Infants and children*— i. *General*. In assessing the potential for additional sensitivity of infants and children to residues of zeta-cypermethrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a 2–generation reproductive study in the rat. The data demonstrated no indication of increased sensitivity of rats to zeta-cypermethrin or rabbits to cypermethrin in utero and/or postnatal exposure to zeta-cypermethrin or cypermethrin. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database.

ii. *Developmental toxicity studies*. In the prenatal developmental toxicity studies in rats and rabbits, there was no evidence of developmental toxicity at the highest doses tested (35.0 mg/kg/day in rats and 700 mg/kg/day in rabbits). Decreased body weight gain was observed at the maternal LOAEL in each study; the maternal NOAEL was established at 12.5 mg/kg/day in rats and 100 mg/kg/day in rabbits.

iii. *Reproductive toxicity study*. In the 2-generation reproduction study in rats, offspring toxicity (body weight) and parental toxicity (body weight, organ weight, and clinical signs) was observed at 27.0 mg/kg/day and greater. The parental systemic NOAEL was 7.0 mg/kg/day and the parental systemic LOAEL was 27.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 45.0 mg/kg/day, highest dose tested.

iv. *Prenatal and postnatal sensitivity*— a. *Prenatal*. There was no evidence of developmental toxicity in the studies at the highest doses tested in the rat (35.0 mg/kg/day) or in the rabbit (700 mg/kg/day). Therefore, there is no evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

b. *Postnatal*. Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special postnatal sensitivity to infants and children in the rat reproduction study.

v. *Conclusion*. Based on the above, FMC concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized significantly less than 1% of the RfD for either the entire U.S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cypermethrin residues.

F. International Tolerances

There are no Codex, Canadian or Mexican residue limits for residues of zeta-cypermethrin in or on wheat (grain, forage, hay, straw, and bran), sorghum (grain, forage and fodder), tomatoes, peppers, peas and beans (dried, succulent and edible podded), and soybeans.

2. FMC Corporation

PP 1F3994

EPA has received a pesticide petition PP 1F3994 from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.418 by establishing tolerances for residues of the insecticide zeta-cypermethrin (±-a-Cyano(3-phenoxyphenyl)methyl (±) cis, trans 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the raw agricultural commodities (RAC): Sunflower, seeds at 0.20 ppm; sunflower, oil at 0.20 ppm, poultry, meat at 0.05 ppm, poultry, meat by-products at 0.05 ppm, poultry, fat at 0.05 ppm and eggs at 0.05 ppm, meat of cattle, goats, hogs, horses, and sheep at 0.3 ppm, fat of cattle, goats, hogs, horses, and sheep at 2.0 ppm, and milk, fat at 1.0 ppm (reflecting 0.2 ppm in whole milk):

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of cypermethrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled cypermethrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method*. There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (Gas Chromatography with Electron Capture Detection GC/ECD.

3. *Magnitude of residues*. Crop field trial residue data from studies conducted at the maimum label rates for sunflowers show that the proposed zeta-cypermethrin tolerances on sunflower, seeds at 0.20 ppm, sunflower, oil at 0.20 ppm.

B. Toxicological Profile

1. *Acute toxicity*. For the purposes of assessing acute dietary risk, FMC has used the NOAEL of 0.5 mg/kg/day based on the NOAEL of 1.0 mg/kg/day from the cypermethrin chronic toxicity study in dogs and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The LOAEL of 5.0 mg/kg/day was based on gastrointestinal disturbances observed in the first week of the study. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicty*. The following genotoxicity tests were all negative: *In vivo* chromosomal aberration in rat bone marrow cells; *in vitro* cytogenic chromosome aberration; unscheduled DNA synthesis; CHO/HGPRT mutagen assay; weakly mutagenic: Gene mutation (Ames).

3. *Reproductive and developmental toxicity*. No evidence of additional sensitivity to young rats was observed following prenatal or postnatal exposure to zeta-cypermethrin.

i. A 2–generation reproductive toxicity study with zeta-cypermethrin in rats demonstrated a NOAEL of 7.0 mg/kg/day and a LOAEL of 27.0 mg/kg/day for parental/systemic toxicity based on body weight, organ weight, and clinical signs. There were no adverse effects in reproductive performance. The NAOEL for reproductive toxicity was considered to be > 45.0 mg/kg/day (the highest dose tested (HDT)).

ii. A developmental study with zeta-cypermethrin in rats demonstrated a maternal NOAEL of 12.5 mg/kg/day and a LOAEL of 25 mg/kg/day based on decreased maternal body weight gain, food consumption and clinical signs. There were no signs of developmental toxicity at 35.0 mg/kg/day, the highest dose level tested.

iii. A developmental study with cypermethrin in rabbits demonstrated a maternal NOAEL of 100 mg/kg/day and a LOAEL of 450 mg/kg/day based on decreased bwt gain. There were no signs of developmental toxicity at 700 mg/kg/day, the HDT.

4. *Subchronic toxicity*. Short- and intermediate-term toxicity. The NOAEL of 2.5 mg/kg/day from the cypermethrin chronic toxicity study in dogs and a correction factor of two to account for the differences in the percentage of the biologically active isomer would also be used for short- and intermediate-term MOE calculations. The LOAEL of 7.5 mg/kg/day was based on neurotoxic clinical signs which were displayed starting week one of the study.

5. *Chronic toxicity*— i. The reference dose (RfD) of 0.005 mg/kg/day for zeta-cypermethrin is based on gastrointestinal disturbances in a cypermethrin study in dogs with an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer).

ii. Cypermethrin is classified as a Group C chemical (possible human carcinogen with limited evidence of carcinogenicity in animals) based upon limited evidence for carcinogenicity in female mice; assignment of a Q* has not been recommended

6. *Animal metabolism*. The metabolism of cypermethrin in animals is adequately understood. Cypermethrin has been shown to be rapidly absorbed, distributed, and excreted in rats when administered orally. Cypermethrin is metabolized by hydrolysis and oidation.

7. *Metabolite toxicology*. The Agency has previously determined that the metabolites of cypermethrin are not of toxicological concern and need not be included in the tolerance epression.

8. *Endocrine disruption*. No special studies investigating potential estrogenic or other endocrine effects of cypermethrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that cypermethrin has an adverse effect on the endocrine system.

C. Aggregate exposure

1. *Dietary exposure*— i. *Food*. Permanent tolerances, in support of registrations, currently eist for residues of zeta-cypermethrin on cottonseed; pecans; lettuce, head; onions, bulb; and cabbage and livestock commodities of cattle, goats, hogs, horses, and sheep (along with the associated meat and milk tolerances). For the purposes of assessing the potential dietary exposure for these eisting and the subject proposed tolerances, FMC has utilized available information on anticipated residues, monitoring data and percent crop treated as follows:

a. *Acute exposure and risk*. Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. For the purposes of assessing acute dietary risk for zeta-cypermethrin, FMC has used the NOAEL of 0.5 mg/kg/day based on the NOAEL of 1.0 mg/kg/day from the cypermethrin chronic toxicity study in dogs and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The LOAEL of 5.0 mg/kg/day was based on gastrointestinal disturbances which were displayed during week one of this study. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the margins of exposure (MOE) are significantly greater than the EPA standard of 100 for all subpopulations. The 95th percentile of exposure for the overall U. S. population was estimated to be 0.000330 mg/kg/day (MOE of 1514); 99th percentile 0.001136 mg/kg/day (MOE of 440); and 99.9th percentile 0.002544 mg/kg/day (MOE of 196). The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.000096 mg/kg/day (MOE of 5211); 99th percentile 0.000365 mg/kg/day (MOE of 1368); and 99.9th percentile 0.001438 mg/kg/day (MOE of 347). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.000040 mg/kg/day (MOE of 12532); 99th percentile 0.000194 mg/kg/day (MOE of 2575); and 99.9th percentile 0.000899 mg/kg/day (MOE of 556). The 95th percentile of exposure for non-nursing infants < 1 year old was estimated to be 0.000114 mg/kg/day (MOE of 4391); 99th percentile 0.000437 mg/kg/day (MOE of 1144); and 99.9th percentile 0.001732 mg/kg/day (MOE of 288). The 95th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) and children 7 to 12 years old was estimated to be, respectively, 0.000442 mg/kg/day (MOE of 1131) and 0.000413 mg/kg/day (MOE of 1209); 99th percentile 0.001355 mg/kg/day (MOE of 368) and 0.001349 (MOE of 370); and 99.9th percentile 0.003454 mg/kg/day (MOE of 144) and 0.002928 (MOE of 170). The 95th percentile of exposure for females (13+/nursing) was estimated to be 0.000306 mg/kg/day (MOE of 1635); 99th percentile 0.001174 mg/kg/day (MOE of 425); and 99.9th percentile 0.002583 mg/kg/day (MOE of 193). Therefore, FMC concludes that the acute dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

b. *Chronic exposure and risk*. The RfD of 0.005 mg/kg/day for zeta-cypermethrin is based on gastrointestinal disturbances in a cypermethrin study in dogs with an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). A chronic dietary exposure/risk assessment has been performed for zeta-cypermethrin using the above RfD. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into the analysis to estimate the anticipated residue contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000033 mg/kg body weight (bwt)/day and utilize 0.7 percent of the RfD for the overall U. S. population. The ARC for nursing infants (<1 year) and non-nursing infants (<1 year) are estimated to be 0.000009 mg/kg bwt/day and 0.000035 mg/kg bwt/day and utilizes 0.2 percent and 0.7 percent of the RfD, respectively. The ARC for children 1-6 years old (subgroup most highly exposed) and children 7-12 years old are estimated to be 0.000078 mg/kg bwt/day and 0.000052 mg/kg bwt/day and utilizes 1.6 percent and 1.0 percent of the RfD, respectively. The ARC for females (13+/nursing) are estimated to be 0.000033 mg/kg bwt/day and utilizes 0.7 percent of the RfD. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100 percent of the RfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

ii. *Drinking water*. Laboratory and field data have demonstrated that cypermethrin is immobile in soil and will not leach into groundwater. Other data show that cypermethrin is virtually insoluble in water and etremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in groundwater at depths of 1 and 2 meters are essentially zero (<<0.001 parts per billion (ppb)). Surface water concentrations for pyrethroids were estimated using PRZM3 and exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maimum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues are not epected to occur in drinking water.

2. *Non-dietary exposure*. Zeta-cypermethrin is registered for agricultural crop applications only, therefore non-dietary exposure assessments are not warranted.

D. Cumulative Effects

In consideration of potential cumulative effects of cypermethrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by cypermethrin would be cumulative with those of other chemical compounds; thus only the potential risks of cypermethrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for the EPA to consider concerning potential cumulative effects of cypermethrin consistent with the schedule established by EPA on August 4, 1997 (62 FR 42020) (FRL–5734–6) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population*. Based on a complete and reliable toxicology database, the RfD for zeta-cypermethrin is 0.005 mg/kg/day for zeta-cypermethrin based on gastrointestinal disturbances in a cypermethrin study in dogs with an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). Available information on anticipated residues, monitoring data and percent crop treated was incorporated into an analysis to estimate the Anticipated Residue Contribution (ARC) for 26 population subgroups. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000033 mg/kg body weight (bwt)/day and utilize 0.7 percent of the RfD for the overall U. S. population. The ARC for nursing infants (<1 year) and non-nursing infants (<1 year) are estimated to be 0.000009 mg/kg bwt/day and 0.000035 mg/kg bwt/day and utilizes 0.2 percent and 0.7 percent of the RfD, respectively. The ARC for children 1-6 years old (subgroup most highly exposed) and children 7-12 years old are estimated to be 0.000078 mg/kg bwt/day and 0.000052 mg/kg bwt/day and utilizes 1.6 percent and 1.0 percent of the RfD, respectively. The ARC for females (13+/nursing) are estimated to be 0.000033 mg/kg bwt/day and utilizes 0.7 percent of the RfD. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100 percent of the RfD. Therefore, FMC

concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the aggregate risk assessment, does not appear to be of concern.

The 95th percentile of exposure for the overall U. S. population was estimated to be 0.000330 mg/kg/day (MOE of 1514); 99th percentile 0.001136 mg/kg/day (MOE of 440); and 99.9th percentile 0.002544 mg/kg/day (MOE of 196). The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.000096 mg/kg/day (MOE of 5211); 99th percentile 0.000365 mg/kg/day (MOE of 1368); and 99.9th percentile 0.001438 mg/kg/day (MOE of 347). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.000040 mg/kg/day (MOE of 12532); 99th percentile 0.000194 mg/kg/day (MOE of 2575); and 99.9th percentile 0.000899 mg/kg/day (MOE of 556). The 95th percentile of exposure for non-nursing infants < 1 year old was estimated to be 0.000114 mg/kg/day (MOE of 4391); 99th percentile 0.000437 mg/kg/day (MOE of 1144); and 99.9th percentile 0.001732 mg/kg/day (MOE of 288). The 95th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) and children 7 to 12 years old was estimated to be, respectively, 0.000442 mg/kg/day (MOE of 1131) and 0.000413 mg/kg/day (MOE of 1209); 99th percentile 0.001355 mg/kg/day (MOE of 368) and 0.001349 (MOE of 370); and 99.9th percentile 0.003454 mg/kg/day (MOE of 144) and 0.002928 (MOE of 170). The 95th percentile of exposure for females (13+/nursing) was estimated to be 0.000306 mg/kg/day (MOE of 1635); 99th percentile 0.001174 mg/kg/day (MOE of 425); and 99.9th percentile 0.002583 mg/kg/day (MOE of 193). Therefore, FMC concludes that there is reasonable certainty that no harm will result from acute exposure to zeta-cypermethrin.

2. *Infants and children*— i. *General*. In assessing the potential for additional sensitivity of infants and children to residues of zeta-cypermethrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a 2–generation reproductive study in the rat. The data demonstrated no indication of increased sensitivity of rats to zeta-cypermethrin or rabbits to cypermethrin in utero and/or postnatal exposure to zeta-cypermethrin or cypermethrin. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database.

ii. *Developmental toxicity studies*. In the prenatal developmental toxicity studies in rats and rabbits, there was no evidence of developmental toxicity at the highest doses tested (35.0 mg/kg/day in rats and 700 mg/kg/day in rabbits). Decreased body weight gain was observed at the maternal LOAEL in each study; the maternal NOAEL was established at 12.5 mg/kg/day in rats and 100 mg/kg/day in rabbits.

iii. *Reproductive toxicity study*. In the 2–generation reproduction study in rats, offspring toxicity (body weight) and parental toxicity (body weight, organ weight, and clinical signs) was observed at 27.0 mg/kg/day and greater. The parental systemic NOAEL was 7.0 mg/kg/day and the parental systemic LOAEL was 27.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 45.0 mg/kg/day, HDT.

iv. *Pre- and post-natal sensitivity*— a. *Pre-natal*. There was no evidence of developmental toxicity in the studies at the highest doses tested in the rat (35.0 mg/kg/day) or in the rabbit (700 mg/kg/day). Therefore, there is no evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

b. *Post-natal*. Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special post-natal sensitivity to infants and children in the rat reproduction study.

v. *Conclusion*. Based on the above, FMC concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized significantly less than 1 percent of the RfD for either the entire U. S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cypermethrin residues.

F. International Tolerances

There are no Codex, Canadian, or Mexican residue limits for residues of zeta-cypermethrin in or on sunflowers.

[FR Doc. 00–28421 Filed 11–07–00; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 1, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 8, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communication Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0806.
Title: Universal Service—Schools and Libraries Universal Service Program.
Form No.: FCC Forms 470 and 471.
Type of Review: Extension.
Respondents: Business or Other for Profit.
Number of Respondents: 40,000.
Estimated Time Per Response: 7.3 hrs (avg.).
Total Annual Burden: 660,000 hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion; Recordkeeping; Third Party Disclosure.

Needs and Uses: The Commission adopted rules providing support for all telecommunications services, internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must submit a description of the services desired to the Administrator via FCC Form 470. FCC Form 471 is submitted by schools and libraries that have ordered telecommunications services, internet access, and internal connections. The information is used to determine eligibility.

OMB Control No.: 3060–0819.
Title: Lifeline Assistance (Lifeline) Connection Assistance (Link Up) Reporting Worksheet and Instructions (47 CFR 54.400–54.417).
Form No.: FCC Form 497.
Type of Review: Extension.
Respondents: Business or Other for Profit.
Number of Respondents: 18,000.
Estimated Time Per Response: 3 hrs (avg.).
Total Annual Burden: 54,000 hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion; Monthly; Quarterly.

Needs and Uses: Eligible telecommunications carriers are permitted to receive universal service support reimbursement for offering certain services to qualifying low-income customers. The telecommunications carriers must file FCC Form 497 to solicit reimbursement. Collection of the data is necessary for the administrator to accurately provide settlements for the low-income programs according to Commission rules. FCC Form 497 has been revised to make it consistent with the requirements contained in CC Docket No. 96–45, FCC 00–208. In CC Docket No. 96–45, the Commission adopted measures to promote telecommunications subscribership within American Indian and Alaska Native tribal communities and mandated enhancements to the existing Lifeline and Link Up programs.

OMB Control No.: 3060–0798.
Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.
Form No.: FCC 601.
Type of Review: Revision of an existing collection.
Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 240,320.
Estimated Time Per Response: 1.25 hours.
Total Annual Burden: 210,280 hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $48,364,000, which includes application filing fees.

Needs and Uses: FCC 601 is used as the general application (long form) for market based licensing and site-by-site licensing in the Wireless Telecommunications Radio Services. The purpose of this revision is to make the necessary form changes for the Tribal Lands bidding credits, to make the necessary adjustments to the instructions for implementation of Coast and Ground Radio Services to ULS, to add a general certification statement for RF certification as adopted in Report and Order, FCC–96–326, and to further clarify various instructions for the applicants. We sought emergency clearance on these changes in order to allow form changes to be in place for the auctions scheduled for the beginning of November and are now seeking a 3 year clearance. The information is used by the Commission to determine whether the applicant is legally, technically and financially qualified to be licensed.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28684 Filed 11–07–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 31, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0806.
Expiration Date: 04/30/2001.
Title: Universal Service—Schools and Libraries Universal Service Program.
Form No.: FCC Forms 470 and 471.
Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.
Estimated Annual Burden: 60,000 respondents; 7.3 hours per response (avg.). 440,000 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion; Third Party Disclosure; Recordkeeping.

Description: The Commission adopted rules providing support for all telecommunications services, internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must submit a description of the services desired to the Administrator via FCC Form 470. FCC Form 471 is submitted by schools and libraries that have ordered telecommunications services, internet access, and internal connections. The information is used to determine eligibility. OMB recently approved revisions made to the FCC Form 471. The forms are available via the universal service website (www.universalservice.org). Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0819.
Expiration Date: 04/30/2001.
Title: Lifeline Assistance (Lifeline) Connection Assistance (Link Up) Reporting Worksheet and Instructions (47 CFR Sections 54.400–54.417).
Form No.: FCC Form 497.
Respondents: Business or other for-profit.
Estimated Annual Burden: 18,000 respondents; 3 hours per response (avg.). 54,000 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion; Quarterly; Monthly.

Description: Eligible telecommunications carriers are permitted to receive universal service support reimbursement for offering certain services to qualifying low-income customers. The telecommunications carriers must file FCC Form 497 to solicit reimbursement.

Collection of the data is necessary for the administrator to accurately provide settlements for the low-income programs according to Commission rules. FCC Form 497 has been revised to make it consistent with the requirements contained in CC Docket No. 96–45, FCC 00–208. In CC Docket No. 96–45, the Commission adopted measures to promote telecommunications subscribership within American Indian and Alaska Native tribal communities and mandated enhancements to the existing Lifeline and Link Up programs. The form is available via the universal service website (www.universalservice.org). Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0719.
Expiration Date: 10/31/2003.
Title: Quarterly Report of IntraLATA Carriers Listing Payphone Automatic Number Identifications (ANIs).
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 1600 respondents; 4 hours per response (avg.); 5600 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Quarterly; Third Party Disclosure; Recordkeeping.

Description: Pursuant to the mandate in Section 276(b)(1)(A) to establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call, IntraLATA carriers are required to provide to interexchange carriers a quarterly report. IntraLATA carriers must submit a quarterly list of payphone ANIs to the interexchange carriers. This will facilitate resolution of disputed ANIs in the per-call compensation context. The report allows IXCs to determine which dial-around calls are made from payphones. The data, which must be maintained for at least 18 months after the close of a compensation period, will facilitate verification of disputed ANIs. Obligation to respond: Mandatory.

OMB Control No.: 3060–0743.
Expiration Date: 10/31/2003
Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 4542 respondents; hours per response (avg.); 131,077 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion.

Description: In CC Docket No. 96–128, the Commission promulgated rules and requirements implementing Section 276 of the Telecommunications Act of 1996. Among other things, the rules (1) establish fair compensation for every completed intrastate and interstate payphone call; (2) discontinue intrastate and interstate carrier access charge payphone service elements and payments, and intrastate and interstate payphone subsidies from basic exchange services; and (3) adopt guidelines for use by the states in establishing public interest payphones to be located where there would otherwise not be a payphone.

(a) State Review and Removal of State Regulations Concerning Adequacy of Local Coin Rate Disclosure. States must review their regulations and remove them where necessary to ensure consistency with the Commission's regulations. (No. of respondents: 50; hours per response: 50 hours; total annual hour burden: 2500 hours).

(b) State Review and Removal of Market Entry or Exit Requirements. States must review their regulations and remove them where necessary to ensure consistency with the Commission's regulations. (No. of respondents: 50; hours per response: 50 hours; total annual burden: 2500 hours).

(c) State Showing of Proof of Market Failure for Exception to Market-Rate Local Coin Call Requirement. States must comply with the Commission's market-rate local coin call requirement, except where they show proof of market failure. Such a showing could consist of, for example, a detailed summary of the record of a state proceeding that examines the costs of providing payphone service within that state and the reasons why the public interest is served by having the state set rates within that market. (No. of respondents: 50; hours per response: 50 hours; total annual burden: 2500 hours).

(d) State Review and Removal of Adequacy of Provision of Public Interest Payphones. Each state must review whether it has adequately provided for public interest payphones in a manner consistent with the Order. (No. of respondents: 50; hours per response: 50 hours; total annual burden: 2500 hours).

(e) *Payphone Providers' Transmission of Specific Payphone Coding Digits.* All payphones are required to transmit specific payphone coding digits as a part of their automatic number identification ("ANI"), which will assist in identifying them to compensation payors. Currently, the local exchange carriers ("LECs") are required to tariff federally originating line screening ("OLS") services that provide a discrete code to identify payphones that are maintained by non-LEC providers. This requirement provides that LECs must furnish similar coding digits for their own payphones. (No. of respondents: 197; hours per response: 20 hours; total annual burden: 3940 hours).

(f) Interexchange Carriers' Provision of Tracking of All Compensable Calls. Carriers must provide tracking of all compensable calls received from payphones to ensure that each and every completed call from a payphone is receiving compensation. (No. of respondents: 275; hours per response: 100 hours; total annual burden: 27,500 hours).

(g) LEC Verification of Disputed ANIs and Maintaining and Making Available the Verification Data. LECs must provide verification of disputed ANIs on request and in a timely manner. In order to facilitate the process and provide efficient verification of disputed ANIs, the LECs must maintain and make available the verification data for at least 18 months after the close of the compensation period. (No. of respondents: 400; hours per response: 30 minutes quarterly; total annual burden: 800 hours).

(h) LEC Timely Notification of Payphone Disconnection. LECs are required to notify the carrier-payors of each payphone's disconnection on a basis that is as timely as possible. (No. of respondents: 400; hours per response: 30 minutes; total annual burden: 200 hours).

(i) LEC Indication on the Payphone's Monthly Bill That the Amount Due is for Payphone Services. LECs are required to affirmatively state on their bills to PSPs that the bills are for payphone service, to facilitate payment of compensation and to avoid disputes. (No. of respondents: 400; hours per response: 10 hours; total annual burden: 4000 hours).

(j) LEC Tariff Filings. Pursuant to the mandate in Section 276(b)(1)(B) to remove payphone costs from the CCL charge, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, 47 U.S.C. § 276(b)(1)(B), incumbent LECs must file revised tariffs for central office coin transmission services and CCL charges, to ensure that LEC services are priced reasonably and do not include subsidies. This also requires LECs to submit proposed interconnection requirements to the Commission. (No. of respondents: 400; hours per response: 100 hours; total annual burden: 40,000 hours).

(k) Reclassification of LEC-Owned Payphones. Pursuant to the mandate in Section 276(b)(1)(B) to remove payphone costs from the CCL charge and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, 47 U.S.C. § 276(b)(1)(B), incumbent LECs must either reclassify their payphone assets as nonregulated or transfer them to a separate affiliated engaged in nonregulated activities. Such reclassification or transfer includes establishing Part 64 cost pools, which are groupings of costs that maximize the extent to which cost causative allocation factors can be used to divide costs between regulated and nonregulated activities, as well as revising their cost allocation manuals. (No. of respondents: 400; hours per response: 100 hours; total annual burden 40,000 hours).

(l) Reclassification of AT&T Payphones. AT&T must either reclassify its payphone assets as nonregulated or transfer them to a separate affiliated engaged in nonregulated activities. Such reclassification or transfer includes establishing Part 64 cost pools, which are groupings of costs that maximize the extent to which cost causative allocation factors can be used to divide costs between regulated and nonregulated activities, as well as revising their cost allocation manuals. (No. of respondents: 1; hours per response: 100 hours; total annual burden: 100 hours).

(m) Payphone Provider's Verification of its Status to IXC Paying Compensation. Pursuant to the mandate in Section 276(b)(1)(A) that all payphone providers be fairly compensated for calls using their payphones, the Order established a definition of a payphone eligible for compensation as a payphone that appears on LEC-provided customer-owned, coin-operated telephone ("COCOT") lists. If a payphone provider does not appear on this list, it must provide alternative verification information to the IXC paying compensation. Otherwise, the IXC would be unable to verify that the particular payphone provider was in fact eligible for compensation. (No. of respondents: 197; hours per response: 1 hour; total annual burden: 197 hours).

(n) Payphone Providers' Posting of Local Coin Call Rate on Each Payphone Placard. Pursuant to the mandate in Section 276(b)(1)(A) that the Commission establishes a fair compensation plan, the Commission decided to let the market set the price for individual calls originated by payphones. In order to ensure that callers have information about the price of the calls they make, payphone providers are required to post the local coin call rate within the informational placard on each payphone. (No. of respondents: 197; hours per response: 20 hours; total annual burden: 3940 hours).

(o) LEC Provision of Emergency Numbers to Carrier-Payors. Pursuant to the mandate in Section 276(b)(1)(A) that emergency calls shall not be subject to per call compensation, 47 U.S.C. Section 276 (b)(1)(A), the rules in the Order on Reconsideration provide that LECs shall supply to carrier-payors, on demand, a list of emergency numbers so that carrier-payors will know that they do not have to compensate payphone providers for those calls. (No. of respondents: 400; hours per response: 1 hour; total annual burden: 400 hours).

All of the requirements would be used to ensure that interexchange carriers, payphone service providers ("PSPs"), LECs, and the states, comply with their obligations under the 1996 Act.

Obligation to respond: Mandatory.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28686 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

October 30, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 8, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission; Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0935.

Title: Cable Industry Survey on Channel Capacity and Retransmission Consent.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 16.

Estimate Time Per Response: 12 hours.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 192 hours.

Total Annual Costs: $17,280.

Needs and Uses: The Commission will use the data collected in this survey to build a record and to determine how to proceed on the mandatory carriage issues in the pending rulemaking. The data gleaned from the survey will be incorporated in the next Report and Order in CS Docket NO. 98–120.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28685 Filed 11–7–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Federal-State Joint Conference on Universal Service To Hold En Banc Hearing November 13, 2000 on the Rural Task Force Recommendation for Universal Service Reform for Rural Carriers

AGENCY: Federal Communications Commission.

ACTION: Announcement of hearing.

SUMMARY: The Federal-State Joint Board on Universal Service will hold an *en banc* hearing on Monday, November 13, 2000, at the 112th NARUC Annual Convention in San Diego, California. The Joint Board will discuss the Rural Task Force's recommendation regarding reform of the universal service support mechanism for rural carriers. Panelists representing a broad range of interests will present their views on the Rural Task Force's recommendation and questions from the Joint Board members will follow.

DATES: The meeting date is November 13, 2000, 3:30 p.m. to 5:30 p.m., San Diego, CA.

ADDRESSES: The meeting location is San Diego—San Diego Marriott Hotel and Marina (Marriott Hall 2) 333 West Harbor Drive, San Diego, CA 92101.

FOR FURTHER INFORMATION CONTACT:

Federal-State Joint Board Staff: Katie King, 202–418–7400, kking@fcc.gov; Gene Fullano, 202–418–0492, *gfullano@fcc.gov*.

News Media: Michael Balmoris, 202–418–0253.

SUPPLEMENTARY INFORMATION: The Federal-State Joint Board on Universal Service (the Joint Board) will hold an *en banc* hearing on Monday, November 13, 2000, at the 112th NARUC Annual Convention in San Diego, California. The Joint Board will discuss the Rural Task Force's recommendation regarding reform of the universal service support mechanism for rural carriers. Panelists representing a broad range of interests will present their views on the Rural Task Force's recommendation and questions from the Joint Board members will follow.

In the May 1997 *Universal Service Order*, 62 FR 32862, June 17, 1997, the Commission, acting on the recommendation of the Joint Board, encouraged the Joint Board to establish a Rural Task Force to provide "assistance in identifying the issues unique to rural carriers and analyzing the appropriateness of proxy cost models for rural carriers." On September 17, 1997, the Joint Board announced the creation of the Rural Task Force and directed it to present a report to the Joint Board making specific recommendations on the establishment of a new mechanism for rural telephone companies. On September 29, 2000, the Rural Task Force submitted the *Rural Task Force Recommendation To The Federal-State Joint Board On Universal Service.*

The *en banc* hearing will be held from 3:30 p.m. to 5:30 p.m. at the San Diego Marriott Hotel and Marina, 333 West Harbor Drive, in Marriot Hall 2. An agenda, including scheduled panelists, will be posted on the Joint Board's Web site next week (*http://www.fcc.gov/ccb/universal service/joint.htlm*). The hearing is open to the public and seating will be available on a first-come, first-served basis.

Internet users may listen to the real-time audio feed of the hearing by accessing the FCC Internet Audio Broadcast Home page (*http://www.fcc.gov/realaudio/*). Step-by-step instructions on how to listen to the audio broadcast, as well as information regarding the equipment and software needed, are available on the FCC Audio Broadcast Home page. Audio tapes of the hearing may be purchased from Rollin Recording, 208 River Ranch Road, Boerne, Texas 78006, by calling 1–800–798–5468.

Dated: November 3, 2000.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28726 Filed 11–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2449]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

November 1, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by November 14, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Rangely, Silverton and Ridgway, Colorado) (MM Docket No. 99–15[illegible], RM–9559, RM–9932).

Number of Petitions Filed: 1.

Subject: Amendment of Part 15 of the Commission's Rules Regarding Spread Spectrum Devices (ET Docket No. 99–231).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28614 Filed 11–7–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, November 9, 2000, 10 a.m., meeting open to the public.

This meeting was cancelled.

DATE & TIME: Tuesday, November 14, 2000 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, November 16, 2000 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2000–24: Alaska Democratic Party by counsel, Neil Reiff.

Final Rules and Explanation and Justification on General Public Political Communications Coordinated with Candidates, and Independent Expenditures.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–28841 Filed 11–6–00; 2:47 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011637–003.

Title: Ampac Cooperative Working Agreement.

Parties: Mexican Line Limited, Columbus Line, Maruba S.C.A.

Synopsis: The proposed amendment changes the name of Columbus Line's corporate parent. In addition, it reflects changes in the provision of vessels to be operated under the Agreement and adds provisions in the Agreement's termination provisions to deal with possible changes in control of an Agreement party.

Dated: November 3, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–28665 Filed 11–7–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance of License

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by OSRA 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
4023N ..	Shuh-Liang Huo d/b/a Argosy International Co., 5572 Lutford Circle, Westminster, CA 92683.	September 22, 2000.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 00–28663 Filed 11–7–00; 8:45 am]

BILLING CODE 6730–01–U

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been terminated pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

License Number: 4023F.
Name: Shuh-Liang Huo d/b/a Argosy International Co.
Address: 5572 Lutford Circle, Westminister, CA 92683.
Date Revoked: September 22, 2000.
Reason: Surrendered license voluntarily.

License Number: 15217N.
Name: Caribbean Containers, Inc.
Address: Calle John Albert Ernd, Urb.Ind.Bechara, Puerblo Viejo Puerto Nuevo, San Juan, PR 00920.
Date Revoked: October 21, 2000.
Reason: Failed to maintain a valid bond.

License Number: 15204N.
Name: Executive Freight Services, Inc.
Address: 3848 Salem Road, P.O. Box 310195, Enterprise, AL 36301.
Date Revoked: October 11, 2000.
Reason: Failed to maintain a valid bond.

License Number: 16705NF.
Name: HR Services.
Address: TDK House, 5/7 Queensway, Redhill, Surrey RH1 1YB, United Kingdom.
Date Revoked: September 27, 2000.
Reason: Surrendered license voluntarily.

License Number: 4305F.
Name: Jeffrey Oh d/b/a Penn Int'l Co.
Address: 22533 S. Vermont Avenue, #20, Torrance, CA 90502.
Date Revoked: October 21, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4376F.
Name: Paccent Express Line Co.
Address: 11099 S. La Cienega Blvd., Suite 207, Los Angeles, CA 90045.
Date Revoked: October 12, 2000.
Reason: Surrendered license voluntarily.

License Number: 15125N.
Name: Sea-Air-Land International Services, Inc.
Address: 7365 35th Street, Miami, FL 33122.
Date Revoked: October 21, 2000.
Reason: Failed to maintain a valid bond.

License Number: 13748N.
Name: United Logistics Services, Inc. d/b/a A.N.C. International.
Address: 1699 Wall Street, Suite 112, Mount Prospect, IL 60010.
Date Revoked: October 6, 2000.
Reason: Failed to maintain a valid bond.

License Number: 13495N.
Name: Wintrade Forwarding Agent, Inc.
Address: 1378 N.W. 78th Avenue, Miami, FL 33126.
Date Revoked: October 12, 2000.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 00–28664 Filed 11–7–00; 8:45 am]

BILLING CODE 6730–01–U

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

- Swift Freight (USA) Inc., 121 N. State College Blvd., Suite 118, Anaheim, CA 92806. Officers: Kamal S, Vazirani, Officer (Qualifying Individual), Jayant Bharadwaj, President
- General Cargo & Logistics, 4261 182nd Street, #J, Torrance, CA 90504. Officers: Kim Eric Castro-Bran, Vice President (Qualifying Individual), Rogerio O. Morais, President
- American Asia Freight Corp., Cargo Bldg. 80, Room 115, JFK Int'l Airport, Jamaica, NY 11430. Officers: Edward Leung, Vice President (Qualifying Individual), Sean Jing, President
- Inter-Connect Transportation, Inc., 8901 S. La Cienega Blvd., Suite 210, Inglewood, CA 90301. Officer: Sang Hoon Kong (A.K.A. Brian Kong), C.E.O. (Qualifying Individual)
- Keystone Dedicated Logistics Company, LLC, 15 27th Street, Pittsburgh, PA 15222–4729. Officers: James A. Frye, Vice President (Qualifying Individual), Donald S. Varshine, President
- Asian Development (NY) Int'l Transportation Corp., 168–01 Rockaway Blvd., Suite 203, Jamaica, NY 11434. Officer: Yan Li, President (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

- Stuart Logistics, Incorporated, 56–58 Broad Street, 3rd Floor, Charleston, SC 29401. Officers: Lauren Emily Roos, Treasurer (Qualifying Individual), M. Bruce Burris, Principal
- Speedex International, Inc., 2997 E. Maria Street, Rancho Dominguez, CA 90221. Officer: Hae Sung Park (A.K.A. Esther Park), C.E.O. (Qualifying Individual), Karl O. Krug, President
- Sotby Transportation, Inc., 1630 Bath Avenue, Brooklyn, NY 11214. Officers: Bronovsky Alexander, Vice President (Qualifying Individual), Gregory Solovey, President
- Mohawk Customs & Shipping (Rochester, LLC), 52 Marway Circle, Rochester, NY 14624. Officers: John Philip Tracy, Dir. Sales & Marketing (Qualifying Individual), Sherie Micklei, LCB, Dir. Import Services
- Marist International Group, Inc. d/b/a MIG Cargo Services, 1212 5th Avenue, Suite K, Monrovia, CA 91016. Officers: Ismael A. Ferrer, President (Qualifying Individual), Alex Tibay, Director
- Joseph Bonvissuto, Inc. d/b/a Freight Expediters, 6862 Engle Road, Suite 210A, Middleburg Heights, OH 44130. Officer: Joseph Bonvissuto, President (Qualifying Individual)
- J. Powers International, 2301 So. State, Suite 100–B, Little Rock, AR 72206. Officer: Christopher D. Joshua, Sr., President (Qualifying Individual)
- Aero Costa International, Inc., 460 E. Carson Plaza Drive, Suite 220, Carson, CA 90746. Officer: Kun Woo Lee, C.E.O./Secretary (Qualifying Individual)

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

- Columbia Container Lines (USA) Inc., 175–11 148 Road, Suite 202, Jamaica, NY 11434. Officer: Simon Tung, President (Qualifying Individual)

Dated: November 3, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–28666 Filed 11–7–00; 8:45 am]

BILLING CODE 6730–01–U

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, November 13, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28704 Filed 11–3–00; 4:17 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Delegation of Authority To Disclose Certain Nonpublic Information To Foreign Law Enforcement Agencies

AGENCY: Federal Trade Commission.

ACTION: Delegation of Authority.

SUMMARY: The Commission has delegated authority to the Associate Director of Planning and Information to share certain non-public information with the United Kingdom Directorate for Trade and Industry and the United Kingdom Office of Fair Trading.

EFFECTIVE DATE: October 26, 2000.

FOR FURTHER INFORMATION CONTACT: Maneesha Mithal, Attorney, Division of Planning and Information, 202 326–2771, mmithal@ftc.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given, pursuant to Reorganization Plan No. 4 of 1961, 26 FR 6191, that the Commission has delegated to the Associate Director for Planning and Information the authority to disclose to the United Kingdom Office of Fair Trading and the United Kingdom Directorate for Trade and Industry information regarding consumer protection investigations involving U.K. businesses or consumers.

This delegation does not apply competition-related investigations. Disclosures shall be made only to the extent consistent with limitations on disclosure, including section 6(f) of the FTC Act, 15 U.S.C. 46(f), section 21 of the Act, 15 U.S.C. 57b–2, and Commission Rule 4.10(d), 16 CFR 4.10(d) and with the Commission's enforcement policies and other important interests. When the subject matter of the information to be shared raises significant policy concerns, staff shall consult with the Commission before disclosing such information.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–28692 Filed 11–7–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science

National Action Plan on Oversight and Obesity: Notice of Opportunity for Public Comment; Notice of Public Meeting

AGENCY: OS/Office of Public Health and Science, DHHS.

ACTION: Opportunity to provide comments; Notice of Public Meeting.

SUMMARY: The Department of Health and Human Services (HHS) (a) solicits written comments on the key elements of a national action plan on overweight and obesity, and (b) provides notice of a public meeting.

DATES: (1) Written comments may be submitted on or before 5 p.m. E.S.T. on December 29, 2000. (2) A public meeting will be held on December 7, 2000 from 1 p.m. to 5:30 p.m. and on December 8, 2000 from 8:30 a.m. to 5:30 p.m.

ADDRESSES: (1) Written comments should be sent to Paul Ambrose, M.D., M.P.H., HHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Ave., SW., Washington, DC 20201, (202) 205–4872 (telephone), 202–205–9478 (facsimile). Comments also may be submitted electronically at *www.sgobesity.niddk.nih.gov.* (2) A public meeting will be held at the Lister Hill Auditorium, Building 38A, NIH Campus, Bethesda, Maryland. The meeting is open to the public; seating is limited.

FOR FURTHER INFORMATION CONTACT: Paul Ambrose, M.D., M.P.H., or Kathryn McMurry, M.S., HHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Ave., SW., Washington, DC 20201, (202) 205–4872. To register for the meeting, contact Ms. Susie Warner at (301) 897–2789 (telephone), (301) 897–9587 (facsimile), or on-line at *www.sbogesity.niddk.nih.gov.* Additional information can be obtained at this website or at *www.surgeongeneral.gov.*

SUPPLEMENTARY INFORMATION:

Background

Overweight and obesity is a significant public health problem because it increases risk for many chronic diseases and premature death. More than half of adults and 11 percent of children and adolescents in the United States are estimated to be overweight or obese. The prevalence has almost doubled among children and adolescents since 1980 and is increasing in both genders and among all population groups of adults. Total costs (medical costs and lost productivity) attributed to obesity amounted to an estimated $99 billion in 1995. Health People 2010, the nation's public health agenda, has identified overweight and obesity as one of ten Leading Health Indicators.

While the magnitude of the problem is great, the range of potential solutions is even greater. The design of successful prevention strategies will require the careful attention of many individuals and organizations working together. Prevention of overweight and obesity requires a broad array of strategies to promote healthy eating and increased physical activity. A number of activities are underway in public and private sectors related to the public health issue of obesity.

Written Comments

In preparation for the development of a national action plan to address overweight and obesity in the United States, comments are welcome from all interested stakeholders. Further opportunity for public input in development of the plan is envisioned during 2001.

Comments will be most useful if they include the following information:

(1) What you consider to be the three to five most important priorities for addressing overweight and obesity in the United States.

(2) How, as a nation, we should pursue these strategies.

(3) Your views on the most effective ways to address disparities among different segments of the population.

(4) (If applicable) A short summary of activities that your organization is engaged in or plans to engage in to address overweight and obesity. This information may become part of a publicly accessible website information center.

Comments received by November 26 will be summarized and made available at the listening session described below. Comments will be accepted through 5 p.m., E.S.T. on December 29, 2000.

Announcement of Meeting

To launch a process of developing a national action plan on overweight and obesity, Assistant Secretary for Health and Surgeon General David Satcher plans a listening session entitled Toward a National Action Plan on Overweight and Obesity: The Surgeon General's Initiative on December 7–8, 2000. The event will include invited panels of non-federal and nongovernmental organizations to discuss views on what the key elements of a national action plan on overweight and obesity should be, as well as time for discussion.

Meeting Location and Registration

The meeting will be held on December 7, 2000 from 1 p.m. to 5:30 p.m. and on December 8, 2000 from 8:30 a.m. to 5:30 p.m. at the Lister Hill Auditorium in Bethesda, Maryland. The Lister Hill auditorium is located at Lister Hill Auditorium, Building 38A, NIH Campus, Bethesda, MD. The building is located near the Medical Center metro stop (red line train). Because seating is limited, registration is required and may be limited to one representative per organization. To register, please contact Ms. Susie Warner at (301) 897–2789 (telephone), (301) 897–9587 (facsimile), or on-line at *www.sgobesity.niddk.nih.gov.* If you require a sign language interpreter, please contact Ms. Warner by 5 p.m. E.S.T. on November 30, 2000. The meeting will be webcast live at *videocast.nih.gov.*

Dated: November 1, 2000.

David Satcher,

Assistant Secretary for Health and Surgeon General.

[FR Doc. 00–28642 Filed 11–7–00; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Report on FDA Plan for Statutory Compliance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled "Report on FDA Plan for Statutory Compliance." This report satisfies provisions of the FDA Modernization Act of 1997 (FDAMA), which charged FDA to develop a plan for meeting its statutory requirements, and to report on planned versus actual performance.

ADDRESSES: Copies of the report may be obtained from the contact person at the address listed below. Persons with access to the Internet may obtain the report at http://www.fda.gov/oc/fdama/fdamaplnresponse/rptFY99.html.

FOR FURTHER INFORMATION CONTACT: Bill J. Hagan, Office of Planning (HFP–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5212, FAX 301–827–5225, or e-mail: WHagan@oc.fda.gov.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a report entitled "Report on FDA Plan for Statutory Compliance." This report satisfies provisions outlined in section 406(b) of FDAMA, which charged FDA to develop a plan for meeting its

statutory requirements, and to report on planned versus actual performance. The plan was published in November 1998. This report identifies accomplishments against that plan. As this report shows, in fiscal year 1999, FDA achieved significant gains in the six FDAMA objectives by combining the agency's traditional principles and practices with new approaches. In keeping with its traditional values, FDA continued providing a broad spectrum of consumer protections based on rigorous science-based standards. To strengthen its performance, FDA developed partnerships with stakeholders and stimulated cooperation and participation by making its activities more understandable and accessible to stakeholders. FDA's accomplishments include the following:

- New drugs and biological products are being reviewed and released to the public in record time,
- A nationwide food safety surveillance network has now been established which is helping to significantly reduce food-related illnesses and deaths, and
- Millions of consumers have wider and more timely access to information about their new medications.

FDA will continue working with Congress and our stakeholders to improve performance and to work towards meeting our statutory obligations under FDAMA.

Dated: October 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28616 Filed 11–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Universal Newborn Hearing Screening and Intervention

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $5 million in fiscal year (FY) 2001 funds is anticipated for 25 to 31 grants to States for the implementation of universal physiologic newborn hearing screening prior to hospital discharge with linkages to medical home, ongoing family-to-family support, diagnostic evaluation by three months of age, and enrollment in a program of early intervention by six months of age for those infants identified with hearing loss. All awards will be made under the program authority of Title VI of the Labor-HHS-Education Appropriations Act for FY 2000 (Pub. L. 106–113). This Universal Newborn Hearing Screening and Intervention Program (CFDA #93.251) will be administered by the Maternal and Child Health Bureau (MCHB), HRSA. Projects will be approved for a 4-year period, with awards at average yearly amounts ranging from $100,000 to $200,000. Funding for Universal Newborn Hearing Screening and Intervention grants is contingent upon the availability of FY 2001 funds.

DATES: Entities which intend to submit an application for this grant program are expected to notify MCHB's Division of Services for Children with Special Health Care Needs by November 10, 2000. The deadline for receipt of applications is December 8, 2000. Applications will be considered "on time" if they are either received on or before the deadline date or postmarked on or before the deadline date. The project award date is March 31, 2001.

ADDRESSES: To receive a complete application kit, applicants may telephone the HRSA Grants Application Center at 1–877–477–2123 (1–877–HRSA–123) beginning November 3, 2000, or register on-line at: *http://www.hrsa.dhhs.gov/*, or by accessing *http://www.hrsa.gov/g_order3.htm* directly. This program uses the standard Form PHS 5161–1 (rev. 7/00) for applications (approved under OMB No. 0920–0428). Applicants must use Catalog of Federal Domestic Assistance (CFDA) number 93.251 when requesting application materials. The CFDA is a Government wide compendium of enumerated Federal programs, projects, services, and activities which provide assistance. All applications should be mailed or delivered to: Grants Management Officer, MCHB; HRSA Grants Application Center, 1815 N. Fort Meyer Drive, Suite 300, Arlington, Virginia 22209; telephone: 1–877–477–2123; E-mail: *hrsagac@hrsa.gov.*

This application guidance and the required forms for the Universal Newborn Screening and Intervention program may be downloaded in either WordPerfect 6.1 or Adobe Acrobat format (.pdf) from the MCHB Home Page at *http://www.mchb.hrsa.gov/.* Please contact Joni Johns, at 301/443–2088, or *jjohns@hrsa.gov/*, if you need technical assistance in accessing the MCHB Home Page via the Internet.

This announcement will appear in the **Federal Register** and on the HRSA Home Page at: *http://www.hrsa.dhhs.gov/.* **Federal Register** notices are found by following instructions at: *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

Letter of Intent: Notification of intent to apply can be made in one of three ways: telephone, 301–443–2370; email, *iforsman@hrsa.gov;* mail, MCHB, HRSA; Division of Children with Special Health Care Needs; Parklawn Building, Room 18A–18; 5600 Fishers Lane; Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Irene Forsman, M.S., R.N., 301/443–2370, email: *iforsman@hrsa.gov/* (for questions specific to project activities of the program, program objectives, or the required Letter of Intent which is further described in the application kit); Paulette Faga, 301/443–6934, email *pfagan@hrsa.gov/* (for grants policy, budgetary, and business questions).

SUPPLEMENTARY INFORMATION:

Universal Newborn Hearing Screening and Intervention Program Background and Objectives

HRSA's Maternal and Child Health Bureau has been involved in newborn screening and genetic testing for more than a decade. In 1989, Dr. C. Everett Koop, then Surgeon General, urged that all infants with significant hearing loss be identified by 12 months of age, and encouraged inclusion of this goal in the Public Health Service's *"National Healthy People Goals 2000."* Since then, MCHB, acting in concert with the Centers for Disease Control and prevention (CDC) and the National Institutes of Health (NIH), has made substantial progress in the adoption of universal newborn hearing screening and early intervention as the standard of care in the United States. The new *"Healthy People 2010"* includes a revised newborn hearing screening goal of identifying all newborns with significant hearing loss and enrolling them in a program of early intervention by age 6 months. All relevant professional organizations, including the American Academy of Pediatrics, have endorsed the concept.

Also in 1989, MCHB's Division of Services for Children with Special Health Needs began efforts under the Special Projects of Regional and National Significance (SPRANS) authority of the Maternal and Child Health (MCH) Block Grant (Title V of the Social Security Act) to support implementation of universal newborn hearing screening prior to discharge through a series of demonstration projects to assess the effectiveness of new technologies and to provide technical assistance to a number of hospitals and States in establishing and maintaining universal newborn hearing screening and intervention programs. Resources developed by these projects can be found on-line at: *http://www.usa.edu:8080/-ncham/consort.html*, and *http://www.colorado.edu/slhs/MDNC/index.html*. This grant program will continue to operate in conjunction with the State Title V programs.

In 1999, following more than a decade of pioneering work in universal newborn hearing screening in hospitals nationwide, MCHB released a guide for hospitals wishing to initiate newborn hearing screening and intervention programs. The publication, "Early Identification of Hearing Loss—Implementing Universal Newborn Hearing Screening Programs," is available free to hospitals and birthing centers around the country through the National Maternal and Child Health Clearinghouse and on the World Wide Web at *http://www.nmchc.org*. The guide is organized into areas to be considered in setting up this type of program, such as determining protocol in the participating hospital; choosing equipment; training; financing; managing data; and talking to parents, physicians, and hospital staff.

By the year 2000, about 35 percent of newborns were being screened for hearing loss before discharge. Hundreds of hospitals operate screening programs. Evidence is clear that implementation of universal newborn hearing screening substantially lowers the age at which children with congenital permanent hearing loss are identified and that children who are identified early do better on school related measures. In addition, technology is available to conduct cost-efficient, physiological screening universally prior to hospital discharge. In 1993, less than 5 percent of all infants were screened for hearing loss prior to hospital discharge. Most established programs are now able to screen more than 95 percent of all newborns prior to discharge and parental acceptance of the screening programs is high. Typically, one to three percent of those screened require referral for diagnostic evaluation. The cost of screening is approximately $25-$30 per infant.

As of September 200, about 24 States had enacted laws regarding hearing screening for all newborns. However, the vast majority of hospitals in this country still do not screen all infants prior to discharge.

Congressional support to expand universal newborn hearing screening and intervention to all States grew throughout the 1990's. In November 1999, Congress acted through both the appropriations and authorization processes to target increased resources to encourage State efforts. New legislative authority, enacted under Title VI of the Labor-HHS-Education Appropriations Act for FY 2000 (Pub. L. 106–113), represented a milestone in the effort to give newborns a healthy start in life.

In March 2000, using $3 million in FY 2000 funds appropriated under the new authority, MCHB was able to increase support for newborn hearing screening and intervention by awarding grants, totaling $3 million, to 22 States. These four-year grants are the most recent steps toward assuring that once babies are screened and diagnosed with a hearing loss, they and their families receive appropriate services that are coordinated at the community level with early intervention programs, ongoing family-to-family support and the child's medical home, *i.e.*, regular source of primary health care. Diagnosis is recommended by 3 months of age; intervention by 6 months.

The grants to be awarded under this announcement will extend the initiative MCHB began in March 2000, to an additional 25 to 31 States in FY 2001.

Authorization

Title VI of the Departments of Labor-HHS-Education Appropriations Act for FY 2000 (Pub. L. 106–113).

Purpose

The purpose of these grants is to provide funds to States for the implementation of programs of statewide universal physiologic newborn hearing screening prior to hospital discharge with linkages to medical home, ongoing family-to-family support, diagnostic evaluation by three months of age, and enrollment in a program of early intervention by six months of age for those infants identified with hearing loss.

Eligibility

This program is open to State agencies with the capacity to implement a statewide universal newborn hearing screening and intervention program for all newborn infants in the State.

Funding Level/Project Period

The total funding level for these grants is $5 million annually over a four-year project period, from March 31, 2001 through March 30, 2005. The project period consists of one or more budget periods, each generally of one year duration.

Funding for this grant program is contingent upon the availability of FY 2001 funds. Continuation of any project from one budget period to the next is subject to satisfactory performance, availability of funds, and program priorities. The initial budget period is expected to be 12 months, with subsequent budget periods being 12 months.

An estimated 25 to 31 awards will be made annually, with average first-year awards ranging from $100,000 to $200,000.

Funding Priorities and/or Preferences

Preference will be given to States without a Universal Newborn Hearing Screening and Intervention grant from MCHB.

Review Criteria

Applications for this grant program will be reviewed on the basis of the extent to which they address the following criteria:

(1) The degree to which the applicant provides a complete description of the current status of the State with respect to full implementation of a program of universal newborn hearing screening prior to hospital discharge, linkage to the infant's medical home, audiologic diagnosis by 3 months of age, ongoing family-to-family support and enrollment in a program of early intervention by 6 months.

(2) The degree to which the applicant provides an implementation plan to achieve full implementation of a sustainable statewide universal newborn hearing screening program, defined as the screening of 95 percent of infants prior to hospital discharge or in the first month of life. Elements of such a plan include:

(a) A state level advisory committee with appropriate representation of professionals who will be involved in the screening and followup program, families, and consumers of services for infants with hearing loss;

(b) The structure of the screening program, including informed consent procedures; screening methodology, procedures and personnel; timing and responsibility for documenting and communicating results;

(c) Procedures for assuring timely linkages of identified infants and families with the infant's medical home, ongoing family-to-family support and early intervention services (consistent with Part C of the Individuals with Disabilities Education Act (IDEA) [20 U.S.C. 1431 *et seq.*]).

(d) Procedures for assuring that timely audiologic followup and diagnosis of infants suspected of hearing loss is carried out, including the availability of appropriately trained audiology personnel;

(e) A description of the data and tracking system for infants suspected to have or identified with significant hearing loss, including a description of relationships to other databases within the States that focus on infants and children, particularly the relationship of the newborn hearing screening data to the newborn metabolic screening data and tracking system and CDC's Early Hearing, Detection and Intervention (EHDI) reporting system; and

(f) A plan for professional and public education about the state newborn hearing screening program.

(3) The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results;

(4) The extent to which the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel;

(5) The extent to which the project will be integrated with the administration of MCH Block Grant programs and other related programs in the State.

(6) The inclusion of a well developed plan for evaluation, which documents, with data support, the successes (or failures) at each stage of the screening and intervention program. Funded programs will be required to report annually throughout the life of the grant. Data reporting will include the number of infants screened, number referred for audiologic diagnosis, number and age of infants receiving audiologic diagnosis, number of infants with a medical home, referral to family-to-family support and number and age at which identified infants are enrolled in early intervention services. OMB approval for the data reporting will be sought, as required under the Paperwork Reduction Act of 1995.

Applicants should pay strict attention to addressing the above criteria as they are the basis upon which their applications will be judged.

Executive Order 12372

This program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See Part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements).

Dated: November 2, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–28617 Filed 11–7–00; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–27]

Notice of Proposed Information Collection For the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; Comment Request

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: January 8, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Allen Fishbein, Senior Advisor for Government Sponsored Enterprises Oversight, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3600, extension 2117, or Sandra Fostek, Office of Government Sponsored Enterprises Oversight, at (202) 708–2224, extension 2233 (these are not toll-free numbers) for copies of available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).

OMB Control Number, if applicable: 2502–0514.

Description of the need for the information and proposed use: This notice requests a revision of a currently approved collection to accommodate additional data requirements necessitated by HUD's recent publication of a new implementing regulation to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA). On October 31, 2000, HUD published a rule at 24 CFR Part 81, to become effective January 1, 2001, which increased the levels of required affordable housing goal performance for Fannie Mae and Freddie Mac (the GSEs). The rule also implemented certain changes to HUD's counting rules relative to how mortgages will be credited towards the housing goals and provided special incentives whereby the GSEs could earn additional housing goals credit for certain loan purchase activities. HUD's collection of information on the GSEs' business activities is needed to measure and monitor their compliance with statutorily mandated housing goals; to ensure the GSEs' compliance with counting rules, including the exclusion of high cost, predatory loans, from eligibility for goals credit; to foster a continuing dialogue between HUD, the GSEs, Congress, and the public on the activities of the GSEs with respect to affordable housing and underserved mortgage market issues; and to improve the operating of the housing finance market.

In accordance with HUD's regulation issued in 1995, the GSEs submit Quarterly Mortgage Reports, Annual Housing Activities Reports, Periodic Reports, and Other Information Analyses. This reporting remains unchanged in HUD's recently published regulation.

The mid-year second quarter Mortgage Report and the year-end Annual Mortgage Activities Report also must include year-to-date computerized loan level data. In order to accommodate the counting rule changes in HUD's new regulation, HUD proposes to increase its mid-year and year-end computerized loan level data collection requirement by about 36 percent over requirements imposed during the reporting period 1996–1999. The 36 percent increase includes data fields that are counted twice because the same data is collected from both single family and multifamily data sources. This action represents the first increase in HUD's data collection requirements since publication of the 1995 final rule. These new data collection requirements will enable HUD to monitor GSEs' compliance with new goals and counting conventions and will also permit HUD to make determinations relative to the effectiveness of certain incentives in promoting conventional mortgage lending activity to traditionally underserved borrowers and communities.

Agency Form Numbers, if applicable: None.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of responses: The estimated number of respondents is 2, the total annual responses are approximately 87 reports, and the total annual hours of all responses, including reports and data collection, are estimated at 5,697 hours.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 31, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–28590 Filed 11–7–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amended Gaming Compact between the Sisseton-Wahpeton Sioux Tribe and the State of South Dakota, which was executed on August 24, 2000.

DATES: This action is effective November 8, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: October 25, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–28587 Filed 11–7–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of Revised Outer Continental Shelf (OCS) Official Protraction Diagram.

SUMMARY: Notice is hereby given that effective with this publication, the following NAD 27-based OCS Official Protraction Diagram last revised on the date indicated, is on file and available for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana. In accordance with Title 43, Code of Federal Regulations, this diagram is the basic record for the description of minerals and oil and gas lease sales in the geographic area it represents.

Description	Date
NG15–09, Amery Terrace	Oct. 25, 2000.

FOR FURTHER INFORMATION CONTACT: Copies of Leasing Maps and Official Protraction Diagrams are $2.00 each. These may be purchased from the Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

Dated: November 2, 2000.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 00–28600 Filed 11–7–00; 8:45 am]

BILLING CODE 4310–MR–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Committee on Court Administration and Case Management, Subcommittee on Privacy and Electronic Access to Court Files; Notice of Request for Public Comment

AGENCY: Judicial Conference of the United States, Committee on Court Administration and Case Management, Subcommittee on Privacy and Electronic Access to Court Files.

ACTION: Notice of request for public comment.

SUMMARY: The Court Administration and Case Management Committee of the Judicial Conference of the United States, through its Subcommittee on Privacy and Electronic Access to Case Files, is seeking comment on the attached document outlining policies under consideration to address issues of privacy and security concerns related to the electronic availability of court case files.

DATES: Comments will be accepted from November 13, 2000 through January 26, 2001.

ADDRESSES: All comments should be received by 5 p.m., January 26, 2001. The electronic submission of comments is highly encouraged. Electronic comments may be submitted at *www.privacy.uscourts.gov* or via e-mail at *Privacy_Policy_Comments@ao.uscourts.gov*. Comments may be submitted by regular mail to The Administrative Office of the United States Courts, Court Administration Policy Staff, Attn: Privacy Comments,

Suite 4–560, One Columbus Circle, NE., Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Abel J. Mattos, Chief, Court Administration Policy Staff, Administrative Office of the United States Courts, One Columbus Circle, NE., Washington, DC 20544, telephone (202) 502–1560, fax (202) 502–1022.

Dated: November 1, 2000.

Abel J. Mattos,

Chief, Court Administration Policy Staff.

Request for Comment on Privacy and Public Access to Electronic Case Files

The federal judiciary is seeking comment on the privacy and security implications of providing electronic public access to court case files. The Judicial Conference of the United States is studying these issues in order to provide policy guidance to the federal courts. This request for public comment addresses several related issues:

- The judiciary's plans to provide electronic access to case files through the Internet;
- The privacy and security implications of public access to electronic case files;
- Potential policy alternatives and the appropriate scope of judicial branch action in this area.

The judiciary is interested in comments that address any of the issues raised in this document, including whether it is appropriate for the judiciary to establish policy in this area.

All comments should be received by 5 p.m. January 26, 2001 and must include the name, mailing address and phone number of the commentator. All comments should also include an e-mail address and a fax number, where available, as well as an indication of whether the commentator is interested in participating in a public hearing, if one is held. The public should be advised that it may not be possible to honor all requests to speak at any such hearing.

The electronic submission of comments is highly encouraged. Electronic comments may be submitted at *www.privacy.uscourts.gov* or via e-mail to *Privacy_Policy_Comments@ao.uscourts.gov*. Comments may be submitted by regular mail to The Administrative Office of the United States Courts, Court Administration Policy Staff. Attn: Privacy Comments, Suite 4–560, One Columbus Circle, NE., Washington, DC 20544.

Electronic Public Access to Federal Court Case Files

The federal courts are moving swiftly to create electronic case files and to provide public access to those files through the Internet. This transition from paper files to electronic files is quickly transforming the way case file documents may be used by attorneys, litigants, courts, and the public. The creation of electronic case files means that the ability to obtain documents from a court case file will no longer depend on physical presence in the courthouse where a file is maintained. Increasingly, case files may be viewed, printed, or downloaded by anyone, at any time, through the Internet.

Electronic files are being created in two ways. Many courts are creating electronic images of all paper documents that are filed, in effect converting paper files to electronic files. Other courts are receiving court filings over the Internet directly from attorneys, so that the "original" file is no longer a paper file but rather a collection of the electronic documents filed by the attorneys and the court. Over the next few years electronic filing, as opposed to making images of paper documents, will become more common as most federal courts begin to implement a new case management system, called Case Management/Electronic Case Files (or "CM/ECF"). That system gives each court the option to create electronic case files by allowing lawyers and parties to file their documents over the Internet.

The courts plan to provide public access to electronic files, both at the courthouse and beyond the courthouse, through the Internet. The primary method to obtain access will be through Public Access to Court Electronic Records (or "PACER"), which is a web-based system that will contain both the dockets (a list of the documents filed in the case) and the actual case file documents. Individuals who seek a particular document or case file will need to open a PACER account and obtain a login and password. After obtaining these, an individual may access case files—whether those files were created by imaging paper files or through CM/ECF—over the Internet. Public access through PACER will involve a fee of $.07 per page of a case file document or docket viewed, downloaded or printed. This compares favorably to the current $.50 per page photocopy charge. Electronic case files also will be available at public computer terminals at courthouses free of charge.

Potential Privacy and Security Implications of Electronic Case Files

Electronic case files promise significant benefits for the courts, litigants, attorneys, and the public. There is increasing awareness, however, of the personal privacy implications of unlimited Internet access to court case files. In the court community, some have begun to suggest that case files—long presumed to be open for public inspection and copying unless sealed by court order—contain private or sensitive information that should be protected from unlimited public disclosure and dissemination in the new electronic environment. Others maintain that electronic case files should be treated the same as paper files in terms of public access and that existing court practices are adequate to protect privacy interests.

Federal court case files contain personal and sensitive information that litigants and third parties often are compelled by law to disclose for adjudicatory purposes. Bankruptcy debtors, for example, must divulge intimate details of their financial affairs for review by the case trustee, creditors, and the judge. Civil case files may contain medical records, personnel files, proprietary information, tax returns, and other sensitive information. Criminal files may contain arrest warrants, plea agreements, and other information that raise law enforcement and security concerns.

Recognizing the need to review judiciary public access policies in the context of new technology, the Judicial Conference is considering privacy and access issues in order to provide guidance to the courts. The Judicial Conference has not reached any conclusions on these issues, and this request for public comment is intended as part of the Conference's ongoing study.

The judiciary has a long tradition—rooted in both constitutional and common law principles—of open access to public court records. Accordingly, all case file documents, unless sealed or otherwise subject to restricted access by statute or federal rule, have traditionally been available for public inspection and copying. The Supreme Court has recognized, however, that access rights are not absolute, and that technology may affect the balance between access rights and privacy and security interests. See *Nixon* v. *Warner Communications, Inc.*, 435 U.S. 589 (1978), and *United States Department of Justice* v. *Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). These issues are discussed in more detail in an Administrative Office staff paper, "Privacy and Access to Electronic Case Files in the Federal Courts," available on the Internet at *www.uscourts.gov/privacyn.pdf*.

The Role of the Federal Judiciary

The judiciary recognizes that concern about privacy and access to public records is not limited to the judicial branch. There is a broader public debate about the privacy and security implications of information technology. Congress has already responded to some of these concerns by passing laws that are designed to shield sensitive personal information from unwarranted disclosure. These laws, and numerous pending legislative proposals, address information such as banking records and other personal financial information, medical records, tax returns, and Social Security numbers. The executive branch is also concerned about implications of electronic public access to private information. Most recently, the President directed the Office of Management and Budget, the Department of Justice, and the Department of Treasury to conduct a study on privacy and security issues associated with consumer bankruptcy filings.

Accordingly, the judiciary is interested in receiving comment on the appropriate scope of judicial branch action, if any, on the broad issue of access to public court records, and the corresponding need to balance access issues against competing concerns such as personal privacy and security.

Policy Alternatives on Electronic Public Access to Federal Court Case Files

Regardless of what entity addresses the issues of privacy and electronic access to case files, the effort must be made to balance access and privacy interests in making decisions about the public disclosure and dissemination of case files. The policy options outlined below are intended to promote consistent policies and practices in the federal courts and to ensure that similar protections and electronic access presumptions apply, regardless of which federal court is the custodian of a particular case file. One or more of the policy options for each type of case file may be recommended to the Judicial Conference for its consideration. Some, but not all of the options are mutually exclusive.

Civil Case Files

1. Maintain the presumption that all filed documents that are not sealed are available both at the courthouse and electronically.

This approach would rely upon counsel and pro se litigants to protect their interests on a case-by-case basis through motions to seal specific documents or motions to exclude specific documents from electronic availability. It would also rely on judges' discretion to protect privacy and security interests on a case-by-case basis through orders to seal or to exclude certain information from remote electronic public access.

2. Define what documents should be included in the "public file" and, thereby, available to the public either at the courthouse or electronically.

This option would treat paper and electronic access equally and assumes that specific sensitive information would be excluded from public review or presumptively sealed. It assumes that the entire public file would be available electronically without restriction and would promote uniformity among district courts as to case file content. The challenge of this alternative is to define what information should be included in the public file and what information does not need to be in the file because it is not necessary to an understanding of the determination of the case or because it implicates privacy and security interests.

3. Establish "levels of access" to certain electronic case file information.

This contemplates use of software with features to restrict electronic access to certain documents either by the identity of the individual seeking access or the nature of the document to which access is sought, or both. Judges, court staff, parties and counsel would have unlimited remote access to all electronic case files.

This approach assumes that the complete electronic case file would be available for public review at the courthouse, just as the entire paper file is available for inspection in person. It is important to recognize that this approach would not limit how case files may be copied or disseminated once obtained at the courthouse.

4. Seek an amendment to one or more of the Federal Rules of Civil Procedure to account for privacy and security interests.

Criminal Case Files

1. Do not provide electronic public access to criminal case files.

This approach advocates the position that the ECF component of the new CM/ECF system should not be expanded to include criminal case files. Due to the very different nature of criminal case files, there may be much less of a legitimate need to provide electronic access to these files. The files are usually not that extensive and do not present the type of storage problems presented by civil files. Prosecution and defense attorneys are usually located near the courthouse. Those with a true need for the information can still access it at the courthouse. Further, any legitimate need for electronic access to criminal case information is outweighed by safety and security concerns. The electronic availability of criminal information would allow co-defendants to have easy access to information regarding cooperation and other activities of defendants. This information could then be used to intimidate and harass the defendant and the defendant's family. Additionally, the availability of certain preliminary criminal information, such as warrants and indictments, could severely hamper law enforcement and prosecution efforts.

2. Provide limited electronic public access to criminal case files.

This alternative would allow the general public access to some, but not all, documents routinely contained in criminal files. Access to documents such as plea agreements, unexecuted warrants, certain pre-indictment information and presentence reports would be restricted to parties, counsel, essential court employees, and the judge.

Bankruptcy Case Files

1. Seek an amendment to section 107 of the Bankruptcy Code.

Section 107 currently requires public access to all material filed with bankruptcy courts and gives judges limited sealing authority. Recognized issues in this area would be addressed by amending this provision as follows: (1) Specifying that only "parties in interest" may obtain access to certain types of information; and (2) enhancing the 107(b) sealing provisions to clarify that judges may provide protection from disclosures based upon privacy and security concerns.

2. Require less information on petitions or schedules and statements filed in bankruptcy cases.

3. Restrict use of Social Security, credit card, and other account numbers to only the last four digits to protect privacy and security interests.

4. Segregate certain sensitive information from the public file by collecting it on separate forms that will be protected from unlimited public access and made available only to the courts, the U.S. Trustee, and to parties in interest.

Appellate Cases

1. Apply the same access rules to appellate courts that apply at the trial court level.

2. Treat any document that is sealed or subject to public access restrictions at the trial court level with the same protections at the appellate level unless and until a party challenges the restriction in the appellate court.

[FR Doc. 00–28671 Filed 11–7–00; 8:45 am]

BILLING CODE 2210–[illegible]–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Cooperation; Hearing on Submission #2000–1

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of Hearing.

SUMMARY: The purpose of this notice is to announce a hearing, open to the public, on Submission #2000–1.

Submission #2000–1, was filed with the U.S. National Administrative Office (NAO) on July 3, 2000, by the Coalition for Justice in the Maquiladoras (CJM), current and former workers at Auto Trim/Breed Mexicana, and twenty-two additional unions and non-governmental organizations, including the United Auto Workers (UAW), the United Electrical, Radio and Machine Workers of America (UE), and the AFL–CIO. The submission was accepted for review by the NAO on September 1, 2000, and a notice of acceptance for review was published in the **Federal Register** on September 7, 2000.

Article 16 (3) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the NAO in accordance with U.S. domestic procedures. Revised procedural guidelines pertaining to the submission, review, and reporting process utilized by the office were published in the **Federal Register** on April 7, 1994 (59 FR 16660). The guidelines provide for a discretionary hearing as part of the review.

DATES: The hearing will be held on December 12, 2000, commencing at 9:00 a.m. Persons desiring to present oral testimony at the hearing must submit a request in writing, along with a written statement or brief describing the information to be presented or position to be taken.

ADDRESSES: The hearing will be held at the City Council Chambers, 103 Main Plaza, Municipal Plaza Building, San Antonio, Texas 78205. Written statements or briefs and requests to present oral testimony may be mailed or hand delivered to the U.S. National Administrative Office (NAO), Department of Labor, 200 Constitution Avenue, NW., Room C–4327, Washington, DC 20210. Requests to present oral testimony and written statements or briefs must be received by the NAO no later than close of business November 28, 2000.

FOR FURTHER INFORMATION CONTACT: Lewis Karesh, Secretary, U.S. National Administrative Office. Department of Labor, 200 Constitution Avenue, NW., Room C–4327, Washington, DC 20210. Telephone: (202) 501–6653 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Nature and Conduct of Hearing

As set out in the notice published in the **Federal Register** on September 7, 2000, the objective of the review will be to gather information to assist the NAO to better understand and publicly report on occupational safety and health issues and compensation in cases of occupational injuries and illnesses raised in the submission, including the Government of Mexico's compliance with the obligations agreed to under Articles 3,4,5, and 7 of the NAALC.

The hearing will be conducted by the Secretary of the NAO or the Secretary's designee. It will be open to the public. All proceedings will be conducted in English, with simultaneous translation in English and Spanish provided. The public files for the submission, including written statements, briefs, and requests to present oral testimony, will be made a part of the appropriate hearing record. The public files will also be available for inspection at the NAO prior to the hearing.

The hearing will be transcribed. A transcript of the proceeding will be made available for inspection, as provided for in Section E of the procedural guidelines, or may be purchased from the reporting company.

Disabled persons should contact the Secretary of the NAO no later than November 28, 2000 if special accommodations are needed.

II. Written Statements or Briefs and Requests To Present Oral Testimony

Written statements or briefs shall provide a description of the information to be presented or position taken and shall be legibly typed or printed. Requests to present oral testimony shall include the name, address, and telephone number of the witness, the organization represented, if any, and any other information pertinent to the request. Five copies of a statement or brief and a single copy of a request to present oral testimony shall be submitted to the NAO at the time of filing.

No request to present oral testimony will be considered unless accompanied by a written statement or brief. A request to present oral testimony may be denied if the written statement or brief suggests that the information sought to be provided is unrelated to the review of the submission or for other appropriate reasons. The NAO will notify each requester of the disposition of the request to present oral testimony.

In presenting testimony, the witness should summarize the written statement or brief, may supplement the written statement or brief with relevant information, and should be prepared to answer questions from the Secretary of the NAO or the Secretary's designee. Oral testimony will ordinarily be limited to a ten minute presentation, not including the time for questions. Persons desiring more than ten minutes for their presentation should so state in the request, setting out reasons why additional time is necessary.

The requirements relating to the submission of written statements or briefs and requests to present oral testimony may be waived by the Secretary of the NAO for reasons of equity and public interest.

Signed at Washington, D.C. on November 3, 2000.

Lewis Karesh,

Acting Secretary, U.S. National Administrative Office.

[FR Doc. 00–28656 Filed 11–7–00; 8:45 am]

BILLING CODE 4510–25–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–133)]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: Tuesday, December 5, 2000, 9:00 a.m. to 4:00 p.m., and Wednesday, December 6, 2000, 9:00 a.m. to 12:00 noon.

ADDRESSES: NASA Headquarters, 300 E Street, SW, Washington, DC 20546–0001. Room MIC–7.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, Room 9K70, [illegible]00 E Street, SW, Washington, DC 20546–0001, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview of NASA
—Small Disadvantaged Business Participation in Major NASA Contracts
—Report on Mentor-Protégé Program
—Action Items
—NASA Small Disadvantaged Business (SDB) Program Update
—Report of Chair
—Public Comment
—Report from MBRAC Sub Panels
—Status of Best Practices for Teaming Agreements
—Report on SDB Participation on Agency-Wide Contract(s)

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 31, 2000.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–28582 Filed 11–7–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice (00–134)

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Synthecon, Inc., of Houston, TX, has applied for a partially exclusive license to practice the inventions described and claimed in U.S. Patent No. 5,153,132, entitled "Three-Dimensional Co-Culture Process"; U.S. Patent No. 5,153,133, entitled "Method for Culturing Mammalian Cells in a Horizontally Rotated Bioreactor"; U.S. Patent No. 5,155,034, entitled "Three-Dimensional Cell to Tissue Assembly Process"; U.S. Patent No. 5,155,035, entitled "Method for Culturing Mammalian Cells in a Perfused Bioreactor"; U.S. Patent No. 5,308,764, entitled "Multi-Cellular Three-Dimensional Living Mammalian Tissue"; U.S. Patent No. 5,496,722, entitled "Cultured Normal Mammalian Tissue and Process"; U.S. Patent No. 5,627,021, entitled "Multi-Cellular, Three-Dimensional Living Mammalian Tissue"; U.S. Patent No. 5,846,807, entitled "Media Compositions for Three-Dimensional Mammalian Tissue Growth Under Microgravity Culture Conditions"; U.S. Patent No. 5,858,783, entitled "Production of Normal Mammalian Organ Culture Using a Medium Containing Mem-Alpha, Leibovitz L–15, Glucose Galactose Fructose"; U.S. Patent No. 5,851,816, entitled "Cultured High-Fidelity Three Dimensional Human Urogenital Tract Carcinomas and Process"; and U.S. Patent No. 6,117,674, entitled "Horizontal Rotating-Wall Vessel Propagation in Vitro Human Tissue Models." Each of the above U.S. Patents is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Partially exclusive license rights were also applied for in NASA's undivided interest in the U.S. Patent Application identified as NASA Case No. MSC–22859, entitled "Production of Functional Proteins: Balance of Shear Stress and Gravity," and in pending PCT application, NASA Case No. MSC–22859 (PCT), entitled "Production of Functional Proteins: Balance of Shear Stress and Gravity," and in foreign patents which may issue therefrom. Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

DATES: Responses to this notice must be on or before January 8, 2001.

FOR FURTHER INFORMATION CONTACT: James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 483–1001.

Dated: November 1, 2000.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 00–28583 Filed 11–7–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–54.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 3, 2000, the National Science Foundation published notice in the **Federal Register** of a waste management permit application received. The permit was issued on October 27, 2000 to: The Bancroft Arenesen Expedition, Permit No. 2001 WM–001.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 00–28654 Filed 11–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issues Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 27, 2000, the National Science Foundation published notice in the **Federal Register** of a permit application received. The permit was issued on October 27, 2000 to: Robert A. Blanchette, Permit No. 2001–015.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 00–28655 Filed 11–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda; Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, November 14, 2000.

PLACE: NTSB Board Room, 429 L'Enfant Plaza, S.W. Washington, D.C. 20594.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

7302 Highway Accident Report: School Bus and Dump Truck Collision, Central Bridge, New York, on October 21, 1999.

NEWS MEDIA CONTRACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, November 9, 2000.

FOR MORE INFORMATION CONTACT: Rhonda Underwood (202) 314–6065.

Dated: November 3, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–28771 Filed 11–6–00; 10:50 am]

BILLING CODE 7533–01–M

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council; Meeting

AGENCY: Office of Personnel Management

ACTION: Notice of meeting.

TIME AND DATE: 2:00 p.m., November 15, 2000

Place: Alan K. Campbell Auditorium, U.S. Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC. The Campbell Auditorium is located on the ground floor.

Status: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

Matters to be considered: This meeting will consist of an awards ceremony. The 2000 John N. Sturdivant National Partnership Award will be presented to this year's winners. The John N. Sturdivant National Partnership Award is given in recognition of outstanding labor-management partnership activities.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey Sumberg, Director, Office of Labor & Employee Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–0001, (202) 606–2930.

Office of Personnel Management.

Janice R. LaChance,

Director.

[FR Doc. 00–28615 Filed 11–7–00; 8:45 am]

BILLING CODE 6325–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–272 4]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 1, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 27, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 27, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Cinergy Corp. (70–9759)

Cinergy Corporation ("Cinergy"), 139 East Fourth Street, Cincinnati, Ohio 45202, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rules 42 and 54 under the Act.

By orders dated December 1, 1995 (HCAR No. 26422) ("1995 Order") and April 17, 1996 (HCAR No. 26505) ("1996 Order"), the Commission authorized Cinergy to issue and sell, from time to time through December 31, 2000, a total of approximately 30 million shares of Cinergy's common stock, $0.01 par value per share ("Common Stock"), under various stock-based employee and director plans of Cinergy and its subsidiaries.

More specifically, the 1995 Order authorized Cinergy to issue and sell, from time to time through December 31, 2000, up to 22,386,696 shares of Common Stock under various benefit plans of Cinergy and its subsidiaries, namely, the Cinergy Corp. Dividend Reinvestment and Stock Purchase Plan, the Cinergy Corp. Employee Stock Purchase and Savings Plan, the Cinergy Corp. Performance Shares Plan, the Cinergy Corp. Stock Option Plan, the Cinergy Corp. Directors' Deferred Compensation Plan, the PSI Energy, Inc. ("PSI") Union Employees' 401(k) Savings Plan, the PSI Employees' 401(k) Savings Plan, the Cincinnati Gas & Electric Company Deferred Compensation and Investment Plan and The Cincinnati Gas & Electric Company Savings Incentive Plan. The 1996 Order authorized Cinergy to issue and sell, from time to time through December 31, 2000, up to seven million shares of Common Stock under the Cinergy Corp. Long-Term Incentive Compensation Plan.[1]

Effective January 1, 1998: (1) the PSI Union Employees' 401(k) Savings Plan was amended, restated and renamed the Cinergy Corp. Union Employees' 401(k) Plan; (2) the Cincinnati Gas & Electric Company Savings Incentive Plan was amended, restated and renamed the Cinergy Corp. Union Employees' Savings Incentive Plan; (3) the PSI Employees' 401(k) Savings Plan was amended, restated and renamed the Cinergy Corp. Non-Union Employees' 401(k) Plan; and (4) the Cincinnati Gas & Electric Company Deferred Compensation and Investment Plan was merged into the Cinergy Corp. Non-Union Employees' 401(k) Plan. In addition, since the 1995 Order, the Cinergy Corp. Performance Shares Plan has been terminated.

As of August 31, 2000, Cinergy had 600,000,000 shares of Common Stock authorized for issuance and 158,924,941 shares were outstanding. Since registering under the Act, Cinergy has issued approximately 3.8 million shares of Common Stock under the plans referred to above.

Cinergy now requests authorization to issue and sell up to 50 million shares of Common Stock, from time to time over a 10-year period commencing with the date of the Commission's order in this file ("Authorization Period"), under the following plans (collectively "Plans"): (1) The Cinergy Corp. Dividend Reinvestment and Stock Purchase Plan; (2) the Cinergy Corp. Employee Stock

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[1] The Commission also authorized Cinergy to issue shares of Common Stock, from time to time through December 31, 2004, under certain other plans in accordance with two orders (HCAR No. 27001, Apr. 8, 1999 and HCAR No. 27028, May 19, 1999). Cinergy proposes no changes to the terms of these orders.

Purchase and Savings Plan; (3) the Cinergy Corp. Stock Option Plan; (4) the Cinergy Corp. Directors' Deferred Compensation Plan; (5) the Cinergy Corp. Long-Term Incentive Compensation Plan; (6) the Cinergy Corp. Union Employees' 401(k) Plan; (7) the Cinergy Corp. Union Employees' Savings Incentive Plan; and (8) the Cinergy Corp. Non-Union Employees' 401(k) Plan. Shares of Common Stock issued under the Plans from time to time over the Authorization Period may be authorized and previously unissued shares or previously issued shares reacquired by Cinergy in open market transactions. In addition, under the Stock Option Plan and the Long-Term Incentive Compensation Plan, plan participants may purchase shares of Common Stock under certain circumstances by, among other means, exchanging shares of Common Stock, and accordingly, Cinergy also requests authorization, to the extent required under the Act, to acquire shares of Common Stock from plan participants.

Cinergy proposes to apply proceeds of any shares sold for cash to general corporate purposes, including repayment of outstanding indebtedness and investments in subsidiaries. However, without further authorization from the Commission, Cinergy will not apply any proceeds to acquire exempt wholesale generators as defined in section 32 of the Act, or foreign utility companies as defined in section 33 of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28592 Filed 11–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43493; File No. SR–CBOE–00–04]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change to Amend and Codify Equity Options Post Telephone Policy

October 30, 2000.

I. Introduction

On February 25, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the existing CBOE policy governing the use of telephones at equity option trading posts to conform it to the CBOE's current index option trading post telephone policy by allowing for the receipt of orders over outside telephone lines, from any source, directly at equity trading posts. On August 29, 2000, the Commission published the proposed rule change in the **Federal Register**.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

In this proposed rule change, CBOE seeks to expand its existing policy governing the use of telephones at equity option trading posts[4] to make it more consistent with the CBOE's current index option trading post telephone policy by allowing for the receipt of orders over outside telephone lines, from any source, directly at equity trading posts, and to incorporate that policy into the Exchange's rules. The proposed rule change is more limited than the current telephone policy for the index option post, however, in that it would generally allow for the receipt of orders directly at the post over outside telephone lines only when the order(s) are placed during *outgoing* telephone calls. The Exchange seeks to codify and amend its current equity option post telephone policy to make clear to member and member organizations the Exchange's position with respect to the use of telephones at equity option posts. The proposed policy would supercede previous policies concerning the use of telephones at equity option trading posts set forth in CBOE Regulatory Circulars.

Regarding the history of CBOE's equity option trading post telephone policy, the CBOE first proposed a telephone policy for equity option posts in 1993.[5] That initial policy prohibited any orders from being transmitted over the outside telephone lines to the equity option posts, but allowed for orders to be transmitted via intra-floor lines from one point on the Exchange floor to another. In 1996, the Exchange modified its telephone policy at equity posts to allow orders of CBOE market makers to be received over the outside telephone lines directly at the trading posts, which remains the current policy.[6] The proposed rule change would expand this policy by permitting the receipt of off-floor orders from any source (*i.e.*, members, broker-dealers, non-broker-dealer, or public customers) over outside telephone lines directly at the equity trading posts during outgoing telephone calls, but would limit the orders to those transmitted to the equity posts pursuant to a telephone call initiated at the post (*i.e.*, an outgoing call).[7] According to CBOE, the proposed rule change would make the CBOE's telephone policy for equity option posts more consistent with the current policy at the OEX post in place since 1998.[8]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Sections 6(b)(5) and 6(b)(8) of the Act.[9] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.[10] Section 6(b)(5) also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

Under the current policy, the only orders for equity options that may be received at the post directly via telephone lines from off-floor locations are off-floor orders of CBOE market makers. The proposed rule change would expand this policy by permitting the receipt of off-floor orders from any source (*i.e.*, members, broker-dealers, non-broker-dealers, or public customers) over outside telephone lines directly at the equity trading posts during outgoing telephone calls. The proposed rule change would only allow for such orders to be transmitted to the equity posts pursuant to a telephone call initiated at the post (an outgoing call), while permitting CBOE market makers to continue to transmit orders over the telephone lines from off the floor directly to the equity trading posts (via incoming calls).

The Commission finds that the proposed rule is consist with, and furthers the objectives of, Section 6(b)(5)[11] of the Act in that it is designed to improve communication to and from the Exchange's trading floor in a manner that promotes just and equitable principles of trade, prevents fraudulent and manipulative acts and practices, and maintains fair and orderly markets. Specifically, the Commission notes that the limits on telephone use proposed by the CBOE are consistent with the goals of the Act. In this regard, the commission believes that it is reasonable for CBOE to codify its current policy permitting CBOE market makers to send orders to the trading floor via incoming calls (a benefit that is not enjoyed by other types of members and public customers). This policy allows CBOE market makers to transmit their orders more efficiently at those times when they are required to be off the floor. In the Commission's view, it is also reasonable for the Exchange to now allow orders from any other source to go directly to the post as long as those orders are placed in outgoing calls only.

The Commission further believes that the proposed rule change modifies the Exchange's communication system in a way that provides for equitable access to the Exchange floor among members, broker-dealers, non-broker-dealers, and public customers (both institutional and retail) alike. Accordingly, the Commission finds that the proposal is consistent with the requirement of Section 6(b)(8)[12] of the Act, which requires that the proposed rule change not impose any burden on competition not necessary or appropriate in furtherance of the Act's purposes.

The Exchange has indicated that it intends to police compliance with the conditions applicable to the use of telephones at the equity trading posts (including the requirement that any member or associated person receiving orders over outside telephone lines be properly qualified pursuant to CBOE rules to do so) through complaints from Exchange members at the post, as well as observations of Floor Officials and Exchange staff. The Exchange has further indicated that CBOE's Equity Floor Procedure Committee will be responsible for implementing this policy in conformity with Exchange Rules and provisions of the Act, including approving access and the phone technology, and will decide any other issues relating to this policy.[13] Finally, the CBOE Department of Financial and Sales Practice Compliance will be required to review and approve all applications relating to the policy to ensure that the applicant is intending to transact business which the applicant is authorized to transact.

The Commission believes that proper surveillance is an essential component of any policy telephone access to an exchange's trading floor. Especially important in this case is ensuring that the CBOE's surveillance efforts prevent individuals who are not properly qualified to take public orders for securities (*i.e.* non-Series 7 qualified Exchange employees) from interacting with the public. The Commission finds that the safeguards proposed above by the CBOE are consistent with the prevention of fraudulent and manipulative acts and practices, as required under Section 6(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–00–04) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28594 Filed 11–7–00; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43194 (August 22, 2000), 65 FR 52457 (August 29, 2000).

[4] Equity trading posts are all trading posts that are under the jurisdiction of the Equity Floor Procedure Committee (all trading posts except DJX, NDX, OEX and SPX), including Designated Primary Market maker crowds.

[5] *See* Securities Exchange Act Release No. 33701 (March 2, 1994), approving SR–CBOE–93–24.

[6] RG 97–92, the latest Regulatory Circular reflecting CBOE's current equity telephone policy, was approved by the Commission in Securities Exchange Act Release No. 37876, 61 FR 56728 (November 4, 1996), and modified in Securities Exchange Act Release No, 39331, 62 FR 62650 (November 24, 1997).

[7] In adopting this change, the CBOE wants to provide more immediate access into its trading crowds to its customers. The Exchange believes that this expansion in access is necessary to allow the CBOE to continue to satisfy is customers in an increasingly competitive environment.

[8] The OEX pit telephone policy is set forth in CBOE's Regulatory Circular, RG–98–09, which was approved in Securities Exchange Act Release No. 39435, 62 FR 66157 (December 17, 1997), CBOE's current proposal for the equity option post differs somewhat from its OEX policy contained in the above-noted Regulatory Circular. RG–98–09 allows floor brokers to take telephone orders using their dedicated telephone lines at the OEX pit, while the current proposal would allow all members to receive telephone orders (with the outgoing call limitation) over the equity option post general telephone lines, with members using PIN access codes to access the lines. CBOE represents that space limitations at the equity option post would prohibit the use of dedicated lines. Further, CBOE represents that, in contract to the OEX post, order-taking at the equity option post is not limited to floor brokers, as Designated Primary Market Makers ("DPM") can also act as floor brokers pursuant to existing CBOE rules. Telephone call from Timothy Thompson, Director, Regulatory Affairs, CBOE and Angelo Evangelou, Attorney, CBOE to Geoffrey Pemble, Attorney, Division of Market Regulation, SEC (October 26, 2000).

[9] 15 U.S.C. 78f(b)(5) and (b)(8).

[10] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(8).

[13] According to CBOE, responsibility for accepting orders from a wide range of customers will be borne by the member firms. Floor brokers accepting orders in this manner would be required to be qualified pursuant to Exchange Rule 91. As is the case with brokers accepting orders of public customers over OEX post telephones, any broker speaking directly with a public customer is required to be Series 7 qualified and registered with the Exchange by a member organization approved to conduct non-member customer business.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43490; File No. SR–CBOE–00–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc. To Extend the Pilot Period Relating to the Processing of Live Ammo Orders Until December 15, 2000

October 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] Rule 19b–4[2] thereunder, notice is hereby given that on October 26, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend until December 15, 2000, the pilot program that allows an Order Book Official ("OBO") or a Designated Primary Market-Maker ("DPM") to designate certain booked orders to be electronically executed ("Live Ammo to RAES"). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 2, 2000, the Commission approved, on a pilot basis, a system change that allows an OBO or a DPM to reroute orders on the electronic book screen that displays market orders and limit orders and improve the market ("Live Ammo") to the Retail Automatic Execution System ("RAES") if the orders are RAES-eligible.[3] The pilot is scheduled to expire on October 31, 2000.

The Exchange now proposes to extend the pilot until December 15, 2000. The Exchange is currently preparing a proposed rule change, which will propose to adopt the Live Ammo to RAES processing system on a permanent basis. Thus, the proposed extension of the pilot will allow the Live Ammo to RAES system to remain in place while the Commission considers the Exchange's proposal to permanently approve the system. The Exchange also believes that extending the pilot will continue to allow for the faster execution of customer orders and prevent a backlog of customer orders on the Live Ammo screen.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5),[5] in particular, because it would foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, and would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)[7] thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange seeks to have the proposed rule change become operative immediately in order to allow the Pilot to continue in effect on an uninterrupted basis. The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately through December 15, 2000. The extension of the Pilot will provide the Commission with the time necessary to review and evaluate the Exchange's proposal to permanently adopt the Live Ammo to RAES system.

The Commission notes that unless the pilot is extended, the Pilot will expire on October 31, 2000, which the Commission believes could result in confusion regarding how orders on the Live Ammo screen should be handled. Therefore, the Commission believes that it is in the public interest to extend the Pilot.

Based on these reasons, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change become operative immediately through December 15, 2000.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File no. SR–CBOE–00–50 and should be submitted by November 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28650 Filed 11–7–00; 8:45 am]

BILLING CODE 8010-01-M

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[3] Securities Exchange Act Release No. 42379, 65 FR 6665 (February 10, 2000). The Exchange rule pertaining to the processing of Live Ammo orders is Rule 7.4(g).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43507; File No. SR–NASD–98–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the National Association of Securities Dealers, Inc. Concerning Related Performance Information

November 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] Rule 19b–4 thereunder,[2] notice is hereby given that on February 12, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On August 10, 1998, NASD Regulation filed an amendment that completely replaced and superseded the original proposed rule change.[3] On October 17, 2000, NASD Regulation again amended the proposal.[4] On October 30, 2000, NASD Regulation filed an amendment that made minor, technical changes to the proposed rule language.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing a new Interpretive Material 2210–5 and conforming amendments to existing Rule 2210 and IM–2210–2 of the NASD. Below is the text of the proposed rule change, as amended. Proposed new language is in italics. Proposed deletions are in brackets.

2200. Communications with Customers and the Public

2210. Communications With the Public

(a) and (b) No change.

(c) Filing Requirements and Review Procedures.

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of paragraph (c)(2), and public direct participation programs (as defined in Rule 2810), and advertisements concerning governments securities (as defined in Section 3(a)(42) of the Act) shall be filed with the Association's Advertising/Investment Companies Regulation Department (Department) within 10 days of first use or publication by any member. The member must provide with each filing the actual or anticipated date of first use. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any member filing any investment company advertisement or sales literature pursuant to this paragraph (c) that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature. *Any member filing a mutual fund or variable contract advertisement or sales literature that presents Comparison Portfolio Performance (as defined by IM 2210–5) shall include a copy of the proof of independent verification required by IM 2210–5(c)(1)(B).*

(c)(2) through (f) No change.

IM 2210–2. Communications With the Public About Variable Life Insurance and Variable Annuities

(a) No change.

(b) Specific Considerations

(1) Fund Performance Predating Inclusion in the Variable Product

In order to show how an existing fund would have performed had it been an investment option within a variable life insurance policy or variable annuity, communications may contain the fund's historical performance that predates its including in the policy or annuity. Such performance may only be used provided that no significant changes occurred to the fund at the time or after it became part of the variable product. However, communications may not include the performance of an existing fund for the proposes of promoting investment in a similar, but new Investment option (i.e., clone fund or model fund) available in a variable contract. The presentation of historical performance must conform to applicable Association and SEC standards. Particular attention must be given to including all elements of return and deducting applicable charges and expenses.

(b)(2) through (5) No change.

IM–2210–5 Presentation of Mutual Fund Related Performance Information

Any advertisement or sales literature concerning an open-end management investment company (the "Advertised Mutual Fund") may present the following types of performance information (collectively, "Related Performance Information").

(a) "Clone" Performance

The total return of all registered open-end management investment companies, calculated in accordance with Item 21 of SEC Form N–1A, that have the same investment policies, investment objectives, investment strategies, investment adviser and sub-investment adviser as an Advertised Mutual Fund, provided that the presentation of this Related Performance Information complies with the general standards in paragraph (d).

(b) "Predecessor" Performance

The total return of an Advertised Mutual Fund, calculated in accordance with Item 21 of SEC Form N–1A, that includes the performance of an insurance company separate account,

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* August 7, 1998 letter from Joan C. Conley, Secretary, NASD Regulation, and attachments to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC ("Amendment No. 1")

[4] *See* October 16, 2000 letter ("October 16 Letter" and attachments from Alden S. Adkins, General Counsel and Senior Vice President, NASD Regulation, and attachments, to Katherine A. England, Assistant Director, Division, SEC ("Amendment No. 2"). In Amendment No. 2, NASD Regulation proposes that (i) members presenting clone performance present total return information for all related clone funds; (ii) the predecessor and the advertised mutual fund share sub-investment advisers as well as investment advisers, and substantially all of the predecessor portfolio's assets must have been transferred to the advertised mutual fund, upon conversion the predecessor portfolio would have to cease to exist as a separate entity, to present predecessor performance; (iii) comparison portfolio performance reflect the total return of other investment companies as wellas other portfolios managed by the investment adviser or sub-investment adviser; (iv) several changes be made to the general standards set forth in paragraph (d) of proposed IM–2210–5; (v) no material difference may exist between the portfolio to which the related performance information refers and the advertised mutual fund, except that the portfolio may not have been registered under the Investment Company Act of 1940, and material difference may exist between the fees and expenses of a clone fund and the advertised mutual fund; and (vi) any member filing sales material that presents related performance information to maintain books and records that demonstrate the basis for and calculation of the related performance information.

The draft notice in Amendment No. 2 includes all of the changes implemented in Amendment Nos. 1 and 2. *See* October 19, 2000 telephone conversation between Sarah Williams, Assistant General Counsel, NASD Regulation and Joseph P. Morra, Special Counsel, Division of Market Regulation, SEC.

[5] *See* October 30, 2000 letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division, SEC ("Amendment No. 3").

common trust fund or private investment company that had been converted into, and had the same investment adviser and sub-investment adviser as, the Advertised Mutual Fund; that had investment policies, investment objectives and investment strategies that were in all material respects equivalent to those of the Advertised Mutual Fund; and that was not created in order to establish a performance record, provided that:

(1) in the conversion, substantially all of the assets of the predecessor portfolio were transferred to the Advertised Mutual Fund and upon conversion the predecessor portfolio ceased to exist as a separate entity;

(2) the performance of the predecessor portfolio is adjusted as of the conversion date only, to reflect all current fees and expenses of the Advertised Mutual Fund, as disclosed in the fee table in the Advertised Mutual Fund's current prospectus, but not reflecting any fee waiver or expense reimbursement for the Advertised Mutual Fund; and

(3) the presentation of this Related Performance Information complies with the general standards in paragraph (d).

(c) "Comparison Portfolio" Performance

(1) The total return of a composite of other portfolios, including other investment companies, managed by the investment adviser (or, as appropriate, the sub-investment adviser) of an Advertised Mutual Fund, provided that:

(A) The composite:

(i) Consists of all actual fee-paying, discretionary portfolios managed by the investment adviser (or sub-investment adviser) with substantially similar investment policies, investment objectives, and investment strategies to the Advertised Mutual fund, including the Advertised Mutual Fund itself;

(ii) Excludes terminated portfolios after the last full performance measurement period the portfolios were under management, but includes terminated portfolios or all periods prior termination;

(iii) Does not reflect any portfolio that has been switched into the composite or exclude any portfolio that had been switched into the composite or exclude any portfolio that had been switched from the composite, unless documented changes in guidelines communicated by the client made the switching appropriate; and

(iv) Adjusts the gross performance information of any portfolio to reflect all current fees and expenses of the Advertised Mutual Fund, as disclosed in the fee table in the Advertised Mutual Fund's current prospectus;

(B) The investment adviser (or sub-investment adviser) has obtained verification from an independent third party that the creation and maintenance of the composite complies with paragraph (1)(A) and proof of this independent verification, current as of the investment adviser's (or sub-investment adviser's) most recently ended fiscal year, has been field with the Advertising/Investment Companies Regulation Department; and

(C) The presentation of this Related Performance Information complies with the general standards in paragraph (d).

(2) No member may imply that the Association or any of its affiliates endorses or approves of any composite or the manner in which it was created or maintained.

(d) General Standards

(1) No material difference may exist between the portfolio to which the Related Performance Information refers and the Advertised Mutual Fund, except;

(A) The portfolio may not have been registered under the Investment Company Act of 1940 and therefore may not be subject to the restrictions that the Investment Company Act and the Internal Revenue Code impose; and

(B) Material differences may exist between the fees and expenses of an investment company reflected in Clone Performance and the Advertised Mutual Fund.

(2) Any Related Performance Information presented in an advertisement or sales literature:

(A) Must be, at a minimum, current to the most recent calendar quarter ended prior to submission for publication (in the case of an advertisement) or prior to use (in the case of sales literature); and

(B) Must be accompanied by Related Performance Information for one, five and ten years periods, provided that if the Related Performance Information is available for less than one, five or ten years, the time period during which the Related Performance Information is available must be substituted for the period otherwise prescribed.

(3) Any advertisement or sales literature that presents Related Performance Information:

(A) Must identify the length of, and the date of the last day in, the period used to compute the Related Performance Information:

(B) Must present, in a more prominent manner than the Related Performance Information, the total return of the Advertised Mutual Fund(excluding the performance of any predecessor portfolio) calculated and presented in accordance with the applicable SEC rules, provided that the registration statement for the Advertised Mutual Fund has been effective for at least one year;

(C) When applicable, mut prominently disclose that the Advertised Mutual Fund has been in operation for less than one year;

(D) Must disclose;

(i) Any material difference between the fees and expenses of an investment company reflected in Clone Performance and the Advertised Mutual Fund;

(ii) In the case of all Related Performance Information:

a. That the Related Performance Information is not the performance of the Advertised Mutual Fund and should not be considered indicative of or a substitute for that performance and;

b. When applicable, that some or all of the portfolios reflected in the Related Performance Information (including any predecessor portfolios) are not registered under the Investment Company Act of 1940 and therefore were not subject to certain investment restrictions that the Investment Company Act and the Internal Revenue Code impose, and that the performance of those portfolios may have been adversely affected had they been registered under the Investment Company Act; and

(iii) Any other information that may be necessary to ensure that the Related Performance Information is not presented in a misleading manner;

(E) May not refer to the Related Performance Information in any headline or other prominent statement;

(F) May not contain any ranking based on the Related Performance Information; and

(G) Must accompany any graph or illustration concerning Related Performance Information with a more prominent graph or illustration concerning the total return of the Advertised Mutual Fund, calculated and presented in accordance with applicable SEC rules, provided that the registration statement for the Advertised Fund has been effective for at least one year.

(4) No advertisement or sales literature for a money market fund may present Related Performance Information.

(5) Any member filing an advertisement or sales literature presenting Related Performance with the Department must maintain books and records that demonstrate the basis for and calculation of the Related Performance Information. Retention by the member of copies of all such records maintained by any investment advisers under Rule 204–2(16) of the Investment Advisers Act of 1940 would satisfy this requirement. Such records must be maintained for three years following the last distribution or publication of the advertisement or sales literature.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 2210 requires the filing of various forms of advertisement and sales literature with the Advertising/Investment Companies Regulation Department of NASD Regulation. NASD Regulation staff reviews these filings to determine whether they meet applicable standards in the NASD Conduct Rules, which are generally designed to ensure that sales material is fair, balanced and not misleading.

The SEC's Division of Investment Management recently issued a series of "no-action letters" that essentially permit mutual funds to present a range of performance information in their sales material and prospectuses, subject to specific factual circumstances and regulatory conditions. These letters generally permit the presentation of the performance of (i) a mutual fund from which the offered fund has been "cloned"; (ii) a non-investment company account that had been converted into the advertised mutual fund; (iii) private, investment company or institutional accounts that are managed by the mutual fund's adviser; and (iv) a mutual fund that was previously managed by the offered fund's portfolio manager ("manager performance"). (Together, these types of performance information will be referred to as "Related Performance Information.")

The SEC's no-action letters note that the NASD Conduct Rules impose standards on mutual fund and variable product sales material separate from the Commission rules, and the Commission staff reached no conclusion concerning whether the presentation of Related Performance Information under the conditions imposed by the no-action letters would comply with the NASD Conduct Rules.

Historically, the NASD has prohibited the presentation of any Related Performance Information, except predecessor performance, in mutual fund and variable product sales material. In light of the Commission staff's recent no-action letters and apparent public interest in the potential benefits and concerns with the presentation of Related Performance Information in mutual fund and variable product sales material, NASD Regulation requested comment in August 1997 on whether the NASD should permit Related Performance Information to be included in advertisements or sale literature (*Notice to Members 97–47*).

NASD Regulation received 55 comment letters from investors, Chartered Financial Analysts, mutual funds, money managers, and trade associations. Forty-four commenters supported the presentation of some type of Related Performance Information, while 11 opposed the presentation of any Related Performance Information. Commenters disagreed about the types of Related Performance Information that NASD Regulation should permit. The highest level of opposition was raised to the presentation of manager performance information. Indeed, even some of those who otherwise supported the presentation of Related Performance Information opposed the presentation of portfolio manager performance. Of the 44 commenters who generally supported the presentation of Related Performance Information, 11 specifically discussed the presentation of manager performance. Of these 11, six opposed any presentation of manager performance information.

The proposed rule change would permit the presentation of Related Performance Information (other than manager performance information) in mutual fund and variable product sales material, subject to certain conditions designed to make the presentation fair, balanced and not misleading. The proposed rule change would generally permit, subject to certain conditions, the presentation of the performance of (i) a mutual fund from which the offered fund had been "cloned"; (ii) a non-investment company account that had been converted into the advertised mutual fund; and (iii) private, investment company or institutional accounts that are managed by the mutual fund's adviser. The proposed rule change thus represents a significant liberalization of the types of performance information that members may present in mutual fund and variable product sales material, subject to conditions designed to protect investors.

At the same time, the NASD Board of Directors reaffirmed the NASD's longstanding policy of prohibiting the presentation of manager performance in mutual fund advertisements and sales literature. The NASD believes that the presentation of manager performance could mislead or confuse investors about the contributions of other personnel of the investment adviser to the mutual fund's performance, such as research analysts who recommend securities to the portfolio manager and traders who obtain best execution. The efforts of these personnel and the resources of the investment adviser are, in most cases, critical to the mutual fund's performance. Moreover, a relatively long time period may elapse between the departure of a portfolio manager from the previous mutual fund and the advertisement of the new mutual fund's performance, thus rendering the manager performance information stale.[6]

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] in that the proposed rule change is designed to prevent fraudulent acts and practices, and to promote just and equitable principles of trade. In particular, NASD Regulation believes the proposal would establish conditions designed to ensure that the presentation of Related Performance Information is fair, balanced, and not misleading.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

See discussion of comment letters in Item II(A)(1) above.

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[6] The position of the Commission's staff continues to be that manager performance information in a mutual fund's prospectus, advertisements or sales literature is not *per se* misleading under the federal securities laws, provided that the performance is not presented in a misleading manner and is not presented as a substitute for the advertised mutual fund's performance. *See* Bramwell Growth Fund (pub. avail. August 7, 1996); ITT Hartford Mutual Funds (pub. avail. February 7, 1997). The Commission's staff believes that whether manager performance information is misleading depends on the totality of the circumstances, including the manner in which it is presented. *Id.*

[7] 15 U.S.C. 78o–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD Regulation consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

NASD Regulation has requested that the Commission provide the public with at least 45 days in which to comment on the proposed rule change.[8] The Commission agrees to allow a 45-day comment period on the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Additionally, as previously noted, the Commission's staff disagrees with the NASD's decision to *per se* exclude manager performance information from the rule. Interested persons are specifically invited to comment on this issue.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–98–11 and should be submitted by December 26, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28653 Filed 11–7–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43488; File No. SR–NYSE–00–41]

Self-Regulatory Organization's; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Approval Procedures for Exchange Employee Securities Accounts

October 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on October 6, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 407.10 to make the Exchange's Ethics Officer the party to whom employees of the Exchange or any of its affiliates must apply for permission to open a securities or commodities account. The Exchange also proposes to clarify that the Rule's provisions are not applicable to any affiliated company (as that term is defined by the Rule) which administers a corporate employee securities account disclosure program.

The text of the proposed rule change is available at the NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 407.10 directs Exchange employees, and employees of Exchange affiliates, who wish to open a securities or commodities account to apply to the Secretary of the Exchange for permission. The purpose of the proposed rule change is to require those employees to submit those applications for approval to the Exchange's Ethics Officer rather than the Exchange's Secretary.

The Exchange's ethics functions are performed by the office of the Exchange's senior Human Resources officer, who is also the Exchange's Ethics Officer. The Human Resources Division, as part of its traditional function and as part of its ethics function, maintains a database on Exchange employees. The Exchange Secretary also maintains a database on Exchange employees for the purpose of authorizing securities and commodities accounts.

The Exchange believes that shifting the account-approval function to the Ethics Officer will eliminate duplicative record-keeping and will place the function with the officer most appropriate for making account-approval decisions.

The Exchange also proposes to amend NYSE Rule 407.10 to clarify that the Rule's provisions are not applicable to any affiliated company (as that term is defined by the Rule) which administers a corporate employee securities account disclosure program. This will avoid duplicative approval processes.[3]

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[8] *See* October 16, 2000 Letter at page 1. NASD Regulation also consents to an extension of the time period for Commission action to 30 days after the expiration of the 45-day comment period. The Commission notes that a further extension of the time period for Commission action may be needed to allow for Commission analysis of comment letters, and to allow NASD Regulation to provide a response to comment letters.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Currently, the Securities Industry Automation Corporation ("SIAC") is the only NYSE affiliated company that administers its own corporate employee disclosure program. In this regard, SIAC has a rule similar to NYSE Rule 407.10 requiring SIAC employees to apply to SIAC for permission to open a securities or commodities account. SIAC employees are not required to also seek permission from the NYSE. Telephone call between Steve Abrams, NYSE, and Jennifer Colihan, Attorney, Division of Market Regulation, Commission, October 25, 2000.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5)[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the administration of the Exchange. Therefore, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(3) thereunder.[7] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–00–41 and should be submitted by November 29, 2000.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28649 Filed 11–7–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43496; File No. SR–NYSE–00–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Regarding the Extension of the Pilot Programs for Mediation and Administrative Conferences

October 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 27, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend its pilot programs for mediation and administrative conferences (NYSE Rules 638 and 639) that expire on November 20, 2000. The Exchange has separately requested that the pilot programs, as amended, ("the amended pilots") be extended for two years.[3] An extension of the present pilots is needed pending the Commission's approval or disapproval of the amended pilots.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 19, 1998, the Commission approved a two-year pilot program for mediation and administrative conferences in the Exchange's arbitration facility.[4] The pilot mediation program is intended to allow parties to settle cases earlier with lower costs. The administrative conference allows arbitrators to intervene early in the case to set deadlines and resolve preliminary procedural issues. On September 27, 2000, the Exchange requested Commission approval to amend and extend the pilot programs for mediation and administrative conferences.[5] The Exchange is requesting an extension of the present pilot programs pending the Commission's decision to approve or disapprove its request to amend and extend the pilot programs. The Exchange believes that the pilot programs are operating successfully, and on that basis, the Exchange believes that a six-month extension of the pilots is warranted. By this filing, the Exchange is not seeking to modify the present pilot programs.

2. Statutory Basis

The Exchange believes that proposed changes are consistent with Section 6(b)(5) of the Act in that they promote just and equitable principles of trade by insuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b-4(f)(3).

[8] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* File No. SR–NYSE–00–39.

[4] *See* Securities Exchange Act Release No. 40695 (November 19, 1998), 63 FR 65834 (November 30, 1998).

[5] *See supra* note 3.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 10(b)(3)(A) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

The Commission notes that under Rule 19b–4(f)(6)(iii), the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange requested a waiver of this 30-day period to extend the pilot programs before they are due to expire on November 20, 2000. The Commission believes that the waiver of the 30-day period is consistent with the protection of investors and the public interest.[8]

Any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies there of with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–44 and should be submitted by November 29, 2000.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28652 Filed 11–7–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43505; File No. SR–PCX–00–27]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Pacific Exchange, Inc., Relating to Options Trade Reporting

November 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend Exchange Rule 6.69 to require Exchange options transactions to be reported immediately upon execution and no later than 90 seconds following execution of the trade. The PCX also proposes to amend Exchange Rule 10.13 to include Exchange Rule 6.69 in the Exchange's Minor Violation Plan ("Plan").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections, A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to require options transactions to be reported within 90 seconds to the Options Price Reporting Authority ("OPRA"), which disseminates trade information to the investing public through vendors. Specifically, proposed Rule 6.69(a) would require all Exchange members and member organization's who are required to report trades either directly to OPRA or to another party responsible for reporting trades to OPRA, to immediately report all trades to the Exchange for disseminations to OPRA within the required 90 second time frame.

Currently, Commentary .01 to Exchange Rule 6.69 states that trade must be immediately reported at the time of execution. The Exchange proposes to require immediate trade reporting, and in any event, no later than 90 seconds following execution. This would serve as a specific time limit for trade participants and should enable the Exchange's Market Surveillance Department and Enforcement Department to monitor for violations of the rule. The Exchange also believes that the proposed rule change should facilitate transparency and help to create an accurate picture of market activity and enable the Exchange to better monitor compliance with the order handling and transparency rules, including limit order protection, priority, and best execution.

The Exchange also proposes to amend Rule 10.13 to include violations of proposed Rule 6.69(a) in the Plan. The Exchange believes that the proposed rule is consistent with and furthers the goals and objectives of the Plan. The

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[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.196b–4(F)(6)

[8] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation 15 U.S.C.78c(f).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange believes that the proposed fine schedule of $100.00, $250.00 and $500.00 for the first, second, and third violations, respectively, is reasonable and will serve as an effective deterrent of future violations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(5)[4] in particular, in that it is designed to promote just and equitable principles of trade. The Exchange believes that the proposed rule also furthers the objectives of Section 6(b)(6),[5] in that it is designed to appropriately discipline members who violate the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to the File No. SR–PCX–00–27 and should be submitted by November 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28651 Filed 11–7–00; 8:45 am]

BILLING CODE [illegible]10-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43469; File No. SR–Phlx–00–64]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Late Charges and Penalties for Non-Payment

October 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its By-Law Article XIV, Section 14–5, "Penalty for Non-Payment," and Phlx Rule 50, "Late Charge," to clarify and provide consistent time periods for reporting delinquent accounts to the Phlx's Finance Committee and the Phlx's Board of Governors ("Board"). Specifically, the Phlx proposes to amend Phlx Rule 50 to (1) Impose a late charge on accounts unpaid 30 days after the date of the original invoice, rather than accounts unpaid 40 days after the date of the original invoice; (2) reduce the amount of the late charge from 2% simple interest to 1% simple interest for each 30-day period or fraction thereof, calculated on a daily basis, during which the accounts payable to the Phlx remain outstanding; and (3) provide that the Phlx's Finance Committee may waive the amount of the late charge, or a portion thereof, if the amount falls within guidelines established by the Board. The Phlx also proposes to eliminate from Phlx Rule 50 the requirements that the Phlx's Controller notify the Board when an amount due to the Exchange remains outstanding for 90 days. Instead, Phlx Rule 50, as amended, requires the Phlx's controller to notify the Finance Committee when an amount due to the Phlx remains unpaid 50 days after the date of the original invoice. The Finance Committee will refer the matter to the Board if the amount due exceeds $10,000.

For amounts in excess of $10,000, Phlx By-Law Article XIV, Section 14–5, as amended, requires the Phlx's Controller, rather than the Secretary, to report to the Board: (1) a fine and/or other monetary sanction unpaid 20 days after the amount becomes payable; and (2) a due, FCO user's fee, fee, other charge or other amount due to the Phlx that is unpaid 50 days from the date of the original invoice. The proposed amendments to Phlx By-Law Section 14–5 replace current provisions requiring the Secretary of the Phlx to report to the Board a due or fee not paid within three months and a fine not paid within 20 days.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(6).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed amendments provide consistent time periods for reporting delinquent accounts to the Finance Committee and the Board. The proposed amendments specify that the Controller, rather than the Secretary, will report delinquent unpaid accounts in excess of $10,000 to the Board and establish a $10,000 threshold for reporting delinquent accounts to the Board. The Controller will report delinquent accounts under $10,000 to the Finance Committee for appropriate action.

No new remedies to achieve payment more rapidly are proposed; only the administrative business process has been amended. The proposed amendments to Phlx Rule 50 provide that late charges will be imposed on unpaid accounts outstanding after 30 days, rather than 40 days, and that the Controller will report all outstanding accounts unpaid after 50 days, rather than 90 days, to the Finance Committee for outstanding accounts with outstanding balances of less than $10,000. The proposed amendments also allow the Finance Committee or its designee to waive the imposition of late fees or a portion thereof if the amount falls within guidelines to be established by the Board.

The purpose of the proposed amendment to By-Law XIV, Section 14–5 is to change the reporting of unpaid outstanding delinquent accounts less than $10,000 to the Finance Committee 50 days after original invoice to relieve the Board from having to deal with such matters. The Finance Committee may take appropriate action under amended Phlx Rule 50, such as contacting the member organization to pursue payment or referring the matter to the Business Conduct Committee pursuant to Phlx Rule 708 Commentary .01(c), which prohibits members, member organizations, and associated persons from engaging in acts detrimental to the interest or welfare of the Phlx, including the failure to make a good faith effort to pay fees, dues and fines or other monies due and owing the Exchange. The Phlx believes that the proposed accelerated imposition of the late charge for accounts unpaid after 30 days and the reporting provisions to the Finance Committee and the Board provide an appropriate business process for collection of unpaid charges and fees and are administrative in nature. The specification of the late charge rate and its calculations are delineated in the amended Phlx Rule 50 and the current supplementary material to Phlx 50 is being deleted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[3] in general, and with Section 6(b)(5)[4] in particular, in that the proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest by providing the Exchange with the ability to provide a more responsive administrative process to pursue collection of monies due and owing the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Member, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file No. SR–Phlx–00–64 and should be submitted by November 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28593 Filed 11–7–00; 8:45 am]

BILLING CODE 8010–01–M

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[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3449]

Renewal of the Overseas Schools Advisory Council

The Department of State is renewing the Overseas Schools Advisory Council to provide a formal channel for regular consultation and advice from U.S. corporations and foundations regarding American-sponsored overseas schools. The Under Secretary for Management has determined that the committee is necessary and in the public interest.

The Assistant Secretary for Administration will appoint members of the committee. The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d) and 5 U.S.C. 552b(c) (1) and (4) that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Dr. Keith D. Miller, Executive Secretary of the committee at 202–261–8200.

Dated: November 2, 2000.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 00–28672 Filed 11–7–00; 8:45 am]

BILLING CODE 4710–24–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as amended by P.L. 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for OMB Review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority no later than December 8, 2000.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal to reinstate with change a previously approved collection for which approval has expired (OMB control number 3316–0062).

Title of Information Collection: TVA Procurement Documents, including Invitation to Bid, Request for Proposal, Request for Quotation, and other related Procurement or Sales Documents.

Frequency of Use: On Occasion.

Type of Affected Public: Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations.

Small Business or Organizations Affected: Yes.

Federal Budget Functional Category Code: 999.

Estimated Number of Annual Responses: 24,500.

Estimated Total Annual Burden Hours: 50,000.

Estimated Average Burden Hours Per Request: 0.49.

Need For and Use of Information: TVA procures goods and services to fulfill its statutory obligations and sells surplus items to recover a portion of its investment costs. This activity must be conducted in compliance with a variety of applicable laws, regulations, and Executive Orders. Vendors and purchasers who voluntarily seek to contract with TVA are affected.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 00–28667 Filed 11–7–00; 8:45 am]

BILLING CODE 8120–08–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by P.L. 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for OMB review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority no later than December 8, 2000.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal to extend a currently approved collection of information (OMB control number 3316–0019).

Type of Information Collection: energy right® Residential Program.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Business or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 20,000.

Estimated Total Annual Burden Hours: 6,000.

Estimated Average Burden Hours Per Response: .3.

This information is used by distributors of TVA power to assist in identifying and financing energy improvements for their electrical energy customers.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 00–28668 Filed 11–7–00; 8:45 am]

BILLING CODE 8120–08–P

TENNESSEE VALLEY AUTHORITY

Tims Ford Reservoir Land Management and Disposition Plan, Franklin and Moore Counties, Tennessee

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of Record of Decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA and the Tennessee Department of Environment and Conservation (TDEC) have jointly prepared a comprehensive Land Management and Disposition Plan involving both state and federally-owned properties on Tims Ford Reservoir. On August 29, 2000, the TVA Board of Directors decided to adopt the preferred alternative (Balanced Land Development with Conservation Partnership) identified in the Final Environmental Impact Statement (EIS), Tims Ford Reservoir Land Management and Disposition Plan. A Notice of Availability of the Final EIS was published in the **Federal Register** on July 7, 2000. Under the adopted land plan, TVA seeks to balance regional development needs with resource conservation on shoreline property. Of the 6,453 acres of federal and state lands on the reservoir which are available for allocation, 5,532 acres would be allocated to resource conservation, sensitive resource management, TVA project operation, or recreation uses; 888 acres would be allocated for residential development or commercial development uses, and 33 acres would be allocated for a Conservation Partnership approach which would seek to create a wider shoreline buffer in exchange for limited community water use facility access.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Specialist, Environmental Policy & Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (865) 632–6889 or e-mail hmdraper@tva.gov.

SUPPLEMENTARY INFORMATION: Tims Ford Reservoir was completed in 1970 by TVA for the purposes of flood control, hydroelectric generation, recreation, and economic development. The reservoir is 34 miles long at full pool. There are approximately 250 miles of shoreline at normal summer pool (NSP). Following completion of the reservoir, the Tennessee Elk River Development Agency (TERDA), a state agency, developed subdivisions and recreational facilities on reservoir properties between 1970 and 1996. In 1996, the Tennessee General Assembly passed Public Chapter 816, which terminated TERDA and transferred all powers, duties, contractual obligations, functions and remaining land interests of the agency to TDEC. TDEC and TVA agreed by contract in 1998 to develop a comprehensive land management and disposition plan to determine specific uses of reservoir lands. This EIS and land management plan are in fulfillment of that contract. Originally, 21,863 acres of land were acquired for the Tims Ford Project. Reservoir acreage above NSP was 11,183. Subsequent transfers and sales of land for various commercial, industrial, residential, and recreational uses have resulted in a current balance of 6,453 acres of project lands above NSP. These lands are divided in ownership between TVA (1,854 acres) and TDEC (4,599 acres).

TVA and TDEC announced their proposal to prepare a Tims Ford Land Management Plan in October 1998 and held public scoping meetings on November 9, 1998 in Winchester, Tennessee and November 10, 1998 in Fayetteville, Tennessee. Written comments also were requested through publication of a notice in a newspaper and a website. As land allocation and scoping for the land plan developed, it became evident that increased levels of residential development would result from some of the alternatives. Accordingly, the agencies determined that an EIS would allow better understanding of the impacts of the various alternatives. On July 22, 1999, TVA issued a Notice of Intent to prepare an EIS on alternatives for a land management plan at Tims Ford Reservoir. The Notice of Intent indicated that additional comments on the scope of issues to be addressed could be submitted in writing or through a website. These comments and previous comments from the 1998 scoping period were analyzed to determine the issues and alternatives to be considered in the EIS. A Notice of Availability for the Draft EIS was published in the **Federal Register** on November 12, 1999. TVA and TDEC subsequently held public meetings in Winchester, Tennessee on November 30, 1999 and Tullahoma, Tennessee on December 2, 1999 to discuss the draft EIS and solicit comments on the draft. Comments were received at public meetings and by written responses thereafter from 268 people, agencies, and organizations. After considering all comments, the Final EIS was completed and distributed to commenting agencies and the public. A Notice of Availability for the Final EIS was published on July 7, 2000.

Alternatives Considered

TVA initially considered four alternatives, including no action, for allocation of Tims Ford lands. The action alternatives were characterized as "Balanced Land Development and Conservation," "Maximum Land Development," and "Maximum Land Conservation."

The alternatives were designed to vary in the amount of land allocated for residential development and for residential shoreline access. In response to public comments on the Draft EIS, TVA developed a fifth alternative, designated "Balanced Land Development with Conservation Partnership." This alternative was designed to allow increased reservoir access while providing additional shoreline protection.

Under *Alternative A, the No Action Alternative,* TVA and TDEC would not adopt a jointly prepared plan. In the absence of a plan, TVA and TDEC would proceed with disposition or management of properties on a case-by-case basis. Because no joint plan would exist, the project lands could be considered for a variety of uses. More than likely, some amount of shoreline property (up to 45 percent of project lands) could eventually be considered for residential or commercial uses. About 22 percent already has been transferred to the state and local governments for recreational usage or are currently being used for recreational purposes such as parks and marinas. Those tracts (9 percent of project lands) identified during the planning process as containing rare species, wetlands, cultural resources, or unique natural features would likely be maintained in a protective category to facilitate TVA's and TDEC's compliance with laws relating to protection of sensitive resources. Approximately 20 percent of project lands would likely be managed for natural resource conservation because it has been deemed in the current planning process as not suitable or capable for development. The remaining 4 percent would be retained for use as TVA dam reservation (TVA project operation).

Under *Alternative B, Balanced Land Development and Conservation,* parcels totaling 938 acres would be available for residential development or residential access, with the rest of project lands allocated to natural resource-oriented and recreational uses. Cumulatively, 25 percent of project lands would be allocated to residential uses, 25 percent to recreation uses, and 36 percent to natural resource-oriented uses. As in Alternative A, approximately 9 percent of project lands would be allocated to sensitive resource management, and 4 percent to TVA project operations. Alternative B was identified as the agencies' preferred alternative in the Draft EIS.

Under *Alternative B1, Balanced Land Development with Conservation Partnership,* TVA modified Alternative B to respond to comments received on the draft EIS and plan. One parcel of 128 acres, which was previously allocated to residential development, was changed to a natural resource management allocation. In addition, a new zone was created, designated "conservation partnership," for certain narrow shoreline strips of public land. On Tims Ford Reservoir, the agencies found numerous locations where the public land was narrow and does not provide sufficient conservation buffer to preserve water quality, conserve shoreline habitat, protect shorelines from long-term erosion, or retain shoreline aesthetics. It has also been TVA's experience that due to the close proximity of private lands to the lake, these narrow public land strips present unique management problems. Many of those who commented on the draft EIS stated that because of the close proximity of their property to the water's edge, they had an expectation of gaining water access under previous management policies. In the new zone, TVA would consider granting water access in the form of limited community water use facilities in exchange for a wider shoreline buffer zone. Cumulatively, Alternative B1 would result in 24 percent of project lands being allocated to residential uses, 25 percent to recreation, 37 percent to natural resource management, 9 percent to sensitive resource management, and 4 percent to project operations. Although the acreage difference between Alternative B and B1 is small, approximately 9 additional shoreline miles would be open for consideration of requests for community docks under Alternative B1. Alternative B1 was

identified as the agencies' preferred alternative in the Final EIS.

Under *Alternative C, Maximum Land Development,* all parcels would be allocated for development except those that do not meet suitability and capability criteria, contain sensitive resources, or are less than 20 acres. This would result in 1,764 more acres of residential development than alternative B1. Cumulatively, residential development would encompass 41 percent of project lands, recreational development 25 percent, natural resource management 20 percent, sensitive resource management 9 percent, and TVA project operations 4 percent.

Under *Alternative D, Maximum Land Conservation,* no new development would occur outside of existing areas. All undeveloped lands would be considered unsuitable for development and would be allocated for natural resource conservation. This would result in 1,087 more acres allocated to natural resource conservation than alternative B1. Cumulatively, 17 percent of project lands would be allocated to residential development, 22 percent to recreation, 48 percent to natural resource management uses, 9 percent to sensitive resource management, and 4 percent to TVA project operations.

The EIS considered the environmental consequences of the alternatives on a wide variety of environmental resources. Under any alternative, sensitive resources such as endangered and threatened federal and state-listed species, cultural resources, and wetlands would be protected. Adoption of Alternative B1 would balance the competing demands of development and conservation. Development activities would cause the potential for adverse environmental impacts. However, through the inclusion of environmental safeguards to address water quality, ground water, riparian wildlife habitat, and parcel-specific protection measures, these impacts would be minimized.

During the EIS process, TVA also consulted with the Tennessee State Historic Preservation Officer (SHPO), The Eastern Band of Cherokee Indians (EB), the United Keetoowah Band, the Cherokee Nation of Oklahoma, the Tennessee Commission of Indian Affairs, the Muscogee (Creek) Nation of Oklahoma, and the Poarch Band of Creek Indians on the identification and evaluation of historic properties within the Area of Potential Effect for the Tims Ford Land Plan. Following release of the Final EIS, TVA, TDEC, SHPO, and EB executed a Memorandum of Agreement stipulating measures that will be carried out by TVA and TDEC prior to the commencement of ground-disturbing activities. This agreement allows phased identification, evaluation, and treatment of historic properties, and requires that prior to the transfer of the lands to third parties, TVA and TDEC will ensure that a preservation covenant to protect historic properties is included. These measures ensure that the effects of the Tims Ford Reservoir Land Management and Disposition Plan on historic properties have been taken into account.

Response to Comments on Final EIS

Appendix B of the Final EIS contains summaries of and responses to the comments TVA received during the Draft EIS process. TVA received comments from 268 individuals and organizations. TVA gave the public the opportunity to provide comments on the Final EIS, which included the Conservation Partnership approach.

A total of 7 individuals commented on the Final EIS. Most of these comments were from property owners seeking to clarify whether they had access to the water, or seeking to appeal allocation decisions in the final EIS. TVA plans to consider those requests that are consistent with the land plan.

EPA also commented on the final EIS. Based on their review of the document, they stated that their ordered preferences for alternatives would be D, B1, B, and C. EPA stated that they would not oppose B1 as long as all development is consistent with the TVA Shoreline Management Initiative EIS/ROD, state water quality and other regulations as well as federal statutes associated with delegated programs, and as long as plan implementation is monitored for environmental impacts. EPA also commented on the environmental impacts of residential development for water quality, recreation, and TVA's grandfathering approach to existing docks. TVA agrees that residential development would need to be carefully monitored for compliance with existing regulations to avoid adverse water and air quality impacts.

Decision

The TVA Board decided to adopt the Tims Ford Land Management and Disposition Plan as described in Alternative B1 on August 29, 2000. The Tennessee State Building Commission decided to adopt the plan as described in Alternative B1 on September 14, 2000. TVA believes that Alternative B1 appropriately balances residential shoreline development, recreation use, and resource conservation needs in a way that maintains the quality of life and other important values associated with Tims Ford Reservoir. It recognizes the reality that previous decisions have already allowed residential development on portions of the shoreline, and previous management has created "expectations" for water access among those with shoreline property. It uses logical criteria for determining which stretches of shoreline could have water access, based on past decisions made by the agencies or on distance between the private property line and NSP. It provides a new zone involving partnerships for conservation that would result in the creation of wider shoreline buffers and more protection for water quality and riparian habitats. Finally, it makes an allocation change that would result in additional lands at the lower end of the reservoir being dedicated to natural resource conservation.

Like the other alternatives considered, Alternative B1 sets aside parcels containing sensitive resources and habitats in the Sensitive Resource Protection and Natural Resource Conservation categories. Even for lands that were considered suitable for and capable of development, Alternative B1 adopts commitments that would further minimize the potential for adverse impacts to the environment. These commitments are listed below, under Environmental Commitments.

Environmentally Preferable Alternative

TVA has concluded that Alternative D, which would allow no new land development outside of existing areas, is the environmentally preferable alternative. However, the authorizing legislation for Tims Ford Reservoir, the state legislation transferring lands to TDEC, and the local governments encourage the use of portions of the reservoir lands to foster the economic development of the area. TVA believes that Alternative B1 helps to meet the multiple objectives of the Tims Ford project, and would result in substantially better environmental protection than previous shoreline development practices.

Environmental Commitments

The land plan envisioned in Alternative B1 advances TVA's commitment to resource stewardship and habitat protection through strong conservation approaches, including a new conservation partnership zone to increase shoreline buffers from a minimum of 50 feet to a maximum of 100 feet. Alternative B1 was formulated using environmentally protective measures. Some of these measures include use of a sensitive resource protection zone and retention of a public shoreline strip between the 888 and 895 foot contours. New proposals for access would be allowed using community docks rather than through individual docks, thus minimizing the area of shoreline that will be disturbed. For certain categories of access proposals, TVA would obtain additional shoreline buffers above the 895-foot contour. In addition, TVA is adopting the following measures to minimize environmental impacts:

- New residential development will be required to have groundwater protection plans submitted by the developer for approval prior to development.
- Throughout the construction phase of new subdivisions, periodic site checks will be conducted to ensure that BMPs are used to minimize erosion problems.
- Shoreline fringe wetlands will be avoided during any future development or permitting activities.
- Parcels containing uncommon terrestrial habitats or plants will be protected by avoidance during any future developmental activities. Sale deeds related to disposition will include conditions that require avoidance of the resource on the parcel.
- Livestock grazing on TVA property will be phased out as alternative water sources and pasture are obtained.
- The measures relating to identification, evaluation, and treatment of historic properties contained in the Memorandum of Agreement between TVA, Tennessee State Historic Preservation Officer, Tennessee Department of Environment and Conservation, and the Eastern Band of Cherokee Indians, dated September 21, 2000, will be followed.

With the implementation of the above environmental protection measures, TVA has determined that adverse environmental impacts of future residential shoreline uses would be substantially reduced. These protective measures represent all of the practicable measures to avoid or minimize environmental harm that are associated with this alternative.

As TVA and TDEC implement the Tims Ford Land Management and Disposition Plan, the agencies will continue to work with all affected interests to promote environmentally sound stewardship of public lands.

Dated: October 26, 2000.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment.

[FR Doc. 00–28670 Filed 11–7–00; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Termination: Empire Fire and Marine Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 4 to the Treasury Department Circular 570; 2000 Revision, published June 30, 2000, at 65 FR 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6696.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective immediately.

The Company was last listed as an acceptable surety on Federal bonds at 65 FR 40879, June 30, 2000.

With respect to any bonds currently in force with above listed Company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.tres.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: October 30, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–28588 Filed 11–7–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Lexington National Insurance Corporation

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 5 to the Treasury Department Circular 570: 1998 Revision, published June 30, 2000, at 65 FR 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2000 Revision, on page 40889 to reflect this addition:

Company Name: Lexington National Insurance Corporation.

Business Address: 214 East Lexington Street, Baltimore, Maryland, 21202.

Phone: (410) 625–0800. Underwriting Limitation b/: $423,000.

Surety Licenses: c/: CA, CO, DE, FL, IN, MD, MS, NJ, PA.

Incorporated In: Maryland.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00536–5.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Service Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: October 30, 2000.

Wanda Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

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Part II

Department of Energy

Federal Energy Regulatory Commission

Order Proposing Remedies for California Wholesale Electric Markets and Order Specifying Time of Conference and Procedure for Seeking Participation; Notices

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket Nos. EL00–95–000, EL00–98–000, EL00–107–000, ER00–3461–000, ER00–3673–000]

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Public Meeting in San Diego, California; California Power Exchange Corporation; California Independent System Operator Corporation; Order Proposing Remedies for California Wholesale Electric Markets

Issued November 1, 2000.

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Introduction and Summary

On August 23, 2000, the Commission issued an order in Docket Nos. EL00–95–000 and EL00–98–000, initiating hearing proceedings under section 206 of the Federal Power Act (FPA) to address matters affecting bulk power markets and wholesale energy prices in California.[1] The Commission held the hearing in abeyance, however, pending the results of a separate staff fact-finding investigation, ordered by the Commission on July 26, 2000, of the conditions in electric bulk power markets (including volatile price fluctuations) in various regions of the country.[2] The Commission has now had the opportunity to analyze the staff investigation report (Staff Report) as it pertains to California and the Western region, and has placed that report in the record of this proceeding. Based on that report, as well as other submissions in these dockets [3] and the Commission's experience in dealing with evolving California market issues in over 85 Commission orders since the time the restructured California markets began operation in 1998, and based on the seriousness of market dysfunctions and recent pricing abnormalities in California, in this order the Commission is proposing specific remedies to address dysfunctions in California's wholesale bulk power markets and to ensure just and reasonable wholesale power rates by public utility sellers in California.

The Commission finds in this order that the electric market structure and market rules for wholesale sales of electric energy in California are seriously flawed and that these structures and rules, in conjunction with an imbalance of supply and demand in California, have caused, and continue to have the potential to cause, unjust and unreasonable rates for short-term energy (Day-Ahead, Day-of, Ancillary Services and real-time energy sales) under certain conditions. While this record does not support findings of specific exercises of market power, and while we are not able to reach definite conclusions about the actions of individual sellers, there is clear evidence that the California market structure and rules provide the opportunity for sellers to exercise market power when supply is tight and can result in unjust and unreasonable rates under the FPA. Under such conditions, the Commission is obligated under FPA section 206 to take action to establish market rules, regulations and practices that will ensure just and reasonable rates in the future.[4] Accordingly, we herein propose fundamental modifications to the wholesale market structure and rules currently in place in California; we also propose price mitigation measures to ensure that wholesale rates remain just and reasonable during the period it will take to effectuate the market structure and market rule changes being proposed. Rates charged by public utilities for sales into the ISO's markets and into the PX's day-ahead and hour-ahead markets will remain subject to the refund conditions set forth in the August 23 order, as discussed more fully below.[5]

In developing the proposed remedies in this order, the Commission's goal has been to balance, on the one hand, holding overall rates to levels that approximate competitive market levels for the benefit of consumers, with, on the other hand, inducing sufficient investment in capacity to ensure adequate service for the benefit of consumers. We believe that a well functioning competitive wholesale power market in California, which includes a well functioning regional transmission grid, is a fundamental part of the solution to the supply problems and price volatility in California. The interstate, wholesale nature of electric markets in California and adjoining states makes it incumbent that we take whatever steps we can to make markets in the region work for the ultimate benefit of consumers—assuring a reliable supply of energy at the lowest reasonable rate.

The Commission has also had to grapple with a number of issues that involve the line between State-Federal jurisdiction. There are two aspects to this. First, many, but not all, of the defects in the California markets are within this Commission's jurisdiction. However, certain matters significantly affecting the operation of the wholesale as well as the retail markets in California are within the jurisdiction of the State of California. We therefore include in this order a discussion of matters that need to be corrected by State regulators if there are to be competitive, well functioning markets in California, and if California consumers, are to be protected in the future. We urge the State to continue working to address these matters within its jurisdiction as expeditiously as possible. Second, during the past several years this Commission has struggled to accommodate, and where possible defer to, the State's initial decisions on restructuring, including its decisions directly impacting matters within our exclusive jurisdiction under the FPA. However, we have reached a point where we must make some difficult choices with respect to matters within our exclusive jurisdiction, and we conclude that certain defects in wholesale markets must be remedied even if our decisions preempt certain decisions previously made by the State in its initial restructuring legislation and orders. Unless we take these steps, we believe we will be abdicating our responsibility under the Federal Power Act to ensure just and reasonable rates and service by public utility sellers of wholesale energy in California.

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[1] San Diego Gas & Electric Company, *et al.*, 92 FERC ¶61,172 (2000), *reh'g pending* (August 23 Order).

[2] *See* Order Directing Staff Investigation, 92 FERC ¶61,160 (2000) (July 26, 2000 Order).

[3] In addition to the Staff Report to the Federal Energy Regulatory Commission on Western Markets and the Causes of the Summer 2000 Price Abnormalities—Part 1, November 1, 2000 (Staff Report), the Commission has placed in the record the transcript of the Commission's September 12, 2000 public meeting in San Diego, California, written submissions in response to that public conference, and all reports prepared by the ISO and PX and their market surveillance committees.

[4] Under section 206(a) of the FPA, if the Commission finds, after hearing, that any rate, charge, or classification for jurisdictional services, or any rule, regulation, practice, or contract affecting such rate, charge or classification "is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order."

[5] Because the market structure and market design remedies ordered herein may take up to 24 months to effectuate, and the refund period permitted by FPA section 206 is limited to 15 months, the Commission proposes to condition its market rate authorizations for public utility sellers to the ISO and PX on continuing the refund obligation through December 31, 2002.

The immediate remedies proposed in this order include:

- The elimination of the requirement that the three investor-owned utilities (IOUs)—Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SoCal Edison), and San Diego Gas & Electric Company (SDG&E)—must sell into and buy from the PX;
- The addition of a penalty charge for deviations in scheduling in excess of five percent of an entity's hourly load requirements and the disbursement of penalty revenues to the loads that scheduled accurately;
- The establishment of independent, non-stakeholder Governing Boards for the PX and the ISO; and
- The establishment of generation interconnection procedures.

We also identify a number of structural reforms that must be addressed, including:

- The submission of a congestion management redesign proposal;
- Possible changes to the auction mechanisms;
- Improved market monitoring and market mitigation strategies;
- Demand response programs by the ISO and Scheduling Coordinators;
- Elimination of the requirement for balanced schedules; and
- New approach to reserve requirements.

To ensure fair prices while these market reforms are being put in place, the order proposes additional temporary measures to mitigate prices, including modification of the single price auction so that bids above $150/MWh cannot set the market clearing price that is paid to all bidders; imposition of comprehensive reporting and monitoring requirements for sellers bidding above $150/MWh; and retention of a refund remedy for sales from October 2000 through December 2002.

The order also recognizes that, to resolve the problems facing California consumers, the Public Utilities Commission of the State of California (California Commission) and others must address the following issues:

- Delays in siting additions of generation and transmission capacity;
- Implementation of additional demand response programs at the retail level; and
- Elimination of impediments on Load Serving Entities pursuing power supplies on a forward basis.

The Commission has concluded that the hearing we ordered on August 23 does not need to be a trial-type hearing. Rather, the issues raised in this proceeding can be resolved based on written comments and evidence and oral presentation directly to the Commission. The Commission will permit all interested persons that have not already intervened in these dockets to intervene, and allow all interested persons to file comments on the proposed remedies and any additional information or evidence, by November 22, 2000. We also will hold a public conference on November 9, 2000, which will provide interested persons the opportunity to discuss the proposed remedies before the Commission.

Background

A. California Restructuring

Efforts to restructure the California electric industry began in 1994 in response to high electricity prices.[6] Extensive hearings and negotiations in proceedings before the California Commission resulted in a final restructuring order issued in December 1995 [7] and led to the unanimous enactment of Assembly Bill 1890 by the California legislature in September 199 The main points of AB 1890 included (1) creation of an ISO and PX by January 1998 and simultaneous initiation of direct access; (2) creation of the California Electricity Oversight Board (Oversight Board) with members appointed by the Governor and legislature;[9] (3) a competitive transition charge (CTC) for the recovery of the IOUs' stranded costs; and (4) a 10 percent rate reduction for residential and small customers, and a rate freeze for all retail customers.

PG&E, SoCal Edison, and SDG&E submitted filings to this Commission in April 1996 seeking approval for those aspects of the restructuring subject to FERC's jurisdiction, namely, the conveyance of operational control of transmission facilities to the ISO,[10] the authority to sell energy at market-based rates through the PX, and approval of the overall framework for establishment of the ISO and PX, and for the jurisdictional split between the transmission and local distribution facilities of the utilities. In a series of orders issued that Fall, the Commission largely accepted the filings, and provided a preliminary assessment of the adequacy of the utilities' market power analyses.[11]

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[6] As of January 1995, retail rates in California were 10 to 11 cents per kilowatt-hour, approaching twice the national average, and rising. *See California Rides the Tiger*, Public Utilities Fortnightly, January 1, 1995, p. 20.

[7] *See* California Commission Decision D.95–12–063 (Dec. 20, 1995), *modified by* D.96–01–009 (Jan. 10, 1996) and D.96–03–022, 166 P.U.R. 4th 1 (California Commission Restructuring Decision).

[8] AB 1890, signed by Governor Wilson on September 23, 1996, California Statutes 1996, Chapter 854 (Restructuring Legislation or AB 1890).

[9] As discussed later in this order, the Commission rejected elements of the proposal dealing with the Oversight Board, and the Board subsequently filed a petition for declaratory order requesting that the Commission declare that a bill pending in the California Senate (SB 96), modifying the Board's duties under the Restructuring Legislation, if enacted, would resolve the Commission's concerns about the Board's role.

[10] The Commission established the principles for ISOs in Order No. 888, and three other ISOs are in operation today: PJM Interconnection, New York ISO, and ISO New England.

In December of 1999, the Commission issued its Order on Regional Transmission Organizations, Order No. 2000. Regional Transmission Organizations (RTOs) can be formed as ISOs or may take another organization form, such as a transco. The Commission's RTO requirements build upon the ISO principles of Order No. 888 and reflect, in large measure, the Commission's experience with the pioneering efforts of ISOs such as the California ISO. The California ISO and its public utility members are required to make a filing in compliance with Order No. 2000 on January 17, 2001.

[11] *See* Pacific Gas and Electric Co., *et al.*, 77 FERC ¶61,077 (1996) (*PG&E I*); Pacific Gas and Electric Co., *et al.*, 77 FERC ¶61,204 (1996) (*PG&E II*); Pacific Gas and Electric Co., *et al.*, 77 FERC ¶61,265 (1996) (*PG&E III*). One area of particular concern for

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In March 1997, the ISO and PX submitted filings constituting Phase II of the restructuring proposal, consisting of organizational and governance documents and an Operating Agreement and Tariff for each, a Transmission Control Agreement, and other materials and explanations required by the Commission in earlier orders. In response to a July 30, 1997 order by the Commission directing the ISO and PX to file restated Tariffs, Agreements and Appendices, they submitted on August 15, 1997 filings with numerous additional materials. The Commission addressed these filings in an order dated October 30, 1997, conditionally authorizing limited operation of the ISO and PX.[12] Since the ISO and PX have commenced commercial operations, the Commission has devoted significant resources to many proceedings involving the ISO and PX, including 30 separate amendments to the ISO's tariffs to address, in large measure, the difficulties faced by the ISO in implementing the requirements imposed by AB 1890 and the California Commission.[13]

Shortly after the ISO and PX commenced operations on March 31, 1998, the ISO witnessed dramatic spikes in the price for certain ancillary services, and did not receive sufficient bids for others, events that were inconsistent with the operation of efficient markets.[14] After analyzing reports prepared by market monitoring committees and comments from numerous parties, the Commission, among other things, directed the ISO to file a comprehensive proposal to redesign its Ancillary Services markets.[15] This redesign has been implemented over a period of 24 months, and certain elements have yet to be proposed to the Commission for approval.[16]

The ISO sought price caps as a solution for the volatility and thinness in its Ancillary Services markets. In the July 17, 1998 Order, we authorized the ISO to reject bids in excess of whatever price levels it believed were appropriate for the ancillary services it procures. On rehearing, we explained that, as the procurer of ancillary services, the ISO had the discretion to reject excessive bids. We also stated that a purchase price cap is not an ideal approach to operating a market and that we did not expect the cap to remain in place on a long-term basis.[17] In order to make the Imbalance Energy market similarly situated to the Ancillary Services markets, we later authorized the ISO to adopt a purchase price cap for its Imbalance Energy market at whatever level it deemed necessary and appropriate.[18]

In our order approving the ISO's Ancillary Services market redesign proposal, we allowed the ISO to retain its authority to specify purchase price caps for Ancillary Services and Imbalance Energy until November 15, 1999.[19] The ISO had proposed to raise and eventually eliminate existing price caps on Ancillary Services and Imbalance Energy upon the implementation of several redesign elements, but in the interim, it planned to maintain the current $250 price caps. The ISO had also proposed a safety net in which it would continue to monitor the markets, and if it identified market failures or supply insufficiencies, it would lower price caps in the affected markets. We directed the ISO to eliminate the price caps by November 15, 1999, with the caveat that the ISO could file for an extension of its price cap authority if its experience with the market reforms over the summer indicated serious market design flaws still existed.

On September 17, 1999, the ISO filed proposed tariff revisions to extend for one year, until November 15, 2000, its authority to cap Ancillary Services and Imbalance Energy prices. By direction of the ISO's Governing Board, the price caps were raised from $250 to $750, effective September 30, 1999. The proposal gave the ISO the discretion to lower the price caps to $500 effective June 1, 2000, if the ISO Governing Board determined that any of three specific conditions were met. The proposal also gave the ISO discretion to lower the price caps by an unspecified amount in the event that it determined that the markets were not workably competitive. The Commission accepted the proposed tariff provisions.[20]

B. Events of Summer 2000

Wholesale electricity prices in California jumped dramatically higher this summer with particularly high peaks during the periods May 21–24, June 12–16, and June 26–30. The price spikes affected all markets run by the PX and the ISO. The monthly average unconstrained market-clearing price (UMCP) for May in the PX's day-ahead market represented a 100 percent increase over May 1999.[21] The PX's constrained day-ahead price (NP15) peaked at $1,099/MWh on June 28, 2000.[22] Prices in the ISO's real-time market neared or reached its $750 cap twice in May and on 8 occasions in June. The ISO lowered the price cap from $750 to $500 on July 1, 2000. Subsequently, on August 7, 2000, the ISO further reduced the purchase price cap to $250 per MWh.

High temperatures and generation outages led the ISO to declare system emergencies 39 times between May and August. PG&E had to effect rolling black-outs in San Francisco area on June 14. Notably high prices were also experienced at trading hubs throughout the Western Interconnection. During this summer period, costs of electricity inputs began to increase, particularly gas costs at the California border which rose from $2/MMBtu in the spring to about $6/MMBtu this summer. At the same time, existing gas fired units[23] were operated at unprecedented levels, driving up the price of NO_X emission allowances from around $6/lb to over $40/lb at the end of August.[24]

Because the retail rate freeze imposed in SDG&E's service area by AB 1890 ended in 1999, the very high wholesale prices were passed through directly to the utility's retail customers, resulting in monthly bills that were up to 200 to 300 percent higher than the prior year. PG&E and SoCal Edison, still subject to retail rate freezes, report that their cost for wholesale power has exceeded the amount recovered in retail rates by billions of dollars.[25]

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the Commission was the scope of the Oversight Board's functions. Specifically, the Commission noted that it could not "accept a permanent role for the Oversight Board in the governance or operation of the ISO, or appellate review of ISO Board decisions, because these matters are within our exclusive jurisdiction." *See PG&E II* at 61,818.

[12] Pacific Gas and Electric Co. *et al.*, 81 FERC ¶ 61,122 (1997) (October 30, 1997 Order).

[13] Among the four jurisdictional ISOs that are in operation, the Commission has devoted, by far, the most resources to the California ISO, and most of the attention required by the California ISO reflected the difficulties in implementing the requirements of AB 1890 and the impact of those requirements on transmission grid operations and market performance.

[14] *See* AES Redondo Beach, L.L.C., *et al.*, 84 FERC ¶ 61,046 (1998), *order on reh'g*, 85 FERC ¶ 61,123 (1998) (October 28 1998 Order), *order on further reh'g*, 87 FERC ¶ 61,208 (1999) (May 26, 1999 Order), *order on further reh'g*, 88 FERC ¶ 61,096 (1999), *order on further reh'g*, 90 FERC ¶ 61,148 (2000). *See also* California Independent System Operator Corporation, 84 FERC ¶ 61,309 (1998).

[15] October 28, 1998 Order, 85 FERC at 61,462.

[16] *See* May 26, 1999 Order, 87 FERC at 61,801–02 (explaining that the ISO developed a phased approach to the redesign).

[17] 85 FERC at 61,463.

[18] California Independent System Operator Corporation, 86 FERC ¶ 61,059 (1999).

[19] 87 FERC at 61,817–19.

[20] California Independent System Operator Corporation, 89 FERC ¶ 61,169 (1999), *reh'g pending*.

[21] Price Movements in California Electricity Markets: Analysis of May–June 2000 Price Activity, PX Compliance Unit, September 29, 2000 at 10.

[22] Report of California Energy Market Issues and Performance: May–June 2000, ISO Department of Market Analysis, August 10, 2000 at 13.

[23] Natural gas comprises about 55 percent of California's fuel mix.

[24] Staff Report at 3–21.

These events have created an environment of distress in the State. Probes have been initiated by the California Commission, the Oversight Board, and California's Attorney General, in addition to the investigation by this Commission discussed below. In August, the California Commission put in place a temporary retail rate cap for certain small customers of SDG&E, limiting the amount that they must pay per month. Subsequently, the California legislature enacted AB–265, a retroactive retail cap which expands on the California Commission's action. The legislation limits San Diego residential customers' rates to 6.5 cents per kWh, and requires the California Commission to investigate the purchasing practices of SDG&E. Both retail rate caps defer payment of the total amount due to the utility, requiring customers to pay the balance of costs paid into the wholesale market with interest in the year 2003.

California's Governor also signed SB 970 into law in early September, which will streamline regulatory approval for new power plants.[26] A number of other bills encouraging energy efficiency, distributed generation technologies and approval of new generation were also enacted.[27]

The ISO and PX and the ISO's Market Surveillance Committee (MSC) analyzed the pricing anomalies experienced during the summer and came to similar conclusions. A preliminary report prepared by the PX dated September 29, 2000, found that price spikes were caused by flawed market structures and an insufficient supply of power, rather than gaming by market participants. Although market conditions created the potential for abuses of market power, the PX Report indicated that no one group of participants was setting prices. The ISO, similarly, reported that during certain operating conditions, suppliers can have significant market power, although the underlying causes of high prices were structural and operational in nature.

C. Commission Actions in Response

On July 26, 2000, the Commission issued an order directing a staff fact-finding investigation of the conditions in electric bulk power markets (including volatile price fluctuations) in various regions of the country.[28] The order asked staff to determine any technical or operational factors, regulatory prohibitions or rules (Federal or State), market or behavioral rules, or other factors affecting the competitive pricing of electric energy or the reliability of service, and to report its findings to the Commission by November 1, 2000. Later, staff was asked to expedite the investigation as it related to California and markets in the Western Interconnection.

On July 28, 2000, the Commission issued an order in Docket No. EL00–91–000 in response to a complaint filed by Morgan Stanley Capital Group Inc. against the ISO, asking the Commission to invalidate the ISO's decision to lower the maximum price it was willing to pay to sellers of imbalance energy and ancillary services. At the time the Morgan Stanley request was filed, the ISO Governing Board had voted to lower the ISO's maximum purchase price for these services from $750 to $500. Morgan Stanley wanted the Commission to reinstate the $750 purchase price cap and prevent the ISO Board from further reducing the cap. The Commission denied Morgan Stanley's request, finding that the ISO's maximum purchase price authority remained acceptable because the ISO did not have the authority to require sellers to bid into its markets, and thus, could not dictate sellers' prices.[29]

On August 2, 2000, SDG&E filed a complaint in Docket No. EL00–95–000 against all sellers of energy and ancillary services into the ISO and PX markets requested, among other things, that the Commission impose a $250 price cap. The August 23 Order denied SDG&E's request because the company had not provided sufficient evidence to support an immediate seller's price cap.[30] However, the Commission instituted formal hearing proceedings under section 206 of the Federal Power Act to investigate the justness and reasonableness of the rates of public utility sellers in the California ISO and PX markets, and also to investigate whether the tariffs, contracts, institutional structures and bylaws of the ISO and PX are adversely affecting the efficient operation of competitive wholesale power markets in California and need to be modified.

On September 12, 2000, the Commission conducted a public meeting in San Diego to allow interested persons to give the Commission their views on recent events in California's wholesale markets; written comments were accepted in Docket No. EL00–107–000. In addition, members of the Commission and staff participated in a number of Congressional hearings and proceedings conducted by California State authorities throughout the summer.

The staff fact-finding investigation is now completed, and the Staff Report has been placed in the official record of this proceeding. The Staff Report is generally consistent with the findings of the PX and ISO reports. A detailed summary of the Staff Report is attached to this order as Appendix D.

Briefly, the Staff Report identifies three factors that contributed to the high prices experienced in California this summer. First, competitive market forces played a major role in the run-up of prices through significantly increased power production costs combined with increased demand due to unusually high temperatures and a scarcity of available generation resources throughout the West and California in particular.

In addition, the Staff Report concludes that existing market rules along with some flawed retail regulatory policies exacerbated the situation. The Staff Report notes that the requirement placed upon the three IOUs by the California Commission to buy and sell all their energy needs through the PX, coupled with the California Commission's restrictions on their ability to forward contract, exposed the three IOUs to the volatility of the spot market without the ability to mitigate this summer's price volatility. The Staff Report also notes that a lack of demand responsiveness on the part of retail load allows prices to rise well above competitive levels when demand is high and supplies are scarce. Finally, the Staff Report finds that the ISO's policies relating to replacement reserves increased the amount of demand and supply that appears in the ISO's real-time market (underscheduling in the PX), which results in operational and reliability problems for the ISO and increased costs. The Staff Report recommends that the Commission eliminate these flawed market rules.

Lastly, the Staff Report notes that there is evidence suggesting that sellers had the potential to exercise market power (where market power is defined as prices above short-run marginal cost) this summer; however, the data analyzed in the Staff Report and the limited time available were not sufficient to make determinations regarding the exercise of market power by individual sellers.[31] One of the Staff Report's proposed changes to the market rules would eliminate the single price auction rule.[32]

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[25] The two utilities have reported about $4.6 billion in unrecovered wholesale costs of which about $2 billion reflects sales of electricity sold from generation which they still own.

[26] On September 7, 2000, the California Assembly passed SB 970, to address the immediate need for certain additional generating capacity in the State. SB 970 created an interagency task force appointed by the Governor from various California regulatory agencies, related federal agencies, and local governments.

[27] *See* Electric Utility Week, Oct. 9, 2000, pp. 5–6.

[28] *See infra*, note 2.

[29] *Morgan Stanley Capital Group Inc.* v. *California Independent System Operator Corporation*, 92 FERC ¶ 61,112 (2000) (*Morgan Stanley*).

[30] 92 FERC at 61,606. (Commissioner Massey dissented on this point).

D. Docket No. ER00–3461–000

On August 22, 2000, the PX filed Tariff Amendment No. 19 in Docket No. ER00–3461–000, proposing to impose maximum prices on Demand and Supply Bids in its Day-Ahead and Day-of Markets of $350/MWh. The PX states that the $350/MWh limit represents the sum of the $250/MWh price limitation on ISO purchases of Imbalance Energy plus the $100/MW amount the ISO pays for Replacement Reserves. The PX also states that the establishment of equivalent maximum prices in both the ISO and PX markets will remove any possible uncertainty that might potentially encumber the operation of either of these markets. The PX requests that Amendment No. 19 be granted the earliest possible effective date but no later than sixty days after filing. By letter dated October 5, 2000, Commission staff requested, within fifteen days, additional information from the PX to support the need for their proposed caps. On October 19, 2000, the PX filed additional information (PX Deficiency Report) analyzing six months of recent PX market data demonstrating that the ISO's real-time market serves as a *de facto* price cap in the PX day-of markets. Two exceptions occurred on June 27 and June 28.

Notice of the PX's filing was published in the **Federal Register**, 65 FR 57,599 (2000), with motions to intervene and protests due on or before September 12, 2000. The California Commission filed a notice of intervention. Timely motions to intervene, comments, and protests were filed by the entities listed in Appendix A. In addition, Williams Energy Marketing & Trading Company (Williams) and the Oversight Board filed untimely motions to intervene.

The California Commission, the Oversight Board, PG&E, and SoCal Edison support the filing and request its approval as an interim measure until additional steps are taken to restore prices to just and reasonable levels. Other intervenors argue that the filing should be rejected because: (1) The PX has provided virtually no justification for its proposed price cap; (2) the proposal would further intrude into the competitive energy markets and should be deferred; and (3) the PX's proposal is inconsistent with the Commission's findings in *Morgan Stanley*. Power marketers also argue that price caps are unnecessary and harmful to the development of a competitive electric market by jeopardizing investment in generation and creating an atmosphere of extreme uncertainty.

E. Docket No. ER00–3673–000

On September 14, 2000, the ISO filed Tariff Amendment No. 31 in Docket No. ER00–3673–000, proposing to remove the November 15, 2000 termination date of the ISO's purchase price cap authority. The ISO states that the proposed Amendment No. 31 would remove the existing termination date of the ISO's authority to disqualify Ancillary Service and Imbalance Energy bids that exceed levels specified by the ISO and would confirm the ISO's authority to establish bid caps for all of its markets. The proposed amendment does not specify the particular level of the purchase price caps; instead, it preserves the discretion of the ISO to adjust the bid cap levels as appropriate. The ISO requests that Amendment No. 31 become effective as of the date the existing provision for bid cap authority expires on November 15, 2000.

Notice of the ISO's filing was published in the **Federal Register**, 65 Fed. Reg. 57,599 (2000), with motions to intervene and protests due on or before October 5, 2000. The California Commission filed a notice of intervention. Timely motions to intervene, comments, and protests were filed by the entities listed in Appendix B. In addition, the City of San Diego (San Diego) filed an untimely motion to intervene.

Eight intervenors filed comments supporting the amendment to extend the ISO's bid cap authority, stating that because the market is not currently workably competitive, purchase caps are necessary. Twelve intervenors protest Amendment No. 31, stating that purchase price caps and the indiscriminate lowering of such caps threatens reliability, creates massive instability, and discourages investment in and development of new generation resources. In addition, these intervenors object to the ISO's proposal to set bid caps and as a corollary reject bids above the cap, instead of setting a purchase price at which they are willing to buy. Intervenors maintain that such an ability to reject bids would lead to the unilateral ability of the ISO to reduce the generator's bid to the price it is willing to pay, and amounts to setting the seller's price in violation of our precedents. Finally, intervenors state that the ISO has not developed specific criteria for the application and level of purchase price caps.

On October 20, 2000, the ISO filed an answer arguing that the protests lack merit.

Interventions and Other Pleadings

As noted in the August 23 Order, any party that intervened in Docket No. EL00–95–000 is considered to be a party in this consolidated hearing proceeding.[33] The following filed motions to intervene out-of-time in Docket Nos. EL00–95–000 and/or EL00–98–000: the Cogeneration Association of California jointly with the Energy Producers and Users Coalition (CAC/EPUC); the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Southern Cities); the City of Vernon, California, (Vernon); San Diego; the California Large Energy Consumers Association (CLECA); and Puget Sound Energy, Inc. (Puget Sound).

On October 16, 2000, PG&E, SoCal Edison, and The Utility Reform Network (TURN) (collectively, Joint Movants) filed a joint motion for emergency relief and further proceedings. Joint Movants request that the Commission: (1) Make an immediate finding that California's electricity markets are not producing just and reasonable rates, (2) put in place an interim $100/MWH price cap, (3) direct public utility sellers to provide cost-of-service information for the purpose of implementing market power mitigation measures, and (4) institute expedited procedures to develop long-term market power mitigation measures and to determine refund responsibility. SDG&E filed comments in support of the motion, but urging that fundamental reforms proceed expeditiously.

The California Commission also filed a motion for interim relief, on October 19, 2000, proposing that FERC require certain generators and marketers to offer specified amounts of capacity under forward contracts at FERC-approved cost-based rates. The following day, the ISO submitted a proposed offer of settlement to impose: (1) A $100/MWh price cap with a list of exceptions; (2) requirements for load-serving entities to forward contract; and (3) charges against load and generation not adhering to forward scheduling requirements.

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[31] The Staff Report concluded that: "Further study of high-priced bidding by individual firms or periods when individual generators were not running would be needed to substantiate any charges of market power abuse." Staff Report at 5–19. The Commission will evaluate any information it receives as part of its review of these markets.

[32] A single price auction pays all bidders the price paid to the last seller whose output is needed to clear the market (balance supply and demand); often referred to as the market clearing price. Another auction mechanism, often referred to as the "as bid" auction, pays bidders their own bid price if they are selected.

[33] August 23 Order at 61,606.

Various entities have filed motions and pleadings proposing their own preferred remedies and mitigation such as a $100 bid cap, reintroduction of cost-based rates, and tiered bid caps.[34] Our decision is informed by these requests and proposals and we incorporate into our actions the aspects of those proposals which achieve our objectives. We inform these parties that they should renew in their November 22 comments any concerns stemming from our decision to propose these remedies.

Procedural Matters

In view of the early stage of the consolidated hearing proceedings and the absence of any undue prejudice or delay, we find good cause to grant the untimely, unopposed motions to intervene of CAC/EPUC, Southern Cities, San Diego, Vernon, CLECA, and Puget Sound. Appendix C lists all parties to this proceeding. In addition, the Commission will permit all interested persons that have not already intervened in these dockets to intervene and file comments by November 22, 2000.

Also, in view of the early stage of the proceeding and the absence of any undue prejudice or delay, we find good cause to grant Williams' and the Oversight Board's late interventions in Docket No. ER00–3461–000, and San Diego's late intervention in Docket No. ER00–3673–000.

We will reject the ISO's answer in Docket No. ER00–3673–000 to the extent that it represents an impermissible answer to protests. *See* 18 CFR 385.213(a)(2) (2000).

Discussion

The Commission is obligated under the FPA to ensure that the rates, terms and conditions of wholesale sales and transmission in interstate commerce by public utilities are just, reasonable and not unduly discriminatory or preferential. Under section 206 of the FPA, if the Commission finds that rates, charges or classifications for jurisdictional services, or rules, regulations, practices or contracts affecting such rates or charges, are not just and reasonable, or are unduly discriminatory or preferential, the Commission must determine the just and reasonable rate, charge, classification, rule, regulation or practice to be in effect. In exercising this responsibility in today's electric industry environment, the Commission is faced with electric markets that are increasingly interstate in nature and increasingly dependent upon one another, and with markets that are in varying stages of transition to competition at the wholesale and, in numerous states, the retail level. With respect to California, we are faced with a complex transition from one regulatory regime to another and efforts to establish competitive markets at both the wholesale and retail levels. In this particular proceeding, our responsibility is to determine whether public utility sellers to the ISO and PX are charging unjust and unreasonable rates, and whether the market structures and market rules governing public utility wholesale sellers in California, and affecting the wholesale rates of such public utility sellers, are resulting in, or have the potential to result in, wholesale rates that are unjust, unreasonable, unduly discriminatory, or preferential. In particular, we are concerned about whether these market structures and rules, particularly in conjunction with an imbalance of supply and demand, may give public utilities the ability to exercise market power and thereby charge unjust and unreasonable rates.

Before discussing the specific aspects of market structure and rules that may be adversely affecting wholesale rates, we believe it is important to provide an overview of the historical context in which we address these issues. In 1996, when California decided to embark on its bold and innovative restructuring initiative, it did so because it recognized the problems inherent in its existing regulatory model. Prices paid by retail consumers were among the highest in the nation. California was becoming increasingly dependent on out-of-state generating resources to meet the needs of its citizens. It was against this backdrop of existing problems that California decided to pursue a more market-oriented approach to the provision of retail electricity service—ordering its three IOUs to divest ownership of their generation assets, requiring that they turn over operational control of their transmission facilities to the ISO, establishing the centralized power exchange, and adopting a market design with elaborate rules to govern the behavior of participants in this newly created electricity market.

Although well intentioned, and in some ways visionary, California's pioneering of retail electricity restructuring has not always produced a result that its architects intended—electricity prices lower than historical levels for retail consumers. Indeed, the deregulatory approach adopted by California not only failed to address many of the existing problems which were plaguing the State, but in many ways it exacerbated and magnified those problems. This is not meant to cast blame, but to recognize and try to learn from some of the mistakes that were made. At the Federal level, we remain convinced that competitive markets will provide efficiencies and lower electricity prices to consumers—both retail and wholesale. But such markets need to be properly designed and administered in an independent and non-discriminatory fashion, and they must recognize and accommodate the regional, interstate nature of electricity trade.

The events of this summer provide dramatic evidence of the interstate nature of electric systems and markets in the Western Interconnection. California is not an electrical island. Operationally, the transmission facilities currently controlled by the ISO are part of the much larger Western Interconnection.[35] The reliability of California's electric system depends on access to generating resources located throughout the Western Interconnection.[36] Decades ago, western utilities made large investments in high voltage interstate transmission lines to support the market efficiencies resulting from seasonal diversities between the northern and southern markets. Over time, California utilities have increasingly relied on imports from generation located in neighboring states to meet their load requirements and have constructed significant transmission interties to import electricity for California consumers.[37] This summer, exports from California to others increased. Therefore, the operation of the California electricity market can affect prices throughout the entire Western Interconnection. The Staff Report demonstrates that during the summer of 2000 correlations between PX prices and Western market bilateral prices were quite strong.[38]

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[34] On October 26, 2000, the ISO Board voted to change the ISO bid cap from the current $250 level to a load differentiated cap, effective on November 3, 2000 or as soon thereafter as can be implemented. Our action in this order freezing the ISO bid cap at the current $250 level for 60 days, renders the ISOo board vote null and void.

[35] As early as the 1970's, Western utilities began to face the problem of significant regional loop flows resulting from the interstate use of the Western grid and, in the 1990's, Western utilities agreed on a regional response. *See* Southern california Edison Co., *et. al.*, 70 FERC ¶ 61,078 and 73 FERC ¶ 61,219 (1995).

[36] California's import capability is approximately 8,000 MW.

[37] Two of the first trading hubs for wholesale electricity futures were founded at the California Oregon Border (COB) and at Palo Verde, in Arizona, because of the significant amounts of interstate market activity that occurs at these points.

We make these observations to provide some context for the actions we are proposing in this order. We commend and continue to support California's efforts at restructuring its electricity markets to try and bring lower prices to consumers in California. Although California's restructuring initiatives directly implicated matters subject to our jurisdiction, in order after order, we have deferred wherever possible to the restructuring decisions made by the State. We have devoted unprecedented resources to try and make the California initiative a success. Ultimately, however, the Commission must ensure that wholesale market rules and institutions—even those created by state action—result in just and reasonable wholesale rates for electricity. This summer's events in California and our subsequent investigation have convinced us that we must take decisive action under section 206 of the Federal Power Act to remedy fundamental problems that have been identified in the California market design. The California experience has highlighted the dangers of hard-wiring a market design that is inflexible and cannot adapt to needed changes.

It is important to get the fundamentals right and to devise a roadmap that takes into account the needs of the market and the regional implications of electricity trade. In many ways, this is the approach that Order No. 2000 has taken with regard to the formation of Regional Transmission Organizations. But Order No. 2000 avoided being overly prescriptive and even went so far as to adopt a requirement of open architecture to ensure that RTOs could adapt and evolve to meet the changing needs of the marketplace. Market rules and institutions need to be flexible so that they support the natural evolution of the marketplace. In California, we are confronted with a situation where market participants have to work around overly prescriptive market institutions and requirements which have become an impediment to the efficient operation of the marketplace and which have harmed consumers. The existing market has not lowered prices to consumers this summer nor stimulated needed investment in new generation and transmission facilities.

The specific reforms we are proposing in this order are limited to fixing the fundamental problems which have been identified. As we move forward, we will need input from California and other Western State policymakers to help shape and further develop this new market design. But such input should recognize the regional, interstate character of the western marketplace. We expect the new non-stakeholder boards which we are ordering below to consider further refinements and to help guide the continued evolution of the market. But the Commission must take action at this juncture under section 206 of the Federal Power Act to remedy the problems that have been found to exist in the California market structure. This action must be taken to ensure that the high and volatile prices experienced this past summer do not recur to the detriment of consumers in California and in the West generally. In this order, we focus on proposing changes to certain rules and policies of the PX and the ISO that we believe contributed to the high prices which California experienced last summer.[39]

A. Overview

One of the primary Congressional goals in enacting Part II of the Federal Power Act was to protect electric ratepayers from exercises of market power. Ratepayer interests generally centered on ensuring that rates were not excessive or unduly discriminatory. The need to ensure an adequate supply of generation usually was met through requirements imposed by states on franchise utilities to build or buy adequate power resources to meet demand consistently. Today, however, in states such as California, the adequacy of local power resources depends, not just on state requirements, but also on whether market prices are sufficient to elicit adequate supplies, through construction or otherwise. In other words, when supply is driven by market price instead of regulatory requirements, ratepayer interests may no longer depend solely on whether current prices are deemed too high, but also on whether prices are too low to elicit new supplies over time.

As indicated by the Staff Report and by reports prepared by California State agencies and others, this summer's wholesale markets exhibited certain market fundamentals that would be expected to cause prices to rise. Input costs increased as the cost of fuel, emission credits and O&M expenses increased.[40] Sustained demand increased, requiring increased reliance on generating resources that would have been more expensive to operate even if input prices had not increased.[41] Conditions in the Northwest decreased amounts of hydropower supply usually available to the market which, combined with a failure to bring new generation into service over the last decade, resulted in a true scarcity of generation.[42] In circumstances like this, prices are expected to rise—and indeed they must rise to induce the investment in new capacity that is needed to serve customers adequately.

The issue raised in this proceeding is whether dysfunctional market rules or the exercise of market power allows prices to rise above just and reasonable levels. We conclude that certain market rules do interfere with the functioning of the market and, taken together, may permit sellers to exercise market power. Accordingly, these market rules must be revised. Many of the market dysfunctions in California and the exposure of California consumers to high prices can be traced directly to an over reliance on spot markets. Industries that are either capital intensive or that have a lack of demand response do not rely solely on spot markets where volatility is to be expected. Because the price risks inherent in spot markets are too great for both suppliers and consumers, these market sectors will prefer to manage their risk profiles through forward contracts. However, in California, certain market rules imposed by AB 1890 and its implementation by the California Commission (*e.g.*, mandatory buy-sell through the PX) prevented the IOUs from engaging in forward contracts to any significant degree. And other retail suppliers who would have been free to implement appropriate risk management strategies could not be induced to participate in California's market because the low retail rate, frozen at 10 percent below historical levels, thwarted competitive opportunities for new participants to enter the market.[43] Even so, until the market was stressed this summer by extreme events, pricing volatility was isolated and short-lived and wholesale prices were so low that stranded costs were paid off more quickly than expected. The significant failings of this market design became apparent only as peak demand outstripped supply.

An essential remedy is the elimination of rules that prevent market participants from managing their risks. Moving significant amounts of wholesale transactions into forward markets will (1) reduce reliance on spot markets, thereby directly reducing both the likelihood and the adverse economic consequences of pricing volatility;[44] (2) eliminate the adverse reliability impacts that the ISO faces each day as its obligation to operate a real-time balance market has become transformed into operating the major commodity exchange at the last minute; (3) increase the likelihood of new generation entry because the uncertain revenue stream from spot markets will not attract the necessary capital investments; and (4) limit the ability of sellers to exercise market power in spot markets. To address this critical problem and ensure that market participants have access to forward markets, this order proposes certain remedies intended to facilitate forward contracting.

A second critical issue we address is the ability of the ISO and PX to operate and implement wholesale markets and the ability of the ISO to operate a transmission system reliably and efficiently under the governance of its stakeholder board of directors. The functioning of wholesale markets and the reliability and efficiency of the interstate transmission grid cannot be compromised by a decision-making process that is overly complex, mired in controversy, or prone to excessive influence by special interest groups. Boards, whether comprised of stakeholders or non-stakeholders, must be able to respond decisively to conditions necessary to maintain system integrity and operation. Most importantly, because the markets operated by the PX and the ISO are interstate markets and the transmission system operated by the ISO is part of an interstate transmission grid, the ISO's decision-making process must be responsive to the operations and the welfare of the regional marketplace, and not be restricted to the concerns of one geographic location or one segment of the market. Based on past performance, the ISO and PX boards no longer meet these standards. For these reasons, we propose to disband the stakeholder boards and direct the establishment of independent boards.

We propose several other immediate market reforms. We also identify certain other longer-term measures which need to be addressed.

Finally, because the changes we are requiring here will take time to implement and the addition of new supply is not imminent, we propose price mitigation measures through December 31, 2002. As noted earlier, a number of the changes that are required to ensure proper market functioning are within the control of state agencies. We have identified those critical issues here as well. It is imperative that these matters also be addressed during the period when price mitigation is in effect.

B. Proposed Immediate Measures

1. Requirement to Sell Into and Buy From the PX

The California Commission Restructuring Decision required that the three IOUs sell all of their generation into and purchase all of the energy requirement for their retail load from the PX.[45] In so doing, the California Commission established a mechanism to ensure that the IOUs could not withhold generation from the market prior to the completion of divestiture and to value in a systematic way the above market generation assets which the IOUs had not divested. Sales at frozen retail rates in conjunction with purchases at lower market prices created a revenue surplus from which to write off stranded costs and to transition to a regime of fully competitive prices. The requirement, in fact, was to end on the earlier of March 31, 2002, or the date when the IOUs had written off all of their stranded costs.[46]

During the first three years of operation, a confluence of favorable temperatures and hydro conditions resulted in such low spot market prices that the IOUs were able to write off substantial amounts of stranded costs. Because of these conditions and the valuation of their divested generation assets, the IOUs have either written off or valued virtually all of their stranded costs. However, this past summer's experience and the Staff Report make clear that these favorable market conditions have evaporated. A robust economy with little investment in capacity additions, high temperatures throughout the West and little supply response have now resulted in power costs above the frozen retail, rate levels.[47] The IOUs' reliance on the PX, and, in particular, the California Commission's requirement that they bid the majority (upwards of 80 percent) of their load into the PX's day-ahead and hour-ahead spot markets[48] created substantial short-term cost exposure and price spikes of such a magnitude that market confidence became virtually nonexistent. The details of the Staff Report paint a bleak picture of an over reliance on a spot market in a circumstance of inadequate supply. Moreover, because the IOUs have now divested substantially all of their thermal generation they are substantial purchasers of energy.[49] Therefore, forced sales into the PX by the IOUs to prevent withholding are no longer necessary.

As a result, we conclude that the requirement for the IOUs to sell all of their generation into and buy all of their requirements from the PX, whether in its spot or forward markets, is a significant factor contributing to rates that are unjust and unreasonable,[50] and we propose to declare it null and void effective 60 days from the date of this order. Under this proposal, the IOUs may elect to be their own Scheduling Coordinator rather than maintaining the current structure where the PX is the Scheduling Coordinator for the three IOUs. Without this buy/sell restriction on wholesale trade, the IOUs are free to pursue a portfolio of long- and short-term resources and access whatever wholesale markets are suited to meeting the needs of their retail customers

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[38] *See* Staff Report at 1–3, 3–15—3–17.

[39] There are a number of fixes that must be made that are beyond the statutory authority of this Commission. Thus, we also highlight several initiatives that the State of California must undertake to ensure that the high and volatile price scenario of this past summer is not repeated.

[40] Staff Report at 3–20—3–22.

[41] *Id.* at 5–2, 5–3, and 5–6.

[42] Due to reduced water flows in the West, the output of hydropower generation was reduced. For example, hydro output in June 1999 was 16,685 GWh and in June 2000 was 12,808 GWh, a reduction of 3,880 GWh. Staff Report at 2–26.

[43] An Analysis of the June 2000 Price Spikes in the California ISO's Energy and Ancillary Services Markets, ISO Market Surveillance Committee, September 6, 2000 at 13.

[44] We do not seek to eliminate pricing volatility in spot markets. These markets will, as a matter of course, swing in reaction to changes in short-run market conditions that are difficult to predict. What is important is that market participants have the ability to protect themselves from the economic consequences of pricing volatility. In simplest terms, if California IOUs had the option to use forward markets last summer and had chosen to exercise those options to purchase most of their needs, the high spot market prices experienced this summer would have affected only a small portion of the wholesale power costs. We do not mean to suggest that spot prices are always higher than forward market prices. Indeed, because of cooler than expected weather in the east, buyers in PJM that may have locked in prices in forward markets, based on the best information at the time of their decision, ultimately paid more for energy than the price that was available in the spot markets. The crucial issue is choice and providing market participants with the tools to access the market in the ways that best serve their needs.

[45] Initially, the PX administered only a Day-ahead and an hour-ahead (Day-of) spot Market. Later, it added limited forward marketproducts.

[46] Section 368 of AB 1890.

[47] The Staff Report indicates that over the past five years load in California has risen by 5,522 MW while resources have increased only 672 MW. Staff Report at 5–8.

[48] While the IOUs have recently been authorized by the California Commission to use either the PX's forward markets or the bilateral market, the overall restrictions on the total amount of forward purchases remain.

[49] PG&E, SoCal Edison, and SDG&E still control 28 percent, 20 percent, and 1 percent, respectively, of in-state generation and purchase power contracts.

[50] The Staff Report reached a similar conclusion. Staff Report at 5–9 and 5–11.

(including bilateral markets, the PX, and others such as Automated Power Exchange, Inc.) or by providing power from their own resources to serve their own load and self provide the necessary ancillary services.[51] As an independent exchange, the PX will be free to design and offer the services needed by market participants.

While we are proposing to remove an encumbrance on wholesale trades, we note that, currently, the California Commission restricts the IOUs' ability to procure forward products. These restrictions prohibit the IOUs from creating mutually beneficial long-term financial contracts with generators and marketers, and these prohibitions can result in an increase in overall prices, and the volatility of prices, to consumers.

2. Underscheduling of Load and Resources

Reliable and orderly system operations require that load and resource schedules be substantially finalized on a day-ahead or day-of basis[52] subject to only minor adjustments to reflect more accurate information of actual system conditions as real time approaches. As a result, the ISO operates a real-time energy imbalance market to supply unanticipated changes in load and resources. This balancing market was designed to accommodate approximately 5 percent of the total anticipated load.

The record indicates that there is a chronic pattern of underscheduling[53] load and generation in the PX's Day-Ahead and Day-of market.[54] As a result, large amounts of load are not being scheduled with the ISO and the ISO is often in the position of procuring a substantial amount of energy to meet these needs in real time. In some hours the ISO has been faced with acquiring upwards of 6,000 MW of system energy needs, in real time.[55] The ISO has reported that underscheduling was 50 percent higher this summer than the previous two summers. The cost of out-of-market purchases needed to balance load at the last minute rose to $100 million this summer compared to about $1 million last summer. Underscheduling has caused the ISO's operating personnel to call upon energy from capacity that had been procured for Operating Reserves. As a result, this reserve capacity has been diverted from its intended purpose—protecting against the loss of a component of the system. In addition, the underscheduling resulted in 39 stage-one and stage-two emergencies between June and August 2000, and 13,500 MWhs of load was curtailed.[56] The combination of these problems places even more pressure on system operators.

As a practical matter, the ISO is often not simply providing the real-time services needed to operate a transmission system and balance the market, but is actually forced to operate an energy market and to become a market participant in order to make last minute purchases as a supplier of last resort. The PX Day-Ahead and Day-of Markets were designed as spot market exchanges; the ISO's real time market was not intended to provide this function. Underscheduling puts system reliability at risk and creates a stronger sellers' market and higher prices as real time approaches. In an attempt to address this problem, we directed the ISO in the August 23 Order to use a more forward approach in procuring these energy needs.[57]

As discussed above, the elimination of the buy/sell requirement in the PX will allow for greater discretion for the IOUs to self supply or to procure resources in bilateral or other markets for their energy requirements as well as necessary ancillary services. We believe that the existing underscheduling problem is addressed in part by this revision to the market. We propose to temporarily correct the current situation by limiting the ISO to only the functions needed to reliably operate the transmission system, *i.e.*, provide a balancing service rather than running an energy market. To address this reliability problem and to ensure that loads do not rely excessively on the ISO as the provider of last resort, we propose to establish a penalty charge for deviations in excess of five (5) percent of an entity's hourly load requirements.[58] Loads in excess of this deviation band that are not scheduled in the Day-Ahead or Day-of Markets will be assessed a penalty charge of two times the ISO's real time energy cost for any purchase of balancing energy during the hour. The penalty will not exceed $100/MWh (*i.e.*, the actual imbalance cost plus $100), which approximates the current charge assessed to underscheduled load for replacement reserves. As to the penalty, we have long set disincentive rates for emergency service at twice the standard rate, and we will apply that policy here.[59] As a further incentive to encourage accurate scheduling in the Day-Ahead or Day-of Markets, we propose to direct the ISO to disburse at the end of the billing period all penalty revenues (revenues above costs) *pro rata* to the loads that scheduled accurately and that did not exceed the 5 percent deviation band for that hour. In addition, later in this order we propose to remove one of the financial incentives for sellers to favor the real-time market by providing that suppliers in the real-time market receive either a capacity payment for replacement reserves or energy payments, but not both. We also describe later in this order auction modifications that should eliminate the need for the ISO to go out of market to procure energy needed for the balancing market. As a result, loads when properly scheduled will be better able to access required supply. We believe that this more orderly process for system operations in conjunction with the ISO's use of forward contracts will better enable the ISO to reliably operate the transmission system.

Underscheduling is a symptom of many of the other market flaws.[60] Because our order addresses many of these problems we expect the underscheduling problem to subside. The ISO should consider other market design changes that would address underscheduling.

3. Governance of the PX and ISO

The Commission conditionally authorized the establishment of the ISO and PX in November 1996.[61] In that order, the Commission noted the accelerated schedule for commencement of operations and committed to dedicate the necessary resources to accomplish that schedule. The Commission also expressed its intent to give great weight to the views expressed in the California Restructuring Legislation. The Commission's deference is most apparent with respect to the governance of the ISO and PX. The parties had proposed that the ISO and PX would be governed by boards composed of individuals residing in California who were chosen to represent various stakeholder classes (*i.e.*, transmission owners, municipal entities, sellers, end-users, etc.), with each class having a specified number of voting representatives. The Governing Boards would be responsible for broad operating criteria, rather than daily decisions and functions, and members were to vote individually, not as a class. As initially proposed, the Oversight Board was intended to perform two primary functions: (1) Establish nominating/qualification procedures for the ISO and PX Governing Boards, determine the composition of Board representation, and select Board members both initially (Start-Up Function) and in the future; and (2) serve as a permanent appeal board for reviewing ISO Governing Board decisions.

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[51] The IOUs own nuclear and hydro generation whose variable operating cost are approximately $16/MWh (for a nuclear unit operating at 88 percent capacity factor) and no fuel costs for hydro. Dynegy letter dated October 27, 2000.

[52] The PX Day-of Market is the hourly energy market that is scheduled with the ISO at least 2 hours in advance of real time.

[53] Underscheduling occurs when an entity schedules significantly less energy than its expected actual consumption.

[54] Staff Report at 5–14 and 5–16.

[55] *See* ____ FERC at .

[56] August 25, 2000 Memorandum from Mr. Winter to ISO Board of Governors.

[57] 92 FERC at 61,106.

[58] We propose 5 percent because this is the maximum amount that the ISO intended to balance in the real-time market for operating the transmission system.

[59] *See, e.g.* Indiana Michigan Power Company, *et al.*, 44 FERC ¶ 61,313 at 62,078 (1988).

[60] See also Section C3. Balanced Schedules below.

[61] *PG&E II.*

The Commission accepted the proposed Governing Boards (as modified by the Restructuring Legislation) except for the proposed California residency requirement, finding them to be consistent with the ISO Principles of Order No. 888.[62] The Commission relied on the fact that no one voting class would be able to block or veto actions and that no two classes together would be able to form a sufficient majority to make decisions, and on the codes of conduct that would govern board members' behavior. In an effort to assist in the advancement of the California restructuring process, the Commission granted limited authorization to the Oversight Board's Start-Up Function, subject to all determinations made by the Oversight Board being filed with the Commission for final review.[63] The Commission, however, was troubled by the role for the Oversight Board in the governance and operation of the ISO and PX and the appellate review of ISO Board decisions, because these matters were—and remain—within our exclusive jurisdiction.[64] Consequently, the Commission stated that the continuing functions of the Oversight Board established by the Restructuring Legislation would conflict with our statutory duties under the Federal Power Act and could not remain a part of the proposal.[65]

The Commission recognized, however, that states have a legitimate oversight role with respect to traditional retail matters such as: protecting the welfare of the state's retail consumers and citizens; protecting the reliability of electric service to California retail consumers; ensuring the adequacy of the generating and transmission resources necessary to achieve designated planning and operating reserve criteria to ensure adequate service to end-use consumers; monitoring whether the California retail electricity market is a well-functioning market and delivers the public benefits for which it was developed; and ensuring that the ISO and PX keep retail consumers adequately informed of matters affecting retail electric consumers. The Commission further stated that this role would not conflict with its jurisdiction and would address state-jurisdictional matters.[66]

The Oversight Board subsequently filed a petition for declaratory order requesting that the Commission declare that a bill pending in the California Senate (SB 96), modifying the Board's duties under the Restructuring Legislation, if enacted, would resolve the Commission's concerns about its role.[67] Rather than giving the Oversight Board confirmation power over all members of the ISO and PX Boards, SB 96 afforded the Oversight Board confirmation rights over a limited number of members representing primarily end-users, and addressed the residency requirement. In addition, the structural composition of the Governing Boards was to be modified as soon as another state was to participate in the ISO and PX. SB 96 provided that California could change the ISO and PX Governing Boards into non-stakeholder boards, subject to filing revised Bylaws with the Commission. SB 96 also limited the function of the Oversight Board as an appeal board to ISO decisions regarding eight distinctly state-retail matters.[68] In the *Oversight Board* decision, we accepted, as consistent with the FPA, the Oversight Board's limited interim appointment function and limited appellate review rights set forth in SB 96.

Events over the past two years increasingly have made clear that the ISO Governing Board has such difficulty reaching decisions on the complex and divisive issues confronting it that it has become ineffective. The Staff Report comments on this deficiency.[69] For example, from this Commission's perspective, ancillary services are a critical part of a competitive market. However, the ISO's redesign of its Ancillary Services markets, which was intended to be a global, comprehensive effort to be implemented within perhaps nine to twelve months, has been approved and implemented in piecemeal fashion over a very long term. Similarly, the ISO's reform of its congestion management program has been embroiled in dissension and postponed beyond a reasonable length of time.[70] Most recently, the ISO's efforts to address this summer's price abnormalities could not be resolved by its Governing Board. The ISO's October 20, 2000 submission in this proceeding was not submitted to the Governing Board for its consideration. A news report quotes the ISO's President and CEO explaining that no consensus regarding market mitigation proposals could be developed "'since everyone had a different concern or a different idea for how to change the market."[71]

In addition, over the course of this summer, it has become apparent that the Governing Boards are not functioning as they were intended to. Members of the ISO Board, in particular, have come under undue pressure from various sources, notably regarding votes to change the purchase price cap level. One member even felt compelled to resign, and her parting words encouraged her colleagues "to find the determination to stand for the principle that the ISO must be independent of manipulation by any market participant."[72] Several other members also noted pressure "from people that are very powerful."[73] The Staff Report found indications that the Boards have been susceptible to influence by market participants, particularly by the interest that they represent.[74] Even California authorities have concerns about the Boards' independence. A joint Report to the Governor authored by the California Commission and the Oversight Board notes that the ISO and PX "are governed by boards whose members can have serious conflicts of interest."[75]

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[62] *See* Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996) (*Order No. 888*), *order on reh'g*, Order No. 888–A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888–B, 62 Fed. Reg. 64,688, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.* Transmission Access Policy Study Group, *et al.* v. Federal Energy Regulatory Commission, 225 F.3d 667 (D.C. Cir. 2000).

[63] 77 FERC at 61,817–17; 81 FERC at 61,453.

[64] *See* 77 FERC at 61,818.

[65] 81 FERC at 61,451–53; *see also* California Power Exchange Corp., *et al.*, 85 FERC ¶ 61,263 (1998).

[66] 85 FERC ¶ 61,264 at 62,068.

[67] *See* California Electricity Oversight Board, 88 FERC ¶ 61,172 (1999), *reh'g denied*, 89 FERC ¶ 61,134 (1999), *appeal docketed*, Western Power Trading Forum, *et al.*, v. FERC, No. 99–1532 (D.C. Cir.) (*Oversight Board*).

[68] These state-retail matters included, *e.g.* state functions assigned to the ISO and PX under the state law, matters pertaining to retail electric service or retail sales of electric energy, and open meeting standards and meeting notice requirements.

[69] Staff Report at 6–17.

[70] September 12, 2000 Meeting, Transcript at 107, 108 and 127.

[71] "Cal–ISO Asks FERC for Forward-Looking Market Fix," *The Energy Daily*, October 23, 2000, p. 2. *See also* "Divided Cal ISO Postpones Action on Fixes," *Power Markets Week*, Oct. 9, 2000, pp. 1, 18–19.

[72] Letter of resignation of Camden Collins, dated July 3, 2000.

On this record, we have no choice but to conclude that the existing California ISO stakeholder board is ineffective and must be modified. The ISO is an institution that is central to the functioning of wholesale power markets in the West and, unless it is able to resolve matters in a timely manner and is independent from market participants, we cannot be assured that rates, terms or conditions of its jurisdictional services will be just, reasonable and not unduly discriminatory or preferential. The transmission assets that the ISO operates are a critical part of the interstate transmission grid located in the Western Interconnection which provide essential support to the electric market. Any failings by the ISO in its obligation to ensure reliable operation of the transmission grid would have grave consequences for the residents and business in the Western states. Operation of this interstate transmission grid must be controlled by an expert board which is free from the influence of any market participant or market segment.[76]

We have similar concerns about the independence and effectiveness of the PX Board. The PX was created to accommodate California's retail access program. However, as discussed in detail below, effective 60 days from the date of this order, we propose to lift the requirement that the IOUs sell into and buy from the PX. Consequently, there is no longer any need for a stakeholder body to govern the PX; it may be operated as any other power exchange by independent directors.

While we are proposing to require the removal of the current boards, we recognize that the management of both the ISO and PX have performed admirably working under extreme circumstances and within the system dictated to them both during the initial start-up phase and more recently through the extreme conditions of the summer. We also recognize their tireless work with the stakeholder boards, a situation that was also dictated to them. In order to ensure a successful transition, it is vital that continuity of management be maintained.

We propose in this order that the current stakeholder boards be replaced with non-stakeholder boards effective 90 days after the date of this order. Under this proposal, in order to accommodate this schedule we will require that each new independent non-stakeholder board consist of seven voting members with the President (or CEO) as a voting member. The six other voting members will be selected by the current boards of the ISO and the PX, from a separate slate of candidates for each entity prepared by an independent consultant. The consultants are to be selected by the CEOs of the ISO and PX. The Boards should include members with experience in corporate leadership (at the director or board level) or professional expertise in either finance, accounting, engineering or utility law and regulation. The PX board should include members with expertise in areas of commercial markets and trading. The ISO board should include members with experience in the operation and planning of transmission systems. To allow sufficient time for this transition to occur, we propose to require the current ISO and PX Governing Boards to vote in new independent, non-stakeholder board members selected from the consultant's slate of candidates and disband the existing stakeholder boards within 90 days from the date of this order. We emphasize that the sole responsibility of the existing boards in the selection process is to pick from the slate of qualified candidates identified by the independent consultant.

The ISO and PX have well-established market monitoring units and independent surveillance committees that monitor their respective markets. This monitoring function focuses on trading activities and structural factors. In the October 30, 1997 Order, we accepted the ISO and PX proposal allowing market reports to be filed directly to regulatory agencies.[77] While these entities currently have the discretion to file their reports directly with the Commission, we propose that effective 60 days after the date of this order that all ISO and PX market reports be filed by the ISO and PX with the Commission at the same time that they are released to their respective boards.[78] This requirement will allow the Commission more timely information on market behavior.

4. Interconnection Procedures

While siting issues are not within this Commission's jurisdiction, we note that tariff interconnection policies are. Further, we note that standard procedures to facilitate the interconnection of new generators or existing generators seeking to increase the rated capacity of their facilities are needed in California. In this regard, we find that the ISO tariff lacks any such procedures and we direct the ISO to file generation interconnection procedures no later than sixty (60) days after the Independent Board is seated. This will ensure that the Commission may facilitate the matters under its control in a timely manner.

C. Longer-Term Measures

We believe that current structure in California also requires a number of longer-term reforms. While the Commission is not dictating any particular revision we propose to direct that the following issues be addressed.

1. Reserve Requirement

Adequate reserves to ensure system reliability is closely related to establishing a price that elicits a supply response. Matters of planning reserve and reliability are ill-suited to the lag inherent in a market response to short supplies. Attracting sufficient supply to maintain proper reserve requirements may well benefit from the imposition of planning reserve requirements to be met from forward markets. Suppliers would be able to build capacity with the financial assurance of long-term contracts and would be less tempted to wait until spot prices were driven up by low reserve levels. We direct the ISO and the Load Serving Entities in California to consider what market rules are needed to ensure that sufficient supply is available to meet loads and reserve requirements.

2. Alternative Auction Mechanisms

In times of adequate supply the single price auction disciplines prices by encouraging suppliers to bid their marginal costs so that they can be selected for dispatch and be paid the clearing price. However, in times of scarcity the single price auction can exacerbate the effect of supply shortages by allowing sellers who have small market shares to set the clearing price.

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[73] California ISO Board of Governors Meeting minutes, 28 June 2000, p. 89.

[74] Staff Report at 6–17, 6–18.

[75] California's Electricity Options and Challenges: Report to the Governor, Executive Summary at 3–4 (Joint Report).

[76] As noted in Order No. 2000, which expanded on our Order No. 888 ISO principles and experience with ISOs, independence is the bedrock principle of RTO formation.

[77] 81 FERC at 61,552.

[78] This requirement is consistent with the recommendation in the Staff Report at 6–18.

Not only is the seller transformed into a price setter rather than a price taker, but the resulting price is ascribed to the entire market. We are concerned that given the current market in California, the single price auction may place little or no discipline on sellers during times of shortages by minimizing the risk of strategically bidding a small amount of supply for the purpose of raising the price of the entire market. It is for these reasons that we propose to mitigate prices by eliminating the use of a single price auction at prices above $150. While our proposed market reforms will mitigate some of the effects of the single price auction, we believe that further study of this issue is desirable and direct the PX and the ISO to consider, during the 24 month window, whether alternatives to the single price auction which minimize the ability of sellers to bid for the purpose of setting the clearing price may be appropriate.

3. Balanced Schedules

We are also concerned that some of the underscheduling problems may be a result of the existence of many individual scheduling coordinators that are required to submit balanced schedules to the ISO. We therefore direct the ISO and the PX to pursue establishing an integrated day ahead market in which all demand and supply bids are addressed in one venue.

4. Enhanced Market Mitigation

We direct the ISO and the PX to consider less intrusive, narrowly tailored market protection mechanisms. Such mechanisms could take the form of the ex ante identification of conditions or behavior that would trigger specific market mitigation actions.

5. Congestion Management Redesign

In *California Independent System Operator Corp.*, 90 FERC ¶ 61,006 (2000), the Commission found the ISO's existing congestion management structure to be flawed, and, on that basis, we directed the ISO to develop and submit to the Commission a comprehensive congestion management redesign. Moreover, we stated that such a redesign should be pursued with input from *all* stakeholder groups, as well as from the ISO's Market Surveillance Committee. The reform efforts have been the subject of extensive public review and comment which are nearing completion, and a submission is due to be filed in the near future.

More recently, in the August 23 Order, we stated that we would defer any consideration on the merit of the ISO's congestion management structure until the earlier of the ISO's filing of its reform proposal or the date which the Commission issues a supplemental order in this proceeding. While we consider the ISO's congestion management reform efforts to be crucial, we now believe that this particular aspect of the California market is not a significant source of this summer's high prices and volatility.[79]

We are however concerned about the delay caused by the existing ISO Board on this matter. Therefore we direct the new Independent ISO Board to file its redesign proposal no later than sixty (60) days after the Independent ISO Board is seated with an implementation date as soon as possible. The current congestion management system is fundamentally flawed and needs to be overhauled or replaced. This market redesign is crucial for providing transmission schedules that are based on physical reality and accurate price signals for the siting of new generation. Therefore we will require that the proposal, at a minimum, include a meaningful number of zones that significantly address congestion on the system. In this regard, we also require that the proposal provide a comparison with a nodal energy price proposal (*i.e.* locational marginal prices for each bus or node on the grid). We also expect the ISO to conduct a periodic (annual) review to evaluate the accuracy of the zones for congestion management. We will take any requisite action on that proposal at the time it is filed in a separate proceeding.

6. Demand Response Program

As the Staff Report observed, the difficulty with current demand response in California is that it is driven by administrative directive, not market prices. (Staff report at 5–21). We direct the ISO and Scheduling Coordinators to consider demand bidding programs in which loads can bid offers of demand reduction directly into the market to compete with offers of supply.

7. Importance of RTO Development and Compliance

As discussed earlier in this order, California is physically integrated into an extensive interstate transmission grid and has therefore been part of a western electricity market for a long time. California's markets will never realize optimal performance until the impediments to efficient utilization of the regional transmission grid are eliminated and the regional interstate transmission system is designed in such a way that it supports transparent, competitive Western bulk power markets—markets that support all of the wholesale products that California requires, markets that remove impediments to efficient imports and exports, markets that eliminate rate pancaking and allow California to access more distant markets at a lower cost, markets that undertake regional transmission planning to ensure that the needs of California are considered when transmission expansions in other states are considered, and markets that allow regional market hubs like Palo Verde to develop where new generation can be located to serve multi-state markets. The Commission's RTO initiative is a response to fundamental changes in the electricity industry over the last 20 years. When fully implemented, RTOs will provide for operation and planning that will ensure consumer benefits for Californians and the citizens of other Western states. The problems being confronted in California can, in many ways, be traced to the continued balkanization of the Western grid and the absence of a true RTO with regional scope. The actions we have taken in this order are fully consistent with Order No. 2000, and nothing in this order relieves the ISO, PG&E, SOCal Edison or SDG&E from their obligation to make a filing in compliance with Order No. 2000 on January 17, 2001. We expect that the matters addressed in this order will move the California market toward meeting the significant objectives of Order No. 2000 and that these long-term market reforms will facilitate California's transformation into a properly sized and functioning RTO.

D. Price Mitigation and Refunds

The Commission has found in this proceeding that the existing market structure and market rules, in conjunction with an imbalance of supply and demand in California, have caused and, until remedied, will continue to have the potential to cause, unjust and unreasonable rates for short-term energy during certain time periods. While the Staff Report lists a number of factors that legitimately led to higher prices last summer,[80] it also recites

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[79] In this regard we note that none of the recent reports or analyses of the events of the summer cite to the current congestion management structure as contributing to the high prices.

[80] The Staff Report cites, for example, to increases in natural gas costs ($2 per MMBtu to $6 per MMBtu January 2000 to September 2000); increases in the price of NO_X credits ($5 per pound to over $40 per pound January 200 to September 2000); factors contributing to scarcity of power to meet demand such as lower than expected hydroelectric output and unplanned power plant outages; unusually high temperatures; tight reserve margins; increased demand for energy; reduced imports from

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market design problems that contributed to high prices and that may have provided incentives for the exercise of market power or otherwise led to higher than competitive prices.[81] As long as a flawed market design remains in effect, the possibility for non-competitive prices will continue to exist. Accordingly, pursuant to our statutory responsibility under FPA section 206, the Commission not only must "fix" those areas of market design that are within its jurisdiction and that are causing the potential for unjust and unreasonable rates (*i.e.*, require modifications of existing wholesale market structures and market rules that are impeding a competitive price), we must also provide measures to assure that rates remain just and reasonable until such time as the proposed longer term market remedies can be effectuated.

Below we address two components of protecting ratepayers against unjust and unreasonable rates. First, we address price mitigation measures that will remain in effect for 24 months, which is the time necessary to effectuate all the longer term market structure and market rule changes being required. Second, we address the refund liability of public utility wholesale sellers in the ISO and PX markets who may have the ability to charge unjust and unreasonable rates during certain time periods.

1. Price Mitigation Measures

Between 1996 and 1999 California added about 700 MW of generation while its peak load grew by some 5,500 MW fueled by an annual population growth of 600,000 people and a robust economy. As a result, California's recent peak load and its available installed capacity (*i.e.*, in-state capacity not down for maintenance) are effectively equal at about 45,000 MW; *i.e.*, there is often barely enough supply to meet demand. This leaves California vulnerable to price spikes caused by even small suppliers who, under tight supply conditions, can affect the PX and ISO market clearing prices. These conditions can allow the exercise of market power.[82] These higher spot market prices in turn affect the prices in forward markets. While California has 8,000 MW of import capability, WSCC reserves during peak hours in May and June dropped to about 5 percent, compared to forecasted planning reserves of 17–20 percent issued earlier this year, and therefore less energy was available for purchase from out of state.[83] In addition, as virtually all reports on this market conclude, there is at present little demand responsiveness to price. Accordingly, we propose price mitigation in order to allow sufficient time for the implementation of the remedial measures we are proposing to order herein as well as the development of additional supply and demand response measures. As discussed, *infra*, the price mitigation measures will be in effect for a period of 24 months.

First, we have proposed to free the IOUs of the trade restriction of selling all of their generation into and buying all of their supply from the PX. This permits the IOUs to avail themselves of the bilateral market and forward markets and the ability to self-supply. In so doing, the IOUs now have the ability to mitigate their own prices, and minimize their exposure in the spot market. Second, requiring California market participants to preschedule all resources and loads with the ISO coupled with a penalty on all energy transactions of greater than 5 percent of the prescheduled amount should greatly reduce the amount of supply traded in the real-time market and, thus, will shelter Californians from the huge exposure to spot prices experienced this summer.

We propose to implement a temporary modification to the single price auctions of the PX and the ISO. A significant factor causing high prices in California was the fact that every MW in the market is priced at the market clearing price. We propose that, effective 60 days from the date of this order, for all short-term markets operated by the PX and the ISO (including the Replacement Reserve Market), the single price auctions be used for all sale offers at or below $150.[84] This auction modification imposes no limits on a seller's bid and only limits which bids can set the clearing price. The single market clearing price will be used for the amount of load which clears at or below this amount in the auctions. To the extent an auction does not clear at or below the $150 bid level, suppliers who choose to bid above $150 will be paid their as-bid price.[85] These prices will be averaged and billed to all the load which was supplied in the auction.[86] Allowing generators to receive their as-bid price should permit generators whose costs exceed $150 to participate in the market and continue to attract new supply by reflecting in prices the true cost of scarcity.[87] This pricing method takes care to mitigate prices by reflecting a price to sellers at the margin which signals the supply and demand conditions rather than reverting to a traditional cost of service basis (*i.e.*, a regulated price which reflects the cost of all assets without any regard to market conditions). This is crucial in order to induce new supply. Bids using this modified single price auction will continue to be disciplined by low and moderate cost suppliers bidding their marginal costs at times other than shortages to ensure that they are chosen for dispatch and can receive the clearing price. At times of shortage, we will discipline prices through reporting requirements and monitoring as discussed below.

We propose to require the PX and the ISO to report confidentially to the Commission on a monthly basis all bids (both for public utilities and non-public utilities) in excess of $150, including the name of the seller, the price and amount of MWs covered by the offer, the hour(s) covered by the offer, the bid sufficiency in the market (*i.e.*, the total amount bid compared to the amount needed), and the load at the time of the offer. The ISO also must report unit availability data for all Participating Generators. The first report must be filed no later than February 15, 2001 for the period January 1, 2001 through January 31, 2001, and subsequent reports must be filed no later than 15 days after the end of each month. This will permit the Commission to monitor the effectiveness of the $150 breakpoint and any attempted exercise of market power by the market participants.

In addition, to adequately monitor the competitiveness of markets during the 24-month period and ensure just and reasonable rates during the time it takes to effectuate the longer term structural and market rule remedies, we propose to condition the public utility sellers' market-based rate authority by requiring each seller to file on a weekly basis each transaction in the ISO and PX spot markets that exceeds $150 effective sixty (60) days after this order. We propose to require all transactions for the prior week to be filed on a confidential basis to the Commission's Division of Energy Markets in a single report submitted on the Wednesday following the end of the transaction week (ending midnight Sunday). These market data should include the name of the seller, the price and amount of MWs covered by the transaction, the hour(s) covered by the transaction and the incremental generation cost. The filing may also identify legitimate opportunity costs that are known and verifiable that the seller considered in developing its bid, *i.e.*, prior to the transaction. These data will be used to monitor prices on a more current basis, in order to detect potential exercises of market power or otherwise non-competitive market prices and to adjust transaction prices, if necessary, to establish just and reasonable rates.

We recognize that some parties have offered alternative price mitigation measures and our decision here is informed by those alternative proposals. We believe that a comparison of the major attributes of some alternatives that have been proffered shows that the option we have selected is appropriate. For example, some parties propose that bids into the single price auction be capped at a specific level. Recognizing that the single price auction magnifies the impact when the maximum bid does not reflect the competitive outcome, by paying that same price to all sellers in the market, proponents of these measures seek lower and lower ceilings to reduce the economic consequences. However, ceilings set too low can also have severe short-term and long-term consequences on the market. Recognizing these concerns, some alternative proposals would include load-differentiated price caps that are indexed to estimated load and changes in input costs. These proposals, however, introduce significant complexity into a market that is already in dire need of simplification. We believe that our approach addresses the concerns that underlie these alternatives.

We select $150 as the level above which we will require reporting and increased monitoring because this level is indicative of high demand. Our review of the bids that cleared in the PX's Day Ahead market in August tells us that bids exceeded $150 in about 45% of the hours in the month. All these bids were in the peak hours of about 10 AM to 10 PM. The PX Deficiency Report also shows that during the hours of 11 PM to 6 AM prices exceeded $100 nearly 75 times or about 10% of the hours of the month and about 30% of the off-peak hours. We intend to rely on the single price auction to discipline prices in off-peak hours when supply should be adequate.

We must also take care not to place our breakpoint so high as to provide little or no mitigation other than in periods of extreme weather conditions such as California faced in August. Our review of the bids which cleared in the PX Day Ahead market for September, when the heat wave subsided, indicates the use of a higher break point of $200 would have reduced price mitigation to 9% of the hours.

Our selection of the $150 breakpoint is also informed by the running costs of the gas-fired generation which is and which we expect to be on the margin in California. Selecting a breakpoint which is below or barely exceeds the running costs of new entrants is not in the interest of consumers. In this critical regard, we have also selected $150 because the Staff Report indicates that the running costs alone of gas-fired generation often exceeded $100 during the Summer, and our review indicates that they have not substantially abated.

We have also decided not to propose indexing the $150 to gas and NO_X cost changes in the future. We believe that market entry is promoted by simplicity, transparency and stability in pricing rules and, therefore, intend to avoid the uncertainty inherent in varying this figure. To the extent these costs abate to some degree, we expect to see a favorable supply response. There is little sense in increasing our reporting requirements at the very time the market is self correcting. Conversely, the $150 breakpoint is some $60 above current gas and NO_X costs for a combined-cycle plant. Accordingly suppliers should be able to absorb some rise in gas and NO_X costs and still have the option of bidding at the $150 level which does not trigger reporting and monitoring.

We also select $150 as a reasonable benchmark for the cost consequences of a tight supply. Existing gas fired units[88] were operated at unprecedented levels, driving up the price of NO_X emission allowances from around $6/lb. to over $40/lb. at the end of August.[89] In addition, gas prices have risen from $2/MMBtu in the spring to about $5/MMBtu now.[90] The $150 figure will accommodate these marginal running costs for a combined cycle generating unit and permits some contribution to fixed costs.[91] As a result, existing suppliers and new entrants whose marginal costs allow them to bid within these parameters will not be burdened by reporting requirements. This will minimize our intrusion in these markets and should attract new suppliers. Those suppliers who cannot accommodate their financial needs at or below this

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outside California. See Staff Report at pp. 5–2 to 5–7.

[81] The Staff Report cites market design problems including lack of forward contracting, inadequate demand response; underscheduling; and use of a single price auction to establish price. See Staff Report at 5–9 to 5–18. The report shows that design problems may have provided incentives for the exercise of market power. See Staff Report at 5–9 to 5–26. While findings of specific exercises of market power are not in the record, the Staff Report refers at p. 5–20 to the analysis of the Market Surveillance Committee (MSC) of the ISO, which estimated a significant degree of market power being exercised in California markets for the period October 1, 1999 to June 30, 2000. The MSC estimated prices for must-take energy over the entire period were 36.3% higher than they would have been under competitive conditions. For the last month of the sample, June 2000, they estimated that prices were 64.6% higher than they would have been under competitive conditions. The highest previous monthly market power index was in June 1998, when prices were estimated to be 39.9% higher than they would have been under competitive conditions. Average prices in August were higher than in June. While costs such as gas and NO_X emissions rose, the report states that the numbers suggest that market power may have been exercised in June. With respect to all of the references in this footnote, the standard used to evaluate market power was bids above short-run marginal cost.

[82] Staff Report at 5–19.

[83] Price movements in California Electricity Markets, Analysis of Price Activity: May–July 2000, California Power Exchange, p. 17 and 25. Cambridge Energy Research Associates (CERA) has concluded that a significant rise in spot prices can be expected when reserve margins decline below the 15 to 20 percent range. The Summer 2000 Spot Electricity Markets Outlook; Divergent Trends in Price Volatility, CERA, Lawrence J. Makovich and Joseph Sannicandro, July 2000.

[84] In order to encourage the expansion of Demand Response programs, we will not extend this market reform to bids for load response.

[85] For example, if the highest bid selected in the ISO real-time market is $75/MWh, this will set the market clearing price and all sellers will receive $75. This is the same pricing algorithm that is used now. However, if the highest bid selected is $160/MWh and the second highest bid selected is $75/MWh, the supplier bidding $160 would be paid $160/MWh for the amount it supplied, and the market clearing price for all other sellers would be set at $75/MWh. In addition, as discussed below, the supplier receiving $160/MWh would be required to report that bid to the Commission and provide certain cost information to the Commission.

[86] This proposed market redesign will also apply to the ISO's Replacement Reserve Capacity Market with one modification. In certain instances, a supplier may potentially receive both a capacity and energy payment. Therefore, the capacity payment for replacement reserves will be contingent on whether the supplier is called on to produce energy. In that event, the supplier will receive only the energy payment.

[87] The IOUs have divested most of their fossil generation and, as a result, now own mostly hydro and nuclear generation with running costs of less than $20/MWh. However, gas is the marginal fuel in California and, therefore, we expect to see bids above $150 under some market conditions. We intend here to monitor these bids, not to prohibit them. We also fully appreciate that high cost suppliers will bid a margin above their variable costs as a needed contribution to their fixed costs. The Staff Report concludes that at times of peak demand running costs can be in the range of $160 to $200/MWh for some units. Staff Report at 3–21 and 5–3. In addition, the PX report (at page 30) on price activity May/July 2000 indicates that variable costs during peak periods can approach $500/MWh for some units.

[88] Natural gas comprises about 55 percent of California's fuel mix.

[89] Staff Report at 3–21.

[90] Average California regional gas prices peaked at about $6/MMBtu in September and are trending down toward $5/MMBtu. Natural Gas Intelligence weekly Gas Price Index, Vol. 13, No. 24. NO_X costs for the San Diego area have remained above $40/lb. Cantor Fitzgerald Market Index, October 25, 2000.

[91] A combined-cycle generating unit with a heat rate of 10,000 BTU/KWh will incur fuel costs of $50/MWh, and NO_X emission costs of $40/MWh. The remaining $60/MWh will permit an investment payback of 5 years if the unit is selected for dispatch at the $150 level about one-third of the time (*i.e.* 8 hours per day). Selection for one-fourth of the hours would permit a ten year payback and selection for one-fifth of the hours would permit thirty (30) year payback.

breakpoint will be paid the as-bid price, but will be required to report so that we can monitor their bids.

Prices based on traditional cost of service are incompatible with fostering a competitive market because the cost of the assets will not reflect supply or demand conditions. In choosing our price mitigation approach, it is our intent to guide these markets to self-correct, not to reintroduce command and control price regulation. Monitoring bids above the $150 breakpoint will allow the market to respond over the next 24 months by ensuring that prices reflect the cost of scarcity while allowing us to mitigate potential market power.

Above we established monthly reporting requirements for the ISO and PX and weekly reporting requirements for certain sellers effective upon issuance of our final order. We are also concerned about the market performance between the refund effective date and when our final order becomes effective. Therefore, for this period we propose to establish the same reporting requirement on the ISO and PX with respect to bids that exceed $150. The ISO and PX reports will be due no later than January 30, 2001.

We expect that standardized electronic filing of these reports would facilitate processing of this information and we will finalize our guidance on this point in our final order.

2. Refund Liability of Public Utility Sellers in the ISO and PX Markets

a. Refund Liability for the Period October 2, 2000 Through December 31, 2002

The Commission has specific authority in section 206 to order refunds, if it deems them appropriate, from the refund effective date to a period 15 months following the refund effective date. In our August 23 order, we noted that refunds were discretionary and that refunds may be an inferior remedy from a market perspective and not the fundamental solution to any problems occurring in California markets. We further stated that while we must protect ratepayers, we do not intend to undermine the financial stability of public utility sellers and that any decision on whether to impose refund obligations would be based on our findings regarding just and reasonable rates and a balancing of consumer and investor interests.

In our August 23 Order, pursuant to section 206 of the FPA, the Commission established a refund effective date 60 days from the date of our order instituting an investigation on our own motion into the practices of the ISO and PX. On September 22, 2000, SoCal Edison and PG&E filed for rehearing of this date, seeking a refund effective date beginning 60 days after the filing of SDG&E's complaint in Docket No. EL00–95–000. The Commission will grant SDG&E's request to establish the earliest refund effective date permitted under section 206, which will be October 2, 2000.

We are not now proposing to order any refunds. However, having now reviewed the price volatility that has occurred in California and the flaws in the market design that can lead to unjust and unreasonable rates during certain time periods, we propose that sellers remain subject to potential refund liability during the period it takes to effectuate the longer term remedies proposed herein. We must be vigilant that market manipulation or other anticompetitive behavior does not occur and that the combination of market rules and supply shortage does not otherwise produce unjust and unreasonable rates while the flawed market design remains in effect. Thus, we conclude that not only is the market monitoring through increased reporting, discussed previously, appropriate, but circumscribed refund liability also is appropriate. Therefore, if the Commission finds that the wholesale markets in California are unable to produce competitive, just and reasonable prices, or that market power or other individual seller conduct is exercised to produce an unjust and unreasonable rate, we may require refunds for sales made during the refund effective period. However, should we find it necessary to order refunds, we will limit refund liability to no lower than the seller's marginal costs or legitimate and verifiable opportunity costs. This will achieve an appropriate balance between ratepayer protection and the seller's ability to have an opportunity to recover its costs.

Finally, because the refund protection under section 206 will end 15 months following the October 2, 2000 refund effective date, and because we cannot be assured that rates will remain just and reasonable until longer term remedies are effectuated, we propose to condition the market-based rate authorizations of public utility sellers in the ISO and PX markets on continuing a refund obligation until such time as the longer term remedies are in place (as discussed herein, a period ending December 31, 2002). Such potential refund liability, as discussed above, would be no lower than the seller's marginal costs or legitimate and verifiable opportunity costs.

b. Refund Liability for Period Prior to October 2, 2000

The Commission has proposed in this order to remedy the structural inadequacies of the California bulk power market as quickly and as comprehensively as possible. Nevertheless, the most persistent request made of the Commission by California officials is to return the ratepayers in the SDG&E service territory to the financial circumstances they would have experienced this past summer but for the series of problems in California's retail, and by implication its wholesale, electricity markets. Such equitable relief would take the form of a retroactive refund of amounts in excess of just and reasonable wholesale rates. During the September 11, 2000 Congressional hearing in San Diego, members of Congress stressed the need for relief for the citizens of that city. Consequently, the Chairman of the Commission, at that hearing, agreed to have staff throughly review the state of federal law as it pertains to ordering retroactive refunds of wholesale rates.

The Staff Report, our own San Diego hearing, and all the facts collected about this summer's market dysfunctions attest to the unanticipated hardship imposed on California ratepayers. The rate shocks were severe and unanticipated by consumers. We understand the distress of San Diegans, the concerns of their public representatives, and the adverse impacts on certain sectors of the local economy, but these factors cannot alter the limitations on the Commission's authority to change rates that were previously approved, even if subsequently found to be unjust and unreasonable. The FPA and the weight of court precedent strongly suggest that retroactive refunds are impermissible in these circumstances. See Appendix E. The Congress has refrained during the 65-year history of the FPA from granting such authority in part because of the uncertainty it would create in regulated wholesale markets for power. The FPA itself was created, not to redress traumatic and inequitable circumstances like this, but to provide rate certainty in a relatively static monopoly environment. It may be argued that the dynamic power markets of today may warrant changes in the Commission's refund authority, at least for extreme circumstances, but that does not help the Commission today as it considers rate relief to the citizens of San Diego for the summer just past.[92]

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[92] However, given the new and dynamic environment, the Commission is willing to explore any proposal for equitable relief, provided that it

The economic distress of high rates is an immediate concern. However, the Commission believes that real rate relief for California electricity consumers will be fully realized in the State when sufficient new generation and transmission resources can be attracted and built and better demand-side responses can be prompted. Only competitive markets will do these things. We believe it would be a mistake to revert to the kind of rate regulation that contributed to the decline in investment that clouds California's energy future today. On the other hand, the Commission recognizes that market-based rates will only achieve just and reasonable rates where competition works effectively and market rules are effective and fair. The Commission can, and must, focus its efforts in this area.

E. Docket Nos. ER00–3461–000 and ER00–3673–000

Consistent with the above discussion, we will reject the price cap proposed by the PX and the purchase cap amendment filed by the ISO. While the ISO purchase price cap has served to mitigate price volatility in both the ISO and PX markets, nonetheless it has served to disrupt the market by encouraging sellers to stay out of the PX's auction and wait for the ISO to make the needed purchases on an out-of-market basis at the last minute. As we noted in the August 23 Order,[93] all the PX and ISO markets are interrelated such that any significant modification to one market will affect the other markets. Our proposed modification to the single price auctions is intended to establish uniform pricing and remove incentives for the load and resources to participate in one market over another. For this reason we will not allow, at this time, either the PX or ISO to implement changes that will disrupt this uniformity or to introduce new incentives in the markets. Moreover, we are attempting to provide a period of stability in the market in order to encourage supply to enter the market. Therefore we will reject the PX and ISO proposals. In the interest of maintaining stability in the markets during the transition prior to imposing the instant market reforms, we hereby order that the current $250 ISO purchase cap remain in place at that level until sixty (60) days after the date of this order.[94]

We will sunset all price mitigation on December 31, 2002. We conclude that 24 months is sufficient to restore order to these markets. We discuss below several critical market corrections which must be addressed during the 24-month window and we discuss further the removal of the auction reform after this 24-month window.

F. Actions Others Should Take

In well functioning markets which exhibit ease of supply entry and demand response to price, consumers react to scarcity by either demanding more supply or reducing demand. The current situation in California leaves us faced with little supply entry and essentially no demand response. The Staff Report documents that this phenomenon contributed to high prices in a sellers' market which were not sufficiently disciplined by supply and demand responses which consumers usually make in setting a scarcity price. It is for this very reason that we have adopted a price mitigation which reflects a measure of scarcity costs without allowing sellers to systematically set the clearing price for the entire market.

In setting a 24-month window to remedy market problems, we are mindful of the fact that the structural defects in the California market have been created over many years in an environment which relied on regulatory rather than market responses to consumer needs. We have intervened not to shelter Californians from the consequences of their choices, but to allow a two-year period of transition during which the California Commission and other interested parties can make an informed decision of whether these are the decisions they wish to make for the future in a considered and deliberative environment without the distraction of destabilizing price spikes and an increase in overall power costs. At the end of our 24-month window, we intend to lift the $150 auction modification. At that time, prices will be the product of the informed choices Californians have made on supply and demand and will reflect the true scarcity cost which they place on electric generation.

1. Offering a Full Menu of Forward Products

As noted, many of the remedies we are proposing are intended to move loads into forward markets. Success in this objective is, of course, contingent on the availability of supply in forward markets. While we understand that the pricing offered for each type of forward product may vary to reflect the terms offered (*e.g.*, length of contract, risk apportionment, peak vs off-peak), we fully expect that California suppliers will welcome the opportunity to offer a full range of forward products to meet the needs of their customers. To the extent that a full range of forward products (*e.g.*, short-term, intermediate term and long-term products) do not become available in California, we expect that load-serving entities will bring that to our attention. Whether the Commission should require sellers to provide a certain percentage of product offerings in the forward market is one issue that the Commission will consider in this proceeding.

2. Additions of Generation and Transmission Capacity

There is little doubt that the most crucial task ahead is to ensure that a robust supply enters this market, both now and in response to any future price signals. The Staff Report underscores inadequate siting of generation and transmission as a key structural defect in California. We have made every effort in this order to eliminate market design flaws in a manner that promotes efficient markets in order to reduce consumers prices to the extent possible given the current inadequate supply. However, prompt access to new generation is needed to ensure full consumer benefits are realized. For that reason, we have also carefully crafted our proposed remedies so as to avoid circumstances that may deter new entry, *e.g.*, prices set too low can prevent new entry, indecisiveness about the specifics of market reforms and price mitigation can deter new entry, and market rules that place restrictions on the operation of efficient markets can deter new entry.[95]

However, the Commission's authority does not extend to siting, and without appropriate siting support, consumers in California will continue to pay higher prices due to inadequate generation supply. The 24-month price mitigation we have ordered herein will afford the state and local agencies a window to streamline, facilitate and accelerate the siting of needed generation and transmission, including the specific projects identified in the Staff Report as furthest along in the planning and siting

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would ensure that California's electric markets remain capable of attracting investment while also mitigating the severe financial consequences of last summer's high prices.

[93] 92 FERC at 61,606.

[94] We leave undisturbed the ISO's $100 purchase price cap for Replacement Reserves during this time period.

[95] We note that one of the major costs of scarcity in California is the cost of NO_x allowances which were trading in August for $40/pound or approximately $80,000/ton. By comparison, NO_x allowances were trading in the Northeast for about $400/ton.

process and, therefore, most likely to be completed in the shortest time[96].

Finally, this Commission will commit to expeditiously process any energy facility applications (hydroelectric or gas pipeline) within its jurisdiction, within the constraints of the law and the need for multi-agency coordination.

3. Demand Response

Another matter that lies primarily within the control of state policymakers is the development of demand side response. Demand side is a critical element of the market. When consumers can receive price signals and have the ability to respond to those price signals by reducing demand, it reduces the overall cost of electricity in the market and reduces the electric bills of all consumers, not just those that responded with a load reduction. Also, a viable demand response program provides an alternative to resource expansion. The price mitigation period proposed in this order provides state policymakers with a 24–month window to develop demand response programs, and an important opportunity to take measures that can help reduce prices to California consumers.

4. Elimination of Impediments to Forward Contracting

As noted the use of forward products to hedge against spot prices is crucial to the development of a well functioning market. We encourage the California Commission to eliminate restrictions on the IOUs availing themselves of long term products.

Hearing Based on Written Submissions and Oral Presentations to the Commission

In our August 23 Order, we did not determine the type of hearing that would be needed in this proceeding. Based on the information provided in the Staff Report and the submissions in the record thus far, and the nature of the issues presented, we conclude that a trial-type hearing is not necessary to resolve the matters before us.[97] Further, the need for expeditious resolution of the problems inherent in California markets call for as expeditious a hearing as possible, consistent with due process and the development of an adequate record. Accordingly, the Commission will provide the parties an opportunity to file comments, containing all arguments and all supporting evidence that they wish to present. All such comments must be filed by November 22, 2000, which is three weeks from the date of this order. Reply comments will not be entertained. In addition, the Commission will convene a public conference on November 9, 2000 for interested persons to discuss the proposed remedies. A transcript of this conference will be placed in the public record of this proceeding.

Based on the record developed in this proceeding, including comments and additional information placed in the record in Docket Nos. EL00–95–000, EL00–98–000, and EL00–107–000, and the Staff Report, the Commission will issue by the end of this calendar year, a final order adopting and directing remedies to address the identified problems adversely affecting competitive power markets in California, and if necessary, ordering any further procedures to develop remedies to other identified problems.

The Commission Orders

(A) The parties may submit to the Commission additional arguments and evidence as outlined in the body of this order, by November 22, 2000. A party's presentation should separately state the facts and arguments advanced by the party and include any and all exhibits, affidavits, and/or prepared testimony upon which the party relies. The statement of facts must include citations to the supporting exhibits, affidavits and/or prepared testimony. All materials must be verified and subscribed as set forth in 18 CFR 385.2005 (2000).

(B) The PX's proposed tariff revisions filed in Docket No. ER00–3461–000 are hereby rejected.

(C) The ISO's proposed tariff revisions filed in Docket No. ER00–3673–000 are hereby rejected.

(D) The ISO is directed to implement a $250 purchase price cap, without disturbing the ISO's $100 price cap for replacement reserves, for 60 days, commencing on the date of this order, as discussed in the body of this order.

By the Commission. Commissioners Massey and Hébert concurred with separate statements attached.

David P. Boergers,
Secretary.

Appendix A—Timely Intervenors in ER00–3461–000

California Department of Water Resources
California Electricity Oversight Board
Duke Energy North America L.L.C., Duke Energy Trading and Marketing, L.L.C., and Duke Energy Merchants, L.L.C. (jointly)
Dynegy Power Marketing, Inc.
El Paso Merchant Energy, L.P.
Enron Power Marketing, Inc. and Enron Energy Services, Inc. (jointly)
Independent Energy Producers Association
Morgan Stanley Capital Group, Inc.
Pacific Gas and Electric Company
Public Utilities Commission of the State of California
Reliant Energy Power Generation. Inc.
Southern California Edison Company
Southern Energy California, L.L.C., Southern Energy Potrero, L.L.C. and Southern Energy Delta, L.L.C. (jointly)
Western Power Trading Forum
Williams Energy Marketing & Trading Company

Appendix B—Timely Intervenors in ER00–3673–000

California Department of Water Resources
California Electricity Oversight Board
California Power Exchange
Cities of Redding, Santa Clara, and Palo Alto, California, and the M–S–R Public Power Agency (jointly)
City of San Diego, California
Duke Energy North America L.L.C., Duke Energy Trading and Marketing, L.L.C., and Duke Energy Merchants, L.L.C. (jointly)
Dynegy Power Marketing, Inc.
Enron Power Marketing, Inc., and Enron Energy Services, Inc. (jointly)
Independent Energy Producers Association
Merrill Lynch Capital Services, Inc.
Metropolitan Water District of Southern California
Modesto Irrigation District
Morgan Stanley Capital Group, Inc.
Northern California Power Agency
Pacific Gas and Electric Company
PPL EnergyPlus, LLC and PPL Montana, LLC (jointly)
Reliant Energy Power Generation, Inc.
Sacramento Municipal Utility District
Southern California Edison Company
Southern Energy California, L.L.C., Southern Energy Delta, L.L.C., and Southern Energy Potrero, L.L.C. (jointly)
Transmission Agency of Northern California
Turlock Irrigation District
Western Power Trading Forum
Williams Energy Marketing & Trading Company

Appendix C—Parties to the Consolidated Hearing Proceeding

AES Pacific, Inc.
Arizona Districts

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[96] *See* Staff Report at 5–7—5–8, citing California Energy Commission's reports on their website which has a listing of the proposed generation. The website is www.energy.ca.gov/sitingcases/projects_since_1979.html.

[97] The use of a "paper" hearing rather than a trial-type evidentiary hearing has been addressed in several cases. *See, e.g., Public Service Company of Indiana*, 49 FERC ¶ 61,346 (1989), *order on reh'g*, 50 FERC ¶ 61,186, *opinion issued*, Opinion 349, 51 FERC ¶ 61,367, *order on reh'g*, Opinion 349–A, 52 FERC ¶ 61,260, *clarified*. 53 FERC ¶ 61,131 (1990), *dismissed, Northern Indiana Public Service Company* v. *FERC*, 954 F.2d 736 (D.C. Cir. 1992). As the Commission noted in Opinion No. 349, 51 FERC at 62,218–19 & n.67, while the FPA and the case law require that the Commission provide the parties with a meaningful opportunity for a hearing, the Commission is required to reach decisions on the basis of an oral, trial-type evidentiary record only if the material facts in dispute cannot be resolved on the basis of the written record, *i.e.*, where the written submissions do not provide an adequate basis for resolving disputes about material facts.

Automated Power Exchange, Inc.
California Department of Water Resources
California Electricity Oversight Board
California Independent System Operator Corporation
California Large Energy Consumers Association
California Manufacturers and Technology Association
California Power Exchange
Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (jointly)
Cities of Redding, Santa Clara, and Palo Alto, California, and the M–S–R Public Power Agency (jointly)
City of Dana Point, California
City of Escondido, California
City of Poway, California
City of San Diego, California
City of Vernon, California
City of Vista, California
Cogeneration Association of California and Energy Producers and Users Coalition (jointly)
Duke Energy North America LLC (together with Duke Energy Trading and Marketing, LLC and Duke Energy Merchants, LLC)
Dynegy Power Marketing, Inc.; El Segundo Power, LLC; Long Beach Generation, LLC; Cabrillo Power I LLC; and Cabrillo Power II LLC (jointly)
El Paso Merchant Energy, L.P.
Electric Power Supply Association
Enron Power Marketing, Inc., and Enron Energy Services, Inc. (jointly)
Independent Energy Producers Association
Merrill Lynch Capital Services, Inc.
Metropolitan Water District of Southern California
Modesto Irrigation District
Morgan Stanley Capital Group, Inc.
New York Mercantile Exchange
Northern California Power Agency
Public Utilities Commission of California (California Commission)
Pacific Gas and Electric Company
Pinnacle West Companies
Portland General Electric Company
PPL EnergyPlus, LLC and PPL Montana, LLC (jointly)
Reliant Energy Power Generation, Inc.
Sacramento Municipal Utility District
Southern California Edison Company
Southern Energy California, L.L.C., Southern Energy Delta, L.L.C., and Southern Energy Potrero, L.L.C. (jointly)
The Utility Reform Network
Transmission Agency of Northern California
Western Power Trading Forum
Williams Energy Marketing & Trading Company

Appendix D—Staff Report to the Federal Energy Regulatory Commission on Western Markets and the Causes of the Summer 2000 Price Abnormalities; Brief Overview of Conclusions (pp. 1–2 to 1–4)

The report is organized to provide a factual framework for the Commission's use, a section discussing major issues evaluated during the investigation and, finally, a section with options for consideration by the Commission to remedy immediate and longer term problems.

Section 2 of the report finds tight supply and demand conditions existed throughout the west during most of this summer, with emergency conditions concentrated in California. Broadly speaking,

- Overall demand across the WSCC increased significantly driven by hot weather and load increases that were heat sensitive and that were also driven by increased economic activity. Average summer loads were 11 percent higher in May and 13 percent higher in June from the previous year. Energy consumption also increased across the WSCC by 5 percent in May and approximately 10 percent in June from the previous year. Off-peak demands in the ISO increased significantly during the summer, in large part to meet increased pumping demands for hydro power facilities, needed for peaking purposes both inside and outside of California. However, peak demand in the ISO area fell slightly, partially reflecting response to emergency declarations and actions.
- Exports increased significantly, with little overall change in the level of imports. As a result, net imports decreased by approximately 3,000 megawatts (MW) from May through August. The ability to increase imports was limited by hydro conditions in the Northwest, which actually declined in July and August, and tight load conditions in other Western subregions. Weather conditions led to increased exports in July and August, corresponding to the decreases in the ISO price cap from $750 to $500 in July and then to $250 in August.
- Outages increased significantly compared with 1999. This was especially true with regard to unplanned outages.
- Increased quantities of demand and supply were left unscheduled in day ahead and hour ahead markets. When loads increased above 35,000 MW in June and at lower levels in July and August, the ISO was forced to buy substantial amounts of power in the form of replacement reserves or out of market purchases.
- Non-hydro generation resources throughout the West were more heavily utilized in 2000 over 1999. Generation from non-hydro resources in 2000 increased by 15.1 percent in May and 24.9 percent in July over 1999 levels. Based on a shapshot of WSCC capacity during a selected high load period, little additional capacity appears to have been available at peak times.

Section 3 of the report finds that wholesale power prices were high throughout the West in the summer of 2000, but their implications were most acutely felt in California. The principal findings of the report on western prices and costs in the summer of 2000 are:

- Prices in the ISO spiked in May and June and average June prices reached record high levels. While an ISO price cap of $750 existed during the early part of the Summer, prices became highly volatile and the hourly price hit the cap of 3 days in June. Average June prices reached record levels of $120 in the PX.
- Average prices were lower in July and June, but total costs paid by purchasers in August were higher than June. Caps of $500 in July and $250 in August had a dampening effect on high hourly prices, but average prices in August rose to $166 in the PX after falling below June levels to $106 in July. The lower caps may have played a role in increasing exports in July and August.
- Prices at other trading hubs in the West generally correlated with California prices suggesting that opportunities to sell at high prices existed in these regions when California prices were high. However, it is not yet clear how scarce supplies were in these regions or to what extent prices outside California were from California imports rather then consumption in other regions. While information for certain weeks in the West indicated supply was scarce, it was not possible to make an overall assessment on scarcity throughout the West without additional information.
- Cost for fuel and environmental compliance (NO_X credits) increased significantly in July and August. Gas prices rose from approximately $2 per MMBtu early in the year to approximately $5 per MMBtu in August. Credits to comply with NO_X standards rose from $6 per pound in May to $35 in August and $45 in September. Lower caps in July and August reduced the ceiling for market prices while these fuel and environmental costs raised the "floor". As a result, prices traded over a narrow range.
- Prices in some hours appear to be above those that would have prevailed in a competitive short-term market, if prices were determined from short-term marginal costs.
- Examination of bid patterns in the PX and ISO replacement reserve markets and a review of ISO out of market purchase activity does not suggest substantial or sustained attempts to manipulate prices in these markets. Supply curves bid into the PX show higher bids, on average, when the price caps are lower. However, the increases are not correlated with particular classes of bidders, suggesting that the pattern may reflect increased costs for most participants rather than a pattern of individual bidders or classes of bidders attempting to raise prices intentionally.

Section 4 outlines the statutory and regulatory framework related to energy markets in the West. The report describes the role and policies of the Federal and state economic and environmental agencies in regulating electric utilities in California and the establishment of the ISO and PX, as well as the creation of the Oversight Board. Additionally, this section outlines requirements imposed on the California utilities by the California Commission.

Section 5 discusses the issues that were raised as possibly causing the high prices of this summer. These fall into three general categories: (a) Competitive market forces, (b) market design problems and (c) market power. The data clearly show that a general scarcity of power in the West and increased costs to produce power were factors causing these high prices. It is also clear that existing market rules exacerbated the situation and contributed to the high prices. The data also indicate some attempted exercise of market power, if the standard of bidding above marginal cost is used, and some actual market power effects, to the extent that prices, at least in June, were significantly above competitive levels. The prices, at least in June, were significantly above competitive levels. However, the data do not isolate specific exercises of market power or suggest that the exercise of market power was more important than other primary explanatory factors.

Section 6 provides a range of options to address the problems identified in this report. Staff also attempts in this section to provide the possible benefits and drawbacks of various options.

The investigation was conducted on an expedited basis so there was not enough time to address all issues in depth. This report is intended to provide the Commission with "the big picture."

Appendix E—Analysis of the Commission's Retroactive Refund Authority Under the Federal Power Act

I. Executive Summary

Section 206 of the Federal Power Act authorizes refunds if the Commission finds existing rates to be unjust or unreasonable. However, that authority is limited to the period from the refund effective date through 15 months thereafter. The Commission has the discretion to determine that such refunds would not be in the public interest in individual circumstances.

The issue of retroactive refunds was expressly considered by Congress in 1935 and again in 1988. In 1935, Congress rejected a provision that would have given the Commission authority to order refunds for any amounts found to be unreasonable or excessive. Instead, the 1935 Act authorized the Commission to change existing rates (as distinct from section 205 authority to suspend proposed rate increases) prospectively only—*i.e.*, refund relief was available only after the Commission found that existing rates were unjust or unreasonable. The amendment to section 206 enacted in the 1988 Regulatory Fairness Act permitted limited retroactive refund authority—*i.e.*, from the refund effective date forward.

Key court precedent interpreting the FPA (and the Natural Gas Act, which contains relevant parallel provisions to the FPA) articulates the filed rate doctrine and the rule against retroactive ratemaking. The filed rate doctrine forbids a regulated entity from charging rates for its services other than those properly filed with the appropriate regulatory authority. In the area of Federal electricity regulation, this doctrine is founded on the requirements in section 205 of the FPA that rates for jurisdictional services must be just and reasonable and must be on file with the Commission. The precedents on the rule against retroactive ratemaking provide that, except for certain limited circumstances (*e.g.*, rates inconsistent with the filed rate; legal error by the Commission in approving rate changes), the Commission does not have authority to order retroactive rate changes.

While there is no Commission or court precedent on the applicability of the filed rate and retroactive ratemaking doctrines to market-based rates, the provisions of sections 205 and 206 make no distinction between cost-based and market-based rates. The refund provisions of sections 205 and 206 of the FPA thus would appear to apply equally to both cost-based rates and market-based rates. Similarly, the filed rate and retroactive ratemaking doctrines, which derive from the requirements of sections 205 and 206, would appear to apply equally to cost-based and market-based rates.

II. Legal Analysis of Refund Authority

A. Statutory Provisions

The Commission's statutory authority to order refunds is specified in sections 205 and 206 of the FPA. Section 205 addresses rate changes proposed by the public utility providing the service in question; section 206 addresses rate changes initiated by a complainant or the Commission.

1. Section 205

Section 205(a) provides that all rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.[98] Section 205 also requires that, absent waiver, a public utility filing any changes in its rates, charges, classifications, or services must provide at least 60 days' prior notice, and permits the Commission to suspend the effectiveness of any such change for a period no longer than five months. Section 205(e) provides that the Commission "upon completion of the hearing and decision may by further order require such public utility or public utilities to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified." Thus, refunds under section 205 are limited to the period beginning with the allowed effective date of the proposed rate change and are also limited to the difference between the proposed increased rate and the pre-existing rate.

Section 205 does not, on its face, provide the Commission authority to order refunds for periods prior to the effective date of the proposed rate change. But, as discussed in Section C.2., *infra,* the Commission may, for example, condition its acceptance of a section 205 formula rate filing on the Commission retaining the authority under section 206 to, at a later date, retroactively order refunds with respect to certain costs charged through the formula.

2. Section 206

Section 206 provides that if, upon complaint or upon its own motion, the Commission finds that existing rates, charges or classifications are unjust, unreasonable, or unduly discriminatory or preferential, it must determine, and order implementation of, a just and reasonable rate. In 1988, in the Regulatory Fairness Act (RFA),[99] Congress substantially revised section 206 to permit limited authority to order retroactive refunds of rates found to be unjust and unreasonable. Under section 206, as amended by the RFA, upon instituting a proceeding under section 206, the Commission must establish a refund effective date. In the case of a proceeding instituted upon complaint, the refund effective date cannot be earlier than the date 60 days after the filing of such complaint nor later than 5 months after expiration of such 60-day period. In the case of a proceeding instituted upon the Commission's own motion, the refund effective date cannot be earlier than the date 60 days after publication by the Commission of notice of its intention to initiate such proceeding, nor later than 5 months after the expiration of such 60-day period. At the end of any such proceeding, the Commission may, in its discretion, order refunds if it finds that the existing rate is unjust, unreasonable or unduly discriminatory or preferential. Possible refunds are limited to the period from the refund effective date through a date 15 months after such refund effective date and are also limited to the difference between the rate charged and the rate determined to be just and reasonable.

On its face, section 206 does not provide the Commission authority to establish a refund effective date that is earlier than 60 days after the date that a complaint is filed or the Commission investigates an investigation. Further, section 206 does not contain any provision authorizing the Commission to order refunds for periods prior to the refund effective date. Therefore, section 206 does not expressly afford retroactive refund relief for rates covering periods prior to the filing of a complaint or the initiation of a Commission investigation even if the Commission determines that such past rates were unjust and unreasonable.[100]

B. The Legislative History of Section 206

The FPA as originally enacted in 1935 permitted the Commission to order refunds in section 206 proceedings prospectively only, *i.e.*, prospectively from the date of the Commission's decision. While the originally proposed bill that led to the 1935 FPA contained a provision which would have allowed the Commission to order retroactive reparations, this provision was eliminated from the final bill while in committee. Thus, the FPA as enacted in 1935 allowed the Commission to change unjust or unreasonable rates, upon complaint or on its own motion, on a prospective basis only. In 1988, the Regulatory Fairness Act amended § 206 of the FPA to permit specifically limited retroactive refund authority.

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[98] Section 205(b) provides that: "No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service."

Section 205(c) provides the Commission discretion to prescribe rules and regulations, and to establish filing requirements "within such time and in such form as the Commission may designate."

[99] 102 Stat. 2299 (1988). The RFA amendments to section 206 are discussed *infra*.

[100] As discussed in Section C.2., *infra,* under the Commission's and the courts' interpretations of section 206, there are limited circumstances in which the Commission can order refunds for past periods.

1. The 1935 Act

The originally proposed bill that led to the 1935 FPA had contained a provision (section 213) which would have allowed the Commission, upon complaint, to "order that the public utility make due reparation * * * with interest, for amounts charged by an electric utility which were thereafter found to be unreasonable or excessive." S. 1725, 74th Cong., 1st Sess. at 43 (1935).[101] This provision was eliminated from the final bill while in committee, as it was considered appropriate for a state utility law, but not "applicable to one governing *merely wholesale transactions.*" S. Rep. No. 621, 74th Cong. 1st Sess. 20 (1935) (emphasis added). Based upon the foregoing, it is apparent that Congress drew a distinction between retail and wholesale electric rate regulation as to the authority required by a regulatory agency to adequately protect consumers of electric energy. The reason underlying this distinction was not explicitly stated when the legislation was reported out of committee. Nonetheless, certain testimony from the hearings held in connection with the legislation sheds some light on this subject, as set forth below.

John E. Benton, General Solicitor of the National Association of Railroad and Utility Commissioners (NARUC) appeared before the House committee on behalf of his organization and argued for the elimination of section 213. *Public Utility Holding Companies; Hearings on H.R. 5423 Before the House Comm. on Interstate and Foreign Commerce,* 74th Cong. 1st Sess. 1684–1685 (1935) [hereinafter cited as *House Hearings*]. Mr. Benton stated:

> The next amendment, we ask that section 213, beginning on page 118, be stricken out.
>
> That is the reparation provision brought in from the Interstate Commerce Act. It provides that if service taken has been charged for at an unreasonable or excessive rate, and if within 2 years an application is made to the Commission, it may disapprove the rate charged and fix a reasonable rate, and require the selling utility to make due reparation to the complainant.
>
> That is an entirely proper provision in a railroad statute. When a man goes to the railroad station with a load of goods to ship somewhere he has to ship at the rate that is fixed in the tariff. He must make the shipment then; and he ought to be able to come thereafter to the Commission and show that he was required to pay an unreasonable rate, if it was unreasonable, and to ask for a determination of a reasonable rate and get reparation that is due him for any overpayment. That is perfectly proper. But this bill relates only to service between the wholesale generating or production company and the distributing utility. We question whether the public interest will be served by giving any company the right to go ahead receiving service at the established rate for 2 years, and then to bring a complaint before the Federal Commission that the rate has been unreasonable. If the provision were that the reparation might run after the complaint was made, it would be more reasonable. But to allow the company to take service for 2 years with no question raised and then to allow it to come in and file a complaint, we believe, is not reasonable. We ask that the provision be stricken out or that it be limited to a recovery of reparation after the complaint is filed.

Id.

Whether the distinction drawn by Congress between wholesale and retail rate regulation was based on the relative volume of wholesale and retail sales existing at the time is unclear. Commissioner Clyde L. Seavey of the Federal Power Commission testified in support of the bill and discussed generally the need for Federal regulation of wholesale rates. *House Hearing, supra,* at 420–25. Commissioner Seavey testified that more than 17 percent of the total electric energy generated at that time was transmitted interstate, and that of this 17 percent, "practically all of it is wholesale in nature." *Id.* at 420–21.

> Now, in the electric energy field, at the present time the movement of interstate transmission is over 17 percent. That, however, in percentage does not in either case indicate the full measurement of the need of regulation. *A larger or a smaller percentage does not spell very much and that is not advanced at this time by the Commission as urging that regulation is more than it is in the smaller percentage,* but it is interesting to note, I think, that there is a very substantial movement of interstate energy at the present time.

Id. at 420 (emphasis added).

Based upon the foregoing, it appears that section 213 was included in the proposed legislation submitted to Congress by the Federal Power Commission as a standard utility law provision borrowed from the Interstate Commerce Act. It further appears that Congress accepted the argument set forth by the General Solicitor of NARUC that wholesale customers of electric utilities should not be permitted to accept service for up to two years without complaint and thereafter be permitted reparations covering that period. However, Congress did not explicitly accept the General Solicitor's alternative suggestion that the time period for recovery of reparations should commence with the filing of the complaint, and instead eliminated section 213 entirely. As discussed *infra,* this resulted in the courts later concluding that Congress intended that the Commission have authority to only grant relief in a section 206 proceeding prospectively from the date of its order,[102] and it also led to Congress providing limited retroactive refund authority in the RFA of 1988.

2. The Regulatory Fairness Act of 1988

The Senate Report on the RFA[103] contrasted the Commission's refund authority under sections 205 and 206. It noted that section 205 proceedings on average required one year for resolution and that final decisions by the Commission are retroactive to the effective date of the rate increase. With respect to section 206, the Senate Report stated:

> Section 206 of the FPA allows the Commission, on its own motion or pursuant to complaint, to set a "just and reasonable rate" if it finds the rate in effect to be unlawful. Under existing law, a rate reduction under section 206 differs from a rate increase under section 205 in two important ways. First, a motion or complaint for rate reduction does not take effect automatically after a given period of time as does a request for rate increase. Second, under section 206 a rate reduction is prospective only.
>
> Resolution of section 206 proceedings requires two years on average. One probable reason for the longer period needed to resolve such proceedings is that public utilities have no incentive to settle meritorious section 206 complaints since any relief is prospective. Under present law, public utilities keep revenues collected during the pendency of a section 206 proceeding, even if those revenues are subsequently determined to be excessive. H.R. 2858 would correct this problem by giving FERC the authority to order refunds, subject to certain limitations.[104]

Thus, the RFA was intended to correct the problem of public utilities engaging in dilatory behavior in section 206 proceedings in order to delay the effectiveness of proposed, presumably lower, rates. The RFA did so by giving the Commission the authority to establish a refund effective date and make an existing rate subject to refund during the pendency of a section 206 proceeding for a period of up to 15 months from the refund effective date (longer if the public utility is found to have engaged in dilatory behavior during the hearing).

The Senate Report also explains that the burden of proof was unchanged by the RFA, *i.e.*, the Commission or a complainant has the burden of proof to show that an existing rate, charge or related provision is unlawful and that the proposed rate is just and reasonable.[105]

The Senate Report also states that the RFA was intended to give the Commission the discretion needed to deal with individual circumstances in which refunds would not be in the public interest:

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[101] Proposed section 213 read as follows: "Sec. 213. (a) When complaint has been made to the Commission concerning any rate or charge for any service performed by any public utility, and the Commission has found after investigation that the public utility has charged an unreasonable, excessive, or discriminatory amount for such service in violation of any provision of this title, the Commission may order that the public utility make due reparation to the complainant thereunder, with interest from the date of collection. No such order shall be issued unless the complaint is filed with the Commission within two years from the date of the payment. (b) If the public utility does not comply with the order for the payment or reparation within the time specified within such order, action may be begun in any court of competent jurisdiction to recover the same within one year from the date of the order, and not thereafter."

[102] *See, e.g.,* City of Bethany v. FERC, 727 F.2d 1131 (D.C. Cir. 1984), *cert.denied,* 469 U.S. 917 (1984).

[103] The House passed H.R. 2858, a Senate Committee amended the House-passed bill, and the Senate passed H.R. 2858, as amended.

[104] S. Rep. No. 491, 100th Cong., 2d Sess. 3–4 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2685.

[105] S. Rep. No. 491 at 5, *reprinted in* 1988 U.S.C.C.A.N. 2687.

As passed by the House of Representatives, H.R. 2858 required refunds to be paid subject only to a narrowly drawn public interest exception. The Committee amended the House-passed bill to make the granting of refunds under section 206 discretionary so as to parallel the refund provision of section 205 of the Federal Power Act. The Committee recognizes that it may not be appropriate in all instances to order refunds in the event that it is determined in a proceeding under section 206 of the Act that rates or charges are not just and reasonable.

The Committee intends the Commission to exercise its refund authority under section 206 in a manner that furthers the long-term objective of achieving the lowest cost for consumers consistent with the maintenance of safe and reliable service.

The Committee is aware that there may be challenges to power pooling and system integration agreements brought under section 206 of the Federal Power Act in which refunds might not be appropriate, for example, where the issue relates to cost allocation among utilities, and the bill as reported by the Committee is intended to provide the Commission with the discretion needed to deal with individual instances in which refunds would not be in the public interest.

In determining if a refund may adversely affect the public interest in the case of power pool agreements, the Committee expects the Commission to consider whether, and the extent to which, a refund would adversely affect decisions made on the basis of energy pricing provisions of such pooling agreements or will impose a substantial burden on the pool in comparison with the benefits of refunds to consumers.

In addition to certain situations involving power pooling, there may be others in which the public interest would not be served by requiring refunds under section 206. Because the potential range of these situations cannot be fully anticipated, no attempt has been made to enumerate them here. In any case, the Committee generally expects the Commission to grant refunds under section 206 with comparable frequency to its granting of refunds under section 205.[106]

Thus, the Commission is given the discretion to determine whether, for example, a public utility's financial viability and ability to serve customers might be jeopardized if very large refunds were ordered.

C. Court Precedent

Two court doctrines have arisen from the courts' interpretations of the limitations of sections 205 and 206 of the FPA: the filed rate doctrine and its corollary, the rule against retroactive ratemaking.

1. Key Court Precedent Involving the Filed Rate Doctrine Under the FPA and Natural Gas Act

The filed rate doctrine "forbids a regulated entity [from] charg[ing] rates for its services other than those properly filed with the appropriate regulatory authority." *Arkansas Louisiana Gas Co.* v. *Hall*, 453 U.S. 571, 577 (1981). In the area of federal electricity regulation, this doctrine is founded on the requirements in section 205 of the FPA that rates for jurisdictional services must be just and reasonable and must be on file with the Commission. The considerations underlying the rule are "preservation of the agency's primary jurisdiction over reasonableness of rates and the need to insure that regulated companies charge only those rates of which the agency has been made cognizant." *City of Cleveland* v. *FPC*, 525 F.2d 845, 854 (D.C. Cir. 1976); *see also Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 251–52 (1951).

In cases involving the Commission, the D.C. Circuit has explained that—

> [v]arious reasons have been offered in support of the filed rate doctrine, and its corollary prohibiting the regulatory agency from altering a rate retroactively. Most recently, the Court justified the doctrine as necessary to enforcement of the underlying statute (*Maislin*, 110 S. Ct. at 2769), in that case the Interstate Commerce Act. The Court has also described the considerations underlying the doctrine as "'preservation of the agency's primary jurisdiction over reasonableness of rates and the need to insure that regulated companies charge only those rates of which the agency has been made cognizant."' Opinions of this court have cited "necessary predictability" as "the whole purpose of the well-established 'filed rate' doctrine * * * ." In the context of the Interstate Commerce Act, the Supreme Court has indicated that the doctrine fulfills "the paramount purpose of Congress" of preventing "unjust discrimination." Other courts of appeals have described the doctrine as intending "to prevent discriminatory rate payments" and as "reflecting a statutory bias in favor of retroactive rate reductions but not retroactive rate increases."
>
> Whatever the justification, it is generally agreed that with respect to the Federal Power Act, the filed rate doctrine rests on two provisions: section 205(c), which requires utilities to file rate schedules with the Commission, and section 206(a), which allows the Commission to fix rates and charges, *but only prospectively* [emphasis added].[107]

The DC. Circuit further explained that as the filed rate doctrine and rule against retroactive ratemaking "relate to purchasers, their guiding concern is '[p]roviding the necessary predictability,' allowing 'purchasers of gas to know in advance the consequences of the purchasing decisions they make.'"[108]

2. Key Court Precedent Involving the Rule Against Retroactive Ratemaking Under the FPA

Except for certain limited circumstances discussed below (formula rates, legal error by the Commission), the courts have consistently held that under the FPA, the Commission does not have authority to order retroactive rate decreases. *See FPC* v. *Sierra Pacific Power Co.*, 350 U.S. 348, 353 (1956); *Public Service Co. of New Hampshire* v. *FERC*, 600 F.2d 944, 957 n.51 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 990 (1979).

In a United States Supreme Court opinion addressing the Federal Power Commission's lack of authority to order reparations under section 205(a), the dissent (which concurred with the court's conclusion that the FPA does not authorize reparations under section 205(a)) stated:

> We face at the outset the contention that this section confers on the Federal Power Commission authority to award reparations for unreasonable rates collected in the past. Federal railroad rate legislation gave such a power to the Interstate Commerce Commission. (citations omitted). But it was not given to the Federal Power Commission. It was withheld deliberately. *See* S. Rep. No. 621, 74th Cong., 1st Sess. 20. Wholesale consumers of electric energy were apparently considered, as a rule, adequately protected by the provisions of the Act authorizing the Commission to grant prospective relief and, in certain circumstances, to order refunding of sums accumulated during the pendency of rate proceedings. §§ 205(e), 206(a), 49 Stat. 852, 16 U.S.C. §§ 824d(e), 824e(a).

Montana-Dakota Utilities Co. v. *Northwestern Public Services Co.*, 341 U.S. 246 at 257–58 (1951), (Frankfurter J., dissenting on other grounds).

As the D.C. Circuit in *City of Piqua* stated:

> In essence, the rule against retroactivity is a "cardinal principle of ratemaking[:] a utility may not set rates to recoup past losses, nor may the Commission prescribe rates on that principle." [citation omitted] * * * The retroactive ratemaking rule thus bars utility refunds for past excessive rates, or the Commission's retroactive substitution of an unreasonably high or low rate with a just and reasonable rate.

City of Piqua v. *FERC*, 610 F.2d 950, 954 (D.C. Cir. 1979).

There are, however, some limited circumstances under which the Commission can order refunds for past periods. For example, where the Commission has conditionally accepted for filing a formula rate (such acceptance is subject to the condition that the Commission may, at a later date, retroactively order refunds with respect to certain costs impermissibly charged through the formula) and the utility has charged impermissible costs through the formula, or where the rates charged were contrary to the filed rate, the Commission may order refunds. *See, e.g., Appalachian Power Co.*, 23 FERC ¶ 61,032 at 61,088 (1987). The Commission may also be able to order refunds as a remedy to correct legal

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[106] S. Rep. No. 491 at 5–6, *reprinted in* 1988 U.S.C.C.A.N. 2687–88.

[107] Towns of Concord, Norwood and Wellesley v. FERC, 955 F.2d 67, 71–72 (D.C. Cir. 1992) (citations and footnotes omitted) (*Towns of Concord* v. *FERC*). *See also* Natural Gas Clearinghouse v. FERC, 965 F.2d 1066, 1075 (D.C. Cir. 1992).

[108] Towns of Concord v. FERC, 955 F.2d at 75. *See also* Texas Eastern Transmission Corp. v. FERC, 102 F.3d 174, 188–89 (D.C. Cir. 1996) (filed rate doctrine "seeks to prevent customers from relying on certain rates, only to find later that their purchasing decisions have been upset and their costs increased.") Public Utilities Comm'n of California v. FERC, 988 F.2d 154, 164 (D.C. Cir. 1993) ("when determining whether a FERC order violates either the filed rate doctrine or the rule against retroactive ratemaking, this court inquiries whether as a practical matter, the purchasers of the [energy] had sufficient notice that the approved rate was subject to change.").

errors found by an appellate court upon judicial review of a Commission order on a requested rate change. *United Gas* v. *Callery Properties*, 382 U.S. 223, 229 (1965) (while the Commission has no power to make reparation orders, its power to fix rates being prospective only, it is not so restricted where its order, which never became final, has been overturned by a reviewing court); *Reynolds Metals Co.* v. *FERC*, 777 F.2d 760, 763 (D.C. Cir. 1985); *see Public Utilities Commission of the State of California* v. *FERC, et al.*, 988 F.2d 154, 161–162 (1993) (allowing pipeline to seek retroactive recovery of costs based on court reversal of FERC order, citing "general principle of agency authority to implement judicial reversal"). In *Office of Consumers Counsel* v. *FERC*, 826 F.2d 1136 (D.C. Cir. 1987), the court held that where the Commission had committed legal error in failing to order rate relief to consumers,[109] rate relief dating back to the date of the Commission's error would not violate section 5 of the NGA[110] since this would place consumers in the same position they would have occupied had the error not been made.[111] *See also Tennessee Valley Mun. Gas Assn.* v. *FPC*, 470 F.2d 446, 453 (D.C. Cir. 1972) (granting of refunds did not violate anti-reparations language in the statute which was designed to protect established expectations under legally established rate schedules; one "cannot claim justifiable reliance or protectable expectations based on [Commission] action which was illegal").

D. Applicability of the Refund Provisions of Sections 205 and 206 and the Filed Rate and Retroactive Ratemaking Doctrines to Market-Based Rates

No distinction between cost-based and market-based rates is made in the FPA. Indeed, the statute itself does not dictate or even indicate how the Commission is to establish rates. Nor have courts found the Commission to be "bound to the use of any single formula or combination of formulae in determining rates." *FPC* v. *Hope Gas Co.*, 320 U.S. 591, 602 (1944); *see Duquesne Light Co.* v. *Barasch*, 488 U.S. 299, 310 (1988) (same). Section 205(c) of the FPA is clear, however, that all rates and charges for jurisdictional transactions must be on file with the Commission. Further, a Commission-approved rate, whether cost-based or market-based, may not be changed, except as provided by sections 205 and 206 of the FPA. The refund provisions of sections 205 and 206 of the FPA thus would appear to apply equally to both cost-based rates and market-based rates. Similarly, the filed rate and retroactive ratemaking doctrines, which derive from the requirements of sections 205 and 206, would appear to apply equally to cost-based and market-based rates. There is no court or Commission precedent that addresses the question directly, however.

Massey, Commissioner, *concurring:*

Today the Commission takes a step toward restoring confidence that wholesale markets in California can produce just and reasonable prices and consumer benefits. I am concurring on this proposed order, and want to make a number of points.

First, our order finds that the California wholesale market has produced wholesale prices for electricity that are unjust and unreasonable, and that remedies are necessary. On August 23d, in voting on the complaint filed by San Diego Gas & Electric, I reached this conclusion and set forth my opinion in a separate written statement. Although I have maintained an open mind on all issues during the course of our subsequent investigation, I am convinced that any reasonable interpretation of the record now before us today leads to this same conclusion.

Second, our order moves in the right direction toward remedying the problems in California's electricity market. It correctly identifies the problems that must be addressed going forward to ensure just and reasonable rates and protect consumers. The over reliance on spot markets, underscheduling leading to high prices in the real time markets, and the lack of a demand response are clearly areas that must be dealt with effectively, and our order proposes remedies in each of these areas. I am pleased that our order requires the ISO and PX to reconstitute their governing boards with independent members and abolishes the so-called stakeholder boards. Today's order eliminates the state-imposed requirement that the three California utilities sell into and buy from the PX, and I support the ending of this so-called buy/sell requirement.

Third, our order proposes price mitigation going forward. No bid in excess of $150/MWh will set the market clearing price in the ISO and PX auctions. Sellers may bid above this level and receive their bid if they are dispatched, but they will not set the price that all generators will receive and must report their bid to the Commission.

And fourth, from October 2, 2000 going forward, purchasers may be entitled to refunds for any unjust and unreasonable wholesale prices that may be charged over the following 24 months.

In some of these areas, however, I continue to advocate a more aggressive approach. One of these is forward contracting. Our order finds that there has been an over reliance on spot markets in California, and that consumers have suffered from this. We rightly focus attention on the importance of forward contracts as a way for both buyers and sellers of power to hedge the risk of volatility in the ISO and PX spot markets, and we encourage state policymakers to remove unnecessary barriers to forward contracting. Our order says that we expect public utility sellers to offer a full range of forward contracts covering both short and long-term periods of time. I agree with these conclusions, but would like comment from parties to this proceeding on whether the Commission's final order should take additional steps to "kick start" the market for forward contracting.

Should we, for example, require sellers during the two-year mitigation window to forward contract with California load serving entities a certain percentage of their supply? In a recent pleading styled an Offer of Settlement, the California ISO suggests a forward contracting requirement of 70%. Should the Commission require a certain amount of forward contracting as a temporary measure to mitigate market power in spot markets? Should such an obligation be placed on sellers or buyers, or both? Should the Commission specify a certain level, or does this unnecessarily intrude into business arrangements? During our recent hearing in San Diego, Professor Frank Wolak, Chairman of the ISO's Market Surveillance Committee, suggested that the Commission define a forward contract of 18–24 months duration, set a just and reasonable price for such a contract, and attempt to reach agreement with the California PUC that purchasing such a contract would be deemed prudent. I would appreciate comments on the viability of this concept as well.

Another issue on which I would like comment from parties is our order's proposed $150/MWh ceiling on the market clearing price. Is this a sufficient consumer protection measure? This ceiling would last for 24 months. Our order concludes that in some hours, and particularly at high load levels when there is an imbalance between supply and demand, flawed market rules and a flawed market structure allow the exercise of market power that must be effectively mitigated. Under the proposed $150 ceiling, a generator that bids higher and is dispatched can receive the higher bid, so this is not a hard $150 cap, but this higher bid will not set the market clearing price, and the generator must file a report to allow the Commission to evaluate the bid. This $150 "soft cap" is designed to accommodate the marginal running costs for a combined cycle generating unit, dispatched roughly one third of the time, with an investment payback period of 5 years. It seems to me that these same assumptions, coupled instead with a 10 year payback period, might justify a $120 ceiling. Or the price of natural gas could fall, justifying a somewhat lower ceiling.

I would like comment on whether this soft cap is a good idea. Will it be an effective market power mitigation measure? Has the Commission balanced competing interests reasonably in choosing the $150 level? Should such a cap vary at different load levels or with the price of natural gas or No$_x$ credits? Commenters should keep in mind that today's order proposes to eliminate the ISO's purchase price cap authority, which is the only wholesale price mitigation protection customers have had, so the $150 soft cap should be evaluated with this in mind. Would a 24 month hard cap be more appropriate or would it deter entry of much-needed generation.

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[109] The court determined that the Commission had committed legal error.

[110] 15 U.S.C. § 717d (1994). Section 5 of the Natural Gas Act is analogous to section 206 of the FPA.

[111] In Exxon Co., U.S.A. v. FERC, 182 F.3d 30, 49 (D.C. Cir. 1999), the court held:

> The goals of equity and unpredictability are not undermined when the Commission warns all parties involved that a change in rates is only tentative and might be disallowed.* * * As we stated in [*Public Service Co. of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. Cir. 1996)], "[a]bsent detrimental and reasonable reliance, anything short of full retroactivity * * * allows [some parties] to keep some unlawful overcharges without any justification at all." 91 F.3d at 1490.

Our order deals with other important issues. With respect to the issue of retroactive refunds for last summer when prices were very high, our Office of General Counsel has prepared a legal memorandum that concludes that the Commission has no authority to order refunds for any period of time before October 2, 2000. I realize that this is an issue of utmost importance to the residents of California. This agency must act within the authority delegated by law, and the Congress has not given us this authority, according to our legal staff. Today's order concludes, however, that the Commission would consider any equitable remedies that parties wish to propose in this area. I interpret this language among other things to invite comment on the extent of the Commission's authority in the area of refunds. Has our legal staff reached the correct conclusion? Are there legal precedents or arguments that we have overlooked or misconstrued? This is such an important issue that we should use the comment period to ensure that we reach the correct conclusion with respect to the scope of our refund authority.

Finally, our order attempts to lay out the areas of concern that we believe are our responsibility under the Federal Power Act, including the justness and reasonableness of wholesale prices and ensuring the independent management of the transmission grid. But for the wholesale market to function well, California needs new generation and transmission capacity, and the siting of new facilities is clearly within the jurisdiction of the State of California. I know that I am stating the obvious, but I just want to make the point that we share jurisdiction over electricity regulation with the State of California. We must do our part, and the state must do its part to ensure that customers benefit from competition. I look forward to working with the State of California to ensure that consumers do in fact benefit from competitive markets that produce just and reasonable prices. That is what today's order is all about.

In conclusion, this is not a perfect order. I seek comment on whether we should take a more aggressive approach to certain issues. Going forward, this Commission must take each and every measure necessary to protect consumers from unjust and unreasonable prices. We must ensure that consumers benefit.

William L. Massey,
Commissioner.

Hébert, Commissioner, concurring:

Introduction

As much as I would like to offer a recitation that would be more to the liking of San Diegans, and sit as the most popular member of this Commission, my oath, taken almost exactly three years ago on this date, requires me to regulate in a forthright and intellectually honest fashion. We must provide supply and deliverability opportunities in America and, especially, in California. Worse than high prices, reliability concerns for the good people of California must be a priority.

Recent events demonstrate two things. California wholesale electricity markets require reform. And California ratepayers deserve relief.

In today's order, the Commission attempts to accomplish both tasks. Frankly, in my judgment, it is not altogether clear whether the Commission has moved in the direction of achieving its stated goals of reforming California markets and helping California ratepayers. If it were up to me, today's order would be much, *much* different.

Nevertheless, on balance, today's order appears to be a step in the right direction. For this reason, I hesitantly concur. However, there remains much uncertainty as to the practical effect of various remedial measures adopted in today's order. I can support the order only because it does not represent the last word; it is merely a "proposed" order. A technical conference and a round of comments from the public will follow. If, after listening to comment on the subject, I am convinced that the Commission has moved in the wrong direction—and I am perilously close to that conviction right now—I will not be hesitant to upset the basket of remedial measures adopted today.

I write separately to present for comment the basket of remedial measures I would adopt, if given the chance. I agree with today's order to the extent it explains that California electricity markets suffer from serious structural defects that inhibit the operation of a competitive market. I also agree that the current situation requires "decisive" action; otherwise, California markets will not move toward the goal we all agree on. The Commission needs to act now to ensure that energy suppliers have an incentive to enter capacity-starved California markets, that local utilities have strong reason to hedge against price risk, that entrepreneurs have a motivation to develop new products and technologies, and that consumers share a motivation to conserve.

I simply disagree with today's order with respect to its selection of corrective measures. Some will help; others will hurt. Others not selected would have helped more. The Commission should have stopped with corrective measures designed to remove impediments from the operation of a competitive market. Instead, unfortunately, it decided to go farther and adopted additional measures that prescribe with tremendous specificity how market institutions and market participants should act during the transition period to a fully competitive market. The majority of the Commission believes that various prescriptive measures will ease the pain felt by market participants during what it believes will be a two-year transitional period.

I believe, however, that the Commission's overreaching will only prolong the transition period for an indefinite period. If the Commission were truly committed to the competitive ideals articulated in today's order, it would have taken "decisive" action to ensure that California markets achieve those ideals as quickly as possible. Now is not the time for timidity. California ratepayers will benefit from the restructuring of the California energy market *only* when that market is allowed to operate without artificial restraints designed by regulators who believe that they know best how to serve energy customers.

I now proceed to explain the basket of remedial measures I would adopt to address the California electricity situation. I then explain those measures adopted by the Commission that I would not have adopted. I finish with a discussion of the Commission's attitude toward refunds.

Remedial Measures I Would Adopt

1. Eliminate All Price Controls

Today's order is filled with repeated references to the perceived need for "price mitigation." As a general matter, I find the concept of "price mitigation" to be an offensive one. Government should not be mitigating prices. It is ill-equipped to do so; its efforts invariably back-fire to the detriment of consumers. Rather, market participants—primarily energy suppliers and energy consumers—should be entrusted with the ability and the responsibility to mitigate their price exposure as they deem best.

This is a subject that I have written about in numerous dissents and concurrences over the past three years. Events in California demonstrate that my position is not merely academic or philosophical. In a report dated September 6, 2000, the Market Surveillance Committee of the California ISO concluded that price caps have little ability to constrain prices. Specifically, it noted that monthly average energy prices in California during June of this year, when the price cap was $750/MWh, were lower than monthly average energy prices during August of this year, when the price cap was $250/MWh—even though energy consumption was virtually the same in both months.

Moreover, the Commission's own Staff Report suggests that there is a direct correlation between lower price caps and higher consumer prices. Specifically, it finds that decreases in the ISO price cap this past summer were matched by increases in exports of electricity out of California during the same period. The resulting decrease in net imports, historically relied upon by California, is one of the principle reasons for the increase in wholesale electricity prices.

For these reasons, I am gratified that the Commission today decides to reject the price cap proposed by the PX and the purchase cap amendment filed by the ISO. I agree with the rest of the Commission that the price cap has served to keep sellers out of California markets and has inhibited the incentive of electricity purchasers to engage in forward contracting and thus hedge against price volatility and uncertainty.

Unfortunately, the Commission does not stop here. Instead, it proceeds to take additional "mitigation" action that belies its stated intention to allow competitive markets to send price signals to suppliers and customers.

2. Abolish the Single Price Auction

The Commission abandons a hard cap and imposes a soft cap in its place. This is accomplished through the Commission's modification of the single price auction. In today's order, the Commission creates two distinct categories of bids into the PX and ISO. Sellers bidding below $150/MWh will be subject to little scrutiny. Sellers bidding in excess of the $150 threshold, however, will be subject to tremendous scrutiny. Today's order explains in considerable detail all of the information the PX, ISO, and each seller must report for each bid in excess of $150. Moreover, the order states ominously that the purpose of the enhanced reporting requirements is not simply to monitor market behavior. Rather, it explains that the Commission will use this information "to adjust transaction prices, if necessary, to establish just and reasonable rates."

Thus, to me, the practical effect of today's modification to the single price auction is to clearly disfavor all bids in excess of $150. While the order states that the Commission is not preventing a supplier from bidding in excess of that number and receiving its bid, I doubt that suppliers will be anxious to take advantage of that opportunity and to incur the Commission's wrath. I ask for comment as to whether my doubts are shared by the industry.

I would simplify matters considerably. I would not select an arbitrary $150 figure and leave it in place for an equally arbitrary 24-month period. Instead, I would do what numerous participants in our California proceeding have been asking us to do—eliminate the single price auction altogether.

Despite its length, today's order is surprisingly silent as to the merit of abandoning the single price auction. (This is one of the remedial options identified in the Staff Report.) I fail to perceive any compelling reason why any bid should set the price for the entire market. If the market clearing price for the final increment of needed capacity is, say, $100 MWh, why should a supplier who bid a lower figure receive the same value as that afforded to the supplier of higher-priced increment? Similarly, if the market clears in excess of $100, why should that clearing price set the market price?

My preference is that sellers in California be paid what they bid, regardless of what that bid is, rather than the market clearing price. I can think of no other action that would be more effective in lowering rates to truly competitive levels.

3. Terminate the Mandatory Buy-Sell Requirement in the PX

This is one topic that the Commission gets right in most respects. Wholesale customers should have the ability to name their own price. The Priceline.Com model is, in its most basic form, applicable to wholesale electricity. Purchasers do not need the government to intercede to limit upside price risk. Rather, purchasers have the ability to do this for themselves, if government does not interfere to limit their ability to take advantage of financial instruments and contracting options.

Today's order concludes that the existing requirement that investor-owned utilities sell all of their generation into and buy all of their requirements from the PX contributes significantly to rates that are unjust and unreasonable. I agree. The Commission correctly removes this encumbrance to trading options. Load-serving utilities should have full opportunity to pursue a portfolio of long- and short-term resources and to reach whatever markets are best suited to meet the needs of their customers.

Unfortunately, in its zeal to promote hedging opportunities—a laudable goal to be sure—the Commission goes too far. I explain later in this statement my objection to the Commission's decision to dictate to market participants how best to manage risk.

4. Direct the ISO and PX to Address Remaining Impediments in Their January, 2001 RTO Filing

Today's order expends many pages addressing numerous other flaws in the California market design. Specifically, the order discusses reserve requirements, congestion management redesign, reliability and operational measures, governance structures, demand response, balance scheduling, generation interconnection, and market monitoring and mitigation. The Commission requires specific responses to certain of its concerns. It directs market institutions and participants to consider and report back on other concerns.

I am greatly concerned that the Commission, in its desire to appear active and engaged, is greatly undermining the ability of the ISO and PX to make its regional transmission organization (RTO) filing. That filing is due to be filed no later than January 16, 2001—only 2½ months from now. I have no problem with the Commission identifying its concerns in this order. However, I would ask the ISO and PX to take these concerns into account when they make their RTO filing. By asking the ISO and PX to act immediately on some measures, relatively soon (short-term) on other measures, and somewhat more leisurely (long-term) on still other measures, the Commission is greatly inhibiting the ability of the PX and ISO to respond effectively to their RTO filing obligation. The Commission is also hindering, and in some cases pre-judging, its ability to act on that filing once received.

Remedial Measures I Would Not Adopt

1. Modify the Single Price Auction

I have already explained my preference for abandoning, rather than modifying, the auction rules used by the PX and ISO. If the Commission insists on modifying, rather than terminating, the single price auction, I would offer a different modification.

Specifically, I would start the single price auction for all sale offers at or below $250 MWh. I would not lower the *de facto* price cap below the figure currently in place and previously approved (over my dissent) by the Commission. The Staff Report indicates (at 6–12) that the existing ISO cap already appears to be too low, and that it comes close to the variable costs (fuel and emissions) of a combustion turbine. The Report continues that a price cap at the existing level is unlikely to be high enough to attract new investment.

If the Commission is insistent that it must have a single price auction dollar figure in place, I would not leave it at that figure for the entire period of the transitional period. Rather, I would escalate that figure upward by specific amounts (say, $250 or $500 amounts) at specific intervals (say, every six months). In this manner, California market participants and institutions, in conjunction with California regulators and legislators, will have the incentive to respond *immediately* to the market design flaws identified in today's order. For example, the Commission has no authority to direct the state of California to expedite its siting and permitting procedures, or to drop remaining impediments to forward contracting. A price cap escalator, however, would act to spur all market players to adopt new and badly-needed remedial measures.

2. Disband Stakeholder Boards at This Time

I have no particular fondness for the stakeholder Governing Boards for the PX and the ISO. As today's order correctly explains, the decision-making process is overly complex, mired in controversy, and prone to excessive influence by special interest groups. In operation, the Boards function as little more than a debating society among various market participants. Their governance structure is no model for how a transmission grid or centralized exchange should be operated. The structure is certainly no model for how a competitive business should be run.

Despite all of my misgivings, I would not proceed, as the Commission does today, to dictate right now how the Governing Boards should be restructured. Governance and independence are topics, I presume, that the ISO and PX are vigorously debating as they prepare their RTO filing. They very well may decide to adopt the independent, non-stakeholder governance structure preferred by the Commission in today's order. But, then again, they may not. This is ultimately a matter to be addressed by the ISO and PX, after consultation with various market participants, in the first instance and for the Commission to consider only after receiving the California RTO filing.

By insisting upon a non-stakeholder structure right now, the Commission is betraying its principles as articulated in Order No. 2000. The Commission stated its preference for flexibility and initiative. It also indicated that what works well in one region of the country may not work as well in other regions. I have no idea whether the Boards of ISOs in New York, New England, and PJM would have responded any more effectively and independently than the California ISO and PX Boards, had they been presented with similar market problems. Today's order assumes that governance structures in the East would have operated more effectively than the existing governance structure in the West. I would make no such assumption.

Indeed, all of the Commission's articulated concern for independence and effective decision-making merely confirms my belief that by far the most independent and effective governance structure is that found in an independent transmission company. Despite my enthusiasm for a transco, I would not dare suggest that the Commission impose one on California right now in punishment for the conduct of the California Governing Boards this past summer.

Finally, the Commission is needlessly provoking a constitutional show-down. The Governing Boards are the product of legislative decisionmaking. As a practical matter, I doubt they can be replaced in the time frame contemplated in today's order. Moreover, left unexplained is what the Commission intends to do if the ISO and PX balk at the requirement to adopt immediately a non-stakeholder governance structure. This is precisely the reason why the governance structure should be negotiated and worked out in the context of the collegial RTO process—not determined immediately by regulatory fiat.

3. Dictate to Market Participants How Best to Manage Risk

I share the Commission's enthusiasm for risk management and forward contracting. A prudent utility, I assume, would spread out its risk and procure a diversified portfolio of contracts. This Commission and the California Commission, to the extent possible, should encourage the scheduling of load in forward markets (daily, weekly, monthly, annually, etc.) and should discourage scheduling in real-time (spot) markets. California utilities that failed to take advantage of forward contracting options, because of inattentiveness or regulatory inhibitions, were badly burned this past summer when real-time electricity prices sky-rocketed.

Nevertheless, I draw the line at dictating to market participants precisely how much of their transactions to schedule in forward markets and how much to schedule in real-time markets. I have no basis for assessing what an optimal allocation between forward and real-time scheduling should look like. I believe that no single risk allocation portfolio is appropriate for all market participants. And I believe that no market participant should be locked into a particular allocation method once established. This is, ultimately, a decision to be made by market participants based upon their own risk tolerance and their own evaluation of competitive and financial opportunities. (Hopefully, market participants will be able to make such a decision now that the Commission is eliminating the mandatory buy-sell requirement in the PX.)

I understand that there is a fine line between managing risk and operating in a reliable manner. The Commission justifiably raises a concern in today's order that underscheduling of load and generation in day-ahead and day-of markets forces the ISO to operate an energy market and places system reliability at risk. However, the answer to this concern is not to compel market participants to schedule 95 percent or more of their transactions in forward markets. Rather, I would prefer to direct the ISO and PX to address the underscheduling issue in their forthcoming RTO filing.

Refunds

I choose to close with a discussion of refunds, so as to stress the importance of this issue.

The Commission needs to be honest and forthright with California ratepayers on the subject of refunds. It is a basic premise of responsible government that the American public should know precisely where their elected and appointed officials stand. This is particularly true in California, as the Commission has promised in its orders and in its hearings that it would decide quickly and decisively whether to order refunds.

I believe that the Commission has failed as to this basic responsibility. It is now November 1, and California ratepayers are no closer to a final decision on their claim to refunds for perceived overcharges during the summer. Today's order employs mushy and confusing language on the subject of refunds, indecipherable to all but the most devoted of FERC insiders. I would be more direct.

As for refunds for past periods, today's order concludes that legal authority offers "strong support" for the proposition that the Commission lacks authority to order retroactive refunds. I would not be so equivocal. The Federal Power Act rests on a legislative preference for rate certainty. Refunds and rate revisions, absent a utility filing, are reserved for periods subsequent to the filing of a customer complaint or the initiation of a Commission proceeding.

I discern no exception for market-based (as opposed to stated) rates.

I fail to see how the Commission, even if it wanted to order refunds for prices charged to San Diegans during the summer of 2000, could do so in the present circumstances. Neither the Staff Report nor today's order contains any finding that any power supplier exercised market power or otherwise engaged in inappropriate behavior. Indeed, neither the Staff Report nor the order reaches definite conclusions about any seller or category of sellers. In these circumstances, how could the Commission order individual sellers or categories of sellers to make refunds, much less allocate responsibility for refunds among sellers?

Curiously, the Commission does state in a footnote that it is willing to consider "other forms of equitable relief" to mitigate the "severe financial consequences of last summer's high prices." Frankly, I do not know what this statement means. If the Commission intends to suggest that it enjoys the power to do indirectly what it cannot do directly—*i.e.*, exercise its considerable powers of persuasion to motivate power suppliers to reimburse buyers in some respect—then I reject that suggestion as legally unfounded.

As for refunds for future periods, today's order informs power suppliers that their sales into California ISO and PX markets are now "subject to refund." I addressed the practical effect of "subject to" language in my concurrence to the August 23 order initiating the Commission's investigation into California markets. 92 FERC at 61,611. I believe that the inclusion of "subject to" language will act to exacerbate supply deficiencies in California. This is because power suppliers, uncertain whether the Commission later may decide to alter the rate they have charged, justifiably will decide to sell their capacity in markets outside California. This will only accelerate the exodus of power outside California, a factor recognized by the Staff Report as contributing to the summer increase in the wholesale price of electricity.

I also have serious reservations about conditioning market-based rate authorization on maintaining a "subject to refund" obligation through the end of 2002. This has the practical effect of extending the refund protection under section 206 of the FPA for a total of 27 months of protection. In contrast, section 206 is explicit that, absent dilatory behavior of the type not present here, refund relief may extend only 15 months from the refund effective date established by the Commission (here, October 2, 2000).

To address credible claims of anticompetitive behavior, I would employ the Federal Power Act as it was drafted and promulgated, not as it arguably should be revised to recognize modern-day power sales. I continue to believe that the Commission should act vigorously to detect and remedy real abuses of market power. If a complaint or Commission staff-initiated investigation can establish, to the Commission's satisfaction, such an abuse, the Commission should order refunds prospective from the date of that complaint or investigation. By directing the imposition of a "subject to refund" condition on California sellers of power, the Commission now goes beyond the limitations of the FPA by allowing for the potential award of refunds for conduct prior to the filing of a complaint or the initiation of an investigation.

Next Tuesday represents the most political day of our American heritage. It is our birthright as Americans. Today, there is no room for politics. The question is not whether or not I want to give refund relief to California ratepayers. I do, but I want to follow the law. I am certainly not above it.

Conclusion

In conclusion, there is much I like and much I dislike about today's order. I believe that it is important to keep the process moving forward and to inform California ratepayers and officials of our judgments as soon as possible. I look forward to public input. I remain committed to respond to the needs of California ratepayers in a balanced manner that, hopefully, will allow them to enjoy the benefits of a competitive market as quickly as possible.

For all of these reasons, I respectfully concur.

Curt L. Hébert, Jr.,

Commissioner.

[FR Doc. 00–28447 Filed 11–2–00; 2:57 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–000, EL00–98–000, EL00–107–000, ER00–3461–000, ER00–3673–000]

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents;Investigation of Practices of the California Independent System Operator and the California Power Exchange; Public Meetng in San Diego, California; California Power Exchange Corporation; California Independent System Operator Corporation; Order specifying time of conference and procedure for seeking participation

Issued November 1, 2000.

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

In this order, the Commission specifies the time and place for the November 9, 20009 public conference announced by Commission order on October 19, 2000, [1] and the procedure for interested persons to follow in seeking participation in the conference.

Background

On October 19, 2000, in the consolidated dockets listed above, the Commission issued an order announcing in advance the procedures it expects to follow over the coming weeks to move forward in these proceedings. Among other things, the Commission indicated that it expected to hold a public conference on November 9, 2000 to discuss proposed remedies and stated that a separate order would be issued to specify the date and time of the conference and the manner for seeking participation in the conference.

Discussion

Time and Place of Conference

The Commission announces that it will convene a public conference to be held on Thursday, November 9, 2000, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will commence at 9 a.m. and will be open to all interested persons.

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[1] San Diego Gas & Electric Company, *et al.*, 93 FERC ¶61,051 (2000).

Participation in Conference

Persons wishing to speak at the conference must submit a request to make a statement in the above-captioned dockets. The request should be submitted by e-mail to David Boergers at *david.boergers@ferc.fed.us* (include Docket No. EL00–95–000 in the subject heading of the e-mail), and should be followed up, at the same time, with a letter to the Secretary of the Commission. The request should clearly specify the name of the person desiring to speak, his or her title and affiliation, and the party or parties the speaker represents. In addition, the request should include a telephone number for notifying the speaker. The request should also include a brief summary of the issue or issues the speaker wishes to address, not to exceed one page. All e-mail requests must be submitted on or before Friday, November 3, 2000.

The number of persons desiring to speak at the conference may exceed the time available. Thus, interested persons are encouraged to join with other persons with similar interests. Based on the requests to participate, panels of speakers will be specified. The Secretary will issue a notice listing the speakers and panels for the conference.

In addition, all interested persons are invited to submit written comments on matters addressed at the conference. These comments should be submitted on or before November 22, 2000, in the above-captioned proceedings. All comments will be placed in the Commission's public files and will be available for inspection or copying in the Commission's Public Reference Room during normal business hours. Comments are also accessible via the Commission's Records Information Management System (RIMS).

The conference will be transcribed. Information about obtaining transcripts will be provided on the Commission's website, www.ferc.fed.us.

The Capitol Connection will offer this conference live over the Internet, as well as via telephone and satellite. For a reasonable fee, you can receive these meetings in your office, at home or anywhere in the world. To find out more about The Capitol Connection's internet, phone bridge or satellite coverage, contact David Reininger or Julia Morelli at 703–993–3100 or visit the website (*www.capitolconnection.org*).

In addition, National Narrowcast Network's Hearing-On-The-Line service will cover this conference live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call 202–966–2211.

Anyone interested in purchasing videotapes of the conference should call VISCOM at 703–715–7999.

The Commission Orders

The Commission hereby orders that a public conference be convened on Thursday, November 9, 2000, at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 00–28446 Filed 11–2–00; 2:57 am]

BILLING CODE 6717–01–M

Federal Register

Wednesday,
November 8, 2000

Part III

Environmental Protection Agency

40 CFR Part 148, et al.

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, 271, and 302

[SWH–FRL–6882–6]

RIN 2050–AD85

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is listing as hazardous two wastes generated by the chlorinated aliphatics industry. EPA is finalizing these regulations under the Resource Conservation and Recovery Act (RCRA), which directs EPA to determine whether certain wastes from the chlorinated aliphatics industry may present a substantial hazard to human health or the environment. The effect of listing these two wastes is to subject them to stringent management and treatment standards under RCRA and to subject them to emergency notification requirements for releases of hazardous substances to the environment. EPA is finalizing a contingent-management listing approach for one of these wastes. Under the contingent management listing determination, the waste will not be a listed hazardous waste, if it is sent to a specific type of management facility. EPA also is finalizing determinations not to list as hazardous four wastes generated by the chlorinated aliphatics industry.

EFFECTIVE DATE: This final rule is effective May 7, 2001.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–2000–CALF–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the beginning of the Supplementary Information section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For information on specific aspects of the rule, contact Ross Elliott of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. [E-mail address and telephone number: elliott.ross@epamail.epa.gov, (703) 308–8748.]

SUPPLEMENTARY INFORMATION: Wherever "we" is used throughout this document, it refers to the Environmental Protection Agency (EPA).

The index and some supporting materials for this rulemaking are available on the Internet. Follow these instructions to access these documents.

WWW: http://www.epa.gov/epaoswer/hazwaste/id
FTP: ftp.epa/gov
Login: anonymous
Password: your Internet address
Files are located in /pub/gopher/OSWRCRA

EPA will keep the official record for this action in paper form. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

The contents of the preamble to this final rule are listed in the following outline:

- I. Who Potentially Will Be Affected By Today's Final Rule?
- II. What Is The Legal Authority and Background of Today's Final Rule?
  - A. What Are the Statutory Authorities for This Rule?
  - B. Schedule Suit
- III. Summary of Today's Action
- IV. What Proposed Listing Determinations Led to Today's Final Rule?
  - A. What was the Proposed Listing Determination for Chlorinated Aliphatic Wastewaters?
  - B. What Were the Proposed Listing Determinations for Wastewater Treatment Sludges?
  - C. Which Constituents did EPA Propose to Add to Appendix VIII of 40 CFR part 261
  - D. What Were the Proposed Treatment Standards Under RCRA's Land Disposal Restrictions Standards?
  - E. What Risk Assessment Approach was used for Proposed Rule?
- V. What Changes Were Made to the Proposed Rule?
  - A. Listing Determination for Chlorinated Aliphatic Wastewaters
  - B. Modification of Wastewater Treatment Unit Exemption and Application of Subpart CC Requirements for Tanks Managing Chlorinated Aliphatic Wastewaters
  - C. Landfill Leachate Derived From Previously Disposed VCM–A Wastewater Treatment Sludges
- VI. What Is the Rationale for Today's Final Rule, and What are EPA's Responses to Comments?
  - A. Chlorinated Aliphatic Wastewaters (other than wastewaters from the production of VC–A using mercuric chloride catalyst in an acetylene-based process)
  - B. Wastewater Treatment Sludges from the Production of EDC/VCM
  - C. Wastewater Treatment Sludges and Wastewaters from the Production of VCM–A
  - D. Wastewater Treatment Sludges from the Production of Methyl Chloride
  - E. Wastewater Treatment Sludges from the Production of Allyl Chloride
  - F. What is the Status of Landfill Leachate Derived from Newly-listed K175?
  - G. Population Risks
  - H. Which Constituents are Being Added to Appendix VIII of 40 CFR part 261?
  - I. What are the Land Disposal Restrictions Standards for the Newly-Listed Wastes?
  - J. Is There Treatment Capacity for the Newly-Listed Wastes?
- VII. What is the Economic Analysis of Today's Final Rule?
  - A. What is the Purpose of the Economic Analysis?
  - B. How Did the Public Participate in the Economic Analysis?
  - C. What are the Expected Economic Impacts of this Final Rule?
- VIII. When Must Regulated Entities Comply With Today's Final Rule?
  - A. Effective Date
  - B. Section 3010 Notification
  - C. Generators and Transporters
  - D. Facilities Subject to Permitting
- IX. How Will This Rule be Implemented at the State Level?
  - A. Applicability of Rule in Authorized States
  - B. Effect on State Authorizations
- X. What Are the Reportable Quantity Requirements For Newly-Listed Wastes (K174 and K175) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)?
  - A. What is the Relationship Between RCRA and CERCLA?
  - B. Is EPA Adding Chlorinated Aliphatic Wastes to the table of CERCLA hazardous substances?
  - C. How Does EPA Determine Reportable Quantities?
  - D. When Do I Need to Report a Release of K174 or K175 Under CERCLA?
  - E. What if I Know the Concentration of the Constituents in My Waste?
  - F. How Did EPA Determine the RQs for K174 and K175 and Their Hazardous Constituents?
  - G. How Do I Report a Release?
  - H. Is CERCLA Reporting Required for Spills of EDC/VCM Wastewater Treatment Sludge That (Prior to the Spill) Does Not Meet the Listing Description for K174?
  - I. What is the Statutory Authority for This Program?

- XI. What Are the Administrative Assessments?
  - A. Executive Order 12866
  - B. Regulatory Flexibility Act
  - C. Paperwork Reduction Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children from Environmental Risks and Safety Risks
  - H, National Technology Transfer and Advancement Act of 1995
  - I. Executive Order 12898: Environmental Justice
  - J. Congressional Review Act

I. Who Potentially Will Be Affected by Today's Final Rule?

Today's final rule could directly affect those who generate and handle the types of chlorinated aliphatic hydrocarbon production wastes that EPA is adding to the Agency's list of hazardous industrial wastes under RCRA. Although there are an estimated 39 chlorinated aliphatic hydrocarbon chemical manufacturing facilities in the United States as of 1999, the K174 and K175 listing final rule only applies to 18 of these facilities (17 for the K174 listing and one for the K175 listing), which manufacture two such chemicals; ethylene dichloride (EDC) and vinyl chloride monomer (VCM). Furthermore, because of the final rule's "conditional listing" approach, in comparison to current (baseline) waste management practices in this industry, EPA anticipates that three of the 18 chemical manufacturing facilities subject to the final rule as generators of K174 and K175 hazardous wastes, will incur costs to modify their current waste management practices, while the remaining 15 facilities will incur only minimal regulatory costs, primarily associated with documentation of current waste management practices. In addition, EPA anticipates that four industrial waste management facilities also will be affected by the final rule due to potential changes in the annual quantities of hazardous wastes handled and associated changes to business revenues that will be the result of modifications to current waste management practices to comply with the provisions of today's final rule.

In addition to waste generators targeted by the rule, because of RCRA's "cradle-to-grave" statutory design, EPA anticipates that four waste handlers (three for the K174 listing and one for the K175 listing) are likely to experience "induced effects" from this final rule. In addition, EPA's regional offices and states with RCRA-authorized programs potentially will incur some costs because they must administer new RCRA listings. Several additional stakeholders also will have to read the final rule.

As defined in the Economics Background Document prepared for today's final rule, "targeted effects" are the anticipated costs of the final rule incurred by the unique class of industrial facilities that generate the newly listed hazardous wastes K174 and K175. "Induced effects" are anticipated costs of direct, indirect or secondary impacts the final rule may have on entities linked economically to the targeted facilities such as offsite waste management facilities, and on entities which are likely affected by other generic provisions of the final rule, such as states with RCRA authorized programs which will implement and enforce the rule. "Incidental effects" are anticipated consequential impacts on other types of entities, such as on other chemical manufacturers (to read the rule), other Federal agencies (to read the rule), and other non-governmental organizations (such as industry trade associations to read and propagate the rule to its member companies).

EPA's estimate of expected regulatory costs for these 116 potentially affected entities, is described in EPA's "Economics Background Document'(USEPA 2000a)[1] for this final rule, which is available for public review from the RCRA Docket. A summary of the potentially affected industry sectors (by respective SIC and NAICS codes) is displayed in the table below.

SUMMARY OF ENTITIES POTENTIALLY AFFECTED BY THE RCRA K174/K175 FINAL RULE

Item	Economic sector classification			Number entities potentially affected			
	SIC	NAICS	Description	Targeted	Induced	Incidental	Total
1	2869	32511	Industrial organic chemical manufacturers* (waste generators).	18	0	21	39
2	4953	562211	Hazardous waste treatment & disposal (waste handlers).	0	4	0	4
3	9511	92411	State government environmental departments (public administration).	0	49	0	49
4	9511 9611 9621	92411 92611 92612	Federal government offices (environmental, economic & transportation public administration).	0	11	1	12
5	8742	54161	Management consulting services (non-governmental organizations).	0	0	12	12
			Total	18	64	34	116

Explanatory Notes:
(a) *Parent company codes may differ from the codes associated with the facility units targeted by the rule.
(b) This list of sector classification codes for "induced effect" entities may not be exhaustive for at least two reasons:

- Non-hazardous and hazardous industrial waste collection transporters (SIC 4212, 4953, NAICS 562111, 562112) may be affected, depending upon whether waste collected from K174/K175 generators is transported by waste treatment/disposal facilities, or by separate, unaffiliated transporter companies.
- If waste remediation is required, such entities may be affected (SIC 4959, NAICS 56291).

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[1] USEPA. 2000a. Economics Background Document, USEPA Final Rule Listing Industrial Wastewater Treatment Sludges Generated by Chlorinated Aliphatic Chemical Manufacturing Facilities, as RCRA Hazardous Wastecodes K174 & K175: Industry Profile and Estimation of Regulatory Costs. Office of Solid Waste. 31 July.

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. To determine whether your facility is regulated by this action, you should examine 40 CFR part 260 and 261 carefully in concert with the rules amending RCRA that are found at the end of this **Federal Register** notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

II. What Is the Legal Authority and Background of Today's Final Rule?

A. What Are the Statutory Authorities for This Rule?

These regulations are being promulgated under the authority of sections 2002(a), 3001(b), 3001(e)(2) and 3007(a) of the Solid Waste Disposal Act, 42 U.S.C. 6912(a), 6921(b) and (e)(2), and 6927(a) as amended several times, most importantly by the Hazardous and Solid Waste Amendments of 1984 (HSWA). These statutes commonly are referred to as the Resource Conservation and Recovery Act (RGRA), and are codified at Volume 42 of the United States Code (U.S.C.), sections 6901 to 6992(k) (42 U.S.C. 6901–6992(k)).

Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a) is the authority under which the CERCLA aspects of this rule are being promulgated.

B. Schedule Suit

In 1989, the Environmental Defense Fund (EDF)[2] sued the Environmental Protection Agency (EPA), in part for failing to meet the statutory deadlines of Section 3001(e)(2) of RCRA (EDF vs. Browner; Civ. No. 89–0598 D.D.C.). To resolve most of the issues in the case, EDF and EPA entered into a consent decree, which has been amended several times to revise dates. The consent decree sets out deadlines for promulgating certain RCRA rules and for completing certain studies and reports. The consent decree obliges EPA to propose a hazardous waste listing determination for wastewaters and wastewater treatment sludges generated from the production of specified chlorinated aliphatic chemicals. The wastewater and wastewater treatment sludges subject to the consent decree are those from the production of chlorinated aliphatics for which other process wastes already have been designated as hazardous waste F024 in 40 CFR 261.31. According to the consent decree, EPA was required to propose listing determinations by July 30, 1999 and promulgate final listing determinations on or before September 30, 2000. Today EPA is promulgating listing determinations for these wastes in accordance with the consent decree.

III. Summary of Today's Action

In today's notice, EPA is promulgating regulations that add two wastes generated by the chlorinated aliphatics industry to the list of hazardous wastes in 40 CFR 261.32. Below are the wastestreams EPA is listing as hazardous with their corresponding EPA Hazardous Waste Numbers.

K174 Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (EDC/VCM)
K175 Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process

EPA is listing these wastes as hazardous based on the criteria set out in 40 CFR 261.11(a)(3) for listing a waste as hazardous. EPA assessed and considered these criteria for each of six wastestreams generated by the chlorinated aliphatics industry through the use of risk assessments and risk modeling, as well as a consideration of other pertinent factors. Today's final listing determination follows the elements of the Agency's listing decision policy that was presented in the proposed listing determination for wastes generated by the dye and pigment industries published in the **Federal Register** on December 22, 1994 (see 59 FR at 66073). This policy uses a "weight-of-evidence" approach in which calculated risk information is a key factor considered in making a listing determination.

Upon the effective date of the hazardous waste listings promulgated today, wastes meeting the listing descriptions will become hazardous wastes and need to be managed in accordance with RCRA subtitle C requirements. Residuals from the treatment, storage, or disposal of the wastewater treatment sludges proposed to be listed as hazardous also will be classified as hazardous wastes pursuant to the "derived-from" rule (40 CFR 261.3(c)(2)(i)). Also, with certain limited exceptions, any mixture of a listed hazardous waste and a solid waste is itself a RCRA hazardous waste (40 CFR 261.3(a)(2)(iv), "the mixture rule").

In today's notice, the Agency is promulgating an alternative approach to listing wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (EDC/VCM), rather than listing this waste in accordance with the Agency's traditional listing approach. The Agency is promulgating a conditional listing approach because the Agency evaluated the ways in which the wastes are likely to be managed and determined that the waste may present significant risks to human health and the environment, although it concluded that a particular waste management practice is protective of human health and the environment. Under the conditional listing approach, EPA is listing the waste as hazardous only if the waste is managed in a way other than the manner in which the Agency has determined is protective of human health and the environment. In developing this conditional-listing approach, the Agency has determined that wastes that fall outside the scope of the listing description (e.g., are destined for the appropriate type of disposal) are non-hazardous when generated. However, if it turns out that the waste actually is not handled in accordance with the conditions of the listing at any point in its management, the generators or other handlers of the waste will be subject to enforcement actions. The conditional-listing approach being promulgated today for certain wastes generated from chlorinated aliphatics processes is further discussed in section VI.B. of today's rule.

Today's action also promulgates no list decisions for the following four wastes:

- Process wastewaters from the production of chlorinated aliphatics (other than wastewaters from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process),
- Process wastewaters from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process,
- Wastewater treatment sludges from the production of methyl chloride, and
- Wastewater treatment sludges from the production of allyl chloride.

EPA considers the listing criteria set out in 40 CFR 261.11, in light of information relevant to the criteria, in making listing determinations. The criteria provided in 40 CFR 261.11 include eleven factors for determining whether a waste is capable of posing a "substantial present or potential hazard to human health and the environment." Nine of these factors, as described

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[2] Now known as Environmental Defense.

generally below, are directly incorporated into EPA's completion of a risk assessment for the wastestreams of concern:

- Toxicity (§ 261.11(a)(3)(i)) is considered in developing the health benchmarks used in the risk assessment modeling.
- Constituent concentrations and waste quantities (§§ 261.11(a)(3)(ii) and 261.11(a)(3)(viii)) are used to define the initial conditions for the risk evaluation.
- Potential to migrate, persistence, degradation, and bioaccumulation of the hazardous constituents and any degradation products (§§ 261.11(a)(3)(iii), 261.11(a)(3)(iv), 261.11(a)(3)(v), and 261.11(a)(3)(vi)) are all considered in the design of the fate and transport models used to determine the concentrations of the contaminants to which individuals are exposed.

We consider two of the remaining factors, plausible mismanagement and other regulatory actions (§§ 261.11(a)(3)(vii) and 261.11(a)(3)(x)) in establishing the waste management scenario(s) modeled in the risk assessment.

EPA conducted analyses of the risks posed by wastewaters and wastewater treatment sludges from the production of chlorinated aliphatic chemicals to assist in the determination of whether the wastes meet the criteria for listing set forth in 40 CFR 261.11(a)(3). In the preamble to the proposed rule (64 FR 46476), we discussed the human health risk analyses and ecological risk screening analyses EPA conducted to support our proposed listing determinations for chlorinated aliphatics wastewaters, EDC/VCM wastewater treatment sludges, and methyl chloride wastewater treatment sludges. These analyses, as well as comments EPA received on the analyses, are further discussed in this notice in section VI below. We considered the results of the risk analyses, as well as comments received, and the results of analyses conducted in response to information provided by public commenters in finalizing our listing decisions for each wastestream. The risk analyses conducted in support of our proposed listing determination are presented in detail in the Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination and in the 1999 Addendum to Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination which are located in the docket for the proposed rule. Additional information and analyses conducted with regard to our original risk assessment in response to comments received on our proposed rule are included in the September 2000 Addendum to Risk Assessment Background Document for the Chlorinated Aliphatics Listing Determination. This document is located in the docket for today's final rule.

IV. What Proposed Listing Determinations Led to Today's Final Rule?

In the August 25, 1999 proposed rule (64 FR 46476), EPA proposed to list three wastes generated by the chlorinated aliphatics production industry as hazardous wastes under RCRA. The wastes the Agency proposed to list as hazardous included chlorinated aliphatics manufacturing process wastewaters, wastewater treatment sludges generated from the treatment of wastewaters from the production of ethylene dichloride and/or vinyl chloride monomer (EDC/VCM), and wastewater treatment sludges from the treatment of wastewaters from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process (VCM–A). EPA proposed a conditional listing approach for EDC/VCM wastewater treatment sludges, based upon available information regarding the management of these sludges and the results of the Agency's risk assessment.

In connection with the proposed listings, EPA proposed to amend Appendix VIII of 40 CFR Part 261 to add two constituents, octachlorodibenzo-p-dioxin (OCDD) and octachlorodibenzofuran (OCDF). These constituents are found in chlorinated aliphatic wastewaters and in EDC/VCM wastewater treatment sludges.

In the proposed rule, the Agency also proposed not to list as hazardous wastewater treatment sludges generated from the treatment of wastewaters from the production of methyl chloride and the production of allyl chloride. In addition, the Agency proposed not to list process wastewaters from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process.

The Agency proposed to add to the list of CERCLA hazardous substances those wastes that were proposed to be listed as hazardous. EPA also proposed adjusted Reportable Quantities (RQs) for each waste.

A. What Was the Proposed Listing Determination for Chlorinated Aliphatic Wastewaters?

As explained in Section III.A.1. of the proposed rule (64 FR 46479), the Agency segregated wastewaters from the chlorinated aliphatics industry into two waste groupings. Based upon current waste management practices, we grouped all chlorinated aliphatic wastewaters, except for those wastewaters generated from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process, into a single waste category for the listing determination investigation. We decided to study these wastewaters collectively because most chlorinated aliphatic manufacturers commingle wastewaters generated by individual processes prior to treating the wastewaters in a common wastewater treatment system. In addition, many process wastewaters generated from the production of chlorinated aliphatic hydrocarbons contain similar constituents of concern.

EPA proposed to list as hazardous process wastewaters generated from the production of chlorinated aliphatic hydrocarbons (other than those wastewaters generated from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process). Results of the risk assessment conducted in support of the proposed rule, indicated that the wastewaters met the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous. Risk assessment results identified risks of concern associated with air releases of dioxins from wastewater treatment systems using aerated biological treatment in open tanks.

EPA proposed not to list as hazardous process wastewaters generated from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process (VCM–A wastewaters). EPA proposed not to list this waste as hazardous due to the fact that the wastewater exhibits the toxicity characteristic for both mercury and vinyl chloride. Therefore, the wastewater already is defined as hazardous waste. In addition, any risks associated with the management and disposal not addressed by RCRA (*i.e.*, direct discharge) of the wastewaters are addressed by other environmental regulations. With respect to the discharge of this wastewater, the facility treats and discharges the wastewater in compliance with the conditions of a NPDES permit. Regarding any air emissions of vinyl chloride from these wastewaters, vinyl chloride is a hazardous air pollutant, therefore the facility is subject to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) requirements specific to vinyl chloride emissions (40 CFR 61.65), as well as the Hazardous

Organic NESHAP for the synthetic and organic chemical manufacturing industry sector (40 CFR Part 63, subpart G)(59 FR 19468, April 22, 1994). For these reasons, the Agency proposed not to list VCM–A wastewaters as hazardous waste.

B. What Were the Proposed Listing Determinations for Wastewater Treatment Sludges?

1. EDC/VCM Wastewater Treatment Sludges

EPA proposed to list as hazardous sludges generated from treating wastewaters from the production of ethylene dichloride (EDC) and/or vinyl chloride monomer (VCM). The Agency proposed to list this waste due to the fact that the Agency identified risks of concern associated with the management of this waste in a land treatment unit. Our risk assessment identified dioxin and arsenic as contaminants of concern, and found that high-end cancer risk to the farmer receptor from dioxin was 2E–04. The dioxin risks are associated with airborne releases and subsequent deposition and food chain contamination from dioxin. Surface erosion due to runoff also contributes to risk from dioxin. The risk assessment results for the land treatment unit scenario indicated a risk level above EPA's levels of concern for dioxin.

The risk assessment for EDC/VCM wastewater treatment sludges also included modeling a landfill management scenario. Our risk assessment showed no significant risk from dioxin, and only marginal risk from arsenic associated with the groundwater pathway. Based upon the Agency's findings that EDC/VCM wastewater treatment sludges pose significant risks when managed in land treatment units but do not pose significant risks when managed in landfills, the Agency proposed a "contingent management listing" for this waste. EPA proposed to list EDC/VCM wastewater treatment sludges as hazardous, unless the sludges are managed in landfills.

As explained in the proposal, the Agency believes that allowing the waste to continue to be managed under a low risk management scenario (*i.e.*, non-hazardous waste landfilling) outside of the subtitle C system achieves protection of human health and the environment, and that little additional benefit will be gained by requiring that all EDC/VCM wastewater treatment sludges be managed in accordance with RCRA subtitle C management standards. Given the Agency's finding that no significant risks are posed from managing EDC/VCM wastewater treatment sludges in a landfill, the Agency sees no reason to include sludges managed in this manner in the scope of the hazardous waste listing. Additionally (and after consideration of the predicted risk differential between land treatment and landfilling), because only one facility identified in the RCRA 3007 Survey employs land treatment for these wastes, this practice is somewhat anomalous compared with land disposal. The Agency proposed that it does not make sense to apply a traditional listing approach (*i.e.*, list all wastes regardless of management practice) based upon a practice occurring at one facility, especially if a more tailored listing can prevent this risk.

2. VCM–A Wastewater Treatment Sludges

EPA proposed to list as hazardous wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process (VCM–A). EPA proposed to list this waste as hazardous based upon the fact that it exhibited the toxicity characteristic for mercury when sampled by the Agency and based upon the Agency's assessment of potential risks from this waste, given its high mercury content and given the uncertainties associated with the disposal of untreated wastes of potential high toxicity in lined landfills.

3. Methyl Chloride Wastewater Treatment Sludges

EPA proposed not to list as hazardous sludges from the treatment of wastewaters generated from methyl chloride production processes. The results of our risk assessment indicated that this waste does not pose a substantial present or potential hazard to human health or the environment. As explained in the proposal, EPA identified only one facility that generates sludges from the treatment of wastewaters from the production of methyl chloride and does not currently manage the waste as hazardous. This facility generates less than 800 metric tons of this sludge each year and disposes of the sludge in an on-site landfill along with other wastes from the facility. The landfill is lined and has a leachate collection system. The Agency analyzed potential risks from methyl chloride wastewater treatment sludge by modeling non-groundwater pathways and conducting a screening analysis for groundwater pathway risk. The Agency concluded that no significant risks are posed by the management of methyl chloride sludges in an on-site landfill.

4. Allyl Chloride Wastewater Treatment Sludges

EPA proposed not to list as hazardous sludges generated from treating wastewaters associated with the manufacture of allyl chloride. The Agency identified no risks of concern associated with the current management of the waste.

Only one facility generates wastewater treatment sludge from the production of allyl chloride, and this facility does not currently manage the sludge as hazardous waste. The sludge is generated from the treatment of commingled wastewaters managed at the facility's centralized wastewater treatment system. This wastewater treatment system is a non-dedicated system in that wastewaters from the facility's multiple production processes are discharged to the single system for combined treatment. Wastewaters from the production of allyl chloride contribute less than two percent to the system's total sludge loading. The sludge generated from the facility's wastewater treatment system is incinerated on site in a non-hazardous waste incinerator.

TCLP analyses of the sludge conducted by EPA indicated the presence of no TCLP constituents above regulatory levels. As explained in the proposal, the Agency does not anticipate any significant risk from the incineration of allyl chloride wastewater treatment sludge in a non-hazardous waste incinerator, since both the total arsenic level and the dioxin level detected in the sludge are well within typical soil background levels for these constituents.

C. Which Constituents Did EPA Propose To Add to Appendix VIII of 40 CFR Part 261?

EPA proposed to add two constituents, octachlorodibenzo-p-dioxin (OCDD) and octachlorodibenzofuran (OCDF) to the list of hazardous constituents at 40 CFR part 261, Appendix VIII. These two constituents of concern are present in the EDC/VCM wastewater treatment sludges and the chlorinated aliphatic wastewaters that the Agency proposed to list as hazardous. OCDD and OCDF are members of the large family of polychlorinated dioxins and furans. The Agency proposed to add these two dioxin congeners to Appendix VIII of 40 CFR part 261 because they are constituents of concern in the wastes proposed to be listed as hazardous, studies showed that OCDD and OCDF

have toxic effects and are therefore hazardous, and EPA also noted that OCDD and OCDF are the only congeners that make up 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD or "TCDD") toxic equivalence (TEQ) that are not currently listed in Appendix VIII.

D. What Were the Proposed Treatment Standards Under RCRA's Land Disposal Restrictions Standards?

In the proposal, EPA proposed to apply existing universal treatment standards (UTS) to the regulated hazardous constituents of concern in the wastes that were proposed to be listed as K173 (chlorinated aliphatic wastewaters) and K174 (EDC/VCM wastewater treatment sludges). For K175 (VCM–A wastewater treatment sludges), EPA proposed a metals recovery requirement, roasting and retorting, as the treatment standard. Since treatment residuals would exist after mercury recovery, EPA proposed the residuals meet existing UTS prior to land disposal. Information available to the Agency at the time of the proposal indicated that each of the wastes proposed to be listed as hazardous, as well as the treatment residuals, could be managed in existing treatment and reclamation units that routinely manage similar or as-difficult-to-treat hazardous wastes that currently are prohibited from land disposal. The BDAT background document provided detailed information on EPA's rationale for proposing to apply UTS to the wastes and for proposing a treatment standard of metals recovery to K175.

In the case of hazardous debris contaminated with proposed K173, K174 and K175, EPA proposed that the provisions in 40 CFR 268.45 apply to the treatment and disposal of hazardous debris. Hazardous debris treated in accordance with the provisions of 40 CFR 268.45 may be allowed for land disposal in a hazardous waste disposal facility. As a result, debris contaminated with proposed K173, K174, and K175 would be required to be treated prior to land disposal, using specific debris treatment technologies such as extraction, destruction, or immobilization. Residuals generated from the treatment of contaminated debris would have to meet the applicable UTS limits proposed for K173, K174, and K175.

In the case of proposed K175, EPA proposed an alternative treatment standard. The alternative standard proposed was to subject K175 to a numerical concentration limit of 0.025 mg/L TCLP mercury. Under the alternative proposal, K175 could be land disposed if a standard of 0.025 mg/L TCLP mercury is achieved using any technology other than impermissible dilution.

In the proposal, the Agency explained that the solubility of the mercury in K175 (in the form of mercuric sulfide) varies as a function of pH. In fact, above pH 6.0 the presence of sulfide complexes results in significantly increased solubility. Therefore, controlled treatment and disposal pH conditions were proposed to avoid mobilization of the mercury in the waste. To insure operational stability of the treatment process and proper long-term disposal, EPA proposed two conditions as part of the LDR treatment standards. First, the waste would have to be treated to (or otherwise be generated to meet) a pH of 6.0 or below. Second, EPA proposed that if K175 were to be co-disposed in a landfill with other wastes, co-disposal would be restricted to wastes with similar pH (*i.e.*, pH not greater than 6.0). EPA proposed that disposal facilities be required to certify and maintain operating records demonstrating compliance with this disposal condition.

EPA also proposed to add the numerical standards derived for the 1,2,3,4,6,7,8-heptachlorodibenzo-p-dioxin; 1,2,3,4,6,7,8-heptachlorodibenzofuran;, 1,2,3,4,7,8,9-heptachlorodibenzofuran; 1,2,3,4,6,7,8,9-octachlorodibenzo-p-dioxin (OCDD); and 1,2,3,4,6,7,8,9-octachlorodibenzofuran (OCDF) to the Table of Universal Treatment Standards (UTS) at 40 CFR 268.48. As explained in the proposal, these constituents have been shown to have the potential to cause significant risks to human health or the environment and their presence in wastes should be mitigated to avoid such potential risks. EPA proposed that all characteristic wastes which have these constituents as underlying hazardous constituents above the UTS be required to be treated to UTS levels for those constituents before land disposal.

Furthermore, EPA proposed that the constituents 1,2,3,4,6,7,8-heptachlorodibenzo-p-dioxin; 1,2,3,4,6,7,8-heptachlorodibenzofuran; 1,2,3,4,7,8,9-heptachlorodibenzofuran; OCDD; and OCDF be added to the list of regulated constituents in hazardous waste F039 multisource leachate. F039 applies to multiple listed hazardous waste landfill leachates in lieu of the original waste codes, and F039 wastes are subject to all numerical treatment standards applicable to all listed wastes. To maintain the regulatory implementation benefits of having one waste code for multisource leachate, the treatment standards for F039 must be updated to include the constituents of newly listed wastes.

E. What Risk Assessment Approach Was Used for the Proposed Rule?

EPA conducted human health risk analyses for chlorinated aliphatics wastewaters, EDC/VCM wastewater treatment sludges and methyl chloride wastewater treatment sludges that provided estimates of the incremental human health risks resulting from exposure to contaminants detected in these wastes. The incremental human health risks were expressed as estimates of excess lifetime cancer risk for carcinogenic (cancer-causing) contaminants and hazard quotients (HQs) for those contaminants that produce noncancer health effects.

EPA used two different methods of analysis to estimate risks. These methods are called "deterministic risk analysis" and "probabilistic risk analysis." A deterministic risk analysis produces a point estimate of risk or hazard for each receptor based on using a single value for each parameter in the analysis. A probabilistic analysis calculates risk or hazard by allowing some of the parameters to have more than one value, consequently producing a distribution of risk or hazard for each receptor.

EPA conducted both "central tendency" and "high end" deterministic risk assessments to attempt to quantify the cancer risk or non-cancer hazard for the typical receptor in the population (the central tendency risk) and the risk or hazard for individuals in small, but definable "high end" segments of the population (the high end risk). In the case of the central tendency deterministic risk analyses, we set all parameters at their central tendency values. For the chlorinated aliphatics risk assessments, the central tendency values generally were either mean (average) or 50th percentile (median) values.

We used high end deterministic risk analysis to predict the risks and hazards for those individuals exposed at the upper range of the distribution of exposures. EPA's Guidance For Risk Characterization (EPA 1995)[3] advises that "conceptually, high end exposure means exposure above about the 90th percentile of the population distribution, but not higher than the individual in the population who has the highest exposure," and recommends that "* * * the assessor should approach estimating high end by identifying the most sensitive variables and using high end values for a subset of these variables, leaving others at their central values." For the chlorinated aliphatics high end deterministic risk analyses, EPA set two parameters at their high end values (generally 90th percentile values), and set all other parameters at their central tendency values. We used a "sensitivity analysis" to identify the two parameters that we set at high end.

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[3] EPA. 1995. Guidance for Risk Characterization. U.S. Environmental Protection Agency Science Policy Council. February.

EPA used probabilistic risk assessment to support the results of the deterministic risk analyses and to allow us to quantify individual risk at selected percentiles of the risk distribution (for example, 50th percentile, 90th percentile, 95th percentile). EPA conducted probabilistic risk analyses for those combinations of receptor, contaminant, and pathway for which risk or hazard estimated using a high end deterministic analysis exceeded the following criteria: a cancer risk of 1×10^{-6} or a hazard quotient of 1. The Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination describes the input parameters used in the probabilistic analysis. In the probabilistic analysis, risk was approximated through repetitive calculation of the fate and transport and exposure equations and models using input parameters randomly selected from the Probability Density Functions (PDFs). The result of the probabilistic analysis is a distribution of the risks or hazards for each of the receptors.

The human health risk assessments that EPA conducted to support the chlorinated aliphatics listing determination included five primary tasks: (1) Establishing that there are constituents in the wastes that are of concern to the Agency and that warrant analysis to determine their risk to human health; (2) establishing a scenario under which contaminants are released from a waste management unit and subsequently are transported in the environment to a human receptor; (3) estimating the concentrations of contaminants to which the receptor might be exposed; (4) quantifying the receptor's exposure to contaminants and the contaminants' toxicity to the receptor; and (5) describing the receptor's predicted risk. The preamble to proposed rule provided a detailed discussion of how EPA completed each of these tasks for the risk assessments conducted to support the chlorinated aliphatics listing determination (see 64 FR 46483).

V. What Changes Were Made to the Proposed Rule?

As a result of comments and additional information provided to the Agency in response to the proposed rule, we made certain modifications to the risk modeling assumptions used in the risk assessment for the proposed rule. Changes made to the risk analysis resulted in changes in our risk assessment results. These changes subsequently caused us to re-evaluate, and in some instances change, our proposed listing determinations. These changes and the consequent scope of today's final action are described below. Detailed reasoning behind these changes and a summary of each of our final listing determinations is provided in Section VI.

A. Listing Determination for Chlorinated Aliphatic Wastewaters

In response to comments and information provided by commenters in response to the proposed rule, the Agency examined the record and reconsidered the risk assessment and proposed listing determination for chlorinated aliphatic wastewaters. Commenters to the proposed rule provided detailed comments on the risk assessment approach used to evaluate the potential risks from the management of chlorinated aliphatic wastewaters in aerated biological treatment tanks. These comments generally fell into one of six topic areas: concern about the waste management scenarios EPA evaluated; concern about the exposure scenarios EPA evaluated; EPA's methods for calculating exposure point concentrations; the way that EPA estimated exposure; EPA's assessment of contaminant toxicity; and EPA's characterization of estimated risks. To fully respond to critical issues raised by commenters, EPA decided to make modifications to some modeling assumptions and data inputs used in the risk assessment for the proposed rule. Modifications were made to fully consider the potential impacts of those issues raised by commenters that the Agency found to have merit. In addition, we evaluated the merits of other suggestions provided by commenters, and found these to be of no importance to the listing determination, or we disagreed with the suggested changes. Specifically, we agreed with commenters who pointed out that the intake rates that we used to calculate exposure to beef should have accounted for the mass of beef that is lost during cooking and post-cooking activities (for example, dripping and volatile losses, bones, excess fat, scraps, and juices). We also adjusted our analysis to reflect the variability of dioxin concentrations in air over an area that would be more consistent with the area of a pasture where cattle graze. In addition we were convinced by commenters that our modeling assumptions should have accounted for the removal of wastewater solids prior to wastewaters entering aerated biological treatment tanks.

After we accounted for these modifications, our adjusted risk assessment results indicated that the management of chlorinated aliphatic wastewaters in aerated biological treatment tanks do not pose substantial risks to human health and the environment. The Agency has concluded that available information provides sufficient basis to determine that chlorinated aliphatic wastewaters should not be listed as hazardous waste. A more detailed discussion of the issues raised by public commenters and the modifications made to our risk assessment results to account for some of these issues is provided in Section VI below.

The final listing determination for chlorinated aliphatic wastewaters is based upon EPA's consideration and review of public comments submitted in response to the proposed listing determination, and other relevant information available to the Agency and in the rulemaking record. The final determination is based on the Agency's evaluation as to whether the waste meets the criteria in 40 CFR 261.11(a)(3) for listing wastes as hazardous. We have assessed and considered the factors contained in these criteria primarily by incorporating them as elements in the revised risk assessment, which is based on the methodology described in the preamble to the proposed rule and subsequent modifications described in this preamble and the support documents in the rulemaking record. EPA bases its final listing determinations on the entire rulemaking record, including applicable sections of the preamble to the proposed rule, analyses and background documents developed for the proposed rule, the Agency's responses to the comments on significant issues raised in the preamble to the proposal, and all other relevant information available to the Agency.

B. Modification of Wastewater Treatment Unit Exemption and Application of Subpart CC Requirements for Tanks Managing Chlorinated Aliphatic Wastewaters

Because we are not finalizing the listing for chlorinated aliphatic wastewaters as proposed, the proposed amendments to regulations for tanks

managing chlorinated aliphatic wastewaters are not necessary and are not being finalized in today's rule. This includes the proposed amendments to the wastewater treatment unit exemption in 40 CFR 264.1 and 265.1, as well as the proposed amendments to the 40 CFR parts 264 and 265 subpart CC requirements for implementing the tank cover requirements and the waste sampling and analysis requirements.

C. Landfill Leachate Derived From Previously Disposed VCM–A Wastewater Treatment Sludges

In the proposal, EPA proposed amending the existing exemption from the definition of hazardous waste (40 CFR 261.4(b)(15)) to include leachate derived from non-hazardous waste landfills that previously accepted newly-listed VCM–A wastewater treatment sludges (K175). The Agency would have temporarily deferred the application of the new waste code to such leachate to avoid disruption of ongoing leachate management activities during a time period in which the Agency would decide how to integrate RCRA and CWA regulations governing the management of landfill leachate.

The Agency proposed the deferral because information available to EPA at the time of the proposal indicated that VCM–A wastewater treatment sludges may have been managed previously in non-hazardous waste landfills. However, information provided by the one generator of this waste in response to the proposed rule, indicates that since 1985 these sludges have not been disposed in a non-hazardous waste landfill. The generator has assured EPA that the VCM–A sludges always have been disposed in subtitle C landfills. Based upon this information, the Agency sees no need to finalize the proposed deferral for landfill leachate at this time.

The Agency is not finalizing (but is deferring a final decision on) the proposed temporary deferral for applying the new K175 waste code to leachate from non-hazardous waste landfills that previously accepted waste that meets the K175 listing description. Should the Agency receive information at a later date indicating that one or more non-hazardous waste landfills did accept this waste prior to the effective date of today's rulemaking, we may re-consider our decision not to finalize the proposed deferral.

VI. What is the Rationale for Today's Final Rule, and What Are EPA's Responses to the Comments?

A. Chlorinated Aliphatic Wastewaters (Other Than Wastewaters From the Production of VCM–A Using Mercuric Chloride Catalyst in an Acetylene-Based Process)

The sections that follow provide a discussion of the comments received by the Agency in response to the EPA's proposal to list chlorinated aliphatic wastewaters as hazardous waste, the Agency's response to these comments, and the impact of the comments on the Agency's evaluation of risk and the final listing determination.

1. Summary of the Agency's Listing Decision for Chlorinated Aliphatic Wastewaters

EPA is issuing a final decision not to list wastewaters from chlorinated aliphatic production processes. The Agency has determined that these wastewaters do not pose substantial risks when managed in aerated biological treatment tanks.

The Agency proposed to list chlorinated aliphatic wastewaters based upon an estimated high-end deterministic risk from dioxin for an adult farmer of 2E–05. As explained in more detail below, as a result of our analysis of information provided by commenters, we determined that it was appropriate to adjust our risk assessment results to account for certain factors not addressed in the risk assessment for the proposed rule. These factors include accounting for cooking and post-cooking losses for beef, assuming a more realistic size of the pasture (or field) supporting cattle that are indirectly exposed to dioxin emissions, and accounting for the potential for solids removal prior to wastewater treatment in aerated biological treatment tanks. After calculating these adjustments to our proposed risk assessment results, EPA found that they would reduce our high end deterministic risk estimate for the adult farmer. Specifically, accounting for cooking and post-cooking losses for beef would modify the risk estimate by a factor of 0.78, and accounting for a more reasonable pasture size would modify the risk estimate by a factor of approximately 0.50, resulting in an overall risk estimate of 7E–06. Accounting for solids removal from the wastewater prior to biological treatment could modify the overall risk estimate by an additional factor of 0.67 to 0.94, that is, could result in a risk estimate as low as 4E–06.

Given the Agency's finding, we are not finalizing the proposed amendment to the existing wastewater treatment unit exemption (40 CFR 264.1(g)(6) and 265.1(c)(10)). In addition, the Agency is not finalizing the proposed requirement that wastewater treatment units used to treat chlorinated aliphatic wastewaters comply with specific RCRA air emissions standards.

Today's decision not to list chlorinated aliphatic wastewaters applies to all chlorinated aliphatic wastewaters, including wastewaters managed in underground injection control units. As explained further below, in the case of chlorinated aliphatic wastewaters managed in surface impoundments, although the wastewaters are not listed hazardous wastes, sludges derived from EDC/VCM process wastewaters and generated in impoundments will meet the scope of the hazardous waste listing for EDC/VCM wastewater treatment sludges after the effective date of today's rule.

2. Response to Major Comments Received on Proposed Rule for Chlorinated Aliphatic Wastewaters

EPA received comments on a number of issues concerning the data and analyses EPA used to arrive at our listing decision for chlorinated aliphatic wastewaters. The most significant comments that we received may be divided generally into six categories: (1) Comments on EPA's waste management assumptions; (2) comments on the exposure scenarios we evaluated in our risk assessment; (3) comments on how we calculated exposure point concentrations in the risk assessment; (4) comments on EPA's exposure assessment; (5) comments on EPA's toxicity assessment for dioxin and chloroform; and (6) comments on how we characterized risks associated with dioxin and chloroform. These comments, and the Agency's responses to these comments, are summarized below. We have developed responses to all of the public comments received in response to the proposed rule. The verbatim comments and our responses to all comments are provided in Response to Public Comments; Final Listing Determination for Chlorinated Aliphatics Industry Wastes in the docket for today's rule.

a. Waste Management Assumptions

The majority of chlorinated aliphatic wastewaters is managed in on-site, tank-based wastewater treatment systems prior to direct discharge of the wastewaters in accordance with facility-specific NPDES permits or discharge to an off-site POTW. As explained in the preamble to the proposed rule, two chlorinated aliphatic production facilities manage their wastewaters in underground injection control (UIC) wells. In addition, commenters provided information indicating that one facility pipes its chlorinated aliphatic wastewaters off-site for treatment in a wastewater treatment system that includes biological treatment in surface impoundments.

i. Why Did EPA Only Evaluate Air Releases From Tanks?

One commenter asserted that EPA did not consider releases from tanks other than air emissions from treatment tanks managing chlorinated aliphatics wastewaters. As the commenter pointed out, EPA assumed that the wastewater treatment system tanks are of sufficient integrity to prevent releases and that the tanks are equipped with overflow and spill controls that will prevent non-air releases of wastewaters, even though (as the commenter also points out) no overflow and spill controls are required for nonhazardous storage waste tanks, including tanks that manage wastewaters subsequently discharged either to Publicly Owned Treatment Works (POTWs) or surface waters. The commenter states that EPA's failure to consider non-air releases from wastewater treatment system tanks, which in the commenter's opinion are plausible mismanagement scenarios, violates EPA's criteria for listing determinations, which requires an assessment of "plausible types of improper management."

When EPA set out to assess risks from managing wastewaters in tank-based systems, we chose to model only air emissions because we determined that this was the greatest potential pathway of exposure for constituents from the tank systems (therefore causing the greatest potential risk), particularly since we knew from the RCRA Section 3007 Survey responses that the industry uses aerated biological treatment tanks, many of which are uncovered, or open to the atmosphere. In addition, survey responses indicated that the tanks are positioned aboveground and a majority of them are equipped with secondary containment. Therefore, EPA determined that any leaks or catastrophic releases from such tanks would be detected relatively quickly and corrective measures likely would be implemented prior to a release of significant quantity. In addition, these types of releases, if they were to occur, are not predictable or routine but rather would be the result of inordinate events or accidents such as upset conditions or catastrophic failures, which the Agency presumes would not be routine, frequent or plausible (mis)management. In sum, we continue to believe that air emissions from aerated biological treatment tanks is the predominate exposure pathway and that risks resulting from this pathway are significantly greater than any risk that may periodically arise from spills or leaks.

ii. Why Did EPA Not Evaluate Storage of Wastewater?

One commenter stated that EPA did not consider other air emissions from the storage of chlorinated aliphatic wastewaters prior to placing these materials in tanks. The commenter said that such analysis is not needed if EPA finalizes a "standard" listing mechanism for K173, but that EPA must undertake such an analysis if a concentration-based listing is adopted. EPA assumes that the commenter is describing wastewaters managed in tanks between the point the wastewater is first generated until it reaches the headworks of the wastewater treatment facility. (This is because under the proposed listing options, wastewater would not be tested to determine whether it exceeds the 1 ng/L dioxin trigger until it enters the first tank in the wastewater treatment system.) Although EPA is not finalizing the proposed chlorinated aliphatic wastewater listing in today's rule, we note that the RCRA Section 3007 questionnaire results indicate that only a few facilities manage wastewaters in tanks that are not a part of the wastewater treatment train. In all cases where a facility indicated having wastewater storage tanks that are not part of the wastewater treatment system the facility indicated that the tanks are covered. The fact that such tanks are covered would limit the potential for air releases. In our risk assessment, we chose to analyze air emissions from wastewater treatment tanks because, based upon information provided to the Agency in facility responses to the RCRA Section 3007 questionnaire, such tanks may be used to manage relatively large quantities of chlorinated aliphatic wastewaters, and often are not covered and are aerated. In view of our revised risk estimate for potential releases from these tanks, any potential risks from the covered, upstream tanks would not be substantial.

b. Exposure Scenarios Evaluated in EPA's Risk Assessment

EPA received comments from a number of parties that challenged EPA's basic methodology for establishing the exposure scenarios evaluated in the chlorinated aliphatic wastewater risk analyses. The commenters believed that EPA should have used a site (or facility)-specific approach for conducting the risk assessments. The commenters raised general concerns regarding EPA's approach, and also challenged specific aspects of EPA's analysis. These two issues are discussed separately below.

i. Evaluating Site-Specific Exposure Scenarios—General Comments

Commenters on the proposed rule stated that EPA should have used a site-specific approach to assessing risks from management of chlorinated aliphatic wastewaters, and presented general arguments why EPA should adopt a site-specific approach. Specifically, the commenters believed that EPA should have conducted the chlorinated aliphatics risk assessments using an approach similar to that used in the final combustion Maximum Achievable Control Technology (MACT) rulemaking under the Clean Air Act. For that rulemaking, EPA used facility-specific data in determining risks (64 FR 52828, September 30, 1999). The commenters contended that as a result of the public and peer review comments received on the risk assessment in the proposed combustion MACT, EPA modified its risk analysis to focus on the entire population of persons that are exposed to facility emissions rather than persons living on a few individual farms and residences. Some commenters recommended that EPA adopt a regulatory approach allowing generators themselves to determine the site-specific risk (using site-specific distances to the nearest receptor, wastewater concentrations, etc.) and subsequently the regulatory status of the wastes addressed under EPA's proposed rule.

Similarly, some commenters expressed general concern over EPA's use of "assumptions," rather than site-specific data, in the risk assessment. The commenters believe that if EPA were challenged with evaluating hundreds of scenarios across the entire nation, then the use of assumptions from statistical sampling of databases or best judgment could be better understood. However, with the limited number of facilities and waste management units involved in this proposed rulemaking (23), the commenters believe that EPA could have spent more time gathering real, site-specific data to reduce the uncertainty in risk modeling. The commenters pointed to the limited set of waste sample data, the lack of site-specific information regarding waste

management units for the chlorinated aliphatics industry, and the regional databases used to obtain the parameter values necessary to model containment fate and transport as data elements that should have been more site-specific.

EPA acknowledges that we did not conduct site-specific risk assessments to support the chlorinated aliphatics wastewater listing determination, but rather evaluated plausible exposure scenarios that are based on a combination of national data, regional data, and data collected from the facilities themselves. In some cases we believe that only one specific management practice is plausible, and existing locations for that practice are not likely to change. For example, certain economic or natural resource factors may restrict the nature of wastes in terms of their constituent concentrations, their quantities, or the ways in which the wastes are managed. This generally is not the case for the chlorinated aliphatic chemicals production industry. EPA described the continued and projected growth of the chlorinated aliphatic chemicals industry in the Economics Background Document for the proposed rule, and documented evidence of the industry's historically dynamic nature (USEPA, 1999b).[4] Nevertheless, there is considerable uncertainty in predicting a relationship between industry growth and waste generation and management. We cannot foresee the effects that potential (and possibly simultaneous) changes in technology, facility expansion practices (that is, increasing production capacity at existing facilities versus building new facilities), and waste minimization activities may have on waste generation and management. We also cannot predict whether there will be an increase in global marketshare of off-shore (non-U.S.) chlorinated aliphatic chemical production. Consequently, we based our evaluation on general information describing current chlorinated aliphatic waste management and exposure scenarios. This is not to say we based the modeling entirely on assumptions or hypothetical values. Rather, we used the combination of site-specific information, and other types of information that we thought would effectively capture what we expected would remain relatively consistent for one industry while accounting for likely future variability. For example, we surveyed the potentially affected facilities to identify existing waste management practices, and then assumed that those same management practices will continue to be used by the industry in the future. Additionally, we identified the location of chlorinated aliphatics facilities, and assumed that in the future, facilities might locate in the same general geographic regions (for example, regions with the same meteorological conditions), and in areas with the same general land use patterns (for example, agricultural areas). Similarly, we assumed that, although the exact numbers and locations of facilities may change, the quantities of the wastes, as well as the types and concentrations of contaminants in the wastes, will be generally the same over the near to long term. Again, the specific mix of site-specific and more general information will vary from one listing rule to another and potentially from one waste to another within a given rulemaking, depending on how dynamic EPA expects future waste management practices to be.

By evaluating the data using the probabilistic and two-high end deterministic approaches discussed in the preamble to the proposed rule (64 FR 46483), EPA endeavors to avoid regulating wastes based on exposure scenarios that are unrealistic (that is, based on too many protective [high end] assumptions). However, in the case of the chlorinated aliphatics industry, we did not feel our information justified an assumption that there would always exist exactly 23 chlorinated aliphatics facilities at 23 specific locations that continue to generate the same quantities of wastewaters, with the same types and concentrations of contaminants, that are managed in aerated biological wastewater treatment tanks under a static set of operating conditions. Historically, EPA's policy under the listing program has been to conduct national-scale evaluations that consider the general characteristics of the wastes under review, and allow facilities to petition the Agency to have their wastes "delisted" if they believe that the wastes do not meet the criteria for hazardous waste listing.

EPA also notes that, in view of the Congressional mandate to make final listing determinations on seventeen waste categories in fifteen months, Congress does not appear to have anticipated that each of these listings efforts would involve a detailed, facility-by-facility analysis (RCRA 3001(e)).

ii. Evaluating Site-Specific Exposure Scenarios—Specific Comments

Commenters on the proposed rule raised objections to three specific aspects of the exposure scenarios on which EPA's risk assessments for wastewaters are based. The following discussion describes those comments and EPA's response.

A number of commenters noted that EPA's high end human health risk analyses are based on dioxin exposures to farmers who live at the same location within 300 meters (0.18 miles) of a chlorinated aliphatics facility for 48.3 years or more, who raise fruits, exposed vegetables, root vegetables, beef cattle, and dairy cattle within this 0.18 mile range, and whose diet consists of approximately 42 percent home-grown exposed vegetables, 17 percent home-grown root vegetables, 33 percent home-grown fruits, 49 percent home-produced beef, and 25 percent home-produced dairy.[5] Some commenters questioned why their operations would be regulated under EPA's proposed rule, contending that it does not make sense to regulate a waste stream or to require controls and expenditures to protect a type of individual that will not be present. Many of the commenters claimed that they were not aware of any farmers living within 0.18 miles of a chlorinated aliphatics facility that met all these criteria, and found it difficult to believe that such a farmer would grow fruit trees and vegetables, and raise beef and dairy cattle, all on the same plot of land. Moreover, the commenters maintained that in the south Texas area where several EDC/VCM manufacturing facilities are located, dairy cattle production is non-existent due to the climate. One commenter that represents facilities in Louisiana stated that of the nine companies that they represent, only at two facilities is there farmland within 300 meters of the facility boundary (not 300 meters from the wastewater treatment tanks). The commenters stated that beef cattle are raised on one of the two farms, and that beef cattle and sugar cane are raised on the other farm.

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[4] USEPA. 1999b. Economics Background Document, Proposal by the USEPA To List Wastewaters and Wastewater Sludges from Chlorinated Aliphatic Chemical Manufacturing Plants, as RCRA Hazardous Wastecodes K173, K174, K175: Industry Profile and Estimation of Industry Regulatory Compliance Costs. Office of Solid Waste. 30 July.

[5] The public comments suggest that the commenters believe that EPA assumed that the farmer consumes 42 percent of the exposed vegetables, 17 percent of the root vegetables, 33 percent of the fruits, 49 percent of the beef, and 25 percent of the dairy products that the farmer grows. EPA assumes that the commenters meant to take issue with the EPA's assumption that 42 percent of the exposed vegetables, 17 percent of the root vegetables, 33 percent of the fruits, 49 percent of the beef, and 25 percent of the dairy products that the farmer consumes are home-produced (i.e., the rest of the farmer's diet would be obtained from other sources, such as a grocery store).

In response, EPA notes that exposure duration was one of the two high end parameters in our proposed high end dioxin risk estimate for the farmer, and that the value of 48.3 years is the 90th percentile exposure duration for households in the "farm" housing category as presented in Table 15–164 of the Exposure Factors Handbook (USEPA, 1997[6]). Moreover, the information provided in the public comments confirms that an exposure scenario in which a farmer raises beef cattle on a farm located within 300 meters of a chlorinated aliphatics facility (and presumably a wastewater treatment tank located near the facility boundary) is plausible. Although the commenters clearly disagree that a farmer also might produce fruits and vegetables on this farm, these concerns are unwarranted. Table 5–3 of the Risk Assessment Technical Background Document (USEPA, 1999a)[7] shows that for the adult farmer, 99.3 percent of the high end risk from chlorinated aliphatic wastewaters was due to ingestion of beef and dairy products and only 0.7 percent was due to ingestion of home grown fruits and vegetables. As a result, even though EPA believes it is plausible that a subsistence or hobby farmer would raise fruits and vegetables for home consumption, the validity of EPA's risk estimate depends almost entirely on the validity of our assumption that a farmer might consume both beef and dairy products from cattle raised on a farm located in the vicinity of a chlorinated aliphatics production facility. To evaluate the commenters' concerns regarding dairy cattle production in the vicinity of chlorinated aliphatics facilities, EPA referred to public data on agricultural production in the regions surrounding chlorinated aliphatics production facilities that are available from the Agricultural Census of the United States (see reference for *http://govinfo.library.orst.edu* that is included in the docket for the proposed rule). The census data demonstrate that, in fact, of the 23 chlorinated aliphatic facilities that manage wastewaters, 21 facilities, including all of the facilities in the south Texas area, are located in counties where dairy cattle were reported to have been raised in 1997 (all of the facilities are located in counties where beef cattle were reported to have been raised in 1997). EPA believes that an individual who raises cattle to support a subsistence lifestyle might reasonably consume both dairy and beef products from his/her cattle.

Some commenters also challenged EPA's assumptions regarding the percentages of beef and dairy products consumed by the farmer that are home produced (that is, assumed to be from a contaminated source). Specifically, EPA assumed that 25.4 percent of the dairy products a farmer consumes are home produced, and that 48.5 percent of the beef products a farmer consumes are home-produced. The commenters asserted that the percentages EPA used apply to a relatively small fraction of the surveyed population who farm, and as such are overly conservative by a factor of 21.2 for dairy,[8] and a factor of 12.7 for beef,[9] if applied to the general population (USEPA, 1997). The commenters held the opinion that the percentages used by EPA overstate the upper end homegrown beef and dairy consumption markedly. However, one of the same commenters acknowledged that the commenter was unable to confirm alternate values that EPA should have used for percentage of beef and dairy consumed by the farmer that is home grown. One peer reviewer asked where EPA obtained the values for the percentages of food eaten by the farmer (EPA provided the source of the values in the preamble to the proposed rule), but did not indicate whether he believed the percentages were right or wrong.

EPA's estimates of the portion (percentage or fraction) of a farmer's diet that is home-produced are presented in EPA's Exposure Factors Handbook (USEPA, 1997), and are based on the U.S. Department of Agriculture's 1987–1988 Nationwide Food Consumption Survey (NFCS).[10] We did not use the percentages that reflect the consumption of home-produced foods by the general population in our risk assessment, as suggested by the commenters, because EPA's objective was to evaluate risks to farmers, not members of the general population, who consume home-produced food items. As one would expect, the data in the Exposure Factors Handbook indicate that farm households consume more home-produced foods than do households in the general population. The percentages that correspond to the general population would be applied more appropriately to an evaluation of residential receptors.

One commenter claimed that in EPA's Combustion MACT rulemaking, EPA indicated that according to USDA information, only 40% of farmers who raise beef eat their own beef (64 FR 52998), and that the percentage of dairy farmers who consume home grown dairy products is only 40% in the Northeast, 20% in the Midwest, lower elsewhere in the country, and averages only 13% nationally (64 FR 52998). The commenter also noted that in the Combustion MACT rulemaking, EPA acknowledged that information on the number of farms that produce more than one food commodity (for example, beef and milk) is not available from the U.S. Census of Agriculture (64 FR 52828, see 53005–53006), and that in determining the risk to commercial farmers under the Combustion MACT rule, EPA stated: "only the primary food commodity produced on the farm was assumed to be consumed by farm households (64 FR 52998).

It appears that the commenter somewhat misrepresented the data from the final MACT rule. Specifically, the **Federal Register** notice to which the commenter refers is very clear that while "[o]nly the primary food commodity produced on the farm was assumed to be consumed by farm households," "[a] wide variety of foods was assumed to be produced and consumed by households engaged in subsistence farming" (64 FR 52999). In fact, under the subsistence farmer scenario evaluated for the MACT rulemaking, EPA assumed that 100 percent of the food that the farmer consumes is home-produced. This assumption clearly results in greater exposure than the assumptions used in EPA's analysis of the farmer scenario in the chlorinated aliphatics analysis. Moreover, the commenter misinterpreted data presented in the MACT rulemaking that describe the percentages of households that consume beef and dairy products in various parts of the country. The **Federal Register** notice to which the commenters refers states:

> In particular, we re-analyzed data collected by USDA to estimate consumption of home-produced foods, such as meat, milk, poultry, fish, and eggs. Over half of farm households report consuming home-produced meats, including nearly 40 percent that report consumption of home-produced beef. In the Northeast, nearly 40 percent of farm households report consuming home-produced dairy products, and in the Midwest, nearly 20 percent do. The percentage is lower elsewhere, averaging about 13 percent nationally.

The data cited by EPA pertains to the number of all farm households that consume home-produced beef and dairy products. The commenters incorrectly assumed that the data applied specifically to households engaged in raising beef cattle and households engaged in raising dairy cows, respectively. EPA expects that the consumption of home-produced beef and dairy products would be much greater for households engaged in production of these commodities compared to the consumption for all farm households.

c. Calculation of Contaminant Concentrations at the Point of Human Exposure (Contaminant Fate and Transport Modeling)

EPA received comments questioning the way that we estimated emissions from aerated biological wastewater treatment tanks, and the way that we estimated the concentrations of dioxins in beef and dairy products. These comments included concerns about how CHEMDAT8 evaluates dioxins that are sorbed onto solids in wastewaters, and about how EPA estimated the amount of solids influent to aerated biological wastewater treatment tanks. Commenters also took issue with the Agency's assumptions about the diet of dairy and beef cattle and the productivity of the modeled farm. Each of these assumptions significantly affects our calculation of contaminant concentrations to which human receptors are exposed.

i. EPA Did Not Correctly Consider Sorption of Dioxin Onto Solids and Solids Removal From Wastewater

To evaluate the human health risks posed by dioxins in chlorinated aliphatic wastewaters, EPA modeled air emissions from aerated biological wastewater treatment tanks. We conducted the emissions modeling assuming that the concentrations of dioxins in wastewaters flowing to aerated biological treatment tanks were equivalent to the concentrations of dioxins in certain wastewater samples we collected. For the proposal, we constrained ("capped") the influent concentrations of four congeners in the wastewaters at their aqueous solubility concentrations to account for the fact that dioxins are strongly hydrophobic and are expected to be sorbed to solids preferentially in the wastewater influent, thus are unlikely to exist in the dissolved phase in excess of their solubility limits.

Commenters on the proposed rule expressed a number of concerns regarding the way that EPA evaluated the solids fraction of chlorinated aliphatics wastewaters. The commenters' primary concern was that EPA did not appropriately consider that most dioxins in chlorinated aliphatics facility wastewaters will be sorbed onto solids in the wastewaters even when the dioxin congener concentrations in wastewaters are less than their solubility limits. Certain commenters contended that in EDC/VCM production facilities that use fluidized bed oxychlorination processes, attrited catalyst fines (small particles that are 1 to 20 micrometers in size) that exit the facility process via the wastewater treatment system have very high surface area (approximately > 50 m2/g) and thus strongly sorb dioxins that are present in the wastewaters. The commenters asserted that EPA failed to account for the fact that almost all of the dioxins in wastewaters are sorbed to solids and are removed in primary clarifiers prior to aeration. Moreover, the commenters believed that EPA's model for estimating emissions from wastewater treatment tanks (CHEMDAT8) does not correctly model sorption. One commenter stated that CHEMDAT8 takes into account adsorption onto biomass solids, but claimed that CHEMDAT8 does not adequately address the fact that most dioxin is already sorbed onto solids (and not available for volatilization) when it enters an aerated tank. Commenters submitted various analyses and data to substantiate their claims, and contended that EPA had overestimated the concentration of dioxins available for volatilization by at least an order of magnitude.

Although EPA agrees that the primary removal mechanism of dioxins in wastewater treatment tanks will be through the sorption of dioxins onto solids (see p. 3–2 of EPA's 1999 Risk Assessment Technical Background Document, USEPA 1999a), EPA does not agree with the commenters' concerns that CHEMDAT8 fails to correctly account for sorption. CHEMDAT8 does in fact model sorption as a reversible, linear, equilibrium partitioning process, the same process that the commenters believed should be considered to account for the sorption of dioxins onto solids in wastewater. CHEMDAT8 is designed to evaluate the contaminant loss rates for the competing removal mechanisms of volatilization, biodegradation, sorption and hydrolysis based on the total contaminant load influent to the system (whether associated with the dissolved or solid phase). The contaminant loss rate due to sorption is based on the equilibrium solids partitioning coefficient and the rate at which solids enter or are generated within the system. Thus, in estimating the amount of solids available to sorb dioxins, CHEMDAT8 considers total suspended solids (TSS) in the influent stream as well as new biomass growth. It does not matter how dioxin is partitioned onto solids when the wastewater enters the tank, because the model repartitions the dioxins inside the tank according to the model's equilibrium partitioning relationship and the relative rates of the competing removal mechanisms. Consequently, in our analyses we evaluated the total contaminant load in the tank influent, regardless of whether the contaminants were associated with the dissolved or solid phase. In cases where solids are present in the influent, limiting a CHEMDAT8 analysis to dissolved phase wastewater influent concentrations might seriously under-represent the total contaminant load to the tank and result in greatly underestimating emissions, especially for sorptive chemicals like dioxins. Because CHEMDAT8 considers partitioning and removal by sorption within the tank, limiting the mass of dioxin influent to the system (by limiting the influent concentration to the dissolved phase concentration) may result in greatly underestimating emissions because only the contaminant mass in the dissolved phase would be partitioned in the tank, rather than the total contaminant mass associated with the influent's dissolved plus solid wastewater phases.

In contrast, EPA agrees with the commenters concerns that we failed to accurately account for the fact that in aerated biological wastewater treatment systems, at least some solids removal generally will occur between the headworks of the wastewater treatment system and the influent to an aerated biological treatment tank (we addressed risks from the management of solids separately in this listing determination). In the preamble to the proposed rule, EPA specifically stated that we selected wastewater data for evaluation that we believed represented the concentrations of contaminants in wastewaters at the influent (headworks) of treatment systems that are used to manage only wastewaters from the production of chlorinated aliphatic chemicals ("dedicated" chlorinated aliphatics wastewater samples; 64 FR 46483). In retrospect, our assumption that the same data that represent contaminant concentrations at the headworks of wastewater treatment systems could represent contaminant concentrations at the influent to aerated biological wastewater treatment tanks was somewhat flawed. The Agency reviewed information previously provided to us in industry survey responses and determined that of the eleven facilities that employ aerated biological processes to treat their wastewaters, nine employ primary clarification or other processes that have the effect of removing solids from wastewaters prior to their discharge to aerated biological treatment tanks. (One of these nine facilities is the facility from which we collected the "high end" wastewater sample used in the risk analysis that served as the basis for our proposed listing decision.) The remaining two facilities perform wastewater equalization in tanks prior to aerated biological treatment. One of these two facilities also employs wastewater pH adjustment with resultant precipitation of metal hydroxides prior to aerated biological treatment. Both of these processes are expected to result in at least some solids removal from the wastestream. Moreover, EPA does not anticipate that treatment of the wastewaters in units such as primary clarifiers and equalization basins would result in dioxin air emissions greater than those that we originally predicted from aerated biological treatment tanks, because primary clarifiers are, by design, quiescent units (Metcalf and Eddy, 1991,[11] p. 472), and we have no information that leads us to believe that the equalization tanks in use by the facilities are agitated.

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[6] U.S. EPA. 1997. Exposure Factors Handbook, Volumes I, II, and III. EPA/600/P–95/002Fa, b, c. Office of Research and Development, Washington, D.C., August.

[7] U.S. EPA. 1999a. Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination. Office of Solid Waste. July.

[8] The proportion of home-produced dairy consumed by "households who farm" (0.254) divided by the proportion of home-produced dairy consumed by persons in the general population (0.012).

[9] The proportion of home-produced beef consumed by "households who farm" (0.485) divided by the proportion of home-produced beef consumed by persons in the general population (0.038).

[10] The 1987–1988 NFCS data on intake of home-produced foods are included for use in the recent (1997) Exposure Factors Handbook (U.S.EPA, 1997), which has been reviewed by EPA's Science Advisory Board (SAB) as well as numerous other external reviewers.

To model the aerated biological treatment tanks correctly, that is, to determine what the appropriate influent concentration to the biological treatment tank should be, would have required that EPA model the wastewater treatment train from the point where wastewater enters the headworks of the treatment system to the point where the wastewater enters the aerated biological tank. Metcalf and Eddy (1991, p. 473) state that "efficiently designed and operated primary sedimentation tanks should remove from 50 to 70 percent of the suspended solids * * *" from wastewater. Assuming this level of solids removal from chlorinated aliphatics wastewaters prior to biological treatment we estimate that the high end deterministic risk estimate for the adult farmer reported in the proposal would be reduced by a factor ranging from approximately 0.67 (70 percent removal of solids) to 0.94 (50 percent removal of solids) (USEPA, 2000b).[12] A complete description of our analysis is provided in the Addendum to the 1999 Risk Assessment Technical Background Document (USEPA, 2000).

ii. EPA Incorrectly Evaluated the Contribution of Feed to Dioxin Levels in Dairy and Beef

To support the chlorinated aliphatics wastewater listing determination we estimated risks to a farmer who ingests beef and dairy products derived from cattle raised on a farmer's pastureland. EPA assumed that the beef and dairy cattle consume home-grown forage, grain, and silage, and incidentally ingest pasture soil. We assumed that beef cattle consume different quantities of the various food items (and pasture soil) than do dairy cattle. We also assumed that 100% of the cattle's feed is contaminated by releases from the wastes we evaluated, that is, that cattle are not provided feed from other (uncontaminated) sources.

The commenters believed that EPA should have considered that a cow's consumption of various food sources varies according to the animal's life stage and intended use. The commenters contended that these considerations influence both a cow's exposure and the potential translocation of dioxin to meat or milk. As an example, the commenters pointed out that beef cattle may be raised for part of their lives on pasture, but typically are raised on grain prior to slaughter. The commenters noted that, for instance, the beef cow nurses and pastures for approximately 180 days, pastures exclusively for 55 days, and subsists on a grain only diet for the final 130 days of its life (Stevens and Gerbec, 1988). The commenters asserted that EPA's risk assessment should have considered contaminant losses from a beef cow's tissue in the time period between the cow's consumption of contaminated feed and the cow's slaughter. The commenters also presented alternate information that they said could be considered in EPA's evaluation of risk. First, EPA assumed that dairy cattle consume 13.2 kg/day of forage, 4.1 kg/day of silage, 3 kg/day of grain, and 0.4 kg/day of soil, based on data cited by Rice (1994)[13]. In contrast, the commenters presented data from Stevens and Gerbec (1988)[14] who reported dairy cattle consumption rates of 6.8 kg/day of forage, 16.3 kg/day of silage, 4.5 kg/day of grain, and 0.14 kg/day of soil. Second, EPA assumed that beef cattle consume 8.8 kg/day of forage, 2.5 kg/day of silage, 0.47 kg/day of grain, and 0.5 kg/day of soil (Rice, 1994). The commenters contended that during the nursing phase the beef cow receives practically all of its daily dioxin dose through the mother's milk and this dose has been (and could be) calculated for nursing cattle (Stevens and Gerbec, 1988). The commenters continued that EPA should assume that during the pasture phase of its life the beef cow consumes 13.6 kg/day of feed: 10.2 kg/day of forage, 3.4 kg of silage, and 0.05 kg/day of soil. The commenters argued that during the cow's fattening stage of growth prior to its slaughter, during which the beef cow gains as much as 60 to 70% of its body weight, the cow's diet consists entirely of grain. The commenters suggested that EPA needs to take into account the impact of this body weight gain and consider how dioxin half-life influences the concentration of dioxin residuals in the meat.

The commenters also asserted that EPA's assumption that all of a cow's feed is contaminated seemed unrealistic. The commenters believed that such an assumption implies that a farm not only has both a dairy and beef cattle operation, but raises grain and silage (in addition to crops for human consumption) while still maintaining enough pasture to graze the animals. They noted that the same issue was raised by the peer reviewers who found some of the assumptions on productivity of the theoretical farmer unrealistically high and suggested that productivity necessary to maintain such a farm be researched and used to adjust EPA's assumptions accordingly. The commenters reasoned that since grain and silage often are purchased elsewhere, it would be more appropriate to assume that less than 100% of the cattle's feed is contaminated. They believed that fixing the percentage of contaminated feed consumed by the cattle at 100% is not a central tendency assumption, and fails to reflect the lack of certainty in this parameter. Therefore, they recommended that EPA assume that only 50% of the feed is contaminated in the deterministic assessment, and that a uniform distribution of values be adopted for the Monte Carlo assessment, with percentages ranging from 0 to 100 percent.

To understand EPA's response to these comments, it is important to recall two pieces of information presented in EPA's Risk Assessment Technical Background Document for the proposed rule. First, as discussed previously in Section VI.A.2.b.ii, the risks that EPA estimated for the farmer are due almost exclusively to the farmer's ingestion of beef and dairy products (Table 5–3; USEPA, 1999a). Second, the dioxins in the beef and dairy products result almost entirely from the cattle's consumption of forage that is contaminated by air emissions from the modeled wastewater treatment tank—negligible levels of dioxins are contributed to cattle as a result of the cattle's ingestion of grain, silage, or soil (Appendix H.1, Table H.1–1a; USEPA, 1999a). Consequently, all that is required for the adult farmer to realize the risk that EPA presented in the proposed rule is that the farmer consume beef and dairy products derived from cattle that consume forage from the farmer's pastureland/field. That is, it is not necessary that the farmer consume home-grown fruits and vegetables, or that the farmer produce grain or silage for use as cattle feed. Therefore, in responding to the concerns of the commenters, EPA focused primarily on the technical validity and plausibility of our assumptions regarding the (1) consumption rates of forage by beef and dairy cattle and (2) the percentage of the forage that cattle consume that is contaminated.

EPA disagrees with the commenters' alternate recommendations regarding animal feeding practices. Although the feeding practices that the commenters describe, particularly those for beef cattle, may be applicable to commercial farming operations, EPA does not believe that such practices apply to hobby or subsistence farming. As noted by Rice (1994), a subsistence farmer will tend to feed his/her cattle an "unsupplemented" diet, meaning that the cattle will primarily feed on forage (because the cattle are permitted to graze more in the pasture), and will not be fattened at a feedlot prior to slaughter. Rice (1994) explains that in the southern part of the country (where most of the chlorinated aliphatics facilities are located), cattle will consume pasture as their major source of roughage the entire year (except in drought). Consequently, we believe that our assumptions regarding cattle ingestion of forage under a subsistence/hobby farming scenario are reasonable. We used the assumptions presented by Rice (1994) in other rulemakings[15] and have recommended that these assumptions be used in estimating risks under other hazardous waste programs (USEPA, 1998[16]). Furthermore, the feed ingestion rate for dairy cows presented by the commenters is an average ingestion rate for a dairy cow in Minnesota (Stevens and Gerbec, 1988). In contrast, EPA's data for the intake rates of forage, grain, and silage for dairy cows are based either on data from the South Carolina-Georgia region (see Boone et al., 1981[17]) or on more general data (Shor and Fields, 1980;[18] NAS, 1987;[19] and Boone et al., 1981). Chlorinated aliphatics facilities are located primarily in Texas and Louisiana, which we believe are probably more similar to South Carolina-Georgia than Minnesota in terms of cattle feeding practices.

With regard to EPA's assumptions for the percent of the cattle's feed derived from a contaminated source, EPA believes that it is appropriate to assume that a hobby or subsistence farmer is not supplying forage to his/her cattle from an outside source, such that 100 percent of the forage that the cattle consumes will be from the farmer's pasture or field (in our risk assessment, a contaminated source). This assumption is consistent with the assumptions made for both the subsistence and commercial farmers in the combustion MACT final rulemaking, as well as other EPA rulemakings and guidance.[20] However, in response to the commenters' concerns, we reviewed our methodology for estimating the concentrations of dioxins in forage to ensure that we were adequately considering the size of the contaminated source versus its expected productivity. In the proposed rule we explained that in evaluating the air pathway we always assume that the cattle are located along the centerline of the area most greatly impacted by air releases from the waste management units (64 FR 46486). We said that the air concentrations within about a 100-meter lateral distance from this point do not vary appreciably, and stated specifically in our Risk Assessment Technical Background Document (Addendum; USEPA, 1999a) that the concentrations vary about 20% within 200 meters of the point of maximum concentration. In the course of our reevaluation of these data in response to public comments, we concluded that we should have considered how the concentrations of dioxins in air, therefore in forage, vary over a wider aerial extent that would be more consistent with the area of a pasture. We concluded that a more reasonable approach would be to consider that the size of the pasture that is used to support the cattle is approximately 275 meters by 275 meters ($75{,}625\text{m}^2$, approximately 19 acres). We believe a field of this size would be large enough to support sufficient cattle to sustain the family of a subsistence farmer (USEPA, 2000b). We used the results of the air modeling we conducted for the proposed rulemaking to determine the approximate difference between the air concentration that we used to calculate the proposed risk estimate (the air concentration corresponding to a point located 300m from the modeled wastewater treatment tank) and the average air concentration at a $75{,}625\text{m}^2$ field located 300m from the modeled wastewater treatment tank. In fact, EPA determined that more reasonably considering the area that is affected by the emissions from the modeled wastewater treatment tank would reduce the risk estimate on which our proposed rule was based, modifying the risk estimate (2×10^{-5}) by a factor of 0.50 (USEPA, 2000b).

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[11] Metcalf & Eddy, Inc. 1991. Wastewater Engineering: Treatment, Disposal, and Reuse. Revised by G. Tchobanoglous and F. Burton. Irwin McGraw-Hill, Boston. 1334 pp.

[12] 12 U.S. EPA. 2000b. Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination, Addendum. Office of Solid Waste. September.

[13] Rice, G. 1994. Quantity of Plants and Soil Consumed by Animal. Draft Working Papers. Office of Research and Development. U.S. Environmental Protection Agency, Washington D.C.

[14] Stevens, J.B. and Gerbec, E.N. 1988. Dioxin in the agricultural food chain. Risk Analysis. 8(3):329–335.

[15] We used the assumptions of Rice (1994) in the risk assessment to support the final combustion MACT Rulemaking (64 FR 52828, September 30, 1999). In addition, we used some of the same assumptions in the Proposed HWIR Rule (November 19, 1999 **Federal Register**; 64 FR 63382) and the Petroleum Refining Residuals Final Listing (August 6, 1998 **Federal Register**; 63 FR 42210).

[16] USEPA. 1998. Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities. Peer Review Draft. Office of Solid Waste and Emergency Response. EPA530–D–98–001A. July.

[17] Boone, F.W., Y.C. Ng, and J.M. Palms. 1981. Terrestrial Pathways of Radionuclide Particulates. Health Physics, vol 41, no. 5, pp. 735–747. November.

[18] Shor, R.W. and D.E. Fields. 1980. "Agricultural Factors Affecting the Radionuclide Foodchain Pathway: Green Forage Consumption of Dairy Cows." Health Physics vol. 39, pp. 325–332.

[19] NAS. 1987. Predicting Feed Intake of Food-Producing Animals. National Research Council, Committee on Animal Nutrition. National Academy Press, Washington, D.C.

[20] For example:

USEPA. 1998. Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities. Peer Review Draft. Office of Solid Waste and Emergency Response. EPA530–D–98–001A. July.

USEPA. 1998. Methodology for Assessing Health Risks Associated with Multiple Pathways of Exposure to Combustor Emissions. National Center for Environmental Assessment. EPA600/R–98/137.

Proposed HWIR Rule (November 19, 1999 **Federal Register**; 64 FR 63382)

Final Petroleum Listing Rule (August 6, 1998 **Federal Register**; 63 FR 42210)

d. Exposure Assessment—Cooking and Post-cooking Food Losses

Commenters contended that the equations in the risk assessment used to characterize exposure to chemicals from the consumption of beef do not appear to account for loss of chemicals due to food preparation, cooking, and consumption practices. The commenters pointed out that The Exposure Factors Handbook ("the Handbook;" USEPA, 1997; referenced in the preamble to the proposed rule) recommends that these losses be considered, and provides estimates for percent weight losses from preparation of various meats from cooking and post cooking actions. Beef-specific loss estimates range from 11%–42% (mean = 27%) due to cooking and 10%–46% (mean = 24%) due to post cooking actions. Therefore, the cancer risk estimates associated with the beef ingestion pathway should be adjusted by a factor of 0.55 (0.73×0.76).[21]

EPA agrees that the intake rates that we used for the adult farmer (and certain child of farmer age cohorts) should have incorporated loss of beef due to cooking and post-cooking activities. The Handbook explains that the intake rates it provides for home-produced food items do not reflect actual food consumption (intake), but instead were derived from the amount of household food consumption in an economic sense, that is, they are the measure of the weight of food brought into the household that has been consumed (used up) in some manner. The Handbook explains that in addition to food being consumed by individuals, food may be used up by spoiling, by being discarded (for example, inedible parts), through cooking processes, etc. The Handbook provides estimated preparation losses for beef that include cooking losses (which include dripping and volatile losses) and post-cooking losses (which include cutting, bones, excess fat, scraps, and juices.) The authors of the Handbook averaged these losses across all cuts and cooking methods to obtain a mean net cooking loss and a mean net post-cooking loss for beef. The Handbook explains that the preparation loss factors presented "are intended to convert intake rates based on 'household consumption' to rates reflective of what individuals actually consume. However, these factors do not include losses to spoilage, feeding to pets, food thrown away, etc." EPA acknowledges that considering the mean cooking and post-cooking losses for beef (45%) as presented by the commenters would result in reducing the risk estimate, modifying the total (beef plus dairy, see section VI.A.3) high end deterministic dioxin risk estimate for the adult farmer (2E–05) by a factor of 0.78.

e. Toxicity Assessment

The proposed rule presented an assessment of the toxicity of dioxins and chloroform, the constituents of concern in chlorinated aliphatics wastewaters. Commenters on the proposed rule challenged data and analyses EPA relied upon to characterize the toxicity of the dioxins and chloroform. First, the commenters believed that EPA's use of draft documents under review was inappropriate for obtaining toxicity information for dioxins. Second, the commenters contended that EPA should have used a different cancer slope factor to calculate risks for two of the hexachlorodibenzo-p-dioxin (H_xCDD) congeners. Third, the commenters believed that EPA overestimated certain toxicity equivalency factors (TEFs, described below) that we used in our risk analysis. Lastly, commenters on the proposed rule challenged two of the assumptions inherent in the development of the toxicity benchmarks that we used to evaluate dioxins and chloroform. These two assumptions are as follows:

- To develop cancer benchmarks using animal studies, scientists often extrapolate dose-response data derived from the animal studies to lower levels that are within the range of human exposure. EPA historically has extrapolated response data in the low-dose range using a linear approach called the linearized multistage (LMS) model. However, in 1996, EPA published the Proposed Guidelines for Carcinogen Risk Assessment (hereafter referred to as the "1996 Guidelines;" USEPA, 1996[22]) that provided new recommendations for evaluating responses in the low-dose range when biologically-based or case-specific models are not available. While still recommending a linear extrapolation (a straight line extrapolation) as a default procedure for evaluating low-dose response, the 1996 Guidelines also suggest that extrapolation in the low-dose range can be performed using a nonlinear approach, when the data on the mode of action for the contaminant are sufficient to support such an approach. Commenters on the proposed rule contended that, for 2,3,7,8-TCDD ("TCDD") and chloroform, a nonlinear approach is more appropriate for extrapolating response data in the low-dose range than the LMS approach used by EPA
- To calculate human equivalent doses from animal doses used in toxicity studies, scientists typically scale animal doses based on the ratio of animal and human body weights. The 1996 Guidelines recommend that the default approach is to scale daily applied doses experienced for a lifetime in proportion to body weight raised to the $\frac{3}{4}$ power. This recommendation is a change from EPA's previous recommendation to scale doses in proportion to body weight raised to the $\frac{2}{3}$ power.

Commenters on the proposed rule believed that EPA should account for this revised guidance in our risk assessments for dioxin and chloroform.

i. Assessment of the Toxicity of Dioxins and Furans

EPA used a cancer slope factor of 156,000 (mg/kg-day)$^{-1}$ for TCDD to calculate cancer risk from exposure to dioxins and furans in chlorinated aliphatics wastes. The cancer slope factor is a measure of the relative potency of carcinogens. That is, the higher the cancer slope factor, the more potent the carcinogen. The toxicity of each of the 17 dioxin and furan congeners with TCDD-like toxicity is expressed in terms of TEFs. TEFs are estimates of the toxicity of specific dioxin and furan congeners relative to the toxicity of TCDD, which is assigned a TEF of 1. The sections that follow present public comments on the slope factor and TEFs that EPA used to evaluate dioxins and furans, and provide the Agency's response to those comments.

TCDD Cancer Slope Factor and Health Effects

The existing cancer slope factor for TCDD is based on human equivalent doses calculated from laboratory animal data by scaling doses to body weight raised to the $\frac{2}{3}$ power. Commenters maintained that this practice is obsolete, and does not reflect a change in EPA policy recommending that doses be scaled to body weight raised to the $\frac{3}{4}$ power. The commenters calculated that compared to a cancer slope factor that is based on scaling doses to body weight raised to the $\frac{3}{4}$ power, the existing cancer slope factor overestimates cancer risk from dioxin-like compounds by at least 35% (assuming a linear dose-response), and as a result, all of EPA's cancer risk estimates for dioxin-like compounds should be adjusted by at least a factor of 0.65. Commenters also claimed that the existing slope factor for TCDD does not take into account mechanistic information suggesting there is a threshold for TCDD

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[21] The value 0.55 is calculated as follows: If 27 percent of the mass of meat is lost during cooking, then 73 percent of the meat remains. Of the remaining 73 percent, 24 percent more is lost after cooking (76 percent is retained). As a result, the mass of meat *remaining* after cooking and post-cooking activities is 76 percent of 73 percent, or 55 percent of the original mass. Therefore, the amount of meat *lost* through cooking and post-cooking activities is 45 percent.

[22] USEPA. 1996. Proposed Guidelines for Carcinogen Risk Assessment. 61 FR 17960.

carcinogenesis. The commenters noted that this point is emphasized in a recent letter to the editor of Risk Analysis, written and signed by nearly twenty of the world's leading pharmacologists (Byrd et al., 1998[23]) which states: "A dose-response assessment for dioxin based on receptor binding would predict a nonlinear dose-response relationship with a threshold for tumor induction. A nonlinear relationship is more consistent with the available chronic animal bioassays and human epidemiology studies." The commenters contended that, given this information, the cancer risk posed by all of the dioxin-like dioxin and furans may well be zero for all pathways considered in EPA's risk assessment.

Commenters also took issue with EPA's use of the Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds issued by EPA in 1994. These documents have been reviewed by the EPA Science Advisory Board (SAB), but have not been finalized. Some commenters noted that the SAB made substantial comments on the 1994 draft documents that are directly relevant to the risk assessment for the Chlorinated Aliphatics Listing Determination, and, because the SAB comments have not yet been incorporated in a final document, it is premature and incorrect to use the draft in this current rulemaking. The commenters noted that the front cover of the draft chapters state: "Review Draft (Do not Cite or Quote)" and

> Notice: This document is a preliminary draft. It has not been formally released by EPA and should not at this stage be construed to represent Agency Policy. It is being circulated for comment on its technical accuracy and policy implications.

In addition, the commenters pointed out that page 5–33 of EPA's Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination, July 30, 1999, states: "Most of the information in this summary is from this draft document and is subject to change, pending release of the final document." Thus, the commenters believe that conclusions made concerning dioxin in the risk assessment for chlorinated aliphatics wastes are based on a document that is preliminary and possibly incorrect.

In contrast to the comments above, one commenter strongly supported the proposal to list chlorinated aliphatics wastewaters because of significant risks posed by dioxins, and cited the 1994 draft Health Assessment Document for 2,3,7,8-TCDD and Related Compounds that was challenged by other commenters. The commenter asserted that dioxins are a probable human carcinogen and that, in animal testing, TCDD is one of the most potent carcinogens ever evaluated. The commenter noted that noncarcinogenic effects resulting from TCDD exposure also have been reported. Specifically, some studies suggest evidence of immunotoxicity, such as alteration in lymphocyte populations, cell surface markers or lymphocyte proliferative response. There also is evidence of reproductive and developmental effects from exposure to dioxins. The commenter pointed out that studies discussed in EPA's draft Dioxin Reassessment provide evidence of further health impacts.

EPA acknowledges the commenters' concerns regarding the use of a draft document to support our toxicity assessment for dioxin-like compounds. In the preamble to the proposed rule, and in the Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination (USEPA, 1999a), we presented a summary of the health effects believed to be associated with exposure to dioxins. Although the source of our information concerning dioxin health effects was the 1994 draft health assessment document challenged by commenters, the health effects we presented at the time of proposal continue to reflect our understanding of the health affects associated with exposure to dioxins. A December 1998 toxicological profile for chlorinated dibenzo-p-dioxins published by the Agency for Toxic Substances and Disease Registry (ATSDR, 1998[24]) supports our appraisal of the adverse health effects associated with dioxin exposure. Our reassessment of dioxin risks is still ongoing and we are not relying on draft findings for this final listing determination.

As discussed above, the Agency also received comments on the value of the TCDD cancer slope factor that we used to evaluate cancer risk due to dioxins. The cancer slope factor that we used in our proposed chlorinated aliphatics risk analyses, 156,000 (mg/kg-day)$^{-1}$, is cited in a final Agency report published in 1985,[25] and is comparable to the TCDD slope factor published in the Health Effects Assessment Summary Tables (HEAST; USEPA, 1997), 150,000 (mg/kg-day)$^{-}$[26]. We understand that the 1996 Proposed Guidelines for Carcinogen Risk Assessment recommends the body weight scaling factor approach noted by the commenters, and provides guidance for considering nonlinear contaminant dose-response relationships in developing cancer slope factors. EPA anticipates that we will consider these recommendations of the 1996 Guidelines, as well as other relevant recommendations of the 1996 Guidelines, in the course of future development or reevaluation of contaminant cancer slope factors. However, given that the Agency has not completed its comprehensive reassessment of TCDD carcinogenicity and toxicity, the Agency has decided to use the 1985 cancer slope factor for TCDD (USEPA, 1985) for this rulemaking. Moreover, decreasing the slope factor for TCDD as recommended by commenters would not have any impact on our ultimate listing decisions for chlorinated aliphatics wastewaters, EDC/VCM wastewater treatment sludges, or methyl chloride wastewater treatment sludges. Our decision not to list chlorinated aliphatic wastewaters is supported by other factors that decrease our proposed risk estimate (section VI.A.3), and reducing the slope factor as recommended by the commenters would not reduce our risk estimates enough to alter our listing decisions for the EDC/VCM wastewater treatment sludges (section VI.B.2.b.iv). Nevertheless, EPA may choose to reevaluate today's listing decisions in the future, pending the final outcome of the Agency's ongoing reevaluation of TCDD toxicity.

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[23] Byrd III, D.M., Allen, D.O., Beamer, R.L., et al. 1998. Letter to the Editor: The dose-response model for dioxin. Risk Analysis. 18(1):1–2.

[24] ATSDR. 1998. Toxicological Profile for Chlorinated Dibenzo-p-Dioxins (Update). U.S. Department of Health and Human Services. December.

[25] USEPA. 1985. Health Assessment Document for Polychlorinated Dibenzo-p-Dioxins. Office of Health and Environmental Assessment. EPA/600/8–84/014F. September.

[26] The cancer slope factor for TCDD that we used to calculate the cancer risk resulting from exposure to dioxins in chlorinated aliphatics wastewaters, as well as EDC/VCM wastewater treatment sludges (see section VI.B) was 156,000 (mg/kg-day)$^{-1}$(USEPA, 1985). We incorrectly cited HEAST as the source of our slope factor in Appendix C of the Risk Assessment Technical Background Document (USEPA, 1999a). A risk estimate calculated using the slope factor presented in HEAST would be only a factor of 0.96 (150,000/156,000) times a risk estimate calculated based on the slope factor presented in the 1985 document. This difference would have no discernable impact on our risk estimates (use of either would have resulted in the high end risk estimate for the adult farmer, 2E–05, that we presented in the proposed rule).

USEPA. 1997. Health Effects Assessment Summary Tables: Annual Update (HEAST). Office of Emergency and Remedial Response. Washington, D.C. July.

Use of the Cancer Slope Factor for HxCDD

EPA's Integrated Risk Information System (IRIS) database includes a cancer slope factor of 6,200 (mg/kg-day)$^{-1}$ for HxCDD mixtures. Commenters believed it was curious that EPA did not choose to use this slope factor for any of the HxCDDs or hexachlorinated dibenzofurans (HxCDFs) evaluated in the chlorinated aliphatics risk assessment. Instead, EPA used the TCDD cancer slope factor of 156,000 (mg/kg-day)$^{-1}$ and a TEF value of 0.1, yielding an effective cancer slope factor of 15,600 (mg/kg-day)$^{-1}$, to evaluate all dioxin-like HxCDDs and HxCDFs. Commenters argued that the risk assessment for HxCDDs and HxCDFs would be greatly improved if it were based on the value of 6,200 (mg/kg-day)$^{-1}$ because (1) The cancer slope factor for HxCDD mixtures is verified on USEPA's IRIS database, whereas the value for TCDD is not, and (2) the slope factor for HxCDD mixtures is based on exposure to a mixture of congeners, whereas the value for TCDD is based on exposure to a single congener. The commenters believe that the slope factor for HxCDD mixtures replaces the TEF approach, which was created as an interim approach in the absence of chemical-specific data, with one that is based on chemical-specific dose-response data for this family of congeners. The commenters assert that in using the cancer slope factor for HxCDD mixtures, the inherent uncertainties associated with the application of the TEF approach would be eliminated. For these reasons, the commenters recommended that all cancer risk estimates for HxCDDs and HxCDFs be adjusted by a factor of 0.40 (6,200/15,600). Additionally, since the slope factor of 6,200 (mg/kg-day)$^{-1}$ is based on scaling doses using body weight raised to the ⅔ power, the commenters believed that the slope factor should be reduced further to account for the Agency's more recent recommendation that doses be scaled to body weight raised to the ¾ power, resulting in a net adjustment factor of 0.26 for HxCDD and HxCDF risk estimates.

EPA disagrees with the commenters' suggestion that the slope factor for HxCDD mixtures that is presented in IRIS is applicable to all dioxin-like HxCDDs and HxCDFs. The slope factor presented in IRIS clearly is based on studies of only the 1,2,3,6,7,8- and 1,2,3,7,8,9- congeners of HxCDD, thus these are the congeners to which the slope factor would apply if EPA chose to use it in the chlorinated aliphatics risk analyses. Although the commenters suggested that use of the IRIS slope factor would have an impact on the results of the risk analysis, particularly if the slope factor is adjusted using a revised scaling factor, EPA strongly disagrees. Upon review of the congener-specific risk estimates provided in the Risk Assessment Technical Background Document for the proposed rule (USEPA, 1999a) it is clear that eliminating the 1,2,3,6,7,8- and 1,2,3,7,8,9- congeners of HxCDD from the risk analysis *completely* would have the impact of modifying the high end risk estimate for the adult farmer only by a factor of 0.96.

Use of the WHO TEFs

Commenters contended that a hidden area of conservatism in EPA's risk assessment lay in the fact that the TEF values for many congeners, including 2,3,4,7,8-PeCDF and 1,2,3,4,7,8-HxCDF (the congeners that are the primary contributors to EPA's risk estimates), do not reflect central tendency values, but are instead upper bound values. Using the World Health Organization's (WHO's) database of Relative Potency (REP) estimates for these two congeners, the commenters determined that the TEF value of 0.5 for 2,3,4,7,8-PeCDF is equivalent to the 81st percentile of REP estimates obtained from 59 in vivo studies, and that the geometric mean from these 59 studies corresponds to a value of 0.19. Similarly, the commenters determined that the TEF value of 0.1 for 1,2,3,4,7,8-HxCDF is equivalent to the 93rd percentile of REP estimates obtained from 10 in vivo studies for this congener, and that the geometric mean from these 10 studies corresponds to a value of 0.041. The commenters asserted that EPA's risk estimates for dioxin should be adjusted downward to correct for EPA's use of upper-bound TEF values. Curiously, one of the same commenters who opposed the manner in which the WHO–TEFs were developed, also applauded the use of the WHO–TEFs: "Thus, [the commenter] fully supports EPA's shift from I–TEF to WHO–TEF. This replacement by WHO–TEF needs to be adopted promptly by all EPA programs to avoid unnecessary confusion among the general public" and "[the commenter] commends EPA for several good policy decisions in this proposal. Specifically [the commenter] supports EPA's adoption of the WHO–TEF * * *."

In response, EPA points out that the TEF values are based on all available studies. These studies were conducted under a variety of exposure scenarios, including chronic, subchronic, short-term and acute, and examining a broad spectrum of endpoints including biochemical, developmental, immunotoxicological, neurological, carcinogenic and teratogenic. Whereas the resulting range of in vitro/in vivo REP values for a particular congener may span 3–4 orders of magnitude, final selection of a TEF value gave greater weight to REPs from repeat dose in vivo experiments (chronic > subchronic > subacute > acute). Furthermore, studies examining toxic effects were given greater weight than studies examining biochemical effects. This weighting scheme and the use of professional judgment are designed to give more weight to studies that provide exposure scenarios similar to humans and for studies examining effects of concern.

As pointed out by the commenter, the range of the REPs for a particular chemical can vary across studies. However, the commenters' proposed use of the geometric mean or Monte Carlo simulations is cause for concern. The variability in the REPs for a particular chemical can be due to several factors. As with any other determination, there is variability in the measurement which can be due to either inter-laboratory variability and variability in the actual measurement (that is, experimental variability in determining ethoxyresorufin O-deethylase [EROD] activity). Another source of variability could be due to species or endpoint differences in the REP of a chemical. Finally, the REP of a chemical can be due to differences in study design, for example, in vitro studies vs. in vivo studies, or short-term vs. long term in vivo studies. The use of expert judgment and the weighting scheme described above allows for consideration of the important biological factors regulating the relative potency of a chemical. Use of the geometric mean ignores this biological information.

More importantly, the information presented by the commenters is not representative of the actual data available on TEFs and how this information is used. Of all the chemicals included in the TEF methodology, only 5 of these chemicals account for over 80% of the TCDD equivalents in human tissues, 2,3,7,8-TCDD, 1,2,3,7,8-PeCDD, 1,2,3,6,7,8-HxCDD, 2,3,4,7,8-PeCDF and PCB 126. The TEF values for, PCB 126, 1,2,3,7,8-pentachlorodibenzo-p-dioxin, and 2,3,4,7,8-pentachlorodibenzofuran, are similar to the mean of the relative potencies of these chemicals from in vivo studies and in some cases they are lower than the mean of the relative potencies. Chemicals for which there is limited data tend to have TEFs assigned that are conservative estimates of the

relative potencies specifically because of the limited data.

Another short-coming of the proposed statistical method for determining the TEF is the lack of a weighting scheme. In assigning a TEF value for a particular congener, all available data comparing the relative potency of a chemical to TCDD or PCB 126 are considered. The expert panel examines these data sets and places more emphasis on studies which examine toxic responses following chronic or subchronic exposures. The proposed alternative approach, in which the TEF is assigned based in the mean of the relative potency values, ignores the weighting scheme and places a relative potency for biochemical alterations in vitro equal to that for relative potencies based on toxic responses following subchronic exposures in vivo. While the statistical approach recommended by the commenters provides an estimate of the variability, it ignores biological phenomena that influence the relative potencies of these chemicals. In contrast, the use of expert opinion provides a TEF that is based on endpoints of concern and considers biological factors that influence the relative potency of these chemicals. In the development of the TEF methodology, the use of expert opinion to provide an estimate of the variability of the TEF has not been applied. However, the data base that the expert panel uses to derive the TEF is available from the WHO and does present the range of relative potencies.

Finally, the commenter describes the present TEFs as overly conservative based on comparison to the geometric mean of the REPs. It is unclear what the commenter means by "overly conservative." The true relative potency of these chemicals in humans is uncertain. Because the true value is uncertain, it is difficult to determine if the TEF values are over estimates of the potency or if they underestimate the true potency of these chemicals. For the chemicals described, 2,3,4,7,8-PeCDF and 1,2,3,4,7,8-HxCDF, the TEF is based on giving greater consideration to studies using the most relevant dosing regimen and examining toxic endpoints. Use of the geometric mean down plays the importance of the more relevant studies and provides greater weight to acute and in vitro studies.

ii. Chloroform

One commenter claimed that, as was the case for TCDD, EPA's unit risk of 2.3×10^{-5} (ug/m^3)$^{-1}$ for chloroform was calculated using the outdated practice of scaling dose in proportion to body weight raised to the ⅔ power, rather than to the ¾ power, as recommended in the 1996 Guidelines (USEPA, 1996). The commenter believed that, as a result, the cancer risks attributable to chloroform should be adjusted by a factor of 0.52 (calculated in the same manner as discussed for TCDD in section VI.A.2.e.i). Another commenter asserted that, in evaluating cancer risks due to chloroform exposure, EPA failed to consider the EPA Office of Water's (OW) reanalysis of chloroform carcinogenicity. The commenter noted that EPA's December 16, 1998 rulemaking on disinfection byproducts firmly rejected the LMS approach for assessing cancer risks from chloroform exposure. The commenter contended that in the preamble for OW's rulemaking, EPA concluded specifically that "the nonlinear cancer extrapolation approach is the most appropriate means" to assess cancer risks from chloroform (63 FR 69400). The commenter contended that using the nonlinear approach, exposures to chloroform of 0.3 mg/L are considered to pose no cancer risk. The commenter believed that, therefore, the 0.2 mg/L central tendency concentration for chloroform in chlorinated aliphatics wastewater poses no cancer risk.

In contrast, a third commenter strongly supported the proposal to list chlorinated aliphatics wastewaters because of the significant risks posed by the hazardous constituents in the waste, including chloroform. The commenter pointed out that health risks from chloroform are well documented, and noted that chloroform is a recognized human carcinogen, as well as "a suspected toxicant of the following human health systems: cardiovascular or blood toxicant; developmental toxicant; endocrine toxicant; gastrointestinal or liver toxicant; kidney toxicant; neurotoxicant; reproductive toxicant; and respiratory toxicant." The commenter noted that chloroform is "more hazardous than most chemicals in 11 out of 14 ranking systems and is ranked as one of the most hazardous compounds (worst 10%) to ecosystems and human health." (The commenter referenced "EDF's Scorecard, www.scorecard.org, on chloroform. Scorecard incorporates governmental and other authoritative information on chemicals, including their known and suspected health effects.") The commenter believed that EPA is clearly justified in listing chlorinated aliphatics wastewaters.

While EPA acknowledges the concerns of the commenter who highlighted chloroform's adverse health effects, EPA agrees with the commenter who, based on evaluations conducted by OW, challenged our assessment of chloroform carcinogenicity at low doses. Based on mode of action considerations, EPA's Science Advisory Board (SAB), WHO, the Society of Toxicology, and EPA all strongly endorse the nonlinear approach for assessing risks from chloroform. Although OW conducted its evaluation of chloroform carcinogenicity for oral exposure, the nonlinear approach for low-dose extrapolation cited by the commenter would apply to inhalation exposure to chloroform as well, since chloroform's mode of action is understood to be the same for both ingestion and inhalation exposures. Specifically, tumorgenesis for both ingestion and inhalation exposures is induced through cytotoxicity (cell death) produced by the oxidative generation of highly reactive metabolites (phosgene and hydrochloric acid), followed by regenerative cell proliferation (63 FR 15685). As explained in EPA OW's March 31, 1998, and December 16, 1998, **Federal Register** notices pertaining to chloroform (63 FR 15673 and 63 FR 69389, respectively), EPA now believes that "based on the current evidence for the mode of action by which chloroform may cause tumorgenesis, * * * a nonlinear approach is more appropriate for extrapolating low dose cancer risk rather than the low dose linear approach * * *" (63 FR 15685). In fact, OW determined that given chloroform's mode of carcinogenic action, liver toxicity (a noncancer health effect) actually "is a more sensitive effect of chloroform than the induction of tumors" and that protecting against liver toxicity "should be protective against carcinogenicity given that the putative mode of action understanding for chloroform involves cytotoxicity as a key event preceding tumor development" (63 FR 15686).

Given the recent evaluations conducted by OW that conclude that protecting against chloroform's noncancer health effects protects against excess cancer risk, EPA now believes that the noncancer health effects resulting from inhalation of chloroform would precede the development of cancer and would occur at lower doses than tumor (cancer) development. Although EPA has not finalized a noncancer health benchmark for inhalation exposure (a reference concentration, RfC), the Agency for Toxic Substances and Disease Registry (ATSDR) has developed a Minimal Risk Level (MRL) for inhalation exposure to chloroform. An MRL is "an estimate of the daily human exposure to a hazardous substance that is likely to be without appreciable risk of adverse noncancer health effects over a specified duration of exposure [acute, intermediate, or chronic]" (http://www.atsdr.cdc.gov/mrls.html). To evaluate the noncancer hazard associated with exposure to chloroform in air, we compared the concentration of chloroform that we predicted to occur at a high end receptor's point of exposure to the ATSDR MRLs for inhalation exposure to chloroform. The high end chloroform exposure point concentration in air for chlorinated aliphatics wastewaters, approximately 0.0001 ppm (0.74 ug/m^3), is more than two orders of magnitude below the chronic inhalation MRL for chloroform, 0.02 ppm (the chronic MRL is more protective than either the acute or intermediate MRLs), indicating that there is no concern for adverse noncancer health effects, or, therefore, significant increased risk of cancer, resulting from inhalation exposure to chloroform derived from chlorinated aliphatics wastewaters.

In response to the commenter who disagreed with EPA's use of a slope factor based on animal data that had been adjusted to human equivalent doses using body weight raised to the ⅔ power, EPA notes that in OW's comprehensive reevaluation of chloroform carcinogenicity, EPA adjusted the animal data to equivalent human doses using body weight raised to the ¾ power (63 FR 15686), as recommended in EPA's 1996 Guidelines (USEPA, 1996).

f. Noncancer Dioxin Risks for Adults and Nursing Infants

One commenter asserted that EPA should have considered dioxin noncancer endpoints for adults and for nursing infants in developing a dioxin concentration limit that triggers air emission control requirements for wastewater tanks. The commenter explained that a trigger level based on noncancer endpoints may be higher than the cancer-based trigger level, but that EPA should not assume that is the case. The commenter said that EPA should approximate and consider a trigger level for noncancer endpoints.

First, we note that the lead option proposed by EPA was a 'standard' listing for chlorinated aliphatic wastewaters, (*i.e.*, listed regardless of dioxin concentration) with the dioxin trigger level proposed as an attempt to provide a means to implement tank cover requirements more appropriate to the potential risk, particularly because our data indicated that dioxin levels varied among generators (64 FR at 46503). However, as discussed in section VI.A.3 of today's preamble we have made a decision not to list chlorinated aliphatics wastewaters based on revised estimates of cancer risk. EPA also does not believe there is reason for listing chlorinated aliphatics wastewaters based on dioxin noncancer effects, as discussed further below. Although the proposed wastewater trigger level to implement tank cover requirements is moot because we are not finalizing the listing as proposed, we do not believe any increased risk of adverse noncancer effects due to dioxin in chlorinated aliphatic wastewaters is of concern in any event.

Typically, EPA calculates a hazard quotient (HQ) to assess the noncancer health effects resulting from contaminant exposure. For oral exposures, the HQ is the ratio of an individual's average daily contaminant dose to the reference dose (RfD[27]) for the contaminant. EPA has not established RfDs for any of the dioxin or furan congeners (USEPA, 1994[28]). EPA is awaiting the finalization of the Draft Reassessment before formalizing an approach to evaluating noncancer risks from dioxin. In recent years EPA's Office of Solid Waste and Emergency Response (OSWER) has calculated a modified margin of incremental exposure (MOIE) to dioxin on a case-by-case basis (for example, see 64 FR 52828, September 30, 1999). The MOIE is a tool for evaluating the potential for the occurrence of noncancer health effects due to dioxin. The margin of incremental exposure is an expression of the additional (increment of) exposure to dioxin that an individual receives in excess of background exposure to dioxin. Using this approach, we compare the estimated average daily dose attributable to chlorinated aliphatic wastewaters to background exposures in the general population. As a measure of risk, the MOIE presupposes that if exposures are small relative to background, then risks from these exposures are likely to have limited significance for human health. While the MOIE analysis is not specific to any particular health endpoint, it does allow direct comparison of exposures related to chlorinated aliphatics wastewaters to background dioxin exposure experienced by the general population. Using the high end exposure estimates developed for the proposed rule, the high end margin of incremental exposure due to chlorinated aliphatic wastewaters would be 0.17 for an adult farmer and 0.19 for the breast-feeding infant of an adult farmer. However, we estimate that exposures attributable to chlorinated aliphatics wastewaters are actually lower than we originally presented in the proposed rule, due to our reevaluation of our air dispersion modeling results, beef intake rates, and air emissions modeling assumptions (see section VI.A.3). Therefore, we project that the actual high end margin of incremental exposure for both the adult farmer and breast-feeding infant of the adult farmer is less than 0.1, that is, an order of magnitude or more lower than any risk that may be attributable to background exposures (USEPA, 2000b).

3. Rationale for the Final Listing Determination: Summary of the Impact of Public Comments on the Proposed Listing Determination for Chlorinated Aliphatic Wastewaters

As discussed above, public commenters presented arguments that EPA's high end deterministic risk estimate for the adult farmer was in error and overestimated potential risks to human health and the environment. After reviewing and carefully considering all information provided by commenters, we re-evaluated our risk assessment results for air releases of dioxins and chloroform from chlorinated aliphatics wastewaters managed in aerated biological treatment tanks. Based on information provided by commenters, we decided it was appropriate to adjust our risk assessment results to account for cooking and post-cooking losses for beef, a more realistic size of the pasture supporting cattle indirectly exposed to dioxin emissions, and the potential for solids removal prior to wastewater treatment in aerated biological treatment tanks. After calculating these adjustments to our proposed risk assessment results, EPA found that accounting for cooking and post-cooking losses for beef would modify the high end risk estimate for the adult farmer by a factor of 0.78, and accounting for a more reasonable pasture size would modify the risk estimate by a factor of 0.50, resulting in an overall risk estimate of 7E–06. This risk estimate does not consider the impact of

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[27] In the preamble to the proposed rule, in an effort to present the concept of RfDs and RfCs in plain language, we incorrectly characterized RfDs and RfCs as levels that EPA considers "acceptable." RfDs and RfCs are not by themselves action levels; they do not establish acceptable exposures, nor do they establish danger levels. RfCs and RfDs are used as tools in establishing concern for non-cancer effects resulting from exposure to contaminants, and they serve as a common reference point from which risk managers can make decisions regarding estimates of exposure.

[28] United States Environmental Protection Agency (USEPA). 1994. Health Assessment for 2,3,7,8-TCDD and Related Compounds. Public Review Draft. Office of Research and Development. EPA/600/EP–92/001a–c. September.

assuming solids removal from the wastewater, which could reduce risk to an even greater extent, reasonably by an additional factor of 0.67 to 0.94, such that our final risk estimate could be as low as 4E–06. Moreover, our proposed estimate of risk due to emissions of chloroform, which we previously believed would be additive to our dioxin risk estimate, is no longer valid given recent Agency information regarding chloroform's mode of action. Specifically, there is no concern for adverse noncancer health effects resulting from inhalation exposure to chloroform derived from chlorinated aliphatics wastewaters, therefore, there is no concern for increased risk of cancer. Furthermore, the noncancer health effects due to dioxin that we characterized in response to comments presented above also would be affected by the adjustments to our analysis, and would be even less than projected.

Thus, EPA believes that the risk from this waste is well below 1×10^{-5}. We acknowledge that there is some uncertainty associated with the analyses we have conducted in response to the three comments we found persuasive—for example, we do not have data to support specific conclusions with respect to the percentage of solids removed from wastewater by prior to biological treatment. Nonetheless, we have been conservative in accounting for the factors raised by the comments and believe the risk is unlikely to be higher than our revised estimates. In addition, we note that the risk level presented for these wastewaters in the proposal (2×10^{-5} as marginal. As we have explained, we make listing determinations based on a weight-of-the-evidence approach, and the result of a decision is not dictated by whether the risk calculated for a waste is slightly more or less than 1×10^{-5}. So, even aside from the specific revised risk numbers we have calculated, we would decide not to list this waste based on the determination that the already marginal risk level presented in the proposal clearly overstates the actual risk associated with the waste, and that the actual risk is almost certainly considerably below the 1×10^{-5} level.

Therefore, the Agency concludes that potential air releases from wastewaters managed in biological treatment tanks do not present significant risk to human health and the environment and do not support listing chlorinated aliphatic wastewaters as hazardous wastes. After carefully reviewing our analyses and making necessary adjustments to our risk estimates based upon arguments and information presented in public comments, we estimate that air releases from the management of chlorinated aliphatic wastewaters would result in high end cancer risk risks less than 1×10^{-5}. The Agency therefore is finalizing a decision to not list chlorinated aliphatic wastewaters as hazardous waste.

4. Waste Management Practices / Scope of Listing Determination for Chlorinated Aliphatic Wastewaters

EPA believes that the rulemaking record for this rule supports a decision not to list chlorinated aliphatic wastewaters based on the typical management scenario of biological treatment in tanks. As mentioned above, and explained in more detail in Listing Background Document for the Chlorinated Aliphatics Listing Determination (USEPA, 1999c),[29] the majority of chlorinated aliphatic manufacturing facilities manage their wastewaters in tank-based wastewater treatment systems and either directly discharge treated wastewaters under NPDES permits, or discharge the wastewaters to POTWs. However, the Agency is aware that two facilities treat their chlorinated aliphatic wastewaters on-site and dispose of the wastewaters in on-site UIC wells. In addition, the Agency learned from public comments, that one facility pipes its wastewaters off-site to a nearby chemical manufacturing facility that commingles the chlorinated aliphatic wastewaters with other wastewaters, and treats the combined wastewaters in a wastewater treatment system that includes surface impoundments.

a. Wastewaters Managed in Underground Injection Control (UIC) Wells

With respect to the two facilities that manage their chlorinated aliphatic wastewaters in on-site UIC wells, one of the facilities already manages its wastewaters as hazardous due to the fact that the wastewaters exhibit the toxicity characteristic. This facility manages its hazardous wastewaters in covered tanks, pipes the wastewater directly to a Class I hazardous UIC well and complies with RCRA and CAA (HON) air emissions requirements. Due the fact that this wastewater is being managed as a hazardous waste and in full compliance with RCRA subtitle C and applicable CAA requirements, we conclude that this wastestream does not present significant risk and we believe that our decision not to list these wastewaters as hazardous waste will have no potential adverse impact in terms of protecting human health and the environment.

In the case of the other chlorinated aliphatic production facility that manages its wastewaters by disposing of them in UIC wells, some of the facility's wastewaters were, until recently, defined as hazardous waste (*i.e.*, derived from previously listed hazardous waste) and disposed in a Class I hazardous UIC well and in compliance with a no-migration petition. Recently, the facility was granted a delisting for these wastewaters by the Region VI EPA Regional Administrator. Given that the Regional Administrator has evaluated these wastewaters and determined that the wastewaters, as generated, do not pose significant risks to human health and the environment and warrant the award of a delisting, we believe that our decision not to list chlorinated aliphatic wastewaters as hazardous waste is appropriate for this wastestream and this decision will result in no adverse impact to human health and the environment.

This facility also manages some of its chlorinated aliphatic wastewaters as non-hazardous waste and injects the wastewaters into a Class I non-hazardous UIC well. Although we did not model this management practice in our evaluation of potential risks from the management of chlorinated aliphatic wastewaters, we did examine the specific waste management requirements governing these wastewaters. Our evaluation of the specific management requirements applicable to these wastewaters included a comparison of the state requirements governing Class I non-hazardous UIC wells and those governing Class I hazardous UIC wells. We found that the requirements in Louisiana, where this facility is located, for Class I non-hazardous UIC wells are virtually identical to those governing Class I hazardous waste UIC wells. EPA staff confirmed this conclusion after consulting numerous sources, including a direct examination of the state regulations and discussions with state authorities and EPA Regional personnel. We also note that in our evaluation of these wastewaters, we determined that the levels of constituents in the wastewaters are equivalent to the levels for which the facility's other wastewaters were recently delisted. This indicates that these wastewaters will not pose risk when managed in Class I UIC wells at this specific facility. Given these conclusions, we think this practice is protective and believe that our decision not to list chlorinated aliphatic wastewaters will have no adverse impact on human health and the environment due to the management of this facility's wastewaters in non-hazardous UIC wells.

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[29] U.S. EPA. 1999c. Listing Background Document for the Chlorinated Aliphatic Listing Determination (Proposed Rule). Office of Solid Waste. July.

b. Wastewaters Managed in Surface Impoundments

At the time EPA published the proposed listing determination for chlorinated aliphatic production wastes, the Agency was not aware that any chlorinated aliphatic wastewaters were managed in surface impoundments. EPA noted in the preamble to the proposed rule that although information available to the Agency, at the time of the proposed rule, indicated that surface impoundments had been used in the past, available information indicated that chlorinated aliphatic wastewaters are not managed in surface impoundments today. However, as a result of public comments to the proposed rule, the Agency obtained information indicating that a single facility, which is not a chlorinated aliphatics manufacturing facility, accepts wastewaters from a chlorinated aliphatic manufacturer and treats the chlorinated aliphatic wastewater stream after commingling it with other wastewaters generated at the chemical manufacturing facility. The commingled wastewaters are treated in a wastewater treatment system that includes biological treatment in surface impoundments.

After receiving information indicating that one facility was managing chlorinated aliphatic wastewaters in surface impoundments, the Agency conducted additional research to determine if other chlorinated aliphatic wastewaters were being managed in impoundments. The results of this research are that the Agency could identify no other facilities managing chlorinated aliphatic wastewaters in surface impoundments.

As a result of comments received in response to the proposed rule indicating that one facility treats chlorinated aliphatic wastewaters in surface impoundments, EPA did a screening analysis of potential risks from these wastewaters when managed in an impoundment. That risk screening analysis was based on very conservative assumptions that result in an overestimate of risk, given that the Agency assumed there would be no dilution of the wastewater in the environment and that an individual would drink the wastewater directly from the impoundment. The screening analysis suggested that wastewaters might pose risks in impoundments under the very conservative (and unrealistic) assumptions used in the screening analysis (that is, it may not be safe to drink the wastewaters as generated in the impoundment). However, given the overly protective nature of that screening assessment, the "screening analysis" does not provide meaningful information about any risks actually associated with this waste management practice and, therefore, it does not provide a basis for listing the wastewaters as hazardous.

EPA has to make the best decision it can with the information and analysis it has at the time of its evaluation. EPA has decided at this time not to list as hazardous chlorinated aliphatic wastewaters, regardless of how the wastewaters are managed. We are finalizing this no list determination, given that the data and analysis before us, while indicating some potential for risks from the management of wastewaters in surface impoundments, does not warrant a decision to list these wastewaters as hazardous. Simply put, EPA was unable, in the time afforded under the consent decree, to perform a full risk assessment for this waste management practice and to subject that decision to public comment, and the screening assessment that EPA was able to do was indeterminate. Although EPA cannot rule out the possibility that this practice may present some risk to human health and the environment, EPA has fully assessed the risk presented by the predominant mode of waste management and made the determination that it does not present a substantial hazard. In fact, of the 23 chlorinated aliphatic manufacturing facilities that generate wastes effected by this rulemaking, only 3 facilities manage wastewaters in non-tank based systems. Under these circumstances, EPA has concluded that it is appropriate to make a final decision based on the information and analyses with respect to all the units and practices other than this impoundment.

This conclusion is based in part on our interpretation of our obligation under RCRA section 3001(e)(2). Under that provision, Congress required that EPA make final listing determinations for 17 different waste categories in 15 months. In view of the scope of the task and the tightness of the timeframe established, Congress could not have intended that EPA conduct an in-depth review of every unit managing any amount of waste within the categories. Rather, Congress must have intended that EPA make the best reasoned judgment it can based on analyses and information that are reasonably representative of the waste categories. In practice, EPA has gone well beyond this in its listing decisions and generally has tried to account for all the waste management practices and units of which it is aware. However, in this rulemaking, EPA was faced with the choice of continuing this practice—which would have meant diverting time from completing the rulemaking to attempt to negotiate a further extension of the consent decree—or completing the rulemaking on schedule. Although EPA could always perform more complete and rigorous analysis given more time on any rule, at some point it is appropriate to move toward finalizing a decision and cut off further analysis. In view of the length of time already devoted to this rulemaking and the number of extensions previously negotiated to the consent decree, and the fact that only one waste management unit was unaccounted for in our analysis, EPA decided to issue a final determination not to list aliphatics wastewaters without accounting for this unit.

EPA is not deferring a decision for chlorinated aliphatics wastewaters; it is making a final decision not to list the wastewaters. Of course, EPA can always consider additional information and analyses in the future and make further regulatory decisions based on that. In addition, should EPA learn that the management of waste at this impoundment presents a threat to human health and the environment, EPA could consider taking site-specific action to abate the threat without listing the waste, *e.g.*, an action under RCRA Section 7003.

B. Wastewater Treatment Sludges From the Production of EDC/VCM

EPA is listing as hazardous sludges generated from treating wastewaters associated with the manufacture of ethylene dichloride and vinyl chloride monomer. This wastestream meets the criteria set out at 40 CFR 261.11 (a)(3) for listing a waste as hazardous and is capable of posing a substantial present or potential hazard to human health or the environment when managed in land treatment units. EPA is finalizing a conditional listing for this waste, based upon the Agency's determination that the waste does not pose a substantial risk when disposed of in a landfill.

K174 * * * Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater), unless the sludges meet the following conditions: (i) they are disposed of in a subtitle C or non-hazardous landfill licensed or permitted by the state or federal

government; (ii) they are not otherwise placed on the land prior to final disposal; and (iii) the generator maintains documentation demonstrating that the waste was either disposed of in an on-site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off-site landfill. Respondents in any action brought to enforce the requirements of subtitle C must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (*e.g.*, contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc.) that the terms of the exclusion were met.

1. Summary of the Agency's Listing Decision for EDC/VCM Wastewater Treatment Sludges

EPA evaluated potential risks from the management of wastewater treatment sludges generated by producers of ethylene dichloride (EDC) and vinyl chloride monomer (VCM). This waste grouping consists of all sludges generated from the treatment of EDC/VCM wastewaters, excluding sludge generated from the treatment of VCM-A wastewaters (discussed elsewhere in today's rule). EPA estimates, based upon 1996 data, that approximately 104,600 metric tons of wastewater treatment sludges are generated annually by facilities that produce EDC and/or VCM.

EDC/VCM wastewater treatment sludges are generated by 12 facilities. Most facilities manage these sludges by disposing of them either in a hazardous waste landfill or a non-hazardous waste landfill. However, one facility manages its EDC/VCM sludges in an on-site land treatment unit. To assess the potential human health risks associated with EDC/VCM sludges, EPA evaluated potential risks from managing this waste in an off-site non-hazardous waste (unlined) landfill and an on-site land treatment unit. The highest risk estimates were calculated for an adult farmer who ingests beef and dairy products containing dioxin derived from airborne releases and erosion/runoff from the land treatment unit. The proposed high end and central tendency risk results for the farmer exposed to dioxin from the land treatment unit were 2E–4 and 4E–6, respectively. The Agency also concluded in the proposal that the management of EDC/VCM wastewater treatment sludges in landfills does not present risks of sufficient concern to support a decision to list the sludges as hazardous waste when managed in this manner. 64 FR 46476; 64 FR 49052 (September 9, 1999 **Federal Register**).

Issues raised by commenters, and data provided in comments received in response to the proposed rule, caused the Agency to reevaluate the risk analyses that were the basis of our proposed risk estimates. After careful consideration of information provided by commenters, we lowered the estimated risk associated with the management of EDC/VCM sludges in a land treatment unit. While the Agency's proposed high-end deterministic risk estimate for the land treatment unit (2E–4) was at a level at which the Agency presumes a waste poses sufficient risk to be listed (i.e., 1E–4 or greater), the revised risk estimate (7E–5) falls within the range of risks where the Agency may decide to list the waste as hazardous (i.e., between 1E–4 and 1E–6), upon consideration of additional factors. 59 FR at 66077. More specifically, EPA has previously stated that where risk estimates are within the 1E–4 to 1E–6 range, there is a "presumption of candidacy for either listing (risk >1E–5) or no listing (risk < 1E–5)." 59 FR at 66077. Applying that approach in this instance, the risk estimate for the land treatment unit of 7E–5 is not only greater than 1E–5, it is in the upper end of the range between 1E–5 and 1E–4. Comments received on the Agency's proposed risk analysis for the landfill waste management scenario did not result in the Agency modifying the risk estimate for the landfill. High-end deterministic risk estimates for the landfill scenario were all well within the presumptive no-list range (*i.e.*, less than 1E–6) with the exception of arsenic, the groundwater risk for which was estimated at 3E–5. (The Agency's discussion of additional factors that led EPA to decide that the arsenic risk estimate alone did not support listing EDC/VCM wastewater treatment sludges managed in landfills is presented below in Section VI.B.2.b.v. of this preamble.)

The Agency is therefore listing as hazardous EDC/VCM wastewater treatment sludges (using a conditional listing approach as proposed) based upon EPA's consideration of the risk estimates and additional factors. The Agency's decision was influenced by the fact that dioxin has been heavily studied, and the dioxin concentrations and volumes of EDC/VCM sludge have been well characterized in EPA's study of this industry (and, along with the toxicity [30] of dioxin, were incorporated into the risk assessment). Additionally, there was evidence that the land application unit where these wastes are currently managed had releases of other constituents to the environment, which indicates that there may not be adequate coverage by other regulatory programs.[31] Because industrial solid waste land treatment is a plausible management scenario for these wastes, EPA is concerned about EDC/VCM sludges managed in this manner where dioxin (a chemical that is persistent over the long term) is the constituent of concern.

Finally, the EPA's concern is that not only is the application of dioxin-containing wastes in a land treatment unit plausible, it is in fact occurring. No commenter provided evidence that absent a decision to list the waste, there is other regulatory authority that would assure that the risks the Agency estimates for this practice would not continue, either at the facility currently utilizing this practice, or at a different facility.

The Agency concludes, based upon the estimated risk for dioxin of 7E–5, and after considering other relevant factors described above, that EDC/VCM wastewater treatment sludges pose a substantial hazard when managed in land treatment units. In addition, the Agency concludes that this waste does not pose a substantial hazard when managed in landfills. Based on these conclusions the Agency is promulgating a conditional listing for this waste. EPA is listing EDC/VCM wastewater treatment sludges as hazardous waste, unless the sludges are managed in landfills. The conditional listing promulgated today also requires that EDC/VCM wastewater treatment sludges not be placed on the land prior to disposal. In addition, generators must be able to demonstrate that the sludges are managed in accordance with the conditions for being excluded from the hazardous waste listing.

2. Response to Major Comments Received on Proposed Rule for EDC/VCM Wastewater Treatment Sludges

EPA received comments on a number of issues concerning the data and analyses EPA used to arrive at our listing decisions for EDC/VCM wastewater treatment sludges. In addition, one commenter asserted that many of the comments on EPA's analysis of dioxin risks from the management of chlorinated aliphatics wastewaters (for example, comments relating to the dioxin cancer slope factor) also apply to EPA's analysis of dioxin risks from the management of EDC/VCM wastewater treatment sludges in a land treatment unit. The comments we received may be generally divided into nine categories: (1) Comments on EPA's waste management assumptions; (2) comments on the exposure scenarios we evaluated in our risk assessment; (3) comments on how we calculated exposure point concentrations in the risk assessment; (4) comments on EPA's exposure assessment; (5) comments on EPA's toxicity assessment for dioxin; (6) comments on how we characterized risks associated with arsenic; (7) comments on demonstrating compliance with the listing description; (8) comments on the status of EDC/VCM sludges that are managed in ways other than land treatment or landfilling; and (9) comments on whether or not a contingent management approach to the listing is appropriate. The comments, and the Agency's responses to these comments, are described below.

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[30] Dioxin has the highest slope factor (an indicator of carcinogenic potency) of any chemical in the EPA IRIS database.

[31] See Appendix A.—Environmental Release Descriptions, in Hazardous Waste Characteristics Scoping Study U.S. EPA, November 15, 1996, pp. A–28 and A–29.

a. Waste Management Assumptions

Eleven facilities manage EDC/VCM wastewater treatment sludges by disposing of them either in a hazardous waste landfill or a non-hazardous waste landfill. One facility manages this waste in an on-site land treatment unit. As a result of public comment, the Agency has learned that one facility generates and manages EDC/VCM wastewater treatment sludges in surface impoundments.

In 1996, approximately 104,561 metric tons of wastewater treatment sludges were generated in wastewater treatment systems used to treat process wastewaters from the manufacture of EDC/VCM. Of this volume, approximately 6,574 metric tons is attributable to the production of EDC/VCM. The remaining sludge volumes are associated with the treatment of other process wastewaters that are commingled with EDC/VCM process wastewaters and treated in the same wastewater treatment system.

i. Waste Volumes

One commenter questioned whether EPA used the correct assumption with regard to waste volume in the risk assessment, given that the production of EDC/VCM may be increasing in the United States. The commenter cited information provided in the Agency's Economics Background Document for the proposed rule. The commenter asserted that had EPA assumed a larger waste volume, based upon increased future production capacity, the result would be an increase in the predicted level of risk associated with the management of EDC/VCM sludges in landfills. The same commenter questioned whether or not the Agency had accounted for the likelihood that EDC/VCM wastewater treatment sludges generated by different facilities may be co-disposed in the same landfill.

In response to the commenter's concerns regarding co-disposal of sludges, the Agency wishes to clarify that we did, in fact, account for co-disposal of EDC/VCM sludges where information provided in the RCRA 3007 questionnaire responses showed that multiple generators dispose of the sludges in the same off-site landfill. As documented in the Listing Background Document (USEPA, 1999c, USEPA, 2000e), the Agency accounted for two instances where sludges generated by two generators are disposed in the same landfill.[32] In both cases, the Agency used the combined sludge volume in assessing the quantities of sludges managed in off-site landfills.

In response to other concerns raised by the commenter, the Agency reviewed the sensitivity analyses for the landfill analyses that were presented in the July 1999 Risk Assessment Technical Background Document. Our conclusion is that predicted risk levels are not very sensitive to changes in waste volume: As shown in Table H.3.3 in Appendix H of the Risk Assessment Technical Background Document (USEPA 1999a), we found that increasing waste volume from the central tendency value of approximately 15,000 m^3 to the high end value of approximately 51,000 m^3 increases the maximum 9-year average receptor well concentration, thus risk, by only a factor of 1.6 in the 10,000 year time period that we modeled. This means that if waste volumes more than tripled, the risk estimate would be expected to increase by only a factor of 1.6 (that is, to 5E–05). Such an increase in production and waste generation, which results in a relatively small change in potential risk, would not cause the Agency to change its listing decision. The Agency also points out that there may be significant uncertainties in projecting changes in the volume of waste generated, based upon increased production capacity, due to uncertainties in the relationship between production rates and waste generation rates and the effects that technology changes, types of facility expansions (*i.e.*, increased production capacity at existing facilities versus building new facilities) and the impact of potential (and simultaneous) adoption of waste minimization activities.

ii. Interpretation of Analytical Results

A commenter questioned the Agency's use of analytical results from "dedicated" sludge samples in its risk analysis and the commenter indicated that some of the "non-dedicated" sludge samples appear to have higher dioxin concentrations than the dedicated samples. As explained in the preamble to the proposed rule (see 64 FR 46483), "dedicated" wastes are those wastes attributable only to the production of EDC/VCM and do not include wastes derived from the production of other chlorinated aliphatic wastes and commingled with EDC/VCM sludges. In our risk analysis, EPA used analytical information from samples of dedicated sludges only to isolate the risks from constituents attributed to those wastes generated from the production of the chlorinated aliphatic chemicals of concern to this listing determination. Given the commenter's concerns, the Agency did review the dioxin concentrations in the sludge samples not included in the risk analysis. The Agency found that on the basis of dioxin TEQs, the highest dioxin concentration in the "non-dedicated" samples (those not included in our analysis) was less than one fourth of the highest concentration of dioxins (on a TEQ basis) found in the samples used in the analysis. Therefore, had the Agency used the analytical results from the non-dedicated samples in its analysis, the use of the dioxin concentrations would not have caused an increase in the risk estimate.

A commenter also questioned EPA's use of TCLP analytical results to predict leachate concentrations of contaminants from landfill disposal of EDC/VCM wastewater treatment sludges. The commenter questioned why EPA's data showed that lead and chromium are not detected using the TCLP, given that these constituents were found in the total constituent analysis of the sludges. The commenter suggested that high iron content in the sludges may affect the concentration of lead predicted by the TCLP analysis, citing data in a previous EPA rulemaking (Phase IV Land Disposal Restrictions, or LDR, proposed rule) that suggests high iron content effects lead. EPA believes that the commenter is referring to an issue first raised in the Phase III LDR proposed rule and subsequently finalized in the Phase IV LDR final rule on May 26, 1998 (63 FR 28556). In the Phase IV LDR final rule, EPA determined that the addition of iron filings to lead-containing hazardous wastes was not a legitimate form of treatment, and was in fact impermissible dilution, because the iron filings can interfere with the TCLP test used to determine whether the waste has been effectively treated (40 CFR 268.3(d)). The commenter stated that EPA should determine whether the non-detects for lead in the sludge samples are an artifact of the TCLP, and if so, that EPA should instead use partitioning equations rather than TCLP data in the landfill modeling.

In response, the Agency notes it has consistently relied on the results of TCLP leach tests in estimating the leaching potential of wastes for making listing determinations, although more recently this use in listing determinations has narrowed to evaluation of leaching potential of wastes actually or plausibly being managed in Municipal Solid Waste (MSW) landfills (see for example, 65 FR 55684, September 14, 2000 **Federal Register**). As presented elsewhere in today's preamble, the Agency modeled an unlined, MSW landfill for EDC/VCM sludges, which is not only plausible but is actually occurring as well (see section below on landfill controls).

In addition, after reviewing the information related to the LDR rulemakings referenced by the commenter, and the analytical data for the EDC/VCM sludge samples EPA used in the landfill analysis, EPA does not believe there would be potential risks from groundwater even if all of the lead leached out of the samples EPA used in the landfill modeling, therefore the screening analysis performed was quite adequate to conclude that no significant risks would be posed by the lead in the EDC/VCM sludges. For further information the reader is referred to the Response to Comments Document for today's rule.

iii. Landfill Controls

Two commenters questioned why EPA assumed, in its risk assessment for EDC/VCM sludges managed in landfills, that non-hazardous waste landfills are covered daily and have runoff and runon controls. The commenters stated that some states do not require industrial, non-hazardous waste, landfills to apply daily cover and/or install runon and runoff control systems. The Agency contacted state agency officials in states where generators of EDC/VCM wastewater treatment sludges are located and where landfills identified in the RCRA 3007 questionnaires as accepting EDC/VCM wastewater treatment sludges are located. Officials in each state indicated that either industrial landfills are required to have daily cover and runon/runoff controls, or in the case of one state, although state regulations do not require these controls, the controls are generally required and enforced through permits. In addition, EPA called the owner/operators of each of the landfills identified in the RCRA 3007 questionnaires as accepting EDC/VCM wastewater treatment sludges for disposal. In every case, the owner/operators indicated that daily cover is applied and that the facility is equipped with runon/runoff controls. In addition, all but one of the landfills contacted accepts municipal solid waste. Therefore, Federal and state regulations require these landfills to apply daily cover and be equipped with runon and runoff controls. In addition, we expect that state agencies will continue to require these technical standards in future. Given that all landfills currently accepting EDC/VCM wastewater treatment sludges currently are applying daily cover and are equipped with runon/runoff controls and given that state agencies in states where EDC/VCM sludges currently are generated and managed require these controls, the Agency concludes that the commenters' concerns are unfounded.

b. Risk Assessment Exposure Scenarios, Contaminant Fate and Transport Modeling, Exposure Assessment, and Toxicity Assessment

EPA received comments on several aspects of the landfill and land treatment unit risk assessments that we conducted to support the EDC/VCM wastewater treatment sludge listing determination. EPA received two specific comments concerning the exposure scenarios that we evaluated in the landfill risk assessment: 1) that we did not evaluate particulate emissions from landfills, and 2) that we failed to consider "non-routine" exposures. EPA also received a comment on the contaminant fate and transport modeling that was conducted for the groundwater pathway analysis under the landfill scenario. EPA uses contaminant fate and transport modeling to estimate the contaminant concentrations at the receptor's point of exposure. Commenters contended that we had not correctly evaluated groundwater pathway risk for the landfill because we assumed that leaching of the landfill did not begin until after landfill closure. Lastly, we received a general comment that we believe applies to several aspects of our land treatment unit risk assessment: the exposure scenarios evaluated, the contaminant fate and transport modeling, and the exposure and toxicity assessments. This comment asserted that "much of the same type of over conservatism" present in the risk assessment for the chlorinated aliphatic wastewaters also was present in the risk assessment for EDC/VCM sludges managed in a land treatment unit.

i. Particulate Emissions From Landfills

Based upon information provided in responses to the RCRA § 3007 questionnaires, EPA evaluated the risks associated with the management of EDC/VCM wastewater treatment sludges in unlined municipal landfills and in a land treatment unit. We determined that releases from landfills could occur through the release of vapor emissions to the air and through leaching of the waste into the subsurface. One commenter was concerned that EPA had not considered the risks due to exposure to particulate emissions from landfills in which EDC/VCM wastewater treatment sludges are disposed. The commenter acknowledged that the Agency did not evaluate particulate emissions because the Agency assumed that the moisture content of the waste would prevent the release of particulates. The commenter indicated that the assumption that sludges would have sufficient moisture content to prevent particulate emissions was "not well founded, given possible climate and wind conditions (for example, location of a landfill in an arid climate with high wind)."

The Agency disagrees with the commenter. As explained in the proposed rule (64 FR 46484), data collected by the Agency in support of the listing determination indicate that the EDC/VCM sludges have a high moisture content. Samples analyzed by the Agency had moisture contents of between 41 and 74 percent, which should prevent generation and release of particulates to the air during the time between placement of the waste in the landfill and the application of daily cover (or the application of new waste). Moreover, based on the results of our risk analyses for the land treatment unit, we do not think that particulate emissions from landfills, even if they did occur, would present significant risk. Under the land treatment unit scenario, dioxins were the only contaminants for which we identified significant risks due to air releases, and only 8 percent of the dioxin risk was due to particle phase air releases, while 92 percent of the risk was due to vapor phase air releases (Table 5–8; USEPA, 1999a). Under the landfill scenario, the vapor pathway dioxin risk was estimated to be 4E–10 (Appendix H.3.1,

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[32] See page 56 of "Listing Background Document for the Chlorinated Aliphatics Listing Determination" (USEPA, 1999c).

Table H.3–1c; USEPA, 1999a). Even though we did not calculate risks from particle emissions, we expect they would be even less than 4E–10, based on the relative risks from land treatment units.

ii. "Non-Routine" Exposures

One commenter claimed that virtually the entire risk modeling effort was confined to long-term chronic risk exposures, that is, primarily indirect exposures offsite of a management facility. The commenter believed that EPA ignored activities at the waste management unit itself, and therefore ignored risks to workers and others at the waste management facilities. The commenter believes EPA also should consider acute exposure risks through accidents and other "non-routine" waste management conditions. Examples of such conditions provided by the commenter include high winds (40—60 mph) on dry days, drought or arid conditions, heavy rainfall, and hurricanes. The commenter stated that heavy rainfall and hurricane conditions could cause substantial amounts of dioxin-laden solids to be moved over land and into streams if the wastes were disposed in an unbermed area. The commenter expressed concern that during windy and arid conditions, dioxin-laden particulates may be dispersed from the landfill and beyond the unit boundaries. The commenter argued that the analysis of non-routine exposures is appropriate because of the toxicity and persistence of dioxin relative to other contaminants.

The commenter was concerned that EPA did not evaluate acute exposure to dioxins under scenarios involving workers, extreme climatological events, or accidents. EPA agrees that it can be appropriate to assess acute exposure scenarios or accidents in certain cases. However, in the case of chlorinated aliphatic sludges, we did not believe that such scenarios merited explicit analysis because the sludges, which result from the treatment of wastewaters, do not contain the very high concentrations of dioxins that we believe would be necessary to result in estimates of significant acute risk or hazard. For example, the highest TCDD TEQ concentration reported for dedicated EDC/VCM wastewater treatment sludges, 0.907 ug TCDD TEQ/kg, is below EPA's Superfund soil action level of 1 ug TCDD TEQ/kg which was developed to be protective of direct long term exposure to dioxins in residential soils and therefore clearly would be protective of shorter term exposure (OSWER Directive 9200.4–26, April 13, 1998).

iii. Delay of Landfill Leaching Until After Closure

In evaluating releases to groundwater from the landfill used to manage EDC/VCM sludge, EPA made a simplifying assumption that contaminant leaching from the landfill does not occur until after the landfill closes (that is, after 30 years). As we explained in the proposed rule, we made this assumption because of the complexities associated with linking the output of our landfill partitioning equations and our groundwater model, EPACMTP (EPA's Composite Model for Leachate Migration with Transformation Products). Two of the public commenters and all three of the peer reviewers questioned the appropriateness of our assumption, suggesting that it would lead to an underestimate of risk. One commenter noted that during the period when the landfill is open and the waste is exposed directly to storm water, "leachate migration of contaminants is at its highest level."

In retrospect, we realize that we were not completely clear concerning how our landfill modeling approach considers the production of leachate over the life of the landfill. Because of the way our landfill model is constructed, the application of daily cover and a final cap only limits the release of air emissions from the landfill, daily cover and final cap do not limit the production of landfill leachate. This is because the infiltration rate that we use for the landfill during its active life is the same as the infiltration rate that we use for the landfill once it is closed—we assume that the infiltration through the daily cover and final cap is the same as the infiltration through the exposed waste. Our basis for assuming that the cap will not reduce infiltration is that we predict that over the long term a cap will fail, and will cease to function effectively. Consequently, the effect of delaying leaching of the landfill until after closure is only to "offset" the arrival of the peak contaminant concentration at the groundwater receptor well by 30 years. For the sole contaminant of concern for the landfill, arsenic, the peak arrival time was estimated to be 8800 years. Reducing this time estimate by 30 years is clearly insignificant.

iv. Overly Conservative Land Treatment Unit Risk Analysis

One commenter maintained that "much of the same type of over conservatism" that was present in the risk assessment for the chlorinated aliphatic wastewaters also was present in the risk assessment for EDC/VCM sludges managed in a land treatment unit. The commenter contended that "[f]or the same reasons articulated" for wastewaters, "EPA should reevaluate and adjust risk assessment parameters as necessary before proposing to list such wastes, even under a land treatment scenario."

Although the commenter was not specific regarding which aspects of their comments on the wastewater risk analysis they felt applied to the Agency's evaluation of EDC/VCM sludges managed under a land treatment unit scenario, we reviewed the risk assessment comments for wastewaters to determine which could be relevant to the land treatment unit analysis. The comments that we focused on are discussed below. Section VI.B.3 summarizes how the comments influence the proposed risk estimate for EDC/VCM sludges managed in a land treatment unit.

Cooking and Post-Cooking Losses for Beef

The commenter claimed that the intake rates that EPA used for beef should have been adjusted downward to account for cooking and post-cooking weight loss, as recommended in the Exposure Factors Handbook (USEPA, 1997). As was the case for wastewaters (see section VI.A.2.d.), EPA agrees that we should have accounted for cooking and post-cooking losses of beef in our exposure analysis for the land treatment unit.

Assessment of the Toxicity of Dioxins and Furans

In our evaluation of the comments on wastewaters, we disagreed with the commenter's claim that we should modify the cancer slope factor that we used for TCDD and that our TEFs represent upper-bound values. Our responses to these comments are provided in section VI.A.2.e.i. Although we also disagree with the commenter's assertions that we should use the IRIS slope factor for HxCDD mixtures in our risk assessment (see section VI.A.2.e.i.), eliminating the 1,2,3,6,7,8- and 1,2,3,7,8,9-congeners of HxCDD from the land treatment unit risk analysis *completely* would have the impact of modifying the high end risk estimate for the adult farmer only by a factor of 0.97, which would not significantly change the results of the risk analysis.

EPA Should Have Evaluated Site-Specific Exposure Scenarios

The commenter maintained that EPA should have used a site-specific approach to assessing risks from

management of chlorinated aliphatics wastewaters (see section VI.A.2.b). The commenter suggested that such an approach would recognize that EPA's assumption that a farmer lives at the same location within 300 meters of a chlorinated aliphatics facility for 48.3 years, and raises fruits, exposed vegetables, root vegetables, beef cattle, and dairy cattle within this distance, is unrealistic. In addition, the commenter challenged the amounts of home-produced beef, dairy products, vegetables, and fruits that EPA assumed were consumed by the farmer.

Although the Agency's response to these comments is presented in our discussion of chlorinated aliphatics wastewaters in section VI.A.2.b, there are a few additional points that we can make with regard to the exposure scenario we considered in our evaluation of the risk associated with management of EDC/VCM wastewater treatment sludges in a land treatment unit. Although our land treatment unit analysis was inherently more site-specific than our analysis of wastewaters (since only one facility uses a land treatment unit to manage EDC/VCM sludges), we do not believe, for the reasons presented in section VI.A.2.b.i, that it would have been appropriate to conduct facility-specific risk analyses for chlorinated aliphatics wastes.

In response to concerns regarding the likelihood that a farmer would raise fruits and vegetables for home consumption, in addition to producing beef and dairy products, EPA refers to Table 5–8 of the Risk Assessment Technical Background Document (USEPA, 1999a) that shows that only 4 percent of the high end risk for the adult farmer was due to ingestion of home grown fruits and vegetables. As was the case for wastewaters, even though EPA believes it is plausible that a subsistence or hobby farmer would raise fruits and vegetables for home consumption, the validity of EPA's risk estimate depends almost entirely on the validity of our assumption that a farmer might consume both beef and dairy products from cattle raised on a farm located near a chlorinated aliphatics production facility. While we responded to this comment in our previous discussion of wastewaters, EPA notes that even in the specific case of the facility where the existing land treatment unit is located, there is evidence of the potential close proximity of grazing cattle. First, the most recently available agricultural census data (1997) indicate that both beef and dairy cattle were reported as being raised in the parish in which the land treatment unit is located. Second, although the potential proximity of cattle farming operations to chlorinated aliphatics facilities was confirmed by commenters on the wastewater risk analysis, EPA notes that, in addition, a land use map depicts the location of the facility that operates the land treatment unit as adjacent to land described as cropland and pasture (USEPA, 2000b). In addition, in a 1994 aerial photograph of the facility (located in the docket for the final rule), areas adjacent to the facility are depicted as being used for agriculture. Third, a 1986 RCRA Facility Assessment (RFA) conducted at the facility at which the land treatment unit is located noted the following for a landfarm/land treatment area at the facility: "* * * the State issued a violation to the facility for allowing cows to graze in this area."

EPA Incorrectly Evaluated the Contribution of Feed to Dioxin Levels in Dairy and Beef

The commenter raised several issues related to how EPA evaluated the contribution of feed to dioxin levels in dairy and beef. The Agency's responses to most of these concerns are addressed in section VI.A.2.c.ii. As was the case for wastewaters, we reviewed our methodology for estimating the concentrations of dioxins in beef and dairy products. The dioxins in the beef and dairy products result primarily from the cattle's intake of forage and soil that are contaminated by air emissions and runoff/erosion from the modeled land treatment unit—minor levels of dioxins are contributed to cattle as a result of the cattle's ingestion of grain or silage (USEPA, 2000b). Consequently, all that is required for the adult farmer to realize the risk that EPA presented in the proposed rule is that the farmer consume beef and dairy products derived from cattle that consume forage and incidentally ingest soil from the farmer's pastureland/field. That is, it is not necessary that the farmer consume home-grown fruits and vegetables, or that the farmer produce grain or silage for use as cattle feed. As was the case for wastewaters, we felt that we likely should have considered how the concentrations of dioxins in air vary over a wider areal extent that would be more consistent with the area of a pasture where cattle graze. Similar to wastewaters, we calculated what the impact would be to the risk estimate if we accounted for a more reasonable pasture/field size (USEPA, 2000b). In addition, in response to comments from peer reviewers, we also reviewed the method by which we evaluated risk attributable to the runoff/erosion pathway to ensure that we appropriately characterized the dioxin concentrations in feed, thus the concentrations in dairy and beef. In subsequently evaluating the land treatment unit dioxin mass balance, we determined that, due to limitations of the available model, we overestimated the amount of dioxin-contaminated soil lost from the land treatment unit due to erosion over long durations (USEPA, 2000b). The revised risk estimate that considers these modifications is presented in section VI.B.3.

v. Characterization of Arsenic Risk Results

Several commenters were concerned that although EPA found risks from arsenic that are within its discretionary range for listing EDC/VCM wastewater treatment sludges, EPA did not include arsenic as a basis for the listing determination and the contingent management listing for EDC/VCM wastewater treatment sludges allows this waste to be managed in landfills despite our risk assessment results for arsenic.

EPA evaluated potential risks from arsenic resulting from both landfill management of EDC/VCM wastewater treatment sludges and management of the waste in a land treatment unit. In the case of the landfill scenario, risk assessment results showed a high-end risk from arsenic from a groundwater ingestion exposure pathway, to be 3E–05. However, this potential risk level is predicted to occur only after a very significant period of time. Our modeling results indicate that, after a period of 8,800 years, the disposal of EDC/VCM sludge in an *un*lined landfill would result in an increase in the concentration of arsenic in groundwater in a down gradient well (102 meters from the landfill) by only 1.4 ug/L and would add approximately 2 ug/day of arsenic to the average daily exposure level (about 20 ug/day) for the highly exposed individual.

Given these predicted circumstances, we conclude that the risks from arsenic for the landfill scenario are not significant for several reasons. The predicted risks levels are associated with a peak arsenic concentration in a receptor well that is estimated to occur only after a very long period of time. In addition, the predicted high-end arsenic concentration at a receptor well (1.4 ppb) is very close to the median arsenic background concentration of 1.0 ppb found in groundwater in Texas and Louisiana.[33] The predicted high-end

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[33] Focazio, M.J., Welch, A.H., Watkins, S.A., Helsel, D.R., and Horn, M.A., 1999, A Retrospective Analysis on the Occurrence of Arsenic in Ground-

Continued

arsenic concentration also is well below the current maximum contaminant level (MCL) allowed for arsenic in drinking water and below the revised MCL for arsenic recently-proposed by EPA's Office of Ground Water and Drinking Water. The current MCL for arsenic is 50 ppb, the revised MCL proposed by EPA is 5 ppb (65 FR 38888).

Given that the estimate of potential risk for arsenic is within the range of risk levels in which the Agency exercises discretion with regard to a listing decision (i.e., predicted risk levels are less that 1E–04), the Agency's established policy provides that it may take into account other factors affecting the potential risk associated with the waste in making its listing determination. The risk estimate for arsenic in EDC/VCM wastewater treatment sludges managed in landfills is the result of predicted concentrations of arsenic that are close to background levels, do not exceed the MCL in the modeled receptor well, and the result of a peak arsenic concentration in a receptor well that is predicted to occur only after a period of 8,800 years. Given that there are uncertainties associated with our risk estimates we do not think it makes sense to impose requirements now to address a marginal risk that may be realized so far in the future. In addition, even if the arsenic concentrations predicted to occur very far in the future were to occur now, these concentrations are not at levels of concern, given that the peak concentration of arsenic in groundwater is predicted to be below the current (and all recently proposed) MCL(s). Therefore, EPA concludes that EDC/VCM wastewater treatment sludges do not pose a significant risk due to the presence of arsenic when managed in landfills.

In the case of the potential risks associated with arsenic in EDC/VCM wastewater treatment sludges managed in a land treatment unit, we found that arsenic may present some risk from potential releases to groundwater from the land treatment unit. However, we conclude that the estimated level of potential risk is not significant for the very same reasons we concluded that the risk from arsenic in a landfill scenario is not significant (*i.e.*, predicted concentrations of arsenic in groundwater wells is close to background levels, and is the result of a peak arsenic concentration in a receptor well that is predicted to occur only after a long period of time). The Agency concludes that the risk posed from potential releases of arsenic in this wastestream does not warrant listing the waste as hazardous. However, in the case of the land treatment unit scenario, the Agency determined that the waste should be listed as a hazardous waste based upon the potential risks associated with dioxin concentrations found in the waste. The Agency therefore is listing EDC/VCM wastewater treatment sludges based solely on the presence of dioxin and the potential risk associated with dioxin when this waste is managed in a land treatment unit.

vi. Regulatory Compliance Demonstration

Two commenters were concerned that the proposed conditional listing approach for EDC/VCM wastewater treatment sludges would be burdensome to generators due to commenters' view that the proposal required generators to document their "intent" to properly manage and dispose of the waste. In response, the Agency notes that we are not imposing any new paperwork requirements as part of the conditional listing. In the final listing determination, the Agency is requiring that generators and other handlers of EDC/VCM wastewater treatment sludges merely be able to demonstrate that past and on-going waste management practices are in compliance with the conditions of the contingent management listing approach. Our intent in describing potential types of records or contracts that could fulfill the demonstration requirement was merely to provide examples of appropriate demonstrations, and not to impose stringent or specific paperwork requirements. As explained above, the Agency is finalizing, as part of the listing description, a flexible performance standard similar to the documentation requirement provided in 40 CFR 261.2(f) for documenting claims that materials are not solid wastes, when managed in certain ways. Generators and other handlers of EDC/VCM wastewater treatment sludge that claim the waste is not a hazardous waste must merely demonstrate that the generator or handler has handled the waste or intends to handle the waste in compliance with the conditions of the conditional listing. One manner in which this demonstration may be made is by presenting a copy of a signed contract between the generator and a state-licensed landfill under which the landfill agrees to accept the EDC/VCM waste. Again, in cases where such a contract does not exist, other documentation of past and on-going disposal practices such as signed non-hazardous waste manifests, shipping papers, and/or invoices may provide an appropriate demonstration of proper management. The Agency points out that a generator's or handler's ability to demonstrate recent and/or on-going shipments of EDC/VCM wastewater treatment sludges to appropriate disposal facilities will serve as sufficient demonstration of their intent to continue such management practices for wastes being appropriately stored on-site (i.e., stored in a manner that does not involve direct placement of the waste on the land) prior to off-site disposal and not yet offered for off-site shipment.

vii. Status of EDC/VCM Sludges Managed by Methods Other Than Land Treatment and Landfilling

Incineration

Several commenters requested that EPA include incineration of EDC/VCM wastewater treatment sludges as a contingent management option for this waste. Commenters argued that incineration should be allowed to occur without the sludge falling within the scope of the listing description (*i.e.*, commenters requested that EPA allow the incineration of EDC/VCM wastewater treatment sludges as non-hazardous wastes).

The Agency disagrees with the commenters. First, the Agency notes that commenters provided no information indicating that incineration of presently non-hazardous EDC/VCM sludges is occurring and indicated only that they were considering the practice. Some commenters stated specifically that they currently do not incinerate presently non-hazardous EDC/VCM wastewater treatment sludges. Information available to the Agency during development of the proposed rule indicated that there were no facilities presently incinerating non-hazardous forms of the waste, and EPA did not evaluate potential risks from on-site or off-site incineration of EDC/VCM wastewater treatment sludges in non-hazardous waste incinerators. EPA bases listing determinations on an assessment of plausible (and worst-case) management scenarios. It is not practicable for EPA to evaluate every possible management scenario, and particularly not those management practices that are found not to be plausible (or are hypothetical). This is consistent with the Agency's mandate to evaluate determine whether or not to list wastes, and not management practices. EPA does carve out particular waste management practices in certain circumstances (*e.g.*, here, where there is a widespread practice we have modeled fully), but we cannot possibly evaluate every practice, particularly hypothetical practices, that any commenter says they might employ.

Our policy with regard to hazardous waste listings is that in cases where we have identified one plausible management practice that presents a significant risk to human health and the environment (in this case, land treatment), the waste warrants being listed as a hazardous waste. However, since the Agency identified another plausible management approach (landfill), evaluated the risk from this management approach, and determined that the second management approach does not present a significant risk to human health and the environment, the Agency determined that it is appropriate to exclude the waste from the hazardous waste listing, when managed in this particular manner. Without evaluating potential risks from additional management approaches, the Agency cannot determine whether or not the waste, when managed in a different manner, warrants being excluded from the hazardous waste listing. Given that EDC/VCM wastewater treatment sludges currently are not managed in non-hazardous waste incinerators, we have not used the limited time and resources we have for the rulemaking to conduct an analysis of potential risks associated with this potential management practice. Therefore, we do not have a basis to exclude sludges managed in this manner from the listing description. Should the Agency receive information in the future indicating that non-hazardous waste incineration is occurring, the Agency may re-visit the decision to preclude the management of these sludges in non-hazardous waste incinerators. However, given that these sludges contain dioxin, EPA would want to carefully consider the potential risks of managing these wastes in non-hazardous waste incinerators, before concluding that this practice does not pose a risk.

The final rule, as promulgated in today's notice, provides that EDC/VCM wastewater treatment sludges are listed hazardous wastes, unless the sludges are disposed in a subtitle C landfill or a non-hazardous waste, state-licensed landfill and are not placed on the land prior to final disposal in a landfill. Under the conditional listing, the incineration of EDC/VCM wastewater treatment sludges in a non-hazardous waste incinerator and the disposal of the ash in a landfill does not meet the conditions of the listing. EDC/VCM wastewater treatment sludges destined for incineration are hazardous wastes (*i.e.*, are K174).

EDC/VCM Wastewater Treatment Sludges Derived From the Management of Chlorinated Aliphatic Wastewaters in Surface Impoundments

As mentioned above, at the time of the proposed rule EPA was not aware that any chlorinated aliphatic production facility was managing chlorinated aliphatic wastewaters in surface impoundments, or potentially generating EDC/VCM wastewater treatment sludges in surface impoundments. However, the Agency received information from public comments indicating that one chlorinated aliphatic manufacturing facility produces VCM and sends its process wastewaters to an adjacent facility, where the VCM wastewater is combined with other non-chlorinated aliphatic wastewaters for treatment in surface impoundments. The commenter described the type of treatment occurring in these impoundments to include biological treatment followed by clarification; therefore, we presume wastewater treatment sludges are generated in these impoundments. Because these wastewater treatment sludges are the result of treating wastewaters from the production of VCM, they will meet the definition of today's K174 hazardous waste listing on the effective date of today's rule.

The listing description for EDC/VCM wastewater treatment sludges finalized in today's rulemaking includes sludges that are placed on the land prior to final disposal in a landfill. EPA's long-standing policy under RCRA subtitle C is that wastes generated in surface impoundments are subject to regulation while actively managed in the impoundment (not just when the sludges are removed from the unit) (see 45 FR at 72024; 55 FR 39409; 55 FR 46380). Therefore, sludges resulting from treating wastewaters from the production of EDC/VCM after the effective date of today's rule, when actively managed in surface impoundments in which they are generated, fall within the scope of today's listing determination for EDC/VCM wastewater treatment sludges (K174).

With regard to the regulatory status of surface impoundments used to treat EDC/VCM wastewaters prior to the effective date of the today's rule, EPA has articulated in prior rulemakings certain circumstances where a surface impoundment, in which newly-regulated wastes were generated prior to the effective date of the listing, would not become subject to subtitle C management standards (see 55 FR 39410 and 55 FR 46380). In the November 2, 1990 rulemaking finalizing the hazardous waste listings for F037 and F038, EPA provided that in cases where wastes become defined as hazardous as a result of new listing determinations, if the wastes are removed from the impoundment prior to the effective date of the rule defining them as hazardous, then the impoundment does not become subject to Subtitle C.

In the **Federal Register** notice published on September 27, 1990, EPA clarified the regulatory status of surface impoundments containing sludges newly defined as hazardous that were deposited in an impoundment prior to the effective date of the rule defining the waste as hazardous, and where the impoundment ceased to receive hazardous wastes on or before the effective date of the rule. In that notice, EPA stated: If (1) the newly identified hazardous waste remains in the surface impoundment after the effective date of the rule, and (2) the impoundment does not receive or generate any other hazardous wastes after the effective date, and (3) the impoundment is the final disposal site for the waste, then the impoundment is not subject to RCRA subtitle C. Additionally, the Agency clarified that if newly-listed wastes are removed from an impoundment as part of a one-time removal, including a one-time removal after the date on which the waste becomes defined as hazardous, the impoundment will not be subject to RCRA subtitle C. The Agency also clarified in the September 27, 1990 rulemaking that EPA will not view the one-time removal of waste as part of a closure as changing the status of the surface impoundment (*i.e.*, subjecting the impoundment to RCRA subtitle C), as long as there is no ongoing management of the waste in the impoundment after the effective date of the hazardous waste listing.

Therefore, if a facility ceases to manage EDC/VCM process wastewater sludge in surface impoundments prior to the effective date of today's listing determination, and the facility undertakes a one-time removal of the newly-listed waste, the surface impoundment will not be subject to RCRA subtitle C. The sludges removed from an impoundment as part of a one-time removal after the effective date of today's listing (that were derived from the previously managed chlorinated aliphatic wastewaters), will be defined as K174, unless the waste meets the conditions for exclusion from the hazardous waste listing. If the sludge does meet these conditions (*i.e.*, it is

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disposed in a subtitle C landfill or a non-hazardous waste landfill permitted or licensed by a state, and it is not placed on the land other than in such a landfill after it is removed from the impoundment), it will be exempt from the listing. After the one-time removal of sludge generated from the chlorinated aliphatic wastewaters, and as long as no additional chlorinated aliphatic wastewaters are managed in the impoundment, sludges generated in the impoundment will not meet the listing description for K174. In other words, the impoundment would not become regulated. In addition, sludges removed in subsequent removals (*e.g.*, as part of routine maintenance activities) will not be considered EDC/VCM wastewater treatment sludge (K174), as long as chlorinated aliphatic wastewaters were not managed in the impoundment after the effective date of the rule.

The above discussion pertains to facilities that choose to continue operating their surface impoundments as non-hazardous waste units after the effective date of today's rule. However, a facility could choose to continue to manage chlorinated aliphatic wastewaters in surface impoundments after the effective date of today's rule. In this case, the sludge generated in the impoundments will meet the K174 listing description and the surface impoundments will become subject to RCRA subtitle C. Any newly listed EDC/VCM wastewater treatment sludges that are managed in a newly regulated surface impoundment (i.e., an impoundment that becomes subject to RCRA regulation as a result of the new waste listing) may continue to be managed in the impoundment for up to four years, provided that the impoundment is in compliance with the groundwater monitoring requirements of 40 CFR part 265, Subpart F within 12 months after promulgation of the new waste listing (40 CFR part 268.14).[34] Surface impoundments also may continue to treat wastes that do not meet LDR treatment standards if the surface impoundments are in compliance with 40 CFR 268.4 (the surface impoundment exemption), or if facilities obtain no-migration variances for the units (40 CFR 268.6, 264.221(b), 265.221(c)). Under the surface impoundment exemption, owners or operators must follow specific sampling and testing, removal, subsequent management, and recordkeeping requirements. Some impoundments may be granted a delay of closure (see 40 CFR 265.113 and 40 CFR 264.113) and thus will be allowed to remain in operation, providing that hazardous waste is removed and the impoundment is used for non-hazardous wastes (see section VIII.B for a discussion of permitting requirements and compliance dates applicable to the management of newly-listed wastes). Facilities that currently manage EDC/VCM wastewater treatment sludges in surface impoundments must meet the terms of these regulations or discontinue their use for the management of these sludges prior to the effective date of the listing and land disposal restrictions.

viii. Contingent Management Approach

A few commenters asserted that a contingent management approach to listing EDC/VCM wastewater treatment sludges is not appropriate. Commenters pointed out that such an approach would allow the waste to be land disposed without treatment in compliance with the land disposal restrictions requirements. One commenter stated that RCRA does not provide EPA with the statutory authority to list a waste as hazardous on the basis of how the waste is or is not managed. Another commenter stated that the management process should not decide whether a waste is hazardous or not. The commenter further stated that waste management practices only should ensure that the waste is properly treated.

Given the Agency's finding (discussed in Section VI.B.1. of this preamble) that the predominant approach for managing EDC/VCM wastewater treatment sludges does not pose a substantial hazard to human health and the environment, we see no reason to include sludges managed in this manner in the scope of the hazardous waste listing. In fact, the Agency knows of only two facilities that manage these sludges in a manner other than landfilling. It does not make sense to list the bulk of EDC/VCM wastewater treatment sludges managed safely in landfills based upon the management approaches used by two facilities. On the other hand, we do not believe that it is appropriate to promulgate a no-list determination, given the Agency's finding (discussed in Section VI.B.1. of this preamble) that EDC/VCM sludges pose a substantial hazard to human health and the environment when managed in a land treatment unit. Therefore, the Agency is promulgating a contingent management listing to ensure that EDC/VCM wastewater treatment sludges are managed only in a manner that EPA has shown does not pose a substantial hazard to human health and the environment.

Because the Agency has made a finding that the waste does not pose a substantial hazard to human health and the environment if disposed in a landfill, without being treated prior to disposal, we do not agree with commenters' regarding the necessity of imposing treatment requirements under RCRA subtitle C. Our finding that treatment is not necessary to insure protection of human health and the environment is a major factor supporting the contingent management approach. In addition, the land disposal restrictions apply to hazardous wastes only. Since the Agency has determined that EDC/VCM wastewater treatment sludges, when managed in a landfill, are not hazardous wastes, the treatment standards are not necessary to ensure protection of human health and the environment.

A contingent management listing approach is within EPA's statutory authority. Section 3001(a) requires the Administrator to promulgate criteria for identifying and listing wastes that "should" be subject to the requirements of RCRA. The word "should" in section 3001(a) calls for an exercise of judgment and, therefore, confers discretion upon EPA to determine whether listing is warranted. RCRA sections 3002, 3003 and 3004 direct the Agency to issue regulations "necessary to protect human health and the environment." Accordingly, the decision whether a waste should be regulated under RCRA turns upon EPA's assessment of whether such regulation is necessary to protect human health and the environment. Because a hazardous waste is by definition a solid waste that poses "a substantial threat to human health and the environment when improperly treated, stored, transported, or disposed of, or otherwise managed," (RCRA section 1004(5)) EPA concludes that where a waste might pose a hazard only under limited management scenarios, and other regulatory programs already address such scenarios, the Agency is not required to list a waste as hazardous.

The Agency's decision with regard to whether a waste should be regulated under subtitle C turns upon EPA's assessment of whether RCRA regulation is necessary to protect human health and the environment. In particular, in *Military Toxics Project* v. *EPA*, 146 F.3d 948 (D.C. Cir. 1998) the court found that, if EPA concludes that a waste might pose a hazard only under limited management scenarios, EPA can reasonably and permissibly determine that the waste should be regulated as hazardous only under those scenarios. In the Military Toxics Project case, EPA reasonably determined that waste munitions would not pose a hazard if managed in accordance with existing military munitions handling regulations. Similarly, with regard to EDC/VCM wastewater treatment sludges in today's rulemaking we have reasonably determined that the waste will not pose a hazard if managed in hazardous waste landfills or non-hazardous waste landfills licensed or permitted by a state. We base this conclusion on the results of the Agency's risk assessment and in view of existing state and federal controls for non-hazardous waste landfills. We note that the finding by the court in Military Toxics Project did not hinge upon EPA deferring to a comprehensive regulatory program, but only to programs that address the appropriate waste management scenarios in a manner that EPA determined is necessary to protect health and the environment. Given the results of the Agency's risk assessment, we find that the management of these wastes in non-hazardous waste landfills licensed or permitted by a state is protective of human health and the environment. On the basis of this conclusion and in light of the Military Toxics Project decision, we conclude that EPA has the authority to promulgate a conditional listing for this waste.

3. Rationale for Final Listing Determination: Summary of the Impact of Public Comments on the Proposed Listing Determination for EDC/VCM Wastewater Treatment Sludges

The Agency decided to finalize a contingent management listing for EDC/VCM wastewater treatment sludges based on the EPA's finding that these wastes posed a substantial hazard to human health and the environment when managed in a land treatment unit, but did not pose this hazard when managed in a landfill. As discussed above, commenters argued that EPA's risk estimates for the landfill and land treatment unit were in error. After reviewing and carefully considering all information provided by commenters, we re-evaluated our risk assessment results. Based on information provided by commenters, we decided it was appropriate to adjust our proposed risk estimate, 2E–04, for the land treatment unit. As mentioned above in response to a commenter's concerns regarding the expected productivity of EPA's modeled agricultural field, EPA's risk estimate for the land treatment unit almost entirely was due to a farmer's ingestion of beef and dairy products from cattle that consume dioxin-contaminated forage and pasture soil. That is, the risk estimate is 2E–04 even when the portion of risk associated with cattle consumption of grain and silage are eliminated. Correcting the risk estimate to account for both cooking and post-cooking loss of beef and an overestimate of risk attributable to the erosion pathway analysis would reduce the risk estimate to 1E–04. Accounting for a more reasonable pasture size would reduce this risk estimate (1E–04) to approximately 7E–05. Moreover, adjusting the TCDD slope factor downward as recommended by the commenter, and removing 1,2,3,6,7,9- and 1,2,3,7,8,9-HxCDD from the risk assessment *completely*, would reduce this risk estimate only to 5E–05. Although EPA does not support making these adjustments to the toxicity values, doing so demonstrates that accepting the commenter's recommendation would not reduce the risk estimate to a value that, after consideration of other factors as described in Section VI.B.1. of this preamble, would change the Agency's finding that these wastes pose a substantial hazard to human health and the environment. Our analysis of the comments did not reveal any justification for modifying our proposed risk estimate for the landfill scenario.

Therefore, the Agency is listing EDC/VCM wastewater treatment sludges as EPA Hazardous Waste Number K174, unless the sludges are managed in a subtitle C landfill, or a non-hazardous waste landfill permitted or licensed by a state. The Agency believes that allowing the waste to continue to be managed under a low risk management scenario (i.e., non-hazardous waste landfilling) outside of the subtitle C system achieves protection of human health and the environment, and that little additional benefit would be gained by requiring that all EDC/VCM wastewater treatment sludges be managed in accordance with RCRA subtitle C management standards. Given the Agency's finding that the level of risk posed from managing EDC/VCM wastewater treatment sludges in a landfill is not at a sufficient level to support a hazardous waste listing determination, the Agency sees no reason to include sludges managed in this manner in the scope of the hazardous waste listing. Additionally (and after consideration of the predicted risk differential between land treatment and landfilling), because only one facility employs land treatment for these wastes, this practice is somewhat anomalous compared with land disposal. It does not make sense to apply a traditional listing approach (i.e., list all wastes regardless of management practice) based upon a practice occurring at one facility, especially if a more tailored listing can prevent potential risks from the practice.

Under the contingent management listing approach finalized today for EDC/VCM wastewater treatment sludges, EDC/VCM sludges will be hazardous wastes unless they are disposed in a landfill. EDC/VCM wastewater treatment sludges that are handled in compliance with the contingent management approach will be considered nonhazardous from the point of generation. Such sludges will not be subject to RCRA subtitle C management requirements for generation, transport, or disposal (including the land disposal restrictions), if the waste is destined for disposal in a landfill and is not placed directly on the land prior to disposal in a landfill. If the waste is not disposed of in a subtitle C landfill or a state-licensed non-hazardous waste landfill, then the waste meets the listing description and must be managed in compliance with subtitle C management standards from the point of generation.

In addition to requiring that EDC/VCM wastewater treatment sludges be disposed in a subtitle C landfill or a state-licensed landfill to meet the contingent management listing, the Agency also is restricting the placement of EDC/VCM wastewater treatment sludges directly on the land prior to disposal in a landfill (*e.g.*, storage in surface impoundments, storage in waste piles, spills). EPA wants to ensure that these wastes are managed in the manner found to be protective of human health and the environment. Under the terms of the listing, storage of EDC/VCM wastewater treatment sludge in tanks or containers, or in any manner other than direct placement on the land, prior to disposal will not constitute a violation of the conditions for exclusion from the hazardous waste listing.

Generators, and other parties involved in the management of EDC/VCM wastewater treatment sludges, claiming that their wastes fall outside the scope of the hazardous waste listing must be able to document or demonstrate that sludges excluded from the listing description are being managed in accordance with the conditions for being excluded from the listing. This means that parties claiming the waste falls outside the scope of subtitle C must be able to demonstrate that (1) previously generated and managed waste (which is being claimed as not meeting the K174 listing) was disposed of in a landfill; and (2) waste currently being managed is not being stored, or otherwise managed, on the land (*e.g.*, waste piles, surface impoundments) as well as demonstrate that the waste is disposed of in a landfill. We note that the Agency is not imposing any specific recordkeeping requirements as part of today's final rule. Instead the Agency is finalizing, as part of the listing description, a more flexible performance standard similar to the documentation requirement provided in 40 CFR 261.2(f) for documenting claims that materials are not solid wastes. Generators and other handlers of EDC/VCM that claim the waste is not a hazardous waste must merely demonstrate that the generator or handler has, and continues to handle the waste in compliance with the contingent management conditions. One of the simplest ways to make such a demonstration may be to provide a compliance or enforcement official, upon request, with a copy of a signed contract with a state-licensed landfill. In cases where such a contract does not exist, other documentation of past and on-going disposal practices such as signed non-hazardous waste manifests, shipping papers, and/or invoices should provide an appropriate demonstration of proper management. The Agency points out that a generator's or handler's ability to demonstrate recent and/or on-going shipments of EDC/VCM wastewater treatment sludges to appropriate disposal facilities will serve as sufficient demonstration of intent to continue such management practices for wastes being stored on-site in tanks or containers (or in any other manner other than direct placement on the land) and not yet offered for off-site shipment.

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[34] RCRA § 3005(j)(6) provides that facilities managing wastes in surface impoundments that are newly brought into the subtitle C system by a new listing or characteristic have four years to retrofit or close impoundments receiving newly identified or listed wastes (and no other hazardous wastes).

The Agency points out that should EDC/VCM wastewater treatment sludges meet a listing description for another listed hazardous waste, or if the wastewater treatment sludges exhibit one or more of the characteristics of hazardous waste, the sludges must be managed as hazardous wastes and are not exempt from regulation, due to the fact that they may be characterized as EDC/VCM wastewater treatment sludge.

C. Wastewater Treatment Sludges and Wastewaters From the Production of VCM–A

1. Wastewater Treatment Sludges From VCM–A Production

The EPA is listing as hazardous wastewater treatment sludge from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process (VCM–A). This wastestream meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous because it may pose a substantial or potential hazard to human health or the environment. The Agency identified significant potential risks to consumers of groundwater due to the release of mercury from this waste when managed in a landfill. We are not promulgating the proposed alternative option of conditionally listing this waste (*i.e.*, listing the waste only if it is not managed in a subtitle C landfill) because after reviewing comments we remain convinced that the current management practice of disposing of untreated forms of this waste in a subtitle C landfill, even after taking into account landfill controls, can pose significant risk as explained in more detail below.

K175—Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process.

In the August 25, 1999 **Federal Register** we proposed to list VCM–A wastewater treatment sludge due to the potential risk from consuming groundwater containing concentrations of mercury, arising from the landfill disposal of the VCM–A sludge, that exceed the Maximum Contaminant Limit (MCL).[35] At proposal, we considered risks arising from both an unlined landfill disposal and a subtitle C landfill disposal management scenario, because at that time we believed both scenarios were plausible forms of managing this waste. Under the unlined landfill scenario, we used the mercury TCLP analytical results for the VCM–A sludge (0.26 mg/L; facility split sample was 0.654 mg/L) and calculated a predicted groundwater concentration at a receptor well using a dilution and attenuation factor (DAF) of 40.[36] The predicted receptor well groundwater concentration exceeded the mercury MCL by a factor of three based on a mercury leachate concentration of 0.26 mg/L (obtained from a sample of the waste analyzed by EPA), and by a factor of eight using the mercury leachate concentration from the facility's split sample of 0.654 mg/L (64 FR at 46510).

Under the subtitle C landfill scenario, we took into account additional information regarding the increased mobility of mercuric sulfide (the form of mercury in the VCM–A sludge) under higher pH environments, and the degree to which subtitle C landfill controls (e.g., liner systems) would have to perform to prevent releases that exceed the MCL in groundwater at a modeled receptor well (64 FR at 46511). We documented that the pH measured in leachate from the subtitle C disposal cell where this waste is currently managed is greater than 9, which is in all likelihood due to the presence in the landfill of alkaline materials commonly used to stabilize many types of hazardous wastes. We also cited analytical results from a draft treatability study on the VCM–A waste, indicating that mercuric sulfide is less stable in a higher pH environment, and that the leachate resulting from a constant pH leach test at pH=10 contained 1.63 mg/L of mercury. We concluded that mercury in the VCM–A waste would be significantly mobilized under the conditions found in the subtitle C landfill scenario, and at proposal we said that "* * * even assuming a low probability of [liner] failure * * * there may still be a release of mercury that results in an accedence of the MCL. While there are uncertainties in this assessment, it still illustrates that the mercury concentrations in the receptor well may be close to, and could even be higher than the MCL" (64 FR 46511). In other words, with a leachate concentration of 1.63 mg/L at pH=10 and a DAF of 40, the modeled receptor well mercury concentration is 0.041 mg/L when no credit is given to the liner system (*i.e.*, assuming an unlined landfill). Assuming that no mercury is released to groundwater if a liner system is 100% effective, one only has to reduce the "effectiveness" of the subtitle C liner system by a small margin, to 95%, to predict a mercury concentration in a modeled receptor well equal to the MCL for mercury.[37] The issue of the uncertainty with engineered liner systems is discussed in more detail further below.

Therefore, we presented at proposal two plausible management scenarios upon which we based our proposed listing, an unlined landfill and a subtitle C landfill. As discussed below in section VI.C.1.a, because we received information after proposal indicating that the unlined landfill scenario was not plausible, our final decision today to list the VCM–A sludge as hazardous is based only upon the subtitle C landfill scenario described above.

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[35] The Maximum Contaminant Level Goal (MCLG) for mercury is 0.002 mg/L because EPA has determined that drinking water below this level of protection would not cause any adverse health effects. The MCL for mercury is also 0.002 mg/L, and is an enforceable standard set as close to the MCLG as possible, considering the ability of public water systems to detect and remove contaminants using suitable treatment technologies.

[36] As noted at proposal, the DAF of 40 for mercury was developed for the 1995 proposed Hazardous Waste Identification Rule (60 FR 66344, December 21, 1995) for landfill leachate.

[37] (0.05)(0.041 mg/L) = 0.002 mg/L

a. Response to Major Comments Received on Proposed Rule for VCM–A Wastewater Treatment Sludges

VCM–A sludge is generated by only one facility in the United States, Borden Chemical and Plastics (BCP) in Geismar, Louisiana; therefore, the industry comments relating directly to this waste stream were from BCP. Environmental groups and waste treatment industry representatives also commented on the EPA's proposal to list this wastestream as hazardous.

i. Risk Assessment Submitted by BCP

In response to the Agency's proposed decision to list wastewater treatment sludges from the production of VCM–A, BCP provided the Agency with a groundwater pathway exposure and risk analysis for mercury in VCM–A wastewater treatment sludges managed in landfills, conducted by a contractor on their behalf. BCP concludes, based upon their risk assessment, that there would be no human health risks to consumers of groundwater resulting from releases of mercury from VCM–A waste managed in a landfill.

BCP's analysis was designed to parallel the manner in which EPA conducts contaminant fate and transport modeling when evaluating landfills. Specifically, BCP stated that its "methods and assumptions followed to the extent possible those presented in [EPA's] Chlorinated Aliphatics Risk Assessment document when feasible." However, rather than using EPA's groundwater fate and transport model, EPACMTP, BCP's analysis used a simpler analytical groundwater transport model, AT123D. This model is not specifically designed to simulate leachate migration from land disposal units; although, when used appropriately, AT123D should be able to produce results that are protective and comparable to those obtained with EPACMTP. However, after carefully reviewing the risk assessment submitted by BCP, EPA found that there are significant deficiencies associated with certain aspects of the modeling and risk assessment and therefore is not persuaded by the conclusions drawn from BCP's analysis. These deficiencies are described below:

- EPA's most significant concern regarding the way in which BCP conducted its groundwater modeling is that BCP limited the period of time that the contaminant plume is allowed to migrate to 70 years from the time mercury was introduced into the groundwater. BCP's assumption has the effect of considering only exposure and hazard to current receptors and ignores potential hazard to future generations. In fact, in the case of release of leachate from a landfill, the greatest risk is often to future generations. This is because wastes initially are accumulated in landfills for many years prior to landfill closure, then, subsequent to landfill closure, leachate generation and migration in groundwater can occur for additional tens, hundreds, or thousands of years.
- EPA disagrees with the way that BCP considered the area of the landfill in its modeling efforts. Although the area of the waste management unit is not input directly into the AT123D model employed by BCP, the model does require an equivalent source length and width. In its analysis, BCP modeled an areal source with an area of one meter by one meter, and a depth (thickness) of 6 meters. The analysis submitted by BCP does not provide the area of the actual landfill in which the VCM–A sludge is disposed, but a source area equal to 1 m^2 does not represent a realistic landfill size, since industrial landfills are typically on the order of 50,000 to 100,000 m^2. Moreover, a landfill of the size modeled by BCP (6m^3) would not be large enough to contain the quantity of sludge that we estimate BCP generates in 1 year, 109m^3), let alone the quantity we estimate BCP might generate over a 30 year period (3,273m^3).
- In its AT123D modeling efforts, BCP assumed an aquifer hydraulic conductivity of 1E–04 centimeters per second (cm/s). The median hydraulic conductivity value that we would have selected to correspond to the location of the landfill where BCP disposes of their waste is 8E–03 cm/s.[38] In the context of BCP's analysis, it does not appear that the hydraulic conductivity value used was protective. On the contrary, BCP's conclusion that: "* * * in the 70-year time span evaluated, mercury would move no further than between approximately 37–46 meters * * *." was supported in part through use of a hydraulic conductivity value that was 80 times less than the median hydraulic conductivity value that EPA would have selected, potentially resulting in an underestimate of the predicted groundwater flow rate. This could result in a significant underestimation of predicted contaminant migration.
- The value BCP used for the parameter that defines the dispersion of the contaminant plume (the dispersivity) was unrealistically large for the transport distances that BCP evaluated. Dispersion causes a contaminant plume to spread both ahead of the bulk flow of groundwater (longitudinally) and perpendicular to the bulk flow of groundwater (transversely and vertically). The effect of dispersion is to cause the leading edge of the plume to travel more rapidly and spread more widely than the bulk (average) groundwater flow. Dispersion also will cause the plume to become more diluted due to mixing with ambient (uncontaminated) groundwater. This dilution effect will be most pronounced at the periphery of the plume. BCP's methodology for estimating dispersivity was based on designating where the concentration value for the plume will be measured (that is, the location of the receptor well) and calculating an appropriate dispersivity value for that location, since dispersivity increases with distance from the source. Accordingly, BCP calculated dispersivity values corresponding to the location of a receptor well 152 meters from the landfill source. EPA acknowledges that this approach is consistent with generally accepted practices, and does not disagree with the approach in principle; that is, the dispersivity values used in BCP's modeling would have been appropriate to characterize the effect of hydrodynamic dispersion on plume concentrations at the location of the designated receptor well (152m from the source). BCP's error occurred when they elected to use the modeled concentration at a distance of 37m (the predicted leading edge of the contaminant plume) as the basis for their calculation of mercury hazard. BCP did not modify their estimate of plume dispersion to correspond to a closer distance to the source. By not correctly accounting for distance from the source, BCP's groundwater modeling analysis significantly overestimated the effect of dispersion at the edge of the plume, and the resulting dilution of the plume due to dispersive mixing. Consequently, the mercury concentration (and associated hazard) that BCP predicted to correspond to the edge of the plume was much lower than it would have been had they accurately estimated dispersion. More appropriately, BCP should have extended their modeling timeframe, as discussed above, such that they could have more accurately predicted contaminant concentrations at their designated receptor well distance.

BCP concluded from their analysis that essentially no migration of mercury would occur in groundwater, and that mercury concentrations in groundwater are below levels of concern. Because BCP limited their analysis to the evaluation of current receptors, potentially underestimated the hydraulic conductivity of the aquifer, overestimated aquifer dispersivity, and grossly underestimated the area of the landfill, EPA does not believe BCP's risk analysis can be used to support a listing decision for VCM–A sludge.

ii. Plausibility of Unlined Landfill Management Scenario

In the proposed rule, EPA stated that disposal of Borden's VCM–A sludge in a non-hazardous, unlined landfill was plausible, based upon gaps in the record, particularly prior to 1990. BCP commented that in all of the time it had responsibility for the operation of the VCM–A plant (which records indicate is since the early 1980's) Borden always managed its VCM–A sludge at a facility that was "constructed and operated in accordance with the hazardous waste regulations that existed at the time of disposal." Upon consideration of BCP's claim that the specific inventory of VCM–A waste, cited by EPA as having been stored on site in 1985, was in fact disposed of as hazardous waste between March and May of 1985, there is no evidence the waste has ever been disposed of in an unlined, non-hazardous landfill. Moreover, given BCP's record of disposal of this waste in a hazardous waste landfill during the 1990's, and its comments that this is where BCP will continue to send the waste in the future, we see no compelling information to suggest the company would do otherwise. Accordingly, we agree that disposal in an unlined landfill is not plausible.

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[38] The source of our hydraulic conductivity data is a database prepared by the American Petroleum Institute (Newell, Charles J., Loren P. Hopkins, and Philip B. Bedient, 1989. Hydrogeologic Database for Ground Water Modeling. API Publication No. 4476, American Petroleum Institute, Washington, D.C.). The range of values from which the median is derived is 1E–05 to 4E–01 cm/s.

iii. Constant pH Leach Results Versus TCLP

BCP took issue with our overall approach to determining that the VCM–A waste poses significant risk when mismanaged. Specifically, BCP disagreed with EPA's assertion that the VCM–A waste, which is in the form of mercuric sulfide, leaches mercury more readily at higher pH conditions. In particular, BCP criticized our reliance on the results of a preliminary EPA-sponsored study [39] indicating (using only one sample) a leachate concentration for mercury at 1.63 mg/L at pH=10, and that the pH conditions of the landfill cell where this waste is presently disposed indicate an elevated pH as well (pH=9.48 to 9.7 as reportedly measured in the leachate collected from this landfill cell). Furthermore, BCP questioned our application of these analytical results to the circumstances surrounding the disposal of the VCM–A waste. BCP also argued that it appears that because we stated in the proposed rule that the TCLP may not be a reliable indicator of mercury mobility under these conditions, that EPA has "invalidated its own regulatory procedures for this particular [waste] stream" by relying on the waste-specific pH results discussed above, instead of relying on the existing TCLP method for defining whether or not the VCM–A sludge is hazardous. BCP was concerned that EPA's reliance on a waste-specific approach to determining the hazard of the VCM–A waste, rather than relying instead on the existing toxicity characteristic to determine hazardousness, was an "unconventional method to single out this particular waste stream" and was therefore arbitrary and capricious. BCP is arguing that it is inappropriate for EPA to assess the hazard of mercury in a waste when there is already an existing toxicity characteristic for mercury, and that by doing so for one specific waste EPA is selectively "changing the rules" for that waste.

EPA disagrees with BCP's comment that EPA should rely on the existing TCLP, and that doing otherwise unfairly or inappropriately singles out its waste. First, because EPA has undertaken a listing determination for a certain category of wastes (chlorinated aliphatic wastewater treatment sludges), and has further identified VCM–A sludge as a reasonable subcategory due to the markedly different manufacturing process from which the waste is generated, it is entirely reasonable for us to assess the hazards of this specific waste in the context of this listing determination. The fact that only one facility in the United States currently is generating the waste in this subcategory is irrelevant to the sound technical conclusion that it merits separate consideration. Second, in making a specific listing determination EPA is not limited to looking only at whether the waste is hazardous under the existing characteristics approach to defining hazardous waste. While the listing criteria in 40 CFR 261.11(a)(3)(i) do require EPA to consider whether a waste is characteristically hazardous, there are other criteria in § 261.11(a)(3) that the EPA also addresses in making listing determinations, which include a determination as to whether the waste poses significant risk based on a waste-specific evaluation.

Additionally, the toxicity characteristic regulation is a regulation of general applicability; that is, it potentially applies to all non-exempt solid waste generated. The TCLP leaching test was designed to represent likely leaching potential of waste in an MSW landfill, which was considered plausible worst-case management conditions for industrial solid waste generally. BCP's comments expressed concern that the Agency is singling this waste out for assessment under an approach different (and more stringent) than that applied to other wastes or to evaluation of solid waste under the TC regulation. The Agency is considering the pH dependency of mercury sulfide solubility, and considering other data on this key waste constituent, including both the changes in likely leachability under conditions different from the TCLP test but matching those of the landfill where the waste is actually disposed. In doing so, the Agency is not singling this waste out for more stringent assessment. Rather, the Agency is attempting to more fully consider all the scientific data on the waste, its constituents, and its actual management conditions, and applying these data in an assessment of the likely risks from the waste as it is actually managed. The whole point of a listing determination is to decide, on a wastestream-specific basis, whether the existing characteristics adequately address risks from the waste.

Regarding BCP's comment questioning the results from the EPA/ORD study on mercury mobility, while BCP claims to not necessarily dispute the results, it pointed out that the results were from a preliminary study that had not yet been peer reviewed, and that any decision EPA makes should be based upon peer-reviewed, final analytical reports with all QA/QC data available. BCP also commented that it attempted to duplicate the extraction of the VCM–A waste at varying pH (6, 8, and 10) but found very little difference in the resultant mercury leachate concentration, and all results were below the TCLP limit of 0.2 mg/L. BCP points out that contradicting results cast doubt on EPA's conclusions that mercury is more mobile at elevated pH when in the mercuric sulfide state.

EPA continues to believe that available evidence supports the conclusion that the solubility of mercuric sulfide increases with increasing pH, and that this conclusion is supported by scientific literature cited in the proposed rule [40] as well as additional scientific literature and EPA calculations presented below. A recently published study on mercury speciation in the presence of polysulfides agrees with our finding that there is an increase in the solubility of cinnabar (mercury sulfide) in the presence of elemental sulfur, particularly at high pH.[41] This same study also indicated that at a pH of 10, mercury can solubilize from mercuric sulfide at concentrations very similar to what was reported in the draft EPA/ORD study. EPA performed additional calculations using the geochemical assessment model MINTEQA2. We calculated the solubility of mercuric

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[39] Paul Bishop, Renee A. Rauche, Linda A. Rieser, Markram T. Suidan, and Jain Zhang; "Stabilization and Testing of Mercury Containing Wastes," Draft, Department of Civil and Environmental Engineering, University of Cincinnati, March 31, 1999.

[40] H. Lawrence Clever, Susan A. Johnson, and M. Elizabeth Derrick, The Solubility of Mercury and Some Sparingly Soluble Mercury Salts in Water and Aqueous Electrolyte Solutions, J. Phys. Chem. Ref. Data, Vol. 14, No. 3, 1985, page 652.

[41] Jenny Ayla Jay, Francois M. M. Morel, and Harold F. Hemond, Mercury Speciation in the Presence of Polysulfides, Environmental Science and Technology, 2000, Vol. 34, No. 11, pages 2196–2200.

sulfide using conditions reported for the VCM–A waste (*e.g.*, pH reported for subtitle C landfill leachate where waste is disposed, sulfide concentration of VCM–A waste) and found the calculated mercury solubility agreed well with the mercury concentration data for the landfill leachate (originally included in the docket to the proposed rule). This further supports our assertion that sulfide and pH are controlling factors in the solubility of mercuric sulfide, and that this conclusion reasonably can be applied to the VCM–A waste as well.[42] Therefore, while we did indicate at proposal that the EPA/ORD study was preliminary, we believed it was important to present these results as evidence because they represented direct studies on the instant waste being evaluated for listing. EPA has received no specific information in comment that effectively contradicts this evidence, and has identified specific information in the scientific literature that supports it.

Regarding the results from BCP's own leach testing experiment, which BCP claims did not show a strong correlation between pH and mercury solubility, BCP stated that it had attempted to replicate EPA's study "in the absence of any information regarding how the EPA contractor samples were extracted." [43] While EPA does not have any information on BCP's experiment (other than a summary of the findings) to explain why there might be differences between Borden's results and those from the EPA study, EPA's results are consistent with literature sources regarding the relationship between pH and mercury solubility from the mercuric sulfide form; therefore EPA does not agree that BCP's results indicate that EPA's conclusions are invalid.[44] Again, even absent the draft EPA/ORD study, the effect of pH on the solubility of mercury in mercuric sulfide is established independently in the scientific literature, as discussed above.

iv. Liner Effectiveness

EPA requested comment on the basis for listing as hazardous the VCM–A waste that is presently being disposed in a lined subtitle C landfill. BCP stated that EPA's reliance on some degree of liner failure as part of predicting the release of mercury to groundwater from a subtitle C landfill amounts to a "repudiation of existing standards for * * * landfill management of hazardous waste." BCP argues that EPA's statement that there is "inherent uncertainty" associated with liner integrity in a subtitle C landfill is no greater with respect to its VCM–A waste than it is for any other waste currently disposed in C landfills. BCP continues by making numerous arguments that subtitle C liner systems are designed to be compatible with the wastes being disposed, and that the regulatory requirements applicable to these systems (*e.g.*, groundwater monitoring, leak detection, leachate collection, post-closure care and maintenance, etc.) are all designed to ensure system integrity in both the short- and long-term.

EPA has acknowledged the uncertainty associated with liner systems in the past. Taking this uncertainty into account when evaluating the potential risk from this specific waste stream is in no way a repudiation of EPA's reliance on liner systems overall. Indeed, the premise of the statutory land disposal restrictions requirements—one of the core features of RCRA—is precisely that liners and other containment systems, no matter how well designed, are inherently uncertain and cannot be relied upon alone to fully mitigate threats posed by hazardous wastes. In general, we believe releases from landfills are significantly reduced by well-constructed, monitored, and maintained liner and cap systems. However, we recognize that there is still uncertainty associated with liner performance, both in the near term as well as in the long term. While some studies indicate that engineering properties of liners may last for many (perhaps several hundred) years, there are a variety of factors that may influence longevity and performance, such as poor construction, installation, or geologic movement below the liner that can cause holes, tears, or larger failures. Some defects are likely to have little to moderate effect on the leakage rate. Other defects may have a significant effect and may necessitate corrective action (64 FR at 31582).

We are only considering this uncertainty to the extent that, as discussed previously in section VI.C.1, even if a liner system is capable of preventing 95% of releases over the long-term, the waste likely will present substantial risk to consumers of groundwater due to a release of mercury from the landfill unit (i.e., exceedance of the MCL). We are not saying we believe that liners will necessarily fail. What we are saying is that given the specific evaluation we have made of the VCM–A waste, a liner system can be 95% effective and we still would predict a release to groundwater that potentially poses risk (exceedance of the mercury MCL at a modeled receptor well). We think that over the long term such a change in effectiveness is sufficiently plausible to merit consideration in this listing decision. We emphasize that this assessment is specific to a waste containing a highly toxic, very persistent constituent coupled with the possibility of a small degree of liner degradation, and does not mean that EPA would choose to list any wastes voluntarily put into a subtitle C landfill.

Despite the uncertainty noted above on predicting how well liners will perform over periods of say, 100, 1000, or 10,000 years, and the fact that the oldest subtitle C units are less than 30 years old, EPA is nevertheless obligated in this listing determination to make a judgment whether waste disposed of in these units "is capable of posing a substantial present or potential hazard to human health and the environment." Given that landfill controls would have to be 95% effective forever to prevent substantial risks from this highly concentrated, toxic, and persistent waste, EPA concludes that the waste is capable of posing a substantial hazard. While EPA cannot say how effective these units will be over the long term, we believe it is plausible that at least some will not be 95% effective forever. The alternative course would be for EPA to conclude the waste is not capable of posing a substantial hazard, by concluding that a Subtitle C landfill will most likely be 95% effective forever. But, we conclude that that is an unreasonable and unsupportable conclusion and are acting upon what seems like the more reasonable conclusion under the circumstances.

EPA also points out that under RCRA, the subtitle C management standards provide that hazardous wastes that are land disposed must be treated to reduce the risk of hazardous constituents being released to the environment as well as be disposed in landfills equipped with liners and leak detection. The existing standards for the safe management of hazardous wastes rest on more than the landfill management requirements, or liner integrity. The legislative history to RCRA 3004(m) states that this section of the statute "makes Congressional intent clear that land disposal without prior treatment of these wastes with significant concentrations of highly persistent, bioaccumulative constituents is not protective of human health and the environment." (130 Cong. Rec. S 9178; daily ed. July 25, 1984). Mercury is exactly the type of "highly persistent, bioaccumulative constituent" to which Congress was directing this statutory mandate.

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[42] Memorandum from John Austin to Ross Elliott, May 12, 2000.

[43] EPA notes that there was a summary description of the constant pH leaching procedure in Section 4.4 of the draft EPA report, which was part of the proposed regulatory docket.

[44] EPA also points to data in the proposed rule record from BCP's analysis of their mercuric sulfide sludge at three different pH values, which were all above the current TCLP limit and did vary with pH. See Appendix 1, Reclassification Petition Submitted to LDEQ, September 1987.

v. pH Conditions of Disposal Environment

BCP questioned EPA's conclusions that the disposal conditions at the subtitle C landfill cell where the VCM–A waste is presently disposed are at elevated pH levels, based upon the recorded pH measurements EPA obtained for the leachate collected from this same cell. BCP also cited several factors that it stated led to the conclusion that the VCM–A waste will not be subjected to elevated pH conditions when disposed in the subtitle C cell where it currently is sent. BCP described several factors that would limit the influence of other co-disposed wastes on the VCM–A waste (and thus, BCP appears to be saying, reduce the likelihood of the VCM–A waste being subject to elevated pH conditions). BCP points out that the volume of the VCM–A waste disposed in the cell since 1985, which is relatively minor, compared with the large volume of other hazardous wastes in the disposal cell, the supposed absence of free liquids in a subtitle C landfill, the lower pH and resultant buffering capacity of the VCM–A waste, and the fairly solid nature of the VCM–A waste, all reduce the influence that other co-disposed wastes may have on the potential for mercury to leach from the disposed VCM–A sludge.

EPA disagrees that these factors would change the conclusion that is drawn from the measured elevated pH of the leachate removed from this landfill cell. In addition to the leachate pH measurements cited in the proposed rule for the same cell where BCP's VCM–A sludge is disposed, additional information from the landfill facility confirms these leachate pH measurements are consistent with the nature of the landfill leachate for this facility.[45] In fact, to the extent that these factors affect the pH of the landfill environment, we believe it is reasonable to conclude that the measured leachate pH provided by the landfill operator reflects the sum total of these various factors. Borden's comments give us no reason to believe that the leachate collected from this cell is not indicative of elevated pH conditions within the unit. We thus conclude that BCP's waste, while in the same disposal cell and coming into contact with leachate, would be exposed to the type of alkaline conditions that result in higher mercury mobility when in the sulfide form.

vi. Other Comments

BCP commented that should EPA decide to list the VCM–A waste as hazardous, we should select the alternative option proposed which would result in the VCM–A waste only being listed if sent anywhere other than to a subtitle C landfill (and provided the waste does not exhibit the toxicity characteristic for mercury). EPA proposed this alternative option in the event that we received comment persuading us that our assumptions were incorrect regarding mercury being more mobile in the presence of sulfides in a higher pH environment, or that our assessment of liner uncertainty is insufficient to predict a risk to consumers of groundwater. As discussed above, EPA remains convinced that mercuric sulfide is less stable under the elevated pH conditions of disposal in a subtitle C landfill, and that a liner system can be 95% effective and we still would predict a release to groundwater that potentially poses risk.

BCP also requested that should EPA proceed with a decision to list the VCM–A waste as hazardous, that we re-phrase the K175 listing description so it only applies to mercuric sulfide forms of sludge. The commenter said that this was so future technologies could be developed that are "better" and the sludge would no longer meet the listing if these changes are employed. Aside from suggesting that the reference to mercuric sulfide be removed, the commenter did not provide any specific potential changes that might occur, or how these changes would make the wastewater treatment sludge significantly different or less risky. The listing description proposed refers to the manufacturing process that uses mercuric chloride catalyst, and the commenter did not suggest changing that part of the listing; therefore EPA concludes that the commenter would still be faced with a wastewater treatment sludge containing very high levels of total mercury (to comply with regulatory limits on the amount of mercury in the discharged wastewater). Absent any specific examples, EPA can think of one possible change that could result in a sludge that could pose a greater potential risk. It is possible that the facility could continue to use the mercuric chloride catalysts (as is currently the case for the acetylene-based process), but alter the wastewater treatment process to produce a mercuric oxide sludge, in order to make the sludge more amenable to retorting for mercury recovery. Sludge from such a process might pose a greater risk, because the mercury would be more soluble than the current sulfide. We believe that the current listing description is appropriate, because it appropriately describes the waste subject to our evaluation.

b. Summary

In conclusion, EPA is listing as hazardous the VCM–A wastewater treatment sludge described above because this wastestream meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous. Our analysis that showed potential risk to consumers of groundwater due to a predicted exceedance of the MCL takes into account the toxicity and concentration of mercury in the waste (criteria at 40 CFR 261.11(a)(3)(i) and (ii)). This is because the mercury MCL is based upon toxic human health effects from ingestion of mercury, and because the high mercury concentration in the waste results in the predicted MCL at the modeled receptor well. We also determined that the potential of mercury to migrate from the waste into the environment under a plausible disposal scenario (criteria at 40 CFR 261.11(a)(3)(iii) and (vii)) and mercury's persistence and lack of degradation into non-harmful constituents (criteria at 40 CFR 261.11(a)(3)(iv) and (v)) also supported a decision to list this waste. This is because there is increased solubility of mercury in this waste at the elevated pH conditions in the landfill cell where the waste is disposed, and only a relatively small degradation of liner performance results in unacceptable risk to potential groundwater consumers. In addition, mercury is a persistent contaminant and therefore will not degrade before any predicted impact to groundwater occurs.

Listing criteria that the EPA considered but which did not form the basis for listing this waste include the ability of mercury to bioaccumulate in ecosystems, the nature and severity of human health or environmental damage from improper management of these wastes, and actions taken by other governmental agencies or regulatory programs. (40 CFR 261.11(a)(3)(vi), (ix), and (x)). Bioaccumulation of mercury is not relevant to the exposure pathway EPA assessed (ingestion of groundwater). Although no documented damage incidents were found for this particular waste, EPA believes that on balance this fact alone does not persuade us to make a finding that this waste should not be listed, when weighed against the other criteria described in this section that support a decision to list this wastestream. No governmental or regulatory actions[46] were identified that would lead EPA to decide to list this waste or conclude that waste was already sufficiently controlled to render further regulation moot.

Finally, EPA did consider certain "other factors as may be appropriate" together with the quantities of this waste generated (criteria at 40 CFR 261.11(a)(3)(xi) and (viii)) in a "weight-of-evidence" approach to reach a decision to list this waste as hazardous. As discussed in the Land Disposal Restrictions section of today's preamble (section VI.I.3), EPA believes that this waste can be disposed in a manner that helps ensure the mercury is more stable and less likely to leach. Because this waste is already being sent to a hazardous waste landfill, one important effect of today's listing is the assurance that the waste is properly treated (or otherwise meets specific standards as generated) and is disposed in a manner to reduce the likelihood of mercury releases to groundwater, releases that may result in unacceptable risk to consumers of groundwater. Given the reported amount of this waste generated per year (120 metric tons), and the high total concentration of mercury in the waste (approximately one percent mercury by weight), the total loading to the landfill is approximately one metric ton of mercury per year. Ensuring that this amount of mercury is disposed of in a form that minimizes releases of mercury was considered by EPA when making its final listing decision.

2. Wastewaters From VCM–A Production

a. Summary of Agency's Listing Determination for VCM–A Wastewaters

The EPA is not listing as hazardous wastewaters generated from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process (VCM–A). This wastestream does not meet the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous, for the reasons described below.

b. Discussion of Agency's Listing Determination

As discussed above, only one facility in the United States operates an acetylene-based VCM production process, which uses mercuric chloride catalysts in the production of VCM. The management of spent mercuric chloride catalyst used in the VCM–A production process results in the generation of a wastewater containing mercuric chloride, as well as vinyl chloride. EPA proposed not to list this wastewater due to the fact that the wastewater already is identified as hazardous waste. As explained in the preamble to the proposed rule, the wastewater exhibits the toxicity characteristic for mercury and vinyl chloride. EPA received only one comment addressing the Agency's proposed decision not to list VCM–A wastewaters. This comment favored EPA's proposed decision.

The Agency bases its decision not to list VCM–A wastewaters as hazardous on the fact that the wastewaters already are identified as hazardous wastes under the toxicity characteristic. In fact, the concentration of mercury in a sample of this wastestream analyzed by EPA was over 40 times above the TC regulatory limit for mercury. Therefore, it is highly probable that the wastewater routinely contains levels of mercury which cause this wastestream to be defined consistently as characteristically hazardous waste. Therefore, EPA concludes that the TC adequately defines this wastestream as hazardous.

Additionally, the facility's dedicated wastewater treatment system is designed and optimized expressly for the removal of mercury, the source of which is the mercuric chloride catalysts, to comply with regulations promulgated under the Clean Water Act. The criteria in 40 CFR 261.11(a)(3) for evaluating whether or not a solid waste is a hazardous waste provide that EPA should consider how the waste (and potential risk) is affected by other regulatory programs (i.e., 261.11(a)(3)(x)). In the case of the VCM–A wastewaters, EPA notes that the Agency's decision not to list this wastewater as hazardous is based on the fact that the waste already is defined as a hazardous waste because it exhibits the toxicity characteristic and the potential risks posed by the wastestream are regulated both under RCRA and other programs. With respect to the discharge of the wastewater, the facility treats and discharges the wastewater in compliance with the conditions of a NPDES permit issued under the authority of the Clean Water Act. Regarding any air emissions of vinyl chloride from these wastewaters, vinyl chloride is a hazardous air pollutant; therefore the facility is subject to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) requirements specific to vinyl chloride emissions (40 CFR 61.65), as well as the Hazardous Organic NESHAP for the synthetic and organic chemical manufacturing industry sector (40 CFR Part 63, subpart G)(59 FR 19468, April 22, 1994).

Given that this waste currently is regulated as hazardous because it exhibits the TC and given the fact that management of the wastestream is adequately regulated under a number of environmental regulatory programs, the Agency is promulgating a decision not to list VCM–A wastewaters as hazardous waste.

D. Wastewater Treatment Sludges from the Production of Methyl Chloride

1. Summary of Agency's Listing Determination for Methyl Chloride Wastewater Treatment Sludges

EPA is not listing as hazardous sludges from the treatment of wastewaters generated from methyl chloride production processes. The Agency has determined that this wastestream does not meet the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous.

2. Discussion of Agency's Listing Determination

Only one facility generates a non-hazardous wastewater treatment sludge from the production of methyl chloride. The facility generates less than 800 metric tons of the sludge annually and disposes of the sludge in an on-site landfill. As discussed in the preamble to proposed rule (64 FR 46516), EPA conducted a risk assessment of this waste, modeling one management scenario (the on-site landfill). The Agency's analysis of potential risks due to volatile emissions from the landfill found negligible risks (i.e., estimated risks less than 1E–6) to individuals in the surrounding area. The Agency also conducted a bounding (*i.e.*, worst case) risk analysis to estimate potential risks to groundwater consumers. This analysis used the leachate concentration measured from a sample of the facility's methyl chloride wastewater treatment sludge, and assumed the direct ingestion of this leachate by an adult for a period of 58 years. This bounding analysis resulted in a risk of 5E–5 for one constituent, arsenic. This estimate of individual risk, together with additional factors described below in

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[45] See Memorandum from Ross Elliott, U.S. EPA Office of Solid Waste, to RCRA Docket, "Summary of Phone Call Between EPA and Carl Carlsson, Chemical Waste Management Inc.," July 12, 2000.

[46] Although we noted at proposal that the facility had obtained a "reclassification" of the waste as non-hazardous from the State of Louisiana, this determination did not appear to be a blanket exemption from hazardous waste requirements, for example, should a process change result in a waste that fails the toxicity characteristic for mercury, the waste would have to be handled as hazardous waste).

EPA's response to specific comments, led the Agency to conclude that this waste did not pose a substantial risk to human health and the environment.

3. Response to Major Comments Received on the Proposed Listing Determination for Methyl Chloride Wastewater Treatment Sludges

Two commenters questioned why the Agency proposed not to list the wastewater treatment sludges from methyl chloride production as hazardous, given that the individual cancer risk level from arsenic, via the groundwater pathway, is within the range of risk values that EPA generally associates with potential candidacy for listing the waste as hazardous. The commenters argued that EPA should not ignore the potential risks from the arsenic in the wastewater treatment sludges and should list the waste as hazardous.

EPA did not ignore the potential risk from arsenic. The estimated risk described by the commenter was the result of the Agency conducting a bounding analysis using worst case assumptions. Given that the Agency's assumptions were very conservative (*i.e.*, an adult receptor would drink leachate generated from the disposal of the methyl chloride wastewater treatment sludges for 58 years), and taking into account additional factors described below, the Agency determined that there is no substantial hazard to human health and the environment on which to base a decision to list the waste as hazardous.

As described in more detail in Section VI.B.1. of this preamble, EPA's policy for listing wastes as hazardous (originally outlined in the in 1994 Dyes and Pigments proposal, 59 FR 66077) is that wastestreams with risks in the range of 1E–6 to 1E–4 may be either listed or not listed after taking into account additional factors. Generally, our benchmark level for listing is the middle of the range (1E–05), but, as described in the preamble to the Dyes and Pigments proposal, we use a "weight of evidence" approach that considers other factors. In the case of our listing determination for methyl chloride wastewater treatment sludges, these additional factors include the conservative assumptions that resulted in the groundwater risk estimate for arsenic, along with additional information available to the Agency regarding the manner in which the waste is currently managed (*i.e.*, in a landfill). We also evaluated our risk assessment results in conjunction with additional information available to the Agency with regard to the constituent of concern (*i.e.*, arsenic).

If the Agency assumes a less direct pathway of ingestion (i.e., taking into account some dilution and attenuation expected with a landfill scenario, so that a person drinks groundwater contaminated with leachate, rather than the leachate directly), and applying a DAF of 5 (which would be a reasonable assumption for an unlined landfill), the predicted risk becomes 1E–5. However, the Agency also notes that assuming a DAF of 5 (as was described in the proposed rule) is likely too conservative, given that the landfill in which the methyl chloride sludge is disposed has a 24-inch clay liner and a leachate collection system. Therefore, the actual risk from arsenic in this waste will be much lower than the risk level predicted by the bounding analysis, given that the landfill currently used by the single facility generating this waste is lined and has a leachate collection system.

To further illustrate why assuming a DAF of 5 would be a very conservative assumption, in our assessment of risk from the EDC/VCM wastewater treatment sludge presented elsewhere in today's rule, arsenic was an initial constituent of potential concern. To support our analysis of potential groundwater risks from the landfilling of EDC/VCM wastewater treatment sludges, we modeled arsenic releases and obtained estimates of DAFs for arsenic (assuming an unlined landfill) of 13 for the high-end risk estimate, and a DAF of 93 for the central tendency estimate. Thus, even if the Agency does not take into account the liner and leachate collection system in the one landfill where currently non-hazardous methyl chloride sludge is managed, applying reasonable estimates of DAFs lowers the estimated risk to the lower end of the range of risks where the Agency may or may not list a waste; and upon consideration of the very conservative approach used in generating the arsenic risk estimate, the Agency concludes that the potential risk associated with arsenic in the waste is well below the range in which the Agency would deem the waste to pose a substantial hazard to human health and the environment. Therefore, EPA is finalizing a no list determination for wastewater treatment sludges from the production of methyl chloride.

E. Wastewater Treatment Sludges From the Production of Allyl Chloride

1. Summary of Agency's Listing Determination for Allyl Chloride Wastewater Treatment Sludges

EPA is not listing as hazardous waste sludges from the treatment of wastewaters generated from allyl chloride production processes. The Agency has determined that this wastestream does not meet the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous. The Agency identified no risks of concern associated with the current management of this waste.

2. Discussion of Agency's Listing Determination

As discussed in the proposal, currently non-hazardous wastewater treatment sludges from allyl chloride production are generated at a single facility. The sludges are generated from the facility's centralized wastewater treatment system in which the facility manages wastewaters from multiple production processes and facilities. Wastewaters from the production of allyl chloride contribute less than two percent to the system's total sludge loading. According to the RCRA Section 3007 survey response from the one facility generating a non-hazardous allyl chloride sludge, the sludge generated from the facility's wastewater treatment system is incinerated on site in a non-hazardous waste incinerator.

As described in the proposed rule, during the investigations undertaken in support of the listing determinations EPA collected one sample of sludge from the facility's combined wastewater treatment system. Two duplicate TCLP analyses were performed using the sample collected. The TCLP analyses indicated the presence of no TCLP constituents above regulatory levels. The sample also was analyzed for total constituent concentrations including arsenic and dioxins and furans. The total arsenic concentration in the waste was 11.7 mg/kg, and the total dioxin (TEQ/TCDD) concentration was 11.79 ng/kg.

The Agency did not assess risks by modeling management practices and exposure pathways, since both the total arsenic level and the total dioxin level detected in the sludge are below levels of concern and well within the range of background levels of those constituents in soils.[47] [48] In addition, the waste is generated by a single facility and currently is not managed in a manner other than non-hazardous waste incineration.

Given that wastewater treatment sludges from allyl chloride production are generated by a single facility, that the sludge generated is the product of a facility-wide non-dedicated (*i.e.*, not process-specific) wastewater treatment system, and that the waste contains no constituents of concern at concentrations of concern, the Agency concludes that no significant risks are posed by the waste. The Agency is finalizing a determination not to list this waste as hazardous.

3. Response to Major Comments Received on the Proposed Listing Determination for Allyl Chloride Wastewater Treatment Sludges

One commenter questioned whether EPA had considered the fact that the one facility generating wastewater treatment sludges from the production of allyl chloride may manage this waste in a manner other than on-site combustion in the future. The commenter suggested that EPA should have conducted a risk analysis of managing the waste both in a non-hazardous waste incinerator and in an unlined landfill.

Given that the one facility generating this waste is managing the waste in an on-site incinerator and that the Agency has no information indicating that the facility has or intends to manage the waste in a manner other than on-site incineration, we believe that landfill management is not plausible for this wastestream. In the case of a waste that is generated by a single facility, we would not project a change in management practices without information or cause. EPA evaluated information provided by the facility regarding current management practices to project plausible scenarios. The Agency concluded that the facility has sufficient on-site capacity to continue to treat the waste in its non-hazardous waste incinerator. The total arsenic and total dioxin concentrations in the waste are below levels of concern.

A commenter suggested that the analytical work performed on the wastewater treatment sludge generated from allyl chloride production was inadequate, given that only one sample of the sludge was collected and analyzed by EPA.

The commenter did not provide any specific information as to why the allyl chloride sample collected by EPA was inadequate, other than it was one sample. As noted in Table 2–10 of the Listing Background Document (USEPA, 1999c), the Agency sampled 100% of the facilities producing allyl chloride, that is, EPA visited and sampled the one facility that produces this chlorinated aliphatic chemical. As discussed above and in the proposed rule, EPA is not listing this facility's allyl chloride wastewater treatment sludge because the chlorinated aliphatic production process at this facility contributes less than two percent of the total wastewater volume to the wastewater treatment process from which the sludges are generated. Given that there is only one generator of this waste and that the wastewaters from the allyl chloride production process contribute a relatively small portion to the facility's wastewater treatment system, EPA believes that our data, though perceived as limited by the commenter, is adequate to support the listing determination.

F. What is the Status of Landfill Leachate Derived-From Newly-Listed K175?

At the time of the proposed rule, information available to EPA indicated that wastewater treatment sludges from the production of VCM–A may have been managed previously in non-hazardous waste landfills. If these sludges had been managed in non-hazardous waste landfills, and if the leachate and gas condensate generated at such landfills is actively managed after the effective date of today's rule, the landfill leachate and gas condensate derived from the newly-listed VCM–A waste in such landfills could be classified as K175. As explained in the preamble to the proposed rule and in the final rule for leachate derived from newly-listed petroleum wastes (64 FR 6806), in such circumstances, we would be concerned about the potential disruption in current leachate management that could occur, and the possibility of redundant regulation (under RCRA and CWA) due to the application of the "derived-from" rule to the leachate. In the case of non-hazardous waste landfills receiving newly-listing hazardous wastes prior to the effective date of the listing decision, the leachate that is collected and managed from the landfills would be classified as hazardous, due to the application of the waste code for the newly-listed K175 to the leachate. As noted by a commenter in response to proposed petroleum listing determination, this could lead to vastly increased treatment and disposal costs without necessarily any environmental benefit.

In the chlorinated aliphatics proposed listing determination, EPA requested comment on whether or not VCM–A wastewater treatment sludges were previously disposed in non-hazardous waste landfills. Information provided to the Agency by the one generator of this waste indicates that this waste was not previously managed in non-hazardous waste landfills. The generator stated that they have always disposed of the VCM–A sludge in a subtitle C landfill. Since EPA has no evidence that this waste has been disposed of in non-hazardous waste landfills, the Agency sees no reason at this time to finalize the proposed temporary deferral for landfill leachate and gas condensate derived from newly-listed VCM–A wastes. Therefore, today EPA is not finalizing the proposed temporary deferral for landfill leachate as was proposed.

Although the Agency is not finalizing the proposed temporary deferral for applying the new K175 waste code to leachate from non-hazardous waste landfills that previously accepted K175, should the Agency, in the future, receive information indicating that one or more non-hazardous waste landfills did accept this waste prior to the effective date of today's rulemaking, we may re-consider our decision not to finalize the proposed deferral. The Agency notes that the proposed regulatory language for the temporary deferral, as published in the August 25, 1999 **Federal Register**, inadvertently included both the K174 and K175 waste code. The regulatory language in the proposal only should have included the K175 waste code. Given that the Agency is finalizing the conditional listing approach for K174 (and thus EDC/VCM sludge disposed in a licensed landfill will not be listed hazardous waste) there is no reason to include (nor did EPA intend to include at proposal) the K174 waste code in the temporary deferral for the application of waste codes to leachate from non-hazardous waste landfills that previously accepted newly-listed wastes (40 CFR 261.4(b)(15)).

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[47] Alkhatib, Eid, and O'Connor, Timothy, "Background Levels of Priority Pollutant Metals in Soil, *American Environmental Laboratory*, Vol. 10, No. 3, April, 1998.

Hunter, Philip M., "Air-Force Wide Background Concentrations of Inorganics Occurring in Ground Water and Soil," *Proceedings from the Fourteenth Annual Waste Testing and Quality Assurance Symposium*, Pp. 73–77, 1998.

Welch, Alan H., Lico, Michael S., and Hughes, Jennifer L., "Arsenic in Ground Water of the Western United States," *Ground Water*, Vol. 26, No. 3, May/June, 1988.

[48] See Table 4–4 of "Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination," EPA, June 25, 1999a.

G. Population Risks

As discussed previously, our proposed and final listing determinations were based upon estimates of individual risk. For the EDC/VCM wastewater treatment sludges, the projected population risks are low. We relied on individual risk estimates (excess lifetime cancer risk), and not population risk estimates, because we are concerned about risks to individuals who are exposed to releases of hazardous constituents. EPA concludes that, under certain waste management practices, these wastes are capable of posing a substantial present or potential hazard to human health or the environment. We have determined that using individual risk as a basis for this listing determination, which is consistent with past practices, also is appropriate because the Agency must protect against potential, as well as present hazards that may arise due to the generation and management of particular wastestreams. EPA acknowledges that in cases where small populations are exposed to particular wastes and waste management practices, population risk estimates may be very small. EPA finds it is important to address the current or potential substantial hazards to individuals living in small communities. Where individuals may be subject to substantial risks, EPA finds that such individuals deserve protection. In promulgating the final listing determinations for EDC/VCM and VCM–A wastewater treatment sludges, it is the increased risk for currently or potentially exposed individuals, regardless of how few individuals are exposed, against which EPA is reasonably protecting.

In the proposed rule, in addition to presenting the results of our risk assessments estimating individual risks, we also discussed the potential risk posed to populations from the management of chlorinated aliphatic wastewaters managed in tanks, and EDC/VCM sludges managed in land treatment units and landfills. We requested comment on whether or not it is appropriate to give weight to population risk in making our final listing determinations. We also invited comment on the effect of such an approach with respect to the Agency's environmental justice goals, including our goal of protecting human health in rural areas.

In response to the proposal, we received comments both supporting the use of population risk estimates in making listing determinations, and comments against this approach. Several commenters stated that the population risks estimated by EPA do not justify a decision to list as hazardous the wastes proposed for listing (chlorinated aliphatic wastewaters, EDC/VCM wastewater treatment sludges, VCM–A wastewater treatment sludges). Commenters argued that consideration of the risks posed by the management of these wastes to the entire population potentially exposed would lead to the conclusion that these residuals do not pose substantial hazards to human health. Therefore, the wastes should not be listed as hazardous. Commenters argued that EPA's failure to give serious consideration to the low levels of population risk is at odds with the RCRA statute, the listing criteria, and regulatory precedent within the federal government. Some commenters claimed that, due to the low population risk estimates, EPA cannot conclude that any of the residuals "is capable of posing a substantial present or potential hazard to human health or the environment," as required in 40 CFR 261.11, and therefore EPA should not list any of the residuals.

In response, EPA notes that the use of "population risk" is not explicitly required nor prohibited in either the RCRA statute or the hazardous waste listing criteria in 40 CFR 261.11. EPA does not believe it is appropriate to allow contamination from waste management units to potentially cause substantial hazards to nearby residents simply because there are few individuals or wells in the immediate area. As stated above, our decision to list EDC/VCM and VCM–A wastewater treatment sludges is based on our concern about the present and potential hazards to those individuals who may be significantly exposed, even if there are few of them. In addition, the regulations clearly state that wastes are to be listed as hazardous, if they are "capable of posing a substantial present or potential hazard" (emphasis added). Therefore, it is the Agency's past and current view that as a policy matter, the Agency considers the threats to individuals, whether they exist today or in the future. EPA's discretion to base its hazardous waste listing decisions upon substantial risks to individuals, even if risk to the overall population is low or near zero, recently was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *American Petroleum Institute, et al.* v. *EPA* (No. 94–1683).

Specific comments received in response to the proposed rule included several commenters who argued that the legal standard in the RCRA statute for whether a waste is hazardous—that is, that the waste poses a "substantial present or potential hazard to human health or the environment"—cannot be met unless EPA establishes that a large number of people are likely to have increased cancer risk due to exposure to the hazardous constituents in the waste, *i.e.*, the so-called "population risk" is high. We disagree with these commenters. EPA concludes in this listing (and has concluded in previous listings) that even if relatively few people may be subject to substantial hazards, those individuals still deserve protection. Accordingly, consistent with our past practice, we have based the EDC/VCM hazardous waste listing determination on the substantial hazard to currently or potentially exposed individuals, rather than on the increased number of cancer cases in the population at-large. The D.C. Circuit Court in *American Petroleum Institute, et al.*, v. *EPA* upheld EPA's practice in a previous listing decision to base the decision on its concern for substantial risks to individuals.

EPA points out that the use of the word "substantial" in the RCRA statute (*i.e.*, "* * * substantial present or potential hazard * * *") need not be restricted to a quantitative meaning or applied exclusively to population risk. In the case of the wastes being listed as hazardous wastes today, we have determined that risks to individuals are "substantial." The estimated increased risk of cancer for the exposed individual is greater than 1 in 100,000. Consistent with EPA policy (see 59 FR 66072, at 66077), wastestreams for which the calculated high-end individual cancer risk level is 1 in 100,000 or higher generally are considered initial candidates for a listing decision. Wastestreams for which these risks are calculated to be 1 in 10,000 or higher will generally be listed as hazardous waste, although even for some of these wastestreams, there can be in some cases factors which could mitigate the high hazard presumption. Listing determinations for wastestreams with calculated high-end individual lifetime cancer risks falling into the range of 1 in 10,000 and 1 in 1,000,000 are also potentially listable but always involve an assessment of additional factors.[49] For specific discussion of how EPA

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[49] "The Superfund program has always designed its remedies to be protective of all individuals * * * that may be exposed at a site." 55 F.R. 8666, 8710 (Mar. 8, 1990). EPA's Superfund regulations at 40 C.F.R. § 300.430(e)(2)(i)(A)(2) establish remediation goals at levels that represent an excess upper bound lifetime cancer risk to an individual cancer risk to an individual at between 10^{-4} and 10^{-6}.

addressed these factors for EDC/VCM sludge see Section VI.B.1. of today's preamble.

In addition to comments arguing the legality of basing hazardous waste listing decisions on estimated risks to individuals, rather than population risks, we received comments claiming that the individual risk approach used by EPA was "overly conservative and unrealistic." These commenters stated that EPA needs to use population risk estimates as a "reality check" on individual risk estimates. Two commenters also said that we should use individual central tendency risk estimates as a more meaningful or realistic estimate of potential risk.

EPA disagrees with commenters' assertions that the highly-exposed individual risk approach used in the risk assessment supporting today's listing determinations was overly conservative and unrealistic. In today's notice, as well as in the Response to Comment Document accompanying today's rule, we address specific comments regarding the risk assessment. Even though our listing decisions in today's rule are based upon predicted risks to highly-exposed individuals, we believe that these risks are within the distribution of risks that could reasonably be expected to exist in the population. In support of this conclusion, we note that as part of the analyses to support the notice of proposed rulemaking, we also conducted probabilistic modeling to more directly evaluate the anticipated distribution of risk levels. The high end deterministic risk estimate for the adult farmer under the EDC/VCM land treatment unit scenario fell at the 95th percentile of the probabilistic distribution. EPA's Guidance For Risk Characterization (USEPA, 1995) states: "Conceptually, high end exposure means exposure above about the 90th percentile of the population distribution, but not higher than the individual in the population who has the highest exposure."

One commenter cited a 1987 study of 13 regulatory determinations where low population risk was cited as a reason not to regulate, and noted that the study suggests that EPA should not establish regulatory controls on the management of wastes, if the population burden is less than one cancer in 100 years.[50] The commenter described where the individual risk levels in the proposed chlorinated aliphatics listings fell in comparison to the individual risk levels in these other regulatory decisions.

EPA does not find this study leads it to change today's listing decisions. As already noted, the Agency has the discretion to base its listing decisions on the substantial hazard to highly exposed individuals, even if there is only a small number of them, as upheld by the U.S. Court of Appeals for the D.C. Circuit in *American Petroleum Institute* v. *EPA*. The study itself, however, has a number of flaws which lead EPA to reject its use. It deals with no RCRA decisions, but instead deals with a number of other statutes that have different mandates. This study also is outdated in that it was conducted a number of years ago when Agency risk assessment was less sophisticated than it is now. In particular, the study notes that at the time federal agencies overestimated risk assuming maximum exposures. Since issuance of EPA's 1992 "Guidance on Risk Characterization for Risk Managers and Risk Assessors,[51] EPA has modified its risk assessment approach to determine a plausible high-end exposure analysis, which is intended not to overestimate risks to highly exposed individuals. Moreover, EPA's current guidance acknowledges that in situations where small populations are exposed "individual risk estimates will usually be a more meaningful parameter for decision-makers."[52]

The study merely presents a listing of decisions made by various federal agencies under different statutory requirements. It does not suggest any rationale for the regulatory decisions other than the fact that they occurred. It seems to suggest that, because we decided against specific regulations in the past that coincided with a particular individual risk level (*e.g.*, 1×10^{-4}) and low numbers of cancer cases avoided, we are somehow obligated to make that same decision now. The commenter does not offer any other rationale for determining at what point the number of cancer cases avoided would support an Agency decision to list a waste as hazardous.

For several additional reasons, EPA disagrees with the suggestion that the Agency base today's listing decisions on total population risk or total number of cancer cases. In the first place and as previously noted, we believe we should not ignore substantial risks to individuals, if that might consign individuals to substantial risks, simply because only a few individuals potentially will be exposed. In addition, risk estimates alone do not dictate any particular listing decision. Even if EPA finds an individual risk of 1×10^{-5} or greater, for example, the Agency considers other factors and may decide to list or not list a waste as hazardous, based upon the consideration of all relevant factors. In finalizing today's listing determinations, the Agency is basing its decisions on the listing policy described in the December, 1994 proposed listing determination for dyes and pigment industry wastes (59 FR 66072). Furthermore, the Agency does not think that it is adequate to base a hazardous waste listing determination upon a comparison of potential risks posed by wastes covered by one rulemaking relative to risks posed by other wastes and potentially unrelated rulemakings. The Agency considers relevant factors particular to a waste and the plausible management practices affected when making each regulatory decision. As we have discussed thoroughly in this preamble and in the accompanied background documents, in this case we think the individual risk estimates and our consideration of other factors provide an adequate justification for listing both EDC/VCM and VCM–A wastewater treatment sludges as hazardous wastes.

Other comments received by the Agency include comments that stated that society does not have unlimited resources to address risks unless they are "clearly substantial," as indicated by population risk. We point out however that the regulations state that EPA may list a waste if it is "capable" of posing a hazard and the underlying RCRA statutory language states that hazardous wastes are those that "may * * * pose" a hazard. Thus, the Agency disagrees that risks must be "clearly" substantial to be subject to RCRA regulation. Further, EPA disagrees that "clearly substantial" risk (or even a risk that "may" occur) must be indicated by a high population risk estimate. The statutory standard for listing a waste is "substantial hazard." Where EPA finds that a waste poses a substantial hazard to highly exposed individuals, EPA will list the waste to protect those individuals potentially exposed.

Other commenters supported the Agency's use of individual risk estimates as the appropriate criteria for making hazardous waste listing determinations. For example, one commenter said that EPA should weigh individual risk more than population risk because the commenter believes there is greater uncertainty in population risk estimates than in individual risk estimates. No information was provided by the commenter as to why this would necessarily be the case. EPA agrees with the commenter that individual risk is an appropriate decision parameter, for the reasons already stated above.

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[50] Travis, Curtis C., 1987. Environment Science and Technology, Vol. 21, No. 5.

[51] 1992 Memorandum from the then Deputy Administrator F. Henry Habicht, "Guidance on Risk Characterization for Risk Managers and Risk Assessors."

[52] 1995 Guidance for Risk Characterization (section III.C.2), page 17.

Another commenter who supports the use of individual risk over population risk, argued that EPA is not compelled by governing regulation or statue to define "substantial hazard" in terms of population risk. The commenter also stated that EPA should take into account risks to populations from more than just the industry under study, since populations are potentially impacted by risks from many different facilities. For example, in parts of the country concerns have been raised previously about certain minority and poor populations bearing a disproportionate amount of risk for a variety of industries and wastes.

We agree that we are not compelled by governing regulation or statue to define "hazard" in terms of population risk. We may define "hazard" on the basis of substantial risk to individuals even when population risk estimates are low. Although population risk is one of many factors that has been considered in some Agency decisions, there are numerous precedents where the Agency has taken action, for example at Superfund sites and in previous listing determinations, when there are relatively few people potentially affected. Superfund is a particularly apt example since it, like RCRA, deals with protecting human health and the environment from harm arising from the mismanagement of waste. The D.C. Circuit Court particularly noted the consistency with Superfund in *American Petroleum Institute et al.*, v. *EPA* described above. While a different statute, the Agency has stated that the key objective of the CERCLA National Contingency Plan (NCP) is to protect individuals at contaminated sites (see 55 FR at 8710), and rejected using population risk as the point of departure for setting clean-up levels (see 55 FR at 8718). In addition, the CERCLA regulations (see 300.430(e)(2)(I)(A)(2), and 55 FR at 8848) direct EPA to establish preliminary remediation goals for carcinogens based on "cancer risks to an individual."

The Agency disagrees with the commenter's claim that potential risks from other industries should be estimated or accounted for in estimating potential risks from a particular wastestream generated by one specific industry. The benefits of this listing are the risks avoided from management of the newly-listed wastes. The Agency has no reason to factor in risks from other industrial wastes, unless a synergetic effect can be identified, which the commenter does not claim.

The Agency is committed to addressing environmental justice concerns and does consider risks to minority and disadvantaged populations in its decision making. Our goal is to ensure that no segment of the population bears a disproportionally high risk as a result of our decision making. The hazardous waste listing determinations promulgated today are based upon analyses conducted with a goal of protecting all potentially exposed individuals. No segment of the overall population will be placed at a disadvantage as a result of today's rulemaking.

Finally, the Agency is also concerned that land use patterns can change over time. For example, when evaluating a waste that adversely impacts groundwater, the Agency also is concerned about the potential contamination of future drinking water supplies, and of groundwater which may have other uses (*e.g.*, livestock watering, irrigation, aquaculture). If regulatory decisions were based solely on population risks at a particular point in time, beneficial uses could be precluded or, if the future users were unaware of the contamination, unacceptable risks could occur. This same objective, the protection of reasonably anticipated land use is an integral part of the Agency's Superfund remedy selection process.[53] Under Superfund, it is not sufficient only to consider potential risks to populations surrounding a particular site at the time of contamination or remediation; reasonably anticipated future land use patterns and future populations (*i.e.*, future receptors) are considered in risk assessments supporting remedy decision making and in selecting the final remedy.[54] In fact, the extensive experience with the Superfund program bears out these concerns. There are Superfund sites, for example, where residential developments were placed over former landfills that have turned out to be dangerous to the new populations, leading not only to risks to the population but expensive and time-consuming cleanups.

H. Which Constituents Are Being Added to Appendix VIII to 40 CFR Part 261?

1. Summary of Agency's Decision To Add Two Constitutents to Appendix VIII

Two of the constituents of concern that are present in the EDC/VCM wastewater treatment sludges (K174) that will be designated as listed hazardous wastes as a result of today's rule do not currently appear on the list of hazardous constituents at 40 CFR part 261, Appendix VIII. Therefore, EPA is adding these two constituents, octachlorodibenzo-p-dioxin (OCDD) and octachlorodibenzofuran (OCDF), to Appendix VIII.

2. Discussion of Agency's Decision To Add Constituents to Appendix VIII

OCDD and OCDF are members of the large family of polychlorinated dioxins and furans. Certain of these compounds, most notably, 2,3,7,8 -TCDD, have been shown to be toxic. The Agency found substantial hazard associated with the presence of dioxins in EDC/VCM wastewater treatment sludges, when these sludges are managed in land treatment units. In our risk assessment, dioxin/furan risk was reported on a TCDD TEQ basis. As previously discussed in today's final rule, as well as in the proposal, TCDD TEQ concentrations are calculated by multiplying each 2,3,7,8 substituted congener by the appropriate TEF, and then summing the resultant concentrations to come up with a TCDD TEQ value. OCDD and OCDF are included in this calculation.

Several studies, as noted in the response to comments below, show that OCDD and OCDF have toxic effects on life forms. Therefore, we have concluded, based upon the results presented in these scientific studies, that OCDD and OCDF should be added to Appendix VIII of 40 CFR part 261.

3. Response to Major Comments Addressing Agency's Decision To Add Constituents to Appendix VIII

One commenter opposed the addition of OCDD and OCDF to Appendix VIII of 40 CFR part 261 on the basis that OCDD and OCDF contribute very little to the actual risk attributable to dioxin compounds. The commenter also contended that the assignment of non-zero TEFs to OCDD and OCDF cannot form the basis for a regulatory decision to list the compounds as hazardous constituents, since TEFs are intended only to be used as a tool to aid risk managers in thinking about potential health risks associated with the compounds. The commenter argued that TEFs are not intended to provide a scientific basis for drawing the conclusion that OCDD or OCDF are toxic, carcinogenic, mutagenic, or tetratogenic. The commenter also argued that OCDD and OCDF do not meet the criteria in 40 CFR 261.11(a) for listing a substance on the Appendix VIII hazardous constituent list.

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[53] Memorandum EPA Regional Waste Management Division Directors from Elliott P. Laws, "Land Use in the CERCLA Remedy Selection Process," OSWER Directive No. 9355.7–04.

[54] See "Risk Assessment Guidance for Superfund (RAGs), Volume I—Human Health Evaluation Manual, Part A," (Chapter 6), 1989.

The commenter contends that the 1988 study by Couture, Elwell, and Birnbaum, although it led to a raising of the TEF for OCDD/OCDF to 0.001 by NATO/CCMS, does not support a non-zero TEF for OCDD/OCDF. A reevaluation of the study resulted in a downgrading of the TEF to 0.0001 by the World Health Organization. The commenter further contends that few statistically significant physiological effects have been observed in the study and that they are transitory in nature and are of uncertain toxicological significance. The commenter also points out that a longer-term subchronic study has been reported which dramatically demonstrates that dioxin-like effects are not produced by OCDD in animals even at high dose levels.

The commenter concludes that an extensive body of data exists that does not support the conclusion that OCDD is a toxicant, carcinogen, mutagen, or teratogen. In addition, the commenter states that essentially no toxicological data has been published for OCDF supporting the listing of the compound in Appendix VIII.

EPA disagrees with the commenter's arguments for several reasons. First, the Agency notes, in response to issues raised by the commenter, that as a preliminary matter, dioxin TEFs are irrelevant to EPA's decision to list OCDD and OCDF in Appendix VIII. The criteria in 40 CFR 261.11(a) for listing a substance on the list of hazardous constituents in Appendix VIII are that the constituents be "shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms." The Agency has determined that OCDD and OCDF meet these criteria, independent of any TEF calculation.

There are data from subchronic studies for both OCDD and OCDF which demonstrate dioxin-like effects (Couture *et al.*, 1988; DeVito *et al.*, 1997). Couture *et al.* (1988) is one of the best studies of OCDD and describes not only the effects but the importance of study design in examining the effects of OCDD. Couture *et al.* (1988) demonstrate toxic response of OCDD following subchronic exposures. In addition, this study also provides tissue concentrations at which these effects are observed. Couture *et al.* (1988) demonstrate that the absorption of OCDD is dependent upon both dosing volume and concentration of the solution. The higher the concentration the lower the absorption and the larger the volume (up to 5 ml/kg) the greater the absorption. Hence, high dose single exposures are unlikely to induce significant effects due to the limited absorption of OCDD. In contrast, low dose repeated exposures will allow for the bioaccumulation of OCDD, which eventually leads to biological effects. This is clearly demonstrated in the Couture *et al.* study (1988). The repeated exposure to 1 ug/kg of OCDD in a dose volume of 5 ml/kg produces time dependent effects that also are associated with increasing tissue accumulation of OCDD. OCDD induces hepatic CYP1A1 activity and increases CYP1A1 and CYP1A2 protein. Induction of CYP1A1 occurred as early as two weeks after treatment, and this response increased with time and with hepatic OCDD accumulation. Induction of CYP1A1 is a dioxin-like effect and is indicative of activation of the Ah receptor. Hepatic cytoplasmic vacuolization in the livers was also induced in a time dependent manner, first occurring after 40 doses and increasing in incidence and severity after 65 does of OCDD.

The Agency disagrees with the commenter's argument that these effects are transitory or of uncertain toxicological significance. First, the cytoplasmic vacuolization (lesions) in the liver increased in incidence and severity in a time dependent manner. The increased incidence and severity of these lesions were associated with increasing hepatic concentrations of OCDD. Animals at the last time point examined in the study of Couture *et al.* (1988) demonstrated the highest incidence and severity of these lesions; it is difficult to describe them as "transitory" as the commenters suggest, given that the effects worsened over the last five weeks of the study. Indeed, hepatotoxicity can be considered as part of a continuum of events leading to necrosis or carcinogenicity. Demonstration of events early in this continuum, such as cytoplasmic vacuolization, are cause for concern. The commenter also attributes the liver effects to "nutritional, metabolic or hormonal imbalances." Indeed, dioxins are endocrine disruptors and hormonal imbalances are expected to be induced by OCDD and other dioxins. These hormonal imbalances should be considered adverse responses based on our understanding of the endocrine disrupting actions of these chemicals.

The commenter neglects to mention that not only was enzyme activity induced by OCDD in the rats, but CYP1A1 and CYP1A2 protein were also increased as demonstrated by western blot analysis (Couture *et al.*, 1988). These proteins have been implicated in playing important roles in oxidative damage and porphyria (Sinclair *et al.*, 2000). According to Nebert and colleagues "metabolism of endogenous and exogenous substrates by perhaps every P450 enzyme, but certainly CYP1A1 and CYP1A2 (which are located, in part, in the mitochondrion), have been shown to cause reactive oxygenated metabolite (ROM)-mediated oxidative stress" (Nebert *et al.*, 2000). Ames and colleagues have clearly demonstrated the role of CYP1A1 in oxidative stress (Park *et al.*, 1996).

The commenter cites a number of studies which suggest that OCDD is not toxic, in contrast to the studies of Couture *et al.* The studies cited are generally inadequately designed to address the toxicity of OCDD. Several studies have demonstrated that, while OCDD is poorly absorbed in biological systems (Norback *et al.* Birnbaum and Couture, 1988; Couture *et al.*, 1988) it can bioaccumulate through repeated exposures to low concentrations. In addition, in the Couture *et al.*, study, it took at least 40 doses over approximately nine weeks before enough of the chemical could accumulate to produce alterations in liver histology. Acute, single exposures to high concentrations of OCDD are unlikely to result in significant accumulation to induce a toxic response since very little of the dose shall be absorbed. In fact, this is one of the conclusions in the McConnell *et al.* study (1978). Hence, the acute studies on the effects of OCDD demonstrated none of the typical signs of dioxin-like toxicity due to the limited absorption of the chemical. Other studies have to a lesser or greater degree attempted subchronic exposures. However, these studies either are too short (Holsapple *et al.* (1986)) or use too concentrated a dosing solution (Norback *et al.*, 1975). In either case, too little OCDD was absorbed to induce effects.

The commenter cites a study by Wermelinger *et al.* (1990) as evidence that OCDD does not induce dioxin-like effects. The USEPA strongly disagrees with this conclusion. This manuscript was published as an extended abstract from the dioxin meetings (Organohalogen Compounds, 1:221–224). These data clearly demonstrate that both OCDD and OCDF administered in the diet result in clear dioxin-like activity. Both OCDD and OCDF resulted in dose dependent increases in CYP1A1 activity and decreases in thymic atrophy. These responses are clearly the hallmark of dioxin-like effects in experimental animals. The Wermelinger *et al.* study clearly supports the finding of Couture *et al.*, that repeated low dose administration of OCDD results in dioxin-like effects. In addition, both Wermelinger *et al.* and Couture *et al.* provide similar estimates of the relative potency of OCDD, further supporting the inclusion of these chemicals in the TEF methodology.

The commenter cites a study by the National Toxicology Program in which a two year feeding study of OCDD produced no effects. We could not locate any reports of this study in the NTP databases. After contacting the NTP, it was determined that the study of OCDD was halted due to uncertain technical difficulties and no reports were ever prepared on any study of OCDD by the NTP. It is unclear where the commenter obtained its information, since a citation for the report was not provided.

The effects of OCDF are not as well studied as those of OCDD. Recent studies do document that subchronic exposure to OCDF demonstrates dioxin-like activities in mice (DeVito *et al.*, 1997). The subchronic exposure resulted in EROD induction in liver, lung and skin (DeVito *et al.*, 1997) and hepatic porphyrin accumulation (van Birgelen *et al.*, 1996) in these mice. These studies demonstrate that OCDF also possesses dioxin-like properties.

I. What Are the Land Disposal Restrictions Standards for the Newly-Listed Wastes?

1. What Are EPA's Land Disposal Restrictions (LDRs)?

The RCRA statute requires EPA to establish treatment standards for all wastes destined for land disposal. These are the so called "land disposal restrictions" or LDRs. For any hazardous waste identified or listed after November 8, 1984, EPA must promulgate LDR treatment standards within six months of the date of identification or final listing (RCRA Section 3004(g)(4), 42 U.S.C. 6924(g)(4)). RCRA also requires EPA to set as these treatment standards "* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." RCRA Section 3004(m)(1), 42 U.S.C. 6924(m)(1). Once a hazardous waste is prohibited, the statute provides only two options for legal land disposal: meet the treatment standard for the waste prior to land disposal, or dispose of the waste in a land disposal unit that satisfies the statutory no migration test. A no migration unit is one from which there will be no migration of hazardous constituents for as long as the waste remains hazardous. RCRA Sections 3004 (d), (e), (f), and (g)(5).

5. What Are the LDR Standards for K174?

In today's rule, we are adopting treatment standards for several forms of dioxins and furans as well as a treatment standard for arsenic. With respect to the dioxins and furans being regulated, our standard requires either treatment by means of combustion (denoted as CMBST in the 40 CFR 268.40 Table) *or* that the specified types of dioxins and furans meet numerical standards prior to land disposal.

For most of the specified types of dioxins and furans (*e.g.*, the hexa, penta, and tetra classes of congeners) as well as arsenic, we are adopting the existing universal treatment standards and no significant issues have been encountered. However, the setting of congener-specific numerical standards for 3 hepta and 2 octa forms of dioxin/furan warrants some additional discussion. In previous rulemakings, we have not adopted treatment standards for these isomers. Several reasons convince us that we should do so in today's rule.

First, with the K174 waste, our risk analysis indicates that, should this waste be mismanaged in a land treatment unit, the hepta- and octa-chlorinated dioxin and furan isomers present high-end deterministic risks that, as described in Section VI.B.1. of today's rule, form the basis for EPA's decision to list this waste as hazardous. Second, studies have attributed dioxin-like toxicity to both the hepta and octa isomers. Based on the TCDD cancer slope factor and TEFs used in the risk analysis for this rule, the slope factors for OCDD and OCDF are effectively 15.6 $(mg/kg\text{-}day)^{-1}$ and the slope factors for the 2,3,7,8-substituted hepta dioxin and furan isomers are effectively 156 $(mg/kg\text{-}day)^{-1}$. These are by comparison 10 and 100 times, respectively, the slope factor for arsenic, an Appendix VIII constituent and known carcinogen.

The carcinogenicity and risk levels of the 5 hepta and octa isomers and their potential conversion to even more toxic isomers by dechlorination or photolytic mechanisms lead us to conclude that adopting specific treatment standards (*i.e.*, numerical or CMBST) for these isomers is warranted for the K174 wastes. Because we typically include the same standards for new listings into those for F039 (multisource leachate) to maintain equivalence within the LDR regulatory structure, we are also adding the same treatment standards in the F039 section of the 268.40 table (see section below on conforming changes).

In summary, today, we are promulgating as final the numerical standards that were proposed for the constituents of concern in the K174 wastewater treatment sludges from the production of ethylene dichloride and vinyl chloride monomer. We are finalizing the numerical standards based on the data received and analyzed at proposal. No comments or additional data were received regarding the achievability of the proposed standards so, therefore, we are adopting the same numerical standards as final. In addition we also are promulgating the option of complying with the technology standard of combustion (CMBST) for the organic constituents present in K174. The final treatment standards are presented in the following table.

TABLE I–1.—TREATMENT STANDARDS FOR K174

Regulated harzardous constituent		Wastewaters	Nonwastewaters
Common name	CAS[2] No.	Concentration in mg/L[1], or technology code[2]	Concentration in mg/kg[3] unless noted as "mg/L TCLP", or technology code
1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin	35822–39–4	0.000035 or CMBST[4]	0.0025 or CMBST[4]
1,2,3,4,6,7,8-Heptachlorodibenzofuran	67562–39–4	0.000035 or CMBST[4]	0.0025 or CMBST[4]
1,2,3,4,7,8,9-Heptachlorodibenzofuran	55673–89–7	0.000035 or CMBST[4]	0.0025 or CMBST[4]
HxCDDs (All Hexachlorodibenzo-p-dioxins)	34465–46–8	0.000063 or CMBST[4]	0.001 or CMBST[4]
HxCDFs (All Hexachlorodibenzofurans)	55684–94–1	0.000063 or CMBST[4]	0.001 or CMBST[4]
1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin (OCDD)	3268–87–9	0.000063 or CMBST[4]	0.005 or CMBST[4]
1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF)	39001–02–0	0.000063 or CMBST[4]	0.005 or CMBST[4]
PeCDDs (All Pentachlorodibenzo-p-dioxins)	36088–22–9	0.000063 or CMBST[4]	0.001 or CMBST[4]
PeCDFs (All Pentachlorodibenzofurans)	30402–15–4	0.000035 or CMBST[4]	0.001 or CMBST[4]
TCDDs (All tetrachlorodi-benzo-p-doxins)	41903–57–5	0.000063 or CMBST[4]	0.001 or CMBST[4]
TCDFs (All tetrachlorodibenzofurans)	55722–27–5	0.000063 or CMBST[4]	0.001 or CMBST[4]
Arsenic	7440–36–0	1.4	5.0 mg/L TCLP

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[2] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[3] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[4] For these wastes, the definition of CMBST is limited to: (1) Combustion units operating under 40 CFR 266, (2) combustion units permitted under 40 CFR Part 264, Subpart O, or (3) combustion units operating under 40 CFR 265, Subpart O, which have obtained a determination of equivalent treatment under 268.42(b).

Regarding the use of combustion (CMBST) for the regulated organic constituents, commenters requested that we allow combustion as an alternative to the proposed (and now final) numerical treatment standards. This is consistent with the approach taken for F024, a set of previously listed chlorinated aliphatic wastes (62 FR 26000–3, May 12, 1997). We agree and are promulgating the requested change. As a consequence, facilities treating K174 wastes will have the option of complying with either the numerical standards promulgated or the technology standard of CMBST for the regulated organic constituents.

Adopting combustion as an alternative to the numerical standards serves a general LDR programmatic interest as well. We typically promulgate numerical performance standards to allow facilities maximum flexibility in determining for themselves how best to achieve compliance with the LDR treatment standards. If we promulgate a technology-specific treatment standard (such as combustion) instead, this flexibility is lost. In today's rule, by promulgating combustion as an alternative compliance option, we are not disturbing the degree of flexibility afforded to facilities; rather, we are maintaining or enhancing it.

However, when we specify a treatment technology like CMBST as the LDR standard, the analytical elements of compliance change. Typically, when we specify a method of treatment (like CMBST), no testing and analysis of treatment residuals is required because we are confident that use of the specified technology will reduce the level of target constituents (organics in the case of CMBST) to levels that minimize threats to human health and the environment. For K174, the regulated organic constituents of concern are dioxin/furan congeners, which, if combustion is used for treatment, will not be individually analyzed in the treatment residue (*e.g.*, the ash).

Several factors suggest that such individual constituent analysis is not necessary and that specifying CMBST is appropriate. First, if combustion in well designed and operated units is used to treat K174, the structural features of dioxin/furan congeners (*e.g.*, the presence of the oxygen in the ring formation) suggest that all dioxins and furans in K174 should be substantially destroyed by the high temperature combustion process that would have to be used.

Second, we ensure that combustion will occur in well designed, operated, and highly regulated units. Part of the CMBST standard itself (as modified in today's rule for K174 waste) is that combustion of K174 must occur either in units subject to the standards in 40 CFR part 264 subpart O or 40 CFR part 266, subpart H, or in interim status incinerators where the owner/operator has made a specific demonstration that the unit can operate in a manner equivalent to a part 264 or part 266 combustion unit. The type of facilities that can combust K174 is thereby restricted to highly-regulated RCRA units (or, after the current transition period, Clean Air Act permitted units subject to MACT standards). This will ensure that combustion is done only in a closely-regulated facility and in a manner that provides protection for human health and the environment. More specifically, combustion will occur only in units subject to the recently upgraded dioxin/furan emission standards of the MACT Hazardous Waste Combustion Rule as well as standards for other hazardous air pollutants, such as metals (64 FR 52828, September 30, 1999). Given this level of regulation and permitting oversight, we do not find the need to impose additional and, with respect to other dioxin/furan congeners, unique analytical burdens on the regulated community regarding these 5 hepta and octa congeners.

Of course, K174 does have metal constituents of concern, which would not be treated by the combustion process and that would remain in the combustion treatment residuals (*e.g.*, ash and scrubber water). We therefore are retaining metal treatment standards for all circumstances, *i.e.*, whether or not the treatment used by a facility involves combustion. When combustion is used to treat the organics to achieve LDR compliance, facilities still will need to conduct compliance testing and analysis for all regulated metal constituents in the combustion treatment residuals prior to disposal. This approach is patterned after EPA's promulgation of a similar alternative treatment standard for F024 (wastes from production of chlorinated aliphatics) and also for F032 (wastes from wood preserving processes). See 55 FR 22580–22581, June 1, 1990. See also 62 FR 26000–26003, May 12, 1997.

Another issue warranting brief discussion concerns a related, but in reality quite different, issue. Commenters, in general, oppose the regulation of the additional congeners individually, and state that the existing dioxin and furan congeners covered under UTS standards are sufficient to serve as surrogates for the effective treatment of the 5 hepta and octa congeners. These commenters would omit the 5 hepta and octa congeners entirely from list of regulated hazardous constituents for which LDR treatment standards are set.

We do not agree with this approach. Absent a specific requirement that hepta and octa congeners be treated (*i.e.*, by including them as regulated hazardous constituents for K174 in the table in 268.40), generators would not be obliged to determine the presence of these congeners. Without such a determination, it is certainly possible that generators would not engage in any organic-oriented treatment at all. For example, if the other dioxin/furans are below treatment levels, generators would not have to combust the K174 waste. Given our concern about the potential threats posed to human health and the environment by dioxins and furans, we are choosing to require treatment wherever harmful congeners are present above the treatment standard. Also, the formation pathways for dioxins and furans are highly waste specific, such that we have no way of knowing the concentration of one isomer based on the presence or absence of another.

We conclude that a surrogate approach without compliance testing for the 5 hepta and octa isomers, such as that which would be the consequence of the commenters' views, would not be adequate. Therefore, with today's rule, we are promulgating treatment standards for each of the 5 hepta and octa dioxin and furan isomers identified in the proposal.

3. What Are the LDR Treatment Standards for K175?

We proposed two options for establishing treatment standards under the LDRs for the mercury-bearing waste to be listed as K175 (64 FR 46521). The first option would have included three treatment standards that would essentially be the same as those for other mercury-bearing wastes. These standards are:

(1) for K175 wastes containing greater than 260 mg/kg total mercury, the treatment would be recovery of the waste's mercury content via roasting and retorting (RMERC);
(2) for K175 RMERC residues containing less than 260 mg/kg total mercury, the residues would have to meet a numerical standard of 0.2 mg/L TCLP mercury prior to land disposal; and
(3) for K175 wastes and non-RMERC treatment residues containing less than 260 mg/kg total mercury, these wastes and treatment residues would have to meet a numerical standard of 0.025 mg/L TCLP mercury prior to land disposal

We also proposed that wastes and residues in this last category be treated so that a pH of 6.0 or less is achieved prior to land disposal, and that disposal of these wastes and residuals be restricted to landfill cells where only wastes with similar pH properties are co-disposed.

Because of the potential difficulty in roasting and retorting K175 waste, the Agency requested performance data, and solicited comment on a second treatment standard option. This option would require that K175 waste exhibit no more than 0.025 mg/L TCLP mercury for disposal without any requirement that the waste be roasted or retorted.

The K175 wastes are typically much greater than 260 mg/kg mercury, ranging from approximately 3,000 to 17,700 mg/kg mercury, and are greater than one percent in total organic constituents.[55] As noted in the proposal (64 FR at 46521), when these wastes (high mercury and 1% or more organics) exhibit the toxicity characteristic, they would already be subject to requirements of either RMERC (roasting and retorting) or IMERC (incineration in units operated in accordance with RCRA incinerator standards).

Commenters questioned the ability and willingness of commercial retorting and roasting treatment facilities to accept K175 wastes, citing two factors. First, with a K175 mercury content of approximately one percent, commercial retorters may not recover enough mercury to be cost-effective, and second, most commercial retort facilities may not be able to accept wastes in excess of 500 ppm Appendix VIII organics and still comply with their RCRA permitting limits (USEPA, 1999c).[56] This information suggests that adopting an RMERC standard for K175 may present significant practical difficulties that could not be overcome in the near term.

In addition to the practical points made by commenters, no roasting and retorting performance information for the subject waste or even a similar waste was submitted in comment. Since the Agency itself lacks data on the properties of the subject waste following roasting and retorting, we are not able to persuasively conclude that this type of treatment technology can achieve the level of mercury removal desired. In addition, we have no firm basis for determining whether the RMERC residues from treating K175 could meet the existing 0.2 mg/L TCLP total mercury standard so that the RMERC residues could be land disposed. We are therefore disinclined to adopt a K175 treatment standard that involves mandatory roasting and retorting.

Conversely, with respect to the second option proposed for K175 treatment standards, several factors suggest that this is a better approach to adopt. First, as discussed above, the commercial roasting and retorting alternatives may not exist. Second, the physical properties of the waste indicate that the waste can readily achieve 0.025 mg/L TCLP mercury. Testing conducted for EPA shows the waste sample tested readily achieved 0.025 mg/L TCLP mercury, as the sample tested leached only 0.0027 and 0.0058 mg/L total mercury at pH 4 and 6 respectively.[57]

Third, at this point in time, the Agency is reviewing the appropriateness of thermal treatment and recovery of mercury in all forms of hazardous waste, not solely K175. See 64 FR 28949, May 28, 1999. Therefore, requiring RMERC for K175 at this juncture may prove to be somewhat premature even if adequate data and assurance of commercial treatment capacity were to exist. Because we have an acceptable and effective treatment alternative, we are able to postpone having to make a policy judgment about promoting or requiring mercury recovery and recycling in today's rule (which would just apply to K175) until we are better prepared to resolve the longer term issues of mercury recovery in a comprehensive and more environmentally effective manner.

Based on all these factors, the Agency has selected stabilization as the appropriate technology upon which to base our K175 treatment standard, and is setting 0.025 mg/L TCLP mercury together with control of the pH of co-disposed wastes (as discussed below) as the land disposal restrictions for K175. This standard may be achieved by any technology (other than impermissible dilution), and does not prohibit roasting/retorting should it be shown to achieve the performance standard. While no data were provided in response comment on this proposal, subsequently a vendor has indicated a willingness to demonstrate that the

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[55] See 64 FR at 46510; see also Table 4–14 from Listing Background Document for Chlorinated Aliphatics Listing Determination (Proposed Rule) (USEPA, 1999c).

[56] In accordance with 40 CFR 266.100, a "metals recovery" unit such as a commercial mercury retorter is conditionally excluded from most RCRA permit requirements provided that the facility complies with certain operating restrictions, one being a prohibition against accepting wastes in excess of 500 ppm Appendix VIII organics.

[57] Paul Bishop, Renee A. Rauche, Linda A. Rieser, Markram T. Suidan, and Jain Zhang; "Stabilization and Testing of Mercury Containing Wastes," Department of Civil and Environmental Engineering, University of Cincinnati, March 31, 1999.

waste could be retorted successfully.[58] Should subsequent testing demonstrate that retorting produces a waste form better suited for stabilization and having less potential for long-term mercury release, the standards promulgated today could potentially be adjusted as part of the ongoing re-evaluation of mercury waste treatment technologies. See 64 FR 28949, May 28, 1998. Any modification of today's promulgation would be the subject of a future proposal.

Other comments focused upon the proposed requirement that disposal of K175 wastes and treatment residues which are less than 260 mg/kg total mercury be restricted to landfill cells into which disposal of wastes in excess of pH 6.0 is prohibited. Commenters noted that the waste could readily be treated to a pH <6.0 but stated that, given the relative small quantity of waste generated, monofill disposal of K175 or co-disposal only with similar wastes would not be feasible. One commenter suggested macroencapsulation of the K175 waste as is currently performed for debris would provide a viable alternative to achieve isolation of the waste from surrounding, potentially adverse landfill conditions. Subsequent discussions with Chemical Waste Management Inc. confirm that acidic wastes make up only a small portion of hazardous wastes and that it would not be feasible to manage a small cell for only K175 or for K175 and only similar wastes of pH <6.0.[59]

Control of the disposal site conditions is essential to ensure that the mercury present in this waste remains immobile so that long-term threats to human health and the environment are minimized. The solubility measurements conducted on the waste for EPA are consistent both with results found in the mercury literature[60] as well as with calculations from a geochemical stability model for mercury sulfide complexes.[61] The testing and subsequent solubility calculations confirm that above pH 6.0, increased mobility of mercury as mercuric sulfide/hydrogen sulfide complexes occurs with increasing pH and sulfide concentration.

Therefore, we find that to minimize the potential future threats from mercury mobilization, our treatment standard must ensure that pH is maintained at 6.0 or less for K175 waste. Because we agree with the commenter's suggestion about the practical advantages of macroencapsulation in some situations, we are finalizing treatment standards that require, prior to land placement: (1) Wastes to be at pH 6.0 or less, and placement is restricted to landfill cells in which disposal of other wastes in excess of pH 6.0 is prohibited; or (2) wastes to be at pH 6.0 or less, and macroencapsulation per the requirements of 40 CFR 268.45. The pH restriction in the latter standard is to ensure that mercury is not in a mobile form should the macroencapsulation vessel fail over time. This additional level of protection is part of the best demonstrated and available treatment (BDAT) needed to minimize the threats posed by potential mobilization of the mercury within a landfill over the long-term. Furthermore, macroencapsulation itself is not viewed as BDAT (except in unusual cases such as debris) because it merely isolates the waste from the environment for a period of time and does not actually effect any treatment. We have amended the regulations promulgated today accordingly.

Affected parties and other stakeholders should note that we may revisit the requirement for macroencapsulation should we determine, at some future date, that the generation rate of materials requiring disposal at low pH has increased to the point where maintaining a separate cell for these wastes is an operationally feasible option for a landfill.

We did not pursue to regulatory conclusion other potential avenues by which mercury mobilization could be affected for a number of reasons. Two avenues would be to regulate the sulfide content of the waste itself or the sulfide concentration in the disposal environment, or both. These approaches are fraught with technical and implementation difficulties. For example, chemical and biological processes within the disposal unit may reduce sulfate to sulfide at varying rates depending on in situ conditions. Also, current test methods do not readily distinguish free sulfide from that bound as mercuric sulfide in the waste. Hence, adopting sulfide limits on incoming K175 wastes or mandating in situ sulfide levels would likely not be reliable or implementable means of ensuring mercury immobility. On the other hand, pH can readily be determined using the existing procedure SW–846 Method 9045C. Thus, practical considerations also favor limitation of waste pH at the time of disposal as a more viable option to control potential mobilization of mercury once the wastes are disposed.

In summary, for K175 waste, we are finalizing a treatment standard requiring that, prior to land disposal: (1) The waste must meet a TCLP leachate concentration of 0.025 mg/L mercury or less, (2) the waste must be at or below a pH 6.0 when disposed, and (3) the wastes must be macroencapsulated or, if not, placement is restricted to landfill cells in which disposal of other wastes in excess of pH 6.0 is prohibited. We are promulgating these land disposal restriction requirements for K175 to ensure the long term protection of human health and the environment.

4. What Are the Conforming Changes to F039 and Universal Treatment Standards?

We proposed that the constituents 1,2,3,4,6,7,8-heptachlorodibenzo-p-dioxin; 1,2,3,4,6,7,8-heptachlorodibenzofuran; 1,2,3,4,7,8,9-heptachlorodibenzofuran; 1,2,3,4,6,7,8,9-octachlorodibenzo-p-dioxin (OCDD); and 1,2,3,4,6,7,8,9-octachlorodibenzofuran (OCDF) be added to the list of regulated constituents in hazardous waste F039 multisource leachate. The F039 waste code applies to hazardous waste landfill leachates in lieu of the original waste codes when multiple waste codes would otherwise apply. F039 wastes are subject to numerical treatment standards equivalent to UTS. We proposed these additions to the constituents regulated by F039 to maintain the implementation benefits of having one waste code for multisource leachate.

Commenters correctly noted that the Agency did not add the constituents of the carbamate waste listing to F039 (61 FR 15566), an issue not directly within the purview of this rulemaking. As a result, multisource F039 leachates that also contain one of the listed carbamate wastes must be treated to comply with carbamate hazardous waste codes to meet the 40 CFR 268.48(c) requirement for treatment to achieve the lowest treatment standard for constituents of concern. Therefore, such wastes would be subject to multiple codes; the very situation F039 sought to eliminate. The Agency's intent upon promulgating F039 was that the single F039 waste code would replace the multiple codes to which such wastes were then subject (52 FR 22619, June 1, 1990). To limit any further proliferation of circumstances where treatment standards in addition to F039 may apply, we are promulgating the additional K174 dioxin and furan constituents of concern as proposed. Resources permitting, conforming changes may be proposed for the carbamate waste constituents at some future date.

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[58] Personal communication with SepraDyne Corporation representatives.

[59] Memorandum from Ross Elliott, U.S. EPA Office of Solid Waste, to RCRA Docket, "Summary of Phone Call Between EPA and Carl Carlsson, Chemical Waste Management Inc.," July 12, 2000.

[60] See 64 FR at 46522. See also Jenny Ayla Jay, Francois M. M. Morel, and Harold F. Hemond, Mercury Speciation in the Presence of Polysulfides, Environmental Science and Technology, 2000, Vol. 34, No. 11, pages 2196–2200.

[61] Memorandum from John Austin to Ross Elliott, May 12, 2000.

We also proposed that the numerical standards derived for 1,2,3,4,6,7,8-heptachlorodibenzo-p-dioxin; 1,2,3,4,6,7,8-heptachlorodibenzofuran; 1,2,3,4,7,8,9-heptachlorodibenzofuran; OCDD; and OCDF be added to the Table of Universal Treatment Standards (UTS) at 40 CFR 268.48. These constituents contribute to the overall risks that formed the basis for EPA's decision the EDC/VCM sludges pose a substantial risk to human health and the environment, as shown in the risk assessment accompanying this rule. Their presence in other hazardous wastes should be mitigated by effective treatment to avoid similar risks after land disposal. By adding these numerical standards for five dioxin and furan congeners, we are ensuring that treatment of hazardous waste addresses these risks.

Following the adoption of today's rule, all characteristic wastes that have these constituents as underlying hazardous constituents above the UTS levels will require treatment of these additional constituents before land disposal. This is in direct accord with our mandate under the LDR treatment program to "substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized."[62]

Commenters in general objected to changes to UTS because of their perceived cost of the analysis and concerns over available treatment capacity, which will be discussed in the following section. We were not persuaded by the commenters' arguments. Waste generators must already comply with treatment requirements for tetra-, penta-, and hexa- chlorinated dibenzo-p-dioxin and dibenzofuran congeners. Much of the labor and cost of analysis of the currently regulated congeners can not be separated from the costs associated solely with the hepta and octa congeners because the analysis of these 5 additional isomers is accomplished intrinsically as part of the overall method and is not separable. Hence, sample preparation, labor, and instrument time are not increased by including these 5 additional congeners.

Commenters also suggest that treatment and control of the existing regulated dioxin/furan congeners provides adequate protection against potential risks associated with the hepta and octa congeners. Commenters appear to recognize that the hepta- and octa-dioxin/furan congeners contribute significantly to the overall carcinogenicity of K174 wastes and waste treatment residues, and that they also must be controlled if human health and the environment are to be protected. In essence, these commenters would have us make broad assumptions for all situations about the ancillary impacts of treating and controlling certain dioxin and furan congeners, but not others that nevertheless present significant risks to human health and the environment.

We are not in a position to make such broad assumptions regarding our degree of control over dioxin and furan congeners that present significant risks. We have chosen to take a more conservative tack, providing treatment standards that, when met, ensure that long-term threats to human health and the environment are minimized (RCRA Section 3004(m)). For reasons noted earlier (*e.g.*, carcinogenicity of these congeners, dechlorination or photolytic changes to more toxic congeners, and assuring treatment if these congeners are present), we conclude that direct control of these 5 hepta and octa congeners is warranted.

For these reasons, the Agency is promulgating the proposed additions to the Table of Universal Treatment Standards (UTS) at 40 CFR 268.48 and to the list of regulated constituents for F039, multisource leachate from hazardous waste, in 40 CFR 268.40.

J. Is There Treatment Capacity for the Newly-Listed Wastes?

1. Introduction

Under the land disposal restrictions (LDR) determinations, the Agency must demonstrate that adequate commercial capacity exists to manage listed hazardous wastes in compliance with BDAT standards before the Agency can restrict the listed waste from further land disposal. The Agency performs capacity analyses to determine the effective date of the LDR treatment standards for the proposed listed wastes. This section summarizes the results of EPA's capacity analysis for the wastes covered by today's rule. For a detailed discussion of capacity analysis-related data sources, methodology, and detailed responses to comments for each waste covered in this rule, see USEPA, 2000f[63] (*i.e.*, the Capacity Background Document).

EPA's decisions on whether to grant a national capacity variance are based on the availability of alternative treatment or recovery technologies capable of achieving the prescribed treatment standards. Consequently, the methodology focuses on deriving estimates of the quantities of newly-listed hazardous waste that will require either commercial treatment or the construction of new on-site treatment or recovery as a result of the LDRs. The resulting estimates of required commercial capacity are then compared to estimates of available commercial capacity. If adequate commercial capacity exists, the waste is restricted from further land disposal unless it meets the LDR treatment standards prior to disposal. If adequate capacity does not exist, RCRA Section 3004(h)(2) authorizes EPA to grant a national capacity variance for the waste for up to two years or until adequate alternative treatment capacity becomes available, whichever is sooner.

2. Capacity Analysis Results for Newly Identified Wastes

In conducting the capacity analysis for the wastes newly-listed by today's rule, EPA examined data on waste characteristics and management practices gathered for the purpose of the chlorinated aliphatics hazardous waste listing determinations and on available treatment or recovery capacity for these wastes. The data sources for the analyses are primarily the 1992 RCRA Section 3007 survey, the follow-up survey specific to these wastes conducted in 1997 (see the docket for this rule for more information on these survey instruments), the available treatment capacity data submission that was collected in the mid-1990's, and the 1997 Biennial Report (BR). EPA analyzed the capacity-related information from these data sources, reviewed the public comments received in response to the proposed rule, and corresponded or met with several commenters to obtain more specific information.

We identified the following annual quantities of the newly-listed wastes that are generated and therefore the quantities of waste that potentially could require commercial treatment. Information available to the Agency indicates that up to 6,100 tons of K174 per year could potentially require

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[62] RCRA Section 3004(m).

[63] U.S. EPA. 2000f. Background Document for Capacity Analysis for Land Disposal Restrictions: Newly Identified Chlorinated Aliphatics Production Wastes (Final Rule), September.

commercial treatment capacity. The Agency notes, however, that because EPA is finalizing a conditional listing approach for the K174 wastewater treatment sludges under which these wastes are not hazardous if disposed of in a subtitle C or a non-hazardous waste landfill, it is possible that little or no hazardous waste treatment capacity will be required for this waste. In addition, approximately 130 tons of K175 are generated annually and potentially could require commercial treatment capacity. EPA has determined that there is adequate commercial treatment or recovery capacity available to treat both of these wastes.

For wastewaters from chlorinated aliphatic production processes (proposed as K173), some commenters requested a national capacity variance for this waste in response to the proposed rule. Since EPA is finalizing a decision not to list wastewaters from chlorinated aliphatic production processes as hazardous (as discussed in section VI.A), there is no need for a capacity variance determination for this waste stream.

EPA proposed not to grant a capacity variance for K174 waste (EDC/VCM wastewater treatment sludge). No comments were received regarding the variance determination, available treatment or disposal capacity, or the quantity of the waste potentially requiring treatment, either in nonwastewater or wastewater forms. As described in section VI.I above, we are finalizing the proposed numerical treatment standards as well as an alternative treatment standard of hazardous waste combustion. We estimate that the commercially available sludge and hazardous waste combustion capacity is at least 300,000 tons per year (see details in the Capacity Background Document) and therefore sufficient to treat any K174 hazardous wastes that could require treatment.

As discussed earlier in this preamble, EPA has identified (as a result of public comments) that one facility may generate K174 in a surface impoundment as a result of today's rule. The facility may remove K174 waste before the effective date of the new listing and therefore may not be subject to LDR requirements.[64] The impoundment can also be retrofitted, closed, or replaced with tank systems. If the impoundment continues to be used to actively manage K174 waste, the unit will be subject to subtitle C requirements. In addition, any hazardous wastes that are actively managed in an impoundment (other than wastes removed from an impoundment as part of a one-time removal) after the effective date of today's rule are subject to the land disposal prohibitions.[65] EPA expects that the one facility currently managing chlorinated aliphatic wastewaters in surface impoundments (and which therefore may potential manage EDC/VCM sludges in impoundments after the effective date of today's rule) will cease to do so before the effective date of this rule.

However, as described earlier in this preamble (see section VI.B.2.b.vii) regarding the listing determination for EDC/VCM wastewater treatment sludges, this facility (or others) could manage newly-listed K174 in surface impoundments, provided they are in compliance with the appropriate standards for impoundments (40 CFR parts 264 and 265 subpart K) and the special rules regarding surface impoundments (40 CFR 268.14). EPA notes that those provisions require (by reference) basic groundwater monitoring (40 CFR parts 264 and 265 subpart F), management, and recordkeeping, but are afforded up to 48 months to retrofit to meet minimum technological requirements (see RCRA Section 3005(j)(6)(A)).

Based on the foregoing, EPA concludes that sufficient treatment or disposal capacity is available to manage K174 waste generated after the effective date of the LDR treatment standards either on site or offsite, even if generators seek offsite management for all K174 wastes in a permitted subtitle C disposal or treatment unit. Therefore, EPA is finalizing its decision not to grant a capacity variance for wastewater and nonwastewater forms of K174.

With respect to K175 waste, several commenters raised issues with regard to permitting requirements and constraints of commercial treatment facilities, including the ability of commercial facilities to accept nonwastewater forms of K175 waste and comply with the proposed land disposal restrictions of RMERC. As discussed earlier, EPA is finalizing a numerical treatment standard for this waste (in conjunction with other pH-related restrictions and macroencapsulation), which has been demonstrated to be achievable using stabilization. Sufficient commercial stabilization, pH, and macrocapsulation treatment capacity exists to treat and dispose of mercury-containing wastes and to meet the final treatment standards adopted today. In addition, the one facility generating K175 uses a sulfide precipitation technology and therefore may be able to meet the numerical mercury concentration standard upon generation of the waste. Depending on their ability to control pH and to perform on-site macrocapsulation, no other commercial treatment might be necessary prior to off-site hazardous waste landfilling. EPA notes that generators can use any treatment technology (except impermissible dilution) to meet the numerical mercury concentration and pH standards promulgated today.

EPA proposed that the K175 waste (about 130 tons per year) be co-disposed in a landfill with other wastes with similar pH (6.0 or less). Commenters did not indicate the existence of any technical difficulties in meeting the additional pH requirement. Furthermore, they did not provide any data or information on the issue of available monofill disposal capacity for this waste or landfill co-disposal with similarly acidic (pH 6.0 or less) wastes. Based on previous activities in the commercial sector as well as the lack of adverse comment, we find no reason to doubt that owners of commercial landfills can and at some point will create a special cell based on customer's needs, compliance conditions, and contract negotiation.

However, as noted earlier, we understand from one stakeholder that facilities with hazardous commercial landfill capacity may not have sufficient volumes of similarly acidic wastes to make it cost-effective to designate an entire unit or cell for disposal of only low pH wastes. We have therefore adopted an alternative that allows land disposal in other types of landfill cells following macroencapsulation of the waste (assuming the waste meets other applicable standards, such as Hg concentration and pH 6.0 or less). Based on a discussion with a hazardous waste management facility,[66] we find that macroencapsulation of K175 waste can be made readily available for K175 waste. Based on available data and analyses, EPA has therefore determined that sufficient commercial treatment and disposal capacity exists to manage K175 waste to meet the LDR standards, and we are today finalizing our decision not to grant a capacity variance for wastewater or nonwastewater forms of K175.

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[64] If the waste is actively managed in unretrofitted impoundments (*i.e.*, impoundments not satisfying the minimum technology requirements specified in RCRA sections 3004(o) and 3005(j)(11)) after the effective date of today's rule, it would be land disposed in a prohibited manner.

[65] See RCRA § 3004(m)(1) "Simultaneously with the promulgation of regulations under subsection (d), (e) (f), or (g) prohibiting one or more methods of land disposal of a particular hazardous waste * * * promulgate regulations specifying those levels or methods of treatment * * *"

[66] Personal communication with Carl Carlson, Chemical Waste Management Inc.

In summary, we conclude that sufficient capacity exists for the management of both wastewater and nonwastewater forms of K174 and K175. For K174 and K175 wastes, the customary time period of six months is sufficient to allow facilities to determine whether their wastes are affected by this rule, to identify onsite or commercial treatment and disposal options, and to arrange for treatment or disposal capacity if necessary. LDR treatment standards thus will become effective when the listing determinations become effective for the wastes covered under this rule—the earliest possible date. This conforms to RCRA section 3004(h)(1), which indicates that land disposal prohibitions must take effect immediately when there is sufficient treatment or disposal capacity available for the waste.

Further, for soil and debris contaminated with the newly-listed wastes, EPA proposed not to grant a national capacity variance. EPA received no comments regarding this issue. We expect that the majority of contaminated soil and debris will be managed on-site and therefore would not require substantial off-site commercial treatment capacity. Therefore, EPA is not granting a national capacity variance for hazardous soil and debris contaminated with the newly listed wastes covered under this rule. LDR treatment standards for K174 and K175 hazardous soil and debris will therefore become effective when these listing determinations become effective.

Based on the 1992 RCRA section 3007 questionnaire and the 1997 updated responses, there were no data showing underground injection of the newly-listed wastes or indicating that the newly-listed wastes are mixed with radioactive wastes or with both radioactive wastes and soil or debris. EPA did not receive comments indicating that these wastes are underground injected or that they are mixed with radioactive wastes or with both radioactive wastes and soil or debris. Therefore, EPA is not granting a national capacity variance for K174 and K175 wastes that might be underground injected, mixed with radioactive wastes, or mixed with both radioactive wastes and soil or debris. LDR treatment standards for K174 and K175 underground injected and mixed wastes (if any exists) will therefore become effective when these listing determinations become effective.

Finally, EPA may consider a case-by-case extension to the effective date based on the requirements outlined in 40 CFR 268.5, which includes a demonstration that adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste cannot reasonably be made available by the effective date due to circumstances beyond the applicants' control, and that the petitioner has entered into a binding contractual commitment to construct or otherwise provide such capacity.

3. Available Treatment Capacity for Other Wastes Subject to Revised UTS and F039 Standards

Several commenters expressed concern that EPA did not adequately consider the need for alternative treatment capacity for other hazardous wastes subject to the proposed revisions to the UTS and F039 (multiple source leachate) standards. Such additional treatment would be necessary to meet the treatment standards for the five additional dioxin and furan congeners being added to the UTS table (§ 268.48) and the list of regulated constituents in F039 (§ 268.40). Commenters noted that EPA must consider the potential need for national capacity variances by determining what fraction of the hazardous wastes are required to meet these new requirements, the appropriate means of treatment (if any), and the sufficiency of national treatment capacity for these wastes.

When changing the treatment requirements for wastes already subject to LDR (including F039 and characteristic wastes), EPA no longer has authority to use RCRA section 3004(h)(2) to grant a capacity variance to these wastes. However, EPA is guided by the overall objective of section 3004(h), namely that treatment standards which best accomplish the goal of RCRA section 3004(m) (to minimize threats posed by land disposal) should take effect as soon as possible, consistent with availability of treatment capacity. Our task is therefore to balance the points raised by commenters against the clear statutory direction that treatment standards, such as those at issue here, should be imposed in the shortest feasible time provided capacity is available.

With respect to the issue of capacity availability, we find first that only a limited quantity of hazardous waste leachate is expected to be generated from the disposal of newly-listed K174 and K175 wastes and added to the generation of leachates from other multiple restricted hazardous wastes already subject to LDR. Absent any data from commenters suggesting to the contrary, we have no reason to delay imposition of the LDRs on this ground.

Second, with respect to the other, and potentially much larger volumes of, wastes that would be affected, we evaluated the universe of wastes that could be impacted by today's revisions to the lists of regulated constituents for F039 and UTS. Commenters themselves did not supply any information on these volumes in support of their generalized claims of insufficient capacity or their views that delaying the effective date of these treatment standards is warranted. However, based on 1997 Biennial Report data and some assumptions of waste compositions and their potential for land disposal, we were able to estimate the potential need for additional treatment. For example, EPA estimated an upper bound of 68,000 tons per year of the nonwastewaters mixed with other waste codes, the F039 leachate from which would be potentially impacted by the revisions to the F039 treatment standards. In a similar fashion, we estimated that no more than 130,000 tons per year of characteristic nonwastewaters potentially could be affected by the promulgated changes to the UTS.

Of course, these upper bound estimates are most likely very overstated since only a portion of each estimated waste volume may contain one or more of the five congeners at concentrations above the numerical concentrations specified in the UTS table and the F039 list. Available hazardous waste landfill leachate characterization data from EPA's Office of Water indicate that only one of 15 samples analyzed shows leachate concentration of OCDD exceeding the numerical UTS level adopted today. Any concentrations below these numerical standards would not trigger any treatment obligation or the concomitant need for treatment capacity. (See the Capacity Background Document for detailed analysis.) Furthermore, EPA does not anticipate that waste volumes subject to treatment for F039 or characteristic wastes would significantly increase because waste generators already are required to comply with the treatment requirements for tetra-, penta-, and hexa-chlorinated dioxin/furan congeners. The volumes of wastes for which additional treatment is needed *solely* due to the addition of the five new congeners to the F039 and UTS lists is therefore expected to be very small. Both of these factors indicate the highly conservative nature of our volume estimates.

However, even though our volume estimates are highly conservative and overstated, we find that there still would be no shortage of treatment capacity. Based on data submittals in the mid-1990's and the 1997 Biennial

Report, EPA has estimated that approximately 37 million tons per year of commercial wastewater treatment capacity are available, and well over one million tons per year of liquid, sludge, and solid commercial combustion capacity are available. These are well above the quantities of wastewater and nonwastewater forms of F039 or characteristic wastes potentially requiring treatment for the 5 hepta and octa isomers even under the conservative screening assumptions described above. We find therefore that there is sufficient treatment capacity for these wastes to ensure that the wastes meet today's revisions to the UTS and F039 treatment standards. For this reason, EPA is finalizing its decision not to delay the effective date for adding the five hepta-and octa-dioxin and furan congeners to the lists of constituents for F039 and UTS. As with the other treatment standards being promulgated today, these revised F039 and UTS standards will become effective six months after the date of promulgation, the same date on which the K174 and K175 listing will become effective. This will provide sufficient time to allow facilities to determine whether their wastes are affected by this rule, to identify onsite or commercial treatment and disposal options, and to arrange for treatment or disposal capacity if necessary.

VII. What Is the Economic Analysis of Today's Final Rule?

A. What Is the Purpose of the Economic Analysis?

In 1999, the EPA presented an initial economic analysis (in the form of both a preamble discussion, and a supplementary "Economics Background Document'(USEPA, 1999b), for public review in support of the RCRA K173/K174/K175 listing proposed rule (64 **Federal Register**, 46517–46519, August 25, 1999). The primary purpose of the 1999 economic analysis was to estimate regulatory compliance costs associated with the proposed rule. Secondary purposes were to provide (1) descriptive information about the economic sectors (*i.e.* the chemical industry) and other types of facilities potentially affected by the proposed rule, and (2) descriptive information about the economic activities involving chlorinated aliphatic hydrocarbon chemicals (CAHCs).

As a result of both public comments and changes to the rule, EPA revised the 1999 "Economics Background Document" (USEPA 1999b). In comparison to the 1999 economic analysis, the primary objectives of this final economic analysis are: (1) to present and respond to the public comments received about the economic analysis for the 1999 proposed rule, and (2) to estimate the impacts of the final rule. The findings for each objective are summarized below.

The Economics, Methods, and Risk Assessment Division (EMRAD) of EPA's Office of Solid Waste (OSW) conducted the economic analyses for both the 1999 proposed rule, and for this final rule. The "Economics Background Document" (USEPA, 2000a)[67] in support of this final rule, is available to the public from the EPA's RCRA Docket (refer to the introduction to this preamble for instructions on how to obtain a copy). References to statements below pertaining to facts, data, assumptions and other types of information, are identified in the final rule background document.

B. How Did the Public Participate in the Economic Analysis?

In conjunction with the 1999 proposed rule (64 FR 46517), EPA requested public comment on the following eleven specific information elements pertaining to the data, assumptions, design, accuracy, representativeness and completeness of the initial "Economic Background Document" (dated 30 July 1999, 127pp., which is available over the Internet at *http://www.epa.gov/epaoswer/hazwaste/id/chlorali/economic.pdf*): (1) Economic study design, (2) industry facility universe, (3) affected waste volumes/sources, (4) industry sector profile, (5) baseline (current) waste management practices, (6) regulatory compliance waste management, (7) compliance facility process modifications, (8) waste management costs, (9) regulatory impact financial benchmarks, (10) economic analysis data sources, and (11) other impact considerations. As described elsewhere in this preamble, EPA received a total of 20 sets of public comments on the 1999 proposed rule, of which 14 commenters offered a total of 61 remarks on the 1999 economic analysis. EPA presents and addresses each comment in the "Response to Public Comments" background document (USEPA, 2000g)[68], also available from the EPA RCRA Docket.

For purpose of summary here, the 61 remarks made by the 14 commenters who targeted the 1999 economic analysis may be grouped according to six topics: (1) K173 compliance cost estimates, (2) K174 compliance cost estimates, (3) K175 compliance cost estimates, (4) economic analysis framework, (5) overall magnitude of rule cost, and (6) industry characterization. Many of the commenters made remarks about multiple economic analysis topics (as well as about other aspects of the proposed rule, such as preamble language and risk analysis). Forty-two of the 61 remarks were directed at the EPA's K173 compliance cost estimate, stating that EPA's 1999 estimate was too low for a variety of reasons, including lack of complete descriptive information about all possible wastewater tanks affected, as well as incomplete assessment of all potential costs involved in retrofitting wastewater tanks with covers and tank air emission control devices. However, because the K173 listing is dropped from the final rule, EPA has dropped the K173 cost estimate from the economic analysis, rather than revise it. Otherwise, EPA has incorporated into the final rule economic analysis, information contained in other public comments addressing the K174 listing, K175 listing, economic analysis framework, and industry characterization. Four of the comments also contained remarks about the K174 listing, questioning the magnitude of its associated recordkeeping burden, and claiming that EPA did not consider other impacts arising from RCRA's "mixture and derived-from" clause. One commenter challenged EPA's assertion of the current market availability of K175 waste retorting treatment. The 14 commenters made nineteen remarks questioning the industrial scope of the listing, whether the rule would impact other types of facilities/wastes, and the appropriateness of EPA's cost annualization and future industry waste generation parameters. The 14 commenters also offered thirty-three remarks about the cost-effectiveness of the rule, the total industry cost of the rule, and challenged EPA's assertion that the proposed rule was not economically "significant" according to the $100 million annual effect threshold established in Executive Order 12866 (30 September 1993). Finally, commenters offered seven remarks raising questions about EPA's count of the affected number of facilities, EPA's characterization of the size of wastewater tanks in the affected industry, and EPA's characterization of the affected industry's annual sales and growth rate.

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[67] U.S. EPA. 2000a. Economics Background Document. Office of Solid Waste. September.

[68] U.S. EPA. 2000g. Response to Public Comments on Proposed Listing Determination for Chlorinated Aliphatic Wastes. Office of Solid Waste. September.

C. What Are the Expected Economic Impacts of This Final Rule?

As of the late 1990s, 39 facilities in the US manufacture chlorinated aliphatic hydrocarbon chemicals. Eighteen of these are potentially subject to the rule, 17 as generators of K174 waste, and one as a generator of K175 waste. None of these 18 facilities are owned by small-sized companies. The 21 remainder facilities do not currently manufacture the types of chemicals and associated industrial wastes which are listed as RCRA "hazardous" industrial wastes by the rule.

The anticipated economic impacts associated with the final rule primarily consist of industry compliance costs, likely to be incurred by three of the 18 relevant waste generators (two K174 and one K175), and by four commercial waste handlers.

Because of the facts that: (1) Many of the CAHC manufacturing facilities and commercial industrial waste handlers are currently regulated under RCRA (via the existing RCRA F024 and F025 wastecodes, among others), (2) some CAHC manufacturing facilities currently manage some wastewater sludges as hazardous waste, (3) the K174 listing is targeted upon a subset of chlorinated aliphatic production processes, and/or (4) the K174 final rule is "conditional" upon only certain waste management practices, the incremental impact of this listing is expected to be substantially less than it otherwise would be if all waste generators fitting the listing descriptions, or if all 39 chemical class manufacturers, were affected. Consequently, the incremental impact of the final rule is expected to be less than it otherwise could be (*e.g.*, impacts could be higher under a listing affecting all facilities across the industry sector, rather than the final targeted and "conditional" listing approach which affects only a few facilities).

EPA estimates that the average annualized national cost of this rule will be between $0.42 and $4.05 million per year (consisting of $0.53 to $7.21 million in initial costs and $0.35 to $3.25 million in recurring annual costs), if one generator of EDC/VCM wastewater treatment sludge (K174) is able to make arrangements for the apparent lower-cost option for managing its affected industrial wastewaters. But if that generator is not able to make the appropriate waste management arrangements prior to the effective date for the final rule, such that the one facility might find it cannot make arrangements for a lower cost means of managing its affected wastewater (from which the EDC/VCM wastewater treatment sludges are derived), then it could face relatively high monthly costs for temporarily transporting its wastewater offsite to a commercial hazardous waste management facility, until it can complete an alternative (and lower-cost) waste management arrangement for its wastewaters. For the purpose of reflecting EPA's uncertainty about this facility's actual cost impacts, as well as other cost estimation parameters, EPA included other higher cost waste management options and industry compliance cost contingencies (such as possible surface impoundment corrective action costs) in the economic analysis for the final rule (Economics Background Document USEPA 2000a). Inclusion of all of these high-cost assumptions results in an upper-end EPA cost estimate of $23.37 million in average annualized cost (which includes up to 22 months of temporary offsite transport for the generator of EDC/VCM wastewater treatment sludge currently managing its wastewaters in a surface impoundment). EPA notes that total costs also include minor impacts on EPA regional offices and states with authorized RCRA programs to implement the new rule, as well as other "incidental effects." The reader is referred to the "Economics Background Document" for additional details about all cost items included in EPA's estimate of national cost.

VIII. When Must Regulated Entities Comply With Today's Final Rule?

A. Effective Date

The effective date of today's rule is May 7, 2001.

B. Section 3010 Notification

Pursuant to RCRA section 3010, the Administrator may require all persons who handle hazardous wastes to notify EPA of their hazardous waste management activities within 90 days after the wastes are identified or listed as hazardous. This requirement may be applied even to those generators, transporters, and treatment, storage, and disposal facilities (TSDFs) that have previously notified EPA with respect to the management of other hazardous wastes. The Agency has decided to waive this notification requirement for persons who handle wastes that are covered by today's hazardous waste listings and already have (1) notified EPA that they manage other hazardous wastes, and (2) received an EPA identification number. The Agency has waived the notification requirement in this case because it believes that most, if not all, persons who manage the wastes listed as hazardous in today's rule already have notified the Agency and received an EPA identification number. However, any person who generates, transports, treats, stores, or disposes of these newly listed wastes and has not previously received an EPA identification number must obtain an identification number pursuant to 40 CFR 262.12 to generate, transport, treat, store, or dispose of these hazardous wastes by February 6, 2001.

C. Generators and Transporters

Persons who generate newly identified hazardous wastes may be required to obtain an EPA identification number if they do not already have one (as discussed in section VIII.B, above). If generating or transporting these wastes after the effective date of this rule, generators of the wastes listed today will be subject to the generator requirements set forth in 40 CFR Part 262. These requirements include standards for hazardous waste determination (40 CFR 262.11), compliance with the manifest (40 CFR 262.20 through 262.23), pretransport procedures (40 CFR 262.30 through 262.34), generator accumulation (40 CFR 262.34), record keeping and reporting (40 CFR 262.40 through 262.44), and import/export procedures (40 CFR 262.50 through 262.60). We note that the generator accumulation provisions of 40 CFR 262.34 allow generators to accumulate hazardous wastes without obtaining interim status or a permit only in certain specified units; the regulations also place a limit on the maximum amount of time that wastes can be accumulated in these units. If these wastes are actively managed in surface impoundments or other units that are not tank systems, containers, drip pads, or containment buildings as outlined in 40 CFR 262.34, accumulation of these wastes is subject to the permitting requirements of 40 CFR Parts 264 and 265, and the generator is required to obtain interim status and seek a permit (or modify interim status or a permit, as appropriate). Also, persons who transport newly identified hazardous wastes will be required to obtain an EPA identification number (if they do already have one) as described above and will be subject to the transporter requirements set forth in 40 CFR Part 263. [NOTE: Generators of EDC/VCM wastewater treatment sludge who manage the waste in compliance with the requirements of the conditional listing (*i.e.*, dispose of the waste in a landfill and do not store the waste directly on the land prior to landfilling, are not subject to the hazardous waste

generator requirements at 40 CFR Part 262.]

D. Facilities Subject to Permitting

Today's rule is issued pursuant to HSWA authority. Therefore, EPA will regulate the management of the newly identified hazardous wastes until states are authorized to regulate these wastes. EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized states.

1. Facilities Newly Subject to RCRA Permit Requirements

Facilities that treat, store, or dispose of wastes that are subject to RCRA regulation for the first time by this rule (that is, facilities that have not previously received a permit pursuant to Section 3005 of RCRA and are not currently operating pursuant to interim status), might be eligible for interim status (see Section 3005(e)(1)(A)(ii) of RCRA). To obtain interim status based on treatment, storage, or disposal of such newly identified wastes, eligible facilities are required to comply with 40 CFR 270.70(a) and 270.10(e) by providing notice under Section 3010 and submitting a Part A permit application no later than May 7, 2001. Such facilities are subject to regulation under 40 CFR Part 265 until a permit is issued.

In addition, under Section 3005(e)(3) and 40 CFR 270.73(d), not later than November 8, 2001, land disposal facilities newly qualifying for interim status under section 3005(e)(1)(A)(ii) also must submit a Part B permit application and certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, interim status will terminate on that date.

2. Existing Interim Status Facilities

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of the newly identified hazardous wastes and are currently operating pursuant to interim status under section 3005(e) of RCRA, must file an amended Part A permit application with EPA no later than the effective date of today's rule (*i.e.*, May 7, 2001). By doing this, the facility may continue managing the newly listed wastes. If the facility fails to file an amended Part A application by that date, the facility will not receive interim status for management of the newly listed hazardous wastes and may not manage those wastes until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.10(g)).

3. Permitted Facilities

Facilities that already have RCRA permits must request permit modifications if they want to continue managing newly listed wastes (see 40 CFR 270.42(g)). This provision states that a permittee may continue managing the newly listed wastes by following certain requirements, including submitting a Class 1 permit modification request by the date on which the waste or unit becomes subject to the new regulatory requirements (*i.e.*, the effective date of today's rule), complying with the applicable standards of 40 CFR Parts 265 and 266 and submitting a Class 2 or 3 permit modification request within 180 days of the effective date.

Generally, a Class 2 modification is appropriate if the newly listed wastes will be managed in existing permitted units or in newly regulated tank or container units and will not require additional or different management practices than those authorized in the permit. A Class 2 modification requires the facility owner to provide public notice of the modification request, a 60-day public comment period, and an informal meeting between the owner and the public within the 60-day period. The Class 2 process includes a "default provision," which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is permanently authorized (see 40 CFR 270.42(b)).

A Class 3 modification is generally appropriate if management of the newly listed wastes requires additional or different management practices than those authorized in the permit or if newly regulated land-based units are involved. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60-day public comment period, the Agency will grant or deny the permit modification request according to the more extensive procedures of 40 CFR part 124. There is no default provision for Class 3 modifications (see 40 CFR 270.42(c)).

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all applicable 40 CFR part 265 groundwater monitoring and financial responsibility requirements no later than May 7, 2001. If the facility fails to submit these certifications, authority to manage the newly listed wastes under 40 CFR 270.42(g) will terminate on that date.

4. Units

Units in which newly identified hazardous wastes are generated or managed will be subject to all applicable requirements of 40 CFR part 264 for permitted facilities or 40 CFR part 265 for interim status facilities, unless the unit is excluded from such permitting by other provisions, such as the wastewater treatment tank exclusions (40 CFR 264.1(g)(6) and 265.1(c)(10)) and the product storage tank exclusion (40 CFR 261.4(c)). Examples of units to which these exclusions could never apply include landfills, land treatment units, waste piles, incinerators, and any other miscellaneous units in which these wastes may be generated or managed.

5. Closure

All units in which newly identified hazardous wastes are treated, stored, or disposed after the effective date of this regulation that are not excluded from the requirements of 40 CFR parts 264 and 265 are subject to both the general closure and post-closure requirements of Subpart G of 40 CFR parts 264 and 265 and the unit-specific closure requirements set forth in the applicable unit technical standards Subpart of 40 CFR part 264 or part 265 (*e.g.*, Subpart N for landfill units). In addition, EPA promulgated a final rule that allows, under limited circumstances, regulated landfills, surface impoundments, or LTUs to cease managing hazardous waste but to delay subtitle C closure to allow the unit to continue to manage non-hazardous waste for a period of time prior to closure of the unit (see 54 FR 33376, August 14, 1989). Units for which closure is delayed continue to be subject to all applicable 40 CFR 264 and 265 requirements. Dates and procedures for submittal of necessary demonstrations, permit applications, and revised applications are detailed in 40 CFR 264.113(c) through (e) and 265.113(c) through (e).

IX. How Will This Rule Be Implemented at the State Level?

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. See 40 CFR part 271 for the overall standards and requirements for authorization. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law. A State may receive authorization by following the approval process described under 40 CFR part 271.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. The State must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized States at the same time that they take effect in unauthorized States. Although authorized States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so.

Authorized States are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Effect on State Authorizations

EPA is promulgating this rule (with the exception of the changes to Part 302) pursuant to sections 2002(a), 3001(b), 3001(e)(2), and 3007(a) of the Solid Waste Disposal Act, which are HSWA provisions. We will add the new requirements to Table 1 at 40 CFR 271.1, which identifies Federal program requirements promulgated pursuant to HSWA. Because this rule is promulgated pursuant to the HSWA, after its effective date EPA will implement it rule in all States, including authorized States. Once authorized States modify their programs to adopt equivalent rules and receive authorization for such rules from EPA, those rules will become RCRA subtitle C requirements that apply in that States in lieu of the equivalent federal requirements.

Because this rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final RCRA authorization under RCRA 3006(g) or (b) on the basis that State regulations are, respectively, substantially equivalent or fully equivalent to EPA's regulations. The procedures and schedule for State programs modifications for either interim or final authorization are described in 40 CFR 271.21 and 271.24. Note that all HSWA interim authorizations will expire on January 1, 2003 (see 40 CFR 271.24(c)).

X. What Are the Reportable Quantity Requirements for Newly-Listed Wastes (K174 and K175) Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)?

A. What Is the Relationship Between RCRA and CERCLA?

CERCLA defines the term "hazardous substance" to include RCRA hazardous wastes. When EPA lists a hazardous waste under RCRA, the waste is also a hazardous substance pursuant to CERCLA 101(14), and the Agency adds the waste to the table of CERCLA hazardous substances in the CFR. EPA establishes a reportable quantity or RQ for each CERCLA hazardous substance. EPA provides a list of the CERCLA hazardous substances along with their RQs in Table 302.4 at 40 CFR 302.4. If you are the person in charge of a vessel or facility that releases a CERCLA hazardous substance in an amount that equals or exceeds its RQ, then you must report that release to the National Response Center (NRC). You also may have to notify State and local authorities.

B. Is EPA Adding Chlorinated Aliphatic Wastes to the Table of CERCLA Hazardous Substances?

Yes. Today, EPA is adding the newly listed chlorinated aliphatic wastes (K174 and K175) to the list of CERCLA hazardous substances. As discussed below, EPA also is finalizing adjusted RQs for these wastes.

C. How Does EPA Determine Reportable Quantities?

Under CERCLA, all new hazardous substances generally have a statutory one-pound RQ. EPA adjusts the RQ of a newly added hazardous substance based on an evaluation of its intrinsic physical, chemical, and toxic properties. These intrinsic properties—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity. EPA evaluates the data for a hazardous substance for each primary criterion. To adjust the RQs, EPA ranks each criterion on a scale that corresponds to an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. For each criterion, EPA establishes a tentative RQ. A hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

After the primary criteria RQs are assigned, EPA further evaluates substances for their susceptibility to certain degradative processes. These are secondary adjustment criteria. The natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades rapidly to a less hazardous form by one or more of the BHP processes, EPA generally raises its RQ (as determined by the primary RQ adjustment criteria) by one level. Conversely, if a hazardous substance degrades to a more hazardous product after its release, EPA assigns an RQ to the original substance equal to the RQ for the more hazardous substance.

The standard methodology used to adjust the RQs for RCRA hazardous waste streams differs from the methodology applied to individual hazardous substances. The procedure for assigning RQs to RCRA waste streams is based on the results of an analysis of the hazardous constituents of the waste streams. The constituents of each RCRA hazardous waste stream are identified in 40 CFR part 261, Appendix VII. EPA first determines an RQ for each hazardous constituent within the waste stream using the methodology described above. The lowest RQ value of these constituents becomes the adjusted RQ for the waste stream. When there are hazardous constituents of a RCRA waste stream that are not CERCLA hazardous substances, the Agency develops an RQ, called a "reference RQ," for these constituents in order to assign an appropriate RQ to the waste stream (see 48 FR 23565, May 25, 1983). In other words, the Agency derives the RQ for waste streams based on the lowest RQ of all of the hazardous constituents, regardless of whether they are CERCLA hazardous substances.

D. When Do I Need To Report a Release of K174 or K175 Under CERCLA?

Today, EPA is promulgating adjusted statutory RQs for newly-listed hazardous wastes K174 and K175 waste streams of one pound based on their hazardous constituents. EPA also is adjusting the RQ at one pound for K174 based on its hazardous constituents, chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs). EPA is promulgating an adjusted RQ of one pound for newly-listed waste K175 based on its hazardous constituent, mercury. However, in determining when to report a release of K174 or K175, EPA will allow you to apply the mixture rule, codified in 40 CFR 302.6, using the maximum observed concentrations of the hazardous constituents within the respective waste streams.

The mixture rule provides that when you know the quantities of all hazardous constituents of a mixture or solution, you must notify of releases of an RQ or more of such constituents (40 CFR 302.6). Therefore, if you know the concentration of the hazardous constituents of a hazardous waste, you can calculate the amount of waste released needed to reach the RQ for the constituents. By using the maximum observed concentration that EPA is promulgating today, you may apply the mixture rule, even if you do not know the concentration of constituents released. That is, if you are the person in charge, you must immediately report the release as soon as you know that you have released K174 or K175 in an amount that will reach the RQ for any of the hazardous constituents. This approach is reasonable and conservative because the sampling data presented in the Listing Background Document (USEPA, 1999c) accurately identify the maximum observed concentrations of the hazardous constituents in the chlorinated aliphatics waste streams. Table X–1 below identifies the hazardous constituents for each waste stream, their maximum observed concentrations in parts per million (ppm), and their constituents' RQs or reference RQs.

TABLE X–1.—MAXIMUM OBSERVED CONCENTRATION AND CORRESPONDING RQ FOR HAZARDOUS CONSTITUENTS THAT ARE BASIS FOR NEWLY-LISTED K174 AND K175

Waste	Constituent	Max. concentration (ppm (mg/kg))	RQ (lb)
K174	2,3,7,8-TCDD	0.000039	1
	1,2,3,7,8-PeCDD	0.0000108	1
	1,2,3,4,7,8-HxCDD	0.0000241	1
	1,2,3,6,7,8-HxCDD	0.000063	1
	1,2,3,7,8,9-HxCDD	0.000062	1
	1,2,3,4,6,7,8-HpCDD	0.00123	1
	OCDD	0.0129	1
	2,3,7,8-TCDF	0.000145	1
	1,2,3,7,8-PeCDF	0.0000777	1
	2,3,4,7,8-PeCDF	0.000127	1
	1,2,3,4,7,8-HxCDF	0.001425	1
	1,2,3,6,7,8-HxCDF	0.000261	1
	1,2,3,7,8,9-HxCDF	0.00014	1
	2,3,4,6,7,8-HxCDF	0.000646	1
	1,2,3,4,6,7,8-HpCDF	0.0207	1
	1,2,3,4,7,8,9-HpCDF	0.0135	1
	OCDF	0.212	1
K175	Mercury	9200	1

For example, if K174 is released from your facility and you do not know the actual concentrations of its constituents, you may assume that the concentrations are those identified in Table X–1. Thus, if K174 is released from your facility and you do not know the actual concentrations of its constituents, you may apply the mixture rule to the assumed maximum concentrations indicated in the table. You would have to release 4,716,981 pounds of K174 to reach the RQ for this waste (based on the maximum observed concentration of OCDF). If K175 is released from your facility and you do not know the actual concentration of mercury, you may assume that the concentration is 9200 ppm. Applying the mixture rule, you would have to release 108.7 pounds of K0175 to reach the RQ.

E. What if I Know the Concentration of the Constituents in My Waste?

If you know the concentration levels of all the hazardous constituents in a particular chlorinated aliphatic waste, you may apply the mixture rule (see 40 CFR 302.6(b)) to the actual concentrations. You would need to report a release of either waste when an RQ or more of any of their respective hazardous constituents is released.

F. How Did EPA Determine the RQs for K174 and K175 and Their Hazardous Constituents?

The hazardous constituents identified as the basis for listing K174 as hazardous waste include chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs). Previously, EPA had established an adjusted RQ of one pound for 2,3,7,8-TCDD (see 54 FR 33426). EPA has not established adjusted RQs for the other CDD and CDF congeners. However, EPA recognizes that a number of these congeners exhibit dioxin-like toxicity and has established "reference RQs" of one pound for these congeners to support the development of the adjusted RQs for K174.

The adjusted RQ for 2,3,7,8-TCDD was established as one pound based on potential carcinogenicity, considering the weight of evidence that this substance is carcinogenic, and considering its estimated carcinogenic potency. To establish reference RQs for the other CDD and CDF congeners in the waste stream, EPA applied the toxicity equivalency factors (TEFs) established for dioxin-like compounds to the potency factor used as the basis for the adjusted RQ for 2,3,7,8-TCDD. Of the 210 CDD and CDF congeners, only those with chlorine substitutions in, at least, the 2, 3, 7, and 8 positions (a total of 17 CDD and CDF congeners) are considered to have dioxin-like toxicity. Applying the TEFs established for these 17 congeners to the potency factor established for 2,3,7,8-TCDD indicates that all of the congeners fit into RQ Potency Group 1 with a corresponding reference RQ of one pound.[69] Therefore, because each of the hazardous constituents has an RQ or reference RQ of one pound, EPA is promulgating an adjusted RQ of one pound for K174.

The hazardous constituent identified as the basis for listing as hazardous VCM–A wastewater treatment sludges (K175) is mercury. Previously, EPA had established an adjusted RQ of one pound for mercury (see 50 FR 13456, April 4, 1985). Because the hazardous constituent used as the basis for listing K175 has an RQ of one pound, EPA is promulgating an adjusted RQ of one pound for this waste.

G. How Do I Report a Release?

To report a release of K174 or K175 (or any other CERCLA hazardous substance) that equals or exceeds its RQ, you must immediately notify the National Response Center (NRC) as soon as you have knowledge of that release. The toll-free telephone number of the NRC is 1–800–424–8802; in the Washington, DC, metropolitan area, the number is (202) 267–2675.

You also may have to notify State and local authorities. The Emergency Planning and Community Right-to-Know Act (EPCRA) requires that owners and operators of certain facilities report releases of CERCLA hazardous substances and EPCRA extremely hazardous substances (see list in 40 CFR part 355, Appendix A) to State and local authorities. After the release of an RQ or more of any of those substances, you must report immediately to the community emergency coordinator of the local emergency planning committee for any area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release.

H. Is CERCLA Reporting Required for Spills of EDC/VCM Wastewater Treatment Sludge That (Prior to the Spill) Does Not Meet the Listing Description for K174?

Commenters to the proposed rule asked whether spills of EDC/VCM wastewater treatment sludge, where prior to being spilled the sludge does not meet the K174 listing because of the manner in which it is being managed, would have to be reported in compliance with the CERCLA RQ reporting requirements. The Agency notes that we are finalizing a contingent management listing for EDC/VCM wastewater treatment sludges under which these sludges would be regulated as K174 wastes unless they are destined for management in a subtitle C landfill or a non-hazardous waste landfill licensed or permitted by a state. As part of the listing description, once the EDC/VCM wastewater treatment sludge is placed on the land it meets the listing description. Therefore, contrary to the commenter's suggestion, spills of EDC/VCM sludges would not be excluded from the K174 listing. A spill of EDC/VCM wastewater treatment sludges would constitute the release of a CERCLA hazardous substance, and provided that an amount equal to or exceeding the RQ had been released, would be subject to CERCLA notification requirements.

I. What Is the Statutory Authority for This Program?

Section 101(14) of CERCLA defines the term hazardous substance by referring to substances listed under several other environmental statutes, as well as those substances that EPA designates as hazardous under CERCLA section 102(a). In particular, CERCLA section 101(14)(C) defines the term hazardous substance to include "any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act." CERCLA section 102(a) gives EPA authority to establish RQs for CERCLA hazardous substances. CERCLA section 103(a) requires any person in charge of a vessel or facility that releases a CERCLA hazardous substance in an amount equal to or greater than its RQ to report the release immediately to the federal government. EPCRA section 304 requires owners or operators of certain facilities to report releases of CERCLA hazardous substances and EPCRA extremely hazardous substances to State and local authorities.

XI. What Are the Administrative Assessments?

A. Executive Order 12866

Under Executive Order 12866 (September 30, 1993), EPA must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the other provisions of the Executive Order. A significant regulatory action is defined by Executive Order 12866 as one that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, EPA has determined that this rule is a "significant regulatory action" because of point four (4) above: The rule includes a novel legal or policy issue arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Today's final rule, which includes an alternative listing approach for one of the newly-listed wastestreams, deviates from the Agency's standard or historic listing approach in that the Agency is listing as hazardous only those quantities of the waste that are managed in a manner that reflects unacceptable risks. This differs from the Agency's traditional approach to listing a waste as hazardous, in which the listing determination captures the entire quantity of a targeted wastestream that poses unacceptable risks to human health and the environment when managed in one or more particular manners.

Due to the Agency's decision to promulgate a listing approach that deviates from our historical hazardous waste listing approach, the Agency is deeming today's action to be "significant." Prior to finalizing today's rule, EPA submitted this proposed policy change to OMB for review. Changes made to the Agency's proposal in response to OMB suggestions or recommendations are documented in the public record.

Although today's final rule is not "economically significant," the Agency prepared an Economics Background

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[69] For an explanation of how potency factors are calculated and potency groups and RQs are established, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, July 27, 1989. This document can be viewed by calling the EPA Superfund Docket Center, 703–603–8917, and requesting document number 102 RQ 273C.

Document (USEPA 1999b) in support of today's rule. The Agency's economic assessment addresses, among other factors, industry compliance costs, industry financial impacts, and potential for small entity impacts. A summary of findings from our economic assessment is presented in Section VII. The complete Economics Background Document (USEPA 1999b) is available for public review from the RCRA docket, according to instructions provided in the introduction to this preamble.

EPA anticipates that the final rule will primarily affect three of the 18 known US generators of K174 and K175 hazardous wastes, causing these three facilities to modify current waste management practices, according to the terms and conditions of the final rule. None of these 18 facilities are owned by small-sized companies. The 15 remainder chemical plants will incur relatively minor annual costs for documentation of current waste management practices. In addition, EPA anticipates that four industrial waste management operators will be affected by either increased or decreased annual volumes and business revenues associated with the management of wastes from the three affected chemical plants. EPA also anticipates that states with authorized RCRA programs will be affected as they will be required to implement and enforce the final rule. Finally, EPA anticipates that other Federal agencies and non-governmental organizations may be incur relatively minor costs associated with reading and propagating the final rule.

EPA estimates that the national average annual cost of the final rule will be between $0.42 to $4.05 million. Under broader cost estimation uncertainty assumptions which allow for temporary offsite trucking of affected wastes by one facility if it requires additional time beyond the final rule six-month compliance deadline to modify its current waste management practices, the upper-bound of this cost estimate increases to $23.37 million in average annual cost.

B. Regulatory Flexibility Act

Pursuant to the 1980 Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, a regulatory flexibility analysis is not required if the head of an agency certifies that the rule will not have a "significant" economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a "significant" economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

EPA has examined this rule's potential effects on small entities as required by the RFA/SBREFA, and has determined that this action will not have a significant economic impact on a substantial number of small entities. This is evidenced by the fact that only one of the potentially affected, parent companies determined to be producers of chlorinated aliphatic products in the U.S., may be classified as a "small business," according to the U.S. Small Business Administration's employee size standards (*i.e.*, less than or equal to 1,000 employees) and according to that company's primary Standard Industrial Classification (SIC) code (SIC 2869).

I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1924.01) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 1200 Pennsylvania Avenue NW.; Washington, DC 20460, by E-mail at *farmer.sandy@epamail.epa.gov*, or by calling (202) 260–2740. A copy also may be downloaded off the Internet at *http://www.epa.gov/icr.*

This final rule includes new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* In addition to complying with the existing subtitle C recordkeeping and reporting requirements for the newly listed waste streams, EPA is requiring that facilities generating EDC/VCM wastewater treatment sludges be able to document their compliance wfth the conditions provided for exclusion from the scope of the conditional hazardous waste listing promulgated today. This requirement is necessary to ensure that EDC/VCM wastewater treatment sludges are managed in a manner that is safe for human health and the environment. In addition, EPA is requiring disposal facilities that manage VCM–A wastewater treatment sludges to maintain records documenting that these sludges are co-disposed only with other wastes that have a pH level of 6.0 or lower. This requirement is necessary to ensure that the mercury contained in the waste does not leach from the waste after disposal.

The Agency estimated the burden associated with complying with the requirements in this proposed rule. Included in the ICR are the burden estimates for the following requirements for industry respondents: reading the regulations; keeping records documenting compliance with conditions for exclusion from hazardous waste listings; and keeping records documenting compliance with landfill waste disposal requirements for the disposal of VCM–A wastewater treatment sludges. Included also are the burden estimates for State respondents for applying for State authorization. The Agency determined that all of this information is necessary to ensure compliance with today's final rule.

To the extent that this rule imposes any information collection requirements under existing RCRA regulations promulgated in previous rulemakings, those requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–0009 (ICR No. 1573, Part B Permit Application, Permit Modifications, and Special Permits); 2050–0120 (ICR No. 1571, General Facility Hazardous Waste Standards); 2050–0028 (ICR No. 261, Notification of Hazardous Waste Activity); 2050–0034 (ICR No. 262, RCRA Hazardous Waste Permit Application and Modification, Part A); 2050–0039 (ICR No. 801, Requirements for Generators, Transporters, and Waste Management Facilities under the Hazardous Waste Manifest System); 2050–0035 (ICR No. 820, Hazardous Waste Generator Standards); and 2050–0024 (ICR No. 976, 1997 Hazardous Waste Report).

EPA estimates that the projected annual hour burden for industry respondents will be 93 hours, and the annual cost associated with the additional paperwork burden will be $5,254. Total estimates over three years are 279 hours and $15,762.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon state, tribal or local governments. States, tribes and local governments would have no compliance costs under this rule. It is expected that states will adopt similar rules, and submit those rules for inclusion in their authorized RCRA programs, but they have no legally enforceable duty to do so. For the same reasons, we determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, and thus, is not subject to the requirements of sections 202 and 205 of UMRA. In addition, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The Executive Order defines "policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule directly affects the chlorinated aliphatics industry. States and local governments will not incur direct compliance costs under this rule. It is expected that states will adopt similar rules, and submit those rules for inclusion in their authorized RCRA programs, but they have no legally enforceable duty to do so. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact to tribal governments as the result of the proposed action. In addition, this rule is required by statute (HSWA). Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

The topic of environmental threats to children's health is growing in regulatory importance as scientists, policy makers, and village leaders continue to recognize the extent to which children are particularly vulnerable to environmental hazards. Recent EPA actions have been in the forefront of addressing environmental threats to the health and safety of children. Today's final rule further reflects our commitment to mitigating environmental threats to children.

A few significant physiological characteristics are largely responsible for children's increased susceptibility to environmental hazards. First, children eat proportionately more food, drink proportionately more fluids, and breathe more air per pound of body weight than do adults. As a result, children potentially experience greater levels of exposure to environmental threats than do adults. Second, because children's bodies are still in the process of development, their immune systems, neurological systems, and other immature organs can be more easily and considerably affected by environmental hazards.

Today's rule will reduce risks posed by the hazardous constituents found in the listed waste streams by requiring more appropriate and safer management practices. EPA considered risks to children in its risk assessment. The more appropriate and safer management practices promulgated in this rule are projected to reduce risks to children potentially exposed to the constituents of concern.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Executive Order 12898: Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

Today's rule is intended to reduce risks from the generation and management of hazardous wastes and to benefit all populations. As such, this rule is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities.

In making hazardous waste listing determinations, we base our evaluations of potential risk from the generation and management of solid wastes on an analysis of potential individual risk. In conducting risk evaluations, our goal is to estimate potential risk to any population of potentially exposed individuals (*e.g.*, home gardeners, adult farmers, children of farmers, anglers) located in the vicinity of any generator or facility handling a waste. Therefore, we are not putting poor, rural, or minority populations at any disadvantage with regard to our evaluation of risk or with regard to how the Agency makes its proposed hazardous waste listing determinations.

In promulgating decisions to list two wastes as hazardous (*i.e.*, EDC/VCM wastewater treatment sludges managed in land treatment units, and VCM–A wastewater treatment sludges), all populations potentially exposed to these wastes or potentially exposed to releases of the hazardous constituents in the wastes will benefit from the listing determinations. In addition, listing determinations are effected at the national level. The wastes proposed to be listed as hazardous will be hazardous regardless of where they are generated and regardless of where they may be managed. Although the Agency understands that the listing determinations may affect where these wastes are managed in the future (in that hazardous wastes must be managed at subtitle C facilities), the Agency's decision to list these wastes as hazardous is independent of any decisions regarding the location of waste generators and the siting of waste management facilities.

Similarly, in cases where the Agency is not listing a solid waste as hazardous because the waste does not meet the criteria for being identified as a hazardous waste, these decisions are based upon an evaluation of potential individual risks located in proximity to any facility handling the waste. In the case of wastewater treatment sludges from the production of allyl chloride and methyl chloride and in the case of EDC/VCM wastewater treatment sludges managed in landfills, we believe the potential risk levels associated with the wastes are safe for all populations potentially exposed to the wastes and their constituents.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 7, 2001.

List of Subjects

40 CFR 148

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 268

Environmental protection, Hazardous materials, Waste management, Reporting and recordkeeping requirements, Land disposal restrictions, Treatment standards.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 29, 2000.

Carol M. Browner,

Administrator.

For the reasons setforth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Sec. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.18 is amended by adding paragraphs (j) and (k) to read as follows:

§ 148.18 Waste-specific prohibitions—newly listed and identified wastes.

* * * * *

(j) Effective May 8, 2001, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K174 and K175 are prohibited from underground injection.

(k) The requirements of paragraphs (a) through (j) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in subpart D of 40 CFR part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this part.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

4. In § 261.32, the table is amended by adding in alphanumeric order (by the first column) the following waste streams to the subgroup "Organic Chemicals" to read as follows:

§ 261.32 Hazardous waste from specific sources.

Industry and EPA hazardous waste No.	Hazardous waste	Hazardous code
* * *	* * *	*
Organic chemicals:		
* * *	* * *	*
K174	Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater), unless the sludges meet the following conditions: (i) they are disposed of in a subtitle C or non-hazardous landfill licensed or permitted by the state or federal government; (ii) they are not otherwise placed on the land prior to final disposal; and (iii) the generator maintains documentation demonstrating that the waste was either disposed of in an on-site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off-site landfill. Respondents in any action brought to enforce the requirements of subtitle C must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (*e.g.*, contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, *etc.*) that the terms of the exclusion were met.	T
K175	Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process.	T
* * *	* * *	*

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5. Appendix VII to Part 261 is amended by adding the following wastestreams in alphanumeric order (by the first column) to read as follows:

Appendix VII To Part 261—Basis for Listing Hazardous Waste

EPA hazardous waste no.	Hazardous constituents for which listed
* * *	* * * *
K174	1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD), 1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF), 1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,6,7,8,9-HpCDF), HxCDDs (All Hexachlorodibenzo-p-dioxins), HxCDFs (All Hexachlorodibenzofurans), PeCDDs (All Pentachlorodibenzo-p-dioxins), OCDD (1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin, OCDF (1,2,3,4,6,7,8,9-Octachlorodibenzofuran), PeCDFs (All Pentachlorodibenzofurans), TCDDs (All tetrachlorodi-benzo-p-dioxins), TCDFs (All tetrachlorodibenzofurans).
K175	Mercury

Appendix VIII to Part 261—Hazardous Constituents

6. Appendix VIII to Part 261 is amended by adding in alphabetical order of common name the following entries:

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* *	* *	*	*
Octachlorodibenzo-p-dioxin (OCDD)	1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin	3268–87–9	
Octachlorodibenzofuran (OCDF)	1,2,3,4,6,7,8,9-Octachlorodibenofuran	39001–02–0	
* *	* *	*	*

PART 268—LAND DISPOSAL RESTRICTIONS

7. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart C—Prohibitions on Land Disposal

8. Section 268.33 is revised to read as follows:

§ 268.33 Waste specific prohibitions—chlorinated aliphatic wastes.

(a) Effective May 8, 2001, the wastes specified in 40 CFR part 261 as EPA Hazardous Wastes Numbers K174, and K175, soil and debris contaminated with these wastes, radioactive wastes mixed with these wastes, and soil and debris contaminated with radioactive wastes mixed with these wastes are prohibited from land disposal.

(b) The requirements of paragraph (a) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under § 268.44;

(4) Hazardous debris has met the treatment standards in § 268.40 or the alternative treatment standards in § 268.45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(c) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable levels of subpart D of this part, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

(d) Disposal of K175 wastes that have complied with all applicable 40 CFR 268.40 treatment standards must also be macroencapsulated in accordance with 40 CFR 268.45 Table 1 unless the waste is placed in:

(1) A Subtitle C monofill containing only K175 wastes that meet all applicable 40 CFR 268.40 treatment standards; or

(2) A dedicated Subtitle C landfill cell in which all other wastes being co-disposed are at pH≤6.0.

9. In § 268.40, the Table is amended by adding entries to F039 in alphabetical order, by adding in alphanumeric order new entries for K174 and K175, and by adding footnote 12 to read as follows:

§ 268.40 Applicability of treatment standards.

* * * * *

BILLING CODE [illegible]

TREATMENT STANDARDS FOR HAZARDOUS WASTES Note: NA means not applicable

WASTE CODE	Waste Description and Treatment/Regulatory Subcategory[1]	Regulated Hazardous Constituent		Wastewaters	Nonwastewaters
		Common Name	CAS[2] Number	Concentration in mg/L[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/L TCLP", or Technology Code
* * * * *	**				
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Waste retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028).	* * * * * * *			
		1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin (1,2,3,4,6,7,8-HpCDD)	35822-46-9	0.000035	0.0025
		1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562-39-4	0.000035	0.0025
		1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF)	55673-89-7	0.000035	0.0025
		1,2,3,4,6,7,8,9-Octachlorodibenzo-*p*-dioxin (OCDD)	3268-87-9	0.000063	0.0025
		1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF)	39001-02-0	0.000063	0.005
* * * * *	* *				
K174	Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer.	1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin (1,2,3,4,6,7,8-HpCDD)	35822-46-9	0.000035 or CMBST[11]	0.0025 or CMBST[11]
		1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562-39-4	0.000035 or CMBST[11]	0.0025 or CMBST[11]
		1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF)	55673-89-7	0.000035 or CMBST[11]	0.0025 or CMBST[11]
		HxCDDs (All Hexachlorodibenzo-*p*-dioxins)	34465-46-8	0.000063 or CMBST[11]	0.001 or CMBST[11]
		HxCDFs (All Hexachlorodibenzofurans)	55684-94-1	0.000063 or CMBST[11]	0.001 or CMBST[11]
		1,2,3,4,6,7,8,9-Octachlorodibenzo-*p*-dioxin (OCDD)	3268-87-9	0.000063 or CMBST[11]	0.005 or CMBST[11]
		1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF)	39001-02-0	0.000063 or CMBST[11]	0.005 or CMBST[11]

		PeCDDs (All Pentachlorodibenzo-*p*-dioxins)	36088-22-9	0.000063 or CMBST[11]	0.001 or CMBST[11]
		PeCDFs (All Pentachlorodibenzofurans)	30402-15-4	0.000035 or CMBST[11]	0.001 or CMBST[11]
		TCDDs (All tetrachlorodibenzo-*p*-dioxins)	41903-57-5	0.000063 or CMBST[11]	0.001 or CMBST[11]
		TCDFs (All tetrachlorodibenzofurans)	55722-27-5	0.000063 or CMBST[11]	0.001 or CMBST[11]
		Arsenic	7440-36-0	1.4	5.0 mg/L TCLP
K175	Wastewater treatment sludge from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process.	Mercury[12]	7438-97-6	NA	0.025 mg/L TCLP
		pH[12]		NA	pH ≤6.0
	All K175 wastewaters	Mercury	7438-97-6	0.15	NA
* * * * *	* *				

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* * * * * * *

Footnotes to Treatment Standard Table 268.40

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR Part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * * * *

[11] For these wastes, the definition of CMBST is limited to: (1) combustion units operating under 40 CFR 266, (2) combustion units permitted under 40 CFR part 264, subpart O, or (3) combustion units operating under 40 CFR 265, subpart O, which have obtained a determination of equivalent treatment under 268.42(b).

[12] Disposal of K175 wastes that have complied with all applicable 40 CFR 268.40 treatment standards must also be macroencapsulated in accordance with 40 CFR 268.45 Table 1 unless the waste is placed in:

(1) A Subtitle C monofill containing only K175 wastes that meet all applicable 40 CFR 268.40 treatment standards; or

(2) A dedicated Subtitle C landfill cell in which all other wastes being co-disposed are at pH≤6.0.

* * * * *

10. In § 268.48 the Table is amended by adding in alphabetical sequence the following entries under the heading organic constituents: (The footnotes are republished without change.)

§ 268.48 Universal treatment standards.

(a) * * *

UNIVERSAL TREATMENT STANDARDS

[Note: NA means not applicable]

Regulated constituent common name	CAS[1] number	Wastewater standard	Nonwastewater standard
		Concentration in mg/L[2]	Concentration in mg/Kg[3] unless noted as "mg/L TCLP"
* * * * * * *			
1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD)	35822–46–9	0.000035	0.0025
1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562–39–4	0.000035	0.0025
1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF)	55673–89–7	0.000035	0.0025
* * * * * * *			
1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin (OCDD)	3268–87–9	0.000063	0.005
1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF)	39001–02–0	0.000063	0.005
* * * * * * *			

* * * * * * *

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[2] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[3] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264, Subpart O, or 40 CFR Part 265, Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

11. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

12. In § 271.1(j) tables 1 and 2 are amended by adding the following entries in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
*	*	*	*
September 29, 2000	Listing of Hazardous Wastes K174 and K175.	65 FR 67132	May 7, 2001.
*	*	*	*

TABLE 2.—SELF IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	**Federal Register** reference
*	*	*	*
May 7, 2001	Prohibition on land disposal of K174 and K175 wastes, and prohibition on land disposal of radioactive waste mixed with K174 and K175 wastes, including soil and debris..	3004(g)(4)(C) and 3004(m)	November 8, 2000. 65 FR 67132.
*	*	*	*

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

13. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

14. In § 302.4, Table 302.4 is amended by adding the following new entries in alphanumeric order at the end of the table to read as follows:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA waste No.	Category	Pounds (KG)
*	*	*	*		*		*
K174[f]			1*	4	K174	X	1(0.454)
*	*	*	*		*		*
K175[f]			1*	4	K175	X	1(0.454)

† Indicates the statutory sources as defined by 1, 2, 3, and 4 below.

1 *—Indicates that the 1-pound RQ is a CERCLA statutory RQ.

4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.

[f] See 40 CFR 302.6(b)(1) for application of the mixture rule to this hazardous waste.

15. Section 302.6 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 302.6 Notification requirements.

* * * * *

(b) * * *

(1) * * *

(iii) For waste streams K169, K170, K171, K172, K174, and K175, knowledge of the quantity of all of the hazardous constituent(s) may be assumed, based on the following maximum observed constituent concentrations identified by EPA:

Waste	Constituent	max ppm
K174	2,3,7,8-TCDD	0.000039
	1,2,3,7,8-PeCDD	0.0000108
	1,2,3,4,7,8,-HxCDD	0.0000241
	1,2,3,6,7,8,-HxCDD	0.000083
	1,2,3,7,8,9,-HxCDD	0.000062
	1,2,3,4,6,7,8-HpCDD	0.00123
	OCDD	0.0129
	2,3,7,8-TCDF	0.000145
	1,2,3 7,8-PeCDF	0.0000777
	2,3,4,7,8-PeCDF	0.000127
	1,2,3,4,7,8-HxCDF	0.001425
	1,2,3,6,7,8-HxCDF	0.000281
	1,2,3,7,8,9-HxCDF	0.00014
	2,3,4,6,7,8-HxCDF	0.000648
	1,2,3,4,6,7,8-HpCDF	0.0207
	1,2,3,4,7,8,9-HpCDF	0.0135
	OCDF	0.212
K175	Mercury	9200

* * * * *

[FR Doc. 00–25928 Filed 11–7–00; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
November 8, 2000

Part IV

Department of Transportation

Coast Guard

33 CFR Part 151

46 CFR Parts 30, 150, 151, and 153

Noxious Liquid Substances, Obsolete Hazardous Materials in Bulk, and Current Hazardous Materials in Bulk; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

46 CFR Parts 30, 150, 151, and 153

[USCG 2000–7079]

RIN 2115–AF96

Noxious Liquid Substances, Obsolete Hazardous Materials in Bulk, and Current Hazardous Materials in Bulk

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: The Coast Guard revises its rules on carriage of hazardous materials in bulk, treating the rules in three parts. This three-part revision will update the tables of hazardous materials transportable in bulk and better inform persons shipping any such materials of those materials' compatibility and of requirements for special handling. It should make the carriage of such materials safer.

DATES: This rule is effective March 8, 2001, unless a written adverse comment or a written notice of intent to file one reaches the Docket Management Facility on or before February 6, 2001. If either does reach the Facility, the Coast Guard may withdraw this rule and publish a timely notice of withdrawal in the **Federal Register**. If neither does, the Coast Guard will publish a document affirming the effectiveness of this rule. If an adverse comment applies to an amendment, a section, or a paragraph of this rule and we can withdraw that provision without defeating the purpose of this rule, we may withdraw that provision and adopt as final only the other provisions.

ADDRESSES: Please identify your comments and related material for this rulemaking by the number of the docket [USCG 2000–7079]. To make sure they do not enter the docket more than once, please submit them by only one of the following means:

(1) By mail to the Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) In person to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Mr. Curtis G. Payne, Project Manager, Hazardous Materials Standards Division, Coast Guard, telephone 202–267–1217. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

The Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket. You may inspect or copy them at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find them on the Internet at http://dms.dot.gov.

SUPPLEMENTARY INFORMATION: We are revising our rules on Noxious Liquid Substances (NLSs) to include substances recently authorized for carriage by the Coast Guard or added to the Chemical Codes of the International Maritime Organization (IMO) and by making minor technical and editorial changes. We are revising our rules, tables, and lists on carriage of hazardous materials in bulk by deleting from our rules, tables, and lists commodities that are no longer liquid cargoes transportable in bulk, and by canceling the classifications of obsolete commodities not included in those rules, tables, and lists. We are revising our rules on carriage of hazardous materials in bulk by adding cargoes recently authorized for carriage by the Coast Guard or added to the Chemical Codes of the IMO and by making minor technical and editorial changes.

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the number of the docket for this rulemaking [USCG 2000–7079], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, in person, by fax, or electronically to the Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or in person, submit them in an unbound format, no larger than 81/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures for which are outlined in 33 CFR 1.05–55, because it anticipates no adverse comment. If no written adverse comment or written notice of intent to submit one reaches the Facility within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, about 30 days before the effective date, we will publish a document in the **Federal Register** stating that we received no written adverse comments or written notice and confirming that this rule will become effective as scheduled. However, if we receive either, we will publish a document in the **Federal Register** announcing withdrawal of all or part of this rule. If an adverse comment applies to an amendment, a section, or a paragraph of this rule and we can withdraw the affected provision without defeating the purpose of this rule, we may withdraw that provision and adopt as final only the other provisions. If we decide to proceed with a rulemaking even after receipt of an adverse comment, we will withdraw the direct final rule and publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is "adverse" if it explains why this rule would be inappropriate, by reason of either its premise or its approach, or would be ineffective or unacceptable without a change.

Background and Purpose

Because the United States is a party to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), the Coast Guard must amend its rules to ensure that they stay consistent with the Chemical Codes of the IMO.

In this rule, we address Noxious Liquid Substances, Obsolete Hazardous Materials, and Current Hazardous Materials in Bulk.

Noxious Liquid Substances

The Coast Guard is revising its list of Category D other-than-oil-like NLSs, 33 CFR 151.47, and of Category D oil-like NLSs, 33 CFR 151.49(b).

The Coast Guard is revising its list of Category D NLSs by including in this list new entries added by Part C of this rule to Table 30.25–1 of 46 CFR and Tables 1 and 2 of 46 CFR part 153. These are chemicals recently authorized or added to two Chemical Codes of the IMO: "International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk" (IBC Code), and "Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk" (BCH Code). This rule mainly updates our lists of chemicals in 33 CFR part 151. Further, because the names of several entries have changed, we will change them in the lists.

IMO has reevaluated several of the Category D chemicals so that they now belong to Pollution Category "III" or count both as "safety" hazards and as "pollution" hazards. Therefore, this rule will remove those currently in the lists.

Obsolete Hazardous Materials

IMO publishes the Circular of the Marine Environmental Protection Committee (MEPC), "Provisional Categorization of Liquid Substances," a list of commodities whose carriage as bulk liquid cargoes it permits but that it has not yet entered into its Chemical Codes. It reissues the Circular in December of each year. The current edition is MEPC.2/Circ.5, dated December 17, 1999. The purpose of the Circular is to publish "* * * the lists of products, the pollution category and minimum carriage requirements of which have been established through Tripartite Agreements and registered with the Secretariat * * *" of the Sub-Committee on Bulk Liquids and Gases (BLG) of the IMO.

Of the commodities listed in the Circular, those that have been submitted by the various Administrations to the Working Group on Evaluation of Safety and Pollution Hazards (ESPH) of Chemicals, or that are mixtures of pollutant-only materials, appear in the lists without date of expiry. All other commodities appear with dates of expiry of three years from when first published in the Circular. This grace period of three years is to allow the proposed new commodity to be submitted to the Working Group for final evaluation and inclusion in the Codes, or, as is most often the case, to allow time for any testing that may be needed to complete the data form from IMO where the data were missing in the original submission. At the end of the grace period, any commodity not submitted to the Working Group drops from the Circular and is no longer eligible for carriage in bulk. This rule identifies those commodities.

Last, the Coast Guard periodically reviews its rules, tables, and lists to determine whether any commodities in 33 and 46 CFR are no longer being either manufactured at all or moved in bulk by vessel, and are therefore appropriate for deletion. For interested parties, a preliminary list of commodities that may have become obsolete appears in supplemental material available in the docket [USCG 2000–7079] from the Docket Management Facility.

Current Hazardous Materials in Bulk

This rule updates various hazardous materials tables in 46 CFR parts 30, 150, 151, and 153 to include new chemicals and requirements authorized by international law or by other of our rules. This rule would also make other non-substantive editorial changes.

Supplemental material is available in the docket [USCG 2000–7079], again from the Docket Management Facility.

Discussion of Changes

Noxious Liquid Substances

(a) IMO has assigned the following chemicals to Pollution Category D. We will enter them in 33 CFR 151.47, Category D NLSs other than oil-like Category D NLSs that may be carried under this part.

Aluminum sulfate solution
Coconut oil fatty acid methyl ester
Copper salt of long chain (C17+) alkanoic acid
Dialkyl (C8–C9) diphenylamines
Ethoxylated long chain (C16+) alkyloxyalkanamine
Glyphosate solution (not containing surfactant)
Methyl amyl ketone
Polyolefin amide alkeneamine (C17+)
Sulfonated polyacrylate solution
Sulfurized fat (C14–C20)
Sulfurized polyolefinamide alkene (C28–C250) amine

(b) IMO has reevaluated five chemicals in Pollution Category D and assigned them as cargoes in Pollution Category "III". We will remove them from § 151.47. They are:

Decane
Decylbenzene
Dialkyl (C10–C14) benzenes
Lecithin (soyabean)
Zinc alkenyl carboxamide

(c) IMO has reevaluated several chemicals and has, on the basis of this, designated them as both "safety" hazards and "pollution" hazards. We will remove them from § 151.47. They are:

Diethanolamine

2–Ethoxyethanol

Ethylene glycol ethyl ether

Ethylene glycol isopropyl ether

Ethylene glycol methyl ether

Ethylene glycol monoalkyl ethers

(d) One entry, "palm kernel oil, fatty acid methyl ester" is obsolete. We will remove it from § 151.47.

(e) We will move names incorrectly cross-referred to under "Polypropylene glycol methyl ether" so they correctly cross-refer to "Propylene glycol monoalkyl ether."

(f) We will remove "Diisopropyl naphthalene" from the list of Category D oil-like NLSs in 33 CFR 151.49(b). We revised the Pollution Category for this chemical according to the Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) Hazard Profile. The new Category is "A." This leaves paragraph (b) an empty set, but we will reserve it.

Obsolete Hazardous Materials

We identify below commodities canceled and deleted from the IMO Circular MEPC.2/Circ.5, PROVISIONAL CATEGORIZATION OF LIQUID SUBSTANCES, and also canceled and deleted from our rules, tables, and lists. We identify the commodities by the IMO Tripartite List in which they appeared with the number of the list in the right-hand column.

IMO Tripartite Lists, MEPC.2/Circ.5, Provisional Categorization of Liquid Substances

List 1: Pure or technically pure substances.

List 2: Pollutant only mixtures classified by calculation or assessed as a mixture.

List 3: Trade-named substances with safety hazards.

List 4: Pollutant only mixtures with greater than 3% unassessed components.

A diamond "♦" preceding the name of the cargo indicates the sponsorship of the cargo by the Coast Guard for the U.S. in the Tripartite Agreement process. The absence of a diamond indicates sponsorship of the cargo by an Administration of another country, counterpart to the Coast Guard.

In light of the foregoing, we cancel all chemicals below, referred to in one or another of the four Tripartite Lists, and delete them as bulk liquid cargoes. They are no longer transportable in bulk by the water mode.

Commodities Deleted From IMO Tripartite Lists, MEPC.2

CIRC.1, PROVISIONAL CATEGORIZATION OF LIQUID SUBSTANCES (18 DEC. 1995)

	Commodity name (descriptor)	List
◆	A-964 (*ammonium long chain alkaryl sulfonate*).	4
◆	AL 150 (*alkyl(C18-C65) benzene*).	4
◆	Alcohol(C9-C11)(primary)ethoxylated.	1
	NOTE: This chemical has been renamed "Alcohol(C9-C11) poly(2.5-9) ethoxylate", which is currently a valid cargo name.	
◆	AMOCO 2400 (*zinc alkyl dithiophosphate (C3-C14) and polyolefin amide alkeneamine polyol*).	4
◆	AMOCO 8072F (*zinc alkyl dithiophosphate(C3-C14)*).	4
◆	AMOCO 9267 (*polybutyl phenol*)	4
	Antifreeze 511 (*ethylene glycol*)	4
◆	AO 5301 (*polyolefin amine*)	4
	ARCOL Polyol 1905 (*1,2,3-propane triol polymer with oxirane and methyloxirane*).	4
	Atar cresylic acid (*cresols*)	3
	BEROLAMINE 20 (*alkanolamines*).	3
	Brake fluid component 5/9 (*polyether polyols*).	4
	Brake Fluid ET 462 (*triethylene glycol methyl ether, polyether triols*).	4
◆	CALTEX CODE 599067 (*alkyl phenate sulfide*).	4
◆	CALTEX CODE 599178 (*alkyl phenate sulfide*).	4
	1-(4-Chlorophenyl)-4,4-dimethyl-3-pentanone.	1
	Co-solvent alcohol (*propyl alcohol*).	4
	Depitched tar acid (*phenols, cresols*).	3
	2-Ethylhexyl-2-(2,4-dichlorophenoxy) propionate.	1
◆	HiTEC 244 (*sulpho hydrocarbon, long chain alkyl amine mixture*).	4
◆	HiTEC 370 (*sulpho hydrocarbon, alkenyl dialkyl dithiophosphate mixture*).	4
◆	HiTEC 4782 (*methylene bridged isobutylated phenols*).	4
	Light end/Heavy end Chlorinated hydrocarbon mixture.	3
	LINCOL 86M (*1-decanol*)	4
	LM 114 (*ethoxylated nonylphenol*).	3
◆	M-50-A (*calcium and magnesium long chain alkaryl sulfonates*).	3
	MANRO SXS 40 (*alkylbenzene sulfonic acid, sodium salt solution*).	3
◆	MCP 121 (*ditridecyl adipate*)	4
◆	MCP 239B (*polyisobutenyl anhydride adduct*).	4
◆	MCP 955A (*polyisobutenyl anhydride adduct*).	4
	MD-E-18 (*aliphatic C18 ethers and C19 ether alcohol*).	4
	MD-E-20 (*aliphatic C20 ethers and C21 ether alcohol*).	4
◆	MOBIL Stock 2631 (*zinc alkyl dithiophosphate(C3-C14)*).	4
◆	OGA 478 (*polyolefin amine*)	4
◆	OLOA 2564A (*polyolefin anhydride*).	4
◆	OLOA 2564B (*polyolefin anhydride*).	4
◆	OLOA 2820 (*diphenylamine reaction product with 2,2,4-trimethylpentene and zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 2990 (*calcium long chain alkyl phenate sulfide(C8-C40)*.	4
◆	OLOA 6039M (*alkyl phenate sulfide*).	4
◆	OLOA 6063U (*alkyl phenol*)	4
◆	OLOA 6109 (*alkyl phenate sulfide*).	4
◆	OLOA 6121 (*alkyl phenol*)	4
◆	OLOA 6832 (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 6847 (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 6847D (*polyolefin amide alkeneamine polyol and zinc alkyl dithio phosphate (C3-C14)*).	4
◆	OLOA 6848 (*diphenylamines, alkylated*).	4
◆	OLOA 6853 (*zinc alkyl dithiophosphate (C3-C14) and polyolefin amide alkeneamine polyol*).	4
◆	OLOA 6854 (*diphenylamines, alkylated*).	4
◆	OLOA 6856 (*diphenylamines, alkylated*).	4
◆	OLOA 6858 (*diphenylamines, alkylated*).	4
◆	OLOA 6859 (*diphenylamines, alkylated*).	4
◆	OLOA 6859D (*polyolefin amide alkeneamine polyol and polyolefin ester*).	4
◆	OLOA 6881 (*alkyl phenate sulfide*).	4
◆	OLOA 6981 (*alkyl phenate sulfide*).	4
◆	OLOA 8167FA (*zinc alkyl dithiophosphate(C3-C14)*).	4
◆	OLOA 8167G (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 8172 (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 8172A (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 8172M (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 8177 (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 8177C (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 8179 (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 8179A (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 8380G (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 8380V (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 857P (*alkyl phenol*)	4
◆	OLOA 8804E (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 8818 (*zinc alkyl dithiophosphate (C3-C14) and polyolefin amide alkeneamine polyol*).	4
◆	OLOA 8850 (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	OLOA 8858 (*diphenylamines, alkylated*).	4
	OLOA 8858B (*diphenylamine (C6-C15) alkylation product*).	4
◆	OLOA 9091 (*alkyl phenate sulfide*).	4
	OMA 431 CS(D) (*alkyl(C7-C9) nitrates*).	3
◆	ORA 502 (*polyolefin amine*)	4
◆	ORA 702 (*polyolefin amine*)	4
	OXYSOLVE 80 (*aliphatic ketones*).	4
◆	PARANOX 5277 (*zinc alkyl dithiophosphate(C3-C14)*).	4
◆	PARAPOID 48 (*alkylamine (C17+)*.	4
◆	Pibsa (*polyolefin anhydride*)	4
	Polyalkyl methacrylate (C1-C20)	1
	REOFOS 65 (*isopropylated phenyl phosphate*).	4
	REOFOS 95 (*isopropylated phenyl phosphate*).	4
	SAP 9413 (*alcohol(C12-C15) propoxylate*).	4
	Sodium chromate liquor	1
◆	STOCK 1462 (*alkylamine (C17+)*.	4
	Tallow nitrile (Tallow (*alkyl nitrile*).	1
◆	TLA 2400 (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	TLA 2418 (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	TLA 2421 (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	TLA 2422 (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	TLA 2427 (*diphenylamines, alkylated and polyolefin amide alkeneamine (C28+)*).	4
◆	TLA 2906A (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	TLA 2907 (*zinc alkyl dithiophosphate (C3-C14)*).	4
◆	TLA 2907A (*zinc alkyl dithiophosphate (C3-C14) and calcium long chain alkaryl sulfonate*).	4
◆	TRILIN (TRIFLURALIN (*A,A,A-trifluoro-2,6-dinitro-N,N-dipropyl-p-toluidine*)).	4
	VAMMAR D9 (*aliphatic C18 ethers and C19 ether alcohol*).	4
	VAMMAR D10 (*aliphatic C20 ethers and C21 ether alcohol*).	4
	VORANOL CP 4100 S Polyol (*polyether polyols*).	4

CIRC.2, PROVISIONAL CATEGORIZATION OF LIQUID SUBSTANCES (17 DEC. 1996)

	Commodity name (descriptor)	List
	Aliphatic(C18-C20) ethers and alkyl(C20-C21) ether alcohols mixtures.	1
◆	2-Ethyl-6-methyl-N-(2-methoxy-1-methyl ethyl) aniline.	1
	Monomer 981 (*polyalkyl(C12-C15) methacrylates*).	3
◆	OLOA 390 (*calcium salts of fatty acids*).	4
◆	PARATEMPS 15 (*decyl alcohol*)	4
◆	PC-709 (*polyoxyalkylamine*)	4
◆	Potassium polysulfide, Potassium thiosulfate solution (41% or less).	1

CIRC.3, PROVISIONAL CATEGORIZATION OF LIQUID SUBSTANCES (17 DEC. 1997)

	Commodity name (descriptor)	List
◆	Alkaryl polyethers (C65-C95)	1
	Arcol 1131 (*1,2,3-propanetriol polymer*).	4
	Crude Dipe (*diisopropyl ether and 2-methylpent-2-ene*).	3
	Diphenyl cresyl phosphate	1
◆	MCP 1064D (*naphthalene*)	4
◆	MOBILAD C241B (*naphthalene*)	4
◆	OGA 558R (*alkaryl polyethers (C65-C95)*.	4
◆	OLOA 6741 (*methylene bridged isobutenylated phenols*).	4
◆	OLOA 758A (*calcium stearate*)	4
◆	OLOA 6743 (*methylene bridged isobutenylated phenols*).	4
	OMA 4391 (*alkyl(C7-C9) nitrates*).	3
◆	PARADYNE 740 (*mineral oil*)	4
◆	PARANOX 152 (*mineral oil*)	4
◆	PARANOX 1155 (*methylene bridged isobutenylated phenols*).	4
	Pentacosa(oxypropane-2,3-diyl)s.	1
◆	POBA (*alkaryl polyethers (C65-C95)*).	4
	RGA 900 (*alkyl(C7-C9) nitrates*)	3
◆	Stock 2921.0 (*naphthalene*)	4
◆	TFA-4711 (*naphthalene*)	4
◆	TLA-2422A (*zinc alkyl dithiophosphate (C3-C14)*).	4

CIRC.4, PROVISIONAL CATEGORIZATION OF LIQUID SUBSTANCES (17 DEC. 1998)

	Commodity name (descriptor)	List
◆	HITEC 162 (*polyolefin (mw 300+)*).	2
◆	HITEC 164 (*polyolefin (mw 300+)*).	2
◆	HiTEC 168 (*polyolefin (mw 300+)*).	2
◆	HiTEC 318 (*sulphohydrocarbon, long chain (C18+) alkyl amine mixture*).	2
◆	HiTEC 612 (*calcium long chain alkaryl sulfonate (C11-C50)*).	2
◆	HiTEC 613 (*calcium long chain alkaryl sulfonate (C11-C50)*).	2
◆	HiTEC 615 (*calcium long chain alkaryl sulfonate (C11-C50)*).	2
◆	HiTEC 619 (*alkylphenol sulfide*)	2
◆	HiTEC 644 (*polyolefin amide alkeneamine (C28+)*).	2
◆	HiTEC 646 (*polyolefin amide alkeneamine (C28+)*).	2
◆	HiTEC 648 (*polyolefin amide alkeneamine borate (C28-C250)*).	2
◆	HiTEC 685 (*zinc alkyl dithiophosphate (C3-C8)*).	2
◆	HiTEC 921 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HiTEC 1102 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HiTEC 2403 (*mineral oil*)	2
◆	HiTEC 2769 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HiTEC 2831 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HiTEC 2837 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HiTEC 2908 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HiTEC 2933 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HiTEC 2934 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HiTEC 4103	2
◆	HiTEC 4105	2
◆	HiTEC 4736 (*methylene bridged isobutylated phenols*).	2
◆	HiTEC 4940 (*naphthalene*)	2
◆	HiTEC 4941 (*polyolefin phenolic amine (C28-C250)*).	2
◆	HiTEC 4949 (*naphthalene*)	2
◆	HiTEC 4950 (*naphthalene*)	2
◆	HiTEC 4961	2
◆	HiTEC 4963A (*naphthalene*)	2
◆	HITEC 4980 (*trimethylbenzene (all isomers)*).	2
◆	HiTEC 4992 (*naphthalene*)	2
◆	HiTEC 4997 (*naphthalene*)	2
◆	HITEC 6653 (*sulphohydrocarbon (C3-C88)*).	2
◆	HITEC 7011 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HITEC 7023 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HITEC 7034 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HITEC 7049 (*polyolefin phenolic amine (C28-C250)*).	2
◆	HITEC 7065 (*polyolefin phenolic amine (C28-C250)*).	2
◆	HITEC 7064 (*sulphohydrocarbon (C3-C88)*).	2
◆	HITEC 7100 (*polyolefin amide alkeneamine borate (C28-C250)*).	2
◆	HiTEC 7160 (*calcium long chain alkyl phenate (C8-C40)*).	2
◆	HiTEC 7169 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HiTEC 7198 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HiTEC 7222	2
◆	HiTEC 7239 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HiTEC 7243 (*calcium long chain alkaryl sulfonate (C11-C50)*).	2
◆	HiTEC 7303 (*calcium long chain alkaryl sulfonate (C11-C50)*).	2
◆	HiTEC 7304 (*calcium long chain alkaryl sulfonate (C11-C50)*).	2
◆	HiTEC 7305 (*zinc alkyl dithiophosphate (C3-C14) and polyolefin phenolic amine (C28-C250)*).	2
◆	HiTEC 7333 (*zinc alkyl dithiophosphate (C3-C14) and polyolefin phenolic amine (C28-C250)*).	2
◆	HiTEC 7334 (*calcium long chain alkyl phenate (C8-C40)*).	2
◆	HiTEC 7365 (*calcium long chain alkaryl sulfonate (C11-C50)*).	2
◆	HiTEC 7383 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HiTEC 7405 (*zinc alkyl dithiophosphate (C3-C14) and calcium long chain alkaryl sulfonate (C11-C50)*).	2
◆	HiTEC 7410 (*diphenylamines, alkylated*).	2
◆	HiTEC 7465 (*calcium long chain alkyl phenate (C8-C40)*).	2
◆	HiTEC 7562 (*calcium long chain alkaryl sulfonate (C11-C50)*).	2
◆	HiTEC 7569 (*calcium long chain alkaryl sulfonate (C11-C50)*).	2
◆	HiTEC 7576 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HiTEC 7635 (*magnesium long chain alkaryl sulfonate (C11-C50)*).	2

CIRC.4, PROVISIONAL CATEGORIZATION OF LIQUID SUBSTANCES (17 DEC. 1998)—Continued

	Commodity name (descriptor)	List
◆	HiTEC 7636 (*magnesium long chain alkaryl sulfonate (C11-C50)*).	2
◆	HiTEC 7650 (*polyolefin (mw 300+) in mineral oil*).	2
◆	HiTEC 7714 (*polyolefin amide alkeneamine borate (C28-C250)*).	2
◆	HiTEC 7720 (*polyolefin amide alkeneamine borate (C28-C250)*).	2
◆	HiTEC 7741 (*polyolefin phenolic amine (C28-C250)*).	2
◆	HiTEC 7744 (*polyolefin phenolic amine (C28-C250)*).	2
◆	HiTEC 7829 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	HiTEC 7957 (*diphenylamines, alkylated*).	2
◆	HiTEC 9268 (*polybutyl phenol*)	4
◆	HiTEC 9290 (*aryl polyolefin (C11-C50)*).	2
◆	HiTEC 9298 (*aryl polyolefin (C11-C50)*).	2
◆	LUBRIZOL 3580P (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	LUBRIZOL 4720A (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	LUBRIZOL 4723B (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	LUBRIZOL 4837W (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	LUBRIZOL 4856J (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	LUBRIZOL 4887 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	LUBRIZOL 4898S (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	LUBRIZOL 4911F (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	LUBRIZOL 4912 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	LUBRIZOL 4923	2
◆	LUBRIZOL 4975G (*diphenylamines, alkylated*).	2
◆	LUBRIZOL 73725 (*mineral oil*)	2
◆	LUBRIZOL 74888 (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	LUBRIZOL 74890 (*diphenylamines, alkylated*).	2
◆	LUBRIZOL 78008 (*oleylamine*)	2
◆	LUBRIZOL 8888Z (*zinc alkyl dithiophosphate (C3-C14)*).	2
◆	MOBILAD 232 (*decyl alcohol (all isomers)*).	2
	Natural (animal/vegetable) fatty acids, (C16-C20) sat/unsat., methyl esters and triglycerides, sulfurized.	1
◆	t-Octylamine	1
◆	OLOA 246B (*calcium long chain alkaryl sulfonate (C11-C50)*).	2
	SAP 3333 (*calcium long-chain alkyl salicylate (C13+)*).	1
◆	TFA-4655 (*xylene-toluene mixture and polyolefin amine)*).	2

The commodities entered below are ones that we have evaluated for carriage but have not included in this rule, and ones that information we hold indicates no longer to be valid bulk liquid cargoes. We are removing them from our rules, tables, and lists. They are:

Caustic and petroleum residue (dated 30 Mar 90)
Contaminated waste water (dated 20 Mar 85)
Pond waste water (dated 23 Mar 87)
Rainwater contaminated with pink/red water (dated 19 Oct 83)
Waste water (aniline production) (dated 28 Sep 90)
Waste water, Bottom sediment sludge (wood preserving process) (dated 25 Feb 83)
Waste water (coal tar distillation) (dated 20 Apr 94)
Waste water (pond waste water) (dated 11 Sep 97)
Waste water (Santos, Brazil) (dated 15 Jan 93)

The commodities entered below are ones that we had evaluated for carriage and had included in our rules but ones that information we hold indicates no longer to be valid bulk liquid cargoes. We are removing them from our rules, tables, and lists. Again, they are:

Potassium polysulfide, Potassium thiosulfate solution (41% or less)
Propanil, Mesityl oxide, Isophorone mixture
Trifluralin in Xylene

The following commodities, being ones whose classifications the IMO cancelled or ones the Coast Guard believes are no longer viable bulk liquid cargoes, are no longer transportable by the water mode as cargoes in bulk.

A–964
AL 150
Alkaryl polyethers (C65–C95)
Alcohol(C9–C11)(primary)ethoxylated
AMOCO 2400
AMOCO 8072F
AMOCO 9267
Antifreeze 511
AO 5301
Arcol 1131 (1,2,3-propanetriol polymer)
ARCOL Polyol 1905
Atar cresylic acid
BEROLAMINE 20
Brake fluid component 5/9
Brake Fluid ET 462
CALTEX CODE 599067
CALTEX CODE 599178
Caustic and petroleum residue (dated 30 Mar 90)
1-(4-Chlorophenyl)-4,4-dimethyl-3-pentanone
Contaminated waste water (dated 20 Mar 85)
Co-solvent alcohol
Crude Dipe
Depitched tar acid
Diphenyl cresyl phosphate
2-Ethylhexyl-2-(2,4-dichlorophenoxy) propionate
HiTEC 162
HiTEC 164
HiTEC 168
HiTEC 244
HiTEC 318
HiTEC 370
HiTEC 612
HiTEC 613
HiTEC 615
HiTEC 619
HiTEC 644
HiTEC 646
HiTEC 648
HiTEC 685
HiTEC 921
HiTEC 1102
HiTEC 2403
HiTEC 2769
HiTEC 2831
HiTEC 2837
HiTEC 2908
HiTEC 2933
HiTEC 2934
HiTEC 4103
HiTEC 4105
HiTEC 4738
HiTEC 4782
HiTEC 4940
HiTEC 4941
HiTEC 4949
HiTEC 4950
HiTEC 4961
HiTEC 4963A
HiTEC 4980
HiTEC 4992
HiTEC 4997
HiTEC 6653
HiTEC 7011
HiTEC 7023
HiTEC 7034
HiTEC 7049
HiTEC 7065
HiTEC 7084
HiTEC 7100
HiTEC 7160
HiTEC 7169
HiTEC 7198
HiTEC 7222
HiTEC 7239
HiTEC 7243
HiTEC 7303
HiTEC 7304
HiTEC 7305
HiTEC 7333
HiTEC 7334
HiTEC 7365
HiTEC 7383
HiTEC 7405
HiTEC 7410
HiTEC 7465
HiTEC 7562
HiTEC 7569
HiTEC 7576
HiTEC 7635
HiTEC 7636
HiTEC 7650
HiTEC 7714
HiTEC 7720
HiTEC 7741
HiTEC 7744
HiTEC 7829
HiTEC 7957
HiTEC 9268
HiTEC 9290
HiTEC 9298
Light end/Heavy end Chlorinated hydrocarbon mixture

LINCOL 86M
LM 114
LUBRIZOL 3580P
LUBRIZOL 4720A
LUBRIZOL 4723B
LUBRIZOL 4837W
LUBRIZOL 4856J
LUBRIZOL 4887
LUBRIZOL 4898S
LUBRIZOL 4911F
LUBRIZOL 4912
LUBRIZOL 4923
LUBRIZOL 4975G
LUBRIZOL 73725
LUBRIZOL 74888
LUBRIZOL 74890
LUBRIZOL 78008
LUBRIZOL 8888Z
M–50–A
MANRO SXS 40
MCP 121
MCP 239B
MCP 955A
MCP 1064D
MD-E-18
MD–E–20
MOBILAD 232
MOBILAD C241B
MOBIL Stock 2631
Natural (animal/vegetable) fatty acids, (C16–C20) sat/unsat., methyl esters and triglycerides, sulfurized
t-Octylamine
OGA 558R
OGA 4784
OLOA 246B
OLOA 758A
OLOA 2564A
OLOA 2564B
OLOA 2820
OLOA 2990
OLOA 6039M
OLOA 6063U
OLOA 6109
OLOA 6121
OLOA 6741
OLOA 6743
OLOA 6832
OLOA 6847
OLOA 6847D
OLOA 6848
OLOA 6853
OLOA 6854
OLOA 6856
OLOA 6858
OLOA 6859
OLOA 6859D
OLOA 6881
OLOA 6981
OLOA 8167FA
OLOA 8167G
OLOA 8172
OLOA 8172A
OLOA 8172M
OLOA 8177
OLOA 8177C
OLOA 8179
OLOA 8179A
OLOA 8380G
OLOA 8380V
OLOA 857P
OLOA 8804E
OLOA 8818
OLOA 8850
OLOA 8858
OLOA 8858B
OLOA 9091
OMA 431 CS(D)
OMA 4391
ORA 502
ORA 702
OXYSOLVE 80
PARADYNE 740
PARANOX 1155
PARANOX 5277
PARAPOID 48
Pentacosa(oxypropane-2,3-diyl)s
Pibsa
POBA
Pond waste water (dated 23 Mar 87)
Potassium polysulfide, Potassium thiosulfate solution (41% or less)
Propanil, Mesityl oxide, Isophorone mixture
Rainwater contaminated with pink/red water (dated 19 Oct 83)
REOFOS 95
REOFOS 664
RGA 900
SAP 3333
SAP 9413
Sodium chromate liquor
STOCK 1462
Stock 2921.0
TFA–4655
TFA–4711
TLA 2400
TLA 2418
TLA 2421
TLA 2422
TLA–2422A
TLA 2427
TLA 2906A
TLA 2907
TLA 2907A
TRILIN (TRIFLURALIN)
Trifluralin in Xylene
VAMMAR D9
VAMMAR D10
VORANOL CP 4100 S Polyol
Waste water (aniline production) (dated 28 Sep 90)
Waste water, Bottom sediment sludge (wood preserving process) (dated 25 Feb 83)
Waste water (coal tar distillation) (dated 20 Apr 94)
Waste water (Pond waste water) (dated 11 Sep 97)
Waste water (Santos, Brazil) (dated 15 Jan 93)

Current Hazardous Materials in Bulk

(a) We add a number of new cargoes to 46 CFR Tables 30.25–1, 151.05, and 1 and 2 of part 153. These comprise cargoes recently authorized by the Coast Guard and cargoes headed for the two Chemical Codes of the IMO—"International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk" (IBC Code) and "Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk" (BCH Code)—but not yet included in our rules. Among these cargoes are new ones approved at the IMO Sub-Committee on Bulk Liquids and Gases (BLG), first session, BLG 1, held March 4–8, 1996; the second intersessional meeting (ESPH 2), held September 23–7, 1996; the BLG 2 meeting held April 7–11, 1997; the ESPH 3 meeting held October 13–7, 1997; the BLG 3 meeting held July 6–10, 1998; the ESPH 4 meeting held September 28 through October 2, 1998; the BLG 4 meeting held April 12–6, 1999; and the ESPH 5 meeting held October 18–22, 1999.

(b) From 46 CFR Table 30.25–1, Tables I and II of part 150, Table 151.05, and Tables 1 and 2 of part 153, we remove all bold-faced type wherever it appears and add, in its place, Roman type. Likewise, in the "Cargoes" columns, we remove every "*" and "+" that precedes the name of a cargo.

(c) We revise the "Compatibility of Cargoes" tables in part 150 to include the chemicals added by this rule to the tables of hazardous materials in 46 CFR parts 30, 151, and 153.

Of specific note, we revised the Compatibility Groups of several lube-oil additives (LOAs). After discussions with the manufacturer of the LOAs' reactivity potential, we determined that the Group to which we had originally assigned each does not represent its true reactivity.

	Current	New
Calcium long chain alkyl phenolicamine (C8–C40)	Group 7	Group 9.
Polyolefin amide alkeneamine borate (C28–C250)	Group 34	Group 33.
Polyolefin amide alkeneamine polyol	Group 7	Group 20.
Polyolefin amine (C28–C250)	Group 7	Group 33.
Polyolefin amine in alkyl- benzenes (C2–C4)	Group 7	Group 32.
Polyolefin aminoester salt	Group 7	Group 34.
Sulfurized polyolefinamide alkene-amines (C28–C250)	Group 7	Group 33.

This rule also corrects several current names of cargoes and cross-refers to other entries in part 150.

(d) In its continued effort to maintain consistency between the rules on tankships (part 153) and those on tank barges (part 151), where applicable, the Coast Guard is adding to Table 1 of part 153 the special requirement in § 153.933, "Chemical protective clothing," for the commodities below:

(1) Acetic acid
(2) Acetic anhydride
(3) Formic acid
(4) Phosphoric acid
(5) Propionic acid

By this means the Coast Guard brings Table 1 of part 153, like § 153.933, into substantial conformity with the rule on tank barges at § 151.50–73, "Chemical protective clothing."

(e) In keeping with paragraph (d), the Coast Guard is also applying the special requirement of § 153.933 to the entry "Diethyl sulfate." (The manufacturer recommended this.)

(f) We will "downgrade" many cargo names in the various tables and lists. These are names whose use as proper cargo names we currently allow but that we cross-refer to other names. That is, they will become non-names (by appearing in *Italics* and cross-referring to proper cargo names). See the Table of Changes.

(g) Cargo-specific actions of particular interest:

(1) Alkyl (C7–C9) nitrates. Correct the Pollution Category from A to B in Table 1 of 46 CFR part 153.

(2) Ammonium bisulfite. When ammonium bisulfite entered Table 1 of part 153 [60 FR 34051 (June 29, 1995)], we inadvertently omitted special requirement § 153.526 Toxic vapor detectors. With this rule we correct that oversight.

(3) Ammonium sulfide solution (45% or less). We correct the Pollution Category from C to B in Table 1 of part 153.

(4) Benzene hydrocarbon mixtures (containing Acetylenes) (having 10% Benzene or more), Benzene hydrocarbon mixtures (having 10% Benzene or more), and Benzene, Toluene, Xylene mixtures (having 10% Benzene or more). In Table 151.05, we added § 151.50–60 to the section Special Requirements. Final rule CGD 88–040 [56 FR 52112 (October 17, 1991)], which added this requirement, inadvertently did not also add it to the three entries in our rules on tank barges. We are correcting that oversight.

(5) Carbon tetrachloride. In Table I of part 150, carbon tetrachloride, Group 36 (Halogenated hydrocarbons), is not compatible with tetraethylenepentamine or triethylenetetramine, both Group 7 (Aliphatic amines).

(6) Caustic potash solution. We correct the Pollution Category from D to C in Table 1 of part 153.

(7) Dodecyl hydroxypropyl sulfide. The IMO has finalized the set of requirements for carriage of this commodity, bringing about two significant changes. First, IMO originally assigned this commodity to a cargo-containment system of type II (ship type 2) with the special requirement in § 153.409, High level alarms, and with a Provisional Pollution Category of A, or "[A]." Second, it has finally assigned it to a cargo-containment system of type I (ship type 1) with the special requirement in § 153.408, Tank overflow control, and with a final Pollution Category of A. The Coast Guard is revising its lists and tables to reflect these final assignments.

(8) Fatty acids (saturated, C13+). IMO has revised the cargo name "fatty acids (saturated, C13+)" to read "fatty acids (saturated, C14+)," a change in the carbon-range designator. It had to do this because an entry exists for "tridecanoic acid" a C13 fatty acid with a Pollution Category of B. But the current name "fatty acids (saturated, C13+)," Pollution Category III, includes "tridecanoic acid." The Coast Guard is revising its lists and tables to pick up this change.

(9) 2-Hydroxyethyl acrylate. The Coast Guard has reevaluated the Compatibility Group, Part 150, for the cargo "2-hydroxyethyl acrylate" and assigned the cargo to Group 14, Acrylates. Currently, 2-Hydroxyethyl acrylate resides in Group 0 with restriction against stowage adjacent to Groups 2, 3, 5 to 8, and 12 in the Compatibility Chart. Its reassignment to Group 14 will retain both the current prohibition against stowage adjacent to Groups 5, 6, and 12 and the standard prohibition for Group 14 against stowage adjacent to Groups 2, 3, 7, and 8. Thus, there is no change in the actual requirements.

(10) Polyolefin amide alkeneamine (C28+). The Coast Guard has reevaluated the Compatibility Group, Part 150, for the cargo "Polyolefin amide alkeneamine (C28+)." Discussions with a manufacturer of this commodity have shown that the current assignment, to Group 7 (Amines), is inappropriate for these materials, which contain only a small fraction of unreacted amine and whose mineral-oil content acts as a buffer to any possible remaining hazardous reactivity. Upon review, we have determined that Group 33 (Miscellaneous hydrocarbon mixtures) is the more appropriate Compatibility Group for this cargo.

(11) Sodium sulfide solution (15% or less). We correct the Pollution Category from C to B in Table 1 of Part 153.

(12) 1,2,3-Trichloropropane. In table I of Part 150, 1,2,3-trichloropropane, Group 36 (Halogenated hydrocarbons), is not compatible with ethylenediamine, diethylenetriamine, or triethylenetetramine, all of Group 7 (Aliphatic amines).

(h) We otherwise correct or modify, as appropriate, current entries in the various lists and tables.

(i) New entries to Table 30.25–1:

Alcohol (C9–C11) poly(2.5–9)ethoxylate
Alkanes (C6–C9)
Alkyl ester copolymer (C4–C20)
Alkyl (C7–C11) phenol poly(4–12)ethoxylates
Alkyl (C8–C40) phenol sulfide
Alkyl (C9–C15) phenyl propoxylate
Alkyl sulfonic acid ester of phenol tert-Amyl methyl ether
Butyl alcohol (all isomers)
Calcium long chain alkyl (C5–C10) phenate
Calcium long chain alkyl (C11–C40) phenate
Copper salt of long chain (C17+) alkanoic acid
Dialkyl (C8–C9) diphenylamines
Ditridecyl adipate
Dodecyl hydroxypropyl sulfide
Ethoxylated long chain (C16+) alkyloxyalkanamine
Ethyl tert-butyl ether
Glyphosate solution (not containing surfactant)
1-Hexadecylnaphthalene, 1,4-bis(Hexadecyl)naphthalene mixture
2-Methyl-1,3-propanediol
Phosphate esters, alkyl (C12–C14) amine
Polyisobutenyl anhydride adduct
Polyolefin amide alkeneamine (C17+)
Potassium salt of polyolefin acid
Sulfurized fat (C14–C20)
Sulfurized polyolefinamide alkene (C28–C250) amine

(j) New entries to Table 151.05:

Alkylbenzenesulfonic acid (greater than 4%)
Cashew nut shell oil (untreated)
Cyclohexanone, Cychexanol mixture
Cyclopentadiene, Styrene, Benzene mixture
Dodecyl phenol
Glyoxylic acid solution (50% or less)
Toluenediamine
o-Toluidine

(k) New entries to Table 1 of Part 153:

Alcohol (C9–C11) poly (2.5–9) ethoxylate
Alkenyl (C16–C20) succinic anhydride
Alkylaryl phosphate mixtures (more than 40% Diphenyl tolyl phosphate, less than 0.02% ortho-isomer)

Alkyl (C8–C9) phenylamine in aromatic solvent
Alkyl (C10–C20, saturated and unsaturated) phosphite
Alkyl (C8–C10) polyglucoside solution (65% or less)
Alkyl (C12–C14) polyglucoside solution (55% or less)
Alkyl (C8–C10)/(C12–C14): (40% or less/60% or more) polyglucoside solution (55% or less)
Alkyl (C8–C10)/(C12–C14): (50/50%) polyglucoside solution (55% or less)
Alkyl (C8–C10)/(C12–C14): (60% or more/40% or less) polyglucoside solution (55% or less)
tert-Amyl methyl ether
Barium long chain (C11–C50) alkaryl sulfonate
Calcium long chain alkyl (C5–C10) phenate
1-(4-Chlorophenyl)-4,4-dimethyl pentan-3-one
N,N-Dimethyldodecylamine
Diphenylamine (molten)
Dithiocarbamate ester (C7–C35)
Dodecyl hydroxypropyl sulfide
Dodecyl-Octadecyl methacrylate mixture
Ethyl tert-butyl ether
S-Ethyl dipropylthiocarbamate
Glyoxylic acid solution (50% or less)
Hexamethylenediamine (molten)
Hexamethylene diisocyanate
N,N-bis(2-Hydroxyethyl) oleamide
3-(Methylthio)propionaldehyde
Nitroethane, 1-Nitropropane (each 15% or more) mixture
Paraldehyde-Ammonia reaction product
n-Pentanoic acid (64%), 2-Methyl butyric acid (36%) mixture
Phosphate esters, alkyl (C12–C14) amine
Polyisobutenamine in aliphatic (C10–C14) solvent
Polyolefinamine (C28–C250)
Poly(tetramethylene ether) glycols (mw 950–1050)
Potassium thiosulfate (50% or less)
1,2,4-Trichlorobenzene (molten)
Xylenes, Ethylbenzene (10% or more) mixture

(l) New entries to Table 2 of Part 153:

Ammonium thiosulfate solution (60% or less)
Sulfonated polyacrylate solution
Titanium dioxide slurry

(m) We have determined three entries in our tables and lists not to be bulk liquid cargoes, and will delete them. They are:

(1) Potassium polysulfide, Potassium thiosulfate solution (41% or less)

(2) Propanil, Mesityl oxide, Isophorone mixture

(3) Trifluralin in Xylene

One issue addressed in the supplemental material in the docket involves the supposed potential for incompatible stowage of isocyanate cargoes, Group 12, and water solutions of chemical cargoes. (See Appendix I [60 FR 34053 (June 29, 1995)]). Shippers and carriers of such cargoes should review the supplemental material available in the docket [USCG 2000–7079] for further information.

This Table of Changes lists all changes to existing entries with a brief explanation where helpful:

TABLE OF CHANGES

Cargo Name		Pollution Category		Comments
Current	Proposed	Current	Proposed	
Acetic acid	No change	No change	No change	46 CFR 153, Table 1: Protective clothing requirement added.
Acetic anhydride	No change	No change	No change	46 CFR 153, Table 1: Protective clothing requirement added.
Alachlor technical and Alachlor technical (90% or more).	Alachlor	No change	No change	
Alcohols (C13 and above)				Delete the entry in its entirety.
Alcohols (C13+)	Alcohols (C13+) Including: Oleyl alcohol (octadecanol) Pentadecanol Tallow alcohol Tetradecanol Tridecanol	Not applicable	Not applicable	46 CFR 150, Table I.
Alcohol(C12-C15) poly(1-3)ethoxylates.				Delete the entry in its entirety.
Alcohol(C12-C15) poly(3-11) ethoxylates.				Delete the entry in its entirety.
Alcohol(C12-C15) poly(1-6)ethoxylates.	Alcohol(C12-C16) poly(1-6)ethoxylates.	No change	No change	Increase upper carbon, "C" range from "C15" to "C16"
Alcohol(C12-C15) poly(7-19)ethoxylates.	Alcohol(C12-C16) poly(7-19)ethoxylates.	No change	No change	Increase upper carbon, "C" range from "C15" to "C16".
Alcohol(C12-C15) poly(20+) ethoxylates.	Alcohol(C12-C16) poly(20+) ethoxylates.	No change	No change	Increase upper carbon, "C" range from "C15" to "C16".

TABLE OF CHANGES—Continued

Cargo Name		Pollution Category		Comments
Current	Proposed	Current	Proposed	
Alkanes (C6-C9)	Alkanes (C6-C9) Including: Heptanes Hexanes Nonanes Octanes	Not applicable	Not applicable	46 CFR 150, Table I.
n-Alkanes (C10+)	n-Alkanes (C10+) Including: Decanes Dodecanes Heptadecanes Tridecanes Undecanes	Not applicable	Not applicable	46 CFR 150, Table I.
Alkenylsuccinic anhydride	Alkenyl(C16-C20) succinic anhydride.	#	D	
Alkyl(C3-C4) benzenes	Alkyl(C3-C4) benzenes Including: Butylbenzenes Propylbenzenes	Not applicable	Not applicable	46 CFR 150, Table I.
Alkyl(C5-C8) benzenes	Alkyl(C5-C8) benzenes Including: Amylbenzenes Heptylbenzenes Hexylbenzenes Octylbenzenes	Not applicable	Not applicable	46 CFR 150, Table I.
Alkyl(C9-C17) benzenes				Delete the entry in its entirety.
Alkyl(C9+) benzenes	Alkyl(C9+)benzenes Including: Decylbenzenes Dodecylbenzenes Nonylbenzenes Tetradecylbenzenes Tetrapropylbenzenes Tridecylbenzenes Undecylbenzenes	Not applicable	Not applicable	46 CFR 150, Table I.
Alkyl ester copolymer (C6-C18).	Alkyl ester copolymer (C4-C20)	[D]	D	
Alkyl(C7-C9) nitrates	No change	A	B	46 CFR 153, Table I: Correct Pollution Category.
Alkyl(C7-C12) phenol poly(4-12)ethoxylate.	Alkyl(C7-C11) phenol poly(4-12)ethoxylate.	No change	No change	Correct the upper carbon, "C" range from "C12" to "C11".
Alkylphenol sulfide (C8-C40).	Alkyl (C8-C40) phenol sulfide	[D]	D	
Ammonia, aqueous, see Ammonium hydroxide.	Ammonia, aqueous [IMO cargo name], see Ammonium hydroxide.	Not applicable	Not applicable	46 CFR 150, Table I: Identify IMO Cargo name.
Ammonium bisulfite solution (70% or less).	No change	No change	No change	46 CFR 153, Table 1: Special requirement .526 added.
Ammonium sulfide solution (45% or less).	No change	C	B	46 CFR 153, Table I: Correct Pollution Category.
(commercial, iso-, n-, sec-) Amyl acetate.				Delete the entry in its entirety.
Amyl acetate (iso-, n-)				Delete the entry in its entirety.
Amylene	Pentene	No change	No change	

TABLE OF CHANGES—Continued

Cargo Name		Pollution Category		Comments
Current	Proposed	Current	Proposed	
Animal and Fish acid oils and distillates, n.o.s.	Animal and Fish acid oils and distillates, n.o.s. Including: Cod liver oil Lanolin Neatsfoot oil Pilchard oil Sperm oil	Not applicable	Not applicable	46 CFR 150, Table I.
Animal and Fish oils, n.o.s.	Animal and Fish oils, n.o.s Including: Animal acid oil Fish acid oil Lard acid oil Mixed acid oil Mixed general acid oil Mixed hard acid oil Mixed soft acid oil	Not applicable	Not applicable	46 CFR 150, Table I.
Benzene hydrocarbon mixtures (containing Acetylenes) *(having 10% Benzene or more).*	No change	No change	Not applicable	46 CFR 151, Table 151.05: Special requirement .50-60 added.
Benzene hydrocarbon mixtures *(having 10% Benzene or more).*	No change	No change	Not applicable	46 CFR 151, Table 151.05: Special requirement .50-60 added.
Benzene, Toluene, Xylene mixtures *(having 10% Benzene or more).*	No change	No change	Not applicable	46 CFR 151, Table 151.05: Special requirement .50-60 added.
Benzene hydrocarbon mixtures2 (having 10% Benzene or more).	No change	No change	No change	46 CFR 153, Table 1: Special requirement "16" corrected to read ".316".
(iso-, n-) Butyl acetate				Delete the entry in its entirety.
(sec-) Butyl acetate				Delete the entry in its entirety.
iso-Butyl acrylate				46 CFR 151, Table 151.05: Delete from table.
n-Butyl acrylate				46 CFR 151, Table 151.05: Delete from table.
(iso-, n-) Butyl acrylate				Delete the entry in its entirety.
Butyl alcohol (iso-, n-, sec-, tert-).	Butyl alcohol (all isomers)	No change	No change	
Butylbenzene and Butylbenzene (all isomers).	Alkyl(C3-C4) benzenes	No change	No change	
Butylene polyglycol				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
iso-Butyl isobutyrate				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
n-Butyl butyrate				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
iso-Butyraldehyde				46 CFR 153, Table 1: Delete from table.

TABLE OF CHANGES—Continued

Cargo Name		Pollution Category		Comments
Current	Proposed	Current	Proposed	
n-Butyraldehyde				46 CFR 153, Table 1: Delete from table.
Calcium alkyl salicylate				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Calcium long chain alkyl phenolic amine (C8-C40).	No change	Not applicable	Not applicable	46 CFR 150, Table I: To Group 9, from Group 7.
Carbon tetrachloride				Exception to 46 CFR 150, Table I.
Caustic potash solution	No change	D	C	46 CFR 153, Table I: Correct Pollution Category, and Hazard category from "S" to "S/P".
Cresylic acid, sodium salt solution, see Cresylate spent caustic.	Cresylic acid, sodium salt solution [IMO cargo name], see Cresylate spent caustic.	Not applicable	Not applicable	46 CFR 150, Table I: Identify IMO Cargo name.
Cumene				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Cyclopentadiene, Styrene, Benzene mixture.				46 CFR 151, Table 151.01: Add Special Requirement 151.50-60.
Cyclopentadiene polymers				46 CFR 30, Table 30.25-1: Delete the entry in its entirety.
Decane				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Decylbenzene	Alkyl(C9+)benzenes	D	III	
Dextrose solution	Glucose solution	No change	No change	
Dialkyl(C10-C14) benzenes.	Alkyl(C9+)benzenes	D	III	
Dialkyl(C7-C13) phthalates.	Dialkyl(C7-C13) phthalates Including: Diisodecyl phthalate Diisononyl phthalate Dinonyl phthalate Ditridecyl phthalate Diundecyl phthalate	No change	No change	46 CFR 150, Table I.
Dibutyl carbinol				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
1,1-, 1,2-, or 1,3-Dichloropropane.				Delete the entry in its entirety.
Diethylaminoethanol, see Diethylethanolamine.	Diethylaminoethanol [IMO cargo name], see Diethylethanolamine.	Not applicable	Not applicable	46 CFR 150, Table I: Identify IMO Cargo name.
Diethylene glycol butyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Diethylene glycol butyl ether acetate.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.

TABLE OF CHANGES—Continued

Cargo Name		Pollution Category		Comments
Current	Proposed	Current	Proposed	
Diethylene glycol ethyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Diethylene glycol ethyl ether acetate.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Diethylene glycol n-hexyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Diethylene glycol methyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Diethylene glycol methyl ether acetate.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Diethylene glycol propyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Diethylenetriamine				Exception to 46 CFR 150, Table I.
Diethyl ether, see Ethyl ether.	Diethyl ether [IMO cargo name], see Ethyl ether.	Not applicable	Not applicable	46 CFR 150, Table I: Identify IMO Cargo name.
Di-(2-ethylhexyl) phthalate	Dioctyl phthalate	D	III	Cross-reference to the correct proper cargo name.
Diethyl sulfate	No change	No change	No change	46 CFR 153, Table 1: Protective clothing requirement added.
Diisobutyl carbinol	Diisobutyl carbinol [industrial name], see also Nonyl alcohol.			46 CFR 150, Table I: Identify industrial cargo name.
Diisodecyl phthalate				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Diisononyl phthalate				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Dimethylpolysiloxane	Polydimethylsiloxane			A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
2,2-Dimethyl propane-1,3-diol.	2,2-Dimethylpropane-1,3-diol (molten or solution).	No change	No change	
Dinonyl phthalate				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Dipropylene glycol butyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Dipropylene glycol methyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Ditridecyl phthalate				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.

TABLE OF CHANGES—Continued

Cargo Name		Pollution Category		Comments
Current	Proposed	Current	Proposed	
Diundecyl phthalate	....	....	....	A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Dodecane	n-Alkanes (C10+)	No change	No change	
Dodecyl alcohol	Dodecyl alcohol [IMO cargo name], see Dodecanol.	....	....	46 CFR 150, Table I: Identify IMO Cargo name.
Dodecylbenzene	Alkyl(C9+)benzenes	No change	No change	
Dodecyl hydroxypropyl sulfide.	....	[A]	A	46 CFR 153, Table I: Ship type I from II; Sp. Requirement .408 replacing .409.
Ethoxylated alcohols, C11-C15.	....	....	....	46 CFR 30, Table 30.25-1: Delete the entry in its entirety.
Ethylenediamine	....	....	....	Exception to 46 CFR 150, Table I.
Ethylene glycol ethyl ether acetate.	....	....	....	A non-cargo name (i.e., Italicized) cross referenced to a proper cargo name.
Ethylene glycol hexyl ether.	Ethylene glycol monoalkyl ethers	....	....	46 CFR 153, Table 1: Add the cross-reference under the first entry in the table.
Ethylene glycol monoalkyl ethers.	Ethylene glycol monoalkyl ethers including: 2-Ethoxyethanol Ethylene glycol butyl ether Ethylene glycol tert-butyl ether Ethylene glycol ethyl ether +Ethylene glycol hexyl ether Ethylene glycol methyl ether Ethylene glycol n-propyl ether Ethylene glycol isopropyl ether	....	....	46 CFR 150, Table I.
Ethylene glycol monoalkyl ethers.	....	....	....	46 CFR 153, Table 1: Delete the second entry in its entirety.
Ethylene glycol propyl ether.	....	....	....	Delete the entry in its entirety.
2-Ethylhexanoic acid	....	....	....	A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
2-Ethylhexanol	....	....	....	A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
2-Ethylhexyl acrylate	....	....	....	46 CFR 151, Table 151.05: Temp. control install. Column, replace I-D with NA.
Fatty acid (saturated, C13 and above).	....	....	....	Delete the entry in its entirety.
Fatty acid (saturated, C13+).	Fatty acid (saturated, C14+)	No change	No change	Increase lower carbon, "C" range from "C13" to "C14".
Formic acid	No change	No change	No change	46 CFR 153, Table 1: Protective clothing requirement added.
Glycidyl ester of C10 trialkyl acetic acid, see Glycidyl ester of tridecyl acetic acid.	Glycidyl ester of C10 trialkyl acetic acid [IMO cargo name], see Glycidyl ester of tridecyl acetic acid.	Not applicable	Not applicable	46 CFR 150, Table I: Identify IMO Cargo name.

TABLE OF CHANGES—Continued

Cargo Name		Pollution Category		Comments
Current	Proposed	Current	Proposed	
Heptadecane	....	....	....	A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Heptane (all isomers)	Alkanes (C6-C9)	No change	No change	
Hexaethylene glycol	....	....	....	A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Hexane (all isomers)	Alkanes (C6-C9)	No change	No change	
Hydrofluorosilicic acid (25% or less).	....	....	....	46 CFR 151, Table 151.05: Delete from table.
Hydroxy terminated polybutadiene, see Polybutadiene, hydroxyl terminated.	Hydroxy terminated polybutadiene [IMO cargo name], see Polybutadiene, hydroxy terminated.	Not applicable	Not applicable	Revise US cargo name. 46 CFR 150, Table I: Identify IMO Cargo name.
Isopropylbenzene (Cumene).	....	....	....	46 CFR 153, Table 1: A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Lauryl polyglucose (50% or less).	Alkyl(C12-C14) polyglucoside solution (55% or less).	[B]	B	46 CFR 153, Table 1.
Lecithin (soyabean)	Lecithin	[D]	III	
Lignin sulfonic acid, sodium salt solution.	Sodium lignosulfonate solution or Lignin liquor.	No change	No change	46 CFR 153, Table 2.
Magnesium nonyl phenol sulfide.	....	....	....	A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Magnesium sulfonate	....	....	....	A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
N-(2-Methoxy-1-methylethry)2-ethyl-6-methyl chloroacetanilide, see Metolachlor.	N-(2-Methoxy-1- methylethry)2-ethyl-6-methyl chloroacetanilide [IMO cargo name], see Metolachlor.	Not applicable	Not applicable	46 CFR 150, Table I: Identify IMO Cargo name.
Methoxy triglycol	....	....	....	A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Methyl butynol	2-Methyl-2-hydroxy-3-butyne	No change	No change	46 CFR 30, Table 30.25-1: Delete from table; safety hazard.
2-Methyl-2-hydroxy-3-butyne.	No change	III	D	46 CFR 153, Table 1.
Methyl isobutyl carbinol	....	....	....	A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Methyl pentene; 2-Methyl pentene; 4-Methyl pentene;	....	....	....	A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
o-Nitrochlorobenzene	....	....	....	Delete the entry in its entirety.
Nonane (all isomers)	Alkanes (C6-C9)	No change	No change	
Nonyl phenol (ethoxylated).	....	....	....	Delete the entry in its entirety.

TABLE OF CHANGES—Continued

Cargo Name		Pollution Category		Comments
Current	Proposed	Current	Proposed	
Nonyl phenol poly(4-12) ethoxylates.	Nonyl phenol poly(4+) ethoxylates	No change	No change	
Nonyl phenol sulfide (90% or less).				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Octane (all isomers)	Alkanes (C6-C9)	No change	No change	
Octyl nitrates (all isomers)				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Oil misc: Coconut oil, esterified.				46 CFR 30, Table 30.25-1: Delete the entry in its entirety.
Oil misc: Coconut oil, methyl ester.				46 CFR 30, Table 30.25-1: Delete the entry in its entirety.
Oil misc: Cottonseed, fatty acid.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Oil misc: Palm oil, methyl ester.				46 CFR 30, Table 30.25-1: Delete the entry in its entirety.
Organic amine 70				46 CFR 30, Table 30.25- 1: Delete the entry in its entirety.
n-Paraffins (C10-C20)				Delete the entry in its entirety.
Pentasodium salt of Diethylenetriamine pentaacetic acid solution.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Pentene, Miscellaneous hydrocarbon mixture.				Delete the entry in its entirety.
Phosphoric acid	No change	No change	No change	46 CFR 153, Table 1: Protective clothing requirement added.
Phthalate plasticizers				46 CFR 30, Table 30.25- 1: Delete the entry in its entirety.
Pinene				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Polyalkylene glycol butyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether.	Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether. Including: Diethylene glycol butyl ether Diethylene glycol ethyl ether Diethylene glycol n-hexyl ether Diethylene glycol methyl ether Diethylene glycol n-propyl ether Dipropylene glycol butyl ether Dipropylene glycol methyl ether Polypropylene glycol methyl ether Triethylene glycol butyl ether Triethylene glycol ethyl ether Triethylene glycol methyl ether Tripropylene glycol methyl ether	Not applicable	Not applicable	46 CFR 150, Table I.

TABLE OF CHANGES—Continued

Cargo Name		Pollution Category		Comments
Current	Proposed	Current	Proposed	
Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether acetate.	Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether acetate. Including: Diethylene glycol butyl ether acetate Diethylene glycol ethyl ether acetate Diethylene glycol methyl ether acetate	Not applicable	Not applicable	46 CFR 150, Table I.
Polybutenyl succinimide	No Change	[D]	III	
Polybutadiene, hydroxyl terminated.	Polybutadiene, hydroxy terminated.	No change	No change	Revise name.
Polyethylene glycol monoalkyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Polyolefin amide alkeneamine borate (C28-C250).	No change	Not applicable	Not applicable	46 CFR 150, Table I: To Group 33, from Group 34.
Polyolefin amide alkeneamine polyol.	No change	Not applicable	Not applicable	46 CFR 150, Table I: To Group 20, from Group 7.
Polyolefin amine (C28-C250).	No change	Not applicable	Not applicable	46 CFR 150, Table I: To Group 33, from Group 7.
Polyolefin amine in alkylbenzenes (C2-C4).	No change	Not applicable	Not applicable	46 CFR 150, Table I: To Group 32, from Group 7.
Polyolefin aminoester salt	No change	Not applicable	Not applicable	46 CFR 150, Table I: To Group 34, from Group 7.
Polypropylene				Delete the entry in its entirety.
Polypropylene glycol methyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Potassium hydroxide solution, see Caustic potash solution.	Potassium hydroxide solution [IMO cargo name], see Caustic potash solution.	Not applicable	Not applicable	46 CFR 150, Table I: Identify IMO Cargo name.
Potassium polysulfide, Potassium thiosulfate solution (41% or less).				Delete the entry in its entirety.
Propanil, Mesityl oxide, Isophorone mixture.				Delete the entry in its entirety.
Propionic acid	No change	No change	No change	46 CFR 153, Table 1: Protective clothing requirement added.
n-Propoxypropanol (propylene glycol propyl ether).				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
iso-Propylamine solution (70% or less).				46 CFR 153, Table 1: Special Requirements column, replace .1010 with .1020.
iso-Propylbenzene				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.

TABLE OF CHANGES—Continued

Cargo Name		Pollution Category		Comments
Current	Proposed	Current	Proposed	
n-Propylbenzene				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Propylene carbonate	No change	[III]	III	
Propylene glycol n-butyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Propylene glycol ethyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Propylene glycol methyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Propylene glycol monoalkyl ether.	Propylene glycol monoalkyl ether Including: n-Propoxypropanol Propylene glycol n-butyl ether Propylene glycol ethyl ether Propylene glycol methyl ether	Not applicable	Not applicable	46 CFR 150, Table I.
Propylene glycol phenyl ether.		[D]	D	
Propylene glycol propyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Rum				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Sodium hydroxide solution, see Caustic soda solution.	Sodium hydroxide solution [IMO cargo name], see Caustic soda solution.	Not applicable	Not applicable	46 CFR 150, Table I: Identify IMO Cargo name.
Sodium naphthenate solution.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Sodium sulfide solution (15% or less).	No change	C	B	46 CFR 153, Table I: Correct Pollution Category.
Stearic acid				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Sulfurized polyolefinamide alkeneamines (C28-C250).	No change	Not applicable	Not applicable	46 CFR 150, Table I: To Group 33, from Group 7.
Tallow alcohol				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Tetradecanol				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Tetradecylbenzene	Alkyl(C9+)benzenes	[D]	III	
Tetraethylenepentamine				Exception to 46 CFR 150, Table I.
1,2,3,5-Tetramethylbenzene.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.

TABLE OF CHANGES—Continued

Cargo Name		Pollution Category		Comments
Current	Proposed	Current	Proposed	
Tetrasodium salt of Ethylene-diaminetetraacetic acid solution.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Triarylphosphate				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
1,2,3-Trichloropropane				Exception to 46 CFR 150, Table I.
Tridecane	n-Alkanes (C10+)			A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Tridecene				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Tridecylbenzene	Alkyl(C9+)benzenes	[D]	III	
Triethylene glycol butyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Triethylene glycol ethyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Triethylene glycol methyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Triethylenetetramine				Exception to 46 CFR 150, Table I.
Triflurlin in Xylene				Delete the entry in its entirety.
2,2,4-Trimethyl penanediol-1,3-diisobutyrate.				Delete the entry in its entirety.
Tripropylene				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Tripropylene glycol methyl ether.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Trisodium salt of N-(Hydroxyethyl) ethylenediaminetetraacetic acid solution.				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Trixylyl phosphate, see Trixylenyl phosphate.	Trixylyl phosphate [IMO cargo name], see Trixylenyl phosphate.	Not applicable	Not applicable	46 CFR 150, Table I: Identify IMO Cargo name.
Turpentine substitute				A non-cargo name (i.e., Italicized) cross-referenced to a proper cargo name.
Undecylbenzene	Alkyl(C9+)benzenes	[D]	III	
Valeraldehyde (iso-, n-)				46 CFR 151, Table 151.05: Delete from table.

TABLE OF CHANGES—Continued

Cargo Name		Pollution Category		Comments
Current	Proposed	Current	Proposed	
Vegetable oils, n.o.s.	Vegetable oils, n.o.s. Including: Beechnut oil Castor oil Cocoa butter Coconut oil Corn oil Cottonseed oil Groundnut oil Hazelnut oil Linseed oil Nutmeg butter Oiticica oil Olive oil Palm kernel oil Palm oil Peel oil (oranges and lemons) Perilla oil Poppy oil Raisin seed oil Rapeseed oil Rice bran oil Safflower oil Salad oil Sesame oil Soya bean oil Sunflower seed oil Tucum oil Tung oil Walnut oil	Not applicable	Not applicable	46 CFR 150, Table I.
Vegetable acid oils and distillates, n.o.s.	Vegetable acid oils and distillates, n.o.s. Including: Corn acid oil Cottonseed acid oil Dark mixed acid oil Groundnut acid oil Mixed acid oil Mixed general acid oil Mixed hard acid oil Mixed soft acid oil Rapeseed acid oil Safflower acid oil Soya acid oil Sunflower seed acid oil	Not applicable	Not applicable	46 CFR 150, Table I.

Regulatory Evaluation

This direct final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040 (February 26, 1979)). This rulemaking will merely update lists of chemicals by adding cargoes to the lists that the Coast Guard already maintains and by making a few non-substantive editorial changes. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this direct final rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Although this rule is exempt, we have reviewed it for potential impact on small entities. This rule will merely update lists of chemicals by adding cargoes recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making a few non-substantive editorial changes.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We will evaluate comments submitted in response to this finding under the criteria in the section of this preamble called *Regulatory Information.*

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this direct final rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule affects your small business or organization and you have questions concerning its provisions or options for compliance, please call Mr. Curtis G. Payne at 202–267–1217.

Collection of Information

This direct final rule will call for no collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this direct final rule under Executive Order 13132 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. Because this rule would merely render current lists already maintained by the Coast Guard in its rules, there are no implications for Federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership (58 FR 58093 (October 28, 1993)), govern the issuance of Federal rules that impose unfunded mandates. An unfunded mandate is a requirement that a State, local, or tribal government or the private sector incur direct costs without the Federal Government's having first provided the funds to pay those costs. This direct final rule will not impose an unfunded mandate.

Taking of Private Property

This direct final rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Reform of Civil Justice

This direct final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this direct final rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this direct final rule and concluded that, under figure 2–1, paragraph (34)(a) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule brings up to date lists already maintained by the Coast Guard in its rules to add chemicals already approved under those rules or under international law and clearly would have no impact on the environment. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 150

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 151 and 46 CFR parts 30, 150, 151, and 153 as follows:

Title 33—[Amended]

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The citation of authority for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321 and 1903; Pub. L. 104–227 (110 Stat. 3034), E.O. 12777, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 151.05 [Amended]

2. In § 151.05, add the definition "*NLS* means Noxious Liquid Substance." preceding the definition of "*NLS Certificate*".

3. Revise the listing in § 151.47 to read as follows:

§ 151.47 Category D NLSs other than oil-like Category D NLSs that may be carried under this part.

* * * * *

Acetophenone
Acrylonitrile-Styrene copolymer dispersion in Polyether polyol
iso- & cyclo-Alkane (C10–C11)
Alkenyl(C11+)amine
Alkyl(C8+)amine, Alkenyl (C12+) acid ester mixture
Alkyl dithiothiadiazole (C6–C24)
Alkyl ester copolymer (C4–C20)
Alkyl(C8–C40) phenol sulfide
Aluminum sulfate solution
Ammonium hydrogen phosphate solution
Ammonium nitrate solution (45% or less)
Ammonium nitrate, Urea solution (2% or less NH_3)
Ammonium phosphate, Urea solution
Ammonium polyphosphate solution
Ammonium sulfate solution (20% or less)
Amyl alcohol (iso-, n-, sec-, primary)
Animal and Fish oils, n.o.s. (*see also Oil, edible*)
Animal and Fish acid oils and distillates, n.o.s.
Aryl polyolefin (C11–C50)
Brake fluid base mixtures
Butylene glycol
iso-Butyl formate
n-Butyl formate
gamma-Butyrolactone
Calcium hydroxide slurry
Calcium long chain alkyl sulfonate (C11–C50)
Calcium long chain alkyl(C11–C40) phenate
Calcium long chain alkyl phenate sulfide (C8-C40)
Caprolactam solutions
Chlorine chloride solution
Citric acid (70% or less)
Coconut oil fatty acid methyl ester
Copper salt of long chain (C17+) alkanoic acid
Cyclohexanol
Decahydronaphthalene
Diacetone alcohol
Dialkyl(C8–C9) diphenylamines
Dialkyl(C7–C13) phthalates
Diethylene glycol
Diethylene glycol butyl ether acetate, *see* Poly(2-8) alkylene glycol monoalkyl(C1–C6) ether acetate

- Diethylene glycol dibutyl ether
- Diethylene glycol ethyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether
- Diethylene glycol ethyl ether acetate, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether acetate
- Diethylene glycol methyl ether acetate, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether acetate
- Diethylene glycol phenyl ether
- Diethylene glycol phthalate
- Di-(2-ethylhexyl)adipate
- 1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution
- Diisobutyl ketone
- *Diisodecyl phthalate, see* Dialkyl(C7–C13) phthalates
- Diisononyl adipate
- *Diisononyl phthalate, see* Dialkyl(C7–C13) phthalates
- 2,2-Dimethylpropane-1,3-diol
- *Dinonyl phthalate, see* Dialkyl(C7–C13) phthalates
- Dipropylene glycol dibenzoate
- Dipropylene glycol methyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1-C6) ether
- *Ditridecyl phthalate, see* Dialkyl(C7–C13) phthalates
- *Diundecyl phthalate; see* Dialkyl(C7–C13) phthalates
- Dodecenylsuccinic acid, dipotassium salt solution
- Ethoxylated long chain (C16+) alkyloxyalkanamine
- Ethoxy triglycol (*crude*)
- 2-Ethyl-2-(hydroxymethyl)propane-1,3-diol, C8–C10 ester
- Ethyl acetate
- Ethyl acetoacetate
- Ethyl butanol
- Ethylenediaminetetraacetic acid, tetrasodium salt solution
- Ethylene glycol
- Ethylene glycol acetate
- Ethylene glycol dibutyl ether
- Ethylene glycol methyl butyl ether
- Ethylene glycol phenyl ether
- Ethylene glycol phenyl ether, Diethylene glycol phenyl ether mixture
- *2-Ethylhexanoic acid, see* Octanoic acid
- Ethyl propionate
- Ferric hydroxyethylethylene diamine triacetic acid, trisodium salt solution
- Formamide
- Glycerine (83%), Dioxanedimethanol (17%) mixture
- Glycerol monooleate
- Glyoxal solution (40% or less)
- Glyphosate solution (not containing surfactant)
- Heptanoic acid
- Hexamethylenediamine adipate
- Hexamethylenetetramine solutions
- Hexanoic acid
- Hexanol
- N–(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution
- Isophorone
- Lactic acid
- Latex (ammonia (1% or less) inhibited)
- Long chain alkaryl sulfonic acid (C16–C60)
- Magnesium long chain alkaryl sulfonate (C11–C50)
- Magnesium long chain alkyl phenate sulfide (C8–C20)
- 3-Methoxybutyl acetate
- Methyl acetoacetate
- Methyl alcohol
- Methyl amyl ketone
- Methyl butenol
- Methyl butyl ketone
- Methyl isobutyl ketone
- Methyl tert-butyl ether
- Methyl butynol
- Methyl propyl ketone
- N-Methyl-2-pyrrolidone
- Myrcene
- Naphthalene sulfonic acid-formaldehyde copolymer, sodium salt solution
- Nonanoic acid (all isomers)
- Nonanoic, Tridecanoic acid mixture
- Nonyl methacrylate
- Noxious Liquid Substance, (17) n.o.s.
- Octadecenoamide solution
- Octanoic acid
- Oil, edible:
  - Babassu
  - Beechnut
  - Castor
  - Cocoa butter
  - Coconut
  - Cod liver
  - Corn
  - Cottonseed
  - Fish
  - Groundnut
  - Hazelnut
  - Nutmeg butter
  - Olive
  - Palm
  - Palm kernel
  - Peanut
  - Poppy
  - Raisin seed
  - Rapeseed
  - Rice bran
  - Safflower
  - Salad
  - Sesame
  - Soya bean
  - Sunflower seed
  - Tucum
  - Vegetable
  - Walnut
- Oil, misc:
  - Animal, n.o.s.
  - Coconut oil, esterified
  - Coconut oil, fatty acid methyl ester
  - Lanolin
  - Linseed
  - Neatsfoot
  - Oiticica
  - Palm oil, fatty acid methyl ester
  - Palm oil, methyl ester
  - Perilla
  - Pilchard
  - Soya bean (epoxidized)
  - Sperm
  - Tung
  - Whale
- Olefin/Alkyl ester copolymer (molecular weight 2000+)
- Oleic acid
- Palm kernel acid oil, methyl ester
- Palm stearin
- Pentaethylenehexamine
- Pentanoic acid
- Poly(2–8)alkylene glycol monoalkyl(C1-C6) ether, *Including:*
  - Diethylene glycol butyl ether
  - Diethylene glycol ethyl ether
  - Diethylene glycol n-hexyl ether
  - Diethylene glycol methyl ether
  - Diethylene glycol n-propyl ether
  - Dipropylene glycol butyl ether
  - Dipropylene glycol methyl ether
  - Polypropylene glycol methyl ether
  - Triethylene glycol butyl ether
  - Triethylene glycol ethyl ether
  - Triethylene glycol methyl ether
  - Tripropylene glycol methyl ether
- Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether acetate, *Including:*
  - Diethylene glycol butyl ether acetate
  - Diethylene glycol ethyl ether acetate
  - Diethylene glycol methyl ether acetate
- Polyalkylene glycols, Polyalkylene glycol monoalkyl ethers mixtures
- Polypropylene glycol methyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether
- Polyalkyl(C10–C20) methacrylate
- Polybutenyl succinimide
- Polyether (molecular weight 2000+)
- Polyethylene glycol monoalkyl ether
- Polyolefin amide alkeneamine (C17+)
- Polyolefin amide alkeneamine (C28+)
- Polyolefin amide alkeneamine borate (C28–C250)
- Polyolefin amide alkeneamine polyol
- Polyolefin anhydride
- Polyolefin ester (C28–C250)
- Polyolefin phenolic amine (C28–C250)
- Polyolefin phosphorosulfide, barium derivative
- Polypropylene glycol
- n-Propyl acetate
- Propylene glycol monoalkyl ether, Including:
  - n-Propoxypropanol
  - Propylene glycol n-butyl ether
  - Propylene glycol ethyl ether
  - Propylene glycol methyl ether
- Propylene glycol ethyl ether, see Propylene glycol monoalkyl ether
- Propylene glycol methyl ether, see Propylene glycol monoalkyl ether
- Propylene glycol methyl ether acetate
- Propylene glycol phenyl ether
- Sodium acetate solution
- Sodium benzoate solution
- Sodium carbonate solution
- Soybean oil (epoxidized)

- Sulfohydrocarbon (C3–C88)
- Sulfonated polyacrylate solution
- Sulfolane
- Sulfurized fat (C14–C20)
- Sulfurized polyolefinamide alkene(C28–C250)amine
- Tallow
- Tallow fatty acid
- Tetrasodium salt of Ethylenediaminetetraacetic acid solution
- Triethylene glycol butyl ether, see Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether
- Triethylene glycol ethyl ether, see Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether
- Triethylene glycol methyl ether, see Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether
- Triethyl phosphate
- Trimethylol propane polyethoxylate
- Tripropylene glycol methyl ether, see Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether
- Trisodium salt of N-(Hydroxyethyl)-ethylenediamine triacetic acid solution
- Urea, Ammonium mono- and di-hydrogen phosphate, Potassium chloride solution
- Urea, Ammonium nitrate solution (2% or less NH_3)
- Urea, Ammonium phosphate solution
- Vegetable oils, n.o.s. (see also Oil, edible)
- Vegetable acid oils and distillates, n.o.s.
- Waxes:
  - Candelilla
  - Carnauba

4. Amend § 151.49 by removing and reserving paragraph (b).

Title 46—[Amended]

PART 30—GENERAL PROVISIONS

5. The citation of authority for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–5 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

6. In § 30.25–1, revise Table 30.25–1 to read as follows:

30.25–1 Cargoes carried in vessels certificated under the rules of this subchapter.

* * * * *

TABLE 30.25–1.—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES

Cargo name	IMO Annex II Pollution Category
Acetone	III
Acetophenone	@D
Acrylonitrile-Styrene copolymer dispersion in Polyether polyol	D
Alcohols (C13+)	III
Alcoholic beverages, n.o.s.	III
Alcohol(C6–C17)(secondary) poly(3-6)ethoxylates	A
Alcohol(C6–C17)(secondary) poly(7-12)ethoxylates	B
Alcohol(C9–C11) poly(2.5-9)ethoxylate	B
Alcohol(C12–C15) poly(...)ethoxylates, *see* Alcohol(C12–C16) poly(...)ethoxylates	....
Alcohol(C12–C16) poly(1-6)ethoxylates	A
Alcohol(C12–C16) poly(7-19)ethoxylates	B
Alcohol(C12–C16) poly(20+)ethoxylates	C
Alkanes (C6–C9)	C
n-Alkanes (C10+)	III
iso- & cyclo-Alkanes (C10–C11)	D
iso- & cyclo-Alkanes (C12+)	III
Alkaryl polyether (C9–C20)	B
Alkenyl(C11+) amine	D
Alkenyl(C16–C20) succinic anhydride)	D
Alkyl(C8+)amine, Alkenyl (C12+) acid ester mixture	D
Alkyl(C9+)benzenes	III
Alkylbenzenesulfonic acid (4% or less)	#
Alkyl dithiothiadiazole (C6–C24)	D
Alkyl ester copolymer (C4–C20)	D
Alkyl(C7–C11) phenol poly(4-12)ethoxylates	B
Alkyl phenol sulfide (C8–C40), *see* Alkyl(C8–C40) phenol sulfide	....
Alkyl(C8–C40) phenol sulfide	D
Alkyl(C9–C15) phenyl propoxylate	III
n-Alkyl phthalates, see individual phthalates	....
Alkyl sulfonic acid ester of phenol	III
Aminoethyldiethanolamine, Aminoethylethanolamine solution	III
Amyl acetate (all isomers)	C
Amyl alcohol (iso-, n-, sec-, primary)	D
Amyl alcohol (tert-)	III
Amylene, see Pentene (all isomers)	C
tert-Amyl methyl ether (Methyl tert-pentyl ether)	C
Amyl methyl ketone, see Methyl amyl ketone	D
Animal and Fish oils, n.o.s.	D
(*see also* Oil, edible, *or* Oil, misc.)	
Including:	
Cod liver oil	
Lanolin	
Neatsfoot oil	
Pilchard oil	
Sperm oil	
Animal and Fish acid oils and distillates, n.o.s.	D
Including:	
Animal acid oil	
Fish acid oil	
Lard acid oil	
Mixed acid oil	
Mixed general acid oil	
Mixed hard acid oil	
Mixed soft acid oil	
Aryl polyolefin (C11–C50)	D
Asphalt	I
Asphalt blending stocks:	
Roofers flux	I
Straight run residue	I
Barium long chain (C11–C50) alkaryl sulfonate	B
Barium long chain alkyl(C8–C14)phenate sulfide	[A]
Behenyl alcohol	III
Benzene tricarboxylic acid trioctyl ester	III
Benzyl alcohol	C
Brake fluid base mixtures	D
(containing Poly(2-8)alkylene(C2–C3) glycols, Polyalkylene(C2–C10) glycol monoalkyl(C1–C4) ethers, and their borate esters)	
Butane	LFG
Butene, see Butylene.	
Butene oligomer	B
Butyl acetate (all isomers)	C
Butyl alcohol (iso-, n-, sec-, tert-), *see* Butyl alcohol (all isomers)	....
Butyl alcohol (all isomers)	III
Butyl benzyl phthalate	A •
Butylene	LFG
Butylene glycol	D
1,3-Butylene glycol, see Butylene glycol	....
Butylene polyglycol, see Butylene glycol	....
iso-Butyl formate	D
n-Butyl formate	@D
Butyl heptyl ketone	[C]
Butyl methyl ketone, see Methyl butyl ketone	....
n-Butyl propionate	C
Butyl stearate	III
Butyl toluene	@A
gamma-Butyrolactone	D
Calcium alkyl(C9)phenol sulfide, polyolefin phosphorosulfide mixture	A

TABLE 30.25–1.—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargo name	IMO Annex II Pollution Category
Calcium alkyl salicylate, see Calcium long chain alkyl salicylate (C13+)	....
Calcium long chain alkaryl sulfonate (C11–C50)	D
Calcium long chain alkyl phenate (C8–C40), see Calcium long chain alkyl(C5–C10) phenate *or* Calcium long chain alkyl(C11–C40) phenate	....
Calcium long chain alkyl(C5–C10) phenate	C
Calcium long chain alkyl(C11–C40) phenate	D
Calcium long chain alkyl phenate sulfide (C8–C40)	D
Calcium long chain alkyl phenolic amine (C8–C40)	III
Calcium long chain alkyl salicylate (C13+)	C
Caprolactam solutions	D
Cetyl alcohol (hexadecanol), see Alcohols (C13+)	....
Cetyl-Stearyl alcohol), *see* Alcohols (C13+)	III
† Coal tar	A
Copper salt of long chain (C17+) alkanoic acid	[D]
Cumene (isopropylbenzene), see Propylbenzene (all isomers)	....
Cyclohexane	C
Cyclohexanol	D
1,3-Cyclopentadiene dimer (molten)	B
p-Cymene	C
Decahydronaphthalene	D
iso-Decaldehyde	●C
n-Decaldehyde	●B
Decane, see n-Alkanes (C10+)	....
Decene	B
Decyl acetate	B
Decyl alcohol (all isomers)	B
n-Decylbenzene, *see* Alkyl(C9+)benzenes	III
Detergent alkylate	D
Diacetone alcohol	D
Dialkyl(C10–C14) benzenes, *see* Alkyl(C9+)benzenes	III
Dialkyl(C8–C9) diphenylamines	D
Dialkyl(C7–C13) phthalates *Including:*	D
Diisodecyl phthalate	
Diisononyl phthalate	
Dinonyl phthalate	
Ditridecyl phthalate	
Diundecyl phthalate	
Dibutyl carbinol, see Nonyl alcohol (all isomers)	....
ortho-Dibutyl phthalate	A
Dicyclopentadiene, *see* 1,3-Cyclopentadiene dimer (molten)	B
Diethylbenzene	A
Diethylene glycol	D
Diethylene glycol butyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	....
Diethylene glycol butyl ether acetate, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether acetate	....
Diethylene glycol dibutyl ether	D
Diethylene glycol diethyl ether	III
Diethylene glycol ethyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	....
Diethylene glycol ethyl ether acetate, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether acetate	....
Diethylene glycol n-hexyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	....
Diethylene glycol methyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	....
Diethylene glycol methyl ether acetate, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether acetate	....
Diethylene glycol phenyl ether	#
Diethylene glycol phthalate	D
Diethylene glycol propyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	....
Di-(2-ethylhexyl)adipate	D
Di-(2-ethylhexyl)phthalate, see Dioctyl phthalates	....
Diethyl phthalate	C
Diglycidyl ether of Bisphenol A	B
Diheptyl phthalate	III
Dihexyl phthalate	III
Diisobutylcarbinol, *see* Nonyl alcohol (all isomers)	C
Diisobutylene	B
Diisobutyl ketone	D
Diisobutyl phthalate	B
Diisodecyl phthalate, see Dialkyl(C7–C13) phthalates	....
Diisononyl adipate	D
Diisononyl phthalate, see Dialkyl(C7–C13) phthalates	....
Diisooctyl phthalate	III
Diisopropylbenzene (*all isomers*)	A
Diisopropyl naphthalene	D
Dimethyl adipate	B
Dimethylbenzene, see Xylenes	....
Dimethyl glutarate	C
Dimethyl phthalate	C
Dimethylpolysiloxane, *see* Polydimethylsiloxane	III
2,2-Dimethylpropane-1,3-diol (molten or solution)	D
Dimethyl succinate	C
Dinonyl phthalate, see Dialkyl(C7–C13) phthalates	....
Dioctyl phthalate	III
Dipentene	C
Diphenyl	A
Diphenyl, Diphenyl ether mixture	A
Diphenyl ether	A
Diphenyl ether, Biphenyl phenyl ether mixture	A
Dipropylene glycol	III
Dipropylene glycol butyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	....
Dipropylene glycol dibenzoate	[D]
Dipropylene glycol methyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	....
Distillates:	
Flashed feed stocks	I
Straight run	I
Ditridecyl adipate	III
Ditridecyl phthalate, see Dialkyl(C7–C13) phthalates	....
Diundecyl phthalate, see Dialkyl(C7–C13) phthalates	....
Dodecane (all isomers), *see also* n-Alkanes (C10+)	III
Dodecanol	B
Dodecene (all isomers)	B
Dodecyl alcohol, *see* Dodecanol	....
Dodecylbenzene, *see* Alkyl(C9+)benzenes	III
Dodecyl hydroxypropyl sulfide	A
Dodecyl phenol	A
Dodecyl xylene	III
Drilling mud (low toxicity) *(if flammable or combustible)*	[III]
Ethane	LFG
2-Ethoxyethyl acetate	C
Ethoxylated alkyloxy alkyl amine, see Ethoxylated long chain (C16+) alkyloxyalkanamine	....
Ethoxylated long chain (C16+) alkyloxyalkanamine	D
Ethoxy triglycol *(crude)*	D
Ethyl acetate	D
Ethyl acetoacetate	D
Ethyl alcohol	III
Ethyl amyl ketone	C
Ethylbenzene	B
Ethyl butanol	●D
Ethyl tert-butyl ether	C
Ethyl butyrate	C
Ethyl cyclohexane	C
Ethylene	LFG
Ethylene carbonate	III
Ethylene glycol	D
Ethylene glycol acetate	D
Ethylene glycol butyl ether acetate	C
Ethylene glycol diacetate	C
Ethylene glycol dibutyl ether	[D]
Ethylene glycol ethyl ether acetate, see 2-Ethoxyethyl acetate	....

TABLE 30.25–1.—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargo name	IMO Annex II Pollution Category
Ethylene glycol methyl butyl ether	D
Ethylene glycol methyl ether acetate	C
Ethylene glycol phenyl ether	D
Ethylene glycol phenyl ether, Diethylene glycol phenyl ether mixture	D
Ethylene-Propylene copolymer *(in liquid mixtures)*	[III]
Ethyl-3-ethoxypropionate	C
2-Ethylhexaldehyde, see Octyl aldehydes	....
2-Ethylhexanoic acid, see Octanoic acid (all isomers)	....
2-Ethylhexanol, see Octanol (all isomers)	....
Ethylhexoic acid, see 2-Ethylhexanoic acid	....
Ethyl hexyl phthalate	C
2-Ethyl-2-(hydroxymethyl) propane-1,3-diol, C8–C10 ester	D
Ethyl propionate	D
Ethyl toluene	B
Fatty acid (saturated, C13+), *see* Fatty acid (saturated, C14+)	....
Fatty acid (saturated, C14+)	III
Formamide	D
Furfuryl alcohol	C
† Gas oil, cracked	I
Gasoline blending stocks:	
Alkylates	I
† Reformates	I
Gasolines:	
† Automotive *(containing not over 4.23 grams lead per gallon)*	I
† Aviation *(containing not over 4.86 grams lead per gallon)*	I
Casinghead *(natural)*	I
Polymer	I
† Straight run	I
Glycerine	III
Glycerine (83%), Dioxanedimethanol (17%) mixture	D
Glycerol, see Glycerine	....
Glycerol monooleate	D
Glycerol polyalkoxylate	III
Glyceryl triacetate	III
Glycidyl ester of tertiary carboxylic acid, see Glycidyl ester of tridecyl acetic acid	....
Glycidyl ester of C10 trialkylacetic acid, *see* Glycidyl ester of tridecyl acetic acid	B
Glycidyl ester of tridecyl acetic acid	B
Glycidyl ester of versatic acid, see Glycidyl ester of tridecyl acetic acid	....
Glycol diacetate, see Ethylene glycol diacetate	....
Glycol triacetate, see Glyceryl triacetate	....
Glyoxal solution (40% or less)	D
Glyphosate solution (not containing surfactant)	D
Heptadecane, see n-Alkanes (C10+)	....
Heptane (all isomers), *see* Alkanes (C6–C9)	C
Heptanoic acid	D
Heptanol (all isomers)	C
Heptene (all isomers)	C
Heptyl acetate	B
Herbicide (C15 -H22 -NO2 -Cl), see Metolachlor	....
1-Hexadecylnaphthalene, 1,4-bis(Hexadecyl)naphthalene mixture	III
Hexaethylene glycol, see Polyethylene glycol	....
Hexamethylene glycol	III
Hexamethylenetetramine solutions	D
Hexane (all isomers), *see* Alkanes (C6–C9)	C
Hexanoic acid	D
Hexanol	D
Hexene (all isomers)	C
Hexyl acetate	B
Hexylene glycol	III
Hog grease, see Lard	....
2-Hydroxy-4-(methylthio)butanoic acid	C
Hydroxy terminated polybutadiene, *see* Polybutadiene, hydroxy terminated	....
Isophorone	D
Jet fuels:	
† JP-4	I
JP-5 *(kerosene, heavy)*	I
JP-8	●I
Kerosene	I
Lactic acid	D
Lard	III
Latex (ammonia (1% or less) inhibited)	D
Latex, liquid synthetic *including:*	III
Styrene-butadiene rubber	III
Carboxylated styrene-butadiene copolymer	III
Lecithin	III
Long chain alkaryl polyether (C11–C20)	C
Long chain alkaryl sulfonic acid (C16–C60)	D
Long chain alkylphenate/Phenol sulfide mixture	III
Magnesium long chain alkaryl sulfonate (C11–C50)	D
Magnesium long chain alkyl phenate sulfide (C8–C20)	[D]
Magnesium long chain alkyl salicylate (C11+)	C
Magnesium nonyl phenol sulfide, see Magnesium long chain alkyl phenate sulfide (C8–C20)	....
Magnesium sulfonate, see Magnesium long chain alkaryl sulfonate (C11–C50)	....
2-Mercaptobenzothiazol *(in liquid mixtures)*	#
Methane	LFG
3-Methoxy-1-butanol	III
3-Methoxybutyl acetate	D
1-Methoxy-2-propyl acetate	#
Methoxy triglycol (triethylene glycol methyl ether), see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	....
Methyl acetate	III
Methyl acetoacetate	D
Methyl alcohol	D
Methyl amyl acetate	C
Methyl amyl alcohol	C
Methyl amyl ketone	D
Methyl butanol, see the amyl alcohols	....
Methyl butenol	D
Methyl tert-butyl ether	D
Methyl butyl ketone	D
Methyl butyrate	C
Methyl ethyl ketone	III
N-Methylglucamine solution (70% or less)	III
Methyl heptyl ketone	B
Methyl isobutyl carbinol, see Methyl amyl alcohol	....
Methyl isobutyl ketone	D
3-Methyl-3-methoxybutanol	III
3-Methyl-3-methoxybutyl acetate	III
Methyl naphthalene	A
Methyl pentene, see Hexene (all isomers)	....
Methyl tert-pentyl ether *(IMO cargo name)* tert-Amyl methyl ether	....
2-Methyl-1,3-propanediol	III
Methyl propyl ketone	D
N-Methyl-2-pyrrolidone	D
Metolachlor	B
Mineral spirits	I
Myrcene	D
Naphtha:	
† Aromatic *(having less than 10% Benzene)*	●I
Heavy	●I
Paraffinic	●I
† Petroleum	I
† Solvent	I
Stoddard Solvent	●I
† Varnish makers' and painters' (75%)	●I
Naphthalene sulfonic acid-formaldehyde copolymer, sodium salt solution	D
Naphthenic acid	A
Nonane (all isomers), *see* Alkanes (C6–C9)	C
Nonanoic acid (all isomers)	D
Nonanoic Tridecanoic acid mixture	●D
Nonene (all isomers)	B

TABLE 30.25-1.—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargo name	IMO Annex II Pollution Category
Nonyl acetate	C
Nonyl alcohol (all isomers)	C
Nonyl methacrylate *monomer*	D
Nonyl phenol	A
Nonyl phenol poly(4+)ethoxylates	B
Nonyl phenol sulfide (90% or less), see Alkyl phenol sulfide (C8–C40)	
Noxious liquid, N.F., (1) n.o.s. ("trade name" contains "principle components") ST 1, Cat A *(if combustible)*	A
Noxious liquid, F., (2) n.o.s. ("trade name" contains "principle components") ST 1, Cat A	A
Noxious liquid, N.F., (3) n.o.s. ("trade name" contains "principle components") ST 2, Cat A *(if combustible)*	A
Noxious liquid, F., (4) n.o.s. ("trade name" contains "principle components") ST 2, Cat A	A
Noxious liquid, N.F., (5) n.o.s. ("trade name" contains "principle components") ST 2, Cat B *(if combustible)*	B
Noxious liquid, N.F., (6) n.o.s. ("trade name" contains "principle components") ST 2, Cat B, mp. equal to or greater than 15 deg. C *(if combustible)*	B
Noxious liquid, F., (7) n.o.s. ("trade name" contains "principle components") ST 2, Cat B	B
Noxious liquid, F., (8) n.o.s. ("trade name" contains "principle components") ST 2, Cat B, mp. equal to or greater than 15 deg. C	B
Noxious liquid, N.F., (9) n.o.s. ("trade name" contains "principle components") ST 3, Cat A *(if combustible)*	A
Noxious liquid, F., (10) n.o.s. ("trade name" contains "principle components") ST 3, Cat A	A
Noxious liquid, N.F., (11) n.o.s. ("trade name" contains "principle components") ST 3, Cat B *(if combustible)*	B
Noxious liquid, N.F., (12) n.o.s. ("trade name" contains "principle components") ST 3, Cat B, mp. equal to or greater than 15 deg. C *(if combustible)*	B
Noxious liquid, F., (13) n.o.s. ("trade name" contains "principle components") ST 3, Cat B	B

TABLE 30.25-1.—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargo name	IMO Annex II Pollution Category
Noxious liquid, F., (14) n.o.s. ("trade name" contains "principle components") ST 3, Cat B, mp. equal to or greater than 15 deg. C	B
Noxious liquid, N.F., (15) n.o.s. ("trade name" contains "principle components") ST 3, Cat C *(if combustible)*	C
Noxious liquid, F., (16) n.o.s. ("trade name" contains "principle components") ST 3, Cat C	C
Noxious liquid, n.o.s. (17) ("trade name," contains "principal components"), Category D *(if flammable or combustible)*	D
Non-noxious liquid, n.o.s. (18) ("trade name," contains "principal components"), Appendix III *(if flammable or combustible)*	III
Octadecene, see the olefin or alpha-olefin entries	
Octadecenoamide solution *(oleamide)*	[D]
Octane (all isomers), *see* Alkanes (C6–C9)	C
Octanoic acid (all isomers)	D
Octanol (all isomers)	C
Octene (all isomers)	B
Octyl acetate	C
Octyl alcohol (iso-, n-), see Octanol (all isomers)	
Octyl aldehydes	B
Octyl decyl adipate	III
Octyl phthalate (Di-(2-ethylhexyl)phthalate), see Dioctyl phthalates	
Oil, edible:	
Beechnut	D
Castor	D
Cocoa butter	D
Coconut	D
Cod liver	D
Corn	D
Cottonseed	D
Fish, *n.o.s.*	D
Groundnut	D
Hazelnut	D
Lard	@III
Maize, *see* Corn oil	D
Nutmeg butter	D
Olive	D
Palm	D
Palm kernel	D
Peanut	D
Poppy	D
Raisin seed	D
Rapeseed	D
Rice bran	D
Safflower	D
Salad	D
Sesame	D
Soya bean	D

TABLE 30.25-1.—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargo name	IMO Annex II Pollution Category
Sunflower, *see* Sunflower seed	D
Sunflower seed	D
Tucum	D
Vegetable, *n.o.s.*	D
Walnut	D
Oil, fuel:	
No. 1 *(kerosene)*	I
No. 1-D	I
No. 2	I
No. 2-D	I
No. 4	I
No. 5	I
No. 6	I
Oil, misc:	
Aliphatic	@I
Animal, *n.o.s.*	D
Aromatic	I
Clarified	I
Coal	#
Coconut oil, fatty acid	C
Coconut oil, fatty acid methyl ester	D
Cottonseed, fatty acid, see Cottonseed oil, fatty acid	
† Crude	I
Diesel	I
Gas, high pour	@I
Gas, low pour	@I
Gas, low sulfur	@I
Heartcut distillate	I
Lanolin	D
Linseed	D
Lubricating	I
Mineral	I
Mineral seal	@I
Motor	I
Neatsfoot	D
Oiticica	D
Palm oil, fatty acid methyl ester	D
Penetrating	I
Perilla	D
Pilchard	D
Pine	C
Residual	I
Road	I
Rosin	B
Seal	I
Soapstock	#
Soya bean (epoxidized)	[D]
Sperm	D
Spindle	I
Tall	B
Tall, fatty acid	C
Transformer	I
Tung	D
Turbine	I
Whale	D
alpha-Olefins (C6–C18)	B
alpha-Olefins (C13–C18)	III
Olefin mixtures (C5–C7)	C
Olefin mixtures (C5–C15)	B
Olefins (C13+, all isomers)	III
Olefin/Alkyl ester copolymer (molecular weight 2000+)	D
Oleic acid	D

TABLE 30.25-1.—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargo name	IMO Annex II Pollution Category
Oleyl alcohol (octadecenol), see Alcohols (C13+)	
Palm kernel acid oil, methyl ester	[D]
Palm stearin	D
n-Paraffins (C10–C20), see n-Alkanes (C10+)	
Pentadecanol, see Alcohols (C13+)	
Pentaethylene glycol, see Polyethylene glycols	
Pentaethylenehexamine	D
Pentane (all isomers)	C
Pentanoic acid	D
Pentene (all isomers)	C
n-Pentyl propionate	C
Petrolatum	III
1-Phenyl-1-xylyl ethane	C
Phosphate esters, alkyl(C12–C14) amine	B
Phosphosulfurized bicyclic terpene	#
Pinene, see the alpha- or beta-isomers	
alpha-Pinene	A
beta-Pinene	B
Polyalkylene glycols, Polyalkylene glycol monoalkyl ethers mixtures	@D
Polyalkylene glycol butyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	
Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	D
Including:	
Diethylene glycol butyl ether	
Diethylene glycol ethyl ether	
Diethylene glycol n-hexyl ether	
Diethylene glycol methyl ether	
Diethylene glycol n-propyl ether	
Dipropylene glycol butyl ether	
Dipropylene glycol methyl ether	
Polypropylene glycol methyl ether	
Triethylene glycol butyl ether	
Triethylene glycol ethyl ether	
Triethylene glycol methyl ether	
Tripropylene glycol methyl ether	
Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether acetate	D
Including:	
Diethylene glycol butyl ether acetate	
Diethylene glycol ethyl ether acetate	
Diethylene glycol methyl ether acetate	
Polyalkylene oxide polyol	C
Polycarboxylic ester (C9+), see Ditridecyl adipate.	

TABLE 30.25-1.—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargo name	IMO Annex II Pollution Category
Polyalkyl(C10–C20) methacrylate	D
Polybutadiene, hydroxy terminated	[III]
Polybutene	III
Polybutenyl succinimide	D
Polydimethylsiloxane	#
Polyether (molecular weight 2000+)	D
Polyethylene glycol	III
Polyethylene glycol dimethyl ether	III
Polyethylene glycol monoalkyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	
Polyglycerine, Sodium salts solution (containing less than 3% Sodium hydroxide)	III
Polyglycerol	III
Polyisobutenyl anhydride adduct	III
Poly(4+)isobutylene	III
Polymerized esters	#
Polyolefin (molecular weight 300+)	III
Polyolefin amide alkeneamine (C17+)	D
Polyolefin amide alkeneamine (C28+)	D
Polyolefin amide alkeneamine borate (C28–C250)	D
Polyolefin amide alkeneamine/Molybdenum oxysulfide mixture	C
Polyolefin amide alkeneamine polyol	D
Polyolefin anhydride	D
Polyolefin ester (C28–C250)	D
Polyolefin phenolic amine (C28–C250)	D
Polyolefin phosphorosulfide, barium derivative (C28–C250)	C
Poly(20)oxyethylene sorbitan monooleate	III
Poly(5+)propylene	III
Polypropylene glycol	D
Polypropylene glycol methyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	
Polysiloxane	III
Potassium oleate	C
Potassium salt of polyolefin acid	III
Propane	LFG
n-Propoxypropanol (propylene glycol propyl ether), see Propylene glycol monoalkyl ether	
iso-Propyl acetate	III
n-Propyl acetate	D
iso-Propyl alcohol	III
n-Propyl alcohol	III
iso-Propylbenzene (cumene), see Propylbenzene (all isomers)	

TABLE 30.25-1.—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargo name	IMO Annex II Pollution Category
n-Propylbenzene, see Propylbenzene (all isomers)	
Propylbenzene (all isomers)	A
iso-Propylcyclohexane	C
Propylene	LFG
Propylene-butylene copolymer	III
Propylene carbonate	III
Propylene dimer	C
Propylene glycol	III
Propylene glycol n-butyl ether, see Propylene glycol monoalkyl ether	
Propylene glycol ethyl ether, see Propylene glycol monoalkyl ether	
Propylene glycol methyl ether, see Propylene glycol monoalkyl ether	
Propylene glycol methyl ether acetate	D
Propylene glycol monoalkyl ether	D
Including:	
n-Propoxypropanol	
Propylene glycol n-butyl ether	
Propylene glycol ethyl ether	
Propylene glycol methyl ether	
Propylene glycol propyl ether	
Propylene glycol phenyl ether	D
Propylene glycol propyl ether, see Propylene glycol monoalkyl ether	
Propylene polymer *(in liquid mixtures)*	#
Propylene tetramer	B
Propylene trimer	B
Pseudocumene, see Trimethylbenzenes	
Rum, see Alcoholic beverages, n.o.s.	
Sodium acetate, Glycol, Water mixture (containing 1% or less, Sodium hydroxide) *(If flammable or combustible)*	#
Sodium acetate solution	D
Sodium benzoate *solution*	D
Sodium long chain alkyl salicylate (C13+)	[C]
Soyabean oil (epoxidized)	[D]
Stearic acid, see Fatty acid (saturated, C14+)	
Stearyl alcohol *(octadecanol)*	III
Sulfohydrocarbon (C3–C88)	D
Sulfohydrocarbon, long chain (C18+) alkylamine	B
Sulfolane	D
Sulfurized fat (C14–C20)	D
Sulfurized polyolefinamide alkene(C28–C250)amine	D
Tallow	D
Tallow alcohol, see Alcohols (C13+)	
Tallow fatty acid	D

TABLE 30.25–1.—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargo name	IMO Annex II Pollution Category
Tallow *alkyl* nitrile	#
Tetradecanol, see Alcohols (C13+)	
Tetradecene, see the olefin or alpha-olefin entries	
Tetradecylbenzene, *see* Alkyl(C9+)benzenes	III
Tetraethylene glycol	III
Tetrahydronaphthalene	C
Tetrapropylbenzene, see Alkyl(C9+)benzenes	
Toluene	C
Triarylphosphate, see Triisopropylated phenyl phosphates	
Tributyl phosphate	B
Tricresyl phosphate (less than 1% of the ortho isomer)	A
Tridecane, see n-Alkanes (C10+)	
Tridecanoic acid	B
Tridecanol, see Alcohols (C13+)	
Tridecene, see Olefins (C13+)	
Tridecyl acetate	III
Tridecylbenzene, *see* Alkyl(C9+)benzenes	III
Triethylbenzene	A
Triethylene glycol	III
Triethylene glycol butyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	
Triethylene glycol butyl ether mixture	#
Triethylene glycol di-(2-ethylbutyrate)	[C]
Triethylene glycol ether mixture	#
Triethylene glycol ethyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	
Triethylene glycol methyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	
Triethyl phosphate	D
Triisooctyl trimellitate	#
Triisopropanolamine	III
Triisopropylated phenyl phosphates	A
Trimethylbenzene (all isomers)	A
Trimethylol propane polyethoxylate	D
2,2,4-Trimethyl-1,3-pentanediol diisobutyrate	III
2,2,4-Trimethyl-3-pentanol-1-isobutyrate	#
Tripropylene, see Propylene trimer	
Tripropylene glycol	III
Tripropylene glycol methyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	
Trixylenyl phosphate	A
Trixylyl phosphate, *see* Trixylenyl phosphate	A
Turpentine	B
†*Turpentine substitute, see* White spirit (low (15–20%) aromatic)	
Undecanol, see 1- Undecyl alcohol	
Undecene	B
1- Undecyl alcohol	B
Undecylbenzene, *see* Alkyl(C9+)benzenes	III
Vegetable oils, n.o.s. (*see also* Oil, edible)	D
Including:	
Beechnut oil	
Castor oil	
Cocoa butter	
Coconut oil	
Corn oil	
Cottonseed oil	
Groundnut oil	
Hazelnut oil	
Linseed oil	
Nutmeg butter	
Oiticica oil	
Olive oil	
Palm kernel oil	
Palm oil	
Peel oil (oranges and lemons)	
Perilla oil	
Poppy oil	
Raisin seed oil	
Rapeseed oil	
Rice bran oil	
Safflower oil	
Salad oil	
Sesame oil	
Soya bean oil	
Sunflower seed oil	
Tucum oil	
Tung oil	
Walnut oil	
Vegetable acid oils and distillates, n.o.s.	D
Including:	
Corn acid oil	
Cottonseed acid oil	
Dark mixed acid oil	
Groundnut acid oil	
Mixed acid oil	
Mixed general acid oil	
Mixed hard acid oil	
Mixed soft acid oil	
Rapeseed acid oil	
Safflower acid oil	
Soya acid oil	
Sunflower seed acid oil	
Waxes:	D
Candelilla	⊖D
Carnauba	⊖D
Paraffin	III
†*White spirit, see* White spirit (low (15–20%) aromatic)	
†White spirit (low (15–20%) aromatic)	B
Wine, see Alcoholic beverages, n.o.s.	
Xylenes *(ortho-, meta-, para-)*	C
Zinc alkaryl dithiophosphate (C7–C16)	C
Zinc alkenyl carboxamide	D
Zinc alkyl dithiophosphate (C3–C14)	B

NOTE: See table 2 of part 153 for additional cargoes permitted to be carried by tank barge.

Explanation of Symbols: As used in this table the following stands for:

A, B, C, D—NLS Category of Annex II of MARPOL 73/78.

I—Considered an "oil" under Annex I of MARPOL 73/78.

III—Appendix III of Annex II (non-NLS cargoes) of MARPOL 73/78.

LFG—Liquefied flammable gas.

#—No determination of NLS status. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).

[ ]—A NLS category in brackets indicates that the product is provisionally categorized and that further data are necessary to complete the evaluation of its pollution hazards. Until the hazard evaluation is completed, the pollution category assigned is used.

⊖—The NLS category has been assigned by the U.S. Coast Guard, in absence of one assigned by the IMO. The category is based upon a GESAMP Hazard Profile or by analogy to a closely related product having an NLS assigned.

†—The provisions contained in 46 CFR part 197, subpart C, may apply to this cargo.

Abbreviations for Noxious liquid Cargoes:

N.F.—non-flammable (flash point greater than 60 degrees C (140 degrees F) cc).

F.—flammable (flash point less than or equal to 60 degrees C (140 degrees F) cc).

n.o.s.—not otherwise specified.

ST—Ship type.

Cat—Pollution category.

Words in italic are not part of the cargo name but may be used in addition to the cargo name.

When one entry references another entry by use of the word "*see*", and both names are in roman type, either name may be used as the cargo name (e.g., Diethyl ether, *see* Ethyl ether). However, the referenced entry is preferred.

PART 150—COMPATIBILITY OF CARGOES

7. The citation of authority for part 150 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46. Section 150.105 issued under 44 U.S.C. 3507; 49 CFR 1.45.

8. Revise Table I to read as follows:

TABLE I.—ALPHABETICAL LIST OF CARGOES

Chemical name	Group No.	Footnote	CHRIS Code	Related CHRIS Codes
Acetaldehyde	19		AAD	
Acetic acid	4	2	AAC	
Acetic anhydride	11		ACA	
Acetochlor	10		ACG	
Acetone	18	2	ACT	
Acetone cyanohydrin	0	1, 2	ACY	
Acetonitrile	37		ATN	
Acetophenone	18		ACP	
Acrolein	19	2	ARL	
Acrylamide solution	10		AAM	
Acrylic acid	4	2	ACR	
Acrylonitrile	15	2	ACN	
Acrylonitrile-Styrene copolymer dispersion in Polyether polyol	20		ALE	
Adiponitrile	37		ADN	
Alachlor	33		ALH	
Alcohols (C13+)	20		ALY	
Including:				
Oleyl alcohol (octadecenol)				
Pentadecanol				
Tallow alcohol				
Tetradecanol				
Tridecanol				
Alcoholic beverages	20			
Alcohol polyethoxylates	20			APU/APV/APW/AET
Alcohol polyethoxylates, secondary	20			AEA/AEB
Alkanes (C6-C9)	31	1	ALK	
Including:				
Heptanes				
Hexanes				
Nonanes				
Octanes				
n-Alkanes (C10+)	31	1	ALJ	
Including:				
Decanes				
Dodecanes				
Heptadecanes				
Tridecanes				
Undecanes				
Iso- & cyclo-Alkanes (C10-C11)	31	1	AKI	
Iso- & cyclo-Alkanes (C12+)	31	1	AKJ	
Alkane (C14-C17) sulfonic acid, sodium salt solution	34		AKA	
Alkaryl polyether (C9-C20)	41		AKP	
Alkenyl(C11+)amide	11		AKM	
Alkenyl(C16-C20)succinic anhydride	11		AAH	
Alkyl acrylate-Vinyl pyridine copolymer in Toluene	32	2	AAP	
Alkyl(C8+)amine, Alkenyl (C12+) acid ester mixture	34		AAA	
Alkylaryl phosphate mixtures (more than 40% Diphenyl tolyl phosphate; less than 0.02% ortho-isomer).	34		APD	
Alkyl(C3-C4)benzenes	32	2	AKC	
Including:				
Butylbenzenes				
Cumene				
Propylbenzenes				
Alkyl(C5-C8)benzenes	32	2	AKD	
Including:				
Amylbenzenes				
Heptylbenzenes				
Hexylbenzenes				
Octylbenzenes				
Alkyl(C9+)benzenes	32	2	AKB	
Including:				
Decylbenzenes				
Dodecylbenzenes				
Nonylbenzenes				
Tetradecylbenzenes				
Tetrapropylbenzenes				
Tridecylbenzenes				
Undecylbenzenes				
Alkylbenzene, Alkylindane, Alkylindene mixture (each C12-C17)	32	2	AIH	
Alkylbenzenesulfonic acid	0	1, 2		ABS/ABN

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Alkylbenzenesulfonic acid, sodium salt solutions	33	....	ABT	
Alkyl dithiothiadiazole (C6-C24)	33	....	ADT	
Alkyl ester copolymer (C4-C20)	34	....	AES	
Alkyl(C7-C9) nitrates	34	2	AKN	ONE
Alkyl(C7-C11) phenol poly(4-12)ethoxylate	40	....	APN	
Alkyl(C8-C40) phenol sulfide	34	....	AKS	
Alkyl(C8-C9) phenylamine in aromatic solvents	9	....	ALP	
Alkyl(C9-C15) phenyl propoxylate	40	....		
Alkyl phthalates	34	....		
Alkyl(C10-C20, saturated and unsaturated) phosphite	34	....	AKL	
Alkyl polyglucoside solutions	43	....		AGL/AGN/AGO/AGP/AGM
Alkyl sulfonic acid ester of phenol	34	....		
Allyl alcohol	15	2	ALA	
Allyl chloride	15	1	ALC	
Aluminium chloride, Hydrochloric acid solution	0	1	AHS	
Aluminum sulfate solution	43	2	ASX	ALM
2-(2-Aminoethoxy)ethanol	8	....	AEX	
Aminoethyldiethanolamine, Aminoethylethanolamine solution	8	....		
Aminoethylethanolamine	8	....	AEE	
N-Aminoethylpiperazine	7	....	AEP	
2-Amino-2-hydroxymethyl-1,3-propanediol solution	43	....	AHL	
2-Amino-2-methyl-1-propanol	8	....	APQ	APR
Ammonia, anhydrous	6	....	AMA	
Ammonia, aqueous (28% or less Ammonia) *(IMO cargo name), see* Ammonium hydroxide	6	....		AMH
Ammonium bisulfite solution	43	2	ABX	ASU
Ammonium hydrogen phosphate solution	0	1	AMI	
Ammonium hydroxide (28% or less Ammonia)	6	....	AMH	
Ammonium lignosulfonate solution, *see also* Lignin liquor	43	....		
Ammonium nitrate solution	0	1	ANR	AND/AMN
Ammonium nitrate, Urea solution (containing Ammonia)	6	....	UAS	
Ammonium nitrate, Urea solution (not containing Ammonia)	43	....	ANU	UAT
Ammonium polyphosphate solution	43	....	AMO	APP
Ammonium sulfate solution	43	....	AME	AMS
Ammonium sulfide solution	5	....	ASS	ASF
Ammonium thiocyanate, Ammonium thiosulfate solution	0	1	ACS	
Ammonium thiosulfate solution	43	....	ATV	ATF
Amyl acetate	34	....	AEC	IAT/AML/AAS/AYA
Amyl alcohol	20	....	AAI	IAA/AAN/ASE/APM
Amylene, see Pentene	....	....	AMZ	PTX
tert-Amyl methyl ether (*see also*, Methyl tert-pentyl ether)	41	....	AYE	
Amyl methyl ketone, see Methyl amyl ketone	....	....	AMK	MAK
Aniline	9	....	ANL	
Animal and Fish oils, n.o.s.	34	....	AFN	
Including:				
Cod liver oil				
Lanolin				
Neatsfoot oil				
Pilchard oil				
Sperm oil				
Animal and Fish acid oils and distillates, n.o.s.	34	....	AFA	
Including:				
Animal acid oil				
Fish acid oil				
Lard acid oil				
Mixed acid oil				
Mixed general acid oil				
Mixed hard acid oil				
Mixed soft acid oil				
Anthracene oil (Coal tar fraction), *see* Coal tar	33	....	AHO	COR
Apple juice	43	....		
Aryl polyolefin (C11-C50)	30	....	AYF	
Asphalt	33	....	ASP	ACU
Asphalt blending stocks, roofers flux	33	....	ARF	
Asphalt blending stocks, straight run residue	33	....	ASR	
Asphalt emulsion (*ORIMULSION*)	33	....	ASQ	
Aviation alkylates	33	....	AVA	GAV
Barium long chain alkaryl(C11-C50) sulfonate	34	....	BCA	
Barium long chain alkyl(C8-C14)phenate sulfide	34	....	BCH	

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Behenyl alcohol	20	....		
Benzene	32	2	BNZ	
Benzene hydrocarbon mixtures (having 10% Benzene or more)	32	2	BHB	BHA
Benzenesulfonyl chloride	0	1, 2	BSC	
Benzene, Toluene, Xylene mixtures	32	2	BTX	
Benzene tricarboxylic acid, trioctyl ester	34	....		
Benzylacetate	34	....	BZE	
Benzyl alcohol	21	....	BAL	
Benzyl chloride	36	....	BCL	
Brake fluid base mixtures	20	....	BFX	
Bromochloromethane	36	....	BCM	
Butadiene	30	....	BDI	
Butadiene, Butylene mixtures (cont. Acetylenes)	30	....	BBM	
Butane	31	1	BMX	IBT/BUT
1,4-Butanediol, see Butylene glycol	....	....	BDO	BUG
2-Butanone, see Methyl ethyl ketone	....	....		
Butene, see Butylene	....	....		IBL/BTN
Butene oligomer	30	....	BOL	
Butyl acetate	34	....	BAX	IBA/BCN/BTA/BYA
Butyl acrylate	14	1	BAR	BAI/BTC
Butyl alcohol	20	2	BAY	IAL/BAN/BAS/BAT
Butylamine	7	....	BTY	IAM/BAM/BTL/BUA
Butylbenzene, *see* Alky(C3-C4)benzenes	32	2	BBE	AKC
Butyl benzyl phthalate	34	....	BPH	
Butyl butyrate	34	....	BBA	BUB/BIB
Butylene	30	....	BTN	IBL
Butylene glycol	20	2	BUG	BDO
1,3-Butylene glycol, see Butylene glycol	....	....		BUG
Butylene oxide	16	1	BTO	
Butyl ether	41	....	BTE	
Butyl formate	34	....		BFI/BFN
Butyl heptyl ketone	18	....	BHK	
Butyl methacrylate	14	1	BMH	BMI/BMN
Butyl methacrylate, Decyl methacrylate, Cetyl-Eicosyl methacrylate mixture	14	1	DER	
Butyl methyl ketone, see Methyl butyl ketone	....	....		MBK
Butyl phenol, Formaldehyde resin in Xylene	32	2		
n-Butyl propionate	34	....	BPN	
Butyl stearate	34	....		
Butyl toluene	32	2	BUE	
Butyraldehyde	19	....	BAE	BAD/BTR
Butyric acid	4	....	BRA	IBR
gamma-Butyrolactone	0	1, 2	BLA	
C9 Resinfeed (DSM)	32	2	CNR	
Calcium alkyl(C9)phenol sulfide, polyolefin phosphorosulfide mixture	34	....	CPX	
Calcium alkyl salicylate, see Calcium long chain alkyl salicylate (C13+)	....	....		CAK
Calcium bromide solution, see Drilling brines	....	....		DRB
Calcium bromide, Zinc bromide solution, see Drilling brine (containing Zinc salts)	....	....		DZB
Calcium carbonate slurry	34	....		
Calcium chloride solution	43	....	CCS	CLC
Calcium hydroxide slurry	5	....	COH	
Calcium hypochlorite solutions	5	....		CHZ/CHU/CHY
Calcium lignosulfonate solution, *see also* Lignin liquor	43	....		
Calcium long chain alkaryl sulfonate (C11-C50)	34	....	CAY	
Calcium long chain alkyl phenates	34	....		CAN/CAW
Calcium long chain alkyl phenate sulfide (C8-C40)	34	....	CPI	
Calcium long chain alkyl salicylate (C13+)	34	....	CAK	
Calcium long chain alkyl phenolic amine (C8-C40)	9	....	CPQ	
Calcium nitrate solution	34	....	CNU	
Calcium nitrate, Magnesium nitrate, Potassium chloride solution	34	....		
Calcium sulfonate, Calcium carbonate, Hydrocarbon solvent mixture	33	....		
Camphor oil	18	....	CPO	
Canola oil, see rapeseed oil under "oils, edible."	....	....		
Caprolactam solution	22	....	CLS	
Caramel solutions	43	....		
Carbolic oil	21	....	CBO	
Carbon disulfide	38	....	CBB	
Carbon tetrachloride	36	2	CBT	
Cashew nut shell oil (untreated)	4	....	OCN	

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Catoxid feedstock	36	2	CXF	
Caustic potash solution	5	2	CPS	
Caustic soda solution	5	2	CSS	
Cetyl alcohol (hexadecanol), see Alcohols (C13+)	....	....		ALY
Cetyl-Eicosyl methacrylate mixture	14	1	CEM	
Cetyl-Stearyl alcohol, *see* Alcohols (C13+)	....	....		ALY
Chlorinated paraffins (C10-C13)	36	....	CLH	
Chlorinated paraffins (C14-C17) (with 52% Chlorine)	36	....	CLJ	
Chlorine	0	1	CLX	
Chloroacetic acid solution	4	....	CHM	CHL/MCA
Chlorobenzene	36	....	CRB	
Chlorodifluoromethane (*monochlorodifluoromethane*)	36	....	MCF	
Chloroform	36	....	CRF	
Chlorohydrins	17	1	CHD	
4-Chloro-2-methylphenoxyacetic acid, Dimethylamine salt solution	9	....	CDM	
Chloronitrobenzene	42	....	CNO	
1-(4-Chlorophenyl)-4,4-dimethyl pentan-3-one	18	2	CDP	
Chloropropionic acid	4	....	CPM	CLA/CLP
Chlorosulfonic acid	0	1	CSA	
Chlorotoluene	36	....	CHI	CTM/CTO/CRN
Choline chloride solutions	20	....	CCO	
Citric acid	4	....	CIS	CIT
Clay slurry, *see also* Kaolin clay slurry	43	....		
Coal tar	33	....	COR	OCT
Coal tar distillate	33	....	CDL	
Coal tar, high temperature	33	....	CHH	
Coal tar pitch	33	....	CTP	
Cobalt naphthenate in solvent naphtha	34	....	CNS	
Coconut oil, fatty acid	34	....	CFA	
Copper salt of long chain (C17+) alkanoic acid	34	....	CUS	CFT
Corn syrup	43	....	CSY	
Cottonseed oil, fatty acid	34	....	CFY	
Creosote	21	2	CCT	CCW/CWD
Cresols	21	....	CRS	CRL/CSL/CSO
Cresylate spent caustic	5	....	CSC	
Cresylic acid	21	....	CRY	
Cresylic acid, dephenolized	21	....	CAD	
Cresylic acid, sodium salt solution *(IMO cargo name), see* Cresylate spent caustic	5	....		CSC
Cresylic acid tar	21	....	CRX	
Crotonaldehyde	19	2	CTA	
Cumene (isopropyl benzene), see Propylbenzene	....	....	CUM	PBY
1,5,9-Cyclododecatriene	30	....	CYT	
Cycloheptane	31	1	CYE	
Cyclohexane	31	1	CHX	
Cyclohexanol	20	....	CHN	
Cyclohexanone	18	....	CCH	
Cyclohexanone, Cyclohexanol mixtures	18	2	CYX	
Cyclohexyl acetate	34	....	CYC	
Cyclohexylamine	7	....	CHA	
1,3-Cyclopentadiene dimer	30	....	CPD	DPT
Cyclopentadiene, Styrene, Benzene mixture	30	....	CSB	
Cyclopentane	31	1	CYP	
Cyclopentene	30	....	CPE	
Cymene	32	2	CMP	
Decahydronaphthalene	33	....	DHN	
Decaldehyde	19	....		IDA/DAL
Decane, see n-Alkanes (C10+)	....	....	DCC	ALJ
Decanoic acid	4	....	DCO	
Decene	30	....	DCE	
Decyl acetate	34	....	DYA	
Decyl acrylate	14	1	DAT	IAI/DAR
Decyl alcohol	20	2	DAX	ISA/DAN
Decylbenzene, *see* Alkyl(C9+) benzenes	32	2	DBZ	AKB
Decyloxytetrahydro-thiophene dioxide	0	1, 2	DHT	
Degummed C9 (DOW)	33	....	DGC	
Dextrose solution, *see* Glucose solution	43	....	DTS	GLU
Diacetone alcohol	20	2	DAA	
Dialkyl(C10-C14) benzenes, *see* Alkyl(C9+) benzenes	32	2	DAB	AKB
Dialkyl(C8-C9) diphenylamines	9	....	DAQ	
Dialkyl(C7-C13) phthalates	34	....	DAH	

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Including:				
Diisodecyl phthalate				
Diisononyl phthalate				
Dinonyl phthalate				
Ditridecyl phthalate				
Diundecyl phthalate				
Dibromomethane	36	....	DBH	
Dibutylamine	7	....	DBA	
Dibutyl carbinol, see Nonyl alcohol	....	....		NNS
Dibutyl hydrogen phosphonate	34	....	DHD	
Dibutylphenols	21	....		DBT/DBV, DBW
Dibutyl phthalate	34	....	DPA	
Dichlorobenzene	36	....	DBX	DBM/DBO/DBP
3,4-Dichloro-1-butene	36	....	DCD	DCB
Dichlorodifluoromethane	36	....	DCF	
1,1-Dichloroethane	36	....	DCH	
2,2′-Dichloroethyl ether	41	....	DEE	
1,6-Dichlorohexane	36	....	DHX	
2,2′-Dichloroisopropyl ether	36	....	DCI	
Dichloromethane	36	2	DCM	
2,4-Dichlorophenol	21	....	DCP	
2,4-Dichlorophenoxyacetic acid, Diethanolamine salt solution	43	....	DDE	
2,4-Dichlorophenoxyacetic acid, Dimethylamine salt solution	0	1, 2	DAD	DDA/DSX
2,4-Dichlorophenoxyacetic acid, Triisopropano-lamine salt solution	43	2	DTI	
Dichloropropane	36	....	DPX	DPB/DPP/DPC/DPL
1,3-Dichloropropene	15	1	DPS	DPU/DPF
Dichloropropene, Dichloropropane mixtures	15	1	DMX	
2,2-Dichloropropionic acid	4	....	DCN	
Dicyclopentadiene, *see also* 1,3-Cyclopentadiene dimer	30	....	DPT	CPD
Diethanolamine	8	....	DEA	
Diethanolamine salt of 2,4-Dichlorophenoxyacetic acid solution, see 2,4-Dichlorophenoxyacetic acid, Diethanolamine salt solution.	....	....		DDE
Diethylamine	7	....	DEN	
Diethylaminoethanol *(IMO cargo name), see* Diethylethanolamine	8	....		DAE
2,6-Diethylaniline	9	....	DMN	
Diethylbenzene	32	2	DEB	
Diethylene glycol	40	2	DEG	
Diethylene glycol butyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether	....	....	DME	PAG
Diethylene glycol butyl ether acetate, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether acetate.	....	....	DEM	PAF
Diethylene glycol dibenzoate	34	....	DGZ	
Diethylene glycol dibutyl ether	40	....	DIG	
Diethylene glycol diethyl ether	40	....		
Diethylene glycol ethyl ether, see Poly(2-8)alkylene glycol monoalkyl (C1-C6) ether	....	....	DGE	PAG
Diethylene glycol ethyl ether acetate, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether acetates.	....	....	DGA	PAF
Diethylene glycol n-hexyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether	....	....	DHE	PAG
Diethylene glycol methyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether	....	....	DGM	PAG
Diethylene glycol methyl ether acetate, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether acetate.	....	....	DGR	PAF
Diethylene glycol phenyl ether	40	....	DGP	
Diethylene glycol phthalate	34	....	DGL	
Diethylene glycol propyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether	....	....	DGO	PAG
Diethylenetriamine	7	2	DET	
Diethylenetriamine pentaacetic acid, pentasodium salt solution	43	....		
Diethylethanolamine	8	....	DAE	
Diethyl ether *(IMO cargo name), see* Ethyl ether	41	....		EET
Diethyl hexanol, see Decyl alcohol	....	....		DAX
Di-(2-ethylhexyl)adipate	34	....	DEH	
Di-(2-ethylhexyl)phosphoric acid	1	1	DEP	
Di-(2-ethylhexyl)phthalate, see Dioctyl phthalate	34	....	DIE	DOP
Diethyl phthalate	34	....	DPH	
Diethyl sulfate	34	....	DSU	
Diglycidyl ether of Bisphenol A	41	....	BDE	BPA
Diglycidyl ether of Bisphenol F	41	....	DGF	
Diheptyl phthalate	34	....	DHP	
Di-n-hexyl adipate	34	....	DHA	
Dihexyl phthalate	34	....		
1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution	5	....	DDH	
Diisobutylamine	7	....	DBU	

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Diisobutyl carbinol *(commercial cargo name), see* Nonyl alcohol	20	....	DBC	NNS
Diisobutylene	30	....	DBL	
Diisobutyl ketone	18	....	DIK	
Diisobutyl phthalate	34	....	DIT	
Diisodecyl phthalate, see Dialkyl(C7-C13) phthalates	....	....	DID	DAH
Diisononyl adipate	34	....	DNY	
Diisononyl phthalate, see Dialkyl(C7-C13) phthalates	....	....	DIN	DAH
Diisooctyl phthalate	34	....	DIO	
Diisopropanolamine	8	....	DIP	
Diisopropylamine	7	....	DIA	
Diisopropylbenzene	32	2	DIX	
Diisopropyl naphthalene	32	2	DII	
N,N-Dimethylacetamide	10	....	DAC	
N,N-Dimethylacetamide solution	10	....	DLS	
Dimethyl adipate	34	....	DLA	
Dimethylamine	7	....	DMA	
Dimethylamine solution	7	....		DMG/DMY/DMC
Dimethylamine salt of 4-Chloro-2-methylphenoxyacetic acid solution, see 4-Chloro-2-methylphenoxyacetic acid, Dimethylamine salt solution.	....	....		CDM
Dimethylamine salt of 2,4-Dichlorophenoxyacetic acid solution, see 2,4-Dichlorophenoxyacetic acid, Dimethylamine salt solution.	....	....		DAD/(DDA/DSX)
2,6-Dimethylaniline	9	....	DMM	
Dimethylbenzene, see Xylenes	....	....		XLX
Dimethylcyclicsiloxane hydrolyzate	34	....		
N,N-Dimethylcyclohexylamine	7	....	DXN	
N,N-Dimethyldodecylamine *(IMO cargo name), see* Dodecyldimethylamine	7	....	DDY	
Dimethylethanolamine	8	....	DMB	
Dimethylformamide	10	....	DMF	
Dimethyl furan	41	....		
Dimethyl glutarate	34	....	DGT	
Dimethyl hydrogen phosphite	34	2	DPI	
Dimethyl naphthalene sulfonic acid, sodium salt solution	34	2	DNS	
Dimethyloctanoic acid	4	....	DMO	
Dimethyl phthalate	34	....	DTL	
Dimethylpolysiloxane, *see* Polydimethylsiloxane	34	....	DMP	
2,2-Dimethylpropane-1,3-diol	20	....	DDI	
Dimethyl succinate	34	....	DSE	
Dinitrotoluene	42	....	DNM	DTT/DNL/DNU
Dinonyl phthalate, see Dialkyl(C7-C13) phthalates	....	....	DIF	DAH
Dioctyl phthalate	34	....	DOP	DIE
1,4-Dioxane	41	....	DOX	
Dipentene	30	....	DPN	
Diphenyl	32	2	DIL	
Diphenylamine (molten)	9	....	DAG	DAM/LRM
Diphenylamines, alkylated	7	....	DAJ	
Diphenylamine, reaction product with 2,2,4-trimethylpentene	7	....	DAK	
Diphenyl, Diphenyl ether mixture	33	....	DDO	DTH
Diphenyl ether	41	....	DPE	
Diphenyl ether, Diphenyl phenyl ether mixture	41	....	DOB	
Diphenylmethane diisocyanate	12	....	DPM	
Diphenylol propane-Epichlorohydrin resins	0	1	DPR	
Diphenyl oxide, see as diphenyl ether	....	....		
Di-n-propylamine	7	....	DNA	
Dipropylene glycol	40	....	DPG	
Dipropylene glycol butyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether	....	....	DBG	PAG
Dipropylene glycol dibenzoate	34	....	DGY	
Dipropylene glycol methyl ether, see Poly (2-8)alkylene glycol monoalkyl(C1-C6) ether	....	....	DPY	PAG
Distillates, flashed feed stocks	33	....	DFF	
Distillates, straight run	33	....	DSR	
Dithiocarbamate ester (C7-C35)	34	....	DHO	
Ditridecyl adipate	34	....		
Ditridecyl phthalate, see Dialkyl(C7-C13) phthalates	....	....	DTP	DAH
Diundecyl phthalate, see Dialkyl(C7-C13) phthalates	....	....	DUP	DAH
Dodecane	31	1	DOC	ALJ
tert-Dodecanethiol	0	2	DDL	
Dodecanol	20	2	DDN	LAL
Dodecene	30	....	DOZ	DDC/DOD
2-Dodecenylsuccinic acid, dipotassium salt solution	34	....		DSP
Dodecyl alcohol *(IMO cargo name), see* Dodecanol	....	....		DDN
Dodecylamine, Tetradecylamine mixture	7	2	DTA	
Dodecylbenzene, *see* Alkyl(C9+)benzenes	32	2	DDB	AKB

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Dodecylbenzenesulfonic acid	0	1, 2	DSA	
Dodecyldimethylamine, Tetradecyldimethylamine mixture	7	....	DOT	
Dodecyl diphenyl ether disulfonate solution	43	....	DOS	
Dodecyl hydroxypropyl sulfide	0	1, 2	DOH	
Dodecyl methacrylate	14	1	DDM	
Dodecyl-Octadecyl methacrylate mixture	14	1	DOM	
Dodecyl-Pentadecyl methacrylate mixtures	14	1	DDP	
Dodecyl phenol	21	....	DOL	
Dodecyl xylene	32	2	DXY	
Drilling brine (containing Calcium, Potassium or Sodium salts)	43	....		DRB
Drilling brine (containing Zinc salts)	43	....	DZB	
Drilling mud (low toxicity) *(if flammable or combustible)*	33	....		DRM
Drilling mud (low toxicity) *(if non-flammable or non-combustible)*	43	....		DRM
Epichlorohydrin	17	1	EPC	
Epoxy resin	18	....		
ETBE, see Ethyl tert-butyl ether	....	....		EBE
Ethane	31	1	ETH	
Ethanolamine *(monoethanolamine)*	8	....	MEA	
2-Ethoxyethanol, see Ethylene glycol monoalkyl ethers	....	....	EEO	EGC
2-Ethoxyethyl acetate	34	....	EEA	
Ethoxylated alcohols, C11-C15, see the alcohol poylethoxylates	....	....		
Ethoxylated long chain (C16+) alkyloxyalkanamine	8	....	ELA	
Ethoxy triglycol	40	....	ETG	
Ethyl acetate	34	....	ETA	
Ethyl acetoacetate	34	....	EAA	
Ethyl acrylate	14	1	EAC	
Ethyl alcohol	20	2	EAL	
Ethylamine	7	2	EAM	
Ethylamine solution	7	....	EAN	
Ethyl amyl ketone	18	....	EAK	ELK
Ethylbenzene	32	2	ETB	
Ethyl butanol	20	....	EBT	
N-Ethyl-n-butylamine	7	....	EBA	
Ethyl tert-butyl ether	41	2	EBE	
Ethyl butyrate	34	....	EBR	
Ethyl chloride	36	....	ECL	
Ethyl cyclohexane	31	1	ECY	
N-Ethylcyclohexylamine	7	....	ECC	
Ethylene	30	....	ETL	
Ethyleneamine EA 1302	7	2	EMX	EDA
Ethylene carbonate	34	....		
Ethylene chlorohydrin	20	....	ECH	
Ethylene cyanohydrin	20	....	ETC	
Ethylenediamine	7	2	EDA	EMX
Ethylenediaminetetraacetic acid, tetrasodium salt solution	43	....	EDS	
Ethylene dibromide	36	....	EDB	
Ethylene dichloride	36	2	EDC	
Ethylene glycol	20	2	EGL	
Ethylene glycol acetate	34	....	EGO	
Ethylene glycol butyl ether, see Ethylene glycol monoalkyl ethers	....	....	EGM	EGC
Ethylene glycol tert-butyl ether, see Ethylene glycol monoalkyl ethers	....	....		EGC
Ethylene glycol butyl ether acetate	34	....	EMA	
Ethylene glycol diacetate	34	....	EGY	
Ethylene glycol dibutyl ether	40	....	EGB	
Ethylene glycol ethyl ether, see Ethyl glycol monoalkyl ethers	....	....	EGE	EGC/EEO
Ethylene glycol ethyl ether acetate, see 2-Ethoxyethyl acetate	....	....	EGA	EEA
Ethylene glycol hexyl ether	40	....	EGH	
Ethylene glycol isopropyl ether, see Ethylene glycol monoalkyl ethers	....	....	EGI	EGC
Ethylene glycol methyl butyl ether, see Ethylene glycol monoalkyl ethers	40	....	EMB	EGC
Ethylene glycol methyl ether, see Ethylene glycol monoalkyl ethers	....	....	EME	EGC
Ethylene glycol methyl ether acetate	34	....	EGT	
Ethylene glycol monoalkyl ethers	40	....	EGC	
Including:				
Ethylene glycol butyl ether				
Ethylene glycol isobutyl ether				
Ethylene glycol tert-butyl ether				
Ethylene glycol ethyl ether				
Ethylene glycol hexyl ether				
Ethylene glycol methyl ether				
Ethylene glycol propyl ether				
Ethylene glycol isopropyl ether				
Ethylene glycol phenyl ether	40	....	EPE	

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Ethylene glycol phenyl ether, Diethylene glycol phenyl ether mixture	40	....	EDX	
Ethylene glycol propyl ether, see Ethylene glycol monoalkyl ethers	....	....	EGP	EGC
Ethylene glycol iso-propyl ether, see Ethylene glycol monoalkyl ethers	....	....	EGI	EGC
Ethylene oxide	0	1	EOX	
Ethylene oxide, Propylene oxide mixture	16	1	EPM	
Ethylene-Propylene copolymer	30	....		
Ethylene-Vinyl acetate copolymer emulsion	43	....		
Ethyl ether	41	....	EET	
Ethyl-3-ethoxypropionate	34	....	EEP	
2-Ethylhexaldehyde, see Octyl aldehydes	....	....	HA	OAL
2-Ethylhexanoic acid, see Octanoic acids	....	....	EHO	OAY
2-Ethylhexanol, see Octanol	....	....	EHX	OCX
2-Ethylhexyl acrylate	14	1	EAI	
2-Ethylhexylamine	7	....	EHM	
Ethyl hexyl phthalate	34	....	EHE	
Ethyl hexyl tallate	34	....	EHT	
2-Ethyl-1-(hydroxymethyl)propane-1,3-diol, C8-C10 ester	34	....	EHD	
Ethylidene norbornene	30	2	ENB	
Ethyl methacrylate	14	1	ETM	
N-Ethylmethylallylamine	7	....	EML	
2-Ethyl-6-methyl-N-(1'-methyl-2-methoxyethyl)aniline	9	....	EEM	
o-Ethyl phenol	21	....	EPL	
Ethyl propionate	34	....	EPR	
2-Ethyl-3-propylacrolein	19	2	EPA	
Ethyl toluene	32	2	ETE	
Fatty acids (saturated, C13+), *see* Fatty acids (saturated, C14+)	....	....		
Fatty acids (saturated, C14+)	34	....	FAD	SRA
Ferric chloride solution	1	1	FCS	FCL
Ferric hydroxyethylethylenediaminetriacetic acid, trisodium salt solution	43	2	FHX	STA
Ferric nitrate, Nitric acid solution	3	....	FNN	
Fish solubles *(water based fish meal extracts)*	43	....	FSO	
Fluorosilicic acid	1	1	FSJ	
Formaldehyde, Methanol mixtures	19	2	MTM	
Formaldehyde solution	19	2	FMS	
Formamide	10	....	FAM	
Formic acid	4	2	FMA	
Fructose solution	43	....		
Fumaric adduct of Rosin, water dispersion	43	....	FAR	
Furfural	19	....	FFA	
Furfuryl alcohol	20	2	FAL	
Gas oil, cracked	33	....	GOC	
Gasoline blending stock, alkylates	33	....	GAK	
Gasoline blending stock, reformates	33	....	GRF	
Gasolines:				
Automotive *(not over 4.23 grams lead per gal.)*	33	....	GAT	
Aviation *(not over 4.86 grams lead per gal)*	33	....	GAV	AVA
Casinghead *(natural)*	33	....	GCS	
Polymer	33	....	GPL	
Straight run	33	....	GSR	
Glucose solution	43	....	GLU	DTS
Glutaraldehyde solution	19	....	GTA	
Glycerine	20	2	GCR	
Glycerine, Dioxanedimethanol mixture	20	....	GDM	
Glycerol monooleate	20	....	GMO	
Glycerol polyalkoxylate	34	....		
Glyceryl triacetate	34	....		
Glycidyl ester of C10 trialkyl acetic acid *(IMO cargo name), see* Glycidyl ester of tridecyl acetic acid.	34	....		GLT
Gylcidyl ester of tridecylacetic acid	34	....	GLT	
Glycidyl ester of Versatic acid, see Gylcidyl ester of tridecylacetic acid	....	....		GLT
Glycine, sodium salt solution	7	....		
Glycol diacetate, see Ethylene glycol diacetate	....	....		EGY
Glycolic acid solution	4	....	GLC	
Glyoxal solutions	19	....	GOS	
Glyoxylic acid	4	....	GAC	
Glyphosate solution (not containing surfactant) (See also ROUNDUP)	7	....	GIO	
Heptadecane, see n-Alkanes (C10+)	....	....		ALJ
Heptane	31	1	HMX	ALK (HPI/HPT)
n-Heptanoic acid	4	....	HEP	
Heptanol	20	....	HTX	HTN
Heptene	30	....	HPX	HTE

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Heptyl acetate	34	....	HPE	
Herbicide (C15-H22-NO2-Cl), see Metolachlor	....	....		MCO
Hexadecanol (cetyl alcohol), see Alcohols (C13+)	....	....		ALY
1-Hexadecylnaphthalene, 1,4-bis(Hexadecyl)naphthalene mixture	32	2		
Hexaethylene glycol, see Polyethylene glycol	....	....		
Hexamethylene glycol	20	....		
Hexamethylenediamine	7	....	HME	HMD/HMC
Hexamethylenediamine solution	7	....	HMC	HMD/HME
Hexamethylenediamine adipate solution	43	....	HAM	
Hexamethylene diisocyanate	12	....	HDI	
Hexamethylenetetramine	7	....	HMT	
Hexamethylenetetramine solutions	7	....	HTS	
Hexamethylenimine	7	....	HMI	
Hexane	31	2	HXS	ALK (IHA/HXA)
Hexanoic acid		....	HXO	
Hexanol	20	....	HXN	
Hexene	30	....	HEX	HXE/HXT/MPN/ MTN
Hexyl acetate	34	....	HAE	HSA
Hexylene glycol	20	....	HXG	
HiTec 321	7	....	HIT	
Hog grease, see Lard	....	....		
Hydrochloric acid	1	1	HCL	
Hydrofluorosilicic acid, see Fluorosilicic acid	....	....	HFS	FSJ
bis(Hydrogenated tallow alkyl)methyl amines	7	....	HTA	
Hydrogen peroxide solutions	0	1		HPN/HPS/HPO
2-Hydroxyethyl acrylate	14	2	HAI	
N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution	43	....	HET	FHX
N,N-bis(2-Hydroxyethyl) oleamide	10	....	HOO	
2-Hydroxy-4-(methylthio)butanoic acid	4	....	HBA	
Hydroxy terminated polybutadiene *(IMO cargo name), see* Polybutadiene, hydroxy terminated	20	....		
alpha-hydro-omega-Hydroxytetradeca(oxytetramethylene), see Poly(tetramethylene ether) glycols (mw 950-1050).	....	....		HTO
Icosa(oxypropane-2,3-diyl)s	20	....	IOP	
Isophorone	18	2	IPH	
Isophorone diamine	7	....	IPI	
Isophorone diisocyanate	12	....	IPD	
Isoprene	30	....	IPR	
Isoprene concentrate (Shell)	30	....	ISC	
Isopropylbenzene (cumene), see Propylbenzene	....	....		PBY
Jet fuels:				
JP-4	33	....	JPF	
JP-5	33	....	JPV	
JP-8	33	....	JPE	
Kaolin clay slurry	43	....		
Kerosene	33	....	KRS	
Ketone residue	18	....	KTR	
Kraft black liquor	5	....		KPL
Kraft pulping liquors *(Black, Green, or White)*	5	....	KPL	
Lactic acid	0	1, 2	LTA	
Lactonitrile solution	37	....	LNI	
Lard	34	....		
Latex (ammonia inhibited)	30	....	LTX	
Latex, liquid synthetic	43	....	LLS	LTX
Lauric acid	34	....	LRA	
Lauryl polyglucose, see Alkyl(C12 -C14) polyglucoside solution (55% or less)	....	....	LAP	AGM
Lecithin	34	....	LEC	
Lignin liquor	43	....		
Lignin sulfonic acid, sodium salt solution, see Sodium lignosulfonate solution	....	....		
d-Limonene, see Dipentene	....	....		
Liquid Streptomyces solubles	43	....		
Long chain alkaryl polyether (C11-C20)	41	....	LCP	
Long chain alkaryl sulfonic acid (C16-C60)	0	1, 2	LCS	
Long chain alkylphenate/Phenol sulfide mixture	21	....	LPS	
Long chain polyetheramine in alkyl(C2-C4)benzenes	7	....	LCE	
l-Lysine solution	43	....	LYS	
Magnesium chloride solution	0	1, 2		
Magnesium hydroxide slurry	5	....		
Magnesium long chain alkaryl sulfonate (C11-C50)	34	....	MAS	MSE
Magnesium long chain alkyl phenate sulfide (C8-C20)	34	....	MPS	
Magnesium long chain alkyl salicylate (C11+)	34	....	MLS	

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Magnesium nonyl phenol sulfide, see Magnesium long chain alkyl phenate sulfide (C8-C20)				MPS
Magnesium sulfonate, see Magnesium long chain alkaryl sulfonate (C11-C50)			MSE	MAS
Maleic anhydride	11		MLA	
Mercaptobenzothiazol, sodium salt solution *(IMO cargo name), see* Sodium-2-mercaptobenzothiazol solution.	5			SMB
Mesityl oxide	18	2	MSO	
Metam sodium solution	7		MSS	SMD
Methacrylic acid	4		MAD	
Methacrylic resin in Ethylene dichloride	14	1	MRD	
Methacrylonitrile	15	2	MET	
Methane	31	1	MTH	
3-Methoxy-1-butanol	20			
3-Methoxybutyl acetate	34		MOA	
N-(2-Methoxy-1-methyl ethyl)-2-ethyl-6-methyl chloroacetanilide *(IMO cargo name), see* Metolachlor.	34			MCO
1-Methoxy-2-propyl acetate	34		MPO	
Methoxy triglycol	*40*		*MTG*	
Methyl acetate	34		MTT	
Methyl acetoacetate	34		MAE	
Methyl acetylene, Propadiene mixture	30		MAP	
Methyl acrylate	14	1	MAM	
Methyl alcohol	20	2	MAL	
Methylamine solutions	7		MSZ	
Methyl amyl acetate	34		MAC	
Methyl amyl alcohol	20		MAA	MIC
Methyl amyl ketone	18		MAK	
Methyl bromide	36		MTB	
Methyl butanol, see the amyl alcohols				AAI
Methyl butenol	20		MBL	
Methyl butenes (tert-amylenes), see Pentene				PTX
Methyl tert-butyl ether	41	2	MBE	
Methyl butyl ketone	18	2	MBK	
Methylbutynol, *see* 2-Methyl-2-hydroxy-3-butyne	20		MBY	MHB
3-Methyl butyraldehyde	19			
Methyl butyrate	34		MBU	
Methyl chloride	36		MTC	
Methylcyclohexane	31	1	MCY	
Methylcyclopentadiene dimer	30		MCK	
Methyl diethanolamine	8		MDE	MAB
Methylene chloride, see Dichloromethane				DCM
2-Methyl-6-ethylaniline	9		MEN	
Methyl ethyl ketone	18	2	MEK	
2-Methyl-5-ethylpyridine	9		MEP	
Methyl formate	34		MFM	
N-Methylglucamine solution	43		MGC	
Methyl heptyl ketone	18		MHK	
2-Methyl-2-hydroxy-3-butyne	20		MHB	
Methyl isoamyl ketone	18			MAK
Methyl isobutyl carbinol, see Methyl amyl alcohol			MIC	MAA
Methyl isobutyl ketone	18	2	MIK	
Methyl methacrylate	14	1	MMM	
3-Methyl-3-methoxybutanol	20			
3-Methyl-3-methoxybutyl acetate	34			
Methyl naphthalene	32	2	MNA	
Methylolureas	19		MUS	
2-Methyl pentane	31	1		IHA
2-Methyl-1-pentene, see Hexene			MPN	HEX
4-Methyl-1-pentene, see Hexene			MTN	HEX
Methyl tert-pentyl ether *(IMO cargo name), see* tert-Amyl methyl ether	41			AYE
2-Methyl-1,3-propanediol	20		MDL	
Methyl propyl ketone	18		MKE	
Methylpyridine	9			MPR/MPE/MPF
N-Methyl-2-pyrrolidone	9	2	MPY	
Methyl salicylate	34		MES	
alpha-Methylstyrene	30		MSR	
3-(Methylthio)propionaldehyde	19		MTP	
Metolachlor	34		MCO	
Milk	43			
Mineral spirits	33		MNS	
Molasses	20			
Molasses residue	0	1		

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Monochlorodifluoromethane	36		MCF	
Monoethanolamine, see Ethanolamine				
Monoisopropanolamine, see Propanolamine				
Morpholine	7	2	MPL	
Motor fuel antiknock compounds containing lead alkyls	0	1	MFA	
MTBE, see Methyl tert-butyl ether				MBE
Myrcene	30		MRE	
Naphtha:				
Aromatic	33			
Coal tar solvent	33		NCT	
Heavy	33			
Paraffinic	33			
Petroleum	33		PTN	
Solvent	33		NSV	
Stoddard solvent	33		NSS	
Varnish Makers' and Painters'	33		NVM	
Naphthalene	32	2	NTM	
Naphthalene still residue	32	2	NSR	
Naphthalene sulfonic acid-formaldehyde copolymer, sodium salt solution	0	1	NFS	
Naphthalene sulfonic acid, sodium salt solution	34		NSA	
Naphthenic acid	4		NTI	
Naphthenic acid, sodium salt solution	43		NTS	
Neodecanoic acid	4		NEA	
NIAX POLYOL APP 240C	0	1, 2	NXP	
Nitrating acid	0	1	NIA	
Nitric acid (70% or less)	3		NCD	
Nitric acid (greater than 70%)	0	1		NAC
Nitrobenzene	42		NTB	
o-Nitrochlorobenzene, see Chloronitrobenzene				CNO
Nitroethane	42		NTE	
Nitroethane, 1-Nitropropane mixtures	42		NNO	
o-Nitrophenol	0	1, 2	NTP	NIP/NPH
Nitropropane	42		NPM	NPN/NPP
Nitropropane, Nitroethane mixture	42			NNO (NNM/ NNL)
Nitrotoluene	42		NIT	NIE/NTT/NTR
Nonane	31	1	NAX	ALK (NAN)
Nonanoic acid	4		NNA	NAI/NIN
Nonanoic, Tridecanoic acid mixture	4		NAT	
Nonene	30		NOO	NON/NNE
Nonyl acetate	34		NAE	
Nonyl alcohol	20	2	NNS	NNI/NNN/DBC
Nonylbenzene, see Alkyl(C9+)benzenes				AKB
Nonyl methacrylate	14	1	NMA	
Nonyl phenol	21		NNP	
Nonyl phenol poly(4+)ethoxylates	40		NPE	
Nonyl phenol sulfide solution, see Alkyl phenol sulfide (C8-C40)				AKS/NPS
Noxious Liquid Substance, n.o.s. (NLS's)	0	1		
1-Octadecene, see the olefin or alpha-olefin entries				
Octadecenoamide	10		ODD	
Octadecenol (oleyl alcohol), see Alcohols (C13+)				ALY
Octane	31	1	OAX	ALK (IOO/OAN)
Octanoic acid	4		OAY	OAA/EHO
Octanol	20	2	OCX	IOA/OTA/EHX
Octene	30		OTX	OTE
n-Octyl acetate	34		OAF	OAE
Octyl alcohol, see Octanol				OCX
Octyl aldehyde	19		OAL	IOC/OLX/EHA
Octyl decyl adipate	34		ODA	
Octyl nitrate, see Alkyl(C7-C9) nitrates			ONE	AKN
Octyl phenol	21			
Octyl phthalate, see Dioctyl phthalate				DOP
Oil, edible:				
Beechnut	34		OBN	VEO
Castor	34		OCA	VEO
Cocoa butter	34		OCB	VEO
Coconut	34	2	OCC	VEO
Cod liver	34		OCL	AFN
Corn	34		OCO	VEO
Cottonseed	34		OCS	VEO
Fish	34	2	OFS	AFN

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Groundnut	34		OGN	VEO
Hazelnut	34		OHN	VEO
Lard	34		OLD	AFN
Maize	34			VEO (OCO)
Nutmeg butter	34		ONB	VEO
Olive	34		OOL	VEO
Palm	34	2	OPM	VEO
Palm kernel	34		OPO	VEO
Peanut	34		OPN	VEO
Poppy	34		OPY	VEO
Poppy seed	34			VEO
Raisin seed	34		ORA	VEO
Rapeseed	34		ORP	VEO
Rice bran	34		ORB	VEO
Safflower	34		OSF	VEO
Salad	34		OSL	VEO
Sesame	34		OSS	VEO
Soya bean	34		OSB	VEO
Sunflower seed	34		OSN	VEO
Tucum	34		OTC	VEO
Vegetable	34		OVG	VEO
Walnut	34		OWN	VEO
Oil, fuel:				
No. 1	33		OON	
No. 1-D	33		OOD	
No. 2	33		OTW	
No. 2-D	33		OTD	
No. 4	33		OFR	
No. 5	33		OFV	
No. 6	33		OSX	
Oil, misc:				
Aliphatic	33			
Animal	34		OMA	AFN
Aromatic	33			
Clarified	33		OCF	
Coal	33			
Coconut oil, fatty acid methyl ester	34		OCM	
Cotton seed oil, fatty acid	34		CFY	
Crude	33		OIL	
Diesel	33		ODS	
Gas, high pour	33			
Gas, low pour	33			
Gas, low sulfur	33			
Heartcut distillate	33			
Lanolin	34		OLL	AFN
Linseed	33		OLS	
Lubricating	33		OLB	
Mineral	33		OMN	
Mineral seal	33		OMS	
Motor	33		OMT	
Neatsfoot	33		ONF	AFN
Oiticica	34		OOI	
Palm oil, fatty acid methyl ester	34		OPE	
Penetrating	33		OPT	
Perilla	34		OPR	
Pilchard	34		OPL	AFN
Pine	33		OPI	PNL
Residual	33			
Road	33		ORD	
Rosin	33		ORN	
Seal	34			
Soapstock	34		OIS	
Soybean (epoxidized)	34			EVO
Sperm	33		OSP	AFN
Spindle	33		OSD	
Tall	34		OTL	
Tall, fatty acid	34	2	TOF	
Transformer	33		OTF	
Tung	34		OTG	
Turbine	33		OTB	
Wood	34			

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Olefin/Alkyl ester copolymer (molecular weight 2000+)	34		OCP	
Olefin mixtures	30			OFX/OFY
alpha-Olefins (C6-C18) mixtures	30		OAM	
Olefins (C13+)	30			
Oleic acid	34		OLA	
Oleum	0	1, 2	OLM	
Oleyl alcohol (octadecanol), see Alcohols (C13+)				ALY
Oleylamine	10		OLY	
ORIMULSION, see Asphalt emulsion				ASQ
Oxyalkylated alkyl phenol formaldehyde	33			
Palm kernel acid oil	34		PNO	
Palm kernel acid oil, methyl ester	34		PNF	
Palm kernel oil, fatty acid, see Palm kernel acid oil				PNO
Palm kernel oil, fatty acid methyl ester, see Palm kernel acid oil, methyl ester				PNF
Palm stearin	34		PMS	
n-Paraffins (C10-C20), see n-Alkanes (C10+)			PFN	ALJ
Paraldehyde	19		PDH	
Paraldehyde-Ammonia reaction product	9		PRB	
Pentachloroethane	36		PCE	
Pentacosa(oxypropane-2,3-diyl)s	20		POY	
Pentadecanol, see Alcohols (C13+)			PDC	ALY
1,3-Pentadiene	30		PDE	PDN
Pentaethylene glycol, see Polyethylene glycols				
Pentaethylene glycol methyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether				PAG
Pentaethylenehexamine	7		PEN	
Pentaethylenehexamine, Tetraethylenepentamine mixture	7		PEP	
Pentane	31	1	PTY	IPT/PTA
Pentanoic acid	4		POC	
n-Pentanoic acid, 2-Methyl butryic acid mixture	4		POJ	POC
Pentasodium salt of Diethylenetriamine pentaacetic acid solution, see Diethylenetriamine pentaacetic acid, pentasodium salt solution.				
Pentene	30		PTX	PTE
Pentyl aldehyde	19			
n-Pentyl propionate	34		PPE	
Perchloroethylene	36	2	PER	TTE
Petrolatum	33		PTL	
Phenol	21		PHN	
1-Phenyl-1-xylyl ethane	32	2	PXE	
Phosphate esters, alkyl(C12-C14)amine	7		PEA	
Phosphoric acid	1	1	PAC	
Phosphorus	0	1	PPW	PPR/PPB
Phthalate based polyester polyol	0	1, 2	PBE	
Phthalic anhydride	11		PAN	
alpha-Pinene	30		PIO	PIN
beta-Pinene	30		PIP	PIN
Pine oil	33		PNL	OPI
Polyalkyl(C18-C22) acrylate in Xylene	14	1	PIX	
Polyalkylene glycol butyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether			PGB	PAG
Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether *Including:* *Diethylene glycol butyl ether* *Diethylene glycol ethyl ether* *Diethylene glycol n-hexyl ether* *Diethylene glycol methyl ether* *Diethylene glycol n-propyl ether* *Dipropylene glycol butyl ether* *Dipropylene glycol methyl ether* *Polyalkylene glycol butyl ether* *Polyethylene glycol monoalkyl ether* *Polypropylene glycol methyl ether* *Tetraethylene glycol methyl ether* *Triethylene glycol butyl ether* *Triethylene glycol ethyl ether* *Triethylene glycol methyl ether* *Tripropylene glycol methyl ether*	40		PAG	
Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether acetate *Including:* *Diethylene glycol butyl ether acetate* *Diethylene glycol ethyl ether acetate* *Diethylene glycol methyl ether acetate*	34		PAF	
Polyalkylene glycols, Polyalkylene glycol monoalkyl ethers mixtures	40		PPX	

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Polyalkylene oxide polyol	20	....	PAO	
Polyalkyl methacrylate (C1-C20)	....	....		
Polyalkyl(C10-C20)methacrylate	14	1	PMT	
Polyalkyl(C10-C18)methacrylate/Ethylene propylene copolymer mixture	14	1	PEM	
Polyaluminum chloride solution	1	1		
Polybutadiene, hydroxyl terminated	20	....		
Polybutene	30	....	PLB	
Polybutenyl succinimide	10	....	PBS	
Poly(2+)cyclic aromatics	32	2	PCA	
Polydimethylsiloxane	34	....		
Polyether (molecular weight 2000+)	41	....	PYR	
Polyethylene glycol	40	....		
Polyethylene glycol dimethyl ether	40	....		
Polyethylene glycol monoalkyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether	....	....	PEE	PAG
Polyethylene polyamines	7	2	PEB	
Polyferric sulfate solution	34	....	PSS	
Polyglycerine, Sodium salts solution (containing less than 3% Sodium hydroxide)	20	2	PGT	
Polyglycerol	20	....		GCR
Polyisobutenamine in aliphatic (C10-C14) solvent	7	....	PIB	
Polyisobutenyl anhydride adduct	11	....		
Poly(4+)isobutylene	30	....		
Polymethylene polyphenyl isocyanate	12	....	PPI	
Polymethylsiloxane	34	....		
Polyolefin (molecular weight 300+)	30	....		
Polyolefin amide alkeneamine (C17+)	33	....	POH	
Polyolefin amide alkeneamine (C28+)	33	....	POD	
Polyolefin amide alkeneamine borate (C28-C250)	33	....	PAB	
Polyolefin amide alkeneamine/Molybdenum oxysulfide mixture	7	....		
Polyolefin amide alkeneamine polyol	20	....	PAP	
Poly(C17+)olefin amine	7	....	POG	
Polyolefinamine (C28-C250)	33	....	POM	
Polyolefinamine in alkyl(C2-C4)benzenes	32	2	POF	
Polyolefin aminoester salt	34	....	PAE	
Polyolefin anhydride	11	....	PAR	
Polyolefin ester (C28-C250)	34	....	POS	
Polyolefin phenolic amine (C28-C250)	7	....	PPH	
Polyolefin phosphorosulfide, barium derivative (C28-C250)	34	....	PPS	
Poly(20)oxyethylene sorbitan monooleate	34	....	PSM	
Poly(5+)propylene	30	....	PLQ	PLP
Polypropylene glycol	40	....	PGC	
Polypropylene glycol methyl ether, see Propylene glycol monoalkyl ether	....	....	PGM	PGE
Polysiloxane	34	....		DMP
Poly(tetramethylene ether) glycols (mw 950-1050) (*alpha-hydro-omega-Hydroxytetradeca(oxytetramethylene)*).	40	....	HTO	
Polytetramethylene ether glycol	40	....		
Potassium chloride solution	43	....	PCS	(DRB)
Potassium formate solution	34	....	PFR	
Potassium hydroxide solution *(IMO cargo name), see* Caustic potash solution	5	2		CPS
Potassium oleate	34	....	POE	
Potassium salt of polyolefin acid	34	....		
Potassium thiosulfate solution	43	....	PTF	
Propane	31	1	PRP	
Propanolamine	8	....	PAX	MPA/PLA
Propionaldehyde	19	....	PAD	
Propionic acid	4	....	PNA	
Propionic anhydride	11	....	PAH	
Propionitrile	37	....	PCN	
n-Propoxypropanol, see Propylene glycol monoalkyl ether	....	....	PXP	PGE
Propyl acetate	34	....		IAC/PAT
Propyl alcohol	20	2		IPA/PAL
Propylamine	7	....		IPP/PRA
iso-Propylamine solution	7	....		IPO/IPQ
Propylbenzene	32	2	PBY	PBZ/CUM
n-Propyl chloride	36	....	PRC	
iso-Propylcyclohexane	31	1	IPX	
Propylene	30	....	PPL	
Propylene-butylene copolymer	30	....	PBP	
Propylene carbonate	34	....		
Propylene dimer	30	....	PDR	
Propylene glycol	20	2	PPG	
Propylene glycol n-butyl ether, see Propylene glycol monoalkyl ether	....	....	PGD	PGE

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Propylene glycol ethyl ether, see Propylene glycol monoalkyl ether	....	....	PGY	PGE
Propylene glycol methyl ether, see Propylene glycol monoalkyl ether	....	....	PME	PGE
Propylene glycol methyl ether acetate	34	....	PGN	
Propylene glycol monoalkyl ether	40	....	PGE	
Including:				
n-Propoxypropanol				
Propylene glycol n-butyl ether				
Propylene glycol ethyl ether				
Propylene glycol methyl ether				
Propylene glycol propyl ether				
Propylene glycol phenyl ether	40	....	PGP	
Propylene glycol propyl ether, see Propylene glycol monoalkyl ether	....	....		PGE
Propylene oxide	16	1	POX	
Propylene, Propane, MAPP gas mixture	30	2	PPM	
Propylene tetramer	30	....	PTT	
Propylene trimer	30	....	PTR	
Propyl ether	41	....		IPE/PRE
Pseudocumene, see Trimethylbenzene	....	....		TME/TRE
Pyridine	9	....	PRD	
Pyridine bases, see Paraldehyde-Ammonia reaction product	....	....		PRB
Roehm monomer 6615	14	1	RMN	
Rosin oil	33	....	ORN	
Rosin soap (disproportionated) solution	43	....	RSP	
ROUNDUP (See also Glyphosate solution)	7	....	RUP	
Rum, see Alcoholic beverages	....	....		
SAP 7001	0	1	SON	
Sewage sludge	43	....		
Silica slurry	43	....		
Sludge, treated	43	....		
Sodium acetate, Glycol, Water mixture (not containing Sodium hydroxide)	34	2	SAO	SAP
Sodium acetate, Glycol, Water mixture (containing Sodium hydroxide)	5	....	SAP	SAO
Sodium acetate solution	34	....	SAN	AKP
Sodium alkyl sulfonate solution	43	....	SSU	
Sodium alkyl (C14-C17) sulfonates 60-65% solution *(IMO cargo name), see* Alkane (C14-C17) sulfonic acid, sodium salt solution.	34	....	AKA	
Sodium aluminate solution	5	....	SAU	
Sodium aluminosillicate slurry	34	....		
Sodium benzoate solution	34	....	SBN	
Sodium borohydride, Sodium hydroxide solution	5	....	SBX	SBH/SBI
Sodium carbonate solutions	5	....	SCE	
Sodium chlorate solution	0	1, 2	SDD	SDC
Sodium cyanide solution	5	....	SCS	SCN
Sodium dichromate solution	0	1, 2	SDL	SCR
Sodium dimethyl naphthalene sulfonate solution, see Dimethyl naphthalene sulfonic acid, sodium salt solution.	....	....		DNS
Sodium hydrogen sulfide, Sodium carbonate solution	0	1, 2	SSS	
Sodium hydrogen sulfite solution	43	....	SHX	
Sodium hydrosulfide solution	5	2	SHR	
Sodium hydrosulfide, Ammonium sulfide solution	5	2	SSA	
Sodium hydroxide solution *(IMO cargo name), see* Caustic soda solution	5	2		CSS
Sodium hypochlorite solution	5	....		SHP/SHQ/(SHC)
Sodium lignosulfonate solution, *see also* Lignin liquor	43	....		
Sodium long chain alkyl salicylate (C13+)	34	....	SLS	
Sodium 2-mercaptobenzothiazol solution	5	....	SMB	
Sodium N-methyl dithio carbamate solution, see Metam sodium solution	....	....		MSS
Sodium naphthalene sulfonate solution, see Naphthalene sulfonic acid, sodium salt solution	....	....	SNS	NSA
Sodium naphthenate solution; see Naphthenic acid, sodium salt solution	....	....		NTS
Sodium nitrite solution	5	....	SNI	SNT
Sodium petroleum sulfonate	33	....	SPS	
Sodium polyacrylate solution	43	2		
Sodium salt of Ferric hydroxyethylethylenediaminetriacetic acid solution, see Ferric hydroxyethylethylenediaminetriacetic acid, trisodium salt solution.	....	....	STA	FHX
Sodium silicate solution	43	2	SSN	SSC
Sodium sulfide, Hydrosulfide solution	0	1, 2		SSH/SSI/SSJ
Sodium sulfide solution	43	....	SDR	
Sodium sulfite solution	43	....	SUP	SUS
Sodium tartrates, Sodium succinates solution	43	....	STM	
Sodium thiocyanate solution	0	1, 2	STS	SCY
Sorbitol solutions	20	....		SBT
Soyabean oil (expoxidized)	34	....		OSC/EVO
Stearic acid, see Fatty acids (saturated, C14+)	....	....	SRA	FAD

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Stearyl alcohol	20			
Styrene	30		STY	STX
Sulfohydrocarbon (C3-C88)	33		SFO	
Sulfohydrocarbon, long chain (C18+) alkylamine mixture	7		SFX	
Sulfolane	39		SFL	
Sulfonated polyacrylate solutions	43	2		
Sulfur	0	1	SXX	
Sulfuric acid	2	2	SFA	
Sulfuric acid, spent	2	2	SAC	
Sulfurized fat (C14-C20)	33		SFT	
Sulfurized polyolefinamide alkene(C28-C250) amine	33		SPO	
Tall oil	34		OTL	
Tall oil fatty acid *(Resin acids less than 20%)*	34	2	TOF	
Tall oil fatty acid, barium salt	0	1, 2	TOB	
Tall oil soap (disproportionated) solution	43		TOS	
Tallow	34	2	TLO	
Tallow fatty acid	34	2	TFD	
Tallow fatty alcohol, see Alcohols (C13+)			TFA	ALY
Tallow nitrile	37		TAN	
TAME, see tert-Amyl methyl ether				AYE
1,1,2,2-Tetrachloroethane	36		TEC	
Tetrachloroethylene, see Perchloroethylene			TTE	PER
Tetradecanol, see Alcohols (C13+)			TTN	ALY
Tetradecene, see the olefins entries			TTD	
Tetradecylbenzene, *see* Alkyl(C9+) benzenes	32	2	TDB	AKB
Tetraethylene glycol	40		TTG	
Tetraethylene glycol methyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether				PAG
Tetraethylenepentamine	7	2	TTP	
Tetrahydrofuran	41		THF	
Tetrahydronaphthalene	32	2	THN	
1,2,3,5-Tetramethylbenzene, see Tetramethylbenzene			TTB	TTC
Tetramethylbenzene	32	2	TTC	TTB
Tetrapropylbenzene, see Alkyl(C9+)benzenes				AKB
Tetrasodium salt of EDTA solution, see Ethylenediaminetetraacetic acid, tetrasodium salt solution.				EDS
Titanium dioxide slurry	43		TDS	
Titanium tetrachloride	2	2	TTT	
Toluene	32	2	TOL	
Toluenediamine	9		TDA	
Toluene diisocyanate	12		TDI	
o-Toluidine	9		TLI	
Triarylphosphate, see Triisopropylated phenyl phosphates			TRA	TPL
Tributyl phosphate	34		TBP	
1,2,4-Trichlorobenzene	36		TCB	
1,1,1-Trichloroethane	36	2	TCE	
1,1,2-Trichloroethane	36		TCM	
Trichloroethylene	36	2	TCL	
1,2,3-Trichloropropane	36	2	TCN	
1,1,2-Trichloro-1,2,2-trifluoroethane	36		TTF	
Tricresyl phosphate	34			TCO/TCP
Tridecane, see n-Alkanes (C10+)			TRD	ALJ
Tridecanoic acid	34		TDO	
Tridecanol, see Alcohols (C13+)			TDN	ALY
Tridecene, see Olefins (C13+)			TDC	
Tridecyl acetate	34		TAE	
Tridecylbenzene, *see* Alkyl(C9+) benzenes	32	2	TRB	AKB
Triethanolamine	8	2	TEA	
Triethylamine	7		TEN	
Triethylbenzene	32	2	TEB	
Triethylene glycol	40		TEG	
Triethylene glycol butyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether				PAG
Triethylene glycol butyl ether mixture	40			
Triethylene glycol dibenzoate	34		TGB	
Triethylene glycol di-(2-ethylbutyrate)	34		TGD	
Triethylene glycol ether mixture	40			
Triethylene glycol ethyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether			TGE	PAG
Triethylene glycol methyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether			TGY	PAG
Triethylenetetramine	7	2	TET	
Triethyl phosphate	34		TPS	
Triethyl phosphite	34	2	TPI	
Triisobutylene	30		TIB	

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Triisooctyl trimellitate	34			
Triisopropanolamine	8		TIP	
Triisopropanolamine salt of 2,4-Dichlorophenoxyacetic acid solution, see 2,4-Dichlorophenoxyacetic acid, Triisopropanolamine salt solution.				DTI
Triisopropylated phenyl phosphates	34		TPL	
Trimethylacetic acid	4		TAA	
Trimethylamine solution	7		TMT	
Trimethylbenzene	32	2	TRE	TME/TMB/TMD
Trimethylhexamethylenediamine (2,2,4- and 2,4,4-)	7		THA	
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-)	12		THI	
Trimethyl nonanol, see Dodecanol				DDN
Trimethylol propane polyethoxylate	20		TPR	
2,2,4-Trimethyl-1,3-pentanediol diisobutyrate	34		TMQ	
2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate	34		TMP	
2,2,4-Trimethyl-3-pentanol-1-isobutyrate	34			
Trimethyl phosphite	34	2	TPP	
1,3,5-Trioxane	41	2	TRO	
Triphenylborane, Caustic soda solution	5		TPB	
Tripropylene, see Propylene trimer				PTR
Tripropylene glycol	40		TGC	
Tripropylene glycol methyl ether, see Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether			TGM	PAG
Trisodium nitrilotriacetate	34			
Trisodium phosphate solution	5		TSP	
Trisodium salt of N-(Hydroxyethyl)ethylenediaminetriacetic acid solution, see N-(Hydroxyethyl)ethylenediaminetriacetic acid, trisodium salt solution.				HET
Trixylyl phosphate *(IMO cargo name), see* Trixylenyl phosphate	34			TRP
Trixylenyl phosphate	34		TRP	
Turpentine	30		TPT	
Ucarsol CR Solvent 302 SG	8		UCS	
Undecanoic acid	4		UDA	
Undecanol, see Undecyl alcohol				UND
Undecene	30		UDC	
Undecyl alcohol	20		UND	
Undecylbenzene, *see* Alkyl(C9+) benzenes			UDB	AKB
Urea, Ammonium mono- and di-hydrogen phosphate, Potassium chloride solution	0	1	UPX	
Urea, Ammonium nitrate solution (containing Ammonia)	6		UAS	
Urea, Ammonium nitrate solution (not containing Ammonia)	43		UAT	ANU
Urea, Ammonium phosphate solution	43		UAP	
Urea solution	43			URE
Valeraldehyde	19		VAK	IVA/VAL
Vanillin black liquor	5		VBL	
Vegetable oils, n.o.s.	34		VEO	
Including:				
Beechnut oil				
Castor oil				
Cocoa butter				
Coconut oil				
Corn oil				
Cottonseed oil				
Groundnut oil				
Hazelnut oil				
Linseed oil				
Nutmeg butter				
Oiticica oil				
Olive oil				
Palm kernel oil				
Palm oil				
Peel oil (oranges and lemons)				
Perilla oil				
Poppy oil				
Raisin seed oil				
Rapeseed oil				
Rice bran oil				
Safflower oil				
Salad oil				
Sesame oil				
Soya bean oil				
Sunflower seed oil				
Tucum oil				
Tung oil				
Walnut oil				
Vegetable acid oils and distillates, n.o.s.	34		VAO	

TABLE I.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Foot-note	CHRIS Code	Related CHRIS Codes
Including:				
Corn acid oil				
Cottonseed acid oil				
Dark mixed acid oil				
Groundnut acid oil				
Mixed acid oil				
Mixed general acid oil				
Mixed hard acid oil				
Mixed soft acid oil				
Rapeseed acid oil				
Safflower acid oil				
Soya acid oil				
Sunflower seed acid oil				
Vegetable protein solution	43	....		
Vinyl acetate	13	1	VAM	
Vinyl chloride	35	....	VCM	
Vinyl ethyl ether	13	1	VEE	
Vinylidene chloride	35	....	VCI	
Vinyl neodecanate	13	1	VND	
Vinyltoluene	13	1	VNT	
Water	43	....		
Waxes:	....	....	WAX	
Candelilla	34	....	WDC	
Carnauba	34	....	WCA	
Paraffin	31	1	WPF	
Petroleum	33	....		
Wine, see Alcoholic beverages	....	....		
White spirit (low (15-20%) aromatic)	33	....	WSL	WSP
Xylene	32	2	XLX	XLM/XLO/XLP
Xylenes, Ethylbenzene mixture	32	2	XEB	
Xylenols	21	....	XYL	
Zinc alkaryl dithiophosphate (C7-C16)	34	....	ZAD	
Zinc alkenyl carboxamide	10	....	ZAA	
Zinc alkyl dithiophosphate (C3-C14)	34	....	ZAP	
Zinc bromide, Calcium bromide solution, see Drilling brine (containing Zinc salts)	....	....		DZB

1. Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this commodity is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (G–MSO), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001. Telephone (202) 267–1577.
2. See Appendix I–Exceptions to the Chart.

PART 150 TABLE II—[AMENDED]

9. In Table II, amend the designated Compatibility Groups as follows:

a. In Compatibility Group O, Unassigned Cargoes:

1. Remove the words "2-Hydroxyethyl acrylate [1,2]".

2. Remove the words "Potassium polysulfide, Potassium thiosulfide solution (41% or less)".

b. In Compatibility Group 7, Aliphatic Amines:

1. Remove the words "Calcium long chain alkyl phenolic amine (C8–C40)".

2. Remove the word "Diethylenetriamine" and add, in its place, the word "Diethylenetriamine [2]".

3. Remove the words "Polyalkyl methacrylate (C1–C20)".

4. Remove the words "Polyolefin amide alkeneamine polyol".

5. Remove the words "Polyolefinamine in alkyl (C2–C4) benzenes".

6. Remove the words "Polyolefin phenolic amine (C28–C250)".

7. Remove the word "Tetraethylenepentamine" and add, in its place, the word "Tetraethylenepentamine [2]".

c. In Compatibility Group 14, Acrylates, remove the words "Polyalkyl methacrylate (C1–C20)", and add, in their place, the words "Polyalkyl (C10–C20) methacrylate".

d. In Compatibility Group 18, Ketones, remove the entry "Methyl diethanolamine".

e. In Compatibility Group 20, Alcohols, Glycols, remove the words "Polybutadiene, hydroxyl terminated" and add, in their place, the words "Polybutadiene, hydroxy terminated".

f. In Compatibility Group 30, Olefins, remove the words "Pentene, Miscellaneous hydrocarbon mixture [2]".

g. In Compatibility Group 33, Miscellaneous Hydrocarbon Mixtures, from the entry "Alachlor technical" remove the word "technical".

h. In Compatibility Group 34, Esters:

1. Remove the words "Alkyl phenol sulfide (C8–C40)" and add, in their place, the words "Alkyl (C8–C40) phenol sulfide".

2. Remove the words "Barium long chain alkaryl sulfonate (C11–C50)" and add, in their place, the words "Barium long chain alkaryl (C11–C50) sulfonate".

3. Remove the words "Calcium long chain alkyl phenate (C8–C40)" and add the words "Calcium long chain alkyl phenates" following the entry for "Calcium long chain alkyl phenate sulfide (C8–C40)".

4. Revise the entry "Fatty acids (saturated, C13+)", to read "Fatty acids (saturated, C14+)".

5. For the entry "Lecithin (*soyabean*)", remove the word "(*soyabean*)".

6. Remove the words "Polyolefin amide alkeneamine borate (C28–C250)".

i. In Compatibility Group 36, Halogenated Hydrocarbons, remove the words "Carbon tetrachloride" and add, in their place, the words "Carbon tetrachloride [2]".

j. In Compatibility Group 40, Glycol Ethers,

---

1. Remove the words "Nonyl phenol (ethoxylated)".

2. Revise the entry "Nonyl phenol poly(4–12)ethoxylates", to read "Nonyl phenol poly(4+)ethoxylates".

3. Remove the words "Oil, misc:".

k. In Compatibility Group 42, Nitrocompounds, revise the entry "Nitropropane, Nitroethane mixture" to read "Nitropropane, Nitroethane mixtures".

l. In Compatibility Group 43, Miscellaneous Water Solutions, remove the words "N-Methylglucamine solution (70% or less)".

m. To the same Table II, add the following new entries in the designated Compatibility Groups, in chemically proper alphabetized order:

Table II—Grouping of Cargoes

* * * * *

0. Unassigned Cargoes

* * * * *

tert-Dodecanethiol [2]

* * * * *

Hydrogen peroxide solutions [1]

* * * * *

NIAX POLYOL APP 240C [1, 2]

* * * * *

SAP 7001 [1]

* * * * *

4. Organic Acids

* * * * *

Glycolic acid

* * * * *

n-Pentanoic acid, 2-Methyl butryic acid mixture

* * * * *

7. Aliphatic Amines

* * * * *

N,N-Dimethyldodecylamine

* * * * *

Ethyleneamine EA 1302 [2]

* * * * *

N-Ethylmethylallylamine

* * * * *

Glyphosate solution (not containing surfactant)

* * * * *

Hexamethylenediamine

* * * * *

HiTec 321

* * * * *

bis-(Hydrogenated tallow alkyl)methyl amines

* * * * *

Phosphate esters, alkyl (C12–C14) amine

* * * * *

Polyisobutenamine in aliphatic (C10–C14) solvent

* * * * *

Poly (C17+) olefin amine

* * * * *

Polyolefin amide alkeneamine (C17+)

* * * * *

iso-Propylamine solution

* * * * *

Roundup

8. Alkanolamines

* * * * *

Ethoxylated long chain (C16+) alkyloxyalkanamine

* * * * *

Methyl diethanolamine

* * * * *

Ucarsol CR Solvent 302 SG

9. Aromatic Amines

* * * * *

Alkyl (C8–C9) phenylamine in aromatic solvents

* * * * *

Calcium long chain alkyl phenolic amine (C8–C40)

* * * * *

Dialkyl (C8–C9) diphenylamines

* * * * *

Diphenylamine

* * * * *

Paraldehyde-Ammonia reaction product

10. Amides

* * * * *

Acetochlor

* * * * *

N,N-bis(2-Hydroxyethyl) oleamide

* * * * *

Zinc alkenyl carboxamide

11. Organic Anhydrides

* * * * *

Polyisobutenyl anhydride adduct

* * * * *

12. Isocyanates

* * * * *

Hexamethylene diisocyanate

* * * * *

14. Acrylates

* * * * *

Dodecyl-Octadecyl methacrylate mixture

* * * * *

2-Hydroxyethyl acrylate [2]

* * * * *

Polyalkyl (C10–C18) methacrylate/Ethylene

* * * * *

propylene copolymer mixture

* * * * *

Roehm monomer 6615

* * * * *

18. Ketones

* * * * *

1-(4-Chlorophenyl)-4,4-dimethyl pentan-3-one [2]

* * * * *

19. Aldehydes

* * * * *

3-(Methylthio)propionaldehyde

* * * * *

20. Alcohols, Glycols

* * * * *

1,4-Butanediol

* * * * *

Diethyl hexanol

* * * * *

Icosa(oxypropane-2,3-diyl)s

* * * * *

2-Methyl-1,3-propanediol

* * * * *

Penacosa(oxypropane-2,3-diyl)s

* * * * *

Polyolefin amide alkeneamine polyol

* * * * *

Trimethyl nonanol

* * * * *

21. Phenols, Cresols

* * * * *

Dibutylphenols

* * * * *

30. Olefins

* * * * *

Cyclopentadiene, Styrene, Benzene mixture

* * * * *

Isoprene concentrate (Shell)

* * * * *

Methyl butene

* * * * *

Propylene, Propane, MAPP gas mixture

* * * * *

32. Aromatic Hydrocarbons

* * * * *

C9 Resinfeed (DSM) [2]

* * * * *

1-Hexadecylnaphthalene, 1,4-bis(Hexadecyl)

* * * * *

ne hthalene mixture
Naphthalene still residue

* * * * *

Polyolefin amine in alkylbenzenes (C2–C4)

* * * * *

Xylenes, Ethylbenzene mixture

33. Miscellaneous Hydrocarbon Mixtures

* * * * *

Asphalt emulsion

* * * * *

Coal tar distillate
Coal tar, high temperature

* * * * *

Degummed C9 (DOW)

* * * * *

Polyolefin amine (C28–C250)

Polyolefin amide alkeneamine (C17+)
Polyolefin amide alkeneamine borate (C28–C250)

* * * * *

Sulfurized fat (C14–C20)
Sulfurized polyolefinamide alkeneamines (C28–C250)

* * * * *

34. Esters

* * * * *

Alkyl (C10–C20, saturated and unsaturated) phosphite
Alkyl sulfonic acid ester of phenol
Alkylaryl phosphate mixtures (more than 40%
Diphenyl tolyl phosphate, less than 0.02% ortho-isomer)

* * * * *

Calcium nitrate solution

* * * * *

Copper salt of long chain alkanoic acids

* * * * *

Diethylene glycol dibenzoate

* * * * *

Dithiocarbamate ester (C7–C35)

* * * * *

Ditridecyl adipate

* * * * *

Polyolefin aminoester salt

* * * * *

Potassium formate solution

* * * * *

Potassium salt of polyolefin acid

* * * * *

Tall oil fatty acid (*Resin acids less than 20%*)[2]

* * * * *

Triethylene glycol dibenzoate

* * * * *

36. Halogenated Hydrocarbons

* * * * *

Bromochloromethane

* * * * *

Catoxid feedstock[2]

* * * * *

Dibromomethane

* * * * *

Dibutylphenols

* * * * *

3,4-Dichloro-1-butene

* * * * *

1,2,3-Trichlorobenzene

* * * * *

40. Glycol Ethers

Alkyl (C7-C11) phenol poly(4-12)ethoxylate
Alkyl (C9-C15) phenyl propoxylate

* * * * *

Pentaethylene glycol methyl ether

* * * * *

Poly(tetramethylene ether) glycols (mw 950–1050)
Polytetramethylene ether glycol

* * * * *

Tetraethylene glycol methyl ether

41. Ethers

* * * * *

tert-Amyl methyl ether

* * * * *

Ethyl tert-butyl ether[2]

* * * * *

Methyl tert-pentyl ether

42. Nitrocompounds

* * * * *

Nitroethane, 1-Nitropropane mixture

* * * * *

43. Miscellaneous Water Solutions

Alkyl polyglucoside solutions

* * * * *

Ammonium lignosulfonate solution

* * * * *

Calcium lignosulfonate solution

* * * * *

Caramel solutions

* * * * *

l-Lysine solution

* * * * *

Sodium lignosulfonate solution

* * * * *

Titanium dioxide slurry

* * * * *

Footnotes to Table II

[1] Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this product is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (G–MSO), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001. Telephone (202) 267–1577.

[2] See Appendix I—Exceptions to the Chart.

PART 150 APPENDIX [AMENDED]

10. In appendix I(a):

a. Under the compound "Caustic Soda, 50% or less (5)" in the column "Member of reactive group", revise the entry "Sodium chlorate (0)" in the column "Compatible with" to read "Sodium chlorate solution (0)"; add the new entry "Dodecyl alcohol (20)" to follow the entry "Diethylene glycol (40)" in the column "Compatible with"; and add the new entry "iso-Propyl alcohol (20)" to follow the entry "Propyl alcohol (20)" in the column "Compatible with".

b. Preceding the entry "Dodecyl and Tetradecylamine mixture (7)" in the column "Member of reactive group", add the new entry "tert-Dodecanethiol (0)"; and, in the column "Compatible with", add the corresponding entries "Acrylonitrile (15)", "Diisodecyl phthalate (34)", "Methyl ethyl ketone (18)", "iso-Nonyl alcohol (20)", "Perchloroethylene (36)", "iso-Propyl alcohol (20)", and "Tall oil, crude".

c. Under the entry "Sodium hydrosulfide solution (5)" in the column "Member of reactive group", add the new entry "Methyl alcohol (20)" to precede the entry "iso-Propyl alcohol (20)" in the column "Compatible with".

11. In appendix I (b):

a. Remove the words "Ethylenediamine (7) is not compatible with Ethylene dichloride (36)" and add, in their place, the words "Ethylenediamine (7) and Ethyleneamine EA 1302 (7) are not compatible with either Ethylene dichloride (36) or 1,2,3-Trichloropropane (36)".

b. Remove the words "Ethylene dichloride (36) is not compatible with Ethylenediamine (7)" and add, in their place, the words "Ethylene dichloride (36) is not compatible with Ethylenediamine (7) or Ethyleneamine EA 1302 (7)".

c. Remove the words "2-Hydroxyethyl acrylate is not compatible with Groups 2, 3, 5–8 and 12" and add, in their place, the words "2-Hydroxyethyl acrylate (14) is not compatible with Group 5, 6, or 12".

12. Amend Appendix I (b) by removing the following entries in their entirety:

a. "Naphtha, cracking fraction (33) is not compatible with strong acids, caustics or oxidizing agents".

b. "Pentene, Miscellaneous hydrocarbon mixtures (30) are not compatible with strong acids or oxidizing agents".

c. "Sodium salt of Ferric hydroxyethylethylenediamine triacetic acid solution (43) is not compatible with Group 3, Nitric acid".

13. Amend Appendix I (b) by adding the following new entries in chemically proper alphabetical order to read as follows:

* * * * *

C9 Resinfeed (DSM) (32) is not compatible with Group 2, Sulfuric acid.

* * * * *

Carbon tetrachloride (36) is not compatible with Tetraethylenepentamine or Triethylenetetramine, both Group 7, Aliphatic amines.

* * * * *

Catoxid feedstock (36) is not compatible with Group 1, 2, 3, 4, 5, or 12.

* * * * *

1-(4-Chlorophenyl)-4,4-dimethyl pentan-3-one (18) is not compatible with Group 5 (Caustics) or 10 (Amides).

* * * * *

Diethylenetriamine (7) is not compatible with 1,2,3-Trichloropropane, Group 36, Halogenated hydrocarbons.

* * * * *

Ethyl tert-butyl ether (41) is not compatible with Group 1, Non-oxidizing mineral acids.

* * * * *

NIAX POLYOL APP 240C (0) is not compatible with Group 2, 3, 5, 7, or 12.

* * * * *

Propylene, Propane, MAPP gas mixture (containing 12% or less MAPP gas) (30) is not compatible with Group 1 (Non-oxidizing mineral acids), Group 36 (Halogenated hydrocarbons), nitrogen dioxide, oxidizing materials, or molten sulfur.

* * * * *

Tall oil fatty acid (*Resin acids less than 20%*) (34) is not compatible with Group 5, Caustics.

* * * * *

Tetraethylenepentamine (7) is not compatible with Carbon tetrachloride, Group 36, Halogenated hydrocarbons.

* * * * *

1,2,3-Trichloropropane (36) is not compatible with Diethylenetriamine, Ethylenediamine, Ethyleaneamine EA 1302, or Triethylenetetramine, all Group 7, Aliphatic amines.

* * * * *

Triethylenetetramine (7) is not compatible with Carbon tetrachloride, or 1,2,3-Trichloropropane, both Group 36, Halogenated hydrocarbons.

* * * * *

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

14. The citation of authority for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

§ 151.05–1 [Amended]

15. In § 151.05–1, remove paragraph (f) and redesignate paragraphs (g) through (r) as (f) through (q).

16. Following § 151.05–2, revise Table 151.05 to read as follows:

TABLE 151.05— SUMMARY OF MINIMUM REQUIREMENTS

Cargo identification[1]			Hull type	Cargo segregation tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements in 46 CFR Part 151	Electrical hazard class and group	Temp. control instal.	Tank internal inspect. period—years
Cargo name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
a.	b.	c.	d.	e.	f.	g	h.	i.	j.	k.	l.	m.	n.	o.	p.	q.
Acetaldehyde	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-1	Inert	Vent F	Yes	.55-1(h)	I-C	NA	G
Acetic acid	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.50-73 .55-1(g)	I-D	NA	G
Acetic anhydride	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-73 .55-1(g)	I-D	NA	G
Acetone cyanohydrin	Atmos.	Amb.	I	1ii 2i	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 .50-70(b) .50-73 .50-81	I-D	NA	G
Acetonitrile	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Acrylic acid	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) .50-73 .50-81 .58-1(a)	I-D	NA	G
Acrylonitrile	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(e) .50-70(a)	I-D	NA	G
Adiponitrile	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Alkylbenzenesulfonic acid *(greater than 4%)*.	Atmos.	Elev.	III	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.50-73 .58-1(e)	I-B	NA	G
Alkyl(C7–C9) nitrates	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.50-81 .50-86	NA	NA	G
Allyl alcohol	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 .50-73	I-C	NA	G
Allyl chloride	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5	I-D	NA	G
Aluminum sulfate solution	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.58-1(e)	NA	NA	G
Aminoethylethanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(b)	NA	NA	G
Ammonia, anhydrous	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR250 p.s.i.	Restr.	II	P-2	NR	Vent F	No	.50-30 .50-32	I-D	NA	G
Ammonia, anhydrous	Atmos.	Low	II	1NA 2ii	Ind. Gravity	PV	Restr.	II-L	G-2	NR	Vent F	No	.50-30 .50-32	I-D	.40-1(b)(1)	8
Ammonium bisulfite solution (70% or less)	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-73 .56-1(a), (b), (c)	NA	NA	G
Ammonium hydroxide (28% or less NH_3)	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	.56-1(a), (b), (c), (f), (g)	I-D	NA	G
Aniline	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 .50-73	I-D	NA	G
Anthracene oil (Coal tar fraction)	Atmos.	Amb. Elev.	II	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Argon, *liquefied*	Press.	Low	III	1NA 2i	Ind. Pressure	SR	Restr.	II-L	P-1	NR	Vent F	No	.40-1(a) .50-30 .50-36	NA	.40-1(a)	G
Benzene	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.50-60	I-D	NA	G
Benzene hydrocarbon mixtures (containing Acetylenes) *(having 10% Benzene or more)*.	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.50-60 .56-1(b), (d), (f), (g),	I-D	NA	G
Benzene hydrocarbon mixtures *(having 10% Benzene or more)*.	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.50-60	I-D	NA	G
Benzene, Toluene, Xylene mixtures *(having 10% Benzene or more)*.	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.50-60	I-D	NA	G
Butadiene	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	.50-70(a) .50-73	I-B	NA	G
Butadiene, Butylene mixtures *(containing Acetylenes)*.	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-1	NR	Vent F	Yes	50-30 .50-70(a) .50-73 .56-1(b), (d), (f), (g)	I-B	NA	G
Butyl acrylate (all isomers)	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) .50-81(a), (b)	I-D	NA	G
Butylamine (all isomers)	Atmos.	Amb.	II	1ii 2ii	Ind. Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(c)	I-D	NA	G
Butyl methacrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) .50-81(a), (b)	I-D	NA	G
Butyraldehyde (all isomers)	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	.55-1(h)	I-C	NA	G
Camphor oil *(light)*	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Carbolic oil	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 .50-73	NA	NA	G
Carbon dioxide, *liquefied*	Press.	Low	III	1NA 2i	Ind. Pressure	SR	Restr.	I-L	P-1	NR	Vent F	No	.50-30	NA	.40-1(b)(1)	G
Carbon disulfide	Atmos.	Amb.	II	1NA 2ii	Ind. Gravity	PV	Restr.	II	G-1	Inert	Vent F	Yes	.50-40 .50-41	I-A	NA	G
Carbon tetrachloride	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Open	II	G-1	NR	Vent N	No	No	NA	NA	G

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification[1]			Hull type	Cargo segregation tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements in 46 CFR Part 151	Electrical hazard class and group	Temp. control install.	Tank internal inspect. period—years
Cargo name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
a.	b.	c.	d.	e.	f.	g.	h.	i	j.	k.	l.	m.	n.	o.	p.	q.
Cashew nut shell oil (untreated)	Atmos.	Amb.	III	1 ii 2 i	Integral Gravity	PV	Restr.	II	G-2	NR	Vent N	Yes	.50-73	NA	NA	G
Caustic potash solution	Atmos.	Amb. Elev.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	.50-73 .55-1(j)	NA	NA	G
Caustic soda solution	Atmos.	Amb. Elev.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	.50-73 .55-1(j)	NA	NA	G
Chlorine	Press.	Amb.	I	1NA 2 ii	Ind. Pressure	SR300 p.s.i.	Indirect	I	P-2	NR	Vent F	No	.50-30 .50-31	NA	NA	3
Chlorobenzene	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	PV	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Chloroform	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	Vent F	No	No	NA	NA	G
Chlorohydrins *(crude)*	Atmos.	Amb.	I	1 ii 2 ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5	I-D	NA	G
o-Chloronitrobenzene	Atmos.	Amb.	I	1 ii 2 ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 .50-73	NA	NA	G
Chlorosulfonic acid	Atmos.	Amb.	III	1 ii 2 ii	Integral Gravity	PV	Open	II	G-1	NR	Vent N	No	.50-20 .50-21 .50-73	I-B	NA	G
Coal tar naphtha solvent	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-73	I-D	NA	G
Coal tar pitch (molten)	Atmos.	Elev.	III	1 ii 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-73	I-D	NA	G
Creosote	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
Cresols (all isomers)	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
Cresols with less than 5% Phenol, see Cresols (all isomers).																
Cresols with 5% or more Phenol, see Phenol.																
Cresylate spent caustic	Atmos.	Amb.	III	1 ii 2 i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-73 .55-1(b)	NA	NA	G
Cresylic acid, sodium salt solution, *see* Cresylate spent caustic.																
Crotonaldehyde	Atmos.	Amb.	II	1 ii 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(h)	I-C	NA	G
Cyclohexanone	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.56-1(a), (b)	I-D	NA	G
Cyclohexanone, Cyclohexanol mixture	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.56-1(b)	I-D	NA	G
Cyclohexylamine	Atmos.	Amb.	III	1 ii 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.56-1(a), (b), (c), (g)	I-D	NA	G
Cyclopentadiene, Styrene, Benzene mixture.	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	Open	Open	II	G-1	NR	Vent F	Yes	.50-60 .56-1(b)	I-D	NA	G
iso-Decyl acrylate	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.50-70(a) .50-81(a), (b) .55-1(c)	NA	NA	G
Dichlorobenzene (all isomers)	Atmos.	Amb.	III	1 ii 2 i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.56-1(a), (b)	I-D	NA	G
Dichlorodifluoromethane	Press.	Amb.	III	1NA 2 i	Ind. Pressure	SR	Restr.	II	P-1	NR	NR	No	No	NA	NA	G
1,1-Dichloroethane	Atmos.	Amb.	III	1 ii 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
2,2'-Dichloroethyl ether	Atmos.	Amb.	II	1 ii 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(f)	I-C	NA	G
Dichloromethane	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	No	I-D	NA	G
2,4-Dichlorophenoxy acetic acid, diethanolamine salt solution.	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.56-1(a), (b), (c), (g)	NA	NA	G
2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution.	Atmos.	Amb. Elev.	III	1 i 2 i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	.56-1(a), (b), (c), (g)	NA	NA	G
2,4-Dichlorophenoxyacetic acid, triisopropanolamine salt solution.	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.56-1(a), (b), (c), (g)	NA	NA	G
1,1-Dichloropropane	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
1,2-Dichloropropane	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
1,3-Dichloropropane	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
1,3-Dichloropropene	Atmos.	Amb.	II	1 ii 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Dichloropropene, Dichloropropane mixtures.	Atmos.	Amb.	II	1 ii 2 ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
2,2-Dichloropropionic acid	Atmos.	Amb.	II	1 ii 2 i	Integral Gravity	PV	Restr.	II	G-1	Dry	Vent F	Yes	.50-73 .56-1(e)	NA	NA	G
Diethanolamine	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	NA	NA	G

TABLE 151.05— SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification[1]			Hull type	Cargo segregation tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements in 46 CFR Part 151	Electrical hazard class and group	Temp. control install.	Tank internal inspect. period—years
Cargo name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.	k.	l.	m.	n.	o.	p.	q.
Diethylamine	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-C	NA	G
Diethylenetriamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	NA	NA	G
Diethyl ether, *see* Ethyl ether.																
Diisobutylamine	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-C	NA	G
Diisopropanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	NA	NA	G
Diisopropylamine	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(c)	I-C	NA	G
N,N-Dimethylacetamide	Atmos.	Amb.	III	1ii 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.56-1(b)	I-D	NA	G
Dimethylamine	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	.55-1(c)	I-C	NA	G
Dimethylethanolamine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.56-1(b), (c)	I-C	NA	G
Dimethylformamide	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(e)	I-D	NA	G
1,4-Dioxane	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	Inert	Vent F	Yes	No	I-C	NA	G
Diphenylmethane diisocyanate	Atmos.	Elev.	II	1ii 2i	Integral Gravity	PV	Closed	I	G-1	Inert Dry	Vent F	Yes	.50-5 .56-1(a), (b)	NA	Yes	G
Di-n-propylamine	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-C	NA	G
Dodecyl- dimethyl- amine, Tetradecyl-dimethylamine mixture.	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.56-1(b)	NA	NA	G
Dodecyl phenol	Atmos.	Amb.	I	1ii 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.50-73	I-D	NA	2
Epichlorohydrin	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5	I-C	NA	G
Ethanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	I-D	NA	G
Ethyl acrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) .50-81(a), (b)	I-D	NA	G
Ethylamine solution (72% or less)	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(b)	I-D	NA	G
N-Ethylbutylamine	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(b)	I-C	NA	G
Ethyl chloride	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	No	I-D	NA	8
N-Ethylcyclohexylamine	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(b)	I-C	NA	G
Ethylene chlorohydrin	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 .50-73	I-D	NA	G
Ethylene cyanohydrin	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
Ethylenediamine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-D	NA	G
Ethylene dibromide	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	No	No	NA	NA	G
Ethylene dichloride	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Ethylene glycol monoalkyl ethers *Including:* *2-Ethoxyethanol* *Ethylene glycol butyl ether* *Ethylene glycol tert-butyl ether* *Ethylene glycol ethyl ether* *Ethylene glycol methyl ether* *Ethylene glycol n-propyl ether* *Ethylene glycol isopropyl ether*	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-C	NA	G
Ethylene glycol hexyl ether	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
Ethylene glycol propyl ether	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
Ethylene oxide	Press.	Amb.	I	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	Inert	Vent F	Yes	.50-10 .50-12	I-B	.40-1(c)	4
Ethyl ether	Atmos.	Amb.	II	1NA 2ii	Ind. Gravity	PV	Closed	II	G-1	Inert	Vent F	Yes	.50-40 .50-42	I-C	NA	G
2-Ethylhexyl acrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.50-70(a) .50-81(a), (b)	I-D	NA	G
Ethylidene norbornene	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.50-5 .50-74	NA	NA	G
Ethyl methacrylate	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a)	I-D	NA	G
2-Ethyl-3-propylacrolein	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-C	NA	G
Ferric chloride solutions	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 .50-75	I-B	NA	G

TABLE 151.05— SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification[1]			Hull type	Cargo segregation tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements in 46 CFR Part 151	Electrical hazard class and group	Temp. control install.	Tank internal inspect. period—years
Cargo name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.	k.	l.	m.	n.	o.	p.	q.
Fluorosilicic acid (30% or less)	Atmos.	Amb.	II	1 ii 2 ii	Ind. Gravity	PV	Closed	II	G-1	NR	Vent F	No	.50-20 .50-22 .50-73 .50-77	I-B	NA	4
Formaldehyde solution (37% to 50%)	Atmos.	Amb.	III	1 ii 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	.55-1(h)	I-B	NA	G
Formic acid	Atmos.	Amb.	III	1 ii 2 i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-73 .55-1(i)	I-D	NA	G
Furfural	Atmos.	Amb.	III	1 ii 2 i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(h)	I-C	NA	G
Glutaraldehyde solution (50% or less)	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	No	NA	NA	G
Glyoxylic acid solution (50% or less)	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.50-73 .50-81 .58-1(e)	NA	NA	G
Hexamethylenediamine solution	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-D	NA	G
Hexamethyleneimine	Atmos.	Amb.	II	1 ii 2 i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.56-1(b), (c)	I-C	NA	G
Hydrochloric acid	Atmos.	Amb.	III	1NA 2 ii	Ind. Gravity	Open	Open	II	G-1	NR	Vent F	No	.50-20 .50-22 .50-73	I-B	NA	4
Hydrofluorosilicic acid (25% or less), see Fluorosilicic acid (30% or less).																
2-Hydroxyethyl acrylate	Atmos.	Amb.	I	1 ii 2 i	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 .50-70(a) .50-73 .50-81(a), (b)	NA	NA	G
Isoprene	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	.50-70(a) .50-81(a), (b)	I-D	NA	G
Kraft pulping liquors (free alkali content 3% or more) *(including: Black, Green, or White liquor).*	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	.50-73 .56-1(a), (c), (g)	NA	NA	G
Mesityl oxide	Atmos.	Amb.	III	1 ii 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Methylacetylene, Propadiene mixture	Press.	Amb.	III	1 NA 2 ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	.50-79	I-C	NA	G
Methyl acrylate	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) .50-81(a), (b)	I-D	NA	G
Methylamine solution (42% or less)	Atmos.	Amb.	II	1NA 2 ii	Ind. Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.56-1(a), (b), (c), (g)	I-D	NA	G
Methyl bromide	Press.	Amb.	I	1NA 2 ii	Ind. Pressure	SR	Closed	I	P-2	NR	Vent F	Yes	.50-5	I-D	NA	2
Methyl chloride	Press.	Amb.	II	1NA 2 ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	.55-1(c)	I-D	NA	8
Methylcyclopentadiene dimer	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-B	NA	G
Methyl diethanolamine	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.56-1(b), (c)	I-C	NA	G
2-Methyl-5-ethylpyridine	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(e)	I-D	NA	G
Methyl methacrylate	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) .50-81(a), (b)	I-D	NA	G
2-Methylpyridine	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-D	NA	G
alpha-Methylstyrene	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) .50-81(a), (b)	I-D	NA	G
Monochloro- difluoromethane	Press.	Amb.	III	1NA 2 i	Ind. Pressure	SR	Restr.	I	P-1	NR	NR	No	No	NA	NA	G
Morpholine	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	I-C	NA	G
Motor fuel anti-knock compounds (containing lead alkyls).	Atmos.	Amb.	I	1 ii 2 ii	Ind. Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-6 .50-73	I-D	NA	.50-6
Nitric acid (70% or less)	Atmos.	Amb.	II	1 ii 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	.50-20 .50-73 .50-80	I-B	NA	4
Nitrobenzene	Atmos.	Amb.	I	1 ii 2 ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 .50-73	I-D	NA	G
Nitrogen, *liquefied*	Press.	Low	III	1NA 2 i	Ind. Pressure	SR	Restr.	II-L	P-1	NR	Vent F	No	.40-1(a) .50-30 .50-36	NA	.40-1(a)	G
1- or 2-Nitropropane	Atmos.	Amb.	III	1 ii 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-81	I-C	NA	G
o-Nitrotoluene	Atmos.	Amb.	I	1 ii 2 ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 .50-73	I-D	NA	G
Octyl nitrates (all isomers), see Alkyl(C7–C9) nitrates.																
Oleum	Atmos.	Amb.	III	1 ii 2 ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 .50-21 .50-73	I-B	NA	4

TABLE 151.05— SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification[1]					Tanks			Cargo transfer		Environmental control						
Cargo name	Pressure	Temp.	Hull type	Cargo segregation tank	Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space	Fire protection required	Special requirements in 46 CFR Part 151	Electrical hazard class and group	Temp. control install.	Tank internal inspect. period—years
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.	k.	l.	m.	n.	o.	p.	q.
Pentachloroethane	Atmos.	Amb.	III	1ii 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	No	NA	NA	G
1,3-Pentadiene	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) .50-81	I-D	NA	G
Perchloroethylene	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	No	NA	NA	G
Phenol	Atmos.	Amb.	I	1ii 2i	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 .50-73	I-D	NA	2
Phosphoric acid	Atmos.	Amb.	III	1ii 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 .50-23 .50-73	I-B	NA	4
Phosphorus, white (elemental)	Atmos.	Elev.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	Water Pad	Vent F	Yes	.50-50	NA	NA	4-8
Phthalic anhydride (molten)	Atmos.	Elev.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Polyethylene polyamines	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(e)	NA	NA	G
Polymethylene polyphenyl isocyanate	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Closed	II	G-1	Dry	Vent F	Yes	.55-1(e)	NA	NA	G
Potassium hydroxide solution, *see* Caustic potash solution.																
iso-Propanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	I-D	NA	G
Propanolamine (iso-, n-)	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.56-1(b), (c)	I-D	NA	G
Propionic acid	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.50-73 .55-1(g)	I-D	NA	G
iso-Propylamine	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(c)	I-D	NA	3
Propylene oxide	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-1	Inert	Vent F	Yes	.50-10 .50-13	I-B	NA	G
iso-Propyl ether	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	Inert	Vent F	Yes	.50-70(a)	I-D	NA	G
Pyridine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(e)	I-D	NA	G
Sodium aluminate solution (45% or less)	Atmos.	Amb. Elev.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	.50-73 .56-1(a), (b), (c)	NA	NA	G
Sodium chlorate solution (50% or less)	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-73	NA	NA	G
Sodium dichromate solution (70% or less)	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	Open	Closed	II	G-1	NR	Vent N	No	.50-5(d) .50-73 .56-1(b), (c)	NA	NA	G
Sodium hydroxide solution, *see* Caustic soda solution.																
Sodium hypochlorite solution (20% or less)	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	.50-73 .56-1(a), (b)	NA	NA	G
Sodium sulfide, hydrosulfide solutions (H_2S 15ppm or less).	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-73 .55-1(b)	NA	NA	G
Sodium sulfide, hydrosulfide solutions (H_2S greater than 15ppm but less than 200ppm).	Atmos.	Amb.	III	1ii 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	.50-73 .55-1(b)	NA	NA	G
Sodium sulfide, hydrosulfide solutions (H_2S greater than 200ppm).	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	No	.50-73 .55-1(b)	NA	NA	G
Sodium thiocyanate solution (56% or less)	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.56-1(a)	NA	NA	G
Styrene monomer	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.50-70(a) .50-81(a), (b)	I-D	NA	G
Sulfur (molten)	Atmos.	Elev.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	Vent N	Vent N	Yes	.50-55	I-C	.40-1(f)(1)	G
Sulfur dioxide	Press.	Amb.	I	1NA 2ii	Ind Pressure	SR	Closed	....	P-2	NR	Vent F	No	.50-30 .50-84 .55-1(j)	NA	NA	2
Sulfuric acid	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 .50-21 .50-73	I-B	NA	4
Sulfuric acid, spent	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 .50-21 .50-73	I-B	NA	4
1,1,2,2-Tetrachloroethane	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	No	NA	NA	G
Tetraethylenepentamine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	I-C	NA	G
Tetrahydrofuran	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(b)	I-C	NA	G
Toluenediamine	Atmos.	Elev.	II	1ii 2i	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.50-73 .56-1(a), (b), (c), (g)	NA	NA	G
Toluene diisocyanate	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	Dry N_2	Vent F	Yes	.50-5 .55-1(e)	I-D	NA	G
o-Toluidine	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.50-5 .50-73	I-D	NA	G

TABLE 151.05— SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification[1]			Hull type	Cargo segregation tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements in 46 CFR Part 151	Electrical hazard class and group	Temp. control instal.	Tank internal inspect. period—years
Cargo name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.	k.	l.	m.	n.	o.	p.	q.
1,2,4-Trichlorobenzene	Atmos.	Amb.	III	1 ii 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
1,1,2-Trichloroethane	Atmos.	Amb.	III	1 ii 2 i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	.50-73 .56-1(a)	I-D	NA	G
Trichloroethylene	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	No	I-D	NA	G
1,2,3-Trichloropropane	Atmos.	Amb.	II	1 ii 2 i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-73 .56-1(a)	I-D	NA	G
Triethanolamine	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(b)	I-C	NA	G
Triethylamine	Atmos.	Amb.	II	1 ii 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(e)	I-C	NA	G
Triethylenetetramine	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(b)	I-C	NA	G
Triphenylborane (10% or less), Caustic soda solution.	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	.56-1(a), (b), (c)	NA	NA	G
Trisodium phosphate solution	Atmos.	Amb. Elev.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	.50-73 .56-1(a), (c)	NA	NA	G
Urea, Ammonium nitrate solution (containing more than 2% NH_3).	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	.56-1(b)	I-D	NA	G
Valeraldehyde (all isomers)	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	PV	Restr.	II	G-1	Inert	Vent F	Yes	No	I-C	NA	G
Vanillan black liquor (free alkali content 3% or more).	Atmos.	Amb.	III	1 i 2 i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	.50-73 .56-1(a), (c), (g)	NA	NA	G
Vinyl acetate	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	.50-70(a) .50-81(a), (b)	I-D	NA	G
Vinyl chloride	Press.	Amb.	II	1NA 2 ii	Ind. Pressure	SR	Closed	II	P-2	NR	Vent F	Yes	.50-30 .50-34	I-D	NA	8
Vinyl chloride	Atmos.	Low	II	1NA 2 ii	Ind. Gravity	PV	Closed	II-L	G-2	NR	Vent F	Yes	.50-30 .50-34	I-D	.40-1(b)(1)	8
Vinylidene chloride	Atmos.	Amb.	II	1NA 2 ii	Ind. Gravity	PV	Closed	II	P-2	Padded	Vent F	Yes	.55-1(f) .50-70(a) .50-81(a), (b)	I-D	NA	G
Vinyltoluene	Atmos.	Amb.	III	1 i 2 ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) .50-81 .56-1(a), (b), (c), (g)	I-D	NA	G
For requirements see these sections in Part 151:.			.10- 1	.13- 5	.15- 1	.15-5	.15- 10	.20- 1	.20- 5	.25-1	.25-2	.30		111.105 (Subchapter J)	.40	.04- 5

See Table 2 of Part 153 for additional cargoes permitted to be carried by tankbarge.
Terms and symbols:
Segregation—Tank—
  Line 1—Segregation of cargo from surrounding waters:
    i=Skin of vessel (single skin) only required. Cargo tank wall can be vessel's hull.
    ii=Double skin required. Cargo tank wall cannot be vessel's hull.
  Line 2—Segregation of cargo space from machinery spaces and other spaces which have or could have a source of ignition:
    i=Single bulkhead only required. Tank wall can be sole separating medium.
    ii=Double bulkhead required. Cofferdam, empty tank, pumproom, tank with Grade E Liquid (if compatible with cargo) is satisfactory.
Internal tank inspection—
  G—Indicates cargo is subject to general provisions of 151.04-5(b).
  Specific numbers in this column are changes from the general provisions.
Abbreviations used:
Tank type: Ind=Independent.
Vent:
  PV=Pressure vacuum valve.
  SR=Safety relief.
Gauging device: Restr.=Restricted.
General usage:
  NR=No requirement.
  NA=Not applicable.

[1] The provisions contained in 46 CFR Part 197, subpart C, apply to liquid cargoes containing 0.5% or more benzene by volume.

§ 151.12–5 [Amended]

17. Amend § 151.12–5 by adding the following new entries in chemically proper alphabetized order:

§ 151.12–5 Equipment for Category D NLS.

* * * * *

Cyclohexanone, Cychexanol mixture

* * * * *

Glyoxylic acid solution (50% or less)

* * * * *

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

18. The citation of authority for Part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

19. Revise Table 1 of part 153 to read as follows:

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Acetic acid	D	S	III	4m	PV	Restr	A	.238(a), .409, .527, .554, .933	I-D
Acetic anhydride	D	S	II	4m	PV	Restr	A	.238(a), .409, .526, .527, .554, .933	I-D
Acetochlor	A	P	II	NR	Open	Open	A	.409	NA
Acetone cyanohydrin	A	S/P	II	B/3	PV	Closed	A	.238(a), .316, .336, .408, .525, .526, .527, .912(a)(2), .933, .1002, .1004, .1020, .1035.	I-D
Acetonitrile	III	S	II	B/3	PV	Restr	A	.409, .525, .526, .1020	I-D
Acrylamide solution (50% or less).	D	S	II	NR	Open	Closed	NSR	.409, .525(a), (c), (d), (e), .912(a)(1), .1002(a), .1004, .1020.	NA
Acrylic acid	D	S	III	4m	PV	Restr	A	.238(a), .409, .526, .912(a)(1), .933, .1002(a), .1004.	I-D
Acrylonitrile	B	S/P	II	B/3	PV	Closed	A	.236(a), (c), (d), .316, .408, .525, .526, .527, .912(a)(1), .1004, .1020.	I-D
Adiponitrile	D	S	III	4m	PV	Restr	A	.526	I-D
Alachlor	B	S/P	III	NR	Open	Open	A, C	.238(a), .409, .440, .488, .908(a), (b).	NA
Alcohol (C6–C17) (secondary) poly(3–6)ethoxylates.	A	P	II	NR	Open	Open	A	.409	NA
Alcohol (C6–C17) (secondary) poly(7–12)ethoxylates.	B	P	III	NR	Open	Open	A	.409, .440, .908(a), (b)	NA
Alcohol(C9–C11) poly(2.5–9) ethoxylate.	B	P	III	NR	Open	Open	A	.409, .440, .908(a)	NA
Alcohol(C12–C15) poly(...)ethoxylates, *see* Alcohol(C12–C16) poly(...)ethoxylates.									
Alcohol(C12–C16) poly(1–6)ethoxylates.	A	P	II	NR	Open	Open	A	.409	NA
Alcohol(C12–C16) poly(7–19)ethoxylates.	B	P	III	NR	Open	Open	A	.409, .440, .908(a)	NA
Alcohol(C12–C16) poly(20+)ethoxylates.	C	P	III	NR	Open	Open	A	None	NA
Alkanes(C6–C9) (*all isomers*).	C	P	III	4m	PV	Restr	A	.409	I-D
Alkane(C14–C17) sulfonic acid, sodium salt solution (65% or less).	B	P	III	NR	Open	Open	NSR	.440, .908(a)	NA
Alkaryl polyether (C9–C20)	B	P	III	NR	Open	Open	A, B	.409; (.440, .908(a))[1]	NA
Alkenyl(C16–C20) succinic anhydride.	D	S	III	B/3	PV	Closed	NSR	.316, .408, .525, .526, .1020	NA
Alkyl acrylate-Vinyl pyridine copolymer in Toluene.	C	P	III	4m	PV	Restr	A	.409	NA
Alkylaryl phosphate mixtures (more than 40% Diphenyl tolyl phosphate, less than 0.02% ortho-isomer).	A	S/P	I	B/3	PV	Closed	A, B, C	.316, .408, .525, .526, .1020	NA
Alkyl(C3–C4)benzenes (*all isomers*).	A	P	III	4m	PV	Restr	A	.409	I-D
Alkyl(C5–C8)benzenes (*all isomers*).	A	P	II	NR	Open	Open	A	.409	I-D

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Alkylbenzene, Alkylindane, Alkylindene mixture (each C12–C17).	A	P	II	NR	Open	Open	A	.409	NA
Alkylbenzenesulfonic acid *(greater than 4%)*.	C	S/P	III	NR	Open	Open	A, B	.440, .908(a)	NA
Alkylbenzenesulfonic acid, sodium salt solution.	C	P	III	NR	Open	Open	NSR	.440, .903, .908(a), (b)	NA
Alkyl(C7–C9) nitrates	B	S/P	II	NR	Open	Open	A, B	.409, .560, .1002	NA
Alkyl (C7–C11) phenol poly(4-12) ethoxylate.	B	P	III	NR	Open	Open	A	.409, .440, .488[1], .908(a), (b)	I-D
Alkyl(C8–C9) phenylamine in aromatic solvent.	A	P	III	4m	PV	Restr	A	.409	NA
Alkyl(C10–C20, saturated and unsaturated) phosphite.	C	P	III	NR	Open	Open	A	None	NA
Alkyl(C8–C10) polyglucoside solution (65% or less).	C	P	III	NR	Open	Open	NSR	.440, .908(a), (b)	NA
Alkyl(C12–C14) polyglucoside solution (55% or less).	B	P	III	NR	Open	Open	NSR	.409, .440, .908(a), (b)	NA
Alkyl(C8–C10)/(C12–C14): (40% or less/60% or more) polyglucoside solution (55% or less).	B	P	III	NR	Open	Open	NSR	.409, .440, .908(a), (b)	NA
Alkyl(C8–C10)/(C12–C14): (50/50%) polyglucoside solution (55% or less).	C	P	III	NR	Open	Open	NSR	.440, .908(a), (b)	NA
Alkyl(C8–C10)/(C12–C14): (60% or more/40% or less) polyglucoside solution (55% or less).	C	P	III	NR	Open	Open	NSR	.440, .908(a), (b)	NA
Allyl alcohol	B	S/P	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .933, .1020.	I-C
Allyl chloride	B	S/P	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .1020	I-D
Aluminum chloride (30% or less), Hydrochloric acid (20% or less) solution.	D	S	III	4m	PV	Restr	NSR	.252, .526, .527, .554, .557, .933, .1045, .1052.	I-B
2-(2-Aminoethoxy) ethanol	D	S	III	NR	Open	Open	A, C, D	.236(b), (c), .409	NA
Aminoethylethanolamine	D	S	III	NR	Open	Open	A	.236(a), (b), (c), (g)	NA
N-Aminoethylpiperazine	D	S	III	4m	PV	Restr	A	.236(b), (c), .409, .526	I-C
2-Amino-2-methyl-1-propanol (90% or less).	D	S	III	NR	Open	Open	A	.236(a), (b), (c), (g)	I-D
Ammonia aqueous (28% or less), *see* Ammonium hydroxide (28% or less NH$_3$).									
Ammonium bisulfite solution (70% or less).	D	S	III	4m	PV	Restr	No	.238(e), .526, .933, .1002	NA
Ammonium hydroxide (28% or less NH$_3$).	C	S/P	III	4m	PV	Restr	A, B, C	.236(b), (c), (f), .526, .527	I-D
Ammonium nitrate solution (greater than 45% and less than 93%).	D	S	II	NR	Open	Open	NSR	.238(d), .252, .336, .409, .554(a), (b).	NA
Ammonium sulfide solution (45% or less).	B	S/P	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .316, .408, .525, .526, .527, .933, .1002, .1020.	I-D
Ammonium thiocyanate (25% or less), Ammonium thiosulfate (20% or less) solution.	C	P	III	NR	Open	Open	NSR	None	NA
Ammonium thiosulfate solution (60% or less).	C	P	III	NR	Open	Open	NSR	.440, .908(b)	NA
Amyl acetate (all isomers)	C	P	III	4m	PV	Restr	A	.409	I-D

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
tert-Amyl methyl ether	C	P	III	4m	PV	Restr	A	.409	NA
Aniline	C	S/P	II	B/3	PV	Closed	A	.316, .408, .525, .526, .933, .1020	I-D
Anthracene oil (Coal tar fraction), *see* Coal tar.									
Aviation alkylates *(C8 paraffins and iso-paraffins, b. pt. 95–120 deg. C).*	C	P	III	4m	PV	Restr	B	.409	I-C
Barium long chain (C11–C50) alkaryl sulfonate.	B	S/P	II	NR	Open	Open	A, D	.408, .440, .525(a), (c), (e), (d), .908(a), .1020.	NA
Barium long chain alkyl (C8–C14) phenate sulfide.	[A]	P	II	NR	Open	Open	A	.409	NA
Benzene hydrocarbon mixtures [2] *(having 10% Benzene or more).*	C [2]	S/P	III	B/3	PV	Closed	A, B	.316, .409, .440, .526, .908(b), .933, .1060.	I-D
Benzenesulfonyl chloride	D	S	III	4m	PV	Restr	A, B, D	.236(a), (b), (c), (g), .409, .526	I-D
Benzene, Toluene, Xylene mixtures [2] *(having 10% Benzene or more).*	●C [2]	S/P	III	B/3	PV	Closed	B	.316, .409, .440, .526, .908(b), .1060.	I-D
Benzyl acetate	C	P	III	NR	Open	Open	A	None	I-D
Benzyl alcohol	C	P	III	NR	Open	Open	A	None	I-D
Benzyl chloride	B	S/P	II	B/3	PV	Closed	A, B	.316, .408, .525, .526, .527, .912(a)(2), .1004, .1020.	I-D
Bromochloromethane	D	S	III	4m	PV	Restr	NSR	.236(a), (b), (d), .526, .933	NA
Butene oligomer	B	P	III	NR	Open	Open	A	.409	NA
Butyl acetate (all isomers)	C	P	III	4m	PV	Restr	A	.409	I-D
Butyl acrylate (all isomers)	B	S/P	II	4m	PV	Restr	A	.409, .526, .912(a)(1), .1002(a), (b), .1004.	I-D
Butylamine (all isomers)	C	S/P	II	B/3	PV	Restr	A	.236(b), (c), .316, .408, .525, .526, .527, .1020.	I-D
Butylbenzene (all isomers), *see* Alkyl(C3–C4)benzenes (*all isomers*).	A	P	III	4m	PV	Restr	A	.409	I-D
Butyl benzyl phthalate	A	P	II	NR	Open	Open	A	.409	I-D
n-Butyl butyrate, see Butyl butyrate (all isomers).									
Butyl butyrate (all isomers)	B	P	III	4m	PV	Restr	A	.409	I-D
1,2-Butylene oxide	C	S/P	III	4m	PV	Restr	A, C	.372, .409, .440, .500, .526, .530(a), (c), (e)–(g), (m)–(o), .1010, .1011.	I-B
n-Butyl ether	C	S/P	III	B/3	PV	Restr	A, D	.409, .500, .525, .526, .1020	I-C
Butyl heptyl ketone	[C]	P	III	NR	Open	Open	A	None	NA
iso-Butyl isobutyrate, see Butyl butyrate (all isomers).									
Butyl methacrylate	D	S	III	4m	PV	Restr	A, D	.409, .526, .912(a)(1), .1002(a), (b), .1004.	I-D
Butyl methacrylate, Decyl methacrylate, Cetyl-Eicosyl methacrylate mixture.	D	S	III	4m	PV	Restr	A, C, D	.912(a)(1), .1002(a), (b), .1004	I-D
n-Butyl propionate	C	P	III	4m	PV	Restr	A	.409	I-D
Butyl toluene	●A	P	II	NR	Open	Open	A	.409	I-D
Butyraldehyde (all isomers)	C	S/P	III	4m	PV	Restr	A	.409, .526	I-C
Butyric acid	D	S	III	4m	PV	Restr	A	.238(a), .554	I-D
Calcium alkyl(C9)phenol sulfide, polyolefin phosphorosulfide mixture.	A	P	II	NR	Open	Open	A, B	.409	NA
Calcium bromide, Zinc bromide solution, see Drilling brine (containing Zinc salts).									

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Calcium hypochlorite solution (15% or less).	C	S/P	III	4m	PV	Restr	NSR	.236(a), (b)	NA
Calcium hypochlorite solution (more than 15%).	B	S/P	III	4m	PV	Restr	NSR	.236(a), (b), .409	NA
Calcium long chain alkyl(C5–C10) phenate.	C	P	III	NR	Open	Open	A	None	NA
Calcium long chain alkyl salicylate (C13+).	C	P	III	NR	Open	Open	A, B	(.440, .903, .908(a)) [1]	NA
Camphor oil	B	S/P	II	4m	PV	Restr	A, B	.409	I-D
Carbolic oil	A	S/P	II	B/3	PV	Closed	A	.408, .440, .525, .526, .908(b), .933, .1020.	NA
Carbon disulfide	B	S/P	II	B/3	PV	Closed	C	.236(c), .252, .408, .500, .515, .520, .525, .526, .527, .1020, .1040.	I-A
Carbon tetrachloride	B	S/P	III	B/3	PV	Closed	NSR	.316, .409, .525, .526, .527, .1020	NA
Cashew nut shell oil (untreated).	D	S	III	4m	PV	Restr	A, B	.526, .933	NA
Caustic potash solution	C	S/P	III	NR	Open	Open	NSR	.236(a), (c), (g), .933	NA
Caustic soda solution	D	S	III	NR	Open	Open	NSR	.236(a), (c), (g), .933	NA
Cetyl-Eicosyl methacrylate mixture.	III	S	III	NR	Open	Open	A, C, D	.912(a)(1), .1002(a), (b), .1004	NA
Chlorinated paraffins (C10–C13).	A	P	I	NR	Open	Open	A	.408	NA
Chloroacetic acid (80% or less).	C	S/P	II	B/3	PV	Closed	NSR	.238(e), .408, .440, .554, .908(b)	I-D
Chlorobenzene	B	S/P	III	4m	PV	Restr	A, B	.409, .526	I-D
Chloroform	B	S/P	III	B/3	PV	Restr	NSR	.409, .525, .526, .527, .1020	NA
(crude) Chlorohydrins	D	S	II	B/3	PV	Closed	A	.408, .525, .526, .1020	I-D
4-Chloro-2-methylphenoxy-acetic acid, dimethylamine salt solution.	C	P	III	NR	Open	Open	NSR	.236(a), (b), (c), (g)	NA
o-Chloronitrobenzene	B	S/P	II	B/3	PV	Closed	A, B, C, D	.316, .336, .408, .440, .525, .526, .908(a), (b), .933, .1020.	NA
1-(4-Chlorophenyl)-4,4-dimethyl pentan-3-one.	B	P	III	NR	Open	Open	A, B, D	.409, .440, .488, .908(a), (b)	NA
2- or 3-Chloropropionic acid.	C	S/P	III	NR	Open	Open	A	.238(a), (b), .440, .554, .908(a), (b)	NA
Chlorosulfonic acid	C	S/P	I	B/3	PV	Closed	NSR	.408, .525, .526, .527, .554, .555, .602, .933, .1000, .1020, .1045.	I-B
o-Chlorotoluene	A	S/P	III	4m	PV	Restr	A, B, C	.409, .526	I-D
m-Chlorotoluene	B	S/P	III	4m	PV	Restr	A, B, C	.409, .526	I-D
p-Chlorotoluene	B	S/P	II	4m	PV	Restr	A, B, C	.409, .440, .526, .908(b)	I-D
Chlorotoluenes (mixed isomers).	A	S/P	II	4m	PV	Restr	A, B, C	.409, .526	I-D
Coal tar	A	S/P	II	4m	PV	Restr	B, D	.409, .933, .1060	I-D
Coal tar naphtha solvent	B	S/P	III	4m	PV	Restr	A, D	.409, .526, .933, .1060	I-D
Coal tar pitch (molten)	D	S	III	4m	PV	Restr	B, D	.252, .409, .933, .1060	I-D
Cobalt naphthenate in solvent naphtha.	A	S/P	II	4m	PV	Restr	A, D	.409, .526	I-D
Coconut oil, fatty acid	C	P	III	NR	Open	Open	A	.440, .903, .908(a), (b)	NA
Cottonseed oil, fatty acid	[C]	P	III	NR	Open	Open	A	.440, .903, .908(a)	NA
Creosote (coal tar)	A	S/P	II	NR	Open	Open	A, B, D	.409	I-D
Creosote (wood)	A	S/P	II	NR	Open	Open	A, B, D	.409	NA
Cresols (all isomers)	A	S/P	II	NR	Open	Open	A, B	.409, .440, .908(b)	I-D

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Cresols with less than 5% Phenol, see Cresols (all isomers)									
Cresols with 5% or more Phenol, see Phenol									
Cresylate spent caustic *(mixtures of Cresols and Caustic soda solutions).*	A	S/P	II	NR	Open	Open	NSR	.236(a), (c), .409, .933	NA
Cresylic acid, dephenolized	A	S/P	II	NR	Open	Open	A, B	.409	NA
Cresylic acid, sodium salt solution, *see* Cresylate spent caustic.									
Crotonaldehyde	A	S/P	II	B/3	PV	Restr	A	.316, .409, .525, .526, .527, .1020	I-C
Cumene (isopropylbenzene), see Propylbenzene (all isomers).									
1,5,9-Cyclododecatriene	A	S/P	I	4m	PV	Restr	A	.236(b), (c), .408, .526, .912(a)(1), .1002(a), (b), .1004.	I-D
Cycloheptane	C	P	III	4m	PV	Restr	A	.409	I-D
Cyclohexane	C	P	III	4m	PV	Restr	A	.409, .440, .908(b)	I-D
Cyclohexanone	D	S	III	4m	PV	Restr	A	.236(a), (b), .409, .526	I-D
Cyclohexanone, Cyclohexanol mixture.	D	S	III	4m	PV	Restr	A	.236(a), (b), .526	I-D
Cyclohexyl acetate	B	P	III	4m	PV	Restr	A	.409	I-D
Cyclohexylamine	C	S/P	III	4m	PV	Restr	A, C, D	.236(a), (b), (c), (g), .409, .526	I-D
1,3-Cyclopentadiene dimer (molten).	B	P	II	4m	PV	Restr	A	.409, .440, .488, .908(a), (b)	I-C
Cyclopentane	C	P	III	4m	PV	Restr	A	.409	I-D
Cyclopentene	B	P	III	4m	PV	Restr	A	.409	I-D
p-Cymene	C	P	III	4m	PV	Restr	A	.409	I-D
iso-Decaldehyde	@C	P	III	NR	Open	Open	A	None	I-C
n-Decaldehyde	@B	P	III	NR	Open	Open	A	None	I-C
Decanoic acid	C	P	III	NR	Open	Open	A	.440, .903, .908(a), (b)	NA
Decene	B	P	III	4m	PV	Restr	A	.409	I-D
Decyl acetate	B	P	III	NR	Open	Open	A	.409	NA
(iso-, n-) Decyl acrylate	A	S/P	II	NR	Open	Open	A, C, D	.236(a), (b), (c), .409, .912(a)(1), .1002(a), (b), .1004.	I-D
Decyl alcohol (all isomers)	B	P	III	NR	Open	Open	A	.409, .440, .908(b)	I-D
Decyloxytetrahydro-, thiophene dioxide.	A	S/P	II	B/3	PV	Restr	A	.409, .526	NA
Dibromomethane	C	S/P	II	4m	PV	Restr	NSR	.236(a), (b), (d), .408, .525(a), (c), (d), (e), .526, .933, .1020.	NA
Dibutylamine	C	S/P	III	4m	PV	Restr	A, B, C, D	.236(b), (c), .409, .526	I-C
Dibutyl hydrogen phosphonate.	B	P	III	NR	Open	Open	A	.409, .440, .908(a)	NA
ortho-Dibutyl phthalate	A	P	II	NR	Open	Open	A	.409	I-D
Dichlorobenzene (all isomers) [1].	B	S/P	II	4m	PV	Restr	A, B, D	.236(a), (b), .409, .440, .488 [1], .526, .908(a), (b) [1].	I-D
3,4-Dichloro-1-butene	B	S/P	III	B/3	PV	Closed	A, B, C	.316, .409, .525(a), (c), (d), (e), .526, .527, .933, .1020.	I-D
1,1-Dichloroethane	D	S	III	4m	PV	Restr	A, B	.409, .526, .527	I-D
2,2'-Dichloroethyl ether	B	S/P	II	4m	PV	Restr	A	.236(a), (b), .409, .526	I-C
1,6-Dichlorohexane	B	S/P	II	4m	PV	Restr	A, B	.409, .526	NA
2,2'-Dichloroisopropyl ether	C	S/P	II	B/3	PV	Restr	A, B, C, D	.236(a), (b), .316, .408(a), .440, .525, .526, .1020.	I-D
Dichloromethane	D	S	III	4m	PV	Restr	NSR	.526	I-D
2,4-Dichlorophenol [4]	A	S/P	II	4m	PV	Restr	A, B, C, D	.236(a), (b), (c), (g), .409, .440, .500, .501, .526, .908(b), .933.	I-D
2,4-Dichlorophenoxyacetic acid, diethanolamine salt solution.	A	S/P	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .409	NA

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution.	A	S/P	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .409	NA
2,4-Dichlorophenoxyacetic acid, triisopropanolamine salt solution.	A	S/P	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .409	NA
1,1-Dichloropropane	C	S/P	II	B/3	PV	Restr	A, B	.409, .525, .526, .1020	I-D
1,2-Dichloropropane	C	S/P	II	B/3	PV	Restr	A, B	.409, .525, .526, .1020	I-D
1,3-Dichloropropane	D	S	II	B/3	PV	Restr	A, B	.409, .525, .526, .1020	I-D
1,3-Dichloropropene	B	S/P	II	B/3	PV	Closed	A, B	.316, .336, .408, .525, .526, .527, .1020.	I-D
Dichloropropene, Dichloropropane mixtures.	B	S/P	II	B/3	PV	Closed	A, B, C, D	.316, .336, .408, .526, .527	I-D
2,2-Dichloropropionic acid	D	S	III	4m	PV	Restr	A	.238(e), .266, .500, .501, .554, .933	NA
Diethanolamine	D	S	III	NR	Open	Open	A	.236(b), (c)	NA
Diethylamine	C	S/P	III	B/3	PV	Restr	A	.236(a), (b), (c), (g), .409, .525, .526, .527, .1020.	I-C
Diethylaminoethanol, *see* Diethylethanolamine									
2,6-Diethylaniline	C	S/P	III	NR	Open	Open	B, C, D	.236(b), .409, .440, .908(b)	NA
Diethylbenzene	A	P	III	4m	PV	Restr	A	.409	I-D
Diethylenetriamine	D	S	III	NR	Open	Open	A	.236(b), (c)	NA
Diethylethanolamine	C	S/P	III	4m	PV	Restr	A, C	.236(a), (b), (c), (g), .409, .526	I-C
Diethyl ether, *see* Ethyl ether									
Di-(2-ethylhexyl) phosphoric acid.	C	S/P	III	NR	Open	Open	A, B, C, D	.236(b), (c)	I-D
Diethyl phthalate	C	P	III	NR	Open	Open	A	None	I-D
Diethyl sulfate	B	S/P	II	4m	PV	Closed	A, D	.236(a), (c), (d), .409, .526, .933	I-D
Diglycidyl ether of Bisphenol A.	B	P	III	NR	Open	Open	A	.409, .440, .908(a)	NA
Diglycidyl ether of Bisphenol F.	B	P	III	NR	Open	Open	A	.409, .440, .908(a)	NA
Di-n-hexyl adipate	B	P	III	NR	Open	Open	A	.409	NA
Diisobutylamine	C	S/P	II	4m	PV	Restr	A, B, C, D	.236(a), (b), (c), (g), .409, .525(a), (c), (d), (e), .526, .1020.	I-C
Diisobutylcarbinol	@C	P	III	NR	Open	Open	A	None	I-D
Diisobutylene	B	P	III	4m	PV	Restr	A	.409	I-D
Diisobutyl phthalate	B	P	III	NR	Open	Open	A	.409, .440, .908(a)	I-D
Diisopropanolamine	C	S/P	III	NR	Open	Open	A	.236(b), (c), .440, .908(a), (b)	I-D
Diisopropylamine	C	S/P	II	B/3	PV	Closed	A	.236(b), (c), .408, .525, .526, .527, .1020.	I-C
Diisopropylbenzene (all isomers).	A	P	II	NR	Open	Open	A	.409	I-D
N,N-Dimethylacetamide	D	S	III	B/3	PV	Restr	B	.236(b), .316, .525, .526, .527, .1020.	I-D
N,N-Dimethylacetamide solution (40% or less).	D	S	III	B/3	PV	Restr	B	.236(b), .316, .526	I-D
Dimethyl adipate	B	P	III	NR	Open	Open	A	.409, .440, .908(b)	NA
Dimethylamine solution (45% or less).	C	S/P	III	B/3	PV	Restr	A, C, D	.236(a), (b), (c), (g), .409, .525, .526, .527, .1020.	I-C
Dimethylamine solution (over 45% but not over 55%).	C	S/P	II	B/3	PV	Closed	A, C, D	.236(a), (b), (c), (g), .316, .408, .525, .526, .527, .1020.	I-C
Dimethylamine solution (over 55% but not over 65%).	C	S/P	II	B/3	PV	Closed	A, C, D	.236(a), (b), (c), (g), .316, .372, .408, .525, .526, .527, .1020.	I-C
2,6-Dimethylaniline	[C]	S/P	III	NR	Open	Open	B, C, D	.236(b), .409, .440, .908(b)	I-D
N,N-Dimethylcyclohexylamine.	C	S/P	II	B/3	PV	Restr	A, C	.236(a), (b), (c), (g), .316, .409, .525, .526, .527, .1020.	NA
N,N-Dimethyldodecylamine	A	S/P	I	NR	Open	Open	B	.236(b), .408	NA
Dimethylethanolamine	D	S	III	4m	PV	Restr	A, D	.236(b), (c), .409, .526	I-C

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Dimethylformamide	D	S	III	4m	PV	Restr	A, D	.236(b), .409, .526	I-D
Dimethyl glutarate	C	P	III	NR	Open	Open	A	None	NA
Dimethyl hydrogen phosphite.	B	S/P	III	4m	PV	Restr	A, D	.526	NA
Dimethyl naphthalene sulfonic acid, sodium salt solution.	[A]	P	III	NR	Open	Open	NSR	.409	NA
Dimethyloctanoic acid	C	P	III	NR	Open	Open	A	.440, .903, .908(b)	I-D
Dimethyl phthalate	C	P	III	NR	Open	Open	A	None	I-D
Dimethyl succinate	C	P	III	NR	Open	Open	A	.440, .908(b)	NA
Dinitrotoluene (molten)	A	S/P	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .1003, .1020.	I-C
1,4-Dioxane	D	S	II	B/3	PV	Closed	A	.408, .525, .526, .1020	I-C
Dipentene	C	P	III	4m	PV	Restr	A	.409	I-D
Diphenyl	A	P	I	NR	Open	Open	B	.408	I-D
Diphenylamine (molten)	B	P	III	NR	Open	Open	B, D	.236(b), .409, .440, .488, .908(b)	NA
Diphenylamines, alkylated	A	P	II	NR	Open	Open	A	.409	NA
Diphenylamine, reaction product with 2,2,4-Trimethylpentene.	A	S/P	I	NR	Open	Open	A	.408	NA
Diphenyl, Diphenyl ether mixtures.	A	P	I	NR	Open	Open	B	.408	I-D
Diphenyl ether	A	P	III	NR	Open	Open	A	.409	I-D
Diphenyl ether, Biphenyl phenyl ether mixture.	A	P	III	NR	Open	Open	A, B	.409	NA
Diphenylmethane diisocyanate [6].	B	S/P	II	B/3	PV	Closed	A, B, C [6], D	.236(a), (b), .316, .409, .440, .500, .501, .525, .526, .602, .908(a), .1000, .1020.	NA
Diphenylol propane-epichlorohydrin resins.	B	P	III	NR	Open	Open	A, B	.409, .440, .908(a)	NA
Di-n-propylamine	C	S/P	III	4m	PV	Restr	A	.236(b), (c), .409, .525, .526, .1020	I-C
Dithiocarbamate ester (C7–C35).	A	P	II	NR	Open	Open	A, D	.409	NA
Dodecanol	B	P	III	NR	Open	Open	A	.409, .440, .488, .908(a), (b)	I-D
Dodecene (all isomers)	B	P	III	NR	Open	Open	A	.409	I-D
Dodecyl alcohol, *see* Dodecanol.									
Dodecylamine, Tetradecylamine mixture.	A	S/P	II	4m	PV	Restr	A, D	.236(b), (c), .409, .526	NA
Dodecyldimethylamine, Tetradecyldimethylamine mixture.	A	S/P	II	NR	Open	Open	B, C, D	.236(b), .409	NA
Dodecyl diphenyl ether disulfonate solution.	A	S/P	II	NR	Open	Open	NSR	.409	NA
Dodecyl hydroxypropyl sulfide.	A	P	I	NR	Open	Open	A	.408	NA
Dodecyl methacrylate	III	S	III	NR	Open	Open	A, C	.236(b), (c), .912(a)(1), .1004	I-D
Dodecyl-Octadecyl methacrylate mixture.	D	S	III	NR	Open	Restr	A, D	.236(b), .912(a)(1), .1002(a), (b), .1004.	NA
Dodecyl-Pentadecyl methacrylate mixture.	III	S	III	NR	Open	Open	A, C, D	.912(a)(1), .1002(a), (b), .1004	NA
Dodecyl phenol	A	P	I	NR	Open	Open	A	.408	I-D
Drilling brine (containing Zinc salts).	B	P	III	NR	Open	Open	NSR	.409	NA
Epichlorohydrin	A	S/P	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .1020	I-C
Ethanolamine	D	S	III	NR	Open	Open	A	.236(b), (c), .526	I-D
2-Ethoxyethyl acetate	C	P	III	4m	PV	Restr	A	.409	I-C
Ethyl acrylate	A	S/P	II	4m	PV	Restr	A	.409, .526, .527, .912(a)(1), .1002(a), (b), .1004.	I-D
Ethylamine	C	S/P	II	B/3	PV	Closed	C, D	.236(b), (c), .252, .372, .409, .525, .526, .527, .1020.	I-D
Ethylamine solution (72% or less).	C	S/P	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .372, .408, .525(a), (c), (d), (e), .526, .527, .1020.	I-D
Ethyl amyl ketone	C	P	III	4m	PV	Restr	A	.409	I-D

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Ethylbenzene	B	P	III	4m	PV	Restr	A	.409	I-D
N-Ethylbutylamine	C	S/P	III	4m	PV	Restr	A	.236(a), (b), (c), (g), .409, .525(a), (c), (d), (e), .526, .1020.	I-C
Ethyl tert-butyl ether	C	P	III	4m	PV	Restr	A	.409	I-C
Ethyl butyrate	C	P	III	4m	PV	Restr	A	.409	I-D
Ethylcyclohexane	C	P	III	4m	PV	Restr	A	.409	I-D
N-Ethylcyclohexylamine	D	S	III	4m	PV	Restr	A, C	.236(a), (b), (c), (g), .409, .526	I-C
S-Ethyl dipropylthiocarbamate.	C	P	III	NR	Open	Open	A	None	NA
Ethylene chlorohydrin	C	S/P	II	B/3	PV	Closed	A, D	.316, .408, .525, .526, .527, .933, .1020.	I-D
Ethylene cyanohydrin	D	S	III	NR	Open	Open	A	None	NA
Ethylenediamine	C	S/P	II	4m	PV	Restr	A	.236(b), (c), .409, .440, .526, .908(b).	I-D
Ethylene dibromide	B	S/P	II	B/3	PV	Closed	NSR	.408, .440, .525, .526, .527, .908(b), .1020.	NA
Ethylene dichloride	B	S/P	II	4m	PV	Restr	A, B	.236(b), .408, .526	I-D
Ethylene glycol butyl ether acetate.	C	P	III	NR	Open	Open	A	None	I-C
Ethylene glycol diacetate	C	P	III	NR	Open	Open	A	None	I-D
Ethylene glycol ethyl ether acetate, see 2-Ethoxyethyl acetate									
Ethylene glycol methyl ether acetate.	C	P	III	NR	Open	Open	A	None	I-C
Ethylene glycol monoalkyl ether. *Including:* *2-Ethoxyethanol* *Ethylene glycol butyl ether* *Ethylene glycol tert-butyl ether* *Ethylene glycol ethyl ether* *Ethylene glycol hexyl ether* *Ethylene glycol methyl ether* *Ethylene glycol n-propyl ether* *Ethylene glycol isopropyl ether*	D	S	III	4m	PV	Restr	A	.409	I-C
Ethylene oxide (30% or less), Propylene oxide mixture.	C	S/P	II	B/3	PV	Closed	A, C	.252, .372, .408, .440, .500, .525, .526, .530, .1010, .1011, .1020.	I-B
Ethyl ether	III	S	II	4m	PV	Closed	A	.236(g), .252, .372, .408, .440, .500, .515, .526, .527.	I-C
Ethyl-3-ethoxypropionate	C	P	III	4m	PV	Restr	A	.409	NA
2-Ethylhexanol	C	P	III	NR	Open	Open	A	None	I-D
2-Ethylhexyl acrylate	B	S/P	III	NR	Open	Open	A	.409, .912(a)(1), .1002(a), (b), .1004.	I-D
2-Ethylhexylamine	B	S/P	II	B/3	PV	Restr	A	.236(b), (c), .409, .525, .526, .1020	I-D
Ethyl hexyl phthalate	C	P	III	NR	Open	Open	A	None	NA
Ethylidene norbornene	B	S/P	III	B/3	PV	Restr	A, B, C, D	.236(b), .409, .526	NA
Ethyl methacrylate	D	S	III	4m	PV	Restr	A, B, D	.409, .526, .912(a)(1), .1002(a), (b), .1004.	I-D
Ethylphenol	A	S/P	III	NR	Open	Open	B	.409	I-D
2-Ethyl-3-propylacrolein	A	S/P	III	4m	PV	Restr	A	.409, [illegible]	I-C
Ethyl toluene	B	P	III	4m	PV	Restr	A	.409	I-D
Ferric chloride solutions	C	S/P	III	NR	Open	Open	NSR	.409, .440, .554, .555, .908(b), .1045.	I-B
Ferric nitrate, Nitric acid solution.	C	S/P	II	4m	PV	Restr	NSR	.408, .526, .527, .554, .555, .559, .933, .1045.	I-B

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Fluorosilicic acid (30% or less).	C	S/P	III	B/3	PV	Restr	NSR	.252, .526, .527, .554, .555, .933, .1045.	I-B
Formaldehyde (50% or more), Methanol mixtures.	[illegible]	S/P	III	4m	PV	Closed	A	.409, .526, .527	I-B
Formaldehyde solution (37% to 50%).	C	S/P	III	4m	PV	Restr	A	.409, .440, .526, .527, .908(b)	I-B
Formic acid	D	S	III	4m	PV	Restr	A	.238(b), (c), .409, .526, .527, .554, .933.	I-D
Fumaric adduct of rosin, water dispersion.	B	P	III	NR	Open	Open	NSR	.409, .440, .908(a)	NA
Furfural	C	S/P	III	4m	PV	Restr	A	.409, .526	I-C
Furfuryl alcohol	C	P	III	NR	Open	Open	A	None	I-C
Glutaraldehyde solution (50% or less).	D	S	III	NR	Open	Open	NSR	None	NA
Glycidyl ester of C10 Trialkyl acetic acid, *see* Glycidyl ester of Tridecyl acetic acid.									
Glycidyl ester of Tridecyl acetic acid.	B	P	III	NR	Open	Open	A	.409	NA
Glyoxylic acid solution (50% or less).	D	S	III	NR	Open	Open	A, C, D	.238(e), .554(a), (b), (c), .933, .1002.	NA
Heptane (all isomers), *see* Alkanes(C6–C9) (*all isomers*).	C	P	III	4m	PV	Restr	A	.409	I-D
Heptanol (all isomers)	C	P	III	4m	PV	Restr	A	.409	I-D
Heptene (all isomers)	C	P	III	4m	PV	Restr	A	.409	I-D
Heptyl acetate	B	P	III	NR	Open	Open	A	.409	NA
Hexamethylenediamine (molten).	C	S/P	II	B/3	PV	Closed	C	.236(a), (b), (c), (g), .316, .336, .409, .440, .525, .526, .527, .908(a), (b), .933, .1020.	NA
Hexamethylenediamine solution.	C	S/P	III	4m	PV	Restr	A	.236(b), (c), .409, .440, .526, .908(b).	I-D
Hexamethylene diisocyanate [6].	B	S/P	II	B/3	PV	Closed	A, C [6], D	.238(d), .252, .316, .336, .408, .500, .501, .525, .526, .527, .602, .1000, .1020.	NA
Hexamethyleneimine	C	S/P	II	4m	PV	Restr	A, C	.236(a), (b), (c), (g), .409, .526	I-C
Hexane (all isomers), *see* Alkanes(C6–C9).	C	P	III	4m	PV	Restr	A	.409	I-D
Hexene (all isomers)	C	P	III	4m	PV	Restr	A	.409	I-D
Hexyl acetate	B	P	III	4m	PV	Restr	A	.409	I-D
Hydrochloric acid	D	S	III	4m	PV	Restr	NSR	.252, .526, .527, .554, .557, .933, .1045, .1052.	I-B
Hydrogen peroxide solutions (over 8% but not over 60%).	C	S/P	III	B/3	PV	Closed	NSR	.238(a), (c), .355, .409, .440(a)(1)&(2), .500, .933, .1004(a)(2), .1500.	NA
Hydrogen peroxide solutions (over 60% but not over 70%).	C	S/P	II	B/3	PV	Closed	NSR	.238(a), (c), .355, .409, .440(a)(1)&(2), .500, .933, .1004(a)(2), .1500.	NA
2-Hydroxyethyl acrylate	B	S/P	II	B/3	PV	Closed	A	.408, .525, .526, .912(a)(1), .933, .1002(a), (b), .1004, .1020.	NA
N,N-bis(2-Hydroxyethyl) oleamide.	B	P	II	4m	PV	Restr	A	.409, .440, .488, .908(a), (b)	NA
2-Hydroxy-4-(methylthio)butanoic acid.	C	P	III	NR	Open	Open	A	.440, .903, .908(a)	NA
alpha-hydro-omega-Hydroxytetradeca(oxytetra methylene), see Poly(tetramethylene ether) glycols (mw 950-1050).									
Icosa (oxypropane-2,3-diyl)s.	B	P	III	NR	Open	Open	A	.409, .440, .908(a)	NA

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Isophorone diamine	D	S	III	4m	PV	Restr	A	.236(b), (c), .526	NA
Isophorone diisocyanate [6]	B	S/P	II	B/3	PV	Closed	A, B, C [6], D	.236(a), (b), .316, .409, .500, .501, .525, .526, .602, .1000, .1020.	NA
Isoprene	C	S/P	III	4m	PV	Restr	B	.372, .409, .440, .912(a)(1), .1002(a), (b), .1004.	I-D
Isopropylbenzene, see Propylbenzene (all isomers)									
Lactonitrile solution (80% or less).	B	S/P	II	B/3	PV	Closed	A, C, D	.238(d), .252, .316, .336, .408, .440, .525, .526, .527, .908(a), .912(a)(2), .1002, .1004, .1020, .1035.	I-D
Lauric acid	B	P	III	NR	Open	Open	A	.409, .440, .488, .908(a), (b)	NA
Lauryl polyglucose (50% or less), *see* Alkyl(C12–C14) polyglucoside solution (55% or less).									
Long chain alkaryl polyether (C11–C20).	C	P	III	NR	Open	Open	A, B	(.440, .903, .908(a)) [1]	NA
Long chain polyetheramine in alkyl(C2–C4)benzenes.	C	P	III	4m	PV	Restr	A	.409, .440, .903, .908(a)	I-D
Magnesium long chain alkyl salicylate (C11+).	C	P	III	NR	Open	Open	A, B	(.440, .903, .908(a)) [1]	NA
Maleic anhydride [7]	D	S	III	4m	PV	Restr	[7]A, C	None	I-D
Mercaptobenzothiazol, sodium salt solution, *see* Sodium-2-mercaptobenzothiazol solution									
Mesityl oxide	D	S	III	4m	PV	Restr	A	.236(b), (c), .409, .526	I-D
Metam sodium solution	A	S/P	II	NR	Open	Open	NSR	.236(a), (b), (c), (g), .409	NA
Methacrylic acid	D	S	III	4m	PV	Restr	A	.238(a), .526, .912(a)(1), .1002(a), .1004.	NA
Methacrylic resin in Ethylene dichloride.	B	S/P	II	4m	PV	Restr	A, B	.236(b), .408, .440, .526, .908(a)	I-D
Methacrylonitrile	D	S	II	B/3	PV	Closed	A	.236(b), .316, .408, .525, .526, .527, .912(a)(1), .1002(a), .1004, .1020.	NA
N-(2-Methoxy-1-methyl ethyl)-2-ethyl-6-methyl chloroacetanilide, *see* Metolachlor									
Methyl acrylate	B	S/P	II	4m	PV	Restr	A, B	.409, .526, .527, .912(a)(1), .1002(a), (b), .1004.	I-D
Methylamine solution (42% or less).	C	S/P	II	B/3	PV	Closed	A, C; D	.236(a), (b), (c), (g), .316, .408, .525, .526, .527, .1020.	I-D
Methylamyl acetate	C	P	III	4m	PV	Restr	A	.409	I-D
Methylamyl alcohol	C	P	III	4m	PV	Restr	A	.409	I-D
Methyl butyrate	C	P	III	4m	PV	Restr	A	.409	I-D
Methylcyclohexane	C	P	III	4m	PV	Restr	A	.409	I-D
Methylcyclopentadiene dimer.	B	P	III	4m	PV	Restr	B	.409	I-B
Methyl diethanolamine	D	S	III	NR	Open	Open	A	.236(b), (c)	I-C
Methylene chloride, see Dichloromethane									
2-Methyl-6-ethylaniline	C	S/P	III	NR	Open	Open	A, B, C, D	None	NA
2-Methyl-5-ethylpyridine	B	S/P	III	NR	Open	Open	A, D	.236(b), .409	I-D
Methyl formate	D	S	II	B/3	PV	Restr	A	.372, .408, .440, .525, .526, .527, .1020.	I-D
Methyl heptyl ketone	B	P	III	4m	PV	Restr	A	.409	I-D
2-Methyl-2-hydroxy-3-butyne.	III	S	III	4m	PV	Restr	A, B, C, D	.236(b), (d), (f), (g), .409, .526	I-D
Methyl methacrylate	D	S	II	4m	PV	Restr	A, B	.409, .526, .912(a)(1), .1002(a), (b), .1004.	I-D

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	[illegible]	f.	g.	h.	i.	j.
Methyl naphthalene (molten).	A	S/P	II	4m	PV	Restr	A, D	.409	I-D
2-Methyl-1-pentene (Hexene (all isomers)), see Alkanes(C6–C9).									
4-Methyl-1-pentene (Hexene (all isomers)), see Alkanes(C6–C9).									
Methyl tert-pentyl ether, *see* tert-Amyl methyl ether.									
2-Methylpyridine	D	S	II	B/3	PV	Closed	A, C	.236(b), .408, .525(a), (c), (d), (e), .1020.	I-D
3-Methylpyridine	C	S/P	II	B/3	PV	Closed	A, C	.236(b), .408, .525(a), (c), (d), (e), .1020.	I-D
4-Methylpyridine	D	S	II	B/3	PV	Closed	A, C, D	.236(b), .408, .440, .525(a), (c), (d), (e), .526, .908(b), .1020.	I-D
Methyl salicylate	B	P	III	NR	Open	Open	A	.409	I-D
alpha-Methylstyrene	A	S/P	III	4m	PV	Restr	A, D	.409, .526, .912(a)(1), .1002(a), (b), .1004.	I-D
3-(Methylthio) propionaldehyde.	B	S/P	III	B/3	PV	Closed	B, C	.238(e), .316, .408, .525, .526, .527, .1020.	NA
Metolachlor	B	P	III	NR	Open	Open	A	.409	NA
Morpholine	D	S	III	4m	PV	Restr	A	.236(b), (c), .409	I-C
Motor fuel anti-knock compounds (containing lead alkyls).	A	S/P	I	B/3	PV	Closed	A, B, C	.252, .316, .336, .408, .525, .526, .527, .933, .1020, .1025.	I-D
Naphthalene (molten)	A	S/P	II	4m	PV	Restr	A, D	.409, .440, .908(b)	I-D
Naphthalene sulfonic acid, sodium salt solution (40% or less).	[A]	P	III	NR	Open	Open	NSR	.409	NA
Naphthenic acid	A	P	II	NR	Open	Open	A	.409	NA
Naphthenic acid, sodium salt solution.	[A]	P	II	NR	Open	Open	NSR	.409	NA
Neodecanoic acid	C	P	III	NR	Open	Open	A	None	NA
Nitrating acid *(mixture of sulfuric and nitric acids).*	C	S/P	II	B/3	PV	Closed	NSR	.316, .408, .526, .527, .554, .555, .556, .559, .602, .933, .1000, .1045.	I-B
Nitric acid (70% or less)	C	S/P	II	4m	PV	Restr	NSR	.408, .526, .527, .554, .555, .559, .933, .1045.	I-B
Nitrobenzene	B	S/P	II	B/3	PV	Closed	A, D	.316, .336, .408, .440, .525, .526, .908(b), .933, .1020.	I-D
Nitroethane [7]	D	S	III	4m	PV	Restr	[7]A, C	.236(b), .409, .526, .1002(a), (b), .1003.	I-C
Nitroethane, 1-Nitropropane (each 15% or more) mixture [7].	D	S	III	4m	PV	Restr	[7]A	.236(b), .409, .526, .1002	I-C
o-Nitrophenol (molten)	B	S/P	II	B/3	PV	Closed	A, C, D	.409, .440, .525, .526, .908(a), (b), .1020.	NA
1- or 2-Nitropropane [7]	D	S	III	4m	PV	Restr	[7]A, C	.409, .526	I-C
Nitropropane (60%), Nitroethane (40%) mixture [7].	D	S	III	4m	PV	Restr	[7]A, C	.236(b), .409, .526	I-C
Nitropropane (20%), Nitroethane (80%) mixture [7].	D	S	III	4m	PV	Restr	[7]A, C	.236(b), .409, .526, .1002(a), (b), .1003.	I-C
(o-, p-) Nitrotoluene	B	S/P	II	B/3	PV	Closed	A, B	.316, .408, .440, .525, .526, .908(b), .1020.	I-D
Nonane (all isomers), *see* Alkanes(C6–C9).	C	P	III	4m	PV	Restr	B, C	.409	I-D
Nonene (all isomers)	B	P	III	4m	PV	Restr	A	.409	I-D
Nonyl acetate	C	P	III	NR	Open	Open	A	.409	I-D
Nonyl alcohol (all isomers)	C	P	III	NR	Open	Open	A	None	I-D
Nonyl phenol	A	P	II	NR	Open	Open	A	.409	I-D

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Nonyl phenol poly(4+)ethoxylates.	B	P	III	NR	Open	Open	A	.409, .440, .488 [1], .908(a), (b)	I-D
Noxious liquid, N.F., (1) n.o.s. ("trade name" contains "principal components") ST 1, Cat A.	A	P	I	NR	Open	Open	A	.408	NA
Noxious liquid, F., (2) n.o.s. ("trade name" contains "principal components") ST 1, Cat A.	A	P	I	4m	PV	Restr	A	.408	NA
Noxious liquid, N.F., (3) n.o.s. ("trade name" contains "principal components") ST 2, Cat A.	A	P	II	NR	Open	Open	A	.409	NA
Noxious liquid, F., (4) n.o.s. ("trade name" contains "principal components") ST 2, Cat A.	A	P	II	4m	PV	Restr	A	.409	NA
Noxious liquid, N.F., (5) n.o.s. ("trade name" contains "principal components") ST 2, Cat B.	B	P	II	NR	Open	Open	A	.409; (.440, .908) [1]	NA
Noxious liquid, N.F., (6) n.o.s. ("trade name" contains "principal components") ST 2, Cat B, mp. equal to or greater than 15 deg. C.	B	P	II	NR	Open	Open	A	.409, .440, .488, .908(b); (.908(a)) [1]	NA
Noxious liquid, F., (7) n.o.s. ("trade name" contains "principal components") ST 2, Cat B.	B	P	II	4m	PV	Restr	A	.409; (.440, .908) [1]	NA
Noxious liquid, F., (8) n.o.s. ("trade name" contains "principal components") ST 2, Cat B, mp. equal to or greater than 15 deg. C.	B	P	II	4m	PV	Restr	A	.409, .440, .488, .908(b); (.908(a)) [1]	NA
Noxious liquid, N.F., (9) n.o.s. ("trade name" contains "principal components") ST 3, Cat A.	A	P	III	NR	Open	Open	A	.409	NA
Noxious liquid, F., (10) n.o.s. ("trade name" contains "principal components") ST 3, Cat A.	A	P	III	4m	PV	Restr	A	.409	NA
Noxious liquid, N.F., (11) n.o.s. ("trade name" contains "principal components") ST 3, Cat B.	B	P	III	NR	Open	Open	A	(.409, .440, .908) [1]	NA
Noxious liquid, N.F., (12) n.o.s. ("trade name" contains "principal components") ST 3, Cat B, mp. equal to or greater than 15 deg. C.	B	P	III	NR	Open	Open	A	.409, .440, .488, .908(b); (.908(a)) [1]	NA
Noxious liquid, F., (13) n.o.s. ("trade name" contains "principal components") ST 3, Cat B.	B	P	III	4m	PV	Restr	A	.409; (.440, .908) [1]	NA

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Noxious liquid, F., (14) n.o.s. ("trade name" contains "principal components") ST 3, Cat B, mp. equal to or greater than 15 deg. C.	B	P	III	4m	PV	Restr	A	.409, .440, .488, .908(b); (.908(a)) [1]	NA
Noxious liquid, N.F., (15) n.o.s. ("trade name" contains "principal components") ST 3, Cat C.	C	P	III	NR	Open	Open	A	(.440, .903, .908) [1]	NA
Noxious liquid, F., (16) n.o.s. ("trade name" contains "principal components") ST 3, Cat C.	C	P	III	4m	PV	Restr	A	(.440, .903, .908) [1]	NA
Octane (all isomers), *see* Alkanes(C6–C9).	C	P	III	4m	PV	Restr	A	.409	I-D
Octanol (all isomers)	C	P	III	NR	Open	Open	A	None	I-D
Octene (all isomers)	B	P	III	4m	PV	Restr	A	.409	I-D
Octyl acetate	C	P	III	NR	Open	Open	A	None	I-D
Octyl aldehydes	B	P	III	4m	PV	Restr	A	.409, .440, .908(b)	I-C
Octyl nitrates (all isomers), see Alkyl(C7–C9) nitrates.									
Olefin mixtures (C5–C7)	C	P	III	4m	PV	Restr	A	.409	I-D
Olefin mixtures (C5–C15)	B	P	III	4m	PV	Restr	A	.409	I-D
alpha-Olefins (C6–C18) mixtures.	B	P	III	4m	PV	Restr	A	.409, .440, .908(a), (b)	I-D
Oleum	C	S/P	II	B/3	PV	Closed	NSR	.316, .408, .440, .526, .527, .554, .555, .556, .602, .908(a), .933, .1000, .1045, .1052.	I-B
Oleylamine	A	S/P	II	4m	PV	Restr	A	.409, .526	NA
Palm kernel acid oil	C	P	III	NR	Open	Open	A, B	.440, .903, .908(a), (b)	NA
Paraldehyde	C	S/P	III	4m	PV	Restr	A	.409, .440, .908(b)	I-C
Paraldehyde-ammonia reaction product.	C	S/P	II	B/3	PV	Closed	A	.236 (a), (b), (c), (g), .525(a), (c), (e), .408, .526, .1020.	NA
Pentachloroethane	B	S/P	II	B/3	PV	Restr	NSR	.316, .409, .525, .526, .1020	NA
1,3-Pentadiene	C	S/P	III	4m	PV	Restr	A, B	.409, .526, .912(a)(1), .1002, .1004	I-D
Pentane (all isomers)	C	P	III	4m	PV	Restr	A	.372, .409	I-D
n-Pentanoic acid (64%), 2-Methyl butyric acid (36%) mixture.	D	S	II	B/3	Open	Closed	A, D	.238(a), .408, .525(a), (c), (e), .554, .933, .1020.	I-D
Pentene (all isomers)	C	P	III	4m	PV	Restr	A	.409	I-D
n–Pentyl propionate	C	P	III	4m	PV	Restr	A	.409	I-D
Perchloroethylene	B	S/P	III	B/3	PV	Restr	NSR	.409, .526	NA
Phenol *(or solutions with 5% or more Phenol).*	C	S/P	II	B/3	PV	Closed	A	.408, .440, .488, .525, .526, .908(a), (b), .933, .1020.	I-D
1-Phenyl-l-xylyl ethane	C	P	III	NR	Open	Open	A, B	None	NA
Phosphate esters, alkyl(C12–C14)amine.	B	P	III	4m	PV	Restr	A	.409	NA
Phosphoric acid	D	S	III	NR	Open	Open	NSR	.554, .555, .558, .1045, .1052, .933	I-B
Phthalic anhydride (molten)	C	S/P	III	4m	PV	Restr	A, D	.440, .908(a), (b)	I-D
Pinene, see the alpha- or beta- isomers.									
alpha-Pinene	A	P	III	4m	PV	Restr	A	.409	I-D
beta-Pinene	B	P	III	4m	PV	Restr	A	.409	I-D
Pine oil	C	P	III	NR	Open	Open	A	.440, .908(a)	I-D
Polyalkyl(C18–C22) acrylate in Xylene.	C	P	III	4m	PV	Restr	A	.409, .440, .903, .908(a)	NA
Polyalkylene oxide polyol	C	P	III	NR	Open	Open	A	.440, .903, .908(a)	NA
Poly(2+)cyclic aromatics	A	P	II	4m	PV	Restr	A, D	.409	I-D
Polyethylene polyamines	C	S/P	III	NR	Open	Open	A	.236(b), (c), .400, .440, .908(b)	NA
Polyferric sulfate solution	C	S/P	III	NR	Open	Open	NSR	.238(d)	NA
Polyisobutenamine in aliphatic (C10–C14) solvent.	C	P	III	NR	Open	Open	A	.903	NA

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Polymethylene polyphenyl isocyanate [6].	D	S	II	B/3	PV	Closed	A, C[6], D	.236(a), (b), .409, .500, .501, .525, .526, .602, .1000, .1020.	NA
Polyolefinamine (C28–C250).	C	P	III	NR	Open	Open	A	None	NA
Polyolefinamine in alkyl(C2–C4)benzenes.	C	P	III	4m	PV	Restr	A	.409, .440, .903, .908(a)	I-D
Polyolefin phosphorosulfide, barium derivative (C28–C250).	C	P	III	NR	Open	Open	A, B	(.440, .903, .908(a)) [1]	NA
Poly(tetramethylene ether) glycols (mw 950-1050).	B	P	III	NR	Open	Open	A, D	.409, .440, .488, .908(a), (b)	NA
Potassium hydroxide solution, *see* Caustic potash solution									
Potassium oleate	C	P	III	NR	Open	Open	A	.409	NA
Potassium thiosulfate (50% or less).	C	P	III	NR	Open	Open	NSR	None	NA
iso-Propanolamine	C	S/P	III	NR	Open	Open	A	.236(b), (c), .440, .526, .903, .908(b).	I-D
n-Propanolamine	C	S/P	III	NR	Open	Open	A, D	.236(b), (c), .440, .526, .908(b)	NA
Propionaldehyde	C	S/P	III	4m	PV	Restr	A	.316, .409, .526, .527	I-C
Propionic acid	D	S	III	4m	PV	Restr	A	.238(a), .409, .527, .554, .933	I-D
Propionic anhydride	C	S P	III	4m	PV	Restr	A	.238(a), .526	I-D
Propionitrile	C	S/P	II	B/3	PV	Closed	A, D	.252, .316, .336, .408, .525, .526, .527, .1020.	I-D
iso-Propylamine	C	S/P	II	B/3	PV	Closed	C, D	.236(b), (c), .372, .408, .440, .525, .526, .527, .1020.	I-D
iso-Propylamine solution (70% or less).	C	S/P	II	B/3	PV	Closed	C, D	.236(a), (b), (c), (g), .408, .440, .525, .526, .527, .1020.	I-D
n-Propylamine	C	S/P	II	B/3	PV	Closed	A, C, D	.236(b), (c), .408, .500, .525, .526, .527, .1020.	I-D
n-Propylbenzene, see Propylbenzene (all isomers).									
Propylbenzene (all isomers).	A	P	III	4m	PV	Restr	A	.409	I-D
n-Propyl chloride	D	S	III	4m	PV	Restr	A, B	.409	I-D
iso-Propylcyclohexane	C	P	III	4m	PV	Restr	A	.409, .440, .903, .908(a)	I-D
Propylene dimer	C	P	III	4m	PV	Restr	A	.409	NA
Propylene oxide	C	S/P	II	B/3	PV	Closed	A, C	.372, .408, .440, .500, .526, .530, .1010, .1011.	I-B
Propylene tetramer	B	P	III	4m	PV	Restr	A	.409	I-D
Propylene trimer	B	P	III	4m	PV	Restr	A	.409	I-D
iso-Propyl ether	D	S	III	4m	PV	Restr	A	.409, .500, .515, .912(a)(1)	I-D
Pyridine	D	S	III	4m	PV	Restr	A	.236(b), .409	I-D
Rosin, *see* Rosin oil.									
Rosin oil	B	P	III	NR	Open	Open	A	.409, .440, .488, .908(a), (b)	I-D
Rosin soap (disproportionated) solution.	B	P	III	NR	Open	Open	A	.409	NA
Sodium alkyl (C14-C17) sulfonates 60-65% solution, *see* Alkane (C14-C17) sulfonic acid, sodium salt solution.									
Sodium aluminate solution	D	S	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .933	NA
Sodium borohydride (15% or less), Sodium hydroxide solution.	C	S/P	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .440, .908(a), .933.	NA
Sodium chlorate solution (50% or less).	III	S	III	NR	Open	Open	NSR	.409, .933, .1065	NA
Sodium dichromate solution (70% or less).	C	S/P	II	B/3	Open	Closed	NSR	.236(b), (c), .408, .525, .933, .1020	NA

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Sodium dimethyl naphthalene sulfonate solution, see Dimethyl naphthalene sulfonic acid, sodium salt solution.									
Sodium hydrogen sulfide (6% or less), Sodium carbonate (3% or less) solution.	B	P	III	NR	Open	Open	NSR	.409	NA
Sodium hydrogen sulfite solution (45% or less).	D	S	III	NR	Open	Open	NSR	None	NA
Sodium hydrosulfide solution (45% or less).	B	S/P	III	4m	PV	Restr	NSR	.409, .440, .526, .908(b), .933	NA
Sodium hydrosulfide, Ammonium sulfide solution.	B	S/P	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .316, .372, .408, .525, .526, .527, .933, .1002, .1020.	NA
Sodium hydroxide solution, *see* Caustic soda solution									
Sodium hypochlorite solution (15% or less).	C	S/P	III	4m	PV	Restr	NSR	.236(a), (b), .933	NA
Sodium long chain alkyl salicylate (C13+).	[C]	P	III	NR	Open	Open	A	(.440, .903, .908(a)) [1]	NA
Sodium-2-mercaptobenzothiazol solution.	B	S/P	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .409, .440, .908(b), .933.	NA
Sodium N-methyldithiocarbamate solution, see Metam sodium solution.									
Sodium naphthalene sulfonate solution (40% or less), see Naphthalene sulfonic acid, sodium salt solution (40% or less).									
Sodium naphthenate solution, see Naphthenic acid, sodium salt solution.									
Sodium nitrite solution	B	S/P	II	NR	Open	Open	NSR	.408, .525(a), (c), (d), (e), .1020	NA
Sodium petroleum sulfonate.	B	S/P	II	NR	Open	Open	A	.409, .440, .908(a)	NA
Sodium silicate solution	C	P	III	NR	Open	Open	A	None	NA
Sodium sulfide solution (15% or less).	B	S/P	III	B/3	PV	Closed	NSR	.236(a), (b), .409, .440, .526, .908(b).	NA
Sodium sulfite solution (25% or less).	C	P	III	NR	Open	Open	NSR	.409, .440, .908(b)	NA
Sodium tartrates, Sodium succinates solution.	D	S	III	NR	Open	Open	A, B	.238(e)	NA
Sodium thiocyanate solution (56% or less).	B	P	III	NR	Open	Open	NSR	.238(a), .409	NA
Styrene *monomer*	B	S/P	III	4m	PV	Restr	A, B	.236(b), .409, .912(a)(1), .1002(a), (b), .1004.	I-D
Sulfohydrocarbon, long chain (C18+) alkylamine mixture.	B	P	III	NR	Open	Open	A, B	.409; (.440, .908(a)) [1]	NA
Sulfur (molten)	III	S	III	NR	Open	Open	NSR	.252, .440, .526, .545	I-C
Sulfuric acid	C	S/P	III	NR	Open	Open	NSR	.440, .554, .555, .556, .602, .908(a), (b), .933, .1000, .1045, .1046, .1052.	I-B
Tall oil *(crude and distilled)*	B	P	III	NR	Open	Open	A	.409, .440, .488, .908(a), (b)	NA
Tall oil, fatty acid *(resin acids less than 20%).*	C	P	III	NR	Open	Open	A	.440, .908(a), (b)	NA
Tall oil fatty acid, barium salt.	B	S/P	III	NR	Open	Open	A	.409, .440, .908(a)	NA
Tall oil soap (disproportionated) solution.	B	P	III	NR	Open	Open	A	.409, .440, .908(a), (b)	NA

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
1,1,2,2-Tetrachloroethane	B	S/P	III	B/3	PV	Restr	NSR	.316, .409, .525, .526, .1020	NA
Tetraethylenepentamine [3]	D	S	III	NR	Open	Open	A	.236(b), (c), (g)	I-C
Tetrahydrofuran	D	S	III	4m	PV	Restr	A, D	.409, .526, .912(a)(2), .1004	I-C
Tetrahydronaphthalene	C	P	III	NR	Open	Open	A	None	I-D
Tetramethylbenzene (all isomers).	A	P	III	NR	Open	Open	A	None	I-D
Toluene	C	P	III	4m	PV	Restr	A	.409	I-D
Toluenediamine	C	S/P	II	B/3	PV	Closed	A, B, C, D	.236(a), (b), (c), (g), .316, .408, .440, .525, .526, .527, .908(a), (b), .933, .1020.	NA
Toluene diisocyanate [6]	C	S/P	II	4m	PV	Closed	A, C [6], D	.236(b), .316, .408, .440, .500, .501, .525, .526, .527, .602, .908(b), .1000, .1020.	I-D
o-Toluidine	C	S/P	II	B/3	PV	Closed	A, C	.316, .408, .525, .526, .933, .1020	I-D
Tributyl phosphate	B	P	III	NR	Open	Open	A	.409	I-D
1,2,3-Trichlorobenzene (molten).	A	S/P	I	B/3	PV	Closed	A, C, D	.316, .408, .440, .526, .908(b), .933	I-D
1,2,4-Trichlorobenzene	B	S/P	II	4m	PV	Restr	A, B,C,	.409, .440, .526, .908(b),	I-D
1,1,1-Trichloroethane	C	P	III	NR	Open	Open	A	.409	I-D
1,1,2-Trichloroethane	C	S/P	III	B/3	PV	Restr	NSR	.409, .525, .526, .933, .1020	I-D
Trichloroethylene	C	S/P	III	B/3	PV	Restr	NSR	.316, .409, .525, .526, .1020	I-D
1,2,3-Trichloropropane	C	S/P	II	B/3	PV	Closed	A, B, C, D	.316, .408, .525, .526, .933, .1020	I-D
1,1,2-Trichloro-1,2,2-trifluoroethane.	C	P	III	NR	Open	Open	NSR	None	NA
Tricresyl phosphate (less than 1% of the ortho isomer).	A	P	II	NR	Open	Open	A	.409	I-D
Tricresyl phosphate (1% or more of the ortho isomer).	A	S/P	I	4m	PV	Closed	A, B	.408, .525(a), (c), (d), (e), .1020	I-D
Tridecanoic acid	B	P	III	NR	Open	Open	A	.409, .440, .488, .908(a), (b)	NA
Triethanolamine	D	S	III	NR	Open	Open	A	.236(a), (b), (c), (g)	I-C
Triethylamine	C	S/P	II	B/3	PV	Restr	A, B, C	.236(b), (c), .409, .525, .526, .527, .1020.	I-C
Triethylbenzene	A	P	II	NR	Open	Open	A	.409	I-D
Triethylene glycol di-(2-ethylbutyrate).	[C]	P	III	NR	Open	Open	A	None	I-C
Triethylenetetramine	D	S	III	NR	Open	Open	A	.236(a), (b), (c)	I-C
Triethyl phosphite	B	S/P	III	B/3	PV	Restr	A, B, D	.409, .526	NA
Triisopropylated phenyl phosphates.	A	P	II	NR	Open	Open	A	.409	NA
Trimethylacetic acid	D	S	III	4m	PV	Restr	A, C	.238(a), .266, .554	I-D
Trimethylamine solution (30% or less).	C	S/P	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .372, .408, .440, .525, .526, .527, .908(b), .1020.	I-C
Trimethylbenzene (all isomers).	A	P	III	4m	PV	Restr	A	.409	I-D
Trimethvlhexamethylenediamine (2,2,4- and 2,4,4-isomers).	D	S	III	NR	Open	Open	A, C	.236(a), (b), (c), (g), .409	NA
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4- isomers) [6].	B	S/P	II	B/3	PV	Closed	A, C [6]	.316, .409, .500, .501, .525, .526, .60[illegible], .1000, .1020.	NA
2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate.	C	P	III	NR	Open	Open	A	None	I-D
Trimethyl phosphite	[illegible]	S	III	4m	PV	Restr	A, D	.409 .526, .602, .1000	I-D
1,3,5-Trioxane	D	S	III	4m	PV	Restr	A, D	.409	I-C
Trixylenyl phosphate	A	P	I	NR	Open	Open	A	.408	NA
Trixylyl phosphate, *see* Trixylenyl phosphate.									
Turpentine	B	P	III	4m	PV	Restr	A	.409	I-D
Undecanoic acid	B	P	III	NR	Open	Open	A	.440, .908(a), (b)	NA

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II Pollution Category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
1-Undecene	B	P	III	NR	Open	Open	A	.409	I-D
1- Undecyl alcohol	B	P	III	NR	Open	Open	A	.409, .440, .908(b)	I-D
Urea, Ammonium nitrate solution (containing more than 2% NH_3).	C	S/P	III	4m	PV	Restr	A	.236(b), .526	I-D
Valeraldehyde (all isomers)	C	S/P	III	4m	PV	Restr	A	.409, .500, .526	I-C
Vinyl acetate	C	S/P	III	4m	PV	Restr	A	.409, .912(a)(1), .1002(a), (b), .1004.	I-D
Vinyl ethyl ether	C	S/P	II	4m	PV	Closed	A	.236(b), (d), (f), (g), .252, .372, .408, .440, .500, .515, .526, .527, .912(a)(1), .1002(a), (b), .1004.	I-C
Vinylidene chloride	D	S	II	4m	PV	Restr	B	.236(a), (b), .372, .409, .440, .500, .526, .527, .912(a)(1), .1002(a), (b), .1004.	I-D
Vinyl neodecanate	B	S/P	III	NR	Open	Open	A, B	.409, .912(a)(1), .1002(a), (b), .1004.	NA
Vinyltoluene	A	S/P	III	4m	PV	Restr	A, B, D	.236(a), (b), (c), (g), .409, .912(a)(1), .1002(a), (b), .1004.	I-D
White spirit (low (15–20%) aromatic).	B	P	II	4m	PV	Restr	A	.409	NA
Xylenes[8] *(ortho-, meta-, para-).*	C	P	III	4m	PV	Restr	A	.409, .440, .908(b)[8]	I-D
Xylenes, Ethylbenzene (10% or more) mixture.	B	P	III	4m	PV	Restr	A	.409	NA
Xylenol	B	S/P	III	NR	Open	Open	A, B	.409, .440, .908(a), (b)	NA
Zinc alkaryl dithiophosphate (C7–C16).	C	P	III	NR	Open	Open	A, B	(.440, .903, .908(a))[1]	NA
Zinc alkyl dithiophosphate (C3–C14).	B	P	III	NR	Open	Open	A, B	.409; (.440, .908(a))[1]	NA

Column Heading Footnotes:

a. The cargo name must be as it appears in this column (see 153.900, 153.907). Words in italics are not part of the cargo name but may be used in addition to the cargo name. When one entry references another entry by use of the word "*see*", and both names are in roman type, either name may be used as the cargo name (e.g., Diethyl ether, *see* Ethyl ether). However, the referenced entry is preferred.

The provisions contained in 46 CFR part 197, subpart C, apply to liquid cargoes containing 0.5% or more benzene by volume.

b. This column lists the IMO Annex II Pollution Category.

A, B, C, D—NLS Category of Annex II of MARPOL 73/78.

III—Appendix III of Annex II (non-NLS cargoes) of MARPOL 73/78.

#—No determination of NLS status. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).

[ ]—A NLS category in brackets indicates that the product is provisionally categorized and that further data are necessary to complete the evaluation of its pollution hazards. Until the hazard evaluation is completed, the pollution category assigned is used.

@—The NLS category has been assigned by the U.S. Coast Guard, in absence of one assigned by the IMO. The category is based upon a GESAMP Hazard Profile or by analogy to a closely related product having an NLS assigned.

c. This column lists the hazard(s) of the commodity:

S—The commodity is included because of its safety hazards.

P—The commodity is included because of its pollution hazards.

S/P—The commodity is included because of both its safety and pollution hazards.

d. This column lists the type of containment system the cargo must have (see 153.230 through 153.232).

e. This column lists the height of any vent riser required (see 153.350 and 153.351).

f. This column lists any vent control valve required (see 153.355).

g. This column lists the type of gauging system required (see 153.400 through 153.406).

h. This column lists the type of fire protection system required. Where more than one system is listed, any listed system may be used. A dry chemical system may not be substituted for either type of foam system unless the dry chemical system is listed as an alternative or the substitution is approved by Commandant (G–MSO) (see 153.460). The types are as follows:

A is a foam system for water soluble cargoes (polar solvent foam).

B is a foam system for water insoluble cargoes (non-polar solvent foam).

C is a water spray system.

D is a dry chemical system.

NSR means there is no special requirement applying to fire protection systems.

i. This column lists sections that apply to the cargo in addition to the general requirements of this part. The 153 Part number is omitted.

j. This column lists the electrical hazard class and group used for the cargo when determining requirements for electrical equipment under Subchapter J (Electrical Engineering) of this chapter.

A number of electrical hazard class and group assignments are based upon that which appears in "Classification of Gases, Liquids and Volatile Solids Relative to Explosion-Proof Electrical Equipment", Publication NMAB 353–5, National Academy Press, 1982, when not appearing in NFPA 497M, "Manual for Classification of Gases, Vapors and Dusts for Electrical Equipment in Hazardous (Classified) Locations."

The I-B electrical hazard does not apply to weather deck locations (see 46 CFR Part 111) for inorganic acids: Chlorosulfonic acid; Hydrochloric acid; Nitrating acid; Nitric acid (70% or less); Oleum; Phosphoric acid; Sulfuric acid.

Abbreviations used in the Table:

NR—No requirement.

NA—Not applicable.

Abbreviations for Noxious Liquid cargoes:

N.F.—non-flammable (flash point greater than 60 deg C (140 deg F) closed cup (cc)).

F.—flammable (flash point less than or equal to 60 deg C (140 deg F) closed cup (cc)).

n.o.s.—not otherwise specified.

ST—Ship type.

Cat—Pollution category.

Footnotes for Specific Cargoes:

1. Special applicability:

153.440 and .908(a) apply to the chemical, and mixtures containing the chemical, with a viscosity of 25 mPa.s at 20 deg C (68 deg F).

153.440 and .908(b) apply to the chemical, and mixtures containing the chemical, with a melting point of 0 deg C (32 deg F) and above.

153.488 applies to the chemical, and mixtures containing the chemical, with a melting point of 15 deg C (59 deg F) and above.

2. Benzene containing cargoes.

Applies to mixtures containing no other components with safety hazards and where the pollution category is C or less.

3. Diammonium salt of Zinc ethylenediaminetetraacetic acid solution; Tetraethylenepentamine.

Aluminum is a questionable material of construction with this cargo since pitting and corrosion has been reported. The IMO Chemical Code prohibits aluminum as a material of construction for this cargo.

4. 2,4-Dichlorophenol.

Some tank pitting has been reported when this cargo is contaminated with water, including moisture in the air. The IMO Chemical Code requires that the vapor space over this cargo be kept dry.

5. Reserved.

6. Diphenylmethane diisocyanate; Hexamethylene diisocyanate; Isophorone diisocyanate; Polymethylene polyphenyl isocyanate; Toluene diisocyanate; Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4- isomers).

Water is effective in extinguishing open air fires but will generate hazardous quantities of gas if put on the cargo in enclosed spaces.

7. Maleic anhydride; Nitroethane; Nitroethane, 1-Nitropropane mixtures; 1- or 2-Nitropropane; Nitropropane, Nitroethane mixtures.

Dry chemical extinguishers should not be used on fires involving these cargoes since some dry chemicals may react with the cargo and cause an explosion.

8. Xylenes.

Special requirement .908(b) only applies to the para- (p-) isomer, and mixtures containing the para-isomer having a melting point of 0 deg C (32 deg F) or more.

PART 153 TABLE II—[AMENDED]

20. Amend Table 2 as follows:

a. Change bold-faced type wherever it appears to Roman type; in the column entitled "Cargoes", remove each bullet "•" that precedes the name of a cargo; and remove the undesignated footnote that reads: "Items with a bullet (•) or in **boldface** are changes since October 1, 1993".

b. From the column entitled "Cargoes", remove the words "Dextrose solution" and add, in their place, the words "*Dextrose solution, see* Glucose solution", and beside it in the column entitled "Pollution Category", remove the number "III".

c. From the column entitled "Cargoes", remove the words "Lignin sulfonic acid, sodium salt solution" and add, in their place, the words "Lignin sulfonic acid, sodium salt solution, *see also* Lignin liquor *or* Sodium lignosulfonate solution".

d. In the column entitled "Pollution Category", beside the entry "Drilling brine (containing Calcium, Potassium, or Sodium Salts)", add the number "III".

e. From the column entitled "Cargoes", remove the words "Pentasodium salt of Diethylenetriamine pentaacetic acid solution, *see* Diethylenetriamine pentaacetic acid, pentasodium salt solution" and add, in their place, the words "*Pentasodium salt of Diethylenetriamine pentaacetic acid solution, see* Diethylenetriamine pentaacetic acid, pentasodium salt solution"; and, from beside them in the column entitled "Pollution Category", remove the number "III".

f. From the column entitled "Cargoes", remove the words "Sodium naphthenate solution (free alkali content, 3% or less), *see* Naphthenic acid, sodium salt solution" and add, in their place, the words "*Sodium naphthenate solution (free alkali content, 3% or less), see* Naphthenic acid, sodium salt solution"; and, from beside it in the column entitled "Pollution Category", remove the letter "[A]".

g. From the column entitled "Cargoes", remove the words "Tetrasodium salt of Ethylenediaminetetraaacetic acid solution, *see* Ethylenediaminetetraacetic acid, tetrasodium salt solution" and add, in their place, the words "*Tetrasodium salt of Ethylenediaminetetraaacetic acid solution, see* Ethylenediaminetetraacetic acid, tetrasodium salt solution"; and, from beside it in the column entitled "Pollution Category", remove the letter "D".

h. From the column entitled "Cargoes", remove the words "Trisodium salt of N-(Hydroxyethyl)ethylenediaminetriacetic acid solution, *see* N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution" and add, in their place, the words "*Trisodium salt of N-(Hydroxyethyl)ethylenediamine triacetic acid solution, see* N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution"; and, from beside it in the column entitled "Pollution Category", remove the letter "D".

21. Amend Table 2 by adding the following new entries in chemically proper alphabetized order:

TABLE 2—CARGOES NOT REGULATED UNDER SUBCHAPTERS D OR O OF THIS CHAPTER WHEN CARRIED IN BULK ON NON-OCEANGOING BARGES

Cargoes	Pollution category
* * * * *	
Ammonium thiosulfate solution (60% or less).	C
* * * * *	
Sulfonated polyacrylate solution	III
* * * * *	
Titanium dioxide slurry	III
* * * * *	

Dated: August 30, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–28387 Filed 11–7–00; 8:45 am]

BILLING CODE 4910–15–U

Federal Register

Wednesday,
November 8, 2000

Part V

Department of Education

National Assessment of Educational Progress (NAEP)—Secondary Analysis Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.902B]

National Assessment of Educational Progress (NAEP)—Secondary Analysis Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Purpose of Program: To encourage the preparation of reports that would not otherwise be available and that apply new approaches to the analysis and reporting of the NAEP and NAEP High School Transcript Studies data. Analyses and reports prepared under this program should potentially be useful to the general public, parents, educators, educational researchers, or policy makers.

For FY 2001, the competition for new awards focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice.

Eligible Applicants: Public or private organizations and consortia of organizations.

Applications Available: November 9, 2000. The application package for this competition is also available on-line at: http://ed.gov/GrantApps/.

Deadline for Transmittal of Applications: January 10, 2001.

Estimated Available Funds: $700,000.

The estimated amount of funds available for new awards is based on the Administration's request for this program for FY 2001. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the fiscal year, if Congress appropriates funds for this program.

Estimated Range of Awards: $15,000–$100,000.

Estimated Average Size of Awards: $85,000.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 18 months.

Estimated Number of Awards: 7–9.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 60 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

If, to meet the page limit, you use more than one side of the page, you use a larger page or you use a print size, spacing, or margins smaller than the standards in this notice, we will reject your application.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for those provisions of part 75 noted in 34 CFR 700.5 (a)), 77, 80, 81, 82, 85, and 86; and (b) The regulations in 34 CFR part 700.

Priorities

Invitational Priorities

We are particularly interested in applications that meet one or more of the following invitational priorities.

Under 34 CFR 75.105(c)(1) we do not give an application that meets one or more of the priorities a competitive or absolute preference over other applications.

Invitational Priority 1

Projects that use NAEP achievement data alone or in combination with other data sets to assist policy makers and educators who make decisions about curriculum and instruction.

Invitational Priority 2

Projects designed to assist States in analyzing, interpreting and reporting their State-level NAEP results.

Invitational Priority 3

Projects that include the development of analytic procedures that improve precision with which NAEP estimates group and subgroup performance.

Invitational Priority 4

Projects that develop improved sampling procedures for national or State-level NAEP.

Invitational Priority 5

Projects to analyze and report data using statistical software developed by the project to permit more advanced analytic techniques to be readily applied to NAEP data.

For Further Information or Applications Contact: Alex Sedlacek, U.S. Department of Education, 1990 K Street, NW., room 8007, Washington, DC 20006. Telephone: (202) 502–7446 or via Internet: alex__sedlacek@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information or Applications Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the program person listed under *For Further Information or Applications Contact.* However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 9010.

Dated: November 1, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–28658 Filed 11–7–00; 8:45 am]

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Federal Register

Wednesday,
November 8, 2000

Part VI

Department of Education

Bilingual Education: Training for All Teachers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.195B]

Bilingual Education: Training for All Teachers Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program

This program provides grants to incorporate courses and curricula on appropriate and effective instructional and assessment methodologies, strategies, and resources specific to limited English proficient students into preservice and inservice professional development programs for teachers, pupil services personnel, administrators, and other educational personnel in order to prepare such individuals to provide effective services to limited English proficient students. The program focuses on the development of coursework and curricula for professional development programs for currently practicing teachers and other educational personnel who provide instruction or support to LEP students, but who do not expect to become bilingual education or English as a second language specialists. Training activities may also include improving the skills of higher education faculty to better prepare all teachers to instruct LEP students. Funds under this program may be used to provide for the development of training programs in collaboration with other programs, such as programs authorized under Titles I and II of this Act and under the Head Start Act.

Eligible Applicants: One or more institutions of higher education (IHEs); one or more local educational agencies (LEAs); one or more State educational agencies (SEAs); or one or more nonprofit organizations (NPOs) which have entered into consortia arrangements with an IHE, LEA, or SEA. organizations.

Deadline for Transmittal of Applications: 12/22/2000.

Deadline for Intergovernmental Review: 2/22/2001.

Available Funds: $10 million.

Estimated Range of Awards: $150,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 50.

Note: The Administration has requested $10 million for new awards under the Training for All Teachers program in 2001. The actual level of funding, if any, depends upon final congressional action.

Project Period: Up to 60 Months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 30 pages, using the following standards:

- A page is 8.5 × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including budget justification and the cost itemization; Part IV, the assurances and certifications; or the table of contents, the one-page abstract, or the letters of support. However you must include all of the application narrative in Part III.

If, to meet the page limit, you use more than one side of the page, you use a larger page, or you use a print size, spacing, or margins smaller that the standards in this notice, we will reject your application.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99; and 34 CFR Part 299.

Description of Program

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7142 and 7146–7150 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994) (the Act) (20 U.S.C. 7474 and 7476–7480).

Activities conducted under this program must assist educational personnel in meeting State and local certification requirements for bilingual education and, wherever possible, must lead to the awarding of college or university credit.

Priorities

Competitive Priority

Under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b), we award up to 3 points for an application that meets the competitive priority. These points are in addition to any points the application earns under the selection criteria for the program.

Projects that will contribute to a systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Invitational Priorities

The Secretary is particularly interested in applications that meet the following invitational priorities. However, an application that meets these invitational priorities receives no competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

(a) Projects that propose to improve the skills of higher education faculty to ensure that all teachers are effectively prepared to teach LEP students.

(b) Projects that incorporate training in family involvement into formal induction programs for beginning secondary teachers or ongoing professional development programs for currently practicing secondary teachers.

Selection Criteria

The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Significance.* (10 points) (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project the Secretary considers the likelihood that the proposed project will result in system change or improvement.

(b) *Need for project.* (10 points) (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and the magnitude of those gaps or weaknesses.

(c) *Quality of the project design.* (45 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iv) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(v) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(vi) The extent to which the proposed project represents an exceptional approach for meeting the statutory purposes and requirements.

(d) *Quality of project services.* (5 points) (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(e) *Quality of project personnel.* (5 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor: the qualifications, including relevant training and experience, of key project personnel.

(f) *Quality of the management plan.* (5 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factor: the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(g) *Quality of the project evaluation.* (20 points) (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Intergovernmental Review Of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive order 12372.

If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any SPOC, see the list in the appendix to this application notice; or you may view the latest official SPOC list on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants.*

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA # 84.195B, U.S. Department of Education, Room 7E200 400 Maryland Avenue, SW., Washington, D.C. 20202–0125.

We will determine proof of mailing under 34 CFR 75.102 (Deadline date for applications). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

If you want to apply for a grant and be considered for funding you must meet the following deadline requirements:

(a) *If you send your application by mail*—

You must mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.195B), Washington, D.C. 20202–4725.

You must show one of the following as proof of mailing.

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) Hand-deliver the original and two copies of the application by 4:30 p.m.

(Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.195B), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), except Saturdays, Sundays and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(c) *If you submit your application by courier*—You must deliver the original and two copies of your application to the courier service on or before the deadline date. You must show as proof of delivery to the courier service a dated shipping label, invoice, or receipt from the courier service. The courier service must deliver your application to: U.S. Department of Education, Application Control Center, Attn: (8[illegible].195B), Room 3633, Regional Office Building, 7th and D Streets, SW., Washington, D.C.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), except Saturdays, Sundays and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A courier delivering an application must show identification to enter the building.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) You *must* indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, questions and answers on this program (located at the end of the notice) and various assurances, certifications, and required documentation:

a. Estimated Public Reporting Burden
b. Application Instructions
c. Nonregulatory Guidance: Questions and Answers
d. Checklist for Applicants
e. List of Empowerment Zones and Enterprise Communities
f. Application for Federal Education Assistance (ED 424) and instructions
g. Group Application Form
h. Budget Information
i. Participant Data
j. Project Documentation
k. Program Assurances
l. Assurances—Non-Construction Programs (Standard Form 424B) and instructions
m. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions
n. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014) and instructions

Note: This form is intended for the use of grantees and should not be transmitted to the Department.

o. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes
p. Notice to All Applicants (GEPA Requirement) and Instructions (OMB No. 1801–0004)

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit *ONE* original signed application, including ink signatures on all forms and assurances, and *TWO* copies of the application. Please mark each application as "original" or "copy". No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Petraine Johnson or Franklin Reid US Department of Education, 400 Maryland Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Telephone: Petraine Johnson: (202) 205–8766; Franklin Reid: (202) 205–9803 E-mail address: Franklin_Reid@ed.gov; Petraine_Johnson@ed.gov.

If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternative format (e.g. braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternative format the standard forms included in the notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PFD) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use PFD you must have Adobe Acrobat Reader, which is available free at either of the preceding sites. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, D.C. area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available at GPO access at: *http://www.access.gpo.gov.nara.index.html*

Program Authority: 20 U.S.C. 7474.

Dated: November 11, 2000.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

Appendix

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0542, Exp. Date: 12/31/01. We estimate the time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202–4651.

If you have any comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202–6510.

Application Instructions

Abstract

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, planned activities, and invitational priorities the project proposes to address.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes. Instead, provide position descriptions for key personnel. Do not include bibliographies, letters of support, or appendices in your application. This package includes questions and answers to assist you in preparing the narrative portion of your application.

Empowerment Zone/Enterprise Community Priority

Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the Applicable Empowerment Zone or Enterprise Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Empowerment Zone or Enterprise Community and be an integral part of the Zone's or Community's comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Table of Contents

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components. A separate budget summary and cost itemization must be provided. Prepare an itemized budget for each year of requested funding.

Indirect costs for institutions of higher education which are the fiscal agents for Training for All Teachers are limited to the lower of either 8 percent of a modified total direct cost base or the institution for higher education's actual indirect cost agreement. A modified direct cost base is defined as total direct costs less stipends, tuition and related fees and capital expenditures of $5,000 or more. In describing student support costs distinguish costs for tuition and fees from costs for stipends.

Submission of Application to State Educational Agency

Section 7146(a)(4) of the Act (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7476(a)(4)).

Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package.

Applicants that do not submit a copy of their application to their SEA will not be considered for funding. Applicants are reminded that the requirement for submission to the State Educational Agency and the requirements for Executive Order 12372 are two separate requirements.

Final Application Preparation

Use the following checklist to verify that all necessary items are addressed. Prepare one original with an original signature, and include two additional copies. Do not use elaborate bindings or covers. The application package must be mailed to the Application Control Center (ACC) and postmarked by the deadline date published in the closing date notice.

Checklist for Applicants

The following forms and other items must be included in the application:

1. Application for Federal Assistance (SF 424)
2. Group Application Certification (to be signed by authorized Representative of LEA in consortia with the applicant)
3. Budget Information (ED Form No. 524)
4. Itemized Budget for each year (attached to ED Form No. 524)
5. Participant Data (approximate number of participants to be served each year)
6. Project Documentation

Section A—Copy of Transmittal Letter to SEA requesting SEA to comment on application
Section B—Documentation of Empowerment Zone or Enterprise Community (if applicable)

7. Program Assurances
8. Non-Construction Programs (SF 424B)
9. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013)
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014)
11. Disclosure of Lobbying Activities (SF–LLL)
12. Notice to all Applicants (See form provided below)
13. Table of Contents
14. One-page single-spaced abstract
15. Application narrative (Not to exceed 30 double-spaced pages, see instructions below)
16. One original and two copies of the application to the Department of Education Application Control Center
17. One copy to the State Education Agency
18. One copy to the State Single Point of Contact

Questions and Answers

May Training for All Teachers Programs Provide Training to Participants?

In addition to developing and revising courses and curricula for professional development programs for all teachers, applicants may implement training activities for currently practicing teachers and other educational personnel, including beginning teachers, who are not bilingual education or English as a second language specialists, but who provide services to LEP students. The program addresses the need for teachers and other educational personnel to acquire knowledge and skills necessary to provide appropriate and effective services to limited English proficient students and their families.

What Factors Should Be Considered in Designing a Training for All Teachers Program?

Applicants should consider the characteristics and conditions that foster high-quality professional development, including sustained intensive training activities that are focused on a manageable number of participants. In determining the number of participants to be served, applicants should consider the capability of the program to provide high-quality professional development for all participants and to effectively evaluate improved teaching and learning as a result of the program. Applicants are reminded that program participants may include higher education faculty as well as inservice teachers of other educational personnel. Applicants should not propose programs that are so large in scope that they dilute the quality of training.

What Are the Certification Requirements for the Training for all Teachers Program?

The Title VII statute requires grantees to assist educational personnel in meeting state and local certification requirements. Courses and curricula developed, revised or offered must be part of a program, which would lead to State and local certification. However, it is not a requirement that participants trained under the program complete certification requirements during the course of the grant. Emphasis should be placed on the acquisition of knowledge and skills in order to meet the needs of limited English proficient students.

What Information May Be Helpful in Preparing a Aarrative for Training for All Teachers Grant?

Information on the Training for All Teachers Program is available through the OBEMLA Website: *http://www.ed.gov/offices/OBEMLA*. First click on Funding opportunities, then go to Professional Development Programs.

In responding to the selection criteria applicants may wish to consider the following questions as a guide for preparing the application narrative:

- What are the specific responsibilities of schools, districts, institutions of higher education and other partnership organizations in planning, implementing and evaluating the proposed program?
- How will the training curricula incorporate high standards for teaching and learning?
- How is the proposed program linked to a comprehensive school-wide plan to improve professional development programs for all teachers related to the needs of limited English proficient students?
- How will the products of the proposed program be integrated into professional development program activities for all teachers?
- How will the program assist in systemically reforming local policies and practices related to the training of teachers to improve instructional services for LEP students?
- What performance indicators will the proposed program use to assess the effectiveness of the program? What are the expected outcomes for participant learning, improved teaching practices, improved student achievement, reform of professional development in the school or university, or improved skills of higher education faculty?
- What professional development activities are planned for school staff development specialists, or for higher education faculty to ensure that they are effectively prepared to provide training to prepare all teachers related to the needs of LEP students?

In addition, applicants may wish to consider the Department of Education Professional Development Principles in planning Training for All Teachers Program. The following are the Professional Development Principles: Professional Development: Focuses on teachers as central to student learning, yet includes all other members of the school community; Focuses on individual, collegial and organizational improvement; Respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community; Reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards; promotes continuous inquiry and improvement embedded in the daily life of schools; is planned collaboratively by those who will participate in and facilitate that development; requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and this assessment guides subsequent professional development efforts.

BILLING CODE 4000-01-P

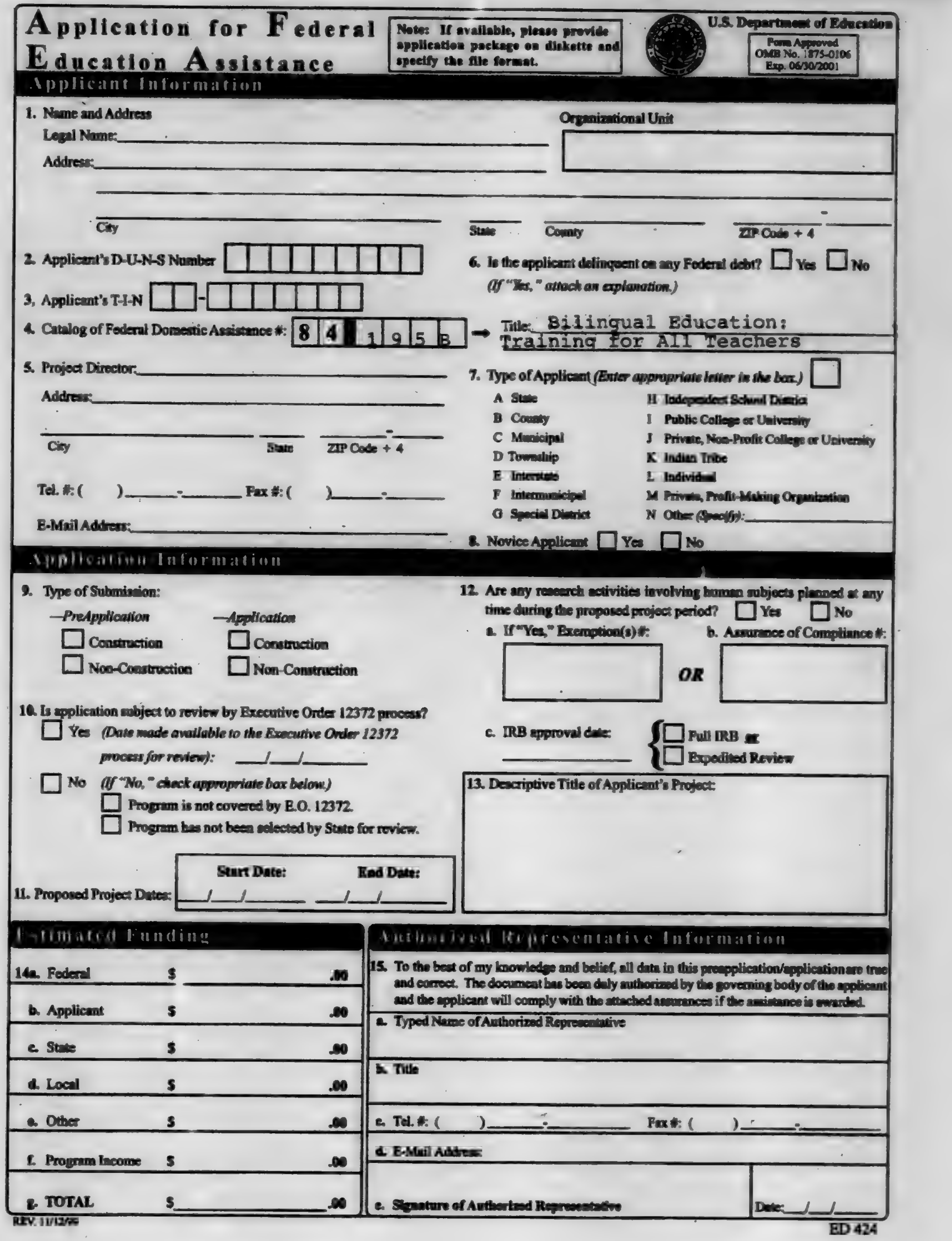

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address
Legal Name: ______
Address: ______
City ______ State ______ County ______ ZIP Code + 4 ______

Organizational Unit ______

2. Applicant's D-U-N-S Number ☐☐☐☐☐☐☐☐☐

3. Applicant's T-I-N ☐☐-☐☐☐☐☐☐☐

4. Catalog of Federal Domestic Assistance #: 8 4 ■ 1 9 5 B → Title: Bilingual Education: Training for All Teachers

5. Project Director: ______
Address: ______
City ______ State ______ ZIP Code + 4 ______
Tel. #: ( ) ______-______ Fax #: ( ) ______-______
E-Mail Address: ______

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School District
I Public College or University
J Private, Non-Profit College or University
K Indian Tribe
L Individual
M Private, Profit-Making Organization
N Other *(Specify)*: ______

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:
—PreApplication
☐ Construction
☐ Non-Construction
—Application
☐ Construction
☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes *(Date made available to the Executive Order 12372 process for review)*: ___/___/______
☐ No *(If "No," check appropriate box below.)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: ___/___/______ End Date: ___/___/______

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
a. If "Yes," Exemption(s) #: ______ *OR* b. Assurance of Compliance #: ______
c. IRB approval date: ______ ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.
a. Typed Name of Authorized Representative
b. Title
c. Tel. #: ( ) ______-______ Fax #: ( ) ______-______
d. E-Mail Address:
e. Signature of Authorized Representative Date: ___/___/______

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.
2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**
3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.
4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.
5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.
6. **Federal Debt Delinquency.** Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."
7. **Type of Applicant.** Enter the appropriate letter in the box provided.
8. **Novice Applicant.** Check "Yes" only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check "No."
9. **Type of Submission.** Self-explanatory.
10. **Executive Order 12372.** Check "Yes" if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check "No."
11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).
12. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are not planned at any time during the proposed project period, check "No." **The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check "Yes." If all the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR an **approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.
13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.
15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a , **(all research activities are exempt)**, provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt)**, address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of *exemptions* are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. *If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.* [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization				Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.		
SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS						
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						
SECTION C - OTHER BUDGET INFORMATION (see instructions)						

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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Prescribed by OMB Circular A-102

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year ______ quarter ______ date of last report ______

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ______, *if known*: **Congressional District,** *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: ______
8. Federal Action Number, *if known*:	**9. Award Amount,** *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: ______ Print Name: ______ Title: ______ Telephone No.: ______ Date: ______
	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

OMB Control No. 1801-[illegible]4 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

PARTICIPANT DATA

Note: This form must be completed by applicants under the following programs:

- **Teachers and Personnel Grants**
- **Career Ladder Program**
- **Training for all Teachers**

Number of proposed participants in each of the following categories to be served each year of the grant.

Preservice Teachers (who are not paraprofessionals) ______

Preservice Teachers (who are currently paraprofessionals) ______

Inservice Teachers ______

Other Educational Personnel (Specify type of personnel below) ______

______ ______

______ ______

Degree level(s) to be attained (if applicable) ______

Certification Type(s) to be attained ______

Language(s) of Participants (other than English) ______

______

______

PROGRAM ASSURANCES

NOTE: The authorizing statute requires applicants under certain programs to provide assurances. These assurances are specified below under the relevant programs. If your application pertains to any of these programs, this form must be completed.

As the duly authorized representative of the applicant, I certify that the applicant, in regard to the program relevant to this application:

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Will include, if applicable, as part of the project implementing a master's or doctoral-level program, a training practicum in a local school program serving children and youth of limited English proficiency.
(Authority: 20 U.S.C. 7426(g)(3))

______

Authorized Representative

Name: ______

Signature: ______

Typed Name: ______

Date: ______

Applicant Organization: ______

PROJECT DOCUMENTATION

Note: Submit the appropriate documents and information as specified below for the following programs.

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Section A

A copy of the applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. (This does not refer to the Executive Order requirements)

Section B

If applicable, identify on the line below the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve. **Attach any documentation to support how the project will contribute to systemic educational reform in an Empowerment Zone, Suppplemental Empowerment Zone or an Enterprise Community** (See the competitive priority and the list of designated Empowerment Zones in previous sections of this application package.)

____

STATE SINGLE POINT OF CONTACT

(As of April 22, 1999)

Note: In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, this listing represents the designated State Single Points of Contact (SSPOCs). Because participation is voluntary, some States and Territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

The jurisdictions not listed no longer participate in the process. However, an applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a SSPOC.

ARIZONA
Ms. Joni Saad
Arizona State Clearinghouse
3800 N. Central Avenue
Fourteenth Floor
Phoenix, Arizona 85012
Telephone:(602) 280-1315
FAX:(602) 280-8144
jonis@ep.state.az.us

ARKANSAS
Mr. Tracy L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Services
Department of Finance and Administration
1515 W. 7th St., Room 412
Little Rock, Arkansas 72203
Telephone: (501) 682-1074
FAX: (501) 682-5206
tlcopeland@dfa.state.ar.us

CALIFORNIA
Grants Coordination
State Clearinghouse
Office of Planning and Research
1400 10th Street, Room 121
Sacramento, California 95814
Telephone: (916) 445-0613
FAX: (916) 323-3018
No e-mail address

DELAWARE
Executive Department
Office of the Budget
540 S. Dupont Highway
Suite 5
Dover, Delaware 19901
Telephone: (302) 739-3326
FAX: (302) 739-5661
No e-mail address

DISTRICT OF COLUMBIA
Mr. Charles Nichols
State Single Point of Contact
Office of Grants Management and Development
717 14th Street, N.W. - Suite 1200
Washington, D.C. 20005
Telephone: (202) 727-1700 (direct)
(202) 727-6537 (secretary)
FAX: (202) 727-1617
No e-mail address

FLORIDA
Florida State Clearinghouse
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399-2100
Telephone: (850) 922-5438
FAX: (850) 414-0479
Contact: Ms. Cherie Trainor
(850) 414-5495
cherie.trainor@dca.state.fl.us

GEORGIA
Ms. Deborah Stephens
Coordinator
Georgia State Clearinghouse
270 Washington Street, S.W. - 8th Floor
Atlanta, Georgia 30334
Telephone: (404) 656-3855
FAX: (404) 656-7901
ssda@mail.opb.state.ga.us

ILLINOIS
Ms. Virginia Bova, Single Point of Contact
Illinois Department of Commerce and
Community Affairs
James R. Thompson Center
100 West Randolph, Suite 3-400
Chicago, IL 60601

Telephone: (312) 814-6028
FAX: (312) 814-1800

INDIANA
Ms. Allison Becker
State Budget Agency
212 State House
Indianapolis, Indiana 46204-2796
Telephone: (317) 232-7221 (direct line)
FAX: (317) 233-3323
No e-mail address

IOWA
Mr. Steven R. McCann
Division for Community Assistance
Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Telephone: (515) 242-4719
FAX: (515) 242-4809
steve.mccann.@ided.state.ia.us

KENTUCKY
Mr. Kevin J. Goldsmith, Director
Sandra Brewer, Executive Secretary
Intergovernmental Affairs
Office of the Governor
700 Capitol Avenue
Frankfort, Kentucky 40601
Telephone: (502) 564-2611
FAX: (502) 564-0437
kgoldmkgoamith@mail.state.ky.us
sbrewer@mail.state.ky.us

MAINE
Ms. Joyce Benson
State Planning Office
184 State Street
38 State House Station
Augusta, Maine 04333
Telephone: (207) 287-3261
FAX: (207) 287-6489
joyce.benson@state.me.us

MARYLAND
Ms. Linda Janey
Manager, Plan & Project Review
Maryland Office of Planning
301 W. Preston Street - Room 1104
Baltimore, Maryland 21201-2365
Telephone: (410) 767-4490
FAX: (410) 767-4480
linda@mail.op.state.md.us

MICHIGAN
Mr. Richard Pfaff
Southeast Michigan Council of Governments
660 Plaza Drive - Suite 1900
Detroit, Michigan 48226
Telephone: (313) 961-4266
FAX: (313) 961-4869
pfaff@semcog.org

MISSISSIPPI
Ms. Cathy Mallette
Clearinghouse Officer
Department of Finance and Administration
550 High Street
303 Walters Sillers Building
Jackson, Mississippi 39201-3087
Telephone: (601) 359-6762
FAX: (601) 359-6758
No e-mail address

MISSOURI
Ms. Lois Pohl
Federal Assistance Clearinghouse
Office of Administration
P.O. Box 809
Jefferson Building, Room 915
Jefferson City, Missouri 65102
Telephone: (573) 751-4834
FAX: (573) 522-4395
pohll_@mail.oa.state.mo.us

NEVADA
Department of Administration
State Clearinghouse
209 E. Musser Street, Room 200
Carson City, Nevada 89710
Telephone: (702) 684-0222
FAX: (702) 684-0260
Contact: Ms. Heather Elliot
(702) 684-0209
helliot@govmail.state.nv.us

NEW HAMPSHIRE
Mr. Jeffrey H. Taylor
Director, New Hampshire Office of State Planning
Attn: Intergovernmental Review Process
Mr. Mike Blake
2 ½ Beacon Street
Concord, New Hampshire 03301

Telephone: (603) 271-4991
FAX: (603) 271-1728
No e-mail address

NEW MEXICO
Mr. Nick Mandell
Local Government Division
Room 201 Bataan Memorial Building
Santa Fe, New Mexico 87503
Telephone: (505) 827-4991
FAX: (505) 827-4984
No e-mail address

NEW YORK
New York State Clearinghouse
Division of the Budget
State Capitol
Albany, New York 12224
Telephone: (518) 474-1605
Fax: (518) 486-1217
No e-mail address

NORTH CAROLINA
Ms. Jeanette Furney
North Carolina Department of Administration
116 West Jones Street - Suite 5106
Raleigh, North Carolina 27603-8003
Telephone: (919) 733-7232
FAX: (919) 733-9571
jeanette_furney@mail.doa.state.nc.us

NORTH DAKOTA
North Dakota Single Point of Contact
Office of Intergovernmental Assistance
600 East Boulevard Avenue
Department 105
Bismarck, North Dakota 58505-0170
Telephone: (701) 328-2094
FAX: (701) 328-2308
No e-mail address

RHODE ISLAND
Mr. Kevin Nelson
Review Coordinator
Department of Administration
Division of Planning
One Capitol Hill, 4th Floor
Providence, Rhode Island 02908-5870
Telephone: (401) 222-1220 (secretary)
FAX: (401) 222-2093 (direct)
knelson@planning.state.ri.us

SOUTH CAROLINA
Ms. Omeagia Burgess
State Single Point of Contact
Budget and Control Board
Office of State Budget
1122 Ladies Street - 12th floor
Columbia, South Carolina 29201
Telephone: (803) 734-0494
FAX: (803) 734-0645
No e-mail address

TEXAS
Mr. Tom Adams
Governors Office
Director, Intergovernmental Coordination
P.O. Box 12428
Austin, Texas 78711
Telephone: (512) 463-1771
FAX: (512) 936-2681
tadams@governor.state.tx.us

UTAH
Ms. Carolyn Wright
Utah State Clearinghouse
Office of Planning and Budget
Room 116 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1535 (direct)
FAX: (801) 538-1547
cwright@state.ut.us

WEST VIRGINIA
Mr. Fred Cutlip, Director
Community Development Division
W. Virginia Development Office
Building #6, Room 553
Charleston, West Virginia 25305
Telephone: (304) 558-4010
FAX: (304) 558-3248
fcutlip@wvdo.org

WISCONSIN
Mr. Jeff Smith
Section Chief, Federal/State Relations
Wisconsin Department of Administration
101 East Wilson Street - 6th Floor
P.O. Box 7868

Madison, Wisconsin 53707
Telephone: (608) 266-0267
FAX: (608) 267-6931
sjt@doa.state.wi.us

WYOMING
Ms. Sandy Ross
State Single Point of Contact
Department of Administration and Information
2001 Capitol Avenue, Room 214
Cheyenne, WY 82002
Telephone: (307) 777-5492
FAX: (307) 777-3696
sross1@missc.state.wy.us

TERRITORIES

GUAM*
Mr. Joseph Rivera
Acting Director
Bureau of Budget and Management Research
Office of the Governor
P.O. Box 2950
Agana, Guam 96932
Telephone: (671) 475-9411 or 9412
FAX: (671) 472-2825

PUERTO RICO
Ms. Elsa Luis
Director
Federal Proposals Division
1100 17th Street, N.W.
Suite 800
Washington, D.C. 20036
Telephone: (202) 778-0750
FAX: (202) 530-5559

NORTH MARIANA ISLANDS
Mr. Alvaro A. Santos, Executive Officer
Office of Management and Budget
Office of the Governor
Saipan, MP 96950
Telephone: (670) 664-2256
FAX: (670) 664-2272
Contact person: Ms. Jacoba T. Seman
Federal Programs Coordinator
Telephone: (670) 664-2289
FAX: (670) 664-2272

VIRGIN ISLANDS*
Nellon Bowry
Director, Office of Management and Budget
#41 Norregade Emancipation Garden Station
Second Floor
Saint Thomas, Virgin Islands 00802
Please direct all questions and correspondence about intergovernmental review to: Linda Clarke
Telephone: (809) 774-0750
FAX: (809) 776-0069

Note: This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to Sherron Duncan at the Office of Management and Budget (202) 395-3914 and to the State in question. Changes to the list will only be made upon formal notification by the State. The list is updated every six months and is also published biannually in the Catalog of Federal Domestic Assistance.

The last changes made were to Delaware, Indiana, Missouri, New Mexico, Puerto Rico, Rhode Island, Utah, and Wisconsin.

*Guam and the Virgin Islands are not confirmed.

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Wednesday,
November 8, 2000

Part VII

The President

Proclamation 7370—National Family Caregivers Month, 2000

Federal Register
Vol. 65, No. 217
Wednesday, November 8, 2000

Presidential Documents

Title 3—

The President

Proclamation 7370 of November 5, 2000

National Family Caregivers Month, 2000

By the President of the United States of America

A Proclamation

All Americans owe a debt of gratitude to the family caregivers among us—the generous, compassionate individuals who daily face the challenge of caring for loved ones who are frail, chronically ill, or living with disabilities that restrict their independence. These everyday heroes, living quietly among us in families and communities across the country, are the major source of long-term care in America. By providing billions of dollars' worth of caregiving services each year, they dramatically reduce the demands on our Nation's health care system and make an extraordinary contribution to the quality of life of their loved ones.

Caregivers often pay an emotional and physical price as well as a financial one. Few enjoy any free time because they must juggle the demands of home and work while meeting the special needs of the individuals in their care. Many do not have the support of other family members or friends and consequently experience depression, a sense of isolation, and the stress of knowing they must carry out their important duties alone. Studies have indicated that such caregiver stress can have a physical consequence, contributing to a higher mortality rate among elderly caregivers who themselves have a history of chronic illness.

But caregivers should not have to face their challenges alone, and my Administration has worked hard to ensure that they will not have to do so. I am pleased that the Congress has finally passed the Older Americans Act Amendments of 2000, which will strengthen and improve the services available to senior citizens in every State, from home-delivered meals to transportation services to legal assistance. This legislation also includes authorization for our new National Family Caregiver Support Program, which will provide quality respite care and other support services to hundreds of thousands of families who are struggling to care for loved ones.

The Long-Term Care Security Act that I signed into law in September authorizes the Office of Personnel Management to negotiate with private insurers to offer more affordable, high-quality, long-term care insurance policies to Federal employees, retirees, and their families. This initiative will help some 13 million Americans better prepare for the future and ease the fear of having to deplete their life savings to care for a loved one.

We must also help families who need long-term care assistance right now. I continue to call on the Congress to provide a $3,000 tax credit for the millions of Americans with long-term care needs and the families who care for them. Passage of a new, voluntary Medicare prescription drug benefit would also go a long way toward easing the financial burden on family caregivers.

Caregiving touches us all, either within our own families or within our communities. As we observe National Family Caregivers Month, let us thank the millions of devoted men and women across our Nation who enable our loved ones who are frail, chronically ill, or living with disabilities to live in dignity in the warmth and familiarity of home.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2000 as National Family Caregivers Month. I call upon all Americans to acknowledge and honor the contributions of caregivers to the quality of our national life.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00-28884
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 8, 2000

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Tomatoes grown in—
  - Florida; published 11-6-00

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

- Permanent program and abandoned mine land reclamation plan submissions:
  - Maryland; published 11-8-00

LABOR DEPARTMENT

Mine Safety and Health Administration

- Metal and nonmetal mine safety and health:
  - Occupational noise exposure—
    - Health standards; correction; published 11-8-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Airworthiness directives:
  - CFE Co.; published 10-24-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Cranberries grown in—
  - Massachusetts et al.; comments due by 11-13-00; published 9-14-00
- Watermelon research and promotion plan; comments due by 11-15-00; published 10-16-00

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

- Plant-related quarantine, domestic:
  - Asian longhorned beetle; comments due by 11-13-00; published 9-12-00
  - Plum pox compensation; comments due by 11-13-00; published 9-14-00

AGRICULTURE DEPARTMENT

Food and Nutrition Service

- Food stamp program:
  - Electronic benefit transfer systems interoperability and portability; comments due by 11-13-00; published 8-15-00

AGRICULTURE DEPARTMENT

Farm Service Agency

- Program regulations:
  - Emergency Farm Loan Program; requirements; comments due by 11-13-00; published 9-12-00
  - Environmental policies and procedures; comments due by 11-13-00; published 9-14-00

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

- Program regulations:
  - Emergency Farm Loan Program; requirements; comments due by 11-13-00; published 9-12-00
  - Environmental policies and procedures; comments due by 11-13-00; published 9-14-00

AGRICULTURE DEPARTMENT

Rural Housing Service

- Program regulations:
  - Emergency Farm Loan Program; requirements; comments due by 11-13-00; published 9-12-00
  - Environmental policies and procedures; comments due by 11-13-00; published 9-14-00

AGRICULTURE DEPARTMENT

Rural Utilities Service

- Program regulations:
  - Emergency Farm Loan Program; requirements; comments due by 11-13-00; published 9-12-00
  - Environmental policies and procedures; comments due by 11-13-00; published 9-14-00

AGRICULTURE DEPARTMENT

- Acquisition regulations:
  - Contractor performance system; designation and mandatory use; comments due by 11-13-00; published 9-12-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Fishery conservation and management:
  - Northeastern United States fisheries—
    - Atlantic sea scallop; comments due by 11-13-00; published 10-11-00
    - Summer flounder, scup, black sea bass, Atlantic mackerel, squid, and butterfish; comments due by 11-17-00; published 11-2-00

CONSUMER PRODUCT SAFETY COMMISSION

- Poison prevention packaging:
  - Child-resistant packaging requirements—
    - Over-the-counter drug products; comments due by 11-13-00; published 8-30-00

DEFENSE DEPARTMENT

- Federal Acquisition Regulation (FAR):
  - Applied research and development; definitions; comments due by 11-13-00; published 9-11-00
  - Balance of Payments Program; revisions; comments due by 11-13-00; published 9-11-00
  - Financing policies; comments due by 11-17-00; published 9-18-00

ENVIRONMENTAL PROTECTION AGENCY

- Air pollutants, hazardous; national emission standards:
  - Paper and other web coatings; comments due by 11-13-00; published 9-13-00
- Air quality implementation plans; approval and promulgation; various States:
  - California; comments due by 11-17-00; published 10-16-00
  - Connecticut, Massachusetts, District of Columbia, and Georgia; serious ozone nonattainment areas; one-hour attainment demonstrations; comments due by 11-15-00; published 11-2-00
- Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Missouri; comments due by 11-17-00; published 10-18-00
- Air quality planning purposes; designation of areas:
  - California; comments due by 11-13-00; published 10-11-00
- Hazardous waste:
  - Identification and listing—
    - Exclusions; comments due by 11-13-00; published 9-27-00
  - Inorganic chemical manufacturing processes identification and listing, newly identified wastes land disposal restrictions, etc.; comments due by 11-13-00; published 9-14-00
    - Technical correction; comments due by 11-13-00; published 9-28-00
- Toxic substances:
  - Significant new uses—
    - Perfluorooctyl sulfonates; comments due by 11-17-00; published 10-18-00

FEDERAL COMMUNICATIONS COMMISSION

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- Radio services, special:
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    - Public Safety Pool and highway maintenance frequencies, eligibility criteria; and dockside channels, power limits; 1998 biennial regulatory review; comments due by 11-14-00; published 9-15-00
- Radio stations; table of assignments:
  - Hawaii; comments due by 11-13-00; published 10-4-00
  - Kentucky; comments due by 11-13-00; published 10-4-00
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- Television broadcasting:
  - Cable television systems—
    - Navigation devices; commercial availability; comments due by 11-15-00; published 9-28-00

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- Federal Acquisition Regulation (FAR):
  - Applied research and development; definitions; comments due by 11-13-00; published 9-11-00
  - Balance of Payments Program; revisions;

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- Financing policies; comments due by 11-17-00; published 9-18-00

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HOUSING AND URBAN DEVELOPMENT DEPARTMENT

- Low income housing:
  - Housing assistance payments (Section 8)—
    - Fair market rents for Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program, etc.; comments due by 11-16-00; published 10-2-00

INTERIOR DEPARTMENT

Indian Affairs Bureau

- Economic enterprises:
  - Gaming on trust lands acquired after October 17, 1988; determination procedures; comments due by 11-13-00; published 9-14-00

INTERIOR DEPARTMENT

Land Management Bureau

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  - Mineral materials disposal; sales; free use; comments due by 11-13-00; published 9-14-00

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- Endangered and threatened species:
  - Chiricahua leopard frog; comments due by 11-13-00; published 9-27-00
  - Critical habit designations—
    - Piping plover; Great Lakes breeding population; comments due by 11-13-00; published 9-28-00
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  - Surface coal mining; award of costs and expenses; petitions; comments due by 11-13-00; published 10-12-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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- Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
  - Approved spent fuel storage casks; list; comments due by 11-13-00; published 10-11-00

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TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

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  - Hazardous materials transportation—
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TRANSPORTATION DEPARTMENT

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    - Major rail consolidation procedures; comments due by 11-17-00; published 10-3-00

TREASURY DEPARTMENT

Customs Service

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    - Correction; comments due by 11-16-00; published 11-6-00
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- Income taxes:
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  - Tax shelter rules; modification; cross-reference; comments due by 11-14-00; published 8-16-00

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H.R. 4811/P.L. 106–429

Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2001, and for other purposes. (Nov. 6, 2000; 114 Stat. 1900)

H.R. 5178/P.L. 106–430

Needlestick Safety and Prevention Act (Nov. 6, 2000; 114 Stat. 1901)

Last List November 7, 2000

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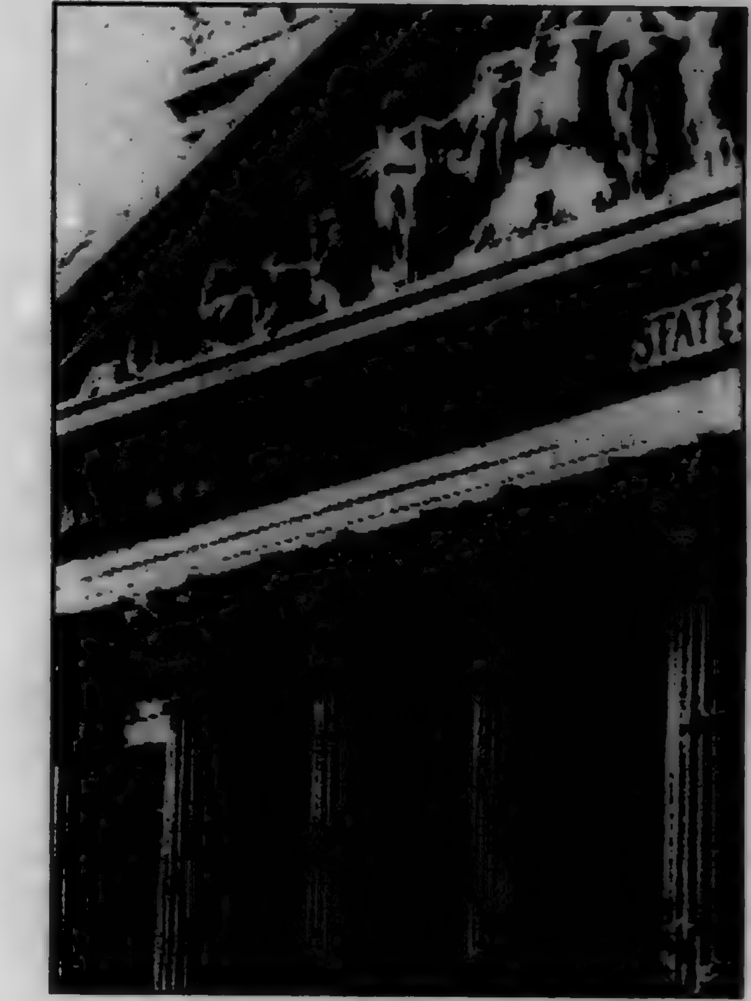

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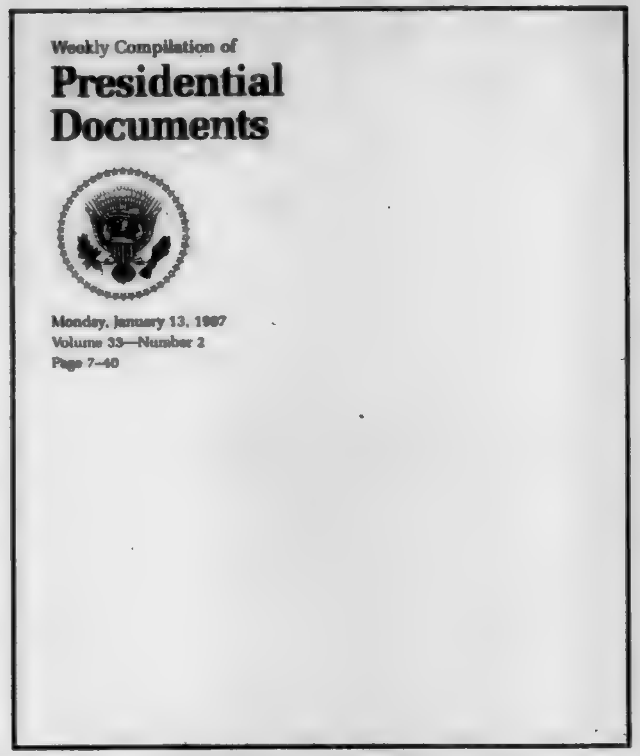
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Title 3—

The President

Executive Order 13175 of November 6, 2000

Consultation and Coordination With Indian Tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. *Fundamental Principles.* In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. *Policymaking Criteria.* In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. *Consultation.* (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. *Increasing Flexibility for Indian Tribal Waivers.*

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. *Accountability.*

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. *General Provisions.* (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A–19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

William J. Clinton

THE WHITE HOUSE,
November 6, 2000.

[FR Doc. 00-29003
Filed 11-8-00; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 65, No. 218
Thursday, November 9, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–29]

Establishment of Class D and Class E4 Airspace; New Bern, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and Class E4 airspace at New Bern, NC. A Federal Contract Tower is operational at Craven County Regional Airport, NC, and the air traffic controllers are certificated as weather observers. Therefore, the airport meets criteria for Class D surface area airspace and Class E4 airspace designated as an extension to Class D airspace to contain Standard Instrument Approach Procedures (SIAPs) to the airport.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 29, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D and Class E4 airspace at New Bern, NC (65 FR 52375). Class D and Class E4 airspace designations are published in Paragraphs 5000 and 6004 respectively of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR part 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D and Class E4 airspace at New Bern, NC, Craven County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

ASO NC D New Bern, NC [New]

Craven County Regional Airport, NC
(Lat. 35°04′23″ N., long. 77°02′35″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the Craven County Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 airspace areas designated as an extension to a Class D airspace area

* * * * *

ASO NC E4 New Bern, NC [New]

Craven County Regional Airport, NC
(Lat. 35°04′23″ N., long. 77°02′35″ W.)

New Bern VOR/DME, NC

(Lat. 35°04′23″ N., long. 77°02′42″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the New Bern VOR/DME 038° and 210° radials, extending from the 4-mile radius to 7 miles northeast and southwest of the VOR/DME. This Class E4 airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in College Park, Georgia, on October 24, 2000.

Richard Biscomb,
Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–28847 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–33]

Establishment of Class E Airspace; Oak Grove, NC.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Oak Grove, NC. The United States Marine Corps operates a part time control tower at the Marine Corps Outlying Landing Facility (MCOLF) Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required when the control tower is open to contain instrument approaches at the airport.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 31, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Oak Grove, NC, (65 FR 52960) to contain instrument approaches at the MCOLF Airport. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1, dated September 1, 2000. The Class E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Oak Grove, NC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Oak Grove, NC [New]

Marine Corps Outlying Landing Facility Airport, NC

(Lat. 35°02′01″ N., long. 77°14′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Marine Corps Outlying Landing Facility Airport.

* * * * *

Issued in College Park, Georgia, on October 24, 2000.

Richard Biscomb,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–28849 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–33]

Amendment to Class E Airspace; Albia, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Albia, IA. The FAA has developed Area Navigation (RNAV) Runway (RWY) 31 ORIGINAL, a Standard Instrument Approach Procedure (SIAP) to serve Albia Municipal Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for other Instrument Flight Rules (IFR) operations at this airport.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, March 22, 2001.

Comments for inclusion in the Rules Docket must be received on or before December 27, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations and Airspace Branch, Air Traffic Division, ACE–530, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–33, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations & Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV RWY 31 ORIGINAL, SIAP to serve the Albia Municipal Airport, Albia, IA. The amendment to Class E airspace at Albia, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Albia Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR procedures. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–33." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA had determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Albia, IA [Revised]

Albia Municipal Airport, IA

(Lat 40°59′40″ N., long. 92°45′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Albia Municipal Airport.

* * * * *

Issued in Kansas City, MO, on October 31, 2000.

H.J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–28846 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–24]

Amendment to Class E Airspace; Washington, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace at Washington, MO as published in the **Federal Register** August 11, 2000 (65 FR 49192) Airspace Docket No. 00–ACE–24, and corrected in the **Federal Register** (65 FR 52811) Airspace Docket No. 00–ACE–24.

DATES: The direct final rule published at 65 FR 49192 and corrected in 65 FR 52811 is effective on 0901 UTC, November 30, 2000.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

On August 11, 2000, the FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Washington, MO (65 FR 49192, Airspace Docket No. 00–ACE–24). An error in longitude for the Washington Memorial Airport, MO was corrected in (65 FR 52811, Airspace Docket No. 00–ACE–24). After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the pubic that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 30, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 27, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–28845 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–32]

Amendment to Class E Airspace; Bloomfield, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Bloomfield, IA. The FAA has developed Area Navigation (RNAV) Runway (RWY) 36, a Standard Instrument Approach Procedure (SIAP) to serve Bloomfield Municipal Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for other Instrument Flight Rules (IFR) operations at this airport.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, March 22, 2001.

Comments for inclusion in the Rules Docket must be received on or before December 27, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations and Airspace Branch, Air Traffic Division, ACE–530, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–32, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations & Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV RWY 36, SIAP to serve the Bloomfield Municipal Airport, Bloomfield, IA. The amendment to Class E airspace at Bloomfield, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Bloomfield Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR procedures. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–32." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Bloomfield, IA [Revised]

Bloomfield Municipal Airport, IA
(Lat 40°43′56″N., long 92°25′42″W.)
Bloomfield NDB
(Lat 40°44′42″N., long 92°25′50″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Bloomfield Municipal Airport and within 2.6 miles each side of the 176° bearing from the Bloomfield NDB extending from the 6.3-mile radius to 7.4 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on October 30, 2000.

H.J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–28844 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–22]

Realignment of Federal Airways; IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal descriptions of five Federal airways that align with the Northbrook Very High Frequency Omnidirectional Range/Tactical Air navigation (VORTAC). The FAA is taking this action due to the decommissioning of the Northbrook VORTAC and commissioning of the Northbrook Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) facility. This action also reflects minor changes to the legal descriptions of five Federal airways and also makes editorial corrections to V–217.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The Northbrook VOR/DME (formerly a VORTAC) is essential in supporting aircraft operations into, out of and above the Chicago O'Hare, IL, Class B airspace area. In the interest of aviation safety, the FAA decommissioned the VORTAC and commissioned the new VOR/DME facility. On April 4, 2000, the FAA published in the National Flight Data Digest (Issue 070–2) information pertaining to the Northbrook facility. The action was charted effective June 15, 2000, however, as a result of this relocation the legal descriptions of five Federal airways requires amendment.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the legal descriptions of five Federal airways, V–24, V–97, V–100, V–217, and V–228. These airways align with the Northbrook VOR/DME and have intersections contained in the legal descriptions. These intersections are defined by the Northbrook VOR/DME and are published on the appropriate aeronautical charts. These changes are due to the decommissioning of the Northbrook VORTAC and commissioning of the Northbrook VOR/DME facility located approximately 851 feet south of the VORTAC's prior location.

In addition, this action updates V–217 by amending the spelling of "Winnepeg" to "Winnipeg." The FAA is taking this action to manage the navigable airspace and support navigational requirements in the vicinity north of Chicago O'Hare International Airport.

Domestic VOR Federal airways are published in Section 6010(a) of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document will be published subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a significant regulatory action" under Executive Order 12866; (2) is not a significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–24 [Revised]

From Aberdeen, SD, via Watertown, SD; Redwood Falls, MN; Rochester, MN; Lone Rock, WI; INT Lone Rock 147° and Janesville, WI, 281° radials; Janesville; INT Janesville 112° and Northbrook, IL, 291° radials; to Northbrook. From Peotone, IL, INT Peotone 152° and Brickyard, IN, 312° radials; to Brickyard.

* * * * *

V–97 [Revised]

From Dolphin, FL; La Belle, FL; St. Petersburg, FL; Seminole, FL; Pecan, GA; Atlanta, GA; INT Atlanta 001° and Volunteer, TN, 197° radials; Volunteer; London, KY; Lexington, KY; Cincinnati, OH; Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL; to INT Chicago Heights 358° and Chicago O'Hare, IL, 127° radials. From INT Northbrook, IL, 291° and Janesville, WI, 112° radials; Janesville; Lone Rock, WI; Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

V–100 [Revised]

From Medicine Bow, WY; Scottsbluff, NE; Alliance, NE; Ainsworth, NE; O'Neill, NE; Sioux City, IA; Fort Dodge, IA; Waterloo, IA; Dubuque, IA; Rockford, IL; INT Rockford 074° and Janesville, WI, 112° radials; INT Janesville 112° and Northbrook, IL, 291° radials; Northbrook; INT Northbrook 095° and Keeler, MI, 271° radials; Keeler; to Litchfield, MI.

* * * * *

V–217 [Revised]

From INT Chicago O'Hare, IL, 316°/DuPage, IL, 359° and Northbrook, IL, 291° radials; INT Chicago O'Hare, 316° and Badger, WI, 193° radials; Badger; Green Bay, WI; Rhinelander, WI; Duluth, MN; Hibbing, MN; Baudette, MN; INT Baudette 313° and Winnepeg, MB, 117° radials; to Winnepeg. The airspace within Canada is excluded. In addition, the portion of this airway which lies within the Beaver MOA is excluded during the times the Beaver MOA is activated.

* * * * *

V–228 [Revised]

From Stevens Point, via Dells, WI, Madison, WI; INT Madison 138° Chicago O'Hare, IL, 316° radials; INT Chicago O'Hare 316° and Northbrook, IL, 291° radials; Northbrook; INT Northbrook 110° and Gipper, MI, 290° radials; to Gipper.

* * * * *

Issued in Washington, DC, on November 2, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–28731 Filed 11–8–00; 8:45 am]

BILLING CODE 4910-13-U

FEDERAL TRADE COMMISSION

16 CFR Parts 2 and 4

Access Requests From Foreign and Domestic Law Enforcement Agencies

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule amendments.

SUMMARY: The Federal Trade Commission is amending its Rules of Practice to delegate to the Director of the Bureau of Competition the authority to respond to certain requests made pursuant to agreements under the International Antitrust Enforcement Assistance Act. The Commission is also providing that requests from state agencies may be addressed to an appropriate liaison officer (rather than the General Counsel).

DATES: The amendments are effective on November 2, 2000.

FOR FURTHER INFORMATION CONTACT: Marc Winerman, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW., Washington, DC 20580, 202–326–2451, mwinerman@ftc.gov.

SUPPLEMENTARY INFORMATION: *Authority to respond to requests for materials made pursuant to agreements under the International Antitrust Enforcement Assistance Act.* The International Antitrust Enforcement Assistance Act (IAEAA), 15 U.S.C. 6201 *et seq.*, authorizes the Commission and the Justice Department to assist foreign antitrust agencies, and anticipates that foreign agencies will assist them in return, pursuant to IAEAA agreements. After making a public interest determination and other determinations set forth in the Act, 15 U.S.C. 6207(a), the agencies can share information already in their files, including, for example, information made confidential by the Federal Trade Commission Act. 15 U.S.C. 6201, 6205.[1] They can also conduct investigations to help an IAEAA requester, during which they can use compulsory process if needed. 15 U.S.C. 6202. The first IAEAA agreement, an agreement with Australia, was signed on April 27, 1999. The Commission has delegated to the Director of the Bureau of Competition the authority to respond to certain requests under this and future IAEAA agreements, in accordance with the IAEAA.

Requests for records (including information within records). Rule 4.11(i), a new provision, delegates to the Director of the Bureau of Competition the authority to respond to requests under IAEAA agreements seeking access to existing Commission records. This includes requests that seek, through discussion or otherwise, information contained in such records. The authority cannot be redelegated, and the delegation is subject to negative option review; before responding to a request, the Bureau Director must give the Commission three days' notice of the intended response and, during that time, any Commissioner may bring the matter to the full Commission.

The Commission has also amended sections 4.10(d) and (e) of its Rules of Practice, which describe materials that the Commission generally cannot make public at all or can make public only after finding the material is not confidential and giving ten days' notice to the submitter. These provisions also describe situations where their general restrictions on disclosure do not apply, including disclosure to IAEAA requesters.[2] The Commission is replacing language in both provisions that simply references the IAEAA with cross-references to new Rule 4.11(i), which both references the IAEAA and delegates to the Bureau Director substantial authority to implement it.

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[1] Certain materials cannot be shared, however, including premerger filings under the Hart-Scott-Rodino Antitrust Improvements Act. 15 U.S.C. 6204.

[2] While Rule 4.10(e) does not require notice before disclosures to IAEAA requesters, the Commission will consider notice on a case-by-case basis. *See* H. Rep. No. 772, 103d Cong., 2d Sess. 20 (1994).

Requests for investigations. The Commission has also amended Rule 2.1, which describes delegations to Commission staff to open investigations. This delegation, as well, is subject to a three-day negative option review by the Commission. Because a Commission resolution is required for process, *see* 15 U.S.C. 57b–1(i), this delegation does not extend to requests that seek such process.

Liaison officers for state access requests. The Commission is also amending Rule 4.11(c), which governs access requests for law enforcement purposes from domestic agencies. The rule formerly provided that requests from federal agencies could be processed by the General Counsel or a designated liaison officer, while requests from state agencies could be processed only by the General Counsel. The rule now provides that appropriate liaison officers can respond to state as well as federal access requests.[3]

Procedural Matters. These amendments are exempt from the notice and comment requirements of the Administrative Procedure Act as "rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). They do not entail information collection for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and are not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b). Nor are they subject to the Small Business Regulatory Enforcement Fairness Act, because that law does not apply to procedural rules that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 803(3)(C).

List of Subjects

16 CFR Part 2

Administrative practice and procedure, Reporting and recordkeeping requirements.

16 CFR Part 4

Administrative practice and procedure, Freedom of information.

Accordingly, the Federal Trade Commission amends title 16, chapter I, subchapter A, of the Code of Federal Regulations as follows

PART 2—NONADJUDICATIVE PROCEDURES

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 46.

2. Amend § 2.1 by adding to the end new sentences to read as follows:

§ 2.1 How initiated.

* * * The Director of the Bureau of Competition has also been delegated, without power of redelegation, authority to open investigations in response to requests pursuant to an agreement under the International Antitrust Enforcement Assistance Act, 15 U.S.C. 6201 *et seq.*, if the requests do not ask the Commission to use process. Before responding to such a request, the Bureau Director shall transmit the proposed response to the Secretary and the Secretary shall notify the Commission of the proposed response. If no Commissioner objects within three days following the Commission's receipt of such notification, the Secretary shall inform the Bureau Director that he or she may proceed.

PART 4—MISCELLANEOUS RULES

3. The authority citation for part 4 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

4. Amend § 4.10 by revising paragraphs (d) and (e) to read as follows:

§ 4.10 Nonpublic material.

* * * * *

(d) Except as provided in paragraphs (f) or (g) of this section or in § 4.11 (b), (c), (d), or (i), no material that is marked or otherwise identified as confidential and that is within the scope of § 4.10(a)(8), and no material within the scope of § 4.10(a)(9) that is not otherwise public, will be made available, without the consent of the person who produced the material, to any individual other than a duly authorized officer or employee of the Commission or a consultant or contractor retained by the Commission who has agreed in writing not to disclose the information. All other Commission records may be made available to a requester under the procedures set forth in § 4.11 or may be disclosed by the Commission except where prohibited by law.

(e) Except as provided in paragraphs (f) or (g) of this section or in § 4.11 (b), (c), (d), or (i), material not within the scope of § 4.10(a)(8) or § 4.10(a)(9) that is received by the Commission and is marked or otherwise identified as confidential may be disclosed only if it is determined that the material is not within the scope of § 4.10(a)(2), and the submitter is provided at least ten days' notice of the intent to disclose the material.

* * * * *

5. Amend § 4.11 by revising paragraph (c) and by adding a new paragraph (i), to read as follows:

§ 4.11 Disclosure requests.

* * * * *

(c) *Requests from Federal and State law enforcement agencies.* Requests from law enforcement agencies of the Federal and State governments for nonpublic records shall be addressed to a liaison officer, where the Commission has appointed such an officer, or if there is none, to the General Counsel. With respect to requests under this paragraph, the General Counsel, the General Counsel's designee, or the appropriate liaison officer is delegated the authority to dispose of them. Alternatively, the General Counsel may refer such requests to the Commission for determination, except that requests must be referred to the Commission for determination where the Bureau having the material sought and the General Counsel do not agree on the disposition. Prior to granting access under this section to any material submitted to the Commission, the General Counsel, the General Counsel's designee, or the liaison officer will obtain from the requester a certification that such information will be maintained in confidence and will be used only for official law enforcement purposes. The certificate will also describe the nature of the law enforcement activity and the anticipated relevance of the information to that activity. A copy of the certificate will be forwarded to the submitter of the information at the time the request is granted unless the agency requests that the submitter not be notified. Requests for material pursuant to compulsory process, or for voluntary testimony, in cases or matters in which the Commission is not a party will be treated in accordance with paragraph (e) of this section.

* * * * *

(i) The Director of the Bureau of Competition is authorized, without power of redelegation, to respond to access requests for records and other materials pursuant to an agreement under the International Antitrust Enforcement Assistance Act, 15 U.S.C. 6201 *et seq.* Before responding to such a request, the Bureau Director shall transmit the proposed response to the Secretary and the Secretary shall notify the Commission of the proposed response. If no Commissioner objects within three days following the Commission's receipt of such notification, the Secretary shall inform the Bureau Director that he or she may proceed.

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[3] For example, the Commission has designated a liaison officer, currently the Associate Director for Planning and Information in the Bureau of Consumer Protection, who can grant access requests from the Commission's partners in the Consumer Sentinel program. That program maintains a database, with information entered by the Commission, by other agencies, and by private entities (who can enter but not retrieve data). The database does not include information subject to prohibitions on disclosure. The Associate Director is the liaison officer to Consumer Sentinel's government participants, who can seek more detailed information through an access request after they learn about an investigation from the database.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–28691 Filed 11–8–00; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 10

[T.D. 00–67]

RIN 1515–AC72

African Growth and Opportunity Act and Generalized System of Preferences

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; corrections.

SUMMARY: This document makes corrections to the document published in the **Federal Register** on October 5, 2000, as T.D. 00–67 which set forth interim amendments to the Customs Regulations primarily to implement the trade benefit provisions for sub-Saharan Africa contained in Title I of the Trade and Development Act of 2000, referred to as the African Growth and Opportunity Act.

DATES: These corrections are effective October 1, 2000; written comments must be submitted by December 4, 2000, in the manner prescribed in T.D. 00–67.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Office of Regulations and Rulings (202–927–1361).

SUPPLEMENTARY INFORMATION:

Background

On October 5, 2000, Customs published in the **Federal Register** (65 FR 59668) T.D. 00–67 to set forth interim amendments to the Customs Regulations primarily to implement the trade benefit provisions for sub-Saharan Africa contained in Title I of the Trade and Development Act of 2000. The trade benefits under Title I, also referred to as the African Growth and Opportunity Act (the AGOA), apply to sub-Saharan African countries designated by the President and involve: the extension of duty-free treatment under the Generalized System of Preferences (GSP) to non-textile articles normally excluded from GSP duty-free treatment that are not import-sensitive; and the entry of specific textile and apparel articles free of duty and free of any quantitative limits. Those interim regulatory amendments took effect on October 1, 2000, to coincide with the effective date of the relevant statutory provisions.

This document makes the following corrections to the regulatory texts published in T.D. 00–67:

1. The definition of "assembled in one or more beneficiary countries" under § 10.212 includes a parenthetical specification of items (that is, thread, decorative embellishments, buttons, zippers, or similar components) that are not considered to be components for purposes of assembly under the text. However, Customs has reconsidered this matter and now believes that inclusion of this parenthetical limiting language, which is not mandated by the statute, was in error because in some contexts it may be inconsistent with applicable judicial precedent as regards what may be considered a component for assembly purposes. Accordingly, this parenthetical reference should be removed from the text of the definition.

2. The definition of "beneficiary country" under § 10.212 refers to a finding "by the President" that the country has satisfied the requirements of section 113 of the AGOA. However, that text does not reflect the fact that in Presidential Proclamation 7350 of October 2, 2000 (published in the **Federal Register** at 65 FR 59321 on October 4, 2000), which implemented the AGOA, the authority to make the finding regarding the requirements of section 113 was delegated to the United States Trade Representative. To ensure consistency with this delegation, the text of the definition should include a reference to a "designee" of the President.

3. Within § 10.213, paragraph (a)(9) requires some wording changes to conform more closely to the terms of corresponding subheading 9819.11.24 which was added to the HTSUS by the Annex to Presidential Proclamation 7350.

4. Finally, within § 10.213, in paragraph (a)(10), the words "or his designee" should be added after "the President" to cover any future delegation of authority by the President in this context.

Corrections of Publication

Accordingly, the document published in the **Federal Register** as T.D. 00–67 on October 5, 2000 (65 FR 59668) is corrected as set forth below.

§ 10.212 [Corrected]

1. On page 59676, in the third column, in § 10.212, the definition of "assembled in one or more beneficiary countries" is corrected by removing the parenthetical phrase "(other than thread, decorative embellishments, buttons, zippers, or similar components)".

2. On page 59676, in the third column, in § 10.212, the definition of "beneficiary country" is corrected by adding the words "or his designee" after the words "finding by the President".

§ 10.213 [Corrected]

3. On page 59677, in the third column, in § 10.213, paragraph (a)(9) is corrected to read:

* * * * *

(a) * * *

(9) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabrics or yarn that the President or his designee has designated in the **Federal Register** as not available in commercial quantities in the United States;

* * * * *

4. On page 59677, in the third column, in § 10.213, the text of paragraph (a)(10) is corrected by adding the words "or his designee" after the words "the President".

Dated: November 3, 2000.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–28773 Filed 11–6–00; 4:01 pm]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 10

[T.D. 00–68]

RIN 1515–AC76

United States-Caribbean Basin Trade Partnership Act and Caribbean Basin Initiative

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; corrections.

SUMMARY: This document makes corrections to the document published in the **Federal Register** on October 5, 2000, as T.D. 00–68 which set forth interim amendments to the Customs Regulations primarily to implement the trade benefit provisions for Caribbean Basin countries contained in Title II of the Trade and Development Act of 2000, referred to as the United States-Caribbean Basin Trade Partnership Act.

DATES: These corrections are effective October 1, 2000; written comments must be submitted by December 4, 2000, in the manner prescribed in T.D. 00–68.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Office of Regulations and Rulings (202–927–1361).

SUPPLEMENTARY INFORMATION:

Background

On October 5, 2000, Customs published in the **Federal Register** (65 FR 59650) T.D. 00–68 to set forth interim amendments to the Customs Regulations primarily to implement the trade benefit provisions for Caribbean Basin countries contained in Title II of the Trade and Development Act of 2000. The trade benefits under Title II, also referred to as the United States-Caribbean Basin Trade Partnership Act (the CBTPA), apply to Caribbean Basin countries designated by the President and involve the entry of specific textile and apparel articles free of duty and free of any quantitative restrictions, limitations, or consultation levels and the extension of NAFTA duty treatment standards to non-textile articles that are excluded from duty-free treatment under the Caribbean Basin Initiative (CBI) program. Those interim regulatory amendments took effect on October 1, 2000, to coincide with the effective date of the relevant statutory provisions.

This document rectifies some omissions and corrects some other errors published in T.D. 00–68. Two errors were in the preamble portion of the document and involved a misplacement of two numbers regarding the estimated information collection burden under the Paperwork Reduction Act. The remaining corrections set forth in this document involve the following aspects of the interim regulations:

1. The amendatory instruction for the authority citation to Part 10 should have stated that the general authority citation "is revised" (rather than "continues") to read as follows, because that general authority citation as set forth in T.D. 00–68 includes a change to reflect that General Note 20 of the Harmonized Tariff Schedule of the United States (HTSUS) was redesignated as General Note 22 in the Annex to Presidential Proclamation 7351 of October 2, 2000 (published in the **Federal Register** at 65 FR 59329 on October 4, 2000) which implemented the CBTPA.

2. In the first sentence of § 10.221, the word "Basin" was inadvertently omitted from the title of the CBTPA.

3. The definition of "assembled in one or more CBTPA beneficiary countries" under § 10.222 includes a parenthetical specification of items (that is, thread, decorative embellishments, buttons, zippers, or similar components) that are not considered to be components for purposes of assembly under the text. However, Customs has reconsidered this matter and now believes that inclusion of this parenthetical limiting language, which is not mandated by the statute, was in error because in some contexts it may be inconsistent with applicable judicial precedent as regards what may be considered a component for assembly purposes. Accordingly, this parenthetical reference should be removed from the text of the definition.

4. The definition of "CBTPA beneficiary country" under § 10.222 refers to a beneficiary country designated by the President but does not refer to the additional statutory requirement that the President determine whether a designated beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii) (the authority for making that determination was delegated to the United States Trade Representative (USTR) in Presidential Proclamation 7351). Since the determination regarding the requirements of 19 U.S.C. 2703(b)(4)(A)(ii) is a necessary condition of eligibility for the CBTPA trade benefits for each beneficiary country and thus operates as a condition precedent to application of the implementing regulations, the definition must be corrected to reflect this additional statutory requirement.

5. Within § 10.223, paragraph (a)(4) requires some wording changes to conform more closely to the terms of corresponding subheading 9820.11.09 which was added to the HTSUS by the Annex to Presidential Proclamation 7351.

6. Within § 10.223, paragraph (a)(8) requires some wording changes to conform more closely to the terms of corresponding subheading 9820.11.27 which was added to the HTSUS by the Annex to Presidential Proclamation 7351.

7. Within § 10.223, in paragraph (a)(9), the words "or his designee" should be added after "the President" to cover any future delegation of authority by the President in this context.

8. Within § 10.223, the words "in a CBTPA beneficiary country" need to be added after the word "assembled" in paragraph (a)(11) to reflect the wording of corresponding subheading 9820.11.21 which was added to the HTSUS by the Annex to Presidential Proclamation 7351.

9. Within § 10.223, paragraph (a)(12) describes certain knitted or crocheted apparel articles and was included to reflect the terms of subheading 9820.11.18 which was added to the HTSUS by the Annex to Presidential Proclamation 7351. The word "wholly" appears in the regulatory text before the word "assembled" but is not included in the text of the HTSUS subheading. In addition, the regulatory text includes, after the words "assembled in one or more CBTPA beneficiary countries," the words "or the United States" which do not appear in the HTSUS subheading text. Accordingly, the words "wholly" and "or the United States" must be removed from the regulatory text to ensure conformity with the HTSUS subheading text.

10. Also with regard to paragraph (a)(12) of § 10.223, appropriate and necessary references to that provision were inadvertently omitted from the following regulatory provisions:

a. In paragraph (b)(1)(i)(A) of § 10.223, which concerns the special rule for foreign findings and trimmings, the sewing thread exception at the end must include a reference to paragraph (a)(12) in addition to the reference to paragraph (a)(3) because both provisions refer to "thread formed in the United States."

b. In paragraph (b)(1)(i)(D) of § 10.223, which concerns the *de minimis* rule for fibers and yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries, the exception for elastomeric yarns (which must be wholly formed in the United States) must include a reference to paragraph (a)(12) in addition to the reference to paragraphs (a)(1) through (a)(5) because all of those provisions refer to "yarns wholly formed in the United States."

c. In paragraph (b)(2) of § 10.223, which concerns the special rule for nylon filament yarn, reference is made to an article otherwise described under "paragraph (a)(1), (a)(2) or (a)(3) of this section," because those three regulatory provisions correspond to the two statutory provisions (that is, "clause (i) or (ii)" of 19 U.S.C. 2703(b)(2)(A)) referred to in the statutory nylon filament yarn provision (that is, 19 U.S.C. 2703(b)(2)(A)(vii)(IV)). It is noted that the nylon filament yarn rule is also reflected in U.S. Note 3(d) to new Subchapter XX of Chapter 98 of the

HTSUS as added by the Annex to Presidential Proclamation 7351. Since that U.S. Note 3(d) also includes a reference to HTSUS subheading 9820.11.18, a reference to paragraph (a)(12) should be added to paragraph (b)(2) of § 10.223.

d. Finally, the second sentence of paragraph (a) of § 10.225, which concerns the filing of claims for preferential treatment, refers to articles described in paragraphs (a)(1) through (a)(11) and thus requires the addition of a reference to paragraph (a)(12) to be complete.

11. In the Textile Certificate of Origin set forth under paragraph (b) of § 10.224, the reference to Caribbean yarn must be removed from block 7 because the statutory and regulatory texts do not mention Caribbean yarn, and the description of preference group D must be corrected to conform more closely to the wording of paragraph (a)(4) of § 10.223 as corrected in this document. The complete Certificate incorporating these corrections is set forth in this document.

12. As in the case of § 10.221 mentioned above, the word "Basin" was inadvertently omitted from the title of the CBTPA in the first sentence of § 10.231.

13. Finally, for the same reasons stated above in the case of § 10.222, the definition of "CBTPA beneficiary country" under § 10.232 must be corrected to reflect the additional statutory requirement under 19 U.S.C. 2703(b)(4)(A)(ii).

Corrections of Publication

Accordingly, the document published in the **Federal Register** as T.D. 00–68 on October 5, 2000 (65 FR 59650) is corrected as set forth below.

Corrections to the Preamble

1. On page 59657, in the second column, in the second line the number "440" is corrected to read "42" and in the fourth line the number "42" is corrected to read "440".

Corrections to the Interim Regulations

2. On page 59657, in the third column, in the amendatory language in instruction paragraph 1, pertaining to the general authority citation for Part 10, the word "continues" is corrected to read "is revised".

§ 10.221 [Corrected]

3. On page 59658, in the third column, in § 10.221, the first sentence is corrected by adding the word "Basin" between the words "Caribbean" and "Trade".

§ 10.222 [Corrected]

4. On page 59658, in the third column, in § 10.222, the definition of "assembled in one or more CBTPA beneficiary countries" is corrected by removing the parenthetical phrase "(other than thread, decorative embellishments, buttons, zippers, or similar components)".

5. On page 59658, in the third column, in § 10.222, the definition of "CBTPA beneficiary country" is corrected to read:

* * * * *

CBTPA beneficiary country. "CBTPA beneficiary country" means a "beneficiary country" as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential treatment of textile and apparel articles under 19 U.S.C. 2703(b)(2) and which has been the subject of a finding by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii).

* * * * *

§ 10.223 [Corrected]

6. On page 59659, in the second column, in § 10.223, paragraph (a)(4) is corrected to read:

* * * * *

(a) * * *

(4) Apparel articles (other than socks provided for in heading 6115 of the HTSUS) knit to shape in a CBTPA beneficiary country from yarns wholly formed in the United States, and knitted or crocheted apparel articles (other than non-underwear t-shirts) cut and wholly assembled in one or more CBTPA beneficiary countries from fabrics formed in one or more CBTPA beneficiary countries or in one or more CBTPA beneficiary countries and the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more CBTPA beneficiary countries);

* * * * *

7. On page 59659, in the third column, in § 10.223, paragraph (a)(8) is corrected to read:

* * * * *

(a) * * *

(8) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics or yarn that the President or his designee has designated in the **Federal Register** as not available in commercial quantities in the United States;

* * * * *

8. On page 59659, in the third column, in § 10.223, the text of paragraph (a)(9) is corrected by adding the words "or his designee" after the words "the President";

9. On page 59659, in the third column, in § 10.223, the text of paragraph (a)(11) is corrected by adding the words "in a CBTPA beneficiary country" after the word "assembled".

10. On page 59660, in the first column, in § 10.223, the text of paragraph (a)(12) is corrected by removing the word "wholly" before the word "assembled" and by removing the words "or the United States" after the word "countries".

11. On page 59660, in the first column, in § 10.223, the text of paragraph (b)(1)(i)(A) is corrected by adding the reference "or (a)(12)" after the reference "paragraph (a)(3)".

12. On page 59660, in the second column, in § 10.223, the text of paragraph (b)(1)(i)(D) is corrected by adding the reference "or (a)(12)" after the reference "paragraph (a)(1) through (a)(5)".

13. On page 59660, in the second column, in § 10.223, the text of paragraph (b)(2) is corrected by removing the reference "paragraph (a)(1), (a)(2) or (a)(3)" and adding, in its place, the reference "paragraph (a)(1), (a)(2), (a)(3) or (a)(12)".

§ 10.224 [Corrected]

14. On page 59661, in § 10.224, the Textile Certificate of Origin under paragraph (b) is corrected to read:

* * * * *

(b) * * *

BILLING CODE 4820–02–P

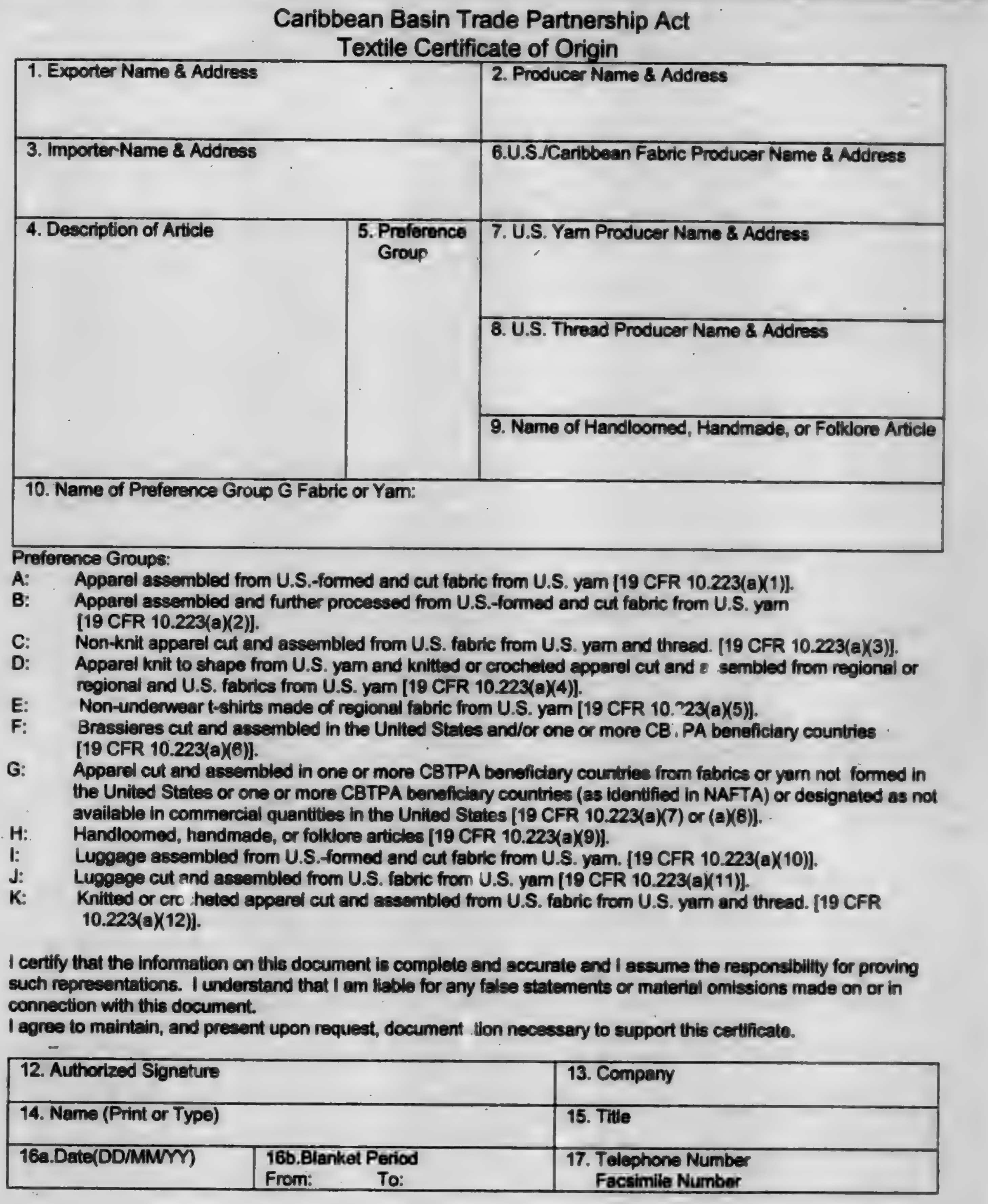

Caribbean Basin Trade Partnership Act
Textile Certificate of Origin

1. Exporter Name & Address		2. Producer Name & Address
3. Importer Name & Address		6. U.S./Caribbean Fabric Producer Name & Address
4. Description of Article	5. Preference Group	7. U.S. Yarn Producer Name & Address
		8. U.S. Thread Producer Name & Address
		9. Name of Handloomed, Handmade, or Folklore Article
10. Name of Preference Group G Fabric or Yarn:		

Preference Groups:

A: Apparel assembled from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.223(a)(1)].

B: Apparel assembled and further processed from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.223(a)(2)].

C: Non-knit apparel cut and assembled from U.S. fabric from U.S. yarn and thread. [19 CFR 10.223(a)(3)].

D: Apparel knit to shape from U.S. yarn and knitted or crocheted apparel cut and assembled from regional or regional and U.S. fabrics from U.S. yarn [19 CFR 10.223(a)(4)].

E: Non-underwear t-shirts made of regional fabric from U.S. yarn [19 CFR 10.223(a)(5)].

F: Brassieres cut and assembled in the United States and/or one or more CBTPA beneficiary countries [19 CFR 10.223(a)(6)].

G: Apparel cut and assembled in one or more CBTPA beneficiary countries from fabrics or yarn not formed in the United States or one or more CBTPA beneficiary countries (as identified in NAFTA) or designated as not available in commercial quantities in the United States [19 CFR 10.223(a)(7) or (a)(8)].

H: Handloomed, handmade, or folklore articles [19 CFR 10.223(a)(9)].

I: Luggage assembled from U.S.-formed and cut fabric from U.S. yarn. [19 CFR 10.223(a)(10)].

J: Luggage cut and assembled from U.S. fabric from U.S. yarn [19 CFR 10.223(a)(11)].

K: Knitted or crocheted apparel cut and assembled from U.S. fabric from U.S. yarn and thread. [19 CFR 10.223(a)(12)].

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document.
I agree to maintain, and present upon request, documentation necessary to support this certificate.

12. Authorized Signature		13. Company
14. Name (Print or Type)		15. Title
16a. Date(DD/MM/YY)	16b. Blanket Period From: To:	17. Telephone Number Facsimile Number

§ 10.225 [Corrected]

15. On page 59662, in the second column, in § 10.225, the second sentence of paragraph (a) is corrected by removing the reference "§ 10.223(a)(2) through (a)(9) and (a)(11)" and adding, in its place, the reference "§ 10.223(a)(2) through (a)(9), (a)(11) or (a)(12)".

§ 10.231 [Corrected]

16. On page 59663, in the third column, in § 10.231, the first sentence is corrected by adding the word "Basin" between the words "Caribbean" and "Trade".

§ 10.232 [Corrected]

17. On page 59663, in the third column, in § 10.232, the definition of

"CBTPA beneficiary country" is corrected to read:

* * * * *

CBTPA beneficiary country. "CBTPA beneficiary country" means a "beneficiary country" as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential duty treatment of articles under 19 U.S.C. 2703(b)(3) and which has been the subject of a finding by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii).

* * * * *

Dated: November 3, 2000.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–28772 Filed 11–06–00; 4:01 pm]

BILLING CODE 4820-02-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 07–00–107]

RIN 2115–AE46

Special Local Regulation; Charleston Christmas Parade of Boats, Charleston Harbor, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the parade route for the Charleston Christmas Parade of Boats. The change in the parade route is necessary to provide improved viewing for the spectators, to reduce the impact on commercial traffic in Charleston Harbor and to provide for the safety of life on the navigable waters during the event.

DATES: This rule is effective December 11, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD 07–00–107 and are available for inspection or copying at Commander, Seventh Coast Guard District, 909 S.E. 1st Street, Suite 918, Miami, Florida 33131, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: QMC David Jersey Coast Guard Group Charleston, South Carolina at (843) 724–7600.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing a NPRM is impracticable as we were only recently informed of the change in parade route, and these regulations are needed to provide for the safety of life on navigable waters during the event.

Background and Purpose

Each year a Christmas boat parade is held in Charleston Harbor, South Carolina. We previously issued a permanent special local regulation for this event, at 33 CFR 100.721. Under this regulation the parade route started near the Wando River Terminal, and proceeded south past the Cooper River Bridge, and then around the peninsula and up the Ashley River and ending at City Marina. The parade route is changing this year in order to provide improved viewing for the spectators, to reduce the impact on commercial traffic in Charleston Harbor and to provide for the safety of life on the navigable waters during the event. This year the parade starts in the Middle Ground, a more open area, proceeds generally north west towards Town Creek, and then southerly around the peninsula as in previous years.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule is only effective for 4 hours on the day of the parade, and will expire thereafter.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Charleston Harbor from 4:30 p.m. to 8:30 p.m. on December 9, 2000.

This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. This regulation will only be in effect a total of four hours on the day of the event. Further, the parade route is configured to minimize the impact on commercial traffic and vessel traffic can pass around the parade route.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(h), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

In consideration of the foregoing, the Coast Guard amends 33 CFR Part 100 as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. In § 100.721 revise paragraph (a)(2) to read as follows:

§ 100.721 Charleston Christmas Parade of Boats, Charleston Harbor, SC.

(a) * * *

(2) *Parade Route.* The parade will organize in the Middle Ground, north of Charleston South Channel. The parade will proceed north along the west edge of Commercial Anchorage A, entering Rebellion Reach in the vicinity of Charleston HBR N Chan LB 2 (Light List Number 2505) at approximate position 32°46.3′N, 079°53.3′W, thence proceeding up Folly Shutes, and Horse Reach to approximately two-tenths of a nautical mile north of USS Yorktown at position 32°47.7′N, 079°54.7′W, thence across Hog Island Reach near Charleston Harbor N. Channel LB 11 (Light List Number 2529) at approximate position 32°47.6′N, 079°55.1′W, entering Town Creek Lower reach near Town Creek Chan LB2 (Light List Number 2715) at approximate position 32°47.7′N, 079°55.5′W thence south to 32°45.7′N, 079°55.3′W (approximately one half nautical mile southeast of Battery Point), thence up the Ashley River, and continuing to the finishing point at City Marina (32°46.6′N, 079°57.2′W). All coordinates referenced use datum: NAD 1983.

* * * * *

Dated: October 27, 2000.

G.W. Sutton,

U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 00–28535 Filed 11–8–00; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ90

Miscellaneous Montgomery GI Bill Eligibility and Entitlement Issues

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends regulations concerning eligibility for and entitlement to educational assistance under the Montgomery GI Bill—Active Duty (MGIB). The regulations are amended to correctly restate statutory provisions.

DATES: *Effective Date:* This final rule is effective November 9, 2000.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Assistant Director for Policy and Program Development (225), Veterans Benefits Administration, Department of Veterans Affairs, (202) 273–7187.

SUPPLEMENTARY INFORMATION: This document makes changes to correctly restate statutory provisions as discussed below.

- Section 21.7020 is corrected to show that VA will consider an initial period of active duty of not more than 12 months that results in a hardship discharge to be continuous with a subsequent period of active duty.
- Section 21.7042 is revised to correct the eligibility criteria an individual must meet if that individual is attempting to establish eligibility for MGIB by serving two years on active duty followed by four years in the Selected Reserve. Such an individual is exempt from serving those four years if he or she was discharged from the Selected Reserve for a condition that interfered with the performance of duty and which was not the result of his or her own willful misconduct. That individual does not have to meet the otherwise applicable deadline for obtaining a high school diploma if he or she was on active duty on August 2, 1990, and completed the requirements for the diploma or the equivalent before October 29, 1994.
- Section 21.7044 is revised to correct the eligibility criteria an individual must meet if he or she was formerly eligible for educational assistance under the Vietnam Era GI Bill. That individual does not have to meet the otherwise applicable deadline for obtaining a high school diploma if he or she was on active duty on August 2, 1990, and completed the requirements for the diploma or the equivalent before October 29, 1994.
- Section 21.7073 is revised to expand the categories of individuals to whom the provisions of the section for deciding on the amount of an individual's entitlement apply. The provisions apply to individuals who between December 1, 1988, and June 30, 1989, withdrew an election not to enroll in MGIB and were discharged from the period of service they were obligated to serve on December 1, 1988, for a condition that interfered with the performance of duty and which was not the result of his or her own willful misconduct.

Nonsubstantive changes also are made for the purpose of clarity.

Changes made by this final rule merely restate statutory language. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and does not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 29, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Editorial Note: This document was received in the Office of the Federal Register on November 3, 2000.

For the reasons set out in the preamble, 38 CFR part 21, subpart K, is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

2. Section 21.7020 is amended by:

A. In paragraph (b)(6)(iv)(A), removing the comma at the end of the paragraph and adding, in its place, a semi-colon.

B. Redesignating paragraphs (b)(6)(iv)(B), (b)(6)(iv)(C), and (b)(6)(iv)(D) as paragraphs (b)(6)(iv)(C), (b)(6)(iv)(D), and (b)(6)(iv)(E), respectively.

C. Adding a new paragraph (b)(6)(iv)(B).

D. In newly redesignated paragraph (b)(6)(iv)(C), removing the comma at the end of the paragraph and adding, in its place, a semi-colo.

E. In newly redesignated paragraph (b)(6)(iv)(D), removing the comma immediately after the word concerned and adding, in its place, a semi-colon.

The addition reads as follows:

§ 21.7020 Definitions.

* * * * *

(b) * * *

(6) * * *

(iv) * * *

(B) For hardship;

* * * * *

3. Section § 21.7042 is amended by:

A. Revising paragraph (b)(2) introductory text.

B. In paragraph (b)(7)(ii)(A), removing "disability, or" and adding, in its place, "disability;".

C. In paragraph (b)(7)(ii)(B), removing "connected." and adding, in its place, "connected; or".

D. Adding paragraph (b)(7)(ii)(C) immediately after paragraph (b)(7)(ii)(B).

E. Adding a new paragraph (b)(10) immediately after the authority citation at the end of paragraph (b)(9).

The revision and additions read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(b) * * *

(2) Except as provided in paragraph (b)(10) of this section, the individual before completing the service requirements of this paragraph must either—

* * * * *

(7) * * *

(ii) * * *

(C) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3012(b)(1)(B)(i))

* * * * *

(10) An individual who does not meet the requirements of paragraph (b)(2) of this section nevertheless is eligible for basic educational assistance if he or she—

(i) Was on active duty on August 2, 1990; and

(ii) Completed the requirements of a secondary school diploma (or an equivalency certificate) before October 29, 1994.

(Authority: 38 U.S.C. 3012)

* * * * *

4. Section § 21.7044 is amended by:

A. Revising paragraph (b)(3) introductory text.

B. Adding paragraph (b)(13) immediately after the authority citation at the end of paragraph (b)(12).

C. In paragraph (c), removing "paragraph (e)" and adding, in its place, "paragraph (d)".

D. In paragraph (d), removing "paragraph (d)" and adding, in its place "paragraph (c)".

The revision and addition read as follows:

§ 21.7044 Persons with eligibility under 38 U.S.C. chapter 34.

* * * * *

(b) * * *

(3) Except as provided in paragraph (b)(13) of this section, the individual must either—

* * * * *

(13) An individual who does not meet the requirements of paragraph (b)(3) of this section nevertheless is eligible for basic educational assistance if he or she—

(i) Was on active duty on August 2, 1990; and

(ii) Completed the requirements of a secondary school diploma (or an equivalency certificate) before October 29, 1994.

(Authority: 38 U.S.C. 3012)

* * * * *

5. Section § 21.7073 is amended by:

A. In paragraph (a)(1)(iii), introductory text removing "to service on", and adding, in its place, "to serve on".

B. Redesignating paragraphs (a)(1)(iii)(B) and (a)(1)(iii)(C) as paragraphs (a)(1)(iii)(C) and (a)(1)(iii)(D), respectively.

C. Adding a new paragraph (a)(1)(iii)(B).

D. Revising the authority citation following newly redesignated paragraph (a)(1)(iii)(D).

The revision and addition read as follows:

§ 21.7073 Entitlement for some individuals who establish eligibility during the open period or who establish eligibility before involuntary separation.

(a) * * *

(1) * * *

(iii) * * *

(B) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

* * * * *

(Authority: 38 U.S.C. 3018(b)(3))

[FR Doc. 00–28702 Filed 11–8–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–6899–7]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone."

EFFECTIVE DATE: This final rule is effective November 9, 2000.

FOR FURTHER INFORMATION CONTACT: William L. Johnson, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5245; e-mail: johnson.williaml@epa.gov.

SUPPLEMENTARY INFORMATION: The EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements promulgated under the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," which appeared in the **Federal Register** on October 27, 1998 (63 FR 57356). The affected regulations are codified at 40 CFR 51.121 and 51.122. The EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

I. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 13132 (64 FR 43255, August 10, 1999) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the October 27, 1998 **Federal Register** document.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of November 9, 2000. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: November 1, 2000.

Oscar Morales,

Director, Collection Strategies Division, Office of Information Collection.

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326. 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding new entries 51.121 and 51.122 to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control no.
* * *	* *
Requirements for Preparation, Adoption, and Submittal of Implementation Plans	
51.121–51.122	2060–0445
* * *	* *

[FR Doc. 00–28808 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6896–6]

RIN 2050–AE01

NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule—Interpretive Clarification; Technical Correction

AGENCY: Environmental Protection Agency (EPA, the Agency).

ACTION: Final rule; Interpretive Clarification and Technical Correction.

SUMMARY: On September 30, 1999 (64 FR 52828), EPA issued a final rule promulgating revised standards for hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns. These standards were promulgated under joint authority of the Clean Air Act (CAA) and Resource Conservation and Recovery Act (RCRA). Sources subject to these standards have raised questions regarding the applicability of new source versus existing source standards for hazardous waste incinerators. In part one of today's rule, we clarify the original intent of our rule on these issues. In part two of today's rule, we make three technical corrections.

DATES: This rule is effective on November 9, 2000.

ADDRESSES: You may view the docket for this rulemaking at the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. You should ask for docket number F–2000–RF3C–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For general information or to order paper copies of this **Federal Register** document, contact the RCRA Hotline Monday through Friday between 9 a.m. and 6 p.m. EST, toll free at (800) 424–9346; or (703) 412–9810 from Government phones or if in the Washington, DC local calling area; or (800) 553–7672 for the hearing impaired. For information on this rule contact David Hockey (5302W), Office of Solid Waste, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or at *hockey.david@epa.gov*, or at telephone number 703–308–8846.

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Part one: Clarifications

I. What Is the Purpose of This Section?

EPA promulgated emission standards for hazardous waste-burning incinerators, lightweight aggregate kilns and cement kilns on September 30, 1999. 64 FR 52828. These standards implement section 112(d) of the Clean Air Act and reflect the performance of the Maximum Available Control Technology (or MACT). The standards themselves are normally called National Emission Standards for Hazardous Air Pollutants (NESHAP).

The Hazardous Waste Combustor (HWC) NESHAP contains two sets of emission standards: One set for existing sources and a second, generally more stringent, set for new sources. Several incinerators subject to this NESHAP have requested clarification as to the applicability of new versus existing source standards in situations when existing incinerators are modified to comply with the emission standards. Specifically, these incinerators have requested clarification on two issues that affect the applicability of new versus existing source standards. First, incinerator commenters want to know if an incinerator's air pollution control device is considered to be part of the "affected source" for purposes of this rule. Second, these commenters want to know if the costs of replacement or retrofitting of air pollution control equipment, installed to comply with the HWC NESHAP (incurred between the proposal and source's compliance date), are to be considered as "reconstruction" costs in determining if new source standards apply.

After receiving these comments, we further studied the regulatory text and determined that the definitions are either ambiguous or contain (unintended) gaps on several points. In this rule, therefore, we set out our interpretation of these provisions and add clarifying language to the rules to remove ambiguity or gaps and to better express our original intent. We note further, that these interpretations apply to this NESHAP alone and so have no precedential value for interpreting any other NESHAP or any other Clean Air Act regulation.

II. What Is the Scope of the Definition of Hazardous Waste Incinerator?

The HWC MACT standards apply to, among other sources, "hazardous waste incinerators." These are defined at 40 CFR 260.10, as (for purposes relevant here) "any enclosed device that [u]ses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace." This definition does not explicitly address whether air pollution control equipment and other hazardous waste burning equipment, e.g., the waste firing system, is considered to be part of the incinerator.

The relationship of this definition to the question of new source standard applicability is that, as provided in § 63.1206(a)(3), "if you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996", the source is subject to the new source standards. If pollution control equipment is part of the incinerator, then an incinerator that began retrofitting pollution control equipment before April 19, 1996 ordinarily would not be subject to the new source standards. Conversely, if only the combustion chamber is considered to be the source, then only changes to the combustion chamber begun before April 19, 1996 would be relevant in assessing new source standard applicability.

As described by commenters, the definition of an incinerator at 40 CFR 260.10 is unclear with regard to whether the "enclosed device" includes the air pollution control device (APCD). In one instance, the enclosed device can be interpreted to include only the burn chamber, typically either a box or cylindrical configuration, into which waste is fed and burned using controlled flame combustion. However, the definition also can be read to include not only the burn chamber, but also to include other parts of the device through which combustion off-gases, that can contain significant concentrations of hazardous air pollutants (HAPs), flow prior to release to the environment. These APCDs, of course, are also enclosed and so are part of the device preventing release of HAPs until the end of the combustion process. These gases continue to be regulated, as is the APCD itself.

In promulgating the HWC NESHAP rule, we intended that the incinerator source include not only the combustion chamber, but also the waste firing system and the APCD. The commercial purpose of an HWC is the safe treatment (destruction) of hazardous organic pollutants. In order to provide safe treatment, other HAPs may require capture, additional treatment, and disposal. For hazardous waste incinerators, we regulate, through specific operating conditions and monitoring requirements, all aspects of the source that may affect emissions of HAPs from the burning of hazardous wastes. See 64 FR at 53055—53062. Because the APCD affects emissions of HAPs, e.g., dioxin/furan formation, toxic metals capture, acid gas removal, we consider the APCD integral to the treatment process, and, therefore, to the source as a whole. For example, when describing the applicability of requirements in response to comments, we say that requirements apply to "* * * all components of the combustor, including associated pollution control equipment." US EPA, *Response to Comments Background Document, Volume II:* Compliance, PM Control (PMCOMP.WPD), page 6.

We acknowledge that this intent should have been expressed in the definition of an incinerator. Therefore, we make our intent explicit by adding the following clarification to the rule: To the definition of a hazardous waste incinerator in § 63.1201(a) we add the following sentence: "For purposes of this subpart, the hazardous waste incinerator includes all associated firing systems and air pollution control devices, as well as the combustion chamber equipment."

Most importantly, this interpretation maintains the status quo in defining new source incinerators. In implementing the RCRA subtitle C rules, we included air pollution controls as part of the incinerator. This is important in that section 112(n)(7) of the CAA calls for integration of the standards under both RCRA and CAA programs to the extent practicable (consistent with the requirements of section 112). In this case, it is "practicable," in the words of section 112(n)(7), to carry over this RCRA practice into implementation of the MACT standard. We are therefore doing so here. However, we note that due to this need to link with the RCRA subtitle C program, this action creates no precedent for any other CAA source category.

III. Clarification of "Reconstructed Sources"

Section 63.1206(a)(3), as promulgated, states that "if you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996, you must comply with (the new source standards)." "Reconstruction," in turn, is defined in the General Provisions (in relevant part) as "the replacement of components of an affected * * * source to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital costs that would be required to construct a comparable new source." Section 63.2 (definition of "reconstruction"). In adopting § 63.1206(a)(3), we intended that the cost of retrofitting and replacement of air pollution control devices installed to comply with the MACT standard is not to be considered as a cost of reconstruction. As shown below, this principle has long been codified in the RCRA subtitle C rules. We also stated in the administrative record to the 1999 HWC MACT rule that we meant for the same principle to apply here.

The RCRA subtitle C rules have long included the same cost test for determining when reconstruction occurs as is found in the General Provisions. In 40 CFR 270.72(b) we use the definition of reconstruction in a context directly analogous to whether new source status is triggered. This section defines when changes to an interim status RCRA facility are so extensive as to amount to reconstruction, causing a source to be subject to the more stringent standards for fully permitted facilities. The rules state, however, that this reconstruction cost test does not apply to units that are added due to the need to comply with a new RCRA rule. Section 270.72(b)(7). We initially proposed this principle for boilers and industrial furnaces burning hazardous waste (see 52 FR at 17013 (May 6, 1987)), but later codified the policy for all RCRA facilities in order that the principle—new units added to meet new regulations are not to be considered in applying the reconstruction cost test—apply generally. 56 FR at 7186 (Feb. 21, 1991). In addition, the RCRA rules (as amended in a 1998 rulemaking) further state that "changes necessary to comply with standards under 40 CFR Part 63 subpart EEE (the hazardous waste combustor MACT standards)" are not to be considered as reconstruction costs for purposes of RCRA. Section 270.72(b). This provision was added specifically to ensure that the costs of coming into compliance with the MACT standards incurred by hazardous waste combustion sources were not to be considered in applying the reconstruction cost test. 63 FR at 33805 (June 19, 1998).

With these existing rules establishing our approach, we intended to apply the same principle in determining which costs were to be included within the reconstruction cost test used for determining applicability of new source standards for hazardous waste combustors. We also reiterated that these costs would not be considered as reconstruction costs in the RCRA context, emphasizing that this approach avoided any potential conflict between the CAA and RCRA regimes (implying that the principle regarding reconstruction costs was meant to apply in both contexts). US EPA, *Response to Comments Background Document, Vol. 1: Miscellaneous Standards*, pp. 56–7.

To clarify our intent, today we add the following sentence to the end of § 63.1206(a)(3) New or reconstructed sources: "The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 19, 1996 and a source's compliance date, are not considered to be reconstruction costs."

As with the definition of affected source, this clarifying change regarding the reconstruction test, is needed to further the purpose of section 112(n)(7) of the CAA. This section calls for integration of the standards under both CAA and RCRA programs to the extent practicable (consistent with the requirements of section 112). Here, as just explained, longstanding RCRA practice is not to include costs of new units needed to comply with new regulatory standards as reconstruction costs. It is "practicable " (section 112(n)(7)) to carry this administrative principle over into the CAA regime for RCRA sources. As with the definition of affected source, this action is therefore not precedential for any non-RCRA source category.

Part Two: Technical Corrections

I. What Is the Purpose of This Section?

This final rule also makes three technical corrections to the Hazardous Waste Combustor NESHAPS promulgated on September 30, 1999 (64 FR 52828). First, if you use data in lieu of your initial comprehensive performance test, you must commence a comprehensive performance test within five years of the commencement date of the test from which the data were obtained. Second, you are required to submit your continuous monitoring system (CMS) evaluation test plan rather than the evaluation plan for review and approval. Third, if you comply with the standards early, you begin calculating continuous monitoring system rolling averages at the time you elect to begin complying with the standards.

II. The Deadline for Conducting the Subsequent Comprehensive Performance Test After Using Data in Lieu of the Initial Performance Test Is Corrected

Section 63.1207(d)(1) inadvertently requires you to commence the subsequent comprehensive performance test within 61 months of the date six months after the compliance date if you submit data in lieu of the initial comprehensive performance test. This is incorrect. As discussed in the preamble (see 64 FR at 52917–18), your subsequent comprehensive performance test must commence within five years of the commencement date of the test from which you are using data in lieu of the initial comprehensive performance test. For example, if you commence an emissions test on September 30 2001, one year prior to the compliance date, and the results of that test can be used in lieu of the initial comprehensive performance test to demonstrate compliance with Subpart EEE, you must commence your subsequent comprehensive performance test within five years of that date, September 30, 2006.

For the reasons discussed above, we revise § 63.1207(d)(1) to make it consistent with the preamble.

III. The Confusion Between Continuous Monitoring System Evaluation Plan and Evaluation Test Plan is Corrected

Sections 63.1207(e)(1) and (e)(2) inadvertently require you to submit a continuous monitoring system (CMS) evaluation plan for review and approval at least one year prior to the scheduled date of the CMS performance evaluation. What we actually intended was to require you to submit the CMS evaluation test plan, for review and approval. The CMS evaluation test plan describes the actual testing necessary to demonstrate calibration, minimization of malfunctions, and how the CMS will meet the required performance specifications.

The CMS evaluation plan implements your CMS quality control program and specifies how a source will maintain calibration of the CMS and minimize malfunctions. As required by Subpart EEE, you must keep the CMS evaluation plan on record for the life of the source and make the plan available for inspection upon request by the Administrator. As we correct in today's notice you need not submit the CMS evaluation plan for review and approval.

We revise §§ 63.1207(e)(1) and (e)(2) accordingly.

IV. Procedures to Begin Calculating Continuous Monitoring System Rolling Averages Is Corrected for Sources That Comply Early

The September 30, 1999 Final Rule requires you to begin recording one-minute continuous emission monitor (CEM) and continuous monitoring system (CMS) values by 12:01 a.m., hourly rolling average values by 1:01 a.m., and twelve hour rolling averages by 12:01 p.m.. See §§ 63.1209(a)(6)(i) and (b)(5)(i). Although not explicitly written, we intended this provision to apply to you on the regulatory compliance date (i.e., three years after Final Rule promulgation). We have since determined that there could be situations where you would choose to voluntarily comply with the MACT standards before the compliance date. In such situations, the requirement for you to begin calculating one-minute averages, hourly rolling averages, and 12-hour rolling averages by 12:01 a.m., 1:01 a.m., and 12:01 p.m., respectively, is inappropriate.

Today we are correcting the regulatory language in §§ 63.1209(a)(6)(i) and (b)(5)(i) in order to clarify that: (1) The requirement to begin calculating one-minute averages, hourly rolling averages, and 12-hour rolling averages by 12:01 a.m., 1:01 a.m., and 12:01 p.m., respectively, applies only to sources that begin complying with the MACT standards on the regulatory compliance date; and, (2) if you elect to comply early with the MACT standards, you must simply begin recording CEM and CMS rolling averages at the time at which you elect to begin complying with the MACT standards. We believe this correction is prudent because of our desire to promote the concept of early compliance.

Part Three: Good Cause Exemption

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment.[1] EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because it merely clarifies certain requirements and provides technical corrections (corrects errors) to the Hazardous Waste Combustors NESHAP Final Rule (64 FR 52828, September 30, 1999). The final rule was subject to notice and comment, and the clarified regulatory language reflects the Agency's views already set out during the rulemaking and in past Agency practice. Thus, notice and public procedure for this action are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Part Four: How Is the Program Delegated Under the Clean Air Act?

States can implement and enforce the new MACT standards through their delegated 112(l) CAA program and/or by having title V authority. A State's title V authority is independent of whether it has been delegated section 112(l) of the CAA. Additional information on state authority under the CAA may be found in the HWC MACT rule (64 FR 52991).

Part Five: Analytic and Regulatory Requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding, see Section I above, that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see Part Three: Good Cause Exemption), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This interpretive clarification and technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Our compliance with these statutes and Executive Orders for the underlying rule is discussed in the September 30, 1999, **Federal Register** notice.

The Congressional Review Act, (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of November 9, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 31, 2000.

Michael Shapiro,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.1201 is amended by revising the definition of "Hazardous waste incinerator" in paragraph (a) to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Hazardous waste incinerator means a device defined as an incinerator in § 260.10 of this chapter and that burns hazardous waste at any time. For purposes of this subpart, the hazardous waste incinerator includes all associated firing systems and air pollution control devices, as well as the combustion chamber equipment.

* * * * *

3. Section 63.1206 is amended by revising paragraph (a)(3)(i) to read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

(a) * * *

(3) * * *

(i) If you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996, you must comply with this subpart by the later of September 30, 1999 or the date the source starts operations, except as provided by paragraph (a)(3)(ii) of this section. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 19, 1996 and a source's compliance date, are not considered to be reconstruction costs.

* * * * *

4. Section 63.1207 amended by revising paragraphs (d)(1), (e)(1)(i) introductory text, (e)(1)(i)(A), (e)(1)(ii), and (e)(2) to read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(d) * * *

(1) *Comprehensive performance testing.* You must commence testing no later than 61 months after the date of commencing the previous comprehensive performance test. If you submit data in lieu of the initial performance test, you must commence the subsequent comprehensive performance test within 61 months of commencing the test used to provide the data in lieu of the initial performance test.

* * * * *

(e) * * *

(1) * * *

(i) *Comprehensive performance test.* You must submit to the Administrator a notification of your intention to conduct a comprehensive performance test and CMS performance evaluation and a site-specific test plan and CMS performance evaluation test plan at least one year before the performance test and performance evaluation are scheduled to begin.

(A) The Administrator will notify you of approval or intent to deny approval of the site-specific test plan and CMS performance evaluation test plan within 9 months after receipt of the original plan.

* * * * *

(ii) *Confirmatory performance test.* You must submit to the Administrator a notification of your intention to conduct a confirmatory performance test and CMS performance evaluation and a site-specific test plan and CMS performance evaluation test plan at least 60 calendar days before the performance test is scheduled to begin. The Administrator will notify you of approval or intent to deny approval of the site-specific test plan and CMS performance evaluation test plan within 30 calendar days after receipt of the original test plans.

(2) After the Administrator has approved the site-specific test plan and CMS performance evaluation test plan, you must make the test plans available to the public for review. You must issue a public notice announcing the approval of the test plans and the location where the test plans are available for review.

* * * * *

5. Section 63.1209 is amended by revising paragraphs (a)(6)(i) and (b)(5)(i) to read as follows:

§ 63.1209 What are the monitoring requirements?

(a) * * *

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[1] The good cause exemption in 5 U.S.C. 553 (b) applies here, even though this is a rulemaking otherwise subject to the procedural standards set out in section 307 (d) of the Clean Air Act. See CAA section 307 (d) (1) (final sentence).

(6) * * *

(i) *Calculation of rolling averages initially.* The carbon monoxide or hydrocarbon CEMS must begin recording one-minute average values by 12:01 a.m. and hourly rolling average values by 1:01 a.m., when 60 one-minute values will be available for calculating the initial hourly rolling average for those sources that come into compliance on the regulatory compliance date. Sources that elect to come into compliance before the regulatory compliance date must begin recording one-minute and hourly rolling average values within 60 seconds and 60 minutes (when 60 one-minute values will be available for calculating the initial hourly rolling average), respectively, from the time at which compliance begins.

* * * * *

(b) * * *

(5) * * *

(i) *Calculation of rolling averages initially.* Continuous monitoring systems must begin recording one-minute average values by 12:01 a.m., hourly rolling average values by 1:01 a.m.(e.g., when 60 one-minute values will be available for calculating the initial hourly rolling average), and twelve-hour rolling averages by 12:01 p.m.(e.g., when 720 one-minute averages are available to calculate a 12-hour rolling average), for those sources that come into compliance on the regulatory compliance date. Sources that elect to come into compliance before the regulatory compliance date must begin recording one-minute, hourly rolling average, and 12-hour rolling average values within 60 seconds, 60 minutes (when 60 one-minute values will be available for calculating the initial hourly rolling average), and 720 minutes (when 720 one-minute values will be available for calculating the initial 12-hour hourly rolling average) respectively, from the time at which compliance begins.

* * * * *

[FR Doc. 00–28710 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301074; FRL–6751–7]

RIN 2070–AB78

Sulfentrazone; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of sulfentrazone *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide and its major metabolite 3-hydroxymethyl sulfentrazone *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide in or on horseradish and sugarcane. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on horseradish and sugarcane. This regulation establishes a maximum permissible level for combined residues of sulfentrazone in these food commodities. The tolerances will expire and are revoked on December 31, 2002.

DATES: This regulation is effective November 9, 2000. Objections and requests for hearings, identified by docket control number OPP–301074, must be received by EPA on or before January 8, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301074 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Meredith Laws, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703 305–9366; and e-mail address: laws.meredith@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301074. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the herbicide sulfentrazone, in or on horseradish and sugarcane at 0.1 and 0.05 part per million (ppm) respectively. These tolerances will expire and are revoked on December 31, 2002. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemptions for Sulfentrazone on Horseradish and Sugarcane and FFDCA Tolerances

Illinois submitted a section 18 request for the emergency use of sulfentrazone on horseradish to control annual broadleaf weeds. EPA reviewed the request and concluded that the situation was urgent and nonroutine because heavy rains, urbanization, and drainage canal problems led to flooding of fields during the spring of 1999 resulting in significant problems with yellow nutsedge and broadleaf weeds.

Louisiana submitted a section 18 request for the emergency use of sulfentrazone to control morning glories infesting sugarcane fields. EPA agrees that morning glory infestations may create emergency conditions for growers since the registered alternative herbicide is ineffective against late season infestations when used on a higher yielding sugarcane variety. Due to this variety's earlier lay-by, late season applications of soil herbicides are not possible. Additionally, morning glory vines can cause indirect economic costs to growers by disabling combine-type harvesters.

EPA has authorized under FIFRA section 18 the use of sulfentrazone on horseradish and sugarcane for control of annual broadleaf weeds in Illinois and morning glories in Louisiana, respectively. After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by the combined residues of sulfentrazone in or on horseradish and sugarcane. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemptions in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on horseradish and sugarcane after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether sulfentrazone meets EPA's registration requirements for use on horseradish or on sugarcane or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of sulfentrazone by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Illinois and Louisiana to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for sulfentrazone, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) .

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of sulfentrazone and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for combined residues of sulfentrazone in or on horseradish and sugarcane at 0.1 and 0.05 ppm, respectively. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE$_{cancer}$ = point of departure/exposures) is calculated. A summary of the toxicological endpoints for sulfentrazone used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SULFENTRAZONE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13-50 years of age	NOAEL = 10.0 mg/kg/day UF = 100 Acute RfD = 0.10 mg/kg/day	FQPA SF = 10 aPAD = acute RfD/FQPA SF = 0.01 mg/kg/day	Rat Developmental LOAEL = 25 mg/kg/day based on decreased fetal weight and retarded skeletal development as evidenced by an increased number of litters with any variation and by decreased numbers of caudal vertebral and metacarpal ossification sites.
Acute Dietary general population including infants and children	NOAEL = 250 mg/kg/day UF = 100 Acute RfD = 2.5 mg/kg/day	FQPA SF = 10 aPAD = acute RfD/FQPA SF = 0.25 mg/kg/day	Acute Neurotoxicity Study in Rats LOAEL = 750 mg/kg/day based on increased incidences of clinical signs abdominal gripping, abdominogenital staining, and/or reddish- brown staining under the cage, FOB findings, and decreased motor activity which was reversed by Day 14 postdose. There was no evidence of neuropathology at the highest dose tested (2,000 mg/kg/day).
Chronic Dietary all populations	NOAEL= 14.0 mg/kg/day UF = 100 Chronic RfD = 0.14 mg/kg/day	FQPA SF = 10 cPAD = chronic RfD/FQPA SF = 0.014 mg/kg/day	2-Gen. Repro. Study in Rats LOAEL = 33/44 mg/kg/day in males and females, respectively based on 1) decreased maternal body weight and/or body weight gain during gestation in both P and F1 generations, 2) reduced premating body weight gains in the second generation (F1 adults), 3) increased duration of gestation in both F1 and F2 dams, 4) reduced prenatal viability (fetal and litter), 5) reduced litter size, 6) increased number of stillborn pups, 7) reduced pup and litter postnatal survival, and 8) decreased pup body weights throughout gestation. In males, effects included decreased fertility in F1 generation and/or atrophy of the germinal epithelium of the testes, oligospermia and intratubular degeneration of the seminal product in the epididymis.

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.498) for the combined residues of sulfentrazone, in or on a variety of raw agricultural commodities. A permanent tolerance has been established for soybean, seed at 0.05 ppm. Time-limited tolerances have been established for cowpeas, lima beans, and sunflowers, with an expiration date of 12/30/00. Risk assessments were conducted by EPA to assess dietary exposures from sulfentrazone in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989-1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Two acute doses and endpoints were selected, one for the females 13+ years old population subgroup and another for the U.S. population and other subgroups (excluding females 13+ years old). Therefore, acute dietary exposure analyses were performed using two separate endpoints. Tolerance level residues and 100% crop treated were used for all commodities (Tier 1). As the acute analyses were Tier 1 assessments, acute risk estimates are shown at the 95th percentile.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989-1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues and 100% crop treated information were used for all commodities (Tier 1).

iii. *Cancer.* Sulfentrazone has been classified as a "Group E" chemical (not likely to be carcinogenic to humans via relevant routes of exposure). Therefore, no cancer dietary exposure risk analysis was performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for sulfentrazone in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of sulfentrazone.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides.

GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to sulfentrazone they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the EECs of sulfentrazone for acute exposures are estimated to be 12.5 parts per billion (ppb) for surface water and 21.8 ppb for ground water. The EECs for chronic exposures are estimated to be 12.0 ppb for surface water and 10.2 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Sulfentrazone is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether sulfentrazone has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, sulfentrazone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that sulfentrazone has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* FFDCA section 408 provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Developmental toxicity studies*— a. *Rats.* In the oral developmental study in rats, the maternal (systemic) NOAEL was 25 mg/kg/day, based on increased spleen weights and splenic extramedullary hematopoiesis at the LOAEL of 50 mg/kg/day. The developmental (fetal) NOAEL was 10 mg/kg/day, based on decreased mean fetal weight and retardation in skeletal development as evidenced by increased numbers of litters with any variation and by decreased numbers of caudal vertebral and metacarpal ossification sites at the LOAEL of 25 mg/kg/day.

In the dermal developmental study in rats, the maternal (systemic) NOAEL was ≥250 mg/kg/day and a LOAEL was not determined. The developmental (fetal) NOAEL was 100 mg/kg/day, based on decreased fetal weight and increased fetal variations (hypoplastic or wavy ribs, incompletely ossified lumbar vertebral arches, incompletely ossified ischia or pubes, and reduced numbers of thoracic vertebral and rib ossification sites) at the LOAEL of 250 mg/kg/day.

b. *Rabbits.* In the oral developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 100 mg/kg/day, based on increased abortions, clinical signs (decreased feces and hematuria), and reduced body weight gain during gestation at the LOAEL of 250 mg/kg/day. The developmental (pup) NOAEL was 100 mg/kg/day, based on increased resorptions, decreased live fetuses per litter, and decreased fetal weight at the LOAEL of 250 mg/kg/day.

iii. *Reproductive toxicity study— Rats.* In the 2-generation reproductive toxicity study in rats, the maternal (systemic) NOAEL was 14/16 mg/kg/day in males and females, respectively, based on decreased maternal body weight and/or body weight gain during gestation in both P and F1 generations, and reduced premating body weight gains in the second generation (F1 adults) at the LOAEL of 33/44 mg/kg/day for males and females, respectively. The developmental (pup) NOAEL was 14/16 mg/kg/day based on 1) reduced prenatal viability (fetal and litter), 2) reduced litter size, 3) increased number of stillborn pups, 4) reduced pup and litter postnatal survival, and 5) decreased pup body weights throughout lactation at the LOAEL of 33/44 mg/kg/day. The reproductive NOAEL was 14/16 mg/kg/day, based on 1) increased duration of gestation in both F1 and F2 dams, 2) decreased fertility in F1 generation (males), and/or 3) atrophy of the germinal epithelium of the testes, oligospermia and intratubular degeneration of the seminal product in the epididymis at the LOAEL of 33/44 mg/kg/day.

iv. *Prenatal and postnatal sensitivity.* The toxicological data base for evaluating prenatal and postnatal toxicity for sulfentrazone is complete with respect to current data requirements. Based on the developmental and reproductive toxicity studies discussed above for sulfentrazone there appears to be prenatal and postnatal sensitivity.

v. *Conclusion.* There is a complete toxicity data base for sulfentrazone and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be retained. For acute dietary analysis, the FQPA SF was retained and is applicable to the U.S. population and all subgroups due to the increased susceptibility observed in the prenatal developmental studies. For chronic dietary analysis, the FQPA safety factor was retained and is applicable for all populations due to the qualitative increased susceptibility observed in the 2-generation reproduction study.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD − (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to sulfentrazone in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of sulfentrazone on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to sulfentrazone will occupy <1% of the aPAD for the U.S. population, 6% of the aPAD for females 13 years and older, <1% of the aPAD for all infants (<1 year old) and <1% of the aPAD for children (1-6 years old). In addition, despite the potential for acute dietary exposure to sulfentrazone in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of sulfentrazone in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO SULFENTRAZONE

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females, 13-50 years old	0.01	6	12.5	21.8	284
U.S. population (including infants and children)	0.25	<1	12.5	21.8	8,700
Children (1-6 years old) and all infants (1 year old)	0.25	<1	12.5	21.8	2484

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to sulfentrazone from food will utilize 2% of the cPAD for the U.S. population, 4% of the cPAD for all infants (< 1 year old) and 6 % of the cPAD for children (1-6 years old). There are no residential uses for sulfentrazone that result in chronic residential exposure to sulfentrazone. In addition, despite the potential for chronic dietary exposure to sulfentrazone in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of sulfentrazone in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIÇ (NON-CANCER) EXPOSURE TO SULFENTRAZONE

Population Subgroup	cPAD (mg/kg)	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S Population	0.014	2	4.0	10.2	478
Children (1-6 years old)	0.014	6	4.0	10.2	132
Children (Females 13-50 years old)	0.014	2	4.0	10.2	412
Males (13-19 years old)	0.014	3	4.0	10.2	477

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Sulfentrazone is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Sulfentrazone is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Because sulfentrazone is not a carcinogen, a cancer aggregate risk assessment was not conducted.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to sulfentrazone residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical methodology for the determination of sulfentrazone, 3-desmethyl sulfentrazone, and 3-hydroxymethyl sulfentrazone residues in/on various matrices was submitted with a petition for a sulfentrazone tolerance on soybeans. A petition method validation (PMV) was successfully completed by the Agency's Analytical Chemistry Laboratory. The Limit of Quantitation (LOQ) and Minimum Detection Limit (MDL) were determined to be 0.05 ppm and 0.005-0.025 ppm, respectively. EPA concluded that the method is suitable for enforcement purposes.

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no Codex, Canandian or Mexican residue limits for sulfentrazone on horseradish and sugarcane. Therefore, no compatibility problems exist for the proposed tolerances.

C. Conditions

Rotational field trial data for wheat, corn, rice and sorghum were submitted in support of a petition for a sulfentrazone tolerance on soybeans. Permanent tolerances have been established on cereal grains (excluding sweet corn) when planted in rotation with the primary crop soybeans. The suggested rotational crop restrictions on the Section 18 labels pertaining to these emergencies are the same as those on the label for soybeans. Therefore, additional rotational crop data are not necessary for this action.

VI. Conclusion

Therefore, the tolerances are established for combined residues of sulfentrazone, in or on horseradish and sugarcane at 0.1 and 0.05 ppm, respectively.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301074 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 8, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301074, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 25, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.498 is amended by alphabetically adding the commodities to the table in paragraph (b) to read as follows:

§180.498 Sulfentrazone; tolerances for residues.

* * * * *

(b)* * *

Commodity	Parts per million	Expiration/Revocation Date
* * * * *	*	*
Horseradish, Roots	0.1	12/31/02
* * * * *	*	*
Sugarcane	0.05	12/31/02
* * * * *	*	*

* * * * *

[FR Doc. 00–28714 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6898–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final deletion of the Superfund Site from the National Priorities List (NPL).

SUMMARY: EPA Region 5 announces the deletion of the Ilada Energy Company Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substance Pollution Continency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (CERCLA). EPA and the Illinois Environmental Protection Agency (IEPA) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: This "direct final" action will be effective January 8, 2001, unless EPA receives dissenting comments by December 11, 2000. If written dissenting comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Jon Peterson, Remedial Project Manager, or Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency, Superfund Division, U.S. EPA, Region 5, 77 W. Jackson Blvd., (SR–6J), Chicago, IL 60604. Requests for comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repositories at the following locations: U.S. EPA Region 5, Administrative Records, 77 W. Jackson Blvd., Chicago, IL 60604, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, Springfield, Illinois 62794 and Cape Girardeau Public Library, 711 N. Clark, Cape Girardeau, MO 63701.

FOR FURTHER INFORMATION CONTACT: Jon Peterson at (312) 353–1264, email *peterson.jon@epa.gov* or Gladys Beard (SR–6J), U.S. Environmental Protection Agency, 77 W. Jackson, Chicago, Il, (312) 886–7253, FAX (312) 886–4071, e-mail beard.gladys@epa.gov

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion
V. Action

I. Introduction

The Environmental Protection Agency (EPA) Region 5 announces the deletion of the Ilada Energy Company Site, East Girardeau, Illinois from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the State of Illinois have determined that the remedial action for the Site has been successfully executed. EPA will accept comments on this action for thirty days after publication of this action in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the Ilada Energy Company Site and explains how the Site meets the deletion criteria. Section V states EPA's action to delete the Site from the NPL unless dissenting comments are received during the comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that Sites may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if the Site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the Site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the Site will be conducted at least every five years after the initiation of the remedial action at the Site to ensure that the Site remains protective of public health and the environment. In the case of this Site, EPA will conduct a Five-Year Review in the year of 2005. As explained below, the Site meets the NCP's deletion criteria (i) listed above. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without the application of the Hazard Ranking System (HRS).

III. Deletion Procedures

The following procedures were used for the intended deletion of the Site:

(1) All appropriate responses under CERCLA have been implemented and no further action by EPA is appropriate; (2) The State has concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day dissenting public comment period on EPA's Direct Final Action to Delete; and, (4) All relevant documents have been made available for public review in the local Site information repositories. EPA is requesting only dissenting comments on the Direct Final Action to Delete.

For deletion of the Site, EPA's Regional Office will accept and evaluate public comments on EPA's Final Notice before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary, responding to each significant comment submitted during the public comment period. Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a Site from the NPL does not preclude eligibility for future response actions.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

Site Background and History

The Ilada Energy Company site (the "Site") encompasses approximately 17 acres in southern Illinois, south of the town of East Cape Girardeau in the northwest quadrant of Section 32, Township 14 South, Range 3 West. The surrounding area is utilized primarily for agricultural purposes. Farmland borders the Site to the northeast, but the remainder is owned by the US Forest Service and used for silviculture. The area is relatively flat with a ground surface elevation of approximately 330 feet above mean sea level. The Site is located within the 100-year floodplain of the Mississippi River on the "dry" side of the 20-foot high flood control levee which is located immediately to the south of the Site. A 200-foot wide slough was formed along the south toe of the levee as a result of borrowing material for its construction. This area is swampy during the wet season (approximately Fall through Spring) supporting riparian vegetation consisting of cattails and other aquatic plants. The quarter-mile wide strip between the river and the slough comprises wooded areas, dense brush and ground vegetation, and patches of overgrown, idle cropland.

The main portion of the Site is surrounded by a locked chain-link fence to restrict access. Prior to the removal action, there were seven structures and twenty-two bulk oil tank and numerous underground pipelines. All were removed from the Site along with the tank contents and the grossly contaminated, on Site soil. The Site is overgrown yearly with native grasses and weeds.

The Site originally consisted of a tank farm built for the U. S. Department of War (DOW) in 1942. The location was selected to take advantage of access provided by the Mississippi River. The facility was operated by Allied Oil Terminal Company as a bulk fuel oil storage/transfer terminal until the early or mid-1950's. Transfer piping ran across the levee towards the river.

After Allied Terminal ceased using the facility in the mid-1950's, the Site sat idle until purchased by the Kara Oil Company in 1979. In 1982, it was assigned to Larry Wilson of the Ilada Energy Company (Ilada).

From 1981 to 1983, Ilada operated the tank farm as a waste oil reclamation facility. Additional tanks and structures were added to the facility in that time period.

Several inspections of the then operating facility were conducted by the Illinois EPA and the USEPA in 1982 and 1983. These inspections revealed that Ilada was improperly storing, handling, mixing, and disposing waste oils contaminated with PCBs. Ilada and the USEPA entered into a consent decree in January 18, 1983. This decree ordered Ilada to remove PCB-contaminated materials and cease handling hazardous materials and waste. Among other actions, the order required the removal of PCB-contaminated materials in accordance with Toxic Substance Control Act (TSCA). It also required Ilada to close all activities relating to the receipt, transportation, storage, handling, use and disposal of PCBs, chemicals, and other wastes. Later in 1983, the boiler was removed by Ilada as well as some pumps and related equipment from the pump house, and office and laboratory equipment were removed from the Office Building. In 1986, the Illinois EPA installed six groundwater monitoring wells on the Site. The Site was subsequently proposed for inclusion on the National Priorities List (NPL) pursuant to section 105 of CERCLA on June 24, 1988. The listing of the Site on the NPL was finalized on October 4, 1989. Site visits in 1989 indicated spillage and leakage of oils on the ground near several tanks and tank valves. Ilada failed to remove any of the PCB waste. After Ilada's failure to perform the required actions, a Unilateral Order was issued.

In 1989, a Unilateral Administrative Order was issued pursuant to section 106 of CERCLA to remove PCB materials from the Site. As a result of the section 106 Order, four of the companies included as PRPs formed the Ilada Energy Company—East Cape Girardeau Group. These companies included Shell Oil Company, Metal Container Corporation, Granite City Steel Division of National Steel, and Emerson Electric Company. The group was then ordered to initiate a Remedial Investigation (RI) to determine the source, nature and extent of the contamination at the Site following the removal action.

The RI was finalized and approved by Illinois EPA in April of 1999. The Human Health Baseline Risk Assessment (HHRA) and Ecological Risk Assessment (ERA) were finalized and approved by Illinois EPA in July of 1999.

All structures used by Ilada Energy, including foundations, tanks, above ground and buried pipelines (including those south of the levee), debris, and grossly contaminated soils were removed as part of the August 7, 1992, removal action. The only remnants of the tank farm are the repaired seven-foot high perimeter fence, roads, subdued remnants of the six berms around the tank areas, and the former site production water well. Nearly all of the brush and trees were removed during the removal action. Weeds and brush have re-established a vegetative cover since completion of site activities.

With the exception of a localized pool of subsurface aviation gasoline, no continuing source of constituents associated with site operations remains on the Site. The lateral extent of this pool has been fully delineated and is confined to an area of about 50 by 75 feet. This pool was observed in one monitoring well, D12. Subsurface investigation in the area of D12 revealed that the pool is discontinuous and is not present as a contiguous pool of mobile liquid floating on the groundwater. All other materials and potential sources, including grossly contaminated surficial soils, were removed during the removal action.

The 1999 RI report yielded information regarding the nature and extent of the contamination remaining at the Site including the following:

- The site surface and subsurface soils contain generally low levels of Volatile Organic Compounds (VOC's) and Semi-Volatile Organic Compounds (SVOC'S).
- A localized subsurface pocket of light non-aqueous phase liquid (LNAPL) composed of aviation gasoline remains from the site's original use as a fuel storage depot approximately 40 years ago. The lateral extent of this pocket measures approximately 50 by 75 feet, and it is entirely contained on the Site.
- The adjacent properties to the south, east, west, and north are unavailable for future development because they were acquired in 1997 as part of a federal flood control program.

The removal action conducted between 1989 and 1991 substantially mitigated the human health and environmental threats posed by this site. This action resulted in the removal from the Site of all tanks and their contents, piping, structures, and grossly contaminated soils. A total of 442,162 gallons of oil and sludge were sent offsite to be burned as waste fuel in cement kilns; 142,700 gallons of PCB contaminated oil and sludge were incinerated at a permitted off-site facility; 865,700 gallons of contaminated water were treated and discharged to the river after testing showed that it met Clean Water Act standards; 1055 cubic yards of soil and miscellaneous debris were disposed offsite as special waste; 637 cubic yards were disposed offsite as demolition debris; fifty cubic yards of

PCB-contaminated soil were landfilled at a permitted offsite facility; and 1264 tons of steel were recycled. All wastes were removed from the Site and treated or disposed elsewhere.

During the RI, an analysis was conducted to estimate the health and environmental problems that could result from the residual soil and groundwater constituents at the Ilada Energy Site after the completion of the removal action at the Site.

The Proposed Plan for the Ilada Energy Superfund Site was released for public comment in July 1999. The Proposed Plan identified the "No Further Action" alternative as the preferred and only alternative for the Site. Illinois EPA reviewed all written and verbal comments submitted during the public comment period. None were received. It was determined that no significant changes to the remedy, as originally identified in the Proposed Plan, were necessary or appropriate.

A no further remedial action Record of Decision (ROD) was sign on September 27, 1999. It has been determined that no further remedial action is necessary for the purpose of mitigating environmental or human health threats at this Site. The selected remedy is protective of human health and the environment, attains Federal and State requirements that are applicable or relevant and appropriate for this remedial action, and is cost-effective.

This remedy requires the maintenance of institutional controls. The institutional controls that consist of the following:

- Prohibiting the installation of groundwater wells for the purpose of producing potable water, and;
- Prohibiting the use, improvement or maintenance of any type of Site property for residential purposes.

V. Action

The remedy selected for this Site has been implemented in accordance with the Record of Decision. The remedy along with the previous removal actions have resulted in the significant reduction of the long-term potential for release of contaminants, therefore, threats to human health and the environment have been minimized. EPA and the State of Illinois find that the response actions implemented provide adequate protection of human health the environment.

The Illinois EPA concurs with the EPA that the criteria for deletion of the Site have been met. Therefore, EPA is deleting the Site from the NPL.

This action will be effective January 8, 2001. However, if EPA receives dissenting comments by December 11, 2000, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 27, 2000.

Gary Gulezian,

Acting Regional Administrator, Region 5.

Part 300, title 40 of Chapter I of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321 (c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p.193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site for "Ilada Energy Co., East Cape Girardeau, IL".

[FR Doc. 00–28514 Filed 11–8–00; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–2372; MM Docket No. 99–220; RM–9601 and RM–9636]

Radio Broadcasting Services; Darby and Stevensville, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 300A to Darby, Montana, in response to a petition filed by Mountain West Broadcasting and denies the petition filed by The Battani Corporation requesting the allotment of Channel 300C2 at Stevensville, Montana. *See* 64 FR 34751, June 29, 1999. The coordinates for Channel 300A at Darby are 46–01–18 and 114–10–43. With this action, this proceeding is terminated. A filing window for Channel 300A at Darby will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–220, adopted October 11, 2000, and released October 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Darby, Channel 300A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28690 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2375; MM Docket No. 99–75; RM–9446]

Radio Broadcasting Services; Grants, Milan, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration.

SUMMARY: The Commission, at the request of Against the Wind Broadcasting, Inc., licensee of Station KXXQ(FM) (formerly KQEO(FM)), Grants, New Mexico, reconsiders and sets aside the reallotment of Channel 264A from Grants to Milan, New Mexico. *See* 65 FR 59751 (October 6, 2000).

DATES: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 99–75, adopted October 11, 2000, and released October 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b) the FM Table of Allotments under New Mexico is amended by removing Milan, Channel 264A and adding Channel 264A at Grants.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28689 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2373; MM Docket No. 99–195; RM–9563, RM–9958]

Radio Broadcasting Services; Wheatland and Wright, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain West Broadcasting, allots Channel 293C1 at Wheatland, Wyoming, as the community's second local FM transmission service (RM–9563) *See* 64 FR 29979, June 4 1999. At the request of Mount Rushmore Broadcasting, Inc., we also allot Channel 289A at Wheatland and Channel 224A at Wright, Wyoming, as each community's third local FM transmission service (RM–9958). Channel 293C1 can be allotted at Wheatland in compliance with the Commission's minimum distance separation requirements with a site restriction of 41 kilometers (25.5 miles) north; and Channel 289A can also be allotted to Wheatland at city reference coordinates. Additionally, Channel 224A can be allotted to Wright in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometers (6.0 miles) north to avoid a short-spacing to the allotment reference site for Channel 223C1, Douglas, Wyoming. The coordinates for Channel 293C1 at Wheatland are 42–25–32 North Latitude and 104–57–21 West Longitude; and the coordinates for Channel 289A at Wheatland are 42–03–16 North Latitude and 104–57–08 West Longitude. Additionally, the coordinates for Channel 224A at Wright are 43–50–02 North Latitude and 105–28–29 West Longitude.

DATES: Effective December 11, 2000. A filing window for Channels 289A and 293C1 at Wheatland, Wyoming, and Channel 224A at Wright, Wyoming, will not be opened at this time. Instead, the issue of opening filing windows for these channels will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–195, adopted October 11, 2000, and released October 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Channels 289A and 293C1 at Wheatland; and by adding Wright, Channel 224A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28687 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–44; FCC 00–343]

Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to continue indefinitely the requirement that commercial broadcast television licensees file with the Commission their quarterly Children's Television Programming Reports (FCC Form 398). The document also requires that the reports be filed quarterly, when they are prepared, rather than annually. In addition, the document also makes a number of revisions to FCC Form 398 to make the information contained in the form clearer and more useful to the public and the FCC. The intended effect of these actions is to assist the Commission in continuing to enforce the Children's Television Act of 1990 ("CTA") and our rules implementing the CTA by facilitating monitoring of the amount and quality of educational television programming for children and industry compliance with the Commission's children's educational programming requirements.

DATES: These rules contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. Written comments by the public on the new and/or modified information collections are due January 8, 2001.

ADDRESSES: In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, D.C. 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy and Rules Division, Mass Media Bureau, at (202) 418–2130, TTY (202) 418–2989. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order* ("*R&O*") in MM Docket No. 00–44, FCC 00–343, adopted on September 14, 2000, and released on October 5, 2000. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY–A257, Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW, Room CY–B402, Washington DC. The complete text is also available under the file name fcc00343.pdf on the Commission's Internet site at www.fcc.gov.

This document contains modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Electronic Access and Filing Addresses

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies via the Internet to *http://www.fcc.gov.e-file/ecfs.html*. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form, <your e-mail address>." A sample form and directions will be sent in reply.

Paperwork Reduction Act

This document contains either new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *R&O,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 8, 2001. Comments should address (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX

Title: Children's Television Programming Report

Form No: FCC Form 398

Type of Review: revision of existing collection

Respondents: business or other for-profit

Number of respondents: 1,250

Estimated Time Per Response: 6 hours/quarter

Total Annual Burden: 30,000 hours

Total Annual Costs: $489,600

Needs and Uses: The *R&O* continues indefinitely the requirement that commercial broadcast television licensees file with the Commission their quarterly Children's Television Programming Reports (FCC 398). The *R&O* also requires that the reports be filed quarterly, when they are prepared, rather than annually. In addition, the *R&O* makes a number of revisions to FCC 398 to make the information contained in the form clearer and more useful to the public and the FCC. These revisions include a new preemption report to be completed for each preempted core program during the quarter. This information collection will assist in efforts by the public and the Commission to monitor compliance with the Children's Television Act.

Synopsis of Report and Order

1. In this *Report and Order* ("*R&O*"), the Commission makes a number of changes to the children's educational television reporting requirements of commercial broadcast television licensees. First, we extend indefinitely the requirement that commercial broadcast television licensees file with the Commission their quarterly Children's Television Programming Reports (FCC Form 398). The Commission's rules currently state that such reports shall be completed quarterly and filed on an annual basis for an experimental period of three years, from January 1998 through January 2000. These reports are required to be filed electronically. Second, we require broadcasters in the future to file these reports on a quarterly basis, at the time they are prepared, rather than annually. Finally, we also announce herein a number of revisions to be made to FCC Form 398 to make the information contained in the form clearer and more useful to the public and the FCC. The actions we take herein will assist the Commission in continuing to enforce the Children's Television Act of 1990 ("CTA") and our rules implementing the CTA by facilitating monitoring by the FCC and the public of the amount and quality of educational television programming for children and industry compliance with the Commission's children's educational programming requirements.

2. Data indicate that children spend, on average, almost three hours a day watching television. In view of the significant impact this medium has on children, Congress has concluded that television should be contributing to children's development. The CTA requires the Commission, in its review of each television broadcast license renewal application, to "consider the extent to which the licensee . . . has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." In enacting the CTA, Congress found that, while television can benefit society by helping to educate and inform children, there are significant market disincentives for commercial broadcasters to air children's educational and informational programming. The objective of Congress in enacting the CTA was to increase the amount of educational and informational programming available on television. The CTA places on every licensee an obligation to provide such programming, including programming specifically designed to educate and inform children, and requires the FCC to enforce that obligation.

3. In August 1996, the Commission adopted its current educational programming rules to strengthen its enforcement of the CTA. *See Policies and Rules Concerning Children's Television Programming,* 61 FR 43981 (Aug. 27, 1996). The Commission's rules include several measures to increase the availability of programming "specifically designed" to serve children's educational needs (otherwise known as "core" programming) and to facilitate public access to information about such programming. These measures include a requirement the licensees identify core programming at the time it is aired and in information provided to publishers of television guides. Licensees are also required to designate a children's liaison at the station responsible for collecting comments on the station's compliance with the CTA. Furthermore, the rules establish a definition of "core" programming as well as a three-hour-per-week processing guideline pursuant to which broadcasters airing at least three hours per week of programming that meets the definition of "core" will receive staff-level approval of the CTA portion of their renewal applications.

4. One of the most important public information measures adopted by the Commission in 1996 was the requirement that licensees complete a Children's Television Programming Report, on FCC Form 398, each calendar quarter and place the report in the station's public inspection file. Broadcasters are required to separate the children's programming reports from other materials they maintain in their public files. The Commission required that these quarterly reports be filed jointly with the Commission on an annual basis for an experimental period of three years. Among other things, these reports identify the educational and informational programs aired by the licensee over the previous quarter and the days and times these programs were regularly scheduled, the age of the target audience for each program, and the average number of hours per week of core programming broadcast over the past quarter. Licensees must include in the reports an explanation of how each core program meets the definition of "core" programming adopted by the Commission. Stations must also identify in their reports the core programs the station plans to air during the next calendar quarter. The Commission makes the reports available at its website.

5. The public information initiatives, including the Children's Television Programming Reports, are an integral part of the children's programming rules. These measures are designed to ensure that the public, and especially parents, has access to information regarding the educational programming being aired by broadcasters so that parents and others can help achieve the goal of the CTA to increase the amount of educational programming available on television. Facilitating public access to the information contained in the Children's Television Programming Reports helps achieve the goals of the CTA in a number of ways. Parents who have access to information about educational programming, such as the titles of programs, the times they are regularly scheduled to air, and the age for which the programs are intended, can select such programming for their children to watch, thereby increasing the audience for such programs and the incentive of broadcasters to air, and producers to supply, more such programs. The information contained in the reports can also be used by parents, educators, and others interested in educational programming to monitor a station's performance in complying with the CTA and the Commission's rules. In this way, the public can play an active role in helping to enforce children's programming requirements. Finally, requiring broadcasters to identify programming they rely upon to meet their obligation to air educational programming makes broadcasters more accountable to the public. Improving broadcaster accountability minimizes the need for government involvement to enforce the CTA and helps to ensure that broadcasters, with input from the public, rather than the Commission determine which television programs serve children's educational needs.

6. In its August 1996 Children's Programming Report and Order, the Commission also required that a children's program be "regularly scheduled" to be counted as core programming for purposes of meeting the three-hour-per-week processing guideline, i.e.,—a core children's program must "be scheduled to air at least once a week" and "must air on a regular basis." The Commission stated that television series typically air in the same time slot for 13 consecutive weeks, although some episodes may be preempted for programs such as breaking news or live sports events. The Commission noted that programming that is aired on a regular basis is more easily anticipated and located by viewers, and can build loyalty that will improve its chance for commercial success. The Commission stated that it would leave to the staff to determine, with guidance from the full Commission as necessary, what constitutes regularly scheduled programming and what level of preemption is allowable. Subsequent to the adoption of the Children's Programming Report and Order, and in response to requests from the ABC, CBS, and NBC networks that local stations be given flexibility to reschedule episodes of core programs that are preempted by live network sports events without adversely affecting the program's status as "regularly scheduled," the Mass Media Bureau has allowed the networks limited flexibility in preempting core children's programming. Specifically, within certain limitations, the Bureau advised that preempted core programs could count toward a station's core programming obligation if the program were rescheduled. The Bureau also indicated that it would revisit this limited flexibility regarding preempted core programming based on the level of preempted programs, the rescheduling and broadcast of the preempted programs, and the impact of promotions and other steps taken by the stations to make children's educational programming a success.

Filing Requirement Extension

7. The Commission has reviewed all of the reports filed since commencement of the FCC filing requirement, and has used the information in the reports to evaluate industry practices in connection with preemption of children's programming. In addition, the Commission staff is currently preparing an analysis based on the data reflected in reports filed over the past three years. In adopting the children's programming rules, the Commission stated it would monitor the broadcast industry's children's educational programming performance for three years based upon the Children's Television Programming Reports filed with the Commission, and would review the reports at the end of the three-year period and take appropriate action as necessary to ensure that stations are complying with the rules and guidelines.

Quarterly Filing

8. In addition to extending the filing requirement, we will require broadcasters to file their Children's Television Programming Reports with the Commission on a quarterly basis, at the time the reports are prepared, rather than annually. Section 73.3526(e)(11)(iii) currently requires that the report for each calendar quarter be filed in the station's public inspection file by the tenth day of the succeeding calendar quarter. Beginning January 10, 2001, we will require that reports for each quarter be filed electronically with the Commission by the same date the report is due to be placed in the station's public inspection file.

9. We agree with CME et al. that quarterly filing with the Commission will provide the public and the Commission with more current information on the educational and informational programming offered by broadcasters to meet their obligation under the CTA and our rules. Among other things, the reports include information on the core educational and informational programs the licensee

plans to air during the next calendar quarter. The purpose of requiring licensees to report this information is to permit parents, teachers, and others to better anticipate and plan for the viewing of educational programs by children. Facilitating timely public access to the station's schedule of core educational and informational programs for the succeeding calendar quarter will permit parents and others to use this information more effectively to plan their children's television viewing. CME et al. suggests that quarterly filings will be more helpful to parents, and argues that they will also allow researchers to report more timely on programming trends for the annual television season, which could influence programming for the subsequent television season.

10. NAB opposes a quarterly filing requirement, arguing that licensees appear to be complying with the children's television programming rules and that there is no demonstrated need for increased reporting requirements. While we agree that the reports filed since our revised children's television programming rules became effective indicate that virtually all licensees claim to be airing at least 3 hours per week of programming that meets our definition of programming "specifically designed" to meet the educational and informational needs of children, we believe that improving public access to the information contained in the reports will assist parents and others interested in selecting programs for children to watch. As noted, assisting parents in choosing educational programming for their children may possibly increase the commercial success of such programming and thereby prompt broadcasters to increase the amount of educational and informational broadcast television programming available to children—one of the underlying goals of our children's programming public information initiatives. More timely information will also assist those interested in monitoring station performance under our rules, thus assisting the Commission in its enforcement role.

11. As reports must now be prepared and placed in the station's public inspection file on a quarterly basis, we continue to believe that requiring these quarterly reports to be transmitted electronically to the Commission on a quarterly basis, rather than once a year, will not impose a significant additional burden on licensees. In this regard, we note that more than seventy percent of licensees already voluntarily file their reports quarterly. Reports are currently required to be filed electronically with the Commission, and the Commission makes an electronic version of a blank FCC Form 398 available on its website to be used by licensees to prepare their quarterly submissions. As CME et al. suggests, transmitting the reports to the Commission quarterly rather than annually should require very little additional time and effort on the part of licensees. In view of the benefits of quarterly filing with the FCC and the minimal additional burden this will impose on licensees, we believe that quarterly filing is warranted.

Changes to FCC Form

12. CME et al. suggested that FCC Form 398 be revised to provide more information regarding (1) why a broadcaster has preempted a children's educational program, (2) which program guide publishers are not printing the programming information provided by local broadcasters, and (3) what efforts broadcasters are making to publicize the existence and location of their Reports (question 8). CME et al. also suggests that broadcasters be required to post their reports on their website, that the FCC's own children's television webpage be made more user-friendly, and that Form 398 be revised to reflect the station's license renewal date.

Preemption Report

13. The Commission required that programming must be "regularly scheduled" to qualify under the three-hour guideline. This requirement was based on the fact that programming that is aired on a regular basis is more easily anticipated and located by viewers, and therefore more likely to be seen by its intended audience. Although acknowledging that preemption might occur, the Commission expected that preemption of core programming would be rare. The Mass Media Bureau staff has recently reviewed a random sample of the Children's Television Programming Reports, and determined that the average preemption rate by stations affiliated with the largest networks during the past two years is nearly 10%, and has been as high as 25% during a quarter when a large number of sports programming commitments. Given this level of preemption, and the difficulty that some members of the public and the Commission staff have experienced in interpreting the information set forth in Form 398, we wish to gather more information about the circumstances of preemption to ensure that our preemption policy does not thwart the CTA.

14. To make the information in the Children's Television Programming Reports clearer and to improve public access to information about educational and informational programming and licensee compliance with the CTA and our rules, we will make a few revisions to FCC Form 398. Currently, question 5 of FCC Form 398 requires broadcasters to list, among other information, the title of each core educational and informational program aired by the station during the past calendar quarter, the days and times the program is regularly scheduled, the total times the program aired, the number of preemptions and, if the program was preempted and rescheduled, the date and time the program was aired. From the way this question is currently worded and formatted, it is difficult to determine from the responses to this question exactly how many times each core program was preempted during the calendar quarter, whether the preempted episode was eventually aired and, if so, when the program was aired. In addition, as CME suggests, it would be useful to know the reason for each preemption. Although we encourage stations to reschedule core programming preempted for breaking news, even if programs preempted for breaking news are not rescheduled they can count toward the three-hour-per-week core programming guideline. We cannot currently determine whether a program was preempted for breaking news or another reason, and thus whether the program must have been rescheduled and aired in order to count toward the three-hour guideline. Finally, we would also like to know if licensees made efforts to notify viewers and publishers of program guides of the date and time their rescheduled programs would air. To address these issues, we will revise question 5 of FCC Form 398 to gather more information about preempted core programs during the quarter and add as an addendum to the form a "Preemption Report" to be completed for each preempted core program during the quarter. The Preemption Report will request information on the date of each preemption, if the program was rescheduled the date and time the program was aired, and the reason for the preemption (e.g., we will ask the licensee to pick a reason from among several options, including breaking news). We will also ask licensees to indicate whether promotional efforts were made to notify the public of the time and date the rescheduled program would air. This data will provide more complete information regarding the level of preemption of core programs and station practices in rescheduling such programs. This information will in turn allow the FCC and interested

members of the public to continue to monitor the impact of preemptions generally on the availability of core programs.

Program Guide Information

15. We will also revise question 4 of FCC Form 398 in order to collect more extensive data about the information furnished by licensees to publishers of program guides regarding core programming aired by the station. Section 73.673(b) of our rules requires commercial television station licensees to provide information identifying core programming, and the age group for which the program is intended, to publishers of program guides. In adopting this requirement, we noted that program guides are an effective means of providing parents with advance notice of scheduling of educational programs, and that such information can assist both parents in finding suitable programs for their children and others who wish to monitor station performance in complying with the CTA. While we noted that we cannot require guides to print this information, we stated that the information is more likely to be included in program listings if broadcasters routinely provide it.

16. Question 4 as currently written asks whether licensees have provided information to publishers of program guides as required by our rules, with the licensee indicating "yes" or "no." We will revise this question to ask licensees to identify by name the program guides to which information was provided, but decline to require broadcasters to indicate in their reports whether the program guides to which the information was provided actually published this information. Our purpose in making this change is twofold. First, we agree with CME et al. that requiring broadcasters to list the publishers to whom information was submitted will provide parents, the public and the Commission useful data by which to judge a broadcasters good-faith efforts to comply with our goal of facilitating public access to information about educational programming. Second, and perhaps more important, requiring broadcasters to provide this information will help in identifying those publishers that decline to include information about educational programming in their program guides. Studies examining the impact of the children's programming rules have concluded that many parents still do not know which programs carry educational labels, and that the widespread failure of program guides to include information identifying core educational programming contributes to this problem. It does not appear that any newspapers or program guides routinely include in their television listings the symbols identifying core programs. Requiring stations to identify publishers to which information about core programs is being provided will allow parents and others to encourage other program guide publishers to include this information in their TV listings. As broadcasters are already required by our rules to provide information to program guide publishers, it should not be difficult for broadcasters simply to identify those publishers on their quarterly programming reports. We disagree with CME et al., however, that broadcasters should be required to indicate in their reports whether the program guides to which information was provided actually published this information. As NAB argues, tracking what was actually published could impose a significant burden on broadcasters. Once publishers that have been provided with information are identified by licensees in their reports, interested members of the public can monitor those publications and urge them to include educational children's program identifiers.

License Renewal Date

17. Finally, as CME et al. suggests, we will also add a question to FCC Form 398 requiring the station to indicate its license renewal date. This information is readily available to broadcasters and easy to provide, and will be useful to members of the public interested in monitoring station compliance.

Revised Form 398

18. We will amend § 73.3526 of the Commission's rules as set forth in FCC Form 398, Children's Television Programming Report, to reflect the changes discussed. We direct the Mass Media Bureau to revise FCC Form 398 accordingly and submit it to OMB for approval.

Final Regulatory Flexibility Analysis

19. The *R&O* amends § 73.3526(e)(11)(iii) of the Commission's rules to continue indefinitely the requirement that commercial broadcast television licensees file with the Commission, on an annual basis, their quarterly Children's Television Programming Reports (FCC Form 398). The Commission's rules currently state that such reports shall be filed on an annual basis for an experimental period of three years, from January 1998 through January 2000. Continuation of the filing requirement will permit the Commission to continue to enforce the Children's Television Act of 1990 ("CTA"), and its rules implementing the CTA, by monitoring the amount and quality of educational television programming for children and industry compliance with the Commission's children's educational programming requirements. The *R&O* also requires that the reports be filed with the Commission quarterly, at the time they are prepared, instead of annually, which will make available to the public more timely information about the educational and informational programming aired by the licensee during the preceding calendar quarter and planned to be aired during the succeeding quarter. Finally, the *R&O* also makes a number of revisions to FCC Form 398 to make the information in the reports clearer and more useful to the Commission and the public. Specifically, the *R&O* adds a "Preemption Report" to FCC Form 398 to be completed for each preempted core program during the quarter requesting information on the date of each preemption, if the program was rescheduled the date and time the program was aired, and the reason for the preemption. The revised form also asks whether promotional efforts were made to notify the public of the time and date the rescheduled program would air, and requires licensees to identify the program guide publishers provided information about the licensee's core educational programming. Finally, licensees must indicate on the revised form the station's next license renewal date. These measures are designed to permit us to continue to enforce the CTA and our rules implementing that statute, and to improve public access to information about licensee compliance with their obligations to provide educational and informational programming for children.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Apply

20. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

21. *Small TV Broadcast Stations.* The SBA defines small television

broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. BIA Research Inc. reports that 784 out of 1221 commercial television stations (64%) have annual revenues less than $10.5 million. Thus, we estimate that 784 or fewer commercial TV broadcast stations are small businesses, as defined by the SBA.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

22. *The R&O* continues the requirement that commercial broadcast television stations file with the FCC a copy of their quarterly Children's Television Programming Reports on FCC Form 398. In addition, the *R&O* requires that these reports be filed on a quarterly basis, as they are prepared, rather than annually. Finally, the *R&O* makes a number of changes in FCC Form 398 to make the information in the reports clearer and more useful to the FCC and the public. Specifically, the *R&O* adds a "Preemption Report" to FCC Form 398 to be completed for each preempted core program during the quarter requesting information on the date of each preemption, if the program was rescheduled the date and time the program was aired, and the reason for the preemption. The revised form also asks whether promotional efforts were made to notify the public of the time and date the rescheduled program would air, and requires licensees to identify the program guide publishers provided information about the licensee's core educational programming. Finally, licensees must indicate on the revised form the station's next license renewal date.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

23. The *R&O* requires licensees to identify in their Children's Television Programming Reports the program guide publishers to whom information regarding the licensee's educational and informational children's programming was provided. Although commenters also advocated that licensees be required to state whether this information was actually published, the *R&O* declines to impose this additional obligation on licensees because we believe that this might have constituted a significant economic impact without an adequate resulting benefit. In addition, although commenters proposed requiring that licensees be required to identify in their reports the precise efforts made to publicize the existence and location of the reports as required by 47 CFR 73.3526(e)(11)(iii), this proposal was not adopted in the *R&O*.

Report to Congress

24. The Commission will send a copy of the *R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *R&O*, including the certification and FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O*, certification, and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b) and 605(b).

Ordering Clauses

25. Pursuant to authority contained in sections 4(i), 303, and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 308, and the Children's Television Act of 1990, 47 U.S.C. 303a, 303b, part 73 of the Commission's rules, 47 CFR part 73, is amended as set forth.

26. Pursuant to the Congressional Review Act, 5 U.S.C. 801, *et seq.*, the amendments set forth shall be effective January 1, 2001. Children's Television Programming Reports for the fourth quarter of 2000, due to be filed with the Commission by January 10, 2001, should be completed using the current FCC Form 398. The Commission will revise its electronic version of FCC Form 398 to reflect the changes adopted herein. Reports for the first quarter of 2001, due to be filed by April 10, 2001, should be completed using the revised form.

27. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *R&O*, including the Initial and Final Regulatory Flexibility Act Analyses, to the Chief Counsel for the Small Business Administration.

28. Pursuant to 47 U.S.C. 155(c), the Chief, Mass Media Bureau, is *granted delegated authority* to implement the changes to Form 398 adopted in this *R&O*.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rules

Part 73 of title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.3526 is amended by revising paragraph (e)(11)(iii) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e) * * *

(11) * * *

(iii) *Children's television programming reports.* For commercial TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter is also to be filed electronically with the FCC. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. The Report shall also identify the program guide publishers to which information regarding the licensee's educational and informational programming was provided as required in § 73.673(b), as well as the station's license renewal date. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicize in an appropriate manner the existence and location of these Reports.

[FR Doc. 00–28612 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 99–25; FCC 00–349]

Creation of Low Power Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document the Commission affirmed most of the *Report and Order* creating a new low power FM radio service. It affirmed the LP100 and LP10 classes created in the Report & Order and the 3rd adjacent channel protection for most stations. The Commission did change certain aspects of the rules created by the *Report & Order*, however, it created a procedure to resolve complaints from listeners of full power radio stations claiming unexpected interference from LPFM stations. The complaint procedures are intended to ensure that if any unexpected, significant 3rd adjacent channel interference problems are caused by the operation of a particular LPFM station, they can be resolved expeditiously. The Commission also preserved existing protection for those stations providing radio reading services for blind or low vision listeners. The Commission made other minor changes to ownership rules involving public safety and transportation organizations and schools.

EFFECTIVE DATE: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Julie Barrie, (202) 418–2130, Policy and Rules Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order on Reconsideration* ("*MO&O*"), MM 99–25; FCC 00–349, adopted September 20, 2000; released September 28, 2000. The full text of the Commission's *MO&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW-A306), 445 12 St. S.W., Washington, D.C. The complete text of this *MO&O* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Memorandum Opinion and Order

I. Background

1. In January, we adopted a *Report and Order* ("*R&O*"), 65 FR 7616 (February 15, 2000), establishing a low power FM radio service. We authorized this new service to provide opportunities for new voices to be heard, while at the same time preserving the integrity and technical excellence of existing FM radio service and safeguarding its transition to a digital transmission mode. In this *MO&O*, we dispose of petitions for reconsideration of the *R&O*, make certain changes to our rules, and provide certain clarifications of our rules.

2. In the *R&O*, the Commission authorized two new classes of FM radio service, known collectively as low power FM (LPFM). The LP100 class will consist of stations with a maximum power of 100 watts effective radiated power (ERP) at 30 meters antenna height above average terrain (HAAT), providing a signal level equivalent to the FM "protected" service (1 mV/m or 60 dBu) within a radius of approximately 3.5 miles. After a period of time sufficient to act on LP100 applications that are filed, the Mass Media Bureau will accept applications for LP10 stations. We are accepting applications for LP100 stations on a geographically staggered basis. *See* filing window schedule. The initial filing window for the first region closed June 8, 2000. The initial filing window for the fifth, and last, region is expected to be opened in May 2001. These stations will have a maximum power of 10 watts ERP at 30 meters HAAT, providing the same signal strength out to approximately 1 or 2 miles from the station's antenna. To avoid compromising existing FM radio service, given the new nature of the LPFM service, we imposed separation requirements for LPFM with respect to full power stations operating on co-, 1st—and 2nd—adjacent and intermediate frequency (IF) channels. Based on our engineers' technical analysis and careful review of other analyses submitted, we determined that 100-watt LPFM stations operating without 3rd adjacent channel separation requirements will not result in unacceptable new interference to the service of existing FM stations. We decided, therefore, not to impose 3rd adjacent channel separation requirements because doing so would unnecessarily and substantially restrict the number of LPFM stations that could be authorized, particularly in higher population areas.

3. We restricted LPFM service to noncommercial operations by noncommercial educational entities and public safety radio services. With certain narrow exceptions, we decided to restrict ownership to entities that have no attributable interest in any other broadcast station or other media subject to our ownership rules. We severely restricted the number of LPFM stations that a single entity can own and limited ownership to locally-based entities for the first two years. We determined not to permit the sale of an LPFM station. To resolve mutually exclusive applications, we decided to use a point system that favors local ownership and locally-originated programming, with time-sharing and successive license terms as tie-breakers. Finally, we have minimized the regulatory burdens imposed on these stations, consistent with their size and very localized operation.

4. In this *MO&O*, we generally affirm the decisions we reached in the *R&O*, although we make some changes and clarify certain aspects of our rules. As explained, we reject arguments by petitioners proposing more stringent channel separation requirements, as well as arguments in favor of relaxing those requirements. We adopt complaint and license modification procedures to ensure that if any unexpected, significant 3rd adjacent channel interference problems are caused by the operation of a particular LPFM station, it can be resolved expeditiously. We decline to modify the permissible power levels for the service. We modify the spacing standards adopted in the *R&O* to require that LPFM stations operating on 3rd adjacent channels protect stations operating radio reading services and, pending further study, will not authorize an LPFM station that would not be sufficiently geographically separated from any full-service FM station on a 3rd adjacent channel that operates a radio reading service as of the date of the adoption of this *MO&O*. We also decline to alter the noncommercial nature of the service. We affirm our decision to apply our character qualifications policy with respect to former illegal broadcasters. We increase the flexibility of the ownership rules for certain specific types of applicants: government, transportation and public safety entities, and universities. We provide clarifications on eligibility issues concerning Indian tribes, student stations, licensees in the Instructional Television Fixed Service (ITFS), and schools with multiple campuses. We affirm our tie-breaker criteria, with certain clarifications regarding the credit for programming that is locally originated. Finally, we address a number of questions and suggestions regarding individual elements of our rules.

II. Issue Analysis

A. Technical Rules

1. Second and Third Adjacent Channel Protection

5. In the *R&O*, we determined that it was not necessary to require that LPFM stations protect other full or low power FM stations operating on 3rd adjacent channels, *i.e.*, stations +/ −600 KHz apart. Our decision on this issue was based on our finding that 100-watt LPFM stations operating on 3rd adjacent channels will not result in significant new interference to the service of existing FM stations. We concluded that any small amount of interference that may occur in individual cases would be outweighed by the benefits of new low power FM service. We also determined that the risk of interference from LPFM stations on 2nd adjacent channels may be somewhat higher than that from such operations on 3rd adjacent channels and therefore chose to retain 2nd adjacent channel protection requirements for LPFM stations.

6. These decisions were based on the substantial record of information and analyses on FM receiver performance characteristics that was developed in response to the *Notice of Proposed Rulemaking*, (*"NPRM"*), 64 FR 07577 (February 16, 1999). The record included three technical studies of FM receivers that were filed by commenting parties.

7. *3rd Adjacent Channel Protection*. NPR disagrees with our findings that any risk of interference from 100-watt LPFM stations operating on 3rd adjacent channels is small and that any such interference that does occur is, on balance, outweighed by the benefits of the new service. It argues that neither of these premises, nor our decision to reduce the existing FM interference protections, are supported by the record.

8. *Radio Reading Services*. In its petition, NPR requests that we provide additional interference protection for FM stations that operate radio reading services. Radio reading services, which provide access to printed news and other information sources for blind or print-disabled persons, are transmitted via FM station subcarrier (SCA) facilities.

9. *2nd Adjacent Channel Operation*. J. Rodger Skinner and UCC request that we reconsider our decision to apply 2nd adjacent channel protection requirements to LPFM stations and revise the rules to allow operation of LPFM stations without regard to 2nd adjacent channel separation. Skinner submits that our recent receiver tests, and the fact that no interference has been reported during the many years when short-spaced grandfathered full service stations were allowed to relocate without regard to 2nd or 3rd adjacent channel restrictions, are indicative that low power stations could operate on such channels without causing interference.

10. The existing FM interference protections, which are provided through spacing standards, are based on the following ratios: 20 dB co-channel D/U; 6 dB 1st adjacent channel D/U; −40 dB 2nd adjacent channel D/U for commercial FM stations and −20dB for noncommercial stations operating in the reserved FM band; −40 dB 3rd adjacent channel D/U. Receivers with the ability to reject interference at these ratios could be expected to provide interference free service within a station's 60 dBu contour service area. (Such radios might not, however, be able to receive service at all locations within that contour if they did not have sufficient sensitivity to receive signals at the 60 dBu level even in the absence of any interference.) Receivers with lower capabilities might experience interference within a station's service area, while those with higher capabilities might be able to reject interference at greater distances.

11. We believe that the principal issue is receiver performance, *i.e.* the ability of modern FM radios to reject unwanted 3rd adjacent channel signals. Laboratory tests allow examination of individual receiver performance under controlled conditions. This permits precise control of both desired and interfering signals so that the interference performance of individual receivers can be accurately determined. Field testing, on the other hand, is generally used to confirm models or estimates of how both desired and interfering signals propagate to individual locations. For example, in the case of FM radio, estimates of desired field strength are based on the F(50, 50) field strength chart contained in 47 CFR 73.333, while estimates of interference are based on the F(50, 10) field strength chart in that Section. These charts shows the distances from their respective transmitters at which the desired signal strength is predicted to exceed a given level at 50 percent of the locations 50 percent of the time and at which the interfering signal strength is predicted to exceed a given level at 50 percent of the locations 10 percent of the time. In simple terms, this approach assumes that the desired signal is at an average level while the interfering signal is at a much stronger level, *i.e.*, a "worse case" interference situation. These propagation and interference models have been used for many years for the FM radio and other services, and are independent of receiver performance. No questions have been raised by any of the parties in this proceeding regarding the propagation and interference models used for FM radio. Further, it is unclear as to what additional information, if any, field tests, would reveal about receiver performance, which is the principal technical issue in this matter affecting 3rd adjacent channel interference. Field test data, in our opinion, would merely assess the accuracy of our propagation predictions, rather than reveal information on receiver performance.

12. Stations on noncommercial reserved FM channels (channels 201–220, in the band 88–92 MHz) are authorized based on contour overlap, rather than the minimum spacing standards used for commercial stations. The contour overlap standards for noncommercial stations are the same as the D/U ratios on which the spacing standards for commercial stations are based, with one exception. The exception is that the D/U ratio for 2nd adjacent channel protection for noncommercial stations is −20 dB, whereas the 2nd adjacent channel spacing standard for commercial stations is based on the less stringent D/U ratio of −40 dB.

2 Regulatory Status of LPFM Stations

13. We decided in the *R&O* to require LPFM stations to protect existing full-power FM stations, translator, boosters, and vacant allotments, according to the separation requirements adopted, and not to protect LPFM stations from interference introduced by new or modified FM stations. We also decided that LPFM stations will be required to cease operation if they cause interference within the 3.16 mV/m contour of a subsequently authorized or modified FM station. One of our paramount goals in introducing LPFM service was that it not interfere with existing service. We believe that the rules we adopted strike a reasonable balance between the need to foster new service and our responsibility both to maintain the integrity of existing FM service and to allow for its expansion to better serve the public.

14. *Translators*. FM translator stations may not continue to operate if any interference occurs in areas where a full service FM station has a "regularly used" signal, including locations beyond the full service station's applicable protected contour. However, LPFM stations are only required to protect subsequently authorized full service FM stations if interference is created within the full service station's

70 dBu principal community contour. The Commission's decision permitting LPFM stations to continue operation if overlap occurs in an FM station's service area outside its 70 dBu contour was an attempt to balance the service needs of full service stations with the need for stability in the LPFM service. FM translators provide full service FM stations with a means of supplementing signal coverage made deficient due to terrain or other transmission issues, while LPFM stations will provide a new program origination service. Given the differing purposes of the LPFM and FM translator services we do not feel that it is necessary for both services to have identical interference protection requirements.

3. Modulation

15. In order to minimize the potential for interference from LPFM stations, the Commission concluded that LPFM stations would be required to meet current FM transmission standards. Additionally, in order to ensure that these standards are met, the *R&O* restricted LPFM stations to the use of FCC "type certified" transmitters.

16. In most cases, these standards will be met through the use of certified equipment without need for further adjustment by the LPFM licensee. LPFM stations will be required to adhere to the 200 kHz channel bandwidth applicable to full service stations, as well as the out-of-channel signal attenuation requirements in 47 CFR 73.317 [via reference in § 73.508], the center frequency drift limits in 47 CFR 73.1545(b), and the limits on modulation in 47 CFR 73.1570 (a) and (b)." In this regard, we note that one of the rules modified in the *R&O*, inadvertently specified verification rather than certification procedures for LPFM stations. We are correcting the rules accordingly to correspond to our decisions in the *R&O*.

4. Cut-Off Date for Protection of Full Service Stations

17. The *R&O* adopted a nationwide filing window for LP100 applications and tentatively set the first window for May, 2000. The Commission directed the Mass Media Bureau to announce by Public Notice, (DA 00–621, released March 17, 2000) the opening of the first national window and to release this notice at least 30 days in advance. Subsequently, the Mass Media Bureau decided to accept LPFM applications in five separate filing windows to "ensure the expeditious implementation of the LPFM service and to promote the efficient use of Commission resources." The *R&O* also established protection rights for both full service and low power stations. LPFM applications must protect all full service FM station applications on file as of the date of the public notice in accordance with the minimum distance separation requirements adopted in the *R&O*. Full service FM applications filed on or after the public notice date would be protected only to the extent that the applicant's 3.16 mV/m contour is affected by an LPFM facility.

18. In light of our decision to use multiple filing windows to implement the LPFM service, we clarify our LPFM cut-off rules. We will use the release date of each public notice announcing the opening of the next LP100 window as the "cut-off" date for protection of pending full service FM applications. Thus, LPFM applicants in subsequent filing windows will be required to protect all full service applications on file as of the date of the public notice for their particular window. This includes applications that may not have been protected in previous windows.

5. Protection of Cable Television Headend

19. In the *R&O*, the Commission made LPFM stations subject to the existing full service station requirements regarding the amelioration of blanketing interference. Cable headends are among the facilities covered by this rule.

6. Translators

20. As part of its overall plan to protect FM stations from interference, the Commission adopted FM translator/booster-LPFM station minimum distance separation requirements. Because FM translator and booster stations generally do not have specific class limitations, the separation requirements were determined by analyzing the 60 dBu contours of authorized stations and grouping them into three cohorts based on station power and height. Additionally, we also amended part 74 rules to require that FM translator and booster stations protect the 1 mV/m contour of LP100 stations.

21. *Protection of Class A TV, Low Power Television and Television Translator Stations Operating on TV Channel 6*. In order to protect TV Channel 6 stations from LPFM station interference, we adopted a rule (47 CFR 73.825) requiring LPFM stations proposing operation in the NCE portion of the FM Band (Channels 201–220) to meet minimum distance separation requirements with respect to TV Channel 6 stations. Section 73.825 does not specifically address Class A TV, low power television (LPTV) and television translator stations operating on TV Channel 6. Accordingly, we will amend § 73.825 to include additional minimum distance separation requirements which we believe will be adequate to protect the service provided by the Class A TV, LPTV and television translator facilities.

7. Spacing Table

22. An anomaly in the minimum distance separation requirements of 47 CFR 73.807(g) has come to our attention. Specifically, the tables specify greater 2nd adjacent channel spacing requirements to Canadian stations from LP10 stations than from LP100 stations. When considering low-powered facilities at very high signal strengths, the Commission's F(50,50) curves often must be used instead of its F(50,10) curves. However, in some cases the staff must utilize the "free space equation" formula to determine contour distances. "In those cases where the distance calculated from the free space equation is greater than 5280 feet [one mile], but the F(50,50) curves show a distance of less than one mile, we use a distance of one mile." Although the staff properly used the treaty-required +20 dBu undesired-to-desired signal radio to determine 2nd adjacent channel interfering contours near the Canadian border area, the staff failed to account for the fact that, in cases where the free space equation yields a result greater than 1.6 kilometers (one mile), 1.6 kilometers must be used as the contour distance. We have recalculated the minimum separation distances for 2nd adjacent channel LP10 stations near the Canadian border and are amending § 73.807 accordingly. For the same reason, we are also amending the IF frequency separation requirements for Class LP100 stations with respect to Class A and Class D stations, and Class B stations in Puerto Rico and the U.S. Virgin Islands.

23. In addition to the anomaly in 47 CFR 73.807(g), we have determined that low power FM stations within Canada and Mexico had not been specifically protected from new domestic LPFM stations in the *R&O*. While these stations are protected by treaty, the *R&O* failed to include spacing tables explicitly protecting Canadian and Mexican low power FM Stations. To eliminate any uncertainty with respect to Canadian and Mexican stations, we are supplementing the international spacing tables specified in 47 CFR 73.807 to include specific distance separation requirements. To determine the spacings, we took the maximum facilities allowed for Canadian and Mexican FM translator stations, calculated the distance to the F(50,50)

protected contour, and added the distance to the F(50,10) interfering curve from the domestic LPFM station required to protect those stations. In doing so, we determined that Canadian low power FM stations should receive the same protections provided to Canadian Class A1 facilities. Therefore, the Class A1 spacings in 47 CFR 73.807(g)(1) and (g)(3) will also be used for protecting Canadian low power FM Stations. However, due to the differences in treaty requirements, Mexican low power FM stations require unique spacing distances, and 47 CFR 73.807(g)(2) and 73.807(g)(4) are amended accordingly.

8. Directional Antennas

24. In the *R&O*, we determined not to authorize directional antennas for LPFM stations. We concluded that directional antennas are unnecessary due to our reliance on a minimum distance separation methodology for interference protection, which assumes the use of a non-directional antenna. We also reasoned that authorizing only nondirectional antennas would simplify the preparation and processing of applications, thereby facilitating the expeditious implementation of the service.

25. As we stated in the *R&O*, there are compelling needs for the services that will be provided by LPFM stations. As part of a streamlined application process to expedite the authorization and implementation of the service, we prohibited the use of directional antennas by LPFM stations. We continue to believe that given the low power levels in the LPFM service, authorizing stations to limit power in particular directions would not generally yield benefits sufficient to offset our concerns about the complexities of directional antenna authorizations. Authorization of directional antennas entails the submission and staff evaluation of radiation patterns and related information. Applicants for directional FM station licenses are required to submit measurement data to verify the radiation characteristics of directional antennas, as installed. Station proposals involving non-directional antennas can be authorized more quickly and with much less information from applicants. Such antennas will also facilitate uniform signal coverage within an LPFM station's service contour. Moreover, the conservative distance separation requirements established for LPFM stations will ensure that other stations are adequately protected against interference without the use of directional antennas. For these reasons, we generally affirm our determination not to authorize directional antennas for LPFM stations.

26. As noted by the petitioners, however, we recognize that there could be tangible benefits to allowing the use of directional antennas, particularly for licensees whose service is generally tailored to directional signal paths.

27. We will make a limited exception to the prohibition of LPFM directional antennas and permit such antennas to be used only by public safety and transportation entities in connection with the operation of TIS services. However, under no circumstances will a specific antenna pattern be considered when determining compliance with our LPFM interference requirements with respect to other stations. Thus, we affirm that all such applicants must propose LPFM locations that comply with the LPFM distance separation requirements; requirements which assume use of a nondirectional antenna. Additionally, the use of a directional antenna will not affect a licensee's obligation to operate at its authorized ERP and will therefore not result in any extension of predicted coverage. Use of a high gain directional antenna will require a corresponding transmitter output power and transmission line loss that produces the authorized ERP.

28. TIS applicants wishing to utilize directional antennas will be limited to the use of a single "off-the-shelf" antenna with pattern characteristics pre-set by the manufacturer. A composite antenna consisting of more than one antenna mounted together may not be utilized. Nor will we permit multiple directional antennas and transmitters to be used from a single licensed facility. When filing an application for license to cover a construction permit (FCC Form 319), permittees will be required to certify that the gain of the specified antenna and transmitter power output (TPO), coupled with the necessary transmission line, produces the licensed ERP. For the purposes of station authorizations and our engineering database, all LPFM stations, including those of TIS stations, will be considered "non-directional." Thus, we will not require applicants for station licenses to submit any data beyond antenna make and model. We will expect all licensees to install their antennas in accordance with the manufacturer's specifications.

8. Service Area Issues

29. In order to avoid the creation of interference to existing FM broadcast stations, the *R&O* adopted minimum distance separation requirements that were premised on the lack of prohibited overlap to each station class' maximum protected contour. In addition, in an effort to account for modifications to existing full service stations, and minimize interference, an additional 20 kilometer "buffer" was added to the co- and 1st adjacent channel separation requirements. Greater protection still was given to several superpowered stations operating within the reserved portion of the FM band. Finally, although a full service station proposing a facility modification could potentially be required to accept some interference from an operating LPFM station, the rules require that LPFM stations fully protect FM station modifications to their principal community (70 dBu) contours.

30. We wish to clarify 47 CFR 73.809 as it relates to determining interference caused by LPFM stations to full service stations operating on IF frequency channels. That section states that interference will be shown by demonstrating contour overlap based upon the interference ratios of 47 CFR 73.215. However, § 73.215 does not apply to IF frequency channel stations. Accordingly, we are amending § 73.809 to state that IF frequency channel interference will be determined via overlap of the 91 dBu F(50,50) (36 mV/m) contours. This contour was utilized to calculate the LPFM IF frequency channel spacing requirements.

31. All full service stations operating in the non-reserved band, regardless of facilities, must be protected under the provisions of 47 CFR 73.207 (distance separations based upon maximum class facilities) or § 73.215 (lesser separation requirements based upon the lack of contour overlap with maximum class facilities).

9. Digital Audio Broadcasting

32. The Commission's decision to retain 2nd adjacent channel LPFM protection requirements but eliminate 3rd adjacent channel standards was designed, in part, to ensure that the introduction of the LPFM service did not impede the development of in-band on-channel (IBOC) digital audio broadcasting (DAB) technologies.

B. Third Adjacent Channel Complaint and License Modification Procedure

33. Based on the Commission's technical analyses and its review of several independent studies submitted in this proceeding we decided not to require LPFM stations to provide 3rd adjacent channel protection to full power stations. As discussed above, no issues have been raised on reconsideration that have persuaded us to reconsider our findings and conclusions on this matter. We continue to believe that the risk of interference

from LPFM stations is small, and that the interference that may occur in individual cases would be vastly outweighed by the benefits of initiating a new service that will create new outlets for locally based community-oriented voices.

34. We concluded in the *R&O* that the licensing of LPFM stations on 3rd adjacent channels would not result in significant new interference to existing FM stations, *i.e.* that very few listeners would be able to detect additional interference as a result of commencement of LPFM service on a 3rd adjacent channel. Although we expect it to be the rare case where an LPFM station operating on a 3rd adjacent channel causes more than a *de minimis* level of interference within the service area of a full power station protected by the distance separation requirements for other channel relationships, such a result would be unacceptable if it were to occur. Accordingly, we conclude on reconsideration that it would be prudent to establish procedures that would encourage cooperation between the parties and permit the Commission to take prompt remedial action where a significant level of interference can be traced to the commencement of broadcasts by a new LPFM station. As a result of these new procedures, there may be circumstances where, contrary to what we said in the *R&O*, an LPFM station will be required to take steps to resolve complaints that its signal is interfering with the reception of a full power FM station even though the LPFM station is operating in accordance with the relevant rules.

35. This marks the first time that the Commission has departed from a purely "predicted interference" approach for an aural service that has program origination authority and that enjoys certain protections generally thought of as "primary" stations rights. Our willingness to do so is based on a unique combination of factors. Most importantly, we are confident about the technical conclusions we have reached in the proceeding. Specifically, we continue to believe that it is unlikely that more than a few listeners will detect any additional interference to the reception of an existing FM station at locations that would be entitled to protection under our full power third adjacent channel interference methodology. Thus, the post-construction "actual interference" complaint procedure we are establishing should not pose a significant threat to the viability or stability of the LPFM service.

36. Moreover, an efficient complaint procedure will promote the fullest interference-free use of the FM broadcast spectrum. At this time there are few, if any, full power FM station opportunities in most of the highly populated areas of the country. In fact, staff studies in this proceeding establish that there are no available FM channels for LP100 stations in a number of major markets. In many communities broadcasters have fully taken advantage of the Commission's policy of licensing efficient high-power stations that serve wide areas with limited technical preclusiveness. As a result, most Americans enjoy abundant radio service. LPFM is not, as some argue, in conflict with these principles. Rather it is a complementary way to serve the needs of communities within a mature broadcast service. It is grounded on the success of the Commission's licensing policies and is designed to efficiently match the little spectrum that remains with the demonstrable demand for locally based programming. We conclude that an efficient, limited complaint procedure fairly balances the interests of incumbent broadcasters against the benefits of fostering a new and different kind of radio service.

37. For purposes of the complaint process we will consider interference to occur whenever reception of a full power station is impaired by the operation of an LPFM station operating on a third adjacent channel station. We believe that it is unnecessary to adopt a more technically objective standard for determining whether a listener is experiencing "actual" interference. The "any impairment" standard has worked successfully over the past decade in the FM translator context. A particular listener's perception of signal impairment is dependent on many factors, including the receiver used, the programming, listener sound quality expectations, and listener auditory discrimination capabilities. As a result, we are reluctant to adopt a single "objectionable interference" standard. We are also concerned that this approach could add a level of factual complexity to the complaint process set forth below without any clear public interest justification.

38. The complaint process may be invoked where an LPFM station's transmission facilities are located inside the predicted 60 dBu contour of an existing full power FM station operating on a 3rd adjacent channel; that is, the 60 dBu contour corresponding to the station facilities that existed at the time construction of the LPFM station was authorized. That contour, which encompasses the area that would have been protected had a 3rd adjacent channel distance separation requirement been applied to LPFM stations, will bound the complaint area. With regard to LPFM protection of subsequently modified, upgraded, or new full-service FM stations, we will conform 3rd adjacent channel protection responsibilities to the generally applicable provisions in paragraph 66 of the *R&O* and as codified in 47 CFR 73.809. In this manner, operating LPFM stations will be permitted to interfere within the 60 dBu contour of a new or subsequently modified FM station, but not within such a station's 70 dBu "city grade" signal contour or principal community of license, as applicable (*see* discussion of service area issues). Complaints will be limited to receivers located at fixed, identifiable locations within the full power station's 60 dBu contour that are not more than one kilometer from the LPFM transmitter site. This geographic limitation is intended to address broadcasters' specific concern about the lack of LPFM station 3rd adjacent channel interference protection requirements. An LPFM station's interfering contour would extend slightly less than one kilometer from the LPFM transmitter site. Under the Commission's interference methodology for FM stations, 3rd adjacent channel interference is predicted where the undesired signal is more than 40 dB stronger than the desired signal level, *e.g.*, where the 3rd adjacent channel station's 100 dBu contour overlaps the desired signal level. The predicted 100 dBu contour of an LPFM station operating at maximum facilities would extend slightly less than one kilometer from the LPFM's transmitter site. The fixed receiver requirement is based on our desire to put in place a manageable and efficient complaint procedure. Mobile receiver complaints are generally much more difficult to identify and resolve. A mobile receiver, such as a car or portable radio, will encounter constantly varying signal strengths from various stations, resulting in a continuously variable potential for interference. The complaint must be received by either the LPFM or full power station within one year of the date on which the LPFM station commenced operation. This time frame is necessary to limit uncertainty regarding the potential modification or cancellation of an LPFM station's license and such station's financial obligation to resolve interference complaints. Any interference caused by the LPFM station should be detectable within one year after it commences

operation. The one-year cure period is similar to the technical requirement that each FM permittee resolve at its sole expense all blanketing interference complaints for a one-year period beginning with the commencement of program tests. The Commission will consider the modification of a station's license, including its cancellation, where as a result of the process described below, *bona fide* complaints from at least one percent of the households or thirty households, whichever is less, within the specified complaint area remain unresolved. The exact number of complaints necessary to satisfy this one-percent threshold can only be calculated on the basis of a specific antenna location of an allegedly interfering LPFM station. Assuming uniform population distribution within a community of license, the number of complaints necessary to reach this threshold would be, for example, approximately 19 in Charlottesville, Virginia, 29 in Minneapolis, Minnesota, and 12 in Frederick, Maryland. As noted, in no event would this procedure require more than 30 *bona fide* complaints. We do not anticipate this level of interference as a result of licensing LPFM stations on 3rd adjacent channels and will not consider it *de minimis*.

39. The first stage of the complaint process is designed to facilitate cooperative efforts between LPFM and full power FM licensees to identify and resolve *bona fide* interference complaints. A listener who believes that an LPFM station signal is interfering with the reception of a full power station may initiate the complaint procedure by providing the full power station an affidavit that describes the nature and location of the alleged interference. LPFM stations receiving complaints directly from listeners will be required to forward promptly such complaints to the affected full power FM stations. The full power FM station will be required to identify those complainants who reside at locations covered by these procedures, and provide copies of all such *bona fide* complaints to the LPFM station. Initially, an LPFM station will have the opportunity to resolve individual interference complaints. For example, an LPFM station may agree to provide new receivers to impacted listeners or to install filters at the receiver site. The LPFM station also may wish to consider a power reduction or other facility modification to alleviate the interference. We expect the LPFM station to make serious and diligent efforts to resolve each *bona fide* complaint received.

40. In the event that the LPFM station concludes that it is not the source of the interference and the number of unresolved complaints equals at least one percent of households or 30 households—whichever is less—in the complaint area, the LPFM and full power stations must cooperate in an "on-off test" to determine whether the interference is traceable to the LPFM station. To the extent necessary and where practical, we instruct our Enforcement Bureau field personnel to assist the parties in determining the source of the interference and identifying possible solutions. The Commission will consider a complaint resolved if the complainant does not reasonably cooperate with the LPFM station's investigatory and remedial efforts. If the licensees fail to reach agreement and the requisite number of complaints remain unresolved, the full power FM station licensee may request that the Commission initiate a proceeding to consider whether the LPFM station's license should be modified or cancelled. To expedite this process, LPFM licenses will include a condition permitting the Commission to modify or cancel such licenses where the Commission determines that the LPFM station is causing more than *de minimis* levels of 3rd adjacent channel interference to the reception of a full power FM station in the complaint area, *i.e.,* where the number of *bona fide* complaints meets or exceeds the one-percent-of-households or thirty-households threshold set forth above. This modification procedure will be conducted pursuant to 47 U.S.C. 316 and any such modification proceeding will be completed within 90 days of the filing of the complaint with the Commission, provided that the parties may seek extensions of this deadline consistent with our procedural rules. An LPFM station may stay this procedure by voluntarily ceasing operations and filing a "displacement" application on Form 318 within twenty days of the commencement of this modification procedure. A displacement application may propose a station relocation and/or channel change to any available channel. It will be treated as a "minor" change that is not subject to competing applications, provided that a requested LP100 station site change is not greater than 2 kilometers or, in the case of an LP10 station, 1 kilometer.

C. Classes of Service

41. The *R&O* established two classes of LPFM stations. LP100 stations will be authorized to operate with maximum facilities of 100 watts effective radiated power (ERP) at 30 meters (100 feet) antenna height above average terrain (HAAT). LP10 stations will be licensed with the equivalent of 10 watts ERP at 30 meters HAAT. The Commission declined to create a 1000 watt class of low power stations because of potential interference concerns, and because it determined that LP100 and LP10 stations would create more opportunities for community-oriented service.

42. Our conclusion that licensing these two classes of service at this time would serve the public interest is warranted by changes in the radio industry. In the past we have struck the balance in favor of licensing higher powered stations to ensure that large audiences were served. Now, when radio service is widely available throughout the country and very little spectrum remains available for new full-powered stations, we conclude that licensing very low powered stations will fill in the gaps in the spectrum that would otherwise go unused. This will maximize the use of the available spectrum, rather than create the inefficiencies we sought to avoid. In the past, we have declined to authorize low power FM radio broadcast stations because of our concern that they would "preclude the establishment of more efficient, stable, full powered stations." At this time, however, we are creating an LPFM service that is designed to allow small stations to operate where full powered stations cannot. Moreover, we have adopted rules to ensure that the operation of LPFM stations does not undermine the technical integrity of the existing FM radio service. Consistent with this approach, we are licensing LP100 stations before LP10 stations. As we stated in the *R&O,* [w]e adopt this sequential process in order to provide the larger (100 watt) stations with their greater service areas the first opportunity to become established. Given that some LP10 stations can be sited where LP100 stations cannot, we expect that opportunities will remain for LP10 stations after the initial demand for LP100 stations has been accommodated. Additionally, our own resources will be better spent *first* advancing services to relatively greater areas." Our decision to begin licensing low power FM radio stations at this time is also in response to the dramatic changes in the radio industry during the last four years since our radio multiple ownership limits were relaxed pursuant to the 1996 Act. Given the substantial consolidation of radio station ownership in recent years, the need for adding

diverse voices to the airwaves has grown. Because we have concluded that taking this step will not undermine our spectrum efficiency goals, we affirm our decision to create these two new classes of FM radio service.

D. Noncommercial Nature of LPFM Service

43. In the *R&O,* we determined that only noncommercial educational entities would be eligible to hold LPFM licenses.

44. Our goals in establishing the LPFM service were to create opportunities for new voices on the airwaves and to allow local groups, including schools, churches, and other community-based organizations, to provide programming responsive to local community needs and interests. As discussed extensively in the *R&O,* although we considered the entrepreneurial opportunities a commercial LPFM service would create, we concluded that a noncommercial service would best serve the Commission's goals in this proceeding.

45. Specific questions were raised as to whether Indian tribes may apply for LPFM stations, or whether only their educational institutions may apply. As long as they meet the NCE criteria and other eligibility rules applicable to all applicants, Indian tribes may apply for LPFM construction permits. We have granted NCE radio station licenses to Indian tribes and to educational institutions operated by Indian tribes and thus, this LPFM eligibility rule follows current policy. We will apply the NCE criteria to Indian tribe applicants—and all applicants—in the same manner in LPFM as we have in the existing FM radio service.

E. Ownership and Eligibility

1. Local Ownership Restrictions

46. In the *R&O* we prohibited common ownership of more than one LPFM station in the same area and cross-ownership of *any* LPFM by any other broadcast station, including translator and low power television stations, as well as other media subject to our ownership rules. As discussed extensively in the *R&O,* we believe that strict ownership rules are an important mechanism for assuring the diversity of ownership that is so critical to this service. We concluded that the interest in bringing new voices to the airwaves would be best served by barring cross-ownership between LPFM licensees and existing broadcast owners and other media entities. We believe that the rules we have adopted for the LPFM service—*including* the strict cross ownership ban—will lead to more access by all segments of the population to the airwaves. We will, therefore, maintain the cross-ownership restrictions set forth in the *R&O.* As noted in the *R&O,* if a licensee of an AM station (or any other station) agrees to divest its interest in its license upon grant of the LPFM license, it may apply for an LPFM license.

2. National Ownership Limit

47. The Commission established a staged national ownership rule. For the first two years after a filing window opens, an entity may own only one LPFM station. After the first two years we will allow one entity to own up to five stations nationwide; after three years, we will allow an entity to own up to ten stations nationwide. The purpose of this staged approach is to foster diversity by initially disallowing common ownership of LPFM stations, but eventually permitting common ownership where local applicants fail to come forward. As noted, since adoption of the *R&O* we adopted staggered filing windows based on geographic regions. We clarify that this two year limitation—as well as other time periods tied to the opening of a filing window—will begin to run in a geographic region based on the opening of that region's filing window.

48. *Public Safety and Transportation.* In addition to NCEs, state or local governments or not-for-profit organizations that operate public safety or emergency services are also eligible owners for LPFM licenses.

49. We will allow government, public safety and transportation organizations to apply for more than one license, but they must designate a "priority" application among those applications. The "priority" application will undergo the usual selection process as outlined in the *R&O* whether or not it encounters mutually exclusive applicants. The other applications they submit will be dismissed if they are mutually exclusive with any other applications but will be eligible for grant in the absence of competing applications.

50. Thus, we will allow government, public safety and transportation organizations to apply for more than one license, but they must designate a "priority" application among those applications. The "priority" application will undergo the usual selection process as outlined in the *R&O* whether or not it encounters mutually exclusive applicants. The other applications they submit will be dismissed if they are mutually exclusive with any other applications but will be eligible for grant in the absence of competing applications.

51. *Schools with Multiple Campuses.* Several schools with multiple campuses sought clarification of the national ownership rules to permit the separate licensing of LPFM stations at several campuses. We believe the LPFM attribution exception should be expanded to cover separate school campuses in most cases, allowing schools to have LPFM stations on separate campuses notwithstanding our national ownership rule. This LPFM exception is inapplicable to full service NCE stations, for which there are no national ownership limits. Schools with multiple campuses applying for full service NCE stations are directed to the definition of attribution and the selection standards in 47 CFR 73.7000 and 73.7003. For example, if several high schools in an area seek LPFM licenses but are all governed by a local school board, the high schools can assert that they are local chapters of a large organization and can apply for their own licenses. If multiple campuses of the same university apply for LPFM licenses, they too would be considered separate local entities under that exception. The same principle will apply to charter schools that are a part of a larger school system but seek their own licenses.

3. University-Licensed Student-Run LPFM Stations

52. As noted, in the *R&O,* we determined that no broadcaster or other media entity subject to our ownership rules, or any party with an attributable interest in a broadcaster or media entity subject to our ownership rules, could hold an attributable ownership interest in an LPFM licensee. Moreover, we restricted local ownership, allowing an entity to own only one LPFM station in a community. We use the term "community" to refer to the very small area and population group that makes up a station's potential service area and audience. For purposes of the LPFM local ownership rules, we require that no entity own or have an attributable interest in two or more LPFM stations located within seven miles of each other. Finally, for purposes of our national ownership limits, an entity may own only one LPFM station during the first two years of LPFM service. While we will disallow common ownership of LPFM stations for the first two years of LPFM service, we will permit multiple ownership of LPFM stations nationally, up to a maximum of 10 LPFM stations over a phased-in period, to bring into use whatever low

power stations remain available but unapplied for.

53. Two petitioners ask us to create an exception to these LPFM multiple and cross-ownership rules to allow universities that hold full-power FM radio licenses to obtain LPFM licenses for student-run stations. Specifically, petitioners contend that our LPFM ownership rules preclude students from operating a university-licensed LPFM station where the university already holds licenses for radio broadcast stations, including NPR affiliated stations. Petitioners argue that students are not permitted to participate in the operation of these full-power stations and that our LPFM ownership rules deny students the opportunity to operate LPFM stations.

54. We will allow universities that hold licenses for full-power broadcast stations that are not student-run to apply for LPFM licenses for stations that would be managed and operated on a day-to-day basis by students, provided that they do not face any competing applications. We find that allowing this limited exception to our LPFM ownership rules will promote our goals of maximizing diversity of ownership in a community and providing a medium for new speakers, including students, to gain experience in the broadcast field. Accordingly, if a university's full-power station does not provide the university's students with a meaningful opportunity to participate in the management and operation of that station, we will allow the university to apply for a license for a student-run LFPM station on that campus. If a license is granted, the station must be managed and operated by students of the university, although as the licensee, the University must retain ultimate control of the station's operations. However, in those cases where a university already holds an attributable interest in a broadcast station, its LPFM application will be eligible for grant only if it does not face competing applications. If the university is a licensee and its LPFM application faces a competing application, the university's LPFM application will be dismissed. We believe this exception properly balances the interests of local groups in acquiring a first broadcast facility and of university licensees that desire to provide a distinct media outlet for students.

4. Time Periods for the Community-Based Requirement and for the National Ownership Cap

55. In the *R&O*, the Commission established a two-year time period during which only local, community-based applicants are eligible, and an entity can only own one station nationwide.

56. When deciding on the two-year time period for the community-based requirement, we weighed our interest in putting LPFM stations into the hands of local and diverse entities against our interest in ensuring that available spectrum does not go unused. As noted, we have adopted a staggered filing window approach for accepting LPFM applications based on geographic region. We clarify that the two-year period for the community-based requirement for each jurisdiction starts on the date of the filing window for that jurisdiction. Therefore, in Alaska, California, District of Columbia, Georgia, Indiana, Louisiana, Maine, Mariana Islands, Maryland, Oklahoma, Rhode Island and Utah, for which we opened a filing window on May 30, 2000, the two-year period began running on that date. In the remainder of the jurisdictions, in which LPFM filing windows have not yet opened, the two-year period has not yet begun to run. Thus, applicants in these jurisdictions that have not yet had a filing window will have additional time to organize and prepare their applications.

5. Foreign Ownership and Non-Stock Entities

57. Questions have arisen with respect to the application of statutory foreign ownership requirements to LPFM applicants and licensees. As we explained in the *NPRM*, all low-power facilities will be subject to the statutory requirements of Section 310(b) of the Act, which limits foreign ownership and voting interests in radio station licenses, including broadcast licenses. Sections 310 (b)(1) and (b)(2) prohibit the grant of a license to a foreign government or a representative of a foreign government; an alien or representative of an alien; or a corporation organized under the laws of a foreign government. While foreign parties may act as officers or directors of corporate licensees, Section 310(b)(3) prohibits foreign entities from owning or voting more than 20 percent of the capital stock of a broadcast licensee. If either the foreign ownership or voting interest in an applicant or licensee exceeds the 20 percent benchmark, we are required by law to revoke the license or refuse to grant the license application. In the Matter of Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310 (b)(3) and (4) of the Communications Act of 1934, as amended, *Declaratory Ruling*. Section 310(b)(4), which limits foreign ownership in parent corporations, allows us to deny a license application, upon a determination that denial is in the public interest, where more than 25 percent of the parent corporation's capital stock is owned or voted by foreign entities. The Commission has determined that Section 310(b) applies not only to corporate interests, but also to partnership and other non-corporate interests. Thus, we will apply our foreign ownership rules and policies on a case-by-case basis to all entities that are LPFM applicants and licensees, guided by Commission precedent.

58. We recognize that many entities that will hold LPFM licenses will be non-stock corporations or other non-stock entities, and that non-stock entities do not have "owners" in the traditional sense. As the Commission has explained, the specific citizenship requirements of Section 310(b) reflect a deliberate judgment on the part of Congress to prevent undue foreign influence in broadcasting. Thus, for the purpose of determining whether a non-stock LPFM applicant or licensee complies with the statutory foreign ownership requirements, we will first consider the citizenship of those individuals who would have the ability, comparable to that of a traditional owner, to influence or control the licensee. In making these determinations we will be guided by Commission precedent.

59. An applicant or licensee must directly inform us that an ownership structure may or does in fact exceed the foreign ownership benchmarks in Section 310(b) of the Act.

6. Minority Broadcast Training Institutions

60. We agree that providing minority broadcast education would be a valuable use of the LPFM service, it is not the only valuable use. We believe our current eligibility rules will lead to the ownership of LPFM stations by a wide variety of groups, which will best promote our goals in this proceeding.

61. As we stated in the *R&O* in response to requests for preferences for entities controlled by minorities, the Commission is conducting fact-finding studies as to whether such preferences may be justified consistent with *Adarand*. Depending on the outcome of these studies, as well as our experience with LPFM, we will consider in the future whether to adjust our rules to facilitate participation of more minority-oriented organizations in the service.

7. Unlicensed Broadcasters

62. In the *R&O*, we determined that unauthorized broadcasters would not be eligible for LPFM licenses unless they could certify that they (1) promptly

ceased operation when directed by the Commission to do so if that direction was received prior to February 26, 1999, or (2) voluntarily ceased operation by February 26, 1999. In no event will an unlicensed broadcaster be eligible for an LPFM license if it continued illegally broadcasting after February 26, 1999. We have modified § 73.854 to make clear that no unlicensed broadcaster that continued to broadcast after February 26, 1999 will be eligible for an LPFM license. As discussed in the *R&O*, our rule on unlicensed broadcasters was based on our concern that past illegal broadcast operations reflect on the entity's proclivity to deal truthfully with the Commission and to comply with our rules and policies. We continue to believe that a party that continued to operate in contravention of an FCC direction to cease operations should not be eligible to apply for an LPFM license. Such a party should have ceased its illegal broadcast while pursuing any legal challenge to a Commission order. Any party ignoring our order has demonstrated an unwillingness to comply with the Commission's rules and thus should not be rewarded with an LPFM license.

F. Point System For Resolving Mutually Exclusive Applications

63. In the *R&O*, the Commission created a point system to determine selection among mutually exclusive applications. The point system includes three selection criteria: (1) Established community presence; (2) proposed operating hours; and (3) local program origination. The system will employ voluntary time-sharing as an initial tie-breaker; that is, tied applicants will have an opportunity to aggregate points by submitting time-share proposals. Successive license terms will be used as a final tie-breaker.

G. Other Issues

64. *Low Power Advisory Committee.* LPFM broadcasters and other interested parties are free, of course, to form a private organization to promote LPFM, support and assist its members and their operations, and address technical issues with each other and, where appropriate, raise them with the Commission.

65. *Automatic Program Review.* We are open to proposing, or considering proposals, to revise our rules after we have had experience with the service, we do not find it necessary to commit now to a review in the future.

66. *Transfers of Control—Nonstock Entities.* In the *R&O*, we established that LPFM licenses (and licensees) cannot be sold or transferred to another entity.

III. Conclusion

67. In this *MO&O*, we generally affirm the decisions we reached in the *R&O*. We do clarify certain rules to provide better guidance to the public, and make minor revisions to improve our procedures and the quality of the LPFM service, and to protect stations operating radio reading services, while at the same time preserving the quality of full power FM service. We also establish a process to ensure prompt resolution of certain interference problems in the unlikely event they occur.

IV. Procedural Matters and Ordering Clauses

68. Authority for issuance of this *MO&O* is contained in Sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405.

69. The actions taken in this *MO&O* have been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose no new or modified reporting and record-keeping requirements or burdens on the public.

70. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *MO&O* including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

71. Accordingly, the petitions for reconsideration or clarification listed below are granted to the extent provided herein and otherwise are denied pursuant to Sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405, and § 1.429(i) of the Commission's rules, 47 CFR 1.429(i).

72. The Motion of The Amherst Alliance *et al.* for a Decision on the Motion for Reconsideration of the Amherst Alliance filed June 5, 2000, and the Motion of Don Shellhardt *et al.* for a Decision on the Motion for Reconsideration of Don Schellhardt filed June 5, 2000, are to the extent provided herein dismissed as untimely and moot pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405, and §§ 1.429(d) and (i) of the Commission's rules, 47 CFR 1.429(d) and (i).

73. The Commission's rules are amended as set forth. The provisions of this *MO&O* and the Commission's rules, as amended, shall become effective 30 days after publication in the **Federal Register**.

V. Supplemental Final Regulatory flexibility analysis

74. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* and a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *R&O*. The Commission sought written public comment on the proposals in the *NPRM* and the *R&O*, including comment on the IRFA and FRFA. No comments were received in response to the IRFA and the one comment received in response to the FRFA is addressed below. This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA.

Need for, and Objectives of, the MO&O

75. In the *R&O*, the Commission adopted a 100-watt class (LP100) and a 10-watt class (LP10) of small radio stations. Because of the predicted lower construction and operational costs of LPFM stations as opposed to full power facilities, the Commission expects that small entities would be expected to have few economic obstacles to becoming LPFM licensees. Therefore, as discussed in the *R&O* and the FRFA, this new service may serve as a vehicle for small entities and under-represented groups (including women and minorities) to gain valuable broadcast experience and to add their voices to their local communities. The Commission received petitions for reconsideration of the *R&O* that requested reconsideration of a variety of issues. This *MO&O* resolves those issues.

76. We do not change most of the determinations made in the *R&O*. We do, however, adopt the following few changes. We adopt complaint and license modification procedures to ensure that if any unexpected, significant 3rd adjacent channel interference problems are caused by the operation of a particular LPFM station, it can be resolved expeditiously. We modify the spacing standards adopted in the *R&O* to require that LPFM stations operating on 3rd adjacent channels protect stations operating radio reading services and we increase the flexibility of the ownership rules for certain specific types of applicants.

Summary of Significant Issues Raised by Public Comments in Response to the FRFA

77. J. Rodger Skinner (Skinner), who submitted one of the original Petitions for Rulemaking regarding LPFM on February 5, 1998, contends in his Comments that the *R&O*'s FRFA

analysis was flawed in claiming that the institution of LPFM service would "create significant opportunities for new small businesses." Skinner argues that the rejection of commercial service, the imposition of 3rd adjacent channel separations and the refusal to include 1000 watt stations undercut the Commission's expectation of new stations in the LPFM service. His argument, however, that the alternative resolutions he proposes were not considered and their rejection explained is mistaken. Both the *R&O* and the *MO&O* address each issue that he raises. In instituting this new LPFM service and in determining the rules that will govern it, we were concerned with the impact of our rules on small businesses, and took many steps to ensure the availability of this service to new entities. For instance, we adopted strict ownership limitations, made electronic filing voluntary, and refrained from main studio requirements for LPFM stations. At the same time, we explicitly weighed the best manner in which to achieve our goals in protecting existing service and creating this service against the benefits of commercial service, less stringent interference protection and higher power limits. Skinner's argument that small local businesses will be deprived of a potential economical advertising outlet also is insufficient to outweigh the reasons for our determination to make LPFM a strictly noncommercial service.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

78. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 per cent) are small entities.

79. The SBA defines a radio broadcasting station that has $5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of September 30, 1999, Commission records indicate that 12,615 radio stations were operating, of which 7,832 were FM stations.

80. The rules will apply to a new category of FM radio broadcasting service. It is not known how many entities may seek to obtain a low power radio license. Nor do we know how many of these entities will be small entities. We note, however, that in the eighteen months since we issued the *NPRM*, the Commission's LPFM website has received approximately 100,000 hits, demonstrating the interest of individuals and groups in operating such a facility. In addition, we expect that, due to the small size of low power FM stations, small entities would generally have a greater interest than large ones in acquiring them.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

81. Most of the provisions of the *R&O* are unchanged by the *MO&O*. As noted in the *R&O*, the new service will require the collection of information for the purposes of processing applications for (among other things) initial construction permits, assignments and transfers, and renewals. We will also require lower power radio stations to comply with some of the reporting, recordkeeping, and other compliance requirements of full power radio broadcasters.

82. The portions of the *R&O* that were altered by the *MO&O* follow: (1) Radio reading services will be protected on the 3rd adjacent channel, (2) corrections were made to the spacing table, (3) a complaint procedure was added, (4) transportation entities will be permitted to hold multiple stations in certain instances, and (5) an ownership exception was created for university-licensees of low power radio stations. We do not anticipate that these changes will result in any changes to the reporting and recordkeeping requirements of LPFM licensees.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

83. The RFA requires agencies to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

84. The Commission believes that the LPFM service is likely to create significant opportunities for new small businesses. None of the changes made by the *MO&O* alter that belief. This *MO&O* alters the LPFM rules by allowing an expedited complaint process, creating additional interference protection for radio reading services, and increasing flexibility for specific licensees (university and public safety entities). The Commission believes that none of these revisions will have a significant economic impact on a substantial number of small entities. However, in an abundance of caution we will examine any potential impact to potential LPFM licensees.

85. The Commission does not anticipate that LPFM service will cause interference to existing stations. Due to concern expressed by parties about potential interference, however, the Commission has adopted complaint and license modification procedures to ensure that if any unexpected, significant 3rd adjacent channel interference problems are caused by the operation of a particular LPFM station, they can be resolved expeditiously. We believe this process will assist small entities by providing resolution to problems without delays and the potential for incurring legal and consulting expenses.

86. The Commission offered additional protection to the radio reading services, pending its analysis of a Commission study conducted to assess radio reading service's performance as compared with other receivers. While awaiting the results of the study, the Commission will not license LPFM stations on 3rd adjacent channels to existing stations with radio reading services. Because radio reading services provide such a valuable service, we have modified the rules to assure that interference to radio reading services does not occur. The only other alternative considered would have been to leave the rules as originally drafted in the *R&O*. We decided against that alternative until such a time as the Commission can confirm that no unacceptable interference would occur.

87. The Commission makes a few other changes to the *R&O*. We allow transportation and public safety entities to hold multiple LPFM stations in certain instances and create an ownership exception for university-licensees of low power radio stations. Petitioners showed the Commission that these exceptions were merited based on the specific circumstances of these potential licensees. The only other alternative was to leave the rules as adopted in the *R&O*; to do so would not have accounted for the beneficial service, and unique circumstances, of particular applicants.

Report to Congress

88. The Commission will send a copy of the *MO&O*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the SBREFA. In addition, the Commission will send a copy of the *MO&O*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *MO&O* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Filing Schedule

89. The country has been divided into five groups of states accepting LPFM applications. The FCC has accepted applications from the first and second groups of states:

90. 1st: Alaska, California, District of Columbia, Georgia, Indiana, Louisiana, Maine, Mariana Islands, Maryland, Oklahoma, Rhode Island, Utah.

91. 2nd: Connecticut, Illinois, Kansas, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, Puerto Rico, Virginia, Wyoming.

92. The remaining three groups of states' LPFM applications are anticipated to be accepted as follows:

93. 3rd: American Samoa, Colorado, Delaware, Hawaii, Idaho, Missouri, New York, Ohio, South Carolina, South Dakota, Wisconsin (Public Notice October 2000; filing window: November 2000).

94. 4th: Arizona, Florida, Iowa, New Jersey, North Dakota, Oregon, Tennessee, Texas, U.S. Virgin Islands, Vermont, West Virginia (Public Notice January 2001; filing window: February 2001).

95. 5th: Alabama, Arkansas, Guam, Kentucky, Massachusetts, Montana, Nebraska, New Mexico, North Carolina, Pennsylvania, Washington (Public Notice April 2001; filing window: May 2001).

List of Subjects in 47 CFR Part 73 and 74

Radio broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Low Power FM Service Rule Modifications

Part 73 of title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334; and 336.

2. Section 73.209(c) is revised to read as follows:

§ 73.209 Protection from interference.

* * * * *

(c) Permittees and licensees of FM stations are not protected from interference which may be caused by the grant of a new LPFM station or of authority to modify an existing LPFM station, except as provided in subpart G of this part.

3. Section 73.514 is revised to read as follows:

§ 73.514 Protection from interference.

Permittees and licensees of NCE FM stations are not protected from interference which may be caused by the grant of a new LPFM station or of authority to modify an existing LPFM station, except as provided in subpart G of this part.

4. In § 73.807, the undesignated text, paragraphs (a), (b), (c), (c)(1), (c)(2), the note to paragraphs (a), (b), and (c), paragraphs (g)(1) through (g)(4) and (g)(6) are revised to read follows:

§ 73.807 Minimum distance separation between stations.

Minimum separation requirements for LP100 and LP10 stations, as defined in §§ 73.811 and 73.853, are listed in the following paragraphs. An LPFM station will not be authorized unless these separations are met. Minimum distances for co-channel and first-adjacent channel are separated into two columns. The left-hand column lists the required minimum separation to protect other stations and the right-hand column lists (for informational purposes only) the minimum distance necessary for the LPFM station to receive no interference from other stations assumed to operating at the maximum permitted facilities for the station class. For second-adjacent channels and IF channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

(a)(1) An LP100 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP100 stations, authorized LP100 stations, LP100 station applications that were timely-filed within a previous window, and vacant FM allotments. LP100 stations are not required to protect LP10 stations. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations.

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
LP100	24	24	14	14	0	0
D	24	24	13	13	6	3

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
A	67	92	56	56	29	6
B1	87	119	74	74	46	9
B	112	143	97	97	67	12
C3	78	119	67	67	40	9
C2	91	143	80	84	53	12
C1	111	178	100	111	73	20
C	130	203	120	142	93	28

(a)(2) LP100 stations must satisfy the second-adjacent channel minimum distance separation requirements of paragraph (a)(1) of this section with respect to any third-adjacent channel FM station that, as of September 20, 2000 (the adoption date of this *MO&O*) broadcasts a radio reading service via a subcarrier frequency.

(b)(1) An LP10 station will not be authorized unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP10 stations, vacant FM allotments, or LPFM stations.

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
LP100	16	22	10	11	0	0
LP10	13	13	8	8	0	0
D	16	21	10	11	6	2
A	59	90	53	53	29	5
B1	77	117	70	70	45	8
B	99	141	91	91	66	11
C3	69	117	64	64	39	8
C2	82	141	77	81	52	11
C1	103	175	97	108	73	18
C	122	201	116	140	92	26

(b)(2) LP10 stations must satisfy the second-adjacent channel minimum distance separation requirements of paragraph (b)(1) of this section with respect to any third-adjacent channel FM station that, as of September 20, 2000 (the adoption date of this *MO&O*) broadcasts a radio reading service via a subcarrier frequency.

(c) In addition to meeting or exceeding the minimum separations for Class LP100 and Class LP10 stations in paragraphs (a) and (b) of this section, new LP100 and LP10 stations will not be authorized in Puerto Rico or the Virgin Islands unless the minimum distance separations in the following tables are met with respect to authorized or proposed FM stations:

(1) LP100 stations in Puerto Rico and the Virgin Islands:

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
A	80	111	70	70	42	9
B1	95	128	82	82	53	11
B	138	179	123	123	92	19

(2) LP10 stations in Puerto Rico and the Virgin Islands:

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
A	72	108	66	66	42	8
B1	84	125	78	78	53	9
B	126	177	118	118	92	18

Note to paragraphs (a), (b), and (c): Minimum distance separations towards "grandfathered" superpowered Reserved Band stations are as specified.

Full service FM stations operating within the reserved band (Channels 201–220) with facilities in excess of those permitted in § 73.211(b)(1) or § 73.211(b)(3) shall be protected by LPFM stations in accordance with the minimum distance separations for the nearest class as determined under § 73.211. For example, a Class B1 station operating with facilities that result in a 60 dBu contour that exceeds 39 kilometers but is less than 52 kilometers would be protected by the Class B minimum distance separations. Class D stations with 60 dBu contours that exceed 5 kilometers will be protected by the Class A minimum distance separations. Class B stations with 60 dBu contours that exceed 52 kilometers will be protected as Class C1 or Class C stations depending upon the distance to the 60 dBu contour. No stations will be protected beyond Class C separations.

* * * * *

(g) *International considerations within the border zones.* (1) Within 320 km of the Canadian border, LP100 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1 & Low Power	45	30	21	20	4
A	66	50	41	40	7
B1	78	62	53	52	9
B	92	76	68	66	12
C1	113	98	89	88	19
C	124	108	99	98	28

(2) Within 320 km of the Mexican border, LP100 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second-third adjacent channel (km)	Intermediate frequency (IF) channel (km)
Low Power	27	17	9	3
A	43	32	25	5
AA	47	36	29	6
B1	67	54	45	8
B	91	76	66	11
C1	91	80	73	19
C	110	100	92	27

(3) Within 320 km of the Canadian border, LP10 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1 & Low Power	33	25	20	19	3
A	53	45	40	39	5
B1	65	57	52	51	8
B	79	71	67	66	11
C1	101	93	88	87	18
C	111	103	98	97	26

(4) Within 320 km of the Mexican border, LP10 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second-third adjacent channel (km)	Intermediate frequency (IF) channel (km)
Low Power	19	13	9	2
A	34	29	24	5
AA	39	33	29	5
B1	57	50	45	8
B	79	71	66	11
C1	83	77	73	18
C	102	96	92	26

* * * * *

(6) The Commission will initiate international coordination of a LPFM proposal even where the above Canadian and Mexican spacing tables are met, if it appears that such coordination is necessary to maintain compliance with international agreements.

5. Section 73.809 paragraphs (a), (b) and (c) are revised to read as follows:

§ 73.809 Interference protection to full service FM stations.

(a) It shall be the responsibility of the licensee of an LPFM station to correct at its expense any condition of interference to the direct reception of the signal of any subsequently authorized commercial or NCE FM station that operates on the same channel, first-adjacent channel, second-adjacent channel or intermediate frequency (IF) channels as the LPFM station, where interference is predicted to occur and actually occurs within:

(1) The 3.16 mV/m (70 dBu) contour of such stations;

(2) The community of license of a commercial FM station; or

(3) Any area of the community of license of an NCE FM station that is predicted to receive at least a 1 mV/m (60 dBu) signal. Predicted interference shall be calculated in accordance with the ratios set forth in §§ 73.215(a)(1) and 73.215(a)(2). Intermediate Frequency (IF) channel interference overlap will be determined based upon overlap of the 91 dBu F(50,50) contours of the FM and LPFM stations. Actual interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the LPFM station.

(b) An LPFM station will be provided an opportunity to demonstrate in connection with the processing of the commercial or NCE FM application that interference as described in paragraph (a) of this section is unlikely. If the LPFM station fails to so demonstrate, it will be required to cease operations upon the commencement of program tests by the commercial of NCE FM station.

(c) Complaints of actual interference by an LPFM station subject to paragraphs (a) and (b) of this section must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations within twenty-four hours of the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. An LPFM station may only resume operations at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility for the complaint.

* * * * *

12. Section 73.810 is added to read as follows:

§ 73.810. Third adjacent channel complaint and license modification procedure.

(a) An LPFM station is required to provide copies of all complaints alleging that the signal of such LPFM station is interfering with or impairing the reception of the signal of a full power station to such affected full power station.

(b) A full power station shall review all complaints it receives, either directly or indirectly, from listeners regarding alleged interference caused by the operations of an LPFM station. Such full power station shall also identify those that qualify as *bona fide* complaints under this section and promptly provide such LPFM station with copies of all *bona fide* complaints. A *bona fide* complaint:

(i) Is a complaint alleging third adjacent channel interference caused by an LPFM station that has its transmitter site located within the predicted 60 dBu contour of the affected full power station as such contour existed as of the date the LPFM station construction permit was granted;

(ii) Must be in the form of an affidavit; and state the nature and location of the alleged interference;

(iii) Must involve a fixed receiver located within the 60 dBu contour of the affected full power station and not more than one kilometer from the LPFM transmitter site; and

(iv) Must be received by either the LPFM or full power station within one year of the date on which the LPFM station commenced broadcasts with its currently authorized facilities.

(c) An LPFM station will be given a reasonable opportunity to resolve all interference complaints. A complaint will be considered resolved where the complainant does not reasonably cooperate with an LPFM station's remedial efforts.

(d) In the event that the number of unresolved complaints plus the number of complaints for which the source of interference remains in dispute equals at least one percent of the households within one kilometer of the LPFM transmitter site or thirty households, whichever is less, the LPFM and full power stations must cooperate in an "on-off" test to determine whether the interference is traceable to the LPFM station.

(e) If the number of unresolved and disputed complaints exceeds the numeric threshold specified in subsection (d) following an "on-off" test, the full power station may request that the Commission initiate a proceeding to consider whether the LPFM station license should be modified or cancelled, which will be completed by the Commission within 90 days. Parties may seek extensions of the 90 day deadline consistent with Commission rules.

(f) An LPFM station may stay any procedures initiated pursuant to paragraph (e) of this section by voluntarily ceasing operations and filing an application for facility modification within twenty days of the commencement of such procedures.

5. Section 73.816 is revised to read as follows:

§ 73.816 Antennas.

(a) Permittees and licensees may employ nondirectional antennas with horizontal only polarization, vertical only polarization, circular polarization or elliptical polarization.

(b) Directional antennas will not be authorized and may not be utilized in the LPFM service, except as provided in paragraph (c) of this section.

(c) Public safety and transportation permittees and licensees, eligible pursuant to § 73.853(a)(ii), may utilize directional antennas in connection with the operation of a Travelers' Information Service (TIS) provided each LPFM TIS station utilizes only a single antenna with standard pattern characteristics that are predetermined by the manufacturer. In no event may composite antennas (i.e. antennas that consist of multiple stacked and/or phased discrete transmitting antennas) and/or transmitters be employed.

(d) LPFM TIS stations will be authorized as nondirectional stations. The use of a directional antenna as provided for in paragraph (c) of this section will not be considered in the determination of compliance with any requirements of this part.

6. Section 73.825 is revised to read as follows:

§ 73.825 Protection to reception of TV channel 6.

(a) LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances in the following table are met with respect to all full power TV Channel 6 stations.

FM channel number	Class LP100 LP100 to TV channel 6 (km)	Class LP10 to TV channel 6 (km)
201	140	136
202	138	134
203	137	133
204	136	133
205	135	132
206	133	131
207	133	131
208	133	131
209	133	131
210	133	131
211	133	131
212	132	131
213	132	131
214	132	130
215	131	130
216	131	130
217	131	130
218	131	130
219	130	130
220	130	130

(b) LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances in the following table are met with respect to all low power TV, TV translator, and Class A TV stations authorized on TV Channel 6.

FM channel number	Class LP100 to LPTV channel 6 (km)	Class PL10 to LPTV channel 6 (km)
201	98	93
202	97	92
203	95	91
204	94	91
205	93	90
206	91	90
207	91	89
208	91	89
209	91	89
210	91	89
211	91	89
212	90	89
213	90	89
214	90	89
215	90	89
216	89	89
217	89	89
218	89	89
219	89	89
220	89	88

7. Section 73.827 is added to read as follows:

§ 73.827 Interference to the input signals of FM translator or FM booster stations.

(a) An authorized LPFM station will not be permitted to continue to operate if an FM translator or FM booster station demonstrates that the LPFM station is causing actual interference to the FM translator or FM booster station's input signal, provided that the same input signal was in use at the time the LPFM station was authorized.

(b) Complaints of actual interference by an LPFM station subject to paragraph (a) of this section must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations upon the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures. An LPFM station may only resume full operation at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility for the complaint.

8. Section 73.854 is revised to read as follows:

§ 73.854 Unlicensed operations.

No application for an LPFM station may be granted unless the applicant certifies, under penalty of perjury, to one of the following statements:

(a) Neither the applicant, nor any party to the application, has engaged in any manner including individually or with persons, groups, organizations or other entities, in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301.

(b) To the extent the applicant or any party to the application has engaged in any manner, individually or with other persons, groups, organizations or other entities, in the unlicensed operation of a station in violation of section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301, such an engagement:

(1) Ceased voluntarily no later than February 26, 1999, if not previously directed by the FCC to cease operation; or

(2) Ceased operation within 24 hours of being directed by the FCC to terminate unlicensed operation of any station but in no event later than February 26, 1999.

9. In § 73.855, paragraph (b) introductory text is revised and paragraph (b)(4) is added to read as follows:

§ 73.855 Ownership limits.

* * * * *

(b) Except as provided in paragraph (b)(4) of this section, nationwide ownership limits will be phased in according to the following schedule:

* * * * *

(4) Not-for-profit organizations and governmental entities with a public safety purpose may be granted multiple licenses only if:

(i) One of the multiple applications is submitted as a priority application, and;

(ii) The remaining non-priority applications do not face a mutually exclusive challenge.

10. Section 73.860 paragraphs (a) and (b) are revised to read as follows:

§ 73.860 Cross ownership.

(a) Except as provided in paragraph (b) of this section, no license for an LPFM station shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions.

(b) A party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest unless such party is a college or university that can certify that the existing broadcast radio station is not student run. This exception applies only to parties that;

(i) Are accredited educational institutions, and;

(ii) Own attributable interest in non-student run broadcast stations;

(iii) Apply for an authorization for an LPFM station that will be managed and operated on a day-to-day basis by students of the accredited educational institution; and

(iv) Do not face competing applications for the LPFM authorization.

* * * * *

11. Section 73.870 paragraph (c) is revised to read as follows:

§ 73.870 Processing of LPFM broadcast station applications.

* * * * *

(c) Applications subject to paragraph (b) of this section that fail to meet the § 73.807 minimum distance separations with respect to all applications and facilities in existence as the date of the pertinent public notice in paragraph (b) of this section other than to LPFM station facilities proposed in applications filed in the same window, will be dismissed without any opportunity to amend such applications.

* * * * *

12. Section 73.872 is revised to read as follows:

§ 73.872(b)(3) Selection procedure for mutually exclusive application.

* * * * *

(b)* * *

(3) *Local program origination.* The applicant must pledge to originate locally at least eight hours of programming per day. For purposes of this criterion, local origination is the production of programming, by the licensee, within ten miles of the coordinates of the proposed transmitting antenna.

* * * * *

13. Section 73.877 is revised to read as follows:

§ 73.877 Station logs for LPFM stations.

The licensee of each LPFM station must maintain a station log. Each log entry must include the time and date of observation and the name of the person making the entry. The following information must be entered in the station log:

(a) Any extinguishment or malfunction of the antenna structure obstruction lighting, adjustments, repairs, or replacement to the lighting system, or related notification to the FAA. See §§ 17.48 and 73.49 of this chapter.

(b) Brief explanation of station outages due to equipment malfunction, servicing, or replacement;

(c) Operations not in accordance with the station license; and

(d) EAS weekly log requirements set forth in § 11.61(a)(1)(v) of this chapter.

14. In § 73.1660, paragraph (a) is revised to read as follows:

§ 73.1660 Acceptability of broadcast transmitters.

(a)(1) An AM, FM, or TV transmitter shall be verified for compliance with the requirements of this part following the procedures described in part 2 of this chapter.

(a)(2) An LPFM transmitter shall be certified for compliance with the requirements of this part following the procedures described in part 2 of the this chapter.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. In § 74.1204, paragraphs (a) introductory text and (a)(4) are revised to read as follows:

§ 74.1204 Protection of FM broadcast, FM Translator and LP100 stations.

(a) An application for an FM translator station will not be accepted for filing if the proposed operation would involve overlap of predicted field contours with any other authorized commercial or noncommercial educational FM broadcast stations, FM translators, and Class D (secondary) noncommercial educational FM stations; or if it would result in new or increased overlap with an LP100 station, as set forth:

* * * * *

(4) LP100 stations (Protected Contour: 1 mV/m)

Frequency separation	Interference contour of proposed translator station	Protected contour of LP100 LPFM station
Cochannel	0.1 mV/m (40 dBu).	1 mV/m (60 dBu)
200 kHz	0.5 mV/m (54 dBu).	1 mV/m (60 dBu)

Note to paragraph (a)(4): LP100 stations, to the purposes of determining overlap pursuant to this paragraph, LPFM applications and permits that have not yet been licensed must be considered as operating with the maximum permitted facilities. All LPFM TIS stations must be protected on the basis of a nondirectional antenna.

* * * * *

[FR Doc. 00–28613 Filed 11–8–00; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AF54

Marine Mammals; Incidental Take During Specified Activities; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: U.S. Fish and Wildlife Service regulations to authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry exploration, development, and production operations in the Beaufort Sea and adjacent coast of Alaska expired on December 15, 1998. Subsequent regulations that we issued should have been characterized as "adding" rather than "revising" these regulations. This correction makes clear that our intent was to add the regulations.

DATES: This correction is effective March 30, 2000, and remains effective through March 31, 2003.

ADDRESSES: Comments and materials received in response to our most recent final rule action, published in the **Federal Register** on March 30, 2000, are available for public inspection during normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Horwath, Division of Fish and Wildlife Management Assistance and Habitat Restoration, U.S. Fish and Wildlife Service, Telephone 703–358–1718, or on the Internet at Jeffrey_Horwath@fws.gov.

SUPPLEMENTARY INFORMATION: On December 15, 1998, our regulations at 50 CFR Part 18, Subpart J expired. These regulations were effective beginning on December 16, 1993 (58 FR 60402, November 16, 1993), and authorized the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry exploration, development, and production operations in the Beaufort Sea and adjacent coast of Alaska. We subsequently issued final regulations on January 29, 1999 (64 FR 4328) "revising" these expired regulations. Later regulations appear on February 3, 2000 (65 FR 5275), and March 30, 2000 (65 FR 16828). Rather than "revising" our regulations, we should have stated that we were "adding" these regulations at 50 CFR Part 18. Therefore, this action corrects this technical error by changing the amendatory instructions in our March 30, 2000, final rule to state that we are "adding" those regulations to 50 CFR Part 18, Subpart J. Letters of Authorization issued under the regulations are not affected by this action.

Accordingly, make the following correction to FR Doc. 00–7912 published at 65 FR 16828 on March 30, 2000:

PART 18—[CORRECTED]

On page 16842, in column one, correct amendatory instruction 2. to read as follows:

2. Add Subpart J to Part 18 to read as follows:

Dated: November 6, 2000.

Cathleen Short,

Assistant Director, Fisheries and Habitat Conservation, Fish and Wildlife Service.

[FR Doc. 00–28778 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 679

[Docket No. 000616184-0290-02; I.D. 050500A]

RIN 0648-AK74

Fisheries of the Exclusive Economic Zone Off Alaska; Sitka Pinnacles Marine Reserve

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 59 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) and to make changes to the regulations governing the Individual Fishing Quota (IFQ) commercial fishery and halibut sport fishery. This action designates an unusually productive and fragile 2.5 square nautical mile (nm) area of habitat as the Sitka Pinnacles Marine Reserve (Reserve) and closes this area to groundfish fishing and anchoring by commercial groundfish vessels, to halibut fishing and anchoring by IFQ halibut fishing vessels, to sport fishing for halibut, and to anchoring by any vessel if halibut is on board. The intent of this action is to protect an area containing important fish habitat from the effects of fishing and anchoring and to create a groundfish reserve.

DATES: Effective December 11, 2000.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Impact Review (EA/RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Regional Administrator, Alaska Region, NMFS, 709 West Ninth Street, Federal Office Building, Suite 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Nina Mollett, 907-586-7228; fax 907-586-7465.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries of the Gulf of Alaska (GOA) are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the domestic groundfish fisheries in the exclusive economic zone of the GOA appear at 50 CFR parts 600 and 679. Regulations governing the IFQ halibut fisheries in the exclusive economic zone of the GOA appear at 50 CFR part 679. Regulations governing the domestic halibut fisheries appear at 50 CFR 300.60 to 300.65, which supplements the annual fishery management measures adopted by the International Pacific Halibut Commission (IPHC) under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea.

Amendment 59 was submitted to NMFS for review and a notice of availability of the FMP amendment was published on May 12, 2000 (65 FR 30559), with comments on the FMP amendment invited through July 11, 2000. Amendment 59 was approved by NMFS on August 9, 2000. The proposed rule to implement Amendment 59 was published on June 26, 2000 (64 FR 39342). The public comment period ended on August 10, 2000. One letter of comments was received on Amendment 59 and its implementing regulations. A summary of this letter and NMFS' response is provided in the "Response to Comments" section.

Background

The Sitka Pinnacles area, in the Southeast Outside District of the GOA near Cape Edgecumbe, provides highly productive habitat for many species at different stages of their life cycles. Information collected during manned submersible surveys of groundfish habitat by the Alaska Department of Fish & Game (ADF&G) indicates that the diversity and density of fish around the Sitka Pinnacles are much greater than the typical eastern continental shelf of the GOA. The pinnacles habitat is fragile, and the concentration of fishes in a relatively small, compact space can lend itself to overfishing of certain species, particularly lingcod, at sensitive life stages.

The Sitka Pinnacles (also called the Cape Edgecumbe Pinnacles) consist of two large volcanic cones that rise abruptly off the seafloor. The top of one is within 70 meters (229.6 feet) of the sea surface, and the other within 40 meters (131.2 feet). The area from sea surface to seafloor provides a variety of rich habitat suitable for different species. The field of boulders on the bottom provides a spawning bed for lingcod and refuge for large numbers of such commercially valuable species as yelloweye and tiger rockfish, and of such non-commercial species as prowfish. The flat, irregular tops of the pinnacles are used as a feeding platform by juvenile and adult rockfish and by huge concentrations of lingcod. The walls of the pinnacles, covered with algae, anemones, and other organisms, provide shelter to large numbers of juvenile and adult bottom-dwelling rockfish. Finally, schooling species, such as yellowtail and widow rockfish, feed along the pinnacle walls and in the water column between the top of the pinnacles and the surface.

Since 1997, when the State of Alaska (State) initially proposed this action to the Council, NMFS, ADF&G, and the IPHC have cooperated on creating the Reserve, as different species are managed under different jurisdictions (see Table 1).

THE SITKA PINNACLES TABLE 1—AGENCY ACTIONS TO CLOSE FISHERIES OFF CAPE EDGECUMBE

Species	Agency	Law
Commercial and recreational fishing for lingcod and black rockfish	ADF&G	These fisheries are closed under 5 AAC 28.150.
Groundfish	NMFS	Closed by Amd. 59 and regulatory amendments at 50 CFR 679.2 and § 679.22.
Halibut	NMFS and IPHC	Closed by regulatory amendments at 50 CFR 300.63 and § 679.22.
Scallops	ADF&G	Under Amd. 3 to the Fishery Management Plan for Scallop Fisheries off Alaska, NMFS delegates responsibility to the State for managing the scallop fishery. Scallop dredging has been closed under 5 AAC 38.120 in the "Central Southeast Outside" area, including the Sitka Pinnacles, since July, 1994.
Commercial and Recreational Salmon	NMFS and ADF&G	The Alaska State Board of Fish considered closure to salmon fishing at its February 2000 meeting and rejected the proposal.

The area has been used for fishing, especially with hook-and-line gear, for decades. In the late 1980s, a directed fishery for lingcod developed on the pinnacles. The high density and aggressive feeding behavior of lingcod made them extremely susceptible to capture; hourly catch rates of lingcod at the site exceeded catch rates in the surrounding area by threefold. In 1991, the State of Alaska (State) began attempting to preserve lingcod populations in nearby State waters (the Sitka Pinnacles are in Federal waters) through closures during winter when male lingcod are nest guarding and, in 1994, through spring/summer in-season closures of State-regulated fishing in areas that included the pinnacles. In 1995, the pinnacles area was included in the winter closure as well. In 1997, ADF&G issued an emergency order closing the area to all State-regulated groundfish fishing for the entire season. However, the sport fishery was not affected by any of the State's management actions and continued to take lingcod and Pacific halibut. In May 1998, the commercial and sportfish divisions of ADF&G submitted joint proposals to the State's Board of Fish and the Council to close the Sitka Pinnacles area. The Board of Fish closed the area to fishing for lingcod and black rockfish, which are species under its jurisdiction. It took up the question of closing the area to commercial and recreational salmon fishing in February 2000 but rejected the proposal.

This action has two parts:

1. Implementation of Amendment 59; Designation of Sitka Pinnacles Marine Reserve and Closure to Groundfish Fishing and Anchoring

This action complements State regulations by designating a 2.5 square nm area of the GOA as the Sitka Pinnacles Marine Reserve and closing this area to groundfish fishing or anchoring by vessels required to have a Federal fisheries permit under § 679.4(b).

2. Regulatory amendment for halibut

The Pacific halibut fishery is managed by the IPHC, under the Northern Pacific Halibut Act. The Act states that the Regional Fishery Management Council with authority for a geographic area may develop regulations governing U.S. waters "which are in addition to, and not in conflict with, regulations adopted by the Commission" (16 U.S.C. 773c(c)). Pursuant to this authority, this action closes the Reserve to fishing for halibut or anchoring by vessels required to have on board an Individual Fishing Quota (IFQ) halibut permit under § 679.4(d). Also pursuant to this authority, this action closes the area to sport fishing for halibut as defined at § 300.61, or anchoring by any vessel having halibut on board.

The combined effect of State and Federal regulations will allow the Sitka Pinnacles ecosystem to maintain its natural level of production by eliminating the harvest or bycatch of fish during critical portions of their life history. The prohibition on anchoring will prevent degradation of the area's fragile habitat.

Response to Comments

One letter was received during the public comment period. It was from the Center for Marine Conservation (CMC). CMC's comments are summarized and responded to as follows:

Comment: CMC supported the closure generally with certain reservations: (1) It would have preferred an "ecosystem-based management strategy" including designation of the reserve as a Habitat Area of Particular Concern (HAPC) to the "species-specific strategy" adopted by NMFS; (2) it supports a ban on all anchoring in the pinnacles area; (3) it supports closing a larger area to fishing that would include a buffer zone around the pinnacles, noting that initial State-regulated closures designated a 3.1 square nm area.

Response: (1) The Reserve is being considered by the Council for HAPC designation as part of a broader HAPC amendment, which is undergoing a public planning process. (2) NMFS agrees that the anchoring prohibition is selective, not comprehensive. However, NMFS' authority under the Magnuson-Stevens Act is limited to the regulation of fishing vessels. Thus, NMFS does not have authority to prohibit anchoring by non fishing vessels. NMFS has delegated the management of commercial and sport salmon fishing to the State. NMFS has corresponded with the State over the possibility of prohibiting anchoring by salmon fishing vessels. (3) Initial state-regulated closures designated a 3.1 square nm area around the pinnacles. The discrepancy is due to an initial miscalculation of the area, which has been corrected. The area is actually 2.5 square nm. The area delineated has remained the same dimension and includes the entire area around the pinnacles recommended by the State in its initial presentation to the Council, as described in the final rule. A larger closed area would lead to greater impacts on fishermen and would have less community support. The 2.5 square nm closure adequately protects the discrete habitat area surrounding the Sitka Pinnacles.

Classification

This action has been determined to be not significant under Executive Order12866. No new reporting, recordkeeping, or compliance requirements are imposed by this final rule.

NMFS has prepared an FRFA that describes the impact this final rule is expected to have on small entities. A copy of this analysis is available from NMFS (see ADDRESSES). At the upper limit, the total number of entities that could be affected by this action is estimated at 2,618, which includes 1,048 fixed gear groundfish vessels and 1,570 halibut vessels, based on 1998 data for vessels that fished in the GOA. This figure does not include trawl vessels, which are already prohibited from fishing in this area under Amendment 41 (63 FR 8356, February 19, 1998). Of the non-trawl vessels, the great majority (90 percent) are catcher vessels under 60 feet in length overall (as opposed to larger catcher vessels and catcher-processors). The necessary data on ownership, affiliation, contractual relationships, and the rest from which to conclusively determine which of these operations are "small entities" for Regulatory Flexibility Act purposes are not available, and some of these 2,618 vessels might not qualify under Small Business Administration criteria. However, for the purposes of the FRFA analysis, all of these groundfish and commercial halibut vessels are assumed to be small entities, given the nature of the fisheries they participate in and the unlikelihood that many of them have annual gross revenues in excess of $3 million. This simplifying assumption avoids the risk of understating the potential impact on small entities.

Realistically, the assumption that all vessels fishing in the GOA could be affected greatly inflates the estimate of vessels whose opportunity to fish could potentially be affected by this final rule. The closure is in Statistical Area (S.A.) 355631. Information from the State's Commercial Fisheries Entry Commission fish ticket data shows that, in 1998, 97 vessels fished for groundfish in S. A. 355631. The NMFS IFQ landings database shows that 67 vessels caught IFQ halibut in 1998 in S. A. 355631 (4.2 percent of halibut vessels). Therefore, 157 is a more realistic estimate of the universe of commercial groundfish and halibut vessels that fish in the vicinity and whose opportunity to fish could potentially be affected by the final rule.

The total landings of State and federally managed species in 1998 in S. A. 355631, based on fish ticket data, were 748,378 lb (or about 0.14 percent of the total landings in the GOA that year). The total amount of halibut landed in S. A. 355631 was 409,000 lb, or 0.9 percent of the total landed in the GOA, a percentage which remained consistent from 1995 to 1998. The closure area itself is less than 1 percent of S. A. 355631 (2.5 sq nm out of a total of 466 sq nm). The historical poundage of groundfish and halibut taken in the closure area cannot be ascertained with any further accuracy, however, because the data built from fish tickets give only statistical areas and not exact catch locations.

In addition to the commercial fishing vessels, 588 charter vessels, owned by 397 unique businesses, fished for halibut in 1988 in IPHC Area 2C, in which the Sitka Pinnacles are located. Of the charter vessels, 364 were homeported in Sitka, and 191 of the Sitka vessels targeted bottomfish, including Pacific halibut. Opportunities of charter boat operators, as well as individual anglers, to fish for Pacific halibut could be affected by this action. But few, if any, of these charter boats have been fishing on the pinnacles since the State closed the area to fishing for lingcod and State-managed rockfish species in the summer of 1998. The aggregations of lingcod present on the pinnacles were an incentive to travel to this site. Although halibut may be found near the Sitka Pinnacles, they do not aggregate there in any greater numbers than elsewhere in S. A. 355631.

The actual number of vessels affected by the rule will be even smaller than the number outlined. Few fishing vessels currently use the area. Most, if not all, groundfish and halibut fishermen have voluntarily avoided the pinnacles area for the past 2 years, since ADF&G regulations prohibiting the take of groundfish species under its jurisdiction took effect. Local fishermen have been supportive of protecting the Sitka Pinnacles.

If any vessels continue to fish in the reserve, they are not likely to be adversely affected by the closure to any significant extent, as the area constitutes less than 1 percent of the grounds in S. A. 355631 and less than .001 percent of the total available fishing grounds in the GOA (about 340,000 sq nm). Some long-term advantage may accrue to fishermen in terms of fishing opportunity in nearby areas because leaving an area of notably high biological importance and productivity (e.g., unique breeding, spawning, rearing habitat) undisturbed has the potential of increasing production through a spillover effect in adjacent areas that remain open to fishing. Any such benefits from increased production, however, could be offset in an open-access situation because increased catch per unit effort in adjacent areas could lead to crowding externalities. The preferred alternative selected, under which salmon fishing would continue to be allowed, was chosen in order to reduce the potential impact on small entities. The State Board of Fish considered and rejected closing the area to salmon fishing at its February 2000 meeting in order to minimize unwarranted adverse impacts on numerous salmon vessels that fish in the GOA.

In summary, the cost to small entities of implementing the final rule is expected to be quite low, as the area being proposed for closure constitutes an extremely small percentage of available fishing grounds, and few, if any, vessels have been fishing in the area since ADF&G promulgated regulations prohibiting fishing for groundfish species under its jurisdiction in 1998. No total allowable catch quotas will be changed by the rule, and NMFS does not anticipate a reduction in catch for any species as a result of this rulemaking.

The Environmental Assessment concluded that implementing the amendment is not likely to affect the quality of the human environment.

The President has directed Federal agencies to use plain language in their communication with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Alaska Regional Administrator (see **ADDRESSES**).

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Exports, Fish, Fisheries, Marine resources.

50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 1, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR parts 300 and 679 are amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773 - 773k.

2. In subpart E, Pacific Halibut Fisheries, § 300.63, paragraph (e) is added to read as follows:

§ 300.63 Catch sharing plans, local area management plans, and domestic management measures.

* * * * *

(e) *Prohibition on halibut fishing and anchoring in the Sitka Pinnacles Marine Reserve.* (1) For purposes of this paragraph (e), the Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm off Cape Edgecumbe, defined by straight lines connecting the following points in a counterclockwise manner:

56°55.0'N lat., 135°54.0'W long;
56°57.0'N lat., 135°54.0'W long;
56°57.0'N lat., 135°57.0'W long;
56°55.5'N lat., 135°57.0'W long.

(2) No person shall engage in sport fishing, as defined in § 300.61, for halibut within the Sitka Pinnacles Marine Reserve.

(3) No person shall anchor a vessel within the Sitka Pinnacles Marine Reserve if halibut is on board.

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

3. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

4. In § 679.2, a new definition for the "Sitka Pinnacles Marine Reserve" is added in alphabetical order, to read as follows:

§ 679.2 Definitions.

* * * * *

Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm in the GOA, off Cape Edgecumbe, in Statistical Area 650. See Figure 18 to this part.

* * * * *

5. In § 679.22, paragraph (b)(5) is added to read as follows:

§ 679.22 Closures.

* * * * *

(b)* * *

(5) *Sitka Pinnacles Marine Reserve.* (i) No vessel required to have a Federal fisheries permit under § 679.4(b) may fish for groundfish or anchor in the Sitka Pinnacles Marine Reserve, as described in Figure 18 to this part.

(ii) No vessel required to have on board an IFQ halibut permit under § 679.4(d) may fish for halibut or anchor in the Sitka Pinnacles Marine Reserve, as described in Figure 18 to this part.

* * * * *

6. In part 679, Figure 18 is added to read as follows:

Figure 18 to Part 679–Sitka Pinnacles Marine Reserve

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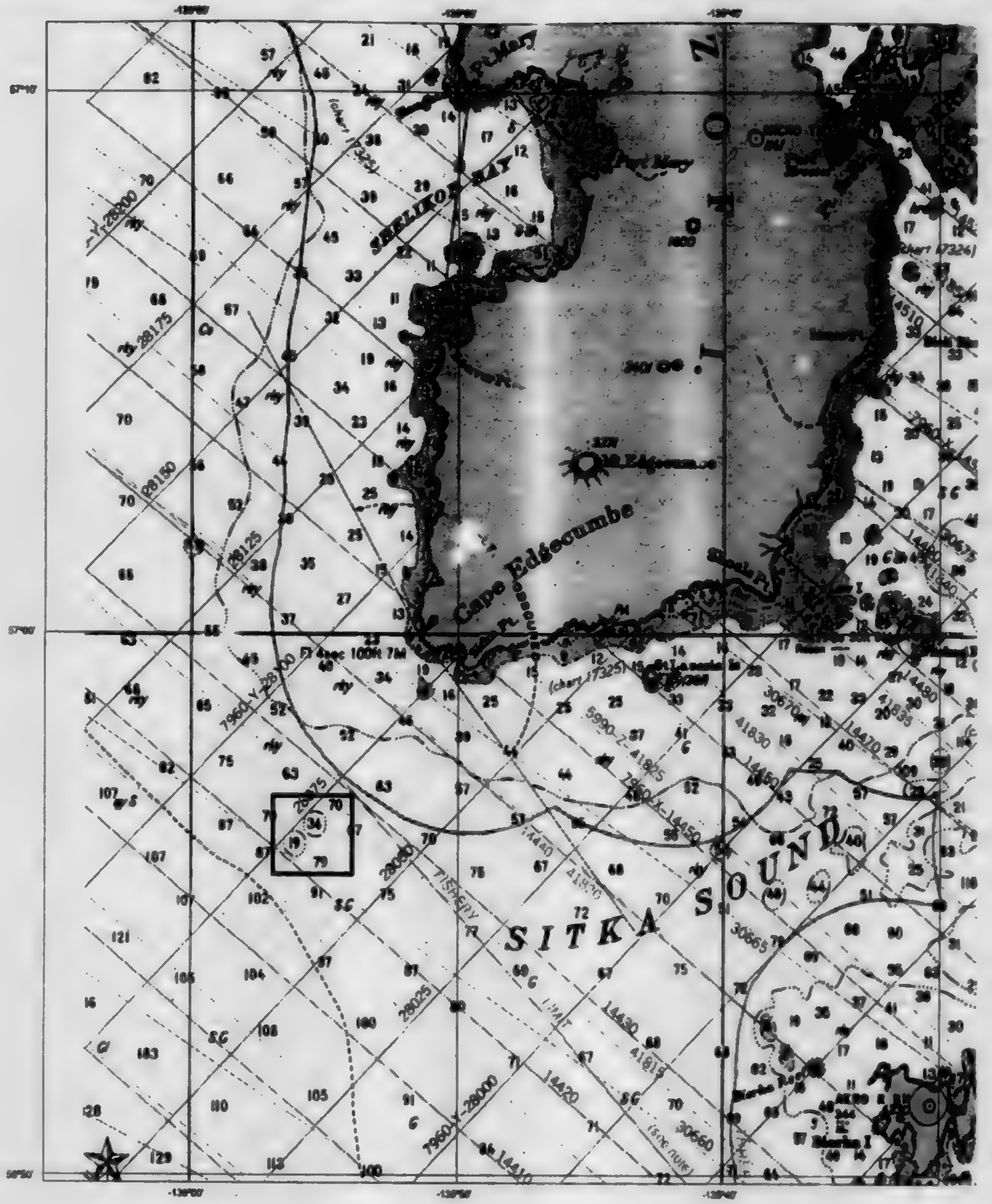

Figure 18 to Part 679. Sitka Pinnacles Marine Reserve (area enclosed within rectangle).

a. Map

b. Coordinates

An area totaling 2.5 square nm off Cape Edgecumbe, defined by straight lines connecting the following points in a counterclockwise manner:

56°55.5'N lat., 135°54.0'W long;
56°57.0'N lat., 135°54.0'W long;
56°57.0'N lat., 135°57.0'W long;
56°55.5'N lat., 135°57.0'W long.

[FR Doc. 00–28676 Filed 11–09–00; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 99122347-9347-01; I.D. 071900A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Closure for the Catcher/Processor Sector

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces closure of the 2000 catcher/processor fishery for Pacific whiting (whiting) at 6 p.m. local time (l.t.) November 6, 2000, because the allocation for the catcher/processor sector will be reached by that time. This action is intended to keep the harvest of whiting within the 2000 allocation levels.

DATES: Effective from 6 p.m. l.t. November 6, 2000, until the start of the 2001 primary season for the catcher/processor sector, unless modified, superseded or rescinded. Comments will be accepted through November 24, 2000.

ADDRESSES: Submit comments to Donna Darm,, Acting Regional Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or Rebecca Lent, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Becky Renko at 206-526-6110.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On January 4, 2000 (65 FR 221), the levels of allowable biological catch (ABC), the optimum yield (OY) and the commercial OY (the OY minus the tribal allocation) for U.S. harvests of whiting were announced in the **Federal Register**. For 2000, the whiting ABC and OY are 232,000 mt (mt), the tribal whiting allocation is 32,500 mt, and the commercial OY is 199,500 mt.

Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the catcher/processor (34 percent), mothership (24 percent), and shore-based (42 percent) sectors of the whiting fishery. The 2000 commercial whiting allocations are 67,830 mt for the catcher/processor sector, 47,880 mt for the mothership sector, and 83,790 mt for the shoreside sector. The catcher/processor sector is composed of vessels that harvest and process whiting. The mothership sector is composed of motherships, and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is composed of vessels that harvest whiting for delivery to shoreside processors.

Regulations at 50 CFR 660.323(a)(3)(i) describe the primary season for catcher/processors as the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector. When each sector's allocation is reached, the primary season for that sector is ended.

NMFS Action

This action announces achievement of the allocation for the catcher/processor sector only. The best available information on November 1, 2000, indicated that the 67,830 mt catcher/processor allocation would be reached by 6 p.m. l.t. on November 6, 2000, at which time the primary season the catcher/processor sector ends.

For the reasons stated here and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(A), NMFS herein announces:

Effective 6 p.m. l.t. on November 6, 2000, further taking and retaining, receiving or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(A) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–28612 Filed 11–6–00; 4:01 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040-0040-01; I.D. 102400C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reallocation; correction.

SUMMARY: This document corrects the reallocation of Bering Sea and Aleutian Islands management area (BSAI) Pacific cod from trawl catcher/processors and vessels using jig gear to vessels using hook-and-line or pot gear.

DATES: Effective November 1, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: This document corrects the reallocation of Pacific cod in the Bering Sea and Aleutian Islands from trawl catcher/processors and vessels using jig gear to vessels using hook-and-line or pot gear.

Correction

In the final rule Pacific Cod in the Bering Sea and Aleutian Islands Management Area; published on November 1, 2000 (65 FR 65272), FR Doc. 00-28023, an error was made in **SUPPLEMENTARY INFORMATION**.

On page 65273, in the third column, the tenth line is corrected to read as follows: "processors, 81,958 mt to catcher/processor vessels using".

Dated: November 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–28842 Filed 11–08–00; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 65, No. 218

Thursday, November 9, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–283–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–100 series airplanes, that currently requires repetitive inspections to detect cracking of the outer chord of the body station (BS) 1480 upper and lower bulkhead and longeron splice fitting; repair, if necessary; and modification of the skin splice plate, the outer chord splice fitting, and the stringer interface of the lower bulkhead, if necessary. This action would revise the applicability of the existing AD to add additional airplanes, require accomplishment of previously optional inspections and clarify those inspections, extend certain compliance times, and require additional work in certain areas. This proposal is prompted by reports that fatigue cracking has been found in the outer chord of the BS 1480 bulkhead at the overwing longeron splice on airplanes not subject to the existing AD. The actions specified in this proposed AD are intended to detect and correct fatigue cracking of the outer chord of the BS 1480 upper and lower bulkhead and longeron splice fitting, which could result in reduced structural integrity of the fuselage and the inability to carry limit load.

DATES: Comments must be received by December 26, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–283–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 98–NM–283–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–283–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–283–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 15, 1998, the FAA issued AD 98–20–25, amendment 39–10791 (63 FR 50508, September 22, 1998), applicable to certain Boeing Model 747–100 series airplanes, to require repetitive inspections to detect cracking of the outer chord of the body station (BS) 1480 upper and lower bulkhead and longeron splice fitting, and repair, if necessary. Alternatively, that action requires other repetitive inspections to detect cracking of the BS 1480 upper and lower bulkhead, bulkhead outer chord, web, skin, splice components, and lower bulkhead/stringer interface; and modification of the skin splice plate, the outer chord splice fitting, and the stringer interface of the lower bulkhead, if necessary. That action was prompted by a report indicating that fatigue cracking was found in the outer chord of the BS 1480 bulkhead at the overwing longeron splice, and that the longeron splice fitting was completely severed. The requirements of that AD are intended to detect and correct such fatigue cracking, which could result in reduced structural integrity of the fuselage and the inability to carry limit load.

Actions Since Issuance of Previous Rule

Since the issuance of AD 98–20–25, the FAA has determined that the detailed visual inspections described in paragraph (a)(1) of that AD as one alternative for compliance with that AD may not be adequate to ensure that any fatigue cracking will be detected in a timely manner. Therefore, this action proposes to require detailed visual, ultrasonic, and open-hole high frequency eddy current (HFEC) inspections which were referenced in paragraph (a)(2) of AD 98–20–25 as another alternative for compliance with that AD.

Paragraph (a)(2) of AD 98–20–25 specifies repetitive inspections of both the upper and lower bulkhead, bulkhead outer chord, web, skin, splice components, and lower bulkhead/stringer interface. The initial inspection is required prior to the accumulation of 10,000 total flight cycles, or within 45 days after October 7, 1998 (the effective date of AD 98–20–25), whichever occurs later. Since the issuance of AD 98–20–25, the FAA has determined that it is appropriate to extend the inspection threshold for the inspection of the bulkhead outer chord, skin, and lower bulkhead/stringer interface. The FAA finds that a repetitive inspection threshold of 20,000 total flight cycles for inspection of the lower bulkhead/stringer interface is adequate to ensure the continued safety of the affected airplanes.

Explanation of New Relevant Service Information

Since the issuance of AD 98–20–25, the FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000. (AD 98–20–25 references the original issue of that service bulletin, dated July 31, 1997, as an appropriate source of service information.) Like the original issue of the service bulletin, Revision 1 describes procedures for repetitive inspections to detect cracking of the BS 1480 upper and lower bulkhead, bulkhead outer chord, web, skin, splice components, and lower bulkhead/stringer interface; repair, if necessary; and, as part of a certain inspection plan, procedures for modification of the skin splice plate, outer chord splice fitting, and the stringer interface of the lower bulkhead. Revision 1 of the service bulletin expands the effectivity listing specified in the original issue of the service bulletin to include Model 747–400 series airplanes up to line number 1254, includes new instructions for inspection and modification at stringer S–34 in the lower bulkhead/stringer interface area, revises inspection procedures for airplanes with a reinforcement strap installed on the bulkhead outer chord, and references new repair instructions.

Explanation of Applicability

In the preamble to AD 98–20–25, the FAA specified that the actions required by that AD were considered "interim action" and that the FAA was considering further rulemaking action to supersede that AD to require inspections and modification of the upper and lower bulkhead and overwing longeron at BS 1480 for all Boeing Model 747–100, –200, and –300 series airplanes. The FAA has determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

In addition, as specified previously, Revision 1 of the service bulletin adds Boeing Model 747–400 series airplanes up to line number 1254 to the effectivity listing. The area of the outer chord of the BS 1480 upper bulkhead on Model 747–400 series airplanes up to and including line number 1096 is essentially the same as that on other Boeing Model 747 series airplanes. Therefore, this proposed AD would require the same inspections of the upper bulkhead for Boeing Model 747–400 series airplanes up to and including line number 1096 as it would require for other Boeing Model 747 series airplanes. Improvements were made during production on the upper bulkhead area on Model 747–400 series airplanes having line numbers 1097 through 1254 inclusive; however, the lower bulkhead area on those airplanes is also essentially the same as on other Model 747 series airplanes. Therefore, this proposed AD also would require the same inspections of the lower bulkhead for Boeing Model 747–400 series airplanes up to and including line number 1254 as it would require for other Boeing Model 747 series airplanes. Improvements were made during production on the lower bulkhead area on Model 747–400 series airplanes having line number 1255 and above, so those airplanes are not subject to this proposed AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–20–25 to continue to require repetitive inspections to detect cracking of the outer chord of the BS 1480 upper and lower bulkhead and longeron splice fitting; repair, if necessary; and modification of the skin splice plate, the outer chord splice fitting, and the stringer interface of the lower bulkhead, if necessary. This proposed AD would require accomplishment of the actions specified in Revision 1 of the service bulletin described previously, except as discussed below.

Differences Between Service Bulletin and Proposed AD

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Explanation of Changes Made to AD 98–20–25

Paragraph (a)(2) of this AD is essentially a restatement of paragraph (a)(2) of AD 98–20–25; however, the FAA has revised paragraph (a)(2) of this proposed AD to more accurately state the inspections included in that paragraph. The inspections specified in paragraph (a)(2) of this proposed AD are the same as those specified in paragraph (d) of this proposed AD. Thus, an operator who has inspected an airplane in accordance with paragraph (a)(2) of this AD is not required to inspect in accordance with paragraphs (c) and (d) of this AD.

In addition, the FAA has added a note to the proposed rule to clarify the definition of a detailed visual inspection.

Cost Impact

There are approximately 1,128 airplanes of the affected design in the worldwide fleet. The FAA estimates that 259 airplanes of U.S. registry would be affected by this proposed AD.

AD 98–20–25 applies to airplanes listed in Groups 1 through 3 of the service bulletin. The detailed visual inspection that is currently offered as one alternative for compliance with AD 98–20–25 takes approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $960 per airplane, per inspection cycle.

For airplanes listed in Groups 1 through 3 in the service bulletin (34 U.S.-registered airplanes), the proposed detailed visual, ultrasonic, and open hole HFEC inspections of the upper bulkhead area (which AD 98–20–25 references as an alternative inspection program) would take approximately 32 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed inspections on U.S. operators is estimated to be $65,280, or $1,920 per airplane, per inspection cycle.

For airplanes listed in Groups 4 through 22 in the service bulletin (191 U.S.-registered airplanes), the proposed detailed visual, ultrasonic, and open hole HFEC inspections of the upper bulkhead area would take approximately 22 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections on U.S. operators is estimated to be $252,120, or $1,320 per airplane, per inspection cycle.

For all airplanes listed in the applicability of this proposed AD (259 U.S.-registered airplanes), the proposed detailed visual, ultrasonic, and open hole HFEC inspections of the lower bulkhead/stringer interface area would take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed inspections on U.S. operators is estimated to be $466,200, or $1,800 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10791 (63 FR 50508, September 22, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98–NM–283–AD. Supersedes AD 98–20–25, Amendment 39–10791.

Applicability: Model 747 series airplanes, line numbers (L/N) 1 through 1254 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the outer chord of the body station (BS) 1480 bulkhead at the overwing longeron splice, which could result in reduced structural integrity of the fuselage and the inability to carry limit load, accomplish the following:

Restatement of Requirements of AD 98–20–25:

Repetitive Inspections and Repair

(a) For Model 747–100 series airplanes, L/N 1 through 87 inclusive: Prior to the accumulation of 10,000 total flight cycles, or within 45 days after October 7, 1998 (the effective date of AD 98–20–25, amendment 39–10791), whichever occurs later, accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Perform a detailed visual inspection to detect cracking of the longeron splice fitting at BS 1480, the forward side of the outer chord of the BS 1480 bulkhead at the longeron splice fitting attachment bolts, and the aft side of the outer chord of the BS 1480 bulkhead within two inches above the outer chord splice fitting, on both the left and right sides of the airplane.

Note 2: Figure 5 of Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997, provides an exploded view of the structural components of the splice area for the purpose of parts identification. (However, paragraph (a)(1) of this AD does not require the inspection described in Figure 5.)

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(i) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

(ii) Repeat the detailed visual inspection thereafter at intervals not to exceed 250 flight cycles, until the initial inspection required by paragraph (a)(2) or (d) of this AD is accomplished.

(2) Perform detailed visual, ultrasonic, and open hole high frequency eddy current (HFEC) inspections to detect cracking of the upper and lower bulkhead, bulkhead outer chord, web, skin, splice components, and lower bulkhead/stringer interface, in accordance with Figures 5 and 6 of Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997. Additionally, for airplanes on which the inspection in "Plan B" of the service bulletin is accomplished, modify the skin splice plate, the outer chord splice fitting, and the stringer interface of the lower bulkhead, in accordance with the Accomplishment Instructions of the service bulletin. Accomplishment of these actions constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1) of this AD.

(i) If any cracking is detected, prior to further flight, repair in accordance with the service bulletin, except as provided by paragraph (b) of this AD.

(ii) Repeat the inspections thereafter in accordance with the flight safety inspection program specified in Figures 1 and 3 of the service bulletin.

(b) Where the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, repair in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

New Requirements of This AD

Groups 1 Through 3: Splice Area Work (Compliance Times)

Note 4: Airplanes inspected in accordance with paragraph (a)(2) of this AD are not required to be inspected in accordance with paragraphs (c) and (d) of this AD.

(c) For airplanes listed in Groups 1 through 3 in Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000; on which the requirements of paragraph (a)(2) of this AD have NOT been accomplished prior to the effective date of this AD: Accomplish paragraph (d) of this AD at the applicable time specified in paragraph (c)(1), (c)(2), or (c)(3) of this AD.

(1) For airplanes on which the inspection specified in Boeing Service Bulletin 747–53–2333 has not been accomplished: Inspect prior to the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the inspection specified in Boeing Service Bulletin 747–53–2333 has been accomplished, but the full modification specified in that service bulletin has not been accomplished: Inspect at the later of the times specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Prior to the accumulation of 10,000 total flight cycles, or within 2,000 flight cycles after accomplishment of the last inspection in accordance with Boeing Service Bulletin 747–53–2333, whichever occurs first.

(ii) Within 1,000 flight cycles after the effective date of this AD.

(3) For airplanes on which the full modification specified in Boeing Service Bulletin 747–53–2333 has been accomplished: Inspect at the later of the times specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this AD.

(i) Prior to the accumulation of 16,000 total flight cycles, or within 6,000 flight cycles after accomplishment of the full modification in accordance with Boeing Service Bulletin 747–53–2333, whichever occurs first.

(ii) Within 1,000 flight cycles after the effective date of this AD.

Groups 1 Through 3: Splice Area Work (Inspections)

(d) For airplanes listed in Groups 1 through 3 in Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000; on which the requirements of paragraph (a)(2) of this AD have NOT been accomplished prior to the effective date of this AD: At the applicable time specified in paragraph (c) of this AD, accomplish paragraph (d)(1) or (d)(2) of this AD. Accomplishment of the requirements of this paragraph constitutes terminating action for the repetitive inspection requirements specified in paragraph (a)(1) of this AD, or, for the upper bulkhead splice area ONLY, for the inspection requirements specified in paragraph (a)(2) of this AD.

(1) Plan "A": Perform detailed visual, ultrasonic, and HFEC inspections to detect cracking of the splice area, in accordance with Plan "A" and Figure 5, as defined in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000. Repeat the inspections thereafter in accordance with the flight safety inspection program as specified under Plan "A" and Figure 1 of the service bulletin.

(2) Plan "B": Modify the skin splice plate and outer chord splice fitting in accordance with Plan "B," as defined in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000. Perform HFEC inspections and modification, then accomplish repeat open hole HFEC inspections, in accordance with the flight safety inspection program, as specified under Plan "B" and Figure 1 of the service bulletin. Accomplishment of the modification and inspections in accordance with this paragraph terminates the repetitive inspection requirements in paragraph (d)(1) of this AD.

Groups 4 Through 22: Splice Area Work (Compliance Time and Inspections)

(e) For airplanes listed in Groups 4 though 22 in Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000: Prior to the accumulation of 16,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, perform detailed visual and ultrasonic inspections to detect cracking of the bulkhead forward flange in accordance with Figure 7 of the service bulletin, and accomplish the requirements of either paragraph (e)(1) or (e)(2) of this AD.

(1) Plan "A": Perform open hole HFEC inspections to detect cracking of the splice area, in accordance with Plan "A" and Figures 6 and 7, as defined in the Accomplishment Instructions of the service bulletin. Repeat the inspections thereafter in accordance with the flight safety inspection program as specified under Plan "A" and in Figure 2 of the service bulletin.

(2) Plan "B": Perform open hole HFEC inspections and modification of the upper bulkhead, bulkhead outer chord, web, skin, and splice components, in accordance with Plan "B," as defined in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000. Thereafter, repeat the open hole HFEC inspections in accordance with the flight safety inspection program as specified under Plan "B" and Figure 2 of the service bulletin. Accomplishment of the modification and inspections in accordance with this paragraph terminates the repetitive inspection requirements specified in paragraph (e)(1) of this AD.

All Airplanes: Lower Bulkhead/Stringer Interface Work (Compliance Times)

(f) For all airplanes (L/N 1 through 1254 inclusive): At the applicable time specified in paragraph (f)(1) or (f)(2) of this AD, accomplish paragraph (g) of this AD.

(1) For airplanes on which an inspection of the lower bulkhead has NOT been accomplished prior to the effective date of this AD in accordance with paragraph (a)(2) of this AD: Inspect prior to the accumulation of 20,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes on which an inspection of the lower bulkhead HAS been accomplished prior to the effective date of this AD in accordance with paragraph (a)(2) of this AD: Inspect prior to the accumulation of 20,000 total flight cycles, or at the time of the next scheduled inspection of the lower bulkhead in accordance with paragraph (a)(2) of this AD, whichever occurs later.

All Airplanes: Lower Bulkhead/Stringer Interface Work (Inspections)

(g) For all airplanes (L/N 1 through 1254 inclusive): At the applicable time specified in paragraph (f) of this AD, accomplish paragraph (g)(1) or (g)(2) of this AD. For airplanes having L/N 1 through 87 inclusive, accomplishment of the requirements of this paragraph constitutes terminating action for the inspection requirements specified in paragraph (a)(2) of this AD for the lower bulkhead/stringer interface area ONLY.

(1) Plan "A": Perform detailed visual and either ultrasonic or open hole HFEC inspections, as applicable, to detect cracking of the lower bulkhead/stringer interface area, in accordance with Plan "A" and Figure 8, as defined in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000. Repeat the inspections thereafter in accordance with the flight safety program as specified under Plan "A" and Figure 3 or Figure 8 of the service bulletin.

(2) Plan "B": Except as provided by paragraph (h) of this AD, perform open hole HFEC inspections and modification of the lower bulkhead/stringer interface area, in accordance with Plan "B" and Figure 19, as defined in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000. Thereafter, repeat the detailed visual and either ultrasonic or open hole HFEC inspections, as applicable, in accordance with the flight safety inspection program as specified under Plan "B" and Figures 3 and 8 of the service bulletin. Accomplishment of the modification and inspections in accordance with this paragraph terminates the repetitive inspection requirements specified in paragraph (g)(1) of this AD.

Airplanes Modified With Original Service Bulletin: Post-Modification Work

(h) For any airplane (L/N 1 through 1254 inclusive) on which the modification specified in paragraph (g)(2) was accomplished prior to the effective date of this AD in accordance with the original issue of Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997: Prior to the accumulation of 20,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later, accomplish post-modification work in accordance with Figure 26 of Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000.

Repair

(i) Except as provided by paragraph (b) of this AD, if any cracking is detected during any inspection required by this AD, prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000.

Alternative Methods of Compliance

(j)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–20–25, amendment 39–10791, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(k) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 2, 2000,

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28723 Filed 11–8–00; 8:45 am]

BILLING CODE 4010–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–75–AD]

RIN 2120–AA64

Airworthiness Directives; Rolladen Schneider Flugzeugbau GmbH Models LS 4 and LS 4a Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Rolladen Schneider Flugzeugbau GmbH (Rolladen Schneider) Models LS 4 and LS 4a sailplanes. The proposed AD would require you to inspect the airbrake system for damage and proper rigging, with correction, repair, or replacement, as necessary. The proposed AD would also require you to report any damage found to the Federal Aviation Administration (FAA). The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to detect and correct damage to the airbrake locking bracket caused by asymmetric loads. This condition could result in the pilot's inability to operate the airbrake controls, with consequent loss of sailplane control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 14, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–75–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Rolladen-Schneider Flugzeugbau GmbH, Muhlstrasse 10, D–63329 Egelsbach, Germany; phone: ++ 49 6103 204126; facsimile: ++ 49 6103 45526. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on the proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99–CE–75–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The LBA, which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain Rolladen Schneider Models LS 4 and LS 4a sailplanes. The LBA reports two occurrences of damaged airbrake locking brackets found on the above-referenced sailplanes. The damage was the result of improper rigging of the airbrake system. The asymmetric load that occurs over time with an improperly rigged airbrake system could result in cracks in the welding region of the airbrake tube and lateral deformation of the airbrake locking bracket.

What are the consequences if the condition is not corrected? Damage to the airbrake locking bracket, if not detected and corrected, could result in the pilot's inability to operate the airbrake controls with consequent loss of sailplane control.

Is there service information that applies to this subject? Rolladen Schneider has issued Technical Bulletin No. 4042, dated July 2, 1999.

What are the provisions of this service bulletin? The service bulletin specifies procedures for:

—Inspecting the airbrake locking bracket for deformation (indicated by cracks in paint, paint chipping off, and/or cracks in the welding region to the tube); and

—If any deformation exists, repairing or modifying the airbrake locking bracket by adding a brace that increases the structural strength of the bracket.

What action did the LBA take? The LBA classified this service bulletin as mandatory and issued German AD 1999–270, dated July 22, 1999, in order to assure the continued airworthiness of these sailplanes in Germany.

Was this in accordance with the bilateral airworthiness agreement? These sailplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the LBA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Rolladen Schneider Models LS 4 and LS 4a sailplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected sailplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would the proposed AD require? This proposed AD would require you to:

—Inspect the airbrake locking bracket on the rear landing gear box for signs of fatigue (cracks in the paint, paint chips, or cracks in the welding region to the tube) and inspect for proper rigging of the airbrake system;

—Reassemble the airbrake system (if improper rigging is found), and if any sign of fatigue is evident, disassemble the airbrake system, repair or modify any airbrake locking bracket, and accomplish certain adjustments after reassembling the airbrake system; and

—Report any damage found to the FAA.

The FAA is proposing a reporting requirement so we can get an idea of how many sailplanes in the fleet have damaged or incorrectly rigged airbrake systems. We will utilize this information in deciding whether any of the proposed actions should be repetitive or whether we should initiate additional rulemaking.

Cost Impact

How many sailplanes would the proposed AD impact? We estimate that the proposed AD would affect 78 sailplanes in the U.S. registry.

What would be the cost impact of the proposed AD on owners/operators of the affected sailplanes? We estimate the following costs to accomplish the proposed inspection and any necessary reassembly:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. sailplane operators
1 workhour × $60 per hour = $60	Not applicable	$60 per sailplane	$4,680

We estimate the following costs to accomplish any necessary modification that would be required based on the results of the proposed inspection. We have no way of determining the number of sailplanes that may need such modification:

Labor cost	Parts cost	Total cost per sailplane
2 workhours × $60 per hour = $120	The manufacturer will modify the airbrake bracket free of charge.	$120 per sailplane.

Compliance Time of the Proposed AD

What would be the compliance time of the proposed AD? The compliance time of this proposed AD is within the next 30 calendar days after the effective date of this AD.

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? Damage to the airbrake locking brake occurs as a result of airplane operation. However, the reason the damage occurs is because of incorrect rigging of the airbrake system. We have determined that a calendar time for compliance is necessary because this incorrect rigging is not directly related to sailplane operation. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it is for a sailplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Why is the compliance time of the proposed AD different than the German AD and the service information? The service information specifies the actions required in this proposed AD "prior to further flight" and the German AD mandates these actions "prior to further flight" for sailplanes registered for operation in Germany. The FAA does not have justification for requiring the action prior to further flight. Instead, the FAA has determined that 30 calendar days is a reasonable time period for accomplishing the actions in this proposed AD.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows.

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Rolladen Schneider Flugzeugbau GMBH: Docket No. 99–CE–75–AD.

(a) *What sailplanes are affected by this AD?* This AD affects models LS 4 and LS 4a sailplanes, serial numbers 4000 through 4852, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage to the airbrake locking bracket caused by asymmetric loads. This condition could result in the pilot's inability to operate the airbrake controls with consequent loss of sailplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Action	Compliance time	Procedures
(1) Inspect the airbrake locking bracket on the rear landing gear box for signs of fatigue (cracks in the paint, paint chips, or cracks in the welding region to the tube) and inspect for proper rigging of the airbrake system.	Within the next 30 calendar days after the effective date of this AD..	Inspect for proper rigging in accordance with the procedures contained in the applicable maintenance manual. Inspect the airbrake locking bracket in accordance with the procedures contained in Rolladen Schneider Technical Bulletin No. 4042, dated July 2, 1999.
(2) If any sign of fatigue is evident, accomplish the following:. (i) Disassemble the airbrake system; (ii) Obtain a modified airbrake locking bracket from the manufacturer (2-day turnaround time) and install this bracket; and (iii) Reassemble the airbrake system and accomplish the adjustments listed in the service bulletin	Accomplish all actions prior to further flight after the inspection required in paragraph (d)(1) of this AD.	Accomplish the disassembly, installation, assembly, and adjustments in accordance with procedures contained in the applicable maintenance manual and the procedures in Rolladen Schneider Technical Bulletin No. 4042, dated July 2, 1999.
(3) If no signs of fatigue are found but the airbrake system is incorrectly assembled, disassemble the system and reassemble, including accomplishing the adjustments listed in the service bulletin.	Accomplish all actions prior to further flight after the inspection required in paragraph (d)(1) of this AD.	Accomplish in accordance with procedures contained in the applicable maintenance manual and the procedures in Rolladen Schneider Technical Bulletin No. 4042, dated July 2, 1999.
(4) If no signs of fatigue are found and the airbrake system is correctly assembled, then no further action is required by this AD.	AD complied with	AD complied with.
(5) If any discrepancy is found that requires additional work as required by paragraphs (d)(2) and (d)(3) of this AD, then send information describing the discrepancies found and the follow-on work that was necessary to the FAA.	Within 10 days after the inspection required by this AD or within 10 days after the effective date of this AD, whichever occurs later.	Mail the information to: FAA, Small Airplane Directorate (ACE–112), Attention: Docket No. 99–CE–75–AD, 901 Locust, Room 301, Kansas City, Missouri 64106.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Rolladen-Schneider Flugzeugbau GmbH, Muhlstrasse 10, D–63329 Egelsbach, Germany. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in German AD 1999–270, dated July 22, 1999.

Issued in Kansas City, Missouri, on November 2, 2000.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28832 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–37]

Proposed Amendment of Class E Airspace; Lexington, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which proposed to amend the Class E airspace at Lexington, KY. The NPRM is being withdrawn as a result of the determination that additional Class E airspace to contain aircraft executing the Non-Directional Beacon (NDB) Runway 4 (RWY 4) Standard Instrument Approach Procedure (SIAP) developed for Blue Grass Airport is not necessary, as the SIAP is fully contained within existing Class E airspace.

DATES: This proposed rule is withdrawn as of November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Docket No. 00–ASO–37, P.O. Box 20636, Atlanta, Georgia 30320, telephone: (404) 305–5586.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On September 25, 2000, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend Class E airspace at Lexington, KY, (65 FR 57568) to provide adequate controlled airspace to contain the NDB RWY 4 SIAP developed for Blue Grass Airport. The initial airspace review for Lexington, KY, determined the need for an airspace extension. However, a follow-up review determined the extension was not necessary.

Conclusion

In consideration of the aforementioned determination, action to amend the Lexington, KY, Class E airspace area is withdrawn.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 00–ASO–37, as published in the **Federal Register** on September 25, 2000, (65 FR 57568), is hereby withdrawn.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in College Park, Georgia, on October 24, 2000.

Richard Biscomb,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–28848 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209038–89]

RIN 1545–AO75

Foreign Trusts That Have U.S. Beneficiaries; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Monday, August 7, 2000 (65 FR 48185) relating to transfers of property by U.S. persons to foreign trusts having one or more United States beneficiaries.

FOR FURTHER INFORMATION CONTACT: Willard W. Yates at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of this correction is under section 679 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–209038–89), that was the subject of FR Doc. 00–19897, is corrected as follows:

1. On page 48187, column 2, in the preamble under the paragraph heading *"Section 1.679–1 U.S. Transferor Treated as Owner of Foreign Trust"*, first full paragraph from the top of the column, last line, the language "November 6, 2000" is corrected to read "August 7, 2000".

2. On page 48188, column 1, in the preamble under the paragraph heading *"Section 1.679–2: Trusts Treated as Having a U.S. Beneficiary"*, third full paragraph, last line, the language "November 6, 2000" is corrected to read "August 7, 2000".

3. On page 48188, column 3, in the preamble under the paragraph heading *"Section 1.679–3 Transfers"*, fourth paragraph, last line, the language "November 6, 2000" is corrected to read "August 7, 2000".

4. On page 48189, column 2, in the preamble under the paragraph heading *"Section 1.679–4 Exceptions to General Rule"*, second full paragraph, third line, the language "trusts after November 6, 2000. Special" is corrected to read "trusts after August 7, 2000. Special".

5. On page 48189, column 3, in the preamble under the paragraph heading *"Section 1.679–5 Pre-immigration Trusts"*, third full paragraph, last line, the language "after November 6, 2000" is corrected to read "after August 7, 2000".

6. On page 48189, column 3, in the preamble under the paragraph heading *"Section 1.679–6 Outbound Migrations of Domestic Trusts"*, last paragraph in the column, last line, the language "November 6, 2000" is corrected to read "August 7, 2000".

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 00–28424 Filed 11–8–00; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD107–3059, VA122 &123–5054; FRL–6899–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland and Virginia; Metropolitan Washington, D.C. Ozone Nonattainment Area; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a series of proposed rulemaking actions published on October 19, 2000. On this date, EPA proposed action on the following Maryland and Virginia provisions as revisions to their respective State Implementation Plans (SIP's): Maryland—New Source Review (65 FR 62675); and Virginia—Source-Specific Permits to Reduce NO_X Emissions in the Metropolitan Washington, D.C. Ozone Nonattainment Area (65 FR 62666).

DATES: Comments must be received on or before November 20, 2000.

ADDRESSES: Comments may be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT:

1. Maryland—New Source Review: Perry R. Pandya, U.S. EPA Region III, (215) 814–2167.

2. Virginia—Source-Specific Permits to Reduce NO_X emissions in the Metropolitan Washington, D.C. Ozone Nonattainment Area: Michael Ioff, U.S. EPA Region III, (215) 814–2166.

Dated: October 31, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–28705 Filed 11–8–00; 8:45 am]

BILLING CODE [illegible] 50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC048–2022, MD096–3053, MD104–3057, MD106–3058, MD058–3036 & VA083–5038; FRL–6899–1]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Metropolitan Washington D.C. Ozone Nonattainment Area; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a series of proposed rulemaking actions published on October 19, 2000. On this date, EPA proposed action on the following District of Columbia, Maryland, and Virginia provisions as revisions to their respective State Implementation Plans (SIP's): District of Columbia—Nitrogen Oxides Budget Program (65 FR 62679); Maryland—Nitrogen Oxides Budget Program (65 FR 62677), Nitrogen Oxides Reduction and Trading Program (65 FR 62671), and Reasonably Available Control Technology for Oxides of Nitrogen (65 FR 62668); and Maryland and Virginia—Post-1996 Rate of Progress Plan for the Metropolitan Washington, D.C. Ozone Nonattainment Area (65 FR 62658).

DATES: Comments must be received on or before November 20, 2000.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT:

1. District of Columbia—Nitrogen Oxides Budget Program; Maryland—Nitrogen Oxides Budget Program, and Maryland—Nitrogen Oxides Reduction and Trading Program: Cristina Fernandez, U.S. EPA Region III, (215) 814–2178.

2. Maryland—Reasonably Available Control Technology for Oxides of Nitrogen: Kelly Bunker, U.S. EPA Region III, (215) 814–2177.

3. Maryland and Virginia—Post-1996 Rate of Progress Plan for the Metropolitan Washington, D.C. Ozone Nonattainment Area: Janice Lewis, U.S. EPA Region III, (215) 814–2185, or Christopher Cripps at (215) 814–2179.

Dated: October 31, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–28706 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6899–4]

Supplemental Information To Support Proposed Approvals of One-Hour Ozone Attainment Demonstrations for Serious Ozone Nonattainment Areas; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and extension of comment period; correction.

SUMMARY: On November 2, 2000 (65 FR 65818), EPA published a notice of availability and reopening of comment period to provide the public with the opportunity to comment on a reasonably available control measures (RACM) analysis that EPA performed. In that document EPA stated that the comment period would be extended 15 additional days, but in the Dates Section there was a typographical error that stated that the comment period would close on November 15, 2001. The EPA's original intent was to extend the comment period 15 additional days, therefore the comment period is only being extended to November 15, 2000.

Dated: November 3, 2000.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

DATES: The comment period closes on November 15, 2000.

FOR FURTHER INFORMATION CONTACT: John Silvasi at (919) 541–5666.

[FR Doc. 00–28810 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6895–1]

National Oil and Hazardous Substances Pollution Contingency Plan, National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed direct final deletion of the Ilada Energy Company Superfund

Site (Site) from the National Priorities List (NPL).

SUMMARY: The EPA proposes to delete the Ilada Energy Company Superfund site (Site) from the NPL and requests public comment on this action. The NPL constitutes appendix B to 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. EPA has determined that the Site currently poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, further remedial measures under CERCLA are not appropriate. We are publishing this proposed rule without prior notification because the Agency views this as a noncontroversial revision and anticipates no dissenting comments. A detailed rationale for this proposal is set forth in the direct final rule, published elsewhere in this issue of the **Federal Register**. If no dissenting comments are received, the deletion will become effective. If EPA receives dissenting comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this Action must be received by December 11, 2000.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson, Chicago, IL 60604. Comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repositories at the following locations: U.S. EPA Region 5, Administrative Records, 77 W. Jackson Boulevard, Chicago, IL 60604 (312) 886–0900, the Cape Giradeau Public Library, 711 N. Clark, Cape Girardeau, MO 63701 and the Illinois Environmental Protection Agency, 1021 North Grand Ave. East, Springfield, Illinois 62794.

FOR FURTHER INFORMATION CONTACT: Jon Peterson, Remedial Project Manager at (312) 353–1264 or Gladys Beard Associate Remedial Project Manager, at (312) 886–7253. Written correspondence can be directed to Ms. Beard at U.S. Environmental Protection Agency, (SR–6J) 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Action which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321 (c) (2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Dated: October 27, 2000.

Gary Gulezian,

Acting Regional Administrator, Region V.

[FR Doc. 00–28515 Filed 11–8–00; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; DA 00–2433]

Comment Sought on Recommended Decision Issued by Federal-State Joint Board on Jurisdictional Separations

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; solicitation of comments.

SUMMARY: This document seeks comment on the Federal-State Joint Board on Jurisdictional Separations' Recommended Decision for instituting an interim freeze of the relationships and jurisdictional allocation factors.

DATES: Submit comments on or before November 24, 2000, and reply comments on or before December 4, 2000.

ADDRESSES: See Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: William Cox, (202) 418–7400; TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW., Washington, DC 20036, telephone 202–857–3800, facsimile 202–857–3805.

On July 21, 2000, the Federal-State Joint Board on Jurisdictional Separations (Joint Board) released a *Recommended Decision* for instituting an interim freeze of the part 36 category relationships and jurisdictional allocation factors. On August 15, 2000, we released a public notice, similar to this *Public Notice*, that sought comment on the *Recommended Decision*. The *Aug. 15 Public Notice* inadvertently was not published in the **Federal Register**. In order to provide adequate notice to interested parties, we now release this *Public Notice* seeking comment on the *Recommended Decision*. Parties who have already filed comments in response to the *Aug. 15 Public Notice* need not refile their comments.

The Joint Board recommended that the Commission institute a five-year freeze of all part 36 category relationships and allocation factors for price cap carriers, and a freeze of the allocation factors for rate-of-return carriers. The Joint Board recommended that the Commission adopt a freeze based on carriers' data from the twelve months prior to the Commission's issuance of an order on the *Recommended Decision*. The Joint Board further recommended that the freeze should be mandatory and apply to all carriers subject to the Commission's part 36 rules. The Joint Board recommended that the freeze remain in effect for five years, or until the Commission takes further action pursuant to a recommendation from the Joint Board, whichever occurs first. During the interim freeze period, the Joint Board recommended that the Joint Board and the Commission continue to review issues regarding separations reform, as specified in the *Recommended Decision*. We seek comment on the Joint Board's recommendations.

The Joint Board also recommended that the Commission further develop the record in this proceeding on the impact of increased intrastate usage on jurisdictional allocations and consumers since 1995. Accordingly, we seek comment on the impact of increased intrastate usage since 1995 on jurisdictional allocations and consumers. The Joint Board noted that one possible explanation for the increase in intrastate usage is the growth in the use of the local network to connect to the Internet since 1995. As a result, we seek comment on the impact of Internet traffic growth on jurisdictional allocations since 1995. We request that companies provide specific information on Internet usage minutes, including the percentage of local minutes and total minutes that represent Internet traffic. This usage information should include data from Internet service providers both affiliated and non-affiliated with incumbent local exchange carriers. If estimates are used in determining these statistics, we request that commenters provide detailed explanation and justification

for these estimates and their underlying assumptions, including all studies and related work papers.

The Joint Board recommended that, if the Commission finds that Internet traffic is jurisdictionally interstate in the proceeding that has been initiated as a result of the remand by the United States Court of Appeals for the DC Circuit on the Commission's *Reciprocal Compensation Ruling*, 64 FR 14203, March 24, 1999, the Commission freeze the local dial equipment minutes (DEM) factor for the duration of the freeze at some substantial portion of the current year level based on data from the twelve months preceding the implementation of the freeze. The Joint Board recommended that, based on the record established in connection with the *Recommended Decision*, the precise percentage of the current year's local DEM should be established according to how much of a reduction in local DEM is warranted in light of any effects that Internet usage has had on jurisdictional allocations or consumers. We seek comment on this recommendation.

Procedures for Filing Comments

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before November 24, 2000, and reply comments on or before December 4, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send paper copies of their filings to the individuals listed in the attached Service List. Parties must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Separations Joint Board Service List

The Honorable William E. Kennard, Chairman, Federal Joint Board Chairman, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
The Honorable Susan Ness, Commissioner, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
The Honorable Michael K. Powell, Commissioner, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
The Honorable Joseph P. Mettner, Commissioner, Wisconsin Public Service Commission, P.O. Box 7854, Madison, WI 53707–7854.
The Honorable Diane Munns, Commissioner, Iowa Utilities Board, 350 Maple Street, Des Moines, IA 50319–0069.
The Honorable Joan H. Smith, Commissioner, Oregon Public Utility Commission, 550 Capitol Street, NE., Suite 215, Salem, OR 97310–2551.
The Honorable Thomas L. Welch, Chairman, State Joint Board Chairman, Maine Public Utilities Commission, State House Station #18, 242 State Street, Augusta, ME 04333.
Stephen Burnett, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Washington, DC 20554.
William Cox, Federal Joint Board Staff Chairman, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Washington, DC 20554.
Andrew Firth, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Washington, DC 20554.
Genaro Fullano, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Washington, DC 20554.
Robert Loube, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Washington, DC 20554.
Richard Robinson, Federal Communications Commission, CCB, Accounting Safeguards Division, 445 12th Street, SW., Room 6–C160, Washington, DC 20552.
Gary Seigel, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Washington, DC 20554.
Sheryl Todd, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Room 5–B540, Washington, DC 20554.
Sharon Webber, Deputy Division Chief, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Washington, DC 20554.
Peter Bluhm, Vermont Public Service Board, Drawer 20, 112 State St., 4th Floor, Montpelier, VT 05620–2701.
Ingo Henningsen, Utah Public Service Commission, 160 East 300 South, Box 146751, Salt Lake City, UT 84114–6751.
Sandy Ibaugh, Indiana Utility Regulatory Commission, 302 W. Washington, Suite E–306, Indianapolis, IN 46204.
Lori Kenyon, Regulatory Commission of Alaska, 1016 West 6th Ave., Suite 400, Anchorage, AK 99501–1963.
David Lynch, State Joint Board Staff Chairman, Iowa Utilities Board, 350 Maple Street, Des Moines, IA 50319–0069.
J. Bradford Ramsay, National Association of Regulatory Utility Commissioners, P.O. Box 684, Washington, DC 20044–0683.
Jeffrey J. Richter, Wisconsin Public Service Commission, 610 North Whitney Way, Madison, Wisconsin 53705–2729.
Joel B. Shifman, Maine Public Utilities Commission, State House Station #18, 242 State Street, Augusta, ME 04333.

Fred Sistarenik, New York State Department of Public Service, Communications Division, 3 Empire State Plaza, Albany, NY 12223.
Cynthia Van Landuyt, Oregon Public Utility Commission, 550 Capitol Street, N.E., Suite 215, Salem, OR 97310–2551.

Dated: November 2, 2000

Sharon L. Webber,

Deputy Chief, Accounting Policy Division.

[FR Doc. 00–28606 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 00–359]

Federal-State Joint Board on Universal Service: Petition for Forbearance by Operator Communications, Inc. d/b/a Oncor Communications, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rules.

SUMMARY: In this document, the Commission seeks comment on proposals to modify the Commission's rules relating to contributions to the federal universal service support mechanisms. In light of significant recent developments in the interstate telecommunications marketplace, such as the entry of Regional Bell Operating Companies into the interexchange services market, we seek comment on whether the existing methodology provides or will provide a competitive advantage to certain carriers in the marketplace. By initiating this rulemaking, we seek to ensure that assessment of contributions to the federal universal service support mechanisms remains competitively neutral, and that the mechanisms continue to meet the statutory requirement to be specific, predictable, and sufficient.

DATES: Comments are due on or before November 30, 2000. Reply comments are due on or before December 14, 2000. Written comments by the public on the proposed and/or modified information collections discussed in this Further Notice of Proposed Rulemaking are due on or before November 30, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before January 8, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to vhuth@omb.eop.gov. Parties also should send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–B540, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Praveen Goyal, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400. For further information concerning the information collection contained in this Further Notice of Proposed Rulemaking contact Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking in CC Docket No. 96–45 released on October 12, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

This FNPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

The FNPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection(s) contained in this FNPRM, as required by the PRA, Public Law 104–13. Public and agency comments on the proposed and/or modified information collections discussed in this Further Notice of Proposed Rulemaking are due on or before November 30, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before January 8, 2001.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0855.

Title: Telecommunications Reporting Worksheet and Associated Requirements, CC Docket No. 96–45.

Form No.: FCC Forms 499A and 499S.

Type of Review: Proposed Revision.

Respondents: Businesses or other for-profit.

Proposal 1: Periodic current Revenue Reports of Proposed Changes to the Contribution Assessment Methodology.

Title	Number of respondents	Hrs. per response	Total annual burden
FCC Form 499A	3500	8	28,000
FCC Form 499S	2000	5.5	11,000
Periodic Current Revenue Reporting (Monthly)	2000	5.5	132,000
Total Annual Burden for Proposal 1	....	....	171,000

Cost of Respondents: $0.

Needs and Uses: If adopted, this proposal on which the Commission seeks comment in the FNPRM may entail altering the current revenue reporting requirements to which interstate telecommunications carriers are subject under §§ 54.709 and 54.711 of the Commission's rules. Under one proposed contribution assessment methodology, carriers would determine the amount of their contributions to the universal service fund by applying the contribution factor as currently calculated to their *current* end-user revenues, as opposed to their prior-year end-user revenues. As a result, this contribution methodology would require periodic current revenue reports in addition to the two historical revenue reports already required semi-annually, increasing the number of revenue filings carriers must make to USAC.

Proposal 2: Annual and Quarterly Reports of Proposed Changes to the Contribution Assessment Methodology.

Title	Number of respondents	Hrs per response	Total annual burden
FCC Form 499A	3500	8	28,000
Report of Revenues (Quarterly)	2000	5.5	44,000
Total Annual Burden for Proposal 2	....	....	72,000

Cost to Respondents: $0.

Needs and Uses: If adopted, this proposal on which the Commission seeks comment in the FNPRM may entail altering the current revenue reporting requirements to which interstate telecommunications carriers are subject under §§ 54.709 and 54.711 of the Commission's rules. This proposed contribution assessment methodology would shorten the interval between the accrual of revenues by carriers and the assessment of universal service contributions based on those revenues from a range of 12 to 18 months to a range of 3 to 6 months. Under this proposal, carriers would continue to file FCC Form 499A annually as they are required to do under the existing methodology. Carriers would, however, begin to report their revenues for each quarter by the beginning of the second month of the first following quarter. By the 20th day of the second month of the first following quarter, USAC would prepare a quarterly contribution base for the second following quarter. Finally, as it does currently, the Commission would release a proposed contribution factor for the second following quarter in the last month of the first following quarter. Under this proposal, carriers' filings increase from the two semi-annual filings currently required to one annual filing and four quarterly filings, for a total of five revenue filings per year.

Synopsis of FNPRM

I. Introduction

1. In this Further Notice of Proposed Rulemaking (FNPRM), we seek comment on proposals to modify the Commission's rules relating to contributions to the federal universal service support mechanisms. Currently, contributions to the universal service support mechanisms are based on carriers' interstate and international end-user telecommunications revenues from the prior year. In light of significant recent developments in the interstate telecommunications marketplace, such as the entry of Regional Bell Operating Companies (RBOCs) into the interexchange services market under section 271 of the Communications Act, we seek comment on whether the existing methodology provides or will provide a competitive advantage to certain carriers in the marketplace.

2. By initiating this rulemaking, we seek to ensure that assessment of contributions to the federal universal service support mechanisms remains competitively neutral, and that the mechanisms continue to meet the statutory requirement to be specific, predictable, and sufficient. Specifically, in this rulemaking, we seek comment on the following: (1) A proposed methodology for the assessment of universal service contributions based on current revenues; (2) a proposed methodology that would reduce the current interval between the accrual of revenues and the collection of universal service contributions based on those revenues; and (3) other proposals for the reporting of carrier revenues and the collection of contributions that maintain the competitive neutrality of contributions to the federal universal service support mechanisms, and that enable the mechanisms to continue to meet the statutory requirement to be specific, predictable, and sufficient.

II. Proposals To Modify the Universal Service Assessment Methodology

A. Contribution Assessment Generally

3. In light of significant recent developments in the interstate telecommunications marketplace, such as the entry of RBOCs into the interexchange services market under section 271 of the Act, we seek comment generally on whether and how to modify the existing contribution assessment methodology. Specifically, we ask parties to comment on whether, as a result of changes in the interstate marketplace, the existing methodology provides or will provide a competitive advantage to certain carriers in the marketplace.

4. Carriers have argued that, as a result of the existing methodology which assesses contributions based on carriers' interstate end-user telecommunications revenues from the prior year, new entrants to the long distance marketplace, particularly RBOCs, may have a competitive advantage as they gain entry into the long distance market. They argue that, during the first year of post in-region interLATA entry, the new entrant is not required to contribute to the universal service fund on its interstate end-user revenues generated from the new in-region interexchange service. If the new entrants do not accrue a portion of their revenues for making universal service contributions during the following year that will be based on those revenues, such new entrants may be able to undercut the prices offered by established providers.

5. In subsequent years, to the extent new entrants increase their long distance market share and recover universal service contributions against current end-user revenues, the revenue base against which they recover their universal service contributions would remain greater than the revenue base against which their contributions are assessed, creating a potential for a continuing competitive advantage. Similarly, carriers have also expressed concern that, under the existing contribution methodology, carriers with decreasing interstate revenues may have a competitive disadvantage as compared to carriers with increasing interstate revenues. As interexchange carriers lose market share, they may have to recover from a declining current revenue base

their universal service contributions assessed against a larger prior-year revenue base.

6. We therefore ask whether and how to modify the existing contribution assessment methodology, in light of the recent developments in the long distance market. We seek comment on whether the current methodology would place interexchange carriers at a competitive disadvantage against RBOCs as they gain entry into the long distance market. We seek comment on whether any such competitive advantage might impede the development of competition in the local exchange marketplace, for example, by giving incumbent local exchange carriers entering the long distance marketplace a competitive advantage in the provision of bundled local and long distance service offerings. We further seek comment on whether the contribution methodology disadvantages carriers with declining shares of interstate revenues as compared to carriers with increasing shares of interstate revenues. Commenters should also address whether any such competitive advantage under the current recovery methodology would render the methodology inconsistent with section 254's requirement that contributions be "equitable and nondiscriminatory."

7. The preceding discussion assumes that new entrants into the interstate telecommunications marketplace are likely to pay universal service contributions out of current period revenue. We seek comment on the likelihood that they instead would collect a surcharge in their first periods of operation in order to accrue revenue for the purpose of making universal service contributions in subsequent periods. To the extent new entrants follow such a procedure, we seek comment on whether and how established carriers already contributing to the universal service mechanisms would nonetheless be disadvantaged under the existing contribution assessment methodology.

8. In the discussion, we seek comment on two specific proposals to change the universal service recovery methodology. We also invite commenters to propose any other alternatives for assessment of contributions that are competitively neutral and consistent with the Act. In particular, we request comment from the state members of the Federal-State Joint Board on Universal Service and from USAC on the issues raised in this Further Notice of Proposed Rulemaking.

B. Proposal To Assess Contributions Based on Current Revenues

9. We seek comment on a proposal to adopt an assessment methodology based on current-year revenues, as suggested by one carrier. Under this proposal, the contribution factor would continue to be set quarterly in the same manner as it is currently, based on the ratio of estimated federal support to total end-user telecommunications revenues. The revenue base used in calculating the contribution factor would continue to be determined by USAC as it is currently, based on semi-annual filings of the FCC Form 499 Telecommunications Reporting Worksheet by interstate telecommunications carriers. Carriers, however, would calculate their contributions by applying the factor to their *current* end-user revenues, as opposed to their prior-year end-user revenues. Assuming a level or upward trend in industry revenues, the application of a contribution factor based on prior-year revenues to current revenues should allow USAC to recover sufficient contributions from the industry as a whole in order to fund the universal service support mechanisms. We seek comment on whether this proposal would be competitively neutral and consistent with the requirements of section 254 of the Act, including the requirements that the Commission's universal service support mechanisms be "equitable and nondiscriminatory" and "specific, predictable, and sufficient."

10. In particular, we seek comment on the potential effects of such a methodology on the integrity of the universal service fund, including whether a potential shortfall in the fund might result. Under the existing contribution assessment methodology, the revenue base used in calculating the contribution factor and the revenue base against which contributions are assessed are the same. Under the proposal on which we seek comment here, which would apply contribution factors as presently calculated to current revenues, the revenue base used in calculating the contribution factor would be one year prior to the revenue base against which contributions would be assessed. We seek comment on whether a decline in industry-wide interstate telecommunications revenues could generate a shortfall in the universal service fund under such a methodology, and whether the possibility of such a shortfall would render this proposal inconsistent with the Act's mandate of a "sufficient" fund. We also seek comment on whether certain events or market conditions, such as increased use of Internet Protocol (IP) telephony, changes in international settlement rates, or economic recession, might result in a dramatic or systemic decline in interstate end-user telecommunications revenues, and on the likelihood of such events or conditions and a resultant decline.

11. We also seek comment on whether certain safeguards might be adopted with this proposal to ensure universal service fund integrity. Specifically, we ask commenters to address whether a quarterly "true-up" mechanism could be implemented with this proposal to allow USAC to adjust the contribution assessment rate retrospectively, and whether mid-quarter contribution factor adjustments would prevent a shortfall in the fund caused by a systemic or extended decline in revenues. We also seek comment on the effectiveness of the "true-up" safeguard in light of the lag that could occur between USAC's detection of an impending shortfall in the fund and the Commission's establishment of an adjusted mid-quarter contribution factor. Commenters should also discuss the method by which USAC could project whether there would be a shortfall in the fund under this proposed recovery methodology, and what methodology should be used to adjust the contribution factor mid-quarter in the event of a projected shortfall. Finally, commenters should discuss any other possible safeguards they believe should be included with such a proposal, and explain why such safeguards should be implemented.

12. Because this contribution methodology would require periodic current revenue reports in addition to the two historical revenue reports already required semi-annually, it would increase the number of revenue filings carriers must make to USAC. Consequently, this contribution recovery methodology may also pose significant administrative burdens for carriers and for USAC, which we ask commenters to address. Specifically, we seek comment on the frequency with which carriers should report revenues to USAC under this proposal, the types of burdens carriers will face in periodically reporting revenues to USAC, and whether the costs of such reporting are outweighed by the potential benefits posed by the proposed methodology. Where possible, commenters, especially small businesses, should quantify the costs and benefits of this proposal. We also seek comment on how USAC's billing and collection procedures would need to be revised to accommodate this contribution methodology. Currently, USAC calculates individual contributions by multiplying the quarterly contribution factor by the applicable period of historic quarterly revenues. USAC then bills contributors in equal monthly installments at a fixed amount each month. We seek comment on whether and/or how this procedure should be modified under an assessment methodology based on current revenues.

13. We seek comment on the incentives carriers may have under this proposed recovery methodology to report their current revenues in an accurate and timely manner. For example, this proposal may create incentives for carriers to underreport revenues for the early months of a reporting period in an attempt to reduce their current contribution obligations, thereby freeing capital for other uses, such as interest-bearing investments. Such carriers could then overreport revenues in the later months of a reporting period so that their total revenues for the reporting period are accurate. We seek comment on the extent to which this proposal creates such incentives and the likelihood that a shortfall in the fund might result. We also seek comment on whether changes should be made to USAC's auditing abilities to ensure accurate reporting, and on any other administrative mechanisms that might be implemented to ensure accurate reporting of current revenues. Commenters should address measures USAC should take to verify carrier revenue reports, and what burdens or costs USAC would bear in performing such verifications. Parties should explain the procedures that should be followed where a carrier's current revenue reports do not reconcile with its report of annual revenues filed the following April, and whether penalties should be imposed on such a carrier. We also seek comment on whether this proposal would increase the likelihood of delinquent payments by carriers, and thus a shortfall in the fund. We invite comment on possible administrative mechanisms to minimize any such potential for delinquent payments.

14. We seek comment on how to make the transition from the existing contribution assessment methodology to a methodology based on current revenues, if we were to adopt this proposal for assessment of universal service contributions. In particular, we ask commenters to address when assessments based on current revenues should begin under the proposal, and how to "close out" the assessment of contributions under the existing methodology. We also seek comment on whether a one-time over-collection of funds might be necessary to make the transition to the proposed methodology, and whether such an over-collection would need to be maintained going forward in order to safeguard fund integrity.

15. Finally, we invite commenters, especially small businesses, to discuss any additional advantages, disadvantages, or other implementation issues presented by this proposed contribution assessment methodology. Commenters should indicate whether the costs of implementing this proposal outweigh the benefits and quantify such claims, where possible. Furthermore, in light of the issues presented by this proposal, commenters should discuss whether it would meet the requirements of section 254 of the Act, including the requirement that the Commission's universal service support mechanisms be "specific, predictable, and sufficient."

C. Universal Service Contribution Assessment With a Shorter Interval

16. Under the existing assessment methodology, the interval between the accrual of revenues by carriers and the assessment of universal service contributions based on those revenues ranges from 12 to 18 months. We seek comment on a proposal to revise the existing assessment methodology to reduce this interval to three to six months.

17. Under this proposal, carriers would continue to file FCC Form 499A annually as they are required to do under the existing methodology. Carriers would, however, begin to report their revenues for each quarter by the beginning of the second month of the first following quarter. By the 20th day of the second month of the first following quarter, USAC would prepare a quarterly contribution base for the second following quarter. Finally, as it does currently, the Commission would release a proposed contribution factor for the second following quarter in the last month of the first following quarter. Thus, for example, revenues for January 2001 through March 2001, namely for 1Q 2001, would be reported by May 1, 2001, the beginning of the second month in 2Q 2001. USAC would estimate a quarterly contribution base using these 1Q 2001 revenues by May 20, 2001, the 20th day of the second month in 2Q 2001. Finally, the Commission would release a proposed contribution factor for 3Q 2001, based on 1Q 2001 revenues, at the beginning of June 2001 (the last month of 2Q 2001).

18. Like the existing assessment methodology, and unlike an assessment methodology based on current revenues, this proposal would assess contributions against the same revenue base used to calculate the contribution factor. We seek comment on whether this reduced interval between the accrual of revenues and the assessment of contributions would result in a methodology that is competitively neutral and "specific, predictable, and sufficient," consistent with section 254 of the Act. This methodology would also reduce the interval between revenue accrual and contribution assessment from the current interval of twelve to eighteen months to an interval of three to six months. We seek comment on whether this proposal poses any concerns regarding universal service fund integrity.

19. The shortened schedule under this proposal would give USAC 20 days to compile quarterly filing information and estimate the contribution base. Parties are asked to address whether this schedule allows sufficient time for USAC to perform these functions. In particular, parties should address whether carriers could file reliable revenue information within 30 days of the close of a quarter. USAC is asked to comment on the extent to which this schedule would increase the likelihood of late filings, the extent to which data would have to be estimated for late filings, and the likelihood and size of resulting over-collections or under-collections.

20. Under this proposal, carriers' filings increase from two semi-annual filings to one annual filing and four quarterly filings, for a total of five revenue filings per year. We seek comment, especially from small businesses, on whether the costs associated with the increased reporting requirements under this proposal outweigh the benefits of the reduced interval between revenue accrual and contribution assessment. We also invite commenters to address whether this proposal should be offered as an optional alternative to the current assessment methodology, rather than as a replacement for it. Commenters should explain whether making this proposal optional adequately addresses concerns about the burden it would impose. Commenters should also address whether offering this proposal as an option alongside the current assessment methodology would result in a methodology that is competitively neutral and "specific, predictable, and sufficient," consistent with section 254 of the Act.

21. As with the first proposal discussed, we seek comment on the incentives carriers have under this proposed methodology to report their quarterly revenues in an accurate and timely manner. In particular, commenters should address whether this proposal minimizes carriers' incentives to underreport revenues for the early quarters of a reporting year. We also seek comment on whether changes should be made to USAC's auditing abilities to ensure accurate quarterly reporting. In addition, we invite comment on possible administrative mechanisms that might be implemented to ensure accurate reporting of quarterly revenues, including the use of penalties. We also ask commenters to address whether such a methodology would increase the likelihood of delinquent payments by carriers, and thus a shortfall in the fund. We seek comment on possible administrative mechanisms that might be implemented to minimize any such potential for delinquent payments, including the use of penalties.

22. We also seek comment on how to make the transition from the existing assessment methodology to the proposal discussed here. In particular, we ask commenters to address when assessments based on quarterly revenues should begin under the proposal, and how to "close out" the assessment of contributions under the existing methodology. We also seek comment on whether a one-time over-collection of funds might be necessary to make the transition to the proposed methodology. In addition, we ask commenters to address how to make the transition from the existing methodology to the proposal discussed here if that proposal is made optional.

23. Finally, we invite commenters, especially small businesses, to discuss any additional advantages, disadvantages, or other implementation issues presented by this proposed contribution methodology. Commenters should indicate whether the costs of implementing this proposal outweigh the benefits and quantify such claims, where possible. Furthermore, commenters should discuss whether it would meet the requirements of section 254 of the Act, including the requirements that the Commission's universal service support mechanisms be "equitable and nondiscriminatory" and "specific, predictable, and sufficient."

D. Other Proposed Universal Service Contribution Assessment Methodologies

24. In addition to the two proposals discussed, we invite commenters, especially small businesses, to suggest other alternative assessment methodologies. For example, some parties have suggested the use of a contribution methodology that requires carriers to recover their contributions through a fixed-percentage end-user surcharge. We invite commenters to address the legal and policy issues associated with such an approach. Specifically, we encourage commenters to address the extent to which consumers will benefit from such an approach. Commenters should explain the operation of this alternative, or any other alternative, including a plan for transition from the existing methodology to the proposed alternative.

25. We ask commenters offering alternative proposals to address the following questions in detail. (1) Is the proposed alternative consistent with the requirements of section 254 of the Act, including the requirements that the Commission's universal service support mechanisms be "equitable and nondiscriminatory" and "specific, predictable, and sufficient?" (2) Does the alternative protect the integrity of the universal service fund, in particular by guarding against a shortfall in the fund? (3) To the extent there are concerns about the competitive neutrality of the universal service assessment methodology, does the alternative address these concerns, and is it more competitively neutral than the current methodology and other proposed methodologies? (4) Does the alternative minimize burdens, including recordkeeping and reporting requirements, on carriers? (5) How should the alternative be implemented, and how should the Commission transition from the existing contribution assessment methodology to the alternative? (6) Finally, what are the advantages and disadvantages of any such alternative (quantifying the associated costs and benefits where appropriate)?

III. Procedural Matters

A. Ex Parte

26. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Initial Paperwork Reduction Act of 1995 Analysis

27. This FNPRM contains either a proposed or modified information collection. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB comments are due 60 days from the date of publication of this FNPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Initial Regulatory Flexibility Analysis

28. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided below. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

29. The Telecommunications Act of 1996 requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." This FNPRM addresses issues of the methodology that should be used to assess carriers' contributions to the universal service support mechanisms. We desire to adopt rules for an assessment methodology that best meets the statute's requirements that contributions be equitable and nondiscriminatory and that the universal service support mechanisms be specific, predictable, and sufficient. We also seek, wherever possible, to minimize the regulatory burden on affected parties.

2. Legal Basis

30. The legal basis as proposed for this FNPRM is contained in section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 254.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

31. The Commission's contributor reporting requirements apply to a wide range of entities, including all telecommunications carriers and other providers of interstate telecommunications services that offer telecommunications services for a fee. Thus, we expect that the rules adopted in this proceeding could have a significant economic impact on a substantial number of small entities. Of the estimated 5,000 filers of the Telecommunications Reporting Worksheet, FCC Form 499, we do not know how many are small entities, but we offer below a detailed estimate of the number of small entities within each of several major carrier-type categories.

32. To estimate the number of small entities that would be affected by this economic impact, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

33. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, *inter alia,* incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

34. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted, a "small business" under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

35. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rule changes adopted in this proceeding.

36. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rule changes adopted in this proceeding.

37. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition particular to small LECs, interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service. According to our most recent data, there are 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are

unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers that may be affected by the decisions and rule changes adopted in this proceeding.

38. *Wireless (Radiotelephone) Carriers.* The SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rule changes adopted in this proceeding.

39. *Cellular, PCS, SMR, and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under the SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies. To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions below. According to our most recent TRS data, 808 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described below, that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the decisions and rule changes adopted in this proceeding.

40. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of at least 183 small PCS providers as defined by the SBA and the Commissioner's auction rules.

41. *SMR Licensees.* Pursuant to § 90.814(b)(1) of the Commission's rules, the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. The definition of a "small entity" in the context of both 800 MHz and 900 MHz SMR has been approved by the SBA. Any rules proposed in this proceeding may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, that may be affected by the decisions and rule changes adopted in this proceeding.

42. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees that may be affected by the decisions and rule changes adopted in this Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this IRFA, that all of the licenses may be awarded to small entities who may be affected by the decisions and rule changes adopted in this proceeding.

43. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to radiotelephone communications companies. According to the Census Bureau, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues to 2000 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

44. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* 62 FR 16004 (April 3, 1997), this Commission adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.

45. *Paging.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent Carrier Locator data, 303 carriers reported that they were engaged in the provision of either paging or messaging services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 303 small paging carriers that may be affected by the decisions and rule changes under consideration in this proceeding. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

46. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

47. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

48. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

49. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

50. The Commission is unable at this time to estimate the number of, if any, small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States.

51. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.,* an entity with no more than 1,500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

52. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of

Mexico. At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

53. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rule changes under consideration in this proceeding includes these eight entities.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

54. As currently structured, telecommunications carriers and other service providers having interstate revenues are required to file semiannually the Telecommunications Reporting Worksheet, which includes their reporting of end-user telecommunications revenues for purposes of the federal universal service support mechanisms. Any decisions or rule changes adopted in this proceeding carry the potential to increase the reporting and recordkeeping requirements on telecommunications service providers regulated under the Communications Act. For example, two of the possible alternatives to the current universal service contribution assessment methodology discussed, (1) basing universal service contributions on current year revenues and (2) reducing the time period between accrual of revenues and the assessment of universal service contributions based on those revenues, would entail additional monthly or quarterly reporting of end-user telecommunications revenues. Any such additional reporting requirements could potentially require the use of professional skills, including legal and accounting expertise. At this point, until we receive more data, we are unable to estimate the costs of compliance with these or other possible universal service assessment methodologies upon small telecommunications service providers that might be affected by any of the proposals discussed in the FNPRM. Entities, especially small businesses, are encouraged to file comments identifying and quantifying the costs of the two contribution assessment methodologies proposed and any other alternative methodologies during this proceeding.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

56. To minimize the significant economic impact on carriers, including carriers which are small entities, this FNPRM proposes two alternative contribution assessment methodologies: (1) Basing contributions on current year revenues and (2) reducing the time period between accrual of revenues and the assessment of universal service contributions based on those revenues. These two alternatives impose different revenue reporting requirements. For example, the current year methodology proposed would require carriers to submit reports of their current revenues regularly in addition to the semiannual reports already required of revenues from the prior year in Forms 499A and 499S. The other methodology proposed, however, would increase filing burdens to a lesser degree, requiring quarterly reporting of revenue data and the annual filing of the Form 499A. These alternatives would require the same reporting requirements for both large and small entities. Therefore, this Notice also seeks comment on other alternative contribution assessment methodologies that might minimize recordkeeping and reporting burdens on carriers, including small entities. The final alternative may be to leave the current contribution assessment methodology in place. This alternative will depend on the record developed in this proceeding.

6. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

57. None.

D. Comment Dates and Filing Procedures

58. We invite comment on the issues and questions set forth. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments as follows: comments are due November 30, 2000 and reply comments are due December 14, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

59. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

60. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties also should send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–B540, Washington, DC 20554.

61. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Accounting Policy Division, Common

Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–B540, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format using Microsoft Word 97 for Windows or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read-only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 96–45), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ("Disk Copy Not an Original.") Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

62. Written comments by the public on the proposed and/or modified information collections discussed in this FNPRM are due November 30, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before January 8, 2001. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to vhuth@omb.eop.gov.

IV. Ordering Clauses

63. Pursuant to the authority contained in sections 1, 4(i), 4(j), 254, and 403, of the Communications Act of 1934, as amended, that this Further Notice of Proposed Rulemaking is adopted, that Comments are Requested as described, and that Notice is Hereby Given of proposed amendments to parts 54 of the Commission's rules, as described in this Further Notice of Proposed Rulemaking.

64. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28728 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–44; FCC 00–343]

Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on the tentative conclusion that broadcasters who maintain internet websites should be required to post their completed quarterly Children's Television Programming Reports (FCC Form 398) on these sites. The FCC 398 is required to be filed by commercial television broadcast stations each quarter. This form is used to provide information on the efforts of commercial television stations to provide children's educational and informational programs aired to meet its obligation under the Children's Television Act of 1990 (CTA). Although the Children's Television Programming Reports are available in a central location on the FCC's website, members of the public may look first to their local broadcast station for information about programming at the station, making station website posting useful.

DATES: Comments must be filed on or before December 18, 2000; reply comments must be filed on or before January 17, 2001. Written comments by the public on the proposed information collections are due on or before December 18, 2000. Written comments must be submitted by the Office of Management and Budget (PMB) on the proposed information collection(s) on or before January 8, 2001.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy and Rules Division, Mass Media Bureau, at (202) 418–2130, TTY (202) 418–2989. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Further Notice of Proposed Rule Making* ("*FNPRM*") in MM Docket No. 00–44, FCC 00–343, adopted on September 14, 2000, and released on October 5, 2000. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY–A257, Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW, Room CY–B402, Washington DC. The complete text is also available under the file name fcc00343.pdf on the Commission's Internet site at *www.fcc.gov.*

This document contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). The general public and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Electronic Access and Filing Addresses

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,*, and should include the following words in the body of the message, "get form, <your e-mail address>." A sample form and directions will be sent in reply.

Paperwork Reduction Act

This document contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in the *FNPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *FNPRM*; OMB comments are due January 8, 2001. Comments should address (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.

Title: FNPRM—Extension of the Filing Requirement for Children's Television Programming Reports.

Form No: FCC Form 398.

Type of Review: revision of existing collection.

Respondents: business or other for-profit.

Number of respondents: 1,250.

Estimated Time Per Response: 6 hours.

Total Annual Burden: 30,000 hours.

Total Annual Costs: $489,600.

The estimated time, burden and costs are based upon the existing burdens for the FCC 398. This burden could increase depending on what requirements are ultimately adopted.

Needs and Uses: The FCC 398 is required to be filed by commercial television broadcast stations each quarter. This form is used to provide information on the efforts of commercial television stations to provide children's educational and informational programs aired to meet its obligation under the Children's Television Act of 1990 (CTA). The FCC 398 facilitates consistency of reporting among all licensees and assist in efforts by the public and the Commission to monitor station compliance with the CTA. The FNPRM seeks comments on whether broadcasters should be required to provide their completed Children's Television Programming Reports at their own websites. Depending on what requirements are ultimately adopted, there may be an increase in the burden for this form.

Synopsis of Further Notice of Proposed Rulemaking

1. We tentatively conclude that if a broadcaster maintains a website, it must post its quarterly report on that site at the same time that it places it in the station's public file. Although the Children's Television Programming Reports are available in a central location on the FCC's website, we believe that members of the public may look first to their local broadcast station, rather than the Commission, for information about the programming of the station. Our inclination is to allow stations, at their option, either to post the quarterly reports on the station's own internet website, or to create a link on the station's website directly to either the FCC's children's television webpage or to the station's most recent quarterly report on the FCC's children's television website. We note that NAB argues that it may cost stations more to provide the required form at their websites. Allowing stations simply to create a link to the FCC's website provides a less costly alternative. This option also responds to NAB's concern about any unnecessary duplication of effort associated with making the reports available both on the FCC's and the station's websites. Broadcasters must currently retain a paper copy of the report in their station public inspection file until final action has been taken on the station's next renewal of license. We seek comment on whether broadcasters that elect to maintain the reports on their own station websites should be required to maintain these reports on the website until final action has been taken on the station's next license renewal application.

2. Because the Commission's own website provides a central location where the public can access reports from all stations in their community and across the country, we want to ensure that the information on our website is easily accessible by the public. In response to a request from CME *et al.*, the Commission staff has created a link directly from its internet homepage to its children's television webpage. We note that interested organizations can create links directly from their own websites to our children's television website if they choose.

Administrative Matters

3. *Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, §§ 1.415, 1.419, interested parties may file comments on or before December 18, 2000 and reply comments on or before January 17, 2001. Comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

4. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form, <your e-mail address." A sample form and directions will be sent in reply.

5. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW–A325, Washington, DC 20554.

6. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, S.W.; 2–C221, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number (MM Docket No. 00–44), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, S.W.; CY–B402, Washington, DC 20554.

7. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

8. *Initial Regulatory Flexibility Analysis.* With respect to the *FNPRM*, an Initial Regulatory Flexibility Analysis ("IRFA"). As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in this *FNPRM*. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract With America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of

questions in our IRFA regarding the prevalence of small business in the television broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *FNPRM*, but they must have a distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau shall send a copy of this *FNPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981), as amended.

9. *Initial Paperwork Reduction Act Analysis.* This *FNPRM* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this *FNPRM*, as required by the Paperwork Reduction Act of 1996. Public and agency comments are due at the same time as other comments on the *FNPRM*. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W., Room C–1804, Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov.*

Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 ("RFA"), the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals contained in the attached *FNPRM*. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *FNPRM*, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Commission shall send a copy of this *FNPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA, 5 U.S.C. 603(a).

a. *Reasons Why Agency Action is Being Considered.* Our goal in commencing this proceeding is to seek comment on the tentative conclusion to require commercial television broadcasters that maintain a website to post their quarterly Children's Television Programming Reports on that site at the same time that they place the reports in the station's public inspection file. We also seek comment on whether broadcasters should be required to maintain the reports on the website until final action has been taken on the station's next license renewal.

b. *Need For and Objectives of the Proposed Rule Changes.* Although the Children's Television Programming Reports are available in a central location on the FCC's website, the FCC believes that members of the public may look first to their local broadcast station, rather than the Commission, for information about the programming of the station. We invite comment on this view and ask commenters to provide detailed information on any costs or other burdens associated with requiring those stations that maintain websites to post their quarterly reports on the sites.

c. *Legal Basis.* Authority for the actions proposed in the *FNPRM* may be found in sections 4(i) and 303, 307, and 336(d) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 307, and 336(d), and in the Children's Television Act of 1990.

d. *Recording, Recordkeeping, and Other Compliance Requirements.* The *FNPRM* invites comment on the tentative conclusion to require commercial television broadcasters that maintain a website to post their quarterly Children's Television Programming Reports on that site at the same time that they place the reports in the station's public inspection file. We also seek comment on whether broadcasters should be required to maintain the reports on the website until final action has been taken on the station's next license renewal.

e. *Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules.* The rules under consideration in this proceeding do not overlap, duplicate, or conflict with any other rules.

f. *Description and Estimate of the Number of Small Entities to Which the Rules Would Apply.* Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.

Small TV Broadcast Stations. The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. BIA Research Inc. reports that 784 out of 1221 commercial television stations (64%) have annual revenues of less than $10.5 million.

The requirement to prepare quarterly Children's Television Programming Reports applies to commercial broadcast television stations. Thus, we estimate that 784 or fewer commercial TV broadcast stations are small businesses, as defined by the SBA.

g. *Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives:* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

11. This *FNPRM* invites comment generally on the tentative conclusion to require commercial television broadcasters that maintain a website to post their quarterly Children's Television Programming Reports on that site at the same time that they place the reports in the station's public inspection

file. We also seek comment on whether broadcasters should be required to maintain the reports on the website until final action has been taken on the station's next renewal license. We seek comment on whether there is a significant economic impact on any class of small licensees as a result of any of these proposals. Any significant alternatives presented in the comments will be considered.

Ordering Clauses

12. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *FNPRM*, including the Initial and Final Regulatory Flexibility Act Analyses, to the Chief Counsel for the Small Business Administration.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rules

Part 73 of title 47 of the U.S. Code of Federal Regulations is proposed to be amended to read as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.3526 is amended by revising paragraph (e)(11)(iii) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e) * * *

(11) * * *

(iii) *Children's television programming reports.* For commercial TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter is also to be filed electronically with the FCC. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. The Report shall also identify the program guide publishers to which information regarding the licensee's educational and informational programming was provided as required in § 73.673(b), as well as the station's license renewal date. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicize in an appropriate manner the existence and location of these Reports.

* * * * *

[FR Doc. 00–28611 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG15

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the Arroyo Southwestern Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a draft economic analysis for the proposed designation of critical habitat for the arroyo southwestern toad (*Bufo microscaphus californicus*). We are also providing notice of the reopening of the comment period for the proposal to designate critical habitat for the arroyo southwestern toad to allow all interested parties to submit written comments on the proposal and on the draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as a part of this reopened comment period and will be fully considered in the final rule.

DATES: The original comment period on the critical habitat proposal closed on August 7, 2000. The comment period is again reopened and we will accept comments until December 11, 2000. Comments must be received by 5:00 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Copies of the draft economic analysis are available on the Internet at "www.r1.fws.gov" or by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2394 Portola Road, Suite B, Ventura, California 93003. All written comments should be sent to the Field Supervisor at the above address. You may also send comments by electronic mail (e-mail) to "fw1artoch@r1.fws.gov." Please submit electronic comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: RIN 1018–AG15" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805–644–1766. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Ventura Fish and Wildlife Office, at the above address (telephone 805–644–1766; facsimile 805–644–3958).

SUPPLEMENTARY INFORMATION:

Background

The arroyo southwestern toad (*Bufo microscaphus californicus*) is one of three members of the southwestern toad (*B. microscaphus*) complex, in the family of true toads, Bufonidae. The arroyo toad is a small (adult length 55–82 millimeters (2–3 inches), dark-spotted toad, with females larger than males. The arroyo toad is found in coastal and desert drainages from Monterey County, California, south into northwestern Baja California, Mexico. These systems are inherently quite dynamic, with marked seasonal and annual fluctuations in climatic regimes, particularly rainfall. Natural climatic variations as well as other random events, such as fires and floods, coupled with the species' specialized habitat requirements, lead to annual fluctuations in arroyo toad populations. Extensive habitat loss as a result of agriculture and urbanization, and the construction, operation, and maintenance of water storage reservoirs, flood control structures, roads, and recreational facilities such as campgrounds and off-highway vehicle parks, have caused many arroyo toad populations to be reduced in size or extirpated (eliminated). Threats to the species survival include loss of habitat, coupled with habitat modifications due to the manipulation of water levels in many central and southern California streams and rivers, as well as predation from introduced aquatic species, and habitat degradation from introduced plant species. Such threats have caused arroyo toads to be extirpated from about 75 percent of the previously occupied habitat in California. Pursuant to the Endangered Species Act of 1973, as amended (Act), the species was federally listed as endangered on December 16, 1994, due to habitat degradation, small population sizes, and predation (59 FR 64859). On June 8, 2000, we published in the **Federal Register** (65 FR 36512) a determination proposing critical habitat for the arroyo southwestern toad. Approximately 193,600 hectares (478,400 acres) fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Los Angeles, Monterey, Orange, Riverside, Santa Barbara, San Bernardino, and San Diego, San Luis Obispo, and Ventura counties, California, as described in the proposed determination.

Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the arroyo southwestern toad and comments received during the previous comment period, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available at the above Internet and mailing address. We have reopened the comment period at this time in order to accept the best and most current scientific and commercial data available regarding the proposed critical habitat and the draft economic analysis. We will accept written comments during this reopened comment period. Previously submitted oral or written comments on this critical habitat proposal need not be resubmitted. The current comment period on this proposal closes on December 11, 2000. Written comments may be submitted to the Ventura Fish and Wildlife Office in the **ADDRESSES** section.

Author

The primary author of this notice is John Nuss, U.S. Fish and Wildlife Service, Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 2, 2000.

Donald W. Steffeck,
Acting Manager, California/Nevada Operations Office.

[FR Doc. 00–28699 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH70

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Polygonum hickmanii* (Scotts Valley polygonum)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for *Polygonum hickmanii* (Scotts Valley polygonum). *Polygonum hickmanii* is restricted to two sites in northern Scotts Valley, Santa Cruz County, California. The plant is threatened by alteration of habitat due to urban development and associated disturbances, displacement by nonnative grasses, and the increased chance of extinction due to the small numbers of individuals and limited amount of habitat occupied by this species. The effects of these threats are exacerbated by the inadequate design of preserves meant to protect the species. This proposed rule, if made final, would extend the Act's protection to this plant.

DATES: All comments, including written and email from all interested parties must be received by January 8, 2001. Public hearing requests must be received by December 26, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

2. You may send comments by e-mail to svpolygonum@r1.fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

3. You may hand-deliver comments to our Ventura Fish and Wildlife office at 2493 Portola Road, Suite B, Ventura, California.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Listing and Recovery, Ventura Fish and Wildlife Office at the above address or telephone number 805/644–1766 or facsimile 805/644–3958.

SUPPLEMENTARY INFORMATION:

Background

Polygonum hickmanii (Scotts Valley polygonum) is a recently described endemic species from Scotts Valley, Santa Cruz County, California (Hinds and Morgan 1995). The species was named after James C. Hickman, editor of the Jepson Manual (1993) and author of the chapter on the genus *Polygonum* in the same reference. He concurred with Morgan's assessment that the taxon was distinct (J.C. Hickman, *in litt.* 1991), but died before coauthoring the publication of a name. Randy Morgan made the type collection in 1993 from a "grassland N of Navarra Drive, W of Carbonero Creek" (Hinds and Morgan 1995). The plant is a small, erect, taprooted annual in the buckwheat family (Polygonaceae). It grows from 2 to 5 centimeters (cm) (1 to 2 inches (in.)) tall, and can be either single stemmed or profusely branching near the base in more mature plants. The linear-shaped leaves are 0.5 to 3.5 cm (0.2 to 1.4 in.) long and 1 to 1.5 cm (0.4 to 0.6 in.) wide and tipped with a sharp point. The single white flowers consist of two outer tepals (petal-like structure) and three inner tepals and are found in the axils of the bracteal leaves (modified leaves near the flower). The plant flowers from late May to August. Seed production ranges from a few dozen seeds in a typical individual to as many as two hundred in a particularly robust individual (Randy Morgan, biological consultant, pers. comm. 1998). The nearest known location of a closely related species, *P. parryi*, is at Mount Hamilton, about 48 kilometers (km) (30 miles (mi)) inland. *Polygonum hickmanii* differs from *P. parryi* in its larger white flowers, longer leaves, larger anthers and achenes, and longer, straight stem sheath (Hinds and Morgan

1995). According to Harold Hinds, author for the genus *Polygonum* in an upcoming volume of the Flora of North America (Flora of North America Editorial Committee, in prep.), the distinctness of *P. hickmanii* as a species will continue to be recognized in that volume (Harold Hinds, University of New Brunswick, pers. comm. 1998).

The available information suggests that *Polygonum hickmanii* has always been limited in distribution to the northern Scotts Valley area in Santa Cruz County, California. Two bodies of evidence support this theory. First, none of the herbarium collections of other *Polygonum* species that were checked in preparation of the publication of the name for *P. hickmanii* matched those collected from Scotts Valley. Herbaria that were searched included the Dudley Herbarium at Stanford University, the Jepson and University of California (UC) herbaria located at UC Berkeley, and the herbarium at the Missouri Botanic Garden (H. Hinds, *in litt.* 1998; R. Morgan, pers. comm. 1998). Secondly, predictive searches of other potentially suitable habitat in Santa Cruz County (based on soil type, local climate, and associated species) have failed to locate any additional colonies of *P. hickmanii* (R. Morgan, pers. comm. 1998).

Polygonum hickmanii is known from two sites about 0.6 km (1 mi) apart at the northern end of Scotts Valley. The plant is found on gently sloping to nearly level fine-textured shallow soils over outcrops of Santa Cruz mudstone and Purisima sandstone (Hinds and Morgan 1995). It occurs with the endangered *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower) (59 FR 5499) and other small annual herbs in patches within a more extensive annual grassland habitat. These small patches have been referred to as "wildflower fields" because they support a large number of native herbs, in contrast to the adjacent annual grasslands that support a greater number of nonnative grasses and herbs. While the wildflower fields are underlain by shallow, well-draining soils, the surrounding annual grasslands are underlain by deeper soils with a greater water-holding capacity, and therefore more easily support the growth of nonnative grasses and herbs. The surface soil texture in the wildflower fields tends to be consolidated and crusty rather than loose and sandy (Biotic Resources Group (BRG) 1998). Elevation of the sites is from 215 to 246 meters (m) (700 to 800 feet (ft)) (Hinds and Morgan 1995). The climate in the city of Santa Cruz, 13 km (8 mi) to the south, is characterized by an average of 77 cm (30 in.) of rain per year, and an average temperature of 14 degrees Celsius (57 degrees Fahrenheit), while the city of Los Gatos, 16 km (10 mi) to the north, averages 120 cm (51 in.) of rain per year, with an average temperature of 15 degrees Celsius (58 degrees Fahrenheit) (Worldclimate 1998).

Polygonum hickmanii is associated with a number of native herbs including *Chorizanthe robusta* var. *hartwegii*, *Lasthenia californica* (goldfields), *Minuartia douglasii* (sandwort), *Minuartia californica* (California sandwort), *Gilia clivorum* (gilia), *Castilleja densiflora* (owl's clover), *Lupinus nanus* (sky lupine), *Brodiaea terrestris* (brodiaea), *Stylocline amphibola* (Mount Diablo cottonweed), *Trifolium grayii* (Gray's clover), and *Hemizonia corymbosa* (coast tarplant). Nonnative species present include *Filago gallica* (filago) and *Vulpia myuros* (rattail) (California Natural Diversity Data Base (CNDDB) 1998; R. Morgan, pers. comm. 1998). In many cases, the habitat also supports a crust of mosses and lichens (BRG 1998).

Morgan observed a sphecid wasp (family Sphecidae) visitation to an individual *Polygonum hickmanii* (R. Morgan, pers. comm. 1998). Other potential pollinators have not been identified at this time, and the degree to which *P. hickmanii* depends on insect pollinators (rather than being self-pollinated) has not been determined.

For purposes of this rule, a cluster of individuals of *Polygonum hickmanii* will be referred to as a "colony." Because of the close proximity of many of the clusters to each other (less than 0.4 km (0.2 mi) apart), it is uncertain whether these clusters are patches within a metapopulation (population consisting of interconnected subpopulations), true colonies, or separate populations. The approximate area occupied by any one colony ranges from the smallest at 1.5 m by 1.5 m (5 ft by 5 ft) to the largest at 15 m by 9 m (50 ft by 30 ft). There are approximately 11 colonies of *P. hickmanii* in total, which together occupy less than 0.4 hectare (ha) (1 acre (ac)).

The *Polygonum hickmanii* colonies are split between two sites. The first site is located north of Casa Way and west of Glenwood Drive in northern Scotts Valley. Referred to as the Glenwood site, it contains five colonies on two parcels of land. One of these colonies is situated within a 3.6 ha (9 ac) preserve on a 19.4 ha (48 ac) parcel that is owned by the Scotts Valley Unified School District and is referred to as the "School District" colony (Denise Duffy and Associates 1998). The other four colonies at the Glenwood site are located approximately 0.21 km (0.13 mi) to the west of the School District colony, on a parcel of land owned by the Salvation Army (CNDDB 1998). These four colonies are referred to as the "Salvation Army" colonies.

The second site contains six colonies and is referred to as the "Polo Ranch" site. Located just east of Highway 17 and north of Navarra Road in northern Scotts Valley, the Polo Ranch site is approximately 1.6 km (1 mi) east of the Salvation Army and School District colonies. These six colonies are situated within 0.2 km (0.1 mi) of one another, and all of these colonies occur on a parcel owned by Greystone Homes (Kathleen Lyons, BRG, *in litt.* 1997).

Being a short-lived annual species, the total number of individuals can vary from year to year. In 1998, the total number of individuals found at the Glenwood site was 153 on the School District parcel and approximately 2,000 on the Salvation Army parcel (K. Lyons, pers. comm. 1998). In 1997, the total number of individuals on the Polo Ranch site was approximately 2,140 (K. Lyons *in litt.* 1997).

Polygonum hickmanii is threatened with extinction by habitat alteration due to secondary impacts of urban development occurring within close proximity. Urban development includes the proposed construction and operation of a high school; installation and maintenance of water delivery pipelines, access roads, and water tanks; and currently existing and proposed housing. Results of a field survey conducted on the School District colony identified that the *P. hickmanii* may occur in the vicinity of the alternative access routes to the tank sites and that potential impacts from the construction activities may be significant (Service, *in litt.* 1998).

The kinds of habitat alterations expected to impact *Polygonum hickmanii* as a result of development include changes in hydrologic conditions; soil compaction; increased disturbance by humans, pets, and bicycle traffic; the inadvertent application of herbicides and pesticides; dumping of yard wastes; and the introduction of nonnative species. These habitat alterations are substantial enough that they are even destabilizing the proposed preserves and open space areas intended to protect *P. hickmanii* and making these areas inadequate for maintaining viable populations of this species (Service, *in litt.* 1998). Studies on habitat fragmentation and preserves established in urbanized settings have shown that these preserves gradually become destabilized from external forces (*i.e.*, changes in the hydrologic

conditions, soil compaction, etc.), resulting in preserves that are no longer able to support the species they were established to protect (Kelly and Rotenberry 1993).

The chance of random extinction for *Polygonum hickmanii* is also increased due to the small numbers of individuals and limited area occupied by the species (Shaffer 1981).

Previous Federal Action

We first became aware of *Polygonum hickmanii* in the course of proposing to list *Chorizanthe robusta* var. *hartwegii* for Federal listing in 1992. At that time, however, a name for the taxon had not formally been published, and so it could not be considered for listing under the Act. Once the name, *P. hickmanii*, was published by Hinds and Morgan (1995), we reviewed information in our existing files, in the California Natural Diversity Data Base, and new information on proposed projects being submitted to us for our review, and determined that sufficient information existed to believe that listing might be warranted. *Polygonum hickmanii* was included in the list of candidate species published in the **Federal Register** on October 25, 1999 (64 FR 57534).

The processing of this proposed rule conforms with our current Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarified the order in which we process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being. Second priority is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists (such as this proposed rule for *Polygonum hickmanii*). The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Polygonum hickmanii* H. R. Hinds and R. Morgan are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In addition to the colonies of *Polygonum hickmanii* at the Glenwood and Polo Ranch sites, other colonies of *P. hickmanii* may have occurred in Scotts Valley prior to publication of the species name in 1995. An existing housing development bordering the south side of the Glenwood site (Glen View) was built in the mid-1980s, and one development bordering the south side of the Polo Ranch site (Navarra Drive) was built in the 1970s. The environmental analyses done at those times would not have recognized *P. hickmanii* as a distinct taxon.

None of the occupied habitat for *Polygonum hickmanii* is targeted for direct destruction; however, all occupied habitat will be subject to habitat alteration resulting from current and proposed projects. At the Glenwood site, construction of a high school was initiated in June 1998. The colony of *P. hickmanii* on this site is within an area designated as a grassland preserve intended to protect a number of sensitive plant species, including *P. hickmanii*, *Minuartia californica* (California sandwort), *Plagiobothrys diffusus* (San Francisco popcorn flower), and the endangered *Chorizanthe robusta* var. *hartwegii*. The preserve is 2 ha (4 ac) in size, and is adjacent to a wetland preserve of slightly smaller size. The two preserves combined form a 3.6 ha (9 ac) area, linear in shape, sandwiched between high school playing fields to the north and the existing Glen View development to the south. The colony of *P. hickmanii* is 18 m (60 ft) away from the edge of the preserve nearest to the playing field. A management plan for the grasslands preserve includes prescriptions for boundary protection, habitat enhancement, control of nonnative plant species, and a 10-year monitoring program (BRG 1998). Although the effectiveness of this management plan has not been demonstrated yet, *P. hickmanii* will likely still be subject to habitat alteration due to the small size of the preserve and its proximity to other land uses. Problems with managing small preserves within urban areas have been documented previously (Jensen 1987; Clark *et al.* 1998; Howald 1993; Service 1995). See Factor E for additional discussion on the failure of preserve design to provide for long-term conservation.

The kinds of habitat alteration that are anticipated to result from the high school project include changes in surface hydrologic conditions due to the increased watering of the ballfield up slope from the preserve; changes in surface water quality due to the application of fertilizers, herbicides and pesticides on the ballfield and adjacent areas up slope from the preserve; an increase in the number of nonnative plant species that will likely invade from adjacent newly altered areas; and an increase in the amount of soil disturbance and soil compaction caused by the increased numbers of students, pets, and bicycles coming into the preserve from adjacent areas. The nature of the thin soils and the crusts of mosses and lichens they support make them particularly vulnerable to any form of surface disturbance (Belknap 1990).

The Scotts Valley Water District recently approved the construction of a series of pipelines, maintenance roads, and tanks to distribute recycled water in the northern Scotts Valley area (EMC Planning Group 1998; Scotts Valley Water District 1998). One pipeline and an all-weather maintenance road pass through the southwestern corner of the preserve, then continue to the north and west onto a parcel owned by the Salvation Army where a water tank would be installed. As originally proposed, this route was to come within 23 m (75 ft) of the colonies of *Polygonum hickmanii* on the Salvation Army parcel, and within 18 m (60 ft) of the endangered *Chorizanthe robusta* var. *hartwegii* (K. Lyons, pers. comm. 1998). However, when road grading was initiated in July 1999, grading plans were not followed closely. Moreover, measures to minimize and mitigate impacts to sensitive resources included in the approved project were not implemented. As a result, road grading came to within 3 m (10 ft) of *P. hickmanii*, and to within 6 m (20 ft) of *C. r.* var. *hartwegii* (Vince Cheap, California Native Plant Society, *in litt.* 1999).

The kinds of habitat alteration that are anticipated to impact *P. hickmanii* from the Water District's project include changes in surface hydrology due to the placement of the road upslope from the colonies; changes in surface water quality due to the application of herbicides, pesticides, and tackifiers (dust reducing substances) on the road and roadsides upslope from the colonies; an increase in the amount of soil siltation from the up slope roadbank; soil compaction and disturbance; and an increase in the number of nonnative plant species that will likely invade from the road.

A recent visit to the Glenwood site confirmed that the nonnative plant *Cytisus scoparius* (Scotch broom) has invaded to within a few feet of one of the colonies of *Polygonum hickmanii* in the last few years (Carole Kelley, Friends of Scotts Valley, per. comm. 1998). If not controlled, this invasive plant could quickly eliminate habitat for the *P. hickmanii*. The California Department of Food and Agriculture has declared *Cytisus scoparius* and *Cytisus monspessulanus* (French broom) pest species, which in some places forms impenetrable thickets that displace native vegetation and lower habitat value for wildlife (Habitat Restoration Group, no date).

A housing development proposed for the Polo Ranch site includes 74 housing units clustered on 7.3 of 47.0 ha (18 of 116 ac), with the remaining 38 ha (95 acres) kept as open space (City of Scotts Valley 1998). The development, as currently proposed, places houses and roadways within 18 m (60 ft) or closer to five out of six colonies of *Polygonum hickmanii*. Moreover, not only will the development then separate the colonies from each other, three of the six colonies will be isolated on all sides either by existing or proposed dwellings and roadways.

Alterations of habitat for *Polygonum hickmanii* that are likely to occur as a result of the Polo Ranch development are changes in surface hydrologic conditions due to the grading of roads and lots; soil compaction and disturbance by humans, pets, and bicycle traffic; inadvertent (i.e., aerial drift) and intentional application of herbicides, pesticides, and fertilizers on roadsides and yards; inadvertent introduction of nonnative species (both weedy and ornamental), and dumping of yard wastes. Examples of alteration of habitat that have occurred on grasslands north of the backyards of existing housing along Navarra Drive (along the south edge of the Polo Ranch property) include gates and pathways leading from backyards onto the grassland, ivy creeping over fences and onto the grassland, oaks (*Quercus* sp.) planted within the grassland, and shade created by planted backyard trees (K. Lyons, pers. comm. 1998).

Although two of the projects (high school and recycled water distribution system) include plans for conservation of *Polygonum hickmanii* through development-related mitigation, and the third project (Polo Ranch) would be expected to do so as well, the successful implementation of these mitigation plans has not been demonstrated. In particular, the size and characteristics of preserve areas, open spaces, and management actions prescribed through the environmental review process (see Factor D) are unlikely to be biologically adequate to meet the goal of long-term conservation of *P. hickmanii* and its habitat. In addition, since *P. hickmanii* colonies will be in preserves or open spaces that are small in area, support small numbers of individuals, whose habitat is degraded, or that continue to receive secondary effects of adjacent human activities, they become more vulnerable to extirpation from naturally occurring events (see Factor E).

All habitat for *Polygonum hickmanii* is also threatened in general by the encroachment of nonnative grasses from the surrounding grasslands. Although several species of nonnative grass (e.g., *Vulpia myuros*) grow within the wildflower fields, these patches for the most part do not support the abundant growth of nonnative grasses (*Bromus* sp.) that occur on the adjacent, more mesic grassland habitat. These nonnative grasses on the mesic grasslands do not compete with *P. hickmanii* in the classic sense (competition for light, water, nutrients). However, the tall culms (stems) of nonnative grasses can physically drape over patches of wildflower field habitat, particularly the smaller patches, and deposit a mat of litter (thatch) that physically prohibits the species within the wildflower field from appearing. Because nonnative grasses and herbs produce more biomass than their native counterparts, they also produce more litter. Although decomposition rates for nonnative species are likely no slower than those of native species, their faster rate of biomass production results in a greater accumulation of litter. Other cases of native species being overtaken by litter accumulation produced by nonnatives have been noted in desert ecosystems (Jayne Belknap, Biological Resources Division, pers. comm. 1998) and on the California Channel Islands (Rob Klinger, The Nature Conservancy, pers. comm. 1998).

B. *Overutilization for commercial, recreational, scientific, or educational purposes*. Overutilization or vandalism are not known to be threats to this species.

C. *Disease or predation*. We found no evidence that disease is a factor affecting this species. Predation by cattle, livestock, or other wildlife species is not known to occur.

D. *The inadequacy of existing regulatory mechanisms*. *Polygonum hickmanii* currently receives no protection under Federal law, and it is not currently listed by the State of California.

Chorizanthe robusta var. *hartwegiana*, an endangered species, occurs within the same wildflower field habitat as *Polygonum hickmanii*. Although *C. r.* var. *hartwegiana* is listed, it remains vulnerable to all the same threats that face *P. hickmanii*. Therefore, the association of *P. hickmanii* with the *C. r.* var. *hartwegiana* in the same wildflower field habitat confers little regulatory protection on the *P. hickmanii*. However, there may be some benefit to *P. hickmanii* through the California Environmental Quality Act (CEQA) process described below.

The CEQA requires a full disclosure of the potential environmental impacts of proposed projects. The lead agency is the public agency with primary authority or jurisdiction over the project, and is responsible for conducting a review of the project and consulting with other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project potentially "reduce(s) the number or restrict(s) the range of a rare or endangered plant or animal." Species eligible for State listing as threatened or endangered, but not listed, are given the same protection as those species officially listed by State or Federal governments. The Rare Plant Scientific Advisory Committee for the California Native Plant Society has determined that *Polygonum hickmanii* meets the criteria for being included on CNPS' "List 1B." The plants on List 1B meet the definitions of sec. 1901, chapter 10 of the California Department of Fish and Game Code, and are therefore eligible for State listing. It is mandatory that plants on List 1B be fully considered during preparation of environmental documents relating to CEQA. Once significant effects are identified, the lead agency may require mitigation for effects through changes in the project or alternatively, the lead agency may decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed species. Therefore, the protection of listed species through CEQA depends upon the discretion of the lead agency involved.

CEQA approval for the construction of the Polo Ranch development falls under the purview of the City of Scotts Valley. However, the Scotts Valley Unified School District was the lead CEQA agency for approval of the Glenwood High School project, while the Scotts Valley Water District acted as the lead CEQA agency for approval of the recycled water distribution project. With at least three local agencies separately approving development proposals, a consistent, appropriate approach to managing such small preserves and adequately mitigating project impacts may be very difficult to develop and maintain.

Inclusion of mitigation measures in a project approved through the CEQA process does not guarantee that such measures are implemented. The recycled water distribution project approved by the Scotts Valley Water District included measures to avoid and mitigate impacts to sensitive resources, including those for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*. However, grading for this project was initiated without implementing those measures, which resulted in a much narrower buffer zone left between the plant populations and the grading activity (Carl Wilcox, California Department of Fish and Game, *in litt.* 1999).

Certain local agencies are exempt from city and county regulations in accordance with chapter 1, paragraphs 53094 and 53096 of the State of California regulations on planning, zoning, and development laws (Governor's Office of Planning and Research 1996). In the case of the High School project, the Scotts Valley Unified School District is exempt from local permitting requirements; therefore, no permits or approvals were required from the City of Scotts Valley. In the case of the recycled water distribution project, the Scotts Valley Water District is similarly exempted; therefore, no permits or approvals are required from either the City of Scotts Valley or the County of Santa Cruz. In July 1999, the Water District proceeded with road and tank pad grading for this project. This activity was initiated without fulfilling mitigation measures that called for sensitive areas to be flagged and fenced ahead of time, and resulted in grading that went beyond the scope of work for the project. Although the County of Santa Cruz notified the Water District that the additional grading was not exempted from applicable regulations, the only consequence is that the county has requested that the damaged areas are satisfactorily restored (Alvin James, County of Santa Cruz, *in litt.* 1999).

The establishment and implementation of a management plan for the preserve at the High School site does not provide for enforcement authority to maintain the physical integrity of the preserve. Few regulatory mechanisms are available to assist in protection of the high school preserve. State law addressing trespass is found at California Penal Code Section 554 and 555 (California State Legislature 2000). To date, however, these regulations have not been enforced in cases of trespass at the preserve (Carole Kelley, Friends of Scotts Valley, pers. comm. 1999).

E. *Other natural or manmade factors affecting its continued existence*. The design of preserves and open spaces related to project mitigation is insufficient to provide for the long-term conservation of *Polygonum hickmanii* and other sensitive species that occur in the wildflower fields in Scotts Valley. Additionally, the threat of random extinction is increased in small populations of limited distribution.

Inadequate preserve design. The need for adequate preserve design has been discussed by many biologists (Jensen 1987; Shafer 1995; Rathcke and Jules 1993; Kelly and Rotenberry 1993). To increase the certainty that a species will persist over a given interval of time, adequate habitat needs to be protected and land uses adjacent to the preserve need to be compatible with maintaining the integrity of the preserve. Habitat is not restricted solely to the area actually occupied by the species. It must include an area that is large enough to maintain the ecological functions upon which the species depends, and have a ratio of edge to total area that minimizes fragmentation and edge effects.

Failure to protect sufficient habitat results in the eventual decline of the target species. Small preserves adjacent to urban areas have additional stress placed on them due to the need to manage a host of human-caused impacts. The increased stress urban wildland areas receive has been documented by many authors (Keeley 1983). Although little work has focused on the effects of habitat alteration and fragmentation on native grassland habitat in California, the effects would likely be similar to those documented for other native California habitats. Clark *et al.* (1998) discussed management problems encountered by small vernal pool preserves surrounded by an urban park and residential development in the Sacramento area, and they identified the following threats to the habitat—off-road motorized vehicle, foot, horse, and bicycle traffic; plant and animal collection; herbicides; changes in hydrology; garbage; invasive exotic plants; feral and domestic animals; vegetation management for fire control; and vandalism.

We previously listed serpentine-endemic species in the San Francisco Bay area, in part, due to the impacts these taxa were subjected to in urban wildland areas (Service 1995; 60 FR 6671). For example, *Cordylanthus tenuis* ssp. *capillaris* (Pennell's bird's-beak) is threatened with mowing and spraying along roadsides, illegal dumping of household trash, and disturbance that facilitates the invasion of nonnative species (60 FR 6671). *Calochortus tiburonensis* (Tiburon mariposa lily) is threatened by bicycle, motorbike, and pedestrian traffic even though it occurs within a fenced preserve area; and *Cirsium fontinale* var. *fontinale* (Fountain thistle) is threatened by dumping of garden debris from households on a ridge above the plants (60 FR 6671). In the case of *Polygonum hickmanii* at the School District Preserve, the site has remained unfenced and unsigned, and has been subject to bicycle traffic, heavy equipment traffic, and served as a repository for yard waste (C. Kelley, *in litt.* 1999). In addition, a management plan for the preserve has not yet been completed.

Pentachaeta lyonii (Lyon's pentachaeta) is an endangered plant species that is restricted to less than 10 sites in western Los Angeles and eastern Ventura County. It is similar to *Polygonum hickmanii* in that its habitat consists of thin-soiled patches within a larger grassland community that has deeper soils. In the early 1990s, small patches of *Pentachaeta lyonii* were set aside as preserves as mitigation for a housing development and golf course in Westlake Village. At hole 10 on the golf course, a 1,394 square-meter (1,500 square-foot) area was set aside for a small population of the pentachaeta; however, the population dwindled over the next six years and finally disappeared (Carl Wishner, Envicom, pers. comm. 1998). Attempts to transplant bare root seedlings into the site resulted in the reappearance of the species the following year, but with numbers again dwindling in subsequent years. Habitat for the plant has been rendered unsuitable for several reasons including overspray from the sprinkler system that increased soil moisture, which in turn promoted the growth of weedy nonnative herbs and grasses that compete with the pentachaeta. Overspray also resulted in the mildew of pentachaeta flower heads, which then did not produce seed. Adjacent landscaped areas provide cover that harbors populations of rabbits, birds, snails and insects that were not previously present. In combination, these animals have consumed much of the vegetation along a 1.5 to 2.4 m (5 to 8 ft) wide swath of vegetation, including pentachaeta, on the perimeter of the preserve area.

Alberts *et al.* (1993) documented the effects of habitat fragmentation on coastal scrub in southern California. Surveys of native and introduced plant species conducted in 25 patches of coastal scrub found that plant species richness and the ratio of native species to nonnative species was correlated with several variables—larger and more recently isolated patches supported more species; fragments with longer perimeters contained more weed species; and older fragments and those with artificially supplemented water sources supported higher numbers of escaped ornamentals. Human disturbance, including clearing of vegetation, addition of nonnatural water supplies, and disruption of fire regimes, has most likely contributed to the loss of native species and subsequent invasion of nonnative species into the patches.

Habitat fragmentation also affects plant-pollinator interactions in a number of ways. The abundance of specific pollinators may decline due to the elimination of nesting sites, decreases in food source plants due to changes in composition of the plant community, increases in competition from nonnative pollinators, and increases in the exposure to pesticides (Rathcke and Jules 1993; Jennersten 1988; Kearns and Inouye 1997). In plant species that are obligate outcrossers (those that require pollinators to effect seed development), reduced pollinator availability can result in limited seed production. Even if a plant species is not an obligate outcrosser, genetic variability within the plant population can be reduced with potentially deleterious long-term consequences (see discussion below on random extinction).

In the case of *Polygonum hickmanii*, ecological processes that would be important to maintain within preserve areas include, but are not limited to, the integrity of edaphic (soil) conditions, hydrologic processes (surface flows), the associated "wildflower field" plant community, plant-pollinator interactions, and seed dispersal mechanisms. Maintaining such processes will be severely compromised by the small size of the areas being set aside as preserves or open spaces, the extent of edge subject to external influences, and the particular kinds of adjacent land use to which the preserves will be subject. Threats resulting from alteration of habitat due to adjacent changes in land use (discussed in Factor A) are exacerbated by the small size of the preserves and the proximity of nearly all of the colonies to the edges of the preserves or open spaces, or to roads. Distances of less than 24 m (80 ft) are not considered to be highly effective at buffering from chemical pollutants (e.g., herbicides, pesticides, and other contaminants) (Conservation Biology Institute 2000). Depending on site configuration or circumstances, buffers of up to 91 m (300 ft) may not be adequate to provide sufficient buffering from invasive animals and increased fire frequency (Conservation Biology Institute 2000) .

Random extinction. Species with few populations and individuals are vulnerable to the threat of naturally occurring events, causing extinction through mechanisms operating either at the genetic level, the population level, or at the landscape level. The loss of genetic diversity may decrease a species' ability to persist within the environment, often manifested as a decrease in reproductive success. At the population level, species with few populations or individuals may be subject to forces that affect their ability to complete their life cycles successfully. For example, the loss of pollinators may reduce successful seed set, or if the host plant is at least partially self-compatible, may reduce the degree of genetic variability within species. At the landscape level, random natural events, such as storms, drought, or fire could destroy a significant percentage of a species' individuals or entire populations. The restriction of colonies to small sites increases their risk of extinction from such naturally occurring events.

The genetic characteristics of *Polygonum hickmanii* have not been investigated; therefore, the degree to which these characteristics contribute to the likelihood of *P. hickmanii* being vulnerable to extinction for these reasons is unknown. However, random events operating at the population and landscape levels clearly have the potential for increasing the chance of extinction for *P. hickmanii*.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon in determining to propose this rule. Based on this evaluation, the appropriate action is to propose listing *Polygonum hickmanii* (Scotts Valley polygonum) as endangered. The species is threatened with extinction due to habitat alteration resulting primarily from urban development, inadequate preserve design, and vulnerability to naturally occurring events due to low numbers of individuals and occupied acreage of the entire taxon. All of the colonies are on private lands. Although conservation efforts have been prescribed as part of mitigation for two of the three projects (high school and recycled water distribution project), and are expected to be proposed for the third project (Polo Ranch development), the small extent of occupied habitat, small colony sizes, and imminent threats lessen the chance that such efforts will lead to secure, self-sustaining colonies at these sites.

Critical Habitat

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species, and that may require special management consideration or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Our Final Listing Priority Guidance for FY 2000 (64 FR 57114) states that the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**.

We believe that critical habitat is prudent for *Polygonum hickmanii*. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior*, 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat would be prudent for *P. hickmanii*.

Due to the small number of populations, *Polygonum hickmanii* is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence of vandalism, collection, or trade of *P. hickmanii* or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we propose that critical habitat is prudent for *Polygonum hickmanii*.

We are deferring the proposed critical habitat designation for *Polygonum hickmanii* until a later date. The reason for this is that *P. hickmanii* occurs in the same general areas as *Chorizanthe robusta* var. *hartwegii*. We intend to concurrently propose critical habitat for both of these species. Also, this deferral will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *P. hickmanii* without further delay. We will also make the final critical habitat determination separately from the final listing determination for *P. hickmanii*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in public awareness and conservation actions by Federal, State, and local and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that we carry out recovery actions for all listed species. Together with our partners, we would initiate such actions following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat, if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Activities on private lands requiring a permit from a Federal agency, such as a permit from the Army Corps of Engineers under section 404 of the Clean Water Act, would be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted would not require section 7 consultation.

Listing of this plant would authorize development of a recovery plan for it. However, in the case of *Polygonum hickmanii*, we included conservation recommendations for this species in a multi-species recovery plan we published, which also addressed recovery actions for two listed insects and three listed plants (including the endangered *Chorizanthe robusta* var. *hartwegii* that occurs with *P. hickmanii*) in the Santa Cruz Mountains (Service 1998). Should *P. hickmanii* become listed, we intend that the conservation recommendations included in this recovery plan will, in effect, become the recovery plan for this species. This plan identifies both State and Federal efforts for conservation of the plant and establishes a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan sets recovery priorities and describes site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to the State of California for management actions promoting the protection and recovery of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction in areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destroying of such endangered plants in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

In accordance with our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), at the time a species is listed we identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Collection, damage, or destruction of endangered plants on Federal lands is prohibited, although in appropriate cases, a Federal endangered species permit may be issued to allow for collection. However, *Polygonum hickmanii* is not presently known to occur on Federal land. Removal, cutting, digging up, damaging or destroying endangered plants on non-Federal lands also constitutes a violation of section 9 of the Act if conducted in knowing violation of State law or regulations, including State criminal trespass law.

Questions regarding whether specific activities will constitute a violation of section 9 should be addressed to the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Polygonum hickmanii;*

(2) The location of any additional populations of *Polygonum hickmanii* and the reasons why any habitat of this species should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Polygonum hickmanii.*

In making a final decision on this proposal, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final regulation that differs from this proposal.

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

If you would like to submit comments by e-mail (see **ADDRESSES** section), please submit e-mail comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AH70" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805/644–1766.

Public Hearings

The Act provides for one or more public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section).

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the office identified in the **ADDRESSES** section at the beginning of this document.

National Environmental Policy Act

We have determined that an Environmental Assessment and Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This proposed rule does not contain any new or revised information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. For additional information concerning permits and associated requirements for endangered plants, see 50 CFR 17.62

and 17.63. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Constance Rutherford (see **ADDRESSES** section).

List of Subjects in 50 CFR part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Polygonum hickmanii	Scotts Valley polygonum.	U.S.A. (CA)	Polygonaceae	E	....	NA	NA
*	*	*	*	*	*	*	

Dated: October 17, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–28698 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Designation of the Northern Sea Otter in the Aleutian Islands as a Candidate Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of designation of a candidate species.

SUMMARY: In this document, we present information on the recent addition of the northern sea otter (*Enhydra lutris kenyoni*) found in the Aleutian Islands to the list of candidates for listing under the Endangered Species Act of 1973, as amended. Identification of candidate taxa can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and thereby possibly remove the need to list taxa as endangered or threatened. Even if we subsequently list this candidate species, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to this species.

We also announce the availability of the candidate and listing priority assignment form for this candidate species. This document describes the status and threats that we evaluated to determine that the northern sea otter in the Aleutian Islands warrants consideration for listing, and to assign a listing priority to this species.

We request additional status information that may be available for the northern sea otter. We will consider this information in evaluating, monitoring, and developing conservation strategies for this species.

DATES: We will accept comments on this document at any time.

ADDRESSES: Submit written comments and data regarding the northern sea otter to the Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Douglas Burn, Wildlife Biologist, Marine Mammals Management Office at the above address, or telephone 907/786–3800 or facsimile 907/786–3816.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we list taxa of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. As part of this program, we also identify taxa that we regard as candidates for listing. Candidate taxa are those taxa for which we have on file sufficient information to support issuance of a proposed rule to list under the Act. In addition to our annual review of all candidate taxa (64 FR 57534; October 25, 1999), we have an on-going review process, particularly to update taxa whose status may have changed markedly.

Section 3 of the Act generally defines an endangered species as any species which is in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(B) Overutilization of the species for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation affecting the species;

(D) The inadequacy of existing regulatory mechanisms to protect the species; and

(E) Other natural or manmade factors affecting the species' continued existence.

We are required to make the listing determination "solely on the basis of the best scientific and commercial data available" and "taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas." Sections 4(a)(1) and 4(b)(1)(A) and our regulations at 50 CFR 424.11(f) require us to consider any State or local laws, regulations, ordinances, programs, or other specific conservation measures that either positively or negatively affect a species' status (*i.e.*, efforts that create, exacerbate, reduce, or remove threats identified through the section 4(a)(1) analysis).

We maintain the list of candidate species for a variety of reasons, including: to provide advance knowledge of potential listings that could affect decisions of planners and developers; to solicit input from interested parties to identify those candidate taxa that may not require protection under the Act or additional taxa that may require the Act's protections; to solicit information on the status of species and measures necessary to conserve species, and to solicit information needed to prioritize the order in which we will propose taxa for listing. We encourage consideration of candidate taxa in environmental planning, such as in environmental impact analysis under the National Environmental Policy Act of 1969 (implemented at 40 CFR parts 1500–1508) and in local and Statewide land use planning.

According to our 1983 Listing Priority System (48 FR 43098; September 21, 1983), all species that are candidates for listing are assigned a listing priority number. This system ranks species according to—(1) the magnitude of threats they face, (2) the immediacy of these threats, and (3) the taxonomic distinctiveness of the entity that may be listed. Listing priority numbers range from 1 (highest priority) to 12 (lowest priority). We will complete proposals to list candidate species, based on their listing priority, to the extent that our resources for listing activities and our workload for other listing activities will allow.

This notice provides specific explanations of why we classified the northern sea otter as a candidate. This decision was approved by the Service's Director Jamie Rappaport Clark, on August 22, 2000. It is important to note that candidate assessment is an ongoing function and changes in status should be expected. If we remove taxa from the candidate list, they may be restored to candidate status if additional information supporting such a change becomes available to us. We issue requests for such information in a Candidate Notice of Review published in the **Federal Register** every year.

Findings

The worldwide population of sea otters in the early 1700s has been estimated at 150,000 (Kenyon 1969) to 300,000 (Johnson 1982). Extensive commercial hunting of sea otters began following the arrival in Alaska of Russian explorers in 1741 and continued during the 18th and 19th centuries. By the time sea otters were afforded protection from commercial harvests by international treaty in 1911, the species was nearly extinct throughout its range, and may have numbered only 1,000–2,000 individuals (Kenyon 1969).

Following the international treaty in 1911, only 13 isolated remnant populations scattered throughout the historic range remained. However, once commercial harvests ceased, these populations began to grow and recolonize their former range. Today three subspecies of sea otter have been identified (Wilson *et al.* 1991). The northern sea otter contains two subspecies: *Enhydra lutris kenyoni* which occurs from the Aleutian Islands to Oregon, and *Enhydra lutris lutris* which occurs in the Kuril Islands, Kamchatka Peninsula, and Commander Islands in Russia. The third subspecies, *Enhydra lutris nereis,* occurs in California and is known as the southern sea otter.

The period of recolonization was marked by high reproductive rates and range expansion. Survey data indicate that otters were present in all island groups in the Aleutians by the 1980s (Brueggeman *et al.* 1988, Estes 1990). Calkins and Schneider (1985) calculated the sea otter population in the Aleutians as 55,100 to 73,700 individuals, which represented over half the Alaska population. The entire Aleutian archipelago was not systematically surveyed again until 1992. During these surveys Evans *et al.* (1997) estimated the Aleutian Islands sea otter population as 19,157 ± 3,281. The most striking results of this survey were that sea otter density and abundance in the Rat, Delarof, and western Andreanof Islands had unexpectedly declined by more than 50 percent. Boat-based surveys of sea otters at several islands in the Near, Rat, and Andreanof Islands further documented an ongoing decline of sea otters during the 1990s (Estes *et al.* 1998). As few as 6,000 sea otters may remain in the Aleutians today (U.S. Fish & Wildlife Service, Unpublished Data).

Potential threats include both natural fluctuations and human activities, which may have caused changes in the Bering Sea ecosystem. Subsistence hunting occurs at very low levels and does not appear to be a factor in the decline. While disease, starvation, and contaminants have not been implicated at this time, additional evaluation of these factors is warranted. The hypothesis that predation by killer whales is causing the sea otter decline (Estes *et al.* 1998) should also be studied further.

Due to the precipitous and rapid nature of the ongoing population decline, we have assigned the northern sea otter in the Aleutian Islands listing a priority of three under our Listing Priority System. Additionally we note that the imminence of the threats underscores the urgent need for more information regarding the cause of the decline in this population.

Request for Information

We request you submit any further information on the northern sea otter as soon as possible or whenever it becomes available. We are seeking the following types of information:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the northern sea otter;

(2) Reasons why any habitat of this species should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Information regarding the range, status, habitat needs, and listing priority assignment for the northern sea otter is available for review by contacting the Service as specified in the **ADDRESSES** section.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In certain circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Marine Mammals Management Office (see **ADDRESSES** section).

References Cited

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Author

This notice was compiled from materials supplied by staff biologists located in the Service's regional and field offices. The materials were compiled by, Division of Endangered Species (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: November 3, 2000.

David B. Allen,

Regional Director, U. S. Fish and Wildlife Service, Region 7.

[FR Doc. 00–28796 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–55–U

Notices

Federal Register

Vol. 65, No. 218

Thursday, November 9, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Jasper Fire Value Recovery EIS—Black Hills National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Black Hills National Forest will prepare an environmental impact statement on a proposal to recover value from fire-killed timber within the Jasper Fire perimeter. The Jasper Fire burned approximately 83,500 acres in August and September 2000. Fire-killed ponderosa pine in the Black Hills is highly susceptible to damage from insects and fungus. Expectations are that wood quality within the fire area will decline at a moderate rate until mid-summer 2001. Wood quality is expected to decline rapidly after that point. The Forest Plan goals and objectives that will be met include minimizing public safety hazards through hazard tree removal, maintaining soil productivity and minimizing soil erosion, managing fuel loading, and capturing economic values associated with restoration treatments. The EIS will be designed to satisfy the requirements of the National Environmental Policy Act, 42 U.S.C. Sections 4321–4370a, and the National Forest Management Act, 16 U.S.C. 1600–1614, and their respective implementing regulations.

DATES: Comments concerning the scope of the analysis should be received on or before 30 days after publication of this notice in the Federal Register.

ADDRESSES: Send written comments to Mike Lloyd, District Ranger, Hell Canyon Ranger District, Black Hills National Forest, 330 Mt. Rushmore Road, Custer, SD 57730.

FOR FURTHER INFORMATION CONTACT: Kelly Honors, EIS Team Leader, (605) 673–4853.

SUPPLEMENTARY INFORMATION: The proposed action is to recover value from timber killed by the Jasper Fire. Specifically this includes removing up to 60 million board feet of timber, concentrating in areas with high volume per acre; removing timber in areas with high and moderate intensity burns only (trees 100% scorched or totally devoid of needles) except incidental removal of green trees where necessary to access harvest units; no new specified road construction (temporary roads may be utilized for access but would be closed post-harvest); and lastly, concentrating value recovery from areas with low susceptibility to soil erosion, compaction and water runoff. Resource protection measures are included as part of the proposed action. Mitigation measures will be included to protect resources such as mountain grasslands, snags, soils, heritage resources, water quality and wildlife.

Decision To Be Made

The Forest Service will prepare an EIS. The Forest Supervisor of the Black Hills National Forest will decide whether or not to implement this project, and if so, in what manner.

Responsible Official

John Twiss, Forest Supervisor, Black Hills National Forest, North Highway 385, Custer, South Dakota 57730 is the Responsible Official for this decision. He will document his decision in a Record of Decision.

Estimated Dates for Filing

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 15, 2000. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by March 2001. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Reviewers Obligation To Comment

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 3, 2000.

John C. Twiss,

Forest Supervisor, Black Hills National Forest.

[FR Doc. 00–28766 Filed 11–8–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following information collection under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 5).

Agency: Economic Development Administration (EDA).

Title: Award for Excellence in Economic Development.

Agency Form Number: Not applicable.

OMB Approval Number: 0610–0097.

Type of Request: Regular submission.

Burden: 150 hours.

Average Hours Per Response: 3.

Number of Respondents: Approximately 50 respondents.

Needs and Uses: EDA provides a broad range of economic development assistance to help distressed communities design and implement effective economic development strategies. Part of this assistance includes disseminating information about best practices and encouraging collegial learning among economic development practitioners. EDA has created the Award for Excellence in Economic Development to recognize outstanding economic development activities of national importance. In order to make Awards for Excellence in Economic Development, EDA must collect two kinds of information: (a) Information identifying the nominee and contacts within the organization being nominated and (b) information explaining why the nominee should be given the award. The information will be used to determine those applicants best meeting the preannounced selection criteria. Use of a nomination form standardizes and limits the information collected as part of the nomination process. This makes the competition fair and eases any burden on applicants and reviewers alike. Participation in the competition is voluntary. The award is strictly honorary.

Affected Public: State, local or Tribal Government and not-for profit organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482–3129, U.S. Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: November 3, 2000.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–28762 Filed 11–8–00; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–805]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 6, 2000, the Department of Commerce (the "Department") published the preliminary results of administrative review of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide ("PPD–T aramid") from the Netherlands. The review covers one manufacturer/exporter, Twaron Products V.o.F., and its U.S. affiliate, Twaron Products, Inc. (collectively "Twaron Products"). The period of review ("POR") is June 1, 1998, through May 31, 1999.

Based on our analysis of the comments received, we have made no changes in the margin calculations. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Michael Grossman, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the "Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On July 6, 2000, the Department published the preliminary results of administrative review of the antidumping duty order on PPD–T aramid from the Netherlands. *See Preliminary Results of Antidumping Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands*, 65 FR 41626 (July 6, 2000). The review covers one manufacturer/exporter, Twaron Products V.o.F. The POR is June 1, 1998, through May 31, 1999. We invited interested parties to comment on our preliminary results of review. We received comments on August 7, 2000, from E.I. Dupont de Nemours & Company ("petitioner"). On August 14, 2000, we received a rebuttal brief from Twaron Products. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are all forms of PPD–T aramid from the Netherlands. These consist of PPD–T aramid in the form of filament yarn (including single and corded), staple fiber, pulp (wet or dry), spun-laced and spun-bonded nonwovens, chopped fiber, and floc. Tire cord is excluded from the class or kind of merchandise subject to this order. This merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States ("*HTSUS*") item numbers 5402.10.3020, 5402.10.3040, 5402.10.6000, 5503.10.1000, 5503.10.9000, 5601.30.0000, and 5603.00.9000. The *HTSUS* item numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "*Issues* and Decision Memorandum" ("*Decision Memorandum*") from Holly

A. Kuga, Acting Deputy Assistant Secretary for Import Administration, to Richard W. Moreland, Acting Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 ("B–099") of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of Review

We determine that the following percentage weighted-average margin exists for the period June 1, 1998, through May 31, 1999:

Manufacturer/exporter	Margin (percent)
Twaron Products	3.20

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an exporter/importer-specific assessment rate by dividing the total dumping margins for the reviewed sales by the total entered value of those reviewed sales. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of PPD–T aramid from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 66.92 percent. This rate is the "All Others" rate from the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 3, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum Comments and Responses

1. Constructed Export Price
   - A. Consolidated Financial Statements Used to Calculate Financial Expenses (U.S. Indirect Selling Expenses)
   - B. Credit Period for Imputed Credit Expenses Related to Consignment Sales
   - C. Duties Related to Duty Drawback (Movement Expenses—Canadian Duties)
2. Cost of Production
   - A. Consolidated Financial Statements Used to Calculate Net Interest Expense
   - B. Treatment of Goodwill Expenses

[FR Doc. 00–28834 Filed 11–8–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Notice of Postponement of Final Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of final results of antidumping duty administrative review.

EFFECTIVE DATE: November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James Doyle, Office IX, DAS Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6412 and (202) 482–0159, respectively.

Postponement of Preliminary Determination

The Department of Commerce ("the Department") is postponing the final results in the antidumping duty administrative review of Certain Stainless Steel Butt-Weld Pipe Fittings ("SSBWPF") from Taiwan. The deadline for issuing the final results in this administrative review is now December 15, 2000.

On July 29, 1999, the Department initiated this administrative review. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 64 FR 41075 (July 29, 1999). The date for issuing the final results of the review was November 3, 2000. In order to provide interested parties an opportunity to comment on the issue of reimbursement, which arose late in the proceeding, we are extending the time limit for the final results of the administrative review of SSBWPF from Taiwan by 42 days, in accordance with section 751(a)(3) of the Tariff Act of 1930, as amended. See November 3, 2000 memorandum from Edward Yang to Joseph Spetrini: *Extension of Time Limit for the Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan.*

The date for issuing the final results is moved from November 3, 2000 to December 15, 2000.

Dated: November 3, 2000.

Edward C. Yang,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–28833 Filed 11–8–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number: Health Professions Accessions Forms; AETC Forms 1402, 1437; OMB Number 0701–0078.

Type of Request: Extension.

Number of Respondents: 3,600.

Responses per Respondent: 1.

Annual Responses: 3,600.

Average Burden per Response: 1 hour.

Annual Burden Hours: 3,600.

Needs and Uses: Respondents are civilian candidates applying for a commission in the U.S. Air Force as health care officers. These forms provide pertinent information to facilitate selection of candidates for a commission.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Officer of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 3, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–28721 Filed 11–8–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Department of Defense Acquisition University.

ACTION: Board of visitors meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Packard Conference Center, Building 184, Ft. Belvoir, Virginia on Wednesday December 6, 2000 from 0900 until 1500. The purpose of this meeting is to report back to the BoV on continuing items of interest.

The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mr. John Michel at 703.805.4575.

Dated: November 3, 2000.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 00–28719 Filed 11–8–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on December 5, 2000; December 12, 2000; December 19, 2000; and December 26, 2000, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: November 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–28720 Filed 11–8–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for BRAC 95 Disposal and Reuse of Rio Vista Army Reserve Center, California

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the closure of Rio Vista Reserve Center.

The Final EA evaluates the environmental impacts of the disposal and subsequent reuse of the 28-acre installation. Alternatives examined in this EA include no action, unencumbered disposal of the property and encumbered disposal of the property. Encumbered disposal refers to transfer or conveyance of property having restrictions on subsequent use as a result of any Army-imposed or legal restraint. Under the no action alternative, the Army would not dispose of property but would maintain it in a caretaker status for an indefinite period.

DATES: Comments must be submitted by December 11, 2000.

ADDRESSES: Copies of the Final EA and FNSI may be obtained by writing to Mr. Jerry Fuentes, Corps of Engineers, Sacramento District, Environmental Resources Branch (CESPK–PD–R), 1325 J Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Fuentes at (916) 557–6706.

SUPPLEMENTARY INFORMATION: While closure of Rio Vista is the Army's primary action, the EA also analyzes the potential environmental effects of reuse as a secondary impact by means of evaluating intensity-based reuse scenarios. The Army's preferred alternative for disposal of the Rio Vista Reserve Center is encumbered disposal, with encumbrances pertaining to easements, threatened and endangered species habitat, lead-based paint and asbestos-containing material.

A Notice of Intent declaring the Army's intent to prepare an EA for the closure of Rio Vista Reserve Center was published in the **Federal Register** on September 22, 1995 (60 FR 49264).

The Final EA and FNSI are available for review at the Rio Vista Library, 167 Main St, Rio Vista, CA 94571.

Dated: September 26, 2000.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 00–28777 Filed 11–8–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Planning and Steering Advisory Committee (PSAC)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The purpose of this meeting is to discuss topics relevant to Fleet Ballistic Missile Submarine (SSBN) security.

DATES: The meeting will be held on December 14, 2000, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Center for Naval Analyses, 4825 Mark Center, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Randy Craig, CNO–N875C2, 2000 Navy Pentagon, NC–1, Washington, DC 20350–2000, (703) 604–7392.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The entire agenda will consist of classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, U.S.C.

Dated: October 31, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–28814 Filed 11–8–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; American Pipe Lining, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to American Pipe Lining, Inc., a revocable, nonassignable, exclusive license in the United States to practice the Government-owned invention described in U.S. Patent No. 5,707,702, entitled "Epoxy Pipelining Composition and Method of Manufacture," issued January 13, 1998.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than January 8, 2001.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: October 31, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–28813 Filed 11–8–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Program Special Projects Financial Assistance

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice for 2001 State Energy Program Special Projects.

SUMMARY: As options offered under the State Energy Program (SEP) for fiscal year 2001, the Office of Energy Efficiency and Renewable Energy is announcing the availability of financial assistance to States for a group of special project activities. Funding is being provided by a number of end-use sector programs in the Office of Energy Efficiency and Renewable Energy. States may apply to undertake any of the projects being offered by these programs. Financial assistance will be awarded to the States separately for each special project, with the activities to be carried out in conjunction with their efforts under SEP. The special projects funding and activities are tracked separately so that the end-use sector programs may follow the progress of their projects.

The projects must meet the relevant requirements of the program providing the funding, as well as of SEP, as specified in the 2001 Special Projects Announcement. Among the goals of the special projects activities are to assist States to: accelerate deployment of energy efficiency and renewable energy technologies; facilitate the acceptance of emerging and underutilized energy efficiency and renewable energy technologies; and increase the responsiveness of Federally funded technology development efforts to private sector needs.

DATES: The program announcement will be available on November 6, 2000. Applications must be received by February 23, 2001.

ADDRESSES: Complete information about this program, including phone numbers for the State SEP offices and a question and answer forum, is available at the following website: http://www.eren.doe.gov/buildings/state__energy/fy01/sepsp01-forum. Otherwise, for referral to the appropriate DOE Regional Office or State Office, you may contact Mr. Thomas Stapp at the U.S. Department of Energy Headquarters, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–2096.

SUPPLEMENTARY INFORMATION: Fiscal year 2001 is the sixth year special project activities have been funded in conjunction with the State Energy Program (10 CFR part 420). Most of these State-oriented special projects are related to or based on similar efforts that have been funded separately by the various DOE end-use sector programs that are now providing funding for these optional SEP activities.

Availability of Fiscal Year 2001 Funds

With this publication, DOE is announcing the availability of an estimated $14.8 million in financial assistance funds for fiscal year 2001. The awards will be made though a competitive process. The end-use sector programs that are participating in the SEP Special Projects for fiscal year 2001,

with the estimated amount of funding available for each, are as follows:

- Clean Cities/Alternative Fuels: Accelerating the introduction and increasing the use of alternative fuels and alternative fuel vehicles through the development of infrastructure, niche markets, and clean corridors, and by promoting the use of advanced transportation technologies ($3,800,000).
- Industrial Technologies: Implementing Industries of the Future at the State level by building partnerships among State government agencies, industry, universities and research institutions: to develop new technologies tied to Industries of the Future road maps and visions; and to utilize best practices which can improve energy efficiency, environmental performance and productivity ($2,800,000).
- Codes and Standards: Supporting States' actions to update, implement, and enforce residential and commercial building energy codes ($4,200,000).
- Rebuild America: Helping community and regional partnerships improve commercial and multifamily building energy efficiency ($1,200,000).
- Building America: Applying systems engineering approaches to the development of advanced residential buildings, including production techniques, products and technologies that result in higher quality, energy efficient housing ($300,000).
- Energy and Environment Integration: Encouraging State-wide pilot projects with specific environmental benefits ($500,000).
- Federal Energy Management Program: Developing Federal/State partnerships to increase technical capability and funding for energy efficiency, renewable energy, and water conservation measures for Federal buildings ($400,000).
- Hydrogen Reformer Field Verification: Siting and operating small advanced hydrogen reformer systems to better understand and document the performance, maintenance, operation and economic viability of these systems ($500,000).
- Geothermal Energy Resource Assessments: Identifying potential areas or sites for geothermal power development in a State or region in the West (DOE Denver and Seattle Regional Office areas only) ($200,000).
- Biomass Power Projects: Recovering and using biogas for energy and other applications by assessing the feasibility of site-specific projects or implementing actual site-specific projects ($300,000).
- Brightfields—Redeveloping Brownfields with Solar Energy: Deploying solar energy technologies onto brownfields or landfill sites through solar arrays on the site; solar technologies integrated into buildings on the site; or a solar energy related business locating on the site ($100,000).
- Wind Energy Case Studies: Performing case studies documenting the benefits and costs of deployment of 25 to 50 megawatt state of the art wind turbines ($200,000).
- Distributed Energy Resources: Performing studies on cooling, heating and power applications and on streamlining siting and permitting, and analyses on constraints and placement of distributed technologies to support load ($300,000).

Restricted Eligibility

Eligible applicants for purposes of funding under this program are limited to the 50 States, the District of Columbia, Puerto Rico, and any territory or possession of the United States, specifically, the State energy or other agency responsible for administering the State Energy Program pursuant to 10 CFR part 420. For convenience, the term State in this notice refers to all eligible State applicants.

The Catalog of Federal Domestic Assistance number assigned to the State Energy Program Special Projects is 81.119.

Requirements for cost sharing contributions will be addressed in the program announcement for each special project activity, as appropriate. Cost sharing contributions beyond any required percentage are desirable.

Any application must be signed by an authorized State official, in accordance with the program announcement.

Evaluation Review and Criteria

A first tier review for completeness will occur at the appropriate DOE Regional Office. Applications found to be complete will undergo a merit review process by panels comprised of members representing the participating end-use sector programs in DOE's Office of Energy Efficiency and Renewable Energy. The end-use sector offices select projects for funding. The Office of Building Technology Assistance then recommends project allocations to the Assistant Secretary for Energy Efficiency and Renewable Energy for final determination. DOE reserves the right to fund, in whole or in part, any, all or none of the applications submitted in response to this notice.

Issued in Washington, D.C., on November 6, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 00–28843 Filed 11–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–71–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 2000.

Take notice that on October 31, 2000, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Eleventh Revised Sheet No. 40 and Fourth Revised Sheet No. 686, to become effective on December 1, 2000.

Algonquin states that, pursuant to section 32 of the General Terms and Conditions of its FERC Gas Tariff, it is filing to revise the Fuel Reimbursement Percentages (FRPs) for the calendar periods beginning December 1, 2000. Algonquin states that the use of actual data for the latest available 12-month period yields decreased FRPs which, compared to the last FRQ annual filing, consist of a 0.06% decrease in the FRP for the Winter season and 0.28% decrease for the Non-Winter seasons. Algonquin proposes to change its tariff to provide for the levelization of the three Non-Winter periods in response to requests from customers for rate stability and in compliance with the Commission's directive in approving Algonquin's last annual FRP filing. Algonquin specifically requests that its tariff changes be accepted by the Commission in order to permit Algonquin to continue to combine the three seasonal periods as proposed.

Algonquin also states that it is submitting the calculation of the fuel reimbursement quantity (FRQ) deferral allocation, pursuant to section 32.5(c) which provides that Algonquin will calculate surcharges or refunds designed to amortize the net monetary value of the balance in the FRQ Deferred Account at the end of the previous accumulation period. Algonquin states that for the period August 1, 1999 through July 31, 2000, the FRQ Deferred Account resulted in a net credit balance that will be refunded to Algonquin's customers, based on the allocation of the account balance over the actual throughput during the accumulation period, exclusive of backhauls.

Algonquin states that copies of this filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Davis P. Boergers,
Secretary.

[FR Doc. 00–28759 Filed 11–8–00; 8:45 am]

BILLING CODE 5717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–67–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 2000.

Take notice that on October 31, 2000, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the Fifth Revised Sheet No. 45E.01 to be effective December 1, 2000.

ANR states that the purpose of this filing is to designate in its tariff a new point eligible for service under its existing Rate Schedule IPLS.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28753 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–70–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

November 3, 2000.

Take notice that on October 31, 2000, Kinder Morgan Interstate Gas Transmission LLC, (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A and Fourth Revised Volume 1–B, the tariff sheets listed on appendix A to the filing, to become effective December 1, 2000.

KMIGT states that the proposed changes update the KMIGT tariff and clarify certain tariff provisions with respect to KMIGT's tariff provisions governing negotiated rates, in accordance with current Commission policy and decisions concerning tariff filings made by other interstate pipelines with respect to negotiated rate authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28758 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–68–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 3, 2000.

Take notice that on October 31, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Sixteenth Revised Sheet No. 22, to be effective December 1, 2000.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions (GT&C) of its Tariff as the fifteenth semiannual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under Section 21 are not reflected in this filing.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28756 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–21–000]

Ozark Gas Transmission, L.L.C. and Arkansas Western Pipeline, L.L.C.; Notice of Application

November 3, 2000.

Take notice that on October 27, 2000, Ozark Gas Transmission, L.L.C. (Ozark), 104 Central Park One, 525 Central Park Drive, Oklahoma City, Oklahoma 73105, and Arkansas Western Pipeline, L.L.C. (AWP), 104 Central Park One, 525 Central Park Drive, Oklahoma City, Oklahoma 73105, filed a joint application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act (NGA) for issuance of a certificate of public convenience and necessity to Ozark to acquire facilities currently owned and operated by AWP and for an order granting AWP permission and approval to abandon its facilities and services by transfer to Ozark, all as more fully set forth in the application which is on file with the Commission and open for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202/208–2222 for assistance).

Any questions regarding this application should be directed to counsel for Ozark and AWP, James F. Bowe, Jr., Dewey Ballantine LLP, at (202) 429–1444, fax (202) 429–1579, or jbowe@deweyballantine.com.

Any person desiring to be heard or making any protest with reference to said petition should on or before November 24, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/cfi/doorbell.htm.*

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process.. Commenters will not be required to serve copies of filed documents on all other parties. However, comments will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this petition if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the requested exemption is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for AWP or Ozark to appear or be represented at the hearing.

David P. Boergers,
Secretary.

[FR Doc. 00–28752 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–73–000]

Southwest Gas Transmission Company, A Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

November 3, 2000.

Take notice that on October 31, 2000, Southwest Gas Transmission Company, A Limited Partnership (SGTC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 2, the following tariff sheets to become effective December 1, 2000.

First Revised Sheet No. 4
Original Sheet No. 28A

SGTC states that the proposed changes would increase revenues from jurisdictional service by $121,138 based on the 12-month period ending August 31, 2000, as adjusted.

SGTC indicates that the principal items of cost changes producing its deficiency are: (1) Increases in plant and related items due to the construction of facilities to establish an interconnection with Transwestern Pipeline Company; and (2) the incurrence of additional operation and maintenance expenses.

SGTC states that it has served copies of its filing on its affected customer and interested state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28754 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–69–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 3, 2000.

Take notice that on October 31, 2000, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed on Appendix B to the filing, to become effective December 1, 2000.

Texas Eastern states that it is reducing its rates to effect an annual cost reduction of approximately $137 million at December 1, 2000 and to effect new applicable shrinkage factors for the year commencing December 1, 2000. Texas Eastern states that the approximate $137 million rate reduction filing is based upon the projected full recovery of Order No. 636 transition costs as of December 1, 2000, and that if Texas Eastern has in fact overrecovered its Non-Spot Costs as of December 1, 2000, Texas Eastern will return any such excess collection to its customers as described herein by crediting the ASA Deferred Account for ultimate flow back to its customers.

Texas Eastern also states that to the extent that the actual data establishes that Texas Eastern has not fully recovered such Non-Spot Costs before December 1, 2000, Texas Eastern will voluntarily absorb any such unrecovered Non-Spot Costs in order to assure its customers a rate reduction for the upcoming winter.

Texas Eastern states that the revised tariff sheets are being filed (1) pursuant to Section 15.6, Applicable Shrinkage Adjustment (ASA), contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, (2) in compliance with the Stipulation and Agreement (Global Settlement) approved by the Commission in its order issued May 12, 1994 [67 FERC ¶ 61,170, reh'g denied, 68 FERC ¶ 61,062 (1994)], and (3) in compliance with the Joint Stipulation and Agreement Amending Global Settlement (Amended Global Settlement) approved by the Commission in its order issued August 28, 1998 [84 FERC ¶ 61,200 (1998)].

Texas Eastern states that the impact of the filing on Texas Eastern's rates, in combination with the Annual PCB–Related Costs filing being filed concurrently, for the upcoming winter to be effective on December 1, 2000, equates to an overall decrease of 8.32 cents for typical long-haul service under Rate Schedule FT–1 from Access Area Zone East Louisiana to Market Zone 3 (ELA–M3) as follows:

Rate impact	100% LF impact ($/dth)
Removal of the Non Spot Fuel Component	($0.0400)
Removal of the Fuel Reservation Charge Adjustment	(0.0350)
Amended Global Settlement Step 2 Rate Reduction	(0.0248)
PCB Year 11 Filing	(0.0053)
ASA Surcharge	(0.0034)
Total Rate Impact	(0.1085)
Fuel Retention Impact:	
Winter Season ASA Percentage Increase—0.62%	
Rate Equivalent at P.I.R.A. projected price of $4.08/dth—$0.0253	
Grand Total Rate Impact—$(0.0832)	

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28757 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–72–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

November 3, 2000.

Take notice that on October 31, 2000, Wyoming Interstate Company (WIC), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Seventh Revised Sheet No. 4B, with an effective date of December 1, 2000.

WIC states that Seventh Revised Sheet No. 4B, reflects increases in the percentages for Fuel, Lost and Unaccounted-for Gas (FL&U Percentage) from .45% to .63% for its Existing System transport, from 1.72% to 1.92% for its Powder River Incremental transport and from .48% to .68% for its Medicine Bow Incremental transport, based on the data contained in the twelve month data collection period ending August 31, 2000, to be effective on December 1, 2000.

WIC states that copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David. P. Boergers,

Secretary.

[FR Doc. 00–28755 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–11–000, et al.]

El Paso Generating, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

November 2, 2000.

Take notice that the following filings have been made with the Commission:

1. El Paso Generating, L.L.C., El Paso Energy West Georgia, L.L.C., West Georgia Generating Company, L.P., Mesquite Investors, L.L.C.

[Docket No. EC01–11–000]

Take notice that on October 25, 2000, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (1998) and Part 33 of the Commission's Regulations, El Paso Generating, L.L.C., El Paso Energy West Georgia, L.L.C., West Georgia Generating Company, L.P. (West Georgia LP), and Mesquite Investors, L.L.C. (Mesquite) (collectively, Applicants) filed an application for Commission authorization for West Georgia LP to convert its form of business organization to a limited liability company, and for the transfer of ownership interests in the new limited liability company to Mesquite.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Merchant Energy Group of the Americas, Inc.

[Docket No. EC01–12–000]

Take notice that on October 26, 2000, Merchant Energy Group of the Americas, Inc. (MEGA) tendered for filing an application pursuant to Section 203 of the Federal Power Act for authorization of a transaction whereby MEGA will assign certain of its wholesale power sales agreements and associated books and records to AES Eastern Energy, L.P. MEGA requests confidential treatment of Exhibit H of the filing.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Alliance for Municipal Power

[Docket No. EL00–116–000]

Take notice that on October 23, 2000, Alliance for Municipal Power (AMP or the Alliance), tendered for filing a Petition for Exemption in Lieu of Fee pursuant to AMP's September 29, 2000, Petition for Declaratory Order filed with the Commission in the above-referenced docket. Take further notice that AMP's Petition for Declaratory Order requests the Commission to determine that it, not the New York Public Service Commission, is the proper forum to establish the extent of AMP's stranded cost obligation to Niagara Mohawk Power Company (NMPC) and also to determine that NMPC has no reasonable expectation to continue serving AMP communities at retail.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Electric & Gas Company

[Docket No. ES01–9–000]

Take notice that on October 27, 2000, South Carolina Electric & Gas Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term unsecured promissory notes in the form of bank loans and commercial paper in an amount not to exceed $250 million at one time during the period January 1, 2001, through December 31, 2002.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER01–266–000]

Take notice that on October 30, 2000, MidAmerican Energy Company (MidAmerican) filed with the Commission a Notice of Cancellation pursuant to Section 35.15 of the Commission's regulations.

MidAmerican requests that the following rate schedule be canceled effective as of December 31, 2000:

1. Firm Power Purchase Agreement dated September 16, 1987 between Iowa Public Service Company (a predecessor company of MidAmerican) and Missouri Joint Municipal Electric Utility Commission. This Agreement has been designated as MidAmerican Rate Schedule No. 74.

MidAmerican has mailed a copy of this filing to Missouri Joint Commission, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Southwest Power Pool, Inc.

[Docket No. ER01–267–000]

Take notice that on October 30, 2000, Southwest Power Pool, Inc. (SPP) tendered for filing a service agreement for Network Integration Transmission Service with Grand River Dam Authority (Network Customer).

SPP seeks an effective date of October 1, 2000 for the service agreement.

A copy of this filing was served on the Network Customer.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Ameren Energy Generating Company

[Docket No. ER01–268–000]

Take notice that on October 30, 2000, Ameren Energy Generating Company, pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d, and the market-based rate authority provided to it by the Commission, submitted for filing a long-term lease agreement with Ameren Energy Development Company.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Energy South Bay LLC

[Docket No. ER01–269–000]

Take notice that on October 30, 2000, Duke Energy South Bay LLC tendered for filing revised tariff sheets in the above-referenced docket to restate schedules to its Must-Run Schedule.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Energy Oakland LLC

[Docket No. ER01–270–000]

Take notice that on October 30, 2000, Duke Energy Oakland LLC tendered for filing revised tariff sheets in the above-referenced docket to restate schedules to its Must-Run Schedule.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. MidAmerican Energy Company

[Docket No. ER01–271–000]

Take notice that on October 30, 2000, MidAmerican Energy Company (MidAmerican) filed with the Commission a Notice of Cancellation pursuant to Section 35.15 of the Commission's regulations.

MidAmerican requests that the following rate schedule be canceled effective as of December 31, 2000:

1. Firm Power Interchange Service Agreement dated November 15, 1985, and First Amendment dated November 21, 1986, between Iowa Public Service Company (a predecessor company of MidAmerican) and La Porte City Municipal Utilities. This Agreement has been designated as MidAmerican Rate Schedule No. 86.

MidAmerican has mailed a copy of this filing to La Porte City, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities commission.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER01–272–000]

Take notice that on October 30, 2000, Commonwealth Edison Company (ComEd) submitted for filing two amended Network Service Agreements (NSA) between ComEd and Unicom Energy, Inc. (UEI), and between ComEd and NewEnergy Midwest, L.L.C. (NEMW). The NSAs extend the termination date previously filed with UEI and NEMW on October 29, 1999 in Docket No. ER00–358–000. The NSAs governs ComEd's provision of network service to serve retail load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of October 1, 2000 for NSAs, and therefore ComEd seeks waiver of the Commission's notice requirements.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER01–273–000]

Take notice that on October 30, 2000, Commonwealth Edison Company (ComEd) submitted for filing an executed Dynamic Scheduling Agreement (DSA) with Alliant Energy Corporate Services, Inc. (Alliant).

ComEd requests an effective date of October 1, 2000 for the DSA to coincide with the effective date of the Firm Transmission Service Agreement with Alliant that the DSA supplements and accordingly seeks waiver of the Commission's notice requirements. ComEd has served a copy of this filing on Alliant.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–28751 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: November 6, 2000, 65 FR 66535.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 8, 2000, 11:00 a.m.

CHANGE IN THE MEETING: The time for the Commission meeting scheduled for November 8, 2000, has been changed to 11:00 a.m.

David P. Boergers,

Secretary.

[FR Doc. 00–29009 Filed 11–7–00; 3:53 pm]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

November 3, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt		
1. Project No. 8282–015	10–25–00	Rafael Montag, FERC.
2. Project No. 184	10–24–00	Daniel Abeyta.
3. CP98–150–000	10–24–00	Donald J. Stauber.
4. Project No. 3090	10–24–00	Brian T. Fitzgerald.
5. CP00–232–000	10–16–00	John T. Pierpont.
6. CP00–14–000	10–23–00	Joel A. Ivey.
7. CP00–14–000 and CP00–6–00	10–23–00	Marian Ryan.
8. Project No. 1927	10–31–00	Carol Gleichman.
9. CP00–36–000	10–18–00	Laura de la Flor.
10. CP00–36–000	10–18–00	James R. Hartwig.

David P. Boergers,

Secretary.

[FR Doc. 00–28760 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6899–8]

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources for Other Solid Waste Incinerator Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revised schedule for promulgation.

SUMMARY: Section 129 of the Clean Air Act (CAA) directs us to develop new source performance standards (NSPS) and emission guidelines (EG) for municipal waste combustors (MWC), hospital/medical/infectious solid waste incinerators (HMIWI), commercial or industrial solid waste incinerators (CISWI), and other solid waste incinerators (OSWI). On November 2, 1993, we published a notice in the **Federal Register** (58 FR 58498) adopting a schedule for the promulgation of standards for OSWI and listing the types of incinerators to be included in that category. In that notice, we adopted a date of November 15, 2000 for promulgation of NSPS and EG for OSWI. This notice revises that schedule and adopts a date of November 15, 2005 for promulgation of NSPS and EG for OSWI.

ADDRESSES: Docket No. A–93–11 contains the supporting information for development of NSPS and EG for OSWI and is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–7548, fax (202) 260–4000. The docket is available at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5251, electronic mail address: porter.fred@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 129 of the CAA requires us to develop NSPS and EG for several categories of solid waste incinerators: MWC, HMIWI, CISWI and OSWI. While the CAA specifies the schedule for promulgation of NSPS and EG for MWC, HMIWI, and CISWI, it does not specify a schedule for the promulgation of NSPS and EG for OSWI. Instead, section 129 requires us to publish a schedule for promulgating NSPS and EG for OSWI.

On November 2, 1993, we published a notice in the **Federal Register** (58 FR 58498) stating that we believed the emissions reductions resulting from NSPS and EG for MWC, HMIWI, and CISWI were likely to outweigh those that could be achieved by NSPS and EG for OSWI. As a result, we announced that we would prioritize our resources and focus first on developing NSPS and EG for MWC, second on developing NSPS and EG for HMIWI, and third on developing NSPS and EG for CISWI. Based on that prioritization and the Administrator's judgement that OSWI are of substantially lesser significance than MWC, HMIWI, and CISWI, we adopted a date of November 15, 2000 for promulgation of NSPS and EG for OSWI.

II. List of Sources in the OSWI Category

In addition to adopting a date of November 15, 2000 for promulgation of NSPS and EG for the OSWI category, we also identified an initial list of incinerators within that category.

Small Incinerators Combusting Municipal Solid Waste are those with capacities of less than 35 tons per day burning municipal solid waste located at plants burning municipal solid waste. Small incinerators burning municipal solid waste are not covered under the NSPS and EG for MWC promulgated on

August 25, 1997 (62 FR 45116 and 62 FR 45124) which apply to MWC with capacities greater than 250 tons per day, nor are they covered under the NSPS and EG for MWC proposed on August 30, 1999 (64 FR 47275 and 64 FR 47233) which apply to MWC with capacities greater than 35 tons per day, but less than or equal to 250 tons per day.

Residential Incinerators are those burning municipal solid waste located at single and multi-family dwellings, hotels and motels.

Agricultural Waste Incinerators are those burning agricultural waste.

Wood Waste Incinerators are those burning wood waste which are not covered by the proposed NSPS and EG for CISWI or the promulgated or proposed NSPS and EG for MWC. There are likely to be very few of those incinerators since the NSPS and EG for CISWI, as well as those for MWC, cover most incinerators burning wood waste.

Construction and Demolition Waste Incinerators are those burning construction and demolition waste.

Crematories and Pathological Incinerators are those burning human or animal tissue or cremating human or animal remains.

Petroleum-Contaminated Soil Treatment Facilities are those burning petroleum-contaminated soil. Sections 104 and 127 of the Comprehensive Environmental Response, Compensation, and Liability Act exclude petroleum from the definition of hazardous wastes; therefore, those incineration units are not regulated as hazardous waste treatment facilities.

Due to the limited information available to date, we cannot state with certainty that the OSWI category covers only those incinerators. As additional information is collected and assessed, we may add or delete incinerators within the OSWI category.

III. Schedule

As mentioned previously, we initially adopted a schedule of November 15, 2000 for promulgating NSPS and EG for OSWI. However, after collecting and assessing a limited amount of information on the various types of OSWI, we believe there may be substantial differences among those incinerators which may merit further subcategorization of OSWI for purposes of regulation. As a result, we have concluded that we need to collect additional information in order to determine the most logical and reasonable approach for developing NSPS and EG for OSWI. Consequently, we are adopting a revised schedule of November 15, 2005 for promulgation of NSPS and EG for the OSWI to allow sufficient time for the collection and analysis of additional information.

Dated: November 3, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–28807 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6612–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–COE–H36110–NE Rating EO2, Western Sarpy/Clear Creek Flood Reduction Study Including Environmental Restoration Component, Lower Platte River and Tributaries, Saunders and Sarpy Counties, NE.

Summary: EPA raised objections, noting the potential for significant adverse impacts to natural resources, endangered species, and flood plain values. EPA encouraged the Corps to examine non-structural alternatives to lessen impacts.

ERP No. D–FHW–E40783–SC Rating EC2, Dave Lyle Boulevard Extension, New Location from the S.C. Route 161/Dave Lyle Boulevard Intersection in York County to S.C. Route 75, in the vicinity of the U.S. Route 521/S.C., York County Metropolitan Road Corridor Project, Funding, York and Lancaster Counties, SC.

Summary: EPA expressed concerns regarding potential project impacts related to surface water, wetlands, and threatened and endangered species.

ERP No. D–FHW–H40170–MO Rating LO, U.S. Route 50 East-Central Corridor Study, Highway Improvements from Route 50 to Route 63 east of Jefferson City, Major Transportation Investment Analysis, Osage, Gasconade, and Franklin Counties, MO.

Summary: EPA has no objection to the project as proposed.

ERP No. D–TVA–E39053–TN Rating EO2, Future Water Supply Needs in the Upper Duck River Basin, NPDES Permit and COE Section 404 Permit, Bedford, Marshall, Maury and Williamson Counties, TN.

Summary: EPA expressed objections since EPA does not believe additional source water is needed immediately, especially if conservation measures are implemented during droughts. If selection of a water supply alternative is locally preferred, we recommend implementation of Alternative C over Alternative E if pipeline impacts are minimal or a modification of Alternative E, if feasible, by approximately 2025.

Final EISs

ERP No. F–FHW–F40383–WI WI–113 Wisconsin River Crossing at Merrimac, Improvements, US Coast Guard and COE Section 10 and 404 Permits, Columbia and Sauk Counties, WI.

Summary: EPA has no objections with the preferred alternative.

ERP No. F–FHW–F40387–OH Lancaster Bypass (FAI–US 22/US 33–9.59/9.95) Construction, Funding, Greenfield, Hocking, Berne and Pleasant Townships, Fairfield County, OH.

Summary: EPA's previous concerns have been addressed; EPA does not object to project implementation.

Dated: November 6, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–28839 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6612–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements filed October 30, 2000 through November 3, 2000 pursuant to 40 CFR 1506.9.

EIS No. 000374, FINAL EIS, FHW, CA, US–7 Expressway Project, Construction between CA–98 to Interstate 8, Improve Access to the new Calexico East Port of Entry, Funding and COE Section 404 Permit, Imperial County, CA, Due: December 4, 2000, Contact: Jeffery S. Lewis (916) 498–5035. This Notice of Availability should have appeared in the 11/3/2000 FR. The Official Wait Period

began on 11/3/2000 and ends on 12/4/2000.

EIS No. 000375, DRAFT EIS, NPS, WA, Mount Rainier National Park General Management Plan, Implementation, Pierce and Lewis Counties, WA, Due: February 9, 2001, Contact: Eric Walkinshaw (360) 589–2211.

EIS No. 000376, FINAL EIS, AFS, ID, Goose Creek Watershed Project, Harvesting Timber and Improve Watershed, Payette National Forest, New Meadows Ranger District, Adams County, ID, Due: December 26, 2000, Contact: Kimberly Brandel (208) 347–0300.

EIS No. 000377, FINAL EIS, COE, MO, Chesterfield Valley Flood Control Study, Improvement Flood Protection, City of Chesterfield, St. Louis County, MO, Due: December 11, 2000, Contact: Deborah Foley (314) 331–8485.

EIS No. 000378, DRAFT EIS, FHW, VA, I–73 Location Study, Between Roanoke and the North Carolina State Line Commonwealth of Virginia, Construction and Operation, Bedford, Botetourt, Franklin, Henry and Roanoke Counties, Cities of Roanoke and Martinsville, VA, Due: January 5, 2001, Contact: J. Bruce Turner (804) 775–3320.

EIS No. 000379, FINAL EIS, COE, WA, Programmatic Green/Duwamish River Basin Restoration Program, Capitol Improvement Type Program and Ecological Health, King County, WA, Due: December 11, 2000, Contact: Patrick Cagney (206) 764–6577.

EIS No. 000380, DRAFT EIS, NRC, GA, Generic EIS—Edwin I. Hatch Nuclear Plant, Unit 1 and 2, License Renewal of Nuclear Plants, Supplement 4 to NUREG–1437, Altamaha River, Appling County, GA, Due: January 24, 2001, Contact: Andrew J. Kugler (301) 415–2828.

Dated: November 6, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–28840 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6899–3]

Notice of Public Comment Period for the Draft Report to Congress II From the National Environmental Education Advisory Council

Notice is hereby given that the National Environmental Education Advisory Council, established under Section 9 if the National Environmental Education Act of 1990 (the Act), is providing the public with an opportunity to provide written comments on the draft Report to Congress II. The purpose of this Report is to provide Congress with an assessment of the status of environmental education and to report effects of the Act. The draft Report to Congress II can be found on the Office of Environmental Education web site (*www.epa.gov/enviroed*) until December 31, 2000. Paper copy is available by request only.

Members of the public are invited to submit written comments to Ginger Keho, Office of Environmental Education (1704A), Office of Communications, Education and Media Relations, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW Washington, DC 20460 or by e-mail at *keho.ginger@epa.gov*. Written comments will be accepted until December 31, 2000.

Dated: November 1, 2000.

Ginger Keho,

Designated Federal Official, Office of Environmental Education.

[FR Doc. 00–28809 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6898–5]

Notice of Proposed De Minimis Administrative Order on Consent Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g), PCB Treatment Inc., Superfund Site, Kansas City, KS, and Kansas City, MO, Docket No. CERCLA 7–2000–0030

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed De Minimis Administrative Order on Consent, PCB Treatment, Inc., 2100 Wyandotte Street, Kansas City, Missouri; and 45 Ewing Street, Kansas City, Kansas.

SUMMARY: Notice is hereby given that a proposed administrative order on consent regarding the PCB Treatment Inc. Superfund Site was signed by the United States Environmental Protection Agency (EPA) on September 29, 2000 and approved by the United States Department of Justice (DOJ) on October 2, 2000.

DATES: EPA will receive comments on or before December 15, 2000, related to the proposed agreement and covenant not to sue.

ADDRESSES: Comments should be addressed to Audrey Asher, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, and should refer to the PCB Treatment Inc. Superfund Site Administrative Order on Consent, EPA Docket No. CERCLA 7–2000–0030.

The proposed agreement may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551–7255.

SUPPLEMENTARY INFORMATION: The proposed agreement concerns the PCB Treatment Inc. Superfund Site ("Site"), located at 2100 Wyandotte Street, Kansas City, Missouri and 45 Ewing Street, Kansas City, Kansas. The Site was the location of treatment and storage facilities for materials and equipment containing polychlorinated biphenyls ("PCBs"). PCBs have been found in the concrete of the Ewing building at levels exceeding 15,000 micrograms per kilogram (mg/kg), and in the concrete of the Wyandotte building at levels exceeding 19,700 mg/kg.

As of July 31, 2000, EPA had incurred costs in excess of $1.3 million exclusive of interest. Each of the proposed settlors arranged with PCB Treatment Inc. for disposal of transformers, capacitors, oil, materials or equipment contaminated with PCBs.

EPA has determined that any party who arranged for disposal of transformers, capacitors, oil, materials, or equipment contaminated with PCBs weighting between 630 and 2,760 pounds (in allocated weight) contributed a de minimis volume of waste to the Site and that such wastes are not more toxic than any other hazardous substance at the Site.

Each settlor will pay a share of costs based on its volumetric share of capacitor weight compared to all capacitor weight with an additional premium of 100%.

Through this settlement EPA will recover over $66,000, and will seek remaining costs from other potentially responsible parties at the Site.

Dated: October 19, 2000.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 00–28712 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6898–9]

Notice of Proposed Agreement for Recovery of Past Response Costs to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), Ridgeway Logging Site, Sweet Home, OR

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for Comment.

SUMMARY: In accordance with Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 42 U.S.C. 9622(h)(1), notice is hereby given of a proposed agreement for recovery of past response costs with Mrs. Betty Selander, the owner of the real property upon which the Ridgeway Logging Site, Sweet Home, Oregon, is located. This agreement proposes to recover a portion of EPA's past response costs in response to the release or threatened release of hazardous substances at the Ridgeway Logging Site. EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. 9604. In performing this response action, EPA incurred response costs at or in connection with the Site. The agreement requires Mrs. Betty Selander (hereinafter "Settling Party") to pay a total of $70,280.00 to the Hazardous Substance Superfund. The Settling Party consents to and will not contest the Environmental Protection Agency's (EPA's) jurisdiction to enter into this Agreement or to implement or enforce its terms. EPA and the Settling Party desire to resolve the Settling Party's alleged civil liability for Past Response Costs without litigation and without the admission or adjudication of any issue of fact or law. EPA will consider public comments on the proposed Agreement for Recovery of Past Response Costs for thirty days. EPA may withdraw from or modify this proposed agreement should such comments disclose facts or considerations which indicate this proposed agreement is inappropriate, improper, or inadequate.

DATES: Written comments must be provided on or before December 11, 2000.

ADDRESSES: Comments should be addressed to Docket Clerk, U.S. Environmental Protection Agency, Region 10, ORC–158, 1200 Sixth Avenue, Seattle, Washington 98101, and should refer to In Re Ridgeway Logging Site, Sweet Home, Oregon, U.S. EPA Docket No. CERCLA–10–2000–0142.

FOR FURTHER INFORMATION CONTACT: Dean Ingemansen, Office of Regional Counsel (ORC–158), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1744.

SUPPLEMENTARY INFORMATION:

Authority: The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(h)(i).

Chuck Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 00–28713 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51954; FRL–6752–2]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of.commencement to manufacture those chemicals. This status report, which covers the period from September 11, 2000 to September 29, 2000, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51954 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51954. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through

Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51954 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51954 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 11, 2000 to September 29, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new Chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the Chemical identity.

TABLE I. 54 PREMANUFACTURE NOTICES RECEIVED FROM: 09/11/00 TO 09/29/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–1179	09/11/00	12/10/00	CBI	(G) Elastomeric tires	(G) 4,4′mdi prepolymer with aliphatic glycol
P–00–1180	09/13/00	12/12/00	3M Company	(S) Chemical intermediate	(G) Polyurethane acrylate copolymer
P–00–1181	09/14/00	12/13/00	CBI	(G) Open, non-dispersive use	(G) Silated urethane polymer
P–00–1182	09/14/00	12/13/00	Vantico Inc. Polymer Specialties	(S).Epoxy curing agent	(G) Propanoic acid, compds. with bisphenol a-an epoxy resin-epichlorohydrin-ethylenediamine-polyethylene glycol polymer-glycidyl o-tolyl ether reaction products
P–00–1183	09/15/00	12/14/00	CBI	(G) Open, non-dispersive (resin)	(G) Aliphatic polyurethane resin

Table I. 54 Premanufacture Notices Received From: 09/11/00 to 09/29/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–1184	09/15/00	12/14/00	Inx International Ink Company	(G) Dispersing agent	(G) Phenol, polymer with formaldehyde, glycidyl ether, reaction products with carbomonocylic carboxylic acid and hydroxy alkanoic acid homopolymer
P–00–1185	09/18/00	12/17/00	CBI	(G) Polymeric photoinitiator	(G) 2,5-furandione, telomer with ethenylbenzene and (1-methylethyl)benzene, aralkyl 4-[(1-oxo-2-propenyl)oxy]butyl ester, ammonium salt
P–00–1186	09/18/00	12/17/00	CBI	(G) Polymeric photoinitiator	(G) 2,5-furanedione, telomer with ethenylbenzene and (1-methylethyl)benzene, aralkyl 2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl ester, ammonium salt
P–00–1187	09/11/00	12/10/00	Aventis Cropscience USA LP	(S) Use as a herbicide safener in formulated pesticide products	(S) 3-isoxazolecarboxylic acid, 4,5-dihydro-5,5-diphenyl-, ethyl ester
P–00–1188	09/18/00	12/17/00	CBI	(G) Printing ink resin	(G) Poly(oxyalkylene)bis(2-maleimidoacetate)
P–00–1189	09/18/00	12/17/00	CIBA Specialty Chemicals Corporation	(S) Photoacid generator for resists in semiconductor and display mfg.	(G) Aromatic thiophene derivative
P–00–1190	09/19/00	12/18/00	CBI	(S) Specialty polymer	(G) Glycidyl substituted bicyclic olefin
P–00–1191	09/19/00	12/18/00	CBI	(G) Open non-dispersive (resin)	(G) Blocked polyisocyanate
P–00–1192	09/20/00	12/19/00	CBI	(G) Rubber elastomer for tires, wheels, rolls and other specialty urethane applications	(G) Toluene diisocyanate terminated polyether polyol
P–00–1193	09/18/00	12/17/00	Clariant Corporation	(G) Destructive end-use	(G) Telogen, telomer with alkenes and alkenyl acetate
P–00–1194	09/18/00	12/17/00	Clariant Corporation	(G) Destructive end-use	(G) Telogen, telomer with alkenes and alkenyl acetate
P–00–1195	09/20/00	12/19/00	Basf Corporation	(S) Basic dye for complex basic dye pigment manufacture	(S) 9-(2-(ethoxycarbonyl)phenyl)-3,6-bis(ethylamino)-2,7-dimethylxanthylium ethyl sulfate
P–00–1196	09/21/00	12/20/00	CBI	(G) Polyurethane adhesive	(G) Polyurethane polymer
P–00–1197	09/21/00	12/20/00	CBI	(S) Additive	(G) Alkohol alkoxylate
P–00–1198	09/21/00	12/20/00	CBI	(S) Additive	(G) Alkohol alkoxylate
P–00–1199	09/22/00	12/21/00	BP Amoco Chemical Company	(S) Polymer for improved gas barrier in multi- and single layer food container applications	(G) Polyester copolymer
P–00–1200	09/22/00	12/21/00	BP Amoco Chemical Company	(S) Polymer for improved gas barrier in multi- and single layer food container applications	(G) Polyester copolymer
P–00–1201	09/22/00	12/21/00	BP Amoco Chemical Company	(S) Polymer for improved gas barrier in multi- and single layer food container applications	(G) Polyester copolymer
P–00–1202	09/22/00	12/21/00	BP Amoco Chemical Company	(S) Polymer for improved gas barrier in multi- and single layer food container applications	(G) Polyester copolymer
P–00–1203	09/22/00	12/21/00	Dainippon Ink and Chemicals, Inc.	(S) Binder for water-base coatings	(G) Polysiloxane-acrylic hybrid resin
P–00–1204	09/22/00	12/21/00	Dainippon Ink and Chemicals, Inc.	(S) Binder for water-base coatings	(G) Polysiloxane-acrylic hybrid resin
P–00–1205	09/25/00	12/24/00	CBI	(G) Intermediate in manufacture of aqueous dye	(G) 6-methoxy-1h-benz[de]isoquinoline-2[3h]-dione derivative
P–00–1206	09/25/00	12/24/00	CBI	(G) Intermediate in manufacture of aqueous dye	(G) 6-chloro-1h-benz[de]isoquinoline-2[3h]-dione derivative
P–00–1207	09/25/00	12/24/00	CBI	(G) Aqueous dye	(G) 6-methoxy-1h-benz[de]isoquinoline-2[3h]-dione derivative
P–00–1208	09/25/00	12/24/00	Rhodia, Inc./formerly Albright & wilson	(S) Viscosity index for improver; hydraulic and gear oils;viscosity index improvers; for shock absorber fluids and other special hydraulics;pour point depressants for hydraulic and gear oils	(S) 2-propenoic acid, 2-methyl, decyl ester, polymer with dodecyl 2-methyl-2-propenoate, hexadecyl 2-methyl-2-propenoate, hexyl 2-methyl-2-propenoate, methyl 2-methyl-2-propenoate, octadecyl 2-methyl-2-propenoate, octyl 2-methyl-2-propenoate and tetradecyl 2-methyl-2-propenoate
P–00–1209	9/25/00	12/24/00	CBI	(G) Chemical intermediate	(G) Aromatic hydrocarbon

Table I. 54 Premanufacture Notices Received From: 09/11/00 to 09/29/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–1210	09/25/00	12/24/00	BASF Corporation	(S) Processing aid for leather finishing	(S) Alkenes, c12–24, hydroformylation products, distillation residues
P–00–1211	09/25/00	12/24/00	H.B. Fuller Company	(S) Window assembly adhesive;volumes are a total for all substances combined	(G) Polyester isocyanate prepolymer
P–00–1212	09/25/00	12/24/00	H.B. Fuller Company	(S) Window assembly adhesive;volumes are a total for all substances combined	(G) Polyester isocyanate prepolymer
P–00–1213	09/25/00	12/24/00	H.B. Fuller Company	(S) Window assembly adhesive;volumes are a total for all substances combined	(G) Polyester isocyanate prepolymer
P–00–1214	09/25/00	12/24/00	H.B. Fuller Company	(S) Window assembly adhesive;volumes are a total for all substances combined	(G) Polyester isocyanate prepolymer
P–00–1215	09/22/00	12/21/00	CBI	(G) Multipurpose adhesive;open, nondispersive use;laminating adhesive; open nondispersive use	(G) Polyurethane prepolymer;polyurethane adh.
P–00–1216	09/25/00	12/24/00	Oakite products, Inc. (owned by chemetall gmbh)	(S) Surface layer adhesive for preparing aluminum, magnesium, zinc and steel	(S) Phosphonic acid, 1,12-dodecanediylbis-
P–00–1217	09/27/00	12/26/00	CBI	(S) Raw material used in a photoresist formulation	(G) Diaryliodonium salt
P–00–1218	09/27/00	12/26/00	CBI	(G) Crosslinking agent	(G) Aminosilanol polymer
P–00–1219	09/27/00	12/26/00	CBI	(G) Acrylic binder	(G) Acrylic polymer
P–00–1220	09/27/00	12/26/00	Summit Specialty Chemicals Corporation	(G) Electric molding	(G) Phenol-biphenyl polymer condensate
P–00–1221	09/28/00	12/27/00	CBI	(G) Monomer	(G) Modified vegetable oil
P–00–1222	09/28/00	12/27/00	CBI	(G) Monomer	(G) Modified vegetable oil
P–00–1223	09/28/00	12/27/00	CBI	(G) Monomer	(G) Modified vegetable oil
P–00–1224	09/29/00	12/28/00	CBI	(S) For oem & industrial coatings	(G) Carbamated diol
P–00–1225	09/29/00	12/28/00	Dystar L. P.	(S) Dyestuff for the coloration of cellulose	(G) 1,7-naphthalenedisulfonic acid, 2-[[substitutedamino]-5-hydroxy-6-[(4-methyl-2-sulfophenyl]azo]-, salt
P–00–1226	09/28/00	12/27/00	Dystar L. P.	(S) Dyestuff for the coloration of cellulose	(G) 1,7-naphthalenedisulfonic acid, 2-substitutedamino]-5-hydroxy-6-[(4-methyl-2-sulfophenyl)azo]-, salt
P–00–1227	09/27/00	12/26/00	CBI	(S) Clarifying agent and nucleating agent for plastic articles	(G) 12h-dibenzo[d,g][1,3,2]dioxaphosphocin, aluminum deriv.
P–00–1228	09/27/00	12/26/00	CBI	(G) Additive for plastic film in packaging applications	(G) Substituted benzophenone
P–00–1229	09/18/00	12/17/00	CBI	(S) Polymer used in automotive primers	(G) Acrylic copolymer
P–00–1230	09/29/00	12/28/00	P N Solution	(G) Intermediate for melamine phosphate	(G) Substituted melamine
P–00–1231	09/29/00	12/28/00	P N Solution	(G) Intermediate for urea phosphate	(G) Substituted urea
P–00–1232	09/29/00	12/28/00	P N Solution	(S) Flame retardant for polymers;flame retardant for coatings	(G) Substituted melamine phosphate
P–00–1233	09/29/00	12/28/00	P N Solution	(S) Flame retardant for polymers;flame retardant for coatings	(G) Substituted urea phosphate

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

Table II. 35 Notices of Commencement From: 09/11/00 to 09/29/00

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0089	09/25/00	08/29/00	(G) Alkyl methacrylate, alkylaminoalkylmethacrylamide copolymer
P–00–0235	09/21/00	09/01/00	(G) Urethane prepolymer
P–00–0274	09/22/00	09/20/00	(G) Amine-salted polyester resin
P–00–0275	09/22/00	09/20/00	(G) Amine-salted polyester resin
P–00–0330	09/21/00	09/18/00	(S) Oxirane, [[[(1r,2s,5r)-5-methyl-2-(1-methylethyl)cyclohexyl]oxy]methyl]-
P–00–0352	09/19/00	09/01/00	(G) Organic disulfide
P–00–0391	09/19/00	08/30/00	(G) Propanenitrile, 3,3'-[[4-[[2-substituted-4-nitro-6-(trihalomethyl)phenyl]azo]phenyl]imino]bis-

TABLE II. 35 NOTICES OF COMMENCEMENT FROM: 09/11/00 TO 09/29/00—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0426	09/20/00	08/21/00	(G) Inorganic acid reaction product, with alkaline flouride metal salts
P–00–0445	09/26/00	09/12/00	(G) Polyester polyol
P–00–0446	09/26/00	09/15/00	(G) Polyester polyol
P–00–0488	09/21/00	09/01/00	(G) Crosslinked polymethylsiloxane
P–00–0528	09/15/00	08/18/00	(G) Alkali salts of aryl carboxylates
P–00–0588	09/25/00	09/07/00	(G) Ketoxime blocked ppdi/polyether prepolymers
P–00–0611	09/12/00	08/05/00	(S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol and 1,2-propanediol, isononyl ester
P–00–0612	09/12/00	08/05/00	(S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol and 3-hydroxy-2,2-dimethylpropanoic acid, isononyl ester
P–00–0723	09/26/00	09/18/00	(G) Acrylic polymer
P–00–0730	09/19/00	09/07/00	(G) Polyester urethane
P–00–0731	09/27/00	08/16/00	(S) Phosphonium, ethyltris(4-methylphenyl)-, acetate
P–00–0804	09/20/00	08/29/00	(G) Aliphatic dialdehyde
P–00–0805	09/20/00	08/29/00	(G) Aliphatic dialdehyde
P–00–0807	09/26/00	08/28/00	(G) Substituted cycloalkyl heterocyclic derivative
P–00–0825	09/11/00	08/23/00	(G) Azo dyestuff
P–00–0828	09/29/00	09/08/00	(S) 2,4(1h,3h)-pyrimidinedione, 6-amino-1,3-dimethyl-
P–00–0835	09/14/00	08/23/00	(G) Substituted picolinate
P–00–0845	09/19/00	08/24/00	(G) Epoxy nitrile rubber amine adduct
P–00–0851	09/25/00	08/24/00	(G) C.i. solvent blue 38
P–00–0853	09/25/00	08/24/00	(G) C.i. solvent blue 37
P–00–0863	09/26/00	09/21/00	(G) Carboxylic acid, polymer with 1,2-ethanediol, 2,5-furandione and alicyclic compound
P–96–0840	09/15/00	08/28/00	(S) Dl-alanine, *n,n*-bis(carbooxymethyl)-, trisodium salt
P–97–0386	09/25/00	09/11/00	(G) Polyvinyl fluoride copolymer
P–98–0694	09/19/00	08/22/00	(G) Modified isocyanic acid, polymethylenepolyphenylene ester
P–99–0682	09/20/00	09/12/00	(S) 1,1,1,3,3-pentafluoropropane
P–99–0752	09/18/00	08/23/00	(G) Sulfonated copper phthalocyanine, substituted with aromatic sulfonamid, sodium salt
P–99–1024	09/19/00	08/24/00	(G) Unsaturated polyester
P–99–1100	09/19/00	08/29/00	(G) *N,N*-dimethylethanolamine salt of an oilfree, saturated polyester containing urethane groups

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: October 24, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–28716 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51955; FRL–6752–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new Chemical (i.e., a Chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new Chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the Chemicals under review and the receipt of notices of commencement to manufacture those Chemicals. This status report, which covers the period from October 2, 2000 to October 6, 2000, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new Chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51955 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51955. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51955 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: *oppt.ncic@epa.gov*, or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51955 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new Chemical (i.e., a Chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new Chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the Chemicals under review and the receipt of notices of commencement to manufacture those Chemicals. This status report, which covers the period from October 2, 2000 to October 6, 2000, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new Chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new Chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the Chemical identity.

TABLE I. 21 PREMANUFACTURE NOTICES RECEIVED FROM: 10/02/00 TO 10/06/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0001	10/02/00	12/31/00	CBI	(G) Component of optical Polymer	(G) Chloroformate
P–01–0002	10/02/00	12/31/00	CBI	(G) Fuel additive	(G) Linear alkyl polyhydroxypolyester
P–01–0003	10/03/00	01/01/01	Estron Chemical, Inc.	(S) Flow control additive for industrial coatings	(G) Acrylic Polymer
P–01–0004	10/03/00	01/01/01	BASF Corporation	(S) Base/top coat binder for leather finishing	(G) Block Polymer of aromaticdiacid with alkane diamines, polysubstituted cycloalkanes and alkanediols
P–01–0005	10/03/00	01/01/01	CBI	(G) Additive for polyurethane elastomers	(G) Polymeric isocyanate prePolymer
P–01–0006	10/03/00	01/01/01	CBI	(S) Detergent additive;metal cleaning hydrotrope	(G) Ethoxylated glycol ether phosphate salt
P–01–0007	10/03/00	01/01/01	CBI	(G) Contained use bleaching agent	(G) Aliphatic polycarboxylic acid, metal salt
P–01–0008	10/06/00	01/04/01	Johnson Polymer	(G) Open, non-dispersive use	(G) Acrylic polyol
P–01–0009	10/06/00	01/04/01	CBI	(G) Destructive use	(G) Halogenated arylsilane
P–01–0010	10/06/00	01/04/01	CBI	(G) Intermediate for solvent based coatings	(G) Phenol blocked isocyanate
P–01–0011	10/06/00	01/04/01	CBI	(G) Synthetic industrial lubricant for contained use	(G) Pentaerythritol ester of branched and linear fatty acids
P–01–0012	10/06/00	01/04/01	Applied Power Concepts, Inc.	(S) Textile sizing agent	(S) Propanoic acid, 2-hydroxy-, 1,2,3-propanetriyl ester
P–01–0013	10/06/00	01/04/01	Mane, U.S.A.	(S) Aromatic substance (musky note) for perfume	(S) Oxacycloheptadec-11-en-2-one
P–01–0014	10/06/00	01/04/01	JSR Corporation	(G) Coating agent	(G) Modified styrene Polymer dispersion
P–01–0015	10/06/00	01/04/01	CBI	(G) Polymer precursor	(G) Alkyl polysaccharide derivative
P–01–0016	10/06/00	01/04/01	CBI	(G) Components of water-based adhesives and inks	(G) Sugar acrylate copolymer
P–01–0017	10/06/00	01/04/01	CBI	(G) Components of water-based adhesives and inks	(G) Sugar acrylate copolymer
P–01–0018	10/06/00	01/04/01	CBI	(G) Components of water-based adhesives and inks	(G) Sugar acrylate copolymer
P–01–0019	10/06/00	01/04/01	CBI	(G) Components of water-based adhesives and inks	(G) Sugar acrylate copolymer
P–01–0020	10/06/00	01/04/01	CBI	(G) Components of water-based adhesives and inks	(G) Sugar acrylate copolymer
P–01–0021	10/06/00	01/04/01	CBI	(G) Components of water-based adhesives and inks	(G) Sugar acrylate copolymer

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

TABLE II. 11 NOTICES OF COMMENCEMENT FROM: 10/02/00 TO 10/06/00

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0276	10/02/00	09/29/00	(S) 2-propenamide, n-[3-(dimethylamino)propyl]-2-methyl-, Polymer with 1-ethenyl-2-pyrrolidinone, sulfate
P–00–0342	10/03/00	09/29/00	(G) Blocked isocyanate Polymer
P–00–0519	10/06/00	09/15/00	(G) Methyl carboxypentanoate
P–00–0609	10/02/00	09/22/00	(G) Polyglycolether - polycarboxylate
P–00–0702	10/03/00	09/25/00	(G) Olefin oligomers
P–00–0809	10/04/00	09/04/00	(G) Heterocyclic alkyl acid derivative
P–00–0881	10/06/00	10/04/00	(G) Silane ester
P–97–0645	10/02/00	08/31/00	(G) Acrylic copolymer with imidazole
P–98–0487	10/05/00	09/17/00	(G) Polycycloamide
P–99–0067	10/04/00	09/19/00	(G) Modified glycerol ester of tall oil fatty acid
P–99–1244	10/05/00	08/04/00	(G) Catechol-formaldehyde resin

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: November 3, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–28717 Filed 11–08–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51957; FRL–6754–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 9, 2000 to October 20, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical identity is specific or generic.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51957 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51957. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, any test data submitted by the Manufacturer/Importer and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51957 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: *oppt.ncic@epa.gov*, or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51957 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**"

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 09, 2000 to October 20, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical identity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

TABLE I. 38 PREMANUFACTURE NOTICES RECEIVED FROM: 10/09/00 TO 10/20/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0022	10/10/00	01/08/01	Shin-Etsu Silicones of America, Inc.	(S) Additive for silicone rtv rubber compounds;additive for primer	(S) Propanoic acid, 2-(trimethoxysilyl)-, ethyl ester
P–01–0023	10/10/00	01/08/01	CBI	(G) Epoxy hardener - open, non-dispersive use	(G) Part acrylated epoxy cresol novolac acrylate
P–01–0024	10/10/00	01/08/01	CBI	(G) Uv sensitive resin-open, non-dispersive use	(G) Carboxylated epoxy cresol novolac acrylate
P–01–0025	10/10/00	01/08/01	CBI	(S) Waterbased uv curing polymer for wood topcoats (kitchen cabinets) and plastic picture frames and moldings	(G) Polyester polyurethane acrylate block copolymer
P–01–0026	10/10/00	01/08/01	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer salt
P–01–0027	10/10/00	01/08/01	CBI	(G) Destructive use	(G) Acid functional acrylic polymer
P–01–0028	10/10/00	01/08/01	CBI	(G) Open,non-dispersive use	(G) Hydroxy functional acrylic polymer
P–01–0029	10/10/00	01/08/01	CBI	(S) Release finish;textile additive	(G) Dimethicone copolyol polyacrylate
P–01–0030	10/10/00	01/08/01	Ashland Inc.	(G) Lamination adhesive	(G) Polyurethane prepolymer
P–01–0031	10/10/00	01/08/01	CBI	(S) Lubricant for both offshore and onshore oil production sites	(G) Amine phosphate
P–01–0032	10/13/00	01/11/01	CBI	(G) Component of coating with open use	(G) Urethane acrylate
P–01–0033	10/11/00	01/09/01	FMC Corporation	(S) Chemical intermediate	(G) Sulfonamide
P–01–0034	10/12/00	01/10/01	CBI	(G) Component of coating with open use	(G) Modified amino triazine
P–01–0035	10/12/00	01/10/01	Arch Chemicals, Inc.	(S) Photo-acid generator f/chemically amplified resist systems	(G) Perfluorooctanesulfonate
P–01–0036	10/12/00	01/10/01	CBI	(G) This component will be a minor wear inhibitor ingredient formulated into selected natural gas and railroad lubricating oil concentrates for delivery to commercial and industrial finished oil blenders and end cutomers for these products. in actual service, this component will be degraded, as intended, to afford enhance protection from lead bearing corrosion in these types of internal combution engines	(G) Polyalkenyl succinimide, ammonium salt
P–01–0037	10/12/00	01/10/01	Cytec Industries Inc.	(S) Anti-scalant in oil field and oil refinery operations	(G) Polymeric scale inhibitor
P–01–0038	10/13/00	01/11/01	Dow Corning Corporation	(S) Siloxane endblocker	(G) Alkyl phenyl siloxane
P–01–0039	10/13/00	01/11/01	Dow Corning Corporation	(S) Hydraulic/heat transfer fluid	(G) Dimethyl, methyl phenyl siloxane
P–01–0040	10/13/00	01/11/01	CBI	(G) Open, dispersive use; component of asphalt and concrete emulsions	(G) Salt of polymerized rosin
P–01–0041	10/16/00	01/14/01	CBI	(G) Open, non-dispersive use	(G) Hydroxy functional acrylic polymer
P–01–0042	10/16/00	01/14/01	Cognis Corporation	(G) Textile sizing resin	(G) Polyether epoxy polyurethane
P–01–0043	10/13/00	01/11/01	CBI	(S) Specialty polymer	(G) Silyl substituted bicyclic olefin
P–01–0044	10/16/00	01/14/01	CBI	(G) Component of coating with open use	(G) Cationic epoxy dispersion
P–01–0045	10/16/00	01/14/01	CIBA Specialty Chemicals Corporation	(S) Colorant in polymers	(G) Diketo-pyrrolopyrrol pigment derivative
P–01–0046	10/13/00	01/11/01	CBI	(G) Lubricant additive	(G) Modified alkyl ester
P–01–0047	10/13/00	01/11/01	CBI	(G) Lubricant additive	(G) Modified alkyl ester
P–01–0048	10/13/00	01/11/01	CBI	(G) Lubricant additive	(G) Modified alkyl ester
P–01–0049	10/13/00	01/11/01	CBI	(G) Lubricant additive	(G) Modified alkyl ester
P–01–0050	10/13/00	01/11/01	CBI	(G) Lubricant additive	(G) Modified alkyl ester
P–01–0051	10/13/00	01/11/01	CBI	(G) Lubricant additive	(G) Modified alkyl ester
P–01–0052	10/18/00	01/16/01	Warner-Jenkinson Co., Inc.	(S) Technical dye	(S) 1h-pyrazole-3-carboxylic acid, 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-4-[(4-sulfophenyl)azo]-, sodium salt, compd. with 2-aminoethanol
P–01–0053	10/18/00	01/16/01	CBI	(G) Dispersive use	(G) Poly carboxylic acid, sodium salt
P–01–0054	10/18/00	01/16/01	CBI	(G) Dispersive use	(G) Polycarboxylate
P–01–0055	10/18/00	01/16/01	CBI	(G) Dispersive use	(G) Polycarboxylate
P–01–0056	10/18/00	01/16/01	CBI	(G) Dispersive use	(G) Polycarboxylate, sodium salt
P–01–0057	10/18/00	01/16/01	CBI	(G) Dispersive use	(G) Polycarboxylate, sodium salt
P–01–0058	10/19/00	01/17/01	BASF Corporation	(S) Process aid for leather finishing	(G) Counter ions of alkenes, hydroformylation products, distn. residues
P–01–0059	10/20/00	01/18/01	CBI	(G) Plastics additive	(S) Fatty acids, c8-10, esters with 3,3'-oxybis[1,2-propanediol]

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

TABLE II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 10/09/00 TO 10/20/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–01–0001	10/13/00	11/27/00	CBI	(G) Component of coating with open use	(G) Urethane acrylate

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

TABLE III. 30 NOTICES OF COMMENCEMENT FROM: 10/09/00 TO 10/20/00

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0123	10/10/00	09/29/00	(G) Amino alkane
P–00–0190	10/16/00	09/27/00	(G) Amine functional acrylic polymer salted with an organic acid
P–00–0349	10/10/00	09/20/00	(G) Benzoic acid, 3,5-diamino-2,4-bis[[4-[[2-(sulfooxy)ethyl]sulfonyl]azo]-6-[[2-sulfo-4-[substituted]phenyl]azo]-, sodium salt
P–00–0452	10/11/00	09/14/00	(S) 3h-indol-3-one, 5-bromo-2-(5-bromo-1,3-dihydro-3-oxo-2h-indol-2-ylidene)-1,2-dihydro-
P–00–0545	10/17/00	10/14/00	(G) Piperidinyl derivative
P–00–0680	10/13/00	10/08/00	(G) Fatty acids, reaction products
P–00–0710	10/19/00	10/02/00	(G) Benzenesulfonic acid, 2,2'-(9,10-dihydro-5,8-dihydroxy-9,10-dioxo-1,4-anthracenediyl) (substituted)-,disodium salt

TABLE III. 30 NOTICES OF COMMENCEMENT FROM: 10/09/00 TO 10/20/00—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0711	10/19/00	10/02/00	(G) Benzenesulfonic acid, 2,2′-(9,10-dihydro-5,8-dihydroxy-9,10-dioxo-1,4-anthracenediyl) (substituted)-,disodium salt
P–00–0712	10/19/00	10/02/00	(G) Benzenesulfonic acid, 2,2′-(9,10-dihydro-5,8-dihydroxy-9,10-dioxo-1,4-anthracenediyl) (substituted)-,disodium salt
P–00–0750	10/10/00	09/27/00	(G) Reaction product of: 1,2 ethane diamine, aliphatic diisocyanate and polyether polyols
P–00–0763	10/20/00	10/04/00	(G) Polyester modified polydimethylsiloxane
P–00–0792	10/13/00	10/06/00	(G) Silicone copolymer
P–00–0814	10/16/00	10/03/00	(G) Isocyanate terminated urethane pre-polymer
P–00–0816	10/20/00	09/20/00	(G) Alkyl aminosulfonylcarboxylate
P–00–0836	10/10/00	09/12/00	(G) Modified copolymer of acrylic esters and styrene
P–00–0846	10/11/00	09/20/00	(G) Polyester acrylate
P–00–42	10/17/00	09/23/00	(G) Alkylated naphthylamine
P–00–48	10/10/00	09/24/00	(G) Coconut fatty acid polyester
P–00–52	10/20/00	10/09/00	(G) Polyester polyurethane prepolymer
P–00–58	10/17/00	09/22/00	(G) 1-propanethiol, 3-(trisubstituted)-,hydrolysis products with dichlorodimethylsilane and silica
P–00–59	10/17/00	09/22/00	(G) 1-propanethiol, 3-(trisubstituted)-,hydrolysis products with dichlorodimethylsilane and silica
P–00–60	10/16/00	10/06/00	(G) Polyakyleneoxy aliphatic urethane
P–00–1003	10/19/00	10/12/00	(G) Aliphatic urethane
P–95–1565	10/13/00	09/20/00	(G) Amine functional epoxy resin salted with an organic acid
P–98–0367	10/10/00	07/29/99	(G) Organic acid amine salt
P–98–0870	10/11/00	09/15/00	(G) Sodium alcoholate
P–99–0457	10/17/00	09/17/00	(G) Polymer of styrene and mixed acrylates
P–99–0603	10/13/00	01/20/00	(G) Acrylic polymer resin
P–99–0604	10/13/00	09/25/99	(G) Oil-free alkyd
P–99–0840	10/19/00	09/25/00	(G) Hexamethylene diisocyanate, polymer with alkanepolyols, dimethyl terephthalate, benzenepolycarboxylic acid and alkanepolycarboxylic acid

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: November 3, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–28718 Filed 11–08–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6898–6]

Clean Water Act Class II: Proposed Administrative Penalty Assessments and Opportunities to Comment Regarding Mr. Richard Westra, H&R Westra Dairy and Mr. Bernard Teunissen, Beranna Dairy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Assessments of Clean Water Act Class II Administrative Penalties and opportunity to comment.

SUMMARY: EPA is providing notice of proposed administrative penalties for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalties.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who has violated the conditions of a National Pollutant Discharge Elimination System permit may be assessed a penalty in a "Class II" administrative penalty proceeding. Class II proceedings under section 309(g) are conducted in accordance with consolidated rules of practice governing the administrative assessment of civil penalties, 40 CFR part 22.

EPA is providing notice of the following Class II penalty proceedings:

In the Matter of Richard Westra, Docket No. CWA–9–2000–0011; Complainant, Alexis Strauss, Director, Water Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105; Respondent, Mr. Richard Westra, H&R Westra Dairy, 7851 Bickmore Avenue, Chino, CA 91710; filed September 28, 2000; seeking a penalty of up to $137,500 for various discharges from H&R Westra Dairy to a natural drainage channel which flows to the Prado Flood Control Basin and the Santa Ana River, in violation of "General Waste Discharge Requirements for Concentrated Animal Feeding Operations, including Dairies, within the Santa Ana Region," NPDES No. CAG018001, and for various violations of conditions of that permit related to construction and maintenance of containment structures, inundation protection, surface runoff, drainage diversion, and other operational requirements.

In the Matter of Bernard Teunissen, Docket No. CWA–9–2000–0012; Complainant, Alexis Strauss, Director, Water Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105; Respondent, Mr. Bernard Teunissen, Beranna Dairy, 16015 Mountain Avenue, Chino, CA 91710; filed September 29, 2000; seeking a penalty of up to $137,500 for various discharges from Beranna Dairy to Cypress Creek Channel, which flows to Chino Creek, the Prado Flood Control Basin and the Santa Ana River, in violation of "General Waste Discharge Requirements for Concentrated Animal Feeding Operations, including Dairies, within the Santa Ana Region," NPDES No. CAG018001, and for various violations of conditions of that permit related to construction and maintenance of containment structures, surface runoff, drainage diversion, and other operational requirements.

Procedures by which the public may comment on a proposed Class II penalty or participate in a Class II penalty proceeding are set forth in the consolidated rules. A commenter may present written comments for the record at any time prior to the close of the record or by such date as the presiding officer may set.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of the consolidated rules, review the complaint or other documents filed in the proceedings, or comment or participate in the proceedings, should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in the proceedings are available for inspection during business hours at the office of the Regional Hearing Clerk.

Dated: October 27, 2000.

Alexis Strauss,

Director, Water Division.

[FR Doc. 00–28711 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; FCC 00–359]

Federal-State Joint Board on Universal Service; Petition for Forbearance by Operator Communications, Inc. d/b/a Oncor Communications, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission extends until February 20, 2001 the date on which the petition requesting forbearance filed on November 22, 1999 by Operator Communications, Inc., d/b/a Oncor Communications, Inc. ("Oncor"), shall be deemed granted in the absence of a Commission decision that the petition fails to meet the standard for forbearance under the Act.

DATES: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Praveen Goyal, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in CC Docket No. 96–45 released on October 12, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Order, pursuant to section 10(c) of the Communications Act of 1934, as amended (Act), we extend until February 20, 2001 the date on which the petition requesting forbearance filed on November 22, 1999 by Operator Communications, Inc., d/b/a Oncor Communications, Inc. ("Oncor"), shall be deemed granted in the absence of a Commission decision that the petition fails to meet the standard for forbearance under section 10(a) of the Act.

II. Oncor Petition for Forbearance

2. On November 22, 1999, Operator Communications, Inc., d/b/a Oncor Communications, Inc. (Oncor), filed a petition for forbearance from enforcement of §§ 54.709 and 54.711 of the Commission's rules (not published in the **Federal Register**). Oncor requests that, for its end-user telecommunications revenues subject to universal service contributions for the years 1998, 1999, and 2000, Oncor be assessed universal service contributions based on its current revenues for those years rather than revenues from the prior year.

3. Section 10(c) of the Communications Act states that a petition for forbearance shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under section 10(a) within one year after the Commission receives it, unless the one-year period is extended by the Commission. The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of section 10(a).

4. Oncor's petition raises significant questions regarding whether forbearance from the enforcement of §§ 54.709 and 54.711 of the Commission's rules meets the statutory requirements set forth in section 10(a). We find that a 90-day extension is warranted under section 10.

III. Ordering Clauses

5. Pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. 160, that the date on which the above-captioned request for forbearance shall be deemed granted in the absence of a Commission denial of the request for failure to meet the statutory standards for forbearance, is extended to February 20, 2001.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28727 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 24, 2000.

A. **Federal Reserve Bank of Minneapolis** (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *William E. Coffee*, Billings, Montana, individually and as trustee for the following trusts: Coffee Family Trust I, Coffee Family Trust II, Nefsy Family Trust I, Nefsy Family Trust II, and Nefsy Family Trust III, and the following trusts acting in concert: Coffee Family Trust I, Coffee Family Trust II, Nefsy Family Trust I, and Nefsy Family Trust III, all of Billings, Montana, to acquire voting shares of Stockman Financial Corporation, Miles City, Montana, and thereby indirectly acquire voting shares of Stockman Bank of Montana, Miles City, Montana.

Board of Governors of the Federal Reserve System, November 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28765 Filed 11–8–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 27, 2000.

A. **Federal Reserve Bank of Minneapolis** (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Douglas Loren Jilek, Lester Prairie, Minnesota, to acquire additional voting shares of Prairie Bancshares, Inc., Lester Prairie, Minnesota, and thereby indirectly acquire additional voting shares of First Community Bank Lester Prairie, Lester Prairie, Minnesota, and First Community Bank Silver Lake, Silver Lake, Minnesota.

Board of Governors of the Federal Reserve System, November 6, 2000

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28825 Filed 11–8–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 2000.

A. **Federal Reserve Bank of Chicago** Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Lenawee Bancorp, Inc., Adrian, Michigan; to acquire 100 percent of the voting shares of Bank of Washtenaw (In organization), Saline, Michigan.

2. Chemical Financial Corporation, Midland, Michigan; to merge with Shoreline Financial Corporation, Benton Harbor, Michigan, and thereby indirectly acquire Shoreline Bank, Benton Harbor, Michigan.

Board of Governors of the Federal Reserve System, November 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28764 Filed 11–8–00; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of Communications/Department of Defense; Construction Cancellation of Stocked Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage the 4-part continuous, carbon interleave set construction of the following Standard Form is cancelled: SF 153, COMSEC Material Report (NSN 7540–00–935–5861).

The 4-part continuous feed, chemical transfer paper set version (identified by NSN 7540–00–935–5860) of this form is still available from FSS.

DATES: Effective November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: October 17, 2000.

Barbara M. Williams,

Deputy, Standard and Optional Forms Management Officer.

[FR Doc. 00–28724 Filed 11–8–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Runaway and Homeless Youth Program Regulations.

OMB No.: New Collection.

Description: The Runaway and Homeless Youth program is administered by the Family and Youth Services Bureau (FYSB). The authorizing legislation for the Runaway and Homeless Youth (RHY) Program, Public Law 106–71 (42 U.S.C. 5701), Section 311, set forth provisions for awarding grants through a competitive process to public and nonprofit private entities (and combinations of such entities) to establish and operate local programs to provide services for runaway and homeless youth and their families. For the competitive grant making process, eligible entities are required to describe their goals, plans (scope of activities), capacities and other qualifications for receiving Federal funding to operate the type of youth services programs authorized under the RHY Act. The information is requested annually through the RHY Program Announcement. The program regulations implementing provisions of the RHY Act limit grants project period to three years (a limit not specified in the statue). The final rule would change the project periods from a maximum of three years to five years. The regulation change is technical in nature and will allow FYSB the flexibility and discretion to award some grants for five-year periods, instead of three years. The regulatory change will not increase the burden for any entities. The change will only affect the frequency of application submission.

Respondents: Community-based Organizations, States, and Tribes.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Grant application	500	1	20	10,000
Estimated total annual burden hours				10,000

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: October 26, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–27969 Filed 11–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Uniform Project Description for a Discretionary Grant Application.

OMB No.: 0970–0139.

Description

Respondents: Applicants for ACF Discretionary Grant Programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
UPD	2,838	1	8	22,838
Estimated Total Annual Burden Hours				22,838

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: October 26, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–28052 Filed 11–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Family and Child Experiences Survey (FACES)

OMB No.: Revision of a currently approved collection (OMB No. 0970–0151)

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to extend the Head Start Family and Child Experiences Survey (FACES). This study is being conducted under contract with Westat, Inc. (with Ellsworth Associates and the CDM Group as their subcontractors) (#105–96–1912) to collect information on Head Start performance measures. This revision is intended to extend the current design to a national probability sample of 43 additional Head Start programs in order to ascertain what progress has been made since 1997 in meeting Head Start program performance goals.

FACES currently involves seven phases of data collection. The first phase was a Spring 1997 Field test in which approximately 2400 parents and children were studied in a nationally stratified random sample of 40 Head Start programs. The second and third phases occurred in Fall 1997 (Wave 1) and Spring 1998 (Wave 2) when data were collected on a sample of 3200 children and families in the same 40 programs. Spring 1998 data collection included assessments of both Head Start children completing kindergarten (kindergarten field test) as well as interviews with their parents and ratings by their kindergarten teachers. In the fourth and fifth phases, follow-up continued for a second program year, plus a kindergarten follow-up. The sixth and seventh waves of data collection involve data collection in spring of the first-grade year for both cohorts of children, those completing kindergarten in spring 1999, and those completing kindergarten in spring 2000. The current plan is to extend data collection to a new cohort of 2825 children and families in a new sample of 43 Head Start programs.

This schedule of data collection is necessitated by the mandates of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), which requires that the Head Start Bureau move expeditiously toward development and testing of Head Start Performance Measures, and by the 1994 reauthorization of Head Start (Head Start Act, as amended, May 18, 1994, Section 649 (d)), which requires periodic assessments of Head Start's quality and effectiveness.

Respondents: Federal Government, Individuals or Households, and Not-for-profit institutions.

ANNUAL BURDEN ESTIMATES

[Estimated Response Burden for Respondents to the Head Start Family and Child Experiences Survey (FACES 2000)—Fall 2000, Spring 2001 Spring 2002, Spring 2003]

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (2000):				
Head Start Parents	2825	1	1.00	2825
Head Start Children	2825	1	0.66	1865
Head Start Teachers (child ratings)	205	14	0.25	718
Center Directors	180	1	1.00	180
Education Coordinators	180	1	0.75	135
Classroom Teachers	205	1	1.00	205
Year 2 (2001):				
Head Start Parents	2400	1	0.75	1800
Head Start Children	2400	1	0.66	1584
Head Start Teachers (child ratings)	205	12	0.25	615
Family Services Coordinators	180	1	0.75	135
Year 3 (2002):				
Head Start Parents	850	1	0.75	638
Head Start Children	850	1	0.66	561
Head Start Teachers (child ratings)	71	12	0.25	213
Kindergarten Parents	1122	1	0.75	842
Kindergarten Children	1122	1	0.75	842
Kindergarten Teachers	1122	1	0.50	561
Year 4 (2003):				
Kindergarten Parents	680	1	0.75	510
Kindergarten Children	680	1	0.75	510
Kindergarten Teachers	680	1	0.50	340
Annualized Totals:				
Year 1				5928
Year 2				4134
Year 3				3657
Year 4				1360
Estimated Average Annual Burden Hours:				3780

Note: The 3780 Estimated Average Annual Burden Hours is based on an average of 2000, 2001, 2002, and 2003 estimated burden hours.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: November 3, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–28801 Filed 11–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Directory of New Hires.

OMB No.: 0970–0166.

Description: Public Law 104–193, the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," requires the Office of Child Support Enforcement (OCSE) to operate a National Directory of New Hires (NDNH) to improve the ability of State child support agencies to locate noncustodial parents and collect child support across State lines. The law requires States to periodically transmit new hire data received from employers to the NDNH, and to transmit quarterly wage and unemployment compensation claims data to the NDNH on quarterly basis. States transmit all data to the NDNH electrically.

Respondents: Employers, State child support agencies, State Employment Security agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
New Hire: Employers Reporting Manually	5,168,000	3.464	.0417 hours (2.5 minutes)	750,531
New Hire: Employers Reporting Electronically	1,134,000	37.037	.00028 hours (1 second)	11,760
New Hire: States	54	83.333	266.669 hours	1,200,001
Quarterly Wage & Unemployment Compensation	54	4	.033 hours (2 minutes)	7.13
Multistate Employers' Notification Form	2052	1	.050 hours (3 minutes)	102.6
Estimated Total Annual Burden Hours:				1,962,402

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: November 3, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–28802 Filed 11–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/HS FY 2001–03]

Fiscal Year 2001 Discretionary Announcement for University-Head Start Partnerships and Graduate Student Head Start Research Grants: Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth, and Families, ACF, DHHS.

ACTION: Notice.

Statutory Authority: The Head Start Act, as amended 42 U.S.C. 9801 *et seq.* CFDA: 93.600.

SUMMARY: The Administration for Children and Families, Administration on Children, Youth, and Families, Head Start Bureau announces the availability of funds for two Priority Areas; University-Head Start Partnerships (1.01) and Graduate Student Head Start Research Grants (1.02). These priority areas will support research activities in the areas of infant and toddler development within the cultural context, school readiness, mental health and field-initiated research which will increase our knowledge of low-income children's development for the purpose of improving services or have significant policy implications.

DATES: The closing date for receipt of applications is 5:00 P.M. EDT February 7, 2001.

Note: Applications should be submitted to the ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209. However, prior to preparing and submitting an application, in order to satisfactorily compete under this announcement it will be necessary for potential applicants to read the full announcement which is available through the addresses listed below.

ADDRESSES: Applications, including all necessary forms can be downloaded from the Head Start web site at *www.acf.dhhs.gov/programs/hsb*. The web site also contains a listing of all Head Start and Early Head Start programs. Hard copies of the application may be obtained by writing or calling the Operations Center or sending an email to *hsr@lcgnet.com*.

FOR FURTHER INFORMATION CONTACT: ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209 or (1–800) 351–2293.

SUPPLEMENTARY INFORMATION:

Priority Areas

Priority Area 1.01 University-Head Start Partnerships

Eligible Applicants: Universities and four-year colleges on behalf of a faculty member who holds a doctorate or equivalent in their respective field.

Project Duration: The announcement for Priority Area 1.01 is soliciting applications for project periods of three years, with the first year as a planning grant which will be used to pilot instruments or interventions. Awards, on a competitive basis, will be for the first one-year planning budget period. Applications for continuation funds under these awards beyond the first-year budget period, but within the established project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interests of the Government.

Federal Share of Project Costs: The maximum Federal share is $75,000 for the first-year budget period. The Federal share for the subsequent years is approximately $150,000 for each year of the project period. The Federal Share is inclusive of indirect costs.

Matching Requirements: There are no matching requirements.

Anticipated Number of Projects To Be Funded: It is anticipated that 4–8 projects will be funded.

Priority Area 1.02 Master's-Level and Doctoral Head Start Research Grants

Eligible Applicants: Institutions of higher education on behalf of graduate students at both the Master's and Doctorate levels. Doctoral students must have completed their Master's degree or equivalent in that field prior to applying for this grant or by the time grants are awarded, and have sent formal notification of having been granted the degree to ACYF. To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council on Post-Secondary Accreditation. In addition, the specific graduate student on whose behalf the application is made must be identified.

Project Duration: The announcement for Priority Area 1.02 is soliciting applications for project periods up to two years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for two years. It should be noted, that if the graduate student, on whose behalf the university is applying, expects to receive a degree by the end of the first year budget period, the applicant should request a one-year project period only. A second year budget period will not be granted if the student has graduated by the end of the first year. If the student either graduates or leaves the program during the project or budget period, the grant cannot be transferred to another student and must be surrendered to the Government. Applications for continuation grants will be entertained in the subsequent year on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum Federal share shall range between $10,000–$20,000 for the first-year budget period or a maximum of $40,000 for a two-year project period.

Matching Requirements: There are no matching requirements.

Anticipated Number of Projects To Be Funded: It is anticipated that between 5 and 10 projects will be funded with an unspecified mixture of master's-level and doctoral level applicants. No university will be funded for more than one candidate, unless there are no other approved applications. Applications from the master's-level students will be evaluated separately from the applications from doctoral-level students.

Criteria for Priority Areas 1.01 and 1.02

Reviewers will consider the following factors when assigning points.

1. *Results or Benefits Expected:* 25 points.

- The research questions are clearly stated.
- The extent to which the questions are of importance and relevance for low-income children's development and welfare.
- The extent to which the research study makes a significant contribution to the knowledge base.
- The extent to which the literature review is current and comprehensive and supports the need for the study, the questions to be addressed or the hypotheses to be tested.
- The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.

2. *Approach:* 40 points.

- The extent to which the research design is appropriate and sufficient for addressing the questions of the study.
- The extent to which child outcomes are the major focus of the study.
- The extent to which the measures are direct measures of child outcomes.
- The extent to which the planned research specifies the measures to be used and the analyses to be conducted.
- The extent to which the planned measures are appropriate and sufficient for the questions of the study.
- The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques and advance the state-of-the-art.
- The extent to which the analytic techniques are appropriate for the question under consideration.
- The extent to which the proposed sample size is sufficient for the study.
- The scope of the project is reasonable for the funds available for these grants.
- The extent to which the planned approach reflects sufficient input from and partnership with the Head Start or Early Head Start program.

3. *Staff and Position Data:* 35 points.

- The extent to which the principal investigator (or for 1.02, the graduate student) and other key research staff possess the research expertise necessary to conduct the study as demonstrated in the application and information contained in their vitae.
- For Priority Area 1.01 the principal investigator(s) has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.
- The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with Head Start/Early Head Start program staff and parents.
- The adequacy of the time devoted to this project by the principal investigator and other key staff in order to ensure a high level of professional input and attention. For graduate students, the adequacy of the supervision provided by the graduate student's mentor.

Required Notification of the Single Point of Contact

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and American Samoa have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

When comments are submitted directly to ACF, they should be addressed to: William Wilson, Head Start Bureau, 330 C Street SW., Washington, DC 20447. Attn: Head-Start University Partnerships or Graduate Student Head Start Research. A list of the Single Points of Contact for each State and Territory can be found on the web site. *http://www.dhhs.gov/progorg/grantsnet/laws-reg/spoq0695.htm.*

Dated: November 3, 2000.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth, and Families.

[FR Doc. 00–28800 Filed 11–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation; Grant to the National Campaign to Prevent Teen Pregnancy

AGENCY: Office of Planning, Research and Evaluation, ACF, DHHS.

ACTION: Award announcement.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the National Campaign to Prevent Teen Pregnancy to develop a fifty-state survey of teen pregnancy prevention. This survey will also include three to four case studies of individual state efforts.

This 17-month project is being funded noncompetitively, because it is expected to provide valuable information useful to this Department and other practitioners regarding progress and state/community efforts to prevent teen pregnancy. The National Campaign to Prevent Teen Pregnancy is uniquely qualified to conduct the study because of its considerable experience and access to resources. The total cost of the project is $150,496.

FOR FURTHER INFORMATION CONTACT: Nancye Campbell, Office of Planning, Research and Evaluation, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, Phone: 202–401–5760.

Dated: November 2, 2000.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 00–28818 Filed 11–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Availability of a Draft Programmatic Environmental Assessment

AGENCY: Administration on Children, Youth, and Families (ACYF), ACF, DHHS.

ACTION: Notice.

SUMMARY: The Administration for Children and Families has prepared a draft Programmatic Environmental Assessment in accordance with the National Environmental Policy Act of 1969, as amended, and the Revised General Administration Manual, HHS Part 30, Environmental Protection. The document assesses the environmental impacts of activities undertaken by the Head Start and Early Head Start grantees when purchasing, renovating or constructing child care facilities.

The Department of Health and Human Services has completed a review of the draft Programmatic Environmental Assessment. A determination as to the finding of significant or non-significant impacts on the environment will not be made until at least 30 days from the publication of this notice.

DATES: Written comments on the draft Programmatic Environmental Assessment should be received on or before December 11, 2001.

ADDRESSES: Persons wishing to review the draft Programmatic Environmental Assessment may obtain a copy by writing to: Head Start PEA Team, The Mangi Environmental Group, 701 West Broad Street, Suite 205, Falls Church, Virginia 22046. Comments concerning the draft Programmatic Environmental Assessment should be submitted to the Programmatic Environmental Team at the address above.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Acting Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013; (202) 205–8672.

SUPPLEMENTARY INFORMATION: Head Start and Early Head Start are authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services to low-income preschool children, primarily age three to age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and 500 Head Start program grantees.

To improve the availability and quality of child care centers, the Head Start Act was amended in 1992 and again in 1994 authorizing the use of federal financial assistance to make payments for capital expenditures, such as expenditures for the purchase, construction and major renovations of Head Start and Early Head Start facilities. This authority is found in Section 644 (f) and (g) of the Head Start Act.

In conformance with the Revised General Administration Manual, HHS Part 30, Environmental Protection, the Administration for Children and Families has conducted a Programmatic Environmental Assessment to determine if this federally funded activity would have a significant impact on the environment.

Dated: November 1, 2000.

Olivia A. Golden,

Assistant Secretary for Children and Families.

[FR Doc. 00–28799 Filed 11–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–CCB 2001–01]

Native Hawaiian and Nonprofit American Indian Organization; Child Care Grants

AGENCY: Administration on Children and Families (ACYF), Administration for Children and Families, (ACF).

ACTION: Announcement of availability of competitive financial assistance for Native Hawaiian and Nonprofit American Indian Organization Child Care Grants.

SUMMARY: The purpose of this program announcement is to announce the availability of fiscal year 2001 Discretionary Funds, authorized under the Child Care and Development Block Grant (CCDBG) Act (the Act), as amended, for child care grants to:

(1) A Native Hawaiian organization; and

(2) A private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

DATES: The closing date for submission of applications is January 8, 2001.

Mailing and Delivery Instructions: Mailed applications and applications hand delivered by applicants, applicant couriers, overnight/express mail couriers or any other method of hand delivery shall be considered as meeting an announced deadline if they are received on or before the deadline, at the: ACYF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209, Telephone: 1–800–351–2293.

Applications may be hand delivered to the above address between the hours of 8:00 a.m. and 4:30 p.m. (EDT), Monday through Friday (excluding Federal Holidays).

Applicants are responsible for mailing and delivering applications well in advance of deadlines to ensure that the applications are received on time. Applications received after 4:30 p.m. (EDT) on the deadline date will be classified as late. Postmarks and other similar documents do not establish receipt of an application.

ACF will not accept applications delivered by fax, regardless of date or time of submission and receipt.

Late applications: Applications which do not meet the criteria stated above and are not received by the deadline date and time are considered late applications. The Administration for Children and Families (ACF) will notify each late applicant that its application will not be considered in the current competition.

Extension of deadline: ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

Notice of Intent to Submit Application: If you intend to submit an application, please contact ACYF's Operations Center at 1–800–351–2293 with the following information: the number and title of this announcement; your organization's name and address; and your contact person's name, phone number, fax number, and e-mail address. The information will be used to determine the number of expert reviewers needed to evaluate applications and to update the mailing list for program announcements.

FOR FURTHER INFORMATION CONTACT: Ginny Gorman, Administration for Children and Families, Child Care Bureau, Room 2046, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20447, Phone: 202–401–7260, Fax: 202–690–5600, or E-mail: ggorman@acf.dhhs.gov

SUPPLEMENTARY INFORMATION: The ACF Uniform Discretionary Grant Application Form covering all ACF announcements, contained in the Application Kit, and this Supplementary Information section contain all the forms and instructions needed to apply for a grant under this announcement. No additional application materials are needed.

The Supplementary Information section consists of seven parts. Part I provides general information about funding requirements, and application procedures for child care grants under this program announcement. Part II provides background information on ACYF, the Child Care Bureau, and funding to Indian Tribes and tribal organizations under the Child Care and Development Fund (CCDF), and CCDF definitions used in this announcement. Part III describes child care goals and priorities related to this announcement. Part IV provides instructions for the Uniform Project Description. Part V describes the evaluation criteria and selection process. Part VI describes the application process. Part VII provides information on the content of the application and submission instructions. The contents are outlined below:

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Part I. General Information

A. Purpose

The purpose of this program announcement is to provide funding for two child care programs: one serving Native Hawaiian youths; and one serving Indian and/or Native Hawaiian youths.

B. Citations

1. Sponsorship

Grants being awarded under this announcement are sponsored by the Child Care Bureau (the Bureau) of the Administration on Children, Youth and Families (ACYF) in the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (DHHS). The Bureau will manage the projects.

2. Funding Authority

Funding is being provided by ACF under Sec. 658B of the Child Care and Development Block Grant Act, as amended (42 U.S.C. 9858).

3. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number is 93.575.

C. Number of Awards

Two projects will be funded in fiscal year 2001 (beginning October 1, 2000), subject to the availability of funds and results of the evaluation process.

D. Project Duration

The total project period will be 36 months.

E. Funding Levels and Budget Periods

Initial awards will be for a one-year budget period. Individual projects will receive between $500,000 and $1,000,000 for the first budget period of 12 months, with a possibility of between $500,000 and $1,000,000 per year in continuation funding to be awarded in each of fiscal years 2002 and 2003. The estimated total Federal funding for a three-year project is between $1,500,000 and $3,000,000.

Applications for continuation of grants funded under this announcement will be entertained in subsequent years on a non-competitive basis. The award of continuation funding beyond each one-year budget period (but within the three-year project period) will be subject to the availability of funds, satisfactory progress of the grantee, and a

determination that continued funding would be in the best interest of the government.

F. Non-Federal Share of Project Costs

While the applicant is not required to provide a match to receive funding under this program announcement, it is strongly encouraged to leverage funds from other sources for their project.

G. Eligibility

The following organizations are eligible to apply for funding under this program announcement:

A private nonprofit organization that serves the interests of Native Hawaiians and is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or parts of programs) for the benefit of Native Hawaiians; and

A private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

At least 90 percent of the individuals serving on a non-profit applicant's board must fall into one or more of the following categories: (1) Must be a current or past member of the community to be served; (2) be a prospective participant in or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.

"Community" is defined as a group with common interests and a common identify, such as an Indian Tribe, Alaska Native Village, or a group of Native Hawaiians living in a given geographic area, and all those residing or participating in a predominantly Native Hawaiian community.

If an Indian organization is already receiving Child Care and Development Fund (CCDF) funding, it is not eligible to apply for Discretionary Funds under this program announcement. Only one application will be accepted from each eligible applicant.

Part II. Background and Context

A. The Child Care Bureau

The Child Care Bureau was established in 1994 to provide leadership to efforts to enhance the quality, affordability, and supply of child care available for all families. The Child Care Bureau administers the Child Care and Development Fund (CCDF), a $3.5 billion child care program that includes funding for child care subsidies and activities to improve the quality and availability of child care. CCDF was created after amendments to ACF child care programs by Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 consolidated four Federal child care funding streams including the Child Care and Development Block Grant, AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care.

The Bureau works closely with ACF Regions, States, Territories and Tribes to assist with, oversee, and document implementation of new policies and programs in support of State, local and private sector administration of child care services and systems. In addition, the Bureau collaborates extensively with other offices throughout the Federal government to promote integrated, family-focused services and coordinated child care delivery systems. In all of these activities, the Bureau seeks to enhance the quality, availability, and affordability of child care services, support children's healthy growth and development in safe child care environments, enhance parental choice and involvement in their children's care, and facilitate the linkage of child care with other community services.

B. Grants to Indian Tribes and Tribal Consortia

The CCDF is comprised of two funding sources for Tribes and tribal consortia:

Discretionary Funds—funding that is provided under the Child Care and Development Block Grant Act, as amended; and

Tribal Mandatory Funds—funding that is provided to eligible tribal organizations under Section 418 of the Social Security Act.

Currently, 257 Indian Tribes and tribal consortia receive CCDF funds. Through consortia arrangements, these grantees serve over 500 Federally recognized Indian Tribes and Alaska Native Villages. In FY 2000, Tribes and tribal organizations received approximately $71 million in CCDF funds.

A Tribe is eligible to receive CCDF funds if it is Federally recognized and the tribal population includes at least 50 children under 13 years of age (or such similar age, as determined by the Secretary from the best available data). A Tribe with fewer than 50 children under age 13 may participate in a consortium of eligible tribes.

In order to receive CCDF funds, eligible Tribes and tribal consortia develop a plan for child care services. The plan is an agreement between the Administration for Children and Families (ACF) and the Tribal agency responsible for administering the CCDF funds. The plan provides assurances that the funds will be administered in conformance with the Act, pertinent Federal regulations, and other applicable instructions or guidelines issued by ACF.

C. Grants to "Other Organizations"

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) amended the Child Care and Development Block Grant Act (CCDBG), to add the following definition to the term "tribal organization," to indicate other organizations that are potentially eligible for Discretionary Funding:

"Other organizations—Such term includes a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians."

Section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 defines a Native Hawaiian Organization as:

"A private nonprofit organization that serves the interests of Native Hawaiians, and is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or parts of programs) for the benefit of Native Hawaiians."

The applicant is eligible to apply only for Discretionary Funds under this announcement. Native Hawaiian organizations and private nonprofit organizations established for the purpose of serving youth who are Indians or Native Hawaiians are not eligible to apply for Tribal Mandatory Funds.

D. Definitions

This program announcement is based on the following definitions:

Categories of Care—center-based child care, group home child care, family child care and in home care.

Center-Based Child Care Provider—a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting, unless care in excess of 24 hours is due to the nature of the parent(s)' work.

Child Care Certificate—a certificate (that may be a check, or other disbursement) that is issued by a grantee directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider, pursuant to 45 CFR 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assistance to the provider.

Construction—the erection of a facility that does not currently exist.

Discretionary Funds—the funds authorized under section 658B of the Child Care and Development Block Grant Act. The Discretionary funds were formerly referred to as the Child Care and Development Block Grant.

Eligible Child Care Provider—(1) A center-based child care provider, a group home child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that is licensed, regulated, or registered under applicable State or local law as described in 45 CFR 98.40; and satisfies State and local requirements, including those referred to in 45 CFR 98.41 applicable to the child care services it provides; or (2) a child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, sibling (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved.

Family Child Care Provider—one individual who provides child care services for fewer than 24 hours per day per child, as the sole caregiver, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work.

Group Home Child Care Provider—two or more individuals who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work.

Indian Tribe—any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. section 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

In-Home Child Care Provider—an individual who provides child care services in the child's own home.

Licensing or Regulatory Requirements—requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or Tribal law.

Other Tribal Organizations—such term includes a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

Parent—a parent by blood, marriage or adoption and also means a legal guardian, or other person standing *in loco parentis*.

Provider—the entity providing child care services.

Sliding Fee Scale—a system of cost sharing by a family based on income and size of the family, in accordance with 45 CFR 98.42.

Tribal Mandatory Funds—the child care funds set aside at section 418(a)(4) of the Social Security Act. The funds consist of between one and two percent of the aggregate Mandatory and Matching child care funds reserved by the Secretary in each fiscal year for payments to Indian Tribes and Tribal organizations.

Types of Providers—the different classes of providers under each category of care. For the purposes of the CCDF, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

Part III. Native Hawaiian and Nonprofit American Indian Organization Child Care Grants—Goals and Priorities

In designing a project under this announcement, the applicant should consider the following goals of the amended CCDBG Act, provided at 45 CFR 98.1(a):

1. Allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the State;
2. Promote parental choice to empower working parents to make their own decisions on the child care needs that best suits their family's needs;
3. Encourage States to provide consumer education information to help parents make informed choices about child care;
4. Assist States to provide child care to parents trying to achieve independence from public assistance; and
5. Assist States in implementing the health, safety, licensing and registration standards established in State regulations.

Grants awarded under this announcement are to increase the availability, affordability and quality of child care services by establishing child care programs in areas that have been previously underserved and/or have unmet needs.

Eligible applicants are reminded that under 45 CFR 98.80(d) of the CCDF Final Rule, Indian children continue to have dual eligibility to receive services funded by CCDF. Indian children and Native Hawaiian children will continue to be eligible for services provided under this announcement *and* from the State in which the applicant organization is located. Therefore, through the two grants awarded under this announcement, additional child care services (from the Discretionary Fund) are available to children who are currently eligible to be served under a State CCDF program.

A. Regulatory and Statutory Requirements

To meet the purposes of the Act, the applicant is required to meet most of the same requirements as grantees receiving tribal formula grants under the CCDF program. Thus, the majority of the information requested under Part IV, General Instructions for the Uniform Project Description, of this program announcement is required by the current regulations at 45 CFR parts 98 and 99 and the CCDBG Act, as amended. Unless otherwise indicated, the regulations at 45 CFR part 98 will apply to grants awarded under this program announcement. As discussed in Part II., B. Grants to Indian Tribes and Tribal Consortia, this information is requested in the CCDF plan for Tribes and tribal consortia. Since the CCDF plan is not appropriate for grants under this announcement, it is incumbent upon the applicant to demonstrate how

their project meets these regulatory and statutory requirements. The applicant must also include a statement that it will comply with the applicable list of assurances found in 45 CFR 98.15 of the CCDF final rule.

B. Eligibility for Services

All eligible children must be under the age of 13 and reside with a family whose income does not exceed 85% of the grantee median income for a family of the same size and whose parent(s) are working or attending a job training or educational program or who receive or need to receive protective services. Grantee median income may be defined as: (1) Tribal median income for a family of the same size residing in the area served by the applicant; or (2) State median income for a family of the same size.

The applicant must indicate which income eligibility definition it plans to use in establishing a child care program under this announcement. In addition, an applicant must define the following terms, as used in their application: (1) Attending (a job training or educational program); (2) *in loco parentis;* (3) job training and educational program; (4) physical or mental incapacity; (5) protective services; (6) residing with; and (7) special needs child. Instructions on defining these terms are included in the Application Kit's "Supplemental Guide." The applicant may elect to establish additional eligibility criteria. For example, the applicant may establish different income limits for part of the population to be served. Any additional eligibility criteria need to be clearly identified and defined by the applicant. The applicant may also elect to waive, on a case-by-case basis, the fee and income eligibility requirements for cases in which children receive or need to receive protective services.

The applicant may provide child care for children age 13 and older who are physically and/or mentally incapable of self-care, but must define these terms in their application. The applicant may also provide child care for children age 13 and older who are under court supervision. If care is to be provided in either circumstance, the applicant must specify the age of the children to be served, up to age 19.

In designing a child care program, the applicant is encouraged to address the before- and after-school care needs of eligible children to be served under this program announcement.

C. Coordination

The applicant must describe how it will coordinate the delivery of CCDF-funded child care services with other Federal, State, and local child care, early childhood development programs, and before- and after-school care services, if applicable.

Child care is an integral part of a community's self-sufficiency and workforce development efforts. In addition, the quality of child care benefits greatly from close coordination with the public health and education communities. Therefore, the applicant must include the results of its coordination activities with agencies responsible for health (including the agency responsible for immunizations), education, employment services or workforce development, and the agency responsible for providing Temporary Assistance for Needy Families (TANF).

D. Public Notice

The applicant is encouraged to engage in a planning process that includes parents, providers, and other relevant stakeholders in the community to be served. As part of the planning process, the applicant must notify those families eligible to be served under this program announcement of the provision of child care services proposed under this project and provide an opportunity for members to comment on the proposed plan through a public hearing. Public notice of the hearing must be made available across the proposed service area at least 20 days prior to the hearing.

E. Parental Choice

One of the goals of the Child Care and Development Block Grant Act is "to promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs." In support of this goal, the applicant is expected to design and implement a certificate program since it promotes parental choice in selecting CCDF-funded child care providers. However, while certificates ensure parental choice, contracted slots also play an important role in meeting the child care needs of families, particularly in rural areas, for infant-care, or for children with special needs.

Therefore, it is incumbent for the applicant to design a child care program that will adequately address the needs and unique circumstances of the population it intends to serve. If the applicant is unable to operate a certificate program, or chooses to provide child care services through grants and contracts exclusively, it must justify this approach in its program narrative and assure how the alternative approach will promote parental choice.

F. Quality Activities

The applicant must spend no less than four percent of its grant award on activities to improve the availability and quality of child care. Examples of activities undertaken by CCDF-funded tribal child care programs include: (1) Resource and referral programs; (2) grants or loans to providers to assist in meeting standards; (3) monitoring of compliance with licensing and regulatory requirements; (4) training and technical assistance; (5) compensation for child care providers; and (6) comprehensive consumer education. The applicant may select activities from this list of examples, or design other quality activities that are better suited to the population to be served.

G. Construction or Renovation of Child Care Facilities

Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) amended the Child Care and Development Block Grant Act to permit Tribal grantees to use CCDF funds for construction or renovation of child care facilities. Therefore, in its grant application the applicant should describe any anticipated construction and renovation projects that will be funded with CCDF funds, and estimate the amount of funds that will be used for these projects.

However, grant funds cannot be spent for construction or renovation until a grantee has applied for and received approval, through a separate application process, from the Department of Health and Human Services (DHHS). A grantee may submit a request to spend part of its grant for construction or renovation through this separate application process once it has been awarded a CCDF grant under this announcement.

As part of the separate application process, a grantee must show that adequate facilities are not otherwise available to carry out child care programs, and that the lack of facilities will inhibit the operation of such programs in the future. The amount of funds that a grantee may request for construction or renovation through the separate application process is limited to the amount estimated in the grantee's original CCDF application under this announcement.

Furthermore, statutory language at section 6580(c)(6) of the revised CCDBG Act indicates that Congress does not intend for construction and renovation projects to unnecessarily divert resources from the provision of child care services. Because grants under this announcement are designed to establish child care programs in areas with unmet need, a grantee should reserve adequate funds for direct child care services. While some construction and renovation activity is allowable under this program announcement, in accordance with Part V., A. Criterion 5. Budget, the applicant will have to demonstrate that funds will be used for direct child care services and the funds requested are reasonable in regard to the number of eligible children to be served.

Part IV. General Instructions for the Uniform Project Description

The following ACF Uniform Project Description has been approved under OMB Control Number 0970–0139. This format is to be used to submit an application under this announcement.

A. Introduction

The applicant is required to submit a full project description shall prepare the project description statement in accordance with the following instructions. The pages of the project description must be numbered and are limited to 40 typed pages, double spaced, printed on only one side, with at least ½-inch margins. Pages over the limit will be removed from the application and will not be reviewed. In addition, please note that previous attempts by applicants to circumvent space limitations or to exceed page limits by using small print have resulted in negative responses from reviewers because of the difficulty in reviewing the application.

The applicant should use the evaluation criteria listed in Part V as a way to organize the uniform project description, providing specific information that addresses all components of each criterion.

It is in the applicant's best interest to ensure that the project description is easy to read, logically developed in accordance with evaluation criteria and adhere to page limitations. In addition, the applicant should be mindful of the importance of preparing and submitting applications using language, terms, concepts and descriptions that are generally known to the child care and early childhood fields.

B. Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

C. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated); some of which may be outside the scope of the program announcement.

D. Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe who will receive child care services, where and how these services will be provided, the anticipated numbers of children and families to be served, and how the services will benefit the children, families and community to be served.

E. Approach

Outline a plan of action, which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of youth to be served and the results of those services. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

F. Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

G. Additional Information

1. *Staff and position data:* Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

2. *Plan for project continuance beyond grant support:* Provide a plan for securing resources and continuing project activities after Federal assistance has ceased.

3. *Organizational profiles:* Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

4. *Third-party agreements:* Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

5. *Letters of support:* Provide statements from community, public and commercial leaders that support the project proposed for funding.

6. *Budget and budget justification:* Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must

include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Part V. Evaluation Criteria and Selection Process

The five evaluation criteria that follow will be used to review and evaluate each application. Each of the criteria should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. Note that the highest possible score an application can receive is 100 points.

A. Evaluation Criteria

Criterion 1. Objectives and Need for Assistance (20 Points)

1. The applicant must specify the goals and objectives of the project and how implementation will fulfill the purposes of the amended Child Care and Development Block Grant Act. The applicant must demonstrate a thorough understanding of the Child Care and Development Fund, and the Federal regulations that apply to CCDF grants administered by the Child Care Bureau.

2. The applicant must state the need for assistance by identifying and discussing the critical child care issues affecting Native Hawaiian and or low-income Indian families and the challenges they face as they move toward economic self-sufficiency. Participant and beneficiary information must also be included.

3. The applicant must describe how it will coordinate the delivery of CCDF-funded child care services with other Federal, State and local child care, early childhood development programs, and before- and after-school care services. Supporting documentation of need from other community groups may be included.

4. The applicant must describe the area to be served, indicate the precise locations of program services and demonstrate that the services will be located in an area which is accessible to children and families. Maps or other graphic aids may be attached.

Criterion 2. Results and Benefits Expected (10 Points)

1. The applicant must specify the number of children and families to be served, the array of child care settings available, and the types of other services to be provided (such as quality activities).

2. The applicant must explain how the expected results will benefit the population to be served in meeting its child care needs.

3. The applicant must describe the criteria to be used to evaluate the results and success of the program.

Criterion 3. Approach (40 Points)

1. The applicant must include a detailed plan that identifies goals and objectives and provides a work plan identifying specific activities necessary to accomplish the stated goals and objectives.

2. The applicant must describe how the project will coordinate the delivery of CCDF funded child care services with other Federal, State and local child care, early childhood development programs, and before- and after-school care services. Coordination activities with agencies responsible for health, education, employment services or workforce development and Temporary Assistance for Needy Families must also be addressed.

3. The applicant must describe how it will develop and implement a certificate program that allows parents to choose from a variety of child care categories, including center-based care, group home care, family child care and in-home care (including a description of the certificate payment system). The applicant must also discuss the use of grants or contracts for child care slots, if applicable, and any reasons for limiting the use of in-home care.

4. The applicant must demonstrate that payment rates are adequate to ensure equal access to comparable child care services provided to children whose parents are not eligible to receive child care assistance under the CCDF and other governmental programs based on the results of a required market rate survey. The applicant may base its market rate survey on the State's survey rather than conducting its own survey if the applicant's service area is included in the State's market rate survey. A copy of the required market rate survey must be included.

5. The applicant must explain its eligibility criteria and requirements, including how the applicant will give priority for child care services to children with special needs, and include a copy of the sliding fee scale that will be used to determine each family's contribution to the cost of care (including whether families below the poverty level would be exempted from the fee). An explanation of the use of the sliding fee scale must also be provided.

6. The applicant must describe how it will develop and implement processes with parents including: informing parents about child care services and options, making applications, and eligibility determinations; making available information on parental complaints; and affording parents unlimited access to their children receiving CCDF-funded child care services.

7. The applicant must describe the activities it will develop and implement to improve the availability and quality of child care.

8. The applicant will discuss how it will meet the required health and safety standards by type of provider, particularly in regard to the newly issued guidance on the Minimum Tribal Child Care Standards.

9. The applicant must describe how it will collect data on children and families receiving CCDF-funded child care services.

10. The applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended and must describe specific plans for accomplishing program phase-out in the event the applicant cannot obtain new operating funds at the end of the 36-month project period.

Criterion 4. Staff and Position Data and Organizational Profiles (20 Points)

1. The applicant must discuss staff and organizational experience in working with children and families, particularly in early childhood education and/or child care. The applicant must also document the services it provides to this specific population and the length of time the applicant has been involved in the provision of these services.

2. The applicant must include information on the skills, knowledge and experience of the project director and key project staff. Brief resumes of current and proposed staff, as well as job descriptions, should be included. Resumes must indicate what position the individual will fill and position descriptions must specifically describe the job as it relates to the proposed project. The applicant must also list organizations and consultants who will work on the program along with a short description of the nature of their effort or contribution. The applicant must provide information on plans for training project staff as well as staff of cooperating organizations and individuals.

3. The applicant must demonstrate the ability of the organization to effectively manage the program.

4. The applicant must provide a short description of the applicant agency's organization; the types, quantities and costs of services it provides and must identify and discuss the role of other organizations or multiple sites of the agency that will be involved in direct services to children and families through this grant. List all these sites, including addresses, phone numbers and staff contact names if different than those on the SF 424. If the agency is a recipient of funds from the Administration on Children, Youth and Families for services to children and families for programs other than that applied for in this application (e.g., Head Start; Child Welfare Services), show how the services supported by these funds are or will be integrated with the existing services. Organizational charts may be provided.

5. The applicant must provide an annotated listing of its funding sources and contractual agreements and other relationships which support or complement the provision of child care services to low-income Native Hawaiian and/or Indian children and families.

Criterion 5. Budget (10 Points)

1. The applicant must show the extent to which the funds requested will be used for direct child care services to families through certificates and/or contracted programs for child care slots and are reasonable and justified in regard to the number of eligible children that will receive CCDF-funded child care services under this announcement. Discussion should refer to (1) the budget information presented on Standard Forms 424 and 424A and the applicant's budget justification and (2) the results or benefits identified under Criterion 2 above.

2. The applicant must describe the fiscal control and accounting procedures used to ensure prudent use, proper disbursement and accurate accounting of funds.

B. The Selection Process

The Commissioner, ACYF, will make the final selection of the applicants to be funded. Applications may be funded in whole or in part depending on: (1) the ranked order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects that best meets the Bureau's objectives; (4) the funds available; and (5) other relevant considerations.

Selected applicants will be notified through the issuance of a Financial Assistance Award that sets forth the amount of funds granted, the terms and conditions of the grant award, the effective date of the award, the budget period for which support is given, and the total project period for which support is provided.

C. Funding Date

It is anticipated that successful applications will be funded in the second quarter of FY 2001.

Part VI. Application Process

A. Assistance to Prospective Grantees

Potential grantees can direct questions about application forms to the Administration on Children, Youth and Families, Child Care Bureau Program Announcement, 1815 North Fort Myer Drive, Suite 300, Arlington, VA. 22209; Telephone: 1–800–351–2293; electronic mail: CCB@lcgnet.com. Questions about program requirements may be directed to Ginny Gorman, Child Care Bureau; Telephone 202–401–7260; electronic mail: *ggorman@acf.dhhs.gov* or John Coakley, ACF Region IX, San Francisco; Telephone 415–437–8554; Electronic Mail jcoakley@acf.dhhs.gov.

B. Application Requirements

To be considered for a grant, each application must be submitted on the forms provided in the Application Kit and in accordance with the guidance provided below. The application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by terms and conditions of the grant award. If more than one agency is involved in submitting a single application, one entity must be identified as the applicant organization that will have legal responsibility for the grant.

C. Paperwork Reduction Act of 1995 (Public Law 104–13)

The Uniform Project Description information collection within this Program Announcement is approved under Uniform Project Description (0970–0139).

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

D. Notification Under Executive Order 12372

This program announcement is not covered under Executive Order 12372, Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities."

E. Availability of Forms and Other Materials

A copy of the forms that must be submitted as part of an application and instructions for completing the application are provided in the Application Kit. Legislation referenced in Part I, section B.2 of this announcement and the CCDF Final Rule (45 CFR parts 98 and 99) may be found in major public libraries and on the Child Care Bureau's website at http://www.acf.dhhs.gov/programs/ccb/policy1/index.htm. Additional copies of this announcement may be obtained by calling 1–800–351–2293. Many standard forms can also be downloaded and printed from the following ACF webpage: http://www.acf.dhhs.gov/programs/oa/form.htm.

An Application Kit containing the necessary forms and a "Supplemental Guide to Develop a Funding Application for Native Hawaiian and Nonprofit American Indian Organization Child Care Grants" may be obtained from: Department of Health and Human Services, Administration for Children and Families, Child Care Bureau, Room 2046, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20447, *Attention:* ACYF–PA–CCB–2001–01, *Telephone:* (202) 401–7260.

F. Application Consideration

All applications that are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation against the specific competitive grant area criteria outlined in Part V of this announcement. This review will be conducted in Washington, D.C., by panels of non-Federal experts knowledgeable in the areas of tribal child care, early childhood education and other relevant areas.

Application review panels will assign a score to each application, identifying its strengths and weaknesses. Both Central and Regional Hub office staff will conduct administrative reviews of the applications and the results of the competitive review panels and will recommend applications for funding to the Commissioner, ACYF. The Commissioner will make the final

selection of the applications to be funded. The Commissioner may also elect not to fund any applicants having known management, fiscal, reporting, program, or other problems which make it unlikely that they would be able to provide effective services.

Successful applicants will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, and the budget period for which initial support will be given.

Organizations whose applications will not be funded will be notified in writing by the Commissioner of the Administration on Children, Youth and Families. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

Part VII. Application Content and Submission Instructions

A. Application Content

Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, REV 4–92). Follow the instructions in the Application Kit. In Item 8 of Form 424, check "New." In Item 10 of the 424, clearly identify the *Catalog of Federal Domestic Assistance* (CFDA) program title and number: Child Care and Development Block Grant, 93.575.

2. Budget and Budget Justification (Standard Form 424A, REV 4–92). Follow the instructions in the Application Kit. The budget justification should be typed on standard size plain white paper, provide breakdowns for major budget categories and justify significant costs. List amounts and sources of all funds, both Federal and non-Federal, to be used for this project.

3. Project Summary/Abstract (one page maximum). Clearly mark this page with the applicant name as shown in item 5 of the SF 424, identify the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the SF 424. The summary description should not exceed 300 words.

Care should be taken to produce a summary which accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results and benefits expected.

4. Assurances/Certifications. The applicant must sign and return a SF 424B, Assurances—non-Construction Programs form and the Certification Regarding Lobbying form and return them with the application. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances and certifications. *Note:* Although construction is an allowable cost if approved by ACF (see Part III, G), the non-construction assurances are required for purposes of this application. All requirements related to construction will be addressed through the separate application process for construction and renovation.

In addition, the applicant must certify its compliance with: (1) Drug-Free Workplace Requirements; (2) Debarment and Other Responsibilities; and (3) Pro-Children Act of 1994 (Certification Regarding Environmental Tobacco Smoke). A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, Debarment and Other Responsibilities and Environmental Tobacco Smoke Certifications. A signature on the application constitutes an assurance that the applicant will comply with the pertinent Departmental regulations contained in 45 CFR Part 74.

5. Documents of Support. The maximum number of pages for supporting documentation is 10 pages, double-spaced, exclusive of letters of support or agreement. These documents must be numbered and might include resumes, photocopies of news clippings, evidence of the program's efforts to coordinate child care services at the local level, etc. Documentation over the ten-page limit will not be reviewed. The applicant may, however, include as many letters of support or agreement as are appropriate.

B. Application Submission

To be considered for funding, the applicant must submit one signed original and two additional copies of the application, including all attachments, to the application receipt point specified above. The original copy of the application must have original signatures, signed in *black* ink. Each copy must be stapled (back and front) in the upper left corner. All copies of an application must be submitted in a single package.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review.

(*Catalog of Federal Domestic Assistance:* Child Care and Development Block Grant, 93.575)

Dated: November 3, 2000.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 00–28796 Filed 11–08–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1033]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Draft Guidance for Industry on Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 11, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Draft Guidance for Industry on Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank

In the **Federal Register** of March 29, 2000 (65 FR 16620), FDA issued a draft guidance to industry on recommendations for investigational new drug application (IND) sponsors on submitting information about clinical trials for serious or life-threatening diseases to a Clinical Trials Data Bank developed by the National Library of Medicine, National Institutes of Health (NIH). This information is especially important for patients and their families seeking opportunities to participate in clinical trials of new drug treatments for serious or life-threatening diseases. The draft guidance describes three collections of information: Mandatory submissions, voluntary submissions, and certifications.

I. Mandatory Submissions

Section 113 of the Food and Drug Administration Modernization Act (the Modernization Act) (Public Law 105–115) requires that sponsors shall submit information to the Clinical Trials Data Bank when the clinical trial: (1) Involves a treatment for a serious or life-threatening disease, and (2) is intended to assess the effectiveness of the treatment. The draft guidance discusses how sponsors can fulfill the requirements of section 113 of the Modernization Act. Specifically, sponsors should provide: (1) Information about clinical trials, both federally and privately funded, of experimental treatments (drugs, including biological products) for patients with serious or life-threatening diseases; (2) a description of the purpose of the experimental drug; (3) patient eligibility criteria; (4) the location of clinical trial sites; and (5) a point of contact for patients wanting to enroll in the trial.

II. Voluntary Submissions

Section 113 of the Modernization Act also specifies that sponsors may voluntarily submit information pertaining to results of clinical trials, including information on potential toxicities or adverse effects associated with the use or administration of the investigational treatment. Sponsors may also voluntarily submit studies that are not trials to test effectiveness, or not for serious or life-threatening diseases, to the Clinical Trials Data Bank. This notice of proposed collection only applies to the voluntary submission of information pertaining to studies that are not trials to test effectiveness or not for serious or life-threatening diseases. Any paperwork burden associated with the voluntary submission of information pertaining to the results of clinical trials will be discussed in the implementation document.

III. Certifications

Section 113 of the Modernization Act specifies that the data bank will not include information relating to a trial if the sponsor certifies to the Secretary of Health and Human Services (the Secretary) that disclosure of the information would substantially interfere with the timely enrollment of subjects in the investigation, unless the Secretary makes a determination to the contrary.

Description of Respondents: A sponsor of a drug or biologic product regulated by the agency under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act (42 U.S.C. 262) who submits a clinical trial to test effectiveness of a drug or biologic product for a serious or life-threatening disease.

Burden Estimate: The information required under section 113(a) of the Modernization Act is currently submitted to FDA under 21 CFR part 312, and this collection of information is approved under OMB Control Number 0910–0014 until September 30, 2002, and, therefore, does not represent a new information collection requirement. Instead, preparation of submissions under section 113 of the Modernization Act involves extracting and reformatting information already submitted to FDA. Although the procedures (where and how) for the actual submission of this information have not yet been developed, the agency believes it has an adequate basis for the determination of the hourly burden related to extracting and reformatting this information. The chart below provides an estimate of the annual reporting burden for the submission of information to satisfy requirements of section 113 of the Modernization Act. The Center for Drug Evaluation and Research (CDER) is currently receiving 99.2 new protocols per week (mean value, March through May 1999), or 5,158 new protocols per year. CDER anticipates that protocol submission rates will remain at or near this level in the near future. Of these new protocols, an estimated two-thirds are for serious or life-threatening diseases and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 5,158 protocols per year is 3,439 new protocols per year. An estimated 65 percent of the new protocols for serious or life-threatening diseases submitted to CDER are for clinical trials involving assessment for effectiveness, and are subject to the mandatory reporting requirements under section 113 of the Modernization Act. Sixty-five percent of 3,439 protocols per year is 2,235 new protocols per year subject to mandatory reporting. The remaining 2,923 new protocols per year are subject to voluntary reporting.

The Center for Biologics Evaluation and Research (CBER) is currently receiving 29 new protocols per month, or 348 new protocols per year. CBER anticipates that protocol submission rates will remain at or near this level in the near future. An estimated two-thirds of the new protocols submitted to CBER are for clinical trials involving a serious or life-threatening disease, and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 348 new protocols per year is 232 new protocols per year. An estimated 65 percent of the new protocols for serious or life-threatening diseases submitted to CBER are for clinical trials involving assessments for effectiveness. Sixty-five percent of 232 protocols per year is an estimated 151 new protocols per year subject to the mandatory reporting requirements under section 113 of the Modernization Act. The remaining 197 new protocols per year are subject to voluntary reporting.

The estimated total number of new protocols for serious or life-threatening diseases subject to mandatory reporting requirements under section 113 of the Modernization Act is 2,235 for CDER plus 151 for CBER, or 2,386 new protocols per year. The remainder of protocols submitted to CDER or CBER will be subject to voluntary reporting, including clinical trials not involving a serious or life-threatening disease as well as trials in a serious or life-threatening disease but not involving assessment of effectiveness. Therefore, the total number of protocols (5,506) minus the protocols subject to mandatory reporting requirements (2,386) will be subject to voluntary reporting, or 3,120 protocols.

It was originally estimated that the protocol submissions to the data bank will be updated 2.5 times per year under section 113 of the Modernization Act. In the **Federal Register** of March 29, 2000, the agency requested comments on the proposed collection of information. One comment was received. The comments stated that FDA greatly underestimated the burden by excluding multicenter studies and not accounting for the quality control review of the data before it is submitted to the data bank. We estimated that 5,506 new protocols are submitted each year and each new protocol is updated 2.5 times per year with information that would necessitate a change in the data bank. We further estimated that each change requires an average of 5.6 hours resulting in 77,084 hours spent by respondents per year. These estimates included protocols subject to mandatory and voluntary reporting requirements.

For the revised justification, we reviewed actual IND data from 1997 to 1999, and as a result of our reanalysis we incorporated new estimates that consider multicenter studies. The average number of IND amendments submitted annually for protocol changes (e.g., changes in eligibility criteria) was 4,019 for CDER and 1,441 for CBER. The average number of IND amendments submitted annually for new investigators was 7,745 for CDER and 1,349 for CBER. The number of protocol changes and new investigators was apportioned proportionally between mandatory and voluntary submissions. We recognize that single submissions may include information about multiple sites.

Generally, there is no submission to FDA when an individual study site is no longer recruiting study subjects. For this analysis, we assumed that the number of study sites closed each year is similar to the number of new investigator amendments received by FDA (7,745 CDER and 1,349 CBER).

Generally, there is no submission to FDA when the study is closed to enrollment. We estimate the number of protocols closed to enrollment each year is similar to the number of new protocols submitted (5,158 CDER and 348 CBER).

The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted under section 113(a) of the Modernization Act, including the time it takes to extract and reformat the information. FDA has been advised that some sponsors lack information system capabilities enabling efficient collection of company-wide information on clinical trials subject to reporting requirements under section 113(a) of the Modernization Act. The estimation of burden under section 113(a) reflects the relative inefficiency of this process for these firms.

Based on its experience reviewing IND's, and consideration of the above information, FDA estimated that approximately 5.6 hours on average would be needed per response (mean value), based on an estimated 3.2 hours for data extraction and 2.4 hours for reformatting. We considered quality control issues when developing the original burden estimates of 3.2 hours for data extraction and the 2.4 hours estimated for reformatting. Additionally, the data entry system being developed incorporates features that will further decrease the sponsor's time requirements for quality control procedures. No new estimates for quality control are included in the reanalysis.

The new estimate continues to use an average of 5.6 hours per response for calculations related to new submissions. Changes related to the addition and deletion of investigational sites will involve minimal resource commitments from the sponsor. Further, many protocol changes will not require changes to the data bank. Other protocol changes will require minimal time to make changes to the data bank (e.g., modification of eligibility criteria). The 5.6 hours per response estimate for these types of responses is high.

A sponsor of a study subject to the requirements of section 113 of the Modernization Act will have the option of submitting data under that section or certifying to the Secretary that disclosure of information for a specific protocol would substantially interfere with the timely enrollment of subjects in the clinical investigation. FDA has no means to accurately predict the proportion of protocols subject to the requirements of section 113 of the Modernization Act that will be subject to a certification submission. However, it is anticipated that the burden associated with such certification will be comparable to that associated with submission of data regarding a protocol. Therefore, the overall burden is anticipated to be the same, regardless of whether the sponsor chooses data submission or certification for nonsubmission. The table below reflects the estimate of this total burden.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

	New Protocols	Recruitment Complete	Protocol Changes	New Investigators	Sites Closed	Total Responses	Hours per Response	Total Hours
CDER (mandatory)	2,235	2,235	1,728	3,330	3,330	12,858	5.6	72,005
CBER (mandatory)	151	151	620	580	580	2,082	5.6	11,659
CDER (voluntary)	2,923	2,923	2,291	4,415	4,415	16,967	5.6	95,015
CBER (voluntary)	197	197	821	769	769	2,753	5.6	15,417
Total								194,096

[1] There are no capital and startup, or operation and maintenance costs associated with this collection of information.

The revised burden estimate for responses (34,660) is 2.5 times the original estimate (13,765).

We believe that the original burden estimate of 77,084 hours spent per year underestimated the burden. The new estimate, 194,096 hours per year (34,660 responses x 5.6 hours per response), more accurately reflects the burden.

NIH and FDA are considering a pilot program for the electronic submission of protocol information over the Internet. The purpose of the pilot project is twofold. First, the pilot project will allow FDA to test its systems for receiving electronic submissions under section 113 of the Modernization Act. Second, the pilot project will provide opportunities for volunteers to gain experience in using the prototype system that will enable them to provide technical feedback on how well the system is working, and also to offer suggestions for change. The experience gained from this pilot project also will facilitate the development of the implementation plan.

FDA anticipates that up to 25 sponsors will volunteer to participate in a pilot program involving the electronic submission of protocol information over the Internet. Protocol information entered into the system during the pilot project will be included in the Clinical Trials Data Bank (ClinicalTrials.gov). We estimate that each sponsor will include 10 protocols in the data bank. We estimate that each protocol will be modified two times and add three new sites. It is assumed that the sites will remain open for the duration of the pilot. The one-time burden estimate for the pilot program is 8,400 (1,500 responses x 5.6 hours/response). Since the pilot protocols will be included in the ClinicalTrials.gov data bank, the estimated annual burden for the first year will be reduced by the number of protocols included in the pilot.

FDA estimates the burden of the collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	New Protocols	Protocol Changes	New Investigators	Total Annual Responses	Hours per Response	Total Hours
CDER	200	400	600	1,200	5.6	6,720
CBER	50	100	150	300	5.6	1,680
Total						8,400

[1] There are no capital and startup, or operation and maintenance costs associated with this collection of information.

Dated: November 6, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28851 Filed 11–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1441]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Infant Formula Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 11, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Infant Formula Requirements (OMB Control Number 0910–0256)—Extension

Statutory requirements for infant formula under the Federal Food, Drug, and Cosmetic Act (the act) are intended to protect the health of infants and include a number of reporting and recordkeeping requirements. Among other things, section 412 of the act (21 U.S.C. 350a) requires manufacturers of infant formula to: (1) Establish and adhere to quality control procedures, (2) notify FDA when a batch of infant formula that has left the manufacturers' control may be adulterated or misbranded, and (3) keep records of distribution. FDA has issued regulations to implement the act's requirements for infant formula in parts 106 and 107 (21 CFR parts 106 and 107). FDA also regulates the labeling of infant formula under the authority of section 403 of the act (21 U.S.C. 343). Under the labeling regulations for infant formula in part 107, the label of an infant formula must include nutrient information and directions for use. The purpose of these labeling requirements is to ensure that consumers have the information they need to prepare and use infant formula appropriately. In a document published in the **Federal Register** of July 9, 1996 (61 FR 36154), FDA proposed changes in the infant formula regulations, including some of those listed in tables 1 and 2 of this document. The document included revised burden estimates for the proposed changes and solicited public comment. In the interim, however, FDA is seeking an extension of OMB approval for the current regulations so that it can continue to collect information while the proposal is pending.

In the **Federal Register** of August 18, 2000 (65 FR 50539), the agency requested comments on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Federal Food, Drug, and Cosmetic Act (the Act) or 21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Section 412(d) of the act	4	7	28	10	280
106.120(b)	4	0.25	1	4	4
107.10(a) and 107.20	4	7	28	8	224
107.50(b)(3) and (b)(4)	3	4	12	4	48
107.50(e)(2)	3	0.33	1	4	4
Total					560

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
106.100	4	10	40	4,000	16,000
107.50(c)(3)	3	10	30	3,000	9,000
Total					25,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compiling these estimates, FDA consulted its records of the number of infant formula submissions received in the past. The figures for hours per response are based on estimates from experienced persons in the agency and in industry.

Dated: November 6, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28852 Filed 11–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Radiological Health Reengineering; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA), Center for Devices and Radiological Health (CDRH), is announcing a public workshop intended to gather information regarding its radiological health programs. The topic to be discussed is reengineering of electronic product radiation control processes with attention to prioritization, information exchange on new technology and public health issues, standards, and product testing.

Date and Time: The public workshop will be held on November 15 and 16, 2000, 8:30 a.m. to 4:30 p.m.

Location: The public workshop will be held at the Holiday Inn, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Joanne Barron, Center for Devices and Radiological Health (HFZ–342), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4654, FAX 301–594–4672, e-mail: jxb@cdrh.fda.gov.

SUPPLEMENTARY INFORMATION: At the workshop, FDA would like to hear whether certain radiological health programs and processes would benefit from changes and, if so, which changes would be most effective. The purpose of reengineering the radiological health processes is to make the best use of FDA expertise and resources in performing activities that best fulfill FDA's role in radiation protection. While reengineering provides opportunities to shift priorities. FDA also would like to establish partnerships with others who have a role in radiation protection from electronic products.

During the past 2 years, FDA obtained comments from stakeholders on improvements needed in the radiological health program. Comments received suggested four areas for improvement: (1) Prioritization, (2) information exchange, (3) standards, and (4) product testing. Several FDA teams considered the ideas and now would like public participation in revising the processes. CDRH must prioritize the use of limited resources to effectively and efficiently address these public health concerns. To that end, FDA issues recommendations and guidance and develops and enforces regulatory performance standards for radiation-emitting electronic products to minimize exposures to unnecessary radiation. FDA develops test methods and tests electronic products to ensure conformance to standards, identify nationwide exposure trends, and provide a basis for analyzing new technologies. FDA and stakeholders need information on product emissions, exposures, use, and health effects as a basis for decisions and actions. CDRH expects this public workshop to benefit the radiological health reengineering effort by developing practical solutions to the following questions:

1. How should CDRH choose and implement specific radiological health activities and set priorities?
2. How can CDRH optimize and improve the development/administration of electronic product radiation standards, recommendations, and guidances?
3. How can CDRH optimize and improve the evaluation of radiation emissions and exposures from electronic products?
4. How can CDRH better communicate and network with partners (States, other Federal agencies, industry, health professionals, standards organizations, etc.) regarding its radiological health program?

FDA will conduct concurrent breakout sessions on each of the four topics during this public workshop.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, fax number, and e-mail address), and written material and requests to make oral presentations to Diarra Hall at Laurel Consulting Group, 14504 Greenview Dr., suite 500, Laurel, MD 20708, 301–490–5500, FAX 301–490–7260 by November 13, 2000; or complete the registration form that is available at http://www.fda.gov/cdrh/reenging/radhlth/index.html.

If you need special accommodations due to a disability, please contact Diarra Hall in advance.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page.

Dated: November 2, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–28694 Filed 11–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1562]

Draft Guidance for Industry on Cancer Drug and Biological Products—Clinical Data in Marketing Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

availability of a draft guidance for industry entitled "Cancer Drug and Biological Products—Clinical Data in Marketing Applications." The draft guidance document provides recommendations for sponsors designing clinical trials to demonstrate the safety and efficacy of cancer treatments on the collection of data that may be submitted to support marketing claims in new drug applications (NDA's), biologics license applications (BLA's), or applications for supplemental indications.

DATES: Submit written comments on the draft guidance by January 8, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Grant A. Williams, Center for Drug Evaluation and Research (HFD–150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5740, or Patricia Keegan, Center for Biologics Evaluation and Research (HFM–573), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5093.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Guidance for Industry: Cancer Drug and Biological Products—Clinical Data in Marketing Applications." This draft guidance provides general principles for data collection and submission for sponsors of investigational new drug applications, NDA's, BLA's, or applications for supplemental indications. It is intended to enable sponsors to more effectively create plans to record and report the data from controlled trials that form the clinical basis for approval of anticancer drug and biological products.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (65 FR 56468, September 19, 2000). The draft guidance represents the agency's current thinking on clinical data in marketing applications for cancer drug or biologic products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm.

Dated: October 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28776 Filed 11–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Statement of Mission, Organization, Functions and Delegation of Authority

Part G, of the statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, as amended at 60 FR 56606, November 9, 1995, and most recently amended at 61 FR 67048, December 19, 1996, is amended to reflect a reorganization of the Office of Public Health (GAB), Indian Health Service (IHS).

The changes are as follows:

Delete the functional statements for the Office of Public Health in their entirety and replace with the following:

Section GAB–00, Office of Public Health, IHS—Mission. The Office of Public Health, IHS defines its mission as a commitment to the well-being and cultural integrity of Indian people through a participatory and consultative process. The goal of the Office of Public Health is to elevate the health status of American Indian and Alaska Native (AI/AN) people to the highest possible level by (1) providing and/or assuring availability; (2) providing increasing opportunities for Indians to manage and operate their own health programs; and (3) serving as an advocate for Indian people.

Section GAB–10, Functions Office of Public Health (OOH) (GAB). (1) Advises and supports the Director, Indian Health Service (IHS), on policy, budget formulation, resource allocation regarding the operation and management of IHS direct, tribal, and urban public health programs, risk management, quality assurance, facilities programs, and self-determination; (2, provides agency-wide leadership and consultation to IHS direct, tribal, and urban public health programs on IHS goals, objectives, policies, standards, and priorities; (3) represents the IHS within the HHS and external organizations for purposes of liaison, professional collaboration, cooperative ventures, and advocacy; (4) manages and provides national leadership and consultation for IHS and Area offices on strategic and tactical planning, program evaluation and assessment, public health and medical services, research agendas, and special public health initiatives for the agency; (5) manages the design, development, and assessment for implementation of resource requirements and resource allocation methodology models for the agency; (6) manages demographic and program databases and performs statistical and epidemiological analyses and consultation; (7) carries out IHS responsibilities as required by the United States Federal Response Plan under Emergency Support Function No. 8; (8) assures agency compliance with the Code of Federal Regulations 45, Part 46, Protection of Human Subjects; and (9) manages and administers the functions related to business office services, contract health care, clinical and community services, preventive services, managed care, hospitals and ambulatory care centers, general public health practices and advocacy, environmental health, realty, facilities construction, facilities operation and management, and environmental engineering.

Office of Executive Management (GAB–1). (1) Provides leadership and advice to the Director and public health programs on policy, budget, personnel, business office and the health care financing administration issues, and general administration; (2) represents the Director, Office of Public Health (OPH), in meetings with IHS employees and high-level management officials within the IHS, HHS, or other Federal agencies, tribes, and other organizations on administrative/management and policy issues. (3) participates with the National Council of Executive Officers, and meets with HHS/IHS leadership to provide agency advice on management and administrative matters; (4) administers, monitors, and assists in the development of office and program budgets and budget formulation; (5) manages and oversees the IHS third party revenue generation activity; (6) participates in self-determination issues and processes pertaining to budget and tribal shares computation (7) functions as operational manager for administrative policies and activities within the OPH; and (8) provides guidance and carries out OPH responsibilities regarding Equal Employment Opportunities (EEO), labor relations, and other employee relations activities.

Administrative Management Team. (1) Provides program budget execution, analysis, and oversight; (2) provides guidance and coordinates the development and review of the OPH sections of the Department and Congressional budgets and presentation materials; (3) coordinates and assists in review of responses to budget inquiries and budgets materials for Congressional hearings and meetings; (4) coordinates, develops, promulgates, and maintains administrative policies, procedures, and manual issuances for the OPH; (5) monitors and administers existing agency administrative policies for OPH; (6) provides the OPH executive secretariat function; (7) serves as the review and coordinating point for OPH managed intra and interagency agreements; (8) serves as the principal resource for OPH personnel management and training issues consultation; (9) serves as the principal resource for OPH office space, property and supply activities; (10) serves as a general administrative resource for special activities/initiatives; and (11) provides direction and oversight on daily operations for the OPH.

Business Office Services Team. (1) Serves as the primary focal point for Business Office Services (BOS) program operations and policy issues and represents BOS in national forums; (2) ensures improvement of the effectiveness and efficiency of the revenue generation activity, and provides support for local capacity building. (3) develops, disseminates, and maintains BOS policy and procedures manual (4) develops and promulgates standards and conducts BOS program reviews on a recurring, scheduled basis; (5) provides national leadership for Medicare, Medicaid, and private insurance reimbursement policy and procedures; (6) serves as the primary liaison with the Health Care Financing Administration for rate setting negotiations (7) serves as the focal point regarding Medicare and Medicaid managed care activities, including the review, evaluation, and monitoring of Sections 1115 and 1915(b) Medicaid waiver proposals and other State and Federal health care reform activities; (8) provides programmatic management of information systems for patient registration and billing and collections systems (9) assures training on various regulatory issues and negotiated managed care provider agreements; and (10) develops third-party budget materials and responds to congressional departmental inquiries regulating to third-party issues.

Office of Program Support (GAB–2). (1) Serves as a coordinating point for public health advocacy and as a source of technical support, development, and dissemination of policy advice for IHS Headquarters, OPH, Area offices, and facilities programs on the full scope of the public health and health data issues and activities; (2) serves as a resource and provides coordination and consultation to the IHS direct, tribal, and urban health programs (I/T/U) on public health issues; (3) provides and directs public health surveillance, intervention, research and evaluation programs, and the information systems to support them; (4) develops and coordinates agency strategic planning and performance measurement efforts with budgeting and requirements in consultation with OPH program staff; (5) provides consultation and coordination on the IHS budget formulation activity for planing and data purposes; (6) maintains, analyzes, makes accessible, and publishes results from national demographic and program databases; and (7) performs statistical and epidemiological consultation and coordination for the IHS in response to special conditions and communicable disease outbreaks of public health significance.

Office of Clinical and Preventive Service (GAB1). (1) Serves as the primary source of technical and policy advice, and supports local capacity building for clinical and public health infrastructure for the IHS, Area offices, and I/T/U programs, on the full scope of clinical health care programs, including their quality assurance and preventive aspects, and tort claims; (2) provides leadership in articulating the clinical needs of the American Indian/Alaska Native (AI/AN) population and competing health care needs; (3) advocates the resource needs of specialized health care delivery providers of clinical services disciplines; (4) provides leadership, consultation and technical support to I/T/U public health programs; (5) develops, manages, and administers the program functions that includes, but are not limited to, behavioral health, chronic disease such as diabetes and cancer, dental services, emergency medial services, health records, maternal and child health, social services, pharmacy services, nursing services, nutrition and dietetics, laboratory, disabilities, and contract health care services; (6) investigates evidence-based and best practice models of service delivery for dissemination to community service locations; and (7) coordinates development of staffing requirements for new or replacement health care facilities and approves Congressional budget requests for staffing.

Division of Behavioral Health (GAB11). (1) Identifies industry program standards and monitors and evaluates community and Area-wide services provided through grants or contracts with Indian tribes, Indian organizations, and direct IHS operations in the area or mental health, social services, alcohol/substance abuse, and health education; (2) coordinates the Indian community behavioral health programs, such as alcoholism/substance abuse, mental health, social work, and health education with tribal program directors, division staff, Area line staff, and other agencies and institutions; (3) coordinates contracts and grants for behavioral health services and monitors services provides; (4) makes program and policy changes using data analysis, recommendations from operations levels, and research results. Coordinates resources allocation from program policies; (5) plans, develops, and coordinates a comprehensive mental health, social service, substance abuse and health education program and programs for children with special needs; (6) provides behavioral health program consultation to tribal groups and IHS staff; (7) provides leadership in the identification of behavioral change interventions and supports implementations at the community level; (8) coordinates with State, Federal, professional, private, and community organizations on alternate health care resource; (9) provides leadership in measuring and evaluating the quality of behavioral health care services; and (10) prepares information on behavioral health for budgetary hearings, and program evaluation results for the IHS Director, the Congress, and the American people.

Division of Clinical and Community Services (GAB12). (1) Manages, develops, coordinates, and evaluates a comprehensive clinical and community program focusing on diabetes, maternal/child health, Indian children services, nutrition, AIDS, pharmacy, laboratory, health records, and health promotion and disease prevention; (2) develops and establishes standards for clinical and community services and special initiatives; (3) develops objectives, priorities, and methodologies for the conduct and evaluation of clinical and community health-based program; (4) provides, develops, and implements IHS guidelines, policies, and procedures on clinical and community based programs and initiatives; (5) monitors, evaluates, and provides consultation to clinical and community programs and new initiatives; (6) plans jointly with other agencies on research and coordinated services; (7) coordinates training needs and staff recruitment, assignment and development to meet service unit, area, and tribal needs; (8) provides increased awareness for health promotion and disease prevention and the maintenance of health; (9) coordinates and monitors contracts and grants with I/T/Us and other entities; (10) coordinates model diabetes program sites and provides support and direction to I/T/Us on diabetes related issues; (11) develops and disseminates information and materials to IHS facilities and (I/T/U); and (12) develops program budget materials and responds to congressional and department inquiries.

Division of Nursing Services (GAB13). (1) Manages the IHS Nursing Services, Women's Health, and Community Health Representative programs and advocates for program needs; (2) plans, develops, coordinates, and evaluates nursing and the community health representative program; (3) identifies and establishes standards for nursing services and the community health representative program; (4) provides leadership, professional guidance, and staff development; (5) plans, develops, coordinates, manages, and evaluates nursing education; (6) coordinates the assignment and development of professional staff, including nursing recruitment staff, and scholarship recipients, to meet Service Unit, Area, and tribal needs in accordance with IHS policies and procedures; (7) provides guidance in planning, developing, and maintaining management information systems; and (8) prepares budgetary data, analysis and program evaluations and prepares information for program and budget presentations and congressional hearings.

Division of Oral Health (GAB14). (1) Plans, develops, coordinates, and evaluates dental health programs; (2) establishes staffing, procedural, facility, and dental contract standards; (3) coordinates professional recruitment, assignment, and staff development; (4) improves effectiveness and efficiency of dental programs; (5) develops resource opportunities and monitors utilization of resources for dental health programs; (6) formulates and allocates dental program budget; (7) advocates for oral health needs of AI/AN population; (8) coordinates health promotion and disease prevention activities for the dental program; and (9) monitors oral health status and treatment needs of the AI/AN population.

Division Contract Care and Risk Management (GAB15). (1) Plans, develops, and coordinates the Contract Health Service (CHS) program; (2) serves as the primary focal point for Contract Health Support (CHS) program operations and policy issues, and represents CHS in national forums; (3) develops, disseminates, and maintains CHS policy and procedures manual; (4) conducts CHS program reviews on a recurring, scheduled basis; (5) monitors the implementation of the IHS payment policy and reports the status to the Director, OPH; (6) administers the Catastrophic Health Emergency Fund; (7) administers the CHS Quality Assurance Fund; (8) administers the CHS claims adjudication activity for the IHS Headquarters; (9) administers the IHS fiscal intermediary contract and conducts data analysis; (10) coordinates the development of the CHS budget and the allocation of resources; (11) provides consultation to Headquarters and Area offices, and responds to inquiries from the Congress, tribes, and other Federal agencies; (12) serves as the primary source of technical and policy advice and consultation for IHS Headquarters and the OPH on risk management, quality assurance, and workers compensation; (13) manages the clinical features of tort claims against the IHS; (14) develops and disseminates clinical and personal risk management recommendations; (15) manages the IHS workman's compensation claims; and (16) oversees IHS efforts in a variety of quality assurance and improvement activities.

Office of Environmental Health and Engineering (GAB2). (1) Serves as the primary source of technical and policy advice for IHS Headquarters and Area offices, tribal, and urban public health programs on the full scope of health care facilities, sanitation facilities construction (SFC) and management, environmental health, environmental engineering, clinical engineering, and realty services management; (2) develops objectives, priorities, standards, and methodologies for the conduct and evaluation of environmental health, environmental engineering, and facilities engineering and management activities; (3) coordinates the formulation of the IHS Facilities budget request and responds to all inquiries about the budget request and programs funded by the IHS Facilities appropriation; (4) maintains needs-based and workload-based methodologies for equitable resource distribution for all funds appropriated under the IHS Facilities appropriation; (5) provides leadership, consultation, and staff development to assure functional, safe, and well-maintained health care facilities, a comprehensive environmental health program, and the availability of water, sewer, and solid waste facilities for Indian homes and communities; and (6) coordinates the IHS responses to disasters and other emergency situations.

Division of Sanitation Facilities Construction (GAB21). (1) Develops, implements, and manages the environmental engineering programs including the SFC program, and compliance activities associated with environmental protection and historic preservation legislation; (2) provides agency-wide management assistance and special support/consultation to address special environmental public health problems, environmental engineering/construction activities and compliance with environmental legislation; (3) works closely with other Federal agencies to resolve environmental issues and maximize benefits to tribes by coordinating program efforts; (4) develops, implements, and evaluates agency program activities, objectives, policies, plans, guidelines, and standardized data systems for SFC activities; (5) consults with tribal groups/organizations in the development and implementation of SFC policies and initiatives, and in the identification of sanitation needs; (6) maintains a national inventory of current tribal sanitation facilities needs, and past and present projects to address those needs; and (7) allocates financial resources nationwide based on need and workload using the national data inventories.

Division of Environmental Health Services (GAB22). (1) Develops, implements, and manages IHS Environmental Health Services programs including the Injury Prevention and Institutional Environmental Health programs, and serves as the primary source of technical and policy advice for IHS Headquarters and Area offices on the full scope of environmental health issues and activities; (2) maintains interagency relationships with other Federal agencies and tribes to maximize interagency and intertribal responses to environmental health issues and maximize benefits to tribes by coordinating program efforts; (3) provides leadership in identifying and articulating environmental health needs of AI/AN populations and support efforts to build tribal capacity; (4) provides personnel support services and advocates for environmental health providers; (5) maintains, analyzes, makes accessible, and publishes results from national data bases; (6) manages resource allocation activities in accordance with established criteria based on workload; (7) develops and evaluates standards and guidelines for environmental health programs and activities; and (8) performs functions related to environmental health programs such as injury prevention, emergency response, water quality, food sanitation, occupational health and safety, solid and hazardous waste management, environmental health issues in health care and non-health care institutions, and vector control.

Division of Facilities Operations (GAB23). (1) Develops, implements, and manages the programs affecting health care facilities operations, including routine maintenance and improvement (M&I), quarters, realty, and clinical engineering programs; (2) develops, implements, monitors, and evaluates agency program activities, objectives, policies, plans, guidelines, and standardized data systems for health care facilities operations; (3) serves as principal resource for coordination of facilities operations and provides consultation to IHS and the tribes on health care facilities operations; (4) maintains realty and quarters management systems; (5) maintains clinical engineering management systems; (6) formulates financial resources allocation methodologies nation-wide based on need and workload data; (7) maintains nation-wide data on Federal and tribal facilities for program budget justification; and (8) develops and evaluates technical standards and guidelines for health care facilities operations.

Division of Facilities Planning and Construction (GAB24). (1) Develops, implements, and manages IHS Health Care Facilities Planning and Construction program, including the facilities planning process, facilities design process, facilities acquisition, and construction project management; (2) develops, implements, monitors, and evaluates agency program activities, objectives, policies, plans, guidelines, and standardized data systems for health care facilities planning and construction; (3) develops and maintains construction priority systems and develops project budget documents for the health care facilities construction program; (4) serves as the principal resource in providing leadership, guidance and coordination of health care facilities engineering activities for the IHS Headquarters, Area offices, and I/T/Us; (5) monitors construction activities and the improvement, alteration, and repair of health care facilities; and (6) develops and evaluates technical standards and guidelines for health care facilities construction.

Division of Engineering Services (Dallas, Seattle) (GAB25). (1) Administers health care facilities engineering and construction projects for specified Area offices and administers the engineering and construction of certain projects for other Federal agencies through interagency agreements; (2) carries out management activities relating to IHS-owned and utilized health care facilities, including construction, contracting, realty, and leasing services; (3) serves as the source of engineering and contracting expertise for assigned programs/projects and other technical programmatic areas affecting the planning, design, alteration, leasing, and construction of IHS health care and sanitation facilities for Indian homes and communities; (4) assists in the development of Area office annual work plans, and in studies, investigations, surveys, audits, facilities planning, and technical standards development, related to IHS tribal health care facilities.

Section GAB–20, Office of Public Health—Delegations of Authority. All delegations and redelegations made to officials in the Office of Public Health that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further redelegation.

This reorganization shall be effective on the date of signature.

Dated: October 13, 2000.

Michael H. Trujillo,

Director, Assistant Surgeon General.

[FR Doc. 00–28695 Filed 11–8–00; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Administrative Reporting Form (ARF) for the Women, Co-occurring Disorders and Violence Cooperative Agreement Program (Phase II)—New—The Women, Co-occurring Disorders, and Violence Study is funded by SAMHSA's Center for Substance Abuse Treatment (CSAT), Center for Substance Abuse Prevention (CSAP), and Center for Mental Health Services (CMHS) to produce knowledge on the development and effectiveness of integrated services for women with co-occurring mental health and substance abuse disorders who are victims of violence. Fourteen sites were funded in Phase I, and ten sites are expected to be funded in Phase II. During Phase I of the study (2 years), sites developed integrated service models. In Phase II, sites that successfully reapplied will test their interventions in a multi-site outcome study contrasting comprehensive, integrated, trauma-specific and Consumer/Survivor/Recovering Person (C/S/R) involved services to services as usual.

The Administrative Reporting Form (ARF) is a program monitoring instrument which is to be completed jointly by the project director, project staff members, and directors of participating organizations at each study site annually. The ARF collects information about the staffing and governance of each project, project accomplishments in the previous year, and specific project components.

Information collected with the ARF will be used in three ways. First, evaluators will use information from the ARF to describe the process of project implementation at each of the study sites. This information will ultimately contribute to "how-to" knowledge products for communities attempting to integrate services. Second, site visiting teams will use information from the ARF in their assessments of the sites and will make recommendations to each site of how the site can improve its project. Third, descriptive information from the ARF will be used to characterize each site's intervention in terms of the players involved, the services provided, the manner in which those services are integrated, and the manner in which C/S/R persons are involved. These characterizations will inform the interpretation of the client-level data in the outcome study.

The estimated annual burden for these reporting requirements is summarized below.

Respondent type	Number of respondents	Responses/respondent	Burden/response (hours)	Total burden hours
Project Directors	10	1	10	100

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 2, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–28609 Filed 11–8–00; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–75]

Notice of Submission of Proposed Information Collection to OMB; Rental Rehabilitation Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 11, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0080) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Rental Rehabilitation Program.

OMB Approval Number: 2506–0080.

Form Numbers: HUD–40014, 40014B, 40021, 40070, 40018, 40018A, 40022.

Description of the Need for the Information and its Proposed Use: Although the Rental Rehabilitation Program (RRP) has been terminated, the statute originally authorizing the RRP still imposes data collection and reporting requirements upon HUD and grantees, State and local governments. The information will be used by HUD to account for program funds and to satisfy statutory reporting requirements.

Respondents: Federal Government, State, Local or Tribal Government.

Frequency of Submission: On occasion, annually and recordkeeping.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
150		6		1.74		1,571

Total Estimated Burden Hours: 1,571.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 2, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–28744 Filed 11–8–00; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–76]

Notice of Submission of Proposed Information Collection to OMB; Lease and Sale of HUD-Acquired Single Family Properties for the Homeless

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 11, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0412) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Lease and Sale of HUD-Acquired Single Family Properties for the Homeless.

OMB Approval Number: 2502–0412.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The purpose of the program is to make available to applicants approved by HUD, through sale or lease, certain HUD-acquired single family properties for use in housing the homeless.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion.

Reporting Burden:

Number of respondents	x	Frequency of response	x	Hours per Response	=	Burden hours
300		1		2		600

Total Estimated Burden Hours: 600.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 2, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–28745 Filed 11–8–00; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–77]

Notice of Submission of Proposed Information Collection to OMB; Doctoral Dissertation Research Grant Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 11, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–XXXX) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Doctoral Dissertation Research Grant Program.

OMB Approval Number: 2528–XXXX.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Ph.D candidates will receive competitive grants to complete their doctoral dissertations on HUD-related topics.

Respondents: Individuals or household, not-for-profit institutions.

Frequency of Submission: Annually.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
80		1.56		21.68		2,710

Total Estimated Burden Hours: 2,710.

Status: New.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 2, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–28746 Filed 11–8–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–45]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 2, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 00–28591 Filed 11–8–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Friday, November 17, 2000, time 1:30 p.m. to 4:00 p.m.

Address: Greater Wilkes-Barre Chamber of Business & Industry, 2 Public Square, Wilkes-Barre, PA 18710.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission. 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: November 4, 2000.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 00–28767 Filed 11–8–00; 8:45 am]

BILLING CODE 5820–PE–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–01–1990–00; CACA–35511]

Imperial Project Proposed Open Pit Gold Mine, Southeastern Imperial County, CA

AGENCY: Bureau of Land Management, Department of the Interior, El Centro Field Office, California Desert District.

ACTION: Notice of availability of Final Environmental Impact Statement/Environmental Impact Report.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and 40 CFR 1503.4, this is notice that the Bureau of Land Management (BLM) and the County of Imperial have jointly published the Final Environmental Impact Statement/Environmental Impact Report (Final EIS/EIR) on the proposed Imperial Project. The Bureau of Land Management (BLM) has prepared a Final EIS/EIR for the Imperial Project, proposed by Glamis Imperial Corporation is an open-pit gold mine on about 1,500 acres of public land. The project is located on BLM-administered public lands in an unincorporated area of southeastern Imperial County, California. The Final EIS/EIR contains the BLM preferred alternative.

Interested citizens are invited to review a copy of the Final EIS. The entire document will be available on the internet at http://www.ca.blm.gov/elcentro/imperial project. The document also is available by request to the BLM El Centro Field Office on CD–ROM. The CD–ROM is in Adobe Acrobat Reader format, and contains a free download of Acrobat Reader so it can be opened easily.

List of Libraries to Which Copies of the Final EIS/EIR Have Been Sent

A limited number of paper copies of the Final EIS are available, and a copy may be obtained by telephoning or writing the contact person listed below. Public reading copies are available at the following public libraries:

Arizona Western College Library, 9500 South Avenue 8 East, Yuma, AZ 85365
Holtville Library, 101 East Sixth Street, Holtville, CA 92250
BLM Library SC–322A, Bldg. 50, Denver Federal Center, Denver, CO 80225
Brawley Public Library, 400 Main Street, Brawley, CA 92227
Calexico City Library, 850 Encinas Avenue, Calexico, CA 92231
El Centro Public Library, 539 State Street, El Centro, CA 92243
Imperial County Library, 1647 West Main Street, El Centro, CA 92243
Imperial County Free Library, 939 West Main Street, El Centro, CA 92243
Imperial Valley College Library, 380 East Aten Road, Imperial, CA 92251
Imperial Public Library, 200 W. Ninth Street, Imperial, CA 92251
Meyer Memorial Library, 225 West Main Street, Calipatria, CA 92233
Palo Verde District Library, 125 W. Chanslor Way, Blythe, CA 92225
San Diego City Public Library—Clairemont, 2920 Burgener Boulevard, San Diego, CA 92110–1027
San Diego City Public Library—Logan Hills, 811 South 28th Street, San Diego, CA 92113–2498
San Diego City Pub. Library—Mission Hills, 925 West Washington Street, San Diego, CA 92103–1895
San Diego City Public Library—Oak Park, 2802 54th Street, San Diego, CA 92105–4941
San Diego City Public Library—Paradise Hills, 5922 Rancho Hills Drive, San Diego, CA 92139–3137
San Diego County Public Library, 2130 Arnold Way, Alpine, CA 91901–9499
San Diego County Public Library, 652 Palm Canyon Drive, Borrego Springs, CA 92004–0297
San Diego County Public Library, 1309 Camino del Mar, Del Mar, CA 92014–2693
San Diego County Public Library, 201 E. Douglas, El Cajon, CA 92020–4519
San Diego County Public Library, 8055 University Avenue, La Mesa, CA 91941–5097
San Diego County Public Library, 1406 Monicito Road, Ramona, CA 92065–2296
San Diego County Public Library, 700 Eucalyptus Avenue, Vista, CA 92084–6245
San Diego State University Library, 720 Heber Avenue, Calexico, CA 92231
Sierra Club, San Diego Chapter Office Library, 3820 Ray Street, San Diego, CA 92104–3623
Yuma County Library District, 350 South 3rd Avenue, Yuma, AZ 85364.

DATES: Public comments on the Final EIS/EIR will be accepted at the BLM El Centro Field Office until close of business on November 27, 2000. Unless specifically requested otherwise, names of commentators will be available to the public. BLM will be rendering a decision on the proposed Project no sooner than mid-December 2000.

FOR ADDITIONAL INFORMATION CONTACT: Comments on the Final EIS/EIR should be addressed to Mr. Glen R. Miller, BLM El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243. To obtain copies of the Final EIS/EIR, contact Mr. Miller at (760) 337–4473. Fax requests may be sent to the attention of Mr. Glen Miller at (760) 337–4490. Requests also may be placed through email at: gmiller@ca.blm.gov. Please specify either CD–ROM or the specific volume(s) desired (see Supplemental Information below). Include your name, complete mailing address (no P.O. Boxes), and phone number on all requests.

SUPPLEMENTARY INFORMATION: A Draft EIS/EIR was published in November 1997, with a comment period closing on April 13, 1998. A Recirculated Supplement to the Draft EIS/EIR (SDEIS/EIR) was released in March 1999.

The Final EIS/EIR incorporates changes based on public comments received on the Draft EIS/EIR. The Final EIS/EIR contains the BLM Preferred Alternative, along with responses to written comments received during the 135-day public comment period for the Draft EIS/EIR. Both the Solicitor's Opinion on regulation of hardrock mining in the California desert, and a report of the task force of the Advisory Council on Historic Preservation are included as appendices to Volume I. The Final EIS/EIR has 3 volumes:

- Volume I—Main Text—(incorporates changes to DEIS/EIR, text and appendices)
- Volume II—Technical Appendices—(this is identical to the DEIS/EIR Volume II)
- Volume III—Public Comments to the Draft EIS/EIR and Responses to Comments—Written Comment Letters from Individuals/Petitions/Form Letters

Dated: October 27, 2000.

Greg Thomsen,

Field Manager.

[FR Doc. 00–27376 Filed 11–8–00; 8:45 am]

BILLING CODE 4210–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council (RAC). The meeting will be held on December 12, in Phoenix, Arizona. The RAC meeting will begin at 9:00 a.m. and will conclude at approximately 4:00 p.m. The agenda items to be covered include the review of the October 4, 2000 meeting minutes; BLM State Director's Update on legislation, regulations, and statewide planning efforts; Election of RAC Chair and Vice Chair; Draft National Off-Highway Vehicle Use Strategy Review and Discussion; Update on National Landscape Conservation System in Arizona, Report on 2001 Appropriations, Funding Allocation, and Arizona BLM Priorities; Update of State-Federal Land Exchange Agreement; Update on Las Cienegas National Conservation Area Legislation and Other Proposed Special Area Designations; Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on December 12, 2000, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Denise P. Merdith,

Arizona State Director.

[FR Doc. 00–28768 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a new information collection titled Production and Royalty Reporting for Geothermal Resources (OMB Control Number 1010–NEW).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we are soliciting comments on an information collection titled Production and Royalty Reporting for Geothermal Resources. We will submit an information collection request (ICR) regarding the collection of data supporting geothermal royalty payments to the Office of Management and Budget (OMB) for review and approval after this comment period closes. This information collection does not involve a standard report form or specific format. Rather, this information collection requires information that companies already use, and in the format that they use it, to calculate their royalty payments for geothermal resources.

DATES: Submit written comments on or before January 8, 2001.

ADDRESSES: Submit written comments to Connie Bartram, Acting Chief, Regulations and FOIA Team, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

Public Comment Procedure: Submit your comments to the office listed in the **ADDRESSES** section, or email your comments to us at *MRM.comments@mms.gov*. Include the title of the information collection and the OMB Control Number in the "Attention" line of your comment; also, include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Bartram at (303) 231–3410, FAX (303) 231–3385. We will post all comments at *http://www.rmp.mms.gov* for public review.

Also, contact Ms. Bartram to review paper copies of the comments. The comments, including names and addresses of respondents, are available for public review during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the public record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and FOIA Team, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov*. A copy of the ICR will be available to you without charge upon request.

SUPPLEMENTARY INFORMATION:

Title: Production and Royalty Reporting for Geothermal Resources.

OMB Control Number: 1010–NEW.

Bureau Form Number: N/A.

Abstract: The Secretary of the Department of the Interior (Secretary) is responsible under the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*), for the proper collection and disbursement of royalties due on Federal geothermal resources. We perform these royalty management functions on behalf of the Secretary by delegated authority. We are also designing new compliance and asset management processes to ensure that royalties are accurately and timely paid in the most cost effective manner possible. The goal of these processes is to reduce compliance verification from 6 years, our current audit cycle, to not more than 3 years. To achieve this goal, we find it necessary to collect supplemental production and valuation information.

When a company or individual enters into a geothermal lease with the United States Government, that company or individual agrees to pay a share (royalty) of the value of production to the United States. It is expressly understood that the Secretary may establish the values and minimum values of geothermal resources to compute royalties in accordance with applicable regulations. Royalty rates are specified in the lease document. Although specific lease language may vary, holders of Federal geothermal leases also agree to comply with reporting requirements prescribed by the Secretary's delegated official.

We currently collect only minimal information supporting geothermal royalty payments, usually on an as-needed, case-by-case basis at the time of audit. In fact, the only geothermal information that we routinely collect (from royalty reporters) at this time is the data reported on the Report of Sales and Royalty Remittance, Form MMS–2014. While this report in its revised form (see 65 FR 31598, May 18, 2000) will remain our principal document for the reporting and payment of geothermal royalties, it does not contain sufficient data to gauge the accuracy of the royalty payment. This is particularly true for those geothermal resources valued by the netback procedure and other indirect methods, which require multiple computational steps to derive the resource's value reported on the Form MMS–2014. Accordingly, we propose to collect supplemental information that supports the royalty payment. This information collection does not involve a standard report form or specific format. Rather, this information collection requires information that companies already use, and in the format that they use it, to calculate their royalty payment and value for geothermal resources.

Submission of this information will be mandatory. Proprietary information will be protected. There are no questions of a sensitive nature included in this information collection.

Frequency: Monthly.

Estimated Number and Description of Respondents: 20 geothermal lessees and operators.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 240 hours.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: N/A.

Comments: The Paperwork Reduction Act at 44 U.S.C. 3506(c)(2)(A) requires each agency "to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of

automated collection techniques or other forms of information technology.

The Paperwork Reduction Act also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens and need to know if there are other costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities.

Your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

The Paperwork Reduction Act provides that an agency shall not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: November 3, 2000.

Cathy J. Hamilton,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 00–28821 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of an information collection (OMB Control Number 1010–0074).

SUMMARY: To comply with the Paperwork Reduction Act of 1995, we are soliciting comments on an information collection titled, Coal Washing and Transportation Allowances. We will submit an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval after this comment period closes.

DATES: Submit written comments on or before January 8, 2001.

ADDRESSES: Submit written comments to Connie Bartram, Acting Chief, Regulations and FOIA Team, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

PUBLIC COMMENT PROCEDURE: You may mail your comments to us (see **ADDRESSES** section), or you may email your comments to us at *MRM.comments@mms.gov*. Include the title of the information collection and the OMB Control Number in the "Attention" line of your comment; also, include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Bartram at (303) 231–3410, FAX (303) 231–3385. We will post all comments at *http://www.rmp.mms.gov* for public review.

Also, contact Ms. Bartram to review paper copies of the comments. The comments, including names and addresses of respondents, are available for public review during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law.

There also may be circumstances in which we would withhold from the public record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Regulations and FOIA Team, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov*. A copy of the ICR will be available to you without charge upon request.

SUPPLEMENTARY INFORMATION:

Title: Coal Washing and Transportation Allowances.

OMB Control Number: 1010–0074.

Bureau Form Number: n/a.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries.

The Secretary is required by various laws to manage the production of mineral resources on Indian lands, to collect the royalties due, and to distribute the funds in accordance with those laws. The product valuation and allowance determination process that we perform on behalf of the Secretary is essential to assure that the Indians receive payment on the full value of the minerals being removed. When a company or an individual enters into a lease to develop, mine, and dispose of coal deposits from Indian lands, that company or individual (the lessee) agrees to pay the gross proceeds received from the sale of production from the leased lands.

Royalty rates are specified in an Indian lease agreement. The lessee is required to report various kinds of information to the lessor relative to the transportation, processing, and commercial transactions associated with the disposition of the leased minerals. In order to determine whether the amount of royalty tendered represents the proper royalty due, it is necessary to establish the value of the coal being sold or otherwise disposed of in some other manner (for example, used by the lessee). Under some circumstances the lessee may be authorized to deduct certain costs in the calculation of royalties due from an Indian lease, and allowances may be granted from royalties to compensate the lessee for the reasonable actual cost of washing and transporting the royalty portion of coal.

Frequency: Annually.

Estimated Number and Description of Respondents: 1 company or individual entering into an Indian lease.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 2 hours.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: n/a.

Comments: The Paperwork Reduction Act at 44 U.S.C. 3506(c)(2)(A) requires each agency "to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information.* * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The Paperwork Reduction Act also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens and need to know if there are other costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities.

Your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

The Paperwork Reduction Act provides that an agency shall not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: November 3, 2000.

Cathy Hamilton,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 00–28822 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Boston Harbor Islands Advisory Council will meet on Wednesday, December 6, 2000. The meeting will convene at 4:00 p.m. at the New England Aquarium Education Center, Long Wharf, Boston, Massachusetts.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational, cultural, and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operation of the Boston Harbor Islands National Recreation Area.

The Agenda for this meeting is as follows:

1. Approval of minutes from September 6, 2000
2. Discussion regarding the park operations "report card"
3. Discussion on water transportation issues

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Boston Harbor Islands NRA, 408 Atlantic Ave., Boston, MA, 02110, telephone (617) 223–8667.

Dated: November 1, 2000.

George E. Price, Jr.,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. 00–28837 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA) of 1992 and the Reclamation Reform Act of 1982, Reclamation developed and published the Criteria for Evaluating Water Conservation Plans, dated April 30, 1993. In September 1996, Reclamation revised the document and renamed it to Criteria for Evaluating Water Management Plans (Criteria). The Criteria were revised again in 1999.

The Cities of Avenal, Coalinga, and Huron, along with Broadview Water District and West Stanislaus Irrigation District, all have developed Water Management Plans (Plan) which Reclamation has evaluated and preliminarily determined to meet the requirements of the Criteria.

The 1999 Criteria were developed based on information provided during public scoping and review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all Plans developed by Central Valley Project contractors. The Criteria were developed and the Plans have been evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination of the adequacy of each contractor's Plan in the **Federal Register** to allow the public a minimum of 30 days to comment on its preliminary determinations.

DATES: All public comments must be received by December 11, 2000.

ADDRESSES: Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and

from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Please mail comments to Lucille Billingsley, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento CA 95825.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Lucille Billingsley at the address above, or by telephone at (916) 978–5215 (TDD, 978–5608).

SUPPLEMENTARY INFORMATION: Under provision of Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–57), "The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to Section 3405(e)(1), these criteria will be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices."

The Criteria states that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contracts over 2,000 irrigable acres) will prepare Plans which will be evaluated by Reclamation based on the following required information detailed in the sections listed below to develop, implement, monitor, and update their Plans. The sections are:

1. Description of the District.
2. Inventory of Water Resources.
3. Best Management Practices (BMPs) for Agricultural Contractors.
4. BMP's for Urban Contractors.
5. Plan Implementation.
6. Exemption Process.
7. Regional Criteria.
8. Five Year Revisions.

Public comment on Reclamation's preliminary (i.e., draft) determination of the Cities of Avenal, Coalinga, and Huron, along with Broadview Water District and West Stanislaus Irrigation District, are invited at this time. A copy of these Plans will be available for review at Reclamation's MP Regional Office located in Sacramento, California, and MP's South-Central California Area Office located in Fresno, California.

Dated: November 1, 2000.

Charles B. Johnson,

Acting Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 00–28769 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–706 (Review)]

Canned Pineapple Fruit From Thailand

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on canned pineapple fruit from Thailand.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on canned pineapple fruit from Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: November 1, 2000.

FOR FURTHER INFORMATION CONTACT: D.J. Na (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On September 1, 2000, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (65 FR 55047, September 12, 2000). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on February 21, 2001, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on March 13, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 5, 2001. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 8, 2001, at the U.S. International Trade

Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is March 2, 2001. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is March 22, 2001; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before March 22, 2001. On April 16, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 18, 2001, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Dated: Issued: November 2, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–28725 Filed 11–08–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–868–870 (Final)]

Steel Wire Rope from China, India, and Malaysia

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–868–870 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China, India, and Malaysia of steel wire rope, provided for in subheadings 7312.10.60 and 7312.10.90 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 2, 2000.

FOR FURTHER INFORMATION CONTACT: Jeff Clark (202–205–3195), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of steel wire rope from China and India are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b).[2] The investigations were requested in petitions filed on March 1, 2000, by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on February 6, 2001, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on February 21, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 14, 2001. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 16, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 13, 2001. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is February 28, 2001; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before February 28, 2001. On March 15, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 19, 2001, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: November 3, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–28729 Filed 11–8–00; 8:45 am]

BILLING CODE 7020–02–P

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[1] For purposes of these investigations, Commerce has defined the subject merchandise as "Steel wire rope, which encompasses ropes, cables, and cordage of iron or carbon or stainless steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire."

[2] Commerce has made a preliminary determination of sales at not LTFV with respect to the subject imports from Malaysia. Pending Commerce's final determination of sales at LTFV, the final phase of the Commission's antidumping investigation with respect to Malaysia is also being scheduled, for purposes of efficiency.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Withdrawal

As set fourth in the **Federal Register** (FR Doc. 99–26605) Vol. 64, No. 197 at page 55489, dated October 13, 1999, Fort Dodge Laboratories, Inc., 141 E. Riverside Drive, Fort Dodge, Iowa 50501, made application to the Drug Enforcement Administration to be registered as an importer of pentobarbital (2270).

One registered bulk manufacturer of pentobarbital requested a hearing to deny the proposed registration of Fort Dodge Laboratories, Inc. Fort Dodge Laboratories, Inc. requested by letter that its application be withdrawn. Therefore, Fort Dodge Laboratories, Inc.'s, application to import pentobarbital is hereby withdrawn.

Dated: October 30, 2000.

Joh[illegible] King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–28696 Filed 11–8–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Registration

By Notice dated August 22, 2000, and published in the **Federal Register** on September 6, 2000, (65 FR 54067), ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Assonet, Massachusetts 02702, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone to manufacture amphetamine.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of IPS Freetown Fine Chemicals, Inc., is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated ISP Freetown Fine Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: October 18, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–28697 Filed 11–8–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2096–00; AG Order No. 2330–2000]

RIN 1115 AE–26

Extension of Designation of Burundi Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Burundi under the Temporary Protected Status (TPS) program expired on November 2, 2000. This notice extends the Attorney General's designation of Burundi under the TPS program for 12 months until November 2, 2001, and sets forth procedures necessary for nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) with TPS to register for the additional 12-month period. Eligible nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on November 3, 1998, who registered under the redesignation, which ended November 2, 2000, or who registered under the late initial registration provisions. Nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who are eligible for late initial registration may register for TPS during this extension.

EFFECTIVE DATES: The extension of the TPS designation for Burundi is effective November 2, 2000, and will remain in effect until November 2, 2001. The 30-day re-registration period begins November 9, 2000, and will remain in effect until December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Rebecca K. Peters, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Attorney General To Extend Burundi's TSP Designation Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General determines that the foreign state continues to meet the conditions for designation, the period of designation is extended pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). With respect to Burundi, such an extension makes TPS available only to persons who have been continuously physically present since November 9, 1999, and have continuously resided in the United States from November 9, 1999.

Why Did the Attorney General Decide To Extend the TPS Designation for Burundi?

On November 4, 1997, the Attorney General designated Burundi for TPS for a period of 12 months (62 FR 59735). Since that date, the Departments of State and Justice have annually reviewed conditions within Burundi, with the Attorney General extending the designation in 1998 (63 FR 59334), and extending the designation and redesignating Burundi in 1999 (64 FR 61123).

The Departments of State and Justice have recently reviewed conditions within Burundi. The review resulted in a consensus that a further 12-month extension is warranted. The State Department, in a recent memorandum, explained the reasons for extension, stating: "While negotiations yielded a framework for peace in August 2000, no cease-fire is in effect. Considerable ethnic violence and deep divisions over the distributions of power continue. In addition, the widening war in [Democratic Republic of Congo] has effectively pulled in Burundi * * *. Burundi is insecure throughout, and the prospects for real peace in the near future are uncertain." Based on this year's review, the Attorney General finds that conditions are Burundi warrant a 12-month extension of the designation of Burundi under section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). Because the Attorney General did not determine, at least 60 days before the end of the designation period, that the conditions in Burundi no longer warrant TPS, the designation was automatically extended six months by operation of statute on November 2, 2000. 8 U.S.C. 1254a(b)(3)(C). On the basis of the most recent findings, however, the Attorney General finds that the TPS designation for Burundi should be extended for an additional 12-month period, rather than the six month period resulting from the automatic extension.

If I Currently Have TPS Through the Burundi TPS Program, Do I Still Need To Register for an Extension and How Do I Do So?

If you have already been granted TPS through the Burundi TPS Program, your TPS expired on November 2, 2000. Persons previously granted TPS under the Burundi program may apply for an extension by filing a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins November 9, 2000 and ends December 11, 2000. Additionally, you must file a Form I–765, Application for Employment Authorization. To determine whether or not you must submit the one-hundred dollar ($100) filing fee with the Form I–765, see the chart below.

If . . .	Then . . .
You are applying for employment authorization until November 2 2001	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You have employment authorization until November 2, 2001, or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, with no fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file Form I–765 and a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

To re-register for TPS, you must also include two identification photographs (1½″ × 1½″).

Where Must I File for an Extension of TPS?

Nationals of Burundi (or aliens who have no nationality and who last habitually resided in Burundi) seeking to register for the extension of TPS must submit an application and accompanying materials to the Immigration and Naturalization Service (Service) district office that has jurisdiction over the applicant's place of residence.

When Must I File for an Extension of TPS?

The 30-day re-registration period begins November 9, 2000, and will remain in effect until December 11, 2000.

How Does an Application for TPS Affect My Application for Asylum and Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Burundi (or alien having no nationality who last habitually resided in Burundi) who is otherwise eligible for TPS and has applied for, or plans to apply for, asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denial may also be grounds of denial for TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B).

Does This Extension Allow Nationals of Burdundi (or Aliens Having No Nationality Who Last Habitually Resided in Burdundi) Who Entered the United States After November 9, 1999, To File for TPS?

No. This is a notice of an extension of the TPS designation for Burundi, not a notice of redesignation for Burundi for TPS. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States and does not expand TPS availability to include nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who arrived in the United States after the date of the most recent redesignation, in this case, November 9, 1999.

Is Late Initial Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Burundi under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Burundi (or an alien who has no nationality and who last habitually resided in Burundi);

(2) Have been continuously physically present in the United States since November 9, 1999;

(3) Have continuously resided in the United States since November 9, 1999; and

(4) Be admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the registration period from November 9, 1999, through November 2, 2000, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal,

(2) Had an application for change of status adjustment of status, asylum, voluntary departure or any relief from removal or change of status pending or subject to further review or appeal,

(3) Was a parolee or had a pending request for reparole, or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the conditions described above. 8 CFR 244.2(g).

Notice of Extension of Designation of Burundi Under the TPS Program

By the authority vested in me as Attorney General under section 244(b)(3)(A) and (C), and (b)(1) of the Act, I have consulted with the appropriate Government agencies concerning whether the conditions under which Burundi was designated for TPS continue to exist. As a result, I determine that the conditions for the original designation of TPS for Burundi continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Burundi under section 244(b) of the Act is extended for an additional 12-month period from November 2, 2000, until November 2, 2001. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 1,000 nationals of Burundi (or aliens who have no nationality and who last habitually resided in Burundi) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from November 2, 2000, to November 2, 2001, a national of Burundi (or an alien who has no nationality and who last habitually resided in Burundi) who has already received a grant of TPS under the Burundi TPS designation or who is eligible to file under the late filing provision of 8 CFR 244.2(f)(2) must register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on November 9, 2000 and ending on December 11, 2000. Late registration will be allowed only for good cause shown pursuant to 8 CFR 244.17(c).

(4) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before November 2, 2001, the designation of Burundi under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(5) Information concerning the TPS program for nationals of Burundi (or aliens who have no nationality and who last habitually resided in Burundi) will be available at local Service offices upon publication of this notice.

Dated: November 2, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–28749 Filed 11–8–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2095–00; AG Order No. 2332–2000]

RIN 1115–AE 26

Extension of Designation of Sierra Leone Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Sierra Leone under the Temporary Protected Status (TPS) program expired on November 2, 2000. This notice extends the Attorney General's designation of

Sierra Leone under the TPS program for 12 months until November 2, 2001, and sets forth procedures necessary for nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) with TPS to register for the additional 12-month period. Eligible nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on November 3, 1998, who registered under the redesignation, which ended November 2, 2000, or who registered under the late initial registration provisions. Nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) who are eligible for late initial registration may register for TPS during this extension.

EFFECTIVE DATES: The extension of the TPS designation for Sierra Leone is effective November 2, 2000, and will remain in effect until November 2, 2001. The 30-day re-registration period begins November 9, 2000, and will remain in effect until December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Rebecca K. Peters, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Attorney General To Extend Sierra Leone's TPS Designation Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General determines that the foreign state continues to meet the conditions for designation, the period of designation is extended pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 12254a(b)(3)(C). With respect to Sierra Leone, such an extension makes TPS available only to persons who have been continuously physically present since November 9, 1999, and have continuously resided in the United States from November 9, 1999.

Why Did the Attorney General Decide To Extend the TPS Designation for Sierra Leone?

On November 4, 1997, the Attorney General designated Sierra Leone for TPS for a period of 12 months (62 FR 59736). Since that date, the Departments of State and Justice have annually reviewed conditions within Sierra Leone, with the Attorney General extending the designation in 1998 (63 FR 59336), and extending the designation and redesignating Sierra Leone in 1999 (64 FR 61125). The Departments of State and Justice have recently reviewed conditions within Sierra Leone. The review resulted in a consensus that a further 12-month extension is warranted. The reasons for extension, as explained in a State Department memorandum, are as follows: "While the Lome Peace Accord was signed in July 1999 rebels did not comply with disarmament and demobilization commitments. Active conflict resumed in May 2000 between the Revolutionary United Front (RUF) and government forces supported by the United Nations Mission to Sierra Leone (UNAMSIL) peacekeepers. Harassment, abuse, and atrocities committed against unarmed civilians by the RUF rebels, as well as by undisciplined elements of pro-government forces continue." Based on this year's review, the Attorney General finds that conditions in Sierra Leone warrant a 12-month extension of the designation of Sierra Leone under section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). Because the Attorney General did not determine, at least 60 days before the end of the designation period, that the conditions in Sierra Leone no longer warrant TPS, the designation was automatically extended six months by operation of statute on November 2, 2000. 8 U.S.C. 1254a(b)(3)(C). On the basis of the most recent findings, however, the Attorney General finds that the TPS designation for Sierra Leone should be extended for an additional 12-month period, rather than the six month period resulting from the automatic extension.

If I Currently Have TPS Through the Sierra Leone TPS Program, Do I Still Need To Register for an Extension and How Do I Do So?

If you have already been granted TPS through the Sierra Leone TPS Program, your TPS expired on November 2, 2000. Persons previously granted TPS under the Sierra Leone program may apply for an extension by filing a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins November 9, 2000 and ends December 11, 2000. Additionally, you must file a Form I–765, Application for Employment Authorization. To determine whether or not you must submit the one-hundred dollar ($100) filing fee with the Form I–765, see the chart below.

If . . .	Then . . .
You are applying for employment authorization until November 2, 2001	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You have employment authorization until November 2, 2001, or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, with no fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file Form I–765 and a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

To re-register for TPS, you must also include two identification photographs (1½×1½).

Where Must I File for an Extension of TPS?

Nationals of Sierra Leone (or aliens who have no nationality and who last habitually resided in Sierra Leone) seeking to register for the extension of TPS must submit an application and accompanying materials to the Immigration and Naturalization Service (Service) district office that has jurisdiction over the applicant's place of residence.

When Must I File for an Extension of TPS?

The 30-day re-registration period begins November 9, 2000, and will remain in effect until December 11, 2000.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Sierra Leone (or alien having no nationality who last habitually resided in Sierra Leone) who is otherwise eligible for TPS and has applied for, or plans to apply for, asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denial may also be grounds of denial for TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B).

Does This Extension Allow Nationals of Sierra Leone (or Aliens Having No Nationality Who Last Habitually Resided in Sierra Leone) Who Entered the United States After November 9, 1999, To File for TPS?

No. This is a notice of an extension of the TPS designation for Sierra Leone, not a notice of redesignation for Sierra Leone for TPS. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States and does not expand TPS availability to include nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) who arrived in the United States after the date of the most recent redesignation, in this case, November 9, 1999.

Is Late Initial Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Sierra Leone under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) be a national of Sierra Leone (or an alien who has no nationality and who last habitually resided in Sierra Leone);

(2) have been continuously physically present in the United States since November 9, 1999;

(3) have continuously resided in the United States since November 9, 1999; and,

(4) be admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the registration period from November 9, 1999, through November 2, 2000, he or she:

(1) was a nonimmigrant or had been granted voluntary departure status or any relief from removal,

(2) had an application for change of status, adjustment of status, asylum, voluntary departure or any relief from removal or change of status pending or subject to further review or appeal,

(3) was a parolee or had a pending request for reparole, or

(4) was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the conditions described above. 8 CFR 244.2(g).

Notice of Extension of Designation of Sierra Leone Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(3)(A) and (C), and (b)(1) of the Act, I have consulted with the appropriate Government agencies concerning whether the conditions under which Sierra Leone was designated for TPS continue to exist. As a result, I determine that the conditions for the original designation of TPS for Sierra Leone continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Sierra Leone under section 244(b) of the Act is extended for an additional 12-month period from November 2, 2000, until November 2, 2001. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 5,000 nationals of Sierra Leone (or aliens who have no nationality and who last habitually resided in Sierra Leone) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from November 2, 2000, to November 2, 2001, a national of Sierra Leone (or an alien who has no nationality and who last habitually resided in Sierra Leone) who has already received a grant of TPS under the Sierra Leone TPS designation or who is eligible to file under the late filing provision of 8 CFR 244.2(f)(2) must register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on November 9, 2000 and ending on December 11, 2000. Late registration will be allowed only for good cause shown pursuant to 8 CFR 244.17(c).

(4) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before November 2, 2001, the designation of Sierra Leone under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(5) Information concerning the TPS program for nationals of Sierra Leone (or aliens who have no nationality and who last habitually resided in Sierra Leone) will be available at local Service offices upon publication of this notice.

Dated: November 2, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–28747 Filed 11–8–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2094–00; AG Order No. 2331–2000]

RIN 1115–AE 26

Extension of Designation of Sudan Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Sudan under the Temporary Protected Status (TPS) program expired on November 2, 2000. This notice extends the Attorney General's designation of Sudan under the TPS program for 12 months until November 2, 2001, and sets forth procedures necessary for nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) with TPS to register for the additional 12-month period. Eligible nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on November 3, 1998, who registered under the redesignation, which ended November 2, 2000, or who registered under the late initial registration provisions. Nationals of Sudan (or aliens having no

nationality and who last habitually resided in Sudan) who are eligible for late initial registration may register for TPS during this extension.

EFFECTIVE DATES: The extension of the TPS designation for Sudan is effective November 2, 2000, and will remain in effect until November 2, 2001. The 30-day re-registration period begins November 9, 2000, and will remain in effect until December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Rebecca K. Peters, Residence and Status Services Branch; Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Attorney General To Extend Sudan's TPS Designation Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General determines that the foreign state continues to meet the conditions for designation, the period of designation is extended pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(c). With respect to Sudan, such an extension makes TPS available only to persons who have been continuously physically present since November 9, 1999, and have continuously resided in the United States from November 9, 1999.

Why Did the Attorney General Decide To Extend the TPS Designation for Sudan?

On November 4, 1997, the Attorney General designated Sudan for TPS for a period of 12 months (62 FR 59737). Since that date, the Departments of State and Justice have annually reviewed conditions within Sudan, resulting in the Attorney General extending the designation in 1998 (63 FR 59337), and extending the designation and redesignating Sudan in 1999 (64 FR 61128). The Departments of State and Justice have recently reviewed conditions within Sudan. The review resulted in a consensus that a further 12-month extension is warranted. The reasons for extension, as explained in a State Department memorandum, are as follows: "Civil war continues in Sudan, causing extensive displacement of populations and violations of human rights. Insecurity and forced population relocations and insecurity have destroyed most of the indigenous trading and production systems. The risk of famine continues as fighting impedes relief efforts." Based on this year's review, the Attorney General finds that conditions in Sudan warrant a 12-month extension of the designation of Sudan under section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). Because the Attorney General did not determine, at least 60 days before the end of the designation period, that the conditions in Sudan no longer warrant TPS, the designation was automatically extended six months by operation of statute on November 2, 2000. 8 U.S.C. 1254a(b)(3)(C). On the basis of the most recent findings, the Attorney General finds that the TPS designation for Sudan should be extended for an additional 12-month period, rather than the six month period resulting from the automatic extension.

If I Currently Have TPS Through the Sudan TPS Program, Do I Still Need To Register for an Extension and How Do I Do So?

If you have already been granted TPS through the Sudan TPS Program, your TPS expired on November 2, 2000. Persons previously granted TPS under the Sudan program may apply for an extension by filing a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins November 9, 2000 and ends December 11, 2000. Additionally, you must file a Form I–765, Application for Employment Authorization. To determine whether or not you must submit the one-hundred dollar ($100) filing fee with the Form I–765, see the chart below.

If . . .	Then . . .
You are applying for employment authorization until November 2, 2001	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You have employment authorization until November 2, 2001, or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, with no fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file Form I–765 and a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

To re-register for TPS, you must also include two identification photographs (1½′ × 1½′).

Where Must I File for an Extension of TPS?

Nationals of Sudan (or aliens who have no nationality and who last habitually resided in Sudan) seeking to register for the extension of TPS must submit an application and accompanying materials to the Immigration and Naturalization Service (Service) district office that has jurisdiction over the applicant's place of residence.

When Must I File for an Extension of TPS?

The 30-day re-registration period begins November 9, 2000, and will remain in effect until December 11, 2000.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Sudan (or alien having no nationality who last habitually resided in Sudan) who is otherwise eligible for TPS and has applied for, or plans to apply for, asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denial may also be grounds of denial for TPS. For example, a person who has been convicted of a particularly serious crime is no eligible for asylum or TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B).

Does This Extension Allow Nationals of Sudan (or Aliens Having No Nationality Who Last Habitually Resided in Sudan) Who Entered the United States After November 9, 1999, To File for TPS?

No. This is a notice of an extension of the TPS designation for Sudan, not a notice of redesignation for Sudan for TPS. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States and does not expand TPS availability to include nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who arrived in the United States after the date of the most recent redesignation, in this case, November 9, 1999.

Is Late Initial Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Sudan under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) be a national of Sudan (or an alien who has no nationality and who last habitually resided in Sudan);

(2) have been continuously physically present in the United States since November 9, 1999;

(3) have continuously resided in the United States since November 9, 1999; and,

(4) be admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the registration period from November 9, 1999, through November 2, 2000, he or she:

(1) was a nonimmigrant or had been granted voluntary departure status or any relief from removal,

(2) had an application for change of status, adjustment of status, asylum, voluntary departure or any relief from pending or subject to further review or appeal,

(3) was a parolee or had a pending request for reparole, or

(4) was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of conditions described above. 8 CFR 244.2(g).

Notice of Extension of Designation of Sudan Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(3)(A) and (C), and (b)(1) of the Act, I have consulted with the appropriate Government agencies concerning whether the conditions under which Sudan was designated for TPS continue to exist. As a result, I determine that the conditions for the designation of TPS for Sudan continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Sudan under section 244(b) of the Act is extended for an additional 12-month period from November 2, 2000, until November 2, 2001. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 1,500 nationals of Sudan (or aliens who have no nationality and who last habitually resided in Sudan) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from November 2, 2000, to November 2, 2001, a national of Sudan (or alien who has no nationality and who last habitually resided in Sudan) who has already received a grant of TPS under the Sudan TPS designation or who is eligible to file under the late filing provisions of 8 CFR 244.2(f)(2), must register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on November 9, 2000 and ending on December 11, 2000. Late registration will be allowed only for good cause shown pursuant to 8 CFR 244.17(c).

(4) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before November 2, 2001, the designation of Sudan under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register** 8 U.S.C. 1254a(b)(3)(A).

(5) Information concerning the TPS program for nationals of Sudan (or aliens who have no nationality and who last habitually resided in Sudan) will be available at local Service offices upon publication of this notice.

Dated: November 2, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–28748 Filed 11–8–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 1, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by e-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by e-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Uniform Health Insurance Claim Form—UB–92.

OMB Number: 1215–0176.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal

Government; and individuals or households.

Frequency: On occasion.

Number of Respondents: 166,622.

Number of Annual Responses: 166,622.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 28,538.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Office of Workers Compensation Programs (OWCP) requests hospitals providing medical services to beneficiaries covered under the Federal Employee Compensation Act and the Federal Black Lung Benefits Act to bill on the standard form UB–92. This form identifies the injured worker, the name of the services provided, the conditions being treated and billed amounts. This information is required by OWCP to enable reimbursement for covered services.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–28797 Filed 11–8–00; 8:45 am]

BILLING CODE 4510–47–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term "FR Notice" appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated: November 1, 2000.

Carol J. Jones,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–2000–003–C.

FR Notice: 65 FR 10563.

Petitioner: Big Ridge, Inc.

Regulation Affected: 30 CFR 75.1700.

Summary of Findings: Petitioner's proposal is to plug and mine in close proximity to, or through oil and gas wells and to notify the District Manager or designee: prior to mining within 300 feet of the well; in sufficient time to have an opportunity to have a representative present; and when a specific plan is developed for mining through each well. This is considered an acceptable alternative method for the Big Ridge Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil and gas wells penetrating the Illinois No. 5 seam and other mineable coal seams at the Big Ridge Mine with conditions.

Docket No.: M–2000–004–C.

FR Notice: 65 FR 10563.

Petitioner: Aracoma Coal Company.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal is to use a 2,400 volt continuous mining system inby the last open crosscut and within 150 feet from pillar workings using the specific terms and conditions listed in the petition for modification. This is considered an acceptable alternative method for the Aracoma Alma Mine. MSHA grants the petition for modification for the Aracoma Alma Mine with conditions.

Docket No.: M–2000–006–C.

FR Notice: 65 FR 10563.

Petitioner: Marrowbone Development Company (Eastern Mingo Coal Company).

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal is to use 2,400-volt AC continuous mining equipment. This is considered an acceptable alternative method for the Drautz Mine. MSHA grants the petition for modification for the Drautz Mine with conditions.

Docket No.: M–2000–011–C.

FR Notice: 65 FR 10564.

Petitioner: Alex Energy, Inc.

Regulation Affected: 30 CFR 75.350.

Summary of Findings: Petitioner's proposal is to use air coursed through the belt haulage entry to ventilate active working places by installing a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to carry intake air to a working place. This is considered an acceptable alternative method for the Jerry Fork Eagle Mine. MSHA grants the petition for modification for the Jerry Fork Eagle Mine with conditions.

Docket No.: M–2000–016–C.

FR Notice: 65 FR 16966.

Petitioner: Elk Run Coal Company.

Regulation Affected: 30 CFR 75.350.

Summary of Findings: Petitioner's proposal is to use air coursed through the conveyor belt entry at a velocity of at least 50 feet per minute to ventilate active working places installing a low-level carbon monoxide system as an early warning fire detection system in all belt entries used to course intake air to a working place. This is considered an acceptable alternative method for the White Knight Mine. MSHA grants the petition for modification for the White Knight Mine with conditions.

Docket No.: M–2000–017–C.

FR Notice: 65 FR 16966.

Petitioner: FKZ Coal, Inc.

Regulation Affected: 30 CFR 75.1202–1(a).

Summary of Findings: Petitioner's proposal is to conduct mine surveys and revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations, and conduct subsequent surveys prior to commencing retreat mining and whenever a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. This is considered an acceptable alternative method for the No. 1 Slope Mine. MSHA grants the petition for modification for the No. 1 Slope Mine with conditions.

Docket No.: M–2000–023–C.

FR Notice: 65 FR 19928.

Petitioner: Crystal Fuels Company.

Regulation Affected: 30 CFR 75.1103–4.

Summary of Findings: Petitioner's proposal is to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used to ventilate active working places instead of using monitoring systems that identify each belt flight. This is considered an acceptable alternative method for the No. 1 Mine. MSHA grants the petition for modification for the No. 1 Mine with conditions.

Docket No.: M–2000–027–C.

FR Notice: 65 FR 31611.

Petitioner: Hopkins County Coal, LLC.

Regulation Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics instead of a padlock to secure plugs and electrical type connectors to batteries and to permissible mobile powered equipment, to prevent the battery plugs from accidentally separating from the receptacle during normal operation of battery equipment. This is considered an acceptable alternative method for the Island Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs at the Island Mine with conditions.

Docket No.: M–2000–032–C.

FR Notice: 65 FR 31611.

Petitioner: Sidney Coal Company, Inc.

Regulation Affected: 30 CFR 75.350.

Summary of Findings: Petitioner's proposal is to use air coursed through belt haulage entries to ventilate active working places by installing a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used to course intake air to a working place. This is considered an acceptable alternative method for the Rockhouse Energy Mining Company, Mine No. 1. MSHA grants the petition for modification for the Rockhouse Energy Mining Company, Mine No. 1 with conditions.

Docket No.: M–2000–035–C.

FR Notice: 65 FR 31612.

Petitioner: West Ridge Resources, Inc.

Regulation Affected: 30 CFR 75.352.

Summary of Findings: Petitioner's proposal is to use the belt entry as a return air course during two-entry longwall development, and as an intake during longwall extraction to ensure adequate ventilation to dilute and render harmless any methane or other noxious gases that may accumulate. This is considered an acceptable alternative method for the West Ridge Mine. MSHA grants the petition for modification for the West Ridge Mine with conditions.

Docket No.: M–2000–042–C.

FR Notice: 65 FR 31610.

Petitioner: Marfork Coal Company, Inc.

Regulation Affected: 30 CFR 75.350.

Summary of Findings: Petitioner's proposal is to use an automatic fire detection system based on carbon monoxide monitoring of the underground belt conveyor entries and to install a low-level carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. This is considered an acceptable alternative method for the Brushy Eagle Mine. MSHA grants the petition for modification for the Brushy Eagle Mine with conditions.

Docket No.: M–2000–044–C.

FR Notice: 65 FR 31610.

Petitioner: Appalachian Eagle, Inc.

Regulation Affected: 30 CFR 75.350.

Summary of Findings: Petitioner's proposal is to use a carbon monoxide monitoring system to monitor belt air used in the face. The petitioner proposes to use a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. This is considered an acceptable alternative method for the Mine No. 1. MSHA grants the petition for modification for the Mine No. 1 with conditions.

Docket No.: M–2000–056–C.

FR Notice: 65 FR 40142.

Petitioner: Dominion Coal Corporation.

Regulation Affected: 30 CFR 77.214(a).

Summary of Findings: Petitioner's proposal is to cover abandoned mine openings with coarse refuse material for the Dominion Mine No. 22, MSHA Site ID #1211–VA5–0335–01. The petitioner proposes to construct a refuse bench fill in abandoned mine openings using the specific plans and procedures listed in the petition for modification. This is considered an acceptable alternative method for the Dominion Mine No. 22. MSHA grants the petition for modification for the Dominion Mine No. 22 with conditions.

Docket No.: M–1999–007–C.

FR Notice: 64 FR 16760.

Petitioner: Energy Fuels Coal, Inc.

Regulation Affected: 30 CFR 75.701.

Summary of Findings: Petitioner's proposal is to use a 135 kw/169 kva, 480-volt diesel powered generator set to move equipment in and out of the mine and operate a roof bolter for roof rehabilitation in remote areas of the mine. This is considered an acceptable alternative method for the South Field Mine. MSHA grants the petition for modification for the 480-volt, three-phase, 135kw Diesel Powered Generator (DPG) set supplying power to a 169 KVA three-phase transformer and three-phase 480-volt and 995-volt power circuits with conditions.

Docket No.: M–1999–012–C.

FR Notice: 64 FR 16760.

Petitioner: Canyon Fuel Company, LLC.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal is to use high-voltage (2,400 volt) cables on continuous miner sections. This is considered an acceptable alternative method for the SUFCO Mine. MSHA grants the petition for modification for the SUFCO Mine with conditions.

Docket No.: M–1999–021–C.

FR Notice: 64 FR 23874.

Petitioner: Jim Walter Resources, Inc.

Regulation Affected: 30 CFR 75.364(b)(2).

Summary of Findings: Petitioner's proposal is to establish evaluation points inby and outby the return air course and have a certified person examine the evaluation points for methane and oxygen concentrations and the volume of air and record the results in a book maintained on the surface of the mine. This is considered an acceptable alternative method for the No. 4 Mine. MSHA grants the petition for modification for the examination of approximately 2,000 feet of unsafe-to-travel air course between Shafts 4–1 and 4–2 (Southern Area) and the Shaft 4–5 (Northern Area) which ventilates the A Panel off of 3 East mine seals at the No. 4 Mine with conditions.

Docket No.: M–1999–026–C.

FR Notice: 64 FR 25518.

Petitioner: West Ridge Resources, Inc.

Regulation Affected: 30 CFR 75.350.

Summary of Findings: Petitioner's proposal is to use two-entry longwall development, use the belt entry as a return air course during longwall development and as an intake during longwall extraction, to ensure an adequate quantity of ventilation to dilute and render harmless methane or noxious gases that may accumulate. This is considered an acceptable alternative method for the West Ridge Mine. MSHA grants the petition for modification for the West Ridge Mine with conditions.

Docket No.: M–1999–028–C.

FR Notice: 64 FR 25518.

Petitioner: Peabody Coal Company.

Regulation Affected: 30 CFR 75.364(b)(4).

Summary of Findings: Petitioner's proposal is to establish evaluation points to monitor its bleeder system due to hazardous conditions that hinder continued travel to conduct examinations, and conduct daily examinations at various evaluation points, have a certified person check for methane and oxygen and the volume of air and record the results in a book kept on the surface of the mine. This is considered an acceptable alternative method for the Camp No. 11 Mine. MSHA grants the petition for modification for the continuous monitoring using intrinsically safe sensors installed as part of the mine's AMS and daily evaluation of air, entering the worked out longwall panels and approximately 5600 feet of bleeder/return air course which ventilates the inaccessible 9th North mine seals at the Camp No. 11 Mine with conditions.

Docket No.: M–1999–039–C.

FR Notice: 64 FR 32553.

Petitioner: Canyon Fuel Company, LLC.

Regulation Affected: 30 CFR 75.701.

Summary of Findings: Petitioner's proposal is use a 420 KW/525 KVA, 480-volt diesel-powered generator system to move equipment in and out of the mine and perform minor mining activities in the mine, and to conduct proper testing procedures training for all operators prior to using the generator system. This is considered an acceptable alternative method for the SUFCO Mine. MSHA grants the petition for modification for the 480-volt, three-phase, 420KW/525KVA diesel-powered generator (DPG) set supplying power to a three-phase transformer and three-phase 480-volt and 995-volt power circuits at the SUFCO Mine with conditions.

Docket No.: M–1999–040–C.

FR Notice: 64 FR 32553.

Petitioner: Canyon Fuel Company, LLC.

Regulation Affected: 30 CFR 75.901.

Summary of Findings: Petitioner's proposal is use a 420 KW/525 KVA, 480-volt diesel-powered generator system to move equipment in and out of the mine and perform minor mining activities in the mine, and to conduct proper testing procedures training for all operators prior to using the generator system. This is considered an acceptable alternative method for the SUFCO Mine. MSHA grants the petition for modification for the 480-volt, three-phase, 420KW/525KVA diesel-powered generator (DPG) set supplying power to a three-phase transformer and three-phase 480-volt and 995-volt power circuits at the SUFCO Mine with conditions.

Docket No.: M–1999–053–C.

FR Notice: 64 FR 41139.

Petitioner: West Ridge Resources, Inc.

Regulation Affected: 30 CFR 75.1002–1(a).

Summary of Findings: Petitioner's proposal is to use a nominal voltage of longwall power circuits not to exceed 2,400 volts to supply power to the permissible longwall mining equipment. This is considered an acceptable alternative method for the West Ridge Mine. MSHA grants the petition for modification for the West Ridge Mine with conditions.

Docket No.: M–1999–070–C.

FR Notice: 64 FR 49247.

Petitioner: RAG Emerald Resources Corporation (Originally Cyprus Emerald Resources Corporation).

Regulation Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal is to use trailing cables greater than 500 feet in length for mining equipment taken in by the last open crosscut with the cable length not to exceed 1,000 feet. This is considered an acceptable alternative method for the Emerald No. 1 Mine. MSHA grants the petition for modification for the Emerald No. 1 Mine with conditions.

Docket No.: M–1999–076–C.

FR Notice: 64 FR 55493.

Petitioner: Consolidation Coal Company.

Regulation Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal is to use trailing cables greater than 500 feet in length on face equipment during longwall panel development with the cable length not to exceed 1,000 feet. This is considered an acceptable alternative method for the Shoemaker Mine. MSHA grants the petition for modification for the Shoemaker Mine with conditions.

Docket No.: M–1999–078–C.

FR Notice: 64 FR 55493.

Petitioner: Consolidation Coal Company.

Regulation Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal is to use trailing cables greater than 500 feet in length on face equipment during longwall panel development. This is considered an acceptable alternative method for the Dilworth Mine. MSHA grants the petition for modification for the Dilworth Mine with conditions.

Docket No.: M–1999–090–C.

FR Notice: 64 FR 57662.

Petitioner: Canterbury Coal Company.

Regulation Affected: 30 CFR 75.350.

Summary of Findings: Petitioner's proposal is to ventilate working sections. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries where air coursed through the belt entry is used to ventilate active working places. This is considered an acceptable alternative method for the DiAnne Mine. MSHA grants the petition for modification for the DiAnne Mine with conditions.

Docket No.: M–1999–092–C.

FR Notice: 64 FR 57662.

Petitioner: Marfork Coal Company, Inc.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal is to use 4,160 volt longwall face equipment using specific terms and conditions listed in the petition for modification. This is considered an acceptable alternative method for the Brushy Eagle Mine. MSHA grants the petition for modification for the Brushy Eagle Mine with conditions.

Docket No.: M–2000–096–C.

FR Notice: 64 FR 57663.

Petitioner: Canyon Fuel Company, LLC.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal is to use a nominal voltage of longwall power circuits not to exceed 2,400 volts to supply power to permissible longwall equipment. This is considered an acceptable alternative method for the Dugout Canyon Mine. MSHA grants the petition for modification for the Dugout Canyon Mine with conditions.

Docket No.: M–1999–101–C.

FR Notice: 64 FR 57663.

Petitioner: RAG Emerald Resources Corporation.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal is to use 4,160 volt high-voltage longwall equipment. This is considered an acceptable alternative method for the Emerald Mine No. 1. MSHA grants the petition for modification for the Emerald Mine No. 1 with conditions.

Docket No.: M–1999–108–C.

FR Notice: 64 FR 70054.

Petitioner: Energy West Mining Company.

Regulation Affected: 30 CFR 75.1909(b)(6).

Summary of Findings: Petitioner's proposal is to use an alternative method for service brakes on diesel powered graders. The petitioner proposes to install a speedometer on diesel graders in order to limit the speed to 25 miles per hour when operating graders in an underground coal mine or on the surface of an underground coal mine, and train all miners who operate the graders in the proper procedures for lowering the blade in order to restrict the speed and stop the grader, in proper gear selection for grading, and in the proper speed for grading. This is considered an acceptable alternative method for the Deer Creek Mine. MSHA grants the petition for modification for the Deer Creek Mine with conditions.

Docket No.: M–1999–126–C.

FR Notice: 64 FR 70732.

Petitioner: Mingo Logan Coal Company.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal is to use a high-voltage cable within 150 feet of pillar workings to power a 2,400 VAC longwall mining machine. This is considered an acceptable alternative method for the Mountaineer Alma-A Mine. MSHA grants the petition for modification for the Mountaineer Alma-A Mine with conditions.

Docket No.: M–1999–136–C.

FR Notice: 65 FR 1914.

Petitioner: Twentymile Coal Company.

Regulation Affected: 30 CFR 75.1909(b)(6).

Summary of Findings: Petitioner's proposal is to use an alternative method of compliance for service brakes on diesel-powered graders. The petitioner proposes to equip the diesel-powered graders with devices to limit the speed for operating the graders to 10 miles per hour, and train each miner who operates the grader on the proper techniques for lowering the blade in order to restrict the speed and stop the grader. This is considered an acceptable alternative method for the Foidel Creek Mine. MSHA grants the petition for modification for the Foidel Creek Mine with conditions.

Docket No.: M–1999–139–C.

FR Notice: 65 FR 1914.

Petitioner: RAG Shoshone Coal Corporation.

Regulation Affected: 30 CFR 75.1909(b)(6).

Summary of Findings: Petitioner's proposal is to use an alternative method of compliance for service brakes on diesel-powered graders. The petitioner proposes to equip the diesel graders with devices to limit the speed for operating the graders to 10 miles per hour, and train each miner who operates the grader on the proper techniques for lowering the blade in order to restrict the speed and stop the grader. This is considered an acceptable alternative method for the Shoshone No. 1 Mine. MSHA grants the petition for modification for the Shoshone No. 1 Mine with conditions.

Docket No.: M–1999–143–C.

FR Notice: 65 FR 5700.

Petitioner: Consol of Kentucky, Inc.

Regulation Affected: 30 CFR 75.701.

Summary of Findings: Petitioner's proposal is to use a diesel-generator source of low and medium voltage, three-phase electrical power during transportation of certain mobile equipment underground. This is considered an acceptable alternative method for the Rhoades Branch H–4 Mine. MSHA grants the petition for modification for the Rhoades Branch H–4 Mine with conditions.

Docket No.: M–1999–144–C.

FR Notice: 65 FR 5700.

Petitioner: Consol of Kentucky, Inc.

Regulation Affected: 30 CFR 75.901.

Summary of Findings: Petitioner's proposal is to use a diesel-generator source of low and medium voltage, three-phase electrical power during transportation of certain mobile equipment underground. This is considered an acceptable alternative method for the Rhoades Branch H–4 Mine. MSHA grants the petition for modification for the Rhoades Branch H–4 Mine with conditions.

Docket No.: M–1999–145–C.

FR Notice: 65 FR 5700.

Petitioner: Consol of Kentucky, Inc.

Regulation Affected: 30 CFR 75.1101–8.

Summary of Findings: Petitioner's proposal is to use a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors. This is considered an acceptable alternative method for the Rhoades Branch H–4 Mine. MSHA grants the petition for modification for the Rhoades Branch H–4 Mine with conditions.

Docket No.: M–1999–148–C.

FR Notice: 65 FR 5701.

Petitioner: Consolidation Coal Company.

Regulation Affected: 30 CFR 75.364(b)(2).

Summary of Findings: Petitioner's proposal is to establish evaluation check points in certain area of the return air course due to deteriorating roof conditions and have a certified person test for methane and the quantity of air at the check points on a weekly basis. This is considered an acceptable alternative method for the Shoemaker Mine. MSHA grants the petition for modification for the Shoemaker Mine with conditions.

Docket No.: M–1998–056–C.

Petitioner: 63 FR 44291.

Regulation Affected: 30 CFR 75.901(a).

Summary of Findings: Petitioner's proposal is to use a portable diesel powered generator to move electrically powered mining– equipment from one section of the mine to another and incorporate a ground fault system for the power circuits that would deenergize mining equipment if a phase to frame fault occurs. This is considered an acceptable alternative method for the Foidel Creek Mine. MSHA grants the petition for modification for 480-volt, three-phase, 320KW/400KVA Diesel Powered Generator (DPG) set supplying power to a three-phase transformer and three-phase 480-volt, and 995-volt power circuits at the Foidel Creek Mine with conditions.

Docket No.: M–1998–100–C.

FR Notice: 64 FR 2520.

Petitioner: Cyprus Plateau Mining Corporation.

Regulation Affected: 30 CFR 75.804(a).

Summary of Findings: Petitioner's proposal is to: use specially designed high-voltage cables on longwall equipment that would comply with the existing standard, or use type CABLE/BICC Anaconda brand 5KV, 3/C type SHD+GC; Amercable Tiger Brand, 3/C, 5KV, type SHD–CGC; Pirelli 5KV, 3/C, type SHD–CENTER–GC; or similar 5,000 volt cable with center ground check conductor, manufactured to the ICEA Standard S–75–381 for type SHD, three-conductor cables; use MSHA accepted as flame-resistant cable; use a ground check conductor not smaller than a No. 16 AWG stranded conductor; use cable construction of symmetrical 3/C, 3/G, and 1/GC; train all qualified electrical personnel who perform maintenance on the longwall on the installation, splicing, repair, and permissibility requirements of high-voltage cables; and submit proposed revisions for part 48 training to the District Manager within 60 days after the proposed decision and order becomes final. This is considered an acceptable alternative method for the Willow Creek Mine. MSHA grants the petition for modification for the use of high-voltage longwall cables at the Willow Creek Mine with conditions.

Docket No.: M–2000–005–M.

FR Notice: 65 FR 40142.

Petitioner: Frontier-Kemper Constructors, Inc.

Regulation Affected: 30 CFR 57.9360.

Summary of Findings: Petitioner's proposal is to install and use safety platforms instead of shelter-holes mounted along the rib at regular intervals throughout the ASARCO Mineral Creek Water Diversion Tunnel using the specific construction procedures outlined in the petition for modification. This is considered an acceptable alternative method for the

ASARCO Ray Complex Mine. MSHA grants the petition for modification for the ASARCO Ray Complex Mine with conditions.

Docket No.: M–1999–004–M.

FR Notice: 64 FR 32554.

Petitioner: Dally Slate Company and American Bangor Slate & Stone.

Regulation Affected: 30 CFR 57.19007.

Summary of Findings: Petitioner's proposal is to use a stand-by engineer, instead of a mechanical device, to prevent overtravel or overspeed in the event the hoist operating engineer has a sudden health problem that impairs his/her ability to operate the hoist. This is considered an acceptable alternative method for the Dally 2-Pit Diamond Mill Doney Mine and the American Bangor Slate & Stone Mine. MSHA grants the petition for modification for the Dally 2-Pit Diamond Mill Doney Mine and the American Bangor Slate & Stone Mine with conditions.

Docket No.: M–1999–005–M.

FR Notice: 64 FR 32554.

Petitioner: Williams & Sons Slate & Tile, Inc.

Regulation Affected: 30 CFR 57.19007.

Summary of Findings: Petitioner's proposal is to use a stand-by engineer, instead of a mechanical device, to prevent overtravel or overspeed in the event the hoist operating engineer has a sudden health problem that impairs his/her ability to operate the hoist. This is considered an acceptable alternative method for the Sreebs Slate & Stone Co., Inc. Mine. MSHA grants the petition for modification for the Sreebs Slate & Stone Co., Inc. Mine with conditions.

Docket No.: 1999–015–M.

FR Notice: 64 FR 55494.

Petitioner: Lyons Salt Company.

Regulation Affected: 30 CFR 49.6(a)(1).

Summary of Findings: Petitioner's proposal is to maintain six (6) approved apparatuses at its mine-rescue station rather than twelve as required by the standard. The four members of the Kansas Mine Rescue Association (Association) (of which Lyons Salt is one) have an agreement that Association members will respond to mine emergencies at other member mines, which means there are 24 mine-rescue apparatuses available for mine emergency. The association member mines each have their own rescue stations, which are equipped with six complete mine-rescue apparatuses. These apparatuses could be used immediately or transported to another mine within 30 minutes to 2 hours ground travel. This is considered an acceptable alternative method for the Lyons Salt Company Mine. MSHA grants the petition for modification for the Lyons Salt Company Mine with conditions. This is an underground salt mine using conventional room-and-pillar mining methods. The petitioner amended this petition on February 21, 2000, to change the standard for which it was seeking modification from 30 CFR 49.6(a)(4) to 30 CFR 49.6(a)(1).

Docket No.: M–1999–016–M.

FR Notice: 64 FR 55494.

Petitioner: Hutchinson Salt Company.

Regulation Affected: 30 CFR 49.6(a)(1).

Summary of Findings: Petitioner's proposal is to maintain six (6) approved apparatuses at its mine-rescue station rather than twelve as required by the standard. The four members of the Kansas Mine Rescue Association (Association) (of which Hutchinson Salt is one) have an agreement that Association members will respond to mine emergencies at other member mines, which means there are 24 mine-rescue apparatuses available for mine emergency. The association member mines each have their own rescue stations, which are equipped with six complete mine-rescue apparatuses. These apparatuses could be used immediately or transported to another mine within 30 minutes to 2 hours ground travel. This is considered an acceptable alternative method for the Hutchinson Salt Company Mine. MSHA grants the petition for modification for the Hutchinson Salt Company Mine with conditions. This is an underground salt mine using conventional room-and-pillar mining methods. The petitioner amended this petition on February 22, 2000, to change the standard for which it was seeking modification from 30 CFR 49.6(a)(4) to 30 CFR 49.6(a)(1).

Docket No.: M–1999–17–M.

FR Notice: 64 FR 55494.

Petitioner: G–P Gypsum Corporation.

Regulation Affected: 30 CFR 49.6(a)(1).

Summary of Findings: Petitioner's proposal is to maintain six (6) approved apparatuses at its mine-rescue station rather than twelve as required by the standard. The four members of the Kansas Mine Rescue Association (Association) (of which G–P Gypsum corporation is one) have an agreement that Association members will respond to mine emergencies at other member mines, which means there are 24 mine-rescue apparatuses available for mine emergency. The association member mines each have their own rescue stations, which are equipped with six complete mine-rescue apparatuses. These apparatuses could be used immediately or transported to another mine within 30 minutes to 2 hours ground travel. This is considered an acceptable alternative method for the Blue Rapids Mine & Mill. MSHA grants the petition for modification for the Blue Rapids Mine & Mill with conditions. This is an underground salt mine using conventional room-and-pillar mining methods. The petitioner amended this petition on February 10, 2000, to change the standard for which it was seeking modification from 30 CFR 49.6(a)(4) to 30 CFR 49.6(a)(1).

Docket No.: M–1999–019–M.

FR Notice: 64 FR 55495.

Petitioner: Independent Salt Company.

Regulation Affected: 30 CFR 49.6(a)(1).

Summary of Findings: Petitioner's proposal is to maintain six (6) approved apparatuses at its mine-rescue station rather than twelve as required by the standard. The four members of the Kansas Mine Rescue Association (Association) (of which Independent Salt Company is one) have an agreement that Association members will respond to mine emergencies at other member mines, which means there are 24 mine-rescue apparatuses available for mine emergency. The association member mines each have their own rescue stations, which are equipped with six complete mine-rescue apparatuses: These apparatuses could be used immediately or transported to another mine within 30 minutes to 2 hours ground travel. This is considered an acceptable alternative method for the Independent Salt Company Mine. MSHA grants the petition for modification for the Independent Salt Company Mine with conditions. This is an underground salt mine using conventional room-and-pillar mining methods. The petitioner amended this petition on February 22, 2000, to change the standard for which it was seeking modification from 30 CFR 49.6(a)(4) to 30 CFR 49.6(a)(1).

[FR Doc. 00–28816 Filed 11–8–00; 8:45 am]

BILLING CODE 4510–43–U

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings of the Special Emphasis Panel in Astronomical Sciences (1186):

Date and Time: November 30–December 1, 2000, 9 a.m.–5 p.m.; December 7–8, 2000, 9 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. James Breckinridge, Program Manager, Advanced Technologies and Instrumentation, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. Telephone: (703) 292–4892.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Advanced Technologies and Instrumentation Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 3 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Commiittee Management Office.

[FR Doc. 00–28782 Filed 11–8; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date and Time: December 19–20, 2000; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Leon Esterowitz, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8320.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals and proposals received under the Initiative on Sensing and Imaging Technologies for Multi-Use Applications Program Announcement (Announcement Number NSF 00–106), as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and person information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28783 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biological Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biological Infrastructure (#1215).

Date and Time: November 30–December 1, 2000, 8:30 a.m.–5 p.m.

Place: National Science Foundation at 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Gerald Selzer, Program Director Biological Instrumentation and Instrument Development, National Science Foundation, Rm. 615. 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 292–8470.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposal for acquisition of Biological Instrumentation and Instrument Development for the Instrument Development for Biological Research (IDBR) Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28786 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (1190).

Date and Time: December 19, 2000; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Chuan F. Chen, Program Director, Fluid, Dynamics & Hydraulics, Division of Chemical & Transport Systems, 4201 Wilson Boulevard, Room 525, Arlington, VA 22230. Telephone: (703) 292–8371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY 2000 Sensing & Imaging Panel of proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28785 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computing—Communications Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Computing—Communications Research (1192).

Date/Time: November 16–17, 2000; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Roger Ziemer, Communications Research Panel, CISE/CCR, Room 1145, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230. (703) 292–8918.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate COM CAREER proposals as a part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28789 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194).

Date and Time: December 5, 6, and 7, 2000, 8 a.m.–5:30 p.m.

Type of Meeting: Closed.

Contact Person: Dr. Delcie Durham, Dr. George Hazelrigg, Dr. Kamalakar Rajurkar, and Dr. Ronald Rardin, Program Directors, DMII, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8330.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28780 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers (#173).

Date and Time: January 8–9, 2001 8:30 AM–5:30 PM.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Ms. Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8380.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Research Experiences for Undergraduates Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28788 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: December 7–8, 2000 from 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 380, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Victor Santiago, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–4673.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Historically Black Colleges and Universities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28781 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: November 30, 2000 through December 2, 2000; 8:30 a.m. until 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Alvin Thaler, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–4863.

Purpose of Meeting: To provide advice and recommendations concerning proposal submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Foundations Panel Meeting, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28784 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

National Science Foundation

NSB Public Service Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: NSB Public Service Award Committee (5195).

Date and Time: Tuesday, November 28, 2000, 11 a.m.–1 p.m. EST (teleconference meeting).

Place; National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Pannoney, Executive Secretary, Room 1220, National

Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8096.

Purpose of Meeting: To provide advice and recommendations in the selection of the NSB Public Service Award recipient.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28787 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing

The National Transportation Safety Board will convene a public hearing beginning at 9:30 a.m., local time on Wednesday, November 15–16, 2000, at the NTSB Board Room and Conference Center, 429 L'Enfant Plaza. S.W., Washington, D.C. 20024 concerning Pipeline Safety. For more information, contact Joseph Kris, NTSB Office of Pipeline and Hazardous Materials Safety at (202) 314–6539 or Keith Holloway, NTSB Office of Public Affairs at (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Carolyn Dargan at (202) 314–6305 by Thursday, November 9, 2000.

Dated: November 6, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–28836 Filed 11–8–00; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Northeast Nuclear Energy Company; Millstone Nuclear Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–21 issued to Northeast Nuclear Energy Company, the licensee, for the Millstone Nuclear Power Station, Unit 1 (MP1), a permanently shutdown nuclear reactor facility located in Waterford, Connecticut.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise certain License Conditions, delete other License Conditions, and delete some Confirmatory Orders to reflect the permanently shutdown and defueled status of the plant. The proposed action is in accordance with the licensee's application for amendment dated June 6, 2000.

The Need for the Proposed Action

Currently, the MP1 Operating License (DPR–21) is written to apply to an operating facility. MP1 is permanently shutdown and defueled; therefore, the licensee determined that changes to certain License Conditions and Confirmatory Orders were necessary to reflect the permanently shutdown and defueled status of the plant.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed amendment to the MP1 License and concludes that issuance of the proposed amendment will not have an environmental impact. The proposed changes to the License Conditions and Orders are consistent with the regulations and regulatory guidance for a permanently shutdown and defueled facility and are considered editorial and administrative in nature. The licensee does not propose any disposal or relocation of nuclear fuel or any changes to structures, systems, components, or site boundaries.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historical sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for MP1.

Agencies and Persons Contacted

In accordance with its stated policy, on September 25, 2000, the staff consulted with the State of Connecticut official, Mr. Michael Firsick of the Connecticut Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 6, 2000, which may be examined, and/or copied for a fee, at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov/NRC/ADAMS/index.html (the Electronic Reading Room).

Dated at Rockville, Maryland, this 31st day of October 2000.

For the Nuclear Regulatory Commission.

John B. Hickman,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–28775 Filed 11–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company, Inc. Edwin I. Hatch Nuclear Plant, Units 1 and 2; Notice of Availability of the Draft Supplement 4 to the Generic Environmental Impact Statement and Public Meeting for the License Renewal of Edwin I. Hatch Nuclear Plant, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published a draft plant-specific supplement to NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants [GEIS]," regarding the renewal of operating licenses DPR–57 and NPF–5 for Edwin I. Hatch Nuclear Plant (HNP), Units 1 and 2, for an additional 20 years. HNP is located in Appling County, Georgia. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft supplement to the GEIS is available electronically through the NRC's Public Electronic Reading Room (PERR) found on the Internet at the following web address: http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain access to the NRC's Agencywide Document Access and Management Systems (ADAMS), which provides text and image files of NRC's public documents. The draft report can also be examined, or copied for a fee, at the NRC's Public Document Room found at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD. In addition, the Appling County Library, located at 242 East Parker Street, Baxley, Georgia, has agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by January 24, 2001. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to:

David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Mailstop T 6 D 59, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments may be submitted electronically to the NRC to the e-mail address hatcheis@nrc.gov. All comments received by the NRC, including those made by Federal, State, and local agencies; Indian tribes; or other interested persons, will be accessible electronically through NRC's PERR link listed above, and can be examined, or copied for a fee, at the NRC's Public Document Room in Rockville, Maryland.

The NRC staff will hold public meetings to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meetings will be held at the Southeastern Technical Institute, Vidalia, Georgia, on December 12, 2000. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7:00 p.m. and will continue until 10:00 p.m. Both meetings will be transcribed and will include (1) a presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Andrew Kugler by telephone at 1–800–368–5642, extension 2828, or by Internet to the NRC at hatcheis@nrc.gov no later than December 7, 2000. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Kugler's attention no later than December 7, 2000, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Kugler, Generic Issues, Environmental, Financial, and Rulemaking Branch, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Mr. Kugler may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 31st day of October, 2000.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–28774 Filed 11–8–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection: Comment Request for Review of an Expiring Information Collection: Procedures for Submitting Compensation and Leave Claims

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an expiring information collection. Procedures for Submitting Compensation and Leave Claims is used to collect information from current and former Federal employees who are submitting a claim for compensation and/or leave. OPM needs this information in order to adjudicate the claim.

Approximately 100 claims are submitted annually. It takes approximately 60 minutes to compile the information needed to submit a claim. The annual estimated burden is 100 hours.

Comments are particularly invited on:

- Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to *mbtoomey@opm.gov.*

DATES: Comments on this proposal should be received on or before January 8, 2001.

ADDRESSES: Send or deliver comments to—Melissa A. Drummond, Program Manager, Office of Merit Systems Oversight, Office of Merit Systems Oversight and Effectiveness, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7671, Washington, DC 20415.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–28790 Filed 11–8–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Information Collection: Forms RI 38–117, 38–118, and RI 37–22

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an information collection. RI 38–117, Rollover Election, is used to collect information from each payee affected by a change in the tax code (Pub. L. 102–318) so that OPM can make payment in accordance with the wishes of the payee. RI 38–118, Rollover Information, explains the election. RI 37–22, Special Tax Notice Regarding Rollovers, provides more detailed information.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 6,000 RI 38–118 forms will be completed annually. We estimate it takes approximately 30 minutes to complete the form. The annual burden is 3,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–2150, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before January 8, 2001.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–28792 Filed 11–8–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. The FEHB Open Season Express IVR System and the open season web site, Open Season Online, is used by retirees and survivors; it collects information for changing FEHB enrollments, collecting dependent and other insurance information for self and family enrollments, requesting plan brochures, requesting a change of address, requesting cancellation or suspension of FEHB benefits, asking to make payment to the Office of Personnel Management when the FEHB payment is greater than the monthly annuity amount, or requesting a copy of the FEHB Customer Satisfaction Survey results.

We estimate we will receive 112,000 responses per year to the IVR system and the on-line web site. Each response takes approximately 10 minutes to complete. The annual burden is 18,666 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–2150, or email to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before December 11, 2000.

ADDRESSES: Send or deliver comments to—

James K. Freiert, Chief, Retirement Services Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 1312, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–28791 Filed 11–8–00; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1905/803–150]

ML Oklahoma Venture Partners, Limited Partnership, et al.; Notice of Application

November 3, 2000.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

APPLICANTS: ML Oklahoma Venture Partners, Limited Partnership ("ML Oklahoma" or "Partnership") and MLOK Co., Limited Partnership ("Managing General Partner").

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 206A of the Advisers Act from section 205(a)(1) of the Advisers Act.

SUMMARY OF APPLICATION: Applicants request an order permitting the Partnership to make in-kind distributions of its portfolio securities and, in connection with these distributions, deem gains or losses on the distributed securities to be realized, for purposes of the Managing General Partner's performance compensation, upon distribution to ML Oklahoma's limited partners.

FILING DATES: The application was filed on May 11, 2000 and amended on October 27, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with copies of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. ML Oklahoma Venture Partners, Limited Partnership and MLOK Co., Limited Partnership, Two World Financial Center, 23rd Floor, New York, NY 10281–6123.

FOR FURTHER INFORMATION CONTACT: Karen Goldstein, Senior Counsel, or Jennifer Sawin, Assistant Director, at (202) 942–0716 (Division of Investment Management, Office of Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. ML Oklahoma is a limited partnership organized under the laws of Delaware and is a business development company as defined in section 202(a)(22) of the Advisers Act ("BDC"). ML Oklahoma's investment objective is to seek long-term capital appreciation by making venture capital investments in new and developing companies, primarily Oklahoma companies, which the Partnership's management believes offer significant long-term growth opportunities.

2. ML Oklahoma's registration statement under the Securities Act of 1933 on Form N–2 became effective on December 1, 1988. ML Oklahoma closed its public offering on August 14, 1989, at which time it sold 10,248 units of limited partnership interest ("Units") for total proceeds of $10.2 million. The Partnership is scheduled to terminate on December 31, 2000.

3. ML Oklahoma has five general partners, consisting of four individuals ("Individual General Partners") and the Managing General Partner. The Individual General Partners include three ML Oklahoma independent General Partners (defined in the application as individuals who are not "interested persons" of ML Oklahoma within the meaning of section 2(a)(19) of the Investment Company Act of 1940) and one general partner that is an affiliated person of the Managing General Partner. The Managing General Partner is a limited partnership controlled by its general partner, Merrill Lynch Venture Capital Inc. ("Management Company"). The Management Company performs, or arranges for the performance of, management and administrative services necessary for the operation of ML Oklahoma. The Management Company is an indirect subsidiary of Merrill Lynch & Co., Inc.

4. The Managing General Partner is the managing general partner of ML Oklahoma and is solely responsible for ML Oklahoma's venture capital investments. The Managing General Partner and the Management Company are each registered with the Commission under the Advisers Act.

5. Allocation of profits and losses of ML Oklahoma to its Partners are made in accordance with the terms of the Amended and Restated Agreement of Limited Partnership of the Partnership ("Partnership Agreement"). The Partnership Agreement generally provides that each year, with respect to venture capital investments, if the sum of all profits allocated to the Limited Partners equals the sum of all losses allocated the Limited Partners, and the Limited Partners have been allocated a "priority return," [1] the Managing General Partner is allocated 30% of profits. When the Managing General Partner has been allocated 20% of all profits, it is then (and thereafter) allocated 20% of profits ("Managing General Partner's Allocation"). The Partnership Agreement provides that ML Oklahoma's investment income and net realized capital gains or losses, in excess of the Managing General Partner's Allocation, shall be allocated among all the Partners (including the Managing General Partner) in proportion to their capital contributions. The Partnership Agreement also provides that all other profits and losses, including interest or other income on funds not invested in venture capital investments, will be allocated among all the Partners (including the Managing General Partner) in proportion to their capital contributions.

6. The Partnership Agreement provides that the Individual General Partners may make in-kind distributions of any or all of ML Oklahoma's portfolio securities "in such amounts and at such times as they may determine." The Partnership Agreement provides that, for the purpose of allocating profits and losses, unrealized gains or losses attributable to any securities distributed in-kind to Partners will be deemed realized upon distribution. Any in-kind distribution made by the Partnership will be valued based on its market price on the national securities exchange or the NASDAQ National Market System ("NASDAQ NMS") at the close of trading on the date the securities are first distributed by the Partnership. Prior to making any in-kind distribution, at least a majority of the Independent General Partners will have approved the proposed in-kind distribution as being in the best interests of the Limited Partners. The Limited Partners will be notified prior to any in-kind distribution made by the Partnership.

7. Although the Partnership Agreement expressly contemplates in-kind distributions both during the life of ML Oklahoma and upon its termination, and permits the Managing General Partner to receive compensation based upon gains attributable to securities distributed in kind, ML Oklahoma has made no such distributions. In a prior application filed by the Managing General Partner, the Management Company and ML Oklahoma for certain exemptions under the Investment Company Act of 1940, those applicants undertook that ML Oklahoma would not make in-kind distributions until it obtained a no-action letter from the Commission staff confirming that unrealized gains or losses attributable to in-kind distributions are properly deemed realized upon such distribution, or obtained an exemption pursuant to section 206A of the Advisers Act permitting ML Oklahoma to deem such gains or losses to be realized upon in-kind distributions of securities. [2]

Applicant's Legal Analysis

1. Section 205(a)(1) of the Advisers Act prohibits any investment adviser register under the Advisers Act from entering into a contract which provides for compensation based upon "a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client," commonly referred to as a "performance fee."

2. Section 205(b)(3) provides, in pertinent part, that the performance fee proscriptions of section 205(a)(1) are not applicable to advisory contracts between an investment adviser and a BDC if, among other things, "the compensation provided for in such contract does not exceed 20 per centum of the realized capital gains upon the funds of [the BDC] over a specified period or as of definite dates, computed net of all realized capital losses and unrealized capital depreciation." Thus, Applicants assert, section 205(b)(3) recognizes the appropriateness of a performance fee as compensation for investment advisers to BDCs in light of the special nature of BDCs.

3. Section 205(b)(3) permits a performance fee with respect to realized gains only and does not contemplate the procedures set forth in the Partnership Agreement whereby unrealized gains or losses are "deemed" realized under certain conditions for purposes of the compensation formula.

4. Section 206A of the Advisers Act authorizes the Commission, by order upon application, to exempt any person or transaction from any provision of the Advisers Act "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Advisers Act]."

5. Applicants request exemptive relief from section 205(a)(1) to permit the Partnership to make in-kind distributions of shares of common stock that ML Oklahoma holds in one of its two remaining investments. Upon distribution, the Partnership would deem realized any unrealized gains or losses on the securities being distributed. Applicants submit that the performance fee received by the Managing General Partner from the in-kind distribution may be prohibited under section 205(a)(1) of the Advisers Act and it is not included within the exemption from that prohibition provided in section 205(b)(3).

6. Applicants state that the exemption sought is consistent with the standards set out in Advisers Act section 206A Congress has found it appropriate to permit a performance fee in the case of an investment adviser to a BDC. Applicants argue that to the extent section 205(b)(3) requires a performance fee to be based on realized capital gains, their proposal is consistent with the statutory purpose. Once the in-kind distribution is made, the Managing General Partner will no longer have any control over the investment in the subject securities; investors in ML Oklahoma will have the exclusive ability to liquidate such investments. Furthermore, Applicants state that, under the terms of their proposal, the proper valuation of the securities upon which the performance fee is based would be easily determinable. Applicants request exemptive relief only with respect to in-kind distributions of securities that Applicants represent are traded on the NASDAQ NMS and for which market quotations are readily available.[3] Thus, applicants assert, the issues that would be raised if ML Oklahoma paid a performance fee based on the valuation of securities of private companies are not present.

7. Applicants submit that it is in the best interests of the Partners, particularly the Limited Partners, and in the public interest for ML Oklahoma to have the authority to make in-kind distributions of the subject portfolio securities. First, Applicants represent that the distributed securities will be freely transferable, and the Partners will be able to determine whether to hold or sell them. Applicants assert that as a venture capital fund, ML Oklahoma has no experience or expertise with respect to publicly traded securities, and therefore the Partners do not lose the benefits of expert, professional management by receiving in-kind distributions. Second, Applicants assert that the distributions of portfolio securities will not constitute a taxable event with respect to the Partnership or the Partners, so that Partners will, in determining whether to hold or sell the securities, control the timing of realization of capital gains. Third, to the extent that ML Oklahoma holds a significant percentage of the subject company's shares, Applicants expect that the market could more easily absorb sales by those Partners desiring to sell over a more extended time period than if ML Oklahoma sold its position directly over a shorter period of time. Finally, Applicants assert that in-kind distributions on termination are an efficient way of winding up the Partnership's affairs and avoiding premature dispositions of portfolio investments.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28793 Filed 11–8–00; 8:45 am]

BILLING CODE 8010–01–M

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[1] Under the Partnership Agreement, the "Priority Return" is an amount equal to a cumulative, non-compounded return of 10% per annum on the average daily amount of the gross capital contributions invested in liquidated investments from the date of the last closing of the sale of Units through the date each venture capital investment is liquidated. The Priority Return is calculated on a cumulative basis over the life of the Partnership through the relevant year.

[2] *See* ML Oklahoma Venture Partners, L.P., *et al.*, Investment Company Act Release Nos. 16613 (Oct. 26, 1988) [53 FR 44272 (Nov. 2, 1988)] (Notice of Application) and 16652 (Nov. 23, 1988), 42 SEC Docket 463 (Order).

[3] In the Application, Applicants state that the relief they request extends to in-kind distributions of securities only if, at the time of the distribution, the securities continue to be traded on a national securities exchange or the NASDAQ NMS.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24725; File No. 812–12136]

Principal Life Insurance Company, et al., Notice of Application

November 2, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits applied to purchase payments made under certain variable annuity contracts.

Summary of Application: Applicants Principal Life Insurance Company ("Principal Life"), Principal Life Insurance Company Separate Account B (the 'Account"), and Princor Financial Services Corporation ("Princor") seek an order to permit, under specified circumstances, the recovery of certain credits previously applied to purchase payments made under: (i) Certain deferred variable annuity contracts that Principal Life issues through the Account (the contracts, including certain data pages and endorsements, are collectively referred to herein as the "Contracts"), and (ii) contracts that Principal Life may issue in the future through the Account, any of its other separate accounts, or any separate accounts that it may establish in the future("Future Accounts") which contracts are substantially similar in all material respects to the Contracts ("Future Contracts"). Applicants also request that the order extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling, controlled by, or under common control with Principal Life, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts or any Future Contracts offered through the Account or any Future Accounts (collectively "Affiliated Broker-Dealers").

Applicants: Principal Life, the Account, Princor, and any of Principal Life's Future Accounts established to support Future Contracts issued by Principal Life (collectively, "Applicants").

Filing Date: The Application was filed on June 22, 2000 and amended on October 30, 2000.

Hearing or Notification of Hearing: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 on November 27, 2000 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicants, c/o J. Sumner Jones, Jones & Blouch, L.L.P., 1025 Thomas Jefferson Street, NW., Washington, DC 20007–0805.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Principal Life is a stock life insurance company organized under the laws of Iowa in 1879 as Bankers Life Association. It changed its name to Bankers Life Company in 1911, to Principal Mutual Life Insurance Company in 1986, and then to Principal Life Insurance Company in 1998. The name change to Principal Life Insurance Company was made in connection with the reorganization into a mutual holding company structure in 1998. Principal Life's principal business is offering life insurance and annuity contracts in 50 states and the District of Columbia. Principal Mutual Holding company is the holding company of Principal Life, its affiliates and subsidiaries, collectively known as Principal Financial Group.

2. The Account was established in 1970 by Principal Life as a separate account under Iowa law and is registered with the Commission as a unit investment trust under the Act. The Account funds the benefits available under the Contracts and other variable annuity contracts issued by Principal Life. The offering of the Contracts by Principal Life is registered under the Securities Act of 1933. That portion of the assets of the Account that is equal to the reserves and other contract liabilities with respect to the Account is not chargeable with liabilities arising out of any other business of Principal Life. Any income, gains or losses, realized or unrealized, from assets allocated to the Account are, in accordance with the various contracts, credited to or charged against the Account without regard to other income, gains or losses of Principal Life.

3. Princor is an Iowa corporation controlled by Principal Financial Services, Inc. and is the principal underwriter of the Contracts. Princor is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD. Sales of the Contracts are made by registered representatives of broker-dealers authorized by Princor to sell the Contracts. Such registered representatives are also licensed insurance agents or brokers of Principal Life.

4. The Contracts are flexible purchase payment individual deferred combination fixed and variable annuity contracts. The Contracts may be issued under a qualified contract or as a non-qualified contract.

5. The minimum initial purchase payment for a Contract is $2,500 for non-qualified retirement programs and $1,000 for a qualified Contract. The minimum subsequent purchase payment is $100. Principal Life may limit total Contract purchase payments to $2,000,000.

6. At the time of issuance, a Contract owner may elect to purchase the Purchase Payment Credit Rider. If the Rider is elected, Principal Life will add a 5% payment enhancement or credit to the owner's Contract (the "Credit") upon receipt of a purchase payment from the Contract owner during the first contract year. After the first contract year, additional purchase payments will not receive a Credit. Principal Life will fund Credits from its general account assets and will allocate Credits among investment options (excluding certain fixed benefit options used for dollar cost averaging (the DCA Plus accounts)) in the same proportion as the applicable purchase payment.

7. Principal Life will recover any Credit applied if the Contract owner returns the Contract for a refund during the 10-day "free look" period. The free look period is the 10-day period (or a longer period in states where required) during which a Contract owner may return a Contract after it has been delivered. Upon such return, the Contract owner generally will receive a full refund of the Contract value, less any Credit, and no withdrawal charge will apply to the refund. The Contract owner will retain any earnings attributable to the Credit allocated to his or her account value or, if there has been a decline in the value of accumulation units for an investment to which a Credit has been allocated, will bear the loss from such decline. The refund amount may thus be more or less than the Contract owner's purchase payment. Where applicable state law requires that the full amount of the purchase payment be refunded, the Contract owner will receive that amount, and Principal Life will retain any earnings, or bear any loss, attributable to the Credit as well as to the purchase payment. The recovery of Credits from the sub-accounts will be effected by canceling accumulation units equal in value to the full amounts to be recovered, the number of such units to be calculated at the accumulation unit value next determined. Amounts recovered will be withdrawn from each investment option in the same proportion that the value of the investment account of each investment option bears to the Contract value.

8. Contract owners may allocate their purchase payments among a fixed account, two different DCA Plus fixed options (which will not be available to Contract owners who elect the Purchase Payment (Credit Rider), and a number of sub-accounts of the Account. Each sub-account invests in shares of a corresponding portfolio of certain underlying investment companies ("Underlying Funds"). Principal Life may, subject to compliance with applicable law, add other sub-accounts, eliminate or combine existing sub-accounts or transfer assets in one sub-account to another sub-account established by Principal Life or an affiliated company.

9. The Contracts provide for the following charges: (i) A withdrawal or contingent deferred sales charge ("CDSC") as a percentage of amounts withdrawn attributable to purchase payments that have been in the Contract less than seven complete years, with the applicable percentage charge declining from a maximum of 6% in years zero, one and two to 0.0% in year seven and thereafter; (ii) an annual contract fee that is the lesser of $30 or 2% of the accumulated value (which may be waived under certain circumstances); (iii) a daily mortality and expense risks charge in an amount equal on an annual basis to 1.25% of the value of each variable investment account, deducted from each sub-account; and (iv) any applicable state or local premium taxes up to 3.5%, depending on the Contract owner's state of residence or the state in which the Contract was sold. In addition, the Underlying Funds also impose a management and administrative fee which varies depending upon which Funds are selected.

10. If the Purchase Payment Credit Rider is elected, the Contracts will provide for the following charges: (i) A withdrawal or contingent deferred sales charge ("CDSC") as a percentage of amounts withdrawn attributable to purchase payments that have been in the Contract less than nine complete years, with the applicable percentage charge declining from a maximum of 8% in years zero, one, two and three to 0.0% in year nine and thereafter; (ii) an annual contract fee that is the lesser of $30 or 2% of the accumulated value (which may be waived under certain circumstances); (iii) a daily mortality and expense risks charge in an amount equal on an annual basis to 1.25% of the value of each variable investment account, deducted from each sub-account; (vi) a Purchase Payment Credit Rider charge payable for the first 8 contract years, in an amount equal on an annual basis to .60% of the value of each variable investment account, deducted from each sub-account; and (v) any applicable state or local premium taxes up to 3.5%, depending on the Contract owner's state of residence or the state in which the Contract was sold. In addition, the Underlying Funds also impose a management and administrative fee which varies depending upon which Funds are selected.

11. Because of the higher charges applicable to a Contract with the Purchase Payment Credit Rider, the prospectus description of the Rider will include a statement to the effect that expenses of a Contract with the Rider may be higher than expenses of a Contract without the Rider and the amount of the Credits may be more than offset by the fees and charges associated with the Credits. The prospectus will also state that there may be circumstances in which a Contract owner may be worse off for having the Rider because of the higher charges.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions requested below with respect to the Contracts, and any Future Contracts funded by the Account or Future Accounts, that are issued by Principal Life and underwritten or distributed by Princor or Affiliated Broker-Dealers. Applicants undertake that Future Contracts will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extend deemed necessary to permit Principal Life to recover any Credit previously applied to purchase payments under certain Contracts or Future Contracts if a Contract owner returns the Contracts or Future Contracts for a refund during the free look period.

3. Applicants represent that it is not administratively feasible to track asset-based charges against Credits in the Account after the Credits have been applied. Accordingly, the asset-based charges applicable to the Account will be assessed against the entire amounts held in the Account, including Credits, during the free look period. As a result, during such period, the aggregate asset-based charges assessed against a Contract owner's annuity account value will be higher than they would have been if the owner's annuity account value did not include any Credits.

4. Subsection (i) of Section 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines a "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon representation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net asserts, or the cash equivalent thereof.

5. Applicants submit that the recovery of Credits in the circumstances set forth in the Application does not deprive a Contract owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the Credit allocated to his or her annuity account value is not vested until the applicable free look period has expired without return of the Contract. Until the right to recovery has expired and any Credit has vested, Principal Life retains the right and interest therein. Thus, when Principal Life recovers any Credit, it is merely retrieving its own assets. The Contract owner is not deprived of a proportionate share of the Account's assets because the Contract owner's interest in such Credit has not vested. Moreover, Principal Life does not recover any earnings attributable to Credits allocated to a Contract owner's account value prior to exercise of the free look return.

6. Applicants further submit that permitting a Contract owner to retain a Credit upon the exercise of the free look return provisions would be unfair and would deny Principal Life a reasonable measure of protection against anti-selection. The anti-selection risk here is that, rather than spreading purchase payments over a number of years, a Contract owner might seek to manipulate Contracts provisions in a manner that leaves Principal Life little time to recover the cost of the Credits. For example, permitting a Contract owner to retain a Credit upon the exercise of the free look return would encourage the purchase of Contracts for a quick profit upon return rather than with the intention of making a long-term investment. As stated above, the amounts recovered will equal the Credits provided by Principal Life from general account assets, and any gains attributable to such Credits will remain a part of the Contract owner's Contract value. For the foregoing reasons, Applicants submit that the provisions for recovery of Credits under the Contracts do not violate Section 2(a)(32) and 27(i)(2)(A) of the Act.

7. Applicants believe, moreover, that the exemptive relief requested is consistent with and serves the stated

purpose of the National Securities Markets Improvement Act of 1996 ("NSMIA") in amending the Act to "provide more effective and less burdensome regulation." Sections 26(e) and 27(i) were added to the Act to implement the purposes of NSMIA and Congressional intent. The application of Credits to purchase payments under the Contracts should not raise any questions as to Principal Life's compliance with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recovery of Credits under the circumstances described in the Application with respect to Contracts and Future Contracts, without the loss of relief from Section 27 provided by Section 27(i).

8. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Principal Life's recovery of Credits as described in the Application might arguably be viewed as involving the redemption of redeemable securities for a price other than one based on the current net asset value of the Account.

9. Applicants believe that the recovery of the Credits does not violate Section 22c–1 and Rule 22c–1. Such recovery does not involve either of the harms that Rule 22c–1 was intended to eliminate or reduce, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. These harms resulted from the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Such backward pricing allowed investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the value of outstanding fund shares.

10. Applicants submit that the recovery of Credits as described in the Application does not pose such a threat of dilution. In effecting recoveries, Principal Life will redeem interests in a Contract owner's Contract at a price determined on the basis of the current net asset value of the sub-account(s) to which the owner's Contract value is allocated. The amounts recovered will equal the Credits that Principal Life has paid out of general account assets. Except where state law requires that the full amount of the purchase payment be refunded, the Contract owners will be entitled to retain any investment gains attributable to the Credits, and the amounts of such gains will be determined on the basis of the current net asset values of the applicable sub-accounts. Under these circumstances, in Applicants' view, the recovery of the Credits does not involve dilution. Applicants further submit that the second harm that Rule 22c–1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recovery of Credits.

11. Applicants contend that, because neither of the harms that Rule 22c–1 was meant to address are found in the recovery of Credits, Rule 22c–1 and Section 22(c) should not be construed as applicable thereto. However, to avoid any uncertainty in this regard, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recover Credits under the Contracts and Future Contracts as described in the Application.

12. Applicants submit that their request for an order that applies to Future Accounts and Future Contracts that are substantially similar in all material respects to the Contracts and underwritten or distributed by Princor or Affiliated Broker-Dealers is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Investors will not receive any benefit or additional protection if Applicants are required repeatedly to seek exemptive relief presenting no issue under the Act that has not already been addressed in the Application. Having Applicants file additional applications would impair Applicants' ability to effectively take advantage of business opportunities as they arise. Applicants undertake that Future Contracts funded by the Account or by Future Accounts which seek to rely on the order issued pursuant to this Application will be substantially similar in all material respects to the Contracts.

Conclusion

Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that, for the reasons stated in the Application, their exemptive requests meet the standards set out in Section 6(c) and that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–28750 Filed 11–8–00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24727; 812–12244]

Firstar Funds, Inc., et al.; Notice of Application

November 3, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

Summary of the Application: Applicants request an order to permit certain series of Firstar Funds, Inc. ("Firstar") to acquire all of the assets and liabilities of all of the series of Firstar Stellar Funds ("Stellar"), Mercantile Mutual Funds, Inc. ("Mercantile"), and Firstar Select Funds ("Select") (the "Reorganizations"). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: Firstar, Stellar, Mercantile, Select, Firstar Investment Research & Management Company, LLC ("FIRMCO"), and Firstar Bank, N.A. ("Firstar Bank").

Filing Dates: The application was filed on September 13, 2000. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 24, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Firstar, Stellar, and Mercantile, 615 East Michigan Street, Milwaukee, WI 53201–3011; Select, 431 North Pennsylvania Street, Indianapolis, IN 46204; FIRMCO, Firstar Center, 777 East Wisconsin Avenue, Suite 800, Milwaukee, WI 53202; and Firstar Bank, 425 Walnut Street, Cincinnati, OH 45202.

FOR FURTHER INFORMATION CONTACT: Susan K. Pascocello, Senior Counsel, at (202) 942–0674, or Michael W. Mundt, Branch Chief, at (202) 942–0578 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Stellar, a Massachusetts business, Select, an Ohio business trust, and Mercantile, a Maryland corporation, are registered under the Act as open-end management investment companies and are comprised of 12, 1 and 19 series respectively (the "Acquired Funds"). Firstar, a Wisconsin corporation, is registered under the Act as an open-end management investment company. Firstar is comprised of 36 series, 27 of which will participate in the Reorganizations. Sixteen of the participating series are currently operating (the "Existing Acquiring Funds") and eleven are newly organized shell series (the "Shell Acquiring Funds," and together with the Existing Acquiring Funds, the "Acquiring Funds").[1] The Acquiring Funds and the Acquired Funds are collectively referred to as the "Funds."

2. FIRMCO is registered under the Investment Advisers Act of 1940 ("Advisers Act") and is the investment adviser for Stellar, Mercantile and the Existing Acquiring Funds, and will serve as the investment adviser to the Shell Acquiring Funds. Firstar Bank, N.A. ("Firstar Bank") serves as investment adviser to Select's series, the Select REIT-Plus Fund (the "Select Fund"), and is exempt from registration under the Advisers Act. FIRMCO and Firstar Bank are subsidiaries of Firstar Corporation.

3. FIRMCO, Firstar Bank and certain of their affiliated companies that are under common control with Firstar Corporation (the "Firstar Group"), hold of record in their name, and in the names of their nominees, more than 5% (and with respect to certain Funds more than 25%) of the outstanding voting securities of certain of the Funds.[2] All of these securities are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity, except that certain of the companies of the Firstar Group may, at times, own economic interests in certain money market Funds for their own account. Some of these securities are held for the benefit of employee benefit plans for employees of Firstar Corporation and its affiliates.

4. On June 6, 7, 13, 16, July 11, 13, 20, and August 15, 2000, the boards of directors or trustees of Firstar, Stellar, Select and Mercantile (together, the "Boards"), including the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors"), unanimously approved Plans of Reorganization (each a "Plan" and collectively, the "Plans") between Firstar and Stellar, Select and Mercantile. Pursuant to the Plans, each Acquiring Fund will acquire all of the assets and liabilities of the corresponding Acquired Fund in exchange for shares of the Acquiring Fund.[3]

5. The various Funds have multiple classes of shares. The number of Acquiring Fund shares to be issued to shareholders of the Acquired Fund will be determined by dividing the aggregate net assets of each Acquired Fund class by the net asset value per share of the corresponding Acquiring Fund class, each computed as of the close of business immediately prior to the effective time of the Reorganization ("Effective Time"). Applicants state that the matching of classes was done in a way that provides the closest alignment between distribution channels and/or servicing and distribution-related expenses of each Acquired Fund and Acquiring Fund share class. In addition, Applicants represent that the rights and obligations of each class of shares of the Acquired Funds are substantially

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[1] A registration statement for the Shell Acquiring Funds was filed with the Commission on September 20, 2000, and it is anticipated that it will be declared effective on November 17, 2000.

[2] The Firstar Group does not hold more than 5% of the outstanding voting securities of the Mercantile Conning Money Market Portfolio and the Firstar Conning Money Market Fund. Applicants will rely on Rule 17a-8 under the Act and not the requested order for the merger of these Funds.

[3] The Acquired Funds and their corresponding Acquiring Funds are: (1) Stellar Treasury Fund, Mercantile Treasury Money Market Portfolio and Firstar U.S. Treasury Money Market Fund; (2) Stellar Tax-Free Money Market Fund, Mercantile Tax-Exempt Money Market Portfolio and Firstar Tax-Exempt Money Market Fund; (3) Mercantile Bond Index Portfolio, Mercantile Government & Corporate Bond Portfolio and Firstar Aggregate Bond Fund; (4) Stellar U.S. Government Income Fund, Mercantile U.S. Government Securities Portfolio and Firstar U.S. Government Securities Fund; (5) Stellar Insured Tax-Free Bond Fund, Mercantile National Municipal Bond Portfolio and Firstar National Municipal Bond Fund; (6) Mercantile Money Market Portfolio and Firstar Money Market Fund; (7) Mercantile Intermediate Corporate Bond Portfolio and Firstar Intermediate Bond Market Fund; (8) Mercantile Short-Intermediate Municipal Portfolio and Firstar Tax-Exempt Intermediate Bond Fund; (9) Mercantile Balanced Portfolio and Firstar Balanced Growth Fund; (10) Mercantile Equity Index Portfolio and Firstar Equity Index Fund; (11) Mercantile Growth & Income Equity Portfolio and Firstar Growth & Income Fund; (12) Mercantile Growth Equity Portfolio and Firstar Growth Fund; (13) Mercantile Small Cap Equity Portfolio and Firstar Emerging Growth Fund; (14) Mercantile International Equity Portfolio and Firstar Core International Equity Fund; (15) Stellar Fund and Firstar Balanced Income Fund; (16) Stellar Capital Appreciation Fund and Firstar MidCap Index Fund; (17) Mercantile Conning Money Market Portfolio and Firstar Conning Money Market Fund; (18) Mercantile Missouri Tax-Exempt Bond Portfolio and Firstar Missouri Tax-Exempt Bond Fund; (19) Mercantile Equity Income Portfolio and Firstar Equity Income Fund (shell); (20) Mercantile Small Cap Equity Index Portfolio and Firstar Small Cap Index Fund (shell); (21) Stellar Ohio Tax-Free Money Market Fund and Firstar Ohio Tax-Exempt Money Market Fund (shell); (22) Stellar Strategic Income Fund and Firstar Strategic Income Fund (shell); (23) Stellar Growth Equity Fund and Firstar Large Cap Growth Fund (shell); (24) Stellar Relative Value Fund and Firstar Relative Value Fund (shell); (25) Stellar Science & Technology Fund and Firstar Science & Technology Fund (shell); (26) Stellar International Equity Fund and Firstar Global Equity Fund (shell); and (27) Select Fund and Firstar REIT Fund (shell).

similar to those of the corresponding class of shares of the Acquiring Funds into which they will be reorganized.[4] For purposes of calculating the deferred sales charges of shares of Acquiring Fund classes that charge a contingent deferred sales load, shareholders of the Acquired Funds will be deemed to have held the shares of the corresponding Acquiring Fund since the date the shareholders initially purchased the shares of the Acquired Fund.

6. Applicants state that the investment objectives, policies, and restrictions of each Acquiring Fund are substantially similar to those of its corresponding Acquired Fund. No sales charge will be imposed in connection with the Reorganizations. The Plans provide that Acquiring Fund shares will be distributed pro rata to the shareholders of record in the applicable Acquired Fund class, determined as of the close of business immediately prior to the Effective Time, in complete liquidation of each Acquired Fund. Applicants anticipate that the Reorganizations will be completed on or about November 27, 2000.

7. The Boards, including the Independent Directors, unanimously found that participation in the Reorganizations is in the best interest of each Fund and its shareholders and that the interests of existing shareholders of the Funds will not be diluted as a result of the Reorganizations. In approving the Reorganizations, the Boards considered, among other things, (a) the potential effect of the Reorganizations; (b) the expense ratios of the Acquiring Funds and the Acquired Funds; (c) the compatibility of the investment objectives and investment strategies of the Acquiring Funds and the Acquired Funds; (d) the terms and conditions of the Plans; and (e) the tax-free nature of the Reorganizations. FIRMCO or one of its affiliates (not the Funds) will assume all expenses incurred by the Funds in connection with the Reorganizations.

8. The Plans may be terminated by mutual written consent of the Acquiring Funds and Acquired Funds at any time prior to the Effective Time. In addition, either party may terminate the Plans in writing without liability to the terminating party if certain conditions are not satisfied prior to the Effective Time.

9. The registration statement on Form N–14 for Firstar (which contains a combined prospectus/proxy statement for each of Stellar and Mercantile) was filed with the Commission on September 7, 2000, and the registration statement was declared effective on October 7, 2000. The combined prospectus/proxy statements contained in the N–14 registration statement were mailed to shareholders of Stellar and Mercantile on October 23, 2000. The definitive proxy materials for Select were filed with the Commission on October 6, 2000, and were sent to the shareholders of Select on October 11, 2000. A special meeting of shareholders of Select to consider the Reorganizations is to be held on November 8, 2000, and special meetings of the shareholders of Stellar and Mercantile are to be held on November 24, 2000.

10. The consummation of the Reorganizations is subject to certain conditions, including: (a) A registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective; (b) the Acquired Fund shareholders will have approved the Plans; (c) applicants will have received exemptive relief from the Commission to permit the Reorganizations; (d) the Funds will have received an opinion of counsel concerning the tax-free nature of the Reorganizations; and (e) each Acquired Fund that is not reorganizing into a corresponding Shell Acquiring Fund will have declared a dividend to distribute substantially all of its investment company taxable income and net capital gain, if any, to its shareholders. Applicants agree not to make any material changes to the Plans that affect the application without prior Commission approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that the Firstar Group holds of record more than 5% (and in some cases more than 25%) of the outstanding voting securities of certain Funds. Because of this ownership, applicants state that these Funds may be deemed affiliated persons for reasons other than those set forth in rule 17a–8 and therefore unable to rely on the rule. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganizations.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants submit that the terms of the Reorganizations satisfy the standards set forth in section 17(b). Applicants note that the Boards, including all of the Independent Directors, found that participation in the Reorganizations is in the best interests of each Fund and its shareholders and that the interests of the existing shareholders of each Fund will not be diluted as result of the Reorganizations. Applicants also note that the Reorganizations will be based on the Funds' relative net asset value.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28795 Filed 11–8–00; 8:45 am]

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[4] The two classes of Select Fund will be reorganized into one class of Firstar REIT Fund, which, unlike the classes of Select Fund, is not subject to a distribution or shareholder servicing plan.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24726; File No. 812–12068]

National Life Insurance Company, et al.; Notice of Application

November 3, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an order under the Investment Company

Act of 1940 (the "Act") approving certain substitutions of securities and an order of exemption pursuant to Section 17(b) of the Act from Section 17(a) of the Act.

Summary of Application: Applicants seek an order approving the substitution of securities issued by certain management investment companies (each a "Management Company") and held by either the Annuity Account or the Life Account (each, an "Account," together, the "Accounts") to support variable annuity contracts or variable life insurance contracts (collectively, the "Contracts") issued by NLIC. Applicants also seek an order of the Commission pursuant to Section 17(b) of the Act exempting them, Market Street Fund, Inc. ("MSF") and sentinel Variable Products Trust ("SVPT"), and certain investment portfolios of each (each, a "Portfolio" or "Fund," as appropriate), from Section 17(a) of the Act to the extent necessary to permit NLIC to carry out certain of the above-referenced substitutions of securities by redeeming shares issued by MSF in kind and using the proceeds to purchase shares issued by SVPT.

Applicants: National Life Insurance Company ("NLIC"), National Variable Annuity Account II ("Annuity Account"), and National Variable Life Insurance Account ("Life Account").

Filing Date: The application was filed on April 20, 2000, and was amended and restated on November 3, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 24, 2000, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o D. Russell Morgan, Esq., National Life Insurance Company, National Life Drive, Montpelier, VT 05604.

FOR FURTHER INFORMATION CONTACT: Keith A. O'Connell, Senior Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. NLIC is a stock life insurance company, all of the outstanding stock of which is indirectly owned by National Life Holding Company, a mutual insurance holding company, established under Vermont law in 1999. NLIC is authorized to transact life insurance and annuity business in Vermont and in 50 other jurisdictions. As of December 31, 1999, NLIC had consolidated assets of approximately $10 billion. For purposes of the Act, NLIC is the depositor and sponsor of the Annuity Account and the Life Account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts. Each Account is a "separate account" as defined by Rule 0–1(e) under the 1940 Act, and is registered with the commission as an unit investment trust.

2. The Annuity Account is divided into twenty-seven subaccounts. Each subaccount invests exclusively in a Fund of one of eleven series-type Management Companies. The assets of the Annuity Account support variable annuity Contracts, and interests in the Account offered through each Contracts have been registered under the Securities Act of 1933 (the "1933 Act") on Form N–4.

3. The Life Account is divided into forty-eight subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding Fund of one of eight series-type Management Companies. The assets of the Life Account support variable life insurance Contracts, and interests in this Account offered through such Contracts have been registered under the 1933 Act on Form S–6.

4. MSF is registered under the Act as an open-end diversified management investment company. MSF is a series investment company as defined by Rule 18f–2 under the Act and currently comprises twelve Portfolios. MSF issues a separate series of shares of stock in connection with each Portfolio and has registered these shares under the 1933 Act on Form N–1A. Providemutual Investment Management Company ("PIMC") serves as investment adviser to the MSF International Portfolio and The Boston Company Asset Management, Inc. serves as its subadviser. Sentinel Advisors Company serves as investment adviser to the MSF Growth Portfolio, Sentinel Growth Portfolio, Aggressive Growth Portfolio and Money Market Portfolio.

The investment objective of the International Portfolio is long-term growth of capital primarily through investments in a diversified portfolio of marketable equity securities of established foreign corporate issuers and companies organized in the U.S. but having their principal activities and interests outside the U.S. This Portfolio also may invest in securities of other foreign issuers such as foreign governments or agencies or instrumentalities of foreign governments.

The investment objective of the Growth Portfolio is intermediate and long-term growth of capital. A reasonable level of income is an important secondary objective. This Portfolio invests primarily in common stocks of companies that its investment adviser believes offer above-average intermediate and long-term growth potential. The Portfolio purchases securities only of companies that have profitable operations and an annual minimum level of sales or revenues of at least $50 million.

The investment objective of the Sentinel Growth Portfolio is long-term growth of capital through equity participation in companies having growth potential believed by its investment adviser to be more favorable than the U.S. economy as a whole, with a focus on relatively well-established companies.

The investment objective of the Aggressive Growth Portfolio is to seek a high level of long-term capital appreciation. This Portfolio invests primarily in securities of companies in new or emerging industries and securities of small capitalization companies and/or unseasoned companies.

The investment objective of the Money Market Portfolio is maximum current income consistent with capital preservation and liquidity. This Portfolio invests exclusively in dollar-denominated money market instruments that present minimal credit risks.

5. SVPT is registered under the Act as an open-end diversified management investment company. SVPT is a series investment company as defined by Rule 18f–2 under the Act and currently comprises five Funds. SVPT will issue a separate series of shares of beneficial interest in connection with each Fund and has registered these shares under the 1933 Act on Form N–1A. National

Life Investment Management Company, Inc. will serve as investment adviser to each of the Funds.

The investment objective of the Sentinel Variable Products Common Stock Fund is to seek a combination of growth of capital, current income, growth of income and relatively low risk as compared with the stock market as a whole. This Fund invests mainly in a diverse group of common stocks of well-established companies, most of which pay regular dividends. The Fund's investment adviser tries to select stocks of leading companies that are financially strong and are selling at attractive prices in relation to their values.

The investment objective of Sentinel Variable Products Mid Cap Growth Fund is growth of capital, by focusing its investments on common stock of mid-sized growing companies. The Fund invests in securities of issuers that its investment adviser believes have favorable growth potential with attractive pricing in relation to this growth potential as well as experienced and capable management. The Fund invests at least 65% of its assets in stocks whose market capitalization is within the range of these comprising the Standard & Poor's 400 Midcap Index.

The investment objective of Sentinel Variable Products Small Company Fund is growth of capital, by investing mainly in common stocks of small and medium companies that its investment adviser believes have attractive growth potential and are attractively valued. The Fund invests at least 65% of its assets in stocks of companies with market capitalizations of less than $2 billion, and the median market capitalization of the Fund's holdings is less than $1 billion.

The investment objective of Sentinel Variable Products Money Market Fund is to seek as high a level of current income as is consistent with stable principal values an liquidity by investing exclusively in dollar-denominated money market instruments, including U.S. government securities, bank obligations, repurchase agreements, commercial paper, and other corporate debt obligations.

6. *Goldman Sachs Variable Insurance Trust ("GSVIT").* GSVIT is registered under the Act as an open-end diversified management investment company. GSVIT is a series investment company as defined by Rule 18f–2 under the Act and currently comprises nine funds. GSVIT issues a separate series of shares of beneficial interest in connection with each fund and has registered these shares under the 1933 Act on Form N–1A. Goldman Sachs Asset Management International, an affiliate of Goldman, Sachs & Co., serves as investment adviser to the GSVIT International Equity Fund and Goldman Sachs Asset Management, a unit of the Investment Management Division of Goldman, Sachs & Co., serves as investment adviser to the other GSVIT funds whose shares are held by the Accounts.

The investment objective of the International Equity Fund is long-term capital appreciation. Under normal circumstances, the Fund invests substantially all, and at least 65% of its total assets in equity securities of companies that are organized outside the U.S. or whose securities are primarily traded outside the U.S. The Fund may allocate its assets among countries selected by its investment adviser, provided that its assets are invested in at least three foreign countries. The Fund expects to invest a substantial portion of its assets in the securities of issuers located in the developed countries of Western Europe and in Japan.

The investment objective of the Global Income Fund is high total return emphasizing current income. The Fund invests primarily in high quality fixed-income securities of U.S. and foreign issuers and enters into transactions in foreign currency. Under normal market conditions, the Fund has at least 30% of its total assets denominated in U.S. dollars and invests in at least three countries. Except for issuers located in Canada, Germany, Japan, the United Kingdom, and the U.S., not more than 25% of the Fund's total assets is invested in securities of issuers in any single country.

The investment objective of the CORE Small Cap Entity Fund is long-term growth of capital. The Fund seeks this objective through a broadly diversified portfolio or equity securities of U.S. issuers that are included in the Russell 2000 Index at the time of investment. Under normal circumstances, the Fund invests at least 90% of its total assets in equity securities of U.S. issuers, including foreign issuers whose securities are traded in the U.S.

The investment objective of the Mid Cap Value Fund is long-term capital appreciation. Under normal circumstances, the Fund invests substantially all of its assets in equity securities and at least 65% of its total assets in equity securities of mid-cap companies with public stock market capitalizations within the range of market capitalizations of companies comprising the Russell Midcap Index at the time of investment. The Fund also may invest up to 25% of its total assets in foreign securities, including securities of issuers in emerging countries and securities quoted in foreign currencies.

7. *Fidelity Variable Insurance Products Fund and Fidelity Variable Insurance Products Fund II (together, "FVIP").* Fidelity Variable Insurance Products Fund and Fidelity Variable Insurance Products Fund II are each registered under the Act as an open-end diversified management investment company. Each also is a series investment company as defined by Rule 18f–2 under the Act and issues a separate series of shares of beneficial interest in connection with each Portfolio and has registered these shares under the 1933 Act on Form N–1A. Fidelity Management & Research Company serves as investment adviser to the FVIP Investment Grade Bond Portfolio and Overseas Portfolio.

The investment objective of FVIP Investment Grade Bond Portfolio is to seek as high a level of current income as is consistent with the preservation of capital. The Portfolio normally invests its assets in U.S. dollar-denominated investment-grade bonds. The Portfolio's investment adviser manages it to have similar overall interest rate risk to the Lehman Brothers Aggregate Bond Index. The investment adviser allocates the Portfolio's assets among different market sectors and different maturities based on its view of the relative value of each sector or maturity.

The investment objective of FVIP Overseas Portfolio is long-term growth of capital. The Portfolio invests at least 65% of its total assets in foreign securities. It invests primarily in common stocks.

8. *Van Eck Worldwide Insurance Trust ("VEWIT").* VEWIT is registered under the Act as an open-end diversified management investment company. VEWIT is a series investment company as defined by Rule 18f–2 under the Act and currently comprises four Funds. VEWIT issues a separate series of shares of beneficial interest in connection with each Fund and has registered these shares under the 1933 Act on Form N–1A. Van Eck Associates Corporation serves as investment adviser to the VEWIT Worldwide Bond.

The investment objective of the Worldwide Bond Fund is high total return by investing globally, primarily in a variety of debt securities. The Fund's assets generally consist of debt securities rated B or better by Standard & Poor's or Moody's Investor's Service, but it may hold up to 25% of its assets in lower-rated debt issued by governments or government agencies. The Fund's investment adviser expects the Fund's average maturity to range from three to ten years. There is no limit on the amount that the Fund may invest in one country or in securities denominated in a single currency. Under normal conditions, the Fund's assets will be invested in at least three countries other than the U.S.

9. *American Century Variable Portfolios, Inc. ("ACVP").* ACVP is registered under the Act as an open-end diversified management investment company. ACVP is a series investment company as defined by Rule 18f–2 under the Act and currently comprises six Funds. ACVP issues a separate series of shares of stock in connection with each Fund and has registered these shares under the 1933 Act on Form N–1A. American Century Investment Management, Inc. serves as investment adviser to the ACVP Value Fund.

The investment objective of the ACVP Value Fund is long-term growth. Income is a secondary objective. The Fund's investment adviser seeks for the Fund stocks of medium to large companies that it believes are undervalued at the time of purchase. The investment adviser follows a value strategy that looks for companies that are temporarily out of favor in the market.

10. The Contracts are flexible premium variable life insurance contracts and individual flexible premium deferred variable annuity contracts. Under each of the Contracts, NLIC reserves the right to substitute shares of one Fund or Portfolio for shares of another, including a Fund or Portfolio of a different Management Company.

11. Under the variable life insurance Contracts, a Contract owner may make unlimited transfers of accumulated value in a Contract year between and among the subaccounts of the relevant Account and NLIC's general account. Currently there is no charge for transfers; however, NLIC reserves the right to assess a $25 charge for each transfer in excess of twelve in any Contract year. Under the variable annuity Contracts, a Contract owner may make unlimited transfers of contract value between and among the subaccounts of the relevant Account and NLIC's general account. Currently there is no charge for transfers, however, NLIC reserves the right to assess a $25 charge for each transfer in excess of twelve in any Contract year.

12. NLIC, on its behalf and on behalf of the Accounts, proposes to make the following substitutions of shares held in those Accounts: (1) Shares of SVPT Common Stock Fund for shares of MSF Growth Portfolio, (2) shares of SVPT Mid Cap Growth Fund for shares of MSF Sentinel Growth Portfolio, (3) shares of SVPT Small Company Fund for shares of MSF Aggressive Growth Portfolio, (4) shares of FVIP Overseas Portfolio for shares of MSF International Portfolio, (5) shares of SVPT Money Market Fund for shares of MSF Money Market Portfolio, (6) shares of FVIP Investment Grade Bond Portfolio for shares of VEWIT Worldwide Bond Fund, (7) shares of FVIP Overseas Portfolio for shares of GSVIT International Equity Fund, (8) shares of FVIP Investment Grade Bond Portfolio for shares of GSVIT Global Income Fund, (9) shares of SVPT Small Company Fund for shares of GSVIT CORE Small Cap Equity Fund, and (10) shares of ACVP Value Portfolio for shares of GSVIT Mid Cap Value Fund. NLIC believes that by making the proposed substitutions in each of the Accounts, they can better serve the interests of owners of the Contracts.

13. *Proposed substitution of shares of SVPT Common Stock Fund for shares of MSF Growth Portfolio, shares of SVPT Mid Cap Growth Fund for shares of MSF Sentinel Growth Portfolio, shares of SVPT Small Company Fund for shares of MSF Aggressive Growth Portfolio, shares of FVIP Overseas Portfolio for shares of MSF International Portfolio, and shares of SVPT Money Market Fund for shares of MSF Money Market Portfolio.* Sentinel Advisors Company ("SAC") serves as the investment manager and adviser to the MSF Growth Portfolio, Sentinel Growth Portfolio, Aggressive Growth Portfolio and Money Market Portfolio. SAC is a general partnership owned and controlled by four entities: (1) National Retirement Plan Advisors, Inc., an indirect wholly-owned subsidiary of NLIC, (2) Providentmutual Management Co., Inc., an indirect wholly-owned subsidiary of Provident Mutual Life Insurance Company ("PMLIC"), (3) HTK of Delaware, Inc., a wholly-owned subsidiary of The Penn Mutual Life Insurance Company ("Penn Mutual"), and (4) Sentinel Management Company (a partnership of wholly-owned subsidiaries of NLIC, PMLIC and Penn Mutual), which is SAC's managing general partner. NLIC, PMLIC and Penn Mutual are not affiliated persons of each other. Although a joint venture among the three principal controlling parties (NLIC, PMLIC and Penn Mutual) who each maintain a financial interest in SAC, SAC's officers and investment personnel are all employees of NLIC or its affiliates. The ownership percentages of the partners fluctuate as a function of the assets (managed by SAC) contributed by each partner. As of December 31, 1999, the percentages were: NLIC, 62.238%, PMLIC, 33.924%; and Penn Mutual, 3.839%. SAC is located at NLIC's premises, in Montpelier, Vermont.

14. PIMC, an indirect wholly-owned subsidiary of PMLIC, serves as the investment manager and adviser of the MSF International Portfolio. PIMC has engaged The Boston Company Asset Management, Inc. as an investment subadviser to carry out day-to-day portfolio management. PIMC also serves as the investment manager and adviser to five other MSF investment portfolios that are not used by NLIC as investment options in any of its variable life insurance or annuity contracts and which would not be involved in the proposed substitutions.

15. PMLIC and NLIC have discussed the possibility of ending their joint use of MSF as an investment vehicle for both companies' variable life insurance and variable annuity contracts (including the Contracts). NLIC has determined that the manner of accomplishing this separation which would involve the least confusion and disruption to owners of the Contracts would be for it to substitute shares of new Funds or Portfolios for those of MSF Portfolios held by the Accounts. Once the Accounts no longer held shares of MSF's Growth Portfolio, Sentinel Growth Portfolio, Aggressive Growth Portfolio and Money Market Portfolio, SAC would be willing to step down as investment manager and adviser to MSF. Applicants assert that this would permit MSF to make whatever new investment management arrangements (and related changes, if any, in Portfolio investment policies) it desires for PMLIC contract owners invested in the foregoing Portfolios and would avoid the possibility that MSF may propose changes which NLIC and PMLIC could not agree on. The Applicants state that such a disagreement could create unnecessary expense and confusion for owners of both the Contracts and PMLIC contracts, and could result in one or more material irreconcilable conflicts between the interests of Contract owners and owners of PMLIC contracts.

16. The Applicants state that except for the Sentinel Growth Portfolio, most of the assets in these Portfolios belong to owners of variable annuity and variable life insurance contracts issued by PMLIC and its affiliates and only small portions of each consist of assets beneficially owned by owners of the Contracts.

17. NLIC believes that most of the owners of the Contracts wanted (and still want) to invest in Funds managed

or advised by SAC or an affiliate organization or, failing that, in Funds or Portfolios selected by NLIC and over which NLIC has some influence. To facilitate what it believes are the desires of Contract owners, NLIC asked National Life Investment Management Company, Inc. ("NLIMC") to create SVPT with the four Funds that it proposes to substitute for the MSF Growth, Sentinel Growth, Aggressive Growth and Money Market Portfolios. The Applicants state that these Funds are designed to be substantially identical to the MSF Portfolios that they would replace. The investment objectives are substantially the same. Although the investment policies of the Funds (other than the Money Market Fund) are articulated somewhat differently than those of their MSF counterparts, NLIMC intends to manage the Funds exactly as SAC has managed the MSF Portfolios. Indeed, in recent years, SAC generally managed each of these MSF Portfolios in tandem with a Sentinel Fund of the same type; each of the four Funds has identical investment objectives and policies as those of the. appropriate corresponding Sentinel Fund.

18. NLIC believes that the four proposed SVPT Funds will have investment performance substantially similar to that which the corresponding MSF Portfolio would have had if SAC had continued to manage the corresponding MSF Portfolios. Projected expense levels for the SVPT Funds are the same as those experienced in recent years by the MSF Portfolios because each will be capped by NLIC for two years at levels equal to the percentage expense levels experienced by its corresponding MSF Portfolio for the 1999 Fiscal year. Likewise, the management fee rates (including breakpoints) of each SVPT Fund are the same as that of its corresponding MSF Portfolio (for the SVPT Small Company Fund, the corresponding rates will be those of the MFS Aggressive Growth Portfolio). Accordingly, the expense limits for the SVPT Funds for a period of 24 months following the date of the substitution are as follows:

SVPT portfolio	Expense limit (percent)
SVPT Common Stock Fund	.48
SVPT Mid Cap Growth Fund	.71
SVPT Small Company Fund	.57
SVPT Money Market Fund	.40

In addition, for those Contract owners who were Contract owners on the date of the substitution, NLIC will not increase Account or Contract expenses for a period of 24 months following the date of the substitution. Also, NLIC believes it likely that most or all of the MSF Portfolios will experience increases in expense levels in the foreseeable future. Moreover, NLIMC expects to earn lower profits managing the Funds than it derived from its share of SAC's profits from managing the corresponding MSF Portfolios. Thus, Applicants assert that NLIC is not proposing to substitute its proprietary Funds for those of MSF in order to increase its profits. The Applicants state that NLIC is merely trying to respond to a management change for MSF by replacing existing proprietary Portfolios with substantially identical proprietary Funds.

19. The Applicants state that, because NLIMC is not currently in a position to manage an international equity portfolio, NLIC has determined to replace the MSF International Portfolio with the FVIP Overseas Portfolio. NLIC believes that the FVIP Overseas Portfolio is an excellent choice in keeping with what its Contract owners expect.

20. NLIC believes that it would be beneficial to Contract owners invested in the foregoing MSF Portfolios to have their investments withdrawn prior to a major restructuring of the management arrangements for the Portfolios. The Applicants state that this is because most of these Contract owners would likely not favor the proposed management changes while most owners of PMLIC contracts invested in the MSF Portfolios would likely favor such changes. Thus, at any meetings of MSF Portfolio shareholders, Applicants assert that management changes proposed by PMLIC would almost certainly be approved and NLIC would then desire to carry out the proposed substitutions. Applicants assert that nothing would be gained by waiting until after such shareholder meetings to carry out the proposed substitutions.

21. The Applicants state that in light of the significant beneficial ownership position of PMLIC (and affiliate) contract owners, Contract owners and future NLIC contract owners cannot expect to command a majority voting position in any of the Portfolios (except Sentinel Growth Portfolio) in the event that they, as a group, desire that a Portfolio move in a direction different from that generally desired by owners of PMLIC (or its affiliates;) contracts. In addition, because MSF is unlikely to offer shares of the Portfolios to any insurer not affiliated with either NLIC or PMLIC, unless the growth in the number of Contracts or the assets supporting them increases at a much greater rate than those of similar contracts issued by PMLIC and its affiliates, owners of Contracts have no prospects of influencing the future direction of these Portfolios.

22. Similarly, to the extent that NLIC can influence a MSF Portfolio (*i.e.*, its board) or the Portfolio's investment adviser, such influence would likely diminish substantially after PIMC becomes the investment adviser.

23. *Proposed substitution of shares of FVIP Investment Grade Bond Portfolio for shares of VEWIT Worldwide Bond Fund, shares of FVIP Overseas Portfolio for shares of GSVIT International Equity Fund, shares of FVIP Investment Grade Bond Portfolio for shares of GSVIT Global Income Fund, shares of SVPT Small Company Fund for shares of GSVIT CORE Small Cap Equity Fund, and shares of ACVP Value Portfolio for shares of GSVIT Mid Cap Value Fund.* The Applicants state that the VEWIT Worldwide Bond Fund and the GSVIT International Equity Fund, GSVIT Global Income Fund, GSVIT CORE Small Cap Equity Fund, and GSVIT Mid Cap Value Fund have proved unpopular with Contract owners. There are currently 40,964 Contractor owners; only 535 of these are invested in these five Funds. Out of a total of 58,511 Contract owners who have ever invested in the 27 currently offered subaccounts, only 665 have ever invested in subaccounts for these five Funds.

24. NLIC does not believe that Contract owners' interest in these Funds will increase significantly in the foreseeable future. The Applicants state that although performance and expense levels in these Funds have generally been reasonable, both the GSVIT and VEWIT Funds have remained small and have attracted almost no interest from Contract owners. In light of the practical limits on the number of investment options that it can offer in the Contracts, NLIC believes that Contract owners' best interests would be served by replacing these Funds with other, larger and potentially more appealing Funds or Portfolios.

25. In each case, NLIC believes that the new Portfolio proposed for substitution is an excellent choice in keeping with what its Contract owners expect. The Applicants state that except for the substitution of FVIP Investment Grade Bond Portfolio for both the VEWIT Worldwide Bond Fund and the GSVIT Global Income Fund, the investment objectives and policies of the new Portfolios are substantially the same as those of the Fund that each would replace. As for the VEWIT Worldwide Bond Fund and the GSVIT Global Income Fund, NLIC's experience has been that very few Contract owners have an interest in global or international income Funds or Portfolios. NLIC believes that FVIP Investment Grade Bond Portfolio is a sound fixed-income alternative for Contract owners currently invested in VEWIT Worldwide Bond Fund and the GSVIT Global Income Fund which entails lower risk than would other possible alternatives.

26. In the event that the FVIP Overseas Portfolio, FVIP Investment Grade Bond Portfolio or ACVP Value Portfolio has operating expenses (taking into account expense waivers and reimbursements) for any fiscal period (not to exceed a fiscal quarter) during the 24 months following the date of the proposed substitutions equal on an annualized basis to an amount greater than 0.98%, 1.15% and 1.05%, respectively, NLIC will make adjustments to the Account expenses of those subaccounts that invest in the FVIP Overseas Portfolio, FVIP Investment Grade Bond Portfolio, and ACVP Value Portfolio for those Contract owners who were Contract owners on the date of the substitution. These adjustments will limit those Contract owners expenses so that the amount of the new Portfolio's operating expenses together with the corresponding subaccount's Account expenses paid during such period on an annualized basis will be no greater than the sum of the replaced Portfolio's expenses (*i.e.*, 0.98%, 1.15%, or 1.05%, as the case may be) together with the corresponding subaccount's Account expenses during the fiscal year preceding the proposed substitution, which were as follows:

Variable contract	Account expense limit*
Sentinel Advantage VA	1.40
Sentinel Estate Provider VLI	.90
VariTrak VLI	.90
Sentinel Benefit Provider VLI	.32

*As a percentage of the average daily net asset account value on an annual basis.

In addition, as stated above, for those Contract owners who were Contract owners on the date of the substitutions, NLIC will not increase Account or Contract expenses for a period of 24 months following the date of the substitutions.

27. The following charts show the approximate annual management fees, other expenses and total expenses of each of the Funds or Portfolios involved in the proposed substitutions both before and after any reimbursement or fee waivers. The charts also show revenue-sharing that NLIC expects to receive from the investment manager or distributor of various unaffiliated Funds or Portfolios on an annual basis after the proposed substitutions are carried out. Revenue sharing paid to NLIC by the investment manager or distributor of a Fund or Portfolio (as a percentage of NLIC's share of the average daily net assets of the Fund or Portfolio) is to reimburse NLIC for some of the expenses of administering the Contracts. For the Funds and Portfolios other than the GSVIT Funds, the management fees and expenses shown are those for the 1999 fiscal year. For the GSVIT Funds, the management fees and expenses shown are those projected for those funds for the 2000 fiscal year.

Fund	Before reimbursement or fee waiver (percent)	After reimbursement or fee waiver (percent)	Revenue sharing percentage
MSF Growth	0.32	0.32	N/A
	0.16	0.16	
	0.48	0.48	
SVPT Common Stock	0.50	0.48	N/A
	0.52	0.00	
	1.02	0.48	
MSF Sentinel Growth	0.50	0.50	N/A
	0.21	0.21	
	0.71	0.71	
SVPT Mid Cap Growth	0.50	0.50	N/A
	0.52	0.21	
	1.02	0.71	
MSF Aggressive Growth	0.41	0.41	N/A
	0.16	0.16	
	0.57	0.57	
SVPT Small Company	0.50	0.50	N/A
	0.52	0.07	
	1.02	0.57	
MSF International	0.75	0.75	N/A
	0.23	0.23	
	0.95	0.98	
FVIP Overseas	0.73	0.73	0.10
	0.18	0.14	

Fund	Before reimbursement or fee waiver (percent)	After reimbursement or fee waiver (percent)	Revenue sharing percentage
	0.91	0.87	
MSF Money Market	0.25 0.15	0.25 0.15	N/A
	0.40	0.40	
SVPT Money Market	0.25 0.72	0.25 0.15	N/A
	0.97	0.40	
VEWIT Worldwide Bond	1.00 0.22	1.00 0.22	0.15
	1.22	1.22	
FVIP Investment Grade Bond	0.43 0.11	0.43 0.11	0.10
	0.54	0.54	
GSVIT International	1.00 0.77	1.00 0.35	0.20
	1.77	1.35	
FVIP Overseas	0.73 0.18	0.73 0.14	0.10
	0.91	0.87	
GSVIT Global Income	0.90 1.78	0.90 0.25	0.20
	2.68	1.15	
FVIP Investment Grade Bond	0.43 0.11	0.43 0.11	0.10
	0.54	0.54	
GSVIT CORE Small Cap	0.75 0.75	0.75 0.25	0.20
	1.50	1.00	
SVPT Small Company	0.50 0.52	0.50 0.07	N/A
	1.02	0.57	
GSVIT Mid Cap Value	0.80 0.42	0.80 0.25	0.20
	1.22	1.05	
American Century Value	1.00 0.00	1.00 0.00	0.20
	1.00	1.00	

28. The Applicants state that by disclosure added to the various May 1, 2000 prospectuses for the Contracts and the Accounts (and possibly by additional subsequent supplements to such prospectuses), all owners of the Contracts have been or will be notified of NLIC's intention to take the necessary actions, including seeking the order requested by this application, to substitute shares of the Portfolios and Funds as described herein.

29. The Applicants state that the additional prospectus disclosure (and any subsequent supplements) about the proposed substitutions will advise Contract owners that from May 1 (or the date of any supplement) until the date of the proposed substitution, owners are permitted to make one transfer of all amounts under a Contract invested in

any one of the affected subaccounts on May 1 (or on the date of the supplement) to another subaccount available under a Contract other than one of the other affected subaccounts without that transfer counting as a "free" transfer permitted under a Contract. The Applicants state that the prospectus disclosure also informs (and any subsequent supplements will inform) Contract owners that NLIC will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitutions.

30. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's account value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or NLIC's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by NLIC. In addition, the Applicants state that the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. The proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. NLIC will not exercise any right it may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the substitutions.

31. The Applicants state that in addition to the prospectus disclosure (and supplements) distributed to owners of Contracts, within five days after the proposed substitutions, any Contract owners who were affected by the substitution will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all accumulation or contract value under a Contract invested in any one of the affected subaccounts on the date of the notice to another subaccount available under their Contract without that transfer counting as one of a limited number transfers permitted in a Contract year free of charge. The notice will also reiterate the fact that NLIC will not exercise any rights reserved by it under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states, Contract owners who are affected by the substitutions may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by NLIC during the 60 days following the proposed substitutions. Current prospectuses for the new Funds or Portfolios will precede or accompany the notices. NLIC also is seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

Applicants' Legal Analysis

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. The Investment Company Amendments of 1970 added Section 26(b) to the Act. The Applicants state that prior to the enactment of the 1970 amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five days of the substitution. In 1966. the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted fund, recommended that Section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval. Congress responded to the Commission's concerns by enacting Section 26(b) to require that the Commission approve all substitutions by the depositor of investments held by unit investment trusts.

2. The Applicants state that the proposed substitutions appear to involve substitutions of securities within the meaning of Section 26(b) of the Act. Applicants therefore request an order from the Commission pursuant to Section 26(b) approving the proposed substitutions.

3. The Applicants state that the Contracts expressly reserve for NLIC the right, subject to compliance with applicable law, to substitute shares of one Portfolio or Fund held by subaccount of an Account for another. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right. NLIC reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contract owners.

4. The Applicants state that in the case of the proposed substitutions of shares of the four SVPT Funds for those of MSF Portfolios, each MSF Portfolio would be replaced by a Fund with substantially the same investment objectives but which is managed by the investment management team that Contract owners selected.

5. Applicants also state that in the case of the proposed substitution of shares of FVIP Overseas Portfolio for shares of MSF International Portfolio, the interests of Contract owners will be better served primarily because the new Portfolio would more closely resemble the Portfolio that such owners are currently invested in than would the same MSP Portfolio after the proposed management changes. The Applicants state that this investment option under the Contracts would each be replaced by a Portfolio with substantially the same investment objectives.

6. Moreover, with regard to all of the proposed substitutions of MSF Portfolios, the Applicants state that Contract owners would avoid the likely experience of having their current investment option significantly changed and would become invested in Portfolios that are less likely to become controlled by owners of variable contracts issued by a competitor of NLIC.

7. Finally, in the case of the remaining proposed substitutions, the Applicants state that Contract owners will be better served because available subaccounts would represent a broader range of popular investment choices than is currently the case. The Applicants state that these Portfolios are each larger and have both comparable performance and greater marketing appeal than the Portfolios or Funds that they would replace.

8. In addition to the foregoing, Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

9. Applicants anticipate that Contract owners will be at least as well off with the proposed array of subaccounts offered after the proposed substitutions as they have been with the array of subaccounts offered prior to the

substitutions. The Applicants state that the proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer accumulated values and contract values between and among the same number of subaccounts as they could before the proposed substitutions.

10. The Applicants state that each of the proposed substitutions is not the type of substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer accumulation and contract values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. The Applicants state that the proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

11. The Applicants state that the proposed substitutions also are unlike the type of substitution which Section 26(b) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific type of insurance coverage offered by NLIC under their Contract as well as numerous other rights and privileges set forth in the Contract. The Applicants state that Contract owners may also have considered NLIC's size, financial condition, type and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed substitutions.

12. Applicants request an order of the Commission pursuant to Section 26(b) of the Act approving the proposed substitutions by NLIC. Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

13. Applicants request an order under Section 17(b) exempting them from the provisions of Section 17(a) to the extent necessary to permit NLIC to carry out the following substitutions by redeeming MSF shares in kind and using the redemption proceeds to purchase SVPT shares; shares of SVPT Common Stock Fund for shares of MSF Growth Portfolio, shares of SVPT Mid Cap Growth Fund for shares of MSF Sentinel Growth Portfolio, shares of SVPT Small Company Fund for shares of MSF Aggressive Growth Portfolio, shares of SVPT Money Market Fund for shares of MSF Money Market Portfolio.

14. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

15. Section 2(a)(3) of the Act defines the term "affiliated person of another person" in relevant part as:

> (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; * * *

16. The Applicants state that because shares held by a separate account of an insurance company are owned by the insurance company, NLIC owns of record all of the shares of MSF Sentinel Growth Portfolio. The Applicants state that, therefore, MSF and Sentinel Growth Portfolio is arguably under the control of NLIC notwithstanding the fact the Contract owners may be considered the beneficial owners of those shares held in the Accounts. If MSF and one or more of its Portfolios is under NLIC's control, then NLIC, any person controlling NLIC or any person under common control with NLIC, is an affiliated person of MSF, Sentinel Growth Portfolio and, arguably, other MSF Portfolios. The Applicants state that, similarly, if MSF and one or more of its Portfolios are under NLIC's control, then MSF, Sentinel Growth Portfolio, and, arguably, other MSF Portfolios are affiliated persons of NLIC and of any persons that control NLIC or are under common control with NLIC.

17. The Applicants state that regardless of whether or not NLIC can be considered to control MSF or Sentinel Growth Portfolio or both (or other MSF Portfolios), because NLIC owns of record more than 5% of the shares of MSF Money Market Portfolio, Growth Portfolio, Bond Portfolio, Managed Portfolio, Aggressive Growth Portfolio, Sentinel Growth Portfolio and International Equity Portfolio, it is an affiliated person of MSF and each of the foregoing Portfolios. Applicants also state that MSF and each of the foregoing Portfolios is an affiliated person of NLIC and also is an affiliated person of an affiliated person of any person that controls NLIC or is under common control with NLIC.

18. In addition, the Applicants state that because the investment adviser of each of the foregoing MSF Portfolios is controlled by NLIC or persons controlling NLIC and the investment adviser of each SVPT Fund is controlled by NLIC or persons controlling NLIC, the investment advisers of MSF and SVPT are under common control. Although the Applicants state that they do not believe that this would, by itself, result in MSF (or any of its Portfolios) and SVPT (or any of its Funds) being under common control, to remove any doubt about status of possible transactions involving MSF (or any of its Portfolios) and SVPT (or any of its Funds), Applicants assume, for the purposes of this application, the MSF and SVPT and their Portfolios or Fund could be under common control. Based on the foregoing, MSF and SVPT and the Funds of each may be affiliated persons of each other or affiliated persons of affiliated persons of each other. The Applicants state that each also may be an affiliated person of NLIC or an affiliated person of an affiliated person of NLIC.

19. The Applicants state that the proposed substitutions by NLIC, which may entail the indirect purchase of shares of SVPT Funds with portfolio securities of MSF Portfolios and the indirect sale of portfolio securities of MSF Portfolios for shares of SVPT Funds, therefore may also entail the purchase or sale of such securities by each of the Portfolios or Funds involved, acting as principal, to one of the other Portfolios or Funds and therefore may be in contravention of Section 17(a). In addition, the Applicants state that the participation of NLIC in such purchase and sale transactions could be viewed as entailing the purchase of such securities from MSF Portfolios and the sale of such securities to SVPT Funds by NLIC, acting as principal, and therefore may be in contravention of Section 17(a).

20. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that:

(1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the Act; and

(3) The proposed transaction is consistent with the general purposes of the Act.

21. Rule 17a–7 under the Act exempts from the prohibitions of Section 17(a), subject to certain enumerated conditions, a purchase or sale transaction between registered investment companies or separate series or registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company, or between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers. The Applicants state that NLIC, MSF, and SVPT (as well as the Portfolios and Funds of MSF and SVPT) cannot, however, rely on Rule 17a–7 in connection with their participation as principals in the proposed MSF/SVPT substitutions because they would not necessarily be affiliated persons of each other solely by reason of having a common investment adviser or affiliated investment advisers, common directors, and/or common officers. Moreover, one of the conditions enumerated in the rule is that the transaction be a purchase or a sale for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available. The Applicants state that the proposed purchase of SVPT shares with MSF investment securities, however, entails the purchase and sale of securities for securities (albeit ones for which market quotations are readily available).

22. Applicants submit that the terms of the proposed substitutions by NLIC, including the consideration to be paid and received, as described in this application, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also submit that the proposed substitutions by NLIC are consistent with the policies of: (1) MSF and of its Growth Portfolio, Sentinel Growth Portfolio, Aggressive Growth Portfolio and Money Market Portfolio; and (2) SVPT and its Common Stock Fund, Mid Cap Growth Fund, Small Company Fund and Money Market Fund, as recited in the current registration statements and reports filed by each under the Act. Finally, Applicants submit that the proposed substitutions are consistent with the general purposes of the Act.

Conclusion

Applicants assert that, for the reasons stated above, the registered order approving the substitutions and exempting in-kind redemptions should be granted.

For the Commission, by Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28794 Filed 11–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 13, 2000.

An open meeting will be held on Wednesday, November 15, 2000 at 10 a.m. in Room 6600.

The subject matter of the open meeting scheduled for Wednesday, November 15, 2000 will be:

The Commission will consider adopting rule amendments to its auditor independence requirements. The rule amendments are intended to modernize the Commission's regulations regarding:

(1) Investments by auditors and members of their families;

(2) Auditors' employment relationship; and

(3) The scope of services provided by audit firms to their audit clients.

In addition, the rules would require companies to disclose in their annual proxy statements certain information about non-audit services provided by their auditors during the last fiscal year.

For further information, contact: John Morrissey, or Sam Burke, Office of the Chief Accountant at (202) 942–4400.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: November 6, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28873 Filed 11–6–00; 4:28 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will consider two additional agenda items during the open meeting on Wednesday, November 15, 2000 at 10:00 a.m. Additionally, notice is hereby given that this meeting will be held in Room 1C30, the William O. Douglas Room, not Room 6600 as previously announced.

The subject matters of the additional agenda items will be:

(1) The Commission will consider adopting two rules that would require greater disclosure of order execution and order routing practices by market centers and brokers.

For further information, contact: Susie Cho, Division of Market Regulation at (202) 942–0748; and

(2) Consideration will be given to adopting rules regarding the quotation obligations of options exchanges and market makers, and disclosure by broker-dealers of executions of customer options orders at prices inferior to the best available quote.

For further information contact: Heather Traeger, Division of Market Regulation at (202) 942–0763.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: November 7, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–29010 Filed 11–7–00; 4:00 pm]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3463]

Future Leaders Exchange (FLEX) Computer Training of Trainers Workshop; Request for Proposals

SUMMARY: The Office of Citizen Exchanges, Division of the NIS Secondary School Initiative of the United States Information Agency's Bureau of Educational and Cultural Affairs, announces an open competition for the Computer Training of Trainers Workshop for the Future Leaders Exchange (FLEX) program. The FLEX program brings secondary students from the New Independent States (NIS) of the former Soviet Union to the U.S. for an academic year. During their time in the U.S., FLEX students live with American host families and attend U.S. high schools.

The primary goal of the Computer Training of Trainers Workshop is to train the participants to educate others in basic computer skills and Internet access. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to conduct a one-week workshop in Spring, 2001 to train a minimum of 25 FLEX students. Participants will be selected from among a group of 1155 students. The maximum grant award will be $60,000. Provision of cost sharing to maximize the number of participants will be looked at very favorably.

Program Information

The recipient of the grant is responsible for developing and conducting the Computer Training of Trainers Workshop based on guidelines set forth by the Division. The grantee organization will also have responsibility for selecting participants in cooperation with their respective placement organizations. Additional responsibilities include coordinating travel arrangements for each participant from his/her host community to the training site and return, and for providing room and board for students during their time at the workshop.

Overview

Workshop participants should be selected according to computer ability and interest as well as motivation to help citizens of their countries. The workshop should provide an opportunity for participants to improve their computer expertise and learn about teaching methodology that will empower them to instruct others. Participants will be provided with tools that will enable them to teach basic computer skills. Participants should also gain awareness of how computers can enhance societal development through communication with appropriate organizations, distance learning projects, local language web sites, etc. Particular attention should be paid to those issues that will be especially significant to people from the former Soviet Union. The program should be arranged for seven days, including arrival and departure.

Selection of workshop participants will be completed by the recipient of the grant in collaboration with placement organizations. Currently, there are 16 organizations that are responsible for placing FLEX students in American homes and schools throughout the U.S. They are also responsible for the students' well-being during their stay in the U.S. For a complete list of these organizations, please refer to the Youth Programs Division web site: *http://exchanges.state.gov/education/citizens/students.*

Guidelines

The workshop should be held in Spring, 2001, preferably in March or April. Proposals must effectively describe the organization's ability to accomplish the following essential components of the program:

1. Provide a Computer Training of Trainers Workshop, as described above and, preferably, at the time period indicated.
2. Include a description of the student selection process.
3. Provide training for organization staff on NIS society and culture.
4. Provide housing and meals for the students throughout the program.
5. Arrange travel for students from their U.S. host communities to the training site, and return, in coordination with FLEX placement organizations. (Note: Students will likely be coming from as many as 25 states.) Provide ground transportation for students in the training area, including to and from airports.
6. Provide opportunities to attend cultural events in the area.
7. Provide staff to assist in case of medical emergencies.
8. Incorporate a program component designed to facilitate students' transition from the computer workshop to their host communities.
9. Include a description of the ways in which students will be encouraged to share what they have learned, both in their U.S. host communities and when they return to their home countries.
10. Provide a mechanism in which participants can continue to communicate with each other upon completion of the workshop.
11. Provide tools for evaluation of the program in terms of its impact on the students and its success in fulfilling the objectives.

A competitive proposal will incorporate important elements of American/NIS culture in sessions that are largely interactive and designed to appeal to high school-age students. The program must be substantive and academic while, at the same time, be paced realistically to meet the needs of young people. A strong proposal will reflect a clear, convincing agenda outlining exactly how the program will be carried out and how outcomes will be accomplished as a result of the grant. Knowledge of the current technological capacity (Internet connectivity, e-mail, hardware and software) of NIS countries is essential.

Significant cost sharing is important since it will enable a greater number of students to participate. Therefore, those proposals that show more generous and creative cost sharing will be more favorably viewed.

Please refer to the Program Objectives, Goals, and Implementation (POGI) section of the Solicitation Package for greater detail regarding the design of component parts as well as other program information.

Budget Guidelines

Organizations must submit proposals that arrange a program for a minimum of 25 students, but may increase the number of participants through cost sharing. Proposals that maximize the number of students will be favorably viewed. One grant will be awarded for this activity. It is estimated that the total costs of the Computer Training of Trainers Workshop will average $2,400 per NIS participant for a one-week program, including U.S. domestic travel.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $60,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Please refer to the Solicitation Package for further details and for complete budget guidelines and formatting instructions.

Allowable costs for the program include the following:

(1) Transportation for participants from their host U.S. cities/towns to workshop site
(2) Daily travel to/from workshop site location
(3) Room and board during the time of the workshop
(4) Rental of facilities and equipment

(5) Fees for related activities/excursions
(6) Honoraria for speakers/trainers, as appropriate
(7) Supplies
(8) Security services

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFP should reference the above title and number *ECA/PE/C/PY–01–20.*

FOR FURTHER INFORMATION CONTACT: The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, phone: 202/619–6299, fax: 202/619–5311, e-mail: <amussman@pd.state.gov> to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Anna Mussman on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/rfps.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on December 22, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–01–20, Program Management, ECA/EX/PM, Room 534, 301 4th Street, S.W., Washington, D.C. 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.
2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.
3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives and plan.
4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration.
5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposing organization should demonstrate it has experience with computer education, preferably with youth, as well as familiarity with the culture of the New Independent States (NIS) of the former Soviet Union.
6. *Track Record:* Proposals should demonstrate an institutional record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.
7. *Multiplier effect/impact:* Proposed programs should describe how workshop participants will be motivated and enabled to reach out to other individuals in their home countries.
8. *Follow-on Activities:* Proposals should describe how workshop participants will be provided with knowledge and tools that will prepare them to share information and ideas after their return to their home countries.
9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit a final report after the project has been completed.
10. *Cost-effectiveness/Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items

should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation of the Freedom Support Act.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: November 1, 2000.

Helena Kane Finn,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 00–28674 Filed 11–8–00; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3462]

Bureau of Educational and Cultural Affairs; NIS Community College Partnerships Program

NOTICE: Request for Proposals.

SUMMARY: The Office of Global Educational Programs of the United States Department of State's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited institutions offering the two-year Associate's degree and meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to pursue institutional or departmental objectives in international partnerships with counterpart institutions from Georgia, Kazakhstan, Moldova, Russia, Ukraine or Uzbekistan. The underlying purposes of these partnerships should be: (1) To support through teaching, scholarship, and professional outreach from the partner institutions, the transition of the New Independent States to democratic systems based on market economies; and (2) to strengthen mutual understanding and cooperation between the United States and the New Independent States. Eligible fields are education, continuing education or educational administration; the social, political or economic sciences; business/accounting/trade; or journalism/communications.

Program Information

The NIS Community College Partnerships Program is designed to encourage community colleges to share with their educational partners in the NIS their practical experience in designing and implementing programs which provide targeted training in professional fields; provide outreach and services to surrounding communities; and provide education to underserved populations.

In general, underlying the specific objectives of projects funded by this program should be the goal of fostering freedom and democracy through a deepened mutual understanding of fundamental issues and practical applications in the encouragement of civil society, economic growth and prosperity, or the free flow of information. Creative, innovative strategies to address these underlying concerns in the pursuit of clearly defined institutional goals are encouraged. The extension of understanding about these issues through outreach from academic institutions to larger communities of citizens and practitioners is encouraged, particularly by linking educational programs in the NIS to the communities that they serve.

Support from the NIS Community College Partnerships Program is limited to partnerships with institutions in Georgia, Kazakhstan, Moldova, Russia, Ukraine and Uzbekistan. In addition, the Bureau also supports institutional linkages in higher education with partners from these and other countries in the New Independent States of the former Soviet Union through the NIS College and University Partnerships Program. A Request for Proposals for this project was announced on July 27, 2000 with a deadline of January 19, 2001. Community colleges are among the institutions eligible to apply for that competition. The Bureau supports institutional linkages in higher education with partners worldwide through the College and University Affiliations Program; a Request for Proposals for this project was announced separately on June 19, 2000 and has a deadline of November 13, 2000. Applicants interested in either of these two programs should contact the Bureau's Humphrey Fellowships and Institutional Linkages Branch at (202) 619–5289.

Applicant Objectives

In the NIS Community College Partnerships Program, partner institutions may pursue specific institutional goals with support from the Bureau of Educational and Cultural Affairs through exchanges of teachers and administrators for any appropriate combination of teaching, consultation, research, and outreach, for periods ranging from one week (for planning visits) to an academic year.

While the benefits of the project to each of the participating institutions may differ significantly in nature and scope, proposals should outline well-reasoned strategies leading to specific, demonstrable changes at the department or institution in the NIS.

For example, proposals may describe the parameters and possible content of new courses, new research or teaching capacities or methodologies, new or revised curricula or programs, or other changes anticipated as a result of the project. Proposals to pursue a limited number of related thematic objectives at each institution are preferred to proposals addressing a large number of unrelated objectives.

Proposals must focus on curriculum, faculty, and staff development at the NIS partner institution(s) in one or more of the eligible disciplines. Administrative reform at the foreign partner institution should also be a project component. Projects should involve the development of new academic programs or the building and/or restructuring of an existing program or programs, and should promote higher education's role in the transition to market economies and open democratic systems. Whenever feasible, participants should make their training and personnel resources, as well as the results of their collaborative work, available to the government, NGOs, and business community.

To provide adequate time to meet institutional project objectives, the Program awards grants for periods of approximately three years. The strategy for achieving project goals may include visits in either or both directions, but no single formula is anticipated for the duration, sequence, or number of these visits. However, visits of one semester or more for participants from each of the institutional partners are strongly encouraged. Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Although strong budgetary and programmatic emphasis may be given to visits in one direction over another, the benefits of these visits to the sending as well as the receiving sides should be clearly explained in terms of their contributions to the departmental or institutional objectives that the project is designed to achieve. Exchange visits for the purpose of attending conferences are not encouraged except in combination with other grant activities and in support of specific educational objectives at one or more of the participating institutions.

In addition to demonstrating the capacity of each participating institution to contribute to its partner(s), proposals should also explain how this cooperation would enable each of the institutions to address its own need. Accordingly, applicants are encouraged to describe the needs as well as the capabilities of each participating department as well as the broader social and educational needs which the partner institutions attempt to serve.

Effective proposals will explain the anticipated cooperation in ways that demonstrate that the institutions proposed for participation in the partnership clearly understand one another and are committed to support one another in project implementation. If the proposed partnership would occur within the context of a previous or on-going project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects, which must be listed and described in an appendix with details about the amounts and sources of external support.

Proposals should outline a methodology for project evaluation. The evaluation plan should include an updated assessment of the current status of each participating department's and institution's needs at the time of program inception; ongoing formative evaluation to allow for prompt corrective action; and, at the conclusion of the project, summative evaluation of the degree to which the project's objectives have been achieved together with observations about the project's influence within the participating institutions and their surrounding communities or societies. The final evaluation should also include recommendations about how to build upon project achievements, both with and without the Bureau's support. Evaluative observations by external consultants with appropriate subject or regional expertise are especially encouraged. Proposal budgets should reflect evaluation plans.

Proposals must be submitted by the U.S. institutional partner and must include a letter of commitment from the foreign partner(s). Faxed letters are acceptable. The letters should be signed by persons authorized to commit institutional resources to the project. U.S. and foreign partner institutions are encouraged to consult about the proposed project with program office staff in Washington, DC.

Costs

The Bureau's support may be used to defray the costs of the exchange visits as well as the costs of their administration at any partner institution up to a maximum of 20 percent of the total grant, including administrative salaries. All indirect costs are unallowable. However, substantiated indirect costs may be included as part of an institution's cost-sharing. Although grants under this program will be issued to eligible U.S. community colleges, adequate provision for the administrative costs of the project at all partner institutions is encouraged. Administrative salary support may be included for project directors and administrative assistants within the 20 percent maximum that may be allocated to administrative costs. (See the section of the POGI on allowable costs.) Students may participate in the project, but not with the Bureau's support for the costs of their visits.

The proposal may include a request for funding to reinforce the activities of exchange participants through the establishment and maintenance of Internet and/or electronic mail communication facilities as well as through interactive technology or non-technology-based distance-learning programs. However, projects focusing primarily on technology or physical infrastructure development are not encouraged. Proposals that include Internet, electronic mail, and other interactive technologies should discuss how the foreign partner institution would support the costs of such technologies after the project ends. Applicants may propose other project activities not specifically anticipated in this solicitation if the activities reinforce exchange activities and their impact.

The commitment of all partner institutions to the proposed project should be reflected in the cost-sharing which they offer in the context of their respective institutional capacities. Although the contributions offered by U.S. and foreign institutions with relatively few resources may be less than those offered by other applicants, all participating institutions are expected to identify substantial costs to contribute. These costs may include the estimated costs of in-kind contributions for which funds are not exchanged. Consistent with the "Review Criteria" for this competition listed elsewhere in this document, proposed cost-sharing will be considered an important indicator of each participating institution's interest in the project and of the institution's potential to benefit from it.

The maximum award in the FY 2001 competition will be $200,000. Requests for amounts smaller than the maximum are eligible. Budgets and budget notes should carefully justify the amounts requested. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Grants are subject to the availability of funds for Fiscal Year 2001.

Projects must conform with the Bureau's requirements and guidelines outlined in the solicitation package for this RFP, which can be obtained by following the instructions given in the section below entitled "For Further Information". The Project Objectives, Goals, and Implementation (hereafter, POGI) and the Proposal Submission Instructions (hereafter, PSI), which contain additional guidelines, are included in the Solicitation Package. Proposals that do not follow RFP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

Eligible Fields

The NIS Community College Partnerships Program is limited to the following academic fields:

(1) business/accounting/trade;

(2) education/continuing education/educational administration;

(3) journalism/communications; and

(4) social, political, or economic sciences.

U.S. Institution and Participant Eligibility

In the United States, participation in the program is open to accredited institutions offering the two-year Associate's degree. Applications from consortia and other combinations of cooperating institutions are eligible. Secondary U.S. partners may include relevant non-governmental organizations, non-profit service or professional organizations, or other institutions of higher education. If the lead U.S. institution is responsible for submitting an application on behalf of a consortium, the application must document the lead institution's authority to represent the consortium. With the exception of outside evaluators on contract with the U.S. institution, participants representing the U.S. institution(s) who are traveling under Bureau grant funds must be faculty or staff from the participating institution(s) and must be U.S. citizens.

Foreign Institution and Participant Eligibility

In other countries, participation is open to recognized institutions of post-secondary education, including pedagogical institutes and universities, technical institutes and universities, and vocational training schools. Secondary foreign partners may include relevant governmental and non-governmental organizations, non-profit service or professional organizations. Participants representing the foreign institutions must be faculty or staff of the primary or secondary partner institution, and be citizens, nationals, or permanent residents of the country of the foreign partner, and be qualified to hold a valid passport and U.S. J–1 visa.

Foreign Country and Location Eligibility

Foreign partners from the following countries are eligible:

Georgia;

Kazakhstan;

Moldova;

Russia—Preference will be given to proposals that designate a partner institution outside Moscow and St. Petersburg. Proposals that designate a partner institution in the Russian Far East, Tomsk, or Samara region are encouraged.

Ukraine—Preference will be given to proposals that designate a partner institution outside Kyiv.

Uzbekistan.

Ineligibility

A proposal may be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) One of the partner institutions is ineligible;

(5) The academic discipline(s) is/are not listed as eligible in the RFP, herein;

(6) The amount requested of the Bureau exceeds $200,000 for the three-year project.

Please refer to program-specific guidelines (POGI) in the Solicitation Package for further details.

Grant-Making Authority

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . . to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (FREEDOM Support Act).

Announcement Title and Number

All communications with the Bureau concerning this RFP should refer to the NIS Community College Partnerships Program and reference number ECA/A/S/U–01–10.

Deadline for Proposals

All copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, February 23, 2001. Faxed documents will not be accepted at any time, nor will documents postmarked on Friday, February 23, 2001 but received on a later date. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate program dates: Grants should begin on or about August 15, 2001.

Duration: Approximately August 15, 2001–August 14, 2004.

FOR FURTHER INFORMATION: Please contact the United States Department of State, Bureau of Educational and Cultural Affairs, Office of Global Educational Programs, Humphrey Fellowships and Institutional Linkages Branch, State Annex 44 (ECA/A/S/U) room 349, 301 4th Street, S.W., Washington, D.C. 20547, fax: (202) 401–1433 to request a Solicitation Package containing more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify Bureau Program Officer Jonathan Cebra (telephone: 202–619–4126, email: jcebra@pd.state.gov) on all inquiries and correspondence regarding partnerships with institutions in Moldova or Ukraine; please indicate Bureau Program Officer Michelle Johnson (telephone: 202–619–4097, email: johnsonmi@pd.state.gov) on all inquiries and correspondence regarding partnerships with institutions in Russia; please indicate Bureau Program Officer Alanna Bailey (telephone: 202–619–6492, email: abailey@pd.state.gov) on all inquiries and correspondence regarding institutions in any other eligible country.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at: http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, Bureau of Cultural and Educational Affairs, Ref.: ECA/A/S/U–01–10, Program Management Staff, ECA/EX/PM, Room 534, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to

public affairs sections at U.S. embassies overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be evaluated by independent external reviewers.

The independent external reviewers, who will be professional, scholarly, or educational experts with appropriate regional and thematic knowledge, will provide recommendations and assessments for consideration by the Bureau. The Bureau will consider for funding only those proposals that are recommended for further consideration by the independent external reviewers.

Proposals will also be reviewed by Department staff as well as by the officers of the Office of the Coordinator of United States Assistance to the New Independent States and the public diplomacy sections of U.S. Embassies. Proposals may also be reviewed by the Office of the Legal Advisor or by other offices of the U.S. Department of State. Funding decisions will be made at the discretion of the Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

All reviewers will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be competitively reviewed according to these criteria, which are not rank-ordered or weighted.

(1) Broad Significance of Institutional Objectives: Project objectives should have significant but realistically anticipated ongoing consequences for the participating institutions that will also contribute to the transition of the New Independent States to market economies and democratic societies.

(2) Clarity and Relevance of Project Objectives to Institutional Needs: Proposed projects should outline clearly formulated objectives that relate specifically to the needs of the participating institutions.

(3) Creativity and Feasibility of Project Implementation: Plan to achieve project objectives should demonstrate the feasibility of doing so during a three-year period by utilizing and reinforcing exchange activities realistically and with creativity.

(4) Institutional Commitment to Cooperation: Proposals should demonstrate significant understanding at each institution of its own needs and capacities and of the needs and capacities of its proposed partner(s), together with a strong commitment, during and after the period of grant activity, to cooperate with one another in the mutual pursuit of institutional objectives.

(5) Project Evaluation: Proposals should outline a methodology for determining the degree to which a project meets its objectives, both while the project is underway and at its conclusion. The final project evaluation should include an external component and should provide observations about the project's influence within the participating institutions as well as their surrounding communities or societies.

(6) *Cost-effectiveness:* Administrative and program costs should be reasonable and appropriate with cost-sharing provided by all participating institutions within the context of their respective capacities and as a reflection of their commitment to cooperate with one another in pursuing project objectives. Although indirect costs are eligible for inclusion among costs to be contributed by the applicant, contributions should not be limited to indirect costs.

(7) *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity relate to project objectives for all institutional partners and how these issues will be addressed during project implementation. Proposals should also outline the institutional profile of each participating institution with regard to issues of diversity.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: November 1, 2000.

Helena Kane Finn,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 00–28673 Filed 11–8–00; 8:45 am]

BILLING CODE 4710–11–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–8229]

Deepwater Capability Replacement Project: Programmatic Environmental Impact Statement

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent and request for public comments; public meeting notice.

SUMMARY: The Coast Guard announces its intent to prepare a draft Programmatic Environmental Impact Statement (PEIS) for the development of

a proposed action to modernize and replace the aging and technologically obsolete Coast Guard assets required for Deepwater missions. The Deepwater Capability Replacement Project (Deepwater Project) has been initiated to ensure the timely acquisition over the next few decades of appropriate assets for Deepwater missions. The Coast Guard seeks public and agency input on the scope of the PEIS. Specifically, the Coast Guard requests input on any environmental concerns that the public may have related to existing Deepwater assets, the proposal to replace and/or modernize these assets, sources of relevant data or information, and any suggested analysis methods for inclusion in the PEIS.

DATES: Comments must reach the Coast Guard on or before January 19, 2001. Open houses will be held on the following dates:

Oakland, CA, November 27, 2000 from 2 p.m. to 8 p.m.
Seattle, WA, November 28, 2000 from 2 p.m. to 8 p.m.
Juneau, AK, November 30, 2000 from 2 p.m. to 8 p.m.
Cleveland, OH, December 4, 2000 from 2 p.m. to 8 p.m.
Cambridge, MA, December 5, 2000 from 2 p.m. to 8 p.m.
Portsmouth, VA, December 7, 2000 from 2 p.m. to 8 p.m.
New Orleans, LA, December 11, 2000 from 2 p.m. to 8 p.m.
Miami, FL, December 12, 2000 from 2 p.m. to 8 p.m.
Honolulu, HI, December 14, 2000 from 2 p.m. to 8 p.m.

ADDRESSES: The open houses will be held at the following locations:

Oakland, CA—Marriott at City Center, Room 210, 1001 Broadway
Seattle, WA—Seattle Center, Shaw Room, Northwest Rooms Building, 305 Harrison Street
Juneau, AK—Centennial Hall Convention Center, Egan Room, 101 Egan Drive
Cleveland, OH—Cleveland State University, University Center, Room 364, 2121 Euclid Avenue
Cambridge, MA—Radisson Hotel, Ballroom, 777 Memorial Drive
Portsmouth, VA—Tidewater Community College, Waterfront Room, 7000 College Drive
New Orleans, LA—New Orleans Public Library, Smith Branch, 6301 Canal Blvd
Miami, FL—West Dade Regional Library, Auditorium, 9445 SW 24th Street
Honolulu, HI—Honolulu Maritime Center, Pacific Room, Pier 7 Honolulu Harbor

Comments may be submitted in several ways. To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2000–8229), US Department of Transportation, Room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001.

(2) By delivery to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW, Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying at Room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also view this docket, including this notice and comments, on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions about the project, you may contact LCDR Eric Johnson, Deepwater Environmental & Facilities Planner, by phone at (202) 267–1665 or by e-mail at *ejohnson@comdt.uscg.mil* or at the Coast Guard's Deepwater EIS Web Page at http://www.deepwaterEIS.com. For questions on viewing, or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, DOT, 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related materials on this notice. Persons submitting comments should include their names and addresses, identify this notice (USCG–2000–8229), and the reasons for each comment. You may submit your comments and materials by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address given under **ADDRESSES**; but please submit your comments and materials by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period. For additional information about this notice or the Programmatic Environmental Impact Statement, contact Joan Lang, Deepwater Project NEPA Coordinator (under contract to the Coast Guard), 202–267–0284, or via email at jlang@comdt.uscg.mil.

Open Houses

The Coast Guard intends to hold open houses at the times and locations listed in **DATES** and **ADDRESSES**. Comments on issues that the public feels should be included in the Programmatic Environmental Impact Statement will be accepted at these meetings.

Background Information

Deepwater missions are defined as Coast Guard operations that occur at least 50 nautical miles offshore, or require an extended on-scene presence, long transit times to reach the operations area, and/or the forward deployment of forces. The Coast Guard's current Deepwater assets—medium- and high-endurance cutters, fixed and rotary wing aircraft and their supporting command, control and communications systems—are aging and technologically obsolete. The average age of the Coast Guard's Deepwater cutters is 27 years, making this force older than 40 of the world's 42 major naval fleets. While some cutters have received mid-life upgrades, during the next ten to fifteen years all of our assets will reach the end of their projected service life. As a result of this age, Coast Guard assets lack the ability and technology necessary for efficient and effective mission performance.

The Deepwater Project is the Coast Guard's answer, ensuring the timely acquisition of appropriate resources to remedy the aging fleet dilemma and meeting deepwater mission requirements. These Deepwater missions include search and rescue, maritime law enforcement (MLE, including drug LE, living marine resources LE and alien migrant interdiction), national defense and marine environmental protection. Detailed information about the Project is included in the Appendix to this notice. It may also be found at the Project's web site at *http://www.uscg.mil/deepwater*.

Proposed Action

In accordance with the National Environmental Policy Act (NEPA) of 1969 (Section 102[2][c]), as implemented by the Council on

Environmental Quality regulations (40 CFR Parts 1500–1508), Department of Transportation (DOT) Order 5610.1C (Procedures for Considering Environmental Impacts), and Coast Guard Policy (NEPA: Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1C), the Coast Guard intends to prepare a Programmatic Environmental Impact Statement (PEIS) on the Deepwater Project. The purpose of a PEIS is to develop a high-level approach and direction for implementing a broad policy or program. The Deepwater Project meets those criteria.

NEPA requires federal agencies to consider all significant aspects of environmental impacts that may result from a proposed action, to inform the public of potential impacts and alternatives, and to facilitate public involvement in the assessment process. The core of the impact assessment process is the environmental impact statement, or EIS. The EIS must include, among other topics, discussions of the purpose and need for the proposed action, a description of alternatives, and an evaluation of the environmental impacts of the proposed action and alternatives. Once an EIS is completed, the lead agency prepares a record of decision (ROD), a legally binding document that identifies the agency's decision including any mitigation measures required to offset impacts.

A programmatic EIS is prepared on a "broad federal action such as the adoption of new agency programs". When preparing a PEIS, the agency may evaluate the program based on common geographic locations, similarities of impacts, or stages of development. Because no site-specific homeporting and bedding down decisions—allocating assets and staff to Coast Guard facilities—will be made during this stage of the project, the PEIS is expected to facilitate and expedite the preparation of subsequent project-specific NEPA documents.

The PEIS will address the general environmental impacts of each of the three alternative systems being considered for replacement of the current Deepwater system, and the no action alternative, while subsequent analyses will address specific implementing actions, such as homeporting new ships and aircraft. Hence, as the first-tier EIS, the PEIS would cover general issues in a broader program-oriented analysis. Subsequent NEPA documentation will concentrate on the issues specific to the action being considered.

The environment to be affected by the proposed action may be the entire marine and terrestrial coastal region of the continental US, Alaska, Hawaii, the Caribbean, Guam, and the Great Lakes where the Coast Guard has Deepwater facilities, as well as the areas where Deepwater missions are conducted. Deepwater missions are defined as Coast Guard operations that occur at least 50 nautical miles offshore, or require an extended on-scene presence, long transit times to reach the operations area, and/or the forward deployment of forces. The PEIS will discuss the general aspects of the affected environment, such as air quality, water quality, terrestrial and marine vegetation and wildlife, endangered species and their habitat, wetlands, historic and cultural resources, public safety, and land use. The PEIS will compare the potential environmental impacts and benefits that would result from each of the three alternatives and the no action alternative. For the purposes of the PEIS, the location of these assets throughout the country will be designated on a regional level. As required by NEPA, the Coast Guard also will analyze the "no action" alternative as a baseline for comparing the impacts of the proposed project.

The Coast Guard encourages public participation in the PEIS process. Presently, the Coast Guard is conducting a nationwide public scoping process to help identify environmental issues to be addressed in the PEIS. The scoping period will be 45 days starting with publication of this notice in the **Federal Register**. The public and agencies will be able to select from a variety of outreach tools to learn about the Deepwater Project. Multiple methods for providing comments will be available, including mail, Internet, and fax. These opportunities will be widely publicized through multiple news media and the Deepwater Project EIS web site at http://www.DeepwaterEIS.com. Information on the Coast Guard's Deepwater mission can be found at *http://www.uscg.mil/deepwater*. In addition, the Coast Guard will conduct open houses according to the schedule provided in this **Federal Register** notice (see **DATES**). This process is designed to ensure the public participation process is accessible to all interested parties and that it meets the goal established by Executive Order 12898 (Environmental Justice) by including all affected low-income and minority populations in the public participation process.

In order to obtain maximum public input and participation, the USCG will release all relevant information allowed by law. Some procurement sensitive and other information may be withheld from public documents. To the fullest extent possible, the USCG will segregate any procurement sensitive information that is exempt from disclosure under the Freedom of Information Act (FOIA) into an appendix to facilitate public review of the remainder of the NEPA document. If segregation of information exempt from FOIA would leave essentially meaningless material, the USCG will withhold portions of the NEPA document or the entire NEPA document from the public. However, the USCG shall circulate the complete NEPA document including procurement sensitive information withheld from public review, to the USCG decision makers, in accordance with the CEQ, DOT and USCG Regulations.

Following the scoping process, the Coast Guard will prepare a Draft PEIS. Unless the USCG finds that the entire NEPA document must be withheld from public review, a notice of availability will be published in the **Federal Register** and national newspapers when the Draft PEIS is available. Public notices will be mailed or e-mailed to those on the PEIS distribution list. This period will provide the public with an opportunity to review the document and to offer appropriate comments. Public hearings may be held during the review period to capture verbal comments on the Draft PEIS. If public hearings will be held, the time and place of the hearings will be announced in the **Federal Register** and other media.

Unless the USCG finds that the entire NEPA document must be withheld from public review, the comments received during the Draft PEIS review period will be published and made available in the Final PEIS. A notice of availability of the Final PEIS will be published in the **Federal Register** and in other public notices. NEPA provides for a 30-day comment period after publication of the Final PEIS, during which the public may comment on the adequacy of responses to comments and the Final PEIS. After that time, a ROD detailing the Coast Guard's decision identifying the selected alternative will be prepared and published in the **Federal Register**. The entire ROD will be available for public review regardless of whether parts or all of the DEIS and FEIS must be withheld from the public.

Dated: November 3, 2000.

R.J. Casto,

RADM, USCG, Assistant Commandant for Acquisition.

Appendix

The Coast Guard Deepwater Capabilities Replacement Project

The Coast Guard operates in inland, coastal, and Deepwater maritime regions.

Deepwater missions are defined as operations that occur at least 50 nautical miles offshore, or require an extended on-scene presence, long transit times to reach the operations area, and/or the forward deployment of forces. Deepwater missions typically require Coast Guard personnel to be involved in long-term, continuous missions, often with deployments away from home stations for several months on end. These missions may also take place in severe environments from arctic to tropical, 24 hours a day, wherever the Coast Guard's presence is required.

Overall, the Coast Guard performs fourteen statutorily mandated missions in the Deepwater regions around the globe. These fall into four main categories: Maritime Law Enforcement; Maritime Safety; National Defense; and Marine Environmental Protection.

Maritime Law Enforcement includes: Living marine resources enforcement, drug interdiction, alien migrant interdiction and general law enforcement.

Maritime Safety includes: Search and rescue (SAR) and the International Ice Patrol.

National Defense includes: General defense operations, maritime intercept operations, deployed port security and defense operations, environmental defense operations, and peacetime military engagement.

Marine Environmental Protection includes: Maritime pollution enforcement and response, lightering zone enforcement and foreign vessel inspection.

In 1999, an Interagency Task Force on United States Coast Guard Roles and Missions was appointed to "provide advice and recommendations regarding the appropriate roles and missions for the Coast Guard through the year 2020," with special attention to the Deepwater missions. The Task Force's findings affirmed that the Coast Guard must remain a military, multi-mission, maritime service in the 21st century to meet national policies and statutory mandates. The Task Force further recommended that the Coast Guard forces possess inherent operational flexibility and adaptability, including the ability to operate alongside the forces and personnel of other US armed services, US civilian agencies, and nations. In addition, the Coast Guard must strive to be cost effective across all missions.

The Coast Guard's Deepwater ships and aircraft (assets) are aging and technologically obsolete. This equipment was originally acquired from the early 1960s to the mid 1980s. The average age of the Deepwater cutters is 27 years old, making this force older than 36 of the world's 41 major naval fleets. Although some cutters received upgrades, during the next 10 years these cutters will reach the ends of their projected service lives.

Consequently, Deepwater assets lack fundamental capabilities and technologies necessary for efficient and effective mission performance. Examples include poor sensors and night operations capability, inadequate communication systems among Coast Guard units and forces of other services, agencies and navies of other countries. In addition, antiquated technology increases operating and maintenance hours and costs, placing greater demands on the logistics infrastructure.

[FR Doc. 00–28779 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCGD08–00–025]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

DATES: LMRWSAC will meet on Thursday, December 7, 2000, from 9 a.m. to 12 noon. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before November 20, 2000. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before November 20, 2000.

ADDRESSES: LMRWSAC will meet at the Ernest N. Morial Convention Center, 900 Center Blvd, New Orleans, LA Hall D, Room 338 during the International Workboat Show. Send written material and requests to make oral presentations to LT(jg), Zeital Merchant, Committee Administrator, c/o Commanding Officer, Marine Safety New Orleans, 1615 Poydras Steet, New Orleans, LA 70112. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact LT(jg) Zeita Merchant, Committee Administrator, telephone (504) 589–4222, Fax (504) 589–4241.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC)

The agenda includes the following:

(1) Introduction of committee members.
(2) Election of Committee Chairman & Vice Chairman
(3) Remarks by RADM P. Pluta, Committee Sponsor.
(a). Establishment of a working group to develop strategic planning to guide LMRWSAC.
(4) Approval of the April 26, 2000 minutes.
(5) Old Business:
Captain of the Port status report
VTS update report
PORTS update report
River crossing dredging ranges side markings
(6) New Business:
(7) Next meeting.
(8) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than November 20, 2000. Written material for distribution at the meeting should reach the Coast Guard no later than November 20, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 30 copies to the Committee Administrator at the location indicated under Addresses no later than November 20, 2000.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under Addresses as soon as possible.

Dated: October 16, 2000.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 00–28701 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver of Aeronautical Land-use Assurance Lawrence Municipal Airport, North Andover, Massachusetts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comments. Notice of Intent to Waiver with respect to land.

SUMMARY: The FAA is considering a proposal that a portion of the airport (approximately 2 acres located on Sutton Street along the southwest corner of the airport) is not needed for aeronautical use, as shown on the Airport Layout Plan. There appear to be no impacts to the airport by allowing the airport the use of the land under a 45 year lease, for public self storage units. Approximately 20 percent of the land was acquired by the airport under FAA Project No. 9–19–007–0804 (parcel 9 and a portion of parcel 12).

In accordance with section 47107(h) of title 49, United States Code, the notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The purpose of this lease is to make use of surplus land to generate needed revenue for the operations and maintenance of the airport.

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. William Cronan, Special Projects Officer, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: William Cronan, Special Projects Officer, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone number 781–238–7610/Fax number 781–238–7608. Documents reflecting the FAA action may be reviewed at the 16 New England Executive Park, Burlington, Massachusetts 01803 or at the Lawrence Municipal Airport 492 Sutton Street, North Andover, Massachusetts 01845.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA intends to authorize the release of the subject airports property at the Lawrence Municipal Airport, North Andover, Massachusetts. The disposition of proceeds from the leasing of the airport property will be in accordance with FAA's policy and procedures concerning the use of the airport revenue, published in the **Federal Register** on February 16, 1999.

Issued in Burlington Massachusetts on October 30, 2000.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 00–28732 Filed 11–8–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on September 30, 2000. This publication ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 400 7th Street, SW., Suite PL 200–A, Washington, DC 20590; telephone (202) 366–4118.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number. The indexes are published on a quarterly basis (*i.e.*, January, April, July, and October.)

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of the civil penalty decisions for the previous year. 58 FR 5044; 1/19/93.

The previous quarterly publications of these indexes have appeared in the **Federal Register** as follows:

Dates of quarter	Federal Register publication
11/1/89–9/30/90	55 FR 45984; 10/31/90.
10/1/90–12/31/90	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
10/1/91–12/31/91	57 FR 2299; 1/21/92.
1/1/92–3/31/92	57 FR 12359; 4/9/92.
4/1/92–6/30/92	57 FR 32825; 7/23/92.
7/1/92–9/30/92	57 FR 48255; 10/22/92.
10/1/92–12/31/92	58 FR 5044; 1/19/93.
1/1/93–3/31/93	58 FR 21199; 4/19/93.
4/1/93–6/30/93	58 FR 42120; 8/6/93.
7/1/93–9/30/93	58 FR 58218; 10/29/93.
10/1/93–12/31/93	59 FR 5466; 2/4/94.
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4/1/94–6/30/94	59 FR 39618; 8/3/94.
7/1/94–12/31/94	60 FR 4454; 1/23/95.
1/1/95–3/31/95	60 FR 19318; 4/17/95.
4/1/95–6/30/95	60 FR 36854; 7/18/95.
7/1/95–9/30/95	60 FR 53228; 10/12/95.
10/1/95–12/31/95	61 FR 1972; 1/24/96.
1/1/96–3/31/96	61 FR 16955; 4/18/96.
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7/1/96–9/30/96	61 FR 54833; 10/22/96.
10/1/96–12/31/96	62 FR 2434; 1/16/97.
1/1/97–3/31/97	62 FR 24533; 5/2/97.
4/1/97–6/30/97	62 FR 38339; 7/17/97.
7/1/97–9/30/97	62 FR 53856; 10/16/97.
10/1/97–12/31/97	63 FR 3373; 1/22/98.
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4/1/99–6/30/99	64 FR 43236; 8/9/99.
7/1/99–9/30/99	64 FR 58879; 11/1/99.
10/1/99–12/31/99	65 FR 1654; 1/11/00.
1/1/00–3/31/00	65 FR 35973; 6/6/00.
4/1/00–6/30/00	65 FR 47557; 8/2/00.

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. Also, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callaghan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld).

A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases are provided at the end of this notice. Information regarding the accessibility of materials filed in recently initiated civil penalty cases in FAA civil penalty cases at the DOT Docket and over the Internet also appears at the end of this notice.

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Civil Penalty Actions—Orders Issued by the Administrator

Digests

(Issued between July 1, 2000, and September 30, 2000)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from July 1, 2000, to September 30, 2000. The FAA will publish non-cumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

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In the Matter of David E. Everson, d/b/a North Valley Helicopters

Order No. 2000–15 (8/7/00)

Appeal Dismissed. Complaint withdrew its notice of appeal from the law judge's initial decision. Therefore, Complainant's appeal is dismissed.

In the Matter of Warbelow's Air Ventures, Inc.

Order No. 2000–16 (8/8/00)

Reconsideration Denied. Warbelow's filed a second, repetitive petition to reconsider FAA Order No. 2000–3. The Rules of Practice provide that the FAA decisionmaker will not consider repetitious petitions, and may summarily dismiss them. 14 CFR § 13.234(d). Warbelow's second petition to reconsider is summarily dismissed as repetitive.

In the Matter of Howard Gotbetter

Order No. 2000–17 (8/11/00)

Alleged Assault on Flight Attendant. On appeal, Gotbetter argues that the record does not support the law judge's finding that he assaulted a flight attendant in violation of 14 CFR 91.11.

Credibility findings. The law judge's credibility findings will not be overturned because Gotbetter has not given any persuasive reason to do so.

Alleged Bias. Gotbetter argues that the ALJ was biased against him. Gotbetter claims that the law judge is in essence "a puppet" of the FAA, and FAA is in turn a puppet of the airlines. Gotbetter is wrong; the law judge is not an employee of the FAA. The United States Department of Transportation employs the law judge.

Gotbetter also contends that the law judge was improperly "cozy" with agency counsel because the law judge renewed his acquaintance with agency counsel after the hearing and discussed agency counsel's new baby. Merely making small talk with counsel does not rise to the level of a showing of bias.

"Guilt by Association." Gotbetter argues that the law judge unfairly penalized him for the actions of his traveling companion. This argument is rejected—the law judge specifically declined to hold Gotbetter responsible for his traveling companion's actions.

Conclusion. The law judge's decision assessing a $500 civil penalty is affirmed.

In the Matter of California Helitech

Order No. 2000–18 (8/11/00)

Operating helicopters with open discrepancies on the squawk sheets. California Helitech, a helicopter pilot school certificated under Part 141, operated two helicopters with open maintenance discrepancies on the squawk sheets. The law judge held that California Helitech violated 14 CFR 91.405(a) and (b) and assessed a $2,200 civil penalty.

Airworthiness. Complainant did not allege that the helicopters were unairworthy. The law judge precluded the introduction of testimony regarding whether the helicopters were airworthy at the hearing. Nonetheless, he held in the initial decision that California Helitech operated the helicopters in an unairworthy condition. The Administrator reversed the law judge's ruling that the helicopters were unairworthy. The Administrator held the finding was unfair in light of the preclusion of evidence at the hearing, and it was unnecessary in light of the absence of any allegation that the helicopters were operated in an unairworthy condition.

The Administrator rejected California Helitech's argument that there should have been no finding of violations because the squawk sheets are required under Part 141 but Complainant did not prove that the flights were conducted under Part 141. The Administrator held that while the squawk sheet is a Part 141 form, the requirement to repair and make appropriate entries in maintenance records arose under Part 91. Regardless of the format of the discrepancy listing, Section 91.405's requirements still apply.

Sequestering of Witnesses. The law judge granted the motion to sequester the witnesses at the beginning of the hearing. Complainant's witness, Inspector Magill, testified during Complainant's case-in-chief, and again as a rebuttal witness, but he was not sequestered during the testimony of the other witnesses. The Administrator held that California Helitech should have objected at the hearing so that the law judge would have had an opportunity to bar the inspector from retaking the witness stand. Moreover, there was little, if any, need to sequester Inspector Magill because on rebuttal he testified primarily as an expert, not a percipient, witness.

Civil Penalty Appropriate Despite California Helitech's Surrender of its Part 141 Certificate. The need for a sanction with a punitive and deterrent effect is not obviated by California Helitech's voluntary surrender of its pilot school certificate.

Sanction. The Administrator affirmed the $2,200 civil penalty, finding it to be reasonable in light of the proven violations.

In the Matter of James J. Horner

Order No. 2000–19 (8/11/00)

Alleged entering of sterile area without submitting to screening. Horner was late for a flight. He presented his carry-on bag for x-ray inspection at the security checkpoint. The screener, who was unable to determine the nature of one of the objects inside the bag, handed it to a bag checker for a physical search. Horner "grabbed" the bag from the bag checker even though the search was not finished and set off for the gate. The supervisor called out to Horner to stop, but he did not. A screener followed him to the gate and told the ticket agent not to let him board because his bag had not been searched thoroughly. The screener asked Horner if he could search the bag, and Horner agreed, but he threw it on the ground and kicked it. He was verbally abusive appeared extremely angry and scary. The screener searched the bag and found nothing threatening. The law judge held that Horner violated 14 CFR 107.20 and assessed a $750 civil penalty.

Alleged Lack of Fair Hearing. On appeal, Horner argued that the agency attorney violated FRCP Rule 26 by failing to provide him, within 30 days before the hearing, a list of evidence the agency might introduce at the hearing. Horner contends he did not present any witnesses because he thought the agency would not present any evidence. The FRCP do not apply in FAA civil penalty proceedings, and the FAA civil penalty rules of practice do not contain a provision that mandates disclosure without a discovery request. Horner was free to submit discovery requests to the agency attorney, but he failed to do so. His claim that he was denied a fair hearing is rejected.

Lateness of Initial Decision. Horner also argued that the case against him should have been dismissed because the law judge failed to issue a decision within 30 days after the hearing, as required by 14 CFR 13.232(c). The law judge's decision was issued approximately 3 months late. Horner has neither asserted nor shown any prejudice resulting from the delay. He could have moved to compel the law judge to issue the decision, but did not.

Conclusion. The Administrator affirmed law judge's decision assessing a $750 civil penalty.

In the Matter of Phillips Building Supply

Order No. 2000–20 (8/11/00)

Hazardous Materials. In this case, five 1-gallon cans of Formica glue were shipped aboard a UPS cargo plane without proper packaging, labeling, marking, and without complying with other requirements of the Hazardous Materials Regulations. The shipment was found leaking in a UPS facility. The agency attorney sought a $20,000 civil penalty, but the law judge reduced it to $9,000, and the agency attorney appealed.

Sanction. The law judge improperly used a mathematical, formulaic approach of multiplying the number of violations by a set dollar amount. This was not appropriate, as a violation of one regulation may be more or less serious than of another.

The law judge improperly reduced the $20,000 proposed civil penalty to $9,000 because of Phillips' first effort at training. While it was a corrective measure justifying a reduction, it deserves only a minor one. Phillips' own witness characterized the training as "cursory."

Further, the law judge improperly reduced the civil penalty based on Phillips' attorney's statement that he advised his client of the need for further training. There was no indication that Phillips accepted its attorney's advice. Moreover, further training after a hearing would be so long after the incident that it could not be regarded as a mitigating factor. Also, it is beyond the authority of the law judge to impose a training requirement as part of the sanction; the law judge's authority is limited to imposing a civil penalty.

In addition, the law judge improperly based his sanction determination in part on Phillips' promise not to ship hazardous materials any more. The case law indicates that a promise not to ship hazardous materials in the future does not represent the type of positive corrective action that warrants consideration in determining the penalty. Such a company policy may be changed at any time.

After considering all the factors required by the statute—

1. the nature, circumstances, extent, and gravity of the violation (undeclared shipments pose a special risk and are extremely dangerous; FAA inspector's testimony that given the closed ventilation system, if the glue leaked, vapors could cause crew to succumb; the package actually leaked, and onto some food, which could have caused people to get sick if they ingested it; on the other hand, it was a relatively small shipment; it was not flammable, corrosive, or radioactive);
2. the violator's degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business (Phillips is a business rather than an individual; while it is not a manufacturer, it regularly handles hazardous materials; prior violations are not present; and Phillips has not alleged financial hardship); and
3. other matters that justice requires (Phillips did take some corrective action—i.e., two employees participated in a UPS training course; this doesn't justify a large adjustment, but it is still mitigating).

Conclusion. Based on the statutory factors, the $9,000 civil penalty assessed by the law judge is too low, but the $20,000 sought by Complainant is excessive. A $14,000 civil penalty is imposed.

In the Matter of Daniel A. Martinez

Order No. 2000–21 (8/11/00)

Untimely Supplemental Brief Rejected. Order No. 2000–7 directed Martinez to file a supplemental brief explaining why he failed to answer the complaint and the law judge's order to show cause. Martinez lacked good cause for failing to file his supplemental brief by the deadline. Thus, his supplemental brief is rejected.

Community Service. In any event, the relief Martinez sought on appeal—to substitute community service for the civil penalty—is not available. The governing statute and regulations provide only for monetary penalties in FAA civil penalty actions; they do not provide for community service as a possible penalty.

Conclusion. Martinez's appeal is dismissed, the law judge's initial decision is affirmed, and a civil penalty of $2,200 is assessed.

Commercial Reporting Services of the Administrator's Civil Penalty Decision and Orders

Commercial Publications: The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications:

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;

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2. *On-Line Services*.The Administrator's decisions and orders in civil penalty cases are available through the following on-line services:

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Docket

The FAA Hearing Docket is located at FAA Headquarters, 800 Independence Avenue, SW, Room 926A, Washington, DC, 20591 (tel. no. 202–267–3641). The clerk of the FAA Hearing Docket is Ms. Stephanie McClain. All documents that are required to be filed in civil penalty proceedings must be filed with the FAA hearing Docket Clerk at the FAA Hearing Docket. (See 14 CFR 13.210.) Materials contained in the docket of any case not containing sensitive security information (protected by 14 CFR Part 191) may be viewed at the FAA Hearing Docket.

In addition, materials filed in the FAA Hearing Docket in non-security cases in which the complaints were filed on or after December 1, 1997, are available for inspection at the Department of Transportation Docket, located at 400 7th Street, SW, Suite PL–401, Washington, DC, 20590, (tel. no. 202–366–9329.) While the originals are retained in the FAA Hearing Docket, the DOT Docket scans copies of documents in non-security cases in which the complaint was filed after December 1, 1997, into their computer database. Individuals who have access to the Internet can view the materials in these dockets using the following Internet address: http://dms.dot.gov.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 926A, Washington, DC 20591; (202) 267–3641

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Regional Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; (405) 954–3296
Office of the Regional Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269
Office of the Regional Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446
Office of the Regional Counsel for the Eastern Region (AEA–7), 1 Aviation Plaza, 159–30 Rockaway Blvd., Springfield Gardens, NY 11434; (718) 533–3285
Office of the Regional Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60019: (847) 294–7085
Office of the Regional Counsel for the New England Region (ANE–7), New England Regional Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803; (781) 238–7040
Office of the Regional Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055; (425) 227–2007
Office of the Regional Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200
Office of the Regional Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137; (817) 222–5064
Office of the Regional Counsel for the Technical Center (ACT–7), William J. Hughes Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7088
Office of the Regional Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (310) 725–71000

Issued in Washington, DC on October 31, 2000.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 00–28850 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–62]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption Part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 29, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ______, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 11.91 of part 11 of 14 CFR.

Issued in Washington, DC, on November 3, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 28530.

Petitioner: Mr. John A. Porter.

Section of the 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/Disposition: To allow Mr. Porter to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements, in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 10/06/00, Exemption No. 6521B.

Docket No.: 28514.

Petitioner: Mr. Henry D. Canterbury.

Section of the 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/Disposition: To allow Mr. Canterbury to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 10/05/00, Exemption No. 6520B.

Docket No.: 29922.

Petitioner: Mr. Richard E. Druschel.

Section of the 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/Disposition: .To allow Mr. Druschel to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in lieu of functioning dual controls.

Grant, 10/06/00, Exemption No. 7367.

Docket No.: 29937.

Petitioner: Southern California Aviation, Inc.

Section of the 14 CFR Affected: 14 CFR 145.35 and 145.37(b).

Description of Relief Sought/Disposition: To permit SCAI to add transport category airplanes up to and including the Boeing 747–400 airplane to its FAA-certificated repair station limited airframe rating without completely meeting the housing and facility requirements for such airplanes..

Grant, 10/06/00, Exemption No. 7364.

[FR Doc. 00–28738 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000PE–63]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 29, 2000.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91 of part 11.

Issued in Washington, D.C., on November 3, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–8051.

Petitioner: Castroville Area Chamber of Commerce.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353 and appendixes I and J to part 121.

Description of Relief Sought/Disposition: To permit CACC to conduct local sightseeing flights at Castroville Municipal Airport, Castroville, Texas, for a two-day charitable event benefiting the Tourism Committee in November 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 10/24/2000, Exemption No. 7372.

Docket No.: FAA–2000–8162.

Petitioner: Evergreen Helicopters, Inc.

Section of 14 CFR Affected: 14 CFR 133.45(e)(1).

Description of Relief Sought/Disposition: To permit Evergreen to conduct Class D rotorcraft-load combination operations with an A109K–2 helicopter certificated in the normal category under 14 CFR part 27.

Grant, 10/27/2000, Exemption No. 7372.

[FR Doc. 00–28739 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–65]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 29, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ______, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 11.91 of part 11 of 14 CFR.

Issued in Washington, D.C., on November 3, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 013SW.

Petitioner: Era Aviation, Inc.

Section of the 14 CFR Affected: 14 CFR 29.1(c).

Description of Relief Sought/Disposition: To permit three (3) Sikorsky Model S–61N helicopters (S–61N) to be certificated as Category B rotorcraft with a maximum gross weight greater than 20,000 pounds and 10 or more passenger seats.

Denied, 09/21/00, Exemption No. 7366.

Docket No.: 29462.

Petitioner: Dallas Airmotive, Inc.

Section of the 14 CFR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/Disposition: To permit DAI to issue export airworthiness approvals for certain Class II products manufactured in the United Kingdom, Canada and Sweden but located in the United States.

Denial, 10/19/00, Exemption No. 7373.

[FR Doc. 00–28740 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–66]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 29, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ______, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 1191 of part 11 of 14 CFR.

Issued in Washington, DC, on November 3, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 30190.

Petitioner: Midwest Express Airlines, Inc.

Section of the 14 CFR Affected: 14 CFR 93.123.

Description of Relief Sought/Disposition: To permit the allocation of exemption slot number 1497 at Ronald Reagan Washington National Airport (DCA) to Midwest Express to augment its service from DCA.

Grant, 10/19/00, Exemption No. 7370.

Docket No.: 30141.

Petitioner: Deniston Enterprises, Inc.

Section of the 14 CFR Affected: 14 CFR 135.299(a).

Description of Relief Sought/Disposition: To permit Deniston pilots to accomplish a line operational evaluation (LOE) in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Denial, 10/03/00, Exemption No. 7362.

Docket No.: 28517.

Petitioner: Mr. Samuel D. James.

Section of the 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/Disposition: To permit Mr. James to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 10/03/00, Exemption No. 6532B.

Docket No.: 30159.

Petitioner: Wallace State Community College.

Section of the 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353 and appendixes I and J to part 121.

Description of Relief Sought/Disposition: To permit Wallace State to conduct local sightseeing flights at Folsom Field, Vinemont, Alabama, for the one-day Wings Over Cullman Airshow in October 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 10/06/00, Exemption No. 7365.

Docket No.: 23492.

Petitioner: United States Hang Gliding Association, Inc.

Section of the 14 CFR Affected: 14 CFR 103.1(a) and (b).

Description of Relief Sought/Disposition: To permit individuals authorized by USHGA to operate unpowered ultralight vehicles (hang gliders) weighing less than 155 pounds, with another occupant, for the purpose of sport, training, or recreation.

Grant, 10/03/00, Exemption No. 4712G.

Docket No.: 28639.

Petitioner: Peninsula Airways, Inc. dba PenAir.

Section of the 14 CFR Affected: 14 CFR 121.574(a)(1) and (3).

Description of Relief Sought/Disposition: To permit the carriage and operation of oxygen storage and dispensing equipment for medical use by patients requiring emergency or continuing medical attention while on board an aircraft operated by PenAir when the equipment is furnished and maintained by a hospital treating the patient.

Grant, 09/28/00, Exemption No. 6523B.

[FR Doc. 00–28741 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–67]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions of exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition document number involved and must be received on or before November 29, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the

Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ______. 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 11.91 of part 11 of 14 CFR.

Issued in Washington, DC, on November 3, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 30186.

Petitioner: Reeve Aleutian Airways, Inc.

Section of the 14 CFR Affected: 14 CFR 121.314(c), 25.857(c)(2) and 25.857(c)(4).

Description of Relief Sought: To permit three Model L188C airplanes to operate without their Class C cargo compartments being fitted with built-in fire extinguishing or suppression systems controllable from the cockpit, and provide a means to control ventilation and drafts within the compartment so that the extinguishing agent used can control any fire that may start within the compartment.

[FR Doc. 00–28742 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (01–03–C–00–GUC) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Gunnison County Airport, Submitted by the County of Gunnison, Gunnison, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Gunnison County Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan Wiechmann, Manager, Denver Airports District Office; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Rex A. Tippetts, Airport Manager, at the following address: 711 Rio Grande Avenue, Building B, Gunnison, Colorado 81230.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Gunnison County Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 342–1258, 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 01–03–C–00–GUC to impose and use PFC revenue at Gunnison County Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 1, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Gunnison County Airport, Gunnison, Colorado, was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 30, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge-effective date: April 1, 2001.

Proposed charge-expiration date: June 1, 2003.

Total requested for use approval: $480,667.

Brief description of proposed project: Land acquisition (Wilson property); Land acquisition (Bratton property); Perimeter fencing; Aircraft rescue and fire fighting vehicle; Design for D–IV safety area standards; Design and construction of I-Bar Road.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Gunnison County Airport.

Issued in Renton, Washington on November 1, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–28734 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at the Huntsville International Airport, Huntsville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Jackson, MS Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Luther H. Roberts, Jr., AAE, Deputy Director of the Huntsville-Madison County Airport Authority at the following address: 1000 Glenn Hearn Boulevard, Box 20008, Huntsville, AL 35834.

Air carriers and foreign air carriers may summit copies of written comments previously provided to the

Huntsville-Madison County Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Roderick T. Nicholson, Program Manager, FAA Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9884. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 2, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Huntsville-Madison County Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 20, 2001.

The following is a brief overview of the application.

PFC Application No.: 01–11–C–00–HSV.

Level of the proposed PFC: $4.50.

Proposed charge effective date: April 1, 2001.

Proposed charge expiration date: February 1, 2017.

Total estimated net PFC revenue: $36,319,312.

Brief description of proposed project(s): Western Land Acquisition (3,500 acres).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Any Air Taxi/Commercial Operator (ATCO), Certified Air Carriers (CAC) and Certified Route Air Carriers (CRAC) having fewer than 500 annual enplanements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Huntsville-Madison County Airport Authority.

Issued in Jackson, MS on November 2, 2000.

Wayne Atkinson,

Manager, Jackson, MS Airports District Office, Southern Region.

[FR Doc. 00–28733 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Naples Municipal Airport, Naples, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Naples Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ted Soliday, Executive Director of the Naples Airport Authority at the following address: 160 Aviation Drive, Naples, FL 34104

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Naples Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Jennifer Ganley, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822, (407) 812–6331, ext. 25. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Naples Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 1, 2000, the FAA determined that the application to impose a PFC submitted by Naples Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 15, 2001.

The following is a brief overview of the application.

PFC Application No.: 01–03–I–00–APF

Level of the proposed PFC: $3.00.

Proposed charge effective date: 8/1/01.

Proposed charge expiration date: 12/1/06.

Total estimated net PFC revenue: $850,000.

Brief description of proposed project(s): Rehabilitate and extend parallel Taxiway B.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: non-scheduled air carriers and charter operators using aircraft with less than 10 seats.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Naples Airport Authority.

Issued in Orlando, Florida on November 1, 2000.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 00–28743 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (01–03–C–00–SLC) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Salt Lake City International Airport, Submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Salt Lake City International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann, Manager, Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy L. Campbell, Executive Director, at the following address: Salt Lake City Department of Airports, 776 N. Terminal Dr., TUI, Suite 250, Salt Lake City, Utah 84122.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Salt Lake City International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (01–03–C–00–SLC), to impose and use PFC revenue at Salt Lake City International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 30, 2000, the FAA determined that, the application to impose and use the revenue from a PFC, submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 30, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2001.

Proposed charge expiration date: March 31, 2002.

Total requested for use approval: $28,822,000.

Brief description of proposed project: Taxiway "H" reconstruction, Cargo apron bypass, South cargo apron expansion, Airfield emergency access road and snow storage, Improve airport access road, Taxiway "S" reconstruction, Cargo site development and security gate, East apron overlay and reconstruction (Phase I), Airfield bird habitat management (Phase I), Bird hazard remediation (Phase II), Bird hazard remediation (Phase III), Security access system, Security system expansion and upgrade, Perimeter security fencing upgrade (Phase I), Perimeter security fencing upgrade (Phase II), Electrical vault modifications, Airfield lighting control system and communication equipment relocation, Modify elevated runway guard light and install precision approach path indicator and runway end identifier lights, CAT III and ALSF–II on Runway 16L, East side deicing, Fire station 11 relocation, CCTV system modifications and upgrades, Automated exit lane at screening checkpoints, Runway guard lights upgrade, Constant current regulator and circuit modifications, Deicing drainage improvements, North cargo taxilane extension, Taxiway "H" reconstruction (Phase II), Runway 16L pavement end and Taxiway "H" reconstruction, acquisition of land, Tooele Valley Airport wildlife fencing, Site preparation for new apron paving, West apron paving and lighting (Phase I), West apron drainage, East apron drainage, West apron paving (Phase II).

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: All air taxi/commercial operators filing or required to file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Salt Lake City International Airport.

Issued in Renton, Washington on October 30, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–28736 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request to Amend an Approved Application (96–02–C–00–SLC) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Salt Lake City International Airport, Submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on a Request to Amend an approved PFC application.

SUMMARY: The FAA proposes to rule and invites public comment on the request to amend the approved application to impose and use PFC revenue at the Salt Lake City International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Comments on this request may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy L. Campbell, Executive Director, at the following address: Salt Lake City Corporation—Department of Airports, 776 N. Terminal Drive, TUI, Suite 250, P.O. Box 22084, Salt Lake City, UT 84122.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Salt Lake City Department of Airports, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. The request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to amend the application (96–02–C–00–SLC) to impose and use PFC revenue at the Salt Lake City International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 2, 2000, the FAA received the request to amend the application to impose and use the revenue from a PFC, submitted by the Salt Lake City Airport Authority, within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the amendment no later than January 30, 2001.

The following is a brief overview of the application.

Proposed increase in PFC level: From $3.00 to $4.50.

Proposed charge-effective date: April 1, 2001.

Total requested for use approval: $61,883,000.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: All air taxi/commercial operators filing or required to file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the request to amend an approved application in person at Salt Lake City International Airport.

Issued in Renton, Washington on October 30, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–28737 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 01–05–U–00–SEA To Use Only the Revenue From a Passenger Facility Charge (PFC) at Seattle-Tacoma International Airport, Submitted by the Port of Seattle, Seattle-Tacoma International Airport, Seattle, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use only PFC revenue at Seattle Tacoma International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Gina Marie Lindsey, Director of Aviation Division, at the following address: Seattle-Tacoma International Airport, Port of Seattle, P.O. Box 68727, Seattle, WA 98168.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Seattle-Tacoma International Airport, under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 01–05–U–00–SEA to use only PFC revenue at Seattle-Tacoma International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 1,2000, the FAA determined that the application to use only the revenue from a PFC submitted by Port of Seattle, Seattle-Tacoma International Airport, Seattle, Washington, was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 16, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2004.

Proposed charge expiration date: January 1, 20023.

Total requested for use approval: $44,965,000.

Brief description of proposed projects: Security System Upgrade; Airfield Pavement and Infrastructure Improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Seattle-Tacoma International Airport.

Issued in Renton Washington on November 1, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–28735 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Hillsborough and Rockingham Counties, New Hampshire; Correction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; correction.

SUMMARY: The Federal Highway Administration published a document in the **Federal Register** of October 27, 2000, concerning Notice of Intent concerning Environmental Impact Statement: Hillsborough and Rockingham Counties, New Hampshire. The document contained incorrect proposed location of the scoping meeting.

FOR FURTHER INFORMATION CONTACT: William F. O'Donnell, 603–228–3057, Extension 145.

Correction

In the **Federal Register** of October 27, 2000, in FR Doc. 00–27669, on page 64474, in the third column, correct the meeting time and location to read "Because this project has been on hold for a substantial period of time, a second formal scoping meeting will be held at 4:00 p.m. on December 6, 2000, the 3rd floor Auditorium of the University of NH—Manchester Campus, 300 (rather than 3000) Commercial Street in Manchester, New Hampshire."

Dated: November 2, 2000.

Walter C. Waidelich,

Assistant Division Administrator, Concord, New Hampshire.

[FR Doc. 00–28817 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Norfolk Southern Corporation

[Waiver Petition Docket Number FRA–2000–8045]

Norfolk Southern Corporation (NS) seeks to amend temporary waiver PB–98–1 by extending the expiration date to December 31, 2001.

Part 232.21(a) requires that "An emergency brake application command from the front unit of the device shall activate the emergency air valve at the rear of the train within one second." According to NS, their front unit sends an emergency brake command in 1.675 seconds, of which a significant portion of this time is involved in coding the unique signal that provides a security barrier against an attempted malicious emergency command from an outside source, or an accidental transmission from another front unit that may have an erroneous rear number inputted. The NS system is designed to code a unique message between the individual devices. These messages are separate from the rear unit number and are coded and initialized only during a five minute window at the initial terminal setup and testing of the system. NS believes this function provides a higher level of security than the two-way systems currently used by other Class I railroads.

Part 232.21(f) requires "the availability of the front-to-rear communications link shall be checked automatically at least every ten minutes." The system used by NS does not have front-to-rear communications checked automatically every ten minutes. NS claims their system communications failure warning is linked to the rear-to-front portion of the messaging. If five minutes elapse, since a good message was received by the front unit, a "STANDBY" message is displayed on the front unit. This message informs the engineer that communication is lost.

Part 232.23(d) permits NS to use these devices because "Each two-way end-of-train device purchased by any person prior to promulgation of these regulations shall be deemed to meet the design and performance requirements contained in § 232.21."

It is NS's desire to redesign all of their devices to comply with § 232.21. In order to facilitate a smooth transition from the existing NS mode to the mode that is currently being used by the rest of the Class I railroads, NS requested and on June 8, 1998, was granted a temporary waiver of § 232.21(a) and (f) for the procurement and operation of a dual mode device for three years. The dual mode device is a dual frequency, two-way system which will operate in both the NS and the current compliant mode. When these devices are operated in the complaint mode, they will comply with current regulations. However, when they are operated in the NS mode, they will be compatible with existing NS devices as described above.

NS would like to modify existing waiver PB–98–1 by extending the expiration date to December 31, 2001, at which time they believe the entire NS locomotive fleet will be compliant with the current design and operating standards.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2000–8045) and must be submitted to the Docket Management Facility, Room PL–401, (Plaza level) 400 Seventh Street, SW, Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http://dms.dot.gov.

Issued in Washington, DC on November 3, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–28730 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket MARAD–2000–8246]

U.S. Ship Management, Inc.; Notice of Application To Replace the Container Vessel "Newark Bay" in Maritime Security Program Operating Agreement MA/MSP–31

By letter dated October 27, 2000, U.S. Ship Management, Inc. (USSMI) has advised that the container vessel *Newark Bay* has been sold to Maersk Line, Limited on October 23, 2000, and will be utilized by that company as an ammunition carrier under long-term charter with the Military Sealift Command. As a result of this sale, that vessel is no longer eligible to receive benefit payments under Maritime Security Program (MSP) Operating Agreement MA/MSP–31.

Pursuant to the terms of MSP Operating Agreement MA/MSP–31, failure to operate the vessel named therein for more than 180 days in any fiscal year may constitute a default. Accordingly, if USSMI fails to resume operations under MA/MSP–31 by April 24, 2001, USMMI can, at the discretion of the Maritime Administration (MARAD) (we, our, or us), be declared in default of the terms of MSP Operating Agreement MA/MSP–31. USSMI has requested our approval to replace the *Newark Bay* with the container vessel *Sealand Pride* in order to remedy that potential default, and continue receiving benefits under the contract.

The Newark Bay is a container vessel of approximately 4,600 TEU capacity built in 1985. The *Sealand Pride* is a former Sea-Land Service Atlantic Class container vessel also built in 1985, and converted to an SL–31 Class vessel of approximately 3,700 TEU capacity in 1994. The vessel was extensively modernized during its conversion.

Due to the policy considerations involved in USSMI's request, we have decided to exercise our discretionary options and seek comments concerning this proposed substitution of vessels from interested parties. A copy of USSMI's request will be available for inspection at the Department of Transportation (DOT) Dockets Facility and on the DOT Dockets website (address information follows).

Any person, firm or corporation having an interest in this proposal, and desiring to submit comments concerning this matter, may file comments as follows. You should mention the docket number that appears at the top of this notice. Written comments should be submitted to the

Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590.

Comments may also be submitted by electronic means via the internet at http://dms.dot.gov/submit/. You may call Docket Management at (202) 366–9324. You may visit the Docket Room to inspect and copy comments at the address above between 10 a.m. and 5 p.m. EST, Monday through Friday, except holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov. Comments must be received by close of business November 24, 2000.

This notice is published as a matter of discretion, and the fact of its publication should in no way be considered a favorable or unfavorable decision on the application, as filed, or as may be amended. We will consider all comments submitted in a timely fashion, and will take such action thereto as may be deemed appropriate.

Dated: November 6, 2000.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–28827 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Third Quarterly Meeting of the Crash Injury Research and Engineering Network

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the Third Quarterly Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at nine Level 1 Trauma Centers which are linked by a computer network. Researchers can review data and share expertise, which could lead to a better understanding of crash injury mechanisms and the design of safer vehicles.

DATE AND TIME: The meeting is scheduled from 9 a.m. to 5 p.m. on November 30, 2000.

ADDRESSES: The meeting will be held in Room 6200–04 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW, Washington, DC.

SUPPLEMENTARY INFORMATION: The CIREN System has been established and crash cases have been entered into the database by each Center. NHTSA has held three Annual Conferences (two in Detroit and one in conjunction with STAPP in San Diego) where CIREN research results were presented. Further information about the three previous CIREN conferences is available through the NHTSA website at: http://www-nrd.nhtsa.dot.gov/include/bio_and_trauma/ciren-final.htm. NHTSA held the first quarterly meeting on May 5, 2000, with a topic of lower extremity injuries in motor vehicle crashes and the second quarterly meeting on July 21, 2000, with a topic of side impact crashes. Information from the May 5 and July 21 meetings are also available through the NHTSA website.

NHTSA plans to continue holding quarterly meetings on a regular basis to disseminate CIREN information to interested parties. This is the third such meeting. The topic for this meeting is thoracic injuries in motor vehicle crashes. Subsequent meetings have tentatively been scheduled for March and June 2001. These quarterly meetings will be in lieu of an annual CIREN conference.

FOR FURTHER INFORMATION CONTACT: Mrs. Donna Stemski, Office of Human-Centered Research, 400 Seventh Street, SW., Room 6206, Washington, DC 20590, telephone: (202) 366–5662.

Issued on: November 2, 2000.

Raymond P. Owings,

Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 00–28700 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–6947, Notice 2]

Subaru of America, Inc.; Grant of Application for Decision of Inconsequential Non-Compliance

This notice grants the application by Subaru of America, Inc. (Subaru) to be exempted from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 with respect to a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 209, "Seat Belt Assemblies." Subaru has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Pursuant to 49 CFR Part 556, Subaru has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301, "Motor Vehicle Safety." The basis of the grant is that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published March 9, 2000, and an opportunity afforded for comment (65 FR 12615). The closing date was April 10, 2000. No comments were received.

Description of Noncompliance

Replacement seat belt assemblies were packaged without instruction sheets required by FMVSS No. 209 S4.1(k) and (l). All of the seat belt assemblies involved meet all other requirements of FMVSS No. 209.

Approximately 522 sets of replacement seat belt assemblies manufactured and sold were involved.

Subaru Submitted the Following in Support of Its Application

> In accordance with FMVSS No. 209, S4.1(k) replacement seat belt assemblies must be accompanied by installation instructions for installing the assembly in a motor vehicle. These instructions "shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles and shall include at least those items specified in SAE Recommended Practice J800c, Motor Vehicle Seat Belt Installation, November 1973.
>
> Subaru understands SAE Recommended Practice J800c, it deals primarily with the threading of webbing and location and drilling of anchorage holes and is not relevant here since all affected Subaru vehicles have pre-existing anchorage holes. All of the affected replacement seat belt assemblies are supplied ready for use with fully threaded webbing.
>
> Subaru believes that S4.1(k) is intended to prevent the mismatch of a seat belt assembly in the wrong model vehicle or the wrong seating position and prevent improper installation of a seat belt at the correct position.
>
> In accordance with FMVSS No. 209, S4.1(l) requires instructions addressing the importance of warning seat belts "snugly and properly located on the body" and information about seat belt maintenance. Subaru believes that since the owner's manual already provides proper usage and maintenance information to the vehicle owner and operator, incorrect usage and maintenance by the vehicle owner is highly unlikely.
>
> Subaru has corrected all the replacement seat belt assembly inventory for shipment to dealers and will provide additional instruction documents to dealers with inventory subject to the noncompliance.
>
> Replacement seat belt assemblies sold at retail to customers has not resulted in owner complaints as a result of this inconsequential noncompliance.
>
> Subaru believes that, based upon the information described above, this is an inconsequential noncompliance.

NHTSA has reviewed Subaru's application and, for the reasons discussed below, has decided that the noncompliance of the Subaru seat belt assemblies is inconsequential to motor vehicle safety.

First, we note that seat belt assemblies were distributed through the Subaru parts system, without the required "installation instructions." FMVSS No. 209, S4.1(k), requires that seat belt assemblies sold as replacement equipment have "installation instructions" to ensure that the correct seat belt is selected as a replacement part, and that the seat belt is installed correctly. Subaru assures us that its parts ordering system and the box labels are quite specific and adequate to ensure that the proper seat belt is provided as a replacement part. We also believe that Subaru is correct in stating that the parts are so specific that if a mechanic tried to install the wrong part, the seat belt would not fit properly. Thus, we conclude that adequate safeguards are being taken by Subaru to ensure that the correct replacement seat belts are provided.

There seems to be little need for the installation instructions with replacements for original equipment seat belts. The SAE J800c Recommended Practice incorporated in FMVSS No. 209 appears to have been written as a guide on how to install a seat belt where one does not exist. The Recommended Practice discusses such things as how to determine the correct location for anchorages, how to create adequate anchorages and how to properly attach webbing to the newly installed anchorages. These instructions do not apply to today's replacement market. Additionally, vehicle manufacturers provide service manuals on how seat belts should be replaced. NHTSA does not believe the "how to" instructions are necessary in this case.

Next, we note that the subject seat belt assemblies were distributed without the required "usage and maintenance instructions" specified in FMVSS No. 209, S4.1(l), which requires that seat belt assemblies sold as replacement equipment have owner instructions on how to wear the seat belt and how to properly thread the webbing on seat belts where the webbing is not permanently attached. NHTSA believes that the proper usage is adequately described in the vehicle owner's manual. NHTSA does not believe that instructions about the proper threading of webbing is applicable to modern original equipment automobile seat belt systems. This second instruction sheet is either duplicated in the owner's manual or not applicable.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance that it describes is inconsequential to safety. The determination is limited to the vehicles and equipment covered by the Part 573 report. All products manufactured on and after the date Subaru determined the existence of this noncompliance must fully comply with the requirements of FMVSS No. 209.

Accordingly, Subaru's application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118 and from remedying the noncompliance, as required by 49 U.S.C. 30120.

Authority: 49 U.S.C. 30118(b), 30120(h), delegations of authority at 49 CFR 150 and 501.8.

Issued on: November 6, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–28835 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Released Rates Decision No. MC–999]

Notice of Filing of an Application To Amend Released Rate Provisions (and Corresponding Limits of Liability) for Motor-Carrier Shipments of Household Goods, and Request for Public Comments

AGENCY: Surface Transportation Board.

SUMMARY: The Household Goods Carriers' Bureau Committee (Committee), on behalf of its member motor carriers, seeks authority to amend Released Rates Decision No. MC–999 by changing the terms under which the carriers would limit their liability for damage to, or loss of, household-goods shipments, and thus changing the resulting charges to shippers.

DATES: Comments are due December 11, 2000.

ADDRESSES: Send comments (an original and 10 copies) referring to Released Rates Decision No. MC–999, to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 565–1578, or Lawrence C. Herzig, (202) 565–1576. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION:

1. Background

Under 49 U.S.C. 14706(a)(1), motor carriers of household goods ordinarily are liable for the actual loss or injury that they cause to the property they transport.[1] However, under 49 U.S.C. 14706(f), household-goods carriers may establish "released rates," under which the carriers' liability is limited to a value established by written declaration of the shipper or by a written agreement between the carrier and shipper, if they obtain permission from the Board.[2]

2. Current Provisions

The released rates currently offered by most household-goods carriers are based upon authority granted by the Board's predecessor, the Interstate Commerce Commission (ICC), in *Released Rates of Motor Common Carriers of Household Goods,* 9 I.C.C.2d 523 (1993). Under the plan approved in 1993, the freight charges paid by a household-goods shipper depend upon the level of liability assumed by the carrier. A shipper pays the carrier's lowest rate, the "base rate" when it agrees, by indicating in writing on the bill of lading, that the carrier's liability will be 60 cents per pound per article for goods lost or damaged, but not more than the actual, depreciated value of the item. According to the Committee, the percentage of household-goods shippers choosing to move their goods under the 60-cents-per-pound limitation on liability remained relatively constant from 1985 through 1996, decreasing from 33.1 to 31.2 percent.[3]

A second option available to shippers allows them to protect more of the value of the shipment for a higher transportation charge. The shipper declares a lump sum value for the entire shipment, and pays the base rate plus a charge of 70 cents for each $100, or fraction, of the "declared value" of the shipment. Under this second option, there is a minimum valuation: if the shipper's declared value is less than $1.25 times the weight (in pounds) of the shipment, the minimum declared value of $1.25 per pound will apply instead. The recovery under this option for lost goods is the actual (depreciated) value of the (typically used) goods up to the declared value of the shipment.[4]

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[1] Carriers are not liable for loss or injury that they do not cause, such as losses due to acts of God.

[2] Motor carriers of freight other than household goods may establish released rates without having to obtain the Board's permission. 40 U.S.C. 14706(c)(1)(A).

[3] The 60-cent limitation predates the 1993 plan. *See Household Goods Carriers' Bureau* v. *ICC,* 584 F.2d 437, 439 (D.C. Cir. 1978).

[4] Of course, if the carrier lost an item that was new and unused, it would be liable for the replacement value of the item. In that case, the "actual value" of the lost item would be its new, or replacement, value.

Many carriers today also offer a third option for an even higher charge: "full value protection" (FVP) within broad ranges of declared values in which the carrier is liable for the full replacement value of items, up to the declared value of the shipment.[5] The breadth of the ranges of declared values to which a single charge applies under this third option is greater than the $100 increments provided under the second option. The Committee states that, from 1985 through 1996, shippers' election of FVP increased from 38.8 to 55.4 percent of shipments.

Under any of these options, when goods are damaged rather than lost, the carrier has the option of paying the cost of repairs to restore the damaged goods to their prior condition.

3. The New Proposal

The Committee now proposes to offer only two options rather than three. It would retain the same first option of paying a base rate, for which the carrier's liability is limited to 60 cents per pound per article. The only other option would be an FVP option based upon a declared value for the shipment. It would differ from the currently available options in two ways. First, there would be no choice under which the carrier is liable for the actual, depreciated value of the goods lost or damaged. Rather, the carriers would be liable for full replacement value. Second, the minimum declared value for shipments would increase from $1.25 to $4.00 times the weight of the shipment (in pounds). The Committee established this figure after concluding that $4.00 per pound, rather than $1.25 per pound, more closely approximates the average value of recent household-goods shipments.

The proposed FVP option would use the broad ranges of declared values from the current FVP option that many carriers offer. At the lower end, the valuation charge would increase as the declared values increased in $5,000 increments. As the declared values go up, the increments to which a single valuation charge would apply also would expand, up to $25,000 worth of declared values. The proposed ranges of declared values and corresponding charges are:

Declared value	Charge
$0 to $5,000	$76
$5,001 to $10,000	113
$10,001 to $15,000	149
$15,001 to $20,000	182
$20,001 to $25,000	216
$25,001 to $30,000	258
$30,001 to $35,000	298
$35,001 to $40,000	338
$40,001 to $50,000	380
$50,001 to $60,000	440
$60,001 to $75,000	506
$75,001 to $100,000	624
$100,001 to $125,000	754
$125,001 to $150,000	825
$150,001 to $175,000	933
$175,001 to $200,000	1,041
$200,001 to $225,000	1,155
$225,001 to $250,000	1,280
Over $250,000	1,280[1]

[1] Plus $.50 for each $100, or fraction thereof, in excess of $250,000 declared value.

Within any of the proposed valuation ranges, lower charges would apply if the shipper elects a $250 or $500 deductible. If goods were lost, the carrier would be fully liable for the loss of the property, at its replacement value with no reduction for depreciation, up to the declared value of the shipment.[6]

If a shipper did not, in writing, either select the 60-cents-per-pound-per-article limit or declare a value for the shipment, the declared value would be deemed to be $4.00 times the weight of the shipment in pounds. Also, when goods are damaged, the carrier would retain the option of paying repairs to restore the damaged items to their condition when the carrier received them, up to the declared value of the shipment.

4. Comments Requested

We wish to ensure that any proposal we might approve represents an appropriate liability regime for individual homeowners who would be affected. Therefore, we seek comments, especially from individual shippers of household goods and organizations or government entities that represent their interests, concerning the Committee's new proposal and particularly the issues we outline below.[7] We also seek additional information from the Committee, as discussed below.

A. 60-cents-per-pound Limitation

The limit of 60 cents per pound per article may no longer be appropriate if the estimated current average value of $4.00 per pound of household-goods shipments is accurate. There may be some appeal to having low base rates with minimal carrier liability for shippers who want to insure their household goods through other means. However, the rates for separate insurance likely will be higher, with lower carrier liability, because insurers typically seek to recover from the carriers, to the extent of the carrier's liability. Thus, any savings to the shipper from continuing an unrealistically low 60-cents-per-pound-per-article limitation could be illusory. We request comments on whether and why we should allow a 60 cents-per-pound-per-article limit.

In addition, we have received informal complaints from household-goods shippers who, despite our clear rule on this matter, state that they did not knowingly request the 60-cents-per-pound limitation but were somehow deemed to have selected it. Therefore, we also request comments on ways to better ensure that shippers make informed, conscious decisions regarding the level of carrier liability and understand any applicable limitations to liability.

B. Use of Deductibles

Under the proposal, if a shipper chooses a rate that includes a deductible, a carrier might lack a liability-based incentive to exercise reasonable care to avoid minor damages to shipments. We request comment on this aspect of the proposal.

C. Elimination of Actual (Depreciated) Value Option

We are concerned that the FVP proposal eliminates the current option under which motor carriers are liable for the actual (depreciated) value of the household goods in a shipment—the level of liability contemplated by the statute. We ask for comment on whether carriers should be allowed to eliminate this intermediate option.

D. Rate Levels

According to the Committee, today some 22.9 percent of FVP shipments result in paid claims. The Committee projects that 25 percent of FVP shipments under the proposed $4.00-per-pound minimum would result in paid claims.[8] We do not know if this projection is based on a trend of an increasing number of paid claims. If the expected increase in paid claims did not occur, the additional revenues generated would have the same effect as a rate increase. We ask the Committee to submit all supporting data, including work papers, associated with the proposed fees and the prediction that a higher percentage of FVP shipments will result in paid claims.[9]

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[5] We note that the protection under the third option could amount to less than full value if a shipper chose a declared value that is less than the replacement cost for all of the items in its shipment and the entire shipment were lost.

[6] Again, we note that a shipper that chooses a declared value that is lower than the replacement value of its household goods would not be able to replace all of its goods with new goods if the entire shipment were destroyed or lost.

[7] The Committee's proposal is the result of collective action by its members pursuant to 49 U.S.C. 13703. The Committee's request for renewed Board approval of (and resulting antitrust immunity for) discussing and taking actions collectively is currently pending before the Board. Our action in moving this proceeding forward is not intended to prejudge our disposition of the Committee's renewal request.

E. Different Carrier Liability on Identical Shipments

We do not know if the Committee intends a difference in carrier liability for two otherwise identical shipments, one of which has a declared lump sum value and one of which does not. As worded, the proposal would seem to provide a different result. Under the Committee's proposed terms:

> All shipments (other than those released to a value not exceeding 60¢ per pound per article) will be deemed released to a minimum lump sum value of $5,000 or $4.00 times the actual total weight (in pounds) of the shipment. If the shipper declares or releases the shipment to a valuation that falls between the valuation amounts shown, the next higher valuation amount and the applicable charge associated therewith will apply.

An example will illustrate our concern. There would be a different maximum amount of carrier liability on two identical shipments each weighing 4,000 pounds, with the same charge, depending on whether the shipper wrote in a declared value or left the line for a declared value blank. If the shipper wrote in the figure $16,000 on the blank for a declared value and the entire shipment were lost, the carrier could be liable for up to $20,000 (if the shipper demonstrated that the replacement value of his lost goods were that high) because the chosen figure, $16,000, "falls between the valuation amounts shown" on the carriers' proposed table of charges. But if the shipper does not write anything in the blank for declared value, the declared value of this shipment would be deemed to be $16,000 ($4.00 × 4,000) and the shipper would pay the same valuation charge; however, the carrier's maximum liability would be $16,000 if the entire shipment were lost. We ask whether the Committee intended this disparate result and if so, whether that is appropriate.

F. Annual Adjustments

The Committee requests authority to affect annual adjustments in both the proposed minimum valuation per pound and the proposed valuation charges for shipments, based on changes in the "household furnishings and operations" item within the Consumer Price Index, U.S. City Average, published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor. We understand that BLS has restructured the household furnishings and operations index, and that certain items frequently included in household goods shipments (televisions and sound equipment, for example) were moved to other indexes. We request additional justification from the Committee regarding the relevance of the proposed index, comparing the items included in the index with all the items commonly included in shipments of household goods.

We invite comments regarding the merits of this or any other index that may be appropriate to establish adjustments in the minimum valuation of shipments and the corresponding charges. Additionally, we invite comments as to whether any methodology for adjusting minimum valuations of household-goods shipments should apply also to the carriers' charges, as the relationship between the costs of providing a specific dollar amount of carrier liability and changes in the value of household goods has not been explained.

5. Summary

We encourage interested persons to participate in this proceeding by submitting written data, views, or arguments for or against the proposed changes in the released rates authority for motor carriers of household goods. While we are interested particularly in receiving comments on certain issues, as discussed above, we invite comments on all aspects of the proposal. All comments and other materials referred to in this notice will be available for inspection and copying at the Board's address given above. Normal office hours are between 8:30 a.m. and 5:00 p.m., Monday through Friday, except holidays.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–28826 Filed 11–8–00; 8:45 am]

BILLING CODE 4915–00–P

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[8] The Committee asserts that fewer claims were filed in the past because the $1.25-per-pound minimum had the effect of discouraging claims for small losses. But current FVP shipments have not been subject to the $1.25-per-pound minimum. Therefore, we question the Committee's assumption that there would be an increase in the amount of paid claims under the proposed new FVP option.

[9] Concerning the supporting data, we seek an explanation of the basis for arriving at the proposed charges for each of the 19 levels shown in Table 5 of the application. It would be helpful to have information similar to that submitted by the Committee in Attachment No. 3 to its October 1992 application to amend earlier released rate orders (Nos. MC–505 and MC–672).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 1, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 11, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1691.

Regulation Project Number: REG–120882–97 Final.

Type of Review: Extension.

Title: Continuity of Interest.

Description: Taxpayers who entered into a binding agreement on or after January 28, 1998 (the effective date of § 1.368–1T), and before the effective date of the final regulations under § 1.368–1(e) may request a private letter ruling permitting them to apply § 1.368–1(e) to their transaction. A private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRS that there is not a significant risk of different parties to the transaction taking inconsistent positions, for U.S. tax purposes with respect to the applicability of § 1.368–1(e) to the transaction.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondent: 150 hours.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–28824 Filed 11–8–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—The Connecticut Indemnity Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 6 to the Treasury Department Circ. 570; 2000 Revision, published June 30, 2000, at 65 FR 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 65 FR 40877, June 30, 2000.

With respect to any bonds currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should be replaced.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: November 1, 2000.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 00–28804 Filed 11–8–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Security Insurance Company of Hartford

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 7 to the Treasury Department Circ. 570; 2000 Revision, published June 30, 2000, at 65 FR 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certification of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 65 FR 40898, June 30, 2000.

With respect to any bonds currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should be replaced.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: November 1, 2000.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 00–28803 Filed 11–8–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Health Services Research and Development Service, Notice of Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Public Law 92–463, that a meeting of the Nursing Research Initiative Subcommittee of the Scientific Review and Evaluation Board for Health Services Research and Development Service will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW, Washington, DC 20005, on March 6, 2001. On March 6, 2001, the meeting will convene from 8 a.m. until 5 p.m. The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care services and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are prepared for the Chief Research and Development Officer.

This meeting will be open to the public at the start of the March 6 session for approximately one-half hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to frustrate significantly implementation of proposed agency action regarding such research projects). As provided by the subsection 10(d) of Pub. L. 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact the Health Services Research and Development Assistant Director, Scientific Review (124F), Health Services Research and Development Service, Department of Veterans Affairs, 1400 I Street, NW, Suite 780, Washington, D.C., at least five days before the meeting. For further information, call (202) 408–3665.

Dated: November 1, 2000.

By Direction of the Acting Secretary

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–28703 Filed 11–8–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 65, No. 218

Thursday, November 9, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 99F–2673]

Irradiation in the Production, Processing and Handling of Food

Correction

In rule document 00–27735 beginning on page 64605 in the issue of Monday, October 30, 2000, the docket number is corrected to read as set forth above.

[FR Doc. C0–27735 Filed 11–8–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600 and 606

[Docket No. 97N–0242]

Biological Products: Reporting of Biological Product Deviations in Manufacturing

Correction

In rule document 00–28133 beginning on page 66621 in the issue of Tuesday, November 7, 2000, make the following correction:

On page 66622, in the first column, in the **DATES** section, "May 7, 2000" should read "May 7, 2001".

[FR Doc. C0–28133 Filed 11–8–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43291; File No. SR–NASD–00–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Authority of the Director of Arbitration to Remove Arbitrators for Cause

September 14, 2000.

Correction

In notice document 00–24389 beginning on page 57413 in the issue of Friday, September 22, 2000 make the following correction:

On page 57416, in the second column, under the heading "**IV. Solicitation of Comments**", in the 25th line "NASA" should read "NASD".

[FR Doc. C0–24389 Filed 11–8–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43303; File No. SR–NASD–00–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Alternative Method of Reporting Riskless Principal Trades

September 19, 2000.

Correction

In notice document 00–24642 beginning on page 57853 in the issue of Tuesday, September 26, 2000, the date is added to read as set forth above.

[FR Doc. C0–24642 Filed 11–8–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
November 9, 2000

Part II

Department of Agriculture

Forest Service

Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Forest Service is adopting a cohesive strategy for fire management and forest health programs. The full text of the report, *Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy*, is set out at the end of this notice. This report responds to direction from Congress and the President to provide a strategic plan to reduce wildland fire risk, protect communities, and restore and maintain forest ecosystem health in the interior West. The report also responds to findings and recommendations in a recent General Acounting Office report, and it provides a strategic framework for reducing hazardous fuels buildup as addressed in the September 8 report to the President by the Secretaries of Agriculture and the Interior, *Managing the Impacts of Wildfires on Communities and the Environment*.

ADDRESSES: Copies of the cohesive strategy report and related materials are available electronically from the Forest Service World Wide Web/Internet home page at *http://www.fs.fed.us/*. Paper copies of the report also may be obtained by writing to Director, Fire and Aviation Management Staff, 2nd Floor-SW, Sidney R. Yates Federal Building (Mail Stop 1107), Forest Service, USDA, P O. Box 96090, Washington, D.C. 20090–6090.

FOR FURTHER INFORMATION CONTACT: Mark Beighley, Fire and Aviation Management Staff, (202) 205–0888.

SUPPLEMENTARY INFORMATION: During the 2000 fire season more than 6.8 million acres of public and private lands had burned as of early October—more than twice the 10-year national average. The magnitude of these fires is the result of two primary factors: a severe drought, accompanied by a series of storms that produced thousands of lightning strikes followed by windy conditions; and the long-term effects of almost a century of suppressing all wildfires that has led to a buildup of brush and small trees in the nation's forests and rangelands.

On August 8, 2000, the President directed the Secretaries of Agriculture and the Interior to prepare a report recommending how best to respond to this year's severe fires, reduce the impacts of those fires on rural communities, and ensure sufficient firefighting resources in the future. On September 8, 2000, the President accepted their report, *Managing Impacts of Wildfires on Communities and the Environment*, which provides an overall framework for forest health and fire management.

Subsequently, the Forest Service issued the report entitled, *Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy*, which is set out in its entirety, with the exception of certain illustrations which could not be printed in the **Federal Register**, in this notice. This report provides the strategic framework for reducing hazardous fuels buildup within wildland—urban interface communities, readily accessible municipal watersheds, threatened and endangered species habitat, and other impotant local features. The Chief of the Forest Service signed the cohesive strategy report on October 13, and it was released to agency managers on October 17.

The report responds to Congressional direction to provide a strategic plan to reduce wildland fire risk and restore forest ecosystem health in the interior West. The report is set out at the end of this notice as directed by Title IV of the fiscal year 2001 appropriations act for Interior and related agencies (Public Law 106–291). As further directed by the act, the agency also has reviewed other policies and rulemakings currently in development for consistency with the cohesive strategy, including proposed rules and policies for the National Forest System road management and transportation system (65 FR 11675, March 3, 2000) and roadless area conservation (65 FR 30276, May 10, 2000); and the Interior Columbia Basin Supplemental Draft Environmental Impact Statement and the Sierra Nevada Framework/Sierra Nevada Forest Plan Draft Environmental Impact Statement. This report also responds to the General Acounting Office report, *Western National Forests: A Cohesive Stratgey Is Needed To Address Catastrophic Wildfire Threats* (GAO/RCED–99–65).

This cohesive strategy addresses the restoration and maintenance of ecosystem health in fire-adapted ecosystems for priority areas, with emphasis on the interior West. The focus of the strategy is on protecting communities at risk and restoring ecosytems that evolved with frequently occurring, low-intensity fire. Many of these forests and rangelands have grown out of balance due in part to past management practices and decades of fire suppression. The strategy identifies restoration priorities in fire dependent ecosystems for urban-wildland interface areas, threatened and endangered species habitat, and readily accessible municipal watersheds.

Dated: November 1, 2000.

Mike Dombeck,

Chief.

Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy

The Forest Service Management Response to the General Accounting Office Report, GAO/RCED–99–65,

October 13, 2000.

Submitted by: Lyle Laverty, Report Team Leader, Rocky Mountain Region Regional Forester; and Jerry Williams, Report Team Co-Leader, Northern Region Director Fire Management

Approved by: Mike Dombeck, Chief of the Forest Service

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Resilience and the Effects of Restoration Treatments in Fire-Prone Forests

Note: The photograph mentioned below is not printed in the **Federal Register**. It is available as indicated in the **ADDRESSES** section at the beginning of this notice.

This photograph illustrates how a treated forest—the green strip running toward the crest of the ridge in the photo's center—can survive a severe wildland fire. It also shows the differences in resilience between treated and untreated forests. The untreated forest—the blackened areas located on either side of this green strip—burned in the Wenatchee National Forest's 1994 Tyee Fire.

In this example, treatment was in the form of a "shaded fuel break" (areas of green trees in above photo) established several years before. The purpose of these shaded fuel breaks—located in tactically important areas—is to provide firefighters an anchor from which to safely fight fire. The shaded fuel break (pictured) left older-age trees overhead and thinned out the smaller trees beneath them—removing surface fuels to reduce potential fire intensities.

On the Tyee Fire, extreme conditions that included high winds and rapid fire growth, precluded safe attack. No suppression actions were therefore taken in this area. Nevertheless, because the fuels had been reduced and fire intensities did not burn hot enough to kill all of the older trees, much of the treated forest survived the fire—even without the efforts of firefighters.

The cohesive strategy described in this report attempts to achieve improved forest and grassland resilience—as illustrated in this Tyee Fire photo. The strategy provides an approach to reduce fuel loadings in fire-prone forests to protect people and sustain resources.

Executive Summary

Premise

This strategy is based on the premise that sustainable resources are predicated on healthy, resilient ecosystems. In fire-adapted ecosystems, some measure of fire use—at appropriate intensity, frequency, and time of year—should be included in management strategies intended to protect and sustain watersheds, species, and other natural resources over the long term.

The strategy is also based on the premise that, within fire-adapted ecosystems, fire-maintained forests and grasslands are inherently safer for firefighters and the public than ecosystems in which fire is excluded.

Purpose

The strategy establishes a framework that restores and maintains ecosystem health in fire-adapted ecosystems for priority areas across the interior West. In accomplishing this, it is intended to:

- Improve the resilience and sustainability of forests and grasslands at risk,
- Conserve priority watersheds, species and biodiversity,
- Reduce wildland fire costs, losses, and damages, and
- Better ensure public and firefighter safety.

Priorities

Wildland-urban interface. Wildland-urban interface areas include those areas where flammable wildland fuels are adjacent to homes and communities.

Readily accessible municipal watersheds. Water is the most critical resource in many western states. Watersheds impacted by uncharacteristic wildfire effects are less resilient to disturbance and unable to recover as quickly as those that remain within the range of ecological conditions characteristic of the fire regime under which they developed.

Threatened and endangered species habitat. The extent of recent fires demonstrates that in fire-adapted ecosystems few areas are isolated from wildfire. Dwindling habitat for many threatened and endangered species will eventually be impacted by wildland fire. The severity and extent of fire could eventually push declining populations beyond recovery.

Maintenance of existing low risk Condition Class 1 areas. This is especially important in the southern and eastern states where high rates of vegetation growth can eliminate the effects of treatment in 5–10 years. Recent droughts have caused severe wildland fire problems in Florida and Texas.

Elements

For the purposes of this report, the following are used as the elements of a cohesive strategy:

- Institutional Objectives and Priorities
- Program Management Budgets and Authorities
- Social Awareness and Support

The strategy is based on the alignment of these institutional, program management, and constituency elements. The cohesion of this strategy stands on the collective strength of these three core elements.

Within the Forest Service, ecosystem management concepts continue to evolve into practice. This report describes a cohesive set of actions from which the Forest Service may choose to initiate restoration and maintenance objectives within fire-adapted ecosystems.

I. Purpose and Intent of a Cohesive Strategy

"The most extensive and serious problem related to the health of national forests in the interior West is the over-accumulation of vegetation."—General Accounting Office Report (99–65)

Preface

The 2000 fire season was undoubtedly one of the most challenging on record. As of early October, more than 6.8 million acres of public and private lands burned—more than twice the 10-year national average. The magnitude of these fires is the result of two primary factors: A severe drought, accompanied by a series of storms that produced thousands of lightning strikes followed by windy conditions; and the long-term effects of almost a century of aggressively suppressing all wildfires that has led to an unnatural buildup of brush and small trees in our forests and rangelands.

On August 8, 2000, President Clinton asked Secretaries Babbitt and Glickman to prepare a report that recommends how best to respond to this year's severe fires, reduce the impacts of those fires on rural communities, and ensure sufficient firefighting resources in the future. On September 8, 2000, President Clinton accepted their report *Managing Impacts of Wildfires on Communities and the Environment.*

Operating principles directed by The Chief of the Forest Service in implementing this report include:

Firefighting Readiness. Increase firefighting capability and capacity for initial attack, extended attack, and large fire support that will reduce the number of small fires becoming large, to better protect natural resources, to reduce the threat to adjacent communities, and reduce the cost of large fire suppression.

Prevention Through Education. Assist state and local partners to take actions to reduce fire risk to homes and private property through programs such as FIREWISE.

Rehabilitation. Focus rehabilitation efforts on restoring watershed function, including the protection of basic soil, water resources, biological communities, and prevention of invasive species.

Hazardous Fuel Reduction. Assign highest priority for hazardous fuels reduction to communities at risk, readily accessible municipal watersheds, threatened and endangered species habitat, and other important local features, where conditions favor uncharacteristically intense fires.

Restoration. Restore healthy, diverse, and resilient ecological systems to minimize uncharacteristically intense fires on a priority watershed basis. Methods will include removal of excessive vegetation and dead fuels through thinning, prescribed fire, and other treatment methods.

Collaborative Stewardship. Focus on achieving the desired future condition on the land in collaboration with communities, interest groups, and state and federal agencies. Streamline process, maximize effectiveness, use an ecologically conservative approach, and minimize controversy in accomplishing restoration projects.

Monitoring. Monitor to evaluate the effectiveness of various treatments to reduce unnaturally intense fires while restoring forest ecosystem health and watershed function.

Jobs. Encourage new stewardship industries and collaborate with local people, volunteers, Youth Conservation Corps members, service organizations, and Forest Service work crews, as appropriate.

Applied Research and Technology Transfer. Focus research on the long-term effectiveness of different restoration and rehabilitation methods to determine those methods most effective in protecting and restoring watershed function and forest health. Seek new uses and markets for byproducts of restoration.

Managing Impacts of Wildfires on Communities and the Environment provides an overall framework for implementing fire management and forest health programs. This report provides the strategic framework for reducing hazardous fuels buildup within wildland-urban interface communities, readily accessible municipal watersheds, threatened and endangered species habitat, and other important local features. The objective of this strategy is to describe actions that could restore healthy, diverse, and resilient ecological systems to minimize the potential for uncharacteristically intense fires on a priority basis. Methods will include removal of excessive vegetation and dead fuels through thinning, prescribed fire, and other treatment methods.

This report is based on Forest Service experience and analysis. It also responds to Congressional direction to provide a strategic plan to reduce wildland fire risk and restore forest ecosystem health in the interior West. It reflects the findings of the U.S. General Accounting Office (GAO) Report, *Western National Forests: A Cohesive Strategy is Needed to Address Catastrophic Wildland fire Threats* (GAO/RCED–99–65).

The General Accounting Office report concludes, "The most extensive and serious problem related to the health of national forests in the interior West is the over-accumulation of vegetation." The General Accounting Office estimated that the over-accumulation of fuels problem affects approximately 39 million acres in the interior West.

The Chief of the Forest Service chartered the strategy outlined in this report. The National Association of State Foresters and the U.S. Department of the Interior participated with the Forest Service in developing this report.

It is important to note that this is an iterative strategy. It will be refined by: further programmatic and manual direction; ongoing roadless, roads, and planning rulemakings; and environmental impact statements and decision documents for the national grasslands and ongoing regional initiatives.

At the national level the strategy articulates:

- Agency-wide objectives and milestones.
- Geographic priorities, broad management guidance, and performance measures for accountability.
- Alternative schedules to accomplish restoration and maintenance objectives over various timeframes.

Separate action plans, consistent with the strategy and regional assessments and direction, and ongoing national rulemakings, will outline implementation steps at the organization's regional, forest, and ranger district levels.

The acreage and cost estimate numbers used in this report are preliminary and derived from coarse-scale assessments. Further refinement and analysis will initiate appropriate adjustment in the strategy and will occur as more site-specific assessments are completed.

Focus

The focus of this strategy is on restoring ecosystems that evolved with frequently occurring, low intensity fires. These fires typically occurred at intervals of between 1 to 35 years and served to reduce growth of brush and other understory vegetation while generally leaving larger, older trees intact.

Fire suppression activities and some past management practices over the past 100 years have excluded fire from many of these fire-adapted ecosystems. In the absence of fire, many of these lands have become subject to an over-accumulation of shrubs and small trees, diminishing ecosystem diversity, health, and resiliency and fueling conditions for unnaturally intense fires that threaten communities, air, soil, water quality, and plant and animal species.

Premise

This strategy outlines approaches to protect communities and restore and maintain land health in fire-adapted ecosystems across the interior West. The report is based on the premise that sustainable resources depend on healthy, properly functioning, resilient ecosystems.

Within fire-adapted ecosystems, fire-maintained forests and grasslands are inherently safer for firefighters and the public than ecosystems in which fire is excluded.

In fire-adapted ecosystems, some measure of fire use—at the appropriate intensity, frequency, and time of year—should be an essential component of management strategies intended to protect and sustain watersheds, species, and other natural resources over the long term.

Purpose

The strategy outlines approaches to restore and maintain land health in fire-adapted ecosystems across the interior West. In accomplishing this, it is intended to:

- Improve the resilience and sustainability of forests and grasslands at risk,
- Conserve priority watersheds, species and biodiversity,
- Reduce wildland fire costs, losses, and damages, and
- Better ensure public and firefighter safety.

Priorities

- Wildland-urban interface. Wildland-urban interface areas include those areas where flammable wildland fuels are adjacent to homes and communities.
- Readily accessible municipal watersheds. Water is the most critical resource in many western states. Watersheds impacted by uncharacteristic wildfire effects are less resilient to disturbance and unable to recover as quickly as those that remain within the range of ecological conditions characteristic of the fire regime under which they developed.
- Threatened and endangered species habitat. The extent of recent fires demonstrates that in fire-adapted ecosystems few areas are isolated from wildfire. Dwindling habitat for many threatened and endangered species will eventually be impacted by wildland fire. The severity and extent of fire could eventually push declining populations beyond recovery.
- Maintenance of existing low risk Condition Class 1 areas. This is especially important in the southern and eastern states where high rates of vegetation growth can eliminate the effects of treatment in 5–10 years. Recent droughts have caused severe wildland fire problems in Florida and Texas.

Present Situation

Most forests and grasslands in the interior West and their associated species are fire-adapted. Some, known as "short interval" fire-adapted ecosystems, evolved from frequent, low-intensity fires that burned surface fuels. These fires recycled nutrients, checked encroachment of competing vegetation, and maintained healthy conditions (see below in top picture).

Generally, the prolonged absence of low-intensity burning in these ecosystems creates a surface fuel buildup and an over-accumulation of small trees and brush that makes forests more susceptible to insect infestations, disease outbreaks, and severe wildland fires.

Before the turn of the last century, livestock grazing, selective logging, and curtailment of burning by Native Americans began to alter the composition, structure, and function of these fire-adapted forest ecosystems. As a result of human influences, fire-intolerant species replaced fire-tolerant species. Forest stands that typically grew 50 larger fire-tolerant trees per acre became encroached with more than 600 mostly small, fire-intolerant trees per acre. Without recurring underburns, seedlings filled in beneath the older trees—transforming open park-like forests into dense forests.

Expanded human development, changes in climate, and fire suppression have contributed to substantial accumulations of understory vegetation. This over-accumulated vegetation predisposes some areas to severe wildland fires, potentially leaving watersheds, species, and people at risk.

Today, primarily as a result of prolonged fire exclusion, many of the most serious wildland fire threats and forest ecosystem health issues are concentrated within fire-adapted ecosystems that evolved with frequent, low-intensity fires.

The Strategy

This report outlines a strategy to reduce wildland fire threats and restore forest ecosystem health in the interior West. The strategy builds on the premise that within fire-adapted ecosystems, reducing fuel levels and using fire at appropriate intensities, frequencies, and time of year are key to: Restoring healthy, resilient conditions; sustaining natural resources; and protecting people.

The strategy introduces institutional objectives, establishes program management priorities and cost estimates, and confirms the importance of expanding constituency support. The strategy's success stands on the cohesion and collective strength of these elements.

The strategy places a high priority on treating areas where human communities, watersheds, or species are at risk from severe wildfire. It relies on a variety of treatment options to achieve restoration objectives in wildland-urban interface areas, readily accessible municipal watersheds, and habitats of threatened and endangered species. Immediate treatment efforts would be concentrated in the shorter interval fire-adapted ecosystems. These priority ecosystems are farthest outside the historic range of variability and are in close proximity to human communities.

Strategy—Ties to Ongoing Planning and Rulemaking Efforts

First, the strategy meets the requirements of the Forest Service Government Performance and Results Act (GPRA) Strategic Plan (2000 revision) by establishing objectives, milestones, and performance elements for ecosystem restoration and maintenance, and conservation education.

Second, few wildland-urban interface areas are adjacent to inventoried roadless areas making roadless areas a lower priority for treatment. More over, all of the alternatives currently under consideration in the roadless initiative allow for the construction of roads to suppress fire where public health and safety are at risk.

Third, the ongoing roads policy will ensure that operational decisions relative to implementation—such as which roads should be left open or maintained to enhance firefighting or other fire management activities—are made locally through cooperative planning.

Finally, efforts to revise management plans governing the national forests and grasslands and the Columbia River Basin and Sierra Nevada ecosystems will integrate fire management with other agency multiple-use objectives. This strategy will be refined and adapted to ensure consistency with the outcomes of these regional conservation efforts.

Strategy—How Much Treatment Is Needed?

The strategy does not require that every high, medium or low risk acre be treated, nor does it eliminate all risks. By strategically identifying fuel treatment areas to protect values associated with human communities, municipal watersheds and critical species habitat, the damaging effects of wildland fire can be effectively minimized.

Due to other agency priorities and funding constraints, historic efforts to reduce fire risk often focused treatment efforts on areas that posed the least risk to communities. The result: areas where treatments could be implemented at the least cost often took priority over other areas with higher costs.

The purpose of this report is to establish priorities for treatment. The strategy will be refined as hazardous fuels reduction and restoration priorities are considered in local, regional and national planning efforts.

Strategy—Focus on High-Risk Areas

The strategy focuses treatment on high-risk areas, rather than least-cost acres. Existing roads will be used to access high-risk areas. Where roads are scheduled for closure, consideration will be given to accomplishing ecosystem restoration objectives prior to closure.

While emphasizing *restoration* in the interior West, the strategy also supports ongoing efforts to *maintain* healthy ecosystems where they currently exist. For example, in the South, fuels can rapidly accumulate to dangerous levels in the absence of treatment. The Forest

Service must therefore continue treating these areas.

Fuel reduction treatment techniques will range from maintenance prescribed burning, where fire is used to maintain forest conditions in lower-risk acres, to restoration treatments in higher-risk areas where mechanical thinning is followed by prescribed burning. Forest planning and collaboration with states, local governments, tribes and the public will determine the number of acres to be treated and where and how the treatment will occur.

The first priority for restoration will be the millions of acres of already roaded and managed landscapes that are in close proximity to communities. Extensive use of service contracts will provide local jobs and accomplish land management objectives while helping to protect people and property.

In order to maximize effectiveness and minimize controversy, mechanical treatments will be prioritized toward wildland-urban interface areas within already roaded and managed portions of the landscape. Under this strategy, ecologically sensitive areas, such as old growth and late successional forests, will be avoided. In some areas, where old growth characteristics are threatened by the risk of uncharacteristic wildfire effects, the agency may conduct fuel treatments designed to protect older, larger trees while reducing unnatural buildups of understory vegetation.

Better integration of existing program budgets could reduce the amount of money requested. In most cases, any receipts associated with treatments will not be significant due to the need to reduce the disproportionately large number of small, non-merchantable trees, brush, and shrubs that dominate short interval fire-adapted ecosystems and leave standing the larger, fire-tolerant trees.

Strategy—Complements Other Efforts

The strategy complements other work, including efforts to protect roadless areas and to better manage the existing road system. For example, in most places roadless areas are often less affected by past management practices and found at higher elevations with vegetation that evolved with longer fire return intervals. Furthermore, roadless areas are typically removed from human communities. Thus, fires in these areas may pose less of a threat to lives and property. The proposed road policy would require that issues such as the need for hazardous fuels treatments be considered prior to making decisions about road decommissioning, upgrading, or new construction.

The strategy also builds on the Joint Fire Sciences Program. It relies on adaptive management, monitoring, research, and the further integration of social sciences. It encourages development of procedures that bring together and overlay agency objectives for watershed protection, species conservation, ecosystem resilience, and public safety.

Research is needed to support restoration. The need for assertive action must be coupled with prudence and caution to minimize unintended consequences. Additional research is needed to support managers in prescribing land management treatments to improve forest ecosystem health, as well as to find ways to increase utilization of small diameter material.

The Consequences of Deferral

The costs of implementing the restoration and maintenance approaches outlined under this strategy are high. Yet, fire suppression costs, public resource losses, private property losses, and environmental damages accruing without treatment are expected to be significantly greater over time.

Successful Restoration and Maintenance Efforts

The optimum method to ensure success in restoring ecosystems is collaborating with the local public in planning efforts. Regional planning, including stakeholders in identifying and assessing values at risk, is an important component of the strategy. The Sierra Nevada Ecosystem Management Project and the Interior Columbia River Basin Management Project are examples of regional-scale planning that address resources at risk and establish priorities for broad geographic areas.

More localized planning processes, including Land and Resource Management Plan (forest plan) revisions and amendments, will integrate specific concerns and priorities at a watershed or landscape scale within the context of regional plans and the Forest Service GPRA Strategic Plan.

Across the nation, awareness is growing about the fire-related consequences that occur in untreated forests and grasslands prone to wildland fire. The following are two examples of citizen-based efforts that have been developed to reduce risks within the interior West's urban interface:

- The Grand Canyon Forests Partnership (joining Arizona Game and Fish, U.S. Fish and Wildlife Service, Arizona State Land Department, Coconino County, City of Flagstaff, Northern Arizona University, Grand Canyon Trust and the Nature Conservancy);
- The Priest-Pend Oreille Stewardship Project that focuses on 7,200 acres of wildland-urban interface lands in the Idaho Panhandle National Forest (joining two community project teams with the Forest Service).

To improve forest ecosystem health and reduce wildland fire risks at larger scales, action needs to be expanded over broader areas and coordinated among Forest Service research, state and private forestry, and National Forest System programs. Restoration and maintenance of fire-adapted ecosystems depends on:

- Understanding and valuing ecological processes as the means to sustain ecosystem health.
- An ability to evaluate options and weigh decisions for long-term outcomes.
- An understanding and acceptance of the tools needed to accomplish restoration goals.
- A commitment to monitoring, evaluation, and research as the basis for adaptive management.
- Working collaboratively with communities and interested parties to build project plans with broad-based local ownership.

Successful implementation of the approach outlined in this strategy requires strong support from Congress and constituents. It must also be recognized that success will depend on applying a combination of traditional and newly developed methods and knowledge.

II. Background, Land Use History and Ecological Change

Background

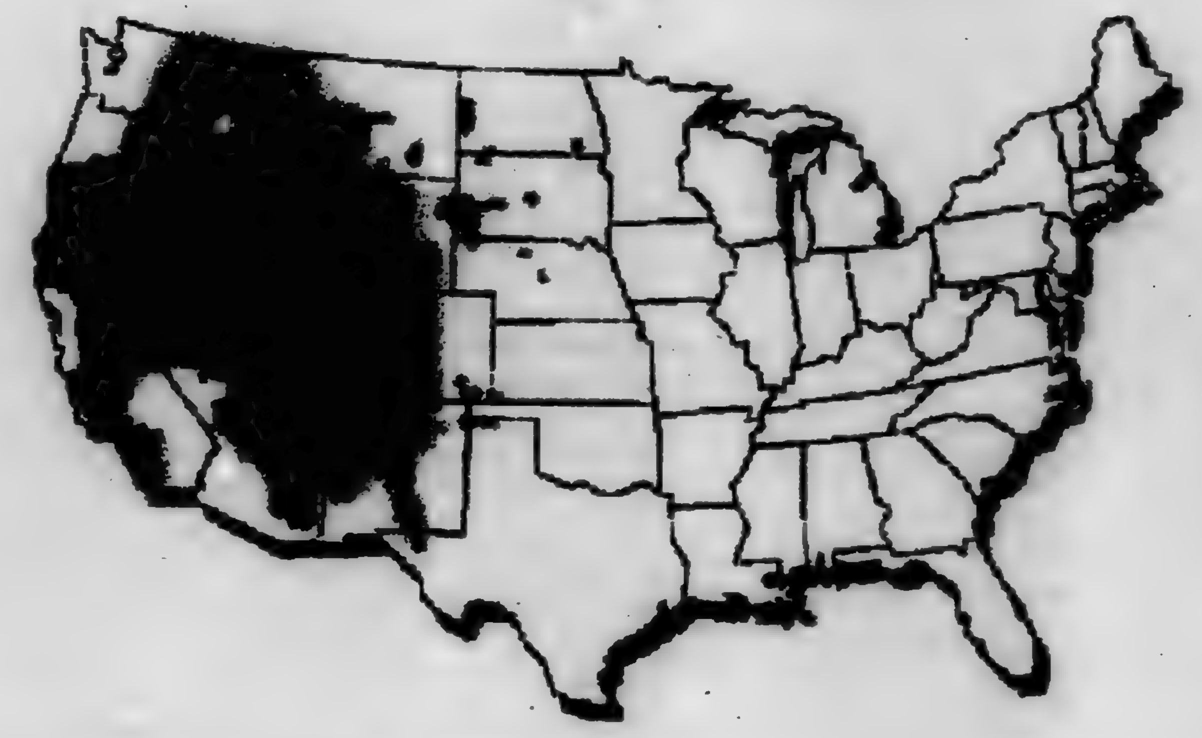

Figure 1—General Affected Area Within the Western United States

Approximately 134 million acres, or about 70 percent of National Forest System lands are in the western U.S. The area is a fire-influenced environment. For thousands of years, the magnitude of burning that occurred in this area was much greater than today. In the upper Columbia River Basin alone—a small portion of the interior West—scientific assessments indicate that prior to European settlement, more than six million acres per year burned. Today, fewer than one-half million acres burn per year in this same area.

Nearly all forests and grasslands in this region evolved and adapted as a result of widespread fire from lightning and burning by Native Americans. These adaptations enabled plant species to survive and regenerate in the presence of fire. Some interior West ecosystems depend on frequently recurring, low-intensity surface burns to cycle nutrients, control pathogens, and maintain healthy, resilient conditions.

These are called "short interval" fire-adapted ecosystems. Before the turn of the century, these forested ecosystems were often described as open and savannah or "park-like," with well-spaced, older-aged trees. Grasses and forbs dominated the understories of these forest communities. They were kept in this condition by frequent, low-intensity fires that swept the forest floor.

Land Use History

Many of the wildland fire threats and forest ecosystem health issues that confront us today were triggered more than 100 years ago. In the late 1800s and early 1900s, "high grade" logging selectively removed the largest, most valuable trees—often the fire-tolerant ponderosa and other long-needle pine species.

Slash and other brush left behind from logging practices of this era posed tremendous fire risks and contributed to devastating fires in the Great Lakes states and elsewhere. In later years, fire exclusion from plantations of uniform trees of the same age class created conditions conducive to insect and disease infestation and subsequent fires. In later years, logging and other management practices may have further compromised land health by removing overstory trees while leaving smaller trees, slash, and other highly flammable fine fuels behind.

Across open landscapes, early livestock grazing also reduced grass cover and scarified the soil. In forested areas, the bare soil seedbeds that resulted from logging and intensive grazing allowed hundreds of trees to establish on each acre. Without grass fuels to carry surface fires, the number of trees (including fire-intolerant species) multiplied rapidly. These became dense tree stands that foresters termed "dog-hair" thickets. Elsewhere, grasslands often converted to brushlands and woodlands.

In the West, the notion of forest protection has historically been equated with fire exclusion. Thus, a primary function of the Forest Service's overall mission became forest fire suppression.

Ecological Change

The unintended consequences of logging, livestock grazing, and fire control resulted in significant changes to species composition and structure—especially in short interval fire-adapted ecosystems. These changes, in turn, predisposed extensive areas to many of today's wildland fire and forest ecosystem health problems in the interior West.

The following photos (figures 2–3), from the Bitterroot National Forest in western Montana, illustrate the changes that have occurred in species composition and forest structure over a 111-year period in a short interval fire-adapted ponderosa pine forest ecosystem. Each photo was taken from the same place, looking at the same forest, at different periods in time. The photos capture the differences that have developed in species composition and forest structure in the prolonged absence of periodic surface burning. Within these ecosystems, these changes become indicators of potential risk.

Changes in Species Composition and Forest Structure

Note: Figures 2 and 3 are not printed in the **Federal Register**. They are available as indicated in the **ADDRESSES** section at the beginning of this notice.

Figure 2—Bitterroot National Forest 1871 Photo

1871 Photo

This serves as the baseline reference of forest stand conditions that evolved from regularly occurring, low-intensity surface burning. The forest was open and dominated by fire-tolerant, fire-adapted ponderosa pine.

Figure 3—Bitterroot National Forest 1982 Photo

1982 Photo

By 1982, the forest has changed dramatically from the one that existed here in 1871. Over this 111-year period, small trees have established in dense thickets and fire-intolerant tree species now crowd the forest. During drought periods the overabundance of vegetation stresses the site, predisposing the forest to insect infestations, disease outbreaks, and severe wildland fire.

In the prolonged absence of periodic surface burning, vegetative growth compounds and dead fuels accumulate. Within the forest, this biomass—in the form of multi-layered tree canopies—can carry flames from the surface where dead branchwood burns up into the tree crowns. In drought years, when vegetation dries, these "ladder fuels" contribute to severe, high-intensity wildland fires.

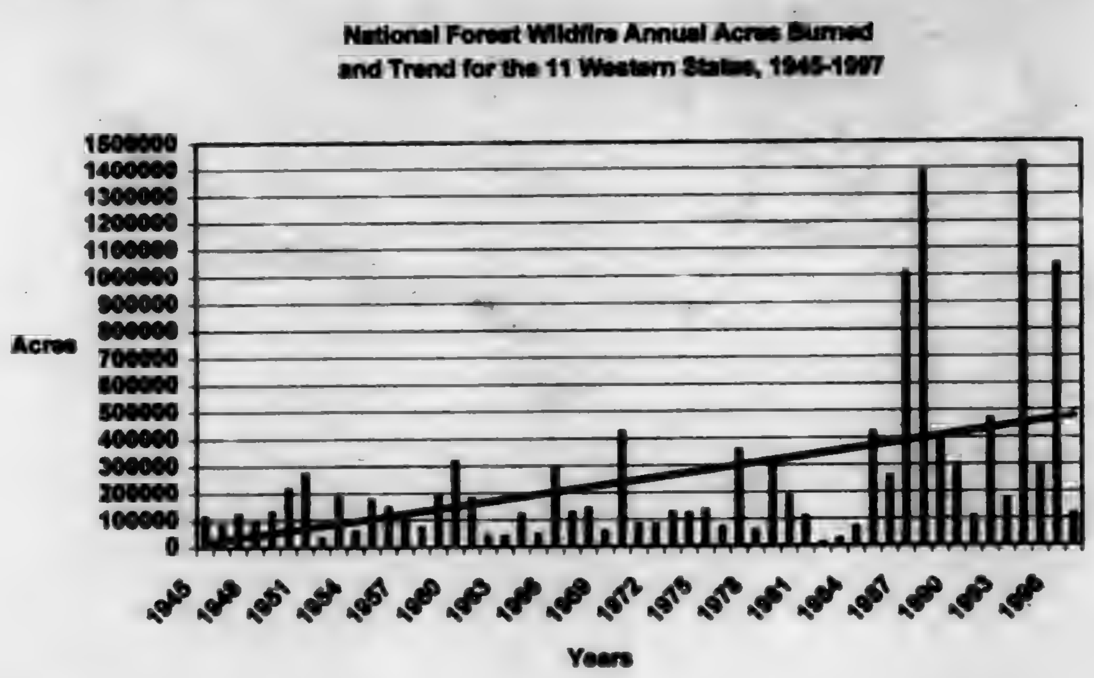

Figure 4—National Forest Wildland Fire Acres Burned Trend in 11 Western States

Under these conditions, wildland fires exceed nearly all control efforts and often result in long-lasting damage to the soil and to the watershed.

In 1871, practically all of the short interval fire-adapted ecosystems in the interior West were considered to be relatively low risk. They were typically open and because of frequent fire had little fuel accumulation. By 1982, the situation had reversed. This elevated risk is apparent when evaluated in the context of Western wildland fire trends (Figure 4). Since approximately 1987—despite better firefighting capabilities—the change in fuel conditions has resulted in an increase in wildland fire acres burned.

For the purpose of this strategy, risk conditions are assigned "condition class" descriptors. In short interval fire-adapted ecosystems, Condition Class 1 [for a complete definition, see Appendix *A The Coarse-Scale Assessment and Definition of Fire Regimes and Fire Classes]* (which corresponds to the 1871 Bitterroot N.F. photo) represents low relative risk. As Figure 2 indicates, the Condition Class 1 trend has few small trees and little ground fuel. The scarcity of fuel tends to limit the intensity of wildland fires. At low intensities, wildland fires typically do not kill the larger fire-tolerant trees but often consume small encroaching trees, other vegetation, and dead fuels.

At low intensities, fire is ecologically beneficial because nutrients are cycled. In addition, the soil's organic layer is not consumed at these low fire intensities. The remaining organic material stabilizes the soil surface and helps prevent erosion.

Because fires in Condition Class 1 areas are low-intensity within these ecosystems, they leave the soil intact and functioning normally. These fires generally pose little risk and have positive effects to biodiversity, soil productivity, and water quality.

Note: Figures 5 through 7 are not printed in the **Federal Register**. They are available as indicated in the **ADDRESSES** section at the beginning of this notice.

Figure 5—Increased Density of Smaller Trees Provides Fuel for Vertical Fire Spread

Condition Class 2 situations develop as one or more fire return intervals are missed, primarily due to well-intentioned suppression efforts, while understory vegetation continues to grow, becoming denser. If this accumulating vegetation is not treated, fires begin to burn more intense—making them more difficult to suppress. The impact of fires to biodiversity, soil productivity and water quality become more pronounced.

In Condition Class 3 areas within these same ecosystems, fires are relatively high risk. As Figure 5 indicates, the forest is littered with considerable amounts of dead material and is choked with hundreds of small trees that reach into the crowns of the larger, older-age forest above. During drought years, small trees and other vegetation dry out and burn along with the dead material—fueling severe, high intensity wildland fires. At these intensities, wildland fires kill all of the trees—even the large ones that, at lower fire intensities, would normally survive.

Within Condition Class 3 in these short interval fire-adapted ecosystems, wildland fires usually damage key ecosystem components, including the soil. High-intensity fires consume the soil's organic layer and burn off or volatilize nutrients. When small twigs, pine needles, and other litter are consumed, water runs unimpeded over the surface. Under these circumstances, the soil becomes more susceptible to erosion (Figure 6).

Figure 6—Buffalo Creek Fire, Colorado

These photos, of Colorado's Buffalo Creek Fire aftermath, illustrate soil severity burned and left exposed to rain and runoff. This produced the subsequent 1996 flash flood that claimed two lives. The ensuing erosion also washed topsoil off hillsides, clogging downstream watercourses. This erosion reduced future storage capacity of reservoirs and silted-over the river's gravel beds—significantly reducing spawning habitat.

At extreme fire intensities, the soil's capacity to absorb water is often lost. The fine, powder-like ash that follows a severe wildland fire on these sites makes water bead on the surface. These so-called "hydrophobic conditions" result in highly erodable soils.

Condition Class 3 is classified as high risk because of the danger it poses to people and the severe, long-lasting damage likely to result to species and watersheds when a fire burns—particularly in drought years. Firefighters are especially cognizant of hazards in Condition Class 3 situations. In a national survey (Tri-data, 1995), nearly 80% of all firefighters identified fuel reduction as the single-most important factor for improving their margin of safety on wildland fires.

In Condition Class 3, fires become more costly when homes are involved. Throughout much of the interior West, short interval fire-adapted ecosystems are typically located in valley-bottoms where homes and human development are most concentrated. Just as building homes in floodplains exposes homeowners to risk of floods, if hazardous fuels accumulations persist, development in fire-adapted ecosystems may pose a tangible risk to communities.

An example from the 2000 fire season demonstrates the increased costs of fighting fire near people and homes. The Skalkaho Fire on the Bitterroot National Forest covered 64,000 acres of forest interspersed with homes. It employed 755 firefighting personnel at a cost of $7.2 million dollars. Meanwhile, on the same forest within the Selway-Bitterroot Wilderness Area, a fire that burned about the same acreage (63,0000 acres) only required 25 firefighters at a cost of approximately $709,999.

Efforts to reduce hazardous fuels on federal lands must be coupled with efforts to assist private landowners to take preventative action in their own communities. Creating defensible perimeters around homes, improving building codes, and employing fire resistant landscaping will help reduce fire risk to communities. These and other such actions can help prevent wildland fires from burning homes, reduce insurance premiums, and reduce suppression cost.

Figure 7—Homes Burning in the Dude Fire, Arizona, 1990

The Dude Fire burned in central Arizona in Condition Class 3 stand conditions. Although the fire only burned a few days, it resulted in the death of six firefighters and cost $7.5 million to control. It destroyed 75 homes, resulting in property loss of $12 million. No estimate is available on the resource losses involved.

III. Ensuring Clean Air, Clean Water, and Biodiversity in Fire-Adapted Ecosystems

Sustainability: "Meeting the needs of the current generation without compromising the ability of future generations to meet their needs. Ecological sustainability entails maintaining the composition, structure and processes of a system, as well as species diversity and ecological productivity. The core element of sustainability is that it is future oriented." Committee of Scientists Report, 1999.

The Legal Basis for Sustainability

A suite of federal laws and regulations guide management of National Forest System lands and fire-related activities on those lands. These include the Organic Act, Clean Air Act, Clean Water Act, Endangered Species Act, National Environmental Policy Act, and National Forest Management Act. Long-term sustainability is a consistent theme embodied within these laws.

Sustaining natural resources in short interval fire-adapted ecosystems is a basis of the cohesive strategy outlined in this report.

Legal Basis for Sustainability

Endangered Species Act

"The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved * * * "

Clean Water Act

"(a) Restoration and maintenance of chemical, physical and biological integrity of the nation's waters * * * The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the nation's waters."

Clean Air Act

"(1) to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population."

National Forest Management Act (NFMA)

"(6) the Forest Service * * * has both a responsibility and an opportunity to be a leader in assuring that the nation maintains a natural resource conservation posture that will meet the requirements of our people in perpetuity."

National Environmental Protection Act (NEPA)

"(a) Creation and maintenance of conditions under which man and nature can exist in productive harmony."

The Forest Service Government Performance and Results Act (GPRA) Strategic Plan (2000 revision) bridges law and Forest Service activities. This report's cohesive strategy anchors to the following GPRA Strategic Plan's specific objectives:

- Improve watershed conditions and restore hydrological processes;
- Improve habitat quality; and conserve fish, wildlife and plant populations;
- Improve ecosystem resiliency associated with fire adapted ecosystems; and
- Reduce the relative risk of damage to human communities associated with wildland fire.

The overarching purpose of the GPRA Strategic Plan, consistent with these laws, is to maintain healthy, diverse ecosystems that meet human needs on a long-term basis. Sustaining healthy, diverse conditions requires consideration of entire landscapes in the context of specific ecosystems and their ecological dynamics.

The Need for Adaptive Management

Increased human population growth, expanded land-use development, and changes in natural ecosystems affect ecosystem dynamics and processes. In the short interval fire-adapted systems, over-accumulated fuels indicate that more wildland fires in the future may burn with uncharacteristic fire effects. This trend may result in higher corresponding threats to human life and property, as well as potentially more degraded ecosystems.

Planning in fire-adapted ecosystems requires an integration and understanding of: fire history, potential fire behavior, past management actions, land-use change, watershed needs, species viability, and relative risk to human communities. Uncertainties associated with these considerations are addressed through monitoring, research, and adaptive management. During planning and implementation of restoration activities, the best available science and frequent monitoring must be used to reduce uncertainty and to facilitate learning. In addition, public outreach and collaboration will be critical components to successful ecosystem restoration.

While some ecosystems are adapted to infrequent high-intensity burning, the short interval fire-adapted ecosystems are not. The primary emphasis of the strategy is ensuring protection of human values and the sustainability of natural resources in the context of short interval fire-adapted ecosystems

Active Management Improves Habitat

Most research involving relationships between fire and wildlife has focused on mammals and birds, with an emphasis on habitat, rather than populations (Smith, 2000). The cause and effect relationships between fire and wildlife are only correctly understood in the context of specific ecosystems.

Research reveals that active management can improve habitat quality for some species dependent on fire-adapted ecosystems, such as Kirtland's warbler (Probst and Weinrich, 1993) and the red cockaded woodpecker. For example, the relationship between fire and bobwhite quail populations served as an important factor in initiating the prescribed burning program in the South's fire-adapted forests.

The effectiveness of ecosystem restoration in contributing to species conservation is dependent on the extent to which landscape patterns and processes support population persistence over the long term (Wilcove, 1999). For example, sage grouse population dynamics are dependent on landscape patterns (Knick, 1999); yet many factors affect the integrity of sagebrush ecosystems across landscapes following fire (such as the expansion of cheat grass).

Considering the extent of habitat alteration that has occurred over the past century, management for species conservation in fire-adapted ecosystems is complicated. In many areas, habitat is currently at risk of long-term loss from severe wildland fires. In some cases, further reduction of habitat due to severe wildland fires may threaten species viability.

Integrating ecosystem restoration goals with species conservation priorities will require coordinated effort between planned land uses to improve the quantity and quality of potentially suitable, but presently unoccupied habitat. This must occur prior to treating any areas that serve as refugia for remnant populations (Noss *et al.* 1997).

Using Adaptive Management to Evaluate Results

The type, intensity and frequency of management activity in fire-adapted ecosystems will influence the ability to provide for clean air, clean water, and biodiversity over the long term. A considerable amount of science supports an understanding of fire-adapted ecosystems. Some uncertainty, however, surrounds management treatments. It is therefore essential that an adaptive management framework involving the public be used in designing, monitoring, and evaluating activities. Assumptions associated with management approaches across broad landscapes need to be clearly identified and articulated as a part of the adaptive management process.

In developing manual direction and regional and local level plans for implementing the strategy, it is essential that monitoring be conducted to validate assumptions, reduce uncertainties, and measure progress. Upon completion of these actions, the agency will determine whether to continue pursuing ongoing management, modified management approaches, or to propose new actions in response to what was learned through monitoring. The strategy will evolve as planning decisions are made on the ground and results are evaluated. While some uncertainties exist, implementing this strategy may help to avoid serious consequences that are certain to occur if fuel reduction treatments are deferred.

IV. A Cohesive Strategy to Protect People and Sustain Resources in Fire-Adapted Ecosystems

This cohesive strategy provides a broad national framework for aligning the social, program management, and institutional elements that will be required to restore fire-adapted ecosystems. These three elements underpin this strategy.

Implementation will be based on regional assessments, integrated planning processes, public input, and collaboration with other agencies. Environmental documentation for on-the-ground projects will contain many of the "how to" actions necessary to move the strategy forward in a manner that is consistent with law, regulations, and Forest Service policy.

Priorities for Restoration

Specific areas of emphasis in the strategy include reducing risk within the wildland-urban interface, readily accessible municipal watersheds, and threatened and endangered species habitat. However, it is equally important to maintain existing low risk areas from developing into moderate or high-risk. To this end, the following priorities will apply when designating areas for treatment.

- *Wildland-urban interface.* Wildland-urban interface areas include those areas where flammable wildland fuels are adjacent to homes and communities.
- *Readily accessible municipal watersheds.* Clean water is the most critical resource in many western states. Watersheds impacted by uncharacteristic wildfire effects are less resilient to disturbance and unable to recover as quickly as those that remain within the range of ecological conditions characteristic of the fire regime under which they developed.
- *Threatened and endangered species habitat.* The extent of recent fires demonstrates that in fire-adapted ecosystems few areas are isolated from wildfire. Dwindling habitat for many threatened and endangered species will eventually be impacted by wildland fire. The severity and extent of fire could eventually push declining populations beyond recovery.
- *Maintenance of existing low risk Condition Class 1 areas.* This is especially important in the southern and eastern states where high rates of vegetation growth can eliminate the effects of treatment in 5–10 years. Recent droughts have caused severe wildland fire problems in Florida and Texas.

Supporting Scientific Evidence

Considerable scientific evidence supports use of prescribed fire and other management treatments in fire-adapted ecosystems to reduce risk of catastrophic wildland fire, improve ecosystem resilience, and restore plant community composition, structure, and landscape patterns.

Several examples of small-scale watershed improvement projects exist in national forests in fire-adapted systems. Virtually all use prescribed fire and mechanical treatments to improve watershed conditions. Fuel reduction work can reduce potential fire severity, which, in turn, can reduce potential erosion. Conditions that favor low intensity burning on these sites help prevent erosion and leave more organic material that filters water and improves water quality characteristics.

At landscape scales, the effectiveness of treatments in improving watershed conditions has not been well documented. Many scientists, however, agree that careful application of treatments across larger scales can restore water quality.

Degraded air quality associated with long-duration wildland fires has been widely experienced in the West. Because wildland fires tend to occur at the driest time of year when dead fuels and vegetation is also driest, they are more completely consumed and typically produce three to five times more emissions than early or late-season prescribed fires.

In Condition Class 3 and some Condition Class 2 situations, the strategy advocates mechanical thinning of small trees, brush and shrubs to reduce fire intensities and particulate emissions during prescribed burning. This practice, although expensive, opens prescription windows of opportunity—enabling managers to capitalize on better weather conditions for smoke ventilation and dispersal.

The extent to which management for ecosystem resilience can improve air quality over the long term is not completely known. Present regulatory policies measure prescribed fire emissions, but not wildland fire emissions. The emissions policy tends to constrain treatments and—in short interval fire systems—may act to inadvertently compound wildland fire risks. A growing body of scientific evidence suggests that mechanical treatments followed by prescribed fire can reduce the overall adverse impacts to air quality by reducing the amount of fuel that would otherwise be available during the wildland fire season.

The Three Cohesive Elements

Social

- Establish an objective for conservation awareness in the Forest Service Government Performance and Results Act (GPRA) Strategic Plan (2000 revision). Emphasize the need to increase public awareness of the role of ecological processes in ecosystem sustainability (Appendix B).
- Initiate collaborative planning with stakeholders to identify and evaluate ecosystem restoration and maintenance needs and opportunities. Utilize science-based assessments of present and projected ecosystem conditions as a basis for determining restoration needs.
- To promote fire-safe local planning, zoning, and building requirements, establish partnerships with other federal agencies, states, communities, and the insurance industry.

Encourage and assist communities to take responsibility for sharing in risk reduction and fire prevention efforts.

Institutional

Long-Term Policy Assessment

- Establish objectives, strategies, and milestones for restoration and maintenance of fire-adapted ecosystems in the Forest Service GPRA Strategic Plan. Emphasize integration in objectives for public safety, watershed protection, species conservation, and ecosystem resilience. (Appendix B.)
- Establish ecosystem restoration as a performance element in the Forest Service Annual Performance Plan. Use changes in condition class as one of the measures for annual performance and accountability. (Appendix B.)
- Establish assessment procedures that integrate considerations of current ecosystem condition (status), probability of degradation from disturbance events (risk), and alternatives to reduce risk or improve conditions (opportunity). Include objectives at the national, regional and local scales for: watershed protection, species conservation, ecosystem resilience, and public safety. Coordinate information across all program areas.

Program Management

At the National Level

- Concentrate projects in the shorter interval fire-adapted ecosystems (Fire Regimes I and II), with emphasis in Condition Classes 2 and 3. (GPRA 1c.)
- Establish the interior West as a priority for restoration. (GPRA 1c.)
- Direct funds—in an integrated fashion—to highest values to be protected, especially for: watersheds (GPRA 1a), species (GPRA 1b), ecosystems (GPRA 1c), and human communities (GPRA 4b).
- Explore innovative use of existing authorities for grants, agreements, and contracts for project execution such as service contracts to hire local people.
- Emphasize long-term training and community development opportunities through restoration activities.
- Establish program reviews at regular intervals to determine if adjustments are needed. Take into account: budget, the findings of regional assessments, finer-scaled risk and hazard mapping, and other planning efforts.

At the Regional Level

- Conduct regional assessments, establishing restoration and maintenance priorities consistent with values to be protected (watersheds, species, human communities) in collaboration with other federal agencies, tribes, state and local government, and constituents.

At the National Forest and Grassland Level

- In Land and Resource Management Plan amendments and revisions: identify land by condition class categories, discuss the resources to be protected from catastrophic wildland fire including human communities, watersheds, threatened and endangered species habitats, and establish landscape goals to achieve sustainable ecosystems. Goals should be included to reduce acres at risk.
- Establish monitoring and evaluation programs and measures in Land and Resource Management Plan revisions for restoration activities in fire-adapted ecosystems.
- Consistent with Land and Resource Management Plans, develop fire management plans that provide for suppressing fires that would threaten public safety, communities, species habitat, or degrade ecosystems. Increase the management of natural ignitions for resource benefits where values and resources will be increased or improved.

State and Private Forestry

- Expand efforts such as the Firewise Communities Program to assist communities and homeowners in the urban wildland interface to take preventative and corrective actions to protect lives and property from fire. Provide assistance in conducting risk and hazard assessments in developing community disaster plans, and in educating the public about measures they can take to protect their property.

Research and Development

- Strengthen Forest Service research programs to evaluate ecological, social, and economic tradeoffs and other issues; develop more effective prediction systems; and quantify disturbance effects and ecological interactions in fire regimes. Continue funding the Joint Fire Sciences Program.
- Study, document and monitor examples of various treatments and their effectiveness in restoring ecological processes, protecting communities, and protecting key ecosystem components.
- Research the long-term results of rehabilitation techniques and help determine those most effective at restoring ecological processes and habitats.

Funding

- Establish an integrated budget structure that facilitates an accomplishment of the GPRA Strategic Plan elements: Watershed Restoration, Species Conservation, Ecosystem Processes, and the Protection of Human Communities.
- Wildland fire preparedness funding requests should be made at the most efficient level, as defined by the National Fire Management Analysis System.

Actions Requiring External Collaboration

Long-Term Policy Assessment

Collaborate with the Environmental Protection Agency, National Marine Fisheries Service, and the U.S. Fish and Wildlife Service in addressing long-term impacts, tradeoffs, and issues to air quality, watershed resilience, species conservation, ecosystem integrity, and public safety as a result of each agency's respective policy in the context of fire-adapted ecosystems. Identify opportunities for improved coordination between regulatory and land management agencies in achieving restoration and maintenance objectives to protect people and sustain resources in fire-adapted ecosystems.

Economic Feasibility Assessment for Fuel Utilization

Because understory biomass has little or no value, disposing of it becomes problematic. Small diameter material, however, may become more economically feasible if assessments for its utilization more comprehensively evaluate tradeoffs and risks to watershed and species values, public health and safety, and other factors that may benefit from reducing fuels in fire-adapted ecosystems. Projected wildland fire costs, resource losses, and environmental damage, all suggest that developing and supporting markets for utilization of over-accumulated biomass may be desirable.

Consistent with Executive Order 13134 "Developing and Promoting Biobased Products and Bioenergy", collaborate with other agencies and organizations to conduct economic feasibility analyses of increased biomass utilization.

The FY 2001 budget includes a Presidential bio-based products and bio-energy initiative. This initiative supports research and development, demonstration and commercialization, and outreach and education activities. The Forest Service will take a leadership role in this effort.

Projected Treatment Schedule at Full Program Implementation

Different treatment schedules are displayed below. The strategy does not include a treatment target of a fixed number of acres within a set period of time. The number of acres actually treated will depend on different circumstances, including available funding. The treatment schedule displayed below illustrates potential costs over varying time frames. Actual treatment costs and rates will depend on a variety of circumstances.

The purpose of the report is to establish priorities and a rationale for restoration. Local Land and Resource Management Plans and community involvement will help to guide the types and locations of treatment actions. Enhancing forest ecosystem health is best accomplished at the local level with on-site examination and experience.

Tables 1a, 1b, and 1c provide estimates of a potential annual program to achieve restoration goals within 10, 15, and 20-year time periods.

This information was developed using regional input based on Land and Resource Management Plan and other assessments. Strategy implementation will be consistent with forest plan direction and other ongoing initiatives. Acreage estimates give consideration to regulatory obligations for clean air, clean water, and threatened or endangered species habitat. These goals are expected to change as the Forest Service refines these data. More accurate regional and sub-regional assessments, integrated planning processes, and public collaboration may refine these figures.

10-YEAR TREATMENT SCHEDULE

Regions 1-6 Treatment Schedule (acres)

	Year 1	Year 2	Year 3	Year 4-10
CC1	200,000	400,000	600,000	800,000
CC2	500,000	850,000	1,400,000	2,500,000
CC3	300,000	700,000	1,100,000	1,650,000
Total	1,000,000	1,950,000	3,100,000	4,950,000

Regions 8-9 Treatment Schedule (acres)

	Year 1	Year 2	Year 3	Year 4-10
CC1	770,000	1,000,000	1,150,000	1,250,000
CC2	220,000	350,000	470,000	640,000
CC3	50,000	60,000	60,000	60,000
Total	1,040,000	1,410,000	1,680,000	1,950,000

Table 1a—10-Year Schedule To Increase the Annual Hazardous Fuels Treatment Program.

15-YEAR TREATMENT SCHEDULE

Regions 1-6 Treatment Schedule (acres)

	Year 1	Year 2	Year 3	Year 4-15
CC1	150,000	250,000	400,000	500,000
CC2	450,000	700,000	1,100,000	1,500,000
CC3	200,000	500,000	750,000	1,000,000
Total	800,000	1,450,000	2,250,000	3,000,000

Regions 8-9 Treatment Schedule (acres)

	Year 1	Year 2	Year 3	Year 4-15
CC1	750,000	780,000	780,000	780,000
CC2	200,000	380,000	380,000	380,000
CC3	300,000	400,000	400,000	400,000
Total	980,000	1,200,000	1,200,000	1,200,000

Table 1b—15-Year Schedule To Increase the Annual Hazardous Fuels Treatment Program

20-YEAR TREATMENT SCHEDULE

Regions 1-6 Treatment Schedule (acres)

	Year 1	Year 2	Year 3	Year 4	Year 5-20
CC1	100,000	150,000	225,000	325,000	375,000
CC2	400,000	600,000	750,000	900,000	1,100,000
CC3	200,000	300,000	400,000	550,000	750,000
Total	700,000	1,050,000	1,375,000	1,775,000	2,000,000

Regions 8-9 Treatment Schedule (acres)

	Year 1	Year 2	Year 3	Year 4	Year 5-20
CC1	400,000	400,000	450,000	500,000	620,000
CC2	120,000	150,000	200,000	250,000	300,000
CC3	25,000	25,000	30,000	30,000	30,000
Total	545,000	575,000	680,000	780,000	950,000

Table 1c—20-Year Schedule To Increase the Annual Hazardous Fuels Treatment Program

V. Consequences of Deferral

"* * * in many of the interior West forests, the costs and risks of inaction are greater than the costs and risks of remedial action."

Concluding comments from academic and agency scientists. Assessing Forest Ecosystem Health in the Inland West Workshop (November, 1993).

This chapter projects suppression costs, natural resource and private property losses, and environmental damages expected under present treatment schedules and compares them with the costs, losses and damages anticipated for the mid-range treatment schedule shown on Table 1c. If

Funding

- Establish an integrated budget structure that facilitates an accomplishment of the GPRA Strategic Plan elements: Watershed Restoration, Species Conservation, Ecosystem Processes, and the Protection of Human Communities.
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Actions Requiring External Collaboration

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Collaborate with the Environmental Protection Agency, National Marine Fisheries Service, and the U.S. Fish and Wildlife Service in addressing long-term impacts, tradeoffs, and issues to air quality, watershed resilience, species conservation, ecosystem integrity, and public safety as a result of each agency's respective policy in the context of fire-adapted ecosystems. Identify opportunities for improved coordination between regulatory and land management agencies in achieving restoration and maintenance objectives to protect people and sustain resources in fire-adapted ecosystems.

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This information was developed using regional input based on Land and Resource Management Plan and other assessments. Strategy implementation will be consistent with forest plan direction and other ongoing initiatives. Acreage estimates give consideration to regulatory obligations for clean air, clean water, and threatened or endangered species habitat. These goals are expected to change as the Forest Service refines these data. More accurate regional and sub-regional assessments, integrated planning processes, and public collaboration may refine these figures.

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[illegible] Treatment Schedule (acres)

	Year 1	Year 2	Year 3	Year 4-10
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Table 1b—15-Year Schedule To Increase the Annual Hazardous Fuels Treatment Program

20-YEAR TREATMENT SCHEDULE

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Concluding comments from academic and agency scientists. Assessing Forest Ecosystem Health in the Inland West Workshop (November, 1993).

This chapter projects suppression costs, natural resource and private property losses, and environmental damages expected under present treatment schedules and compares them with the costs, losses and damages anticipated for the mid-range treatment schedule shown on Table 1c. If treatment schedules are accelerated, objectives may be met sooner. If treatment schedules are extended, results may be deferred. Three alternative treatment timeframes are presented in the strategy. For demonstrative purposes, changes over time are projected using the 15-year treatment schedule (figures 8,10, 11, and 12).

Commodity values are well established. Non-commodity values, however, are more difficult to determine. Economic research is ongoing to better describe and quantify amenity values including ecosystem components, natural resources, and safety considerations involved in tradeoff analysis. Tradeoff analysis measures the costs, benefits, and risks under different protection strategies. It is one way to compare the expected outcomes of different management scenarios.

Fire-adapted ecosystems are dynamic. With any treatment schedule, live vegetation will continue to grow and dead wood will continue to accumulate. Risk conditions will continue to increase as some forests and grasslands areas migrate from lower-risk conditions to higher-risk conditions. During this same time period, severe wildland fires will continue to occur—reducing high-risk acres, but also potentially damaging ecosystem components and natural resources.

Areas at Risk

As human populations continue to expand, threats to species viability, watershed health, and ecosystem integrity will grow. The situation will be exacerbated as forest fuels accumulate and fire risks increase. Even at current levels of treatment, risks to species, watersheds, forest health, and human communities throughout the interior West are escalating due to increasing fuels buildups (vegetation) in fire-prone environments. The answer is not in bigger and better firefighting apparatus. At very high fuel loadings, fire behavior overwhelms even the best fire suppression efforts. Under extreme conditions, control of fire becomes dependent on relief in weather or a break in fuels.

Reducing fuels and restoring fire's ecological role in fire-adapted ecosystems can reverse many adverse trends that serve as important indicators of ecosystem sustainability. To demonstrate the strategy's benefits, graphs from a recent assessment of several indicators for the Western states were developed to illustrate trends (figures 8, 10, 11, 12). These graphs reflect assessments from a recently completed national-scale evaluation (see Appendix D). They are based on coarse-scale data that model averages for the area under study. They cannot be directly applied to areas smaller in scale than the analysis area. The data are not directly applicable to fine-scale analysis; they serve to evaluate relative risk trends among different management options.

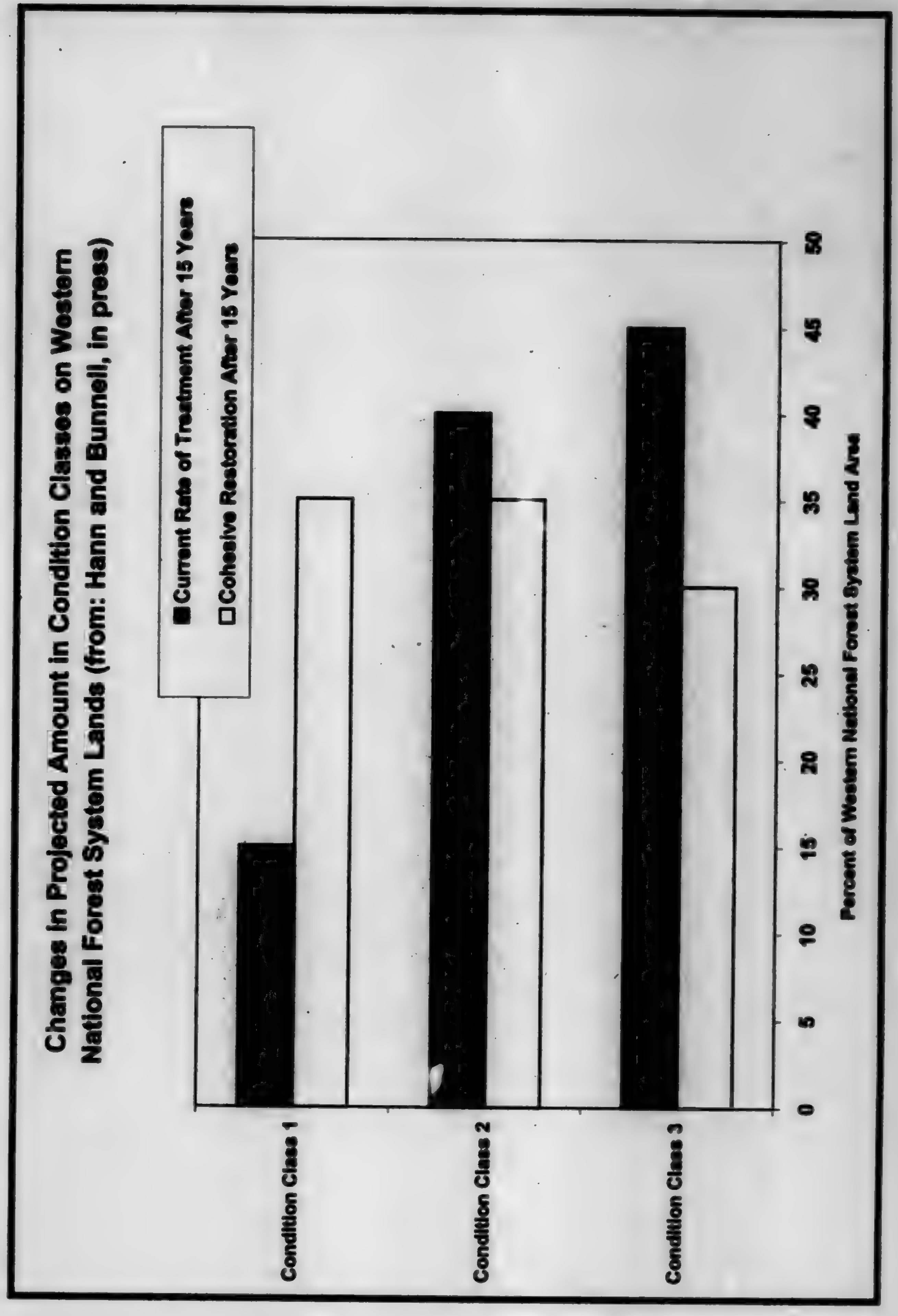

Figure 8

The assessment was based on a projection using the 15-year treatment schedule. Results for the 10 and 20-year treatment schedules will vary from this only in the time required to achieve the same level of results. At 100 years, the social, economic, and ecological benefits of restoration treatments become exponentially greater. And, as treatments shift from restoration to maintenance, treatment costs will go down.

At the current rate of treatment (0.75 million acres/year), the acres at high risk in the interior West will increase over the next 15 years. Implementing the approaches outlined in this strategy can increase levels of treatment and decrease moderate and high-risk categories (Condition Classes 2 and 3). It will restore proportionately more low-risk areas (Condition Class 1). The strategy therefore substantially reduces risk over the current rate of fuel reduction treatment.

Without increased restoration treatments in these ecosystems, wildland fire suppression costs, natural resource losses, private property losses, and environmental damage are certain to escalate as fuels continue to accumulate and more acres become high-risk.

Suppression Costs

Suppression strategies (and their associated costs) are determined using the Wildland Fire Situation Analysis (WFSA), a required assessment process on federal lands. Under this system, suppression costs are calculated from an array of alternatives prior to selecting a fire suppression strategy. The analysis weighs values to be protected. Firefighter and public safety always serves as the first criteria. As a general rule, depending on the circumstances surrounding a particular wildland fire, resource or private values to be protected are typically two to five times greater than the expected suppression costs, as calculated using the WFSA.

The Line Officer selects the most appropriate strategy and, in doing so, approves the expected suppression costs. If the strategy fails or if costs exceed the expected level, the Line Officer must reevaluate alternatives and approve any changes.

Suppression costs and wildland fire acres burned (Figure 9) have increased due to over-accumulation of fuels and a corresponding increase in high-risk acreage and drought conditions. In recent years, large fires have become more damaging and more costly. *Unless the rate of restoration is increased, larger burned acreages and higher wildland fire suppression costs should be expected.*

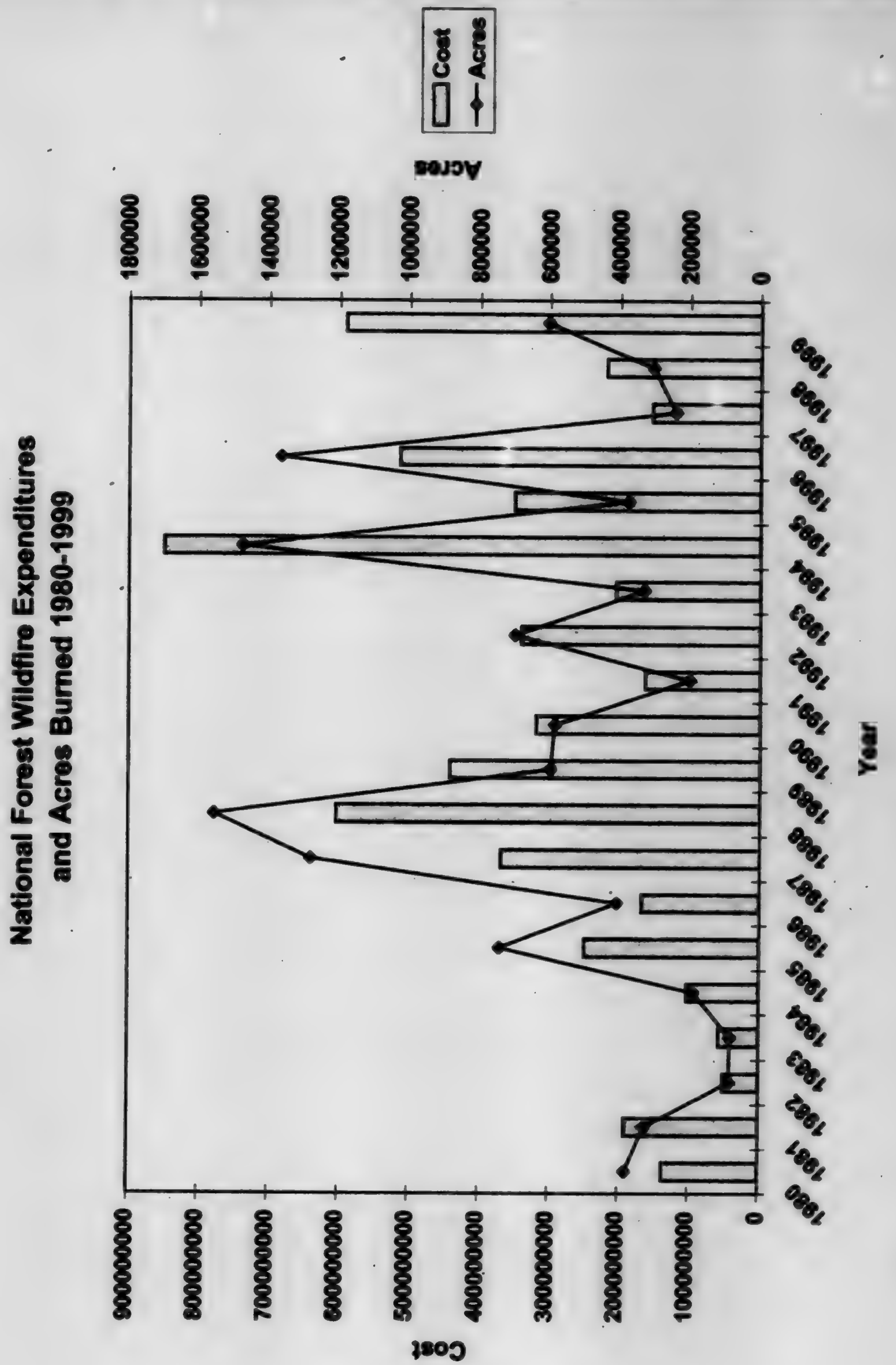

Figure 9

Loss to Private Property and Resource-Based Commodities

As human populations grow and shifting demographics concentrate more people in or adjacent to wildlands, more private property will be at risk to catastrophic wildland fires.

According to the National Fire Protection Association, wildland-urban interface fires from 1985 to 1994 destroyed 8,925 homes. During dry years or under adverse weather conditions, because they occur in high-risk fuels, many wildland-urban interface fires exceed firefighting capabilities.

No forest can be made fireproof. As homes and communities are built in the wildland interface, they face added risk of fire. Efforts to reduce hazardous fuels on federal lands must be coupled with efforts to assist private landowners to take preventative action in their own communities.

Research suggests that the most effective way to reduce risk of fire to homes in the wildland-urban interface is through fuels treatment carried out within 200 feet of building structures (Cohen, 1999). Homes with high ignitibility factors, such as pine needle accumulation on roofs and in yards and firewood piles next to houses, frequently suffer more severe fire damage than other areas.

When fuel loadings are reduced, protection of life and property is significantly improved (Fischer, 1988).

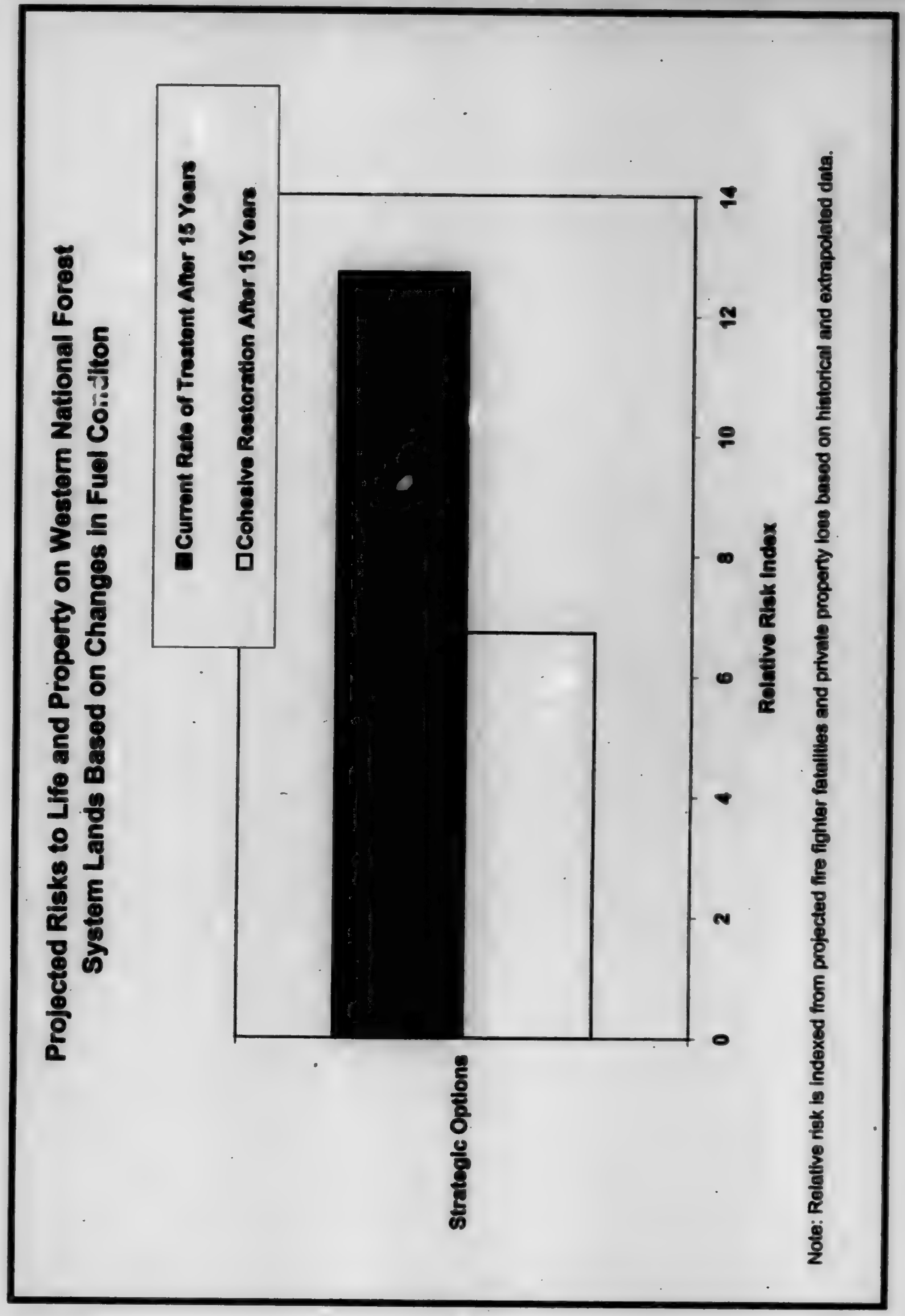

Figure 10

The National Research Council and the Federal Emergency Management Agency (FEMA) recognized wildland fires in California (1993) and Florida (1998) as among the defining natural disasters of the 1990s. In terms of damage, the magnitude of these catastrophic fires were compared with the Northridge earthquake, Hurricane Andrew, and flooding of the Mississippi and Red rivers.

The 1991 Oakland, California fire was ranked by insurance claims as one of the ten most costly all-time natural catastrophes. More wildland fire disasters of this scale can be expected in the absence of a mitigation strategy. FEMA is emphasizing mitigation and prevention to state and local governments to address the growing losses from natural disasters such as hurricanes and flooding. The strategy outlined in this report complements the efforts to forestall disaster-related costs and losses.

Damage to commodity resources such as wood fiber and watersheds often result from severe wildland fire. These losses can be significant. For example, the Big Bar Fire Complex, consisting of five fires that burned during the late summer of 1999 in northern California. The Complex burned 141,000 acres on and adjacent to the Six Rivers National Forest. The Big Bar Complex cost $81 million to suppress and $6 million for burned-area rehabilitation. It resulted in a preliminary estimate of $122 million in resource losses, including loss of marketable timber.

Environmental Damage

Any restoration strategy should be evaluated in the context of the ecosystem under consideration. Wildland fires occurring in the shorter interval fire-adapted ecosystems where fuels have accumulated over several missed fire cycles often burn with uncharacteristic wildfire effects. Consequently, habitats, soils, and watersheds are burned beyond their adaptive limits. The severity of these fires pose threats to species persistence and watershed integrity. The damage from these fires is often long-lasting and, within some ecosystems, may be irretrievable.

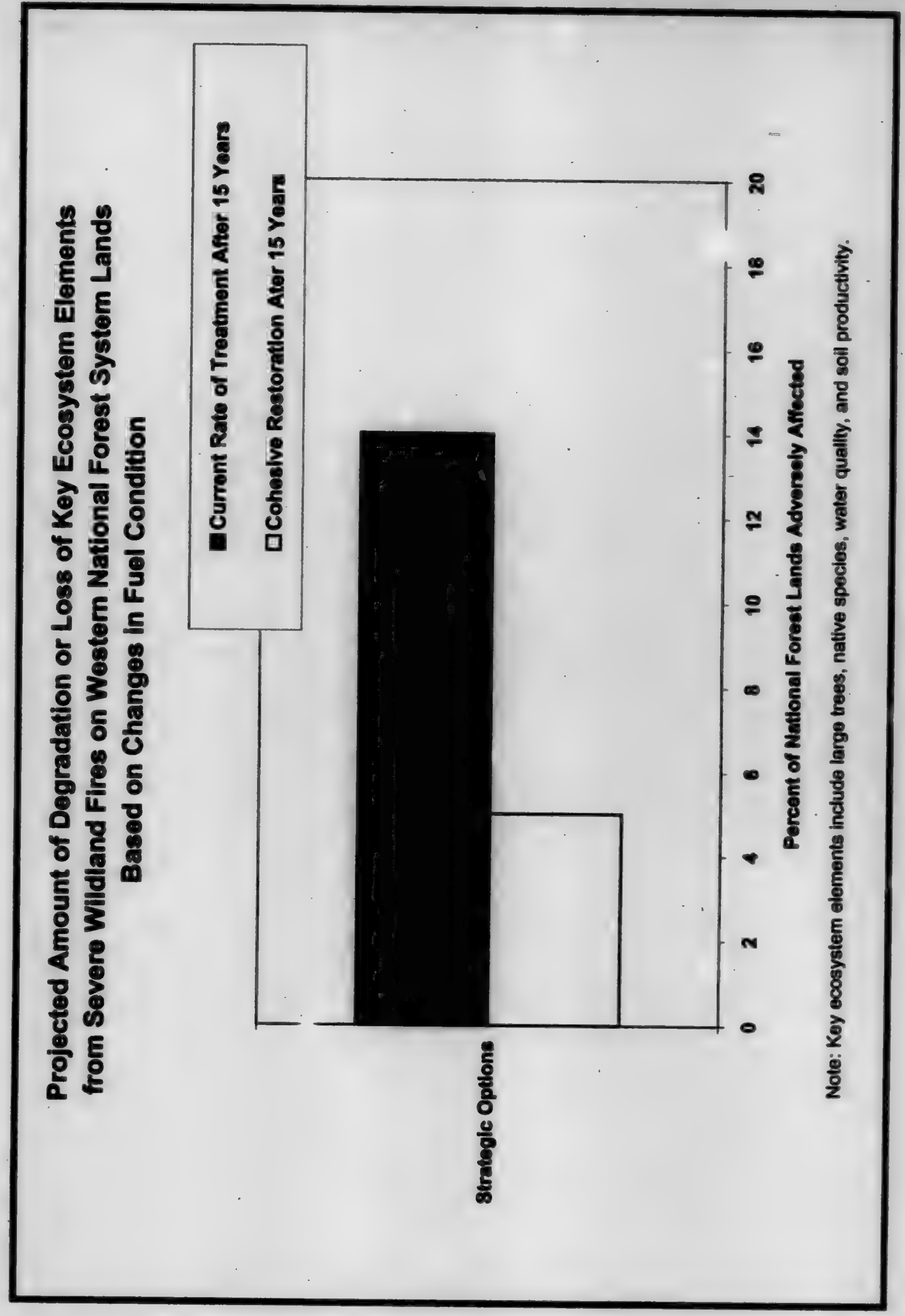

Figure 11

With an increasing number of large, uncharacteristically damaging wildland fires in short interval fire systems, we can eventually expect:

- Loss of critical habitat for fish, wildlife, and plant species at risk.
- Soil erosion and loss of site stability and productivity.
- Changes in temperatures and moisture regimes on certain sites.
- Increased spread of invasive weeds or non-native plants.

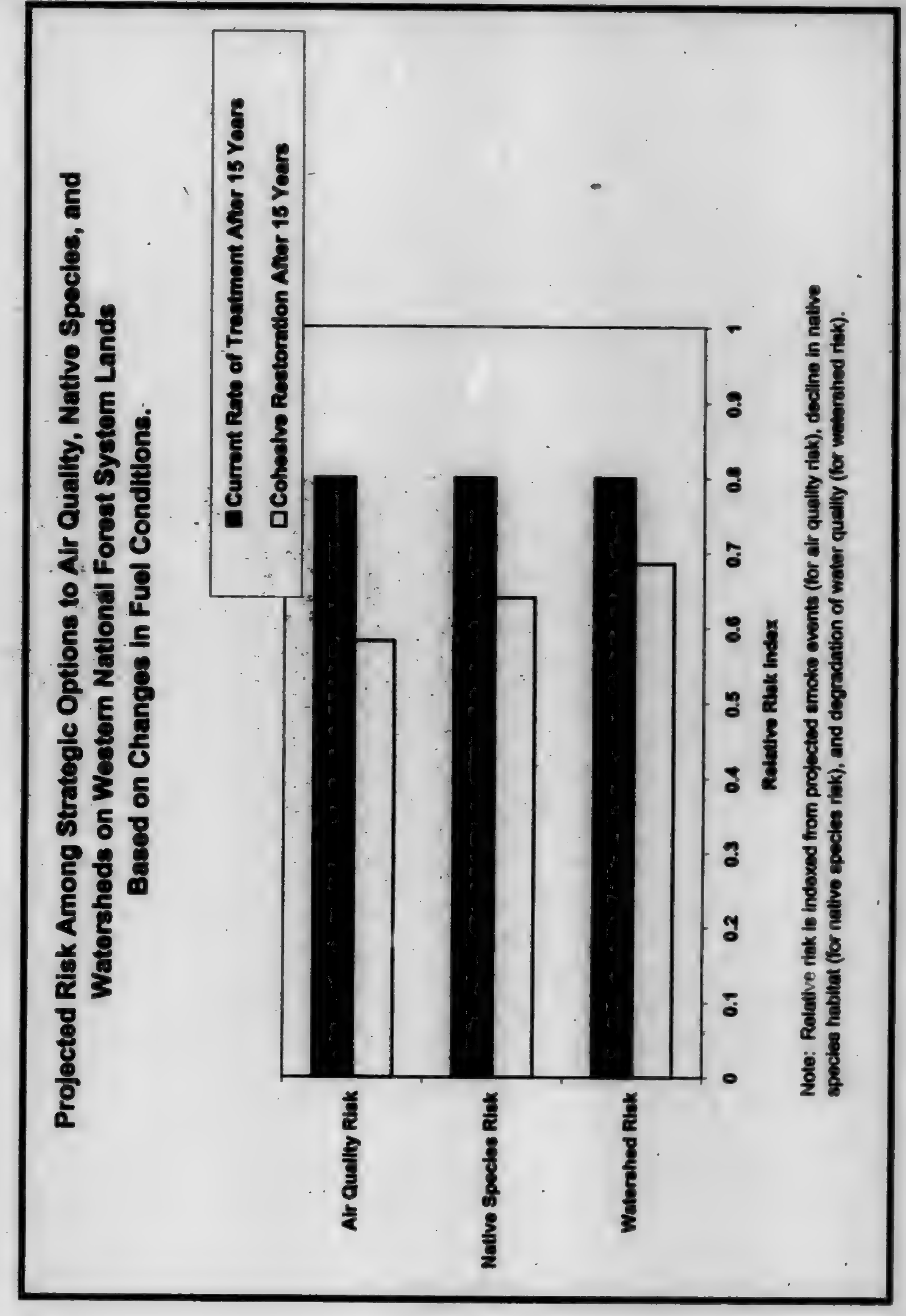

Figure 12

On the 1999 Big Bar Complex, adverse effects were most commonly found where the fires burned at higher intensities. Impacts from the fires included:

- Prolonged exposure of local communities to unhealthy smoke concentrations.
- Increased soil erosion and stream course sedimentation.
- Loss of old-growth trees that provide significant wildlife habitat.
- Degradation and loss of fish habitat, especially in the New River's tributaries.

Public and Firefighter Safety

In fire-adapted forests adjacent to human communities, concerns for public health often compete with concerns for public and firefighter safety. Treatments that use prescribed burning raise health issues related to smoke. Although this strategy would employ mechanical thinning prior to prescribed burning in some areas to reduce particulate emissions, air quality will remain an important concern.

Current regulatory policies "count" prescribed fire emissions in measuring air quality, but do not include wildland fire emissions. Constraining prescribed fire use in fire-adapted ecosystems to ensure public health may inadvertently increase risks to human safety.

Stagnant atmospheric conditions during the late summer and early fall often inhibit smoke dispersal from wildland fires. Although these episodes are exempt from regulatory control, they exceed public health standards. In 1977 and 1987, southern Oregon and northern California experienced long-term, unhealthy smoke concentrations. The 1999 Big Bar Fire Complex in northern California and the 1994 Wenatchee, Washington wildland fires also caused prolonged exposure of local communities to unhealthy smoke levels.

In recent years, several tragedies have occurred as firefighters tried to control wildland fires threatening human developments. In 1991, the Dude wildland fire near Payson, Arizona killed six firefighters as they attempted to protect a rural subdivision. The South Canyon fire in 1994 resulted in the death of 14 firefighters who were suppressing a wildland fire that was approaching homes near Glenwood Springs, Colorado.

Among the general public, loss of life due to wildland fire is rare but not unknown. In 1991, 25 lives were lost, 150 people injured, and more than 3,000 structures were destroyed in a wildland fire in the hills near Oakland, California. On March 8, 2000, three motorists lost their lives and many more were injured in a multi-car pileup in Florida—the result of wildland fire smoke obscuring visibility on a highway.

While fuel treatments across the interior West have increased in the last few years, further increases are needed to protect communities, watershed health, species viability, and ecosystem resilience.

VI. Conclusions and Next Steps

"Moving toward sustainability is a two-part process. First, revising the uses of the ecosystem so that environmental values take an economically relevant place in policy and practice; second, incorporating the well-being of the ecosystem into the way management is conceived and implemented."—Kai N. Lee, Compass and Gyroscope, 1993

The cohesive strategy outlined in this report is based on the premise that, within fire-adapted ecosystems, fire—at the right intensities, frequency, and season—is fundamentally essential for healthy, sustainable resources and the protection of nearby human communities. The strategy clarifies agency goals and objectives, establishes milestones and performance measures, and outlines an approach for setting restoration priorities.

The strategy directs treatments to high-risk areas, specifically, the wildland-urban interface, readily accessible municipal watersheds, and threatened and endangered species habitat. Implementing it will reduce the area in the interior West considered at highest risk of loss or damage. It prioritizes treatment of additional acres to prevent them from developing into high-risk conditions. It relies on a variety of treatments—including thinning, some harvest, other mechanical treatments and prescribed burning—to reduce fuels and the consequent risks of loss or long-lasting damage resulting from wildland fire.

The strategy provides an iterative approach, based on adaptive management and incremental steps. Actual treatment schedules will be developed using regional input based on Land and Resource Management Plans and other more recent assessments.

The strategy is responsive to regulatory responsibilities for clean air, clean water, and threatened and endangered species. Over the long term, the agency believes strategy implementation will better ensure ecosystem integrity for the benefit of future generations. The strategy does not attempt to treat all acres, nor does it eliminate all risks. While it does not aim to return forests and grasslands to pre-European settlement conditions—it does reduce risks by reducing over-accumulated fuels (Figure 13). The strategy will continue to evolve as the agency works with states, tribes, local communities and others.

The strategy also maintains that constituency support and collaboration with tribal, other federal, state, local agencies, and the public is an essential cornerstone for restoration work. It is consistent with the guiding principles of the Federal Wildland Fire Management Policy (approved by the Secretaries of Interior and Agriculture in 1995). In addition, it supports federal and state initiatives aimed at improving forest ecosystem health on public lands.

This strategy effectively reduces risk on a scale that makes a difference, but is potentially expensive and will take time and collaborative planning to implement. The costs, losses, and damages that will occur without this strategy are not always quantifiable or precisely known. When evaluated against recent trends and projections, however, wildland fire costs, loses, and damages, are expected to compound and exceed treatment costs—unless the rate of treatment is accelerated.

Large wildland fires will continue to occur. This cohesive strategy aims to reduce losses and damages from these wildland fires by concentrating treatments where human communities, watersheds, and species are at risk. Until restoration efforts are significantly expanded in fire-adapted ecosystems, the risks to watersheds, species, and people will continue to increase.

Note: Figure 13 is not printed in the **Federal Register**. It is available as indicated in the **ADDRESSES** section at the beginning of this notice.

Figure 13—The cohesive strategy outlined in this report aims to reduce severe insect, disease, and wildland fire risk.

Next Steps

This report provides a broad iterative approach to restore fire-adapted ecosystems and protect human values.

The coarse-scale assessments that establish the basis for the strategy will be refined as finer scale data become available to conduct forest-level planning. Implementation will occur consistent with Land and Resource Management Plan direction and other ongoing initiatives. More accurate assessments, integrated planning processes, public input, and collaboration with other agencies are all included in the work ahead.

Strategy actions to be addressed immediately:

- Refine coarse-scale assessments for wildland fuel risks.
- Develop regional implementation plans, integrating the status and risk information included in the Western Watershed Initiative, Human Population Density Maps, and Species at Risk Analysis into forest planning efforts at national, regional, and local levels as applicable.
- Incorporate recommended adjustments to the Forest Service Government Performance and Results Act (GPRA) Strategic Plan (2000 revision).
- Identify funding for priority projects.
- Frame a research program to strengthen monitoring and evaluation during the strategy's implementation.
- Coordinate with states, tribes, and local communities for work in the urban-wildland interface to help in risk reduction and hazard mitigation.
- Continue efforts to develop markets and ideas for small-diameter material utilization.

VII. Team Members

Team Leaders
  Lyle Laverty, Regional Forester, Rocky Mountain Region, USDA Forest Service
  Jerry Williams, Director, Fire and Aviation Management, Northern Region, USDA Forest Service
Team Facilitator
  Joe Michaels, Field Representative Forester, State and Private Forestry, Northeast Area, USDA Forest Service
Core Team
  Michael Hilbruner, Applied Fire Ecologist, Washington Office, USDA Forest Service
  Timothy Sexton, Fire Ecologist, Fire Program Management Program Center, USDI National Park Service
  Monica Schwalbach, Assistant Director, Wildlife and Terrestrial Ecology, Washington Office, USDA Forest Service
  James Morrison, Staff Assistant, Interregional Ecosystem Management Coordination Group, Northern Region, USDA Forest Service
  Andrea Tuttle, Director, California Department of Forestry and Fire Protection
  David Burich, Assistant Director, Financial Management, Washington Office, USDA Forest Service
  William Bradshaw, Assistant Director, Strategic Planning and Assessment, Washington Office, USDA Forest Service
  David Cleaves, Program Leader, Forest Fire Systems Research, Washington Office, USDA Forest Service
Support Team
  Mark Beighley, Strategic Fuels Planner, Washington Office, USDA Forest Service
  Doug MacCleery, Assistant Director, Forest Ecosystems and Planning, Washington Office, USDA Forest Service
  Gene Blankenbaker, Staff Specialist, Legislative Affairs, Washington Office, USDA Forest Service
  Michael da Luz, Branch Chief, Fire Ecology and Operations, Rocky Mountain Region, USDA Forest Service
  Marlin Johnson, Assistant Director of Forestry, Southwestern Region, USDA Forest Service
  Galen Hall, Regional Budget Officer, Northern Region, USDA Forest Service
  Paul Keller, Writer-Editor, Pacific Northwest Region, USDA Forest Service

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R. Neil Sampson, President, The Sampson Group, Inc., Alexandria, Virginia.
James Hubbard, State Forester, Colorado State Forest Service.
David Bunnell, National Fire Use Program Manager, National Interagency Fire Center, USDA Forest Service.
Colin Hardy, Research Forester, Rocky Mountain Research Station, Fire Sciences Laboratory, USDA Forest Service.
Wendell Hann, Fire/Landscape Ecologist, Washington Office, Fire and Aviation Management, USDA Forest Service.
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IX. Glossary

Uncharacteristic Wildfire Effects

An increase in wildfire size, severity and resistance to control, and the associated impact to people and property, compared to that which occurred in the native system.

Ecosystem Process

The actions or events that link organisms and their environment, such as predation, mutualism, successional development, nutrient cycling, carbon sequestration, primary productivity, and decay. Natural disturbance processes often occur with some periodicity (From Webster's dictionary, adapted to ecology.)

Ecosystem

The complex of a community of organisms and its environment functioning as an ecological unit in nature. (Webster's dictionary.)

Ecosystem Integrity

The completeness of an ecosystem that, at multiple geographic and temporal scales, maintains its characteristic diversity of biological and physical components, spatial patterns, structure, and functional processes within its approximate range of historic variability. These processes include: disturbance regimes, nutrient cycling, hydrologic functions, vegetation succession, and species adaptation and evolution. Ecosystems with integrity are resilient and capable of self-renewal in the presence of the cumulative effects of human and natural disturbances. (Proposed Rule, Section 219.36, 1999.)

Ecosystem Management u

The careful and skillful use of ecological, economic, social, and managerial principles in managing ecosystem integrity and desired conditions, uses, products, and services over the long term.

Fire-Adapted Ecosystem

An ecosystem with the ability to survive and regenerate in a fire-prone environment.

Fire Regime

A generalized description of the role fire plays in an ecosystem. It is characterized by fire frequency, seasonality, intensity, duration and scale (patch size), as well as regularity or variability. (Agee, as modified by Sexton.)

Fire Frequency (Fire Return Interval)

How often fire burns a given area; often expressed in terms of fire return intervals (*e.g.*, fire returns to a site every 5–15 years).

Interagency Wildland Fire Policy

The Federal Wildland Fire Management Policy and Program Review was chartered by the secretaries of the Interior and Agriculture to ensure that federal policies are uniform and programs are cooperative and cohesive. For the first time, one set of federal fire policies will enhance effective and efficient operations across administrative boundaries to improve the capability to meet challenges posed by current wildland fire conditions.

The policy review team reexamined the role of fire in ecological processes and the costs associated with fighting fire. An interagency product has resulted in changes in terminology, funding, agency policy, and analysis of ecological processes.

Landscape

An area composed of interacting and inter-connected patterns of habitats (ecosystems) that are repeated because of the geology, landform, soils, climate, biota, and human influences throughout the area. Landscape structure is formed by patches (tree stands or sites), connections (corridors and linkages), and the matrix. Landscape function is based on disturbance events, successional development of landscape structure, and flows of energy and nutrients through the structure of the landscape. A landscape is composed of watersheds and smaller ecosystems. It is the building block of biotic provinces and regions.

Restoration

In the context of this report's cohesive strategy, restoration means the return of an ecosystem or habitat toward: its original structure, natural complement of species, and natural functions or ecological processes.

Sustainability

Meeting the needs of the current generation without compromising the ability of future generations to meet their needs. Ecological sustainability entails maintaining the composition, structure and processes of a system, as well as species diversity and ecological productivity. The core element of sustainability is that it is future-oriented. (Committee of Scientists Report, 1999.)

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XI. Appendices

Appendix A—The Coarse-Scale Assessment and Definition of Fire Regimes and Condition Classes

Fire Regime Descriptors

Five combinations of fire frequency, expressed as fire return interval and fire severity, are defined (Table 2) to create the map of Historic Natural Fire Regimes (Figure 14). Groups I and II include fire return intervals in the 0–35 year range. Group I includes ponderosa pine, other long-needle pine species, and dry-site Douglas fir. Group II includes the drier grassland types, tall grass prairie, and some chaparral ecosystems. Groups III and IV include fire return intervals in the 35–100+ year range; and Group V is the long-interval (infrequent), stand replacement fire regime.

TABLE 2.—THE FIVE HISTORIC NATURAL FIRE REGIME GROUPS

Fire Regime Group	Frequency (fire return interval)	Severity
I	0–35 years	Low severity.
II	0–35 years	Stand replacement severity.
III	35–100+ year	Mixed severity.
IV	35–100+ year	Stand replacement severity.
V	>200 years	Stand replacement severity.

Fire Regime Groups I and II

These first two fire regime groups occupy nearly all the lower elevation zones across the U.S. They have been most affected by the presence of human intervention and our analysis shows that these types demonstrate the most significant departure from historical levels. The departures are affected largely by housing development, agriculture, grazing, and logging. These areas are at greatest risk to loss of highly valued resources, commodity interests, and human health and safety. It is expected that these areas will receive primary focus of wildland management agencies in the future.

Current Condition Class Attributes

Three Condition Classes have been developed to categorize the *current* condition with respect to each of the five historic Fire Regime Groups. Current condition is defined in terms of departure from the historic fire regime, as determined by the number of missed fire return intervals—with respect to the historic fire return interval—and the current structure and composition of the system resulting from alterations to the disturbance regime. The relative risk of fire-caused losses of key components that define the system increases for each respectively higher numbered condition class, with little or no risk at the Class 1 level.

CONDITION CLASS[1] DESCRIPTIONS

Condition class	Fire regime	Example management options
Condition Class 1	Fire regimes are within an historical range and the risk of losing key ecosystem components is low. Vegetation attributes (species composition and structure) are intact and functioning within an historical range.	Where appropriate, these areas can be maintained within the historical fire regime by treatments such as fire use.
Condition Class 2	Fire regimes have been moderately altered from their historical range. The risk of losing key ecosystem components is moderate. Fire frequencies have departed from historical frequencies by one or more return intervals (either increased or decreased). This results in moderate changes to one or more of the following: fire size, intensity and severity, and landscape patterns. Vegetation attributes have been moderately altered from their historical range.	Where appropriate, these areas may need moderate levels of restoration treatments, such as fire use and hand or mechanical treatments, to be restored to the historical fire regime.
Condition Class 3	Fire regimes have been significantly altered from their historical range. The risk of losing key ecosystem components is high. Fire frequencies have departed from historical frequencies by multiple return intervals This results in dramatic changes to one or more of the following: fire size, intensity, severity, and landscape patterns. Vegetation attributes have been significantly altered from their historical range.	Where appropriate, these areas may need high levels of restoration treatments, such as hand or mechanical treatments, before fire can be used to restore the historical fire regime.

[1] Current conditions are a function of the degree of departure from historical fire regimes resulting in alterations of key ecosystem components such as species composition, structural stage, stand age, and canopy closure. One or more of the following activities may have caused this departure: fire suppression, timber harvesting, grazing, introduction and establishment of exotic plant species, insects or disease (introduced or native), or other past management activities.

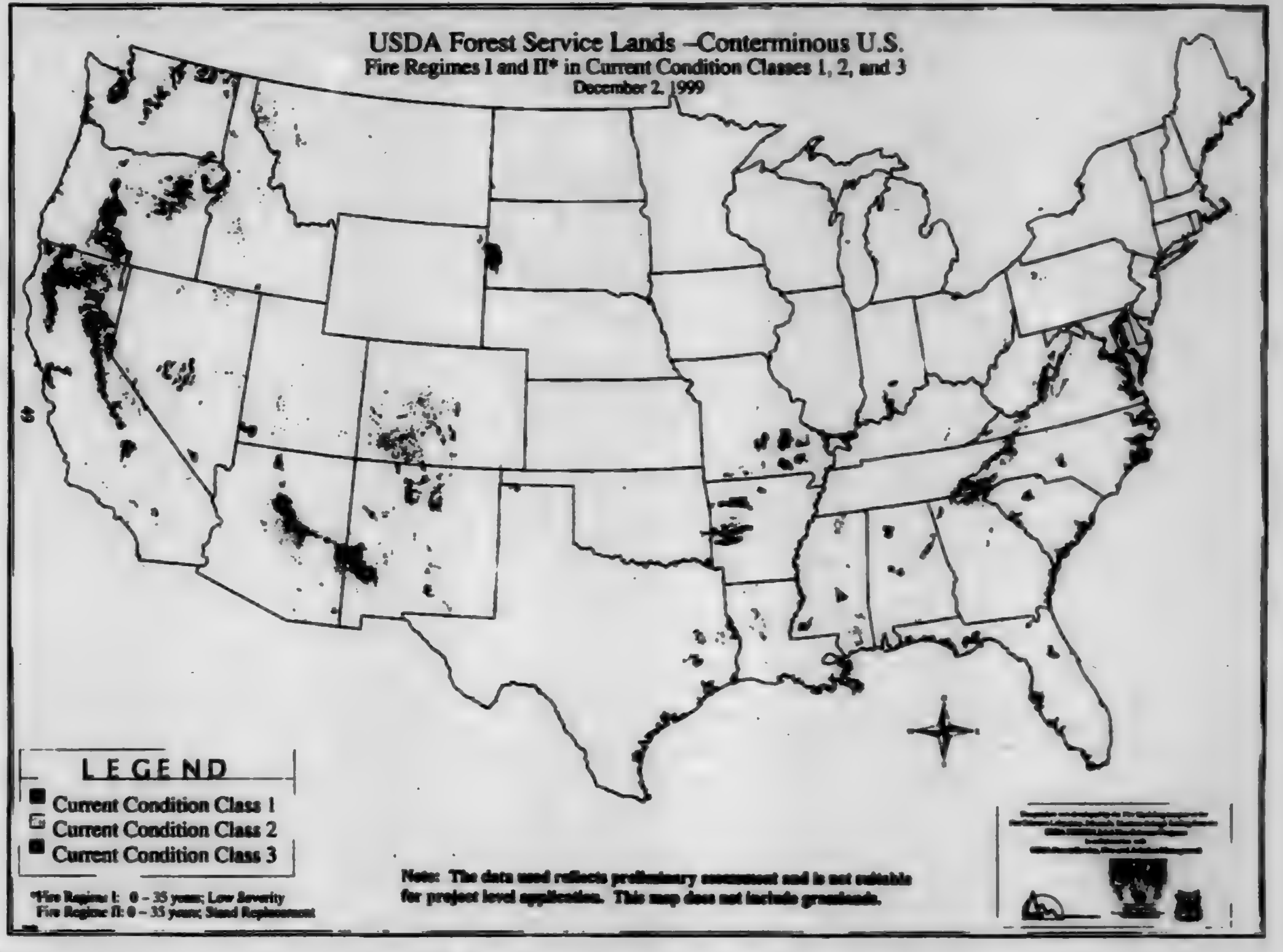
USDA Forest Service Lands –Conterminous U.S.
Fire Regimes I and II* in Current Condition Classes 1, 2, and 3
December 2, 1999
LEGEND
Current Condition Class 1
Current Condition Class 2
Current Condition Class 3
*Fire Regime I: 0 – 35 years; Low Severity
Fire Regime II: 0 – 35 years; Stand Replacement
Note: The data used reflects preliminary assessment and is not suitable for project level application. This map does not include grasslands.

Figure 14—Forest Service Lands; Fire Regime Groups I and II

Appendix B—Recommended Adjustments to the Forest Service GPRA Strategic Plan

Objective 1.c—RESTORE ECOSYSTEM HEALTH AND RESILIENCE WITHIN THE CONTEXT OF NATURAL DISTURBANCE PROCESSES.

Strategies to Achieve the Objective

We will . . .

- Identify priority health restoration needs through national and regional environmental monitoring and ecological risk assessments. Including:
  - social and economic factors and
  - sensitive species habitats at risk.
- In regional, Land and Resource Management Plan, and landscape scale assessments, clearly identify values to be protected, relative risks, benefits, and costs of all treatment options for restoring fire-adapted ecosystems.
- Research ecosystems (composition, structure, and process), social and economic values at risk, and the role of disturbance process.
- Assess what fel treatment works most effectively to protect communities and restore fire-adaped ecosystems.
- Design and implement systematic methods for broad-scale and landscape scale assessments of the history, status, and trajectory of ecosystem conditions; values at risk; and management opportunities for maintaining and restoring ecosystem integrity.
- Apply the latest knowledge to develop and implement landscape scale protection and restoration projects that achieve landscape goals established in Forest Plans.

Measure

Trends in acres at extreme risk from fire, insects, diseases, and invasive species.

FY 2006 Milestones

- A 5% decrease in acres at extreme risk from insects and diseases.
- Restore and maintain fire-adapted ecosystems in fire regimes I and II. Reduce high risk areas by 25 percent.
- Acres infested with targeted invasive species remains unchanged or is diminished.

Key External Factors

Baseline data on acres at risk was collected in an inconsistent manner in the past. Well-defined methods of data collection and storage are being developed. Fires, insect and disease epidemics and other unplanned large natural disturbances can radically alter the landscape and rapidly change management strategies, priorities, and budget allocations.

Local jurisdictions regulate homebuilding. As development extends into wildlands, areas can experience higher intensity fires that increase risks to human life and property and contribute to the spread of invasive species.

Objective 3.c

Increase awareness among employees and constituents about the need for restoration and management for ecosystem sustainability.

Educate homeowners about FIREWISE programs and principles.

Strategies to Achieve the Objective

We will . . .

Develop corporate training module for conservation awareness, and ensure all employees participate in this training module.

Strengthen interagency conservation education efforts to emphasize the importance of watershed protection, species conservation, and management for long-term ecosystem integrity and resilience.

Design and implement conservation awareness products that facilitate understanding about natural disturbance processes, particularly fire, and the potential values at risk when fire regimes are altered.

Conduct FIREWISE workshops in all high-risk urban-interface communities adjacent to National Forests. Assist states in implementing the FIREWISE program nation-wide.

Measure

Increasing trend in employee and public awareness of relationships among natural disturbance processes, ecosystem integrity and social values.

All communities in high-risk urban-interface areas understand FIREWISE principles.

FY 2006 Milestone

- Complete corporate training module for conservation awareness and require all employees to participate in this training, by 2002.
- Develop an MOU with the Department of Interior to strengthen interagency conservation education to focus on the importance of watershed protection, species conservation, and management for ecosystem integrity and resilience, by 2002.
- Conduct FIREWISE workshops in all high-risk urban-interface areas adjacent to National Forest System lands.

Key External Factors

Cooperate with state, tribal, county, municipal, and local governments.

Appendix C—Reconciling Stewardship Objectives—Assessing Values at Risk

Considerable progress can be made in reconciling stewardship objectives by assessing values at risk at national, regional, and local scales. Emphasizing the agency's strategic objectives, a framework for assessing values at risk can be developed. Specifically, agency objectives for ecosystem health and public safety define national priorities for values to be protected. These objectives and their associated values are:

- Public safety (GPRA SP Objective 4b)
- Watershed protection (GPRA SP Objective 1a)
- Species conservation (GPRA SP Objective 1b)
- Ecosystem resilience (GPRA SP Objective 1c)

At a national level, we are working to integrate information on human development, watershed condition, species and ecosystems of concern, noxious weeds, insects and disease, roadless areas, and plant community/ecosystem conditions by fire regimes. This requires compilation of information on historic disturbance regimes, watershed condition information, and development of a watershed-at-risk map, and completion of the species-at-risk map. An integrated map of relative risk to these values will provide broad-scale context of the challenges for protecting people and sustaining ecosystems at the national level. A standard process for integrating and interpreting this information needs to be developed. National leadership will use this information to refine priorities for annual and long-term performance and accountability.

In assessing risk at the regional level, we need to integrate information including, but not limited to: human development, historic disturbance regimes, watershed condition, species and ecosystems of concern, invasive weeds, insects and disease, roadless areas, plant community/ecosystem conditions by fire regimes. This will require compilation of appropriate information at finer scales of resolution than that compiled for the national risk assessments. Based on regional assessments, priorities for landscape scale analyses and management action can be developed. On-the-ground treatment priorities are then identified by the goals, objectives, and strategies that are linked up through the agency to GPRA strategic goal for restoring and maintaining ecosystem health.

Appendix D—Brief Summary for Future Projections of Condition Classes and Risks

Introduction

The methods, results, and confidence in the future projections of Condition Classes and associated risks in section VI, "Consequences of Deferral," are discussed in detail in a paper by Hann and Hilbruner (2000) titled "Protecting People and Sustaining Resources—Assessment of Management Options for the Western U.S." This paper can be found on the www web site "fs.fed.us/fire/fuelman." Methods for this analysis were based on adjustment and re-calibration for Forest Service lands in the Western U.S. of a vegetation and disturbance dynamics model developed by Hann and Bunnell (In Press) for the contiguous Lower 48 States.

This appendix provides a brief overview of methods and limitations of the modeling projections.

Methods

A landscape succession and disturbance network model was developed for the assessment of the cohesive strategy options in the Western U.S. (Hann and Hilbruner 2000) using the Vegetation Dynamics Development Tool (VDDT) (Beukema and Kurz 2000). The model that was developed used Condition Classes as states and incorporated probabilities for succession, unplanned disturbances (such as fire), and planned disturbances (such as mechanical and prescribed fire restoration).

The concepts of this type of model of multiple succession and disturbance pathways were first developed by Egler (1954). These concepts were incorporated with other information into the development of conceptual succession and disturbance models by Noble and Slatyer (1977). Conceptual succession and disturbance models were combined with ecosystem specific information into computer models by Kessell and Fischer (1981) and Keane *et al.* (1989 to predict response over time of the interactions of vegetation succession and disturbance dynamics. As space and time pattern and process concepts developed in the field of landscape ecology, these models were further advanced (Forman and Godrun 1986, Turner *et al.* 1989). State and transition model concepts were further expanded with findings on multiple pathways and steady states in rangelands by Tausch *et al.* (1993).

The accumulation of this long history and wide variety of kinds of spatial and temporal landscape modeling were fully implemented to support an assessment of management implications that included characterization of the historical range and variation, as well as future outcomes of management option for the Interior Columbia Basin Ecosystem Management Project (ICBEMP) by Keane *et al.* (1996) and Hann *et al.* (1997 and 1998).

Dynamic relationships of basic landscape vegetation, disturbance, and hydrologic regimes were then linked with aquatic and terrestrial habitat and species population characteristics to characterize basic relationships and project future outcomes (Lee *et al.* 1997, Raphael *et al.* 1998, Wisdom *et al.* 2000). Similar linkages were developed with social and economic variables to characterize basic relationships and project future outcomes (Haynes and Horne 1997). Further developments have resulted in development of the Tool for Exploratory Landscape Scenario Analyses (TELSA) (Kurz *et al.* In Press) and the LAND and fire planning model which have been designed to support assessment of ecosystem status and risk variables, and prioritization of restoration opportunities to improve status and reduce risk (Hann and Caratti 2000).

Much of the understanding developed from the comprehensive scientific assessment and evaluation of management alternatives for the ICBEMP (Quigley *et al.* 1996, 1997, 1999) became the foundation for the modeling effort described briefly in this appendix and by Hann and Bunnell (In Press) for the Lower 48 states and Hann and Hilbruner (2000) for the western U.S. The modeling effort used the description of the present conditions for the western U.S. from Hardy *et al.* 2000.

Succession and disturbance probabilities were developed by determining average rates for the Fire Regimes and between each Condition Class. The model was calibrated for the historical range and variation (HRV) by repeating 10 runs per simulation (to get average, maximum, and minimum) until succession and disturbance probability combinations were found that could represent the fire regimes. The model was then calibrated from the late 1800s to the present by activating disturbances associated with post-Euro-American settlement, fire suppression, and management activities. The methods for this calibration were similar to those for calibration of HRV in that 10 runs per simulations were conducted until the projected conditions at the year 2000 and the trends of Condition Class and wildland fire graphs were similar to those of the published literature (Agee 1993, Hardy *et al.* 2000).

Two future options were calibrated using the combined understanding gained from the HRV and post-settlement calibration, with adjustments for future management option projections. The two future management options were: (1) Continuation of current management using the current levels of prescribed fire and fuel management combined with current levels of other activities (such as timber management, range improvement, wildlife habitat restoration, watershed restoration); and (2) implementation of the cohesive restoration strategy. In comparison to the HRV and post-settlement calibrations, these were relatively simple to calibrate, since the current levels of activities and the cohesive strategy level of activities were known entities.

Attributes for projections of loss of life and property, severe event degraded ecosystems, and relative risks of smoke/air quality, native species endangerment, and stream/watershed were developed using correlation of trends in landscape Condition Classes and assumptions similar to relationships found within ICBEMP (Quigley *et al.* 1999), but adjusted for conditions in the western U.S. (Elmore *et al.* 1994, Flatherer *et al.* 1994 and 1998, Hann and Caratti 2000, Hardy *et al.* 2000, Leenhouts 1998, Mangan 1999).

Loss of life and property was based on the relationship between firefighter fatalities and property losses correlated with amount of uncharacteristic wildland fire events. The amount of severe event degraded ecosystems was projected based on the correlation of uncharacteristic wildland fire events with high risk conditions. Relative risk of smoke/air quality was correlated with tons of particulates produced for both wildland fire and prescribed fire events. Native species endangerment patterns were correlated with the number of species of concern in the western U.S. and cumulative effect patterns of association with loss of habitat quality. Stream and watershed risk was correlated with effects of uncharacteristic wildland fires in cumulation with other effects. Many of the risks (such as land use or human disturbance on adjacent lands) that cause cumulative negative effects to native species, air quality, and streams and watersheds are not reduced by restoration on Forest Service lands. This was factored in to the model relationships.

Three key assumptions served as a basis for the Condition Class, disturbance, and associated attribute modeling:

Assumption 1—based on the landscape pattern and causes of fragmentation findings from ICBEMP, it was assumed that a step-down prioritization would occur that would identify priority watersheds to be restored. The watersheds would be selected based on high composition of Fire Regimes I and II and opportunities for maintenance of low risk or reduction of high risk conditions. However, once a priority watershed was selected, restoration activities would be designed to restore habitats and regimes across all Forest Service lands within the watershed, irrespective of the Condition Class and Fire Regime. This would achieve a landscape approach to restoration. This would avoid a fragmented outcome associated with the fragmented landscape pattern of Fire Regimes I and II that often occur in association with variation in elevation, terrain, road access, or history of land use within the watershed. In turn this would restore wildlife and fish habitats, and hydrologic and air regimes at a watershed scale, thus providing a positive outcome to those resources.

Assumption 2—based on aquatic native species strongholds and vulnerability of wildlife species, air quality and hydrologic regimes to the combination of land use, human activities, and proposed restoration; the step-down prioritization would result in an integrated design as described by Reiman *et al.* (2000). This would assure that vulnerable native species or ecosystems would not be selected for restoration activities that could cause a decline in these resources. This would also assure that watersheds selected for restoration would be restored in an integrated fashion, such that vegetation and fuel restoration activities would be paralleled with the necessary road, stream, and watershed restoration activities that would cumulatively result in a healthy watershed.

Assumption 3—the future projections assumed a minor level of continuation of increasing drought and warming temperatures in both management options. However, for the future projections of the cohesive strategy it was assumed that a landscape approach to restoration would occur. This would result in a re-patterning of the fuels and vegetation such that the present contiguous high risk fuel bodies would be restored to a pattern somewhat similar to that of HRV, thus resulting in lower risk of uncharacteristic wildland fire event continuity or continuation of uncharacteristic succession/disturbance momentum. For the cohesive strategy, this assumption resulted in the slowing of succession rates to higher risk Condition Classes and lowering of probabilities of large uncharacteristic wildland fire events.

Limitations of Modeling

There are considerable limitations to this type of general modeling at a scale that accounts for all Forest Service lands in the western U.S. Modeling could be much more precise with more detailed pixel modeling using refined stratification of succession, disturbance, and attribute parameters, such as accomplished by Keane *et al.* (1996) with the Columbia River Basin Succession Model. However, given experience with validation of this and other detailed spatial and temporal geographic information systems, it is unlikely that the relative differences between the outcomes of the two options would change substantially with more detailed modeling. This appears to be particularly true at the broad scale of Forest Service lands in the western U.S.

One key caution is emphasized relative to use of the projected outcomes:

Caution—the strength of this type of modeling is in reliance on relative differences and not on the absolute. The absolute value of the area for a Condition Class, disturbance effect, or associated attribute class does not have high confidence at this scale. However, the relative difference (percent difference) between management options for the Condition Class, disturbance effect, or associated attribute class has fairly high confidence. This is because the confidence in relative differences between management options for the same attribute class increases with increasing size of summary area, while the confidence in the absolute area of an attribute class decreases with increasing size of summary area (Hann *et al.* 1997).

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Part III

Department of Agriculture

Forest Service

36 CFR Parts 217 and 219
National Forest System Land Resource Management Planning; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 217 and 219

RIN 0596–AB20

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule describes the framework for National Forest System land and natural resource planning; reaffirms sustainability as the overall goal for National Forest System planning and management; establishes requirements for the implementation, monitoring, evaluation, amendment, and revision of land and resource management plans; and guides the selection and implementation of site-specific actions. The intended effects are to simplify, clarify, and otherwise improve the planning process; to reduce burdensome and costly procedural requirements; to strengthen and clarify the role of science in planning, and to strengthen collaborative relationships with the public and other government entities.

EFFECTIVE DATE: This rule is effective November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Robert S. Cunningham, Assistant Director, Ecosystem Management Coordination, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, (202) 205–2494.

SUPPLEMENTARY INFORMATION: The following outline displays the contents of the preamble to this final regulation.

General Background

The 1982 Planning Rule

Summary of Public Comment

Today's Final Rule

Response to General Comments

Section by Section Response to Public Comments

Purpose, Goals, and Principles

Proposed section 219.1 Purpose.
Proposed section 219.2 Goals and principles for planning.

The Framework for Planning

Proposed section 219.3 Overview.
Proposed section 219.4 Topics of general interest or concern.
Proposed section 219.5 Information development and interpretation.
Proposed section 219.6 Proposed actions.
Proposed section 219.7 Plan decisions that guide future actions.
Proposed section 219.8 Amendment.
Proposed section 219.9 Revision.
Proposed section 219.10 Site-specific decisions and authorized uses of land.
Proposed section 219.11 Monitoring and evaluation.

Collaborative Planning for Sustainability

Proposed section 219.12 Collaboration and cooperatively developed landscape goals.
Proposed section 219.13 Coordination among federal agencies.
Proposed section 219.14 Involvement of state and local governments.
Proposed section 219.15 Interaction with American Indian tribes and Alaska Natives.
Proposed section 219.16 Relationships with interested individuals and organizations.
Proposed section 219.17 Interaction with private landowners.
Proposed section 219.18 Role of advisory groups and committees.

Ecological, Social, and Economic Sustainability

Proposed section 219.19 Ecological, social, and economic sustainability.
Proposed section 219.20 Ecological sustainability.
Proposed section 219.21 Social and economic sustainability.

The Contribution of Science

Proposed section 219.22 The role of assessments, analyses, and monitoring.
Proposed section 219.23 The participation of scientists in planning.
Proposed section 219.24 Science consistency evaluations.
Proposed section 219.25 Science advisory boards.

Special Considerations

Proposed section 219.26 Identifying and designating suitable uses.
Proposed section 219.27 Special designations.
Proposed section 219.28 Determination of land suitable for timber removal.
Proposed section 219.29 Limitation on timber removal.

Planning Documentation

Proposed section 219.30 Land and resource management plan documentation.
Proposed section 219.31 Maintenance of the plan and planning records.

Objections and Appeals

Proposed section 219.32 Objections to amendments or revisions.
Proposed section 219.33 Appeals of site-specific decisions.

Applicability and Transition

Proposed section 219.34 Applicability.
Proposed section 219.35 Transition.

Definitions

Proposed section 219.36 Definitions.

Regulatory Certification

Regulatory Impact

No Takings Implications

Civil Justice Reform Act

Unfunded Mandates Reform

Environmental Impact

Controlling Paperwork Burdens on the Public

Description of the Information Collection

Use of Comments—Federalism

General Background

The Forest Service is responsible for managing the lands and resources of the National Forest System, which includes 192 million acres of land in 42 states, the Virgin Islands, and Puerto Rico. The system is composed of 155 national forests, 20 national grasslands, and various other lands under the jurisdiction of the Secretary of Agriculture (the Secretary).

On October 5, 1999, the Forest Service published a proposed rule (64 FR 54074) to revise the Land and Resource Management Planning rule at 36 CFR part 219. The existing planning rule was adopted on September 30, 1982 (47 FR 43026) and amended in part on June 24, 1983, (48 FR 29122), and September 7, 1983 (48 FR 40383). The rule is required by the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476 *et seq.*) as amended by the National Forest Management Act of 1976, (90 Stat. 2949 *et seq.*; 16 U.S.C. 1601–1614) (hereafter, NFMA).

This final rule will help the Forest Service improve forest planning and on-the-ground management and enable the agency to improve the long-term health of the national forests and grasslands while better meeting the needs of the American people. Consistent with the statutory mission of the Forest Service and applicable federal environmental laws, the final rule emphasizes four key concepts. First, it affirms sustainability as the overall goal for national forest and grassland management in accordance with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 *et seq.*) (hereafter, MUSYA). Second, it requires extensive cooperation and collaboration with the public and other private and public entities. Third, it integrates science more effectively into the planning and management of national forests and grasslands. Finally, the rule eliminates burdensome analytical requirements that were designed to govern the initial development of land and resource management plans and puts into place a new planning framework that addresses problems, issues, and opportunities identified through collaboration with the public, through monitoring or other scientific analyses, or by other means.

The final rule is grounded in the laws that guide National Forest System management. It also provides for the incorporation of significant new scientific information and other lessons the agency has learned since it began implementing NFMA planning regulations in 1982. Indeed, much has been learned in developing, implementing, and litigating the original national forest and grassland plans and the numerous plan amendments and revisions that have been completed during the past two decades.

Congress created the National Forest System "to improve and protect" federal forests (Act of June 4, 1897, ch. 2, 30 Stat. 34–36). The Forest Service is vested with broad authority to make rules "to regulate [the Forests'] occupancy and use and to preserve the forests therein from destruction" 16 U.S.C. 551.

Sustainability of these lands and resources is the essence of Forest Service land and natural resource management from the very beginnings of the National Forest System. Over a century ago, Congress authorized the President to reserve "public land bearing forests * * * whether of commercial value or not, as public reservations," Act of March 3, 1891, ch. 561, 26 Stat. 1095, 1103, to protect them from unsustainable uses that had damaged watersheds. Six years later in the Organic Administration Act of 1897, Congress provided further direction and management authority for these forest reserves and reaffirmed its intent to provide for sustainable protection and use of these forest reserves. That law provided for the establishment of forest reserves "to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States * * *" 16 U.S.C. 475.

In the MUSYA, Congress again affirmed the application of sustainability to the broad range of resources over which the Forest Service has responsibility. MUSYA confirms the Forest Service's authority to manage the national forests and grasslands "for outdoor recreation, range, timber, watershed, and wildlife and fish purposes" (16 U.S.C. § 528), and does so without limiting the Forest Service's broad discretion in determining the appropriate resource emphasis *or* levels of use of the lands of each national forest and grassland.

Shortly after the passage of MUSYA, the public was becoming increasingly concerned about environmental decline throughout the United States. Congress responded to this concern by enacting several laws directed toward protecting or improving the natural environment, conserving natural resources to meet the needs of the American people in perpetuity, and providing for greater public involvement in agency decisionmaking. Specifically regarding forest land and resource management, Congress enacted the NFMA (16 U.S.C. 1660(6)), which requires the Forest Service to manage the National Forest System lands according to land and resource management plans that provide for multiple-uses and sustained-yield in accordance with MUSYA (16 U.S.C. 1604(e) and (g)(1)). In developing and maintaining these plans, NFMA calls for "integrated consideration of physical, biological, economic and other sciences." (16 U.S.C. 1604(b)). As Sen. Humphrey stated, in explaining the significance of the NFMA: "The days have ended when the forest may be viewed only as trees and trees viewed only as timber. The soil and the water, the grasses and the shrubs, the fish and the wildlife, and the beauty that is the forest must become integral parts of resource managers' thinking and actions" (122 Cong Rec. 5618–19 (1976)). Similarly, federal courts have recognized that NFMA and related statutes represent a congressional delegation of broad authority that allows the Forest Service to address issues of sustainability using an integrated ecological and socio-economic framework. *See, e.g., Seattle Audubon Society* v. *Lyons*, 871 F. Supp. 1291 (W.D. Wash. 1994) aff'd 80 F.3d 1401 (9th Cir. 1996) * * * "Given the current condition of the forests, there is no way the agencies could comply with the environmental laws without planning on an ecosystem basis."

NFMA also requires the Secretary to promulgate regulations "that set out the process for the development and revision of the land management plans" for units of the National Forest System, and specifies certain procedures, guidelines and goals that should be discussed in the regulations (16 U.S.C. 1604). NFMA expanded on MUSYA and the Endangered Species Act of 1973 (ESA) authorities by including in the requirements for land use planning broad discretion to provide for "diversity of plant and animal communities" and "to preserve the diversity of tree species similar to that existing in the region controlled by the plan" (16 U.S.C. 1604(g)(3)(B)). Additionally, in response to public concerns regarding the sustainability of certain silvicultural techniques, Congress included several limitations and analytical requirements for timber harvest (16 U.S.C. 1604(g)(3)(D) through (F), (k), and (m)). NFMA also requires the Secretary to appoint a "committee of scientists" to assist in carrying out the task of developing and promulgating regulations in accordance with the purposes of the statute (16 U.S.C. 1604(h)).

Congress enacted the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), "to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man, [and] enrich the understanding of the ecological systems and natural resources important to the Nation" (42 U.S.C. 4321). Under NEPA, all Forest Service proposals for major federal actions significantly affecting the quality of the human environment must include detailed statements of the environmental effects and alternatives to proposals (42 U.S.C. 4332(C)). Environmental effects include ecological effects "such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems" (40 CFR 1508.8). NEPA also requires the Forest Service to "initiate and utilize ecological information in the planning and development of resource-oriented projects" (42 U.S.C. 4332(H)).

In addition to NEPA, the ESA also bounds the otherwise broad discretion that the Forest Service has over land and resource management. One of the purposes of the ESA is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved . . ." (16 U.S.C. 1531(b)). The ESA requires federal agencies such as the Forest Service to "utilize their authorities in furtherance of the purposes of this [Act] by carrying out programs for the conservation of endangered species and threatened species" in consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (16 U.S.C. 1536(a)(1)).

The 1982 Planning Rule

In accordance with NFMA's direction to develop regulations regarding the development, maintenance, and revision of land and resource management plans for units of the

National Forest System, the Secretary promulgated a rule for implementation of the planning requirements on September 30, 1982 (47 FR 43026), as amended (48 FR 29122, June 24, 1983), and (48 FR 40383, Sep. 7, 1983).[1] The rule is codified at 36 CFR part 219.

Many things have changed since the publication of the 1982 rule. Ideas and concepts, such as sustainability and ecosystem management have become more adequately understood and increasingly more important as human uses of natural resources has grown. The Forest Service has also gained a great deal of experience developing, implementing, amending, and revising the existing 127 land and resource management plans under the rule. The Forest Service is now in the process of revising many of these plans in accordance with NFMA's requirement that plans be revised at least once every 15 years. The agency has also developed innovative new planning tools, such as geographical information systems and is engaged in increased collaboration with the public and other federal agencies, tribes, state government, and other interested groups or persons, and uses independent scientific review more frequently.

The concept of sustainability has become an internationally recognized objective for land and resource stewardship. In 1987, the Brundtland Commission Report (The World Commission on Environment and Development) articulated in "Our Common Future" the need for intergenerational equity in natural resource management. The Commission defined sustainability as meeting the needs of the present without compromising the ability of future generations to meet their own needs. During the last twenty years, the world has increasingly come to recognize that the functioning of ecological systems is a necessary prerequisite for strong productive economies, enduring human communities, and the values people seek from wildlands.

Similarly, the Forest Service and scientific community have developed the concepts of ecosystem management and adaptive management. Scientific advances and improved ecological understanding support an approach under which forests and grasslands are managed as ecosystems rather than focusing solely on single species or commodity output. Indeed, ecosystem management places greater emphasis on assessing and managing broad landscapes and sustaining ecological processes. Ecosystem management focuses on the cumulative effects of activities over time and over larger parts of the landscape. Planning and management under ecosystem management also acknowledge the dynamic nature of ecological systems, the significance of natural processes, and the uncertainty and inherent variability of natural systems. Ecosystem management calls for more effective monitoring of management actions and their effects to facilitate adaptive management, which encourages changes in management emphasis and direction as new, scientific information is developed. In accord with ecosystem management, regional ecosystem assessments have become the foundation for more comprehensive planning, sometimes involving multiple forests and other public land management units. The Northwest Forest Plan, for example, affects 17 national forests and 6 BLM districts in a three-state region. The Interior Columbia Basin Ecosystem Project encompasses 25 percent of the entire National Forest System and ten percent of the public lands administered by the BLM nationwide.

In the last 20 years, the number of federal, state and local agencies, Tribes, members of the public, and interested groups wanting to be involved in planning decisions and share stewardship responsibilities has skyrocketed. In many cases, Forest Service personnel have been able to learn significant information, create new understanding, build trust, obtain new resources for implementation and monitoring, and diffuse potential conflicts by engaging these parties more effectively in the planning process through collaboration. While collaborative approaches do not end conflict or necessarily result in consensus, by engaging people and identifying key issues early in the process, they enable the Forest Service to make better decisions and to manage conflict more effectively. Similarly, the Forest Service has learned that independent scientific and public review can greatly enhance the credibility of planning and validate the soundness of stewardship decisions and the reality of achievements.

Taken together, ecosystem management, scientific reviews, and collaboration enable the Forest Service to identify key scientific and public issues and to target its limited resources on trying to resolve those issues at the most appropriate time and geographic scale. Based on these changes in the state of scientific and technical knowledge, the Forest Service's extensive experience, and a series of systematic reviews, the Forest Service has concluded that 36 CFR part 219 must be revised in order to better reflect current knowledge and practices and to better meet the conservation challenges of the future. Indeed, while the 1982 planning rule was appropriate for developing the first round of plans from scratch, it is no longer well suited for implementing the NFMA or responding to the ecological, social, and economic issues currently facing the national forests and grasslands.

The Forest Service has undertaken two systematic reviews of the planning process mandated by the 1982 rules. The first began in 1989, when it conducted a comprehensive review of its land management planning process in cooperation with the Conservation Foundation and Purdue University's Department of Forestry and Natural Resources. The results of this review are documented in a summary report, *Synthesis of the Critique of Land Management Planning, Volume One* and ten accompanying detailed reports. Based in part on this review, the Forest Service published an Advance Notice of Proposed Rulemaking (56 FR 6508, Feb. 15, 1991) regarding possible revisions to the 1982 planning rule. The agency conducted four public meetings to explain and discuss ideas for revising the planning rule; and received comments from over 600 individuals and groups. These comments were used in the development of a proposed rule published on April 13, 1995 (60 FR 18886). However, due to comments received on the 1995 proposed rule and lessons learned from experiences in developing the Northwest Forest Plan, regional assessments, and other regional ecosystem management strategies, the Secretary elected not to proceed with that proposal.

The second systematic review was undertaken in December 1997, when the Secretary of Agriculture convened a 13-member Committee of Scientists to review the Forest Service planning process and offer recommendations for improvements within the statutory mission of the Forest Service and the established framework of environmental laws. The members of this Committee of Scientists represented a diversity of views, backgrounds, and academic expertise. The Committee's charter was to "provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made in the National Forest System Land and Resource Management Planning Process and to address such topics as how to consider the following in land and resource management plans: biological diversity, use of ecosystem assessments in land and resource management planning, spatial and temporal scales for planning, public participation processes, sustainable forestry, interdisciplinary analysis, and any other issues that the Committee identifies that should be addressed in revised planning regulations." The Committee was also asked to recommend improvements in Forest Service coordination with other federal, state, and local agencies, and tribal governments while recognizing the unique roles and responsibilities of each agency in the planning process.

The Committee held more than 20 publicly noticed meetings and teleconferences across the country and heard from Forest Service employees, representatives of tribes, state and local governments and other federal agencies, members of the public, former Chiefs of the Forest Service, and members of the original Committee of Scientists regarding their concerns and ideas about the current planning process and the current management of national forests and grasslands.

Following these meetings, the Committee of Scientists issued a final report on March 15, 1999, entitled *Sustaining the People's Lands*. The Committee found that, through careful management, National Forest System lands can continue to provide many diverse benefits to the American people in perpetuity. These benefits include clean air and water, productive soils, biological diversity, a wide variety of products and services, employment, community development opportunities, and recreation. The Committee recognized that many Forest Service managers have developed innovative ways to commingle science and collaborative public processes to improve land management decisions, and that these innovative strategies provided a good starting point for developing a more integrated, long-lasting, and flexible planning framework. The Committee concluded that the Forest Service can improve its planning and decisionmaking by relying on the concepts and principles of sustainable natural resource stewardship; by applying the best available scientific knowledge to management choices; and by effectively collaborating with a broad array of citizens, other public servants, and governmental and private entities. Accordingly, the Committee recommended a planning framework that would provide flexibility in dealing with a multitude of resource issues at various scales across the landscape and would require managers to integrate public collaboration and science to identify desirable outcomes and promote sustainable management. It also recommended use of adaptive practices, monitoring, performance measures, and budgeting strategies.

Based on scientific advances in forestry, forest management and range science, the 1990 Critique of land and resource management planning and the Committee of Scientists' findings and recommendations as contained in its 1999 report, the various laws and regulations that guide National Forest System planning and management, and over 17 years of experience in developing and implementing the existing 127 land and resource management plans, a team of Forest Service employees from national, regional, and local offices, aided by an interagency steering committee, prepared the October 5, 1999, proposed rule to comprehensively revise the land and resource management planning regulation at 36 CFR part 219 (60 FR 18886 Oct. 5, 1999).

Summary of Public Comment

In addition to the meetings held by the Committee of Scientists, the Forest Service conducted more than twenty public town meetings to solicit input on the proposed rule. At many of the locations, the Forest Service also conducted meetings with representatives from Tribes, state and local governments, and other federal agencies. The agency held town meetings in both rural and urban communities across the country, at the following locations:

St. Louis, MO—Tuesday, October 26, 1999
Hanover, NH—Tuesday, October 26, 1999
Duluth, MN—Thursday, October 28, 1999
Olympia, WA—Tuesday, November 2, 1999
Boise, ID—Monday, November 1, 1999
Juneau, AK—Thursday, November 4, 1999
Salem, OR—Thursday, November 4, 1999
Casper, WY—Tuesday, November 9, 1999
Reno, NV—Wednesday, November 10, 1999
Los Angeles, CA—Saturday, November 13, 1999
Denver, CO—Saturday, November 13, 1999
Little Rock, AR—Tuesday, November 16, 1999
Bozeman, MT—Tuesday, November 16, 1999
Jackson, MS—Thursday, November 18, 1999
Missoula, MT—Thursday, November 18, 1999
Coeur d'Alene, ID—Saturday, November 20, 1999
Montrose, CO—Tuesday, November 30, 1999
Grayling, MI—Wednesday, December 1, 1999
Albuquerque, NM—Thursday, December 2, 1999
Asheville, NC—Saturday, December 4, 1999
Salt Lake, UT—Tuesday, December 7, 1999
Sacramento, CA—Thursday, December 9, 1999
Phoenix, AZ—Thursday, December 9, 1999

Approximately 1339 people attended the public meetings. The public comment period on the proposed rule closed on January 3, 2000, but was subsequently extended to February 10, 2000. Some 10,489 persons or entities submitted written comments on the proposed rule. The respondents consisted of a wide array of individuals, businesses, government agencies, and organizations. Most respondents agreed that the planning regulations needed to be revised and supported the objectives that the Forest Service proposed, but provided numerous comments on how to better achieve those objectives.

Today's Final Rule

Today's final rule will help the Forest Service improve forest planning and on-the-ground management and enable the agency to improve the long-term health of the national forests and grasslands while better meeting the needs of the American people. The final rule affirms ecological, social, and economic sustainability as the overall goal for managing the National Forest System lands and makes the maintenance and restoration of ecological sustainability a first priority for management of the national forests and grasslands so these lands can contribute to economic and social sustainability by providing a sustainable flow of uses, values, products, and services.

The final rule published here today also is designed to facilitate greater public collaboration in all phases of the planning process. The rule expands on existing requirements for collaboration to expand management choices, create new understanding, build trust, obtain

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[1] The Secretary had initially promulgated these rules in 1979, but no forest plans were ever completed under the 1979 rules. Soon after a new Administration took office, the USDA Assistant Secretary for Natural Resources and Environment withdrew these planning rules and sought to revise them. Such controversy was generated as a result, that the Committee of Scientists involved in the development of the 1979 rules was reconvened and enlisted to work on what eventually became the 1982 planning rules.

new resources for implementation and monitoring, manage conflict more productively, and more fully informed decisionmaking to ensure the long-term sustainability of the multiple resources of national forests and grasslands. The rule encourages land managers to more actively engage the American people, other federal, state and local agencies, Tribes, and interested groups in the planning and management of the national forests and grasslands. In collaborative settings that provide opportunities for early, open, and frequent public involvement, responsible Forest Service officials will play many roles, including serving as process conveners, facilitators, leaders, participants, and decision makers, as appropriate.

The final rule creates opportunities for people, communities, and organizations to work together in the identification of key issues, discussions of opportunities for contributing to sustainability, and development and promotion of landscape goals. Indeed, under the rule, improvements to management practices would be made based upon cooperatively developed landscape goals and other issues which can emerge from a variety of sources such as collaboration, monitoring, evaluation, broad-scale assessments, local analyses, new laws and policies, or simply from discussions among interested persons. The proposed regulation would encourage the public to be involved in identifying concerns and problems, considering available information, assessing current conditions, and identifying potential solutions even before a proposal for agency action is written. This early public involvement would make more information available to the public, enhance its ability to participate in the process, and lead to better communication about expectations and outcomes. To further enhance the collaborative process, advisory committees could be used to assist the responsible official in determining whether there is a reasonable basis for proposing an action to address an issue.

Additionally, the final rule would replace the post-decision appeal process with a pre-decisional objection process. The objection process would only apply to forest and grassland plan revisions and amendments. Under a pre-decisional objection process, a person could object to a pending decision before the agency makes a final decision, a process very similar to the protest procedures now in effect in the Bureau of Land Management. The intent is to provide the reviewing official with an opportunity to work more closely with the responsible official and those filing objections to resolve the objections before a decision is made. A pre-decisional objection process also will enhance interagency collaboration by standardizing objection procedures and will provide incentives to work out substantive differences rather than focus on procedural errors.

The emphasis on collaboration is consistent with direction provided in NFMA and other statutes guiding land and resource management and in concert with the underlying philosophy of national forest management. As reflected in guidance provided by Gifford Pinchot in the first Forest Service administrative manual, Uses of the National Forests (1907), "National Forests are made for and owned by the people. They should also be managed by the people * * * If National Forests are going to accomplish anything worthwhile the people must know all about them and must take a very active part in their management. What the people as a whole want, will be done. To do it, it is necessary that the people carefully consider and plainly state just what they want and then take a very active part in seeing that they get it."

Another key element in the final rule is greater emphasis on the use of science in planning. The final rule requires the use of the best available science to give the Forest Service and the people, communities, and organizations involved in the planning process sound information on which to make recommendations about the resource conditions and outcomes they desire. The final rule incorporates science in the planning and decisionmaking process in a number of ways.

First, the rule recognizes the lessons learned in recent years about developing and analyzing information at the regional ecosystem level. Regional ecosystem assessments have proven to be an extremely valuable and efficient means of understanding the scientific, ecological, social, and economic issues and trends affecting national forests and grasslands and generating baseline data for use in planning and decisionmaking.

Second, consistent with the 1990 Critique and the Committee of Scientists report, the final rule emphasizes monitoring and evaluation of resource conditions and trends over time so that management can be adapted as conditions change. Specifically, the required monitoring and evaluation will assist in determining if desired outcomes are being achieved and how to adapt if they are not. This emphasis is in keeping with NFMA's direction to ensure research on evaluation of the effects of each management system, based on continuous monitoring and assessment in the field, to the end that it will not produce substantial and permanent impairment of the productivity of the land (16 U.S.C. 1604(g)(3)(C)). As noted by the Committee of Scientists, "Monitoring is a key component of planning * * * Monitoring procedures need to be incorporated into planning procedures and should be designed to be part of the information used to inform decisions. Adaptive management and learning are not possible without effective monitoring of actual consequences from management activities."

Third, the final rule provides for the establishment of science advisory boards to improve decision makers' and planners' access to current scientific information and analysis. It also provides for an independent scientific review of the effectiveness of land management plans in meeting the goal of sustainability during the revision process, and, when appropriate, science consistency evaluations to determine whether the planning process is consistent with the best available science. As the Committee of Scientists observed, "To ensure public trust and support innovation, scientific and technical review processes need to become essential elements of management and stewardship * * * The more that conservation strategies and management actions are based on scientific findings and analysis, the greater the need for an ongoing process to ensure that the most current and complete scientific and technical knowledge is used."

Fourth, the proposed rule affirms the Forest Service's commitment to the viability of all species in accordance with the NFMA requirement to provide for the diversity of plant and animal communities and recognizes the unique contributions national forest and grassland stewardship can make in maintaining species viability. At the same time, the rule recognizes the limits of our scientific understanding and financial and technical capability to conduct viability assessments. To assess the viability of appropriate species of flora and fauna, the rule calls for the use of focal species as indicators of ecological conditions and the best available science and information, including professional opinion and the principles of conservation biology.

Finally, the final rule provides a planning framework that facilitates the identification and responsive resolution to emerging problems. The final rule simplifies required planning steps to enable responsible officials to more readily address emerging issues than is

possible under the 1982 rule. For example, the final rule would clarify that, where appropriate, multiple planning activities of one or more national forests or grasslands can be combined along administrative boundaries. Additionally, current requirements for detailed analyses, such as those required for benchmark analyses, would be streamlined or eliminated. Moreover, planning would be done at the most appropriate scale in order to address key issues, and forest and grassland plans and projects would use the same planning framework. The final rule also allows the steps in the planning framework to be coordinated with the scoping requirements under the Forest Service NEPA procedures when appropriate. This will reduce duplication in the preparation of environmental documents associated with management of the National Forest System.

In summary, the final rule will enable the Forest Service to make better decisions about the National Forest System and guide Forest Service planning and management clearly and effectively well into the 21st Century. Grounded in law and experience, the final rule affirms sustainability as the overall goal for national forest and grassland management, requires greater cooperation and collaboration with the public and other private and public entities, and more effectively integrates science into Forest Service planning and management. At the same time, the rule also includes the essential features of National Forest System planning that Chief Gifford Pinchot established almost a century ago and that the Forest Service has used throughout the history of the agency. These features include detailed inventories, monitoring of forest conditions, determination of sustainable levels of uses, and exclusion of uses, where necessary, to protect watershed and other resources (1906 Use Book).

Response to General Comments

Many of the comments received did not address specific sections of the proposed rule, but were more general in nature. These comments and responses are summarized below.

Comment: Committee of Scientists Report. A common concern involved the incorporation of the Committee of Scientists' report findings into the proposed planning rule. Some people felt recommendations in the Committee of Scientists report should lay the groundwork for management and guide future management actions. Others, however, believed this report should be subject to peer review by other qualified science professionals. Additionally, some people proposed that the Committee of Scientists' report be open to public scrutiny, requiring public meetings and a public comment period for review of the report. Other respondents suggested that the proposed planning rule include the names and qualifications of the Committee of Scientists' members.

Response: The Committee of Scientists, established by the Secretary of Agriculture under the Federal Advisory Committee Act, represented a spectrum of disciplines and views related to planning for the National Forest System. While formal, scientific peer review of the recommendations of the Committee was not undertaken, the process used in the development of the Committee's report provided for external review and comment. In developing its recommendations, the Committee utilized a very open, deliberative process which included open public meetings, an internet web site accessible to the public which contained its working drafts and related papers, and public meetings. The names and qualifications of the members of the Committee are listed in the report and available on the Committee's web site (www.cof.orst.edu/org/scicomm).

Comment: National Forest Management Act requirements. Many reviewers said that the proposed rule did not clearly identify how it complied with NFMA requirements. These reviewers felt that the intent of NFMA can be realized without revising the current land and resource management planning process.

Response: The preamble of the proposed rule described how the planning rule complied with specific sections of NFMA and reasons for revising the existing planning regulations.

Comment: Need for revising the existing rule. According to several respondents, the Forest Service should demonstrate the need for revising the existing planning rule. In particular, some believed that the length of time the existing rule has been in effect is not justification for implementing a new rule. Others argued that the existing system already fulfills NFMA and NEPA requirements and that some individual forest plans are very effective, and there is no reason for changing the process. Several people argued that the proposed rule does not address deficiencies in the existing rule. The Forest Service should document the inadequacies inherent in the existing planning process. Some commenters asserted that the existing rule should be improved before a new planning rule is implemented.

Response: This comment has previously been addressed in the preamble of the proposed rule and in this final rule document.

Comment: Public trust and credibility. Many respondents expressed concerns regarding the purpose of the proposed planning rule. Some felt the primary objective of the planning process was to establish public trust and credibility. They believed that the trust in Forest Service structure and management was waning and recommended that the agency take steps to rectify this. In addition, the Forest Service should assume the leadership role in the effort to ensure healthy forests.

Response: The Department of Agriculture (Department) is concerned with the lack of trust expressed about the Forest Service by the respondents. The revised planning process is designed to encourage effective communication and cooperation among diverse national forest and grassland users. The Forest Service will continue to participate with others indeveloping management strategies to conserve healthy forests and grasslands.

Comment: Discretionary authority. Some reviewers were concerned that the proposed regulations would broaden the discretionary power of Forest Service officials. These individuals asserted that the current discretionary authority of the Forest Service has resulted in increased litigation. They were concerned that further increase in authority could result in additional appeals and lawsuits.

Response: The Department does not agree with the comment that increased discretion creates increased litigation. Increased discretionary authority may provide the needed flexibility to craft appropriate solutions to complex natural resource issues acceptable to a wide variety of interests. It has been the experience of the Forest Service and others that inflexible policies are often the genesis of misunderstandings and eventual litigation. The planning rule is intended to improve opportunities to collaborate with a wide variety of people and reach well-reasoned and sustainable solutions to natural resource issues.

Comment: Statutory authority. Many public comments focused on the statutory authority for the proposed planning rule stating that the proposed rule should both recognize and comply with existing laws. Some people felt that the proposed rule provided improved integration of environmental laws and regulations; while, others said that the proposed rule goes beyond legal limitations and that only Congress can make such changes in national policy.

Response: The Department agrees that the planning rule improves the integration of current laws and recognizes it as consistent with the laws that guide all Forest Service activities. A full discussion related to this concern is addressed in this preamble under the heading statutory authority.

Comment: Public Lands Planning and Management Improvement Act. Some reviewers noted that the Public Lands Planning and Management Improvement Act (PLPMIA) offered provisions for meeting human and wildlife needs. They felt that act should be used to help streamline the management process, resolve contradictory laws, and modernize the land management laws.

Response: The Congress is considering the proposed legislation, but it is not law and therefore does not apply. Moreover, the Department believes human and wildlife needs are adequately represented in the final planning rule, see sections 219.20 and 219.21, and the management process is streamlined.

Comment: Conflicts over values. In the words of one respondent, "Most of the crises that beset the Forest Service since the age of environmentalism have concerned conflicts over values, not individual land use decisions." Value conflicts can only be resolved through effective policymaking, this person contended, and the Forest Service's policymaking efforts are in need of improvement.

Response: The planning framework outlined in the regulation is intended to provide a flexible mechanism to identify and solve issues before they mature into intractable problems pitting people against one another, rather than seeking mutually beneficial results. There is no intention to diminish the importance of the values people possess with regard to the use and enjoyment of national forests and grasslands. Better policies are the result of people working together to solve common problems.

Comment: Analysis of prior appeals. Some respondents suggested that the Forest Service address prior appeals against Forest Service decisions as part of the proposed planning rule. They believed that interviews with people who filed appeals should be incorporated into the planning process.

Response: Appeals and the concerns of national forest and grassland users were considered in development of the planning rule. The team that developed the proposed regulation and response to public comment based their work on years of experience in addressing the concerns of interested citizens. The increased emphasis that the planning rule places on collaboration is a direct response to improve working relationships among interested citizens.

Comment: Vested water rights. Some respondents are concerned that discretionary authority granted to forest planners in the proposed planning rule may override states' water rights. They asserted that no law allows ecological needs to surpass vested state water rights.

Response: The planning regulation does not override existing water rights adjudication procedures.

Comment: Selling the national forests. One person suggested that the Forest Service sell some of the national forest land back to United States citizens in order to generate tax revenue.

Response: This rule addresses management of lands in public ownership. Planning conducted in accordance with this rule may address land ownership adjustment needs where that is an issue. It is beyond the authority of the Secretary of Agriculture to sell national forests and grasslands to generate tax revenue.

Comment: Civil rights analysis. One reviewer asked if the proposed rule would require a civil rights impact analysis, as required by Departmental Regulation 4300–4, "since the rule will affect various publics."

Response: A civil rights impact analysis has been prepared and is available upon request from the person listed at the beginning of this final rulemaking document under **FOR FURTHER INFORMATION CONTACT.** The analysis describes the increased opportunities many people will have to become engaged in National Forest System planning under the new rule. It concludes that "no adverse civil rights impacts are anticipated on the delivery of benefits or other program outcomes on an underrepresented population, to U.S. populations or communities, or employees of USDA on a national level."

Comment: General clarity. Many comments reflected a need to reevaluate the clarity of the language used in the proposed planning rule. Many contended the general comprehensibility of the language needed to be improved to allow the public to better understand the concepts of the rule. Many of the respondents felt that the document was too verbose and redundant to understand. Further, some people argued that the proposed rule was too complex for most citizens to comprehend. In addition, some contended that the format of the proposed rule inundated the reader with a multitude of long and tedious subdivisions, which made the document difficult to follow.

Response: The Department has made a genuine effort to simplify the language of the final rule. The length of the text has been reduced, and several technical terms (e.g. ecological integrity and watershed integrity) have been eliminated to improve readability. The text about sustainability has been rearranged to combine analysis requirements related to sustainability with other analysis requirements. In addition, the goals and principles are simplified in the final rule.

Comment: Discretionary versus compulsory direction. Many people indicated that the language of the proposed planning rule was too discretionary. Words like "should" and "may," many believed, should be replaced with more definitive wording such as "shall" or "must." These respondents asserted that the nebulous nature of the rule would weaken its enforceability. By contrast, others said that the proposed regulation had too many "must" and "shall" statements and would, therefore, be impossible to implement because of all the restrictions imposed.

Response: The Department has carefully considered which provisions of the final planning regulation should be discretionary versus compulsory direction and the use of this language should not be viewed as either increasing or decreasing the importance of the planning procedures in developing sound solutions to natural resource issues. The final rule does not contain any "shall" statements.

Section-by-Section Response to Public Comments

The majority of comments addressed specific sections of the proposed rule. These comments and responses are summarized below.

Purpose, Goals, and Principles

In the proposed rule this chapter is named "Purpose, Goals, and Principles." In the final rule, it is shortened to " Purpose and Principles." Revisions were made to clarify and simplify language in the final rule.

Proposed Section 219.1—Purpose. This section described the purpose of the proposed rule. The proposed rule guides planning efforts toward the overall goal of sustainability. Purposes are to: (1) Guide stewardship; (2) set forth a process for amending and revising plans and for monitoring plan implementation; and (3) guide selection and implementation of site-specific actions. The national forests were set aside and protected from exploitation to embrace, as a matter of national policy, a system of sustainable forest reserves to protect water resources and ensure a continuous supply of timber for benefit of the American public. The proposed rule incorporated language recommended by the Committee of Scientists (see Chapter 8, "Sustaining the People's Lands").

Comment: Ecological Sustainability and Compliance with the Multiple-Use Sustained-Yield Act of 1960 and the Organic Administration Act. Many respondents felt that the agency erred in placing ecological sustainability as the first priority. They felt that the agency was ignoring its legislative mandates for multiple-use and had slighted the importance of humans and their needs in the management of National Forest System lands.

According to some respondents, changing the emphasis of planning to ecological sustainability would virtually make it impossible to comply with the MUSYA. They were concerned that the MUSYA requirement, to ensure a continued supply of products and services in perpetuity, would be jeopardized. Additional public comments expressed concern that provisions of the Organic Administration Act of 1897 could not be achieved with ecological sustainability as the primary objective.

Response: The proposed rule's focus on sustaining ecosystems is fully compatible with the Forest Service's underlying statutes. In order to ensure that the multiple-uses can be sustained in perpetuity, decisions must be made with sustainability as the overall guiding principle. Ecological sustainability lays a necessary foundation for national forests and grasslands to contribute to the economic and social needs of citizens. Without first maintaining, and where appropriate restoring, ecologically sustainable systems the productivity of the land for various social and economic uses could be impaired, therefore, planning for multiple-use, sustained-yield management of national forest and grasslands must operate within a baseline level that ensures the sustainability of ecological systems. Although some respondents perceived a conflict between emphasis on sustainable ecosystems and legislative mandates, the Department does not believe this is true. Instead, the Department sees ecological sustainability not only as a complement to multiple-use, sustained-yield management, but also as a prerequisite for it.

It is the Department's view that the rule is consistent with the Forest Service's conservation and legislative mandates. Contrary to some comments received, the proposed rule did not change the overarching purpose for planning. Rather, it affirmed the direction in the MUSYA. As used in the final rule, sustainability embodies the congressional mandates of multiple-use and sustained-yield without impairing the productivity of the land. In the final rule, sustainability is described as comprising three intricately linked elements that integrate the ecological, social, and economic aspects of our world. It is virtually impossible to separate one element from the other.

For example, without a sound social and economic system in place, people are more likely to over-exploit the natural world to meet basic human needs. At the same time, ecological resources constitute the foundation upon which our ability to meet other needs ultimately rests. Ecological elements are the capital, the investment in our future. Sustainability provides for meeting needs of the present generation without compromising the ability of future generations to meet their needs. In response to public comment, language is added at the end of section 219.1 of the final rule to clarify the relationship among ecological, social, and economic sustainability.

Under the Organic Administration Act of 1897, the forest reserves were set aside and protected from exploitation, with the intention to embrace a system of sustainable forest reserves that would protect water resources and ensure a continuous supply of timber for the benefit of the American public. As the U.S. population grows and the environmental consequences of human activities are better understood, it is not only logical, but it is imperative that knowledge and skills are applied to ensure the sustainable, continuous use and enjoyment of our natural resource legacy as described in the Organic Administration Act.

Ecological sustainability has always been the linchpin of managing national forests and grasslands. The final rule provides for progressively improving the understanding of how to achieve sustainable use and enjoyment of the National Forest System through monitoring results and effective engagement of scientific knowledge and the skills and interests of citizens, elected officials, and others. The increased use of national forests and grasslands requires increased knowledge and understanding of sustainable multiple-uses. If the ecological basis of the national forests and grasslands is compromised in providing products, services uses, and values, then a "continuous supply of products and services" will not be achieved in "perpetuity" as required by MUSYA.

Proposed Section 219.2—Goals and principles for planning. This section of the proposed rule identified five major goals for land and resource management planning, with each goal having a set of supporting principles. In the final rule, this section has been renamed "Principles."

Comment: Quantifiable information. Many believed the proposed planning rule should include objective and quantifiable information. In particular, some respondents recommended that the proposed planning rule provide statistical data to support the need for the plan revisions. They felt that access to quantifiable information could allow the public to offer more informed comments. Others suggested that the proposed rule include measures to assess goal achievement in forest planning. One respondent contended that beauty and inspiration are too subjective to use as points of consideration in land resource and management planning.

Response: A premise of the final rule is science-based decisionmaking, including use of the best available information. Sections 219.5, 219.20, and 219.21 in the final rule describe appropriate assessments and analyses needed prior to proposing a site-specific action or a plan amendment or revision. The rule also stresses the development and implementation of monitoring strategies to use in evaluating plan implementation and achievement of sustainability (section 219.11). The development of both qualitative and quantitative information described in the planning rule will improve the overall understanding and sustainable use of the National Forest System.

Comment: Sampling interested parties to determine resource objectives. Developing, achieving, and evaluating planning goals and objectives elicited a number of comments. One recreational organization recommended that the Forest Service survey a random sample of parties interested in National Forest System lands when determining specific resource objectives. They suggested by using a random sampling scheme, the agency could assure that all interests have an opportunity to provide input in the planning process.

Response: The final rule does not require specific tools or analytical approaches to sampling user preferences. The information and analysis described in section 219.21 may be obtained through sampling in appropriate circumstances. The rule also provides opportunities for interested and affected people to participate in planning for the use and enjoyment of their national forests and grasslands. While sampling methods may prove useful for many tasks, the Department believes it is imperative that people participate with Forest Service personnel in planning.

Comment: Long-term planning. Several respondents suggested that the proposed planning rule emphasize long-term planning. These people felt that long-term forest health should take precedence over short-term economic gains by resource extraction companies.

Response: While the planning rule does not set forth specific short-term versus long-term standards, the planning rule is designed to ensure that short-term uses do not damage or otherwise harm the long-term sustainability of each national forest and grassland.

Comment: Ecological values. Some respondents believed that ecological values should be defined as intrinsic goals rather than constraints. The conservation of ecological values was important for many who recommended that the proposed planning rule be used as a guide in preserving national forests. They expressed concern that the increasing human population will ultimately encroach on the few natural places left. They asserted preservation of National Forest System lands to offset this loss is imperative.

Response: The final planning rule states that the first priority for stewardship of the national forests and grasslands is to maintain or restore ecological sustainability. If the preservation of a unit of land is necessary to ensure long-term sustainability, that decision would be made through the planning process in a plan amendment or revision receiving full public review and comment within the Forest Service NEPA procedures.

Comment: Balancing economic and social needs. Several people expressed the belief that balancing economic and social needs should be a priority in national forest planning. Specifically, one person suggested that balancing selective logging practices, road maintenance, and access to national forest lands is crucial for successful forest management. Others recommended that the proposed rule's effects on industries and communities be evaluated prior to implementation.

Response: Balancing the production of multiple values, uses, products, and services from each national forest and grassland is a continual process achieved through collaboration and planning. The planning rule is intended to enhance collaboration and the balancing of social and economic needs in a sustainable environment. A cost-benefit analysis was done for the planning rule and is available. Regulatory implications are discussed later in this preamble.

Comment: Restricting corporate industry. Some respondents felt that restricting corporate industry use of national forests and grasslands should be a priority in planning. Respondents contended that, relatively speaking, large corporations pose greater detrimental impacts to national forests than do recreational users. The Forest Service should focus on improving and maintaining forests, rather than, as one person commented, "catering to degrading commercial ventures." In contrast, others felt that the restoration of ecosystems as a guiding principle is not a valid, achievable planning goal.

Response: The Department believes that it is appropriate for both large corporations as well as small companies to have an active role in the management and stewardship of national forests and grasslands. In the planning rule, no group is provided an unfair advantage or disadvantage in securing use or access to natural resources.

Comment: Balancing the world's resource needs. Other respondents asserted that Forest Service's mission statement should include balancing the world's resource needs. "With both balance and agreement, the Forest Service can once again be the world's leader in land and natural resource management," they contended. Some citizens feared the scope of the proposed planning effort might make the United States dependent on other countries for raw materials. "Since we have some of the best environmental laws to deal with," they write, "it makes little sense globally to obtain raw materials from countries who do not have adequate restrictions."

Response: As described in the NFMA, the Forest Service * * * "has both a responsibility and an opportunity to be a leader in assuring that the Nation maintains a natural resource conservation posture that will meet the requirements of our people in perpetuity." Regarding the global nature of today's world, it is certainly appropriate to consider the resource needs, uses, and practices of our national trading partners and others. The planning rule sets the stage for the wise, sustained use of the national forests and grasslands, and provides a link to national level planning, though which national policy makers can consider methods to improve the production and use of renewable natural resources in the United States and elsewhere.

Comment: Limiting planning to smaller areas. Some people felt that forest plans should be directed toward unit-sized planning efforts. These respondents believed that keeping planning limited to smaller areas ensures greater understanding by both the public and forest managers.

Response: The planning regulations provide for adjusting the boundaries of planning based on the scope and scale of issues addressed. In many places, planning and involvement with the public will take place in areas smaller than a national forest or grassland. Only in the revision process is it required that the entire national forest or grassland be considered. Even in that circumstance, decisions may be made that apply only to geographic areas within or among administrative units.

Other changes. In the final rule, this section has been reorganized and restructured for clarity and readability. Goal statements have been removed from this section in the final rule to prevent confusion with the term "goal" used in other contexts. Much of the text in the proposed rule provided background information regarding the principles of planning. The final rule provides more of an outline format to specifically highlight six planning principles and their key characteristics.

Paragraph (a) of the proposed rule provided that "planning must be directed toward assuring the ecological sustainability of our watersheds, forests, and rangelands." The final rule has added language to maintain or restore the ecological sustainability of national forests and grasslands. This change is made to recognize the importance of "restoration" of national forest and grasslands.

Paragraph (a)(2) in the final rule provides that "scientifically based strategies for sustainability" benefit from independent scientific review. This change was made to this section from the proposed rule to acknowledge the importance of independent scientific review in this new planning structure.

The Framework for Planning

Proposed Section 219.3—Overview. This section of the proposed rule described the overall framework for planning, the levels of planning and decisionmaking, and the key elements of the planning framework.

Comment: Clarification of the planning framework. Many respondents felt that the planning framework needs more specific guidance and

requirements. Claiming that the framework will not assure consistency between different units of the National Forest System, some people recommended that the planning rule include uniform guidance applicable to each national forest and grassland. Other respondents asserted that the objectives of the framework are too vague and should include specific objectives for planning. Many people believed the planning rule inadequately addresses standards and guidelines that they think could result in a lack of agency accountability, inability to achieve planning goals, and inadequate protection of the environment. Some of these respondents suggested maintaining the minimum management requirements of the current rule. Others recommended including specific and enforceable standards and guidelines in the proposed planning rule, while some asked that these types of standards be established in individual national forest and grassland plans.

Response: The Department believes that less specific planning guidance is needed after almost two decades of experience implementing NFMA. The planning process included in the final rule is essentially unchanged from the proposed rule, and provides a flexible process that is responsive to issues associated with current conditions and experience with implementing the current plan. Standards required in all plans are addressed in section 219.7. Plan requirements for ecological sustainability are found in section 219.20(b).

Comment: Decisionmaking authority. Some respondents felt that the Forest Service is attempting to avoid its responsibility by emphasizing collaborative processes and recommended that the planning rule should further emphasize the agency's decisionmaking responsibility. Other respondents requested clarification on decisionmaking. They suggested that the planning rule describe national level planning processes as well as decisionmaking authority on multi-forest or regional projects. Other respondents expressed general concern regarding the implementation of the proposed rule and recommended making trial runs on a few forest plans before implementing the changes system-wide.

Response: It is the responsibility of the Forest Service to encourage involvement with the public in the management of the public's lands. The Forest Service is redeeming this responsibility by providing for early involvement and collaboration through the planning framework. Instead of working in an isolated environment, the agency will openly address the issues confronting the national forests and grasslands, enlisting the assistance of interested and affected parties through expanded public involvement and collaboration. The intent is to foster a good faith effort to reach resolution on agreed upon problems before final decisions are made, and to hopefully reduce the level of costly lawsuits. However, the definition of "responsible official" makes it clear that this individual and the Forest Service have the authority and responsibility to oversee the planning process and make decisions on proposed actions.

Linkage to the national strategic plan has been added or clarified in several places in the final rule, including section 219.3(b). Multiple-forest and regional decisions are also addressed in this section.

Comment: Local-level planning and decisionmaking. Several respondents felt that the planning rule should emphasize local-level planning and decisionmaking, while others believed the proposed rule places too much responsibility at the local level. Some of the people favored increased focus and responsibility at the local level contended that the proposed rule's provisions not only are costly and inefficient, but also allow senior Forest Service authorities to undermine local decisions and planning efforts. Such actions, they contended, will alienate the public. These respondents suggested that the final rule limit national and regional level planning and decisionmaking. Other people who support a local level focus believed that local Forest Service officials are more knowledgeable about their specific forest or grassland than national officials and therefore are able to make better planning decisions. These respondents recommended increasing the decisionmaking authority of local agency officials. In contrast to these views, some respondents believed the proposed rule would place excessive authority at the local level. These people primarily felt that either additional requirements or higher levels of oversight were necessary to ensure consistency in planning among national forests or grasslands. Several of these respondents recommended that the proposed rule provide specific rules and guidelines for Forest Supervisors, while others suggested that the proposed rule maintain requirements for regional guidance and oversight.

Response: Fundamental to this rule is the notion that there is a hierarchy of scale to be considered when addressing resource management issues, and that it is the nature of the issue that guides the selection of the appropriate scale and level of the organization to address it. By not tying decisionmaking authority to a specific organizational position, the Department is promoting flexibility to do what makes sense for the issues ripe for consideration. The National Forest or Grassland Supervisor is the person most familiar with the resources and publics interested in his or her forest or grassland, and often the most appropriate to make decisions affecting those lands.

The rule should not be interpreted as excluding higher-level officials from decisions made at the forest and grassland level. If an issue warrants higher-level study and decisionmaking, such tasks can be undertaken. Also, through the objection process (section 219.32) the higher-level officials actually join the problem-solving process before an administrative decision is adopted. Advisory committees (section 219.18) provide yet another source of input to local decisionmaking.

Comment: Adequacy of funding. Many respondents felt that the implementation of the proposed planning process will require significant additional resources. They asserted that funding, staffing, and equipment needs will make the proposed planning processes prohibitively expensive. Several respondents believed that the proposed rule would restrict needed planning proposals based on inadequate funding. "Plans should identify necessary actions even if adequate funding does not exist," wrote one organization. More specifically, other respondents focused more on funding for particular management actions. One such person suggested that the proposed rule address funding to mitigate potential damage from forest management activities.

Response: The Department believes that, rather than requiring significant additional resources, the planning framework, as adopted in the final rule, will put more resource earlier in the planning process and require less at the end of the process. This will shift the planning process from one of confrontation to collaboration. The scope of the planning effort will also be more focused on the issues selected for evaluation.

While funding of planning and projects remains an item under the prerogative of Congress, the Department hopes that Congress will support projects built using this collaborative process. In addition, the revised rule will promote a closer link to the budget process through requirements for ongoing consideration of budgetary information (section 219.30). By evaluating the alternatives at the current or likely budgets, while considering other spending levels, as appropriate, the analysis will be based on realistic expectations and be more useful as strategic documents.

Other changes. Paragraph (a) in the proposed rule included five premises of the planning framework. Premise (1) is found in sections 219.5 and 219.12 of the final rule. Premise (2) is included as 219.3(c) in the final rule. Premise (3) is included in section 219.30 "Plan documentation" of the final rule. Premise (4) is included as 219.3(b)(4) and 219.10 of the final rule. Premise (5) is a general description of the planning framework and included in sections 219.3–219.11 of the final rule.

Paragraph (b) in the proposed rule, described the levels at which planning may occur, and who may be the responsible official. In the final rule, paragraph (b) is restructured in outline form. Planning will be conducted at the appropriate level depending on the scope and scale of the issues. In addition, the final rule specifically recognizes the role of the Forest Service national strategic plan required under the Government Performance and Results Act of 1993 (GPRA). The GPRA directs government agencies to establish national long-term goals, outcome measures, and strategies. The final rule clarifies that these are to be considered in managing the National Forest System. In particular, it provides for the development of outcome measures to evaluate ecological, social, and economic impacts, accountability, and management performance. The development of outcome measures will be included in the Forest Service directives System.

Paragraph (c) in the proposed rule lists the key elements. The list in the final rule has been changed slightly to line up with the subsequent sections of the planning framework and use consistent terminology. Cooperatively developed landscape goals are no longer specifically listed, however, they are still included in section 219.12 and may be considered as issues (section 219.4). This change was made to clarify the key elements of planning.

Proposed Section 219.4—Topics of general interest or concern. This section of the proposed rule established a process for identifying, discussing, and, if appropriate, acting on topics of general interest or concern that might emerge from a variety of sources. The process for identifying these topics was to be used for both plan amendments and revisions as well as for site-specific plans. In the final rule, this section has been renamed "Identification and consideration of issues."

Comment: Identification of issues. Many respondents believed that the proposed rule should provide additional details about how issues will be identified. Specifically, some people felt that current Forest Service public involvement methods do not provide an accurate representation of the interested public. They recommended that the Forest Service conduct unbiased sampling to determine public opinion about forest plans.

Response: The proposed rule established a collaborative process that will be used in addition to current public involvement methods. This approach is retained in the final rule. This process will improve the identification of issues. Also, the flexibility in approaches is very important to the collaborative process. Sampling is addressed in section 219.1 of the preamble.

Comment: Evaluation of topics. Many respondents expressed concern about the evaluation of topics of concern. Most of these people felt that the proposed rule gives the responsible official too much discretion in considering whether action will be taken on these topics. Many of these respondents felt the discretion in the rule could allow responsible officials to ignore important concerns.

Response: The regulation actually increases the accountability of the responsible official for addressing issues that are "ripe" for resolution. As now, the decision to move an issue forward for resolution is an agency prerogative. Accountability is increased however through the more open and collaborative process for identifying issues.

Comment: Limiting discretion. Several people advocated limiting discretion and suggested a number of remedies to this perceived problem such as establishing requirements for reasonableness and timeliness in the evaluation of topics of general concern, creating guidelines for the consideration and documentation of topics of general concern and requiring that the responsible official's decisions on topics of concern should be subject to administrative appeal or judicial review.

Response: The Department does not agree. It is imperative that the responsible officials maintain sole responsibility to review the circumstances surrounding an issue before investing time and agency resources in addressing one or more aspects of the issue. Each day, each responsible official has a host of possible issues pressed forward. It is through experience and collaboration with others that the issues that should be addressed are addressed. As described in the planning rule, there are several ways that a host of people, including higher-level officials, can become engaged in the identification and potential resolution of issues important in the plan area.

Other changes. The most noticeable change in this section, as adopted in the final rule, is replacement of "topics of general interest or concern" with the term "issues." Although some members of the Committee of Scientists found "issues" to have a negative connotation, and to imply that some action must be taken, many found the terminology of the proposed rule to be vague and verbose. Therefore, the final rule refers to "issues." This is consistent with the current planning regulations and more familiar with the public and within the agency.

Editorial changes were made to the proposed rule, including changes in terminology, to remain consistent with other parts of the rule (for example, "ecological sustainability" and "range of expected variability"). The words "consistent" and "consistency" in the proposed rule are changed to avoid confusion with the use of that terminology in NFMA and section 219.10.

Proposed Section 219.5—Information development and interpretation. This section of the proposed rule described information needed to further consider a topic of general interest or concern. It provided direction on conducting broad-scale assessments and local analyses.

Comment: Discretion of responsible official. Some respondents felt that the discretionary authority given to the responsible official in the proposed rule may conflict with provisions for the use of scientific and collaborative input. These people recommended that the proposed rule limit the discretion of the responsible official in determining whether the available information is sufficient or additional data collection is needed.

Response: Implementation of the planning process of this rule promotes collaborative problem solving. The responsible official has access to a wide variety of information from staff specialists and a knowledgeable and often active national forest or grassland user community. A decision to initiate collection of additional data is a managerial choice that may be assisted by scientific review and science advisory boards, as appropriate. As many years of experience have

demonstrated for many issues, when authorities closely match responsibilities, the quality of decisions and overall public service improves.

Comment: Development of information. Some people recommended restricting large-scale planning to non-decisional, data collection efforts. Still others believed accurate data are essential for the Forest Service to assess the need for actions and to measure the effectiveness of its actions in planning. These people suggested that the proposed rule emphasized collecting and maintaining sufficient natural resource data. Some citizens asserted that the proposed rule should specify appropriate analysis tools and models to ensure consistency between national forests and grasslands.

Response: The Department agrees with the importance of applying the best available data, and has emphasized that need in the final rule. It encourages multi-scale assessments and analyses prior to proposing any actions. The final rule also promotes monitoring to obtain data, and scientific review of its use. In order to be able to respond promptly to scientific advances, the Department has avoided including specific analysis tools or models in a regulation. The Department believes that large-scale decisions may be necessary to respond to some issues; however, it does not expect every broad-scale assessment to lead to broad-scale decisions.

Comment: Public Involvement. Public involvement in information development and interpretation was a significant concern for many people. These people contended that the proposed rule's provisions on information development and interpretation do not provide sufficient opportunities for public input or review. Some of these people suggested that the proposed rule include provisions requiring collaboration in information development and interpretation, while others requested that the proposed rule comply with NEPA requirements. Another respondent believed that the final planning regulations should incorporate the guidelines for interdisciplinary planning teams from the 1982 planning regulations.

Response: The planning rule has several provisions for encouraging the public to participate in the identification and resolution of natural resource management issues. As described in sections 219.12 to 219.18, it is the intent of the rule that the Forest Service participate with others in building stewardship capacity—the ability to develop ideas, take action, and solve problems (section 219.2). The planning framework is characterized by an interdisciplinary collaborative approach (section 219.3). In addition, the NEPA process applied to planning must be interdisciplinary. The final rule also provides that each broad scale assessment should be designed and conducted with the assistance of scientists, resource professionals, government entities, and other individuals and organizations knowledgeable of the assessment area (section 219.5(a)(2)).

Comment: Interest group involvement. Some respondents expressed concerns regarding what groups will be involved in information development and interpretation. Some of these people felt that the Forest Service does not recognize or respect the knowledge and past stewardship of private property holders and lessees. These individuals recommended that the proposed rule emphasize the role of lessees and private property holders in information development and interpretation. Other respondents specifically suggested that the Forest Service engage environmental groups in conducting ecological assessments.

Response: As described in the planning rule, it is the intent of the Department and the Forest Service that a wide variety of people, including property holders and lessees and environmental groups engage in the consideration of their natural resources and in the stewardship of their national forests and grasslands (see sections 219.16 and 219.17). The final rule also provides that each broad scale assessment be designed and conducted with the assistance of scientists, resource professionals, government entities, and other individuals and organizations knowledgeable of the assessment area (section 219.5(a)(2)).

Comment: Consideration of activities outside of national forest boundaries. Believing that the failure to address national supply and demand trends could lead to an oversupply of specific resources, one respondent recommended that the proposed rule require the consideration of these trends in decisions specifically regarding grazing permits. Another person felt that consideration of activities outside National Forest System unit boundaries in planning could restrict resource extraction. This person suggested that the Forest Service be prohibited from restricting resource use on such a basis. Other respondents believed that the proposed rule fails to address the effects of agency planning on lands outside of National Forest System lands. These people recommended that the proposed rule should explicitly recognize these impacts.

Response: The planning process is designed to enable the Forest Service to address each of the above comments at the appropriate time and place. For example, if the supply and demand of a particular natural resource is relevant at a national scale, the Chief of the Forest Service, working with others, may address the concern. Likewise, if the supply of a local resource use is of concern to one or more communities, that may very well be an issue that is addressed in the revision or amendment to a plan. Planning is tailored to fit the needs of people in the use and enjoyment of their national forests and grasslands. Section 219.17(c) of the final rule was changed to include consideration of the effects of managing National Forest System lands on adjacent lands.

Comment: Use of broad-scale assessments. Many respondents expressed preferences about the use of broad-scale assessments in national forest planning. Some people opposed the use of broad-scale assessments, feeling that these efforts will be excessively expensive and that this expense will hinder the implementation of project proposals. Some respondents supported the use of broad-scale assessments in planning, and they believe private lands adjacent to national forests and grasslands should be included in such assessments. Focusing more on who should oversee the development of assessment processes, other respondents recommended that the final rule require the Forest Service to lead broad-scale assessments. These people felt that the proposed rule allows unacceptable influence by nongovernmental entities and that this could lead to decisions that are not in the best public interest.

Response: The amount and level of data collection and synthesis needed varies with the issue and the nature of the decision to be made. The responsible official is to determine if the information on hand is sufficient, or if additional information is desirable and can be obtained at a reasonable cost and in a timely manner. Where the issue is broad in scale, a broad-scale assessment is often needed. Where the issue is more limited in scale, local analyses are more appropriate. The final planning rule provides a flexible process that yields the data appropriate to address an issue, rather than mandating one approach. Information and data may be solicited and accepted from a variety of sources, including broad-scale assessments prepared or led by others. Managers must use their professional judgment to gauge the usefulness, reliability, and value of the information received.

Comment: Broad-scale assessments and NEPA public involvement requirements. Some respondents' comments focused on the proposed rule's relationship with National Environmental Policy Act (NEPA) public input requirements. These respondents felt that the provisions of the proposed rule allow the development of large-scale or national planning parameters outside the scope of public scrutiny. These people suggested that broad-scale assessments should not be used in place of the NEPA scoping process.

Response: Broad-scale assessments do not constitute a decision point—they are a source of data and information that may be used in later decisionmaking by the agency or others. The preparation of broad-scale assessments is intended to be an open and collaborative process, one that encourages participation by interested and affected parties. Involvement in broad-scale assessments in no way supplants or eliminates the requirement for scoping under NEPA or other public involvement in other aspects of the planning framework. The text of the regulation in section 219.6, Proposed actions, emphasizes that NEPA requirements must be met for every proposed action, and activities associated with broad-scale assessments are intended to complement, rather than replace the scoping process of NEPA for subsequent decisionmaking.

Comment: Adequacy of data in broad-scale assessments. Many respondents expressed concern regarding the adequacy of data used in broad-scale assessments. Some of these people felt that the proposed rule would allow the use of inadequate or out-dated data. According to one person, the use of this data "leads to erroneous conclusions; these erroneous conclusions lead to poorly thought-out recommendations." Other respondents asserted that the proposed rule weakens existing requirements for the use of current data. One respondent specifically requested that the agency seek additional funds to perform broad-scale assessments to avoid impacting Forest Service research station budgets.

Response: The planning rule has several provisions for the inclusion of the best available science in all activities associated with planning as described in sections 219.22 to 219.25. Through science advisory boards and the use of science consistency evaluations, the best available science is sought for each key step in the planning process.

Comment: Local analyses. A few respondents suggested that the proposed rule emphasize local analyses, while others requested that the rule include clarification on what local analyses entail. One person, claiming that the Forest Service lacks the information necessary to make informed planning decisions, recommended that the proposed rule require landscape assessments be conducted on all national forests and grasslands.

Response: The planning process is designed to ensure that the appropriate information is gathered and evaluated before decisions are made. The extensive collaboration among interested and affected people as well as the increased involvement of science in the planning process are intended to highlight information needs and ensure appropriate consideration of all elements affecting sustainable use of national forests and grasslands. The rule encourages the use of local analyses as a basis for proposals at a comparable scale.

Comment: Terminology to describe spatial scales. One respondent questioned the use of "broad" and "local" to describe the scale of analysis in the proposed planning regulations. "Coarse" and "fine filters" are the technical terms most often used in Forest Service management plans and this person felt these widely used and clearly defined terms should replace "broad" and "local" in the final rule.

Response: Even though the terms "coarse" and "fine" filters are used frequently among some natural resource professionals, they are not identical to scale descriptors. We do refer to these terms in our response to comments for section 219.20. We believe that the use of the terms "broad" and "local" in the final rule describe the extent of assessments and analyses to a larger number of national forest and grassland users.

Comment: Scope of spatial and temporal scales. Several respondents supported the collection and analysis of ecological data on a variety of spatial and temporal scales. One respondent suggested that the final rule expand the scale of analysis to include cumulative effects of global magnitude. Conversely, some individuals questioned the use of a variety of spatial and temporal scales. Such a mandate requires funding and staffing beyond the means of the current Forest Service structure, according to these respondents. One citizen questioned the utility of using varying scales, asserting that such a hierarchical approach would lead to specific project plans containing forgiving, default language that lacks serious standards and thresholds.

Response: The variable scale planning process envisioned by the planning rule is intended to enable planners, managers, and the public to identify and act upon important issues at the appropriate scale for their resolution. Through the identification of issues that may cross many political boundaries, interested and affected people can work together to reach common solutions among many landowners and natural resource users. Cumulative impacts will also be addressed through agency NEPA procedures. Appropriate analyses and monitoring of results are used to ensure that the cumulative effects of small actions do not result in unwanted or unanticipated impacts. The responsible official has the authority to determine the appropriate scope and scale of analysis and data collection. In making this determination, the responsible official appropriately applies collaborative processes and uses the best available science.

Other changes. The proposed rule stated that the Regional Forester is responsible for National Forest System participation in broad-scale assessments. The final rule requires Station Directors and Regional Foresters to have joint responsibility for Forest Service participation in broad-scale assessments. It no longer addresses Forest Service participation in broad-scale assessments led by others. The Department believes it is not necessary to address the possible actions of others in this rule.

The requirement to use the best available scientific information and analysis is moved to sections 219.22 and 219.23 in the final rule. Examples of possible uses of assessment information in the proposed rule are generalized to "other purposes" in the final rule, and the language made consistent with the description of uses of local analysis. The final rule clarifies that assessments be used to evaluate the factors that contribute to the conditions and trends observed and is important in gaining understanding of issues.

The proposed rule stated that the purpose of local analyses was to provide information to aid in the identification of possible actions or projects to achieve desired conditions. The final rule expands the use of local analyses so that an analysis could be tailored to the scope of issues rather than potential actions. Similarly, the final rule provides for the use of social or economic analysis units for local analyses if warranted by the scope and context of the issues under consideration.

The components of both broad-scale assessments and local analyses were described as mandatory in the proposed rule. The amount and level of data

collection and synthesis needed varied with the issue and the nature of the decision to be made. The responsible official was to determine if the information on hand was sufficient, or if additional information was desirable and could be obtained at a reasonable cost and in a timely manner. Where the issue was broad in scale, a broad-scale assessment was often needed. Where the issue was more limited in scale, local analyses were more appropriate. The final rule provides for a flexible process that yields the data appropriate to address an issue, eliminating unnecessary analysis requirements. Information and data can be solicited and accepted from a variety of sources, including broad-scale assessments prepared or led by others. Managers must use their professional judgment to gauge the usefulness, reliability, and value of the information received.

Proposed Section 219.6—Proposed actions. This section identifies the point at which a responsible official initiates a decisionmaking process to resolve an issue, based on the information that has been developed and interpreted. No public concerns explicitly related to this section were identified in the analysis of public comment. Paragraph (b) was redrafted in the final rule to make it clear that public involvement and collaborative activities, related to issue identification and analyses of information, can be used as part of the scoping process required in the Forest Service NEPA procedures.

Proposed Section 219.7—Plan decisions that guide future actions. This section of the proposed rule described categories of decisions in land and resource management plans that would guide future agency actions. The title was changed in the final rule to "Plan decisions."

Comment: Consistency of plan decisions among plan areas. Some people question how the Forest Service will maintain consistency between national forests if regional guides are eliminated as indicated in the proposed rule

Response: The proposed rule allowed the scope of decisions to be tailored to the scope of the issues relevant to the plan area. Decisions may be made simultaneously for multiple administrative units, in a manner similar to what has occurred with regional guide amendments under the current rule. Section 219.3 of the final rule authorizes and encourages joint planning on multiple administrative units. In addition, the objection process (section 219.32), the addition of science consistency evaluations (section 219.24), and the requirement to incorporate regional guide direction into agency procedures or plan decisions (section 219.35) ensure consistency among national forests and grasslands.

Comment: Desired conditions. Many people commented on the proposed planning rule's emphasis on desired conditions. Some contended that the emphasis on desired conditions was an improvement over the Forest Service's perceived current focus on products and services. One respondent recommended that specific requirements for detailed descriptions of desired future conditions be included in plans. Some respondents believed that the proposed rule did not clearly define how "desired future conditions" would be developed.

Response: The Department agrees that emphasis on the desired conditions, rather than an estimate of what may or may not be produced from a unit of land, provides a more meaningful basis for people to discuss suitable and unsuitable uses of specific areas within national forests and grasslands. The planning rule uses the term "desired condition" rather than "desired future condition" to stress the point that there are many areas of national forests and grasslands that are now in a "desired condition" and that use of the term "future" was not necessary. In addition, the term "goal" was removed as a planning decision. A clear explanation of a desired condition for all or a part of a plan area included statements that describe the conditions sought or the "goals" of the area. Therefore, it is not necessary to have a category of plan decisions that are called "goals." The Department believes that the responsible official should evaluate and address conditions relevant to the issues and the scope of the decision being made, and does not feel it is appropriate to include in the rule more specific requirements for how to develop desired conditions.

Comment: Standards and guidelines. Some respondents asserted that the existing rule is unclear about the difference between standards and guidelines and that this has "caused a lot of confusion, false expectations, and conflict." These people recommended clarifying the difference between guidelines and standards in the proposed rule. Others believed that the proposed planning regulations should establish enforceable criteria for the development of objectives, standards, and guidelines in forest planning rather than relegating such criteria to the Forest Service Manual.

Response: This concern is addressed in the final rule by modifying the definition for standards (section 219.7) and by removing the term "guidelines." This was done because the use of both terms, standards and guidelines, was confusing. In the proposed rule, the mandatory or discretionary nature of a provision was contained in the description of that provision, not by whether it was labeled a standard or a guideline. In the final rule, a provision that is labeled as a standard in a plan can be either mandatory or discretionary depending upon the language of the standard and the scope of its requirements.

Comment: Range of management alternatives. Of those respondents who address requirements for forest plans in the proposed rule, many felt that "consideration of a full range of management alternatives" will "allow planners to identify important management options, thresholds, and trade-offs." These people suggested the proposed rule include provisions requiring the Forest Service to develop a full range of management alternatives in its forest plans. One organization contended that the proposed planning regulations should retain programmatic consultation as a means to challenge land and resource management plans.

Response: The Department believes that the collaboration emphasized by this rule will lead to a thorough examination of the options and tradeoffs relevant to the issues that have been identified. A full range of management alternatives that meets the purpose and need for changes in the proposed plan is required in accordance with Forest Service NEPA procedures. Neither the proposed nor final rule directly addressed Endangered Species Act consultation procedures, which are described in 50 CFR part 402. The final rule does require the incorporation of non-discretionary terms of biological opinions into plans (section 219.20(b)(3)).

Comment: Preservation of ecological diversity. Several respondents cited the current rule's requirements for the prevention of "large-scale conversions of national forest lands to a single-tree species" as an example of the imperative language they would like to see retained in the final rule.

Response: The final rule provides for ecological diversity in section 219.20, wherein plan decisions must provide for ecosystem composition and structure similar to that which would be expected under natural disturbance regimes. The Department believes that large-scale type conversions would not meet this requirement and that more imperative language is not necessary.

Comment: Preservation of scenic beauty. One person requested that the proposed rule require specific guidelines for the preservation of scenic beauty. Asserting that one of the primary values of national forests mentioned by the public is scenic beauty, this respondent feels the Forest Service should address this concern in the final rule.

Response; The final rule requires that standards be developed for each plan that includes methods of achieving aesthetic objectives.

Comment: Watershed restoration. Several individuals felt the proposed rule needed to include specific guidelines for restoring and protecting water resources. Some suggested that the criteria for watershed restoration and protection be expanded. Several individuals believed the proper functioning of all the physical components of watersheds is an essential prerequisite to attaining ecological sustainability.

Response: The Department believes that it has given high priority to watershed restoration by including aquatic and riparian systems as a component of ecological sustainability (section 219.20(a)(1)(i)(B)), and focusing on ecological sustainability. In addition, watershed condition is one of the factors in section 219.28 used for the identification of lands were timber may not be harvested.

Comment: Restorative employment. One individual believed that the Forest Service should shift emphasis from fostering an extractive economy to championing restorative employment on national forests.

Response: This rule establishes ecological sustainability as the first priority for stewardship of the national forests and grasslands (section 219.19). It also requires the Forest Service to consider opportunities to provide social and economic benefits to communities through natural resource restoration strategies (section 219.21).

Comment: Invasive species. Believing that invasive species disrupt expected ecosystem functions, several citizens felt that the failure to sufficiently address this concern was a major flaw in the proposed rule. One respondent asserted that roads are the major vectors for the spread of noxious weeds throughout national forests. Road construction and off-road vehicle use need to be restricted, this individual asserted, if the spread of noxious weeds is to be slowed. Conversely, another individual believed the proposed planning regulations should qualify the mandate to control the spread of non-native species. Although this person stated that the Forest Service should not knowingly spread invasive species, this individual believed that there are situations where these processes occur naturally and therefore it would be "extremely expensive if not impossible for the agency to prevent the phenomena." Another respondent requested that the proposed planning regulations address the ecological and human health impacts of chemical applications to control invasive species.

Response: The final rule includes invasive or noxious plant or animal species as factors to consider in evaluating and providing for ecosystem diversity (section 219.20). Where such factors are contributing to loss of ecological sustainability, the Department expects invasive species to be an issue that is sufficiently addressed. Use of chemicals or other kinds of treatments would not normally be determined as part of a plan decision, as described by this rule. Separate national road management and roadless area policy initiatives are addressing road construction and management. Off-road vehicle use would be addressed through the planning process at a local level.

Comment: Fire management strategies. Some respondents felt that the Forest Service should suppress fires. Allowing forests to burn was seen as a waste of resources to these people. Others asserted that the Forest Service should allow fires to burn, proposing that restoring fire disturbance regimes will, in turn, help restore ecological sustainability. One respondent questioned how the Forest Service would prescribe fire to restore ecosystems while maintaining the air resource value of visibility. This individual felt that the proposed planning regulations should clarify how this conflict will be resolved.

Response: The Department does not believe that this rule is the appropriate place to resolve questions of fire management policy. However, the planning framework provided by this rule will facilitate resolving them at the appropriate scale. Fire may be an issue handled at the national or regional scale. For example, the Forest Service has recently developed new information about the risk of catastrophic fires that may be useful for planning at a national or regional level. Planning could also happen at the forest plan or landscape level if scientific information or a local community suggested that fire was an issue that should be addressed through a specific project or series of projects and the responsible official determined that the issue should be considered and sufficient information existed to address it. The collaborative and flexible planning process outlined in this final rule is fully consistent with ongoing efforts at the Forest Service to address fire risks to communities and the environment.

Comment: Wildlife on grazing allotments. Believing that hunting has greater economic potential than that of grazing, another person suggested that game species be given priority over cattle in management area allocations. Elk and bison are not only endemic, but they would also provide hunting revenues according to this individual.

Response: The Department does not believe that this rule is the appropriate place to resolve questions of livestock and big game conflicts. However, the planning framework provided by this rule will facilitate resolving conflicts at the appropriate scale.

Other changes. The introductory paragraph in the final rule differs in two ways from the proposed rule. The paragraph clarifies that decisions may apply to all or parts of a plan area and must reflect the ongoing and anticipated actions of landowners adjacent and within national forest and grassland boundaries. It acknowledges the possibility that plan decisions may commit resources to site-specific uses in some cases.

The proposed rule described four categories of decisions. The final rule lists five and shortens the descriptions of each. Standards are separated from objectives because these are considered to be different types of decisions. Objectives describe intended results over a projected period of time. Standards describe the limitations necessary to achieve objectives. Standards are adopted, when needed, to achieve objectives and desired conditions.

In paragraph (c) of the final rule, standards have been defined more specifically than in the proposed rule to emphasize that they are requirements, rather than statements of intent, and that they apply to land uses and management actions rather than outcomes. The proposed rule included three standards required by NFMA. The final rule adds a fourth general category of standards that must be included to ensure achievement of sustained multiple-use of national forests and grasslands.

Paragraph (d) in the final rule was paragraph (c) in the proposed rule and addresses suitable land uses. Livestock grazing is added to the list of suitable land uses within the National Forest System based on comments received for section 219.26. Paragraph (e) in the final rule was paragraph (d) in the proposed rule. This section requires an identifiable monitoring and evaluation strategy that is required by each plan in section 219.11.

Proposed Section 219.8—Amendment. This section of the proposed rule addressed amendments to plans as an addition to or the modification or deletion of one or more of the decisions listed in section 219.7. An amendment to a plan was defined as a plan decision. It also addressed the process through which amendments must be made. There were no additional requirements beyond those presented in the rest of the planning framework and Forest Service NEPA procedures.

Comment: Timeframes. Many respondents expressed concerns regarding the time period of Forest Service planning efforts. Some of these people felt that the proposed rule's provisions allow for various parties to delay amendment and revision processes. Some of these respondents recommended that the proposed rule include specific time limitations on revisions and amendments, while one person suggested that the proposed rule include provisions allowing ongoing activities to continue during plan amendments. Some believed the proposed planning regulations should require consideration of impacts to the entire planning area during amendment, revision, and objection procedures.

Response: The Department envisions that proposed amendments and revisions be completed in a timely manner considering the complexity of the issues and public interest in pending proposals. Ongoing activities may continue while an existing plan is being amended or revised (40 CFR 1506.1(c)). Impacts must be considered in accordance with NEPA procedures.

Comment: Significant plan amendments. One person felt that the proposed rule circumvents the criteria for determining "significant amendments" described in the NFMA. In the proposed and final rule, a proposed plan amendment that may create significant environmental impact is deemed to be a significant amendment as described in NFMA. This person suggested that the proposed rule does not comply with the NFMA requirements in that a plan amendment that may create large social or economic effects should require a significant plan amendment. However, a plan amendment that would create only social or economic effects would not necessarily require preparation of an environmental impact statement. A change in the projected level of timber production was cited as an example of such a situation.

Response: The Department believes that any plan amendment that may create significant environmental effects should be considered as a significant amendment as described in the NFMA. It is unreasonable to conclude that a plan amendment may create only social or economic effects apart from physical or biological effects. The proposed amendment that may create significant environmental effects would require preparation of an environmental impact statement and a 90-day public review period for the draft environmental impact statement. Such an amendment would be a significant amendment to a plan.

Comment: Provisions related to amendments and revisions need additional requirements. A few people recommended the proposed rule include specific criteria for initiating amendments and revisions. Another respondent recommended that the proposed rule include specific provisions for the review of environmental impact statements generated by other federal agencies for actions impacting national forest plans.

Response: The Department expects that amendments will occur frequently in response to new information and newly identified issues. If conditions have changed significantly throughout the plan area, the responsible official may revise the plan. In the final rule, the decision to propose an amendment or a revision, if under the legal time limit, remains discretionary, as in both the current and proposed rules. This enables the responsible official to consider resource and administrative factors, and other applicable information prior to proposing to amend a plan. While not specifically mentioned in the rule, the Department expects the Forest Service to consider environmental impact statements prepared by other agencies as potential sources of issues to be addressed.

Other changes. The final rule references other applicable sections of the rule for additional requirements to consider in making an amendment. The final rule changes the focus of paragraph (b) from addressing "Plan amendments in conjunction with site-specific decisions" to "Environmental review of a proposed plan amendment."

Proposed Section 219.9—Revision. This section of the proposed rule described the process to be used periodically to review the plan. Paragraph (a) of this section of the rule describes revision as a process that is required in accordance with 16 U.S.C. 1604(f)(5).

Comment: Adaptability. Contending that the current planning process is so slow that it produces obsolete plans, some respondents supported the proposed rule's emphasis on adaptability. One person even asserted that, given ongoing updates, the requirement for revisions every fifteen years is unnecessary and should be eliminated.

Response: The fifteen-year timeframe for revisions is a statutory requirement. The final rule has been changed, however, so that it does not incorporate a specific timeframe. Rather, it allows the timeframe to be governed by applicable law. Under the rule, the scope of revision is not open-ended, but focuses on the identified issues. If there are few issues, the process should be focused and simplified accordingly.

Comment: Relationship to the proposed Roadless Area Conservation Rule. Some individuals explicitly requested that the Forest Service clarify the relationship between the proposed Roadless Area Conservation Rule (proposed roadless rule) and the planning rule and how the planning rule will account for the proposed roadless rule through the planning process. In addition, some respondents suggested that the local planning process is better suited to determine future management direction than national rulemaking for roadless areas, particularly for those roadless areas not yet identified.

Response: The final rule clarifies the relationship of the planning rule with the proposed Roadless Area Conservation Rule (proposed roadless rule) described in Forest Service Roadless Area Conservation, Draft Environmental Impact Statement, Volume 2, dated May, 2000 and 65 FR 30276, May 10, 2000. The terms "inventoried roadless areas" and "unroaded areas" are described in the planning rule to clarify the relationship of the final planning rule to the proposed roadless rule and the Forest Service's recently proposed road management policy. The proposed road management policy describes analysis methods and procedures that would complement the planning-related activities of national forests and grasslands. The proposed rule regarding roadless areas would prohibit road construction and reconstruction in inventoried roadless areas. It would also require land managers to consider certain roadless area characteristics during plan revision and to then decide in the context of overall multiple-use objectives whether additional protections should be afforded inventoried roadless areas or other unroaded areas. Similarly, the proposed planning rule would require the responsible official to consider designating roadless areas during plan revision along with any needed plan decisions related to such areas. The final planning rule clarifies that analyses and decisions regarding inventoried roadless areas and other unroaded areas, other than the national prohibitions that may be established in the final Roadless Area Conservation Rule, will be made through the planning process articulated in this final rule. Under this final rule, the responsible official is required to evaluate inventoried roadless areas and unroaded areas and identify areas that warrant protection and the level of protection to be afforded.

Public comments suggested, and the Department agrees, that the procedures described in the proposed roadless rule were very similar to those outlined in the proposed planning rule. Moreover, comments suggested that appropriate roadless area protections could be best considered using the explicit collaboration, science, sustainability, and planning requirements of the planning rule.

The Department has determined that the review of the roadless characteristics contemplated by the proposed roadless rule is an explicit function of land management planning and should be addressed through this rule. Moreover, most of the roadless area characteristics identified in section 294.13 of the proposed roadless rule are characteristics otherwise required to be analyzed during plan revision or at other times as deemed appropriate by the responsible official. In the final planning rule, the requirements for identifying roadless areas and additional roadless area protections are an explicit part of the plan revision process as described in section 219.9(b)(8). The analysis and treatment of characteristics of roadless areas as identified in the proposed roadless rule are listed below as they compare to the requirements of the final planning rule.

Proposed roadless rule	Final planning rule
294.13(a) At the time of plan revision, the quality and importance of nine characteristics of inventoried roadless areas and unroaded areas must be evaluated.	Section 219.9(b)(8) requires the responsible official to consider inventoried roadless areas and unroaded areas in all plan revisions and at other times as appropriate through the criteria in section 219.20(a) and 219.21(a). Those sections require development and analysis of information at a variety of spatial and temporal scales.
294.13(a)(1) Soil, water, and air; and 294.13(a)(2) Sources of public drinking water	219.20(a)(1)(i)(B) Water resources: the diversity, abundance, and distribution of aquatic and riparian systems including streams, stream banks, coastal waters, estuaries, groundwater, lakes, wetlands, shorelines, riparian areas, and floodplains; stream channel morphology and condition, and flow regimes. 219.20(a)(1)(i)(C) Soil resources: soil productivity; physical, chemical, and biological properties; soil loss; and compaction. 219.20(a)(1)(i)(D) Air resources: air quality, visibility, and other air resource values. 219.20(a)(2)(i)(F) An evaluation of the effects of air quality on ecological systems including water. 219.20(a)(2)(i)(G) An estimation of current and foreseeable future Forest Service consumptive and non-consumptive water uses and the quantity and quality of water needed to support those uses and contribute to ecological sustainability.
294.13(a)(3) Diversity of plant and animal communities.	219.20(a)(2)(ii) Evaluations of species diversity must include, as appropriate, assessments of the risks to species viability and the identification of ecological conditions needed to maintain species viability over time. 219.36 Ecological conditions: Components of the biological and physical environment that can affect the diversity of plant and animal communities, including species viability, and the productive capacity of ecological systems. These could include the abundance and distribution of aquatic and terrestrial habitats, roads and other structural developments, human uses, and invasive and exotic species.
294.13(a)(4) Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land.	219.20(a)(2)(ii)(A) The viability of each species listed under the Endangered Species Act as threatened, endangered, candidate, and proposed species must be assessed. Individual species assessments must be used for these species. 219.20(a)(2)(ii)(B) For all other species, including other species-at-risk and those species for which there is little information, a variety of approaches may be used, including individual species assessments and assessments of focal species or other indicators used as surrogates in the evaluation of ecological conditions needed to maintain species viability. 219.36 Species-at-risk: Federally listed endangered, threatened, candidate, and proposed species and other species for which loss of viability, including reduction in distribution or abundance, is a concern within the plan area. Other species-at-risk may include sensitive species and state listed species. A species-at-risk also may be selected as a focal species.
294.13(a)(5) Primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation.	Section 219.27(c) The consideration of recreation-related uses of land is addressed in the planning framework and within administratively designated areas that may include inventoried roadless areas and unroaded areas as well as motorized and non-motorized public use areas.
294.13(a)(6) Reference landscapes	219.20(a)(2)(i)(H) An identification of reference landscapes to provide for evaluation of the effects of actions.
294.13(a)(7) Landscape character and scenic integrity.	The consideration of landscapes and scenic integrity is within the development of landscape goals (section 219.12(b)) and consideration of issues.
294.13(a)(8) Traditional cultural properties and sacred sites.	219.21(a) For plan revisions, and to the extent the responsible official considers to be appropriate for plan amendments or site-specific decisions, the responsible official must develop or supplement the information and analyses related to the following: 219.21(a)(1) Describe and analyze, as appropriate. 219.21(a)(1)(i) Demographic trends; * * * cultural and American Indian tribe land settlement patterns; social and cultural history; * * * and other appropriate social and cultural information.
294.13(a)(9) Other locally identified unique characteristics.	219.5 The responsible official, in his or her discretion, may choose the methods and determine the scope of information development and interpretation for an issue under consideration. A broad-scale assessment or a local analysis may be developed or supplemented if appropriate to the scope and scale of an issue. 219.5(b) Local analyses. Local analyses provide ecological, social, or economic information as deemed appropriate by the responsible official. Local analyses may cover watersheds, ecological units, and social and economic units, and may tier to or provide information to update a broad-scale assessment. Local analyses should provide the following, as appropriate. 219.5(b)(6) Recommendations for proposals (§ 219.6(a)) or identification of other issues (§ 219.4).

Other changes. The final rule clarifies that the revision process is completed when the responsible official signs a record of decision for a plan revision. Language to this effect was in paragraph (a) of the proposed rule and is found in the final rule in paragraph (e). Paragraph (b) lists steps to be taken to initiate the revision process. A number of clarifying changes were made in these steps. In paragraph (b)(2), issues were added to the list of information sources to be summarized. Paragraph (b)(2) in the proposed rule was separated into two parts, (b)(3) and (b)(4). Between them, they make it clear that the evaluations of sustainability presented in sections 219.20 and 219.21 must be performed on the current plan prior to revision, in order to assess the plan's contribution to sustainability.

Paragraph (b)(3) of the proposed rule is renumbered (b)(5) in the final rule. Based on response to public comments the text in (b)(3) of the proposed rule is moved to (b)(8) and revised to include the identification and evaluation of inventoried roadless areas and unroaded areas. A sentence requiring the determination of warranted protections of these areas during the revision process or at other appropriate times is added to this section to ensure that plan decisions address these areas. Paragraph (b)(4) of the proposed rule is renumbered (b)(6) in the final rule and the term "priority" is deleted to avoid the appearance of decisions being made at this early stage of the process. Regarding paragraph (b)(9) in the final rule, outcomes are to be projected for the 15-year the life of the plan, rather than 10 years, which is consistent with section 219.30.

Paragraphs (c) and (d) in the proposed rule are reorganized. As mentioned above, the meaning of revision is clarified. The only substantive change is the removal of specific requirements for the content of the Notice of Intent to revise plan decisions, and the requirement for a 45-day review period that were included in the proposed rule, paragraph (d). Because paragraph (e) in the final rule requires each plan revision to have an environmental impact statement that in turn requires an accompanying Notice of Intent, the content of the Notice of Intent would be governed by Forest Service NEPA procedures.

Paragraph (e) of the final rule was changed to be consistent with the intent of section 219.32, which prohibits the responsible official from approving a plan amendment until the conclusion of the objection process.

Paragraph (h) of the proposed rule required establishment of a revision schedule. This requirement is moved to section 219.35, as part of the transition process.

Proposed Section 219.10—Site-specific decisions and authorized uses of land. This section of the proposed rule described the basic steps and requirements that apply to planning for site-specific decisions. It also addressed the statutory requirement between permits, contracts, and other instruments be considered with the applicable land and resource management plan. In the final rule, this section has been renamed "Site-specific decisions."

Comment: Site-specific amendments. Many respondents felt that the proposed planning rule should clarify how amendments to approve site-specific decisions will apply to national forest and grassland plans. They asserted that inconsistencies between site-specific plans and national forest plans be clarified in the final rule. One organization recommended that the Forest Service develop and include specific criteria and guidelines pursuant to determining the appropriate action regarding site-specific decisions.

Response: Detailed guidance for addressing potential inconsistencies with the plan has been provided by Forest Service directives. The Department intends to streamline the planning process, and therefore does not believe there is a need to add more detailed information to the final planning regulation to address this concern.

Comment: Appropriateness of including site-specific decisions. Some respondents believed that the proposed planning rule should emphasize site-specific planning actions on national forests. Specifically, unique ecosystems contained within broad-scale analysis areas, they contended, needed to be addressed independently in forest planning efforts. Conversely, others believed the proposed planning rule should not address project-level planning. "Requiring that project planning follow the same process as set forth for forest plans," one person asserted, "will essentially mean an end to project planning, as it will be entirely too cumbersome, time-consuming, and expensive."

Response: The Department believes that joining site-specific planning and forest planning into one shared planning framework will result in better project integration and an increased measure of efficiency, both in terms of the planning process and in achieving resource objectives. One framework will make it easier for the public to understand and participate in Forest Service planning at all levels. Sections of the framework applicable to site-specific planning have been specifically identified in the final rule to ensure that project planning will be conducted efficiently. The Department believes that this approach will encourage appropriate treatment of unique ecosystems through planning at an appropriate scale.

Comment: Exemptions. Some respondents felt that the proposed planning rule should provide specific criteria for granting exemptions to forest plans. An appeals process for exemption decisions, they asserted, should also be included. The proposed planning rule should include reasonable and negotiated schedules for compliance for non-exempted authorized uses, some contended.

Response: The NFMA requires that authorized uses be consistent with applicable plans. It provides for amendment of plans, but not for exemptions from them. The proposed rule provided for an exemption process. The Department now believes that the same purposes can be achieved through an amendment or revision process that addresses issues related to ongoing authorized uses.

Other changes. Paragraph (a) of the proposed rule required the application of the planning requirements of the entire subpart to site-specific decisions. The final rule clarifies which sections are relevant to project decisions. Paragraph (a) of the proposed rule describes the options available to a responsible official if a proposed site-specific decision is not consistent with an applicable land and resource management plan. Similar guidance is currently found in the Forest Service directive system and is not included in the final rule.

Paragraph (b) of the proposed rule contained extensive directions on what to do with existing permits, contracts and other instruments authorizing the use and occupancy of National Forest System lands when a plan is amended or revised, including an exemption process. Many people are distrustful of exemptions from plan decisions. NFMA explicitly provides for amendment of plans, but not for exemptions from them. The same purposes can be achieved through an amendment or revision process that addresses issues related to ongoing authorized uses. The paragraph is not included in the final rule. For such authorizations, paragraph (b) also requires consistency with existing plans at the time of their issuance. In the final rule, authorized uses of land are included as site-specific decisions. The title of this section was changed to reflect the relationship of authorizations and site-specific decisions.

Proposed Section 219.11—Monitoring and evaluation. This section of the proposed rule described the monitoring and evaluation requirements for site-specific actions and land and resource management plans. To more accurately reflect the use of monitoring information in developing appropriate adjustments to ongoing and planned actions, this section of the final rule is renamed "Monitoring and evaluation for adaptive management".

Comment: Monitoring for site-specific decisions. Many respondents felt that monitoring and evaluation is essential to assess the effectiveness of management activities. They recommended that the planning rule emphasize monitoring and evaluation, especially for site-specific decisions.

Response: The proposed rule emphasized the importance of monitoring in achieving sustainability. The final rule retains this emphasis. Monitoring and evaluation is a key component of adaptive management and dealing with uncertainty and risk in managing complex natural systems.

Comment: Monitoring and evaluation requirements. Many people were concerned with the flexibility of the monitoring and evaluation requirements, and some respondents believed that the proposed rule should include criteria for developing monitoring strategies.

Others felt that the proposed rule's requirements are too restrictive. "Research demonstrates that determining sample size, sampling frequency, and even sampling methods is an adaptive process," one person wrote, "therefore, including details on frequency of sampling and sampling protocols in the land and resource management plan will constrain the monitoring system such that effective monitoring will be less likely."

Response: The Department does not believe there was unwarranted flexibility in the requirements for monitoring and evaluation in the proposed rule. There was a lack of clear descriptions of monitoring requirements in this section of the proposed rule. This section is revised to improve its clarity and readability.

For ecological sustainability, the final rule requires the monitoring strategy to include an assessment of the status and trend of selected physical and biological characteristics of ecosystem diversity (section 219.20(a)(1)). It must also assess the status and trends of ecological conditions known or suspected to support focal species and selected species-at-risk including population monitoring for some species. For social and economic sustainability, the final rule requires the monitoring strategy to include periodic review of national, regional, and local supply and demand for products, services, and values, with special consideration given to those uses, values, products, and services that the Forest Service is uniquely poised to provide.

The proposed rule required the monitoring strategy to include the frequency of measurement and sampling protocols. In the final rule, the selection of monitoring methods, as well as reasons for selection of the methodologies, must be documented as part of the monitoring strategy. In addition, the final rule provides that, unless required by the monitoring strategy, monitoring methods may be changed to reflect new information without plan amendment or revision. The Department does not believe that including details on frequency of sampling and sampling protocols in the monitoring strategy will constrain the monitoring system.

Comment: Specific monitoring requirements. One person contended, "No level of monitoring, linked with current understanding of ecological systems, can provide the information necessary to determine, unequivocally, long-term sustainability." This person recommended the elimination of monitoring requirements for different management practices. Others suggested that the planning rule specifically address water quality monitoring methods in the proposed rule.

Response: The proposed rule does not provide for the information necessary to determine, unequivocally, long-term sustainability. Rather, it views monitoring and evaluation as a key component of adaptive management, enabling the Forest Service to deal with uncertainty and risk in managing complex natural systems. The final rule retains this emphasis on monitoring and evaluation.

The proposed rule did not specifically address methods for monitoring for water quality. The final rule requires assessment of the status and trend of selected physical and biological characteristics of ecosystem diversity (section 219.20(a)(1)). These include the diversity, abundance, and distribution of aquatic and riparian systems including streams, stream banks, coastal waters, estuaries, groundwater, lakes, wetlands, shorelines, riparian areas, and floodplains; stream channel morphology and condition, and flow regimes. The Department believes that methods for water resource monitoring are best documented in the monitoring strategy for a plan rather than included in the planning rule.

Comment: Quality and type of data collected. Some people felt that poor quality data will continue to impact the agency's ability to conduct adequate assessments. They recommended that the proposed rule require the collection of adequate monitoring data. Other respondents addressed concerns regarding the use of models as tools for monitoring. One person asserted that "all models are inherently wrong and similarly the assumptions of models are always violated." Several people suggested that the planning rule recognize the limitations of planning models and emphasize proven monitoring methods, especially field monitoring.

Response: The primary focus of monitoring and evaluation is based upon on-the-ground results and measures of how well activities provide for sustainability and fulfill desired conditions and objectives. In the final rule, each plan must contain a practicable, effective, and efficient monitoring strategy. Data and models used to address the monitoring requirements are to use the best science available. Under the adaptive approach to management described by the planning framework, many management activities are continually tested against planned and actual results. Appropriate adjustments can be made as new information becomes available.

Comment: Coordination among interested groups. Some recommended that the proposed rule be strengthened to ensure that monitoring efforts are coordinated with appropriate and interested parties. Some respondents specifically suggested that state and local government representatives be involved in monitoring activities. Various respondents expressed preferences about who should conduct or assist with monitoring efforts. Some people felt that monitoring activities should be restricted to qualified parties, while others recommended the inclusion of diverse interests in these activities.

Response: In the proposed rule, monitoring and evaluation is coordinated and, to the extent practicable, conducted jointly with other federal agencies, state, local, and tribal governments, scientific and academic communities, or other interested parties. In addition, the proposed rule required the responsible official to provide appropriate opportunities for the public to be involved in monitoring and evaluation. The final rule retains only the former provision as the latter provision was viewed as redundant.

The Department believes that monitoring is an important opportunity for the public to become directly involved with the conservation and stewardship of their national forests and grasslands. As in other steps of the planning framework, the expectation is that responsible officials will ensure opportunities are provided for appropriate collaboration.

Comment: Adequacy of funding to support the monitoring and evaluation requirements. Some respondents did not favor the requirement that the responsible official shall ensure that adequate funding is available for monitoring specifically required in project-level decision documents. Many people feared that inadequate funding could hinder the implementation of necessary projects. The Congressional budget process, they asserted, needs to be considered in developing the proposed rule. Other respondents, concerned about the adequacy of funding for monitoring, believed that the proposed rule's monitoring requirements will be excessively expensive and suggested that the rule emphasize that monitoring should not require significant additional costs.

Response: The Department believes that it is reasonable to expect the responsible official to make a fairly accurate prediction of future funding. First, the responsible official has the budget history of the unit and should be able to make a reasonable estimate on funding availability. Second, the responsible official has the flexibility to adjust the size and complexity of projects to reduce funding. Finally, the responsible official sets the stage for monitoring by documenting what is needed for specific projects in preliminary budget proposals. As noted by the Committee of Scientists, monitoring is an indispensable part of land and resource stewardship. To date, it has not been integrated into the planning and implementation process. Yet, including monitoring within the planning process may be the single most important shift that can happen in forest stewardship. The monitoring process creates the information necessary for future decisions, reduces the cost of future inventory analysis, and lessens the likelihood of management mistakes.

Comment: Linkage of project approval to monitoring funding. Many people voiced general support for the proposed rule's provisions requiring adequate funding for monitoring as a condition for project approval. Conversely, several other respondents felt that project approval should not be connected to funding for monitoring. These people asserted that this condition will hinder project implementation and conflicts with congressional budgetary authority. Focusing more on accountability, a few respondents suggested that the proposed rule require that responsible officials include their rationale for supporting expectations of adequate funding for monitoring in decision documents.

Response: The Department has retained language in the final rule concerning adequate funds for monitoring and evaluation of site-specific decisions. It is important to clarify that monitoring is not required for all site-specific projects. Where it is identified as important to understanding and ensuring sustainability, monitoring is considered as part of the project in the decision process.

Comment: Mechanisms for funding monitoring. Several respondents felt that it is unfair to require industrial interests to fund monitoring for projects that these interests propose. These people asserted that the proposed rule should not include such provisions. Other respondents recommended that the Forest Service seek legislative approval to establish a fund specifically for monitoring.

Response: The Department has retained language in the final rule concerning adequate funds for monitoring and evaluation of site-specific decisions. References were not made to industrial or non-industrial interests funding monitoring in the proposed or final rule. Monitoring is considered as part of the cost of doing the project where it is required.

Comments: Monitoring and evaluation of social and economic sustainability. Some respondents believed that the proposed rule has inadequate requirements for the evaluation of economic and social sustainability and recommended an expansion of the evaluation criteria in the final rule. Other respondents requested clarification of the requirements for review of national, regional, and local supply and demand for products, services, and values. One organization believed that the proposed rule should emphasize monitoring and evaluation processes that focus on the products, services, and values that both the Forest Service and local governments specifically provide. One person explicitly suggested that the Forest Service remove the term "values" from the proposed rule's items for consideration when monitoring for economic and social sustainability because it "will allow a manager to use a variety of undefined and arbitrary 'values' to counteract a demand for products or services." Another person asked the Forest Service to require inventories of timber resources. Inventories of areas not suited for timber production, this person contended, are essential to gauge economic sustainability.

Response: The requirements for evaluating economic and social sustainability are identified in sections 219.5 and 219.21. Coordination of monitoring with partners is encouraged in section 219.11(e). The requirements for evaluating ecological, economic, and social sustainability have been increased in the final rule. The plan monitoring strategy must provide periodic reviews of national, regional, and local supply and demand for products, services, and values. It requires the responsible official to evaluate the effectiveness of information and analyses described in 219.21 (a) in providing reliable information regarding social and economic sustainability. This provides an adaptive approach to address many of the concerns made by the respondents, including inventories of areas not suited for timber production and assessing supply and demand for products, services, and values.

Other changes. The monitoring and evaluation section of the final rule is reorganized to more clearly describe the strategy of monitoring plan decisions and characteristics of sustainability required by each plan. Each plan will contain a practicable, effective, and efficient monitoring strategy to evaluate sustainability by monitoring appropriate plan decisions and characteristics of sustainability. Section 219.5 provides that this type of information will be prepared within "reasonable costs and in a timely manner."

In the proposed rule paragraph (a), "Monitoring and evaluation requirements," is reorganized and renamed "Plan monitoring strategy" to more accurately describe requirements. To simplify the presentation of required information, specific requirements for the use of monitoring information listed in paragraph (a) of the proposed rule are moved to paragraph (d), "use of monitoring information," in the final rule. Monitoring methods described in paragraph (a) of the proposed rule are moved to paragraph (c) of the final rule to distinguish these requirements from the monitoring strategy, thus ensuring that appropriate adjustments in sampling frequencies and technical methods are implemented as monitoring progresses. The final rule clarifies that changes in monitoring methods are not plan decisions unless they are specifically required within the monitoring strategies described in a plan.

Paragraph (b) of the proposed rule, "Coordination," described the need for collaboration and coordination in the development and implementation of monitoring programs. This paragraph is renumbered as paragraph (e) of the final rule, simplified, and renamed, "Coordination of monitoring and evaluation."

Paragraph (c) of the proposed rule, "Project monitoring," is renamed "Monitoring of site-specific actions" and renumbered paragraph (b) in the final rule. The text of the paragraph is modified to specify that the responsible official must determine funding will be adequate to complete specifically described monitoring and evaluation before authorizing a site-specific action. The proposed rule is not specific regarding who is responsible for a determination of the appropriate funding prior to authorization of an action.

Paragraph (d) in the proposed rule, "Monitoring and evaluation report," is moved to paragraph (f) in the final rule, "A summary of the results of monitoring." Two items required for "Identification of topics of general interest or concern," and "A list of amendments, revisions and summaries of outcomes," are removed from this section in the final rule. These items are required by section 219.30, "Plan documentation," and not necessary to repeat as a requirement in the monitoring and evaluation report.

Paragraphs (e) and (f), "Monitoring of ecological, social, and economic sustainability" in the proposed rule, are redrafted to follow the content of sections 219.20 and 219.21 of the final rule. They are incorporated into paragraph (a), "Plan monitoring strategy," in the final rule. Because sustainability is the foundation for providing multiple uses of national forest and grasslands and monitoring activities are directed toward effective and efficient strategies to evaluate sustainability, it is appropriate that the characteristics of sustainability are described in conjunction with development of the plan monitoring strategy.

Collaborative Planning for Sustainability

In the proposed rule, sections 219.12 to 219.18 outlined the opportunities for the public and others to be actively engaged in the Forest Service's land management planning process. Collaboration with the public is one of the overriding themes of this rule. The agency recognizes that these are the "people's lands" and the public should be actively involved in their planning and management. These sections identify multiple opportunities for early and continuous involvement by the public.

Proposed Section 219.12—Collaboration and cooperatively developed landscape goals. This section detailed opportunities for the public to become involved in the development of landscape goals for national forests and grasslands. This section also detailed the role the responsible official will play in fostering an understanding of the purposes of the National Environmental Policy Act.

Comment: Resolving conflicts. Some people suggested that the proposed rule include guidelines regarding what should be involved in collaboration and how potential conflicts among different parties will be handled. The responsible official, one business contended, needs to ensure that the parties involved in collaboration are all interested in problem solving. "The collaborative approach only works when you have a group that is interested in the solutions to the problems," wrote this business representative. "It is a disaster when only part of the group wants to find solutions." One person addressed a different perceived shortcoming of collaboration. "When the outcome of collaboration is different from what participants want," this person wrote, "they often distrust the Forest Service and choose not to participate in future collaborate efforts."

Response: Based on comments, section 219.12(a) of the final rule has been strengthened to provide that the "responsible official" must seek to "actively engage" the public and others in stewardship and planning of National Forest System lands. This change was made to emphasize the importance of actively working with the public and other agencies in forest planning. As noted in the Committee of Scientists Report, collaboration is about working together on issues of mutual concern in a manner that best fits the needs of people, place, and issues of concern.

In response to the comment on the commitment of parties to resolve problems, the final rule does not list any specific criteria for participation in the collaborative process. It is incumbent on the responsible official to identify the parties that will be "actively engaged" in the planning process. Section 219.12(a) of the final rule states that "the responsible official shall consider the distinct roles, jurisdictions, and relationships of interested and affected governments, organizations, groups, and individuals."

In regard to the comment on the Forest Service's role in the outcome of collaboration, the final rule provides that the "responsible official shall provide early and frequent opportunities for people to participate openly and meaningfully in planning and has discretion to determine how to provide these opportunities." The overall intent of this rule is to have the Forest Service working together with others to cooperatively resolve natural resource issues.

Collaborative planning is not a stop-and-start activity but rather an ongoing effort, with varying levels of intensity. Its purpose is to reach out to communities and other stakeholders and build stewardship relationships needed to achieve an integrated landscape for planning to achieve goals of sustainability.

Comment: Discretionary authority. The discretionary authority of the Forest Service was another source of concern for many respondents. Specifically, the proposed provision stating that, "The responsible official has full discretion to determine how and to what extent to use the collaborative process" evoked fears that the decision maker will be able to, in the words of one respondent, "manipulate the process to achieve a predetermined target under the collaborative decisions label." To prevent this perceived abuse of discretionary power, several people recommended that the proposed planning rule require the responsible official to adhere to certain procedures such as documenting the rationale for choosing a given collaborative process and specifying when and how public input will be solicited. Others suggested that the proposed planning regulations retain current requirements for collaboration because they believe existing guidelines are more stringent in requiring opportunities for involvement with the public.

Response: The proposed rule provided that the responsible official has "full discretion * * * to determine how and to what extent" to use the collaborative processes outlined in certain sections of the proposed rule. Based on comments, this provision in the final rule has been changed in section 219.12(a) to provide the responsible official "has discretion to determine how to provide these opportunities." The language "to what extent" has been removed from the final rule. The Department made this change to emphasize that the agency would use collaborative techniques in planning and stewardship of national forests and grasslands. Section 219.12(a) of the final rule recognizes that the responsible official may play several roles, such as leader, organizer, facilitator, or participant, in achieving collaboration.

In addition, discretion of the agency to consider "cooperatively developed landscape goals" has been modified in the final rule. Section 219.12(b)(3) provides that the responsible official "shall consider" (emphasis added) the cooperatively developed landscape goals as an issue for planning.

In regard to the comment on involvement with the public requirements, the rule does not conflict with any other public involvement processes the agency currently uses. In fact, the rule complements the existing public involvement requirements and increases opportunities for collaboration with the public throughout the planning process.

Comment: Implementation. The proposed planning rule, several believed, should clarify how collaborative planning goals relate to NEPA requirements and other goals proposed in the planning rule. In particular, the Forest Service must not substitute proposed collaborative processes for NEPA analysis, according to one organization. Clarification is also needed, one person wrote, regarding how the proposed collaborative planning process is different from the scoping process under NEPA. Other people suggested that the planning rule include recognition of the fact that collaboratively developed goals may not be consistent with other proposed goals such as ecological sustainability or emphasis on science. Some respondents agreed that collaborative planning is a laudable goal but, doubt that it will be realized. Citing a variety of past examples in which the Forest Service perceivably discounted local interests, several respondents wondered whether the Forest Service will actually adopt management directions developed through collaborative efforts. The Forest Service, others suggested, should disclose how public comments are used in forest planning.

Response: The proposed rule provided that the responsible official should use collaboration to develop landscape goals for "ecological units" that may be associated with National Forest System lands. In the final rule, this provision has been changed to using collaborative efforts "to develop or propose landscape goals for areas that include National Forest System lands." The Department made this change to broaden the use of collaboratively developed landscape goals, not just to ecological units, but to all lands associated with the National Forest System. With respect to the comment on consistency of collaboratively developed landscape goals and ecological sustainability, Section 219.4 of the final rule provides that the responsible official should consider the extent to which addressing the issues relates to or provides an opportunity to contribute to the "restoration or maintenance of ecological sustainability."

In regard to landscape goals and NEPA, the language in section 219.12(b)(2) in the proposed rule has been retained in the final rule that recognized the importance and understanding of collaborative efforts and the National Environmental Policy Act. Section 219.12(b)(2) of the final rule explicitly recognizes the link between NEPA and collaborative planning. In section 219.5 of the final rule, the Department has clarified that "the results from broad-scale assessments, local analyses, monitoring activities, and other studies that are not plan or site-specific decisions or proposals . . . are not subject to Forest Service NEPA procedures." The Department made this change to clarify that these landscape goals are broad landscape goals and not decisions requiring NEPA analysis. With respect to public comments during the planning process, all public comments are available for review. In regard to scoping and collaborative planning, the Department views collaborative planning as complementary to the NEPA scoping process. This is one more avenue for the agency to actively engage the public in land and resource planning.

In regard to the comments about the Forest Service adopting management directions developed in collaborative efforts, the overall intent and emphasis in the rule is for the Forest Service, along with other parties, to "actively engage" in a collaborative planning process to problem solve and identify mutual goals and interests. The collaborative process does not ensure what decision will be made by the responsible official.

Comment: Efficiency. Other people worried that the involvement of "uninformed" parties, single-issue organizations, or individuals or groups that cannot demonstrate a "relevant relationship to the subject matter of a proposed plan" results in an inefficient and laborious collaborative process. Similarly, some respondents asserted that if the Forest Service were required to consider all landscape goals initiated by various individuals and groups, decisionmaking would be slowed considerably. One organization cautioned, "Decisions not incorporating all the conflicting goals will end up in litigation and further waste of taxpayer resources."

Response: The proposed rule provided that collaboration in land and resource management planning "enhances the ability of people to work together, build their capacity for stewardship, and achieve ecological, economic, and social sustainability." In section 219.12(a) of the final rule, the Department has strengthened this provision by stating "to promote sustainability, the responsible official, must seek to actively engage the American public, interested organizations, private landowners, state, local, and Tribal governments, and other federal agencies in the stewardship of National Forest System Lands by providing early and frequent opportunities for people to participate openly and meaningfully in planning." The Department continues to believe that meaningful collaboration by the agency with all interested parties is the best way to manage the national forest and grasslands. With respect to potential litigation and collaboratively developed landscape goals, section 219.4(b) of the final rule provides that the responsible official has the discretion to determine "whether and to what extent an issue is appropriate for consideration." Litigation risks cannot be determined at this time. Collaboratively developed landscape goals are not subject to Forest Service NEPA procedures. Section 219.12(b)(3) of the final rule provides that cooperatively developed landscape goals are considered as an issue within the framework of planning. Section 219.12 of the final rule encourages an efficient and effective approach among interests to utilize limited human and financial resources that enable use of the latest technology and adoption of creative approaches to collaboration. It positions the agency in a leadership role and commits, as appropriate and practical, the responsible official to use creative collaborative approaches to supplement traditional NEPA processes.

Comment: Local Groups. Some people worried that Forest Supervisors may interpret the guidance in the proposed rule encouraging responsible officials to "initiate or seek to join ongoing collaborative efforts to develop or propose landscape goals" as a mandate to rely on local groups such as the Quincy Library Group. These people did not want the Forest Service to give special consideration to local collaborative groups and recommended that the proposed rule explicitly state that input from collaborative groups will be considered equally with input from other sources.

Response: The proposed rule provided that the responsible official and those involved in planning should invite and encourage others to engage in the collaborative development of landscape goals. Section 219.12(b)(1) of the final rule retains this language. The Department believes that this language is broad enough to ensure that one group does not have special consideration during the planning process. The intent of this section is to provide opportunities for all parties interested in forest planning to have an active role in the development of landscape goals and the collaborative process. As noted in the Committee of Scientists Report, collaborative planning is a shared process within which agencies cooperate with one another, work with other public and private organizations, and engage communities and citizens in envisioning and working toward a sustainable future of the national forests and grasslands.

Proposed Section 219.13—Coordination among federal agencies. This section of the proposed rule addressed coordination with other federal agencies in national forest and grassland planning and decisionmaking.

Comment: Sentiments were mixed among those respondents who specifically addressed coordination among federal agencies in national forest planning. While some supported the proposed planning rule's emphasis on participation and coordination of various federal agencies in forest planning, others were concerned that this focus on coordination might unduly influence other agencies' management actions.

Response: Section 219.13 of the proposed rule provided that the responsible official must provide "early and continuous coordination" for other interested or affected federal agencies to participate in identification of issues and formulation of proposed actions that may affect their programs. Section 219.13 of the final rule changed the language from "continuous coordination" to "frequent coordination" for working with other federal agencies. This change was made to clarify that there would be multiple opportunities for other federal agencies to participate in planning. Agencies are also urged to contribute to streamlined coordination of federal agency policies, resource management plans, or programs. Other federal agencies may further engage in a variety of tasks throughout the NEPA process, examples include: assist the agency in EA and EIS development, participate in public scoping, develop information and analyses in which they have special expertise, contribute staff and resource support, participate on interdisciplinary planning teams, and share information and data. These actions strengthen the final outcome for sound management of public resources.

In regard to the comment on the influence of the Forest Service to other agency management actions, section 219.12 of the final rule recognizes the distinct jurisdictions, policies and legislative mandates of the other federal agencies. This language was retained from the proposed regulations.

Proposed Section 219.14—Involvement of state and local governments. This section of the proposed rule described the involvement of state and local governments in the land and resource management planning and decisionmaking.

Comment: Suggestions for creating a useful collaboration process. Many people who responded to the proposed planning regulations support the idea that the Forest Service should actively collaborate with state and local governments. Forest Service officials, several respondents claimed, often require state and local governments to participate in planning in the same manner as members of the public rather than create specific outreach mechanisms for these governmental entities. These people offered a variety of suggestions for creating a useful collaboration process designed for state and local governments. These included requiring early and continuous coordination with state and local governments, consulting with state and local government officials, establishing state and local agencies as cooperating agencies under NEPA, obtaining the consensus of local governments before establishing topics of concern, providing documented rationale for the acceptance or rejection of local governmental concerns and suggestions, and establishing a process for intergovernmental information exchange.

Response: Section 219.14 of the proposed rule stated that the responsible official must provide opportunities for involvement of state and local governments in the planning process, including opportunities to participate in identification of topics of interest or concern related to the planning area. Based on comments, the Department has strengthened section 219.14 of the final rule to provide "early and frequent" opportunities for state and local governments to be actively involved in the planning process. In addition, the Department has also included language in section 219.14(b) of the final rule that acknowledges the need to coordinate resource management plans and programs with state and local governments. The final rule directs the continued building and fostering of these relationships.

Comment: Resolving conflict. Some respondents expressed reservations regarding the potential success of collaborative efforts with local and state governments. "Local governments," one organization claims, "may exercise their rights to maintain roads and trails counter to the desires of other interests within the 'collaborative' decisionmaking process—leading to additional conflict, litigation, and wasted resources."

Response: Section 219.12(a) of the final rule provides that the responsible official should recognize the "distinct roles, jurisdictions, and relationships of interested and affected governments, organizations, groups and individuals." The Forest Service will conduct

collaborative planning consistent with all applicable federal laws and regulations. This rule does not abrogate any federal responsibility to state government.

Comment: Discretionary authority. Although many respondents like the proposed planning rule's general emphasis on collaboration with state and local governments, several argued that the rule does not provide adequate assurance that these governments will be meaningfully involved in collaborative efforts. These people suggested that the Forest Service clarify how local and state governments will be engaged in forest planning by eliminating discretionary language and providing more specific direction in the proposed planning regulations. In particular, the proposed rule, one person suggested, should specify that municipalities and special districts would be consulted in forest planning. This respondent asserted that national forest management often affects water and sewage districts; thus, the Forest Service should involve these affected parties.

Response: Section 219.14 of the final rule identifies some of the key steps where state and local governments will be engaged in planning. State and local governments will be involved in the identification of issues as described in section 219.4(a) of the final rule. Further, section 219.14 in the final rule provides that the responsible official must provide early and frequent opportunities for state and local governments to participate in the planning process. This language strengthens the intent of the rule to have the agency work with state and local governments in planning. In addition the rule recognizes the need for the Forest Service and state and local governments to coordinate plans and programs.

Comment: Coordination. Several people suggested this is a critical component of effective collaboration procedures. Whether they want the Forest Service to retain existing requirements for coordination and review procedures or adopt the Bureau of Land Management's coordination raquirements, these people generally believed that the rule must be explicit in requiring the Forest Service to strive for consistency among various plans and policies.

Response: Based on comments, the Department has added section 219.14(b) that recognizes the need for the Forest Service to coordinate resource management plans and programs with state and local governments. In addition, section 219.13 of the final rule describes the process for the Forest Service to coordinate their plans and programs with other federal agencies.

Proposed Section 219.15—Interaction with American Indian Tribes and Alaska Natives. This section of the proposed rule described the interaction with American Indian Tribes and Alaska Natives in National Forest System planning and decisionmaking.

Comment: Several people believed that the proposed planning rule should more explicitly recognize the Forest Service's responsibility to consult with American Indian tribes and Alaska Natives in forest planning. The proposed rule, one respondent asserted, must require that Forest Service decisions that may potentially impact tribal trust resources be specifically analyzed for compliance with fiduciary obligations of the United States. According to this respondent, "More emphasis needs to be placed on the recommendations and desires of American Indian Tribes and Alaska Natives through the planning process because much of these lands involve aboriginal and ancestral lands of American Indian Tribes and Alaska Natives." The involvement of tribes and natives in forest planning was important for several respondents who do not think tribes should be treated in the same manner as members of the public or state agencies are treated. American Indian Tribes and Alaska Natives, these people asserted, must be partners in the initial, pre-scoping stages of Forest Service planning. Another respondent recommended that formal agreements be developed with tribal governments regarding planning priorities and joint management in areas where common boundaries exist.

Response: Section 219.15 of the final rule retains language from the proposed rule declaring that the Forest Service shares in the federal government's overall trust responsibilities and recognizes the government-to-government relationships with American Indian Tribes and Alaska Natives. It also retains language calling for collaboration in the early identification of treaty rights, treaty-protected resources, tribal trust resources, and other tribal consultation and participation. Section 219.3(c) of the final rule provides that American Indian tribes and Alaska Natives are to be engaged in an "interdisciplinary, collaborative approach to planning." The Department believes that section 219.15(c) of the proposed rule, which is retained in the final rule, provides explicit language for the Forest Service to consult with American Indian tribes. There is no discretionary language in this section of the rule.

Comment: Tribal treaty requirements. In order to exercise their rights, one tribal organization asserted that the Forest Service must acknowledge the significant treaty requirements for protection of fish, wildlife, and plants. This organization claimed that national forest lands must be managed for a productive yield to allow tribes to exercise their preexisting legal rights.

Response: Section 219.15 of the final rule emphasizes identification of treaty rights and treaty and trust resources. The planning regulations provide for early and frequent communication among Forest Service personnel and American Indians and Alaska Natives. The planning rule does not modify tribal treaty requirements.

Proposed Section 219.16—Relationships with interested individuals and organizations. This section of the proposed rule addressed relationships with interested individuals and organizations in national forest and grassland planning and decisionmaking.

Comment: Encouraging public involvement. Many people who commented on the proposed planning rule agreed that public involvement should be an integral part of forest planning. However, respondents' perceptions varied as to whether the proposed planning regulations will, in effect, increase or decrease public involvement opportunities. Nevertheless, the Forest Service, they contended, should encourage more public involvement throughout the entire forest planning process to account for the needs and wants of different forest users. Some further suggested that the Forest Service clarify what incentives will be offered to encourage people to become involved early in the planning process.

Response: Section 219.16 of the proposed rule, which is retained in the final rule, described a process for the responsible official to involve the public in the planning process. Based on comments, the Department has strengthened this section in the final rule by describing specific steps where interested individuals and organizations will be "actively" engaged in planning. As noted in the Committee of Scientists Report, multiple mechanisms of public dialogue need to be devised to enhance the capacity of the American people to effectively engage in the planning process. The Committee of Scientists also wrote that planning must provide mechanisms for broad-based, vigorous, and ongoing opportunities for open public dialogue. These dialogues must be open to any person, conducted in non-technical terms, and structured to accommodate differing schedules, capabilities, and interests. The Department continues to support a comprehensive public involvement process that has multiple opportunities for diverse interests to participate in the forest planning process. It recognizes that the planning process must be fair, meaningful, and open to persons with diverse opinions and values. Through this process, the responsible official must provide early and frequent opportunities for interested parties to participate, work together, and collaborate to improve understanding. A central function of the planning process aims at facilitating community building by providing opportunities for people to come together. There are not explicit incentives to participate in the collaborative planning process in the rule; however, the rule does ensure the opportunity for the agency and interested parties to collaboratively develop plans for our national forests and grasslands.

Comment: Reducing bias in decisionmaking. Many people asserted that when the Forest Service develops public outreach strategies, it must both engage a broad range of constituents in the collaborative process and equally consider the diverse interests of these constituents. Whether they believe the Forest Service may give undue preference to the views of local residents, logging companies, or environmentalists, many respondents strongly insisted that the proposed planning rule should reduce bias in decisionmaking by requiring equal outreach and consideration processes for different stakeholders. The Forest Service, some contended, must clarify how collaborative processes will weigh the input from different interests. Offering a specific suggestion for reducing bias in forest planning, one person proposed "each national forest be governed by a set of elected officials who would be responsible to the public for the management of the national forests." By electing designated representatives, the Forest Service, this person contended, would be able to balance non-local interests and local interests as well as the interests of those who have the time and resources to participate and those that do not.

Response: The final rule retains the language in section 219.16 of the proposed regulations that recognized the need for engaging diverse interests in collaborative planning. As noted in the Committee of Scientists Report, collaborative planning must recognize the inevitability of legitimate, yet competing, values in National Forest System management. It must encourage divergent interests to collectively deal with their differences while pursuing shared goals for the national forests and grasslands. With respect to the comments on bias of planning, this rule provides a framework for developing plans that provides equal opportunities for all interested parties to participate in a meaningful and open collaborative planning process.

Comment: Involvement in collaborative planning. Some respondents offered specific ideas regarding who should or should not be involved in collaborative efforts. Several people argued that the Forest Service must focus collaboration at the local level and give priority consideration to local concerns. In the words of one person, the Forest Service should "listen to the local people who use the forests." Others did not want corporate interests involved in collaboration; these "faceless corporate giants," they perceived, used money and well-spoken representatives to unjustly influence the decisionmaking process. Similarly, some people suggested that paid lobbyists be excluded from the collaborative process as well. Some town meeting attendees felt that the Forest Service should clarify the difference between interested and affected parties in the collaboration process.

Response: The proposed rule provided language that would "encourage participants to work collaboratively and directly with one another to improve understanding." In the final rule, the Department has expanded the language to "encourage interested individuals and organizations to work collaboratively and directly with one another to improve understanding." In addition, section 219.16(b) of the final rule includes language that directs the responsible official to initiate a planning process that is "fair, meaningful, and open to persons with diverse opinions." The Department believes that this language encompasses not only local citizens and interest groups, but a national constituency as well. The Department recognizes that all Americans own the national forests. The language in the final rule provides a framework for all interested parties to actively participate in the planning process. Section 219.12 of the final rule provides that the responsible official has the authority to consider the distinct roles, jurisdictions, and relationships in identifying participants in the collaborative process.

Comment: Outreach methods for soliciting public comment. Some respondents asserted that the Forest Service does not currently do enough to encourage involvement of all interested parties and should explore more creative ways of informing people about public involvement opportunities. Several people offered a variety of different suggestions for improving Forest Service outreach efforts. These included using different media to disseminate information such as the telephone, internet sites, industry-specific newsletters, radio programs, and bulletin boards, providing adequate notice and time for public comment opportunities, holding meetings within local communities and at convenient times, using neutral group facilitators and a small group format for public meetings, incorporating funding for outreach efforts in the annual Forest Service budget, maintaining databases of people who have expressed interest in forest planning, establishing partnerships with interested groups and individuals, and training Forest Service personnel in collaboration procedures. Regardless of which specific outreach method the Forest Service uses in planning, some respondents asked that the proposed rule include the NFMA mandate that requires the Forest Service to "hold public meetings or comparable processes at locations that foster public participation in the review of such plans and revisions."

Response: The proposed rule provided a framework to actively engage the public in a meaningful collaborative planning process. The Department continues to support that framework in the final rule. The Department acknowledges that the agency has multiple roles in the collaborative process including leader, organizer, facilitator, or participant. As noted in the Committee of Scientists Report, information is a key element in building an accessible planning process and an honest relationship between the agency and communities. The Committee further noted that where key information about the resources and management of national forests and grasslands is readily available in a range of locations and formats, open information policies could provide any interested individual the ability to understand, critique, and participate in planning processes. The Department agrees with the respondents about using different media and requires alternative formats for persons with disabilities when disseminating information to the public. The planning framework outlined in the final rule requires the Forest Service to use a variety of media to engage the public and tribal

governments in planning. The overall intent of the rule is to "actively engage" the public in collaborative planning. The rule emphasizes the need to utilize multiple methods to disseminate planning information.

In regard to the comment about holding public meetings on changes in the plans, the agency will continue to have public involvement in accordance with Forest Service NEPA procedures. There is no intent to eliminate these requirements from Forest Service planning.

Comment: Role as an educator. The Forest Service's role as an educator evoked comments from several respondents. These people believed the Forest Service should establish educational programs that provide the public with both environmental and forest management planning information. These people contended that informed stakeholders will help expedite the planning process and contribute to improved forest plans.

Response: The proposed rule acknowledged the multiple roles the agency has in the collaborative planning process. The final rule retains the multiple roles for the agency in the collaborative planning process. The Department acknowledges that the agency will not only be a convener, facilitator, leader, or participant, but will also be an educator. The principles in the final rule provide that "planning meaningfully engages the American people in the stewardship of their national forests and grasslands." The Department believes that the agency will be learning along with the public in a collaborative planning process. One of the themes of the rule is to inform and educate the public about the Forest Service's planning process. Section 219.16(e) of the final rule provides for the Forest Service to work with parties to identify information needs for planning. The rule provides a framework for the Forest Service to be an educator as well as a participant in the planning process.

Proposed Section 219.17—Interaction with private landowners. This section of the proposed rule described the interaction with private landowners in National Forest System planning and decisionmaking.

Comment: Few people specifically addressed this section. One individual believed that the language of the proposed rule is too discretionary about requirements for engaging private landowners in forest planning.

Response: Section 219.17 of the final rule describes the process for the responsible official to engage private landowners in the planning process. The final rule provides that the Forest Service will work with adjacent landowners on issues of mutual concern that may affect them or management of National Forest System lands.

The final rule retains the requirement that the responsible official seek to engage private landowners. The information to be requested is expanded by the Department to include local knowledge, potential actions and partnerships, potential conditions and activities on National Forest System lands that may affect adjacent private lands, and issues relating to the plan area. The Department added these provisions to more clearly identify the types of information that were being sought from private landowners.

The Department has removed the phrase in the proposed regulations "consideration of the pattern and distribution of land ownership in assessment and plan areas is critical" in the final rule. The Department is confident that the language in the final rule adequately recognizes the interrelationships between private landowners and the Forest Service. The Department has added a new item (b) in the final rule that recognizes opportunities for partnerships between Forest Service and private landowners.

Proposed Section 219.18—Role of advisory groups and committees. This section of the proposed rule described the role of advisory committees and groups in land and resource management and decisionmaking. This section has been renamed in the final rule to "Role of advisory committees."

Comment: Influence of local interests. Many who wanted the proposed provision for advisory groups eliminated from the planning regulations claim that local commodity or economic interests will dominate these groups. Advisory groups composed of mostly local interests, these people argued, will likely advocate damaging land management practices rather than emphasizing the needs and desires of a broad spectrum of interests. In contrast, some respondents believed that local advisory groups are long overdue in national forest planning. They contended that these groups are needed to provide a means for rural communities to voice concerns about Forest Service projects that may have local impacts. In formalizing the concept of the proposed advisory groups, several people suggested that the Forest Service establish the groups as permanent committees accountable to the Forest Service leadership team.

Response: Because the Forest Service cannot carry out the mission of sustainability alone, the Committee of Scientists recommended that it develop both formal and informal collaborative structures that engage the broader community of interests and responsible governments to work together. Mechanisms for ensuring ongoing, long-term, broadly inclusive public relationships that build the capacity for creating effective collaborative stewardship are necessary for effective planning. It is the obligation of every line officer to build and maintain strong relationships with members of the public, interested organizations, other governments, and appropriate federal agencies. In some areas, especially when communities are spread over a large area, multiple, informal, localized networks can be a useful approach to maintaining these relationships. In other cases, especially when large landscape plans cross multiple social communities and other political boundaries, formal advisory boards may be the appropriate mechanism for ensuring full and representative participation. Section 219.18 of the final rule describes the roles and responsibilities of advisory committees in the planning process. The Department believes that Forest or Grassland Supervisors must have access to an advisory committee. These groups can raise issues and communicate other information vital to the planning process. They should not be construed to only allow local participation. Effective committees will respect all of those interested in or affected by national forest system management. The Department believes these groups will provide important information for planning and decisionmaking.

Comment: Composition of advisory groups. Whether they explicitly expressed support of or opposition to the proposed advisory groups, many respondents asked that the groups represent diverse interests. Fearing that these advisory groups may be biased toward one particular interest group, these people requested that specific guidance be included in the planning regulations directing the Forest Service to create well-balanced committees. Several respondents offered suggestions for the specific guidance they wanted included in the regulations. These included criteria for selection of committee members, requirements to ensure that groups represent diverse values, and clarification regarding the relationship between proposed advisory groups and the Federal Advisory Committee Act. In addition, some people made specific requests for the composition of these groups such as excluding vested financial interests from participating and ensuring American Indian and Alaska Native representation.

Response: As noted by the Committee of Scientists, formal advisory boards, chartered under the Federal Advisory Committee Act and appointed by the Secretary of Agriculture, can provide an immediate, legitimate, representative, and predictable structure within which public dialogue can occur so that Forest Service relationships with a broad and dispersed community of interests can be efficiently maintained. The NFMA authorizes the formation of such advisory committees. These committees should contain representatives of the diversity of interested institutions and individuals, as currently required in the law. Thus, when they are the appropriate mechanism, the Forest Service should not hesitate to formally charter advisory boards at the individual national forest level or at the large landscape level, whichever provides the greatest opportunity to gain representative, structured, and focused public interactions through which the key issues can be most effectively and meaningfully addressed. Section 219.18 also provides for the Forest Service to utilize groups already established by other governmental agencies. In addition, the Department has added a new subparagraph (c) that provides for the responsible official to emphasize the importance of Forest Service participation in community based groups such as local watershed councils. With respect to the concern about providing specific guidance in the planning regulations, the rule provides only the framework for establishing advisory committees. It does not include specific language for representation on these advisory committees. This will be determined by the specific circumstances and needs for an advisory committee.

Ecological, Social, and Economic Sustainability

Section 219.19—Ecological, social, and economic sustainability. This section of the proposed rule described goals and priorities for sustainable management of National Forest System lands.

Comment: Definition of sustainability. The definition of sustainability evoked numerous concerns from the people responding to the proposed planning regulation. Some believed that the ambiguity of the term needed to be addressed. Because there are many different meanings of sustainability, its use created confusion throughout the proposed rule, according to one respondent. Many felt that the term should be used consistently throughout not only the proposed planning regulations but also the entire federal planning process.

Response: The Department agrees that the inconsistent use of sustainability in the proposed rule was a source of potential confusion. A definition of sustainability has been included in the final rule. Section 1(b)(3) defines sustainability as being composed of interdependent ecological, social, and economic elements, embodying the principles of multiple-use and sustained-yield without impairment to the productivity of the land, and meeting needs of the present generation without compromising the ability of future generations to meet their needs. Impairment of the productivity of the land means managing lands in a manner inconsistent with the requirements of ecological sustainability in section 219.20. It is beyond the scope of the current rule-making effort to propose consistent treatment of sustainability in all federal planning processes.

Comment: Implications for resource management. Some respondents were concerned that the adoption of the sustainability goal will prescribe activities on national forests that are considered nonrenewable. They felt the proposed rule should address how actions such as mining can be conducted in a sustainable manner. Others were equally concerned that their personal access to national forests will be limited by the proposed rule. They questioned what activities would be allowed and feared their activity on national forests might be excluded by the attempt to attain the goal of sustainability. These respondents sought reassurances that such a scenario will be avoided.

Response: The proposed rule did not specifically address how nonrenewable activities can be addressed in a sustainable manner or define activities that would be allowed on the national forests and grasslands. Likewise, these topics are not addressed in the final rule. Rather, the rule establishes a process for identifying, discussing, and, if appropriate, acting on issues that may emerge from a variety of sources (section 219.4).

The Department believes that this rule, and in particular, its sustainability requirements, will not by itself preclude mining activities. Analysis and collaboration conducted under the requirements of the rule, and following all applicable laws, will determine where mining is appropriate and what mitigation measures will be required. The rule's emphasis on ecosystem health, collaboration, and the role of science may very well result in the identification and implementation of effective and efficient mitigating measures applicable to mining operations, improving the overall sustainability of the use and development of what are commonly referred to as nonrenewable resources.

Comment: Assessing ecological, social, and economic sustainability. Many respondents felt the ecological, economic, and social benefits derived from national forest management must outweigh the costs involved. This is the standard by which the Forest Service should measure sustainability, according to these citizens. Others asserted that ecological, economic, and social sustainability should receive equal consideration in the proposed rule. Citing the fact that social and economic sciences are currently not being integrated into Forest Service decisions, they believed that this perceived oversight be corrected in the final planning rule. In addition, one respondent wanted the proposed rule to set a discrete time period over which sustainability is to be measured. Finally, other people applauded the choice of sustainability as the guiding principle of forest management because they believe such a goal is admirable and attainable.

Response: Requirements for achieving sustainability are found in sections 219.19, 219.20, and 219.21 of the final rule. The proposed rule did not specify how social and economic sustainability was to be achieved in relation to ecological sustainability. In the final rule, social and economic sustainability is achieved by providing a range of uses, products, services, and values, consistent with ecological sustainability (section 219.20(b)). The first priority for stewardship of the National Forest System, which is to maintain and restore ecological sustainability, is unchanged from the proposed rule. The Department believes that these requirements will result in ecological, economic, and social benefits that are greater than the costs. As noted by the Committee of Scientists,

> "* * * ecological sustainability lays a necessary foundation for national forests and grasslands to contribute to the economic and social components of sustainability, making contributions to strong productive economies and creating opportunities for enduring human communities."

In the proposed rule, information on ecological sustainability is collected at a variety of spatial and temporal scales. This requirement has been retained in the final rule. The proposed and final rules are silent on the temporal scale for

the evaluation of social and economic sustainability. The proposed rule acknowledges social and economic analyses being undertaken at various spatial scales. The final rule requires the planning process to include analyses for social and economic information at variable scales, including national, regional, and local scales. The responsible official has the authority to determine the appropriate scope and scale of analysis and data collection. In making this determination, the responsible official appropriately applies collaboration and the best available science.

As noted in section 219.20(a) of the final rule, the collection and analysis of information at a variety of spatial and temporal scales is important in providing for maintenance or restoration of ecosystems. These scales include geographic areas such as bioregions and watersheds, scales of biological organization such as communities and species, and scales of time ranging from months to centuries, For this reason, the Department has not adopted a discrete time period over which sustainability is to be measured.

The Department agrees that sustainability is the guiding principle of National Forest System management. This section of the proposed rule referred to sustainability as the overall goal for the management of National Forest System land. The Department has retained this reference in the final rule.

Comment: Linkage between ecological, economic, and social sustainability. Some people believed that the Forest Service should emphasize the link among the three types of sustainability outlined in the proposed planning regulations. Others sought clarification regarding the link between ecological and socioeconomic sustainability, as well as what role extraction industries will play in achieving ecological sustainability.

Response: The Department agrees that the linkage between ecological, social and economic sustainability was not sufficiently emphasized in the proposed rule. Language was added to the final rule to rectify this insufficiency. In the final rule, sustainability, composed of interdependent ecological, social, and economic elements, embodies the MUSYA without impairment to the productivity of the land and is the overall goal of management of the National Forest System. The first priority for stewardship of the national forests and grasslands is to maintain or restore ecological sustainability to provide a sustainable flow of uses, values, products, and services from these lands.

To contribute to economic and social sustainability, the responsible official involves interested and affected people in planning for National Forest System lands (§ 219.12–219.18), provides for the development and consideration of relevant social and economic information and analyses, and a range of uses, values, products, and services. Plan decisions contribute to social and economic sustainability by providing a range of uses, products, services, and values, consistent with ecological sustainability (section 219.21(b)).

The proposed rule did not define a specific role for extractive industries in achieving ecological sustainability. Nor has such a role been defined in the final rule. The final rule does include provisions such as § 219.21(a)(1)(iii) that require the responsible official to consider opportunities to provide social and economic benefits to communities through natural resource restoration strategies. The rule establishes a process for identifying, discussing, and, if appropriate, acting on issues that may emerge from a variety of sources (section 219.4). The Department believes that the role of extractive industries in achieving ecological sustainability is most appropriately addressed using this process.

The final rule would not, by itself, result in environmental consequences. Rather, adverse effects or benefits would only be realized when the new rule is applied on national forests and grasslands through forest and project level planning. Because application of the rule requires consideration of site-specific information that pertains to the planning unit, it is not possible, from a programmatic viewpoint, to determine short or long-term environmental, social, or economic consequences of the final rule. The Department believes that this rule, and in particular, its sustainability requirements, will not by itself preclude mining or other economic activities. Analysis and collaboration conducted under the requirements of the rule, and following all applicable laws, will determine where mining is appropriate and what mitigation measures will be required. The rule's emphasis on ecosystem health, collaboration, and the role of science may very well result in the identification and implementation of effective and efficient mitigating measures applicable to mining operations, improving the overall sustainability of the use and development of what are commonly referred to as nonrenewable resources. As noted above, mitigation of the effects of mining activities through the application of the planning rule may reduce the overall environmental impacts of mining within national forests and grasslands.

Similarly, any short-term or long-term effects on the availability of forest products and services would occur on a forest-by-forest basis once forest plans were revised under the final rule. For this reason, quantifiable impacts to the availability of forest products and services cannot be determined at this time. The Forest Service speculates that by implementing the rule, the Forest Service will put greater emphasis on maintaining and restoring ecosystem health in order to promote sustainable forest use. As a result, it is possible that there could be less timber volume made available for commodity purposes in the future. At the same time, more timber volume could be made available as a result of efforts to increase timber harvest for stewardship purposes.

Comment: Adoption of Montreal Criteria: One respondent recommended that the rule be used to build greater consistency between sustainable forest management, including national commitments to sustainable forestry and the Forest Service Natural Resource Agenda, and national forest planning. Adoption of the seven Montreal Process Criteria within the regulation was specifically recommended to provide a framework for measuring and organizing information and performance related to sustainability.

Response: The Committee of Scientists, while acknowledging their potential usefulness, had a number of qualifications about the use of criteria and indicators for gauging sustainability on the National Forest System lands. First, the Committee found that they might not be sufficient, by themselves, to gauge ecological sustainability. As an example, the "maintenance of productive capacity of forest ecosystems" does not appear to include the amount of dead trees for wildlife habitat as an indicator. Second, the Committee believed that the criteria and indicators are generally non-spatial and seem to lack a landscape view. They focus on measuring acres in certain condition without the aggregation needed for judgments about areas. The lack of integrative concepts on the use of the criteria and indicators may make it difficult to use them to make overall judgments. Finally, the Committee felt that they could consume much of the agency's resources for inventorying and monitoring, leaving little to other important measures of sustainability.

The Department is guided by the qualifications of the Committee of Scientists concerning the use of criteria and indicators for gauging sustainability on National Forest System lands. The specific framework for illustrating the linkage between sustainability and the Montreal Criterion are under development and are expected to be included in Forest Service directives as they become available.

Other changes: The final rule refers to sustainability as the embodiment of the principles of multiple-use and sustained-yield without impairment to the productivity of the land. This language is not contained in the proposed rule. The Department has included this language to more clearly describe the linkage of sustainability to the requirements of the MUSYA. The phrase "without impairment to the productivity of the land" in this statute is key in defining both multiple-use and sustained-yield and is acknowledged in the final rule.

Other changes in the final rule are made to eliminate redundancy, improve clarity, or incorporate changed terminology. The proposed rule required that management be consistent with laws and regulations. This reference is removed from the final rule because this is a requirement of all actions by each civil servant and not unique to management of national forests or grasslands. The proposed rule referred to sustainability as the overall goal of National Forest System management and this reference is retained in the final rule. Similar language is found in section 219.1(b) of the final rule. Finally, section 219.1(b)(3) of the proposed rule made reference to the interdependent elements of sustainability. This reference is included in this section of the final rule to emphasize the importance of consideration of the interdependent nature of ecological, social, and economic sustainability.

Section 219.20—Ecological sustainability. This section of the proposed rule described the key principles and desired outcomes for ecological sustainability.

Comment: The definition of ecological sustainability. Some felt that the proposed regulations should include humans and their impacts on the environment in the definition. Of those respondents that use the terms ecological sustainability and forest health interchangeably, some suggested the proposed rule clarify the definition of forest health.

Response: The Department believes that humans and their impacts on the environment are included in the definition of ecological sustainability. The Department also believes that forest health is also encompassed in this definition. Ecological sustainability is defined in section 219.36 of the final rule as the maintenance or restoration of the composition, structure, and processes of ecosystems including the diversity of plant and animal communities and the productive capacity of ecological systems.

Comment: Ecological sustainability and discretionary language. Numerous people cited the use of discretionary language, such as "may" and "should," as a serious flaw in the proposed regulations. These individuals would like to see the inclusion of imperative language, such as "shall" and "must," to ensure that ecological sustainability is achieved.

Response: The Department has retained the discretionary language in the final rule. It does not believe that the use of discretionary language in referring to ecological sustainability is a serious flaw. The planning rule is intended to provide numerous opportunities to reach well-reasoned and sustainable solutions to natural resource issues. Discretionary authority often provides flexible and appropriate solutions to complex natural resource issues among competing interests. It has been the experience of the Forest Service and others that the net result of inflexible policies often results in poorer solutions.

Comment: Specific guidelines for ecological sustainability. Several respondents that supported the goal of ecological sustainability felt that the proposed planning rule lacks specific guidelines. They requested that the Forest Service include clear, direct standards and goals for achieving ecological sustainability in the final rule. Others asserted that ecosystem recovery should occur before the maintenance of sustainability is undertaken. A few respondents urged the Forest Service to recognize the link between timber harvest and ecological sustainability. They were adamant that fuel loads and overstocked forests pose a more serious threat to forest health than logging does.

Response: The Department agrees that the proposed rule did not include clear, direct standards and goals for achieving ecological sustainability. This section of the final rule was revised in response to this concern. Requirements for achieving ecological sustainability are found in section 219.20(b) of the final rule.

The proposed rule did not require ecosystem recovery to occur before the maintenance of sustainability is undertaken. Nor did it recognize the link between timber harvest and ecological sustainability. The Department did not include either of these issues in the final rule. The rule does establish a process for identifying, discussing, and, if appropriate, acting on issues that may emerge from a variety of sources (section 219.4). The Department believes that these issues are most appropriately addressed using this process.

Finally, as noted above, the Department believes that the definition of ecological sustainability encompasses forest health.

Comment: Ecological sustainability as the over-reaching goal of forest planning. Some respondents cited the loss of jobs and an increase of appeals and litigation as reasons not to support the goal of ecological sustainability. One respondent asserted that ecological sustainability is unattainable under the current ecological circumstances. Invasive species such as cheatgrass have irretrievably altered the landscape, this person contended, precluding the possibility of attaining ecological sustainability. Others believed the goal of ecological sustainability is too nebulous a concept to use as a standard upon which to judge forest health.

Response: The Department does not believe that the goal of ecological sustainability will result in a loss of jobs or an increase in appeals and litigation. As noted by the Committee of Scientists, "* * * ecological sustainability lays a necessary foundation for National Forests and Grasslands to contribute to the economic and social components of sustainability, making contributions to strong productive economies and creating opportunities for enduring human communities." The intent of the objection process (section 219.32) is to encourage resolution of issues before decisions are made. In the long run, the objection process is expected to resolve many potential conflicts, reducing litigation.

The proposed rule stated that where ecosystems have been altered to the extent that it is not possible to return them to conditions within the historical range, other scientifically credible approaches may be used to maintain or restore ecological sustainability. The final rule states that where it is not practicable to make measurable progress toward conditions within the expected range of variability, plan decisions may provide for ecosystem composition and structure outside the expected range of variability. Other independently peer-reviewed methods must be used to provide for ecosystem diversity. The Department believes this language in the final rule provides for ecological sustainability where circumstances, such as invasive species, have irretrievably altered the landscape.

Finally, as noted above, the Department changed this section to provide clear, direct standards and goals for achieving ecological sustainability.

Comment: The maintenance of the composition, structure, and processes of ecosystems. Some respondents asserted that the discretionary and nebulous nature of this mandate will lead to arbitrary and inconsistent decisions. Others believed that the proposed rule does not address the physical characteristics of ecosystems. According to these individuals, the Forest Service should emphasize soil, water, and air as much as biological factors when conducting ecological analyses.

Response: As noted above, the Department changed this section to provide clear, direct standards and goals for achieving ecological sustainability. As also noted above, the use of discretionary language in referring to ecological sustainability is appropriate.

The proposed rule required ecological information and analyses on the following physical characteristics: soil conditions, air and water quality, stream channel morphology, and instream flows. The final rule requires evaluations of soil resources, including soil productivity, physical, chemical and biological properties, soil loss, and compaction, and air resources, including air quality, visibility, and other air resource values. The final rule also requires an evaluation of the effects of air quality in ecological systems, including water, and an estimate of current and foreseeable future Forest Service consumptive and non-consumptive water uses and the quantity and quality of water needed to support those uses and contribute to ecological sustainability. The Department believes the requirements in the final rule appropriately address the physical characteristics of ecological sustainability.

Comment: Value of medicinal plants. The extraction of trees, while fostering immediate economic gains, may be destroying valuable plants, according to one respondent. Claiming that medicinal plants have the potential to not only generate income but also save lives, this respondent requested that the value of medicinal plants growing in national forests be considered in the final rule.

Response: Medicinal plants will continue to be an important consideration in the management of national forests and grasslands. The procedures for the identification of functioning ecosystems described in section 219.5 and the use of the issue identification process in section 219.4 ensure appropriate attention and management action is directed toward medicinal plants on National Forest System lands.

Comment: Pre-European settlement conditions. A few respondents supported the concept of pre-European settlement conditions as it is presented in the proposed regulations. They felt that using such a standard would help the Forest Service avoid past mistakes. A majority of respondents, however, presented numerous and diverse reasons for not supporting these concepts. Many believed that the goal of pre-European settlement conditions was unattainable. One individual cited airplane over-flights as an example of the impossibility of returning forests to the pre-European settlement conditions. Some respondents requested the Forest Service clarify exactly what pre-European settlement conditions are. Other respondents feared that this benchmark would be used to restrict human access to national forests. One respondent believed that adopting the pre-European settlement standard will shift forest product demands onto less resilient forests around the world. Such a shift will impact global biodiversity according to this respondent. Others believed that the goal of pre-European settlement conditions contradicts the letter and the spirit of the MUSYA. The resource needs of the nation today cannot be met, they asserted, if such a standard is adopted.

Response: The Department agrees that a goal of pre-European settlement conditions is unattainable. Given climate change, land-use change, and changing landscape conditions, the use of the conditions of pre-European settlement as a reference was not realistic for many environments. For this reason, the Department has eliminated the use of this terminology from the final rule.

As discussed for more fully below, the final rule partially relies on information from the historical natural disturbance regimes of ecosystems, but does not purport to return ecosystems to the dynamics of pre-European settlement. Rather, these requirements use the regimes of natural disturbances of the current climatic period to estimate an expected range of variability for characteristics of ecosystem composition and structure that can be used in planning at broad spatial scales across major ecological types.

Comment: Historical range of variability. Some respondents believed that a lack of information makes a definitive determination of historical range of variability unattainable. They felt that the Forest Service should clearly define what the historical range of variability means and how it will be applied. Others felt the term is too discretionary and will allow the Forest Service to make arbitrary management decisions. Some felt that the proposed planning regulations should account for potential misuse of the historical range of variability. They asserted that the concept can be exploited to support extractive activities that do not necessarily support ecosystem sustainability. Various respondents suggested that the final planning rule provide specific guidance for instances when the historical range of variability for a site is not clearly defined. Because they believed that the determination of historical range of variability for specific sites could take years to complete, several individuals requested that the proposed planning regulations require the implementation of interim protection guidelines for areas of high ecological value. Some respondents wished to see the incorporation of heritage research in the ecosystem management process. They believed such research was essential to determine the historical range of variability. Some respondents supported the benchmark of historical range of variability to measure ecosystem integrity.

Response: The proposed rule described the concept of ecological integrity and the historical range of variability, which, in turn, used pre-European settlement as a reference period. Considering variable and changing climate, land-use, and landscape conditions, the approach in the proposed rule was changed.

The proposed rule contained important, essential ideas about natural history and disturbances. It is well accepted in the scientific community that the ecosystems and species of today are a product of historical disturbance regimes as well as current environments. It is also widely accepted that disturbances play a major role in creating ecological diversity and productivity. The current species are adapted to recent climatic and disturbance regimes of landscapes and contain a long record of environmental history in their genetic structure. Consequently, one cannot ignore the role of the past when attempting to sustain ecological conditions into the future, even when that future environment will be different.

Human desires, however, need to be in sync with ecological capacities. When those desires include maintaining and enhancing current biological diversity, or slowing the rate of its change, then information from the past must be used to help sustain or transition ecosystems into future states at rates that are socially acceptable. The role of ecosystem management in this process is to manage change in ecosystems such that the rate and direction of change is consistent with ecological potential and social desires. It is extremely difficult to establish desired conditions for species and complex ecosystems without some reference to how they have functioned in the past. When used carefully and in a limited way, historical information can play an important role in sustaining desired ecosystems into the future.

The final rule uses information from the historical natural disturbance regimes of ecosystems, but does not purport to return ecosystems to the dynamics of pre-European settlement. Rather, these requirements use the regimes of natural disturbances of the current climatic period to estimate an expected range of variability for characteristics of ecosystem composition and structure. The expected range of variability for characteristics of ecosystem composition and structure in a landscape or region can be estimated from general knowledge of disturbance frequencies, severities, and rates of vegetation development.

The Department believes that providing ecological conditions within the expected range of variability across all major ecological types will reduce threats and risks to the sustainability of native and desired non-native species and ecosystems on national forests and grasslands. Many of the current threats to species and ecosystems on these lands have their origin in accelerated rates and intensities of human activities such as intensive management for timber production and overgrazing or reduced rates of disturbance from fire suppression that have altered the abundance, structure and composition of ecosystems at multiple spatial scales. Providing ecological conditions within the expected range of variability will also contribute to ecosystem productivity and diversity and options for sustaining social, and economic goods and services such as water, forage, and wood and recreation. This requirement is intended to be set at relatively broad province scales and for major ecological types that correspond to potential natural vegetation series.

The proposed rule did not include interim protection guidelines for areas of high ecological value; nor has the Department included such interim guidelines in the final rule. The Department believes that, unlike the historic range of variability, the estimation of the expected range of variability can be accomplished without the need to provide interim protection for areas of high ecological value.

The use of the expected range of variability is not intended to preclude commercial timber harvest. Any short-term or long-term effects on the availability of forest products and services would occur on a forest-by-forest basis once forest plans were revised under the final rule. For this reason, quantifiable impacts to the availability of forest products and services cannot be determined at this time.

Comment: Reference landscapes. Some citizens suggested that the final planning rule clarify the process of identifying reference landscapes. They felt specific guidelines would help define which landscapes will be deemed suitable for such a designation. A few respondents questioned the possibility of finding suitable areas for reference landscape designation. They believed the Forest Service will be hard pressed to find large areas affected by natural disturbance regimes yet still undisturbed by human activity. One individual believed the establishment of reference landscapes is a usurpation of Congressional authority. Since these landscapes are to be set aside in perpetuity as benchmarks, this individual asserted that such an action is a de facto wilderness designation. This respondent felt that such a designation can be exploited to amass large land areas and then exclude access to these lands.

Response: The Committee of Scientists noted that managers need some guidance about the amount of environmental variation that is acceptable and is within the biota's ability to respond adaptively to it. Estimates of an acceptable range of variability in composition, structures, and processes provide reference distributions or conditions against which competing management scenarios are compared. The conditions found in reference landscapes may be the "coarse filters" within which the current physical landscape and biota evolved. To the degree that future management scenarios can achieve the conditions in reference landscapes, the more likely it is that the "coarse filter" will achieve the objectives for ecological sustainability and the less likely that "fine-filter" strategies will be needed for individual species.

The Department has not included specific guidelines in the final rule to define which landscapes will be deemed suitable for such a designation. Reference landscapes are rarely uniform "snapshots" of the past. Considerable variability caused by climate change and disturbance by fire, flood, insects, disease, and other natural factors typically affects reference conditions. Reference conditions vary within an ecosystem over time, and the proportions of old-growth forests or early seral conditions are never in a true equilibrium state. These conditions also vary between ecosystems.

The Department agrees that it will be difficult finding suitable areas for reference landscape designation. In general, it is easier to reconstruct disturbance regimes (e.g., fire frequency and intensity) than the effect of those regimes, so reference landscapes are rarely precise. Nevertheless, they play a key role in evaluating the "coarse filter" proposed by future management plans.

Finally, the establishment of reference landscapes is not a usurpation of Congressional authority. The final rule does not set aside reference landscapes in perpetuity as benchmarks.

Comment: Scientific foundation of ecosystem integrity. Some respondents felt that the concept of ecosystem integrity cannot currently be scientifically gauged. These respondents believed that the lack of scientific measurement standards has led to the unfair labeling of road building and logging activity as indicators of ecosystem integrity. Such a designation, they asserted, leads to the prohibition of road building and logging. One respondent, citing the complexity and breadth of ecosystem processes, requested clarification on the definition of the concept of a "complete" ecosystem. Another respondent asserted that, "Grouping species based on particular value judgments and then using these groupings to evaluate * * * integrity introduces enormous bias into the evaluation."

Response: The proposed rule defined integrity as the completeness of an ecosystem, at multiple spatial and temporal scales, that maintains its characteristic diversity of biological and physical components, spatial patterns, structure, and functional processes within its approximate range of historic variability. These processes include disturbance regimes, nutrient cycling, hydrologic functions, vegetation succession, and species adaptation and evolution. Ecosystems with integrity are resilient and sustainable in the presence of human management actions and natural disturbances. Ecological integrity is an intuitively appealing concept that is well established in the ecological literature, but its definition is contentious. This contention stems from the various (and often conflicting) perspectives that include: Structural

(keep the parts), functional (maintain ecosystem functions and processes), and human uses (accommodating the derivation of goods and services from ecosystems for humans).

Ecological integrity was defined in the Committee of Scientists' report as the state of being unimpaired and sound, and the quality or condition of being whole or complete. Furthermore, the Committee of Scientists recommended that a suite of indicators be used to evaluate integrity that includes species composition, ecosystem composition, ecosystem processes, and appropriate reference distributions against which to judge management decisions. This definition has its basis in the structural and functional perspectives defined above and was put forth as a way to encapsulate the state of the ecosystem in the absence of social and economic considerations.

There are a number of potential concerns tied to directly using ecological integrity in the proposed rule, including: the lack of an unambiguous definition in the literature; a tendency to be viewed as a single state of absolute condition rather than recognizing the dynamic nature of ecosystems; an inclination to link integrity measures to goals (e.g., the historical range of variability of pre-European conditions); and a redundancy with the concept of ecological sustainability.

There is a relatively rich literature on the conceptual aspects of ecological integrity. What is lacking is a generally accepted set of scientific norms regarding integrity measures. For this reason, actual applications of ecological integrity in a management context are rare in the literature, making it difficult to use the concept of ecological integrity in natural resource planning. Some applications of integrity have focused on a single ecosystem stated as having integrity. The concept does not lend itself to classify each system as having or not having integrity. This approach fails to recognize the dynamic nature of ecosystems.

The context for understanding the ecological integrity of any specific landscape must be couched in terms of the goals and expectations for the landscape. This translates, in part, to defining some standard against which integrity will be measured. Often this standard is based on some ecological condition like the historic range of variability as reflected under pre-European settlement conditions. Defining ecological integrity to be within the historic range of variability and requiring that ecological conditions should be maintained within that range does not capture the full meaning of integrity as described in the literature. Linking only to historical conditions, without framing the current and probable future climatic system, is not supported by scientific understanding of environmental change.

The proposed rule stated that "to achieve ecological sustainability, it is necessary to maintain and restore ecological integrity." The Department found it difficult to separate ecological integrity from the broader notion of ecological sustainability. Ecological integrity and ecological sustainability are intended to reflect the overall state of an ecosystem as a whole.

The language "ecological integrity" is not included in the final rule. Integrity is viewed as a component of ecological sustainability along with other system attributes like resiliency, health, and vitality. The Department concluded that the explicit application of ecological integrity as an analysis or performance requirement in the final rule was unnecessary given the rule's focus on ecological sustainability. The Department believes the concept of ecological integrity is within the concept of sustainability as described by the rule.

Comment: Indicators of ecosystem integrity. One respondent wondered how the Forest Service will choose specific indicators to gauge the integrity of ecosystems when, by definition, ecosystems are constantly changing, dynamic systems. This person also questioned how, and by whom, good and bad effects will be determined. Some respondents supported the inclusion of water quality and water flow regimes as indicators of ecosystem integrity in the final rule.

Response: As noted above, the Department found that ecological integrity indicators are an unnecessary addition to the evaluation of sustainability.

As also noted above, the final rule requires the estimation of an expected range of variability for characteristics of ecosystem composition and structure that can be used as planning objectives at broad spatial scales across major ecological types. The expected range of variability in a landscape or region can be estimated from general knowledge of disturbance frequencies, severities and rates of vegetation development.

With respect to the integrity of ecosystems, neither the proposed nor final rule described how good and bad effects will be determined. The requirements for ecosystem diversity (section 219.20(b)(1)) use the expected range of variability to provide for the maintenance and restoration of the characteristics of ecosystem composition and structure.

The final rule provides for an evaluation of ecological sustainability, which includes characteristics of ecosystem and species diversity (section 219.20(a)). The characteristics to be evaluated include water quality and flow regimes.

Comment: Species definitions. While some respondents sought general clarification of focal species, others suggested the final rule specifically elucidate the distinction between focal species and management indicator species. Another respondent questioned whether introduced species, such as the wolf, can be considered under the definition of species-at-risk. In addition, certain respondents felt the proposed definitions of focal species and species-at-risk create a statutory conflict with endangered and threatened species under the Endangered Species Act. Some respondents wonder whether the Forest Service or the Fish and Wildlife Service will designate focal species and species-at-risk. One individual believed the definition of species-at-risk should be expanded to include any species identified by conservation organizations or state natural heritage programs as imperiled. Another felt any documented declining species should be designated. Conversely, numerous respondents supported the concept of focal species, species-at-risk, and demand species as they are currently defined in the proposed rule.

Response: In the current rule, management indicator species (MIS) are selected in order to estimate the effects of management actions on fish and wildlife populations. MIS include, where appropriate, threatened and endangered species; species with special habitat needs that may be significantly influenced by planned management programs; species commonly hunted, fished, or trapped; non-game species of special interest; and species whose population changes are believed to indicate the effects of management activities on other species of selected major biological communities or on water quality.

In the proposed rule, focal species are selected for use as surrogate measures in the assessment of ecological integrity, including the diversity of native and desired non-native species. Their status and time trend provide insights to the integrity of the larger ecological system to which they belong. Species selected would represent the range of environments within the assessment area, and would serve an umbrella function, or play key roles in maintaining community structure or processes. Focal species have been retained in the final rule.

In the proposed rule, species-at-risk were defined as endangered, threatened, candidate, proposed, and sensitive species, and species for which significant local reductions in distribution or density are concerns. The final rule defines species-at-risk as federally listed endangered, threatened, candidate, and proposed species and other species for which loss of viability, including reduction in distribution or abundance, is a concern. In the final rule, an introduced species could be designated as a species-at-risk.

The Department does not believe the definitions of focal species and species-at-risk in the proposed rule created a statutory conflict with endangered and threatened species under the Endangered Species Act. In addition, the responsible official designates focal species and those species-at-risk not designated as threatened, endangered, candidate, and proposed species by the U.S. Fish and Wildlife Service in the proposed rule. This language is retained in the final rule (section 219.20(a)).

The proposed rule did not require inclusion of species listed by state natural heritage programs or conservation organizations as species-at-risk. The Department believed that the state natural heritage programs or conservation organizations listed species for reasons other than viability concerns. In defining species-at-risk, the Department sought a grouping of species based solely on viability concerns. For this reason, the Department inserted language in the final rule that species-at-risk include other species for which loss of viability, including reduction in distribution or abundance, is a concern within the plan area. These other species-at-risk may include sensitive species and state listed species. Viability is the criterion which determines what is included as a species-at-risk.

Comment: Game species. Some respondents felt habitats for abundant game species have been enhanced at the expense of habitats for less common and more sensitive species. They asserted that such practices indicate the need for a shift of emphasis from demand species to focal species and species-at-risk. In contrast, some felt that many species of big game are not receiving the management attention they warrant.

Response: Demand species are those plants and animal species of high social, cultural, or economic value. In the proposed rule, plan decisions must provide for ecological conditions needed to achieve sustainable use levels of demand species. This provision was deleted from the final rule to ensure that the treatment of demand species would not take place at the expense of habitats for focal species and species-at-risk.

Comment: Use of focal species. Some respondents believed the Forest Service should reconsider the use of focal species as indicators of ecosystem integrity. One citizen asserted, "There is not enough money in the federal treasury to fund the numerous surveys and analyses that will ultimately be required." Others agreed with this sentiment, and added that the emphasis of the final rule should be shifted from focal species to habitat capability. The Forest Service should be monitoring for habitat, they declared, because it is not only easier than monitoring for populations, but it also allows the appropriate entity, the individual stated, to manage and monitor wildlife species.

Response: The Department acknowledges an increase in analysis and monitoring in the proposed rule for ecological sustainability, including focal species. Continued declines in the cost of analysis and monitoring are expected in the future, however, with advances in information technology. Furthermore, the Department believes that no significant additional resources will be required for implementation of the final rule as the planning framework shifts resources from later to earlier in the planning process. For these reasons, the Department has retained the provisions for appropriate analysis and monitoring in the final rule.

Comment: Assessing viable populations of species. Population sampling and monitoring of species, especially threatened and endangered species, needs to be a mandate in the final rule, some respondents asserted. These respondents felt that without actual population surveys, species viability will not be sustained. Another individual wondered if scientists have reached any consensus on broad-scale methods and strategies for providing species viability. This person asserted that such a model does not exist and hence the attainment of species viability will be marred by confusion and conflict.

Response: In the proposed rule, population sampling is appropriate when the risk of local or broader extirpation is high or there is high uncertainty about the habitats and conditions needed for species viability. In the final rule, the plan monitoring strategy may require population monitoring for some focal species and some species-at-risk as appropriate.

The responsible official's decision to monitor populations and the responsible official's choice of methodologies for monitoring selected focal species and selected species-at-risk in the final rule may be based upon factors that include, but are not limited to, the degree of risk to the species, the degree to which a species' life history characteristics lend themselves to monitoring, the reasons that a species is included in the list of focal species or species-at-risk, and the strength of association between ecological conditions and population dynamics. The Department believes this language provides assurance that species viability will be sustained.

Many scientists have reached a consensus on broad scale methods and strategies for providing species viability. These scientists believe that taking an ecosystem diversity approach increases the potential to meet the needs of the preponderance of species. This is particularly important because it is financially and technically impractical to individually assess each species.

Ecological sustainability has two primary indicators in the final rule: ecosystem diversity and species diversity. Ecosystem diversity provides a "coarse filter" approach for sustaining ecosystems. Ecological diversity is defined in a broad context by language throughout section 219.20 of the final rule. Characteristics of ecosystem diversity include, but are not limited to, major vegetation types, water resources, soil resources, air resources, and focal species. Evaluation of ecological diversity includes information about focal species, biological and physical properties, principal ecological processes, effects of human activities, estimations of the range of variability of characteristics, effects of air quality, water uses, and reference landscapes. Species diversity provides a "fine filter" approach for sustaining ecosystems in the final rule by addressing those species that may not remain viable under the coarse filter approach. These species typically include those that are currently thought to have a high extinction risk within an area of interest. The combination of coarse and fine filters in the final rule has the advantage of efficiency; the responsible official assumes adequate representation of ecological conditions by maintaining or restoring a diversity of ecosystems and checks this assumption through assessments of viability of a subset of individual species.

Comment: Use of plant and invertebrate species in evaluating species viability. Many respondents exhorted the Forest Service to reconsider the use of plant and invertebrate species in evaluating species viability. Most of these

respondents felt that insufficient scientific data exists to implement this increase in the scope of analysis. Other respondents applauded the inclusion of plant and invertebrate species viability as an indicator of ecological integrity. Of these respondents, at least one individual suggested the Forest Service expand the species viability criteria to include organisms from all the biological kingdoms.

Response: The proposed rule implemented the NFMA requirement to provide for the diversity of plant and animal communities by expressly defining species to include any taxon of the plant or animal kingdom. The current rule only requires that viable populations of vertebrate fish and wildlife be maintained. In the final rule, a species is defined as any member of the animal or plant kingdom that is described as a species in a peer-reviewed scientific publication and is identified as a species by the responsible official pursuant to a plan decision.

The Department acknowledges an increase in requirements for species viability. But as noted above, continued declines in the cost of information technology, such as personal computers and the application of remote sensing technologies, are anticipated. In addition, it is expected that the application of broad-scale assessments and subsequent smaller-scale analyses and decisionmaking will build on one another and improve the overall efficiency and effectiveness of planning activities.

The Department has not expanded the species viability criteria to include organisms from all the biological kingdoms. NFMA's requirement is specific to plant and animal communities.

Comment: Sustaining viable populations of non-native species. Some respondents wondered why the Forest Service would wish to maintain species that, by definition, disrupt the ecological integrity of an ecosystem. One respondent wanted the Forest Service to recognize that planning, in and of itself, cannot ensure species viability. This person supported this assertion by noting that the American Chestnut, once the dominant, climax tree species in eastern forests, has been wiped out by chestnut blight. Forest planning has no effect on the loss of such major ecosystem components, this respondent asserted. Another citizen applauded the agency's acknowledgment of incomplete information, uncertainty, and the inherent variability of ecological systems. Such an acknowledgment should be heeded, this person asserted, and precaution and prudence should be used when implementing any new management practices.

Response: The proposed rule defined desired non-native species as those species of plants or animals that are not indigenous to an area but which represent a significant, and usually remnant segment of a gene pool. The final rule retains its reference to desired non-native species, which are defined as those species of plants or animals which are not indigenous to an area, but valued for their contribution to species diversity or their high social, cultural, or economic value.

The Department agrees that planning, in and of itself, cannot ensure species viability. The Forest Service can only affect certain ecological conditions on land it manages, such as the abundance and distribution of habitat, roads, other structural developments, many human uses, and some invasive or exotic species. Other factors beyond the control of the Forest Service may influence the viability of species.

As noted above, the final rule provides that where it is not practicable to make measurable progress toward conditions within the expected range of variability, plan decisions may provide for ecosystem composition and structure outside the expected range of variability. Other independently peer-reviewed methods must be used to provide for ecosystem diversity.

An alternative method of providing for ecosystem diversity, which was described in the proposed rule, is the historic range of variability referenced to pre-European settlement conditions. Yet another approach would be a range of variability referenced using a time period more recent than pre-European settlement conditions. This would provide for ecological sustainability where circumstances, such as the Chestnut blight, which have irretrievably altered the landscape. In the future there may also be other methods that have not yet been fully tested or envisioned.

The proposed rule acknowledged the uncertainty and inherent variability of ecological systems (sections 219.20(a)(10) and 219.20(b)(1)). The Department agrees with respondents that welcomed the inclusion of this language. The final rule retains this language and relocates it to section 219.22, The overall role of science in planning.

Comment: Discretionary language. Many respondents felt that specific, imperative language should be used in section 219.20 (b) of the proposed rule. Discretionary language is too vague to be enforceable, they asserted. One person asserted that phrases such as, "Maintain the more likely conditions within the range," and "provide for * * * redundancy of habitat as necessary to buffer disturbances characteristic of dynamic systems," needs less jargon and more clarification. Another respondent felt that the final rule should consider the variability of species distributions and density over time.

Response: The Department acknowledges a lack of clarity in the proposed rule and has revised paragraph (b) in section 219.20 to improve its clarity and readability.

The species viability criteria do not specifically address the variability of species distributions and density over time. These are factors to be addressed during plan revisions as required by NFMA, to provide for diversity of plant and animal communities based on the suitability and capability of the specific land area, in order to meet overall multiple-use objectives (16 U.S.C. 1604(g)(3)(B)).

Comment: Species viability requirements. Numerous respondents felt that the Forest Service should use clear, specific, imperative language to guide the maintenance of species viability. Some of these respondents also believed the final rule should specify a discrete time period over which species viability will be measured. Although dissent exists among the public and even within the Committee of Scientists, one respondent believed this should not preclude the Forest Service from including requirements for sustaining viable populations. The majority of respondents that supported requirements for sustaining viable populations believed the final rule should contain specific guidelines in this respect, rather than the vague "high likelihood" standard. Conversely, some respondents believe the Forest Service should reconsider the requirement in the proposed rule to sustain viable populations. They felt that such a mandate makes wildlife the dominant, if not exclusive, goal of forest planning. Others questioned whether funding sources will be available to support such a mandate.

Response: As noted above, the Department does not believe there is a lack of imperative language in section 219.20(b). It does acknowledge less than clear descriptions in this section of the proposed rule. Paragraph (b) in section 219.20 is revised in the final rule to improve its clarity and readability.

As also noted above, the collection and analysis of information at a variety of spatial and temporal scales is important in providing for maintenance or restoration of ecological sustainability. These scales include geographic areas such as bioregions and watersheds, scales of biological organization such as communities and species, and scales of time ranging from months to centuries. For this reason, the Department has not adopted a discrete time period over which species viability is to be measured.

The Department is adopting the "high likelihood" language to emphasize the importance it places on the viability of plant and animal species. The current rule states "Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area." Furthermore, the rule states that "a viable population shall be regarded as one which has the estimated number and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained. * * *". Together, the phrases "shall be managed to maintain" and "ensure" have been perceived by some people to be a 100 percent certainty that all species would remain viable at all times. This expectation in the face of known as well as unknown uncertainty, imperfect and incomplete information, as well as acknowledgment of systemic environmental variation is a standard that is arguably a technical impossibility—unattainable in the absolute. The Department has adopted the high likelihood standard, as an administrative rather than technical standard, to provide a reasonable level of assurance that species will remain viable and correct what is perceived by many to be a technical conundrum.

The Department revised the language in the final rule to clearly apply the high likelihood standard to ecological conditions rather than to the populations of species and their viability. This recognizes that the Forest Service can only affect certain ecological conditions on the land it manages. These conditions include the abundance and distribution of habitat as well as other factors such as roads, other structural developments, many human uses, and some invasive or exotic species. Other factors beyond the control of the Forest Service may influence the viability of some species. These factors include fragmented land ownership patterns, adjacent activities, climate, disease, and factors that may preclude a species from maintaining viability within National Forest System lands.

The Department has retained the requirement in the final rule to sustain viable populations. As noted above, the first priority for stewardship of the National Forest System, which is to maintain and restore ecological sustainability, is unchanged from the proposed rule. Ecological sustainability has two primary indicators in the final rule: ecosystem diversity and species diversity. Ecosystem diversity provides a "coarse filter" approach to the conservation of biological diversity. Species diversity requirements specified in the final rule defines what is commonly considered a "fine filter" approach. The combination of coarse and fine filters in the final rule has the advantage of efficiency: the responsible official assumes adequate representation of ecological conditions by maintaining or restoring a diversity of ecosystems and checks this assumption through assessments of viability of a subset of individual species.

The Department acknowledges an increase in requirements for species viability. But as noted above, continued declines in the cost of information technology are expected in the future. Furthermore, the Department believes that, in total, no significant additional resources will be required for implementation of the final rule.

Comment: Mandates to maintain habitat. Many respondents support maintenance of habitat. However, several people believed that as private lands become developed, the national forests and grasslands could become increasingly important refuges for sensitive species. They felt that the proposed regulations should include requirements to restore or maintain disproportionately greater amounts of habitat in national forests and grasslands for sensitive species. One individual requested clarification regarding the concept of redundancy of habitat. One organization suggested that the requirement to provide for redundancy of habitat would only lead to more litigation.

Response: In the proposed rule, consideration is given to National Forest System lands that have a unique opportunity to provide a disproportionately greater contribution to ecological conditions needed to reduce the likelihood of species becoming listed under the Endangered Species Act or to contribute to the recovery of listed species. In response to this comment, the final rule strengthens this provision by requiring plan decisions to reflect the unique opportunities that National Forest System lands provide to contribute to recovery of listed species.

Section 219.20(b)(8)(v) in the proposed rule required structural and functional redundancy of habitat as necessary to buffer disturbances characteristic of dynamic systems. This provision was not retained in the final rule and is best addressed in site-specific planning.

Other changes. This section has been substantially reorganized from the proposed rule and terms redefined. This was done to add clarity and respond to public comments and staff review. None of the changes in section 219.20 are intended to change the overall intent of the section as originally proposed.

"Ecosystem diversity and species diversity" are specifically stated as the components of ecological sustainability in the final rule and provide a focus to reorganize information in this section. The proposed rule included, but did not explicitly identify ecosystem diversity and species diversity as the two components of ecological sustainability.

COMPARISON OF THE COMPONENTS IN SECTION 219.20

Components	Proposed rule	Final rule
Spatial and temporal scales	(a) Includes NEPA under list of methods	(a) NEPA requirement already exists and is not included. Language added for responsible official to determine information and analyses needed for plan revisions, amendments, and site-specific decisions.
Characteristics of ecosystem and species diversity.		(a)(1) New language added for clarity.
Ecosystem diversity	(a)(1), (a)(7), (b)(6), (b)(7)	(a)(1)(i) Soil resource language added to level of detail consistent with water and air resources.
Species diversity	(a)(1), (a)(7)	(a)(1)(ii).
Evaluation of ecological sustainability	(a), (a)(5), (a)(8)	(a)(2) Language added that describes evaluations of ecological sustainability.
Focus species	(a)(7)(i)	(a)(2)(i)(A).
Biological and physical properties of ecosystems.	(a)(1)	(a)(2)(i)(B).
Ecological processes	(a)(2)	(a)(2)(i)(C) Adds specific information to be included in the description of other ecological processes and feasibility of maintaining ecological processes (e.g. dispersal, migration, nutrient cycle, food web dynamics, waterfowls, etc.)
Effects of human activities	(a)(3)	(a)(2)(i)(D).
Effects of air quality	(b)(7)	(a)(2)(i)(F).
Estimates of water use	(b)(6)	(a)(2)(i)(G).
Plan decision requirements for soil, water and air.	(b)(6), (b)(7)	(b)(1) Language not retained, requirements included within overall statement.
Identification of reference landscapes	(a)(6)	(a)(2)(i)(H).
Definitions: Focal species, Species-at-risk	(a)(7)(i), (a)(7)(ii)	Section 219.36, Definitions.
Species viability	(a)(8)(i)	(a)(2)(ii) Situations where risks to viability are high not included, enough language is included to analyze these situations.
Measures of ecological integrity	(a)(8)(ii)	Provides for evaluation of a comprehensive list of physical and biological indicators.
Individual and group species assessments	(a)(8)(i)	(a)(2)(ii) Language added requiring individual species assessments of federally listed species, otherwise allowing for group assessments. Group assessments necessary for financial and technical feasibility.
Variability of ecological systems	(a)(10), (b)(1)	Section 219.22.
Consistency of planning level decisions and existing rights and legal requirements.	(b)	Section 219.7 adequately describes these requirements.
Plan decision for maintenance or restoration of ecosystems.	(b)(2), (b)(3)	(b)(1).
Conditions within the range of variability	(b)(3)(i), (b)(3)(iv) for exception	(b)(1)(i) New language provides an exception, (b)(1)(iv), when staying within the range is unacceptable.
Conditions outside the range of variability	(b)(3)(ii), (b)(3)(iv) for exception	(b)(1)(ii) New language provides an exception, (b)(1)(v), when staying outside the range is acceptable.
Range of variability cannot be defined	(b)(3)(iv)	(b)(1)(iii) New language ensures other peer-reviewed methods are used.
Natural disturbance processes	(b)(3)(iii)	(a)(2)(i)(E).
Future stewardship choices	(b)(4)	(b)(1) Language not retained, intent addressed.
Reference landscapes	(b)(5)	(b)(1) Language not retained, intent addressed.
Plan decisions affecting species diversity	(b)(8), (b)(8)(ii), (b)(8)(iii), (b)(8)(i) replaced by new language referencing methods.	(b)(2).
Exceptions for plan decisions affecting species diversity.	(b)(8)(iv)	(b)(2)(ii).
	(b)(8)(ii)	(b)(2)(iii) New language to prevent species extirpation and support viability. (b)(2)(iv) Added to support viability where infeasible to restore ecological conditions.
Redundancy of habitat to buffer disturbances	(b)(8)(v)	Language not retained, requirements of the section provide a comprehensive ecological approach.
Federally listed species	(b)(10)	(b)(3)(i) Language that actions not contribute to species listing is covered under ESA and restated only for conservation agreements.
Biological opinions and recovery plans	(b)(9)	(b)(3)(ii) Specific language for recovery plans is replaced by requirement for plan decisions and ESA.

Section 219.21—Social and economic sustainability. This section of the proposed rule described a process for developing a comprehensive understanding of sustainable social and economic environments.

Comment: Definition of economic and social sustainability. Many respondents express confusion over the myriad of definitions of social and economic sustainability contained in the proposed planning regulations. Clear, concise, and consistent definitions are needed, according to numerous citizens. Several people believe the use of discretionary language in this section is rampant, and therefore makes all the subsequent guidelines moot.

Response: The Department acknowledges a lack of clear, concise, and consistent definitions in the proposed rule concerning social and economic sustainability. The final rule has been revised in response to this concern.

In the final rule, social and economic sustainability is defined as meeting the economic, social, aesthetic, and cultural needs and desires of current generations without reducing the capacity of the environment to provide for the needs and desires of future generations, considering both local communities and the nation as a whole. It also involves the capacity of citizens to communicate effectively with each other and to make sound choices about their environment.

The Forest Service contributes to social and economic sustainability by developing and considering relevant social and economic information and analyses, providing early and frequent opportunities for interested and affected people to participate in National Forest System planning and stewardship, and providing a range of uses, values, products, and services. These uses, values, products, and services include but are not limited to outdoor recreation; forage; timber; wildlife and fish; biological diversity; productive soils; clean air and water; and minerals. They also afford intangible benefits such as beauty, inspiration, and wonder.

The final rule requires the responsible official to develop or supplement information and analyses (section 219.21(a)), including specific social and economic analyses (section 219.21(a)(1)) and analyses of community or regional risk and vulnerability (section 219.21(a)(2)).

Comment: Goal of economic and social sustainability. Several people felt that social and economic concerns have received little consideration in past Forest Service decisions. These people do not think the proposed regulations will prevent such transgressions. To help emphasize these concerns, one person requested that social and economic sustainability be split into two separate sections. Another individual asserted that the Forest Service should establish the achievement of economic and social sustainability as the first priority among the goals of the proposed rule. Of those that believe the social and economic section needs to be emphasized and expanded, many requested that the Forest Service promulgate specific, mandatory guidelines for achieving social and economic sustainability. Some believed the proposed rule should not emphasize economic and social sustainability, because they fear such an emphasis will result in the reallocation of time and money away from natural resource management. Improving local stewardship capacities and collaboration were also offered as ways to attain social and economic sustainability.

Response: In the final rule, the Department has not split social and economic sustainability into two separate sections. Nor has it established the achievement of economic and social sustainability as the first priority among the goals of the proposed rule. Finally, the Department has not included in the final rule specific, mandatory guidelines for achieving social and economic sustainability.

Requirements for achieving sustainability are found in sections 219.19, 219.20, and 219.21 of the final rule. As noted above, social and economic sustainability is achieved by providing a range of uses, products, services, and values, consistent with ecological sustainability (section 219.20(b)). The first priority for stewardship of the National Forest System, which is to maintain and restore ecological sustainability, is unchanged from the proposed rule. As noted by the Committee of Scientists, "* * * ecological sustainability lays a necessary foundation for National Forests and Grasslands to contribute to the economic and social components of sustainability, making contributions to strong productive economies and creating opportunities for enduring human communities."

The Department agrees that improving local stewardship capacities and collaboration are ways to attain social and economic sustainability. The proposed rule provided that the responsible official and those involved in planning should invite and encourage others to engage in the collaborative development of landscape goals. This language has been retained in the final rule (section 219.12(b)(1)). As noted in the Committee of Scientists' report, collaborative planning is a shared process within which agencies cooperate with one another; work with tribes, other public, and private organizations; and engage communities and citizens in envisioning and working toward a sustainable future on the national forests and grasslands.

Comment: Role of timber harvest in economic and social sustainability. One respondent believed that the Forest Service must realize that timber harvest is necessary to achieve economic and social sustainability. In contrast, another individual asserted that the Forest Service has no responsibility or reason to sustain certain cultural and economic practices such as commodity extraction. No federal agency should maintain a particular lifestyle over another, according to this respondent.

Response: The proposed rule did not consider timber harvest or more generally, commodity extraction, necessary to achieving economic and social sustainability. Nor did the Department include either of these issues in the final rule. The rule does establish a process for identifying, discussing, and, if appropriate, acting on issues that may emerge from a variety of sources (section 219.4). The Department believes that these issues are most appropriately addressed using this process.

Comment: Analysis of economic and social sustainability. Many respondents offered various ideas to help achieve social and economic sustainability in national forest communities. One person suggested the Forest Service adopt better modeling tools to improve analysis. Others cited the need to expand the analysis criteria to include adjacent communities and elected officials in management decisions. One person believed the Forest Service should reconsider the requirement to analyze social and economic sustainability on a large scale. Such analysis, this person asserted, masks the impacts on small and sparsely populated communities.

Response: The Department agrees that better modeling tools should be adopted to improve analysis. The final rule requires that the best available science be considered in planning (section 219.22(a)).

The Department has not expanded the analysis criteria to include adjacent communities and elected officials in the analysis of management decisions. As noted above, section 219.14 of the final rule identifies some of the key steps where state and local governments will be engaged in planning. State and local governments will be involved in the identification of issues as described in section 219.4(a). In addition, the rule recognizes the need for the Forest Service and state and local governments to coordinate plans and programs. Section 219.3(c) provides opportunities for state and local governments to participate in the collaborative planning process.

The proposed rule encouraged appropriate analysis within the relevant scales of influence for national forest and grassland planning and decisionmaking. This language has been retained in the final rule. Large-scale studies may not be appropriate to determine the impacts of an action within a particular village or small town. Conversely, looking only at economic or social relationships within a village or small town may mask identification of regional trends and emerging events. As with many topics, the early identification of issues and their appropriate scope and scale are critical to successful planning and natural resource management.

Comment: Measurement of social sustainability. The exact means by which social sustainability will be measured needs to be clarified for many respondents. Some felt that the proposed regulations should expand the criteria of future social analyses to include the input of adjacent communities and their elected officials. Numerous people cited the use of discretionary language, such as "may" and "should," as a serious flaw in the proposed regulations. These individuals would like to see the inclusion of imperative language, such as "shall" and "must," to ensure that social analysis is, in fact, undertaken.

Response: The proposed rule did not describe the exact means by which social sustainability will be measured. This information was not included in the final rule. Instead, this information will be included in the Forest Service Manual.

As noted above, the Department has not expanded the criteria of analyses to include the input of adjacent communities and their elected officials. Section 219.14 of the final rule identifies some of the key steps where state and local governments will be engaged in planning. State and local governments will be involved in the identification of issues as described in section 219.4(a). In addition, the rule recognizes the need for the Forest Service and state and local governments to coordinate plans and programs. Section 219.3(d) provides opportunities for state and local governments to participate in the collaborative planning process.

As noted above, the Department agrees that the use of discretionary language, such as "may" and "should," was a serious flaw in the proposed rule. The final rule requires the responsible official to develop or supplement information and analyses (section 219.21(a)), including specific social analyses (section 219.21(a)(1)(i)) and analyses of community or regional risk and vulnerability (section 219.21(a)(2)).

Comment: Social data and effects. Specific clarification regarding social data collection is needed according to many respondents. Local values, social standards, and changes in social values were mentioned as criteria that need to be further clarified. The social effects of the loss of timber industry jobs, specifically on rural communities, were also a concern. Several respondents asserted that their quality of life is at least partially, if not wholly, dependent on the health of the national forests.

Response: The Department agrees that the proposed rule was not specific concerning the collection of social information. As described above, the final rule requires the responsible official to develop or supplement information and analyses (section 219.21(a)), including specific social analyses (section 219.21(a)(1)(i)). Additional specificity will be provided in the Forest Service Manual.

Included in section 219.21(a)(1)(i) of the final rule is the requirement to develop or supplement information on social and cultural opportunities provided by National Forest System lands. The Department believes this language encompasses the social effects of the loss of timber industry jobs, including those effects on rural communities.

The Department agrees that quality of life is at least partially dependent on the health of the national forests. As noted above, the first priority for stewardship of the National Forest System, which is to maintain and restore ecological sustainability, is unchanged from the proposed rule.

Comment: Economic analysis of Forest Service management. Several people felt that previous economic analyses of national forests have been myopic in scope, and hence the proposed rule should expand the criteria of future economic analysis to include adjacent communities and elected officials in management decisions. Some cited the need for a comprehensive economic analysis of the entire Forest Service and its management activities.

Response: As noted above, the Department has not expanded the criteria of analyses to include the input of adjacent communities and local elected officials. Section 219.14 of the final rule identifies some of the key steps where state and local governments will be engaged in planning. State and local governments will be involved in the identification of issues as described in section 219.4(a). In addition, the rule recognizes the need for the Forest Service and state and local governments to coordinate plans and programs. Section 219.3(c) provides opportunities for state and local governments to participate in the collaborative planning process.

An economic analysis of the entire Forest Service and its management activities is beyond the scope of this rule.

Comment: Valuation of non-market benefits. Several respondents felt that the Forest Service has been ignoring the indirect and often time invisible benefits of forest systems. They believed that non-commodity resource benefits, such as carbon sequestration, oxygen production, and water filtration, should be factored into any economic analysis of forest management activities. One citizen urged the Forest Service to assign a monetary value to these traditionally priceless benefits. This individual felt that such an exercise would ensure that the loss of these benefits would be a factor in economic cost-benefit analysis.

Response: The proposed rule provided for, but did not require, the consideration of the financial and opportunity costs derived from market and non-market use. Section 219.21(a)(1)(ii) of the final rule requires the development of information on the range and estimated long-term value of market and non-market goods, uses, services, and amenities that can be provided by National Forest System lands consistent with the requirements of ecological sustainability. This includes the cost of providing them, and the effect of providing them on regional and community well-being, employment, and wages. The Department believes this language in the final rule requires the inclusion of commodity and non-commodity resource benefits in economic analyses, with values assigned to these benefits.

Comment: Economic impacts on ecosystems. Some respondents felt that the long-term ecological consequences have not been considered when conducting cost-benefit analysis of past forest management activities. One individual cited the long-term loss of water quality incurred from the short-term economic benefit of logging as an example. Another citizen stated that timber harvest often has adverse economic impacts, citing the loss of windbreak and temperature regulation that a nearby forest once provided local families. Some respondents suggested that the cost-benefit analysis of past logging expand in scope to include any and all costs associated with specific projects.

Response: The proposed rule did not provide for cost-benefit analysis of past forest management activities. The Department has not included such a provision in the final rule. While acknowledging that timber harvest in the past may have had adverse economic impacts, the Department does not believe that quantifying past economic impacts would significantly improve the planning process.

As noted above, the final rule requires the development of descriptions and analyses, including the estimated long-term value of market and non-market goods, uses, services, and amenities that can be provided by National Forest System lands consistent with the requirements of ecological sustainability.

Comment: Economic impacts on local economies. Some respondents felt that the final rule will further restrict timber harvest, and this restriction will adversely affect the economies of local companies and communities. Other individuals cited the need for the Forest Service to specifically identify the economic impacts the proposed rule may have on local economies. Many felt that the small, rural communities associated with national forests have experienced, and will continue to experience, the majority of impacts any change in forest management policy engenders. Thus, they asserted, local communities, especially those where the majority of adjacent land is federally owned, warrant special consideration.

Response: The proposed rule provided for, but did not require, the consideration of economic estimates of the National Forest System contribution to present and future society benefits. As noted above, section 219.21(a)(1)(ii) of the final rule requires the development of information on the range and estimated long-term value of market and non-market goods, uses, services, and amenities that can be provided by National Forest System lands consistent with the requirements of ecological sustainability. This includes the cost of providing them, and the effect of providing them on regional and community well-being, employment, and wages. The Department believes this language helps identify the economic impacts on local economies.

Comment: Direct and indirect costs. Another person felt the language in the current rule better ensures that direct and indirect costs are included in such an economic analysis. This person suggested the Forest Service retain the current language rather than adopt the less stringent proposed language. Such language will lead to more divisiveness, according to this individual. In addition to including traditional expenses, these people believed the Forest Service should include the costs of general overhead and possible litigation in their economic analysis.

Response: In the proposed rule, lands not suited for timber production included lands where the costs of timber production were not justified by the ecological, social, or economic benefits (section 219.28(b)(5)). This provision has not been retained in the final rule. In the final rule, the responsible official may establish timber production and its possible harvest as a multiple-use value and plan objective within the plan area where timber may be harvested if the costs of timber production are justified by the ecological, social, or economic benefits (section 219.28(b)). The Department believes the costs and benefits referenced in this Section of the final rule include all direct and indirect costs and benefits.

Comment: Economic analysis and demographics. Several respondents believed that the Forest Service should conduct economic analyses suited to local demographics. The densely populated, sparsely forested East Coast is demographically distinct from the sparsely populated, densely forested western regions. Some asserted that such demographics should be incorporated into the economic analysis of Forest Service activities. The dearth of forests and plethora of humans in the eastern region of the United States dictates that the value of tourism should outweigh the value of timber in eastern economic analyses, according to these respondents.

Response: The proposed rule provided for, but did not require, the consideration of the demographics, including current demographics related to direct, indirect, and induced effects on income, population, and industry employment, and the ability of communities to adapt to change. The final rule requires the development of descriptions and analyses, but its treatment of demographics is limited to social trends.

Other changes. The Department acknowledges the frequent use of discretionary language in this section of the proposed rule. In contrast, the final rule requires the responsible official to develop or supplement information and analyses, including specific social and economic analyses and analyses of community or regional risk and vulnerability, paragraph (a).

The proposed rule did not include requirements for plan decisions that may affect economic and social sustainability. The final rule requires that plan decisions contribute to social and economic sustainability by providing a range of uses, products, services, and values, consistent with ecological sustainability, paragraph (b). This paragraph also contains new language concerning the scope and scale of decisions, issues addressed, and analyses conducted in previous provision of this section. The language was added to clarify that plan decisions affecting economic and social sustainability would be made consistent with the principles of ecological sustainability and applicable laws, including the MUSYA.

The Department acknowledges respondent's concerns regarding definitions for social and economic sustainability in the proposed rule that are clear, concise, and consistent. Section 219.21 is revised to reduce redundancy and improve clarity and readability, as described below:

COMPARISON OF THE COMPONENTS IN SECTION 219.21

Components	Proposed rule	Final rule
Planning involves interested and affected people	(a)	Opening paragraph references sections 219.12 through 219.18.
Social and economic information	(b), (c), (d)	(a) Language added that requires social and economic information and analyses for planning.
Economic effect	(b)(4), (b)(5), (b)(7)	(a).
Social and economic analyses	(b)(3), (b)(4), (c)(1), (c)(2), (d)(1), (d)(2)	(a) Adds monitoring results to the list of methods.
Demographic trends	(b)(1), (e)	(a)(1)(i) Language added to include social and cultural opportunities, community assistance needs, and other appropriate information to provide a comprehensive list of social indicators.
Employment, income, and other economic trends.	(b)(3–6)	(a)(1)(ii) Language added includes long-term costs and benefits provided by National Forest System lands and their effects on community well-being to provide a comprehensive list of economic indicators.
Benefits of restoration strategies	(b)(2)	(a)(1)(iii).
Other information		(a)(1)(iv) Added to provide for issues being considered by the responsible official, section 219.4.
Risk and vulnerability analyses	(c)(3), (g)	(a)(2).
Evaluate social and economic sustainability		(b) Requires responsible official to use the information analyses developed in (a).

The Contribution of Science

Section 219.22—The role of assessments, analyses, and monitoring. This section of the proposed rule described the role of assessments, local analyses, and monitoring. In the final rule, this section has been renamed "The role of science in assessments, analyses, and monitoring." It has been designated as section 219.23.

Comment: Integrating science into the planning process. While many people agree with using science as a management tool, respondents expressed a variety of opinions on how to best integrate science into the planning process. One person suggested replacing the phrase "best available science" with the phrase "broadly accepted scientific principles, information, and analysis" in order to maintain continuity in scientific assessment. Others contended that science must be statistically sound and supportable.

Response: The Committee of Scientists' report emphasized that "Collaborative planning rests upon a foundation of scientific information developed by scientists and other knowledgeable people in an open, public process." The Committee identified at least five different tasks for scientists in collaborative planning: creating knowledge of relevance to collaborative planning, developing integrative science for bioregional assessments, helping managers understand the application of scientific and technical knowledge, helping to design effective monitoring procedures and adaptive management experiments, and evaluating the use of scientific information in planning and implementation.

Planning is based on scientific and other forms of knowledge. Where scientific information is used, the quality of such information should be ensured by using appropriate levels of independent peer review, quality assurance protocols for monitoring and other data, as well as free and open access by the public (including the scientific community) to data, assumptions, and conclusions.

The final rule acknowledges these roles for science and the responsibilities of the Forest Service Research and Development Program. It requires the responsible official to ensure that the best available science is considered in planning (section 219.22). It also sets mechanisms in place through involvement of Forest Service Research and Development, Science Advisory Boards (section 219.25), science consistency evaluations (section 219.24), and scientific peer reviews (section 219.22) to ensure that the best science is available to decision makers, is properly analyzed and interpreted, and can be applied with scientific credibility.

Comment: Human values and multiple perspectives. Even though many believe that the use of scientists in national forest planning is important, some requested that human values and multiple perspectives be integrated with science to evaluate sustainability.

Response: The role of science in the final rule (section 219.22) is to ensure that the best available science, including social science, is available and soundly considered in planning. Collaborative planning involving other federal agencies, state and local governments, American Indian Tribes and Alaska Natives, private landowners, and other interested individuals and organizations (sections 219.12 to 219.18) is encouraged to ensure that a broad range of human values and perspectives is brought to bear, along with the best science available, in land management planning. Through these processes, a locally appropriate balance of ecological conditions and social issues, goals, and proposed actions will be identified to ensure that scientifically sound management decisions are made to sustain ecological conditions for the future while meeting current desires and requirements of humans. Furthermore, the final rule underscores that science provides information, not decisions, and it is the responsible official who has final decision authority.

Comment: Balance between economic, social, and biological sciences. Many respondents asserted that economic and social sciences must be weighed equally with biological sciences in the decisionmaking process.

Response: Section 219.22(a) of the final rule includes new language requiring consideration of the best available science in the development of recommendations or conclusions. This includes all scientific fields appropriate to natural resource issues, which will be considered by the responsible official along with other forms of input in decisionmaking.

Other changes: The introductory paragraph of the proposed rule has not been retained in final rule. This information is already contained in section 219.5.

Section 219.23—The participation of scientists in planning. This section of the proposed rule described expectations and roles for scientists in National Forest System planning and decisionmaking. In the final rule, this section has been renamed "The overall role of science in planning." It has been designated as section 219.22.

Comment: Use of sound science. Various individuals suggested that the regulations clarify the definition of "scientist." The real issue, according to some of these respondents, is the use of sound science information and scientific methods—not who brings the information or methods to the process.

Response: The Department agrees, and section 219.22 of the final rule shifts the emphasis from scientists, as the deliverers of scientific information, to the role of science in the planning process. This shifts the focus from individuals who may participate in the process, to an embracing of science as an integral part of National Forest System planning—thus including scientific knowledge, scientific methods, and expert scientific review and opinion, including analyses based on the latest scientific information.

Comment: Influence of science advisory panels. Enthusiasm for science in land management was tempered by concerns regarding the level of authority and influence of science advisory panels. Some felt that the scientific advisory board should support Forest Service staff and should not be involved in decisionmaking.

Response: The final rule requires the responsible official to ensure that the best available science is considered in planning. It clarifies the intent that science consistency evaluations (section 219.24) and science advisory boards (section 219.25) are to inform this process, not to advocate a particular decision, and clearly states that all decision authority rests with the responsible official.

Comment: Cost and effectiveness of scientific input. Some respondents questioned the cost and effectiveness of increasing the required levels of scientific input into the forest planning process. Others expressed concern that the Forest Service does not have the budget or resources to effectively evaluate the credentials of non-governmental science professionals.

Response: The final rule requires that the best scientific information be considered in planning (section 219.22(a)), but recognized that all plan decisions do not require detailed and costly broad-scale assessments, science consistency evaluations, or similar costly approaches, to achieve this goal (section 219.5). Concerns regarding scientific efficacy are addressed by increasing peer review of science input (section 219.22), involving the Deputy Chief for Research and Development, Research Station Directors, and Science Advisory Boards (sections 219.24 and 219.25).

Comment: Use of science advisory boards. Forest Service officials are granted too much discretion in determining the use of peer reviews and science advisory boards, many respondents contended. Additionally, many respondents worry about the potential for bias in the selection of scientists. One person recommends using professional literature searches to ensure an efficient and cost effective means for gathering and documenting information. Others recommended publishing the names and qualifications of those selected to serve on science advisory boards.

Response: The final rule requires full consideration of the best available science in plan development, including peer review and science consistency evaluations. Peer reviews and public involvement provide powerful mechanisms to detect scientific or other bias in decisionmaking. Furthermore, the final rule clarifies that the responsible official, not scientists or others, makes the decision. Membership on advisory boards would be public information, and the Department assumes that literature searches would be a part of applying the best available science where appropriate.

Other changes. Section 219.23 in the proposed rule, paragraphs (b) and (c) are not retained in the final rule. These are functions of scientists listed in the proposed rule, which are only illustrative and not needed in the final rule. In the proposed rule, general assistance in applying relevant scientific information is addressed in paragraph (a), to the extent necessary in the rule, by science consistency evaluations in section 219.25. The material related to issues in paragraph (d) of the proposed rule, is also not retained. It is referenced in section 219.4 which suggests that the responsible official consider the scientific basis and merit of available data and analyses in determining whether an issue is appropriate for consideration. Section 219.23 in the final rule addresses the role of science in information development and interpretation. Since the final rule does not focus on scientists, the last sentence in paragraph (d) of the proposed rule discussing their employer is not included.

Section 219.24—Science consistency evaluations. This section of the proposed rule described responsibilities for scientific review of planning processes to ensure that proposed actions and supporting procedures are consistent with current scientific understanding.

Comment: Some reviewers felt that the planning regulations should clarify what science consistency guidelines may be used if the responsible official chooses not to consult with the science advisory board.

Response: The final rule requires the responsible official to consider the best available science in plan development and subsequent decisions; it is at her/his discretion as to how this can best be accomplished. The final rule makes it clear that the use of advisory boards is one means identified in the final rule to assist, others include: Direct informal and formal involvement of scientists and technical experts, peer reviews of draft analyses and plans, and science consistency evaluations. All of these, as well as others, are available to the responsible official. The method employed for a planning activity is to be selected by the responsible official, but at a minimum, the responsible official must periodically consult with an advisory board.

Other changes. There are two important changes in paragraph (a). The first clarifies the purpose of science consistency evaluations. The proposed rule initially stated that decisions must be consistent with available science. It then restates the test as whether information gathered, evaluations conducted, or analyses and conclusions reached in the planning process are consistent with the best available scientific information and analysis. A finding of inconsistency that results from this process does not necessarily mean that a decision is "wrong." It does mean that the information and analysis supporting that decision should be revisited, which may in turn lead to a change in the decision. The final rule states the purpose of the science consistency evaluation is to determine whether information, evaluations, analyses, or interpretations used in proposals for plan decisions are consistent with the best available science.

The second change in paragraph (a) concerns the role of the science advisory boards in this process. In the proposed rule, the responsible official may use them to assist in the science consistency evaluation. In the final rule, the responsible official must use them to determine when a science consistency evaluation is appropriate. This change is consistent with the change in emphasis away from who is performing analysis. While the proposed rule did not require participation of the science advisory boards, it gave too much weight to this one approach. In addition, giving the science advisory boards a role in determining when to conduct science consistency analysis addressed the concern that there are no criteria for when such an analysis should occur.

Section 219.25—Science advisory boards. This section of the proposed rule described establishment of National and Regional Science Advisory Boards and work groups

Comment: Representation of interests. A large number of comments recommended that the proposed regulations establish protections against bias and unequal representation of interests. Many people advocated that the proposed planning regulations require representation from a broad range of scientific fields in peer evaluations and advisory boards. For example, some suggested that the Forest Service should better recognize university professionals and other federal agency scientists as resources in planning. Others argued that the use of non-Forest Service scientists be explicitly required in forest planning to minimize agency influence over scientific conclusions.

Response: Sections 219.25(a) and (b) of the final rule now stipulate that: "Board membership (of National and Regional Science Advisory Boards) must represent a broad range of scientific disciplines including, but not limited to, the physical, biological, and social sciences." The Department believes that the purpose of the science advisory boards, as specified in section 219.25(a) of the final rule, is to advise on matters of science. It is not, however, a role of Advisory Board members to represent or advocate special interests. Sections 219.22(b) and 219.24(a) should help expose and mitigate any perceived bias.

Comment: Role of Forest Service scientists. Many respondents believe the role of Forest Service scientists needs to be clarified. Several people state that the proposed regulations will unduly burden Forest Service research station personnel and potentially compromise their integrity as field experts. Conversely, several people indicate that the regulations should encourage land managers to utilize research station professionals more extensively.

Response: The final rule specifies that "the best available science" must be considered and obtained from those individuals possessing appropriate scientific credentials. In some cases this may include Forest Service scientists. In others cases it may not.

This section of the final rule differs from the proposed rule in that the Deputy Chief for Research and Development must establish a National Science Advisory Board to advise on issues of national importance, rather than the Chief as required in the proposed rule. The final rule also states that Station Directors and the Deputy Chief for Research and Development must personally chair the science advisory board(s) they establish, or appoint the chair(s).

The proposed rule states that work groups could be established with the concurrence of "Forest Service officials." The final rule specifies that concurrence must be by the Deputy Chief for Research and Development for the National Science Advisory Board, or the Research Station Director for a Regional Science Advisory Board.

Other changes. Paragraph (a) in the final rule requires the establishment of a national science advisory board. This board is required by paragraph (b) in the proposed rule. The role remains to provide advice on issues of national significance. The final rule clarifies that the Chief of the Forest Service will identify these issues. The composition of the science advisory boards generated many public comments, including some advocating a stronger role for Forest Service research scientists. In response, the final rule gives the Deputy Chief for Research and Development the responsibility for establishing and chairing the national science advisory board. In the proposed rule, the Chief of the Forest Service is responsible for establishing the national advisory board.

Paragraph (b) in both the proposed and final rules requires the appropriate Forest Service Research Station Director(s) to establish regional science advisory boards. As a result of public comments, in the final rule, this director or directors shall chair the advisory board or appoint a chair. The final rule clarifies the geographic boundaries of the boards need not align with National Forest System Regional boundaries.

Special Considerations

Proposed Section 219.26—Identifying and designating suitable uses. This section of the proposed rule identified the suitability of various uses on national forests and grasslands and provided criteria for making a determination of suitability within the planning framework. Designation of suitable land uses was one of the decisions that must be included in plans (see Section 219.7).

Comment: Multiple-use as the guiding principle. Multiple-use should continue to be the guiding principle for management of national forests, according to many individuals. Like a number of respondents who view this section as a significant departure both from relevant statutes and from the existing planning rule, these individuals saw the proposed planning regulations as de-emphasizing multiple-use to the extent that they "violate the mandates prescribed in the NFMA and the MUSYA as well as other applicable rules and regulations." In particular, some respondents suggested that the planning rule encourage industrial commodity production and extraction. One person, though, asked the Forest Service to define the term multiple-use since the term may include connotations other than resource extraction.

Response: National forest and grasslands will continue to be available for a wide variety of multiple uses as long as those uses do not conflict with one another and they are appropriate for the location where they may occur. This section of the planning rule provides criteria for making this determination.

Comment: Criteria to identify and designate suitable uses. Some respondents believed that in comparison to the current NFMA planning regulations, the proposed criteria to identify and designate suitable uses is thoroughly inadequate. These individuals contended that the proposed rule should provide clear suitability standards—particularly regarding livestock grazing, mineral extraction, and timber removal. To this end, some respondents suggested that the Forest Service retain the existing suitability requirements since the current guidelines are more prescriptive than those included in the proposed regulations. In addition, several people asserted that the final rule's suitability requirements must not grant excessive discretion to Forest Service land managers. Specifically, they suggested replacing the word "should" with "shall" throughout the subsection. Such a change would require land managers to consider the possible uses listed in this section, they asserted. Several other people asked the Forest Service to clarify the statutory authority by which Executive Orders can restrict suitable uses of national forests. One respondent wondered how forest plans would designate and map management areas for specific uses.

Response: The Department has added criteria to the rule related to impairment of the productivity of the land and compatibility with plan decisions. With these changes, the Department believes that it has provided sufficient guidance for amendment and revision of plans. The current regulation was put in place to enable the agency to prepare comprehensive national forest and grassland plans. Detailed instructions were necessary and appropriate for completion of the first round of planning. Each national forest and grassland now has a plan in place, and the task at hand is to evaluate and improve upon each of these. Detailed procedures regarding the integration of natural resource management practices are no longer appropriate. Rather, as described in the planning regulation, it is now appropriate to look to ways to improve existing plans and provide for needed adjustments in uses.

Comment: Access to national forests and grasslands. Several respondents feared that the proposed rule would limit access to national forest lands. Among those that felt access will be restricted, some asserted that if national forests really are the "people's lands," then the people have the right to access them for recreation, such as hiking, biking, off-highway travel, and snowmobiling. "I have a right as a taxpayer and a law abiding citizen to use these lands," wrote one respondent. Recreational access is especially crucial for visitors with disabilities, according to many. "I cannot park a car in a trailhead parking lot and hike into areas that non-handicapped persons can," one citizen said. "I should be able to access the same public lands as non-handicapped persons," this person stated.

Response: Congress has given the Secretary of Agriculture the responsibility to regulate use of the National Forests System. The MUSYA acknowledges that not all lands must be available for all uses. Any changes to access for specific uses under this rule will occur using the framework for planning, will involve collaboration with the affected and other publics, and will use the best available science to identify the uses that are suitable within the plan area.

Comment: Mining. Many respondents felt that the proposed rule fails to emphasize mining as a legitimate use of national forests. At the very least, according to one person, the proposed rule should clarify how nonrenewable resources, such as minerals, will be regulated. If mining is to be allowed, others asserted, its effects must be mitigated.

Response: Unlike current planning rule, the revised rule does not try to provide direction for specific uses. It focuses instead on sustainability of the economic, social, and ecological systems. Mining is one of many uses of national forests, and it may occur where it is a suitable use, consistent with plans. Other federal statutes applicable to mining must also be considered in determining where and how mining may occur.

The Department believes that this rule, and in particular, its sustainability requirements, will not by itself preclude mining activities. Analysis and collaboration conducted under the requirements of the rule, and following all applicable laws, will determine where mining is appropriate and what mitigation measures will be required. The rule's emphasis on ecosystem health, collaboration, and the role of science may very well result in the identification and implementation of effective and efficient mitigating measures applicable to mining operations, improving the overall sustainability of the use and development of what are commonly referred to as nonrenewable resources.

Comment: Grazing. Requiring monitoring and enforcement of grazing standards on national forest lands, some contended, will ameliorate the negative effects of grazing. To this end, wrote one person, the proposed rule should clarify how science will aid in determining the suitability of lands for grazing.

Response: This level of detail is not appropriate for this rule. The role of science is generally described in section 219.22, which requires the use of best available science in all aspects of planning, including suitability determinations.

Comment: Recreation. One respondent contended that limiting access to portions of public land might shift increasing visitor pressure into other, ever-dwindling, public use areas. Conversely, others specifically requested access restrictions for types of recreation that degrade public lands. Activities that are allowed on Forest Service lands—be they recreational or commercial-must not degrade forest resources, many argued. Still others questioned what role recreation should have in forest planning.

Response: Outdoor recreation is one of the uses of national forests recognized in the MUSYA. The NFMA requires that plans provide for these uses. In accordance with this rule, all potential uses, and decisions to limit access must be considered in the context of overall sustainability.

Comment: Biodiversity. One respondent suggested that the planning rule should require that public lands be evaluated for their role in maintaining and protecting biodiversity.

Response: Section 219.20 requires this evaluation.

Comment: Relationship with private land. Several respondents suggested that the proposed planning rule address the relationship between resource extraction on national forests and that on private lands. Another respondent argued for conservation easements across deeded lands.

Response: Section 219.17 requires the Forest Service to interact with private landowners, which may include the relationship between resource extraction on national forests and that on private lands and conservation easements across deeded lands.

Other changes. The final rule characterizes the process as identifying lands *not* suited for particular uses, whereas the proposed rule required identification of lands suited for certain uses. The approach in the final rule is more in line with the introductory statement that national forests and grasslands are suitable unless they are designated unsuitable.

Additional criteria are added to the final rule for identifying lands not suitable for particular uses. These are: (1) Incompatibility with policies of the National Forest System, (2) causing substantial and permanent impairment of the productivity of the land, and (3) incompatibility with one or more plan decisions. With these changes, the Department believes that it has provided sufficient guidance for amendment and revision of plans. The current regulation was put in place to enable the agency to prepare comprehensive national forest and grassland plans. Detailed instructions were necessary and appropriate for completion of the first round of planning. Each national forest and grassland now has a plan in place, and the task at hand is to evaluate and improve upon each of these. Detailed procedures regarding the integration of natural resource management practices are no longer appropriate. Rather, as described in the planning regulation, it is now appropriate to look to ways to improve existing plans and to provide for needed adjustments in uses.

Proposed Section 219.27—Special designations. The proposed rule identified types of special designations the Forest Service can recommend through the plan amendment or revision process. It required all roadless, undeveloped areas of sufficient size to be considered for wilderness designation. It required special areas designated by statute to be incorporated in the plan.

Comment: List of special designations. A state agency believed that the proposed planning regulations should clarify which special designations, in addition to those listed, will be allowed. In the minds of some respondents, the list in section 219.27 contains too many designations. In particular, many believed that public access would be unnecessarily limited by special designations such as wilderness and research natural areas. Others contended that Forest Service officials simply have too much discretion to authorize special designations. This, they believed, is an abrogation of

Congressional powers. Conversely, several people suggested that the Forest Service broaden the list of special designations to include heritage management areas, unique botanical areas, indigenous religious sites, and utility corridors. Some recommended protecting and strengthening existing special designations areas such as reference landscape areas and research natural areas.

Response: The lists of both Congressionally and administratively designated areas are examples, and not all-inclusive. The recommendation or designation of these or other kinds of special areas is within the scope of existing laws and regulations and is within the authority of planning as designated in NFMA. The framework for planning allows for the development of issues leading to the proposal of special designations, and also gives ample opportunity for the public and others to collaborate on the issue at all levels of planning.

In response to comments, and to more clearly delineate the authorities related to special designations, the final rule separates Congressionally designated areas, paragraph (a), from administratively designated areas, paragraph (c). Based on public comment, specific requirements for evaluating inventoried roadless areas and unroaded areas are included in section 219.9(b)(8) of the final rule to emphasize that the responsible official must evaluate these areas during the revision process. The Forest Service may adopt special designations or recommend designation to higher authorities through the planning process. In the final rule, the Forest Service is not limited to the classifications listed in the rule, and the Forest Service, Department, or Administration may designate areas as appropriate.

Comment: Wild and Scenic Rivers. Many respondents urged the Forest Service to protect watersheds, wetlands, and riparian areas. According to a few respondents, affected rivers must be evaluated for Wild and Scenic River designation as per the Wild and Scenic Rivers Act. Specifically, The Draft Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management was cited by a state agency as a model for watershed restoration. Correspondingly, a water users' association believed that the Forest Service's founding mandate dictates that the agency ensure certain and stable water flows from national forests. "While the Cache La Prouder Water Users Association approves in concept the long-term, sustainable management of the forests, we are concerned that the proposed rule's emphasis on sustainability may in practice subvert and cripple one of the original purposes of the national forests—favorable conditions of water flows for use by the people." Conversely, one respondent asked the Forest Service to justify the purpose of maintaining riparian buffer zones.

Response: Authorities governing the development and the management of the National Forest System include the Organic Administration Act, the Clean Water Act, and the Wild and Scenic Rivers Act. The requirements of these must be followed. This rule does not reiterate those requirements, but it does create a framework for planning to meet them. Specific methods for the protection of watersheds, wetlands, and riparian areas and the use of riparian buffer zones are not addressed in this rule. These are developed through the planning process using the best available science.

Comment: Evaluating areas for wilderness. One respondent stated that the language of section 219.27(a) "clearly singles out and emphasizes wilderness as a consideration for management and in the next paragraph says that roadless areas should receive a full range of management options." The wilderness biases should be eliminated from the text of the rule, this person believed. During any analysis of proposed wilderness, wrote one organization, an ecological, social, and economic cost-benefit analysis should be conducted. Some respondents suggested specific suitability criteria. "There should be some sort of release criteria to prevent unsuitable areas from remaining in 'limbo' for decades as wilderness study areas do now," one respondent stated. Others called for using either environmental impact statements or site-specific analyses (in accordance with RARE I and II) as the appropriate tools to evaluate roadless areas for wilderness designation. Others questioned the efficacy of considering roadless areas for wilderness designation at this time—they suggest changing section 219.27(a) to exempt wilderness consideration "during this round of plan revisions."

Response: The Department believes that the best process for determining suitability for wilderness designation is the planning process embodied in this rule, and conducted at a scale that can address unique characteristics of each area. The Department does not see a need to change the wilderness suitability process significantly from the one that was used to develop current plans. Wilderness review is intrinsic to planning. Wilderness designation will be subject to the planning and public involvement requirements of this rule. A responsible official may establish management direction for areas not recommended for wilderness, consistent with requirements of this and other applicable rules. The Department does not believe this section of the rule establishes a bias or preference for wilderness designation.

Comment: Evaluating roadless areas. Many people supported the proposed rule's directive to evaluate roadless areas for wilderness designation. One person suggested that, at the very least, commercial activities should be prohibited in roadless areas.

Response: The Forest Service's proposed Roadless Area Conservation Rule would provide protections for inventoried roadless areas by prohibiting certain activities in inventoried roadless areas. In addition, as discussed above, the final planning rule clarifies that the responsible official will have to evaluate inventoried roadless and unroaded areas and consider additional protections during the time of plan revision.

Comment: "Roadless" and "unroaded" areas. A pervasive theme among respondents" comments was the need for the Forest Service to clarify the definition and relationship of "roadless area" and "unroaded area." Specifically, some questioned the appropriateness of using the term unroaded since, according to one group, "Congress has never legally recognized the term." Another respondent, however, asked that the final planning rule clarify the definition of unroaded to address the size, configuration, composition, and inherent values of unroaded areas. The proposed rule was vague, according to a recreational organization, as to whether "the Forest Service will undertake a comprehensive inventory of the unroaded areas." Many feel that the Forest Service should perform such an inventory since, according to one individual, "the existing inventories on many forests were never performed accurately during the RARE II process."

Response: To reduce this confusion, the final planning rule renames "roadless" areas "inventoried roadless areas." Definitions of inventoried roadless area and unroaded areas in the final planning rule are consistent with the Forest Service's proposed roadless area conservation rule and road management policy. An unroaded area is any area, without the presence of a classified road, of a size and configuration sufficient to protect the inherent characteristics associated with its roadless condition. As noted above, the final rule clarifies that during the revision process the responsible official must evaluate inventoried roadless areas and unroaded areas and identify areas that warrant protection and the level of protection to be afforded.

Comment: Protection of roadless areas. Many believed all remaining roadless areas on National Forest System lands—particularly roadless areas of 1,000 acres or more—should be protected. A primary reason cited for this view was the need to preserve ecologically significant areas upon which plant and animal species are dependent. Some believed the Tongass National Forest exhibited these qualities and argued that the Tongass not be exempted from roadless area protection. Others suggested biodiversity protection can be achieved by basing roadless area management on the recommendations found in the Committee of Scientists' report.

Response: The Forest Service's proposed Roadless Area Conservation Rule would provide protections for inventoried roadless areas by prohibiting certain activities in inventoried roadless areas. In addition, as discussed above, the final planning rule (section 219.9(b)(8)) clarifies that the responsible official must evaluate inventoried roadless and unroaded areas and consider additional protections during plan revision. This evaluation must include information and analyses developed to assess ecological sustainability, including assessments of ecosystem and species diversity at the appropriate spatial and temporal scale. The final planning rule does not include special provisions for the Tongass National Forest.

The Department believes it inappropriate to predetermine the size or configuration of unroaded areas to be analyzed and considered through plan revisions. In some areas, 1,000-acre unroaded areas may be an appropriate standard. In other areas, management criteria, such as the scarcity or abundance of unroaded and inventoried roadless areas, may require the consideration of smaller or larger sized areas. Responsible officials may determine that other size, configuration, or resource criteria may be appropriate to best evaluate and protect the important social and ecological characteristics of unroaded and inventoried roadless areas. Unroaded areas should be of a size, shape, and position within the landscape to reasonably achieve the long-term conservation of roadless characteristics such as soil, water, and air quality; sources of drinking water; diversity of plant and animal communities; habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land; primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation; reference landscapes, landscape character and scenic integrity; traditional cultural properties and sacred sites; and other locally identified unique characteristics. Areas may include those that provide important corridors for wildlife movement, or areas that share a common boundary of considerable length with an inventoried roadless area, with a component of the National Wild and Scenic River System, or with unroaded areas 5,000 acres or more on lands administered by other federal agencies. In selecting areas, the responsible official should consider the distance from, and the scarcity of, other unroaded areas, particularly for those areas east of the 100th meridian.

Comment: Access to public lands. Many argued against the withdrawal of roadless areas because access for active management practices was needed to maintain forest health. Additionally, many stated that access to public lands for recreation was an essential component of multiple-use. Furthermore, the fact that motorized vehicle use had been authorized in certain areas in the past should ensure future access for this activity, according to some.

Response: This final rule does not withdraw roadless areas from active management or prohibit access to public lands. The proposed Roadless Area Conservation Rule proposes prohibiting certain activities in inventoried roadless areas, but it does not propose closing trails or roads, prohibiting off-road vehicle use, changing current forest access, or interfering with access granted by statute, treaty, or reserved or outstanding rights. Under the proposed roadless rule, decisions about recreational activities (other than those that depend on road construction and reconstruction) on National Forest System lands would continue to be made through the planning process with the full involvement of trail riders and other interested people.

Indeed, the final planning rule establishes a process for identifying, discussing, and, if appropriate, acting on issues that may emerge from a variety of sources and on a variety of special and temporal scales (section 219.3). This rule anticipates that issues will be resolved at the appropriate level—national, regional, or local—through the planning process. In some places, activities such as mineral exploration or recreational access to the national forests and grasslands may become issues. As such, these issues would be considered using the explicit collaboration, science, sustainability, and planning requirements articulated in the final planning rule.

Comment: Legal mandates and proposed roadless area conservation rule. Many respondents felt the proposed roadless rule must not violate existing statutes such as the Wilderness Act and the MUSYA. Several individuals expressed concern that the proposed roadless rule circumvents Congressional authority to designate wilderness areas. Among those who explicitly argued against the proposed roadless rule, the need to comply with forest management and multiple-use mandates were two prominent reasons offered in support of their position.

Response: Consistent with all applicable law, the Forest Service's proposed Roadless Area Conservation Rule would provide protections for inventoried roadless areas by prohibiting certain activities in inventoried roadless areas. In addition, as discussed above, the final planning rule (section 219.9) clarifies that the responsible official will have to evaluate inventoried roadless and unroaded areas and consider additional protections during the time of plan revision. These procedures are in accordance with existing statutory direction, including the Wilderness Act and the MUSYA.

Other changes. The final rule expanded the list of special designations to be more inclusive than that of the proposed rule. The final rule clarifies that an amendment or revision of a plan is a mechanism by which the Forest Service establishes management direction for special designations.

Section 219.28—Determination of land suitable for timber harvest. This section of the proposed rule established two classifications of land suitability for timber harvest. The first was the classification of lands not suited for timber production. The second was the classification of lands where timber harvest would be permitted.

Comment: Suitability classifications. The proposed rule listed two classifications of land relative to timber production: "land not suited for timber production" and "land where timber harvest is permitted." A number of respondents claimed that these classes are not consistent with NFMA. Others suggested retaining the suitability determination requirements in the existing regulations. Some individuals suggested adding additional classifications such as "lands unavailable for timber production" or other classifications that take into account forest health harvests or long-term harvest rotations.

Response: The final rule has been reorganized to better incorporate the intent of the NFMA, and also to better accommodate innovative management approaches to achieving sustainability. The final rule, identifies three separate classifications of land in section 219.28: (a) Lands where timber may not be harvested; (b) lands where timber may be harvested for timber production; and (c) lands where timber may be harvested for other multiple-use values.

Comment: Consistency with NFMA requirements. Some respondents wanted the proposed planning rule to include various specific provisions from NFMA. Other people voiced reservations regarding the criteria for determining lands not suited for timber production as detailed in the proposed rule. These criteria are too vague and should be eliminated, according to several people. Expressing a common sentiment among respondents, one wood products industry representative believed that "interpretation of the phrases 'ecosystem integrity,' and 'lands where the costs of timber production are not justified by the ecological, social, or economic benefits,' would be costly and controversial at best, and most likely would contribute to further planning gridlock."

Response: Criteria for lands where timber harvest may not occur are taken directly from NFMA section 6(e). In order to determine lands where timber harvest is an objective, the responsible official must complete the planning process to determine that the projected costs of timber production are justified by the overall benefits. The Department believes that these criteria are straightforward and legally sound. In the final rule, criteria for where timber may be harvested from lands not suited for timber production, include the term "ecological sustainability" instead of "ecosystem integrity," and the rule elaborates on its meaning in 219.20. The rule also defers the determination of the need to harvest timber until site-specific information is available.

Comment: Land withdrawn form timber harvest. The proposed rule lists a number of lands not suited for timber production—one category being "lands that have been withdrawn from timber harvest by the Secretary of Agriculture or the Chief of the Forest Service." Several respondents question this executive branch authority that they believe is reserved for Congress alone.

Response: Authority to withdraw land from availability for timber harvest may be undertaken by the Secretary of Agriculture or Chief of the Forest Service for specific reasons such as, but not limited to, public health and safety, accomplishments of other multiple-use objectives, and other appropriate uses of the land.

Comment: Lands where technology is not available for conducting timber harvesting. The proposed planning rule also describes lands "where technology is not available for conducting timber harvesting * * *" as another land-class not suited for timber production. One wood products industry representative recommends striking this provision based on the belief that "technology is ever changing, and tomorrow systems will be available that we aren't even thinking of today."

Response: This language is a requirement of NFMA. The fact that technology changes was recognized by the additional requirement in NFMA (and this section of the rule) to review lands determined to be not suited for timber production at least every ten years, or as prescribed by law.

Comment: Lands where the costs of timber production are exceeded by benefits. The proposed planning regulations defined one classification of lands not suitable for timber production as "lands where the costs of timber production are not justified by the ecological, social, or economic benefits" (section 219.28(b)(5)). Respondents raised a number of related concerns regarding this classification.

First, some believed that timber production costs should be exempted from consideration during suitability determinations for timber production because to do otherwise, they contended, would constitute a violation of NFMA suitability criteria. Second, a number of people asked the Forest Service to clarify what they mean by below-market cost timber sales. In other words, what "costs" are being considered in such determinations? Are they ecological, social, or economic? A possible solution offered by one respondent requires the Forest Service to conduct a cost-benefit analysis of ecological, social, and economic factors in conjunction with proposed timber removal actions. Third, if ecological, social, or economic benefits do not outweigh the cost of conducting a timber sale; such projects should be prohibited, according to some.

Response: Section 6(k) of the NFMA requires the Secretary of Agriculture to identify lands, which are not suited for timber production, considering physical, economic, and other pertinent factors. Under this authority, it is appropriate to consider the relative costs and benefits from timber production. In the final rule, regarding lands that are not classified as unsuitable for timber, the responsible official may establish timber production as a multiple-use objective in the plan if the costs of timber production are justified by the ecological, social, or economic benefits. With regard to individual timber sales, no economic test is required on lands where timber production has been established as a plan objective based on plan-level analysis. On lands where timber production is not an objective, analysis must be used to determine that timber harvest is necessary to achieve other objectives. However, the Department does not believe this rule should limit use of timber harvest as a management tool in these situations based on the ability to recover economic costs.

Comment: Lands where timber harvest is permitted. Several respondents argued that in order to achieve the goals of multiple-use sustained-yield, the Forest Service must require active timber management through its planning regulations. For some, this even meant harvesting timber from roadless areas. In addition to the statutory foundation for this position, these individuals cited the need to improve both forest health and wildlife habitat.

Response: Plans prepared pursuant to this planning regulation may, in response to issues that have been identified, require active timber management to achieve their objectives, the Department does not believe that it is appropriate to mandate such action on each national forest and grassland at the national level. The planning rule provides ample direction and opportunity for the responsible official to provide for timber production.

Comment: Salvage and Sanitation harvests. A few people asked the Forest Service to clarify the language of section 219.28(d), which, according to one person, "seems to allow salvage logging on all national forest lands not protected by wilderness status." The bottom line for these individuals is that the Forest Service needs to clearly differentiate between salvage, sanitation, and green timber harvests. However, assuming that the proposed rule does, in fact, allow salvage logging on all non-wilderness lands, other respondents urged the Forest Service to eliminate salvage and sanitation harvests entirely. They questioned the efficacy of such harvests to actually control fires or curb insect infestations. They also cited perceived past abuses of the salvage sale program as reason enough to be skeptical of the program in the future. In contrast, others supported planning rule provisions for salvage and sanitation harvests. These, they claimed, are essential to local economies and to improving forest health.

Response: Both sanitation and salvage harvest of timber are legitimate, tested, silvicultural practices that may be appropriate to curb or manage the harmful impacts of undesirable insect and disease attacks. The Department believes that the language in this section on suitability is appropriate regardless of the kind of timber harvesting activity. The reference to the sanitation and salvage harvest has been removed from this section. No exceptions are made for salvage and sanitation harvests in this rule. They will be allowed on lands where timber may be harvested for timber production, and on lands where it may be harvested for other values as long as the criteria for harvest from such lands are met. NFMA requires keeping separate records of salvage and sanitation harvest volume.

New language has been added to section 219.29 which states, based on NFMA: "For purposes of limiting the amount of timber harvest, the harvest of timber from areas that are substantially affected by fire, wind, or other events, or for which there is an imminent threat from insects or disease may either substitute such timber for timber that would otherwise be sold or, if not feasible, sell such timber over and above the plan volume * * *"

Other changes. The final rule emphasizes that a decision to harvest timber must be consistent with plan decisions, in accordance with section 219.10.

Paragraph (b)(2) in the proposed rule designated all lands that do not meet the definition of forested land as not suited for timber production. That provision is not in the final rule; rather, paragraph (b) allows a decision on such lands to be based on an evaluation of the costs and benefits of timber production. Lands that do not meet the definition of forested land are by their nature, not suitable for timber production. NFMA requires that lands determined to be not suitable for timber production be reviewed at least once every ten years. In accordance with paragraph (b), all lands other than those selected pursuant to this paragraph are not suited for timber harvest, and subject to this review requirement.

Proposed Section 219.29—Limitation on timber harvest. This section of the proposed rule required the estimation of the long-term sustained-yield capacity of timber. In addition, it provided for the calculation of an allowable sale quantity for any decade that departs from the projected long-term average sale quantity.

Comment: Exceeding sustained-yield limits. Most respondents agreed that the concept of sustained-yield is, in principle, a positive goal. However, some people took exception to how this actually will be implemented through the proposed regulations. For example, some saw section 219.29(c)(2) as providing a loophole for truly sustainable timber removal. These people argued that this section allows the responsible officials the discretion to exceed sustained-yield limits "whenever they want as long as the sale is disclosed."

Response: The text of the proposed rule regarding the procedures that must be used when a departure in timber harvest levels is necessary is not retained in the final rule. Because this text was taken from the language of NFMA, it is believed that in the rare circumstance when a departure in projected timber harvests may be necessary, it is best to rely on the exact language of NFMA. Also, the calculation for long-term, sustained-yield limitations is separated into two categories in the final rule. The first is a limitation on the harvests that may take place from timber production lands. The second is a limitation on the harvests that may take place for the removal of timber to accomplish multiple-use objectives other than timber production. The two calculations cannot be combined to increase harvest levels from either category of land.

Comment: Ecologically sustainable timber harvest. Some respondents urged the Forest Service to adopt specific standards and criteria to achieve ecologically sustainable timber harvests. Several respondents suggested possible means to this end: adopting guidelines to ensure a diversity of tree age classes on national forests rather than simply evaluating sustainable biomass removal; measuring sustained-yield at a finer scale than the current provision that allows combining forests less than 200,000 acres in size; or using the Sustainable Fisheries Act as a model for sustainable logging. Sections 219.29(a) and (c) of the proposed rule used the term "perpetuity." One respondent wondered how "perpetuity" will be calculated-is this a mathematical estimation and who would determine this figure?

Response: In accordance with section 219.20, plans must provide for ecosystem diversity, which includes many characteristics such as distribution and abundance of successional stages of vegetation. The Department intends and believes that timber harvest levels that result from implementation of this rule will be consistent with ecological sustainability.

Comment: Allowable sale quantity. Many public concerns centered on the concept of allowable sale quantity (ASQ). Some saw the proposed rule as a detrimental move away from existing ASQ requirements, which were thought to be important for sustaining the economies of timber-dependent communities. Moreover, one wood products industry representative contended that pursuant to NFMA requirements, the proposed rule should require that ASQ determinations be made at the forest level and that "any significant up or down departure from planned allowable sale quantities should trigger a forest plan amendment." In contrast, others requested that ASQ provisions be entirely eliminated from the proposed rule or revised to require that ASQ determinations reflect salvage and sanitation harvest volumes.

Response: The topic of ASQ has long caused confusion for those concerned with the management of the national forests. NFMA authorizes, but does not require, the establishment of an ASQ where it is necessary to plan harvest of more timber in a decade than what could be removed on a sustained-yield basis (16 U.S.C. 1611). The current planning rule required the establishment of an ASQ for every plan based on its projected sale schedule (36 CFR 219.16(b)). In accordance with NFMA, both the sustained-yield quantity (long-term sustained-yield capacity) and ASQ were intended to impose limits on the sale of timber from a national forest rather than to establish targets. Nevertheless, many individuals have viewed ASQ as a target to be achieved. However, many factors beyond the control of the agency have influenced and will continue to influence actual harvest levels. These include the budget received from Congress, new listings and designations of critical habitat under the Endangered Species Act, weather, and the requirements of other statutes and Executive Orders.

The proposed rule, while not requiring the establishment of an ASQ, did require the establishment of a long-term sustained-yield capacity at the forest level, which set the upper cap on the sale of timber from lands where timber production was an objective. In addition, the proposed rule required that plans contain a display of actions, outcomes, and projected products and services that could be used for reasonable estimates of likely timber harvest levels. These provisions are retained in the final rule. In addition, a limitation on the amount of timber that may be removed from lands unsuited for timber production is added to the final rule. Language from NFMA has been added to clarify the relationship of salvage and sanitation sales to harvest volume limits. To simplify the text and acknowledge the intended limited use of the term, "allowable sale quantity," it is no longer used in the rule, but may be found in the referenced section of NFMA.

Comment: Logging methods. Logging methods and techniques were very important for many who comment on the proposed planning rule. In order to ensure minimal environmental impact during logging activities, some suggested using small equipment for timber cutting and removal procedures. One person requested that the Forest Service design timber harvest units to mimic stand composition and structure created by natural disturbance events. Indeed, to some, mimicking disturbance events requires an explicit commitment by the Forest Service to continue the practice of clearcutting. Clearcuts, they claimed, contribute to a multi-age forest structure and serve as habitat for a variety of wildlife species. Still, there must be limits on individual clearcut size, some argued. One person suggested using the Committee of Scientists report as a guide for establishing size limits based on the characteristics of natural disturbance regimes. Many other respondents called for a complete ban on clearcutting in national forests. To them, clearcuts are ecologically destructive and reduce the capacity of forests to act as wind buffers for human communities in some regions of the country.

Response: Clearcutting is a legitimate and sometimes needed silvicultural tool for managing certain forested landscapes. Forest silviculture and ecosystem disturbance ecology support this view. At the same time, the Department shares the concerns over inappropriate application of clearcutting. The Department is confident that the planning framework and the collaborative, science-based approach to ecological diversity it contains will result in clearcutting being used appropriately. It remains agency policy that clearcutting be used only when and where it is appropriate and fully supported by science.

Other changes. Paragraph (a) in the final rule requires calculation of the amount of timber that could be sold in perpetuity on a sustained-yield basis from lands where timber harvest is not prohibited. In the proposed rule, this calculation was required only for those lands where timber production was identified as an objective. NFMA does not make this distinction, and in the final rule the requirement applies to all lands not identified in paragraph (a). Estimates for lands that may be harvested for other purposes may be difficult to make and less reliable than for timber production lands. For that reason, and to avoid excessive harvest from either type of land, the volume estimates for the two areas may not be combined. Paragraph (b) imposes separate limits on the volume that may be sold from lands that are suited for timber production and those lands that are not suited for timber production, but available for the harvest of timber to fulfill other multiple use objectives.

Planning Documentation

Proposed Section 219.30—Land and resource management plan documentation. This section of the proposed rule described the documentation requirements for the plan, including the summary document, a display of land suitable for selected uses, a display of decisions for the plan area, a list of actions to achieve desired conditions, the minimum level of monitoring and evaluation, a display of budgetary information, and a list of reference materials. In the final rule, this section has been renamed "Plan documentation."

Comment: Many people found the "living document" idea appealing although they doubt the ability of the Forest Service to meet the goals set out in this subsection of the proposed rule. Some people claimed that "existing forest plans are already living documents" due to rapidly changing conditions which require revisions. Other people questioned the ability of the Forest Service to keep up with expectations outlined in the proposal. "This is a lot of disparate information to keep track of, connected, integrated, and continually updated." A few respondents asked how the documentation will work and how it will be organized. Will the living document result in "the same sort of unintelligible documents that appeared during the first round of planning," another person asked? Others had specific suggestions for the kind of budget and output information to include.

Response: In general, section 219.30 of the final rule retains the language in the proposed rule. The Department does not view the plan documentation as an undue burden. The items to be displayed already exist within agency records. By following the plan documentation process, information relative to plan and site-specific decisions as well as future implementation would be readily available to the public. The intent of this section of the rule is to provide one location for all the documents that pertain to plan decisions on the forest or grassland. As noted in the Committee of Scientists Report, the integrated plan is the assemblage of all policies and decisions affecting an administrative unit. The Department agrees with the comment that forest plans currently can be viewed as "living documents." However, the Department believes that the planning structure outlined in the final rule provides for more timely and flexible planning based on the appropriate scale of the issue.

Other Changes. The term "guidelines" in the proposed rule has been removed from this section in the final rule. There was some confusion about the terms "standards and guidelines" and their meaning in the proposed rule. The term "standards" has been retained in the final rule. New language is added in the final rule referring to "maintenance or restoration of sustainability." This language has been added to emphasize the goals of sustainability in the final rule. The language referring to "watershed protection or restoration" in paragraph (a) from the proposed rule is removed in the final rule. The Department believes that the language in the final rule referring to "ecological" environments within the plan area encompasses watershed protection and restoration.

Some editing and clarifying changes to paragraph (b), "Display of public uses," and paragraph (c), "Plan decisions," are made in the final rule. There is also some editing and clarifying changes to paragraph (d), "Display of actions and outcomes." Paragraph (d)(4), regarding the projected range of outcomes for uses, values, and services is changed from 10-year projection in the proposed rule to a 15-year projection in the final rule to coincide with the required revision schedule for plans.

Proposed Section 219.31—Maintenance of the plan and planning records. This section of the proposed rule described the requirements that keep plans up-to-date and readily available to the public. It also described the types of administrative changes to plans that are considered maintenance.

Comment: Many people believed that the maintenance of planning documents under the proposed rule would become an insurmountable obstacle to effective management. They were concerned about the staff time it will take to comply with the reporting periods. One person wrote that at a two-year cycle for documentation maintenance would be a better use of staff time. Others argued that posting the entire plan record on the Internet is not feasible. Some people requested that complete sets of documents be maintained at district offices. Distances can sometimes be "unduly burdensome for staff and citizens to have to travel to the Supervisor's office," they asserted. Some respondents feared that special interest groups would be able to unduly influence management by initiating revisions. Other people felt that stability is more important than flexibility in a forest plan.

Response: The Department believes it is reasonable to expect the requirements under this provision to be successfully followed by the Forest Service. The documents should be available in an electronic format. However, the reference to the Internet in section 219.31(a) in the proposed rule has been eliminated from the final rule to allow for development and use of other applicable electronic media for information exchange. The Department has removed the language in section 219.31(b) of the proposed rule referring to "complete and current data" associated with planning records. This language was removed because these terms have specific legal interpretations.

The Department has also added a new item (4) under subsection (b) that would exempt changes in monitoring methods from Forest Service NEPA procedures. The Department made this change to make sure that any changes in monitoring methods would be considered administrative corrections, and not plan revisions or amendments subject to NEPA.

Objections and Appeals

Proposed Section 219.32—Objections to amendments or revisions. In the proposed rule, this section described the process by which the public could challenge plan revisions or amendments. This process will provide the public an opportunity to challenge Forest Service planning prior to the responsible official making a final decision. This section requires the responsible official in the planning process to respond to all objections prior to approving an amendment or revision of the plan. This process will provide the Forest Service and the public with an opportunity to address issues before a final decision is made.

Comment: Objection process. Many people feared the objection process would reduce the influence that the current appeals process provides to some individuals. They claimed the 30-day objection period is insufficient time to identify issues and generate an administrative record. Many believed the proposed objection process would undermine their ability to establish standing for possible litigation. Although some respondents felt that the objection process is an inadequate protection of public interests, others felt that requirements for standing should be much more stringent to prevent needless obstruction. Many respondents noted that there is no time limit for the agency to respond to objections. To achieve conflict resolution and efficiency in the objection process, "time limits are essential," wrote one individual. However, one forest products industry representative believed that the pre-decisional objection process would allow managers to implement decisions without "excessive appeals."

Response: The objection process applies only to amendments and revisions of a land and resource management plan. The process recognizes the interest of people engaged in stewardship and the achievement of sustainability is grounded in the recommendations of the Committee of Scientists. It furthers the intent of the collaborative dialogue outlined in sections 219.12 to 219.18 and supports the premise of the problem-solving and decisionmaking model envisioned in the framework for planning (sections 219.3 to 219.11). The process complements and is consistent with the maintenance of established relationships, commitments, and responsibilities necessary to continuing solving problems for effective stewardship prior to finalizing a pending plan amendment or revision.

The final rule, as a whole, addresses the weaknesses in the current 36 CFR part 217 appeal process through integration of the objection process with the framework for planning (sections 219.3 to 219.11) and supplementing traditional NEPA public involvement with collaborative planning for sustainability (sections 219.12 to 219.18). In the long run, the objection process is expected to resolve many potential conflicts. The purpose of the objection process is to encourage resolution of issues before decisions are made. The intent is to provide the reviewing officer with an opportunity to work more closely with the responsible official and those filing objections to resolve the objections before a decision is made. A predecisional objection process will also enhance interagency collaboration by standardizing objection procedures and provide incentives to work out substantive differences rather than focus on procedural errors.

Critical to the success of the objection process is the active effort of the responsible official and others to engage in early and frequent opportunities for public involvement and dialogue. An objection must be filed, in writing, within 30 calendar days of public notice of the appropriate NEPA documentation. The 30-day objection period mirrors a similar existing process used successfully by the Bureau of Land Management, and the Department feels that it should not prove a barrier to those who wish to utilize it—particularly if they have been involved in the collaborative processes. Establishing a time limit for the agency to respond to objections would burden the collaborative process with an unnecessary constraint. The focus of the objection process is on joint problem solving to resolve issues, not on pressing a decision to meet an artificial deadline.

Comment: Current appeals process. Many respondents argued for the retention of the current appeal process. They felt that appeals ensure cumulative analysis, allow public oversight of Forest Service policy, and are a citizen's right. Changing the process, some declared, will destroy confidence in the integrity of the Forest Service. Many people believed an appeals process provides the option to resolve conflict before litigation becomes necessary.

Response: Under the current 36 CFR part 217 appeal process, the agency and the public expend significant human and financial resources in fulfillment of procedural requirements. Under the existing rule, some individuals and interest groups have little trust in the integrity of the current process and perceive they have a better chance of achieving their interests through costly appeal and litigation processes. Often, a polarized relationship develops where there is no real incentive to address natural resource issues, creating a cycle of "bulletproofing environmental documentation" and expending both human and financial capital, often without long-lasting solutions. The objection process provides for the consideration of a pending plan amendment or revision without restricting citizens' legal rights. The responsible official, the reviewing officer and the objector have the opportunity to seek reasonable solutions to conflicting views before a plan amendment or revision is adopted.

Comment: Analysis of prior appeals. Some respondents suggested that the Forest Service address prior appeals

against Forest Service decisions as part of the proposed planning rule. They believed that interviews with people who filed appeals should be incorporated into the planning process.

Response: Appeals and the concerns of national forest and grassland users were considered in the development of the final planning rule. The team that developed the proposed rule and response to public comment based their work on years of experience in addressing the concerns of interested citizens. The increased emphasis that the planning rule places on collaboration is a direct response to improve working relationships among interested citizens. In the objection process, the reviewing officer can step in and review the procedures as well as the substance of a pending decision and seek a suitable resolution of an objection.

Subparagraph (b) has been added to the final rule which provides for objectors and other parties to participate in meetings with the responsible official to discuss their objection, narrow differences, agree on facts, and explore opportunities for resolution. Any person would be allowed to object to a pending decision. The objection submittal requires copies of all documents addressing the issue or issues that were submitted during the planning process by the objecting party or an indication of the date the issue or issues were discussed for the record. Unlike the current 36 CFR part 217 rule, the objection process in section 219.32 of the final rule does not have a specific time limit for resolving objections. The current appeal process prevents a higher level intervention or participation in issue resolution or problem solving because of the need to avoid ex parte communication by higher-level reviewing authorities and also to maintain an independent, objective review of the record, at the higher level of appeal. Under the objection process, to expedite resolution of any objection, the responsible official would not be allowed to approve an amendment or revision under objection until a decision on the objection has been reached and documented in an appropriate decision document. Also, the reviewing officer must promptly render a response, in writing, setting forth the rationale for the response. The reviewing officer's response regarding an objection is the final decision of the Department of Agriculture.

Other changes. The Department added new language in paragraph (a) in the final rule, which requires the responsible official to publish notice of all objections in a newspaper of record. This language was added to ensure that the list of objections would be disclosed to the public. The Department removed the section of paragraph (b) in the proposed rule pertaining to the Notice of Intent and multi-agency planning. The Department believes that this language is not necessary in the final rule. The Department also removed paragraph (c) of the proposed rule pertaining to review and final response to an objection. The Department determined that the objection process should not be viewed as a legal process.

Proposed Section 219.33—Appeals of site-specific decisions. This section of the proposed rule addressed appeals of site-specific decisions. The appeal process is the same as the existing requirements provided in 36 CFR part 215.

Comment: Although many people wanted to keep the existing appeals process, some felt that the objection process is a good direction for the Forest Service and is appropriate for site-specific decisions as well. Others believed that the Forest Service must clarify the relationship between the pre-decision objection process for plan decisions and the appeal process for site-specific decisions. A few people argued that objection process violates due process requirements for site-specific decisions.

Response: While there is merit in having an objection process for site-specific decisions, amending the appeal process is beyond the scope and authority for developing these planning regulations under the NFMA. For this reason, the administrative appeal process for site-specific decisions remains unchanged in the final rule.

The Department added language to this section to clarify the relationship between the objection processes for plan decisions and the appeal process for site-specific decisions. Other revisions have been made to incorporate changed terminology.

The Department does not believe that objection process violates due process requirements for site-specific decisions. The agency's NEPA procedures provides for both public comment and appeal of site-specific decisions.

Applicability and Transition

Proposed Section 219.34—Applicability. This section of the proposed rule provided that the direction in the rule applied to all units of the National Forest System and remains unchanged in the final rule. The agency did not receive any specific comments on this section.

Proposed Section 219.35—Transition. This section of the proposed rule addressed the shift in planning from the use of the existing regulation to the new rule, including the initiation of transition, the length of time existing plans remain in effect, the review of unsuitable land for timber production, the timing for completion of ongoing amendment or revision efforts, the relationship between transition and site-specific decisions, and the withdrawal of regional guides. This section outlined the process by which the Forest Service will transition from the 1982 planning regulations.

Comment: Many respondents requested a clear distinction between forest plans and project-level plans in terms of when they must conform to requirements in the proposed rule. Existing NEPA regulations still apply to project plans, stated one person. In addition, the application of the proposed regulations to recently revised forest plans was a significant concern of many people. One respondent said that the new regulations could overturn environmental safeguards developed in revised forest plans. Some commented that a timeframe must be set in order that proposed projects, which can take years to develop, don't come into conflict with forest plans under the new regulations.

Response: The final rule adequately describes the relationship between plan decisions, site-specific decisions, and the agency's NEPA procedures. The transition from the existing regulations to the new rule and the relationship between transition and site-specific decisions is addressed in section 219.35. The Department does not believe that the new rule could overturn environmental safeguards developed in revised forest plans. For site-specific decisions, section 219.35(d) provides a three-year time period for transition between the existing regulations and the new rule.

Comment: The use of Regional Guides after implementation of the proposed planning regulations should be discussed in more detail some contended. One respondent suggested that Regional Guides should be withdrawn "on a forest-by-forest basis." Another requests they not apply until the next scheduled plan revision. Several people asserted that provisions must be in place to prevent delays in revision of forest plans through "endless extensions." On a separate note, one person wanted requirements for evaluating suitability for multiple-uses specified in the transition section instead of "just sustainability."

Response: The management direction contained within each Regional Guide would be transferred to the Forest

Service directives system or to applicable plans. The direction contained within Regional Guides will be used to develop plan revisions. Section 219.35(f) of the final rule provides that the Regional Forester will have 1 year from the effective date of this rule to withdraw the regional guide. In regard to the comment about delays in planning, the rule provides a transition framework that will expeditiously amend or revise existing forest plans. In addition, the rule establishes a framework for incorporating this new planning structure into project planning as well as forest and grassland plans. In regard to the comment about suitability, the identification and designations of suitable uses will be implemented in accordance with Section 219.26 of the final rule. It is the intent of this rule to provide that suitable uses will be evaluated during the transition period.

Other Changes. Some editing and clarifying changes are made to this section of the final rule. In addition, the Department has added new text in paragraph (a) of the final rule requiring the responsible official to consider the "best available science to implement, and, if appropriate, amend the current plan." This text is added in the final rule in order to require the Forest Service to incorporate the best science within current plans. The Department intends this to be incorporated within existing forest plans that have been prepared under the 1982 planning structure, too.

New text in paragraph (b) of the final rule is added to allow for the completion of an ongoing plan amendment or revision under the 1982 rule if an environmental assessment or draft environmental impact statement has been issued within six months of the effective date of the new planning rule. The responsible official may complete the amendment or revision under the new rule. This addition to the final rule was made to ensure that ongoing plan amendments or revisions nearing completion were not delayed. Implementation of the new planning rule would take place as described by the transition process.

New language in paragraph (e) requiring the Regional Forester to withdraw the regional guide within one year of the effective date of the regulation is added to the final rule. The language in the proposed rule that required all the forests within a region to complete their revisions prior to withdrawal of the regional guide has been removed. This change was made to ensure the expeditious withdrawal of regional guides. The information in the regional guide will be transferred to a regional supplement of the Forest Service directives system or to existing forest plans. Public notice for these actions will be announced in the **Federal Register**. The Department has included new language in paragraph (f) of the final rule that provides for the transfer of information from the regional guide to other plans does not constitute new decisionmaking subject to additional Forest Service NEPA procedures.

A new subparagraph (g) is added to the final rule that requires the Chief of the Forest Service to prepare a schedule for completion of the plan revisions within one year. This section was moved from section 219.9, Revision, of the proposed rule to this section in the final rule. The change was made to emphasize this is one of the major responsibilities during the transition period. This language will enable the Chief of the Forest Service to prioritize plan revisions and provide the necessary resources to complete them in a timely manner.

Definitions

Proposed Section 219.36—Definitions. This section of the proposed rule defines terms used in the rule. This section has been retained in the final rule, with some changes in terms.

Comment: Many people requested that a variety of terms be defined this section of the proposed planning rule. Other respondents offered specific comments regarding the need for the clarification of terms already defined in the proposed planning regulations.

Response: The changes in the definitions and terms from the proposed rule to the final rule are as follows:

Assessment or analysis area. The definition of assessment or analysis area was retained from the proposed rule, with some minor clarifying language. The term "geographic" has been added to describe the area of analysis.

Broad-scale assessment. The proposed rule included a definition for this term. The definition of broad-scale assessment has been moved to section 219.5(a) of the final rule.

Candidate species. The term candidate species has been retained in the final rule. The phrase "a list of such species prepared by the USFWS and published in the Federal Register" has been removed. The Department believes that this language is unnecessary and redundant.

Conservation agreement. The term conservation agreement was defined in the proposed rule has been retained in the final rule. There are no changes to the definition.

Current climatic period. This term has been added to the final rule. The Department believes that this term is important to understand the timeframe for species and ecosystems within the final rule.

Demand species. This term was defined in the proposed rule. It has been removed from the final rule. The Department believes that the final rule should concentrate on protection of species that may have viability concerns. Demand species, as defined in the proposed rule, may not have viability concerns.

Desired condition. This term has been modified in the final rule by deleting the phrases pertaining to the description of the range of natural variability. The Department removed this language because there is a new definition for range of variability.

Desired non-native species. This term has been modified in the final rule to recognize that non-native species can have "high social, cultural, or economic value." This term could include "demand species," as defined in the proposed rule.

Disturbance processes. This term has been changed from "disturbance processes" to "disturbance regime" in the final rule. The Department believes that this term better describes disturbances. The Department also removed the term "land use development" from the list of human caused disturbances. The Department believes that the list of disturbances in the final rule describes all of the activities that could occur on national forests and grasslands.

Diversity of plant and animal communities. The Department has retained this term in the final rule.

Ecological composition. This term, which was defined in the proposed rule, has been removed from the final rule. The Department believes that the characteristics of ecological composition are defined in the definitions for the terms ecosystem composition, ecosystem processes, and ecosystem structure.

Ecological conditions. The Department has removed the term "ecological sustainability" from the list of components of the biological and physical environment. The term "ecological sustainability" has been defined in the final rule. The Department has also added the phrase "abundance and distribution" to the list of ecological conditions. This phrase was added to ensure that planning takes into consideration these factors in identifying ecological conditions.

Ecological sustainability. This term, which was defined in the proposed rule,

has been retained in the final rule with some modifications. The Department has removed the language in the proposed rule referring to "plan area." The Department believes that this definition should not be limited to only the plan area.

Ecosystem. This term, which was defined in the proposed rule, has been removed from the final rule. The Department believes that this term is adequately defined within the definitions of ecosystem structure, ecosystem processes, and ecosystem composition.

Ecosystem composition. The Department has added this definition to the final rule to clarify what ecological elements are included within this term.

Ecosystem integrity. This term has been removed from the final rule. The Department believes that the terms ecosystem composition, ecosystem processes, and ecosystem structure provide adequate definitions for this term in the final rule.

Ecosystem processes. The Department has added this term to the final rule. The Department believes that it is important for participants in the planning process to have an understanding of the elements of ecological processes.

Ecosystem structure. This term was defined in the proposed rule. It has been retained in the final rule, with some modifications. The Department has removed the language listing the specific characteristics for identifying ecosystem structure. The Department believes that this information is not necessary.

Focal species. The proposed rule did not define this term. The Department has added this term to the final rule because of its importance in determining viability of species. This is a term that is used broadly by the scientific community.

Forest Service NEPA procedures. The Department has retained this definition in the final rule.

Historical range of variability. The Department has removed this term from the final rule. It has included a new definition for range of variability in the final rule. The Department removed this term because it wanted to ensure that range of ecosystem processes considered in the new planning process are within the current climatic period, but not limited to pre-European settlement time period.

Inherently rare species. This term was not defined in the proposed rule. The Department has added this term to the final rule. The Department has defined this term because it is important for the agency and public to understand that there may be species that are "rare" because of natural circumstances.

Inventoried roadless areas. The Department has added this term in the final rule. This was done to further clarify the terms of "roadless areas" and "unroaded areas" in the proposed rule and make the definition consistent with Forest Service Roadless Area Conservation Draft Environmental Impact Statement Summary and Proposed Rule, dated May 2000.

Local analysis. The Department has removed this definition from the final rule. This term is defined in Section 219.5, Information development and interpretation.

Major vegetation types. The Department has added a definition of this term to the final rule. This term was added to describe the predominant plant communities within a region or sub-region.

Native species. The Department has made minor editorial changes to this definition in the final rule. The substance of the definition remains unchanged.

Plan area. This term was defined in the proposed rule. It is defined in the final rule, with some modifications. The Department has added the term "geographic." The Department believes that this addition is important for describing the plan area.

Productive capacity of ecosystems. The Department has changed this term to "productive capacity of ecological systems" in the final rule. The Department believes that this better describes ecosystem processes in the planning structure.

Range of variability. The Department has added this term to the Definition section in the final rule. As mentioned above, the definition on historical range of variability is no longer included in the final rule. The new definition states that the natural disturbance regimes are in the current climatic period. The Department believes that this language better characterizes the range of variability for planning on national forests and grasslands.

Reference landscapes. The Department has redefined this term in the final rule. The Department removed the phrases referring to "historical range of variability" and "terrestrial and aquatic areas." The Department has added new language that describes the "reference landscapes" as places within the "plan area." The Department believes that this new language better describes the types of reference landscapes that can be used in the planning process.

Responsible official. The Department has modified this definition in the final rule by removing the language referring to more than one line officer. The Department believes that this phrase is not necessary. The Department has also removed the language referring to "line officer," and has added new language that provides for the responsible official to be the person who oversees the planning process.

Reviewing officer. The Department has added this term in the final rule. The Department wanted to clarify who this individual is and what their responsibility is in the planning framework.

Roadless areas. The Department has renamed this term "inventoried roadless areas" to further differentiate it from unroaded areas.

Salvage harvest of timber. The Department has removed this definition from the final rule. The Department believes that it is not necessary to specifically define this term.

Sanitation harvest of timber. The Department has removed this definition from the final rule. The Department believes that this term does not need to be defined in the final rule.

Sensitive species. The Department has removed this definition from the final rule. The term is only referred to in the Definition section for "species-at-risk" in the final rule and the Department believes it is not necessary to specifically define it.

Social and economic sustainability. The Department added this definition in the final rule based on public comment.

Species. The definition in the proposed rule stating that "any native taxon of the plant or animal kingdom" is defined as a species has been changed in the final rule to "any member of the plant or animal kingdom." The Department made this change to broaden the definition to include native and non-native species.

Species-at-risk. The Department has defined this new term in the final rule. The Department wanted to clarify that these are federally listed and other species that have a viability risk within the plan area.

Species viability. The Department has retained this definition in the final rule, with some modifications. The Department has removed the language in the proposed rule referring to the "genetic diversity" of self-sustaining populations. The Department removed this language because it believes that viability should be interpreted in the broadest manner.

Successional stages. The Department has added this term to the final rule. The Department believes there is a need to define the various phases of vegetation development within the context of sustainability.

Timber production. This definition is unchanged from the proposed rule.

Undeveloped areas. This term was added to the final rule. This term refers to all areas of sufficient size that are "untrammeled" by human beings that are appropriate to evaluate for wilderness designation in the planning process.

Unroaded areas. This term is revised to be consistent with the definition used in Forest Service Roadless Area Conservation Draft Environmental Impact Statement Summary and Proposed Rule, dated May 2000.

Vegetation Management. This term has been removed from the final rule. The term is defined within the content of sections 219.4, Identification and consideration of issues, 219.28, Determination of land suitable for timber harvest, and 219.29, Limitation on timber harvest.

Watershed integrity. This term has been removed from the final rule. It is defined within the content of section 219.20, Ecological Sustainability.

Regulatory Certifications

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not an economically significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in National Forest System planning and decisionmaking, the Office of Management and Budget has determined this rule to be significant and thus, subject to OMB review under Executive Order 12866.

The cost-benefit analysis focused on key activities in land and resource management planning for which costs could be estimated under the existing and final planning rules. Those major activities included regional guides, land and resource management plan revisions, land and resource management plan amendments, and advisory committees. The final rule would reduce costs by eliminating regional guides and reducing the length of the planning process. Increased costs would result from new requirements for FACA-type advisory boards and science advisory boards. The cost of broad-scale assessments will also be a new planning expense, which is assumed to be at least equal to the cost of maintaining regional guides. Based on the quantified costs, the final rule is estimated to result in an average annual cost savings of $2.4 million compared to the existing rule. This estimate is a conservative estimate of cost savings, since it is assumed that the cost of significant amendments under the existing rule is zero (based on the rarity of application), and no cost savings are estimated as a result of improved efficiencies, streamlined processes, and reduced litigation costs because of improved methods for dealing with planning conflicts. The cost-benefit analysis can be obtained by contacting: the Director, Ecosystem Management and Coordination, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1697.

Moreover, this rule has been considered in light of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), and it has been determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by that Act. The rule imposes no requirements on either small or large entities. Rather, the rule sets out the process the Forest Service will follow in planning for the management of the National Forest System. The rule should increase opportunities for small businesses to become involved in both site-specific and national forest and grassland plan decisions. Moreover, by streamlining the planning process, small businesses should see more timely site-specific decisions that affect outputs of products and services.

Eight comments from law firms or representatives of small mining operators, outfitters and guide permit holders, and small timber companies challenged the Forest Service assertion that the proposed rule, if adopted, would not have a significant economic impact on small businesses and other entities. Several of these reviewers asserted that the shift to ecological sustainability would result in reductions in resource allocations and thus would have severe adverse effects on small businesses and communities within and adjacent to National Forests. One commenter also challenged the assertion that the proposed rule streamlined the planning process. One organization representing the 8,000 recreation outfitters and guides operating under permit on the national forests and grasslands contended that the proposed planning rule would reduce recreation opportunities with corollary reductions in commercial outfitting and guiding.

Several representatives of small mining operators also asserted that the proposed planning rule, in combination with actions by the Bureau of Land Management, would violate the small miners Constitutional rights. Finally, all these respondents quoting various provisions of the Regulatory Flexibility Act, believed that the Forest Service had not complied with the Act, either by not preparing Initial Regulatory Flexibility Act, or not presenting a factual basis for why an IRFA was not required.

The Department finds that the planning rule would not result in a significant economic impact on a substantial number of small entities as defined by the Small Business Act. Those who allege severe shifts in resource allocations have not offered facts and data to prove their point.

This planning rule establishes a process for planning of national forest and grasslands and does not directly regulate any business. The process that is being established under this rule offers greater opportunity for small entities to actively participate in the planning process than in the past. Forest dependent businesses and communities may choose to become involved in planning if the issues are relevant and important to them.

No Takings Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally protected private property. This rule establishes a process for amending and revising land and resource management plans for national forests and grasslands. Several respondents commented that the proposed regulations would impose "takings" of private property. After careful review of the proposed and final regulations, the Department finds that there are no "takings" implications by this rule. As stated previously, the rule establishes a process and only applies to national forests and grasslands, not private property.

Civil Justice Reform Act

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. As adopted, (1) all state and local laws and regulations that are in conflict with this rule or which would impede its full implementation are to be

preempted; (2) no retroactive effect is given to this rule; and (3) it does not require administrative proceedings before parties may file suit in court challenging its provisions. Several respondents commented about the federal government's authority to preempt state and local laws. The Department has carefully reviewed this language and finds that this is entirely consistent with the legal responsibilities of the federal government.

Unfunded Mandates Reform

The President signed into law on March 22, 1995, direction regarding unfunded mandates. The Department has assessed the effects of this rule on state, local, and tribal governments, and the private sector. This rule does not compel the expenditure of $100 million or more by any state, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required. Several respondents commented that the proposed regulations imposed an "unfunded mandate" on state and local governments. The Department disagrees with this comment. These regulations do not impose any mandatory requirements on states, tribes, or local governments. These regulations only apply to land and management planning for national forests and grasslands. It is discretionary for state and local governments and tribes to participate in the planning process detailed in this rule.

Environmental Impact

This rule deals with the development and adoption of Forest Service land and resource management plan decisions as well as procedures for developing site-specific decisions that may include decisions regarding the occupancy and use of National Forest System land. An environmental assessment has been completed with a finding of no significant impact. Several respondents asked why the Forest Service did not prepare an environmental impact statement. As stated previously, the Department prepared an environmental assessment consistent with the National Environmental Policy Act. The environmental assessment prepared by the Forest Service includes a Cost-Benefit Analysis and Civil Rights Impact Analysis. The environmental assessment can be obtained by contacting: Director, Ecosystem Management and Coordination, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1697. Subsequent NEPA documents will be written when land and resource management plans and site-specific plans are undertaken.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or reporting requirements included in the rule have been approved by the Office of Management and Budget (OMB) and assigned control number 0596–0158.

Section 219.32 Objections and Appeals would establish a new process for citizens and groups to object to a forest plan amendment or revision decision. Instead of appealing a decision after it is made under the rules of 36 CFR part 217, the rule would allow interested and affected persons and groups to file an objection before the decision is made. The final rule also includes a provision for other parties to participate in the objection process. The objection process should be open and inclusive of all parties. In addition, language has been added to the final rule that provides for objectors and other parties to participate in meetings with the reviewing officer to discuss their concerns regarding a proposed plan amendment or revision. This is an opportunity for all parties to explore possible resolution of their concerns with the responsible official.

The rule sets out the information that an objector would need to provide in order to file an objection to a proposed decision. This information is the same information that is currently required by the rules at 36 CFR part 217, which provides post-decisional administrative appeal and review of land and resource management plan decisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB initialed number.

The agency received comments on this section for the proposed regulation. Respondents indicated that language in the proposed rule was nebulous and confusing. There were concerns stated for replacing the appeal process with a pre-decisional objection process and including site-specific decisions in the land and resource management plan. Respondents said that the direction for analysis and documentation would not reduce paperwork under the proposed rule.

The language in the final rule clarifies the language used in the proposed rule. The new objection process replaces the paperwork required in the appeal process with upfront discussions until the objection is resolved. Site-specific decisions are required to be identified in the two-year budgetary documentation of the Land and Resource Management Plan and be consistent with the planning processes. Site-specific decisions will continue to be conducted consistent with applicable NEPA procedures.

Use of Comments—Federalism

The agency has considered this rule under the requirements of Executive Order 12612 and made a preliminary assessment that the rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment on federalism implications is necessary at this time. In addition, the agency has reviewed the consultation requirements under Executive Order 13132, which is effective on November 2, 1999. This Order calls for enhanced consultation with state and local governmental officials and emphasizes increased sensitivity to their concerns. In the spirit of these new requirements, the agency consulted with the Western Governors' Association and the Natural Resources Committee of the National Governors' Association for comments on a draft version of the rule. Representatives of the Western Governors' Association indicated that the rule fits the principles espoused in their organization's ENLIBRA policy, which encourages greater participation and collaboration in decisionmaking, focuses on outcomes rather than programs only, and recognizes the need for a variety of tools beyond regulation that can improve environmental and natural resource management. The National Governors' Association also has adopted the ENLIBRA policy. Many state and local government representatives attended town meetings on the proposed rule. Department representatives also met with and shared information about the proposed planning rule with the International City and County Management Association, National Conference of State Legislators, The Council of State Governments, National Association of Counties, Western Governors Association, U.S. Conference of Majors, and National League of Cities.

The rule calls for enhanced collaboration with state and local governments. Section 219.14 shows sensitivity to federalism concerns from a substantive standpoint. Under the rule, the responsible official must provide opportunities for involvement of state and local governments in the planning process, including opportunities to participate in the identification and consideration of issues related to planning.

Respondents appreciated the consultation required with state and local governments in the proposed rule. One respondent felt the role of states and local governments was diminished by so much emphasis on collaborative relationships with the public. Respondents were concerned that public meetings on the proposed rule were not held in more local communities. In the context of planning activities, there was concern that this was the province of the city and county governments and that the Forest Service should not promote community organization around a set of agency determined goals.

List of Subjects

36 CFR Part 217

Administrative practice and procedure, National forests.

36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Forest and forest products, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, and under the authority of 16 U.S.C. 551, chapter II of title 36 of the Code of Federal Regulations is amended as follows:

PART 217—[REMOVED]

1. Remove Part 217.
2. Revise Part 219 to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Land and Resource Management Planning

Purpose and Principles

Sec.
219.1 Purpose.
219.2 Principles.

The Framework for Planning

219.3 Overview.
219.4 Identification and consideration of issues.
219.5 Information development and interpretation.
219.6 Proposed actions.
219.7 Plan decisions.
219.8 Amendment.
219.9 Revision.
219.10 Site-specific decisions.
219.11 Monitoring and evaluation for adaptive management.

Collaborative Planning for Sustainability

219.12 Collaboration and cooperatively developed landscape goals.
219.13 Coordination among federal agencies.
219.14 Involvement of state and local governments.
219.15 Interaction with American Indian tribes and Alaska Natives.
219.16 Relationships with interested individuals and organizations.
219.17 Interaction with private landowners.
219.18 Role of advisory committees.

Ecological, Social, and Economic Sustainability

219.19 Ecological, social, and economic sustainability.
219.20 Ecological sustainability.
219.21 Social and economic sustainability.

The Contribution of Science

219.22 The overall role of science in planning.
219.23 The role of science in assessments, analyses, and monitoring.
219.24 Science consistency evaluations.
219.25 Science advisory boards.

Special Considerations

219.26 Identifying and designating suitable uses.
219.27 Special designations.
219.28 Determination of land suitable for timber removal.
219.29 Limitation on timber removal.

Planning Documentation

219.30 Plan documentation.
219.31 Maintenance of the plan and planning records.

Objections and Appeals

219.32 Objections to amendments or revisions.
219.33 Appeals of site-specific decisions.

Applicability and Transition

219.34 Applicability.
219.35 Transition.

Definitions

219.36 Definitions.

Subpart B—[Reserved]

Subpart A—National Forest System Land and Resource Management Planning

Authority: 5 U.S.C. 301; and Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613).

Purpose and Principles

§ 219.1 Purpose.

(a) Land and resource management planning guides how the Forest Service will fulfill its stewardship of the natural resources of the National Forest System to fulfill the designated purposes of the national forests and grasslands and honor their unique place in American life. The regulations in this subpart set forth a process for amending and revising land and resource management plans, hereafter referred to as plans, for the National Forest System and for monitoring the results of plan implementation under the Forest and Rangeland Renewable Resources Act of 1974, as amended by the National Forest Management Act of 1976, 16 U.S.C. 1600 *et seq.* The regulations in this subpart also guide the selection and implementation of site-specific actions. The principal authorities governing the development and the management of the National Forest System include: the Organic Administration Act of 1897, as amended (16 U.S.C. 473 *et seq.*); the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 *et seq.*); the Wilderness Act (16 U.S.C. 1121 *et. seq.*); the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Forest and Rangeland Renewable Resource Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*); and the Clean Water Act of 1948, as amended by the Federal Water Pollution Control Act Amendments of 1977 and the Water Quality Act of 1987 and other laws (33 U.S.C. 1251 *et seq.*, 1323 *et seq.*).

(b) The National Forest System constitutes an extraordinary national legacy created by people of vision and preserved for future generations by diligent and far-sighted public servants and citizens. These are the peoples' lands, emblems of the nation's democratic traditions.

(1) The national forests and grasslands provide a wide variety of uses, values, products, and services that are important to many people, including outdoor recreation, forage, timber, wildlife and fish, biological diversity, productive soils, clean air and water, and minerals. They also afford intangible benefits such as beauty, inspiration, and wonder.

(2) To assure the continuation of this array of benefits this regulation affirms sustainability as the overall goal for stewardship of the natural resources of each national forest and grassland consistent with the laws that guide management of these lands.

(3) Sustainability, composed of interdependent ecological, social, and economic elements, embodies the principles of multiple-use and sustained-yield without impairment to the productivity of the land. Sustainability means meeting needs of the present generation without compromising the ability of future generations to meet their needs. Planning contributes to social and economic sustainability without compromising the basic composition, structure, and functioning of ecological

systems. The progress toward achievement of sustainability is assessed through monitoring and evaluation.

§ 219.2 Principles.

The planning regulations in this subpart are based on the following principles:

(a) The first priority for planning to guide management of the National Forest System is to maintain or restore ecological sustainability of national forests and grasslands to provide for a wide variety of uses, values, products, and services. The benefits sought from these lands depend upon long-term ecological sustainability. Considering increased human uses, it is essential that uses of today do not impair the functioning of ecological processes and the ability of these natural resources to contribute to sustainability in the future.

(1) Planning provides the guidance for maintaining or restoring the diversity of plant and animal communities and the productive capacity of ecological systems, the core elements of ecological sustainability.

(2) Planning is based on science and other knowledge, including the use of scientifically based strategies for sustainability and benefits from independent scientific peer review.

(3) Planning is based on the temporal and spatial scales necessary for sustainability.

(4) Planning includes the monitoring and evaluation of the achievement of goals.

(b) Planning contributes to social and economic sustainability by providing for a wide variety of uses, values, products, and services without compromising the basic composition, structure, and function of ecological systems.

(1) Planning recognizes and fosters a broad-based understanding of the interdependence of national forests and grasslands with economies and communities.

(2) Planning fosters strategies and actions that provide for human use in ways that contribute to long-term sustainability.

(c) Planning is efficiently integrated into the broader geographic, legal, and social landscape within which national forests and grasslands exist. Other agencies, governments, corporations, and citizens manage land in and around the national forests and grasslands. Planning, therefore, is outward looking with the goal of understanding the broader landscape in which the national forests and grasslands lie.

(1) Planning fosters coordination among all affected federal agencies.

(2) Planning proceeds in close cooperation with state, tribal, and local governments.

(3) Planning recognizes the rights of American Indian tribes and Alaska Natives.

(4) Planning is interdisciplinary, providing analyses and options that are responsive to a broad range of ecological, social, and economic.

(5) Planning acknowledges the limits and variability of likely budgets.

(d) Planning meaningfully engages the American people in the stewardship of their national forests and grasslands. Just as the Forest Service can help the American people learn about the limits and capabilities of the national forests and grasslands, managers also should be guided by the knowledge and values of the American people.

(1) Planning encourages extensive collaborative citizen participation and builds upon the human resources in local communities and throughout the nation.

(2) Planning actively seeks and addresses key issues and promotes a shared vision of desired conditions.

(3) Planning and plans are understandable.

(4) Planning restores and maintains the trust of the American people in the management of the national forests and grasslands.

(e) Planning is an ongoing process, where decisions are adapted, as necessary, to address new issues, new information, and unforeseen events.

(1) Planning is innovative and practical.

(2) Planning is expeditious and efficient in achieving goals.

(f) Planning seeks to manage National Forest System resources in a combination that best serves the public interest without impairment of the productivity of the land consistent with the Multiple-Use Sustained-Yield Act of 1960.

The Framework for Planning

§ 219.3 Overview.

(a) *The planning framework.* Land and resource management planning is a flexible process for fitting solutions to the scope and scale of needed action. Planning, conducted according to the planning framework outlined in §§ 219.3–219.11, involves engaging the public (§§ 219.12–219.18) and applying the best available science (§§ 219.22–219.25) to contribute to sustainability (§§ 219.19–219.21) in the use and enjoyment of National Forest System lands.

(b) *Levels of planning.* Planning may be undertaken at the national, regional, national forest or grassland, and/or ranger district administrative levels depending on the scope and scale of issues.

(1) The Chief of the Forest Service is responsible for national planning. National planning includes the Forest Service national strategic plan required under the Government Performance and Results Act of 1993 (5 U.S.C. 306, 31 U.S.C. 1115–1119 and 9703–9704) that establishes national long-term goals, outcome measures, and strategies to be considered in managing the National Forest System and the Resources Planning Act Program (16 U.S.C. 1600).

(2) The Forest or Grassland Supervisor is the responsible official for a plan amendment or revision, except to the extent the Regional Forester or Chief decides to act as the responsible official.

(3) When appropriate, two or more Forest or Grassland Supervisors, one or more Regional Foresters, or the Chief of the Forest Service may undertake planning which may amend or revise one or more plans.

(4) The Chief of the Forest Service, Regional Foresters, National Forest and Grassland Supervisors, or District Rangers may authorize and implement site-specific actions.

(c) *An interdisciplinary, collaborative approach to planning.* An interdisciplinary, collaborative approach to planning may be achieved by engaging the skills and interests of appropriate combinations of Forest Service staff, consultants, contractors, other federal agencies, states, American Indian tribes, Alaska Natives, or local government personnel, or other interested or affected people consistent with applicable laws.

(d) *Key elements.* The planning cycle begins with the identification and consideration of issues and concludes with the monitoring and evaluation of results. Based upon the scope and scale of issues, planning includes one or more of the following key elements:

(1) Identification and consideration of issues (§ 219.4);

(2) Information development and interpretation (§ 219.5);

(3) Proposed actions (§ 219.6);

(4) Plan decisions (§ 219.7);

(5) Amendment (§ 219.8);

(6) Revision (§ 219.9);

(7) Site-specific decisions (§ 219.10); and

(8) Monitoring and evaluation for adaptive management (§ 219.11).

§ 219.4 Identification and consideration of issues.

(a) *Origination of issues.* Issues may originate from a variety of sources including, but are not limited to:

inventories, assessments, analyses, monitoring and evaluation of projects; discussions among people and proposals by organizations or governments interested in or affected by National Forest System management; Presidential, Departmental, and Forest Service conservation leadership initiatives; cooperatively developed landscape goals (§ 219.12(b)); evaluation of sustainability (§ 219.9(b)(4)); enactment of new laws; policies such as the Forest Service national strategic plan; and applications for authorization for occupancy and use of National Forest System lands.

(b) *Consideration of issues.* The responsible official has the discretion to determine, at any time, whether and to what extent an issue is appropriate for consideration.

(1) In making this determination, the responsible official should consider:

(i) The scope, complexity, and geographic scale of potential actions that may address an issue;

(ii) Statutory requirements;

(iii) Organizational and community capabilities and available resources, including current and likely Forest Service budgets;

(iv) The scientific basis and merit of available data and analyses;

(v) The relationship of possible actions to the Forest Service national strategic plan, other existing plans, adopted conservation strategies, biological opinions, or other strategies applicable within all or a portion of the plan area; and

(vi) The opinions of interested or affected individuals, organizations, or other entities and the social and cultural values related to an issue.

(2) The responsible official should consider the extent to which addressing the issue relates to or provides:

(i) Opportunities to contribute to the achievement of cooperatively developed landscape goals;

(ii) Opportunities for the national forests and grasslands to contribute to the restoration or maintenance of ecological sustainability, including maintenance or restoration of watershed function, such as water flow regimes to benefit aquatic resources, groundwater recharge, municipal water supply, or other uses, and maintaining or restoring ecological conditions needed for ecosystem and species diversity;

(iii) Opportunities for the national forests or grasslands to contribute to social and economic sustainability;

(iv) Opportunities to recover threatened or endangered species and maintain or restore their habitat;

(v) The potential for negative environmental effects, including human health, economic and social effects, upon minority and low income communities;

(vi) Opportunities to maintain or restore ecological conditions that are similar to the biological and physical range of expected variability (§ 219.20(b)(1)); and

(vii) Opportunities to contribute to knowledge about and preservation of historic and cultural resources.

§ 219.5 Information development and interpretation.

If the responsible official determines an issue should receive consideration, the responsible official should review relevant information such as inventories, broad-scale assessments, local analyses, or monitoring results to determine if additional information is desirable and if it can be obtained at a reasonable cost and in a timely manner. The responsible official, at his or her discretion, may choose the methods and determine the scope of information development and interpretation for an issue under consideration. A broad-scale assessment or a local analysis may be developed or supplemented if appropriate to the scope and scale of an issue. Broad-scale assessments, local analyses, monitoring results, and other studies are not site-specific or plan decisions or proposals for agency action (§ 219.6(a)) subject to Forest Service NEPA procedures.

(a) *Broad-scale assessments.* Broad-scale assessments provide information regarding ecological, economic, or social issues that are broad in geographic scale, sometimes crossing Forest Service regional administrative boundaries. Ecological information and analyses that may be provided in an assessment are addressed in § 219.20(a). Social and economic information and analyses that may be provided in an assessment are addressed in § 219.21(a).

(1) Broad-scale assessment should provide the following as appropriate:

(i) Findings and conclusions that describe historic conditions, current status, and future trends of ecological, social, and/or economic conditions, their relationship to sustainability, and the principal factors contributing to those conditions and trends. The responsible official may use these findings and conclusions to identify other issues (§ 219.4), develop proposals for action (§ 219.6), or for other purposes.

(ii) Identification of needs for additional research to develop new information or address conflicting interpretations of existing information.

(2) Station Directors and Regional Foresters must have joint responsibility for Forest Service participation in broad-scale assessments. Each broad-scale assessment should be designed and conducted with the assistance of scientists, resource professionals, governmental entities, and other individuals and organizations knowledgeable of the assessment area.

(b) *Local analyses.* Local analyses provide ecological, social, or economic information as deemed appropriate by the responsible official. Local analyses may cover watersheds, ecological units, and social and economic units, and may tier to or provide information to update a broad-scale assessment. Local analyses should provide the following, as appropriate:

(1) Characterization of the area of analysis;

(2) Description of issues within the analysis area;

(3) Description of current conditions;

(4) Description of likely future conditions;

(5) Synthesis and interpretation of information; and

(6) Recommendations for proposals (§ 219.6(a)) or identification of other issues (§ 219.4).

§ 219.6 Proposed actions.

(a) *Proposal.* The responsible official may propose to amend or revise a plan, propose a site-specific action, or both.

(b) *NEPA requirements.* Unless otherwise provided by law, the responsible official must analyze the effects of the proposal and alternative(s) in conformance with Forest Service NEPA procedures. The responsible official may use issues identified and information reviewed pursuant to §§ 219.4–219.5 for scoping required in Forest Service NEPA procedures.

§ 219.7 Plan decisions.

Plan decisions guide or limit uses of National Forest System resources and provide the basis for future agency action. Plan decisions link the requirements of laws, regulations, Executive Orders, policies, and the Forest Service national strategic plan to specific national forests and grasslands. While plan decisions generally do not commit resources to a site-specific action, plan decisions provide a framework for authorizing site-specific actions that may commit resources. In making decisions, the responsible official should seek to manage National Forest System resources in a combination that best serves the public interest without impairment of the productivity of the land consistent with the Multiple-Use Sustained-Yield Act of 1960. Plan decisions may apply to all or part of a plan area. Paragraphs (a) through (e) of this section describe the decisions in a plan.

(a) *Desired resource conditions.* These plan decisions define the resource conditions sought within all or portions of the plan area. Desired resource conditions may include, but are not limited to, the desired watershed and ecological conditions and aquatic and terrestrial habitat characteristics.

(b) *Objectives.* These plan decisions are concise statements describing measurable results intended to contribute to sustainability (§ 219.19), including a desired level of uses, values, products, and services, assuming current or likely budgets and considering other spending levels as appropriate. Objectives include an estimate of the time and resources needed for their completion.

(c) *Standards.* These plan decisions are the requirements and limitations for land uses and management actions necessary for the achievement of desired conditions and objectives and compliance with applicable laws, regulations, Executive Orders, and policies. Standards include, but are not limited to:

(1) Limitations on even-aged timber harvest methods;

(2) Maximum size openings from timber harvest;

(3) Methods for achieving aesthetic objectives by blending the boundaries of vegetation treatments; and

(4) Other requirements to achieve multiple-use of the national forests and grasslands.

(d) *Designation of suitable land uses.* These plan decisions identify lands within the National Forest System that are or are not suitable for specific uses (§ 219.26), including, but not limited to: the transportation system; livestock grazing; special designations as described in § 219.27; and lands where timber production is an objective (§ 219.28).

(e) *Monitoring strategy.* A monitoring strategy is required by each plan as described in § 219.11(a).

§ 219.8 Amendment.

(a) *Amending plans.* A plan amendment may add, modify, or rescind one or more of the decisions of a plan (§ 219.7). An amendment decision must be based on the identification and consideration of issues (§ 219.4), applicable information (§ 219.5), and an analysis of the effects of the proposed amendment (§ 219.6). In developing an amendment, the responsible official must provide opportunities for collaboration consistent with § 219.12 through § 219.18.

(b) *Environmental review of a proposed plan amendment.* For each proposal for a plan amendment, the responsible official must complete appropriate environmental analyses and public involvement in accordance with Forest Service NEPA procedures. A proposed amendment that may create a significant environmental effect and thus require preparation of an environmental impact statement is considered to be a significant change in the plan. If a proposal for amendment requires the preparation of an environmental impact statement, the responsible official must give public notice and an opportunity to comment on the draft environmental impact statement for at least 90 calendar days.

§ 219.9 Revision.

(a) *Application of the revision process.* Revision of a plan is required by 16 U.S.C. 1604(f)(5). The revision process is a review of the overall management of a unit of the National Forest System and an opportunity to consider the likely results if plan decisions were to remain in effect.

(b) *Initiating revision.* To begin the revision process, the responsible official must:

(1) Provide opportunities for collaboration consistent with § 219.12 through § 219.18;

(2) Summarize those issues the responsible official determines to be appropriate for consideration (§ 219.4), any relevant inventories, new data, findings and conclusions from appropriate broad-scale assessments and local analyses, monitoring and evaluation results, new or revised Forest Service policies, relevant portions of the Forest Service national strategic plan, and changes in circumstances affecting the entire or significant portions of the plan area;

(3) Develop the information and complete the analyses described in § 219.20(a) and § 219.21(a);

(4) Evaluate the effectiveness of the current plan in contributing to sustainability (§§ 219.19–219.21) based on the information, analyses, and requirements described in § 219.20(a) and (b) and § 219.21(a) and (b), and provide for an independent scientific peer review (§ 219.22) of the evaluation;

(5) Identify new proposals for special areas, special designation, or for recommendation as wilderness (§ 219.27);

(6) Identify specific watersheds in need of protective or restoration measures;

(7) Identify lands classified as not suitable for timber production (§ 219.28);

(8) Identify and evaluate inventoried roadless areas and unroaded areas based on the information, analyses, and requirements in § 219.20(a) and § 219.21(a). During the plan revision process or at other times as deemed appropriate, the responsible official must determine which inventoried roadless areas and unroaded areas warrant additional protection and the level of protection to be afforded; and

(9) Develop an estimate of outcomes that would be anticipated, including uses, values, products, or services, for a 15-year period following initiation of the revision process, if the plan decisions in effect at the time the revision process began remain in effect.

(c) *Public notice of revision process and review of information.* After the responsible official has compiled the information required under paragraph (b) of this section, the responsible official must give public notice of the plan revision process and make the information compiled under paragraph (b) of this section available for public comment for at least 45 calendar days.

(d) *Notice of Intent.* Based upon the information compiled under paragraph (b) of this section and any comments received during the comment period required under paragraph (c) of this section, the responsible official must publish a Notice of Intent to prepare an environmental impact statement to add, modify, remove, or continue in effect the decisions embodied in a plan. The responsible official must give the public notice and an opportunity to comment on the draft environmental impact statement for at least 90 calendar days. Following public comment, the responsible official must oversee preparation of a final environmental impact statement in accordance with Forest Service NEPA procedures.

(e) *Final decision on plan revision.* The revision process is completed when the responsible official signs a record of decision for a plan revision.

§ 219.10 Site-specific decisions.

To the extent appropriate and practicable and subject to valid existing rights and appropriate statutes, the responsible official must provide opportunities for collaboration consistent with § 219.12 through § 219.18, follow the planning framework described in §§ 219.4–219.6 and comply with § 219.11 to make site-specific decisions. All site-specific decisions, including authorized uses of land, must be consistent with the applicable plan. If a proposed site-specific decision is not consistent with the applicable plan, the responsible official may modify the proposed decision to make it consistent with the plan, reject the proposal; or amend the plan to authorize the action.

§ 219.11 Monitoring and evaluation for adaptive management.

(a) *Plan monitoring strategy.* Each plan must contain a practicable, effective, and efficient monitoring strategy to evaluate sustainability in the plan area (§§ 219.19–219.21). The strategy must require monitoring of appropriate plan decisions and characteristics of sustainability.

(1) *Monitoring and evaluation of ecological sustainability.* The plan monitoring strategy for the monitoring and evaluation of ecological sustainability must require monitoring of:

(i) *Ecosystem diversity.* Monitoring must be used to evaluate the status and trend of selected physical and biological characteristics of ecosystem diversity (§ 219.20(a)(1)). The plan monitoring strategy must document the reasons for selection of characteristics to be monitored, monitoring objectives, methodology, and designate critical values that will prompt reviews of plan decisions.

(ii) *Species diversity.* Monitoring must be used to evaluate focal species and species-at-risk as follows:

(A) The status and trends of ecological conditions known or suspected to support focal species and selected species-at-risk must be monitored. The plan monitoring strategy must document the reasons for the selection of species-at-risk for which ecological conditions are to be monitored, including the degree of risk to the species, the factors that put the species at risk, and the strength of association between ecological conditions and population dynamics.

(B) In addition to monitoring of ecological conditions, the plan monitoring strategy may require population monitoring for some focal species and some species-at-risk. This monitoring may be accomplished by a variety of methods including population occurrence and presence/absence data, sampling population characteristics, using population indices to track relative population trends, or inferring population status from ecological conditions.

(C) A decision by the responsible official to monitor populations and the responsible official's choice of methodologies for monitoring selected focal species and selected species-at-risk may be based upon factors that include, but are not limited to, the degree of risk to the species, the degree to which a species' life history characteristics lend themselves to monitoring, the reasons that a species is included in the list of focal species or species-at-risk, and the strength of association between ecological conditions and population dynamics. Monitoring of population trend is often appropriate in those cases where risk to species viability is high and population characteristics cannot be reliably inferred from ecological conditions. The reasons for selection of species, monitoring objectives, and methodologies must be documented as part of the plan monitoring strategy. Critical values that will prompt reviews of plan decisions must be designated in the monitoring strategy.

(iii) *Monitoring effectiveness.* As a part of the plan monitoring strategy, the responsible official must evaluate the effectiveness of selected characteristics of ecosystem diversity and species diversity in providing reliable information regarding ecological sustainability.

(2) *Monitoring and evaluation of social and economic sustainability.* The plan monitoring strategy for the monitoring and evaluation of social and economic sustainability should provide for periodic review of national, regional, and local supply and demand for products, services, and values. Special consideration should be given to those uses, values, products, and services that the National Forest System is uniquely poised to provide. Monitoring should improve the understanding of the National Forest System contributions to social and economic sustainability. The plan monitoring strategy must require the responsible official to evaluate the effectiveness of information and analyses described in § 219.21(a) in providing reliable information regarding social and economic sustainability.

(b) *Monitoring of site-specific actions.* The decision document authorizing a site-specific action should describe any required monitoring and evaluation for the site-specific action. The responsible official must determine that there is a reasonable expectation that anticipated funding is adequate to complete any required monitoring and evaluation prior to authorizing a site-specific action.

(c) *Monitoring methods.* Unless required by the monitoring strategy, monitoring methods may be changed to reflect new information without plan amendment or revision.

(d) *Use of monitoring information.* Where monitoring and evaluation is required by the plan monitoring strategy, the responsible official must ensure that monitoring information is used to determine one or more of the following:

(1) If site-specific actions are completed as specified in applicable decision documents;

(2) If the aggregated outcomes and effects of completed and ongoing actions are achieving or contributing to the desired conditions;

(3) If key assumptions identified for monitoring in plan decisions remain valid; and

(4) If plan or site-specific decisions need to be modified.

(e) *Coordination of monitoring activities.* To the extent practicable, monitoring and evaluation should be conducted jointly with other federal agencies, state, local, and tribal governments, scientific and academic communities, and others. In addition, the responsible official must provide appropriate opportunities for the public to be involved and utilize scientists as described in § 219.23.

(f) *Annual monitoring and evaluation report.* The responsible official must prepare a monitoring and evaluation report for the plan area within 6 months following the end of each fiscal year. The report must be maintained with the plan documents (§ 219.30(d)(5)), and include the following:

(1) A list or reference to monitoring required by the plan; and

(2) A summary of the results of monitoring and evaluation performed during the preceding fiscal year and appropriate results from previous years. The summary must include:

(i) A description of the progress toward achievement of desired conditions within the plan area; and

(ii) A description of the plan area's contribution to the achievement of applicable outcomes of the Forest Service national strategic plan.

Collaborative Planning for Sustainability

§ 219.12 Collaboration and cooperatively developed landscape goals.

(a) *Collaboration.* To promote sustainability, the responsible official must actively engage the American public, interested organizations, private landowners, state, local, and Tribal governments, federal agencies, and others in the stewardship of National Forest System lands. To engage people in the stewardship of National Forest System lands, the responsible official may assume many roles, such as leader, organizer, facilitator, or participant. The responsible official must provide early and frequent opportunities for people to participate openly and meaningfully in planning taking into account the diverse roles, jurisdictions, and responsibilities of interested and affected organizations, groups, and individuals. The responsible official has the discretion to determine how to provide these opportunities in the planning process.

(b) *Cooperatively developed landscape goals.* (1) The responsible official and other Forest Service employees involved in planning must invite and encourage others to engage in the collaborative development of landscape goals. Using information from broad-scale assessments or other available information, and subject to applicable laws, the responsible official may initiate or join ongoing collaborative efforts to develop or propose landscape goals for areas that include National Forest System lands.

(2) During collaborative efforts, responsible officials and other Forest Service employees, must communicate and foster understanding of the nation's declaration of environmental policy as set forth in section 101(b) of the National Environmental Policy Act, as amended (42 U.S.C. 4321–4347), which states that it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate federal plans, functions, programs, and resources to the end that the Nation may—

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(v) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vi) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) Cooperatively developed landscape goals, whether the result of efforts initiated by the Forest Service or others, must be deemed an issue for the purposes under § 219.4.

§ 219.13 Coordination among federal agencies.

The responsible official must provide early and frequent coordination with appropriate federal agencies and may provide opportunities:

(a) For interested or affected federal agencies to participate in the identification of issues and formulation of proposed actions;

(b) For the streamlined coordination of federal agency policies, resource management plans, or programs; and

(c) The development, where appropriate and practicable, of joint resource management plans.

§ 219.14 Involvement of state and local governments.

The responsible official must provide early and frequent opportunities for state and local governments to:

(a) Participate in the planning process, including the identification of issues; and

(b) Contribute to the streamlined coordination of resource management plans or programs.

§ 219.15 Interaction with American Indian tribes and Alaska Natives.

(a) The Forest Service shares in the federal government's overall trust responsibility for federally recognized American Indian tribes and Alaska Natives.

(b) During planning, the responsible official must consider the government-to-government relationship between American Indian or Alaska Native tribal governments and the federal government.

(c) The responsible official must consult with and invite American Indian tribes and Alaska Natives to participate in the planning process to assist in:

(1) The early identification of treaty rights, treaty-protected resources, and American Indian tribe trust resources;

(2) The consideration of tribal data and resource knowledge provided by tribal representatives; and

(3) The consideration of tribal concerns and suggestions during decisionmaking.

§ 219.16 Relationships with interested individuals and organizations.

The responsible official must:

(a) Make planning information available to the extent allowed by law;

(b) Conduct planning processes that are fair, meaningful, and open to persons with diverse opinions;

(c) Provide early and frequent opportunities for participation in the identification of issues;

(d) Encourage interested individuals and organizations to work collaboratively with one another to improve understanding and develop cooperative landscape and other goals;

(e) Consult with individuals and organizations who can provide information about current and historic public uses within an assessment or plan area, about the location of unique and sensitive resources and values and cultural practices related to issues in the plan area; and

(f) Consult with scientific experts and other knowledgeable persons, as appropriate, during consideration of collaboratively developed landscape goals and other activities.

§ 219.17 Interaction with private landowners.

The responsible official must seek to collaborate with those who have control or authority over lands adjacent to or within the external boundaries of national forests or grasslands to identify:

(a) Local knowledge;

(b) Potential actions and partnership activities;

(c) Potential conditions and activities on the adjacent lands that may affect management of National Forest System lands, or vice versa; and

(d) Issues (§ 219.4).

§ 219.18 Role of advisory committees.

(a) *Advisory committees.* Advisory committees can provide an immediate, representative, and predictable structure within which public dialogue can occur and the Forest Service can develop relationships with diverse communities of interests. The responsible official may seek the assistance or advice from a committee, consistent with the requirements of the Federal Advisory Committee Act (5 U.S.C. app.) in determining whether there is a reasonable basis to propose an action to address an issue. Each Forest or Grassland Supervisor must have access to an advisory committee with knowledge of local conditions and issues, although an advisory committee is not required for each national forest or grassland. Responsible officials may request establishment of advisory committees and recommend members to the Secretary of Agriculture. Advisory committees used by other agencies may be utilized through proper agreements.

(b) *Participation in other types of community-based groups.* When appropriate, the responsible official should consider participating in community-based groups organized for a variety of public purposes, particularly those groups organized to develop landscape goals (§ 219.12(b)).

Ecological, Social, and Economic Sustainability

§ 219.19 Ecological, social, and economic sustainability.

Sustainability, composed of interdependent ecological, social, and economic elements, embodies the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 *et seq.*) without impairment to the productivity of the land and is the overall goal of management of the National Forest System. The first priority for stewardship of the national forests and grasslands is to maintain or restore ecological sustainability to provide a sustainable flow of uses, values, products, and services from these lands.

§219.20 Ecological sustainability.

To achieve ecological sustainability, the responsible official must ensure that plans provide for maintenance or restoration of ecosystems at appropriate spatial and temporal scales determined by the responsible official.

(a) *Ecological information and analyses.* Ecosystem diversity and species diversity are components of ecological sustainability. The planning process must include the development and analysis of information regarding these components at a variety of spatial and temporal scales. These scales include geographic areas such as bioregions and watersheds, scales of biological organization such as communities and species, and scales of time ranging from months to centuries. Information and analyses regarding the components of ecological sustainability may be identified, obtained, or developed through a variety of methods, including broad-scale assessments and local analyses (§ 219.5), and monitoring results (§ 219.11). For plan revisions, and to the extent the responsible official considers appropriate for plan amendments or site-specific decisions, the responsible official must develop or supplement the following information and analyses related to ecosystem and species diversity:

(1) *Characteristics of ecosystem and species diversity.* Characteristics of ecosystem and species diversity must be identified for assessing and monitoring ecological sustainability. In general, these identified characteristics should be consistent at various scales of analyses.

(i) *Ecosystem diversity.* Characteristics of ecosystem diversity include, but are not limited to:

(A) *Major vegetation types.* The composition, distribution, and abundance of the major vegetation types and successional stages of forest and grassland systems; the prevalence of invasive or noxious plant or animal species.

(B) *Water resources.* The diversity, abundance, and distribution of aquatic and riparian systems including streams, stream banks, coastal waters, estuaries, groundwater, lakes, wetlands, shorelines, riparian areas, and floodplains; stream channel morphology and condition, and flow regimes.

(C) *Soil resources.* Soil productivity; physical, chemical and biological properties; soil loss; and compaction.

(D) *Air resources.* Air quality, visibility, and other air resource values.

(E) *Focal species.* Focal species that provide insights to the larger ecological systems with which they are associated.

(ii) *Species diversity.* Characteristics of species diversity include, but are not limited to, the number, distribution, and geographic ranges of plant and animal species, including focal species and species-at-risk that serve as surrogate measures of species diversity. Species-at-risk and focal species must be identified for the plan area.

(2) *Evaluation of ecological sustainability.* Evaluations of ecological sustainability must be conducted at the scope and scale determined by the responsible official to be appropriate to the planning decision. These evaluations must describe the current status of ecosystem diversity and species diversity, risks to ecological sustainability, cumulative effects of human and natural disturbances, and the contribution of National Forest System lands to the ecological sustainability of all lands within the area of analysis.

(i) *Evaluation of ecosystem diversity.* Evaluations of ecosystem diversity must include, as appropriate, the following:

(A) Information about focal species that provide insights to the integrity of the larger ecological system to which they belong.

(B) A description of the biological and physical properties of the ecosystem using the characteristics identified in paragraph (a)(1)(i) of this section.

(C) A description of the principal ecological processes occurring at the spatial and temporal scales that influence the characteristic structure and composition of ecosystems in the assessment or analysis area. These descriptions must include the distribution, intensity, frequency, and magnitude of natural disturbance regimes of the current climatic period, and should include other ecological processes important to ecological sustainability, such as nutrient cycling, migration, dispersal, food web dynamics, water flows, and the identification of the risks to maintaining these processes. These descriptions may also include an evaluation of the feasibility of maintaining natural ecological processes as a tool to contribute to ecological sustainability.

(D) A description of the effects of human activities on ecosystem diversity. These descriptions must distinguish activities that had an integral role in the landscape's ecosystem diversity for a long period of time from activities that are of a type, size, or rate that were not typical of disturbances under which native plant and animal species and ecosystems developed.

(E) An estimation of the range of variability of the characteristics of ecosystem diversity, identified in paragraph (a)(l)(i) of this section, that would be expected under the natural disturbance regimes of the current climatic period. The current values of these characteristics should be compared to the expected range of variability to develop insights about the current status of ecosystem diversity.

(F) An evaluation of the effects of air quality on ecological systems including water.

(G) An estimation of current and foreseeable future Forest Service consumptive and non-consumptive water uses and the quantity and quality of water needed to support those uses and contribute to ecological sustainability.

(H) An identification of reference landscapes to provide for evaluation of the effects of actions.

(ii) *Evaluations of species diversity.* Evaluations of species diversity must include, as appropriate, assessments of the risks to species viability and the identification of ecological conditions needed to maintain species viability over time based on the following:

(A) The viability of each species listed under the Endangered Species Act as threatened, endangered, candidate, and proposed species must be assessed. Individual species assessments must be used for these species.

(B) For all other species, including other species-at-risk and those species for which there is little information, a variety of approaches may be used, including individual species assessments and assessments of focal species or other indicators used as surrogates in the evaluation of ecological conditions needed to maintain species viability.

(C) Except as provided in paragraph (a)(2)(ii)(A) of this section, for species groups that contain many species, assessments of functional, taxonomic, or habitat groups rather than individual species may be appropriate.

(D) In analyzing viability, the extent of information available about species, their habitats, the dynamic nature of ecosystems and the ecological conditions needed to support them must be identified. Species assessments may rely on general conservation principles and expert opinion. When detailed information on species habitat relationships, demographics, genetics, and risk factors is available, that information should be considered.

(b) *Plan decisions.* When making plan decisions that will affect ecological sustainability, the responsible official must use the information developed under paragraph (a) of this section. The following requirements must apply at the spatial and temporal scales that the responsible official determines to be appropriate to the plan decision:

(1) *Ecosystem diversity.* Plan decisions affecting ecosystem diversity must provide for maintenance or restoration of the characteristics of ecosystem composition and structure within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period in accordance with paragraphs (b)(1)(i) through (v) of this section.

(i) Except as provided in paragraph (b)(1)(iv) of this section, in situations where ecosystem composition and structure are currently within the expected range of variability, plan decisions must maintain the composition and structure within the range.

(ii) Except as provided in paragraph (b)(1)(v) of this section, where current ecosystem composition and structure are outside the expected range of variability, plan decisions must provide for measurable progress toward ecological conditions within the expected range of variability.

(iii) Where the range of variability cannot be practicably defined, plan decisions must provide for measurable progress toward maintaining or restoring ecosystem diversity. The responsible official must use independently peer-reviewed scientific methods other than the expected range of variability to maintain or restore ecosystem diversity. The scientific basis for such alternative methods must be documented in accordance with (§§ 219.22–219.25).

(iv) Where the responsible official determines that ecological conditions are within the expected range of variability and that maintaining ecosystem composition and structure within that range is ecologically, socially or economically unacceptable, plan decisions may provide for ecosystem composition and structure outside the expected range of variability. In such circumstances, the responsible official must use independently peer-reviewed scientific methods other than the expected range of variability to provide for the maintenance or restoration of ecosystem diversity. The scientific basis for such alternative methods must be documented in accordance with (§§ 219.22–219.25).

(v) Where the responsible official determines that ecological conditions are outside the expected range of variability and that it is not practicable to make measurable progress toward conditions within the expected range of variability, or that restoration would result in conditions that are ecologically, socially or economically unacceptable, plan decisions may provide for ecosystem composition and structure outside the expected range of variability. In such circumstances, the responsible official must use independently peer-reviewed scientific methods other than the expected range of variability to provide for the maintenance or restoration of ecosystem diversity. The scientific basis for such alternative methods must be documented (§§ 219.22–219.25).

(2) *Species diversity.* (i) Plan decisions affecting species diversity must provide for ecological conditions that the responsible official determines provide a high likelihood that those conditions are capable of supporting over time the viability of native and desired non-native species well distributed throughout their ranges within the plan area, except as provided in paragraphs (b)(2)(ii)–(iv) of this section. Methods described in paragraph (a)(2)(ii) of this section may be used to make the determinations of ecological conditions needed to maintain viability. A species is well distributed when individuals can interact with each other in the portion of the species range that occurs within the plan area. When a plan area occupies the entire range of a species, these decisions must provide for ecological conditions capable of supporting viability of the species and its component populations throughout that range. When a plan area encompasses one or more naturally disjunct and self-sustaining populations of a species, these decisions must provide ecological conditions capable of supporting over time viability of each population. When a plan area encompasses only a part of a population, these decisions must provide ecological conditions capable of supporting viability of that population well distributed throughout its range within the plan area.

(ii) When conditions outside the authority of the agency prevent the agency from providing ecological conditions that provide a high likelihood of supporting over time the viability of native and desired non-native species well distributed throughout their ranges within the plan area, plan decisions must provide for ecological conditions well distributed throughout the species range within the plan area to contribute to viability of that species.

(iii) Where species are inherently rare or not naturally well distributed in the plan area, plan decisions should not contribute to the extirpation of the species from the plan area and must provide for ecological conditions to maintain these species considering their natural distribution and abundance.

(iv) Where environmental conditions needed to support a species have been so degraded that it is technically infeasible to restore ecological conditions that would provide a high likelihood of supporting viability, plan decisions must provide for ecological conditions to contribute to supporting over time viability to the degree practicable.

(3) *Federally listed threatened and endangered species.* (i) Plan decisions must provide for implementing actions in conservation agreements with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service that provide a basis for not needing to list a species. In some situations, conditions or events beyond the control or authority of the agency may limit the Forest Service's ability to prevent the need for federal listing. Plan decisions should reflect the unique opportunities that National Forest System lands provide to contribute to recovery of listed species.

(ii) Plan decisions involving species listed under the Endangered Species Act must include, at the scale determined by the responsible official to be appropriate to the plan decision, reasonable and prudent measures and associated terms and conditions contained in final biological opinions issued under 50 CFR part 402. The plan decision documents must provide a rationale for adoption or rejection of discretionary conservation recommendations contained in final biological opinions.

§219.21 Social and economic sustainability.

To contribute to economic and social sustainability, the responsible official involves interested and affected people in planning for National Forest System lands (§§ 219.12–219.18), provides for the development and consideration of relevant social and economic information and analyses, and a range of uses, values, products, and services.

(a) *Social and economic information and analyses.* To understand the contribution national forests and grasslands make to the economic and social sustainability of local communities, regions, and the nation, the planning process must include the analysis of economic and social information at variable scales, including national, regional, and local scales. Social analyses address human life-styles, cultures, attitudes, beliefs, values, demographics, and land-use patterns, and the capacity of human communities to adapt to changing conditions. Economic analyses address economic trends, the effect of national forest and grassland management on the well-being of communities and regions, and the net benefit of uses, values, products, or services provided by national forests and grasslands. Social and economic analyses should recognize that the uses, values, products, and services from national forests and grasslands change with time and the capacity of communities to accommodate shifts in land uses change. Social and economic analyses may rely on quantitative, qualitative, and participatory methods for gathering and analyzing data. Social and economic information may be developed and analyzed through broad-scale assessments and local analyses (§ 219.5), monitoring results (§ 219.11), or other means. For plan revisions, and to the extent the responsible official considers to be appropriate for plan amendments or site-specific decisions, the responsible official must develop or supplement the information and analyses related to the following:

(1) Describe and analyze, as appropriate, the following:

(i) Demographic trends; life-style preferences; public values; land-use patterns; related conservation and land use policies at the state and local level; cultural and American Indian tribe and Alaska Native land settlement patterns; social and cultural history; social and cultural opportunities provided by national forest system lands; the organization and leadership of local communities; community assistance needs; community health; and other appropriate social and cultural information;

(ii) Employment, income, and other economic trends: the range and estimated long-term value of market and non-market goods, uses, services, and amenities that can be provided by national forest system lands consistent with the requirements of ecological sustainability, the estimated cost of providing them, and the estimated effect of providing them on regional and community well-being, employment, and wages; and other appropriate economic information. Special attention should be paid to the uses, values, products, or services that the Forest Service is uniquely poised to provide;

(iii) Opportunities to provide social and economic benefits to communities through natural resource restoration strategies;

(iv) Other social or economic information, if appropriate, to address issues being considered by the responsible official (§ 219.4).

(2) Analyze community or region risk and vulnerability. Risk and vulnerability analyses assess the vulnerability of communities from changes in ecological systems as a result of natural succession or potential management actions. Risk may be considered for geographic, relevant occupational, or other related communities of interest. Resiliency and community capacity should be considered in a risk and vulnerability analysis. Risk and vulnerability analysis may also address potential consequences to communities and regions from land management changes in terms of capital availability, employment opportunities, wage levels, local tax bases, federal revenue sharing, the ability to support public infrastructure and social services, human health and safety, and other factors as necessary and appropriate.

(b) *Plan decisions.* When making plan decisions that will affect social or economic sustainability, the responsible official must use the information analyses developed in paragraph (a) of this section. Plan decisions contribute to social and economic sustainability by providing for a range of uses, values, products, and services, consistent with ecological sustainability.

The Contribution of Science

§ 219.22 The overall role of science in planning.

(a) The responsible official must ensure that the best available science is considered in planning. The responsible official, when appropriate, should acknowledge incomplete or unavailable information, scientific uncertainty, and the variability inherent in complex systems.

(b) When appropriate and practicable and consistent with applicable law, the responsible official should provide for independent, scientific peer reviews of the use of science in planning. Independent, scientific peer reviews are conducted using generally accepted scientific practices that do not allow individuals to participate in the peer reviews of documents they authored or co-authored.

§ 219.23 The role of science in assessments, analyses, and monitoring.

(a) *Broad-scale assessments.* If the Forest Service is leading a broad-scale assessment, the assessment must be led by a Chief Scientist selected by the Deputy Chief of Research and Development. When appropriate and practicable, a responsible official may provide for independent, scientific peer review of the findings and conclusions originating from a broad-scale assessment. Independent, scientific peer review may be provided by scientists from the Forest Service, other federal, state, or tribal agencies, or other institutions.

(b) *Local analyses.* Though not required, a responsible official may include scientists in the development or technical reviews of local analyses and field reviews of the design and selection of subsequent site-specific actions.

(c) *Monitoring.* (1) The responsible official must include scientists in the design and evaluation of monitoring strategies. Additionally, the responsible official must provide for an independent, scientific peer review of plan monitoring on at least a biennial basis to validate adherence to appropriate protocols and methods in collecting and processing of monitoring samples and to validate that data are summarized and interpreted properly.

(2) When appropriate and practicable, the responsible official should include scientists in the review of monitoring data and analytical results to determine trends relative to ecological, economic, or social sustainability.

§ 219.24 Science consistency evaluations.

(a) The responsible official must ensure that plan amendments and revisions are consistent with the best available science. The responsible official may use a science advisory board (§ 219.25) to assist in determining whether information gathered, evaluations conducted, or analyses and conclusions reached in the planning process are consistent with the best available science. If the responsible official decides to use a science advisory board, the board and the responsible official are to jointly establish criteria for the science advisory board and the responsible official to use in reviewing the consistency of proposed plan amendments and revisions with the best available science.

(b) The science advisory board is responsible for organizing and conducting a scientific consistency evaluation to determine the following:

(1) If relevant scientific (ecological, social, or economic) information has been considered by the responsible official in a manner consistent with current scientific understanding at the appropriate scales;

(2) If uncertainty of knowledge has been recognized, acknowledged, and adequately documented; and

(3) If the level of risk in achievement of sustainability is acknowledged and adequately documented by the responsible official.

(c) If substantial disagreement among members of the science advisory board or between the science advisory board and the responsible official is identified during a science consistency evaluation, a summary of such disagreement should be noted in the appropriate environmental documentation within Forest Service NEPA procedures.

§ 219.25 Science advisory boards.

(a) *National science advisory board.* The Forest Service Deputy Chief for Research and Development must establish, convene, and chair a science advisory board to provide scientific advice on issues identified by the Chief of the Forest Service. Board membership must represent a broad range of scientific disciplines including, but not limited to, the physical, biological, economic, and social sciences.

(b) *Regional science advisory boards.* Based upon needs identified by Regional Forester(s) or Research Station Director(s), the Forest Service Research Station Director(s), should establish and convene science advisory boards consistent with the Federal Advisory Committee Act (5 U.S.C. app.) to provide advice to one or more Regional Foresters regarding the application of science in planning and decisionmaking for National Forest System lands. At least one regional science advisory board must be available for each national forest and grassland. The Station Director(s) must chair the board or appoint a chair of such boards. The geographical boundaries of the boards need not align with National Forest System Regional boundaries. Board membership must represent a broad range of science disciplines including, but not limited to, the physical, biological, economic, and social sciences. Regional science advisory board tasks may include, but are not limited, to:

(1) Evaluating significance and relevance of new information related to current plan decisions, including the results of monitoring and evaluation; and

(2) Evaluating science consistency as described in § 219.24.

(c) *Work groups.* With the concurrence of the appropriate chair and subject to available funding, the national or regional science advisory boards may convene work groups to study issues and provide recommendations.

Special Considerations

§ 219.26 Identifying and designating suitable uses.

National forests and grasslands are suitable for a wide variety of public uses, such as outdoor recreation, livestock grazing, timber harvest, off-road vehicle travel, or other uses except where lands are determined to be unsuited for a particular use. Lands are not suited for a particular use if that use: is prohibited by law, regulation, or Executive Order; is incompatible with the mission or policies of the National Forest System; or would result in substantial and permanent impairment of the productivity of the land. Through a plan amendment or revision, the responsible official may determine whether specific uses may begin, continue, or terminate within the plan area. Planning documents should describe or display lands suitable for various uses in areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions.

§ 219.27 Special designations.

The Forest Service may recommend special designations to higher authorities or, to the extent permitted by law, adopt special designations through plan amendment or revision. Special designations are areas within the National Forest System that are identified for their unique or special characteristics and include the following:

(a) *Congressionally designated areas.* Congressionally designated areas may include, but are not limited to, wilderness, wild and scenic rivers, national trails, scenic areas, recreation areas, and monuments. These nationally significant areas must be managed as required by Congress and may have specific requirements for their management.

(b) *Wilderness area reviews.* Unless federal statute directs otherwise, all undeveloped areas that are of sufficient size as to make practicable their preservation and use in an unimpaired condition must be evaluated for recommended wilderness designation during the plan revision process. These areas may be evaluated at other times as determined by the responsible official.

(c) *Administratively designated areas.* Administratively designated areas may include, but are not limited to, critical watersheds, research natural areas, national monuments, geological areas, inventoried roadless areas, unroaded areas, motorized and non-motorized recreation areas, botanical areas, and scenic byways.

§ 219.28 Determination of land suitable for timber harvest.

(a) *Lands where timber may not be harvested.* The plan must identify lands within the plan area where timber may not be harvested. These lands include:

(1) Lands where timber harvest would violate statute, Executive Order, or regulation and those lands that have been withdrawn from timber harvest by the Secretary of Agriculture or the Chief of the Forest Service;

(2) Lands where technology is not available for conducting timber harvesting without causing irreversible damage to soil, slope, or other watershed conditions or produce substantial and permanent impairment of the productivity of the land; and

(3) Lands where there are no assurances that such lands can be adequately restocked within 5 years after harvest;

(b) *Lands where timber may be harvested for timber production.* The responsible official may establish timber production as a multiple-use plan objective for lands not identified in paragraph (a) of this section if the costs of timber production are justified by the ecological, social, or economic benefits considering physical, economic, and other pertinent factors to the extent feasible. Lands where timber production is not established as a plan objective are deemed not suited for timber production. These lands must be reviewed by the responsible official at least once every 10 years, or as prescribed by law, to determine their suitability for timber production considering physical, economic, and other pertinent factors to the extent feasible. Based on this review, timber production may be established as a plan objective for these lands through amendment or revision of the plan.

(c) *Lands where timber may be harvested for other multiple-use values.* Except for lands identified in paragraph (a) of this section, timber may be harvested from land where timber production is not established as a plan objective if, based on a site-specific analysis, the responsible official determines and documents that such timber harvest would contribute to achievement of desired conditions and ecological sustainability, and is necessary to protect multiple-use values other than timber production.

§ 219.29 Limitation on timber harvest.

(a) *Estimate of the limitation of timber harvest.* The responsible official must estimate the amount of timber that can be sold annually in perpetuity on a sustained-yield basis from National Forest System lands other than those identified in § 219.28(a). This estimate must be based on the yield of timber that can be removed consistent with achievement of objectives or desired conditions in the applicable plan. In those cases where a national forest has less than 200,000 acres of forested land identified in lands other than those in § 219.28(a), two or more national forests may be combined for the purpose of estimating amount of timber that can be sold annually on a sustained-yield basis. Estimations for lands where timber production is established as a plan objective § 219.28(b) and estimations for lands identified in § 219.28(c) cannot be combined.

(b) *Limitation of timber harvest.* The responsible official must limit the sale of timber from the lands where timber production is an objective and from other lands to a quantity equal to or less than that estimated in paragraph (a) of this section.

(c) *Exceptions to limitations of timber harvest.* For purposes of limiting the sale of timber, the responsible official may sell timber from areas that are substantially affected by fire, wind, or other events, or for which there is an imminent threat from insects or disease, and may either substitute such timber for timber that would otherwise be sold or, if not feasible, sell such timber over and above the plan limit established in paragraph (b) of this section. If departure from the quantity of timber removal established in paragraph (b) of this section is necessary to meet overall multiple-use objectives, the requirements in 16 U.S.C. 1611 must be followed.

Planning Documentation

§ 219.30 Plan documentation.

A plan is a repository of documents that integrates and displays the desired conditions, objectives, standards, and other plan decisions that apply to a unit of the National Forest System. The plan also contains maps, monitoring and evaluation results, the annual monitoring and evaluation report, and other information relevant to how the plan area is to be managed. Planning documents should be clear, understandable, and readily available for public review. Plan documents should be updated through amendments, revision, and routine maintenance (§ 219.31). Plan documents include, at a minimum, the following:

(a) *A summary of the plan.* The summary is a concise description of the plan that includes a summary of the plan decisions and a description of the plan area and appropriate planning units. The summary should include a brief description of the ecological, social, and economic environments within the plan area and the overall strategy for maintenance or restoration of sustainability, including desired conditions and objectives for their achievement. The summary also includes appropriate maps, a description of the transportation system, utility corridors, land ownership patterns and proposed land ownership adjustments, charts, figures, photographs, and other information to enhance understanding.

(b) *Display of public uses.* The plan documents must identify the suitability of the plan area for various uses (§ 219.26) such as recreation uses, livestock grazing, timber harvest, and mineral developments. The plan documents must identify land where timber may not be harvested and where timber production is an objective (§ 219.28). The plan documents also must describe the limitations on the removal of timber (§ 219.29) and the standards for timber harvest and regeneration methods (§ 219.7(c)).

(c) *Plan decisions.* The plan documents must display or describe the plan decisions (§ 219.7).

(d) *Display of actions and outcomes.* The plan documents must also contain:

(1) An annually updated list or other display of proposed, authorized, and completed actions to achieve desired conditions and objectives within the plan area;

(2) A 2-year schedule, updated annually, of anticipated outcomes which may include anticipated uses, values, products, or services based on an estimate of Forest Service budget and capacity to perform the identified program of work. The estimate of Forest Service budget and capacity should be based on recent funding levels;

(3) A 2-year summary, updated annually, of the actual outcomes which may include specific uses, values, products, or services provided as a result of completed site-specific actions;

(4) A projected range of outcomes which may include anticipated uses, values, products, and services for the next 15 years, assuming current or likely budgets while considering other spending levels as appropriate. These projections are estimates and as such often contain a high degree of uncertainty; they are intended to describe expected progress in achieving desired conditions and objectives within the plan area. The projections are to be updated during revision of each plan;

(5) A description of the monitoring strategy to occur in the plan area and the annual monitoring and evaluation report; and

(6) A summary of the projected program of work, updated annually, including costs for inventories, assessments, proposed and authorized actions, and monitoring. The projected program of work must be based on reasonably anticipated funding levels. Reasonably anticipated funding levels should be based on recent funding levels. The plan documents must also include a description of the total current-year budget, funded actions, projections for future budgets over the next 2 years; and a display of the budget trends over at least the past 5 years.

(e) *Other components.* A plan must contain or reference a list of materials, Forest Service policies, and decisions used in forming plan decisions. The information should include, but is not limited to, lists of previous decision and environmental documents, assessments, conservation agreements and strategies, biological opinions, inventories, administrative studies, monitoring results, and research relevant to adoption of plan decisions.

§ 219.31 Maintenance of the plan and planning records.

(a) Each National Forest or Grassland Supervisor must maintain a complete set of the planning documents required under § 219.30 that constitute the plan for the unit. The set of documents must be readily available to the public using appropriate and relevant technology.

(b) The following administrative corrections and additions may be made at any time, are not plan amendments or revisions, and do not require public notice or the preparation of an environmental document under Forest Service NEPA procedures:

(1) Corrections and updates of data and maps;

(2) Updates to activity lists and schedules as required by § 219.30(d)(1)–(6);

(3) Corrections of typographical errors or other non-substantive changes; and

(4) Changes in monitoring methods other than those required in a monitoring strategy (§ 219.11(c)).

Objections and Appeals

§ 219.32 Objections to amendments or revisions.

(a) Any person may object to a proposed amendment or revision

prepared under the provisions of this subpart, except for an amendment or revision proposed by the Chief. The objection must be filed within 30 calendar days from the date that the Environmental Protection Agency publishes the notice of availability of a final environmental impact statement regarding a proposed amendment or revision in the **Federal Register**, or within 30 calendar days of the publication of a public notice of a proposed amendment not requiring preparation of an environmental impact statement. Within ten days after the close of the objection period, the Responsible Official shall publish notice of all objections in the local newspaper of record. An objection must be filed with the reviewing officer identified in the notice and contain:

(1) The name, mailing address, and telephone number of the person filing the objection;

(2) A specific statement of the basis for each objection; and

(3) A description of the objector's participation in the planning process for the proposed amendment or revision, including a copy of any relevant documents submitted during the planning process.

(b) Objectors may request meetings with the reviewing officer and the responsible official to discuss the objection, to narrow the issues, agree on facts, and explore opportunities for resolution. The reviewing officer must allow other interested persons to participate in such meetings. An interested person must file a request to participate in an objection within ten days after publication of the notice of objection as described in paragraph (a) of this section.

(c) The reviewing officer must respond, in writing, to an objection within a reasonable period of time and may respond to all objections in one response. The reviewing officer's response regarding an objection is the final decision of the Department of Agriculture.

(d) The responsible official may not approve a proposed amendment or revision until the reviewing officer has responded to all objections. A decision by the responsible official approving an amendment or revision must be consistent with the reviewing officer's response to objections to the proposed amendment or revision.

(e) Where the Forest Service is a participant in a multi-agency decision subject to objection under this subpart, the responsible official and reviewing officer may waive the objection procedures of this subpart to adopt the administrative review procedure of another participating federal agency, if the responsible official and the responsible official of the other agencies agree to provide a joint response to those who have filed for administrative review of the multi-agency decision.

(f) The information collection requirements of this section have been approved by the Office of Management and Budget and assigned control number 0596–0158.

§ 219.33 Appeals of site-specific decisions.

If a site-specific decision is proposed in conjunction with a plan amendment or revision, a person may object to the proposed plan amendment or revision as described in (§ 219.32). If a decision is made to authorize a site-specific action, a person may request administrative review of that decision as described in 36 CFR part 215.

Applicability and Transition

§ 219.34 Applicability.

The provisions of this subpart are applicable to all units of the National Forest System as defined by 16 U.S.C. 1609.

§ 219.35 Transition.

(a) The transition period begins on November 9, 2000 and ends upon the completion of the revision process (§ 219.9) for each unit of the National Forest System. During the transition period, the responsible official must consider the best available science in implementing and, if appropriate, amending the current plan.

(b) If, as of November 9, 2000, a plan revision or amendment has been initiated under the 1982 planning regulations in effect prior to November 9, 2000 (See 36 CFR part 219, revised as of July 1, 2000.) and if a notice of availability of a draft environmental impact statement or an environmental assessment is published by May 9, 2001 in the **Federal Register**, the responsible official may complete the amendment or revision process under the 1982 regulations or adjust the process to conform to the provisions of this subpart.

(c) If a review of lands not suited for timber production is required before the completion of the revision process, the review must take place as described by the provisions of § 219.28, except as provided in paragraph (b) of this section.

(d) Site-specific decisions made by the responsible official 3 years from November 9, 2000 and afterward must be in conformance with the provisions of this subpart.

(e) Within 1 year of November 9, 2000, the Regional Forester must withdraw the regional guide. When a regional guide is withdrawn, the Regional Forester must identify the decisions in the regional guide that are to be transferred to a regional supplement of the Forest Service directive system (36 CFR 200.4) or to one or more plans and give notice in the **Federal Register** of these actions. The transfer of direction from a regional guide to a regional supplement of the Forest Service directive system or to one or more plans does not constitute an amendment, revision, or site-specific action subject to Forest Service NEPA procedures.

(f) Within 3 years after completion of the revision process for a unit, the responsible official must complete the first monitoring and evaluation report as required in § 219.11(f).

(g) Within 1 year of November 9, 2000, the Chief of the Forest Service must establish a schedule for completion of the revision process for each unit of the National Forest System.

Definitions

§ 219.36 Definitions.

Definitions of the special terms used in this subpart are set out in alphabetical order in this section as follows:

Adaptive management: An approach to natural resource management wherein the effects of policies, plans, and actions are monitored for the purpose of learning and adjusting future management actions. Successive iteration of the adaptive process is essential in contributing to sustainability.

Assessment or analysis area: The geographic area included within the scope of a broad-scale assessment or local analysis.

Candidate species: Species identified by the United States Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), which are considered to be candidates for listing under the Endangered Species Act as published in the **Federal Register**.

Conservation agreement: A formal agreement between the Forest Service and the USFWS and/or NMFS identifying management actions necessary to prevent the need to list species under the Endangered Species Act.

Current climatic period: The period of time since establishment of the modern major vegetation types, which typically encompass the late Holocene Epoch including the present, including likely climatic conditions within the planning period. The climatic period is typically centuries to millennia in length, a period of time that is long enough to encompass the variability that species and ecosystems have experienced.

Desired condition: A statement describing a common vision for a specific area of land or type of land within the plan area. Statements of desired conditions should include the estimated time required for their achievement.

Desired non-native species: Those species of plants or animals which are not indigenous to an area but valued for their contribution to species diversity or their high social, cultural or economic value.

Disturbance regime: Actions, functions, or events that influence or maintain the structure, composition, or function of terrestrial or aquatic ecosystems. Natural disturbances include, among others, drought, floods, wind, fires, insects, and pathogens. Human-caused disturbances include actions such as recreational use, livestock grazing, mining, road construction, timber harvest, and the introduction of exotic species.

Diversity of plant and animal communities: The distribution and relative abundance of plant and animal communities and their component species occurring within an area.

Ecological conditions: Components of the biological and physical environment that can affect the diversity of plant and animal communities, including species viability, and the productive capacity of ecological systems. These could include the abundance and distribution of aquatic and terrestrial habitats, roads and other structural developments, human uses, and invasive and exotic species.

Ecological sustainability: The maintenance or restoration of the composition, structure, and processes of ecosystems including the diversity of plant and animal communities and the productive capacity of ecological systems.

Ecosystem composition: The plant and animal species and communities in the plan area.

Ecosystem processes: Ecological functions such as photosynthesis, energy flow, nutrient cycling, water movement, disturbance, and succession.

Ecosystem structure: The biological and physical attributes that characterize ecological systems.

Focal species: Focal species are surrogate measures used in the evaluation of ecological sustainability, including species and ecosystem diversity. The key characteristic of a focal species is that its status and trend provide insights to the integrity of the larger ecological system to which it belongs. Individual species, or groups of species that use habitat in similar ways or which perform similar ecological functions, may be identified as focal species. Focal species serve an umbrella function in terms of encompassing habitats needed for many other species, play a key role in maintaining community structure or processes, are sensitive to the changes likely to occur in the area, or otherwise serve as an indicator of ecological sustainability. Certain focal species may be used as surrogates to represent ecological conditions that provide for viability of some other species, rather than directly representing the population dynamics of those other species.

Forest Service NEPA procedures: The Forest Service policy and procedures for implementing the National Environmental Policy Act (NEPA) and the Council on Environmental Quality regulations (40 CFR chapter V) as described in Chapter 1950 of the Forest Service Manual and Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook (See 36 CFR 200.4 for availability).

Inherently rare species: A species is inherently rare if it occurs in only a limited number of locations, has low population numbers, or has both limited occurrences and low population numbers, and those conditions are natural characteristics of the life history and ecology of the species and not primarily the result of human disturbance.

Inventoried roadless areas: Areas are identified in a set of inventoried roadless area maps, contained in *Forest Service Roadless Area Conservation, Draft Environmental Impact Statement, Volume 2,* dated May 2000, which are held at the National headquarters office of the Forest Service, or any subsequent update or revision of those maps.

Major vegetation types: Plant communities, which are typically named after dominant plant species that are characteristic of the macroclimate and geology of the region or sub-region.

Native species: Species of the plant and animal kingdom indigenous to the plan area or assessment area.

Plan area: The geographic area of National Forest System lands covered by an individual land and resource management plan. The area may include one or more administrative units.

Productive capacity of ecological systems: The ability of an ecosystem to maintain primary productivity including its ability to sustain desirable conditions such as clean water, fertile soil, riparian habitat, and the diversity of plant and animal species; to sustain desirable human uses; and to renew itself following disturbance.

Range of variability: The expected range of variation in ecosystem composition, and structure that would be expected under natural disturbance regimes in the current climatic period. These regimes include the type, frequency, severity, and magnitude of disturbance in the absence of fire suppression and extensive commodity extraction.

Reference landscapes: Places identified in the plan area where the conditions and trends of ecosystem composition, structure, and processes are deemed useful for setting objectives for desired conditions and for judging the effectiveness of plan decisions.

Responsible official: The officer with the authority and responsibility to oversee the planning process and make decisions on proposed actions.

Reviewing officer: The supervisor of the responsible official.

Social and economic sustainability: Meeting the economic, social, aesthetic, and cultural needs and desires of current generations without reducing the capacity of the environment to provide for the needs and desires of future generations, considering both local communities and the nation as a whole. It also involves the capacity of citizens to communicate effectively with each other and to make sound choices about their environment.

Species: Any member of the animal or plant kingdom that is described as a species in a peer-reviewed scientific publication and is identified as a species by the responsible official pursuant to a plan decision, and must include all species listed under the Endangered Species Act as threatened, endangered, candidate, or proposed for listing by the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

Species-at-risk: Federally listed endangered, threatened, candidate, and proposed species and other species for which loss of viability, including reduction in distribution or abundance, is a concern within the plan area. Other species-at-risk may include sensitive species and state listed species. A species-at-risk also may be selected as a focal species.

Species viability: A species consisting of self-sustaining and interacting populations that are well distributed through the species' range. Self-sustaining populations are those that are sufficiently abundant and have sufficient diversity to display the array of life history strategies and forms to

provide for their long-term persistence and adaptability over time.

Successional stages: The different structural and compositional phases of vegetation development of forests and grasslands that occur over time following disturbances that kill, remove, or reduce vegetation and include the major developmental or seral stages that occur within a particular environment.

Timber production: The sustained long-term and periodic harvest of wood fiber from National Forest System lands undertaken in support of social and economic objectives identified in one or more land and resource management plans. For purposes of this regulation, the term timber production includes fuel wood.

Undeveloped areas: Areas, including but not limited to inventoried roadless areas and unroaded areas, within national forests or grasslands that are of sufficient size and generally untrammeled by human activities such that they are appropriate for consideration for wilderness designation in the planning process.

Unroaded areas: Any area, without the presence of a classified road, of a size and configuration sufficient to protect the inherent characteristics associated with its roadless condition. Unroaded areas do not overlap with inventoried roadless areas.

Subpart B—[Reserved]

Dated: October 31, 2000.

Dan Glickman,

Secretary.

[FR Doc. 00–28580 Filed 11–8–00; 8:45 am]

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Federal Register

Thursday,
November 9, 2000

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 923

Sweet Cherries Grown in Designated Counties in Washington; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement No. 134 and Marketing Order No. 923; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket Nos. 99AMS–FV–923–A1; FV00–923–1]

Sweet Cherries Grown in Designated Counties in Washington; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement No. 134 and Marketing Order No. 923

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order for sweet cherries grown in six counties in eastern Washington. Six proposals were submitted by the Washington Cherry Marketing Committee (Committee), which is responsible for local administration of the order. The Committee's proposals would: increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range and allow for special purpose shipments of cherries to packing operations outside the production area; increase representation on the Committee by adding an additional handler member; provide for late payment and interest charges on delinquent assessments; authorize establishment of container marking requirements; and allow prospective Committee members and alternates to qualify for membership by filing a single form. The Fruit and Vegetable Programs (F&V) of the Agricultural Marketing Service (AMS) proposed the establishment of tenure requirements for Committee members and to require that continuance referenda be conducted every six years. AMS also proposed to allow such changes as may be necessary to the order to conform with any amendment that may result from the hearing. These proposals are intended to improve the operation and functioning of the Washington sweet cherry marketing order program.

DATES: Written exceptions must be filed by December 11, 2000.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776. Four copies of all written exceptions should be submitted and they should reference the docket numbers and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, Washington, D.C. 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Hearing issued on November 3, 1999, and published in the November 8, 1999, issue of the **Federal Register** (64 FR 60733).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Question and Answer Overview

What circumstances led to this recommended decision?

The Washington Cherry Marketing Committee (Committee), which is responsible for local administration of the marketing order, recommended amending the current order. A hearing was held on these proposed amendments in Yakima, Washington, on November 16, 1999.

The Washington Cherry Marketing Order was created in 1957 and has never been amended. Since that time, cherry production has dramatically increased in areas outside the current 6-county production area.

The marketing order's primary authority is the use of grade, size and container regulations for fresh shipments of cherries from the production area. The purpose of these regulations is to ensure the shipment of high quality cherries. The order has allowed the industry to develop the reputation for shipping a quality product, which has allowed producers to ship and sell sweet cherries in a more stable marketplace.

The primary purpose of this proceeding is to expand the production area to include the other sweet cherry producing counties in Washington and maintain the high quality image of the Washington sweet cherry. This proceeding would also allow shipments of cherries outside the production area for packing, to accommodate growers in the proposed production area who have their cherries packed in Oregon.

The Committee also recommended increasing representation on the Committee, allowing for late payment and interest charges on unpaid assessments, authorizing container marking requirements and other administrative changes.

AMS proposed establishing a limit on the number of consecutive terms a person may serve as a member on the Committee and requiring that continuance referenda be conducted every six years to ascertain industry support for the order.

Who would be impacted by this action?

Growers and handlers of sweet cherries in the current and proposed production area would be affected by these amendments. Handlers would be required to pay assessments based on the amount of cherries handled. The current assessment rate is 75 cents per ton of cherries handled. Handlers would also be required to abide by the regulations in effect under the order which includes obtaining Federal/State inspections on all cherries to ensure that marketing order requirements are met. Current regulations specify certain size, maturity and pack requirements and are based on the State of Washington grade standards.

Field-run cherries from Washington growers sent to Oregon packers also would have to meet these requirements as well.

How can I comment on these proposals?

Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776. Four copies of all written exceptions should be submitted and they should reference the docket numbers and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

All exceptions will be considered before issuing any final decision.

What are the next steps after the recommended decision?

USDA will evaluate the exceptions and, if it is decided to continue with the proceeding, a Secretary's Decision and Referendum Order will be issued. A producer referendum will be conducted and will include all affected producers. The referendum will be conducted by mail ballot, and producers can vote on each material issue presented. There are seven material issues in this recommended decision.

To become effective, the amendments require approval of two-thirds of the producers voting in the referendum or approval by two-thirds of the volume of production represented by the producers voting in the referendum. If the vote favors any or all of the amendments, the Department prepares a final order effectuating the amendments.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement No. 134 and Marketing Order No. 923, regulating the handling of sweet cherries grown in designated counties in Washington, (hereinafter referred to as the order), and the opportunity to file written exceptions thereto.

This action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The proposed amendment of Marketing Agreement No. 134 and Order No. 923 is based on the record of a public hearing held in Yakima, Washington, on November 16, 1999. Notice of this hearing was published in the **Federal Register** on November 8, 1999. The notice of hearing contained proposals submitted by the Committee and the Department.

The Committee's proposed amendments would: Increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range, redefine the districts currently established under the order and allow for special purpose shipments of cherries to packing operations outside the production area; Increase representation on the Committee by adding an additional handler member; Provide for late payment and interest charges on delinquent assessments; Authorize establishment of container marking requirements; and Allow prospective Committee members and alternates to qualify for membership by filing a single form.

Also, AMS proposed to establish a limit on the number of consecutive terms a person may serve as a member on the Committee and to require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order.

At the conclusion of the hearing, the Administrative Law Judge fixed January 20, 2000, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. None were filed.

Material Issues

The material issues of record addressed in this decision are as follows:

(1) Whether to increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range; to redefine the districts established under the order; and to authorize special purpose shipments, with appropriate safeguards, allowing movement of cherries to packing facilities outside the production area;

(2) Whether to increase representation on the Committee by adding one additional handler member;

(3) Whether to authorize the Committee, with USDA approval, to collect late payment and interest charges on delinquent assessments;

(4) Whether to authorize the Committee, with USDA approval, to establish container marking requirements;

(5) Whether to authorize Committee nominees to qualify as a member or alternate by filing a written acceptance of willingness to serve prior to the selection;

(6) Whether to establish a limit on the number of consecutive terms a person may serve as a member on the Committee; and

(7) Whether to require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence presented at the hearing and the record thereof, are:

Material Issue Number 1

The definition of production area under § 923.4 should be amended to include the counties of Okanogan, Chelan, Kittitas, Yakima, Klickitat in the State of Washington and all of the counties in Washington lying east thereof and § 923.14 should be amended to include the additional counties in the two districts established under the order. In addition, § 923.54 should be amended to authorize special purpose shipments, with appropriate safeguards, allowing movement of cherries to packing operations outside the production area.

Currently, the production area includes only the counties of Okanogan, Chelan, Douglas, Grant, Yakima and Benton in the State of Washington. District 1 includes the counties of Chelan, Okanogan, Douglas and Grant. District 2 includes the counties of Yakima and Benton. There are no provisions in the current order that authorize uninspected cherries to be shipped outside the production area for packing.

The marketing order was promulgated in 1957. At that time, the primary objective of the order was to provide consumers with a uniform product so that buyers were assured of quality. The order has never been amended. Since that time, many changes have occurred in the sweet cherry industry. New areas of production have developed and marketing practices have changed. For example, Franklin County is not currently regulated under the marketing order, but reports indicate that sweet cherry trees have been planted in that county in recent years. This is true in other non-regulated counties as well. If 12 counties in the State of Washington are producing cherries in significant volume, and only 6 are regulated under the order, inconsistencies in quality could occur which could impact the current high quality image of Washington sweet cherries. The proposed amendment intends to update the order to reflect this change. The proposed amendment also would redefine the districts established under the order to include the new counties in the existing districts.

In addition, many of the cherries grown in the counties proposed to be added to the production area are currently packed in Oregon. If the production area is expanded to include these counties, it is recommended that sweet cherry shipments be authorized outside the production area to these packing facilities for preparing for market. This would be done under the special purpose authority contained in § 923.54 of the order. Grower/handlers could deliver cherries to those Oregon packing operations that agree to abide by the marketing order requirements for such cherries, including obtaining inspections and paying assessments. The Committee would establish safeguards to ensure that marketing order requirements are being met.

Expansion of Production Area

When the order was created in 1957, sweet cherries were primarily grown in only 6 counties in the State of Washington. The 6 counties that are currently regulated are Okanogan, Chelan, Douglas, Grant, Benton and Yakima. The 14 additional counties proposed for inclusion are Kittitas, Klickitat, Ferry, Stevens, Pend Oreille, Lincoln, Spokane, Adams, Whitman, Franklin, Walla Walla, Columbia, Garfield and Asotin.

Cherry production has dramatically increased in areas within the State of Washington that are outside the current production area. As more land has come into irrigation and farmers look for alternative crops to grow, sweet cherry production is expected to continue to increase in areas outside the current production area.

The total production of sweet cherries in Washington was reported by the National Agricultural Statistics Service (NASS), USDA to be 96,000 tons in 1998 and 95,000 tons in 1997. Production by county is not available. However, NASS does report production information by Fruit Reporting Districts and this information is available annually for 1993 through 1997.

The West Fruit Reporting District produces a minimal amount of sweet cherries (50 tons per year) and is not proposed to be included in the order's production area. In addition to the low level of production, testimony revealed that, due to weather conditions, it would be unlikely that cherries could be commercially produced in significant amounts west of the Cascade Mountain Range in Washington. Average production in this area is 50 tons per year. Testimony indicated that excessive rain causes serious quality problems with sweet cherries, such as cracking. Generally, weather conditions in eastern Washington are more favorable for growing sweet cherries, as well as other horticultural crops.

The Mid-Columbia Fruit Reporting District includes the counties of Wahkiakum, Cowlitz, Clark, Skamania, and Klickitat. These counties produced an average of 1,550 tons during the 1993 though 1997 seasons. Only Klickitat County would be included in the proposed regulated area. The other four counties are in the western part of the State and have minimal sweet cherry production and no potential for significant production. These counties not included in the proposed production area have weather conditions similar to the counties in the West Fruit Reporting District.

The Wenatchee Fruit Reporting District includes the counties of Okanogan, Chelan, and Douglas. This is one of the two biggest sweet cherry producing districts with an average production of 34,360 tons from 1993 through 1997. These three counties are currently regulated under the federal marketing order.

The Yakima Valley Fruit Reporting District is the other large sweet cherry producing district with an average production of 35,830 tons from 1993 through 1997. Yakima County is currently regulated, while Kittitas County is proposed for inclusion in the regulated area.

The Columbia Basin Fruit Reporting District includes the counties of Grant, Adams, and Franklin. Grant is currently regulated under the federal marketing order, while Adams and Franklin counties are proposed additions to the regulated area. The Columbia Basin Fruit Reporting District averaged 3,410 tons annually over the past 5 seasons.

The Northeast Fruit Reporting District is made-up of Ferry, Stevens, Pend Oreille, Lincoln, and Spokane counties. The average annual production from this fruit-reporting district is 100 tons. All of these counties would be included in the proposed production area.

The Southeast Fruit Reporting District is comprised of Whitman, Walla Walla, Columbia, Garfield, and Asotin counties. Average production from 1993 through 1997 for this fruit-reporting district was 100 tons. Again, the proposed production area would include all of these counties.

Of the 14 counties that are proposed to be added to the marketing order, 10 currently produce cherries (Franklin, Klickitat, Walla Walla, Spokane, Stevens, Asotin, Lincoln, Kittitas, Adams, and Whitman). Production of cherries is not shown for the counties of Ferry, Pend Oreille, Columbia, and Garfield.

Testimony indicated that it is likely for these current non-producing counties to produce cherries in the future. One grower testified that there are newly planted cherry orchards in Pend Oreille, one of the counties proposed to be in the expanded production area, that currently lists no commercial production. Testimony indicated that these four counties with no current statistics on cherry orchards, could produce cherries in significant volume in the future. The climatic conditions in those counties have potential for future growth. Additional testimony revealed that cattle and wheat farmers in these areas are looking for alternative crops to enhance their operations and cherries could be a reasonable choice.

As discussed later in this decision, the Committee considered various alternatives and concluded that the proposal it submitted on the expansion of the production area is the most reasonable alternative. The proposed production area is the smallest regional area, which is practicable, while maintaining program effectiveness.

Testimony revealed that Washington cherries have a very positive image to buyers and consumers. When purchases are made of Washington cherries, the buyer does not necessarily know if the cherries originate from counties under the marketing order or not. If one county ships an inferior cherry, the entire state's image could be impacted. Testimony indicated that most of the facilities that pack Washington cherries (both those inside and outside the production area) already pack to the marketing order requirements. However, without modifying the order, a greater possibility exists for more cherries being shipped of an inferior quality. Testimony further indicated that a grower's success is partly based on the quality of fruit delivered. As production levels continue to increase, the value of maintaining a high quality image will assist growers from encountering decreasing prices. The marketing order assists all growers in that handlers prepare their cherries to a certain quality level, which helps to maintain price levels.

Testimony was received at the hearing on the costs associated with the proposed amendments. The current assessment of 75 cents per ton comprises less than 1 percent of total production costs. The 1999–2000 budget for the Committee is $62,815, of which $3,388 is earmarked for compliance efforts. Testimony indicated that increased compliance and administrative costs necessary to monitor this proposal would not be significant. Testimony further indicated that the annual assessment could even be reduced due to additional cherries being assessed with the expansion of the production area. Testimony at the hearing indicated that the benefits of strengthening the market would outweigh any increase in costs. Adversely, if the production area is not redefined, testimony indicated that the Washington cherry image could be harmed, as more and more areas are growing cherries. In addition, indications are that a large number of non-bearing acres are coming into production inside and outside the current production area. Adding to the increase in production are growers of other crops, such as grain and apples, looking for alternative crops to grow in order to supplement incomes. Sweet cherries are an option these growers consider.

Applying grades and standards to the new production areas should provide benefits to producers. The grades and standards allow small producers the opportunity to develop a reputation for producing and delivering a consistent, high quality product. These grades and standards provide incentives and rewards for the production of high quality product. In addition, the establishment of uniform grades and standards across all the production areas provides a level field for competition among both small and large growers. Testimony indicated that as production increases, quality issues become more important. Production is expected to increase in excess of 100,000 tons for the first time in the industry's future.

As an example of the impact inconsistent quality can have on a market, testimony was presented on the Rainier cherry market. Although Rainier cherries are included in the marketing order, they were specifically exempt from quality requirements until a few years ago. Some handlers packed high quality Rainier cherries and received a premium price. When other growers and handlers realized the acceptance of the Rainier, various ranges of quality were shipped in anticipation of receiving a premium price. However, buyers became reluctant to purchase Rainier cherries due to inconsistent quality. The Committee recommended minimum quality requirements for Rainier cherries which were established by regulation under the order. Assurance of consistent quality has resulted in the Rainier cherry market becoming more stable, and Rainiers are again considered a premium product.

The Washington cherry market distinguishes itself from competitors. More product is available from Washington than the other cherry producing States. The Washington cherry market is more diverse and national in scope, and testimony indicated that buyers have confidence in Washington sweet cherries due to consistent quality. Testimony revealed that this distinction is a direct result of the establishment of minimum quality requirements under the marketing order.

Testimony was received from a cooperative cherry handler that represents 108 growers, 27 of which are located in the proposed production area (the balance are in the current production area.) This handler testified that his company has two packing facilities, one inside the current production area and one in the proposed production area. It was this handler's position that its customers and growers must have confidence in their ability to pack a high quality consistent product.

The witness testified that bringing all his growers under the marketing order would provide better returns for these growers and help bolster the image of the Washington sweet cherry. He stated that implementation of these proposals would level the playing field by eliminating confusion and creating more orderly marketing. This handler would anticipate no significant additional costs as his company already packs all cherries received to the marketing order's minimum quality requirements. It was this handler's position that the benefits would outweigh the costs to cherry growers.

This handler stated that quality issues are foremost to the industry and equate to buyer confidence. Repeat business is critical to the cooperative and any bad perceptions could be detrimental to future business. If all major cherry producing counties were required to maintain the same quality requirements, consistency in quality would prevail. With increasing levels of production in Washington, other U.S. states and in foreign countries, quality becomes more and more important. Consumers view Washington cherries as a premium preferred product and this positive image could suffer if quality is not maintained.

When regulations are in place, all cherries in the production area are required to be inspected and certified as meeting established requirements. Testimony indicated that increased costs associated with more cherries being inspected would be offset by consistent quality and a stable marketplace. Inspection costs are discussed in detail later in this document.

Production has and continues to increase. The increased production is coming from the traditional growing areas in addition to the new production areas. The peak shipping week occurs during the last week of June. With new production and the plantings of late-season varieties of sweet cherries, the marketing window for shipping Washington sweet cherries is expanding into August.

Minimum quality and size standards in the proposed production area would maintain the integrity of the product so that the commodity's overall quality image is not diminished by a low quality sample. The principal objective of a grading system is to make the market work more efficiently. Minimum quality and size requirements would improve information between buyers and sellers. Contracts could be made based on grade specifications, and buyers need not personally inspect each lot of product. Standardization of quality and size reduces uncertainty between buyers and sellers, and this helps reduce marketing costs. The goal of an effective grading system is to improve quality and size. Minimum quality and size standards would help ensure that substandard product does not find its way to the market and destroy consumer confidence and harm producer returns. Cherries that do not make the specified grade and size requirements can be shipped to processing outlets.

Record evidence supports expanding the production area to include all counties in the State of Washington east of the Cascade Mountain Range.

Redefining Districts To Include Expanded Production Area

For purposes of allocating Committee membership, the production area is divided into two geographic districts. If the production area is expanded, it will be necessary to incorporate the additional counties into the districts currently established under the order. The Committee discussed dividing the production area into three districts and distributing the counties and membership across these districts. The Committee was concerned that this would entail increasing Committee membership by more than one handler member as proposed and discussed in Material Issue No. 2. The record indicated that the Committee believed a 16 member Committee would be the most effective. Therefore, it was decided to distribute the new counties proportionately between the two existing districts. District 1 is currently composed of the counties of Chelan, Okanogan, Douglas and Grant. This proposal adds the counties of Lincoln, Spokane, Pend Oreille, Stevens and Ferry. District 2 is currently composed of the counties of Yakima and Benton. This proposal adds the counties of Kittitas, Klickitat, Adams, Franklin, Walla Walla, Whitman, Columbia, Garfield and Asotin.

The proposed District 1 encompasses the northern part of the production area and District 2 encompasses the southern part. In 1997 production in proposed District 1 was approximately 44,300 tons of sweet cherries and in proposed District 2, 45,500 tons. In addition, the tonnage packed in each proposed district is about the same.

Record evidence supports redefining the districts to incorporate the additional counties into the currently established districts in the order.

Authority To Deliver Cherries to Packing Facilities Outside the Production Area

The term "handle" under § 923.13 means to sell, consign, deliver, or transport cherries or cause the sale, consignment, delivery, or transportation of cherries in the current of commerce from any point within the production area to any point outside. All cherries "handled" must meet marketing order requirements, but the requirements can be waived for special purpose shipments which are defined in § 923.54 of the order. The Committee has proposed adding as "special purpose shipments" the authority to ship cherries outside the production area for grading or packing.

The Committee has been discussing amending the order for many years. In 1990, the subcommittee appointed to study the expansion of the production area, discussed expanding the production area with producers located outside the production area. Out of these discussions, it was determined that if the production area was expanded, the authority to grade and pack outside the production area was also needed in order to allow many growers in the proposed production area to continue having their cherries packed in Oregon. This would help avoid financial hardships for these growers by maintaining continuity in the packing of their cherries.

A grower/handler from Oregon who does pack Washington cherries testified that some growers who are in the proposed production area have always had their cherries packed at plants outside the production area. His company has operated an orchard at Dallesport, Washington for over 17 years and has always packed the fruit in The Dalles, Oregon. This witness testified that much is invested in his facilities and it would be an economic hardship not to be able to pack and ship his fruit at his own plant. This is a good example of why the proposals for expansion of the production area and shipments outside the production area for packing should be considered as one material issue. This situation applies to many other growers in Dallesport and White Salmon, Washington. Expenses for growers could be dramatically increased if they are required to change their packing facilities to those that are farther from their orchards but in the production area. The four closest packing operations to Dallesport, Washington are in The Dalles, Oregon. The closest packing facility in Washington to that growing area is in Yakima, which is over 50 miles away.

In addition to proximity to their orchards, there are other reasons growers select certain packing facilities. Many growers select packers based on the quality of pack, the packinghouse image and/or whether or not the packing facility is a cooperative. These options for growers would be limited if they were no longer able to have their cherries packed in Oregon.

There are approximately 75 packing operations in the current production area and two additional packing houses in the proposed production area. There are four packing operations in Oregon that pack Washington cherries for grower/handlers. Testimony indicated that existing packing facilities in the State of Washington could have difficulty handling the volume of Washington cherries if the production continues to increase. The proposal to allow shipments of Washington cherries outside the production area for packing would specifically address this issue. This proposal would provide flexibility in moving product in and out of the marketing order production area while ensuring that quality objectives are not compromised.

WSDA currently has an agreement with the Oregon Department of Agriculture covering the border area between both states, namely in the Bingen, Washington area, where the Oregon Department of Agriculture conducts inspections to Washington standards and marketing order specifications, using appropriate Washington certificates. Testimony indicated this agreement works well, as it assists the industry in supplying quality inspections in that area.

Because of the agreement with the Oregon Department of Agriculture, there is assurance that any Washington product that is inspected by the Oregon Department of Agriculture is inspected to Washington standards or to Washington marketing order requirements. There is documentation that verifies product inspections and this process has proven to be successful in this area. Testimony indicated that the inspection office does not envision any oversight burden imposed by these proposals that it cannot meet.

Safeguard provisions are incorporated into this proposal to ensure compliance with the proposal to authorize shipments outside the production area. This would be done under the special purpose shipment authority contained in § 923.54 of the order. Grower/handlers could deliver cherries to those Oregon packing operations that agree to abide by the marketing order requirements for such cherries. The Committee would establish additional safeguards to ensure that marketing order requirements are being met. Although no specific procedures have been developed as yet, such information may include a requirement that packing facilities that grade and pack cherries outside the production area apply to the Committee and provide pertinent information necessary to safeguard marketing order provisions. If a packing facility does not abide by applicable requirements, the committee can rescind their agreement and Washington cherries could not be delivered to that facility.

The WSDA assists in monitoring for compliance with the marketing order and would continue to do so. The WSDA provides the Committee with copies of all Federal/State inspection note sheets. If WSDA notifies the Committee of a potential marketing order violation, the Committee takes steps to ensure compliance. Compliance is currently not a problem with the Committee.

The Committee proposal concerning this part of the amendment was designed to address this specific situation involving the packing facilities in Oregon. The proposed order language states that authority for "shipments of cherries for grading and packing to specified locations outside the production area" would be authorized. The specified locations would include the areas where these packing facilities are located in Oregon across the Washington border. This amendment is intended to provide flexibility in addressing the current situation of expanding the production area and to allow packing facilities currently being used to pack Washington cherries to continue to do so.

Record evidence supports authorizing shipments, with appropriate safeguards, outside the production area for packing.

Combining Expansion of Production Area, Redefining Districts and Shipments Outside the Production Area as One Issue

Record evidence supports that the proposals to expand the production area, to redefine the districts and to authorize shipments outside the production area for packing be considered as one votable issue in a referendum. Evidence presented at the hearing demonstrated that these proposals are inextricably intertwined and would cause confusion in the referendum if not voted upon as a single issue. The proposal to redefine the districts to allocate the new counties

between the existing districts obviously is only necessary if the production area is expanded. Therefore, this proposal should be combined with the proposal to expand the production area.

Regarding combining the proposals on the production area expansion and the authority to authorize shipments of uninspected cherries outside the production area for packing, these proposals are reliant on each other and should be combined as one issue. Failure for both aspects to pass in referendum could result in hardships for grower/handlers, especially those grower/handlers who currently ship their cherries to Oregon for packing. There are grower/handlers in the proposed production area whose orchards are closer to packing plants in Oregon than in Washington and who currently ship their cherries to these plants for packing.

The record supports these proposed amendments. For the above reasons, the proposal to amend § 923.4 *Production area* by including the counties of Okanogan, Chelan, Kittitas, Yakima, Klickitat in the State of Washington and all of the counties in Washington lying east; the proposal to amend § 923.14 *District* by including the additional counties under Districts 1 and 2; and the proposal to amend § 923.54 *Special purpose shipments* to authorize special purpose shipments, with appropriate safeguards, allowing movement of cherries to packing operations outside the production area should be voted on in the referendum as one material issue.

Material Issue Number 2

Section 923.20 should be amended to increase representation on the Committee by adding one additional handler member representing District 1. In addition, § 923.20 should be amended to provide equal grower representation in each district.

The current 15-member Committee consists of four grower members representing District 1, six grower members representing District 2, two handler members representing District 1 and three handler members representing District 2. All members have alternates. District 1 includes the counties of Chelan, Okanogan, Douglas, and Grant. District 2 includes the counties of Yakima and Benton. If the proposal to expand the production area is implemented, District 1 would include the counties of Chelan, Okanogan, Douglas, Grant, Lincoln, Spokane, Pend Oreille, Stevens and Ferry. District 2 would include the counties of Kittitas, Yakima, Klickitat, Benton, Adams, Franklin, Walla Walla, Whitman, Columbia, Garfield and Asotin.

The Committee believes that producer representation in District 1 should remain at 4 members and District 2 should remain at 6 members. A witness testified that the amount of tonnage produced is significantly greater in District 2. However, significant quantities of cherries produced in District 2 are packed and graded in District 1. It was estimated that total product packed is nearly equal in both districts. By adding one handler member to District 1, both districts would be equally represented by 3 handler members.

Record evidence supports increasing the membership on the Committee by one handler member. The Washington sweet cherry industry is growing. Bearing acres and production are increasing and markets, including exports, are expanding. Although the Committee's recommendation to increase the number of Committee members by one initially related to the expansion of the production area, the record testimony revealed that the Committee would prefer to have an additional handler member even if the production area is not expanded. Therefore, this material issue is not tied to the expansion of the production area and should be addressed and voted in the referendum on its own merits.

Increasing representation on the Committee would allow additional input in Committee decisions. Having equal handler representation for each district is reasonable considering that the volume handled is similar in each district, whether or not the production area is expanded.

The Committee discussed alternatives to address appropriate representation and districting should the production area be expanded. The Committee agreed that 16 members was an appropriate number for the Committee to be most effective while adequately representing the expanded production area. The alternatives are discussed in more detail later in this document.

Further, an economic report submitted as evidence at the hearing does not support the proponents' statement that the amount of tonnage produced is significantly greater in District 2. The report shows that under the current districts, District 1 has approximately 814 farms growing sweet cherries on approximately 10,000 acres of land. In District 2, approximately 621 farms produce sweet cherries on approximately 9,141 acres of land.

In the proposed districts, District 1 would have approximately 870 farms growing cherries on 10,074 acres. District 2 would have approximately 753 farms that grow cherries on approximately 11,560 acres of land. Production figures show that in 1997, production in proposed District 1 was approximately 44,300 tons of sweet cherries and in proposed District 2, production was approximately 45,500 tons.

These statistics indicate that volume of production between Districts 1 and 2 is not significantly different in the current and proposed districts. Record evidence revealed that District 2 has slightly less growing acreage currently than District 1 and would have slightly more if the proposal to expand the production area were adopted. Based on record testimony, the Committee is striving for handler representation based on the volume of cherries handled in each district. The record indicated that the Committee intends that grower representation be based on the volume of production for each district. Since statistics show that production in the proposed districts would be relatively the same, grower membership between districts should be equal. Therefore, the record supports modifying the current representation of 4 growers for District 1 and 6 for District 2 to 5 grower members and their respective alternatives per district.

The marketing order provides the authority to redefine the production area districts and to reapportion the representation of any district on the Committee. The Committee may recommend changes in district representation if cherry production within the districts and the production area shifts. These changes can be accomplished through informal rulemaking.

Currently, 12 members are required to make a quorum under the 15-member Committee. Also, 9 concurring votes are currently required to pass any Committee action. A witness testified that quorum and concurring voting requirements were not discussed at meetings when the issue to increase membership was discussed. However, the current quorum and voting numbers would still be considered a "super" majority should the membership on the Committee increase by one handler member. The witness indicated that the current requirements would be adequate and no changes are being recommended to the quorum and voting requirements.

Seemingly, record evidence suggests increasing representation on the Committee by one handler member and providing for equal grower representation in each district.

Material Issue Number 3

Section 923.41 should be amended to add authority to require handlers to pay late payment charges and/or interest on late assessment payments in order to encourage timely remittance of assessments by handlers.

Currently, § 923.41 requires handlers to pay to the Committee on demand assessments on cherries received by the handler. There is no provision for a late payment or interest charge.

Record testimony revealed that most handlers pay assessments promptly and timely. However, the Committee's operating budget is relatively small and late payments could be detrimental to the operations of the Committee. Three marketing orders are administered by one manager and share expenses in order to mitigate costs. The other marketing orders are the Washington Apricot marketing order (Marketing Order No. 922) and the Washington-Oregon Fresh Prune marketing order (Marketing Order No. 924). Assessments collected under the sweet cherry order represent 80 percent of the combined budgets. For example, the 1999–2000 total annual budget for sweet cherries is $62,815, while the two other program budgets combined total $18,600. Testimony indicated that even a few hundred dollars in late assessments could be detrimental to the administration of the cherry program.

Testimony further indicated that failure to incorporate a charge for late payment of assessments would not be equitable for handlers who pay on time. These handlers would be financing Committee operations while late paying handlers would benefit from the Committee programs.

Late payment and interest charges for delinquent assessments would provide an incentive for handlers to pay on time. This would result in fewer funds needed by the Committee for collection activities. Also, the fees derived from late payment and interest charges would partially compensate the Committee for its collection efforts.

The Committee envisions implementing the specifics of the late payment and/or interest charges through informal rulemaking with the Secretary's approval. This would allow the Committee to remain flexible with the establishment of the interest and late payment charge. The Committee anticipates that the billing statements would include a date at which time a late payment charge of a specified amount would be assessed. The statement would advise the handler that in addition to the late payment charge, an interest payment of a certain percent on the unpaid balance would be assessed each month thereafter. Testimony indicated that an example of such charges would be similar to what commercial businesses charge, such as a $25 late fee, and a one and a half percent per month charge on the unpaid balance.

The Department agrees that authorizing late payment and interest charges would encourage prompt payment and thereby, help ensure that the Committee operates effectively. The annual sweet cherry budget is small enough that even a few handlers paying late could disrupt Committee operations.

Accordingly, record evidence supports this aspect of the proposal. However, in the proposed amendatory language, a provision was included stating "the Committee may also recommend other methods of assessment collection with the approval of the Secretary." Testimony revealed that other methods of assessment collection would be filing liens against handlers for failure to pay assessments or suing a handler in small claims court for unpaid assessments.

There is no authority under the Act allowing the Committee to file liens or sue in small claims court for unpaid assessments. Therefore, this provision should not be included in the proposed amendment.

Material Issue Number 4

Section 923.52 should be amended to authorize the Committee to establish container marking requirements.

Currently, the order provides the authority to fix the size, capacity, weight, dimensions, or pack of containers that may be used to ship fresh sweet cherries. The order does not include authority to establish marking requirements.

Testimony indicated that, in the cherry industry, the customer dictates specifications of products such as quality, packaging and variety. The quality, size, container and pack requirements currently authorized under the order address many of these preferences. These provisions are used by the Committee and modified with industry changes and customer preferences. They help to maintain a positive image for Washington sweet cherries and stimulate repeat business. The proposal to add the authority to implement marking requirements would add an additional marketing tool for the Committee to continue meeting customer needs.

Washington sweet cherry bearing acres are continually increasing, which has resulted in increased production. Since 1959, the production of sweet cherries has increased by over 500 percent. Production levels are trending toward 100,000 tons in the near future. New national markets have developed and exports now play an important role in the marketing of sweet cherries. Exports represented 40 percent of fresh sweet cherry shipments in 1998. In 1998, exports increased 35 percent over the 1997 levels, achieving a new high of 28,560 tons.

Testimony revealed that two containers are primarily used in packing sweet cherries currently. However, in response to customer preferences, the industry is moving to multiple packaging and multiple varieties of cherries. As packaging and varieties become more diverse and production continues to increase, container markings are becoming increasingly important.

In addition, product identification and origination becomes increasingly important as more and more sweet cherries are shipped greater distances nationally and to foreign markets. Testimony indicated that many handlers currently mark their containers to meet customer needs. However, uniform marking requirements would eliminate confusion and ensure to customers that they are receiving the products ordered. Testimony indicated that marking requirements that may be recommended by the Committee are weights, growing areas and State of origin.

For these reasons, the Committee believes that it is becoming more important to denote product origination and varieties on packaging. Testimony indicated that containers may need to be marked more precisely in the future than just stating "sweet cherries." Uniform marking requirements would provide additional consistency in product identification. This proposal is intended to provide that authority.

The proponents have recommended establishing the authority for marking requirements under the marketing order. However, implementation of any specific regulations would require a recommendation by the Committee for informal rulemaking. The Committee wants to keep the order language flexible enough so that the Committee could adapt and modify marking requirements with changing needs and preferences of customers.

Testimony indicated that no significant costs would be incurred if this authority were implemented because handlers already have the equipment to mark containers. Container markings are currently accomplished by handlers on an individual basis. The benefits of this proposed amendment would be in the form of uniform marking requirements for Washington sweet cherries.

Although the Committee has not developed a specific type of marking that would be recommended, adding the authority to establish marking requirements in the future is reasonable. The authority for uniform container marking requirements would further expand and complement the current container and pack requirements already being used. The Committee would discuss any recommended markings at meetings and vote on support for a marking requirement. Therefore, record evidence supports adding authority for container marking requirements to § 923.52.

Material Issue Number 5

Section 923.25 should be amended to authorize Committee nominees to qualify as a member or alternate by filing a written acceptance of willingness to serve prior to the selection.

The Committee consists of 15 members, each of whom has an alternate. Ten members are growers and five are handlers. The term of office for Committee members and alternates is two years, beginning on April 1 and ending on March 31. Members and alternates serve in such capacities for the term of office for which they were selected and qualified until their respective successors are selected and have qualified.

Currently, Committee nominations are made at the designated meetings where elections are to be held. These meetings are required to be held no later than March 1 of each year. Elected nominees for member and alternate positions are required to furnish a background statement, which is forwarded to the Secretary along with a list of nominees. After being notified of the selection by the Secretary, the members and alternates sign a written acceptance indicating their willingness to serve on the Committee.

The proposal would delete the requirement that the selected member/alternate file a written acceptance after notification of selection and combine the acceptance letter with the background statement submitted prior to the selection. The nominee would, in effect, be indicating willingness to serve on the Committee prior to being selected.

Committee Form FV–23 is the Background Statement form. This form allows the Committee and Secretary to determine a nominee's eligibility to serve on the Committee by requiring information on the nominees' experience in the sweet cherry industry. The time required to complete this form is estimated to be five minutes. When nominated, the nominee completes this form. If the nominees do not return these forms promptly, delays can occur in submitting the nominee's names to the Secretary for selection, which could have a negative impact on the seating of the Committee.

The Acceptance Letter, currently signed after selection, merely requires a signature from the person accepting the appointment. Testimony indicated that there is no advantage to waiting for this form to be signed by the selectee.

The Committee believes that combining these forms as one and requiring submission at the time of nomination would be more efficient than the current method. Testimony indicated that the nominee, in effect, indicates willingness to serve on the Committee by accepting the nomination and completing the background statement upon nomination. By combining these forms into one and requiring the information at the time of nomination, the Committee and Secretary know in advance that the nominees are willing to serve on the Committee if selected.

Testimony indicated that there is no benefit in waiting for the nominee to sign the Acceptance Letter after being selected. No negative impacts are anticipated from implementing this proposal. However, the benefits are that the nominees are only required to sign and deliver one form. In addition, the Committee could obtain all pertinent information well ahead of the time for seating of the new Committee, thereby operating more efficiently.

The Department will submit the modified form to the Office of Management and Budget (OMB) for approval. Current information collection requirements for Part 923 are approved by OMB under OMB number 0581–0133.

Accordingly, record evidence supports revising § 923.25 of the order.

Material Issue Number 6

Section 923.21 should be revised to establish a limit on the number of consecutive terms a person may serve on the Committee. Currently, the term of office of each member and alternate member of the Committee is two years. There are no provisions related to tenure in the marketing order. Members and alternates may serve on the Committee until their respective successors are selected and have qualified.

The Department believes that all marketing order programs should consider tenure requirements for committee membership as a part of any amended order process. The Department believes that this provision would increase industry participation on the Committee, provide for more diverse membership, provide the Committee with new perspectives and ideas, and increase the number of individuals in the industry with Committee experience.

Experience with other marketing order programs suggests that a period of six years would be appropriate. Since the current term of office for members and alternates is two years, the Department is proposing that no member serve more than three consecutive two-year terms or a total of six years. This proposal for a limitation on tenure would not apply to alternates. Once a member has served on the Committee for three consecutive terms, or six years, the member would sit out for one year before being eligible to serve as a member again. The member could serve as an alternate during that time.

Witnesses presented testimony in opposition to this proposal. Although the Committee agrees with the principal that outreach efforts are important, the application of tenure could be problematic. Testimony indicated that the sweet cherry producing area is rather small in comparison to other fruit and vegetable growing areas, and finding growers willing to serve on the Committee is difficult. In addition, testimony further indicated that it is counterproductive to require valuable members to step down when the current system is working well.

Regarding diversity, testimony indicated that there are few diverse individuals in the cherry industry and limiting tenure on the Committee would make it challenging to maintain a diverse Committee membership and to meet the Department's diversity goals. The Committee has difficulty getting growers involved in Committee operations. Many growers participate in the nomination meetings, but few volunteer to participate as members or alternates. The Committee finds that the industry members that do agree to serve bring knowledge and experience to the Committee that would be difficult to replace.

Testimony indicated that the Committee would continue outreach efforts to encourage diverse representation on the Committee. If the proposal is implemented, the Committee supports that tenure should not apply to alternates.

The Department believes, and experience with other marketing order committees has demonstrated, that tenure requirements for committee membership increases participation, provides for more diverse committees, provides for different perspectives, and increases the number of industry members with Committee experience.

Therefore, record evidence supports establishing tenure requirements for the Committee.

Material Issue Number 7

Section 923.64 should be amended to require that continuance referenda be conducted every six years to ascertain industry support for the order.

Currently, there is no provision in the marketing order that provides for periodic continuance referenda.

The Department believes that producers should have an opportunity to periodically vote on whether a marketing order should continue. Continuance referenda provide an industry with a means to measure producer support for the marketing order program. Experience has shown that programs need significant industry support to operate effectively. Under this proposal, the Department would consider termination of the marketing order if less than two-thirds of those voting and less than two-thirds of the volume represented in the referendum favored continuance. This is the same as that for issuance of an order. As with tenure, experience in recent years indicates that six years is an appropriate period to allow producers an opportunity to vote for continuance of the program. Therefore, the proposal sets forth that a referendum would be conducted six years after the effective date of this amendment and every sixth year thereafter.

Witnesses presented testimony in opposition to this proposal. Testimony indicated that the industry currently has the ability to request a continuance referendum at any time. The Committee believes that requiring unnecessary referenda is costly and of little value to the industry or the Department. The program has worked successfully since 1957 and growers have not been against any major aspects of the order since that time.

Testimony also indicated that requiring a continuance referendum every six years would further impede participation on the Committee. Based on record evidence, many industry members believed that the process for conducting continuance referenda is similar to the marketing order amendment process, in that a hearing would be required.

Contrary to formal amendment proceedings, continuance referenda do not require a hearing. Most referenda are conducted by mail. All growers in the production area would be sent a ballot and would be asked, not required, to answer whether they support continuance of the marketing order. The growers then send the ballot back to the Department. That is the extent of grower responsibility in the continuance referenda process. The Department prepares the ballot, mails the ballots and tallies and publishes the results. The Committee office does assist the Department in this process by providing a list of growers eligible to vote in the referendum.

The Department believes that producers should have an opportunity to periodically vote on whether the marketing order should continue.

Accordingly, the record evidence supports adding a requirement that such referenda be conducted.

The Agricultural Marketing Service also proposed to make such changes as may be necessary to the order to conform with any amendment that may result from the hearing. The Department has identified no necessary conforming changes.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that growers and handlers would not be burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping as a result of these proposed amendments.

Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The record indicates that there are approximately 75 handlers currently regulated under Marketing Order No. 923. There are two additional packing houses in the proposed production area that would be considered handlers if the production area is expanded. There are four packing operations in Oregon that pack Washington cherries for grower/handlers. In addition, there are approximately 1,400 cherry growers in the current production area. There would be approximately 200 additional growers if the production area is expanded as proposed.

In 1998, Washington produced 96,000 tons of sweet cherries. The average price for fresh cherries in 1998 was $1,600 per ton. This computes to approximate revenues for the 1998 crop of $153,600,000. The record indicated that approximately 15 handlers handle the majority of the crop and could be classified as large businesses. Thus, a majority of sweet cherry handlers could be classified as small entities. The same is estimated with regard to the packing houses in Oregon.

Dividing total production from 1998 by the number of growers in the proposed production area, the average grower produces about 60 tons of cherries annually. With an average price of $1,600 per ton for 1998 sweet cherries, average revenues would be $96,000. Thus, it is reasonable to conclude that most sweet cherry growers are small entities.

Industry Background

Sweet cherries rank second to apples as the most important fruit grown in Washington, with a value of production of $128.7 million. Washington growers produced 96,000 tons of sweet cherries in 1998, which is 46 percent of the nation's total.

The varieties of sweet cherries subject to regulation under the order are: Bing, Chelan, Lambert, Lapin, Rainier, and Sweetheart. Shipping of these cherries generally begins around June 15 and usually ends around August 15. The most active harvest period is from June 10 through July 20.

The order authorizes the use of grade, size and container regulations for the fresh shipment of sweet cherries from the production area. The regulations, specify certain size, maturity and pack requirements. The current regulations are based on Washington grade standards and apply to specific varieties. The purpose of these regulations is to ensure the shipment of high quality cherries. The order has allowed the industry to develop the reputation for shipping a quality product, which has allowed producers to ship and sell fruit in a more stable marketplace.

Washington is the leading producer of sweet cherries for fresh market sale. Washington's main competitors in domestic fresh markets are California and Oregon. From 1994 through 1998, Washington produced an average of 55,600 tons per year. This represents 59 percent of the total sweet cherries marketed fresh. California produced an average of 20,460 tons per year and Oregon produced 12,900 tons per year from 1994 through 1998.

Sweet cherries are also grown in Idaho, Montana and Utah, as well as Michigan, New York and Pennsylvania. Bearing acreage figures are not published for the States of Idaho and Montana. Utah's production area totals 600 acres, and has been declining. Bearing acreage figures are published for Michigan, New York and Pennsylvania, but the majority of sweet cherries grown in those states are not sold in fresh markets. The fruit in these States are produced and marketed during the summer months each year. While these States compete with Washington, Oregon and California in the marketing of fresh sweet cherries, their production is relatively small.

From 1964 through 1998, total U.S. production of sweet cherries increased 332 percent and fresh utilization increased 393 percent. This suggests that fresh shipments have been growing in importance, while the processing sector has remained relatively stable. Over the past five seasons, 66 percent of Washington's production moved into fresh markets.

Over the last 30 years, prices between the three primary growing States have been very competitive. Prices in California, Washington and Oregon have averaged $1,166, $1,028 and $798 per ton, respectively. California prices are slightly higher than prices in Washington or Oregon. One of the reasons that California prices average higher than Washington's is that California shipments begin in the early part of May, when competition in the fresh fruit market is limited. Washington shipments do not start until the middle of June. Early-season shippers generally receive a premium for their product on the fresh market.

Fresh prices for Washington sweet cherries receive a premium over processing sweet cherries. From 1969 to 1998, fresh prices have increased more than 350 percent. Fresh cherry prices were $350 per ton in 1969 and were as high as $2,150 per ton in 1996. Prices were $1,600 per ton in 1998.

While California growers receive higher prices than Washington growers on average, Washington's value of production is much greater than California's or Oregon's. This is due to higher yields and larger production levels in Washington. This likely indicates that Washington growers have a comparative cost advantage over California or Oregon growers. In 1998, Washington reported its highest value of fresh production, $113.6 million. This compares to a 1998 value of fresh production of $17.9 million for California and $22.6 million for Oregon. The value of fresh production has increased more than 150 percent since 1991.

Exports play an important role in the marketing of Washington sweet cherries. With increasing bearing acres and production levels trending toward 100,000 tons in the near future, increasing levels of exports can be anticipated. However, competition in the export markets is expected to be high. California continues to export a large volume of their increasing production. In addition, China is estimated to have 25,000 acres of cherries planted. Spain, Greece, Turkey, Iran, Lebanon, Syria and some Eastern European countries have also increased production levels. These countries do not import sweet cherries into the U.S.

Exports of fresh Washington sweet cherries have been increasing, in particular during the 1997 and 1998 seasons. Exports reached a high of 21,148 tons in 1997. In 1998, exports increased 35 percent over the 1997 levels, achieving a new high of 28,560 tons.

Export markets demand a high quality product. With a limited shelf life, these fresh deliveries of sweet cherries require a high quality product. The shipment of low quality product could ruin years of market development in an export market. Grades and standards assure the shipment of high quality fruit into export markets, and small growers as well as large growers will benefit.

Production Area and Shipments Outside Production Area

When the marketing order was created in 1957, sweet cherries were primarily grown in only 6 counties in the State of Washington. The 6 counties that are currently regulated are Okanogan, Chelan, Douglas, Grant, Benton, and Yakima. The 14 additional counties proposed for inclusion are Kittitas, Klickitat, Ferry, Stevens, Pend Oreille, Lincoln, Spokane, Adams, Whitman, Franklin, Walla Walla, Columbia, Garfield, and Asotin.

Cherry production has dramatically increased in areas within the State of Washington that are outside the current production area. As more land has come into irrigation and farmers look for alternative crops to grow, sweet cherry production is expected to increase in areas outside the current production area.

The proposed amendment to increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range, to redefine the districts in order to include the additional counties and to authorize special purpose shipments, with appropriate safeguards, allowing movement of cherries to packing operations outside the production area would improve the effectiveness of the marketing order by ensuring that the major cherry producing counties in Washington are covered under the marketing order. In addition, including counties with potential to produce significant amounts of sweet cherries would ensure that all major production would be covered under the marketing order in the future. The proposed amendment would also benefit growers, especially growers not currently regulated under the order, by allowing many of these growers to continue shipping their cherries to Oregon for packing.

The Committee has been discussing amending the order in this regard for many years. In 1990, a subcommittee composed of small and large growers and handlers was appointed to study the expansion of the production area. The Committee discussed expanding the production area with producers located outside the production area. Out of these discussions, it was determined that if the production area was expanded, the authority to grade and pack cherries outside the production area was also needed in order to allow growers in the proposed production area to avoid financial hardships by maintaining continuity in the packing of their cherries.

In March 1998, the Committee recommended numerous amendments to the marketing order, including covering the entire State of Washington in the production area. In August 1999, the Committee recommended modifying the recommendation on the production area proposal from regulating the entire State to only including the eastern part of the State.

Alternatives to the current proposal on the expansion of the production area were considered by the Committee. These alternatives were: (1) Including the entire State of Washington; (2) including the States of Washington and Oregon; and (3) including the States of Washington, Oregon, Idaho and Utah. Committee representatives communicated with growers and handlers in these regions. Public meetings on the subject were publicized in these growing areas and interested parties were encouraged to attend. Committee members also attended grower meetings in these areas to discuss expansion of the production area.

Regarding including the entire State of Washington, the Committee determined that due to weather conditions, it would be unlikely that cherries could be commercially produced in significant amounts west of the Cascade Mountain Range in Washington. Average production in this area is 50 tons per year. Testimony indicated that excessive rain causes serious quality problems with sweet cherries, such as cracking. Generally, weather conditions in eastern Washington are more favorable for growing sweet cherries, as well as other horticultural crops.

Representatives from Idaho and Utah believed that their production and marketing could be easily distinguished and segregated from Washington and Oregon production. In addition, it was believed the Idaho and Utah sweet cherry industry was not large enough to make an impact on Washington cherries. Statistical data presented at the hearing on the volume of cherries produced in Idaho and Utah supports this belief.

Oregon's sweet cherry industry primarily borders the State of Washington, but representatives from Oregon believed their industry should be kept separate from the Washington industry. The record evidence revealed that Oregon already has two organizations that represent the interests of sweet cherry growers, the Oregon Sweet Cherry Commission and the Wasco County Fruit and Produce League. These organizations collect assessments based on cherry production. According to record testimony, the Oregon growers did not see the need to form another organization to protect their interests. In addition, testimony indicated that Oregon growers did not want to become a minor part of the Washington order.

An organization called the Northwest Cherry Growers also represents the States of Washington, Oregon, Idaho and Utah. This group is responsible for collecting assessments based on cherry tonnage and directing promotion programs for sweet cherries grown in these four states.

Based on record evidence, the Committee considered these various alternatives and concluded that the proposal it submitted on the expansion of the production area is the most reasonable alternative. The proposed production area is the smallest regional area, which is practicable, while maintaining program effectiveness.

The record revealed that the average cherry farm size in Washington ranges from 3 or 4 acres to several hundred acres. The average farm is approximately 40 acres. According to testimony, there are approximately 180 growers in the proposed production area that are larger that the average farm. Some farms in the proposed production area, particularly in Franklin County, are 50 to 200 acres. Although much of this acreage is currently non-producing, testimony indicated that the potential exists for significant production. Unlike the western part of the State where significant production is not anticipated, if those areas with significant production potential are not regulated, it could have a detrimental impact on the favorable Washington sweet cherry quality image.

Testimony was received at the hearing on the costs associated with the proposed amendments. This testimony indicated that costs associated with this proposal would be minor. The total annual cost of production for a mature orchard is $7,413.06 per acre. The current assessment of 75 cents per ton comprises less than 1 percent of total production costs. Any increase in assessments resulting from this proposed amendment would not have a significant negative financial impact on growers or handlers. Testimony indicated that the annual assessment could even be reduced due to additional cherries being assessed with the expansion of the production area.

Applying grades and standards to the new production areas should provide benefits to small producers. The grades and standards allow small producers the opportunity to develop a reputation for producing and delivering a consistent, high quality product. These grades and standards provide incentives and rewards for the production of high quality product. In addition, the establishment of uniform grades and standards across all the production areas provides a level field for competition among both small and large growers. Testimony indicated that as production increases, quality issues become more important and production is expected to increase in excess of 100,000 tons for the first time in the industry's history.

The 1999–2000 budget for the Committee is $62,815, of which $3,388 is earmarked for compliance efforts. Testimony indicated that increased compliance and administrative costs necessary to monitor this proposal would not be significant. It was testified that the benefits of strengthening the market would outweigh any increase in costs. Adversely, if the production area is not redefined, testimony indicated that the Washington cherry image could be harmed, as more and more areas are growing cherries. In addition, indications are that a large number of non-bearing acres are coming into production inside and outside the current production area. Adding to the increase in production are growers of other crops, such as grain and apples, looking for alternative crops to grow in order to supplement incomes. Sweet cherries are an option these growers consider.

The Washington cherry market distinguishes itself from competitors. More product is available from Washington than the other cherry producing States. The Washington cherry market is more diverse and national in scope, and testimony indicated that buyers have confidence in Washington sweet cherries due to consistent quality. Testimony revealed that this distinction is a direct result of the establishment of minimum quality requirements under the marketing order. If the proposal to allow cherry shipments outside the production area for packing is implemented there are safeguards in place to ensure that minimum quality requirements are met. If these facilities fail to abide by the applicable requirements, the committee can rescind their privileges and Washington cherries could not be delivered to that facility.

When regulations are in place, all cherries in the production area are required to be inspected and certified as meeting established requirements. The Washington State Department of Agriculture's Fruit and Vegetable Inspection Program (WSDA), headquartered in Olympia, Washington collaborates with USDA–AMS, Fresh Products Branch to provide inspection to marketing order commodities in Washington. WSDA's district offices are located in Yakima, Wenatchee and Moses Lake. These main district offices have area offices in strategic locations to the various growing areas in the State. WSDA employs approximately 150–160 full-time inspection staff throughout the State. In addition, during peak harvest periods, temporary inspectors are hired.

The WSDA operates on a user-fee basis; no appropriated funds are received. Inspection fees pay for the program to operate. Except for random inspections conducted on fruit stands to comply with a cherry fruit fly quarantine program, WSDA provides inspections only upon request. The applicant indicates to WSDA what type

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of inspection is needed, such as compliance with a marketing order.

The fees for cherry inspections are 21 cents per hundred weight or $23/hour, whichever is greater, plus additional charges for travel time and mileage. The larger growers have individual inspectors stationed at their warehouses during the season. The time and mileage charges are more frequently assessed to the smaller grower/packer because of the small volumes inspected and remote locations. However, WSDA attempts to mitigate costs, especially to small growers and handlers. WSDA helps smaller growers mitigate these costs by meeting growers halfway between their orchard and the inspection office or WSDA authorizes the grower to bring the product to the inspection office.

Individual shipments not exceeding 100 pounds in the aggregate are exempt from the regulations, as well as cherries for home use and cherries not intended for re-sale. In addition, shipments for consumption by charitable institutions, for distribution by relief agencies or for commercial processing into products are exempt from regulation.

Testimony indicated that increased costs associated with more cherries being inspected in accordance with marketing order requirements would be offset by consistent quality and a stable market place. In addition, most handlers already pack their cherries and have them inspected in accordance with marketing order requirements, regardless of whether the cherries are grown inside or outside the current production area.

Minimum quality and size standards in the proposed production area would maintain the integrity of the product so that the commodity's overall quality image is not diminished by a low quality sample. The principle objective of a grading system is to make the market work more efficiently. Minimum quality and size requirements would improve information between buyers and sellers. Contracts could be made based on grade specifications, and buyers need not personally inspect each lot of product. Standardization of quality and size reduces uncertainty between buyers and sellers, and this helps reduce marketing costs. The goal of an effective grading system is to improve quality and size. Minimum quality and size standards would help ensure that substandard produce does not find its way to the market and destroy consumer confidence and harm producer returns. Cherries that do not meet the grade and size requirements can be sold in the processed market.

In addition to proximity to their orchards, there are other reasons growers select certain packinghouses. Many growers select handlers based on the quality of pack, the packinghouse image and/or whether or not the handler is a cooperative. These options for growers would be limited if they were no longer able to have their cherries packed in Oregon.

Testimony indicated that existing packing facilities in the State of Washington could have difficulty handling the volume of Washington cherries if the production continues to increase. The proposal to allow shipments of Washington cherries outside the production area for packing would specifically address this issue. This proposal would provide flexibility in moving product in and out of the marketing order production area.

WSDA currently has an agreement with the Oregon Department of Agriculture covering the border area between both states, namely in the Bingen, Washington area, where Oregon Department of Agriculture conducts the inspections to Washington standards and marketing order specifications. Testimony indicated this agreement works well, as it assists the WSDA in supplying quality inspections in that area. Testimony indicated that the inspection office does not envision any oversight burden imposed by these proposals that it cannot meet. Safeguard provisions are incorporated into this proposal to ensure compliance with the proposal to authorize shipments outside the production area.

If the production area is expanded, it would be necessary to incorporate the additional counties regulated into the districts currently established under the order. The Committee discussed dividing the production area into three districts and distributing the counties and membership across these districts. The Committee was concerned that this would entail increasing Committee membership by more than one handler member as proposed and discussed in Material Issue No. 2. The record indicated that the Committee believed a 16 member Committee would be the most effective. Therefore, it was decided to distribute the counties proportionately among the two districts.

The proposed District 1 encompasses the northern part of the production area and District 2 encompasses the southern part. In 1997 production in proposed District 1 was approximately 44,300 tons of sweet cherries and in proposed District 2, 45,500 tons. In addition, tons packed in each proposed district is close to equal. This distribution of counties among the two districts would provide for equal representation of handlers and growers from each district.

Committee Representation

The proposed amendment to increase representation on the Committee by adding one additional handler member would improve representation on the Committee and allow the Committee to function more efficiently.

Record evidence supports increasing the membership on the Committee by one handler member. The Washington sweet cherry industry is growing. Bearing acres and production are increasing and markets, including exports, are expanding. Although the Committee's recommendation to increase the number of Committee members by one initially related to the expansion of the production area, the record testimony revealed that the Committee would prefer to have an additional handler member even if the production area is not expanded.

Increasing representation on the Committee would allow additional input in Committee decisions. Having equal handler representation for each district is reasonable considering that the volume handled is similar in each district, regardless if the production area is expanded. Costs of adding an additional member to the Committee would be minimal.

In its deliberations, the Committee discussed alternatives to address appropriate representation and districting should the production area be expanded. One alternative was to divide the area into three districts and distribute membership proportionately across these districts. This alternative would have likely entailed increasing membership by more than one. The Committee was concerned that increasing the number of members by more than one would hinder the decision-making capability of the Committee. The Committee agreed that 16 members was an appropriate number for the Committee to be most effective while adequately representing the expanded production area.

Late Payment and Interest Charges on Delinquent Assessments

The proposed amendment to authorize the Committee, with AMS approval, to collect late payment and interest charges on delinquent assessments would encourage handlers to pay their assessments on time. Assessments not paid promptly add an undue burden on the Committee because the Committee has ongoing projects and programs funded by assessments that are functioning throughout the year. The addition of such a charge is consistent with standard business practices. No costs would be associated for handlers who pay timely assessments.

Late payment and interest charges for delinquent assessments would provide an incentive for handlers to pay on time. This would result in fewer funds needed by the Committee for collection activities. Also, the fees derived from late payment and interest charges would partially compensate the Committee for its collection efforts.

Container Marking Requirements

The proposed amendment to authorize the Committee, with AMS approval, to establish container marking requirements would further expand and enhance the current container and pack requirements already being used. Uniform marking requirements would assist in avoiding confusion in the marketplace.

Testimony indicated that no significant costs would be incurred if this authority were implemented because handlers already have the equipment to mark containers. Container markings are currently accomplished by handlers, on an individual basis. The benefits of this proposed amendment would be in the form of uniform marking requirements for Washington sweet cherries.

Combining Forms Required by Committee Nominees

The proposed amendment to authorize Committee nominees to qualify as a member or alternate by filing a written acceptance of willingness to serve prior to the selection would allow the selection process to take place in a more timely fashion.

The proposal would delete the requirement that the selected member/alternate file a written acceptance after notification of selection and combine the acceptance letter with the background statement submitted prior to selection. The nominee would, in effect, be indicating willingness to serve on the Committee prior to being selected.

Testimony indicated that there is no benefit in waiting for the nominee to sign the acceptance letter after being selected. No negative impacts are anticipated from implementing this proposal. However, the benefits are that the nominees are only required to sign and deliver one form. In addition, the Committee could obtain all pertinent information well ahead of the time for seating of the new Committee, thereby operating more efficiently.

Committee Tenure Requirements

The proposed amendment to add tenure requirements for Committee members would allow more persons the opportunity to serve as members on the Committee. It would provide for more diverse membership, provide the Committee with new perspectives and ideas, and increase the number of individuals in the industry with Committee experience. It is anticipated that this proposed amendment would not increase costs to small businesses.

Continuance Referenda

The proposed amendment to require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order would allow growers the opportunity to vote on whether to continue the operation of the marketing order. Although this proposed amendment may generate minimal Committee costs to assist in conducting the referenda, there are no additional costs anticipated for small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the reporting and recordkeeping provisions that would be generated by the proposed amendments would be submitted to the Office of Management and Budget (OMB). Specifically, if the production area is expanded, the overall burden of completion of all Committee generated forms and reports could increase due to additional handlers being regulated, as well as additional growers in the regulated area. Current total burden hours are approximately 69 hours and only relate to referenda and nominations. Sixty eight of these hours relate to producer referenda. The other hour covers time spent by Committee members and alternates completing membership forms. Adding an additional 200 growers would increase the overall burden for referenda documentation by approximately one hour. Adding an additional handler member would increase the overall burden to complete nomination forms from 1.25 hours to 1.33 hours. The documentation required to implement the safeguard provisions for the four packing facilities in Oregon are yet to be established, but it is not anticipated that the overall burden would be dramatically increased. It is anticipated an application form would be developed for these packing operations. These provisions and any additional provisions modifying reporting and recordkeeping burdens that generate from these proposed amendments would not be effective until receiving OMB approval. Current information collection requirements for Part 923 are approved by OMB under OMB number 0581–0133. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. All of these amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

While the implementation of these requirements may impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of these costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the meetings regarding these proposals as well as the hearing date were widely publicized throughout the Washington sweet cherry production area and proposed production area and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. The Committee itself is composed of 15 members, of whom five are handlers and ten are producers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate so that this rulemaking may be completed prior to the 2001 season which begins April 1, 2001. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as hereby proposed to be amended, regulate the handling of sweet cherries grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as hereby proposed to be amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) All handling of sweet cherries grown in the production area as defined in the marketing agreement and order, as hereby proposed to be amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 923

Marketing agreements, Cherries, Reporting and recordkeeping requirements.

Recommended Amendment of the Marketing Agreement and Order

For the reasons set out in the preamble, 7 CFR part 923 is proposed to be amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Revise § 923.4 to read as follows:

§ 923.4 Production area.

Production area means the counties of Okanogan, Chelan, Kittitas, Yakima, Klickitat in the State of Washington and all of the counties in Washington lying east thereof.

3. Amend § 923.14 by revising paragraphs (a) and (b) to read as follows:

§ 923.14 District.

* * * * *

(a) *District 1* shall include the Counties of Chelan, Okanogan, Douglas, Grant, Lincoln, Spokane, Pend Oreille, Stevens, and Ferry.

(b) *District 2* shall include the counties of Kittitas, Yakima, Klickitat, Benton, Adams, Franklin, Walla Walla, Whitman, Columbia, Garfield and Asotin.

§ 923.20 [Amended]

4. Amend § 923.20 as follows:

a. In the first sentence remove the word "fifteen" and add the word "sixteen" in its place;

b. In the third and fourth sentences remove the word "five" and add the word "six" in its place;

c. In the fifth sentence, remove the words "four" and "six" and add the word "five" in their place; and

d. In the sixth sentence, remove the word "two" and add the word "three" in its place.

5. Revise § 923.21 to read as follows:

§ 923.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. Committee members shall not serve more than three consecutive terms. Members who have served for three consecutive terms must leave the committee for at least one year before becoming eligible to serve again.

6. Revise § 923.25 to read as follows:

§ 923.25 Acceptance.

Any person prior to selection as a member or an alternate member of the committee shall qualify by filing with the Secretary a written acceptance of willingness to serve on the committee.

7. Amend § 923.41 by adding a new paragraph (c) to read as follows:

§ 923.41 Assessments.

* * * * *

(c) If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both, as may be established by the Secretary as recommended by the committee.

§ 923.52 [Amended]

8. In § 923.52, paragraph (a)(3) is amended by adding the word "markings," after the word "dimensions,".

9. Amend § 923.54 as follows

a. Remove the words "(including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 923.45)," in paragraph (b) and add a new sentence at the end of the section; and

b. Add a new sentence at the end of paragraph (c) to read as follows:

§ 923.54 Special purpose shipments.

* * * * *

(b) * * * Specified purposes under this section may include shipments of cherries for grading or packing to specified locations outside the production area and shipments to facilitate the conduct of marketing research and development projects established pursuant to § 923.45.

(c) * * * The committee may rescind or deny to any packing facility the special purpose shipment certificate if proof satisfactory to the committee is obtained that cherries shipped for the purpose stated in this section were handled contrary to the provisions of this section.

10. Amend § 923.64 by adding a new sentence at the beginning of paragraph (c) to read as follows:

§ 923.64 Termination.

* * * * *

(c) The Secretary shall conduct a referendum six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether continuance of this part is favored by growers. * * *

* * * * *

Dated: November 2, 2000.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 00–28660 Filed 11–8–00; 8:45 am]

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Federal Register

Thursday,

November 9, 2000

Part V

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement for the Tribal Youth Field-Initiated Research and Evaluation Program; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1305]

Program Announcement for the Tribal Youth Field-Initiated Research and Evaluation Program

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications for the Tribal Youth Field-Initiated Research and Evaluation Program to conduct research and evaluation projects focusing on youth from federally recognized tribes in the areas of alcohol and substance abuse, child abuse or neglect, or indigenous approaches to juvenile justice. Research findings will inform prevention and intervention efforts with offenders, high-risk youth, or juvenile victims of crime.

DATES: Applications must be received by January 23, 2001.

ADDRESSES: All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. Interested applicants can obtain the *OJJDP Application Kit* from the Juvenile Justice Clearinghouse at 800–638–8736. The *Application kit* is also available at OJJDP's Web site at *www.ojjdp.ncjrs.org/grants/about.html#kit.* (See "Format" in this program announcement for instructions on application standards.)

FOR FURTHER INFORMATION CONTACT: Phelan Wyrick, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, 202–353–9254. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this program is to generate high-quality research and evaluation focusing on youth from federally recognized tribes [1] that will inform prevention and intervention efforts with offenders, high-risk youth, or juvenile victims of crime. Research and evaluation will be supported in the specific areas of alcohol and substance abuse, child abuse or neglect, and indigenous approaches to juvenile justice. Further, OJJDP's Tribal Youth Field-Initiated Research and Evaluation Program is intended to support the development of innovative and culturally appropriate research methods and instruments for use with tribal youth.

Authority

The Fiscal Year 2000 Consolidated Appropriations Act, November 17, 1999 (Pub. L. 106–113), authorized the Tribal Youth Program (TYP), providing $12.5 million to OJJDP to support and enhance tribal comprehensive delinquency prevention and control activities and for tribal juvenile justice system improvement. Ten percent of the funds appropriated for TYP is set aside to support program-related research, evaluation, and statistics. Of that total, $500,000 is being made available for field-initiated research and evaluation.

Background

TYP funds support a joint U.S. Department of Justice (DOJ) and U.S. Department of the Interior (DOI) Indian Country Law Enforcement Initiative. The purpose of the Initiative is to address the compelling need to improve the administration of tribal criminal and juvenile justice. OJJDP has been charged with sponsoring juvenile justice research, evaluation, and statistics in this effort.

In general, OJJDP funds research activities that derive from express congressional direction or address specified statutory priority areas. However, it is clear that many creative and important research ideas deserving support originate outside the Federal Government. The Tribal Youth Field-Initiated Research and Evaluation Program allows OJJDP to provide flexible funding for innovative and rigorous research that supports TYP and the Indian Country Law Enforcement Initiative.

At the beginning of the 21st century, the tribal population faces myriad challenges. Roughly 30 percent of all tribal members and more than 50 percent of those on reservations live below the poverty level (U.S. Census Bureau, 1993). The median age of American Indians, Eskimos, and Aleuts is estimated to be under 27 years, compared with the median age for all races, estimated at about 35 years (U.S. Census Bureau, 2000). Yet tribal youth have few opportunities for social, educational, or vocational development. Findings from the Bureau of Justice Statistics (BJS) 1999 report *American Indians and Crime* highlight several critical issues for tribal youth:

- Rates of violent victimization in every age group are higher among American Indians [2] than among all other races.
- In 1995, American Indians had the highest rate of abuse or neglect of children under age 15 of any racial or ethnic group, and they experienced the greatest increase in this rate between 1992 and 1995.
- American Indians under age 18 are arrested for alcohol-related violations at a rate twice the national average.

These findings only begin to express the difficulties faced by tribal youth and communities, yet they clearly demonstrate the need for effective prevention and intervention approaches with offenders, high-risk youth, and juvenile victims of crime. OJJDP encourages the pursuit of new avenues of inquiry and innovative approaches to the problem of tribal juvenile delinquency. Support for innovative programming for Indian tribes is a priority objective under OJJDP's Tribal Youth Program.

Goals

The goal of this field-initiated research and evaluation program is to foster original, rigorous, and scientific research focusing on tribal youth populations in one or more of the following areas: Alcohol and substance abuse, child abuse or neglect, or indigenous approaches to juvenile justice. Research under this program will have direct practical implications for improving juvenile justice policy and practice.

Objectives

- Conceptualize and investigate research questions dealing specifically with alcohol and substance abuse, child abuse or neglect, or indigenous approaches to juvenile justice for tribal youth.
- Develop data collection approaches that are both scientifically rigorous and culturally appropriate.
- Expand and validate hypotheses on juvenile delinquency as they relate to tribal youth.
- Develop knowledge that will inform new hypotheses, techniques, or approaches to improve tribal juvenile justice and delinquency prevention programming.

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[1] Federally recognized Indian tribes include Alaska Native tribal governments. Under current law (Fiscal Year 2000 Consolidated Appropriations Act), the term "Indian tribes," "tribal," or "tribe(s)" means: "any Indian tribe, band, nation or other organized group or community, including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act * * * , which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

[2] The BJS report includes Alaska Natives and Aleuts under the term "American Indian."

Program Strategy [L1]

All too frequently, studies addressing tribal juvenile justice and delinquency prevention reflect limited knowledge of local cultures and indigenous justice systems. To address this gap, the Office of Justice Programs has sought guidance from tribal practitioners and researchers around the country on such issues as tribal crime and justice research, Alaskan tribal justice policies and practices, youth gangs, and suicide among tribal youth. Research recommendations that emerged from these consultations include the following: (1) Investigators should make greater efforts to involve indigenous people in the design and implementation of their research, (2) research findings should have clear practical implications for the community in which the study was conducted and for tribal communities in general, and (3) methods of inquiry should be based on and sensitive to local customs and values.

These recommendations apply to projects funded under the Tribal Youth Field-Initiated Research and Evaluation Program. Thus, applications submitted under this program should reflect efforts to involve tribal members in the design and implementation of any research or evaluation to be conducted. Projects should use culturally appropriate methods of inquiry and should offer practical implications with relevance to both the local community and broader audiences. OJJDP expects to use the results of these projects to provide empirically based guidance regarding tribal juvenile justice and delinquency prevention policies and practices.

Tribal Support

Applicants must demonstrate that they will be able to conduct the proposed research or evaluation with appropriate tribal approval. While it is not necessary to have a tribal resolution in support of this application, such a resolution may be necessary before the project begins. Applications must include a memorandum of understanding (MOU) or letter of support from at least one tribal leader with authority related to the proposed research or program evaluation (for example, a tribal council member or a program administrator). The MOU(s) or letter(s) should be included in appendix C of the application.

Special Considerations for Program Evaluations

Funding available through this solicitation is intended to support research and program evaluation efforts only. Applications proposing program evaluations should not request funds for service delivery, program materials, facility costs, or any other programmatic expenses that are not directly related to the evaluation. Further, because of the time and difficulty involved in launching youth service programs, it is strongly recommended that evaluations address programs that are already in place and operational.

Products

Proposals should contain a description of all products that will originate from the project. At a minimum, each grantee will be required to produce a final report that provides an overview of the research project. This overview should contain the following: (1) The theory and hypotheses guiding the work, (2) a description of the research or evaluation methods, (3) a full accounting of research and evaluation results, (4) practical or policy implications of the results, and (5) recommendations for future study. Grantees should indicate in their final report how their work will contribute to defining and/or implementing best practices in the field of juvenile justice for the target population. This final report should be publishable as an OJJDP research report. Applicants are also strongly encouraged to consider submitting their results for publication in a refereed journal.

Applicants must also indicate their willingness to provide at least one additional report suitable for publication as an OJJDP Bulletin or Fact Sheet. This report generally consists of excerpts or a summary of the final report and should be completed within 60 days of the grant's closing date.

Eligibility Requirements

OJJDP invites applications from public and private agencies, organizations, institutions, federally recognized tribes, and individuals, or any combination of the above. Private, for-profit organizations must agree to waive any profit or fee. In the case of joint applications, one applicant must be clearly indicated as primary (for correspondence and award purposes) and the other(s) listed as coapplicant(s). OJJDP encourages collaborative relationships among researchers, practitioners, and tribal entities. Collaborative applications with programs currently receiving TYP funding are encouraged. If the research is of a collaborative nature, written assurances of participation from each of the collaborating entities should be provided. Similarly, when specific programs or agencies are the subject of an applicant's research or evaluation, the application should include letters of commitment or cooperation from the relevant program or agency. Applicants are encouraged to identify existing or potential funding partners for the proposed work and indicate whether the proposed project has been submitted to any other funding sources.

Selection Criteria

Applications will be evaluated and rated by a peer review panel according to the criteria outlined below. In addition, the extent to which the project narrative makes clear and logical connections among the components listed below will be considered in assessing a project's merits.

Problem(s) To Be Addressed (20 points)

The proposed research will be judged on its ability to contribute to knowledge and practice in the field of juvenile justice and delinquency prevention. Applicants must include in the project narrative a clear statement of the research questions to be addressed. Applicants should discuss how previous research supports and shapes these questions and should identify the relevance of these questions for the field of juvenile justice and for tribal youth.

Goals and Objectives (10 points)

The application must include project goals and objectives that are clearly stated and relevant to the field of juvenile justice. Goals should reflect the mission of the project and they should derive directly from the statement of problems to be addressed. Objectives should consist of clearly defined, realistic, and measurable tasks and outcomes that will enable the applicant to achieve the goals of the project. Objectives should be framed to answer the proposed research questions.

Project Design (40 points)

The application should include a detailed description of the proposed project design and research or evaluation methods. Design elements should follow directly from the project's goals and objectives. The data to be collected and/or analyzed should clearly support the project's goals and objectives. Any instruments or data to be used should be identified and discussed with regard to validity and cultural sensitivity to the target population.

The application must include a timeline that indicates when specific tasks will be initiated and completed. The timeline should be referenced as appropriate in the narrative but should be placed in appendix A of the application.

Program evaluation applications should include enough descriptive program information in this section to make the evaluation design comprehensible. However, more detailed program information may be necessary to assess the quality of the application. This should be included as necessary in appendix D.

Management and Organizational Capability (20 points)

Applicants must demonstrate that they have experience or ability related to the type of research or evaluation being proposed. This includes knowledge of juvenile justice issues specific to tribal youth and evidence of the applicant's ability to work collaboratively with tribal juvenile justice system practitioners, service providers, or tribal members. This section must include the names of responsible individuals and key consultants, their time commitments, and their major tasks. In particular, applicants must ensure that the tasks delineated in the project timeline (see "Project Design" above) are adequately staffed. Résumés for key staff members should be included in appendix B.

Applicants must demonstrate organizational capacity and the existence of a management structure that will support the achievement of the project's goals and objectives in an efficient and cost-effective manner. Applicants should include a description of any similar projects undertaken previously. Memorandums of cooperation or appropriate letters of support from tribal leaders must be included in appendix C.

Budget (10 points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost-effective in relation to the activities to be undertaken. All budgeted costs should be directly related to the achievement of project goals and objectives. A brief budget narrative should be included in this section. As stated above, the budget should not include support for service delivery or any other programmatic expenses that are unrelated to research or evaluation.

Format

Applications must include a program narrative of no more than 30 pages. The page limit does not include the budget narrative, appendixes, application forms, or assurances. At the end of the program narrative, applicants must indicate the author(s) responsible for each of the narrative sections. Appendix A should contain the project's timeline with dates for initiation and completion of critical project tasks. Appendix B should contain the résumés for the principal investigator and key staff members. Appendix C should include all necessary letters of cooperation or support. Appendix D should include any additional program descriptions necessary to assess the quality of proposed program evaluation projects.

The narrative portion of the application must be submitted on 8½- by 11-inch paper using a standard 12-point font. The application should be double spaced and printed on one side of the paper only. The narrative should be preceded by an abstract with a maximum length of 300 words.

These requirements are necessary to maintain a fair and uniform set of standards among all applicants. If the application fails to conform to these standards, it will not be eligible for consideration.

Award Period

This program will be funded for a single budget and project period not to exceed 2 years.

Award Amount

Up to $500,000 is available for this program of field-initiated research and evaluation. Individual grant amounts, which will be subject to negotiation, may range from $100,000 to $200,000 per project.

Confidentiality and Human Subjects

U.S. Department of Justice regulations require that projects involving research or statistics must maintain the confidentiality of information identifiable to a private person and that human research subjects must be protected from unreasonable risks and properly informed of the potential harms and benefits from their participation in research. Applicants must comply with the confidentiality requirements of 42 U.S.C. 3789g and 28 CFR part 22 by submitting a Privacy Certificate in accordance with 28 CFR 22.23 as part of the application package. (See appendix B, "Privacy Certificate Guidelines and Statement," in the *OJJDP Application Kit*.)

If the project involves research using human subjects, the applicant must comply with Department of Justice regulations at 28 CFR part 46. This part generally requires that an Institutional Review Board (IRB) review and approve such projects unless the project is determined to be exempt from the regulatory requirements. IRB review is not required prior to submission of the application. However, if an award is made and the project involves research using human subjects, OJJDP will place a special condition on the award requiring that the project be approved by an appropriate IRB before Federal funds can be expended on activities involving human research subjects. Applicants should include plans for IRB review, where applicable, in the project timeline submitted with the proposal.

As sovereign nations, Indian tribes may have specific requirements for confidentiality and approval of research and evaluation projects. Tribal policies and procedures for reviewing and approving research apply to this program and must be met before Federal funds can be expended on activities involving human research subjects. Tribal review and approval should also be considered in the project timeline submitted with the proposal.

Catalog of Federal Domestic Assistance (CFDA) Number

The CFDA number, required on Standard Form 424, "Application for Federal Assistance," is 16.731. Standard Form 424 is included in the *OJJDP Application Kit*, which can be obtained by contacting the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org. The *Application Kit* is also available online at www.ojjdp.ncjrs.org/grants/about.html#kit.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice is requesting applicants to provide information on the following: (1) Active Federal grant awards supporting this project or related efforts, including other awards from the Department of Justice; (2) any pending applications for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) and (2) with the funding requested in this application. For each Federal award, applicants must include the program or project title, the Federal granting agency, the amount of the award, and a brief description of its purpose.

The term "related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (i.e., the proposed project would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (e.g., to implement a planning effort funded by other Federal monies or to provide a substance abuse treatment or educational component within an existing juvenile justice project).
- Services of some kind (e.g., technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535.

Note: In the lower left-hand corner of the envelope, the applicant must clearly write "Tribal Youth Field-Initiated Research and Evaluation Program."

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on January 23, 2001.

Contact

For further information, contact Phelan Wyrick, Program Manager, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, at 202–353–9254. Alternatively, e-mail inquiries can be sent to wyrickp@ojp.usdoj.gov.

References

Bureau of Justice Statistics. 1999. *American Indians and Crime.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Dated: October 31, 2000.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–28763 Filed 11–8–00; 8:45 am]

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  - Hazardous waste combustors
    - Clarification and technical corrections; published 11-9-00
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
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    - Exclusions; comments due by 11-13-00; published 9-27-00

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- Tax shelter rules; modification; cross-reference; comments due by 11-14-00; published 8-16-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 468/P.L. 106–431

Saint Helena Island National Scenic Area Act (Nov. 6, 2000; 114 Stat. 1905)

H.R. 1725/P.L. 106–432

Miwaleta Park Expansion Act (Nov. 6, 2000; 114 Stat. 1908)

H.R. 3218/P.L. 106–433

Social Security Number Confidentiality Act of 2000 (Nov. 6, 2000; 114 Stat. 1910)

H.R. 3657/P.L. 106–434

To provide for the conveyance of a small parcel of public domain land in the San Bernardino National Forest in the State of California, and for other purposes. (Nov. 6, 2000; 114 Stat. 1912)

H.R. 3679/P.L. 106–435

2002 Winter Olympic Commemorative Coin Act (Nov. 6, 2000; 114 Stat. 1916)

H.R. 4315/P.L. 106–436

To designate the facility of the United States Postal Service located at 3695 Green Road in Beachwood, Ohio, as the "Larry Small Post Office Building". (Nov. 6, 2000; 114 Stat. 1919)

H.R. 4404/P.L. 106–437

To permit the payment of medical expenses incurred by the United States Park Police in the performance of duty to be made directly by the National Park Service, to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision when required by State law, and for other purposes. (Nov. 6, 2000; 114 Stat. 1920)

H.R. 4450/P.L. 106–438

To designate the facility of the United States Postal Service located at 900 East Fayette Street in Baltimore, Maryland, as the "Judge Harry Augustus Cole Post Office Building". (Nov. 6, 2000; 114 Stat. 1922)

H.R. 4451/P.L. 106–439

To designate the facility of the United States Postal Service located at 1001 Frederick Road in Baltimore, Maryland, as the "Frederick L. Dewberry, Jr. Post Office Building". (Nov. 6, 2000; 114 Stat. 1923)

H.R. 4625/P.L. 106–440

To designate the facility of the United States Postal Service located at 2108 East 38th Street in Erie, Pennsylvania, as the "Gertrude A. Barber Post Office Building". (Nov. 6, 2000; 114 Stat. 1924)

H.R. 4786/P.L. 106–441

To designate the facility of the United States Postal Service located at 110 Postal Way in Carrollton, Georgia, as the "Samuel P. Roberts Post Office Building". (Nov. 6, 2000; 114 Stat. 1925)

H.R. 4957/P.L. 106–442

To amend the Omnibus Parks and Public Lands Management Act of 1996 to extend the legislative authority for the Black Patriots Foundation to establish a commemorative work. (Nov. 6, 2000; 114 Stat. 1926)

H.R. 5083/P.L. 106–443

To extend the authority of the Los Angeles Unified School District to use certain park lands in the City of South Gate, California, which were acquired with amounts provided from the land and water conservation fund, for elementary school purposes. (Nov. 6, 2000; 114 Stat. 1927)

H.R. 5157/P.L. 106–444

Freedmen's Bureau Records Preservation Act of 2000 (Nov. 6, 2000; 114 Stat. 1929)

H.R. 5273/P.L. 106–445

United States Mint Numismatic Coin Clarification Act of 2000 (Nov. 6, 2000; 114 Stat. 1931)

H.R. 5314/P.L. 106–446

To amend title 10, United States Code, to facilitate the adoption of retired military working dogs by law enforcement agencies, former handlers of these dogs, and other persons capable of caring for these dogs. (Nov. 6, 2000; 114 Stat. 1932)

S. 614/P.L. 106–447

Indian Tribal Regulatory Reform and Business Development Act of 2000 (Nov. 6, 2000; 114 Stat. 1934)

S. 2812/P.L. 106–448

To amend the Immigration and Nationality Act to provide a waiver of the oath of renunciation and allegiance for naturalization of aliens having certain disabilities. (Nov. 6, 2000; 114 Stat. 1939)

S. 3062/P.L. 106–449

To modify the date on which the Mayor of the District of Columbia submits a performance accountability plan to Congress, and for other purposes. (Nov. 6, 2000; 114 Stat. 1940)

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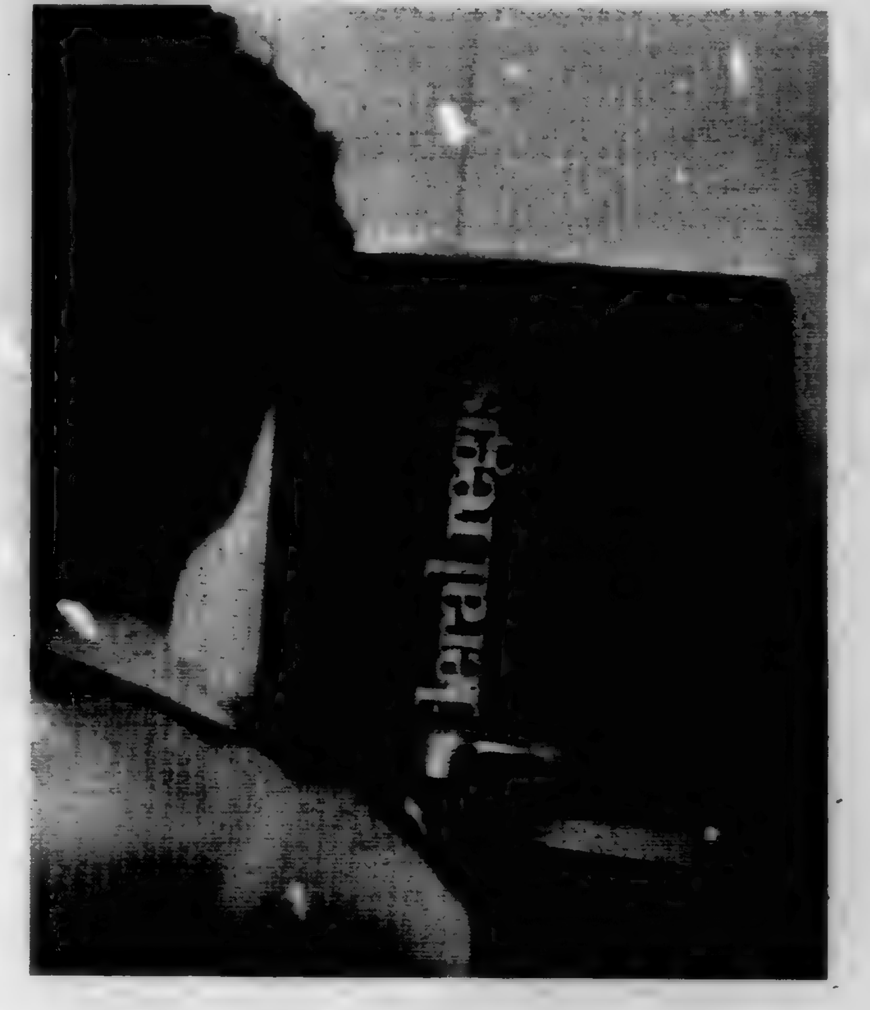

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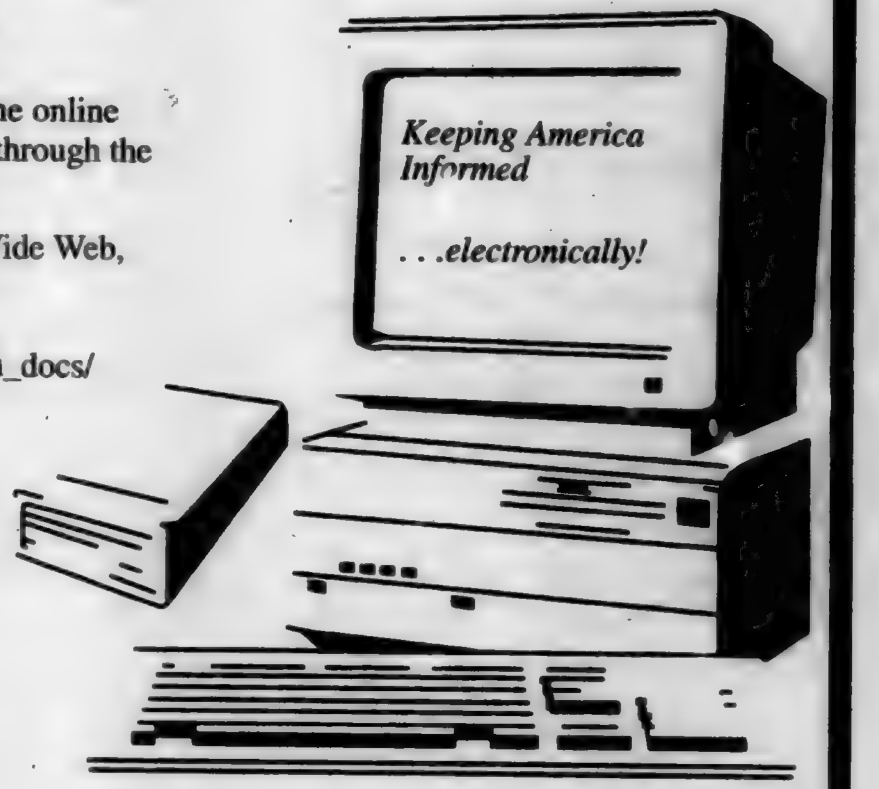

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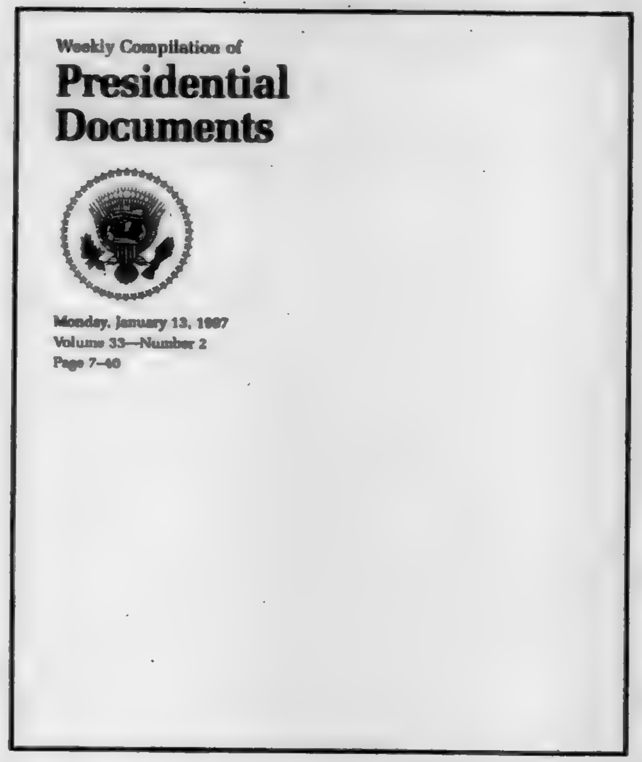

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Presidential Documents

Title 3—

The President

Proclamation 7371 of November 7, 2000

National Adoption Month, 2000

By the President of the United States of America

A Proclamation

Families are the cornerstone of our Nation. Yet, today, tens of thousands of America's children are living within our child welfare system, without the sustained love and care of permanent families. For many of these children, often shuttled from one living situation to another, adoption opens the door to loving parents and permanent homes, where they can put down roots and learn what it means to be part of a safe, stable family. Adoption gives children who have been orphaned, abandoned, or abused a precious second chance at happiness; a chance to love and be loved and to reach their full potential in a secure, supportive environment.

While foster care offers children a safe temporary haven, adoption allows children to have the permanent homes they deserve. That is why increasing the chances of adoption for children in the foster care system has been one of my Administration's chief goals. Over the last 8 years, we have worked with the Congress to craft legislation that makes it easier, faster, and more affordable for parents to adopt children. Adoptive parents—like all new parents—can now take time off to care for their newly adopted children without fear of losing their jobs. We have ensured health coverage for adopted children with special needs, barred discrimination and delays of adoptions on the basis of race or ethnicity, provided tax cuts to families adopting children, and offered States financial incentives to move children more rapidly from foster care into the permanent homes of loving families.

We are beginning to see dramatic results from these efforts. Last year alone, 46,000 foster children were adopted—an increase of nearly 65 percent since 1996. All 50 States, as well as the District of Columbia and Puerto Rico, have succeeded in increasing the number of children adopted from their child welfare systems. This puts us well on the way to meeting my goal of doubling the annual number of adoptions from 28,000 in 1996 to 56,000 in 2002.

Despite our efforts, nearly 20,000 18-year-olds still leave foster care each year without the emotional, social, and financial support that adoptive families provide. To help them make the challenging transition to successful, independent adulthood, I signed the Foster Care Independence Act last year. This legislation provides young people who are growing too old for the foster care system with better educational opportunities and access to health care, training, housing assistance, counseling, and other services.

As we observe National Adoption Month, we should take pride in our progress, but realize that there is more work to be done. Let us recommit ourselves to giving our Nation's most vulnerable children what every child deserves and needs—a safe, stable home and a loving family. And let us also give thanks for the many generous and compassionate families who, through adoption, have opened their hearts and homes and changed a child's life forever.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2000 as National

Adoption Month. I urge all Americans to observe this month with appropriate programs and activities to honor adoptive families and to participate in efforts to find permanent, loving homes for waiting children.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of November, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–29089
Filed 11–09–00; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 65, No. 219
Monday, November 13, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1209

Practices and Procedures for Appeals and Stay Requests of Personnel Actions Allegedly Based on Whistleblowing

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure in this part to permit an appellant who files a whistleblower appeal with MSPB after first seeking corrective action from the Office of Special Counsel (OSC) to satisfy certain requirements for the information to be included in the appeal by filing a copy of *Part 2: Reprisal for Whistleblowing* of the complaint form submitted to OSC, Form OSC–11 *(Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity)*, as revised August 2000. On October 31, 2000, OSC amended its rules to require that, effective December 1, 2000, complaints of prohibited personnel practices or other prohibited activity (other than an alleged Hatch Act violation) be submitted on Form OSC–11. The amendment to the Board's rules is intended to assist appellants who file whistleblower appeals after first seeking corrective action from the Special Counsel to provide the information necessary for the Board to determine whether the appellant has satisfied the requirement to exhaust OSC procedures prior to filing with the Board.

EFFECTIVE DATE: November 13, 2000.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: On October 31, 2000, the Office of Special Counsel amended its rules at 5 CFR 1800.1, effective December 1, 2000, to require an individual who files a complaint of a prohibited personnel practice or other prohibited activity (other than an alleged Hatch Act violation) to complete and submit Form OSC–11, *Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity* (65 FR 64881). OSC revised the complaint form in August 2000 to group details of whistleblower reprisal allegations in a separate section of the form. That section, designated as *Part 2: Reprisal for Whistleblowing,* requires the complainant to describe each whistleblowing disclosure and to identify when and to whom the disclosure was made, the personnel action that was taken or threatened because of the whistleblowing disclosure, and the date of any such action or threat. The form is available on the OSC Web site (www.osc.gov).

Under the Whistleblower Protection Act, a Federal employee, former employee, or applicant for employment may file an appeal with the Board challenging a personnel action that the individual believes was taken or threatened because of whistleblowing activity. If the individual seeks to challenge a personnel action that is not directly appealable to the Board under another law, rule, or regulation, however, he must first seek corrective action from the Special Counsel. Such an individual may file an individual right of action (IRA) appeal with the Board only if the Special Counsel declines to seek corrective action from the Board or does not inform the individual within 120 days of the filing of the complaint that corrective action will be sought. 5 U.S.C. 1214(a)(3), 5 U.S.C. 1221(a), 5 CFR 1209.2(b)(1), 5 CFR 1209.5(a).

An individual who may appeal a personnel action directly to the Board under another law, rule, or regulation may file his appeal with the Board and raise the allegation that the personnel action was based on whistleblowing as a part of that appeal. 5 U.S.C. 1221(b), 5 CFR 1209.2(b)(2). Alternatively, such an individual may first file a complaint with the Special Counsel and subsequently file an otherwise appealable action (OAA) appeal with the Board after exhausting OSC procedures. 5 CFR 1209.5(b); also see *Hartfield* v. *Department of Defense,* 70 M.S.P.R. 20 (1996).

The U.S. Court of Appeals for the Federal Circuit held in *Ward* v. *Merit Systems Protection Board,* 981 F.2d 521, 526–27 (Fed. Cir. 1992), that in an IRA appeal, the Board may consider only those matters raised by the appellant in the complaint to the Special Counsel. By providing the Board a copy of Part 2 of Form OSC–11, describing each whistleblowing reprisal claim, an appellant who first sought corrective action from the Special Counsel will help ensure that the Board has sufficient information to determine whether the appellant has satisfied the statutory requirement of exhausting the OSC procedures with respect to all matters raised before the Special Counsel before filing an appeal with the Board.

Therefore, the Board is amending its rule at 5 CFR 1209.6 by adding a new subsection (a)(6) to permit an appellant who files a whistleblower appeal with the Board after first seeking corrective action from the Special Counsel to satisfy the requirements of subsections (a)(3) through (a)(5) of that section by filing a copy of Part 2 of Form OSC–11, together with a copy of any continuation sheet with answers to Part 2 questions filed with OSC, and any supplement to the original complaint filed with OSC or completed by OSC and furnished to the appellant.

The Board is making two additional changes to reflect Board rulings that an appellant is protected by the Whistleblower Protection Act if a personnel action is taken against him because the agency believed he made whistleblowing disclosures (*Special Counsel* v. *Department of the Navy,* 46 M.S.P.R. 274 (1990)) or because of his close relationship to a whistleblower (*Duda* v. *Department of Veterans Affairs,* [illegible]1 M.S.P.R. 444 (1991)). In § 1209.6(a)(4), "the appellant's disclosure" is replaced by "each disclosure." In § 1209.6(a)(5)(ii), "the appellant's whistleblowing" is replaced by "the whistleblowing disclosure."

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1209

Administrative practice and procedure, Government employees.

Accordingly, the Board amends 5 CFR part 1209 as follows:

PART 1209—PRACTICES AND PROCEDURES FOR APPEALS AND STAY REQUESTS OF PERSONNEL ACTIONS ALLEGEDLY BASED ON WHISTLEBLOWING

1. The authority citation for part 1209 continues to read as follows:

Authority: 5 U.S.C. 1204, 1221, 2302(b)(8), and 7701.

2. Amend § 1209.6 at paragraph (a) by revising subparagraphs (a)(4) and (a)(5)(ii) and by adding new subparagraph (a)(6) to read as follows:

§ 1209.6 Content of appeal; right to hearing.

(a) * * *

(4) A description of each disclosure evidencing whistleblowing as defined in § 1209.4(b) of this part; and

(5) * * *

(ii) The personnel action was or will be based wholly or in part on the whistleblowing disclosure, as described in § 1209.4(b) of this part.

(6) An appellant who first sought corrective action from the Special Counsel may satisfy the requirements of paragraphs (a)(3) through (a)(5) of this section by filing with the appeal a copy of *Part 2: Reprisal For Whistleblowing* of the complaint form submitted to the Office of Special Counsel (Form OSC–11, *Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity*, Rev. 8/00), together with a copy of any continuation sheet with answers to Part 2 questions filed with the Office of Special Counsel, and any supplement to Part 2 of the original complaint filed with the Office of Special Counsel or completed by the Office of Special Counsel and furnished to the appellant.

* * * * *

Dated: November 6, 2000

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–28823 Filed 11–9–00; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1424

RIN 0560–AG16

Bioenergy Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is adopting as final the proposed rule published July 27, 2000, in the **Federal Register** to accelerate the development and use of bio-based technologies in stimulating the industrial use of agricultural commodities into bio-based fuels and products. CCC will make incentive cash payments to bioenergy producers who increase their purchases of eligible agricultural commodities, as compared to the corresponding period in the prior fiscal year (FY), and convert that commodity into increased bioenergy production.

EFFECTIVE DATE: This program will become effective December 1, 2000. The FY 2001 sign-up period will begin that day and will end December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Director, Warehouse and Inventory Division, FSA, United States Department of Agriculture (USDA), STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553, telephone (202) 720–2121 or e-mail address, Steve_Gill@wdc.fsa.usda.gov or Jim Goff at (202) 720–5396. Persons with disabilities who require alternative means of communication for regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be economically significant for the purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB). A summary of the cost-benefit assessment is included in the Background section explaining the actions this rule will take.

Small Business Regulatory Enforcement Fairness Act

This rule was determined to be Major under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Section 801 of SBREFA requires a 60-day delay for Congressional review before Major regulations can go into effect. However, section 808 of SBREFA allows an agency to promulgate a rule at such time as it determines necessary, notwithstanding the Congressional review required by section 801 of SBREFA, if the agency finds for good cause that it is impracticable, unnecessary, or contrary to the public purpose to delay the rule. It is hereby determined that delaying this rule would be contrary to the public interest and, accordingly, this rule is effective December 1, 2000.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the matter of this rule.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015 subpart V published at 48 FR 29115 (June 24, 1983).

Environmental Assessment

An environmental assessment has been completed and it has been determined that there will be no significant impact on the environment.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. All State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule. It will not effect agreements entered into prior to the effective date of the rule. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before bringing any action for judicial review.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this Rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of Government.

Unfunded Mandates Reform Act of 1995

This Rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA regulations.

Paperwork Reduction Act

The information collection reporting and recordkeeping requirements associated with this rulemaking have

been approved by OMB and assigned control number 0560-xxxx. A **Federal Register** notice for this information collection was published on July 27, 2000. No comments were received.

Background

To encourage bioenergy producers to expand agricultural markets by promoting increased bioenergy (ethanol and biodiesel) production, CCC, in accordance with Executive Order 13134, Developing and Promoting Biobased Products and Bioenergy, and the CCC Charter Act, will make incentive cash payments to bioenergy producers who increase their purchases of agricultural commodities over the previous fiscal year's (FY's) purchases and convert that commodity into increased ethanol and biodiesel production over previous FY ethanol and biodiesel production. This rule provides for payments on purchases of barley, corn, grain sorghum, oats, rice, wheat, soybeans, sunflower seed, canola, crambe, rapeseed, safflower, sesame seed, flaxseed, mustard seed, and cellulosic crops, such as switchgrass and short rotation trees, grown on farms, for the purpose of producing ethanol and or biodiesel used in either ethanol or biodiesel production.

Eligible bioenergy producers will receive incentive cash payments quarterly, based on the producer's total annual bioenergy production increase for the FY to date compared to the same time period in the previous FY. If, at the end of the fourth quarter, overpayments have been made, the bioenergy producer shall repay the overpayment plus interest from the date of the overpayment through the date of repayment to CCC. Eligible bioenergy producers with less than 65 million gallons annual production capacity from all facilities will receive a higher effective payment rate than bioenergy producers with 65 million gallons or more annual production capacity to increase the incentive for smaller plants and thereby further promote expansion of bioenergy production. A higher incentive is needed for smaller plants because, compared to larger plants, they tend to produce a more limited product range during refining, are less able to capture economies of scale, and may not have access to attractive risk management strategies.

Except for FY 2001, bioenergy producers will enter into annual agreements with CCC establishing their eligibility to receive program payments before September of the preceding FY. Once an agreement is entered into, eligible bioenergy producers will submit quarterly applications after the end of each quarter requesting payments for that quarter. For example, during January 2002, producers may request payments for the period beginning October 1, 2001 through December 31, 2001. CCC will make payments to eligible bioenergy producers within 30 calendar days of receiving a completed eligible application.

CCC will make available up to $150 million in FY 2001 and $150 million in FY 2002 for this program. Because payment requests could potentially exceed available program funding, producers will be required to complete an agreement during a sign-up period to be announced by CCC for each FY of the program. The agreement will include an estimate of increased production for the upcoming FY. The total estimated increase in production for the upcoming FY will be used to determine if payment requests will exceed funding. If so, a factor will be used to prorate payments to keep payments at or below the budgeted amount. Eligible producers (agreement holders) will submit applications for program payments after each FY quarter. A producer will enter into a single agreement covering all production facilities operated or planned to be operated during the applicable FY by the producer at sign-up. However, agreement holders must submit separate applications for each facility location each quarter once enrolled in the program. Applicable payments will be based on the total production increase from all facilities FY to date, reconciled each quarter, compared to the producer's production at all locations during the base period. Producers who anticipate having new or expanded production capacity on line during the FY applicable to the sign-up period should enroll that anticipated production increase in the program during sign-up.

Payments under the program will be based on the expected additional amount of agricultural commodities used by producers to produce additional energy. Interested parties will be required to sign up for the program and the total amount of expected claims will then be prorated, as needed, to match the available funding. Actual payments will be made on a quarterly basis by converting the extra fuel production to a gross extra commodity amount by using a factor set by CCC which estimates the amount of corn or other eligible commodity that was used to produce the increase in bioenergy. That figure will then be reduced to payable bushels or other unit of production. For smaller firms, as specified in the rule, payable bushels will be 1 bushel for every 2.5 gross bushels. For larger firms, it will be 1 bushel for every 3.5 gross bushels. Subject to the proration factor referred to above, a producer's payable bushels will be multiplied by a current (at the time) per bushel dollar amount to reach the payment amount. However, rising commodity prices could mean that funding is exhausted, despite the proration, before the end of the year. Should that happen, the agency will determine the manner in which it will resolve the competing claims but in no case will total payments exceed available funding. All participants will be required to sign an agreement that will set out the terms of the payment and the refund obligations that will apply if the additional commodity use levels are not obtained. The agreement will also set out whatever additional terms and conditions appear to be appropriate to assure that the program obtains its objectives. In all cases, the amount of the payment to which the producer remains eligible will be based on the increases in the energy produced for the year to date (as accounted for each quarter). Hence, changes in production could mean that payments received earlier in the year may have to be returned.

Bioenergy producers, to be eligible for this program, must meet additional requirements specific to the bioenergy fuel being produced. For example, ethanol producers must also be licensed by the Bureau of Alcohol, Tobacco, and Firearms (ATF) for fuel ethanol production.

Proposed Rule

A proposed rule addressing this matter was published in the **Federal Register** (65 FR 46115) on July 27, 2000. Comments from interested parties were due on or before August 28, 2000. A total of 123 comments were received from 6 different sectors as follows: three Government; 16 ethanol and biodiesel organizations; three Congressional; 17 industry (processors, plants, banks, accounting firms and cooperatives); 31 renderers; and 53 individuals. Comments submitted varied widely in support for the proposed rule. Forty-three supported the rule as written, while all 31 renderers were strongly opposed to the program unless substantial changes are made to include rendered animal by-products and recycled cooking oils as eligible for program payments. Most renderers mentioned in some way perceived unfairness because the grain commodities already are eligible for other USDA program benefits while renderers and recycled products are not eligible.

The proposed rule asked for comments on 8 specific questions. These questions and the responses to them are as follows:

1. Producers of What Forms of Bioenergy Should be Eligible for Program Payments?

Ethanol and biodiesel were included in the proposed rule.

Comments: The majority of comments (43) supported making payments to only ethanol and biodiesel producers. The remainder of commentators suggested various alternatives such as: focusing incentives on expansion of alternative fuels; transferring funds from farm level price support subsidies to programs such as this to refocus payments for crops used in bioenergy production; adding E–85 (a blend of 85 percent ethanol and 15 percent gasoline); limiting program to biodiesel and ethanol produced from domestic feed stocks; adding E-diesel (less than 5 percent additive and diesel fuel); changing the word gasoline in the definition of ethanol to denaturant; limiting biodiesel producers to commercial producers registered and in good standing with Environmental Protection Agency (EPA) under section 211(b) of the Clean Air Act Amendment of 1990.

Response: As supported by the majority of comments received, the program will only cover ethanol and biodiesel production in the US from commodities produced in the US. This has remained unchanged so that the effect of this program will not be diluted but will be confined to traditional uses of those commodities which could, otherwise, produce inventories of goods that would have to be stored at government expense. However, definitions of ethanol and biodiesel fuel have been broadened and requirements have been added to address comments received about E-diesel, the use of gasoline as a denaturant, and to assure that eligible biodiesel producers meet EPA regulatory requirements. No change was made regarding adding E–85 since payments will only be made on increased ethanol production and the percentage of blend with gasoline will not be a factor.

2. What Agricultural Commodities Used in Bioenergy Production Should be Included in the Program?

The proposed rule listed barley, corn, grain sorghum, oats, rice, wheat, soybeans, sunflower seed, canola, crambe, rapeseed, safflower, flaxseed, and mustard seed used in either ethanol or biodiesel production.

Comments: The majority of respondents were in favor of the proposed eligible commodities. However, we did receive comments favoring the inclusion of sugar and commodities for which there is another statutory program so that incentive payments for using that commodity in this Program will result in lower costs in other Programs in the form of loan deficiency payments (LDP's), forfeitures, storage costs, or other payments to farmers. We also received many (31) letters from renderers recommending the inclusion of animal fats and oils and certain recycled products of these fats and oils as eligible commodities in the Program. Additional items that were suggested to be added to the definition were as follows: tobacco, peanuts, cellulosic crops such as switchgrass, crop residues (such as corn stover), forest residue, non-recyclable cellulosic solid waste (i.e. waste paper), cotton waste, sustainable forest thinning material, soybean wax, and other biomass materials. One respondent was against including recycled and waste products as eligible commodities.

Response: In response CCC has decided to add cellulosic crops, such as switchgrass and short rotation trees, grown on farms for the purpose of producing ethanol or biodiesel to the eligible commodity definition. This change allows CCC to support crops with excellent long-run potential for increasing the Nation's supply of ethanol and biodiesel and are the basis for much of USDA's efforts under the President's Bioenergy Initiative and the Biomass Research and Development Act of 2000. While we have an interest in supporting a broad bioenergy industry, the addition of other items proposed needs further analysis and public comment. We plan to specifically request comments on adding animal fats and oils that are first used in ethanol and biodiesel production to this program. For the reasons given earlier, this rule will for the time being focus on field crops for which marketing assistance is provided and which are more customarily the focus of the use of agricultural products to produce ethanol and biodiesel fuel.

3. At What Plant Capacity Level Should Program Payment Rates Change to Account for Plant Efficiency Variances by Eligible Program Commodity?

The proposed rule suggested making larger payments to producers with less than 30 million gallon-per-year capacity than to plants with 30 million gallon or more capacity.

Comments: Several respondents indicated that, while the 30 million gallons per year limit has been the "traditional" definition of a "small" ethanol producer, time and technology have changed. One respondent stated, "In a country where there are at least five ethanol plants that can produce at least 100 million gallons per year, a 31 million gallon plant is by no means a large producer and should not be categorized as one for the sake of this program." Since 1990, the majority of the industry's growth has been in smaller, farmer-owned cooperatives. Today, many of these facilities are looking to expand their initial output to more than 30 million gallons per year to take advantage of plant efficiencies, economies of scale, and potential new market demand. The majority of respondents commenting in this area felt the level should be raised to 65 million gallons per year. We also had individual comments to: cap payments to plants with 150 million gallon-per-year production capacity; provide a reduced payment to firms with multiple facilities; and provide the smallest incentives to firms with largest capacities that also have other production.

Response: We agree with the majority of respondents and this rule provides for more advantageous payments to producers with less than 65 million gallons-per-year capacity than to producers with 65 million gallons or more capacity. This level appears to be a reasonable line of demarcation, based on the comments, between those producers who may need an extra incentive and those that do not. Under the terms of the rule, that extra incentive will, as indicated, mean that smaller firms will receive payment on a higher percentage of their extra purchases of agricultural commodities. As for capping payments at 150 million gallons per year capacity by producer or considering the number of other production sites, we believe neither would help accomplish the purpose of the program which is increased bioenergy production. In addition, by having a five percent payment limitation, we will restrict payments to very large producers so funding is available to more producers.

4. How Should Payment Rates Be Established, Especially for Commodities Without CCC Announced Terminal Market Prices?

The proposed rule limited payments to commodities with established CCC announced terminal prices.

Comments: A few respondents suggested: establishing a separate budget for biodiesel and ethanol; changing the time period used in

comparison to determine increase in production; and, structuring payments to allow plant construction or expansion. Individual respondents suggested: considering a flexible mechanism in adjusting payment formulas to maximize removal of commodities from markets; using daily prices by region or area for payments; establishing terminal market prices for those commodities without them or using an average of recent prices paid by the producers.

Response: While the suggestion that the time period for comparison be changed, there was no consensus what would be better and the vast majority of respondents recommended no change to the program. Therefore, the comparison time period remains FY compared to the prior FY. However, the formula has been adjusted from a quarterly comparison to FY to date as the FY progresses to level out payments between quarters and reduce the need for end of FY repayments. CCC considered the comments on structuring the payments to allow plant expansion and construction and concluded that the program as proposed met those goals in the short term. Since CCC cannot predict the amount of either ethanol or biodiesel production that will be covered by the program, we do not feel we can accurately establish a separate budget for ethanol versus biodiesel. The sign-up will decide how funding is divided between the two. Based on the limited comments received, no change has been made from the proposed rule in this area. However, since terminal market prices and county differentials are not available for cellulosic crops, such as switchgrass and short rotation trees, grown on farms for the purpose of producing ethanol and or biodiesel that have been added as eligible commodities, CCC will announce how payment rates will be established on these commodities after sign-up occurs and CCC knows payments will be applicable on the commodity.

5. When Payments Are Limited, How Should Payments Be Distributed?

The proposed rule asked for comments on how payments should be prorated in the event that the program should be oversubscribed in the sense that there might be more willing participants than the normal payment formulas and funding would allow. It was contemplated in that respect, however, that there would be a sign-up period so that all interested parties could make their interest known so that the amount of proration could be then adduced. The proposed rule suggested several methods for dealing with shortage in funding.

Comments: We received a variety of comments on how to distribute payments including: supported prorating payments; advance 90 percent of expected payments quarterly with final payments reflecting the balance due; limit the total dollars any one entity could receive; limit program to 30 million gallon-per-year capacity producers; issue payments on a first come first paid basis; and, limit payments to corporations with 125 million gallon-per-year capacity or less capacity for program participation.

Response: Based on comments received, we believe the procedure in the proposed rule is best. Therefore, there will be a sign-up period and a proration made on the basis of that sign up as otherwise there would be an overemphasis on early filings. As for limitations on payments to particular entities, while there is a desire to avoid over-concentration of the payment to one or several entities, it was felt that goal is met by setting, in the rule, a limit on the annual amount of program funding that could be received by a particular party.

6. Should the Payment Formulas Be Adjusted if There Is an Under Subscription of the Program, so as to, in Effect, Allow Payments at Higher Than the 100 Percent of Formula Level Contemplated in the Proposed Rule?

Comments: A few respondents stated the cap should be 100 percent. Other individual respondents stated that payments should be prorated provided all other criteria are met and a payment cap would not be necessary if bid offer system was used to establish payments.

Response: The payment "cap" will stay at 100 percent of formula amount since it appears for now to provide a sufficient incentive for increased production of energy resources using grains and other eligible agricultural commodities. A bid offer system is discussed below under "Change the way payments are established".

7. How Should Increases in Bioenergy Production be Established for the Various Commodities Receiving Program Payments?

The proposed rule compared ethanol and biodiesel production for the just completed FY quarter to the production from the same quarter in the prior FY.

Comments: Individual comments received in response to this question included: base program payments on the percentage increase in eligible domestic crop purchases and renewable energy production; proposed rule considers purchases and production from existing nonproducing plants as increases; payments should reflect changes in feedstock components and commodity prices based on volume and input cost of product.

Response: The final rule compares the producer's agricultural commodity energy production at all locations with that producer's production in the previous year at all locations. For the first quarter of the year, energy production will be compared with the production from the first quarter of the previous year. After that quarter, the comparison will be made as a running total. That is, for example, at the end of the third quarter, the payment will be based on the increase in bioenergy for all three quarters, not just the third quarter by itself. This will reduce the need for any producer repayments at the end of the FY. At the same time, it will encourage producers to immediately begin their process of increasing their use of agricultural commodities and increasing their energy production. We concur with the comment that this considers purchases and production from existing nonproducing plants as increases and believe that meets the program's goal of increasing bioenergy production. We also believe that the procedure for establishing program payments addresses the other comments.

8. What are the Expected Impacts of This Program on Agricultural Commodity Prices, Fossil Fuel Energy Prices, Farm Income, Bioenergy Production and Prices, and International Trade in Agricultural and Energy Products?

Comments: The majority of respondents that commented (54) stated the program would have a positive impact in these areas. One respondent mentioned the program would provide a market for aflatoxin corn.

A large group of respondents (33) felt the program would have a negative impact in these areas. A couple of respondents stated the program would have a minimal impact in these areas. Specific single negative comments stated the program would: pay incentives for capacity and demand that would have occurred anyway; encourage the building of small plants that may not be financially viable; have a side effect of restraining bioenergy production; discourage construction of new plants or put recently completed plants at a disadvantage; attempt to reward production increases but instead creates uncertainty; and, result in some ethanol and biodiesel production facilities not receiving payments since they are already at 100 percent production capacity. One respondent advised against the adoption of the proposed rule as currently written.

Several respondents suggested changing the program as follows: emphasize the soy-based biodiesel industry; increase program's life-span to 3 to 6 years; issue Payment-in-Kind (PIK) certificates instead of cash payments; target low-income areas of the county; and, use a per-capita basis for allocating funds.

Additionally some individual respondents suggested that USDA instead of proceeding with the program should: conduct an assessment of impacts on country grain elevators and feed mills before proceeding; establish a strategic corn reserve to remove corn from the market during periods of low prices; and, establish a limited farmer-stored reserve program dedicated to bioenergy feed stock.

Response: We agree with the positive comments received and agree that ethanol production does provide a market for aflatoxin corn. The negative comments question the wisdom of the program as it was proposed. USDA has in that respect conducted what it believes to be a thorough evaluation of the program and believes that these incentives will in fact produce appropriate and needed increases in energy production and commodity use. Should the operation of the program have any of the negative impacts cited by respondents or other negative impacts, a reassessment will be made and changes will be made as needed. We believe the program will have a positive impact and therefore it is being implemented. Current available funding does not allow CCC to extent the guaranteed life of the program beyond FY 2002. CCC does not have the inventory needed to support changing payments from cash to PIK. Changing the program to target low-income areas or base payments on a per-capita basis would be counter to the program's goal of increasing bioenergy production as much as possible. Establishing a strategic corn reserve and or a limited farmer-stored reserve program are outside the scope of this rule.

In addition to comments on the eight specific questions above, comments were also received on the following issues:

1. Unspent Funding Allocations for FY 2000

Comments: A few respondents wanted CCC to commit the $100 million for FY 2000 retroactively.

Response: Originally it was hoped that this program would be operated in FY 2000 but that has not proved to be possible. Any retroactive payments would, at this time, not be an incentive payment and thus would not be consistent with the nature of this program.

2. Change Payment Restriction

Under the proposed rule no person could receive more than 10 percent of the total funding available under the program.

Comments: Several respondents supported some level of payment limitation. However, a number of respondents favored changes that would increase the number of firms that could receive payments. Comments made by these respondents included: limit gross amount of funding for each large producer to an equitable percent of funding; lower the payment limitation to 8 percent; lower payment limitation to 5 percent; and change payment limitation to per corporation capacity of 125 million gallons per year ethanol. Additionally comments received suggested: having a separate biodiesel payment limitation of 30 percent; limiting payments by single company; and not having a payment limitations.

Response: In order to increase the number of producers that can enroll in the program, the payment restriction has been lowered to five percent of total funding so payments will be available to a greater number of producers, and the rule has been clarified that the restriction is by producer for all plants. Without sign-up data and long range commodity price forecasts, we cannot predict what limitation the five percent will establish on producer size or justify establishing a separate limitation for biodiesel producers.

3. Records Inspection

Comments: Inividual respondents commented that production increases should be verifiable by documentation and record retention should be reduced to only 3 years.

Response: We agree with both comments. Record retention has been reduced to 3 years in section 1424.11(b) and the rule requires documentation be kept to support all program payments.

4. Change the way Payments Are Established

Comments: One respondent suggested that a reverse auction similar to the Conservation Reserve Program should be used so producers would bid on payments per unit of increased bioenergy production. Another respondent questioned whether the program should expand the use of terminal market prices.

Response: We believe a reverse auction would favor large plants at the expense of others and would be contrary to the goals of the program to encourage greater production among all producers and to encourage diversity in production by providing greater incentives to smaller plants. While one respondent questioned using terminal market prices in this program, we consider using them whenever possible as the best option for the program.

5. Change Payment Amounts

Comments: A respondent suggested basing payment on grain use instead of increased bioenergy production.

Response: The primary goal of the program is to increase bioenergy production and, as structured, payments will also reflect increased commodity use.

6. Clarify Definition of Producer

Comments: A respondent asked that we clarify the difference between producer and facility.

Response: We agree that there was ambiguity in the proposed rule between these two terms. The definition of producer has been modified to say that a producer is a legal entity (individual, partnership, cooperative, or corporation, etc) who is a producer of bioenergy. Clarification has also been made throughout this rule that payment restrictions apply by producer and payments.

Changes From Proposed Rule

CCC is adopting as final the proposed rule published July 27, 2000, in the **Federal Register** with the following changes. First, most of the major payment provisions, for purposes of clarity, have been concentrated in one section rather than spread throughout the regulation, including that portion of the regulation that contains definitions. In that connection, the provision allowing smaller producers to be paid on a higher percentage of the extra units of the agricultural commodity they use for extra energy production has been changed so that the dividing line between small and large producers has been raised from a 30 million gallon per year energy production level to a 65 million gallons per year production level. Also the regulations now reflect that quality factors can be used in determining per unit payment rates for the payable units of the commodity. Also, the proration provision has been amended to correct an error in the original formula and to assure that the proration is as accurate as possible. In that respect as well, terms have been adjusted and reorganized. In addition, the amended rule, in order to help assure real increases in the use of agricultural commodities to produce fuel, provides that in accounting for production the producer must aggregate production by all persons (not just the producer) at all locations in which the producer had an interest now (in the current FY) or in the previous FY, irrespective of whether the producer still has such an interest in that facility. This will avoid situations in which there could otherwise be an artificial increase due to a mere reorganization or change of ownership, or shift of production from one plant to another. CCC will be able to grant exemptions to that requirement should a need arise. Also, the rule provides that CCC may, in the program agreement, require that the producer certify the amount of the actual increased use of agricultural commodities for energy production at all such locations for the relevant period and make an adjustment in the formulaic payments that would otherwise be made to the producer if there is a difference between that certification and the amount of increased commodity use as calculated under the formula. A provision has also been added which would allow persons who acquire facilities under contract to petition CCC to be permitted to succeed to the existing contract. Still further, a provision has been added to specify that a contract may be terminated if the contracting party fails to retain the ability to assure that the contract obligations and responsibilities will be met over the full life of the contract. of payment to provide greater clarity. Further:

(a) In § 1424.3 the following definitions are changed:

(1) The definition of *biodiesel producer* will require commercial biodiesel producers to also be registered and in good standing with EPA under the Clean Air Act Amendment of 1990, Title II, Section 211(b).

(2) The definition of *eligible commodity* has been expanded to include sesame seed and cellulosic crops, such as switchgrass and short rotation trees, grown on farms for the purpose of producing ethanol and or biodiesel.

(3) The definition of *ethanol* has been changed to state that it "has been rendered unfit for beverage use" instead of composed of 95 percent ethanol and 5 percent gasoline.

(4) The definition of *producer* has been clarified to be "a legal entity (individual, partnership, cooperative, or corporation, etc) who is a commercial producer of bioenergy making application under this program."

(b) 1424.4(a) has been changed to indicate that Agreement forms may be also obtained via the internet.

(c) 1424.4(b) has been changed to indicate that Form CCC–850, Bioenergy Program Agreement, must be submitted to KCCO, Contract Reconciliation Division, STOP 8758, P.O. Box 419205, Kansas City, Missouri 64141–6205;

(d) 1424.5(b) has been changed to indicate Applications are also available via the internet.

(e) 1424.5(c) has been changed to remove the requirement that applications must be submitted within 30 days of the end of a quarter. It now just states that applications must be submitted by 30 days after the end of the applicable FY.

(f) 1424.8(a) has been changed to indicate that unused funds for any FY will not be reallocated and, therefore, will not be carried over.

(g) 1424.8(b) has been changed to state that reconciliations will be year-to-date for each quarter of the FY.

(h) 1424.8(e) has been changed to indicate that no producer may receive more than five percent of the available funding for this program and determinations of payment eligibility shall take that limit into account.

(i) 1424.9 has been changed to indicate that once an eligible producer has submitted an Agreement, Form CCC–850, that producer shall file information for each bioenergy producing facility quarterly through the end of the applicable FY as specified by CCC.

(j) 1424.11 b has been changed to require record retention for 3 years (instead of 6) from the payment date.

Cost-Benefit Assessment

The program is projected to provide significant benefits for the agricultural sector. It will expand existing demand for corn and other grains used in ethanol production, and create new markets for oilseed crops, particularly soybeans, through the stimulation of biodiesel production. Impacts of the program were estimated under two scenarios, a low-impact scenario with no other significant policy changes that would increase biofuels demand, and a high-impact scenario, with other policy and program changes in addition to the program that collectively would substantially increase demand for ethanol and biodiesel. Incentive payments during FYs 2001–2002 for the program are expected to range from about $57 million under a low-impact scenario to about $164.2 million under a high-impact scenario.

Under the low-impact scenario, average farm prices for corn are projected to increase by 1 cent per bushel in marketing year 2000/01 and increase by 2 cents per bushel in 2001/02. For soybeans, average farm prices are projected to remain unchanged in marketing year 2000/01 and increase by 1 cent per bushel in marketing year 2001/02. CCC outlays (including direct payments under the program) for feed grains and soybeans are projected to decrease by $258 million during FYs 2001–2002.

Under the high-impact scenario, average farm prices for corn are projected to increase by 1 and 4 cents per bushel in marketing years 2000/01 and 2001/02 respectively. Soybean farm prices are projected to increase by 1 and 4 cent per bushel in marketing years 2000/01 and 2001/02, respectively. CCC outlays (including direct payments under the program) for feed grains and soybeans are projected to decrease by $355 million during FYs 2000–2002.

Under the low-impact scenario, ethanol production is projected to reach about 1.730 billion gallons by 2002, about 95 million gallons higher than the baseline level. Biodiesel fuel production is projected to reach about 7 million gallons, 5 million gallons above base levels. Under the high-impact scenario, ethanol production is projected to reach about 1.940 billion gallons by 2002, or about 305 million gallons above baseline levels. Biodiesel fuel production is projected to reach about 14 million gallons, 12 million gallons above the baseline levels.

The small increases in feed costs resulting from the program would not be sufficient to significantly affect livestock and poultry production. Thus, no impacts are expected on consumer prices for meat and poultry products.

Ethanol and biodiesel processors benefit from the program by having reduced production costs. Providing more supply with reduced production costs is expected to increase net returns for participating processors. Minimal effects are expected on ethanol and biodiesel market prices as these prices are largely determined by fossil-based liquid fuel prices. Increased ethanol and biodiesel production is expected to substitute for Methyl Tertiary Butyl Ether (MTBE) and imported oil, helping to achieve the Administration's goals for reducing MTBE use and increasing energy security.

List of Subjects in 7 CFR Part 1424

Administrative practice and procedure, Energy—bioenergy, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 7 CFR Part 1424 Chapter XIV is amended by adding Part 1424 as set forth below.

PART 1424—BIOENERGY PROGRAM

Sec.
1424.1 Applicability.
1424.2 Administration.
1424.3 Definitions.
1424.4 General eligibility rules.
1424.5 Application process.
1424.6 Eligibility determinations.
1424.7 [Reserved]
1424.8 Payment amounts.
1424.9 Reports required.
1424.10 Succession and control of facilities and production
1424.11 Maintenance and inspection of records.
1424.12 Appeals.
1424.13 Misrepresentation and scheme or device.

Authority: 15 U.S.C. 714 c (e); Section 5(e) of the Commodity Credit Corporation Charter Act.

§ 1424.1 Applicability.

This part establishes the Bioenergy Program (Program). It sets forth the terms and conditions a bioenergy producer must meet to obtain payments from the Commodity Credit Corporation (CCC) for eligible bioenergy production. Additional terms and conditions are set forth in Form CCC–850, Bioenergy Program Agreement.

§ 1424.2 Administration.

(a) On behalf of CCC, the Farm Service Agency (FSA) will administer the provisions of this part under the general direction and supervision of the Deputy Administrator, Commodity Operations (Deputy Administrator), FSA.

(b) The Deputy Administrator or a designee may authorize a waiver or modification of deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the Program, and may set such additional requirements as will facilitate the operation of the program.

§ 1424.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration under this subpart.

Agreement means the Bioenergy Program Agreement, Form CCC–850.

Application means the Bioenergy Program Application, Form CCC–850–A.

ATF is the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury.

Biodiesel is a nontoxic, biodegradable replacement for or additive to petroleum diesel derived from the oils and fats of plants and animals and manufactured in the United States. Chemically, biodiesel is described as a mono alkyl ester.

Biodiesel producer is a producer that produces and sells biodiesel who is also registered and in good standing with Environmental Protection Agency under Clean Air Act Amendment of 1990, Title II, Section 211(b).

Bioenergy means ethanol and biodiesel produced from eligible commodities.

Eligible commodity means barley, corn, grain sorghum, oats, rice, wheat, soybeans, sunflower seed, canola, crambe, rapeseed, safflower, sesame seed, flaxseed, mustard seed, and cellulosic crops, such as switchgrass and short rotation trees, grown on farms for the purpose of producing ethanol and or biodiesel or any other commodity or commodity by-product as determined and announced by CCC used in ethanol and biodiesel production which is produced in the United States and its territories.

Eligible producer means a bioenergy producer who has been determined by CCC to be eligible to receive Program payments and has entered into an Agreement with CCC.

Ethanol is anhydrous ethyl alcohol manufactured in the United States and sold:

(1) For fuel use and which has been rendered unfit for beverage use in a manner and which is produced at a facility approved by the ATF for the production of ethanol for fuel, or

(2) As denatured ethanol used by blenders and refiners which has been rendered unfit for beverage use.

Ethanol producer is a producer that has authority from the ATF to produce ethanol.

FSA means the Farm Service Agency, USDA.

FY means fiscal year beginning each October 1 and ending September 30 of the following year.

Gallon Conversion factor shall be:

(1) 2.5 bushels, unless otherwise determined through review of an individual Program participant by CCC, of ethanol produced per bushel of corn used in ethanol production;

(2) 1.4 bushels, unless otherwise determined through review of an individual Program participant by CCC, of biodiesel per bushel of soybeans used in biodiesel production; or

(3) As determined by CCC for other eligible commodities.

KCCO means Kansas City Commodity Office.

Producer is a legal entity (individual, partnership, cooperative, or corporation, etc.) who is a commercial bioenergy producer making application under this program.

Quarter means the respective time periods of October 1 through December 31, January 1 through March 31, April 1 through June 30, and July 1 through September 30 of each FY, as applicable.

USDA means the United States Department of Agriculture.

§ 1424.4 General eligibility rules.

To obtain Program payments, a producer must do all of the following:

(a) Obtain an Agreement, Form CCC–850, from the KCCO, Contract Reconciliation Division, STOP 8758, P.O. Box 419205, Kansas City, Missouri 64141–6205 or via the internet at: www.fsa.usda.gov/daco/bioenergy/bioenergy.htm;

(b) Submit a completed Agreement, Form CCC–850, to CCC no later than October 1 of each year or a later date, if announced by CCC, to KCCO, Contract Reconciliation Division, STOP 8758, P.O. Box 419205, Kansas City, Missouri 64141–6205;

(c) Be assigned an Agreement number by KCCO indicating the producer is eligible for program payments;

(d) Maintain records indicating:

(1) Commodities for which it seeks payment;

(2) The quantity of bioenergy produced from an eligible commodity by location during the quarter FY to date compared to the same time period in the previous FY; and

(3) The quantity of eligible commodity used to produce the bioenergy stated in paragraph (d)(2) of this section during the quarter FY to date compared to the same time period in the previous FY;

(e) Furnish CCC such certification, and access to such records, as CCC considers necessary to verify compliance with Program provisions;

(f) Make Application submissions in accordance with § 1424.9;

(g) If not purchasing raw commodity input, be able to prove to CCC's satisfaction that both the producer's net purchases of eligible commodities and net production of bioenergy increased as compared to such production at all locations during the relevant base period. Except as otherwise provided for by CCC, the increase in production must equal or exceed that amount of energy production which would be calculated using the gross amount of agricultural commodities which forms the basis of the payment and the conversion factor set out in § 1424.2. Example: A producer that purchases soy oil from a soybean crushing plant for further refinement into biodiesel must be able to prove to CCC's satisfaction that both soy oil purchases and biodiesel production increased for the applicable quarter;

(h) Certify the accuracy and truthfulness of the information provided in their Agreement on Form CCC–850; and

(i) Allow verification by CCC of all information provided. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a determination of ineligibility.

(j) Meet all other conditions for payment which are set out in the Agreement or in these regulations or otherwise.

§ 1424.5 Application process.

To receive payments under this program during a FY, an eligible producer must:

(a) Have an approved Agreement in accordance with § 1424.4(b) and an Agreement number assigned by KCCO under § 1424.4(c);

(b) Obtain an Application, Form CCC–850–A, from the KCCO, Contract Reconciliation Division, STOP 8758, P.O. Box 419205, Kansas City, Missouri 64141–6205 or via the internet at: www.fsa.usda.gov/daco/bioenergy/bioenergy.htm;

(c) Submit applications for each quarter. Submit the last quarterly application of the FY within 30 calendar days of the end of the FY for which payment is requested. If the actual deadline is a non-workday, the deadline will be the next business day;

(d) Submit other relevant documents as required by CCC for the specific commodity; and

(e) Certify with respect to the accuracy and truthfulness of the information provided.

§ 1424.6 Eligibility determinations.

(a) Applicants will, after Agreements are submitted, if:

(1) Determined eligible, receive notification of eligibility;

(2) Determined ineligible, be notified in writing of ineligibility for program participation and reason for the determination; or

(3) Additional information is needed for CCC to determine eligibility, be contacted for additional supporting documentation.

(b) Applicants will, after Applications are submitted, if:

(1) Determined eligible, receive payment;

(2) Determined ineligible, be notified in writing of ineligibility for payment and reason for determination; or

(3) Additional information is needed for CCC to determine eligibility, be contacted for additional supporting documentation.

§ 1424.7 [Reserved]

§ 1424.8 Payment amounts.

(a) Eligible producer may be paid the amount specified in this section, subject to the availability of funds. Funds shall be considered available only to the extent determined appropriate by CCC. Unless otherwise determined by CCC, that amount shall be no more than $150 million in FY 2001 and no more than an additional $150 million in FY 2002.

(b) Eligible producer must sign an agreement to participate. Such an agreement must be signed during the designated sign-up period. Thereafter, producers must file a report of their production at all locations for the program year to date through the respective quarter for each such report. Such reports must comply with the terms of the agreement and these regulations.

(c) Persons will be eligible for payments only to the extent that their production of eligible energy from eligible inputs is, for the program year to date, as compared to the comparable portion of the previous year, in excess of their total comparable production at all locations. Producers will not be paid twice for the same increase and any decline in relative production between quarters will require a comparable refund as specified below. That is, for example, if a producer were to be paid, at the end of the first quarter, for an increase of 500 units of energy production, but by the end of the second quarter that producer's production, for the year to date, was down to a net increase for the year of 450 units, then a refund would be due for the loss of the corresponding 50 units of net extra production. For these purposes unless CCC shall agree otherwise in order to facilitate the program, "all locations" for these and other purposes within these regulations shall mean any and all locations in which the producer had an interest now (in the current FY) or in the previous FY, irrespective of whether the producer still has such an interest in that facility. Eligibility determinations will be made on the basis of aggregating production figures from all such locations and shall include production by all persons at those locations for the current and preceding FY, not just the production of the producer. Also, the CCC may in the program agreement require that the producer certify the amount of the actual increased use of agricultural commodities for energy production at all such locations for the relevant period and make adjustment in the formulaic payments that would otherwise be made to the producer if there is a difference between that certification and the amount of increased commodity use as calculated under the formula.

(d) The submitted agreements filed during the sign-up period will require that the applicant set out the expected increase in production and other information as the agency may demand. Based on expected commodity prices, following the formula set out in this section, all such submissions will be assigned an expected value. Should the total expected value of all such agreements exceed the available funding, then a proration factor will be developed to factor the agreements down to the funding made available by CCC.

(e) Subject to the provisions of this section and conditions specified in the Agreement, a producer's payment eligibility shall be adjusted at the end of each quarter, and figured as follows:

(1) the extra production in energy from eligible inputs will be converted to gross payable bushels (or other applicable agricultural unit) by, unless otherwise determined by CCC:

(i) Allowing, as applicable, 1 bushel of corn for each increase of 2.5 gallons of ethanol;

(ii) Allowing, as applicable, 1 bushel of soybeans for each increase of 1.4 gallons of biodiesel production;

(iii) Such other method for other eligible agricultural commodities as CCC deems appropriate.

(2) The gross payable bushels, or other gross units, calculated under paragraph (e)(1) of this section shall then be converted to a net payable bushel (or other unit amount) by:

(i) For producers whose annual bioenergy production is less than 65 million gallons, allowing 1 net payable bushel for every 2.5 gross payable bushels of corn or soybeans, or by allowing a similar conversion in the event that there are other eligible agricultural commodities involved in the calculation;

(ii) For producers whose annual bioenergy production is equal to or more than 65 million gallons, allowing 1 net payable bushel for every 3.5 gross payable bushels of corn or soybeans, or by allowing a similar conversion in the event that there are other eligible commodities involved;

(3) The net payable bushel (or other unit) agricultural commodity amount calculated under paragraph (e)(2) of this section, shall be then converted to a gross payment by multiplying that commodity amount by the per unit value for the commodity determined as follows:

(i) For those agricultural commodities with established terminal market prices, the CCC will use the applicable terminal market price for the last day of the program quarter announced daily by the KCCO, FSA, adjusted by the county average differential for the county in which the plant is located and the applicable quality factors determined by CCC. For this purpose the terminal market and differential used by CCC in determining different values for different locations will, to the extent practical, be the same as that used for producers under other major CCC commodity programs for determining marketing loan gains and other matters.

(ii) For those agricultural commodities that do not, as determined by CCC, have acceptable established terminal prices, the price shall be as determined by CCC based on such market data as appears to be appropriate for a fair evaluation.

(4) The gross payment calculated under paragraph (e)(3) of this section shall be reduced to a net payment by multiplying the gross payment figure by the proration factor determined under paragraph (d) of this section.

(5) Subject to other provisions of this section, producers shall be paid the net current payment, if positive, determined for the first quarter.

(6) After the first quarter, adjustments shall be made based on changes in production. New or renewed increases shall be paid using the formula set out above using current per unit values. Refunds, when due, shall be due at the per unit values at which they were paid unless CCC determines otherwise.

(7) If despite or in the absence of a proration under paragraph (d) of this section funds shall not be sufficient to cover payments due for any quarter then CCC shall prorate, or further prorate, the claims in such manner as CCC deems fit.

(8) No producer may receive more than five percent of the available funding for this program and determinations of payment eligibility shall take that limit into account.

§ 1424.9 Reports required.

Once an eligible producer has submitted an Agreement, Form CCC–850, that producer shall file information for each bioenergy producing facility quarterly through the end of the applicable FY as specified by CCC.

§ Sec. 1424.10 Succession and control of facilities and production.

A person who obtains a facility which is under contract under this part may request permission to succeed to the program contract and CCC may grant such request if it is determined that permitting such succession would serve the purposes of the program. As determined to be appropriate, CCC may require the consent of the original party to such succession and likewise CCC may terminate a contract and demand a full refund of payments made if a contracting party loses control of a facility whose increased production is the basis of a program payment or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

§ 1424.11 Maintenance and inspection of records.

For the purpose of verifying compliance with the requirements of this part, each eligible producer shall make available at one place at all reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to the program that is within the control of such entity for not less than 3 years from the payment date.

§ 1424.12 Appeals.

(a) Any producer who is subject to an adverse determination made under this part shall have a right to appeal the determination by filing a written request with the Deputy Administrator at the following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, DC 20250–0550.

(b) Any producer who believes that they have been adversely affected by a determination under this part must seek review with the Deputy Administrator within thirty days of such determination, unless provided with notice by FSA which provides a different time for appealing.

(c) Any producer who believes that they have been adversely affected by a determination by the Agency, must seek review with the Deputy Administrator before any other review may be requested within the Agency.

§ 1424.13 Misrepresentation and scheme or device.

(a) A producer shall be ineligible to receive payments under this program if CCC determines the producer:

(1) Adopted any scheme or device which tends to defeat the purpose of the program in this part;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a producer engaged in a misrepresentation, scheme, or device, or to any other person as a result of the bioenergy producer's actions, shall be refunded with interest together with such other sums as may become due, plus damages as may be determined by CCC.

(c) Interest charged under this part shall at the rate of interest which the United States Treasury charges CCC for funds, as of the date CCC made such funds available. Such interest shall accrue from the date such payments were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations.

(d) CCC may waive the accrual of interest and or damages if CCC determines that the cause of the erroneous determination was not due to any action of the bioenergy producer.

(e) Any producer or person engaged in an act prohibited by this section and any producer or person receiving payment under this part shall be jointly and severally liable for any refund due under this part and for related charges.

(f) The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

(g) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR part 1403.

(h) Other limitations may apply.

Signed in Washington, DC, on November 7, 2000.

Parks Shackelford,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–28969 Filed 11–7–00; 4:08 pm]

BILLING CODE 3410–05–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 214

[INS 1946–98]

RIN 1115–AF29

Delegation of the Adjudication of Certain Temporary Agricultural Worker (H–2A) Petitions, Appellate and Revocation Authority for Those Petitions to the Secretary of Labor

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule; delay of effective date.

SUMMARY: The Immigration and Naturalization Service (Service) is delaying the effective date of a final rule previously published in the **Federal Register** on July 13, 2000, at 65 FR 43528–43534 which delegated the adjudication of certain petitions for agricultural workers (H–2A) to the United States Department of Labor (DOL).

DATES: The effective date for the regulation published on July 13, 2000, at 65 FR 43528–43534 amending 8 CFR parts 103 and 214 is delayed from November 13, 2000, until October 1, 2001.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Benefits Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION: On July 13, 2000, the Service published a final rule in the **Federal Register** at 65 FR 43528–43534 delegating the authority to adjudicate certain H–2A petitions to the DOL. The final rule, which amended 8 CFR parts 103 and 214, was to take effect on November 13, 2000. The delay in the effective date of the final rule will afford the public as much opportunity as possible to become familiar with the new procedures in the issuance of temporary employment of nonimmigrant aliens in agriculture in the United States.

Dated: November 7, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–29008 Filed 11–9–00; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–028–1]

Importation of Horses, Ruminants, Swine, and Dogs; Inspection and Treatment for Screwworm

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the animal import regulations to require horses, ruminants, and swine that are imported from regions of the world where screwworm is considered to exist to be inspected and treated, under certain conditions, for screwworm. We are also amending the regulations to require dogs that are imported from regions of the world where screwworm is considered to exist to be inspected and, if necessary, treated for screwworm. This action is necessary to prevent the introduction of screwworm into the United States.

DATES: This interim rule is effective November 13, 2000. We invite you to comment on this docket. We will consider all comments that we receive by January 12, 2001.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–028–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–028–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Glen I. Garris, Supervisory Staff Officer, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39 Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

Screwworm is a pest native to tropical areas of South America, the Indian subcontinent, Southeast Asia, tropical and sub-Saharan Africa, and the Arabian peninsula that causes extensive damage to livestock and other warmblooded animals. The adult female screwworm typically lays her eggs in the open wounds of warmblooded host animals. Screwworm larvae hatch in as little as 12 hours and begin to feed on the raw flesh of the host animal; they are fully grown within 5 to 7 days after hatching. The fully grown larvae then drop from the host and tunnel into the soil, where they form protective cases to house themselves while they pupate. Adult screwworm flies emerge from these pupal cases and are ready to mate again within 3 to 5 days.

Screwworm was eradicated from the United States in 1966. However, in July of 1999, and again in February and March of 2000, screwworm larvae were found in horses that were imported into the United States from Venezuela and Argentina.

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of certain animals and birds into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subparts C, D, E, and F of the regulations govern the importation of horses, ruminants, swine, and dogs, respectively.

We are amending the animal import regulations to require horses, ruminants, and swine that are imported from regions of the world where screwworm is considered to exist to be inspected and treated, under certain conditions, for screwworm. We are also amending the regulations to require dogs that are imported from regions of the world where screwworm is considered to exist to be inspected and, if necessary, treated for screwworm. We are taking this action in order to prevent the introduction of screwworm into the United States.

Screwworm is considered to exist in the following regions of the world: Angola, Argentina, Bahrain, Bangladesh, Benin, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, China, Columbia, Congo, Dominican Republic, Ecuador, Equatorial Guinea, French Guiana, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iraq, Ivory Coast, Jamaica, Kenya, Kuwait, Laos, Lesotho, Liberia, Macau, Malawi, Malaysia, Mali, Mauritania, Mozambique, Myanmar, Namibia, Nigeria, Oman, Pacific Islands (Palau), Panama, Papua New Guinea, Paracel Islands, Paraguay, Peru, Philippines, Qatar, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Spratly Islands, Sri Lanka, Surinam, Swaziland, Taiwan, Tanzania, Thailand, Togo, Trinidad and Tobago, Uganda, United Arab Emirates, Uruguay, Venezuela, Vietnam, Zaire, Zambia, and Zimbabwe. Screwworm is also considered to exist on Isla de Pascua (Easter Island), which is part of Chile.

As of the effective date of this rule, horses, ruminants, swine, and dogs may be imported into the United States from the regions where screwworm is considered to exist only if they are inspected and, if necessary, treated for screwworm according to the conditions outlined below for each type of animal.

Requirements for Horses

Prior to the effective date of this rule, the regulations did not contain any restrictions on the importation of horses that were specifically designed to protect against the introduction of screwworm into the United States. In this document, we are amending subpart C of the regulations to add the following requirements for imported horses from any region of the world where screwworm is considered to exist.

- A veterinarian must treat horses with ivermectin 3 to 5 days prior to the date of export to the United States. The horses must be treated according to the appropriate recommended dose prescribed on the product's label.

Research has shown that ivermectin is effective against the early stages of screwworm infestation that are difficult to observe during visual inspection of animals. The treatment must be administered within 3 to 5 days prior to export because ivermectin has been demonstrated to eliminate infestations of screwworm within 3 to 5 days after treatment. Treating horses with ivermectin 3 to 5 days prior to export reduces the risk of animals becoming infested with screwworm just prior to export.

- Horses must be examined for screwworm by a full-time salaried veterinary official of the exporting country within 24 hours prior to shipment to the United States. The official must fully examine the animals, paying particular attention to their external genitalia. If any animals are found to be infested with screwworm, they must be held in quarantine and treated until free from infestation.

This examination is necessary to identify outwardly visible signs of screwworm infestation. We are directing that officials pay particular attention to the external genitalia of horses because in both recent cases where screwworm infestations were found in imported horses, the infestations were located in the prepuce area of the penis of the horses. The Animal and Plant Health Inspection Service (APHIS) has gathered information from other countries confirming that screwworm infestations in horses are commonly found in the prepuce.

- At the time the horses are loaded onto a means of conveyance for export, a veterinarian must treat any visible wounds on the animals with a solution of coumaphos dust at a concentration of 5 percent active ingredient.

Treatment with coumaphos will help ensure that potential screwworm infestations in open wounds are eliminated prior to shipment to the United States. Coumaphos dust is an insecticide that is effective against screwworm and is the insecticide most commonly used in the International Screwworm Eradication Program, an APHIS program to prevent the introduction of screwworm into the United States by eradicating screwworm from Mexico and Central America.

- The horses must be accompanied to the United States by a certificate signed by a full-time salaried veterinary official of the exporting country. The certificate must state that the horses, including their external genitalia, have been thoroughly examined, that the animals have been treated with ivermectin, that any visible wounds on the animals have been treated with coumaphos, and that the animals appear to be free of screwworm.

This certification will help ensure that all preembarkation requirements have been met.

Horses imported from regions identified in this document as regions where screwworm is considered to exist are already required to be quarantined upon arrival in the United States for at least 3 days at an APHIS animal import center. Under this rule, horses from regions where screwworm is considered to exist must be quarantined, inspected, and, if necessary, treated upon arrival in the United States as follows:

- The horses must be quarantined upon arrival in the United States at an APHIS animal import center for at least 7 days.
- A veterinarian must examine the horses, including their external genitalia, for screwworm within 24 hours after their arrival at the APHIS animal import center in the United States.

If a horse arrives infested with screwworm despite preembarkation precautions, we must be sure the infestation is promptly detected. If screwworm infestations are promptly discovered and treated during quarantine, maturation of larvae can be prevented, thus reducing the possibility that larvae could drop into the soil and pupate. The cost of this inspection is covered by the user fees applicable to equines quarantined in APHIS animal import centers (see 9 CFR part 130, § 130.2).

- On day 7, prior to the horses' release, a veterinarian must examine the horses for screwworm at the expense of the owner or broker.[1] For this examination, the veterinarian must anesthetize the horses so that he or she can thoroughly examine the horses' external genitalia. If screwworms are found during this examination, the horses must be held in quarantine and treated until free.

A 7-day quarantine will provide time for any previously undetected screwworm that may be present to grow large enough to be found. Examination on the seventh day will ensure that any screwworm infestations are detected and eliminated before the animal is allowed to leave quarantine.

Requirements for Ruminants and Swine

Prior to the effective date of this rule, the regulations did not contain any restrictions on the importation of ruminants and swine that were specifically designed to protect against the introduction of screwworm into the United States. In this document, we are amending subparts D and E of the regulations to add the following requirements for imported ruminants and swine from any region of the world where screwworm is considered to exist.

- A veterinarian must treat ruminants and swine with ivermectin 3 to 5 days prior to the date of export to the United States. The ruminants and swine must be treated according to the appropriate recommended dose prescribed on the product's label.

Research has shown that ivermectin is effective against the early stages of screwworm infestation that are difficult to observe during visual inspection of animals. The treatment must be administered within 3 to 5 days prior to export because ivermectin has been demonstrated to eliminate infestations of screwworm within 3 to 5 days after treatment. Treating ruminants and swine with ivermectin 3 to 5 days prior to export reduces the risk of animals becoming infested with screwworm just prior to export.

- Ruminants and swine must be examined for screwworm by a full-time salaried veterinary official of the exporting country within 24 hours prior to shipment to the United States. The official must fully examine the animals. If any animals are found to be infested with screwworm, they must be held in quarantine and treated until free from infestation.

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[1] The daily costs of APHIS animal quarantine services are provided in § 130.2(a). The cost of paying for this final examination of an anesthetized horse is not included in the daily user fees, and importers are responsible for the cost of this examination, in addition to daily quarantine user fees.

This examination is necessary to identify outwardly visible signs of screwworm infestation.

- At the time the ruminants or swine are loaded onto a means of conveyance for export, a veterinarian must treat any visible wounds on the animals with a solution of coumaphos dust at a concentration of 5 percent active ingredient.

Treatment with coumaphos will help ensure that potential screwworm infestations in open wounds are eliminated prior to shipment to the United States. Coumaphos dust is an insecticide that is effective against screwworm and is the insecticide most commonly used in the International Screwworm Eradication Program, an APHIS program to prevent the introduction of screwworm into the United States by eradicating screwworm from Mexico and Central America.

- The ruminants and swine must be accompanied to the United States by a certificate signed by a full-time salaried veterinary official of the exporting country. The certificate must state that the ruminants or swine have been thoroughly examined, that the animals have been treated with ivermectin, that any visible wounds on the animals have been treated with coumaphos, and that the animals appear to be free of screwworm.

This certification will help ensure that all preembarkation requirements have been met.

Ruminants and swine that are imported from all countries and areas identified in this rule as regions where screwworm is considered to exist are already required under §§ 93.411 and 93.510 of the regulations to be quarantined for 30 and 15 days, respectively, during which time they are observed for signs of disease or infestation with animal pests. If screwworm is found during quarantine, the infested animal is held in quarantine and treated until free of infestation.

We believe the requirements described above, in combination with existing quarantine requirements, will prevent the introduction of screwworm into the United States by imported horses, ruminants, or swine.

Dogs

Dogs to be used in the handling of livestock may be imported into the United States in accordance with the regulations at subpart F. The regulations provide that dogs from any part of the world except Canada, Mexico, and regions of Central America and the West Indies that are imported to be used in the handling of livestock must be quarantined and inspected at the port of entry in the United States for a sufficient time to determine if the dogs are infested with *Taenia coenurus* (tapeworm). If dogs are found to be infested with tapeworm, they are required to be treated until free from the infestation.

Prior to the effective date of this rule, APHIS did not regulate the importation of dogs other than those used to handle livestock because we did not believe such imported dogs presented a significant risk of disseminating pests or diseases to livestock. However, since screwworms are strong fliers and can move considerable distances from their original point of infestation, we believe it is necessary to require all dogs intended for importation into the United States to be inspected for screwworm by a veterinarian and, if infested, to be held in quarantine and treated until free.

We are, therefore, amending subpart F to provide that all dogs from any region of the world where screwworm is considered to exist may be imported into the United States only if accompanied by a certificate signed by a full-time salaried veterinary official of the exporting region that states that the dog(s) have been inspected for screwworm within 5 days preceding shipment to the United States and that the dog(s) were either found free of screwworm, or were found to be infested with screwworm and were held in quarantine and treated until free prior to leaving the region of export. We believe these requirements are necessary to prevent screwworm from being introduced into the United States. We are also making several editorial changes to the requirements for dogs used for handling livestock to make the requirements clearer.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of screwworm into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Prior to the effective date of this rule, APHIS regulations contained no provisions specifically designed to protect against the introduction of screwworm by animals imported into the United States. In July 1999, and again in February and March 2000, screwworm larvae were found in horses imported into the United States. This interim rule sets forth preembarkation requirements for ruminants, swine, and dogs and preembarkation and postarrival requirements for horses imported from any region of the world where screwworm is considered to exist in order to prevent the introduction of screwworm into the United States.

The screwworm is a parasite that enters open wounds and feeds on the flesh of livestock and other warmblooded animals, including humans. Left untreated, screwworm-infested wounds lead to death. Multiple infestations can kill a grown steer in 5 to 7 days.

As early as 1825, western States reported serious screwworm problems, and infestations spread to the southeastern United States by the 1930's. The U.S. Department of Agriculture began an eradication program in the 1950's using sterilized flies, and self-sustaining screwworm populations were eliminated from the United States by 1966. International eradication efforts have proceeded southward during the 1990's, with Mexico officially declared free of screwworm in 1991, and the countries of Belize, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua thereafter.

Regions where screwworm is considered to exist include Angola, Argentina, Bahrain, Bangladesh, Benin, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, China, Colombia, Congo, Dominican Republic, Ecuador, Equatorial Guinea, French Guiana, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iraq, Ivory Coast, Jamaica, Kenya, Kuwait, Laos, Lesotho, Liberia, Macau, Malawi, Malaysia, Mali, Mauritania, Mozambique, Myanmar, Namibia, Nigeria, Oman, Pacific Islands (Palau), Panama, Papua New Guinea, Paracel Islands, Paraguay, Peru, Philippines, Qatar, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Spratly Islands, Sri Lanka, Surinam, Swaziland, Taiwan, Tanzania, Thailand, Togo, Trinidad and Tobago, Uganda, United Arab Emirates, Uruguay, Venezuela, Vietnam, Zaire, Zambia, and Zimbabwe. Screwworm is also considered to exist on Easter Island, which is part of Chile. However, given that few, if any, animals are imported by the United States from Easter Island, Chile is not included in this analysis.

Inspection and testing protocols for the importation of horses, ruminants, swine, and dogs from regions where screwworm is considered to exist were described earlier in this document. Where possible, costs associated with the protocols are approximated, to evaluate whether proposed regulations are likely to have a significant economic effect on a substantial number of small entities. This likelihood is examined for each type of animal, based on inspection, treatment, and certification costs, and recognizing that some measures are already required because of other disease risks. Estimates of the additional costs per animal to importers that could result from implementation of this rule are then placed in perspective by comparing the magnitude of the additional costs to the average value of the animals being imported, and by noting the proportion of U.S. imports of these animals that come from the infested countries.

Horses

As explained earlier in this document, this interim rule requires horses that are imported from regions of the world where screwworm is considered to exist to meet the following conditions:

- A veterinarian must treat horses with ivermectin 3 to 5 days prior to the date of export to the United States;
- Horses must be examined for screwworm and found free by a full-time salaried veterinary official of the exporting country within 24 hours prior to shipment to the United States;
- At the time of loading onto a means of conveyance for export, a veterinarian must treat any visible wounds on horses with a solution of coumaphos dust at a concentration of 5 percent active ingredient;
- Horses must be accompanied to the United States by a certificate signed by a full-time, salaried veterinary official of the exporting country. The certificate must state that the animals, including their external genitalia, have been thoroughly examined and found free of screwworm, and that the animals have been treated with ivermectin, and, if necessary, coumaphos dust;
- Horses must be quarantined upon arrival in the United States at an APHIS animal import center for at least 7 days.
- A veterinarian must examine the horses, including their external genitalia, for screwworm within 24 hours after their arrival at the APHIS animal import center; and
- On day 7, prior to the horses' release, a veterinarian must examine the horses for screwworm at the expense of the owner or broker. For this examination, horses must be anesthetized so that their external genitalia can be thoroughly examined.

Most countries in the Western hemisphere that are infested with screwworm are also affected by Venezuelan equine encephalomyelitis (VEE), and several countries in the Eastern Hemisphere that are infested with screwworm are also affected by African horse-sickness (AHS). Under § 93.308(a)(1) and (2), horses imported from VEE- or AHS-affected regions are subject to 7- and 60-day quarantines, respectively, upon arrival in the United States. The 7-day screwworm quarantine will be concurrent with required quarantines for VEE and AHS. Importers of horses from screwworm infested and VEE- or AHS-affected areas will bear only the additional costs associated with preembarkation treatment and inspection, treatment of wounds during loading, inspection upon arrival at the port of entry, and the final examination of anesthetized horses.

Preembarkation inspection and treatment costs will vary from region to region. The requirement that the examination will need to be performed by a full-time salaried veterinary official of the exporting country would suggest that some regions may set fees. We do not have information on these costs, but for the purposes of a generalized analysis, we assumed that pre-embarkation inspections, treatments, and certification would total between $50 and $100 per animal. We assumed that examination upon arrival in the United States and the final inspection of the anesthetized horse at the end of the quarantine period would cost between $75 and $125 per horse, for a total cost ranging from $125 to $225 per horse.

Regions with screwworm that are not affected by VEE or AHS are Argentina, Bangladesh, Brunei, Cambodia, China, India, Indonesia, Iraq, Laos, Macau, Malaysia, Myanmar, Pacific Islands (Palau), Papua New Guinea, Paracel Islands, Philippines, Qatar, Singapore, Spratly Islands, Sri Lanka, Taiwan, Thailand, United Arab Emirates, and Vietnam. Horses imported from these regions are already subject to a minimum quarantine of 3 days upon arrival in the United States. Importers of horses from these regions will bear preembarkation inspection and treatment costs as discussed above, as well as the cost of 4 additional days of quarantine.

Argentina is the only significant source of horse imports for which the additional quarantine days will be applicable. China, Philippines, Taiwan, and United Arab Emirates also exported horses to the United States during the period 1995–1998, but collectively they exported only 5 horses in 1995, 9 in 1996, 14 in 1997, and 13 in 1998.

The cost of quarantining a horse for 3 days is $448.50. The cost of a 7-day quarantine is $881.50. Thus, importers of horses from Argentina (and countries such as China, Philippines, Qatar, Taiwan, and United Arab Emirates) will bear an additional quarantine cost of $433 per horse. Given that importers will also bear preembarkation and postarrival costs of $125 to $225 per horse, the total additional cost to importers will likely be $558 to $658 per horse. Importers may also encounter other costs less easily quantified, such as greater difficulty in the scheduling of shipments (space is easier to reserve for a 3-day quarantine than for a 7-day quarantine) given the demand for use of the animal import center.

These costs are small when compared to the value of the horses imported. For example, the average value of purebred horses imported between 1995 and 1998 from screwworm infested regions in the Western Hemisphere, except Argentina, was $6,370. The assumed additional costs ($125 to $225) to importers of purebred horses from these countries represent 2 to 3.5 percent of the average value of imported horses. During this same period, the average value of purebred horses imported from Argentina was $9,280. The assumed costs ($558 to $658) to importers of purebred horses from Argentina represent 6 to 7 percent of the average value of the horses.

The potential effect of these costs on U.S. entities can also be assessed by taking into account the share of U.S. horse imports supplied by the screwworm infested regions. In 1995–1998, the infested regions, excluding Argentina, supplied about 12 percent of all purebred horses imported by the United States (an average of 196 horses per year); about 21 percent (an average

of 347 horses per year) of purebred imports came from Argentina.[2]

Importers that may be affected by this rule include U.S. horse farms and operators of racing stables. Whether potentially affected operations are considered small entities depends on their annual gross receipts. Horse farms, classified under Standard Industrial Classification (SIC) industry number 0272 (Horses and Other Equines), are considered small if their annual gross receipts are $0.5 million or less. Operators of racing stables are included within SIC industry number 7948 (Racing, Including Track Operations), for which the small-entity criterion is annual gross receipts of $5 million or less.

It is reasonable to assume that at least some of the horse farms and other firms that will be affected by this rule change are small entities, although their number is not known. However, since estimated screwworm-prevention costs are a small fraction of the average value of the horses imported, and since two-thirds of purebred horse imports do not come from screwworm-affected regions, we do not expect the economic effects of this rule to be significant.

Ruminants and Swine

Protocol requirements for ruminants and swine are the same as for horses, other than for the 7-day quarantine and final examination of the anesthetized animal. Ruminants and swine are generally not imported from screwworm infested countries, for both economic and animal health reasons. The occurrence of diseases such as foot-and-mouth disease and hog cholera essentially preclude ruminant and swine imports from most screwworm-affected regions. Of the screwworm infested regions that are considered free of foot-and-mouth disease (Haiti, Jamaica, Panama, South Africa,[3] and Trinidad and Tobago), only South Africa has a history of ruminant exports to the United States.[4]

No cattle or sheep were exported from South Africa to the United States in the past 5 years, but 412 goats were exported to the United States in 1995. If such shipments were to recur, the additional costs borne by the goat importers would be those associated with preembarkation inspection, treatment, and certification, and treatment of wounds during loading. The value of goats imported from South Africa in 1995 was about $660 each. Assumed preembarkation inspection, treatment, and certification costs of about $30 per goat represent less than 5 percent of this average value.

Potentially affected entities would include U.S. goat producers, the majority of which are small entities (as classified under SIC industry number 0214, and for which the small-entity criterion is annual gross receipts of $0.5 million or less). We expect that any future goat imports from South Africa would represent a small fraction of the total U.S. imports of goats. As with horses, we do not expect that this rule will have a significant economic effect on a substantial number of small entities.

Dogs

Prior to the effective date of this rule, we regulated the importation of dogs only if they were intended to be used in the handling of livestock. The screwworm threat requires that all dogs imported from the infested countries be inspected and, if necessary, treated before importation. A certificate signed by a full-time salaried veterinary official of the dog's region of origin must state that the dog has been inspected for screwworm within 5 days prior to shipment to the United States and that it is either free from infestation, or was found to be infested with screwworm and treated until free prior to leaving the region of origin.

The cost to dog importers for preembarkation inspection, treatment (if necessary), and certification is not known. It may be similar to that assumed for horses: $50 to $100 per animal.

The quantity of dogs imported yearly from the affected regions is not known, but we believe the number is small. Many of these dogs are probably owned as pets; for their owners, any economic effects of this rule are not within the scope of the Regulatory Flexibility Act. Firms importing dogs from these regions for sale, whether to be used in handling livestock or otherwise, are classified under SIC industry number 5199 (Miscellaneous Nondurable Goods), for which the small-entity criterion is 100 employees or fewer.

Firms that import dogs from the infested regions may well be small entities. However, it is unlikely that the preembarkation screwworm requirements would represent significant costs when compared to the value of an imported dog; transport expenses alone would imply that the market value of such a dog would be relatively high.

Summary

This rule sets forth preembarkation and postarrival requirements for horses, ruminants, swine, and dogs imported from screwworm infested regions. Protocols for testing and treatment will reduce the risk that screwworm could be introduced into the United States. As a group, screwworm infested regions are not a major source of U.S. horse imports, and, with apparently only one exception in the past 5 years, not a source at all of ruminants or swine. Also, few if any dogs are presumed to be imported from these regions. In those instances in which imports do take place, we do not expect costs associated with the protocols to be large when compared to the value of the animals. Small entities may be affected, but their number will not be substantial nor will the economic effects be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0165 to the information collection and recordkeeping requirements.

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[2] For nonpurebred horses, the screwworm-affected countries supply a much smaller share of U.S. imports. During 1995–1998, only 0.21 percent of nonpurebred horse imports (an average of 73 horses per year) were supplied by the affected countries, excluding Argentina; only 0.36 percent of of nonpurebred horse imports (an average of 125 horses per year) came from Argentina. We excluded from this analysis nonpurebred horse imports from the affected countries since they represent such a small fraction—about one-half of one percent—of all such imports by the United States.

[3] South Africa is considered free of foot-and-mouth disease except the foot-and-mouth disease controlled area (which extends from the Republic of South Africa's border with Mozambique approximately 30 to 90 kilometers into the Republic of South Africa to incude Kruger National Park and surveillance and control zones around the park, and elsewhere extends, from east to west, approximately 10 to 20 kilometers into the Republic of South Africa along its borders with Mozambique, Swaziland, Zimbabwe, Botswana, and the southeast part of the border with Namibia).

[4] Canada is the main supplier of cattle to the United States, and Mexico is second. Together, they provide 99 percent of U.S. cattle imports; very small quantities are imported from other countries, such as Japan and Germany. Nearly all imported sheep are from Canada, with small percentages coming from Mexico, New Zealand, and Australia. Canada and New Zealand are the major suppliers of goats, with occasional shipments from Mexico and Australia. Nearly all imported swine come from Canada, with lesser numbers supplied by Europe, New Zealand and Australia.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Docket No. 00–028–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. Please state that your comments refer to Docket No. 00–028–1 and send your comments within 60 days of publication of this rule.

This interim rule will amend the animal import regulations to require horses, ruminants, and swine that are imported from regions of the world where screwworm is considered to exist to be inspected and treated, under certain conditions, for screwworm. This rule will also amend the regulations to require dogs that are imported from regions of the world where screwworm is considered to exist to be inspected and, if necessary, treated for screwworm.

Implementing this rule will necessitate the completion of a foreign animal health certificate for horses, ruminants, swine, and dogs that are imported from regions where screwworm is considered to exist.

We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Full-time salaried veterinary officials of exporting regions.

Estimated annual number of respondents: 36.

Estimated annual number of responses per respondent: 3.78.

Estimated annual number of responses: 136.

Estimated total annual burden on respondents: 34 hours.

Copies of this information collection can be obtained from: Ms. Laura Cahall, APHIS' Information Collection Coordinator, (301) 734–5360.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 is revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 93.301, a new paragraph (j) is added to read as follows:

§ 93.301 General prohibitions; exceptions.

* * * * *

(j) *Examination and treatment for screwworm.* Horses from Angola, Argentina, Bahrain, Bangladesh, Benin, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, China, Columbia, Congo, Dominican Republic, Ecuador, Equatorial Guinea, French Guiana, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iraq, Isla de Pascua (Easter Island, part of Chile), Ivory Coast, Jamaica, Kenya, Kuwait, Laos, Lesotho, Liberia, Macau, Malawi, Malaysia, Mali, Mauritania, Mozambique, Myanmar, Namibia, Nigeria, Oman, Pacific Islands (Palau), Panama, Papua New Guinea, Paracel Islands, Paraguay, Peru, Philippines, Qatar, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Spratly Islands, Sri Lanka, Surinam, Swaziland, Taiwan, Tanzania, Thailand, Togo, Trinidad and Tobago, Uganda, United Arab Emirates, Uruguay, Venezuela, Vietnam, Zaire, Zambia, Zimbabwe, or any other region of the world where screwworm is considered to exist may be imported into the United States only if they meet the following requirements and all other applicable requirements of this part:

(1) A veterinarian must treat horses with ivermectin 3 to 5 days prior to the date of export to the United States according to the recommended dose prescribed on the product's label.

(2) Horses must be examined for screwworm by a full-time salaried veterinary official of the exporting country within 24 hours prior to shipment to the United States. The official must fully examine the horses, including their external genitalia. If horses are found to be infested with screwworm, they must be treated until free from infestation.

(3) At the time horses are loaded onto a means of conveyance for export, a veterinarian must treat any visible wounds on the animals with a solution of coumaphos dust at a concentration of 5 percent active ingredient.

(4) Horses must be accompanied to the United States by a certificate signed by a full-time salaried veterinary official of the exporting country. The certificate must state that the horses, including their external genitalia, have been thoroughly examined and found free of screwworm and that the horses have been treated in accordance with paragraphs (j)(1) and (j)(3) of this section.

(5) Horses must be quarantined upon arrival in the United States at an APHIS animal import center for at least 7 days.

(6) Horses must be examined for screwworm by a veterinarian within 24 hours after arrival at an APHIS animal import center in the United States. The examining veterinarian must examine horses, including their external genitalia, to determine whether the horse is infested with screwworm.

(7) Horses must be held at the animal import center for a minimum of 7 days. On day 7, prior to the horses' release, the horses must be examined for screwworm by a veterinarian at the expense of the owner or broker. For this examination, the horses must be anesthetized so that the external genitalia of the horses can be thoroughly examined. If screwworm are found during this examination, the horses must be held in quarantine and treated until free of infestation.

* * * * *

3. Section 93.405 is amended as follows.

a. In paragraph (a)(1), by removing the word "and" at the end of the paragraph.

b. By revising paragraph (a)(2).

c. By adding a new paragraph (a)(3).

§ 93.405 Certificates for ruminants.

(a) * * *

(2) That the ruminants are not in quarantine in the region of origin; and

(3) If the ruminants are from Angola, Argentina, Bahrain, Bangladesh, Benin, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, China, Columbia, Congo, Dominican Republic, Ecuador, Equatorial Guinea, French Guiana, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iraq, Isla de Pascua (Easter Island, part of Chile), Ivory Coast, Jamaica, Kenya, Kuwait, Laos, Lesotho, Liberia, Macau, Malawi, Malaysia, Mali, Mauritania, Mozambique, Myanmar, Namibia, Nigeria, Oman, Pacific Islands (Palau), Panama, Papua New Guinea, Paracel Islands, Paraguay, Peru, Philippines, Qatar, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Spratly Islands, Sri Lanka, Surinam, Swaziland, Taiwan, Tanzania, Thailand, Togo, Trinidad and Tobago, Uganda, United Arab Emirates, Uruguay, Venezuela, Vietnam, Zaire, Zambia, Zimbabwe, or any other region of the world where screwworm is considered to exist, the ruminants may be imported into the United States only if they meet the following requirements and all other applicable requirements of this part:

(i) A veterinarian must treat the ruminants with ivermectin 3 to 5 days prior to the date of export to the United States according to the recommended dose prescribed on the product's label.

(ii) The ruminants must be fully examined for screwworm by a full-time salaried veterinary official of the exporting country within 24 hours prior to shipment to the United States. If ruminants are found to be infested with screwworm, they must be treated until free from infestation.

(iii) At the time ruminants are loaded onto a means of conveyance for export, a veterinarian must treat any visible wounds on the animals with a solution of coumaphos dust at a concentration of 5 percent active ingredient.

(iv) The ruminants must be accompanied to the United States by a certificate signed by a full-time salaried veterinary official of the exporting country. The certificate must state that the ruminants have been thoroughly examined and found free of screwworm and that the ruminants have been treated in accordance with paragraphs (a)(3)(i) and (a)(3)(iii) of this section.

* * * * *

4. Section 93.505 is amended by redesignating paragraph (b) as paragraph (c) and by adding a new paragraph (b) to read as follows.

§ 93.505 Certificate for swine.

* * * * *

(b) Swine from Angola, Argentina, Bahrain, Bangladesh, Benin, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, China, Columbia, Congo, Dominican Republic, Ecuador, Equatorial Guinea, French Guiana, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iraq, Isla de Pascua (Easter Island, part of Chile), Ivory Coast, Jamaica, Kenya, Kuwait, Laos, Lesotho, Liberia, Macau, Malawi, Malaysia, Mali, Mauritania, Mozambique, Myanmar, Namibia, Nigeria, Oman, Pacific Islands (Palau), Panama, Papua New Guinea, Paracel Islands, Paraguay, Peru, Philippines, Qatar, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Spratly Islands, Sri Lanka, Surinam, Swaziland, Taiwan, Tanzania, Thailand, Togo, Trinidad and Tobago, Uganda, United Arab Emirates, Uruguay, Venezuela, Vietnam, Zaire, Zambia, Zimbabwe, or any other region of the world where screwworm is considered to exist may only be imported into the United States if they meet the following requirements and all other applicable requirements of this part:

(1) A veterinarian must treat the swine with ivermectin 3 to 5 days prior to the date of export to the United States according to the recommended dose prescribed on the product's label.

(2) The swine must be fully examined for screwworm by a full-time salaried veterinary official of the exporting country within 24 hours prior to shipment to the United States. If swine are found to be infested with screwworm, they must be treated until free from infestation.

(3) At the time swine are loaded onto a means of conveyance for export, a veterinarian must treat any visible wounds on the animals with a solution of coumaphos dust at a concentration of 5 percent active ingredient.

(4) The swine must be accompanied to the United States by a certificate signed by a full-time salaried veterinary official of the exporting country. The certificate must state that the swine have been thoroughly examined and found free of screwworm and that the swine have been treated in accordance with paragraphs (b)(1) and (b)(3) of this section.

* * * * *

5. Section 93.600 is revised to read as follows:

§ 93.600 Importation of dogs.

(a) *All dogs.* Dogs from Angola, Argentina, Bahrain, Bangladesh, Benin, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, China, Columbia, Congo, Dominican Republic, Ecuador, Equatorial Guinea, French Guiana, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iraq, Isla de Pascua (Easter Island, part of Chile), Ivory Coast, Jamaica, Kenya, Kuwait, Laos, Lesotho, Liberia, Macau, Malawi, Malaysia, Mali, Mauritania, Mozambique, Myanmar, Namibia, Nigeria, Oman, Pacific Islands (Palau), Panama, Papua New Guinea, Paracel Islands, Paraguay, Peru, Philippines, Qatar, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Spratly Islands, Sri Lanka, Surinam, Swaziland, Taiwan, Tanzania, Thailand, Togo, Trinidad and Tobago, Uganda, United Arab Emirates, Uruguay, Venezuela, Vietnam, Zaire, Zambia, Zimbabwe, or any other region of the world where screwworm is considered to exist may only be imported into the United States if they meet the following requirements and all other applicable requirements of this part:

(1) Dogs must be accompanied by a certificate signed by a full-time salaried veterinary official of the region of origin stating that the dog has been inspected for screwworm within 5 days preceding its shipment to the United States.

(2) The certificate must state that the dog is either free from screwworm or was found to be infested with screwworm and was held in quarantine and treated until free from screwworm prior to leaving the region of origin.

(b) *Dogs for handling livestock.* Collie, Shepherd, and other dogs that are imported from any part of the world except Canada, Mexico, and regions of Central America and the West Indies and that are to be used in the handling of sheep or other livestock must be inspected and quarantined at the port of entry for a sufficient time to determine their freedom from tapeworm (*Taenia* spp.). If found to be infested with tapeworm, dogs must be treated under the supervision of an inspector at the port of entry until they are free from infestation.

Done in Washington, DC, this 3rd day of November 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–28974 Filed 11–9–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–36]

Amendment of Class D Airspace; Kissimmee, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace at Kissimmee, FL. Orlando Approach Control is the controlling air traffic control (ATC) facility for Instrument Flight Rules (IFR) operations at Kissimmee Municipal Airport, Kissimmee, FL. Due to the proximity of the Kissimmee Municipal Airport to the Orlando International Airport and the Orlando Class B airspace area, Orlando Approach Control has requested the Kissimmee Class D airspace be lowered from 2,500 feet MSL to 1,500 feet MSL.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On September 25, 2000, the FAA proposed to amend Part 71 of the Federal Aviation regulations (14 CFR part 71) by amending Class D airspace at Kissimmee, FL (65 FR 57567), at the request of Orlando Approach Control, the controlling ATC facility for IFR operations at Kissimmee Municipal Airport. Designations for Class D airspace are published in FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.11. The Class D designation listed in this document will be published subsequently in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class D airspace Kissimmee, FL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120, EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows: Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Kissimmee, FL [Revised]

Kissimmee Municipal Airport, FL
(Lat. 28°17′23″ N, long 81°26′14″ W)

That airspace extending upward from the surface to but not including 1,600 feet MSL within a 4-mile radius of Kissimmee Municipal Airport, excluding that portion within the Orlando International Airport, FL, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on November 1, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 00–28990 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–35]

Amended of Class D and Class E4 Airspace; Gainesville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D and Class E4 airspace at Gainesville, FL. The Gainesville VORTAC has been relocated and renamed. As a result of VHF Omni-directional Range (VOR) Standard Instrument Approach Procedure (SIAP) for the Gainesville Regional Airport, Gainesville, FL, is amended. Therefore, the Class E4 extension to the Class D surface area will be rotated clockwise seven degrees. This action will also remove the reference the Gainesville VORTAC from the Class D airspace description.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P. O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On September 22, 2000, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amending Class D and Class E4 airspace at Gainesville, FL (65 FR 57300). Class D and Class E4 airspace designations are published in Paragraphs 5000 and 6004 respectively of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class D and Class E4 airspace at Gainesville, FL.

The FAA has determined that this regulation only involves an established body ot technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [AMENDED]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Gainesville, FL [Revised]

Gainesville Regional Airport, FL
(Lat. 29°41′24″ N, long. 82°16′18″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.3-mile radius of the Gainesville Regional Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Airspace Area

* * * * *

ASO FL E4 Gainesville, FL [Revised]

Gainesville Regional Airport, FL
(Lat. 29°41′24″ N, long. 82°16′18″ W)
Gators VORTAC
(Lat. 29°34′20″ N, long. 82°21′45″ W)

That airspace extending upward from the surface within 2.4 miles each side of the Gators VORTAC 041° radial, extending from the 4.3-mile radius of Gainesville Regional Airport to 7 miles northeast of the VORTAC. This Class E4 airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on November 1, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–28989 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–19]

Revision of Class E Airspace; Atlanta, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Atlanta, TX. The development of an Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP), at Hall Miller Municipal Airport, Atlanta, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Hall Miller Municipal Airport, Atlanta, TX.

DATES: Effective 0901 UTC, March 22, 2001. Comments must be received on or before December 28, 2000.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2000–ASW–19, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Atlanta, TX. The development of a RNAV SIAP, at Hall Miller Municipal Airport, Atlanta, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to Hall Miller Municipal Airport, Atlanta, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, or adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–ASW–19." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAY; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, *Airspace Designations and Reporting Points*, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Atlanta, TX [Revised]

Atlanta, Hall Miller Municipal Airport, TX
(Lat. 33°06′06″ N., long. 94°11′43″ W.)
Atlanta NDB
(Lat. 33°06′13″ N., long. 94°11′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Hall Miller Municipal Airport and within 2.5 miles each side of the 237° bearing of the Atlanta NDB extending from the 6.5-mile radius to 7.2 miles southwest of the airport.

* * * * *

Issued in Fort Worth, TX, on November 2, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–28992 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–38]

Amendment of Class E3 Airspace; Tallahassee, FL, and Class E4 Airspace; Dothan, AL; Vero Beach, FL; Athens, GA; Columbus Lawson AAF, GA; Meridian/Key Field, MS; Meridian NAS–McCain Field, MS; and Florence, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E3 airspace at Tallahassee, FL, and Class E4 airspace at Dothan, AL; Vero Beach, FL; Athens, GA; Columbus Lawson AAF, GA; Meridian/Key Field, MS; and Florence, SC, from continuous to part time, as the air traffic control towers at these locations are now part time.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

The air traffic control towers at Tallahassee Regional Airport, FL; Dothan Regional Airport, AL; Vero Beach Municipal Airport, FL; Athens/Ben Epps Airport, GA; Columbus Lawson AAF, GA; Meridian/Key Field, MS; and Florence, SC, no longer operate continuously. Therefore, the Class E3 airspace at Tallahassee, FL, and the Class E4 airspace at Dothan, AL; Vero Beach, FL; Athens, GA; Columbus Lawson AAF, GA; Meridian/Key Field, MS; and Florence, SC, must be amended from continuous to part time. This rule will become effective on the date specified in the **EFFECTIVE DATE** section. Since this action eliminates the impact of controlled airspace on users of the airspace in the vicinity of the Airports during the hours the control towers are closed, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Class E3 airspace designations for airspace areas designated as an extension and Class E4 airspace designations for airspace areas designated as an extension to a Class D airspace area are published in paragraphs 6003 and 6004 respectively of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E3 airspace at Tallahassee, FL, and Class E4 airspace at Dothan, AL; Vero Beach, FL; Athens, GA; Columbus Lawson AAF, GA; Meridian/Key Field, MS; and Florence, SC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6003 Class E3 Airspace Areas Designated as an Extension.

* * * * *

ASO FL E3 Tallahassee, FL [Revised]

Tallahassee Regional Airport, FL
(Lat 30°23′47″ N, long. 84°21′01″ W)
Seminole VORTAC
(Lat 30°33′22″ N, long. 84°22′26″ W)

That airspace extending upward from the surface within 1.3 miles each side of the Seminole VORTAC 175° radial extending from the 5-mile radius of the Tallahassee Regional Airport to 2 miles south of the VORTAC. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Airspace Area.

* * * * *

ASO AL E4 Dothan, AL [Revised]

Dothan Regional Airport, AL
(Lat. 31°19′17″ N, long. 85°26′59″ W)
Wiregrass VORTAC
(Lat. 31°17′04″ N, long. 85°25′53″ W)

That airspace extending upward from the surface within 3.2 miles each side of the Wiregrass VORTAC 156° radial extending from the 4.7-mile radius of the Dothan Regional Airport to 7 miles southeast of the VORTAC. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL E4 Vero Beach, FL [Revised]

Vero Beach Municipal Airport, FL
(Lat. 27°39′20″ N, long. 80°25′05″ W)
Vero Beach NDB
(Lat 27°39′51″ N long. 80°25′10″ W)

That airspace extending upward from the surface within 3.2 miles each side of the 261° bearing from the Vero Beach NDB extending from the 4.2-mile radius of the Vero Beach Municipal Airport to 7 miles west of the NDB. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO GA E4 Athens, GA [Revised]

Athens/Ben Epps Airport, Athens, GA
(Lat. 33°56′54″ N, long. 83°19′36″ W)
Athens VORTAC
(Lat. 33°56′51″ N, long. 83°19′36″ W)

That airspace extending upward from the surface within 3 miles each side of the Athens VORTAC 195° radial extending from the 4-mile radius of the Athens/Ben Epps Airport to 7 miles south of the VORTAC, and within 3 miles each side of the Athens VORTAC 076° radial extending from the 4-mile radius of the airport to 7 miles east of the VORTAC. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO GA E4 Columbus Lawson AAF, GA [Revised]

Columbus Lawson AAF, GA
(Lat. 32°20′17″ N, long. 84°59′32″ W)
Lawson VOR/DME
(Lat. 32°19′57″ N, long. 84°59′36″ W)
Lawson NDB
(Lat. 32°17′36″ N, long. 85°01′24″ W)

That airspace extending upward from the surface within 1.2 miles each side of the Lawson VOR/DME 214° radial extending from the 4.2-mile radius of Lawson AAF to 6 miles southwest of the NDB. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO MS E4 Meridian/Key Field, MS [Revised]

Meridian/Key Field, MS
(Lat. 32°20′00″ N, long. 88°45′04″ W)
Meridian VORTAC
(Lat. 32°22′43″ N long. 88°48′15″ W)

That airspace extending upward from the surface within 2.5 miles each side of the Meridian VORTAC 315° radial extending from the 5.3-mile radius of Meridian/Key Field to 7 miles northwest of the VORTAC. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO SC E4 Florence, SC [Revised]

Florence Regional Airport, SC
(Lat. 34°11′08″ N, long. 79°43′26″ W)
Florence VORTAC
(Lat. 34°13′59″ N, long. 79°39′26″ W)

That airspace extending upward from the surface within 2.4 miles each side of the Florence VORTAC 049° radial extending from the 4.2-mile radius of the Florence Regional Airport to 7 miles northeast of the VORTAC. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on November 1, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–28991 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB23

Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Delegation of Authority To Adjudicate Petitions; Deferral of Effective Date

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule with request for comments ; deferral of effective date of final rule.

SUMMARY: The Immigration and Naturalization Service (INS) has informed the Department of Labor (DOL or Department) that it intends to delay INS' delegation to DOL of authority to adjudicate petitions for the temporary employment of nonimmigrant aliens in agriculture in the United States. Additionally, DOL has the need for additional time to effectively implement the new procedures and to train and brief members of the affected public and the employment and training community in the new procedures. Therefore, the Department has determined to defer the effective date of the Final Rule promulgated at 65 FR 43538 (July 13, 2000). Comments are being requested on this action. The rule being deferred amends the Employment and Training Administration (ETA) regulations to implement the delegation of authority to adjudicate petitions for temporary nonimmigrant agricultural workers (H–2A's) from the INS to the Department. A companion Proposed Rule setting forth the fee structure and consolidated form was published at 65 FR 43545 (July 13, 2000). The extended comment period on the Proposed Rule has ended and DOL continues to review the comments.

DATES:

Effective Date: The effective date of the final rule in FR Doc. 00–17641, published at 65 FR 43538 (July 13, 2000), is deferred from November 13, 2000, until October 1, 2001.

Comments: Comments are invited on the deferral of the effective date. Submit comments on or before January 12, 2001.

ADDRESSES: Send comments to Assistant Secretary of Labor for Employment and Training, Attention: Division of Foreign Labor Certifications, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Denis M. Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210. Telephone: (202) 693–2953 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) published a final rule in this rulemaking in the **Federal Register** on 65 FR 43538 (July 13, 2000), with an effective date of November 13, 2000.

It is DOL's understanding that INS has or will publish a rule delaying the effective date of that agency's delegation of authority to DOL, which would defer DOL's legal authority to exercise INS" role with respect to H–2A visas.

In addition, the Department found it impracticable to engage in adequate training of federal and State staff and briefing of stakeholders and other members of the public on the new system. This can be accomplished by delaying the effective date of the Final Rule.

DOL has determined to defer the effective date through the end of the current Fiscal Year. This deferral will allow employers, workers, and government personnel time to familiarize themselves with the new system and forms and to resolve concerns over the change. In addition, comments are being sought from interested parties on the deferral of the effective date.

The regulatory certifications set forth in the July 13, 2000, final rule apply to this deferral as well. For the above reasons, the Department finds good cause that prior notice on this rule was impracticable and contrary to the public interest, although in the interest of affording the public as much opportunity as possible to express their views, a post-publication comment period is being offered. 5 U.S.C. 553(b) and (c). The same reasons which justify not having a pre-publication period of notice and comment provide good cause to make this deferral effective upon publication in the **Federal Register**. 5 U.S.C. 553(d)(3).

Accordingly, the effective date of the final rule in FR Doc. 00–17641, published at 65 FR 43538 (July 13, 2000), is deferred until October 1, 2001.

Signed at Washington, D.C., this 7th day of November, 2000.

Raymond L. Bramucci,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 00–28897 Filed 11–9–00; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 736

RIN 0703–AA60

Disposition of Property

AGENCY: Department of the Navy, DOD.

ACTION: Final Rule; Correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** on September 5, 2000, (65 FR 53589) amending regulations on disposition of property. One amendment inadvertently removed the authority of the Department of the Navy to sell property not excess to its needs. This document corrects that error.

DATES: Effective on November 13, 2000.

FOR FURTHER INFORMATION CONTACT: Major Chris Carlson, USMC, Regulations and Legislation, FOIA/PA Branch, Administrative Law Division, Office of the Judge Advocate General (Code 13), 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066. Phone (703) 604–8219.

SUPPLEMENTARY INFORMATION: The Department of the Navy (DON) published a document in the **Federal Register** on September 5, 2000, (65 FR 53589) amending Part 736. In FR Doc. 00–22445, published in the **Federal Register** on September 5, 2000, § 736.5(e) was inadvertently amended. This correction adds back the language on the sale of property that was deleted in the revision to § 736.5(e).

In rule FR doc. 00–22445 published on September 5, 2000, (65 FR 53589) make the following correction. On page 53590, in the third column, at amendment 4(d) correct the paragraph to read:

§ 736.5 Disposition of real and personal property under special statutory authority.

* * * * *

(e) Exchange or sale of property for replacement purposes. Under the authority of section 201(c) of the Federal Property Act (40 U.S.C. 481(c)) and

consistent with Department of Defense implementing regulations, DOD 4140.1–R and the Defense Federal Acquisition Regulation Supplement, the Department of the Navy is authorized in the acquisition of new equipment to exchange or sell similar items which are not excess to its needs, and apply the exchange allowance or proceeds of sale in whole or part payment for the items acquired.

Dated: October 31, 2000.

C.G. Carlson,

U.S. Marine Corps, Alternate Federal Register, Liaison Officer.

[FR Doc. 00–28867 Filed 11–9–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–239]

Drawbridge Operation Regulations: Danvers River, MA.

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Massachusetts Bay transportation Authority (MBTA)/Amtrak Bridge, at mile 0.05, across the Danvers River between Beverly and Salem, Massachusetts. This deviation allows the bridge owner to keep the bridge in the closed position from 6 a.m. on Saturday November 18, 2000, through 6 p.m. on Sunday November 19, 2000. This action is necessary to facilitate replacement of the submarine power cables at the bridge.

DATES: This deviation is effective from November 18, 2000, to November 19, 2000.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The MBTA/Amtrak Bridge, at mile 0.05, across the Danvers River, has a vertical clearance of 3 feet at mean high water, and 12 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.595(b).

The bridge owner requested a temporary deviation from the drawbridge operating regulations to facilitate the necessary maintenance for the replacement of the submarine power cables at the bridge. This deviation from the operating regulations allows the bridge owner to keep the bridge in the closed position from 6 a.m. on Saturday, November 18, 2000, through 6 p.m. on Sunday, November 19, 2000. Vessels that can pass under the bridge without an opening may do so at all times during the closed period.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 31, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 00–28997 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MI74–02–7282a; FRL–6896–3]

Approval and Promulgation of State Implementation Plans; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is adjusting the applicability date for reinstating the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in Genesee, Bay, Midland, and Saginaw Counties, Michigan and is determining that these areas have attained the 1-hour ozone NAAQS. This determination is based on 3 consecutive years of complete, quality-assured, ambient air monitoring data for the 1997–1999 ozone seasons that demonstrate that the areas have attained the ozone NAAQS. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements, and certain related requirements of part D of subchapter I of the Clean Air Act (CAA), do not apply to Genesee, Bay, Midland, and Saginaw Counties.

EPA is also approving the State of Michigan's request to redesignate Genesee, Bay, Midland, and Saginaw Counties to attainment for the 1-hour ozone NAAQS. Michigan submitted the redesignation request for these areas on May 9, 2000. EPA is also approving the State's plan for maintaining the 1-hour ozone standard for the next 10 years as a revision to the Michigan State Implementation Plan (SIP).

In the proposed rules section of this **Federal Register**, EPA is proposing approval of, and soliciting comments on, this SIP revision. If we receive adverse comments on this action, we will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule. We will not open a second public comment period. Parties interested in commenting on this action should do so at this time.

DATES: This "direct final" rule is effective January 16, 2001, unless EPA receives adverse written or critical comments by December 13, 2000. If the rule is withdrawn, EPA will publish timely notice in the **Federal Register**.

ADDRESSES: Send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Mooney at (312) 886–6043 before visiting the Region 5 Office.)

A copy of the SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: John M. Mooney, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6043.

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I. Adjustment of Applicability Date for Reinstating the 1-Hour Ozone Standard

A. Why Did EPA Revoke the 1-Hour Ozone Standard in Genessee, Saginaw, Midland, and Bay Counties?

On June 5, 1998 (63 FR 31014), July 22, 1998 (63 FR 39432) and June 9, 1999 (64 FR 30911), the EPA revoked the 1-hour ozone NAAQS in many areas around the country in anticipation of implementing the new 8-hour ozone NAAQS that was established in 1997. EPA revoked the 1-hour standard to allow areas that were showing attainment to redirect their focus toward meeting the new 8-hour standard. On June 5, 1998, the EPA revoked the 1-hour standard for Genessee, Saginaw, Midland, and Bay Counties because ozone monitors were showing attainment of the ozone NAAQS.

B. Why Did EPA Reinstate the 1-Hour Ozone Standard in Genessee, Saginaw, Midland, and Bay Counties?

On May 14, 1999, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision on the 8-hour ozone NAAQS that blocked EPA's ability to implement the new standard. That action left nearly 3,000 U.S. counties without any Federal public health standard for ozone. To remedy this situation, on July 20, 2000, EPA published a final rulemaking action in the **Federal Register** (65 FR 45181) to reinstate the 1-hour standard in areas where it had been revoked, including Genessee, Saginaw, Midland, and Bay Counties.

C. What Does Reinstatement Mean for Genesee, Saginaw, Midland, and Bay Counties?

For areas with clean air quality data, like Genessee, Saginaw, Midland, and Bay Counties, the July 20, 2000 rulemaking (65 FR 45182) specifies that reinstating the nonattainment designation will occur 180 days after EPA published the rulemaking, on January 16, 2001. EPA believes that it is appropriate to provide nonattainment areas with clean air quality data since revocation additional time to complete the redesignation process. Therefore, EPA delayed the applicability date of the final rule for 180 days for areas that were designated nonattainment at the time of revocation and continue to have clean data, to allow States to submit redesignation requests and EPA time to act on them prior to the January 16, 2001 applicability date. The July 20, 2000 rule specifies a procedure by which EPA can synchronize the effective date of the reinstatement and redesignate at the same time. EPA is using that procedure in this action.

II. Determination of Attainment

A. What Action Is EPA Taking?

The EPA is determining that the Flint (Genesee County) transitional ozone nonattainment area and the Saginaw-Midland-Bay City (Saginaw, Midland, and Bay Counties) ozone nonattainment area have attained the NAAQS for ozone. On the basis of this determination, EPA is also determining that certain CAA requirements do not apply to these areas as long as they continue to attain the ozone NAAQS. These requirements are section 172(c)(1) attainment demonstration requirements and section 172(c)(9) contingency measure requirement.

B. Why Is EPA Taking This Action?

The EPA believes it is reasonable to interpret provisions regarding attainment demonstrations and certain related provisions to not require SIP submissions, as described further below, if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.*, attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). The EPA is basing this determination upon three years of complete, quality-assured, ambient air monitoring data for the 1997 to 1999 ozone seasons recorded at the Flint monitoring sites that demonstrate that Genessee, Saginaw, Midland, and Bay Counties have attained the ozone NAAQS. Preliminary ozone monitoring data for 2000 continue to show that these areas are attaining the ozone NAAQS.

G. What Would Be the Effect of This Action?

The requirements of section 172(c)(1) concerning the submission of a plan to ensure reasonable further progress (RFP) and the ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment will not apply to the area.

D. What Is the Background for This Action?

The EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations and certain related provisions to not require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.*, attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA has interpreted the general provisions of subpart 1 of part D of Subchapter I (sections 171 and 172) as not requiring the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures, as explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," dated May 10, 1995 (See *Sierra Club* v. *EPA*, 99 F.3d 1551 (10th Cir. 1996)).

The attainment demonstration requirements of section 182(b)(1) are that the plan provide for "such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA." If an area has in fact monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I of the Clean Air Act Amendments of 1990 (1990 Act). As EPA stated in the Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached" (57 FR 13564). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similarly, the EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer applying once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date" (57 FR 13564) EPA has exercised this policy most recently in approvals for the Cincinnati, OH and Muskegon, MI areas (65 FR 37879 and 65 FR 52651).

The state must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

The determinations in this notice do not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, any other states with respect to the NAAQS (see section 110(a)(2)(D)). The EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the CAA to require such emission reductions if necessary and appropriate to deal with transport situations.

The EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) for Genesee, Bay, Midland, and Saginaw Counties from the 1997 through 1999 ozone seasons, as recorded at monitoring sites in Genesee County. This data is summarized in Table 1 of this document covering EPA's analysis of the redesignation request. Preliminary monitoring data for 2000 show the area continues to attain the 1-hour ozone NAAQS. On the basis of this review, EPA determines that these areas have attained the 1-hour ozone standard during the 1997–99 period, which is the most recent 3 year time period of air quality monitoring data. The State therefore is not required to submit an attainment demonstration, RFP, and a section 172(c)(9) contingency measure plan.

E. Where Is the Public Record and Where Do I Send Comments?

The official record for this direct final rule is at the addresses in the ADDRESSES section at the beginning of this document. The addresses for sending comments are also provided in the ADDRESSES section at the beginning of this document. If we receive adverse comments on this action, we will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule. We will not open a second public comment period. Parties interested in commenting on this action should do so at this time.

III. Redesignation Request

A. What Action Is EPA Taking?

The EPA is approving the redesignation request for Genesee, Bay, Midland, and Saginaw Counties because 3 years of ambient monitoring data demonstrate that these areas have attained the ozone NAAQS, and the areas have satisfied the other requirements for redesignation. The EPA is approving the maintenance plans submitted by the Michigan Department of Environmental Quality (MDEQ) as a revision to the SIP.

B. What Would Be the Effect of the Redesignation?

The redesignation would change the official designation of Genesee, Bay, Midland, and Saginaw Counties from nonattainment to attainment for the 1-hour ozone standard. It would also put a plan in place to maintain the 1-hour ozone standard for the next 10 years. This plan includes contingency measures to correct any future violations of the 1-hour ozone standard.

C. What Is the Background for This Action?

The EPA originally designated Genesee, Bay, Midland, and Saginaw Counties (Flint and Saginaw-Midland-Bay City areas) as ozone nonattainment areas under section 107 of the 1977 Act on March 3, 1978 (43 FR 8962). The EPA revisited this original designation in 1991 to reflect new designation requirements contained in the 1990 Act. The 1990 Act authorized the EPA to designate nonattainment areas according to degree of severity of the nonattainment problem. On November 6, 1991 (56 FR 56694), the EPA designated Genesee, Bay, Midland, and Saginaw Counties as ozone nonattainment areas. At the time of the 1991 designations, air quality monitoring data for the Flint area showed that the area had not experienced a violation of the ozone NAAQS between 1988–1990, however, the State had not completed a redesignation request showing that it had complied with the requirements of section 107 of the Act. As a result, EPA designated the area as nonattainment, but did not establish a nonattainment classification, establishing the area as a transitional ozone nonattainment area. The State discontinued ozone monitoring in the Saginaw-Midland-Bay City area prior to EPA's 1991 designations. As a result, up to date monitoring data was not available for these areas, nor had the State completed a redesignation request showing that it complied with the requirements of section 107 of the Act. Based on this, the EPA designated the area as nonattainment, but did not establish a nonattainment classification, establishing the area as an incomplete data ozone nonattainment area. The preamble for the original designation contains more detail on this action (56 FR 56694).

Air quality monitors in Genesee County have since recorded 3 years of complete, quality-assured, ambient air quality monitoring data for 1997–1999, thereby demonstrating that the area has attained the 1-hour ozone NAAQS. While monitoring data is not available for Bay, Midland, and Saginaw Counties, the State has argued that the data collected by the ozone monitors in Genesee County are indicative of ozone levels in Bay, Midland, and Saginaw Counties, and should be used as an indicator of this area's attainment status. As discussed in section E.1., below, EPA agrees with Michigan's assertion.

On May 9, 2000 Michigan submitted a maintenance plan to ensure continued attainment of the ozone standard for the Flint and the Saginaw-Midland-Bay City areas. The State also included materials from the public hearing on the request which it held in Saginaw on July 16, 1997.

D. What Are the Redesignation Review Criteria?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that: (1) The Administrator determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable State Implementation Plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175(A); and, (5) the State containing such area has met all requirements of section 110 and part D of the CAA which are applicable to the area.

The EPA provided guidance on redesignation in the State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, on April 16, 1992 (57 FR 13498) and supplemented the guidance on April 28, 1992 (57 FR 18070). The EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994. (Nichols, October 1994)

2. "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas," Sally L. Shaver, Director, Air Quality Strategies and Standards Division, November 16, 1994.

3. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

4. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993.

5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992. (Calcagni, October 1992)

6. "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

7. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

E. What Is EPA's Analysis of the Request?

1. The Area Must Be Attaining the 1-Hour Ozone NAAQS

For ozone, an area may be considered to be attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and Appendix H, based on three complete, consecutive calendar years of quality assured monitoring data. A violation of the 1-hour ozone NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 per year at a monitoring site. A daily exceedance occurs when the maximum hourly ozone concentration during a given day is 0.125 parts per million (ppm) or higher. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in AIRS. The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

The Michigan request is based on an analysis of quality-assured ozone air quality data. Ambient air monitoring data for calendar years 1997 through calendar year 1999 show no violations of the ozone NAAQS (40 CFR 50.9) in Genesee County. The State collected this data in an EPA approved, quality assured, National Air Monitoring System monitoring network. Table 1 below summarizes the air quality data.

TABLE 1.—1-HOUR OZONE EXCEEDANCES IN GENESEE COUNTY

Site	Year	Exceedances measured	Expected exceedances
Flint Monitor: 26–049–0021	1996	0	0
	1997	0	0
	1998	1	1
	1999	0	0
Otisville Monitor: 26–049–2001	1996	0	0
	1997	0	0
	1998	1	1
	1999	1	1

As discussed in the State's redesignation submittal, ozone monitors operated in Bay County from 1973–1982, and from 1979–1981 in Saginaw County. Due to new monitoring siting criteria, as well as other changes in ozone monitoring techniques, Michigan discontinued monitoring in Bay and Saginaw Counties in 1982. At that time, the monitors had shown attainment of the ozone NAAQS in the Saginaw-Midland-Bay City area since 1978. In the redesignation request, the State argues that recent data from the two Flint monitors is representative of current ozone levels in the Saginaw-Midland-Bay City area. The EPA believes that this is appropriate given the monitoring history of the area, the proximity of the Flint monitors to the Saginaw-Midland-Bay City area, and the population and emissions information that Michigan submitted with the redesignation request. EPA agrees with Michigan's assertion that these monitors are representative of ozone levels in the Saginaw-Midland-Bay City area.

As a result, the area meets the first statutory criterion for redesignation to attainment of the ozone NAAQS. The State has committed to continue to operate a network of monitoring stations in the areas in accordance with 40 CFR part 58. The State will be subject to any changes to the 40 CFR part 58 monitoring requirements if they are changed. (If complete quality assured data show violations of the ozone NAAQS before the final EPA action on this redesignation, the EPA will disapprove the redesignation requests for the Flint and Saginaw-Midland-Bay City areas.

2. The Area Must Have a Fully Approved SIP Under Section 110(k); and the Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Before Genesee, Bay, Midland, and Saginaw Counties may be redesignated to attainment for ozone, the State must have fulfilled the applicable requirements of section 110 and part D. The Calcagni memorandum dated September 4, 1992, states that areas requesting redesignation to attainment must fully adopt rules and programs that come due prior to the submittal of a complete redesignation request.

Section 110 Requirements

General SIP elements are delineated in section 110(a)(2) of the CAA. These requirements include but are not limited to the following: A SIP submittal containing rules the State adopted after reasonable notice and public hearing; provisions to establish and operate appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; a permit program to implement provisions of part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting; provisions for modeling; and provisions for public and local agency participation.

For purposes of redesignation, EPA reviewed the Michigan SIP to ensure that it satisfied all requirements under the amended CAA through approved SIP provisions. A number of the requirements did not change in

substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. The EPA has analyzed the Michigan SIP and determined that it is consistent with the requirements of amended section 110(a)(2). (See also 61 FR 20458 and *Southwestern Growth Alliance* v. *Browner*, 144 F.3d 984 (6th Cir. 1998)).

Part D: General Provisions for Nonattainment Areas

Before Genesee, Bay, Midland, and Saginaw Counties may be redesignated to attainment, they must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for ozone nonattainment areas classified under section 186 of the Act. As described in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501 (April 16, 1992)). However, as noted in the General Preamble, the subpart 2 requirements do not apply to "not classified" ozone nonattainment areas (57 FR 13525). EPA designated Genesee, Bay, Midland, and Saginaw Counties as "not classified" ozone nonattainment areas (56 FR 56694, November 6, 1991), codified at 40 CFR § 81.323. Therefore, to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, but not the requirements of subpart 2 of part D.

Subpart 1 of Part D—Section 172(c) Provisions

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years from the date of the nonattainment designation.

EPA has determined that Michigan's redesignation request for Genesee, Bay, Midland, and Saginaw Counties has satisfied all of the requirements under section 172(c) necessary for the areas' redesignation to attainment. Many of the general requirements contained in section 172(c) are addressed by the State's pre-amendment submittal which EPA approved on May 6, 1980 (45 FR 29801). In part 2 of this rulemaking, entitled "Determination of Attainment," EPA determines that several of the section 172(c) requirements do not apply since the areas have attained the ozone NAAQS. We address below the requirements for emissions inventories under section 172(c)(3) and permits programs under section 172(c)(5), which are necessary to redesignate the areas.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The base year emissions inventory for Genesee, Bay, Midland, and Saginaw Counties is satisfied by the State's submittal of the 1990 inventories for these counties in the redesignation request.

Section 172(c)(5) requires permits to construct and operate new and modified major stationary sources anywhere in the nonattainment area (a NSR program). The EPA has determined that areas being redesignated do not need an approved NSR program prior to redesignation provided that the area demonstrates maintenance of the standard without a NSR program in effect. A memorandum from Mary Nichols dated October 14, 1994 describes the rationale for this decision. See discussion in the Grand Rapids, Michigan notice published on June 21, 1996 (61 FR 31831). EPA has also applied this policy in redesignations of Youngstown-Warren, Columbus, Canton, Cleveland-Akron-Lorain, Dayton-Springfield, Toledo, Preble County, Columbiana County, Clinton County, and Cincinnati Ohio, as well as Detroit, Michigan. Additional information on EPA's rationale is in the approval of the redesignation request for the Cincinnati area (65 FR 37879).

The State has demonstrated that Genesee, Bay, Midland, and Saginaw Counties can maintain the standard without a NSR program in effect, and, therefore, the State need not have a fully approved NSR program prior to approval of the redesignation request for Genesee, Bay, Midland, and Saginaw Counties. The MDEQ's federally delegated PSD program will become effective in Genesee, Bay, Midland, and Saginaw Counties upon redesignation to attainment.

Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. This requirement applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. and the Federal Transit Act ("transportation conformity"), and to all other federally supported or funded projects ("general conformity"). EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. Section 176 further provides that state conformity revisions must be consistent with Federal conformity regulations promulgated by EPA pursuant to CAA requirements. EPA approved Michigan's general and transportation SIPs on December 18, 1996 (61 FR 66607).

As noted in more detail below, EPA's approval is based in part on a November 16, 1994, memorandum from Sally L. Shaver, Director of the Air Quality Strategies and Standards Division entitled "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" (limited maintenance plan memo), which contains guidance related to the conformity program. This memo allows nonclassifiable ozone areas that are at or below 85 percent of the ozone standard to submit a less rigorous maintenance plan. In these areas, there is no requirement to project emissions over the maintenance period. EPA believes it is reasonable to expect that such an area will not experience so much growth in that period that a violation of the NAAQS would occur. EPA believes that Genesee, Bay, Midland, and Saginaw Counties meet the criteria for limited maintenance and therefore EPA is approving their limited maintenance plan.

The memo notes that the Federal transportation conformity rule (58 FR 62188) and the Federal general conformity rule (58 FR 63214) apply to areas operating under maintenance plans. Under either rule, one means by which a maintenance area can demonstrate conformity of Federal actions is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area. Because EPA believes that an area to which the limited maintenance plan memo applies will not experience so much growth during the maintenance period that a violation of the NAAQS would occur, emissions budgets are not necessary to constrain emissions growth, and need not be capped for the maintenance period. In these cases, EPA considers that Federal projects subject which otherwise demonstrate conformity satisfy the "budget test" of the Federal conformity rules. While this policy does not exempt an area from the need to affirm conformity, it does allow an area to demonstrate conformity without regional emissions analysis.

The adequacy review period for this SIP submission is concurrent with the public comment period on this direct final rule. Because limited maintenance plans do not contain budgets, the adequacy review period for this maintenance plan serves to allow the public to comment on whether limited maintenance is appropriate for Genesee, Bay, Midland, and Saginaw Counties.

Interested parties may comment on the adequacy and approval of the limited maintenance plan by submitting their comments on this direct final rule.

If EPA receives adverse written comments with respect to the adequacy of the Genesee, Bay, Midland, and Saginaw County limited maintenance plan, or any other aspect of our approval of this SIP, by the time the comment period closes, we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. In this case, we will either respond to the comments in our final action or proceed with the adequacy process as a separate action.

Our action on the Genesee, Bay, Midland, and Saginaw County limited maintenance plan will also be announced on EPA's conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

3. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

Several Federal and statewide rules are in place which have significantly improved the ambient air quality in the Flint and Saginaw-Midland-Bay City areas, since they last violated the standard in 1988. Existing Federal programs, such as the Federal Motor Vehicle Control Program and the Reid Vapor Pressure (RVP) limit of 9.0 pounds per square inch for gasoline, will not be lifted upon redesignation. These programs will counteract emissions growth as the areas experience economic growth over the life of the maintenance plan.

The State has also adopted VOC rules controlling the loading of gasoline into existing stationary vessels at dispensing facilities; existing cold cleaners; the use of cutback paving asphalt; emissions of VOC from existing metallic surface coating lines; storage of organic compounds in existing fixed roof storage tanks; existing coating lines, emissions of VOC from existing automobile, light-duty truck, and other product and material coating lines; and, emission of volatile organic compounds from existing graphic arts lines. These rules will also remain in place in the applicable areas. In addition, the PSD permits program, and the Federal Operating Permits program will help limit emissions growth.

The EPA finds that the combination of existing EPA-approved SIP and Federal measures ensure the permanence and enforceability of reductions in ambient ozone levels that have allowed the area to attain the NAAQS.

4. The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10 year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems.

Section 175A(d) requires that the contingency provisions include a requirement that the State will implement all control measures that were in the SIP prior to redesignation as an attainment area.

In the limited maintenance plan memo noted above, EPA set forth new guidance on maintenance plan requirements for certain ozone nonattainment areas. The limited maintenance plan memo identified criteria through which certain "not classified" ozone nonattainment areas could choose to submit less rigorous maintenance plans. EPA used this policy in the approval of the maintenance plan for Victoria, Texas, on March 7, 1995 (60 FR 12453). As noted in the policy, areas whose design values are calculated at or below 0.106 parts per million (ppm) at the time of redesignation, are no longer required to project emissions over the maintenance period. The 0.106 ppm represents 85 percent of the ozone exceedance level of 0.125 ppm. As explained in the limited maintenance plan memo, the EPA believes if an area begins the maintenance period at or below 85 percent of the ozone exceedance level of the NAAQS, the existing Federal and SIP control measures, along with the PSD program, will be adequate to assure maintenance of the ozone NAAQS in the area.

The method for calculating design values is presented in the June 18, 1990 memorandum, "Ozone and Carbon Monoxide Design Value Calculations," from William G. Laxton, former Director of the Office of Air Quality Planning and Standards Technical Support Division. Michigan developed the redesignation request for the Flint and Saginaw-Midland-Bay City areas in 1997. At that time, based on 1994–1996 monitoring data from the Flint ozone network, the design value at the Flint monitors was .106 ppm and the area qualified for the limited maintenance plan option.

After reviewing the redesignation request, EPA finds that the design value for the Flint monitoring network is no longer within the .106 ppm threshold specified in the limited maintenance plan policy. Using monitoring data from 1997–1999, the Otisville monitoring site, downwind of Flint, shows a design value of .114 ppm, mainly due to two unusually high exceedance days recorded on May 15, 1998 and June 11, 1999.

The EPA performed an analysis of meteorological conditions on these days to determine the likely source of the high ozone values. A detailed discussion on this analysis is in EPA's TSD. Based on this analysis, the EPA concludes that the two episode days in question were unusual in that the winds were blowing from south to southeast, carrying emissions from urban areas in Southeast Michigan into the Flint area. Under more typical conditions, with winds from the west/southwest, emissions from the Flint urbanized area are blown toward the Otisville monitoring site. With winds from the south/southeast, emissions sources from upwind areas around Detroit are responsible for the high ozone levels. EPA's analysis indicates that this was the case on both episode days. As a result, it appears that the high values recorded on these days are primarily due to the transport of ozone and ozone forming emissions from areas outside of Flint.

EPA's limited maintenance plan policy is based on an argument that certain areas need not meet the full maintenance plan requirements because they have achieved air quality levels well below the standard without the application of control measures required by the Act for classified ozone nonattainment areas. Despite its current design value, this argument is true for

the Flint area. In fact, the last monitored violation in the Flint area was in 1975. Exceedances of the 1-hour ozone standard have been monitored only a small number of times in the area over the last two decades.

Furthermore, on October 27, 1998 (63 FR 57356) the EPA published a final rule, known as the NO_X SIP call, requiring 22 States and the District of Columbia to significantly reduce NO_X emissions in the eastern United States to reduce the transport of ozone. In an opinion delivered on March 3, 2000, the Circuit Court for the District of Columbia confirmed the applicability of this regulation on numerous States, including Michigan. As a result, Michigan, and other Midwestern States, must reduce NO_X emissions on a statewide basis to reduce background ozone levels. In Michigan, many of the largest NO_X sources are in Southeast Michigan and reductions from these sources would be expected to directly affect the type of situation that occurred in Flint on May 15, 1998 and June 11, 1999.

Without the two transport related exceedances, the design value in Flint would drop to .106 ppm and the area would qualify under the limited maintenance policy. Since the high values were caused by transport, and since EPA has developed the NO_X SIP call to address the transport problem, the EPA believes that it is appropriate to apply the limited maintenance policy in the Flint and Saginaw-Midland-Bay City areas.

In this action, EPA is approving Michigan's limited maintenance plan for the Genesee, Bay, Midland, and Saginaw Counties because Michigan's submittal meets the requirements of section 175A.

An ozone maintenance plan should address the following five elements: attainment inventory, demonstration of maintenance, monitoring network, verification of continued attainment, and a contingency plan.

Attainment Inventory

The State has adequately developed attainment emission inventories for 1990 that identify VOC and NO_X emissions for the Flint and Saginaw-Midland-Bay City nonattainment areas. EPA has determined that 1990 is an appropriate year on which to base attainment level emissions because monitors in the area showed attainment of the ozone NAAQS at the time.

The methodologies used in developing these inventories are discussed in EPA's TSD and in further detail in the State's redesignation submittal. The State has adequately developed an attainment emissions inventory for 1990 that identifies the levels of VOC and NO_X emissions in the areas sufficient to attain the NAAQS.

These emissions are summarized in Tables 2 and 3 below:

TABLE 2.—1990 ATTAINMENT INVENTORY—VOC EMISSIONS

[Tons per day]

Source type	Flint	Saginaw-Midland-Bay City
On-highway motor vehicle	30.05	34.64
Off-highway motor vehicle	12.05	14.63
Area	22.07	25.15
Point	18.52	38.90
Total	83.15	113.3

TABLE 3.—1990 ATTAINMENT INVENTORY—NO_X EMISSIONS

[Tons per day]

Source type	Flint	Saginaw-Midland-Bay City
On-highway motor vehicle	31.27	38.91
Off-highway motor vehicle	10.89	39.69
Area	7.84	2.34
Point	12.11	209.64
Total	62.11	290.58

Demonstration of Maintenance

Under the limited maintenance plan policy, EPA considers air quality monitoring data showing attainment of the ozone standard as satisfying the maintenance demonstration requirement. As a result, areas are not required to project emissions over the maintenance period. EPA believes that areas that qualify under the limited maintenance policy will benefit enough from the PSD program, any measures that are in the SIP, and Federal measures to ensure maintenance over the initial 10 year maintenance period.

Monitoring Network

The State has committed to continue to operate and maintain the network of ambient ozone monitoring stations in Genesee County in accordance with provisions of 40 CFR part 58.

Verification of Continued Attainment

Tracking—Continued demonstration of attainment of the ozone NAAQS in Genesee, Bay, Midland, and Saginaw Counties depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The tracking plan for Genesee, Bay, Midland, and Saginaw Counties consists of continued ambient ozone monitoring in the areas in accordance with the requirements of 40 CFR part 58.

Triggers—The contingency plan contains one trigger: A monitored air quality violation of the ozone NAAQS in any of the four counties, as defined in 40 CFR 50.9. At this time, two ozone monitors are in place in Genesee County. As such, a violation at either of these monitors would trigger the implementation of contingency measures in all four counties. The trigger date will be the date that the State certifies to the U.S. EPA that the air quality data are quality assured, which will be no later than 30 days after monitoring an ambient air quality violation.

Contingency Plan

Despite best efforts to maintain compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, as required by section 175A of the Act, Michigan has provided contingency measures with a schedule for implementation if a future ozone air quality problem occurs. Contingency measures in the plan include Reid vapor pressure controls on gasoline, implementation of stage I vapor control systems, and industrial cleanup solvent, plastic parts coating, and wood furniture coating regulations.

The State commits to adopting rules or passing legislation for any selected contingency measure within one year of its selection and submit them to EPA for approval. For the Reid vapor pressure controls and stage I vapor recovery control, the State will implement programs within 2 years of its selection as a contingency measure. For other contingency measures, the State will promulgate regulations within 12 months of selection, and implement the measure within 12 months of adoption.

Commitment To Submit Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the State has committed to submitting a revised maintenance SIP 8 years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional 10 years.

F. Where Is the Public Record and Where Do I Send Comments?

The official record for this direct final rule is located at the addresses in the **ADDRESSES** section at the beginning of this document. The addresses for sending comments are also provided in the **ADDRESSES** section at the beginning of this document. If EPA receives adverse written comments on this action, we will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule. We will not open a second public comment period. Parties interested in commenting on this action should do so at this time.

If we receive adverse written comments on the adequacy of the limited maintenance plan, or any other aspect of our approval of this SIP, by the time the comment period closes, we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. In this case, we will either respond to the comments on the emissions budgets in our final action or proceed with the adequacy process as a separate action.

IV. Disclaimer Language Approving SIP Revisions

Ozone SIPs are designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the ozone NAAQS. This redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the ozone emission limitations and restrictions in the approved ozone SIP. The State cannot make changes to ozone SIP regulations which will render them less stringent than those in the EPA approved plan unless it submits to EPA a revised plan for attainment and maintenance and EPA approves the revision. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

V. What Administrative Requirements Did EPA Consider?

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 16, 2001 unless EPA receives adverse written comments by December 13, 2000.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 12, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Hydrocarbons, Reporting and recordkeeping requirements, Volatile organic compounds, Ozone.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671 *et seq.*

Dated: October 26, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart X—Michigan

2. Section 52.1174 is amended by adding and reserving paragraph (r) and adding paragraph (s) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(s) Approval—On May 9, 2000, the State of Michigan submitted a revision to the Michigan State Implementation Plan for ozone containing a section 175A maintenance plan for the Flint and Saginaw-Midland-Bay City areas as part of Michigan's request to redesignate the areas from nonattainment to attainment for ozone. Elements of the section 175A maintenance plan include a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If monitors in any of these areas record a violation of the ozone NAAQS (which must be confirmed by the State), Michigan will adopt, submit to EPA, and implement one or more appropriate contingency measure(s) which are in the contingency plan and will submit a full maintenance plan under section 175A of the Clean Air Act. The menu of contingency measures includes a low Reid vapor pressure gasoline program, stage I gasoline vapor recovery, and rules for industrial cleanup solvents, plastic parts coating, and wood furniture coating.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671 *et seq.*

2. In § 81.323 the table entitled "Michigan—Ozone (1-hour standard)" is amended by revising the entries for "Flint Area: Genesee County," and "Saginaw-Bay City Midland Area:" including "Bay County," "Midland County," and Saginaw County to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—OZONE (1-HOUR STANDARD)

Designated areas	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	*	*	*
Flint Area:				
Genesee County	January 16, 2001	Attainment.		
* * *	*	*	*	*
Saginaw-Bay City-Midland Area:				
Bay County	January 16, 2001	Attainment.		
Midland County	January 16, 2001	Attainment.		
Saginaw County	January 16, 2001	Attainment.		
* * *	*	*	*	*

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

[FR Doc. 00–28805 Filed 11–9–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[FRL–6896–7]

RIN 2040–AD32

Final Rule To Amend the Final Water Quality Guidance for the Great Lakes System To Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today EPA is promulgating the final rule to amend the Final Water Quality Guidance for the Great Lakes System (Guidance) to prohibit mixing zones for bioaccumulative chemicals of concern (BCCs) in the Great Lakes System, subject to certain exceptions for existing discharges. For existing discharges, the regulation prohibits mixing zones for BCCs starting 10 years after the publication date of the final BCC mixing zone rule. New discharges of BCCs are subject to the mixing zone prohibition immediately upon commencing discharge. EPA had promulgated a mixing zone provision similar to this regulation on March 23, 1995, as part of the Guidance required by section 118(c)(2) of the Clean Water Act. The provision was vacated by the U.S. Court of Appeals for the District of Columbia Circuit in the case of *American Iron & Steel Institute* v. *EPA*, 115 F.3d 979 (D.C. Cir. 1997), and was remanded to the Agency for further consideration. In response to the Court's remand, EPA published a proposal on October 4, 1999, to amend the Guidance to reinstate the provision to prohibit mixing zones for BCCs (64 FR 53632). EPA received many comments from stakeholders throughout the United States on its proposal to prohibit mixing zones for BCCs in the Great Lakes Basin. This final rule reflects EPA's reconsideration of the factual record in response to the Court's remand and public comments received on its proposal.

EFFECTIVE DATE: December 13, 2000.

ADDRESSES: The public docket for this rulemaking, including the proposed rule, economic analysis, and other supporting documents, are available for inspection and copying at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604, by appointment only. Appointments may be made by calling Mary Willis Jackson at (312) 886–3717.

FOR FURTHER INFORMATION CONTACT: Mark Morris (4301), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (202–260–0312).

SUPPLEMENTARY INFORMATION:

Potentially Affected Entities

Entities potentially affected by today's action are those discharging or intending to discharge BCCs to waters of the United States in the Great Lakes System. Categories and entities that may ultimately be affected include the following:

Category	Examples of potentially affected entities
Industry	Industries discharging or intending to discharge BCCs to waters in the Great Lakes System as defined in 40 CFR 132.2.
Municipalities	Publicly owned treatment works discharging or intending to discharge BCCs to waters of the Great Lakes System as defined in 40 CFR 132.2

This table is not intended to be exhaustive, but rather is presented to provide a guide for readers regarding regulated entities likely to be affected by this action. Listed in the table are the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table also could be affected. To determine whether your facility is affected by this action, you should examine carefully the definition of "Great Lakes System" in 40 CFR 132.2 and examine the preamble to 40 CFR part 132, which describes the part 132 regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section titled **FOR FURTHER INFORMATION CONTACT**.

I. Legal Authority

This regulation is promulgated under the authority of sections 118, 301, 303, 402, and 501 of the Clean Water Act (CWA).

II. Introduction

Section 118(c)(2) of the CWA, as amended by the Great Lakes Critical Programs Act of 1990, required EPA to publish proposed and final water quality guidance on minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes System. On March 23, 1995, EPA published a final rule entitled "Final Water Quality Guidance for the Great Lakes System" (Guidance) in order to satisfy this

requirement. See 60 FR 15366. The 1995 Guidance included ambient water quality criteria for 29 pollutants, including BCCs, that reflect the maximum ambient concentrations of those pollutants that could be present in waters of the Great Lakes Basin without impairing aquatic life, wildlife, or human health. The 1995 Guidance also included implementation procedures that Great Lakes States and Tribes are to use to prepare total maximum daily load (TMDL) analyses and to develop water quality-based effluent limits (WQBELs) for facilities discharging these pollutants. See 40 CFR part 132.

The Great Lakes States are the States of Illinois, Indiana, Michigan, Minnesota, Ohio, New York, Pennsylvania, and Wisconsin. The Great Lakes Tribes are those Tribes as defined in 40 CFR 132.2. Great Lakes Tribes consist of any Tribe within the Great Lakes Basin for which EPA has approved water quality standards under section 303 or that EPA has authorized to administer a National Pollutant Discharge Elimination System (NPDES) program under section 402 of the CWA.

Among the implementation procedures in the 1995 Guidance was procedure 3.C in appendix F. Under this procedure, NPDES permits would have been prohibited from including mixing zones in the calculation of water quality-based effluent limits for new discharges of BCCs after March 23, 1997, or for existing discharges of BCCs after March 23, 2007. EPA also codified exceptions for existing discharges to account for water conservation and technical and economic considerations.

Great Lakes States and Tribes were required to adopt water quality standards, antidegradation policies, and implementation procedures consistent with the criteria methodologies, policies, and implementation procedures specified in the 1995 Guidance by March 23, 1997, and to submit them to EPA for approval or disapproval. See 40 CFR 132.5. In the event EPA disapproves all or part of a State's or Tribe's submission, EPA would publish a final rule identifying the provisions of part 132 that shall apply to discharges in that State or Tribal reservation. See 40 CFR 132.5(f)(2).

The 1995 Guidance was challenged in the U.S. Court of Appeals for the District of Columbia Circuit. On June 6, 1997, the Court issued a decision upholding virtually all of the provisions contained in the 1995 Guidance (*American Iron and Steel Institute, et al.* v. *EPA*, 115 F.3d 979 (D.C. Cir. 1997)) however, the Court vacated the provisions of the Guidance that would have eliminated mixing zones for BCCs (115 F.3d at 985). The Court held that EPA had "failed to address whether the measure is cost-justified," and remanded the provision to EPA for an opportunity to address this issue (115 F.3d at 997). In response to the Court's remand, EPA re-examined the factual record, including its cost analyses, and published the Proposal to Amend the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern in the **Federal Register** on October 4, 1999 (64 FR 53632). EPA received numerous comments, data, and information from commenters in response to the proposal.

After reviewing and analyzing the information in the rulemaking record, including those comments, EPA has developed the Final Rule to Amend the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern, to be codified in appendix F, procedure 3.C of 40 CFR part 132. This preamble describes the background and purpose of this final rule, briefly summarizes the rule's major provisions, and summarizes the major issues in the public comments received on the proposal and EPA's responses to them. A detailed discussion of EPA's analysis of comments and issues, as well as its reasons for issuing the final rule to prohibit mixing zones for BCCs in the Great Lakes Basin, are provided in additional technical and supporting documents, which are available in the docket for this rulemaking. Copies of the supporting documents also are available from EPA in electronic format (see section VIII of this preamble). For a detailed discussion of the rule's major provisions, please see the preamble to the proposed rule.

III. Summary of the Final Regulation

Today, EPA is promulgating the final rule to amend 40 CFR part 132, appendix F, procedure 3, to reinstate the mixing zone provisions for BCCs. A mixing zone is the area beyond a point source outfall (*e.g.*, a pipe) in which concentrations of a particular pollutant from a wastewater discharge mix with receiving waters. The water is allowed to exceed the water quality criterion for that pollutant within the mixing zone. Behind the theory of using mixing zones is the belief that by mixing with the receiving waters within the zone, the discharge will become sufficiently diluted to meet applicable water quality criteria beyond the borders of that zone.

Today's rulemaking prohibits or, for existing discharges, phases out mixing zones for BCCs in the Great Lakes System subject to certain exceptions. This means that NPDES permit limitations for BCCs discharged to the Great Lakes System must be set no higher than water quality criteria. Under today's rule, the phase-out of mixing zones is to occur, in most cases, by November 15, 2010. EPA believes this is a reasonable time frame because five out of the eight Great Lakes States have similar State-adopted BCC mixing zone provisions and the remaining three States have been aware since 1997 of EPA's intention to reinstate this provision. See 63 FR 20107 (April 23, 1998). In addition, EPA has not chosen to reduce the phase-out period to less than 10 years (the time frame originally promulgated in the 1995 Guidance), to allow affected dischargers the same time (approximately 10 years) they would have had under the original BCC mixing zone provision.

Under this amendment to Part 132, the mixing zone prohibition would be limited to BCCs—the pollutants of primary concern in the Great Lakes System. EPA's regulations applicable to the Great Lakes System define a BCC, in essence, as any chemical that (1) accumulates in aquatic organisms by a human health bioaccumulation factor (BAF) greater than 1000 (after considering various specified factors), and (2) has the potential upon entering surface waters to cause adverse effects, either by itself or in the form of its toxic transformation product, as a result of that accumulation. See 40 CFR 132.2. The table below lists the BCCs subject to today's rule.

BIOACCUMULATIVE CHEMICALS OF CONCERN (BCCS)

Lindane	Mirex
Hexachlorocyclohexane (BHC)	Hexachlorobenezane
alpha-Hexachlorocyclohexane	Chlordane
beta-Hexachlorocyclohexane	DDD
delta-Hexachlorocyclohexane	DDT
Hexachlorobutadiene	DDE
Photomirex	Octachlorostyrene
1,2,4,5-Tetrachlorobenzene	PCBs
Toxaphene	2,3,7,8-TCDD
Pentachlorobenzene	Mercury
1,2,3,4-Tetrachlorobenzene	Dieldrin

There are two components of this rule. First, today's rule prohibits the establishment of mixing zones for new discharges of BCCs to the Great Lakes

System. This prohibition takes effect as soon as EPA has approved the State's or Tribe's submission with respect to this prohibition or publishes a notice identifying that prohibition as applying within the State's or Tribe's jurisdiction. The definition of "new discharge" can be found at procedure 3.C.2 of today's rule. All other discharges of BCCs are defined as existing discharges.

Second, this regulation prohibits mixing zones for existing discharges of BCCs after November 15, 2010, subject to two exceptions: (1) promotion of water conservation; and (2) technical and economic considerations. EPA recognizes that, as a result of water conservation measures, concentrations of a BCC in an effluent may increase slightly, while the mass of the BCC being discharged does not. Therefore, the first exception would allow States and Tribes to grant mixing zones for any existing discharge of BCCs even after November 15, 2010 in cases in which it can be demonstrated that failure to grant a mixing zone would preclude water conservation measures that would lead to overall load reductions in BCCs, even though higher concentrations of BCCs may occur in the effluent. This mixing zone exception is virtually identical to the provision promulgated in 1995.

Regarding the exception for technical and economic considerations, a State or Tribe could authorize a mixing zone for existing discharges of BCCs after November 15, 2010 if the State or Tribe determines that (a) the discharger complies with all applicable requirements of CWA sections 118, 301, 302, 303, 304, 306, 307, 401, and 402 (including existing NPDES water quality-based effluent limitations) for the BCC for which the mixing zone is requested, and (b) the discharger has reduced and will continue to reduce—to the maximum extent possible—its discharge of the BCC for which the mixing zone is requested. This exception would not be available if cost-effective pollution prevention and/or other control and treatment strategies exist that make it technically feasible for the discharger to achieve the applicable water quality criteria at the point of discharge, and if the discharger, or affected community or communities, will not suffer unreasonable economic effects in implementing such strategies.

EPA has modified the technical and economic feasibility provision from the 1995 Guidance to clarify the importance of implementing only those control strategies determined to be cost-effective. EPA expects that exceptions to the BCC mixing zone provision will be granted solely at the discretion of the State or Tribe on a case-by-case basis. See procedure 3.C.5 and 6 for more information on exceptions to the provisions contained herein. EPA received no comments concerning any aspects of either exception as proposed.

To date, the States of Illinois, Indiana, Minnesota, Michigan, and Wisconsin have adopted and submitted to EPA requirements to eliminate or, for existing discharges, to phase out mixing zones for BCCs. If these requirements are retained by the five States, and if EPA determines that they are as protective as today's final rule, EPA will approve those submissions under the procedures set forth in 40 CFR 132.5(f). Any Great Lakes State or Tribe that has not adopted BCC mixing zone provisions as protective as those in today's rule (e.g., New York, Ohio, Pennsylvania) will need to adopt such provisions and submit them to EPA for approval or disapproval pursuant to 40 CFR 132.5 by May 13, 2002, see 40 CFR 132.5(a) and (c) (as amended by today's rule.). If a Great Lakes State or Tribe fails to submit such provisions, or if EPA disapproves the submission, EPA, after giving the State or Tribe an opportunity to make necessary changes, will publish a final rule no later than November 13, 2002 identifying the provisions of today's rule that shall apply to discharges within that State's or Tribe's jurisdiction. See 40 CFR 132.5(c), (d) and (f).

IV. Comments on the Proposed Regulation

EPA solicited comments on the intended amendment in the "Proposal to Amend the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern," which was published in the **Federal Register** on October 4, 1999 (64 FR 53632). The following sections summarize comments received and EPA's responses.

A. Support for the Regulation

Some commenters on the proposal of this rule support the elimination of mixing zones for BCCs in the Great Lakes System. The majority of these comments address issues such as (1) the consistency between the final rule, the goals of the CWA, and the goals of the Great Lakes Water Quality Agreement (GLWQA), (2) the inappropriateness of mixing zones for BCCs due to BCCs' persistence in the environment, and (3) the adverse health effects BCCs impose on fish and other aquatic organisms, wildlife, and humans. Commenters also urged EPA to extend the proposed rule so that it encompasses other national waters, to apply the prohibition to chemicals other than BCCs, and to include chemicals with BAFs lower than the current 1000 cutoff that was established in the 1995 Guidance. These issues and requests are discussed throughout the remainder of this section.

Phasing out existing mixing zones for BCCs and prohibiting new mixing zones for BCCs will ensure that the 1995 Guidance achieves the goals of the CWA and the objectives of the GLWQA, which is an international agreement between the United States and Canada to restore and maintain the environmental integrity of the Great Lakes ecosystem. Several commenters pointed out that today's rule is an important and necessary step toward achieving the GLWQA's goals to virtually eliminate persistent and bioaccumulative toxics (Article II.a) and to reduce mixing zones to the maximum extent possible (Article IV.f). EPA acknowledges the consistency between today's rulemaking and the objectives of the GLWQA and is promulgating this amendment in an effort to conform to goals that work toward mending and upholding the integrity of the Great Lakes System.

As part of this effort, EPA has judged that mixing zones for BCCs (even of the limited size already authorized by 40 CFR part 132 under certain conditions) for existing discharges should be prohibited to the greatest extent technically and economically possible. A large number of scientists, policy makers, and other stakeholders in the Great Lakes and Canada agree on the need to virtually eliminate BCCs from the Great Lakes Basin and to reduce the size of BCC mixing zones to the maximum extent possible. This is because BCCs, due to their persistent and bioaccumulative nature, are incompatible with mixing zones. By definition, BCCs are chemicals that do not degrade over time. These chemicals accumulate in organisms living in the water and become more concentrated as they move up the food chain—from biota to fish and wildlife to humans. Because the effects of these chemicals are not mitigated by dilution, using a mixing zone to "dilute" BCC discharges is not appropriate. Commenters pointed out that dilution and dispersion are inadequate substitutes for removing and treating the BCCs before they are discharged to the Great Lakes' waters. EPA agrees with these commenters because it is the mass of BCCs that poses a problem, not just the concentration. Because dioxins, mercury, polychlorinated biphenyls (PCBs) and other BCCs degrade over long periods of time or do not degrade at all, their buildup in pockets of sediments creates "hot spots" in the environment in which bioaccumulation of toxics in fish and other aquatic organisms can occur at levels that significantly exceed safe levels for consumption by wildlife and humans. The 1995 Guidance required a minimum 10:1 dilution ratio for lake discharges and 25 percent of the critical stream flow for tributary discharges in calculating mixing zones for all pollutants, including BCCs. See 40 CFR part 132, appendix F, procedure 3.D and 3.E. Larger mixing zones also are allowed if a particular demonstration is performed. See 40 CFR part 132, appendix F, procedure 3.F. Thus, with the currently allowable dilution, the mass of BCCs discharged from point sources to the Great Lakes System could be reduced significantly—by a factor of 10 to 100 in certain circumstances—when mixing zones for BCCs are prohibited.

Commenters on EPA's proposal support today's rule because of its ability to help decrease the amount of BCCs to which fish, wildlife, and humans are exposed. The commenters recognize the adverse effects BCCs have on human health and wildlife and that even small concentrations can increase the risks of cancer, organ failure, and a host of other maladies. One commenter noted that contaminating any waterbody with persistent toxic substances that accumulate in the food chain is never rational. Furthermore, it should not be justifiable public policy.

Because the food web that accumulates BCCs can be concentrated in tributaries, bays, and other areas where natural sinks exist—and where fish species are more diverse and productive—the elimination of mixing zones will reduce the probability of adverse effects on these organisms and those that consume them. Fewer pollutants entering the waters will reduce the detrimental effects already discovered in various fish species and wildlife.

In aquatic organisms, effects of BCCs range from death to impairment of reproduction, development, and growth (Sweeney et al., 1993). In wildlife, birds exposed to BCCs have exhibited biochemical dysfunction and metabolic effects, behavioral/neurological disorders, and reproductive impairment (Elliott et al., 1996).

For humans, as is true for wildlife, the main route of exposure to BCCs is through the consumption of Great Lakes fish, which have "uptaken" and retained the pollutants from their surrounding environment and food. Potential adverse human health effects resulting from the consumption of contaminated fish include both the increased risk of cancer and the potential for systemic or noncancer risks such as kidney damage (U.S. EPA, 1997). As affirmed by commenters who support today's rule, women who are pregnant and children, in particular, are at risk for being adversely affected by BCCs (U.S. EPA, 1997). BCCs can induce inheritable chromosomal changes in women that could result in birth defects in their infants, cross the human placenta contributing to exposure of the fetus through placental transfer, and accumulate in body tissues. Exposure to BCCs can result in decreased fertility, premature labor, spontaneous abortion, reproductive hormone disorders, increased stillbirths, lack of mammary function, reduced libido, and delayed estrus.

Children may be at greater risk than adults. Because BCCs can accumulate in human milk, women exposed to the pollutants who breastfeed could potentially pass the chemicals on to their infants. Risks to infants and children include central nervous system effects, mortality, low IQ scores, cataracts, congestive heart failure, skin disorders, cancers, immune system dysfunction and immunosuppression, skeletal disorders, neurological/behavioral effects, and endocrinological disorders.

In addition to supporting EPA in its rationale behind the rule, as summarized in the above paragraphs, many commenters strongly advised EPA to expand the proposed rule so that the regulations apply nationwide, not just for the Great Lakes System, and that the BCC mixing zone phase-out should cover chemicals other than BCCs. One commenter noted that, although lakes lend themselves to the most easily quantifiable demonstration of risk to a particular subpopulation, the discharge of BCCs into moving waterbodies is no less problematic. EPA, under a separate undertaking, is evaluating whether mixing zones for BCCs should be prohibited in other national waters and for chemicals other than BCCs.

Commenters also urged EPA to propose an amendment that would address chemicals with a BAF that falls short of the cutoff established by the Guidance. These commenters claimed that the risks to wildlife and humans from chemicals with lower BAFs might be just as severe as those chemicals with BAFs of greater than 1000, particularly when wildlife and humans are exposed to a mix of chemicals found within fish. In response, EPA believes that the current BAFs are sufficient to protect water quality and human health. The Agency wishes to point out, however, that 40 CFR 132.1(d) provides that the methodologies for establishing BAFs and criteria for pollutants, including BCCs, will be evaluated and revised, as appropriate, every three years.

In summary, these commenters stated their support for today's rule. Although some hope to see an extension of the mixing zone prohibition, many were satisfied with the step forward that this rule is making in helping to meet the objectives of the CWA.

B. Benefits Associated With Phase-out and Elimination of Mixing Zones for BCCs

A few commenters asserted that the proposed rule contained no evidence or documentation that restrictions on NPDES dischargers would produce any measurable change in the levels of BCCs in water, sediment, or fish tissue. Others claimed that the proposal would yield no benefits because five of the Great Lakes States have already adopted a similar prohibition on BCC mixing zones and, to date, no mixing zone credit exists for cases in which water quality exceeds applicable water quality standards. One commenter estimated that annual benefits of the proposal would amount to no more than $1.3 to $4.1 million.

EPA disagrees with these claims. EPA believes that the mixing zone prohibition is necessary to protect the integrity of the Great Lakes and that its benefits derive from the minimization or avoidance of the adverse effects summarized in the preceding section. The Court that struck down an earlier version of this regulation noted that EPA had adequately explained the environmental importance of eliminating mixing zones for BCCs. In addition, numerous scientists, policy makers, and other stakeholders in the United States and Canada are urging EPA to reduce the size of BCC mixing zones to the maximum extent possible, which would be a step forward in trying to virtually eliminate BCCs from the Great Lakes Basin as called for by the GLWQA.

Because BCCs are harmful to the environment, any discharge of BCCs—even those discharges that are equivalent to the applicable water quality criteria-have the potential to impair the integrity of the receiving waterbody. Using mixing zones to increase the amount of allowable discharge exacerbates this situation because the effects of BCCs are not limited to the short term, or localized zone of initial dilution, meaning that adverse effects could occur far outside the mixing zone and long after the BCC discharge occurred.

Since point sources affect waterbodies and, hence, fish tissue on a site-specific basis, removing fish advisories and restoring waters requires a reduction in the mass of BCCs that accumulate in depositional areas of the Great Lakes. The bottom levels of the food web biomagnify BCCs that concentrate in these sinks, affecting the higher levels of species that tend to be more productive in these areas. Prohibiting mixing zones for BCCs in the Great Lakes System can reduce the natural sink masses below point source discharges by a factor of 10 to 100 in some circumstances.

EPA reiterates that one of the primary purposes of the 1995 Guidance and, by extension, today's rule is to promote pollution prevention. Approximately one-third of the more than 360 hazardous pollutants in the Great Lakes System could have acute or chronic toxic effects on aquatic life, wildlife, and human health. Had the Guidance's framework been in place 30 years ago when the effects of PCBs from point source discharges began to emerge, States could have moved quickly to control these pollutants, avoiding millions of dollars in cleanup costs, human health impacts, and other environmental damage. Prompted by today's rule, dischargers can use pollutant minimization to control pollutants before new water quality problems arise. With low concentrations of new chemicals being introduced into the environment every year, it would be prudent to try to avoid future cleanup costs now.

Although EPA was not able to quantify all of these benefits in its analysis of the final Guidance as promulgated in March 1995, the Agency believes today's rule is an integral part of the framework created by the Guidance for the type of preventative measures mentioned above. EPA believes that these and other benefits derived from the Guidance and today's rule are indeed significant and, further, draws attention to the potential high costs of future cleanup that, without the help of the BCC mixing zone prohibition, may someday need to be addressed.

Some commenters asserted that the proposed rule would yield no benefits because some Great Lakes States have already adopted a similar prohibition on BCC mixing zones (e.g., Indiana). EPA observes that these commenters do not make the corresponding argument that the rule has no costs in those States. As noted above, the benefits and costs of the rule are directly linked to reducing the mass loading of BCCs to the waterbody. EPA has chosen to assess costs and benefits in these States because EPA would be required to impose these measures through a Federal promulgation if those Great Lakes States withdraw or fail to submit such voluntarily adopted measures.

As for the claim that the annual benefits of the prohibition will be between $1.3 million and $4.1 million, EPA believes that this is an understatement and was made based on a misconception of the methodology EPA used in the Guidance. When EPA developed the 1995 Guidance, EPA did not estimate benefits for the entire Great Lakes Basin; rather, EPA estimated values for three case-study areas only. An extrapolation to the whole Great Lakes Basin from this small number of case studies, as the commenter has done, is inappropriate because EPA was able to estimate basinwide benefits for one benefit category only, and was not able to quantify all categories of benefits even for the three case-study areas (for example, there is no methodology for monetizing noncancer health effects from pollutants like mercury). Nor was EPA able to account for avoided future contamination and cleanup in its analysis of benefits. EPA believes that any disparity between the environmental justification for today's rule (which the Court found to be adequately explained) and estimates of monetary benefits is the result of not being able to account for all potential benefits in dollar values.

C. Source Controls, Pollution Prevention, and Waste Minimization

A number of commenters expressed the opinion that EPA, in its proposal, failed to support its statement that dischargers can comply with the prohibition through product substitution, cleaner technologies, and source controls. These commenters believe that it is unlikely that many publicly-owned treatment works (POTWs) would be able to achieve additional pollutant reductions through source controls alone, particularly for mercury. Some commenters also asserted that EPA did not evaluate the cost impacts on indirect dischargers.

EPA disagrees with these comments. The record shows that it will be technically and economically feasible for many dischargers, including POTWs, to phase out mixing zones for BCCs during the 10-year phase out period. Although EPA acknowledges that at present it may be difficult to identify potential sources of pollutants within POTW service areas, as analytical methods continue to improve, so should the POTWs' abilities to identify and control sources of BCCs and to educate the public on how to prevent pollution by avoiding household products that contain high levels of BCCs or substituting for those products ones that are BCC-free or more environmentally friendly. As discussed below, EPA also considered the cost impact on indirect dischargers.

Even though many facilities may face challenges in achieving effluent limitations derived from Great Lakes standards for mercury, EPA's record shows that when facilities try to control mercury they have been able to achieve significant reductions in their discharge levels. As described in more detail below, in many cases these reductions have been attained by source control, not end-of-pipe treatment. These approaches succeed for other BCCs as well. Less costly than end-of-pipe treatment, source controls have included efforts to control more diffuse sources of BCCs, such as households using lindane-containing products and have resulted in substantial increases in the percentages of BCC removals (U.S. EPA, 1999).

One commenter argued that all POTWs will have a hard time meeting effluent limits for mercury unless a mixing zone is allowed. The two primary reasons for this belief are (1) that POTWs currently have high concentrations of mercury in influents from domestic sources alone (according to the commenter an approximate median of 110 ppt), and (2) that pollution prevention is cost-effective for industrial users only. The conclusion reached by this commenter, then, is that end-of-pipe treatment would need to be added if stringent limitations based on mercury water quality criteria (1.3 ng/L) are to be met. EPA believes that both of the reasons given overstate the issue and that the conclusion is based on an incorrect premise. EPA acknowledges that many POTWs have high concentrations of mercury in their influent and agrees that these high levels need to be significantly reduced if POTWs are to meet the stringent effluent limits contemplated by today's rule. The mere fact that high mercury concentrations exist, however, does not mean that they cannot be controlled at the source, prior to the time they arrive at the POTW. Indeed, EPA's record shows that source controls, pollution prevention, and waste minimization often are far more efficient and cost effective than end-of-pipe treatment for mercury. EPA does not agree that cost-effective opportunities typically occur for POTWs only when there are industrial sources with high loading rates. EPA acknowledges that if the great majority of mercury in a POTW's influent is derived from one or two sources, obviously it would be easier and more cost-effective to control those sources than it would be to control other, more diverse sources. Nonindustrial sources, however, such as dental and medical facilities, often discharge high concentrations of mercury. These sources are usually classified as "domestic" rather than "industrial" discharges. In those few cases in which POTWs have seriously attempted to reduce mercury from domestic sources, significant measures of success from control of commercial facilities in "domestic" wastewater have been achieved. While dental and medical facilities tend to be more widely distributed than "industrial" facilities, reductions in discharges can be organized through a variety of programs that include campaigns directed toward dental and medical practices and public education. In some cases, dental and medical offices are required to remove mercury prior to discharging to sewers. The bottom line is that the treatment of more concentrated wastestreams at the source or pollution prevention at the source is more likely to be cost-effective than treating diluted wastestreams at the POTW.

EPA understands that the control of mercury from "domestic" sources would entail costs on the part of the POTW, but such costs are likely to be considerably smaller than those required for end-of-pipe treatment. In sum, the most cost-effective way in which POTWs can substantially reduce mercury discharges thus appears to be pollution prevention and waste minimization. These programs can focus on high concentration high volume industrial discharges to the collection system as well as high concentration low volume discharges, such as those coming from medical and dental facilities. As evidence, EPA provides the example of the Western Lake Superior Sanitary District (WLSSD), which, after evaluating the costs involved in meeting more stringent water quality-based effluent limits for mercury with end-of-pipe treatment, concluded that pollution prevention techniques were the preferable control strategy. As of 1996, WLSSD had successfully reduced mercury concentrations at the wastewater treatment plant by more than 74% from 1990 dry sludge levels (from 4.50 ppm to 1.15 ppm) and by more than 97% from 1990 effluent levels (from 0.58 ppb to 0.015 ppb), which brought WLSSD well into compliance with its existing WQBEL. Additional examples of source control programs can be found in Overview of P2 Approaches at POTWs, Draft, Office of Science and Technology, March (U.S. EPA, 1999). EPA believes that facilities like WLSSD, with the use of super clean analytical methods to better identify and characterize sources of mercury, will be able to advance their pollution prevention efforts to further reduce the levels of mercury in their sludge and effluent as mixing zones are phased out over the next 10 years.

Further, EPA believes that recent data submitted by the Association of Metropolitan Sewerage Agencies (AMSA) support EPA's position that product substitution, cleaner technologies, and source controls are the most efficient and cost-effective means of reducing BCCs. These data indicate that POTWs are achieving, on average, about 97 percent removal of mercury from their influent with an average effluent discharge concentration of about 9 parts per trillion (ppt or ng/L). Wastewater from industrial and commercial establishments, however, such as hospitals, medical waste incinerators, industrial laundries, medical/dental/clinical laboratories, dental offices, and others, can be discharged directly to the POTW's wastewater collection system virtually unregulated at concentrations that exceed 1 million ppt. Indeed, AMSA's data indicate that influent mercury concentrations at the headworks of POTWs range from 50 ppt to 1300 ppt.

What this means is that POTWs are channeling a significant amount of mercury into their sludge (approximately 30 to 40 tons nationally), which results in a release of chemicals into the environment when the sludge is disposed of through incineration or land-application practices. EPA estimates that between 0.6 and 1.9 tons of mercury are emitted each year from sewage sludge incinerators in the vicinity of the Great Lakes Basin. In essence, pollutants are merely being transferred from one medium to another. Therefore, EPA believes that the solution to controlling mercury releases to the environment is not to change the medium from the POTW's influent to its sludge and effluent, but to either prevent mercury from entering the wastewater collection system at the source through product substitution, waste minimization, or process modification, or by removing and recycling mercury at the source (i.e., employing source controls) using state-of-the-art technology. Such cost-effective source controls, which will prevent additional environmental releases, provide an auxiliary environmental benefit to today's rulemaking.

In conclusion, pollution prevention (including product substitution by households), waste minimization, and source controls for high concentration low volume industrial and commercial discharges (as well as high concentration high volume discharges) to the POTW's collection system, are the most cost-effective approaches to reducing overall environmental releases to water, as well as to air and land. At facilities in which these approaches have been implemented, substantial reductions in BCC concentrations, including mercury concentrations in POTW influents, sludges, and effluents, have been achieved. Where these reductions are insufficient to meet WQBELs, POTWs can seek an exception to the mixing zone prohibition. A condition for eligibility is that the facility has and will continue to implement controls or pollution prevention measures to reduce or ultimately eliminate the BCC. Thus, aggressive pollution prevention efforts may well achieve the necessary reductions to meet a WQBEL with no mixing zone, but if not, will help the facility to qualify for an exception.

With respect to costs, in 1995, EPA estimated potential costs to indirect dischargers of implementing the Guidance with the mixing zone provision to be between $6.6 million and $19.9 million per year (in 1994 dollars). In addition, EPA's estimate of total costs to direct and indirect dischargers to implement the Guidance in 1995 (including the mixing zone provision) of $60 million to $380 million per year included source control costs for POTWs (i.e., costs to control indirect discharges). EPA's analysis of today's rule provides an estimate of the portion of the $60 million to $380 million cost range that is attributable to just the phase out and elimination of mixing zones. By including costs for source controls at POTWs, EPA's cost estimates reflect costs that could be passed on to dischargers to POTWs. EPA also conducted an analysis of potential impacts on small entities. Although this analysis looks at small dischargers that are direct dischargers (the Guidance only regulates direct dischargers), EPA did not find a significant impact on small entities. In addition, an independent economic analysis of the Guidance (including the BCC mixing zone prohibition) concluded that it would have an imperceptible impact on the region's economy (DRI/McGraw-Hill, 1993). Thus, EPA can only conclude that the impacts on many industries discharging to POTWs will not be significant.

D. Other Cost Issues Related to Rulemaking Implementation

A commenter from California expressed concern that end-of-pipe treatment would be necessary to meet water quality-based effluent limitations based on water quality criteria for BCCs in the Great Lakes and that such treatment would cost $2.45 billion to implement in California alone. Additional commenters cited an Ohio study that reported that EPA's cost estimates were too low and that the elimination of mixing zones for BCCs in the Great Lakes will result in significant costs for dischargers.

EPA disagrees with the claim that today's rule would force the construction and operation of extraordinary treatment. As discussed earlier EPA believes that an aggressive pollutant minimization program consisting of source controls, pollution prevention (e.g., product substitution or process modification), and public education, can attain effluent limits based on achieving criteria end-of-pipe. While there are new data showing that mercury comes from a variety of sources and products (e.g., industrial, commercial, household), no one to date has demonstrated that an aggressive long-term pollutant minimization program containing these features has failed in this regard, or that, as a result, the State or community had to force the construction of extraordinary end-of-pipe treatment that was later determined to be cost "ineffective" with no environmental benefit. In addition, the sampling results presented by AMSA for mercury at POTWs in and out of the Great Lakes Basin do not provide evidence that Great Lakes standards for BCCs cannot be met without end-of-pipe treatment. EPA recognizes that discharges from some facilities exceed the mercury criterion, but, based on results from facilities that have tried to control mercury, significant reductions in discharge levels have been achieved. In many cases, these reductions have been attained by source control, not end-of-pipe treatment, demonstrating the feasibility of this approach. (Refer to section IV.C for more discussion on the benefits of source controls). EPA also notes that if, after ten years, it appears that a pollution minimization program at a facility will not achieve the necessary BCC reductions, today's rule affords States and Tribes the flexibility to authorize BCC mixing zones when additional controls are not technically feasible or cost-effective.

Even though the rule is only applicable to the Great Lakes Basin, EPA disagrees with the claim that implementing the rule in California would cost $2.45 billion. The cost tables offered by the commenter to support this estimate do not provide information on the current levels of mercury or other BCC concentrations in California POTWs, the estimated reductions needed to achieve revised standards for BCCs, or the treatment already in place at these facilities. Instead, the cost tables provide only calculations of a worst-case estimate assuming all California POTWs would need to implement lime precipitation, carbon adsorption, and reverse osmosis. A thorough facility-level analysis, which was not furnished by the commenter, is essential if the commenter wishes to provide meaningful cost estimates. Further, EPA has not seen impacts of the magnitude indicated by the commenter in other regions of the country that have aggressive water quality standards programs. Moreover, data for California POTWs evaluated by EPA as part of analysis of the California Toxics Rule do not support the claim that all POTWs would need end-of-pipe treatment to meet criteria end-of-pipe for mercury and other BCCs in California.

With respect to comments regarding the Ohio mercury study, EPA believes that Ohio's alternative cost analysis for mercury is not compelling here because it assumes that end-of-pipe treatment is necessary in cases when EPA would conclude otherwise. EPA believes that this is an artificial analysis of the options required of dischargers. EPA's own estimates instead assume a combination of end-of-pipe treatment and lower cost alternatives such as process modification, waste minimization, pollution prevention, source controls, and public education. In addition, Ohio's estimates are also not comparable to EPA's because they reflect not only the costs of today's mixing zone rule but also costs associated with the Guidance promulgated in 1995. EPA's estimates for today's rule reflect only the impact of the BCC mixing zone provision, not the impact of the entire 1995 Guidance. Using this estimate, as well as information on the contribution of air sources to mercury water concentrations in Ohio, Ohio adopted a variance provision for mercury for point source dischargers that requires dischargers, in order to obtain the variance, to implement a plan of study and pollutant minimization plan for identifying and reducing loadings of mercury. Thus, Ohio variance provision employs much the same control strategies contemplated by EPA.

E. Point Source Loadings

Some commenters on EPA's proposed rule argued that point sources contribute a relatively insignificant amount of BCCs (mercury, in particular) when compared to the total accumulation of BCCs in the Great Lakes caused by other sources, such as atmospheric deposition.

EPA disagrees with the assertion that point source loadings are insignificant and believes that comparing the total contribution of BCCs from point sources and atmospheric sources to the entire Great Lakes System often ignores the nature of point source discharges and their spatial impact on the environment. Macro-scale analyses of the atmospheric contribution of BCCs to the Great Lakes System is not comparable with localized point source studies because those analyses assume that atmospheric deposition is constant and uniform over a significantly larger geographical area like the Great Lakes Basin. The water column concentrations from air deposition derived from such assumptions simply assume that the Great Lakes Basin is one unique, enormous, completely mixed system. These assumptions are used by researchers who study the fate and transport of pollutants on a large-scale system, not by researchers who address localized impacts on a much smaller scale, such as the ones created by point source dischargers.

By their very nature, point source discharges create "hot spots" within the Great Lakes System where elevated concentrations of BCCs have a potential adverse impact on aquatic life, wildlife, and human health. In other words, a point source discharge does not disperse and mix completely throughout the entire Great Lakes System, as is assumed for BCCs from atmospheric deposition. Therefore, comparing contributions from the two sources on such a large scale conceals the real impact of BCCs from point source discharges. In fact, when assessing the impact of a point source discharge, water quality analysts do not perform a mass balance on the entire lake system, but rather on the specific zone of influence of the point source discharge where atmospheric deposition may be insignificant and generally not taken into account.

F. TMDLs and Other CWA Issues

Some commenters asserted that a BCC mixing zone prohibition is inconsistent with the Clean Water Act and implementing regulations and they argue that EPA erroneously concluded that mixing zones are never permissible

in impaired waters. Others assert that today's rule would interfere with States' abilities to control discharges through a TMDL process. Other commenters simply assert that BCC mixing zones should be available wherever the area of impact from the discharge is not biologically significant.

With respect to the first assertion, the question of when and whether mixing zones (for any pollutant) are permissible in impaired waters is outside the scope of today's rule. Today's rule applies only after the permitting authority has determined that a mixing zone for BCCs might otherwise be available in the Great Lakes System under the Clean Water Act and State and federal implementing regulations and standards. Today's rule establishes restrictions on the availability of such mixing zones. In addition, the general availability of mixing zones in impaired waters was not relevant to EPA's cost estimates for today's rule. Rather, EPA estimated its costs for this rule based on the perhaps over-broad assumption that mixing zones for BCCs would be available throughout the Great Lakes for each discharger with known or suspected BCC discharges.

EPA's discussion in the preamble to the proposed rule about the availability of mixing zones in impaired waters generated considerable concern that EPA was announcing a new policy banning mixing zones in impaired waters. EPA does not have a general policy on the availability of mixing zones in impaired waters at this time and generally defers to States on this issue. What the preamble discussion reflected was the application of provisions in procedure 3 governing the calculation of wasteload allocations in various situations. Under procedure 3.B.c.3, background levels of the pollutant must be accounted for in determining wasteload allocations (WLAs). When background levels of the pollutant for which a mixing zone is sought already exceed the applicable criterion in the receiving water, there may be no available dilution, despite the availability of a mixing zone. (Exceptions might be where there are no currently available data for calculating background values as provided in 3.B.9 or where anticipated loading reductions would lower background levels (see 3.C.3.b.iii) and "free up" assimilative capacity for use in calculating WLAs.) Thus, the preamble discussion in the proposal used the absence of a mixing zone as a simplified way of discussing other procedures that might have the same effect when calculating WLAs for discharges to impaired waters.

With respect to the second assertion, EPA agrees that today's rule limits the discretion of Great Lakes States to use a TMDL as a vehicle for establishing mixing zones for BCCs in the Great Lakes System. EPA believes that this restriction is reasonable because of the documented environmental and health effects caused by BCCs in the Great Lakes System. EPA notes, however, that Great Lakes States are not absolutely foreclosed from authorizing a mixing zone for BCCs in the context of a TMDL. For existing dischargers, today's rule provides for a 10-year phase-out period that allows dischargers sufficient time to develop and implement control strategies to achieve WQBELs based on meeting water quality criteria end-of-pipe. The rule also provides for exceptions to the mixing zone prohibition for existing discharges of BCCs. In addition to the water conservation exception, the rule authorizes an exception to account for technical and economic circumstances. This exception could be employed, at the discretion of the State, beyond the 10-year period (perhaps implemented through a TMDL) if the State determines that more aggressive controls aimed at achieving criteria at the end of the pipe would not be cost-effective or economically or technically feasible for the existing BCC discharge in question.

Finally, in response to the third assertion, regarding the availability of mixing zones when the impact is not biologically significant, EPA is particularly concerned with how commenters are defining "not biologically significant." EPA does not consider mixing zones an entitlement and does not agree that it is reasonable to not seek reduction of mass loadings of BCCs to areas of the Great Lakes System that no longer are considered "biologically significant." In many cases, these areas have been biologically impacted because of the discharge of these pollutants. That is no reason that they should remain aquatic waste dumps especially when improved water quality is feasible. Further, one of the basic tenets underlying the mixing zone prohibition is that the adverse impacts of BCC discharges can almost never be limited to areas that are determined to be biologically or otherwise insignificant. If the receiving water is connected to another waterbody, that other waterbody would almost certainly be affected adversely by BCC discharges. States, nevertheless, have the flexibility to allow a mixing zone under certain exceptions, as noted above.

G. EPA's Fulfillment of the Court Remand

In 1997, the U.S. Court of Appeals for the District of Columbia Circuit remanded the provisions of the Guidance to phase out and eliminate mixing zones for BCCs. The Court found that "[a]lthough the EPA appears to have shown that eliminating mixing zones is not without some environmental benefit, the agency simply failed to address whether the measure is cost-justified. We remand the matter in order to afford the EPA an opportunity to do just that," *American Iron & Steel Institute (AISI)* v. *EPA*, 115 F.3d 979 (D.C. Cir. 1997). This finding resulted because the Agency had estimated the total cost of eliminating BCC mixing zones at $200,000 yet did not explain a comment estimating at approximately $300,000 the cost to one town of removing the BCC mercury from its sewage discharge. Commenters on the proposal for this rulemaking asserted that EPA's revised cost estimates had been underestimated and that EPA had not yet satisfied this order.

EPA's 1995 sensitivity analysis on the BCC mixing zone provisions of the Guidance produced the $200,000 estimate because State derived permit limits (based on State water quality standards and mixing zone requirements) and Guidance-based permit limits (derived without a mixing zone) were both below analytical method detection levels. This provided EPA with little information concerning the effectiveness of possible pollution control strategies that the Guidance might impose over those that would be required to achieve current State (i.e., pre-Guidance) permit limits. EPA recognized at the time that its mixing zone sensitivity analysis did not produce a justifiable cost estimate and supplemented it with a second analysis that evaluated the possible cost impacts of reducing potential hidden loadings of BCCs as future analytical detection methods improve. This analysis showed that if hidden loadings exist and analytical method detection levels improve, significant costs impacts from reducing BCCs could occur. However, this analysis did not evaluate the impact of the BCC mixing zone prohibition alone.

As such, EPA has reevaluted the comment from the City of Owosso on the proposed Guidance in which they asserted that it would cost $300,000 to remove mercury from their sewage discharge. EPA notes that the $300,000 estimate presented by the City of Owosso is not comparable to the cost that was estimated in 1995 for the elimination of mixing zones for BCCs ($200,000) nor is it comparable to the costs estimated for today's rule. This is because the City's cost is the total cost estimated to be necessary to comply with all of the requirements contained in the 1995 Guidance (as proposed). That is, the City did not distinguish between the original BCC mixing zone provision and the rest of the Guidance. The $300,000 estimate does not represent the incremental cost of eliminating mixing zones for BCCs. Nor did the City provide in its comment any information regarding the State's mercury water quality standard for the receiving water (Michigan's mercury standard that it has been using for over 15 years to protect human health and wildlife is as stringent as the mercury criteria promulgated in the 1995 Guidance, but less stringent than the criteria in the proposed Guidance), or the dilution and ambient background data that is used by the State permitting authority to evaluate reasonable potential and calculate permit limits for this facility when mixing zones are allowed. Nonetheless, the City's cost estimate of $300,000 is within the average cost range per municipal facility that EPA calculated for its economic analysis of the entire 1995 Guidance (from $75,185 to $822,251 under the low and high scenarios, respectively).

In addition, the City did not indicate in its comment if it had previously conducted any pollution prevention or minimization efforts among its users. Although the commenter describes the industrial contribution to its headworks as "light," this is not a sufficient argument to disregard, without further assessment, the true impact of the existing industrial discharges and the applicability of pollution prevention to control them. Most importantly, the City did not indicate whether or not it had conducted pollution prevention assessments at any medical and dental offices that it serves. Medical and dental offices have been found, in many cases, to significantly contribute to the mercury levels in the influents to POTWs but have controllable sources of mercury that are readily amenable to cost-effective pollution prevention techniques.

Nonetheless, as discussed above, EPA has revised its economic sensitivity analysis of today's BCC mixing zone provision in response to the Court remand. EPA's estimated cost range for the 1995 Guidance, which included the 1995 provision to prohibit mixing zones for BCCs, was $60 million to $380 million per year. EPA estimates, based on its revised analysis, that the portion of that cost range attributable to today's rule to prohibit mixing zones for BCCs is between $12 million and $35 million per year (not $200,000 as was indicated in 1995).

Not only does EPA believe that this revised estimate is reasonable, it believes that the upper estimate ($35 million annually) may be overstated. This is because the upper estimate is based on pre-1995 effluent data. When EPA supplemented these data for today's rule using high-resolution and super clean analytical techniques for detecting BCCs in POTW effluents, it obtained the $12 million per year estimate. This lower estimate is due to the fact that concentrations in BCCs in POTW effluents were found to be substantially lower than expected.

Complementing the Agency's opinion in this regard is DRI/McGraw-Hill's independent review of the analyses of costs for the 1995 Guidance from which the costs for the proposed rule were derived. This review found EPA to be "conservative in the sense that, on the whole, higher costs were adopted in cases where assumptions were required due to incomplete data" (DRI/McGraw-Hill, 1995). Thus, EPA expects that its cost estimates overstate, rather than underestimate, the costs associated with the Guidance and, by extension, today's rule.

For these reasons and other reasons set forth in the rulemaking record, EPA believes that its revised economic analysis provides a substantiated estimate of the potential incremental costs of the rule. EPA also believes that today's rule is "cost-justified." That is, EPA believes that the estimated costs are reasonable in view of the benefits derived from minimizing the adverse effects of pollutants such as mercury in the Great Lakes System as a result of this rule. Today's rule also complies with the test articulated in the GLWQA, which called for the reduction of BCC mixing zones to the maximum extent possible. EPA estimated that today's rule will result in a reduction of between 225,000 and 668,000 toxic-weighted pounds (or between 876 and 81,718 unweighted pounds) of pollutants from the Great Lakes System each year. This includes loadings of chlordane, DDT, dieldrin, hexachlorocyclohexane, alpha-hexachlorocyclohexane, beta-hexachlorocyclohexane, hexachlorocyclohexane, lindane, mercury, PCBs, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, 2,3,7,8-TCDD, and toxaphene. As described previously, this will reduce the accumulation of BCCs in depositional areas of the Great Lakes, reducing the probability for bioaccumulation in the food chain and adverse effects on fish, wildlife, and humans. EPA believes that these avoided effects justify the costs even when the cost to remove a pound of a specific pollutant may be relatively high.

In addition, EPA has codified exceptions to the mixing zone prohibition to ensure that the BCC reductions achieved under the rule are both technically feasible and cost-effective. Procedure 3.C.6.a.ii states that dischargers must reduce the loadings of BCCs to "the maximum extent possible such than any additional controls or pollution prevention measures to reduce or ultimately eliminate the BCC would result in unreasonable economic effects on the discharger or the affected community because the controls or measures are not feasible or cost-effective." As noted above in Section III, EPA modified this provision from the 1995 Guidance to clarify the importance of implementing only those control strategies determined to be cost-effective. For example, if the State determined that the discharger or affected community would face unreasonable economic effects as a result of implementing the rule, it could grant the exception.

In relation to this topic, some commenters alleged that the cost justification required by the Court's remand necessitated a justification of benefits. However, as several industry commenters have observed in arguing that EPA's benefits analysis is irrelevant, the AISI Court already has held that EPA adequately explained the environmental benefits of its BCC mixing zone prohibition. Moreover, EPA may have understated the resulting benefits, because many benefits categories are not amenable to quantification (e.g., estimating the number of noncancer human health cases avoided from exposure to fish contaminated with mercury and monetizing those benefits) and can only be discussed in qualitative terms. In addition, EPA's benefits estimates do not account for the impact of pollution prevention strategies with respect to the environment as a whole; as a result of today's rule, not only will fewer BCCs be discharged into the Great Lakes System, but EPA expects that overall release of BCCs to the environment will be reduced as well, so that these pollutants are not simply transferred to the air or soil.

V. Special Provision for Certain New or Expanded Discharges of BCCs from Municipalities

In proposing today's rule, EPA requested comments on excluding from

the definition of "new discharge" any new or expanded discharges of BCCs from POTWs when such discharges are necessary to prevent a public health threat to the community. EPA did not receive any comments directed at this exclusion. The Agency is promulgating this new exclusion because it believes that it is a reasonable, common sense policy that balances competing health risks. As such, new or expanded discharges to which this exclusion applies will be treated as existing discharges of BCCs for purposes of today's rule. See procedure 3.C.2 (2).

VI. Economic Analysis

As described above in Section IV, EPA revised its analysis of the potential costs associated with eliminating and, for existing discharges, phasing out mixing zones for BCCs from the analysis that accompanied the Guidance in 1995. EPA's estimated cost range for the 1995 Guidance, which included the 1995 provision to prohibit mixing zones for BCCs, was $60 million to $380 million per year. EPA estimates, based on its revised analysis, that the portion of that cost range attributable to today's rule ranges from $12 million to $35 million per year. This estimate, and EPA's methodology, are presented in the proposal for today's rulemaking (64 FR 53632, October 4, 1999).

VII. Administrative Requirements

A. Regulatory Planning and Review (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and therefore is not subject to OMB review.

B. Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act, generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

EPA prepared a screening analysis to evaluate the financial impact on small entity dischargers that would be subject to the requirements of the rule (i.e., NPDES permit holders that may discharge BCCs). EPA identified 2,329 of these small entities and estimated that more than 96% of them would not be significantly affected. EPA determined that potential impacts represent less than 1% of estimated revenues for 2,290 small entity dischargers under the low cost scenario and 2,244 under the high cost scenario. For small entities that may be affected more, EPA estimates the impact on small municipal dischargers to range from 3% to 5% under the low cost scenario for seven facilities, and from 3% to 14% under the high cost scenario for 43 facilities, with a midpoint of 5%. EPA determined that potential impacts on nonmunicipal dischargers represent less than 1% of estimated revenues.

EPA believes that its screening analysis is conservative (erring on the side of higher costs and greater impacts on small entities than would normally be expected) because Great Lakes States and Tribes have flexibility to authorize mixing zones for small entities under certain technical and economic circumstances and EPA's screening analysis did not take these circumstances into consideration. EPA further believes that as States and Tribes exercise this flexibility for small municipal dischargers that may be affected by this rule the cost impact realized would be near the low end of the range. The screening analysis results were presented in more detail in the proposal for today's final rulemaking (64 FR 53632, October 4, 1999) and the analytical method is described in a document entitled RFA/SBREFA Screening Analysis for the Proposal to Amend the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern (August 1999).

EPA's analysis was based on the projected impact of the rule on existing small entities; however, the rule may also affect small entities that do not yet exist or that do not discharge BCCs at this time but may choose to do so in the future. EPA does not expect that new small entities discharging to the Great Lakes will experience significant economic impacts because, in EPA's view, it is highly unlikely that any new discharger would discharge BCCs in quantities to be affected by the proposed mixing zone prohibition. First, most BCCs are already banned from use and/or production or are severely restricted in use. Therefore, EPA does not expect them to be present in a new discharger's effluent above criteria levels. Second, for the few remaining BCCs that may be contaminating effluent as a result of household products or products and chemicals used in production, municipalities and commercial and industrial users of those products should be able to use substitutes for these products, rely on cleaner technologies that do not require their use or that do not produce BCCs as a by-product, or employ source controls to reduce releases of BCCs to acceptable levels. These pollution prevention alternatives often are significantly more cost-effective than the end-of-pipe treatment technologies that could be used in their place.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rulemaking amends the 1995 Water Quality Guidance for the Great Lakes System to establish requirements that apply in the first instance to Great Lakes States and Tribes. Today's rule restricts the current discretion of States and Tribes to allow mixing zones when establishing water quality-based effluent limitations for discharges of BCCs to the

Great Lakes System. Great Lakes States and Tribes (or EPA, if a State or Tribe fails to do so) must adopt requirements to ensure that all discharges of BCCs to the Great Lakes System receive limits no greater than the water quality criteria for those BCCs. In the case of existing discharges of BCCs, Great Lakes States and Tribes need not require attainment of such limitations until November 15, 2010. Great Lakes States and Tribes also retain some discretion after that date to authorize mixing zones for existing discharges of BCCs in specified circumstances.

The RFA only requires analysis of the economic impacts of a rule on the small entities that are subject to the requirements of a rule. *United Distribution Cos.* v. *FERC,* 88 F.3d 1105 at 1170 (D.C. Cir. 1996), quoting *Mid-Tex Elec. Co-op* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985). Today's rule applies to States and Tribes in the Great Lakes System when issuing NPDES permits. It establishes requirements that Great Lakes States and Tribes must adopt and apply to all new and existing discharges of BCCs in the Great Lakes System, including discharges from small entities. The universe of dischargers affected by the rule is certain and Great Lakes States and Tribes have no discretion in implementing the rule with respect to new BCC discharges and only limited authority to modify the requirements with respect to existing BCC discharges. In this sense, the rule imposes requirements on new and existing dischargers in the Great Lakes System.

The requirements in this rulemaking do not become binding requirements on direct dischargers until they are used to derive effluent discharge limitations as conditions in an NPDES permit issued to the discharger. However, effluent limitations based on today's regulations must be included by NPDES permitting authorities as permit conditions when the permitting authority issues or reissues permits to direct dischargers discharging BCCs to the Great Lakes System. Based on this consideration, EPA has concluded that small entities will be subject to the regulation for purposes of the RFA, and EPA has accordingly evaluated the impact of the rule on small entities. Based on its assessment, the Agency concludes that this rulemaking will not have a significant economic impact on a substantial number of small entities for the reasons explained above.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of today's rule on small entities by authorizing an exception, granted solely at the discretion of the State or Tribe on a case-by-case basis, under certain circumstances. EPA believes that small entity dischargers will have an easier time meeting an economic threshold that would qualify them for the exception. Prior to promulgation of the final 1995 Water Quality Guidance, which contained the BCC mixing zone prohibition, EPA received in excess of 23,000 pages of information and data from over 6,000 respondents on its April 16, 1993, proposal. To stay abreast of public expectations for the final Guidance, EPA continued to meet with State, Local, and Tribal government officials, financial officials and co-regulators, the regulated community and environmental interests to listen and openly discuss their concerns. During the post-proposal process for the Guidance, EPA participated in over 40 such meetings with over 1,000 stakeholder representatives including small entities. The comments and issues raised by the various stakeholders were considered in EPA's option selection process and regulatory impact analysis for developing the final Guidance. The open public process resulted in meaningful changes to the final Guidance. Many of the provisions outlined in the proposal were revised for the final Guidance to increase flexibility for State, local, and Tribal implementation, and to reduce the impact of the Guidance on large and small entities. Today's final rule builds on that process.

C. Paperwork Reduction Act

An agency may not conduct or sponsor and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. Under this rule, the Great Lakes States and Tribes must adopt and submit to EPA provisions that are as protective as this amendment. See 40 CFR 132.1 and 132.5(a). EPA received approval from OMB for that information collection as part of the 1995 rulemaking. OMB renewed its approval in September 30, 1998. The OMB control number is 2040–0180 and is listed in 40 CFR part 9. EPA will renew this information collection prior to the date by which Great Lakes States and Tribes must make submissions consistent with today's rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of the affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule amends part 132 to prohibit mixing zones for BCCs in the Great Lakes System. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector, in any one year. The total annual impact of this rule on State, local, and Tribal governments and the private sector is not expected to exceed $12 to $35 million. Thus, today's rule to amend part 132 to prohibit mixing zones for BCCs in the Great Lakes System is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As described above, EPA does not expect that small governments, including Tribal governments with responsibility for implementing this rule, and small governments operating POTWs discharging to the Great Lakes, will experience significant economic impacts because most BCCs are already banned from use or are severely restricted in use. In those rare instances where the few remaining BCCs (i.e., BCCs that are not already banned or severely restricted) are found contaminating effluent to unacceptable levels as a result of household products or products and chemicals used in production, municipalities and commercial and industrial users of those products should be able to use substitutes for these products, rely on cleaner technologies that do not require their use or that do not produce BCCs as a by-product, or employ source controls to reduce releases of BCCs to acceptable levels. In addition, for existing discharges, there is some flexibility and discretion in how the rule is to be implemented by States and Tribes within the NPDES permit program. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order on Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule simply requires the Great Lakes States to add one discrete provision to the regulations and policies they were already required to adopt pursuant to the 1995 Guidance. EPA's estimated cost range for the 1995 Guidance, which included the 1995 provision to prohibit mixing zones for BCCs, was $60 million to $380 million per year. EPA estimates that only a small portion of that cost range, $12 million to $35 million per year, is attributable to today's rule. Similarly, this rule will not have a substantial direct effect upon the distribution of power and responsibilities among the various levels of government because the States retain primary responsibility for administering their NPDES permit programs, through which this rule is implemented. The rulemaking authorizes EPA to promulgate these mixing zone provisions only if an authorized State has failed to act. Accordingly, these provisions will not have a substantial direct effect on States or on intergovernmental relationships or responsibilities. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA extensively involved State, local, and Tribal government representatives in the development of this amendment, notably during the process of developing the 1995 Guidance, which contained the original version of today's rule. The process used to develop the Guidance marked the first time that EPA had developed a major rulemaking effort in the water quality standards program through a regional public forum. The public process, which lasted over a seven-year period and involved Great Lakes States, EPA, and other Federal agencies in open dialogue with citizens, Tribal and local governments, and industry in the Great Lakes Basin, is described further in the preamble to the Guidance. See 60 FR 15383 (March 23, 1995). As described above, today's action by EPA reinstates a provision nearly identical to the provision in the 1995 Guidance that was vacated by the Court in *AISI.* It thus reflects the State, local, and Tribal government input EPA received during the 1995 Guidance rulemaking.

F. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or unless EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments or impose substantial direct compliance costs on them. See section VII. D above for more discussion. Therefore, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule. Nonetheless, EPA has extensively involved Great Lakes State, local, and Tribal governments in the development of this amendment, notably during the process of developing the 1995 Guidance, which contained the original version of this rule. Today's action by EPA proposes to reinstate a provision nearly identical to the provision in the 1995 Guidance that was vacated by the Court in *AISI.* It thus reflects the State, local, and Tribal government input EPA received during the 1995 Guidance rulemaking.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. As noted earlier, however, children may be at a greater risk to BCCs than adults. If they are at greater risk, then they will benefit the most from this rule to prohibit mixing zones for BCCs in the Great Lakes System.

H. Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), to ensure their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat of such species that have been designated as "critical." Consultation is designed to assist Federal agencies in complying with the requirements of section 7 by supplying a process within which FWS and NMFS provide such agencies with advice on whether an action complies with the substantive requirements of ESA.

In accordance with these requirements, EPA completed consultation with the FWS on the 1995 Guidance, and the FWS issued a biological opinion concluding that the Guidance was not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of species' critical habitat. As explained above, today's rule essentially reinstates, with some clarification, the BCC mixing zone provisions of the 1995 Guidance. Since the substance of today's rule has already been the subject of section 7 consultation, the effects of today's rule have been addressed by the Services' prior biological opinion.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's rule does not involve technical standards; therefore, EPA did not consider using any voluntary consensus standards. EPA received no comments on this aspect of the rulemaking and no commenter identified any potentially applicable voluntary consensus standards for use in this regulation.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective December 13, 2000.

VIII. Supporting Documents

All documents that are referenced in this preamble are available for inspection and photocopying in the docket of the 1995 Guidance and the docket of this rulemaking at the address listed at the beginning of this preamble. A reasonable fee will be charged for photocopies.

EPA is also making a number of documents available in electronic format at no incremental cost to users of the Internet (http://www.epa.gov/ost/GLI). These documents include the contents of this **Federal Register** document and several other supporting documents and materials.

IX. References

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DRI/McGraw-Hill. 1995. Great Lakes Water Quality Initiative, Cost Effectiveness Update. June.

Elliot, J.E., R.J. Norstrom, A. Lorenzen, L.E. Hart, H. Philibert, S.W. Kennedy, J.J. Stegeman, G.D. Bllward, and K.M. Cheng. 1996. Biological effects of polychlorinated dibenzo-p-dioxins, dibenzofurans, and biphenyls in bald eagle (*Haliaeetus leucocephalus*) chicks. *Environmental Toxicology and Chemistry* 15: 782–93.

Mason, R.T., and K.A. Sullivan. 1997. Mercury in Lake Michigan. *Environmental Science and Technology* 31: 942–47.

Sweeney, B.W., D.H. Funk, and L.J. Standley. 1993. Use of the stream mayfly *Cloeon triangulifer* as a bioassay organism: life history response and body burden following exposure to technical chlordane. *Environmental Toxicology and Chemistry* 12: 115–25.

U.S. EPA. 1995. Regulatory Impact Analysis for the Final Great Lakes Water Quality Guidance. U.S. Environmental Protection Agency, Washington, D.C.

U.S. EPA. 1997. Guidance for Assessing Chemical Data for Use in Fish Advisories. Volume 2. Risk Assessment and Fish Consumption Limits. EPA 823-B–97–009. U.S. Environmental Protection Agency, Washington, D.C.

U.S. EPA. 1999. Overview of Pollution Prevention Approaches at POTWs. Draft. Office of Science and Technology. U.S. Environmental Protection Agency, Washington, D.C.

List of Subjects in 40 CFR Part 132

Environmental protection, administrative practice and procedure, Great Lakes, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 2, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Title 40, chapter I, part 132 of the Code of Federal Regulations is amended as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

1. The authority citation for part 132 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 132.5 is amended by revising paragraphs (a) and (c) to read as follows:

§ 132.5 Procedures for adoption and EPA review.

(a) Except as provided in paragraph (c) of this section, the Great Lakes States and Tribes shall adopt and submit for EPA review and approval the criteria, methodologies, policies, and procedures developed pursuant to this part no later than September 23, 1996. With respect to procedure 3.C of appendix F of this part, each Great Lakes State and Tribe shall make its submission to EPA no later than May 13, 2002.

* * * * *

(c) The Regional Administrator may extend the deadline for the submission required in paragraph (a) of this section if the Regional Administrator believes that the submission will be consistent with the requirements of this part and can be reviewed and approved pursuant to this section no later than March 23, 1997, or, for procedure 3.C of appendix F of this part, no later than November 13, 2002.

* * * * *

3. Appendix F of part 132 is amended by adding procedure 3.C to read as follows:

Appendix F of Part 132—Great Lakes Water Quality Initiative Implementation Procedures

* * * * *

Procedure 3: * * *

C. *Mixing Zones for Bioaccumulative Chemicals of Concern (BCCs).* The following requirements shall be applied in establishing TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs for purposes of determining the need for WQBELs under procedure 5 of appendix F, for BCCs:

1. There shall be no mixing zones available for new discharges of BCCs to the Great Lakes System. WLAs established through TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs for purposes of determining the need for WQBELs for new discharges of BCCs shall be set no higher than the most stringent applicable water quality criteria or values for the BCCs in question. This prohibition takes effect for a Great Lakes State or Tribe on the date EPA approves the State's or Tribe's submission of such prohibition or publishes a notice under 40 CFR 132.5(f) identifying that prohibition as applying to discharges within the State or Federal Tribal reservation.

2. For purposes of section C of procedure 3 of appendix F, new discharges are defined as: (1) A "discharge of pollutants" (as defined in 40 CFR 122.2) to the Great Lakes System from a building, structure, facility, or installation, the construction of which commences after the date the prohibition in section C.1 takes effect in that State or Tribe; (2) a new discharge from an existing Great Lakes discharger that commences after the date the prohibition in section C.1 takes effect in that State or Tribe; or (3) an expanded discharge from an existing Great Lakes discharger that commences after the date the prohibition in section C.1 takes effect in that State or Tribe, except for those expanded discharges resulting from changes in loadings of any BCC within the existing capacity and processes (*e.g.*, normal operational variability, changes in intake water pollutants, increasing the production hours of the facility or adding additional shifts, or increasing the rate of production), and that are covered by the existing applicable control document. Not included within the definition of "new discharge" are new or expanded discharges of BCCs from a publicly owned treatment works (POTW as defined at 40 CFR 122.2) when such discharges are necessary to prevent a public health threat to the community (*e.g.*, a situation where a community with failing septic systems is connected to a POTW to avert a potential public health threat from these failing systems). These and all other discharges of BCCs are defined as existing discharges.

3. Up until November 15, 2010, mixing zones for BCCs may be allowed for existing discharges to the Great Lakes System pursuant to the procedures specified in sections D and E of this procedure.

4. Except as provided in sections C.5 and C.6 of this procedure, permits issued on or after this provision takes effect in a Great Lakes State or Tribe shall not authorize mixing zones for existing discharges of BCCs to the Great Lakes System after November 15, 2010. After November 15, 2010, WLAs established through TMDLs, WLAs established in the absence of TMDLs, and preliminary WLAs for purposes of determining the need for WQBELs under procedure 5 of appendix F for existing discharges of BCCs to the Great Lakes System shall be equal to the most stringent applicable water quality criteria or values for the BCCs in question.

5. *Exception for Water Conservation.* Great Lakes States and Tribes may grant mixing zones for any existing discharge of BCCs to the Great Lakes System beyond the date specified in section C.4 of this procedure where it can be demonstrated, on a case-by-case basis, that failure to grant a mixing zone would preclude water conservation measures that would lead to overall load reductions in BCCs, even though higher concentrations of BCCs occur in the effluent. Such mixing zones must also be consistent with sections D and E of this procedure.

6. *Exception for Technical and Economic Considerations.* Great Lakes States and Tribes may grant mixing zones beyond the date specified in section C.4 of this procedure for any existing discharge of a BCC to the Great Lakes System upon the request of a discharger, subject to sections C.6.a through C.6.c below.

a. The State or Tribe must determine that:

i. The discharger is in compliance with and will continue to implement, for the BCC in question, all applicable requirements of Clean Water Act sections 118, 301, 302, 303, 304, 306, 307, 401, and 402, including existing National Pollutant Discharge Elimination System (NPDES) water-quality based effluent limitations; and

ii. The discharger has reduced and will continue to reduce the loading of the BCC for which a mixing zone is requested to the maximum extent possible, such that any additional controls or pollution prevention measures to reduce or ultimately eliminate the BCC discharge would result in unreasonable economic effects on the discharger or the affected community because the controls or measures are not feasible or cost-effective.

b. Any mixing zone established pursuant to this section shall:

i. Not result in any less stringent limitations than those existing prior to November 13, 2000;

ii. Be no larger than necessary to account for the technical constraints and economic effects identified pursuant to paragraph C.6.a.ii above;

iii. Meet all applicable acute and chronic aquatic life, wildlife and human health criteria and values within and at the edge of the mixing zone or be consistent with the applicable TMDL or assessment and remediation plan authorized under procedure 3.A.

iv. Be accompanied, as appropriate, by a permit condition requiring the discharger to implement an ambient monitoring plan to ensure compliance with water quality standards and consistency with any applicable TMDL or such other strategy consistent with Section A of this procedure, including the evaluation of alternative means for reducing the BCC from other sources in the watershed; and

v. Be limited to one permit term unless the permitting authority makes a new determination in accordance with this section for each successive permit application in which a mixing zone for the BCC is sought.

c. For each draft NPDES permit that would allow a mixing zone for one or more BCCs after November 15, 2010, the fact sheet or statement of basis for the draft permit that is required to be made available through public notice under 40 CFR 124.6(e) shall:

i. Specify the mixing provisions used in calculating the permit limits; and

ii. Identify each BCC for which a mixing zone is proposed.

7. Any mixing zone authorized under sections C.3, C.5 or C.6 must be consistent with sections D and E of this procedure, as applicable.

* * * * *

[FR Doc. 00–28709 Filed 11–9–00; 8:45 am]

BILLING CODE [illegible]0-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[IB Docket No. 97–142, FCC 00–339]

Rules and Policies on Foreign Participation in the U.S. Telecommunications Market

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of rules. The Commission amended its rules regarding the prior notifications of foreign affiliations, and the rules contained information collection requirements. These rules become effective on November 9, 2000.

EFFECTIVE DATE: The amendments to 47 CFR 63.11 published at 65 FR 60113, October 10, 2000, become effective on November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Telecommunications Division, International Bureau, (202) 418–1499.

SUPPLEMENTARY INFORMATION: On September 12, 2000, the Commission adopted an order clarifying and revising rules regarding prior notifications of foreign affiliations, a summary of which was published in the **Federal Register**. See 65 FR 60113, October 10, 2000. Section 63.11 of the rules contained information collection requirements. We stated that § 63.11 contained "information collections that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that section." The information collections were approved by OMB on October 23, 2000. See OMB No. 3060–0686. This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rules.

List of Subjects in 47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28887 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2424; MM Docket No. 00–88; RM–9871]

Radio Broadcasting Services; Dillsboro and Rosman, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sutton Radiocasting Corporation, allots Channel 237A to Dillsboro, NC, as the community's first local aural service. *See* 65 FR 34997, June 1, 2000. Channel 237A can be allotted to Dillsboro in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.5 kilometers (9 miles) southeast, at coordinates 35–15–56 NL; 83–09–16 WL, to avoid a short-spacing to Stations WIKQ, Channel 235C, Greeneville, TN, and WYFC, Channel 237A, Clinton, TN. The counterproposal of Chase Broadcasting, Inc. to allot Channel 237A to Rosman, NC, as its first local aural service, is dismissed. A filing window for Channel 237A at Dillsboro will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–88, adopted October 10, 2000, and released October 27, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Dillsboro, Channel 237A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28889 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2429; MM Docket No. 98–74; RM–9269, RM–9736]

Radio Broadcasting Services; Eatonville, Wenatchee, Moses Lake, Spokane, and Newport, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of joint filers Barbara J. Geesman, licensee of Station KKBY–FM, Eatonville, Washington, Morris Communications, successor to Pioneer Broadcasting Company, Inc, licensee of Stations KKRV and KWIQ, Upper Columbia Media Association, licensee of Station KEEH, Spokane, Washington, James and Helen Stargel, licensee of Station KMJY, Newport, Washington, and Jeffrey Aaron Bruton, makes the following amendments to the FM Table of Allotments. (1) Channel 284C2 is substituted for Channel 285C2 at Wenatchee, Washington, and Station KKRV's license is modified at its present site 10.2 kilometers (6.3 miles) northeast of the community at coordinates 47–28–44 NL and 120–12–49 WL. (2) Channel 285C3 is substituted for Channel 285A at Eatonville, Washington, and Station KFNK's license is modified at its present site 6.4 kilometers (4 miles) southeast of the community at coordinates 46–50–19 NL and 122–11–53 WL. (3) Channel 262C is substituted for Channel 262C1 at Moses Lake, Washington, and Station KWIQ's license is modified at its present site 42.1 kilometers (26.2 miles) north of the community at coordinates 47–29–20 NL and 119–26–45 WL. (4) Channel 285C2 is substituted for Channel 284A at Spokane, Washington, and Station KEEH's license is modified at its present site 13.1 kilometers (8.2 miles) southeast of the community at coordinates 47–34–45 NL and 117–17–48 WL. (5) Channel 283C3 is substituted for Channel 285A at Newport, Washington, and Station KMJY's license is modified at its present site 2.2 kilometers (1.4 miles) southeast of the community at coordinates 48–09–37 NL and 117–01–49 WL. *See* Supplementary Information.

DATES: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–74, adopted October 18, 2000, and released October 27, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Since Eatonville, Wenatchee, Moses Lake, Spokane and Newport are within 320 kilometers (200 miles) of the U.S.-Canadian border, we have requested concurrence of the Canadian government for the allotments at those communities. Concurrence has been received for Eatonville, Moses Lake, Spokane and Newport. Concurrence for the allotment at Wenatchee has been requested but not yet received. Any construction permit for Channel 284C2 at Wenatchee that is granted prior to the

receipt of formal concurrence of the Canadian Government will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to hearing if specifically objected to by Industry Canada. This condition will be removed once formal approval for the allotment is received from Industry Canada."

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b) the FM Table of Allotments under Washington is amended by removing Channel 285C2 at Wenatchee and adding 284C2, removing Channel 285A at Eatonville and adding 285C3, removing Channel 262C1 at Moses Lake and adding Channel 262C, removing Channel 284A at Spokane and adding Channel 285C2 and removing Channel 285A at Newport and adding Channel 283C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28888 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2360; MM Docket No. 00–82; RM–9841]

Radio Broadcasting Services; McCook, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of McCook Radio Group, LLC, allots Channel 280C2 to McCook, NE, as the community's fifth local commercial FM service. *See* 65 FR 34997, June 1, 2000. Channel 280C2 can be allotted to McCook in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 40–12–18 NL; 100–37–36 WL. The Commission also editorially amends the FM Table of Allotments to reflect the grant of Station KRKU's one-step upgrade application to operate on Channel 253C1 in lieu of Channel 253C2 at McCook. A filing window for Channel 280C2 at McCook will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–82, adopted October 11, 2000, and released October 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 253C2 and adding Channel 253C1 and Channel 280C2 at McCook.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28885 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2363; MM Docket No. 00–92; RM–9657]

Radio Broadcasting Services; Livingston and Dos Palos, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed on behalf of All American Broadcasting, Inc., the Commission reallots Channel 240A from Livingston to Dos Palos, California, as that community's first local aural transmission service, and modifies the license for Station KNTO accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. *See* 65 FR 36652, June 9, 2000. Coordinates used for Channel 240A at Dos Palos are 37–04–03 NL and 120–44–52 WL

DATES: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–92, adopted October 11, 2000, and released October 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Dos Palos, Channel 240A.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Livingston, Channel 240A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28882 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2362; MM Docket No. 00–83; RM–9849]

Radio Broadcasting Services; Butte Falls, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Butte Falls Radio, allots Channel 225A to Butte Falls, OR, as the community's first local aural service. *See* 65 FR 34997, June 1, 2000. Channel 225A is allotted instead of the originally proposed Channel 255A in order to avoid a short-spacing to the proposed allotment of Channel 255A at Hornbrook, CA, in MM Docket No. 00–73. Channel 225A can be allotted to Butte Falls in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.4 kilometers (2.1 miles) northwest, at coordinates 42–33–33 NL; 122–36–13 WL, to avoid a short-spacing to Stations KLAD–FM, Channel 223C, Klamath Falls, OR, and KKNU, Channel 226C, Springfield, Oregon. A filing window for Channel 225A at Butte Falls will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–83, adopted October 11, 2000, and released October 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Butte Falls, Channel 225A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28881 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2361; MM Docket No. 00–66; RM–9842]

Radio Broadcasting Services; Des Moines, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Willison H. Gormly d/b/a/ Sierra Grande Broadcasting, allots Channel 287C to Des Moines, NM, as the community's first local aural service. *See* 65 FR 25697. May 3, 2000. Channel 287C can be allotted to Des Moines in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–45–48 NL; 103–50–12 WL. A filing window for Channel 287C at Des Moines will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–66, adopted October 11, 2000, and released October 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Des Moines, Channel 287C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28880 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2426; MM Docket No. 99–312; RM–9735]

Radio Broadcasting Services; Mill Hall, Jersey Shore, and Pleasant Gap, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Forever Broadcasting, LLC., reallots Channel 249A from Jersey Shore to Mill Hall, Pennsylvania, and modifies Station WVRT(FM)'s license accordingly. We also reallot Channel 254A from Mill Hall to Pleasant Gap, Pennsylvania, and modify Station WZRZ(FM)'s license accordingly. *See* 64 FR 59728, November 3, 1999. Channel 249A can be reallotted to Mill Hall in compliance with the Commission's minimum distance separation requirements at Station WVRT(FM)'s requested site. The coordinates for Channel 249A at Mill Hall are 41–08–03 North Latitude and 77–28–09 West Longitude. Additionally, Channel 254A can be reallotted to Pleasant Gap in compliance with the Commission's minimum distance separation requirements at Station WZRZ(FM)'s requested site. The coordinates for Channel 254A at Pleasant Gap are 40–55–58 North Latitude and 77–45–40 West Longitude.

DATES: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–312, adopted October 18, 2000, and released October 27, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Channel 249A and removing Channel 254A at Mill Hall; and adding Pleasant Gap, Channel 254A; and removing Channel 249A at Jersey Shore.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28879 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2423; MM Docket No. 97–130; RM–8751]

Radio Broadcasting Services; Galesburg, IL, and Ottumwa, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a Petition for Reconsideration filed by Galesburg Broadcasting Company directed to the Report and Order in this proceeding which upgraded Station KTWA, Ottumwa, Iowa, to specify operation on Channel 224C2. *See* 63 FR 57608, October 28, 1998. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 97–130, adopted October 18, 2000, and released October 27, 2000. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals 11, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28878 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–2425; MM Docket No. 00–54; RM–9835 & RM–9907]

Radio Broadcasting Services; Mount Pleasant and Bogata, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Leo Ashcraft proposed the allotment of Channel 263A at Mount Pleasant, Texas, as that community's first local broadcast service. *See* 65 FR 17618, April 4, 2000. In response to a counterproposal filed by Bogata Broadcasting Company we will allot Channel 263A at Bogata, Texas, as a first local service, with no allotment being made at Mount Pleasant because no valid continuing expression of interest was filed for a channel at Mount Pleasant. The coordinates for Channel 263A at Bogata, Texas, are 33–23–50 and 95–11–42. A filing window for Channel 263A at Bogata will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 00–54, adopted October 18, 2000, and released October 27, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Bogata, Channel 263A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28877 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–U

Proposed Rules

Federal Register

Vol. 65, No. 219

Monday, November 13, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 99–060–1]

Veterinary Services User Fees; Fees for Permit Applications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend existing user fees for processing applications for permits to import and transport certain animal products, organisms, vectors, and germ plasm. We are also proposing to establish new user fees that would pay the cost of processing applications to import live animals. We are proposing these changes in order to ensure that we recover our costs.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by January 12, 2001.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–060–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–060–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations for Veterinary Services, contact Ms. Louise Lothery, Administrative Officer, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231; (301) 734–7517.

For information concerning rate development of the proposed user fees, contact Mrs. Kris Caraher, Accountant, Financial Systems and Services Branch, Budget and Accounting Service Enhancement Unit, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130. Section 130.8 lists miscellaneous flat rate user fees.

In this document, we are proposing to amend existing user fees for processing applications for permits to import or transport certain animal products, organisms, vectors, and germ plasm. We are also proposing to establish user fees to cover the cost of processing applications for permits to import live animals. These proposed changes are explained in detail below.

Fees for Processing Applications for Permits to Import Certain Animal Products, Organisms, Vectors, and Germ Plasm

Currently, under the regulations in § 130.8, APHIS charges flat rate fees for processing Veterinary Services Form 16–3, "Application for Permit to Import or Transport Controlled Material or Organisms or Vectors." This form is used to apply for a permit to import materials derived from animals or materials that have been exposed to animal-source materials. Materials that require a permit include animal tissues, blood, cells, or cell lines of livestock or poultry origin, RNA/DNA extracts, hormones, enzymes, monoclonal antibodies, certain polyclonal antibodies, antisera, bulk shipments of test kit reagents, and microorganisms including bacteria, viruses, protozoa, and fungi. Exceptions to this requirement are tissues, serum, and blood from primates. Various other animal materials from countries where certain livestock diseases exist require a permit to be imported into the United States. Such materials include dairy products (except butter and cheese), meat products (*e.g.*, meat pies, prepared foods), and various animal products, including, but not limited to, hides, bones, and carcasses, parts, or products of certain animals that are destined for use as trophies.

Also under § 130.8, APHIS charges a flat fee for processing applications to import germ plasm. APHIS services related to inspecting imported germ plasm and empty germ plasm containers are charged at the hourly rate user fees listed in § 130.30.

The table below lists existing and proposed user fees for the services listed.

Service	Existing user fees				Proposed user fee
	Oct. 1, 2000–Sept. 30, 2001	Oct. 1, 2001–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003	Beginning with effective date of the final rule for this action
Processing a permit application to import fetal bovine serum when inspection of a facility is required.	$283.00 per application.	$292.00 per application.	$300.00 per application.	$309.00 per application.	$322.00 per application.
Processing an initial permit application to import germ plasm.[1]	55.00 per load	57.00 per load	58.00 per load	60.00 per load	94.00 per application.
Processing an amended permit application to import germ plasm.[1]	55.00 per load	57.00 per load	58.00 per load	60.00 per load	47.00 per application.
Processing an initial permit application to import certain animal products or import or transport organisms or vectors.	36.00 per application	37.00 per application	38.00 per application	39.00 per application	94.00 per application.
Processing an amended permit application to import certain animal products or import or transport organisms or vectors.	15.00 per amended application.	15.00 per amended application.	16.00 per amended application.	16.00 per amended application.	47.00 per amended application.
Processing a renewed permit application to import certain animal products or import or transport organisms or vectors.	19.00 per application	20.00 per application	21.00 per application	21.00 per application	61.00 per application.

[1] Current fees for processing applications for permits to import germ plasm are not broken into fees for initial and amended applications. Under this proposal, different fees would be charged for processing initial and amended applications.

On August 28, 2000, we published in the **Federal Register** a final rule (65 FR 51997–52010, Docket No. 97–058–2) that amended the user fees for the services listed above. When we calculated the fees established by that final rule, we assumed that the fees in place prior to the rule had been calculated to cover all the costs of providing the respective services. Therefore, in calculating the current fees, we simply added cost components for employee pay increases and additional costs for inflation (based on the consumer price index) to the previous fees.

Since the time when we calculated the current fees, we have conducted an in-depth review of the basic costs of providing the services listed above. In that review, we found that the existing fees and fees previously collected for the services listed (1) underestimated the amount of direct labor performed by administrative and professional staff who are involved in the permit application process, and (2) do not cover overhead costs. We are, therefore, proposing to amend the fees accordingly as shown above. The proposed fees will allow us to recover all the costs associated with providing the services listed, including direct labor and overhead costs.

Calculation of Fees—Animal Products Permit Applications

We began our calculation of the proposed fees by estimating future annual volumes of each type of application based on the average of the actual volumes of each type of application processed in FY's 1998 and 1999. Those volumes are shown in the table below.

	Volumes		
	FY 1998	FY 1999	Projected annual volumes
New applications	2,071	1,214	1,643
Amended applications	556	331	435
Renewed applications	2,058	1,476	1,766

We then estimated that the total annual cost of processing the projected volume of applications would be $282,000. Our estimate includes cost components for the salaries of employees involved in processing applications, along with costs of billings and collections, rent, equipment (such as computer technologies), agency overhead, and departmental charges.

We then estimated, based on our experience processing applications, that processing amended and renewed applications respectively take approximately 50 percent and 65 percent of the time required to process a new application. We used the following equation to determine the proposed fee for a new application. In the equation, "x" represents the fee for new applications.

$$\overset{\text{New}}{1643x} + \overset{\text{Amended}}{435(.5x)} + \overset{\text{Renewed}}{1766(.65x)} = \overset{\text{Total cost}}{\$282{,}000}$$

$$x = 93.73753$$

We then rounded the value for "x" to the nearest whole dollar to arrive at the proposed user fee of $94.00 for a new application for a permit to import animal products. Since processing an amended application takes approximately 50 percent of the time it takes to process a new application, we are proposing a fee of $47.00 for amended applications. Finally, since processing a renewed application takes approximately 65 percent of the time it takes to process a new application, we are proposing a fee of $61.00 for renewed applications.

Calculation of Fees—Fetal Bovine Serum Permit Application

The fee for processing a permit application to import fetal bovine serum when inspection of a facility is required pays the cost of providing two distinct APHIS services. One covers the cost of processing an application to import fetal bovine serum (representing $94.00 of the fee), and the other covers the cost of inspecting the facility where the fetal bovine serum will be housed (representing the remaining $228.00 of the fee). We determined these costs based on the estimated time it takes to process the applications and inspect the facilities. The portion of the fee covering the costs of processing an application is the same as that proposed for processing an application to import other animal products and live animals. The portion of the fee covering the cost of inspecting the facility where fetal bovine serum will be housed is based on the existing hourly rate user fee of $76.00 per hour that is contained in § 130.30 of the regulations. We set this portion of the fee at $228.00 (3 × $76.00) because inspections of this type of facility have averaged 3 hours in recent years.

Fees for Processing Applications to Import Live Animals

Currently, APHIS uses appropriated funds to cover the costs of processing applications and amended applications to import live animals. In this document, we are proposing to establish a flat-rate user fee to recover these costs. APHIS currently charges flat-rate user fees to persons applying for permits to import animal products, organisms, and vectors, as well as animal semen, embryos, and ova. By establishing flat rate user fees for processing applications and amended applications for permits to import live animals, we would make our user fee regulations more consistent and shift the cost of paying for these services away from taxpayers toward the actual users of these services.

Our proposed flat-rate user fees for processing these applications are as follows:

Service	User fee
Processing initial application for a live animal import permit	$94.00
Processing application for an amended permit	47.00

The above fees are the same as those we are proposing to charge for processing applications for permits to import animal products, organisms, vectors, and germ plasm. We believe that these fees will adequately cover the cost of providing these services.

Calculation of Fees—Live Animal Permit Applications

We began our calculation of the proposed fees by estimating future annual volumes of each type of application based on the approximate volumes of each type of application processed in FY 1999. In FY 1999, APHIS processed approximately 7,500 new applications and 1,500 amended applications to import live animals.

We then estimated that the total annual cost of processing new and amended applications to import live animals, based on the expected volume of applications to be processed, would be $775,970. Our estimate includes cost components for the salaries of employees involved in processing applications, along with costs of billings and collections, rent, equipment (such as computer technologies), agency overhead, and departmental charges.

We then estimated, based on our experience processing applications, that it takes approximately half as much time to process an amended application as it takes to process a new application. Given these estimates, we used the following equation to determine the proposed fee for a new application. In the equation, "x" represents the fee for a new application.

$$\overset{\text{New}}{7500x} + \overset{\text{Amended}}{1500(.5x)} = \overset{\text{Total cost}}{\$775{,}970}$$

$$x = 94.0569$$

We then rounded the value for "x" to the nearest whole dollar to arrive at the proposed user fee of $94.00 for a new application for a permit to import live animals. Since processing an amended application takes approximately half the time it takes to process a new application, we are proposing a fee of $47.00 for amended applications.

All of the proposed fees described in this document would be located in a new § 130.4, and the current fees would be removed from § 130.8. We also would move the fees for import compliance assistance that are currently contained in § 130.8 to the new § 130.4 because those fees are directly associated with the importation of animals and animal products. Import compliance assistance fees are charged to persons who need additional assistance from an APHIS headquarters veterinarian in order to facilitate the processing or completion of particular importations of animals or animal products.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this proposed rule on small entities. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects.

User fees to reimburse APHIS for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130. Section 130.8 lists the user fees APHIS charges for processing applications for permits to import germ plasm and to import or transport certain animal products, organisms, and vectors.

We are proposing to amend existing user fees for processing applications for permits to import and transport certain animal products, organisms, vectors, and germ plasm. We are also proposing to establish new user fees that would pay the cost of processing applications to import live animals. We are proposing these changes in order to ensure that we recover our costs.

User Fees for the Importation of Germ Plasm

APHIS currently charges a fee of $55.00 for processing applications to import germ plasm. This proposed rule would establish two separate fees: One for processing initial applications for permits, and one for processing amended applications. The fee for processing each new permit application would be $94.00, and the fee for processing each amended permit application would be $47.00.

The effect of the proposal would be to increase revenues for APHIS, since the fees for new applications would exceed the existing fee of $55.00. At a minimum, importers would be charged $47.00 for applying for an amended permit.

In FY 1999, APHIS processed 448 applications for permits to import germ plasm (semen and embryos), generating total revenues of $17,696. We estimate that 90 of those applications represent amended applications, and the rest represent new applications.

Had the proposed fee schedule been in effect during FY 1999[2], APHIS would have generated approximately $37,882 from processing those applications, an increase of $20,186 over actual revenues for that year. Further, as a result of increased world trade, it is likely that APHIS' annual revenues from processing product applications would increase over time.

The number of different entities that submitted applications in FY 1999 and the number of applications submitted by each are not available. However, because approximately 90 entities submitted amended applications during the year, we know that the number of different entities is significantly less than the total application count of 448. The economic effect on individual entities would vary, depending on the size of the entity and the number of permits required. For an entity that requires only a few permits each year, as is likely to be the case with the smaller entities that are affected, the proposed fees are not likely to have a significant economic impact. However, even an entity that requires a large number of permits might not be significantly affected if it is large enough to easily absorb the increased fees.

User Fees for Processing Applications for Permits to Import Animal Products

APHIS currently charges applicants a fee for processing their applications for permits to import animal products (including byproducts, organisms, and vectors). The fees vary, depending on such factors as the type of application and the type of product.

Under the proposal, all fees would be increased from their current levels, as shown earlier in this document.

The proposed fee amounts have been set so as to allow APHIS to recover the full costs of processing the applications. The current fee levels do not allow for full cost recovery, especially given the additional staffing needed to provide applicants with a quick turnaround of their permit requests.

In FY 1999, APHIS processed 2,575 applications for permits to import animal products. Of that total, 2 were fetal bovine serum (with facility inspection) applications, 856 were initial applications to import animal products or import or transport organisms or vectors, 241 were amended applications, and 1,476 were renewed applications.

APHIS generated revenues of $48,868.50 from processing the 2,575 applications in FY 1999.[3] Had the proposed fee schedule been in effect during FY 1999, APHIS would have generated $182,351 from processing those applications, an increase of $133,482.50 over actual revenues for that year. Further, as a result of increased world trade, it is likely that APHIS' annual revenues from processing product applications would increase over time.

The number of different entities that submitted applications in FY 1999 and the number of applications submitted by each are not available. However, because 241 entities submitted amended applications and 1,476 entities submitted renewed applications during the year, we know that the number of different entities is significantly less than the total application count of 2,575. The economic effect on individual entities would vary, depending on the size of the entity and the number of permits required. For an entity that requires only a few permits each year, as is likely to be the case with the smaller entities that are affected, the proposed fees are not likely to have a significant economic impact. However, even an entity that requires a large number of permits might not be significantly affected if it is large enough to easily absorb the increased fees.

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[2] For FY 1999, fees for processing applications for permits to import germ plasm were set at $39.50. Data on fee receipts based on current fees, which are effective October 1, 2000, are not available.

[3] The current user fees for this service were made effective October 1, 2000. The revenues collected in 1999 are based on collections of the fees that were in place during FY 1999.

User Fees for Processing Applications for Permits to Import Animals

Under APHIS' rules, importers must, under certain circumstances, apply for and obtain an import permit from the agency prior to importing live animals.[4] Currently, APHIS does not charge applicants a fee for processing their permit applications.

Under the proposed rule, APHIS would charge applicants $94.00 for each new application, and $47.00 for each amended application to import live animals. The proposed rule is designed to shift the cost of processing the applications from the general taxpayer (via appropriated funds) to the users of those services, *i.e.*, the permit applicants. The proposed rule would also serve to remove an existing inequity, since APHIS currently charges applicants a fee for processing their applications for permits to import animal products and germ plasm.

In FY 1999, APHIS processed approximately 9,000 applications for permits to import animals. Of that total, approximately 7,500 were initial applications and 1,500 were amended applications. Had the proposed fee schedule been in effect during FY 1999, APHIS would have generated additional revenues of $775,500 from processing those applications. Further, as a result of increased world trade, it is likely that APHIS' annual revenues from processing applications for permits to import live animals will increase over time.

The number of different entities that submitted applications in FY 1999 and the number of applications submitted by each are not available. However, because some entities submitted amended applications and some entities submitted more than one new application during the year, we know that the number of different entities is less than the total application count of 9,000.

Data on the types of entities who submit applications is not available, but they are believed to be varied, and include breeders, commercial researchers, universities, zoos, and private individuals. At least some of the commercial entity applicants are believed to be brokers acting on behalf of their client customers. Even though they do not submit permit applications to APHIS, the client customers of brokers are likely to be affected by this proposed rule, since the application fees incurred by the brokers are likely to be passed on to them. The economic effect on individual entities would vary, depending on the size of the entity and the number of permits required. For an entity that requires only a few permits each year, as is likely to be the case with the smaller entities that are affected, the proposed fees are not likely to have a significant economic effect. However, even an entity that requires a large number of permits might not be significantly affected, if it is large enough to easily absorb the proposed fees.

Effects on Small Entities

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic effects of their rules on small entities, *i.e.*, small businesses, organizations, and governmental jurisdictions. The proposed changes discussed above would affect those entities in the United States that import live animals, animal products, and germ plasm. They would be affected because they would have to pay new fees, or higher fees, to have APHIS process their permit applications and, when required, inspect their facilities or products.

The types of entities that may be affected vary widely, and include breeders, commercial researchers, universities, zoos, and private individuals. At least some of the commercial entities are likely to be brokers acting on behalf of their client customers. Even though they themselves do not submit permit applications to APHIS, the client customers of brokers would be affected by the proposed changes if the increased fees incurred by the brokers are passed on to them.

The number of different entities that would be affected by the proposed changes, if they are adopted, and the extent of the effect on each, is unknown. In FY 1999, APHIS processed approximately 12,023 live animal, animal product, and germ plasm permit applications, but that figure overstates the number of affected entities, because some entities submitted more than one application during the year. Furthermore, the total application count of 12,023 includes an unknown number of private individuals in the United States who import live animals, animal products or germ plasm for nonbusiness reasons. These private individuals are not "entities" for purposes of this regulatory flexibility analysis.

It is reasonable to assume that most businesses affected by this proposed rule are small in size. This is because most U.S. businesses in general are small, based on the standards of the U.S. Small Business Administration (SBA). In 1996, for example, there were 1,197 U.S. firms in SIC 0751, a classification comprised of firms primarily engaged in performing certain services, including breeding, for cattle, hogs, sheep, goats, and poultry. Of those 1,197 firms, 97 percent had less than $5.0 million in sales that year, the SBA's small entity threshold. Similarly, in 1996, there were 7,408 U.S. firms in SIC 0752, a classification comprised of firms primarily engaged in performing certain services for pets, equines, and other animal specialties, including breeding services. Of those 7,408 firms, over 99 percent had less than $5.0 million in sales that year, the SBA's small entity threshold for firms in that SIC category. Accordingly, most of the businesses affected by this proposed rule are likely to be small in size.

The potential economic effect on individual entities would vary, depending on the number of permits required by each. For an entity that requires only a few permits each year, as is likely to be the case with the smaller entities that are affected, the proposed fees are not likely to have a significant economic effect. For an entity that submits five new live animal applications per year, the additional annual cost would be $470.

Alternatives Considered

One alternative to this proposed rule would be to make no changes to the user fee regulations. We rejected this alternative for several reasons. First, it would not allow us to recover the full cost of providing the import services for which user fees have already been established, *i.e.*, the germ plasm and animal product services. APHIS cannot charge user fees that recover less than the full cost of providing the service. Second, it would not allow us to shift the cost of providing live animal import services from the general taxpayer to the user of those services. (This shifting also serves to remove an existing inequity, since APHIS currently charges a fee for providing animal product and germ plasm import services.)

Another alternative would be to either exempt small businesses from the user fees or establish a different user fee structure for small businesses. This alternative was also rejected, because APHIS cannot exempt certain classes of users, such as small businesses. Nor, as indicated above, can APHIS charge user fees that recover less than the full cost of providing the service.

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[4] Whether or not an importer is required to obtain a permit from APHIS depends on several factors, including the type of animal to be imported and the country of export. The rules are designed to protect the health of the U.S. animal population, since such imports pose a risk of introducing animal diseases.

This proposed rule contains information collection requirements, which have been submitted for approval to the Office of Management and Budget (see "Paperwork Reduction Act" below).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 99–060–1. Please send a copy of your comments to: (1) Docket No. 99–060–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we are proposing to amend existing user fees for processing applications for permits to import and transport certain animal products, organisms, vectors, and germ plasm. We are also proposing to establish new user fees that would pay the cost of processing applications to import live animals. We are proposing these changes in order to ensure that we recover our costs.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .0166 hours per response.

Respondents: Importers and brokers of live animals, animal products, germ plasm, organisms, and vectors.

Estimated annual number of respondents: 8100.

Estimated annual number of responses per respondent: 1.111.

Estimated annual number of responses: 9000.

Estimated total annual burden on respondents: 149.4 hours.

Copies of this information collection can be obtained from: Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 would continue to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

2. Section 130.4 would be added to read as follows:

§ 130.4 User fees for processing import permit applications.

User fees for processing applications for permits to import certain animals and animal products (using VS forms 16–3 and 17–129) are listed in the table below. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Service	Unit	User fee			
		Effective Date of final rule—Sept. 30, 2001	Oct. 1, 2001–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
Import compliance assistance:					
Simple (2 hours or less)	per release	64.00	66.00	68.00	70.00
Complicated (more than 2 hours)	per release	164.00	169.00	174.00	180.00
Processing an application for a permit to import live animals, animal products or byproducts, organisms, vectors, or germ plasm (embryos or semen) or to transport organisms or vectors.[1]					
Initial permit	per application	94.00	94.00	94.00	94.00
Amended permit	per amended application	47.00	47.00	47.00	47.00
Renewed permit[2]	per application	61.00	61.00	61.00	61.00
Processing an application for a permit to import fetal bovine serum when facility inspection is required.	per application	322.00	322.00	322.00	322.00

[1] Using Veterinary Services Form 16–3, "Application for Permit to Import or Transport Controlled Material or Organisms or Vectors," or Form 17–129, "Application for Import or In Transit Permit (Animals, Animal Semen, Animal Embryos, Birds, Poultry, or Hatching Eggs)."

[2] Permits to import germ plasm and live animals are not renewable.

§ 130.8 [Amended]

3. In § 130.8(a), the table would be amended by removing the entries for "Germ plasm being imported" (including footnote 2), "Import compliance assistance", and "Processing VS Form 16–3".

Done in Washington, DC, this 20th day of October 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–28973 Filed 11–9–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–319–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes. This proposal would require replacement of certain brake control units (BCU) with new units. This action is necessary to prevent uncommanded application of 50 percent braking in one pair of wheels, which could result in the airplane skidding off the runway. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–319–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–319–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–319–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–319–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and EMB–145 series airplanes. The DAC advises that it received a report of one occurrence in which the flight crew noticed uncommanded brake application on an EMB–145 series airplane. Analysis of the brake control unit (BCU) that was removed after this occurrence revealed a condition that caused uncommanded application of 50 percent braking in one pair of wheels. This condition, if not corrected, could result in the airplane skidding off the runway.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–32–0060, Change No. 01, dated June 6, 2000, which describes procedures for replacement of certain BCU's with new units. The procedures involve converting BCU's having a particular part number to a new part number, replacing certain units with new units, and performing a functional check of the main brake system. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2000–07–01, dated August 20, 2000, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Difference Between Proposed AD and Brazilian Airworthiness Directive

Operators should note that the applicability of the Brazilian airworthiness directive includes all Model EMB–135 and EMB–145 series airplanes. However, the applicability of this proposed AD points to the effectivity of the referenced service bulletin, which specifies affected airplane serial numbers and provides information on in-production airplanes.

Cost Impact

The FAA estimates that 165 Model EMB–135 and EMB–145 series airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 5 work hours per airplane (2.5 work hours per BCU) to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would be provided by a vendor at no charge to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $49,500, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira De Aeronautica S.A. (Embraer): Docket 2000–NM–319–AD.

Applicability: Model EMB–135 and EMB–145 series airplanes, certificated in any category, as listed in EMBRAER Service Bulletin 145–32–0060, Change No. 01, dated June 6, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded application of 50 percent braking in one pair of wheels, which could result in the airplane skidding off the runway, accomplish the following:

Replacement

(a) Within 2,000 landings after the effective date of this AD: Replace the brake control unit (BCU) having part number (P/N) 42–951–1 or 42–951–2 with a new BCU having P/N 42–951–3 in accordance with EMBRAER Service Bulletin 145–32–0060, Change No. 01, dated June 6, 2000.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane a BCU having P/N 42–951–1 or 42–951–2.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2000–07–01, dated August 20, 2000.

Issued in Renton, Washington, on November 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28968 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–16]

Proposed Modification of Class E Airspace, Tillamook, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace at Tillamook, OR. A new Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 13 at Tillamook Airport has made this proposal necessary. Additional Class E 700-feet, and 1,200 feet controlled airspace, above the surface of the Earth is required to contain aircraft executing the RNAV RWY 13 SIAP with a Terminal Arrival Area (TAA) design to Tillamook Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Tillamook Airport, Tillamook, OR.

DATES: Comments must be received on or before December 28, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 99–ANM–16, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–16 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ANM–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Tillamook, OR. A new RNAV SIAP to RWY 13 at Tillamook Airport has made this proposal necessary. Additional controlled airspace from 700 feet, and 1,200 feet, above the surface is required to contain aircraft executing the RNAV RWY 13 SIAP with a TAA design to Tillamook Airport. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Tillamook Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the Earth, are published in Paragraph 6005, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and procedures (44 FR 11013; February 26, 1979(; and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows: *Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the Earth.*

* * * * *

ANM OR E5 Tillamook, OR [Revised]

(Lat 45°25′07″N., long. 123°48′49″W.)

The airspace extending upward from 700 feet above the surface within the 7.5-mile radius of the Tillamook airport, and within 2.5 miles each side of the 334° bearing from the airport extending to 13.8 miles; and the airspace extending upward from 1,200 feet above the surface within the 30 mile radius of Lat 45°37′05″N., long. 123°56′36″W., extending clockwise from the 246° bearing to the 064° bearing, and within the 30 miles radius of Lat 45°39′57″N., long. 123°47′30″W., extending clockwise from the 064° bearing to the 154° bearing of Lat 45°37′05″N., long. 123°56′36″W., and within the 30 miles radius of Lat 45°34′11″N., long. 124°05′41″W., extending counterclockwise from the 244° bearing to the 154° bearing of

Lat 45°37′05″N., long. 123°56′36″W.; and excluding that airspace that extends more than 12 miles west of the U.S. shoreline; that airspace within Federal airways; the Astoria, OR; the Portland-Hillsboro; and the Portland, OR, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on October 30, 2000.

Charles E. Davis,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 00–28988 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 100

[Docket No. FR 4597–P–01]

RIN 2529–AA89

Fair Housing Act Regulations Amendments Standards Governing Sexual Harassment Cases

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's Fair Housing regulations to establish the standards the Department will use in sexual harassment cases.

DATES: Comment due date: January 12, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each comment submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) eastern time at the above address.

FOR FURTHER INFORMATION CONTACT: David H. Enzel, Deputy Assistant Secretary for Enforcement and Programs, Room 5204, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 619–8046. (This is not a toll-free number). Individuals with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339 (This is a toll-free number).

SUPPLEMENTARY INFORMATION The Fair Housing Act (42 U.S.C. 3600–3620) (referred to as "the Act" in this rule) prohibits discrimination on the basis of sex. Sexual harassment related to housing has been uniformly recognized by courts as a form of discrimination based on sex and a violation of the Fair Housing Act. Sexual harassment may violate sections 804(a), 804(b), 804(c), 805, 806 or 818 under the Act. As the Department's current Fair Housing regulations do not address the standards to be applied in cases of sexual harassment, courts have looked to Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000 et. seq.) (Title VII), and associated case law and regulations for guidance in Fair Housing Act cases. (*See Grieger* v. *Sheets*, 1989 WL 38707 (N.D. Ill); see also *Henson* v. *City of Dundee*, 682 F.2d 897 (11th Cir. 1982); *Shellhammer* v. *Lewallen*, 770 F.2d 167 (6th Cir. 1985); *Honce* v. *Vigil*, 1 F.3d 1085 (10th Cir. 1993); *Beliveau* v. *Caras*, 873 F. Supp. 1393 (D. Cal. 1995); *Krueger* v. *Cuomo*, 115 F.3d 487 (7th Cir. 1997).) One court has expressed concern about the Department's lack of published standards concerning sexual harassment as a violation of the Act. (See *DiCenso* v. *Cisneros*, 96 F.3d 1004, 1007 (7th Cir. 1996)).

The Department is promulgating this proposed rule to provide guidance on key aspects of evaluating sexual harassment claims. In formulating the Department's position on sexual harassment, the Department carefully reviewed case law applying the Fair Housing Act, case law governing Title VII, and the Equal Employment Opportunity Commission's (EEOC) guidelines and policy statements.

Victims of sexual harassment at home lose their traditional place of refuge. "When the harassment occurs in a woman's home, it is a complete invasion in her life. Ideally, the home is the haven from the troubles of the day, when home is not a safe place, a woman may feel distressed and often immobile." (Regina Cahan, *Home is No Haven: An Analysis of Sexual Harassment in Housing* 1987 Wis. L. Rev. 1061, 1072 (1987).) At least two courts have recognized that sexual harassment in the home may have more severe effects than harassment in the workplace. (*See Beliveau* v. *Caras*, 873 F. Supp. 1393, 1397 (C.D. Cal. 1995); *Williams* v. *Poretsky Management*, 955 F. Supp. 490, 497 (S.D. Md. 1996).)

Sexual harassment violates the prohibitions against discrimination on the basis of sex found in sections 804(a), 804(b), 804(c), 805, or 806 of the Act. Sexual harassment can also violate section 818 of the Act, which prohibits threatening, intimidating or coercive verbal or physical conduct that occurs because of an individual's membership in a protected class. Threatening, intimidating or coercive verbal or physical conduct, which occurs between neighbors or tenants, may constitute sexual harassment and, if so, the offending neighbor or tenant will be liable under section 818 of the Act.

There are two types of actionable sexual harassment claims: "quid pro quo" claims and "hostile environment" claims. There will be cases where the conduct in question may support both quid pro quo and hostile environment claims of sexual harassment.

Proposed § 100.500(a)(1)—Quid Pro Quo

A "quid pro quo" claim exists when submission to unwelcome sexual advances and requests for sexual favors is made a term or condition of housing related to the sale or rental of dwellings, the provision of services in connection therewith, or the availability of residential real estate-related transactions. Such a claim may be established if submission to or rejection of such conduct is used as the basis for decisions affecting the provision of housing or residential real estate-related transactions and related benefits or services. Generally, an individual asserting a quid pro quo claim of sexual harassment must establish the existence of an unwelcome demand for sexual favors based on the individual's sex and that the harassment adversely affected one or more terms, conditions, or privileges of housing or a residential real estate-related transaction or associated benefits or services.

Proposed § 100.500(a)(2)—Hostile Environment

A person creates a hostile environment when that person's unwelcome conduct is sufficiently severe or pervasive that it results in the creation of an environment that a reasonable person in the aggrieved person's position would find intimidating, hostile, offensive, or otherwise significantly less desirable. Generally, an individual asserting a hostile environment sexual harassment claim generally must establish that he or she was subjected to unwelcome verbal or physical conduct; the conduct was severe or pervasive; the conduct was based upon the individual's sex; and the conduct made the environment burdensome and significantly less desirable than if the conduct had not occurred.

Reasonable person standard. Whether conduct creates a hostile environment will be evaluated from the perspective

of a reasonable person in the aggrieved person's position. The perspective of a reasonable person in the aggrieved person's position is that of an ordinary person in like circumstances. The Department believes that the purpose and intent of the Act is best served by adhering to the reasonable person standard and adopts this standard for cases under the Act. This standard recognizes that men, as well as women, may be victims of sexual harassment. (*Oncale* v. *Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998).) This standard also recognizes that either opposite-sex or same-sex discrimination violates the Fair Housing Act if the challenged conduct occurred because of the victim's sex. (*Id.*)

The reasonable person standard is the perspective from which the victim's reaction to the harasser's conduct should be analyzed to determine whether an actionable sexual harassment claim exists. Use of the reasonable person standard to determine liability should not be confused with the standard used to determine appropriate damages to aggrieved persons in housing discrimination cases. It is a well-established principle in fair housing law that perpetrators of housing discrimination must take their victims as they find them; that is, damages are measured based on the injuries actually suffered by the victim, not on the injuries that would have been suffered by a reasonable person. (Alan W. Heifetz and Thomas C. Heinz, *Separating the Objective, the Subjective and the Speculative: Assessing Compensatory Damages in Fair Housing Adjudications*, 26 Marshall Law Review 3, 21 (1992).)

Proposed § 100.500(b)—Totality of the Circumstances

Whether any conduct in question constitutes sexual harassment in violation of the Act will depend on the totality of the circumstances involved in each particular situation on a case by case basis. (*Harris* v. *Forklift Systems, Inc.*, 510 U.S. 17, 22 (1993).) Critical factors to examine include, but are not limited to, the context, nature, severity, scope, frequency, duration, and location of the incidents, as well as the identity, number, relative ages and relationships of the persons involved.

This proposed regulation does not impose a quantitative requirement on the incidents of harassment that will constitute sexual harassment under the Act. (*Harris*, 510 U.S. at 22 "[t]his is not * * * a mathematically precise test.") A quantitative requirement unfairly penalizes the person who takes affirmative steps to avoid further harassment by avoiding the harasser. (*Gnerre* v. *Massachusetts Commission Against Discrimination*, 524 N.E. 2d 84, 89 (Mass. 1988).) A single incident of conduct may constitute unlawful sexual harassment.

Proposed § 100.500(c)—Unwelcome Conduct

As evidenced by case law, unwelcome verbal conduct without physical conduct may independently support a sexual harassment claim. (See e.g., Grieger, 1989 WL 38707 (N.D. Ill.).) Verbal conduct includes, but is not limited to, the use of sexual epithets. Since verbal harassment may by itself support a sexual harassment claim under the Act, it follows that proof of physical harm is not necessary to establish a sexual harassment claim.

An intentional touching of any part of the body may constitute unwelcome conduct. To establish that conduct is sexual harassment, it is not necessary that intentional physical conduct involve an intimate body part. Evidence of unwelcome conduct need not be sexual in nature to support a claim for sexual harassment. (*Id.**3 (citing cases from the Eighth, Tenth, and District of Columbia Circuits).)

Proposed § 100.500(d)—Liability

(1) A person is responsible for his or her acts.

(2) A person shall be vicariously liable for sexual harassment by his or her agents. An alleged perpetrator's responsibilities, duties and functions should be carefully examined to establish whether the perpetrator was acting in an agency capacity before determining whether a principal is liable. This principle is fully consistent with the Department's position on a principal's liability for the acts of agents. (See 24 CFR 103.20 (1999), and preamble to final rule implementing the Fair Housing Act Amendments of 1988, 54 FR 3232, 3260–3261, January 23, 1989.)

The duty of a property owner not to discriminate in the leasing or sale of property is non-delegable. (*Alexander* v. *Riga*, 208 F.3d 419, 432–434 (3rd Cir. 2000); *Walker* v. *Crigler*, 976 F.2d 900, 904 (4th Cir. 1992); *Marr* v. *Rife*, 503 F.2d 735, 741 (6th Cir. 1974); *City of Chicago* v. *Matchmaker Real Estate Sales Center, Inc.*, 982 F.2d 1086, 1096 (7th Cir. 1996); *Coates* v. *Bechtel*, 811 F.2d 1045, 1051 (7th Cir. 1987); *Phiffer* v. *Proud Parrot Motor Hotel, Inc.*, 648 F.2d 548 (9th Cir. 1980)). The Department invites comment on whether an affirmative defense, similar to the one that was created for employers by the Supreme Court in Title VII cases (*Burlington Industries, Inc.* v. *Ellerth*, 524 U.S. 742 (1998), and *Faragher* v. *City of Boca Raton*, 524 U.S. 775 (1998)) would be appropriate in the Fair Housing context. The Department also solicits comments on methods by which it can incorporate in the regulation provisions regarding training and other methods to educate individuals as to the prohibitions against sexual harassment under the Fair Housing Act.

(3) A person shall be responsible for acts of sexual harassment by third parties, where he or she, or his or her agent, knew or should have known of the conduct and failed to take immediate and appropriate corrective action, and had a duty to do so. (*Reeves* v. *Carrolsburg Condominium Unit Owners Association*, 1997 U.S. Dist. LEXIS 21762 *23; Cf. *Bradley* v. *Carydale Enterprises*, 707 F. Supp. 217 (E.D. VA 1989).) The duty to take corrective action may be established by leases, contracts, condominium by-laws and local ordinances. (*Reeves*, 1997 U.S. Dist., LEXIS 21762, *23.) Examples of third parties include tenants and independent contractors.

The Department solicits comments on other mechanisms that may create a duty to take corrective action and factors the Department should consider when determining whether such a duty exists.

Proposed § 100.500(e)—Other Related Conduct

When a housing-related opportunity or benefit is granted because of an individual's submission to sexual advances or requests for sexual favors, a person may be held liable for sexual harassment by other individuals who were qualified for and had a reasonable expectation of receiving an opportunity or benefit, but were denied. (Cf., *Broderick* v. *Ruder*, 685 F. Supp., 1269 (D.D.C. 1988).) For example, the manager of a housing complex with a long waiting list offers to move applicants to the top of the waiting list in exchange for sexual favors. Other applicants, even if they were not propositioned, but lost housing opportunities because of the manager's preferential treatment of others in exchange for sexual favors are aggrieved persons under the Fair Housing Act.

Proposed § 100.500(f)—Evidence of Psychological harm

Evidence relating to the relative mildness or severity of an aggrieved person's psychological harm is not relevant to whether a respondent has violated the Fair Housing Act's prohibition against sexual harassment.

(Harris, 510 U.S. 17 (1993)) Evidence of psychological harm may be considered in determining the proper amount of any money damages to which an aggrieved person may be entitled in compensation for emotional distress suffered.

Findings and Certifications

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review,* and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made in this proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, Room 1026, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would address sexual harassment in a housing or residential real estate-related transaction environment as a form of discrimination based on sex and a violation of the Fair Housing Act.

Environmental Impact

In accordance with 24 CFR 50.19(c)(3) of HUD's regulations, this proposed rule would set forth fair housing standards, and therefore is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347).

Executive Order 13132, Federalism

This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule would not impose any Federal mandates on any State, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.400.

List of Subjects in 24 CFR Part 100

Aged, Fair Housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 100 is proposed to be amended as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for 24 CFR part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3620.

§ 100.65 Discrimination in terms, conditions and privileges and in services and facilities.

2. Section 100.65 is amended by removing paragraph (b)(5).

Subpart G—Prohibited Sexual Harassment

3. In part 100, a new subpart G that consists of new § 100.500 is added to read as follows:

§ 100.500 Prohibited sexual harassment.

(a) Sexual harassment can violate the prohibitions against discrimination on the basis of sex found in sections 804(a), 804(b), 804(c), 805, or 806 of the Act. Sexual harassment can also violate section 818 of the Act. There are two types of actionable sexual harassment claims:

(1) *Quid pro quo.* Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when submission to the conduct, either explicitly or implicitly, is made a term or condition relating to the sale or rental of dwellings, the provision of benefits or services in connection therewith, or the availability of residential real estate-related transactions.

(2) *Hostile environment.* Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct constitute sexual harassment when the conduct has the effect of creating an environment which a reasonable person in the aggrieved person's position would consider intimidating, hostile, offensive, or otherwise significantly less desirable in connection with the sale or rental of dwellings, the provision of benefits or services in connection therewith, and the availability of residential real estate-related transactions. Proof of an adverse action is not necessary to create an actionable hostile environment claim.

(b) *Totality of the circumstances.* Whether any particular conduct constitutes sexual harassment will depend upon the totality of the circumstances, including the nature of the conduct and the context in which the incident(s) occurred. Critical factors to examine include, but are not limited to, the context, nature, severity, scope, frequency, duration, and location of the incidents, as well as the identity, number, relative ages and relationships of the persons involved. A single incident of conduct may constitute hostile environment sexual harassment.

(c) *Unwelcome conduct.* Unwelcome verbal conduct may include, but is not limited to, sexual epithets. Unwelcome physical conduct may include, but is not limited to, contact with an intimate body part.

(d) *Liability.* (1) A person is responsible for his or her acts.

(2) A person is vicariously liable to a victimized individual for sexual harassment by his or her agents.

(3) With respect to liability for sexual harassment by a third party, a person is responsible for acts of sexual harassment where the person, or his or her agents, knew or should have known of the third party's conduct and did not take immediate and appropriate corrective action and had a duty to do so.

(e) *Other related conduct.* When a housing-related opportunity or benefit is granted because of an individual's submission to sexual advances or requests for sexual favors, a person may be held liable by other individuals who were qualified for and had a reasonable expectation of receiving the opportunity or benefit, but were denied.

(f) *Evidence of psychological harm.* Evidence relating to the relative mildness or severity of an aggrieved person's psychological harm from such conduct is not relevant to a determination of whether a respondent violated the Act, but such evidence will be considered in determining the proper amount of any money damages to which an aggrieved person may be entitled in compensation for emotional distress suffered.

Dated: August 21, 2000.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 00-28892 Filed 11–9–00; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

[Notice No. 906]

RIN 1512–AC25

Identification Markings Placed on Imported Explosive Materials (2000R–238P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering amending the regulations to require licensed importers to legibly identify by marking all imported explosive materials. Based on a petition we have received, we wish to gather information by inviting comments from the public and industry whether the regulations should be amended.

DATES: Comments must be received on or before January 12, 2001.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 906.* Written comments must be signed. Submit e-mail comments to: nprm@atfhq.atf.treas.gov. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on not more than three pages 8½″ × 11″ in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See the Public Participation section of this document for alternative means of submitting written comments.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) is responsible for implementing Title XI, Regulation of Explosives (18 U.S.C. Chapter 40), of the Organized Crime Control Act of 1970. One of the stated purposes of the Act is to reduce the hazards to persons and property arising from the misuse of explosive materials. Under section 847 of title 18, United States Code, the Secretary of the Treasury "may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter." Regulations that implement the provisions of chapter 40 are contained in title 27, Code of Federal Regulations (CFR), part 55.

Section 55.109 requires licensed manufacturers of explosive materials to legibly identify by marking all explosive materials manufactured for sale or distribution. The term "explosive materials," as defined in section 55.11, means explosives, blasting agents, water gels and detonators. The term includes, but is not limited to, all items in the "List of Explosive Materials" provided for in section 55.23. Section 55.202 provides that there are three classes of explosive materials: (1) high explosives (e.g., dynamite, flash powders, and bulk salutes), (2) low explosives (e.g., black powder, safety fuses, igniters, igniter cords, fuse lighters, and display fireworks (except bulk salutes)), and (3) blasting agents (e.g., ammonium nitrate-fuel oil and certain water-gels).

The marks required by section 55.109 include the identity of the manufacturer and the location, date, and shift of manufacture. This section also provides that licensed manufacturers must place the required marks on each cartridge, bag, or other immediate container of explosive materials for sale or distribution, as well as on the outside container, if any, used for their packaging.

Exceptions to the marking requirements are provided in section 55.109(b). Licensed manufacturers of blasting caps are only required to place the required identification marks on the containers used for the packaging of blasting caps. In addition, the Director may authorize other means of identifying explosive materials upon receipt of a letter application from the licensed manufacturer showing that other identification is reasonable and will not hinder the effective administration of part 55. Finally, section 55.109(b) provides that the Director may authorize the use of other means of identification on fireworks instead of the required markings specified above.

Petition

The Institute of Makers of Explosives (IME) filed a petition with ATF, dated March 7, 2000, requesting an amendment of the regulations to require licensed importers to place the same identification marks on imported explosive materials that are currently required for explosive materials manufactured in the United States. As stated in the petition, the IME is the safety association of the commercial explosives industry. Its mission is to promote safety and the protection of employees, users, the public and the environment, and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use, and disposal of explosive materials used in blasting and other essential operations.

According to the petitioner, the commerce of explosives is a global enterprise and it expects the quantity of imports to increase over time. For example, the petitioner states that between 1994 and 1997, imports of cast boosters (high explosives) increased 14-fold to account for approximately 17 percent of all high explosives used annually in the U.S. The IME further states that while unmarked high explosives may have entered the United States over the years, it was not until last year that the association became aware of significant quantities of unmarked high explosives being imported into the country. The IME contends that by the end of 1999 about two million unmarked units had been distributed in the United States. The petitioner further states that many more thousands of tons of these high explosives are expected to be imported into the U.S. in the near future. Without a change in the regulations, the IME is concerned that these explosives will be entered into commerce in the U.S. without marks of identification, posing significant safety and security risks to the public. Although the IME has informed ATF that many of its member companies importing explosives into the U.S. mark their imported explosive materials in an effort to ensure traceability and accountability of the materials, it believes that all imported explosive materials should be appropriately identified. Therefore, it petitioned that the Federal explosives regulations be amended.

By letter dated August 2, 2000, the IME amended its petition to narrow the scope to importers of high explosives and blasting agents. The IME stated that it did not understand that the scope of its initial petition would apply to importers of products other than high explosives and blasting agents, i.e., low explosives. The IME noted that it has a specific standard that high explosives and blasting agents be marked with a date/plant/shift code.

Discussion

In an effort to protect the public from the misuse of explosive materials, ATF generally requires that explosives manufacturers mark all explosive materials manufactured with specific information, including the name of manufacturer, and the location, date, and shift of manufacture. Generally, licensees and permittees must record the manufacturer's marks of identification on all explosives they receive. These requirements help ensure that explosive materials can be effectively traced for criminal enforcement purposes, i.e., the explosives can be tracked through the records kept by licensees and permittees. This process often provides valuable information in explosion and bombing investigations and is useful for inspection purposes in verifying inventory and proper conduct of business practices. However, the regulations do not require that imported explosive materials be marked. Therefore, we are requesting information and comments from interested persons on the desirability and feasibility of marking imported explosive materials.

Although ATF is soliciting comments on the following specific questions, we are also requesting any relevant information on the subject. 1. Should explosive materials imported into the United States contain identification markings?

2. Should all imported explosive materials be marked, or should certain classes of explosive materials, such as low explosives, be exempt? If you believe certain classes of explosives should be exempt from marking, please provide the reason(s) why such an exemption is consistent with public safety.

3. What identification marks, if any, are currently being placed on imported explosive materials?

4. What information should appear on imported explosive materials? ATF believes that the name and address of the importer, the name of the country in which the explosive materials were manufactured, and the date that the explosive materials were manufactured would be sufficient.

5. Assuming that any required identification marks must be placed on each cartridge, bag, or other immediate container of explosive materials that are imported, as well as on any outside container used for their packaging, is it feasible for a U.S. importer to place the required marks on foreign explosive materials?

6. How many importers would be affected by a requirement to place identification markings on foreign explosive materials?

7. Of those importers that would be affected by such a requirement, how many would be considered a "small business concern" as provided in the Small Business Act (15 U.S.C. 631, *et seq.*)?

8. What would be the cost burden imposed on importers for purchasing or leasing equipment for marking foreign explosive materials, including installation and operation?

9. What would the cost be for importers to contract with a foreign manufacturer to place the required marks on explosive materials on behalf of the importer?

Executive Order 12866

It has been determined that this advance notice is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this advance notice is not subject to the analysis required by this Executive Order.

Public Participation

We are requesting comments on the petition from all interested persons. We are specifically requesting comments on the clarity of this advance notice and how it may be made easier to understand.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

You may submit written comments by facsimile transmission to (202) 927–8602. Facsimile comments must:

- Be legible;
- Reference this notice number;
- Be 8½″ × 11″ in size;
- Contain a legible written signature; and
- Be not more than three pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

Disclosure

Copies of the petition, this advance notice, and the comments received will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in Part 55

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance. This notice is issued under the authority of 18 U.S.C. 846 and 847.

Signed: September 8, 2000.

Bradley A. Buckles,
Director.

Approved: October 11, 2000.

John P. Simpson,
Deputy Assistant Secretary, Regulatory, Tariff and Trade Enforcement.

[FR Doc. 00–28979 Filed 11–9–00; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 552

[BOP–1107–P]

RIN 1120–AB06

Suicide Prevention Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons proposes to revise its regulations on the suicide prevention program for clarity and to remove agency management procedures which do not need to be stated in regulations. We intend the revised regulations to provide for the health and safety of inmates.

DATES: Comments due by January 12, 2001.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons (Bureau) proposes to revise its regulations on the suicide prevention program (28 CFR part 552,

subpart E). Current regulations on this subject were published in the **Federal Register** on April 24, 1990 (55 FR 17355).

What Change Is the Bureau Making?

We are revising the regulations generally for clarity and to remove procedures relating to agency management. The revised regulations more clearly describe for the inmate how we identify and protect inmates at risk for suicide.

Why Is the Bureau Making This Change?

We are making this change to conform to the plain language initiative. Procedures relating to agency management are exempt from the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553). Removing these procedures from the regulations allows us to speak more directly to inmates.

Revised § 552.40 more precisely states the purpose of our suicide prevention program and summarizes how we place inmates in and remove them from the program. Former §§ 552.41 through 552.43 are combined in a new § 552.41 which details the specific procedures we use to identify, refer, assess, and treat potentially suicidal inmates.

We combined provisions for the conditions of a suicide watch in former §§ 552.44, 552.46, and 552.48 in the new § 552.42. The revised regulations are more objective based. For example, the revised regulations require that rooms designated for housing an inmate on suicide watch must allow staff to maintain adequate control of the inmate without compromising the ability to observe and protect the inmate.

Previously, the regulations relied upon a more prescriptive approach of describing the location of the room (". . . a non-administrative detention/segregation cell ordinarily in the health services area"). This prescriptive approach does not take into account recent developments in correctional facility design and construction, and has become unnecessarily restrictive.

Former §§ 552.45 and 552.49 addressed agency management procedures, and former § 552.47 affirms that a previously imposed sanction remains in effect for an inmate when that inmate is removed from a suicide watch. Because our regulations on inmate discipline sufficiently support that statement, we removed these three sections.

Who Does This Change Affect?

This regulation generally affects inmates in Bureau institutions.

How Can I Comment on the Proposed Change?

If you want to comment on this proposed rulemaking, you can submit data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534.

We will consider comments we receive during the comment period before we take final action. We will try to consider comments we receive after the comment period ends if we can.

All comments received remain on file for public inspection at the above address. We may change the proposed rule in light of the comments received. We do not expect to hold oral hearings on this rulemaking.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make Bureau documents easier to read and understand. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi at the telephone number or address listed above.

List of Subjects in 28 CFR Part 552

Prisoners.

Kathleen Hawk Sawyer,
Director, Bureau of Prisons.

Accordingly, under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR part 552, chapter V, subchapter C, as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 552—CUSTODY

1. The authority citation for 28 CFR part 552 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Revise subpart E to read as follows:

Subpart E—Suicide Prevention Program

Sec.
552.40 Purpose and scope.
552.41 Program procedures.
552.42 Suicide watch conditions.

Subpart E—Suicide Prevention Program

§ 552.40 Purpose and scope.

The Bureau of Prisons (Bureau) operates a suicide prevention program in order to assist staff in identifying and managing potentially suicidal inmates.

When staff identify an inmate as being at risk for suicide, staff will place the inmate on suicide watch. Based upon clinical findings, staff will either terminate the suicide watch when the inmate is no longer at imminent risk for suicide or arrange for the inmate's transfer to a medical referral center or contract health care facility.

§ 552.41 Program procedures.

(a) *Program Coordinator*. Each institution must have a Program Coordinator for the institution's suicide prevention program.

(b) *Training*. The Program Coordinator is responsible for ensuring that appropriate training is available to staff and to inmates selected as inmate observers.

(c) *Identification of at-risk inmates*. (1) Medical staff are to screen a newly admitted inmate for signs that the inmate is at risk for suicide. Ordinarily, this screening is to take place within twenty-four hours of the inmate's admission to the institution.

(2) Staff (whether medical or non-medical) may make an identification at any time based upon the inmate's observed behavior.

(d) *Referral*. Staff who identify an inmate to be at risk for suicide will have the inmate placed on suicide watch.

(e) *Assessment*. A psychologist will clinically assess each inmate placed on suicide watch.

(f) *Intervention*. Upon completion of the clinical assessment, the Program Coordinator or designee will determine the appropriate intervention that best meets the needs of the inmate.

§ 552.42 Suicide watch conditions.

(a) *Housing*. Each institution must have one or more rooms designated specifically for housing an inmate on suicide watch. The designated room must allow staff to maintain adequate control of the inmate without compromising the ability to observe and protect the inmate.

(b) *Observation*. (1) Staff or trained inmate observers operating in scheduled shifts are responsible for keeping the inmate under constant observation.

(2) Only the Warden may authorize the use of inmate observers.

(3) Inmate observers are considered to be on an institution work assignment when they are on their scheduled shift.

(c) *Suicide watch log*. Observers are to document significant observed behavior in a log book.

(d) *Termination*. Based upon clinical findings, the Program Coordinator or designee will:

(1) Remove the inmate from suicide watch when the inmate is no longer at imminent risk for suicide, or

(2) Arrange for the inmate's transfer to a medical referral center or contract health care facility.

[FR Doc. 00–28905 Filed 11–9–00; 8:45 am]

BILLING CODE 4410–05–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1956

[Docket No. T–034]

RIN 1218–AB98

Notice of the Submission of the New Jersey State Plan for Public Employees Only; Proposal To Grant Initial State Plan Approval; Request for Public Comment and Opportunity To Request Public Hearing

AGENCY: Occupational Safety and Health Administration, Department of Labor (OSHA).

ACTION: Proposed rule: Initial State Plan approval; request for written comments; notice of opportunity to request informal public hearing.

SUMMARY: This document gives notice of the submission by the New Jersey Department of Labor of a State occupational safety and health plan, applicable only to public sector employment (employees of the State and its political subdivisions), for determination of initial approval under section 18 of the Occupational Safety and Health Act of 1970 (the "Act"). OSHA is seeking written public comment on whether or not initial State plan approval should be granted and offers an opportunity to interested persons to request an informal public hearing on the question of initial State plan approval.

Approval of the New Jersey Public Employee Only State plan will be contingent upon a determination that the plan meets OSHA's plan approval criteria and the availability of funding as contained in the Department of Labor's Fiscal Year 2001 budget, which is currently pending final Congressional and Executive action.

DATES: Written comments or requests for a hearing must be received by December 13, 2000.

ADDRESSES: Written comments or request for a hearing should be submitted in duplicate, to the Docket Officer, Docket T–034, U.S. Department of Labor, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350. Comments limited to 10 pages or fewer may also be transmitted by FAX to: (202) 693–1648, provided that the original and one copy of the comments are sent to the Docket Office immediately thereafter. Electronic comments may be submitted on the Internet at: *http://ecomments.osha.gov/*.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act") 29 U.S.C. 667 provides that a State which desires to assume responsibility for the development and enforcement of standards relating to any occupational safety and health issue with respect to which a Federal standard has been promulgated may submit a State plan to the Assistant Secretary of Labor for Occupational Safety and Health ("Assistant Secretary") documenting in detail the proposed program. Regulations promulgated pursuant to the Act at 29 CFR part 1956 provide that a State may submit a State plan for the development and enforcement of occupational safety and health standards applicable only to employees of the State and its political subdivisions ("public employees"). Under these regulations the Assistant Secretary will approve a State plan for public employees if the plan provides for the development and enforcement of standards relating to hazards in employment covered by the plan which are or will be at least as effective in providing safe and healthful employment and places of employment for public employees as standards promulgated and enforced under section 6 of the Federal Act, giving due consideration to differences between public and private sector employment. In making this determination the Assistant Secretary will consider, among other things, the criteria and indices of effectiveness set forth in 29 CFR part 1956, Subpart B.

B. New Jersey State Plan History

In 1973, the New Jersey Department of Labor and Industry obtained OSHA approval of a State plan for the enforcement of occupational safety and health standards covering private sector workplaces as well as a program for

public employees in New Jersey. That plan was approved by the Assistant Secretary on January 22, 1973 (37 FR 2426); 29 CFR 1952.140 *et seq.*). That plan was subsequently withdrawn by the State of New Jersey effective June 30, 1975, after the State was unable to gain enactment of the necessary State OSHA legislation (40 FR 27655).

In 1984, the New Jersey State Legislature passed the New Jersey Public Employees Occupational Safety and Health (PEOSH) Act, which was signed into law by the Governor, and which provided the basis for establishing a comprehensive occupational safety and health program applicable to the public employees in the State.

The State formally submitted for Federal approval a plan applicable only to public employees in February 1988. OSHA's review findings were detailed in an October 1988 letter to then New Jersey Labor Commissioner Charles Serraino. OSHA determined that the New Jersey statute, as structured, and the proposed State plan presented several obstacles to meeting Federal State plan approval criteria.

A revised plan was submitted by the State on February 19, 1992. On March 27, 1992, in a letter to former New Jersey State Labor Commissioner Raymond L. Bramucci, OSHA informed the State of its latest findings, identifying areas of the proposed plan which needed to be addressed or needed clarification. Amended enabling legislation was signed into law by Governor Christine Todd Whitman on July 25, 1995, to conform the proposed State plan to OSHA requirements. On October 11, 1995, former New Jersey State Labor Commissioner Peter J. Calderone submitted a newly revised PEOSH State plan which OSHA determined was conceptually approvable as a developmental State plan, but which could not be approved until Congress appropriated additional Federal matching grant funds for a new State plan under section 23(g) of the OSHAct. On August 1, 2000, current New Jersey Commissioner of Labor, Mark B. Boyd, and Commissioner of Health and Senior Services, Christine Grant, submitted a further revised plan document, with final amendments submitted on September 1, 2000.

The Act provides for funding "up to 50%" of the State plan costs, but longstanding language in OSHA's appropriation legislation further provides that OSHA must fund "* * * no less than 50% of the costs required to be incurred" by an approved State plan. The Department of Labor's Fiscal Year 2000 budget request included additional section 23(g) grant funds to allow approval of the New Jersey State plan. However, the requested funds were not included in OSHA's final FY 2000 Congressional appropriation. The Department of Labor's Fiscal Year 2001 budget, which is pending final Congressional and Executive action, again requests funding to allow approval of the New Jersey State plan.

After an opportunity for public comment, and contingent upon the availability of additional section 23(g) grant funds, the Assistant Secretary of Labor will approve the New Jersey State plan if it is determined that the plan meets the criteria set forth in the Occupational Safety and Health Act of 1970 and applicable regulations at 29 CFR part 1956, Subpart B. The approval of a State plan for public employees in New Jersey is not a significant regulatory action as defined in Executive Order 12866.

C. Description of the New Jersey State Plan

The plan designates the New Jersey Department of Labor as the State agency responsible for administering the plan throughout the State. The plan includes legislation, the Public Employees Occupational Safety and Health Act (the "State Act," N.J.S.A. 34:6A–25 *et seq.*), passed by the New Jersey legislature in 1995. Under that legislation, the New Jersey Commissioner of Labor has full authority to adopt standards and enforce and administer all laws and rules protecting the safety and health of employees of the State and its political subdivisions. The State Commissioner of Labor and the State Commissioner of Health and Senior Services are both responsible for conducting inspections within their jurisdictional areas. (Although health inspections will be conducted by the New Jersey State Department of Health and Senior Services, all enforcement actions will be initiated by the State Department of Labor.) New Jersey has adopted State standards identical to Federal occupational safety and health standards promulgated as of December 7, 1998, with differences only in its hazard communication and fire protection standards. The State plan includes a commitment to bring those standards into conformance with OSHA requirements and to update all standards within one year after plan approval. The State plan also provides that future OSHA standards and revisions will be adopted by the State in accordance with 29 CFR 1953.21. The plan also includes provisions for the granting to public employers of permanent and temporary variances from State standards in terms substantially similar to the variance provisions contained in the Federal Act. The State provisions require employee notification of variance applications as well as employee rights to participate in hearings held on variance applications. Variances may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance. Section 6A–35 of the State Act (N.J.S.A. 34) provides for inspections of covered workplaces including inspections in response to employee complaints. If a determination is made that an employee complaint does not warrant an inspection, the complainant will be notified, in writing, of such determination and afforded an opportunity to seek informal review of the determination. Additionally, section 6A–35 of the State Act provides the opportunity for employer and employee representatives to accompany an inspector during an inspection for the purpose of aiding in the inspection.

The plan provides for notification to employees of their protections and obligations under the plan by such means as a State poster, and required posting of notices of violation. Section 6A–45 of the State Act provides for protection of employees against discharge or discrimination resulting from exercise of their rights under the State Act in terms essentially identical to section 11(c) of the Federal Act. lieu of first-instance monetary penalties, the plan provides a scheme of enforcement for compelling compliance under which public employers are issued notices of violations and orders to comply, for any violation of standards and orders. Such notices must allow a reasonable abatement period. Public employers, employees and other affected parties may seek informal review of the notice of violation with the New Jersey Department of Labor, including the reasonableness of the abatement period, and/or may seek formal administrative review with the New Jersey Department of Labor's Occupational Safety and Health Review Commission. Judicial review of the decision of the Review Commission may be sought at the Appellate Division of the Superior Court. The PEOSH Act further mandates a system of monetary penalties as its primary enforcement mechanism for failures to comply with an Order of the Commissioner of Labor and willful violations pursuant to section 6A–41d. The prescribed penalty amounts are up to $7,000 per day for failure to abate violations and up to $70,000 for willful violations. Such penalties are also subject to administrative review and subsequent judicial appeal.

The plan also includes provisions for right of entry for inspection, prohibition of advance notice of inspection and employers' obligations to maintain records and provide reports as required. The plan further provides assurances of a fully trained, adequate staff, including 20 safety and 7 health compliance officers for enforcement inspections, and 4 safety and 3 health consultants to perform consultation services in the public sector, and 2 safety and 3 health training and education staff. 29 CFR 1956.10(g) requires that State plans for public employees provide a sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards. The compliance staffing requirements (or benchmarks) for State plans covering both the private and public sectors are established based on the "fully effective" test established in *AFL–CIO* v. *Marshall*, 570 F.2d 1030 (D.C. Cir., 1978). This staffing test, and the complicated formula used to derive benchmarks for complete private/public sector plans, is not intended, nor is it appropriate, for application to the staffing needs of public employee only plans. However, the State has given satisfactory assurance in its plan that it will meet the staffing requirements of 29 CFR 1956.10. The State has also given satisfactory assurances of adequate State matching funds to support the plan and is requesting initial Federal funding of $1,771,000.

Although the State Act sets forth the general authority and scope for implementing the New Jersey Public Employees Occupational Safety and Health (PEOSH) Plan, the plan is developmental under the terms of 29 CFR 1956.2(b), in that specific rules and regulations must still be adopted to carry out the plan and make it fully operative. The plan sets forth a timetable for the accomplishment of these and other developmental goals. This timetable addresses such general areas as the development or revision of regulations governing enforcement, consultation, and variances. Other developmental aspects include hiring and training of staff, obtaining laboratory services, development of a Field Operations Manual and other implementing policies and procedures, and adoption of various forms, procedures, and instructions.

D. Location of the Plan for Inspection and Copying

A copy of the plan may be inspected and copied during normal business hours at the following locations:

Docket Office, Docket T–034, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210;
Office of the Regional Administrator,. U.S. Department of Labor, Occupational Safety and Health Administration, 201 Varick Street, Room 670, New York, New York 10014;
New Jersey Department of Labor, Division of Public Safety and Occupational Safety and Health, Office of Public Employees' Safety, P.O. Box 386, 225 East State Street, 8th Floor West, Trenton, New Jersey 08625–0386.

E. Request for Public Comment and Opportunity To Request Hearing

Public comment on the New Jersey Public Employees Occupational Safety and Health (PEOSH) Plan is hereby requested. Interested persons are invited to submit written data, views, and comments with respect to this proposed initial State plan approval. These comments must be received on or before December 13, 2000 and submitted in duplicate to the Docket Officer, Docket No. T–034, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the positions taken with respect to each issue. Comments limited to 10 pages or fewer may also be transmitted by FAX to: (202) 693–1648, provided that the original and one copy of the comment are sent to the Docket Office immediately thereafter. Electronic comments may be submitted on the Internet at: *http://ecomments.osha.gov/*. The State of New Jersey will be afforded the opportunity to respond to each submission. The New Jersey Department of Labor must also publish appropriate notice within the State of New Jersey within 5 days of publication of this notice, announcing OSHA's proposal to approve a New Jersey State Plan for Public Employees Only, contingent on the availability of appropriated funds, and giving notice of the opportunity for public comment.

Pursuant to 29 CFR 1902.39(f), interested persons may request an informal hearing concerning the proposed initial State plan approval. Such requests also must be received on or before December 13, 2000 and should be submitted in duplicate to the Docket Officer, Docket T–034, at the address noted above. Such requests must present particularized written objections to the proposed initial State plan approval. The Assistant Secretary will decide within 30 days of the last day for filing written views or comments and requests for a hearing whether the objections raised are substantial and, if so, will publish notice of the time and place of the scheduled hearing.

The Assistant Secretary will, within a reasonable time after the close of the comment period or after the certification of the record if a hearing is held, publish his decision in the **Federal Register**. All written and oral submissions, as well as other information gathered by OSHA, will be considered in any action taken. The record of this proceeding, including written comments and requests for hearing and all materials submitted in response to this notice and at any subsequent hearing, will be available for inspection and copying in the Docket Office, Room N–2625, at the previously mentioned address, between the hours of 8:15 a.m and 4:45 p.m.

F. Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that the proposed initial approval of the New Jersey State Plan will not have a significant economic impact on a substantial number of small entities. By its own terms, the plan will have no effect on private sector employment, but is limited to the State and its political subdivisions. Moreover, the New Jersey legislation has been in effect since 1984, when the State first established a safety and health program for State and local government employees. Since that time, the New Jersey program has been in operation with State funding and most public sector employers in the State, including small units of local government, have been subject to its terms. Compliance with State OSHA standards is required by State law; Federal approval of a State plan imposes regulatory requirements only on the agency responsible for administering the State plan. Accordingly, no new obligations would be placed on public sector employers as a result of Federal approval of the plan.

G. Federalism

Executive Order 13132, "Federalism," emphasizes consultation between Federal agencies and the States and establishes specific review procedures the Federal government must follow as it carries out policies which affect state or local governments. OSHA has consulted extensively with New Jersey throughout the development, submission and consideration of its proposed State plan. Although OSHA has determined that the requirements and consultation procedures provided in Executive Order 13132 are not applicable to initial approval decisions under the Act, which have no effect outside the particular State receiving the approval, OSHA has reviewed the New Jersey initial approval decision proposed today, and believes it is consistent with the principles and criteria set forth in the Executive Order.

H. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under section 18 of the OSH Act (29 U.S.C. 667), 29 CFR part 1902, and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC this 6th day of November 2000.

Charles N. Jeffress,
Assistant Secretary of Labor.

[FR Doc. 00–28998 Filed 11–9–00; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MI74–7282b; FRL–6896–4]

Approval and Promulgation of State Implementation Plans; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to adjust the applicability date for reinstating the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in Genesee, Bay, Midland, and Saginaw Counties, Michigan and is proposing on a determination that these areas have attained the 1-hour ozone NAAQS. This determination is based on 3 consecutive years of complete, quality-assured, ambient air monitoring data for the 1997–1999 ozone seasons that demonstrate that the areas have attained the ozone NAAQS. On the basis of this determination, EPA is also proposing that certain attainment demonstration requirements, and certain related requirements of part D of subchapter I of the Clean Air Act (CAA), do not apply to Genesee, Bay, Midland, and Saginaw Counties.

EPA is also proposing to approve the State of Michigan's request to redesignate Genesee, Bay, Midland, and Saginaw Counties to attainment for the 1-hour ozone NAAQS. Michigan submitted the redesignation request for these areas on May 9, 2000. EPA is also proposing to approve the State's plan for maintaining the 1-hour ozone standard for the next 10 years as a revision to the Michigan State Implementation Plan (SIP).

In the final rules section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving and disapproving portions of the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this proposed rule within 30 days of this publication. Should EPA receive adverse comment, it will publish a document informing the public that the direct final rule will not take effect and that EPA will address adverse comments in a subsequent final rule based on this proposed rule. If EPA does not receive adverse comments, the direct final rule will take effect on the date stated in that document and EPA will not take further action on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: EPA must receive written comments by December 13, 2000.

ADDRESSES: Send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Mooney at (312) 886–6043.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. (Please telephone John Mooney at (312) 886–6043 before visiting the Region 5 Office.)

Authority: 42 U.S.C. 7401–7671 *et seq.*

Dated: October 26, 2000.

Francis X. Lyons,
Regional Administrator, Region 5.

[FR Doc. 00–28806 Filed 11–9–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 43 and 64

[CC Docket No. 00–199; FCC 00–364]

2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document the Commission is initiating Phase 2 and Phase 3 of the 2000 Biennial Regulatory Review—Comprehensive Accounting and ARMIS review. This Notice of Proposed Rulemaking (NPRM), will examine long-term changes need as new technologies impact the provision of telecommunications services and as local exchange markets become competitive.

DATES: Interested parties may file comments on the Phase 2 section of the NPRM on or before December 21, 2000, and reply comments on or before January 30, 2001; Phase 3 comments may be filed on or before January 30, 2001 and reply comments on or before February 28, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before January 12, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, TW–A325, Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov*; and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Mika Savir, Accounting Safeguards

Division, Common Carrier Bureau, at (202) 418–0384 or JoAnn Lucanik, Accounting Safeguards Division, Common Carrier Bureau, at (202) 418–0873.

For additional information concerning the information collections contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, CC Docket No. 00–199, FCC 00–364, adopted October 12, 2000 and released October 18, 2000. The full text of this Commission NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this NRPM may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036.

This NPRM contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due January 12, 2001.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: None.

Title: 2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3, CC Docket No. 00–199.

Form No.: FCC Reports 43–01, 43–02, 43–03, 43–04, 43–05, 43–07, 43–08, 495A and 495B.

Type of Review: New collection.

Respondents: Business or other for-profit.

Title	No. of respondents	Estimated hours per response*	Total annual burden
Part 32—Uniform Systems of Accounts (Class A recordkeepers only)	30	33,383	1,001,490
Implementation of the Telecommunications Act of 1996 Accounting Safeguards Under The Telecommunications Act of 1996 (Affiliate Transaction Only)	20	24	480
Sections 64.901–64.903, Allocation of Cost, Cost Allocations Manual	5	600	3,000
Section 64.904, Independent Audits	5	250	1,250
ARMIS Annual Summary Report: FCC Report 43–01	29	115	3,335
ARMIS Uniform System of Accounts: FCC Report 43–02	30	430	12,900
ARMIS Service Quality Report: FCC Report 43–05	12	**855	10,264
ARMIS Infrastructure Report: FCC Report 43–07	7	370	2,590
ARMIS Joint Cost Report: FCC Report 43–03	93	83	7,719
ARMIS Access Report: FCC Report 43–04	93	601	55,893
ARMIS Operating Data Report: FCC Report 43–08	53	129	6,837
Forecast of Investment & Actual Usage Reports: FCC Reports 495A & B	186	40	7,440

*These are the estimated hours if all the proposals are adopted in a Report and Order.

** Includes recordkeeping requirement.

Total Annual Burden: 1,113,198 hours.

Cost to Respondents: $65,000–$1,200,000.

Needs and Uses: In CC Docket No. 00–199, the Commission seeks comment on streamlining its part 32 chart of accounts, modifying its affiliate transactions rules, and revising its expense limits rules. In addition, the NPRM seeks comment on streamlining the accounting and reporting requirements specifically for mid-sized carriers by eliminating mandatory CAM filing and CAM audits for these carriers. The NPRM seeks comment on the modification of all ARMIS reports, except FCC Report 43–06. The information is needed so that the Commission can fulfill its statutory responsibilities and obligations.

Synopsis of Notice of Proposed Rulemaking

In this item, we commence Phase 2, to seek comment on further accounting and reporting reform measures that may be implemented in the near term; and Phase 3, to consider the appropriate indicia for more significant deregulation in this area.

Commencement of Phase 2, that is also part of our biennial regulatory review process, is particularly appropriate at this time given the recent changes in the telecommunications industry and recent changes in regulatory requirements for the largest incumbent LECs.

In 1999, we initiated this comprehensive review proceeding to examine further reform measures and announced a two-phased approach that would address immediate and long-term reform. We adopted a number of immediate reform measures in our *Phase 1 Report and Order*, 65 FR 16328 (March 28, 2000). We realize now that further immediate reform measures may be warranted at this time, as we consider long-range reform. Thus, in Phase 2, we seek comment on immediate accounting and reporting reform measures that are appropriate now, and in Phase 3, we seek comment on appropriate indicia for more significant deregulation in this area. Our actions to implement immediate reforms will not slow down our long-range plans for accounting and reporting deregulation. We envision that Phase 2 and Phase 3 will proceed concurrently. Accordingly, we seek comment on both immediate and long-term reform measures.

During this comprehensive review, we have worked closely with the National Association of Regulatory Utility Commissioners (NARUC), state commissions, and the industry. We are also working with the states to eliminate overlap of federal and state reporting requirements, as well as eliminating unnecessary reporting requirements. Under section 220(i) of the Communications Act, the Commission must notify the state commissions before modifying the chart of accounts and must allow the states a reasonable opportunity to present their views. Even without this statutory requirement, we recognize the state commissions' significant expertise with accounting and cost allocation issues and would invite their recommendations.

In the following sections, we set forth proposals for the second phase of our comprehensive review and seek comment on streamlining accounting rules and ARMIS reporting requirements for Class A carriers. We also set forth a separate proposal for streamlining our accounting and reporting requirements specifically for mid-size carriers. In addition to commenting on these proposals, commenters are encouraged to propose any additional recommendations for action. In the third phase of our comprehensive review, we seek comment on specific issues and long-term proposals as we continue to move to a more deregulatory environment.

A. Part 32 Accounting Rules

In this NPRM, we seek comment on further revising our part 32 chart of accounts, our affiliate transactions rules, and our expense limits rules.

1. Chart of Accounts

In this NPRM, we seek comment on modifications to the Uniform System of Accounts to reduce burdens on Class A carriers. We propose retaining the current Class B account structure for the incumbent LECs currently reporting at the Class B level. We seek comment on specific proposals from both the industry and the states to streamline and modify the USOA. Specifically, USTA has requested that we uniformly adopt Class B accounting for all carriers. USTA contends that Class A accounting is not needed for jurisdictional separations, price caps, or universal service mechanisms. The states, in contrast, have asked us to add additional accounts to track information for various purposes. USTA also proposes that we eliminate several subaccounts and Jurisdictional Difference Accounts that Class B carriers currently must report. USTA contends that carriers should not be required to maintain subaccounts or subsidiary records that are not necessary to meet business requirements. In addition, USTA contends that the Jurisdictional Difference Accounts are not needed because they are not used for federal regulatory oversight and the information in these accounts is also provided to the states. We seek comment on these proposals.

In considering USTA's request to use Class B accounts for all carriers, we have found many instances where Class B accounting would appear to meet the Commission's data needs. We agree with USTA that fewer prescribed accounts such as we now require for Class B carriers would reduce the carriers' regulatory reporting burdens. Therefore, we propose to eliminate approximately one-fourth of the current Class A accounts. Based on our examination of the various accounts, we believe there is no continuing need for carriers to record their costs in these accounts. We seek comment on whether eliminating these accounts would undermine our ability to meet our statutory mission.

We also seek comment on the remaining three-fourths of Class A accounting. In particular, we seek comment on the impact of eliminating the Class A account structure for network plant and related asset and expense accounts, and how that would affect our ongoing mission. We seek comment on whether using Class B accounting for all carriers would provide sufficient information for our purposes. Commenters should address the impact this rule modification would have on universal service mechanisms and anything else they deem relevant. For example, we note that there may be a continuing need for network plant and related accounts at the Class A level in order to maintain and use the universal service model we utilize in administering the universal service high cost fund for non-rural carriers. For instance, Class A accounting requires that switching equipment be accounted for by technology (*i.e.*, analog electronic switching, digital electronic switching, and electro-mechanical switching) whereas Class B combines all switching technologies in one account. The universal service high cost model currently determines the cost of providing digital switching equipment using Class A central office equipment accounts. We seek comment on how we could avoid serious distortions in the digital switching cost estimates if all types of switching equipment were combined as they are in Class B accounts.

In addition, Class A accounting data may be used by the states on a comparative basis in state UNE pricing proceedings. We seek comment on the prevalence and frequency of such state use. Commenters should also address whether states could find or develop alternative sources of data for this purpose. Part 32 organizes telecommunications costs in a manner that allows a logical mapping of these costs to telecommunications rate structures. Switching costs, for example, currently are tracked separately from transport costs under our part 32 rules. This cost distinction permits the carriers' use of separate rate structures for switching and transport UNEs, thus facilitating the states' efforts to compare costs and rates for each UNE. Part 32 creates uniformity among telecommunication carriers, allowing state regulators to compare and benchmark the UNE costs and rates of carriers operating in various states. Such uniformity also benefits carriers operating in more than one jurisdiction. Part 32 provides the level of cost detail that is used in forward-looking cost studies. For example, estimates of operating costs for digital switches can be derived from Class A accounts in part 32, thus enabling the states to evaluate forward-looking switching costs without the distortion that could result if all types and vintages of switches were combined into one account. Consequently, state and federal regulators may use uniform and detailed accounting data when setting rates, even when those rates are based on forward-looking costs. Commenters should discuss whether reporting at the Class B level would provide sufficient detail to identify costs for various rate elements and services such as collocation, UNEs, interconnection, and long term number portability.

In contrast to USTA's proposal, in our teleconferences and public workshops, state staff advocated adoption of new accounts to meet their data needs to implement the 1996 Act and to keep pace with changes in technology and the regulatory environment. They reason that new accounting information is needed to follow the rate of deployment and cost of new technologies, to evaluate prices for UNEs and resold services, to determine separated jurisdictional costs, to provide more details for state access revenues, and to provide insight into issues related to reciprocal compensation, state universal service support, and collocation. We seek comment on whether and, if so, specifically how we should amend part 32 to add these new accounts. Commenters should discuss whether specific accounts are needed and provide detailed analysis as to what regulatory purpose the new information would serve. Commenters should also address and quantify, to the extent possible, the regulatory burdens associated with establishing and maintaining these new accounts. We also seek comment on whether these new accounts should be required for both Class A and Class B carriers.

2. Other Regulatory Relief

In the USTA petition and during our workshops, the carriers raised several other areas that would provide additional regulatory relief by generally loosening restrictions in our current rules. We seek comment on these areas, which are discussed in the following paragraphs. In addition, we seek comment on any other areas that may provide similar relief.

a. Inventories

Section 32.1220(h) of the Commission's rules, provides that inventories of material and supplies shall be taken during each calendar year and the adjustments to this account shall be charged or credited to Account 6512, Provisioning expense. Section 32.2311(f) of the Commission's rules requires an annual inventory of all station apparatus in stock included in this account. In its petition for rulemaking, USTA proposes that GAAP requirements should be the basis for performing these inventories instead of the detailed inventory requirements in the rules and that companies should be able to perform inventories based on risk assessment and on existing controls. We seek comment on whether we should adopt USTA's proposal to eliminate these inventory requirements.

b. Charges to Plant Accounts

In its petition for rulemaking, USTA contends that the cost of construction should be calculated using GAAP and that management judgment and materiality should form the basis of the criteria for determining the status of construction. USTA argues that arbitrary thresholds, such as the two month/ $100,000 thresholds, are not appropriate for price cap LECs. We seek comment on whether we should eliminate the threshold requirements in § 32.2003(b), modify the thresholds, or keep the thresholds. Commenters are invited to propose alternative ways of satisfying the underlying goals of these requirements.

c. Contributions

In June 1993, the Financial Accounting Standards Board (FASB) adopted Statement of Financial Accounting Standards No. 116 (SFAS–116), "Accounting for Contributions Received and Contributions Made." SFAS–116 requires companies to record in the current period a liability and related expense for unconditional pledges to make contributions in future years. Prior to adoption of SFAS–116, companies would record such pledges annually as they were made. The Common Carrier Bureau (Bureau) notified carriers, after BellSouth Telecommunications, Inc., filed a notice of intent to adopt SFAS–116, that carriers should not adopt SFAS–116 for federal accounting purposes. The Bureau was concerned that adoption of SFAS–116 for federal accounting purposes would allow carriers to increase reported costs and prices based on pledges rather than actual contributions.

We conclude that we should revisit this issue. Adopting SFAS–116 may make sense for financial accounting purposes because this accounting treatment better informs investors about the impact of a company's commitments on the financial condition of the company. We are concerned, however, that adoption of SFAS–116 could necessitate an exogenous price cap adjustment permitting carriers to recover the entire amount of pledged contributions as an exogenous cost in the year the accounting change is adopted. We seek comment on whether we should allow carriers to adopt SFAS–116 for federal accounting purposes.

d. Additional USTA Proposals

USTA has presented several additional proposals to further streamline our accounting and reporting requirements. USTA proposes that we eliminate the § 32.5280(c) subsidiary record requirement. This rule section requires carriers to maintain separate subsidiary categories for nonregulated revenue recorded in Account 5280, Nonregulated operating revenue. USTA contends that this subsidiary record requirement is unnecessary.

In addition, USTA requests that we simplify deferred tax accounting by allowing carriers to book the Account 1437, Deferred tax regulatory asset, net of Account 4361, Deferred tax regulatory liability. USTA requests that carriers be permitted to eliminate the requirement to calculate the gross up for the tax on tax effect. USTA contends that this would bring the regulatory books closer to the financial books. USTA proposes that we eliminate detailed requirements for property record additions, retirements, and recordkeeping. USTA contends that detailed property records do not impact the establishment of access rates and only serve to require LECs to maintain an extraordinary array of records. USTA also proposes that we eliminate the § 32.16 requirement for notification and approval to implement new accounting standards prescribed by the Financial Accounting Standards Board (FASB). USTA claims that the FASB provides a process through which proposed changes in GAAP are exposed for debate, discussion, and evaluation. Finally, USTA proposes that the Commission clarify that section 252(e) agreements are treated the same as tariffed services in part 64 cost allocation rules. We seek comment on these proposals.

3. Affiliate Transactions

In the *Accounting Safeguards Order*, 62 FR 022918 (January 21, 1997) the Commission concluded that its revised affiliate transactions rules would promote competition by preventing LECs from using their market power in local exchange services to obtain an anti-competitive advantage in other markets. The Commission amended the affiliate transactions rules for assets and services provided by a carrier to its affiliate and services received by a carrier from its affiliate. Under these rules, such transactions are to be valued at publicly available rates, if possible. The publicly available rates, in order of precedence, are: (1) An existing tariff rate; (2) (for services only) a publicly-filed agreement or statements of generally available agreements; or (3) a qualified prevailing price valuation. To qualify for prevailing price treatment, at least 50 percent of sales of the subject asset or service must be to third parties. USTA proposes that the Commission revise § 32.27(d) to decrease the threshold from 50 percent to 25 percent for use of prevailing price in valuing affiliate transactions. USTA contends that this proposed change in threshold would be consistent with a more competitive environment. We seek comment on USTA's proposal.

Under our rules, if a transaction cannot be valued at publicly available rates, it must be valued based on a comparison of cost and fair market value. If a comparison is used, the carrier must make a good faith determination of fair market value. If the regulated company receives the asset or service from the nonregulated affiliate, the carrier must record the transaction at the lower of cost or market value. On the other hand, if the carrier sells the asset or service to its nonregulated affiliate, it must record the transaction on its books at the higher of cost or market. There is an exception to the estimated fair market value rule for services received by a carrier from its affiliate that exists solely to provide services to members of the carrier's corporate family. These services are recorded at fully distributed cost. USTA proposes that we expand this exception to the estimated fair market value rule to include all centralized services, regardless of whether the services are from a separate affiliate. USTA argues that this rule change would permit carriers to recognize the benefit of shared administrative services. We seek comment on this proposal.

Commenters should discuss any other proposals to modify our affiliate transactions rules. We also seek comment on three modifications that would reduce the accounting burdens associated with our affiliate transactions rules. Two of these modifications would reduce the requirements related to the lower of cost or market value analysis for affiliate transactions, and the third would exempt transactions between a carrier's nonregulated activity and a nonregulated affiliate.

a. Eliminate Requirement for Fair Market Value Comparison for Asset Transfers Under $500,000

In the *Phase 1 Report and Order*, we eliminated the requirement that carriers make a good faith determination of fair market value for services where the total annual value of that service is less than $500,000. We noted that below that threshold the administrative cost and effort of making such a determination would outweigh the regulatory benefits of a good faith determination of fair market value. In such cases, the service should be recorded at fully distributed cost, and carriers should continue to report such transactions in their CAMs and ARMIS reports.

We seek comment on whether such an exemption for assets would be appropriate and whether the potentially burdensome cost analyses outweighs the benefits to ratepayers. We propose to extend the exemption to assets and no longer require carriers to perform the net book cost/fair market value comparison for asset transfers totaling less than $500,000 per year. We seek comment on our proposal. Commenters should discuss specifically the burdens, financial or otherwise, of performing the comparison for assets and the potential harm, if any, to ratepayers.

b. Establish Ceiling and Floor for Recording Transactions

As discussed, for certain transactions carriers must compare the cost of the service or asset to market value. If the carrier is the recipient of the asset or service, it must be recorded on the carrier's books at the lower of cost or market. If the carrier is the provider, it must be recorded at the higher of cost or market. We seek comment on whether ratepayers would be harmed if carriers had flexibility to use the higher or lower of cost or market valuation as either a floor or ceiling. If ratepayers would be harmed if carriers had this flexibility, we seek comment on alternative methods for addressing such harm. We propose to give carriers flexibility in valuing these transactions by allowing the higher or lower of cost or market valuation to operate as either a floor or ceiling, depending on the direction of the transaction. If, for example, the transaction were from the carrier to the nonregulated affiliate, the higher of cost or market valuation would function as the floor amount, *i.e.*, the carrier could value the asset or service at that amount or higher. If the transaction were from the nonregulated affiliate to the carrier, the lower of cost or market valuation would function as the ceiling, *i.e.*, the carrier could value the asset or service at that amount or lower. Therefore, if a carrier purchased an asset from one of its nonregulated affiliates with a net book cost of $750,000 and a fair market value of $1,000,000 (and no tariff rate or prevailing price), our current rules would require the carrier to book the asset at $750,000, which is the lower of cost or market. Our proposed rule, on the other hand, would allow the carrier to record the asset at a maximum of $750,000. We seek comment on our proposal. Commenters should address any potentially anti-competitive effects if we implement ceilings and floors for transactional valuations, as well as any benefits that would result from this approach.

c. Exempt Nonregulated to Nonregulated Transactions From Affiliate Transactions Rules

Our affiliate transactions rules apply to all transactions between carriers and their nonregulated affiliates that affect the carrier's regulated books of account. This means that many transactions involving nonregulated assets and services are subject to our affiliate transactions rules. For example, when a carrier sells an asset used exclusively in its nonregulated operations to its nonregulated affiliate, the asset must be valued according to our affiliate transactions rules. The asset is subject to two separate levels of accounting safeguards against subsidization: first, when the carrier ensures, pursuant to part 64, that the asset is recorded as a nonregulated cost, and second, when the asset is valued according to our affiliate transactions rules.

It is now the time to revisit this issue in light of the changes in the CAM audits process. In the *Phase 1 Report and Order,* we permitted the large incumbent LECs to obtain an attest examination every two years, covering the prior two-year period, in lieu of an annual financial audit. Such attests should be performed by independent auditing firms in accordance with the standards of the American Institutes of Certified Public Accountants and as further directed by the Chief, Common Carrier Bureau. As part of this attest examination, we required the independent auditor to provide the Commission with the CAM audit program at least 30 days prior to the commencement of the audit. We stated that in the event additional steps are necessary, we will communicate this to the independent auditor within 30 days and attempt to minimize the burden of any necessary changes. This review will permit the Commission's auditors to review the audit program and, if necessary, work with the independent auditors to eliminate potential problems in advance.

We propose that our affiliate transactions rules should not apply to nonregulated activities transferred from the carrier's nonregulated operations to its nonregulated affiliate. We seek comment on whether the independent CAM attestation process or alternative measures can be relied upon to ensure that there is no ratepayer harm. We also seek comment on whether it matters how the carrier values its transaction to its nonregulated affiliate because our part 64 rules ensure that the asset is recorded as nonregulated. We seek comment on our proposal. Commenters should discuss whether removing these transactions from our affiliate transactions rules could result in potential ratepayer harm.

4. Incidental Activities

Section 32.4999(l) provides that revenues from minor nontariffed activities that are an outgrowth of the carrier's regulated activities may be recorded as regulated revenues under certain conditions. This provision obviates the need to make the detailed cost allocations that would otherwise be required to remove the costs of the nonregulated activity from regulated costs. Essentially, the revenues from the activity are used to reduce the carrier's revenue requirement rather than removing the costs to reduce the carrier's revenue requirement.

These activities, referred to as "incidental activities," must satisfy four criteria:

(1) Be an outgrowth of regulated operations;

(2) have been treated traditionally as regulated;

(3) be a non-line-of business activity; and

(4) result in revenues that, in the aggregate, represent less than one percent of total revenues for three consecutive years. Carriers must list their incidental activities in their CAM, but may not add new incidental activities because of the second criterion. Carriers filed their first CAMs over ten years ago. During this decade, the list of incidental activities has been static. We seek comment on whether eliminating the "treated traditionally" requirement would harm ratepayers.

We note that the three remaining criteria provide safeguards that the incidental-activities exception will not be abused. We seek comment on whether we should modify the three remaining criteria. Commenters advocating modifications to these three criteria should address how such changes would provide adequate safeguards against abuse. We propose to relax the "treated traditionally" requirement to allow carriers the flexibility to add new incidental activities. Under this proposal, the three other criteria would remain unaffected. We seek comment on whether relaxing this criterion is appropriate. Commenters should describe any additional activities that would qualify as incidental under our proposed rule. In addition, commenters should address whether, under our proposal, carriers could classify a new nonregulated activity as incidental and subsequently reclassify it as nonregulated thereby forcing ratepayers to bear the risk of nascent nonregulated ventures.

5. Expense Limits

The purpose of the expense limit is to reduce the cost of maintaining property records for the acquisition, depreciation, and retirement of a multitude of low-cost, high-volume assets. Increases in the expense limit are made periodically to recognize the effects of inflation, technological changes, and changes in the telecommunications regulatory environment. The expense limit in part 32 has been increased several times. In addition, Responsible Accounting Officer Letter No. 6, increased from $200 to $500 the limit for expensing the tools and test equipment included in the central office plant accounts.

We seek comment on whether the expense limit rules should be modified again. Specifically, we seek comment on whether we should raise the expense limit from $500 to $2,000 for both Account 2124, General support computers, and the tools and test equipment included in the central office plant accounts. Alternatively, we could extend the expense limit to include all the plant asset accounts, not just selected general support assets. We note that the expense limit would have to be the same for all carriers to allow the Commission to compare costs across companies when determining appropriate levels of Universal Service support. Commenters should discuss positive or negative impacts on maintaining continuing property records related to central office plant accounts if the expense limit were raised. Commenters should also address how we should treat the embedded investment in these accounts if the expense limit were raised.

6. Additional Modifications to Cost Allocation Manual Requirements

Section 64.903 of the Commission's rules requires incumbent LECs with annual operating revenues from regulated telecommunications operations equal to or above a designated indexed revenue threshold, currently $114 million, to file CAMs annually setting forth the cost allocation procedures that they use to allocate costs between regulated and nonregulated services. The companies with operating companies that exceed the indexed threshold are SBC Communications, Qwest, Verizon, and BellSouth Corporation (all filing based on Class A accounts) and Alltel, Cincinnati Bell, Citizens Telecom, Frontier, Sprint, and C–TEC (mid-size carriers, filing based on Class B accounts). USTA proposes that the Commission allow all carriers the option to allocate part 64 costs at a Class B level. USTA contends that direct assignment of costs would not change if carriers moved from Class A to Class B accounting. We seek comment on this proposal and any alternative modifications to these requirements. Commenters should discuss any concerns that may affect the states due to cost allocations at the Class B level and address the potential for cost allocation distortions. Commenters should also discuss the benefits of such an approach.

7. Classification of Companies

Section 32.11 of the Commission's rules divides companies into two categories for accounting purposes: Class A and Class B. Carriers with annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold, currently $114 million, are classified as Class A; those with annual revenues from regulated telecommunications operations that are below the threshold are classified as Class B. Currently, we apply these requirements to incumbent LECs only. We seek comment on whether § 32.11 should be amended so that its requirements explicitly pertain only to incumbent LECs, as defined in section 251(h) of the Communications Act, and any other companies that the Commission designates by order.

8. Cost Allocation Forecasts

Section 64.901(b)(4) of the Commission's rules requires that carriers allocate the costs of central office equipment and outside plant investment between regulated and nonregulated activities based on a forecast of the relative regulated and nonregulated usage during a three calendar year period beginning with the current calendar year. The purpose of this rule is to avoid cost allocation distortions that could adversely affect regulated ratepayers. USTA has asserted that this rule is burdensome and unnecessary. We seek comment on USTA's proposal, whether elimination of the rule would adversely affect ratepayers, and whether there are other alternative forecasting methodologies.

B. ARMIS Reporting Requirements

In this NPRM we are proposing revisions to the following ARMIS Reports: 43–01 (Annual Summary Report); 43–02 (USOA Report); 43–03 (Joint Cost Report); 43–04 (Separations and Access Report); 43–07 (Infrastructure Report); and 43–08 (Operating Data Report). As set forth, our proposed recommendations seek to eliminate or substantially simplify the reporting requirements for both large incumbent LECs and mid-sized incumbent LECs. We seek comment on our proposed recommendations. We are also looking for ways to provide easier input and access to the ARMIS reports and invite comment on how we can best achieve a more user-friendly ARMIS system. In addition, we set forth a separate proposal addressing reporting requirements for mid-sized carriers. We seek comment on the separate proposal

for mid-sized carriers and ask commenters to address whether the proposed abbreviated filing requirement is sufficient and whether different reporting requirements for large incumbent LECs and mid-sized incumbent LECs, as proposed, is justified. To the extent ARMIS reports are used by states and other parties, we seek comment on whether those parties can obtain enough information for their purposes from alternative sources. In particular, commenters should address whether state-imposed or other non-federal reporting can be used to generate sufficient data for these parties' purposes.

We have attached the proposal presented by the large incumbent LECs as Appendix 1 to this document and seek comment on the industry's proposal as it relates to the ARMIS 43–01, 43–02, 43–03, 43–04, 43–07, and 43–08 Reports. USTA contends that this proposal would be less burdensome and addresses some of the concerns expressed by the Commission and the state staffs in the public meetings. We specifically seek comment from the states on how that industry's proposal, if implemented, would affect their ongoing activities.

1. ARMIS Reports 43–01, 43–02, 43–03, and 43–04

We propose to eliminate the requirement to file ARMIS 43–01, Table I for all carriers filing at the Class A level. We propose to generate this table from information provided in other financial ARMIS reports and to post the report electronically with the carrier's annual ARMIS filing. Under this proposal, carriers would be relieved from reporting information that can otherwise be derived from other financial ARMIS reports. At the same time, useful summary information would be made available to policy makers and interested parties. We seek comment on this proposal. We are also considering eliminating Table II, from the ARMIS 43–01 requirements. We propose to eliminate the reporting of all Common Line Demand Minutes of Use (*i.e.*, premium and non-premium). We seek comment on retaining the sections for Switched Traffic Sensitive Demand Minutes of Use and Common Line Demand Billable Access Lines. This information about traffic on the carrier's network may be needed for decisions concerning jurisdictional separations, subscriber line charges, the deployment and cost of Lifeline service, and other universal service issues. The information we propose to retain would be added to the ARMIS 43–04 in conjunction with row 9010 (Total Billable Access Lines). We seek comment on this proposal and on any alternative proposals for achieving these purposes.

In this NPRM, we seek comment on eliminating the filing of ARMIS 43–02, Table I–1 (Income Statement Accounts) for all carriers filing at the Class A level. Table I–1 collects data on the carrier's revenues, expenses, and net income for the reporting period. We propose to eliminate the requirement for carriers to file Table I–1 and to generate this table from information provided in the other financial ARMIS reports. As with our proposal for eliminating Table-I from the 43–01 Report, this proposal would provide relief to carriers from reporting information that can otherwise be derived from other ARMIS reports.

We propose to reduce the number of columns currently reported on the 43–03 Report by eliminating the distinction between "SNFA and Intra-co. Adjustments" and "Other Adjustments." We propose to combine these columns into one column entitled "Adjustments." We seek comment on this proposal.

In order to implement our proposal to eliminate the requirement to file ARMIS 43–01, Table I and ARMIS 43–02, Table I–1, for the largest incumbent LECs, we note that collection of some additional data will be needed in the ARMIS 43–03 Reports. Therefore, we are proposing to include in ARMIS 43–03, the collection of data for Account 1402 (Investment in Non-Affiliate Companies); Account 1437 (Deferred Tax Regulatory Asset); Account 4341 (Net deferred tax liability adjustment); Account 4361 (Deferred tax regulatory liability); and the account series (7410 through 7450) for Account 7400 (Non-operating Taxes). In addition, we propose the addition of 4 rows for collecting information on the number of employees (rows 830, 840, 850, and 860). We note that these data are currently required in ARMIS 43–02, Table I–1, but not in any other ARMIS report. We seek comment on this proposal and whether any additional data would be needed to meet our ongoing needs.

The ARMIS 43–04 Separations and Access Report contains data regarding the separation of carriers' regulated revenues and costs between the state and interstate jurisdictions and allocation of interstate amounts among the access charge categories. We note that the Federal-State Joint Board has currently recommended an interim five-year freeze on separations activities as it continues to further consider more comprehensive separations reform. Until such time as the Commission takes action on the Joint Board's recommendation, we will not propose changes that would affect separations data.

We propose some revisions to the 43–04 Report, however, that we do not believe will affect the separations data. We propose to reduce the number of columns by eliminating the column for "BFP" (*i.e.*, the base factor portion) and collecting this data in the existing column entitled "Total Common Line." We seek comment on this proposal. As noted, our proposal to eliminate Table–II, from the ARMIS 43–01 requirements entails that we retain data collection of Switched Traffic Sensitive Demand Minutes of Use and Common Line Demand Billable Access Lines. In the event we decide, after reviewing the comments, to retain this data, we propose to add this information to the ARMIS 43–04 Report in conjunction with row 9010 (Total Billable Access Lines). We seek comment on this proposal. We also propose that the carriers be required to identify the cost and revenue associated with their excluded services separately from the remainder of their access element data. We seek comment on these proposals. Commenters also may propose alternative approaches that do not require carriers to identify the cost and revenue associated with their excluded services separately from the remainder of the access element data.

Finally, we note that part 32 requires metallic and non-metallic subsidiary record categories for each of the cable investment and expense accounts. These subsidiary record categories are not reported to the Commission, but the data contained therein are used to calculate universal service support for non-rural carriers, and also are useful in other forward-looking cost studies. We propose to add rows to ARMIS 43–02 and 43–04 Reports to allow for the reporting of metallic and non-metallic cable investment and expense information. We seek comment on this proposal.

2. ARMIS 43–07 and 43–08 Reports

The ARMIS 43–07 Infrastructure Report and 43–08 Operating Data Report collects data about the physical and operating characteristics of the local exchange carriers' telephone network. Together, these reports provide information about the make-up and operating capability of nearly 95 percent of the country's public local exchange telephone network. This information has been useful to policymakers at federal, state, and local levels, and provides critical data not available through other public sources. We seek comment on the continued need to collect this data at the federal level, or whether state-level collection or other sources would be sufficient. As reported in ARMIS, approximately 480 million telephone calls were carried over the public network in 1991. By 1999, calls over the public telephone network reached almost 660 million, an increase of almost 40 percent in traffic. This growth shows the increasing use of, and reliance on, the public network for communications throughout the country. We seek comment on whether such reliance should be considered when deciding whether to retain these reporting requirements.

Our monitoring through ARMIS has provided us with information to assess the condition of the country's network infrastructure and has permitted us to make informed decisions to protect against degradations and outmoded network capabilities. While the ARMIS 43–07 and 43–08 Reports were designed to achieve this purpose, our review reveals that many of the reporting requirements may have outlived their usefulness. We believe that significant revisions to these reports are in order. We seek comment on the elimination of obsolete data and also the collection of data related to new technologies.

We note that the Commission currently has underway an effort to collect data concerning broadband deployment. The information collected through the *Local Competition and Broadband Data Gathering Program,* however, is not a substitute for the information collected in the ARMIS 43–07 and 43–08 Reports and was designed to be complementary to other Commission data gathering efforts, including ARMIS. The *Local Competition and Broadband Data Gathering Program* will provide the Commission with information on local competition and the deployment of advanced services in the United States; in contrast, the information collected in ARMIS provides the Commission with basic information about the infrastructure, capacity, and operating characteristics of the nation's network. We seek comment on whether this distinction is meaningful and on the extent to which ARMIS data is needed in light of our newer broadband data gathering efforts.

We seek comment on whether gathering information about the deployment of newer technologies would assist us in carrying out our mission of ensuring a competitive environment, while ensuring universal service. We seek comment on whether we should collect data on newer technologies to assist us in achieving our stated objectives of ensuring that incumbent LECs maintain and upgrade their network infrastructure for all consumers. We recognize that additional collections must be carefully designed to balance our need for information with the need to reduce burdens imposed on carriers. We seek comment on how burdensome the requirements we consider would be if imposed. Commenters should discuss whether the additional information concerning these newer technologies are appropriate indicators of the carriers' efforts to upgrade and invest in technologies that provide improved service to their customers and promote efficiencies and cost savings.

Finally, we seek comment on ways to improve reporting requirements for infrastructure and operating data in ARMIS. We seek comment on whether the ARMIS 43–07 and 43–08 Reports could be made more efficient in terms of use and reporting by combining some or all requirements. We note, however, that although there is a close relationship between these reports, there are some notable differences. Generally, the 43–07 Report collects information on measure of capacity while the 43–08 Report collects information on what is in-service. Further, the 43–07 Report is only filed by mandatory price cap incumbent LECs and is reported at the study area (jurisdiction) and holding company levels. The 43–08 Report is filed by all carriers at or above the revenue reporting threshold and is reported at the operating company level. We ask commenters to make specific recommendations as to the nature of any proposed changes in format and collection of data. We seek comment on whether and how ARMIS should be modified to enable us to perform trend analysis, provide rate and tariff analysis, make relevant comparisons among companies, and monitor the effects of company mergers and acquisitions, and whether the purposes of such analyses could be achieved through alternative means.

a. ARMIS 43–07—Infrastructure Report

In ARMIS 43–07 Infrastructure Report we propose to eliminate the collection of outdated information and propose to collect information on newer technologies. Our intent is to collect basic relevant facts about the deployment of new technologies, not to expand significantly our monitoring program. In Table I (Switching Equipment), we propose to eliminate all reporting requirements for electromechanical switches (rows 130–141). We further propose to eliminate reporting requirements for analog stored-program-control and digital stored-program-control switches except for the total number of switches and lines served (retain rows 150, 160, 170 and 180; eliminate rows 151–155, 161, 171–175, and 181). We also propose to eliminate all reporting requirements related to equal access and touch tone capabilities (rows 190–221). We seek comment on these proposals. We also propose to eliminate reporting of information related to SS7 and ISDN capabilities except to retain information concerning total switches, lines, local switches, and tandems equipped with SS7 and ISDN capabilities (eliminate rows 231, 233, 235, 237, 241, 247, 251, 257, 271, 281, 291, and 301). We seek comment on this proposal.

To the extent commenters conclude that our broadband data gathering program is inadequate for this purpose, we seek comment on whether our monitoring program should include information on new technologies that indicate the degree that carriers are upgrading the network. We seek comment on including information for switches capable of transmitting the ATM protocol in Table I, and on the characteristics of ATM that carriers should provide in this report. Switched multi-megabit data service ("SMDS"), internet routers, and frame relay service are high-speed data telecommunications services built upon packet-switching technology. These services are widely offered to business customers for high-volume usage. We seek comment on whether carriers should report data on SMDS, internet routers, and frame relay services in Table I and on which characteristics of switches used to provide SMDS, internet routers, and frame relay services carriers should report.

Table II (Transmission Facilities) collects information about components of the network that are used to carry voice, video, and data traffic. Data reported in Table II provide information about transmission facilities for the total operating area of the carrier, and does not distinguish between urban and rural areas. The deployment of new technologies and new services in rural areas has been a matter of particular concern for the Commission. Transmission facilities, are perhaps, the most critical component in the provisioning of new services to rural areas. However, because the reporting carriers do not distinguish between rural and urban transmission facilities, the Commission cannot compare rural and urban infrastructure development based on the current reported information. Therefore, we seek

comment on modifying Table II to require carriers to report data by Metropolitan Statistical Areas (MSA) and non-MSA. We seek comment on whether this distinction will assist the Commission and other interested parties in measuring the deployment of advanced telecommunications infrastructure in rural areas. We also seek comment on whether this or alternative proposals would be best considered in the context of the broadband data gathering proceeding.

In the first section of Table II, "Sheath Kilometers," carriers report data on transmission facilities within their operating areas. Carriers use either analog or digital technology on copper wire, coaxial cable, fiber, radio, and other media. We seek comment on changing the title "Sheath Kilometers" to "Loop Sheath Kilometers" and to narrow the collection of data to only local loop facilities connecting customers to their serving offices.

In the second section of Table II, "Interoffice Working Facilities," total circuit links are reported for baseband, analog carrier, and digital carrier. We seek comment on whether we should eliminate the reporting requirements that further distinguish baseband, analog, and digital (rows 331, 332, 333, 350, 351, 352, 360, 361, 362, 363). We believe we can simplify the reporting requirements and obtain relevant information by requiring only the total circuit links for copper, radio, and fiber. We also note that optical carrier facilities, such as synchronous optical networks (SONET) are currently being deployed by the incumbent LECs. This technology will increasingly play a role in improving the transmission capacity of the network. We seek comment on whether we should include categories for optical carrier facilities and non-optical carrier facilities. Commenters should address definitional and other characteristics that would be useful if collection of data on this technology is implemented. We also seek comment on whether this or alternative proposals would be best considered in the context of the broadband data gathering proceeding.

In the third section of Table II, "Loop Plant-Central Office Terminations," carriers report total working channels and total equipped channels. Under each category, there is a requirement for reporting six subcategories (copper, baseband, analog carrier, digital carrier, fiber digital carrier, and other). We seek comment on whether we should eliminate the reporting of six subcategories of equipped channels, and retain only the total of equipped channels. We seek comment on whether data about new technologies used in the local loop that provide high-capacity transmission facilities closer to subscribers would assist the Commission and the states in monitoring the deployment of new services and how that technology affects the development of competition. Commenters should discuss which categories of data would provide an accurate picture of deployment without placing an undue administrative burden on the reporting incumbent LECs. We also seek comment on whether this or alternative proposals would be best considered in the context of the broadband data gathering proceeding.

In the fourth section of Table II, "Other Transmission Facility Data," we propose to eliminate reporting of information that is no longer useful (fiber strands terminated at the customer premises at the DS–0 rate; and fiber strands terminated at the customer premises at the DS–2 rate). We seek comment on including information on hybrid fiber-copper loop interface locations, number of customers served from these interface locations, xDSL customer terminations associated with hybrid fiber-copper loops, and xDSL customer terminations associated with non-hybrid loops. Such data could provide a meaningful indication of carrier's efforts to upgrade the network. Commenters should discuss any other specifics that may provide a better indicator of this aspect of the network. We also seek comment on whether this or alternative proposals would be best considered in the context of the broadband data gathering proceeding.

In Table III (LEC Set-up Time Reporting), information is provided about incumbent LEC call set-up time for calls delivered by the incumbent LEC to interexchange carriers. Incumbent LEC call set-up time measures the time from when the customer completes dialing until the call reaches an interexchange carrier. We note that the need for this data was largely driven by problems arising from the change from a multi-frequency to the SS7 protocol. Our review of the data shows that most of these problems have been solved. Thus, we propose to eliminate this table. We seek comment on this proposal.

In Table IV (Additions and Book Costs), carriers report data concerning total access lines in service, access line gain, and total gross capital expenditures. This information provides data as it relates to carriers' actions to maintain and upgrade the network. We seek comment on whether there is continued need to collect this information by the federal government, as opposed to states or other entities. We seek comment on whether the information collected in this table is available from other data reported in ARMIS, and if so, whether there is a need for duplication. Specifically, we ask commenters to comment on whether the information on number of access lines is the same information reported in the 43–08 Report and whether the data on gross capital expenditures is the same information reported in the 43–02 Report, Table B–1.

b. ARMIS 43–08—Operating Data Report

The ARMIS 43–08 tables, which collect data on an operating company level by state, provide us with the ability to assess trends in investment in physical plant and to benchmark among carriers. We seek comment on the continued importance of such assessments and on whether there are alternative methods for achieving the goals underlying these assessments. We believe there are a number of areas in the ARMIS 43–08 Report where unnecessary data can be eliminated and where necessary data can be collected more efficiently. We seek comment on whether we can eliminate the reporting requirements in Table 1.A (Outside Plant Statistics—Cable and Wire Facilities), that distinguish among aerial, underground, buried, submarine, deep sea, and intrabuilding cable plant (columns d–o). We note that some carriers have suggested that we use information on relative sheath miles in aerial, underground, and buried cable as a basis for determining the relative amount of these types of facilities used in the forward looking model for calculating universal service support for non-rural carriers. In Table 1.B (Outside Plant Statistics—Other), we propose to eliminate the reporting of information on satellite channels and video circuits for carriers' radio relay and microwave systems (columns be, bj, bm). We believe that data collected in these areas may no longer provide important information relevant to our policy analysis. We seek comment on these proposals. We ask commenters proposing to retain this information to discuss at what point would collection of data no longer be necessary. For instance, radio relay systems, except in 11 states, are 100 percent digital. We seek comment on whether some threshold level of deployment would provide a basis for eliminating the need for information, and if so, what an appropriate threshold level would be.

In Table II (Switched Access Lines in Service by Technology), we propose to eliminate the distinction between analog and digital lines, and require carriers to report the total of main access lines, PBX and Centrex units, and Centrex extensions (retain columns cc, cd, and ce on a total basis; and eliminate columns cf, cg, and ch). Our experience reveals that, while the data derived from these columns provide us with important information, the information may be more useful and collected more efficiently if provided on a total basis. We seek comment on these proposals and on the continued importance of collecting switched access line data generally.

In Table III (Access Lines in Service by Customer), we propose to narrow the information collection to total number of Business Access Lines (Single-Line and Multi-Line) and Residential Access Lines (Lifeline/Non-Lifeline and Primary/Non-Primary). We believe that the level of detail required in this table may not be necessary and that collection on a total basis may be sufficient for us to meet our responsibilities. We propose to collect data on private lines providing intrastate service. We note that this information is used to calculate forward-looking costs for universal service purposes. We seek comment on whether this information is available from any other public source. We also seek comment on whether Special Access Lines (Analog and Digital) (columns dk and dl) provide accurate information about the carriers' provision of special access lines. Specifically, we seek comment on whether there is a need for clarification of this reporting requirement. For instance, would redefining this collection as Customer Private Line Terminations (Broadband and Narrowband) or some other designation result in more accurate reporting by carriers? We note that there has been much controversy over the use of the term "Special Access Lines," resulting in inconsistent reporting by carriers. We seek comment on the use of this term and whether a more meaningful definition or term would be appropriate. We also ask commenters to discuss whether the use of terms in other ARMIS reports should be revised or clarified in order to be consistent with any change made in this report.

C. Relief for Mid-Sized Carriers

In this NPRM, we propose more significant reductions for mid-sized carriers than we have proposed for large incumbent LECs. In our public meeting with the mid-sized carriers, they suggested that we treat mid-sized Class A carriers as Class B carriers. This would eliminate all CAM requirements and ARMIS filings for such carriers. We seek comment on this proposal. As an alternative, we propose to eliminate mandatory annual CAM filings and biennial CAM audits for these carriers. Instead, the mid-sized carriers would file only an annual certification with the Commission. We also propose raising the indexed revenue threshold from $114 million to $200 million. The net effect for mid-sized carriers would be that several carriers will be classified as Class B carriers, and therefore not subject to any reporting requirements, and the balance of the mid-sized carriers will be subject only to very minimal reporting requirements. We also propose eliminating all financial reporting for mid-sized carriers except the 43–01 (Summary Report). We seek comment on adoption of these proposals for mid-sized carriers.

1. Reduced Cost Allocation Manual Procedures

We seek comment on ways to further reduce regulatory burdens on mid-sized incumbent LECs. We propose to eliminate the requirement that mid-sized incumbent LECs file their CAMs on an annual basis. We seek comment on whether these carriers should be required to maintain cost allocation manuals in the format set forth in § 64.903 of our rules, even if they do not file those CAMs with the Commission. Commenters should quantify the costs of maintaining a CAM in accordance with the requirements of § 64.903, and suggest any modifications to that rule they deem appropriate. As an alternative, the mid-sized carriers could file a certification with the Commission stating that they are complying with § 64.901 of the Commission's rules. Under this proposal, the certification would be signed, under oath, by an officer of the incumbent LEC, and filed with the Commission on an annual basis. In addition, we propose to eliminate the requirement for an attestation engagement every two years. The Common Carrier Bureau would have the authority to request further information or order an audit of the carrier's books to ensure they are in compliance with our cost allocation requirements. We seek comment on these proposals.

We further seek comment on whether our definition of mid-sized incumbent LECs should be re-examined. We note that a few carriers have recently crossed the indexed revenue threshold, although they are significantly smaller than the majority of mid-sized LECs. We propose to increase the indexed revenue threshold from $114 million to $200 million. Under this proposal, carriers with operating revenues below $200 million would not be required to maintain a CAM or file a certification. We seek comment on our proposal. Carriers should discuss whether, alternatively, the threshold should be based on holding company revenues instead of operating company revenues, with a corresponding change in threshold.

2. Streamlined ARMIS Requirements

We propose to eliminate the ARMIS 43–02, 43–03, and 43–04 reporting requirements for mid-sized carriers. We recognize that mid-sized carriers often have limited resources and have financial transactions that are generally smaller and fewer in number than the larger incumbent LECs. The cost of regulatory compliance may disproportionately impact the mid-sized carriers filing the more detailed ARMIS 43–02, 43–03, and 43–03 reports.

We seek comment on retaining the reporting requirement that mid-sized carriers report ARMIS 43–01 (Summary Report), which presents information in a highly aggregated form. We ask commenters to specifically address the costs and benefits of requiring certain mid-size carriers to file the ARMIS 43–01 Summary Report, particularly in light of the previous proposal to eliminate ARMIS 43–02, 43–03, and 43–04. To the extent we find obvious errors or inconsistencies, we have the ability to request further information from the carrier that will clarify and address such issues. We also seek comment on the costs and benefits of retaining the requirement that carriers at or above the threshold continue to file operating data in the ARMIS 43–08 Report.

We further propose to reduce the requirements in ARMIS 43–01 by eliminating the distinction between "SNFA and Intra-co. Adjustments" and "Other Adjustments." We propose to combine these columns into one column entitled "Adjustments." We propose to reduce the number of columns by eliminating the column for "BFP" and collecting this data in the existing column entitled "Total Common Line." Finally, we propose to either add a new column for "excluded services" or add excluded services cost and revenue data to the billing and collection data in a renamed column. This would enable us to reconcile their rate of return filings with their accounting data. We seek comment on these proposals, and on whether it would be appropriate to extend all or part of this relief to larger carriers.

I. Phase 3—Long Term Transition to Deregulation

The 1996 Act directed the Commission to "provide for a pro-competitive, de-regulatory, national policy framework." As regulatory, technological, and market conditions continue to change, the Commission must consider more drastic changes to existing accounting and reporting requirements. We thus seek to undertake a broader examination of part 32 and ARMIS requirements with the goal of determining what additional changes can be made as competition develops, and assessing ultimately what, if any, specific accounting and reporting requirements are necessary when local exchange markets become sufficiently competitive.

Our accounting and reporting safeguards were largely implemented to support Commission policies intended to prevent dominant carriers from taking unfair advantage of their monopolistic control over loop facilities and access to the local exchange network. As the local exchange industry becomes more competitive, we expect that our needs for accounting and reporting information will diminish. At the same time, we must be careful not to eliminate requirements that are necessary to promote universal service, foster efficient competition, and protect consumers before significant market changes occur.

In this section, we seek comment on what roadmap we should follow for accounting and reporting deregulation. Specifically, we seek comment on whether there are certain triggers that will allow the Commission to significantly modify or relieve certain accounting and reporting requirements that currently apply to incumbent LECs. Is there a point at which the Commission should completely eliminate its accounting and reporting requirements? Is that point when all local exchange carriers become non-dominant? Alternatively, should individual carriers be relieved of accounting and reporting requirements as they individually become non-dominant? How would this Commission make such a finding of non-dominance? How should the Commission proceed if an incumbent remains dominant for certain services, but not others? How should deregulation occur if some carriers are deemed non-dominant, but other carriers, such as rural carriers, remain dominant? Is there a basis for eliminating or modifying our accounting and reporting requirements on an industry wide basis, even if some carriers retain market power?

We also ask commenters to address the effect of BOCs receiving section 271 authorizations to provide in-region interLATA services. We seek comment on whether certain accounting requirements should sunset when the section 272 separate affiliate requirements sunset for a given carrier in a particular state, and if so, which specific requirements should be eliminated. Would it be administratively practical for accounting and reporting requirements to be reduced or eliminated on a state-by-state basis?

We seek comment on whether achieving pricing flexibility should be a trigger for relaxing accounting and reporting requirements and if it would be administratively practical because pricing flexibility is granted on a market by market basis. If so, which specific requirements should be modified or eliminated?

We note that other carriers, such as competitive LECs (CLECs), interexchange carriers, cable companies providing telephony, and wireless carriers, are not subject to our accounting and reporting requirements. We seek comment on whether this asymmetric regulation makes sense as we move to a more competitive environment. What is the policy rationale for subjecting one type of carrier to accounting and reporting requirements when other carriers are not subject to such requirements? Do the current accounting and reporting requirements imposed on incumbent LECs impede their ability to compete with other market participants? Commenters should quantify any monetary or other impact of our current requirements.

We note that a number of incumbents, both large and small, have begun to compete as CLECs outside of their traditional service areas. Moreover, a number of incumbents are offering bundled packages of offerings—such as voice, Internet access, wireless, and long distance—in competition with other carriers. How should our accounting and reporting requirements evolve as carriers no longer remain in their historical line of business?

The requirements under consideration in this proceeding fall into two general areas. First, our accounting rules largely prescribe how incumbent LECs record and allocate costs. Second, our ARMIS reporting rules require that certain carriers report to the Commission on an annual basis various information, both financial and nonfinancial. We seek comment on whether it makes sense to relieve carriers from reporting requirements, while maintaining our existing accounting requirements. Compliance with certain requirements may be critical to protecting ratepayers from subsidizing nonregulated services, but the Commission may not need information on an annual basis on how specific carriers are complying with such requirements. How would the Commission's mission be affected if it were to gather information on a less frequent, or more ad hoc, basis?

Our accounting and reporting requirements already recognize that the burdens of compliance may outweigh the benefits for small and mid-size incumbent LECs. The vast majority of incumbents with fewer than two percent of the nation's access lines are not required to file in ARMIS today, even though they have historically been dominant in their relevant markets. In the 1996 Act, Congress explicitly recognized that smaller and rural carriers might face unique circumstances warranting lesser regulatory requirements. Regardless of what actions we take with respect to the larger carriers, should deregulation proceed in a different fashion, for companies with fewer than two percent of access lines? Commenters should address with specificity what deregulatory measures are appropriate for smaller carriers and what safeguards are necessary to ensure that consumers' interests are protected.

We note that our accounting and reporting rules were designed to provide uniform accounting data to be used to support tariffed prices, to provide information concerning the financial condition of incumbent local exchange carriers, and to serve as an efficient system for both management and federal and state regulators. As carriers were allowed to provide nonregulated services without the need for structural separations, the accounting and reporting rules served the additional public policy goal of ensuring that the ratepayers of regulated services did not bear the costs and risks of nonregulated activities. As our universal service system developed, the accounting and reporting rules also served the policy of ensuring proper cost data on which to base a system of sufficient universal service support. Comments addressing triggers for accounting and reporting deregulation should also discuss these policy underpinnings, how these policies have changed over time, and how these policies can be maintained when more drastic deregulation of accounting and reporting occur.

Section 220 of the Communications Act states that the Commission shall prescribe a uniform system of accounts for use by telephone companies. Sections 260 and 271 through 276 of the Communications Act require a certain amount of accounting safeguards in place to either ensure that transactions between Bell operating companies

(BOCs) and their affiliates or nonregulated activities are accomplished without cost misallocations and that these transactions are performed on an arm's length basis. Section 254(k) specifically states that the Commission, with respect to interstate services, and the states, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable allocation of joint and common costs of facilities used to provide these services. These legislative accounting safeguards were mandated to ensure that the pro-competitive goals of the Communications Act could be realized. Moreover, section 1 of the Communications Act established as one purpose to ensure "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities and reasonable charges." We seek comment on how we can best achieve these mandates keeping in mind the ultimate goal of a deregulatory national telecommunications policy framework.

We ask commenters to discuss whether and how the Commission and the states can carry out their respective statutory mandates without uniform and accurate accounting and reporting information. Specifically, commenters should address how jurisdictional separations could be implemented without part 32 accounting data. Commenters should also discuss how any system of universal service support could be implemented without the Commission receiving uniform accounting data. Commenters should address how this Commission could assess the state of the network without ARMIS information. Finally, we ask commenters to discuss how the Commission and states could address cost issues in various proceedings such as long-term number portability, interconnection, pole attachments, and collocation without uniform and accurate accounting data.

II. Procedural Issues

A. Ex Parte Presentations

This is a permit but disclose rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206.

B. Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice of Proposed Rulemaking provided in section V.D. The Consumer Information Bureau, Reference Information Center, will send a copy of the Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

The Commission has initiated this proceeding to determine whether it should streamline or modify the current accounting and reporting requirements. This Notice of Proposed Rulemaking consists of Phase 2 and Phase 3 of the Commission's comprehensive review of the accounting and reporting requirements. This Notice of Proposed Rulemaking seeks to reduce accounting and reporting requirements, while furthering the Commission's goals of promoting universal service, fostering efficient competition, and protecting consumers.

Legal Basis

The legal basis for the action as proposed for this rulemaking is contained in sections 4(i), 4(j), 11, 201(b), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 161, 201(b), 303(r), and 403.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.

We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. It seems certain that some of these carriers are not independently owned and operated, but we are unable at this time to estimate with greater precision the number of wireline carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small incumbent LECs that may be affected by the proposed rules, if adopted.

More specifically, the proposed changes to the accounting and reporting requirements in sections III.A.1, III.A.6, and III.B would only affect Class A companies, *i.e.*, companies with annual

revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold, currently $144 million. Presently, these companies are SBC Communications, Quest, Verizon, BellSouth Corporation, Cincinnati Bell, C–TEC, Sprint, Alltel Corporation, Frontier Corporation, and Citizens Telecom. These companies would not be considered "small entities" under the SBA definition. Therefore, it is extremely unlikely that any of the 2,295 small entity telephone companies would be affected by the proposals in section III.A.1, III.A.6, and III.B.

The proposals discussed in section III.A.2, 3, 4, 5, 7, and 8 could affect all local exchange carriers. Some of these companies may be considered "small entities" under the SBA definition. Therefore, it is possible that some of the 2,295 small entity telephone companies may be affected by the proposals in section III.A.2, 3, 4, 5, 7, and 8.

The proposals discussed in section III.C would affect only mid-sized carriers, *i.e.*, Class A carriers with aggregate revenues below $7 billion but equal to or above the indexed revenue threshold (currently $144 million). These companies would not be considered "small entities" under the SBA definition. Therefore, it is extremely unlikely that any of the 2,295 small entity telephone companies would be affected by the proposals in section III.C.

The proposals discussed in section IV could affect all local exchange carriers. Some of these companies may be considered "small entities" under the SBA definition. Therefore, it is possible that some of the 2,295 small entity telephone companies may be affected by the proposals in section IV.

Description of Proposed Reporting, Recordkeeping, and Other Compliance Requirements

This Notice of Proposed Rulemaking seeks to further reduce accounting and reporting requirements for Class A companies. In this Notice of Proposed Rulemaking, the Commission seeks comment on eliminating one-fourth of the Class A accounts from the Part 32 chart of accounts, reducing ARMIS reporting requirements, and streamlining other accounting rules. These proposals, if adopted, would result in fewer accounting requirements and reduced ARMIS reporting requirements for Class A companies. In some instances, the Commission seeks comment on whether additional accounts should be added to the Part 32 Chart of Accounts, to reflect changes in technology and new requirements under the Telecommunications Act of 1996. None of these proposals apply to small entities because they are not subject to these reporting requirements. As mentioned in section C, Class A companies are not small businesses, so these reporting and record-keeping requirements will not affect small entities.

In addition, in section III.A.2, 3, 4, 5, 7, and 8, the Notice of Proposed Rulemaking seeks comment on: streamlining inventory requirements in §§ 32.1220(h) and 32.2311(f); changing the threshold requirements in § 32.2003(b); adopting SFAS–116 for federal accounting purposes; and modifying the affiliate transactions rules, the definition of "incidental activities," our expense limit rules, and cost allocation manual requirements. These proposals, if adopted, could affect both Class A and Class B companies, including small entities. If adopted, these proposals could significantly reduce the federal regulatory accounting requirements and costs associated with these requirements for the affected companies, including the small entities.

In section III.C, the Notice of Proposed Rulemaking also seeks comment on simplifying reporting requirements and eliminating cost allocation manual filing requirements for mid-sized carriers, including any small entities. This proposal, if adopted, would greatly reduce the reporting requirements and costs associated with these requirements for these companies, including any small entities.

In section IV, the Notice of Proposed Rulemaking seeks comment on triggers for more significant deregulation of accounting and reporting requirements for all carriers in a competitive marketplace, including small entities. Once the marketplace is competitive, regulatory accounting and reporting requirements and costs associated with these requirements for all carriers, including small entities may be greatly diminished, if not eliminated.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The rule changes proposed in this Notice of Proposed Rulemaking are reductions in our accounting requirements and ARMIS reporting requirements for Class A companies (*i.e.*, carriers with annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold, currently $144 million). These rule changes, as discussed in sections III.A.1, III.A.6, III.B, and III.C, only affect Class A companies and would not have a significant economic impact on small entities because the Class A companies, as identified in section C, are not small entities. The remaining rule changes proposed in the Notice of Proposed Rulemaking may affect all LECs. Our proposals, if adopted, would streamline the accounting and reporting rules and would significantly lessen regulatory requirements for all carriers, including small entities. This should produce a significant economic benefit to small entities. Alternatives considered for small entities subject to our accounting and reporting requirements, were to maintain our current rules or to consider changes proposed in this Notice of Proposed Rulemaking on a case-by-case basis in ongoing proceedings where related accounting changes may properly be considered within the scope of such proceedings. We believe that streamlining our current rules, however, would reduce regulatory burdens on carriers, including small entities. In section IV of the Notice of Proposed Rulemaking, we discuss eliminating accounting rules and reporting requirements as the local exchange market becomes competitive. This would result in a further reduction in the regulatory burden on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

C. Paperwork Reduction Act

As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on Phase 2 on or before December 21, 2000, and reply comments on or before January 30, 2001. For Phase 3, interested parties may file comments on or before January 30, 2001, and reply comments on or before February 28, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form your e-mail address." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Ernestine Creech, Accounting Safeguards Division, 445 12th Street, S.W., Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case CC Docket No. 00–199, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

Written comments by the public on the proposed and/or modified information collections are due on or before December 13, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before January 12, 2001. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503.

III. Ordering Clauses

Pursuant to the authority contained in sections 4(i), 4(j), 11, 201(b), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 161, 201(b), 303(r), and 403, this NPRM *is adopted*.

The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Appendix 1—USTA'S ARMIS Reporting Proposals

USTA proposes streamlining the following items:

1. Combine ARMIS 43–01, 02 [B1, I1], 03 and 04 (See USTA June 9 letter); allow reporting at OTC level (Operating Telephone Company) for majority of data (Proposed Table III, Separations and Access would be by study area).
2. Eliminate ARMIS 43–02 Schedules B4 and I2. (Note: USTA also proposed elimination of B12, which was eliminated in Phase 1.)
3. Modify required nonregulated adjustment threshold from $1 million per holding company to $1 million or 2% nonregulated expense; require aggregation of only material dollars rather than every dollar.
4. Eliminate ARMIS 43–07, Infrastructure Report.
5. Streamline ARMIS 43–08, Operating Data Report—Eliminate tables of access lines (2) and traffic data (see USTA Letter).
6. Eliminate ARMIS 495/A and 495/B Reports.
7. One definition for "access lines" should be used. (Billable Access lines currently in ARMIS 43–01).

[FR Doc. 00–28886 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2374; MM Docket No. 00–149; RM–9940]

Radio Broadcasting Services; Smiley, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: Smiley Community Radio Company filed a petition for rule making proposing the allotment of Channel 280A at Smiley, Texas, as the community's first local aural transmission service. *See* 65 FR 53689, September 5, 2000. On October 10, 2000, petitioner filed a request for withdrawal. A showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. No other comments were filed. Therefore, at the request of petitioner, we will dismiss the instant proposal.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–149, adopted October 11, 2000, and released October 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28883 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2420; MM Docket No. 00–208; RM–9977]

Radio Broadcasting Services; Huachuca City, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Santa Cruz Broadcasting, requesting the allotment of Channel 232A to Huachuca City, Arizona, as a first local aural transmission service. Information is requested regarding the attributes of Huachuca City to determine whether it is a *bona fide* community for allotment purposes. Additionally, as Huachuca City is located within 320 kilometers (199 miles) of the U.S.-Mexico border, and will result in short spacings to three Mexican allotments, concurrence of the Mexican government to the proposed allotment of Channel 232A to Huachuca City, as a specially-negotiated short-spaced allotment must be obtained. Coordinates used for this proposal are 31–32–30 NL and 110–23–20 WL.

DATES: Comments must be filed on or before December 18, 2000, and reply comments on or before January 2, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Susan A. Marshall Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–208, adopted October 18, 2000, and released October 27, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Huachuca City, Channel 232A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28917 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2420; MM Docket No. 00–209; RM–9978]

Radio Broadcasting Services; Rio Rico, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Santa Cruz Broadcasting, requesting the allotment of Channel 300A to Rio Rico, Arizona, as a first local aural transmission service. Information is requested regarding the attributes of Rio Rico to determine whether it is a *bona fide* community for allotment purposes. Additionally, as Rio Rico is located within 320 kilometers (199 miles) of the U.S.-Mexico border, and will result in short spacings to two Mexican allotments, concurrence of the Mexican government to the proposed allotment of Channel 300A to Rio Rico, as a specially-negotiated short-spaced allotment must be obtained. Coordinates used for this proposal are 31–24–00 NL and 110–57–30 WL.

DATES: Comments must be filed on or before December 18, 2000, and reply comments on or before January 2, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Susan A. Marshall Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–209, adopted October 18, 2000, and released October 27, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Rio Rico, Channel 300A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28916 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2420; MM Docket No. 00–210; RM–9979]

Radio Broadcasting Services; Sonoita, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Santa Cruz Broadcasting, requesting the allotment of Channel 263A to Sonoita, Arizona, as a first local aural transmission service. Information is requested regarding the attributes of Sonoita to determine whether it is a *bona fide* community for allotment purposes. Additionally, as Sonoita is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the proposed allotment of Channel 263A to Sonoita must be obtained. Coordinates used for this proposal are 31–40–46 NL and 110–39–17 WL.

DATES: Comments must be filed on or before December 18, 2000, and reply comments on or before January 2, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Susan A. Marshall Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–210, adopted October 18, 2000, and released October 27, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Sonoita, Channel 263A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28915 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2420; MM Docket No. 00–211; RM–9993]

Radio Broadcasting Services; Pine Level, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Susannah Lane Hodges, requesting the allotment of Channel 248A to Pine Level, Alabama, as a first local aural transmission service. Petitioner is requested to provide additional information to establish that Pine Level is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 32–04–04 NL and 86–03–35 WL.

DATES: Comments must be filed on or before December 18, 2000, and reply comments on or before January 2, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John A. Borsari, Esq., Borsari & Assoc., PLC, P.O. Box 29, Arlington, VA 22210.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–211, adopted October 18, 2000, and released October 27, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036; (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Pine Level, Channel 248A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28914 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2422; MM Docket Nos. 00–215, 00–216; RM–9994, RM–9995]

Radio Broadcasting Services (Aspen, Colorado; McKinleyville, California)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks comment on two petitions for rule making. The first, filed by Roaring Forks Broadcasting, Inc., requests the allotment of Channel 228A at Aspen, Colorado, as the community's third local FM service. The second, filed by Four Rivers Broadcasting Inc., requests the allotment of Channel 236C3 at McKinleyville, California, as the community's first local aural transmission service.

Channel 228A can be allotted to Aspen in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction, at coordinates 39–11–24 NL and 106–49–06 WL. Channel 236C3 can be allotted to McKinleyville in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction at coordinates 40–56–42 NL and 124–05–54 WL.

DATES: Comments must be filed on or before December 18, 2000, and reply comments on or before January 2, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties in MM Docket No. 00–215 should serve petitioner Four Rivers Broadcasting Inc., or its counsel or consultant, as follows: Meredith Senter, Jr., Leventhal, Senter & Lerman, Suite 600, Washington, DC 20006–1809. Interested parties in MM Docket No. 00–216 should serve petitioner Four Rivers Broadcasting, Inc., or its counsel or consultant, as follows: Howard M. Weiss, Fletcher, Heald & Hildreth, 1300 N. 17th St., 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, Docket Nos. 00–215, 00–216, adopted October 18, 2000, and released October 27, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 228A at Aspen.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by adding McKinleyville, Channel 236C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28913 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2421; MM Docket No. 00–213; RM–9990]

Radio Broadcasting Services; Pigeon Forge, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Bernice P. Hedrick proposing the allotment of Channel 292A at Pigeon Forge, TN as the community's first local aural transmission service. Channel 292A can be allotted to Pigeon Forge in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.5 kilometers (4.7 miles) southeast of city reference coordinates. The coordinates for Channel 292A at Pigeon Forge are 35–43–33 North Latitude and 83–31–18 West Longitude.

DATES: Comments must be filed on or before December 18, 2000, and reply comments on or before January 2, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Bernice P. Hedrick, P.O. Box 27, 317 Stonegables Ct., Gray, GA 31032.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of

Proposed Rule Making, MM Docket No. 00–213; adopted October 18, 2000 and released October 27, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Pigeon Forge, Channel 292A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28912 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2421; MM Docket No. 00–214; RM–9980]

Radio Broadcasting Services; Lincolnton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by H. David Hedrick proposing the allotment of Channel 254A at Lincolnton, GA, as the community's first local aural transmission service. Channel 254A can be allotted to Lincolnton in compliance with the Commission's minimum distance separation requirements with a site restriction of 13 kilometers (8.1 miles) south of city reference coordinates. The coordinates for Channel 254A at Lincolnton are 33–40–37 North Latitude and 82–30–18 West Longitude.

DATES: Comments must be filed on or before December 18, 2000, and reply comments on or before January 2, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: H. David Hedrick, P.O. Box 27, 317 Stonegables Ct., Gray, GA 31032.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–214; adopted October 18, 2000 and released October 27, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Lincolnton, Channel 254A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28911 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2421; MM Docket No. 00–212; RM–9999]

Radio Broadcasting Services; Glenville, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed by Donald Staats proposing the allotment of Channel 299A at Glenville, WV, as the community's first local aural transmission service. Channel 299A can be allotted to Glenville in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.0 kilometers (0.6 miles) southwest of city reference coordinates. The coordinates for Channel 299A at Glenville are 38–55–43 North Latitude and 80–50–47 West Longitude.

DATES: Comments must be filed on or before December 18, 2000, and reply comments on or before January 2, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Donald Staats, P.O. Box 1346, Parkersburg, WV 26102.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–212; adopted October 18, 2000 and

released October 27, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Glenville, Channel 299A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28910 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–00–8248]

RIN 2127–AF36

Federal Motor Vehicle Safety Standards; Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We are proposing to upgrade the rear impact test in the Federal motor vehicle safety standard on fuel system integrity. That standard currently specifies that the rear of the test vehicle is to be impacted with a flat rigid barrier at speeds up to 48 km/h (30 mph). Under the proposal, we would replace that full rear impact test procedure with an offset rear impact test procedure specifying that only a portion of the width of the rear of vehicles would be impacted, that a deformable and lighter barrier would be used, and that the test would be conducted at 80 km/h (50 mph). We tentatively conclude that the new, more stringent test procedure would save lives and prevent injuries.

We are also proposing to change the standard's procedure for side impact tests. Currently, the standard specifies a side impact test procedure that differs from that specified in our standard on side impact protection. We are proposing to specify that the test procedure in the side impact protection standard be used for both standards. We tentatively conclude that this change would provide a more realistic test, increase safety and reduce testing costs.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 12, 2001.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590. You may also submit your comments electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Dr. William J. J. Liu, Office of Vehicle Safety Standards, (Telephone 202–366–2264) (FAX 202–366–4329).

For legal issues, you may call Mr. Stephen Wood, NCC–20, Assistant Chief Counsel for Rulemaking, Office of Chief Counsel, (Telephone 202–366–2992) (FAX 202–366–3820).

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC, 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

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I. Overview of this Rulemaking

On April 12, 1995, we published an Advance Notice of Proposed Rulemaking (ANPRM) (60 FR 18566) announcing our plans to consider upgrading Standard No. 301, Fuel system integrity.[1] Specifically, we announced our plans to consider research and rulemaking activities related to amending Standard No. 301 to:

- define performance criteria for fuel system components directed at reducing the occurrence and spread of vehicle fires;
- modify the existing Standard No. 301 crash test procedures and performance criteria to better simulate the events that lead to serious injury and fatalities in fires; and,
- define the role of environmental and aging factors such as corrosion and vibration as they affect fuel system integrity, and, if appropriate, specify performance criteria related to this area.

Due to the varying complexity of the above three activities, we also announced that we were considering pursuing a three-phase approach to upgrading the standard:

- Phase 1 would focus on requirements for component performance.
- Phase 2 would address system performance.
- Phase 3 would address issues related to environmental and aging effects.

After evaluating the research related to the frontal and rear impact requirements and the comments submitted in response to the ANPRM, we have decided not to pursue rulemaking related to Phases 1 and 3 at this time. Further analysis by NHTSA of the results of research related to fuel system components conducted by the agency and General Motors (GM) is needed before we can determine whether rulemaking is appropriate and, if so, what form it should take.[2] In addition, we believe that further studies are needed to define the problems associated with environmental and aging effects and determine whether rulemaking would be appropriate to address them.[3]

After evaluating the research related to Phase 2 and the comments submitted in response to the ANPRM, we have tentatively concluded that a more stringent rear impact test procedure would save lives and reduce injuries. We are, therefore, proposing to strengthen the current crash requirements applicable to vehicles with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less. Specifically, we are proposing to replace Standard No. 301's current rear impact test procedure with one that involves striking the rear of the test vehicle at 80 km/h (50 mph) with a 1,368 kg (3,015 lb) moving deformable barrier at a 70 percent overlap with the test vehicle. We are also proposing to replace Standard No. 301's lateral impact test procedure with the current side impact test procedure of Standard No. 214, Side impact protection. We tentatively conclude that these changes would help to preserve fuel system integrity in a crash, thereby helping to prevent fire-related fatalities and injuries. In addition, we tentatively conclude that the specification of a single lateral impact test procedure instead of two different test procedures would reduce manufacturer certification and agency enforcement costs.

II. Existing Standard

Standard No. 301 sets performance requirements for the fuel systems of light vehicles, *i.e.*, vehicles with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less. The standard, which was issued in the 1970s, limits the amount of fuel spillage from fuel systems of vehicles during and after being subjected to a frontal, rear, or lateral impact test.

In the frontal impact test, a vehicle is driven forward into a fixed barrier at 48 km/h (30 mph), while in the side impact test, a 1,814 kg (4,000 lb) barrier moving at 32 km/h (20 mph) is guided into the side of a stationary vehicle, and in the rear impact test, a 1,814 kg (4,000 lb) barrier moving at 48 km/h (30 mph) is guided into the rear of a stationary vehicle. The standard limits fuel spillage from crash-tested vehicles to 28 grams (1 ounce) by weight during the time period beginning with the start of the impact and ending with the cessation of vehicle motion and to a total of 142 grams (5 ounces) by weight during the 5-minute period beginning with the cessation of motion. During the 25-minute period beginning with the end of the 5-minute period, fuel spillage during any 1-minute interval is limited to 28 grams (1 ounce) by weight.

Similar fuel spillage limits apply to vehicles tested in accordance with the standard's static rollover test procedure. The rollover test is conducted after frontal, rear and lateral impact tests.

III. Current Safety Problem

Preserving fuel system integrity in a crash to prevent occupant exposure to fire is critical. Although vehicle fires are relatively rare events (occurring in only one percent of vehicles in towaway crashes), they tend to be severe in terms of casualties. According to an analysis of the agency's Fatality Analysis Reporting System (FARS) in 1998, four percent (1,411) of light vehicle occupant fatalities occurred in crashes involving fire.[4] Overall, the fire itself was deemed to be the most harmful event in the vehicle for about 20 percent (282) of these fatalities.

An analysis of 1991–1998 National Automotive Sampling System (NASS) data shows that about 12,941 occupants per year were exposed to fire in passenger cars and light vehicles (vans, pickup trucks, and multipurpose vehicles with GVWR of 4,536 kg (10,000 lb) or less) that were towed away from the fire. Of those occupants, about 1,062 (8 percent) received moderate or severe burns (AIS 2 and greater). Three-quarters of those with moderate and more severe burns had second or third degree burns over more than ninety percent of the body; maximum-severity (AIS 6) burns are nearly always fatal. These statistics underscore the importance of preserving fuel system integrity in a crash in order to prevent vehicle fires.

IV. 1995 Advance Notice of Proposed Rulemaking (ANPRM)

In the 1995 ANPRM, we announced our plans to consider upgrading Standard No. 301. We explained that we were considering using a three-phase approach to upgrade the requirements of Standard No. 301. Phase 1 would focus on requirements for component

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[1] Previously, on December 14, 1992, we published a Request for Comments notice (57 FR 59041, Docket No. 92–66, Notice 1) stating that we were "considering initiating rulemaking to upgrade the protection currently provided by" Standard No. 301. The notice also requested answers to specific questions related to test impact speeds, impact barriers, effect of vehicle aging on the likelihood of fire, contribution of occupant entrapment to the likelihood of fire-related injuries, etc.

[2] On December 2, 1994, the Secretary of Transportation announced a settlement of an investigation by NHTSA of an alleged safety defect in certain GM pickup trucks with fuel tanks mounted outside the frame rails. Under that settlement, GM is contributing over $51.3 million for a variety of safety initiatives. Among other things, the settlement is funding research on ways to reduce the occurrence and effects of post-crash fires. All relevant results of this research are being placed in dockets NHTSA–98–3585, NHTSA–98–3588, Docket No. 96–GMRSCH–GR, and Docket No. 95–20-GR.

In addition, GM is conducting an extensive research program related to engine component fires and its propagation into the occupant compartment. Depending on the results of GM's research (which was officially completed in April 2000), we may revisit our decision with respect to Phase 1.

[3] As part of the GM settlement, GM is conducting research on environmental factors and aging effects on fuel system integrity and is preparing a report of its findings. Depending on the results of GM's research, we may also revisit this issue in the future.

[4] These fatalities included fatalities due to burns and/or impact injuries, but not those due to asphyxiation.

performance, Phase 2 would address system performance, and Phase 3 would address issues related to environmental and aging effects. We sought comment on this approach as well as several other issues.

A. Component Performance (Phase 1)

We explained that our focus in Phase 1 was on developing component performance criteria aimed at shutting down the fuel supply and potential fire ignition sources in a crash to help reduce the occurrence and effects of a fire should a breach in the fuel system occur. Quickly shutting off the fuel flow during or immediately after a crash would eliminate a major fire and fuel source and should, therefore, both reduce fires and limit the spread of fire, if one were to start. Phase 1 would also focus on minimizing the possibility of an electrical spark of sufficient intensity to act as an ignition source. Finally, it would explore other means for reducing fires (e.g., engine fire extinguishers). While these criteria would primarily address fires that originate in the engine compartment due to frontal impacts, they would also help to shut off the fuel flow for all crash modes, including a rollover crash.

In the ANPRM, we sought comment about component test requirements for fuel tanks, fuel pumps, the vehicle's electrical system, and engine fire extinguishers. We requested information on the performance, cost, and practicability aspects of various systems for shutting off the fuel flow and the electric power. We also requested comments on ways to develop practicable test procedures and to define specific criteria with sufficient objectivity that test variability would be minimal.

We also explained that we believed that the technology already existed for detecting and identifying conditions when the fuel flow should be shut off. Most new vehicles sold in the United States were already equipped with devices that shut off the fuel pump in any collision that causes the engine to stop.[5] Other vehicles were equipped with inertia switches that shut off the fuel flow and/or the electric current.[6]

We also discussed how fuel system components had to operate in a real-world environment surrounded by extreme conditions imposed by modern engine technology. We explained that the materials and parts used to assemble fuel system components were already subject to manufacturers' specifications, which were often derived from or directly related to other engineering standards such as those of the American Society for Testing and Materials (ASTM). Some of the test requirements are generic to many of the ASTM standards, for example: vibration, shock, endurance testing, temperature cycling, temperature extremes, and compatibility with other materials.

Finally, we also sought comment regarding the extent and scope of component test requirements that could be developed for inclusion in Standard No. 301. We identified the following fuel system and vehicle components as potential candidates for this approach: fuel tank, including filler pipe; fuel pump(s); vehicle's electrical system; and engine fire retardant/extinguisher. We did not include fuel lines in the list because the potential to shut down the entire fuel delivery system when the fuel pump shuts down already exists.

B. System Performance (Phase 2)

While Phase 1 focused on shutting down fuel supply and potential ignition sources in a crash to help prevent or mitigate vehicle fires if a breach in the fuel system occurs, Phase 2 focused on preventing fuel system failures in the first instance. We explained that Phase 2 would focus on the process of upgrading crash test performance in frontal, side, and rear impacts. Phase 2's purpose was to identify tests that represent the crash conditions associated with fires that cause fatal and severe injury.

We explained that available information indicated that the present tests in Standard No. 301 may not be representative of the crash conditions associated with fatal and severe injury-causing fires. We also explained that further tests were needed to define specific upgrades to these crash conditions. We noted that offset/oblique tests in the frontal mode, use of the Standard No. 214 barrier in the rear test mode, and a pole impact or use of the Standard No. 214 barrier for the side impact test all appeared promising for possible inclusion in Standard No. 301.

We explained that a key objective for such tests may be to limit the engagement of the struck vehicle to a narrower area than is engaged using current barriers. We explained that we needed to define the specific crash conditions that cause fuel system loss of integrity and understand which crashes would be survivable if fire were avoided. We explained that we were considering performing crash data analyses and crash testing to further explore these issues. We requested comments on the performance aspects and practicability of this approach.

C. Environmental and Aging Effects (Phase 3)

We explained that the third phase would explore the issue of environmental and aging effects on vehicle condition and the possible relationship to fire occurrence. Our preliminary analyses of FARS and State crash files indicated that the likelihood of fire increases with the age of the vehicle. The analysis also attempted to determine the possible differences, if any, in the occurrence of fire in fatal crashes in states that typically experience more inclement weather (*i.e.*, snow and ice) and as a result, use more salt and other corrosive substances on public roadways, when compared to other states.

Passenger cars registered in the "salt belt" states and involved in fatal crashes were found to have an approximately 25 percent greater rate of fire occurrence in fatal crashes, compared with passenger cars in fatal crashes in the "sun belt" states. When the fire itself was deemed to be the most harmful event in the vehicle, however, the "salt belt" states had a lower rate compared to the "sun belt" states. Consequently, it was not clear whether the possible relationship between vehicle aging, weather and use of salt and similar substances and fire occurrence was due to environmental characteristics, to changes in vehicle design, to differences in operator characteristics, or a combination of these factors. We explained that if the disparity could be attributed to environmental factors, it might be possible to add environmental tests, such as a corrosion test, to Standard No. 301.

V. Public Comments on ANPRM

NHTSA received 40 comments on the April 1995 ANPRM. Of the comments, twenty were one-page form letters that supported the proposal and were signed by individuals affiliated with various businesses and organizations. The remaining 20 comments were submitted by: eight manufacturers (1 component manufacturer and 7 vehicle manufacturers), 6 associations, and 6 other organizations (2 separate comments from a consulting firm, 1 state agency, 1 consumer advocacy organization, 1 research institute, and 1 individual). The comments are summarized below.

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[5] For example, in some vehicles, sensors detect the consequence of severe engine damage (rotation stops for camshaft, crankshaft or alternator) and immediately shut off the fuel pump. Often, signals from more than one sensor are used to determine if the engine has stopped running and the decision for fuel pump shut-off is left up to the vehicle's onboard computer (such as the Engine Control Unit or Electronic Control Module).

[6] Inertia switches operate on sudden impact to open the electrical circuit to the fuel pump or the battery during the crash. An inertia switch can be designed to operate at various levels of impact intensity and direction, and, therefore, could be effective in all crash modes.

A. Comments on Component Performance

The First Inertia Switch Company (First Inertia) stated that it first introduced a crash activated fuel pump shut-off switch for the 1981 vehicle models in the U.S. First Inertia argued that an inertia switch is the most direct and effective means of shutting off the fuel pump in a crash. It estimated that during the 1995 model year, 9.5 million inertia switches would be installed in vehicles manufactured in the U.S., Canada, Europe, and Japan. First Inertia believes that its inertia switches can easily be designed for shutting off the electric power in a crash and performing other functions (e.g., unlocking vehicle doors).

While GM expressed interest in the potential benefits that could be derived from possible fuel system component upgrades, it suggested that we conduct careful studies to ensure that we selected proposed countermeasures that would not be "counterproductive." Specifically, GM pointed out that the agency's crash data analysis of vehicle fires showed no statistically significant difference in the rate of crash related fuel leakage and/or fire between the GM vehicles that used an engine rotation sensing device for shutting off the fuel flow and the peer Ford vehicles that, in addition to the engine rotation sensing device, used inertia switches as a redundant fuel pump shut-off device.

GM opposed using a battery shut-off device to interrupt the vehicle's electric power. GM argued that the potential negative side effects (*e.g.*, potentially getting stranded on the road if the engine shuts off while driving) of a crash-activated electrical system shut-off preclude the incorporation of such a device. GM suggested conducting additional research on the nature and relative frequency of real-world crash fire ignition sources.

GM stated that it considered the concept of using fire extinguishers and fire retardant blankets for extinguishing engine compartment fires intriguing and supported doing a thorough evaluation to determine their feasibility. GM also stated that it planned to research means to reduce or delay engine fire propagation into the occupant compartment to help provide occupants with additional time to exit a vehicle and avoid burn injuries.

Volkswagen of America, Inc. (VW) was concerned with potential reliability problems associated with inertia-activated fuel cut-off switches. VW explained that it was using an engine rotation sensing device for cutting-off fuel flow in its vehicles. VW also stated that additional fuel tank filler valve systems were unnecessary. In addition, VW recommended that we refer to ECE Regulation No. 34 for possible component test requirements, but did not specify particular tests.

Mitsubishi Motors America, Inc. argued that the proposed Phase 1 approach could put undue emphasis on the performance of particular isolated components in resisting post-impact fires. Mitsubishi argued that such an approach could have unanticipated negative consequences on maximizing over-all fire resistance in real-world crashes.

Ford Motor Company (Ford) stated that fuel system integrity in a crash is a vehicle/system phenomenon in which the vehicle and its components work as a unit. Ford disagreed with the proposed Phase 1 approach of incorporating separate component tests into Standard No. 301. Ford stated that it uses redundant fuel shut-off devices (an engine speed sensing device and an inertia sensing device) to stop the flow of electric current to the fuel pump in certain conditions.

Chrysler Corporation (Chrysler) argued that fuel system integrity should be evaluated as a system and expressed its opposition to any initiative to introduce component design or performance requirements into Standard No. 301. Chrysler explained that it used a fuel shut-off device that senses engine rotation for stopping the fuel flow and stated that additional protection had not been shown to be any more effective in reducing fuel related fires. Chrysler stated that it was premature to consider using an electrical power shut-off device for reducing fuel induced fires. Chrysler argued that more research is needed to verify that the proposed mitigation approach will not harm other systems that are critical to occupant protection, during and after the crash event. Chrysler opposed the concept of using fire extinguishers and fire retardant systems for engine compartment fires and stated that the ignition of a vehicle fire does not necessarily occur at a predictable point in time during a vehicle crash. In addition, Chrysler stated that, in some fires, a "second ignition" is encountered that would not be mitigated by these proposed systems.

Volvo Cars of North America, Inc. (Volvo) stated that shutting off fuel flow quickly during and after a crash could help to reduce the risk of engine fires and the spread of fires once one had started. Volvo stated that since a number of methods could be employed to stop the flow of fuel, there should be no requirement mandating certain equipment. Volvo stated that we should give manufacturers the freedom to design their own systems by specifying performance criteria for them to meet. Volvo suggested that we incorporate the plastic fuel tank test requirements of ECE Reg. No. 34 into Standard No. 301.

Stilson Consulting submitted two sets of comments in favor of the proposed approach. Stilson suggested in its first set of comments (Stilson-1) that the upgrading effort concentrate on preventing fuel siphoning from fuel line and fuel tank failure due to undercarriage impact and requiring a fuel pump shut-off switch for all crash directions. Stilson-1 provided a draft amendment to Standard No. 301 for consideration. Stilson's second set of comments (Stilson-2) contained recommendations for examining vehicle components and testing fuel lines, fuel filler necks and caps, and inertia switches.

The Insurance Institute for Highway Safety (IIHS), Advocates for Highway and Auto Safety (Advocates), National Truck Equipment Association (NTEA), National Association of State Fire Marshals (NASFM), and North Carolina Department of Crime Control and Public Safety (North Carolina) supported the proposed approach. IIHS stated that we should move rapidly to incorporate component testing. IIHS argued that since the fuel flow shut-off technology is readily available, the agency should require manufacturers to demonstrate that their vehicles will automatically interrupt the fuel flow in a crash. IIHS also stated that the technology to interrupt the flow of electrical current was readily available and supported including in the Standard test requirements that assure that electrical sparks do not ignite spilled fuel in crashes. IIHS reiterated its suggestion that we specify additional requirements for nonmetallic fuel tanks.

B. Comments on System Performance

Chrysler, GM, Mitsubishi, Ford, and Volvo expressed general support for upgrading Standard No. 301's test procedures. GM, Ford, and Chrysler stated, however, that more research was needed before the test procedures for frontal and rear impacts were upgraded. The American Automobile Manufacturing Association (AAMA) also stated that additional research and analysis was needed for some of the proposed upgrades. Mitsubishi argued that we should look at the entire spectrum of real-world impact speeds

and modes and consider whether the proposed upgrades would yield negative side-effects on other aspects of overall crashworthiness. Volvo stated that Standard No. 301 should adopt the proposed ECE R94 tests using an offset crash condition with a fixed deformable impact barrier. IIHS and Advocates suggested using a deformable barrier for frontal and rear impact offset tests. VW opposed including any additional crash tests in the standard.

For side impact, GM, VW, Ford, Chrysler, AAMA, Advocates, and IIHS all supported replacing the current Standard No. 301 side impact test with the current Standard No. 214 dynamic test. GM, VW, Ford, Chrysler, and AAMA stated that the moving deformable barrier (MDB) used in Standard No. 214 is more realistic than the one currently used in Standard No. 301's lateral moving barrier crash test. They also argued that no new test development was needed because Standard No. 214's test was more stringent and more representative of real-world crash conditions than Standard No. 301's side impact test. Chrysler, GM and AAMA stated that no other side impact tests were justified for the upgrade and opposed including a side impact pole test in Standard No. 301. AAMA, GM and Chrysler all noted that a December 1994 NHTSA report indicates

> that the side collision fire rate for cars, light trucks, and vans is highest when a narrow object is struck. However, there are approximately two to eight times as many side collision fires (depending on vehicle type) when the object struck is another vehicle compared to a narrow object such as a pole. Thus, it would appear to be more effective in terms of vehicle side collision fire mitigation to concentrate on the vehicle-to-vehicle collision conditions in the standard.

They argued that Standard No. 214's test procedure would do this.

For rear impacts, GM supported efforts to develop a repeatable and objective rear impact test, using a realistic moving deformable barrier to replace the existing Standard No. 301 rear moving barrier test. However, GM cautioned that, because of the uniaxial nature and construction of the Standard No. 214 barrier, the representativeness of this barrier face in a primarily off-axis crush mode (*e.g.*, in an angled rear impact) had to be evaluated.

Three of the commenters, Stilson, IIHS, and Advocates, supported the system level approach to upgrade Standard No. 301. Stilson-1 argued that since automobile manufacturers were already conducting 80 km/h (50 mph) offset vehicle-to-vehicle impact tests for examining fuel systems, incorporating higher test speeds into Standard No. 301 would not pose an unreasonable burden on the automotive manufacturers. Stilson-2 reiterated the comments in Stilson-1 and stated that the minimum test requirements should be: 56 km/h (35 mph) frontal barrier (NCAP type) and 88 km/h (55 mph) vehicle-to-vehicle 50 percent offset impact tests, 48 km/h (30 mph) rear fixed barrier impact tests, and 88 km/h (55 mph) vehicle-to-vehicle side impact tests.

Advocates stated that all barrier tests at any crash angle should be conducted at least 56 km/h (35 mph). Advocates supported using a more aggressive test barrier design to simulate narrow objects. Advocates expressed support for replacing the current Standard No. 301 side impact test with the current Standard No. 214 dynamic test as a near term upgrade. Advocates also recommended using heavier barrier weights for testing LTVs than those used for cars. Advocates also stated that we should require fuel tanks on light passenger vehicles to be placed forward of the rear axle.

C. Comments on Environmental and Aging Effects

Ford, Mitsubishi and GM all said that additional research and analysis was needed to determine if an association between fire and environmental and/or aging factors exists. Chrysler argued that it was premature to suggest that environmental and aging factors degrade fuel system components and lead to an increase in vehicle fires. Chrysler, Ford and GM stated that manufacturers were already upgrading fuel and evaporative emission components to comply with the regulations of the Environmental Protection Agency (EPA) and the California Air Resources Board. These regulations require the vehicle's fuel system to comply with specified emission performance requirements for a specified period of time (ten years or 100,000 miles for cars and 11 years or 100,000 miles for trucks). The regulations also require manufacturers to install an on-board diagnostic system that detects evaporative emissions. Mitsubishi also stated that the agency needed to do more work to define possible performance tests and said that such tests would have to address issues such as how to "age" vehicles or vehicle parts. Advocates argued that we should adopt performance tests that ensure that fuel systems are designed and manufactured to maintain their integrity over the life of the vehicle.

VI. Agency's Response to Comments on ANPRM

A. NHTSA's Component Performance Activities

We examined the effectiveness of fuel pump shut-off devices in reducing post-crash vehicle fires, using the data in NHTSA's 1992 to 1996 NASS file. We compared post-crash fire occurrence in light vehicles with and without inertia activated fuel pump shut-off devices. According to estimates based on the NASS data, 1,552 Ford vehicles that had inertia switches were involved in post-crash fires. In addition, 2,020 GM and 1,008 Chrysler vehicles that did not have inertia switches were involved in post-crash fires. These crash fires accounted for 0.32 percent of all Ford towaway crashes during that period, as compared to 0.34 percent for GM, and 0.41 percent for Chrysler. The fires were classified as minor or major fires with the following results: Ford (0.23 percent minor, 0.09 percent major), GM (0.06 percent minor, 0.28 percent major), and Chrysler (0.35 percent minor, 0.06 percent major), respectively. It appears that Ford and Chrysler vehicles had more minor fires than the GM vehicles.

Based on the foregoing, we have decided not to pursue rulemaking with respect to fuel system component performance at this time. Our own review of NASS data did not reveal a significant difference in the rate or severity of post crash fire occurrence in vehicles with and vehicles without inertia activated fuel pump shut-off devices. GM crash test data support this conclusion. GM monitored the fuel pump circuitry in all of the crash tests that it conducted for its above-mentioned research. All of the crashes caused electrical circuitry shorting that disabled the fuel pump before the inertia switch could be activated.

B. NHTSA's System Performance Activities

In response to the comments and to follow-up on earlier activities, we decided to investigate the feasibility and practicability of upgrading Standard No. 301's current rear and side impact requirements. We reviewed real world crash data to determine what types of rear impact crashes result in "moderate," "severe," and "very severe" fires.[7] Next, we analyzed the data to determine whether it was the fire or the impact of the crash that caused the fatalities and injuries in the fire-related crashes. We then examined the data to determine the types of rear crashes that were causing fire-related fatalities and injuries and developed a new crash test procedure to simulate the most frequent crash scenario that leads to fire and fire-related fatalities and injuries in rear impact crashes. We then performed seventeen crash tests using the new crash test procedure. The following two sections summarize the results of the studies and crash tests.

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[7] A "moderate" fire is defined as fire damage to between 25 percent and 50 percent of the vehicle surface, a "severe" fire has fire damage to between 50 percent and 75 percent of the vehicle surface, and a "very severe" fire has fire damage to more than 75 percent of the vehicle surface.

1. Analyses of FARS and NASS Data on Fire-Related Rear Impact Crashes

In the April 1995 ANPRM, we discussed the results of a detailed NHTSA-sponsored research study of a sample of crash cases involving fire from NASS and FARS conducted by GESAC, Inc.[8] The GESAC study selected 150 NASS cases for detailed analysis. They were selected from recent years and involved fire that caused any occupant injury of AIS 2 or greater. One of the objectives of the analysis was to suggest a laboratory simulation for crashes that cause vehicle fires. The suggested crash simulations include impact mode, speed, barrier, location, and orientation.

For vehicles receiving rear damage, the report indicates that a moving deformable barrier with a partial overlap (a partial width of the vehicle involved in the crash) would simulate the most common type of fire-producing crash. The GESAC study also presented information on impact speed for crash simulations. For rear impacts, the delta-v ranged from 11 km/h to 73 km/h (7 to 45 mph) with a 42 km/h (26 mph) median delta-v. Overlap, which is defined as the percentage of the rear width engaged in a crash, ranged from 30 percent to 95 percent with an average level of 71 percent. The rear impact estimates were based on 11 cases in the 1979 to 1986 NASS data. Due to data limitations, we were unable to derive a more detailed and statistically significant delta-v versus occupant burn injury (e.g., 8 km/h (5 mph) delta-v intervals vs. different AIS levels of occupant injury). Therefore, we concluded that further study was needed.

A detailed case study of 214 fire-related fatal crashes was conducted to determine whether the death was caused by the fire or blunt trauma and to determine the specific crash conditions which caused the fire.[9] Fatality Analysis Reporting System (FARS) data for 1990, 1991, 1992, and 1993 were queried to obtain a listing of cases in which fire occurred. Cases were selected from seven states (Illinois, Florida, Colorado, Arizona, Ohio, Delaware, and West Virginia) because the crash records of these states include case history information. The crash records may have included all or part of the following: (1) Photographs which documented the crash site and the vehicle damage, (2) "police accident reports" (PARs) that described the crash based on the opinion and findings of the investigating officer, (3) witness statements, sometimes indicating the intensity, location, and timing of the fire, and (4) medical records that stated whether an autopsy was performed and the findings of the autopsy describing the cause of death, typically differentiating between conflagration and blunt trauma. Based on these data, NHTSA determined the cause of death. Generally, we gave priority to death certificates issued by a medical examiner. We also used witness statements in a few cases to determine the immediate post crash state of the burn victim. This study did not use the FARS' variable for most harmful event.

The 214 fire-related fatal crashes involved 251 vehicles and 293 total fatalities. The distribution of these 214 crashes was 58 percent (124) frontal impacts, 15 percent (33) side impacts, 10 percent (22) rollover crashes, 10 percent (22) rear impacts, and 6 percent (13) coded as other impact types. At the crash level, NHTSA's analysis found 21 percent of the crashes (45) resulted in one or more fatalities due to burn-related trauma. Of these 45 crashes, 16 were rear impacts.

At the occupant level, NHTSA's analysis found 22 percent of the 293 occupant fatalities (65) were due to burn-related trauma while the remaining 78 percent (228) were due to impact-related trauma. The subset consisting of the 65 burn-related trauma occupant fatalities was categorized by crash type. The resulting distribution shows that 46 percent (30) of the fatalities occurred from rear impacts, 23 percent (15) from front impacts, 15 percent (10) from side impacts, 11 percent (7) from rollover crashes, and 5 percent (3) were coded as other impact types.

Although the majority of crashes in which fire occurs are frontal crashes (58 percent), an analysis of fatalities due to burn-related trauma shows that rear impacts account for the majority (46 percent). Therefore, a fatal rear impact involving fire is more likely to result in a burn-related fatality than fire-related crashes in other modes.

Based on the methodology used in this analysis, we estimate that 309 burn-related trauma fatalities occurred in 1995 in the United States. Further, based on the distribution of burn-related trauma fatalities, about 143 (46 percent) of these would have occurred in rear impact crashes.

A thorough review of the crash conditions in the rear impact cases revealed a consistent crash and fire scenario. According to the study, "[i]n all 16 rear impact cases the vehicle [was] struck in the rear causing loss of fuel from the tank area which ignites during impact and results in a rapidly spreading fire and resulting fatalities." The study concluded that striking a stationary vehicle at 50–55 mph with a moving deformable barrier (MDB) at a 70 percent overlap (width of vehicle engagement) would provide a reasonable crash simulation of real world rear impact fatal burn cases.

As discussed earlier in this notice, the April 1995 ANPRM described the results of a research study GESAC, Inc. conducted for NHTSA on 150 selected NASS cases for detailed analysis. One of the objectives of the analysis was to suggest a laboratory simulation for each crash that led to vehicle fire. For rear impacts, the GESAC study suggested using a moving deformable barrier with a partial overlap to simulate the most frequent crash scenario. The overlap ranged from 30 percent to 95 percent with an average level of 71 percent. The GESAC study accumulated a delta-v range from 11 to 72 km/h (7 to 45 mph) with a recommended 42 km/h (26 mph) delta-v, if the crash could be simulated by an equal mass vehicle-to-vehicle collision (i.e., where the weights of the two vehicles are equivalent).

According to 1991 to 1997 NASS–CDS estimates of occupant injuries vs. delta-v, there were no occupant *burn* injuries when the delta-v was lower than 32 km/h (20 mph) in light passenger vehicles involved with fire and in nonrollover rear-impact towaway crashes. The NASS–CDS estimates also show that the majority of fatal and nonfatal occupant burn injuries were crashes with a 34 to 48 km/h (21 to 30 mph) delta-v range. For those occupants that suffered both burn and impact injuries, NASS–CDS does not specify whether the most severe occupant injury (MAIS) listed in NASS–CDS is due to burn or impact.

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[8] "Fuel System Integrity Upgrade—NASS & FARS Case Study," DOT Contract No. DTNH–22–92–D–07064, March 1994.

[9] The study is summarized in the paper, "A Case Study of 214 Fatal Crashes Involving Fire," by Carl Ragland and Hsi-Sheng Hsia, Paper No. 98–S4–O–08, The Sixteenth International Technical Conference on the Enhanced Safety of Vehicles, Windsor, Canada, June 1998.

Crash data analyses revealed a consistent crash scenario that causes fire and fire-related fatalities and injuries that can be simulated with the following test procedure: a moving deformable barrier (MDB) of 1,368 kg (3,015 pounds) impacting the rear of the test vehicle at 80 km/h (50 mph) with a 70 percent overlap of the vehicle. The 1,368 kg (3,015 lb) moving deformable barrier is the same barrier used for Standard No. 214, except that the barrier's face is situated two inches lower than the face of the Standard No. 214 barrier to simulate pre-crash braking in rear impact crashes.

The lowering of the face of the barrier by 2 inches is consistent with the results of panic braking tests that were performed by the agency as part of its underride research. It is also supported by annualized estimates from NASS–CDS 1995 to 1999 data regarding the frequency of braking by the drivers of striking vehicles in rear impact crashes involving two light vehicles. Based on those data, we estimate that 72% of drivers of striking vehicles involved in those crashes applied the brakes. Based on the same data, we estimate that 36% of drivers applied the brakes in frontal and 54% in side impact crashes, respectively.

According to the October 30, 1990 final rule that adopted the Standard No. 214 barrier, the barrier is intended to simulate a 2,700 pound vehicle containing 300 pounds of passengers or cargo, which we estimated would be the average weight of the striking vehicle in crashes.[10] Using the Standard No. 214 barrier as the rear impact striking device on a range of small, mid-size, and large vehicles [11] at 80 km/h (50 mph) produces a delta-v range of about 32 to 48 km/h (20 to 30 mph). That is the range in which the majority of fatal and nonfatal occupant burn injuries are occurring, according to NASS–CDS estimates.[12]

2. Offset Rear Impact Vehicle Crash Tests

We conducted several series of vehicle crash tests to determine the feasibility and practicability of the offset rear impact test procedure for the types of vehicles to which it would apply.[13] All of the tests used a 1,368 kg (3,015 pounds) MDB with the barrier lowered by 50 mm (2 inches) to simulate pre-crash breaking. The MDB impacted the test vehicle at 80 km/h (50 mph) (parallel to the longitudinal centerline of the tested vehicle) with a 70 percent overlap on the side of the vehicle where the fuel filler neck is located. This test condition approximates the findings of both the GESAC study and the FARS case study with respect to delta-v and vehicle-to-barrier overlap. Once the tests were performed, we looked to see whether the vehicles met the fuel leakage requirements of Standard No. 301. A discussion of the test results follows.[14]

Between February and April 1996 at the Transportation Research Center of Ohio (TRC), we conducted six rear impact tests on 1996 model vehicles using the offset rear impact test procedure. The vehicles tested included a Suzuki Sidekick, Dodge Neon, Geo Prizm, Ford Mustang, Plymouth Voyager, and Chevrolet Blazer. The Suzuki Sidekick, Dodge Neon, and Geo Prizm all leaked fuel in excess of Standard No. 301's requirements.[15] The Ford Mustang,[16] Plymouth Voyager, and Chevrolet Blazer all passed the fuel leakage requirements.[17]

In light of the failure of the smaller vehicles to pass the test, we decided to perform additional crash tests on small compact and light-passenger vehicles to assess the practicability and repeatability of the offset rear impact test procedure with respect to small vehicles.

GM, in cooperation with the agency, conducted five rear impact crash tests between December 1997 and January 1998. The five GM tests were funded by the GM C/K pickup truck settlement research fund. All of the five tested vehicles, a Honda Civic, Chevrolet Cavalier, Nissan Sentra, VW Jetta, and Ford Escort, were 1998 models. The vehicles' test weights ranged from 1,344 to 1,468 kg (2,962 to 3,236 pounds). The Honda Civic and the Nissan Sentra passed Standard No. 301's fuel leakage requirements. The Chevrolet Cavalier, Ford Escort, and VW Jetta all leaked fuel in excess of Standard No. 301's requirements.

We also conducted two additional tests on two mini-cars, a 1998 Chevrolet Metro and a 1999 Mazda Miata, through Veridian (formerly Calspan Corp.). The Metro weighed 996.5 kg (2,196 pounds) and the Miata weighed 1,225.5 kg (2,701 pounds). Both of the vehicles passed the fuel leakage requirements, demonstrating the feasibility of the smallest cars passing the proposed rear impact test procedure.

To assess the repeatability of the offset rear impact test procedure, we conducted additional tests of previously tested vehicles. We decided to retest the Honda Civic, which had passed the test, and the Chevrolet Cavalier, which had failed the test. Between September and October 1998, the agency conducted these two tests through TRC. The Honda Civic passed the TRC test and repeated the results of the GM test. The Chevrolet Cavalier, which failed the GM test, also passed the TRC test and, therefore, did not repeat the results of the GM test.

An examination of the TRC test results revealed that the damage patterns of the TRC tests were nearly identical to the damage pattern of the GM tests, but that the extent of the damage was less. The impact velocity of the TRC test was 1 km/h lower than the GM test. This difference, however, would not account for the difference in crush. Further examination revealed a defective honeycomb barrier assembly. The barrier's honeycomb bumper assembly delaminated during the TRC crash test, which led to more honeycomb crush and less vehicle crush.[18] Because of the consistent crush pattern to both of the vehicles and the MDBs in the two tests of the Cavalier, we decided not to retest the Chevrolet Cavalier at TRC if we obtained a repeatable outcome in the Veridian testing.

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[10] The barrier was built to behave like a vehicle in a real-world crash. Unlike the flat faced barrier currently used in Standard No. 301's rear impact crash test, the moving deformable barrier absorbs some of the crash energy and distributes crash forces in the striking vehicle in the same way a vehicle would in a real crash. While there is less crush and deformation to the struck vehicle with the MDB, the deformation is uneven and more realistic than the flat, even deformation caused by the current flat-faced barrier.

[11] Vehicles in the range of 907 to 2,041 kg (2,000 to 4,500 pounds).

[12] The delta-v of an 80 km/h (50 mph) impact between a 1,368 kg (3,015 pounds) moving barrier and a 1,368 kg (3,015 pounds) test vehicle is half of the impact speed, specifically, 40 km/h (25 mph). The same test conducted with a lighter test vehicle would yield a higher delta-v; a crash into a heavier vehicle would yield a lower delta-v.

[13] The test results are available in the docket for this rulemaking.

[14] Fully instrumented Hybrid III dummies were placed in the driver and right front passenger seating positions during the crash tests. The dummy measurements are available in the docket of this rulemaking.

[15] The test weights of the three failed vehicles were 1,370, 1,360, and 1,326 kg (3,020, 2,997, and 2,923 lb), respectively.

[16] Between July and November 1995, NHTSA conducted three more rear impact crash tests on 1993 Ford Mustangs through the Transportation Research Center of Ohio (TRC). The tests used the MDB at 80.3, 79.6. and 80.1 km/h (49.9, 49.5, and 49.8 mph) impact speeds and with 88 percent, 80 percent, and 50 percent overlaps, respectively. Only the second of the three tested vehicles passed the Standard No. 301 fuel leakage requirements.

[17] The test weights of the three passed vehicles were 1,628, 1,946, and 1,906 kg (3,588, 4,289, and 4,201 lb), respectively.

[18] Further investigation revealed that the honeycomb supplier had changed the procedure in manufacturing the assembly. The change in assembly procedure reduced the bonding strength of the epoxy. The honeycomb supplier subsequently replaced all untested honeycomb faces.

In November 1998, we conducted two additional tests of the Honda Civic and Chevrolet Cavalier through Veridian. The Honda Civic passed and the Chevrolet Cavalier failed the Veridian test. Both the Cavalier and the Civic repeated the results of the GM tests.

3. Analysis of Side Impact Test Procedure

Since 1994, a small number of vehicles have exceeded the limits on fuel leakage in Standard No. 301 in Standard No. 301 lateral and Standard No. 214 compliance tests (one out of more than 100 vehicles in Standard No. 214 compliance tests and one out of 43 in Standard No. 301 compliance tests). In addition, in 1997, the agency's New Car Assessment Program (NCAP) began conducting NCAP side impact tests at a higher impact speed. To date, two out of 76 of the NCAP tested vehicles leaked fuel in excess of Standard No. 301's fuel leakage requirements.

We compared the crash test results of a Standard No. 301 lateral impact compliance test and a Standard No. 214 compliance test for the same vehicle model. According to our analysis, the Standard No. 214 crash test exposes the subject vehicle to higher crush energy and higher crash forces, and to greater changes in velocity than the existing Standard No. 301 test. The data show that the fuel system components are exposed to more stringent forces in the Standard No. 214 test than in the present Standard No. 301 lateral test.

C. Environmental and Aging Effects

At this time, we have decided not to pursue rulemaking related to environmental and aging effects. While we agree with Advocates that preserving fuel system integrity over the life of a vehicle is important, we also agree with the comments of Mitsubishi, GM and Ford that further studies are needed to define the problems associated with environmental and aging effects and determine whether rulemaking would be appropriate to address them.

GM has conducted research on environmental factors and aging effects on fuel system integrity as part of the GM Settlement Agreement and has prepared a report on its findings. A review of this findings, based on a limited number of vehicles from the "salt belt" regions, indicates some significant degradation of metal components including fuel tanks. Additionally, a significant degradation of rubber components from the "sun belt" regions was observed. There was little degradation of plastic fuel tanks or lines in either region. Upon further study, we may revisit this issue in the future.

As stated in the 1995 ANPRM, the number of cases in the data base is insufficient to produce statistically significant results using vehicle age as a variable. Further studies are needed to relate degradation of components to fire-related occupant injuries. The agency seeks comments on the magnitude of the problem and the need for future rulemaking action. The agency also seeks comments on what procedure and requirements are appropriate to be used in testing for problems associated with older vehicles.

D. Comparison of U.S. and Foreign Fuel System Safety Requirements

The following discussion summarizes the results of our comparison of Standard No. 301's requirements with the following foreign fuel system integrity standards:

(1) The Canadian CMVSS No. 301, *Fuel System Integrity (Gasoline, Diesel)*;[19]

(2) The Economic Commission for Europe (ECE) Regulation No. 34, *Uniform Provisions Concerning the Approval of Vehicles with Regard to the Prevention of Fire Risks* (01 Series, Amendment 1, January 29, 1979) (Thirteen European countries have agreed to adopt ECE Reg. No. 34, including Germany, France, Italy, Netherlands, Sweden, Belgium, Czechoslovakia, United Kingdom, Luxembourg, Norway, Finland, Denmark, and Romania); and

(3) The Japanese Standard, *Technical Standard for Fuel Leakage in Collision, etc.* (Amended on August 1, 1989).

In terms of the vehicles covered: Standard No. 301 applies to all vehicles 4,536 kg (10,000 pounds) or less GVWR and school buses over 4,536 kg (10,000 pounds) GVWR. ECE Reg. No. 34 only applies to passenger cars, and the Japanese standard applies to passenger cars and multipurpose passenger vehicles 2,540 kg (5,600 pounds) or less.

In terms of required impact tests: As described above, Standard No. 301 requires frontal, rear and side impact tests at 48, 48 and 32 km/h (30, 30, and 20 mph), respectively, plus a static rollover test, for vehicles 4,536 kg (10,000 pounds) or less GVWR. Standard No. 301 also requires a 48 km/h (30 mph) impact test for school buses over 10,000 pounds (4,536 kg) GVWR.

The ECE Reg. No. 34 requires a 48 to 53 km/h (30 to 33 mph) frontal fixed barrier impact test and a 35 to 38 km/h (22 to 24 mph) rear moving flat rigid barrier impact test. The ECE test device weighs 1,100±20 kg (2,425±44 pounds). A pendulum can be used as the impactor. ECE Reg. No. 34 does not require a rollover test. The standard requires a hydraulic internal-pressure test for all fuel tanks and special tests (impact resistance, mechanical strength, and fire resistance) for plastic fuel tanks.

The Japanese standard requires a 50±2 km/h (31±1 mph) frontal fixed barrier impact test and a 35 to 38 km/h (22 to 24 mph) rear moving flat barrier impact test. The flat rigid barrier weighs 1,100±20 kg (2,425±44 pounds). A pendulum can be used as the impactor.

In terms of test performance requirements: all three standards limit fuel spillage. As in Standard No. 301, the ECE Reg. No. 34 and the Japanese standard, in general, also limit fuel spillage to about 28 grams/min (1 ounce/min). The Japanese standard lists the ECE Reg. No. 34 and Standard No. 301 as equivalent standards.

In summary, Standard No 301 applies to more vehicle classes and to higher vehicle weights than the ECE Reg. No. 34 or the Japanese standard. Standard No. 301 requires testing in all crash modes (frontal, side, rear, and rollover). ECE Reg. No. 34 and the Japanese standard require only frontal and rear impact tests. Standard No. 301 uses a much heavier moving barrier for impact tests than the ECE and Japanese standards (1,814 kg vs. 1,100 kg). However, Standard No. 301 does not specify a hydraulic pressure test for fuel tanks, a battery retention requirement, or additional tests for plastic fuel tanks; ECE Reg. No. 34 does. In addition, the ECE Reg. No. 34 requires that "no fire maintained by the fuel shall occur" and does not allow failure of the battery securing device due to the impact. ECE Reg. No. 34 also requires filling the impacted vehicle's fuel tank "either with fuel or with a non-inflammable liquid." We understand that, in practice, when the ECE Reg. No. 34 tests are conducted, the fuel tank is filled with non-inflammable liquid. Therefore, compliance with the no-fire requirement is based on a judgment about whether a fire would occur given the amount of observed fuel leakage.

VII. Proposal to Upgrade Standard No. 301's Rear and Lateral Impact Test Procedures

A. Proposed Offset Rear Impact Test Procedure

Based on our analysis of real-world fire-related fatal crash data and the results of various vehicle offset crash tests, we are proposing to replace Standard No. 301's current rear impact test procedure with one that specifies striking the rear of the test vehicle at 80 km/h (50 mph) ± 1 km/h with a 1,368 kg (3,015 lb) MDB at a 70 percent overlap with the test vehicle. The MDB face would be located 50 mm (2 inches) lower than the face of the Standard No. 214 barrier to simulate pre-crash braking. We have tentatively concluded that this more stringent test procedure would reduce fire-related deaths and injuries from rear impact crashes.

The greatest number of fatalities due to fire occur in rear impacts. The proposed test procedure simulates a type of rear vehicle-to-vehicle collision that can result in post-crash fire in an otherwise survivable crash: a high speed offset rear strike to the vehicle that results in fuel leakage from a breach in the fuel system; the fuel can ignite during or following impact and lead to a rapidly spreading fire which results in fatalities and injuries. NASS estimates show that the majority of fatal and nonfatal occupant burn injuries in rear impact crashes were in the 34 to 48 km/h (21 to 30 mph) delta-v range. The proposed test procedure simulates the vehicle-to-vehicle crashes that result in delta-v's of 32 to 48 km/h (20 to 30 mph).

We have tentatively concluded that replacing the current Standard No. 301 rear impact test procedure with the proposed upgraded test procedure is practicable. Crash test results indicate that large, medium and small vehicles could be designed to meet the standard under the proposed upgraded rear impact procedure. In those tests, some small as well as large existing light-duty vehicles already meet the proposed upgrade. Several larger light-duty vehicles, including passenger cars, multipurpose passenger vehicles, and light trucks, all passed the proposed upgrade. In addition, several small vehicles, the Mazda Miata, Chevrolet Metro, Nissan Sentra, and Honda Civic, passed the proposed upgrade. While we are aware that some existing smaller vehicles leaked fuel when tested under the proposed upgraded test procedure (*e.g.*, the 1996 Suzuki Sidekick, Dodge Neon, Geo Prizm, and the 1998 Chevrolet Cavalier, VW Jetta, and Ford Escort), we believe that relatively minor, inexpensive design changes would correct the vast majority of the failures.[20] For example, the fuel lines in the Dodge Neon could be rerouted and the area on top of the tank around the fuel sender unit plastic sealing plate could be reinforced on the VW Jetta.

We are not proposing to require manufacturers to place each vehicle's fuel tank forward of the rear axle as suggested by Advocates. We believe such a requirement is unnecessary and would be design restrictive. We note that the fuel tank of the 1996 Ford Mustang, which passed the proposed rear impact test requirement, is located behind the rear axle. We believe that this test demonstrates that structural and component design is a more critical factor than fuel tank location in maintaining fuel system integrity.

We are also not proposing to use a heavier barrier for light trucks and sport utility vehicles, as suggested by Advocates. As noted above, in a 80 km/h (50 mph) rear impact offset crash test, a 1,368 kg (3,015 lb) MDB effectively reproduces the damage profile seen in real world crashes that can lead to fires. If a heavier barrier were used, the proposed rear impact crash test would no longer reproduce that profile.[21]

As to the comments concerning other aspects of crashworthiness, NHTSA plans to upgrade Standard No. 202, "Head restraints," and is considering the possibility of upgrading Standard No. 207, "Seating systems."

B. Proposed Side Impact Test Procedure

Commenters on the ANPRM supported replacing Standard No. 301's current lateral crash test with Standard No. 214's side impact crash test, stating that the latter test would impose requirements that are more stringent for evaluating fuel system integrity than the current lateral crash test requirements in Standard No. 301. Manufacturers, safety advocates, and others agreed that this replacement would be beneficial from both a safety and cost perspective. In addition, in November 1992, Volkswagen of America, Inc. (VW) petitioned the agency to replace Standard No. 301's lateral crash test with Standard No. 214's dynamic test. We granted that petition very shortly after it was received.

We are proposing to replace Standard No. 301's current lateral crash test with the side impact crash test of Standard No. 214. Test analyses show that that Standard No. 214 crash test exposes the subject vehicle to higher crush energy and crash forces, and to greater changes in velocity than the existing Standard No. 301 lateral test The data show that the fuel system components are often exposed to greater forces in the Standard No. 214 test.

Replacing the current Standard No. 301 lateral test with the Standard No. 214 test would both increase safety and reduce certification testing costs for manufacturers. These costs would be reduced because manufacturers would only have to conduct one type of side impact test instead of two.

In proposing to adopt the Standard No. 214 test, we are also proposing a slight change to that test, both as it appears in Standard No. 214, and as it would appear in Standard No. 301. Instead of specifying that the test would be conducted "at" 54 km/h (33.5 mph), we are proposing to specify that the test would be conducted at 53 km/h + 1.0 km/h. This is very close to the speed (52.9+0.8 km/h) at which our Office of Vehicle Safety Compliance has been conducting Standard No. 214 tests. In addition to proposing this change to Standard No. 214, we are also deleting several paragraphs of outdated requirements relating solely to vehicles manufactured in the mid-1990s.

C. Additional Considerations

1. Door System Integrity

As discussed previously, NASS data from 1991 to 1998 indicate that potential escape from the fire was made more difficult for most occupants (87 percent for all impacts) with moderate or more serious burns because they (1) were sitting next to a door that was jammed shut by crash forces, (2) did not have a door at their position, or (3) had a part of their body physically restrained by deformed vehicle structure. Real-world crash reports indicate that there were instances in which fire suddenly started several minutes after the vehicle was impacted. Thus, it is critical that occupants are able to quickly and easily exit the vehicle after a crash that could lead to a fire.

We examined the results of the vehicle crash tests we conducted using the offset rear impact test procedure to determine whether the front and rear doors were operable. The driver and passenger side doors in the Ford Mustang, Plymouth Voyager, Chevrolet Blazer, Geo Prizm, Chevrolet Metro and the Veridian-tested Honda Civic were all easy to open after the test. The driver side door in the Veridian-tested Chevrolet Cavalier was operable while the passenger side door was not. In the TRC-tested Honda Civic, the driver side door was easy to open; the passenger side door required tools. Tools were needed to open both the driver and passenger side door in the TRC-tested Chevrolet Cavalier. The driver and passenger side doors in the Mazda Miata were reported closed/inoperable. Information was not available on the GM tests of the Honda Civic, Chevrolet Cavalier, Nissan Sentra, VW Jetta, and the Ford Escort. Several of the vehicles had at least one door that was "easy" to open or "operable." Several, however, had doors that were inoperable or required tools to open.

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[19] This Standard is identical to NHTSA's Standard No. 301.

[20] The Ford Mustang test series demonstrated the technical feasibility of redesigning a failed 1993 Ford Mustang so that it would pass the proposed upgrade test procedure (the 1996 Ford Mustang test). It demonstrated that structural and component design are critical, regardless of the fuel tank location, for passing the proposed upgrade.

[21] In a recent notice regarding Standard No. 214, NHTSA stated:

> While the current moving deformable barrier used in Standard 214's dynamic test may be too small and too light to represent the future U.S. fleet, the barrier used in EU 96/27/EC is even smaller in size and mass. Instead of adopting the smaller ECE barrier, NHTSA plans to consider adopting a more representative barrier than the current barrier used in Standard 214.

We note that further research and development would have to be done before a heavier MDB could be developed and proposed for use in any test procedure.

In light of these data, we are considering adding a door opening test requirement to Standard No. 206. The purpose of this requirement would be to reduce the risk of injury in the event that a crash results in a fire. The requirement would accomplish this by increasing the chance that vehicle occupants can exit or be extricated from the vehicle after a crash. We request comment on whether such a requirement is necessary and, if so, what type of requirements would be appropriate, objective, and repeatable. Do any manufacturers currently perform post-crash door opening/egress capability tests? If so, how much force is applied to the door? How is the force applied? The ECE's frontal offset crash test requirement (ECE Regulation No. 94, S5.2.5.1, Amendment 2, September 18, 1998) requires that at least one door per row be openable after that frontal crash. Should we include a similar requirement in Standard No. 206 for the Standard No. 301 rear impact crash test? Should we go further and require openability after each type of crash specified in Standard No. 301?

2. Lead Time

The agency proposes a lead time of approximately three years for the rear impact test requirements. This proposal is based on the following analysis:

- All vehicles must be tested with the new requirements, which specifies a higher speed than the one currently used by most manufacturers in their testing. Thus, essentially all make/models that a manufacturer intends to sell after the effective date of these requirements would have to be tested to determine compliance. NHTSA estimates such testing will take at least five months.
- For all vehicles that did not currently comply (6 of 13 vehicles tested failed at least one test), a remedy must be determined, a prototype solution fabricated and incorporated in the vehicle, and the vehicle retested. With potential iterations, this process could take ten months. The design changes we believe are necessary for the vehicles we have tested have been moderate, not requiring retooling.
- Finally, the changes must be implemented on the production line. This is about a 12 month process.

These three factors indicate that a lead time of about 27 months is reasonably necessary. However, if retooling is necessary for some vehicles (we tested 13 make/models), at least an additional 6 months must be added to the process, making the total 33 months. Thus, as noted above, we propose a lead time of approximately three years for the rear impact test requirements. These estimates are based on a study conducted for NHTSA by Ludtke & Associates and documented in a report titled "FMVSS 301 Fuel System Integrity Rear Impact Test Upgrade: Cost, Weight and Lead Time Analysis," dated September 21, 1999. This report is available in the docket for this rulemaking.

As to the new side impact test requirements, few, if any, design changes would be necessary. However, manufacturers would need to certify compliance using the new procedure. Therefore, we propose to put the side impact test requirements into effect on the first September 1st that occurs at least 12 months after the issuance of the final rule.

Between the issuance of the final rule and the effective date of the upgraded Standard, the manufacturers would be allowed the option of certifying to the Standard No. 301 rear and/or side impact requirements based either on the current test procedure or the new procedure. However, consistent with our other recent amendments adding options to our safety standards, a manufacturer would have to select irrevocably a particular option when it certifies the vehicle.

3. Request for Comments on Particular Issues

In addition to the matters discussed above, we seek responses to the following questions:

a. Are there any real-world data, other than the data that the agency has already analyzed for this proposed upgrade, that may better describe the relationship between the risk of occupant injury due to fire and crash severity?

b. Vehicle manufacturers.

i. How many of your vehicle models would need some redesign to comply with the proposed offset rear impact test procedure? Describe the type and extent of design changes. What costs would be associated with those redesigns? Would you have any significant problems completing necessary redesigns within the three-year lead time? If so, please identify those problems and indicate how much lead time would you need.

ii. How many of your vehicle models would need some redesign to comply with the proposed side impact test procedure? Describe the type and extent of design changes. What costs would be associated with those redesigns? Please indicate how much lead time you would need and why.

c. What impact would the proposed changes have on vehicle safety?

d. Are the proposals sufficient and appropriate for the different sizes and types of vehicles?

e. In the various crash tests that were performed during the research for this rulemaking, the values of head and neck injury criteria measured by the responses of the two front Hybrid III anthropomorphic test devices were much higher than acceptable thresholds. Direct contact of the head of the dummy with the interior of the vehicle compartment, which occurred when the front seat rotated backward excessively due to the rear impact, contributed to these high values. These high values raise concerns about head and neck protection of the occupants. The rear impact testing also raised concerns are also raised about the seat back strength as most seat backs collapsed in those tests. What do the high HIC values and neck loadings registered by the test dummies in those tests indicate about the real world potential for trauma injury to vehicle occupants in rear impacts? Could future vehicles be designed to provide both the improved fuel system integrity necessary to meet the more stringent requirements proposed in this NPRM and, at the same time, provide improved occupant protection in such impacts?

f. How do seat back failures influence the injury potential in rear impacts? Please provide data and other information that would aid the agency in determining the need for improving seat back strength and the appropriate requirements for doing so.

g. Should we require vehicles to retain fuel system integrity in tests with 5th percentile female dummies, as well as with 50th percentile male dummies, as is currently required?

h. We are proposing to eliminate the second sentence in S7.1.6(b) from Standard No. 301. That sentence reads:

"If the weight on any axle, when the vehicle is loaded to unloaded vehicle weight plus dummy weight, exceeds the axle's proportional share of the test weight, the remaining weight shall be placed so that the weight on that axle remains the same." Given the specifications in S7.1.6(a) concerning the placement of rated cargo and luggage capacity weight in the luggage area and the placement of dummies, is the second sentence in S7.1.6(b) needed for conducting Standard No. 301 compliance tests?

i. For the rear offset moving deformable barrier test conditions, we are proposing that the barrier be the same as the one shown in Figure 2 of Standard No. 214, 49 CFR 571.214 and specified in 49 CFR part 587, with one exception. The exception is that the face of the barrier would be positioned in the rear impact test so that it is 50 mm (2 inches) lower than the barrier face height specified in the current Standard No. 214, Figure 2. Positioning the barrier face in that manner might make it necessary for us to change slightly the center of gravity and moment of inertia specifications in paragraphs 587.6(d) and (e) of Part 587 of Title 49 CFR for the purposes of testing under Standard No. 301. The agency is in the process of determining the necessary changes to the specifications and plans to docket its findings during the comment period on this notice. Comments are requested on any necessary changes.

j. With respect to side impact crashes that result in fires, this proposal to upgrade Standard No. 301 addresses vehicle-to-vehicle crashes. As noted above, there are approximately two to eight times as many side collision fires (depending on vehicle type) when the object struck is another vehicle compared to a narrow object such as a pole. However, as also noted above, the side collision fire rate for cars, light trucks, and vans is highest when a narrow object is struck. Would it therefore be reasonable to consider a pole side impact test as part of a subsequent upgrading of the Standard?

k. Should the agency amend FMVSS No. 301 to prohibit fuel leakage in any crash test under FMVSS No. 208?

VIII. Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this final rule under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rule was not reviewed under E.O. 12866, "Regulatory Planning and Review" and is not considered significant under the Department of Transportation's regulatory policies and procedures.

The agency has prepared a Preliminary Regulatory Evaluation (PRE) describing the economic and other effects of this proposal. The average cost for vehicles that would need to be modified to meet the proposed rear seat requirements is $5 per vehicle. Based on our estimate that 46 percent of the fleet does not currently meet the proposal and on an estimated 15.2 million total sales, we estimate that the total cost for the fleet would be $35 million annually.

The target population of crashes includes multi-vehicle crashes in which a passenger vehicle is struck in the rear by another passenger vehicle and the fire starts in the struck vehicle. There are an estimated 57 fatalities and 119 non-fatal injuries annually in the target population. The non-fatal burn injuries in that population of crashes were mostly minor and were typically not the most severe injury to the occupant. Our estimate of benefits ranges from 8 to 21 lives saved annually, once all vehicles on the road meet the proposed rear impact test.

While we believe the FMVSS 214 side impact test is somewhat stricter than the existing side impact test in FMVSS 301, we could not quantify any benefits in side impacts. There are less than 100 fatalities annually in multi-vehicle side impacts resulting in fire. More important, only one out of more than 100 vehicles tested failed the proposed fuel leakage requirements using the FMVSS 214 proposed test. Based on those test results, it appears that few vehicles would have to be modified to meet the proposed side impact test.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this proposed rule under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Further, the amendments primarily affect passenger car and light truck manufacturers which are not small entities under 5 U.S.C. 605(b). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). The agency estimates that there are at most five small final stage manufacturers of passenger cars in the U.S. and no small manufacturers of light trucks, producing a combined total of at most 500 cars each year. It is unknown how many of their vehicle models currently meet the proposed requirements. Comments are requested on the impact of this proposal on small vehicle manufacturers.

There are a large number of second-stage manufacturers that could be affected by this proposal. Second-stage manufacturers buy a chassis from a first-stage manufacturer and finish it to the consumer's specifications. The manufacturers that put a work-related body on a pickup truck chassis (like a small tow truck) often perform manufacturing operations affecting the fuel system, both in the structure around the fuel tank and where the fuel filler neck attaches to the body. Other second-stage manufacturers use a van chassis or an incomplete vehicle for ambulances, small mobile homes, small school buses, etc. Typically, the first-stage manufacturer provides the second-stage manufacturer with a body builder's guide which tells the second-stage manufacturer what it can do and still either pass along the original equipment manufacturer's certification for compliance with Standard No. 301 (for chassis cabs) or otherwise be confident that the vehicle will comply (for other types of incomplete vehicles). To the extent that a second-stage manufacturer deviates from the guide, it would have to certify compliance on their own. The agency tentatively concludes that few final stage manufacturers would do so and that therefore this would not result in a significant economic impact on these companies. Comments are requested on this tentative conclusion.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has concluded that implementation of this action would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). As indicated above, NHTSA anticipates that this proposed rule would not result in an annual expenditure of $100 million.

F. Civil Justice Reform

These amendments would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." We surveyed several voluntary standards organizations to see whether there were any voluntary standards that were applicable to this rulemaking. Standard No. 301's current rear and lateral moving barrier crash test requirements are the same as the Society of Automotive Engineer's (SAE) Standard for rear and side barrier collision tests, SAE, J972. Today's notice proposes to amend Standard No. 301's current rear and lateral moving barrier crash test requirements. The American National Standards Institute (ANSI) and the International Standards Organization (ISO) do not have any automobile fire protection standards relevant to this rulemaking. We seek comment on whether there are any other voluntary standards that may be applicable to this rulemaking.

H. Paperwork Reduction Act

This rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act of 1995 (Public Law 104–13).

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

IX. Submission of Comments

How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing this NPRM, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we have not considered, new data, how this proposed rule may affect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but request comments on specific issues throughout this document. We grouped these specific requests near the end of the sections in which we discuss the relevant issues. Your comments will be most effective if you follow the suggestions below:

Explain your views and reasoning as clearly as possible.

- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts of the NPRM you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the NPRM, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

In addition, for those comments of 4 or more pages in length, we request that you send one copy on computer disc to: Dr. George Mouchahoir, Chief, Special Vehicles & Systems Division, NPS–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. We emphasize that this is not a requirement. However, we ask that you do this to aid us in expediting our review of all comments. The copy on computer disc may be in any format, although we would prefer that it be in WordPerfect 8.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That my Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People and Other Materials Relevant to This Rulemaking?

You may view the materials in the docket for this rulemaking on the Internet. This materials include the written comments submitted by other interested persons and the preliminary regulatory evaluation prepared by this agency. You may read them at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments and materials on the Internet. To read them on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(2) On that page, click on "search."

(3) On the next page *(http://dms.dot.gov/search/)*, type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–2000–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the materials in the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

X. Proposed Regulatory Text

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and record keeping requirements, Tires.

In consideration of the foregoing, the agency is proposing to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would be revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.214 would be amended by revising S3(b) to read as follows and by removing and reserving S3(c) and S3(d).

§ 571.214 Standard No. 214; Side impact protection.

* * * * *

S3. *Requirements.* * * *

(b) When tested under the conditions of S6, each passenger car manufactured on or after September 1, 1996 shall meet the requirements of S5.1, S5.2, and S5.3 in a 53 km/h (± 1.0 km/h) impact in which the car is struck on either side by a moving deformable barrier. 49 CFR part 572, subpart F 50th percentile male test dummies are placed in the front and rear outboard seating positions on the struck side of the car. However, the rear seat requirements do not apply to passenger cars with a wheelbase greater than 3302 mm, or to passenger cars which have rear seating areas that are so small that the part 572, subpart F dummies cannot be accommodated according to the positioning procedure specified in S7.

(c) [Reserved]

(d) [Reserved]

3. Section 571.301 would be amended by revising S6.1, S6.2, S6.3, S7.1.6(b), S7.2, and S7.3, and adding a new figure 3 at the end of the section to read as follows:

§ 571.301 Standard No. 301; Fuel system integrity.

* * * * *

S6.1 Frontal barrier crash. When the vehicle traveling longitudinally forward at any speed up to and including 48 km/h impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30 degrees in either direction from the perpendicular to the line of travel of the vehicle, with 49 CFR part 572 50th percentile male test dummies at each front outboard designated seating position, under the applicable conditions of S7, fuel spillage must not exceed the limits of S5.5.

S6.2 Rear offset moving barrier crash. When the vehicle is impacted from the rear by an offset moving deformable barrier at 80 km/h (± 1.0 km/h) with 49 CFR part 572 50th percentile male test dummies at each front outboard designated seating position, under the applicable conditions of S7, fuel spillage must not exceed the limits of S5.5.

S6.3 Side moving barrier crash. When the vehicle is impacted on either side by a moving deformable barrier at 53 km/h (± 1.0 km/h) with 49 CFR part 572 50th percentile male test dummies at positions required for testing to S7 of Standard No. 214, under the applicable conditions of S7, fuel spillage must not exceed the limits of S5.5.

* * * * *

S7.1.6 * * *

* * * * *

(b) Except as specified in S7.1.1, a multipurpose passenger vehicle, truck, or bus with a GVWR of 4,536 kg or less is loaded to its unloaded vehicle weight, plus the necessary test dummies, as specified in S6, plus 136 kg or its rated cargo and luggage capacity weight, whichever is less, secured to the vehicle and distributed so that the weight on each axle as measured at the tire-ground interface is proportional to its GAWR. Each dummy is restrained only by means that are installed in the vehicle for protection at its seating position.

* * * * *

S7.2 Side moving deformable barrier test conditions. The side moving deformable barrier crash test conditions are those specified in S6 of Standard No. 214, 49 CFR 571.214.

S7.3 Rear offset moving deformable barrier test conditions. The moving deformable barrier is the same as the one shown in Figure 2 of Standard No. 214, 49 CFR 571.214 and specified in 49 CFR part 587, except as otherwise specified in paragraph S7.3(b). The barrier and test vehicle are positioned so that at impact—

(a) The test vehicle is stationary;

(b) The deformable face of the barrier is mounted on the barrier 50 mm lower than the height specified in Standard No. 214, Figure 2;

(c) The barrier is traveling at 80 km/h (± 1.0 km/h); and

(d) The barrier impacts the test vehicle with the longitudinal centerline of the vehicle parallel to the line of travel and perpendicular to the barrier face within a tolerance of ± 5 degrees. The test vehicle and barrier face are aligned so that the barrier strikes the rear of the vehicle with 70 percent overlap toward either side of the vehicle. So aligned, the barrier face fully engages one half of the rear of the vehicle and partially engages the other half. At impact, the vehicle's longitudinal centerline is located inboard of the side edge of the barrier face by a distance equal to 20 percent of the vehicle's width ± 50 mm. (See Figure 3.) The vehicle's width is the maximum dimension measured across the widest part of the vehicle, including bumpers and molding but excluding such components as exterior mirrors, flexible mud flaps, marker lamps, and dual rear wheel configurations.

* * * * *

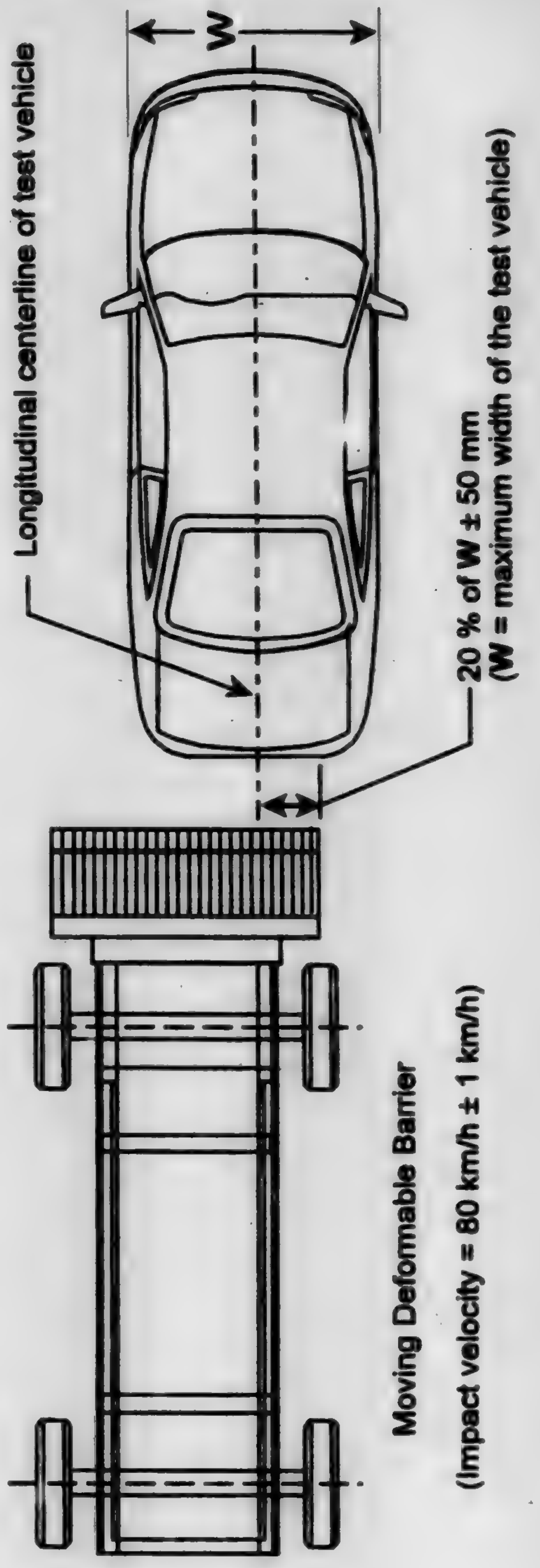
W
Longitudinal centerline of test vehicle
20 % of W ± 50 mm
(W = maximum width of the test vehicle)
Moving Deformable Barrier
(Impact velocity = 80 km/h ± 1 km/h)

FIGURE 3 – MOVING DEFORMABLE BARRIER REAR IMPACT - 70 % OVERLAP

Issued on: November 6, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–28984 Filed 11–9–00; 8:45 am]

BILLING CODE 4910-59-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 110200A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has made a preliminary determination to issue EFPs to conduct experimental fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. Captains Bill Lee and Robert Fisher submitted an application for the issuance of EFPs, which warrants further consideration. The EFPs would allow two commercial vessels to conduct trawl net gear trials with two modified nordmore-style grates in a portion of the Gulf of Maine/ Georges Bank Regulated Mesh Area. EFPs would allow for exemptions to the gear restrictions, retention of catch potentially in excess of the possession limits for the purposes of data collection, and exempt vessels from Northeast Multispecies days-at-sea (DAS) requirements. Commercial scale gear trials would look at the interaction of the modified nordmore-style grate and trawl gear with groundfish species; specifically, how the grate and the escape chute, which have been designed to release cod bycatch in the winter flounder fishery, would perform under commercial fishing conditions.

Regulations under the Magnuson-Stevens Act provisions require publication of this notification to provide interested parties the opportunity to comment on the proposed experimental fisheries.

DATES: Comments on this notification must be received by November 28, 2000.

ADDRESSES: Written comments should be sent to the Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Proposed EFP Proposal." Comments may also be sent via facisimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Management Specialist, 978-281-9244.

SUPPLEMENTARY INFORMATION: On October 18, 2000, Captains Lee and Fisher submitted an application to conduct exempted experimental fishing activities involving commercial gear trials with two modified nordmore-style grates assembled on standard Yankee trawls (modified trawls). This short-term investigation will provide information on the modified trawl gear performance and ability to selectively target winter flounder (*Pleuronectes americanus*) and reduce the rate of bycatch of Atlantic cod (*Gadus morhua*) in the overall catch. The experiment proposes to conduct preliminary gear trials in the shallow waters of Ipswich Bay through video observation of the trawl and modified grate configuration while under tow. The next stage of the gear trials involves a series of 15-minute tows with the grate angled at eight different positions to test for bycatch separation through the escape chute mechanism positioned at the top of the grate. The angle that produces the greatest separation of cod from flounder will be selected for the commercial scale trials in deeper waters. The final phase is designed to produce statistically valid data on the rate of reduction of cod bycatch as a result of the gear modifications. Four 1-hour parallel tows will be made on each of 4 consecutive days in the following sequence: Day 1, control net (standard trawl nets with 6.5-inch (16.5 cm) square codend) towed against a second control net; Day 2, control and experimental net towed in parallel; Day 3, switch the control and experimental nets between the two vessels; and Day 4, both vessels tow experimental nets in parallel. This tow sequence will be duplicated in two different bottom habitats; one primarily sand and the other mud. Therefore, a total of 32 tows with both the experimental and the control nets will be performed in each of two test sites. The entire experiment will require the use of 22 days to complete all phases of gear testing, from the preliminary tests in shallow water to the commercial scale testing in two deeper water sites.

Two nordmore-style grates have been constructed for use in these gear trials. One is made of plastic and the other of steel. Both grates are approximately 40-inches (101.6 cm) in width by 48-inches (121.9 cm) in length. The openings of the grate will lie horizontally and will decrease in aperture from 10-inches (25.4 cm) at the lowest bar spacing, becoming progressively smaller in 2-inch (5.1 cm) increments, until the fifth bar from the bottom, where they remain at the 2-inch bar spacing for the remainder of the upper portion of the grate. The modified nordmore-style grates will be fitted into a standard inshore Yankee trawl with a sweep measuring 80 ft (24.38 m) at the top and 60 ft (18.28 m) at the bottom. Any variability in vessel towing power and efficiency will be alleviated through the parallel gear testing sequence designed to quantify this variability.

All catch brought on board the vessels will be sorted and measured and returned to the sea immediately. It is estimated that the average maximum catch rate would be 6,720 to 8,400 lb (3,048 to 3,810 kg), based on a total towing time of 84 hours and a maximum average catch rate of 80 to 100 lb (36.3 to 45.4 kg) per 4-hour tow. Projections for average catch rates in the experimental net under experimental towing conditions are 5,040 lb (2,286 kg) based 84-hours total tow time, assuming that approximately 80 percent of the cod escape and that the catch composition on the bottom is 50 percent flounder and 50 percent cod and the total catch retained is 60 lb (27.2 kg)–50 lb flounder, 10 lb cod. The current net design has about a 20 percent bycatch of all other incidental species, including crabs, lobsters, whiting, and hake.

All data will be recorded by a biologist who will perform statistical analyses on significance demonstrating the ability of the experimental net configuration to separate cod bycatch from the targeted catch, flounder. A report and a short video to show the grate under construction and functioning in the water will be supplied to the Northeast Consortium. It is projected that this study may lead to other studies to further refine and develop a modified trawl net that will selectively fish for flatfish, while avoiding roundfish species (i.e., cod and monkfish) in soft mud and sandy bottom habitats.

EFPs would be issued to two participating vessels in accordance with the conditions stated therein, and will exempt vessels from the gear restrictions and DAS requirements of the Fishery Management Plan for the Northeast Multispecies Fishery.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 6, 2000.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–28951 Filed 11–09–00; 8:45 am]

BILLING CODE: 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 102500A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a denial of a proposal for EFPs.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has denied the request to issue EFPs to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States due to enforcement difficulties. A delegation of the City of Gloucester, composed of representatives of the Commonwealth of Massachusetts, the Gloucester Mayor's Office, local industry, the Gloucester Fisheries Commission, and the Massachusetts Fisheries Recovery Commission, requested the issuance of EFPs to conduct a 3-month pilot study beginning October 1, 2000. The EFPs would have allowed commercial vessels to enter Gloucester Harbor with overages of haddock to seek refuge from unsafe weather conditions related to wind and sea state.

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Management Specialist, 978-281-9244.

SUPPLEMENTARY INFORMATION: On August 29, 2000, NMFS published notification of an application for an EFP to address safety issues associated with haddock trip limits (65 FR 52404). The EFP would have allowed commercial vessels to enter Gloucester Harbor with overages of haddock when unsafe conditions caused by wind or sea state prevent the vessels from remaining at sea. A more detailed description of the proposed EFP pilot program was contained in that notice and is not repeated here.

The Joint Enforcement Oversight and Advisory Panel (Enforcement Committee), consisting of members of the NMFS Office of Enforcement, the U.S. Coast Guard, and the Commonwealth of Massachusetts, met on September 21, 2000, to discuss the EFP pilot program application. The Enforcement Committee passed a motion that was carried forward to the New England Fishery Management Council (Council) that the pilot program not be approved in its current form due to the difficulty in adequately enforcing the EFP conditions. The Council agreed that the pilot program should not be pursued in its current form and advised NMFS not to approve the pilot program. Therefore, because of the enforcement concerns, and the recommendation of the Council, the Regional Administrator has denied the EFP application.

Additionally, because projections of the total allowable catch (TAC) target for haddock indicate that the haddock target TAC will not be harvested by the end of the current fishing year (April 30, 2001), the Regional Administrator has recently suspended the daily trip limits for haddock through February 28, 2001 (65 FR 63549, October 24, 2000), while maintaining the per trip maximum possession limit, as authorized under 50 CFR 648.86(a)(iii)(B). Eliminating the daily trip limit for haddock during the period when weather-related sea conditions have historically been the worst also eliminates the need for vessels fishing for haddock to wait out hazardous weather conditions at sea and relieves the need for the proposed EFP.

Dated: November 6, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–28954 Filed 11–09–00; 8:45 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 65, No. 219

Monday, November 13, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–098–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations intended to prevent the introduction of fruit flies from Hawaii onto the mainland United States.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by January 12, 2001.

ADDRESSES: Please send your comment and three copies to:

Docket No. 00–098–1, Regulatory Analysis and Development

PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–098–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information regarding the interstate movement of fruits and vegetables from Hawaii, contact Ms. Donna L. West, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Fruit from Hawaii.

OMB Number: 0579–0123.

Expiration Date of Approval: November 30, 2000.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection & Quarantine Division (PPQ) of the United States Department of Agriculture's Animal and Plant Health Inspection Service regulates the interstate movement of fruits and vegetables from Hawaii to prevent the spread of the Mediterranean fruit fly, the melon fruit fly, the Oriental fruit fly, and the Malaysian fruit fly pests that occur in Hawaii and that could cause millions of dollars in damage to U.S. agriculture if they become established on the mainland United States. These regulations are at 7 CFR, part 318, §§ 318.13 through 318.13–17.

We have in place regulations designed to facilitate the movement of abui, atemoya, bananas, longan, rambutan, sapodilla, durian, papayas, carambolas, litchis, and other fruits and vegetables from Hawaii while continuing to provide protection against the spread of fruit flies from Hawaii to the mainland United States. Specifically, our regulations provide for irradiation of this fruit in Hawaii prior to being moved to the mainland United States. In addition, the regulations allow abui, atemoya, bananas, longan, rambutan, sapodilla, papayas, carambolas, litchis that have not been irradiated in Hawaii to be moved to non-fruit fly supporting areas of the mainland United States for irradiation treatment. The regulations also allow durian (which is not a fruit fly host) to be moved from Hawaii to the mainland United States provided it is inspected by an authorized inspector in Hawaii and found to be free of certain plant pests.

Regulating the movement of this fruit from Hawaii to the mainland United States requires us to engage in a number of information collection activities, including the use of certificates, limited permits, compliance agreements, requests for treatment facility approval, requests for certification and recertification of testing equipment, and recordkeeping systems.

We are asking the Office of Management and Budget (OMB) to approve, for an additional 3 years, our use of these information collection activities in connection with our program to facilitate the interstate movement of abui, atemoya, bananas, longan, rambutan, sapodilla, durian, papayas, carambolas, litchis, and other fruits and vegetables from Hawaii with minimal risk of introducing destructive fruit flies onto the mainland United States.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our Agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Fruit and vegetable producers, shippers, importers, exporters, irradiation facility personnel, and State plant regulatory officials.

Estimated annual number of respondents: 300.

Estimated annual number of responses per respondent: 10

Estimated annual number of responses: 3,000.

Estimated total annual burden on respondents: 750 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of November 2000 .

Bobby R. Acord

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–28971 Filed 11–9–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Determination of the 2000 Fiscal Year Interest Rates on Rural Telephone Bank Loans

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of 2000 fiscal year interest rates determined.

SUMMARY: In accordance with 7 CFR 1610.10, the Rural Telephone Bank (Bank) fiscal year 2000 cost of money rates have been established as follows: 6.01% and 6.05% for advances from the liquidating account and financing account, respectively (fiscal year is the period beginning October 1 and ending September 30).

Except for loans approved from October 1, 1987, through December 21, 1987, where borrowers elected to remain at interest rates set at loan approval, all loan advances made during fiscal year 2000 under Bank loans approved in fiscal years 1988 through 1991 shall bear interest at the rate of 6.01% (the liquidating account rate). All loan advances made during fiscal year 2000 under Bank loans approved during or after fiscal year 1992 shall bear interest at the rate of 6.05% (the financing account rate).

The calculation of the Bank's cost of money rates for fiscal year 2000 for the liquidating account and the financing account are provided in Tables 1 and 2. Since the calculated rates are greater than the minimum rate (5.00%) allowed under 7 U.S.C. 948(b)(3)(A), the cost of money rates for the liquidating account and financing account are set at 6.01% and 6.05%, respectively. The methodology required to calculate the cost of money rates is established in 7 CFR 1610.10(c).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1590, South Building, Washington, DC 20250, telephone number (202) 720–9556.

SUPPLEMENTARY INFORMATION: The Federal Credit Reform Act of 1990 ("Credit Reform") (2 U.S.C. 661a, *et seq.*) implemented a system to reform the budgetary accounting and management of Federal credit programs. Bank loans approved on or after October 1, 1991, are accounted for in a different manner than Bank loans approved prior to fiscal year 1992. As a result, the Bank must calculate two cost of money rates: (1) the cost of money rate for advances made from the liquidating account (advances made during fiscal year 2000 on loans approved prior to fiscal year 1992) and (2) the cost of money rate for advances made during fiscal year 2000 on loans approved on or after October 1, 1991 (otherwise referred to as loans from the financing account).

The cost of money rate methodology is the same for both accounts. It develops a weighted average rate for the Bank's cost of money considering total fiscal year loan advances; the excess of fiscal year loan advances over amounts received in the fiscal year from the issuance of Class A, B, and C stocks, debentures and other obligations; and the costs to the Bank of obtaining funds from these sources.

During fiscal year 2000, the Bank was authorized to pay the following dividends: the dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act (RE Act); no dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 5.65%.

Sources and Costs of Funds—Liquidating Account

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 2000. Advances for the purchase of Class B stock and cash purchases for Class B stock were $496,982. Rescissions of loan funds advanced for Class B stock amounted to $195,750. Thus, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $301,232 ($496,982–$195,750). The amount received by the Bank in fiscal year 2000 from the issuance of Class C stock was $12,684.

The Bank did not issue debentures or any other obligations related to the liquidating account in fiscal year 2000. Consequently, no cost was incurred related to the issuance of debentures subject to 7 U.S.C. 948(b)(3)(D).

The excess of fiscal year 2000 loan advances from the liquidating account over amounts received from issuance of stocks, debentures, and other obligations amounted to $10,122,706. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the liquidating account is also provided in Table 1. The methodology required to perform this calculation is described in 7 CFR 1610.10(c). The cost for money rates for fiscal years 1974 through 1987 are defined in section 408(b) of the RE Act, as amended by Pub. L. 100–203, and are listed in 7 CFR 1610.10(c) and Table 1 herein.

Sources and Costs of Funds—Financing Account

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 2000. Advances for the purchase of Class B stock and cash purchases for Class B stock were $1,495,327. Since there were no rescissions of loan funds advanced for Class B stock, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $1,495,327. The Bank did not receive any amounts in fiscal year 2000 from the issuance of Class C stock.

During fiscal year 2000, issuance of debentures or any other obligations related to the financing account were $28,384,191 at an interest rate of 6.36%.

The excess of fiscal year 2000 loan advances from the financing account over amounts received from issuance of stocks, debentures, and other obligations amounted to $1,522,349. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. § 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the financing account is also provided in Table 2. The methodology required to perform this calculation is described in 7 CFR 1610.10(c).

Dated: October 3, 2000.

Christopher A. McLean,

Governor, Rural Telephone Bank.

BILLING CODE 3410–15–P

TABLE 1

Rural Telephone Bank Cost of Money Rate - Liquidating Account:

FY 2000 Source of Bank Funds	(a) Amount	(b) Cost	(c) (a) x (b)	(c) / Advances
Issuance of Class A Stock	$ -	2.00%	$ -	0.0000%
Issuance of Class B Stock	$ 301,232	0.00%	$ -	0.0000%
Issuance of Class C Stock	$ 12,684	5.65%	$ 717	0.0069%
Issuance of Debentures and Other Obligations	$ -		$ -	0.0000%
Excess of Total Advances Over Issuances	$ 10,122,706	6.19%	$ 626,596	6.0038%
Total FY 2000 Advances	$ 10,436,622	CALCULATED COST OF MONEY RATE =		6.01%
		MINIMUM RATE ALLOWABLE =		5.00%

Rural Telephone Bank Historical Cost of Money Rate - Liquidating Account:

Fiscal Year	(a) Cost of Money	(b) Advances	(c) (a) X (b)	(c) / Total Advances
FY 1974	5.01%	$ 111,022,574	$ 5,562,231	0.233%
FY 1975	5.85%	$ 130,663,197	$ 7,643,797	0.320%
FY 1976	5.33%	$ 99,915,066	$ 5,325,473	0.223%
FY 1977	5.00%	$ 80,907,425	$ 4,045,371	0.170%
FY 1978	5.87%	$ 142,297,190	$ 8,352,845	0.350%
FY 1979	5.93%	$ 130,540,067	$ 7,741,026	0.324%
FY 1980	8.10%	$ 199,944,235	$ 16,195,483	0.679%
FY 1981	9.46%	$ 148,599,372	$ 14,057,501	0.589%
FY 1982	8.39%	$ 112,232,127	$ 9,416,275	0.395%
FY 1983	6.99%	$ 93,402,836	$ 6,528,858	0.274%
FY 1984	6.55%	$ 90,450,549	$ 5,924,511	0.248%
FY 1985	5.00%	$ 72,583,394	$ 3,629,170	0.152%
FY 1986	5.00%	$ 71,582,383	$ 3,579,119	0.150%
FY 1987	5.00%	$ 51,974,938	$ 2,598,747	0.109%
FY 1988	5.00%	$ 119,488,367	$ 5,974,418	0.250%
FY 1989	5.00%	$ 97,046,947	$ 4,852,347	0.203%
FY 1990	5.00%	$ 107,694,991	$ 5,384,750	0.226%
FY 1991	5.43%	$ 163,143,075	$ 8,858,669	0.371%
FY 1992	6.14%	$ 84,940,822	$ 5,215,366	0.219%
FY 1993	6.05%	$ 84,605,366	$ 5,118,625	0.215%
FY 1994	6.15%	$ 54,530,897	$ 3,353,650	0.141%
FY 1995	6.04%	$ 35,967,133	$ 2,172,415	0.091%
FY 1996	6.05%	$ 30,965,187	$ 1,873,394	0.079%
FY 1997	5.98%	$ 32,602,587	$ 1,949,635	0.082%
FY 1998	5.96%	$ 20,673,798	$ 1,232,158	0.052%
FY 1999	6.01%	$ 17,796,518	$ 1,069,571	0.045%
	TOTAL ADVANCES	$ 2,386,571,041	COST OF MONEY	6.19%

TABLE 2

Rural Telephone Bank Cost of Money Rate - Financing Account:

FY 2000 Source of Bank Funds	(a) Amount	(b) Cost	(c) (a) x (b)	(c) / Advances
Issuance of Class A Stock	$ -	2.00%	$ -	0.0000%
Issuance of Class B Stock	$ 1,495,327	0.00%	$ -	0.0000%
Issuance of Class C Stock	$ -	5.65%	$ -	0.0000%
Issuance of Debentures and Other Obligations	$ 28,384,191	6.36%	$ 1,805,235	5.7488%
Excess of Total Advances Over Issuances	$ 1,522,349	6.29%	$ 95,756	0.3049%
Total FY 2000 Advances	$ 31,401,867	CALCULATED COST OF MONEY RATE =		6.05%
		MINIMUM RATE ALLOWABLE =		5.00%

Rural Telephone Bank Historical Cost of Money Rate - Financing Account:

Fiscal Year	(a) Cost of Money	(b) Advances	(c) (a) X (b)	(c) / Total Advances
FY 1992	7.38%	$ 4,056,250	$ 299,351	0.109%
FY 1993	6.35%	$ 23,839,200	$ 1,513,789	0.553%
FY 1994	6.40%	$ 56,838,902	$ 3,637,690	1.328%
FY 1995	6.88%	$ 37,161,517	$ 2,556,712	0.933%
FY 1996	6.42%	$ 44,536,621	$ 2,859,251	1.044%
FY 1997	6.54%	$ 34,368,726	$ 2,247,715	0.821%
FY 1998	5.71%	$ 34,446,456	$ 1,966,893	0.718%
FY 1999	5.54%	$ 38,685,732	$ 2,143,190	0.782%
	TOTAL ADVANCES	$ 273,933,406	COST OF MONEY	6.29%

[FR Doc. 00–28970 Filed 11–09–00; 8:45 am]

BILLING CODE 3410–15–C

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

DATES: *Comments must be received on or before:* December 12, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.
2. The action will result in authorizing small entities to furnish the commodity and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Line, Multi-Loop

1670–01–062–6301
1670–01–062–6303
1670–01–062–6306
1670–01–062–6309
1670–01–062–6312
1670–01–062–6313
1670–01–064–4451
1670–01–064–4452
1670–01–064–4454
1670–01–107–7652
NPA: Industrial Opportunities, Inc., Marble, North Carolina

Services

Administrative Services, U.S. Department of Agriculture, Farm Service Agency, Kansas City, Missouri
NPA: Independence & Blue Springs Industries, Inc., Independence, Missouri

Administrative Services, U.S. Department of Agriculture, Farm Service Agency, Kansas City, Missouri
NPA: St. Vincent DePaul Rehabilitation Services of Texas, Inc., Austin, Texas

Administrative Services, U.S. Department of Agriculture, Rural Development Agency, St. Louis, Missouri
NPA: St. Vincent DePaul Rehabilitation Services of Texas, Inc., Austin, Texas

Food Service, Kirtland Air Force Base, New Mexico
NPA: RCI, Inc., Albuquerque, New Mexico

Janitorial/Custodial

Department of the Treasury, Federal Law Enforcement Training Center, Bldgs. 161, 163, 165, 167, Glynco, Georgia
NPA: Goodwill Industries of the Coastal Empire, Inc., Savannah, Georgia

Warehousing & Distribution Service

Defense Supply Center—Philadelphia, Philadelphia, Pennsylvania
NPA: The Travis Association for the Blind Austin, Texas

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodity and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Commodity

Cutlery, Heavy Duty

M.R. 533
M.R. 534
M.R. 535

Applicator, Wax

M.R. 922

Louis R. Bartalot,
Deputy Director (Operations).
[FR Doc. 00–28999 Filed 11–9–00; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 12, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 25 and September 15, 2000 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 51794 and 55938) of proposed additions to the Procurement List.

Additions

The following comments pertain to Mailroom Operation/Messenger Service, Peace Corps, Washington, DC: Comments were received from the current contractor for this mail operations service. The contractor stated that its staff providing this service are local minority persons, most of whom are the sole support of their families. The contractor indicated that these persons would probably be laid off, as the contractor is uncertain it can replace the work being lost. The contractor also indicated that this service and two other contracts expiring this year represent a significant portion of its business.

According to information the contractor gave the Committee, the portion of its total sales represented by this service does not reach a percentage which the Committee would consider to constitute severe adverse impact on a contractor. The contractor has not provided any information which would indicate, particularly in the current good economy, that the uncertainty of its ability to replace other contracts expiring this year should cause the Committee to give more weight to the impact this Procurement List addition will have on the contractor. Consequently, the Committee does not believe this addition will have a severe adverse impact on the contractor.

The nonprofit agency which will perform this service plans to retain approximately half the contractor's current work force. The nonprofit agency also plans to employ more workers with severe disabilities than contractor workers that will be displaced. Because the unemployment rate for people with severe disabilities remains far above that of the workers being displaced, the Committee believes the contractor workers are more likely to find other employment than the people with severe disabilities would find if this service were not added to the Procurement List.

The following material pertains to all of the items being added to the Procurement List: After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will not have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Services

Mailroom Operation/Messenger Service

U.S. Peace Corps Headquarters, 1111 20th Street, NW, Washington, DC

Mailroom Operation

New Orleans Strategic Petroleum Reserve (SPR) Site, New Orleans, Louisiana

Switchboard Operation

Department of Justice, FBI Academy, Quantico, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,
Deputy Director (Operations).
[FR Doc. 00–29000 Filed 11–9–00; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 110700B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fisheries Capacity Reduction Program Advanced Referenda and Other Requirements.

Form Number(s): None.

OMB Approval Number: 0648-0413.

Type of Request: Regular submission.

Burden Hours: 3,200.

Number of Respondents: 800.

Average Hours Per Response: 4 hours.

Needs and Uses: NOAA conducts a program to reduce excess fishing capacity by paying fishermen to (1) surrender their fishing permits or (2) both surrender their permits and either scrap their vessels or restrict vessel titles to prevent fishing. Separately approved requirements for the program included a referendum to be held at a certain point in the process. Comments on the proposed rule indicated that additional referenda may be needed. NOAA also decided that certain requirements that were considered implicitly part of previous requirements need to be made explicit. The submission to OMB covers the additional referenda and those other requirements.

Affected Public: Business and other for-profit organizations, individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: November 3, 2000.

Gwellnar Banks,
Management Analyst, Office of the Chief Information Officer.
[FR Doc. 00–28953; Filed 11–9–00; 8:45am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Office of Inspector General

Performance Review Board Membership

The following individuals are eligible to serve on the Performance Review Board (PRB) in accordance with the Department of Commerce Senior Executive Service Performance Appraisal System and the Office of Inspector General's PRB Charter:

Edward L. Blansitt, Deputy Inspector General
Elizabeth T. Barlow, Counsel to the Inspector General

Jill A. Gross, Assistant Inspector General for Inspections & Evaluations
Judith J. Gordon, Assistant Inspector General for Systems Evaluation
Stephen E. Garmon, Assistant Inspector General for Investigations
Robert Seabrooks, Assistant Inspector General for Auditing, Small Business Administration

Denise A. Yaag,

Executive Secretary, Performance Review Board, Office of Inspector General.

[FR Doc. 00–28949 Filed 11–9–00; 8:45 am]

BILLING CODE 3810-66-M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 001102308–0308–01]

RIN Number 0607–XX58

2000 Company Organization Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: The U.S. Census Bureau is conducting the 2000 Company Organization Survey. The survey's data are needed, in part, to update the multiestablishment companies in the Business Register. The survey, which has been conducted annually since 1974, is designed to collect information on the number of employees, payroll, geographic location, current operational status, and kind of business for the establishments of multilocation companies. We have determined that annual data collected from this survey are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from this survey are not available from any other source.

FOR FURTHER INFORMATION CONTACT: Paul Hanczaryk, Economic Planning and Coordination Division, U.S. Census Bureau, Room 2747, Federal Building 3, Washington, DC 20233–6100, telephone (301) 457–4058.

SUPPLEMENTARY INFORMATION: Title 13, United States Code (U.S.C.), Sections 182, 195, 224, and 225, authorize the Census Bureau to undertake surveys necessary to furnish current data on the subjects covered by the major censuses. This survey will provide continuing and timely national statistical data for the period between economic censuses. The next economic censuses will be conducted for the year 2002. The data collected in this survey will be within the general scope, type, and character of those that are covered in the economic censuses.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the OMB approved the survey on November 3, 1999, under OMB control Number 0607–0444. We will furnish report forms to organizations included in the survey, and additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

I have, therefore, directed that the 2000 Company Organization Survey be conducted for the purpose of collecting these data.

Dated: November 3, 2000.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 00–28874 Filed 11–9–00; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium from the People's Republic of China; Continuation of Antidumping Duty Order, Correction

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Correction to Continuation of Antidumping Duty Order: Pure Magnesium from the People's Republic of China.

SUMMARY: On October 27, 2000, the Department of Commerce ("the Department"), published in the **Federal Register** the continuation of the antidumping duty order on pure magnesium from the People's Republic of China.[1] Subsequent to the publication of the continuation of the antidumping duty order, we identified an error in the "Determination" section of the notice. Therefore, we are correcting this error.

The error lies in the last sentence of the last paragraph of the determination section: "Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than April 2005." The sentence should be replaced with "Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than September 2005."

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy for Imports Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone (202) 482–5050.

Dated: November 3, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–29006 Filed 11–9–00; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Wisconsin—Madison; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 00–020. *Applicant:* University of Wisconsin—Madison, Madison, WI 53706–1490. *Instrument:* Zebra Fish Tank Installation. *Manufacturer:* Aquarien-Bau Schwarz, Germany. Date of Denial Without Prejudice to Resubmission: August 2, 2000.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 00–29007 Filed 11–9–00; 8:45 am]

BILLING CODE 3510-DS-P

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[1] See Continuation of Antidumping Duty Order: Pure Magnesium From the People's Republic of China, 65 FR 64422 (October 27, 2000).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[110700A]

Submission for OMB Review; Comment Request

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: At-Sea Scale Certification Program.

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Form Number(s): None.

OMB Approval Number: 0648-0330.

Type of Request: Regular submission.

Burden Hours: 3,508.

Number of Respondents: 49.

Average Hours Per Response: 45 minutes for a daily scale test, 6 minutes per day to retain printed scale output, 6 minutes to request a scale inspection, 6 minutes to attach a scale approval sticker, 6 minutes for an application for authority to inspect scales, 2 hours for a request for an observer station inspection, and 30-190 hours for scale type evaluations.

Needs and Uses: Fishermen on certain Federally-regulated fisheries off Alaska must weigh their catch at sea on approved scales. Vessels must request inspection of scales and observer stations, test their scales daily, and maintain output from the scales. Related information collection requirements are requests from scale manufacturers to have their scale approved, and requests from non-NOAA scale inspectors to have authority to conduct scale inspections.

Affected Public: Business and other for-profit organizations.

Frequency: Daily, annually, and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Forms Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: November 3, 2000.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–28952 Filed 11–9–00; 8:45 am]

BILLING CODE: 3510-22-S

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2001 Diagnosis Related Group (DRG) Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of DRG revised rates.

SUMMARY: This notice describes the changes made to the TRICARE/CHAMPUS DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS).

It also provides the updated fixed loss cost outlier threshold, cost-to-charge ratios and the Internet address for accessing the updated adjusted standardized amounts. DRG relative weights, and beneficiary cost-share per diem rates to be used for FY 2001 under the TRICARE/CHAMPUS DRG-based payment system.

EFFECTIVE DATES: The rates, weights and Medicare PPS changes which affect the TRICARE/CHAMPUS DRG-based payment system contained in this notice are effective for admissions occurring on or after October 1, 2000.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9043. For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238. The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, Medical Benefits and Reimbursement Systems, TMA, telephone (303) 676–3627.

To obtain copies of this document, see the **ADDRESSES** section above. Questions regarding payment of specific claims under the TRICARE/CHAMPUS DRG-based payment system should be addressed to the appropriate contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), October 22, 1990 (55 FR 42560), and September 10, 1998 (63 FR 48439).

An explicit tenet of these final rules, and one based on the statute authorizing the use of DRGs by TRICARE/CHAMPUS, is that the TRICARE/CHAMPUS DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the TRICARE/CHAMPUS system will follow the same rules that apply to the Medicare PPS. HCFA publishes these changes annually in the **Federal Register** and discusses in detail the impact of the changes.

In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the TRICARE/CHAMPUS DRG-Based Payment System

Following is a discussion of the changes the Health Care Financing Administration (HCFA) has made to the Medicare PPS that affect the TRICARE/CHAMPUS DRG-based payment system.

A. DRG Classifications

Under both the Medicare PPS and the TRICARE/CHAMPUS DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the TRICARE/CHAMPUS DRG-based payment system is the same as the current Medicare Grouper with two modifications. The TRICARE/CHAMPUS system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and has implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. For admissions occurring on or after October 1, 1995, the CHAMPUS grouper hierarchy logic was changed so the age split (age <29 days) and assignments to MDC 15 occur before assignment of the PreMDC DRGs. This resulted in all neonate tracheostomies and organ transplants to be grouped to MDC 15 and not to DRGs

480–483 or 495. For admissions occurring on or after October 1, 1998, the CHAMPUS grouper hierarchy logic was changed to move DRG 103 to the PreMDC DRGs and to assign patients to PreMDC DRGs 480, 103 and 495 before assignment to MDC 15 DRGs and the neonatal DRGs.

For FY 2001, HCFA will implement classification changes, including surgical hierarchy changes. The CHAMPUS Grouper will incorporate all changes made to the Medicare Grouper.

B. Wage Index and Medicare Geographic Classification Review Board Guidelines

TRICARE/CHAMPUS will continue to use the same wage index amounts used for the Medicare PPS. In addition, TRICARE/CHAMPUS will duplicate all changes with regard to the wage index for specific hospitals that are redesignated by the Medicare Geographic Classification Review Board.

C. Hospital Market Basket

TRICARE/CHAMPUS will update the adjusted standardized amounts according to the final updated hospital market basket used for the Medicare PPS according to HCFA's August 1, 2000, final rule.

D. Outlier Payments

Since TRICARE/CHAMPUS does not include capital payments in our DRG-based payments, we will use the fixed loss cost outlier threshold calculated by HCFA for paying cost outliers in the absence of capital prospective payments. For FY 2001, the fixed loss cost outlier threshold is based on the sum of the applicable DRG-based payment rate plus any amounts payable for IDME plus a fixed dollar amount. Thus, for FY 2001, in order for a case to qualify for cost outlier payments, the costs must exceed the TRICARE/CHAMPUS DRG base payment rate (wage adjusted) for the DRG plus the IDME payment plus $16,036 (wage adjusted). The marginal cost factor for cost outliers continues to be 80 percent.

Blood Clotting Factor

For FY 2001, TRICARE/CHAMPUS will use the following HCPCS codes and payment rates for blood clotting factors:

	Per unit
J7190 Factor VIII (antihemophilic factor—human)	$0.85
J7191 Factor VIII (antihemophilic factor—porcine)	2.09
J7192 Factor VIII (antihemophilic factor—recombinant)	1.12
J7194 Factor IX (complex)	0.31
J7198 Anti-inhibitor	1.43
Q0160 Factor IX (antihemophilic factor, purified, Non-recombinant)	1.05
Q0161 Factor IX (antihemophilic factor, recombinant)	1.12

Indirect Medical Education (IDME) Adjustment

The Balanced Budget Refinement Act of 1999, modified the transition for the IDME adjustment that was established by the Balanced Budget Act of 1997. The new multiplier for the IDME adjustment factor for TRICARE/CHAMPUS for FY 2001 is 1.16.

II. Cost to Charge Ratio

For FY 2001, the cost-to-charge ratio used for the TRICARE/CHAMPUS DRG-based payment system will be 0.5353, which is increased to 0.5408 to account for bad debts. This shall be used to calculate the adjusted standardized amounts and to calculate cost outlier payments, except for children's hospitals. For children's hospital cost outliers, the cost-to-charge ratio used is 0.5913.

III. Updated Rates and Weights

The updated rates and weights are accessible through the Internet at *www.tricare.osd.mil* under the heading TRICARE Provider Information. Table 1 provides the ASA rates and Table 2 provides the DRG weights to be used under the TRICARE/CHAMPUS DRG-based payment system during FY 2001 and which is a result of the changes described above. The implementing regulations for the TRICARE/CHAMPUS DRG-based payment system are in 32 CFR part 199.

Dated: November 6, 2000.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 00–28866 Filed 11–9–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Planning and Steering Advisory Committee (Navy)

ACTION: Notice.

SUMMARY: The Planning and Steering Advisory Committee (PSAC) has been renewed in consonance with the public interest, and in accordance with the provisions of Public Law 92–463, the "Federal Advisory Committee Act."

The PSAC provides an avenue of communications by which a distinguished group representing scientific, academic engineering, and intelligence communities advises the Chief of Naval Operations on questions related to SSBN Security. Their mission is to make in-depth technical assessments of U.S. and foreign threat ASW developments and related technologies, to critically review programs which potentially impact SSBN survivability, and to evaluate intelligence efforts to identify and define ASW and SSBN survivability threats.

The Committee will continue to be composed of selected Group members to conduct detailed examinations of matters related to SSBN security.

FOR FURTHER INFORMATION CONTACT: Please contact Laura Wurzer, telephone: 301–693–0934.

Dated: November 6, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–28863 Filed 11–9–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Telecommunications Service Priority System Oversight Committee (TSPOC)

ACTION: Notice.

SUMMARY: The TSPOC has been renewed in consonance with the public interest, and in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act."

The TSPOC provides advice and recommendations to the Secretary of Defense regarding the priority treatment of national security and emergency preparedness telecommunications services. Functions include evaluating the currency of policies, procedures and system documentation requirements, and assessing the adequacy of the system in the light of technological advances.

The TSPOC will continue to be composed of 18 members, both federal, state and local government, and non-government individuals, who are experts in telecommunications services. Efforts will be made to ensure that there is a fairly balanced membership in terms of the functions to be performed and the interest groups represented.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Bea, National Communications System, Defense Information Systems Agency, telephone: 703–607–4933.

Dated: November 6, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–28862 Filed 11–9–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. Notice of this meeting is required under the Federal Advisory Committee Act. (Pub. L. 92–463).

DATES: November 27 and 28, 2000.

ADDRESSES: RAND, 1200 South Hayes Street, Arlington, VA 22202–5050.

PROPOSED SCHEDULE AND AGENDA: Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet from 8:30 a.m. until 5:30 p.m. on November 27, 2000 and from 8:30 a.m. until 3:30 p.m. on November 28, 2000. The meeting will include classified briefings on cyber terrorism and therefore portions of the meeting will be closed to the public. Time will be allocated for public comments by individuals or organizations.

FOR FURTHER INFORMATION CONTACT: RAND provides information about this Panel on its web site at http://www.rand.org/organization/nsrd/terrpanel; it can also be reached at (703) 413–1100 extension 5282. Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Priscilla Schlegel, RAND, 1200 South Hayes Street, Arlington, VA 22202–5050. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: November 6, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–28861 Filed 11–9–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of Meeting Cancellation.

SUMMARY: On October 12, 2000, 65 FR 60652, the Department of Defense published a notice to announce a meeting of the Defense Partnership Council to be held November 9, 2000. This notice is to announce that the meeting is cancelled due to conflicts in members' schedules.

FOR FURTHER INFORMATION CONTACT: Mr. Ben James, Chief, Labor and Employee Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Boulevard, Suite B–200, Arlington, VA 22209–5144, (703) 696–1450.

Dated: November 6, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 00–28865 Filed 11–9–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense, Advisory Committee on Women in the Services.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming Quarterly Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the Executive Committee Meeting is to provide transitional training to the incoming 2001 Executive Committee members and an Awards Presentation for the 2000 Executive Committee members. The Requests for Information Review and the Awards presentation hosted by the Secretary of Defense are open to the public. All other portions are for training only and are not open to the public.

DATES: December 4, 2000, 10:00 a.m.–4:00 p.m.

ADDRESSES: SECDEF Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Susan E. Kolb, ARNGUS, DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: Meeting agenda:

Monday, December 4, 2000

Time and Event

10:00 a.m.: Requests for Information Review
1:45 p.m.: Executive Committee Awards Presentation (Secretary of Defense Conference—5C1042, Please be seated by 1:30 p.m.)

Dated: November 6, 2000.

L.M. Bynum,

Alternate Federal Register Liaison, Department of Defense.

[FR Doc. 00–28864 Filed 11–9–00; 8:45 am]

BILLING CODE 5001–10–M

Delaware River Basin Commission

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, November 15, 2000. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Sheraton Bucks County Hotel, 400 Oxford Valley Road, Langhorne, Pennsylvania.

The conference among the Commissioners and staff will begin at 9:30 a.m. Topics of discussion will include progress reports on the Commission's Comprehensive Plan and Flow Needs Study; a status report on a resolution amending water usage reporting requirements; a proposal for the DRBC to continue to house the Delaware Estuary Program Coordinator and perform certain other administrative functions; and, time permitting, a proposal to institute project review upon retirement of entitlements. Summaries of the following five meetings will be presented: The Water Quality Advisory Committee meeting of October 4; the Toxics Advisory Committee meetings of October 6, October 18 and November 2; and the Christina Basin Policy Committee meeting of November 3. Also scheduled for the conference session is a dialogue with citizens from the West Branch fishery.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include, in addition to the dockets listed below, two proposed resolutions—one amending the Comprehensive Plan with respect to recreation areas in the Commonwealth of Pennsylvania and another adopting the Commission's FY 2002 budgets.

The dockets scheduled for public hearing will be as follows:

1. *Pennsylvania Department of Conservation and Natural Resources D–80–7 CP RENEWAL 3.* A renewal of a ground water withdrawal project to supply up to 3 million gallons (mg)/30 days of water to French Creek State Park from Wells A and B in the Hammer Creek Formation. The applicant requests that the total withdrawal from all wells remain limited to 3 mg/30 days. The project is located in Union Township, Berks County in the Southeastern Pennsylvania Ground Water Protected Area.

2. *PSEG Nuclear LLC D–90–71 RENEWAL.* A renewal of a ground water withdrawal project to supply up to 43.2 mg/30 days of water for use at the applicant's Salem and Hope Creek nuclear powered electric generating stations from existing Wells Nos: PW–2 and PW–3 in the Mount Laurel-Wenonah aquifer; Well No. PW–6 in the Middle Raritan aquifer; and Wells Nos. PW–5, HC–1 and HC–2 in the Upper Raritan aquifer. No increase in maximum allocation is proposed, and the water will continue to be used mainly for on-site potable supply as well as industrial processes. The project is located in Lower Alloways Creek Township, Salem County, New Jersey.

3. *City of Wilmington D–98–26 CP.* A project to rerate the applicant's existing sewage treatment plant (STP) from an average monthly flow of 90 million gallons per day (mgd) to a yearly average flow of 105 mgd, with a maximum allowable monthly flow of 134 mgd to treat additional Combined Sewer Overflow. The STP is located in the City of Wilmington, New Castle County, Delaware, and will continue to serve most of northern New Castle County and provide advanced secondary treatment prior to discharge to the Delaware River in Water Quality Zone 5.

4. *Asbury Farms c/o The Cotton Group, Inc. D–98–52.* A ground water withdrawal project to supply up to 11 mg/30 days of water to the applicant's golf course from new holding Pond No. 1, supplemented as needed with water from new Well No. 1 in the Kittatinny Formation. The project is located in Washington Township, Warren County, New Jersey.

5. *Northampton, Bucks County Municipal Authority D–99–1 CP.* A ground water withdrawal project to supply up to 7.2 mg/30 days of water to the applicant's public water distribution system from new Well No. 16, and to retain the existing withdrawal limit from all wells at 66 mg/30 days. The project is located in Northampton Township, Bucks County in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Bucks County Water & Sewer Authority D–2000–22 CP.* A project to expand the applicant's existing Green Street sewage treatment plant from 0.7 mgd to 1.2 mgd. The STP is located off Green Street near the State Route 202 bypass in Doylestown Borough and Doylestown Township, Bucks County, Pennsylvania and will continue to provide advanced secondary treatment for Doylestown Borough and Doylestown Township. The STP will continue to discharge to Country Club Run, a tributary of Neshaminy Creek.

7. *Nova-Borealis Compounds LLC D–2000–39.* A ground water withdrawal project to supply up to 27 mg/30 days of water to the applicant's industrial facility from existing Wells Nos. 1, 2 and 3 in the Martinsburg Shale Formation, and to limit the withdrawal from all wells to 27 mg/30 days. The project is located in Mansfield Township, Warren County, New Jersey.

In addition to the public hearing, the Commission will address the following at its 1:30 p.m. business meeting: minutes of the September 28, 2000 business meeting; announcements; report on hydrologic conditions in the basin; reports by the Executive Director and General Counsel; and public dialogue.

Documents relating to the dockets and other items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 with any docket-related questions. Persons wishing to testify at this hearing are requested to register in advance with the Secretary at (609) 883–9500 ext. 203.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary, Pamela M. Bush, directly at (609) 883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY) to discuss how the Commission may accommodate your needs.

Dated: October 30, 2000.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 00–28875 Filed 11–9–00; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 12, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB.

Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 6, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision

Title: State Plan for Independent Living and Center for Independent Living Programs (SC)

Frequency: Annually

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions; Individuals or household; Businesses or other for-profit; Farms; Federal Government

Reporting and Recordkeeping Hour Burden:

Responses: 3,300

Burden Hours: 60

Abstract: Chapter 1 of Title VII of the Rehabilitation Act of 1973, as Amended (Act) authorizes financial assistance to States for providing, expanding and improving the provision of independent living services, to develop and support Statewide networks of Centers for Independent Living (CIL) , to improve working relationships among State Independent Living Services, CILs, Statewide Independent Living Councils, programs funded under other titles of the Act, and other programs that address issues relevant to individuals with disabilities funded by Federal and non-Federal authorities.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO__IMG__Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila__Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–28894 Filed 11–9–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 13, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB.

Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: November 6, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: The National Institute on Disability and Rehabilitation Research (NIDRR) Quality of Research Rating Scale.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden: Responses: 300; Burden Hours: 100.

Abstract: To assess quality of NIDRR funded research, a reliable, valid, and efficient instrument needs to be developed and tested. A form will be administered to 300 people. Responses will be analyzed for validity and reliability. If the results are satisfactory, the form will be used for future quality of research assessment.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–28893 Filed 11–9–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–00NT41003 entitled "Infrastructure Reliability for Natural Gas." Natural gas consumption in the U.S. is projected to reach or exceed 32 trillion cubic feet (TCF) per year by 2020, increasing from 22 TCF per year in 1997. In addition, potential lower emission targets for greenhouse gases could even increase the demand for natural gas as high as 35 TCF per year. Maintaining the integrity and efficiency of the gas infrastructure may be the most important challenge to achieving a substantial increase in gas deliverability given the age of the existing pipelines. Technological advances in materials, tools and operations will be needed to maintain the throughput of the current infrastructure and expansion for future system demands.

DATES: The solicitation will be available on the DOE/NETL's Internet address at http://www.netl.doe.gov/business on or about November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, Contract Specialist MS IO7, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507–0880, E-mail Address: csharp@netl.doe.gov, Telephone Number: 304–285–4442.

SUPPLEMENTARY INFORMATION: The purpose of the National Gas Infrastructure Reliability program is to fund research which encourages and promotes research and development efforts resulting in the development of technology which will place the necessary tools and materials into the hands of those who maintain and enhance the integrity and operational reliability of the Nation's natural gas transmission and distribution network. DOE is requesting proposals which support technology developments in the areas of both natural gas transmission and distribution infrastructure. Specifically, proposals are requested under the following topic areas:

1. The development of technology to ensure the integrity and reliability of the design, construction and operation of the natural gas transmission infrastructure;
2. The development of technology to ensure the integrity and reliability of the design, construction and operation of the natural gas distribution infrastructure; and
3. The development of technology which may crosscut topics 1 and 2.

It is anticipated that there will be multiple awards resulting from this solicitation. DOE has determined that a minimum cost share of 35% of the total cost is required for this solicitation research. At current planning levels, and subject to the availability of funds, DOE expects to provide up to approximately $10,000,000 to support work under this solicitation.

Prospective applicants who would like to be notified as soon as the solicitation is available should register at http://www.netl.doe.gov/business. Provide your E-mail address and click on the "Oil and Gas" technology choice located under the heading "Fossil Energy." Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public.

Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Morgantown, WV on November 2, 2000.

Randolph L. Kesling,

Director, Acquisition and Assistance Division.

[FR Doc. 00–28975 Filed 11–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, November 28, 2000, 10:00 a.m.–2:30 p.m.

ADDRESSES: Radisson Inn of Amarillo, East Wing Ballroom, I–40 & Lakeside, Amarillo, Texas 79108.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120; phone (806) 477–3125; fax (806) 477–5896 or e-mail *jjohnson@pantex.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

10:00 Agenda Review/Approval of Minutes
10:15 Co-Chair Comments
10:30 Task Force/Subcommittee Reports
11:00 Ex-Officio Reports
11:15 Updates—Occurrence Reports—DOE
11:45 Break for Lunch
12:45 Presentation (to be announced)
2:00 Questions
2:20 Public Questions/Comments
2:30 Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10:00 p.m. Monday through Thursday; 7:45 a.m. to 5:00 p.m. on Friday; 8:30 a.m. to 12:00 noon on Saturday; and 2:00 p.m. to 6:00 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 a.m. to 7:00 p.m. on Monday; 9:00 a.m. to 5:00 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on November 7, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–28978 Filed 11–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Hydrogen Technical Advisory Panel; Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Hydrogen Technical Advisory Panel. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, as amended), requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, November 14, 2000, 8:30 a.m.–5:45 p.m.

Wednesday, November 15, 2000, 8:30 a.m.–12:30 p.m.

ADDRESSES: Sunline Transit Authority, 32–505 Harry Oliver Trail, Thousand Palms, California 92296. Telephone: 760–343–3456.

FOR FURTHER INFORMATION CONTACT: Neil Rossmeissl, Designated Federal Officer, Hydrogen Program Manager, EE–15, Office of Power Technologies, Department of Energy, Washington, DC 20585; Telephone: 202–586–8668.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The major purpose of this meeting will be to hold a discussion on Local, State, and Federal Governments role in supporting and encouraging the transition to hydrogen energy systems.

Other topics included are: (1) Reauthorization of the Hydrogen Future Act, (2) California Air Resources Board (CARB) regulating situation, (3) report on the Las Vegas Blueprint Workshop, (4) report on the BP Amoco Workshop on Fuel Cell Vehicle Infrastructure, (5) report on Vision 21.

Tuesday, November 14, 2000

8:30 a.m.: Introduction and Opening Comments—D. Nahmias
8:40: HTAP Committee Reports:
—Coordination—H. Chum
—Scenario Planning— H. Wedda
—Fuel Choice—R. Nichols
9:10: State of California—Hydrogen Activities—Today and Tomorrow
—Reauthorization of the Hydrogen Future Act—H. Chum
—Keynote Address—K. Calvert (invited)
—California Air Resources Board—A. Lloyd
—California Energy Commission—D. Rohy
10:10: Break
10:20: Programs and Coordination Activities—Transportation:
—California Fuel Cell Partnership—J. Wallace (invited)
—Las Vegas Blueprint Meeting Report—C. Hammil
—Sunline Update—R. Cromwell
—BP Amoco Workshop Report—J. Rinker
12:00 p.m.: Lunch
1:00: DOE Program Report—S. Gronich
2:00: Systems Analysis Report—M. Mann
2:45: Vision 21: Perspectives and Prospects—H. Chambers
3:45: Break
4:00: Public Comments (5 minutes maximum per speaker) Audience
4:45: HTAP Deliberations
5:45: Adjourn

Wednesday, November 15, 2000

8:30 a.m.: HYFORUM Report:
—Conference Overview—D. Nahmias
—Hydrogen Across the Federal Government—H. Chum
9:30: Hydrogen Safety Documentary—W. Hoagland, S. Leach
10:00: Break
10:15: Aspen Clean Energy Roundtable—C. Gregorie Padro
11:00: Public Comments
11:30: HTAP Deliberations
12:30 p.m.: Adjourn

Public Participation: This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mr. Neil Rossmeissl's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentations in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that needed to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W. Washington, DC 20585 between 9:00 A.M. and 4:00 P.M., Monday through Friday, except Federal Holidays. Minutes will also be available by writing to Neil Rossmeissl, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or by calling (202) 586–8668.

Issued at Washington, DC on November 6, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–28976 Filed 11–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: Subject to timely enactment of legislation to reinstate the antitrust defense under section 252 of the Energy Policy and Conservation Act, a meeting of the Industry Advisory Board to the International Energy Agency (IEA) will be held on November 14, 2000, at the headquarters of the IEA in Paris, France in connection with a joint meeting of the IEA's Standing Group on Emergency Questions and Standing Group on Oil Markets.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: Subject to timely enactment of legislation to reinstate the antitrust defense under section 252 of the Energy Policy and Conservation Act (EPCA), the following meeting notice is provided, in accordance with section 252(c)(1)(A)(i) of the EPCA (42 U.S.C. 6272(c)(1)(A)(i)):

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on November 14, 2000, beginning at approximately 9 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the Standing Group on Oil Markets (SOM), which is scheduled to be held at the IEA on November 14 beginning at 2:30 p.m., including a preparatory encounter among company representatives on November 14 from approximately 9:00 a.m. to 9:15 a.m.

The Agenda for the preparatory encounter among company representatives is to elicit views regarding items on the SEQ/SOM's Agenda. The Agenda for the SEQ/SOM meeting is under the control of the SEQ/SOM. It is expected that the SEQ/SOM will follow the following:

Agenda

1. Current Oil Market Situation
2. Market Psychology: A Trader's Perspective
3. Heating Oil Situation and Possible Responses
   —Report on Results of Special Statistical Survey
   —Discussion on Possible IEA Response
4. Current Situation with Independent Storage

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, D.C., November 7, 2000.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 00–29068 Filed 11–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board; Meeting

Office of Energy Efficiency and Renewable Energy

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). Federal Advisory Committee Act (Public Law No. 92–463; 86 Stat. 770) requires that public notice be announced in the **Federal Register**.

DATES: November 30, 2000 from 8:00 AM to 5:00 PM, and December 1, 2000 from 8 a.m. to 1 p.m.

Place: Marriott at Metro Center, 775 12th Street, NW., Washington, DC 20005, Phone: 202/737–2200.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Building Technology, State, and Community Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE), Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Public Law 101–440).

Tentative Agenda:

- Joint meeting between incoming and outgoing Board, introduction of new members.
- Discussions with Energy Efficiency and Renewable Energy Deputy Assistant Secretaries.
- Energy Policy Discussion.
- National Lab Presentation.
- Review of STEAB contract support.
- STEAB Committee updates.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 6, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–28977 Filed 11–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–267–002]

ANR Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

November 6, 2000.

Take notice that on October 31, 2000, ANR Pipeline Company (ANR) tendered for filing as part of FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to be effective November 1, 2000.

Substitute Twenty-Eighth Revised Sheet No. 17

ANR states that the filing is being filed in compliance with the Commission's order dated May 31, 2000 at Docket No. RP00–267–000, See ANR Pipeline Company, 91 FERC ¶61,195. The Commission's order approved but suspended the effective date of ANR's proposed cashout price surchange from June 1, 2000 until November 1, 2000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28939 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–014]

Dominion Transmission, Inc.; Notice of Negotiated Rate

November 6, 2000.

Take notice that on October 31, 2000, Dominion Transmission, Inc. (DTI) tendered for filing the following tariff sheets for disclosure of a recently negotiated transaction with Central Hudson Enterprises Corporation, with an effective date of November 1, 2000, for the agreement:

Third Revised Sheet No. 1300
First Revised Sheet No. 1406
Original Sheet No. 1407

DTI states that the transaction includes a negotiated rate. Further, because the transaction includes a provision that may be a material deviation from the form of service agreement included in DTI's tariff, DTI has also filed the letter agreement between the parties.

DTI states that copies of the filing have been served on all parties on the official service list, DTI's customers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–28930 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–74–000 and RP97–406–025

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2000.

Take notice that on November 1, 2000, Dominion Transmission, Inc. (DTI), tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below in order to implement fully unbundled gathering and extraction rates, and to reflect the effects of that unbundling on transportation service rates.

Third Revised Sheet No. 31
Third Revised Sheet No. 32
Second Revised Sheet No. 33
Third Revised Sheet No. 34
Third Revised Sheet No. 35
Second Revised Sheet No. 37
First Revised Sheet No. 152
First Revised Sheet No. 153
First Revised Sheet No. 202
First Revised Sheet No. 203
First Revised Sheet No. 251
First Revised Sheet No. 252
First Revised Sheet No. 253
First Revised Sheet No. 1098
First Revised Sheet No. 1118
First Revised Sheet No. 1121
First Revised Sheet No. 1122
First Revised Sheet No. 1140
First Revised Sheet No. 1141
First Revised Sheet No. 1142

As required by the Commission's October 2, 2000 Order in Docket No. RP97–406, DTI filed cost-based gathering and products extraction rates in the format required by section 154.301 to 154.314 of the Commission's regulations. The rates are based on cost-of-service data reflecting a base period of the twelve months ended August 31, 2000, adjusted for certain changes that are known and measurable with reasonable accuracy and will occur during the nine months following the end of the base period. The fully unbundled rates and the tariff sheets implementing those rates are to become effective January 1, 2001.

DTI states that copies of its filing have been served on its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims/htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28943 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–51–003]

East Tennessee Natural Gas Company; Notice of Amendment

November 6, 2000.

Take notice that on October 27, 2000, East Tennessee Natural Gas Company (East Tennessee), Post Office Box 1642, Houston, Texas 77251–1642; filed a petition with the Commission in Docket No. CP00–51–003 to amend the Commission order issued in Docket Nos. CP00–51–000 and CP00–51–001,[1] pursuant to section 7(c) of the Natural Gas Act (NGA), to vacate, in part, authorization granted to construct, install, and operate various pipeline facilities as part of its Rocky Top Expansion Project and to revise the directed incremental transportation rate from $10.201 per Dekatherm of natural gas to $8.780 per Dekatherm, all as more fully set forth in the amendment which is open to the public for inspection.

East Tennessee states that it no longer needs to undertake the following activities at the following facilities because of changes in market conditions:

(1) Increase the horsepower of three existing Solar Saturn turbine compressor units at Compressor Station 3101 near Ridgetop, Robertson County, Tennessee;

(2) Uprate 4.56 miles of 22-inch diameter pipeline between Main Line Value (MLV) 3107–1, Overton County, Tennessee, and MLV 3107–1A in Overton County, Tennessee;

(3) Uprate 12.85 miles of 22-inch diameter pipeline between MLV 3107–1A, in Overton County, Tennessee, to MLV 3108–1 in Overton County, Tennessee;

(4) Uprate the dual 10-inch Tennessee River pipeline crossings and relocate MLV 3213–1A1 and MLV 3213–1A2 assemblies within 200 feet west of their existing locations at Mile Post 3.19 in Hamilton County, Tennessee;

(5) Uprate by hydrotesting the existing Chattanooga North, Red Bank, Chattanooga East, and Chattanooga Volunteer Ordinance meter stations on the 3200 Line in Hamilton County, Tennessee;

(6) Install new bidirectional metering facilities near MLV Site 3108–1 at the existing Citizens Meter Station in Morgan County, Tennessee; and,

(7) Uprate Value Section 3105–1 from Mile Post 11.20 to Mile Post 13.57 at Cumberland River in Jackson County, Tennessee.

East Tennessee states that the revised cost estimate for the proposed additions, modifications, and testing is $18,129,000, rather than the original cost estimate of $21,162,000 for the new facilities. Consequently, East Tennessee proposes a revised initial incremental transportation rate to reflect the reduced scope of the facilities to be constructed as part of the Rocky Top Expansion Project. Instead of the directed incremental transportation rate of $10.201 per Dekatherm of natural gas, East Tennessee now proposes to charge an incremental transportation rate of $8.780 per Dekatherm of natural gas under East Tennessee's Rate Schedule FT–A.

The project is more fully set forth in the application on file with the Commission and open for public inspection. The application may be viewed on the web at www.ferc.fed.us/

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[1] 92 FERC ¶ 61,165 (2000).

online/rims.htm (call [202] 208–2222 for assistance).

Any questions regarding this application should be directed to Steven E. Tillman, Director of Regulatory Affairs, East Tennessee Natural Gas Company, P.O. Box 1642, Houston, Texas 77251–1642; telephone number (713) 627–5113.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before November 27, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other inventor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for East Tennessee to appear or be represented at the hearing.

David P. Boergers,
Secretary.

[FR Doc. 00–28923 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–534–001]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2000.

Take notice that on November 1, 2000, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective November 2, 2000:

Eighteenth Revised Sheet No. 4

East Tennessee states that this filing is in compliance with the Commission's October 4, 2000 Letter Order in the above-referenced docket, which required East Tennessee to file a revised Sheet No. 4 to present the currently effective rates.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28942 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–346–026]

Equitrans, L.P.; Notice of Gathering Surcharge Report

November 6, 2000.

Take notice that on November 1, 2000, Equitrans, L.P. (Equitrans) submitted its stranded gathering surcharge report pursuant to Article IV of the Stipulation and Agreement (Stipulation) filed on January 22, 1999 and amended on March 31, 1999 in the above reference dockets.

Equitrans the purpose of this filing is for Equitrans to report its reconciliation of the amount collected during the surcharge period for standard gathering and the amount Equitrans was authorized to collect under the Stipulation.

Equitrans states that the total net amount collected, including interest, resulted in an under-recovery of $3,501.34. Because of the small amount of the under-recovery, Equitrans states that it is waiving its right to collect the under-recovery and will not direct bill its firm transportation customers for that amount.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 13, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28931 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–006]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreement

November 6, 2000.

Take notice that on October 31, 2000, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and CXY Energy Marketing (U.S.A.) Inc. (CXY) (FT Service Agreement). The FT Service Agreement being filed reflects a negotiated rate arrangement between Great Lakes and CXY commencing November 1, 2000.

Great Lakes states that the FT Service Agreement is being filed to implement a negotiated rate contract as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28934 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–18–005]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2000.

Take notice that on November 1, 2000, Iroquois Gas Transmission System, L.P. tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 6. Iroquois requests that the Commission approve the tariff sheet effective November 1, 2000.

Iroquois states that the revised tariff sheets reflect a negotiated rate between Iroquois and Duke Energy Trading and Marketing, LLC for transportation under Rate Schedule RTS beginning on November 1, 2000 through April 1, 2001.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28932 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–177–001]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2000.

Take notice that on October 31, 2000, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective on November 1, 2000.

Second Revised Sheet No. 9

Maritimes states that it is filing the above tariff sheet to reflect the expiration of existing negotiated rate contracts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.
[FR Doc. 00–28936 Filed 11–9–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–021]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

November 6, 2000.

Take notice that on October 31, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet No. 26L, 26M and 26N, to be effective November 1, 2000.

Natural states that the purpose of this filing is to implement three (3) negotiated rate transactions with Laclede Gas Company and Central Illinois Light Company under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 187 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.
[FR Doc. 00–28933 Filed 11–9–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3577–000]

New England Power Pool; Notice of Filing

November 6, 2000.

Take notice that on November 2, 2000, the New England Power Pool (NEPOOL) Participants Committee submitted in the above-captioned docket supplemental information relating to its August 31, 2000 filing of the Sixty-Fourth Agreement Amending New England Power Pool Agreement (the Sixty-Fourth Agreement), which proposed the elimination of In Service. This supplemental information clarifies the purpose and intended effect on the Sixty-Fourth Agreement.

The NEPOOL Participants Committee has requested an effective date of December 1, 2000.

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service list in the above-captioned docket, the NEPOOL Participants, the Non-Participant Transmission Customers and the six New England state governors and regulatory commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 14, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,
Secretary.
[FR Doc. 00–28922 Filed 11–9–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–018]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2000.

Take notice that on October 30, 2000, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to become effective on October 31, 2000.

Tenth Revised Sheet No. 66
Fifth Revised Sheet No. 66C

Northern states that the above sheets are being filed to implement a specific negotiated rate transaction with UtiliCorp United, Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.
[FR Doc. 00–28925 Filed 11–9–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–019]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2000.

Take notice that on October 31, 2000, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to become effective on November 1, 2000:

Eleventh Revised Sheet No. 66
First Revised Sheet No. 66A
First Revised Sheet No. 66B
Sixth Revised Sheet No. 66C

Northern states that the above sheets are being filed to implement a specific negotiated rate transaction with Midwest Natural Gas, Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines. In addition, those negotiated rates that have expired have been deleted.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.
[FR Doc. 00–28926 Filed 11–9–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–347–020]

Northern Natural Gas Company; Notice of Tariff Filing

November 6, 2000.

Take notice that on October 31, 2000, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective December 1, 2000:

Fourth Revised Sheet No. 263H
Third Revised Sheet No. 263H.1
Alternate Fourth Revised Sheet No. 263H
Alternate Third Revised Sheet No. 263H.1

Northern states that Tariff Sheet Nos. 263H and 263H.1 reflect the Sourcers' flow obligation after the Appendix B customers' election to source or buyout based on the 2000 Carlton Settlement pending before the Commission as well as Northern's current tariff.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,
Secretary.
[FR Doc. 00–28927 Filed 11–9–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–367–012]

Northwest Pipeline Corporation; Notice of Compliance Filing

November 6, 2000.

Take notice that on October 30, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective December 1, 2000:

Thirteenth Revised Sheet No. 8
Tenth Revised Sheet No. 8.1

Northwest states that the purpose of this filing is to implement rate design changes to Northwest's Rate Schedule LS–1, LS–2F, and LS–21 LNG storage services consistent with the Commission's resolution of LNG storage services rate design issues in Northwest's Docket No. RP95–409 and pursuant to the terms of the Commission-approved Settlement in Northwest's Docket No. RP96–367.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28928 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–018]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

November 6, 2000.

Take notice that on November 1, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A., Twelfth Revised Sheet No. 7 and Fifth Revised Sheet No. 7.01. PG&E GTN requests that the above-referenced tariff sheets become effective November 1, 2000.

PG&E GTN states that these sheets are being filed to reflect the implementation of two negotiated rate agreements.

PG&E GTN further states that a copy of this filing has been served on PG&E GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28941 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–059]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2000.

Take notice that on November 1, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective November 1, 2000:

Fourth Revised Sheet No. 8I
Second Revised Sheet No. 8J

REGT states that the purpose of this filing is to reflect the addition of two new negotiated rate contracts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28924 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–514–002]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

November 6, 2000.

Take notice on October 30, 2000, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective October 1, 2000:

Fifth Revised Sheet No. 99
1st Substitute Fourth Revised Sheet No. 101
1st Substitute Original Sheet No. 101A
1st Substitute Original Sheet No. 101B
1st Substitute 1st Revised Sheet No. 102
1st Substitute Original Sheet No. 102–A

Southern states that the purpose of this filing is to comply with the Commission's order dated September 28, 2000 in the above-referenced docket. Such letter order generally approved Southern's tariff filing made to replace its first-come, first-served capacity allocation methodology to a net present value (NPV) of awarding available capacity. Such order required Southern to make a compliance filing: (i) To limit the establishment of a reserve price in an open season to prior to the posting; (ii) to revise its proposal that shippers must return their Service Agreements within ten (10) business days after receipt if the terms of the Service Agreement reflect the terms of the bid or fifteen (15) business days if the terms do not identically follow the bid; (iii) to establish a minimum bidding period for open seasons which Southern has set at three days for available capacity for less than one year and ten days for one year or more; (iv) to establish the length of time in which Southern must evaluate the bids in an open season; (v) to specify that Southern will post available capacity and the winning bid and NPV method used to calculate the bid; (vi) to specify that Southern's tie breaker methodology for comparable bids is prorata; (vii) to clarify that Primary Receipt Point amendments will be awarded on a first-come, first-served basis; (viii) to clarify that if Southern awards capacity out of pending requests in the queue then it will do so on a first-come, first-served basis.

In addition, Southern has filed a clarification to Section 2.1(a) of the General Terms and Conditions specifying that bids made as part of an open season under Section 2.1(b)(iv) could request service that will commence outside of the 60 day period generally required for FT Requests. Southern intended that open seasons could be held more than 60 days prior to the date the capacity became available, and this tariff language clarifies Southern's intention.

Southern has made an additional clarification consistent with Answer filed by Southern in this proceeding by specifying that, to the extent there are pending requests in the queue for which capacity becomes available, it will within thirty days, either award the capacity on a first-come, first-served basis, post to reserve the capacity, or post its intention to hold an open season for the capacity.

Finally, with respect to the requirement of the commission to specify the length of time to evaluate bids, Southern states that it will post the response time in the open season posting.

Southern states that it needs the flexibility to tailor the response time to the complexity of the open season.

Southern has requested that these sheets be made effective as of October 1, 2000 consistent with the Commission's September 28th Order.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28940 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–260–004]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2000.

Take notice that on October 31, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing changes to its FERC Gas Tariff, First Revised Volume No. 1. This motion rate/compliance filing is being made to place the tariff sheets listed below into effect on November 1, 2000, in compliance with the Commission's Order issued May 31, 2000, in Docket No. RP00–260 at 91FERC ¶61,215 (2000).

Alternate Substitute First Revised Sixth Revised Sheet No. 1
*Substitute First Revised Seventh Revised Sheet No. 2
Substitute Thirty-fourth Revised Sheet No. 10
Substitute Seventeenth Revised Sheet No. 10A
Substitute First Revised Original Sheet No. 10A.01
Substitute First Revised Original Sheet No. 10A.02
Substitute First Revised Original Sheet No. 10A.03
Substitute Thirtieth Revised Sheet No. 11
Substitute Twenty-second Revised Sheet No. 11A
Substitute Eighteenth Revised Sheet No. 11B
Substitute Third Revised Sheet No. 11C
Alternate Second Substitute Original Sheet No. 11D
Alternate Substitute Thirty-second Revised Sheet No. 12
Substitute Eleventh Revised Sheet No. 12A
Substitute Thirteenth Revised Sheet No. 13
Substitute Third Revised Sheet No. 13A
Substitute Twelfth Revised Sheet No. 15
Substitute Thirteenth Revised Sheet No. 16
Alternate Substitute Twelfth Revised Sheet No. 17
*Substitute Second Revised Sheet No. 66
*Substitute First Revised Sheet No. 71
*Substitute First Revised Sheet No. 72
Substitute Second Revised Sheet No. 81
*Substitute Second Revised Sheet No. 86
*Substitute First Revised Sheet No. 87
*Substitute First Revised Sheet No. 94
*Substitute Second Revised Sheet No. 97
*Substitute First Revised Sheet No. 98
*Substitute First Revised Sheet No. 99
*Substitute Original Sheet Nos. 99A–99M
*Substitute Second Revised Sheet No. 111
*Substitute First Revised Sheet No. 119
*Substitute First Revised First Revised Sheet No. 165
*Substitute First Revised Second Revised Sheet No. 166
*Substitute First Revised First Revised Sheet No. 166A
*Substitute First Revised First Revised Sheet No. 176
*Substitute First Revised Second Revised Sheet No. 177
*Substitute First Revised Sheet No. 280
*Substitute Original Sheet Nos. 290A–290K
*Substitute Second Revised Sheet No. 291
*Substitute First Revised Sheet No. 293
*Substitute First Revised Sheet No. 294
*Substitute Second Revised Sheet No. 295
*Substitute First Revised Sheet No. 296
*Substitute First Revised Sheet No. 297
*Substitute Second Revised Sheet No. 298
*Substitute First Revised Sheet No. 299

*The only change on sheets designated with an asterisk is the effective date (November 1, 2000 instead of June 1, 2000). Because the tariff language on these sheets has not changed, there are no red-lined versions of sheets designated with an asterisk in this filing.

Texas Gas requests an effective date of November 1, 2000, for the proposed tariff sheets.

Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers, interested state commission, and all parties appearing on the official restricted service list in Docket No. RP00–260.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28937 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–260–005]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2000.

Take notice that on October 31, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing changes to its FERC Gas Tariff, First Revised Volume No. 1, in compliance with the Commission's Order on Compliance and Rehearing, and Referring Additional Issues for Hearing issued October 27, 2000, in the above-captioned docket (the October 27 Order):

Substitute First Revised Sixth Revised Sheet No. 1
Second Substitute Original Sheet No. 11D
Substitute Thirty-Second Revised Sheet No. 12
Original Sheet No. 12.01
Substitute Twelfth Revised Sheet No. 17
Seventh Revised Sheet No. 18
Original Sheet No. 19

Texas Gas requests an effective date of November 1, 2000, for the proposed tariff sheets.

Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers, interested state commission, and all parties appearing on the official restricted service list in Docket No. RP00–260.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.2111 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be reviewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28938 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–004]

Transcontinental Gas Pipe Line Corporation; Notice of Service Agreement

November 6, 2000.

Take notice that on October 31, 2000 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing copies of the executed service agreements that contain a negotiated rate under Rate Schedule FT applicable to the SouthCoast Expansion Project between Transco and various SouthCoast customers.

Transco states that the purpose of the instant filing is to comply with filing requirements specified in the orders granting Transco's negotiated rate authority and the Commission's Policy Statement. The effective date of these negotiated rate transactions is November 1, 2000, which is the in-service date of the SouthCoast Expansion Project. In compliance with the Commission's orders, the enclosed service agreements disclose the name of the customer, the actual negotiated rate and term, the receipt and delivery points, the quantity of gas to be transported and the applicable rate schedule for the service.

Transco also affirms that the negotiated rate agreements do not deviate in any material aspect from the applicable Rate Schedule FT form of service agreement in the tariff.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All Such protests must be filed on or before November 13, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,
Secretary.

[FR Doc. 00–28929 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–20–000, et al.]

Goldendale Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 6, 2000.

Take notice that the following filings have been made with the Commission:

1. Goldendale Energy, Inc.

[Docket No. EG01–20–000]

Take notice that on November 1, 2000, Goldendale Energy, Inc. (Applicant), 335 Parkplace, Suite 110, Kirkland, WA 98033, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant will own an approximately 248 MW electric generating facility located in Goldendale, Washington and interconnection facilities necessary to effect sales at wholesale (the Facility). The Facility's electricity will be sold exclusively at wholesale.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Sithe Fore River Development LLC

[Docket No. EG01–21–000]

Take notice that on November 1, 2000, Sithe Fore River Development LLC (Sithe Fore River Development) filed with the Commission an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration

of comments to those that concern the adequacy or accuracy of the application.

3. Sithe Mystic Development LLC

[Docket No. EG01–22–000]

Take notice that on November 1, 2000, Sithe Mystic Development LLC (Sithe Mystic Development) filed with the Commission an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Duke Energy Corporation

[Docket No. ER01–280–000]

Take notice that on October 31, 2000, Duke Energy Corporation (Duke), tendered for filing an Amendment to its Catawba Interconnection Agreement with North Carolina Municipal Power Agency No. 1 in the above-referenced docket.

Duke respectfully requests that this amendment be accepted for filing and made effective January 1, 2001.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Energy Corporation

[Docket No. ER01–281–000]

Take notice that on October 31, 2000, Duke Energy Corporation (Duke), tendered for filing an Amendment to its Catawba Interconnection Agreement with Saluda River Electric Cooperative, Inc., in the above-captioned docket.

Duke respectfully requests that this amendment be accepted for filing and made effective December 31, 2000.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Duke Energy Corporation

[Docket No. ER01–282–000]

Take notice that on October 31, 2000, Duke Energy Corporation (Duke), tendered for filing an Amendment to its Catawba Interconnection Agreement with North Carolina Electric Membership Corporation in the above-referenced docket.

Duke respectfully requests that this amendment be accepted for filing and made effective January 1, 2001.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Electric Transmission

[Docket No. ER01–283–000]

Take notice that on October 31, 2000, Duke Electric Transmission (Duke), tendered for filing a Network Integration Transmission Service Agreement and Network Operating Agreement for transmission service to North Carolina Electric Membership Corporation in the above-referenced docket.

Duke respectfully requests that these agreements be accepted for filing and made effective January 1, 2001.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER01–284–000]

Take notice that on October 31, 2000, Wolverine Power Supply Cooperative, Inc., tendered for filing an executed Wholesale Power Sales Enabling Agreement with Wolverine Power Marketing Cooperative, Inc. under its Market-Based Power Sales Tariff.

Wolverine requests an effective date of January 1, 2001 for the Agreement.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER01–285–000]

Take notice that on October 31, 2000, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing proposed changes to its Rate Schedule FERC No. 4—Wholesale Service to Member Distribution Cooperatives. The proposed changes amend Rate Schedule FERC No. 4 by (i) amending Rider "DRC"—Debt Restructuring Charge to make the charge applicable to all energy delivered to the systems of Wolverine's member distribution cooperatives, (ii) adding Rider "SB"—Standby Service Rate applicable to member distribution cooperatives who request standby generation from Wolverine, and (iii) amending Rider "OIL" to remove references to distribution cooperatives that no longer exist.

Copies of the filing were served on the public utility's jurisdictional customers and the Public Utility Commission of Michigan.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER01–286–000]

Take notice that on October 31, 2000, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing an amendment to the Wolverine Open Access Transmission Tariff. The amendment accommodates retail customer choice in Michigan and adds delivery scheduling and balancing service as a new service for generators directly interconnected to the Wolverine transmission system.

Copies of the filing were served on Wolverine's four wholesale power customers and the Michigan Public Service Commission.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Electric Transmission

[Docket No. ER01–291–000]

Take notice that on October 31, 2000, Duke Electric Transmission (Duke), tendered for filing a Network Integration Transmission Service Agreement and Network Operating Agreement for transmission service to North Carolina Municipal Power Agency No. 1 in the above-referenced docket.

Duke respectfully requests that these agreements be accepted for filing and made effective January 1, 2001.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Electric Transmission

[Docket No. ER01–292–000]

Take notice that on October 31, 2000, Duke Electric Transmission (Duke), tendered for filing a Network Integration Transmission Service Agreement, Network Operating Agreement, and Master Meter Agreement for transmission service to New Horizon Electric Cooperative, Inc. in the above-referenced docket.

Duke respectfully requests that these agreements be accepted for filing and made effective December 31, 2000.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Ameren Energy Development Company

[Docket No. ER01–294–000]

Take notice that on October 31, 2000, Ameren Energy Development Company (AED), tendered for filing a request for authorization to engage in the sale of electric energy and capacity at market-based rates, along with a long-term Power Supply Agreement (PSA) for the sale of energy and capacity to Ameren Energy Marketing Company (AEM), an affiliated company that does not serve any captive retail customers. AED also seeks certain blanket approvals and waivers of certain regulations promulgated under the FPA commonly granted to power marketers.

AED seeks an effective date of November 1, 2000, for the authorizations sought therein and for the PSA with AEM.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Outback Power Marketing Inc.

[Docket No. ER01–297–000]

Take notice that on October 31, 2000, Outback Power Marketing Inc. (OPMI) petitioned the Commission for acceptance of OPMI Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations, OPMI is a power marketing company incorporated in the State of Delaware.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. State Line Energy, L.L.C.

[Docket No. ER01–295–000]

Take notice that on October 31, 2000, State Line Energy, L.L.C. (State Line), tendered for filing with the Federal Energy Regulatory Commission Amendment No. 2 to Power Purchase Agreement between Commonwealth Edison Company and State Line Energy, L.L.C., for short-term service under State Line's Market Rate Tariff, which was accepted for filing in Docket No. ER96–2869–000.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. San Diego Gas & Electric Company

[Docket No. ER01–311–000]

Take notice that on October 31, 2000, San Diego Gas & Electric Company (SDG&E), tendered for filing an unexecuted Service Agreement between SDG&E and the City of Escondido (City), for service under SDG&E Open Access Distribution Tariff (OATD). SDG&E states that it tenders the Service Agreement to assure that service under the OATD is available to the city by January 1, 2001, the date on which the existing Power Sale Agreement between SDG&E and the city terminates.

Copies of this filing have been served upon the California Public Utilities Commission and the City.

17. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER01–337–000]

Take notice that on November 1, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (Companies), tendered for filing an executed Netting Agreement between the Companies and Rainbow Energy Marketing Corporation.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Fulton Cogeneration Associates, L.P.

[Docket No. ER01–324–000]

Take notice that on November 1, 2000, Fulton Cogeneration Associates, L.P. (Fulton), tendered for filing an application for an order which will permit Fulton to make wholesale sales of electric power to eligible customers at market-based rates. Fulton is the owner of a generating plant located in Rensselaer, New York that will be selling its output to Niagara Mohawk Power Corporation and in the wholesale market.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Edison Company

[Docket No. ER01–327–000]

Take notice that on November 1, 2000, Commonwealth Edison Company (ComEd), tendered for filing a Short-Term Firm Transmission Service Agreement with GEN–SYS Energy (GSE) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of October 9, 2000, for the agreement with GSE, and accordingly, seeks waiver of the Commission's notice requirements.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Western Resources, Inc.; Kansas Gas and Electric Company

[Docket No. ER01–328–000]

Take notice that on November 1, 2000, Western Resource, Inc. (WR), and its wholly owned subsidiary The Kansas Gas and Electric Company tendered for filing in compliance with Order No. 614 versions of WR' Rate Schedule Federal Power Commission (FPC) No. 6 and KGE's Rate Schedule FPC No. 93. WR and KGE propose that these Order No. 614 compliant versions be designated as WR' 1st Revised Rate Schedule FPC No. 6 and KGE's 1st Revised Rate Schedule FPC No. 93, respectively.

WR and KGE propose an effective date of November 1, 2000.

Copies of this filing have been served upon the Kansas Corporation Commission.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. American Transmission Company LLC

[Docket No. ER01–325–000]

Take notice that on November 1, 2000, American Transmission Company LLC (ATCLLC), tendered for filing service agreements for Short-Term Firm and Non-Firm Point-to-Point transmission service for the following customers under ATCLLC's Open Access Tariff. ATCLLC requests an effective date of January 1, 2001.

American Electric Power Service Corporation
Cargill-Alliant, LLC
Carolina Power & Light Company
Conectiv Energy Supply, Inc.
The Detroit Edison Company
Northern States Power Company
Powerex Corp.
PPL Energy Plus, LLC
Tennessee Power Company
Utilities Plus
Commonwealth Edison Company
Tenaska Power Services Co.
Cinergy Services, Inc
Edison Mission Marketing & Trading, Inc.
Southern Company Energy Marketing LLC

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Dayton Power and Light Company

[Docket No. ER01–329–000]

Take notice that on November 1, 2000, Dayton Power and Light Company (Dayton), tendered for filing Service Agreements establishing Dayton Power & Light Company (Energy Services) as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon The Dayton Power & Light Company (Energy Services) and the Public Utilities Commission of Ohio.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. New York State Electric & Gas Corporation

[Docket No. ER01–330–000]

Take notice that on November 1, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.15 of the Commission's rules, 18 CFR 35.15, a Notice of Cancellation of FERC Rate Schedule Nos. 36 and 84.

NYSEG requests that the Notice of Cancellation be deemed effective as of

November 30, 1998. To the extent required to give effect to the Notice of Cancellation, NYSEG requests waiver of the notice requirements pursuant to § 35.15 of the Commission's Rules, 18 CFR 35.15.

NYSEG served copies of the Notice of Cancellation on the New York Power Authority, the customer previously receiving service under FERC Rate Schedule Nos. 36 and 84, and the New York State Public Service Commission.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. PECO Energy Company

[Docket No. ER01–333–000]

Take notice that on November 1, 2000, PECO Energy Company (PECO), tendered for filing under section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, a Service Agreement dated October 23, 2000 with Reliant Energy HLP under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of November 1, 2000 for the Agreement.

PECO states that copies of this filing have been supplied to Reliant Energy HL&P and to the Pennsylvania Public Utility Commission.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Public Service Company of New Mexico

[Docket No. ER01–331–000]

Take notice that on November 1, 2000, Public Service Company of New Mexico (PNM), tendered for filing, pursuant to the Regulations of the Federal Energy Regulatory Commission (18 CFR 35.15), Notices of Cancellation of several service agreements between PNM and Tri-State Generation and Transmission Association, Inc. (Tri-State).

Pursuant to PNM's filing, the agreements to be canceled include: Service Schedule A to the PNM-Tri-State Master Interconnection Agreement, dated February 28, 1977 (Rate Schedule FERC No. 31, Supplement 4); Service Schedule C to the PNM-Tri-State Master Interconnection Agreement, dated March 1, 1980 (Rate Schedule FERC No. 31, Supplements 18, 18.1, 18.2, 28, and 29); Service Schedule E to the PNM-Tri-State Master Interconnection Agreement, dated April 4, 1979 (Rate Schedule FERC No. 31, Supplements 13, 13.1.1, 13.2, 13.2.1, 13.2.2, 13.2.3, and 13.2.4); Service Schedule F to the PNM-Tri-State Master Interconnection Agreement, dated February 28, 1977 (Rate Schedule FERC No. 31, Supplement 6); Service Schedule G to the PNM-Tri-State Master Interconnection Agreement, dated February 27, 1987 (Rate Schedule FERC No. 31, Supplements 43, 43.1, 43.2, 43.5, 45, and 45.1); Service Schedule H to the PNM-Tri-State Master Interconnection Agreement, dated May 12, 1977 (Rate Schedule FERC No. 31, Supplements 7 and 7.1); the Contract for Transmission Service Agreement Between PNM and Tri-State, dated July 11, 1968 (Rate Schedule FERC No. 12); the Agreement to Wheel Power Between PNM and Tri-State, dated January 2, 1976 (Rate Schedule FERC No. 30, Supplements 1, 2 and 3); and the Norton Switching Station Agreement dated December 13, 1972 (Rate Schedule FERC No. 31, Supplements 44 and 44.1). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Tucson Electric Power Company

[Docket No. ER01–334–000]

Take notice that on November 1, 2000, Tucson Electric Power Company tendered for filing a revised generation dominance study.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Allegheny Energy Supply Hunlock Creek, LLC

[Docket No. ER01–332–000]

Take notice that on November 1, 2000, Allegheny Energy Supply Hunlock Creek, LLC (Allegheny Energy LLC), tendered for filing a Market Rate Tariff of general applicability under which it proposes to sell capacity and energy to affiliates and non-affiliates at market-based rates, and to make such sales to franchised public utility affiliates at rates capped by a publicly available regional index price.

Allegheny Energy LLC requests an effective date no later than November 9, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. New England Power Pool

[Docket No. ER01–335–000]

Take notice that on November 1, 2000, the New England Power Pool (NEPOOL), Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include PSEG Energy Resources & Trade LLC (ER&T), TXU Energy Trading Company (TXU) and Worcester Trading, Inc. (Worcester).

The Participants Committee requests an effective date of November 1, 2000 for commencement of participation in NEPOOL by ER&T and TXU and an effective date for the commencement of participation in NEPOOL by Worcester as of the date of its license by the State of Maine as a Competitive Electricity Provider.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. PJM Interconnection, L.L.C.

[Docket No. ER01–336–000]

Take notice that on November 1, 2000, Potomac Electric Power Company tendered for filing a revised Attachment H–9 to the PJM Open Access Transmission Tariff, reducing the Other Supporting Facilities Charge for lower voltage deliveries in the Pepco Zone of PJM to Southern Maryland Electric Cooperative, Inc.

Copies of this filing were served upon PJM Interconnection, LLC., Southern Maryland Electric Cooperative, Inc., and the Maryland Public Service Commission.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Southern California Edison Company

[Docket No. ER01–314–000]

Take notice, that on November 1, 2000, Southern California Edison Company (SCE), tendered for filing a change in rate for scheduling and dispatching services as embodied in SCE's agreements with the following entities:

Entity	Rate schedule FERC No.
1. Arizona Electric Power Cooperative.	132.
2. Arizona Public Service Company.	348.

Entity	Rate schedule FERC No.
3. California Department of Water Resources.	112, 113, 342.
4. Imperial Irrigation District	268.
5. Metropolitan Water District of Southern California.	292.
6. M–S–R Public Power Agency.	339.
7. Pacific Gas and Electric Company.	256, 318.
8. PacifiCorp	275.

SCE requests that the revised rate for these services be made effective January 1, 2001.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Alliant Energy Corporate Services, Inc.

[Docket No. ER01–312–000]

Take notice that on November 1, 2000, Alliant Energy Corporate Services, Inc., on behalf of IES Utilities Inc. (IES), Interstate Power Company (IPC) and Wisconsin Power and Light Company (WPL), tendered for filing with the Commission new rates to be charged under its Open Access Transmission Tariff to reflect the transfer of the ownership of certain transmission facilities from WPL and its subsidiary South Beloit Water, Gas and Electric Company to the American Transmission Company, LLC.

Alliant Energy Corporate Services, Inc., has asked that the new rates become effective on January 1, 2001

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, the Public Service Commission of Wisconsin and Alliant Energy Corporate Services, Inc transmission customers.

32. California Independent System Operator Corporation

[Docket No. ER01–313–000]

Take notice that on November 1, 2000, the California Independent System Operator Corporation (ISO), tendered for filing an unbundled Grid Management Charge. The purpose of the Grid Management Charge is to allow the ISO to recover its administrative and operating costs.

The ISO requests that the unbundled Grid Management Charge be made effective as of January 1, 2001.

The ISO states that this filing has been served on the California Public Utilities Commission, all California ISO Scheduling Coordinators, and all parties on the official service lists maintained by the Secretary for the following dockets related to the Grid Management Charge: ER98–211–000, ER99–473–000, ER99–2730–000, EL99–47–000, and EL99–67–000.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs: 1

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http:// www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–28921 Filed 11–9–00; 8:45 am]

BILLING CODE 5717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3589–001, et al.]

Public Service Electric and Gas Company, et al.; Electric Rate and Corporate Regulation Filings

November 2, 2000.

Take notice that the following filings have been made with the Commission:

1. Public Service Electric and Gas Company

[Docket No. ER00–3589–001]

Take notice that on October 27, 2000, Public Service Electric and Gas Company (PSE&G), tendered for filing pursuant to Order No. 614, a revised Firm Capacity Agreement with Orange and Rockland Utilities, Inc., originally filed with the Commission on September 1, 2000 in the above-referenced docket.

Comment date: November 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. International Transmission Company

[Docket No. ER00–3295–003]

Take notice that on October 30, 2000, International Transmission Company tendered for filing its compliance filing in the above-captioned docket, in accordance with the Federal Energy Regulatory Commission's order issued September 28, 2000. See 92 FERC ¶ 61,276.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER97–3359–003]

Take notice that on October 30, 2000, Florida Power & Light Company tendered for filing an updated market power analysis in compliance with the Commission's order in Florida Power & Light Co., 81 FERC ¶ 61,107 (1997).

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. American Electric Power Service Corporation

[Docket No. ER01–253–000]

Take notice that on October 30, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Illinois Electric Marketing, LLC, Texas Electric Marketing, LLC and Wolverine Power Supply Cooperative. All of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after October 1, 2000.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Northern Indiana Public Service Company

[Docket No. ER01–254–000]

Take notice that on October 30, 2000, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with NewEnergy Midwest, LLC (NewEnergy).

Northern Indiana has requested an effective date of October 1, 2000.

Copies of this filing have been sent to NewEnergy, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Duquesne Light Company

[Docket No. ER01–255–000]

Take notice that on October 30, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 27, 2000 Dominion Energy Direct Sales, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Dominion Energy Direct Sales, Inc. as a customer under the Tariff.

DLC requests an effective date of October 27, 2000 for the Service Agreement.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER01–256–000]

Take notice that on October 30, 2000, American Electric Power Service Corporation, tendered for filing, on behalf of the operating companies of the American Electric Power System (AEP), proposed amendments to the Open Access Transmission Tariff accepted for filing by the Commission in Docket No. ER98–2786–000.

AEP requests waiver of notice to permit an effective date of January 1, 2001, for such amendments.

Copies of the filing have been served upon AEP's transmission customers and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER01–257–000]

Take notice that on October 30, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing a Transaction Confirmation Agreement (Confirmation) for a firm power sale between AEPSC and City of Vernon, California under Western System Power Pool Agreement effective July 1, 2000 under Rate Schedule FERC No.3 in Docket ER99–541–000 as amended.

AEPSC respectfully requests waiver of notice to permit the Confirmation to be made effective as of October 1, 2000.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Central Maine Power Company

[Docket No. ER01–258–000]

Take notice that on October 30, 2000, Central Maine Power Company (CMP), tendered for filing a service agreement for Short-Term Firm Local Point-to-Point Transmission Service entered into with Greenville Steam Company. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP–FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PPL EnergyPlus, LLC

[Docket No. ER01–260–000]

Take notice that on October 30, 2000, PPL EnergyPlus, LLC tendered for filing a notice of cancellation of PPL EnergyPlus, LLC Rate Schedule FERC No. 7, between PPL EnergyPlus, LLC and Jersey Central Power & Light Company.

PPL EnergyPlus requests an effective date of this cancellation of November 29, 2000.

PPL EnergyPlus, LLC has served a copy of the notice of cancellation on Jersey Central Power & Light Company.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Electric and Gas Company

[Docket No. ER01–261–000]

Take notice that on October 30, 2000, Public Service Electric and Gas Company (PSE&G), tendered for filing the following Agreement between PSE&G, JEDI Linden NB, L.L.C. (JEDI Linden) and Tosco Refining, L.P. (Tosco): (a) an Interconnection Agreement, designated as Service Agreement 208 under PJM Interconnection L.L.C.'s FERC Electric Tariff Third Revised Volume No. 1, to be effective on the initial operation date as PSE&G's Rate Schedule No. 167.

Copies of this filing were served on JEDI Linden and Tosco.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power Corporation

[Docket No. ER01–262–000]

Take notice that on October 30, 2000, Florida Power Corporation (Florida Power), tendered for filing two executed Interconnection and Operating Agreements (Interconnection Agreements) with Shady Hills Power Company, LLC (Shady Hills) and with Reliant Energy Osceola, LLC (Reliant-Osceola). Both Interconnection Agreements are being filed as service agreements under Florida Power's open access transmission tariff (OATT), FERC Electric Tariff, First Revised Volume No. 6. The Interconnection Agreements set forth the terms and conditions. governing the interconnection between two, yet-to-be constructed generating facilities and the Company's transmission system, including the Company's construction of required interconnection facilities.

Florida Power requests an October 1, 2000 effective date for the Shady Hills Interconnection Agreement, and a November 1, 2000 effective date for the Reliant-Osceola Interconnection Agreement.

Copies of the filing were served upon Shady Hills, Reliant-Osceola, and the Florida Public Service Commission.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER01–264–000]

Take notice that on October 30, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-to-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and Unicom Energy, Inc. (Unicom).

Cinergy and Unicom are requesting an effective date of September 25, 2000.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER01–265–000]

Take notice that on October 26, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-to-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and Unicom Energy, Inc. (Unicom).

Cinergy and Unicom are requesting an effective date of September 25, 2000.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–28920 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4185–001, et al.]

Texas-New Mexico Power Company, et al. Electric Rate and Corporate Regulation Filings

November 3, 2000.

Take notice that the following filings have been made with the Commission.

1. Texas-New Mexico Power Company

[Docket No. ER97–4185–001]

Take notice that on October 31, 2000, Texas-New Mexico Power Company (TNP), tendered for filing with the Commission an amendment to its "Request for Determination That Updated Market Analysis Is Not Necessary Or, in the Alternative, for Extension of Time", filed in this proceeding on October 16, 2000. Significantly, the amendment submits the report in lieu of an analysis and omits the request for an extension of time.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Dominion Nuclear Marketing III, Inc.

[Docket No. ER97–3746–001]

Take notice that on October 31, 2000, Dominion Nuclear Marketing III, Inc. (DNM III), at the request of the Commission's Staff, DNM III resubmitted its FERC Market-Based Sales Tariff to assure compliance with the Commission's policy regarding the provision of ancillary services at market based rates and also resubmitted its Code of Conduct for Officers and Employees of Dominion Nuclear Marketing III, Inc., to assure compliance with the Commission's pagination guidelines. Also as part of DNM III's filing, the issue date of its tariff sheets was changed to October 31, 2000.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Company of New York, Inc.

[Docket No. ER01–130–000]

Take notice that on October 31, 2000, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an amendment to its filing of a Supplement to its Rate Schedule FERC 117, an agreement to provide interconnection and transmission service to the Long Island Power Authority (LIPA).

Con Edison states that a copy of this filing has been served by mail upon LIPA.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Old Dominion Electric Cooperative

[Docket No. ER01–259–000]

Take notice that on October 31, 2000, Old Dominion Electric Cooperative (Applicant), tendered for filing a Service Agreement between Applicant and Southside Electric Cooperative for service to a single, new delivery point pursuant to the Applicant's previously granted authority to make sales at market-based rates.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. American Transmission Systems, Inc.

[Docket No. ER01–274–000]

Take notice that on October 31, 2000, American Transmission Systems, Inc., tendered for filing a Supplement adding new transmission customers to the Service Agreement and Operating Agreement for Network Integration Transmission Service provided by American Transmission System, Inc. to American Municipal Power-Ohio, Inc. (AMP-Ohio) on behalf of certain designated municipal electric systems in Ohio and Pennsylvania. The Supplement does not modify the terms and conditions of the existing Network Agreements between American Transmission Systems, Inc. and AMP-Ohio.

American Transmission Systems, Inc. requests an effective date of October 1, 2000 for the Supplement.

Copies of this filing have been served on the utility commissions in Ohio and Pennsylvania.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Western Systems Coordinating Council

[Docket No. ER01–275–000]

Take notice that on October 31, 2000, the Western Systems Coordinating Council (WSCC), tendered for filing with the Commission amendments to the Reliability Criteria Agreement and the individual Reliability Management System Agreements under the WSCC's Reliability Management System. The amendments correct several problems with the original agreements, and add four new reliability criteria to the program.

The WSCC requests that the Commission make such amendments effective November 1, 2000.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER01–276–000]

Take notice that on October 31, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing a revised and amended Coordinated Operations Agreement (Revised COA) between itself, Southern California Edison Company (SCE) and SDG&E ("SDG&E") and each California-Oregon Transmission Project (COTP) Participant. The proposed revisions modify the existing Coordinated Operations Agreement of PG&E, PG&E Rate Schedule FERC No. 146.

Copies of this filing have been served upon SCE, SDG&E, the COTP Participants, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Alcoa Power Generating Inc.

[Docket No. ER01–287–000]

Take notice that on October 31, 2000, Alcoa Power Generating Inc. (APGI), tendered for filing a long-term agreement between Aquila Energy Marketing Corporation (Aquila) and APGI under APGI's Market Rate Tariff No. 1 (MR–1). This Tariff was accepted for filing by the Commission on July 13, 1999 in Docket No. ER99–2932–000.

The service agreement with Aquila is proposed to be effective October 1, 2000.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Company

[Docket No. ER01–288–000]

Take notice that on October 31, 2000, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and ENMAX Energy Corporation.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. WPS Resources Operating Companies

[Docket No. ER01–289–000]

Take notice that on October 31, 2000, WPS Resources Operating Companies (WPS), tendered for filing modifications to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Volume No. 1, WPS is deleting provisions for transmission service over the facilities of its operating company Wisconsin Public Service Corporation (WPSC) and the provision of Schedule 1 Service. WPS states that WPSC's transmission facilities will be transferred to the American Transmission Company, LLC as of January 1, 2001. No change is being made to the OATT provisions relating to Ancillary Service Schedules 2 through 6 or distribution service in the WPSC control area or to any of the tariff services offered within the control area or transmission system of WPS' other operating company, Upper Peninsula Power Company.

WPS requests that its revised OATT be made effective January 1, 2001.

Copies of the filing were served upon WPS's OATT customers, the ATCLLC, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. San Diego Gas & Electric Company

[Docket No. ER01–290–000]

Take notice that on October 31, 2000, San Diego Gas & Electric Company (SDG&E), tendered for filing an unexecuted Service Agreement between SDG&E and the City of Escondido (the City) for service under SDG&E Open Access Distribution Tariff (OATD). SDG&E states that it tenders the Service Agreement to assure that service under the OATT is available to the City January 1, 2001, the date on which the existing Power Sale Agreement between SDG&E and the City terminates.

Copies of this filing have been served upon the California Public Utilities Commission and the City.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. ISO New England Inc.

[Docket No. ER00–395–004]

Take notice that on October 27, 2000, ISO New England Inc., tendered for filing its quarterly Index of Customers for its Tariff for Transmission Dispatch and Power Administration Services in accordance with the procedure specified in its filing letter in Docket No. ER00–395–000 dated November 1, 1999, and approved by Commission order issued December 30, 1999.

Comment date: November 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Company

[Docket No. ER01–298–000]

Take notice that on October 31, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing a conformed "Agreement between Pacific Gas and Electric Company and City and County of San Francisco," Revised PG&E Rate Schedule FERC No. 114 (1987 Agreement) and the Small Facilities Authorization Letter No. 5, submitted pursuant to the Procedures for Implementation (Procedures) of Section 3.3 of the 1987 Agreement between PG&E and the City and County of San Francisco (City). This is PG&E's fourth quarterly filing submitted pursuant to Section 4 of the Procedures, which provides for the quarterly filing of Facilities Authorization Letters.

The Facilities Authorization Letter streamlines the procedures for filing numerous Facilities, and facilitates payment of PG&E's costs of designing, constructing, procuring, testing, placing in operation, owning, operating and maintaining the customer-specific Facilities required for firm transmission and distribution service requested by City under this Facilities Authorization Letter. PG&E has requested certain waivers.

Copies of this filing have been served upon City and the CPUC.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferce.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–28876 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–009]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2000.

Take notice that on October 31, 2000, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective November 1, 2000:

First Revised Sheet No. 14B
First Revised Sheet No. 14F
First Revised Sheet No. 14L

ANR is filing the attached tariff sheets to reflect a change in the negotiated rate contracts with Wisconsin Public Service Corporation (WPSC). WPSC is increasing its MDQ under its Marshfield contract 5500 by 68 dth/d, and making a corresponding decrease of 68 dth/d to its Joliet Hub contract 104403. Also, WPSC is adjusting its previous annual MDQ level associated with NNS contract 99515, to provide for a seasonal split it the MDQ. Therefore, on an annual basis, there is no change in level of NNS service. ANR requests that the Commission grant ANR any waivers of the Commission's regulations which are necessary in order to make these tariff sheets effective as of November 1, 2000, and to the extent necessary, moves pursuant to 18 CFR 154.7(a)(9) for the tariff sheets to go into effect on said date. Additionally, ANR requests all such further relief as is appropriate.

ANR states that a copy of this filing is being mailed to the affected shipper and to each of ANR's FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 customers, and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.

[FR Doc. 00–28935 Filed 11–9–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00439H; FRL–6755–3]

Pesticide Program Dialogue Commitee (PPDC) and Inert Disclosure Stakeholder Workgroup; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will hold a public meeting of the Pesticide Program Dialogue Committee (PPDC) on November 29–30, and the PPDC Inert Disclosure Stakeholder Workgroup on November 28, 2000. Agendas for both of these public meetings are under development and will be available by November 20, 2000, on our website at www.epa.gov/pesticides/ppdc/.

DATES: The Inert Disclosure Stakeholder Workgroup meeting will be held on November 28, 2000 from 9 a.m. to 5 p.m. The PPDC meeting will be held on November 29, from 9 a.m. to 5 p.m. and on November 30, from 9 a.m. to 1 p.m.

ADDRESSES: Both public meetings will be held at Radisson Hotel Old Town, 901 North Fairfax Street, Alexandria, VA 22314, telephone number (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: For the PPDC meeting, contact Margie Fehrenbach or Terria Northern, and for the Inert Disclosure Stakeholder Workgroup, contact Cameo Smoot. All are located within the Office of Pesticide Programs, Office of Prevention, Pesticides and Toxic Substances 7501C, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone numbers: (703) 308–4775 or (703) 305–7090; fax numbers: (703) 308–4776 or (703) 308–8005; e-mail address: Fehrenbach.Margie@epa.gov, Northern.Terria@epa.gov or Smoot.Cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are concerned about implementation of the Food Quality Protection Act (FQPA) (Public Law 104–170) which was passed in 1996 to strengthen the nation's system for regulating pesticides on food; the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and the Federal Food, Drug and Cosmetic Act (FFDCA). PPDC was established in 1995 to provide a forum for a diverse group of stakeholders to provide advice and recommendations to EPA regarding pesticide regulatory and policy issues. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information regarding PPDC, go directly to the Home Page for EPA's Office of Pesticide Programs at http://www.epa.gov/pesticides/ and select ppdc.

2. *In person*. The Agency has established an administrative record for all PPDC meetings and workgroups under docket control number OPP–00439A. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the PPDC and workgroups, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *By mail*. You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

III. How Can I Request to Participate in this Meeting?

PPDC meetings are open to the public under Section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463. Outside statements by observers are welcome. Oral statements will be limited to 3–5 minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement may do so before or after a PPDC meeting. These statements will become part of the permanent record and will be provided to PPDC members. The permanent record will be available for public inspection at the address in Section II.2 "In person" above. The Agency requests that participants limit their use of fragranced products on behalf of persons attending who have expressed a concern about chemical sensitivity.

IV. Background

PPDC was established as an advisory committee in accordance with the Federal Advisory Committee Act in 1995 for a two–year term; it was renewed in 1997 and again in 1999. The PPDC provides a continuing and transparent forum for a diverse group of stakeholders from across the country to provide advice and recommendations to EPA regarding a broad range of pesticide regulatory development and program implementation issues associated with evaluating and reducing risks from use of pesticides. Membership to the PPDC includes broad geographic representation from the following sectors: environmental/public interest and consumer groups; industry and trade associations; pesticide users; Federal and State/local governments; the general public; academia; and public health organizations.

The Inert Disclosure Stakeholder Workgroup was formed in December 1999 to advise the Pesticide Program Dialogue Committee regarding ways to make information on inert ingredients more available to the public while working within the mandates of the Federal Insecticide, Fungicide and Rodenticide Act and related CBI concerns.

List of Subjects

Environmental protection, Agriculture, Chemicals, Pesticides, Pests, Inert ingredients.

Dated: November 7, 2000.

Joseph J. Merenda Jr.,
Director, Office of Pesticide Programs.

[FR Doc. 00–29052 Filed 11–8–00; 1:56 p.m.]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6900–2; RIN 2060–AG85]

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Savannah River Site for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, or "we") is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization of transuranic (TRU) radioactive waste at the Savannah River Site proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are entitled: "Savannah River Site WIPP Disposal Program Quality Assurance Project Plan, WSRC–RP–99–01097," "Savannah River Site WIPP Disposal Program Quality Assurance Program Document, WSRC–RP–99–01119," and "Savannah River Site WIPP Disposal Program Waste Certification Plan, WSRC–RP–99–01095." They are available for review in the public dockets listed in **ADDRESSES**. We will conduct an inspection of waste characterization systems and processes and the quality assurance program for waste characterization at the Savannah River Site to verify that the site can characterize transuranic waste in accordance with EPA's WIPP compliance criteria. We will perform this inspection during the weeks of November 6 and November 13, 2000. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: EPA requests public comment on the documents. Comments must be received by EPA's official Air Docket on or before December 13, 2000.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500 (LE–131), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday-Thursday, 10 am-9 pm, Friday-Saturday, 10 am-6 pm, and Sunday 1 pm-5 pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday-Friday, 9 am-5 pm.

As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Scott Monroe, Office of Radiation and Indoor Air, (202) 564–9310, or call EPA's toll-free WIPP Information Line, 1–800–331–WIPP.

SUPPLEMENTARY INFORMATION:

Background

DOE operates the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Public Law 102–579), as amended (Public Law 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, we announced our final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that: (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (condition 2 of appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (condition 3 of appendix A to 40 CFR part 194). EPA's approval process for waste generator sites is described in § 194.8. As part of our decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, we will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

DOE has notified EPA that the Savannah River Site is preparing to ship waste to the WIPP. EPA will perform an inspection of the site's technical and quality assurance programs for waste characterization in accordance with Conditions 2 and 3 of the WIPP certification. The inspection is scheduled to take place the weeks of November 6 and November 13, 2000.

EPA has placed two documents pertinent to the inspection in the public docket described in **ADDRESSES**. The documents are entitled: (1) "Savannah River Site WIPP Disposal Program Quality Assurance Project Plan, WSRC–RP–99–01097," (2) "Savannah River Site WIPP Disposal Program Quality Assurance Program Document, WSRC–RP–99–01119," and (3) "Savannah River Site WIPP Disposal Program Waste Certification Plan, WSRC–RP–99–01095" (Item II–A2–28). In accordance with 40 CFR 194.8, as amended by the final certification decision, we are providing the public 30 days to comment on these documents.

If we determine as a result of the inspection that the proposed processes and programs at the Savannah River Site adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship transuranic waste from the Savannah River Site to the WIPP. We will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: October 30, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–28957 Filed 11–9–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6900–3]

Proposed Settlement Agreements on Regulations Under Section 126 of the Clean Air Act Reducing Regional Transport of Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA hereby gives notice of three proposed Settlement Agreements regarding certain issues in the case entitled *Appalachian Power* v. *EPA*, Nos. 99–1200, *et al.* (D.C. Cir.). Specifically, the Settlement Agreements address issues in the following cases, consolidated with *Appalachian Power* v. *EPA: Weyerhaeuser Co.* v. *EPA*, No. 00–1126; *West Virginia Manufacturers Ass'n, et al.* v. *EPA*, Nos. 99–1246 & 00–1125; *West Virginia Chamber of Commerce et al.* v. *EPA*, Nos. 99–1205 & 00–1024; *Birchwood Power Partners, et al.* v. *EPA*, No. 00–1116; *Southern Energy Gen. L.L.C.* v. *EPA*, No. 00–1117. EPA issues this notice in accordance with section 113(g) of the Clean Air Act, as amended (the "ACT"), which requires EPA to give notice and provide an opportunity for public comment on proposed settlement agreements.

The litigation concerns EPA's promulgation of two final rules under section 126 of the Act (collectively the "section 126 rule") pertaining to control of interstate transport of ozone. See 64 FR 28250 (May 25, 1999); 65 FR 2674 (January 18, 2000). Under the section 126 rule, certain upwind stationary sources of nitrogen oxides (No_X) emissions in twelve states and the District of Columbia must hold NO_X emission allowances equivalent to the quantity of their NO_X emissions. The section 126 rule allocates quantities of NO_X allowances to each covered source. Various parties have filed petitions for review of the section 126 rule under section 307(b)(1) of the Act. Several of these parties have raised claims that EPA incorrectly allocated NO_X allowances to certain units under the section 126 rule and that the parties did not have the opportunity to comment on the incorrect allocations during the rulemaking process. The proposed Settlement Agreements provide that EPA will propose a rule to modify the allowance allocations for certain units and that the parties will dismiss these claims if EPA issues a final rule consistent with the proposed rule.

Persons who were not named as parties or interveners to this litigation may submit written comments on the proposed settlement agreement to EPA. EPA will accept such comments for a period of thirty days from the date of publication of this notice. EPA or the Department of Justice may withhold or withdraw consent to the proposed Settlement Agreement if the comments disclose facts or circumstances that indicated that the agreement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice makes such a determination following the comment period, EPA will take the actions set forth in the Settlement Agreement.

A copy of the proposed Settlement Agreement is available from Phyllis Davis, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–5566. Written comments should be sent to Alexandra Teitz, Esq., at the above address and must be submitted on or before December 13, 2000.

Dated: October 31, 2000.

Anna Wolgast,

Acting General Counsel.

[FR Doc. 00–28958 Filed 11–9–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6900–1]

Clean Water Act Section 303(d): Availability of Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for nine TMDLs prepared by EPA Region 6 for waters listed in Louisiana's Mermentau and Vermilion/Teche river basins, under section 303(d) of the Clean Water Act (CWA). EPA prepared these TMDLs in response to a Court Order dated October 1, 1999, in the lawsuit *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La. Oct. 1, 1999). Under this court order, EPA is required to prepare TMDLs when needed for waters on the Louisiana 1998 section 303(d) list by December 31, 2007.

DATES: Comments on the nine TMDLs must be submitted in writing to EPA on or before December 13, 2000.

ADDRESSES: Comments on the nine TMDLs should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record file for these TMDLs is available for public inspection at this address as well. Copies of the TMDLs and their respective calculations may be viewed at www.epa.gov/region6/water/tmdl.htm, or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La. Oct. 1, 1999). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. Discussion of the court's order may be found at 65 FR 54032 (September 6, 2000).

EPA Seeks Comments on Nine TMDLs

By this notice EPA is seeking comment on the following nine TMDLs for waters located within the Mermentau and Vermilion/Teche basins:

Subsegment	Waterbody name	Pollutant
050703	White Lake	Total Dissolved Solids.
050703	White Lake	Chloride.
060801	Vermilion River—Headwaters To Bayou Fusilier Bourbeaux Junction to New Flanders	Sulfate.
060802	Vermilion River—From New Flanders to Intracoastal Waterway	Sulfate.
060205	Bayou Teche—Headwaters at Bayou Courtableau to I–10	Sulfate.
060205	Bayou Teche—Headwaters at Bayou Courtableau to I–10	Chloride.
060101	Bayou Cocodrie	Total Dissolved Solids.
060206	Indian Creek Reservoir	Temperature.
060102	Bayou Cocodrie	Total Dissolved Solids.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for these TMDLs, or any other comments relevant to these TMDLs. EPA will review all data and information submitted during the public comment period and revise the nine TMDLs where appropriate. EPA will then forward the TMDLs to the Court and the Louisiana Department of Environmental Quality (LDEQ). LDEQ will incorporate the TMDLs into its current water quality management plan.

Dated: October 20, 2000.

Jayne Fontenot,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 00–28956 Filed 11–9–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 1, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 12, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: *OMB Approval No.:* 3060–0492.

Title: Section 74.992 Access to channels licensed to wireless cable entities.

Form No.: FCC 330.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Number of Respondents: 10.

Estimated Hours Per Response: 3.5 hours (These hours include the contracting hour cost (2 hours) to the respondents and the respondents hour burden (1.5 hours).

Frequency of Response: On occasion.

Cost to Respondents: $4,000.

Estimated Total Annual Burden: 15 hours.

Needs and Uses: Section 74.992 requires that requests by ITFS entities for access to wireless cable facilities licensed on ITFS frequencies be made by filing FCC Form 330 (3060–0062), Sections I (Identity of applicant, requested facilities), II (legal qualifications of applicant), III (Financial qualifications of applicant) and IV (ITFS service proposal). The application must include a cover letter clearly indicating that the application is for ITFS access to a wireless cable entity's facilities on ITFS channels. Section 74.992(d) requires an ITFS user to provide a wireless cable licensee with its planned schedule of use four months in advance of accessing the channels. This notice is completed before the filing of the application and the burden is included with the application. The data is used by FCC staff to determine eligibility of an educational institution or entity demanding access for ITFS use on a wireless cable facility. The four month advance notice is used by the wireless cable licensee to allow it to move programming to other channels.

OMB Approval No.: 3060–0494.

Title: Section 74.990 Use of available instructional television fixed service frequencies by wireless cable entities.

Form No.: n/a.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Number of Respondents: 100.

Estimated Hours Per Response: 0.33 hours–2 hours (These hours include the contracting hour cost to the respondents and the respondents hour burden).

Frequency of Response: On occasion.

Cost to Respondents: $11,250.

Estimated Total Annual Burden: 42 hours.

Needs and Uses: Section 74.990(c) requires applicants to confirm their unopposed status after the period for filing competing applications and petitions to deny has passed. This confirmation is accomplished through the filing of a letter with the Commission. Section 74.990(d) requires a wireless cable applicant to show that there are no multipoint distribution service or multichannel multipoint distribution service channels available for application, purchase or lease that could be used in lieu of the instructional television fixed service frequencies applied for. The data provided in the showing will be used by FCC staff to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use.

OMB Approval No.: 3060–0493.

Title: Section 74.986 Involuntary ITFS station modifications.

Form No.: FCC 330.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit, State, Local or Tribal Government.

Number of Respondents: 25.

Estimated Hours Per Response: 5 hours (These hours include the contracting hour cost (1 hour) to the respondents and the respondents hour burden (4 hours)).

Frequency of Response: On occasion.

Cost to Respondents: $16,250.

Estimated Total Annual Burden: 25 hours.

Needs and Uses: Section 74.986 requires that an application for involuntary modification of an ITFS station be filed on FCC Form 330 (3060–0062) but need not fill out Section II (legal qualifications). The application must include a cover letter clearly indicating that the modification is involuntary and identifying the parties involved. The data is used by FCC staff to insure that proposals to modify facilities of ITFS licensees/permittees would provide comparable ITFS service and would otherwise serve the public interest in promoting the MMDS service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28890 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission; Comments Requested

November 1, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 12, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0950.

Title: Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99–266.

Form No.: FCC Form 601.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 3,844.

Estimated Time Per Response: 10–190 hours.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement.

Total Annual Burden: 768,800 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission adopted WT Docket No. 99–266, Report and Order, which implemented rules and policies to encourage the deployment of wireless services to tribal lands.

A winning bidder seeking a bidding credit to serve a qualifying tribal land within a particular market must: Indicate on the FCC Form 601 that it intends to serve a qualifying tribal land within that market; within 90 days after the filing deadline, amend its FCC Form 601 and attach a certification from the tribal government stating that: (a) The tribal government authorizes the winning bidder to site facilities and provide service on its tribal land; (b) the tribal area to be served by the winner bidder constitutes qualifying tribal land; and (c) the tribal government has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers, and will not unreasonably discriminate among wireless carriers seeking to provide service on the qualifying land. The winning bidder must also meet additional requirements.

The information will be used to ensure that tribal communities within federally-recognized tribal areas have access to wireless telecommunications services equivalent to that of the nation.

OMB Control No.: 3060–0600.

Title: Application to Participate in a FCC Auction.

Form No.: FCC Form 175.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 11,000.

Estimated Time Per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,750 hours.

Total Annual Cost: N/A.

Needs and Uses: This information collection allows the Commission to ascertain whether or not applicants for spectrum have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to a Federal agency. The information will allow the Commission to determine the amount of the up-front payment to be paid by each applicant and will help ensure that auctions are conducted fairly and efficiently, thereby speeding the flow of payments to the U.S. Treasury and accelerating the provision of wireless service to the public.

OMB Control No.: 3060–0621.

Title: Rules and Requirements for C & F Block Broadband PCS Licenses.

Form No.: FCC Form 175.

Type of Review: Extension of currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 3,000.

Estimated Time Per Response: .50–20 hours.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement.

Total Annual Burden: 14,044 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission's rules require applicants for C & F block broadband PCS Licenses to file information so that the Commission can determine whether the applicants are legally, technically and financially qualified to be licensed and to determine whether applicants claiming different eligibility status are entitled to certain benefits.

OMB Control No.: 3060–0624.

Title: Amendment of the Commission's Rules to Establish New Personal Communications Services, section 24.103(f).

Form No.: FCC Forms 601 and 603.

Type of Review: Extension of currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 39 respondents; 16 responses.

Estimated Time Per Response: 250 hours.

Frequency of Response: On occasion reporting requirement and five and ten year reporting requirements.

Total Annual Burden: 7,700 hours.

Total Annual Cost: N/A.

Needs and Uses: The information collection requires all narrowband PCS licensees, except for paging response channel licensees, to file materials that show their compliance with the construction requirements of this service. These requirements were adopted to ensure that licensees timely construct their systems and that their systems serve significant areas. This information is used by licensing personnel in the Wireless Telecommunications Bureau to ensure that the spectrum is being utilized effectively.

OMB Control No.: 3060–0767.

Title: Auction Forms and License Transfer Disclosures—Supplement for the Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking in CC Docket No. 92–297.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 22,000.

Estimated Time Per Response: .25–3.75 hours.

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, on occasion reporting requirement.

Total Annual Burden: 762,000 hours.

Total Annual Cost: $45,333,000.

Needs and Uses: The Commission's rules require that small business applicants submit ownership information and gross revenue calculations and all applicants must submit joint bidding agreements. In the case of default, the FCC retains the discretion to re-auction such licenses. Finally, licensees transferring licenses within three years are required to maintain a file of all documents and contracts pertaining to the transfer. Certification is required for entities dropping out of auction to secure certain ownership interests in participants. The information is used to ensure that applicants are qualified to participate in Commission auctions and to ensure that license winners are entitled to receive small business preferences.

OMB Control No.: 3060–0779.

Title: Amendment to part 90 of the Commission's Rules to Provide for Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552.

Form No.: FCC Form 601.

Type of Review: Extension of currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 27,062 respondents; 31,467 responses.

Estimated Time Per Response: 1–50 hours.

Frequency of Response: Third party disclosure requirement, on occasion reporting requirement.

Total Annual Burden: 112,450 hours.

Total Annual Cost: $28,490,000.

Needs and Uses: This collection includes rules to govern the future operation and licensing of the 220–222 MHz band (220 MHz service). In establishing this licensing plan, the FCC's goal is to establish a flexible regulatory framework that allows for efficient licensing of the 220 MHz service, eliminates unnecessary regulatory burdens, and enhances the competitive potential of the 220 MHz service in the mobile service marketplace. However, as with any licensing and operational plan for radio service, a certain number of regulatory and information burdens are necessary to verify licensee compliance with FCC rules.

OMB Control No.: 3060–0914.

Title: Petition, Pursuant to section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, federal government, state, local or tribal governments.

Number of Respondents: 30.

Estimated Time Per Response: 8 hours.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement.

Total Annual Burden: 240 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission resets a waiver of section 22.925 of the Commission's rules in order to permit AirCell and a number of cellular licensees who, jointly entered into resale agreements with AirCell, to furnish system capacity for the provision of cellular service on a secondary, conditional basis to airborne terminal units using AirCell-developed technology for a period of two years. The waiver will allow airborne use of cellular telephones.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28891 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 3, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 12, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: *OMB Approval No.* 3060-0489.

Title: Section 73.37 — Applications for broadcast facilities, showing required.

Form No.: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 315.

Estimated Hours Per Response: 6–16 hours (These hours include the contracting hour cost to the respondents and the respondents hour burden).

Frequency of Response: On occasion.

Cost to Respondents: $686,250.

Estimated Total Annual Burden: 315 hours.

Needs and Uses: Section 73.37(d) requires an applicant for a new AM broadcast station, or for a major change in an authorized AM broadcast station, to make a satisfactory showing that objectionable interference will not result to an authorized AM station as a condition for its acceptance if new or modified nighttime operation by a Class B station is proposed.

Section 73.37(f) requires applicants seeking facilities modification that would result in spacings that fail to meet any of the separation requirements to include a showing that an adjustment has been made to the radiated signal which effectively results in a site-to-site radiation that is equivalent to the radiation of a station with standard Model I facilities.

The data is used by FCC staff to ensure that objectionable interference will not be caused to other authorized AM stations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28909 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 00–2519]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On November 7, 2000, the Commission released a public notice announcing the November 28 and 29, 2000, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Cheryl Callahan, Designated Federal Officer (DFO) at (202) 418–2320 or cchallaha@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, SW, Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: November 7, 2000.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, November 28, 2000, from 8:30 a.m. until 5:00 p.m., and on Wednesday, November 29, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW, Room TW–C305, Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Cheryl Callahan at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda

1. Approval of September 19–20 and October 17–18, 2000, meeting minutes.
2. North American Numbering Plan Administration (NANPA) Report. Status of proposed enterprise services and prices. Numbering Resource Utilization/Forecast Report (NRUF) December 1, 2000, meeting.
3. North American Numbering Plan Administration (NANPA) Oversight Working Group Report. Status of the NANPA selection process, NANPA performance review and presentation of final NRUF Technical Requirements.
4. Numbering Resource Optimization (NRO) Working Group Report. Status of unassigned number porting (UNP) impacts—Ad Hoc Study Group input and Industry Numbering Committee (INC) UNP report.
5. Industry Numbering Committee (INC) Report.
6. Toll Free Access Codes Issue Management Group (IMG) Report.
7. Network Interconnection and Interoperability Forum (NIIF) Resolution of Issue #0173—Toll Free Record Application Performance Guidelines.
8. Local Number Portability Administration (LNPA) Working Group Report. Wireless Number Portability Subcommittee update and status of Third Wireline Wireless Integration Report (revisited).
9. Cost Recovery Working Group Report. Status of the North American Numbering Plan Billing and Collection (NBANC) Billing and Collection (B&C) Agent Technical Requirements.

Wednesday, November 29, 2000

10. Steering Group Report.
11. North American Numbering Plan Billing and Collection (NBANC) Report.
12. Reseller Identification Code (CIC) Issue Management Group Status Report.
13. Limited Liability Corporations (LLCs) and Number Portability Administration Centers (NPAC) activity update.
14. Public Participation (5 minutes each, if any).
15. Other Business.
16. Action Items and Decisions Reached.

Federal Communications Commission

L. Charles Keller,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 00–29029 Filed 11–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:24 a.m. on Tuesday, November 7, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's personnel, receivership, and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than November 3, 2000, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: November 8, 2000.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 00–29041 Filed 11–8–00; 11:46 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3156–EM]

New Jersey; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Jersey (FEMA–3156–EM), dated November 1, 2000, and related determinations.

EFFECTIVE DATE: November 1, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 1, 2000, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the emergency conditions in certain areas of the State of New Jersey, as result of the West Nile Virus on August 5, 2000, and continuing is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.* (the Stafford Act). I, therefore, declare that such an emergency exists in the State of New Jersey.
>
> You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B) at 75 percent Federal funding for eligible expenses incurred by local governments. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act, as you may deem appropriate.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. However, pursuant to 42 U.S.C. § 5193(b), Federal assistance under this declaration will be limited to $5 million. In the event the assistance exceeds $5 million, you shall report to Congress on the nature and extent of emergency assistance and shall propose additional legislation if necessary, in accordance with 42 U.S.C. § 5193(b)(3).
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael Byrne of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New Jersey to have been affected adversely by this declared emergency:

> Atlantic, Bergen, Burlington, Camden, Cape May, Cumberland, Essex, Gloucester, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morries, Ocean, Passaic, Salem, Somerset, Sussex, Union, and Warren Counties for assistance as specified in the declaration letter quoted above.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment

Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–29005 Filed 11–09–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of teleconference meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Date of Meeting: November 14, 2000.

Place: The FEMA Conference Operator in Washington, DC will administer the teleconference. Individuals interested in participating should call 1–800–320–4330 at the time of the teleconference. Callers will be prompted for the conference code, #17, and they will then be connected through to the teleconference.

Time: 2:00 p.m. to 4:00 p.m., EST.

Proposed Agenda:

1. Call to order.
2. Announcements.
3. Action on minutes from October 2000 teleconference meeting.
4. Review Annual and Year 2000 Report draft text.
5. New business.
6. Adjournment.

Status: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Ms. Sally P. Magee, Federal Emergency Management Agency, 500 C Street SW., room 442, Washington, DC 20472, telephone (202) 646–8242 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting in October 2000.

Dated: November 3, 2000.

Michael K. Buckley,

Director, Technical Services Division, Mitigation Directorate.

[FR Doc. 00–29004 Filed 11–09–00; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Nominations of Topics for Evidence-Based Practice Centers (EPCs)

AGENCY: The Agency for Healthcare Research and Quality (AHRQ), formerly AHCPR.

ACTION: Nominations of topics for evidence reports and technology assessments.

SUMMARY: AHRQ invites a fourth round of nominations of topics for evidence reports and technology assessments relating to the prevention, diagnosis, treatment and management of common diseases and clinical conditions, as well as topics relating to organization and financing of health care. AHRQ's previous requests for topic nominations were published in the **Federal Register** on December 23, 1996, November 28, 1997, and May 4, 1999.

DATES: Topic nominations should be submitted by January 12, 2001 in order to be considered for the next group of evidence reports and technology assessments. In addition to timely responses to this request for nominations, AHRQ also accepts topic nominations on an ongoing basis. AHRQ will not reply to individual responses, but will consider all nominations during the selection process. Topics selected will be announced from time to time in the **Federal Register** and AHRQ press releases.

ADDRESSES: Topic nominations should be submitted to Douglas B. Kamerow, M.D., MPH, Director, Center for Practice and Technology Assessment, AHRQ, 6010 Executive Boulevard, Suite 300, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jacqueline Besteman, J.D., M.A., Center for Practice and Technology Assessment, AHRQ, 6010 Executive Blvd., Suite 300, Rockville, MD 20852; Phone: (301) 594–4017; Fax: (301) 594–4027; E-mail: jbestema@ahrq.gov.

Arrangement for Public Inspection: All nominations will be available for public inspection at the Center for Practice and Technology Assessment, telephone (301) 594–4015, weekdays between 8:30 a.m. and 5 p.m. (Eastern time).

SUPPLEMENTARY INFORMATION:

1. Background

Under Title IX of the Public Health Service Act (42 U.S.C. 299a–299c) as amended by Pub. L. 106–129 (1999), AHRQ is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. AHRQ accomplishes these goals through scientific research and through promotion of improvements in clinical practice and health systems practices including the prevention of diseases and other health conditions.

2. Purpose

The purpose of this **Federal Register** notice is to encourage participation and collaboration of professional societies, health systems, payors, and providers, with AHRQ as it carries out its mission to promote the practice of evidence-based health care. AHRQ serves as the science partner with private-sector and public organizations in their efforts to improve the quality, effectiveness, and appropriateness of health care delivery in the United States, and to expedite the translation of evidence-based research findings into improved health care services. AHRQ awards task order contracts to its Evidence-based Practice Centers (EPCs) to undertake scientific analyses and evidence syntheses on high-priority topics. The EPCs produce science syntheses—evidence reports and technology assessments—that provide to public and private organizations the foundation for developing and implementing their own practice guidelines, performance measures, educational programs, and other strategies to improve the quality of health care and decision-making related to the effectiveness and appropriateness of specific health care technologies and services. The evidence reports and technology assessments also may be used to inform coverage and reimbursement policies.

As the body of scientific studies related to the organization and financing of health care grows, systematic review and analyses of these studies can provide health system organizations with a scientific foundation for developing system-wide policies and practices. These reports may address and evaluate topics such as risk adjustment methodologies, market performance measures, provider payment mechanisms, and insurance purchasing tools, as well as provider integration of new scientific findings regarding health care and delivery innovations.

Evidence-Based Practice Centers (EPCs)

The EPCs prepare evidence reports and technology assessments on topics for which there is significant demand for information by health care providers, insurers, purchasers, health-related societies, and patient advocacy organizations. Such topics may include the prevention, diagnosis and/or treatment of particular diseases or health conditions including, where appropriate, the use of alternative/complementary therapies, as well as the appropriate use of commonly provided services, procedures, or technologies. Topics also may include issues related to the organization and financing of care. AHRQ widely disseminates the EPC evidence reports and technology assessments, both electronically and in print. The EPC evidence reports and technology assessments do not include clinical recommendations or recommendations on reimbursement and coverage policies.

Topic Nomination and Selection Process

The AHRQ will review topic nominations and supporting information and determine final topics, seeking additional information as appropriate. AHRQ encourages topic nominations from professional societies and organizations comprised of members of minority populations, as well as nomination of topics that have significant impact on the health status of women, children, ethnic and racial populations. Nominators of selected topics assume the role of Partners to AHRQ and the EPCs. Partners are expected to serve as resources to EPCs as they develop evidence reports and technology assessments. Partners may also serve as peer reviewers of draft evidence reports and assessments.

The processes that AHRQ employs to select topics nominated for analyses by the EPCs is described below. Section A addresses AHRQ's nomination process and selection criteria for clinical topics. Section B addresses AHRQ's nomination process and selection criteria for organization and financing topics.

Section A: Clinical Topics

Nomination Process for Clinical Topics

Nominations of clinical topics for AHRQ evidence reports and technology assessments should focus on specific aspects of prevention, diagnosis, treatment and/or management of a particular condition, or on an individual procedure, treatment, or technology. Potential topics should be carefully defined and circumscribed so that the relevant published literature and other databases can be searched, evidence systematically reviewed, supplemental analyses performed, draft reports and assessments circulated for external peer review, and final evidence reports or technology assessments produced. Reports and assessments can be completed in three to six months, if there is a small volume of literature to be systematically reviewed and analyzed. Some evidence reports and technology assessments may require up to 12 months for completion due to complexity of the topic, the volume of literature to be searched, abstracted, and analyzed, and completion of the external peer review process. Topics selected will not duplicate current and widely available research syntheses, unless new evidence is available that suggests the need for revisions or updates.

For each topic, nominators should provide a rationale and supporting evidence on the clinical relevance and importance of the topic. Nominators also must state their plans are for rapid translation of the evidence reports and technology assessments into clinical guidelines, performance measures, educational programs, or other strategies for strengthening the quality of health care services, or plans to inform development of reimbursement or coverage policies. Nomination information should include.

- Defined condition and target population.
- Three to five specific questions to be answered.
- Incidence or prevalence, and indication of the disease burden (e.g., mortality, morbidity, functional impairment) in the U.S. general population or in subpopulations (e.g., Medicare and Medicaid populations). For prevalence, the number of cases in the U.S. and the number of affected persons per 1,000 persons in the general U.S. population should be provided. For incidence, the number of new cases per 100,000 a year should be provided.
- Costs associated with the clinical condition, including average reimbursed amounts for diagnostic and therapeutic interventions (e.g., average U.S. costs and number of persons who receive care for diagnosis or treatment in a year, citing ICD9–CM and CPT codes, if possible).
- Impact potential of the evidence report or technology assessment to decrease health care costs or to improve health status or clinical outcomes.
- Availability of scientific data and bibliographies of studies on the topic.
- References to significant differences in practice patterns and/or results; alternative therapies and controversies.
- Demonstrated commitment by nominating organization to incorporate the report into its managerial or policy decision making (i.e., rapid translation of the report or assessment into clinical practice guidelines or other quality improvement tools, or to inform reimbursement or coverage policies about a particular technology or service).
- Plans by the nominating organization to measure the impact of the report on clinical practice.

Selection Criteria for Clinical Topics

Factors that will be considered in the selection of clinical topics for AHRQ evidence report and technology assessment topics include: (1) High incidence or prevalence in the general population and in special populations, including women, racial and ethnic minorities, pediatric and elderly populations, and those of low socioeconomic status; (2) significance for the needs of the Medicare, Medicaid and other Federal health programs; (3) high costs associated with a condition, procedure, treatment, or technology, whether due to the number of people needing care, high unit cost of care, or high indirect costs; (4) controversy or uncertainty about the effectiveness or relative effectiveness of available clinical strategies or technologies; (5) impact potential for informing and improving patient or provider decision making; (6) impact potential for reducing clinically significant variations in the prevention, diagnosis, treatment, or clinical management of a disease or condition, or in the use of a procedure or technology, or in the health outcomes achieved; (7) availability of scientific data to support the systematic review and analysis of the topic; (8) demonstrated commitment by the nominating organization to incorporate the report into its managerial or policy decision making; and (9) plans by the nominating organization to measure the impact of the report on clinical practice.

Section B: Organization and Financing Topics

Nomination Process for Organization and Financing Topics

Nominations of organization and financing topics for AHRQ evidence reports should focus on specific aspects of health care organization and finance. Topics should be carefully defined and circumscribed so that relevant databases may be searched, the evidence systematically reviewed, supplemental analyses performed, draft reports circulated in three to six months if there is a small volume of literature for systematic review and analysis. Some evidence reports may require up to 12 months for completion due to the complexity of the topic and the volume of literature to be searched, abstracted, and analyzed. Topics selected will not duplicate current and widely available research syntheses, unless new evidence is available that suggests the need for revisions or updates.

For each topic, nominators should provide a rationale and supporting evidence on the importance and relevance of the topic. Nominators must also state their plans for use of the evidence report and indicate how the report could be used by public and private decision makers. Nomination information should include:

- Defined organizational/financial arrangement or structure impacting quality, outcomes, cost, access or use.
- Three to five specific questions to be answered.
- If appropriate, description of how the organizational/financial arrangement or structure is particularly relevant to delivery of care for specific vulnerable populations (e.g., children, persons with chronic disease) or certain communities (e.g., rural markets).
- Costs potentially affected by the organizational/financial arrangement, to the extent they can be quantified.
- Impact potential of the evidence report to decrease health care costs or to improve health status or outcomes.
- Availability of scientific and/or administrative data and bibliographies of studies on the topic.
- References to significant variation in delivery and financing patterns and/or results, and related controversies.
- Nominator's plan for use of an evidence report on this topic.
- Nominator's plan for measuring the impact of the report on practice.

Selection Criteria for Organization and Financing Topics

Factors that will be considered in the selection of topics related to the organization and financing of care include the following: (1) Uncertainty about the impact of the subject organizational or financing strategy; (2) potential for the subject organizational or financing strategy or the proposed research synthesis to significantly impact aggregate health care costs; (3) policy-relevant to Medicare, Medicaid, and/or other Federal and State health programs; (4) relevant to vulnerable populations, including racial and ethnic minorities, and particular communities, such as rural markets; (5) available scientific data to support systematic review and analysis of the topic; (6) demonstrated commitment by the nominating organization to incorporate the report into its managerial or policy decision-making; and (7) plans by the nominating organization to measure the impact of the report on practice.

Dated: November 2, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–28896 Filed 11–9–00; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Diseases: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates: 9 a.m.–5:45 p.m., December 7, 2000, 8:30 a.m.–2:30 p.m., December 8, 2000.

Place: CDC, Roybal Building 17 Conference Room, 1600 Clifton Road, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters to be Discussed: Agenda items will include:

1. Opening Session: NCID Update
2. CDC Facilities Master Plan, Fort Collins, Colorado
3. Program Update: Patient Safety and Quality Care
4. Issue Updates
    a. NCID Research Agenda
    b. Planning and Communication Strategies
    c. Global Infectious Disease Strategic Plan
5. Tour of Roybal Building 17
6. Breakout groups on Issue Updates (Item 4, a–c above)
7. Program Update: West Nile Virus
8. Breakout Group Report/Discussion: NCID Research Agenda
9. Breakout Group Report/Discussion: Planning and Communication Strategies
10. Breakout Group Report/Discussion: Global Infectious Disease Strategic Plan
11. Late Breakers: Scientific Outbreak Reports
12. Discussions and Recommendations

Other agenda items include announcements/introductions; follow-up on actions recommended by the Board May 2000; consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Diane S. Holley, Office of the Director, NCID, CDC, Mailstop C–20, 1600 Clifton Road, NE, Atlanta, Georgia 30333, email *dsy1@cdc.gov*; telephone 404/639–0078.

The Director, Management Analysis and Services office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 6, 2000.

Carolyn J. Russell,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–28898 Filed 11–9–00; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 9 a.m.–3:30 p.m., November 28, 2000.

Place: The Washington Court, 525 New Jersey Avenue, NW., Washington, DC 20001–1527.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The BSC, NIOSH is charged with providing advice to the Director, NIOSH on NIOSH research programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results.

Matters To Be Discussed: Agenda items include a report from the Director of NIOSH; Report from Subcommittee for Agricultural Review; Report on the NORA Risk Assessment Meeting; Interim Report from Subcommittee on Beryllium Research; Vermiculite and Other Potential Asbestos Containing Minerals; NIOSH Activities Under the New DOE Workers' Compensation Program; and future activities of the Board.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Kathleen Rest, Ph.D., Executive Secretary, BSC, NIOSH, Centers for Disease Control and Prevention, 200 Independence Avenue, SW., Room 715H, Washington, DC 20201, telephone: 202/401–0721, fax: 202/260–4464, e-mail: krx9@cdc.gov.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November, 6, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–28899 Filed 11–9–00; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10013]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; *Title of Information Collection:* Medicare beneficiary line survey; *Form No.:* HCFA–10013 (OMB# 0938–NEW); *Use:* This survey will be used by the Michigan Peer Review Organization to obtain information that will assist it in improving its services; *Frequency:* On occasion; *Affected Public:* Individuals or households; Number of Respondents: 3,600; *Total Annual Responses:* 360; *Total Annual Hours: 90.*

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 31, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–28868 Filed 11–9–00; 8:45 am]

BILLING CODE 4120-03-U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Information collection; request for comments.

SUMMARY: We are submitting the collection of information described below to OMB for renewal under the provisions of the Paperwork Reduction Act of 1995. If you wish to obtain copies of the proposed information collection requirement, related forms, and/or explanatory material, contact the Information Collection Clearance Officer at the address listed below.

DATES: OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must submit comments on or before December 13, 2000.

ADDRESSES: Send your comments on the requirement to the Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503, and to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222-ARLSQ, 1849 C Street NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Rebecca Mullin, Information Collection Clearance Officer, at (703) 358–2287; rebecca_mullin@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities. The U.S. Fish and Wildlife Service plans to submit a request to OMB to renew its approval of the collection of information concerning numbers of double-crested cormorants taken under the Depredation Order (50 CFR 21.47). We are requesting a 3-year term of approval for this information collection activity. A previous 60 day notice was published (July 28, 2000, pages 46488–46489) in the **Federal Register** inviting public comment. One comment was received.

Comments

A letter from the National Aquaculture Association (NAA) stated that although they felt the time burden was underestimated, the burden is justified because the information collection is "vital to the overall management program." NAA also suggested that publishing an on-line summary of the results of the information collection (*i.e.*, the number of cormorants killed under the Depredation Order) would be useful and that online reporting should be considered.

Response

While we do not feel that these comments justify revising the estimated time burden, we will consider the idea of using the internet for information collection and sharing once OMB approval is completed.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB granted an emergency control number (1018–0097) for this collection of information, which expired in August 1998. The Service is currently in the process of preparing an Environmental Impact Statement and national management plan for the double-crested cormorant and would like to renew the control number so that it may collect relevant biological information from aquaculturists under the terms of the Depredation Order.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the management of migratory bird populations frequenting the United States. This responsibility dictates the gathering of accurate data on various characteristics of migratory bird populations. In 1998, we issued a standing Depredation Order that allows persons engaged in the production of commercial freshwater aquaculture stocks in 13 States to take depredating double-crested cormorants at aquacultural facilities. Under the conditions of the Depredation Order, any person exercising such privileges must keep and maintain a monthly log recording the date and number of all cormorants killed each month, maintain the log for a period of 3 years, and make the log available to Federal and State wildlife enforcement officers upon request. The mortality information that these logs provide is necessary for the development of population data and determination of program effectiveness to be used for management purposes.

Title: Depredation Order for the Double-crested Cormorant.

Approval Number: 1018–0097.

Service Form Number: None.

Frequency of Collection: Annually.

Description of Respondents: Businesses, individuals, and State, local, or tribal governments

Total Annual Burden Hours: The total annual burden is estimated at 875 hours.

Total Annual Responses: About 2,200 individuals are expected to complete the required mortality logs and approximately 250 individuals will complete the annual survey (for a total of 2,450).

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Dated: November 3, 2000.

Rebecca A. Mullin,

Information Collection Clearance Officer.

[FR Doc. 00–28918 Filed 11–9–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE, PRT–032757

The applicant has amended a permit request. The original request for a permit to import 1 captive-born female Sumatran tiger (*Panthera tigris sumatrae*) from the Surabaya Zoo, Indonesia for the purpose of propagation for the enhancement of the survival of the species was published in the **Federal Register** on September 21, 2000. The applicant now requests a permit to import 1 captive-born male and 2 captive-born female Sumatran tigers (*Panthera tigris sumatrae*) from the Surabaya Zoo, Indonesia for the purpose of propagation for the enhancement of the survival of the species.

Applicant: Paul L. Snider, Lewiston, ID, PRT–035504

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: White Oak Conservation Center, Yulee, FL, PRT–843877

The applicant requests a permit to import up to fifteen captive-held and/or captive-born Visayan deer (*Cervus alfredi*) originating from the Mari-ti Center, Panay, Philippines, for the purpose of enhancement of the survival of the species through captive propagation. The specimens will be shipped to Zoo Zurich, Zurich, Switzerland, for quarantine prior to being imported into the United States.

Applicant: University of Illinois, Chicago, IL PRT–009695

The applicant requests re-issuance of their permit to import samples obtained from Cuban sandhill cranes (*Grus canadensis nesiotes*) in Cuba for the purpose of scientific research. This notification covers activities conducted by the applicant over a five year period.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Joe Klutsch, King Salmon, AK, PRT–035705

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The U.S. Fish and Wildlife Service has information collection approval from OMB through February 28, 2001. OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 6, 2000.

Charlie Chandler,

Chief, Branch of Permits, Division of Management Authority.

[FR Doc. 00–28895 Filed 11–9–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Revised Environmental Assessment/Habitat Conservation Plan Related to Application for an Incidental Take Permit for the Magic Carpet Woods Association Project, Leelanau Township, Leelanau County, Michigan

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of availability.

SUMMARY: This notice advises the public and other agencies of the availability for review and comment of a Environmental Assessment/Habitat Conservation Plan (EA/HCP) and Implementing Agreement. On March 29, 2000 Magic Carpet Woods Association (Applicant) applied for an Incidental Take Permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act, 16 U.S.C. 1531, *et seq.*) from the U.S. Fish and Wildlife Service (Service). This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). An April 20, 2000 Notice made available for a permit to authorize the incidental take associated with harassment (*i.e.*, harm) of the pipping plover (*Charadrius melodus;* bird) which is federally listed as endangered. The take would occur as a result of residential construction adjacent to Lake Michigan beachfront in Leelanau Township, Leelanau County, Michigan. That application has been assigned permit number TE–025433.

Copies of the revised EA/HCP and Implementing Agreement may be obtained by making a request to the Regional Office address below. Comments on the EA/HCP must be submitted in writing. All comments received, including names and addresses, will become part of the public record and will be available for review pursuant to section 10(c) of the Act. The comment period is 30 days because the application was received prior to issuance of the "Five-Point Policy" (June 1, 2000; 65 FR 35242).

DATES: Written comments must be received on or before COB December 13, 2000.

ADDRESSES: Persons wishing to review the documents may obtain copies by writing, telephoning, fax, or e-mail to either of the two Service positions listed in the following paragraphs. The EA/HCP is also available at the following Internet address: www/midwest.fws.gov/nepa/

Documents will be available for public inspection during normal business hours (8:00–4:30), at the U.S. Fish and Wildlife Service Regional Office in Fort Snelling, Minnesota, and at the East Lansing Field Office in East Lansing, Michigan. Written comments should be submitted to the Regional HCP Coordinator at the address or via FAX listed below. All comments received will become part of the administrative record and may be released to the public. Please refer to permit number TE–025433 when submitting comments.

Regional HCP Coordinator, U.S. Fish and Wildlife Services, 1 Federal Drive, Fort Snelling, MN 55111–4056, Telephone: 612/713–5343, Fax: 612/713–5292

Field Supervisor, U.S. Fish and Wildlife Service, East Lansing Field Office, 2651 Coolidge Rd., Suite 101, East Lansing, Michigan 48823–6316, Telephone: 517/351–2555

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, Regional HCP Coordinator, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota, telephone (612) 713–5343, or email peter__fasbender@fws.gov.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and federal regulations prohibit "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to take listed species, provided such take is incidental to, and not the purpose of, an otherwise lawful activity. Regulations governing permits for threatened species are found in 50 CFR 17.32.

Background

The proposed Magic Carpet Woods Association residential construction is located on approximately 91 acres at the north end of Kehl Road in Leelanau Township, Leelanau Township, Leelanau County, Michigan. The beachfront of the property is part of the Lake Michigan Cathead Bay shoreline. Magic Carpet Woods Association is requesting a 25-year incidental take permit for potential take (harassment) of the piping plover on the beach of the Association property. The beach/dune portion of the property is the only part potentially containing piping plover habitat. This area consists of open, unvegetated beach and grassy low dunes that abuts a forested portion. The beach/dune is narrow and averages about 85 feet wide.

Piping plovers have nested in recent years at the adjacent Leelanau State Park, although none nested there or elsewhere in Cathead Bay in 2000. No plovers have been known to nest on or as near as one-half mile of the Association beach, nor have they ever been recorded using the Association beach. The beach currently does not have characteristics of good nesting habitat. There may be potential for plovers to nest on the property in the future if an expanded plover population exhibits variation in acceptable breeding habitat characteristics or natural forces alter current beach characteristics. On July 6, 2000, the Service published a proposal to designate critical habitat for the piping plover. All of the Cathead Bay shoreline is included in a proposed 3.7 mile long unit potentially containing primary constituent elements of critical habitat. The open dune portion of the project site contains several hundred individual Pitcher's thistle (*Cirsium pitcheri*) plants, a threatened species.

Piping plovers are known to be extremely sensitive to disturbance by human activity. Direct and indirect effects of human activity throughout the Great lakes and Atlantic coast breeding range is strongly implicated in the species decline that lead to its listing as an endangered species in 1985. The project involves construction of 13 single family residences within the forested portion of the property adjacent to and parallel with the one-half mile long beach. Broadwalk may be constructed through the vegetated dunes, but otherwise the project will not result in any construction on, or other physical alteration of the beach portion of the property. Construction of the proposed project would result in human activity along a section of beach presently associated with undeveloped land.

Potential take of piping plovers would occur through harassment of adults and chicks. The HCP provides conservation and protective measures to minimize and mitigate such take to a level that will not reduce productivity to slow progress toward recovery. The HCP provides for seasonally restructions of human presence on the beach, control of all pets during the critical nesting and rearing period, control of garbage, presence during selected periods of a piping plover steward, access to the beach by Service biologists or designees for annual monitoring on the property regardless of whether piping plovers next there, provide funding for a piping plover captive rearing program, and other measures. In the event piping plovers next on the property in the future, nests will be fully protected with predator exclosures, signing, monitoring and all other measures normally taken for next protection on public lands. The presence of Association residence owners is likely to eliminate unregulated trespass on the property. Take that may occur as a result of the permit issued, will not include direct mortality of adults or chicks.

As a result of comments received on the original draft EA/HCP, the Service and Applicant have revised the EA/HCP. The Proposed Action consists of the issuance of an incidental take permit and implementation of the HCP. The revised EA considers four action alternatives and the "No Action" Alternative. The NEPA process will be completed after the comment period. After completing the NEPA process, the Service will evaluate the permit application (if appropriate to the selected Alternative), the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit to magic Carpet Woods Association for the incidental take of the piping plover from human activity associated with residential development on the Association property. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: November 6, 2000.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 00–28900 Filed 11–9–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Base Roll Dated May 2, 1996, Submitted by the Pokagon Band of Potawatomi Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 9(b)(2) of Pub. L. 103–323 (108 Stat. 2153), as amended, notice is given for receipt of the May 2, 1996, Base Roll of the Pokagon Band of Potawatomi Indians, containing 2,325 names of tribal members.

FOR FURTHER INFORMATION CONTACT: Anne E. Bolton, Field Representative, Michigan Field Office, 2901.5 I–75 Business Spur, Sault Ste. Marie, Michigan 49783.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The Base Roll was received at the Bureau of Indian Affairs, Michigan Field Office on May 2, 1996. After review, corrections to the roll were made: eight names were added, three names were removed due to relinquishments, two names removed because of dual enrollment, 41 names that were listed twice were removed, 52 names were removed because of no ancestors on the historical rolls/filed after date of death/insufficient documentation. The corrected Base Roll containing the names of 2,325 tribal members was approved by Tribal Council Resolution #00–04–05–03 and submitted to the Michigan Field Office on May 11, 2000.

Dated: November 2, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–28982 Filed 11–9–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–01–1220–DA]

Final Travel Management Plan Decision for the Clancy-Unionville Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Record of Decision.

SUMMARY: The Bureau of Land Management (BLM) and the Forest Service completed the Final EIS (FEIS) analysis for the Clancy-Unionville Vegetative Manipulation and Travel Management Project near Helena, Montana and the BLM has finalized its Record of Decision (ROD) for the Travel Management portion of this project. The Decision is to implement Alternative D modified. This preferred alternative restricts wheeled motorized vehicles to designated roads and trails during varying periods of the year to protect vegetation, soils, water quality and wildlife values. Snowmobiles will be allowed across BLM lands south of Jackson Creek from December 2 to May 15 as snow conditions allow.

Five alternatives were considered in response to the identified issues in the Clancy-Unionville Travel Management Plan FEIS. The preferred Alternative D is considered to be the environmentally preferable alternative. The issues and alternatives are described in Chapter II and analyzed in Chapter III of the FEIS.

Alternative D with four minor modifications described in the ROD was selected as the preferred because it best meets the Purpose and Need statements for the Travel Management Plan. This alternative was specifically developed in response to wildlife issues with emphasis given to big game security and winter range protection. In addition, efforts were made to provide a balanced system of designated roads and trails to meet the needs of both motorized and non-motorized users while protecting important natural resources of the area.

BLM lands restricted to motorized travel under this decision are located in

Principal Meridian Montana

T. 8 N., R.3 W., secs. 4–8;
T. 8 N., R.4 W., secs. 1–3, 9, 10, 12–15, 22 and 23;
T. 9 N., R.3 W., secs. 17–20, 23, 26, and 29–33;
T. 9 N., R.4 W., sec. 25; and
T. 10 N, R.4 W., sec. 36.

Travel restrictions for these above lands will be implemented in accordance with the Clancy-Unionville Travel Plan FEIS ROD during the spring of 2001 subject to the appeal process.

A final decision has also been made to amend the Headwaters Resource Management Plan of 1984, in that all three Management Units (8, 23, and 24) within the affected area would be classified as "Restricted" to motorized travel and "Closed" to permit consideration for organized motor vehicle events. A 30-day protest period was provided for this proposed amendment at the time the FEIS was released to the public and published in the **Federal Register** on March 17, 2000. Six protests were received and all have been resolved.

DATES: This travel plan decision is subject to public appeal. You have the right to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations of 43 CFR, part 4. In order for your appeal to be considered timely, it must be received by December 13, 2000, which is 30 days from the date of this publishing in the **Federal Register**. If an appeal is taken, you must follow the procedures outlined on Form 1842–1, Information on Taking Appeals to the Board of Land Appeals. The appellant

has the burden of showing that the Decision appealed from is in error.

This Decision will become effective at the expiration of the time for filing a Notice of Appeal unless a petition for a stay of the Decision is timely filed together with a Notice of Appeal. See 43 CFR 4.21(a). The provisions of 43 CFR 4.21(b) define the standards and procedures for filing a petition to obtain a stay pending appeal.

ADDRESSES: Copies of the FEIS Record of Decisions and Form 1342–1 are available at the Butte Field Office, 106 N. Parkmont, Butte, Montana 59701.

FOR FURTHER INFORMATION CONTACT: Brad Rixford of the Butte Field Office at 406–494–5059.

Steve Hartmann,

Acting Butte Field Manager.

[FR Doc. 00–28815 Filed 11–09–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–010–1430–01; AZA–28743]

Notice of Realty Action; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following land has been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value of $21,000. The land will not be offered for sale until at least 60 days after the date of this notice.

Gila and Salt River Meridian, Arizona

T. 39 N., R. 7 E.,
Sec. 4, Lots 14, 15, and 18, inclusive.
Containing 22.72 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Marble Canyon Company, Marble Canyon, Arizona, who own that portion of the Marble Canyon Airstrip which is located on the subject parcel. The parcel has been leased for airstrip purposes since the early 1950s.

The sale would be for the surface estate only. The patent, when issued, will contain certain reservations to the United States and will be subject to a restrictive covenant to protect scenic values of the area.

DATES: Interested parties may submit comments on or before December 28, 2000 to the Field Manager, Arizona Strip Field Office at the address below. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the reservations, as well as, specific conditions of the sale are available for review at the Arizona Strip Field Office, Bureau of Land Management, 345 East Riverside Drive, St. George, Utah 84790.

FOR FURTHER INFORMATION CONTACT: Laurie Ford, Realty Specialist, at the address listed above or phone (435) 688–3271.

Dated: October 31, 2000.

Roger G. Taylor,

Arizona Strip Field Manager.

[FR Doc. 00–28983 Filed 11–9–00; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of an information collection (OMB Control Number 1010–0061).

SUMMARY: To comply with the Paperwork Reduction Act of 1995, we are soliciting comments on an information collection titled, Oil Transportation Allowance. We will submit an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval after this comment period closes.

DATES: Submit written comments on or before January 12, 2001.

ADDRESSES: Submit written comments to Connie Bartram, Acting Chief, Regulations and FOIA Team, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

PUBLIC COMMENT PROCEDURE: Submit your comments to the offices listed in the **ADDRESSES** section, or email your comments to us at *MRM.comments@mms.gov*. Include the title of the information collection and the OMB Control Number in the "Attention" line of your comment; also, include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Bartram at (303) 231–3410, FAX (303) 231–3385. We will post all comments at *http://www.rmp.mms.gov* for public review.

Also, contact Ms. Bartram to review paper copies of the comments. The comments, including names and addresses of respondents, are available for public review during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the public record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Regulations and FOIA Team, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov*. A copy of the ICR will be available to you without charge upon request.

SUPPLEMENTARY INFORMATION:

Title: Oil Transportation Allowance.

OMB Control Number: 1010–0061.

Bureau Form Number: MMS–4110.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries.

The Secretary is required by various laws to manage mineral resources production on Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The product valuation and allowance determination process that we conduct on behalf of the Secretary is essential to assuring that Indians receive payment on the proper value of the minerals being removed. When a company or an individual enters into a lease to explore, develop, produce, and dispose of oil from Indian lands, that company or individual (the lessee) agrees to pay the Indian tribe or allottee a share (royalty) of the value received from production from the leased lands.

Royalty rates are specified in an Indian lease agreement. To determine whether the amount of royalty tendered represents the proper royalty due, it is first necessary to establish the proper value of the oil that is being sold or otherwise disposed of in some other manner, as well as the proper costs associated with allowable deductions. The lessee is required to report various kinds of information to the lessor relative to the processing and business transactions associated with the disposition of the leased minerals. In some circumstances, lessees are authorized to deduct from royalty payments the reasonable actual cost of transporting the royalty portion of the oil from an Indian lease to a delivery point remote from the lease. We use transportation allowances as part of the product valuation process to determine if the lessee is reporting and paying the proper royalty amount.

Frequency: On occasion.

Estimated Number and Description of Respondents: 3 companies or individuals entering into Indian leases.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 5 hours.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: n/a.

Comments: The Paperwork Reduction Act at 44 U.S.C. 3506(c)(2)(A) requires each agency "to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The Paperwork Reduction Act also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens and need to know if there are other costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities.

Your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

The Paperwork Reduction Act provides that an agency shall not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: October 26, 2000.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 00–27984 Filed 11–9–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Finding of No Significant Impact for the U.S. Park Police (USPP) Aviation Section Hangar and Fuel System Improvements, Washington, DC

ACTION: Notice of availability of the Decision Notice and Finding of No Significant Impact (FONSI) for the U.S. Park Police Aviation Section Hangar and Fuel System Improvements—National Capital Parks—East, Washington, DC.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations, and National Park Service (NPS) guidance, the NPS prepared an environmental assessment (EA) for the construction of an additional aviation hangar and a new fueling station at the existing USPP Aviation Section's heliport in Washington, DC. The EA contained analysis developed as a result of public comments on a draft version obtained during a 30-day public review on the draft EA. The availability of the EA for a second 30-day public comment period was announced in the **Federal Register** on August 29, 2000. After the comment period, NPS selected the preferred alternative which is the proposed action, followed by a November 2, 2000 finding of no significant environmental impact.

These improvements are to the USPP heliport, which is an existing facility in Anacostia Park, National Capital Parks-East, and is used for helicopters that are the only law enforcement and emergency rescue helicopters serving Washington, DC. The project would construct an approximately 6,100-square-foot aviation hangar and replace the fuel trucks on-site by installation of a new environmentally protective fueling station. All improvements would be completely located within the existing area of the heliport with no increase in the size of the heliport footprint, and with three-fourths acre of paving removed and restored to grass.

SUPPLEMENTARY INFORMATION: Requests for copies of the DN/FONSI/EA, or for any additional information, should be directed to Mr. Michael Wilderman, National Capital Parks-East, 1900 Anacostia Drive, SE., Washington, DC 20020, Telephone (202) 690–5165.

Dated: November 6, 2000.

Gentry Davis,

Acting Regional Director, National Park Service, National Capital Region.

[FR Doc. 00–28948 Filed 11–9–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Anthropological Studies Center (ASC), Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA, and in Control of the California Department of Transportation (CALTRANS)

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in possession of the Anthropological Studies Center (ASC), Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA; and in the control of the California Department of Transportation (CALTRANS), Sacramento, CA.

This notice is being published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University professional staff in consultation with representatives of the Cortina Indian Rancheria of Wintun Indians of California.

In 1974, human remains representing two individuals were recovered from the Suscol Site (CA–NAP–15/H) in Napa County, CA by Thomas F. King, during test excavations along Highway 29. No known individuals were identified. No associated funerary objects are present.

In 1978 and 1979, human remains representing five individuals were recovered from the Suscol Site (CA–NAP–15/H) in Napa County, CA by Stradford and Schwaderer, during test excavations along Highway 29. No known individuals were identified. The two associated funerary objects found with individual one (accession number 79–14) are an obsidian biface and a groundstone fragment. The 31 associated funerary objects found with individuals two through four (accession number 79–28) are glass trade beads.

Based on archeological evidence, continuity of occupation, and ethnographic accounts, these individuals have been identified as Native American. The major occupation of CA–NAP–15/H occurred during the historic period, mainly during the early 19th Century. Based on point typologies and bead typologies uncovered during previous excavations of burial matrixes, the human remains have been dated to the historic period. Geographical, ethnographic, linguistic, and historical evidence indicates that the Suscol site is located within the traditional Patwin territory.

Based on the above-mentioned information, officials of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of seven individuals of Native American ancestry. Officials of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University also have determined that, pursuant to 43 CFR 10.2(d)(2), the 33 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Cortina Band of Wintun Indians, California.

This notice has been sent to officials of the Cortina Band of Wintun Indians, California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Tina Biorn, Environmental Program, Department of Transportation, P.O. Box 942874 (M.S.27), Sacramento, CA 94274–0001, telephone (916) 653–0013, before December 13, 2000. Repatriation of the human remains and associated funerary objects to the Cortina Band of Wintun Indians, California may begin after that date if no additional claimants come forward.

Dated: October 31, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–29001 Filed 11–9–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University of Denver Department of Anthropology and Museum of Anthropology professional staff, a contract physical anthropologist, and the New Mexico State Archaeologist in consultation with representatives of the Hopi Tribe of Arizona, and the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California.

In 1938, human remains representing one individual were recovered from Pueblo Blanco, Santa Fe County, NM, by Theodore Sowers. Mr. Sowers was a graduate of the University of Denver, and, in 1995, his daughters donated the remains to the University of Denver so that they could be repatriated. No known individuals were identified. The 14 associated funerary objects are 1 non-human bone, 9 ceramic sherds (black and red on white), and 4 chipped stone tools.

Pueblo Blanco (site LA 40), a large masonry pueblo in the Galisteo Basin, was occupied from A.D. 1400 to circa A.D. 1680 by Tanoan-speaking people. The Galisteo Basin was largely abandoned following the Pueblo Revolt of 1680, and subsequently the Tanos lived among other Rio Grande pueblos. Many of the Tanos moved to the Hopi area around 1700, where they live in Tewa Village. The evidence presented during consultations with the Hopi, supported by the ethnohistoric record and archeological evidence, demonstrates a cultural affiliation between Pueblo Blanco and the Hopi Tribe of Arizona.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 14 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe of Arizona.

This notice has been sent to officials of the Hopi Tribe of Arizona and the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator at the University of Denver Department of Anthropology and Museum of Anthropology, 2000 Asbury, Sturm Hall S–146, Denver, CO 80208–2406, email jbernste@du.edu, telephone (303) 871–2543, before December 13, 2000. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona may begin after that date if no additional claimants come forward.

Dated: October 31, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–28857 Filed 11–9–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University of Denver Department of Anthropology and Museum of Anthropology professional staff and a contract physical anthropologist in consultation with representatives of the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; and the Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch, Nevada.

In 1949, human remains representing two individuals were recovered from near Fallon, Churchill County, NV. At an unknown date an unknown individual donated the remains to the museum. No known individuals were identified. No associated funerary objects are present.

The geographical location and physical anthropological characteristics indicate that these remains are Native American. The archeological, ethnological, and oral historical evidence demonstrates that the area around Fallon, NV, has been the ancestral territory of the Northern Paiute since at least A.D. 1000. Evidence presented during consultations indicates that the Northern Paiute inhabitants of this area are presently represented by the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; and the Walker River Paiute Tribe of the Walker River Reservation, Nevada.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Also, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; and the Walker River Paiute Tribe of the Walker River Reservation, Nevada.

This notice has been sent to officials of the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; and the Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch, Nevada. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator at the University of Denver Department of Anthropology and Museum of Anthropology, 2000 Asbury, Sturm Hall S–146, Denver, CO 80208–2406, email jbernste@du.edu, telephone (303) 871–2543, before December 13, 2000. Repatriation of the human remains to the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; and the Walker River Paiute Tribe of the Walker River Reservation, Nevada, may begin after that date if no additional claimants come forward.

Dated: October 30, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–28858 Filed 11–9–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO. This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University of Denver Department of Anthropology and Museum of Anthropology professional staff and a contract physical anthropologist, in consultation with representatives of the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Mississippi Band of Choctaw Indians, Mississippi; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Quapaw Tribe of Indians, Oklahoma; Thlopthlocco Tribal Town, Oklahoma; and the United Keetoowah Band of Cherokee Indians of Oklahoma.

At an unknown date, an unknown person removed human remains representing two individuals from the Hales' Point Mound, Lauderdale County, TN. At a later date in the 1950's or 1960's the remains and their associated funerary objects were purchased from Tilton Indian Relics by Mr. Fallis F. Rees, who donated the remains and funerary objects to the University of Denver Department of Anthropology and Museum of Anthropology in 1967. No known individuals were identified. The eight associated funerary objects are one mortuary jar, two water bottles, one of which is Bell Plain, one elbow pipe, three unidentified clay objects with indentations, and one double jar with red slip and shell temper.

The Hales' Point site has been identified archeologically as a Walls phase site. The Walls phase is a Late Mississippian (A.D. 1200-1540) and Early Historic Period (A.D. 1540-1700) cultural unit in the central Mississippi Valley of southwestern Tennessee and eastern Arkansas. The funerary objects support a late precontact date for the remains. At the time that Europeans first visited the region around Hales' Point, in the mid-16th century, both the Quapaw and the Chickasaw lived in the central Mississippi Valley. During consultations, representatives of both the Quapaw Tribe of Indians, Oklahoma, and the Chickasaw Nation, Oklahoma, presented evidence from oral tradition, ethnohistory, archeology, and material culture, specifically continuities in ceramic traditions, to demonstrate their cultural affiliation to the Hales' Point site.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the eight objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Also, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Chickasaw Nation, Oklahoma, and the Quapaw Tribe of Indians, Oklahoma.

This notice has been sent to officials of the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Mississippi Band of Choctaw Indians, Mississippi; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Quapaw Tribe of Indians, Oklahoma; Thlopthlocco Tribal Town, Oklahoma; and the United Keetoowah Band of Cherokee Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator at the University of Denver Museum of Anthropology, 2000 Asbury, Sturm Hall S–146, Denver, CO 80208–2406, email jbernste@du.edu, telephone (303) 871–2543, before December 13, 2000. Repatriation of the human remains and associated funerary objects to the Chickasaw Nation, Oklahoma, and the Quapaw Tribe of Indians, Oklahoma, may begin after that date if no additional claimants come forward.

Dated: October 31, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–28859 Filed 11–9–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the Bureau of Indian Affairs, Washington, DC, and in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the Bureau of Indian Affairs, Washington, DC, and in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University of Denver Department of Anthropology and Museum of Anthropology professional staff and a contract physical anthropologist in consultation with representatives of the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Te-Moak Tribes of Western Shoshone Indians of Nevada (four constituent bands: Battle Mountain Band, Elko Band, South Fork Band, and Wells Band); and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

Around 1940, human remains representing two individuals were collected from Dinwoody, Fremont County, WY, on the Wind River Reservation, by Scott Peterson (Crow) and Alice Peterson (Shoshone). At an unknown date, the Petersons gave the remains to Theodore Sowers. Mr. Sowers was a graduate of the University of Denver, and, in 1995, his daughters donated the remains to the University of Denver so that they could be repatriated. No known individuals were identified. No associated funerary objects are present.

The statements of the collectors and donor indicate that these remains are Native American, which is supported by the osteological and geographical evidence. Linguistic and ethnographic evidence indicates that the ancestors of the Eastern Shoshone arrived in the Wind River region by A.D. 1000, and perhaps much earlier. The condition of the remains suggests that they are probably younger than 1000 years old. The Eastern Shoshone are currently represented by the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Te-Moak Tribes of Western Shoshone Indians of Nevada (four constituent bands: Battle Mountain Band, Elko Band, South Fork Band, and Wells Band); and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Also, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Te-Moak Tribes of Western Shoshone Indians of Nevada (four constituent bands: Battle Mountain Band, Elko Band, South Fork Band, and Wells Band); and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

This notice has been sent to officials of the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Te-Moak Tribes of Western Shoshone Indians of Nevada (four constituent bands: Battle Mountain Band, Elko Band, South Fork Band, and Wells Band); the Yomba Shoshone Tribe of the Yomba Reservation, Nevada; and the Bureau of Indian Affairs.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator at the University of Denver Department of Anthropology and Museum of Anthropology, 2000 Asbury, Sturm Hall S-146, Denver, CO 80208-2406, email jbernste@du.edu, telephone (303) 871-2543, before [thirty days after publication in the **Federal Register**]. Repatriation of the human remains to the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon;

Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Te-Moak Tribes of Western Shoshone Indians of Nevada (four constituent bands: Battle Mountain Band, Elko Band, South Fork Band, and Wells Band); and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada, may begin after that date if no additional claimants come forward.

Dated: November 6, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–28660 Filed 11–09–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA) of 1992 and the Reclamation Reform Act of 1982, Reclamation developed and published the Criteria for Evaluating Water Conservation Plans, dated April 30, 1993. In September 1996, Reclamation revised the document and renamed it to Criteria for Evaluating Water Management Plans (Criteria).

Patterson Water District has developed a water management plan which Reclamation has evaluated and preliminarily determined to meet the requirements of the Criteria.

The 1996 Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water management plans developed by Central Valley Project contractors. The Criteria were developed and the plans have been evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination of the adequacy of each contractor's water management plan in the **Federal Register** to allow the public a minimum of 30 days to comment on its preliminary determinations.

DATES: All public comments must be received by December 13, 2000.

ADDRESSES: Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Please mail comments to Lucille Billingsley, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento CA 95825.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Lucille Billingsley at the address above, or by telephone at (916) 978–5215 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: Under provision of Section 3405 (e) of the CVPIA (Title 34 Pub. L. 102–575), "The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to Section 3405 (e)(1), these criteria will be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices."

The Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contracts over 2,000 irrigable acres) will prepare water management plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor, and update their water management plans. The steps are:

1. Describe the district.
2. Inventory water resources available to the District.
3. Best Management Practices (BMP's) for Agricultural Contractors.
4. BMP's for Urban Contractors.
5. Exemption Process.

Public comment on Reclamation's preliminary (*i.e.*, draft) determinations of Patterson Water District's water management plan is invited at this time. A copy of the Plan will be available for review at Reclamation's MP Regional Office located in Sacramento, California, and MP's South-Central California Area Office located in Fresno, California.

Dated: November 1, 2000.

Charles B. Johnson,

Acting Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 00–28770 Filed 11–9–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–429]

In the Matter of Certain Bar Clamps, Bar Clamp Pads, and Related Packaging, Display, and Other Materials; Notice of Commission Decision To Extend by One Week the Deadline for Determining Whether To Review an Initial Determination Terminating the Investigation in Part Based on Partial Withdrawal of the Complaint

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by one week, or until November 9, 2000, the deadline for determining whether to review an initial determination (ID) (Order No. 5) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Tina Potuto Kimble, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3116.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 13, 2000, based on a complaint filed by American Tool

Companies, Inc. ("American Tool") of Hoffman Estates, Illinois, and Peterson Manufacturing Co., Inc. ("Peterson") of DeWitt, Nebraska (collectively "complainants"). 65 FR 13307.

On September 6, 2000, complainants filed a motion to amend the complaint and notice of investigation asserting that respondents no longer ship infringing product to the United States and do not intend to do so in the future. On September 18, 2000, respondents, Wolfcraft GMbH of Germany and Wolfcraft, Inc. of Itasca, Illinois, filed an opposition to complainants' motion stating that they in fact intend to resume importation of the product in question to the United States. On September 18, 2000, the Commission investigative attorney (IA) filed a response in support of the motion, but argued that it should be construed as a motion for partial termination based on the withdrawal of certain allegations. On September 20, 2000, complainants filed a reply agreeing with IA's suggestion that their motion be construed as one for partial termination. On October 2, 2000, the presiding ALJ issued an ID (Order No. 5) granting complainants' motion for partial withdrawal of the complaint. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42(h)(3), 19 CFR 210.42(h)(3).

Copies of the public version of the ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: November 3, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–28981 Filed 11–9–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–00–050]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 20, 2000 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–864 (Final) (Stainless Steel Butt-Weld Pipe Fittings from Germany)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on November 29, 2000.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: November 7, 2000.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 00–29073 Filed 11–8–00; 1:36 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; New Collection.

National Business Survey on White Collar Crime

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, National White Collar Crime (NWCCC), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 18, 2000 (Volume 65, 44546), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until December 13, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technology collection techniques or other forms of information technology (e.g. permitting electronic submission of responses).

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* National Business Survey on White Collar Crime.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form = None. National White Collar Crime Center (NWCCC), Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: United States businesses. Other: None. The NWCCC Training and Research Institute anticipates conducting a national survey of professional business persons and their perceptions of white collar crime. Particular areas of interest include victimization, perpetration, prevention measures, cyber-crime, and general demographics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1070 respondents at 25 minutes per mail survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 450 annual burden hours.

If you have additional comments, suggestions, or need copies of the proposed information collection instruments with instructions, or additional information, please contact: Mrs. Brenda Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington.

Dated: November 2, 2000.

Brenda Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–29002 Filed 11–9–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision of the Center for Employment and Training (CET) Follow-Up Survey. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before January 12, 2001.

ADDRESSES: Tom NaSell, U.S. Department of Labor, Employment and Training Administration/Office of Policy Research, 200 Constitution Ave., NW., Room N–5629, Washington, DC 20210, (202) 693–3615 (this is not a toll-free number), TNASELL@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Center for Employment Training (CET) model of employment and training programs for out-of-school youth has gained national attention as a result of its strong employment impacts relative to comparable programs. Building on this success, the Department of Labor (DOL) began funding the CET Replication Project in December 1992, providing a grant for CET–San Jose, CA to assist other programs in implementing CET-like training. In 1994 DOL competitively awarded grants to select six of these programs in order to evaluate the effects of the CET model on participating youth. Six additional sites have also been selected from among CET programs in California and Nevada. The purpose of this study, A Random Assignment Evaluation of the CET Replication Sites, is to evaluate the CET model in the selected sites to assess whether it can be replicated outside of San Jose, and whether the replication sites have similarly positive employment impacts on out-of-school youth.

In order to assess the success of CET outside of San Jose, DOL has contracted with the Manpower Demonstration Research Corporation (MDRC) to evaluate the CET Replication Project. As part of this evaluation, follow-up information is currently being collected through a long-term follow-up telephone survey conducted approximately 30 months after the random assignment of youth. This information collection was approved under OMB No. 1205–0391, which is due to expire on May 31, 2001. This information collection request would revise the information collection to provide for a second wave of the survey to be completed approximately 54 months after random assignment of all youth.

The 30-Month and 54-Month Follow-Up Surveys will be used to examine the effects of this employment and training program on participants' outcomes two years after beginning the CET training. They will also assess the subsequent outcomes of comparable youth randomly assigned to a control group.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This is a request for OMB approval of a revision of an existing information collection for the CET Replication Project funded by the Department of Labor (DOL). Information in the form of a follow-up phone or in-person survey will be collected from randomly assigned participants at each of the CET Replication Project sites at two points, approximately 30 months following their initial assignment to the program or control groups and again at 54 months after random assignment. The survey data will be utilized to analyze the impact of the CET program on participants' outcomes including education and training, employment, earnings, public assistance participation, childbearing, and other behaviors and activities. The findings will be directly relevant for the future development of employment and training policy for youth.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: CET Follow-Up Survey.

OMB Number: 1205–0391.

Affected Public: Participants in the CET Replication Project.

Total Respondents: 1,485.

Frequency: Two times.

Total Responses: 2,302.

Average Time per Response: 37 minutes.

Estimated Total Burden Hours: 1,420 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $7,313.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 3, 2000.

James Woods,

Division Chief, Division of Evaluation & Skills Assessment, Office of Policy and Research.

[FR Doc. 00–28904 Filed 11–9–00; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to be provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well a such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decision shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or government agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Dated: November 2, 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–28537 Filed 11–9–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000–58]

Amendment to Prohibited Transaction Exemption (PTE) 97–34 Involving Bear, Stearns & Co. Inc., Prudential Securities Incorporated, et al. (D–10829)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Grant of an amendment to the Underwriter Exemptions.[1]

SUMMARY: This document contains a final exemption issued by the Department of Labor (the Department) which amends the Underwriter Exemptions. The Underwriter Exemptions are individual exemptions that provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The amendment: (1) Permits, for certain categories of transactions, the offering of "investment grade" mortgage-backed securities and asset-backed securities which are either senior or subordinated; (2) permits the use of eligible interest rate swaps (both ratings dependent and non-ratings dependent) under circumstances described in this amendment; (3) permits the use of yield supplement agreements which involve notional principal amounts; and (4) makes certain changes to the Underwriter Exemptions that reflects the Department's current interpretation of the Underwriter Exemptions.

Finally, the amendment provides exemptive relief for transactions involving: (1) An Issuer of mortgage-backed securities or asset-backed securities which is a trust (including a grantor or owner trust), REMIC, FASIT, special purpose corporation, limited liability company or partnership and (2) mortgage-backed securities or asset-backed securities issued which are either debt or equity investments.

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[1] The term "Underwriter Exemptions" refers to the following individual Prohibited Transaction Exemptions (PTEs): PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); and PTE 2000–55 (November, 2000).

In addition, the Department notes that it is also granting individual exemptive relief for: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); and Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62.

EFFECTIVE DATE: This amendment to the Underwriter Exemptions is effective for transactions occurring on or after August 23, 2000, except as otherwise provided in sections I.C., II.A.(4)(b), and III.JJ. of the amendment to the Underwriter Exemptions.

FOR FURTHER INFORMATION CONTACT: Wendy McColough of the Department, telephone (202) 219–8971. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 23, 2000, notice was published in the **Federal Register** (65 FR 51454) of the pendency before the Department of a proposed exemption to amend PTE 97–34, 62 FR 39021 (July 21, 1997) (the 1997 Amendment). The 1997 Amendment amended over forty individual Underwriter Exemptions. The Underwriter Exemptions are a group of individual exemptions that provide substantially identical relief for the operation of certain asset pool investment trusts and the acquisition and holding by plans of certain asset-backed pass-through certificates representing interests in those trusts. These exemptions provide relief from certain of the restrictions of sections 406(a), 406(b) and 407(a) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of certain provisions of section 4975(c)(1) of the Code.

The amendment was requested by application dated October 22, 1999, and as restated in later submissions on behalf of Morgan Stanley & Co. Incorporated [2] (the Applicant). In preparing the application, the Applicant received input from members of The Bond Market Association (TBMA).

The Department proposed the amendment to this individual exemption pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570 (Subpart B) 55 FR 32836, 32847 (August 10, 1990).[3] In addition, the Department proposed to provide the same relief on its own motion pursuant to the authority described above for many of the other Underwriter Exemptions which have substantially similar terms and conditions.[4] The Department notes that it also proposed the same individual exemptive relief for: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., FAN 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); and Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62.

The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC.

The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held. The Department received three written comments in response to the proposed amendment. No requests for a hearing were received by the Department in regard to the proposed amendment.

The first commentator observed that it has been his experience that certain trustees of collectively bargained qualified plans may incur unnecessary risk with plan assets when they allow investment managers to purchase debt securities that can only be priced by the underwriter or manually priced by the investment manager. Plans that by their nature are "marked to market" for annual valuations, *i.e.*, defined contribution plans, may find that assets are unintentionally misstated for plan participants when there is a general disruption in the debt market. Similarly, defined benefit plans may be forced to hold assets to maturity when an investment manager buys a "BBB" securitization vehicle and the general interest rate market rises. According to the commentator, the underwriter may not make a secondary market when there is an absence of bidders for such issues.

The Department notes that the fiduciary responsibility provisions of the Act would apply to any decision made by a plan fiduciary or investment manager to purchase asset-backed securities or other debt securities as part of its investment program. In this regard, section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of the plan. The Department's determination to expand the Underwriter Exemptions to permit the offering of "investment grade" asset backed securities, which may be senior or subordinated, should not be viewed as an endorsement by the Department of the suitability of specific securities for a particular plan. Rather, it is the responsibility of the plan fiduciary to act "prudently" with respect to the selection of suitable investments, taking into account the plan's particular facts and circumstances. The Department further notes that plan fiduciaries would be liable for any losses to the plan resulting from a decision to purchase asset-backed securities or other debt securities if such purchase was not prudent at the time the decision was made.

Another commentator was concerned that the proposed amendment may in some way limit the exemptive relief available under the previously granted Underwriter Exemptions and the 1997 Amendment. The commentator proposed that the following language be added to the preamble of the final exemption:

> Nothing in this final exemption limits the exemptive relief otherwise available under any of the Underwriter Exemptions, as in effect prior to the effective date of this final exemption, to transactions related to any securitization transaction that closed prior to the date of publication of this final exemption in the **Federal Register**.

In response to this comment, the Department notes that this amendment does not limit the exemptive relief otherwise available under any of the Underwriter Exemptions, the 1997 Amendment or the individual exemptive relief for entities which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62. In fact, the Department notes that this amendment expands the relief available under the Underwriter Exemptions. In the Department's view, those transactions which meet the requirements of the 1997 Amendment, would fall within the scope of the relief provided by this amendment.

The third commentator posed a question regarding the application of the proposed amendment to subordinated and "BBB" rated securities that were issued prior to August 23, 2000. The Department notes that the amendment is applicable to the purchase by plans of subordinated and "BBB" rated securities after August 23, 2000, provided that these transactions meet the requirements set forth in the amendment.

The commentator further noted that the Department proposed to expand the scope of the Underwriter Exemptions to cover securitization transactions that use "special purpose" corporations, limited partnerships, limited liability companies and owner trust structures. As part of the proposed amendment, the Department required, under section II.A.(8), that certain provisions be included in the documents establishing the Issuer. The commentator was concerned that some of the new requirements under section II.A.(8) would also be applicable to securitization transactions that use traditional "common law" trust structures. As a result, the commentator requested that the Department clarify the requirements set forth in section II.A.(8) of the proposed amendment. The Department believes the following explanation will clarify the intended scope of the requirements of section II.A.(8) of the amendment.

The Applicant provided the following information to the Department during the comment period. Trusts are generally of two types under local or state law. Those referred to as "common law trusts," and those referred to as "owner trusts" (or "business trusts," for example, Delaware business trusts). While both types of trusts are created by contract between a settlor and a trustee for the benefit of beneficiaries, a common law trust does not exist as a separate entity and is governed under common law; whereas an owner trust is created under state statutes and is a separate legal entity. The terms "grantor trust," "REMIC," and "FASIT" are tax classifications.

The Department notes that this amendment generally is effective for transactions occurring on or after August 23, 2000. On that date, this amendment would apply to the expanded list of Issuers defined in section III.B. of the amendment. Accordingly, it is the view of the Department that section II.A.(8) is applicable to those Issuers that are owner trusts, partnerships, special purpose corporations or limited liability companies which meet the conditions of the amendment on or after August 23, 2000 including the requirements contained in section II.A.(8). Conversely, it is the view of the Department that section II.A.(8) would not apply to grantor trusts, REMICs or FASITs which were eligible for relief under the 1997 Amendment, provided that the conditions of that exemption were met.

Finally, the commentator requested that the Department clarify whether offshore entities (special purpose corporations, limited partnerships, limited liability companies and trusts organized under non-United States law) are permissible securitization vehicles under the amendment. The Department does not believe that a sufficient showing has been made that inclusion of offshore entities as securitization vehicles would be protective of the interests of participants and beneficiaries. Accordingly, it is the view of the Department that offshore entities are beyond the scope of relief provided by this amendment.

The Department notes that it has modified the definition of "Qualified Plan Investor," at section III.HH. of the amendment, to clarify that this definition refers only to the swap agreements described at section II.A.(10) of the amendment.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries;

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete and accurately describe all material terms of the transactions which are the subjects of the exemption.

Exemption

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990), the Department amends the following individual Prohibited Transaction Exemptions (PTEs): PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–26, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May

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[2] PTE 90–24, 55 FR 20548 (May 17, 1990).

[3] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1995]) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. In the discussion of the exemption, references to sections 406 and 408 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[4] In this regard, the entities who received the other Underwriter Exemptions were contacted concerning their participation in this amendment process.

23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); and PTE 2000–55 (November, 2000).

In addition, the Department notes that it is also granting individual exemptive relief for: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); and Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62.

I. Transactions

A. Effective for transactions occurring on or after August 23, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[5]

B. Effective for transactions occurring on or after August 23, 2000, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[6] For purposes of this paragraph (iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that the conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective for transaction occurring on or after August 23, 2000, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or, effective January 1, 1999, the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer;[7] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. Effective for transactions occurring on or after August 23, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

II. General Conditions

A. The relief provided under section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories;

(4) The Trustee is not an Affiliate of any member of the Restricted Group. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Effective for transactions occurring on or after January 1, 1998, subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) such Servicer ceases to be an Affiliate of the Trustee no later than six months after the later of August 23, 2000 or the date such Servicer became an Affiliate of the Trustee; and

(ii) such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations of the types specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for determining the eligibility of the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations held by the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

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[5] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act, and regulation 29 CFR 2510.3–21(c).

[6] For purposes of this Underwriter Exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[7] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A "true sale" of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate): or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer or any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6).

III. Definitions

For purposes of this exemption:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. "Issuer" means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1)(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are

secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2)[8]; and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1).[9]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that: (i) The rights and interests evidenced by the Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) the outstanding principal balance due under the obligation which is held by the Issuer; and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement; and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraphs (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this paragraph (c) of subsection III.B.(3), the term "permitted investments" means investments which: (i) are either: (x) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "Issuer" does not include any investment pool unless: (i) the assets of the type described in paragraphs (a)–(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption.

C. "Underwriter" means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc, Credit Lyonnais Securities (USA) Inc., ABN AMRO Inc. and Ironwood Capital Partners Ltd. (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; or

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

D. "Sponsor" means the entity that organizes an Issuer by depositing obligations therein in exchange for Securities.

E. "Master Servicer" means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. "Trust" means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. "Trustee" means the Trustee of any Trust which issues Securities and also includes an Indenture Trustee. "Indenture Trustee" means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the servicer.

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[8] In Advisory Opinion 99–05A (Feb. 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation ("Farmer Mac") meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

[9] The Department wishes to take the opportunity to clarify its view that the definition of Issuer contained in subsection III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemption generally provides relief only for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

J. "Insurer" means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an insurer solely because it holds Securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

K. "Obligor" means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, "Obligor" shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

M. "Restricted Group" with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)–(7).

N. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be "independent" of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

Q. "Sale" includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this Underwriter Exemption applicable to sales are met.

R. "Forward Delivery Commitment" means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. "Reasonable Compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

V. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. "Pooling and Servicing Agreement" means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. "Pooling and Servicing Agreement" also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. "Rating Agency" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies Inc., Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., Fitch ICBA, Inc. or any successors thereto.

Y. "Capitalized Interest Account" means an Issuer account: (i) Which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. "Closing Date" means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. "Pre-Funding Account" means an Issuer account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in paragraph (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

BB. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered, which is less than or equal to: (i) 40 percent, effective for transactions occurring on or after January 1, 1992, but prior to May 23, 1997; and (ii) 25 percent, for transactions occurring on or after May 23, 1997.

CC. "Pre-Funding Period" means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement or (iii) the date which is the later of three months or ninety days after the Closing Date.

DD. "Designated Transaction" means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. "Ratings Dependent Swap" means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. "Eligible Swap" means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. "Eligible Swap Counterparty" means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. "Qualified Plan Investor" means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A "qualified professional asset manager" (QPAM),[10] as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506 (March 13, 1984);

(2) An "in-house asset manager" (INHAM),[11] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. "Excess Spread" means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. "Eligible Yield Supplement Agreement" means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Effective for transactions occurring on or after April 7, 1998, such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the

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[10] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[11] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

Issuer receiving such payments on at least a quarterly basis;

(3) It is not "leveraged" as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)–(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) the principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

IV. Modifications

For the Underwriter Exemptions provided to Residential Funding Corporation, Residential Funding Mortgage Securities, Inc., et al. and GE Capital Mortgage Services, Inc. and GECC Capital Markets (the Applicants) (PTEs 94–29 and 94–73, respectively);

A. Section III.A. of this exemption is modified to read as follows:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which (i) one of the Applicants or any of its Affiliates is the Sponsor, [and] an entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this exemption, is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent or (ii) one of the Applicants or any of its Affiliates is the sole underwriter or the manager or co-manager of the underwriting syndicate, or a selling or placement agent.

B. Section III.C. of this exemption is modified to read as follows:

C. Underwriter means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Ironwood Capital Partners Ltd., Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc.; ABN AMRO and Credit Lyonnais Securities, Inc. (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity;

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) above is a manager or co-manager with respect to the Securities; or

(4) Any entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this exemption.

I. Effective Date

This exemption is effective for transactions occurring on or after August 23, 2000, except as otherwise provided in section I.C., subsection II.A.(4)(b), and section III.JJ. of the exemption. Section I.C., relating to the defeasance of mortgage obligations, is applicable to transactions occurring on or after January 1, 1999; subsection II.A.(4)(b) is applicable to transactions occurring on or after January 1, 1998; and section III.JJ., relating to Eligible Yield Supplement Agreements involving notional principal contracts, is applicable to transactions occurring on or after April 7, 1998.

Signed at Washington, D.C., this day of November, 2000.

Ivan L. Strasfeld,

Director of Exemption, Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–28855 Filed 11–9–00; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000–55; Exemption Application No. D–10863, et al.]

Grant of Individual Exemptions; Country Securities Corporation (Countrywide)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Countrywide Securities Corporation (Countrywide) Located in Calabasas, California

[Prohibited Transaction Exemption 2000–55; Exemption Application No. D–10863]

Exemption

I. Transactions

A. Effective January 28, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by

section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2). Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective January 28, 2000, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective January 28, 2000, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective January 28, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a Rating Agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more

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[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which certificates are offered to investors.

than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B (1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a Rating Agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will be either monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the Rating Agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code; and

(b) That is issued by, and is an obligation of, a trust;

with respect to certificates defined in (1) and (2) above for which Countrywide or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or;

(ii) are credited to a capitalized interest account (as defined in section III.X.); and

(iii) are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term "permitted investments" means investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Countrywide;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Countrywide; or

(3) Any member of an underwriting syndicate or selling group of which Countrywide or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services obligations contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services obligations contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The trust owns or holds a security interest in the lease;

(2) The trust owns or holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. "Rating Agency" means Standard & Poor's Structured Rating Group, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., Fitch IBCA, Inc., or their successors;

X. "Capitalized Interest Account" means a trust account: (i) Which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. "Closing Date" means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. "Pre-Funding Account" means a trust account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. "Pre-Funding Period" means the period commencing on the closing date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. "Countrywide" means Countrywide Securities Corporation and its affiliates.

The Department notes that this exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at (see 60 FR 35932).

For a more complete statement of the fact and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 19, 2000 at 65 FR 56720.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Journal Company, Inc. 401(k) Savings Plan (the Plan) Located in Trenton, New Jersey

[Prohibited Transaction Exemption 2000–56; Exemption Application No. D–10781]

Exemption

The restrictions of 406(a) and 406(b)(1), 406(b)(2), and 406(b)(3) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to: (a) The receipt by certain affiliates and predecessors of Journal Register East, Inc. (JRE), by Bank of America NA. (the successor in interest to Boatmen's Trust Company) (the Bank), and by certain individuals alleged in a complaint to have been or to be fiduciaries of the Plan (collectively, the Defendants) of releases signed by participants in the Plan, in which such participants waive their rights to sue in connection with the acquisition and retention in such participants' accounts in the Plan of interests in certain guaranteed investment contracts (GICs) issued by Confederation Life Insurance Company (CLI); and (b) the payment by the corporate Defendants of a settlement amount to be allocated to the accounts of participants in the Plan in exchange for release from liability obtained from such participants; provided that the following conditions are satisfied:

(a) The payment of the settlement amount is a one-time cash transaction;

(b) Each participant whose account in the Plan has an interest in the GICs decides whether, in exchange for the settlement amount, to waive his or her right to sue in connection with the acquisition and retention in such participant's account in the Plan of interests in such GICs; or to opt out of such settlement and retain all such rights and causes of action;

(c) Pursuant to the terms of the settlement, the account of each participant in the Plan who waives his or her right to sue receives an amount of the settlement proceeds in proportion to the interest each such account has in the GICs;

(d) Pursuant to the terms of the settlement, the corporate Defendants are responsible for paying the attorneys' fees to the law firm representing the plaintiffs (the Plaintiffs);

(e) A portion of the fees that would have been due and payable to the Plaintiffs' attorneys will be withheld from the settlement proceeds by JRE, an employer of employees covered by the Plan, and paid to the Plaintiffs' in cash based on each Plaintiff's share of the amount of the settlement proceeds allocated to all of the Plaintiffs;

(f) Notwithstanding the waiver by any participant of his or her right to sue, the Plan does not release any claims, demands, and/or causes of action which it may have in connection with the acquisition and retention in participants' accounts in the Plan of interests in the GICs;

(g) No expenses are incurred by the Plan as a result of the settlement;

(h) The Plaintiffs' attorneys and each participant who signs the release and waives his or her right to sue will monitor the payment of the settlement proceeds by the corporate Defendants and the allocation of the proper amounts into such participants' accounts in the Plan, in order to ensure compliance with the terms of the settlement agreement; and

(i) All terms and conditions of the transaction are no less favorable than those obtainable at arm's length with unrelated third parties.

EFFECTIVE DATE: This exemption is effective upon the date that the Defendants enter into a settlement of the lawsuit with the Plaintiffs.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption. As set forth in the Notice, interested persons consisted of all participants and beneficiaries in the Plan who have an interest in the GICs. The deadline for submission of such comments was within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on September 7, 2000. All comments and requests for a hearing were due on October 23, 2000.

On September 25, 2000, the applicant informed the Department in writing that, with the exception of seven (7) former participants in the Plan, notification had been sent to all interested persons by first class mail to the last known address. In a letter dated September 29, 2000, the applicant notified the Department that, as of September 27, 2000, a copy of the Notice had been sent to all former participants in the Plan who had not received the earlier mailing. In order to allow all interested parties to have the full comment period after receiving the Notice, the Department required, and the applicants agreed to, an extension of the deadline when comments would be due on the proposed exemption. Accordingly, all comments and requests for a hearing were due on October 30, 2000.

During the comment period, the Department received no requests for a hearing. However, the Department received two (2) comment letters in which interested persons informed the Department of factual changes to the Summary of Facts and Representations (SFR) in the Notice. In this regard, in a letter, dated September 12, 2000, the attorney for Boatman's Trust Company informed the Department that, effective March 13, 1998, Boatman's Trust Company had merged with Bank of America NA (formerly known as NationsBank, NA). The attorney advised the Department that Bank of America NA at the time of the merger assumed all of the obligations of Boatman's Trust Company, including those obligations under the terms of the settlement agreement. The Department acknowledges the merger of Boatman's Trust Company with Bank of America NA. and has amended the operant language of this exemption to reflect such change.

In a letter dated October 30, 2000, the attorney for the Plaintiffs informed that Department that the correct name of the labor organization mentioned in the SFR on page 54304, column 3, lines 35–36 of the Notice is the Woonsocket Newspaper Guild CWA/TNG Local 31182, AFL–CIO. The Department acknowledges the correct name of the labor organization and has included such information in the record of the exemption application.

After giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption. In this regard, the comment letters submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on September 7, 2000, at 65 FR 54303.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (this is not a toll-free number).

Sun Life Assurance Company of Canada (Sun Life) Located in Toronto, Ontario, Canada

[Prohibited Transaction Exemption 2000–57; Exemption Application No. D–10814]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective March 22, 2000, to the (1) receipt of common stock (Common Shares) issued by Sun Life Financial Services of Canada, Inc., the holding company for Sun Life; or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of any eligible policyholder (the Eligible Policyholder) of Sun Life which is an employee benefit plan (the Plan), subject to applicable provisions of the Act and/or the Code, including any Eligible Policyholder which is a Plan established by Sun Life or an affiliate for their own employees (the Sun Life Plans), in exchange for such Eligible Policyholder's membership interest in Sun Life, in accordance with the terms of a plan of conversion (the Conversion Plan) adopted by Sun Life and implemented under the insurance laws of Canada and the State of Michigan.

This exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The Conversion Plan was implemented in accordance with procedural and substantive safeguards that were imposed under the insurance laws of Canada and the State of Michigan and was subject to review and/or approval in Canada by the Office of the Superintendent of Financial Institutions (OSFI) and the Minister of Finance (the Canadian Finance Minister) and, in the State of Michigan, by the Commissioner of Insurance (the Michigan Insurance Commissioner).

(b) OSFI, the Canadian Finance Minister and the Michigan Insurance Commissioner reviewed the terms of the options that were provided to Eligible Policyholders of Sun Life as part of their separate reviews of the Conversion Plan. In this regard,

(1) OFSI (i) authorized the release of the Conversion Plan and all information to be sent to Eligible Policyholders; (ii) oversaw each step of the conversion process (the Conversion); and (iii) made a final recommendation to the Canadian Finance Minister on the Conversion Plan.

(2) The Canadian Finance Minister, in his sole discretion, could consider such factors as whether: (i) the Conversion Plan was fair and equitable to Eligible Policyholders; (ii) whether the Conversion Plan was in the best interests of the financial system in Canada; and (iii) sufficient steps had been taken to inform Eligible Policyholders of the Conversion Plan and of the special meeting on the Conversion.

(3) The Michigan Insurance Commissioner made a determination that the Conversion Plan was (i) fair and equitable to all Eligible Policyholders and (ii) consistent with the requirements of Michigan law.

(4) Both the Canadian Finance Minister and the Michigan Insurance Commissioner concurred on the terms of the Conversion Plan.

(c) Each Eligible Policyholder had an opportunity to vote to approve the Conversion Plan after full written disclosure was given to the Eligible Policyholder by Sun Life.

(d) One or more independent fiduciaries of a Plan that was an Eligible Policyholder received Common Shares, Cash or Policy Credits pursuant to the terms of the Conversion Plan and neither Sun Life nor any of its affiliates exercised any discretion or provided "investment advice," as that term is defined in 29 CFR 2510.3–21(c), with respect to such acquisition.

(e) After each Eligible Policyholder was allocated 75 Common Shares, additional consideration was allocated to an Eligible Policyholder who owned an eligible policy based on an actuarial formula that took into account such factors as the total cash value, the base premium and the duration of such eligible policy. The actuarial formula was reviewed by the Canadian Finance Minister and the Michigan Insurance Commissioner.

(f) With respect to a Sun Life Plan, where the consideration was in the form of Cash or Common Shares, an independent Plan fiduciary—

(1) Determined that the Conversion Plan was in the best interest of the Sun Life Plans and their participants and beneficiaries;

(2) Voted for the Conversion Plan on behalf of the Sun Life Plans;

(3) Received either Common Shares or Cash on behalf of a Sun Life Plan;

(4) Determined that the transactions did not violate the investment objectives and policies of the Sun Life Plans;

(5) Negotiated on behalf of the contributory Sun Life Plans and determined a reasonable allocation of proceeds between Sun Life and the participants in the Sun Life Plans; and

(6) Took (and will continue to take until the proposed exemption becomes final) all actions that were (or will be) necessary and appropriate to safeguard the interests of the Sun Life Plans.

(g) All Eligible Policyholders that were Plans participated in the transactions on the same basis within their class groupings as other Eligible Policyholders that were not Plans.

(h) No Eligible Policyholder paid any brokerage commissions or fees to Sun Life or its affiliates in connection with their receipt of Common Shares or with respect to the implementation of the initial public offering in which an Eligible Policyholder could elect to sell such Common Shares for cash.

(i) All of Sun Life's policyholder obligations will remain in force and will not be affected by the Conversion Plan.

Section III. Definitions

For purposes of this exemption:

(a) The term "Sun Life" means Sun Life Assurance Company of Canada and any affiliate of Sun Life as defined in paragraph (b) of this Section III.

(b) An "affiliate" of Sun Life includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Sun Life; (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.) or

(2) Any officer, director or partner in such person.

(c) The term "Eligible Policyholder" means a policyholder who—

(i) On January 27, 1998 (the Eligibility Day) was the owner of a voting policy;

(ii) Was the holder of a voting policy issued by Sun Life, if the policy was applied for by that person on or before the Eligibility Day and the application was received by Sun Life within a period specified by Sun Life in the Conversion Plan;

(iii) Was the holder of a voting policy, issued to the holder by Sun Life, that lapsed before Sun Life's Eligibility Day and was reinstated during the period beginning on the Eligibility Day and ending 90 days before the day on which Sun Life's Special Meeting was held; or

(iv) Was named by Sun Life in its Conversion Plan as an Eligible Policyholder under subsection 4(4) of the Conversion Regulations.

(d) The term "Policy Credit" means—

(1) For an individual or joint ordinary life insurance policy, an increase in the paid-up dividend additional cash value or dividend accumulation value;

(2) For a policy that is in force as extended term life insurance pursuant to a nonforfeiture provision of a life insurance policy, an extension of the coverage expiry date;

(3) For a policy which is a deferred annuity certificate, an increase in the deferred annuity payment; and

(4) For a policy which is an individual accumulation annuity, an increase in the account value.

EFFECTIVE DATE: This exemption is effective as of March 22, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption that was published on September 7, 2000 at 65 FR 54[illegible]07.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of November, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 00–28856 Filed 11–9–00; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

[Notice 00–135]

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). This information is used to determine whether the requested license should be granted.

DATES: Written comments and recommendations on the proposal for the collection of information should be received within 60 days of this notice.

ADDRESSES: All comments should be addressed to Mr. Brian Dunbar, Code PM, National Aeronautics and Space Administration, Washington, DC 20546. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports

Title: Voluntary Response Survey of NASA Internet Customers

OMB Number: 2700–.

Type of review: New.

Need and Uses: NASA is seeking input from Internet users that they will use to redesign the NASA Home Page, the NASA-wide Search Engine and other Internet offerings so that the NASA Web is more customer-focused and provides users with the information they are seeking more quickly.

Affected Public: Individuals or households.

Number of Respondents: 100.

Responses Per Respondent: 4.

Annual Responses: 400.

Hours Per Request: 15 min.

Annual Burden Hours: 100.

Frequency of Report: quarterly.

Dr. David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–28955 Filed 11–9–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 10 a.m., Thursday, November 16, 2000.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Appeals from Two (2) Federal Credit Unions of the Regional Directors' Denials of Conversion from a Multiple Common Bond to a Community Charter.

2. Advance Notice of Proposed Rulemaking: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.

3. Proposed Rule: Amendments to Part 721, NCUA's Rules and Regulations, Federal Credit Union Insurance and Group Purchasing Activities.

4. NCUA's 2001 Annual Performance Plan.

5. Proposed Information Systems and Technology Examination Program (ISTEP).

6. NCUA's 2001/2002 Operating Budget.

7. Proposed Operating Fee Scale.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, November 16, 2000.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

2. One (1) Personnel Matter. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–29105 Filed 11–8–00; 3:58 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Agency Information Collections Activities; Submission for OMB Review, Comment Request; Technology Survey for Libraries and Museums

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of requests for new information collection approval.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Currently, the Institute of Museum and Library Services is soliciting comment concerning extending collection entitled, Technology Survey for Libraries and Museums. A copy of this proposed form, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Public and Legislative Affairs, Mamie Bittner at (202) 606–8339. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

DATES: Comments must be received by December 13, 2000. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

ADDRESSES: Send comments to: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 510, Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 104–208 enacted on September 30, 1996 contains the former Museum Services Act and the Library Services and Technology Act, a reauthorization Public Law 104–208 authorizes the Director of the Institute of Museum and Library Services to make grants to improve museum and library service throughout the United States.

Agency: Institute of Museum and Library Services.

Title: Technology Survey for Libraries and Museums.

OMB Number: none.

Agency Number: 3137.

Frequency: One-time.

Affected Public: State Library Administrative Agencies, museums, libraries.

Number of Respondents: 3209.

Estimated Time Per Respondent: 45 minutes.

Total Burden Hours: 1605.

Total Annualized capital/startup costs: 0.

Total Annual Costs: $50,686.00.

CONTACT: Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 00–28902 Filed 11–9–00; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Agency Information Collections Activities; Submission for OMB Review, Comment Request; Generic Clearance for Grant Applications, Guidelines and Reporting Forms

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of Requests for Extension of Information Collection Approvals

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Currently, the Institute of Museum and Library Services is soliciting comment concerning extending collection entitled, Generic Clearance for Grant Applications, Guidelines and Reporting forms. A copy of this proposed form, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Public and Legislative Affairs, Mamie Bittner at (202) 606–8339. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

DATES: Comments must be received by December 13, 2000. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Send comments to: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, Room 510, Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 104–208 enacted on September 30, 1996 contains the former Museum Services Act and the Library Services and Technology Act, a reauthorization. Public Law 104–208 authorizes the Director of the Institute of Museum and Library Services to make grants to improve museum and library service throughout the United States.

Agency: Institute of Museum and Library Services.

Title: Application Guidelines, Interim and Final Performance Reports.

OMB Number: 3137–0029.

Agency Number: 3137.

Frequency: Annually.

Affected Public: State Library Administrative Agencies, museums, libraries.

Number of Respondents: 2,664.

Estimated Time Per Respondent: 1–40 hours (see chart).

Total Burden Hours: 36,432.

Total Annualized capital/startup costs: 0.

Total Annual Costs: 0.

CONTACT: Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

Mamie Bittner,

Director Public and Legislative Affairs.

Title of publication	Burden hours	Number of respondents
Museum Assessment Program Grant and Application Guidelines	4	180
Conservation Assessment Program Grant and Application Guidelines	4	208
Conservation Project (CP) Grant Application and guidelines	9	210
CP Interim Performance Report	1	68
CP Final Performance Report	1	68
General Operation Support Grant Application and Guidelines	18	823
GOS final Performance Report	1	202
National Leadership Grant Application and Guidelines for Museums and Libraries	40	277
National Leadership Grant for Museums and Libraries Interim Report	1	50
National Leadership Grant for Museums and Libraries Final Report	2	50
State Grants Annual Report	18	56
Native American Library Services Application and guidelines	14	400

[FR Doc. 00–28903 Filed 11–9–00; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 65, No. 217/Wednesday, November 8, 2000.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, November 14, 2000.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required changing the Board Meeting time from Tuesday, November 14, 2000 at 9:30 am to Tuesday, November 14, 2000 at 10:00 am at this time and that no earlier announcement was possible.

FOR FURTHER INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: November 8, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–29035 Filed 11–8–00; 11:51 am]

BILLING CODE 7533–01–M

PRESIDIO TRUST

The Presidio of San Francisco, California; Extension of the Public Comment Period for the Presidio Trust Implementation Plan Supplemental Environmental Impact Statement

AGENCY: The Presidio Trust.

ACTION: The Presidio Trust (Trust) is extending the scoping period from December 8, 2000 to January 15, 2001 to ensure adequate time for the public to review and comment on the proposed alternatives to be evaluated in the Presidio Trust Implementation Plan (PTIP) Environmental Impact Statement (EIS). The PTIP EIS is a supplement to the 1994 Final General Management Plan Amendment (GMPA) EIS for The Presidio of San Francisco (Presidio).

SUPPLEMENTARY INFORMATION: On June 30, 2000 the Trust published a notice announcing its intention to prepare a Supplemental EIS for PTIP and to hold two public scoping meetings to determine the scope of impact topics and alternatives to be addressed in the Supplemental EIS (65 FR 40707–08). On October 11, 2000 the Trust published a notice amending its June 30, 2000 notice to add a third public scoping meeting on November 15, 2000, to make factual corrections and to extend the previously announced scoping period from November 15, 2000 to December 8, 2000 (65 FR 60477–60478). The November 15, 2000 workshop will present conceptual alternatives to be addressed in the EIS and visions for the Presidio's future. The extension of the scoping period from December 8, 2000 to January 15, 2000 is being provided in response to several requests from commenting organizations and members of the public.

Public Meeting: The Trust will solicit public comments on the conceptual alternatives proposed for analysis in the EIS at the third of three public scoping workshops on Wednesday, November 15, 2000 from 6 to 9 p.m. at the Log Cabin (Building 1299), Fort Scott at the Presidio.

ADDRESSES: Written comments concerning the content of the plan and the scope of the Supplemental EIS should be sent by January 15, 2000 to John Pelka, NEPA Compliance Coordinator, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Fax: 415/561–5315. E-mail: ptip@presidiotrust.gov.

FOR FURTHER INFORMATION: Contact John Pelka, NEPA Compliance Coordinator, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Dated: November 6, 2000.

Karen A. Cook,

General Counsel.

[FR Doc. 00–28901 Filed 11–9–00; 8:45 am]

BILLING CODE 4310–4R–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43506; File No. SR–BSE–00–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Time Period for Filing Claims Against Specialists

November 1, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 21, 2000, the Boston Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the Exchange. On October 3, 2000, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its Rule regarding claims against specialists to bring the time period for filing claims into parity with T+3 settlement. Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in [brackets].

* * * * *

Chapter XV; Claims and Reports Against Specialists

Sec. 14. All claims and reports against specialists must be made in a timely fashion as indicated below:

(a) All claims which involve erroneous comparisons must be made within [5] *3* business days of the original trade date.

(b) All claims relative to the omission of a report which was properly due must be made within [5] *3* business days of the date the order should have been executed.

(c) All claims relative to the lack of comparison of a reported transaction must be made within 3 business days of the original trade date.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Chapter XV, Section 14, *Claims and Reports against Specialists,* to bring the rule into parity with T+3 settlement. Currently, the rule has a five-day period within which claims can be brought against a specialist. At the time the rule was originally drafted, the settlement period for trades was five days, and the period within which claims could be filed corresponded to this period. With the reduction of the trade settlement period to three days, the Exchange is seeking an equivalent three-day time period for the filing of claims against specialists.

2. Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Act,[4] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made certain technical changes relating, *inter alia,* to the format of the filing, the date of effectiveness of the proposed rule change, and the authorization procedures of the Exchange. *See* Amendment No. 1, filed October 3, 2000.

[4] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–00–12 and should be submitted by December 4, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28944 Filed 11–9–00, 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43508; File No. SR–ISE–00–09]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Relating to Chinese Wall Procedures

November 2, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 12, 2000, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend ISE Rule 810 relating to Chinese Wall procedures. Proposed new language is *italicized.*

810. Limitations on Dealings

(a) General Rule. A market maker on the Exchange may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, only if there is a Chinese Wall between the market making activities and the Other Business Activities. "Other Business Activities" means:[3]

(1) conducting an investment or banking or public securities business;

(2) making markets in the stocks underlying the options in which it makes markets; or

(3) functioning as an Electronic Access Member.

(b)–(e) No changes.

(b) Exception to Chinese Wall Requirement. A market maker shall be exempt from paragraph (a)(3) of this Rule to the extent the market maker complies with the following conditions:

(1) such member functions as an Electronic Access Member solely in options classes (i) contained in Groups to which the member is not appointed as a market maker pursuant to Rule 802 or (ii) in which the member is prohibited from acting as a market maker pursuant to regulatory requirements; and

(2) the member enters orders as an Electronic Access Member only for (i) the proprietary account of the member or (ii) the account of entities that are affiliated with the member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE Rule 810 requires that ISE market makers erect a "Chinese Wall" between their market making activity and certain other business activities, including their trading as an Electronic Access Member ("EAM"). The wall is intended to prevent any real-time communication between the various business lines. The ISE believes that this is especially critical to the integrity of the ISE market with respect to EAM activities. Without the wall, a trader entering an order as an EAM could potentially inform the person making markets about the pending order. The market maker could then, based on this knowledge, move its quotation either (i) to "intercept" an order against which the firm wants to trade, or (ii) to avoid an order against which it does not want to trade. The Exchange adopted ISE Rule 810 because such behavior would be inconsistent with the agency auction market structure of the Exchange.

The ISE believes that although ISE Rule 810 generally has worked well, it broad restrictions limit the ability of

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The ISE corrected a typographical error that appeared in the proposed rule language. Telephone conversation between Michael J. Simon, Senior Vice President and General Counsel, ISE, Katherine A. England, Assistant Director, and Susie Cho. Attorney, Division of Market Regulation, Commission, October 31, 2000.

certain market makers to send proprietary order flow to the ISE in options outside of their assigned groups of options ("bins".[4] In particular, many market makers do not have the facilities to establish a "Chinese Wall", which requires physical separation of functions (generally on separate floors), between their proprietary traders and individuals performing ISE market making activities. The ISE notes that several of its market maker members do a significant amount of proprietary trading.

The ISE represents that the purpose of the proposed rule change is to ease ISE Rule 810 to allow members to conduct proprietary trading in the same physical space as their market making activities, but only: (i) in options that are not within their market making assignments or (ii) in options which, pursuant to regulatory requirements, the member is prohibited from making markets. This latter provision is intended to apply to market makers that are specialists in the underlying stock on the New York Stock Exchange, Inc. ("NYSE"), whose rules limit the options trading of specialists and affiliated firms to "hedging activities," thus prohibiting them from making markets in options.[5] In addition, the proposed rule change would permit only proprietary trading without the Chinese Wall and would not permit the market maker to enter agency orders (except with respect to proprietary orders for its affiliates) without complying with the full restrictions of ISE Rule 810.

In these narrow circumstances, the Exchange does not believe that there is the potential for the type of harm against which ISE Rule 810 is intended to protect. Since the member will not be making markets in the stocks in which they are engaging in proprietary trading, there is no opportunity for using the dual roles either to manipulate the market or take unfair advantage of market information. Thus, the ISE believes that relaxing this rule will help attract proprietary order flow to the ISE, without any adverse regulatory implications.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5)[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such long period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–00–09 and should be submitted by December 4, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28945 Filed 11–9–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43500; File No. SR–PCX–00–12]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to Disciplinary Jurisdiction of the Ethics and Business Conduct Committee

November 2, 2000.

I. Introduction

On March 26, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of Securities Exchange Act 1934 ("Act")[1] Rule 19b–4 thereunder,[2] a proposed rule change relating to the disciplinary jurisdiction of the Ethics and Business Conduct Committee ("EBCC"). On September 12, 2000, the PCX filed Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on September 27, 2000.[4] No comments were received on the proposal. This order approves the proposal.

II. Description of Proposal

In its proposed rule change, the Exchange seeks to broaden the jurisdiction of the EBCC to include the enforcement of rules and regulations relating to trading, order, decorum, health, safety, and welfare on the trading floors. Currently, Article IV, Section 9(b) of the PCX Constitution, states that "[t]he jurisdiction of [the EBCC] shall not extend to the enforcement of rules and regulations of the Floor Trading Committees relating to trading, order, decorum, health, safety, and welfare on the trading floors, or to hearings held by and sanctions imposed by such committees relating to such matters." Currently, the rules and regulations governing trading, order, decorum, health, safety, and welfare are within the exclusive jurisdiction of the Floor Trading Committees ("FTCs"). The Exchange proposes to delete the above-quoted section from the PCX Constitution, and grant the EBCC and FTCs concurrent jurisdiction over the enforcement of these rules and regulations.

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[4] The ISE assigns market makers to bins of options. There are 10 bins, and each bin has one Primary Market Maker ("PMM") and up to 10 Competitive Market Makers (CMM) assigned to each.

[5] *See* NYSE Rule 105. This applies solely to CMMs. Because CMMs are required to provide continuous quotes in only 60 percent of the options in a bin, it is possible that a CMM could be assigned a bin in which it is not permitted to make markets in certain options classes. Such a CMM simply would not quote in these "restricted" options. PMMs must provide continuous quotes in all options in a bin and thus were bit assigned bins where these regulatory restrictions apply.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX, to Jennifer L. Colihan, Attorney, Division of Market Regulation, Commission, dated September 11, 2000 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 43312 (September 20, 2000), 65 FR 58139.

Under the proposal, the EBCC will be the primary disciplinary committee at the Exchange and the FTCs will retain jurisdiction to hear certain disciplinary matters, if necessary. An FTC rather than the EBCC may hear a case if it involves technical issues. For example, an FTC may act as the disciplinary committee if a "Marking the Close" trading violation occurs. That is, an incident that involves a market maker changing his quotes at the close to not accurately reflect the market in order to improve the market maker's position. In such a case, the Exchange believes having the expertise of Floor Officials would be appropriate.

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(6),[6] in particular, in that it is designed to assure that Exchange members and persons associated with Exchange members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Commission believes that it is appropriate for the EBCC to have jurisdiction over disciplinary matters arising from the floor because it is less likely that the members of the EBCC will have personal knowledge of relevant incidents or a Floor Official ruling relating to the incident. The Commission believes that this will assist in creating a more objective disciplinary process at the PCX. Further, the proposed rule change will centralize disciplinary actions in one committee at the Exchange. The Commission believes that having one primary disciplinary committee responsible for hearing complaints will better assure consistency in the decisions rendered.

However, the Commission also believes that it is appropriate for the Exchange to allow the FTC to retain jurisdiction to hear those disciplinary matters that require specialized knowledge of the trading rules. The Commission understands many of the trading rules involve complex issues which require a high level of expertise to fully comprehend, and evaluate in a meaningful way.

The Commission believes that the Exchange's proposal to grant the EBCC and FTCs concurrent jurisdiction over disciplinary proceedings relating to trading, order, decorum, health, safety, and welfare on the trading floors, with the EBCC being the primary committee responsible, will result in consistent, independent decision-making. Moreover, the proposal will also ensure that matters involving complex and technical issues are handled by committees appropriately skilled to understand them and render fair decisions.

IV. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7]

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PCX–00–12) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28946 Filed 11–9–00; 8:45 am]

BILLING CODE 8010–01–M

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[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(6).

[7] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3(f) of the Act. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43510; File No. SR–PCX–00–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes to Schedule of Rates and Charges

November 3, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee or other charge imposed by the Exchange under section 19(b0(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested person.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to amend its schedule of rates and charges in order to eliminate credits for book executions, to increase registered representative options principal[4] fees, and to establish examination, registration and annual fees for off-floor trading firms and their traders. The text of the proposed change to the PCX fee schedule is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the PCX Schedule of Rates and Charges credits order flow providers $.10 per contract on all book executions, which can be used to offset other PCX charges. In addition, the PCX charges an annual fee of $25 to all registered representatives and registered options principals for maintenance, new applications, or transfer of registration status. This fee supports the costs related to regulatory oversight and enforcement within the equities and options communities. Finally, the PCX does not charge a Designated Examining Authority ("DEA") fee for its off-floor traders.

The Exchange now proposes to modify its Schedule of Rates and Charges. First, the Exchange proposes to eliminate the $.10 credit provided to order flow providers. In its original filing with the Commission the Exchange stated that this credit was needed in order to attract order flow and enable it to remain competitive.[5] Based upon its experience with this credit, the PCX believes that providing a credit for book activity does not create a meaningful incentive for attracting order flow.

Second, the Exchange proposes to increase its registered representative and registered options principal fee by $10 to $35 for annual maintenance, new applications, and transfers. The Exchange believes that this addition is warranted due to increased costs related to regulatory oversight and enforcement.

Finally, the Exchange proposes to add DEA fees for off-floor trading firms and its traders. Currently the PCX is the DEA for 162 firms. Of these 162 firms, 15 conduct extensive off-floor trading businesses. In the past, the PCX has outsourced the examinations of these 15 firms. The PCX intends to conduct these examinations in the future. The Exchange believes that, based upon its business model, the number of off-floor trading firms for which it will serve as DEA will increase substantially in the near future. Therefore, the Exchange is seeking to establish DEA fees that will allow for recovery of costs associated with these types of examinations. The Exchange proposes to require all current and future off-floor traders to pay an initial registration fee of $75 per trader and an annual fee thereafter of $250 per trader. The Exchange is also proposing to charge a $2,000 per month Examination Fee to be paid by member organizations for which the Exchange is the DEA. An Exemption from these fees will be granted to any member operating from the PCX trading floor that has demonstrated that at least 25% of its income, as reflected on the most recently submitted FOCUS Report, was derived from on-floor activities. These fees will help to offset costs associated with providing examination services to off-floor trading firms. These include costs related to advising firms on financial reporting requirements and compliance with PCX and SEC rules. There are also extensive travel costs and initial set-up costs related to such off-floor firms. These fees are consistent with the fee structures established by other Exchange.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(4)[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4,[10] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–41 and should be submitted by December 4, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28947 Filed 11–9–00; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] Telephone conversation between Hassan Abedi, Attorney, Regulatory Policy, PCX, and Terri Evans, Special Counsel, Division of Market Regulation, SEC, on November 1, 2000 (clarifying that the increased fee also applies to registered options principals).

[5] *See* Securities Exchange Act Release No. 43020. (July 10, 2000) 65 FR 44558 (July 18, 2000).

[6] *See* Securities Exchange Act Release No. 43497 (March 6, 2000), 65 FR 14005 (March 15, 2000); Securities Exchange Act Release No. 42562 (March 22, 2000), 65 FR 16445 (March 28, 2000); Securities Exchange Act Release No. 43074 (July 26, 2000), 65 FR 47529 (August 2, 2000); Securities Exchange Act Release No. 43014 (July 6, 2000), 65 FR 43388 (July 13, 2000); Securities Exchange Act Release No. 43257 (September 6, 2000), 65 FR 55665 (September 14, 2000); and Securities Exchange Act Release No. 43279 (September 11, 2000), 65 FR 56606 (September 19, 2000).

[7] 15 U.S.C. 78(f)(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Region IX Hawaii District Advisory Council; Public Meeting

The Small Business Administration Region IX Hawaii District Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public meeting at 10 a.m. on Thursday, November 30, 2000, at the Business Information and Counseling Center, 1111 Bishop Street, Suite 204, Training Center, Honolulu, HI 96813, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present. For further information write or call Andrew K. Poepoe, District Director U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2–235 Honolulu, Hawaii 96850; (808) 541–2965.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–28906 Filed 11–9–00; 8:45 am]

BILLING CODE 8025–01–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Services (ISAC–13)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Meeting.

SUMMARY: The Industry Sector Advisory Committee on Services will hold a meeting on November 21, 2000, from 9:00 a.m. to 12:30 p.m. The meeting will be opened to the public from 9:00 a.m. to 10:00 a.m., and closed to the public from 10:00 a.m. to 12:30 p.m.

DATES: The meeting is scheduled for November 21, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce, Conference Room B841–A, located at 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Holderman, (202) 482–0345, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, or Dominic Bianchi, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following topics will be discussed:

1. Review of ISAC Mission to Geneva.
2. Overview of GATS Work Program.
3. Review of Preparation of GATS Council for Trade in Services Meeting December 6, 2000.

Dominic Bianchi,

Acting Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 00–29047 Filed 11–8–00; 1:56 pm]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver of Aeronautical Land-Use Assurance North Adams Airport, North Adams, Massachusetts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments; Notice of intent to waiver with respect to land.

SUMMARY: The FAA is considering a proposal that a portion of the airport (approximately 1.35 acres located on Airport Access Road) is not needed for aeronautical use, as shown on the Airport Layout Plan. There appear to be no impacts to the airports by allowing the airport the use of the land under a 25 year lease, with a 10 year extension, for professional and general business office purposes. The land was acquired by the airport under FAA Project No. 9–19–002–901 (portion of parcel 3).

In accordance with section 47107(h) of title 49, United States Code, the notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purposes.

The purpose of this lease is to make use of surplus land to generate needed revenue for the operations and maintenance of the airport.

DATES: Comments must be received on or before December 13, 2000.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. William Cronan, Special Projects Officer, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: William Cronan, Special Projects Officer, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone number 781–238–7610/Fax number 781–238–7608. Documents reflecting the FAA action may be reviewed at the 16 New England Executive Park, Burlington, Massachusetts 01803 or at the North Adams and Harriman Airport North Adams, Massachusetts.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA intends to authorize the release of the subject airports property at the North Adams and Harriman Airport, North Adams, Massachusetts. The disposition of proceeds from the leasing of the airport property will be in accordance with FAA's policy and procedures concerning the use of the airport revenue, published in the **Federal Register** on February 16, 1999.

Issued in Burlington Massachusetts on November 3, 2000.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 00–28995 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 00–02–C–00–GRI to, Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Central Nebraska Regional Airport, Grand Island, Nebraska

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Central Nebraska Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 13, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William G. Stovall, Executive Director, Hall County Airport Authority, at the following address: Hall County Airport Authority, 3743 Sky Park Road, Grand Island, NE 68801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Hall County Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Central Nebraska Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 7, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Hall County Airport Authority, Grand Island, Nebraska, was not substantially complete within the requirements of section 158.25 of part 158. The Hall County Airport Authority submitted supplemental information on October 6, 2000, to complete the application. The FAA will approve or disapprove the supplemental application, in whole or in part, no later than December 19, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: March, 2001.

Proposed charge expiration date: November, 2007.

Total estimated PFC revenue: $578,060.

Brief description of proposed project(s): Ramp improvements; Terminal renovation and addition; Runway/taxiway cable replacement; Rehabilitate, relocate and reconstruct Runway 13/31; and Construct new taxiway.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Central Nebraska Regional Airport.

Issued in Kansas City, Missouri on October 27, 2000.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 00–28994 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lake Charles Regional Airport, Lake Charles, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lake Charles Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 13, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Alan Kratzer, Airport Manager for Lake Charles Regional Airport at the following address: Mr. Alan Kratzer, Airport Manager, Airport Authority of Calcasieu Parish, P.O. Drawer 5820, Lake Charles, LA 70606–5820.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lake Charles Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 2, 2000 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 1, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 2001.

Proposed charge expiration date: March 1, 2021.

Total estimated PFC revenue: $4,251,977.

PFC application number: 00–01–C–00–LCH.

Brief Description of Proposed Project(s)

Projects To Impose and Use PFC's

1. Terminal Improvement Project.
2. Expand Terminal Public Parking.
3. Renovation of the Aircraft Rescue and Firefighting Facility.
4. Security Fencing at General Aviation Area.
5. 1997 Terminal Improvement Project.
6. Professional Fees for Passenger Facility Charge Application Preparation.

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR Part 135 on demand air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Lake Charles Regional Airport.

Issued in Fort Worth, Texas on November 2, 2000.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 00–28993 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Study of Allowing Credit for Emergency Services Provided as Airport Local Share Under the Airport Improvement Program

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of Study of Allowing Credit for Emergency Services Provided as Airport Local Share under the Airport Improvement Program and of Opportunity to Provide Input.

SUMMARY: The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, (Pub. L. 106–181, April 5, 2000), cited below as AIR 21, includes a provision that requires the Federal Aviation Administration (FAA) to conduct a study and report the findings. Section 724, Credit for Emergency Services Provided, directs the FAA to study the appropriateness of allowing an airport that agrees to provide services to the Federal Emergency Management Agency (FEMA) or to a State or local agency, in the event of an emergency, a credit of the value of such services against the airport's local share under the Airport Improvement Program (AIP).

DATES: This study will be conducted by the FAA Office of the Associate Administrator for Airports, Airports Financial Assistance Division, Program Guidance Branch. It will be based on a review of comments submitted by potential beneficiaries and other information gained from experience with administration of the AIP. Nonhub and General Aviation airports are encouraged to submit comments explaining how the credit would benefit their airport. Comments should also address what sort of emergencies could qualify for such credit and how the costs would be quantified to determine the credit against the local share. Comments must be submitted on or before December 4, 2000.

ADDRESSES: Comments may be delivered or mailed to the FAA, Airports Financial Assistance Division, APP–500, Room 615, 800 Independence Ave, SW, Washington, DC 20591 (ATTN: Don Samuels, APP–510).

FOR FURTHER INFORMATION CONTACT: Mr. Don Samuels (Program Guidance Branch) Telephone (202) 267–8818.

SUPPLEMENTARY INFORMATION: The following is Section 724 of AIR 21.

"SEC. 724. CREDIT FOR EMERGENCY SERVICES PROVIDED

(a) **Study.**—The Administrator shall conduct a study of the appropriateness of allowing an airport that agrees to provide services to the Federal Emergency Management Agency or to a State or local agency in the event of an emergency a credit of the value of such services against the airport's local share under the airport improvement program.

(b) **Notification.**—The Administrator shall notify nonhub and general aviation airports that the Administrator is conducting the study under subsection (a) and give them an opportunity to explain how the credit described in subsection (a) would benefit such airports.

(c) **Report.**—Not later than 180 days after the date of the enactment of this Act, the Administrator shall transmit to Congress a report on the results of the study conducted under subsection (a). The report shall identify, at a minimum, the airports that would be affected by providing the credit described in subsection (a), explain what sort of emergencies could qualify for such credit, and explain how the costs would be quantified to determine the credit against the local share."

Issued in Washington, DC on October 13, 2000.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 00–28996 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Iberia, St. Martin, and Lafayette Parishes, Louisiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed road project in Iberia, Lafayette, and St. Martin Parishes, Louisiana.

FOR FURTHER INFORMATION CONTACT: William C. Farr, Program Operations Manager, Federal Highway Administration, 5304 Flanders Drive, Suite A, Baton Rouge, Louisiana 70808, Telephone (225) 757–7615, Facsimile: (225) 757–7601.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Louisiana Department of Transportation and Development (LDOTD), will prepare an Environmental Impact Statement (EIS) on a proposal to upgrade a portion of US 90 to a full "Control of Access" highway meeting current interstate standards. US 90 will become an extension of Interstate 49 (I–49). The proposed project passes through part of the City of Lafayette and the City of Broussard, Lafayette Parish, Louisiana. The approximate distance of the project is 12 miles.

The proposed improvements would provide sufficient capacity for hurricane evacuation routes, maintain access to abutting properties, and minimize adverse environmental and community impacts.

This portion of US 90 begins at the Lafayette Regional Airport in Lafayette Parish and extends to Route LA 88 in Iberia Parish.

Alternatives to be considered include: (1) Utilization of the existing right-of-way to the maximum extent practicable to incorporate a controlled access roadway with a one-way frontage road system; and (2) Utilization of the existing right-of-way to the maximum extent practicable to incorporate a controlled access roadway with a two-way frontage road system.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, state, and local agencies and to private organizations, including groups of individuals who have expressed interest in the project in the past. There are no plans to hold a formal scoping meeting for the proposed action. At least one public informational meeting will be held in the project area that will be affected. In addition, a Public Hearing will be held. Public notice will be given of the time and place of the public informational meeting(s) and the Public Hearing. The draft EIS will be available for public and agency review and comment prior to the Public Hearing.

To ensure that the full range of issues related to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 31, 2000.

William A. Sussmann,

Division Administrator, FHWA, Baton Rouge, Louisiana.

[FR Doc. 00–28870 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Manatee County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Manatee County, Florida.

FOR FURTHER INFORMATION CONTACT: Dr. Donald Davis, Program Operations Engineer, Federal Highway Administration, 227 North Bronough Street, Suite 2015, Tallahassee, Florida 32301, Telephone: (850) 942–9650, Extension 3031.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation will prepare an EIS for a proposal to improve the north-south circulation between I–75 and Rye Road (CR 675). Part of this proposal is to evaluate increased vehicular capacity crossing the Manatee River. Improvements to the corridor are considered necessary to provide for projected traffic demand.

Alternatives under consideration include (1) taking no action; (2) widening mainline I–75 and the I–75 crossing of the River; (3) widening Rye Road; and (4) a new crossing of the Manatee River connecting a widened Fort Hamer Road to the north with a widened Upper Manatee River Road to the south.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, state, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. A series of public meetings will be held in Manatee County, Florida between October 2000 and September 2001. In addition a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS (DEIS) will be made available for public and organizations reviews and comments prior to the public hearing. Per 40 CFR 1507.1, a scoping process will be developed as part of the project and a formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program.)

Issued on: November 1, 2000.

Donald Davis,

Program Operations Engineer, Tallahassee, Florida.

[FR Doc. 00–28872 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement (EIS); Sarasota and Charlotte Counties, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent (NOI).

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Sarasota and Charlotte Counties, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Davis, Programs Operation Engineer, Federal Highway Administration, 227 N. Bronough Street, Suite Room 2015, Tallahassee, Florida 32301–2015, Telephone: (850) 942–9650, Extension 3031.

SUPPLEMENTARY INFORMATION: The FHWA, in consultation with the Florida Department of Transportation, will prepare an EIS for a proposal to develop a north-south arterial linking S.R. 776 in the Englewood area of Charlotte County, Florida to I–75 in Sarasota County, Florida. The project area is approximately 48 square miles, which is four miles wide by 12 miles in length. The project limits are from the vicinity of the S.R. 776/Pine Street intersection to the I–75 interchange at River Road. This project is commonly referred to as the Englewood Interstate Connector. This project has been identified as a high priority by both the Sarasota/Manatee and Charlotte County-Punta Gorda Metropolitan Planning Organizations and is needed to accommodate future growth and to serve as an additional hurricane evacuation route. Alternatives to be considered for this arterial will include a new roadway alignment(s), utilizing the existing River Road alignment and a combination of each. A no-build alternative will also be considered.

Letters describing the appropriate action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed an interest in this proposal. Public meetings will be held in the study area until June 2001. In addition, a Public Hearing will be held in the study area. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be made available to the public and organizations for their review and comments. The formal scoping meeting date is not available at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program.)

Issued On: November 1, 2000.

Donald Davis,

Program Operations Engineer, Tallahassee, Florida.

[FR Doc. 00–28871 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: St. Mary Parish, Louisiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed road project in St. Mary Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: William C. Farr, Program Operations Manager, Federal Highway Administration, 5304 Flanders Drive, Suite A, Baton Rouge, Louisiana, 70808, Telephone: (225) 757–7615, Facsimile: (225) 757–7601.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Louisiana Department of Transportation and Development (LDOTD), will prepare an Environmental Impact Statement (EIS) on a proposal to upgrade a portion of US 90 to a full "Control of Access" highway meeting current interstate standards. US 90 will become an extension of Interstate 49 (I–49). The proposed project passes through the municipalities of Patterson and Berwick as well as the unincorporated community of Bayou Vista, St. Mary Parish, Louisiana. The approximate distance of the project is 9 miles.

The proposed improvements would provide sufficient capacity for hurricane evacuation routes, maintain access to abutting properties, and minimize adverse environmental and community impacts.

This portion of US 90 begins east of the Wax Lake Outlet Bridge and extends to the interchange with LA 182 in Berwick, St. Mary Parish.

Alternatives to be considered include: (1) Utilization of the existing right-of-way to the maximum extent practicable to incorporate a controlled access roadway with a one-way frontage road system; and (2) Utilization of the existing right-of-way to the maximum extent practicable to incorporate a controlled access roadway with a two-way frontage road system.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, state, and local agencies and to private organizations, including groups of individuals who have expressed interest in the project in the past. There are no plans to hold a formal scoping meeting for the proposed action. At least one public informational meeting will be held in the project area that will be affected. In addition, a Public Hearing will be held. Public notice will be given of the time and place of the public informational meeting(s) and the Public Hearing. The draft EIS will be available for public and agency review and comment prior to the Public Hearing.

To ensure that the full range of issues related to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 31, 2000.

William A. Sussmann,

Division Administrator, FHWA, Baton Rouge, Louisiana.

[FR Doc. 00–28869 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2000–6944 (Notice No. 00–12)]

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collections Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comments. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on August 21, 2000, (65 FR 50741). One comment was received regarding OMB Control No. 2137–0034, Hazardous Materials Shipping Papers & Emergency Response Information.

DATES: Comments must be submitted on or before December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

Title: Hazardous Materials Shipping Papers & Emergency Response Information.

OMB Control Number: 2137–0034.

Type of Request: Extension of a currently approved collection.

Abstract: This information collection consolidates and describes the information collection provisions in parts 172, 174, 175, 176, and 177 of the HMR on the shipping paper and emergency response requirements for the transportation of hazardous materials in commerce. Shipping papers and emergency response information are a basic communication tool used in the safe transportation of hazardous materials. They serve as a principal means of identifying hazardous materials during transportation, including emergencies, by providing the proper shipping name, hazard class, UN or NA identification number, packing group and quantity of each hazardous material being transported. Shipping papers also provide emergency response information for use in the mitigation of an incident, and an emergency response telephone number for use in the event of an emergency. The telephone number must be monitored at all times the hazardous material is in transportation, by a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who posses such knowledge and information. Shipping papers also serve as a means of notifying transport workers that hazardous materials are present, so that the proper loading, unloading, handling and safety procedures may be followed.

One comment was received from the Hazardous Materials Advisory Council (HMAC) requesting clarification on the basis of the 6,500,000 burden hours for the preparation of shipping papers. HMAC cited a recent RSPA study completed in August 1998 that estimated there are 800,000 daily shipments of hazardous materials in commerce, most requiring the preparation of shipping papers. According to the August 1998 RSPA study, shipments are defined as equivalent to deliveries, and in most instances may be distinguished from the number of movements, trip segments, or other measures. The estimated number of movements associated with these shipments exceeds 1.2 million per day. Because most of the 800,000 daily shipments are accomplished with one shipping paper and some require multiple shipping papers, RSPA has estimated the annual number of shipments for shipping paper calculation purposes to be approximately 1 million shipments per day. The information collection estimates used by RSPA average out to 1 million/day x 5 days/week x 52 weeks or 260 million shipments per year. These estimates are averages based on the average time it takes all shippers to complete shipping paper. This includes shippers who prepare shipping papers once a year manually, as well as those shippers who ship hundreds of material daily using a permanent reusable

shipping paper, and shippers who use computer generated shipping papers that can be printed out in seconds. RSPA acknowledges that it may take more than 1 minute 30 seconds to prepare a number of shipping papers. However, other shipping papers can be prepared more quickly by using data programs, especially for shippers who continually ship the same hazardous materials.

Affected Public: Shippers and carriers of hazardous materials in intrastate, interstate, and foreign commerce.

Estimated Number of Respondents: 250,000.

Estimated Number of Responses: 260,000,000.

Annual Estimated Burden Hours: 6,500,000.

Frequency of Collection: Annually.

Title: Radioactive (RAM) Transportation Requirements.

OMB Control Number: 2137–0510.

Type of Request: Extension of a currently approved collection.

Abstract: This information collection consolidates and describes the information collection provisions in the HMR (49 CFR parts 171–180) involving the transportation of radioactive materials in commerce. Information collection requirements for RAM include: shipper notification to consignees of the dates of shipment of RAM; expected arrival; special loading/unloading instructions; verification that shippers using foreign-made packages hold a foreign competent authority certificate and verification that the terms of the certificate are being followed for RAM shipments being made into this country; and specific handling instructions from shippers to carriers for fissile RAM, bulk shipments of low specific activity RAM and packages of RAM which emit high levels of external radiation. These information collection requirements help to establish that proper packages are used for the type of radioactive material being transported; external radiation levels do not exceed prescribed limits; packages are handled appropriately and delivered in a timely manner, so as to ensure the safety of the general public, transport workers, and emergency responders.

Affected Public: Shippers and carriers of radioactive materials in commerce.

Estimated Number of Respondents: 3,807.

Estimated Number of Responses: 21,319.

Annual Estimated Burden Hours: 14,480.

Frequency of Collection: Periodically.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to Office of Management and Budget, Attention: Desk Officer for RSPA, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC on November 7, 2000.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 00–28986 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on November 6, 2000.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

New Exception Applications

Application No.	Applicant	Reason for delay	Estimated date of completion
11862–N	The BOC Group, Murray Hill, NJ	4	12/29/2000
11927–N	Alaska Marine Lines, Inc. Seattle, WA	4	12/29/2000
12125–N	Mayo Foundation, Rochester, MN	4	11/30/2000
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	12/29/2000
12158–N	Hickson Corporation, Conley, GA	4	12/29/2000
12181–N	Aristech, Pittsburgh, PA	4	12/29/2000
12248–N	Ciba Specialty Chemicals Corp., High Point, NC	4	12/29/2000
12277–N	The Indian Sugar & General Engineering Corp. ISGE, Haryana, IX	1	11/30/2000

NEW EXCEPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
12281–N	ABS Group, Inc., Houston, TX	4	12/29/2000
12290–N	Savage Industries, Inc., Pottstown, PA	4	12/29/2000
12307–N	Kern County Dept. of Weights & Measures, Bakersfield, CA	4	12/29/2000
12332–N	Automotive Occupant Restraints Council, Lexington, KY	4	12/29/2000
12339–N	BOC Gases, Murray Hill, NJ	4	12/29/2000
12343–N	City Machine & Welding, Inc. of Amarillo, Amarillo, TX	1	12/29/2000
12351–N	Nalco/Exxon Energy Chemicals, L.P., Freeport, TX	4	11/30/2000
12353–N	Monson Companies, South Portland, ME	4	12/29/2000
12355–N	Union Tank Car Company, East Chicago, IN	4	12/29/2000
12368–N	Occidental Chemical Corp., Dallas, TX	4	12/29/2000
12381–N	Ideal Chemical & Supply Co., Memphis, TN	4	12/29/2000
12397–N	FMC Corporation, Philadelphia, PA	4	12/29/2000
12406–N	Occidental Chemical Corporation, Dallas, TX	4	12/29/2000
12412–N	Great Western Chemical Company, Portland, OR	4	12/29/2000
12422–N	Connecticut Yankee Atomic Power Co., East Hampton, CT	4	12/29/2000
12427–N	Chubb Fire Ltd., England	4	11/30/2000
12433–N	The Lighter Company, Inc., Miami, FL	4	12/29/2000
12434–N	Salmon Air, Salmon, ID	4	12/29/2000
12440–N	Luxfer Inc., Riverside, CA	4	01/31/2001
12443–N	ChemCentral/Charlotte, Charlotte, NC	4	01/31/2001
12444–N	ST Services, Dallas, TX	4	01/31/2001
12446–N	Japan Defense Agency, Redstone Arsenal, AL	1	11/30/2000
12454–N	Ethyl Corp., Richmond, VA	4	01/31/2001
12455–N	United States Marine Safety Association, Philadelphia, PA	4	01/31/2000
12456–N	Baker Hughes, Houston, TX	4	01/31/2001
12457–N	Arch Chemicals, Inc., Norwalk, CN	4	12/29/2000
12468–N	Connecticut Yankee Atomic Power Co., East Hampton, CT	4	11/30/2000
12469–N	Department of Energy, Germantown, MD	4	01/31/2001
12473–N	Old Bridge Metals & Chemicals, Inc., Old Bridge, NJ	4	01/31/2001

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
6658–M	Mason & Hanger Corp. (USDOE/Pantex Plant), Amarillo, TX	4	11/30/2000
8299–M	Pacific Scientific, Duarte, CA	4	11/30/2000
8308–M	Tradewind Enterprises, Inc., Hillsboro, OR	4	11/30/2000
8556–M	Gardner Cryogenics, Lehigh Valley, PA	4	11/30/2000
10656–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	11/30/2000
11296–M	Heritage Transport, LLC, Indianapolis, IN	4	11/30/2000
11316–M	TRW Automotive, Queen Creek, AZ	4	01/31/2001
11537–M	JCI Jones Chemicals, Inc., Milford, VA	4	12/29/2000
11769–M	Great Western Chemical Company, Portland, OR	4	11/30/2000
11769–M	Great Western Chemical Company, Portland, OR	4	12/29/2000
11769–M	Hydrite Chemical Company, Brookfield, WI	4	12/29/2000
11798–M	Air Products and Chemicals, Inc., Allentown, PA	1, 4	12/29/2000
11798–M	Anderson Development Company, Adrian, MI	4	12/29/2000
11911–M	Transfer Flow, Inc., Chico, CA	4	01/31/2001
11916–M	CP Industries, Inc., McKeesport, PA	4	01/31/2001
12074–M	Van Hool NV, B–2500 Lier Koningshooikt, BG	1	12/29/2000
12178–M	STC Technologies, Inc., Bethlehem, PA	1	11/30/2000

[FR Doc. 00–28919 Filed 11–9–00; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–33 (Sub-No. 158X) and AB–406 (Sub-No. 12X)]

Union Pacific Railroad Company—Abandonment Exemption—in McPherson, Ellsworth and Rice Counties, KS and Central Kansas Railway Limited Liability Company—Discontinuance of Service Exemption—in McPherson, Ellsworth and Rice Counties, KS

On October 24, 2000, Union Pacific Railroad Company (UP) and Central Kansas Railway Limited Liability Company (CKR) jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for UP to abandon and for CKR to discontinue service over a rail line: (1) Between milepost 523.02, near Geneseo and milepost 495.80, near Lindsborg; and (2) between milepost 531.40 and milepost 530.60, near Lindsborg, a total distance of 28.02 miles in McPherson, Ellsworth and Rice Counties, KS. The line traverses U.S. Postal Service Zip Codes 67444, 67456, and 67464, and includes the non-agency stations of Lindsborg (mileposts 495.80 and 531.0), Marquette (milepost 505.60), Crawford (milepost 518.20), and Geneseo (milepost 524.50).

The line does not contain federally granted rights-of-way. Any documentation in petitioners' possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 9, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 4, 2000. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 158X) and STB Docket No. AB–406 (Sub-No. 12X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; (2) James P. Gatlin, 1416 Dodge Street #830, Omaha, NE 68179; and (3) Karl Morell, 1455 F St., NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before December 4, 2000.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 6, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–28987 Filed 11–9–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–3: OTS Nos. 02461 and H–3365]

FloridaFirst Bancorp, Lakeland, Florida; Approval of Conversion Application

Notice is hereby given that on November 3, 2000, the Managing Director, Office of Supervision, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of FloridaFirst Bank, Lakeland, Florida, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE, Atlanta, GA 30309.

Dated: November 7, 2000.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 00–28980 Filed 11–9–00; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register
Vol. 65, No. 219
Monday, November 13, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0024, MT–001–0025, MT–001–0026; FRL–6883–6]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan; Montana; East Helena Lead State Implementation Plan

Correction

In proposed rule document 00–25929 beginning on page 60144 in the issue of Tuesday, October 10, 2000, make the following correction:

1. On page 30147, in the table, under the heading "Description ", in the fifth line, after "similar", add "provisions ".
2. On the same page, in the first column, in footnote 2, in the 12th line, after "our" add "approval of the modification or alternative. (We caution that our failure to make such".
3. On the same page, in the second column, in footnote 2, in the first line, "mentodology" should read "methodology".
4. On the same page, in the same column, in the same footnote, in the fourth line, after "revision" add "in accordance with the provisions of Title I of the Act, pursuant to notice and comment".
5. On the same page, in the same column, in footnote 3, in the fifth line, "march" should read "March".
6. On the same page, in the same column, in the same footnote in the last line, "Pager" should read "Paper".
7. On the same page, in the third column, in the same footnote, in the second line, "discuss" should read "discusses" and "provess" should read "process".
8. On the same page, in the same column, in the same footnote, in the fifth line, "sate" should read "State"; "actucally using" should read "actually issuing".
9. On the same page, in the same column, in the same footnote, in the sixth line, "source-specicfic" should read "source-specific ".
10. On the same page, in the same column, remove the first footnote 4.

[FR Doc. C0–25929 Filed 11–9–00; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–200018; FRL–6892–2]

Approval and Promulgation of State Implementation Plans (SIP) for the State of Alabama–Call for 1-Hour Attainment Demonstration for the Birmingham, Alabama Marginal Ozone Nonattainment Area

Correction

In rule document 00–27584 beginning on page 64352 in the issue of Friday, October 27, 2000, make the following correction:

§52.66 [Corrected]

On page 64357, in the second column, in §52.66(b), in the fourth line, "April 27, 2000" should read "April 27, 2001".

[FR Doc. C0–27584 Filed 11–9–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG71

Endangered and Threatened Wildlife and Plants; Determinations of Whether Designation of Critical Habitat is Prudent for 81 Plants and Proposed Designations for 76 Plants From the Islands of Kauai and Niihau, Hawaii

Correction

In proposed rule document 00–28214 beginning on page 66808 in the issue of Tuesday, November 7, 2000, make the following correction:

On page 66808, in the second column, in the **DATES** section, "December 7, 2000" should read "January 8, 2001".

[FR Doc. C0–28214 Filed 11–9–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1313

[DEA–197P]

RIN 1117–AA53

Waiver of Advance Notification Requirement to Import Acetone, 2-Butanone (MEK), and Toluene

Correction

In proposed rule document 00–27426 beginning on page 63822 in the issue of Wednesday, October 25, 2000 make the following correction:

On page 63824, in the first column, under the **List of Subjects in 21 CFR Part 1313**, in the fourth line, "recording" should read "recordkeeping".

[FR Doc. C0–27426 Filed 11–9–00; 8:45 am]

BILLING CODE 1505–01–D

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

Correction

In notice document 00–28460 beginning on page 66563, in the issue of Monday, November 6, 2000, make the following correction:

On page 66563, in the third column, under the heading **Open Session**, in the eighth line, " Esther Lardent, ABA Director of the Pro Bono Center" should read "Esther Lardent, Representative of the ABA's Standing Committee on Legal Aid and Indigent Defendants".

[FR Doc. C0–28460 Filed 11–9–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
November 13, 2000

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 419

Medicare Program; Prospective Payment System for Hospital Outpatient Services; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 419

[HCFA–1005–IFC]

RIN 0938–A156

Medicare Program; Prospective Payment System for Hospital Outpatient Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period provides for the annual update to the Medicare hospital outpatient prospective payment system conversion factor that is used to calculate the payment amount for each payment group, effective January 1, 2001. It also updates the wage index values and incorporates the year 2001 changes in the procedure codes that are used to make payments under this system. In this rule, we are also responding to public comments received on those portions of the April 7, 2000 final rule with comment period (which established the hospital outpatient prospective payment system) that implemented related provisions of the Balanced Budget Refinement Act (BBRA) of 1999. In addition, we are responding to public comments on the August 3, 2000 interim final rule with comment period that modified the April 7, 2000 final rule with comment period by revising the criteria used to define new or innovative medical devices, drugs, and biologicals eligible for transitional pass-through payments and correcting the criteria for grandfathering provider-based Federally Qualified Health Centers (FQHC) into the prospective payment system.

DATES:

Effective Date: These regulations are effective on January 1, 2001.

Comment Period: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 12, 2001.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1005–IFC, P.O. Box 8013, Baltimore, MD 21244–8013.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the above addresses may be delayed and received too late for us to consider them. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1005–IFC. of the received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT:

Janet Wellham (410) 786–4510, Chuck Braver, (410) 786–6719, or Jana Petze (410) 786–9374, (for general information).

Kity Ahern, (410) 786–4515 (for information related to ambulatory payment classification groups and transitional pass-through payments related to drugs and biologicals).

Majorie Baldo, (410) 786–4617 or Barry Levi, (410) 786–4529 (for information related to transitional pass-through payments for medical devices).

George Morey (410) 786–4653 (for information related to the criteria for grandfathering provider-based FQHCs into the prospective payment system).

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Website address is http://www.access.gpo.gov /nara/index.html.

To assist readers in referencing sections contained in this document, we are providing the following table of contents:

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Alphabetical List of Acronyms Appearing in the Interim Final Rule With Comment Period

APC	Ambulatory payment classification
APG	Ambulatory patient group
ASC	Ambulatory surgical center
AWP	Average wholesale price
BBA	1997 Balanced Budget Act of 1997
BBRA	1999 Balanced Budget Refinement Act of 1999
CAT	Computerized axial tomography
CCI	[HCFA's] Correct Coding Initiative
CCR	Cost center specific cost-to-charge ratio
CMHC	Community mental health center
CORF	Comprehensive outpatient rehabilitation facility
CPI	Consumer Price Index
CPT	[Physicians'] Current Procedural Terminology, 4th Edition, 2000, copyrighted by the American Medical Association
DME	Durable medical equipment
DMEPOS	DME, prosthetics (which include prosthetic devices and implants) orthotics, and supplies
DRG	Diagnosis-related group
FDA	Food and Drug Administration
FQHC	Federally qualified health center
HCPCS	HCFA Common Procedure Coding System
HHA	Home health agency
ICD–9–CM	International Classification of Diseases, Ninth Edition, Clinical Modification
IME	Indirect medical education
JCAHO	Joint Commission on Accreditation of Healthcare Organizations
MRI	Magnetic resonance imaging
MSA	Metropolitan statistical area
NECMA	New England County Metropolitan Area
PPS	Prospective payment system
RFA	Regulatory Flexibility Act
RHC	Rural health clinic
RRC	Rural referral center
SCH	Sole community hospital
SNF	Skilled nursing facility

I. Background

A. General Summary of April 7, 2000 Final Rule With Comment Period That Implemented Amendments Enacted by the Balanced Budget Act of 1997 and the Balanced Budget Refinement Act of 1999

On April 7, 2000, we published in the FEDERAL REGISTER (65 FR 18434) a final rule with comment period to implement a new prospective payment system for hospital outpatient services. This new system establishes prospective payment rates for covered outpatient hospital services using ambulatory payment classification (APC) groups. The April 7, 2000 final rule with comment period implemented section 4523 of the Balanced Budget Act of 1997 (the BBA 1997), Public Law 105–33, and related sections of the Balanced Budget Refinement Act of 1999 (the BBRA 1999), Public Law 106–113. Section 4523 of the BBA 1997 amended section 1833 of the Social Security Act (the Act) by adding subsection (t) to provide for implementation of a prospective payment system for hospital outpatient services furnished to Medicare beneficiaries. Section 1833(t) of the Act, as added by the BBA 1997—

- Authorizes the Secretary to designate the hospital outpatient services that would be paid under the prospective payment system and requires that the hospital outpatient prospective payment system include hospital inpatient services designated by the Secretary that are covered under Medicare Part B for beneficiaries who are entitled to Part A benefits but who have exhausted them or are otherwise entitled to them.
- Sets forth certain requirements for the hospital outpatient prospective payment system, including the requirement that a classification system for covered outpatient services be developed that may consist of groups arranged so that the services within each group are comparable clinically and with respect to the use of resources.
- Specifies data requirements for establishing relative payment weights. The weights are to be based on the median hospital costs determined by 1996 claims data and data from the most recent available cost reports. (This provision has subsequently been changed by the BBRA 1999, as discussed later in this preamble.)
- Requires that the portion of the Medicare payment and the beneficiary coinsurance that are attributable to labor and labor-related costs be adjusted for geographic wage differences in a budget neutral manner.
- Authorizes the Secretary under section 1833(t)(2)(E) of the Act to establish, in a budget neutral manner, other adjustments, such as outlier adjustments or adjustments for certain classes of hospitals, that the Secretary determines to be necessary to ensure equitable payments.
- Requires the Secretary to develop a method for controlling unnecessary

increases in the volume of covered outpatient services.

- Specifies how beneficiary deductibles are to be treated when calculating the Medicare payment and beneficiary coinsurance amounts and requires that rules be established regarding determination of coinsurance amounts for covered services that were not furnished in 1996. The statute freezes beneficiary coinsurance at 20 percent of the national median charges for covered services (or a group of covered services) furnished during 1996 and updated to 1999 using the Secretary's estimated charge growth from 1996 to 1999.
- Prescribes the formula for calculating the initial conversion factor used to determine 1999 Medicare payment amounts and the method for updating the conversion factor in subsequent years.
- Describes the method for determining the Medicare payment amount and the beneficiary coinsurance amount for services covered under the outpatient prospective payment system. (This section was amended by the BBRA 1999, as discussed later in this preamble.)
- Requires the Secretary to establish a procedure whereby hospitals may voluntarily elect to reduce beneficiary copayment for some or all covered services to an amount no less than 20 percent of the Medicare payment amount. Hospitals are further allowed to disseminate information on any such reductions of copayment amounts. Section 4451 of the BBA 1997 added section 1861(v)(1)(T) to the Act, which provides that any reduction in copayment, must not be treated as a bad debt.
- Authorizes periodic review and revision of the payment groups, relative payment weights, wage index, and conversion factor. (This section was amended by the BBRA 1999, as discussed later in this preamble.)
- Describes how payment is to be made for ambulance services, which are specifically excluded from the hospital outpatient prospective payment system under section 1833(t)(1)(B) of the Act.
- Provides that the Secretary may establish a separate conversion factor for services furnished by cancer hospitals that are excluded from the hospital inpatient prospective payment system.
- Prohibits administrative or judicial review of the hospital outpatient prospective payment system classification system, the payment groups, relative payment weights, wage adjustment factors, other adjustments, calculation of base amounts, periodic adjustments, and the establishment of a separate conversion factor for those cancer hospitals excluded from hospital inpatient prospective payment system. (This section was expanded by the BBRA 1999, as discussed later in this preamble.)

Section 4523(d) of the BBA 1997 made a conforming amendment to section 1833(a)(2)(B) of the Act to provide for payment under the hospital outpatient prospective payment system for some services described in section 1832(a)(2) of the Act that are currently paid on a cost basis and furnished by providers of services, such as comprehensive outpatient rehabilitation facilities (CORFs), home health agencies (HHAs), hospices, and community mental health centers (CMHCs). This amendment provides that partial hospitalization services furnished by CMHCs be paid under the hospital outpatient prospective payment system.

Before enactment of section 4521(b) of the BBA 1997, the blended payment formulas for ambulatory surgery centers (ASC) procedures, radiology, and other diagnostic services, the ASC or physician fee schedule portion were calculated as if the beneficiary paid 20 percent of the ASC rate or physician fee schedule amount instead of the actual amount paid, which was 20 percent of the hospital's billed charges. Section 4521(b) of the BBA 1997, which amended sections 1833(i)(3)(B)(i)(II) and 1833(n)(1)(B)(i) of the Act, corrected this anomaly by changing the blended calculations so that all amounts paid by the beneficiary are subtracted from the total payment in the calculation to determine the amount due from the program. Effective for services furnished on or after October 1, 1997, payment for ASC surgery, radiology, and other diagnostic services calculated by blended payment methods is now calculated by subtracting the full amount of coinsurance due from the beneficiary (based on 20 percent of the hospital's billed charges).

Section 1861(v)(1)(S)(ii) of the Act was amended by section 4522 of the BBA 1997 to require that the amounts otherwise payable for hospital outpatient operating costs and capital costs be reduced by 5.8 percent and 10 percent, respectively, through December 31, 1999. (This section was further amended by the BBRA 1999.)

(Refer to the April 7, 2000 hospital outpatient prospective payment system final rule with comment period for a more in-depth description of how the changes made by the BBA 1997 and the BBRA 1999 were implemented.)

On November 29, 1999, after we had published a proposed rule to implement section 4253 of the BBA 1997, the BBRA 1999 was enacted. The BBRA 1999 made major changes that affected the hospital outpatient prospective payment system that was established by the BBA 1997 and implemented in the April 7, 2000 final rule with comment period. Therefore, in the April 7, 2000 final rule with comment period, we also implemented 14 provisions of the BBRA 1999 that affected the hospital outpatient prospective payment system and solicited public comments on those provisions. The BBRA 1999 provisions on which we solicited comments included the following:

1. Outlier Adjustment

Section 201(a) of the BBRA 1999 amended section 1833(t) of the Act by adding a new paragraph (5) to provide that the Secretary must make payment adjustments (that is, an outlier payment) for covered services whose costs exceed a threshold determined by the Secretary. This section describes how the additional payments are to be calculated and caps the projected outlier payments at no more than 2.5 percent of the total projected payments (sum of both Medicare and beneficiary payments to the hospital) made under the hospital outpatient prospective payment system for years before 2004 and 3.0 percent of the total projected payments for 2004 and subsequent years.

2. Transitional Pass-Through for Additional Costs of Innovative Medical Devices, Drugs, and Biologicals

Section 201(b) of the BBRA 1999 added new section 1833(t)(6) to the Act, establishing transitional pass-through payments for certain medical devices, drugs, and biologicals. This provision specifies the types of items for which additional payments must be made; describes the amount of the additional payments; limits these payments to at least 2, but not more than 3 years; and caps the projected payment adjustments annually at 2.5 percent of the total projected payments for hospital outpatient services each year before 2004 and no more than 2.0 percent in subsequent years. Under this provision, the Secretary must reduce pro rata the amount of the additional payments if, before the beginning of a year, he or she estimates that these payments would otherwise exceed the caps.

3. Budget Neutrality Applied to New Adjustments

Section 201(c) of the BBRA 1999 amended section 1833(t)(2)(E) of the Act to require that the establishment of outlier and transitional pass-through payment adjustments be made in a budget neutral manner.

4. Limitation on Judicial Review

Section 201(d) of the BBRA 1999 amended redesignated section 1833(t)(11) of the Act by extending the prohibition of administrative or judicial review to include the factors for determining outlier payments (that is, the fixed multiple, or a fixed dollar cutoff amount, the marginal cost of care, or applicable total payment percentage), and the determination of additional payments for certain medical devices, drugs, and biologicals, the insignificant cost determination for these items, the duration of the additional payment or portion of the prospective payment system payment amount associated with particular devices, drugs, or biologicals, and any pro rata reduction.

5. Inclusion in the Hospital Outpatient Prospective Payment System of Certain Implantable Items

Section 201(e) of the BBRA 1999 amended section 1833(t)(1)(B) of the Act to include as covered hospital outpatient services implantable prosthetics, durable medical equipment (DME), diagnostic x-ray, laboratory, and other tests associated with those implantable items.

6. Payment Weights Based on Median or Mean Hospital Costs

Section 201(f) of the BBRA 1999 amended section 1833(t)(2)(C) of the Act, which specifies data requirements for establishing relative payment weights, to allow the Secretary the discretion to base the weights on either the median or mean hospital costs determined by data from the most recent available cost reports.

7. Limitation on Variation of Costs of Services Classified Within a Group

Section 201(g) of the BBRA 1999 amended section 1833(t)(2) of the Act to limit the variation of costs of services within each payment classification group by providing that the highest median cost (or mean cost, if elected by the Secretary) for an item or service within the group cannot be more than 2 times greater than the lowest median (or mean) cost for an item or service within the group. The provision allows the Secretary to make exceptions in unusual cases, such as for low volume items and services.

8. Annual Review of the Hospital Outpatient Prospective Payment System Components

Section 201(h) of the BBRA 1999 amended redesignated section 1833(t)(8) of the Act to require at least an annual review of the payment groups, relative payment weights, and the wage and other adjustments made by the Secretary to take into account changes in medical practice, the addition of new services, new cost data, and other relevant information and factors. Section 201(h)(2) provides that the first annual review must be conducted in 2001 for application in 2002. The section was further amended to require the Secretary to consult with an expert outside advisory panel composed of an appropriate selection of provider representatives who will review the clinical integrity of the groups and weights and advise the Secretary accordingly. The panel may use data other than those collected or developed by the Department of Health and Human Services (HHS) for review and advisory purposes.

9. Coinsurance Not Affected by Pass-Throughs

Section 201(i) of the BBRA 1999 amended redesignated section 1833(t)(7) of the Act to provide that the beneficiary coinsurance amount will be calculated as if the outlier and transitional pass-throughs had not occurred; that is, there will be no additional coinsurance collected from beneficiaries for the additional payments made to hospitals by Medicare for these adjustments.

10. Extension of Cost Reductions

Section 201(k) of the BBRA 1999 amended section 1861(v)(1)(S)(ii) of the Act to extend, until the first date that the hospital outpatient prospective payment system is implemented, the 5.8 and 10 percent reductions for hospital operating and capital costs, respectively.

11. Clarification of Congressional Intent Regarding Base Amounts Used in Determining the Hospital Outpatient Prospective Payment System

Section 201(l) of the BBRA 1999 provided that, "With respect to determining the amount of copayments described in paragraph (3)(A)(ii) of section 1833(t) of the Social Security Act, as added by section 4523(a) of BBA, Congress finds that such amount should be determined without regard to such section, in a budget neutral manner with respect to aggregate payments to hospitals, and that the Secretary of Health and Human Services has the authority to determine such amount without regard to such section."

12. Transitional Corridors for Application of Outpatient Prospective Payment System

Section 202 of the BBRA 1999 amended section 1833(t) of the Act by redesignating paragraphs (7) through (11) as paragraphs (8) through (12), respectively, and adding a new paragraph (7), which provides for a transitional adjustment to limit payment reductions under the hospital outpatient prospective payment system. More specifically, from the date the prospective payment system is implemented through 2003, a provider, including a CMHC, will receive an adjustment if its prospective payment system payments for outpatient services furnished during the year is less than a set percentage of its "pre-BBA" amount for that year. The pre-BBA amount is the product of the reasonable costs the hospital incurs for prospective payment system services during the year and the payment-to-cost ratio for covered prospective payment system services furnished during the cost report period ending during 1996. Two categories of hospitals, rural hospitals with 100 or fewer beds and cancer hospitals, will be held harmless under this provision. Small rural hospitals will be held harmless for services furnished before January 1, 2004. The hold-harmless provision applies permanently to cancer centers. Section 202 also requires the Secretary to make interim payments to affected hospitals subject to retrospective adjustments and requires that the provisions of this section do not affect beneficiary coinsurance. Finally, this provision is not subject to budget neutrality.

13. Limitation on Coinsurance for a Procedure

Section 204 of the BBRA 1999 amended redesignated section 1833(t)(8) of the Act to provide that the copayment amount for a procedure performed in a year cannot exceed the hospital inpatient deductible for that year.

14. Reclassification of Certain Hospitals

Section 401 of the BBRA 1999 added section 1886(d)(8)(E) to the Act to permit reclassification of certain urban hospitals as rural hospitals for purposes of section 1886(d) of the Act. Section 401 added section 1833(t)(13) to the Act to provide that a hospital being treated as a rural hospital under section 1886(d)(8)(E) is also to be treated as a rural hospital under the hospital outpatient prospective payment system.

A discussion of how each of these BBRA 1999 provisions was implemented in the April 7, 2000 final rule with comment period appears in section II of this preamble preceding our summary of the public comments received and our responses to those comments.

B. June 30, 2000 Notice of Delay of Effective Date for the April 7, 2000 Final Rule With Comment Period

On June 30, 2000, we published a notice in the **Federal Register** (65 FR 40535) announcing a delay in the effective date of the April 7, 2000 hospital outpatient prospective payment system final rule with comment period from July 1, 2000 to August 1, 2000. This delay was based on our determination that the appropriate claims processing changes could not feasibly be made to our computer systems and properly tested in time to ensure that proper payments would be made for Medicare hospital outpatient services under the new prospective payment system by the original July 1, 2000 effective date.

C. August 3, 2000 Interim Final Rule With Comment Period

On August 3, 2000, we published an interim final rule with comment period in the **Federal Register** (65 FR 47670) that changed one criterion and postponed the effective date for two other criteria that a new device, drug, or biological must meet in order for its cost to be considered "not insignificant" for purposes of determining its eligibility for transitional pass-through payments from the hospital outpatient prospective payment system. It also changed the transitional pass-through payment policy to include new single use medical devices that come in contact with human tissue and are surgically implanted or inserted into patients, whether or not the devices remain with the patients following their release. These policies were a departure from those presented in the April 7, 2000 final rule with comment period.

The August 3, 2000 rule also corrected a trigger date for grandfathering of provider-based FQHCs to conform with the intent not to disrupt existing FQHCs with longstanding provider-based treatment that we discussed in the April 7, 2000 rule. Under the criteria in the April 7, 2000 final rule with comment period, FQHCs would have been treated as departments of a provider without regard to the criteria for provider-based status if they continued to qualify as FQHCs and were designated as FQHCs before 1995. In accordance with the August 3, 2000 interim final rule with comment period and this interim final rule with comment period, facilities that continue to qualify as FQHCs and were designated as FQHCs or "look-alikes" on or before April 7, 2000 would continue to be treated as provider-based facilities. In addition, we clarified how the requirement for prior notices to beneficiaries is to be applied in emergency situations. We also clarified the protocols for off-campus departments in emergency situations.

D. Summary of This Interim Final Rule With Comment Period

In section II of this preamble, we—

- Respond to public comments received timely on the 14 BBRA 1999 provisions that were included in the April 7, 2000 final rule with comment period. (We received numerous public comments on other aspects of the April 7, 2000 final rule with comment period that were not open for comment. We will not address those comments in this rule.)
- Respond to public comments on the August 3, 2000 interim final rule with comment period that revised the criteria for defining new or innovative medical devices, drugs, and biologicals eligible for pass-through payments and corrected the criteria for the grandfathering provision for certain FQHCs as provider-based.

In section III of this preamble, we are updating, for services furnished during calendar year 2001, the wage index values and the conversion factor, and revising the APCs to reflect new codes for 2001 effective January 1, 2001. As required under section 1833(t)(8)(A) of the Act, in 2001, we will begin our annual review process of the APC groups, relative weights, and the wage and other adjustments for the prospective payment systems payments that will become effective on January 1, 2002. The statute requires the Secretary to consult with an expert outside advisory panel composed of an appropriate selection of representatives of providers to review (and advise the Secretary concerning) the clinical integrity of the groups and weights. This provision allows these experts to use data other than those collected or developed by us during our review of the APC groups and weights.

II. Analysis of, and Responses to, Public Comments on the BBRA 1999 Provisions and the August 3, 2000 Interim Final Rule With Comment Period

We received a total of 747 pieces of timely correspondence containing public comments on the April 7, 2000 final rule with comment period. In addition to receiving comments from various organizations throughout the hospital industry, we also received comments from beneficiaries and their families, physicians, health care workers, individual hospitals, professional associations and societies, legal and nonlegal representatives and spokespersons for beneficiaries and hospitals, members of the Congress, and other interested citizens. The majority of the comments addressed the BBRA 1999 provisions relating to the limitation on variation of costs of services classified within a group, the transitional pass-through provision for devices, drugs, and biologicals, and the inclusion of implantable items.

We received 13 comments in response to the August 3, 2000 interim final rule with comment period. These comments were submitted by major associations, drug and device manufacturers, providers, a private citizen, and a law firm. More than half of the comments addressed issues for which we did not solicit comments in the August 3, 2000 interim final rule with comment period. Those comments specifically addressed payment policy and typographical errors present in the April 7, 2000 final rule with comment period. The remaining commenters addressed the revisions to the criteria to define new or innovative medical devices, drugs, and biologicals eligible for pass-through payments and corrections to the criteria for the grandfathering provision for certain FQHCs. These commenters took issue with some of the provisions and raised additional concerns regarding our actions. A summary of the public comments and our responses to them appears following the discussion of the April 7, 2000 final rule with comment period.

We have carefully reviewed and considered all comments received timely. The modifications that we are making in response to commenters' suggestions and recommendations are summarized in section III.A of this preamble and, as appropriate, reflected in the regulation text.

A. April 7, 2000 BBRA 1999 Provisions

Below we discuss the implementation of the BBRA 1999 provisions addressed in the April 7, 2000 final rule with comment period and modified in the August 3, 2000 interim final rule with comment period, the public comments received on each provision, and our response to those comments.

1. Outlier Adjustment

Section 1833(t)(5) of the Act, as added by section 201(a) of the BBRA 1999, required that the Secretary make an additional payment (that is, an outlier adjustment) for outpatient services for which a hospital's charges, adjusted to cost, exceed a fixed multiple of the sum of the outpatient prospective payment system payment and the transitional pass-through payments. The Secretary is

authorized to determine the amount of this fixed multiple and the percent of costs above the threshold that is to be paid under this outlier provision. Under the statute, projected outlier payments may not exceed an "applicable percentage" of projected total program payments. The applicable percentage means a percentage specified by the Secretary (projected percentage of outlier payments relative to total payments), subject to the following limits: For years before 2004, the projected percentage that the Secretary specifies cannot exceed 2.5 percent; for 2004 and later, the projected percentage cannot exceed 3.0 percent. Section 1833(t)(2)(E) of the Act requires that these payments be budget neutral.

Section 1833(t)(5)(D) of the Act grants the Secretary authority until 2002 to identify outliers on a bill basis rather than on a specific service basis and to use an overall hospital cost-to-charge ratio (CCR) to calculate costs on the bill rather than using department-specific CCRs for each hospital.

In the April 7, 2000 final rule with comment period, in accordance with the statute, we presented how the additional outlier payments are to be calculated.

To set the threshold or fixed multiple and the payment percentage of costs above that multiple for which an outlier payment would be made, we first had to determine what specified percentage of total program payment, up to 2.5 percent, we should select. We decided to set the outlier target at 2.0 percent. In order to set the fixed multiple outlier threshold and payment percentage, we simulated the prospective payment system payments. We calibrated the threshold and the payment percentage applying an iterative process so that the simulated outlier payments were 2.5 percent of simulated total payments. For purposes of the simulation, we set a "target" of 2.5 percent (rather than 2.0 percent), because we believed that a given set of numerical criteria would result in a higher percentage of outlier payments under the simulation using 1996 data than under the prospective payment system. This is because we believe that the 1996 data reflects undercoding of services, which means simulated total payments would likely be understated and, in turn, the percentage of outlier payments would be overstated. In addition, we were not able to fully estimate the amount and distribution of pass-through payments using the 1996 data. Our inability to make these estimates further understated the total payments under the simulation. We believe that a set of numerical criteria that results in simulated outlier payments of 2.5 percent using the 1996 data would result in outlier payments of 2.0 percent under the prospective payment system. The difference arises from the effect of undercoding in the historical data and the payment of pass-throughs under prospective payment system. We set the outlier threshold at 2.5 times the prospective payment system payments.

Comment: Several commenters asked us to clarify how series bills for services such as chemotherapy that are billed monthly for multiple sessions are treated in determining outlier payments. They also asked that we clarify how bills for multiple clinic visits on the same day are treated in calculating the outlier payment.

Response: In accordance with section 1833(t)(5)(D) of the Act, until 2002, outliers will be determined on a bill basis rather than on a specific service basis. Therefore, the charges (converted to costs) associated with all services under the hospital outpatient prospective payment system reported on series bills or all payable multiple clinic visits billed on a single claim would be used to determine whether the outlier threshold is exceeded and to calculate the outlier payment.

Comment: One commenter suggested that we prospectively adjust the conversion factor if we determine that the actual outlier expenditures are less than estimated in a given year.

Response: Consistent with our outlier policies in other prospective payment systems, we will not adjust the conversion factor for a given year to account for an underestimation (or overestimation) of outlier payments in a previous year. The statute does not provide for such an adjustment to the conversion factor. We set outlier policies prospectively, using the best available data. Outlier payments, like many aspects of a prospective payment system, reflect estimates, and we believe it would be inappropriate to adjust the conversion factor (upward or downward) for a given year simply because an estimate for a previous year ultimately turned out to be inaccurate. If we underestimate or overestimate the percentage of outlier payments, the divergence of our estimate from actual experience might provide information that might help us improve estimates in the future, but it would have no direct effect on the conversion factor for any following year.

Comment: One commenter urged us to provide additional information about the cost-to-charge ratios that will be used to determine whether a claim exceeds the outlier threshold for payment. The commenter stated that the preamble language on page 18498 of our April 7, 2000 final rule with comment period conflicts with statements contained in Program Memorandum Transmittal No. A–00–23 regarding which cost-to-charge ratio would be used to determine whether a claim meets the outlier threshold requirements for payment. According to the commenter, we stated in the final rule with comment period that we will use a hospital's overall cost-to-charge ratio to make this determination, but stated in the program memorandum that we will use an outpatient cost-to-charge ratio. The commenter asked us to clarify the conflicting statements.

Response: On September 8, 2000, we issued Program Memorandum Transmittal No. A–00–63, titled "Cost-to-Charge Ratios (CCRs) for Calculating Certain Payments Under the Hospital Outpatient Prospective Payment System" which describes how we calculated the cost-to-charge ratios that are used to determine payments for outliers, interim transitional corridors, and device pass-throughs for calendar year 2000. That program memorandum defined the cost-to-charge ratio that is used to calculate these payments as the overall hospital outpatient cost-to-charge ratio. This is consistent with what we stated in our April 7, 2000 final rule with comment period. The September program memorandum contains the latest and most complete information available on cost-to-charge ratio calculation for the hospital outpatient prospective payment system.

Comment: One commenter assumed that we will use department level cost-to-charge ratios after 2002 to determine if a particular outpatient service qualifies for outlier payment. The commenter asked if we will use a "national cost-to-charge mapping procedure" to determine the appropriate department cost-to-charge ratios to use. The commenter expressed concern about the appropriateness of that approach because of the variability among providers in assigning costs to departments. For this reason, the commenter recommended, if we use a national cost-to-charge mapping procedure, we permit providers to request outlier payments if they can demonstrate that the actual department cost-to-charge ratio to which they assign costs for a service results in a cost calculation that meets the outlier threshold.

Response: We plan to address this issue and seek comments on it in the rulemaking process for the annual update for 2002.

Comment: One commenter urged us to publish annually the "cost reporting year" used to determine the cost-to-charge ratios that will be used in determining outlier payments. The commenter also asked that we explain how we computed cost-to-charge ratios for hospitals that have merged or been acquired.

Response: On September 8, 2000, we issued Program Memorandum Transmittal No. A–00–63 that describes the specific criteria we used and provides detailed instructions for calculating the cost-to-charge ratios for hospitals that have merged or been acquired. It also identifies the specific cost reporting year end that was used to calculate each provider's cost-to-charge ratio.

Comment: One commenter asked that we lower the outlier threshold from 2.5 to 2.0. The commenter strongly recommended that we permanently retain the lowered threshold to ensure appropriate patient care and adequate provider reimbursement.

Response: We oppose lowering the outlier threshold to 2.0. As discussed in our April 7, 2000 final rule with comment period, we set the outlier threshold at 2.5 by simulating total prospective payment system payments (using 1996 hospital outpatient data) and using an iterative process to calculate a threshold under which outlier payments are projected to equal 2.0 percent of total payments. If we lowered the threshold as the commenter suggests, then the projected percentage of outlier payments would increase and we would have to reduce the conversion factor correspondingly (thus reducing the payment for all non-outlier cases.)

2. Transitional Pass-Through for Additional Costs of Innovative Medical Devices, Drugs, and Biologicals

Section 1833(t)(6) of the Act, as added by section 201(b) of the BBRA 1999, requires the Secretary to make additional payments to hospitals, outside the hospital outpatient prospective payment system for a period of 2 to 3 years for specific items. The items designated by the law are the following: Current orphan drugs, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act; current drugs, biologic agents, and brachytherapy devices used for treatment of cancer; current radiopharmaceutical drugs and biological products; and new medical devices, drugs, and biologic agents, in instances where the item was not being paid as a hospital outpatient service as of December 31, 1996, and where the cost of the item is "not insignificant" in relation to the hospital outpatient prospective payment system payment amount. In this context, "current" refers to those items for which hospital outpatient payment is being made on the first date the new prospective payment system is implemented.

Section 1833(t)(6)(C)(i) of the Act sets the additional payment amounts for the drugs and biologicals as the amount by which the amount determined under section 1842(o) of the Act (95 percent of the average wholesale price (AWP)) exceeds the portion of the otherwise applicable hospital outpatient department fee schedule amount that the Secretary determines to be associated with the drug or biological. Section 1833(t)(6)(C)(ii) of the Act provides that the additional payment for medical devices be the amount by which the hospital's charges for the device, adjusted to cost, exceed the portion of the otherwise applicable hospital outpatient department fee schedule amount determined by the Secretary to be associated with the device. Under section 1833(t)(6)(D), the total amount of pass-through payments for a given year cannot be projected to exceed an "applicable percentage" of total payments. For a year (or a portion of a year) before 2004, the applicable percentage is 2.5 percent; for 2004 and subsequent years, the applicable percentage is 2.0 percent. If the Secretary estimates that total pass-through payments would exceed the caps, the statute requires the Secretary to reduce the additional payments uniformly to ensure the ceiling is not exceeded.

These pass-through payments must be made in a budget neutral manner. In addition, these additional payments do not affect the computation of the beneficiary coinsurance amount.

In the April 7, 2000 final rule with comment period, we specified the types of items for which additional payments would be made; described the amount of the additional payments; announced that these payments would be limited to at least 2 years but not more than 3 years; and announced a cap of the projected payment adjustments annually at 2.5 percent of the total projected payments for hospital outpatient services each year before 2004 and no more than 2.0 percent in subsequent years.

a. Definition of a Device

Comment: Some commenters argued that we have adopted a very narrow definition of a device that restricts pass-through payments to prosthetic devices and excludes valuable new nonprosthetics from pass-through consideration. They asserted that the definition of a device should mirror the definition set forth in the Federal Food, Drug, and Cosmetic Act. They agreed that such a definition should exclude capital equipment, reusable items, and incidental supplies. However, they argued that we should clarify and revise our definition of devices to those that are "implanted or inserted" and "remain with the patient after the patient is released from the hospital outpatient department."

Response: The definition of a device under the Food, Drug, and Cosmetic Act is extremely broad. In summary, it refers to a device as an instrument, apparatus, implement, machine, contrivance, implant, *in vitro* reagent, or other similar or related article, including any component, part, or accessory, which is—

- Recognized in the official national formulary, or the U.S. Pharmacopeia, or any supplement to them;
- Intended for the use of the diagnosis of conditions other than diseases such as pregnancy;
- Intended to affect the structure or any function of the body of man or other animals; or
- Considered an *in vitro* diagnostic product, including those previously regulated as drugs, and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

This definition is inappropriate for use in the context of the transitional pass-through payments for several reasons: It would include (as the commenters noted) items that are treated as supplies, reusable items, or capital equipment by Medicare payment systems, including the outpatient prospective payment system. It has a number of inappropriate elements, including reference to pharmaceuticals and to use in animals. Further, it is insufficiently specific for Medicare purposes, as it does not mention medical necessity or the test of whether the cost of a device is "not insignificant" relative to the associated APC.

We have instead provided a definition of a device specific to the purposes of the transitional pass-through provision. This definition was presented in the preamble to the April 7, 2000 final rule with comment period and revised in the August 3, 2000 interim final rule with comment period, which added § 413.43(e)(4).

In the August 3, 2000 interim final rule with comment period, we revised the criteria that we had set forth in the

April 7, 2000 final rule with comment period to define a device. Among the changes included is a revision of the criterion relating to whether a device must remain with the patient. The new criterion (§ 419.43(e)(4)(iv)) includes devices that are surgically implanted or inserted in a patient "whether or not they remain with the patient when the patient is released from the hospital outpatient department." This change allows pass-through payments for devices that are surgically implanted or inserted even temporarily in a patient providing the devices meet all other requirements for pass-through payments. As a result, nonprosthetic devices, such as cardiac catheters, guidewires, or stents that commenters noted would be excluded, may be eligible for pass-through status.

In § 419.43(e)(4)(iv), we have retained the limitation to devices that are surgically implanted or inserted because we believe this offers the best interpretation of section 201(e) of the BBRA 1999, which indicates that implantable devices are to be included in the APCs. To further clarify how we interpret § 419.43(e)(4)(iv), we consider that a device is surgically implanted or inserted if it is introduced into the human body through a surgically created incision. We do not consider an item used to cut or otherwise create a surgical opening to be a device that is surgically implanted or inserted. We consider items used to create incisions, such as scalpels, electrocautery units, biopsy apparatuses, or other commonly used operating room instruments, to be supplies or capital equipment, and hence, in accordance with § 419.43(e)(4)(vi) or (vii), we consider these items not eligible for transitional pass-through payments. We believe the function of these items is different and distinct from that of devices that are used for surgical implantation or insertion. Generally, we would expect that surgical implantation or insertion of a device occurs after the surgeon uses certain primary tools, supplies, or instruments to create the surgical path or site for implanting the device.

We have discovered some items that do not meet the requirement of being surgically implanted or inserted were erroneously approved for pass-through payments. Consequently, we will eliminate these items from the list of items eligible for pass-through payments, effective January 1, 2001.

Comment: One commenter claimed that it was inappropriate for us to change the definition of devices through letters to manufacturers. The commenter believed that this was done outside the rulemaking process.

Response: We did not make a change to our policy through a letter. As we began to evaluate the hundreds of applications for approval of numerous devices, it was apparent that our definition for new medical devices as published in our April 7, 2000 final rule with comment period would have resulted in denials for items that we believe might warrant pass-through payments. Examples of such potential denials are many types of general and specialty catheters. Based on our experience in reviewing these applications, we decided to change three of the eight specific criteria that a new device must meet in order to be eligible for pass-through payments. We published these changes in our August 3, 2000 interim final rule with comment period.

b. Eligibility Criteria

Comment: Some commenters believed that we should accept and process applications for items while they are undergoing the FDA review process.

Response: We have accepted and begun processing all applications, including those for which items are pending FDA approval or clearance. However, in those instances where the FDA approval or clearance documentation is missing, the application is considered incomplete. In order for an item to be eligible for transitional pass-through payments, it must have been approved or cleared by the FDA for marketing. We will not make a final determination on any applications that are pending FDA approval or clearance until all the required documentation is submitted. Resources permitting, we will commence preliminary processing of the applications when received. The applying party is responsible for providing us with proper evidence of FDA approval or clearance for any item, once approval or clearance has been obtained. Once we receive documentation of FDA approval or clearance and determine the item is determined to be eligible for transitional pass-through payments, payment for the item will commence at the start of the next quarterly update of pass-through items.

Comment: Some commenters asked that we clarify that items must meet Medicare coverage requirements in order to qualify for pass-through status.

Response: As stated in both our April 7, 2000 final rule with comment period and our August 3, 2000 interim final rule with comment, items that qualify for pass-through payments must be covered by Medicare. They must have been determined to be reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body part, as required by section 1862(a)(1)(A) of the Act. (See § 419.43(e)(4)(iii).)

c. Investigational Device Exemption (IDE) Devices

Comment: Some commenters recommended that we automatically define as "new" any device that receives an investigational device exemption (IDE) from the FDA, with a Category B designation. They believed that we should pay for IDE devices through the pass-through payment methodology rather than limit the payment to no more than what is currently paid for an equivalent device.

Response: As stated in our August 3, 2000 interim final rule with comment period, we have changed the payment methodology for eligible IDE Category B devices so that they will be paid using the transitional pass-through methodology. Since these noninvestigational devices are required to meet the same eligibility criteria as other devices, we determined that they should be paid in a similar manner. However, we do not accept the commenter's recommendation that all IDE Category B devices "automatically" be considered as new. The statute defines "new" medical device on the basis of a date certain (that is, payment for the device was not being made as an hospital outpatient service as of December 31, 1996) rather than based on a class of devices (such as IDEs).

d. Removing Cost of Predicate Item

Comment: Some commenters stated that we did not have adequate data to ensure appropriate removal of the costs for predecessor items (particularly radiopharmaceuticals and devices) from their relevant APCs. They advocated that we reevaluate this provision as soon as possible after implementation of our new system and make necessary changes.

Response: We will be continuously evaluating our data to remove the costs of predecessor items from the pass-through payments. As of January 1, 2001, a specific dollar amount will be deducted from selected devices (see explanation below). Over time, such deductions will be made, as we are able to make appropriate estimates from the data.

e. Excluded Costs

Comment: A number of commenters stated that the APC construction excluded costs for implantable devices billed with revenue codes 274, 275 and 278. The commenters recommended that implantable devices associated with these revenue codes be included on the pass-through list until data is collected to adequately reflect the cost of such devices. In addition to claims that revenue codes 274, 275 and 278 were not represented in the data, some commenters alleged that implant procedures were infrequently performed on an outpatient basis prior to 1997 and therefore the costs associated with them were not represented in the data used to develop the APC rates. Some commenters recommended, on that basis, that all implantable devices be included for pass-through payment regardless of FDA approval dates.

Response: Following enactment of the BBRA of 1999, we did not have sufficient time to re-run our data to package the costs of implantable device revenue centers into the APC weights and still be able to publish a final rule in time to implement the prospective payment system by July 1, 2000.

As of January 1, 2001, the APC rates will reflect the inclusion of revenue codes 274, 275 and 278. While the aggregate amount of these revenue centers is small (0.3 percent of total charges in 1996), the costs of certain procedures such as implantation of cardiac pacemakers did increase substantially. As detailed in section III.B.1 of this interim final rule, some APC groups were modified because of the inclusion of these revenue centers, and rates for some procedures will increase to reflect these costs. A reduction in an amount equal to the increase in the APC rates will be deducted from the relevant devices that are either eligible for pass-through payments or that can be billed for additional payment through the new technology APCs.

f. Effect on Conversion Factor

Comment: Some commenters believed that lowering the outpatient prospective payment system conversion factor to reflect the 2.5 percent transitional pass-through adjustment could affect hospitals' financial health. They asserted that any risks to the financial health of hospitals resulting from reducing the conversion factor should be balanced against any benefits that would be gained from higher payments for new drugs and devices. Another commenter advocated that we increase the conversion factor if we find that the transitional pass-through payments do not comprise 2.5 percent of the total outpatient prospective payment system payments.

Response: Section 1833(t)(2)(E), as amended by section 201(c) of the BBRA 1999, requires that transitional pass-through payments be implemented in a budget neutral manner. We set prospective payment system rates prospectively and, consistent with our policies in other aspects of the prospective payment system, we will not adjust (upward or downward) the conversion factor for a given year to account for the difference between 2.5 percent and the actual percentage of pass-through payments in a previous year.

g. Cost Significance Tests

Comment: Some commenters asserted that we could preclude some worthwhile technologies from achieving pass-through status if we set the "not insignificant" cost threshold at 25 percent of the APC payment rate for the relevant procedure with which it is used. They contend that technologies associated with higher payment APCs would be more likely to be disqualified.

Response: We have lowered the cost threshold from 25 percent to 10 percent of the applicable fee schedule amount for the service associated with the item. This change is effective for services furnished on or after August 1, 2000.

Comment: A hospital association asked that we clarify how the "not insignificant" criteria will be applied when a new device, drug, or biological is associated with more than one APC. The commenter stated that, under the current provisions of the rule, an item could be determined to be eligible for pass-through payment when used in performing a procedure in one APC, but not another. The commenter suggested that an item that meets the criteria for one APC be treated as a pass-through item for all APCs in which it is used.

Response: We agree with the stated approach. This has been the policy that we have applied in processing applications.

Comment: One manufacturer stated that we did not make information available on the "not insignificant" rule in sufficient time for applicants to take the criteria into account in preparing applications for payment effective August 1, 2000. The commenter alleged that the term "not insignificant" can be interpreted widely and caused manufacturers not to apply for all potentially eligible pass-through items. The commenter recommended that we review applications submitted for the following HCPCS codes to be certain that they meet the published cost criteria and remove them from the pass-through list if they do not. The commenter also advocated that we allow other manufacturers to submit applications retroactive to July 1, 2000, to assure that we are not promoting a competitive disadvantage for some companies.

HCPCS Codes

C1029
C1034
C1061
C1072
C1073
C1074
C1100
C1101
C1155

Response: In order for a device to be included on the pass-through list, it must meet the criteria for transitional pass-through payments. These criteria include a test of whether the cost of a device is "not insignificant" relative to the payment for the associated APC. This test was first put forth in the April 7, 2000 final rule with comment period, and subsequently revised in the August 3, 2000 interim final rule with comment period. All the devices denoted by the HCPCS codes listed above were tested and met the 10-percent "not insignificant" test as well as the other applicable criteria. The "not insignificant" test was applied uniformly to all applications that had been received timely. We believe that permitting retroactive applications is unwarranted (and would be inconsistent with principles of prospectivity); moreover, resource and systems constraints would make it infeasible to give retroactive effect to determinations of eligibility for pass-through payments.

h. Brand-Specific Versus Categorization Approaches

Comment: Many commenters criticized us for implementing a brand-specific approach to items on the pass-through list. Device manufacturers in particular recommended a category scheme to classify pass-through devices. Representatives of the device industry also offered to assist us in creating the categories. They argued that a category system would allow devices to be added immediately upon FDA approval. They stated that under a category approach manufacturers would only approach us to obtain new pass-through categories and codes when items reflect a technological advance and are significantly more costly than existing payment amounts.

Response: We adopted a trade-name specific approach for several reasons. First, such an approach provides better information. Codes that are largely item-specific allow us to track what procedures the items are used with and costs of the items. When the pass-through payments for an item ends, we would expect to have good information

for assigning it to relevant APCs and ensuring appropriate payment for these APCs. Adopting a scheme with a significant degree of categorization would require use of averages in making assignments and setting payment rates. Decisions based on these more limited data would be likely to lead to intensified concerns about the appropriateness of APC assignment and payment.

Second, this approach permits finer discrimination in eligibility decisions. An item-by-item approach allows us to be sure individual items in fact meet the criteria for eligibility. Of major concern in this instance is whether a device is "new" using the standard of the statute. Section 1833(t)(6)(A) of the Act limits transitional pass-through payment to those devices for which "* * * payment for the device * * * as an outpatient hospital service under this part was not being made as of December 31, 1996." Adopting categories would in some cases mix "old" and "new" devices. In these instances, either some old devices would get special treatment that they would not be eligible for if they were examined on an item-specific basis, or an entire category could be considered old, thus depriving some new devices from special treatment they would be eligible for if they were examined on an item-specific basis.

Third, an item-specific scheme avoids issues associated with the design of categories needed for purposes of transitional pass-through payments. It largely avoids concerns about what items should be in what category or whether new categories should be created to accommodate items that may appear to be little different from those in existing categories.

Fourth, an item-specific approach allows us to assure that a newly arriving device can obtain the full period of pass-through status it is arguably eligible for under the statute. A categorization approach would likely lead to latecomers being eligible for pass-through payments for a shorter period. Insofar as revision to APC payment rates reflected the costs of items in the category by the time the category was terminated, the shorter period would be of little consequence. However, if the costs of the late-coming item were significantly higher, this procedure could appear objectionable. A solution in this case would be to create a new code, which could be specific to that item, thus departing from a categorization approach.

We recognize that a category approach would lessen concerns about competitive disadvantages that may have been inadvertently created by an item specific approach and about access to specific items by hospitals and their patients. However, we found no satisfactory way of establishing categories that would not run into difficulty regarding the test of whether a device is "new" as described above. Consequently, we are making no change in our approach.

Comment: Many commenters argued that competitive advantages have resulted and will continue to result from using a brand-specific approach to implementing transitional pass-through payments for devices. Some commenters alleged that our use of the FDA approval date as a proxy for determining payment in concert with the brand-specific approach causes further competitive disadvantages. Some hospitals claimed that the brand-specific approach would create winners and losers if a device that one hospital uses obtains pass-through status, but one that another hospital uses does not. A number of commenters asserted that a category approach would decrease the administrative burden on hospitals, manufacturers, and us that a brand-specific approach for application and approval of new devices now incurs.

Response: It was never our intent to competitively disadvantage anyone or any product. To the maximum extent possible, given the limitations under the BBRA 1999 and our resource constraints, we have worked closely with the pharmaceutical and medical device industries to identify and resolve such issues. By October 1, 2000, we had determined that more than 700 devices are eligible for pass-through payments. Therefore, we believe that hospitals will receive additional payments for many of the devices they use.

i. Issues Pertaining to Specific Items

Comment: A medical association advocated pass-through status for the following devices: new pacemakers, implantable cardioverter defibrillators, insertable loop recorders, electrophysiology catheters (ablation and diagnostic), intracardiac echocardiography ultrasound catheters, and advanced three-dimensional mapping system catheters.

Response: All of these items are already on the pass-through list. For a complete list of items approved on the pass-through list, refer to Addendum B of this rule for short descriptions of the items. Refer to Program Memoranda Transmittals Nos. A–00–42, A–00–61 and A–00–72 for the long descriptors for each of the C-codes listed in Addendum B. We are developing an additional program memorandum that we expect to issue shortly. This additional program memorandum will contain a list of additional devices, drugs, and new technology services that will be effective January 1, 2001.

Comment: Several device manufacturers alleged that the following devices were not included on the pass-through list:

PALMAZ Balloon-Expandable Stent
Corinthian IQ Biliary Stent
SMART Cordis Nitinol Stent
CARTO EP Navigation System Catheters
HYDROLYSER Catheter
Indigo Prostate Seeding Needle
Lioresal Intrathecal
SynchroMed and SynchroMed EL infusion pumps

Response: All of these devices have been approved for pass-through payments and assigned C-codes. They have been assigned the following codes: the PALMAZ Balloon-Expandable Stent, C8522; Corinthian IQ Biliary Stent, C5004; SMART Cordis Nitinol Stent, C1372; CARTO EP Navigation System Catheters, C1047; HYDROLYSER Catheter, C1054; Indigo Prostate Seeding Needle, C1706; Lioresal Intrathecal, C9007, C9008, C9009, and C9010; SynchroMed and SynchroMed EL infusion pumps, C8505 and C3800, respectively.

Comment: Another device manufacturer claimed that the following devices were not included on the pass-through list:

Mitek Bone Anchors
Innovasive Bone Anchors
VAPR and VAPR Thermal T Electrode
Gynecare TVT Tension-Free Support for Incontinence System (TVT)
Gynecare Thermachoice Uterine Balloon Therapy System

Response: Many of the items above have been approved for pass-through status and assigned C-codes. The Mitek and Innovasive Bone Anchors have been assigned to C1109; VAPR and VAPR Thermal T Electrode, to C1323; TVT Single-Use Tension-Free Vaginal Tape, to C1370; and the Gynecare Thermachoice II Catheter, to C1056. However, some of the items included in the Gynecare TVT Tension-Free Support for Incontinence System and the Gynecare Thermachoice Uterine Balloon Therapy System did not meet the criteria for pass-through status and, therefore, are ineligible for additional payments. The eligible pass-through items are listed in Addendum B.

Comment: A device manufacturer believed that we should have approved the Targis System, which provides prostatic microwave thermotherapy, for pass-through payments.

Response: We assigned the prostatic microwave thermotherapy procedure to a new technology APC, that is, APC 0980. In making this assignment, we took into account the costs associated with performing this procedure, including the cost of the Targis system. Therefore, we would not also make a pass-through payment for the system.

Comment: A number of commenters contended that only 39 of the more than 70 eligible radiopharmaceuticals have been given pass-through status. They recommended that we approve the following radiopharmaceuticals for pass-through payments:

Strontium Sr 82 Rubidium Rb 82 Generator
Sodium Chromate Cr-51
Co 57 Cobaltous Chloride
Co 57 Cyanocobalamin
Ferrous Citrate Fe59
Fludeoxyglucose F 18
Intrinsic Factor Concentrate Capsules
In 111 Imciromab (Myoscint)
In 111 Labeled WBCs, Platelets
I 123 and I 131 Hippurate
Iodinated I 131 Albumin (I 131 Albumin)
Iodinated I 125 Albumin (I 125 Albumin)
Iothalamate Sodium I 125 Albumin (I125 Iothalamate)
Technetium Tc 99m Pertechnetate
Technetium Tc 99m Albumin Colloid
Technetium Tc 99m Lidofenin
Technetium Tc 99m Tebroxime
Technetium Tc 99m Nofetumomab (Verluma)
Technetium Tc 99m HMPAO labeled WBCs
Technetium Tc 99m Human Serum Albumin
Technetium Tc 99m Serum Albumin (Tc 99m HSA kit)
Xenon XE 127 Gas

Response: While a number of radiopharmaceuticals are already on the pass-through list, we are unable to add some of the ones listed above because we do not have AWPs for them. The AWPs are the basis for payment for these items and without the AWPs we cannot approve them for pass-through payments. As soon as the AWPs are made available to us, we will complete our review to determine their pass-through status. If eligible, they will be added to the pass-through list during the appropriate quarterly update cycle.

Comment: One commenter stated that our transitional pass-through policy for devices precludes pass-through eligibility for capital equipment and therefore does not provide a mechanism under our new system for recognizing the incremental costs associated with capital equipment. The commenter recommended that we recognize capital-equipment costs through our new technology APCs.

Response: Under our new outpatient prospective payment system, capital costs are not paid separately. Payment for these costs are included in the total APC payment amount for each procedure or medical visit and will be updated through our annual updating process. Therefore, the new technology APCs will not be used to make separate payments for capital related costs.

Comment: A number of commenters claimed that we denied pass-through status for the contrast agents.

Response: As clarified in our August 3, 2000 interim final rule with comment, contrast agents other than radiopharmaceuticals are considered supplies and are not eligible for pass-through payments. (See § 419.43(e)(4)(vii).)

Comment: A medical association claimed that we denied pass-through status requests for high dose rate brachytherapy. Another industry group alleged that many brachytherapy related items that manufacturers applied for were excluded from the pass-through list.

Response: Since publishing our initial list of potentially eligible pass-through items to our website on March 9, 2000, we have added 38 brachytherapy items to our pass-through list. High-dose rate brachytherapy will be eligible for pass-through payment effective for services furnished on or after January 1, 2001.

j. Pass-Through Applications Process

Comment: Some commenters urged that we process transitional pass-through applications in a more timely manner. A few other commenters believed that we should have chosen a date later than July 14, 2000 as the application deadline for the October 1, 2000 quarterly update for pass-through items.

Response: We have committed considerable resources to process pass-through applications in a timely manner. Since publication of our preliminary list of 149 potentially eligible pass-through items on our website on March 9, 2000, we have approved nearly 1000 additional items for pass-through payments. We have instituted a coding strategy that allows us to assign a temporary HCPCS code immediately to an eligible pass-through item if a national HCPCS code has not been assigned. We have committed to making quarterly updates to the pass-through list, a commitment that is unprecedented in Medicare's history. We have reviewed all applications timely submitted for each update cycle. Unfortunately, however, we have had to defer items with significantly unclear applications or for which sufficient information was not included to determine that the item meets the statutory criteria. We have endeavored to work closely with the applicants to obtain this information and respond timely to their questions.

Regarding objections to setting a July 14, 2000 deadline for receipt of pass-through applications for the October 1 update, this deadline was established in order to evaluate the applications and make the necessary systems modifications in time for the October release to our fiscal intermediaries and standard systems maintainers.

Comment: One commenter believed that we should update our transitional pass-through list more frequently than quarterly. Some other commenters were concerned that the quarterly updating process could potentially create systems problems for both HCFA and hospitals that would delay payments. They believed that such a delay would, in turn, create cash flow difficulties for hospitals. They urged that we develop contingency plans to address cash flow problems resulting from the transitional pass-through process.

Response: Because of the complexity of our new system, we cannot institute systems changes more frequently than quarterly for pass-through payments. While we believe that making quarterly updates to the pass-through list will present challenges both for HCFA and the hospital industry, we have not been advised that any hospital is experiencing cash flow problems attributable to the transitional pass-through process.

Comment: One commenter urged us to issue guidelines that detail the planned methodologies, data sources, and associated timelines for updating the pass-through list.

Response: Since March 10, 2000, we have published information on our website which provides detailed instructions and deadlines for submitting transitional pass-through applications. These instructions have been revised as needed in order to clarify and update information and may be found on the following HCFA website: http://www.hcfa.gov/medlearn/refopps.htm.

Comment: One commenter claimed that our method and timing of assigning HCPCS codes to eligible transitional pass-through items would preclude Medicare beneficiaries from receiving appropriate treatment. The commenter also alleged that hospitals will not always be adequately reimbursed for their costs for such items and that they will have an incentive to switch to more invasive treatment options with higher costs.

Response: We have expedited the process of assigning HCPCS codes to pass-through items. When an item is determined eligible for pass-through status, a temporary HCPCS code is assigned immediately in order that hospitals may begin billing the item as soon as it is effective for payment.

In addition, section 1833(t)(6)(C)(i) of the Act requires that the hospital's additional payment for drugs and biologicals be determined as the difference between the amount determined under section 1842(o) of the Act (95 percent of AWP) and the portion of the hospital outpatient department fee schedule amount determined by the Secretary to be associated with those items. For devices, the additional payment is the difference between the hospitals' charges adjusted to costs and the portion of the applicable hospital outpatient department fee schedule amount associated with the device. We believe that this payment method will appropriately reimburse hospitals for eligible pass-through items and that hospitals will act in a prudent manner and not compromise their patients' safety and care.

k. Payment for Pass-Through Items

Comment: Several commenters questioned how payment would be made when a pass-through item is included on an outpatient claim. Another commenter stated that our April 7, 2000 final rule with comment period does not state the actual payment amount that will be made for each pass-through item, or provide a good reason for not updating drug and biological average wholesale prices quarterly, or pledge timely correction of payment amount errors. The latter commenter believed that we should make available the actual APC payment rates for pass-through items and institute quarterly pricing-updates for drug and biological APCs.

Response: Transitional pass-through payments for devices are established by taking the hospital charges for each billed item (on an item-by-item basis), reducing them to cost by use of the hospital's cost-to-charge ratio, and subtracting an amount representing the device cost contained in the APC payments for procedures involving that device. Note that for services furnished prior to January 1, 2001, we have not subtracted an amount for the predicate device that is packaged in the relevant APC. However, we will implement this policy beginning with services furnished on or after January 1, 2001. These calculations are all done in the outpatient prospective payment system pricer. Because there are no predetermined APC payment rates for eligible pass-through devices, we cannot publish them in the same manner as we publish the APC payment rates for other services.

For drugs and biologicals, pass-through payments are determined based on 95 percent of the AWP for the eligible drug or biological. We described in our April 7, 2000 final rule (65 FR 18481) the process we used to subtract the cost of the eligible drug or biological contained in the APC payments for procedures involving that drug, radiopharmaceutical or biological. The year 2000 AWPs for pass-through drugs and biologicals on which payments are currently based will be updated annually at the beginning of the next quarter following publication of the updated values. Due to the complexity of our new system, we cannot update AWPs quarterly as requested.

Comment: A number of commenters stated that the codes for drugs in Addendum K of our April 2000 final rule are specific to the dosage amount dispensed and asked what happens if the dosage dispensed to a patient is not equal to the amount associated with the eligible codes. The commenters requested additional information about how providers should account for these situations. They asked if we would allow providers to bill for the product amount associated with the container opened to treat the patient and round up to the nearest whole billing unit.

Response: The APC payment amount for drugs and biologicals is established at the lowest dosage level for the specific drug or biological. If the dosage required in treating the patient exceeds the lowest level specified in the HCPCS code descriptor for the drug or biological, providers may bill the number of units necessary to treat the patient and round them up to the nearest unit. To determine the payment for the drug or biological, multiply the number of billed units by the APC payment amount.

Comment: One commenter stated that the APC payment amount for Eptifibatide, a drug on the pass-through list, does not equal 95 percent of the average wholesale price ($6.28 per 5-mg. service unit). The commenter claimed that the APC payment is 42 percent lower than 95 percent of the AWP. The commenter asked that we correct the payment immediately.

Response: The correct APC payment amount for Eptifibatide injection, 5 mg. is $12.57, of which $1.68 is the minimum unadjusted coinsurance.

Comment: One commenter stated that the APC payment amount for Quadramet, a pass-through drug, is incorrect. The commenter claimed the AWP for this drug is $2,975 rather than $2,875, which the commenter believed is the basis for our APC payment amount. The commenter stated that the pass-through payment should be $942.08 instead of $910.42.

Response: The correct APC payment amount for Quadramet is $942.09. Of this amount, $134.87 is the minimum unadjusted coinsurance.

Comment: A commenter stated that the APC payment amount for Thyrogen, a pass-through drug, should be $494.00 rather than $404.18 per vial.

Response: The APC payment amount of $404.18 is for 0.9 mg. units of Thyrogen rather than 1.1 mg., which appears to be the standard vial dosage. However, because Thyrogen is not available in a vial dosage less than 1.1 mg., we are eliminating the APC payment for 0.9 mg. units (HCPCS code J3240) effective for outpatient prospective payment system services furnished on or after January 1, 2001. We have established a new code, C9108, for Thyrogen, 1.1 mg. with an APC payment amount of $494.00. This new code is effective for outpatient prospective payment system services furnished on or after January 1, 2001.

Comment: A medical association acknowledged our short lead-time for implementing the transitional pass-through provision and urged that we hold a series of face-to-face meetings with physicians and suppliers to clarify and revise our pass-through policies.

Response: Since publishing our April 7, 2000 final rule with comment period, we have met on numerous occasions with physicians and representatives of hospitals, pharmaceutical companies and device manufacturers. During these meetings, we have discussed our transitional pass-through policies and clarified information regarding the pass-through applications process.

Comment: One commenter stated that the April 7, 2000 final rule with comment period requiring the submittal of applications for national HCPCS codes to bill eligible transitional pass-through was published after the application deadline had passed. The commenter alleged that some manufacturers obtained information about the pass-through provisions prior to publication of the final rule, submitted their applications timely, and thus dominated the hospital outpatient market.

Response: On March 9, 2000, we posted information on our website similar to that contained in the April 7, 2000 final rule with comment period about applying for national HCPCS codes for pass-through items. We also discussed the coding deadline with representatives of the pharmaceutical and device manufacturers associations as well as with hospital industry representatives through conference calls, meetings, and e-mails. We note that the instructions and deadline for submitting applications for a national HCPCS code are well established and were published on HCFA's website (http://www.hcfa.gov /medicare/hcpcs.htm) more than a year prior to publication of our April 7, 2000 final rule with comment period. Subsequent to these publications, we adopted a new system for assigning codes exclusively for pass-through items to expedite their availability to the hospital industry and Medicare beneficiaries. Therefore, interested parties applying for pass-through status for items have not been required to obtain national HCPCS codes for these items unless they want to bill other payment systems in addition to the hospital outpatient prospective payment system.

1. Focus Medical Review

Comment: One commenter asked that we clarify why we intend to conduct focused medical review of pass-through eligible drugs, biologicals and medical devices.

Response: Our goal is to identify inappropriate billing for these services and to ensure that payment is not made for noncovered services.

3. Budget Neutrality Applied to New Adjustments

In the April 7, 2000 final rule with comment period, in accordance with section 1833(t)(2)(E) of the Act, as amended by section 201(c) of the BBRA 1999, we made the outlier and transitional pass-through payment adjustments under section 1833(t)(5) and section 1833(t)(6) of the Act, respectively, budget neutral. We did not receive any public comments on this provision.

4. Limitation on Judicial Review

In the April 7, 2000 final rule with comment period (65 FR 18503–18504), in accordance with section 1833(t)(12) of the Act (as amended by section 201(d) of the BBRA 1999 and redesignated by section 202(a) of the BBRA 1999), we implemented the extension of the prohibition of administrative or judicial review to include the factors for determining outlier payments (that is, the fixed multiple, or a fixed dollar cutoff amount, the marginal cost of care, or applicable total payment percentage), and the factors used to determine additional payments for certain medical devices, drugs, and biologicals, the insignificant cost determination for these items, the duration of the additional payment or portion of the prospective payment system payment amount associated with particular devices, drugs, or biologicals, and any pro rata reduction.

We did not receive any public comments on this provision.

5. Inclusion in the Hospital Outpatient Prospective Payment System of Certain Implantable Items

In the April 7, 2000 final rule with comment period, we specified that section 1833(t)(1)(B) of the Act, as amended by section 201(e) of the BBRA 1999, provides that "covered OPD services" include implantable items described in section 1861(s)(3), (6), or (8) of the Act.

The conference report accompanying the BBRA 1999, H.R. Rept. No. 479, 106th Cong., 1st Sess. at 869–870, (1999), expresses the belief of the conferees that the current DMEPOS fee schedule is not appropriate for certain implantable medical items such as pacemakers, defibrillators, cardiac sensors, venous grafts, drug pumps, stents, neurostimulators, and orthopedic implants as well as items that come into contact with internal human tissue during invasive medical procedures, but are not permanently implanted. In the conference report agreement, the conferees state their intention that payment for these items be made through the hospital outpatient prospective payment system, regardless of how they might be classified on current HCFA fee schedules.

In the April 7, 2000 final rule with comment period, we included the following in the list of items and services whose costs are included in hospital outpatient prospective payment rates: Prosthetic implants (other than dental) that replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), and including replacement of these devices; implantable DME; and implantable items used in performing diagnostic x-rays, diagnostic laboratory tests, and other diagnostic tests. In accordance with the BBRA 1999 provision, we require that an implantable item be classified to the group that includes the service to which the item relates. We indicated that we would continue to review the impact of packaging implantables in future updates. For more detailed information on this provision, refer to the April 7, 2000 final rule with comment period (65 FR 18443–18444).

Comment: Two commenters (hospitals) expressed concern that the APC for the Cyberonics-NeuroCybernetic Prosthesis (NCP) System, an implantable device used to treat epilepsy patients with partial-onset seizures, will not adequately reimburse hospitals for the cost of the device and the implantation procedure cost. The hospitals recommended that HCFA create a separate APC group for the NCP System implantation.

Response: The NCP System was approved for pass-through status effective for services furnished on or after August 1, 2000 (see Program Memorandum Transmittal No. A–00–42 issued on July 26, 2000). The two components of this system, the NeuroCybernetic Prosthesis Generator and the NeuroCybernetic Prosthesis Lead, will be paid based on the hospital's charges that are converted to cost using the hospital's assigned cost-to-charge ratio. These devices have been assigned to two separate pass-through APCs (1048 and 1306, respectively) and should be billed using HCPCS code C1048 for the generator and C1306 for each lead.

Comment: Several commenters from physician practices and a device manufacturer raised concerns that the APC payment level for the Contigen Implant procedure is inadequate to cover the facility costs and the Contigen Implant supplies. According to the commenters, the APC reimbursement amount only covers the 2–3 Contigen Implant syringes used per procedure. The commenters recommended that we map the Contigen Implant procedure and the collagen skin test to higher paying completely new APCs, to more adequately reflect reasonable costs for syringes and skin tests used in the procedure, in addition to appropriate facility fees.

Other commenters raised concerns that the separate APC reimbursement for the pre-Contigen Implant procedure testing is inadequate to reimburse for the reasonable cost of the supply. They recommended that we allow payment of Contigen Implant syringes according to the DMEPOS fee schedule.

One commenter recommended that we create a special ancillary APC to cover Contigen Implant syringes and the collagen skin test.

Response: While we understand the commenters' concerns, Contigen Implant syringes do not qualify for transitional pass-through status because they do not meet all of the device criteria set forth in § 419.43(e)(4). Specifically, they are not items that are surgically implanted or inserted in a patient. However, both collagen implant material and the collagen skin test are paid as APCs (that is, APCs 6012 through 6016 and 343, respectively). We will examine data after the first year of billing under the prospective payment system to determine if we are adequately capturing the cost of performing these procedures.

As stated in our April 7, 2000 final rule with comment period, we will initiate the annual review process for the various components of our system, including the APC groupings, in calendar year 2001 for services furnished on or after January 1, 2002. We expect to publish our proposed rule for 2002 in the spring of 2001.

Comment: A device manufacturer inquired as to what will happen when devices are taken off the transitional pass-through list after 2 to 3 years. The commenter stated that the additional expense of these implantable devices will require that HCFA reassign these CPT codes to an APC that is comparable clinically and in terms of resources used at the close of the transition period. If this does not occur, the commenter indicated that hospitals would be seriously underpaid for the use of these technologies and other technologies in similar circumstances.

Response: As stated above, the BBRA 1999 allows for 2 to 3 years of transitional pass-through payments to be made for new devices, drugs, and biologicals. After the temporary payment period expires for any item, its cost will be packaged with the relative procedure code or medical visit and assigned to the APC group that is clinically related and comparable in resources used. Thus, the APC groupings, weights, and payments will be updated in a subsequent year to include costs associated with former pass-through items.

Comment: A coalition of health care providers and insurers indicated that providers should be allowed to report all DME, orthotics, and prosthetic devices, both implantable and nonimplantable, on the UB–92 to the fiscal intermediary. The fiscal intermediary should be able to either pay for the item via the DMEPOS fee schedule or through the APC. This also would allow a tracking system for future ratesetting, and consolidate the billing into one claim. This would consolidate all charges on one bill per encounter, which simplifies processing and is consistent with other third party payer claims processing as well as Medicare inpatient claims processing.

Response: Section 201(e) of the BBRA 1999 amended section 1833(t)(1)(B) of the Act to require that covered outpatient prospective payment system services include implantable medical items, described in section 1861(s)(3), (6), or (8) of the Act. These items were formerly paid under the DMEPOS fee schedule. The statute is explicit in defining which DME items are payable under the hospital outpatient prospective payment system.

Also, we cannot adopt the suggested billing changes for DME as the commenter suggested. All services that are billed through the fiscal intermediaries, whether they are paid under the hospital outpatient prospective payment system or DMEPOS, may be submitted on the UB–92 (or the equivalent electronic transaction). However, there are numerous, very exacting, specific criteria and rules that govern Medicare coverage and payment for nonimplantable DME and oxygen. The DME regional carriers are exclusively qualified to deal with these issues. Therefore, claims for nonimplantable DME and oxygen cannot be billed to the fiscal intermediaries. Instead, providers must continue to submit claims for nonimplantable DME and oxygen to the DME regional carriers using form HCFA–1500 (or the equivalent electronic transaction).

It should be noted that if a health care provider submits an electronic claim for these services, the transaction must comply with the standards adopted by the Secretary in the August 17, 2000 final rule (65 FR 50312) Standards for Electronic Transactions. The compliance date of that rule is October 16, 2002.

Comment: A device manufacturer expressed concern about how the new system will change the payment mechanism for cochlear implants. Under the DMEPOS fee schedule, payments were fixed and unrelated to hospital charges. Now, under the new system, hospitals must properly establish charges that, when multiplied by the ratio of cost to charges, provide an accurate reflection of cost. This manufacturer was concerned that they will have to collect data to determine the charges hospitals have set for these devices and the applicable ratio of cost to charges. They believe the charges may not have been set appropriately to be consistent with the ratio of cost to charges. If not, pass-through payments might be substantially less than the actual cost for these medical devices.

This manufacturer indicated that it is working to obtain the required charge and cost report data from providers of cochlear implant procedures and will report back to us once it has these data. The manufacturer requested that we agree to work with them in setting any future update to the payment allowance recognizing the short timeframe available to collect the data.

Response: We appreciate the commenter's offer to assist us in collecting cost and charge data on cochlear implants billed by hospitals. However, for purposes of making transitional pass-through payments for new medical devices such as cochlear implants, it is not necessary for manufacturers to obtain cost report data from hospitals to assist us in developing hospital-specific, cost-to-charge ratios to calculate these payments. We have already calculated these ratios and assigned them to providers. Each provider is responsible for accurately reporting its charges in order that we may calculate the appropriate payment for the pass-through device.

6. Payment Weights Based on Median or Mean Hospital Costs

Section 1833(t)(2)(C) of the Act requires the Secretary to establish relative payment weights for covered hospital outpatient services. This section requires that the weights be developed using data on claims from 1996 and data from the most recent available hospital cost reports.

As specified in the April 7, 2000 final rule with comment period (65 FR 18482), section 201(f) of the BBRA 1999 amended section 1833(t)(2)(C) of the Act to authorize the Secretary to base the relative payments weights on median or mean hospital costs. In implementing the BBRA 1999 provision, we decided to adopt as final our previously proposed policy to base the relative payment weights on median (as opposed to mean) costs. We had already used median costs to reconstruct our database for the outpatient prospective payment system group weights and conversion factors in a proposed rule and we believe that this method is still valid, especially considering the time constraints for implementation of the BBRA 1999 provision. We indicated that, among other things, reconstructing our database to evaluate the impact of using mean costs after the BBRA 1999 was enacted would have delayed implementation of the hospital outpatient prospective payment system rule.

Comment: A group of hospitals urged us to adopt a mean-based APC relative weight system to implement section 201(f) of the BBRA 1999, which authorizes, but does not require, the Secretary to use mean (rather than median) costs in determining the APC payment weights. The commenters contend that use of the geometric mean is standard in the industry as the basis for calculating payment weights for prospective payment systems. They pointed out that the geometric mean is used because costs are not distributed "normally" (that is, there are no negative costs) and that for APCs that include low volume, high costs procedures, the geometric mean is preferable for adequately accounting for these costs. The commenters believed that our use of median costs also forced us to select an arbitrary value for relative weight 1.0, because finding the median of medians is meaningless. The commenters believed that, given the Congress' clarification in section 201(f) of the BBRA 1999, we should at least evaluate the impact of a mean-based system in our system review for 2001.

Response: We plan to further evaluate the feasibility of using mean rather than median costs for calculating APC payment weights in future updates. In order to make a decision about whether we should change the basis we are using for determining payment weights, we have to analyze and rerun claims data and conduct extensive impact analyses to assess the impact such a change would have on different types of providers and different types of services.

7. Limitation on Variation of Costs of Services Classified Within a Group

Section 1833(t)(2) of the Act was amended by section 201(g) of the BBRA 1999 to limit the variation in resource use among the procedures or services within an APC group. Specifically, section 1833(t)(2) of the Act provides that the items and services within a group cannot be considered comparable with respect to the use of resources if the highest cost item or service within a group is more than 2 times greater than the lowest cost item or service within the same group. The Secretary is to use either the mean or median cost of the item or service.

Section 1833(t)(2) of the Act, as amended, also allows the Secretary to make exceptions to this limit on the variation of costs within each group in unusual cases such as low volume items and services, although we may not make such an exception in the case of a drug or biological that has been designated as an orphan drug under section 526 of the Federal Food, Drug, and Cosmetic Act.

In the April 7, 2000 final rule with comment period, we elected to use the median cost because we have continued to set the relative payment weights for each APC based on median hospital costs. We modified the composition of the APC groups and then made additional changes to the APC in response to public comments on individual or serial APCs.

In determining whether or not to accept changes recommended by commenters, we focused on five criteria that are fundamental to the definition of a group within the APC system. The decision to accept or decline a modification to an APC group was determined based on whether the change enhanced, detracted from, or had no effect on the integrity of an APC group within the context of the following five criteria:

- Resource homogeneity;
- Clinical homogeneity;
- Provider concentration;
- Frequency of services; and
- Minimal opportunity for upcoding and code fragmentation.

For a full explanation of these criteria, refer to the April 7, 2000 final rule with comment period (65 FR 18457).

After we modified the composition of the APC groups based on the recommendations of commenters, we applied the median cost variation limit required by section 201(g) of the BBRA 1999 to the revised APC groups. As a result of our analysis of the array of median costs within the revised APC groups, we had to split some otherwise clinically homogeneous APC groups into smaller groups. We listed the APC groups that we had designated as exceptions to the "two times" requirement and our reasons for granting the exception. We based the exceptions on factors such as low procedure volume, suspect or incomplete cost data, concerns about inaccurate or incorrect coding, or compelling clinical arguments. We indicated that we would be examining the extent to which the APC reorganization due to the "two times" rule results in upcoding (refer to the April 7, 2000 final rule with comment period (65 FR 18458–18475)).

Comment: We received requests to examine 51 APCs that commenters alleged violated the "two times" rule.

Response: We reevaluated the APCs listed below, upon which we received comments, and found that most of them did not warrant revision. We received no new information about these APC groups that would alter our previous decision. These APCs are identified below under numbers 1 and 2.

Our review also revealed that a few APC groups did warrant revision and we have reconfigured these APCs accordingly. We have listed these APCs under number 3. In addition, our review identified some APCs that are additional exceptions to the "two times" requirement. These APC groups and our reasons for the exception are listed below under number 4.

In reviewing the APC groups for conformance to the "two times" requirement, we exempted from the analysis codes for unlisted services and procedures and those codes that represent less than 2 percent of the claims in the APC (our test for low volume).

1. Taking into account the exemptions mentioned above, the following APC groups that we reviewed based on comments have not been reconfigured:

0005	Level II Needle Biopsy/ Aspiration Except Bone Marrow
0076	Endoscopy Lower Airway
0088	Thrombectomy
0090	Level II Implantation/Removal/ Revision of Pacemaker, AICD or Vascular Device
0111	Blood Product Exchange
0112	Extracorporeal Photopheresis
0121	Level I Tube changes and Repositioning
0143	Lower GI Endoscopy
0146	Level I Sigmoidoscopy
0149	Level II Anal/Rectal Procedure
0150	Level III Anal/Rectal Procedure
0151	Endoscopic Retrograde Cholangio-Pancreatography (ERCP)
0162	Level III Cystourethroscopy and other Genitourinary Procedures
0260	Level I Plain Film Except Teeth
0262	Plain Film of Teeth
0265	Level I Diagnostic Ultrasound Except Vascular
0268	Guidance Under Ultrasound
0269	Echocardiogram Except Transesophageal
0278	Diagnostic Urography
0280	Level II Diagnostic Angiography and Venography Except Extremity
0282	Level I Computerized Axial Tomography
0283	Level II Computerized Axial Tomography
0284	Magnetic Resonance Imaging
0286	Myocardial Scans
0290	Standard Non-Imaging Nuclear Medicine
0291	Level I Diagnostic Nuclear Medicine Excluding Myocardial Scans
0292	Level II Diagnostic Nuclear Medicine Excluding Myocardial Scans
0294	Level I Therapeutic Nuclear Medicine
0297	Level II Therapeutic Radiologic Procedures
0301	Level II Radiation Therapy
0303	Treatment Device Construction
0304	Level I Therapeutic Radiation Treatment Preparation
0305	Level II Therapeutic Radiation Treatment Preparation

2. The following APC groups were listed in the April 7, 2000 final rule with comment period as exceptions to the "two times" rule and our review found no factual basis for modifying our decision:

0030	Breast Reconstruction/ Mastectomy
0264	Level II Miscellaneous Radiology Procedures
0274	Myelography
0279	Level I Diagnostic Angiography and Venography Except Extremity
0311	Radiation Physics Services
0371	Allergy Injections

3. We have reconstructed the four APCs shown below as a result of adding the cost of certain devices used in performing procedures included in these APCs. We discuss this change in section III.B. of this preamble.

0080	Diagnostic Cardiac Catheterization
0081	Non-Coronary Angioplasty or Atherectomy
0082	Coronary Atherectomy
0083	Athrectomy

4. Following are additional exceptions to the "two times" rule and our reasons for the exceptions. We are excepting these APCs from the "two times limit" on an interim basis, until we can review data from the first year of billing under the hospital outpatient prospective payment system.

0142 Small Intestine Endoscopy: The codes in APC 0142 are clinically similar and should show a relative progression of cost with slight increases in complexity. This effect does not occur, presumably due to low volume (although exceeding our low volume threshold) or inconsistent coding. Splitting this APC into two, based on current data would be unjustified.

0145 Therapeutic Anoscopy: The costs of the codes in this APC are aberrant, with several of them exceeding the costs of more extensive procedures such as sigmoidoscopy and colonoscopy.

0152 Percutaneous Biliary Endoscopic Procedures: The codes in this APC have so few occurrences that we cannot justify splitting the group. Several of the codes call for the use of devices such as stents that may be paid for separately.

0161 Level II Cystourethroscopy and other Genitourinary Procedures: The costs of the codes in this APC are aberrant, with more comprehensive codes costing less than the base codes.

0195 Level V Female Reproductive Procedures: This is a low volume APC, with aberrant cost data. In several instances, codes that are more comprehensive cost less than the related, simpler code.

0296 Level I Therapeutic Radiologic Procedures: We believe the codes at the lower end of the median cost in this APC would be underpaid if we were to move them to a lower-paying APC.

0300 Level I Radiation Therapy: We believe we would underpay codes at the lower end of median cost in this APC if we were to move them to a lower-paying APC.

0312 Radioelement Applications: We believe the costs in this very low volume APC are aberrant. However, the group is completely coherent clinically. The radioactive elements related to these codes would receive separate payment.

0313 Brachytherapy: We believe the costs in this very low volume APC are aberrant. The group is coherent clinically. The radioactive elements related to these codes would receive separate payment.

0314 Hyperthermic Therapies: This APC has an extremely low volume, with aberrant costs.

8. Annual Review of the Components of the Hospital Outpatient Prospective Payment System

In the April 7, 2000 final rule with comment period (65 FR 18501–18502), we indicated that, in accordance with section 1833(t)(9) (as redesignated and revised by sections 201(h) and 202(a) of the BBRA 1999), we would review and update annually, for implementation effective January 1 of each year, the APC groups, the relative payment weights, and the wage and other adjustments that are components of the hospital outpatient prospective payment system. In accordance with section 201(h)(2) of the BBRA 1999, an annual review process will begin in calendar year 2001 for the hospital outpatient prospective payments that would take effect for services furnished on or after January 1, 2002. This review process will involve consultation with an expert advisory panel. We will provide notice of the formation of the expert advisory panel in the **Federal Register**. The expert outside advisory panel will review and make recommendations to us on the clinical integrity of the groups and weights and may use data other than those collected or developed by us for their review and advisory functions.

We note that in section III of this preamble, we are updating the wage index values and the conversion factor under the hospital outpatient prospective payment system effective for calendar year 2001. We also are making appropriate changes to the APC groups to reflect additions and deletions of CPT codes and changes to a limited number of APCs to incorporate the cost of certain devices used in performing those procedures that were excluded from our initial ratesetting methodology.

Comment: One commenter stated that the wage index for the Hattiesburg, Mississippi Metropolitan Statistical Area (MSA), .7306, was printed incorrectly in our April 7, 2000 final rule with comment period. The commenter stated that use of this value would result in an underpayment for that area. The commenter further stated that, "the appropriate wage index for the Hattiesburg, Mississippi MSA for the fiscal year 2000 is .7634." The commenter was concerned that we had previously acknowledged this error and promised to correct it via a program memorandum to fiscal intermediaries dated April 2000 (Transmittal Number A–00–17), but had failed to do so in our April 7, 2000 final rule with comment period.

Response: We apologize for the confusion. The fiscal year 2000 hospital inpatient prospective payment system wage index value for the Hattiesburg, Mississippi (MSA) was changed from .7306 to .7634 in accordance with section 153 of the BBRA 1999 that required us to include wage data from Wesley Medical Center in calculating the wage index for this MSA. On August 1, 2000, we published in the **Federal Register** an interim final rule with comment period (65 FR 47026) that included Hattiesburg's new hospital inpatient prospective payment system wage index. For services paid under the hospital outpatient prospective payment system, the new wage index value is effective for services furnished on or after August 1, 2000.

9. Copayment Amounts Not Affected by Pass-Throughs

Section 1833(t) of the Act, as established by the BBA of 1997, includes a mechanism designed to achieve a beneficiary coinsurance level equal to 20 percent of the prospectively determined payment rate established for the service. In the April 7, 2000 final rule with comment period, we specified how a copayment amount is calculated annually for each APC group under the hospital outpatient prospective payment system.

We also explained that sections 201(a) and (b) of the BBRA 1999 amended section 1833(t) of the Act to provide for additional payments to hospitals for outlier cases and for certain medical devices, drugs, and biologicals and that these additional payments to hospitals will not affect copayment amounts. Redesignated section 1833(t)(8)(D) of the Act, as amended by section 201(i) of the BBRA 1999, provides that the copayment amount is to be computed as if outlier adjustments, adjustments for certain medical devices, drugs, and biologicals, as well as any other adjustments we may establish under section 1833(t)(2)(E) of the Act, had not occurred.

In addition, we specified that section 202 of the BBRA 1999 added a new section 1833(t)(7) to the Act to provide transitional corridor payments to certain hospitals through calendar year 2003 and indefinitely for certain cancer centers. Section 1833(t)(7)(H) of the Act provides that the transitional corridor payment provisions will have no effect on determining copayment amounts.

We specified that copayment from beneficiaries will not be collected for the additional payments made to hospitals (outlier and transitional pass-throughs) by Medicare. Beneficiary copayment amounts will be calculated as if the outlier and transitional pass-throughs had not occurred (65 FR 18487–18488).

When a drug or device pass-through payment is reduced by the otherwise applicable APC payment amount that is associated with the drug or device, it is only the portion of the payment that represents an additional pass-through payment that is not subject to copayment. The portion that does not represent an additional pass-through payment will be subject to copayment.

We did not receive any public comments on this provision.

10. Extension of Cost Reductions

In the April 7, 2000 final rule with comment period (65 FR 18439), we announced that, in accordance with section 1861(v)(1)(S)(ii) of the Act (as amended by section 201(k) of the BBRA 1999), the 5.8 and 10 percent reductions for hospital operating and capital costs, respectively, would extend until the first date that the hospital outpatient prospective payment system is implemented (which was August 1, 2000).

We did not receive any public comments on this provision.

11. Clarification of Congressional Intent Regarding Base Amounts Used in Determining the Hospital Outpatient Prospective Payment System

Section 201(l) of the BBRA 1999 provided that, "With respect to determining the amount of copayments described in paragraph (3)(A)(ii) of section 1833(t) of the Act, as added by section 4523(a) of BBA, Congress finds that such amount should be determined without regard to such section, in a budget neutral manner with respect to aggregate payments to hospitals, and that the Secretary of Health and Human Services has the authority to determine such amount without regard to such section." In accordance with this provision, in the April 7, 2000 final rule with comment period (65 FR 18482–18493), we explained how we determined APC group weights, calculated an outpatient prospective payment system conversion factor, and determined national prospective payment rates, standardized for area wage variations, for the APC groups. We then explained how we calculated the aggregate hospital outpatient prospective payment to hospitals in a budget neutral manner and how we calculated beneficiary coinsurance amounts for each APC group.

We did not receive any public comments on this provision.

12. Transitional Corridors for Application of Outpatient Prospective Payment System

Section 1833(t)(7) of the Act, as added by section 202(a)(3) of the BBRA 1999, provides for payment adjustments during a transition period to limit the decline in payments under the outpatient prospective payment system for hospitals. These additional payments are to be implemented without regard to budget neutrality and are in effect through 2003.

In the April 7, 2000 final rule with comment period (65 FR 18499–18500), we specified that, from the date the prospective payment system is implemented through 2003, a provider, including a CMHC, will receive an adjustment if its prospective payment system payments for outpatient services furnished during the year is less than a set percentage of its pre-BBA amount for that year. The pre-BBA amount is the product of the reasonable cost the hospital incurs for prospective payment system services furnished during the year and the payment-to-cost ratio for covered prospective payment system services furnished during the cost reporting period ending in calendar year 1996. Additionally, we provided that small rural hospitals with 100 or fewer beds and cancer hospitals will be held harmless under this provision. Small rural hospitals will be held harmless for services furnished before January 1, 2004. The hold-harmless provision applies permanently to cancer centers. We announced that we will make interim payments to the affected hospitals subject to retrospective adjustments and that these provisions do not affect beneficiary coinsurance. Finally, we specified that this provision is not subject to budget neutrality.

a. Interim Payment Versus Final Settlement

Comment: One commenter recommended that we make retroactive payments to hospitals in those "situations where underpayments have been made between the prospective payment system payments as compared to the pre-prospective payment system amounts." Another commenter asked that we set forth the process that would be used to determine retroactive payment adjustments if the hospital's interim payments are higher or lower than its actual experience. The commenter further asks that we state whether the interim payments will be compared to outpatient payments shown on settled or audited cost reports.

Response: Final transitional corridor payments are determined based on a provider's settled cost report. At the time the cost report is settled, the reasonable costs incurred by the provider to furnish outpatient prospective payment system services during the calendar year are known and that amount is then multiplied by the provider's 1996 payment-to-cost ratio to calculate the pre-BBA amount. The pre-BBA amount for a calendar year is compared to the actual prospective payment system payments the provider received to determine whether the provider may be entitled to a transitional corridor payment. Although the final transitional corridor payment is based on a settled cost report, beginning in October 2000, we have been making monthly interim payments to providers based on estimates of what their transitional corridor payments should be based on the monthly bills the provider submits. The monthly payments are designed to maintain some additional cash flow to providers that may otherwise realize significant losses on services that are being paid under the prospective payment system.

b. Payment-to-Cost Ratios

Comment: One commenter argued that our formula for calculating the base payment-to-cost ratio for the transitional corridor payments does not comport with the statutory requirements. The commenter stated that we define the denominator of the base payment-to-cost ratio to be "[the] reasonable cost of these services for the period, without applying the cost reductions under section 1861(v)(1)(S) of the Act." The commenter contends that the phrase "without applying the cost reductions under section 1861(v)(1)(S) of the Act" is not included in section 1833(t)(7)(F)(ii)(II) of the Act, as amended by section 212 of the BBRA 1999. The commenter claimed that by defining the denominator in this manner, the payment-to-cost ratio is understated and transitional corridors payments to hospitals would be reduced. The commenter stated that such a reduction is contrary to Congressional intent and urged us to modify our base payment-to-cost denominator set forth in § 419.70(f)(2)(ii) to exclude the phrase "without applying the cost reduction under section 1861(v)(1)(S) of the Act."

Response: The phrase "without applying the cost reductions under section 1861(v)(1)(S) of the Act" was intended to make clear that a hospital's 1996 "reasonable costs" do not include the effects of the reductions in section 1861(v)(1)(S) of the Act. We did not mean to suggest that we were taking the hospital's 1996 "reasonable costs" and then adding back the reductions for purposes of determining the denominator of the base payment-to-cost ratio. We view the hospital's 1996 reasonable costs as the unreduced amount; thus, the denominator of the hospital's base payment-to-cost ratio (1996 reasonable costs) does not reflect the reductions. We believe that our policy is consistent with the purpose of the transitional corridor provision. Under this policy, if a hospital incurs the same amount of costs during the transitional corridor as in 1996, then its pre-BBA amount (the amount that estimates what the hospital would have received in the current year if payments were calculated under the pre-prospective payment system) would be the same as the payments the hospital received in 1996. Under the methodology suggested by the commenter, if a hospital incurs the same amount of costs during the transitional corridor as in 1996, then its pre-BBA amount would be *higher* than the payments the hospital received in 1996. The language in § 419.70(f)(2)(ii) as set forth in the April 7, 2000 final rule with comment period was intended to clarify, not revise, the definition of 1996 reasonable costs, but we recognize that the phrase at issue may have inadvertently caused confusion to the extent it is redundant; accordingly, we are revising that section to remove the phrase.

Comment: One commenter asked us to clarify the term "payment-to-cost ratio" and the data that will be used to compute the ratio. Several commenters asked why we did not give the 1996 outpatient prospective payment system-specific amounts required to compute the payment-to-cost ratio and the methodology for calculating it.

Response: The statutory definition of base "payment-to-cost ratio" is fairly straightforward. Under section 1833(t)(7)(F) of the Act, the base payment-to-cost ratio for a given hospital is the ratio of (1) the hospital's Medicare Part B reimbursement for covered OPD services for the cost reporting period ending during 1996, to (2) the hospital's reasonable costs for that period. We are in the process of developing program instructions for fiscal intermediaries (for notification to providers) to provide detailed information on how payment-to-cost ratios are calculated. These instructions will be made available as soon as possible.

Comment: One hospital association recommended that we revise our regulations to explicitly state that we will adjust the provider's 1996 payment-to-cost ratio "whenever subsequent developments occur that affect the data used in the calculation." The commenter cited final audit adjustments and appeal determinations as examples of adjustments that would warrant changing the 1996 cost data used to calculate the provider's payment-to-cost ratio. The commenter stated that this policy is consistent with similar adjustments made under the prospective payment systems for both inpatient operating and capital-related costs.

Response: We agree with the commenter. In the event final audit adjustments or appeals result in a change in outpatient costs or payments for the provider's 1996 cost report, the provider's payment-to-cost ratio would be recalculated.

Comment: One commenter asked for clarification on the treatment of direct graduate medical education costs and education costs for nursing and allied health programs in calculating the payment-to-cost ratio. The commenter assumed that such costs are excluded from the pre-BBA amount because they will continue to be paid on a cost pass-through basis.

Response: The commenter is correct that direct graduate medical education costs and certain costs of nursing and allied health programs are paid on a cost pass-through basis and will not be included in calculating a provider's pre-BBA amount.

Comment: One commenter asked that we explain our reasons for basing the transitional corridor interim payments on a 0.8 payment-to-cost ratio. The commenter suggested that a provider be allowed to modify its interim transitional corridor payment if it can show that its payment-to-cost ratio is higher or lower than the 0.8 level.

Several commenters questioned why we chose to use a standard 0.8 payment-to-cost ratio for all providers in calculating the interim payment if provider-specific payment-to-cost ratios were available. They stated that 9 of the 10 cancer centers have payment-to-cost ratios that exceed 0.8.

Response: The standard payment-to-cost ratio of 80 percent is an average value that we calculated for payment-to-cost ratios across all hospitals. We decided to use 80 percent for all providers to permit us to make interim payments as soon as possible following the implementation of the outpatient prospective payment system. If we had attempted to calculate individual payment-to-cost ratios for all providers, it would have delayed, perhaps for several months, the introduction of interim payments. Final transitional corridor payments will be calculated using each provider's payment-to-cost ratio for the relevant year at the time of settlement of the cost report. In the future, as we gain more experience with interim payments, we will consider permitting modification of payment-to-cost ratios to reflect particular circumstances.

c. Cost-to-Charge Ratios

Comment: One commenter stated that the April 7, 2000 final rule with comment period did not explain how the transitional corridor payments would be implemented for the 10 cancer hospitals. The commenter noted that while Program Memorandum Transmittal No. A–00–23 issued by us on April 7, 2000, does describe how these payments are to be calculated it does not clarify how we derived the hospital-specific cost-to-charge ratios used to compute the transitional corridor payments.

Several commenters representing the 10 cancer centers stated that the cost-to-charge ratios for their centers that will be used in calculating their transitional corridor, outlier, and transitional pass-through payments are significantly lower than their estimates. They requested that we explain how we determined their ratios and comment on the appropriateness of our methodology. They also asked that we respond to a number of specific questions to allow hospitals to determine whether the cost-to-charge ratios accurately reflect the hospital's cost and provide a fair base for calculating their transitional corridor payments.

Response: On September 8, 2000, we issued a Program Memorandum Transmittal No. A–00–63, which provides a detailed explanation of how hospital cost-to-charge ratios were calculated. This program memorandum is available on HCFA's internet website at www.hcfa.gov/Medicare.

d. Interim Payments Limited to 85 Percent of the Estimated Transitional Corridor Payment

Comment: One commenter asked why we will only pay 85 percent of the estimated transitional corridor payment as an interim payment. Another commenter recommended that we reconsider our policy to pay providers only 85 percent of their transitional corridor payments on the interim basis. The commenter stated that our policy to withhold 15 percent of each provider's payment until the fiscal intermediary finalizes the provider's cost report is contrary to Congressional intent to preserve hospitals' cash flow and ensure them of an ability to provide outpatient services to beneficiaries, especially those in rural areas. Another commenter stated that retaining 15 percent of each provider's estimated transitional corridor payments until the provider's cost report is settled is contrary to Congressional intent and defers relief provided by statute for several years.

Response: We limited the interim payment to less than 100 percent of the estimated payment in order to minimize the risk of overpayment. If interim payments exceed the final settled amounts, we would need to initiate recoupment procedures that place additional burden both on the agency and on providers. Eighty-five percent was chosen as a reasonable percentage that prudently balances the cash flow needs of some providers with concerns regarding possible difficulties in the recovery of overpayments. We have used comparable figures in other situations in which we make interim or advance payments. One example where we specified 85 percent for advance payments is in the contingency plan that we published to address the possibility that either our contractors or individual providers would be unable to process claims at the initiation of the outpatient prospective payment system. In the future, as cost reports are settled and we are able to determine how well interim transitional corridor payments relate to final transitional corridor payments, we will reevaluate this aspect of our interim payment policy.

e. Providers Having More Than One 1996 Cost Report

Comment: Several commenters stated that we did not discuss in our final rule how we would calculate the 1996 payment-to-cost ratio in cases where a provider has more than one cost report that is less than 12 full months during the fiscal year ending in 1996. The commenters asked which would be the appropriate cost report to use in calculating the transitional corridor payments. One commenter explained that this situation may occur if ownership changed during the provider's fiscal year ending in 1996.

Response: The 1996 cost report that will be used to calculate a payment-to-cost ratio is the cost report period that ends in calendar year 1996. If a provider has two cost reports that end in 1996, we will make a decision about which cost report to use on a case-by-case basis, depending on which appeared to be the most representative of the provider's experience in 1996. For example, if one cost report covers a longer period, we would likely use that one.

f. Providers Having No 1996 Cost Report

Comment: One commenter expressed concern about insufficient guidance from us about how transitional corridor payments would be determined for providers that did not file cost reports during 1996. The commenter believed that because the statute is silent on this issue, we have the discretion to develop such policy. The commenter strongly opposed any decisions by us to preclude providers without 1996 cost reports from being eligible to receive transitional corridor payments.

Another commenter requested that we treat new hospitals that did not file a 1996 cost report the same as rural hospitals. The commenter contended that the pre-BBA payment level for these hospitals should be based on the hospital's first full cost reporting period, and would be guaranteed at that level through December 31, 2003. Another commenter suggested as an option that we assign a regional average payment-to-cost ratio for existing providers to providers without a 1996 cost report.

Response: Under the statute, the amount of transitional payments to providers depends on the provider's reimbursement for the 1996 cost reporting period. We intend to monitor the adequacy of payments to providers not having a 1996 cost report, but we believe that a statutory change is required in order to provide transitional payments to providers that did not have a 1996 cost report.

g. Prospective Payment System Delay and Transitional Corridor Payments

Comment: One commenter expressed concern about the potential effect of delaying implementation of the hospital outpatient prospective payment system on the duration of the transitional corridor payments as provided by law. The commenter stated that our decision to delay implementation of the prospective payment system for 1 month, from July 1, 2000 to August 1, 2000, should not result in a 1-month loss of transitional corridor payments for providers. The commenter believed that the 3½ years of corridor payments required by law for non-cancer hospitals paid under the outpatient prospective payment system should not be reduced due to delayed implementation of the prospective payment system. The commenter urged us to seek a legislative change if we determine the 3½ year period for transitional corridor payments must coincide with the first 3½ years of actual prospective payment system implementation.

Response: For hospitals that do not qualify for the permanent hold-harmless provision applicable to cancer hospitals, the statute provides for transitional corridor payments through the end of calendar year 2003. We will monitor and evaluate prospective payment system payments and will consider whether it would be appropriate to recommend that Congress legislate an extension of transitional corridor payments.

h. Rural Hold-Harmless Provision

Comment: One commenter suggested that we reevaluate the definition of rural outpatient hospitals eligible for the hold-harmless provision and consider including rural hospitals that have 100 to 200 beds, "but whose outpatient volumes are not sufficient to maintain the facilities' finances."

Response: The bed size for hospitals to qualify for the rural hospital hold-harmless provision is limited by statute, under section 1833(t)(7)(D)(i) of the Act, to hospitals that have no more than 100 beds.

Comment: One commenter stated that on page 18501 of the April 7, 2000 final rule with comment period, we state that bed size under the rural hospital hold-harmless provision will be determined in the same manner as it is for the hospital inpatient prospective payment system indirect medical education adjustment. The commenter contended that we have not provided these instructions to fiscal intermediaries. The commenter questioned whether the fiscal intermediaries are using the number of beds reported on the hospital cost reports to determine the bed size. Still another commenter stated that we failed to specify how beds are to be counted under the hospital outpatient prospective payment system. The commenter further stated that our impact analysis published in the April 7, 2000 final rule with comment period

suggests that available bed counts shown on the HCFA–2552 cost report S–3 Worksheet are used to determine if a hospital has 100 or fewer beds to qualify for the rural hold-harmless transitional corridor payment provision. The commenter urged us to clarify this issue.

Response: In Program Memorandum Transmittal No. A–00–23, later revised in June 2000 as Program Memorandum Transmittal No. A–00–36, we provided instructions to fiscal intermediaries concerning how to calculate interim transitional corridor payments. As indicated in the April 7, 2000 final rule with comment period, the bed size used for transitional corridor payments will be the same bed size defined in and used to calculate indirect medical education costs and disproportionate share adjustments under the hospital inpatient prospective payment system. Fiscal intermediaries are instructed to obtain certain provider-specific information needed to make the calculation from the outpatient provider-specific file that they maintain. Certain items on the outpatient provider-specific file, including bed size, are taken directly from the provider file used in processing inpatient claims.

Comment: One commenter urged that we revise policy for determining bed size for purposes of defining rural providers eligible for the hold-harmless provision. The commenter advocated that we adjust a provider's count of acute inpatient days to account for observation patients occupying acute inpatient beds.

Response: The commenter did not provide a rationale for their recommendation. We believe that it is appropriate to adopt a policy for purposes of the outpatient prospective payment system that is consistent with the policy for purposes of the inpatient prospective payment system; therefore, we are not making a change at this time.

Comment: A commenter specifically asked that, for purposes of determining bed size for rural providers, we clarify what year is used to determine bed size. The commenter also asked what our policy is regarding providers that changed their inpatient capacity prior to July 1, 2000, and those that may change this capacity during the 3½ year transition period. The commenter suggested that we permit hospitals to downsize capacity without affecting their eligibility for hold-harmless status.

Response: Under § 412.105(b), to determine bed size for the rural hold-harmless provision, we calculated bed size on the basis of the provider's cost reporting period. A rural hospital's bed size and, therefore, its eligibility for hold-harmless treatment may change from one cost reporting period to the next.

Comment: Several commenters asked us to clarify whether a hospital's reclassification for either the wage index area or standardized amount affects its eligibility for the rural hold-harmless payment. The commenter believed that, because the BBRA 1999 statutory provision relevant to the rural hold-harmless provision refers to providers "located in a rural area" rather than the provider's payment status, a provider's geographic reclassification for wages or standardized amount has no bearing on its rural hold-harmless status. A few commenters argued that a geographic reclassification under inpatient prospective payment system for the wage index or the standardized amount is not relevant for purposes of the hold-harmless rural payment provision and that these reclassified hospitals should be included in the rural hold-harmless payment.

Response: If a hospital is located in a rural area, it will not lose its eligibility for hold-harmless payments if it obtains a geographic reclassification under the inpatient prospective payment system for purposes of determining its wage index or standardized amount.

Comment: A number of commenters expressed concern about the various aspects of the hold-harmless provision, referring to sections 1886(d)(8)(E) and 1833(t)(13) under section 401 of the BBRA 1999, and asked about a hospital's eligibility for the rural hold-harmless provision.

Response: Under section 1886(d)(8)(E) of the Act, as added by section 401 of the BBRA 1999, if a hospital submits an application and meets certain criteria, the Secretary treats the hospital as being located in a rural area for purposes of section 1886(d) of the Act. Under section 1833(t)(13) of the Act, as added by section 401(b) of the BBRA 1999, if a hospital is treated as being located in a rural area under section 1886(d)(8)(E) of the Act, then the Secretary shall treat the hospital as being located in a rural area for purposes of the outpatient prospective payment system. Therefore, if a hospital is treated as being located in a rural area under section 1886(d)(8)(E) of the Act, then the hospital is treated as a rural hospital for purposes of the hold-harmless provision.

Comment: One commenter stated that the 2-month waiting period for interim transitional payments may adversely affect a large number of small rural hospitals. The commenter also believed these hospitals will require a higher interim payment than planned. The commenter asked that we use a hospital-specific impact analyses to create a process for interim payments for these small rural hospitals that would begin concurrently with the start of the prospective payment system.

Response: In order to calculate interim transitional corridor payments for any hospital, we needed to have some amount of claims that had been processed under the prospective payment system. For this reason, we were not able to begin transitional corridor payments concurrently with the implementation of the prospective payment system. Because of our concerns discussed earlier about having to initiate recoupment procedures in cases of overpayments, we are not increasing interim payments at this time. However, as cost reports are settled and we are able to determine how well interim payments predict final transitional corridor payments, we will be able to reevaluate this policy.

i. Covered Charges

Comment: Several commenters asked that we clarify the definition of "covered charges" used to compute the rural hold-harmless transitional corridor payment. One commenter stated that total procedures and thus the hold-harmless payment will be understated should we eliminate from these calculations the charges for incidental procedures or procedures that the Outpatient Code Editor consolidates into the main procedures.

Response: In the preamble and the regulation text of the April 7, 2000 final rule with comment period, we refer to "covered hospital outpatient services" to describe the services that are paid under the prospective payment system and, therefore, subject to the transitional corridor provision. To determine a provider's costs for purposes of calculating the pre-BBA amount for both interim payments and for final cost report settlement, we will take into account all costs encompassed under the prospective payment system, including the cost of incidental services that are packaged into the APC rate. These services are identified as those having HCPCS codes with a status indicator of "N" (as listed in Addendum B) and incidental services that may not be billed with HCPCS codes, but which are billed under revenue codes that indicate a packaged service such as observation services, recovery room, supplies and many drugs.

Comment: One commenter asked us to clarify how charges for packaged services, for example observation services, should be billed when they are the only service provided. The commenter stated that inclusion of charges for these packaged services in the total bill charges are necessary to calculate the proper transitional corridor payment.

Response: Packaged services will not be the only items that appear on a bill. Packaged services will appear on a bill with the service to which they are incidental. For example, observation services are properly billed with the clinic visit, emergency room visit, surgery, etc., that results in the need for the incidental observation service.

j. Cancer Hospitals and Transitional Corridor Payments

Comment: Several commenters believed that the process described in Program Memorandum Transmittal No. A–00–23 for calculating the hold-harmless transitional corridor payments should be revised because it does not reflect Congressional intent and will not provide the relief to the 10 cancer centers that the Congress intended. These commenters contended that the method described in the program memorandum for calculating the transitional corridor payments will result in a 22 percent loss in outpatient patient revenues for the cancer centers compared to those received in 1998. The commenters further claimed that their revenue losses under the new outpatient prospective payment system may increase an additional 2 percent, or 24 percent in total, because we will not pay claims for any medical visits that are billed in conjunction with related significant procedures.

In addition, these commenters urged us to:

- Establish an appeal process for providers with cash flow problems that would permit fiscal intermediaries to adjust a provider's cost-to-charge ratio "to rectify ongoing OPPS losses prior to reconciliation."
- Reduce interim payments to the 10 cancer centers by only 5 percent rather than 15 percent. (The commenters contended that this approach would be consistent with the method currently used to determine their inpatient interim payments under the TEFRA cost limits system.)
- Pay the 10 cancer centers the balance of the hold-harmless payments due at the time the cost report is subjected to desk review rather than at the time it is settled. (The commenters stated that settlement of the centers' cost reports is completed within 2 to 4 years after a completed cost report is filed, whereas the cost report desk review is generally completed 90 days after it is filed.)

Response: Medical visits may be billed with significant procedures as long as the medical visit is a separate and distinct service from the significant procedure, even though the significant procedure is related to the medical visit. For example, as a result of an examination performed as part of a clinic or emergency room visit, a patient is determined to need a CT scan or MRI, or as a result of a dermatology examination performed as a clinic visit, a patient also has a surgical procedure to remove a mole. In these types of situations, payment will be made for both a medical visit and a significant procedure.

Program Memorandum Transmittal No. A–00–63 provides for adjustment of a provider's cost-to-charge ratio in certain specific situations. In the future, in order to reflect changes in hospital costs and charges, we will allow fiscal intermediaries to make additional updates of a provider's cost-to-charge ratio to ensure that interim payments accurately reflect our best estimates of final transitional corridor payments.

Although we limited the interim payment to 85 percent of the estimated payment in order to minimize the risk of overpayment, in the future, as cost reports are settled and we are able to determine how well interim payments predict final transitional corridor payments, we will be able to reevaluate this aspect of our interim payment policy and we will consider permitting modification of payment-to-cost ratios to reflect particular circumstances.

The statute indicates that interim payments are made subject to retrospective adjustments based on settled cost reports. However, it is current practice that, depending on the provider's specific situation, a fiscal intermediary may make additional payments as part of a tentative settlement action prior to final settlement of the cost report.

k. Teaching Hospitals and Transitional Corridor Payments

Comment: One commenter urged that we retain the transitional corridor payments permanently for major teaching hospitals.

Response: Section 1833(t)(7) of the Act provides permanent transitional corridor payments only for cancer hospitals described in section 1886(d)(1)(B)(v) of the Act. As indicated earlier, we will monitor and evaluate the prospective payment system payments and will consider whether it would be appropriate to recommend that Congress extend transitional corridor payments.

Comment: One commenter stated that while the transitional corridor payments will mitigate some of the losses to teaching hospitals under the prospective payment system compared to the former cost-based payment system, these payments are temporary. The commenter believed that we underestimated the losses that some teaching hospitals will experience. Another commenter urged us to monitor closely the impact of the prospective payment system on major teaching hospitals during the 3½ year transitional corridor payments. The commenter believed that these hospitals will require a payment adjustment after the transitional corridor payment period expires to mitigate their potential financial losses under the prospective payment system.

Response: As we stated in the preamble of the April 7, 2000 final rule with comment period, we will perform further comprehensive analyses of cost and payment differences between different classes of hospitals as soon as there is a sufficient amount of claims data submitted under the prospective payment system. We will use data from the initial years of the prospective payment system to conduct regression and simulation analyses. In addition, we will carefully track and analyze the additional payments made to hospitals under the transitional corridor provision. These analyses will be used to consider and possibly propose adjustments in the system, particularly beginning in 2004 when the transitional corridor provisions expire.

13. Limitation on Coinsurance for a Procedure

In the April 7, 2000 final rule with comment period (65 FR 18488), we specified that, in accordance with section 1833(t)(8) of the Act (as amended by section 204(a) of the BBRA 1999), the coinsurance amount for a procedure performed in a year cannot exceed the hospital inpatient deductible for that year. We specified that we would apply the limitation to the wage-adjusted coinsurance amount (not the unadjusted coinsurance amount) after any Part B deductible amounts are taken into account. Therefore, although the unadjusted coinsurance amount for any APC may be higher or lower than the inpatient hospital deductible, the actual coinsurance amount for an APC, determined after any deductible amounts and adjustments for variations in geographic areas are taken into account, will be limited to the Medicare inpatient hospital deductible. Any reduction in coinsurance that occurs in applying the limitation will be paid to

hospitals as additional program payments.

Comment: One commenter disagreed with our interpretation of the BBRA 1999 provision that amended section 1833(t)(8) of the Act to limit the coinsurance amount for a procedure to the amount of the inpatient hospital deductible. The commenter believed that our interpretation that applies the limitation to coinsurance on an APC by the APC basis is too narrow.

The commenter concluded that, at a minimum, the limitation should be more broadly interpreted to apply to the total coinsurance incurred by a beneficiary in connection with an outpatient visit, that is, from the time the beneficiary walks into an outpatient department until he or she is released. However, to implement the provision as envisioned by the Congress, the commenter suggested that we also consider developing a service period unit for outpatient procedures that is similar to the "spell of illness" concept used to define the set of services to which a single inpatient hospital deductible applies. Therefore, when a patient comes to an outpatient department for treatment of a particular condition, his or her coinsurance liability for all the services required for that condition should not exceed the inpatient hospital deductible. The commenter recommended that we apply the limitation regardless of how many or which APCs are billed or the number of visits required for such treatment.

Response: APCs are based on CPT codes. We believe that the most plausible meaning for "procedure" in this context is a CPT code or, by extension, an APC. Thus we interpret the limitation of coinsurance for a procedure in section 1833(t)(8)(C) of the Act as added by section 204 of the BBRA 1999 to apply in general to APCs.

We do not believe that it was the intent of the Congress to apply the coinsurance limitation to the beneficiary's aggregate coinsurance amounts for all outpatient services received during the entire service period for a specific condition or even to the services a beneficiary receives in one day. During the Congressional committee deliberations on this provision before it was enacted, we held technical discussions with committee staff. At their request, we identified the specific 10 APCs in the September 1998 proposed rule that would be likely to have a coinsurance that exceeded the inpatient hospital deductible. The Congressional Budget Office also used that information to project the cost of this statutory provision. Therefore, we believe that our interpretation in the April 7, 2000 final rule with comment period of how the coinsurance limitation is to be applied is consistent with the intent of Congress.

Comment: Several commenters pointed out that because APCs for drugs and biologicals are defined based on HCPCS codes for the lowest unit of the drug or biological, if we intend to apply the inpatient deductible limit at the APC level, we might disadvantage beneficiaries who receive multiple units. For example, the coinsurance for a specific drug APC may not exceed the inpatient deductible amount. However, if multiple units of the same drug are administered, the coinsurance based on the multiple APCs may, in fact, exceed the inpatient deductible. The commenters believed that the total coinsurance amount for a drug or biological based on the amount administered should be subjected to the inpatient deductible limit. The commenters believed that constructing APCs for drugs based on the lowest unit of the drug is solely a payment convention and does not mean that each dose is a separate "procedure." Therefore, the commenters contended, a better reading of the statute is that the administration of a drug or biological, regardless of the dose, is one procedure for purposes of applying the hospital outpatient prospective payment system and it would be inappropriate to compare the inpatient deductible limit to anything but the total coinsurance amounts.

Response: In the case of services that involve the administration of drugs and biologicals in separate APCs, we have concluded that we should apply the limitation on coinsurance to include both the drug or biological (in whatever units it is administered) and the service that leads to its administration. We constructed separate APCs for drugs and biologicals, and established pricing on the basis of the lowest dose, not to reflect CPT codes, but solely as a matter of convenience in administering the payment system. Consequently, we think that the interpretation with the most clinical relevance in this instance is to treat a drug or biological and the service that leads to its administration as a single procedure. We had not proposed separate APCs for drugs and biologicals in the proposed rule for the outpatient prospective payment system and the Congress did not know we would segment APCs at the time it passed the BBRA 1997.

Effective for drugs and biologicals furnished on or after January 1, 2001, when multiple units of a drug or biological are furnished to a beneficiary during one day, resulting in multiple APC payments for the same drug, we will aggregate the total coinsurance applicable to the drug or biological, and the aggregated amount cannot exceed the inpatient hospital deductible for the calendar year. In order to accomplish this change in our bill processing systems, we are assigning a new status indicator designated as "K" to APCs for nonpass-through drugs and biologicals (as reflected in Addendum D of this interim final rule with comment period). Effective for services furnished on or after July 1, 2001, in the same circumstances, we will aggregate the total coinsurance applicable to the drug or biological and to the service that resulted in the administration of the drug, and the aggregated amount cannot exceed the inpatient hospital deductible for the calendar year. We are unable to make the latter provision effective earlier because of systems constraints.

Comment: One commenter stated that the BBRA 1999 requirement that coinsurance for a procedure cannot exceed the inpatient hospital deductible for that year adds confusion to an already complicated formula for determining coinsurance. The commenter stated that the monitoring of coinsurance needed to ensure the limitation is being applied on a procedure basis will add undue burden and increase a provider's costs. To make the hospital outpatient prospective payment system less complicated, the commenter believed that we should consider eliminating the threshold.

Response: The coinsurance limitation is required by statute. Therefore, a statutory change would be required to eliminate this provision.

14. Reclassification of Certain Hospitals

In the August 1, 2000 **Federal Register** (65 FR 47029), we implemented section 401 of the BBRA 1999 for the hospital inpatient prospective payment system. Section 401(a) of the BBRA 1999, which amended section 1886(d)(8) of the Act by adding a new paragraph (E), directs the Secretary to treat any subsection (d) hospital located in an urban area as being located in the rural area of the State in which the hospital is located if the hospital files an application (in the form and manner determined by the Secretary) and meets certain statutorily specified criteria. Additionally, section 401(a) of the BBRA 1999 includes hospitals "* * * located in an area designated by any law or regulation of such State as a rural area (or is designated by such State as a rural hospital)." A hospital also may seek to qualify for reclassification premised on the fact that, had it been located in a rural area, it would have qualified as a rural referral center or as a sole community hospital.

Section 401(b) of the BBRA 1999 made a conforming change to section 1833(t) of the Act. Specifically, section 401(b) added section 1833(t)(13) to the Act which provides that if a hospital is being treated as being located in a rural area under section 1886(d)(8)(E) of the Act (for purposes of section 1886(d) of the Act), the hospital will also be treated under section 1833(t)(13) of the Act as being located in a rural area.

In the April 7, 2000 final rule with comment period, we explained that we use the same yearly version of the hospital inpatient prospective payment system wage index (which takes effect each October 1) to adjust the portion of the outpatient prospective payment system payment rate and the coinsurance amount that is attributable to labor-related costs for relative differences in labor and labor-related costs across geographic areas (and that will be applied effective each January 1). This wage index reflects the effects of hospital designations under section 1886(d)(8)(B) of the Act and hospital reclassifications under section 1886(d)(10) of the Act.

We did not receive any comments on this conforming change.

B. August 3, 2000 Interim Final Rule With Comment Period

Following are the issues addressed in the August 3, 2000 interim final rule with comment period, the public comments received on each issue, and our response to those comments. In that interim final rule, we—

- Revised the regulation at § 419.43(e)(1)(iv) to change one criterion and postpone the effective date for two other criteria that a new device, drug, or biological must meet in order for its cost to be considered "not insignificant" for purposes of determining its eligibility for transitional pass-through payments;
- Changed our interpretation for three of the eight criteria set forth in the April 7, 2000 final rule with comment period for defining a new medical device that would be eligible for transitional pass-through payments and amended § 419.43 by adding new paragraph (e)(4) to include all eight criteria;
- Clarified the assignment of "C" codes to eligible pass-through items;
- Corrected a trigger date for grandfathering of provider-based FQHCs; and
- Clarified our intent regarding prior notice of beneficiary cost-sharing liability in emergency situations.

1. Transitional Pass-Through Provisions

a. "Not Insignificant" Cost Criteria

Section 1833(t)(6) of the Act, as added by section 201(b) of the BBRA 1999, requires the Secretary to make transitional pass-through payments for post-1996 new drugs, biologicals, and devices for at least 2 but no more than 3 years when the cost of the item is "not insignificant" in relation to the hospital outpatient prospective payment system payment amount. In the April 7, 2000 final rule with comment period, we established three criteria that a new device, drug, or biological must meet to determine whether its costs are not insignificant relative to the APC payment with which the item is associated (65 FR 18480–81). We stated that all of the following cost criteria must be satisfied in order for a new device, drug, or biological to be eligible for transitional pass-through payments:

- Its expected reasonable cost exceeds the applicable fee schedule amount determined to be associated with the drug, biological, or device by 25 percent.
- The expected reasonable cost of the new drug, biological, or device exceeds the portion of the fee schedule amount determined to be associated with the drug, biological, or device by 25 percent.
- The difference between the expected, reasonable cost of the item and the portion of the hospital outpatient department fee schedule amount determined to be associated with the item exceeds 10 percent of the applicable hospital outpatient fee schedule amount.

After we published the April 7, 2000 final rule with comment period, we gained considerable experience from reviewing applications for transitional pass-through payments. Based on that experience, we concluded that the 25-percent limitation was too restrictive and could result in limiting Medicare beneficiaries' access to new products. Therefore, in the August 3, 2000 interim final rule with comment period, we changed that criterion to ensure that Medicare beneficiaries would continue to have access to the latest technologies. We now require that the expected reasonable cost of a new drug, biological, or device must exceed 10 percent of the applicable fee schedule amount for the associated service. In addition, we also postponed the effective date of the other two criteria applying to a new device, biologicals, or drugs for which a transitional pass-through payment is first made to on or after January 1, 2003. As stated in the August 3, 2000 interim final rule with comment period, the delay in the effective date for these two criteria is necessary so that we will have sufficient time to gather and analyze data needed to determine the current portion of the fee schedule amounts associated with a device, drug, or biological, which is an essential factor in applying these criteria.

Comment: Several commenters commended us for revising the one "not insignificant" criterion and postponing the other two criteria until after December 31, 2002. However, some argued that we created an uneven playing field by changing our policies after we published our April 7, 2000 final rule and announced pass-through application deadlines. They claimed that our untimely lowering of the cost threshold from 25 percent to 10 percent unfairly disadvantaged companies that did not submit pass-through applications by the deadline for our August 1, 2000 payments because they believed that their products would not qualify for payment. One commenter recommended that we rapidly process applications submitted for our January 1, 2001 update and change the effective date of that update to November 1, 2000. Another commenter advocated that we apply the 10-percent cost threshold retroactively to all device pass-through applications to ensure equitable treatment for all manufacturers.

Response: Based on our review of transitional pass-through applications, we believe that we have not applied our policy change inconsistently to applications that we received. The change to the lower cost threshold is effective for services furnished on or after August 1, 2000. If an applicant's product was denied pass-through status because its cost was considered to be "not insignificant" and that applicant can show that our decision was not based on the 10-percent criterion, the applicant may request that we reevaluate the application. In addition, we encourage other interested parties who withheld applications because they believed that their products would not qualify for pass-through status to submit them. Further, we cannot update the pass-through payments effective November 1, 2000 as requested. Adding new pass-through items to our outpatient prospective payment system requires changes to our complex Medicare computerized claims processing systems that we can make only at the beginning of a calendar quarter.

Comment: One commenter believed that reducing the cost threshold to 10 percent for new devices may be too low. The commenter stated that the lower

cost threshold would expose hospitals to financial risk created by the use of new and expensive technology furnished in providing patient care. The commenter advocated that we consider as an option "establishing * * * a floor—or a variable percentage that is higher for low-cost cases and lower for high-cost cases."

Response: We believe that this option will require time to evaluate its merits, assess its impact on our systems and determine systems changes that would be required to implement it. Therefore, we will consider this request for possible inclusion in our future proposed rule for outpatient prospective payment system updating that we expect to publish in the spring of 2001.

Comment: One commenter urged that we grant the public another opportunity to evaluate and comment on all three "not insignificant" cost criteria before implementing them.

Response: Before we implement all three of these criteria, we plan to provide notice and opportunity for public comment. Since we do not expect to implement two of these criteria before January 1, 2003, we would not expect to publish a proposed rulemaking until the spring of 2002.

Comment: One commenter asked how we would apply the three "not insignificant" cost criteria in instances when multiple units of a new device are used in performing a procedure. The commenter recommended that we use the "weighted average cost of the product, based on the average number of unit used in a procedure."

Response: We plan to fully describe our approach to implementing these three criteria in a future proposed rule. As previously stated, we will not implement two of these criteria before January 1, 2003. Therefore, we do not expect to publish a proposed rulemaking until the spring of 2002.

Comment: One commenter asked that we clarify how transitional pass-through payments will be incorporated into the APC payments at the end of the 2- to 3-year transitional period for a given device. The commenter also asked how we would prevent the cost for the pass-through items from being diluted significantly by the median cost of other procedures grouped in the same APC.

Response: We plan to use a methodology similar to that currently used to construct the APC groups to incorporate payment for pass-through items into the APC payments once their pass-through status expires. That is, we have assigned a unique HCPCS code to each eligible pass-through item that will allow us to track its payments and utilization over the 2 to 3 years that it is eligible for pass-through status. The codes will allow us to match the pass-through items to the specific procedures or medical visits with which they are used. After we gain appropriate information about the actual costs a hospital incurs to provide a pass-through item, we will package the cost for the pass-through with that for the relevant procedure or medical visit with which it is used and assign the packaged service to a clinically related APC group with comparable resources. We will limit the cost variation within each group as required by section 1833(t)(2) of the Act, as amended by section 201(g) of the BBRA 1999. In accordance with this provision, the items and services within a group cannot be considered comparable with respect to the use of resources if the highest median cost item or service within a group is more than two times greater than the lowest median cost item or service within the same group. By law, the Secretary is allowed certain exceptions to this requirement, that is, for low volume items and services.

Comment: One commenter asked if we would provide adequate recognition for multiple devices used in a procedure "if multiple procedure discounting is allowed to cut the pass-through generated recognition of these costs in half."

Response: Under the hospital outpatient prospective payment system, devices eligible for pass-through payments are paid separately and not subject to the multiple procedure discounting policy. This policy applies only to the actual surgical procedure that is performed to implant the pass-through device. These procedures are denoted by a status indicator "T" and listed in Addendum B of this rule.

Comment: One commenter urged us to correct erroneous APC groupings more frequently than during our scheduled quarterly or annual update cycles until we stabilize the hospital outpatient prospective payment system.

Response: We understand the importance of paying appropriately for services billed under our new outpatient system and are committed to resolving problems that would preclude us from making appropriate payments in a timely manner. However, because of the complexity of our system we cannot commit to making changes other than during the scheduled updating cycles.

b. Definition of Medical Device

In the April 7, 2000 final rule with comment period, we established eight specific criteria that new or innovative medical devices must meet to be considered eligible for pass-through payments under section 1833(t)(6) of the Act. We stated in that rule that new or innovative medical devices must meet all of the following criteria to be considered eligible for transitional pass-through payments:

(1) They were not recognized for payment as a hospital outpatient service prior to 1997.

(2) They have been approved or cleared for use by the FDA.

(3) They are determined to be reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body part, as required by section 1862(a)(1)(A) of the Act. We recognize that some investigational devices are refinements of existing technologies or replications of existing technologies and may be considered reasonable and necessary. Therefore, we indicated that we will consider devices for coverage under the hospital outpatient prospective payment system if they have received an FDA investigational device exemption (IDE) and are classified by the FDA as Category B devices. However, in accordance with regulations at § 405.209, payment for a nonexperimental investigation device is based on, and may not exceed, the amount that would have been paid for a currently used device serving the same medical purpose that has been approved or cleared for marketing by the FDA.

(4) They are an integral and subordinate part of the procedure performed, are used for one patient only, are surgically implanted or inserted, and remain with that patient after the patient is released from the hospital outpatient department.

(5) The associated cost is not insignificant in relation to the APC payment for the service in which the innovative medical equipment is packaged.

(6) They are not equipment, instruments, apparatuses, implements, or items for which depreciation and financing expenses are recovered as depreciable assets as defined in Chapter 1 of the Medicare Provider Reimbursement Manual (HCFA Pub. 15–1).

(7) They are not materials and supplies such as sutures, clips, or customized surgical kits furnished incident to a service or procedure.

(8) They are not materials such as biologicals or synthetics that may be used to replace human skin.

In the August 3, 2000 rule, we revised criteria (3), (4), and (7) and amended § 419.43(e)(4) to include all eight criteria. We stated in that rule that our change in policies reflects experience gained in reviewing and processing transitional pass-through applications for devices since publishing our April 7, 2000 final rule with comment period. With regard to criteria (3), we revised it by removing the cost limitation provision for IDE Category B devices that qualify for transitional pass-through payments. We explained in the August 3, 2000 interim final rule that on review of our policy for such new devices, we believed that it would be more appropriate to remove the cost limitation because they are subjected to the same eligibility requirements as any other device applying for pass-through status and because pass-through payments for a specific device are temporary.

For criteria (4), we modified our interpretation of which devices are eligible for transition pass-through payments to include new medical devices that are used for one patient only, are single use, come in contact with human tissue, and are surgically implanted or inserted in a patient during a procedure but may also be removed during that procedure so that the patient leaves the hospital without the device. Our revised interpretation also includes clips that are used as radiological site or tissue markers.

As explained in the August 3, 2000 interim final rule, it became apparent, based on experience gained in processing a large number of applications for new medical device pass-through status, that our attempt to distinguish implantable devices using the criteria we had outlined in our April 7, 2000 final rule with comment period had some practical limitations. We also explained that, in some instances, the new medical device is implanted temporarily rather than permanently as indicated in our original policy published in the April 7, 2000 final rule with comment period. However, we did not intend for our policy to exclude new medical devices that are implanted or inserted during a procedure but also may be removed during that procedure so that the patient leaves the hospital without the device. Rather, we believed that these devices should be considered for pass-through payments because they also are implantables. We further stated in the August 3, 2000 interim final rule with comment period that it had become apparent that some implantable clips are expensive and function other than as tools or supplies necessary for a surgeon to perform a surgical procedure. We did not intend to exclude such clips from consideration for pass-through payments. Therefore, we revised our interpretation of which devices are eligible for transitional pass-through status to include also new single use medical devices that may be temporarily implanted or inserted in a patient.

Finally, in criterion (7), we became aware of the need, based on our review of pass-through applications, to clarify that supplies include pharmacological imaging and stressing agents, including contrast media but excluding radiopharmaceuticals (for which payment under the transitional pass-through provision is established by section 1833(t)(6)(A) of the Act).

Comment: One commenter urged that we issue detailed guidelines that clarify whether an IDE Category B device with pass-through status will be assigned only one "C-code" for both its clinical investigation and commercialization.

Response: Our general policy is to assign only one code to an eligible pass-through item.

Comment: One commenter asked how we would reconcile differences in pass-through payment differences (over 2 to 3 years) that are made for an eligible IDE Category B device during its clinical investigation phase versus those paid once the device is commercialized.

Response: Policy decisions regarding the analytical treatment of costs associated with specific items that will be included in our database for constructing APCs will be made in the context of the methodology that we use to derive updated APC weights and payments. This methodology will be fully described in a subsequent proposed rule prior to incorporating the cost for pass-through devices such as eligible IDE Category B devices into our APC payments.

Comment: One commenter asked that we clarify when the definition of a device includes or excludes all of a device's components. The commenter also asked whether we assigned separate codes for the device's components.

Response: If a device can be separated into distinct components and such components are considered integral to the functioning of that device, we evaluate the device and all its component parts to determine whether any or all would qualify for transitional pass-through payment. For example, we have approved several implantable neurostimulator systems for pass-through payment. These systems usually include at least two or three separate components such as a generator, leads, and receiver/transmitter. In this case, we have assigned separate HCPCS codes to each of the eligible components. However, if an eligible pass-through item is considered a component of a non-eligible item, such as a piece of capital equipment, only the eligible item will receive a HCPCS code to bill for pass-through payments.

Comment: One commenter warned us about medical devices that we have approved for pass-through payments such as electrophysiology catheters that the commenter alleges are not single use items. The commenter stated that hospitals use them more than once. The commenter advocated that we advise hospitals not to request additional payments for any approved pass-through item if they reprocess or reuse them.

Response: In the August 3, 2000 interim final rule with comment period, we revised criterion "d" of the eight medical device eligibility criteria to explicitly preclude pass-through payments for new medical devices other than those that are single use. Therefore, additional payments will not be made for devices that are reprocessed or reused. Hospitals that bill these devices might be considered to be engaging in fraudulent billing practices.

Comment: A number of the commenters urged that we abandon the use of an individual or brand-specific approach to approving devices for transitional pass-through payments and adopt an approach that distinguishes devices based on categories. The commenters argued that a category approach is more appropriate and more efficient to implement than an individual, item-specific approach. They alleged that the latter approach creates winners and losers and delays timely approval of new technologies.

Response: As previously stated, we adopted a trade-name specific approach for several reasons. First, such an approach provides better information. Codes that are largely item-specific allow us to track what procedures the items are used with and costs of the items. When the pass-through payments for an item ends, we would expect to have good information for assigning it to relevant APCs and ensuring appropriate payment for these APCs. Adopting a scheme with a significant degree of categorization would require use of averages in making assignments and setting payment rates. Decisions based on these more limited data would likely lead to intensified concerns about the appropriateness of APC assignment and payment.

Second, this approach permits finer discrimination in eligibility decisions. An item-by-item approach allows us to be sure individual items in fact meet the criteria for eligibility. Of major concern in this instance is whether a device is "new" using the standard of the statute. Section 1833(t)(6)(A) of the Act limits

transitional pass-through payment to those devices for which " * * * payment for the device * * * as an outpatient hospital service under this part was not being made as of December 31, 1996." Adopting categories would in some cases mix "old" and "new" devices. In these instances, either some old devices would get special treatment that they would not be eligible for if they were examined on an item-specific basis, or an entire category could be considered old, thus depriving some new devices from special treatment they would be eligible for if they were examined on an item-specific basis.

Third, an item-specific scheme avoids issues associated with the design of categories needed for purposes of transitional pass-through payments. It largely avoids concerns about what items should be in what category or whether new categories should be created to accommodate items that may appear to be little different from those in existing categories.

Fourth, an item-specific approach allows us to assure that a newly arriving device can obtain the full period of pass-through status it is arguably eligible for under the statute. A categorization approach would likely lead to latecomers being eligible for pass-through payments only for a shorter period. Insofar as revision to APC payment rates reflected the costs of items in the category by the time the category was terminated, the shorter period would be of little consequence. However, if the costs of the late-coming item were significantly higher, this procedure could appear objectionable. A solution in this case would be to create a new code, which could be specific to that item, thus departing from a categorization approach.

We recognize that a category approach would lessen concerns about competitive disadvantages that may have been inadvertently created by an item specific approach and about access to specific items by hospitals and their patients. However, we found no satisfactory way of establishing categories that would not run into difficulty regarding the test of whether a device is "new" as described above. Consequently, we are making no change in our approach in response to comments.

2. Revision to Grandfather Provision for Certain FQHCs and "Look-Alikes"

In the April 7, 2000 final rule with comment period, which discussed the provider-based status criteria and requirements, we grandfathered FQHCs or "look-alikes" that were designated as such before 1995 in order to assure the continuity of care and access to care for patients of some of these facilities. To meet our original policy intent of helping to ensure that the new criteria do not disrupt the delivery of services to patients of these facilities, in the August 3, 2000 interim final rule with comment period (65 FR 47674), we corrected § 413.65(m) to state that a facility that has since April 7, 1995 furnished only services that were billed as if they had been furnished by a department of a provider will continue to be considered as a department of a provider, without regard to compliance with the provider-based criteria, if the facility—

(1) Received a grant on or before April 7, 2000 under section 330 of the Public Health Service Act and continues to receive funding under such a grant, or is receiving funding from a grant made on or before April 7, 2000 under section 330 of the Public Health Service Act under a contract with recipient of such a grant, and continues to meet the requirements to receive a grant under section 330 of the Public Health Service Act; or

(2) Based on the recommendation of the Public Health Service, was determined by HCFA on or before April 7, 2000 to meet the requirements for receiving a grant under section 330 of the Public Health Service Act, and continues to meet such requirements. We made this change to clarify that grandfathering under § 413.65 is based on continued status as a section 330 of the Public Health Service Act grantee or a "look-alike" facility. We received no comments on this change.

3. Clarification of Notice of Beneficiary Cost-Sharing Liability

In the August 3, 2000 interim final rule with comment, we also addressed whether hospitals could reasonably be expected to furnish an exact statement of the patient's financial liability, since the exact scope of services needed may not be known at the time notice must be given. Specifically, we stated that when the extent of care needed is not known before the patient is admitted, the hospital may furnish a written notice to the patient that explains the general fact that the beneficiary will incur a coinsurance liability to the hospital that he or she would not incur if the facility were not provider based. Furthermore, we clarified that the estimate of "potential financial liability" in this written notice may be based on typical or average charges for visits to the facility or organization, while stating that the patient's actual liability will depend upon the actual services furnished by the hospital.

Comment: One commenter stated that our clarification regarding the notice of beneficiary cost sharing liability was helpful, but recommended that we amend or modify the regulations at § 413.65(g)(7) to reflect such clarification since the wording of the existing regulations states twice that the notice must be given "prior to the delivery of services" without an exclusion for emergency medical conditions. In addition, the regulation states that the hospital has an obligation to notify the beneficiary of the "potential financial liability" not just to provide the beneficiary with "an estimate based upon typical or average charges" in the event that the exact type and extent of care is not known.

The commenter also recommended that we require hospitals to only notify the beneficiary of the fact that the beneficiary will incur a coinsurance liability for hospital outpatient services without giving a dollar amount of beneficiary copayment. Such a notice could include a statement that the copayment liability will be determined by us and the beneficiary will be notified of the exact amount once the hospital is notified of the amount determined by us. The commenter believes that an estimate based on charges would "miss the point" of this provision since beneficiary copayment amounts are now determined by HCFA using an APC grouper, not charges.

Response: We appreciate the commenter's concerns and agree that a change in the regulations is needed to reflect the clarification provided in the August 3, 2000 interim final rule with comment period in a future proposed rule. As we stated in the August 3, 2000 interim final rule with comment period (65 FR 47675), we are developing a proposed rule that will further revise and clarify the notice requirements. We are doing this to allow the public a full opportunity to comment on the changes and to ensure that we have the benefit of all relevant comments.

We disagree with the commenter's statement that an estimate based on charges would "miss the point" of this provision since such a notice is required only to give the beneficiary an idea or an example of their "potential financial liability". As stated in the August 3, 2000 interim final rule with comment period (65 FR 47675), the estimate should state that the beneficiary's "actual liability will depend upon actual services furnished by the hospital." Also, with the delay in the effective date of the provider-based status regulations until January 10, 2001, hospitals will have at least five months of experience with APC payments under outpatient prospective payment system and should be able to develop an appropriate estimate of a copayment amount based on APCs rather than charges.

4. Clarification of Protocols for Off-Campus Departments

In the April 7, 2000 final rule, under new § 489.24(i)(2) we require hospitals to establish protocols for handling individuals with potential emergency conditions who arrive at hospital off-campus departments. Section 489.24(i)(2)(ii) further requires that if the off-campus department is a physical therapy, radiology, or other facility not routinely staffed with physicians, RNs, or LPNs, the department personnel must be given protocols that direct them to contact emergency personnel at the main hospital campus.

In the August 3, 2000 interim final rule with comment period, we clarified that § 489.24(i)(2) does not require a delay of an appropriate transfer when the main hospital campus does not have the specialized capability or facilities required by the individual or when the individual's condition is deteriorating so rapidly that the time needed to move the individual to the main hospital campus would significantly jeopardize the individual's life or health. We also stated that the contact with emergency personnel at the main hospital campus should be made either after, or concurrently with, the actions needed to arrange an appropriate transfer under § 489.24(i)(3)(ii), if doing otherwise would significantly jeopardize the individual's life or health. We noted that this clarification does not relieve the off-site department of the responsibility for making this contact, but only clarifies that the contact may be delayed in specific cases when doing otherwise would endanger a patient subject to EMTALA protection. We received no comments on this clarification.

5. Typographical Errors in the Provider-Based Regulations

Comment: One commenter questioned whether the provider-based regulations in §§ 413.65 and 489.24, as they appeared in the April 7, 2000 final rule with comment period (65 FR 18538), contained typographical errors.

Response: We are aware of typographical errors in the provider-based regulations as published in the April 7, 2000 final rule with comment period (65 FR 18538) and will be publishing a correction notice (HCFA–1005–CN) to make these corrections.

III. Provisions of This Interim Final Rule With Comment Period

A. Changes Relating to the BBRA 1999 Public Comments

Except for the changes discussed in the preamble, we are adopting the BBRA 1999 provisions implemented in the April 7, 2000 final rule with comment period and the August 3, 2000 interim final rule with comment period, described in section II of this preamble, as final without modification. We are making the following changes to the regulation text as a result of the public comments received:

We are revising § 419.41(c)(4)(i) to provide that, effective January 1, 2001, when multiple APCs for a single drug or biological are furnished to a beneficiary on the same day, the inpatient hospital deductible limitation on coinsurance will be applied to the aggregate coinsurance for the drug or biological. The section is further revised to provide that, effective July 1, 2001, the coinsurance amount for the procedure or service that resulted in the administration of the drug or biological will be aggregated with the coinsurance for the drug or biological in applying the limit.

We are revising § 419.70(f)(2)(ii) to remove the phrase "without applying the cost reductions under section 1861(v)(1)(S) of the Act". We recognize that the phase may have inadvertently caused confusion to the extent it is redundant, as pointed out by a commenter.

B. Annual Updates to Components of the Hospital Outpatient Prospective Payment System

In this interim final rule with comment period, for calendar year 2001, we are updating the wage index and the conversion factor adjustment for covered hospital outpatient services furnished beginning January 1, 2001. We also are updating the existing APC groups to reflect new codes that have been assigned. In accordance with section 1833(t)(9)(A) of the Act and section 201(h)(2) of the BBRA 1999, we will undertake a complete system update in 2001 for hospital outpatient prospective payments. That update will take effect on January 1, 2002. We will consult with an expert outside advisory panel composed of appropriate representatives of providers. This panel will review and advise us concerning the clinical integrity of the APC groups and relative weights. The panel will be allowed to use data other than those we have collected or developed during our review of the APC groups and relative weights.

1. APC Groups

We are updating the existing APC groups effective January 1, 2001 to reflect the addition of new CPT and alpha-numeric codes, the deletion of invalid codes, changes to the list of procedures we pay for only in an inpatient setting (the "inpatient list"), the creation of a new status indicator, newly covered procedures, reconfigurations due to the inclusion of device costs, and revisions to correct errors and provide consistency in the placement of codes.

a. New Codes

There are 936 new codes, 645 of which are "C" codes. "New" in this context means new since the April 7, 2000 final rule with comment period was published. Many of the "C" codes were published in program memoranda over the intervening months. New codes are shown in Addendum B with an asterisk in the column preceding the code.

b. Deleted Codes

With the exception of "C" codes, codes deleted effective January 1 of each year are given a 3-month grace period in which they will still be recognized. "C" codes are temporary codes used exclusively to bill pass-through items and new technology services and items paid under the hospital prospective payment system. We will retire these codes prospectively at the start of a new calendar quarter based on specific service dates and are not extending the same 3-month grace period to them. We will drop all non "C" codes from APCs effective April l. Deleted codes are shown in Addendum B. They are followed by the letter D. The AMA's CPT books also list deleted codes.

c. Revisions to Correct Errors or Inconsistencies

We are revising the APCs in order to correct errors and to provide greater consistency in the placement of codes. For example, we had assigned various types of cardiovascular diagnostic tests to four APCs, with rates based on data that, on subsequent review, appeared limited. We are recategorizing these APCs. This recategorization results in three APCs with greater clinical coherence.

Medicare covers influenza, pneumococcal, and hepatitis B immunizations routinely, with no copayment or deductible due for flu and pneumonia vaccines or their administration. Other vaccines may be covered in certain circumstances, but are, in fact, given so infrequently that our cost data are limited. We are

rearranging the preventive vaccines and assigning the less frequently furnished vaccines based on their reported costs, but within a smaller range. We expect very few immunizations other than influenza and pneumonia to be billed, but if they are billed, we will update our data.

We also are changing the APCs to which bone density studies are assigned. The codes used in 1996 captured both central and peripheral bone density studies. Coding changes since that time have separated the two types of studies, but this distinction was not reflected in the 1996 data. In order to better reflect these differences, we are separating the various codes and assigning central dual energy x-ray absorptiometry (DEXA) bone density studies to a new technology APC.

We did not include the codes for transfusion laboratory services (for example, typing and crossmatching) in APCs in the April 7, 2000 final rule with comment period. We are now creating three APCs to capture these codes, and an additional APC to capture fertility procedures.

d. Device-Related Codes

As described in the April 7, 2000 final rule with comment period, revenue centers 274, 275, and 278 were not included for purposes of calculating the APC rates because prior to the BBRA 1999, we anticipated paying for durable medical equipment and prosthetics (including implantable devices) outside of the outpatient prospective payment system and it was unfeasible to revise our database to reflect the revenue centers in time to publish a final rule and implement the prospective payment system by July 1, 2000. To reflect the inclusion of implantable devices as required under the BBRA 1999, we have recalculated APC rates with these revenue centers included. As a result, the median cost for certain procedures such as inserting pacemakers, replacing leads, and providing neurostimulators increased significantly.

In order to recognize these cost increases, which are attributable to the devices, and to aid in the assignment of devices to APCs at the end of the pass-through period, we are reconfiguring certain APCs. That is, we are creating APC groups for the insertion of pacemakers, the replacement of pacemaker electrodes, the implantation of a pacemaker and electrodes, and the removal of a pacemaker. These changes reflect our basic criteria that procedures within an APC group be clinically similar and comparable in terms of resources, with the highest cost item or service within a group being no more than 2 times greater than the lowest cost item or service within the same group.

e. Inpatient Codes Moved to the Outpatient Setting

In response to numerous requests, we reviewed the composition of the inpatient list. While we continue to believe that we have the majority of the codes assigned properly, for the reasons discussed in section III.B.2. we are persuaded to move a number of codes to the outpatient setting. We are able to place most codes into closely related APCs.

f. "Two-times" Rule

The BBRA 1999 required us to ensure that no APC contains codes such that the highest median cost in the APC exceed twice the lowest median cost. We undertook an analysis of APCs in relation to this requirement as part of the 2001 update. (Note that the law provides for exceptions based on low volume and other reasons. We consider a code that captures fewer than 2 percent of the services within an APC to be low volume, and we disregard codes for unlisted services or procedures, since we do not know what service or procedure was billed.) For example, moving a radical mastectomy code from the inpatient list to a breast procedure APC caused the group to fail the two-times test. In another instance, as described above, we packaged costs associated with implantable devices into the relevant procedure codes. This change would also cause device-related APCs to fail the two-times test. For these situations and others that failed the two-times test, we are reconfiguring the APCs appropriately.

g. Inpatient Codes Moved to Outpatient and Affected by Device

Seven codes related to vascular and neurological procedures were moved from the inpatient list into APCs, that were then split according to device use, in response to comments.

h. Newly Covered Codes

The updated APCs reflect recent HCFA decisions to provide Medicare coverage for an electrical bioimpedance procedure and three magnetic resonance angiography services. The codes for these newly covered services are M0302 and 71555, 73725, and 74185, respectively.

i. Pass-Through Requests for Drugs

Since publication of the April 7, 2000 final rule with comment period, we have received additional requests for pass-through status for a number of drugs. The codes for the additional eligible pass-through drugs are shown in Addendum B.

The following table contains a listing of the changes in the APC groups discussed above.

SUMMARY OF CHANGES TO APCs

New Codes	Changes to APC Placement of Existing Codes						
	Revisions or corrections of errors	Device-related codes	Inpatient moved to outpatient	"Two-times" rule	Inpatient codes moved to out-patient and affected by device	Newly covered codes	Pass-through requests for drugs
936 codes added, 645 of which are "C".	111 codes changed.	87 codes changed.	56 codes changed (12 as of 8/1/2000).	25 codes changed.	7 codes changed.	4 codes changed.	4 codes changed

SUMMARY OF CHANGES TO APCs—Continued

New Codes	Changes to APC Placement of Existing Codes						
	Revisions or corrections of errors	Device-related codes	Inpatient moved to outpatient	"Two-times" rule	Inpatient codes moved to outpatient and affected by device	Newly covered codes	Pass-through requests for drugs
Denoted by asterisk in Addendum B.	APCs—0004, 0087, 0099, 0100, 0102, 0123, 0282, 0340, 0342, 0346, 0347, 0348, 0349, 0354, 0356, 0602, 0761, 0970, 0971, 0974, 0976, 1044, 1401, 1402, 1403, 1404, 1405, 1406, 1407, and 1409.	APCs—0082, 0083, 0089, 0091, 0093, 0103, 0104, 0105, 0106, 0107, 0108, 0109, 0115, 0119, 0124, 0185, 0224, 0225, 0226, 0227, 0228, 0229, 0256, and 1002.	APCs—0005, 0020, 0021, 0029, 0046, 0050, 0081, 0114, 0115, 0120, 0121, 0162, 0165, 0194, 0195, 0198 , 0216, 0254, 0256, 0263, 0264, 0279, 0280, 0970, 0974, and 0981..	APCs—0028 and 0029.	HCPCS—37620, 35011, 36834, 61880, 61888, 33284, 63741.	HCPCS—71555, 73725, 74185, M0302.	HCPCS—J1650, J2770, J1810, J7315

Addenda A and B reflect changes to the APC groups, effective January 1, 2001. Addendum C, entitled "Hospital Outpatient Department (HOPD) Payment for Procedures by APC, Calendar Year 2001," is not published in this interim final rule with comment period, but will be posted on our website at http://www.hcfa.gov/medlearn/refopps.htm. Addendum C will display data similar to those contained in Addenda A and B, but sorted by APCs with each procedure code listed that is assigned to the APC.

2. Inpatient Procedures List Update

In the preamble to the April 7, 2000 final rule with comment period, we indicated that, as part of our annual update process, we would update the procedures on the inpatient list. The first annual revision of this list is effective on January 1, 2001. We are removing 44 procedures from the list and placing them in APCs. (Several procedures that were inadvertently left on the inpatient list in the April 7, 2000 final rule with comment period were removed from the list and placed in APCs in August 2000.) The revised list is included in Addendum E.

We have attempted to limit the inpatient only list to those procedures that, in current medical practice as understood by our clinical staff, require inpatient care, such as those that are highly invasive, result in major blood loss or temporary deficits of organ systems (such as neurological impairment or respiratory insufficiency), or otherwise require intensive or extensive postoperative care. Insofar as advances in medical practice mitigate concerns about these procedures being performed on an outpatient basis, we will be prepared to remove them from the inpatient list and provide for payment under the hospital outpatient prospective payment system. Since the April 7, 2000 final rule with comment period was published, we have received requests to move a number of procedures from the inpatient list because, based on medical evidence, the procedures can be performed safely in a hospital outpatient setting. These included breast and other cancer procedures, repairs of facial trauma, many orthopedic procedures, several vascular procedures, and some genito-urinary procedures.

Among the procedures we are removing from the inpatient list and placing in APCs as a result of these requests are excision of chest wall tumors, several orthopedic repairs, vascular procedures, and ureteral endoscopies. We are moving overnight pulse oximetry from the inpatient list to packaged status. We also are moving several comparable procedures, for example, related ureteral endoscopies.

At this time, we are not removing from the inpatient list various spinal procedures, including osteotomies and laminectomies. We also are not removing several open abdominal and retroperitoneal procedures from the inpatient list because many of these procedures involve prolonged invasion of the thoracic cavity, the peritoneum, or the retroperitoneal space. Patients undergoing these procedures typically require prolonged postoperative monitoring. Moreover, the information provided to us by requesters did not provide convincing evidence that these procedures are currently being performed or can be safely performed in an outpatient setting. However, we are aware that, with advances in technology and surgical techniques, many of these procedures may eventually be performed safely in a hospital outpatient setting. We will continue to review all the procedures on the inpatient list and will consider additional requests to move specific procedures to the outpatient setting. We ask that these requests contain detailed rationale along with medical evidence that the procedure may be performed safely in an outpatient setting.

We note that, in some instances, requests for removing a particular procedure from the inpatient list may have resulted from a misunderstanding about appropriate coding. Less invasive versions of the procedure on the inpatient list may be in an APC. The presence of certain thoracoscopies on the inpatient list, for example, does not mean that no thoracoscopy will be paid under the outpatient prospective payment system.

We also were asked to move several procedures from APCs to the inpatient list. Because of the rapid advance in technology and surgical techniques mentioned above, we believe that if procedures have been assigned APCs, we should not reverse that status unless it becomes obvious that we have made an error. Thus, we are moving to the inpatient setting only one of the codes for which we received a request (open treatment of a knee dislocation, which requires more than outpatient

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postoperative monitoring), and two other codes (for nephrectomy with total ureterectomy and for escharotomy) that had been assigned APCs in error.

Beginning in April 2001, we will, if warranted, revise the inpatient list at least quarterly to better reflect changes in medical practice that permit procedures that were previously performed only in an inpatient setting to be safely and effectively performed in an outpatient setting. In the April 7, 2000 final rule with comment period, we discussed our intent to revise the list as part of the annual update of APCs and asked that interested parties advise us of procedures that can be performed in an outpatient setting. Since we will be making quarterly updates to the outpatient prospective payment system for other purposes, we will also change the inpatient list quarterly, if warranted. Generally, because of systems limitations, 3 months or more are required after a decision is made before we can implement a change.

The inpatient list was not a result of a provision of the BBRA 1999; it was included in the September 1998 proposed rule and we responded to comments and made the provision final in the April 7, 2000 final rule with comment. Accordingly, we did not request comments on our policy on the establishment of the inpatient list at that time. Nonetheless, we received a number of comments concerning the existence of this list, the provisions for updating it, and its implications for other Medicare payment systems. We will consider these comments and expect to discuss the matter further in the proposed rule updating the hospital outpatient prospective payment system for 2002, which we will publish in the spring of 2001.

3. Wage Index Adjustment

Under section 1833(t)(2)(D) of the Act, we are required to determine a wage adjustment factor to adjust, in a budget neutral manner, the portion of the payment rate and the coinsurance amount that is attributable to labor-related costs for relative differences in labor and labor-related costs across geographic regions under the hospital outpatient prospective payment system.

In the April 7, 2000 final rule with comment period, we specified, in regulations at § 419.43(c), that each year we use the hospital inpatient prospective payment system wage index established in accordance with 42 CFR Part 412 to make a wage adjustment for relative differences in labor and labor-related costs across geographic areas under the hospital outpatient prospective payment system. We note that, by statute, we implement the annual update of the hospital inpatient prospective payment system on a fiscal year basis. However, we update the hospital outpatient prospective payment system on a calendar year basis. Therefore, the hospital inpatient prospective payment system wage index values established for urban and rural areas and for reclassified hospitals published in the **Federal Register** on August 1, 2000 (65 FR 47149 through 47157) are being applied for wage adjustments under the hospital outpatient prospective payment system, effective January 1, 2001. The fiscal year 2001 hospital inpatient wage index reflects the effects of hospitals redesignated under section 1886(d)(8)(B) of the Act and hospital reclassifications under section 1886(d)(10) of the Act. After publication of the hospital inpatient wage index values for fiscal year 2001 on August 1, 2000, we discovered several errors in the values for several geographic areas. The correct wage index values for all areas are republished in Addenda F, G, and H of this interim final rule with comment period.

In this interim final rule with comment period, we are establishing the methodology that we will use in making adjustments for area wage differences for services furnished in the Virgin Islands. We note that a hospital inpatient prospective payment system wage index value is not calculated for the Virgin Islands because there are no hospitals located in that area that are paid under the inpatient hospital prospective payment system. Because the wage index that we adopted in our April 7, 2000 final rule with comment period does not include a value for adjusting wage differences for the Virgin Islands, we will use the wage index for the Virgin Islands as calculated for the skilled nursing facilities prospective payment system to make this adjustment. The skilled nursing facilities prospective payment system uses the inpatient hospital wage index data to adjust its prospective payment rates for the same fiscal year (that is effective October 1, 2000) as covered by the hospital inpatient prospective payment system wage index values. As stated in the July 31, 2000 skilled nursing facilities prospective payment system final rule (65 FR 46770), "The computation of the wage index * * * incorporate[s] the latest data and methodology used to construct the hospital wage index. For these reasons, the wage index adjustment that we will apply to the Virgin Islands for services furnished on or after January 1, 2001 is 0.6306.

Although the wage index for skilled nursing facilities is based on a fiscal year beginning October 1, we will apply the wage index factor for the Virgin Islands that goes into effect on October 1 of each year to the hospital outpatient prospective payment system services furnished during the following calendar year. This is consistent with how we apply the hospital inpatient prospective payment system wage index values to the hospital outpatient prospective payment system services.

Consistent with the methodology applicable for services furnished in 2000 (on or after August 1, 2000), in making adjustments for area wage differences for services furnished in 2001, we will recognize 60 percent of the hospital's costs as labor-related costs that are standardized for geographic wage differences.

4. Conversion Factor Update

Section 1833(t)(3)(C)(ii) of the Act requires us to update annually the conversion factor used to determine APC payment rates. Section 1833(t)(3)(C)(iii) of the Act provides that the update be equal to the hospital inpatient market basket percentage increase applicable to hospital discharges under section 1886(b)(3)(B)(iii) of the Act, reduced by one percentage point for the years 2000, 2001, and 2002. Thus, the update to the outpatient hospital prospective payment system conversion factor for 2001 is 2.4 percent (3.4 percent minus 1 percent).

In accordance with section 1833(t)(9)(B) of the Act, the conversion factor for 2001 also has been adjusted to ensure that the revisions we made to update the wage index are made on a budget-neutral basis. A budget neutrality factor of .9989 was calculated for wage index changes by comparing total payments from our simulation model using the wage index values that will be effective January 1, 2001.

The market basket increase of 2.4 percent for 2001 and the required budget neutrality adjustment calculated to be .9989 result in a conversion factor for 2001 of $49.596.

IV. Waiver of Notice of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comments on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule. For the reasons set forth below, we find that the circumstances surrounding this interim final rule with comment period make it either unnecessary or impracticable to pursue a notice-and-comment procedure before the provisions of this interim final rule with comment period take effect.

As discussed earlier in this interim final rule with comment period, we implemented the hospital outpatient prospective payment system on August 1, 2000 in accordance with the methodology that we set forth in the April 7, 2000 final rule with comment period (65 FR 18434). In section III.I. of the April 7, 2000 final rule with comment period (65 FR 18501), we discuss how we will update the outpatient prospective payment system on an annual basis. We are required under section 1833(t)(3)(C)(ii) of the Act to update annually the conversion factor used to determine the APC payment rates. Under the regulations, 42 CFR 419.43, the wage adjustment under outpatient prospective payment system is based on the hospital inpatient wage index, and we updated the hospital inpatient wage index after the publication of the April 7, 2000 final rule with comment period. Accordingly, in this interim final rule with comment period, we are updating the conversion factor and the wage index adjustment for covered hospital outpatient services furnished beginning January 1, 2001, using the methodology published in the April 7, 2000 final rule with comment period, for which we had previously received comments. We also are updating the existing APC groups to reflect new and deleted CPT codes for 2001 and reconfiguring certain APC groups using more recent data to ensure clinical integrity and consideration of resource use as required by section 1833(t)(8)(A) of the Act and as described in the April 7, 2000 final rule with comment period (65 FR 18456 and 18501). Because these various adjustments are being made in accordance with existing methodology as set forth in the April 7, 2000 final rule with comment period, we believe it is unnecessary to address them further through the notice-and-comment procedure.

In addition, we find good cause to waive prior notice-and-comment procedures with respect to the Virgin Islands wage index methodology because it would have been impracticable to undertake and complete notice-and-comment procedures on this issue in time for the Virgin Islands outpatient prospective payment system wage index value to be effective at the same time as the updated outpatient prospective payment system wage index values for all other areas.

Accordingly, we find good cause to waive the notice-and-comment procedure with respect to the annual update of the wage index values, conversion factor, and the APC groups. However, we are providing for a 60-day comment period as specified in the "Dates" section of this preamble.

II. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact

A. General

We have examined the impacts of this interim final with comment period rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1965, and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This final rule does not mandate any requirements for State, local, or tribal governments.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. For purposes of the RFA, we consider all hospitals to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the hospital outpatient prospective payment system, we classify these hospitals as urban hospitals.

B. Analysis for Changes in this Interim Final Rule with Comment Period

We implemented the outpatient prospective payment system on August 1, 2000 in accordance with the methodology published in the April 7, 2000 final rule with comment period. In section III.I. of the April 7, 2000 final rule with comment period (65 FR 18501), we discuss how we will update the outpatient prospective payment system on an annual basis. We are required under section 1833(t)(3)(C)(ii) of the Act to update annually the conversion factor used to determine the APC payment rates. We are required under section 1833(t)(8)(A) of the Act to revise not less often than annually the wage and other adjustments. Accordingly, in this interim final rule with comment period, we are updating the conversion factor and the wage index adjustment for covered hospital outpatient services furnished beginning January 1, 2001, using the methodology published in the April 7, 2000 final rule with comment period, for which we had previously received comments.

In section IX.B. of the preamble of the April 7, 2000 final rule with comment period, we gave our Office of the Actuary's projection of the additional benefit expenditures from the Medicare Part B Trust Fund resulting from implementation of the hospital outpatient prospective payment system and the hospital outpatient provisions enacted by the BBRA 1999. The impact of implementing the hospital outpatient prospective payment system on the Medicare program is reflected in the table below, which is republished from the April 7, 2000 final rule with comment period (65 FR 18530). The calendar year 2001 increase in total payments to hospitals, which results primarily from the updated conversion factor, is already included as part of HCFA's current law baseline expenditures for hospital outpatient services under the outpatient prospective payment system.

Fiscal year	Impact (in millions)
2001	$3,030
2002	3,520
2003	4,230
2004	4,670

We also are updating the existing APC groups to reflect new and deleted CPT codes for 2001 and adjusting the groups to reflect more recent data as we described in the April 7, 2000 final rule with comment period. The provisions of this interim final rule with comment period do not measurably alter the effect of the outpatient prospective payment system on the groups of hospitals or geographic areas as projected in Table 2 of the April 7, 2000 final rule with comment period (65 FR 18533–18534).

C. Federalism

We have examined this interim rule with comment period in accordance with Executive Order 13132, Federalism, and have determined that it will not have any negative impact on the rights, roles, and responsibilities of State, local or Tribal governments.

D. Executive Order 12866 and 5 U.S.C. 804(2)

The statutory effects of the provisions that are being implemented by this interim final rule with comment period result in expenditures exceeding $100 million per year. Therefore, this interim final rule with comment period is an economically significant rule under Executive Order 12866, and a major rule under 5 U.S.C. 804(2).

In accordance with the provisions of Executive Order 12866, this interim final rule with comment period was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 419

Health facilities, Hospitals, Medicare.

For the reasons set forth in the preamble, 42 CFR Part 419 is amended as set forth below:

PART 419—PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

1. The authority citation for Part 419 continues to read as follows:

Authority: Secs. 1102, 1833(t), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395l(t), and 1395hh).

2. Section 419.41 is amended by revising paragraph (c)(4)(i) to read as follows:

§419.41 Calculation of national beneficiary coinsurance amounts and national Medicare program payment amounts.

* * * * *

(c) * * *

(4) * * *

(i) The coinsurance amount for an APC cannot exceed the amount of the inpatient hospital deductible, established in accordance with §409.82 of this chapter, for that year. For purposes of this paragraph (c)—

(A) Effective for drugs and biologicals furnished on or after January 1, 2001, the coinsurance amount for multiple APCs for a single drug or biological furnished on the same day will be aggregated and treated as the coinsurance amount for one APC.

(B) Effective for drugs and biologicals furnished on or after July 1, 2001, the coinsurance amount for the APC or APCs for a drug or biological furnished on the same day will be aggregated with the coinsurance amount for the APC that reflects the administration of the drug or biological furnished on that day and treated as the coinsurance amount for one APC.

* * * * *

3. Section 419.70 is amended by revising paragraph (f)(2)(ii) to read as follows:

§419.70 Transitional adjustment to limit decline in payment.

* * * * *

(f) * * *

(2) * * *

(ii) The reasonable cost of these services for this period.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare'Supplementary Medical Insurance Program)

Dated: November 1, 2000.

Michael M. Hash,

Acting Administrator, Health Care Financing Administration.

Approved: November 1, 2000.

Donna E. Shalala,

Secretary.

Note to the Addenda: The following Addenda A through H will not appear in the Code of Federal Regulations.

Addenda A through H provide various data pertaining to the Medicare hospital outpatient prospective payment system. Addendum A contains the APCs with title, status indicators, relative weight, payment rate, national unadjusted coinsurance, and minimum unadjusted coinsurance. Addendum B differs from Addendum A in that the APC titles are not listed and both HCPCS codes and descriptions appear. Addendum C, entitled "Hospital Outpatient Department (HOPD) Payment for Procedures by APC, Calendar Year 2001," is not published in this interim final rule with comment period, but will be posted on our website at (http://www.hcfa.gov /medlearn/refopps.htm). Addendum C will display data similar to those contained in Addenda A and B, but sorted by APCs with each procedure code listed that is assigned to the APC. Addendum D lists the status indicators for how various services are treated under the hospital outpatient prospective payment system. Addendum E lists the procedures that we pay for only in an inpatient setting. Addendum F lists the wage index for urban areas, Addendum G lists the wage index for rural areas, and Addendum H lists the wage index for hospitals that are reclassified.

Addendum A.—List of Hospital Outpatient Ambulatory Payment Classification Groups with Status Indicators, Relative Weights, Payment Rates, and Coinsurance Amounts

The payment rate (once wage adjusted) is the total payment to the hospital. The coinsurance amount is part of the total payment rate.

Those APCs with status indicators "G" or "J" denote the inclusion of drugs that are eligible for pass-through payments. The relative weight column for these drug APCs is empty since payment for pass-through drugs/biologicals is calculated using the average wholesale price for the drug/biological rather than the relative weight. Note also that the only coinsurance column that has been filled is the minimum unadjusted coinsurance column. The coinsurance is applied to the nonpass-through portion of the payment rate for the drug/biological.

Those APCs with status indicator "H" denote the inclusion of devices that are eligible for pass-through payments. The relative weight, payment rate, and coinsurance columns are not filled for these APCs. The relative weight and payment rate columns are empty because payment for pass-through devices is determined based on the hospital's submitted charges adjusted to cost using the hospital's cost-to-charge ratio. This calculation is done in the PRICER. The coinsurance columns for these APCs are not filled since the coinsurance is applied to the APC that contains the procedure with which the pass-through device is used rather than to the device APC.

Addendum B.—Hospital Outpatient Department (HOPD) Payment Status by HCPCS Code and Related Information

The codes listed in this addendum include the 2001 CPT codes as published in CPT 2001 by the American Medical Association. Also listed are the codes that have been deleted for 2001. These codes are denoted in the CPT column with the subscript letter "D". These codes are billable through March 31, 2001 for services occurring before January 1, 2001. Deleted codes billed after March 31, 2001 will be rejected. CPT codes appearing for the first time in 2001 are denoted in the CPT column with bolded print. These codes are new for 2001 and are billable effective January 1, 2001.

All CPT codes that are paid only as inpatient procedures are denoted by the status indicator "C". A number of procedures that appeared on the inpatient list in the April 7, 2000 final rule with comment period are now payable under the hospital outpatient prospective payment system. The status indicators for these codes have been updated to reflect their current payment status.

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSIFICATIONS WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS, CALENDAR YEAR 2001

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
0001	Photochemotherapy	S	0.47	$23.31	$8.49	$4.66
0002	Fine needle Biopsy/Aspiration	T	0.62	$30.75	$17.66	$6.15
0003	Bone Marrow Biopsy/Aspiration	T	0.98	$48.61	$27.99	$9.72
0004	Level I Needle Biopsy/ Aspiration Except Bone Marrow	T	1.84	$91.26	$32.57	$18.25
0005	Level II Needle Biopsy /Aspiration Except Bone Marrow	T	5.41	$268.32	$119.75	$53.66
0006	Level I Incision & Drainage	T	2.00	$99.19	$33.95	$19.84
0007	Level II Incision & Drainage	T	3.68	$182.51	$72.03	$36.50
0008	Level III Incision & Drainage	T	6.15	$305.02	$113.67	$61.00
0009	Nail Procedures	T	0.74	$36.70	$9.63	$7.34
0010	Level I Destruction of Lesion	T	0.55	$27.28	$9.86	$5.46
0011	Level II Destruction of Lesion	T	2.72	$134.90	$50.01	$26.98
0012	Level I Debridement & Destruction	T	0.53	$26.29	$9.18	$5.26
0013	Level II Debridement & Destruction	T	0.91	$45.13	$17.66	$9.03
0014	Level III Debridement & Destruction	T	1.50	$74.39	$24.55	$14.88
0015	Level IV Debridement & Destruction	T	1.77	$87.78	$31.20	$17.56
0016	Level V Debridement & Destruction	T	3.53	$175.07	$74.67	$35.01
0017	Level VI Debridement & Destruction	T	12.45	$617.47	$289.16	$123.49
0018	Biopsy Skin, Subcutaneous Tissue or Mucous Membrane	T	0.94	$46.62	$17.66	$9.32
0019	Level I Excision/ Biopsy	T	4.00	$198.39	$76.91	$39.68
0020	Level II Excision/ Biopsy	T	6.51	$322.87	$130.53	$64.57
0021	Level III Excision/ Biopsy	T	10.49	$520.26	$236.51	$104.05
0022	Level IV Excision/ Biopsy	T	12.49	$619.45	$292.94	$123.89
0023	Exploration Penetrating Wound	T	1.98	$98.20	$40.37	$19.64
0024	Level I Skin Repair	T	2.43	$120.51	$44.50	$24.10
0025	Level II Skin Repair	T	3.74	$185.49	$70.66	$37.10
0026	Level III Skin Repair	T	12.11	$600.61	$277.92	$120.12
0027	Level IV Skin Repair	T	15.80	$783.62	$383.10	$156.72
0028	Level I Incision/Excision Breast	T	12.37	$613.52	$303.74	$122.70
0029	Level II Incision/Excision Breast	T	31.39	$1,557.05	$820.79	$311.41
0030	Breast Reconstruction	T	31.11	$1,543.16	$763.55	$308.63
0032	Placement Transvenous Catheters/Arterial Cutdown	T	5.40	$267.82	$119.52	$53.56
0033	Partial Hospitalization	P	4.17	$206.82	$48.17	$41.36
0040	Arthrocentesis & Ligament/Tendon Injection	T	2.11	$104.65	$40.60	$20.93
0041	Arthroscopy	T	24.57	$1,218.56	$592.06	$243.72
0042	Arthroscopically-Aided Procedures	T	29.22	$1,449.19	$804.74	$289.84
0043	Closed Treatment Fracture Finger/Toe/Trunk	T	1.64	$81.34	$25.46	$16.27
0044	Closed Treatment Fracture/Dislocation Except Finger/Toe/Trunk	T	2.17	$107.63	$38.06	$21.53
0045	Bone/Joint Manipulation Under Anesthesia	T	11.02	$546.55	$277.12	$109.31
0046	Open/Percutaneous Treatment Fracture or Dislocation	T	22.29	$1,105.50	$535.76	$221.10
0047	Arthroplasty without Prosthesis	T	22.09	$1,095.58	$537.08	$219.12
0048	Arthroplasty with Prosthesis	T	29.06	$1,441.26	$725.94	$288.25
0049	Level I Musculoskeletal Procedures Except Hand and Foot	T	15.04	$745.93	$356.95	$149.19
0050	Level II Musculoskeletal Procedures Except Hand and Foot	T	21.13	$1,047.96	$513.86	$209.59
0051	Level III Musculoskeletal Procedures Except Hand and Foot	T	27.76	$1,376.79	$675.24	$275.36
0052	Level IV Musculoskeletal Procedures Except Hand and Foot	T	36.16	$1,793.39	$930.91	$358.68
0053	Level I Hand Musculoskeletal Procedures	T	11.32	$561.42	$253.49	$112.28
0054	Level II Hand Musculoskeletal Procedures	T	19.66	$975.06	$472.33	$195.01
0055	Level I Foot Musculoskeletal Procedures	T	15.47	$767.26	$355.34	$153.45
0056	Level II Foot Musculoskeletal Procedures	T	17.30	$858.02	$405.81	$171.60
0057	Bunion Procedures	T	21.00	$1,041.52	$496.65	$208.30
0058	Level I Strapping and Cast Application	S	1.09	$54.06	$19.27	$10.81
0059	Level II Strapping and Cast Application	S	1.74	$86.30	$29.59	$17.26
0060	Manipulation Therapy	S	0.77	$38.19	$7.80	$7.64
0070	Thoracentesis/Lavage Procedures	T	3.64	$180.53	$79.60	$36.11
0071	Level I Endoscopy Upper Airway	T	0.55	$27.28	$14.22	$5.46
0072	Level II Endoscopy Upper Airway	T	1.26	$62.49	$41.52	$12.50
0073	Level III Endoscopy Upper Airway	T	4.11	$203.84	$91.07	$40.77
0074	Level IV Endoscopy Upper Airway	T	13.61	$675.00	$347.54	$135.00
0075	Level V Endoscopy Upper Airway	T	18.55	$920.01	$467.29	$184.00
0076	Endoscopy Lower Airway	T	8.06	$399.75	$197.05	$79.95
0077	Level I Pulmonary Treatment	S	0.43	$21.33	$12.62	$4.27
0078	Level II Pulmonary Treatment	S	1.34	$66.46	$29.13	$13.29
0079	Ventilation Initiation and Management	S	3.18	$157.72	$107.70	$31.54
0080	Diagnostic Cardiac Catheterization	T	31.55	$1,564.75	$838.92	$312.95
0081	Non-Coronary Angioplasty or Atherectomy	T	28.81	$1,428.86	$710.91	$285.77
0082	Coronary Atherectomy	T	51.01	$2,529.89	$1,351.74	$505.98
0083	Coronary Angioplasty	T	29.70	$1,473.00	$794.30	$294.60
0084	Level I Electrophysiologic Evaluation	S	10.70	$530.68	$177.79	$106.14
0085	Level II Electrophysiologic Evaluation	S	27.06	$1,342.07	$654.48	$268.41
0086	Ablate Heart Dysrhythm Focus	S	47.62	$2,361.76	$1,265.37	$472.35
0087	Cardiac Electrophysiologic Recording/Mapping	S	9.53	$472.65	$214.72	$94.53
0088	Thrombectomy	T	26.49	$1,313.80	$678.68	$262.76

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSIFICATIONS WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS, CALENDAR YEAR 2001—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
0089	Insertion/Replacement of Permanent Pacemaker and Electrodes	T	78.45	$3,890.81	$2,275.19	$778.16
0090	Insertion/Replacement of Pacemaker Pulse Generator	T	78.26	$3,882.37	$2,133.86	$776.47
0091	Level I Vascular Ligation	T	14.79	$733.52	$348.23	$146.70
0092	Level II Vascular Ligation	T	20.21	$1,002.34	$505.37	$200.47
0093	Vascular Repair/Fistula Construction	T	12.82	$635.82	$277.34	$127.16
0094	Resuscitation and Cardioversion	S	4.51	$223.68	$105.29	$44.74
0095	Cardiac Rehabilitation	S	0.64	$31.74	$16.96	$6.35
0096	Non-Invasive Vascular Studies	S	2.06	$102.16	$61.48	$20.43
0097	Cardiac Monitoring for 30 days	X	1.62	$80.35	$62.40	$16.07
0098	Injection of Sclerosing Solution	T	1.19	$59.02	$20.66	$11.80
0099	Electrocardiograms	S	0.38	$18.85	$14.66	$3.77
0100	Stress Tests and Continuous ECG	X	1.70	$84.32	$71.57	$16.86
0101	Tilt Table Evaluation	S	4.47	$221.70	$128.64	$44.34
0102	Electronic Analysis of Pacemakers/other Devices	S	0.45	$22.32	$12.62	$4.46
0103	Miscellaneous Vascular Procedures	T	13.09	$649.21	$295.70	$129.84
0104	Transcatheter Placement of Intracoronary Stents	T	14.94	$740.96	$339.51	$148.19
0105	Revision/Removal of Pacemakers, AICD, or Vascular Device	T	15.06	$746.92	$372.32	$149.38
0106	Insertion/Replacement/Repair of Pacemaker Electrodes	T	18.96	$940.34	$503.07	$188.07
0107	Insertion of Cardioverter-Defibrillator	T	147.51	$7,315.91	$5,066.37	$1,463.18
0108	Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads	T	210.84	$10,456.84	$5,484.72	$2,091.37
0109	Removal of Implanted Devices	T	6.53	$323.86	$139.51	$64.77
0110	Transfusion	S	5.83	$289.15	$122.73	$57.83
0111	Blood Product Exchange	S	14.17	$702.77	$300.74	$140.55
0112	Extracorporeal Photopheresis	S	39.60	$1,964.01	$863.65	$392.80
0113	Excision Lymphatic System	T	13.89	$688.89	$326.55	$137.78
0114	Thyroid/Lymphadenectomy Procedures	T	19.56	$970.10	$493.78	$194.02
0115	Cannula/Access Device Procedures	T	19.34	$959.19	$506.74	$191.84
0116	Chemotherapy Administration by Other Technique Except Infusion	S	2.34	$116.06	$23.21	$23.21
0117	Chemotherapy Administration by Infusion Only	S	1.84	$91.26	$71.80	$18.25
0118	Chemotherapy Administration by Both Infusion and Other Technique	S	2.90	$143.83	$72.08	$28.77
0119	Implantation of Devices	T	9.87	$489.59	$161.50	$97.92
0120	Infusion Therapy Except Chemotherapy	T	1.66	$82.33	$42.67	$16.47
0121	Level I Tube changes and Repositioning	T	2.36	$117.05	$52.53	$23.41
0122	Level II Tube changes and Repositioning	T	5.04	$249.96	$114.93	$49.99
0123	Bone Marrow Harvesting and Bone Marrow/Stem Cell Transplant	S	4.13	$204.83	$40.97	$40.97
0124	Revision of Implanted Infusion Pump	T	2.55	$126.64	$61.36	$25.33
0130	Level I Laparoscopy	T	25.36	$1,257.75	$659.53	$251.55
0131	Level II Laparoscopy	T	41.81	$2,073.61	$1,069.88	$414.72
0132	Level III Laparoscopy	T	48.91	$2,425.74	$1,239.22	$485.15
0140	Esophageal Dilation without Endoscopy	T	4.74	$235.09	$107.24	$47.02
0141	Upper GI Procedures	T	7.15	$354.61	$184.67	$70.92
0142	Small Intestine Endoscopy	T	7.45	$369.49	$162.42	$73.90
0143	Lower GI Endoscopy	T	7.98	$395.78	$199.12	$79.16
0144	Diagnostic Anoscopy	T	2.23	$110.60	$49.32	$22.12
0145	Therapeutic Anoscopy	T	7.46	$369.98	$179.39	$74.00
0146	Level I Sigmoidoscopy	T	2.83	$140.36	$65.15	$28.07
0147	Level II Sigmoidoscopy	T	6.26	$310.47	$149.11	$62.09
0148	Level I Anal/Rectal Procedure	T	2.34	$116.06	$43.59	$23.21
0149	Level II Anal/Rectal Procedure	T	12.86	$637.80	$293.06	$127.56
0150	Level III Anal/Rectal Procedure	T	17.68	$876.88	$437.12	$175.37
0151	Endoscopic Retrograde Cholangio-Pancreatography (ERCP)	T	10.53	$522.25	$245.46	$104.45
0152	Percutaneous Biliary Endoscopic Procedures	T	8.22	$407.68	$207.38	$81.54
0153	Peritoneal and Abdominal Procedures	T	19.62	$973.08	$496.31	$194.62
0154	Hernia/Hydrocele Procedures	T	22.43	$1,112.45	$556.98	$222.49
0157	Colorectal Cancer Screening: Barium Enema	S	1.79	$88.78	....	$22.19
0158	Colorectal Cancer Screening: Colonoscopy	S	7.98	$395.78	....	$98.94
0159	Colorectal Cancer Screening: Flexible Sigmoidoscopy	S	2.83	$140.36	....	$35.09
0160	Level I Cystourethroscopy and other Genitourinary Procedures	T	5.43	$269.30	$110.11	$53.86
0161	Level II Cystourethroscopy and other Genitourinary Procedures	T	10.94	$542.58	$249.36	$108.52
0162	Level III Cystourethroscopy and other Genitourinary Procedures	T	17.49	$867.44	$427.49	$173.49
0163	Level IV Cystourethroscopy and other Genitourinary Procedures	T	28.98	$1,437.30	$792.58	$287.46
0164	Level I Urinary and Anal Procedures	T	2.17	$107.64	$33.03	$21.53
0165	Level II Urinary and Anal Procedures	T	3.89	$192.92	$91.76	$38.58
0166	Level I Urethral Procedures	T	10.17	$504.39	$218.73	$100.88
0167	Level II Urethral Procedures	T	21.06	$1,044.50	$555.84	$208.90
0168	Level III Urethral Procedures	T	24.94	$1,236.93	$536.11	$247.39
0169	Lithotripsy	T	46.72	$2,317.13	$1,384.20	$463.43
0170	Dialysis for Other Than ESRD Patients	S	6.68	$331.30	$72.26	$66.26
0180	Circumcision	T	13.62	$675.49	$304.87	$135.10
0181	Penile Procedures	T	32.37	$1,605.43	$906.36	$321.09
0182	Insertion of Penile Prosthesis	T	52.11	$2,584.45	$1,525.05	$516.89
0183	Testes/Epididymis Procedures	T	18.26	$905.62	$448.94	$181.12
0184	Prostate Biopsy	T	4.94	$245.01	$122.96	$49.00
0185	Removal or Repair of Penile Prosthesis	T	32.37	$1,605.43	$906.36	$321.09
0190	Surgical Hysteroscopy	T	17.85	$885.29	$443.89	$177.06
0191	Level I Female Reproductive Procedures	T	1.19	$59.02	$17.43	$11.80
0192	Level II Female Reproductive Procedures	T	2.38	$118.04	$35.33	$23.61
0193	Level III Female Reproductive Procedures	T	8.93	$442.89	$171.13	$88.58

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSIFICATIONS WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS, CALENDAR YEAR 2001—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
0194	Level IV Female Reproductive Procedures	T	16.21	$803.96	$395.94	$160.79
0195	Level V Female Reproductive Procedures	T	18.68	$926.46	$483.80	$185.29
0196	Dilatation & Curettage	T	14.47	$717.66	$357.98	$143.53
0197	Infertility Procedures	T	2.40	$119.03	$49.55	$23.81
0198	Pregnancy and Neonatal Care Procedures	T	1.34	$66.46	$33.03	$13.29
0199	Vaginal Delivery	T	11.20	$555.48	$157.83	$111.10
0200	Therapeutic Abortion	T	13.89	$688.89	$373.23	$137.78
0201	Spontaneous Abortion	T	13.00	$644.75	$329.65	$128.95
0210	Spinal Tap	T	3.00	$148.79	$62.40	$29.76
0211	Level I Nervous System Injections	T	3.32	$164.66	$74.78	$32.93
0212	Level II Nervous System Injections	T	3.64	$180.53	$88.76	$36.11
0213	Extended EEG Studies and Sleep Studies	S	11.15	$553.00	$290.42	$110.60
0214	Electroencephalogram	S	2.32	$115.06	$58.50	$23.01
0215	Level I Nerve and Muscle Tests	S	1.15	$57.04	$30.05	$11.41
0216	Level II Nerve and Muscle Tests	S	2.87	$142.34	$84.59	$28.47
0217	Level III Nerve and Muscle Tests	S	5.87	$291.13	$156.68	$58.23
0220	Level I Nerve Procedures	T	13.96	$692.36	$326.21	$138.47
0221	Level II Nerve Procedures	T	18.36	$910.58	$463.62	$182.12
0222	Implantation of Neurological Device	T	124.43	$6,171.23	$2,955.13	$1,234.25
0223	Implantation of Pain Management Device	T	7.06	$349.65	$154.27	$69.93
0224	Implantation of Reservoir/Pump/Shunt	T	17.89	$887.27	$453.41	$177.45
0225	Implantation of Neurostimulator Electrodes	T	17.72	$878.84	$408.33	$175.77
0226	Implantation of Drug Infusion Reservoir	T	5.62	$278.73	$109.42	$55.75
0227	Implantation of Drug Infusion Device	T	11.17	$553.99	$330.11	$110.80
0228	Creation of Lumbar Subarachnoid Shunt	T	25.06	$1,242.88	$696.46	$248.58
0229	Transcatherter Placement of Intravascular Shunts	T	34.81	$1,726.44	$1,030.12	$345.29
0230	Level I Eye Tests	S	0.98	$48.61	$22.48	$9.72
0231	Level II Eye Tests	S	2.64	$130.94	$59.87	$26.19
0232	Level I Anterior Segment Eye	T	6.04	$299.56	$134.66	$59.91
0233	Level II Anterior Segment Eye	T	13.79	$683.93	$331.80	$136.79
0234	Level III Anterior Segment Eye Procedures	T	20.64	$1,023.66	$502.16	$204.73
0235	Level I Posterior Segment Eye Procedures	T	2.94	$145.81	$78.91	$29.16
0236	Level II Posterior Segment Eye Procedures	T	6.70	$332.29	$147.96	$66.46
0237	Level III Posterior Segment Eye Procedures	T	33.96	$1,684.28	$852.68	$336.86
0238	Level I Repair and Plastic Eye Procedures	T	2.80	$138.87	$58.96	$27.77
0239	Level II Repair and Plastic Eye Procedures	T	6.26	$310.47	$123.42	$62.09
0240	Level III Repair and Plastic Eye Procedures	T	13.47	$668.06	$315.31	$133.61
0241	Level IV Repair and Plastic Eye Procedures	T	16.60	$823.30	$384.47	$164.66
0242	Level V Repair and Plastic Eye Procedures	T	23.70	$1,175.42	$597.36	$235.08
0243	Strabismus/Muscle Procedures	T	17.99	$892.23	$431.39	$178.45
0244	Corneal Transplant	T	32.88	$1,630.72	$851.42	$326.14
0245	Cataract Procedures without IOL Insert	T	26.55	$1,316.77	$623.85	$263.35
0246	Cataract Procedures with IOL Insert	T	26.55	$1,316.77	$623.85	$263.35
0247	Laser Eye Procedures Except Retinal	T	4.89	$242.52	$112.86	$48.50
0248	Laser Retinal Procedures	T	4.19	$207.81	$94.05	$41.56
0250	Nasal Cauterization/Packing	T	2.21	$109.61	$38.54	$21.92
0251	Level I ENT Procedures	T	1.68	$83.32	$27.99	$16.66
0252	Level II ENT Procedures	T	5.18	$256.90	$114.24	$51.38
0253	Level III ENT Procedures	T	12.02	$596.14	$284.00	$119.23
0254	Level IV ENT Procedures	T	12.45	$617.47	$272.41	$123.49
0256	Level V ENT Procedures	T	25.40	$1,259.74	$623.05	$251.95
0258	Tonsil and Adenoid Procedures	T	18.62	$923.48	$462.81	$184.70
0260	Level I Plain Film Except Teeth	X	0.79	$39.18	$22.02	$7.84
0261	Level II Plain Film Except Teeth Including Bone Density Measurement	X	1.38	$68.44	$38.77	$13.69
0262	Plain Film of Teeth	X	0.40	$19.83	$10.90	$3.97
0263	Level I Miscellaneous Radiology Procedures	X	1.68	$83.32	$45.88	$16.66
0264	Level II Miscellaneous Radiology Procedures	X	3.83	$189.96	$106.97	$37.99
0265	Level I Diagnostic Ultrasound Except Vascular	S	1.17	$58.03	$36.06	$11.61
0266	Level II Diagnostic Ultrasound Except Vascular	S	1.79	$88.78	$57.35	$17.76
0267	Vascular Ultrasound	S	2.72	$134.90	$80.06	$26.98
0268	Guidance Under Ultrasound	X	2.23	$110.60	$6[illegible].51	$22.12
0269	Echocardiogram Except Transesophageal	S	4.40	$218.22	$114.01	$43.64
0270	Transesophageal Echocardiogram	S	5.55	$275.25	$150.26	$55.05
0271	Mammography	S	0.70	$34.72	$19.50	$6.94
0272	Level I Fluoroscopy	X	1.40	$69.43	$39.00	$13.89
0273	Level II Fluoroscopy	X	2.49	$123.49	$61.02	$24.70
0274	Myelography	S	4.83	$239.55	$128.12	$47.91
0275	Arthrography	S	2.74	$135.89	$72.26	$27.18
0276	Level I Digestive Radiology	S	1.79	$88.78	$49.78	$17.76
0277	Level II Digestive Radiology	S	2.47	$122.50	$69.28	$24.50
0278	Diagnostic Urography	S	2.85	$141.35	$81.67	$28.27
0279	Level I Angiography and Venography except Extremity	S	6.30	$312.46	$174.57	$62.49
0280	Level II Angiography and Venography except Extremity	S	14.98	$742.95	$380.12	$148.59
0281	Venography of Extremity	S	4.40	$218.22	$115.16	$43.64
0282	Level I Computerized Axial Tomography	S	2.38	$118.04	$94.51	$23.61
0283	Level II Computerized Axial Tomography	S	4.89	$242.52	$179.39	$48.50
0284	Magnetic Resonance Imaging	S	8.02	$397.76	$257.39	$79.55
0285	Positron Emission Tomography (PET)	S	15.06	$746.92	$415.21	$149.38

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSIFICATIONS WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS, CALENDAR YEAR 2001—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
0286	Myocardial Scans	S	7.28	$361.06	$200.04	$72.21
0290	Standard Non-Imaging Nuclear Medicine	S	1.94	$96.21	$55.51	$19.24
0291	Level I Diagnostic Nuclear Medicine Excluding Myocardial Scans	S	3.15	$156.22	$93.14	$31.24
0292	Level II Diagnostic Nuclear Medicine Excluding Myocardial Scans	S	4.36	$216.24	$126.60	$43.25
0294	Level I Therapeutic Nuclear Medicine	S	5.13	$254.43	$144.06	$50.89
0295	Level II Therapeutic Nuclear Medicine	S	19.85	$984.48	$609.17	$196.90
0296	Level I Therapeutic Radiologic Procedures	S	3.57	$177.06	$100.25	$35.41
0297	Level II Therapeutic Radiologic Procedures	S	6.13	$304.03	$172.51	$60.81
0300	Level I Radiation Therapy	S	1.98	$98.20	$47.72	$19.64
0301	Level II Radiation Therapy	S	2.21	$109.61	$52.53	$21.92
0302	Level III Radiation Therapy	S	8.21	$407.18	$216.55	$81.44
0303	Treatment Device Construction	X	2.83	$140.36	$69.28	$28.07
0304	Level I Therapeutic Radiation Treatment Preparation	X	1.49	$73.90	$41.52	$14.78
0305	Level II Therapeutic Radiation Treatment Preparation	X	4.06	$201.36	$97.50	$40.27
0310	Level III Therapeutic Radiation Treatment Preparation	X	13.98	$693.35	$339.05	$138.67
0311	Radiation Physics Services	X	1.32	$65.46	$31.66	$13.09
0312	Radioelement Applications	S	4.09	$202.85	$109.65	$40.57
0313	Brachytherapy	S	7.89	$391.31	$164.02	$78.25
0314	Hyperthermic Therapies	S	5.88	$291.62	$150.95	$58.32
0320	Electroconvulsive Therapy	S	3.68	$182.51	$80.06	$36.50
0321	Biofeedback and Other Training	S	1.26	$62.49	$29.25	$12.50
0322	Brief Individual Psychotherapy	S	1.32	$65.46	$14.22	$13.09
0323	Extended Individual Psychotherapy	S	1.85	$91.75	$22.48	$18.35
0324	Family Psychotherapy	S	1.87	$92.74	$20.19	$18.55
0325	Group Psychotherapy	S	1.55	$76.88	$19.96	$15.38
0330	Dental Procedures	S	1.51	$74.89	$14.98	$14.98
0340	Minor Ancillary Procedures	X	1.04	$51.58	$12.85	$10.32
0341	Immunology Tests	X	0.13	$6.44	$3.67	$1.29
0342	Level I Pathology	X	0.26	$12.90	$8.03	$2.58
0343	Level II Pathology	X	0.45	$22.32	$12.16	$4.46
0344	Level III Pathology	X	0.79	$39.18	$29.63	$7.84
0345	Transfusion Laboratory Procedures Level I	X	0.22	$10.92	$5.37	$2.18
0346	Transfusion Laboratory Procedures Level II	X	0.51	$25.49	$12.03	$5.10
0347	Transfusion Laboratory Procedures Level III	X	0.84	$41.90	$20.13	$8.38
0348	Fertility Laboratory Procedures	X	0.52	$25.57	$5.11	$5.11
0349	Miscellaneous Laboratory Procedures	X	0.48	$23.65	$4.73	$4.73
0354	Administration of Influenza/Pneumonia Vaccine	K	0.13	$6.33		
0355	Level I Immunizations	K	0.19	$9.42	$5.05	$1.88
0356	Level II Immunizations	K	0.36	$17.86	$4.82	$3.57
0359	Injections	X	0.96	$47.61	$9.52	$9.52
0360	Level I Alimentary Tests	X	1.38	$68.44	$34.75	$13.69
0361	Level II Alimentary Tests	X	3.53	$175.07	$88.09	$35.01
0362	Fitting of Vision Aids	X	0.51	$25.30	$9.63	$5.06
0363	Otorhinolaryngologic Function Tests	X	2.83	$140.36	$53.22	$28.07
0364	Level I Audiometry	X	0.68	$33.72	$13.31	$6.74
0365	Level II Audiometry	X	1.47	$72.91	$22.46	$14.58
0367	Level I Pulmonary Test	X	0.83	$41.16	$20.65	$8.23
0368	Level II Pulmonary Tests	X	1.66	$82.33	$42.44	$16.47
0369	Level III Pulmonary Tests	X	2.34	$116.06	$58.50	$23.21
0370	Allergy Tests	X	0.57	$28.27	$11.81	$5.65
0371	Allergy Injections	X	0.32	$15.87	$3.67	$3.17
0372	Therapeutic Phlebotomy	X	0.43	$21.33	$10.09	$4.27
0373	Neuropsychological Testing	X	3.21	$159.20	$44.96	$31.84
0374	Monitoring Psychiatric Drugs	X	1.17	$58.03	$19.06	$11.61
0600	Low Level Clinic Visits	V	0.98	$48.61	$9.72	$9.72
0601	Mid Level Clinic Visits	V	1.00	$49.60	$9.92	$9.92
0602	High Level Clinic Visits	V	1.65	$82.33	$16.47	$16.47
0610	Low Level Emergency Visits	V	1.34	$66.46	$20.65	$13.29
0611	Mid Level Emergency Visits	V	2.11	$104.65	$36.47	$20.93
0612	High Level Emergency Visits	V	3.19	$158.21	$54.14	$31.64
0620	Critical Care	S	8.60	$426.53	$152.78	$85.31
0701	SR 89 chloride, per mCi	G		$783.75		$95.62
0702	SM 153 lexidronam, 50 mCi	G		$942.09		$134.87
0704	IN 111 Satumomab pendetide per dose	G		$712.50		$86.93
0705	TC 99M tetrofosmin, per dose	G		$136.80		$16.69
0725	Leucovorin calcium inj, 50 mg	G		$49.73		$6.66
0726	Dexrazoxane hcl injection, 250 mg	G		$161.11		$21.59
0727	Etidronate disodium inj 300 mg	G		$63.65		$8.53
0728	Filgrastim 300 mcg injection	G		$171.38		$22.96
0730	Pamidronate disodium, 30 mg	G		$232.51		$31.16
0731	Sargramostim injection 50 mcg	G		$27.42		$3.67
0732	Mesna injection 200 mg	G		$36.51		$4.89
0733	Non esrd epoetin alpha inj, 1000 u	G		$11.40		$1.53
0750	Dolasetron mesylate, 10 mg	G		$14.81		$1.98
0754	Metoclopramide hcl injection up to 10 mg	G		$2.00		$0.27
0755	Thiethylperazine maleate inj up to 10 mg	G		$5.02		$0.67
0761	Unspecified oral anti-emetic	G		$0.60		$0.08
0762	Dronabinol 2.5mg oral	G		$3.20		$0.48

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSIFICATIONS WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS, CALENDAR YEAR 2001—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
0763	Dolasetron mesylate oral, 100 mg	G		$65.21		$8.74
0764	Granisetron hcl injection 100 mcg	G		$1.85		$0.25
0765	Granisetron hcl 1 mg oral	G		$44.70		$5.99
0768	Ondansetron hcl injection 1 mg	G		$6.09		$0.82
0769	Ondansetron hcl 8mg oral	G		$25.15		$3.37
0800	Leuprolide acetate, 3.75 mg	G		$492.71		$63.27
0801	Cyclophosphamide oral 25 mg	G		$2.12		$0.28
0802	Etoposide oral 50 mg	G		$45.95		$6.16
0803	Melphalan oral 2 mg	G		$2.07		$0.28
0807	Aldesleukin/single use vial	G		$569.75		$76.35
0809	Bcg live intravesical vac	G		$159.39		$[illegible]9.45
0810	Goserelin acetate implant 3.6 mg	G		$446.49		$59.83
0811	Carboplatin injection 50 mg	G		$98.90		$13.25
0812	Carmus bischl nitro inj 100 mg	G		$103.27		$13.84
0813	Cisplatin 10 mg injection	G		$42.18		$5.65
0814	Asparaginase injection 10,000 u	G		$57.41		$7.69
0815	Cyclophosphamide 100 mg inj	G		$6.13		$0.82
0816	Cyclophosphamide lyophilized 100 mg	G		$6.13		$0.82
0817	Cytarabine hcl 100 mg inj	G		$5.94		$0.80
0818	Dactinomycin 0.5 mg	G		$12.73		$1.71
0819	Dacarbazine 10 mg inj	G		$1.13		$0.15
0820	Daunorubicin 10 mg	G		$80.04		$10.73
0821	Daunorubicin citrate liposom 10 mg	G		$64.60		$8.66
0822	Diethylstilbestrol injection 250 mg	G		$4.20		$0.56
0823	Docetaxel, 20 mg	G		$283.65		$38.01
0824	Etoposide 10 mg inj	G		$4.06		$0.54
0826	Methotrexate Oral 2.5 mg	G		$2.92		$0.39
0827	Floxuridine injection 500 mg	G		$129.56		$17.36
0828	Gemcitabine HCL 200 mg	G		$88.46		$11.85
0830	Irinotecan injection 20 mg	G		$117.81		$15.79
0831	Ifosfomide injection 1 gm	G		$141.50		$18.96
0832	Idarubicin hcl injection 5 mg	G		$341.38		$45.75
0833	Interferon alfacon-1, 1 mcg	G		$3.91		$0.52
0834	Interferon alfa-2a inj recombinant 3 million u	G		$33.22		$4.45
0836	Interferon alfa-2b inj recombinant, 1 million	G		$11.28		$1.51
0838	Interferon gamma 1-b inj, 3 million u	G		$199.50		$26.73
0839	Mechlorethamine hcl inj 10 mg	G		$11.01		$1.48
0840	Melphalan hydrochl 50 mg	G		$363.48		$48.71
0841	Methotrexate sodium inj 5 mg	G		$0.45		$0.06
0842	Fludarabine phosphate inj 50 mg	G		$237.03		$31.76
0843	Pegaspargase, singl dose vial	G		$1,321.65		$177.10
0844	Pentostatin injection, 10 mg	G		$1,562.75		$209.41
0847	Doxorubicin hcl 10 mg vl chemo	G		$15.79		$2.12
0849	Rituximab, 100 mg	G		$420.29		$56.32
0850	Streptozocin injection, 1 gm	G		$65.79		$8.82
0851	Thiotepa injection, 15 mg	G		$100.30		$13.44
0852	Topotecan, 4 mg	G		$573.75		$76.88
0853	Vinblastine sulfate inj, 1 mg	G		$4.11		$0.55
0854	Vincristine sulfate 1 mg inj	G		$30.16		$4.04
0855	Vinorelbine tartrate, 10 mg	G		$75.51		$10.12
0856	Porfimer sodium, 75 mg	G		$2,603.67		$348.89
0857	Bleomycin sulfate injection 15 u	G		$294.48		$39.46
0858	Cladribine, 1mg	G		$53.47		$7.16
0859	Fluorouracil injection 500 mg	G		$2.75		$0.37
0860	Plicamycin (mithramycin) inj 2.5 mg	G		$93.60		$12.57
0861	Leuprolide acetate injection 1 mg	G		$22.90		$3.07
0862	Mitomycin 5 mg inj	G		$121.65		$16.30
0863	Paclitaxel injection, 30 mg	G		$173.50		$23.25
0864	Mitoxantrone hcl, 5 mg	G		$223.02		$29.88
0865	Interferon alfa-n3 inj, human leukocyte derived, 250,000 iu	G		$7.86		$1.05
0884	Rho d immune globulin inj, 1 dose pkg	G		$35.91		$4.38
0886	Azathioprine oral 50mg	G		$1.24		$0.17
0887	Azathioprine parenteral 100 mg	G		$67.88		$9.10
0888	Cyclosporine oral 100 mg	G		$5.80		$0.78
0889	Cyclosporin parenteral 250mg	G		$15.81		$2.12
0890	Lymphocyte immune globulin 250 mg	G		$249.13		$30.39
0891	Tacrolimus oral per 1 mg	G		$2.66		$0.36
0900	Alglucerase injection, per 10 u	G		$37.53		$5.03
0901	Alpha 1 proteinase inhibitor, 10 mg	G		$2.09		$0.28
0902	Botulinum toxin a, per unit	G		$4.39		$0.59
0903	Cytomegalovirus imm IV, vial	G		$370.50		$49.65
0905	Immune globulin 500 mg	G		$27.28		$3.33
0906	RSV-ivig, 50 mg	G		$427.73		$57.32
0907	Ganciclovir Sodium 500 mg injection	K	0.45	$22.26		$4.45
0908	Tetanus immune globulin inj up to 250 u	G		$102.60		$13.75
0909	Interferon beta-1a, 33 mcg	G		$204.73		$27.43
0910	Interferon beta-1b, .25 mg	G		$57.00		$7.64
0911	Streptokinase per 250,000 iu	K	1.76	$87.25		$17.45

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSIFICATIONS WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS, CALENDAR YEAR 2001—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
0913	Ganciclovir long act implant 4.5 mg	G		$4,750.00		$636.50
0914	Reteplase, per 37.6mg	G		$2,612.50		$350.06
0915	Alteplase inj rec, per 10 mg	K	3.80	$168.46		$33.69
0916	Imiglucerase, unit	G		$3.75		$0.50
0917	Pharmacologic stressors	K	0.36	$17.86		$3.57
0918	Brachytherapy Seeds, Any type, Each	H				
0925	Factor viii per iu	G		$0.66		$0.12
0926	Factor VIII (porcine) per iu	G		$2.09		$0.28
0927	Factor viii recombinant per iu	G		$1.17		$0.16
0928	Factor ix complex per iu	G		$.71		$0.10
0929	Anti-inhibitor per iu	G		$1.43		$0.19
0930	Antithrombin iii injection per iu	G		$.82		$0.11
0931	Factor IX non-recombinant, per iu	G		$0.72		$0.10
0932	Factor IX recombinant, per iu	G		$1.12		$0.10
0949	Plasma, Pooled Multiple Donor, Solvent/Detergent Treated, Frozen	K	2.94	$145.76		$29.15
0950	Blood (Whole) For Transfusion	K	2.08	$103.33		$20.67
0952	Cryoprecipitate	K	0.70	$34.70		$6.94
0953	Fibrinogen Unit	K	0.48	$23.80		$4.76
0954	RBC Leukocytes Reduced	K	2.83	$140.35		$28.07
0955	Plasma, Fresh Frozen	K	2.26	$111.85		$22.37
0956	Plasma Protein Fraction	K	1.26	$62.49		$12.50
0957	Platelet Concentrate	K	0.98	$48.55		$9.71
0958	Platelet Rich Plasma	K	1.16	$57.54		$11.51
0959	Red Blood Cells	K	2.04	$101.31		$20.26
0960	Washed Red Blood Cells	K	3.81	$188.75		$37.75
0961	Infusion, Albumin (Human) 5%, 500 ml	K	2.77	$137.38		$27.48
0962	Infusion, Albumin (Human) 25%, 50 ml	K	1.38	$68.44		$13.69
0970	New Technology— I ($0–$50)	T	0.52	$25.79		$5.16
0971	New Technology— II ($50–$100)	S	1.55	$76.88		$15.38
0972	New Technology— III ($100–$200)	T	3.09	$153.26		$30.65
0973	New Technology— IV ($200–$300)	T	5.16	$255.91		$51.18
0974	New Technology— V ($300–$500)	S	8.25	$409.17		$81.83
0975	New Technology— VI ($500–$750)	T	12.90	$639.79		$127.96
0976	New Technology— VII ($750–$1000)	S	18.05	$895.21		$179.04
0977	New Technology— VIII ($1000–$1250)	T	23.20	$1,150.63		$230.13
0978	New Technology— IX ($1250–$1500)	T	28.36	$1,406.54		$281.31
0979	New Technology— X ($1500–$1750)	T	33.51	$1,661.96		$332.39
0980	New Technology— XI ($1750–$2000)	T	38.67	$1,917.89		$383.58
0981	New Technology— XII ($2000–$2500)	S	46.40	$2,301.26		$460.25
0982	New Technology— XIII ($2500–$3500)	T	61.87	$3,068.50		$613.70
0983	New Technology— XIV ($3500–$5000)	T	87.65	$4,347.09		$869.42
0984	New Technology— XV ($5000–$6000)	T	113.43	$5,625.67		$1,125.13
0987	New Device Technology— I ($0-$250)	X		$127.86		$25.57
0988	New Device Technology— II ($250-$500)	X		$383.58		$76.72
0989	New Device Technology— III ($500-$750)	X		$639.30		$127.86
0990	New Device Technology— IV ($750-$1000)	X		$895.01		$179.00
0991	New Device Technology— V ($1000-$1500)	X		$1,278.59		$255.72
0992	New Device Technology— VI ($1500-$2000)	X		$1,790.03		$358.01
0993	New Device Technology— VII ($2000-$3000)	X		$2,557.18		$511.44
0994	New Device Technology— VIII ($3000-$4000)	X		$3,580.05		$716.01
0995	New Device Technology— IX ($4000-$5000)	X		$4,602.92		$920.58
0996	New Device Technology— X ($5000-$7000)	X		$6,137.23		$1,227.45
0997	New Device Technology— XI ($7000-$9000)	X		$8,182.98		$1,636.60
1000	Perclose Closer Prostar Arterial Vascular Closure	H				
1001	AcuNav-diagnstic ultrsnd ca	H				
1002	Cochlear Implant System	H				
1003	Cath, ablation, Livewire TC	H				
1004	Fast-Cath,Swartz,SAFL,CSTA	H				
1006	ARRAY post chamb IOL	H				
1007	Ams 700 penile prosthesis	H				
1008	Urolume-implt urethral stent	H				
1009	Plasma, cryoprecipitate-reduced, unit	K	0.86	$42.76		$8.55
1010	Blood, L/R, CMV-neg	K	2.88	$142.84		$28.57
1011	Platelets, L/R, CMV-neg, unit	K	11.86	$589.15		$117.63
1012	Platelet concentrate, L/R, irradiated, unit	K	1.92	$95.23		$19.05
1013	Platelet concentrate, L/R, unit	K	1.18	$58.30		$11.66
1014	Platelets, aph/pher, L/R, unit	K	8.93	$443.11		$88.62
1016	Blood, L/R, froz/deglycerol/washed	K	7.15	$354.68		$70.94
1017	Platelets, aph/pher, L/R, CMV-neg, unit	K	9.33	$462.54		$92.51
1018	Blood, L/R, irradiated	K	3.13	$155.48		$31.10
1019	Platelets, aph/pher, L/R, irradiated, unit	K	9.64	$478.09		$95.62
1024	Quinupristin 150 mg/dalfopriston 350 mg	J		$102.05		$13.67
1025	Marinr CS catheter	H				
1026	RF Perfrmr cath 5F RF Marinr	H				
1027	Magic x/short, Radius14mm	H				
1028	Prcls Twst trnsvg anch sys	H				
1029	CRE guided balloon dil cath	H				
1030	Cthtr:Mrshal,Blu Max Utr Dmnd	H				

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSIFICATIONS WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS, CALENDAR YEAR 2001—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
1033	Sonicath mdl 37-410	H				
1034	SURPASS, Long30 SURPASS-cath	H				
1035	Cath, Ultra ICE	H				
1036	R port/reservoir impl dev	H				
1037	Vaxcelchronic dialysis cath	H				
1038	UltraCross Imaging Cath	H				
1039	Wallstent/RP: Trach	H				
1040	Wallstent/RP TIPS—20/40/60	H				
1042	Wallstent, UltraFlex: Bil	H				
1043	Atherectomy sys, coronary	H				
1045	I-131 MIBG (ioben-sulfate) O.5mCi	G		$1,140.00		$138.08
1047	Navi-Star, Noga-Star cath	H				
1048	NeuroCyberneticPros: gen	H				
1051	Oasis Thrombectomy Cath	H				
1053	EnSite 3000 catheter	H				
1054	Hydrolyser Thromb Cath 6/7F	H				
1055	Transesoph 210, 210-S Cath	H				
1056	Thermachoice II Cath	H				
1057	Micromark Tissue Marker	H				
1059	Carticel,auto cult-chndr cyte	G		$14,250.00		$2,010.00
1060	ACS multi-link tristor stent	H				
1061	ACS Viking Guiding cath	H				
1063	EndoTak Endurance EZ, RX leads	H				
1067	Megalink biliary stent	H				
1068	Pulsar DDD pmkr	H				
1069	Discovery DR, pmaker	H				
1071	Pulsar Max, Pulsar SR pmkr	H				
1072	Guidant: blln dil cath	H				
1073	Gynecare Morcellator	H				
1074	RX/OTW Viatrac-peri dil cath	H				
1075	Guidant: lead	H				
1076	Ventak mini sc defib	H				
1077	Ventak VR Prizm VR, sc defib	H				
1078	Ventak: Prizm, AVIIIDR defib	H				
1079	CO 57/58 0.5 mCi	G		$264.10		$32.22
1084	Denileukin diftitox, 300 mcg	G		$942.86		$126.35
1086	Temozolomide, 5 mg	G		$5.70		$0.76
1087	I-123 per uCi capsule	G		$0.84		$0.10
1089	CO 57, 0.5 mCi	G		$91.20		$11.13
1090	IN 111 Chloride, per mCi	G		$152.00		$18.54
1091	IN 111 Oxyquinoline, per 5 mCi	G		$508.25		$62.01
1092	IN 111 Pentetate, per 1.5 mCi	G		$769.50		$93.88
1094	TC 99M Albumin aggr, per vial	J		$34.20		$4.17
1095	TC 99M Depreotide, per vial	G		$760.00		$101.84
1096	TC 99M Exametazime, per dose	G		$445.31		$63.75
1097	TC 99M Mebrofenin, per vial	G		$46.76		$5.71
1098	TC 99M Pentetate, per vial	G		$22.80		$2.78
1099	TC 99M Pyrophosphate, per vial	J		$42.75		$5.22
1100	Medtronic AVE GT1 guidewire	H				
1101	Medtronic AVE, AVE Z2 cath	H				
1102	Synergy Neurostim Genrtr	H				
1103	Micro Jewel Defibrillator	H				
1104	RF Conductor Ablative Cath	H				
1105	Sigma 300VDD pacmker	H				
1106	SynergyEZ Pt Progrmr	H				
1107	Torqr, Solist cath	H				
1108	Reveal Cardiac Recorder	H				
1109	Implantable anchor: Ethicon	H				
1110	Stable Mapper, cath electrd	H				
1111	AneuRxAort-Uni-Ilicstnt&cath	H				
1112	AneuRx Stent graft/del.cath	H				
1113	Tlnt Endo Sprng Stnt Grft Sys	H				
1114	TalntSprgStnt+Graf endo pros	H				
1115	5038S,5038,5038L pace lead	H				
1116	CapSureSP pacing Lead	H				
1117	Ancure Endograft Del Sys	H				
1118	Sigma300DR LegIIDR,pacemkr	H				
1119	Sprint6932,6943 defib lead	H				
1120	Sprint6942,6945 defib lead	H				
1121	Gem defibrillator	H				
1122	TC 99M arcitumomab per dose	G		$926.25		$124.12
1123	Gem II VR defibrillator	H				
1124	InterStim Test Stim Kit	H				
1125	Kappa 400SR,Ttopaz II SR pmkr	H				
1126	Kappa 700 DR pacemakr	H				
1127	Kappa 700SR,pmkr sgl chamber	H				
1128	Kappa 700D,Ruby IID pmkr	H				
1129	Kappa 700VDD,pacmkr	H				

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSIFICATIONS WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS, CALENDAR YEAR 2001—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
1130	Sigma 200D,LGCY IID sc pmkr	H				
1131	Sigma 200DR, pmker	H				
1132	Sigma 200SR Leg II:sc pac	H				
1133	Sigma SR, Vita SR, pmaker	H				
1134	Sigma 300D pmker	H				
1135	Entity DR 5326L/R, DC, pmkr	H				
1136	Affinity DR 5330L/R, DC, pmkr	H				
1137	CardioSEAL implant syst	H				
1143	AddVent mod 2060BL,VDD	H				
1144	Afnty SP 5130,Integrity SR,pmkr	H				
1145	Angio-Seal 6fr, 8fr	H				
1147	AV Plus DX 1368: lead	H				
1148	Contour MD sc defib	H				
1149	Entity DC 5226R-pmker	H				
1151	Passiveplus DX lead, 10mdls	H				
1152	LifeSite Access System	H				
1153	Regency SC+ 2402L pmker	H				
1154	SPL:SPOI,02,04 – defib lead	H				
1155	Repliform 8 sq cm	H				
1156	Tr 1102TrSR+ 2260L,2264L,5131	H				
1157	Trilogy DCT 23/8L pmkr	H				
1158	TVL lead SV01,SV02,SV04	H				
1159	TVL RV02,RV06,RV07: lead	H				
1160	TVL–ADX 1559: lead	H				
1161	Tendril DX, 1388 pacing lead	H				
1162	TempoDr, TrilogyDR+DC pmkr	H				
1163	Tendril SDX, 1488T pacing lead	H				
1164	Iodine-125 brachytx seed	H				
1166	Cytarabine liposomal, 10 mg	G		$371.45		$49.77
1167	Epirubicin hcl, 2 mg	J		$24.94		$3.34
1171	Autosuture site marker stple	H				
1172	Spacemaker dissect ballon	H				
1173	Cor stntS540,S670,o-wire stn	H				
1174	Bard brachytx needle	H				
1178	Busulfan IV, 6 mg	G		$36.48		$3.55
1180	Vigor SR, SC, pmkr	H				
1181	Meridian SSI, SC, pmkr	H				
1182	Pulsar SSI, SC, pmkr	H				
1183	Jade IIS, Sigma 300S,SC, pmkr	H				
1184	Sigma 200S, SC, pmkr	H				
1188	I 131, per mCi	G		$5.86		$0.75
1200	TC 99M Sodium Glucoheptonate, per vial	G		$113.05		$13.79
1201	TC 99M succimer, per vial	G		$135.66		$16.55
1202	TC 99M Sulfur Colloid, per dose	G		$36.00		$4.64
1203	Verteporfin for Injection	G		$1,456.25		$195.41
1205	TC 99M Disofenin, per vial	G		$427.50		$57.29
1207	Octreotide acetate depot 1mg	G		$135.10		$16.48
1302	SQ01: lead	H				
1303	CapSure Fix 6940/4068-110, lead	H				
1304	Sonicath mdl 37–416,–418	H				
1305	Apligraf	G		$1,157.81		$163.31
1306	NeuroCyberneticPros: lead	H				
1311	Trilogy DR+/DAO pmkr	H				
1312	Magic WALLSTENT stent-Mini	H				
1313	Magic medium, Radius 31mm	H				
1314	Magic WALLSTENT stent-Long	H				
1315	Vigor DR, Meridian DR pmkr	H				
1316	Meridian DDD pmkr	H				
1317	Discovery SR, pmkr	H				
1318	Meridian SR pmakr	H				
1319	Wallstent/RP Enteral–60mm	H				
1320	Wallstent/RP Iliac Del Sys	H				
1325	Pallidium – 103 seed	H				
1326	Angio-jet rheolytic thromb cath	H				
1328	ANS Renew NS trnsmtr	H				
1333	PALMZA Corinthian bill stent	H				
1334	Crown,Mini-crown,CrossLC	H				
1335	Mesh, Prolene	H				
1336	Constant Flow Imp Pump	H				
1337	IsoMed 8472-20/35/60	H				
1348	I 131 per mCi solution	G		$146.57		$17.86
1350	Prosta/OncoSeed, RAPID strand, I-125	H				
1351	CapSure(Fix)pacing lead	H				
1352	Gem II defib	H				
1353	Itrel Interstm neurostim+ext	H				
1354	Kappa 400DR,Diamond II 820DR	H				
1355	Kappa 600DR, Vita DR	H				
1356	Profile MD V–186HV3 sc defib	H				

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSIFICATIONS WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS, CALENDAR YEAR 2001—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
1357	Angstrom MD V–190HV3 sc defib	H				
1358	Affinity DC 5230R-Pacemaker	H				
1359	Pulsar,Pulsar Max DR,pmkr	H				
1363	Gem DR, DC, defib	H				
1364	Photon DR V-230HV3 DC defib	H				
1365	Guidewire, Hi-Torque 14/18/35	H				
1366	Guidewire,PTCA, Hi-Torque	H				
1367	Guidewire, Hi-Torque Crosslt	H				
1369	ANS Renew Stim Sys recvr	H				
1370	Tension-Free Vaginal Tape	H				
1371	Symp Nitinol Transhep Bil Sys	H				
1372	Cordis Nitinol bil stent	H				
1375	Stent, coronary, NIR	H				
1376	ANS Renew Stim Sys lead	H				
1377	Specify 3988 neuro lead	H				
1378	InterStim Tx 3080/3886 lead	H				
1379	Pisces-Quad 3887 lead	H				
1400	Diphenhydramine hcl 50mg	G		$1.18		$.16
1401	Prochlorperazine maleate 5mg	G		$1.31		$.18
1402	Promethazine hcl 12.5mg oral	G		$.03		$.00
1403	Chlorpromazine hcl 10mg oral	G		$.55		$.07
1404	Trimethobenzamide hcl 250mg	G		$.36		$.05
1405	Thiethylperazine maleate10mg	G		$.69		$.09
1406	Perphenazine 4mg oral	G		$.71		$.10
1407	Hydroxyzine pamoate 25mg	G		$.20		$.03
1409	Factor viia recombinant, per 1.2 mg	G		$1,596.00		$213.86
1410	Prosorba column	H				
1411	Herculink,OTW SDS bil stent	H				
1420	StapleTac2 Bone w/Dermis	H				
1421	StapleTac2 Bone wo Dermis	H				
1450	Orthosphere Arthroplasty	H				
1451	Orthosphere Arthroplasty Kit	H				
1500	Atherectomy sys, peripheral	H				
1600	TC 99M sestamibi, per syringe	G		$109.25		$13.33
1601	TC 99M medronate, per dose	G		$38.38		$4.68
1602	TC 99M apcitide, per vial	G		$47.50		$5.80
1603	TL 201, mCi	G		$28.50		$3.48
1604	IN 111 capromab pendetide, per dose	G		$1,008.90		$135.19
1605	Abciximab injection, 10 mg	G		$513.02		$68.74
1606	Anistreplase, 30 u	G		$2,693.80		$360.97
1607	Eptifibatide injection, 5 mg	G		$12.57		$1.68
1608	Etanercept injection, 25 mg	G		$134.42		$18.01
1609	Rho(D) immune globulin h, sd, 100 iu	G		$20.55		$2.51
1611	Hylan G–F 20 injection, 16 mg	G		$204.87		$27.45
1612	Daclizumab, parenteral, 25 mg	G		$397.29		$53.24
1613	Trastuzumab, 10 mg	G		$48.85		$6.55
1614	Valrubicin, 200 mg	G		$423.23		$56.71
1615	Basiliximab, 20 mg	G		$1,250.01		$167.50
1616	Histrelin Acetate, 0.5 mg	G		$14.91		$2.00
1617	Lepirdin, 50 mg	G		$124.49		$16.68
1618	Von Willebrand factor, per iu	G		$.95		$.13
1619	Ga 67, per mCi	G		$25.97		$3.17
1620	TC 99M Bicisate, per vial	G		$417.53		$55.95
1621	Xe 133, per mCi	G		$28.50		$3.66
1622	TC 99M Mertiatide, per vial	G		$185.82		$24.90
1623	TC 99M Gluceptate	G		$22.61		$2.76
1624	P32 sodium, per mCi	G		$74.10		$9.04
1625	IN 111 Pentetreotide, per mCi	G		$283.42		$37.98
1626	TC 99M Oxidronate, per vial	G		$38.38		$4.68
1627	TC-99 labeled red blood cell, per test	G		$38.95		$4.75
1628	P32 phosphate chromic, per mCi	G		$137.12		$16.73
1700	Authen Mick TP brachy needle	H				
1701	Medtec MT-BT-5201-25 ndl	H				
1702	WWMT brachytx needle	H				
1703	Mentor Prostate Brachy	H				
1704	MT-BT-5001-25/5051-25	H				
1705	Best Flexi Brachy Needle	H				
1706	Indigo Prostate Seeding Ndl	H				
1707	Varisource Implt Ndl	H				
1708	UroMed Prostate Seed Ndl	H				
1709	Remington Brachytx Needle	H				
1710	US Biopsy Prostate Needle	H				
1711	MD Tech brachytx needle	H				
1712	Imagyn brachytx needle	H				
1790	Iridium 192 HDR	H				
1791	OncoSeed, Rapid Strand I-125	H				
1792	UroMed I-125 Brachy seed	H				
1793	Bard InterSource P-103 seed	H				

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APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
1794	Bard IsoSeed P-103 seed	H				
1795	Bard BrachySource I-125	H				
1796	SourceTech Med I-125	H				
1797	Draximage I-125 seed	H				
1798	Syncor I-125 PharmaSeed	H				
1799	I-Plant I-125 Brachytx seed	H				
1800	Pd-103 brachytx seed	H				
1801	IoGold I-125 brachytx seed	H				
1802	Iridium 192 brachytx seeds	H				
1803	Best Iodine 125 brachytx sds	H				
1804	Best Palladium 103 seeds	H				
1805	IsoStar Iodine-125 seeds	H				
1806	Gold 198	H				
1810	D114S Dilatation Cath	H				
1811	Surgical Dynamics Anchors	H				
1812	OBL Anchors	H				
1850	Repliform 14/21 sq cm	H				
1851	Repliform 24/28 sq cm	H				
1852	TransCyte, per 247 sq cm	H				
1853	Suspend, per 8/14 sq cm	H				
1854	Suspend, per 24/28 sq cm	H				
1855	Suspend, per 36 sq cm	H				
1856	Suspend, per 48 sq cm	H				
1857	Suspend, per 84 sq cm	H				
1858	DuraDerm, per 8/14 sq cm	H				
1859	DuraDerm, per 21/24/28 sq cm	H				
1860	DuraDerm, per 48 sq cm	H				
1861	DuraDerm, per 36 sq cm	H				
1862	DuraDerm, per 72 sq cm	H				
1863	DuraDerm, per 84 sq cm	H				
1864	SpermaTex, per 13.44 sq cm	H				
1865	FasLata, per 8/14 sq cm	H				
1866	FasLata, per 24/28 sq cm	H				
1867	FasLata, per 36/48 sq cm	H				
1868	FasLata, per 96 sq cm	H				
1869	Gore Thyroplasty Dev	H				
1870	DermMatrix, per 16 sq cm	H				
1871	DermMatrix, 32 or 64 sq cm	H				
1872	Dermagraft, per 37.5 sq cm	H				
1873	Bard 3DMax Mesh	H				
1929	Maverick PTCA Cath	H				
1930	Coyote Dil Cath, 20/30/40mm	H				
1931	Talon Dil Cath	H				
1932	Scimed Remedy Dil Cath	H				
1933	Opti-Plast XL/Centurion Cath	H				
1934	Ultraverse 3.5F Bal Dil Cath	H				
1935	Workhorse PTA Bal Cath	H				
1936	Uromax Ultra Bal Dil Cath	H				
1937	Synergy Balloon Dil Cath	H				
1938	UroForce Bal Dil Cath	H				
1939	Raptur, Ninja PTCA Dil Cath	H				
1940	PowerFlex,OPTA 5/LP Bal Cath	H				
1941	Jupiter PTA Dil Cath	H				
1942	Cordis Maxi LD PTA Bal Cath	H				
1943	RXCrossSail OTW OpenSail	H				
1944	Rapid Exchange Bil Dil Cath	H				
1945	Savvy PTA Dil Cath	H				
1946	R1s Rapid Dil Cath	H				
1947	Gazelle Bal Dil Cath	H				
1948	Pursuit Balloon Cath	H				
1949	Oracle Megasonics Cath	H				
1979	Visions PV/Avanar US Cath	H				
1980	Atlantis SR Coronary Cath	H				
1981	PTCA Catheters	H				
2000	Orbiter ST Steerable Cath	H				
2001	Constellation Diag Cath	H				
2002	Irvine 5F Inquiry Diag EP Cath	H				
2003	Irvine 6F Inquiry Diag EP Cath	H				
2004	Biosense EP Cath—Octapolar	H				
2005	Biosense EP Cath—Hexapolar	H				
2006	Biosense EP Cath—Decapolar	H				
2007	Irvine 6F Luma-Cath EP Cath	H				
2008	7F Luma-Cath EP Cath 81910–15	H				
2009	Irvine 7F Luma-Cath EP Cath	H				
2010	Fixed Curve EP Cath	H				
2011	Deflectable Tip Cath—Quad	H				
2012	Celsius Abln Cath	H				
2013	Celsius Large Abln Cath	H				

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APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
2014	Celsius II Asym Abln Cath	H				
2015	Celsius II Sym Abln Cath	H				
2016	Navi-Star DS, Navi-Star Ther	H				
2017	Navi-Star Abln Cath	H				
2018	Polaris T Ablation Cath	H				
2019	EP Deflectable Cath	H				
2020	Blazer II XP Abln Cath	H				
2021	SilverFlex EP Cath	H				
2022	CP Chilli Cooled Abln Cath	H				
2023	Chilli Cld AblnCath-std, lg	H				
2100	CP CS Reference Cath	H				
2101	CP RV Reference Cath	H				
2102	CP Radii 7F EP Cath	H				
2103	CP Radii 7F EP Cath w/Track	H				
2104	Lasso Deflectable Cath	H				
2151	Veripath Guiding Cath	H				
2152	Cordis Vista Brite Tip Cath	H				
2153	Bard Viking Cath	H				
2200	Arrow-Trerotola PTD Cath	H				
2300	Varisource Stnd Catheters	H				
2597	CliniCath/kit 16/18 sgl/dbl	H				
2598	CliniCath 18/20/24G-single	H				
2599	CliniCath 16/18G-double	H				
2601	Bard DL Ureteral Cath	H				
2602	Vitesse Laser Cath 1.4/1.7mm	H				
2603	Vitesse Laser Cath 2.0mm	H				
2604	Vitesse E Laser Cath 2.0mm	H				
2605	Extreme Laser Catheter	H				
2606	SpineCath XL Catheter	H				
2607	SpineCath Intradiscal Cath	H				
2608	Scimed 6F Wiseguide Cath	H				
2609	Flexima Bil Drainage Cath	H				
2610	FlexTipPlus Intraspinal Cath	H				
2611	AlgoLine Intraspinal Cath	H				
2612	InDura Catheter	H				
2700	MycroPhylax Plus SC defib	H				
2701	Phylax XM SC defib	H				
2702	Ventak Prizm 2 VR Defib	H				
2703	Ventak Prizm VR HE Defib	H				
2704	Ventak Mini IV+ Defib	H				
2801	Defender IV DR 612 DC defib	H				
2802	Phylax AV DC defib	H				
2803	Ventak Prizm DR HE Defib	H				
2804	Ventak Prizm 2 DR Defib	H				
2805	Jewel AF 7250 Defib	H				
2806	GEM VR 7227 Defib	H				
2807	Contak CD 1823	H				
2808	Contak TR 1241	H				
3002	EasyTrak Defib Lead	H				
3001	Kainox SL/RV defib lead	H				
3003	Endotak SQ Array XP lead	H				
3004	Intervene Defib Lead	H				
3400	Siltex Spectrum, Contour Prof	H				
3401	Saline-Filled Spectrum	H				
3500	Mentor Alpha I Inf Penile Pros	H				
3510	AMS 800 Urinary Pros	H				
3551	Choice/PT Graphix/Luge/Trooper	H				
3552	Hi-Torque Whisper	H				
3553	Cordis guidewires	H				
3554	Jindo guidewire	H				
3555	Wholey Hi-Torque Plus GW	H				
3556	Wave/FlowWire Guidewire	H				
3557	HyTek guidewire	H				
3800	SynchroMed EL infusion pump	H				
3801	Arrow/MicroJect PCA Sys	H				
3851	Elastic UV IOL AA-4203T/TF/TL	H				
4000	Opus G 4621, 4624 SC pmkr	H				
4001	Opus S 4121/4124 SC pmkr	H				
4002	Talent 113 SC pmkr	H				
4003	Kairos SR SC pmkr	H				
4004	Actros SR, Actros SLR SC pmkr	H				
4005	Philos SR/SR-B SC pmkr	H				
4006	Pulsar Max II SR pmkr	H				
4007	Marathon SR pmkr	H				
4008	Discovery II SSI pmkr	H				
4009	Discovery II SR pmkr	H				
4300	Integrity AFx DR 5342 pmkr	H				
4301	Integrity AFx DR 5346 pmkr	H				

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSIFICATIONS WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS, CALENDAR YEAR 2001—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
4302	Affinity VDR 5430 pmkr	H				
4303	Brio 112 DC pmkr	H				
4304	Brio 212, Talent 213/223 DC pmkr	H				
4305	Brio 222 DC pmkr	H				
4306	Brio 220 DC pmkr	H				
4307	Kairos DR DC pmkr	H				
4308	Inos2, Inos2+ DC pmkr	H				
4309	Actros DR,D,DR-A,SLR DC pmkr	H				
4310	Actros DR-B DC pmkr	H				
4311	Philos DR/DR-B/SLR DC pmkr	H				
4312	Pulsar Max II DR pmkr	H				
4313	Marathon DR pmkr	H				
4314	Momentum DR pmkr	H				
4315	Selection AFm pmkr	H				
4316	Discovery II DR	H				
4317	Discovery II DDD	H				
4600	Synox,Polyrox,Elox,Retrox	H				
4602	Tendril SDX, 1488K pmkr lead	H				
4603	Oscor/Flexion pmkr lead	H				
4604	CrystallineActFix,CapsureFix	H				
4605	CapSure Epi pmkr lead	H				
4606	Flextend pmkr lead	H				
4607	FinelineII/EZ, ThinlineII/EZ	H				
5000	BX Velocity w/Hepacoat	H				
5001	Memotherm Bil Stent, sm, med	H				
5002	Memotherm Bil Stent, large	H				
5003	Memotherm Bil Stent, x-large	H				
5004	PalmazCorinthian IQ Bil Stent	H				
5005	PalmazCorinthian IQ Trans/Bil	H				
5006	PalmazTrans Bil Stent Sys-Med	H				
5007	PalmazTrans XL Bil Stent—40mm	H				
5008	PalmazTrans XL Bil Stent—50mm	H				
5009	VistaFlex Biliary Stent	H				
5010	Rapid Exchange Bil Stent Sys	H				
5011	IntraStent, IntraStent LP	H				
5012	IntraStent DoubleStrut LD	H				
5013	IntraStent DoubleStrut, XS	H				
5014	AVE Bridge Stent Sys-10/17/28	H				
5015	AVE/X3 Bridge Sys, 40-100	H				
5016	Biliary stent single use cov	H				
5017	WallstentRP Bil—20/40/60/68mm	H				
5018	WallstentRP Bil—80/94mm	H				
5019	Flexima Bil Stent Sys	H				
5020	Smart Nitinol Stent—20mm	H				
5021	Smart Nitinol Stent—40/60mm	H				
5022	Smart Nitinol Stent—80mm	H				
5023	BX Velocity Stent—8/13mm	H				
5024	BX Velocity Stent—18mm	H				
5025	BX Velocity Stent—23mm	H				
5026	BX Velocity Stent—28/33mm	H				
5027	BX Velocity w/Hep—8/13mm	H				
5028	BX Velocity w/Hep—18mm	H				
5029	BX Velocity w/Hep—23mm	H				
5030	Stent, coronary, S660 9/12mm	H				
5031	Stent,coronary, S660 15/18mm	H				
5032	Stent,coronary, S660 24/30mm	H				
5033	Niroyal Stent Sys, 9mm	H				
5034	Niroyal Stent Sys, 12/15mm	H				
5035	Niroyal Stent Sys, 18mm	H				
5036	Niroyal Stent Sys, 25mm	H				
5037	Niroyal Stent Sys, 31mm	H				
5038	BX Velocity Stent w/Raptor	H				
5039	IntraCoil Periph Stent—40mm	H				
5040	IntraCoil Periph Stent—60mm	H				
5041	BeStent Over-the-Wire 24/30mm	H				
5042	BeStent Over-the-Wire 18mm	H				
5043	BeStent Over-the-Wire 15mm	H				
5044	BeStent Over-the-Wire 9/12mm	H				
5045	Multilink Tetra Cor Stent Sys	H				
5046	Radius 20mm cor stent	H				
5047	Niroyal Elite Cor Stent Sys	H				
5048	GR II Coronary Stent	H				
5130	Wilson-Cook Colonic Z-Stent	H				
5131	Bard Colorectal Stent-60mm	H				
5132	Bard Colorectal Stent-80mm	H				
5133	Bard Colorectal Stent-100mm	H				
5134	Enteral Wallstent—90mm	H				
5279	Contour/Percuflex Stent	H				

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSIFICATIONS WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS, CALENDAR YEAR 2001—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
5280	Inlay Dbl Ureteral Stent	H				
5281	Wallgraft Trach Sys 70mm	H				
5282	Wallgraft Trach Sys 20/30/50	H				
5283	Wallstent/RP TIPS—80mm	H				
5284	Wallstent TrachUltraFlex	H				
5600	Closure dev, VasoSeal ES	H				
5601	VasoSeal Model 1000	H				
6001	Composix Mesh 8/21 in	H				
6002	Composix Mesh 32 in	H				
6003	Composix Mesh 48 in	H				
6004	Composix Mesh 80 in	H				
6005	Composix Mesh 140 in	H				
6006	Composix Mesh 144 in	H				
6012	Pelvicol Collagen 8/14 sq cm	H				
6013	Pelvicol Collagen 21/24/28 sq cm	H				
6014	Pelvicol Collagen 36 sq cm	H				
6015	Pelvicol Collagen 48 sq cm	H				
6016	Pelvicol Collagen 96 sq cm	H				
6017	Gore-Tex DualMesh 75/96 sq cm	H				
6018	Gore-Tex DualMesh 150 sq cm	H				
6019	Gore-Tex DualMesh 285 sq cm	H				
6020	Gore-Tex DualMesh 432 sq cm	H				
6021	Gore-Tex DualMesh 600 sq cm	H				
6022	Gore-Tex DualMesh 884 sq cm	H				
6023	Gore-TexPlus 1mm, 75/96sq cm	H				
6024	Gore-TexPlus 1mm, 150sq cm	H				
6025	Gore-TexPlus 1mm, 285sq cm	H				
6026	Gore-TexPlus 1mm, 432sq cm	H				
6027	Gore-TexPlus 1mm, 600sq cm	H				
6028	Gore-TexPlus 1mm, 884 sq cm	H				
6029	Gore-TexPlus 2mm, 150 sq cm	H				
6030	Gore-TexPlus 2mm, 285 sq cm	H				
6031	Gore-TexPlus 2mm, 432 sq cm	H				
6032	Gore-TexPlus 2mm, 600 sq cm	H				
6033	Gore-TexPlus 2mm, 884 sq cm	H				
6034	Bard ePTFE: 150 sq cm--2mm	H				
6035	Bard ePTFE 150 sqcm-1mm,75-2mm	H				
6036	Bard ePTFE: 50/75 sqcm-1,2mm	H				
6037	Bard ePTFE: 300 sq cm-1,2mm	H				
6038	Bard ePTFE: 600 sq cm-1mm	H				
6039	Bard ePTFE: 884 sq cm-1mm	H				
6040	Bard ePTFE: 600 sq cm-2mm	H				
6041	Bard ePTFE: 884 sq cm-2mm	H				
6050	Female Sling Sys w/wo Matrl	H				
6051	Stratasis Sling, 20/40 cm	H				
6052	Stratasis Sling, 60 cm	H				
6053	Surgisis Soft Graft	H				
6054	Surgisis Enhanced Graft	H				
6055	Surgisis Enhanced Tissue	H				
6056	Surgisis Soft Tissue Graft	H				
6057	Surgisis Hernia Graft	H				
6058	SurgiPro Hernia Plug, med/lg	H				
6080	Male Sling Sys w/wo Matrl	H				
6200	Exxcel Sft ePTFE vas graft	H				
6201	Impra Venaflo--10/20cm	H				
6202	Impra Venaflo-30/40cm	H				
6203	Impra Venaflo-50cm,vt45	H				
6204	Impra Venaflo-stepped	H				
6205	Impra Carboflo—10cm	H				
6206	Impra Carboflo—20cm	H				
6207	Impra Carboflo—30/35/40cm	H				
6208	Impra Carboflo—40/50cm	H				
6209	Impra Carboflo—ctrflex	H				
6210	Exxcel ePTFE vas graft	H				
6300	Vanguard III Endovas Graft	H				
6500	Preface Guiding Sheath	H				
6501	Soft Tip Sheaths	H				
6502	Perry Exchange Dilator	H				
6525	Spectranetics Laser Sheath	H				
6600	Micro Litho Flex Probes	H				
6650	Fast-Cath Guiding Introducer	H				
6651	Seal-AwayGuiding Introducer	H				
6652	Bard Excalibur Introducer	H				
6700	Focal Seal-L	H				
7000	Amifostine, 500 mg	G		$350.31		$46.94
7001	Amphotericin B lipid complex, 50 mg	G		$95.00		$12.73
7003	Epoprostenol injection 0.5 mg	G		$16.53		$2.22
7004	Immune globulin 5 gms	G		$272.80		$33.28

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSIFICATIONS WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS, CALENDAR YEAR 2001—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
7005	Gonadorelin hydroch, 100 mcg	G		$14.80		$1.98
7007	Milrinone lactate, per 5 ml, inj	K	0.47	$23.31		$4.66
7010	Morphine sulfate (preservative free) 10 mg	G		$7.41		$.99
7011	Oprelvekin injection, 5 mg	G		$236.31		$31.67
7014	Fentanyl citrate inj up 2 ml	G		$0.96		$0.13
7015	Busulfan, oral, 2 mg	G		$1.73		$0.23
7019	Aprotinin, 10,000 kiu	G		$196.35		$26.31
7022	Elliot's B solution, per ml	G		$14.25		$1.91
7023	Treatment for bladder calculi, per 500 ml	G		$23.54		$3.15
7024	Corticorelin ovine triflutate, per 0.1 mg	G		$353.88		$45.77
7025	Digoxin immune FAB (Ovine), 40 mg vial	G		$530.44		$64.71
7026	Ethanolamine oleate, 100 mg	G		$27.21		$3.65
7027	Fomepizole, 1.5 mg	G		$728.33		$97.60
7028	Fosphenytoin, 50 mg	G		$8.55		$1.15
7029	Glatiramer acetate, 20 mg	G		$27.40		$3.67
7030	Hemin, 1 mg	G		$0.90		$0.12
7031	Octreotide acetate injection 1mg	G		$115.34		$15.46
7032	Sermorelin acetate, 0.5 mg	G		$15.79		$2.11
7033	Somatrem, 5 mg	G		$199.50		$26.73
7034	Somatropin, 1 mg (any derivation)	G		$39.90		$5.35
7035	Teniposide, 50 mg	G		$195.28		$26.17
7036	Urokinase, inj, IV, 250,000 I.U.	K	6.78	$336.29		$67.26
7037	Urofollitropin, 75 I.U.	G		$69.73		$9.34
7038	Muromonab-CD3, 5 mg	G		$741.00		$99.29
7039	Pegademase bovine inj 25 I.U	G		$139.33		$18.67
7040	Pentastarch 10% inj, 100 ml	G		$15.11		$2.04
7041	Tirofiban hydrochloride 12.5 mg	G		$399.00		$53.47
7042	Capecitabine, oral, 150 mg	G		$1.94		$0.26
7043	Infliximab injection 10 mg	G		$58.08		$7.78
7045	Trimetrexate glucoronate 25 mg	G		$69.83		$9.36
7046	Doxorubicin hcl liposome inj 10 mg	G		$311.72		$41.77
7047	Droperidol/fentanyl inj	G		$7.02		$0.90
7048	Alteplase, 1 mg	K	0.38	$18.70		$3.74
7049	Filgrastim 480 mcg injection	G		$273.03		$35.06
7315	Sodium hyaluronate, 20 mg	G		$125.59		$16.83
8099	Spectranetics Lead Lock Dev	H				
8100	Adhesion barrier, ADCON–L	H				
8102	SurgiVision Esoph Coil	H				
9000	Na chromate Cr51, per 0.25mCi	G		$259.36		$34.75
9001	Linezolid inj, 200mg	J		$34.14		$4.57
9002	Tenecteplase, 50mg/vial	J		$2,612.50		$350.08
9003	Palivizumab, per 50mg	J		$664.45		$89.04
9004	Gemtuzumab ozogamicin inj,5mg	J		$1,929.69		$258.58
9005	Reteplase inj, half-kit, 18.8 mg/vial	G		$1,306.25		$175.04
9006	Tacrolimus inj, per 5mg (1 amp)	J		$109.85		$14.72
9007	Baclofen Intrathecal kit-1amp	G		$79.80		$10.69
9008	Baclofen Refill Kit—500mcg	G		$222.30		$29.79
9009	Baclofen Refill Kit—2000mcg	G		$467.40		$62.63
9010	Baclofen Refill Kit—4000mcg	G		$820.80		$109.99
9011	Caffeine Citrate, inj, 1ml	G		$12.22		$1.57
9100	Iodinated I-131 Albumin	G		$246.05		$30.02
9102	51 Na chromate, 50mCi	G		$216.60		$26.43
9103	Na Iothalamate I-125, 10uCi	G		$12.27		$1.50
9104	Anti-thymocyte globulin,25mg	G		$251.75		$33.73
9105	Hep B imm glob, per 1 ml	G		$152.00		$20.37
9106	Sirolimus 1mg/ml	J		$6.51		$.87
9107	Tinzaparin sodium, 2ml vial	J		$159.60		$20.50
9108	Thyrotropin Alfa,1.1 mg	G		$494.00		$70.72
9109	Tirofiban hydrochloride 6.25 mg	G		$199.50		$26.56
9217	Leuprolide acetate for depot suspension, 7.5 mg	G		$592.60		$79.40
9500	Platelets, irrad, ea unit	K	1.77	$87.97		$17.59
9501	Platelets, pheresis, ea unit	K	9.69	$480.75		$96.15
9502	Platelets, pher/irrad, ea unit	K	10.52	$521.66		$104.33
9503	Fresh frozen plasma, ea unit	K	1.65	$81.83		$16.37
9504	RBC, deglycerolized, ea unit	K	4.35	$215.83		$43.17

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSIFICATIONS WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS, CALENDAR YEAR 2001—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted coinsurance	Minimum unadjusted coinsurance
9505	RBC, irradiated, ea unit	K	2.58	$127.86		$25.57
9996	Enoxaparin	G		$5.53		$0.79

ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
00100	N	Anesth, salivary gland					
00102	N	Anesth, repair of cleft lip					
00103	N	Anesth, blepharoplasty					
00104	N	Anesth, electroshock					
00120	N	Anesth, ear surgery					
00124	N	Anesth, ear exam					
00126	N	Anesth, tympanotomy					
00140	N	Anesth, procedures on eye					
00142	N	Anesth, lens surgery					
00144	N	Anesth, corneal transplant					
00145	N	Anesth, vitrectomy					
00147	N	Anesth, iridectomy					
00148	N	Anesth, eye exam					
00160	N	Anesth, nose/sinus surgery					
00162	N	Anesth, nose/sinus surgery					
00164	N	Anesth, biopsy of nose					
00170	N	Anesth, procedure on mouth					
00172	N	Anesth, cleft palate repair					
00174	N	Anesth, pharyngeal surgery					
00176	N	Anesth, pharyngeal surgery					
00190	N	Anesth, facial bone surgery					
00192	N	Anesth, facial bone surgery					
00210	N	Anesth, open head surgery					
00212	N	Anesth, skull drainage					
00214	N	Anesth, skull drainage					
00215	N	Anesth, skull fracture					
00216	N	Anesth, head vessel surgery					
00218	N	Anesth, special head surgery					
00220	N	Anesth, spinal fluid shunt					
00222	N	Anesth, head nerve surgery					
00300	N	Anesth, head/neck/ptrunk					
00320	N	Anesth, neck organ surgery					
00322	N	Anesth, biopsy of thyroid					
00350	N	Anesth, neck vessel surgery					
00352	N	Anesth, neck vessel surgery					
00400	N	Anesth, skin, ext/per/atrunk					
00402	N	Anesth, surgery of breast					
00404	N	Anesth, surgery of breast					
00406	N	Anesth, surgery of breast					
00410	N	Anesth, correct heart rhythm					
00420	N	Anesth, skin surgery, back					
00450	N	Anesth, surgery of shoulder					
00452	N	Anesth, surgery of shoulder					
00454	N	Anesth, collar bone biopsy					
00470	N	Anesth, removal of rib					
00472	N	Anesth, chest wall repair					
00474	N	Anesth, surgery of rib(s)					
00500	N	Anesth, esophageal surgery					
00520	N	Anesth, chest procedure					
00522	N	Anesth, chest lining biopsy					
00524	N	Anesth, chest drainage					
00528	N	Anesth, chest partition view					
00530	N	Anesth, pacemaker insertion					
00532	N	Anesth, vascular access					
00534	N	Anesth, cardioverter/defib					
*00537	N	Anesth, cardiac electrophys					
00540	N	Anesth, chest surgery					
00542	N	Anesth, release of lung					
00544	N	Anesth, chest lining removal					
00546	N	Anesth, lung,chest wall surg					
00548	N	Anesth, trachea,bronchi surg					
*00550	N	Anesth, sternal debridement					
00560	N	Anesth, open heart surgery					
00562	N	Anesth, open heart surgery					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
*00563	N	Anesth, openproc w/pump					
*00566	N	Anesth CABG w/o pump					
00580	N	Anesth heart/lung transplant					
00600	N	Anesth, spine. cord surgery					
00604	N	Anesth, surgery of vertebra					
00620	N	Anesth, spine, cord surgery					
00622	N	Anesth, removal of nerves					
00630	N	Anesth, spine, cord surgery					
00632	N	Anesth, removal of nerves					
00634	N	Anesth for chemonucleolysis					
*00635	N	Anesth, lumbar puncture					
00670	N	Anesth, spine, cord surgery					
00700	N	Anesth, abdominal wall surg					
00702	N	Anesth, for liver biopsy					
00730	N	Anesth, abdominal wall surg					
00740	N	Anesth, upper gi visualize					
00750	N	Anesth, repair of hernia					
00752	N	Anesth, repair of hernia					
00754	N	Anesth, repair of hernia					
00756	N	Anesth, repair of hernia					
00770	N	Anesth, blood vessel repair					
00790	N	Anesth, surg upper abdomen					
00792	N	Anesth, part liver removal					
00794	N	Anesth, pancreas removal					
00796	N	Anesth, for liver transplant					
00800	N	Anesth, abdominal wall surg					
00802	N	Anesth, fat layer removal					
00810	N	Anesth, low intestine scope					
00820	N	Anesth, abdominal wall surg					
00830	N	Anesth, repair of hernia					
00832	N	Anesth, repair of hernia					
00840	N	Anesth, surg lower abdomen					
00842	N	Anesth, amniocentesis					
00844	N	Anesth, pelvis surgery					
00846	N	Anesth, hysterectomy					
00848	N	Anesth, pelvic organ surg					
00850	N	Anesth, cesarean section					
00855	N	Anesth, hysterectomy					
00857	N	Analgesia, labor & c-section					
00860	N	Anesth, surgery of abdomen					
00862	N	Anesth, kidney/ureter surg					
00864	N	Anesth, removal of bladder					
00865	N	Anesth, removal of prostate					
00866	N	Anesth, removal of adrenal					
00868	N	Anesth, kidney transplant					
00870	N	Anesth, bladder stone surg					
00872	N	Anesth kidney stone destruct					
00873	N	Anesth kidney stone destruct					
00880	N	Anesth, abdomen vessel surg					
00882	N	Anesth, major vein ligation					
00884	N	Anesth, major vein revision					
00900D	N	Anesth, perineal procedure					
00902	N	Anesth, anorectal surgery					
00904	N	Anesth, perineal surgery					
00906	N	Anesth, removal of vulva					
00908	N	Anesth, removal of prostate					
00910	N	Anesth, bladder surgery					
00912	N	Anesth, bladder tumor surg					
00914	N	Anesth, removal of prostate					
00916	N	Anesth, bleeding control					
00918	N	Anesth, stone removal					
00920	N	Anesth, genitalia surgery					
00922	N	Anesth, sperm duct surgery					
27280	C	Fusion of sacroiliac joint					
27282	C	Fusion of pubic bones					
27284	C	Fusion of hip joint					
27286	C	Fusion of hip joint					
27290	C	Amputation of leg at hip					
27295	C	Amputation of leg at hip					
27299	T	Pelvis/hip joint surgery	0043	1.64	$81.34	$25.46	$16.27
27301	T	Drain thigh/knee lesion	0006	6.15	$305.02	$113.67	$61.00
27303	C	Drainage of bone lesion					
27305	T	Incise thigh tendon & fascia	0049	15.04	$745.93	$356.95	$149.19
27306	T	Incision of thigh tendon	0049	15.04	$745.93	$356.95	$149.19

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
27307	T	Incision of thigh tendons	0049	15.04	$745.93	$356.95	$149.19
27310	T	Exploration of knee joint	0050	21.13	$1,047.96	$513.86	$209.59
27315	T	Partial removal, thigh nerve	0220	13.96	$692.36	$326.21	$138.47
27320	T	Partial removal, thigh nerve	0220	13.96	$692.36	$326.21	$138.47
27323	T	Biopsy, thigh soft tissues	0021	10.49	$520.26	$236.51	$104.05
27324	T	Biopsy, thigh soft tissues	0022	12.49	$619.45	$292.94	$123.89
27327	T	Removal of thigh lesion	0022	12.49	$619.45	$292.94	$123.89
27328	T	Removal of thigh lesion	0022	12.49	$619.45	$292.94	$123.89
27329	T	Remove tumor, thigh/knee	0022	12.49	$619.45	$292.94	$123.89
27330	T	Biopsy, knee joint lining	0050	21.13	$1,047.96	$513.86	$209.59
27331	T	Explore/treat knee joint	0050	21.13	$1,047.96	$513.86	$209.59
27332	T	Removal of knee cartilage	0050	21.13	$1,047.96	$513.86	$209.59
27333	T	Removal of knee cartilage	0050	21.13	$1,047.96	$513.86	$209.59
27334	T	Remove knee joint lining	0050	21.13	$1,047.96	$513.86	$209.59
27335	T	Remove knee joint lining	0050	21.13	$1,047.96	$513.86	$209.59
27340	T	Removal of kneecap bursa	0049	15.04	$745.93	$356.95	$149.19
27345	T	Removal of knee cyst	0049	15.04	$745.93	$356.95	$149.19
27347	T	Remove knee cyst	0049	15.04	$745.93	$356.95	$149.19
27350	T	Removal of kneecap	0050	21.13	$1,047.96	$513.86	$209.59
27355	T	Remove femur lesion	0050	21.13	$1,047.96	$513.86	$209.59
27356	T	Remove femur lesion/graft	0050	21.13	$1,047.96	$513.86	$209.59
27357	T	Remove femur lesion/graft	0050	21.13	$1,047.96	$513.86	$209.59
27358	T	Remove femur lesion/fixation	0050	21.13	$1,047.96	$513.86	$209.59
27360	T	Partial removal, leg bone(s)	0050	21.13	$1,047.96	$513.86	$209.59
27365	C	Extensive leg surgery					
27370	N	Injection for knee x-ray					
27372	T	Removal of foreign body	0022	12.49	$619.45	$292.94	$123.89
27380	T	Repair of kneecap tendon	0049	15.04	$745.93	$356.95	$149.19
27381	T	Repair/graft kneecap tendon	0049	15.04	$745.93	$356.95	$149.19
27385	T	Repair of thigh muscle	0049	15.04	$745.93	$356.95	$149.19
27386	T	Repair/graft of thigh muscle	0049	15.04	$745.93	$356.95	$149.19
27390	T	Incision of thigh tendon	0049	15.04	$745.93	$356.95	$149.19
27391	T	Incision of thigh tendons	0049	15.04	$745.93	$356.95	$149.19
27392	T	Incision of thigh tendons	0049	15.04	$745.93	$356.95	$149.19
27393	T	Lengthening of thigh tendon	0050	21.13	$1,047.96	$513.86	$209.59
27394	T	Lengthening of thigh tendons	0050	21.13	$1,047.96	$513.86	$209.59
27395	T	Lengthening of thigh tendons	0051	27.76	$1,376.79	$675.24	$275.36
27396	T	Transplant of thigh tendon	0050	21.13	$1,047.96	$513.86	$209.59
27397	T	Transplants of thigh tendons	0051	27.76	$1,376.79	$675.24	$275.36
27400	T	Revise thigh muscles/tendons	0051	27.76	$1,376.79	$675.24	$275.36
27403	T	Repair of knee cartilage	0050	21.13	$1,047.96	$513.86	$209.59
27405	T	Repair of knee ligament	0051	27.76	$1,376.79	$675.24	$275.36
27407	T	Repair of knee ligament	0051	27.76	$1,376.79	$675.24	$275.36
27409	T	Repair of knee ligaments	0051	27.76	$1,376.79	$675.24	$275.36
27418	T	Repair degenerated kneecap	0051	27.76	$1,376.79	$675.24	$275.36
27420	T	Revision of unstable kneecap	0051	27.76	$1,376.79	$675.24	$275.36
27422	T	Revision of unstable kneecap	0051	27.76	$1,376.79	$675.24	$275.36
27424	T	Revision/removal of kneecap	0051	27.76	$1,376.79	$675.24	$275.36
27425	T	Lateral retinacular release	0050	21.13	$1,047.96	$513.86	$209.59
27427	T	Reconstruction, knee	0052	36.16	$1,793.39	$930.91	$358.68
27428	T	Reconstruction, knee	0052	36.16	$1,793.39	$930.91	$358.68
27429	T	Reconstruction, knee	0052	36.16	$1,793.39	$930.91	$358.68
27430	T	Revision of thigh muscles	0051	27.76	$1,376.79	$675.24	$275.36
27435	T	Incision of knee joint	0051	27.76	$1,376.79	$675.24	$275.36
27437	T	Revise kneecap	0047	22.09	$1,095.58	$537.03	$219.12
27438	T	Revise kneecap with implant	0048	29.06	$1,441.26	$725.94	$288.25
27440	T	Revision of knee joint	0047	22.09	$1,095.58	$537.03	$219.12
27441	T	Revision of knee joint	0047	22.09	$1,095.58	$537.03	$219.12
27442	T	Revision of knee joint	0047	22.09	$1,095.58	$537.03	$219.12
27443	T	Revision of knee joint	0047	22.09	$1,095.58	$537.03	$219.12
27445	C	Revision of knee joint					
27446	C	Revision of knee joint					
27447	C	Total knee replacement					
27448	C	Incision of thigh					
27450	C	Incision of thigh					
27454	C	Realignment of thigh bone					
27455	C	Realignment of knee					
27457	C	Realignment of knee					
27465	C	Shortening of thigh bone					
27466	C	Lengthening of thigh bone					
27468	C	Shorten/lengthen thighs					
27470	C	Repair of thigh					
27472	C	Repair/graft of thigh					
27475	C	Surgery to stop leg growth					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
27477	C	Surgery to stop leg growth					
27479	C	Surgery to stop leg growth					
27485	C	Surgery to stop leg growth					
27486	C	Revise/replace knee joint					
27487	C	Revise/replace knee joint					
27488	C	Removal of knee prosthesis					
27495	C	Reinforce thigh					
27496	T	Decompression of thigh/knee	0049	15.04	$745.93	$356.95	$149.19
27497	T	Decompression of thigh/knee	0049	15.04	$745.93	$356.95	$149.19
27498	T	Decompression of thigh/knee	0049	15.04	$745.93	$356.95	$149.19
27499	T	Decompression of thigh/knee	0049	15.04	$745.93	$356.95	$149.19
27500	T	Treatment of thigh fracture	0044	2.17	$107.63	$38.08	$21.53
27501	T	Treatment of thigh fracture	0044	2.17	$107.63	$38.08	$21.53
27502	T	Treatment of thigh fracture	0044	2.17	$107.63	$38.08	$21.53
27503	T	Treatment of thigh fracture	0044	2.17	$107.63	$38.08	$21.53
27506	C	Treatment of thigh fracture					
27507	C	Treatment of thigh fracture					
27508	T	Treatment of thigh fracture	0044	2.17	$107.63	$38.08	$21.53
27509	T	Treatment of thigh fracture	0046	22.29	$1,105.50	$535.76	$221.10
27510	T	Treatment of thigh fracture	0044	2.17	$107.63	$38.08	$21.53
27511	C	Treatment of thigh fracture					
27513	C	Treatment of thigh fracture					
27514	C	Treatment of thigh fracture					
27516	T	Treat thigh fx growth plate	0044	2.17	$107.63	$38.08	$21.53
27517	T	Treat thigh fx growth plate	0044	2.17	$107.63	$38.08	$21.53
27519	C	Treat thigh fx growth plate					
27520	T	Treat kneecap fracture	0044	2.17	$107.63	$38.08	$21.53
27524	T	Treat kneecap fracture	0046	22.29	$1,105.50	$535.76	$221.10
27530	T	Treat knee fracture	0044	2.17	$107.63	$38.08	$21.53
27532	T	Treat knee fracture	0044	2.17	$107.63	$38.08	$21.53
27535	C	Treat knee fracture					
27536	C	Treat knee fracture					
27538	T	Treat knee fracture(s)	0044	2.17	$107.63	$38.08	$21.53
27540	C	Treat knee fracture					
27550	T	Treat knee dislocation	0044	2.17	$107.63	$38.08	$21.53
27552	T	Treat knee dislocation	0045	11.02	$546.55	$277.12	$109.31
27556	C	Treat knee dislocation					
27557	C	Treat knee dislocation					
27558	C	Treat knee dislocation					
27560	T	Treat kneecap dislocation	0044	2.17	$107.63	$38.08	$21.53
27562	T	Treat kneecap dislocation	0045	11.02	$546.55	$277.12	$109.31
27566	T	Treat kneecap dislocation	0046	22.29	$1,105.50	$535.76	$221.10
27570	T	Fixation of knee joint	0045	11.02	$546.55	$277.12	$109.31
27580	C	Fusion of knee					
27590	C	Amputate leg at thigh					
27591	C	Amputate leg at thigh					
27592	C	Amputate leg at thigh					
27594	T	Amputation follow-up surgery	0049	15.04	$745.93	$356.95	$149.19
27596	C	Amputation follow-up surgery					
27598	C	Amputate lower leg at knee					
27599	T	Leg surgery procedure	0044	2.17	$107.63	$38.08	$21.53
27600	T	Decompression of lower leg	0049	15.04	$745.93	$356.95	$149.19
27601	T	Decompression of lower leg	0049	15.04	$745.93	$356.95	$149.19
27602	T	Decompression of lower leg	0049	15.04	$745.93	$356.95	$149.19
27603	T	Drain lower leg lesion	0008	6.15	$305.02	$113.67	$61.00
27604	T	Drain lower leg bursa	0049	15.04	$745.93	$356.95	$149.19
27605	T	Incision of achilles tendon	0055	15.47	$767.26	$355.34	$153.45
00924	N	Anesth, testis exploration					
00926	N	Anesth, removal of testis					
00928	N	Anesth, removal of testis					
00930	N	Anesth, testis suspension					
00932	N	Anesth, amputation of penis					
00934	N	Anesth, penis, nodes removal					
00936	N	Anesth, penis, nodes removal					
00938	N	Anesth, insert penis device					
00940	N	Anesth, vaginal procedures					
00942	N	Anesth, surgery on vagina					
00944	N	Anesth, vaginal hysterectomy					
00946	N	Anesth, vaginal delivery					
00948	N	Anesth, repair of cervix					
00950	N	Anesth, vaginal endoscopy					
00952	N	Anesth, hysteroscope/graph					
00955	N	Analgesia, vaginal delivery					
01000	N	Anesth, skin surgery, pelvis					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
01110	N	Anesth, skin surgery, pelvis					
*01112	N	Anesth, bone aspirate/bx					
01120	N	Anesth, pelvis surgery					
01130	N	Anesth, body cast procedure					
01140	N	Anesth, amputation at pelvis					
01150	N	Anesth, pelvic tumor surgery					
01160	N	Anesth, pelvis procedure					
01170	N	Anesth, pelvis surgery					
01180	N	Anesth, pelvis nerve removal					
01190	N	Anesth, pelvis nerve removal					
01200	N	Anesth, hip joint procedure					
01202	N	Anesth, arthroscopy of hip					
01210	N	Anesth, hip joint surgery					
01212	N	Anesth, hip disarticulation					
01214	N	Anesth, replacement of hip					
*01215	N	Anesth, revise hip repair					
01220	N	Anesth, procedure on femur					
01230	N	Anesth, surgery of femur					
01232	N	Anesth, amputation of femur					
01234	N	Anesth, radical femur surg					
01240	N	Anesth, upper leg skin surg					
01250	N	Anesth, upper leg surgery					
01260	N	Anesth, upper leg veins surg					
01270	N	Anesth, thigh arteries surg					
01272	N	Anesth, femoral artery surg					
01274	N	Anesth, femoral embolectomy					
01300	N	Anesth, skin surgery, knee					
01320	N	Anesth, knee area surgery					
01340	N	Anesth, knee area procedure					
01360	N	Anesth, knee area surgery					
01380	N	Anesth, knee joint procedure					
01382	N	Anesth, knee arthroscopy					
01390	N	Anesth, knee area procedure					
01392	N	Anesth, knee area surgery					
01400	N	Anesth, knee joint surgery					
01402	N	Anesth, replacement of knee					
01404	N	Anesth, amputation at knee					
01420	N	Anesth, knee joint casting					
01430	N	Anesth, knee veins surgery					
01432	N	Anesth, knee vessel surg					
01440	N	Anesth, knee arteries surg					
01442	N	Anesth, knee artery surg					
01444	N	Anesth, knee artery repair					
01460	N	Anesth, lower leg skin surg					
01462	N	Anesth, lower leg procedure					
01464	N	Anesth, ankle arthroscopy					
01470	N	Anesth, lower leg surgery					
01472	N	Anesth, achilles tendon surg					
01474	N	Anesth, lower leg surgery					
01480	N	Anesth, lower leg bone surg					
01482	N	Anesth, radical leg surgery					
01484	N	Anesth, lower leg revision					
01486	N	Anesth, ankle replacement					
01490	N	Anesth, lower leg casting					
01500	N	Anesth, leg arteries surg					
01502	N	Anesth, lwr leg embolectomy					
01520	N	Anesth, lower leg vein surg					
01522	N	Anesth, lower leg vein surg					
01600	N	Anesth, shoulder skin surg					
01610	N	Anesth, surgery of shoulder					
01620	N	Anesth, shoulder procedure					
01622	N	Anesth, shoulder arthroscopy					
01630	N	Anesth, surgery of shoulder					
01632	N	Anesth, surgery of shoulder					
01634	N	Anesth, shoulder joint amput					
01636	N	Anesth, forequarter amput					
01638	N	Anesth, shoulder replacement					
01650	N	Anesth, shoulder artery surg					
01652	N	Anesth, shoulder vessel surg					
01654	N	Anesth, shoulder vessel surg					
01656	N	Anesth, arm-leg vessel surg					
01670	N	Anesth, shoulder vein surg					
01680	N	Anesth, shoulder casting					
01682	N	Anesth, airplane cast					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
01700	N	Anesth, elbow area skin surg					
01710	N	Anesth, elbow area surgery					
01712	N	Anesth, uppr arm tendon surg					
01714	N	Anesth, uppr arm tendon surg					
01716	N	Anesth, biceps tendon repair					
01730	N	Anesth, uppr arm procedure					
01732	N	Anesth, elbow arthroscopy					
01740	N	Anesth, upper arm surgery					
01742	N	Anesth, humerus surgery					
01744	N	Anesth, humerus repair					
01756	N	Anesth, radical humerus surg					
01758	N	Anesth, humeral lesion surg					
01760	N	Anesth, elbow replacement					
01770	N	Anesth, uppr arm artery surg					
01772	N	Anesth, uppr arm embolectomy					
01780	N	Anesth, upper arm vein surg					
01782	N	Anesth, uppr arm vein repair					
01784D	N	Anesth, av fistula repair					
01800	N	Anesth, lower arm skin surg					
01810	N	Anesth, lower arm surgery					
01820	N	Anesth, lower arm procedure					
01830	N	Anesth, lower arm surgery					
01832	N	Anesth, wrist replacement					
01840	N	Anesth, lwr arm artery surg					
01842	N	Anesth, lwr arm embolectomy					
01844	N	Anesth, vascular shunt surg					
01850	N	Anesth, lower arm vein surg					
01852	N	Anesth, lwr arm vein repair					
01860	N	Anesth, lower arm casting					
01900	N	Anesth, uterus/tube inject					
01902	N	Anesth, burr holes, skull					
01904	N	Anesth, skull x-ray inject					
01906	N	Anesth, lumbar myelography					
01908	N	Anesth, cervical myelography					
01910	N	Anesth, skull myelography					
01912	N	Anesth, lumbar diskography					
01914	N	Anesth, cervical diskography					
01916	N	Anesth, head arteriogram					
01918	N	Anesth, limb arteriogram					
01920	N	Anesth, catheterize heart					
01921	N	Anesth, vessel surgery					
01922	N	Anesth, cat or MRI scan					
*01951	N	Anesth, burn, less 1 percent					
*01952	N	Anesth, burn, 1-9 percent					
*01953	N	Anesth, burn, each 9 percent					
01990	N	Support for organ donor					
01995	N	Regional anesthesia, limb					
01996	N	Manage daily drug therapy					
01999	N	Unlisted anesth procedure					
10040	T	Acne surgery of skin abscess	0006	2.00	$99.19	$33.95	$19.84
10060	T	Drainage of skin abscess	0006	2.00	$99.19	$33.95	$19.84
10061	T	Drainage of skin abscess	0006	2.00	$99.19	$33.95	$19.84
10080	T	Drainage of pilonidal cyst	0006	2.00	$99.19	$33.95	$19.84
10081	T	Drainage of pilonidal cyst	0007	3.68	$182.51	$72.03	$36.50
10120	T	Remove foreign body	0006	2.00	$99.19	$33.95	$19.84
10121	T	Remove foreign body	0020	6.51	$322.67	$130.53	$64.57
10140	T	Drainage of hematoma/fluid	0007	3.68	$182.51	$72.03	$36.50
10160	T	Puncture drainage of lesion	0006	2.00	$99.19	$33.95	$19.84
10180	T	Complex drainage, wound	0007	3.68	$182.51	$72.03	$36.50
11000	T	Debride infected skin	0015	1.77	$87.78	$31.20	$17.56
11001	T	Debride infected skin add-on	0015	1.77	$87.78	$31.20	$17.56
11010	T	Debride skin, fx	0022	12.49	$619.45	$292.94	$123.89
11011	T	Debride skin/muscle, fx	0022	12.49	$619.45	$292.94	$123.89
11012	T	Debride skin/muscle/bone, fx	0022	12.49	$619.45	$292.94	$123.89
11040	T	Debride skin, partial	0015	1.77	$87.78	$31.20	$17.56
11041	T	Debride skin, full	0015	1.77	$87.78	$31.20	$17.56
11042	T	Debride skin/tissue	0016	3.53	$175.07	$74.67	$35.01
11043	T	Debride tissue/muscle	0016	3.53	$175.07	$74.67	$35.01
11044	T	Debride tissue/muscle/bone	0017	12.45	$617.47	$289.16	$123.49
11055	T	Trim skin lesion	0015	1.77	$87.78	$31.20	$17.56
11056	T	Trim skin lesions, 2 to 4	0015	1.77	$87.78	$31.20	$17.56
11057	T	Trim skin lesions, over 4	0015	1.77	$87.78	$31.20	$17.56
11100	T	Biopsy of skin lesion	0018	0.94	$46.62	$17.66	$9.32
11101	T	Biopsy, skin add-on	0018	0.94	$46.62	$17.66	$9.32

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
11200	T	Removal of skin tags	0015	1.77	$87.78	$31.20	$17.56
11201	T	Remove skin tags add-on	0015	1.77	$87.78	$31.20	$17.56
11300	T	Shave skin lesion	0013	0.91	$45.13	$17.66	$9.03
11301	T	Shave skin lesion	0013	0.91	$45.13	$17.66	$9.03
11302	T	Shave skin lesion	0014	1.50	$74.39	$24.55	$14.88
11303	T	Shave skin lesion	0015	1.77	$87.78	$31.20	$17.56
11305	T	Shave skin lesion	0013	0.91	$45.13	$17.66	$9.03
11306	T	Shave skin lesion	0013	0.91	$45.13	$17.66	$9.03
11307	T	Shave skin lesion	0014	1.50	$74.39	$24.55	$14.88
11308	T	Shave skin lesion	0015	1.77	$87.78	$31.20	$17.56
11310	T	Shave skin lesion	0013	0.91	$45.13	$17.66	$9.03
11311	T	Shave skin lesion	0013	0.91	$45.13	$17.66	$9.03
11312	T	Shave skin lesion	0015	1.77	$87.78	$31.20	$17.56
11313	T	Shave skin lesion	0016	3.53	$175.07	$74.67	$35.01
11400	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11401	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11402	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11403	T	Removal of skin lesion	0020	6.51	$322.87	$130.53	$64.57
11404	T	Removal of skin lesion	0020	6.51	$322.87	$130.53	$64.57
11406	T	Removal of skin lesion	0020	6.51	$322.87	$130.53	$64.57
11420	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11421	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11422	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11423	T	Removal of skin lesion	0020	6.51	$322.87	$130.53	$64.57
11424	T	Removal of skin lesion	0020	6.51	$322.87	$130.53	$64.57
11426	T	Removal of skin lesion	0022	12.49	$619.45	$292.94	$123.89
11440	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11441	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11442	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11443	T	Removal of skin lesion	0020	6.51	$322.87	$130.53	$64.57
11444	T	Removal of skin lesion	0020	6.51	$322.87	$130.53	$64.57
11446	T	Removal of skin lesion	0022	12.49	$619.45	$292.94	$123.89
11450	T	Removal, sweat gland lesion	0022	12.49	$619.45	$292.94	$123.89
11451	T	Removal, sweat gland lesion	0022	12.49	$619.45	$292.94	$123.89
11462	T	Removal, sweat gland lesion	0022	12.49	$619.45	$292.94	$123.89
11463	T	Removal, sweat gland lesion	0022	12.49	$619.45	$292.94	$123.89
11470	T	Removal, sweat gland lesion	0022	12.49	$619.45	$292.94	$123.89
11471	T	Removal, sweat gland lesion	0022	12.49	$619.45	$292.94	$123.89
11600	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11601	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11602	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11603	T	Removal of skin lesion	0020	6.51	$322.87	$130.53	$64.57
11604	T	Removal of skin lesion	0020	6.51	$322.87	$130.53	$64.57
11606	T	Removal of skin lesion	0021	10.49	$520.26	$236.51	$104.05
11620	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11621	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11622	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11623	T	Removal of skin lesion	0020	6.51	$322.87	$130.53	$64.57
11624	T	Removal of skin lesion	0020	6.51	$322.87	$130.53	$64.57
11626	T	Removal of skin lesion	0022	12.49	$619.45	$292.94	$123.89
11640	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11641	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11642	T	Removal of skin lesion	0019	4.00	$198.39	$78.91	$39.68
11643	T	Removal of skin lesion	0020	6.51	$322.87	$130.53	$64.57
11644	T	Removal of skin lesion	0020	6.51	$322.87	$130.53	$64.57
11646	T	Removal of skin lesion	0022	12.49	$619.45	$292.94	$123.89
11719	T	Trim nail(s)	0009	0.74	$36.70	$9.63	$7.34
11720	T	Debride nail, 1-5	0009	0.74	$36.70	$9.63	$7.34
11721	T	Debride nail, 6 or more	0009	0.74	$36.70	$9.63	$7.34
11730	T	Removal of nail plate	0013	0.91	$45.13	$17.66	$9.03
11732	T	Remove nail plate, add-on	0012	0.53	$26.29	$9.18	$5.26
11740	T	Drain blood from under nail	0009	0.74	$36.70	$9.63	$7.34
11750	T	Removal of nail bed	0019	4.00	$198.39	$78.91	$39.68
11752	T	Remove nail bed/finger tip	0022	12.49	$619.45	$292.94	$123.89
11755	T	Biopsy, nail unit	0019	4.00	$198.39	$78.91	$39.68
11760	T	Repair of nail bed	0024	2.43	$120.51	$44.50	$24.10
11762	T	Reconstruction of nail bed	0024	2.43	$120.51	$44.50	$24.10
11765	T	Excision of nail fold, toe	0015	1.77	$87.78	$31.20	$17.56
11770	T	Removal of pilonidal lesion	0021	10.49	$520.26	$236.51	$104.05
11771	T	Removal of pilonidal lesion	0022	12.49	$619.45	$292.94	$123.89
11772	T	Removal of pilonidal lesion	0022	12.49	$619.45	$292.94	$123.89
11900	T	Injection into skin lesions	0012	0.53	$26.29	$9.18	$5.26
11901	T	Added skin lesions injection	0013	0.91	$45.13	$17.66	$9.03
11920	T	Correct skin color defects	0024	2.43	$120.51	$44.50	$24.10

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
11921	T	Correct skin color defects	0024	2.43	$120.51	$44.50	$24.10
11922	T	Correct skin color defects	0024	2.43	$120.51	$44.50	$24.10
11950	T	Therapy for contour defects	0024	2.43	$120.51	$44.50	$24.10
11951	T	Therapy for contour defects	0024	2.43	$120.51	$44.50	$24.10
11952	T	Therapy for contour defects	0024	2.43	$120.51	$44.50	$24.10
11954	T	Therapy for contour defects	0024	2.43	$120.51	$44.50	$24.10
11960	T	Insert tissue expander(s)	0026	12.11	$600.61	$277.92	$120.12
11970	T	Replace tissue expander	0026	12.11	$600.61	$277.92	$120.12
11971	T	Remove tissue expander(s)	0022	12.49	$619.45	$292.94	$123.89
11975	E	Insert contraceptive cap					
11976	T	Removal of contraceptive cap	0019	4.00	$198.39	$78.91	$39.68
11977	E	Removal/reinsert contra cap					
11980	X	Implant hormone pellet(s)	0340	1.04	$51.58	$12.85	$10.32
12001	T	Repair superficial wound(s)	0024	2.43	$120.51	$44.50	$24.10
12002	T	Repair superficial wound(s)	0024	2.43	$120.51	$44.50	$24.10
12004	T	Repair superficial wound(s)	0024	2.43	$120.51	$44.50	$24.10
12005	T	Repair superficial wound(s)	0024	2.43	$120.51	$44.50	$24.10
12006	T	Repair superficial wound(s)	0024	2.43	$120.51	$44.50	$24.10
12007	T	Repair superficial wound(s)	0024	2.43	$120.51	$44.50	$24.10
12011	T	Repair superficial wound(s)	0024	2.43	$120.51	$44.50	$24.10
12013	T	Repair superficial wound(s)	0024	2.43	$120.51	$44.50	$24.10
12014	T	Repair superficial wound(s)	0024	2.43	$120.51	$44.50	$24.10
12015	T	Repair superficial wound(s)	0024	2.43	$120.51	$44.50	$24.10
12016	T	Repair superficial wound(s)	0024	2.43	$120.51	$44.50	$24.10
12017	T	Repair superficial wound(s)	0024	2.43	$120.51	$44.50	$24.10
12018	T	Repair superficial wound(s)	0024	2.43	$120.51	$44.50	$24.10
12020	T	Closure of split wound	0024	2.43	$120.51	$44.50	$24.10
12021	T	Closure of split wound	0024	2.43	$120.51	$44.50	$24.10
12031	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12032	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12034	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12035	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12036	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12037	T	Layer closure of wound(s)	0026	12.11	$600.61	$277.92	$120.12
12041	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12042	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12044	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12045	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12046	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12047	T	Layer closure of wound(s)	0026	12.1	$600.61	$277.92	$120.12
12051	T	Layer closure of wound(s)	0024	2.4	$120.51	$44.50	$24.10
12052	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12053	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12054	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12055	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12056	T	Layer closure of wound(s)	0024	2.43	$120.51	$44.50	$24.10
12057	T	Layer closure of wound(s)	0026	12.11	$600.61	$277.92	$120.12
13100	T	Repair of wound or lesion	0025	3.74	$185.49	$70.66	$37.10
13101	T	Repair of wound or lesion	0025	3.74	$185.49	$70.66	$37.10
13102	T	Repair wound/lesion add-on	0025	3.74	$185.49	$70.66	$37.10
13120	T	Repair of wound or lesion	0025	3.74	$185.49	$70.66	$37.10
13121	T	Repair of wound or lesion	0025	3.74	$185.49	$70.66	$37.10
13122	T	Repair wound/lesion add-on	0025	3.74	$185.49	$70.66	$37.10
13131	T	Repair of wound or lesion	0025	3.74	$185.49	$70.66	$37.10
13132	T	Repair of wound or lesion	0025	3.74	$185.49	$70.66	$37.10
13133	T	Repair wound/lesion add-on	0025	3.74	$185.49	$70.66	$37.10
13150	T	Repair of wound or lesion	0026	12.11	$600.61	$277.92	$120.12
13151	T	Repair of wound or lesion	0025	3.74	$185.49	$70.66	$37.10
13152	T	Repair of wound or lesion	0025	3.74	$185.49	$70.66	$37.10
13153	T	Repair wound/lesion add-on	0025	3.74	$185.49	$70.66	$37.10
13160	T	Late closure of wound	0026	12.11	$600.61	$277.92	$120.12
14000	T	Skin tissue rearrangement	0026	12.11	$600.61	$277.92	$120.12
14001	T	Skin tissue rearrangement	0026	12.11	$600.61	$277.92	$120.12
14020	T	Skin tissue rearrangement	0026	12.11	$600.61	$277.92	$120.12
14021	T	Skin tissue rearrangement	0026	12.11	$600.61	$277.92	$120.12
14040	T	Skin tissue rearrangement	0026	12.11	$600.61	$277.92	$120.12
14041	T	Skin tissue rearrangement	0026	12.11	$600.61	$277.92	$120.12
14060	T	Skin tissue rearrangement	0026	12.11	$600.61	$277.92	$120.12
14061	T	Skin tissue rearrangement	0026	12.11	$600.61	$277.92	$120.12
14300	T	Skin tissue rearrangement	0026	12.11	$600.61	$277.92	$120.12
14350	T	Skin tissue rearrangement	0026	12.11	$600.61	$277.92	$120.12
15000	T	Skin graft	0026	12.11	$600.61	$277.92	$120.12
15001	T	Skin graft add-on	0026	12.11	$600.61	$277.92	$120.12
15050	T	Skin pinch graft	0026	12.11	$600.61	$277.92	$120.12

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
15100	T	Skin split graft	0026	12.11	$600.61	$277.92	$120.12
15101	T	Skin split graft add-on	0026	12.11	$600.61	$277.92	$120.12
15120	T	Skin split graft	0026	12.11	$600.61	$277.92	$120.12
15121	T	Skin split graft add-on	0026	12.11	$600.61	$277.92	$120.12
15200	T	Skin full graft	0026	12.11	$600.61	$277.92	$120.12
15201	T	Skin full graft add-on	0026	12.11	$600.61	$277.92	$120.12
15220	T	Skin full graft	0026	12.11	$600.61	$277.92	$120.12
15221	T	Skin full graft add-on	0026	12.11	$600.61	$277.92	$120.12
15240	T	Skin full graft	0026	12.11	$600.61	$277.92	$120.12
15241	T	Skin full graft add-on	0026	12.11	$600.61	$277.92	$120.12
15260	T	Skin full graft	0026	12.11	$600.61	$277.92	$120.12
15261	T	Skin full graft add-on	0026	12.11	$600.61	$277.92	$120.12
*15342	T	Cultured skin graft, 25 cm	0025	3.74	$185.49	$70.66	$37.10
*15343	T	Culture skin graft addl 25 cm	0025	3.74	$185.49	$70.66	$37.10
15350	T	Skin homograft	0026	12.11	$600.61	$277.92	$120.12
15351	T	Skin homograft add-on	0026	12.11	$600.61	$277.92	$120.12
15400	T	Skin heterograft	0026	12.11	$600.61	$277.92	$120.12
15401	T	Skin heterograft add-on	0026	12.11	$600.61	$277.92	$120.12
15570	T	Form skin pedicle flap	0026	12.11	$600.61	$277.92	$120.12
15572	T	Form skin pedicle flap	0026	12.11	$600.61	$277.92	$120.12
15574	T	Form skin pedicle flap	0026	12.11	$600.61	$277.92	$120.12
15576	T	Form skin pedicle flap	0026	12.11	$600.61	$277.92	$120.12
15600	T	Skin graft	0026	12.11	$600.61	$277.92	$120.12
15610	T	Skin graft	0026	12.11	$600.61	$277.92	$120.12
15620	T	Skin graft	0026	12.11	$600.61	$277.92	$120.12
15630	T	Skin graft	0026	12.11	$600.61	$277.92	$120.12
15650	T	Transfer skin pedicle flap	0026	12.11	$600.61	$277.92	$120.12
15732	T	Muscle-skin graft, head/neck	0027	15.80	$783.62	$383.10	$156.72
15734	T	Muscle-skin graft, trunk	0027	15.80	$783.62	$383.10	$156.72
15736	T	Muscle-skin graft, arm	0027	15.80	$783.62	$383.10	$156.72
15738	T	Muscle-skin graft, leg	0027	15.80	$783.62	$383.10	$156.72
15740	T	Island pedicle flap graft	0027	15.80	$783.62	$383.10	$156.72
15750	T	Neurovascular pedicle graft	0027	15.80	$783.62	$383.10	$156.72
15756	C	Free muscle flap, microvasc					
15757	C	Free skin flap, microvasc					
15758	C	Free fascial flap, microvasc					
15760	T	Composite skin graft	0027	15.80	$783.62	$383.10	$156.72
15770	T	Derma-fat-fascia graft	0027	15.80	$783.62	$383.10	$156.72
15775	T	Hair transplant punch grafts	0026	12.11	$600.61	$277.92	$120.12
15776	T	Hair transplant punch grafts	0026	12.11	$600.61	$277.92	$120.12
15780	T	Abrasion treatment of skin	0022	12.49	$619.45	$292.94	$123.89
15781	T	Abrasion treatment of skin	0022	12.49	$619.45	$292.94	$123.89
15782	T	Abrasion treatment of skin	0022	12.49	$619.45	$292.94	$123.89
15783	T	Abrasion treatment of skin	0015	1.77	$87.78	$31.20	$17.56
15786	T	Abrasion, lesion, single	0013	0.91	$45.13	$17.66	$9.03
15787	T	Abrasion, lesions, add-on	0016	3.53	$175.07	$74.67	$35.01
15788	T	Chemical peel, face, epiderm	0013	0.91	$45.13	$17.66	$9.03
15789	T	Chemical peel, face, dermal	0015	1.77	$87.78	$31.20	$17.56
15792	T	Chemical peel, nonfacial	0016	3.53	$175.07	$74.67	$35.01
15793	T	Chemical peel, nonfacial	0016	3.53	$175.07	$74.67	$35.01
15810	T	Salabrasion	0016	3.53	$175.07	$74.67	$35.01
15811	T	Salabrasion	0022	12.49	$619.45	$292.94	$123.89
15819	T	Plastic surgery, neck	0026	12.11	$600.61	$277.92	$120.12
15820	T	Revision of lower eyelid	0026	12.11	$600.61	$277.92	$120.12
15821	T	Revision of lower eyelid	0026	12.11	$600.61	$277.92	$120.12
15822	T	Revision of upper eyelid	0026	12.11	$600.61	$277.92	$120.12
15823	T	Revision of upper eyelid	0026	12.11	$600.61	$277.92	$120.12
15824	T	Removal of forehead wrinkles	0027	15.80	$783.62	$383.10	$156.72
15825	T	Removal of neck wrinkles	0026	12.11	$600.61	$277.92	$120.12
15826	T	Removal of brow wrinkles	0027	15.80	$783.62	$383.10	$156.72
15828	T	Removal of face wrinkles	0027	15.80	$783.62	$383.10	$156.72
15829	T	Removal of skin wrinkles	0026	12.11	$600.61	$277.92	$120.12
15831	T	Excise excessive skin tissue	0027	15.80	$783.62	$383.10	$156.72
15832	T	Excise excessive skin tissue	0027	15.80	$783.62	$383.10	$156.72
15833	T	Excise excessive skin tissue	0027	15.80	$783.62	$383.10	$156.72
15834	T	Excise excessive skin tissue	0027	15.80	$783.62	$383.10	$156.72
15835	T	Excise excessive skin tissue	0026	12.11	$600.61	$277.92	$120.12
15836	T	Excise excessive skin tissue	0027	15.80	$783.62	$383.10	$156.72
15837	T	Excise excessive skin tissue	0027	15.80	$783.62	$383.10	$156.72
15838	T	Excise excessive skin tissue	0022	12.49	$619.45	$292.94	$123.89
15839	T	Excise excessive skin tissue	0027	15.80	$783.62	$383.10	$156.72
15840	T	Graft for face nerve palsy	0027	15.80	$783.62	$383.10	$156.72
15841	T	Graft for face nerve palsy	0027	15.80	$783.62	$383.10	$156.72
15842	T	Graft for face nerve palsy	0027	15.80	$783.62	$383.10	$156.72

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
15845	T	Skin and muscle repair, face	0027	15.80	$783.62	$383.10	$156.72
15850	T	Removal of sutures	0013	0.91	$45.13	$17.66	$9.03
15851	T	Removal of sutures	0013	0.91	$45.13	$17.66	$9.03
15852	T	Dressing change,not for burn	0012	0.53	$26.29	$9.18	$5.26
15860	N	Test for blood flow in graft					
15876	T	Suction assisted lipectomy	0027	15.80	$783.62	$383.10	$156.72
15877	T	Suction assisted lipectomy	0027	15.80	$783.62	$383.10	$156.72
15878	T	Suction assisted lipectomy	0027	15.80	$783.62	$383.10	$156.72
15879	T	Suction assisted lipectomy	0027	15.80	$783.62	$383.10	$156.72
15920	T	Removal of tail bone ulcer	0022	12.49	$619.45	$292.94	$123.89
15922	T	Removal of tail bone ulcer	0027	15.80	$783.62	$383.10	$156.72
15931	T	Remove sacrum pressure sore	0022	12.49	$619.45	$292.94	$123.89
15933	T	Remove sacrum pressure sore	0022	12.49	$619.45	$292.94	$123.89
15934	T	Remove sacrum pressure sore	0027	15.80	$783.62	$383.10	$156.72
15935	T	Remove sacrum pressure sore	0027	15.80	$783.62	$383.10	$156.72
15936	T	Remove sacrum pressure sore	0027	15.80	$783.62	$383.10	$156.72
15937	T	Remove sacrum pressure sore	0027	15.80	$783.62	$383.10	$156.72
15940	T	Remove hip pressure sore	0022	12.49	$619.45	$292.94	$123.89
15941	T	Remove hip pressure sore	0022	12.49	$619.45	$292.94	$123.89
15944	T	Remove hip pressure sore	0027	15.80	$783.62	$383.10	$156.72
15945	T	Remove hip pressure sore	0027	15.80	$783.62	$383.10	$156.72
15946	T	Remove hip pressure sore	0027	15.80	$783.62	$383.10	$156.72
15950	T	Remove thigh pressure sore	0022	12.49	$619.45	$292.94	$123.89
15951	T	Remove thigh pressure sore	0022	12.49	$619.45	$292.94	$123.89
15952	T	Remove thigh pressure sore	0027	15.80	$783.62	$383.10	$156.72
15953	T	Remove thigh pressure sore	0027	15.80	$783.62	$383.10	$156.72
15956	T	Remove thigh pressure sore	0027	15.80	$783.62	$383.10	$156.72
15958	T	Remove thigh pressure sore	0027	15.80	$783.62	$383.10	$156.72
15999	T	Removal of pressure sore	0022	12.49	$619.45	$292.94	$123.89
16000	T	Initial treatment of burn(s)	0015	1.77	$87.78	$31.20	$17.56
16010	T	Treatment of burn(s)	0015	1.77	$87.78	$31.20	$17.56
16015	T	Treatment of burn(s)	0017	12.45	$617.47	$269.16	$123.49
16020	T	Treatment of burn(s)	0015	1.77	$87.78	$31.20	$17.56
16025	T	Treatment of burn(s)	0014	1.50	$74.39	$24.55	$14.88
16030	T	Treatment of burn(s)	0015	1.77	$87.78	$31.20	$17.56
16035	C	Incision of burn scab, initi					
*16036	C	Incise burn scab, addl incis					
17000	T	Destroy benign/premal lesion	0010	0.55	$27.26	$9.86	$5.46
17003	T	Destroy lesions, 2-14	0010	0.55	$27.26	$9.86	$5.46
17004	T	Destroy lesions, 15 or more	0011	2.72	$134.90	$50.01	$26.98
17106	T	Destruction of skin lesions	0011	2.72	$134.90	$50.01	$26.98
17107	T	Destruction of skin lesions	0011	2.72	$134.90	$50.01	$26.98
17108	T	Destruction of skin lesions	0011	2.72	$134.90	$50.01	$26.98
17110	T	Destruct lesion, 1-14	0010	0.55	$27.26	$9.86	$5.46
17111	T	Destruct lesion, 15 or more	0011	2.72	$134.90	$50.01	$26.98
17250	T	Chemical cautery, tissue	0014	1.50	$74.39	$24.55	$14.88
17260	T	Destruction of skin lesions	0013	0.91	$45.13	$17.66	$9.03
17261	T	Destruction of skin lesions	0013	0.91	$45.13	$17.66	$9.03
17262	T	Destruction of skin lesions	0013	0.91	$45.13	$17.66	$9.03
17263	T	Destruction of skin lesions	0013	0.91	$45.13	$17.66	$9.03
17264	T	Destruction of skin lesions	0015	1.77	$87.78	$31.20	$17.56
17266	T	Destruction of skin lesions	0016	3.53	$175.07	$74.67	$35.01
17270	T	Destruction of skin lesions	0015	1.77	$87.78	$31.20	$17.56
17271	T	Destruction of skin lesions	0013	0.91	$45.13	$17.66	$9.03
17272	T	Destruction of skin lesions	0013	0.91	$45.13	$17.66	$9.03
17273	T	Destruction of skin lesions	0015	1.77	$87.78	$31.20	$17.56
17274	T	Destruction of skin lesions	0015	1.77	$87.78	$31.20	$17.56
17276	T	Destruction of skin lesions	0015	1.77	$87.78	$31.20	$17.56
17280	T	Destruction of skin lesions	0015	1.77	$87.78	$31.20	$17.56
17281	T	Destruction of skin lesions	0015	1.77	$87.78	$31.20	$17.56
17282	T	Destruction of skin lesions	0015	1.77	$87.78	$31.20	$17.56
17283	T	Destruction of skin lesions	0015	1.77	$87.78	$31.20	$17.56
17284	T	Destruction of skin lesions	0016	3.53	$175.07	$74.67	$35.01
17286	T	Destruction of skin lesions	0016	3.53	$175.07	$74.67	$35.01
17304	T	Chemosurgery of skin lesion	0020	6.51	$322.87	$130.53	$64.57
17305	T	2nd stage chemosurgery	0020	6.51	$322.87	$130.53	$64.57
17306	T	3rd stage chemosurgery	0020	6.51	$322.87	$130.53	$64.57
17307	T	Followup skin lesion therapy	0020	6.51	$322.87	$130.53	$64.57
17310	T	Extensive skin chemosurgery	0020	6.51	$322.87	$130.53	$64.57
17340	T	Cryotherapy of skin	0012	0.50	$26.29	$9.18	$5.26
17360	T	Skin peel therapy	0016	3.53	$175.07	$74.67	$35.01
17380	T	Hair removal by electrolysis	0016	3.53	$175.07	$74.67	$35.01
17999	T	Skin tissue procedure	0004	1.84	$91.26	$32.57	$18.25
19000	T	Drainage of breast lesion	0004	1.84	$91.26	$32.57	$18.25

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
19001	T	Drain breast lesion add-on	0004	1.84	$91.26	$32.57	$18.25
19020	T	Incision of breast lesion	0008	6.15	$305.02	$113.67	$61.00
19030	N	Injection for breast x-ray					
19100	T	Bx breast percut w/o image	0005	5.41	$268.32	$119.75	$53.66
19101	T	Biopsy of breast, open	0028	12.37	$613.52	$303.74	$122.70
*19102	T	Bx breast percut w/ image	0005	5.41	$268.32	$119.75	$53.66
*19103	S	Bx breast percut w/device	0974	8.25	$409.17		$81.83
19110	T	Nipple exploration	0028	12.37	$613.52	$303.74	$122.70
19112	T	Excise breast duct fistula	0028	12.37	$613.52	$303.74	$122.70
19120	T	Removal of breast lesion	0028	12.37	$613.52	$303.74	$122.70
19125	T	Excision, breast lesion	0028	12.37	$613.52	$303.74	$122.70
19126	T	Excision, addl breast lesion	0028	12.37	$613.52	$303.74	$122.70
19140	T	Removal of breast tissue	0028	12.37	$613.52	$303.74	$122.70
19160	T	Removal of breast tissue	0028	12.37	$613.52	$303.74	$122.70
19162	T	Remove breast tissue, nodes	0029	31.39	$1,557.05	$820.79	$311.41
19180	T	Removal of breast	0029	31.39	$1,557.05	$820.79	$311.41
19182	T	Removal of breast	0028	12.37	$613.52	$303.74	$122.70
19200	C	Removal of breast					
19220	C	Removal of breast					
19240	T	Removal of breast	0029	31.39	$1,557.05	$820.79	$311.41
19260	T	Removal of chest wall lesion	0021	10.49	$520.26	$236.51	$104.05
19271	C	Revision of chest wall					
19272	C	Extensive chest wall surgery					
19290	T	Place needle wire, breast	0028	12.37	$613.52	$303.74	$122.70
19291	T	Place needle wire, breast	0028	12.37	$613.52	$303.74	$122.70
*19295	S	Place breast clip, percut	0971	1.55	$76.88		$15.38
19316	T	Suspension of breast	0029	31.39	$1,557.05	$820.79	$311.41
19318	T	Reduction of large breast	0029	31.39	$1,557.05	$820.79	$311.41
19324	T	Enlarge breast	0029	31.39	$1,557.05	$820.79	$311.41
19325	T	Enlarge breast with implant	0030	31.11	$1,543.16	$763.55	$308.63
19328	T	Removal of breast implant	0028	12.37	$613.52	$303.74	$122.70
19330	T	Removal of implant material	0028	12.37	$613.52	$303.74	$122.70
19340	T	Immediate breast prosthesis	0030	31.11	$1,543.16	$763.55	$308.63
19342	T	Delayed breast prosthesis	0030	31.11	$1,543.16	$763.55	$308.63
19350	T	Breast reconstruction	0028	12.37	$613.52	$303.74	$122.70
19355	T	Correct inverted nipple(s)	0028	12.37	$613.52	$303.74	$122.70
19357	T	Breast reconstruction	0030	31.11	$1,543.16	$763.55	$308.63
19361	C	Breast reconstruction					
19364	C	Breast reconstruction					
19366	T	Breast reconstruction	0029	31.39	$1,557.05	$820.79	$311.41
19367	C	Breast reconstruction					
19368	C	Breast reconstruction					
19369	C	Breast reconstruction					
19370	T	Surgery of breast capsule	0028	12.37	$613.52	$303.74	$122.70
19371	T	Removal of breast capsule	0029	31.39	$1,557.05	$820.79	$311.41
19380	T	Revise breast reconstruction	0029	31.39	$1,557.05	$820.79	$311.41
19396	T	Design custom breast implant	0028	12.37	$613.52	$303.74	$122.70
19499	T	Breast surgery procedure	0004	1.84	$91.26	$32.57	$18.25
20000	T	Incision of abscess	0006	2.00	$99.19	$33.95	$19.84
20005	T	Incision of deep abscess	0049	15.04	$745.93	$356.95	$149.19
20100	T	Explore wound, neck	0023	1.98	$98.20	$40.37	$19.64
20101	T	Explore wound, chest	0026	12.11	$600.61	$277.92	$120.12
20102	T	Explore wound, abdomen	0026	12.11	$600.61	$277.92	$120.12
20103	T	Explore wound, extremity	0023	1.98	$98.20	$40.37	$19.64
20150	T	Excise epiphyseal bar	0051	27.76	$1,376.79	$675.24	$275.36
20200	T	Muscle biopsy	0020	6.51	$322.87	$130.53	$64.57
20205	T	Deep muscle biopsy	0021	10.49	$520.26	$236.51	$104.05
20206	T	Needle biopsy, muscle	0005	5.41	$268.32	$119.75	$53.66
20220	T	Bone biopsy, trocar/needle	0019	4.00	$198.39	$78.91	$39.68
20225	T	Bone biopsy, trocar/needle	0020	6.51	$322.87	$130.53	$64.57
20240	T	Bone biopsy, excisional	0022	12.49	$619.45	$292.94	$123.89
20245	T	Bone biopsy, excisional	0022	12.49	$619.45	$292.94	$123.89
20250	T	Open bone biopsy	0049	15.04	$745.93	$356.95	$149.19
20251	T	Open bone biopsy	0049	15.04	$745.93	$356.95	$149.19
20500	T	Injection of sinus tract	0252	5.18	$256.90	$114.24	$51.38
20501	N	Inject sinus tract for x-ray					
20520	T	Removal of foreign body	0019	4.00	$198.39	$78.91	$39.68
20525	T	Removal of foreign body	0022	12.49	$619.45	$292.94	$123.89
20550	T	Inject tendon/ligament/cyst	0040	2.11	$104.65	$40.60	$20.93
20600	T	Drain/inject, joint/bursa	0040	2.11	$104.65	$40.60	$20.93
20605	T	Drain/inject, joint/bursa	0040	2.11	$104.65	$40.60	$20.93
20610	T	Drain/inject, joint/bursa	0040	2.11	$104.65	$40.60	$20.93
20615	T	Treatment of bone cyst	0004	1.84	$91.26	$32.57	$18.25
20650	T	Insert and remove bone pin	0049	15.04	$745.93	$356.95	$149.19

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
20660	C	Apply,remove fixation device					
20661	C	Application of head brace					
20662	C	Application of pelvis brace					
20663	C	Application of thigh brace					
20664	C	Halo brace application					
20665	N	Removal of fixation device					
20670	T	Removal of support implant	0021	10.49	$520.26	$236.51	$104.05
20680	T	Removal of support implant	0022	12.49	$619.45	$292.94	$123.89
20690	T	Apply bone fixation device	0050	21.13	$1,047.96	$513.86	$209.59
20692	T	Apply bone fixation device	0050	21.13	$1,047.96	$513.86	$209.59
20693	T	Adjust bone fixation device	0049	15.04	$745.93	$356.95	$149.19
20694	T	Remove bone fixation device	0049	15.04	$745.93	$356.95	$149.19
20802	C	Replantation, arm, complete					
20805	C	Replant, forearm, complete					
20808	C	Replantation hand, complete					
20816	C	Replantation digit, complete					
20822	C	Replantation digit, complete					
20824	C	Replantation thumb, complete					
20827	C	Replantation thumb, complete					
20838	C	Replantation foot, complete					
20900	T	Removal of bone for graft	0050	21.13	$1,047.96	$513.86	$209.59
20902	T	Removal of bone for graft	0050	21.13	$1,047.96	$513.86	$209.59
20910	T	Remove cartilage for graft	0026	12.11	$600.61	$277.92	$120.12
20912	T	Remove cartilage for graft	0026	12.11	$600.61	$277.92	$120.12
20920	T	Removal of fascia for graft	0026	12.11	$600.61	$277.92	$120.12
20922	T	Removal of fascia for graft	0026	12.11	$600.61	$277.92	$120.12
20924	T	Removal of tendon for graft	0050	21.13	$1,047.96	$513.86	$209.59
20926	T	Removal of tissue for graft	0026	12.11	$600.61	$277.92	$120.12
20930	C	Spinal bone allograft					
20931	C	Spinal bone allograft					
20936	C	Spinal bone autograft					
20937	C	Spinal bone autograft					
20938	C	Spinal bone autograft					
20950	T	Fluid pressure, muscle	0008	6.15	$305.02	$113.67	$61.00
20955	C	Fibula bone graft, microvasc					
20956	C	Iliac bone graft, microvasc					
20957	C	Mt bone graft, microvasc					
20962	C	Other bone graft, microvasc					
20969	C	Bone/skin graft, microvasc					
20970	C	Bone/skin graft, iliac crest					
20972	C	Bone/skin graft, metatarsal					
20973	C	Bone/skin graft, great toe					
20974	A	Electrical bone stimulation					
20975	T	Electrical bone stimulation	0049	15.04	$745.93	$356.95	$149.19
20979	E	Us bone stimulation					
20999	N	Musculoskeletal surgery					
21010	T	Incision of jaw joint	0254	12.45	$617.47	$272.41	$123.49
21015	T	Resection of facial tumor	0254	12.45	$617.47	$272.41	$123.49
21025	T	Excision of bone, lower jaw	0256	25.40	$1,259.74	$623.05	$251.95
21026	T	Excision of facial bone(s)	0256	25.40	$1,259.74	$623.05	$251.95
21029	T	Contour of face bone lesion	0256	25.40	$1,259.74	$623.05	$251.95
21030	T	Removal of face bone lesion	0254	12.45	$617.47	$272.41	$123.49
21031	T	Remove exostosis, mandible	0253	12.02	$596.14	$264.00	$119.23
21032	T	Remove exostosis, maxilla	0253	12.02	$596.14	$264.00	$119.23
21034	T	Removal of face bone lesion	0256	25.40	$1,259.74	$623.05	$251.95
21040	T	Removal of jaw bone lesion	0253	12.02	$596.14	$264.00	$119.23
21041	T	Removal of jaw bone lesion	0256	25.40	$1,259.74	$623.05	$251.95
21044	T	Removal of jaw bone lesion	0256	25.40	$1,259.74	$623.05	$251.95
21045	C	Extensive jaw surgery					
21050	T	Removal of jaw joint	0256	25.40	$1,259.74	$623.05	$251.95
21060	T	Remove jaw joint cartilage	0256	25.40	$1,259.74	$623.05	$251.95
21070	T	Remove coronoid process	0256	25.40	$1,259.74	$623.05	$251.95
21076	T	Prepare face/oral prosthesis	0254	12.45	$617.47	$272.41	$123.49
21077	T	Prepare face/oral prosthesis	0256	25.40	$1,259.74	$623.05	$251.95
21079	T	Prepare face/oral prosthesis	0256	25.40	$1,259.74	$623.05	$251.95
21080	T	Prepare face/oral prosthesis	0256	25.40	$1,259.74	$623.05	$251.95
21081	T	Prepare face/oral prosthesis	0256	25.40	$1,259.74	$623.05	$251.95
21082	T	Prepare face/oral prosthesis	0256	25.40	$1,259.74	$623.05	$251.95
21083	T	Prepare face/oral prosthesis	0256	25.40	$1,259.74	$623.05	$251.95
21084	T	Prepare face/oral prosthesis	0256	25.40	$1,259.74	$623.05	$251.95
21085	T	Prepare face/oral prosthesis	0253	12.02	$596.14	$264.00	$119.23
21086	T	Prepare face/oral prosthesis	0256	25.40	$1,259.74	$623.05	$251.95
21087	T	Prepare face/oral prosthesis	0256	25.40	$1,259.74	$623.05	$251.95
21088	T	Prepare face/oral prosthesis	0256	25.40	$1,259.74	$623.05	$251.95

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
21089	T	Prepare face/oral prosthesis	0253	12.02	$596.14	$284.00	$119.23
21100	T	Maxillofacial fixation	0256	25.40	$1,259.74	$623.05	$251.95
21110	T	Interdental fixation	0254	12.45	$617.47	$272.41	$123.49
21116	N	Injection, jaw joint x-ray					
21120	T	Reconstruction of chin	0254	12.45	$617.47	$272.41	$123.49
21121	T	Reconstruction of chin	0254	12.45	$617.47	$272.41	$123.49
21122	T	Reconstruction of chin	0254	12.45	$617.47	$272.41	$123.49
21123	T	Reconstruction of chin	0254	12.45	$617.47	$272.41	$123.49
21125	T	Augmentation, lower jaw bone	0254	12.45	$617.47	$272.41	$123.49
21127	T	Augmentation, lower jaw bone	0256	25.40	$1,259.74	$623.05	$251.95
21137	T	Reduction of forehead	0254	12.45	$617.47	$272.41	$123.49
21138	T	Reduction of forehead	0256	25.40	$1,259.74	$623.05	$251.95
21139	T	Reduction of forehead	0256	25.40	$1,259.74	$623.05	$251.95
21141	C	Reconstruct midface, lefort					
21142	C	Reconstruct midface, lefort					
21143	C	Reconstruct midface, lefort					
21145	C	Reconstruct midface, lefort					
21146	C	Reconstruct midface, lefort					
21147	C	Reconstruct midface, lefort					
21150	C	Reconstruct midface, lefort					
21151	C	Reconstruct midface, lefort					
21154	C	Reconstruct midface, lefort					
21155	C	Reconstruct midface, lefort					
21159	C	Reconstruct midface, lefort					
21160	C	Reconstruct midface, lefort					
21172	C	Reconstruct orbit/forehead					
21175	C	Reconstruct orbit/forehead					
21179	C	Reconstruct entire forehead					
21180	C	Reconstruct entire forehead					
21181	T	Contour cranial bone lesion	0254	12.45	$617.47	$272.41	$123.49
21182	C	Reconstruct cranial bone					
21183	C	Reconstruct cranial bone					
21184	C	Reconstruct cranial bone					
21188	C	Reconstruction of midface					
21193	C	Reconst lwr jaw w/o graft					
21194	C	Reconst lwr jaw w/ graft					
21195	C	Reconst lwr jaw w/o fixation					
21196	C	Reconst lwr jaw w/fixation					
21198	T	Reconst lwr jaw segment	0256	25.40	$1,259.74	$623.05	$251.95
*21199	T	Reconst lwr jaw w/advance	0256	25.40	$1,259.74	$623.05	$251.95
21206	T	Reconstruct upper jaw bone	0256	25.40	$1,259.74	$623.05	$251.95
21208	T	Augmentation of facial bones	0256	25.40	$1,259.74	$623.05	$251.95
21209	T	Reduction of facial bones	0256	25.40	$1,259.74	$623.05	$251.95
21210	T	Face bone graft	0256	25.40	$1,259.74	$623.05	$251.95
21215	T	Lower jaw bone graft	0256	25.40	$1,259.74	$623.05	$251.95
21230	T	Rib cartilage graft	0256	25.40	$1,259.74	$623.05	$251.95
21235	T	Ear cartilage graft	0254	12.45	$617.47	$272.41	$123.49
21240	T	Reconstruction of jaw joint	0256	25.40	$1,259.74	$623.05	$251.95
21242	T	Reconstruction of jaw joint	0256	25.40	$1,259.74	$623.05	$251.95
21243	T	Reconstruction of jaw joint	0256	25.40	$1,259.74	$623.05	$251.95
21244	T	Reconstruction of lower jaw	0256	25.40	$1,259.74	$623.05	$251.95
21245	T	Reconstruction of jaw	0256	25.40	$1,259.74	$623.05	$251.95
21246	T	Reconstruction of jaw	0256	25.40	$1,259.74	$623.05	$251.95
21247	C	Reconstruct lower jaw bone					
21248	T	Reconstruction of jaw	0256	25.40	$1,259.74	$623.05	$251.95
21249	T	Reconstruction of jaw	0256	25.40	$1,259.74	$623.05	$251.95
21255	C	Reconstruct lower jaw bone					
21256	C	Reconstruction of orbit					
21260	T	Revise eye sockets	0256	25.40	$1,259.74	$623.05	$251.95
21261	T	Revise eye sockets	0256	25.40	$1,259.74	$623.05	$251.95
21263	T	Revise eye sockets	0256	25.40	$1,259.74	$623.05	$251.95
21267	T	Revise eye sockets	0256	25.40	$1,259.74	$623.05	$251.95
21268	C	Revise eye sockets					
21270	T	Augmentation, cheek bone	0256	25.40	$1,259.74	$623.05	$251.95
21275	T	Revision, orbitofacial bones	0256	25.40	$1,259.74	$623.05	$251.95
21280	T	Revision of eyelid	0256	25.40	$1,259.74	$623.05	$251.95
21282	T	Revision of eyelid	0253	12.02	$596.14	$284.00	$119.23
21295	T	Revision of jaw muscle/bone	0253	12.02	$596.14	$284.00	$119.23
21296	T	Revision of jaw muscle/bone	0254	12.45	$617.47	$272.41	$123.49
21299	T	Cranio/maxillofacial surgery	0253	12.02	$596.14	$284.00	$119.23
21300	T	Treatment of skull fracture	0253	12.02	$596.14	$284.00	$119.23
21310	T	Treatment of nose fracture	0253	12.02	$596.14	$284.00	$119.23
21315	T	Treatment of nose fracture	0253	12.02	$596.14	$284.00	$119.23
21320	T	Treatment of nose fracture	0253	12.02	$596.14	$284.00	$119.23

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
21325	T	Treatment of nose fracture	0253	12.02	$596.14	$284.00	$119.23
21330	T	Treatment of nose fracture	0254	12.45	$617.47	$272.41	$123.49
21335	T	Treatment of nose fracture	0254	12.45	$617.47	$272.41	$123.49
21336	T	Treat nasal septal fracture	0046	22.29	$1,105.50	$535.76	$221.10
21337	T	Treat nasal septal fracture	0253	12.02	$596.14	$284.00	$119.23
21338	T	Treat nasoethmoid fracture	0254	12.45	$617.47	$272.41	$123.49
21339	T	Treat nasoethmoid fracture	0254	12.45	$617.47	$272.41	$123.49
21340	T	Treatment of nose fracture	0256	25.40	$1,259.74	$623.05	$251.95
21343	C	Treatment of sinus fracture					
21344	C	Treatment of sinus fracture					
21345	T	Treat nose/jaw fracture	0254	12.45	$617.47	$272.41	$123.49
21346	C	Treat nose/jaw fracture					
21347	C	Treat nose/jaw fracture					
21348	C	Treat nose/jaw fracture					
21355	T	Treat cheek bone fracture	0256	25.40	$1,259.74	$623.05	$251.95
21356	C	Treat cheek bone fracture					
21360	C	Treat cheek bone fracture					
21365	C	Treat cheek bone fracture					
21366	C	Treat cheek bone fracture					
21385	C	Treat eye socket fracture					
21386	C	Treat eye socket fracture					
21387	C	Treat eye socket fracture					
21390	C	Treat eye socket fracture					
21395	C	Treat eye socket fracture					
21400	T	Treat eye socket fracture	0252	5.18	$256.90	$114.24	$51.38
21401	T	Treat eye socket fracture	0253	12.02	$596.14	$284.00	$119.23
21406	T	Treat eye socket fracture	0256	25.40	$1,259.74	$623.05	$251.95
21407	T	Treat eye socket fracture	0256	25.40	$1,259.74	$623.05	$251.95
21408	C	Treat eye socket fracture					
21421	T	Treat mouth roof fracture	0254	12.45	$617.47	$272.41	$123.49
21422	C	Treat mouth roof fracture					
21423	C	Treat mouth roof fracture					
21431	C	Treat craniofacial fracture					
21432	C	Treat craniofacial fracture					
21433	C	Treat craniofacial fracture					
21435	C	Treat craniofacial fracture					
21436	C	Treat craniofacial fracture					
21440	T	Treat dental ridge fracture	0253	12.02	$596.14	$284.00	$119.23
21445	T	Treat dental ridge fracture	0254	12.45	$617.47	$272.41	$123.49
21450	T	Treat lower jaw fracture	0251	1.68	$83.32	$27.99	$16.66
21451	T	Treat lower jaw fracture	0254	12.45	$617.47	$272.41	$123.49
21452	T	Treat lower jaw fracture	0253	12.02	$596.14	$284.00	$119.23
21453	T	Treat lower jaw fracture	0256	25.40	$1,259.74	$623.05	$251.95
21454	T	Treat lower jaw fracture	0254	12.45	$617.47	$272.41	$123.49
21461	T	Treat lower jaw fracture	0256	25.40	$1,259.74	$623.05	$251.95
21462	T	Treat lower jaw fracture	0256	25.40	$1,259.74	$623.05	$251.95
21465	T	Treat lower jaw fracture	0256	25.40	$1,259.74	$623.05	$251.95
21470	T	Treat lower jaw fracture	0256	25.40	$1,259.74	$623.05	$251.95
21480	T	Reset dislocated jaw	0251	1.68	$83.32	$27.99	$16.66
21485	T	Reset dislocated jaw	0253	12.02	$596.14	$284.00	$119.23
21490	T	Repair dislocated jaw	0256	25.40	$1,259.74	$623.05	$251.95
21493	T	Treat hyoid bone fracture	0252	5.18	$256.90	$114.24	$51.38
21494	T	Treat hyoid bone fracture	0252	5.18	$256.90	$114.24	$51.38
21495	C	Treat hyoid bone fracture					
21497	T	Interdental wiring	0253	12.02	$596.14	$284.00	$119.23
21499	T	Head surgery procedure	0253	12.02	$596.14	$284.00	$119.23
21501	T	Drain neck/chest lesion	0008	6.15	$305.02	$113.67	$61.00
21502	T	Drain chest lesion	0050	21.13	$1,047.96	$513.86	$209.59
21510	C	Drainage of bone lesion					
21550	T	Biopsy of neck/chest	0019	4.00	$198.39	$78.91	$39.68
21555	T	Remove lesion, neck/chest	0022	12.49	$619.45	$292.94	$123.89
21556	T	Remove lesion, neck/chest	0022	12.49	$619.45	$292.94	$123.89
21557	C	Remove tumor, neck/chest					
21600	T	Partial removal of rib	0050	21.13	$1,047.96	$513.86	$209.59
21610	T	Partial removal of rib	0050	21.13	$1,047.96	$513.86	$209.59
21615	C	Removal of rib					
21616	C	Removal of rib and nerves					
21620	C	Partial removal of sternum					
21627	C	Sternal debridement					
21630	C	Extensive sternum surgery					
21632	C	Extensive sternum surgery					
21700	T	Revision of neck muscle	0008	6.15	$305.02	$113.67	$61.00
21705	C	Revision of neck muscle/rib					
21720	T	Revision of neck muscle	0008	6.15	$305.02	$113.67	$61.00

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
21725	T	Revision of neck muscle	0006	6.15	$305.02	$113.6	$61.00
21740	C	Reconstruction of sternum					
21750	C	Repair of sternum separation					
21800	T	Treatment of rib fracture	0043	1.64	$81.34	$25.46	$16.27
21805	T	Treatment of rib fracture	0046	22.29	$1,105.50	$535.76	$221.10
21810	C	Treatment of rib fracture(s)					
21820	T	Treat sternum fracture	0043	1.64	$81.34	$25.46	$16.27
21825	C	Treat sternum fracture					
21899	T	Neck/chest surgery procedure	0252	5.18	$256.90	$114.24	$51.38
21920	T	Biopsy soft tissue of back	0020	5.51	$322.87	$130.53	$64.57
21925	T	Biopsy soft tissue of back	0022	12.49	$619.45	$292.94	$123.89
21930	T	Remove lesion, back or flank	0022	12.49	$619.45	$292.94	$123.89
21935	T	Remove tumor, back	0022	12.49	$619.45	$292.94	$123.89
22100	C	Remove part of neck vertebra					
22101	C	Remove part, thorax vertebra					
22102	C	Remove part, lumbar vertebra					
22103	C	Remove extra spine segment					
22110	C	Remove part of neck vertebra					
22112	C	Remove part, thorax vertebra					
22114	C	Remove part, lumbar vertebra					
22116	C	Remove extra spine segment					
22210	C	Revision of neck spine					
22212	C	Revision of thorax spine					
22214	C	Revision of lumbar spine					
22216	C	Revise, extra spine segment					
22220	C	Revision of neck spine					
22222	C	Revision of thorax spine					
22224	C	Revision of lumbar spine					
22226	C	Revise, extra spine segment					
22305	T	Treat spine process fracture	0043	1.64	$81.34	$25.46	$16.27
22310	T	Treat spine fracture	0043	1.64	$81.34	$25.46	$16.27
22315	T	Treat spine fracture	0043	1.64	$81.34	$25.46	$16.27
22318	C	Treat odontoid fx w/o graft					
22319	C	Treat odontoid fx w/graft					
22325	C	Treat spine fracture					
22326	C	Treat neck spine fracture					
22327	C	Treat thorax spine fracture					
22328	C	Treat each add spine fx					
22505	T	Manipulation of spine	0045	11.02	$546.55	$277.12	$109.31
*22520	T	Percut vertebroplasty thor	0049	15.04	$745.93	$356.95	$149.19
*22521	T	Percut vertebroplasty lumb	0049	15.04	$745.93	$356.95	$149.19
*22522	T	Percut vertebroplasty addl	0049	15.04	$745.93	$356.95	$149.19
22548	C	Neck spine fusion					
22554	C	Neck spine fusion					
22556	C	Thorax spine fusion					
22558	C	Lumbar spine fusion					
22585	C	Additional spinal fusion					
22590	C	Spine & skull spinal fusion					
22595	C	Neck spinal fusion					
22600	C	Neck spine fusion					
22610	C	Thorax spine fusion					
22612	C	Lumbar spine fusion					
22614	C	Spine fusion, extra segment					
22630	C	Lumbar spine fusion					
22632	C	Spine fusion, extra segment					
22800	C	Fusion of spine					
22802	C	Fusion of spine					
22804	C	Fusion of spine					
22808	C	Fusion of spine					
22810	C	Fusion of spine					
22812	C	Fusion of spine					
22818	C	Kyphectomy, 1-2 segments					
22819	C	Kyphectomy, 3 or more					
22830	C	Exploration of spinal fusion					
22840	C	Insert spine fixation device					
22841	C	Insert spine fixation device					
22842	C	Insert spine fixation device					
22843	C	Insert spine fixation device					
22844	C	Insert spine fixation device					
22845	C	Insert spine fixation device					
22846	C	Insert spine fixation device					
22847	C	Insert spine fixation device					
22848	C	Insert pelv fixation device					
22849	C	Reinsert spinal fixation					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
22850	C	Remove spine fixation device					
22851	C	Apply spine prosth device					
22852	C	Remove spine fixation device					
22855	C	Remove spine fixation device					
22899	T	Spine surgery procedure	0043	1.64	$81.34	$25.46	$16.27
22900	T	Remove abdominal wall lesion	0022	12.49	$619.45	$292.94	$123.89
22999	T	Abdomen surgery procedure	0022	12.49	$619.45	$292.94	$123.89
23000	T	Removal of calcium deposits	0021	10.49	$520.26	$236.51	$104.05
23020	T	Release shoulder joint	0051	27.76	$1,376.79	$675.24	$275.36
23030	T	Drain shoulder lesion	0006	6.15	$305.02	$113.67	$61.00
23031	T	Drain shoulder bursa	0006	6.15	$305.02	$113.67	$61.00
23035	C	Drain shoulder bone lesion					
23040	T	Exploratory shoulder surgery	0050	21.13	$1,047.96	$513.86	$209.59
23044	T	Exploratory shoulder surgery	0050	21.13	$1,047.96	$513.86	$209.59
23065	T	Biopsy shoulder tissues	0021	10.49	$520.26	$236.51	$104.05
23066	T	Biopsy shoulder tissues	0022	12.49	$619.45	$292.94	$123.89
23075	T	Removal of shoulder lesion	0021	10.49	$520.26	$236.51	$104.05
23076	T	Removal of shoulder lesion	0022	12.49	$619.45	$292.94	$123.89
23077	T	Remove tumor of shoulder	0022	12.49	$619.45	$292.94	$123.89
23100	T	Biopsy of shoulder joint	0049	15.04	$745.93	$356.95	$149.19
23101	T	Shoulder joint surgery	0050	21.13	$1,047.96	$513.86	$209.59
23105	T	Remove shoulder joint lining	0050	21.13	$1,047.96	$513.86	$209.59
23106	T	Incision of collarbone joint	0050	21.13	$1,047.96	$513.86	$209.59
23107	T	Explore treat shoulder joint	0050	21.13	$1,047.96	$513.86	$209.59
23120	T	Partial removal, collar bone	0051	27.76	$1,376.79	$675.24	$275.36
23125	C	Removal of collar bone					
23130	T	Remove shoulder bone, part	0051	27.76	$1,376.79	$675.24	$275.36
23140	T	Removal of bone lesion	0049	15.04	$745.93	$356.95	$149.19
23145	T	Removal of bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
23146	T	Removal of bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
23150	T	Removal of humerus lesion	0050	21.13	$1,047.96	$513.86	$209.59
23155	T	Removal of humerus lesion	0050	21.13	$1,047.96	$513.86	$209.59
23156	T	Removal of humerus lesion	0050	21.13	$1,047.96	$513.86	$209.59
23170	T	Remove collar bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
23172	T	Remove shoulder blade lesion	0050	21.13	$1,047.96	$513.86	$209.59
23174	T	Remove humerus lesion	0050	21.13	$1,047.96	$513.86	$209.59
23180	T	Remove collar bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
23182	T	Remove shoulder blade lesion	0050	21.13	$1,047.96	$513.86	$209.59
23184	T	Remove humerus lesion	0050	21.13	$1,047.96	$513.86	$209.59
23190	T	Partial removal of scapula	0050	21.13	$1,047.96	$513.86	$209.59
23195	C	Removal of head of humerus					
23200	C	Removal of collar bone					
23210	C	Removal of shoulder blade					
23220	C	Partial removal of humerus					
23221	C	Partial removal of humerus					
23222	C	Partial removal of humerus					
23330	T	Remove shoulder foreign body	0019	4.00	$198.39	$78.91	$39.68
23331	T	Remove shoulder foreign body	0022	12.49	$619.45	$292.94	$123.89
23332	C	Remove shoulder foreign body					
23350	N	Injection for shoulder x-ray					
23395	C	Muscle transfer,shoulder/arm					
23397	C	Muscle transfers					
23400	C	Fixation of shoulder blade					
23405	T	Incision of tendon & muscle	0050	21.13	$1,047.96	$513.86	$209.59
23406	T	Incise tendon(s) & muscle(s)	0050	21.13	$1,047.96	$513.86	$209.59
23410	T	Repair of tendon(s)	0052	36.16	$1,793.39	$930.91	$358.68
23412	T	Repair of tendon(s)	0052	36.16	$1,793.39	$930.91	$358.68
23415	T	Release of shoulder ligament	0051	27.76	$1,376.79	$675.24	$275.36
23420	T	Repair of shoulder	0052	36.16	$1,793.39	$930.91	$358.68
23430	T	Repair biceps tendon	0052	36.16	$1,793.39	$930.91	$358.68
23440	C	Remove/transplant tendon					
23450	T	Repair shoulder capsule	0052	36.16	$1,793.39	$930.91	$358.68
23455	T	Repair shoulder capsule	0052	36.16	$1,793.39	$930.91	$358.68
23460	T	Repair shoulder capsule	0052	36.16	$1,793.39	$930.91	$358.68
23462	T	Repair shoulder capsule	0052	36.16	$1,793.39	$930.91	$358.68
23465	T	Repair shoulder capsule	0052	36.16	$1,793.39	$930.91	$358.68
23466	T	Repair shoulder capsule	0052	36.16	$1,793.39	$930.91	$358.68
23470	C	Reconstruct shoulder joint					
23472	C	Reconstruct shoulder joint					
23480	T	Revision of collar bone	0051	27.76	$1,376.79	$675.24	$275.36
23485	T	Revision of collar bone	0051	27.76	$1,376.79	$675.24	$275.36
23490	T	Reinforce clavicle	0051	27.76	$1,376.79	$675.24	$275.36
23491	T	Reinforce shoulder bones	0051	27.76	$1,376.79	$675.24	$275.36
23500	T	Treat clavicle fracture	0043	1.64	$81.34	$25.46	$16.27

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
23505	T	Treat clavicle fracture	0043	1.64	$81.34	$25.46	$16.27
23515	T	Treat clavicle fracture	0046	22.29	$1,105.50	$535.76	$221.10
23520	T	Treat clavicle dislocation	0043	1.64	$81.34	$25.46	$16.27
23525	T	Treat clavicle dislocation	0043	1.64	$81.34	$25.46	$16.27
23530	T	Treat clavicle dislocation	0046	22.29	$1,105.50	$535.76	$221.10
23532	T	Treat clavicle dislocation	0046	22.29	$1,105.50	$535.76	$221.10
23540	T	Treat clavicle dislocation	0043	1.64	$81.34	$25.46	$16.27
23545	T	Treat clavicle dislocation	0043	1.64	$81.34	$25.46	$16.27
23550	T	Treat clavicle dislocation	0046	22.29	$1,105.50	$535.76	$221.10
23552	T	Treat clavicle dislocation	0046	22.29	$1,105.50	$535.76	$221.10
23570	T	Treat shoulder blade fx	0043	1.64	$81.34	$25.46	$16.27
23575	T	Treat shoulder blade fx	0043	1.64	$81.34	$25.46	$16.27
23585	T	Treat scapula fracture	0046	22.29	$1,105.50	$535.76	$221.10
23600	T	Treat humerus fracture	0044	2.17	$107.63	$38.08	$21.53
23605	T	Treat humerus fracture	0044	2.17	$107.63	$38.08	$21.53
23615	T	Treat humerus fracture	0046	22.29	$1,105.50	$535.76	$221.10
23616	T	Treat humerus fracture	0046	22.29	$1,105.50	$535.76	$221.10
23620	T	Treat humerus fracture	0044	2.17	$107.63	$38.08	$21.53
23625	T	Treat humerus fracture	0044	2.17	$107.63	$38.08	$21.53
23630	T	Treat humerus fracture	0046	22.29	$1,105.50	$535.76	$221.10
23650	T	Treat shoulder dislocation	0043	1.64	$81.34	$25.46	$16.27
23655	T	Treat shoulder dislocation	0045	11.02	$546.55	$277.12	$109.31
23660	T	Treat shoulder dislocation	0046	22.29	$1,105.50	$535.76	$221.10
23665	T	Treat dislocation/fracture	0044	2.17	$107.63	$38.08	$21.53
23670	T	Treat dislocation/fracture	0046	22.29	$1,105.50	$535.76	$221.10
23675	T	Treat dislocation/fracture	0044	2.17	$107.63	$38.08	$21.53
23680	T	Treat dislocation/fracture	0046	22.29	$1,105.50	$535.76	$221.10
23700	T	Fixation of shoulder	0045	11.02	$546.55	$277.12	$109.31
23800	T	Fusion of shoulder joint	0051	27.76	$1,376.79	$675.24	$275.36
23802	T	Fusion of shoulder joint	0051	27.76	$1,376.79	$675.24	$275.36
23900	C	Amputation of arm & girdle					
23920	C	Amputation at shoulder joint					
23921	T	Amputation follow-up surgery	0025	12.11	$600.61	$277.92	$120.12
23929	T	Shoulder surgery procedure	0043	1.64	$81.34	$25.46	$16.27
23930	T	Drainage of arm lesion	0008	6.15	$305.02	$113.67	$61.00
23931	T	Drainage of arm bursa	0008	6.15	$305.02	$113.67	$61.00
23935	T	Drain arm/elbow bone lesion	0049	15.04	$745.93	$356.95	$149.19
24000	T	Exploratory elbow surgery	0050	21.13	$1,047.96	$513.86	$209.59
24006	T	Release elbow joint	0050	21.13	$1,047.96	$513.86	$209.59
24065	T	Biopsy arm/elbow soft tissue	0020	6.51	$322.87	$130.53	$64.57
24066	T	Biopsy arm/elbow soft tissue	0020	6.51	$322.87	$130.53	$64.57
24075	T	Remove arm/elbow lesion	0021	10.49	$520.26	$236.51	$104.05
24076	T	Remove arm/elbow lesion	0022	12.49	$619.45	$292.94	$123.89
24077	T	Remove tumor of arm/elbow	0022	12.49	$619.45	$292.94	$123.89
24100	T	Biopsy elbow joint lining	0049	15.04	$745.93	$356.95	$149.19
24101	T	Explore/treat elbow joint	0050	21.13	$1,047.96	$513.86	$209.59
24102	T	Remove elbow joint lining	0050	21.13	$1,047.96	$513.86	$209.59
24105	T	Removal of elbow bursa	0049	15.04	$745.93	$356.95	$149.19
24110	T	Remove humerus lesion	0049	15.04	$745.93	$356.95	$149.19
24115	T	Remove/graft bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
24116	T	Remove/graft bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
24120	T	Remove elbow lesion	0049	15.04	$745.93	$356.95	$149.19
24125	T	Remove/graft bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
24126	T	Remove/graft bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
24130	T	Removal of head of radius	0050	21.13	$1,047.96	$513.86	$209.59
24134	T	Removal of arm bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
24136	T	Remove radius bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
24138	T	Remove elbow bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
24140	T	Partial removal of arm bone	0050	21.13	$1,047.96	$513.86	$209.59
24145	T	Partial removal of radius	0050	21.13	$1,047.96	$513.86	$209.59
24147	T	Partial removal of elbow	0050	21.13	$1,047.96	$513.86	$209.59
24149	C	Radical resection of elbow					
24150	C	Extensive humerus surgery					
24151	C	Extensive humerus surgery					
24152	C	Extensive radius surgery					
24153	C	Extensive radius surgery					
24155	T	Removal of elbow joint	0051	27.76	$1,376.79	$675.24	$275.36
24160	T	Remove elbow joint implant	0050	21.13	$1,047.96	$513.86	$209.59
24164	T	Remove radius head implant	0050	21.13	$1,047.96	$513.86	$209.59
24200	T	Removal of arm foreign body	0019	4.00	$198.39	$78.91	$39.68
24201	T	Removal of arm foreign body	0021	10.49	$520.26	$236.51	$104.05
24220	N	Injection for elbow x-ray					
24301	T	Muscle/tendon transfer	0050	21.13	$1,047.96	$513.86	$209.59
24305	T	Arm tendon lengthening	0050	21.13	$1,047.96	$513.86	$209.59

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
24310	T	Revision of arm tendon	0049	15.04	$745.93	$356.95	$149.19
24320	T	Repair of arm tendon	0051	27.76	$1,376.79	$675.24	$275.36
24330	T	Revision of arm muscles	0051	27.76	$1,376.79	$675.24	$275.36
24331	T	Revision of arm muscles	0051	27.76	$1,376.79	$675.24	$275.36
24340	T	Repair of biceps tendon	0051	27.76	$1,376.79	$675.24	$275.36
24341	T	Repair arm tendon/muscle	0051	27.76	$1,376.79	$675.24	$275.36
24342	T	Repair of ruptured tendon	0051	27.76	$1,376.79	$675.24	$275.36
24350	T	Repair of tennis elbow	0050	21.13	$1,047.96	$513.86	$209.59
24351	T	Repair of tennis elbow	0050	21.13	$1,047.96	$513.86	$209.59
24352	T	Repair of tennis elbow	0050	21.13	$1,047.96	$513.86	$209.59
24354	T	Repair of tennis elbow	0050	21.13	$1,047.96	$513.86	$209.59
24356	T	Revision of tennis elbow	0050	21.13	$1,047.96	$513.86	$209.59
24360	T	Reconstruct elbow joint	0047	22.09	$1,095.58	$537.03	$219.12
24361	T	Reconstruct elbow joint	0048	29.06	$1,441.26	$725.94	$288.25
24362	T	Reconstruct elbow joint	0048	29.06	$1,441.26	$725.94	$288.25
24363	T	Replace elbow joint	0048	29.06	$1,441.26	$725.94	$288.25
24365	T	Reconstruct head of radius	0047	22.09	$1,095.58	$537.03	$219.12
24366	T	Reconstruct head of radius	0048	29.06	$1,441.26	$725.94	$288.25
24400	T	Revision of humerus	0050	21.13	$1,047.96	$513.86	$209.59
24410	T	Revision of humerus	0050	21.13	$1,047.96	$513.86	$209.59
24420	T	Revision of humerus	0051	27.76	$1,376.79	$675.24	$275.36
24430	T	Repair of humerus	0051	27.76	$1,376.79	$675.24	$275.36
24435	T	Repair humerus with graft	0051	27.76	$1,376.79	$675.24	$275.36
24470	T	Revision of elbow joint	0051	27.76	$1,376.79	$675.24	$275.36
24495	T	Decompression of forearm	0050	21.13	$1,047.96	$513.86	$209.59
24498	T	Reinforce humerus	0051	27.76	$1,376.79	$675.24	$275.36
24500	T	Treat humerus fracture	0044	2.17	$107.63	$38.08	$21.53
24505	T	Treat humerus fracture	0044	2.17	$107.63	$38.08	$21.53
24515	T	Treat humerus fracture	0046	22.29	$1,105.50	$535.76	$221.10
24516	T	Treat humerus fracture	0046	22.29	$1,105.50	$535.76	$221.10
24530	T	Treat humerus fracture	0044	2.17	$107.63	$38.08	$21.53
24535	T	Treat humerus fracture	0044	2.17	$107.63	$38.08	$21.53
24538	T	Treat humerus fracture	0046	22.29	$1,105.50	$535.76	$221.10
24545	T	Treat humerus fracture	0046	22.29	$1,105.50	$535.76	$221.10
24546	T	Treat humerus fracture	0046	22.29	$1,105.50	$535.76	$221.10
24560	T	Treat humerus fracture	0044	2.17	$107.63	$38.08	$21.53
24565	T	Treat humerus fracture	0044	2.17	$107.63	$38.08	$21.53
24566	T	Treat humerus fracture	0046	22.29	$1,105.50	$535.76	$221.10
24575	T	Treat humerus fracture	0046	22.29	$1,105.50	$535.76	$221.10
24576	T	Treat humerus fracture	0044	2.17	$107.63	$38.08	$21.53
24577	T	Treat humerus fracture	0044	2.17	$107.63	$38.08	$21.53
24579	T	Treat humerus fracture	0046	22.29	$1,105.50	$535.76	$221.10
24582	T	Treat humerus fracture	0046	22.29	$1,105.50	$535.76	$221.10
24586	T	Treat elbow fracture	0046	22.29	$1,105.50	$535.76	$221.10
24587	T	Treat elbow fracture	0046	22.29	$1,105.50	$535.76	$221.10
24600	T	Treat elbow dislocation	0044	2.17	$107.63	$38.08	$21.53
24605	T	Treat elbow dislocation	0045	11.02	$546.55	$277.12	$109.31
24615	T	Treat elbow dislocation	0046	22.29	$1,105.50	$535.76	$221.10
24620	T	Treat elbow fracture	0044	2.17	$107.63	$38.08	$21.53
24635	T	Treat elbow fracture	0046	22.29	$1,105.50	$535.76	$221.10
24640	T	Treat elbow dislocation	0044	2.17	$107.63	$38.08	$21.53
24650	T	Treat radius fracture	0044	2.17	$107.63	$38.08	$21.53
24655	T	Treat radius fracture	0044	2.17	$107.63	$38.08	$21.53
24665	T	Treat radius fracture	0046	22.29	$1,105.50	$535.76	$221.10
24666	T	Treat radius fracture	0046	22.29	$1,105.50	$535.76	$221.10
24670	T	Treat ulnar fracture	0044	2.17	$107.63	$38.08	$21.53
24675	T	Treat ulnar fracture	0044	2.17	$107.63	$38.08	$21.53
24685	T	Treat ulnar fracture	0046	22.29	$1,105.50	$535.76	$221.10
24800	T	Fusion of elbow joint	0051	27.76	$1,376.79	$675.24	$275.36
24802	T	Fusion/graft of elbow joint	0051	27.76	$1,376.79	$675.24	$275.36
24900	C	Amputation of upper arm					
24920	C	Amputation of upper arm					
24925	T	Amputation follow-up surgery	0049	15.04	$745.93	$356.95	$149.19
24930	C	Amputation follow-up surgery					
24931	C	Amputate upper arm & implant					
24935	T	Revision of amputation	0052	36.16	$1,793.39	$930.91	$358.68
24940	C	Revision of upper arm					
24999	T	Upper arm/elbow surgery	0044	2.17	$107.63	$38.08	$21.53
25000	T	Incision of tendon sheath	0049	15.04	$745.93	$356.95	$149.19
25020	T	Decompression of forearm	0049	15.04	$745.93	$356.95	$149.19
25023	T	Decompression of forearm	0050	21.13	$1,047.96	$513.86	$209.59
25028	T	Drainage of forearm lesion	0049	15.04	$745.93	$356.95	$149.19
25031	T	Drainage of forearm bursa	0049	15.04	$745.93	$356.95	$149.19
25035	T	Treat forearm bone lesion	0049	15.04	$745.93	$356.95	$149.19

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
25040	T	Explore/treat wrist joint	0050	21.13	$1,047.96	$513.86	$209.59
25065	T	Biopsy forearm soft tissues	0020	6.51	$322.87	$130.53	$64.57
25066	T	Biopsy forearm soft tissues	0022	12.49	$619.45	$292.94	$123.89
25075	T	Removal of forearm lesion	0020	6.51	$322.87	$130.53	$64.57
25076	T	Removal of forearm lesion	0022	12.49	$619.45	$292.94	$123.89
25077	T	Remove tumor, forearm/wrist	0022	12.49	$619.45	$292.94	$123.89
25085	T	Incision of wrist capsule	0049	15.04	$745.93	$356.95	$149.19
25100	T	Biopsy of wrist joint	0049	15.04	$745.93	$356.95	$149.19
25101	T	Explore/treat wrist joint	0050	21.13	$1,047.96	$513.86	$209.59
25105	T	Remove wrist joint lining	0050	21.13	$1,047.96	$513.86	$209.59
25107	T	Remove wrist joint cartilage	0050	21.13	$1,047.96	$513.86	$209.59
25110	T	Remove wrist tendon lesion	0049	15.04	$745.93	$356.95	$149.19
25111	T	Remove wrist tendon lesion	0053	11.32	$561.42	$253.49	$112.28
25112	T	Reremove wrist tendon lesion	0053	11.32	$561.42	$253.49	$112.28
25115	T	Remove wrist/forearm lesion	0049	15.04	$745.93	$356.95	$149.19
25116	T	Remove wrist/forearm lesion	0049	15.04	$745.93	$356.95	$149.19
25118	T	Excise wrist tendon sheath	0050	21.13	$1,047.96	$513.86	$209.59
25119	T	Partial removal of ulna	0050	21.13	$1,047.96	$513.86	$209.59
25120	T	Removal of forearm lesion	0050	21.13	$1,047.96	$513.86	$209.59
25125	T	Remove/graft forearm lesion	0050	21.13	$1,047.96	$513.86	$209.59
25126	T	Remove/graft forearm lesion	0050	21.13	$1,047.96	$513.86	$209.59
25130	T	Removal of wrist lesion	0050	21.13	$1,047.96	$513.86	$209.59
25135	T	Remove & graft wrist lesion	0050	21.13	$1,047.96	$513.86	$209.59
25136	T	Remove & graft wrist lesion	0050	21.13	$1,047.96	$513.86	$209.59
25145	T	Remove forearm bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
25150	T	Partial removal of ulna	0050	21.13	$1,047.96	$513.86	$209.59
25151	T	Partial removal of radius	0050	21.13	$1,047.96	$513.86	$209.59
25170	C	Extensive forearm surgery					
25210	T	Removal of wrist bone	0054	19.66	$975.06	$472.33	$195.01
25215	T	Removal of wrist bones	0054	19.66	$975.06	$472.33	$195.01
25230	T	Partial removal of radius	0050	21.13	$1,047.96	$513.86	$209.59
25240	T	Partial removal of ulna	0050	21.13	$1,047.96	$513.86	$209.59
25246	N	Injection for wrist x-ray					
25248	T	Remove forearm foreign body	0049	15.04	$745.93	$356.95	$149.19
25250	T	Removal of wrist prosthesis	0050	21.13	$1,047.96	$513.86	$209.59
25251	T	Removal of wrist prosthesis	0050	21.13	$1,047.96	$513.86	$209.59
25260	T	Repair forearm tendon/muscle	0050	21.13	$1,047.96	$513.86	$209.59
25263	T	Repair forearm tendon/muscle	0050	21.13	$1,047.96	$513.86	$209.59
25265	T	Repair forearm tendon/muscle	0050	21.13	$1,047.96	$513.86	$209.59
25270	T	Repair forearm tendon/muscle	0050	21.13	$1,047.96	$513.86	$209.59
25272	T	Repair forearm tendon/muscle	0050	21.13	$1,047.96	$513.86	$209.59
25274	T	Repair forearm tendon/muscle	0050	21.13	$1,047.96	$513.86	$209.59
25280	T	Revise wrist/forearm tendon	0050	21.13	$1,047.96	$513.86	$209.59
25290	T	Incise wrist/forearm tendon	0050	21.13	$1,047.96	$513.86	$209.59
25295	T	Release wrist/forearm tendon	0049	15.04	$745.93	$356.95	$149.19
25300	T	Fusion of tendons at wrist	0050	21.13	$1,047.96	$513.86	$209.59
25301	T	Fusion of tendons at wrist	0050	21.13	$1,047.96	$513.86	$209.59
27606	T	Incision of achilles tendon	0049	15.04	$745.93	$356.95	$149.19
27607	T	Treat lower leg bone lesion	0049	15.04	$745.93	$356.95	$149.19
27610	T	Explore/treat ankle joint	0050	21.13	$1,047.96	$513.86	$209.59
27612	T	Exploration of ankle joint	0050	21.13	$1,047.96	$513.86	$209.59
27613	T	Biopsy lower leg soft tissue	0020	6.51	$322.87	$130.53	$64.57
27614	T	Biopsy lower leg soft tissue	0022	12.49	$619.45	$292.94	$123.89
27615	T	Remove tumor, lower leg	0046	22.29	$1,105.50	$535.76	$221.10
27618	T	Remove lower leg lesion	0021	10.49	$520.26	$236.51	$104.05
27619	T	Remove lower leg lesion	0022	12.49	$619.45	$292.94	$123.89
27620	T	Explore/treat ankle joint	0050	21.13	$1,047.96	$513.86	$209.59
27625	T	Remove ankle joint lining	0050	21.13	$1,047.96	$513.86	$209.59
27626	T	Remove ankle joint lining	0050	21.13	$1,047.96	$513.86	$209.59
27630	T	Removal of tendon lesion	0049	15.04	$745.93	$356.95	$149.19
27635	T	Remove lower leg bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
27637	T	Remove/graft leg bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
27638	T	Remove/graft leg bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
27640	T	Partial removal of tibia	0051	27.76	$1,376.79	$675.24	$275.36
27641	T	Partial removal of fibula	0050	21.13	$1,047.96	$513.86	$209.59
27645	C	Extensive lower leg surgery					
27646	C	Extensive lower leg surgery					
27647	T	Extensive ankle/heel surgery	0051	27.76	$1,376.79	$675.24	$275.36
27648	N	Injection for ankle x-ray					
27650	T	Repair achilles tendon	0051	27.76	$1,376.79	$675.24	$275.36
27652	T	Repair/graft achilles tendon	0051	27.76	$1,376.79	$675.24	$275.36
27654	T	Repair of achilles tendon	0051	27.76	$1,376.79	$675.24	$275.36
27656	T	Repair leg fascia defect	0049	15.04	$745.93	$356.95	$149.19
27658	T	Repair of leg tendon, each	0049	15.04	$745.93	$356.95	$149.19

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
27659	T	Repair of leg tendon, each	0049	15.04	$745.93	$356.95	$149.19
27664	T	Repair of leg tendon, each	0049	15.04	$745.93	$356.95	$149.19
27665	T	Repair of leg tendon, each	0050	21.13	$1,047.96	$513.86	$209.59
27675	T	Repair lower leg tendons	0049	15.04	$745.93	$356.95	$149.19
27676	T	Repair lower leg tendons	0050	21.13	$1,047.96	$513.86	$209.59
27680	T	Release of lower leg tendon	0050	21.13	$1,047.96	$513.86	$209.59
27681	T	Release of lower leg tendons	0050	21.13	$1,047.96	$513.86	$209.59
27685	T	Revision of lower leg tendon	0050	21.13	$1,047.96	$513.86	$209.59
27686	T	Revise lower leg tendons	0050	21.13	$1,047.96	$513.86	$209.59
27687	T	Revision of calf tendon	0050	21.13	$1,047.96	$513.86	$209.59
27690	T	Revise lower leg tendon	0051	27.76	$1,376.79	$675.24	$275.36
27691	T	Revise lower leg tendon	0051	27.76	$1,376.79	$675.24	$275.36
27692	T	Revise additional leg tendon	0051	27.76	$1,376.79	$675.24	$275.36
27695	T	Repair of ankle ligament	0050	21.13	$1,047.96	$513.86	$209.59
27696	T	Repair of ankle ligaments	0050	21.13	$1,047.96	$513.86	$209.59
27698	T	Repair of ankle ligament	0050	21.13	$1,047.96	$513.86	$209.59
27700	T	Revision of ankle joint	0047	22.09	$1,095.58	$537.03	$219.12
27702	C	Reconstruct ankle joint					
27703	C	Reconstruction, ankle joint					
27704	T	Removal of ankle implant	0049	15.04	$745.93	$356.95	$149.19
27705	T	Incision of tibia	0051	27.76	$1,376.79	$675.24	$275.36
27707	T	Incision of fibula	0049	15.04	$745.93	$356.95	$149.19
27709	T	Incision of tibia & fibula	0050	21.13	$1,047.96	$513.86	$209.59
27712	C	Realignment of lower leg					
27715	C	Revision of lower leg					
27720	C	Repair of tibia					
27722	C	Repair/graft of tibia					
27724	C	Repair/graft of tibia					
27725	C	Repair of lower leg					
27727	C	Repair of lower leg					
27730	T	Repair of tibia epiphysis	0050	21.13	$1,047.96	$513.86	$209.59
27732	T	Repair of fibula epiphysis	0050	21.13	$1,047.96	$513.86	$209.59
27734	T	Repair lower leg epiphyses	0050	21.13	$1,047.96	$513.86	$209.59
27740	T	Repair of leg epiphyses	0050	21.13	$1,047.96	$513.86	$209.59
27742	T	Repair of leg epiphyses	0051	27.76	$1,376.79	$675.24	$275.36
27745	T	Reinforce tibia	0051	27.76	$1,376.79	$675.24	$275.36
27750	T	Treatment of tibia fracture	0044	2.17	$107.63	$38.08	$21.53
27752	T	Treatment of tibia fracture	0044	2.17	$107.63	$38.08	$21.53
27756	T	Treatment of tibia fracture	0046	22.29	$1,105.50	$535.76	$221.10
27758	T	Treatment of tibia fracture	0046	22.29	$1,105.50	$535.76	$221.10
27759	T	Treatment of tibia fracture	0046	22.29	$1,105.50	$535.76	$221.10
27760	T	Treatment of ankle fracture	0044	2.17	$107.63	$38.08	$21.53
27762	T	Treatment of ankle fracture	0044	2.17	$107.63	$38.08	$21.53
27766	T	Treatment of ankle fracture	0046	22.29	$1,105.50	$535.76	$221.10
27780	T	Treatment of fibula fracture	0044	2.17	$107.63	$38.08	$21.53
27781	T	Treatment of fibula fracture	0044	2.17	$107.63	$38.08	$21.53
27784	T	Treatment of fibula fracture	0046	22.29	$1,105.50	$535.76	$221.10
27786	T	Treatment of ankle fracture	0044	2.17	$107.63	$38.08	$21.53
27788	T	Treatment of ankle fracture	0044	2.17	$107.63	$38.08	$21.53
27792	T	Treatment of ankle fracture	0046	22.29	$1,105.50	$535.76	$221.10
27808	T	Treatment of ankle fracture	0044	2.17	$107.63	$38.08	$21.53
27810	T	Treatment of ankle fracture	0044	2.17	$107.63	$38.08	$21.53
27814	T	Treatment of ankle fracture	0046	22.29	$1,105.50	$535.76	$221.10
27816	T	Treatment of ankle fracture	0044	2.17	$107.63	$38.08	$21.53
27818	T	Treatment of ankle fracture	0044	2.17	$107.63	$38.08	$21.53
27822	T	Treatment of ankle fracture	0046	22.29	$1,105.50	$535.76	$221.10
27823	T	Treatment of ankle fracture	0046	22.29	$1,105.50	$535.76	$221.10
27824	T	Treat lower leg fracture	0044	2.17	$107.63	$38.08	$21.53
27825	T	Treat lower leg fracture	0044	2.17	$107.63	$38.08	$21.53
27826	T	Treat lower leg fracture	0046	22.29	$1,105.50	$535.76	$221.10
27827	T	Treat lower leg fracture	0046	22.29	$1,105.50	$535.76	$221.10
27828	T	Treat lower leg fracture	0046	22.29	$1,105.50	$535.76	$221.10
27829	T	Treat lower leg joint	0046	22.29	$1,105.50	$535.76	$221.10
27830	T	Treat lower leg dislocation	0044	2.17	$107.63	$38.08	$21.53
27831	T	Treat lower leg dislocation	0045	11.02	$546.55	$277.12	$109.31
27832	T	Treat lower leg dislocation	0046	22.29	$1,105.50	$535.76	$221.10
27840	T	Treat ankle dislocation	0044	2.17	$107.63	$38.08	$21.53
27842	T	Treat ankle dislocation	0045	11.02	$546.55	$277.12	$109.31
27846	T	Treat ankle dislocation	0046	22.29	$1,105.50	$535.76	$221.10
27848	T	Treat ankle dislocation	0046	22.29	$1,105.50	$535.76	$221.10
27860	T	Fixation of ankle joint	0045	11.02	$546.55	$277.12	$109.31
27870	T	Fusion of ankle joint	0051	27.76	$1,376.79	$675.24	$275.36
27871	T	Fusion of tibiofibular joint	0051	27.76	$1,376.79	$675.24	$275.36
27880	C	Amputation of lower leg					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
27881	C	Amputation of lower leg					
27882	C	Amputation of lower leg					
27884	T	Amputation follow-up surgery	0049	15.04	$745.93	$356.95	$149.19
27886	C	Amputation follow-up surgery					
27888	C	Amputation of foot at ankle					
27889	T	Amputation of foot at ankle	0050	21.13	$1,047.96	$513.86	$209.59
27892	T	Decompression of leg	0049	15.04	$745.93	$356.95	$149.19
27893	T	Decompression of leg	0049	15.04	$745.93	$356.95	$149.19
27894	T	Decompression of leg	0049	15.04	$745.93	$356.95	$149.19
27899	T	Leg/ankle surgery procedure	0044	2.17	$107.63	$38.08	$21.53
28001	T	Drainage of bursa of foot	0008	6.15	$305.02	$113.67	$61.00
28002	T	Treatment of foot infection	0049	15.04	$745.93	$356.95	$149.19
28003	T	Treatment of foot infection	0049	15.04	$745.93	$356.95	$149.19
28005	T	Treat foot bone lesion	0055	15.47	$767.26	$355.34	$153.45
28008	T	Incision of foot fascia	0055	15.47	$767.26	$355.34	$153.45
28010	T	Incision of toe tendon	0055	15.47	$767.26	$355.34	$153.45
28011	T	Incision of toe tendons	0055	15.47	$767.26	$355.34	$153.45
28020	T	Exploration of foot joint	0055	15.47	$767.26	$355.34	$153.45
28022	T	Exploration of foot joint	0055	15.47	$767.26	$355.34	$153.45
28024	T	Exploration of toe joint	0055	15.47	$767.26	$355.34	$153.45
28030	T	Removal of foot nerve	0220	13.96	$692.38	$326.21	$138.47
28035	T	Decompression of tibia nerve	0220	13.96	$692.38	$326.21	$138.47
28043	T	Excision of foot lesion	0021	10.49	$520.26	$236.51	$104.05
28045	T	Excision of foot lesion	0055	15.47	$767.26	$355.34	$153.45
28046	T	Resection of tumor, foot	0055	15.47	$767.26	$355.34	$153.45
28050	T	Biopsy of foot joint lining	0055	15.47	$767.26	$355.34	$153.45
28052	T	Biopsy of foot joint lining	0055	15.47	$767.26	$355.34	$153.45
28054	T	Biopsy of toe joint lining	0055	15.47	$767.26	$355.34	$153.45
28060	T	Partial removal, foot fascia	0056	17.30	$858.02	$405.81	$171.60
28062	T	Removal of foot fascia	0056	17.30	$858.02	$405.81	$171.60
28070	T	Removal of foot joint lining	0056	17.30	$858.02	$405.81	$171.60
28072	T	Removal of foot joint lining	0056	17.30	$858.02	$405.81	$171.60
28080	T	Removal of foot lesion	0055	15.47	$767.26	$355.34	$153.45
28086	T	Excise foot tendon sheath	0055	15.47	$767.26	$355.34	$153.45
28088	T	Excise foot tendon sheath	0055	15.47	$767.26	$355.34	$153.45
28090	T	Removal of foot lesion	0055	15.47	$767.26	$355.34	$153.45
28092	T	Removal of toe lesions	0055	15.47	$767.26	$355.34	$153.45
28100	T	Removal of ankle/heel lesion	0055	15.47	$767.26	$355.34	$153.45
28102	T	Remove/graft foot lesion	0056	17.30	$858.02	$405.81	$171.60
28103	T	Remove/graft foot lesion	0056	17.30	$858.02	$405.81	$171.60
28104	T	Removal of foot lesion	0055	15.47	$767.26	$355.34	$153.45
28106	T	Remove/graft foot lesion	0056	17.30	$858.02	$405.81	$171.60
28107	T	Remove/graft foot lesion	0056	17.30	$858.02	$405.81	$171.60
28108	T	Removal of toe lesions	0055	15.47	$767.26	$355.34	$153.45
28110	T	Part removal of metatarsal	0057	21.00	$1,041.52	$496.65	$208.30
28111	T	Part removal of metatarsal	0055	15.47	$767.26	$355.34	$153.45
28112	T	Part removal of metatarsal	0055	15.47	$767.26	$355.34	$153.45
28113	T	Part removal of metatarsal	0055	15.47	$767.26	$355.34	$153.45
28114	T	Removal of metatarsal heads	0055	15.47	$767.26	$355.34	$153.45
28116	T	Revision of foot	0055	15.47	$767.26	$355.34	$153.45
28118	T	Removal of heel bone	0055	15.47	$767.26	$355.34	$153.45
28119	T	Removal of heel spur	0055	15.47	$767.26	$355.34	$153.45
28120	T	Part removal of ankle/heel	0055	15.47	$767.26	$355.34	$153.45
28122	T	Partial removal of foot bone	0055	15.47	$767.26	$355.34	$153.45
28124	T	Partial removal of toe	0055	15.47	$767.26	$355.34	$153.45
28126	T	Partial removal of toe	0055	15.47	$767.26	$355.34	$153.45
28130	T	Removal of ankle bone	0055	15.47	$767.26	$355.34	$153.45
28140	T	Removal of metatarsal	0055	15.47	$767.26	$355.34	$153.45
28150	T	Removal of toe	0055	15.47	$767.26	$355.34	$153.45
28153	T	Partial removal of toe	0055	15.47	$767.26	$355.34	$153.45
28160	T	Partial removal of toe	0055	15.47	$767.26	$355.34	$153.45
28171	T	Extensive foot surgery	0055	15.47	$767.26	$355.34	$153.45
28173	T	Extensive foot surgery	0055	15.47	$767.26	$355.34	$153.45
28175	T	Extensive foot surgery	0055	15.47	$767.26	$355.34	$153.45
28190	T	Removal of foot foreign body	0019	4.00	$198.39	$78.91	$39.68
28192	T	Removal of foot foreign body	0021	10.49	$520.26	$236.51	$104.05
28193	T	Removal of foot foreign body	0020	6.51	$322.87	$130.53	$64.57
28200	T	Repair of foot tendon	0055	15.47	$767.26	$355.34	$153.45
28202	T	Repair/graft of foot tendon	0056	17.30	$858.02	$405.81	$171.60
28208	T	Repair of foot tendon	0055	15.47	$767.26	$355.34	$153.45
28210	T	Repair/graft of foot tendon	0055	15.47	$767.26	$355.34	$153.45
28220	T	Release of foot tendon	0055	15.47	$767.26	$355.34	$153.45
28222	T	Release of foot tendons	0055	15.47	$767.26	$355.34	$153.45
28225	T	Release of foot tendon	0055	15.47	$767.26	$355.34	$153.45

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
28226	T	Release of foot tendons	0055	15.47	$767.26	$355.34	$153.45
28230	T	Incision of foot tendon(s)	0055	15.47	$767.26	$355.34	$153.45
28232	T	Incision of toe tendon	0055	15.47	$767.26	$355.34	$153.45
28234	T	Incision of foot tendon	0055	15.47	$767.26	$355.34	$153.45
28238	T	Revision of foot tendon	0056	17.30	$858.02	$405.81	$171.60
28240	T	Release of big toe	0055	15.47	$767.26	$355.34	$153.45
28250	T	Revision of foot fascia	0056	17.30	$858.02	$405.81	$171.60
28260	T	Release of midfoot joint	0056	17.30	$858.02	$405.81	$171.60
28261	T	Revision of foot tendon	0056	17.30	$858.02	$405.81	$171.60
28262	T	Revision of foot and ankle	0056	17.30	$858.02	$405.81	$171.60
28264	T	Release of midfoot joint	0056	17.30	$858.02	$405.81	$171.60
28270	T	Release of foot contracture	0055	15.47	$767.26	$355.34	$153.45
28272	T	Release of toe joint, each	0055	15.47	$767.26	$355.34	$153.45
28280	T	Fusion of toes	0055	15.47	$767.26	$355.34	$153.45
28285	T	Repair of hammertoe	0055	15.47	$767.26	$355.34	$153.45
28286	T	Repair of hammertoe	0055	15.47	$767.26	$355.34	$153.45
28288	T	Partial removal of foot bone	0056	17.30	$858.02	$405.81	$171.60
28289	T	Repair hallux rigidus	0056	17.30	$858.02	$405.81	$171.60
28290	T	Correction of bunion	0057	21.00	$1,041.52	$496.65	$208.30
28292	T	Correction of bunion	0057	21.00	$1,041.52	$496.65	$208.30
28293	T	Correction of bunion	0057	21.00	$1,041.52	$496.65	$208.30
28294	T	Correction of bunion	0057	21.00	$1,041.52	$496.65	$208.30
28296	T	Correction of bunion	0057	21.00	$1,041.52	$496.65	$208.30
28297	T	Correction of bunion	0057	21.00	$1,041.52	$496.65	$208.30
28298	T	Correction of bunion	0057	21.00	$1,041.52	$496.65	$208.30
28299	T	Correction of bunion	0057	21.00	$1,041.52	$496.65	$208.30
28300	T	Incision of heel bone	0056	17.30	$858.02	$405.81	$171.60
28302	T	Incision of ankle bone	0056	17.30	$858.02	$405.81	$171.60
28304	T	Incision of midfoot bones	0056	17.30	$858.02	$405.81	$171.60
28305	T	Incise/graft midfoot bones	0056	17.30	$858.02	$405.81	$171.60
28306	T	Incision of metatarsal	0056	17.30	$858.02	$405.81	$171.60
28307	T	Incision of metatarsal	0056	17.30	$858.02	$405.81	$171.60
28308	T	Incision of metatarsal	0056	17.30	$858.02	$405.81	$171.60
28309	T	Incision of metatarsals	0056	17.30	$858.02	$405.81	$171.60
28310	T	Revision of big toe	0055	15.47	$767.26	$355.34	$153.45
28312	T	Revision of toe	0055	15.47	$767.26	$355.34	$153.45
28313	T	Repair deformity of toe	0055	15.47	$767.26	$355.34	$153.45
28315	T	Removal of sesamoid bone	0055	15.47	$767.26	$355.34	$153.45
28320	T	Repair of foot bones	0056	17.30	$858.02	$405.81	$171.60
28322	T	Repair of metatarsals	0056	17.30	$858.02	$405.81	$171.60
28340	T	Resect enlarged toe tissue	0055	15.47	$767.26	$355.34	$153.45
28341	T	Resect enlarged toe	0055	15.47	$767.26	$355.34	$153.45
28344	T	Repair extra toe(s)	0056	17.30	$858.02	$405.81	$171.60
28345	T	Repair webbed toe(s)	0056	17.30	$858.02	$405.81	$171.60
28360	T	Reconstruct cleft foot	0056	17.30	$858.02	$405.81	$171.60
28400	T	Treatment of heel fracture	0044	2.17	$107.63	$38.08	$21.53
28405	T	Treatment of heel fracture	0044	2.17	$107.63	$38.08	$21.53
28406	T	Treatment of heel fracture	0046	22.29	$1,105.50	$535.76	$221.10
28415	T	Treat heel fracture	0046	22.29	$1,105.50	$535.76	$221.10
28420	T	Treat/graft heel fracture	0046	22.29	$1,105.50	$535.76	$221.10
28430	T	Treatment of ankle fracture	0044	2.17	$107.63	$38.08	$21.53
28435	T	Treatment of ankle fracture	0044	2.17	$107.63	$38.08	$21.53
28436	T	Treatment of ankle fracture	0046	22.29	$1,105.50	$535.76	$221.10
28445	T	Treat ankle fracture	0046	22.29	$1,105.50	$535.76	$221.10
28450	T	Treat midfoot fracture, each	0044	2.17	$107.63	$38.08	$21.53
28455	T	Treat midfoot fracture, each	0044	2.17	$107.63	$38.08	$21.53
28456	T	Treat midfoot fracture	0046	22.29	$1,105.50	$535.76	$221.10
28465	T	Treat midfoot fracture, each	0046	22.29	$1,105.50	$535.76	$221.10
28470	T	Treat metatarsal fracture	0044	2.17	$107.63	$38.08	$21.53
28475	T	Treat metatarsal fracture	0044	2.17	$107.63	$38.08	$21.53
28476	T	Treat metatarsal fracture	0046	22.29	$1,105.50	$535.76	$221.10
28485	T	Treat metatarsal fracture	0046	22.29	$1,105.50	$535.76	$221.10
28490	T	Treat big toe fracture	0043	1.64	$81.34	$25.46	$16.27
28495	T	Treat big toe fracture	0043	1.64	$81.34	$25.46	$16.27
28496	T	Treat big toe fracture	0046	22.29	$1,105.50	$535.76	$221.10
28505	T	Treat big toe fracture	0046	22.29	$1,105.50	$535.76	$221.10
28510	T	Treatment of toe fracture	0043	1.64	$81.34	$25.46	$16.27
28515	T	Treatment of toe fracture	0043	1.64	$81.34	$25.46	$16.27
28525	T	Treat toe fracture	0046	22.29	$1,105.50	$535.76	$221.10
28530	T	Treat sesamoid bone fracture	0044	2.17	$107.63	$38.08	$21.53
28531	T	Treat sesamoid bone fracture	0046	22.29	$1,105.50	$535.76	$221.10
28540	T	Treat foot dislocation	0044	2.17	$107.63	$38.08	$21.53
28545	T	Treat foot dislocation	0045	11.02	$546.55	$277.12	$109.31
28546	T	Treat foot dislocation	0046	22.29	$1,105.50	$535.76	$221.10

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
28555	T	Repair foot dislocation	0046	22.29	$1,105.50	$535.76	$221.10
28570	T	Treat foot dislocation	0044	2.17	$107.63	$38.08	$21.53
28575	T	Treat foot dislocation	0045	11.02	$546.55	$277.12	$109.31
28576	T	Treat foot dislocation	0046	22.29	$1,105.50	$535.76	$221.10
28585	T	Repair foot dislocation	0046	22.29	$1,105.50	$535.76	$221.10
28600	T	Treat foot dislocation	0044	2.17	$107.63	$38.08	$21.53
28605	T	Treat foot dislocation	0045	11.02	$546.55	$277.12	$109.31
28606	T	Treat foot dislocation	0046	22.29	$1,105.50	$535.76	$221.10
28615	T	Repair foot dislocation	0046	22.29	$1,105.50	$535.76	$221.10
28630	T	Treat toe dislocation	0043	1.64	$81.34	$25.46	$16.27
28635	T	Treat toe dislocation	0045	11.02	$546.55	$277.12	$109.31
28636	T	Treat toe dislocation	0046	22.29	$1,105.50	$535.76	$221.10
28645	T	Repair toe dislocation	0046	22.29	$1,105.50	$535.76	$221.10
28660	T	Treat toe dislocation	0043	1.64	$81.34	$25.46	$16.27
28665	T	Treat toe dislocation	0045	11.02	$546.55	$277.12	$109.31
28666	T	Treat toe dislocation	0046	22.29	$1,105.50	$535.76	$221.10
28675	T	Repair of toe dislocation	0046	22.29	$1,105.50	$535.76	$221.10
28705	T	Fusion of foot bones	0056	17.30	$858.02	$405.81	$171.60
28715	T	Fusion of foot bones	0056	17.30	$858.02	$405.81	$171.60
28725	T	Fusion of foot bones	0056	17.30	$858.02	$405.81	$171.60
28730	T	Fusion of foot bones	0056	17.30	$858.02	$405.81	$171.60
28735	T	Fusion of foot bones	0056	17.30	$858.02	$405.81	$171.60
28737	T	Revision of foot bones	0055	15.47	$767.26	$355.34	$153.45
28740	T	Fusion of foot bones	0056	17.30	$858.02	$405.81	$171.60
28750	T	Fusion of big toe joint	0055	15.47	$767.26	$355.34	$153.45
28755	T	Fusion of big toe joint	0055	15.47	$767.26	$355.34	$153.45
28760	T	Fusion of big toe joint	0056	17.30	$858.02	$405.81	$171.60
28800	C	Amputation of midfoot					
28805	C	Amputation thru metatarsal					
28810	T	Amputation toe & metatarsal	0055	15.47	$767.26	$355.34	$153.45
28820	T	Amputation of toe	0055	15.47	$767.26	$355.34	$153.45
28825	T	Partial amputation of toe	0055	15.47	$767.26	$355.34	$153.45
28899	T	Foot/toes surgery procedure	0043	1.64	$81.34	$25.46	$16.27
29000	S	Application of body cast	0059	1.74	$86.30	$29.59	$17.26
29010	S	Application of body cast	0059	1.74	$86.30	$29.59	$17.26
29015	S	Application of body cast	0059	1.74	$86.30	$29.59	$17.26
29020	S	Application of body cast	0059	1.74	$86.30	$29.59	$17.26
29025	S	Application of body cast	0059	1.74	$86.30	$29.59	$17.26
29035	S	Application of body cast	0059	1.74	$86.30	$29.59	$17.26
29040	S	Application of body cast	0059	1.74	$86.30	$29.59	$17.26
29044	S	Application of body cast	0059	1.74	$86.30	$29.59	$17.26
29046	S	Application of body cast	0059	1.74	$86.30	$29.59	$17.26
29049	S	Application of figure eight	0059	1.74	$86.30	$29.59	$17.26
29055	S	Application of shoulder cast	0059	1.74	$86.30	$29.59	$17.26
29058	S	Application of shoulder cast	0059	1.74	$86.30	$29.59	$17.26
29065	S	Application of long arm cast	0059	1.74	$86.30	$29.59	$17.26
29075	S	Application of forearm cast	0059	1.74	$86.30	$29.59	$17.26
29085	S	Apply hand/wrist cast	0059	1.74	$86.30	$29.59	$17.26
29105	S	Apply long arm splint	0059	1.74	$86.30	$29.59	$17.26
29125	S	Apply forearm splint	0059	1.74	$86.30	$29.59	$17.26
29126	S	Apply forearm splint	0059	1.74	$86.30	$29.59	$17.26
29130	S	Application of finger splint	0059	1.74	$86.30	$29.59	$17.26
29131	S	Application of finger splint	0059	1.74	$86.30	$29.59	$17.26
29200	S	Strapping of chest	0059	1.74	$86.30	$29.59	$17.26
29220	S	Strapping of low back	0059	1.74	$86.30	$29.59	$17.26
29240	S	Strapping of shoulder	0059	1.74	$86.30	$29.59	$17.26
29260	S	Strapping of elbow or wrist	0059	1.74	$86.30	$29.59	$17.26
29280	S	Strapping of hand or finger	0059	1.74	$86.30	$29.59	$17.26
29305	S	Application of hip cast	0059	1.74	$86.30	$29.59	$17.26
29325	S	Application of hip casts	0059	1.74	$86.30	$29.59	$17.26
29345	S	Application of long leg cast	0059	1.74	$86.30	$29.59	$17.26
29355	S	Application of long leg cast	0059	1.74	$86.30	$29.59	$17.26
29358	S	Apply long leg cast brace	0059	1.74	$86.30	$29.59	$17.26
29365	S	Application of long leg cast	0059	1.74	$86.30	$29.59	$17.26
29405	S	Apply short leg cast	0059	1.74	$86.30	$29.59	$17.26
29425	S	Apply short leg cast	0059	1.74	$86.30	$29.59	$17.26
29435	S	Apply short leg cast	0059	1.74	$86.30	$29.59	$17.26
29440	S	Addition of walker to cast	0059	1.74	$86.30	$29.59	$17.26
29445	S	Apply rigid leg cast	0059	1.74	$86.30	$29.59	$17.26
29450	S	Application of leg cast	0059	1.74	$86.30	$29.59	$17.26
29505	S	Application, long leg splint	0058	1.09	$54.06	$19.27	$10.81
29515	S	Application lower leg splint	0058	1.09	$54.06	$19.27	$10.81
29520	S	Strapping of hip	0058	1.09	$54.06	$19.27	$10.81
29530	S	Strapping of knee	0058	1.09	$54.06	$19.27	$10.81

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
29540	S	Strapping of ankle	0058	1.09	$54.06	$19.27	$10.81
29550	S	Strapping of toes	0058	1.09	$54.06	$19.27	$10.81
29580	S	Application of paste boot	0058	1.09	$54.06	$19.27	$10.81
29590	S	Application of foot splint	0058	1.09	$54.06	$19.27	$10.81
29700	S	Removal/revision of cast	0058	1.09	$54.06	$19.27	$10.81
29705	S	Removal/revision of cast	0058	1.09	$54.06	$19.27	$10.81
29710	S	Removal/revision of cast	0058	1.09	$54.06	$19.27	$10.81
29715	S	Removal/revision of cast	0058	1.09	$54.06	$19.27	$10.81
29720	S	Repair of body cast	0058	1.09	$54.06	$19.27	$10.81
29730	S	Windowing of cast	0058	1.09	$54.06	$19.27	$10.81
29740	S	Wedging of cast	0058	1.09	$54.06	$19.27	$10.81
29750	S	Wedging of clubfoot cast	0058	1.09	$54.06	$19.27	$10.81
29799	S	Casting/strapping procedure	0058	1.09	$54.06	$19.27	$10.81
29800	T	Jaw arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29804	T	Jaw arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29815	T	Shoulder arthroscopy	0041	24.57	$1,218.58	$592.06	$243.72
29819	T	Shoulder arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29820	T	Shoulder arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29821	T	Shoulder arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29822	T	Shoulder arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29823	T	Shoulder arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29825	T	Shoulder arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29826	T	Shoulder arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29830	T	Elbow arthroscopy	0041	24.57	$1,218.58	$592.06	$243.72
29834	T	Elbow arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29835	T	Elbow arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29836	T	Elbow arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29837	T	Elbow arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29838	T	Elbow arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29840	T	Wrist arthroscopy	0041	24.57	$1,218.58	$592.06	$243.72
29843	T	Wrist arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29844	T	Wrist arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29845	T	Wrist arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29846	T	Wrist arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29847	T	Wrist arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29848	T	Wrist endoscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29850	T	Knee arthroscopy/surgery	0042	29.22	$1,449.19	$804.74	$289.84
29851	T	Knee arthroscopy/surgery	0042	29.22	$1,449.19	$804.74	$289.84
29855	T	Tibial arthroscopy/surgery	0042	29.22	$1,449.19	$804.74	$289.84
29856	T	Tibial arthroscopy/surgery	0042	29.22	$1,449.19	$804.74	$289.84
29860	T	Hip arthroscopy, dx	0041	24.57	$1,218.58	$592.06	$243.72
29861	T	Hip arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29862	T	Hip arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29863	T	Hip arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29870	T	Knee arthroscopy, dx	0041	24.57	$1,218.58	$592.06	$243.72
29871	T	Knee arthroscopy/drainage	0041	24.57	$1,218.58	$592.06	$243.72
29874	T	Knee arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29875	T	Knee arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29876	T	Knee arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29877	T	Knee arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29879	T	Knee arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29880	T	Knee arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29881	T	Knee arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29882	T	Knee arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29883	T	Knee arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29884	T	Knee arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29885	T	Knee arthroscopy/surgery	0042	29.22	$1,449.19	$804.74	$289.84
29886	T	Knee arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29887	T	Knee arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29888	T	Knee arthroscopy/surgery	0042	29.22	$1,449.19	$804.74	$289.84
29889	T	Knee arthroscopy/surgery	0042	29.22	$1,449.19	$804.74	$289.84
29891	T	Ankle arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29892	T	Ankle arthroscopy/surgery	0042	29.22	$1,449.19	$804.74	$289.84
29893	T	Scope, plantar fasciotomy	0055	15.47	$767.26	$355.34	$153.45
29894	T	Ankle arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29895	T	Ankle arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29897	T	Ankle arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29898	T	Ankle arthroscopy/surgery	0041	24.57	$1,218.58	$592.06	$243.72
29909	T	Arthroscopy of joint	0041	24.57	$1,218.58	$592.06	$243.72
30000	T	Drainage of nose lesion	0251	1.68	$83.32	$27.99	$16.66
30020	T	Drainage of nose lesion	0251	1.68	$83.32	$27.99	$16.66
30100	T	Intranasal biopsy	0252	5.18	$256.90	$114.24	$51.38
30110	T	Removal of nose polyp(s)	0253	12.02	$596.14	$264.00	$119.23
30115	T	Removal of nose polyp(s)	0253	12.02	$596.14	$264.00	$119.23

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
30117	T	Removal of intranasal lesion	0253	12.02	$596.14	$284.00	$119.23
30118	T	Removal of intranasal lesion	0254	12.45	$617.47	$272.41	$123.49
30120	T	Revision of nose	0253	12.02	$596.14	$284.00	$119.23
30124	T	Removal of nose lesion	0252	5.18	$256.90	$114.24	$51.38
30125	T	Removal of nose lesion	0256	25.40	$1,259.74	$623.05	$251.95
30130	T	Removal of turbinate bones	0253	12.02	$596.14	$284.00	$119.23
30140	T	Removal of turbinate bones	0253	12.02	$596.14	$284.00	$119.23
30150	T	Partial removal of nose	0256	25.40	$1,259.74	$623.05	$251.95
30160	T	Removal of nose	0256	25.40	$1,259.74	$623.05	$251.95
30200	T	Injection treatment of nose	0253	12.02	$596.14	$284.00	$119.23
30210	T	Nasal sinus therapy	0252	5.18	$256.90	$114.24	$51.38
30220	T	Insert nasal septal button	0252	5.18	$256.90	$114.24	$51.38
30300	T	Remove nasal foreign body	0251	1.68	$83.32	$27.99	$16.66
30310	T	Remove nasal foreign body	0253	12.02	$596.14	$284.00	$119.23
30320	T	Remove nasal foreign body	0253	12.02	$596.14	$284.00	$119.23
30400	T	Reconstruction of nose	0256	25.40	$1,259.74	$623.05	$251.95
30410	T	Reconstruction of nose	0256	25.40	$1,259.74	$623.05	$251.95
30420	T	Reconstruction of nose	0256	25.40	$1,259.74	$623.05	$251.95
30430	T	Revision of nose	0254	12.45	$617.47	$272.41	$123.49
30435	T	Revision of nose	0256	25.40	$1,259.74	$623.05	$251.95
30450	T	Revision of nose	0256	25.40	$1,259.74	$623.05	$251.95
30460	T	Revision of nose	0256	25.40	$1,259.74	$623.05	$251.95
30462	T	Revision of nose	0256	25.40	$1,259.74	$623.05	$251.95
*30465	T	Repair nasal stenosis	0256	25.40	$1,259.74	$623.05	$251.95
30520	T	Repair of nasal septum	0256	25.40	$1,259.74	$623.05	$251.95
30540	T	Repair nasal defect	0256	25.40	$1,259.74	$623.05	$251.95
30545	T	Repair nasal defect	0256	25.40	$1,259.74	$623.05	$251.95
30560	T	Release of nasal adhesions	0251	1.68	$83.32	$27.99	$16.66
30580	T	Repair upper jaw fistula	0256	25.40	$1,259.74	$623.05	$251.95
30600	T	Repair mouth/nose fistula	0256	25.40	$1,259.74	$623.05	$251.95
30620	T	Intranasal reconstruction	0256	25.40	$1,259.74	$623.05	$251.95
30630	T	Repair nasal septum defect	0254	12.45	$617.47	$272.41	$123.49
30801	T	Cauterization, inner nose	0252	5.18	$256.90	$114.24	$51.38
30802	T	Cauterization, inner nose	0253	12.02	$596.14	$284.00	$119.23
30901	T	Control of nosebleed	0250	2.21	$109.61	$38.54	$21.92
30903	T	Control of nosebleed	0250	2.21	$109.61	$38.54	$21.92
30905	T	Control of nosebleed	0250	2.21	$109.61	$38.54	$21.92
30906	T	Repeat control of nosebleed	0250	2.21	$109.61	$38.54	$21.92
30915	T	Ligation, nasal sinus artery	0091	14.79	$733.52	$348.23	$146.70
30920	T	Ligation, upper jaw artery	0092	20.21	$1,002.34	$505.37	$200.47
30930	T	Therapy, fracture of nose	0253	12.02	$596.14	$284.00	$119.23
30999	T	Nasal surgery procedure	0251	1.68	$83.32	$27.99	$16.66
31000	T	Irrigation, maxillary sinus	0251	1.68	$83.32	$27.99	$16.66
31002	T	Irrigation, sphenoid sinus	0252	5.18	$256.90	$114.24	$51.38
31020	T	Exploration, maxillary sinus	0253	12.02	$596.14	$284.00	$119.23
31030	T	Exploration, maxillary sinus	0256	25.40	$1,259.74	$623.05	$251.95
31032	T	Explore sinus,remove polyps	0256	25.40	$1,259.74	$623.05	$251.95
31040	T	Exploration behind upper jaw	0254	12.45	$617.47	$272.41	$123.49
31050	T	Exploration, sphenoid sinus	0256	25.40	$1,259.74	$623.05	$251.95
31051	T	Sphenoid sinus surgery	0256	25.40	$1,259.74	$623.05	$251.95
31070	T	Exploration of frontal sinus	0254	12.45	$617.47	$272.41	$123.49
31075	T	Exploration of frontal sinus	0256	25.40	$1,259.74	$623.05	$251.95
31080	T	Removal of frontal sinus	0256	25.40	$1,259.74	$623.05	$251.95
31081	T	Removal of frontal sinus	0256	25.40	$1,259.74	$623.05	$251.95
31084	T	Removal of frontal sinus	0256	25.40	$1,259.74	$623.05	$251.95
31085	T	Removal of frontal sinus	0256	25.40	$1,259.74	$623.05	$251.95
31086	T	Removal of frontal sinus	0256	25.40	$1,259.74	$623.05	$251.95
31087	T	Removal of frontal sinus	0256	25.40	$1,259.74	$623.05	$251.95
31090	T	Exploration of sinuses	0256	25.40	$1,259.74	$623.05	$251.95
31200	T	Removal of ethmoid sinus	0256	25.40	$1,259.74	$623.05	$251.95
31201	T	Removal of ethmoid sinus	0256	25.40	$1,259.74	$623.05	$251.95
31205	T	Removal of ethmoid sinus	0256	25.40	$1,259.74	$623.05	$251.95
31225	C	Removal of upper jaw					
31230	C	Removal of upper jaw					
31231	T	Nasal endoscopy, dx	0071	0.55	$27.28	$14.22	$5.46
31233	T	Nasal/sinus endoscopy, dx	0072	1.26	$62.49	$41.52	$12.50
31235	T	Nasal/sinus endoscopy, dx	0074	13.61	$675.00	$347.54	$135.00
31237	T	Nasal/sinus endoscopy, surg	0074	13.61	$675.00	$347.54	$135.00
31238	T	Nasal/sinus endoscopy, surg	0074	13.61	$675.00	$347.54	$135.00
31239	T	Nasal/sinus endoscopy, surg	0075	18.55	$920.01	$467.29	$184.00
31240	T	Nasal/sinus endoscopy, surg	0074	13.61	$675.00	$347.54	$135.00
31254	T	Revision of ethmoid sinus	0075	18.55	$920.01	$467.29	$184.00
31255	T	Removal of ethmoid sinus	0075	18.55	$920.01	$467.29	$184.00
31256	T	Exploration maxillary sinus	0075	18.55	$920.01	$467.29	$184.00

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
31267	T	Endoscopy, maxillary sinus	0075	18.55	$920.01	$467.29	$184.00
31276	T	Sinus endoscopy, surgical	0075	18.55	$920.01	$467.29	$184.00
31287	T	Nasal/sinus endoscopy, surg	0075	18.55	$920.01	$467.29	$184.00
31288	T	Nasal/sinus endoscopy, surg	0075	18.55	$920.01	$467.29	$184.00
31290	C	Nasal/sinus endoscopy, surg					
31291	C	Nasal/sinus endoscopy, surg					
31292	C	Nasal/sinus endoscopy, surg					
31293	C	Nasal/sinus endoscopy, surg					
31294	C	Nasal/sinus endoscopy, surg					
31299	T	Sinus surgery procedure	0252	5.18	$256.90	$114.24	$51.38
31300	T	Removal of larynx lesion	0256	25.40	$1,259.74	$623.05	$251.95
31320	T	Diagnostic incision, larynx	0256	25.40	$1,259.74	$623.05	$251.95
31360	C	Removal of larynx					
31365	C	Removal of larynx					
31367	C	Partial removal of larynx					
31368	C	Partial removal of larynx					
31370	C	Partial removal of larynx					
31375	C	Partial removal of larynx					
31380	C	Partial removal of larynx					
31382	C	Partial removal of larynx					
31390	C	Removal of larynx & pharynx					
31395	C	Reconstruct larynx & pharynx					
31400	T	Revision of larynx	0256	25.40	$1,259.74	$623.05	$251.95
31420	T	Removal of epiglottis	0256	25.40	$1,259.74	$623.05	$251.95
31500	S	Insert emergency airway	0094	4.51	$223.68	$105.29	$44.74
31502	T	Change of windpipe airway	0121	2.36	$117.05	$52.53	$23.41
31505	T	Diagnostic laryngoscopy	0072	1.26	$62.49	$41.52	$12.50
31510	T	Laryngoscopy with biopsy	0074	13.61	$675.00	$347.54	$135.00
31511	T	Remove foreign body, larynx	0072	1.26	$62.49	$41.52	$12.50
31512	T	Removal of larynx lesion	0074	13.61	$675.00	$347.54	$135.00
31513	T	Injection into vocal cord	0073	4.11	$203.84	$91.07	$40.77
31515	T	Laryngoscopy for aspiration	0074	13.61	$675.00	$347.54	$135.00
31520	T	Diagnostic laryngoscopy	0072	1.26	$62.49	$41.52	$12.50
31525	T	Diagnostic laryngoscopy	0074	13.61	$675.00	$347.54	$135.00
31526	T	Diagnostic laryngoscopy	0074	13.61	$675.00	$347.54	$135.00
31527	T	Laryngoscopy for treatment	0075	18.55	$920.01	$467.29	$184.00
31528	T	Laryngoscopy and dilatation	0074	13.61	$675.00	$347.54	$135.00
31529	T	Laryngoscopy and dilatation	0074	13.61	$675.00	$347.54	$135.00
31530	T	Operative laryngoscopy	0075	18.55	$920.01	$467.29	$184.00
31531	T	Operative laryngoscopy	0075	18.55	$920.01	$467.29	$184.00
31535	T	Operative laryngoscopy	0075	18.55	$920.01	$467.29	$184.00
31536	T	Operative laryngoscopy	0075	18.55	$920.01	$467.29	$184.00
31540	T	Operative laryngoscopy	0075	18.55	$920.01	$467.29	$184.00
31541	T	Operative laryngoscopy	0075	18.55	$920.01	$467.29	$184.00
31560	T	Operative laryngoscopy	0075	18.55	$920.01	$467.29	$184.00
31561	T	Operative laryngoscopy	0075	18.55	$920.01	$467.29	$184.00
31570	T	Laryngoscopy with injection	0075	18.55	$920.01	$467.29	$184.00
31571	T	Laryngoscopy with injection	0075	18.55	$920.01	$467.29	$184.00
31575	T	Diagnostic laryngoscopy	0071	0.55	$27.28	$14.22	$5.46
31576	T	Laryngoscopy with biopsy	0074	13.61	$675.00	$347.54	$135.00
31577	T	Remove foreign body, larynx	0073	4.11	$203.84	$91.07	$40.77
31578	T	Removal of larynx lesion	0074	13.61	$675.00	$347.54	$135.00
31579	T	Diagnostic laryngoscopy	0073	4.11	$203.84	$91.07	$40.77
31580	T	Revision of larynx	0256	25.40	$1,259.74	$623.05	$251.95
31582	C	Revision of larynx					
31584	C	Treat larynx fracture					
31585	T	Treat larynx fracture	0253	12.02	$596.14	$284.00	$119.23
31586	T	Treat larynx fracture	0256	25.40	$1,259.74	$623.05	$251.95
31587	C	Revision of larynx					
31588	T	Revision of larynx	0256	25.40	$1,259.74	$623.05	$251.95
31590	T	Reinnervate larynx	0256	25.40	$1,259.74	$623.05	$251.95
31595	T	Larynx nerve surgery	0256	25.40	$1,259.74	$623.05	$251.95
31599	T	Larynx surgery procedure	0253	12.02	$596.14	$284.00	$119.23
31600	T	Incision of windpipe	0254	12.45	$617.47	$272.41	$123.49
31601	T	Incision of windpipe	0254	12.45	$617.47	$272.41	$123.49
31603	T	Incision of windpipe	0254	12.45	$617.47	$272.41	$123.49
31605	T	Incision of windpipe	0254	12.45	$617.47	$272.41	$123.49
31610	T	Incision of windpipe	0254	12.45	$617.47	$272.41	$123.49
31611	T	Surgery/speech prosthesis	0254	12.45	$617.47	$272.41	$123.49
31612	T	Puncture/clear windpipe	0253	12.02	$596.14	$284.00	$119.23
31613	T	Repair windpipe opening	0254	12.45	$617.47	$272.41	$123.49
31614	T	Repair windpipe opening	0256	25.40	$1,259.74	$623.05	$251.95
31615	T	Visualization of windpipe	0076	8.06	$399.75	$197.05	$79.95
31622	T	Dx bronchoscope/wash	0076	8.06	$399.75	$197.05	$79.95

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
31623	T	Dx bronchoscope/brush	0076	8.06	$399.75	$197.05	$79.95
31624	T	Dx bronchoscope/lavage	0076	8.06	$399.75	$197.05	$79.95
31625	T	Bronchoscopy with biopsy	0076	8.06	$399.75	$197.05	$79.95
31628	T	Bronchoscopy with biopsy	0076	8.06	$399.75	$197.05	$79.95
31629	T	Bronchoscopy with biopsy	0076	8.06	$399.75	$197.05	$79.95
31630	T	Bronchoscopy with repair	0076	8.06	$399.75	$197.05	$79.95
31631	T	Bronchoscopy with dilation	0076	8.06	$399.75	$197.05	$79.95
31635	T	Remove foreign body, airway	0076	8.06	$399.75	$197.05	$79.95
31640	T	Bronchoscopy & remove lesion	0076	8.06	$399.75	$197.05	$79.95
31641	T	Bronchoscopy, treat blockage	0076	8.06	$399.75	$197.05	$79.95
31643	T	Diag bronchoscope/catheter	0076	8.06	$399.75	$197.05	$79.95
31645	T	Bronchoscopy, clear airways	0076	8.06	$399.75	$197.05	$79.95
31646	T	Bronchoscopy, reclear airway	0076	8.06	$399.75	$197.05	$79.95
31656	T	Bronchoscopy, inj for xray	0076	8.06	$399.75	$197.05	$79.95
31700	T	Insertion of airway catheter	0072	1.26	$62.49	$41.52	$12.50
31708	N	Instill airway contrast dye					
31710	N	Insertion of airway catheter					
31715	N	Injection for bronchus x-ray					
31717	T	Bronchial brush biopsy	0073	4.11	$203.84	$91.07	$40.77
31720	T	Clearance of airways	0072	1.26	$62.49	$41.52	$12.50
31725	C	Clearance of airways					
31730	T	Intro, windpipe wire/tube	0073	4.11	$203.84	$91.07	$40.77
31750	T	Repair of windpipe	0256	25.40	$1,259.74	$623.05	$251.95
31755	T	Repair of windpipe	0256	25.40	$1,259.74	$623.05	$251.95
31760	C	Repair of windpipe					
31766	C	Reconstruction of windpipe					
31770	C	Repair/graft of bronchus					
31775	C	Reconstruct bronchus					
31780	C	Reconstruct windpipe					
31781	C	Reconstruct windpipe					
31785	C	Remove windpipe lesion					
31786	C	Remove windpipe lesion					
31800	C	Repair of windpipe injury					
31805	C	Repair of windpipe injury					
31820	T	Closure of windpipe lesion	0253	12.02	$596.14	$264.00	$119.23
31825	T	Repair of windpipe defect	0254	12.45	$617.47	$272.41	$123.49
31830	T	Revise windpipe scar	0254	12.45	$617.47	$272.41	$123.49
31899	T	Airways surgical procedure	0076	8.06	$399.75	$197.05	$79.95
32000	T	Drainage of chest	0070	3.64	$180.53	$79.60	$36.11
32002	T	Treatment of collapsed lung	0070	3.64	$180.53	$79.60	$36.11
32005	T	Treat lung lining chemically	0070	3.64	$180.53	$79.60	$36.11
32020	T	Insertion of chest tube	0070	3.64	$180.53	$79.60	$36.11
32035	C	Exploration of chest					
32036	C	Exploration of chest					
32095	C	Biopsy through chest wall					
32100	C	Exploration/biopsy of chest					
32110	C	Explore/repair chest					
32120	C	Re-exploration of chest					
32124	C	Explore chest free adhesions					
32140	C	Removal of lung lesion(s)					
32141	C	Remove/treat lung lesions					
32150	C	Removal of lung lesion(s)					
32151	C	Remove lung foreign body					
32160	C	Open chest heart massage					
32200	C	Drain, open, lung lesion					
32201	C	Drain, percut, lung lesion					
32215	C	Treat chest lining					
32220	C	Release of lung					
32225	C	Partial release of lung					
32310	C	Removal of chest lining					
32320	C	Free/remove chest lining					
32400	T	Needle biopsy chest lining	0005	5.41	$268.32	$119.75	$53.66
32402	C	Open biopsy chest lining					
32405	T	Biopsy, lung or mediastinum	0005	5.41	$268.32	$119.75	$53.66
32420	T	Puncture/clear lung	0070	3.64	$180.53	$79.60	$36.11
32440	C	Removal of lung					
32442	C	Sleeve pneumonectomy					
32445	C	Removal of lung					
32480	C	Partial removal of lung					
32482	C	Bilobectomy					
32484	C	Segmentectomy					
32486	C	Sleeve lobectomy					
32488	C	Completion pneumonectomy					
32491	C	Lung volume reduction					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
32500	C	Partial removal of lung					
32501	C	Repair bronchus add-on					
32520	C	Remove lung & revise chest					
32522	C	Remove lung & revise chest					
32525	C	Remove lung & revise chest					
32540	C	Removal of lung lesion					
32601	T	Thoracoscopy, diagnostic	0076	8.06	$399.75	$197.05	$79.95
32602	T	Thoracoscopy, diagnostic	0076	8.06	$399.75	$197.05	$79.95
32603	T	Thoracoscopy, diagnostic	0076	8.06	$399.75	$197.05	$79.95
32604	T	Thoracoscopy, diagnostic	0076	8.06	$399.75	$197.05	$79.95
32605	T	Thoracoscopy, diagnostic	0076	8.06	$399.75	$197.05	$79.95
32606	T	Thoracoscopy, diagnostic	0076	8.06	$399.75	$197.05	$79.95
32650	C	Thoracoscopy, surgical					
32651	C	Thoracoscopy, surgical					
32652	C	Thoracoscopy, surgical					
32653	C	Thoracoscopy, surgical					
32654	C	Thoracoscopy, surgical					
32655	C	Thoracoscopy, surgical					
32656	C	Thoracoscopy, surgical					
32657	C	Thoracoscopy, surgical					
32658	C	Thoracoscopy, surgical					
32659	C	Thoracoscopy, surgical					
32660	C	Thoracoscopy, surgical					
32661	C	Thoracoscopy, surgical					
32662	C	Thoracoscopy, surgical					
32663	C	Thoracoscopy, surgical					
32664	C	Thoracoscopy, surgical					
32665	C	Thoracoscopy, surgical					
32800	C	Repair lung hernia					
32810	C	Close chest after drainage					
32815	C	Close bronchial fistula					
32820	C	Reconstruct injured chest					
32850	C	Donor pneumonectomy					
32851	C	Lung transplant, single					
32852	C	Lung transplant with bypass					
32853	C	Lung transplant, double					
32854	C	Lung transplant with bypass					
32900	C	Removal of rib(s)					
32905	C	Revise & repair chest wall					
32906	C	Revise & repair chest wall					
32940	C	Revision of lung					
32960	T	Therapeutic pneumothorax	0070	3.64	$180.53	$79.60	$36.11
32997	C	Total lung lavage					
32999	T	Chest surgery procedure	0070	3.64	$180.53	$79.60	$36.11
33010	T	Drainage of heart sac	0070	3.64	$180.53	$79.60	$36.11
33011	T	Repeat drainage of heart sac	0070	3.64	$180.53	$79.60	$36.11
33015	C	Incision of heart sac					
33020	C	Incision of heart sac					
33025	C	Incision of heart sac					
33030	C	Partial removal of heart sac					
33031	C	Partial removal of heart sac					
33050	C	Removal of heart sac lesion					
33120	C	Removal of heart lesion					
33130	C	Removal of heart lesion					
33140	C	Heart revascularize (tmr)					
*33141	C	Heart TMR w/ other procedure					
33200	C	Insertion of heart pacemaker					
33201	C	Insertion of heart pacemaker					
33206	T	Insertion of heart pacemaker	0089	78.45	$3,890.81	$2,275.19	$778.16
33207	T	Insertion of heart pacemaker	0089	78.45	$3,890.81	$2,275.19	$778.16
33208	T	Insertion of heart pacemaker	0089	78.45	$3,890.81	$2,275.19	$778.16
33210	T	Insertion of heart electrode	0106	18.96	$940.34	$503.07	$188.07
33211	T	Insertion of heart electrode	0106	18.96	$940.34	$503.07	$188.07
33212	T	Insertion of pulse generator	0090	78.28	$3,882.37	$2,133.86	$776.47
33213	T	Insertion of pulse generator	0090	78.28	$3,882.37	$2,133.86	$776.47
33214	T	Upgrade of pacemaker system	0089	78.45	$3,890.81	$2,275.19	$778.16
33216	T	Revise eltrd pacing-defib	0106	18.96	$940.34	$503.07	$188.07
33217	T	Revise eltrd pacing-defib	0106	18.96	$940.34	$503.07	$188.07
33218	T	Revise eltrd pacing-defib	0106	18.96	$940.34	$503.07	$188.07
33220	T	Revise eltrd pacing-defib	0106	18.96	$940.34	$503.07	$188.07
33222	T	Revise pocket, pacemaker	0026	12.11	$600.61	$277.92	$120.12
33223	T	Revise pocket, pacing-defib	0026	12.11	$600.61	$277.92	$120.12
33233	T	Removal of pacemaker system	0105	15.06	$746.92	$372.32	$149.38
33234	T	Removal of pacemaker system	0105	15.06	$746.92	$372.32	$149.38

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
33235	T	Removal pacemaker electrode	0105	15.06	$746.92	$372.32	$149.36
33236	C	Remove electrode/thoracotomy					
33237	C	Remove electrode/thoracotomy					
33238	C	Remove electrode/thoracotomy					
33240	T	Insert pulse generator	0107	147.51	$7,315.91	$5,086.37	$1,463.18
33241	T	Remove pulse generator	0105	15.06	$746.92	$372.32	$149.38
33243	C	Remove eltrd/thoracotomy					
33244	T	Remove eltrd, transven	0105	15.06	$746.92	$372.32	$149.38
33245	C	Insert epic eltrd pace-defib					
33246	C	Insert epic eltrd/generator					
33249	T	Eltrd/insert pace-defib	0108	210.84	$10,456.84	$5,484.72	$2,091.37
33250	C	Ablate heart dysrhythm focus					
33251	C	Ablate heart dysrhythm focus					
33253	C	Reconstruct atria					
33261	C	Ablate heart dysrhythm focus					
33262	S	Implant pat-active ht record	0974	8.25	$409.17		$81.83
33264	T	Remove pat-active ht record	0109	6.53	$323.86	$133.51	$64.77
33300	C	Repair of heart wound					
33305	C	Repair of heart wound					
33310	C	Exploratory heart surgery					
33315	C	Exploratory heart surgery					
33320	C	Repair major blood vessel(s)					
33321	C	Repair major vessel					
33322	C	Repair major blood vessel(s)					
33330	C	Insert major vessel graft					
33332	C	Insert major vessel graft					
33335	C	Insert major vessel graft					
33400	C	Repair of aortic valve					
33401	C	Valvuloplasty, open					
33403	C	Valvuloplasty, w/cp bypass					
33404	C	Prepare heart-aorta conduit					
33405	C	Replacement of aortic valve					
33406	C	Replacement of aortic valve					
33410	C	Replacement of aortic valve					
33411	C	Replacement of aortic valve					
33412	C	Replacement of aortic valve					
33413	C	Replacement of aortic valve					
33414	C	Repair of aortic valve					
33415	C	Revision, subvalvular tissue					
33416	C	Revise ventricle muscle					
33417	C	Repair of aortic valve					
33420	C	Revision of mitral valve					
33422	C	Revision of mitral valve					
33425	C	Repair of mitral valve					
33426	C	Repair of mitral valve					
33427	C	Repair of mitral valve					
33430	C	Replacement of mitral valve					
33460	C	Revision of tricuspid valve					
33463	C	Valvuloplasty, tricuspid					
33464	C	Valvuloplasty, tricuspid					
33465	C	Replace tricuspid valve					
33468	C	Revision of tricuspid valve					
33470	C	Revision of pulmonary valve					
33471	C	Valvotomy, pulmonary valve					
33472	C	Revision of pulmonary valve					
33474	C	Revision of pulmonary valve					
33475	C	Replacement, pulmonary valve					
33476	C	Revision of heart chamber					
33478	C	Revision of heart chamber					
33496	C	Repair, prosth valve clot					
33500	C	Repair heart vessel fistula					
33501	C	Repair heart vessel fistula					
33502	C	Coronary artery correction					
33503	C	Coronary artery graft					
33504	C	Coronary artery graft					
33505	C	Repair artery w/tunnel					
33506	C	Repair artery, translocation					
33510	C	CABG, vein, single					
33511	C	CABG, vein, two					
33512	C	CABG, vein, three					
33513	C	CABG, vein, four					
33514	C	CABG, vein, five					
33516	C	Cabg, vein, six or more					
33517	C	CABG, artery-vein, single					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
33518	C	CABG, artery-vein, two					
33519	C	CABG, artery-vein, three					
33521	C	CABG, artery-vein, four					
33522	C	CABG, artery-vein, five					
33523	C	Cabg, art-vein, six or more					
33530	C	Coronary artery, bypass/reop					
33533	C	CABG, arterial, single					
33534	C	CABG, arterial, two					
33535	C	CABG, arterial, three					
33536	C	Cabg, arterial, four or more					
33542	C	Removal of heart lesion					
33545	C	Repair of heart damage					
33572	C	Open coronary endarterectomy					
33600	C	Closure of valve					
33602	C	Closure of valve					
33606	C	Anastomosis/artery-aorta					
33608	C	Repair anomaly w/conduit					
33610	C	Repair by enlargement					
33611	C	Repair double ventricle					
33612	C	Repair double ventricle					
33615	C	Repair, simple fontan					
33617	C	Repair, modified fontan					
33619	C	Repair single ventricle					
33641	C	Repair heart septum defect					
33645	C	Revision of heart veins					
33647	C	Repair heart septum defects					
33660	C	Repair of heart defects					
33665	C	Repair of heart defects					
33670	C	Repair of heart chambers					
33681	C	Repair heart septum defect					
33684	C	Repair heart septum defect					
33688	C	Repair heart septum defect					
33690	C	Reinforce pulmonary artery					
33692	C	Repair of heart defects					
33694	C	Repair of heart defects					
33697	C	Repair of heart defects					
33702	C	Repair of heart defects					
33710	C	Repair of heart defects					
33720	C	Repair of heart defect					
33722	C	Repair of heart defect					
33730	C	Repair heart-vein defect(s)					
33732	C	Repair heart-vein defect					
33735	C	Revision of heart chamber					
33736	C	Revision of heart chamber					
33737	C	Revision of heart chamber					
33750	C	Major vessel shunt					
33755	C	Major vessel shunt					
33762	C	Major vessel shunt					
33764	C	Major vessel shunt & graft					
33766	C	Major vessel shunt					
33767	C	Major vessel shunt					
33770	C	Repair great vessels defect					
33771	C	Repair great vessels defect					
33774	C	Repair great vessels defect					
33775	C	Repair great vessels defect					
33776	C	Repair great vessels defect					
33777	C	Repair great vessels defect					
33778	C	Repair great vessels defect					
33779	C	Repair great vessels defect					
33780	C	Repair great vessels defect					
33781	C	Repair great vessels defect					
33786	C	Repair arterial trunk					
33788	C	Revision of pulmonary artery					
33800	C	Aortic suspension					
33802	C	Repair vessel defect					
33803	C	Repair vessel defect					
33813	C	Repair septal defect					
33814	C	Repair septal defect					
33820	C	Revise major vessel					
33822	C	Revise major vessel					
33824	C	Revise major vessel					
33840	C	Remove aorta constriction					
33845	C	Remove aorta constriction					
33851	C	Remove aorta constriction					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
33852	C	Repair septal defect					
33853	C	Repair septal defect					
33860	C	Ascending aortic graft					
33861	C	Ascending aortic graft					
33863	C	Ascending aortic graft					
33870	C	Transverse aortic arch graft					
33875	C	Thoracic aortic graft					
33877	C	Thoracoabdominal graft					
33910	C	Remove lung artery emboli					
33915	C	Remove lung artery emboli					
33916	C	Surgery of great vessel					
33917	C	Repair pulmonary artery					
33918	C	Repair pulmonary atresia					
33919	C	Repair pulmonary atresia					
33920	C	Repair pulmonary atresia					
33922	C	Transect pulmonary artery					
33924	C	Remove pulmonary shunt					
33930	C	Removal of donor heart/lung					
33935	C	Transplantation, heart/lung					
33940	C	Removal of donor heart					
33945	C	Transplantation of heart					
33960	C	External circulation assist					
33961	C	External circulation assist					
33968	C	Remove aortic assist device					
33970	C	Aortic circulation assist					
33971	C	Aortic circulation assist					
33973	C	Insert balloon device					
33974	C	Remove intra-aortic balloon					
33975	C	Implant ventricular device					
33976	C	Implant ventricular device					
33977	C	Remove ventricular device					
33978	C	Remove ventricular device					
33999	T	Cardiac surgery procedure	0070	3.64	$180.53	$79.60	$36.11
34001	C	Removal of artery clot					
34051	C	Removal of artery clot					
34101	T	Removal of artery clot	0068	26.49	$1,313.80	$678.68	$262.76
34111	T	Removal of arm artery clot	0068	26.49	$1,313.80	$678.68	$262.76
34151	C	Removal of artery clot					
34201	T	Removal of artery clot	0068	26.49	$1,313.80	$678.68	$262.76
34203	T	Removal of leg artery clot	0068	26.49	$1,313.80	$678.68	$262.76
34401	C	Removal of vein clot					
34421	T	Removal of vein clot	0068	26.49	$1,313.80	$678.68	$262.76
34451	C	Removal of vein clot					
34471	T	Removal of vein clot	0068	26.49	$1,313.80	$678.68	$262.76
34490	T	Removal of vein clot	0068	26.49	$1,313.80	$678.68	$262.76
34501	T	Repair valve, femoral vein	0068	26.49	$1,313.80	$678.68	$262.76
34502	C	Reconstruct vena cava					
34510	T	Transposition of vein valve	0068	26.49	$1,313.80	$678.68	$262.76
34520	T	Cross-over vein graft	0068	26.49	$1,313.80	$678.68	$262.76
34530	T	Leg vein fusion	0068	26.49	$1,313.80	$678.68	$262.76
*34800	C	Endovasc abdo repair w/tube					
*34802	C	Endovasc abdo repr w/device					
*34804	C	Endovasc abdo repr w/device					
*34808	C	Endovasc abdo occlud device					
*34812	C	xpose for endoprosth, aortic					
*34813	C	xpose for endoprosth, femoral					
*34820	C	xpose for endoprosth, iliac					
*34825	C	endovasc extend prosth, init					
*34826	C	endovasc extend prosth,add'l					
*34830	C	open aortic tube prosth repr					
*34831	C	open aortoiliac prosth repr					
*34832	C	open aortofemor prosth repr					
35001	C	Repair defect of artery					
35002	C	Repair artery rupture, neck					
35005	C	Repair defect of artery					
35011	T	Repair defect of artery	0093	12.82	$635.82	$277.34	$127.16
35013	C	Repair artery rupture, arm					
35021	C	Repair defect of artery					
35022	C	Repair artery rupture, chest					
35045	C	Repair defect of arm artery					
35081	C	Repair defect of artery					
35082	C	Repair artery rupture, aorta					
35091	C	Repair defect of artery					
35092	C	Repair artery rupture, aorta					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
35102	C	Repair defect of artery					
35103	C	Repair artery rupture, groin					
35111	C	Repair defect of artery					
35112	C	Repair artery rupture,spleen					
35121	C	Repair defect of artery					
35122	C	Repair artery rupture, belly					
35131	C	Repair defect of artery					
35132	C	Repair artery rupture, groin					
35141	C	Repair defect of artery					
35142	C	Repair artery rupture, thigh					
35151	C	Repair defect of artery					
35152	C	Repair artery rupture, knee					
35161	C	Repair defect of artery					
35162	C	Repair artery rupture					
35180	T	Repair blood vessel lesion	0093	12.82	$635.82	$277.34	$127.16
35182	C	Repair blood vessel lesion					
35184	T	Repair blood vessel lesion	0093	12.82	$635.82	$277.34	$127.16
35188	T	Repair blood vessel lesion	0068	26.49	$1,313.80	$678.68	$262.76
35189	C	Repair blood vessel lesion					
35190	T	Repair blood vessel lesion	0093	12.82	$635.82	$277.34	$127.16
35201	T	Repair blood vessel lesion	0093	12.82	$635.82	$277.34	$127.16
35206	T	Repair blood vessel lesion	0093	12.82	$635.82	$277.34	$127.16
35207	T	Repair blood vessel lesion	0068	26.49	$1,313.80	$678.68	$262.76
35211	C	Repair blood vessel lesion					
35216	C	Repair blood vessel lesion					
35221	C	Repair blood vessel lesion					
35226	T	Repair blood vessel lesion	0093	12.82	$635.82	$277.34	$127.16
35231	T	Repair blood vessel lesion	0093	12.82	$635.82	$277.34	$127.16
35236	T	Repair blood vessel lesion	0093	12.82	$635.82	$277.34	$127.16
35241	C	Repair blood vessel lesion					
35246	C	Repair blood vessel lesion					
35251	C	Repair blood vessel lesion					
35256	T	Repair blood vessel lesion	0093	12.82	$635.82	$277.34	$127.16
35261	T	Repair blood vessel lesion	0093	12.82	$635.82	$277.34	$127.16
35266	T	Repair blood vessel lesion	0093	12.82	$635.82	$277.34	$127.16
35271	C	Repair blood vessel lesion					
35276	C	Repair blood vessel lesion					
35281	C	Repair blood vessel lesion					
35286	T	Repair blood vessel lesion	0093	12.82	$635.82	$277.34	$127.16
35301	C	Rechanneling of artery					
35311	C	Rechanneling of artery					
35321	T	Rechanneling of artery	0093	12.82	$635.82	$277.34	$127.16
35331	C	Rechanneling of artery					
35341	C	Rechanneling of artery					
35351	C	Rechanneling of artery					
35355	C	Rechanneling of artery					
35361	C	Rechanneling of artery					
35363	C	Rechanneling of artery					
35371	C	Rechanneling of artery					
35372	C	Rechanneling of artery					
35381	C	Rechanneling of artery					
35390	C	Reoperation, carotid add-on					
35400	C	Angioscopy					
35450	C	Repair arterial blockage					
35452	C	Repair arterial blockage					
35454	C	Repair arterial blockage					
35456	C	Repair arterial blockage					
35458	T	Repair arterial blockage	0081	28.81	$1,428.86	$710.91	$285.77
35459	T	Repair arterial blockage	0081	28.81	$1,428.86	$710.91	$285.77
35460	T	Repair venous blockage	0081	28.81	$1,428.86	$710.91	$285.77
35470	T	Repair arterial blockage	0081	28.81	$1,428.86	$710.91	$285.77
35471	T	Repair arterial blockage	0081	28.81	$1,428.86	$710.91	$285.77
35472	T	Repair arterial blockage	0081	28.81	$1,428.86	$710.91	$285.77
35473	T	Repair arterial blockage	0081	28.81	$1,428.86	$710.91	$285.77
35474	T	Repair arterial blockage	0081	28.81	$1,428.86	$710.91	$285.77
35475	T	Repair arterial blockage	0081	28.81	$1,428.86	$710.91	$285.77
35476	T	Repair venous blockage	0081	28.81	$1,428.86	$710.91	$285.77
35480	C	Atherectomy, open					
35481	T	Atherectomy, open	0081	28.81	$1,428.86	$710.91	$285.77
35482	C	Atherectomy, open					
35483	C	Atherectomy, open					
35484	T	Atherectomy, open	0081	28.81	$1,428.86	$710.91	$285.77
35485	T	Atherectomy, open	0081	28.81	$1,428.86	$710.91	$285.77
35490	T	Atherectomy, percutaneous	0081	28.81	$1,428.86	$710.91	$285.77

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
35491	T	Atherectomy, percutaneous	0081	28.81	$1,428.86	$710.91	$285.77
35492	T	Atherectomy, percutaneous	0081	28.81	$1,428.86	$710.91	$285.77
35493	T	Atherectomy, percutaneous	0081	28.81	$1,428.86	$710.91	$285.77
35494	T	Atherectomy, percutaneous	0081	28.81	$1,428.86	$710.91	$285.77
35495	T	Atherectomy, percutaneous	0081	28.81	$1,428.86	$710.91	$285.77
35500	T	Harvest vein for bypass	0091	14.79	$733.52	$348.23	$146.70
35501	C	Artery bypass graft					
35506	C	Artery bypass graft					
35507	C	Artery bypass graft					
35508	C	Artery bypass graft					
35509	C	Artery bypass graft					
35511	C	Artery bypass graft					
35515	C	Artery bypass graft					
35516	C	Artery bypass graft					
35518	C	Artery bypass graft					
35521	C	Artery bypass graft					
35526	C	Artery bypass graft					
35531	C	Artery bypass graft					
35533	C	Artery bypass graft					
35536	C	Artery bypass graft					
35541	C	Artery bypass graft					
35546	C	Artery bypass graft					
35548	C	Artery bypass graft					
35549	C	Artery bypass graft					
35551	C	Artery bypass graft					
35556	C	Artery bypass graft					
35558	C	Artery bypass graft					
35560	C	Artery bypass graft					
35563	C	Artery bypass graft					
35565	C	Artery bypass graft					
35566	C	Artery bypass graft					
35571	C	Artery bypass graft					
35582	C	Vein bypass graft					
35583	C	Vein bypass graft					
35585	C	Vein bypass graft					
35587	C	Vein bypass graft					
*35600	C	Harvest artery for CABG					
35601	C	Artery bypass graft					
35606	C	Artery bypass graft					
35612	C	Artery bypass graft					
35616	C	Artery bypass graft					
35621	C	Artery bypass graft					
35623	C	Bypass graft, not vein					
35626	C	Artery bypass graft					
35631	C	Artery bypass graft					
35636	C	Artery bypass graft					
35641	C	Artery bypass graft					
35642	C	Artery bypass graft					
35645	C	Artery bypass graft					
35646	C	Artery bypass graft					
35650	C	Artery bypass graft					
35651	C	Artery bypass graft					
35654	C	Artery bypass graft					
35656	C	Artery bypass graft					
35661	C	Artery bypass graft					
35663	C	Artery bypass graft					
35665	C	Artery bypass graft					
35666	C	Artery bypass graft					
35671	C	Artery bypass graft					
35681	C	Composite bypass graft					
35682	C	Composite bypass graft					
35683	C	Composite bypass graft					
35691	C	Arterial transposition					
35693	C	Arterial transposition					
35694	C	Arterial transposition					
35695	C	Arterial transposition					
35700	C	Reoperation, bypass graft					
35701	C	Exploration, carotid artery					
35721	C	Exploration, femoral artery					
35741	C	Exploration popliteal artery					
35761	T	Exploration of artery/vein	0115	19.34	$959.19	$506.74	$191.84
35800	C	Explore neck vessels					
35820	C	Explore chest vessels					
35840	C	Explore abdominal vessels					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
35860	T	Explore limb vessels	0115	19.34	$959.19	$506.74	$191.84
35870	C	Repair vessel graft defect					
35875	T	Removal of clot in graft	0088	26.49	$1,313.80	$578.66	$262.76
35876	T	Removal of clot in graft	0088	26.49	$1,313.80	$579.66	$262.76
35879	T	Revise graft w/vein	0088	26.49	$1,313.80	$578.66	$262.76
35881	T	Revise graft w/vein	0088	26.49	$1,313.80	$578.66	$262.76
35901	C	Excision, graft, neck					
35903	T	Excision, graft, extremity	0115	19.34	$959.19	$506.74	$191.84
35905	C	Excision, graft, thorax					
35907	C	Excision, graft, abdomen					
36000	N	Place needle in vein					
36005	N	Injection, venography					
36010	N	Place catheter in vein					
36011	N	Place catheter in vein					
36012	N	Place catheter in vein					
36013	N	Place catheter in artery					
36014	N	Place catheter in artery					
36015	N	Place catheter in artery					
36100	N	Establish access to artery					
36120	N	Establish access to artery					
36140	N	Establish access to artery					
36145	N	Artery to vein shunt					
36160	N	Establish access to aorta					
36200	N	Place catheter in aorta					
36215	N	Place catheter in artery					
36216	N	Place catheter in artery					
36217	N	Place catheter in artery					
36218	N	Place catheter in artery					
36245	N	Place catheter in artery					
36246	N	Place catheter in artery					
36247	N	Place catheter in artery					
36248	N	Place catheter in artery					
36260	T	Insertion of infusion pump	0119	9.87	$489.59	$161.50	$97.92
36261	T	Revision of infusion pump	0124	2.55	$126.64	$81.36	$25.33
36262	T	Removal of infusion pump	0109	6.53	$323.86	$133.51	$64.77
36299	T	Vessel injection procedure	0089	78.45	$3,890.81	$2,275.19	$778.16
36400	N	Drawing blood					
36405	N	Drawing blood					
36406	N	Drawing blood					
36410	N	Drawing blood					
36415	E	Drawing blood					
36420	T	Establish access to vein	0032	5.40	$267.82	$119.52	$53.56
36425	T	Establish access to vein	0032	5.40	$267.82	$119.52	$53.56
36430	S	Blood transfusion service	0110	5.83	$289.15	$122.73	$57.83
36440	S	Blood transfusion service	0110	5.83	$289.15	$122.73	$57.83
36450	S	Exchange transfusion service	0110	5.83	$289.15	$122.73	$57.83
36455	S	Exchange transfusion service	0110	5.83	$289.15	$122.73	$57.83
36460	S	Transfusion service, fetal	0110	5.83	$289.15	$122.73	$57.83
36468	T	Injection(s), spider veins	0096	1.19	$59.02	$20.88	$11.80
36469	T	Injection(s), spider veins	0096	1.19	$59.02	$20.88	$11.80
36470	T	Injection therapy of vein	0096	1.19	$59.02	$20.88	$11.80
36471	T	Injection therapy of veins	0096	1.19	$59.02	$20.88	$11.80
36481	N	Insertion of catheter, vein					
36488	T	Insertion of catheter, vein	0032	5.40	$267.82	$119.52	$53.56
36489	T	Insertion of catheter, vein	0032	5.40	$267.82	$119.52	$53.56
36490	T	Insertion of catheter, vein	0032	5.40	$267.82	$119.52	$53.56
36491	T	Insertion of catheter, vein	0032	5.40	$267.82	$119.52	$53.56
36493	T	Repositioning of cvc	0032	5.40	$267.82	$119.52	$53.56
36500	N	Insertion of catheter, vein					
36510	C	Insertion of catheter, vein					
36520	S	Plasma and/or cell exchange	0111	14.17	$702.77	$300.74	$140.55
36521	S	Apheresis w/ adsorp/reinfuse	0111	14.17	$702.77	$300.74	$140.55
36522	S	Photopheresis	0112	39.50	$1,964.01	$853.65	$392.80
36530	T	Insertion of infusion pump	0119	9.87	$489.59	$161.50	$97.92
36531	T	Revision of infusion pump	0124	2.55	$126.64	$81.36	$25.33
36532	T	Removal of infusion pump	0109	6.53	$323.86	$133.51	$64.77
36533	T	Insertion of access device	0115	19.34	$959.19	$506.74	$191.84
36534	T	Revision of access device	0103	13.09	$649.21	$295.70	$129.84
36535	T	Removal of access device	0109	6.53	$323.86	$133.51	$64.77
*36540	N	Collect blood venous device					
36550	T	Declot vascular device	0970	0.52	$25.79		$5.16
36600	N	Withdrawal of arterial blood					
36620	N	Insertion catheter, artery					
36625	N	Insertion catheter, artery					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
36640	T	Insertion catheter, artery	0032	5.40	$267.82	$119.52	$53.56
36660	C	Insertion catheter, artery					
36680	T	Insert needle, bone cavity	0120	1.66	$82.33	$42.67	$16.47
36800	T	Insertion of cannula	0115	19.34	$959.19	$506.74	$191.84
36810	T	Insertion of cannula	0115	19.34	$959.19	$506.74	$191.84
36815	T	Insertion of cannula	0115	19.34	$959.19	$506.74	$191.84
36819	T	Av fusion by basilic vein	0093	12.82	$635.82	$277.34	$127.16
36821	T	Av fusion direct any site	0088	26.49	$1,313.80	$678.68	$262.76
36822	C	Insertion of cannula(s)					
36823	C	Insertion of cannula(s)					
36825	T	Artery-vein graft	0088	26.49	$1,313.80	$678.68	$262.76
36830	T	Artery-vein graft	0088	26.49	$1,313.80	$678.68	$262.76
36831	T	Av fistula excision	0088	26.49	$1,313.80	$678.68	$262.76
36832	T	Av fistula revision	0088	26.49	$1,313.80	$678.68	$262.76
36833	T	Av fistula revision	0088	26.49	$1,313.80	$678.68	$262.76
36834	T	Repair A-V aneurysm	0093	12.82	$635.82	$277.34	$127.16
36835	T	Artery to vein shunt	0115	19.34	$959.19	$506.74	$191.84
36860	T	External cannula declotting	0115	19.34	$959.19	$506.74	$191.84
36861	T	Cannula declotting	0115	19.34	$959.19	$506.74	$191.84
*36870	T	AV fistula revision, open	0093	12.82	$635.82	$277.34	$127.16
37140	C	Revision of circulation					
37145	C	Revision of circulation					
37160	C	Revision of circulation					
37180	C	Revision of circulation					
37181	C	Splice spleen/kidney veins					
37195	C	Thrombolytic therapy, stroke					
37200	T	Transcatheter biopsy	0005	5.41	$268.32	$119.75	$53.66
37201	T	Transcatheter therapy infuse	0120	1.66	$82.33	$42.67	$16.47
37202	T	Transcatheter therapy infuse	0120	1.66	$82.33	$42.67	$16.47
37203	T	Transcatheter retrieval	0103	13.09	$649.21	$295.70	$129.84
37204	T	Transcatheter occlusion	0103	13.09	$649.21	$295.70	$129.84
37205	T	Transcatheter stent	0229	34.81	$1,726.44	$1,030.12	$345.29
37206	T	Transcatheter stent add-on	0229	34.81	$1,726.44	$1,030.12	$345.29
37207	T	Transcatheter stent	0229	34.81	$1,726.44	$1,030.12	$345.29
37208	T	Transcatheter stent add-on	0229	34.81	$1,726.44	$1,030.12	$345.29
37209	T	Exchange arterial catheter	0103	13.09	$649.21	$295.70	$129.84
37250	T	Iv us first vessel add-on	0103	13.09	$649.21	$295.70	$129.84
37251	T	Iv us each add vessel add-on	0103	13.09	$649.21	$295.70	$129.84
37565	T	Ligation of neck vein	0093	12.82	$635.82	$277.34	$127.16
37600	T	Ligation of neck artery	0093	12.82	$635.82	$277.34	$127.16
37605	T	Ligation of neck artery	0091	14.79	$733.52	$348.23	$146.70
37606	T	Ligation of neck artery	0091	14.79	$733.52	$348.23	$146.70
37607	T	Ligation of a-v fistula	0092	20.21	$1,002.34	$505.37	$200.47
37609	T	Temporal artery procedure	0020	6.51	$322.87	$130.53	$64.57
37615	T	Ligation of neck artery	0091	14.79	$733.52	$348.23	$146.70
37616	C	Ligation of chest artery					
37617	C	Ligation of abdomen artery					
37618	C	Ligation of extremity artery					
37620	T	Revision of major vein	0091	14.79	$733.52	$348.23	$146.70
37650	T	Revision of major vein	0091	14.79	$733.52	$348.23	$146.70
37660	C	Revision of major vein					
37700	T	Revise leg vein	0091	14.79	$733.52	$348.23	$146.70
37720	T	Removal of leg vein	0092	20.21	$1,002.34	$505.37	$200.47
37730	T	Removal of leg veins	0092	20.21	$1,002.34	$505.37	$200.47
37735	T	Removal of leg veins/lesion	0092	20.21	$1,002.34	$505.37	$200.47
37760	T	Revision of leg veins	0091	14.79	$733.52	$348.23	$146.70
37780	T	Revision of leg vein	0091	14.79	$733.52	$348.23	$146.70
37785	T	Revise secondary varicosity	0091	14.79	$733.52	$348.23	$146.70
37788	C	Revascularization, penis					
37790	T	Penile venous occlusion	0181	32.37	$1,605.43	$905.36	$321.09
37799	T	Vascular surgery procedure	0020	6.51	$322.87	$130.53	$64.57
38100	C	Removal of spleen, total					
38101	C	Removal of spleen, partial					
38102	C	Removal of spleen, total					
38115	C	Repair of ruptured spleen					
38120	T	Laparoscopy, splenectomy	0131	41.81	$2,073.61	$1,089.88	$414.72
38129	T	Laparoscope proc, spleen	0130	25.36	$1,257.75	$659.53	$251.55
38200	N	Injection for spleen x-ray					
38230	S	Bone marrow collection	0123	4.13	$204.83	$40.97	$40.97
38231	S	Stem cell collection	0111	14.17	$702.77	$300.74	$140.55
38240	S	Bone marrow/stem transplant	0123	4.13	$204.83	$40.97	$40.97
38241	S	Bone marrow/stem transplant	0123	4.13	$204.83	$40.97	$40.97
38300	T	Drainage, lymph node lesion	0008	6.15	$305.02	$113.67	$61.00
38305	T	Drainage, lymph node lesion	0008	6.15	$305.02	$113.67	$61.00

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
38308	T	Incision of lymph channels	0113	13.89	$688.89	$326.55	$137.78
38380	C	Thoracic duct procedure					
38381	C	Thoracic duct procedure					
38382	C	Thoracic duct procedure					
38500	T	Biopsy/removal, lymph nodes	0113	13.89	$688.89	$326.55	$137.78
38505	T	Needle biopsy, lymph nodes	0005	5.41	$268.32	$119.75	$53.66
38510	T	Biopsy/removal, lymph nodes	0113	13.89	$688.89	$326.55	$137.78
38520	T	Biopsy/removal, lymph nodes	0113	13.89	$688.89	$326.55	$137.78
38525	T	Biopsy/removal lymph nodes	0113	13.89	$688.89	$326.55	$137.78
38530	T	Biopsy/removal, lymph nodes	0113	13.89	$688.89	$326.55	$137.78
38542	T	Explore deep node(s), neck	0114	19.56	$970.10	$493.78	$194.02
38550	T	Removal, neck/armpit lesion	0113	13.89	$688.89	$326.55	$137.78
38555	T	Removal, neck/armpit lesion	0114	19.56	$970.10	$493.78	$194.02
38562	C	Removal, pelvic lymph nodes					
38564	C	Removal, abdomen lymph nodes					
38570	T	Laparoscopy, lymph node biop	0131	41.81	$2,073.61	$1,089.88	$414.72
38571	T	Laparoscopy, lymphadenectomy	0132	48.91	$2,425.74	$1,239.22	$485.15
38572	T	Laparoscopy, lymphadenectomy	0131	41.81	$2,073.61	$1,089.88	$414.72
38589	T	Laparoscope proc, lymphatic	0130	25.36	$1,257.75	$659.53	$251.55
38700	C	Removal of lymph nodes, neck					
38720	T	Removal of lymph nodes, neck	0114	19.56	$970.10	$493.78	$194.02
38724	C	Removal of lymph nodes, neck					
38740	T	Remove armpit lymph nodes	0114	19.56	$970.10	$493.78	$194.02
38745	T	Remove armpit lymph nodes	0114	19.56	$970.10	$493.78	$194.02
38746	C	Remove thoracic lymph nodes					
38747	C	Remove abdominal lymph nodes					
38760	T	Remove groin lymph nodes	0114	19.56	$970.10	$493.78	$194.02
38765	C	Remove groin lymph nodes					
38770	C	Remove pelvis lymph nodes					
38780	C	Remove abdomen lymph nodes					
38790	N	Inject for lymphatic x-ray					
38792	N	Identify sentinel node					
38794	N	Access thoracic lymph duct					
38999	T	Blood/lymph system procedure	0008	6.15	$305.02	$113.67	$61.00
39000	C	Exploration of chest					
39010	C	Exploration of chest					
39200	C	Removal chest lesion					
39220	C	Removal chest lesion					
39400	T	Visualization of chest	0076	8.06	$399.75	$197.05	$79.95
39499	C	Chest procedure					
39501	C	Repair diaphragm laceration					
39502	C	Repair paraesophageal hernia					
39503	C	Repair of diaphragm hernia					
39520	C	Repair of diaphragm hernia					
39530	C	Repair of diaphragm hernia					
39531	C	Repair of diaphragm hernia					
39540	C	Repair of diaphragm hernia					
39541	C	Repair of diaphragm hernia					
39545	C	Revision of diaphragm					
39560	C	Resect diaphragm, simple					
39561	C	Resect diaphragm, complex					
39599	C	Diaphragm surgery procedure					
40490	T	Biopsy of lip	0252	5.18	$256.90	$114.24	$51.38
40500	T	Partial excision of lip	0253	12.02	$596.14	$284.00	$119.23
40510	T	Partial excision of lip	0254	12.45	$617.47	$272.41	$123.49
40520	T	Partial excision of lip	0253	12.02	$596.14	$284.00	$119.23
40525	T	Reconstruct lip with flap	0254	12.45	$617.47	$272.41	$123.49
40527	T	Reconstruct lip with flap	0254	12.45	$617.47	$272.41	$123.49
40530	T	Partial removal of lip	0254	12.45	$617.47	$272.41	$123.49
40650	T	Repair lip	0253	12.02	$596.14	$284.00	$119.23
40652	T	Repair lip	0253	12.02	$596.14	$284.00	$119.23
40654	T	Repair lip	0254	12.45	$617.47	$272.41	$123.49
40700	T	Repair cleft lip/nasal	0256	25.40	$1,259.74	$623.05	$251.95
40701	T	Repair cleft lip/nasal	0256	25.40	$1,259.74	$623.05	$251.95
40702	T	Repair cleft lip/nasal	0256	25.40	$1,259.74	$623.05	$251.95
40720	T	Repair cleft lip/nasal	0256	25.40	$1,259.74	$623.05	$251.95
40761	T	Repair cleft lip/nasal	0256	25.40	$1,259.74	$623.05	$251.95
40799	T	Lip surgery procedure	0253	12.02	$596.14	$284.00	$119.23
40800	T	Drainage of mouth lesion	0251	1.68	$83.32	$27.99	$16.66
40801	T	Drainage of mouth lesion	0252	5.18	$256.90	$114.24	$51.38
40804	T	Removal, foreign body, mouth	0251	1.68	$83.32	$27.99	$16.66
40805	T	Removal, foreign body, mouth	0252	5.18	$256.90	$114.24	$51.38
40806	T	Incision of lip fold	0251	1.68	$83.32	$27.99	$16.66
40808	T	Biopsy of mouth lesion	0251	1.68	$83.32	$27.99	$16.66

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
40810	T	Excision of mouth lesion	0253	12.02	$596.14	$284.00	$119.23
40812	T	Excise/repair mouth lesion	0252	5.18	$256.90	$114.24	$51.38
40814	T	Excise/repair mouth lesion	0253	12.02	$596.14	$284.00	$119.23
40816	T	Excision of mouth lesion	0253	12.02	$596.14	$284.00	$119.23
40818	T	Excise oral mucosa for graft	0251	1.68	$83.32	$27.99	$16.66
40819	T	Excise lip or cheek fold	0252	5.18	$256.90	$114.24	$51.38
40820	T	Treatment of mouth lesion	0253	12.02	$596.14	$284.00	$119.23
40830	T	Repair mouth laceration	0251	1.68	$83.32	$27.99	$16.66
40831	T	Repair mouth laceration	0253	12.02	$596.14	$284.00	$119.23
40840	T	Reconstruction of mouth	0254	12.45	$617.47	$272.41	$123.49
40842	T	Reconstruction of mouth	0254	12.45	$617.47	$272.41	$123.49
40843	T	Reconstruction of mouth	0254	12.45	$617.47	$272.41	$123.49
40844	T	Reconstruction of mouth	0256	25.40	$1,259.74	$623.05	$251.95
40845	T	Reconstruction of mouth	0256	25.40	$1,259.74	$623.05	$251.95
40899	T	Mouth surgery procedure	0252	5.18	$256.90	$114.24	$51.38
41000	T	Drainage of mouth lesion	0253	12.02	$596.14	$284.00	$119.23
41005	T	Drainage of mouth lesion	0251	1.68	$83.32	$27.99	$16.66
41006	T	Drainage of mouth lesion	0253	12.02	$596.14	$284.00	$119.23
41007	T	Drainage of mouth lesion	0253	12.02	$596.14	$284.00	$119.23
41008	T	Drainage of mouth lesion	0253	12.02	$596.14	$284.00	$119.23
41009	T	Drainage of mouth lesion	0251	1.68	$83.32	$27.99	$16.66
41010	T	Incision of tongue fold	0253	12.02	$596.14	$284.00	$119.23
41015	T	Drainage of mouth lesion	0252	5.18	$256.90	$114.24	$51.38
41016	T	Drainage of mouth lesion	0253	12.02	$596.14	$284.00	$119.23
41017	T	Drainage of mouth lesion	0253	12.02	$596.14	$284.00	$119.23
41018	T	Drainage of mouth lesion	0253	12.02	$596.14	$284.00	$119.23
41100	T	Biopsy of tongue	0252	5.18	$256.90	$114.24	$51.38
41105	T	Biopsy of tongue	0253	12.02	$596.14	$284.00	$119.23
41108	T	Biopsy of floor of mouth	0252	5.18	$256.90	$114.24	$51.38
41110	T	Excision of tongue lesion	0253	12.02	$596.14	$284.00	$119.23
41112	T	Excision of tongue lesion	0253	12.02	$596.14	$284.00	$119.23
41113	T	Excision of tongue lesion	0253	12.02	$596.14	$284.00	$119.23
41114	T	Excision of tongue lesion	0254	12.45	$617.47	$272.41	$123.49
41115	T	Excision of tongue fold	0253	12.02	$596.14	$284.00	$119.23
41116	T	Excision of mouth lesion	0253	12.02	$596.14	$284.00	$119.23
41120	T	Partial removal of tongue	0256	25.40	$1,259.74	$623.05	$251.95
41130	C	Partial removal of tongue	....	....	....	....	....
41135	C	Tongue and neck surgery	....	....	....	....	....
41140	C	Removal of tongue	....	....	....	....	....
41145	C	Tongue removal, neck surgery	....	....	....	....	....
41150	C	Tongue, mouth, jaw surgery	....	....	....	....	....
41153	C	Tongue, mouth, neck surgery	....	....	....	....	....
41155	C	Tongue, jaw, & neck surgery	....	....	....	....	....
41250	T	Repair tongue laceration	0251	1.68	$83.32	$27.99	$16.66
41251	T	Repair tongue laceration	0253	12.02	$596.14	$284.00	$119.23
41252	T	Repair tongue laceration	0253	12.02	$596.14	$284.00	$119.23
41500	T	Fixation of tongue	0253	12.02	$596.14	$284.00	$119.23
41510	T	Tongue to lip surgery	0253	12.02	$596.14	$284.00	$119.23
41520	T	Reconstruction, tongue fold	0253	12.02	$596.14	$284.00	$119.23
41599	T	Tongue and mouth surgery	0251	1.68	$83.32	$27.99	$16.66
41800	T	Drainage of gum lesion	0251	1.68	$83.32	$27.99	$16.66
41805	T	Removal foreign body, gum	0253	12.02	$596.14	$284.00	$119.23
41806	T	Removal foreign body,jawbone	0253	12.02	$596.14	$284.00	$119.23
41820	T	Excision, gum, each quadrant	0252	5.18	$256.90	$114.24	$51.38
41821	T	Excision of gum flap	0252	5.18	$256.90	$114.24	$51.38
41822	T	Excision of gum lesion	0253	12.02	$596.14	$284.00	$119.23
41823	T	Excision of gum lesion	0253	12.02	$596.14	$284.00	$119.23
41825	T	Excision of gum lesion	0253	12.02	$596.14	$284.00	$119.23
41826	T	Excision of gum lesion	0253	12.02	$596.14	$284.00	$119.23
41827	T	Excision of gum lesion	0253	12.02	$596.14	$284.00	$119.23
41828	T	Excision of gum lesion	0253	12.02	$596.14	$284.00	$119.23
41830	T	Removal of gum tissue	0253	12.02	$596.14	$284.00	$119.23
41850	T	Treatment of gum lesion	0253	12.02	$596.14	$284.00	$119.23
41870	T	Gum graft	0253	12.02	$596.14	$284.00	$119.23
41872	T	Repair gum	0253	12.02	$596.14	$284.00	$119.23
41874	T	Repair tooth socket	0253	12.02	$596.14	$284.00	$119.23
41899	T	Dental surgery procedure	0253	12.02	$596.14	$284.00	$119.23
42000	T	Drainage mouth roof lesion	0251	1.68	$83.32	$27.99	$16.66
42100	T	Biopsy roof of mouth	0252	5.18	$256.90	$114.24	$51.38
42104	T	Excision lesion, mouth roof	0253	12.02	$596.14	$284.00	$119.23
42106	T	Excision lesion, mouth roof	0253	12.02	$596.14	$284.00	$119.23
42107	T	Excision lesion, mouth roof	0254	12.45	$617.47	$272.41	$123.49
42120	T	Remove palate/lesion	0256	25.40	$1,259.74	$623.05	$251.95
42140	T	Excision of uvula	0252	5.18	$256.90	$114.24	$51.38

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
42145	T	Repair palate, pharynx/uvula	0254	12.45	$617.47	$272.41	$123.49
42160	T	Treatment mouth roof lesion	0253	12.02	$596.14	$284.00	$119.23
42180	T	Repair palate	0251	1.68	$83.32	$27.99	$16.66
42182	T	Repair palate	0256	25.40	$1,259.74	$623.05	$251.95
42200	T	Reconstruct cleft palate	0256	25.40	$1,259.74	$623.05	$251.95
42205	T	Reconstruct cleft palate	0256	25.40	$1,259.74	$623.05	$251.95
42210	T	Reconstruct cleft palate	0256	25.40	$1,259.74	$623.05	$251.95
42215	T	Reconstruct cleft palate	0256	25.40	$1,259.74	$623.05	$251.95
42220	T	Reconstruct cleft palate	0256	25.40	$1,259.74	$623.05	$251.95
42225	T	Reconstruct cleft palate	0256	25.40	$1,259.74	$623.05	$251.95
42226	T	Lengthening of palate	0256	25.40	$1,259.74	$623.05	$251.95
42227	T	Lengthening of palate	0256	25.40	$1,259.74	$623.05	$251.95
42235	T	Repair palate	0254	12.45	$617.47	$272.41	$123.49
42260	T	Repair nose to lip fistula	0253	12.02	$596.14	$284.00	$119.23
42280	T	Preparation, palate mold	0251	1.68	$83.32	$27.99	$16.66
42281	T	Insertion, palate prosthesis	0253	12.02	$596.14	$284.00	$119.23
42299	T	Palate/uvula surgery	0251	1.68	$83.32	$27.99	$16.66
42300	T	Drainage of salivary gland	0253	12.02	$596.14	$284.00	$119.23
42305	T	Drainage of salivary gland	0253	12.02	$596.14	$284.00	$119.23
42310	T	Drainage of salivary gland	0251	1.68	$83.32	$27.99	$16.66
42320	T	Drainage of salivary gland	0251	1.68	$83.32	$27.99	$16.66
42325	T	Create salivary cyst drain	0252	5.18	$256.90	$114.24	$51.38
42326	T	Create salivary cyst drain	0252	5.18	$256.90	$114.24	$51.38
42330	T	Removal of salivary stone	0252	5.18	$256.90	$114.24	$51.38
42335	T	Removal of salivary stone	0253	12.02	$596.14	$284.00	$119.23
42340	T	Removal of salivary stone	0253	12.02	$596.14	$284.00	$119.23
42400	T	Biopsy of salivary gland	0004	1.84	$91.26	$32.57	$18.25
42405	T	Biopsy of salivary gland	0253	12.02	$596.14	$284.00	$119.23
42408	T	Excision of salivary cyst	0253	12.02	$596.14	$284.00	$119.23
42409	T	Drainage of salivary cyst	0253	12.02	$596.14	$284.00	$119.23
42410	T	Excise parotid gland/lesion	0256	25.40	$1,259.74	$623.05	$251.95
42415	T	Excise parotid gland/lesion	0256	25.40	$1,259.74	$623.05	$251.95
42420	T	Excise parotid gland/lesion	0256	25.40	$1,259.74	$623.05	$251.95
42425	T	Excise parotid gland/lesion	0256	25.40	$1,259.74	$623.05	$251.95
42426	C	Excise parotid gland/lesion	....	....	....	....	....
42440	T	Excise submaxillary gland	0256	25.40	$1,259.74	$623.05	$251.95
42450	T	Excise sublingual gland	0253	12.02	$596.14	$284.00	$119.23
42500	T	Repair salivary duct	0254	12.45	$617.47	$272.41	$123.49
42505	T	Repair salivary duct	0256	25.40	$1,259.74	$623.05	$251.95
42507	T	Parotid duct diversion	0256	25.40	$1,259.74	$623.05	$251.95
42508	T	Parotid duct diversion	0256	25.40	$1,259.74	$623.05	$251.95
42509	T	Parotid duct diversion	0256	25.40	$1,259.74	$623.05	$251.95
42510	T	Parotid duct diversion	0256	25.40	$1,259.74	$623.05	$251.95
42550	N	Injection for salivary x-ray	....	....	....	....	....
42600	T	Closure of salivary fistula	0253	12.02	$596.14	$284.00	$119.23
42650	T	Dilation of salivary duct	0252	5.18	$256.90	$114.24	$51.38
42660	T	Dilation of salivary duct	0252	5.18	$256.90	$114.24	$51.38
42665	T	Ligation of salivary duct	0253	12.02	$596.14	$284.00	$119.23
42699	T	Salivary surgery procedure	0253	12.02	$596.14	$284.00	$119.23
42700	T	Drainage of tonsil abscess	0251	1.68	$83.32	$27.99	$16.66
42720	T	Drainage of throat abscess	0253	12.02	$596.14	$284.00	$119.23
42725	T	Drainage of throat abscess	0256	25.40	$1,259.74	$623.05	$251.95
42800	T	Biopsy of throat	0252	5.18	$256.90	$114.24	$51.38
42802	T	Biopsy of throat	0253	12.02	$596.14	$284.00	$119.23
42804	T	Biopsy of upper nose/throat	0253	12.02	$596.14	$284.00	$119.23
42806	T	Biopsy of upper nose/throat	0253	12.02	$596.14	$284.00	$119.23
42808	T	Excise pharynx lesion	0253	12.02	$596.14	$284.00	$119.23
42809	T	Remove pharynx foreign body	0251	1.68	$83.32	$27.99	$16.66
42810	T	Excision of neck cyst	0253	12.02	$596.14	$284.00	$119.23
42815	T	Excision of neck cyst	0256	25.40	$1,259.74	$623.05	$251.95
42820	T	Remove tonsils and adenoids	0258	18.62	$923.48	$462.81	$184.70
42821	T	Remove tonsils and adenoids	0258	18.62	$923.48	$462.81	$184.70
42825	T	Removal of tonsils	0258	18.62	$923.48	$462.81	$184.70
42826	T	Removal of tonsils	0258	18.62	$923.48	$462.81	$184.70
42830	T	Removal of adenoids	0258	18.62	$923.48	$462.81	$184.70
42831	T	Removal of adenoids	0258	18.62	$923.48	$462.81	$184.70
42835	T	Removal of adenoids	0258	18.62	$923.48	$462.81	$184.70
42836	T	Removal of adenoids	0258	18.62	$923.48	$462.81	$184.70
42842	C	Extensive surgery of throat	....	....	....	....	....
42844	T	Extensive surgery of throat	0256	25.40	$1,259.74	$623.05	$251.95
42845	C	Extensive surgery of throat	....	....	....	....	....
42860	T	Excision of tonsil tags	0258	18.62	$923.48	$462.81	$184.70
42870	T	Excision of lingual tonsil	0258	18.62	$923.48	$462.81	$184.70
42890	T	Partial removal of pharynx	0256	25.40	$1,259.74	$623.05	$251.95

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
42892	T	Revision of pharyngeal walls	0256	25.40	$1,259.74	$623.05	$251.95
42894	C	Revision of pharyngeal walls					
42900	T	Repair throat wound	0253	12.02	$596.14	$284.00	$119.23
42950	T	Reconstruction of throat	0254	12.45	$617.47	$272.41	$123.49
42953	C	Repair throat, esophagus					
42955	T	Surgical opening of throat	0254	12.45	$617.47	$272.41	$123.49
42960	T	Control throat bleeding	0250	2.21	$109.61	$38.54	$21.92
42961	C	Control throat bleeding					
42962	T	Control throat bleeding	0256	25.40	$1,259.74	$623.05	$251.95
42970	T	Control nose/throat bleeding	0250	2.21	$109.61	$38.54	$21.92
42971	C	Control nose/throat bleeding					
42972	T	Control nose/throat bleeding	0253	12.02	$596.14	$284.00	$119.23
42999	T	Throat surgery procedure	0252	5.18	$256.90	$114.24	$51.38
43020	T	Incision of esophagus	0254	12.45	$617.47	$272.41	$123.49
43030	C	Throat muscle surgery					
43045	C	Incision of esophagus					
43100	C	Excision of esophagus lesion					
43101	C	Excision of esophagus lesion					
43107	C	Removal of esophagus					
43108	C	Removal of esophagus					
43112	C	Removal of esophagus					
43113	C	Removal of esophagus					
43116	C	Partial removal of esophagus					
43117	C	Partial removal of esophagus					
43118	C	Partial removal of esophagus					
43121	C	Partial removal of esophagus					
43122	C	Parital removal of esophagus					
43123	C	Partial removal of esophagus					
43124	C	Removal of esophagus					
43130	T	Removal of esophagus pouch	0254	12.45	$617.47	$272.41	$123.49
43135	C	Removal of esophagus pouch					
43200	T	Esophagus endoscopy	0141	7.15	$354.61	$184.67	$70.92
43202	T	Esophagus endoscopy, biopsy	0141	7.15	$354.61	$184.67	$70.92
43204	T	Esophagus endoscopy & inject	0141	7.15	$354.61	$184.67	$70.92
43205	T	Esophagus endoscopy/ligation	0141	7.15	$354.61	$184.67	$70.92
43215	T	Esophagus endoscopy	0141	7.15	$354.61	$184.67	$70.92
43216	T	Esophagus endoscopy/lesion	0141	7.15	$354.61	$184.67	$70.92
43217	T	Esophagus endoscopy	0141	7.15	$354.61	$184.67	$70.92
43219	T	Esophagus endoscopy	0141	7.15	$354.61	$184.67	$70.92
43220	T	Esoph endoscopy, dilation	0141	7.15	$354.61	$184.67	$70.92
43226	T	Esoph endoscopy, dilation	0141	7.15	$354.61	$184.67	$70.92
43227	T	Esoph endoscopy, repair	0141	7.15	$354.61	$184.67	$70.92
43228	T	Esoph endoscopy, ablation	0141	7.15	$354.61	$184.67	$70.92
*43231	T	Esoph endoscopy w/ US exam	0141	7.15	$354.61	$184.67	$70.92
*43232	T	Esoph endoscopy w/ US fn bx	0141	7.15	$354.61	$184.67	$70.92
43234	T	Upper GI endoscopy, exam	0141	7.15	$354.61	$184.67	$70.92
43235	T	Uppr gi endoscopy, diagnosis	0141	7.15	$354.61	$184.67	$70.92
43239	T	Upper GI endoscopy, biopsy	0141	7.15	$354.61	$184.67	$70.92
*43240	T	Esoph endoscopy w/ drain cyst	0141	7.15	$354.61	$184.67	$70.92
43241	T	Upper GI endoscopy with tube	0141	7.15	$354.61	$184.67	$70.92
*43242	T	Uppr GI endoscopy w/ US fn bx	0141	7.15	$354.61	$184.67	$70.92
43243	T	Upper GI endoscopy & inject	0141	7.15	$354.61	$184.67	$70.92
43244	T	Upper GI endoscopy/ligation	0141	7.15	$354.61	$184.67	$70.92
43245	T	Operative upper GI endoscopy	0141	7.15	$354.61	$184.67	$70.92
43246	T	Place gastrostomy tube	0141	7.15	$354.61	$184.67	$70.92
43247	T	Operative upper GI endoscopy	0141	7.15	$354.61	$184.67	$70.92
43248	T	Uppr gi endoscopy/guide wire	0141	7.15	$354.61	$184.67	$70.92
43249	T	Esoph endoscopy, dilation	0141	7.15	$354.61	$184.67	$70.92
43250	T	Upper GI endoscopy/tumor	0141	7.15	$354.61	$184.67	$70.92
43251	T	Operative upper GI endoscopy	0141	7.15	$354.61	$184.67	$70.92
43255	T	Operative upper GI endoscopy	0141	7.15	$354.61	$184.67	$70.92
*43256	T	Uppr GI endoscopy w/ stent	0141	7.15	$354.61	$184.67	$70.92
43258	T	Operative upper GI endoscopy	0141	7.15	$354.61	$184.67	$70.92
43259	T	Endoscopic ultrasound exam	0141	7.15	$354.61	$184.67	$70.92
43260	T	Endo cholangiopancreatograph	0151	10.53	$522.25	$245.46	$104.45
43261	T	Endo cholangiopancreatograph	0151	10.53	$522.25	$245.46	$104.45
43262	T	Endo cholangiopancreatograph	0151	10.53	$522.25	$245.46	$104.45
43263	T	Endo cholangiopancreatograph	0151	10.53	$522.25	$245.46	$104.45
43264	T	Endo cholangiopancreatograph	0151	10.53	$522.25	$245.46	$104.45
43265	T	Endo cholangiopancreatograph	0151	10.53	$522.25	$245.46	$104.45
43267	T	Endo cholangiopancreatograph	0151	10.53	$522.25	$245.46	$104.45
43268	T	Endo cholangiopancreatograph	0151	10.53	$522.25	$245.46	$104.45
43269	T	Endo cholangiopancreatograph	0151	10.53	$522.25	$245.46	$104.45
43271	T	Endo cholangiopancreatograph	0151	10.53	$522.25	$245.46	$104.45

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
43272	T	Endo cholangiopancreatograph	0151	10.53	$522.25	$245.46	$104.45
43280	T	Laparoscopy, fundoplasty	0132	48.91	$2,425.74	$1,239.22	$485.15
43289	T	Laparoscope proc, esoph	0130	25.36	$1,257.75	$659.53	$251.55
43300	C	Repair of esophagus					
43305	C	Repair esophagus and fistula					
43310	C	Repair of esophagus					
43312	C	Repair esophagus and fistula					
43320	C	Fuse esophagus & stomach					
43324	C	Revise esophagus & stomach					
43325	C	Revise esophagus & stomach					
43326	C	Revise esophagus & stomach					
43330	C	Repair of esophagus					
43331	C	Repair of esophagus					
43340	C	Fuse esophagus & intestine					
43341	C	Fuse esophagus & intestine					
43350	C	Surgical opening, esophagus					
43351	C	Surgical opening, esophagus					
43352	C	Surgical opening, esophagus					
43360	C	Gastrointestinal repair					
43361	C	Gastrointestinal repair					
*44383	T	Ileoscopy through stoma w/stent	0142	7.45	$369.49	$162.42	$73.90
43400	C	Ligate esophagus veins					
43401	C	Esophagus surgery for veins					
43405	C	Ligate/staple esophagus					
43410	C	Repair esophagus wound					
43415	C	Repair esophagus wound					
43420	C	Repair esophagus opening					
43425	C	Repair esophagus opening					
43450	T	Dilate esophagus	0140	4.74	$235.09	$107.24	$47.02
43453	T	Dilate esophagus	0140	4.74	$235.09	$107.24	$47.02
43456	T	Dilate esophagus	0140	4.74	$235.09	$107.24	$47.02
43458	T	Dilate esophagus	0140	4.74	$235.09	$107.24	$47.02
43460	C	Pressure treatment esophagus					
43496	C	Free jejunum flap, microvasc					
43499	T	Esophagus surgery procedure	0140	4.74	$235.09	$107.24	$47.02
43500	C	Surgical opening of stomach					
43501	C	Surgical repair of stomach					
43502	C	Surgical repair of stomach					
43510	C	Surgical opening of stomach					
43520	C	Incision of pyloric muscle					
43600	T	Biopsy of stomach	0141	7.15	$354.61	$184.67	$70.92
43605	C	Biopsy of stomach					
43610	C	Excision of stomach lesion					
43611	C	Excision of stomach lesion					
43620	C	Removal of stomach					
43621	C	Removal of stomach					
43622	C	Removal of stomach					
43631	C	Removal of stomach, partial					
43632	C	Removal of stomach, partial					
43633	C	Removal of stomach, partial					
43634	C	Removal of stomach, partial					
43635	C	Removal of stomach, partial					
43638	C	Removal of stomach, partial					
43639	C	Removal of stomach, partial					
43640	C	Vagotomy & pylorus repair					
43641	C	Vagotomy & pylorus repair					
43651	T	Laparoscopy, vagus nerve	0132	48.91	$2,425.74	$1,239.22	$485.15
43652	T	Laparoscopy, vagus nerve	0132	48.91	$2,425.74	$1,239.22	$485.15
43653	T	Laparoscopy, gastrostomy	0131	41.81	$2,073.61	$1,069.88	$414.72
43659	T	Laparoscope proc, stom	0130	25.36	$1,257.75	$659.53	$251.55
*43752	E	Nasal/orogastric w/stent					
43750	T	Place gastrostomy tube	0141	7.15	$354.61	$184.67	$70.92
43760	T	Change gastrostomy tube	0121	2.36	$117.05	$52.53	$23.41
43761	T	Reposition gastrostomy tube	0121	2.36	$117.05	$52.53	$23.41
43800	C	Reconstruction of pylorus					
43810	C	Fusion of stomach and bowel					
43820	C	Fusion of stomach and bowel					
43825	C	Fusion of stomach and bowel					
43830	T	Place gastrostomy tube	0141	7.15	$354.61	$184.67	$70.92
43831	T	Place gastrostomy tube	0141	7.15	$354.61	$184.67	$70.92
43832	C	Place gastrostomy tube					
43840	C	Repair of stomach lesion					
43842	C	Gastroplasty for obesity					
43843	C	Gastroplasty for obesity					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
43846	C	Gastric bypass for obesity					
43847	C	Gastric bypass for obesity					
43848	C	Revision gastroplasty					
43850	C	Revise stomach-bowel fusion					
43855	C	Revise stomach-bowel fusion					
43860	C	Revise stomach-bowel fusion					
43865	C	Revise stomach-bowel fusion					
43870	T	Repair stomach opening	0025	3.74	$185.49	$70.66	$37.10
43880	C	Repair stomach-bowel fistula					
43999	T	Stomach surgery procedure	0121	2.36	$117.05	$52.53	$23.41
44005	C	Freeing of bowel adhesion					
44010	C	Incision of small bowel					
44015	C	Insert needle cath bowel					
44020	C	Exploration of small bowel					
44021	C	Decompress small bowel					
44025	C	Incision of large bowel					
44050	C	Reduce bowel obstruction					
44055	C	Correct malrotation of bowel					
44100	T	Biopsy of bowel	0141	7.15	$354.61	$184.67	$70.92
44110	C	Excision of bowel lesion(s)					
44111	C	Excision of bowel lesion(s)					
44120	C	Removal of small intestine					
44121	C	Removal of small intestine					
44125	C	Removal of small intestine					
44130	C	Bowel to bowel fusion					
*44132	C	Enterectomy, cadaver donor					
*44133	C	Enterectomy, live donor					
*44135	C	Intestine transplnt, cadaver					
*44136	C	Intestine transplnt, live					
44139	C	Mobilization of colon					
44140	C	Partial removal of colon					
44141	C	Partial removal of colon					
44143	C	Partial removal of colon					
44144	C	Partial removal of colon					
44145	C	Partial removal of colon					
44146	C	Partial removal of colon					
44147	C	Partial removal of colon					
44150	C	Removal of colon					
44151	C	Removal of colon/ileostomy					
44152	C	Removal of colon/ileostomy					
44153	C	Removal of colon/ileostomy					
44155	C	Removal of colon/ileostomy					
44156	C	Removal of colon/ileostomy					
44160	C	Removal of colon					
44200	T	Laparoscopy, enterolysis	0131	41.81	$2,073.61	$1,089.88	$414.72
44201	T	Laparoscopy, jejunostomy	0131	41.81	$2,073.61	$1,089.88	$414.72
44202	C	Laparo, resect intestine					
44209	T	Laparoscope proc, intestine	0130	25.36	$1,257.75	$659.53	$251.55
44300	C	Open bowel to skin					
44310	C	Ileostomy/jejunostomy					
44312	T	Revision of ileostomy	0026	12.11	$600.61	$277.92	$120.12
44314	C	Revision of ileostomy					
44316	C	Devise bowel pouch					
44320	C	Colostomy					
44322	C	Colostomy with biopsies					
44340	T	Revision of colostomy	0026	12.11	$600.61	$277.92	$120.12
44345	C	Revision of colostomy					
44346	C	Revision of colostomy					
44360	T	Small bowel endoscopy	0142	7.45	$369.49	$162.42	$73.90
44361	T	Small bowel endoscopy/biopsy	0142	7.45	$369.49	$162.42	$73.90
44363	T	Small bowel endoscopy	0142	7.45	$369.49	$162.42	$73.90
44364	T	Small bowel endoscopy	0142	7.45	$369.49	$162.42	$73.90
44365	T	Small bowel endoscopy	0142	7.45	$369.49	$162.42	$73.90
44366	T	Small bowel endoscopy	0142	7.45	$369.49	$162.42	$73.90
44369	T	Small bowel endoscopy	0142	7.45	$369.49	$162.42	$73.90
*44370	T	Small bowel endoscopy/stent	0142	7.45	$369.49	$162.42	$73.90
44372	T	Small bowel endoscopy	0142	7.45	$369.49	$162.42	$73.90
44373	T	Small bowel endoscopy	0142	7.45	$369.49	$162.42	$73.90
44376	T	Small bowel endoscopy	0142	7.45	$369.49	$162.42	$73.90
44377	T	Small bowel endoscopy/biopsy	0142	7.45	$369.49	$162.42	$73.90
44378	T	Small bowel endoscopy	0142	7.45	$369.49	$162.42	$73.90
*44379	T	Small bowel endoscopy/stent	0142	7.45	$369.49	$162.42	$73.90
44380	T	Small bowel endoscopy	0142	7.45	$369.49	$162.42	$73.90
44382	T	Small bowel endoscopy	0142	7.45	$369.49	$162.42	$73.90

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
44385	T	Endoscopy of bowel pouch	0143	7.98	$395.76	$199.12	$79.16
44386	T	Endoscopy, bowel pouch/biop	0143	7.98	$395.76	$199.12	$79.16
44388	T	Colon endoscopy	0143	7.98	$395.76	$199.12	$79.16
44389	T	Colonoscopy with biopsy	0143	7.98	$395.76	$199.12	$79.16
44390	T	Colonoscopy for foreign body	0143	7.98	$395.76	$199.12	$79.16
44391	T	Colonoscopy for bleeding	0143	7.98	$395.76	$199.12	$79.16
44392	T	Colonoscopy & polypectomy	0143	7.98	$395.76	$199.12	$79.16
44393	T	Colonoscopy, lesion removal	0143	7.98	$395.76	$199.12	$79.16
44394	T	Colonoscopy w/snare	0143	7.98	$395.76	$199.12	$79.16
*44397	T	Colonoscopy w/stent	0143	7.98	$395.76	$199.12	$79.16
44500	T	Intro, gastrointestinal tube	0121	2.36	$117.05	$52.53	$23.41
44602	C	Suture, small intestine					
44603	C	Suture, small intestine					
44604	C	Suture, large intestine					
44605	C	Repair of bowel lesion					
44615	C	Intestinal stricturoplasty					
44620	C	Repair bowel opening					
44625	C	Repair bowel opening					
44626	C	Repair bowel opening					
44640	C	Repair bowel-skin fistula					
44650	C	Repair bowel fistula					
44660	C	Repair bowel-bladder fistula					
44661	C	Repair bowel-bladder fistula					
44680	C	Surgical revision, intestine					
44700	C	Suspend bowel w/prosthesis					
44799	T	Intestine surgery procedure	0142	7.45	$369.49	$162.42	$73.90
44800	C	Excision of bowel pouch					
44820	C	Excision of mesentery lesion					
44850	C	Repair of mesentery					
44899	C	Bowel surgery procedure					
44900	C	Drain app abscess, open					
44901	C	Drain app abscess, percut					
44950	C	Appendectomy					
44955	C	Appendectomy add-on					
44960	C	Appendectomy					
44970	T	Laparoscopy, appendectomy	0130	25.36	$1,257.75	$659.53	$251.55
44979	T	Laparoscope proc, app	0130	25.36	$1,257.75	$659.53	$251.55
45000	T	Drainage of pelvic abscess	0149	12.86	$637.80	$293.06	$127.56
45005	T	Drainage of rectal abscess	0148	2.34	$116.06	$43.59	$23.21
45020	T	Drainage of rectal abscess	0149	12.86	$637.80	$293.06	$127.56
45100	T	Biopsy of rectum	0149	12.86	$637.80	$293.06	$127.56
45108	T	Removal of anorectal lesion	0150	17.68	$876.86	$437.12	$175.37
45110	C	Removal of rectum					
45111	C	Partial removal of rectum					
45112	C	Removal of rectum					
45113	C	Partial proctectomy					
45114	C	Partial removal of rectum					
45116	C	Partial removal of rectum					
45119	C	Remove rectum w/reservoir					
45120	C	Removal of rectum					
45121	C	Removal of rectum and colon					
45123	C	Partial proctectomy					
45126	C	Pelvic exenteration					
45130	C	Excision of rectal prolapse					
45135	C	Excision of rectal prolapse					
45150	T	Excision of rectal stricture	0150	17.68	$876.86	$437.12	$175.37
45160	T	Excision of rectal lesion	0150	17.68	$876.86	$437.12	$175.37
45170	T	Excision of rectal lesion	0150	17.68	$876.86	$437.12	$175.37
45190	T	Destruction, rectal tumor	0150	17.68	$876.86	$437.12	$175.37
45300	T	Proctosigmoidoscopy	0146	2.83	$140.36	$65.15	$28.07
45303	T	Proctosigmoidoscopy	0146	2.83	$140.36	$65.15	$28.07
45305	T	Proctosigmoidoscopy & biopsy	0146	2.83	$140.36	$65.15	$28.07
45307	T	Proctosigmoidoscopy	0146	2.83	$140.36	$65.15	$28.07
45308	T	Proctosigmoidoscopy	0147	6.26	$310.47	$149.11	$62.09
45309	T	Proctosigmoidoscopy	0147	6.26	$310.47	$149.11	$62.09
45315	T	Proctosigmoidoscopy	0147	6.26	$310.47	$149.11	$62.09
45317	T	Proctosigmoidoscopy	0146	2.83	$140.36	$65.15	$28.07
45320	T	Proctosigmoidoscopy	0147	6.26	$310.47	$149.11	$62.09
45321	T	Proctosigmoidoscopy	0147	6.26	$310.47	$149.11	$62.09
*45327	T	Proctosigmoidoscopy w/stent	0147	6.26	$310.47	$149.11	$62.09
45330	T	Diagnostic sigmoidoscopy	0146	2.83	$140.36	$65.15	$28.07
45331	T	Sigmoidoscopy and biopsy	0146	2.83	$140.36	$65.15	$28.07
45332	T	Sigmoidoscopy w/fb removal	0146	2.83	$140.36	$65.15	$28.07
45333	T	Sigmoidoscopy & polypectomy	0147	6.26	$310.47	$149.11	$62.09

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
45334	T	Sigmoidoscopy for bleeding	0147	6.26	$310.47	$149.11	$62.09
45337	T	Sigmoidoscopy & decompress	0147	6.26	$310.47	$149.11	$62.09
45338	T	Sigmoidoscopy w/tumr remove	0147	6.26	$310.47	$149.11	$62.09
45339	T	Sigmoidoscopy w/ablate tumr	0147	6.26	$310.47	$149.11	$62.09
*45341	T	Sigmoidoscopy w/ultrasound	0147	6.26	$310.47	$149.11	$62.09
*45342	T	Sigmoidoscopy w/ US guide bx	0147	6.26	$310.47	$149.11	$62.09
*45345	T	Sigmoidoscopy w/stent	0147	6.26	$310.47	$149.11	$62.09
45355	T	Surgical colonoscopy	0143	7.98	$395.78	$199.12	$79.16
45378	T	Diagnostic colonoscopy	0143	7.98	$395.78	$199.12	$79.16
45379	T	Colonoscopy	0143	7.98	$395.78	$199.12	$79.16
45380	T	Colonoscopy and biopsy	0143	7.98	$395.78	$199.12	$79.16
45382	T	Colonoscopy/control bleeding	0143	7.98	$395.78	$199.12	$79.16
45383	T	Lesion removal colonoscopy	0143	7.98	$395.78	$199.12	$79.16
45384	T	Colonoscopy	0143	7.98	$395.78	$199.12	$79.16
45385	T	Lesion removal colonoscopy	0143	7.98	$395.78	$199.12	$79.16
*45387	T	Colonoscopy w/stent	0143	7.98	$395.78	$199.12	$79.16
45500	T	Repair of rectum	0150	17.68	$876.86	$437.12	$175.37
45505	T	Repair of rectum	0150	17.68	$876.86	$437.12	$175.37
45520	T	Treatment of rectal prolapse	0098	1.19	$59.02	$20.88	$11.80
45540	C	Correct rectal prolapse					
45541	C	Correct rectal prolapse					
45550	C	Repair rectum/remove sigmoid					
45560	T	Repair of rectocele	0150	17.68	$876.86	$437.12	$175.37
45562	C	Exploration/repair of rectum					
45563	C	Exploration/repair of rectum					
45800	C	Repair rect/bladder fistula					
45805	C	Repair fistula w/colostomy					
45820	C	Repair rectourethral fistula					
45825	C	Repair fistula w/colostomy					
45900	T	Reduction of rectal prolapse	0148	2.34	$116.06	$43.59	$23.21
45905	T	Dilation of anal sphincter	0149	12.86	$637.80	$293.06	$127.56
45910	T	Dilation of rectal narrowing	0149	12.86	$637.80	$293.06	$127.56
45915	T	Remove rectal obstruction	0148	2.34	$116.06	$43.59	$23.21
45999	T	Rectum surgery procedure	0148	2.34	$116.06	$43.59	$23.21
46030	T	Removal of rectal marker	0149	12.86	$637.80	$293.06	$127.56
46040	T	Incision of rectal abscess	0148	2.34	$116.06	$43.59	$23.21
46045	T	Incision of rectal abscess	0150	17.68	$876.86	$437.12	$175.37
46050	T	Incision of anal abscess	0148	2.34	$116.06	$43.59	$23.21
46060	T	Incision of rectal abscess	0150	17.68	$876.86	$437.12	$175.37
46070	T	Incision of anal septum	0148	2.34	$116.06	$43.59	$23.21
46080	T	Incision of anal sphincter	0149	12.86	$637.80	$293.06	$127.56
46083	T	Incise external hemorrhoid	0148	2.34	$116.06	$43.59	$23.21
46200	T	Removal of anal fissure	0150	17.68	$876.86	$437.12	$175.37
46210	T	Removal of anal crypt	0149	12.86	$637.80	$293.06	$127.56
46211	T	Removal of anal crypts	0150	17.68	$876.86	$437.12	$175.37
46220	T	Removal of anal tab	0149	12.86	$637.80	$293.06	$127.56
46221	T	Ligation of hemorrhoid(s)	0148	2.34	$116.06	$43.59	$23.21
46230	T	Removal of anal tabs	0149	12.86	$637.80	$293.06	$127.56
46250	T	Hemorrhoidectomy	0150	17.68	$876.86	$437.12	$175.37
46255	T	Hemorrhoidectomy	0150	17.68	$876.86	$437.12	$175.37
46257	T	Remove hemorrhoids & fissure	0150	17.68	$876.86	$437.12	$175.37
46258	T	Remove hemorrhoids & fistula	0150	17.68	$876.86	$437.12	$175.37
46260	T	Hemorrhoidectomy	0150	17.68	$876.86	$437.12	$175.37
46261	T	Remove hemorrhoids & fissure	0150	17.68	$876.86	$437.12	$175.37
46262	T	Remove hemorrhoids & fistula	0150	17.68	$876.86	$437.12	$175.37
46270	T	Removal of anal fistula	0150	17.68	$876.86	$437.12	$175.37
46275	T	Removal of anal fistula	0150	17.68	$876.86	$437.12	$175.37
46280	T	Removal of anal fistula	0150	17.68	$876.86	$437.12	$175.37
46285	T	Removal of anal fistula	0150	17.68	$876.86	$437.12	$175.37
46288	T	Repair anal fistula	0150	17.68	$876.86	$437.12	$175.37
46320	T	Removal of hemorrhoid clot	0148	2.34	$116.06	$43.59	$23.21
46500	T	Injection into hemorrhoids	0148	2.34	$116.06	$43.59	$23.21
46600	N	Diagnostic anoscopy					
46604	T	Anoscopy and dilation	0144	2.23	$110.60	$49.32	$22.12
46606	T	Anoscopy and biopsy	0145	7.46	$369.98	$179.39	$74.00
46608	T	Anoscopy/ remove for body	0144	2.23	$110.60	$49.32	$22.12
46610	T	Anoscopy/remove lesion	0145	7.46	$369.98	$179.39	$74.00
46611	T	Anoscopy	0145	7.46	$369.98	$179.39	$74.00
46612	T	Anoscopy/ remove lesions	0145	7.46	$369.98	$179.39	$74.00
46614	T	Anoscopy/control bleeding	0145	7.46	$369.98	$179.39	$74.00
46615	T	Anoscopy	0145	7.46	$369.98	$179.39	$74.00
46700	T	Repair of anal stricture	0150	17.68	$876.86	$437.12	$175.37
46705	C	Repair of anal stricture					
46715	C	Repair of anovaginal fistula					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
46716	C	Repair of anovaginal fistula					
46730	C	Construction of absent anus					
46735	C	Construction of absent anus					
46740	C	Construction of absent anus					
46742	C	Repair of imperforated anus					
46744	C	Repair of cloacal anomaly					
46746	C	Repair of cloacal anomaly					
46748	C	Repair of cloacal anomaly					
46750	T	Repair of anal sphincter	0150	17.68	$876.86	$437.12	$175.37
46751	C	Repair of anal sphincter					
46753	T	Reconstruction of anus	0150	17.68	$876.86	$437.12	$175.37
46754	T	Removal of suture from anus	0149	12.86	$637.80	$293.06	$127.56
46760	T	Repair of anal sphincter	0150	17.68	$876.86	$437.12	$175.37
46761	T	Repair of anal sphincter	0150	17.68	$876.86	$437.12	$175.37
46762	T	Implant artificial sphincter	0150	17.68	$876.86	$437.12	$175.37
46900	T	Destruction, anal lesion(s)	0016	3.53	$175.07	$74.67	$35.01
46910	T	Destruction, anal lesion(s)	0016	3.53	$175.07	$74.67	$35.01
46916	T	Cryosurgery, anal lesion(s)	0016	3.53	$175.07	$74.67	$35.01
46917	T	Laser surgery, anal lesions	0014	1.50	$74.39	$24.55	$14.88
46922	T	Excision of anal lesion(s)	0017	12.45	$617.47	$289.16	$123.49
46924	T	Destruction, anal lesion(s)	0017	12.45	$617.47	$289.16	$123.49
46934	T	Destruction of hemorrhoids	0148	2.34	$116.06	$43.59	$23.21
46935	T	Destruction of hemorrhoids	0148	2.34	$116.06	$43.59	$23.21
46936	T	Destruction of hemorrhoids	0149	12.86	$637.80	$293.06	$127.56
46937	T	Cryotherapy of rectal lesion	0150	17.68	$876.86	$437.12	$175.37
46938	T	Cryotherapy of rectal lesion	0150	17.68	$876.86	$437.12	$175.37
46940	T	Treatment of anal fissure	0149	12.86	$637.80	$293.06	$127.56
46942	T	Treatment of anal fissure	0149	12.86	$637.80	$293.06	$127.56
46945	T	Ligation of hemorrhoids	0148	2.34	$116.06	$43.59	$23.21
46946	T	Ligation of hemorrhoids	0148	2.34	$116.06	$43.59	$23.21
46999	T	Anus surgery procedure	0149	12.86	$637.80	$293.06	$127.56
47000	T	Needle biopsy of liver	0005	5.41	$268.32	$119.75	$53.66
47001	C	Needle biopsy, liver add-on					
47010	C	Open drainage, liver lesion					
47011	C	Percut drain, liver lesion					
47015	C	Inject/aspirate liver cyst					
47100	C	Wedge biopsy of liver					
47120	C	Partial removal of liver					
47122	C	Extensive removal of liver					
47125	C	Partial removal of liver					
47130	C	Partial removal of liver					
47133	C	Removal of donor liver					
47134	C	Partial removal, donor liver					
47135	C	Transplantation of liver					
47136	C	Transplantation of liver					
47300	C	Surgery for liver lesion					
47350	C	Repair liver wound					
47360	C	Repair liver wound					
47361	C	Repair liver wound					
47362	C	Repair liver wound					
*47379	T	Laparoscope procedure, liver	0130	25.36	$1,257.75	$659.53	$251.55
47399	T	Liver surgery procedure	0005	5.41	$268.32	$119.75	$53.66
47400	C	Incision of liver duct					
47420	C	Incision of bile duct					
47425	C	Incision of bile duct					
47460	C	Incise bile duct sphincter					
47480	C	Incision of gallbladder					
47490	C	Incision of gallbladder					
47500	N	Injection for liver x-rays					
47505	N	Injection for liver x-rays					
47510	T	Insert catheter, bile duct	0152	8.22	$407.68	$207.38	$81.54
47511	T	Insert bile duct drain	0152	8.22	$407.68	$207.38	$81.54
47525	T	Change bile duct catheter	0122	5.04	$249.96	$114.93	$49.99
47530	T	Revise/reinsert bile tube	0121	2.36	$117.05	$52.53	$23.41
47550	C	Bile duct endoscopy add-on					
47552	T	Biliary endoscopy thru skin	0152	8.22	$407.68	$207.38	$81.54
47553	T	Biliary endoscopy thru skin	0152	8.22	$407.68	$207.38	$81.54
47554	T	Biliary endoscopy thru skin	0152	8.22	$407.68	$207.38	$81.54
47555	T	Biliary endoscopy thru skin	0152	8.22	$407.68	$207.38	$81.54
47556	T	Biliary endoscopy thru skin	0152	8.22	$407.68	$207.38	$81.54
47560	T	Laparoscopy w/cholangio	0130	25.36	$1,257.75	$659.53	$251.55
47561	T	Laparo w/cholangio/biopsy	0130	25.36	$1,257.75	$659.53	$251.55
47562	T	Laparoscopic cholecystectomy	0131	41.81	$2,073.61	$1,089.88	$414.72
47563	T	Laparo cholecystectomy/graph	0131	41.81	$2,073.61	$1,089.88	$414.72

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
47564	T	Laparo cholecystectomy/explr	0131	41.81	$2,073.61	$1,089.88	$414.72
47570	C	Laparo cholecystoenterostomy					
47579	T	Laparoscope proc, biliary	0130	25.36	$1,257.75	$659.53	$251.55
47600	C	Removal of gallbladder					
47605	C	Removal of gallbladder					
47610	C	Removal of gallbladder					
47612	C	Removal of gallbladder					
47620	C	Removal of gallbladder					
47630	T	Remove bile duct stone	0152	8.22	$407.68	$207.38	$81.54
47700	C	Exploration of bile ducts					
47701	C	Bile duct revision					
47711	C	Excision of bile duct tumor					
47712	C	Excision of bile duct tumor					
47715	C	Excision of bile duct cyst					
47716	C	Fusion of bile duct cyst					
47720	C	Fuse gallbladder & bowel					
47721	C	Fuse upper gi structures					
47740	C	Fuse gallbladder & bowel					
47741	C	Fuse gallbladder & bowel					
47760	C	Fuse bile ducts and bowel					
47765	C	Fuse liver ducts & bowel					
47780	C	Fuse bile ducts and bowel					
47785	C	Fuse bile ducts and bowel					
47800	C	Reconstruction of bile ducts					
47801	C	Placement, bile duct support					
47802	C	Fuse liver duct & intestine					
47900	C	Suture bile duct injury					
47999	T	Bile tract surgery procedure	0121	2.36	$117.05	$52.53	$23.41
48000	C	Drainage of abdomen					
48001	C	Placement of drain, pancreas					
48005	C	Resect/debride pancreas					
48020	C	Removal of pancreatic stone					
48100	C	Biopsy of pancreas					
48102	T	Needle biopsy, pancreas	0005	5.41	$268.32	$119.75	$53.66
48120	C	Removal of pancreas lesion					
48140	C	Partial removal of pancreas					
48145	C	Partial removal of pancreas					
48146	C	Pancreatectomy					
48148	C	Removal of pancreatic duct					
48150	C	Partial removal of pancreas					
48152	C	Pancreatectomy					
48153	C	Pancreatectomy					
48154	C	Pancreatectomy					
48155	C	Removal of pancreas					
48160	E	Pancreas removal/transplant					
48180	C	Fuse pancreas and bowel					
48400	C	Injection, intraop add-on					
48500	C	Surgery of pancreas cyst					
48510	C	Drain pancreatic pseudocyst					
48511	C	Drain pancreatic pseudocyst					
48520	C	Fuse pancreas cyst and bowel					
48540	C	Fuse pancreas cyst and bowel					
48545	C	Pancreatorrhaphy					
48547	C	Duodenal exclusion					
48550	E	Donor pancreatectomy					
48554	E	Transpl allograft pancreas					
48556	C	Removal, allograft pancreas					
48999	T	Pancreas surgery procedure	0005	5.41	$268.32	$119.75	$53.66
49000	C	Exploration of abdomen					
49002	C	Reopening of abdomen					
49010	C	Exploration behind abdomen					
49020	C	Drain abdominal abscess					
49021	C	Drain abdominal abscess					
49040	C	Drain, open, abdom abscess					
49041	C	Drain, percut, abdom abscess					
49060	C	Drain, open, retrop abscess					
49061	C	Drain, percut, retroper absc					
49062	C	Drain to peritoneal cavity					
49080	T	Puncture, peritoneal cavity	0070	3.64	$180.53	$79.60	$36.11
49081	T	Removal of abdominal fluid	0070	3.64	$180.53	$79.60	$36.11
49085	T	Remove abdomen foreign body	0153	19.62	$973.06	$496.31	$194.62
49180	T	Biopsy, abdominal mass	0005	5.41	$268.32	$119.75	$53.66
49200	C	Removal of abdominal lesion					
49201	C	Removal of abdominal lesion					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
49215	C	Excise sacral spine tumor					
49220	C	Multiple surgery, abdomen					
49250	T	Excision of umbilicus	0153	19.62	$973.06	$496.31	$194.62
49255	C	Removal of omentum					
49320	T	Diag laparo separate proc	0130	25.36	$1,257.75	$659.53	$251.55
49321	T	Laparoscopy, biopsy	0130	25.36	$1,257.75	$659.53	$251.55
49322	T	Laparoscopy, aspiration	0130	25.36	$1,257.75	$659.53	$251.55
49323	T	Laparo drain lymphocele	0130	25.36	$1,257.75	$659.53	$251.55
49329	T	Laparo proc, abdm/per/oment	0130	25.36	$1,257.75	$659.53	$251.55
49400	N	Air injection into abdomen					
49420	T	Insert abdominal drain	0153	19.62	$973.06	$496.31	$194.62
49421	T	Insert abdominal drain	0153	19.62	$973.06	$496.31	$194.62
49422	T	Remove perm cannula/catheter	0105	15.06	$746.92	$372.32	$149.38
49423	T	Exchange drainage catheter	0153	19.62	$973.06	$496.31	$194.62
49424	N	Assess cyst, contrast inject					
49425	C	Insert abdomen-venous drain					
49426	T	Revise abdomen-venous shunt	0153	19.62	$973.06	$496.31	$194.62
49427	N	Injection, abdominal shunt					
49428	C	Ligation of shunt					
49429	T	Removal of shunt	0105	15.06	$746.92	$372.32	$149.38
49495	T	Repair inguinal hernia, init	0154	22.43	$1,112.45	$556.96	$222.49
49496	T	Repair inguinal hernia, init	0154	22.43	$1,112.45	$556.96	$222.49
49500	T	Repair inguinal hernia	0154	22.43	$1,112.45	$556.96	$222.49
49501	T	Repair inguinal hernia, init	0154	22.43	$1,112.45	$556.96	$222.49
49505	T	Repair inguinal hernia	0154	22.43	$1,112.45	$556.96	$222.49
49507	T	Repair inguinal hernia	0154	22.43	$1,112.45	$556.96	$222.49
49520	T	Rerepair inguinal hernia	0154	22.43	$1,112.45	$556.96	$222.49
49521	T	Repair inguinal hernia, rec	0154	22.43	$1,112.45	$556.96	$222.49
49525	T	Repair inguinal hernia	0154	22.43	$1,112.45	$556.96	$222.49
49540	T	Repair lumbar hernia	0154	22.43	$1,112.45	$556.96	$222.49
49550	T	Repair femoral hernia	0154	22.43	$1,112.45	$556.96	$222.49
49553	T	Repair femoral hernia, init	0154	22.43	$1,112.45	$556.96	$222.49
49555	T	Repair femoral hernia	0154	22.43	$1,112.45	$556.96	$222.49
49557	T	Repair femoral hernia, recur	0154	22.43	$1,112.45	$556.96	$222.49
49560	T	Repair abdominal hernia	0154	22.43	$1,112.45	$556.96	$222.49
49561	T	Repair incisional hernia	0154	22.49	$1,112.45	$556.96	$222.49
49565	T	Rerepair abdominal hernia	0154	22.43	$1,112.45	$556.96	$222.49
49566	T	Repair incisional hernia	0154	22.43	$1,112.45	$556.96	$222.49
49568	T	Hernia repair w/mesh	0154	22.43	$1,112.45	$556.96	$222.49
49570	T	Repair epigastric hernia	0154	22.43	$1,112.45	$556.96	$222.49
49572	T	Repair epigastric hernia	0154	22.43	$1,112.45	$556.96	$222.49
49580	T	Repair umbilical hernia	0154	22.43	$1,112.45	$556.96	$222.49
49582	T	Repair umbilical hernia	0154	22.43	$1,112.45	$556.96	$222.49
49585	T	Repair umbilical hernia	0154	22.43	$1,112.45	$556.96	$222.49
49587	T	Repair umbilical hernia	0154	22.43	$1,112.45	$556.96	$222.49
49590	T	Repair abdominal hernia	0154	22.43	$1,112.45	$556.96	$222.49
49600	T	Repair umbilical lesion	0154	22.43	$1,112.45	$556.96	$222.49
49605	C	Repair umbilical lesion					
49606	C	Repair umbilical lesion					
49610	C	Repair umbilical lesion					
49611	C	Repair umbilical lesion					
49650	T	Laparo hernia repair initial	0131	41.81	$2,073.61	$1,089.88	$414.72
49651	T	Laparo hernia repair recur	0131	41.81	$2,073.61	$1,089.88	$414.72
49659	T	Laparo proc, hernia repair	0131	41.81	$2,073.61	$1,089.88	$414.72
49900	C	Repair of abdominal wall					
49905	C	Omental flap					
49906	C	Free omental flap, microvasc					
49999	T	Abdomen surgery procedure	0121	2.36	$117.05	$52.53	$23.41
50010	C	Exploration of kidney					
50020	C	Renal abscess, open drain					
50021	C	Renal abscess, percut drain					
50040	C	Drainage of kidney					
50045	C	Exploration of kidney					
50060	C	Removal of kidney stone					
50065	C	Incision of kidney					
50070	C	Incision of kidney					
50075	C	Removal of kidney stone					
50080	T	Removal of kidney stone	0163	28.98	$1,437.30	$792.56	$287.46
50081	T	Removal of kidney stone	0163	28.98	$1,437.30	$792.56	$287.46
50100	C	Revise kidney blood vessels					
50120	C	Exploration of kidney					
50125	C	Explore and drain kidney					
50130	C	Removal of kidney stone					
50135	C	Exploration of kidney					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
50200	T	Biopsy of kidney	0005	5.41	$268.32	$119.75	$53.66
50205	C	Biopsy of kidney					
50220	C	Removal of kidney					
50225	C	Removal of kidney					
50230	C	Removal of kidney					
50234	C	Removal of kidney & ureter					
50236	C	Removal of kidney & ureter					
50240	C	Partial removal of kidney					
50280	C	Removal of kidney lesion					
50290	C	Removal of kidney lesion					
50300	C	Removal of donor kidney					
50320	C	Removal of donor kidney					
50340	C	Removal of kidney					
50360	C	Transplantation of kidney					
50365	C	Transplantation of kidney					
50370	C	Remove transplanted kidney					
50380	C	Reimplantation of kidney					
50390	T	Drainage of kidney lesion	0005	5.41	$268.32	$119.75	$53.56
50392	T	Insert kidney drain	0160	5.43	$269.30	$110.11	$53.86
50393	T	Insert ureteral tube	0160	5.43	$269.30	$110.11	$53.86
50394	N	Injection for kidney x-ray					
50395	T	Create passage to kidney	0160	5.43	$269.30	$110.11	$53.86
50396	T	Measure kidney pressure	0165	3.89	$192.92	$91.76	$38.58
50398	T	Change kidney tube	0122	5.04	$249.96	$114.93	$49.99
50400	C	Revision of kidney/ureter					
50405	C	Revision of kidney/ureter					
50500	C	Repair of kidney wound					
50520	C	Close kidney-skin fistula					
50525	C	Repair renal-abdomen fistula					
50526	C	Repair renal-abdomen fistula					
50540	C	Revision of horseshoe kidney					
50541	T	Laparo ablate renal cyst	0131	41.81	$2,073.61	$1,089.88	$414.72
50544	T	Laparoscopy, pyeloplasty	0131	41.81	$2,073.61	$1,089.8	$414.72
*50545	C	Laparo radical nephrectomy					
50546	C	Laparoscopic nephrectomy					
50547	C	Laparo removal donor kidney					
50548	C	Laparo-asst remove k/ureter					
50549	T	Laparoscope proc, renal	0130	25.36	$1,257.75	$659.53	$251.55
50551	T	Kidney endoscopy	0161	10.94	$542.58	$249.36	$108.52
50553	T	Kidney endoscopy	0161	10.94	$542.58	$249.36	$108.52
50555	T	Kidney endoscopy & biopsy	0161	10.94	$542.58	$249.36	$108.52
50557	T	Kidney endoscopy & treatment	0161	10.94	$542.58	$249.36	$108.52
50559	T	Renal endoscopy/radiotracer	0161	10.94	$542.58	$249.36	$108.52
50561	T	Kidney endoscopy & treatment	0161	10.94	$542.58	$249.36	$108.52
50570	C	Kidney endoscopy					
50572	C	Kidney endoscopy					
50574	C	Kidney endoscopy & biopsy					
50575	C	Kidney endoscopy					
50576	C	Kidney endoscopy & treatment					
50578	C	Renal endoscopy/radiotracer					
50580	C	Kidney endoscopy & treatment					
50590	T	Fragmenting of kidney stone	0169	46.72	$2,317.13	$1,384.20	$483.43
50600	C	Exploration of ureter					
50605	C	Insert ureteral support					
50610	C	Removal of ureter stone					
50620	C	Removal of ureter stone					
50630	C	Removal of ureter stone					
50650	C	Removal of ureter					
50660	C	Removal of ureter					
50684	N	Injection for ureter x-ray					
50686	T	Measure ureter pressure	0165	3.89	$192.92	$91.76	$38.58
50688	T	Change of ureter tube	0121	2.36	$117.05	$52.53	$23.41
50690	N	Injection for ureter x-ray					
50700	C	Revision of ureter					
50715	C	Release of ureter					
50722	C	Release of ureter					
50725	C	Release/revise ureter					
50727	C	Revise ureter					
50728	C	Revise ureter					
50740	C	Fusion of ureter & kidney					
50750	C	Fusion of ureter & kidney					
50760	C	Fusion of ureters					
50770	C	Splicing of ureters					
50780	C	Reimplant ureter in bladder					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
50782	C	Reimplant ureter in bladder					
50783	C	Reimplant ureter in bladder					
50785	C	Reimplant ureter in bladder					
50800	C	Implant ureter in bowel					
50810	C	Fusion of ureter & bowel					
50815	C	Urine shunt to bowel					
50820	C	Construct bowel bladder					
50825	C	Construct bowel bladder					
50830	C	Revise urine flow					
50840	C	Replace ureter by bowel					
50845	C	Appendico-vesicostomy					
50860	C	Transplant ureter to skin					
50900	C	Repair of ureter					
50920	C	Closure ureter/skin fistula					
50930	C	Closure ureter/bowel fistula					
50940	C	Release of ureter					
50945	T	Laparoscopy ureterolithotomy	0131	41.81	$2,073.61	$1,089.88	$414.72
*50947	T	Laparoscopy new ureter/bladder	0130	25.36	$1,257.75	$659.53	$251.55
*50948	T	Laparoscopy new ureter/bladder	0130	25.36	$1,257.75	$659.53	$251.55
*50949	T	Laparoscope proc, ureter	0130	25.36	$1,257.75	$659.53	$251.55
50951	T	Endoscopy of ureter	0162	17.49	$867.44	$427.49	$173.49
50953	T	Endoscopy of ureter	0162	17.49	$867.44	$427.49	$173.49
50955	T	Ureter endoscopy & biopsy	0162	17.49	$867.44	$427.49	$173.49
50957	T	Ureter endoscopy & treatment	0162	17.49	$867.44	$427.49	$173.49
50959	T	Ureter endoscopy & tracer	0162	17.49	$867.44	$427.49	$173.49
50961	T	Ureter endoscopy & treatment	0162	17.49	$867.44	$427.49	$173.49
50970	T	Ureter endoscopy	0162	17.49	$867.44	$427.49	$173.49
50972	T	Ureter endoscopy & catheter	0162	17.49	$867.44	$427.49	$173.49
50974	T	Ureter endoscopy & biopsy	0162	17.49	$867.44	$427.49	$173.49
50976	T	Ureter endoscopy & treatment	0162	17.49	$867.44	$427.49	$173.49
50978	T	Ureter endoscopy & tracer	0162	17.49	$867.44	$427.49	$173.49
50980	T	Ureter endoscopy & treatment	0162	17.49	$867.44	$427.49	$173.49
51000	T	Drainage of bladder	0165	3.89	$192.92	$91.76	$38.58
51005	T	Drainage of bladder	0164	2.17	$107.64	$33.03	$21.53
51010	T	Drainage of bladder	0165	3.89	$192.92	$91.76	$38.58
51020	T	Incise & treat bladder	0162	17.49	$867.44	$427.49	$173.49
51030	T	Incise & treat bladder	0162	17.49	$867.44	$427.49	$173.49
51040	T	Incise & drain bladder	0162	17.49	$867.44	$427.49	$173.49
51045	T	Incise bladder/drain ureter	0162	17.49	$867.44	$427.49	$173.49
51050	T	Removal of bladder stone	0162	17.49	$867.44	$427.49	$173.49
51060	C	Removal of ureter stone					
51065	T	Removal of ureter stone	0162	17.49	$867.44	$427.49	$173.49
51080	T	Drainage of bladder abscess	0008	6.15	$305.02	$113.67	$61.00
51500	T	Removal of bladder cyst	0154	22.43	$1,112.45	$556.96	$222.49
51520	T	Removal of bladder lesion	0162	17.49	$867.44	$427.49	$173.49
51525	C	Removal of bladder lesion					
51530	C	Removal of bladder lesion					
51535	C	Repair of ureter lesion					
51550	C	Partial removal of bladder					
51555	C	Partial removal of bladder					
51565	C	Revise bladder & ureter(s)					
51570	C	Removal of bladder					
51575	C	Removal of bladder & nodes					
51580	C	Remove bladder/revise tract					
51585	C	Removal of bladder & nodes					
51590	C	Remove bladder/revise tract					
51595	C	Remove bladder/revise tract					
51596	C	Remove bladder/create pouch					
51597	C	Removal of pelvic structures					
51600	N	Injection for bladder x-ray					
51605	N	Preparation for bladder xray					
51610	N	Injection for bladder x-ray					
51700	T	Irrigation of bladder	0164	2.17	$107.64	$33.03	$21.53
51705	T	Change of bladder tube	0121	2.36	$117.05	$52.53	$23.41
51710	T	Change of bladder tube	0121	2.36	$117.05	$52.53	$23.41
51715	T	Endoscopic injection/implant	0167	21.06	$1,044.50	$555.84	$206.90
51720	T	Treatment of bladder lesion	0165	3.89	$192.92	$91.76	$38.58
51725	T	Simple cystometrogram	0165	3.89	$192.92	$91.76	$38.58
51726	T	Complex cystometrogram	0165	3.89	$192.92	$91.76	$38.58
51736	T	Urine flow measurement	0164	2.17	$107.64	$33.03	$21.53
51741	T	Electro-uroflowmetry, first	0164	2.17	$107.64	$33.03	$21.53
51772	T	Urethra pressure profile	0165	3.89	$192.92	$91.76	$38.58
51784	T	Anal/urinary muscle study	0164	2.17	$107.64	$33.03	$21.53
51785	T	Anal/urinary muscle study	0164	2.17	$107.64	$33.03	$21.53

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
51792	T	Urinary reflex study	0165	3.89	$192.92	$91.76	$38.58
51795	T	Urine voiding pressure study	0164	2.17	$107.64	$33.03	$21.53
51797	T	Intraabdominal pressure test	0164	2.17	$107.64	$33.03	$21.53
51800	C	Revision of bladder/urethra					
51820	C	Revision of urinary tract					
51840	C	Attach bladder/urethra					
51841	C	Attach bladder/urethra					
51845	C	Repair bladder neck					
51860	C	Repair of bladder wound					
51865	C	Repair of bladder wound					
51880	T	Repair of bladder opening	0162	17.49	$867.44	$427.49	$173.49
51900	C	Repair bladder/vagina lesion					
51920	C	Close bladder-uterus fistula					
51925	C	Hysterectomy/bladder repair					
51940	C	Correction of bladder defect					
51960	C	Revision of bladder & bowel					
51980	C	Construct bladder opening					
51990	T	Laparo urethral suspension	0131	41.81	$2,073.61	$1,089.88	$414.72
51992	T	Laparo sling operation	0132	48.91	$2,425.74	$1,239.22	$485.15
52000	T	Cystoscopy	0160	5.43	$269.30	$110.11	$53.86
52005	T	Cystoscopy & ureter catheter	0161	10.94	$542.58	$249.36	$108.52
52007	T	Cystoscopy and biopsy	0161	10.94	$542.58	$249.36	$108.52
52010	T	Cystoscopy & duct catheter	0161	10.94	$542.58	$249.36	$108.52
52204	T	Cystoscopy	0161	10.94	$542.58	$249.36	$108.52
52214	T	Cystoscopy and treatment	0161	10.94	$542.58	$249.36	$108.52
52224	T	Cystoscopy and treatment	0161	10.94	$542.58	$249.36	$108.52
52234	T	Cystoscopy and treatment	0162	17.49	$867.44	$427.49	$173.49
52235	T	Cystoscopy and treatment	0162	17.49	$867.44	$427.49	$173.49
52240	T	Cystoscopy and treatment	0163	28.98	$1,437.30	$792.58	$287.46
52250	T	Cystoscopy and radiotracer	0162	17.49	$867.44	$427.49	$173.49
52260	T	Cystoscopy and treatment	0161	10.94	$542.58	$249.36	$108.52
52265	T	Cystoscopy and treatment	0160	5.43	$269.30	$110.11	$53.86
52270	T	Cystoscopy & revise urethra	0161	10.94	$542.58	$249.36	$108.52
52275	T	Cystoscopy & revise urethra	0161	10.94	$542.58	$249.36	$108.52
52276	T	Cystoscopy and treatment	0161	10.94	$542.58	$249.36	$108.52
52277	T	Cystoscopy and treatment	0162	17.49	$867.44	$427.49	$173.49
52281	T	Cystoscopy and treatment	0161	10.94	$542.58	$249.36	$108.52
52282	T	Cystoscopy, implant stent	0162	17.49	$867.44	$427.49	$173.49
52283	T	Cystoscopy and treatment	0161	10.94	$542.58	$249.36	$108.52
52285	T	Cystoscopy and treatment	0161	10.94	$542.58	$249.36	$108.52
52290	T	Cystoscopy and treatment	0161	10.94	$542.58	$249.36	$108.52
52300	T	Cystoscopy and treatment	0161	10.94	$542.58	$249.36	$108.52
52301	T	Cystoscopy and treatment	0161	10.94	$542.58	$249.36	$108.52
52305	T	Cystoscopy and treatment	0161	10.94	$542.58	$249.36	$108.52
52310	T	Cystoscopy and treatment	0161	10.94	$542.58	$249.36	$108.52
52315	T	Cystoscopy and treatment	0161	10.94	$542.58	$249.36	$108.52
52317	T	Remove bladder stone	0162	17.49	$867.44	$427.49	$173.49
52318	T	Remove bladder stone	0162	17.49	$867.44	$427.49	$173.49
52320	T	Cystoscopy and treatment	0162	17.49	$867.44	$427.49	$173.49
52325	T	Cystoscopy, stone removal	0162	17.49	$867.44	$427.49	$173.49
52327	T	Cystoscopy, inject material	0161	10.94	$542.58	$249.36	$108.52
52330	T	Cystoscopy and treatment	0162	17.49	$867.44	$427.49	$173.49
52332	T	Cystoscopy and treatment	0162	17.49	$867.44	$427.49	$173.49
52334	T	Create passage to kidney	0162	17.49	$867.44	$427.49	$173.49
52335D	T	Endoscopy of urinary tract	0162	17.49	$867.44	$427.49	$173.49
52336D	T	Cystoscopy, stone removal	0162	17.49	$867.44	$427.49	$173.49
52337D	T	Cystoscopy, stone removal	0162	17.49	$867.44	$427.49	$173.49
52338D	T	Cystoscopy and treatment	0162	17.49	$867.44	$427.49	$173.49
52339D	T	Cystoscopy and treatment	0162	17.49	$867.44	$427.49	$173.49
52340D	T	Cystoscopy and treatment	0162	17.49	$867.44	$427.49	$173.49
*52341	T	Cysto w/ureter stricture treatment	0162	17.49	$867.44	$427.49	$173.49
*52342	T	Cysto w/up stricture treatment	0162	17.49	$867.44	$427.49	$173.49
*52343	T	Cysto w/renal stricture treatment	0162	17.49	$867.44	$427.49	$173.49
*52344	T	Cysto/uretero, stone removal	0162	17.49	$867.44	$427.49	$173.49
*52345	T	Cysto/uretero w/up stricture	0162	17.49	$867.44	$427.49	$173.49
*52346	T	Cystouretero w/renal strict	0162	17.49	$867.44	$427.49	$173.49
*52351	T	Cystouretero &/or pyeloscope	0161	10.94	$542.58	$249.36	$108.52
*52352	T	Cystouretero w/stone removal	0162	17.49	$867.44	$427.49	$173.49
*52353	T	Cystouretero w/lithotripsy	0162	17.49	$867.44	$427.49	$173.49
*52354	T	Cystouretero w/biopsy	0162	17.49	$867.44	$427.49	$173.49
*52355	T	Cystouretero w/excise tumor	0162	17.49	$867.44	$427.49	$173.49
*52400	T	Cystouretero w/congen repr	0162	17.49	$867.44	$427.49	$173.49
52450	T	Incision of prostate	0162	17.49	$867.44	$427.49	$173.49
52500	T	Revision of bladder neck	0162	17.49	$867.44	$427.49	$173.49

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
52510	T	Dilation prostatic urethra	0161	10.94	$542.58	$249.36	$108.52
52601	T	Prostatectomy (TURP)	0163	28.98	$1,437.30	$792.58	$287.46
52606	T	Control postop bleeding	0162	17.49	$867.44	$427.49	$173.49
52612	T	Prostatectomy, first stage	0163	28.98	$1,437.30	$792.58	$287.46
52614	T	Prostatectomy, second stage	0163	28.98	$1,437.30	$792.58	$287.46
52620	T	Remove residual prostate	0163	28.98	$1,437.30	$792.58	$287.46
52630	T	Remove prostate regrowth	0163	28.98	$1,437.30	$792.58	$287.46
52640	T	Relieve bladder contracture	0162	17.49	$867.44	$427.49	$173.49
52647	T	Laser surgery of prostate	0163	28.98	$1,437.30	$792.58	$287.46
52648	T	Laser surgery of prostate	0163	28.98	$1,437.30	$792.58	$287.46
52700	T	Drainage of prostate abscess	0162	17.49	$867.44	$427.49	$173.49
53000	T	Incision of urethra	0166	10.17	$504.39	$218.73	$100.88
53010	T	Incision of urethra	0166	10.17	$504.39	$218.73	$100.88
53020	T	Incision of urethra	0166	10.17	$504.39	$218.73	$100.88
53025	T	Incision of urethra	0166	10.17	$504.39	$218.73	$100.88
53040	T	Drainage of urethra abscess	0166	10.17	$504.39	$218.73	$100.88
53060	T	Drainage of urethra abscess	0166	10.17	$504.39	$218.73	$100.88
53080	T	Drainage of urinary leakage	0166	10.17	$504.39	$218.73	$100.88
53085	C	Drainage of urinary leakage					
53200	T	Biopsy of urethra	0166	10.17	$504.39	$218.73	$100.88
53210	T	Removal of urethra	0168	24.94	$1,236.93	$536.11	$247.39
53215	T	Removal of urethra	0168	24.94	$1,236.93	$536.11	$247.39
53220	T	Treatment of urethra lesion	0168	24.94	$1,236.93	$536.11	$247.39
53230	T	Removal of urethra lesion	0168	24.94	$1,236.93	$536.11	$247.39
53235	T	Removal of urethra lesion	0168	24.94	$1,236.93	$536.11	$247.39
53240	T	Surgery for urethra pouch	0168	24.94	$1,236.93	$536.11	$247.39
53250	T	Removal of urethra gland	0166	10.17	$504.39	$218.73	$100.88
53260	T	Treatment of urethra lesion	0166	10.17	$504.39	$218.73	$100.88
53265	T	Treatment of urethra lesion	0166	10.17	$504.39	$218.73	$100.88
53270	T	Removal of urethra gland	0167	21.06	$1,044.50	$555.64	$208.90
53275	T	Repair of urethra defect	0166	10.17	$504.39	$218.73	$100.88
53400	T	Revise urethra, stage 1	0168	24.94	$1,236.93	$536.11	$247.39
53405	T	Revise urethra, stage 2	0168	24.94	$1,236.93	$536.11	$247.39
53410	T	Reconstruction of urethra	0168	24.94	$1,236.93	$536.11	$247.39
53415	C	Reconstruction of urethra					
53420	T	Reconstruct urethra, stage 1	0168	24.94	$1,236.93	$536.11	$247.39
53425	T	Reconstruct urethra, stage 2	0168	24.94	$1,236.93	$536.11	$247.39
53430	T	Reconstruction of urethra	0168	24.94	$1,236.93	$536.11	$247.39
53440	T	Correct bladder function	0182	52.11	$2,584.45	$1,525.05	$516.89
53442	T	Remove perineal prosthesis	0166	10.17	$504.39	$218.73	$100.88
53443	C	Reconstruction of urethra					
53445	T	Correct urine flow control	0182	52.11	$2,584.45	$1,525.05	$516.89
53447	T	Remove artificial sphincter	0168	24.94	$1,236.93	$536.11	$247.39
53449	T	Correct artificial sphincter	0168	24.94	$1,236.93	$536.11	$247.39
53450	T	Revision of urethra	0168	24.94	$1,236.93	$536.11	$247.39
53460	T	Revision of urethra	0168	24.94	$1,236.93	$536.11	$247.39
53502	T	Repair of urethra injury	0166	10.17	$504.39	$218.73	$100.88
53505	T	Repair of urethra injury	0167	21.06	$1,044.50	$555.64	$208.90
53510	T	Repair of urethra injury	0166	10.17	$504.39	$218.73	$100.88
53515	T	Repair of urethra injury	0168	24.94	$1,236.93	$536.11	$247.39
53520	T	Repair of urethra defect	0168	24.94	$1,236.93	$536.11	$247.39
53600	T	Dilate urethra stricture	0164	2.17	$107.64	$33.03	$21.53
53601	T	Dilate urethra stricture	0164	2.17	$107.64	$33.03	$21.53
53605	T	Dilate urethra stricture	0161	10.94	$542.58	$249.36	$108.52
53620	T	Dilate urethra stricture	0165	3.89	$192.92	$91.76	$38.58
53621	T	Dilate urethra stricture	0164	2.17	$107.64	$33.03	$21.53
53660	T	Dilation of urethra	0164	2.17	$107.64	$33.03	$21.53
53661	T	Dilation of urethra	0164	2.17	$107.64	$33.03	$21.53
53665	T	Dilation of urethra	0166	10.17	$504.39	$218.73	$100.88
53670	N	Insert urinary catheter					
53675	T	Insert urinary catheter	0164	2.17	$107.64	$33.03	$21.53
53850	T	Prostatic microwave thermotx	0980	38.67	$1,917.89		$383.58
53852	T	Prostatic rf thermotx	0980	38.67	$1,917.89		$383.58
53899	T	Urology surgery procedure	0165	3.89	$192.92	$91.76	$38.58
54000	T	Slitting of prepuce	0166	10.17	$504.39	$218.73	$100.88
54001	T	Slitting of prepuce	0166	10.17	$504.39	$218.73	$100.88
54015	T	Drain penis lesion	0006	6.15	$305.02	$113.67	$61.00
54050	T	Destruction, penis lesion(s)	0013	0.91	$45.13	$17.66	$9.03
54055	T	Destruction, penis lesion(s)	0016	3.53	$175.07	$74.67	$35.01
54056	T	Cryosurgery, penis lesion(s)	0013	0.91	$45.13	$17.66	$9.03
54057	T	Laser surg, penis lesion(s)	0017	12.45	$617.47	$289.16	$123.49
54060	T	Excision of penis lesion(s)	0017	12.45	$617.47	$289.16	$123.49
54065	T	Destruction, penis lesion(s)	0017	12.45	$617.47	$289.16	$123.49
54100	T	Biopsy of penis	0020	6.51	$322.87	$130.53	$64.57

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
54105	T	Biopsy of penis	0021	10.49	$520.26	$236.51	$104.05
54110	T	Treatment of penis lesion	0181	32.37	$1,605.43	$906.36	$321.09
54111	T	Treat penis lesion, graft	0181	32.37	$1,605.43	$906.36	$321.09
54112	T	Treat penis lesion, graft	0181	32.37	$1,605.43	$906.36	$321.09
54115	T	Treatment of penis lesion	0008	6.15	$305.02	$113.67	$61.00
54120	T	Partial removal of penis	0181	32.37	$1,605.43	$906.36	$321.09
54125	C	Removal of penis					
54130	C	Remove penis & nodes					
54135	C	Remove penis & nodes					
54150	T	Circumcision	0180	13.62	$675.49	$304.87	$135.10
54152	T	Circumcision	0180	13.62	$675.49	$304.87	$135.10
54160	T	Circumcision	0180	13.62	$675.49	$304.87	$135.10
54161	T	Circumcision	0180	13.62	$675.49	$304.87	$135.10
54200	T	Treatment of penis lesion	0165	3.89	$192.92	$91.76	$38.58
54205	T	Treatment of penis lesion	0181	32.37	$1,605.43	$906.36	$321.09
54220	T	Treatment of penis lesion	0165	3.89	$192.92	$91.76	$38.58
54230	N	Prepare penis study					
54231	T	Dynamic cavernosometry	0165	3.89	$192.92	$91.76	$38.58
54235	T	Penile injection	0164	2.17	$107.64	$33.03	$21.53
54240	T	Penis study	0164	2.17	$107.64	$33.03	$21.53
54250	T	Penis study	0165	3.89	$192.92	$91.76	$38.58
54300	T	Revision of penis	0181	32.37	$1,605.43	$906.36	$321.09
54304	T	Revision of penis	0181	32.37	$1,605.43	$906.36	$321.09
54308	T	Reconstruction of urethra	0181	32.37	$1,605.43	$906.36	$321.09
54312	T	Reconstruction of urethra	0181	32.37	$1,605.43	$906.36	$321.09
54316	T	Reconstruction of urethra	0181	32.37	$1,605.43	$906.36	$321.09
54318	T	Reconstruction of urethra	0181	32.37	$1,605.43	$906.36	$321.09
54322	T	Reconstruction of urethra	0181	32.37	$1,605.43	$906.36	$321.09
54324	T	Reconstruction of urethra	0181	32.37	$1,605.43	$906.36	$321.09
54326	T	Reconstruction of urethra	0181	32.37	$1,605.43	$906.36	$321.09
54328	T	Revise penis/urethra	0181	32.37	$1,605.43	$906.36	$321.09
54332	C	Revise penis/urethra					
54336	C	Revise penis/urethra					
54340	T	Secondary urethral surgery	0181	32.37	$1,605.43	$906.36	$321.09
54344	T	Secondary urethral surgery	0181	32.37	$1,605.43	$906.36	$321.09
54348	T	Secondary urethral surgery	0181	32.37	$1,605.43	$906.36	$321.09
54352	T	Reconstruct urethra/penis	0181	32.37	$1,605.43	$906.36	$321.09
54360	T	Penis plastic surgery	0181	32.37	$1,605.43	$906.36	$321.09
54380	T	Repair penis	0181	32.37	$1,605.43	$906.36	$321.09
54385	T	Repair penis	0181	32.37	$1,605.43	$906.36	$321.09
54390	C	Repair penis and bladder					
54400	T	Insert semi-rigid prosthesis	0182	52.11	$2,584.45	$1,525.05	$516.89
54401	T	Insert self-contd prosthesis	0182	52.11	$2,584.45	$1,525.05	$516.89
54402	T	Remove penis prosthesis	0165	32.37	$1,605.43	$906.36	$321.09
54405	T	Insert multi-comp prosthesis	0182	52.11	$2,584.45	$1,525.05	$516.89
54407	T	Remove multi-comp prosthesis	0165	32.37	$1,605.43	$906.36	$321.09
54409	T	Revise penis prosthesis	0165	32.37	$1,605.43	$906.36	$321.09
54420	T	Revision of penis	0181	32.37	$1,605.43	$906.36	$321.09
54430	C	Revision of penis					
54435	T	Revision of penis	0181	32.37	$1,605.43	$906.36	$321.09
54440	T	Repair of penis	0181	32.37	$1,605.43	$906.36	$321.09
54450	T	Preputial stretching	0165	3.89	$192.92	$91.76	$38.58
54500	T	Biopsy of testis	0005	5.41	$268.32	$119.75	$53.66
54505	T	Biopsy of testis	0183	18.26	$905.62	$448.94	$181.12
54510	T	Removal of testis lesion	0183	18.26	$905.62	$448.94	$181.12
*54512	T	Excise lesion testis	0183	18.26	$905.62	$448.94	$181.12
54520	T	Removal of testis	0183	18.26	$905.62	$448.94	$181.12
*54522	T	Orchiectomy, partial	0183	18.26	$905.62	$448.94	$181.12
54530	T	Removal of testis	0154	22.43	$1,112.45	$556.98	$222.49
54535	C	Extensive testis surgery					
54550	T	Exploration for testis	0154	22.43	$1,112.45	$556.98	$222.49
54560	C	Exploration for testis					
54600	T	Reduce testis torsion	0183	18.26	$905.62	$448.94	$181.12
54620	T	Suspension of testis	0183	18.26	$905.62	$448.94	$181.12
54640	T	Suspension of testis	0154	22.43	$1,112.45	$556.98	$222.49
54650	C	Orchiopexy (Fowler-Stephens)					
54660	T	Revision of testis	0183	18.26	$905.62	$448.94	$181.12
54670	T	Repair testis injury	0183	18.26	$905.62	$448.94	$181.12
54680	T	Relocation of testis(es)	0183	18.26	$905.62	$448.94	$181.12
54690	T	Laparoscopy, orchiectomy	0131	41.81	$2,073.61	$1,089.88	$414.72
54692	T	Laparoscopy, orchiopexy	0132	48.91	$2,425.74	$1,239.22	$485.15
54699	T	Laparoscope proc, testis	0130	25.36	$1,257.75	$659.53	$251.55
54700	T	Drainage of scrotum	0183	18.26	$905.62	$448.94	$181.12
54800	T	Biopsy of epididymis	0004	1.84	$91.26	$32.57	$18.25

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
54820	T	Exploration of epididymis	0183	18.26	$905.62	$448.94	$181.12
54830	T	Remove epididymis lesion	0183	18.26	$905.62	$448.94	$181.12
54840	T	Remove epididymis lesion	0183	18.26	$905.62	$448.94	$181.12
54860	T	Removal of epididymis	0183	18.26	$905.62	$448.94	$181.12
54861	T	Removal of epididymis	0183	18.26	$905.62	$448.94	$181.12
54900	T	Fusion of spermatic ducts	0183	18.26	$905.62	$448.94	$181.12
54901	T	Fusion of spermatic ducts	0183	18.26	$905.62	$448.94	$181.12
55000	T	Drainage of hydrocele	0004	1.84	$91.26	$32.57	$18.25
55040	T	Removal of hydrocele	0154	22.43	$1,112.45	$556.98	$222.49
55041	T	Removal of hydroceles	0154	22.43	$1,112.45	$556.98	$222.49
55060	T	Repair of hydrocele	0183	18.26	$905.62	$448.94	$181.12
55100	T	Drainage of scrotum abscess	0008	6.15	$305.02	$113.67	$61.00
55110	T	Explore scrotum	0183	18.26	$905.62	$448.94	$181.12
55120	T	Removal of scrotum lesion	0183	18.26	$905.62	$448.94	$181.12
55150	T	Removal of scrotum	0183	18.26	$905.62	$448.94	$181.12
55175	T	Revision of scrotum	0183	18.26	$905.62	$448.94	$181.12
55180	T	Revision of scrotum	0183	18.26	$905.62	$448.94	$181.12
55200	T	Incision of sperm duct	0183	18.26	$905.62	$448.94	$181.12
55250	T	Removal of sperm duct(s)	0183	18.26	$905.62	$448.94	$181.12
55300	N	Prepare, sperm duct x-ray					
55400	T	Repair of sperm duct	0183	18.26	$905.62	$448.94	$181.12
55450	T	Ligation of sperm duct	0183	18.26	$905.62	$448.94	$181.12
55500	T	Removal of hydrocele	0183	18.26	$905.62	$448.94	$181.12
55520	T	Removal of sperm cord lesion	0183	18.26	$905.62	$448.94	$181.12
55530	T	Revise spermatic cord veins	0183	18.26	$905.62	$448.94	$181.12
55535	T	Revise spermatic cord veins	0154	22.43	$1,112.45	$556.98	$222.49
55540	T	Revise hernia & sperm veins	0154	22.43	$1,112.45	$556.98	$222.49
55550	T	Laparo ligate spermatic vein	0131	41.81	$2,073.61	$1,089.88	$414.72
55559	T	Laparo proc, spermatic cord	0130	25.36	$1,257.75	$659.53	$251.55
55600	C	Incise sperm duct pouch					
55605	C	Incise sperm duct pouch					
55650	C	Remove sperm duct pouch					
55680	T	Remove sperm pouch lesion	0183	18.26	$905.62	$448.94	$181.12
55700	T	Biopsy of prostate	0184	4.94	$245.01	$122.96	$49.00
55705	T	Biopsy of prostate	0184	4.94	$245.01	$122.96	$49.00
55720	T	Drainage of prostate abscess	0162	17.49	$867.44	$427.49	$173.49
55725	T	Drainage of prostate abscess	0162	17.49	$867.44	$427.49	$173.49
55801	C	Removal of prostate					
55810	C	Extensive prostate surgery					
55812	C	Extensive prostate surgery					
55815	C	Extensive prostate surgery					
55821	C	Removal of prostate					
55831	C	Removal of prostate					
55840	C	Extensive prostate surgery					
55842	C	Extensive prostate surgery					
55845	C	Extensive prostate surgery					
55859	T	Percut/needle insert, pros	0162	17.49	$867.44	$427.49	$173.49
55860	T	Surgical exposure, prostate	0165	3.89	$192.92	$91.76	$38.58
55862	C	Extensive prostate surgery					
55865	C	Extensive prostate surgery					
55870	T	Electroejaculation	0197	2.40	$119.03	$49.55	$23.81
*55873	T	Cryoablate prostate	0980	38.67	$1,917.89		$383.58
55899	T	Genital surgery procedure	0164	2.17	$107.64	$33.03	$21.53
55970	E	Sex transformation, M to F					
55980	E	Sex transformation, F to M					
56405	T	I & D of vulva/perineum	0192	2.38	$118.04	$35.33	$23.61
56420	T	Drainage of gland abscess	0192	2.38	$118.04	$35.33	$23.61
56440	T	Surgery for vulva lesion	0194	16.21	$803.96	$395.94	$160.79
56441	T	Lysis of labial lesion(s)	0193	8.93	$442.89	$171.13	$88.58
56501	T	Destruction, vulva lesion(s)	0016	3.53	$175.07	$74.67	$35.01
56515	T	Destruction, vulva lesion(s)	0017	12.45	$617.47	$389.16	$123.49
56605	T	Biopsy of vulva/perineum	0019	4.00	$198.39	$78.91	$39.68
56606	T	Biopsy of vulva/perineum	0019	4.00	$198.39	$78.91	$39.68
56620	T	Partial removal of vulva	0195	18.68	$926.46	$483.80	$185.29
56625	T	Complete removal of vulva	0195	18.68	$926.46	$483.80	$185.29
56630	C	Extensive vulva surgery					
56631	C	Extensive vulva surgery					
56632	C	Extensive vulva surgery					
56633	C	Extensive vulva surgery					
56634	C	Extensive vulva surgery					
56637	C	Extensive vulva surgery					
56640	C	Extensive vulva surgery					
56700	T	Partial removal of hymen	0194	16.21	$803.96	$395.94	$160.79
56720	T	Incision of hymen	0193	8.93	$442.89	$171.13	$88.58

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
56740	T	Remove vagina gland lesion	0194	16.21	$803.96	$395.94	$160.79
56800	T	Repair of vagina	0194	16.21	$803.96	$395.94	$160.79
56805	T	Repair clitoris	0194	16.21	$803.96	$395.94	$160.79
56810	T	Repair of perineum	0194	16.21	$803.96	$395.94	$160.79
57000	T	Exploration of vagina	0194	16.21	$803.96	$395.94	$160.79
57010	T	Drainage of pelvic abscess	0194	16.21	$803.96	$395.94	$160.79
57020	T	Drainage of pelvic fluid	0193	8.93	$442.89	$171.13	$88.58
*57022	T	I & D vaginal hematoma, OB	0007	3.68	$182.51	$72.03	$36.50
*57023	T	I & D vaginal hematoma, trauma	0007	3.68	$182.51	$72.03	$36.50
57061	T	Destruction vagina lesion(s)	0194	16.21	$803.96	$395.94	$160.79
57065	T	Destruction vagina lesion(s)	0194	16.21	$803.96	$395.94	$160.79
57100	T	Biopsy of vagina	0192	2.38	$118.04	$35.33	$23.61
57105	T	Biopsy of vagina	0194	16.21	$803.96	$395.94	$160.79
57106	T	Remove vagina wall, partial	0194	16.21	$803.96	$395.94	$160.79
57107	T	Remove vagina tissue, part	0194	16.21	$803.96	$395.94	$160.79
57109	T	Vaginectomy partial w/nodes	0194	16.21	$803.96	$395.94	$160.79
57110	C	Remove vagina wall, complete					
57111	C	Remove vagina tissue, compl					
57112	C	Vaginectomy w/nodes, compl					
57120	T	Closure of vagina	0194	16.21	$803.96	$395.94	$160.79
57130	T	Remove vagina lesion	0194	16.21	$803.96	$395.94	$160.79
57135	T	Remove vagina lesion	0194	16.21	$803.96	$395.94	$160.79
57150	T	Treat vagina infection	0192	2.38	$118.04	$35.33	$23.61
57160	T	Insert pessary/other device	0191	1.19	$59.02	$17.43	$11.80
57170	T	Fitting of diaphragm/cap	0191	1.19	$59.02	$17.43	$11.80
57180	T	Treat vaginal bleeding	0192	2.38	$118.04	$35.33	$23.61
57200	T	Repair of vagina	0194	16.21	$803.96	$395.94	$160.79
57210	T	Repair vagina/perineum	0194	16.21	$803.96	$395.94	$160.79
57220	T	Revision of urethra	0195	18.68	$926.46	$483.80	$185.29
57230	T	Repair of urethral lesion	0194	16.21	$803.96	$395.94	$160.79
57240	T	Repair bladder & vagina	0195	18.68	$926.46	$483.80	$185.29
57250	T	Repair rectum & vagina	0195	18.68	$926.46	$483.80	$185.29
57260	T	Repair of vagina	0195	18.68	$926.46	$483.80	$185.29
57265	T	Extensive repair of vagina	0195	18.68	$926.46	$483.80	$185.29
57268	T	Repair of bowel bulge	0195	18.68	$926.46	$483.80	$185.29
57270	C	Repair of bowel pouch					
57280	C	Suspension of vagina					
57282	C	Repair of vaginal prolapse					
57284	T	Repair paravaginal defect	0195	18.68	$926.46	$483.80	$185.29
*57287	T	Revise/remove sling repair	0195	18.68	$926.46	$483.80	$185.29
57288	T	Repair bladder defect	0195	18.68	$926.46	$483.80	$185.29
57289	T	Repair bladder & vagina	0195	18.68	$926.46	$483.80	$185.29
57291	T	Construction of vagina	0195	18.68	$926.46	$483.80	$185.29
57292	C	Construct vagina with graft					
57300	T	Repair rectum-vagina fistula	0195	18.68	$926.46	$483.80	$185.29
57305	C	Repair rectum-vagina fistula					
57307	C	Fistula repair & colostomy					
57308	C	Fistula repair, transperine					
57310	T	Repair urethrovaginal lesion	0195	18.68	$926.46	$483.80	$185.29
57311	C	Repair urethrovaginal lesion					
57320	T	Repair bladder-vagina lesion	0195	18.68	$926.46	$483.80	$185.29
57330	T	Repair bladder-vagina lesion	0195	18.68	$926.46	$483.80	$185.29
57335	C	Repair vagina					
57400	T	Dilation of vagina	0194	16.21	$803.96	$395.94	$160.79
57410	T	Pelvic examination	0194	16.21	$803.96	$395.94	$160.79
57415	T	Remove vaginal foreign body	0194	16.21	$803.96	$395.94	$160.79
57452	T	Examination of vagina	0191	1.19	$59.02	$17.43	$11.80
57454	T	Vagina examination & biopsy	0192	2.38	$118.04	$35.33	$23.61
57460	T	Cervix excision	0193	8.93	$442.89	$171.13	$88.58
57500	T	Biopsy of cervix	0193	8.93	$442.89	$171.13	$88.58
57505	T	Endocervical curettage	0192	2.38	$118.04	$35.33	$23.61
57510	T	Cauterization of cervix	0193	8.93	$442.89	$171.13	$88.58
57511	T	Cryocautery of cervix	0192	2.38	$118.04	$35.33	$23.61
57513	T	Laser surgery of cervix	0193	8.93	$442.89	$171.13	$88.58
57520	T	Conization of cervix	0194	16.21	$803.96	$395.94	$160.79
57522	T	Conization of cervix	0195	18.68	$926.46	$483.80	$185.29
57530	T	Removal of cervix	0195	18.68	$926.46	$483.80	$185.29
57531	C	Removal of cervix, radical					
57540	C	Removal of residual cervix					
57545	C	Remove cervix/repair pelvis					
57550	T	Removal of residual cervix	0195	18.68	$926.46	$483.80	$185.29
57555	T	Remove cervix/repair vagina	0195	18.68	$926.46	$483.80	$185.29
57556	T	Remove cervix, repair bowel	0195	18.68	$926.46	$483.80	$185.29
57700	T	Revision of cervix	0194	16.21	$803.96	$395.94	$160.79

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
57720	T	Revision of cervix	0194	16.21	$803.96	$395.94	$160.79
57800	T	Dilation of cervical canal	0193	8.93	$442.89	$171.13	$88.58
57820	T	D & c of residual cervix	0196	14.47	$717.66	$357.96	$143.53
58100	T	Biopsy of uterus lining	0191	1.19	$59.02	$17.43	$11.80
58120	T	Dilation and curettage	0196	14.47	$717.66	$357.96	$143.53
58140	C	Removal of uterus lesion					
58145	T	Removal of uterus lesion	0195	18.68	$926.46	$483.80	$185.29
58150	C	Total hysterectomy					
58152	C	Total hysterectomy					
58180	C	Partial hysterectomy					
58200	C	Extensive hysterectomy					
58210	C	Extensive hysterectomy					
58240	C	Removal of pelvis contents					
58260	C	Vaginal hysterectomy					
58262	C	Vaginal hysterectomy					
58263	C	Vaginal hysterectomy					
58267	C	Hysterectomy & vagina repair					
58270	C	Hysterectomy & vagina repair					
58275	C	Hysterectomy/revise vagina					
58280	C	Hysterectomy/revise vagina					
58285	C	Extensive hysterectomy					
58300	E	Insert intrauterine device					
58301	T	Remove intrauterine device	0191	1.19	$59.02	$17.43	$11.80
58321	T	Artificial insemination	0197	2.40	$119.03	$49.55	$23.81
58322	T	Artificial insemination	0197	2.40	$119.03	$49.55	$23.81
58323	T	Sperm washing	0197	2.40	$119.03	$49.55	$23.81
58340	N	Catheter for hysterography					
58345	T	Reopen fallopian tube	0194	16.21	$803.96	$395.94	$160.79
58350	T	Reopen fallopian tube	0194	16.21	$803.96	$395.94	$160.79
*58353	T	Endometr ablate, thermal	0193	8.93	$442.89	$171.13	$88.58
58400	C	Suspension of uterus					
58410	C	Suspension of uterus					
58520	C	Repair of ruptured uterus					
58540	C	Revision of uterus					
58550	T	Laparo-asst vag hysterectomy	0132	48.91	$2,425.74	$1,239.22	$485.15
58551	T	Laparoscopy, remove myoma	0131	41.81	$2,073.61	$1,089.88	$414.72
58555	T	Hysteroscopy, dx, sep proc	0191	1.19	$59.02	$17.43	$11.80
58558	T	Hysteroscopy, biopsy	0190	17.85	$885.29	$443.89	$177.06
58559	T	Hysteroscopy, lysis	0190	17.85	$885.29	$443.89	$177.06
58560	T	Hysteroscopy, resect septum	0190	17.85	$885.29	$443.89	$177.06
58561	T	Hysteroscopy, remove myoma	0190	17.85	$885.29	$443.89	$177.06
58562	T	Hysteroscopy, remove fb	0190	17.85	$885.29	$443.89	$177.06
58563	T	Hysteroscopy, ablation	0190	17.85	$885.29	$443.89	$177.06
58578	T	Laparo proc, uterus	0190	17.85	$885.29	$443.89	$177.06
58579	T	Hysteroscope procedure	0190	17.85	$885.29	$443.89	$177.06
58600	T	Division of fallopian tube	0194	16.21	$803.96	$395.94	$160.79
58605	C	Division of fallopian tube					
58611	C	Ligate oviduct(s) add-on					
58615	T	Occlude fallopian tube(s)	0194	16.21	$803.96	$395.94	$160.79
58660	T	Laparoscopy, lysis	0131	41.81	$2,073.61	$1,089.88	$414.72
58661	T	Laparoscopy, remove adnexa	0131	41.81	$2,073.61	$1,089.88	$414.72
58662	T	Laparoscopy, excise lesions	0131	41.81	$2,073.61	$1,089.88	$414.72
58670	T	Laparoscopy, tubal cautery	0131	41.81	$2,073.61	$1,089.88	$414.72
58671	T	Laparoscopy, tubal block	0131	41.81	$2,073.61	$1,089.88	$414.72
58672	T	Laparoscopy, fimbrioplasty	0131	41.81	$2,073.61	$1,089.88	$414.72
58673	T	Laparoscopy, salpingostomy	0131	41.81	$2,073.61	$1,089.88	$414.72
58679	T	Laparo proc, oviduct-ovary	0130	25.36	$1,257.75	$659.53	$251.55
58700	C	Removal of fallopian tube					
58720	C	Removal of ovary/tube(s)					
58740	C	Revise fallopian tube(s)					
58750	C	Repair oviduct					
58752	C	Revise ovarian tube(s)					
58760	C	Remove tubal obstruction					
58770	C	Create new tubal opening					
58800	T	Drainage of ovarian cyst(s)	0195	18.68	$926.46	$483.80	$185.29
58805	C	Drainage of ovarian cyst(s)					
58820	T	Drain ovary abscess, open	0195	18.68	$926.46	$483.80	$185.29
58822	C	Drain ovary abscess, percut					
58823	C	Drain pelvic abscess, percut					
58825	C	Transposition, ovary(s)					
58900	T	Biopsy of ovary(s)	0195	18.68	$926.46	$483.80	$185.29
58920	T	Partial removal of ovary(s)	0195	18.68	$926.46	$483.80	$185.29
58925	T	Removal of ovarian cyst(s)	0195	18.68	$926.46	$483.80	$185.29
58940	C	Removal of ovary(s)					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
58943	C	Removal of ovary(s)					
58950	C	Resect ovarian malignancy					
58951	C	Resect ovarian malignancy					
58952	C	Resect ovarian malignancy					
58960	C	Exploration of abdomen					
58970	T	Retrieval of oocyte	0194	16.21	$803.96	$395.94	$160.79
58974	T	Transfer of embryo	0197	2.40	$119.03	$49.55	$23.81
58976	T	Transfer of embryo	0197	2.40	$119.03	$49.55	$23.81
58999	T	Genital surgery procedure	0019	4.00	$198.39	$78.91	$39.68
59000	T	Amniocentesis	0198	1.34	$66.46	$33.03	$13.29
59012	T	Fetal cord puncture,prenatal	0198	1.34	$66.46	$33.03	$13.29
59015	T	Chorion biopsy	0198	1.34	$66.46	$33.03	$13.29
59020	T	Fetal contract stress test	0198	1.34	$66.46	$33.03	$13.29
59025	T	Fetal non-stress test	0198	1.34	$66.46	$33.03	$13.29
59030	T	Fetal scalp blood sample	0198	1.34	$66.46	$33.03	$13.29
59050	T	Fetal monitor w/report	0198	1.34	$66.46	$33.03	$13.29
59051	E	Fetal monitor/interpret only					
59100	C	Remove uterus lesion					
59120	C	Treat ectopic pregnancy					
59121	C	Treat ectopic pregnancy					
59130	C	Treat ectopic pregnancy					
59135	C	Treat ectopic pregnancy					
59136	C	Treat ectopic pregnancy					
59140	C	Treat ectopic pregnancy					
59150	T	Treat ectopic pregnancy	0131	41.81	$2,073.61	$1,089.88	$414.72
59151	T	Treat ectopic pregnancy	0131	41.81	$2,073.61	$1,089.88	$414.72
59160	T	D & c after delivery	0196	14.47	$717.66	$357.98	$143.53
59200	T	Insert cervical dilator	0191	1.19	$59.02	$17.43	$11.80
59300	T	Episiotomy or vaginal repair	0194	16.21	$803.96	$395.94	$160.79
59320	T	Revision of cervix	0194	16.21	$803.96	$395.94	$160.79
59325	C	Revision of cervix					
59350	C	Repair of uterus					
59400	E	Obstetrical care					
59409	T	Obstetrical care	0199	11.20	$555.48	$157.83	$111.10
59410	E	Obstetrical care					
59412	T	Antepartum manipulation	0199	11.20	$555.48	$157.83	$111.10
59414	T	Deliver placenta	0199	11.20	$555.48	$157.83	$111.10
59425	E	Antepartum care only					
59426	E	Antepartum care only					
59430	E	Care after delivery					
59510	E	Cesarean delivery					
59514	C	Cesarean delivery only					
59515	E	Cesarean delivery					
59525	C	Remove uterus after cesarean					
59610	E	Vbac delivery					
59612	T	Vbac delivery only	0199	11.20	$555.48	$157.83	$111.10
59614	E	Vbac care after delivery					
59618	E	Attempted vbac delivery					
59620	C	Attempted vbac delivery only					
59622	E	Attempted vbac after care					
59812	T	Treatment of miscarriage	0201	13.00	$644.75	$329.65	$128.95
59820	T	Care of miscarriage	0201	13.00	$644.75	$329.65	$128.95
59821	T	Treatment of miscarriage	0201	13.00	$644.75	$329.65	$128.95
59830	C	Treat uterus infection					
59840	T	Abortion	0200	13.89	$688.89	$373.23	$137.78
59841	T	Abortion	0200	13.89	$688.89	$373.23	$137.78
59850	C	Abortion					
59851	C	Abortion					
59852	C	Abortion					
59855	C	Abortion					
59856	C	Abortion					
59857	C	Abortion					
59866	T	Abortion (mpr)	0198	1.34	$66.46	$33.03	$13.29
59870	T	Evacuate mole of uterus	0201	13.00	$644.75	$329.65	$128.95
59871	T	Remove cerclage suture	0194	16.21	$803.96	$395.94	$160.79
59898	T	Laparo proc, ob care/deliver	0130	25.36	$1,257.75	$659.53	$251.55
59899	T	Maternity care procedure	0198	1.34	$66.46	$33.03	$13.29
60000	T	Drain thyroid/tongue cyst	0253	12.02	$596.14	$284.00	$119.23
60001	T	Aspirate/inject thyriod cyst	0002	0.62	$30.75	$17.66	$6.15
60100	T	Biopsy of thyroid	0004	1.84	$91.26	$32.57	$18.25
60200	T	Remove thyroid lesion	0114	19.56	$970.10	$493.78	$194.02
60210	T	Partial thyroid excision	0114	19.56	$970.10	$493.78	$194.02
60212	T	Parital thyroid excision	0114	19.56	$970.10	$493.78	$194.02
60220	T	Partial removal of thyroid	0114	19.56	$970.10	$493.78	$194.02

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
60225	T	Partial removal of thyroid	0114	19.56	$970.10	$493.78	$194.02
60240	T	Removal of thyroid	0114	19.56	$970.10	$493.78	$194.02
60252	T	Removal of thyroid	0256	25.40	$1,259.74	$623.05	$251.95
60254	C	Extensive thyroid surgery					
60260	T	Repeat thyroid surgery	0256	25.40	$1,259.74	$623.05	$251.95
60270	C	Removal of thyroid					
60271	C	Removal of thyroid					
60280	T	Remove thyroid duct lesion	0114	19.56	$970.10	$493.78	$194.02
60281	T	Remove thyroid duct lesion	0114	19.56	$970.10	$493.78	$194.02
60500	T	Explore parathyroid glands	0256	25.40	$1,259.74	$623.05	$251.95
60502	C	Re-explore parathyroids					
60505	C	Explore parathyroid glands					
60512	T	Autotransplant parathyroid	0020	6.51	$322.87	$130.53	$64.57
60520	C	Removal of thymus gland					
60521	C	Removal of thymus gland					
60522	C	Removal of thymus gland					
60540	C	Explore adrenal gland					
60545	C	Explore adrenal gland					
60600	C	Remove carotid body lesion					
60605	C	Remove carotid body lesion					
60650	C	Laparoscopy adrenalectomy					
60659	T	Laparo proc, endocrine	0130	25.36	$1,257.75	$659.53	$251.55
60699	T	Endocrine surgery procedure	0004	1.84	$91.26	$32.57	$18.25
61000	T	Remove cranial cavity fluid	0212	3.64	$180.53	$88.78	$36.11
61001	T	Remove cranial cavity fluid	0212	3.64	$180.53	$88.78	$36.11
61020	T	Remove brain cavity fluid	0212	3.64	$180.53	$88.78	$36.11
61026	T	Injection into brain canal	0212	3.64	$180.53	$88.78	$36.11
61050	T	Remove brain canal fluid	0212	3.64	$180.53	$88.78	$36.11
61055	T	Injection into brain canal	0212	3.64	$180.53	$88.78	$36.11
61070	T	Brain canal shunt procedure	0212	3.64	$180.53	$88.78	$36.11
61105	C	Twist drill hole					
61107	C	Drill skull for implantation					
61108	C	Drill skull for drainage					
61120	C	Burr hole for puncture					
61140	C	Pierce skull for biopsy					
61150	C	Pierce skull for drainage					
61151	C	Pierce skull for drainage					
61154	C	Pierce skull & remove clot					
61156	C	Pierce skull for drainage					
61210	C	Pierce skull, implant device					
61215	T	Insert brain-fluid device	0224	17.89	$887.27	$453.41	$177.45
61250	C	Pierce skull & explore					
61253	C	Pierce skull & explore					
61304	C	Open skull for exploration					
61305	C	Open skull for exploration					
61312	C	Open skull for drainage					
61313	C	Open skull for drainage					
61314	C	Open skull for drainage					
61315	C	Open skull for drainage					
61320	C	Open skull for drainage					
61321	C	Open skull for drainage					
61330	T	Decompress eye socket	0256	25.40	$1,259.74	$623.05	$251.95
61332	C	Explore/biopsy eye socket					
61333	C	Explore orbit/remove lesion					
61334	C	Explore orbit/remove object					
61340	C	Relieve cranial pressure					
61343	C	Incise skull (press relief)					
61345	C	Relieve cranial pressure					
61440	C	Incise skull for surgery					
61450	C	Incise skull for surgery					
61458	C	Incise skull for brain wound					
61460	C	Incise skull for surgery					
61470	C	Incise skull for surgery					
61480	C	Incise skull for surgery					
61490	C	Incise skull for surgery					
61500	C	Removal of skull lesion					
61501	C	Remove infected skull bone					
61510	C	Removal of brain lesion					
61512	C	Remove brain lining lesion					
61514	C	Removal of brain abscess					
61516	C	Removal of brain lesion					
61518	C	Removal of brain lesion					
61519	C	Remove brain lining lesion					
61520	C	Removal of brain lesion					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
61521	C	Removal of brain lesion					
61522	C	Removal of brain abscess					
61524	C	Removal of brain lesion					
61526	C	Removal of brain lesion					
61530	C	Removal of brain lesion					
61531	C	Implant brain electrodes					
61533	C	Implant brain electrodes					
61534	C	Removal of brain lesion					
61535	C	Remove brain electrodes					
61536	C	Removal of brain lesion					
61538	C	Removal of brain tissue					
61539	C	Removal of brain tissue					
61541	C	Incision of brain tissue					
61542	C	Removal of brain tissue					
61543	C	Removal of brain tissue					
61544	C	Remove & treat brain lesion					
61545	C	Excision of brain tumor					
61546	C	Removal of pituitary gland					
61548	C	Removal of pituitary gland					
61550	C	Release of skull seams					
61552	C	Release of skull seams					
61556	C	Incise skull/sutures					
61557	C	Incise skull/sutures					
61558	C	Excision of skull/sutures					
61559	C	Excision of skull/sutures					
61563	C	Excision of skull tumor					
61564	C	Excision of skull tumor					
61570	C	Remove foreign body, brain					
61571	C	Incise skull for brain wound					
61575	C	Skull base/brainstem surgery					
61576	C	Skull base/brainstem surgery					
61580	C	Craniofacial approach, skull					
61581	C	Craniofacial approach, skull					
61582	C	Craniofacial approach, skull					
61583	C	Craniofacial approach, skull					
61584	C	Orbitocranial approach/skull					
61585	C	Orbitocranial approach/skull					
61586	C	Resect nasopharynx, skull					
61590	C	Infratemporal approach/skull					
61591	C	Infratemporal approach/skull					
61592	C	Orbitocranial approach/skull					
61595	C	Transtemporal approach/skull					
61596	C	Transcochlear approach/skull					
61597	C	Transcondylar approach/skull					
61598	C	Transpetrosal approach/skull					
61600	C	Resect/excise cranial lesion					
61601	C	Resect/excise cranial lesion					
61605	C	Resect/excise cranial lesion					
61606	C	Resect/excise cranial lesion					
61607	C	Resect/excise cranial lesion					
61608	C	Resect/excise cranial lesion					
61609	C	Transect artery, sinus					
61610	C	Transect artery, sinus					
61611	C	Transect artery, sinus					
61612	C	Transect artery, sinus					
61613	C	Remove aneurysm, sinus					
61615	C	Resect/excise lesion, skull					
61616	C	Resect/excise lesion, skull					
61618	C	Repair dura					
61619	C	Repair dura					
61624	C	Occlusion/embolization cath					
61626	C	Occlusion/embolization cath					
61680	C	Intracranial vessel surgery					
61682	C	Intracranial vessel surgery					
61684	C	Intracranial vessel surgery					
61686	C	Intracranial vessel surgery					
61690	C	Intracranial vessel surgery					
61692	C	Intracranial vessel surgery					
*61697	C	Brain aneurysm repair, complex					
*61698	C	Brain aneurysm repair, complex					
61700	C	Inner skull vessel surgery					
61702	C	Inner skull vessel surgery					
61703	C	Clamp neck artery					
61705	C	Revise circulation to head					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
61708	C	Revise circulation to head					
61710	C	Revise circulation to head					
61711	C	Fusion of skull arteries					
61720	C	Incise skull/brain surgery					
61735	C	Incise skull/brain surgery					
61750	C	Incise skull/brain biopsy					
61751	C	Brain biopsy w/ ct/mr guide					
61760	C	Implant brain electrodes					
61770	C	Incise skull for treatment					
61790	T	Treat trigeminal nerve	0220	13.96	$692.36	$326.21	$138.47
61791	C	Treat trigeminal tract					
61793	E	Focus radiation beam					
61795	S	Brain surgery using computer	0302	5.21	$407.15	$216.55	$81.44
61850	C	Implant neuroelectrodes					
61860	C	Implant neuroelectrodes					
61862	C	Implant neurostimul, subcort					
61870	C	Implant neuroelectrodes					
61875	C	Implant neuroelectrodes					
61880	T	Revise/remove neuroelectrode	0105	15.06	$746.92	$372.32	$149.38
61885	T	Implant neurostim one array	0222	124.43	$5,171.23	$2,955.13	$1,234.25
61886	T	Implant neurostim arrays	0222	124.43	$5,171.23	$2,955.13	$1,234.25
61888	T	Revise/remove neuroreceiver	0105	15.06	$746.92	$372.32	$149.38
62000	C	Treat skull fracture					
62005	C	Treat skull fracture					
62010	C	Treatment of head injury					
62100	C	Repair brain fluid leakage					
62115	C	Reduction of skull defect					
62116	C	Reduction of skull defect					
62117	C	Reduction of skull defect					
62120	C	Repair skull cavity lesion					
62121	C	Incise skull repair					
62140	C	Repair of skull defect					
62141	C	Repair of skull defect					
62142	C	Remove skull plate/flap					
62143	C	Replace skull plate/flap					
62145	C	Repair of skull & brain					
62146	C	Repair of skull with graft					
62147	C	Repair of skull with graft					
62180	C	Establish brain cavity shunt					
62190	C	Establish brain cavity shunt					
62192	C	Establish brain cavity shunt					
62194	T	Replace/irrigate catheter	0121	2.36	$117.05	$52.53	$23.41
62200	C	Establish brain cavity shunt					
62201	C	Establish brain cavity shunt					
62220	C	Establish brain cavity shunt					
62223	C	Establish brain cavity shunt					
62225	T	Replace/irrigate catheter	0121	2.36	$117.05	$52.53	$23.41
62230	T	Replace/revise brain shunt	0224	17.89	$887.27	$453.41	$177.45
*62252	S	CSF shunt reprogram	0102	0.45	$22.32	$12.62	$4.46
62256	C	Remove brain cavity shunt					
62258	C	Replace brain cavity shunt					
62263	T	Lysis epidural adhesions	0212	3.64	$180.53	$86.78	$36.11
62268	T	Drain spinal cord cyst	0212	3.64	$180.53	$86.78	$36.11
62269	T	Needle biopsy, spinal cord	0005	5.41	$268.32	$119.75	$53.66
62270	T	Spinal fluid tap, diagnostic	0210	3.00	$148.79	$62.40	$29.76
62272	T	Drain spinal fluid	0210	3.00	$148.79	$62.40	$29.76
62273	T	Treat epidural spine lesion	0212	3.64	$180.53	$86.78	$36.11
62280	T	Treat spinal cord lesion	0212	3.64	$180.53	$86.78	$36.11
62281	T	Treat spinal cord lesion	0212	3.64	$180.53	$86.78	$36.11
62282	T	Treat spinal canal lesion	0212	3.64	$180.53	$86.78	$36.11
62284	N	Injection for myelogram					
62287	T	Percutaneous diskectomy	0220	13.96	$692.36	$326.21	$138.47
62290	N	Inject for spine disk x-ray					
62291	N	Inject for spine disk x-ray					
62292	T	Injection into disk lesion	0212	3.64	$180.53	$86.78	$36.11
62294	T	Injection into spinal artery	0212	3.64	$180.53	$86.78	$36.11
62310	T	Inject spine c/t	0212	3.64	$180.53	$86.78	$36.11
62311	T	Inject spine l/s (cd)	0212	3.64	$180.53	$86.78	$36.11
62318	T	Inject spine w/cath, c/t	0212	3.64	$180.53	$86.78	$36.11
62319	T	Inject spine w/cath l/s (cd)	0212	3.64	$180.53	$86.78	$36.11
62350	T	Implant spinal canal cath	0223	7.05	$349.65	$154.27	$69.93
62351	C	Implant spinal canal cath					
62355	T	Remove spinal canal catheter	0105	15.06	$746.92	$372.32	$149.38
62360	T	Insert spine infusion device	0226	5.62	$276.73	$109.42	$55.75

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
62361	T	Implant spine infusion pump	0227	11.17	$553.99	$330.11	$110.80
62362	T	Implant spine infusion pump	0227	11.17	$553.99	$330.11	$110.80
62365	T	Remove spine infusion device	0105	15.06	$746.92	$372.32	$149.38
62367	S	Analyze spine infusion pump	0102	0.45	$22.32	$12.62	$4.46
62368	S	Analyze spine infusion pump	0102	0.45	$22.32	$12.62	$4.46
63001	C	Removal of spinal lamina					
63003	C	Removal of spinal lamina					
63005	C	Removal of spinal lamina					
63011	C	Removal of spinal lamina					
63012	C	Removal of spinal lamina					
63015	C	Removal of spinal lamina					
63016	C	Removal of spinal lamina					
63017	C	Removal of spinal lamina					
63020	C	Neck spine disk surgery					
63030	C	Low back disk surgery					
63035	C	Spinal disk surgery add-on					
63040	C	Neck spine disk surgery					
63042	C	Low back disk surgery					
*63043	C	Laminotomy, addl cervical					
*63044	C	Laminotomy, addl lumbar					
63045	C	Removal of spinal lamina					
63046	C	Removal of spinal lamina					
63047	C	Removal of spinal lamina					
63048	C	Remove spinal lamina add-on					
63055	C	Decompress spinal cord					
63056	C	Decompress spinal cord					
63057	C	Decompress spine cord add-on					
63064	C	Decompress spinal cord					
63066	C	Decompress spine cord add-on					
63075	C	Neck spine disk surgery					
63076	C	Neck spine disk surgery					
63077	C	Spine disk surgery, thorax					
63078	C	Spine disk surgery, thorax					
63081	C	Removal of vertebral body					
63082	C	Remove vertebral body add-on					
63085	C	Removal of vertebral body					
63086	C	Remove vertebral body add-on					
63087	C	Removal of vertebral body					
63088	C	Remove vertebral body add-on					
63090	C	Removal of vertebral body					
63091	C	Remove vertebral body add-on					
63170	C	Incise spinal cord tract(s)					
63172	C	Drainage of spinal cyst					
63173	C	Drainage of spinal cyst					
63180	C	Revise spinal cord ligaments					
63182	C	Revise spinal cord ligaments					
63185	C	Incise spinal column/nerves					
63190	C	Incise spinal column/nerves					
63191	C	Incise spinal column/nerves					
63194	C	Incise spinal column & cord					
63195	C	Incise spinal column & cord					
63196	C	Incise spinal column & cord					
63197	C	Incise spinal column & cord					
63198	C	Incise spinal column & cord					
63199	C	Incise spinal column & cord					
63200	C	Release of spinal cord					
63250	C	Revise spinal cord vessels					
63251	C	Revise spinal cord vessels					
63252	C	Revise spinal cord vessels					
63265	C	Excise intraspinal lesion					
63266	C	Excise intraspinal lesion					
63267	C	Excise intraspinal lesion					
63268	C	Excise intraspinal lesion					
63270	C	Excise intraspinal lesion					
63271	C	Excise intraspinal lesion					
63272	C	Excise intraspinal lesion					
63273	C	Excise intraspinal lesion					
63275	C	Biopsy/excise spinal tumor					
63276	C	Biopsy/excise spinal tumor					
63277	C	Biopsy/excise spinal tumor					
63278	C	Biopsy/excise spinal tumor					
63280	C	Biopsy/excise spinal tumor					
63281	C	Biopsy/excise spinal tumor					
63282	C	Biopsy/excise spinal tumor					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
63283	C	Biopsy/excise spinal tumor					
63285	C	Biopsy/excise spinal tumor					
63286	C	Biopsy/excise spinal tumor					
63287	C	Biopsy/excise spinal tumor					
63290	C	Biopsy/excise spinal tumor					
63300	C	Removal of vertebral body					
63301	C	Removal of vertebral body					
63302	C	Removal of vertebral body					
63303	C	Removal of vertebral body					
63304	C	Removal of vertebral body					
63305	C	Removal of vertebral body					
63306	C	Removal of vertebral body					
63307	C	Removal of vertebral body					
63308	C	Remove vertebral body add-on					
63600	T	Remove spinal cord lesion	0220	13.96	$692.36	$326.21	$138.47
63610	T	Stimulation of spinal cord	0220	13.96	$692.36	$326.21	$138.47
63615	T	Remove lesion of spinal cord	0220	13.96	$692.36	$326.21	$138.47
63650	T	Implant neuroelectrodes	0225	17.72	$878.84	$408.33	$175.77
63655	C	Implant neuroelectrodes					
63660	T	Revise/remove neuroelectrode	0105	15.06	$746.92	$372.32	$149.38
63685	T	Implant neuroreceiver	0222	124.43	$6,171.23	$2,955.13	$1,234.25
63688	T	Revise/remove neuroreceiver	0105	15.06	$746.92	$372.32	$149.38
63700	C	Repair of spinal herniation					
63702	C	Repair of spinal herniation					
63704	C	Repair of spinal herniation					
63706	C	Repair of spinal herniation					
63707	C	Repair spinal fluid leakage					
63709	C	Repair spinal fluid leakage					
63710	C	Graft repair of spine defect					
63740	C	Install spinal shunt					
63741	T	Install spinal shunt	0228	25.06	$1,242.88	$696.46	$248.58
63744	T	Revision of spinal shunt	0228	25.06	$1,242.88	$696.46	$248.58
63746	T	Removal of spinal shunt	0109	6.53	$323.88	$133.51	$64.77
64400	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64402	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64405	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64408	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64410	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64412	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64413	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64415	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64417	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64418	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64420	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64421	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64425	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64430	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64435	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64445	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64450	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64470	T	Inj paravertebral c/t	0211	3.32	$164.66	$74.76	$32.93
64472	T	Inj paravertebral c/t add-on	0211	3.32	$164.66	$74.76	$32.93
64475	T	Inj paravertebral l/s	0211	3.32	$164.66	$74.76	$32.93
64476	T	Inj paravertebral l/s add-on	0211	3.32	$164.66	$74.76	$32.93
64479	T	Inj foramen epidural c/t	0211	3.32	$164.66	$74.76	$32.93
64480	T	Inj foramen epidural add-on	0211	3.32	$164.66	$74.76	$32.93
64483	T	Inj foramen epidural l/s	0211	3.32	$164.66	$74.76	$32.93
64484	T	Inj foramen epidural add-on	0211	3.32	$164.66	$74.76	$32.93
64505	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64508	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64510	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64520	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64530	T	Injection for nerve block	0211	3.32	$164.66	$74.76	$32.93
64550	A	Apply neurostimulator					
64553	T	Implant neuroelectrodes	0225	17.72	$878.84	$408.33	$175.77
64555	T	Implant neuroelectrodes	0225	17.72	$878.84	$408.33	$175.77
64560	T	Implant neuroelectrodes	0225	17.72	$878.84	$408.33	$175.77
64565	T	Implant neuroelectrodes	0225	17.72	$878.84	$408.33	$175.77
64573	T	Implant neuroelectrodes	0225	17.72	$878.84	$408.33	$175.77
64575	T	Implant neuroelectrodes	0225	17.72	$878.84	$408.33	$175.77
64577	T	Implant neuroelectrodes	0225	17.72	$878.84	$408.33	$175.77
64580	T	Implant neuroelectrodes	0225	17.72	$878.84	$408.33	$175.77
64585	T	Revise/remove neuroelectrode	0105	15.06	$746.92	$372.32	$149.38
64590	T	Implant neuroreceiver	0222	124.43	$6,171.23	$2,955.13	$1,234.25

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
64595	T	Revise/remove neuroreceiver	0105	15.06	$746.92	$372.32	$149.38
64600	T	Injection treatment of nerve	0211	3.32	$164.66	$74.78	$32.93
64605	T	Injection treatment of nerve	0211	3.32	$164.66	$74.78	$32.93
64610	T	Injection treatment of nerve	0211	3.32	$164.66	$74.78	$32.93
64612	T	Destroy nerve, face muscle	0211	3.32	$164.66	$74.78	$32.93
64613	T	Destroy nerve, spine muscle	0211	3.32	$164.66	$74.78	$32.93
*64614	S	Desrtoy nerve, extrem musc	0971	1.55	$76.88	....	$15.38
64620	T	Injection treatment of nerve	0211	3.32	$164.66	$74.78	$32.93
64622	T	Destr paravertebrl nerve l/s	0211	3.32	$164.66	$74.78	$32.93
64623	T	Destr paravertebral n add-on	0211	3.32	$164.66	$74.78	$32.93
64626	T	Destr paravertebrl nerve c/t	0211	3.32	$164.66	$74.78	$32.93
64627	T	Destr paravertebral n add-on	0211	3.32	$164.66	$74.78	$32.93
64630	T	Injection treatment of nerve	0211	3.32	$164.66	$74.78	$32.93
64640	T	Injection treatment of nerve	0211	3.32	$164.66	$74.78	$32.93
64680	T	Injection treatment of nerve	0211	3.32	$164.66	$74.78	$32.93
64702	T	Revise finger/toe nerve	0220	13.96	$692.36	$326.21	$138.47
64704	T	Revise hand/foot nerve	0220	13.96	$692.36	$326.21	$138.47
64708	T	Revise arm/leg nerve	0220	13.96	$692.36	$326.21	$138.47
64712	T	Revision of sciatic nerve	0220	13.96	$692.36	$326.21	$138.47
64713	T	Revision of arm nerve(s)	0220	13.96	$692.36	$326.21	$138.47
64714	T	Revise low back nerve(s)	0220	13.96	$692.36	$326.21	$138.47
64716	T	Revision of cranial nerve	0220	13.96	$692.36	$326.21	$138.47
64718	T	Revise ulnar nerve at elbow	0220	13.96	$692.36	$326.21	$138.47
64719	T	Revise ulnar nerve at wrist	0220	13.96	$692.36	$326.21	$138.47
64721	T	Carpal tunnel surgery	0220	13.96	$692.36	$326.21	$138.47
64722	T	Relieve pressure on nerve(s)	0220	13.96	$692.36	$326.21	$138.47
64726		Release foot/toe nerve	0220	13.96	$692.36	$326.21	$138.47
64727	T	Internal nerve revision	0220	13.96	$692.36	$326.21	$138.47
64732	T	Incision of brow nerve	0220	13.96	$692.36	$326.21	$138.47
64734	T	Incision of cheek nerve	0220	13.96	$692.36	$326.21	$138.47
64736	T	Incision of chin nerve	0220	13.96	$692.36	$326.21	$138.47
64738	T	Incision of jaw nerve	0220	13.96	$692.36	$326.21	$138.47
64740	T	Incision of tongue nerve	0220	13.96	$692.36	$326.21	$138.47
64742	T	Incision of facial nerve	0220	13.96	$692.36	$326.21	$138.47
64744	T	Incise nerve, back of head	0220	13.96	$692.36	$326.21	$138.47
64746	T	Incise diaphragm nerve	0220	13.96	$692.36	$326.21	$138.47
64752	C	Incision of vagus nerve	....	....	....	....	....
64755	C	Incision of stomach nerves	....	....	....	....	....
64760	C	Incision of vagus nerve	....	....	....	....	....
64761	T	Incision of pelvis nerve	0220	13.96	$692.36	$326.21	$138.47
64763	C	Incise hip/thigh nerve	....	....	....	....	....
64766	C	Incise hip/thigh nerve	....	....	....	....	....
64771	T	Sever cranial nerve	0220	13.96	$692.36	$326.21	$138.47
64772	T	Incision of spinal nerve	0220	13.96	$692.36	$326.21	$138.47
64774	T	Remove skin nerve lesion	0220	13.96	$692.36	$326.21	$138.47
64776	T	Remove digit nerve lesion	0220	13.96	$692.36	$326.21	$138.47
64778	T	Digit nerve surgery add-on	0220	13.96	$692.36	$326.21	$138.47
64782	T	Remove limb nerve lesion	0220	13.96	$692.36	$326.21	$138.47
64783	T	Limb nerve surgery add-on	0220	13.96	$692.36	$326.21	$138.47
64784	T	Remove nerve lesion	0220	13.96	$692.36	$326.21	$138.47
64786	T	Remove sciatic nerve lesion	0221	18.36	$910.58	$463.62	$182.12
64787	T	Implant nerve end	0220	13.96	$692.36	$326.21	$138.47
64788	T	Remove skin nerve lesion	0220	13.96	$692.36	$326.21	$138.47
64790	T	Removal of nerve lesion	0220	13.96	$692.36	$326.21	$138.47
64792	T	Removal of nerve lesion	0221	18.36	$910.58	$463.62	$182.12
64795	T	Biopsy of nerve	0220	13.96	$692.36	$326.21	$138.47
64802	C	Remove sympathetic nerves	....	....	....	....	....
64804	C	Remove sympathetic nerves	....	....	....	....	....
64809	C	Remove sympathetic nerves	....	....	....	....	....
64818	C	Remove sympathetic nerves	....	....	....	....	....
64820	C	Remove sympathetic nerves	....	....	....	....	....
64831	T	Repair of digit nerve	0221	18.36	$910.58	$463.62	$182.12
64832	T	Repair nerve add-on	0221	18.36	$910.58	$463.62	$182.12
64834	T	Repair of hand or foot nerve	0221	18.36	$910.58	$463.62	$182.12
64835	T	Repair of hand or foot nerve	0221	18.36	$910.58	$463.62	$182.12
64836	T	Repair of hand or foot nerve	0221	18.36	$910.58	$463.62	$182.12
64837	T	Repair nerve add-on	0221	18.36	$910.58	$463.62	$182.12
64840	T	Repair of leg nerve	0221	18.36	$910.58	$463.62	$182.12
64856	T	Repair/transpose nerve	0221	18.36	$910.58	$463.62	$182.12
64857	T	Repair arm/leg nerve	0221	18.36	$910.58	$463.62	$182.12
64858	T	Repair sciatic nerve	0221	18.36	$910.58	$463.62	$182.12
64859	T	Nerve surgery	0221	18.36	$910.58	$463.62	$182.12
64861	T	Repair of arm nerves	0221	18.36	$910.58	$463.62	$182.12
64862	T	Repair of low back nerves	0221	18.36	$910.58	$463.62	$182.12

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
64864	T	Repair of facial nerve	0221	18.36	$910.58	$463.62	$182.12
64865	T	Repair of facial nerve	0221	18.36	$910.58	$463.62	$182.12
64866	C	Fusion of facial/other nerve	....	....	....	....	....
64868	C	Fusion of facial/other nerve	....	....	....	....	....
64870	T	Fusion of facial/other nerve	0221	18.36	$910.58	$463.62	$182.12
64872	T	Subsequent repair of nerve	0221	18.36	$910.58	$463.62	$182.12
64874	T	Repair & revise nerve add-on	0221	18.36	$910.58	$463.62	$182.12
64876	T	Repair nerve/shorten bone	0221	18.36	$910.58	$463.62	$182.12
64885	T	Nerve graft, head or neck	0221	18.36	$910.58	$463.62	$182.12
64886	T	Nerve graft, head or neck	0221	18.36	$910.58	$463.62	$182.12
64890	T	Nerve graft, hand or foot	0221	18.36	$910.58	$463.62	$182.12
64891	T	Nerve graft, hand or foot	0221	18.36	$910.58	$463.62	$182.12
64892	T	Nerve graft, arm or leg	0221	18.36	$910.58	$463.62	$182.12
64893	T	Nerve graft, arm or leg	0221	18.36	$910.58	$463.62	$182.12
64895	T	Nerve graft, hand or foot	0221	18.36	$910.58	$463.62	$182.12
64896	T	Nerve graft, hand or foot	0221	18.36	$910.58	$463.62	$182.12
64897	T	Nerve graft, arm or leg	0221	18.36	$910.58	$463.62	$182.12
64898	T	Nerve graft, arm or leg	0221	18.36	$910.58	$463.62	$182.12
64901	T	Nerve graft add-on	0221	18.36	$910.58	$463.62	$182.12
64902	T	Nerve graft add-on	0221	18.36	$910.58	$463.62	$182.12
64905	T	Nerve pedicle transfer	0221	18.36	$910.58	$463.62	$182.12
64907	T	Nerve pedicle transfer	0221	18.36	$910.58	$463.62	$182.12
64999	T	Nervous system surgery	0211	3.32	$164.66	$74.78	$32.93
65091	T	Revise eye	0242	23.70	$1,175.42	$597.36	$235.06
65093	T	Revise eye with implant	0241	16.60	$823.30	$384.47	$164.66
65101	T	Removal of eye	0242	23.70	$1,175.42	$597.36	$235.06
65103	T	Remove eye/insert implant	0242	23.70	$1,175.42	$597.36	$235.06
65105	T	Remove eye/attach implant	0242	23.70	$1,175.42	$597.36	$235.06
65110	T	Removal of eye	0242	23.70	$1,175.42	$597.36	$235.06
65112	T	Remove eye/revise socket	0242	23.70	$1,175.42	$597.36	$235.06
65114	T	Remove eye/revise socket	0242	23.70	$1,175.42	$597.36	$235.06
65125	T	Revise ocular implant	0240	13.47	$668.06	$315.31	$133.61
65130	T	Insert ocular implant	0241	16.60	$823.30	$384.47	$164.66
65135	T	Insert ocular implant	0241	16.60	$823.30	$384.47	$164.66
65140	T	Attach ocular implant	0242	23.70	$1,175.42	$597.36	$235.06
65150	T	Revise ocular implant	0241	16.60	$823.30	$384.47	$164.66
65155	T	Reinsert ocular implant	0242	23.70	$1,175.42	$597.36	$235.06
65175	T	Removal of ocular implant	0240	13.47	$668.06	$315.31	$133.61
65205	S	Remove foreign body from eye	0231	2.64	$130.94	$59.87	$26.19
65210	S	Remove foreign body from eye	0231	2.64	$130.94	$59.87	$26.19
65220	S	Remove foreign body from eye	0231	2.64	$130.94	$59.87	$26.19
65222	S	Remove foreign body from eye	0231	2.64	$130.94	$59.87	$26.19
65235	T	Remove foreign body from eye	0232	6.04	$299.56	$134.66	$59.91
65260	T	Remove foreign body from eye	0237	33.96	$1,684.28	$852.68	$336.86
65265	T	Remove foreign body from eye	0237	33.96	$1,684.28	$852.68	$336.86
65270	T	Repair of eye wound	0240	13.47	$668.06	$315.31	$133.61
65272	T	Repair of eye wound	0232	6.04	$299.56	$134.66	$59.91
65273	C	Repair of eye wound	....	....	....	....	....
65275	T	Repair of eye wound	0233	13.79	$683.93	$331.60	$136.79
65280	T	Repair of eye wound	0233	13.79	$683.93	$331.60	$136.79
65285	T	Repair of eye wound	0234	20.64	$1,023.66	$502.16	$204.73
65286	T	Repair of eye wound	0232	6.04	$299.56	$134.66	$59.91
65290	T	Repair of eye socket wound	0243	17.99	$892.23	$431.39	$178.45
65400	T	Removal of eye lesion	0232	6.04	$299.56	$134.66	$59.91
65410	T	Biopsy of cornea	0233	13.79	$683.93	$331.60	$136.79
65420	T	Removal of eye lesion	0233	13.79	$683.93	$331.60	$136.79
65426	T	Removal of eye lesion	0233	13.79	$683.93	$331.60	$136.79
65430	S	Corneal smear	0231	2.64	$130.94	$59.87	$26.19
65435	T	Curette/treat cornea	0239	6.26	$310.47	$123.42	$62.09
65436	T	Curette/treat cornea	0232	6.04	$299.56	$134.66	$59.91
65450	T	Treatment of corneal lesion	0232	6.04	$299.56	$134.66	$59.91
65600	T	Revision of cornea	0240	13.47	$668.06	$315.31	$133.61
65710	T	Corneal transplant	0244	32.88	$1,630.72	$851.42	$326.14
65730	T	Corneal transplant	0244	32.88	$1,630.72	$851.42	$326.14
65750	T	Corneal transplant	0244	32.88	$1,630.72	$851.42	$326.14
65755	T	Corneal transplant	0244	32.88	$1,630.72	$851.42	$326.14
65760	E	Revision of cornea	....	....	....	....	....
65765	E	Revision of cornea	....	....	....	....	....
65767	E	Corneal tissue transplant	....	....	....	....	....
65770	T	Revise cornea with implant	0244	32.88	$1,630.72	$851.42	$326.14
65771	E	Radial keratotomy	....	....	....	....	....
65772	T	Correction of astigmatism	0232	6.04	$299.56	$134.66	$59.91
65775	T	Correction of astigmatism	0233	13.79	$683.93	$331.60	$136.79
65800	T	Drainage of eye	0232	6.04	$299.56	$134.66	$59.91

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
65805	T	Drainage of eye	0233	13.79	$683.93	$331.60	$136.79
65810	T	Drainage of eye	0233	13.79	$683.93	$331.60	$136.79
65815	T	Drainage of eye	0233	13.79	$683.93	$331.60	$136.79
65820	T	Relieve inner eye pressure	0232	6.04	$299.56	$134.66	$59.91
65850	T	Incision of eye	0234	20.64	$1,023.66	$502.16	$204.73
65855	T	Laser surgery of eye	0247	4.89	$242.52	$112.86	$48.50
65860	T	Incise inner eye adhesions	0247	4.89	$242.52	$112.86	$48.50
65865	T	Incise inner eye adhesions	0233	13.79	$683.93	$331.60	$136.79
65870	T	Incise inner eye adhesions	0233	13.79	$683.93	$331.60	$136.79
65875	T	Incise inner eye adhesions	0233	13.79	$683.93	$331.60	$136.79
65880	T	Incise inner eye adhesions	0232	6.04	$299.56	$134.66	$59.91
65900	T	Remove eye lesion	0232	6.04	$299.56	$134.66	$59.91
65920	T	Remove implant from eye	0233	13.79	$683.93	$331.60	$136.79
65930	T	Remove blood clot from eye	0233	13.79	$683.93	$331.60	$136.79
66020	T	Injection treatment of eye	0232	6.04	$299.56	$134.66	$59.91
66030	T	Injection treatment of eye	0232	6.04	$299.56	$134.66	$59.91
66130	T	Remove eye lesion	0233	13.79	$683.93	$331.60	$136.79
66150	T	Glaucoma surgery	0233	13.79	$683.93	$331.60	$136.79
66155	T	Glaucoma surgery	0234	20.64	$1,023.66	$502.16	$204.73
66160	T	Glaucoma surgery	0234	20.64	$1,023.66	$502.16	$204.73
66165	T	Glaucoma surgery	0234	20.64	$1,023.66	$502.16	$204.73
66170	T	Glaucoma surgery	0234	20.64	$1,023.66	$502.16	$204.73
66172	T	Incision of eye	0234	20.64	$1,023.66	$502.16	$204.73
66180	T	Implant eye shunt	0234	20.64	$1,023.66	$502.16	$204.73
66185	T	Revise eye shunt	0234	20.64	$1,023.66	$502.16	$204.73
66220	T	Repair eye lesion	0236	6.70	$332.29	$147.96	$66.46
66225	T	Repair/graft eye lesion	0234	20.64	$1,023.66	$502.16	$204.73
66250	T	Follow-up surgery of eye	0233	13.79	$683.93	$331.60	$136.79
66500	T	Incision of iris	0232	6.04	$299.56	$134.66	$59.91
66505	T	Incision of iris	0232	6.04	$299.56	$134.66	$59.91
66600	T	Remove iris and lesion	0233	13.79	$683.93	$331.60	$136.79
66605	T	Removal of iris	0233	13.79	$683.93	$331.60	$136.79
66625	T	Removal of iris	0232	6.04	$299.56	$134.66	$59.91
66630	T	Removal of iris	0233	13.79	$683.93	$331.60	$136.79
66635	T	Removal of iris	0233	13.79	$683.93	$331.60	$136.79
66680	T	Repair iris & ciliary body	0233	13.79	$683.93	$331.60	$136.79
66682	T	Repair iris & ciliary body	0233	13.79	$683.93	$331.60	$136.79
66700	T	Destruction, ciliary body	0232	6.04	$299.56	$134.66	$59.91
66710	T	Destruction, ciliary body	0232	6.04	$299.56	$134.66	$59.91
66720	T	Destruction, ciliary body	0232	6.04	$299.56	$134.66	$59.91
66740	T	Destruction, ciliary body	0233	13.79	$683.93	$331.60	$136.79
66761	T	Revision of iris	0247	4.89	$242.52	$112.86	$48.50
66762	T	Revision of iris	0247	4.89	$242.52	$112.86	$48.50
66770	T	Removal of inner eye lesion	0247	4.89	$242.52	$112.86	$48.50
66820	T	Incision, secondary cataract	0232	6.04	$299.56	$134.66	$59.91
66821	T	After cataract laser surgery	0247	4.89	$242.52	$112.86	$48.50
66825	T	Reposition intraocular lens	0233	13.79	$683.93	$331.60	$136.79
66830	T	Removal of lens lesion	0232	6.04	$299.56	$134.66	$59.91
66840	T	Removal of lens material	0245	26.55	$1,316.77	$623.85	$263.35
66850	T	Removal of lens material	0245	26.55	$1,316.77	$623.85	$263.35
66852	T	Removal of lens material	0245	26.55	$1,316.77	$623.85	$263.35
66920	T	Extraction of lens	0245	26.55	$1,316.77	$623.85	$263.35
66930	T	Extraction of lens	0245	26.55	$1,316.77	$623.85	$263.35
66940	T	Extraction of lens	0245	26.55	$1,316.77	$623.85	$263.35
*66982	T	Cataract surgery, complex	0246	26.55	$1,316.77	$623.85	$263.35
66983	T	Remove cataract/insert lens	0246	26.55	$1,316.77	$623.85	$263.35
66984	T	Remove cataract/insert lens	0246	26.55	$1,316.77	$623.85	$263.35
66985	T	Insert lens prosthesis	0246	26.55	$1,316.77	$623.85	$263.35
66986	T	Exchange lens prosthesis	0246	26.55	$1,316.77	$623.85	$263.35
66999	T	Eye surgery procedure	0247	4.89	$242.52	$112.86	$48.50
67005	T	Partial removal of eye fluid	0237	33.96	$1,684.28	$852.68	$336.86
67010	T	Partial removal of eye fluid	0237	33.96	$1,684.28	$852.68	$336.86
67015	T	Release of eye fluid	0237	33.96	$1,684.28	$852.68	$336.86
67025	T	Replace eye fluid	0237	33.96	$1,684.28	$852.68	$336.86
67027	T	Implant eye drug system	0237	33.96	$1,684.28	$852.68	$336.86
67028	T	Injection eye drug	0236	6.70	$332.29	$147.96	$66.46
67030	T	Incise inner eye strands	0236	6.70	$332.29	$147.96	$66.46
67031	T	Laser surgery, eye strands	0247	4.89	$242.52	$112.86	$48.50
67036	T	Removal of inner eye fluid	0237	33.96	$1,684.28	$852.68	$336.86
67038	T	Strip retinal membrane	0237	33.96	$1,684.28	$852.68	$336.86
67039	T	Laser treatment of retina	0237	33.96	$1,684.28	$852.68	$336.86
67040	T	Laser treatment of retina	0237	33.96	$1,684.28	$852.68	$336.86
67101	T	Repair detached retina	0236	6.70	$332.29	$147.96	$66.46
67105	T	Repair detached retina	0248	4.19	$207.81	$94.05	$41.56

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
67107	T	Repair detached retina	0237	33.96	$1,684.28	$852.68	$336.86
67108	T	Repair detached retina	0237	33.96	$1,684.28	$852.68	$336.86
67110	T	Repair detached retina	0236	6.70	$332.29	$147.96	$66.46
67112	T	Rerepair detached retina	0237	33.96	$1,684.28	$852.68	$336.86
67115	T	Release encircling material	0236	6.70	$332.29	$147.96	$66.46
67120	T	Remove eye implant material	0236	6.70	$332.29	$147.96	$66.46
67121	T	Remove eye implant material	0237	33.96	$1,684.28	$852.68	$336.86
67141	T	Treatment of retina	0235	2.94	$145.81	$78.91	$29.16
67145	T	Treatment of retina	0248	4.19	$207.81	$94.05	$41.56
67208	T	Treatment of retinal lesion	0235	2.94	$145.81	$78.91	$29.16
67210	T	Treatment of retinal lesion	0248	4.19	$207.81	$94.05	$41.56
67218	T	Treatment of retinal lesion	0237	33.96	$1,684.28	$852.68	$336.86
67220	T	Treatment of choroid lesion	0237	33.96	$1,684.28	$852.68	$336.86
*67221	T	Treatment of choroid lesion	0235	2.94	$145.81	$78.91	$29.16
67227	T	Treatment of retinal lesion	0235	2.94	$145.81	$78.91	$29.16
67228	T	Treatment of retinal lesion	0248	4.19	$207.81	$94.05	$41.56
67250	T	Reinforce eye wall	0240	13.47	$668.06	$315.31	$133.61
67255	T	Reinforce/graft eye wall	0237	33.96	$1,684.28	$852.68	$336.86
67299	T	Eye surgery procedure	0248	4.19	$207.81	$94.05	$41.56
67311	T	Revise eye muscle	0243	17.99	$892.23	$431.39	$178.45
67312	T	Revise two eye muscles	0243	17.99	$892.23	$431.39	$178.45
67314	T	Revise eye muscle	0243	17.99	$892.23	$431.39	$178.45
67316	T	Revise two eye muscles	0243	17.99	$892.23	$431.39	$178.45
67318	T	Revise eye muscle(s)	0243	17.99	$892.23	$431.39	$178.45
67320	T	Revise eye muscle(s) add-on	0243	17.99	$892.23	$431.39	$178.45
67331	T	Eye surgery follow-up add-on	0243	17.99	$892.23	$431.39	$178.45
67332	T	Rerevise eye muscles add-on	0243	17.99	$892.23	$431.39	$178.45
67334	T	Revise eye muscle w/suture	0243	17.99	$892.23	$431.39	$178.45
67335	T	Eye suture during surgery	0243	17.99	$892.23	$431.39	$178.45
67340	T	Revise eye muscle add-on	0243	17.99	$892.23	$431.39	$178.45
67343	T	Release eye tissue	0243	17.99	$892.23	$431.39	$178.45
67345	T	Destroy nerve of eye muscle	0238	2.80	$138.87	$58.96	$27.77
67350	S	Biopsy eye muscle	0231	2.64	$130.94	$59.87	$26.19
67399	T	Eye muscle surgery procedure	0243	17.99	$892.23	$431.39	$178.45
67400	T	Explore/biopsy eye socket	0241	16.60	$823.30	$384.47	$164.66
67405	T	Explore/drain eye socket	0241	16.60	$823.30	$384.47	$164.66
67412	T	Explore/treat eye socket	0241	16.60	$823.30	$384.47	$164.66
67413	T	Explore/treat eye socket	0241	16.60	$823.30	$384.47	$164.66
67414	T	Explr/decompress eye socket	0242	23.70	$1,175.42	$597.36	$235.08
67415	T	Aspiration, orbital contents	0239	6.26	$310.47	$123.42	$62.09
67420	T	Explore/treat eye socket	0242	23.70	$1,175.42	$597.36	$235.08
67430	T	Explore/treat eye socket	0242	23.70	$1,175.42	$597.36	$235.08
67440	T	Explore/drain eye socket	0242	23.70	$1,175.42	$597.36	$235.08
67445	T	Explr/decompress eye socket	0242	23.70	$1,175.42	$597.36	$235.08
67450	T	Explore/biopsy eye socket	0242	23.70	$1,175.42	$597.36	$235.08
67500	S	Inject/treat eye socket	0231	2.64	$130.94	$59.87	$26.19
67505	T	Inject/treat eye socket	0238	2.80	$138.87	$58.96	$27.77
67515	T	Inject/treat eye socket	0239	6.26	$310.47	$123.42	$62.09
67550	T	Insert eye socket implant	0242	23.70	$1,175.42	$597.36	$235.08
67560	T	Revise eye socket implant	0241	16.60	$823.30	$384.47	$164.66
67570	T	Decompress optic nerve	0242	23.70	$1,175.42	$597.36	$235.08
67599	T	Orbit surgery procedure	0239	6.26	$310.47	$123.42	$62.09
67700	T	Drainage of eyelid abscess	0238	2.80	$138.87	$58.96	$27.77
67710	T	Incision of eyelid	0239	6.26	$310.47	$123.42	$62.09
67715	T	Incision of eyelid fold	0240	13.47	$668.06	$315.31	$133.61
67800	T	Remove eyelid lesion	0238	2.80	$138.87	$58.96	$27.77
67801	T	Remove eyelid lesions	0239	6.26	$310.47	$123.42	$62.09
67805	T	Remove eyelid lesions	0238	2.80	$138.87	$58.96	$27.77
67808	T	Remove eyelid lesion(s)	0240	13.47	$668.06	$315.31	$133.61
67810	T	Biopsy of eyelid	0238	2.80	$138.87	$58.96	$27.77
67820	T	Revise eyelashes	0238	2.80	$138.87	$58.96	$27.77
67825	T	Revise eyelashes	0238	2.80	$138.87	$58.96	$27.77
67830	T	Revise eyelashes	0239	6.26	$310.47	$123.42	$62.09
67835	T	Revise eyelashes	0240	13.47	$668.06	$315.31	$133.61
67840	T	Remove eyelid lesion	0239	6.26	$310.47	$123.42	$62.09
67850	T	Treat eyelid lesion	0239	6.26	$310.47	$123.42	$62.09
67875	T	Closure of eyelid by suture	0239	6.26	$310.47	$123.42	$62.09
67880	T	Revision of eyelid	0232	6.04	$299.56	$134.66	$59.91
67882	T	Revision of eyelid	0240	13.47	$668.06	$315.31	$133.61
67900	T	Repair brow defect	0240	13.47	$668.06	$315.31	$133.61
67901	T	Repair eyelid defect	0240	13.47	$668.06	$315.31	$133.61
67902	T	Repair eyelid defect	0240	13.47	$668.06	$315.31	$133.61
67903	T	Repair eyelid defect	0240	13.47	$668.06	$315.31	$133.61
67904	T	Repair eyelid defect	0240	13.47	$668.06	$315.31	$133.61

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
67906	T	Repair eyelid defect	0240	13.47	$668.06	$315.31	$133.61
67908	T	Repair eyelid defect	0240	13.47	$668.06	$315.31	$133.61
67909	T	Revise eyelid defect	0240	13.47	$668.06	$315.31	$133.61
67911	T	Revise eyelid defect	0240	13.47	$668.06	$315.31	$133.61
67914	T	Repair eyelid defect	0240	13.47	$668.06	$315.31	$133.61
67915	T	Repair eyelid defect	0239	6.26	$310.47	$123.42	$62.09
67916	T	Repair eyelid defect	0240	13.47	$668.06	$315.31	$133.61
67917	T	Repair eyelid defect	0240	13.47	$668.06	$315.31	$133.61
67921	T	Repair eyelid defect	0240	13.47	$668.06	$315.31	$133.61
67922	T	Repair eyelid defect	0239	6.26	$310.47	$123.42	$62.09
67923	T	Repair eyelid defect	0240	13.47	$668.06	$315.31	$133.61
67924	T	Repair eyelid defect	0240	13.47	$668.06	$315.31	$133.61
67930	T	Repair eyelid wound	0240	13.47	$668.06	$315.31	$133.61
67935	T	Repair eyelid wound	0240	13.47	$668.06	$315.31	$133.61
67938	T	Remove eyelid foreign body	0238	2.80	$138.87	$58.96	$27.77
67950	T	Revision of eyelid	0240	13.47	$668.06	$315.31	$133.61
67961	T	Revision of eyelid	0240	13.47	$668.06	$315.31	$133.61
67966	T	Revision of eyelid	0240	13.47	$668.06	$315.31	$133.61
67971	T	Reconstruction of eyelid	0241	16.60	$823.30	$384.47	$164.66
67973	T	Reconstruction of eyelid	0241	16.60	$823.30	$384.47	$164.66
67974	T	Reconstruction of eyelid	0241	16.60	$823.30	$384.47	$164.66
67975	T	Reconstruction of eyelid	0240	13.47	$668.06	$315.31	$133.61
67999	T	Revision of eyelid	0240	13.47	$668.06	$315.31	$133.61
68020	T	Incise/drain eyelid lining	0240	13.47	$668.06	$315.31	$133.61
68040	T	Treatment of eyelid lesions	0239	6.26	$310.47	$123.42	$62.09
68100	T	Biopsy of eyelid lining	0232	6.04	$299.56	$134.66	$59.91
68110	S	Remove eyelid lining lesion	0231	2.64	$130.94	$59.87	$26.19
68115	T	Remove eyelid lining lesion	0239	6.26	$310.47	$123.42	$62.09
68130	T	Remove eyelid lining lesion	0233	13.79	$683.93	$331.60	$136.79
68135	T	Remove eyelid lining lesion	0239	6.26	$310.47	$123.42	$62.09
68200	S	Treat eyelid by injection	0230	0.98	$48.61	$22.48	$9.72
68320	T	Revise/graft eyelid lining	0240	13.47	$668.06	$315.31	$133.61
68325	T	Revise/graft eyelid lining	0242	23.70	$1,175.42	$597.36	$235.08
68326	T	Revise/graft eyelid lining	0241	16.60	$823.30	$384.47	$164.66
68328	T	Revise/graft eyelid lining	0241	16.60	$823.30	$384.47	$164.66
68330	T	Revise eyelid lining	0233	13.79	$683.93	$331.60	$136.79
68335	T	Revise/graft eyelid lining	0241	16.60	$823.30	$384.47	$164.66
68340	T	Separate eyelid adhesions	0240	13.47	$668.06	$315.31	$133.61
68360	T	Revise eyelid lining	0234	20.64	$1,023.66	$502.16	$204.73
68362	T	Revise eyelid lining	0234	20.64	$1,023.66	$502.16	$204.73
68399	T	Eyelid lining surgery	0239	6.26	$310.47	$123.42	$62.09
68400	T	Incise/drain tear gland	0238	2.80	$138.87	$58.96	$27.77
68420	T	Incise/drain tear sac	0240	13.47	$668.06	$315.31	$133.61
68440	T	Incise tear duct opening	0238	2.80	$138.87	$58.96	$27.77
68500	T	Removal of tear gland	0241	16.60	$823.30	$384.47	$164.66
68505	T	Partial removal, tear gland	0241	16.60	$823.30	$384.47	$164.66
68510	T	Biopsy of tear gland	0240	13.47	$668.06	$315.31	$133.61
68520	T	Removal of tear sac	0241	16.60	$823.30	$384.47	$164.66
68525	T	Biopsy of tear sac	0240	13.47	$668.06	$315.31	$133.61
68530	T	Clearance of tear duct	0240	13.47	$668.06	$315.31	$133.61
68540	T	Remove tear gland lesion	0241	16.60	$823.30	$384.47	$164.66
68550	T	Remove tear gland lesion	0242	23.70	$1,175.42	$597.36	$235.08
68700	T	Repair tear ducts	0241	16.60	$823.30	$384.47	$164.66
68705	T	Revise tear duct opening	0238	2.80	$138.87	$58.96	$27.77
68720	T	Create tear sac drain	0242	23.70	$1,175.42	$597.36	$235.08
68745	T	Create tear duct drain	0241	16.60	$823.30	$384.47	$164.66
68750	T	Create tear duct drain	0242	23.70	$1,175.42	$597.36	$235.08
68760	T	Close tear duct opening	0238	2.80	$138.87	$58.96	$27.77
68761	S	Close tear duct opening	0231	2.64	$130.94	$59.87	$26.19
68770	T	Close tear system fistula	0240	13.47	$668.06	$315.31	$133.61
68801	S	Dilate tear duct opening	0231	2.64	$130.94	$59.87	$26.19
68810	S	Probe nasolacrimal duct	0231	2.64	$130.94	$59.87	$26.19
68811	T	Probe nasolacrimal duct	0240	13.47	$668.06	$315.31	$133.61
68815	T	Probe nasolacrimal duct	0240	13.47	$668.06	$315.31	$133.61
68840	S	Explore/irrigate tear ducts	0231	2.64	$130.94	$59.87	$26.19
68850	N	Injection for tear sac x-ray					
68899	S	Tear duct system surgery	0231	2.64	$130.94	$59.87	$26.19
69000	T	Drain external ear lesion	0006	2.00	$99.19	$33.95	$19.84
69005	T	Drain external ear lesion	0007	3.68	$182.51	$72.03	$36.50
69020	T	Drain outer ear canal lesion	0006	2.00	$99.19	$33.95	$19.84
69090	E	Pierce earlobes					
69100	T	Biopsy of external ear	0019	4.00	$198.39	$78.91	$39.68
69105	T	Biopsy of external ear canal	0253	12.02	$596.14	$284.00	$119.23
69110	T	Remove external ear, partial	0020	6.51	$322.87	$130.53	$64.57

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
69120	T	Removal of external ear	0253	12.02	$596.14	$284.00	$119.23
69140	T	Remove ear canal lesion(s)	0254	12.45	$617.47	$272.41	$123.49
69145	T	Remove ear canal lesion(s)	0020	6.51	$322.87	$130.53	$64.57
69150	C	Extensive ear canal surgery					
69155	C	Extensive ear/neck surgery					
69200	X	Clear outer ear canal	0340	1.04	$51.58	$12.85	$10.32
69205	T	Clear outer ear canal	0022	12.49	$619.45	$292.94	$123.89
69210	X	Remove impacted ear wax	0340	1.04	$51.58	$12.85	$10.32
69220	T	Clean out mastoid cavity	0012	0.53	$26.29	$9.18	$5.26
69222	T	Clean out mastoid cavity	0253	12.02	$596.14	$284.00	$119.23
69300	T	Revise external ear	0254	12.45	$617.47	$272.41	$123.49
69310	T	Rebuild outer ear canal	0256	25.40	$1,259.74	$623.05	$251.95
69320	T	Rebuild outer ear canal	0256	25.40	$1,259.74	$623.05	$251.95
69399	T	Outer ear surgery procedure	0252	5.18	$256.90	$114.24	$51.38
69400	T	Inflate middle ear canal	0251	1.68	$83.32	$27.99	$16.66
69401	N	Inflate middle ear canal					
69405	T	Catheterize middle ear canal	0252	5.18	$256.90	$114.24	$51.38
69410	T	Inset middle ear (baffle)	0252	5.18	$256.90	$114.24	$51.38
69420	T	Incision of eardrum	0252	5.18	$256.90	$114.24	$51.38
69421	T	Incision of eardrum	0253	12.02	$596.14	$284.00	$119.23
69424	T	Remove ventilating tube	0252	5.18	$256.90	$114.24	$51.38
69433	T	Create eardrum opening	0252	5.18	$256.90	$114.24	$51.38
69436	T	Create eardrum opening	0253	12.02	$596.14	$284.00	$119.23
69440	T	Exploration of middle ear	0253	12.02	$596.14	$284.00	$119.23
69450	T	Eardrum revision	0256	25.40	$1,259.74	$623.05	$251.95
69501	T	Mastoidectomy	0256	25.40	$1,259.74	$623.05	$251.95
69502	C	Mastoidectomy					
69505	T	Remove mastoid structures	0256	25.40	$1,259.74	$623.05	$251.95
69511	T	Extensive mastoid surgery	0256	25.40	$1,259.74	$623.05	$251.95
69530	T	Extensive mastoid surgery	0256	25.40	$1,259.74	$623.05	$251.95
69535	C	Remove part of temporal bone					
69540	T	Remove ear lesion	0253	12.02	$596.14	$284.00	$119.23
69550	T	Remove ear lesion	0256	25.40	$1,259.74	$623.05	$251.95
69552	T	Remove ear lesion	0256	25.40	$1,259.74	$623.05	$251.95
69554	C	Remove ear lesion					
69601	T	Mastoid surgery revision	0256	25.40	$1,259.74	$623.05	$251.95
69602	T	Mastoid surgery revision	0256	25.40	$1,259.74	$623.05	$251.95
69603	T	Mastoid surgery revision	0256	25.40	$1,259.74	$623.05	$251.95
69604	T	Mastoid surgery revision	0256	25.40	$1,259.74	$623.05	$251.95
69605	T	Mastoid surgery revision	0256	25.40	$1,259.74	$623.05	$251.95
69610	T	Repair of eardrum	0253	12.02	$596.14	$284.00	$119.23
69620	T	Repair of eardrum	0253	12.02	$596.14	$284.00	$119.23
69631	T	Repair eardrum structures	0256	25.40	$1,259.74	$623.05	$251.95
69632	T	Rebuild eardrum structures	0256	25.40	$1,259.74	$623.05	$251.95
69633	T	Rebuild eardrum structures	0256	25.40	$1,259.74	$623.05	$251.95
69635	T	Repair eardrum structures	0256	25.40	$1,259.74	$623.05	$251.95
69636	T	Rebuild eardrum structures	0256	25.40	$1,259.74	$623.05	$251.95
69637	T	Rebuild eardrum structures	0256	25.40	$1,259.74	$623.05	$251.95
69641	T	Revise middle ear & mastoid	0256	25.40	$1,259.74	$623.05	$251.95
69642	T	Revise middle ear & mastoid	0256	25.40	$1,259.74	$623.05	$251.95
69643	T	Revise middle ear & mastoid	0256	25.40	$1,259.74	$623.05	$251.95
69644	T	Revise middle ear & mastoid	0256	25.40	$1,259.74	$623.05	$251.95
69645	T	Revise middle ear & mastoid	0256	25.40	$1,259.74	$623.05	$251.95
69646	T	Revise middle ear & mastoid	0256	25.40	$1,259.74	$623.05	$251.95
69650	T	Release middle ear bone	0254	12.45	$617.47	$272.41	$123.49
69660	T	Revise middle ear bone	0256	25.40	$1,259.74	$623.05	$251.95
69661	T	Revise middle ear bone	0256	25.40	$1,259.74	$623.05	$251.95
69662	T	Revise middle ear bone	0256	25.40	$1,259.74	$623.05	$251.95
69666	T	Repair middle ear structures	0256	25.40	$1,259.74	$623.05	$251.95
69667	T	Repair middle ear structures	0256	25.40	$1,259.74	$623.05	$251.95
69670	T	Remove mastoid air cells	0256	25.40	$1,259.74	$623.05	$251.95
69676	T	Remove middle ear nerve	0256	25.40	$1,259.74	$623.05	$251.95
69700	T	Close mastoid fistula	0256	25.40	$1,259.74	$623.05	$251.95
69710	E	Implant/replace hearing aid					
69711	T	Remove/repair hearing aid	0256	25.40	$1,259.74	$623.05	$251.95
*69714	T	Implant temple bone w/stimul	0256	25.40	$1,259.74	$623.05	$251.95
*69715	T	Temple bne implnt w/stimulat	0256	25.40	$1,259.74	$623.05	$251.95
*69717	T	Temple bone implant revision	0256	25.40	$1,259.74	$623.05	$251.95
*69718	T	Revise temple bone implant	0256	25.40	$1,259.74	$623.05	$251.95
69720	T	Release facial nerve	0256	25.40	$1,259.74	$623.05	$251.95
69725	T	Release facial nerve	0256	25.40	$1,259.74	$623.05	$251.95
69740	T	Repair facial nerve	0256	25.40	$1,259.74	$623.05	$251.95
69745	T	Repair facial nerve	0256	25.40	$1,259.74	$623.05	$251.95
69799	T	Middle ear surgery procedure	0253	12.02	$596.14	$284.00	$119.23

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
69801	T	Incise inner ear	0256	25.40	$1,259.74	$623.05	$251.95
69802	T	Incise inner ear	0256	25.40	$1,259.74	$623.05	$251.95
69805	T	Explore inner ear	0256	25.40	$1,259.74	$623.05	$251.95
69806	T	Explore inner ear	0256	25.40	$1,259.74	$623.05	$251.95
69820	T	Establish inner ear window	0256	25.40	$1,259.74	$623.05	$251.95
69840	T	Revise inner ear window	0256	25.40	$1,259.74	$623.05	$251.95
69905	T	Remove inner ear	0256	25.40	$1,259.74	$623.05	$251.95
69910	T	Remove inner ear & mastoid	0256	25.40	$1,259.74	$623.05	$251.95
69915	T	Incise inner ear nerve	0256	25.40	$1,259.74	$623.05	$251.95
69930	T	Implant cochlear device	0256	25.40	$1,259.74	$623.05	$251.95
69949	T	Inner ear surgery procedure	0253	12.02	$596.14	$284.00	$119.23
69950	C	Incise inner ear nerve					
69955	T	Release facial nerve	0256	25.40	$1,259.74	$623.05	$251.95
69960	T	Release inner ear canal	0256	25.40	$1,259.74	$623.05	$251.95
69970	C	Remove inner ear lesion					
69979	T	Temporal bone surgery	0252	5.18	$256.90	$114.24	$51.38
69990	N	Microsurgery add-on					
70010	S	Contrast x-ray of brain	0274	4.83	$239.55	$128.12	$47.91
70015	S	Contrast x-ray of brain	0274	4.83	$239.55	$128.12	$47.91
70030	X	X-ray eye for foreign body	0260	0.79	$39.18	$22.02	$7.84
70100	X	X-ray exam of jaw	0260	0.79	$39.18	$22.02	$7.84
70110	X	X-ray exam of jaw	0260	0.79	$39.18	$22.02	$7.84
70120	X	X-ray exam of mastoids	0260	0.79	$39.18	$22.02	$7.84
70130	X	X-ray exam of mastoids	0260	0.79	$39.18	$22.02	$7.84
70134	X	X-ray exam of middle ear	0261	1.38	$68.44	$38.77	$13.69
70140	X	X-ray exam of facial bones	0260	0.79	$39.18	$22.02	$7.84
70150	X	X-ray exam of facial bones	0260	0.79	$39.18	$22.02	$7.84
70160	X	X-ray exam of nasal bones	0260	0.79	$39.18	$22.02	$7.84
70170	X	X-ray exam of tear duct	0263	1.68	$83.32	$45.88	$16.66
70190	X	X-ray exam of eye sockets	0260	0.79	$39.18	$22.02	$7.84
70200	X	X-ray exam of eye sockets	0260	0.79	$39.18	$22.02	$7.84
70210	X	X-ray exam of sinuses	0260	0.79	$39.18	$22.02	$7.84
70220	X	X-ray exam of sinuses	0260	0.79	$39.18	$22.02	$7.84
70240	X	X-ray exam, pituitary saddle	0260	0.79	$39.18	$22.02	$7.84
70250	X	X-ray exam of skull	0260	0.79	$39.18	$22.02	$7.84
70260	X	X-ray exam of skull	0261	1.38	$68.44	$38.77	$13.69
70300	X	X-ray exam of teeth	0262	0.40	$19.83	$10.90	$3.97
70310	X	X-ray exam of teeth	0262	0.40	$19.83	$10.90	$3.97
70320	X	Full mouth x-ray of teeth	0262	0.40	$19.83	$10.90	$3.97
70328	X	X-ray exam of jaw joint	0260	0.79	$39.18	$22.02	$7.84
70330	X	X-ray exam of jaw joints	0260	0.79	$39.18	$22.02	$7.84
70332	S	X-ray exam of jaw joint	0275	2.74	$135.89	$72.26	$27.18
70336	S	Magnetic image, jaw joint	0284	8.02	$397.76	$257.39	$79.55
70350	X	X-ray head for orthodontia	0260	0.79	$39.18	$22.02	$7.84
70355	X	Panoramic x-ray of jaws	0260	0.79	$39.18	$22.02	$7.84
70360	X	X-ray exam of neck	0260	0.79	$39.18	$22.02	$7.84
70370	X	Throat x-ray & fluoroscopy	0273	2.49	$123.49	$61.02	$24.70
70371	X	Speech evaluation, complex	0272	1.40	$69.43	$39.00	$13.89
70373	X	Contrast x-ray of larynx	0263	1.68	$83.32	$45.88	$16.66
70380	X	X-ray exam of salivary gland	0260	0.79	$39.18	$22.02	$7.84
70390	X	X-ray exam of salivary duct	0263	1.68	$83.32	$45.88	$16.66
70450	S	CAT scan of head or brain	0283	4.89	$242.52	$179.39	$48.50
70460	S	Contrast CAT scan of head	0283	4.89	$242.52	$179.39	$48.50
70470	S	Contrast CAT scans of head	0283	4.89	$242.52	$179.39	$48.50
70480	S	CAT scan of skull	0283	4.89	$242.52	$179.39	$48.50
70481	S	Contrast CAT scan of skull	0283	4.89	$242.52	$179.39	$48.50
70482	S	Contrast CAT scans of skull	0283	4.89	$242.52	$179.39	$48.50
70486	S	Cat scan of face/jaw	0282	2.38	$118.04	$94.51	$23.61
70487	S	Contrast CAT scan, face/jaw	0283	4.89	$242.52	$179.39	$48.50
70488	S	Contrast cat scans, face/jaw	0283	4.89	$242.52	$179.39	$48.50
70490	S	CAT scan of neck tissue	0283	4.89	$242.52	$179.39	$48.50
70491	S	Contrast CAT of neck tissue	0283	4.89	$242.52	$179.39	$48.50
70492	S	Contrast CAT of neck tissue	0283	4.89	$242.52	$179.39	$48.50
*70496	S	Ct angiography, head	0283	4.89	$242.52	$179.39	$48.50
*70498	S	Ct angiography, neck	0283	4.89	$242.52	$179.39	$48.50
70540	S	Magnetic image, face/neck	0284	8.02	$397.76	$257.39	$79.55
70541D	S	MR angiography	0284	8.02	$397.76	$257.39	$79.55
*70542	S	MR (eg, proton) imaging	0284	8.02	$397.76	$257.39	$79.55
*70543	S	MR (eg, proton) imaging	0284	8.02	$397.76	$257.39	$79.55
*70544	S	MR angiography	0284	8.02	$397.76	$257.39	$79.55
*70545	S	MR angiography	0284	8.02	$397.76	$257.39	$79.55
*70546	S	MR angiography	0284	8.02	$397.76	$257.39	$79.55
*70547	S	MR angiography	0284	8.02	$397.76	$257.39	$79.55
*70548	S	MR angiography	0284	8.02	$397.76	$257.39	$79.55

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
*70549	S	MR angiography	0284	8.02	$397.76	$257.39	$79.55
70551	S	Magnetic image, brain (MRI)	0284	8.02	$397.76	$257.39	$79.55
70552	S	Magnetic image, brain (MRI)	0284	8.02	$397.76	$257.39	$79.55
70553	S	Magnetic image, brain (mri)	0284	8.02	$397.76	$257.39	$79.55
71010	X	Chest x-ray	0260	0.79	$39.18	$22.02	$7.84
71015	X	Chest x-ray	0260	0.79	$39.18	$22.02	$7.84
71020	X	Chest x-ray	0260	0.79	$39.18	$22.02	$7.84
71021	X	Chest x-ray	0260	0.79	$39.18	$22.02	$7.84
71022	X	Chest x-ray	0260	0.79	$39.18	$22.02	$7.84
71023	X	Chest x-ray and fluoroscopy	0272	1.40	$69.43	$39.00	$13.89
71030	X	Chest x-ray	0260	0.79	$39.18	$22.02	$7.84
71034	X	Chest x-ray and fluoroscopy	0272	1.40	$69.43	$39.00	$13.89
71035	X	Chest x-ray	0260	0.79	$39.18	$22.02	$7.84
71036D	X	X-ray guidance for biopsy	0273	2.49	$123.49	$61.02	$24.70
71040	X	Contrast x-ray of bronchi	0263	1.68	$83.32	$45.88	$16.66
71060	X	Contrast x-ray of bronchi	0263	1.68	$83.32	$45.88	$16.66
71090	X	X-ray & pacemaker insertion	0273	2.49	$123.49	$61.02	$24.70
71100	X	X-ray exam of ribs	0260	0.79	$39.18	$22.02	$7.84
71101	X	X-ray exam of ribs/chest	0260	0.79	$39.18	$22.02	$7.84
71110	X	X-ray exam of ribs	0260	0.79	$39.18	$22.02	$7.84
71111	X	X-ray exam of ribs/ chest	0261	1.38	$68.44	$38.77	$13.69
71120	X	X-ray exam of breastbone	0260	0.79	$39.18	$22.02	$7.84
71130	X	X-ray exam of breastbone	0260	0.79	$39.18	$22.02	$7.84
71250	S	Cat scan of chest	0283	4.89	$242.52	$179.39	$48.50
71260	S	Contrast CAT scan of chest	0283	4.89	$242.52	$179.39	$48.50
71270	S	Contrast CAT scans of chest	0283	4.89	$242.52	$179.39	$48.50
*71275	S	CT angiography, chest	0283	4.89	$242.52	$179.39	$48.50
71550	S	Magnetic image, chest (mri)	0284	8.02	$397.76	$257.39	$79.55
*71551	S	MRI chest w/ dye	0284	8.02	$397.76	$257.39	$79.55
*71552	S	MRI chest w/o dye	0284	8.02	$397.76	$257.39	$79.55
71555	S	Magnetic image, chest (mra)	0284	8.02	$397.76	$257.39	$79.55
72010	X	X-ray exam of spine	0261	1.38	$68.44	$38.77	$13.69
72020	X	X-ray exam of spine	0260	0.79	$39.18	$22.02	$7.84
72040	X	X-ray exam of neck spine	0260	0.79	$39.18	$22.02	$7.84
72050	X	X-ray exam of neck spine	0261	1.38	$68.44	$38.77	$13.69
72052	X	X-ray exam of neck spine	0261	1.38	$68.44	$38.77	$13.69
72069	X	X-ray exam of trunk spine	0260	0.79	$39.18	$22.02	$7.84
72070	X	X-ray exam of thoracic spine	0260	0.79	$39.18	$22.02	$7.84
72072	X	X-ray exam of thoracic spine	0260	0.79	$39.18	$22.02	$7.84
72074	X	X-ray exam of thoracic spine	0260	0.79	$39.18	$22.02	$7.84
72080	X	X-ray exam of trunk spine	0260	0.79	$39.18	$22.02	$7.84
72090	X	X-ray exam of trunk spine	0260	0.79	$39.18	$22.02	$7.84
72100	X	X-ray exam of lower spine	0260	0.79	$39.18	$22.02	$7.84
72110	X	X-ray exam of lower spine	0261	1.38	$68.44	$38.77	$13.69
72114	X	X-ray exam of lower spine	0261	1.38	$68.44	$38.77	$13.69
72120	X	X-ray exam of lower spine	0260	0.79	$39.18	$22.02	$7.84
72125	S	CAT scan of neck spine	0283	4.89	$242.52	$179.39	$48.50
72126	S	Contrast CAT scan of neck	0283	4.89	$242.52	$179.39	$48.50
72127	S	Contrast CAT scans of neck	0283	4.89	$242.52	$179.39	$48.50
72128	S	CAT scan of thorax spine	0283	4.89	$242.52	$179.39	$48.50
72129	S	Contrast CAT scan of thorax	0283	4.89	$242.52	$179.39	$48.50
72130	S	Contrast CAT scans of thorax	0283	4.89	$242.52	$179.39	$48.50
72131	S	CAT scan of lower spine	0283	4.89	$242.52	$179.39	$48.50
72132	S	Contrast CAT of lower spine	0283	4.89	$242.52	$179.39	$48.50
72133	S	Contrat cat scans, low spine	0283	4.89	$242.52	$179.39	$48.50
72141	S	Magnetic image, neck spine	0284	8.02	$397.76	$257.39	$79.55
72142	S	Magnetic image, neck spine	0284	8.02	$397.76	$257.39	$79.55
72146	S	Magnetic image, chest spine	0284	8.02	$397.76	$257.39	$79.55
72147	S	Magnetic image, chest spine	0284	8.02	$397.76	$257.39	$79.55
72148	S	Magnetic image, lumbar spine	0284	8.02	$397.76	$257.39	$79.55
72149	S	Magnetic image, lumbar spine	0284	8.02	$397.76	$257.39	$79.55
72156	S	Magnetic image, neck spine	0284	8.02	$397.76	$257.39	$79.55
72157	S	Magnetic image, chest spine	0284	8.02	$397.76	$257.39	$79.55
72158	S	Magnetic image, lumbar spine	0284	8.02	$397.76	$257.39	$79.55
72159	E	Magnetic image, spine (mra)					
72170	X	X-ray exam of pelvis	0260	0.79	$39.18	$22.02	$7.84
72190	X	X-ray exam of pelvis	0260	0.79	$39.18	$22.02	$7.84
*72191	S	CT angiograph pelv w/o & w/ dye	0283	4.89	$242.52	$179.39	$48.50
72192	S	CAT scan of pelvis	0283	4.89	$242.52	$179.39	$48.50
72193	S	Contrast CAT scan of pelvis	0283	4.89	$242.52	$179.39	$48.50
72194	S	Contrast CAT scans of pelvis	0283	4.89	$242.52	$179.39	$48.50
*72195	S	MRI pelvis w/o dye	0284	8.02	$397.76	$257.39	$79.55
72196	S	Magnetic image, pelvis	0284	8.02	$397.76	$257.39	$79.55
*72197	S	MRI pelvis w/o & w/ dye	0284	8.02	$397.76	$257.39	$79.55

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
72198	E	Magnetic image, pelvis (mra)					
72200	X	X-ray exam sacroiliac joints	0260	0.79	$39.18	$22.02	$7.84
72202	X	X-ray exam sacroiliac joints	0260	0.79	$39.18	$22.02	$7.84
72220	X	X-ray exam of tailbone	0260	0.79	$39.18	$22.02	$7.84
72240	S	Contrast x-ray of neck spine	0274	4.83	$239.55	$128.12	$47.91
72255	S	Contrast x-ray, thorax spine	0274	4.83	$239.55	$128.12	$47.91
72265	S	Contrast x-ray, lower spine	0274	4.83	$239.55	$128.12	$47.91
72270	S	Contrast x-ray of spine	0274	4.83	$239.55	$128.12	$47.91
72275	S	Epidurography	0274	4.83	$239.55	$128.12	$47.91
72285	S	X-ray c/t spine disk	0274	4.83	$239.55	$128.12	$47.91
72295	S	X-ray of lower spine disk	0274	4.83	$239.55	$128.12	$47.91
73000	X	X-ray exam of collar bone	0260	0.79	$39.18	$22.02	$7.84
73010	X	X-ray exam of shoulder blade	0260	0.79	$39.18	$22.02	$7.84
73020	X	X-ray exam of shoulder	0260	0.79	$39.18	$22.02	$7.84
73030	X	X-ray exam of shoulder	0260	0.79	$39.18	$22.02	$7.84
73040	S	Contrast x-ray of shoulder	0275	2.74	$135.89	$72.26	$27.18
73050	X	X-ray exam of shoulders	0260	0.79	$39.18	$22.02	$7.84
73060	X	X-ray exam of humerus	0260	0.79	$39.18	$22.02	$7.84
73070	X	X-ray exam of elbow	0260	0.79	$39.18	$22.02	$7.84
73080	X	X-ray exam of elbow	0260	0.79	$39.18	$22.02	$7.84
73085	S	Contrast x-ray of elbow	0275	2.74	$135.89	$72.26	$27.18
73090	X	X-ray exam of forearm	0260	0.79	$39.18	$22.02	$7.84
73092	X	X-ray exam of arm, infant	0260	0.79	$39.18	$22.02	$7.84
73100	X	X-ray exam of wrist	0260	0.79	$39.18	$22.02	$7.84
73110	X	X-ray exam of wrist	0260	0.79	$39.18	$22.02	$7.84
73115	S	Contrast x-ray of wrist	0275	2.74	$135.89	$72.26	$27.18
73120	X	X-ray exam of hand	0260	0.79	$39.18	$22.02	$7.84
73130	X	X-ray exam of hand	0260	0.79	$39.18	$22.02	$7.84
73140	X	X-ray exam of finger(s)	0260	0.79	$39.18	$22.02	$7.84
73200	S	CAT scan of arm	0283	4.89	$242.52	$179.39	$48.50
73201	S	Contrast CAT scan of arm	0283	4.89	$242.52	$179.39	$48.50
73202	S	Contrast CAT scans of arm	0283	4.89	$242.52	$179.39	$48.50
*73206	S	CT angio upr extrm w/o & w/ dye	0283	4.89	$242.52	$179.39	$48.50
*73218	S	MRI upper extrm w/o dye	0284	8.02	$397.76	$257.39	$79.55
*73219	S	MRI upper extrm w/ dye	0284	8.02	$397.76	$257.39	$79.55
73220	S	Magnetic image, arm/hand	0284	8.02	$397.76	$257.39	$79.55
73221	S	Magnetic image, joint of arm	0284	8.02	$397.76	$257.39	$79.55
*73222	S	MRI joint upr extrm w/ dye	0284	8.02	$397.76	$257.39	$79.55
*73223	S	MRI joint upr extrm w/o & w/ dye	0284	8.02	$397.76	$257.39	$79.55
73225	E	Magnetic image, upper (mra)					
73500	X	X-ray exam of hip	0260	0.79	$39.18	$22.02	$7.84
73510	X	X-ray exam of hip	0260	0.79	$39.18	$22.02	$7.84
73520	X	X-ray exam of hips	0260	0.79	$39.18	$22.02	$7.84
73525	S	Contrast x-ray of hip	0275	2.74	$135.89	$72.26	$27.18
73530	X	X-ray exam of hip	0261	1.38	$68.44	$38.77	$13.69
73540	X	X-ray exam of pelvis & hips	0260	0.79	$39.18	$22.02	$7.84
73542	S	X-ray exam, sacroiliac joint	0275	2.74	$135.89	$72.26	$27.18
73550	X	X-ray exam of thigh	0260	0.79	$39.18	$22.02	$7.84
73560	X	X-ray exam of knee, 1 or 2	0260	0.79	$39.18	$22.02	$7.84
73562	X	X-ray exam of knee, 3	0260	0.79	$39.18	$22.02	$7.84
73564	X	X-ray exam, knee, 4 or more	0260	0.79	$39.18	$22.02	$7.84
73565	X	X-ray exam of knees	0260	0.79	$39.18	$22.02	$7.84
73580	S	Contrast x-ray of knee joint	0275	2.74	$135.89	$72.26	$27.18
73590	X	X-ray exam of lower leg	0260	0.79	$39.18	$22.02	$7.84
73592	X	X-ray exam of leg, infant	0261	1.38	$68.44	$38.77	$13.69
73600	X	X-ray exam of ankle	0260	0.79	$39.18	$22.02	$7.84
73610	X	X-ray exam of ankle	0260	0.79	$39.18	$22.02	$7.84
73615	S	Contrast x-ray of ankle	0275	2.74	$135.89	$72.26	$27.18
73620	X	X-ray exam of foot	0260	0.79	$39.18	$22.02	$7.84
73630	X	X-ray exam of foot	0260	0.79	$39.18	$22.02	$7.84
73650	X	X-ray exam of heel	0260	0.79	$39.18	$22.02	$7.84
73660	X	X-ray exam of toe(s)	0260	0.79	$39.18	$22.02	$7.84
73700	S	CAT scan of leg	0283	4.89	$242.52	$179.39	$48.50
73701	S	Contrast CAT scan of leg	0283	4.89	$242.52	$179.39	$48.50
73702	S	Contrast CAT scans of leg	0283	4.89	$242.52	$179.39	$48.50
*73706	S	CT angio lwr extr w/o & w/ dye	0283	4.89	$242.52	$179.39	$48.50
*73718	S	MRI lower extrem w/o dye	0284	8.02	$397.76	$257.39	$79.55
*73719	S	MRI lower extrem w/ dye	0284	8.02	$397.76	$257.39	$79.55
73720	S	Magnetic image, leg/foot	0284	8.02	$397.76	$257.39	$79.55
73721	S	Magnetic image, joint of leg	0284	8.02	$397.76	$257.39	$79.55
*73722	S	MRI joint lwr extrm w/ dye	0284	8.02	$397.76	$257.39	$79.55
*73723	S	MRI joint lwr extrm w/o & w/ dye	0284	8.02	$397.76	$257.39	$79.55
73725	S	Magnetic image/lower (mra)	0284	8.02	$397.76	$257.39	$79.55
74000	X	X-ray exam of abdomen	0260	0.79	$39.18	$22.02	$7.84

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
74010	X	X-ray exam of abdomen	0260	0.79	$39.18	$22.02	$7.84
74020	X	X-ray exam of abdomen	0260	0.79	$39.18	$22.02	$7.84
74022	X	X-ray exam series, abdomen	0261	1.38	$68.44	$38.77	$13.69
74150	S	CAT scan of abdomen	0283	4.89	$242.52	$179.39	$48.50
74160	S	Contrast CAT scan of abdomen	0283	4.89	$242.52	$179.39	$48.50
74170	S	Contrast CAT scans, abdomen	0283	4.89	$242.52	$179.39	$48.50
*74175	S	CT angio abdom w/o & w/ dye	0283	4.89	$242.52	$179.39	$48.50
74181	S	Magnetic image/abdomen (mri)	0284	8.02	$397.76	$257.39	$79.55
*74182	S	MRI abdomen w/ dye	0284	8.02	$397.76	$257.39	$79.55
*74183	S	MRI abdomen w/o & w/ dye	0284	8.02	$397.76	$257.39	$79.55
74185	S	Magnetic image/abdomen (MRA)	0284	8.02	$397.76	$257.39	$79.55
74190	X	X-ray exam of peritoneum	0263	1.68	$83.32	$45.86	$16.66
74210	S	Contrst x-ray exam of throat	0276	1.79	$88.78	$49.78	$17.76
74220	S	Contrast x-ray, esophagus	0276	1.79	$88.78	$49.78	$17.76
74230	S	Cinema x-ray, throat/esoph	0276	1.79	$88.78	$49.78	$17.76
74235	S	Remove esophagus obstruction	0296	3.57	$177.06	$100.25	$35.41
74240	S	X-ray exam, upper gi tract	0276	1.79	$88.78	$49.78	$17.76
74241	S	X-ray exam, upper gi tract	0276	1.79	$88.78	$49.78	$17.76
74245	S	X-ray exam, upper gi tract	0277	2.47	$122.50	$69.28	$24.50
74246	S	Contrst x-ray uppr gi tract	0276	1.79	$88.78	$49.78	$17.76
74247	S	Contrst x-ray uppr gi tract	0276	1.79	$88.78	$49.78	$17.76
74249	S	Contrst x-ray uppr gi tract	0277	2.47	$122.50	$69.28	$24.50
74250	S	X-ray exam of small bowel	0276	1.79	$88.78	$49.78	$17.76
74251	S	X-ray exam of small bowel	0277	2.47	$122.50	$69.28	$24.50
74260	S	X-ray exam of small bowel	0277	2.47	$122.50	$69.28	$24.50
74270	S	Contrast x-ray exam of colon	0276	1.79	$88.78	$49.78	$17.76
74280	S	Contrast x-ray exam of colon	0277	2.47	$122.50	$69.28	$24.50
74283	S	Contrast x-ray exam of colon	0276	1.79	$88.78	$49.78	$17.76
74290	S	Contrast x-ray, gallbladder	0276	1.79	$88.78	$49.78	$17.76
74291	S	Contrast x-rays, gallbladder	0276	1.79	$88.78	$49.78	$17.76
74300	X	X-ray bile ducts/pancreas	0263	1.68	$83.32	$45.86	$16.66
74301	X	X-rays at surgery add-on	0263	1.68	$83.32	$45.86	$16.66
74305	X	X-ray bile ducts/pancreas	0263	1.68	$83.32	$45.86	$16.66
74320	X	Contrast x-ray of bile ducts	0264	3.83	$189.96	$106.97	$37.99
74327	S	X-ray bile stone removal	0296	3.57	$177.06	$100.25	$35.41
74328	X	Xray bile duct endoscopy	0264	3.83	$189.96	$106.97	$37.99
74329	X	X-ray for pancreas endoscopy	0264	3.83	$189.96	$106.97	$37.99
74330	X	X-ray bile/panc endoscopy	0264	3.83	$189.96	$106.97	$37.99
74340	X	X-ray guide for GI tube	0272	1.40	$69.43	$39.00	$13.89
74350	X	X-ray guide, stomach tube	0264	3.83	$189.96	$106.97	$37.99
74355	X	X-ray guide, intestinal tube	0264	3.83	$189.96	$106.97	$37.99
74360	S	X-ray guide, GI dilation	0296	3.57	$177.06	$100.25	$35.41
74363	S	X-ray, bile duct dilation	0297	6.13	$304.03	$172.51	$60.81
74400	S	Contrst x-ray, urinary tract	0278	2.85	$141.35	$81.67	$28.27
74410	S	Contrst x-ray, urinary tract	0278	2.85	$141.35	$81.67	$28.27
74415	S	Contrst x-ray, urinary tract	0278	2.85	$141.35	$81.67	$28.27
74420	S	Contrst x-ray, urinary tract	0278	2.85	$141.35	$81.67	$28.27
74425	S	Contrst x-ray, urinary tract	0278	2.85	$141.35	$81.67	$28.27
74430	S	Contrast x-ray, bladder	0278	2.85	$141.35	$81.67	$28.27
74440	S	X-ray, male genital tract	0278	2.85	$141.35	$81.67	$28.27
74445	S	X-ray exam of penis	0278	2.85	$141.35	$81.67	$28.27
74450	S	X-ray, urethra/bladder	0278	2.85	$141.35	$81.67	$28.27
74455	S	X-ray, urethra/bladder	0278	2.85	$141.35	$81.67	$28.27
74470	X	X-ray exam of kidney lesion	0264	3.83	$189.96	$106.97	$37.99
74475	S	X-ray control, cath insert	0297	6.13	$304.03	$172.51	$60.81
74480	S	X-ray control, cath insert	0297	6.13	$304.03	$172.51	$60.81
74485	S	X-ray guide, GU dilation	0296	3.57	$177.06	$100.25	$35.41
74710	X	X-ray measurement of pelvis	0260	0.79	$39.18	$22.02	$7.84
74740	X	X-ray, female genital tract	0264	3.83	$189.96	$106.97	$37.99
74742	X	X-ray, fallopian tube	0264	3.83	$189.96	$106.97	$37.99
74775	S	X-ray exam of perineum	0278	2.85	$141.35	$81.67	$28.27
75552	S	Magnetic image, myocardium	0284	8.02	$397.76	$257.39	$79.55
75553	S	Magnetic image, myocardium	0284	8.02	$397.76	$257.39	$79.55
75554	S	Cardiac MRI/function	0284	8.02	$397.76	$257.39	$79.55
75555	S	Cardiac MRI/limited study	0284	8.02	$397.76	$257.39	$79.55
75556	E	Cardiac MRI/flow mapping					
75600	S	Contrast x-ray exam of aorta	0280	14.98	$742.95	$380.12	$148.59
75605	S	Contrast x-ray exam of aorta	0280	14.98	$742.95	$380.12	$148.59
75625	S	Contrast x-ray exam of aorta	0280	14.98	$742.95	$380.12	$148.59
75630	S	X-ray aorta, leg arteries	0280	14.98	$742.95	$380.12	$148.59
*75635	S	CT angio abdominal arteries	0283	4.89	$242.52	$179.39	$48.50
75650	S	Artery x-rays, head & neck	0280	14.98	$742.95	$380.12	$148.59
75658	S	Artery x-rays, arm	0280	14.98	$742.95	$380.12	$148.59
75660	S	Artery x-rays, head & neck	0279	6.30	$312.46	$174.57	$62.49

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
75662	S	Artery x-rays, head & neck	0279	6.30	$312.46	$174.57	$62.49
75665	S	Artery x-rays, head & neck	0280	14.98	$742.95	$380.12	$148.59
75671	S	Artery x-rays, head & neck	0280	14.98	$742.95	$380.12	$148.59
75676	S	Artery x-rays, neck	0280	14.98	$742.95	$380.12	$148.59
75680	S	Artery x-rays, neck	0280	14.98	$742.95	$380.12	$148.59
75685	S	Artery x-rays, spine	0279	6.30	$312.46	$174.57	$62.49
75705	S	Artery x-rays, spine	0279	6.30	$312.46	$ 74.57	$62.49
75710	S	Artery x-rays, arm/leg	0280	14.98	$742.95	$380.12	$148.59
75716	S	Artery x-rays, arms/legs	0280	14.98	$742.95	$380.12	$148.59
75722	S	Artery x-rays, kidney	0280	14.98	$742.95	$380.12	$148.59
75724	S	Artery x-rays, kidneys	0280	14.98	$742.95	$380.12	$148.59
75726	S	Artery x-rays, abdomen	0280	14.98	$742.95	$380.12	$148.59
75731	S	Artery x-rays, adrenal gland	0280	14.98	$742.95	$380.12	$148.59
75733	S	Artery x-rays, adrenals	0280	14.98	$742.95	$380.12	$148.59
75736	S	Artery x-rays, pelvis	0280	14.98	$742.95	$380.12	$148.59
75741	S	Artery x-rays, lung	0279	6.30	$312.46	$174.57	$62.49
75743	S	Artery x-rays, lungs	0280	14.98	$742.95	$380.12	$148.59
75746	S	Artery x-rays, lung	0279	6.30	$312.46	$174.57	$62.49
75756	S	Artery x-rays, chest	0279	6.30	$312.46	$174.57	$62.49
75774	S	Artery x-ray, each vessel	0280	14.98	$742.95	$380.12	$148.59
75790	S	Visualize A-V shunt	0281	4.40	$218.22	$115.16	$43.64
75801	X	Lymph vessel x-ray, arm/leg	0264	3.83	$189.96	$108.97	$37.99
75803	X	Lymph vessel x-ray,arms/legs	0264	3.83	$189.96	$108.97	$37.99
75805	X	Lymph vessel x-ray, trunk	0264	3.83	$189.96	$108.97	$37.99
75807	X	Lymph vessel x-ray, trunk	0264	3.83	$189.96	$108.97	$37.99
75809	X	Nonvascular shunt, x-ray	0264	3.83	$189.96	$108.97	$37.99
75810	S	Vein x-ray, spleen/liver	0279	6.30	$312.46	$174.57	$62.49
75820	S	Vein x-ray, arm/leg	0281	4.40	$218.22	$115.16	$43.64
75822	S	Vein x-ray, arms/legs	0281	4.40	$218.22	$115.16	$43.64
75825	S	Vein x-ray, trunk	0279	6.30	$312.46	$174.57	$62.49
75827	S	Vein x-ray, chest	0279	6.30	$312.46	$174.57	$62.49
75831	S	Vein x-ray, kidney	0279	6.30	$312.46	$174.57	$62.49
75833	S	Vein x-ray, kidneys	0279	6.30	$312.46	$174.57	$62.49
75840	S	Vein x-ray, adrenal gland	0279	6.30	$312.46	$174.57	$62.49
75842	S	Vein x-ray, adrenal glands	0279	6.30	$312.46	$174.57	$62.49
75860	S	Vein x-ray, neck	0279	6.30	$312.46	$174.57	$62.49
75870	S	Vein x-ray, skull	0279	6.30	$312.46	$174.57	$62.49
75872	S	Vein x-ray, skull	0279	6.30	$312.46	$174.57	$62.49
75880	S	Vein x-ray, eye socket	0279	6.30	$312.46	$174.57	$62.49
75885	S	Vein x-ray, liver	0279	6.30	$312.46	$174.57	$62.49
75887	S	Vein x-ray, liver	0280	14.98	$742.95	$380.12	$148.59
75889	S	Vein x-ray, liver	0279	6.30	$312.46	$174.57	$62.49
75891	S	Vein x-ray, liver	0279	6.30	$312.46	$174.57	$62.49
75893	N	Venous sampling by catheter					
75894	S	X-rays, transcath therapy	0297	6.13	$304.03	$172.51	$60.81
75896	S	X-rays, transcath therapy	0297	6.13	$304.03	$172.51	$60.81
75898	X	Follow-up angiogram	0264	3.83	$189.96	$108.97	$37.99
75900	C	Arterial catheter exchange					
75940	X	X-ray placement, vein filter	0264	3.83	$189.96	$108.97	$37.99
75945	S	Intravascular us	0267	2.72	$134.90	$80.06	$26.98
75946	S	Intravascular us add-on	0267	2.72	$134.90	$80.06	$26.98
*75952	C	Abdom aneurysm endovas repr					
*75953	C	Abdom aneurysm endovas repr					
75960	S	Transcatheter intro, stent	0279	6.30	$312.46	$174.57	$62.49
75961	S	Retrieval, broken catheter	0279	6.30	$312.46	$174.57	$62.49
75962	S	Repair arterial blockage	0280	14.98	$742.95	$380.12	$148.59
75964	S	Repair artery blockage, each	0279	6.30	$312.46	$174.57	$62.49
75966	S	Repair arterial blockage	0280	14.98	$742.95	$380.12	$148.59
75968	S	Repair artery blockage, each	0279	6.30	$312.46	$174.57	$62.49
75970	S	Vascular biopsy	0279	6.30	$312.46	$174.57	$62.49
75978	S	Repair venous blockage	0279	6.30	$312.46	$174.57	$62.49
75980	S	Contrast xray exam bile duct	0297	6.13	$304.03	$172.51	$60.81
75982	S	Contrast xray exam bile duct	0297	6.13	$304.03	$172.51	$60.81
75984	S	Xray control catheter change	0296	3.57	$177.06	$100.25	$35.41
75989	X	Abscess drainage under x-ray	0273	2.49	$123.49	$61.02	$24.70
75992	S	Atherectomy, x-ray exam	0279	6.30	$312.46	$174.57	$62.49
75993	T	Atherectomy, x-ray exam	0081	28.81	$1,428.86	$710.91	$285.77
75994	T	Atherectomy, x-ray exam	0081	28.81	$1,428.86	$710.91	$285.77
75995	S	Atherectomy, x-ray exam	0279	6.30	$312.46	$174.57	$62.49
75996	T	Atherectomy, x-ray exam	0081	28.81	$1,428.86	$710.91	$285.77
76000	X	Fluoroscope examination	0272	1.40	$69.43	$39.00	$13.89
76001	X	Fluoroscope exam, extensive	0273	2.49	$123.49	$61.02	$24.70
76003	X	Needle localization by x-ray	0272	1.40	$69.43	$39.00	$13.89
76005	X	Fluoroguide for spine inject	0273	2.49	$123.49	$61.02	$24.70

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ADDENDUM B.—HOSPITAL-OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
76006	X	X-ray stress view	0261	1.38	$68.44	$38.77	$13.69
76010	X	X-ray, nose to rectum	0260	0.79	$39.18	$22.02	$7.84
*76012	S	Percut vertebroplasty fluor	0274	4.83	$239.55	$128.12	$47.91
*76013	S	Percut vertebroplasty CT	0274	4.83	$239.55	$128.12	$47.91
76020	X	X-rays for bone age	0261	1.38	$68.44	$38.77	$13.69
76040	X	X-rays, bone evaluation	0260	0.79	$39.18	$22.02	$7.84
76061	X	X-rays, bone survey	0261	1.38	$68.44	$38.77	$13.69
76062	X	X-rays, bone survey	0261	1.38	$68.44	$38.77	$13.69
76065	X	X-rays, bone evaluation	0261	1.38	$68.44	$38.77	$13.69
76066	X	Joint(s) survey, single film	0260	0.79	$39.18	$22.02	$7.84
76070	E	CT scan, bone density study					
76075	S	Dual energy x-ray study	0971	1.55	$76.88		$15.38
76076	T	Dual energy x-ray study	0970	0.52	$25.79		$5.16
76078	X	Photodensitometry	0261	1.38	$68.44	$38.77	$13.69
76080	X	X-ray exam of fistula	0263	1.68	$83.32	$45.88	$16.66
76086	X	X-ray of mammary duct	0263	1.68	$83.32	$45.88	$16.66
76088	X	X-ray of mammary ducts	0263	1.68	$83.32	$45.88	$16.66
76090	S	Mammogram, one breast	0271	0.70	$34.72	$19.50	$6.94
76091	S	Mammogram, both breasts	0271	0.70	$34.72	$19.50	$6.94
76092	A	Mammogram, screening					
76093	S	Magnetic image, breast	0284	8.02	$397.76	$257.39	$79.55
76094	S	Magnetic image, both breasts	0284	8.02	$397.76	$257.39	$79.55
76095	X	Stereotactic breast biopsy	0264	3.83	$189.96	$108.97	$37.99
76096	X	X-ray of needle wire, breast	0263	1.68	$83.32	$45.88	$16.66
76098	X	X-ray exam, breast specimen	0260	0.79	$39.18	$22.02	$7.84
76100	X	X-ray exam of body section	0261	1.38	$68.44	$38.77	$13.69
76101	X	Complex body section x-ray	0263	1.68	$83.32	$45.88	$16.66
76102	X	Complex body section x-rays	0264	3.83	$189.96	$108.97	$37.99
76120	X	Cinematic x-rays	0261	1.38	$68.44	$38.77	$13.69
76125	X	Cinematic x-rays add-on	0261	1.38	$68.44	$38.77	$13.69
76140	E	X-ray consultation					
76150	X	X-ray exam, dry process	0260	0.79	$39.18	$22.02	$7.84
76350	N	Special x-ray contrast study					
76355	S	CAT scan for localization	0283	4.89	$242.52	$179.39	$48.50
76360	S	CAT scan for needle biopsy	0283	4.89	$242.52	$179.39	$48.50
76365D	S	CAT scan for cyst aspiration	0283	4.89	$242.52	$179.39	$48.50
76370	S	CAT scan for therapy guide	0282	2.38	$118.04	$94.51	$23.61
76375	S	3d/holograph reconstr add-on	0282	2.38	$118.04	$94.51	$23.61
76380	S	CAT scan follow-up study	0282	2.38	$118.04	$94.51	$23.61
76390	S	Mr spectroscopy	0284	8.02	$397.76	$257.39	$79.55
*76393	X	MR guidance for needle place	0273	2.49	$123.49	$61.02	$24.70
76400	S	Magnetic image, bone marrow	0284	8.02	$397.76	$257.39	$79.55
76499	X	Radiographic procedure	0260	0.79	$39.18	$22.02	$7.84
76506	S	Echo exam of head	0266	1.79	$88.78	$57.35	$17.76
76511	S	Echo exam of eye	0266	1.79	$88.78	$57.35	$17.76
76512	S	Echo exam of eye	0266	1.79	$88.78	$57.35	$17.76
76513	S	Echo exam of eye, water bath	0265	1.17	$58.03	$38.06	$11.61
76516	S	Echo exam of eye	0266	1.79	$88.78	$57.35	$17.76
76519	S	Echo exam of eye	0266	1.79	$88.78	$57.35	$17.76
76529	S	Echo exam of eye	0265	1.17	$58.03	$38.06	$11.61
76536	S	Echo exam of head and neck	0265	1.17	$58.03	$38.06	$11.61
76604	S	Echo exam of chest	0266	1.79	$88.78	$57.35	$17.76
76645	S	Echo exam of breast(s)	0265	1.17	$58.03	$38.06	$11.61
76700	S	Echo exam of abdomen	0266	1.79	$88.78	$57.35	$17.76
76705	S	Echo exam of abdomen	0266	1.79	$88.78	$57.35	$17.76
76770	S	Echo exam abdomen back wall	0266	1.79	$88.78	$57.35	$17.76
76775	S	Echo exam abdomen back wall	0266	1.79	$88.78	$57.35	$17.76
76778	S	Echo exam kidney transplant	0266	1.79	$88.78	$57.35	$17.76
76800	S	Echo exam spinal canal	0266	1.79	$88.78	$57.35	$17.76
76805	S	Echo exam of pregnant uterus	0266	1.79	$88.78	$57.35	$17.76
76810	S	Echo exam of pregnant uterus	0265	1.17	$58.03	$38.06	$11.61
76815	S	Echo exam of pregnant uterus	0265	1.17	$58.03	$38.06	$11.61
76816	S	Echo exam follow-up/repeat	0265	1.17	$58.03	$38.06	$11.61
76818	S	Fetal biophysical profile	0266	1.79	$88.78	$57.35	$17.76
*76819	S	Fetl biophys profil w/o stress	0266	1.79	$88.78	$57.35	$17.76
76825	S	Echo exam of fetal heart	0269	4.40	$218.22	$114.01	$43.64
76826	S	Echo exam of fetal heart	0269	4.40	$218.22	$114.01	$43.64
76827	S	Echo exam of fetal heart	0269	4.40	$218.22	$114.01	$43.64
76828	S	Echo exam of fetal heart	0269	4.40	$218.22	$114.01	$43.64
76830	S	Echo exam, transvaginal	0266	1.79	$88.78	$57.35	$17.76
76831	S	Echo exam, uterus	0266	1.79	$88.78	$57.35	$17.76
76856	S	Echo exam of pelvis	0266	1.79	$88.78	$57.35	$17.76
76857	S	Echo exam of pelvis	0265	1.17	$58.03	$38.06	$11.61
76870	S	Echo exam of scrotum	0266	1.79	$88.78	$57.35	$17.76

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
76872	S	Echo exam, transrectal	0266	1.79	$88.78	$57.35	$17.76
76873	S	Echograp trans r, pros study	0266	1.79	$88.78	$57.35	$17.76
76880	S	Echo exam of extremity	0266	1.79	$88.78	$57.35	$17.76
76885	S	Echo exam, infant hips	0266	1.79	$88.78	$57.35	$17.76
76886	S	Echo exam, infant hips	0266	1.79	$88.78	$57.35	$17.76
76930	X	Echo guide for heart sac tap	0268	2.23	$110.60	$69.51	$22.12
76932	X	Echo guide for heart biopsy	0268	2.23	$110.60	$69.51	$22.12
76934D	X	Echo guide for chest tap	0268	2.23	$110.60	$69.51	$22.12
76936	X	Echo guide for artery repair	0268	2.23	$110.60	$69.51	$22.12
76938D	X	Echo exam for drainage	0268	2.23	$110.60	$69.51	$22.12
76941	X	Echo guide for transfusion	0268	2.23	$110.60	$69.51	$22.12
76942	X	Echo guide for biopsy	0268	2.23	$110.60	$69.51	$22.12
76945	X	Echo guide, villus sampling	0268	2.23	$110.60	$69.51	$22.12
76946	X	Echo guide for amniocentesis	0268	2.23	$110.60	$69.51	$22.12
76948	X	Echo guide, ova aspiration	0268	2.23	$110.60	$69.51	$22.12
76950	X	Echo guidance radiotherapy	0268	2.23	$110.60	$69.51	$22.12
76960D	X	Echo guidance radiotherapy	0268	2.23	$110.60	$69.51	$22.12
76965	X	Echo guidance radiotherapy	0268	2.23	$110.60	$69.51	$22.12
76970	S	Ultrasound exam follow-up	0265	1.17	$58.03	$38.08	$11.61
76975	S	GI endoscopic ultrasound	0266	1.79	$88.78	$57.35	$17.76
76977	S	Us bone density measure	0265	1.17	$58.03	$38.08	$11.61
76986	S	Echo exam at surgery	0266	1.79	$88.78	$57.35	$17.76
76999	S	Echo examination procedure	0266	1.79	$88.78	$57.35	$17.76
77261	E	Radiation therapy planning					
77262	E	Radiation therapy planning					
77263	E	Radiation therapy planning					
77280	X	Set radiation therapy field	0304	1.49	$73.90	$41.52	$14.78
77285	X	Set radiation therapy field	0305	4.06	$201.36	$97.50	$40.27
77290	X	Set radiation therapy field	0305	4.06	$201.36	$97.50	$40.27
77295	X	Set radiation therapy field	0310	13.98	$693.35	$339.05	$138.67
77299	E	Radiation therapy planning					
77300	X	Radiation therapy dose plan	0304	1.49	$73.90	$41.52	$14.78
77305	X	Radiation therapy dose plan	0304	1.49	$73.90	$41.52	$14.78
77310	X	Radiation therapy dose plan	0304	1.49	$73.90	$41.52	$14.78
77315	X	Radiation therapy dose plan	0305	4.06	$201.36	$97.50	$40.27
77321	X	Radiation therapy port plan	0305	4.06	$201.36	$97.50	$40.27
77326	X	Radiation therapy dose plan	0305	4.06	$201.36	$97.50	$40.27
77327	X	Radiation therapy dose plan	0305	4.06	$201.36	$97.50	$40.27
77328	X	Radiation therapy dose plan	0305	4.06	$201.36	$97.50	$40.27
77331	X	Special radiation dosimetry	0304	1.49	$73.90	$41.52	$14.78
77332	X	Radiation treatment aid(s)	0303	2.83	$140.36	$69.28	$28.07
77333	X	Radiation treatment aid(s)	0303	2.83	$140.36	$69.28	$28.07
77334	X	Radiation treatment aid(s)	0303	2.83	$140.36	$69.28	$28.07
77336	X	Radiation physics consult	0311	1.32	$65.46	$31.66	$13.09
77370	X	Radiation physics consult	0311	1.32	$65.46	$31.66	$13.09
77399	X	External radiation dosimetry	0311	1.32	$65.46	$31.66	$13.09
77401	S	Radiation treatment delivery	0300	1.98	$98.20	$47.72	$19.64
77402	S	Radiation treatment delivery	0300	1.98	$98.20	$47.72	$19.64
77403	S	Radiation treatment delivery	0300	1.98	$98.20	$47.72	$19.64
77404	S	Radiation treatment delivery	0300	1.98	$98.20	$47.72	$19.64
77406	S	Radiation treatment delivery	0300	1.98	$98.20	$47.72	$19.64
77407	S	Radiation treatment delivery	0300	1.98	$98.20	$47.72	$19.64
77408	S	Radiation treatment delivery	0300	1.98	$98.20	$47.72	$19.64
77409	S	Radiation treatment delivery	0300	1.98	$98.20	$47.72	$19.64
77411	S	Radiation treatment delivery	0301	2.21	$109.61	$52.53	$21.92
77412	S	Radiation treatment delivery	0301	2.21	$109.61	$52.53	$21.92
77413	S	Radiation treatment delivery	0301	2.21	$109.61	$52.53	$21.92
77414	S	Radiation treatment delivery	0300	1.98	$98.20	$47.72	$19.64
77416	S	Radiation treatment delivery	0301	2.21	$109.61	$52.53	$21.92
77417	X	Radiology port film(s)	0260	0.79	$39.18	$22.02	$7.84
77427	E	Radiation tx management, x5					
77431	E	Radiation therapy management					
77432	E	Stereotactic radiation trmt					
77470	S	Special radiation treatment	0302	8.21	$407.18	$216.55	$81.44
77499	E	Radiation therapy management					
77520	S	Proton beam delivery	0974	8.25	$409.17		$81.83
*77522	S	Proton trmt, simple w/ comp	0974	8.25	$409.17		$81.83
77523	S	Proton beam delivery	0976	18.05	$895.21		$179.04
*77525	S	Proton treatment, complex	0976	18.05	$895.21		$179.04
77600	S	Hyperthermia treatment	0314	5.88	$291.62	$150.95	$58.32
77605	S	Hyperthermia treatment	0314	5.88	$291.62	$150.95	$58.32
77610	S	Hyperthermia treatment	0314	5.88	$291.62	$150.95	$58.32
77615	S	Hyperthermia treatment	0314	5.88	$291.62	$150.95	$58.32
77620	S	Hyperthermia treatment	0314	5.88	$291.62	$150.95	$58.32

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
77750	S	Infuse radioactive materials	0301	2.21	$109.61	$52.53	$21.92
77761	S	Radioelement application	0312	4.09	$202.85	$109.65	$40.57
77762	S	Radioelement application	0312	4.09	$202.85	$109.65	$40.57
77763	S	Radioelement application	0312	4.09	$202.85	$109.65	$40.57
77776	S	Radioelement application	0312	4.09	$202.85	$109.65	$40.57
77777	S	Radioelement application	0312	4.09	$202.85	$109.65	$40.57
77778	S	Radioelement application	0312	4.09	$202.85	$109.65	$40.57
77781	S	High intensity brachytherapy	0313	7.89	$391.31	$164.02	$78.26
77782	S	High intensity brachytherapy	0313	7.89	$391.31	$164.02	$78.26
77783	S	High intensity brachytherapy	0313	7.89	$391.31	$164.02	$78.26
77784	S	High intensity brachytherapy	0313	7.89	$391.31	$164.02	$78.26
77789	S	Radioelement application	0300	1.98	$98.20	$47.72	$19.64
77790	N	Radioelement handling					
77799	S	Radium/radioisotope therapy	0313	7.89	$391.31	$164.02	$78.26
78000	S	Thyroid, single uptake	0290	1.94	$96.21	$55.51	$19.24
78001	S	Thyroid, multiple uptakes	0290	1.94	$96.21	$55.51	$19.24
78003	S	Thyroid suppress/stimul	0290	1.94	$96.21	$55.51	$19.24
78006	S	Thyroid imaging with uptake	0291	3.15	$156.22	$93.14	$31.24
78007	S	Thyroid image, mult uptakes	0291	3.15	$156.22	$93.14	$31.24
78010	S	Thyroid imaging	0290	1.94	$96.21	$55.51	$19.24
78011	S	Thyroid imaging with flow	0290	1.94	$96.21	$55.51	$19.24
78015	S	Thyroid met imaging	0291	3.15	$156.22	$93.14	$31.24
78016	S	Thyroid met imaging/studies	0292	4.36	$216.24	$126.63	$43.25
78018	S	Thyroid met imaging, body	0292	4.36	$216.24	$126.63	$43.25
78020	S	Thyroid met uptake	0292	4.36	$216.24	$126.63	$43.25
78070	S	Parathyroid nuclear imaging	0292	4.36	$216.24	$126.63	$43.25
78075	S	Adrenal nuclear imaging	0292	4.36	$216.24	$126.63	$43.25
78099	S	Endocrine nuclear procedure	0290	1.94	$96.21	$55.51	$19.24
78102	S	Bone marrow imaging, ltd	0291	3.15	$156.22	$93.14	$31.24
78103	S	Bone marrow imaging, mult	0292	4.36	$216.24	$126.63	$43.25
78104	S	Bone marrow imaging, body	0292	4.36	$216.24	$126.63	$43.25
78110	S	Plasma volume, single	0291	3.15	$156.22	$93.14	$31.24
78111	S	Plasma volume, multiple	0291	3.15	$156.22	$93.14	$31.24
78120	S	Red cell mass, single	0291	3.15	$156.22	$93.14	$31.24
78121	S	Red cell mass, multiple	0291	3.15	$156.22	$93.14	$31.24
78122	S	Blood volume	0292	4.36	$216.24	$126.63	$43.25
78130	S	Red cell survival study	0292	4.36	$216.24	$126.63	$43.25
78135	S	Red cell survival kinetics	0292	4.36	$216.24	$126.63	$43.25
78140	S	Red cell sequestration	0292	4.36	$216.24	$126.63	$43.25
78160	S	Plasma iron turnover	0292	4.36	$216.24	$126.63	$43.25
78162	S	Iron absorption exam	0292	4.36	$216.24	$126.63	$43.25
78170	S	Red cell iron utilization	0292	4.36	$216.24	$126.63	$43.25
78172	S	Total body iron estimation	0292	4.36	$216.24	$126.63	$43.25
78185	S	Spleen imaging	0291	3.15	$156.22	$93.14	$31.24
78190	S	Platelet survival, kinetics	0291	3.15	$156.22	$93.14	$31.24
78191	S	Platelet survival	0291	3.15	$156.22	$93.14	$31.24
78195	S	Lymph system imaging	0292	4.36	$216.24	$126.63	$43.25
78199	S	Blood/lymph nuclear exam	0290	1.94	$96.21	$55.51	$19.24
78201	S	Liver imaging	0291	3.15	$156.22	$93.14	$31.24
78202	S	Liver imaging with flow	0291	3.15	$156.22	$93.14	$31.24
78205	S	Liver imaging (3D)	0292	4.36	$216.24	$126.63	$43.25
78206	S	Liver image (3d) w/flow	0292	4.36	$216.24	$126.63	$43.25
78215	S	Liver and spleen imaging	0291	3.15	$156.22	$93.14	$31.24
78216	S	Liver & spleen image/flow	0291	3.15	$156.22	$93.14	$31.24
78220	S	Liver function study	0292	4.36	$216.24	$126.63	$43.25
78223	S	Hepatobiliary imaging	0292	4.36	$216.24	$126.63	$43.25
78230	S	Salivary gland imaging	0291	3.15	$156.22	$93.14	$31.24
78231	S	Serial salivary imaging	0291	3.15	$156.22	$93.14	$31.24
78232	S	Salivary gland function exam	0291	3.15	$156.22	$93.14	$31.24
78258	S	Esophageal motility study	0291	3.15	$156.22	$93.14	$31.24
78261	S	Gastric mucosa imaging	0291	3.15	$156.22	$93.14	$31.24
78262	S	Gastroesophageal reflux exam	0291	3.15	$156.22	$93.14	$31.24
78264	S	Gastric emptying study	0292	4.36	$216.24	$126.63	$43.25
78267	A	Breath tst attain/anal c-14					
78268	A	Breath test analysis, c-14					
78270	S	Vit B-12 absorption exam	0290	1.94	$96.21	$55.51	$19.24
78271	S	Vit B-12 absorp exam, IF	0290	1.94	$96.21	$55.51	$19.24
78272	S	Vit B-12 absorp, combined	0291	3.15	$156.22	$93.14	$31.24
78278	S	Acute GI blood loss imaging	0292	4.36	$216.24	$126.63	$43.25
78282	S	GI protein loss exam	0290	1.94	$96.21	$55.51	$19.24
78290	S	Meckel's divert exam	0291	3.15	$156.22	$93.14	$31.24
78291	S	Leveen/shunt patency exam	0292	4.36	$216.24	$126.63	$43.25
78299	S	GI nuclear procedure	0290	1.94	$96.21	$55.51	$19.24
78300	S	Bone imaging, limited area	0291	3.15	$156.22	$93.14	$31.24

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
78305	S	Bone imaging, multiple areas	0292	4.36	$216.24	$126.63	$43.25
78306	S	Bone imaging, whole body	0292	4.36	$216.24	$126.63	$43.25
78315	S	Bone imaging, 3 phase	0292	4.36	$216.24	$126.63	$43.25
78320	S	Bone imaging (3D)	0292	4.36	$216.24	$126.63	$43.25
78350	X	Bone mineral, single photon	0261	1.38	$68.44	$38.77	$13.69
78351	E	Bone mineral, dual photon	....	....	....	....	....
78399	S	Musculoskeletal nuclear exam	0290	1.94	$96.21	$55.51	$19.24
78414	S	Non-imaging heart function	0292	4.36	$216.24	$126.63	$43.25
78428	S	Cardiac shunt imaging	0292	4.36	$216.24	$126.63	$43.25
78445	S	Vascular flow imaging	0291	3.15	$156.22	$93.14	$31.24
78455	S	Venous thrombosis study	0291	3.15	$156.22	$93.14	$31.24
78456	S	Acute venous thrombus image	0291	3.15	$156.22	$93.14	$31.24
78457	S	Venous thrombosis imaging	0291	3.15	$156.22	$93.14	$31.24
78458	S	Ven thrombosis images, bilat	0291	3.15	$156.22	$93.14	$31.24
78459	E	Heart muscle imaging (PET)	....	....	....	....	....
78460	S	Heart muscle blood, single	0286	7.28	$361.06	$200.04	$72.21
78461	S	Heart muscle blood, multiple	0286	7.28	$361.06	$200.04	$72.21
78464	S	Heart image (3d), single	0286	7.28	$361.06	$200.04	$72.21
78465	S	Heart image (3d), multiple	0286	7.28	$361.06	$200.04	$72.21
78466	S	Heart infarct image	0292	4.36	$216.24	$126.63	$43.25
78468	S	Heart infarct image (ef)	0292	4.36	$216.24	$126.63	$43.25
78469	S	Heart infarct image (3D)	0292	4.36	$216.24	$126.63	$43.25
78472	S	Gated heart, planar, single	0286	7.28	$361.06	$200.04	$72.21
78473	S	Gated heart, multiple	0286	7.28	$361.06	$200.04	$72.21
78478	S	Heart wall motion add-on	0286	7.28	$361.06	$200.04	$72.21
78480	S	Heart function add-on	0286	7.28	$361.06	$200.04	$72.21
78481	S	Heart first pass, single	0286	7.28	$361.06	$200.04	$72.21
78483	S	Heart first pass, multiple	0286	7.28	$361.06	$200.04	$72.21
78491	E	Heart image (pet), single	....	....	....	....	....
78492	E	Heart image (pet), multiple	....	....	....	....	....
78494	S	Heart image, spect	0296	3.57	$177.06	$100.25	$35.41
78496	S	Heart first pass add-on	0296	3.57	$177.06	$100.25	$35.41
78499	S	Cardiovascular nuclear exam	0292	4.36	$216.24	$126.63	$43.25
78580	S	Lung perfusion imaging	0291	3.15	$156.22	$93.14	$31.24
78584	S	Lung V/Q image single breath	0292	4.36	$216.24	$126.63	$43.25
78585	S	Lung V/Q imaging	0292	4.36	$216.24	$126.63	$43.25
78586	S	Aerosol lung image, single	0292	4.36	$216.24	$126.63	$43.25
78587	S	Aerosol lung image, multiple	0292	4.36	$216.24	$126.63	$43.25
78588	S	Perfusion lung image	0292	4.36	$216.24	$126.63	$43.25
78591	S	Vent image, 1 breath, 1 proj	0291	3.15	$156.22	$93.14	$31.24
78593	S	Vent image, 1 proj, gas	0292	4.36	$216.24	$126.63	$43.25
78594	S	Vent image, mult proj, gas	0292	4.36	$216.24	$126.63	$43.25
78596	S	Lung differential function	0292	4.36	$216.24	$126.63	$43.25
78599	S	Respiratory nuclear exam	0291	3.15	$156.22	$93.14	$31.24
78600	S	Brain imaging, ltd static	0292	4.36	$216.24	$126.63	$43.25
78601	S	Brain imaging, ltd w/ flow	0292	4.36	$216.24	$126.63	$43.25
78605	S	Brain imaging, complete	0291	3.15	$156.22	$93.14	$31.24
78606	S	Brain imaging, compl w/flow	0292	4.36	$216.24	$126.63	$43.25
78607	S	Brain imaging (3D)	0292	4.36	$216.24	$126.63	$43.25
78608	E	Brain imaging (PET)	....	....	....	....	....
78609	E	Brain imaging (PET)	....	....	....	....	....
78610	S	Brain flow imaging only	0291	3.15	$156.22	$93.14	$31.24
78615	S	Cerebral blood flow imaging	0292	4.36	$216.24	$126.63	$43.25
78630	S	Cerebrospinal fluid scan	0292	4.36	$216.24	$126.63	$43.25
78635	S	CSF ventriculography	0292	4.36	$216.24	$126.63	$43.25
78645	S	CSF shunt evaluation	0292	4.36	$216.24	$126.63	$43.25
78647	S	Cerebrospinal fluid scan	0292	4.36	$216.24	$126.63	$43.25
78650	S	CSF leakage imaging	0292	4.36	$216.24	$126.63	$43.25
78660	S	Nuclear exam of tear flow	0291	3.15	$156.22	$93.14	$31.24
78699	S	Nervous system nuclear exam	0292	4.36	$216.24	$126.63	$43.25
78700	S	Kidney imaging, static	0291	3.15	$156.22	$93.14	$31.24
78701	S	Kidney imaging with flow	0291	3.15	$156.22	$93.14	$31.24
78704	S	Imaging renogram	0292	4.36	$216.24	$126.63	$43.25
78707	S	Kidney flow/function image	0292	4.36	$216.24	$126.63	$43.25
78708	S	Kidney flow/function image	0292	4.36	$216.24	$126.63	$43.25
78709	S	Kidney flow/function image	0292	4.36	$216.24	$126.63	$43.25
78710	S	Kidney imaging (3D)	0292	4.36	$216.24	$126.63	$43.25
78715	S	Renal vascular flow exam	0291	3.15	$156.22	$93.14	$31.24
78725	S	Kidney function study	0291	3.15	$156.22	$93.14	$31.24
78730	S	Urinary bladder retention	0291	3.15	$156.22	$93.14	$31.24
78740	S	Ureteral reflux study	0291	3.15	$156.22	$93.14	$31.24
78760	S	Testicular imaging	0291	3.15	$156.22	$93.14	$31.24
78761	S	Testicular imaging/flow	0291	3.15	$156.22	$93.14	$31.24
78799	S	Genitourinary nuclear exam	0292	4.36	$216.24	$126.63	$43.25

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
78800	S	Tumor imaging, limited area	0292	4.36	$216.24	$126.63	$43.25
78801	S	Tumor imaging, mult areas	0292	4.36	$216.24	$126.63	$43.25
78802	S	Tumor imaging, whole body	0292	4.36	$216.24	$126.63	$43.25
78803	S	Tumor imaging (3D)	0292	4.36	$216.24	$126.63	$43.25
78805	S	Abscess imaging, ltd area	0292	4.36	$216.24	$126.63	$43.25
78806	S	Abscess imaging, whole body	0292	4.36	$216.24	$126.63	$43.25
78807	S	Nuclear localization/abscess	0292	4.36	$216.24	$126.63	$43.25
78810	E	Tumor imaging (PET)	....	....	....	....	....
78890	N	Nuclear medicine data proc	....	....	....	....	....
78891	N	Nuclear med data proc	....	....	....	....	....
78990	N	Provide diag radionuclide(s)	....	....	....	....	....
78999	S	Nuclear diagnostic exam	0291	3.15	$156.22	$93.14	$31.24
79000	S	Init hyperthyroid therapy	0294	5.13	$254.43	$144.06	$50.89
79001	S	Repeat hyperthyroid therapy	0294	5.13	$254.43	$144.06	$50.89
79020	S	Thyroid ablation	0294	5.13	$254.43	$144.06	$50.89
79030	S	Thyroid ablation, carcinoma	0294	5.13	$254.43	$144.06	$50.89
79035	S	Thyroid metastatic therapy	0294	5.13	$254.43	$144.06	$50.89
79100	S	Hematopoetic nuclear therapy	0294	5.13	$254.43	$144.06	$50.89
79200	S	Intracavitary nuclear trmt	0295	19.85	$984.48	$609.17	$196.90
79300	S	Interstitial nuclear therapy	0294	5.13	$254.43	$144.06	$50.89
79400	S	Nonhemato nuclear therapy	0295	19.85	$984.48	$609.17	$196.90
79420	S	Intravascular nuclear ther	0295	19.85	$984.48	$609.17	$196.90
79440	S	Nuclear joint therapy	0294	5.13	$254.43	$144.06	$50.89
79900	N	Provide ther radiopharm(s)	....	....	....	....	....
79999	S	Nuclear medicine therapy	0294	5.13	$254.43	$144.06	$50.89
80048	A	Basic metabolic panel	....	....	....	....	....
80050	A	General health panel	....	....	....	....	....
80051	A	Electrolyte panel	....	....	....	....	....
80053	A	Comprehen metabolic panel	....	....	....	....	....
80055	A	Obstetric panel	....	....	....	....	....
80061	A	Lipid panel	....	....	....	....	....
80069	A	Renal function panel	....	....	....	....	....
80072	A	Arthritis panel	....	....	....	....	....
80074	A	Acute hepatitis panel	....	....	....	....	....
80076	A	Hepatic function panel	....	....	....	....	....
80090	A	Torch antibody panel	....	....	....	....	....
80100	A	Drug screen	....	....	....	....	....
80101	A	Drug screen	....	....	....	....	....
80102	A	Drug confirmation	....	....	....	....	....
80103	N	Drug analysis, tissue prep	....	....	....	....	....
80150	A	Assay of amikacin	....	....	....	....	....
80152	A	Assay of amitriptyline	....	....	....	....	....
80154	A	Assay of benzodiazepines	....	....	....	....	....
80156	A	Assay of carbamazepine	....	....	....	....	....
*80157	A	Assay of carbamazepine, free	....	....	....	....	....
80158	A	Assay of cyclosporine	....	....	....	....	....
80160	A	Assay of desipramine	....	....	....	....	....
80162	A	Assay of digoxin	....	....	....	....	....
80164	A	Assay, dipropylacetic acid	....	....	....	....	....
80166	A	Assay of doxepin	....	....	....	....	....
80168	A	Assay of ethosuximide	....	....	....	....	....
80170	A	Assay of gentamicin	....	....	....	....	....
80172	A	Assay of gold	....	....	....	....	....
*80173	A	Assay of haloperidol	....	....	....	....	....
80174	A	Assay of imipramine	....	....	....	....	....
80176	A	Assay of lidocaine	....	....	....	....	....
80178	A	Assay of lithium	....	....	....	....	....
80182	A	Assay of nortriptyline	....	....	....	....	....
80184	A	Assay of phenobarbital	....	....	....	....	....
80185	A	Assay of phenytoin, total	....	....	....	....	....
80186	A	Assay of phenytoin, free	....	....	....	....	....
80188	A	Assay of primidone	....	....	....	....	....
80190	A	Assay of procainamide	....	....	....	....	....
80192	A	Assay of procainamide	....	....	....	....	....
80194	A	Assay of quinidine	....	....	....	....	....
80196	A	Assay of salicylate	....	....	....	....	....
80197	A	Assay of tacrolimus	....	....	....	....	....
80198	A	Assay of theophylline	....	....	....	....	....
80200	A	Assay of tobramycin	....	....	....	....	....
80201	A	Assay of topiramate	....	....	....	....	....
80202	A	Assay of vancomycin	....	....	....	....	....
80299	A	Quantitative assay, drug	....	....	....	....	....
80400	A	Acth stimulation panel	....	....	....	....	....
80402	A	Acth stimulation panel	....	....	....	....	....

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
80406	A	Acth stimulation panel					
80408	A	Aldosterone suppression eval					
80410	A	Calcitonin stimul panel					
80412	A	CRH stimulation panel					
80414	A	Testosterone response					
80415	A	Estradiol response panel					
80416	A	Renin stimulation panel					
80417	A	Renin stimulation panel					
80418	A	Pituitary evaluation panel					
80420	A	Dexamethasone panel					
80422	A	Glucagon tolerance panel					
80424	A	Glucagon tolerance panel					
80426	A	Gonadotropin hormone panel					
80428	A	Growth hormone panel					
80430	A	Growth hormone panel					
80432	A	Insulin suppression panel					
80434	A	Insulin tolerance panel					
80435	A	Insulin tolerance panel					
80436	A	Metyrapone panel					
80438	A	TRH stimulation panel					
80439	A	TRH stimulation panel					
80440	A	TRH stimulation panel					
80500	X	Lab pathology consultation	0343	0.45	$22.32	$12.16	$4.46
80502	X	Lab pathology consultation	0343	0.45	$22.32	$12.16	$4.46
81000	A	Urinalysis, nonauto w/scope					
81001	A	Urinalysis, auto w/scope					
81002	A	Urinalysis nonauto w/o scope					
81003	A	Urinalysis, auto, w/o scope					
81005	A	Urinalysis					
81007	A	Urine screen for bacteria					
81015	A	Microscopic exam of urine					
81020	A	Urinalysis, glass test					
81025	A	Urine pregnancy test					
81050	A	Urinalysis, volume measure					
81099	X	Urinalysis test procedure	0349	0.48	$23.65	$4.73	$4.73
82000	A	Assay of blood acetaldehyde					
82003	A	Assay of acetaminophen					
82009	A	Test for acetone/ketones					
82010	A	Acetone assay					
82013	A	Acetylcholinesterase assay					
82016	A	Acylcarnitines, qual					
82017	A	Acylcarnitines, quant					
82024	A	Assay of acth					
82030	A	Assay of adp & amp					
82040	A	Assay of serum albumin					
82042	A	Assay of urine albumin					
82043	A	Microalbumin, quantitative					
82044	A	Microalbumin, semiquant					
82055	A	Assay of ethanol					
82075	A	Assay of breath ethanol					
82085	A	Assay of aldolase					
82088	A	Assay of aldosterone					
82101	A	Assay of urine alkaloids					
82103	A	Alpha-1-antitrypsin, total					
82104	A	Alpha-1-antitrypsin, pheno					
82105	A	Alpha-fetoprotein, serum					
82106	A	Alpha-fetoprotein, amniotic					
82108	A	Assay of aluminum					
82120	A	Amines, vaginal fluid qual					
82127	A	Amino acid, single qual					
82128	A	Amino acids, mult qual					
82131	A	Amino acids, single quant					
82135	A	Assay, aminolevulinic acid					
82136	A	Amino acids, quant, 2-5					
82139	A	Amino acids, quan, 6 or more					
82140	A	Assay of ammonia					
82143	A	Amniotic fluid scan					
82145	A	Assay of amphetamines					
82150	A	Assay of amylase					
82154	A	Androstanediol glucuronide					
82157	A	Assay of androstenedione					
82160	A	Assay of androsterone					
82163	A	Assay of angiotensin II					
82164	A	Angiotensin I enzyme test					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
82172	A	Assay of apolipoprotein					
82175	A	Assay of arsenic					
82180	A	Assay of ascorbic acid					
82190	A	Atomic absorption					
82205	A	Assay of barbiturates					
82232	A	Assay of beta-2 protein					
82239	A	Bile acids, total					
82240	A	Bile acids, cholylglycine					
82247	A	Bilirubin, total					
82248	A	Bilirubin, direct					
82251D	A	Assay of bilirubin					
82252	A	Fecal bilirubin test					
82261	A	Assay of biotinidase					
82270	A	Test for blood, feces					
82273	A	Test for blood, other source					
82286	A	Assay of bradykinin					
82300	A	Assay of cadmium					
82306	A	Assay of vitamin D					
82307	A	Assay of vitamin D					
82308	A	Assay of calcitonin					
82310	A	Assay of calcium					
82330	A	Assay of calcium					
82331	A	Calcium infusion test					
82340	A	Assay of calcium in urine					
82355	A	Calculus (stone) analysis					
82360	A	Calculus (stone) assay					
82365	A	Calculus (stone) assay					
82370	A	X-ray assay, calculus					
*82373	A	Carb deficient transferrin					
82374	A	Assay, blood carbon dioxide					
82375	A	Assay, blood carbon monoxide					
82376	A	Test for carbon monoxide					
82378	A	Carcinoembryonic antigen					
82379	A	Assay of carnitine					
82380	A	Assay of carotene					
82382	A	Assay, urine catecholamines					
82383	A	Assay, blood catecholamines					
82384	A	Assay, three catecholamines					
82387	A	Assay of cathepsin-d					
82390	A	Assay of ceruloplasmin					
82397	A	Chemiluminescent assay					
82415	A	Assay of chloramphenicol					
82435	A	Assay of blood chloride					
82436	A	Assay of urine chloride					
82438	A	Assay, other fluid chlorides					
82441	A	Test for chlorohydrocarbons					
82465	A	Assay of serum cholesterol					
82480	A	Assay, serum cholinesterase					
82482	A	Assay, rbc cholinesterase					
82485	A	Assay, chondroitin sulfate					
82486	A	Gas/liquid chromatography					
82487	A	Paper chromatography					
82488	A	Paper chromatography					
82489	A	Thin layer chromatography					
82491	A	Chromotography, quant, sing					
82492	A	Chromotography, quant, mult					
82495	A	Assay of chromium					
82507	A	Assay of citrate					
82520	A	Assay of cocaine					
82523	A	Collagen crosslinks					
82525	A	Assay of copper					
82528	A	Assay of corticosterone					
82530	A	Cortisol, free					
82533	A	Total cortisol					
82540	A	Assay of creatine					
82541	A	Column chromotography, qual					
82542	A	Column chromotography, quant					
82543	A	Column chromotograph/isotope					
82544	A	Column chromotograph/isotope					
82550	A	Assay of ck (cpk)					
82552	A	Assay of cpk in blood					
82553	A	Creatine, MB fraction					
82554	A	Creatine, isoforms					
82565	A	Assay of creatinine					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
82570	A	Assay of urine creatinine					
82575	A	Creatinine clearance test					
82585	A	Assay of cryofibrinogen					
82595	A	Assay of cryoglobulin					
82600	A	Assay of cyanide					
82607	A	Vitamin B-12					
82608	A	B-12 binding capacity					
82615	A	Test for urine cystines					
82626	A	Dehydroepiandrosterone					
82627	A	Dehydroepiandrosterone					
82633	A	Desoxycorticosterone					
82634	A	Deoxycortisol					
82638	A	Assay of dibucaine number					
82646	A	Assay of dihydrocodeinone					
82649	A	Assay of dihydromorphinone					
82651	A	Assay of dihydrotestosterone					
82652	A	Assay of dihydroxyvitamin d					
82654	A	Assay of dimethadione					
82657	A	Enzyme cell activity					
82658	A	Enzyme cell activity, ra					
82664	A	Electrophoretic test					
82666	A	Assay of epiandrosterone					
82668	A	Assay of erythropoietin					
82670	A	Assay of estradiol					
82671	A	Assay of estrogens					
82672	A	Assay of estrogen					
82677	A	Assay of estriol					
82679	A	Assay of estrone					
82690	A	Assay of ethchlorvynol					
82693	A	Assay of ethylene glycol					
82696	A	Assay of etiocholanolone					
82705	A	Fats/lipids, feces, qual					
82710	A	Fats/lipids, feces, quant					
82715	A	Assay of fecal fat					
82725	A	Assay of blood fatty acids					
82726	A	Long chain fatty acids					
82728	A	Assay of ferritin					
82731	A	Assay of fetal fibronectin					
82735	A	Assay of fluoride					
82742	A	Assay of flurazepam					
82746	A	Blood folic acid serum					
82747	A	Assay of folic acid, rbc					
82757	A	Assay of semen fructose					
82759	A	Assay of rbc galactokinase					
82760	A	Assay of galactose					
82775	A	Assay galactose transferase					
82776	A	Galactose transferase test					
82784	A	Assay of gammaglobulin igm					
82785	A	Assay of gammaglobulin ige					
82787	A	Igg 1, 2, 3 and 4					
82800	A	Blood pH					
82803	A	Blood gases: pH, pO2 & pCO2					
82805	A	Blood gases W/O2 saturation					
82810	A	Blood gases, O2 sat only					
82820	A	Hemoglobin-oxygen affinity					
82926	A	Assay of gastric acid					
82928	A	Assay of gastric acid					
82938	A	Gastrin test					
82941	A	Assay of gastrin					
82943	A	Assay of glucagon					
*82945	A	Glucose, body fluid other than blood					
82946	A	Glucagon tolerance test					
82947	A	Assay of glucose, quant					
82948	A	Reagent strip/blood glucose					
82950	A	Glucose test					
82951	A	Glucose tolerance test (GTT)					
82952	A	GTT-added samples					
82953	A	Glucose-tolbutamide test					
82955	A	Assay of g6pd enzyme					
82960	A	Test for G6PD enzyme					
82962	A	Glucose blood test					
82963	A	Assay of glucosidase					
82965	A	Assay of gdh enzyme					
82975	A	Assay of glutamine					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
82977	A	Assay of GGT					
82978	A	Assay of glutathione					
82979	A	Assay, rbc glutathione					
82980	A	Assay of glutethimide					
82985	A	Glycated protein					
83001	A	Gonadotropin (FSH)					
83002	A	Gonadotropin (LH)					
83003	A	Assay, growth hormone (hgh)					
83008	A	Assay of guanosine					
83010	A	Assay of haptoglobin, quant					
83012	A	Assay of haptoglobins					
83013	A	H pylori breath tst analysis					
83014	A	H pylori drug admin/collect					
83015	A	Heavy metal screen					
83018	A	Quantitative screen, metals					
83020	A	Hemoglobin electrophoresis					
83021	A	Hemoglobin chromotography					
83026	A	Hemoglobin, copper sulfate					
83030	A	Fetal hemoglobin assay					
83033	A	Fetal fecal hemoglobin assay					
83036	A	Glycated hemoglobin test					
83045	A	Blood methemoglobin test					
83050	A	Blood methemoglobin assay					
83051	A	Assay of plasma hemoglobin					
83055	A	Blood sulfhemoglobin test					
83060	A	Blood sulfhemoglobin assay					
83065	A	Assay of hemoglobin heat					
83068	A	Hemoglobin stability screen					
83069	A	Assay of urine hemoglobin					
83070	A	Assay of hemosiderin, qual					
83071	A	Assay of hemosiderin, quant					
83080	A	Assay of b hexosaminidase					
83088	A	Assay of histamine					
*83090	A	Homocystine					
83150	A	Assay of for hva					
83491	A	Assay of corticosteroids					
83497	A	Assay of 5-hiaa					
83498	A	Assay of progesterone					
83499	A	Assay of progesterone					
83500	A	Assay, free hydroxyproline					
83505	A	Assay, total hydroxyproline					
83516	A	Immunoassay, nonantibody					
83518	A	Immunoassay, dipstick					
83519	A	Immunoassay, nonantibody					
83520	A	Immunoassay, RIA					
83525	A	Assay of insulin					
83527	A	Assay of insulin					
83528	A	Assay of intrinsic factor					
83540	A	Assay of iron					
83550	A	Iron binding test					
83570	A	Assay of idh enzyme					
83582	A	Assay of ketogenic steroids					
83586	A	Assay 17- ketosteroids					
83593	A	Fractionation, ketosteroids					
83605	A	Assay of lactic acid					
83615	A	Lactate (LD) (LDH) enzyme					
83625	A	Assay of ldh enzymes					
83632	A	Placental lactogen					
83633	A	Test urine for lactose					
83634	A	Assay of urine for lactose					
83655	A	Assay of lead					
83661	A	Assay of l/s ratio					
83662	A	L/S ratio, foam stability					
*83663	A	Fetal lung maturity, fluor polar					
*83664	A	Fetal lung maturity, lam body dens					
83670	A	Assay of lap enzyme					
83690	A	Assay of lipase					
83715	A	Assay of blood lipoproteins					
83716	A	Assay of blood lipoproteins					
83718	A	Assay of lipoprotein					
83719	A	Assay of blood lipoprotein					
83721	A	Assay of blood lipoprotein					
83727	A	Assay of lrh hormone					
83735	A	Assay of magnesium					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
83775	A	Assay of md enzyme					
83785	A	Assay of manganese					
83788	A	Mass spectrometry qual					
83789	A	Mass spectrometry quant					
83805	A	Assay of meprobamate					
83825	A	Assay of mercury					
83835	A	Assay of metanephrines					
83840	A	Assay of methadone					
83857	A	Assay of methemalbumin					
83858	A	Assay of methsuximide					
83864	A	Mucopolysaccharides					
83866	A	Mucopolysaccharides screen					
83872	A	Assay synovial fluid mucin					
83873	A	Assay of csf protein					
83874	A	Assay of myoglobin					
83883	A	Assay, nephelometry not spec					
83885	A	Assay of nickel					
83887	A	Assay of nicotine					
83890	A	Molecule isolate					
83891	A	Molecule isolate nucleic					
83892	A	Molecular diagnostics					
83893	A	Molecule dot/slot/blot					
83894	A	Molecule gel electrophor					
83896	A	Molecular diagnostics					
83897	A	Molecule nucleic transfer					
83898	A	Molecule nucleic ampli					
83901	A	Molecule nucleic ampli					
83902	A	Molecular diagnostics					
83903	A	Molecule mutation scan					
83904	A	Molecule mutation identify					
83905	A	Molecule mutation identify					
83906	A	Molecule mutation identify					
83912	A	Genetic examination					
83915	A	Assay of nucleotidase					
83916	A	Oligoclonal bands					
83918	A	Assay, organic acids quant					
83919	A	Assay, organic acids qual					
*83921	A	Assay, organic acid, single, quant					
83925	A	Assay of opiates					
83930	A	Assay of blood osmolality					
83935	A	Assay of urine osmolality					
83937	A	Assay of osteocalcin					
83945	A	Assay of oxalate					
83970	A	Assay of parathormone					
83986	A	Assay of body fluid acidity					
83992	A	Assay for phencyclidine					
84022	A	Assay of phenothiazine					
84030	A	Assay of blood pku					
84035	A	Assay of phenylketones					
84060	A	Assay acid phosphatase					
84061	A	Phosphatase, forensic exam					
84066	A	Assay prostate phosphatase					
84075	A	Assay alkaline phosphatase					
84078	A	Assay alkaline phosphatase					
84080	A	Assay alkaline phosphatases					
84081	A	Amniotic fluid enzyme test					
84085	A	Assay of rbc pg6d enzyme					
84087	A	Assay phosphohexose enzymes					
84100	A	Assay of phosphorus					
84105	A	Assay of urine phosphorus					
84106	A	Test for porphobilinogen					
84110	A	Assay of porphobilinogen					
84119	A	Test urine for porphyrins					
84120	A	Assay of urine porphyrins					
84126	A	Assay of feces porphyrins					
84127	A	Assay of feces porphyrins					
84132	A	Assay of serum potassium					
84133	A	Assay of urine potassium					
84134	A	Assay of prealbumin					
84135	A	Assay of pregnanediol					
84138	A	Assay of pregnanetriol					
84140	A	Assay of pregnenolone					
84143	A	Assay of 17-hydroxypregneno					
84144	A	Assay of progesterone					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
84146	A	Assay of prolactin					
84150	A	Assay of prostaglandin					
*84152	A	PSA, complexed					
84153	A	Assay of psa, total					
84154	A	Assay of psa, free					
84155	A	Assay of protein					
84160	A	Assay of serum protein					
84165	A	Assay of serum proteins					
84181	A	Western blot test					
84182	A	Protein, western blot test					
84202	A	Assay RBC protoporphyrin					
84203	A	Test RBC protoporphyrin					
84206	A	Assay of proinsulin					
84207	A	Assay of vitamin b-6					
84210	A	Assay of pyruvate					
84220	A	Assay of pyruvate kinase					
84228	A	Assay of quinine					
84233	A	Assay of estrogen					
84234	A	Assay of progesterone					
84235	A	Assay of endocrine hormone					
84238	A	Assay, nonendocrine receptor					
84244	A	Assay of renin					
84252	A	Assay of vitamin b-2					
84255	A	Assay of selenium					
84260	A	Assay of serotonin					
84270	A	Assay of sex hormone globul					
84275	A	Assay of sialic acid					
84285	A	Assay of silica					
84295	A	Assay of serum sodium					
84300	A	Assay of urine sodium					
84305	A	Assay of somatomedin					
84307	A	Assay of somatostatin					
84311	A	Spectrophotometry					
84315	A	Body fluid specific gravity					
84375	A	Chromatogram assay, sugars					
84376	A	Sugars, single, qual					
84377	A	Sugars, multiple, qual					
84378	A	Sugars single quant					
84379	A	Sugars multiple quant					
84392	A	Assay of urine sulfate					
84402	A	Assay of testosterone					
84403	A	Assay of total testosterone					
84425	A	Assay of vitamin b-1					
84430	A	Assay of thiocyanate					
84432	A	Assay of thyroglobulin					
84436	A	Assay of total thyroxine					
84437	A	Assay of neonatal thyroxine					
84439	A	Assay of free thyroxine					
84442	A	Assay of thyroid activity					
84443	A	Assay thyroid stim hormone					
84445	A	Assay of tsi					
84446	A	Assay of vitamin e					
84449	A	Assay of transcortin					
84450	A	Transferase (AST) (SGOT)					
84460	A	Alanine amino (ALT) (SGPT)					
84466	A	Assay of transferrin					
84478	A	Assay of triglycerides					
84479	A	Assay of thyroid (t3 or t4)					
84480	A	Assay, triiodothyronine (t3)					
84481	A	Free assay (FT-3)					
84482	A	T3 reverse					
84484	A	Assay of troponin, quant					
84485	A	Assay duodenal fluid trypsin					
84488	A	Test feces for trypsin					
84490	A	Assay of feces for trypsin					
84510	A	Assay of tyrosine					
84512	A	Assay of troponin, qual					
84520	A	Assay of urea nitrogen					
84525	A	Urea nitrogen semi-quant					
84540	A	Assay of urine/urea-n					
84545	A	Urea-N clearance test					
84550	A	Assay of blood/uric acid					
84560	A	Assay of urine/uric acid					
84577	A	Assay of feces/urobilinogen					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
84578	A	Test urine urobilinogen					
84580	A	Assay of urine urobilinogen					
84583	A	Assay of urine urobilinogen					
84585	A	Assay of urine vma					
84586	A	Assay of vip					
84588	A	Assay of vasopressin					
84590	A	Assay of vitamin a					
*84591	A	Vitamin, NOS					
84597	A	Assay of vitamin k					
84600	A	Assay of volatiles					
84620	A	Xylose tolerance test					
84630	A	Assay of zinc					
84681	A	Assay of c-peptide					
84702	A	Chorionic gonadotropin test					
84703	A	Chorionic gonadotropin assay					
84830	A	Ovulation tests					
84999	X	Clinical chemistry test	0349	0.46	$23.65	$4.73	$4.73
85002	A	Bleeding time test					
85007	A	Differential WBC count					
85008	A	Nondifferential WBC count					
85009	A	Differential WBC count					
85013	A	Hematocrit					
85014	A	Hematocrit					
85018	A	Hemoglobin					
85021	A	Automated hemogram					
85022	A	Automated hemogram					
85023	A	Automated hemogram					
85024	A	Automated hemogram					
85025	A	Automated hemogram					
85027	A	Automated hemogram					
85031	A	Manual hemogram, cbc					
85041	A	Red blood cell (RBC) count					
85044	A	Reticulocyte count					
85045	A	Reticulocyte count					
85046	A	Reticyte/hgb concentrate					
85048	A	White blood cell (WBC) count					
85060	X	Blood smear interpretation	0342	0.26	$12.90	$8.03	$2.58
85095	T	Bone marrow aspiration	0003	0.98	$48.61	$27.99	$9.72
85097	X	Bone marrow interpretation	0344	0.79	$39.18	$23.63	$7.84
85102	T	Bone marrow biopsy	0003	0.98	$48.61	$27.99	$9.72
85130	A	Chromogenic substrate assay					
85170	A	Blood clot retraction					
85175	A	Blood clot lysis time					
85210	A	Blood clot factor II test					
85220	A	Blood clot factor V test					
85230	A	Blood clot factor VII test					
85240	A	Blood clot factor VIII test					
85244	A	Blood clot factor VIII test					
85245	A	Blood clot factor VIII test					
85246	A	Blood clot factor VIII test					
85247	A	Blood clot factor VIII test					
85250	A	Blood clot factor IX test					
85260	A	Blood clot factor X test					
85270	A	Blood clot factor XI test					
85280	A	Blood clot factor XII test					
85290	A	Blood clot factor XIII test					
85291	A	Blood clot factor XIII test					
85292	A	Blood clot factor assay					
85293	A	Blood clot factor assay					
85300	A	Antithrombin III test					
85301	A	Antithrombin III test					
85302	A	Blood clot inhibitor antigen					
85303	A	Blood clot inhibitor test					
85305	A	Blood clot inhibitor assay					
85306	A	Blood clot inhibitor test					
*85307	A	Activated protein C resistance					
85335	A	Factor inhibitor test					
85337	A	Thrombomodulin					
85345	A	Coagulation time					
85347	A	Coagulation time					
85348	A	Coagulation time					
85360	A	Euglobulin lysis					
85362	A	Fibrin degradation products					
85366	A	Fibrinogen test					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
85370	A	Fibrinogen test					
85378	A	Fibrin degradation					
85379	A	Fibrin degradation					
85384	A	Fibrinogen					
85385	A	Fibrinogen					
85390	A	Fibrinolysins screen					
85400	A	Fibrinolytic plasmin					
85410	A	Fibrinolytic antiplasmin					
85415	A	Fibrinolytic plasminogen					
85420	A	Fibrinolytic plasminogen					
85421	A	Fibrinolytic plasminogen					
85441	A	Heinz bodies, direct					
85445	A	Heinz bodies, induced					
85460	A	Hemoglobin, fetal					
85461	A	Hemoglobin, fetal					
85475	A	Hemolysin					
85520	A	Heparin assay					
85525	A	Heparin					
85530	A	Heparin-protamine tolerance					
85535	A	Iron stain, blood cells					
*85536	A	Iron stain, peripheral blood					
85540	A	Wbc alkaline phosphatase					
85547	A	RBC mechanical fragility					
85549	A	Muramidase					
85555	A	RBC osmotic fragility					
85557	A	RBC osmotic fragility					
85576	A	Blood platelet aggregation					
85585	A	Blood platelet estimation					
85590	A	Platelet count, manual					
85595	A	Platelet count, automated					
85597	A	Platelet neutralization					
85610	A	Prothrombin time					
85611	A	Prothrombin test					
85612	A	Viper venom prothrombin time					
85613	A	Russell viper venom, diluted					
85635	A	Reptilase test					
85651	A	Rbc sed rate, nonautomated					
85652	A	Rbc sed rate, automated					
85660	A	RBC sickle cell test					
85670	A	Thrombin time, plasma					
85675	A	Thrombin time, titer					
85705	A	Thromboplastin inhibition					
85730	A	Thromboplastin time, partial					
85732	A	Thromboplastin time, partial					
85810	A	Blood viscosity examination					
85999	X	Hematology procedure	0349	0.48	$23.65	$4.73	$4.73
86000	A	Agglutinins, febrile					
*86001	A	Allergen specific IgE, quant/semiquant					
86003	A	Allergen specific IgE					
86005	A	Allergen specific IgE					
86021	A	WBC antibody identification					
86022	A	Platelet antibodies					
86023	A	Immunoglobulin assay					
86038	A	Antinuclear antibodies					
86039	A	Antinuclear antibodies (ANA)					
86060	A	Antistreptolysin o, titer					
86063	A	Antistreptolysin o, screen					
86077	X	Physician blood bank service	0343	0.45	$22.32	$12.16	$4.46
86078	X	Physician blood bank service	0344	0.79	$39.18	$23.63	$7.84
86079	X	Physician blood bank service	0344	0.79	$39.18	$23.63	$7.84
86140	A	C-reactive protein					
*86146	A	Beta 2 glycoprotein I antibody					
*86147	A	Cardiolipin antibody					
86148	A	Phospholipid antibody					
86155	A	Chemotaxis assay					
86156	A	Cold agglutinin, screen					
86157	A	Cold agglutinin, titer					
86160	A	Complement, antigen					
86161	A	Complement/function activity					
86162	A	Complement, total (CH50)					
86171	A	Complement fixation, each					
86185	A	Counterimmunoelectrophoresis					
86215	A	Deoxyribonuclease, antibody					
86225	A	DNA antibody					

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CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
86225	A	DNA antibody, single strand					
86235	A	Nuclear antigen antibody					
86243	A	Fc receptor					
86255	A	Fluorescent antibody, screen					
86256	A	Fluorescent antibody, titer					
86277	A	Growth hormone antibody					
86280	A	Hemagglutination inhibition					
*86294	A	Tumor antigen, qual or semiquant					
*86300	A	Tumor antigen, quant; CA 15-3					
*86301	A	Tumor antigen, quant; CA 19-9					
*86304	A	Tumor antigen, quant; CA 125					
86308	A	Heterophile antibodies					
86309	A	Heterophile antibodies					
86310	A	Heterophile antibodies					
86316	A	Immunoassay, tumor antigen					
86317	A	Immunoassay,infectious agent					
86318	A	Immunoassay,infectious agent					
86320	A	Serum immunoelectrophoresis					
86325	A	Other immunoelectrophoresis					
86327	A	Immunoelectrophoresis assay					
86329	A	Immunodiffusion					
86331	A	Immunodiffusion ouchterlony					
86332	A	Immune complex assay					
86334	A	Immunofixation procedure					
86337	A	Insulin antibodies					
86340	A	Intrinsic factor antibody					
86341	A	Islet cell antibody					
86343	A	Leukocyte histamine release					
86344	A	Leukocyte phagocytosis					
86353	A	Lymphocyte transformation					
86359	A	T cells, total count					
86360	A	T cell, absolute count/ratio					
86361	A	T cell, absolute count					
86376	A	Microsomal antibody					
86378	A	Migration inhibitory factor					
86382	A	Neutralization test, viral					
86384	A	Nitroblue tetrazolium dye					
86403	A	Particle agglutination test					
86406	A	Particle agglutination test					
86430	A	Rheumatoid factor test					
86431	A	Rheumatoid factor, quant					
86485	X	Skin test, candida	0341	0.13	$6.44	$3.67	$1.29
86490	X	Coccidioidomycosis skin test	0341	0.13	$6.44	$3.67	$1.29
86510	X	Histoplasmosis skin test	0341	0.13	$6.44	$3.67	$1.29
86580	X	TB intradermal test	0341	0.13	$6.44	$3.67	$1.29
86585	X	TB tine test	0341	0.13	$6.44	$3.67	$1.29
86586	X	Skin test, unlisted	0341	0.13	$6.44	$3.67	$1.29
86590	A	Streptokinase, antibody					
86592	A	Blood serology, qualitative					
86593	A	Blood serology, quantitative					
86602	A	Antinomyces antibody					
86603	A	Adenovirus antibody					
86606	A	Aspergillus antibody					
86609	A	Bacterium antibody					
*86611	A	Bartonella antibody					
86612	A	Blastomyces antibody					
86615	A	Bordetella antibody					
86617	A	Lyme disease antibody					
86618	A	Lyme disease antibody					
86619	A	Borrelia antibody					
86622	A	Brucella antibody					
86625	A	Campylobacter antibody					
86628	A	Candida antibody					
86631	A	Chlamydia antibody					
86632	A	Chlamydia igm antibody					
86635	A	Coccidioides antibody					
86638	A	Q fever antibody					
86641	A	Cryptococcus antibody					
86644	A	CMV antibody					
86645	A	CMV antibody, IgM					
86648	A	Diphtheria antibody					
86651	A	Encephalitis antibody					
86652	A	Encephalitis antibody					
86653	A	Encephalitis antibody					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
86654	A	Encephalitis antibody					
86658	A	Enterovirus antibody					
86663	A	Epstein-barr antibody					
86664	A	Epstein-barr antibody					
86665	A	Epstein-barr antibody					
*86666	A	Erlichia antibody					
86668	A	Francisella tularensis					
86671	A	Fungus antibody					
86674	A	Giardia lamblia antibody					
86677	A	Helicobacter pylori					
86682	A	Helminth antibody					
*86683	A	Fecal hgb antibody					
86684	A	Hemophilus influenza					
86687	A	Htlv-i antibody					
86688	A	Htlv-ii antibody					
86689	A	HTLV/HIV confirmatory test					
86692	A	Hepatitis, delta agent					
*86696	A	Herpes simplex type 2 antibody					
86694	A	Herpes simplex test					
86695	A	Herpes simplex test					
86698	A	Histoplasma					
86701	A	HIV-1					
86702	A	HIV-2					
86703	A	HIV-1/HIV-2, single assay					
86704	A	Hep b core antibody, igg/igm					
86705	A	Hep b core antibody, igm					
86706	A	Hep b surface antibody					
86707	A	Hep be antibody					
86708	A	Hep a antibody, igg/igm					
86709	A	Hep a antibody, igm					
86710	A	Influenza virus antibody					
86713	A	Legionella antibody					
86717	A	Leishmania antibody					
86720	A	Leptospira antibody					
86723	A	Listeria monocytogenes ab					
86727	A	Lymph choriomeningitis ab					
86729	A	Lympho venereum antibody					
86732	A	Mucormycosis antibody					
86735	A	Mumps antibody					
86738	A	Mycoplasma antibody					
86741	A	Neisseria meningitidis					
86744	A	Nocardia antibody					
86747	A	Parvovirus antibody					
86750	A	Malaria antibody					
86753	A	Protozoa antibody nos					
86756	A	Respiratory virus antibody					
*86757	A	Rickettsia antibody					
86759	A	Rotavirus antibody					
86762	A	Rubella antibody					
86765	A	Rubeola antibody					
86768	A	Salmonella antibody					
86771	A	Shigella antibody					
86774	A	Tetanus antibody					
86777	A	Toxoplasma antibody					
86778	A	Toxoplasma antibody, igm					
86781	A	Treponema pallidum, confirm					
86784	A	Trichinella antibody					
86787	A	Varicella-zoster antibody					
86790	A	Virus antibody nos					
86793	A	Yersinia antibody					
86800	A	Thyroglobulin antibody					
86803	A	Hepatitis c ab test					
86804	A	Hep c ab test, confirm					
86805	A	Lymphocytotoxicity assay					
86806	A	Lymphocytotoxicity assay					
86807	A	Cytotoxic antibody screening					
86808	A	Cytotoxic antibody screening					
86812	A	HLA typing, A, B, or C					
86813	A	HLA typing, A, B, or C					
86816	A	HLA typing, DR/DQ					
86817	A	HLA typing, DR/DQ					
86821	A	Lymphocyte culture, mixed					
86822	A	Lymphocyte culture, primed					
86849	X	Immunology procedure	0349	0.48	$23.65	$4.73	$4.73

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
86850	X	RBC antibody screen	0346	0.51	$25.49	$12.03	$5.10
86860	X	RBC antibody elution	0345	0.22	$10.92	$5.37	$2.18
86870	X	RBC antibody identification	0347	0.84	$41.90	$20.13	$8.38
86880	A	Coombs test					
86885	A	Coombs test					
86886	A	Coombs test					
86890	X	Autologous blood process	0347	0.84	$41.90	$20.13	$8.38
86891	X	Autologous blood, op salvage	0345	0.22	$10.92	$5.37	$2.18
86900	A	Blood typing, ABO					
86901	X	Blood typing, Rh (D)	0345	0.22	$10.92	$5.37	$2.18
86903	A	Blood typing, antigen screen					
86904	A	Blood typing, patient serum					
86905	A	Blood typing, RBC antigens					
86906	A	Blood typing, Rh phenotype					
86910	E	Blood typing, paternity test					
86911	E	Blood typing, antigen system					
86915	X	Bone marrow/stem cell prep	0347	0.84	$41.90	$20.13	$8.38
86920	X	Compatibility test	0346	0.51	$25.49	$12.03	$5.10
86921	X	Compatibility test	0346	0.51	$25.49	$12.03	$5.10
86922	X	Compatibility test	0346	0.51	$25.49	$12.03	$5.10
86927	X	Plasma, fresh frozen	0347	0.84	$41.90	$20.13	$8.38
86930	X	Frozen blood prep	0347	0.84	$41.90	$20.13	$8.38
86931	X	Frozen blood thaw	0347	0.84	$41.90	$20.13	$8.38
86932	X	Frozen blood freeze/thaw	0347	0.84	$41.90	$20.13	$8.38
86940	A	Hemolysins/agglutinins, auto					
86941	A	Hemolysins/agglutinins					
86945	X	Blood product/irradiation	0346	0.51	$25.49	$12.03	$5.10
86950	X	Leukacyte transfusion	0347	0.84	$41.90	$20.13	$8.38
86965	X	Pooling blood platelets	0346	0.51	$25.49	$12.03	$5.10
86970	X	RBC pretreatment	0345	0.22	$10.92	$5.37	$2.18
86971	X	RBC pretreatment	0346	0.51	$25.49	$12.03	$5.10
86972	X	RBC pretreatment	0345	0.22	$10.92	$5.37	$2.18
86975	X	RBC pretreatment, serum	0346	0.51	$25.49	$12.03	$5.10
86976	X	RBC pretreatment, serum	0347	0.84	$41.90	$20.13	$8.38
86977	X	RBC pretreatment, serum	0346	0.51	$25.49	$12.03	$5.10
86978	X	RBC pretreatment, serum	0345	0.22	$10.92	$5.37	$2.18
86985	X	Split blood or products	0347	0.84	$41.90	$20.13	$8.38
86999	X	Transfusion procedure	0346	0.51	$25.49	$12.03	$5.10
87001	A	Small animal inoculation					
87003	A	Small animal inoculation					
87015	A	Specimen concentration					
87040	A	Blood culture for bacteria					
87045	A	Stool culture for bacteria					
*87046	A	Stool culture for bacteria					
87060D	A	Nose/throat culture, bact					
87070	A	Culture specimen, bacteria					
*87071	A	Culture specimen, bacteria					
87072D	A	Culture of specimen by kit					
*87073	A	Culture specimen, bacteria					
87075	A	Culture specimen, bacteria					
87076	A	Bacteria identification					
*87077	A	Culture specimen, bacteria					
87081	A	Bacteria culture screen					
87082	A	Culture of specimen by kit					
87083D	A	Culture of specimen by kit					
87084	A	Culture of specimen by kit					
87085D	A	Culture of specimen by kit					
87086	A	Urine culture/colony count					
87087D	A	Urine bacteria culture					
87088	A	Urine bacteria culture					
87101	A	Skin fungus culture					
87102	A	Fungus isolation culture					
87103	A	Blood fungus culture					
87106	A	Fungus identification					
*87107	A	Culture specimen, fungi					
87109	A	Mycoplasma culture					
87110	A	Culture, chlamydia					
87116	A	Mycobacteria culture					
87117D	A	Mycobacteria culture					
87118	A	Mycobacteria identification					
87140	A	Culture typing, fluorescent					
87143	A	Culture typing, GLC method					
87145D	A	Culture typing, phage method					
87147	A	Culture typing, serologic					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
*87149	A	Culture typing					
87151D	A	Culture typing, serologic					
*87152	A	Culture typing					
87155D	A	Culture typing, precipitin					
87158	A	Culture typing, added method					
87163D	A	Special microbiology culture					
87164	A	Dark field examination					
87166	A	Dark field examination					
*87168	A	Macroscopic exam, arthropod					
*87169	A	Macroscopic exam, arthropod					
*87172	A	Pinworm exam					
87174D	A	Endotoxin, bacterial					
87175D	A	Assay, endotoxin, bacterial					
87176	A	Endotoxin, bacterial					
87177	A	Ova and parasites smears					
87181	A	Antibiotic sensitivity, each					
87184	A	Antibiotic sensitivity, each					
*87185	A	Susceptibility study					
87186	A	Antibiotic sensitivity, MIC					
87187	A	Antibiotic sensitivity, MBC					
87188	A	Antibiotic sensitivity, each					
87190	A	TB antibiotic sensitivity					
87192D	A	Antibiotic sensitivity; each					
87197	A	Bactericidal level, serum					
87205	A	Smear, stain & interpret					
87206	A	Smear, stain & interpret					
87207	A	Smear, stain & interpret					
87208D	A	Smear, stain & interpret					
87210	A	Smear, stain & interpret					
87211D	A	Smear, stain & interpret					
87220	A	Tissue exam for fungi					
87230	A	Assay, toxin or antitoxin					
87250	A	Virus inoculation for test					
87252	A	Virus inoculation for test					
87253	A	Virus inoculation for test					
*87254	A	Virus isolation					
87260	A	Adenovirus ag, dfa					
87265	A	Pertussis ag, dfa					
87270	A	Chylmd trach ag, dfa					
87272	A	Cryptosporidum ag, dfa					
*87273	A	Identify infectious agent					
87274	A	Herpes simplex ag, dfa					
*87275	A	Identify infectious agent					
87276	A	Influenza ag, dfa					
*87277	A	Identify infectious agent					
87278	A	Legion pneumo ag, dfa					
*87279	A	Identify infectious agent					
87280	A	Resp syncytial ag, dfa					
*87281	A	Identify infectious agent					
*87283	A	Identify infectious agent					
87285	A	Trepon pallidum ag, dfa					
87290	A	Varicella ag, dfa					
87299	A	Ag detection nos, dfa					
*87300	A	Identify infectious agent					
87301	A	Adenovirus ag, eia					
87320	A	Chylmd trach ag, eia					
87324	A	Clostridium ag, eia					
*87327	A	Identify infectious agent					
87328	A	Cryptospor ag, eia					
87332	A	Cytomegalovirus ag, eia					
87335	A	E coli 0157 ag, eia					
*87336	A	Identify infectious agent					
87337	A	Identify infectious agent					
87338	A	Hpylori, stool, eia					
*87339	A	Identify infectious agent					
87340	A	Hepatitis b surface ag, eia					
*87341	A	Identify infectious agent					
87350	A	Hepatitis be ag, eia					
87380	A	Hepatitis delta ag, eia					
87385	A	Histoplasma capsul ag, eia					
87390	A	Hiv-1 ag, eia					
87391	A	Hiv-2 ag, eia					
*87400	A	Identify infectious agent					
87420	A	Resp syncytial ag, eia					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
87425	A	Rotavirus ag, eia					
*87427	A	Identify infectious agent					
87430	A	Strep a ag, eia					
87449	A	Ag detect nos, eia, mult					
87450	A	Ag detect nos, eia, single					
*87451	A	Identify infectious agent					
87470	A	Bartonella, dna, dir probe					
87471	A	Bartonella, dna, amp probe					
87472	A	Bartonella, dna, quant					
87475	A	Lyme dis, dna, dir probe					
87476	A	Lyme dis, dna, amp probe					
87477	A	Lyme dis, dna, quant					
87480	A	Candida, dna, dir probe					
87481	A	Candida, dna, amp probe					
87482	A	Candida, dna, quant					
87485	A	Chylmd pneum, dna, dir probe					
87486	A	Chylmd pneum, dna, amp probe					
87487	A	Chylmd pneum, dna, quant					
87490	A	Chylmd trach, dna, dir probe					
87491	A	Chylmd trach, dna, amp probe					
87492	A	Chylmd trach, dna, quant					
87495	A	Cytomeg, dna, dir probe					
87496	A	Cytomeg, dna, amp probe					
87497	A	Cytomeg, dna, quant					
87510	A	Gardner vag, dna, dir probe					
87511	A	Gardner vag, dna, amp probe					
87512	A	Gardner vag, dna, quant					
87515	A	Hepatitis b, dna, dir probe					
87516	A	Hepatitis b , dna, amp probe					
87517	A	Hepatitis b , dna, quant					
87520	A	Hepatitis c , rna, dir probe					
87521	A	Hepatitis c , rna, amp probe					
87522	A	Hepatitis c, rna, quant					
87525	A	Hepatitis g , dna, dir probe					
87526	A	Hepatitis g, dna, amp probe					
87527	A	Hepatitis g, dna, quant					
87528	A	Hsv, dna, dir probe					
87529	A	Hsv, dna, amp probe					
87530	A	Hsv, dna, quant					
87531	A	Hhv-6, dna, dir probe					
87532	A	Hhv-6, dna, amp probe					
87533	A	Hhv-6, dna, quant					
87534	A	Hiv-1, dna, dir probe					
87535	A	Hiv-1, dna, amp probe					
87536	A	Hiv-1, dna, quant					
87537	A	Hiv-2, dna, dir probe					
87538	A	Hiv-2, dna, amp probe					
87539	A	Hiv-2, dna, quant					
87540	A	Legion pneumo, dna, dir prob					
87541	A	Legion pneumo, dna, amp prob					
87542	A	Legion pneumo, dna, quant					
87550	A	Mycobacteria, dna, dir probe					
87551	A	Mycobacteria, dna, amp probe					
87552	A	Mycobacteria, dna, quant					
87555	A	M.tuberculo, dna, dir probe					
87556	A	M.tuberculo, dna, amp probe					
87557	A	M.tuberculo, dna, quant					
87560	A	M.avium-intra, dna, dir prob					
87561	A	M.avium-intra, dna, amp prob					
87562	A	M.avium-intra, dna, quant					
87580	A	M.pneumon, dna, dir probe					
87581	A	M.pneumon, dna, amp probe					
87582	A	M.pneumon, dna, quant					
87590	A	N.gonorrhoeae, dna, dir prob					
87591	A	N.gonorrhoeae, dna, amp prob					
87592	A	N.gonorrhoeae, dna, quant					
87620	A	Hpv, dna, dir probe					
87621	A	Hpv, dna, amp probe					
87622	A	Hpv, dna, quant					
87650	A	Strep a, dna, dir probe					
87651	A	Strep a, dna, amp probe					
87652	A	Strep a, dna, quant					
87797	A	Detect agent nos, dna, dir					
87798	A	Detect agent nos, dna, amp					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
87799	A	Detect agent nos, dna, quant					
*87800	A	Identify infectious agent					
*87801	A	Identify infectious agent					
87810	A	Chylmd trach assay w/optic					
87850	A	N. gonorrhoeae assay w/optic					
87880	A	Strep a assay w/optic					
87899	A	Agent nos assay w/optic					
*87901	A	Infectious agent genotype					
*87903	A	Infectious agent phenotype					
*87904	A	Infectious agent phenotype					
87999	X	Microbiology procedure	0349	0.48	$23.65	$4.73	$4.73
88000	E	Autopsy (necropsy), gross					
88005	E	Autopsy (necropsy), gross					
88007	E	Autopsy (necropsy), gross					
88012	E	Autopsy (necropsy), gross					
88014	E	Autopsy (necropsy), gross					
88016	E	Autopsy (necropsy), gross					
88020	E	Autopsy (necropsy), complete					
88025	E	Autopsy (necropsy), complete					
88027	E	Autopsy (necropsy), complete					
88028	E	Autopsy (necropsy), complete					
88029	E	Autopsy (necropsy), complete					
88036	E	Limited autopsy					
88037	E	Limited autopsy					
88040	E	Forensic autopsy (necropsy)					
88045	E	Coroner's autopsy (necropsy)					
88099	E	Necropsy (autopsy) procedure					
88104	X	Cytopathology, fluids	0343	0.45	$22.32	$12.16	$4.46
88106	X	Cytopathology, fluids	0343	0.45	$22.32	$12.16	$4.46
88107	X	Cytopathology, fluids	0343	0.45	$22.32	$12.16	$4.46
88108	X	Cytopath, concentrate tech	0343	0.45	$22.32	$12.16	$4.46
88125	X	Forensic cytopathology	0343	0.45	$22.32	$12.16	$4.46
88130	A	Sex chromatin identification					
88140	A	Sex chromatin identification					
88141	N	Cytopath, c/v, interpret					
88142	A	Cytopath, c/v, thin layer					
88143	A	Cytopath c/v thin layer redo					
88144	A	Cytopath, c/v thin lyr redo					
88145	A	Cytopath, c/v thin lyr sel					
88147	A	Cytopath, c/v, automated					
88148	A	Cytopath, c/v, auto rescreen					
88150	A	Cytopath, c/v, manual					
88152	A	Cytopath, c/v, auto redo					
88153	A	Cytopath, c/v, redo					
88154	A	Cytopath, c/v, select					
88155	A	Cytopath, c/v, index add-on					
88160	X	Cytopath smear, other source	0342	0.26	$12.90	$6.03	$2.58
88161	X	Cytopath smear, other source	0343	0.45	$22.32	$12.16	$4.46
88162	X	Cytopath smear, other source	0343	0.45	$22.32	$12.16	$4.46
88164	A	Cytopath tbs, c/v, manual					
88165	A	Cytopath tbs, c/v, redo					
88166	A	Cytopath tbs, c/v, auto redo					
88167	A	Cytopath tbs, c/v, select					
88170	T	Fine needle aspiration	0002	0.62	$30.75	$17.66	$6.15
88171	T	Fine needle aspiration	0002	0.62	$30.75	$17.66	$6.15
88172	X	Evaluation of smear	0343	0.45	$22.32	$12.16	$4.46
88173	X	Interpretation of smear	0343	0.45	$22.32	$12.16	$4.46
88180	X	Cell marker study	0344	0.79	$39.18	$23.63	$7.84
88182	X	Cell marker study	0344	0.79	$39.18	$23.63	$7.84
88199	X	Cytopathology procedure	0349	0.48	$23.65	$4.73	$4.73
88230	A	Tissue culture, lymphocyte					
88233	A	Tissue culture, skin/biopsy					
88235	A	Tissue culture, placenta					
88237	A	Tissue culture, bone marrow					
88239	A	Tissue culture, tumor					
88240	A	Cell cryopreserve/storage					
88241	A	Frozen cell preparation					
88245	A	Chromosome analysis, 20-25					
88248	A	Chromosome analysis, 50-100					
88249	A	Chromosome analysis, 100					
88261	A	Chromosome analysis, 5					
88262	A	Chromosome analysis, 15-20					
88263	A	Chromosome analysis, 45					
88264	A	Chromosome analysis, 20-25					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
88267	A	Chromosome analys, placenta					
88269	A	Chromosome analys, amniotic					
88271	A	Cytogenetics, dna probe					
88272	A	Cytogenetics, 3-5					
88273	A	Cytogenetics, 10-30					
88274	A	Cytogenetics, 25-99					
88275	A	Cytogenetics, 100-300					
88280	A	Chromosome karyotype study					
88283	A	Chromosome banding study					
88285	A	Chromosome count, additional					
88289	A	Chromosome study, additional					
88291	A	Cyto/molecular report					
88299	X	Cytogenetic study	0342	0.26	$12.90	$8.03	$2.58
88300	X	Surgical path, gross	0342	0.26	$12.90	$8.03	$2.58
88302	X	Tissue exam by pathologist	0342	0.26	$12.90	$8.03	$2.58
88304	X	Tissue exam by pathologist	0343	0.45	$22.32	$12.16	$4.46
88305	X	Tissue exam by pathologist	0343	0.45	$22.32	$12.16	$4.46
88307	X	Tissue exam by pathologist	0344	0.79	$39.18	$23.63	$7.84
88309	X	Tissue exam by pathologist	0344	0.79	$39.18	$23.63	$7.84
88311	X	Decalcify tissue	0342	0.26	$12.90	$8.03	$2.58
88312	X	Special stains	0343	0.45	$22.32	$12.16	$4.46
88313	X	Special stains	0342	0.26	$12.90	$8.03	$2.58
88314	X	Histochemical stain	0343	0.45	$22.32	$12.16	$4.46
88318	X	Chemical histochemistry	0343	0.45	$22.32	$12.16	$4.46
88319	X	Enzyme histochemistry	0342	0.26	$12.90	$8.03	$2.58
88321	X	Microslide consultation	0342	0.26	$12.90	$8.03	$2.58
88323	X	Microslide consultation	0343	0.45	$22.32	$12.16	$4.46
88325	X	Comprehensive review of data	0343	0.45	$22.32	$12.16	$4.46
88329	X	Pathology consult in surgery	0343	0.45	$22.32	$12.16	$4.46
88331	X	Pathology consult in surgery	0343	0.45	$22.32	$12.16	$4.46
88332	X	Pathology consult in surgery	0343	0.45	$22.32	$12.16	$4.46
88342	X	Immunocytochemistry	0344	0.79	$39.18	$23.63	$7.84
88346	X	Immunofluorescent study	0343	0.45	$22.32	$12.16	$4.46
88347	X	Immunofluorescent study	0344	0.79	$39.18	$23.63	$7.84
88348	X	Electron microscopy	0344	0.79	$39.18	$23.63	$7.84
88349	X	Scanning electron microscopy	0344	0.79	$39.18	$23.63	$7.84
88355	X	Analysis, skeletal muscle	0344	0.79	$39.18	$23.63	$7.84
88356	X	Analysis, nerve	0344	0.79	$39.18	$23.63	$7.84
88358	X	Analysis, tumor	0344	0.79	$39.18	$23.63	$7.84
88362	X	Nerve teasing preparations	0343	0.45	$22.32	$12.16	$4.46
88365	X	Tissue hybridization	0344	0.79	$39.18	$23.63	$7.84
88371	A	Protein, western blot tissue					
88372	A	Protein analysis w/probe					
88399	X	Surgical pathology procedure	0349	0.48	$23.65	$4.73	$4.73
*88400	A	Bilirubin total, trascutaneous					
89050	A	Body fluid cell count					
89051	A	Body fluid cell count					
89060	A	Exam,synovial fluid crystals					
89100	X	Sample intestinal contents	0361	3.53	$175.07	$86.09	$35.01
89105	X	Sample intestinal contents	0360	1.38	$68.44	$34.75	$13.69
89125	A	Specimen fat stain					
89130	X	Sample stomach contents	0360	1.38	$68.44	$34.75	$13.69
89132	X	Sample stomach contents	0360	1.38	$68.44	$34.75	$13.69
89135	X	Sample stomach contents	0360	1.38	$68.44	$34.75	$13.69
89136	X	Sample stomach contents	0360	1.38	$68.44	$34.75	$13.69
89140	X	Sample stomach contents	0360	1.38	$68.44	$34.75	$13.69
89141	X	Sample stomach contents	0361	3.53	$175.07	$86.09	$35.01
89160	A	Exam feces for meat fibers					
89190	A	Nasal smear for eosinophils					
89250	X	Fertilization of oocyte	0348	0.52	$25.57	$5.11	$5.11
89251	X	Culture oocyte w/embryos	0348	0.52	$25.57	$5.11	$5.11
89252	X	Assist oocyte fertilization	0348	0.52	$25.57	$5.11	$5.11
89253	X	Embryo hatching	0348	0.52	$25.57	$5.11	$5.11
89254	X	Oocyte identification	0348	0.52	$25.57	$5.11	$5.11
89255	X	Prepare embryo for transfer	0348	0.52	$25.57	$5.11	$5.11
89256	X	Prepare cryopreserved embryo	0348	0.52	$25.57	$5.11	$5.11
89257	X	Sperm identification	0348	0.52	$25.57	$5.11	$5.11
89258	X	Cryopreservation, embryo	0348	0.52	$25.57	$5.11	$5.11
89259	X	Cryopreservation, sperm	0348	0.52	$25.57	$5.11	$5.11
89260	X	Sperm isolation, simple	0348	0.52	$25.57	$5.11	$5.11
89261	X	Sperm isolation, complex	0348	0.52	$25.57	$5.11	$5.11
89264	X	Identify sperm tissue	0348	0.52	$25.57	$5.11	$5.11
89300	A	Semen analysis					
89310	A	Semen analysis					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
89320	A	Semen analysis					
*89321	A	Semen analysis					
89325	A	Sperm antibody test					
89329	A	Sperm evaluation test					
89330	A	Evaluation, cervical mucus					
89350	X	Sputum specimen collection	0344	0.79	$39.18	$23.63	$7.84
89355	A	Exam feces for starch					
89360	X	Collect sweat for test	0344	0.79	$39.18	$23.63	$7.84
89365	A	Water load test					
89399	X	Pathology lab procedure	0349	0.48	$23.65	$4.73	$4.73
90281	E	Human ig, im					
90283	E	Human ig, iv					
90287	E	Botulinum antitoxin					
90288	E	Botulism ig, iv					
90291	E	Cmv ig, iv					
90296	K	Diphtheria antitoxin	0356	0.36	$17.86	$4.82	$3.57
90371	K	Hep b ig, im	0356	0.36	$17.86	$4.82	$3.57
90375	K	Rabies ig, im/sc	0356	0.36	$17.86	$4.82	$3.57
90376	K	Rabies ig, heat treated	0356	0.36	$17.86	$4.82	$3.57
90378	K	Rsv ig, im	0356	0.36	$17.86	$4.82	$3.57
90379	K	Rsv ig, iv	0356	0.36	$17.86	$4.82	$3.57
90384	E	Rh ig, full-dose, im					
90385	K	Rh ig, minidose, im	0356	0.36	$17.86	$4.82	$3.57
90386	E	Rh ig, iv					
90389	K	Tetanus ig, im	0356	0.36	$17.86	$4.82	$3.57
90393	K	Vaccina ig, im	0356	0.36	$17.86	$4.82	$3.57
90396	K	Varicella-zoster ig, im	0356	0.36	$17.86	$4.82	$3.57
90399	E	Immune globulin					
90471	N	Immunization admin					
90472	N	Immunization admin, each add					
90476	K	Adenovirus vaccine, type 4	0356	0.36	$17.86	$4.82	$3.57
90477	K	Adenovirus vaccine, type 7	0356	0.36	$17.86	$4.82	$3.57
90581	K	Anthrax vaccine, sc	0356	0.36	$17.86	$4.82	$3.57
90585	K	Bcg vaccine, percut	0356	0.36	$17.86	$4.82	$3.57
90586	K	Bcg vaccine, intravesical	0356	0.36	$17.86	$4.82	$3.57
90632	K	Hep a vaccine, adult im	0356	0.36	$17.86	$4.82	$3.57
90633	K	Hep a vacc, ped/adol, 2 dose	0356	0.36	$17.86	$4.82	$3.57
90634	K	Hep a vacc, ped/adol, 3 dose	0356	0.36	$17.86	$4.82	$3.57
90636	K	Hep a/hep b vacc, adult im	0356	0.36	$17.86	$4.82	$3.57
90645	K	Hib vaccine, hboc, im	0355	0.19	$9.42	$5.05	$1.88
90646	K	Hib vaccine, prp-d, im	0355	0.19	$9.42	$5.05	$1.88
90647	K	Hib vaccine, prp-omp, im	0355	0.19	$9.42	$5.05	$1.88
90648	K	Hib vaccine, prp-t, im	0355	0.19	$9.42	$5.05	$1.88
90657	K	Flu vaccine, 6-35 mo, im	0354	0.13	$6.33		
90658	K	Flu vaccine, 3 yrs, im	0354	0.13	$6.33		
90659	K	Flu vaccine, whole, im	0354	0.13	$6.33		
90660	K	Flu vaccine, nasal	0354	0.13	$6.33		
90665	K	Lyme disease vaccine, im	0356	0.36	$17.86	$4.82	$3.57
90669	K	Pneumococcal vaccine, ped	0356	0.36	$17.86	$4.82	$3.57
90675	K	Rabies vaccine, im	0356	0.36	$17.86	$4.82	$3.57
90676	K	Rabies vaccine, id	0356	0.36	$17.86	$4.82	$3.57
90680	K	Rotovirus vaccine, oral	0356	0.36	$17.86	$4.82	$3.57
90690	K	Typhoid vaccine, oral	0356	0.36	$17.86	$4.82	$3.57
90691	K	Typhoid vaccine, im	0356	0.36	$17.86	$4.82	$3.57
90692	K	Typhoid vaccine, h-p, sc/id	0356	0.36	$17.86	$4.82	$3.57
90693	K	Typhoid vaccine, akd, sc	0356	0.36	$17.86	$4.82	$3.57
90700	K	Dtap vaccine, im	0355	0.19	$9.42	$5.05	$1.88
90701	K	Dtp vaccine, im	0356	0.36	$17.86	$4.82	$3.57
90702	K	Dt vaccine, im	0355	0.19	$9.42	$5.05	$1.88
90703	K	Tetanus vaccine, im	0356	0.36	$17.86	$4.82	$3.57
90704	K	Mumps vaccine, sc	0355	0.19	$9.42	$5.05	$1.88
90705	K	Measles vaccine, sc	0356	0.36	$17.86	$4.82	$3.57
90706	K	Rubella vaccine, sc	0356	0.36	$17.86	$4.82	$3.57
90707	K	Mmr vaccine, sc	0356	0.36	$17.86	$4.82	$3.57
90708	K	Measles-rubella vaccine, sc	0356	0.36	$17.86	$4.82	$3.57
90709	K	Rubella & mumps vaccine, sc	0356	0.36	$17.86	$4.82	$3.57
90710	K	Mmrv vaccine, sc	0356	0.36	$17.86	$4.82	$3.57
90712	K	Oral poliovirus vaccine	0356	0.36	$17.86	$4.82	$3.57
90713	K	Poliovirus, ipv, sc	0355	0.19	$9.42	$5.05	$1.88
90716	K	Chicken pox vaccine, sc	0355	0.19	$9.42	$5.05	$1.88
90717	K	Yellow fever vaccine, sc	0356	0.36	$17.86	$4.82	$3.57
90718	K	Td vaccine, im	0356	0.36	$17.86	$4.82	$3.57
90719	K	Diphtheria vaccine, im	0356	0.36	$17.86	$4.82	$3.57
90720	K	Dtp/hib vaccine, im	0355	0.19	$9.42	$5.05	$1.88

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
90721	K	Dtap/hib vaccine, im	0355	0.19	$9.42	$5.05	$1.88
*90723	K	DTAP-HepB-IPV vaccine	0356	0.36	$17.86	$4.82	$3.57
90725	K	Cholera vaccine, injectable	0356	0.36	$17.86	$4.82	$3.57
90727	K	Plague vaccine, im	0355	0.19	$9.42	$5.05	$1.88
90732	K	Pneumococcal vaccine, adult	0354	0.13	$6.33		
90733	K	Meningococcal vaccine, sc	0356	0.36	$17.86	$4.82	$3.57
90735	K	Encephalitis vaccine, sc	0356	0.36	$17.86	$4.82	$3.57
*90740	K	Hep B vaccine, 3 dose sched	0356	0.36	$17.86	$4.82	$3.57
*90743	K	Hep B vaccine, 2 dose sched	0356	0.36	$17.86	$4.82	$3.57
90744	K	Hep b vaccine, ped/adol, im	0356	0.36	$17.86	$4.82	$3.57
90746	K	Hep b vaccine, adult, im	0356	0.36	$17.86	$4.82	$3.57
90747	K	Hep b vaccine, ill pat, im	0356	0.36	$17.86	$4.82	$3.57
90748	K	Hep b/hib vaccine, im	0356	0.36	$17.86	$4.82	$3.57
90749	K	Vaccine toxoid	0355	0.19	$9.42	$5.05	$1.88
90780	E	IV infusion therapy, 1 hour					
90781	E	IV infusion, additional hour					
90782	X	Injection, sc/im	0359	0.96	$47.61	$9.52	$9.52
90783	X	Injection, ia	0359	0.96	$47.61	$9.52	$9.52
90784	X	Injection, iv	0359	0.96	$47.61	$9.52	$9.52
90788	X	Injection of antibiotic	0359	0.96	$47.61	$9.52	$9.52
90799	X	Ther/prophylactic/dx inject	0359	0.96	$47.61	$9.52	$9.52
90801	S	Psy dx interview	0323	1.85	$91.75	$22.48	$18.35
90802	S	Intac psy dx interview	0323	1.85	$91.75	$22.48	$18.35
90804	S	Psytx, office, 20-30 min	0322	1.32	$65.46	$14.22	$13.09
90805	S	Psytx, off, 20-30 min w/e&m	0322	1.32	$65.46	$14.22	$13.09
90806	S	Psytx, off, 45-50 min	0323	1.85	$91.75	$22.48	$18.35
90807	S	Psytx, off, 45-50 min w/e&m	0323	1.85	$91.75	$22.48	$18.35
90808	S	Psytx, office, 75-80 min	0323	1.85	$91.75	$22.48	$18.35
90809	S	Psytx, off, 75-80, w/e&m	0323	1.85	$91.75	$22.48	$18.35
90810	S	Intac psytx, off, 20-30 min	0322	1.32	$65.46	$14.22	$13.09
90811	S	Intac psytx, 20-30, w/e&m	0322	1.32	$65.46	$14.22	$13.09
90812	S	Intac psytx, off, 45-50 min	0323	1.85	$91.75	$22.48	$18.35
90813	S	Intac psytx, 45-50 min w/e&m	0323	1.85	$91.75	$22.48	$18.35
90814	S	Intac psytx, off, 75-80 min	0323	1.85	$91.75	$22.48	$18.35
90815	S	Intac psytx, 75-80 w/e&m	0323	1.85	$91.75	$22.48	$18.35
90816	S	Psytx, hosp, 20-30 min	0322	1.32	$65.46	$14.22	$13.09
90817	S	Psytx, hosp, 20-30 min w/e&m	0322	1.32	$65.46	$14.22	$13.09
90818	S	Psytx, hosp, 45-50 min	0323	1.85	$91.75	$22.48	$18.35
90819	S	Psytx, hosp, 45-50 min w/e&m	0323	1.85	$91.75	$22.48	$18.35
90821	S	Psytx, hosp, 75-80 min	0323	1.85	$91.75	$22.48	$18.35
90822	S	Psytx, hosp, 75-80 min w/e&m	0323	1.85	$91.75	$22.48	$18.35
90823	S	Intac psytx, hosp, 20-30 min	0322	1.32	$65.46	$14.22	$13.09
90824	S	Intac psytx, hsp 20-30 w/e&m	0322	1.32	$65.46	$14.22	$13.09
90826	S	Intac psytx, hosp, 45-50 min	0323	1.85	$91.75	$22.48	$18.35
90827	S	Intac psytx, hsp 45-50 w/e&m	0323	1.85	$91.75	$22.48	$18.35
90828	S	Intac psytx, hosp, 75-80 min	0323	1.85	$91.75	$22.48	$18.35
90829	S	Intac psytx, hsp 75-80 w/e&m	0323	1.85	$91.75	$22.48	$18.35
90845	S	Psychoanalysis	0323	1.85	$91.75	$22.48	$18.35
90846	S	Family psytx w/o patient	0324	1.87	$92.74	$20.19	$18.55
90847	S	Family psytx w/patient	0324	1.87	$92.74	$20.19	$18.55
90849	S	Multiple family group psytx	0325	1.55	$76.88	$19.96	$15.38
90853	S	Group psychotherapy	0325	1.55	$76.88	$19.96	$15.38
90857	S	Intac group psytx	0325	1.55	$76.88	$19.96	$15.38
90862	X	Medication management	0374	1.17	$58.03	$13.08	$11.61
90865	S	Narcosynthesis	0323	1.85	$91.75	$22.48	$18.35
90870	S	Electroconvulsive therapy	0320	3.68	$182.51	$80.06	$36.50
90871	S	Electroconvulsive therapy	0320	3.68	$182.51	$80.06	$36.50
90875	E	Psychophysiological therapy					
90876	E	Psychophysiological therapy					
90880	S	Hypnotherapy	0323	1.85	$91.75	$22.48	$18.35
90882	E	Environmental manipulation					
90885	N	Psy evaluation of records					
90887	N	Consultation with family					
90889	N	Preparation of report					
90899	S	Psychiatric service/therapy	0322	1.32	$65.46	$14.22	$13.09
90901	S	Biofeedback train, any meth	0321	1.26	$62.49	$29.25	$12.50
90911	S	Biofeedback peri/uro/rectal	0321	1.26	$62.49	$29.25	$12.50
90918	A	ESRD related services, month					
90919	A	ESRD related services, month					
90920	A	ESRD related services, month					
90921	A	ESRD related services, month					
90922	A	ESRD related services, day					
90923	A	Esrd related services, day					
90924	A	Esrd related services, day					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
90925	A	Esrd related services, day					
90935	S	Hemodialysis, one evaluation	0170	6.66	$331.30	$72.26	$66.26
90937	E	Hemodialysis, repeated eval					
*90940	N	Hemodyalysis access study					
90945	S	Dialysis, one evaluation	0170	6.66	$331.30	$72.26	$66.26
90947	E	Dialysis, repeated eval					
90989	E	Dialysis training, complete					
90993	E	Dialysis training, incompl					
90997	E	Hemoperfusion					
90999	E	Dialysis procedure					
91000	X	Esophageal intubation	0361	3.53	$175.07	$86.09	$35.01
91010	X	Esophagus motility study	0361	3.53	$175.07	$86.09	$35.01
91011	X	Esophagus motility study	0361	3.53	$175.07	$86.09	$35.01
91012	X	Esophagus motility study	0361	3.53	$175.07	$86.09	$35.01
91020	X	Gastric motility	0361	3.53	$175.07	$86.09	$35.01
91030	X	Acid perfusion of esophagus	0360	1.38	$68.44	$34.75	$13.69
91032	X	Esophagus, acid reflux test	0361	3.53	$175.07	$86.09	$35.01
91033	X	Prolonged acid reflux test	0361	3.53	$175.07	$86.09	$35.01
91052	X	Gastric analysis test	0361	3.53	$175.07	$86.09	$35.01
91055	X	Gastric intubation for smear	0360	1.38	$68.44	$34.75	$13.69
91060	X	Gastric saline load test	0361	3.53	$175.07	$86.09	$35.01
91065	X	Breath hydrogen test	0360	1.38	$68.44	$34.75	$13.69
91100	X	Pass intestine bleeding tube	0360	1.38	$68.44	$34.75	$13.69
91105	X	Gastric intubation treatment	0360	1.38	$68.44	$34.75	$13.69
91122	T	Anal pressure record	0165	3.89	$192.92	$91.76	$38.58
*91132	X	Electrogastrography	0360	1.38	$68.44	$34.75	$13.69
*91133	X	Electrogastrography	0360	1.38	$68.44	$34.75	$13.69
91299	X	Gastroenterology procedure	0360	1.38	$68.44	$34.75	$13.69
92002	V	Eye exam, new patient	0601	1.00	$49.60	$9.92	$9.92
92004	V	Eye exam, new patient	0602	1.66	$82.33	$16.47	$16.47
92012	V	Eye exam established pat	0601	1.00	$49.60	$9.92	$9.92
92014	V	Eye exam & treatment	0602	1.66	$82.33	$16.47	$16.47
92015	E	Refraction					
92018	S	New eye exam & treatment	0231	2.64	$130.94	$59.87	$26.19
92019	S	Eye exam & treatment	0231	2.64	$130.94	$59.87	$26.19
92020	S	Special eye evaluation	0230	0.98	$48.61	$22.46	$9.72
92060	S	Special eye evaluation	0230	0.98	$48.61	$22.46	$9.72
92065	S	Orthoptic/pleoptic training	0230	0.98	$48.61	$22.46	$9.72
92070	N	Fitting of contact lens					
92081	S	Visual field examination(s)	0230	0.98	$48.61	$22.46	$9.72
92082	S	Visual field examination(s)	0230	0.98	$48.61	$22.46	$9.72
92083	S	Visual field examination(s)	0230	0.98	$48.61	$22.46	$9.72
92100	N	Serial tonometry exam(s)					
92120	S	Tonography & eye evaluation	0230	0.98	$48.61	$22.46	$9.72
92130	S	Water provocation tonography	0230	0.98	$48.61	$22.46	$9.72
92135	S	Opthalmic dx imaging	0231	2.64	$130.94	$59.87	$26.19
92140	S	Glaucoma provocative tests	0231	2.64	$130.94	$59.87	$26.19
92225	S	Special eye exam, initial	0230	0.98	$48.61	$22.46	$9.72
92226	S	Special eye exam, subsequent	0231	2.64	$130.94	$59.87	$26.19
92230	S	Eye exam with photos	0231	2.64	$130.94	$59.87	$26.19
92235	S	Eye exam with photos	0231	2.64	$130.94	$59.87	$26.19
92240	S	Icg angiography	0231	2.64	$130.94	$59.87	$26.19
92250	S	Eye exam with photos	0230	0.98	$48.61	$22.46	$9.72
92260	S	Ophthalmoscopy/dynamometry	0230	0.98	$48.61	$22.46	$9.72
92265	S	Eye muscle evaluation	0230	0.98	$48.61	$22.46	$9.72
92270	S	Electro-oculography	0230	0.98	$48.61	$22.46	$9.72
92275	S	Electroretinography	0216	2.87	$142.34	$64.69	$28.47
92283	S	Color vision examination	0230	0.98	$48.61	$22.46	$9.72
92284	S	Dark adaptation eye exam	0231	2.64	$130.94	$59.87	$26.19
92285	S	Eye photography	0230	0.98	$48.61	$22.46	$9.72
92286	S	Internal eye photography	0231	2.64	$130.94	$59.87	$26.19
92287	S	Internal eye photography	0231	2.64	$130.94	$59.87	$26.19
92310	E	Contact lens fitting					
92311	X	Contact lens fitting	0362	0.51	$25.30	$9.63	$5.06
92312	X	Contact lens fitting	0362	0.51	$25.30	$9.63	$5.06
92313	X	Contact lens fitting	0362	0.51	$25.30	$9.63	$5.06
92314	E	Prescription of contact lens					
92315	X	Prescription of contact lens	0362	0.51	$25.30	$9.63	$5.06
92316	X	Prescription of contact lens	0362	0.51	$25.30	$9.63	$5.06
92317	X	Prescription of contact lens	0362	0.51	$25.30	$9.63	$5.06
92325	X	Modification of contact lens	0362	0.51	$25.30	$9.63	$5.06
92326	X	Replacement of contact lens	0362	0.51	$25.30	$9.63	$5.06
92330	S	Fitting of artificial eye	0230	0.98	$48.61	$22.46	$9.72
92335	N	Fitting of artificial eye					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
92340	E	Fitting of spectacles					
92341	E	Fitting of spectacles					
92342	E	Fitting of spectacles					
92352	X	Special spectacles fitting	0362	0.51	$25.30	$9.63	$5.06
92353	X	Special spectacles fitting	0362	0.51	$25.30	$9.63	$5.06
92354	X	Special spectacles fitting	0362	0.51	$25.30	$9.63	$5.06
92355	X	Special spectacles fitting	0362	0.51	$25.30	$9.63	$5.06
92358	X	Eye prosthesis service	0362	0.51	$25.30	$9.63	$5.06
92370	E	Repair & adjust spectacles					
92371	X	Repair & adjust spectacles	0362	0.51	$25.30	$9.63	$5.06
92390	E	Supply of spectacles					
92391	E	Supply of contact lenses					
92392	E	Supply of low vision aids					
92393	E	Supply of artificial eye					
92395	E	Supply of spectacles					
92396	E	Supply of contact lenses					
92499	S	Eye service or procedure	0230	0.98	$48.61	$22.48	$9.72
92502	T	Ear and throat examination	0251	1.68	$83.32	$27.99	$16.66
92504	N	Ear microscopy examination					
92506	A	Speech/hearing evaluation					
92507	A	Speech/hearing therapy					
92508	A	Speech/hearing therapy					
92510	A	Rehab for ear implant					
92511	T	Nasopharyngoscopy	0071	0.55	$27.28	$14.22	$5.46
92512	X	Nasal function studies	0363	2.83	$140.36	$53.22	$28.07
92516	X	Facial nerve function test	0363	2.83	$140.36	$53.22	$28.07
92520	X	Laryngeal function studies	0363	2.83	$140.36	$53.22	$28.07
92525	E	Oral function evaluation					
92526	A	Oral function therapy					
92531	N	Spontaneous nystagmus study					
92532	N	Positional nystagmus study					
92533	N	Caloric vestibular test					
92534	N	Optokinetic nystagmus					
92541	X	Spontaneous nystagmus test	0363	2.83	$140.36	$53.22	$28.07
92542	X	Positional nystagmus test	0363	2.83	$140.36	$53.22	$28.07
92543	X	Caloric vestibular test	0363	2.83	$140.36	$53.22	$28.07
92544	X	Optokinetic nystagmus test	0363	2.83	$140.36	$53.22	$28.07
92545	X	Oscillating tracking test	0363	2.83	$140.36	$53.22	$28.07
92546	X	Sinusoidal rotational test	0363	2.83	$140.36	$53.22	$28.07
92547	X	Supplemental electrical test	0363	2.83	$140.36	$53.22	$28.07
92548	X	Posturography	0363	2.83	$140.36	$53.22	$28.07
92551	E	Pure tone hearing test, air					
92552	X	Pure tone audiometry, air	0364	0.68	$33.72	$13.31	$6.74
92553	X	Audiometry, air & bone	0364	0.68	$33.72	$13.31	$6.74
92555	X	Speech threshold audiometry	0364	0.68	$33.72	$13.31	$6.74
92556	X	Speech audiometry, complete	0364	0.68	$33.72	$13.31	$6.74
92557	X	Comprehensive hearing test	0365	1.47	$72.91	$22.48	$14.58
92559	E	Group audiometric testing					
92560	E	Bekesy audiometry, screen					
92561	X	Bekesy audiometry, diagnosis	0365	1.47	$72.91	$22.48	$14.58
92562	X	Loudness balance test	0365	1.47	$72.91	$22.48	$14.58
92563	X	Tone decay hearing test	0365	1.47	$72.91	$22.48	$14.58
92564	X	Sisi hearing test	0365	1.47	$72.91	$22.48	$14.58
92565	X	Stenger test, pure tone	0365	1.47	$72.91	$22.48	$14.58
92567	X	Tympanometry	0364	0.68	$33.72	$13.31	$6.74
92568	X	Acoustic reflex testing	0365	1.47	$72.91	$22.48	$14.58
92569	X	Acoustic reflex decay test	0365	1.47	$72.91	$22.48	$14.58
92571	X	Filtered speech hearing test	0365	1.47	$72.91	$22.48	$14.58
92572	X	Staggered spondaic word test	0365	1.47	$72.91	$22.48	$14.58
92573	X	Lombard test	0365	1.47	$72.91	$22.48	$14.58
92575	X	Sensorineural acuity test	0365	1.47	$72.91	$22.48	$14.58
92576	X	Synthetic sentence test	0365	1.47	$72.91	$22.48	$14.58
92577	X	Stenger test, speech	0365	1.47	$72.91	$22.48	$14.58
92579	X	Visual audiometry (vra)	0365	1.47	$72.91	$22.48	$14.58
92582	X	Conditioning play audiometry	0365	1.47	$72.91	$22.48	$14.58
92583	X	Select picture audiometry	0365	1.47	$72.91	$22.48	$14.58
92584	X	Electrocochleography	0363	2.83	$140.36	$53.22	$28.07
92585	S	Auditory evoked potential	0216	2.87	$142.34	$64.69	$28.47
*92586	S	Auditory evoked potentials, ltd	0971	1.55	$76.88		$15.38
92587	X	Evoked auditory test	0363	2.83	$140.36	$53.22	$28.07
92588	X	Evoked auditory test	0363	2.83	$140.36	$53.22	$28.07
92589	X	Auditory function test(s)	0365	1.47	$72.91	$22.48	$14.58
92590	E	Hearing aid exam, one ear					
92591	E	Hearing aid exam, both ears					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
92592	E	Hearing aid check, one ear					
92593	E	Hearing aid check, both ears					
92594	E	Electro hearng aid test, one					
92595	E	Electro hearng aid tst, both					
92596	X	Ear protector evaluation	0365	1.47	$72.91	$22.48	$14.58
92597D	E	Voice prosthetic evaluation					
92598D	E	Voice prosthetic modification					
92599	X	ENT procedure/service	0364	0.68	$33.72	$13.31	$6.74
92950	S	Heart/lung resuscitation cpr	0094	4.51	$223.66	$105.29	$44.74
92953	S	Temporary external pacing	0094	4.51	$223.66	$105.29	$44.74
92960	S	Cardioversion electric, ext	0094	4.51	$223.66	$105.29	$44.74
92961	S	Cardioversion, electric, int	0094	4.51	$223.66	$105.29	$44.74
92970	C	Cardioassist, internal					
92971	C	Cardioassist, external					
92975	C	Dissolve clot, heart vessel					
92977	T	Dissolve clot, heart vessel	0120	1.66	$82.33	$42.67	$16.47
92978	S	Intravasc us, heart add-on	0267	2.72	$134.90	$60.06	$26.98
92979	S	Intravasc us, heart add-on	0267	2.72	$134.90	$60.06	$26.98
92980	T	Insert intracoronary stent	0104	14.94	$740.96	$339.51	$148.19
92981	T	Insert intracoronary stent	0104	14.94	$740.96	$339.51	$148.19
92982	T	Coronary artery dilation	0082	51.01	$2,529.89	$1,351.74	$505.98
92984	T	Coronary artery dilation	0082	51.01	$2,529.89	$1,351.74	$505.98
92986	C	Revision of aortic valve					
92987	C	Revision of mitral valve					
92990	C	Revision of pulmonary valve					
92992	C	Revision of heart chamber					
92993	C	Revision of heart chamber					
92995	T	Coronary atherectomy	0083	29.70	$1,473.00	$794.30	$294.60
92996	T	Coronary atherectomy add-on	0083	29.70	$1,473.00	$794.30	$294.60
92997	C	Pul art balloon repr, percut					
92998	C	Pul art balloon repr, percut					
93000	E	Electrocardiogram, complete					
93005	X	Electrocardiogram, tracing	0099	0.38	$18.85	$14.68	$3.77
93010	E	Electrocardiogram report					
93012	X	Transmission of ecg	0097	1.62	$80.35	$62.40	$16.07
93014	E	Report on transmitted ecg					
93015	E	Cardiovascular stress test					
93016	E	Cardiovascular stress test					
93017	X	Cardiovascular stress test	0100	1.70	$84.32	$71.57	$16.86
93018	E	Cardiovascular stress test					
93024	X	Cardiac drug stress test	0100	1.70	$84.32	$71.57	$16.86
93040	E	Rhythm ECG with report					
93041	X	Rhythm ECG, tracing	0099	0.38	$18.85	$14.68	$3.77
93042	E	Rhythm ECG, report					
93224	E	ECG monitor/report, 24 hrs					
93225	X	ECG monitor/record, 24 hrs	0100	1.70	$84.32	$71.57	$16.86
93226	X	ECG monitor/report, 24 hrs	0100	1.70	$84.32	$71.57	$16.86
93227	E	ECG monitor/review, 24 hrs					
93230	E	ECG monitor/report, 24 hrs					
93231	X	Ecg monitor/record, 24 hrs	0100	1.70	$84.32	$71.57	$16.86
93232	X	ECG monitor/report, 24 hrs	0100	1.70	$84.32	$71.57	$16.86
93233	E	ECG monitor/review, 24 hrs					
93235	E	ECG monitor/report, 24 hrs					
93236	X	ECG monitor/report, 24 hrs	0100	1.70	$84.32	$71.57	$16.86
93237	E	ECG monitor/review, 24 hrs					
93268	E	ECG record/review					
93270	X	ECG recording	0097	1.62	$80.35	$62.40	$16.07
93271	X	Ecg/monitoring and analysis	0097	1.62	$80.35	$62.40	$16.07
93272	E	Ecg/review,interpret only					
93278	X	ECG/signal-averaged	0099	0.38	$18.85	$14.68	$3.77
93303	S	Echo transthoracic	0269	4.40	$218.22	$114.01	$43.64
93304	S	Echo transthoracic	0269	4.40	$218.22	$114.01	$43.64
93307	S	Echo exam of heart	0269	4.40	$218.22	$114.01	$43.64
93308	S	Echo exam of heart	0269	4.40	$218.22	$114.01	$43.64
93312	S	Echo transesophageal	0270	5.55	$275.25	$150.26	$55.05
93313	S	Echo transesophageal	0270	5.55	$275.25	$150.26	$55.05
93314	N	Echo transesophageal					
93315	S	Echo transesophageal	0270	5.55	$275.25	$150.26	$55.05
93316	S	Echo transesophageal	0270	5.55	$275.25	$150.26	$55.05
93317	N	Echo transesophageal					
*93318	S	Echo transesophageal	0270	5.55	$275.25	$150.26	$55.05
93320	S	Doppler echo exam, heart	0269	4.40	$218.22	$114.01	$43.64
93321	S	Doppler echo exam, heart	0269	4.40	$218.22	$114.01	$43.64
93325	S	Doppler color flow add-on	0269	4.40	$218.22	$114.01	$43.64

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
93350	S	Echo transthoracic	0269	4.40	$218.22	$114.01	$43.64
93501	T	Right heart catheterization	0080	31.55	$1,564.75	$838.92	$312.95
93503	T	Insert/place heart catheter	0103	13.09	$649.21	$295.70	$129.84
93505	T	Biopsy of heart lining	0103	13.09	$649.21	$295.70	$129.84
93508	N	Cath placement, angiography					
93510	T	Left heart catheterization	0080	31.55	$1,564.75	$838.92	$312.95
93511	T	Left heart catheterization	0080	31.55	$1,564.75	$838.92	$312.95
93514	T	Left heart catheterization	0080	31.55	$1,564.75	$838.92	$312.95
93524	T	Left heart catheterization	0080	31.55	$1,564.75	$838.92	$312.95
93526	T	Rt & Lt heart catheters	0080	31.55	$1,564.75	$838.92	$312.95
93527	T	Rt & Lt heart catheters	0080	31.55	$1,564.75	$838.92	$312.95
93528	T	Rt & Lt heart catheters	0080	31.55	$1,564.75	$838.92	$312.95
93529	T	Rt, Lt heart catheterization	0080	31.55	$1,564.75	$838.92	$312.95
93530	T	Rt heart cath, congenital	0080	31.55	$1,564.75	$838.92	$312.95
93531	T	R & l heart cath, congenital	0080	31.55	$1,564.75	$838.92	$312.95
93532	T	R & l heart cath, congenital	0080	31.55	$1,564.75	$838.92	$312.95
93533	T	R & l heart cath, congenital	0080	31.55	$1,564.75	$838.92	$312.95
93536	T	Insert circulation assi	0103	13.09	$649.21	$295.70	$129.84
93539	N	Injection, cardiac cath					
93540	N	Injection, cardiac cath					
93541	N	Injection for lung angiogram					
93542	N	Injection for heart x-rays					
93543	N	Injection for heart x-rays					
93544	N	Injection for aortography					
93545	N	Inject for coronary x-rays					
93555	N	Imaging, cardiac cath					
93556	N	Imaging, cardiac cath					
93561	N	Cardiac output measurement					
93562	N	Cardiac output measurement					
93571	N	Heart flow reserve measure					
93572	N	Heart flow reserve measure					
93600	S	Bundle of His recording	0067	9.53	$472.65	$214.72	$94.53
93602	S	Intra-atrial recording	0067	9.53	$472.65	$214.72	$94.53
93603	S	Right ventricular recording	0067	9.53	$472.65	$214.72	$94.53
93607	S	Left ventricular recording	0067	9.53	$472.65	$214.72	$94.53
93609	S	Mapping of tachycardia	0067	9.53	$472.65	$214.72	$94.53
93610	S	Intra-atrial pacing	0067	9.53	$472.65	$214.72	$94.53
93612	S	Intraventricular pacing	0067	9.53	$472.65	$214.72	$94.53
93615	S	Esophageal recording	0067	9.53	$472.65	$214.72	$94.53
93616	S	Esophageal recording	0067	9.53	$472.65	$214.72	$94.53
93618	S	Heart rhythm pacing	0067	9.53	$472.65	$214.72	$94.53
93619	S	Electrophysiology evaluation	0085	27.06	$1,342.07	$654.48	$268.41
93620	S	Electrophysiology evaluation	0085	27.06	$1,342.07	$654.48	$268.41
93621	S	Electrophysiology evaluation	0085	27.06	$1,342.07	$654.48	$268.41
93622	S	Electrophysiology evaluation	0085	27.06	$1,342.07	$654.48	$268.41
93623	S	Stimulation, pacing heart	0067	9.53	$472.65	$214.72	$94.53
93624	S	Electrophysiologic study	0067	9.53	$472.65	$214.72	$94.53
93631	S	Heart pacing, mapping	0067	9.53	$472.65	$214.72	$94.53
93640	S	Evaluation heart device	0084	10.70	$530.68	$177.79	$106.14
93641	S	Electrophysiology evaluation	0084	10.70	$530.68	$177.79	$106.14
93642	S	Electrophysiology evaluation	0084	10.70	$530.68	$177.79	$106.14
93650	S	Ablate heart dysrhythm focus	0086	47.62	$2,361.76	$1,265.37	$472.35
93651	S	Ablate heart dysrhythm focus	0086	47.62	$2,361.76	$1,265.37	$472.35
93652	S	Ablate heart dysrhythm focus	0086	47.62	$2,361.76	$1,265.37	$472.35
93660	S	Tilt table evaluation	0101	4.47	$221.70	$128.84	$44.34
*93662	S	Intracardiac ECG	0270	5.55	$275.25	$150.26	$55.05
*93668	E	Peripheral vascular rehab					
93720	E	Total body plethysmography					
93721	S	Plethysmography tracing	0096	2.06	$102.16	$61.48	$20.43
93722	E	Plethysmography report					
93724	S	Analyze pacemaker system	0102	0.45	$22.32	$12.62	$4.46
93727	S	Analyze ilr system	0102	0.45	$22.32	$12.62	$4.46
93731	S	Analyze pacemaker system	0102	0.45	$22.32	$12.62	$4.46
93732	S	Analyze pacemaker system	0102	0.45	$22.32	$12.62	$4.46
93733	S	Telephone analy, pacemaker	0102	0.45	$22.32	$12.62	$4.46
93734	S	Analyze pacemaker system	0102	0.45	$22.32	$12.62	$4.46
93735	S	Analyze pacemaker system	0102	0.45	$22.32	$12.62	$4.46
93736	S	Telephone analy, pacemaker	0102	0.45	$22.32	$12.62	$4.46
93737	S	Analyze cardio/defibrillator	0102	0.45	$22.32	$12.62	$4.46
93738	S	Analyze cardio/defibrillator	0102	0.45	$22.32	$12.62	$4.46
93740	S	Temperature gradient studies	0096	2.06	$102.16	$61.48	$20.43
93741	S	Analyze ht pace device sngl	0102	0.45	$22.32	$12.62	$4.46
93742	S	Analyze ht pace device sngl	0102	0.45	$22.32	$12.62	$4.46
93743	S	Analyze ht pace device dual	0102	0.45	$22.32	$12.62	$4.46

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
93744	S	Analyze ht pace device dual	0102	0.45	$22.32	$12.62	$4.46
93760	E	Cephalic thermogram					
93762	E	Peripheral thermogram					
93770	N	Measure venous pressure					
93784	E	Ambulatory BP monitoring					
93786	E	Ambulatory BP recording					
93788	E	Ambulatory BP analysis					
93790	E	Review/report BP recording					
93797	S	Cardiac rehab	0095	0.64	$31.74	$16.98	$6.35
93798	S	Cardiac rehab/monitor	0095	0.64	$31.74	$16.98	$6.35
93799	S	Cardiovascular procedure	0096	2.06	$102.16	$61.48	$20.43
93875	S	Extracranial study	0096	2.06	$102.16	$61.48	$20.43
93880	S	Extracranial study	0267	2.72	$134.90	$80.06	$26.98
93882	S	Extracranial study	0267	2.72	$134.90	$80.06	$26.98
93886	S	Intracranial study	0267	2.72	$134.90	$80.06	$26.98
93888	S	Intracranial study	0267	2.72	$134.90	$80.06	$26.98
93922	S	Extremity study	0096	2.06	$102.16	$61.48	$20.43
93923	S	Extremity study	0096	2.06	$102.16	$61.48	$20.43
93924	S	Extremity study	0096	2.06	$102.16	$61.48	$20.43
93925	S	Lower extremity study	0267	2.72	$134.90	$80.06	$26.98
93926	S	Lower extremity study	0267	2.72	$134.90	$80.06	$26.98
93930	S	Upper extremity study	0267	2.72	$134.90	$80.06	$26.98
93931	S	Upper extremity study	0267	2.72	$134.90	$80.06	$26.98
93965	S	Extremity study	0096	2.06	$102.16	$61.48	$20.43
93970	S	Extremity study	0267	2.72	$134.90	$80.06	$26.98
93971	S	Extremity stud	0267	2.72	$134.90	$80.06	$26.98
93975	S	Vascular study	0267	2.72	$134.90	$80.06	$26.98
93976	S	Vascular study	0267	2.72	$134.90	$80.06	$26.98
93978	S	Vascular study	0267	2.72	$134.90	$80.06	$26.98
93979	S	Vascular study	0267	2.72	$134.90	$80.06	$26.98
93980	S	Penile vascular study	0267	2.72	$134.90	$80.06	$26.98
93981	S	Penile vascular study	0267	2.72	$134.90	$80.06	$26.98
93990	S	Doppler flow testing	0267	2.72	$134.90	$80.06	$26.98
94010	X	Breathing capacity test	0367	0.83	$41.16	$20.65	$8.23
94014	X	Patient recorded spirometry	0369	2.34	$116.06	$58.50	$23.21
94015	X	Patient recorded spirometry	0369	2.34	$116.06	$58.50	$23.21
94016	X	Review patient spirometry	0369	2.34	$116.06	$58.50	$23.21
94060	X	Evaluation of wheezing	0368	1.66	$82.33	$42.44	$16.47
94070	X	Evaluation of wheezing	0369	2.34	$116.06	$58.50	$23.21
94150	N	Vital capacity test					
94200	X	Lung function test (MBC/MVV)	0367	0.83	$41.16	$20.65	$8.23
94240	X	Residual lung capacity	0368	1.66	$82.33	$42.44	$16.47
94250	X	Expired gas collection	0367	0.83	$41.16	$20.65	$8.23
94260	X	Thoracic gas volume	0368	1.66	$82.33	$42.44	$16.47
94350	X	Lung nitrogen washout curve	0368	1.66	$82.33	$42.44	$16.47
94360	X	Measure airflow resistance	0368	1.66	$82.33	$42.44	$16.47
94370	X	Breath airway closing volume	0368	1.66	$82.33	$42.44	$16.47
94375	X	Respiratory flow volume loop	0367	0.83	$41.16	$20.65	$8.23
94400	X	CO2 breathing response curve	0367	0.83	$41.16	$20.65	$8.23
94450	X	Hypoxia response curve	0367	0.83	$41.16	$20.65	$8.23
94620	X	Pulmonary stress test/simple	0368	1.66	$82.33	$42.44	$16.47
94621	X	Pulm stress test/complex	0369	2.34	$116.06	$58.50	$23.21
94640	S	Airway inhalation treatment	0077	0.43	$21.33	$12.62	$4.27
94642	S	Aerosol inhalation treatment	0078	1.34	$66.46	$29.13	$13.29
94650	S	Pressure breathing (IPPB)	0077	0.43	$21.33	$12.62	$4.27
94651	S	Pressure breathing (IPPB)	0077	0.42	$21.33	$12.62	$4.27
94652	C	Pressure breathing (IPPB)					
94656	S	Initial ventilator mgmt	0079	3.18	$157.72	$107.70	$31.54
94657	S	Continued ventilator mgmt	0079	3.18	$157.72	$107.70	$31.54
94660	S	Pos airway pressure, CPAP	0079	3.18	$157.72	$107.70	$31.54
94662	S	Neg press ventilation, cnp	0079	3.18	$157.72	$107.70	$31.54
94664	S	Aerosol or vapor inhalations	0077	0.43	$21.33	$12.62	$4.27
94665	S	Aerosol or vapor inhalations	0077	0.43	$21.33	$12.62	$4.27
94667	S	Chest wall manipulation	0077	0.43	$21.33	$12.62	$4.27
94668	S	Chest wall manipulation	0077	0.43	$21.33	$12.62	$4.27
94680	X	Exhaled air analysis, o2	0367	0.83	$41.16	$20.65	$8.23
94681	X	Exhaled air analysis, o2/co2	0368	1.66	$82.33	$42.44	$16.47
94690	X	Exhaled air analysis	0367	0.83	$41.16	$20.65	$8.23
94720	X	Monoxide diffusing capacity	0367	0.83	$41.16	$20.65	$8.23
94725	X	Membrane diffusion capacity	0368	1.66	$82.33	$42.44	$16.47
94750	X	Pulmonary compliance study	0368	1.66	$82.33	$42.44	$16.47
94760	N	Measure blood oxygen level					
94761	N	Measure blood oxygen level					
94762	N	Measure blood oxygen level					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
94770	X	Exhaled carbon dioxide test	0367	0.83	$41.16	$20.65	$8.23
94772	X	Breath recording, infant	0369	2.34	$116.06	$58.50	$23.21
94799	X	Pulmonary service/procedure	0367	0.83	$41.16	$20.65	$8.23
95004	X	Allergy skin tests	0370	0.57	$28.27	$11.81	$5.65
95010	X	Sensitivity skin tests	0370	0.57	$28.27	$11.81	$5.65
95015	X	Sensitivity skin tests	0370	0.57	$28.27	$11.81	$5.65
95024	X	Allergy skin tests	0370	0.57	$28.27	$11.81	$5.65
95027	X	Skin end point titration	0370	0.57	$28.27	$11.81	$5.65
95028	X	Allergy skin tests	0370	0.57	$28.27	$11.81	$5.65
95044	X	Allergy patch tests	0370	0.57	$28.27	$11.81	$5.65
95052	X	Photo patch test	0370	0.57	$28.27	$11.81	$5.65
95056	X	Photosensitivity tests	0370	0.57	$28.27	$11.81	$5.65
95060	X	Eye allergy tests	0370	0.57	$28.27	$11.81	$5.65
95065	X	Nose allergy test	0370	0.57	$28.27	$11.81	$5.65
95070	X	Bronchial allergy tests	0369	2.34	$116.06	$58.50	$23.21
95071	X	Bronchial allergy tests	0369	2.34	$116.06	$58.50	$23.21
95075	X	Ingestion challenge test	0361	3.53	$175.07	$88.09	$35.01
95078	X	Provocative testing	0370	0.57	$28.27	$11.81	$5.65
95115	X	Immunotherapy, one injection	0371	0.32	$15.87	$3.67	$3.17
95117	X	Immunotherapy injections	0371	0.32	$15.87	$3.67	$3.17
95120	E	Immunotherapy, one injection					
95125	E	Immunotherapy, many antigens					
95130	E	Immunotherapy, insect venom					
95131	E	Immunotherapy, insect venoms					
95132	E	Immunotherapy, insect venoms					
95133	E	Immunotherapy, insect venoms					
95134	E	Immunotherapy, insect venoms					
95144	X	Antigen therapy services	0371	0.32	$15.87	$3.67	$3.17
95145	X	Antigen therapy services	0371	0.32	$15.87	$3.67	$3.17
95146	X	Antigen therapy services	0371	0.32	$15.87	$3.67	$3.17
95147	X	Antigen therapy services	0371	0.32	$15.87	$3.67	$3.17
95148	X	Antigen therapy services	0371	0.32	$15.87	$3.67	$3.17
95149	X	Antigen therapy services	0371	0.32	$15.87	$3.67	$3.17
95165	X	Antigen therapy services	0371	0.32	$15.87	$3.67	$3.17
95170	X	Antigen therapy services	0371	0.32	$15.87	$3.67	$3.17
95180	X	Rapid desensitization	0370	0.57	$28.27	$11.81	$5.65
95199	X	Allergy immunology services	0370	0.57	$28.27	$11.81	$5.65
95805	S	Multiple sleep latency test	0213	11.15	$553.00	$290.42	$110.60
95806	S	Sleep study, unattended	0213	11.15	$553.00	$290.42	$110.60
95807	S	Sleep study, attended	0213	11.15	$553.00	$290.42	$110.60
95808	S	Polysomnography, 1-3	0213	11.15	$553.00	$290.42	$110.60
95810	S	Polysomnography, 4 or more	0213	11.15	$553.00	$290.42	$110.60
95811	S	Polysomnography w/cpap	0213	11.15	$553.00	$290.42	$110.60
95812	S	Electroencephalogram (EEG)	0213	11.15	$553.00	$290.42	$110.60
95813	S	Electroencephalogram (EEG)	0213	11.15	$553.00	$290.42	$110.60
95816	S	Electroencephalogram (EEG)	0214	2.32	$115.06	$58.50	$23.01
95819	S	Electroencephalogram (EEG)	0214	2.32	$115.06	$58.50	$23.01
95822	S	Sleep electroencephalogram	0214	2.32	$115.06	$58.50	$23.01
95824	S	Electroencephalography	0214	2.32	$115.06	$58.50	$23.01
95827	S	Night electroencephalogram	0213	11.15	$553.00	$290.42	$110.60
95829	S	Surgery electrocorticogram	0214	2.32	$115.06	$58.50	$23.01
95830	E	Insert electrodes for EEG					
95831	N	Limb muscle testing, manual					
95832	N	Hand muscle testing, manual					
95833	N	Body muscle testing, manual					
95834	N	Body muscle testing, manual					
95851	N	Range of motion measurements					
95852	N	Range of motion measurements					
95857	S	Tensilon test	0215	1.15	$57.04	$30.05	$11.41
95858	S	Tensilon test & myogram	0215	1.15	$57.04	$30.05	$11.41
95860	S	Muscle test, one limb	0215	1.15	$57.04	$30.05	$11.41
95861	S	Muscle test, two limbs	0215	1.15	$57.04	$30.05	$11.41
95863	S	Muscle test, 3 limbs	0216	2.87	$142.34	$64.69	$28.47
95864	S	Muscle test, 4 limbs	0215	1.15	$57.04	$30.05	$11.41
95867	S	Muscle test, head or neck	0216	2.87	$142.34	$64.69	$28.47
95868	S	Muscle test, head or neck	0216	2.87	$142.34	$64.69	$28.47
95869	S	Muscle test, thor paraspinal	0215	1.15	$57.04	$30.05	$11.41
95870	S	Muscle test, nonparaspinal	0215	1.15	$57.04	$30.05	$11.41
95872	S	Muscle test, one fiber	0215	1.15	$57.04	$30.05	$11.41
95875	S	Limb exercise test	0217	5.87	$291.13	$156.68	$58.23
95900	S	Motor nerve conduction test	0215	1.15	$57.04	$30.05	$11.41
95903	S	Motor nerve conduction test	0215	1.15	$57.04	$30.05	$11.41
95904	S	Sense/mixed n conduction tst	0215	1.15	$57.04	$30.05	$11.41
95920	S	Intraop nerve test add-on	0216	2.87	$142.34	$64.69	$28.47

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
95921	S	Autonomic nerv function test	0216	2.87	$142.34	$64.69	$28.47
95922	S	Autonomic nerv function test	0216	2.87	$142.34	$64.69	$28.47
95923	S	Autonomic nerv function test	0216	2.87	$142.34	$64.69	$28.47
95925	S	Somatosensory testing	0216	2.87	$142.34	$64.69	$28.47
95926	S	Somatosensory testing	0216	2.87	$142.34	$64.69	$28.47
95927	S	Somatosensory testing	0216	2.87	$142.34	$64.69	$28.47
95930	S	Visual evoked potential test	0216	2.87	$142.34	$64.69	$28.47
95933	S	Blink reflex test	0215	1.15	$57.04	$30.05	$11.41
95934	S	H-reflex test	0215	1.15	$57.04	$30.05	$11.41
95936	S	H-reflex test	0216	2.87	$142.34	$64.69	$28.47
95937	S	Neuromuscular junction test	0215	1.15	$57.04	$30.05	$11.41
95950	S	Ambulatory eeg monitoring	0217	5.87	$291.13	$156.68	$58.23
95951	S	EEG monitoring/videorecord	0213	11.15	$553.00	$290.42	$110.60
95953	S	EEG monitoring/computer	0213	11.15	$553.00	$290.42	$110.60
95954	S	EEG monitoring/giving drugs	0213	11.15	$553.00	$290.42	$110.60
95955	S	EEG during surgery	0214	2.32	$115.06	$58.50	$23.01
95956	N	Eeg monitoring, cable/radio					
95957	N	EEG digital analysis					
95958	S	EEG monitoring/function test	0213	11.15	$553.00	$290.42	$110.60
95961	S	Electrode stimulation, brain	0216	2.87	$142.34	$64.69	$28.47
95962	S	Electrode stim, brain add-on	0216	2.87	$142.34	$64.69	$28.47
95970	S	Analyze neurostim, no prog	0102	0.45	$22.32	$12.62	$4.46
95971	S	Analyze neurostim, simple	0102	0.45	$22.32	$12.62	$4.46
95972	S	Analyze neurostim, complex	0102	0.45	$22.32	$12.62	$4.46
95973	S	Analyze neurostim, complex	0102	0.45	$22.32	$12.62	$4.46
95974	S	Cranial neurostim, complex	0102	0.45	$22.32	$12.62	$4.46
95975	S	Cranial neurostim, complex	0102	0.45	$22.32	$12.62	$4.46
95999	N	Neurological procedure					
96100	X	Psychological testing	0373	3.21	$159.20	$44.96	$31.84
96105	X	Assessment of aphasia	0373	3.21	$159.20	$44.96	$31.84
96110	X	Developmental test, lim	0373	3.21	$159.20	$44.96	$31.84
96111	X	Developmental test, extend	0373	3.21	$159.20	$44.96	$31.84
96115	X	Neurobehavior status exam	0373	3.21	$159.20	$44.96	$31.84
96117	X	Neuropsych test battery	0373	3.21	$159.20	$44.96	$31.84
96400	E	Chemotherapy, sc/im					
96405	E	Intralesional chemo admin					
96406	E	Intralesional chemo admin					
96408	E	Chemotherapy, push technique					
96410	E	Chemotherapy,infusion method					
96412	E	Chemo, infuse method add-on					
96414	E	Chemo, infuse method add-on					
96420	E	Chemotherapy, push technique					
96422	E	Chemotherapy,infusion method					
96423	E	Chemo, infuse method add-on					
96425	E	Chemotherapy,infusion method					
96440	E	Chemotherapy, intracavitary					
96445	E	Chemotherapy, intracavitary					
96450	E	Chemotherapy, into CNS					
96520	E	Pump refilling, maintenance					
96530	E	Pump refilling, maintenance					
96542	E	Chemotherapy injection					
96545	E	Provide chemotherapy agent					
96549	E	Chemotherapy, unspecified					
96570	T	Photodynamic tx, 30 min	0973	5.16	$255.91		$51.18
96571	T	Photodynamic tx, addl 15 min	0973	5.16	$255.91		$51.18
96900	S	Ultraviolet light therapy	0001	0.47	$23.31	$8.49	$4.66
96902	N	Trichogram					
96910	S	Photochemotherapy with UV-B	0001	0.47	$23.31	$8.49	$4.66
96912	S	Photochemotherapy with UV-A	0001	0.47	$23.31	$8.49	$4.66
96913	S	Photochemotherapy, UV-A or B	0001	0.47	$23.31	$8.49	$4.66
96999	S	Dermatological procedure	0001	0.47	$23.31	$8.49	$4.66
97001	A	Pt evaluation					
97002	A	Pt re-evaluation					
97003	A	Ot evaluation					
97004	A	Ot re-evaluation					
97010	A	Hot or cold packs therapy					
97012	A	Mechanical traction therapy					
97014	A	Electric stimulation therapy					
97016	A	Vasopneumatic device therapy					
97018	A	Paraffin bath therapy					
97020	A	Microwave therapy					
97022	A	Whirlpool therapy					
97024	A	Diathermy treatment					
97026	A	Infrared therapy					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
97028	A	Ultraviolet therapy					
97032	A	Electrical stimulation					
97033	A	Electric current therapy					
97034	A	Contrast bath therapy					
97035	A	Ultrasound therapy					
97036	A	Hydrotherapy					
97039	A	Physical therapy treatment					
97110	A	Therapeutic exercises					
97112	A	Neuromuscular reeducation					
97113	A	Aquatic therapy/exercises					
97116	A	Gait training therapy					
97124	A	Massage therapy					
97139	A	Physical medicine procedure					
97140	A	Manual therapy					
97150	A	Group therapeutic procedures					
97504	A	Orthotic training					
97520	A	Prosthetic training					
97530	A	Therapeutic activities					
*97532	A	Cognitive skills development					
*97533	A	Sensory integration					
97535	A	Self care mngment training					
97537	A	Community/work reintegration					
97542	A	Wheelchair mngment training					
97545	A	Work hardening					
97546	A	Work hardening add-on					
*97601	A	Wound care selective					
*97602	N	Wound care non-selective					
97703	A	Prosthetic checkout					
97750	A	Physical performance test					
97770D	A	Cognitive skills development					
97780	E	Acupuncture w/o stimul					
97781	E	Acupuncture w/stimul					
97799	A	Physical medicine procedure					
*97802	E	Medical nutrition					
*97803	E	Medical nutrition					
*97804	E	Medical nutrition					
98925	S	Osteopathic manipulation	0060	0.77	$38.19	$7.80	$7.64
98926	S	Osteopathic manipulation	0060	0.77	$38.19	$7.80	$7.64
98927	S	Osteopathic manipulation	0060	0.77	$38.19	$7.80	$7.64
98928	S	Osteopathic manipulation	0060	0.77	$38.19	$7.80	$7.64
98929	S	Osteopathic manipulation	0060	0.77	$38.19	$7.80	$7.64
98940	S	Chiropractic manipulation	0060	0.77	$38.19	$7.80	$7.64
98941	S	Chiropractic manipulation	0060	0.77	$38.19	$7.80	$7.64
98942	S	Chiropractic manipulation	0060	0.77	$38.19	$7.80	$7.64
98943	E	Chiropractic manipulation					
99000	E	Specimen handling					
99001	E	Specimen handling					
99002	E	Device handling					
99024	E	Postop follow-up visit					
99025	E	Initial surgical evaluation					
99050	E	Medical services after hrs					
99052	E	Medical services at night					
99054	E	Medical servcs, unusual hrs					
99056	E	Non-office medical services					
99058	E	Office emergency care					
99070	E	Special supplies					
99071	E	Patient education materials					
99075	E	Medical testimony					
99078	E	Group health education					
99080	E	Special reports or forms					
99082	E	Unusual physician travel					
99090	E	Computer data analysis					
99100	E	Special anesthesia service					
99116	E	Anesthesia with hypothermia					
99135	E	Special anesthesia procedure					
99140	E	Emergency anesthesia					
99141	N	Sedation, iv/im or inhalant					
99142	N	Sedation, oral/rectal/nasal					
99170	T	Anogenital exam, child	0192	2.38	$118.04	$35.33	$23.61
*99172	E	Visual function screening					
99173	E	Visual screening test					
99175	N	Induction of vomiting					
99183	E	Hyperbaric oxygen therapy					
99185	N	Regional hypothermia					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
99186	N	Total body hypothermia					
99190	C	Special pump services					
99191	C	Special pump services					
99192	C	Special pump services					
99195	X	Phlebotomy	0372	0.43	$21.30	$10.09	$4.27
99199	E	Special service/proc/report					
99201	V	Office/outpatient visit, new	0600	0.98	$48.61	$9.72	$9.72
99202	V	Office/outpatient visit, new	0600	0.98	$48.61	$9.72	$9.72
99203	V	Office/outpatient visit, new	0601	1.00	$49.60	$9.92	$9.92
99204	V	Office/outpatient visit, new	0602	1.66	$82.33	$16.47	$16.47
99205	V	Office/outpatient visit, new	0602	1.66	$82.33	$16.47	$16.47
99211	V	Office/outpatient visit, est	0600	0.98	$48.61	$9.72	$9.72
99212	V	Office/outpatient visit, est	0600	0.98	$48.61	$9.72	$9.72
99213	V	Office/outpatient visit, est	0601	1.00	$49.60	$9.92	$9.92
99214	V	Office/outpatient visit, est	0602	1.66	$82.33	$16.47	$16.47
99215	V	Office/outpatient visit, est	0602	1.66	$82.33	$16.47	$16.47
99217	N	Observation care discharge					
99218	N	Observation care					
99219	N	Observation care					
99220	N	Observation care					
99221	E	Initial hospital care					
99222	E	Initial hospital care					
99223	E	Initial hospital care					
99231	E	Subsequent hospital care					
99232	E	Subsequent hospital care					
99233	E	Subsequent hospital care					
99234	N	Observ/hosp same date					
99235	N	Observ/hosp same date					
99236	N	Observ/hosp same date					
99238	E	Hospital discharge day					
99239	E	Hospital discharge day					
99241	V	Office consultation	0600	0.98	$48.61	$9.72	$9.72
99242	V	Office consultation	0600	0.98	$48.61	$9.72	$9.72
99243	V	Office consultation	0601	1.00	$49.60	$9.92	$9.92
99244	V	Office consultation	0602	1.66	$82.33	$16.47	$16.47
99245	V	Office consultation	0602	1.66	$82.33	$16.47	$16.47
99251	C	Initial inpatient consult					
99252	C	Initial inpatient consult					
99253	C	Initial inpatient consult					
99254	C	Initial inpatient consult					
99255	C	Initial inpatient consult					
99261	C	Follow-up inpatient consult					
99262	C	Follow-up inpatient consult					
99263	C	Follow-up inpatient consult					
99271	V	Confirmatory consultation	0600	0.98	$48.61	$9.72	$9.72
99272	V	Confirmatory consultation	0600	0.98	$48.61	$9.72	$9.72
99273	V	Confirmatory consultation	0601	1.00	$49.60	$9.92	$9.92
99274	V	Confirmatory consultation	0602	1.66	$82.33	$16.47	$16.47
99275	V	Confirmatory consultation	0602	1.66	$82.33	$16.47	$16.47
99281	V	Emergency dept visit	0610	1.34	$66.46	$20.65	$13.29
99282	V	Emergency dept visit	0610	1.34	$66.46	$20.65	$13.29
99283	V	Emergency dept visit	0611	2.11	$104.65	$36.47	$20.93
99284	V	Emergency dept visit	0612	3.19	$158.21	$54.14	$31.64
99285	V	Emergency dept visit	0612	3.19	$158.21	$54.14	$31.64
99288	E	Direct advanced life support					
99291	S	Critical care, first hour	0620	8.60	$426.53	$152.78	$85.31
99292	N	Critical care, addl 30 min					
99295	C	Neonatal critical care					
99296	C	Neonatal critical care					
99297	C	Neonatal critical care					
99298	C	Neonatal critical care					
99301	E	Nursing facility care					
99302	E	Nursing facility care					
99303	E	Nursing facility care					
99311	E	Nursing fac care, subseq					
99312	E	Nursing fac care, subseq					
99313	E	Nursing fac care, subseq					
99315	E	Nursing fac discharge day					
99316	E	Nursing fac discharge day					
99321	E	Rest home visit, new patient					
99322	E	Rest home visit, new patient					
99323	E	Rest home visit, new patient					
99331	E	Rest home visit, est pat					
99332	E	Rest home visit, est pat					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
99333	E	Rest home visit, est pat					
99341	E	Home visit, new patient					
99342	E	Home visit, new patient					
99343	E	Home visit, new patient					
99344	E	Home visit, new patient					
99345	E	Home visit, new patient					
99347	E	Home visit, est patient					
99348	E	Home visit, est patient					
99349	E	Home visit, est patient					
99350	E	Home visit, est patient					
99354	N	Prolonged service, office					
99355	N	Prolonged service, office					
99356	C	Prolonged service, inpatient					
99357	C	Prolonged service, inpatient					
99358	N	Prolonged serv, w/o contact					
99359	N	Prolonged serv, w/o contact					
99360	E	Physician standby services					
99361	E	Physician/team conference					
99362	E	Physician/team conference					
99371	E	Physician phone consultation					
99372	E	Physician phone consultation					
99373	E	Physician phone consultation					
99374	E	Home health care supervision					
99375D	E	Home health care supervision					
99377	E	Hospice care supervision					
99378D	E	Hospice care supervision					
99379	E	Nursing fac care supervision					
99380	E	Nursing fac care supervision					
99381	E	Prev visit, new, infant					
99382	E	Prev visit, new, age 1-4					
99383	E	Prev visit, new, age 5-11					
99384	E	Prev visit, new, age 12-17					
99385	E	Prev visit, new, age 18-39					
99386	E	Prev visit, new, age 40-64					
99387	E	Prev visit, new, 65 & over					
99391	E	Prev visit, est, infant					
99392	E	Prev visit, est, age 1-4					
99393	E	Prev visit, est, age 5-11					
99394	E	Prev visit, est, age 12-17					
99395	E	Prev visit, est, age 18-39					
99396	E	Prev visit, est, age 40-64					
99397	E	Prev visit, est, 65 & over					
99401	E	Preventive counseling, indiv					
99402	E	Preventive counseling, indiv					
99403	E	Preventive counseling, indiv					
99404	E	Preventive counseling, indiv					
99411	E	Preventive counseling, group					
99412	E	Preventive counseling, group					
99420	E	Health risk assessment test					
99429	E	Unlisted preventive service					
99431	N	Initial care, normal newborn					
99432	N	Newborn care, not in hosp					
99433	C	Normal newborn care/hospital					
99435	E	Newborn discharge day hosp					
99436	N	Attendance, birth					
99440	S	Newborn resuscitation	0094	4.51	$223.68	$105.29	$44.74
99450	E	Life/disability evaluation					
99455	E	Disability examination					
99456	E	Disability examination					
99499	E	Unlisted e&m service					
A0021	E	Outside state ambulance serv					
A0030D	A	Air ambulance service					
A0040D	A	Helicopter ambulance service					
A0050D	A	Water amb service emergency					
A0080	E	Noninterest escort in non er					
A0090	E	Interest escort in non er					
A0100	E	Nonemergency transport taxi					
A0110	E	Nonemergency transport bus					
A0120	E	Noner transport mini-bus					
A0130	E	Noner transport wheelch van					
A0140	E	Nonemergency transport air					
A0160	E	Noner transport case worker					
A0170	E	Noner transport parking fees					
A0180	E	Noner transport lodgng recip					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
A0190	E	Noner transport meals recip					
A0200	E	Noner transport lodgng escrt					
A0210	E	Noner transport meals escort					
A0225	A	Neonatal emergency transport					
A0300D	A	Ambulance basic non-emer all					
A0302D	A	Ambulance basic emergeny all					
A0304D	A	Amb adv non-er no serv all					
A0306D	A	Amb adv non-er spec serv all					
A0308D	A	Amb adv er no spec serv all					
A0310D	A	Amb adv er spec serv all					
A0320D	A	Amb basic non-er + supplies					
A0322D	A	Amb basic emerg + supplies					
A0324D	A	Adv non-er serv sep mileage					
A0326D	A	Adv non-er no serv sep mile					
A0328D	A	Adv er no serv sep mileage					
A0330D	A	Adv er spec serv sep mile					
A0340D	A	Amb basic non-er + mileage					
A0342D	A	Ambul basic emer + mileage					
A0344D	A	Amb adv non-er no serv +mile					
A0346D	A	Amb adv non-er serv + mile					
A0348D	A	Adv emer no spec serv + mile					
A0350D	A	Adv emer spec serv + mileage					
A0360D	A	Basic non-er sep mile & supp					
A0362D	A	Basic emer sep mile & supply					
A0364D	A	Adv non-er no serv sep mi&su					
A0366D	A	Adv non-er serv sep mil&supp					
A0368	A	Adv er no serv sep mile&supp					
A0370D	A	Adv er spec serv sep mi&supp					
A0380D	A	Basic life support mileage					
A0382	A	Basic support routine suppls					
A0384	A	Bls defibrillation supplies					
A0390D	A	Advanced life support mileag					
A0392	A	Als defibrillation supplies					
A0394	A	Als IV drug therapy supplies					
A0396	A	Als esophageal intub suppls					
A0398	A	Als routine disposble suppls					
A0420	A	Ambulance waiting 1/2 hr					
A0422	A	Ambulance O2 life sustaining					
A0424	A	Extra ambulance attendant					
A0425	A	Ground mileage					
A0426	A	Als 1					
A0427	A	ALS1-emergency					
A0428	A	bls					
A0429	A	BLS-emergency					
A0430	A	Fixed wing air transport					
A0431	A	Rotary wing air transport					
A0432	A	PI volunteer ambulance co					
A0433	A	als 2					
A0434	A	Specialty care transport					
A0435	A	Fixed wing air mileage					
A0436	A	Rotary wing air mileage					
A0888	E	Noncovered ambulance mileage					
A0999	A	Unlisted ambulance service					
A4206	E	1 CC sterile syringe&needle					
A4207	E	2 CC sterile syringe&needle					
A4208	E	3 CC sterile syringe&needle					
A4209	E	5+ CC sterile syringe&needle					
A4210	E	Nonneedle injection device					
A4211	E	Supp for self-adm injections					
A4212	E	Non coring needle or stylet					
A4213	E	20+ CC syringe only					
A4214	A	30 CC sterile water/saline					
A4215	E	Sterile needle					
A4220	E	Infusion pump refill kit					
A4221	A	Maint drug infus cath per wk					
A4222	A	Drug infusion pump supplies					
A4230	A	Infus insulin pump non needl					
A4231	A	Infusion insulin pump needle					
A4232	A	Syringe w/needle insulin 3cc					
A4244	E	Alcohol or peroxide per pint					
A4245	E	Alcohol wipes per box					
A4246	E	Betadine/phisohex solution					
A4247	E	Betadine/iodine swabs/wipes					
A4250	E	Urine reagent strips/tablets					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
A4253	A	Blood glucose/reagent strips					
A4254	A	Battery for glucose monitor					
A4255	A	Glucose monitor platforms					
A4256	A	Calibrator solution/chips					
A4258	A	Lancet device each					
A4259	A	Lancets per box					
A4260	E	Levonorgestrel implant					
A4261	E	Cervical cap contraceptive					
A4262	N	Temporary tear duct plug					
A4263	N	Permanent tear duct plug					
A4265	A	Paraffin					
A4270	A	Disposable endoscope sheath					
A4280	A	Brst prsths adhsv attchmnt					
A4290	N	Sacral nerve stim test lead					
A4300	A	Cath impl vasc access portal					
A4301	A	Implantable access syst perc					
A4305	A	Drug delivery system >=50 ML					
A4306	A	Drug delivery system <=5 ML					
A4310	A	Insert tray w/o bag/cath					
A4311	A	Catheter w/o bag 2-way latex					
A4312	A	Cath w/o bag 2-way silicone					
A4313	A	Catheter w/bag 3-way					
A4314	A	Cath w/drainage 2-way latex					
A4315	A	Cath w/drainage 2-way silcne					
A4316	A	Cath w/drainage 3-way					
A4319	A	Sterile H2O irrigation solut					
A4320	A	Irrigation tray					
A4321	A	Cath therapeutic irrig agent					
A4322	A	Irrigation syringe					
A4323	A	Saline irrigation solution					
A4324	A	Male ext cath w/adh coating					
A4325	A	Male ext cath w/adh strip					
A4326	A	Male external catheter					
A4327	A	Fem urinary collect dev cup					
A4328	A	Fem urinary collect pouch					
A4329	A	External catheter start set					
A4330	A	Stool collection pouch					
A4331	A	Extension drainage tubing					
A4332	A	Lubricant for cath insertion					
A4333	A	Urinary cath anchor device					
A4334	A	Urinary cath leg strap					
A4335	A	Incontinence supply					
A4338	A	Indwelling catheter latex					
A4340	A	Indwelling catheter special					
A4344	A	Cath indw foley 2 way silicn					
A4346	A	Cath indw foley 3 way					
A4347	A	Male external catheter					
A4348	A	Male ext cath extended wear					
A4351	A	Straight tip urine catheter					
A4352	A	Coude tip urinary catheter					
A4353	A	Intermittent urinary cath					
A4354	A	Cath insertion tray w/bag					
A4355	A	Bladder irrigation tubing					
A4356	A	Ext ureth clmp or compr dvc					
A4357	A	Bedside drainage bag					
A4358	A	Urinary leg bag					
A4359	A	Urinary suspensory w/o leg b					
A4361	A	Ostomy face plate					
A4362	A	Solid skin barrier					
A4364	A	Ostomy/cath adhesive					
A4365	A	Ostomy adhesive remover wipe					
A4367	A	Ostomy belt					
A4368	A	Ostomy filter					
A4369	A	Skin barrier liquid per oz					
A4370	A	Skin barrier paste per oz					
A4371	A	Skin barrier powder per oz					
A4372	A	Skin barrier solid 4x4 equiv					
A4373	A	Skin barrier with flange					
A4374	A	Skin barrier extended wear					
A4375	A	Drainable plastic pch w fcpl					
A4376	A	Drainable rubber pch w fcplt					
A4377	A	Drainable plstic pch w/o fp					
A4378	A	Drainable rubber pch w/o fp					
A4379	A	Urinary plastic pouch w fcpl					

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
A4380	A	Urinary rubber pouch w fcplt					
A4381	A	Urinary plastic pouch w/o fp					
A4382	A	Urinary hvy plstc pch w/o fp					
A4383	A	Urinary rubber pouch w/o fp					
A4384	A	Ostomy faceplt/silicone ring					
A4385	A	Ost skn barrier sld ext wear					
A4386	A	Ost skn barrier w flng ex wr					
A4387	A	Ost clsd pouch w att st barr					
A4388	A	Drainable pch w ex wear barr					
A4389	A	Drainable pch w st wear barr					
A4390	A	Drainable pch ex wear convex					
A4391	A	Urinary pouch w ex wear barr					
A4392	A	Urinary pouch w st wear barr					
A4393	A	Urine pch w ex wear bar conv					
A4394	A	Ostomy pouch liq deodorant					
A4395	A	Ostomy pouch solid deodorant					
A4396	A	Peristomal hernia supprt blt					
A4397	A	Irrigation supply sleeve					
A4398	A	Ostomy irrigation bag					
A4399	A	Ostomy irrig cone/cath w brs					
A4400	A	Ostomy irrigation set					
A4402	A	Lubricant per ounce					
A4404	A	Ostomy ring each					
A4421	A	Ostomy supply misc					
A4454	A	Tape all types all sizes					
A4455	A	Adhesive remover per ounce					
A4460	A	Elastic compression bandage					
A4462	A	Abdmnl drssng holder/binder					
A4464	A	Joint support device/garment					
A4465	A	Non-elastic extremity binder					
A4470	A	Gravlee jet washer					
A4480	A	Vabra aspirator					
A4481	A	Tracheostoma filter					
A4483	A	Moisture exchanger					
A4490	E	Above knee surgical stocking					
A4495	E	Thigh length surg stocking					
A4500	E	Below knee surgical stocking					
A4510	E	Full length surg stocking					
A4550	E	Surgical trays					
A4554	E	Disposable underpads					
A4556	A	Electrode pair					
A4557	A	Lead wires, pair					
A4558	A	Conductive paste or gel					
A4560D	A	Pessary					
A4561	N	Pessary rubber, any type					
A4562	N	Pessary, non rubber,any type					
A4565	A	Slings					
A4570	N	Splint					
A4572	A	Rib belt					
A4575	E	Hyperbaric o2 chamber disps					
A4580	N	Cast supplies (plaster)					
A4590	N	Special casting material					
A4595	A	TENS suppl 2 lead per month					
A4608	A	Transtracheal oxygen cath					
A4611	A	Heavy duty battery					
A4612	A	Battery cables					
A4613	A	Battery charger					
A4614	A	Hand-held PEFR meter					
A4615	A	Cannula nasal					
A4616	A	Tubing (oxygen) per foot					
A4617	A	Mouth piece					
A4618	A	Breathing circuits					
A4619	A	Face tent					
A4620	A	Variable concentration mask					
A4621	A	Tracheotomy mask or collar					
A4622	A	Tracheostomy or larngectomy					
A4623	A	Tracheostomy inner cannula					
A4624	A	Tracheal suction tube					
A4625	A	Trach care kit for new trach					
A4626	A	Tracheostomy cleaning brush					
A4627	E	Spacer bag/reservoir					
A4628	A	Oropharyngeal suction cath					
A4629	A	Tracheostomy care kit					
A4630	A	Repl bat t.e.n.s. own by pt					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
A4631	A	Wheelchair battery					
A4635	A	Underarm crutch pad					
A4636	A	Handgrip for cane etc					
A4637	A	Repl tip cane/crutch/walker					
A4640	A	Alternating pressure pad					
A4641	N	Diagnostic imaging agent					
A4642	G	Satumomab pendetide per dose	0704		$712.50		$86.93
A4643	N	High dose contrast MRI					
A4644	N	Contrast 100-199 MGs iodine					
A4645	N	Contrast 200-299 MGs iodine					
A4646	N	Contrast 300-399 MGs iodine					
A4647	N	Supp- paramagnetic contr mat					
A4649	A	Surgical supplies					
A4650	A	Supp esrd centrifuge					
A4655	A	Esrd syringe/needle					
A4660	A	Esrd blood pressure device					
A4663	A	Esrd blood pressure cuff					
A4670	E	Auto blood pressure monitor					
A4680	A	Activated carbon filters					
A4690	A	Dialyzers					
A4700	A	Standard dialysate solution					
A4705	A	Bicarb dialysate solution					
A4712	A	Sterile water					
A4714	A	Treated water for dialysis					
A4730	A	Fistula cannulation set dial					
A4735	A	Local/topical anesthetics					
A4740	A	Esrd shunt accessory					
A4750	A	Arterial or venous tubing					
A4755	A	Arterial and venous tubing					
A4760	A	Standard testing solution					
A4765	A	Dialysate concentrate					
A4770	A	Blood testing supplies					
A4771	A	Blood clotting time tube					
A4772	A	Dextrostick/glucose strips					
A4773	A	Hemostix					
A4774	A	Ammonia test paper					
A4780	A	Esrd sterilizing agent					
A4790	A	Esrd cleansing agents					
A4800	A	Heparin/antidote dialysis					
A4820	A	Supplies hemodialysis kit					
A4850	A	Rubber tipped hemostats					
A4860	A	Disposable catheter caps					
A4870	A	Plumbing/electrical work					
A4880	A	Water storage tanks					
A4890	A	Contracts/repair/maintenance					
A4900	A	Capd supply kit					
A4901	A	Ccpd supply kit					
A4905	A	Ipd supply kit					
A4910	A	Esrd nonmedical supplies					
A4912	A	Gomco drain bottle					
A4913	A	Esrd supply					
A4914	A	Preparation kit					
A4918	A	Venous pressure clamp					
A4919	A	Supp dialysis dialyzer holde					
A4920	A	Harvard pressure clamp					
A4921	A	Measuring cylinder					
A4927	A	Gloves					
A5051	A	Pouch clsd w barr attached					
A5052	A	Clsd ostomy pouch w/o barr					
A5053	A	Clsd ostomy pouch faceplate					
A5054	A	Clsd ostomy pouch w/flange					
A5055	A	Stoma cap					
A5061	A	Pouch drainable w barrier at					
A5062	A	Drnble ostomy pouch w/o barr					
A5063	A	Drain ostomy pouch w/flange					
A5064	E	Drain ostomy pouch w/fcepltе					
A5065D	E	Drain ostomy pouch w/fceplte					
A5071	A	Urinary pouch w/barrier					
A5072	A	Urinary pouch w/o barrier					
A5073	A	Urinary pouch on barr w/flng					
A5074	E	Urinary pouch w/faceplate					
A5075	E	Urinary pouch on faceplate					
A5081	A	Continent stoma plug					
A5082	A	Continent stoma catheter					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
A509[illegible]	A	Ostomy accessory convex inse					
A5102	A	Bedside drain btl w/wo tube					
A5105	A	Urinary suspensory					
A5112	A	Urinary leg bag					
A5113	A	Latex leg strap					
A5114	A	Foam/fabric leg strap					
A5119	A	Skin barrier wipes box pr 50					
A5121	A	Solid skin barrier 6x6					
A5122	A	Solid skin barrier 8x8					
A5123	A	Skin barrier with flange					
A5126	A	Disk/foam pad +or- adhesive					
A5131	A	Appliance cleaner					
A5149D	A	Incontinence/ostomy supply					
A5200	A	Percutaneous catheter anchor					
A5500	A	Diab shoe for density insert					
A5501	A	Diabetic custom molded shoe					
A5502	A	Diabetic shoe density insert					
A5503	A	Diabetic shoe w/roller/rockr					
A5504	A	Diabetic shoe with wedge					
A5505	A	Diab shoe w/metatarsal bar					
A5506	A	Diabetic shoe w/off set heel					
A5507	A	Modification diabetic shoe					
A5508	A	Diabetic deluxe shoe					
A6020	A	Collagen wound dressing					
A6021	A	Collagen dressing <=16 sq in					
A6022	A	Collagen drsg>6<=48 sq in					
A6023	A	Collagen dressing >48 sq in					
A6024	A	Collagen dsg wound filler					
A6025	E	Silicone gel sheet, each					
A6154	A	Wound pouch each					
A6196	A	Alginate dressing <=16 sq in					
A6197	A	Alginate drsg >16 <=48 sq in					
A6198	A	alginate dressing > 48 sq in					
A6199	A	Alginate drsg wound filler					
A6200	A	Compos drsg <=16 no border					
A6201	A	Compos drsg >16<=48 no bdr					
A6202	A	Compos drsg >48 no border					
A6203	A	Composite drsg <= 16 sq in					
A6204	A	Composite drsg >16<=48 sq in					
A6205	A	Composite drsg > 48 sq in					
A6206	A	Contact layer <= 16 sq in					
A6207	A	Contact layer >16<= 48 sq in					
A6208	A	Contact layer > 48 sq in					
A6209	A	Foam drsg <=16 sq in w/o bdr					
A6210	A	Foam drg >16<=48 sq in w/o b					
A6211	A	Foam drg > 48 sq in w/o brdr					
A6212	A	Foam drg <=16 sq in w/border					
A6213	A	Foam drg >16<=48 sq in w/bdr					
A6214	A	Foam drg > 48 sq in w/border					
A6215	A	Foam dressing wound filler					
A6216	A	Non-sterile gauze<=16 sq in					
A6217	A	Non sterile gauze>16<=48 sq					
A6218	A	Non-sterile gauze > 48 sq in					
A6219	A	Gauze <= 16 sq in w/border					
A6220	A	Gauze >16 <=48 sq in w/bordr					
A6221	A	Gauze > 48 sq in w/border					
A6222	A	Gauze <=16 in no w/sal w/o b					
A6223	A	Gauze >16<=48 no w/sal w/o b					
A6224	A	Gauze > 48 in no w/sal w/o b					
A6228	A	Gauze <= 16 sq in water/sal					
A6229	A	Gauze >16<=48 sq in watr/sal					
A6230	A	Gauze > 48 sq in water/salne					
A6231	A	Hydrogel dsg<=16 sq in					
A6232	A	Hydrogel dsg>16<=48 sq in					
A6233	A	Hydrogel dressing >48 sq in					
A6234	A	Hydrocolld drg <=16 w/o bdr					
A6235	A	Hydrocolld drg >16<=48 w/o b					
A6236	A	Hydrocolld drg > 48 in w/o b					
A6237	A	Hydrocolld drg <=16 in w/bdr					
A6238	A	Hydrocolld drg >16<=48 w/bdr					
A6239	A	Hydrocolld drg > 48 in w/bdr					
A6240	A	Hydrocolld drg filler paste					
A6241	A	Hydrocolloid drg filler dry					
A6242	A	Hydrogel drg <=16 in w/o bdr					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
A6243	A	Hydrogel drg >16<=48 w/o bdr					
A6244	A	Hydrogel drg >48 in w/o bdr					
A6245	A	Hydrogel drg <= 16 in w/bdr					
A6246	A	Hydrogel drg >16<=48 in w/b					
A6247	A	Hydrogel drg > 48 sq in w/b					
A6248	A	Hydrogel drsg gel filler					
A6250	A	Skin seal protect moisturizr					
A6251	A	Absorpt drg <=16 sq in w/o b					
A6252	A	Absorpt drg >16 <=48 w/o bdr					
A6253	A	Absorpt drg > 48 sq in w/o b					
A6254	A	Absorpt drg <=16 sq in w/bdr					
A6255	A	Absorpt drg >16<=48 in w/bdr					
A6256	A	Absorpt drg > 48 sq in w/bdr					
A6257	A	Transparent film <= 16 sq in					
A6258	A	Transparent film >16<=48 in					
A6259	A	Transparent film > 48 sq in					
A6260	A	Wound cleanser any type/size					
A6261	A	Wound filler gel/paste /oz					
A6262	A	Wound filler dry form / gram					
A6263	A	Non-sterile elastic gauze/yd					
A6264	A	Non-sterile no elastic gauze					
A6265	A	Tape per 18 sq inches					
A6266	A	Impreg gauze no h2O/sal/yard					
A6402	A	Sterile gauze <= 16 sq in					
A6403	A	Sterile gauze>16 <= 48 sq in					
A6404	A	Sterile gauze > 48 sq in					
A6405	A	Sterile elastic gauze /yd					
A6406	A	Sterile non-elastic gauze/yd					
A7000	A	Disposable canister for pump					
A7001	A	Nondisposable pump canister					
A7002	A	Tubing used w suction pump					
A7003	A	Nebulizer administration set					
A7004	A	Disposable nebulizer sml vol					
A7005	A	Nondisposable nebulizer set					
A7006	A	Filtered nebulizer admin set					
A7007	A	Lg vol nebulizer disposable					
A7008	A	Disposable nebulizer prefill					
A7009	A	Nebulizer reservoir bottle					
A7010	A	Disposable corrugated tubing					
A7011	A	Nondispos corrugated tubing					
A7012	A	Nebulizer water collec devic					
A7013	A	Disposable compressor filter					
A7014	A	Compressor nondispos filter					
A7015	A	Aerosol mask used w nebulize					
A7016	A	Nebulizer dome & mouthpiece					
A7017	A	Nebulizer not used w oxygen					
A7018	A	Water distilled w/nebulizer					
A7019	A	Saline solution dispenser					
A7020	A	Sterile H2O or NSS w lgv neb					
A7501	A	Tracheostoma valve w diaphra					
A7502	A	Replacement diaphragm/fplate					
A7503	A	HMES filter holder or cap					
A7504	A	Tracheostoma HMES filter					
A7505	A	HMES or trach valve housing					
A7506	A	HMES/trachvalve adhesivedisk					
A7507	A	Integrated filter & holder					
A7508	A	Housing & Integrated Adhesiv					
A7509	A	Heat & moisture exchange sys					
A9150	E	Misc/exper non-prescript dru					
A9160	E	Podiatrist non-covered servi					
A9170	E	Chiropractor non-covered ser					
A9190	E	Misc/expe personal comfort i					
A9270	E	Non-covered item or service					
A9300	E	Exercise equipment					
*A9500	G	Technetium TC 99m sestamibi	1600		$109.25		$13.33
A9502	G	Technetium TC99M tetrofosmin	0705		$136.80		$16.69
*A9503	G	Technetium TC 99m medronate	1601		$38.38		$4.68
*A9504	G	Technetium tc 99m apcitide	1602		$47.50		$5.80
*A9505	G	Thallous chloride TL 201/mci	1603		$28.50		$3.48
*A9507	G	Indium/111 capromab pendetid	1604		$1,008.90		$135.19
A9508	G	Iobenguane sulfate I-131	1045		$1,140.00		$139.08
A9510	G	Technetium TC99m Disofenin	1205		$427.50		$57.29
A9600	G	Strontium-89 chloride	0701		$783.75		$95.62
A9605	G	Samarium sm153 lexidronamm	0702		$942.09		$134.87

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
A9700	N	Echocardiography Contrast					
A9900	E	Supply/accessory/service					
A9901	E	Delivery/set up/dispensing					
B4034	A	Enter feed supkit syr by day					
B4035	A	Enteral feed supp pump per d					
B4036	A	Enteral feed sup kit grav by					
B4081	A	Enteral ng tubing w/ stylet					
B4082	A	Enteral ng tubing w/o stylet					
B4083	A	Enteral stomach tube levine					
B4084	A	Gastrostomy/jejunostomy tubi					
B4085	A	Gastrostomy tube w/ring each					
B4150	A	Enteral formulae category I					
B4151	A	Enteral formulae category I-					
B4152	A	Enteral formulae category II					
B4153	A	Enteral formulae category II					
B4154	A	Enteral formulae category IV					
B4155	A	Enteral formulae category v					
B4156	A	Enteral formulae category vi					
B4164	A	Parenteral 50% dextrose solu					
B4168	A	Parenteral sol amino acid 3.					
B4172	A	Parenteral sol amino acid 5.					
B4176	A	Parenteral sol amino acid 7-					
B4178	A	Parenteral sol amino acid >					
B4180	A	Parenteral sol carb > 50%					
B4184	A	Parenteral sol lipids 10%					
B4186	A	Parenteral sol lipids 20%					
B4189	A	Parenteral sol amino acid &					
B4193	A	Parenteral sol 52-73 gm prot					
B4197	A	Parenteral sol 74-100 gm pro					
B4199	A	Parenteral sol > 100gm prote					
B4216	A	Parenteral nutrition additiv					
B4220	A	Parenteral supply kit premix					
B4222	A	Parenteral supply kit homemi					
B4224	A	Parenteral administration ki					
B5000	A	Parenteral sol renal-amirosy					
B5100	A	Parenteral sol hepatic-fream					
B5200	A	Parenteral sol stres-brnch c					
B9000	A	Enter infusion pump w/o alrm					
B9002	A	Enteral infusion pump w/ ala					
B9004	A	Parenteral infus pump portab					
B9006	A	Parenteral infus pump statio					
B9998	A	Enteral supp not otherwise c					
B9999	A	Parenteral supp not othrws c					
C1000	H	PercloseClosr ProstarArt Vas	1000				
C1001	H	AcuNav-diagnstic ultrsnd ca	1001				
C1003	H	Cath, ablation, Livewire TC	1003				
C1004	H	Fast-Cath,Swartz,SAFL,CSTA	1004				
C1005D	E	Sensar IOL					
C1006	H	ARRAY post chamb IOL	1006				
C1007	H	Ams 700 penile prosthesis	1007				
C1008	H	Urolume-implt uretheral stent	1008				
C1009	K	Plasma, cryoprecipitate-reduced, unit	1009	0.86	$42.76		$8.55
C1010	K	Blood, L/R, CMV-neg	1010	2.88	$142.84		$28.57
C1011	K	Platelets, L/R, CMV-neg, unit	1011	11.86	$588.15		$117.63
C1012	K	Platelet concentrate, L/R, irradiated, unit	1012	1.92	$95.23		$19.05
C1013	K	Platelet concentrate, L/R, unit	1013	1.18	$58.30		$11.66
C1014	K	Platelets, aph/pher, L/R, unit	1014	8.93	$443.11		$88.62
C1016	K	Blood, L/R, froz/deglycerol/washed	1016	7.15	$354.68		$70.94
C1017	K	Platelets, aph/pher, L/R, CMV-neg, unit	1017	9.33	$462.54		$92.51
C1018	K	Blood, L/R, irradiated	1018	3.13	$155.48		$31.10
C1019	K	Platelets, aph/pher, L/R, irradiated, unit	1019	9.64	$478.09		$95.62
C1024	J	Quinupristin 150 mg/dalfopriston 350 mg	1024		$159.60		$20.50
C1025	H	Marinr CS Cath	1025				
C1026	H	RF Perfrmr cath 5F RF Marinr	1026				
C1027	H	Magic x/short, Radius14mm	1027				
C1028	H	Prcis Twst trnsvg anch sys	1028				
C1029	H	CRE guided balloon dil cath	1029				
C1030	H	Cthtr:Mrshal,Blu Max Utr Drnnd	1030				
C1031D	E	MR Comp/mod LeVeen ned elect					
C1033	H	Sonicath mdl 37-410	1033				
C1034	H	SURPASS, Long30 SURPASS-cath	1034				
C1035	H	Cath, Ultra ICE	1035				
C1036	H	R port/reservoir impl dev	1036				
C1037	H	Vaxcelchronic dialysis cath	1037				

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
C1038	H	UltraCross Imaging Cath	1038				
C1039	H	Wallstent, tracheobronchial	1039				
C1040	H	WALLSTENT: TIPS (shunt)	1040				
C1042	H	Wallstent, biliary	1042				
C1043	H	Atherectomy sys, coronary	1043				
C1045	G	I-131 MIBG (ioben-sulfate) O.5mCi	1045		$1,140.00		$139.08
C1047	H	Noga/Navi-Star cath	1047				
C1048	H	NeuroCybemeticPros: gen	1048				
C1050	H	Prosorba column	1410				
C1051	H	Oasis Thrombectomy Cath	1051				
C1053	H	EnSite 3000 catheter	1053				
C1054	H	Hydrolyser Thromb Cath 6/7F	1054				
C1055	H	Transesoph 210, 210-S Cath	1055				
C1056	H	Thermachoice II Cath	1056				
C1057	H	Micromark Tissue Marker	1057				
C1059	G	Carticel,auto cult-chndr cyte	1059		$14,250.00		$2,010.00
C1060	H	ACS multi-link tristor/ultra	1060				
*C1061	H	ACS Viking Guiding cath	1061				
*C1063	H	EndoTak Endurance EZ, RX lead	1063				
*C1067	H	Megalink biliary stent	1067				
*C1068	H	Pulsar DDD pmkr	1068				
*C1069	H	Discovery DR, pmaker	1069				
*C1071	H	Pulsar Max, Pulsar SR pmkr	1071				
*C1072	H	Guidant: blln dil cath	1072				
*C1073	H	Morcellator	1073				
*C1074	H	RX/OTW Viatrac-peri dil cath	1074				
*C1075	H	Guidant: lead	1075				
*C1076	H	Ventak mini sc defib	1076				
*C1077	H	Ventak VR Prizm VR, sc defib	1077				
*C1078	H	Ventak: Prizm, AVIIIDR defib	1078				
*C1079	G	CO 57/58 0.5 mCi	1079		$264.10		$32.22
*C1084	G	Denileukin diftitox, 300 mcg	1084		$942.88		$126.35
*C1086	G	Temozolomide, 5 mg	1086		$5.70		$.76
*C1087	G	I-123 per uCi capsule	1087		$.84		$.10
*C1088	T	LaserOptic tx sys	0980	38.67	$1,917.89		$383.58
*C1089	G	CO 57, 0.5 mCi	1089		$91.20		$11.13
*C1090	G	IN 111 Chloride, per mCi	1090		$152.00		$18.54
*C1091	G	IN 111 Oxyquinoline, per 5 mCi	1091		$508.25		$62.01
*C1092	G	IN 111 Pentetate, per 1.5 mCi	1092		$769.50		$93.88
*C1094	J	TC 99M Albumin aggr, per vial	1094		$102.05		$13.67
*C1095	G	TC 99M Depreotide, per vial	1095		$760.00		$101.84
*C1096	G	TC 99M Exametazime, per dose	1096		$34.20		$4.17
*C1097	G	TC 99M Mebrofenin, per vial	1097		$445.31		$63.75
*C1098	G	TC 99M Pentetate, per vial	1098		$46.76		$5.71
*C1099	J	TC 99M Pyrophosphate, per vial	1099		$42.75		$5.22
*C1100	H	Medtronic AVE GT1 guidewire	1100				
*C1101	H	MedtronicAVE Zuma guidecath	1101				
*C1102	H	Syngergy Neurostim Genrtr	1102				
*C1103	H	Micro Jewel Defibrillator	1103				
*C1104	H	RF Conductor Ablative Cath	1104				
*C1105	H	Sigma 300VDD pacmker	1105				
*C1106	H	SynergyEZ Pt Progrmr	1106				
*C1107	H	Torqr, Solist cath	1107				
*C1109	H	Implantable anchor: Ethicon	1109				
*C1110	H	Stable Mapper, cath electrd	1110				
*C1111	H	AneuRxAort-Uni-Ilicstnt&cath	1111				
*C1112	H	AneuRx Stent graft/del.cath	1112				
*C1113	H	Tlnt Endo Sprng Stnt Grft Sys	1113				
*C1114	H	TalntSprgStnt+Graf endo pros	1114				
*C1115	H	5038S,5038,5038L pace lead	1115				
*C1116	H	CapSureSP pacing Lead	1116				
*C1117	H	Ancure Endograft Del Sys	1117				
*C1118	H	Sigma300DR LegIIDR,pacemkr	1118				
*C1119	H	Sprint6932,6943 defib lead	1119				
*C1120	H	Sprint6942,6945 defib lead	1120				
*C1121	H	Gem defibrillator	1121				
*C1122	G	TC 99M arcitumomab per dose	1122		$22.80		$2.78
*C1123	H	Gem II VR defibrillator	1123				
*C1124	H	InterStim Test Stim Kit	1124				
*C1125	H	Kappa 400SR,Ttopaz II SR pmkr	1125				
*C1126	H	Kappa 700 DR pacemakr	1126				
*C1127	H	Kappa 700SR,pmkr sgl chamber	1127				
*C1128	H	Kappa 700D,Ruby IID pmkr	1128				
*C1129	H	Kappa 700VDD,pacmkr	1129				

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
*C1130	H	Sigm200D,LGCY IID sc pmkr	1130				
*C1131	H	Sigma 200DR, pmker	1131				
*C1132	H	Sigma300,200SR Leg II:sc pac	1132				
*C1133	H	Sigma SR, Vita SR, pmaker	1133				
*C1134	H	Sigma 300D pmker	1134				
*C1135	H	Entity DR 5326L/R	1135				
*C1136	H	Affinity DR 5330L/R	1136				
*C1137	H	CardioSEAL implant syst	1137				
*C1143	H	AddVent mod 2060BL,VDD	1143				
*C1144	H	Afnty SR 5130,Integrity SR,pmkr	1144				
*C1145	H	Angio-Seal 6fr, 8fr	1145				
C1146D	E	VETT tube					
*C1147	H	AV Plus DX 1368: lead	1147				
*C1148	H	Contour MD sc defib	1148				
*C1149	H	Entity DC 5226R, 5226 pmkr	1149				
*C1151	H	Passiveplus DX lead, 10mdls	1151				
*C1152	H	LifeSite Access System	1152				
*C1153	H	Regency SC+ 2402L pmker	1153				
*C1154	H	SPL:SPOl,02,04- defib lead	1154				
*C1155	H	Repliform 8 sq cm	1155				
*C1156	H	Tr 1102TrSR+ 2260L,2264L,5131	1156				
*C1157	H	Trilogy DCT 2318L pmkr	1157				
*C1158	H	TVL lead SV01,SV02,SV04	1158				
*C1159	H	TVL RV02,RV06,RV0 : lead	1159				
*C1160	H	TVL-ADX 1559: lead	1160				
*C1161	H	Tendril DX, 1388 pacing lead	1161				
*C1162	H	TempoDr, TrilogyDR+DC pmkr	1162				
*C1163	H	Tendril SDX, 1488T pacing lead	1163				
*C1164	H	Iodine-125 brachytx seed	1164				
*C1166	G	Cytarabine liposomal, 10 mg	1166		$371.45		$49.77
*C1167	J	Epirubicin hcl, 2 mg	1167		$24.94		$3.34
C1170D	E	ABBI disp biopsy device					
*C1171	H	Autosuture site marker stple	1171				
*C1172	H	Spacemaker dissect ballon	1172				
*C1173	H	Cor stnt S540, S670, o-wire stn	1173				
*C1174	H	Bard brachytx needle	1174				
C1175D	E	Biopsy device, MIBB Device					
C1176D	E	Mammotome HH Probe w/Vac Sys					
C1177D	E	11-G Mammotome Probe					
*C1178	G	Busulfan IV, 6 mg	1178		$26.48		$3.55
C1179D	E	14-G Mammotome Probe					
*C1180	H	Vigor SR, SC, pmkr	1180				
*C1181	H	Meridian SSI, SC, pmkr	1181				
*C1182	H	Pulsar SSI, SC, pmkr	1182				
*C1183	H	Jade IIS, Sigma 300S,SC, pmkr	1183				
*C1184	H	Sigma 200S, SC, pmkr	1184				
*C1188	G	I 131, per mCi	1188		$5.86		$.75
*C1200	G	TC 99M Sodium Glucoheptonate, per vial	1200		$113.05		$13.79
*C1201	G	TC 99M succimer, per vial	1201		$135.86		$16.55
*C1202	G	TC 99M Sulfur Colloid, per dose	1202		$36.00		$4.64
*C1203	G	Verteporfin for Injection	1203		$1,458.25		$195.41
*C1205	G	TC 99M Disofenin, per vial	1205		$427.50		$57.29
*C1207	G	Octreotide acetate depot 1mg	1207		$135.10		$16.48
*C1300	S	Hyperbaric O2 per 30 min under pressure	0971	1.55	$76.88		$15.38
*C1302	H	Lead, defibrillator, TVL SQ01	1302				
*C1303	H	CapSure Fix 6940/4068-110, lead	1303				
*C1304	H	Sonicath mdl 37-416,-418	1304				
*C1305	G	Apligraf	1305		$1,157.81		$163.31
*C1306	H	NeuroCybernetic Pros: lead	1306				
*C1311	H	Trilogy DR+/DAO pmkr	1311				
*C1312	H	Magic WALLSTENTstent-Mini	1312				
*C1313	H	Magic medium, Radius 31mm	1313				
*C1314	H	Magic WALLSTENT stent-Long	1314				
*C1315	H	Vigor DR, Meridian DR pmkr	1315				
*C1316	H	Meridian DDD pmkr	1316				
*C1317	H	Discovery SR, pmkr	1317				
*C1318	H	Meridian SR pmakr	1318				
*C1319	H	WALLSTENT: enteral	1319				
*C1320	H	WALLSTENT:iliac	1320				
C1321D	E	Palate/Base of Tongue electr					
C1322D	E	Turbinate Somnoplasty electr					
C1323D	E	VAPR/T disp electrode					
C1324D	E	Ligasure disposable electrode					
*C1325	H	Pallidium -103 seed	1325				

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
*C1326	H	Angio-jet rheolytic thromb cath	1326				
*C1328	H	ANS Renew NS trnsmtr	1328				
C1329D	E	Versapoint disp electrode					
*C1333	H	PALMAZ Corinthian bill stent	1333				
*C1334	H	Crown,Mini-crown,CrossLC	1334				
*C1335	H	Mesh, Prolene	1335				
*C1336	H	Constant Flow Imp Pump	1336				
*C1337	H	IsoMed 8472-20/35/60	1337				
*C1348	G	I 131 per mCi solution	1348		$146.57		$17.86
*C1350	H	ProstaSeed, I125, per source	1350				
*C1351	H	CapSure Fix lead	1351				
*C1352	H	Gem II defib	1352				
*C1353	H	itrel interstm neurostim+ext	1353				
*C1354	H	Kappa 400DR,Diamond II 820DR	1354				
*C1355	H	Kappa 600DR, Vita DR	1355				
*C1356	H	Profile MD V-186HV3 sc defib	1356				
*C1357	H	Angstrom MD V-190HV3 sc defib	1357				
*C1358	H	Affinity DC 5230R, 5230 pmkr	1358				
*C1359	H	Pulsar,Pulsar Max DR,pmkr	1359				
*C1360D	T	Ocular photodynamic therapy	0235	2.94	$145.81	$78.91	$29.16
*C1361	H	Reveal Cardiac Recorder	1108				
*C1362	H	Herculink,OTW SDS bil stent	1411				
*C1363	H	Gem DR, DC, defib	1363				
*C1364	H	Photon DR V-230HV3 DC defib	1364				
*C1365	H	Guidewire, Hi-Torque14/18/35	1365				
*C1366	H	Guidewire,PTCA, Hi-Torque	1366				
*C1367	H	Guidewire, Hi-Torque Crosslt	1367				
C1368D	E	On-Q Pain Mgt Sys					
*C1369	H	ANS Renew Stim Sys recvr	1369				
*C1370	H	Tension-Free Vaginal Tape	1370				
*C1371	H	Symp Nitinol Transhep Bil Sys	1371				
*C1372	H	Cordis Nitinol bil stent	1372				
*C1375	H	Stent, coronary, NIR	1375				
*C1376	H	ANS Renew Stim Sys lead/ex	1376				
*C1377	H	Specify 3988 neuro lead	1377				
*C1378	H	InterStim Tx 3080/3886 lead	1378				
*C1379	H	Pisces-Quad 3887 lead	1379				
*C1420	H	StapleTac2 Bone w/Dermis	1420				
*C1421	H	StapleTac2 Bone wo Dermis	1421				
*C1450	H	Orthosphere Arthroplasty	1450				
*C1451	H	Orthosphere Arthroplasty Kit	1451				
*C1500	H	Atherectomy sys, peripheral	1500				
*C1700	H	Authen Mick TP brachy needle	1700				
*C1701	H	Medtec MT-BT-5201 -25 ndl	1701				
*C1702	H	WWMT brachytx needle	1702				
*C1703	H	Mentor Prostate Brachy	1703				
*C1704	H	MT-BT-5001-25/5051-25	1704				
*C1705	H	Best Flexi Brachy Needle	1705				
*C1706	H	Indigo Prostate Seeding Ndl	1706				
*C1707	H	Varisource Implt Ndl	1707				
*C1708	H	UroMed Prostate Seed Ndl	1708				
*C1709	H	Remington Brachytx Needle	1709				
*C1710	H	US Biopsy Prostate Needle	1710				
*C1711	H	MD Tech brachytx needle	1711				
*C1712	H	Imagyn brachytx needle	1712				
*C1790	H	Iridium 192 HDR	1790				
*C1791	H	OncoSeed, Rapid Strand I-125	1791				
*C1792	H	UroMed I-125 Brachy seed	1792				
*C1793	H	Bard InterSource P-103 seed	1793				
*C1794	H	Bard IsoSeed P-103 seed	1794				
*C1795	H	Bard BrachySource I-125	1795				
*C1796	H	SourceTech Med I-125	1796				
*C1797	H	Draximage I-125 seed	1797				
*C1798	H	Syncor I-125 PharmaSeed	1798				
*C1799	H	I-Plant I-125 Brachytx seed	1799				
*C1800	H	Pd-103 brachytx seed	1800				
*C1801	H	IoGold I-125 brachytx seed	1801				
*C1802	H	Brachytherapy seed, Iridium 192	1802				
*C1803	H	Best Iodine 125 brachytx sds	1803				
*C1804	H	Best Palladium 103 seeds	1804				
*C1805	H	IsoStar Iodine-125 seeds	1805				
*C1806	H	Gold 198 brachy seeds	1806				
*C1810	H	D114S Dilatation Cath	1810				
*C1811	H	Surgical Dynamics Anchors	1811				

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
*C1812	H	OBL Anchors	1812				
*C1850	H	Repliform 14/21 sq cm	1850				
*C1851	H	Repliform 24/28 sq cm	1851				
*C1852	H	TransCyte, per 247 sq cm	1852				
*C1853	H	Suspend, per 8/14 sq cm	1853				
*C1854	H	Suspend, per 24/28 sq cm	1854				
*C1855	H	Suspend, per 36 sq cm	1855				
*C1856	H	Suspend, per 48 sq cm	1856				
*C1857	H	Suspend, per 84 sq cm	1857				
*C1858	H	DuraDerm, per 8/14 sq cm	1858				
*C1859	H	DuraDerm, per 21/24/28 sq cm	1859				
*C1860	H	DuraDerm, per 48 sq cm	1860				
*C1861	H	DuraDerm, per 36 sq cm	1861				
*C1862	H	DuraDerm, per 72 sq cm	1862				
*C1863	H	DuraDerm, per 84 sq cm	1863				
*C1864	H	SpermaTex,per 13.44 sq cm	1864				
*C1865	H	FasLata, per 8/14 sq cm	1865				
*C1866	H	FasLata, per 24/28 sq cm	1866				
*C1867	H	FasLata, per 36/48 sq cm	1867				
*C1868	H	FasLata, per 96 sq cm	1868				
*C1869	H	Gore Thyroplasty Dev	1869				
*C1870	H	DermMatrix, per 16 sq cm	1870				
*C1871	H	DermMatrix, 32 or 64 sq cm	1871				
*C1872	H	Dermagraft, per 37.5 sq cm	1872				
*C1873	H	Bard 3DMax Mesh	1873				
*C1929	H	Maverick PTCA Cath	1929				
*C1930	H	Coyote Dil Cath,20/30/40mm	1930				
*C1931	H	Talon Dil Cath	1931				
*C1932	H	Scimed Remedy Dil Cath	1932				
*C1933	H	Opti-Plast XL/Centurion Cath	1933				
*C1934	H	Ultraverse 3.5F Bal Dil Cath	1934				
*C1935	H	Workhorse PTA Bal Cath	1935				
*C1936	H	Uromax Ultra Bal Dil Cath	1936				
*C1937	H	Synergy Balloon Dil Cath	1937				
*C1938	H	UroForce Bal Dil Cath	1938				
*C1939	H	Raptor, Ninja PTCA Dil Cath	1939				
*C1940	H	PowerFlex,OPTA 5/LP Bal Cath	1940				
*C1941	H	Jupiter PTA Dil Cath	1941				
*C1942	H	Cordis Maxi LD PT/ Bal Cath	1942				
*C1943	H	RXCrossSail OTW OpenSail	1943				
*C1944	H	Rapid Exchange Bil Dil Cath	1944				
*C1945	H	Savvy PTA Dil Cath	1945				
*C1946	H	R1s Rapid Dil Cath	1946				
*C1947	H	Gazelle Bal Dil Cath	1947				
*C1948	H	Pursuit Balloon Cath	1948				
*C1949	H	Oracle Megasonics Cath	1949				
*C1979	H	Visions PV/Avanar US Cath	1979				
*C1980	H	Atlantis SR Coronary Cath	1980				
*C1981	H	PTCA Catheters	1981				
*C2000	H	Orbiter ST Steerable Cath	2000				
*C2001	H	Constellation Diag Cath	2001				
*C2002	H	Irvine 5F Inquiry Diag EP Cath	2002				
*C2003	H	Irvine 6F Inquiry Diag EP Cath	2003				
*C2004	H	Biosense EP Cath--Octapolar	2004				
*C2005	H	Biosense EP Cath--Hexapolar	2005				
*C2006	H	Biosense EP Cath--Decapolar	2006				
*C2007	H	Irvine 6F Luma-Cath EP Cath	2007				
*C2008	H	Luma-Cath EP Cath 81910-15	2008				
*C2009	H	Irvine 7F Luma-Cath EP Cath	2009				
*C2010	H	Fixed Curve EP Cath	2010				
*C2011	H	Deflectable Tip Cath--Quad	2011				
*C2012	H	Celsius Abln Cath	2012				
*C2013	H	Celsius Large Abln Cath	2013				
*C2014	H	Celsius II Asym Abln Cath	2014				
*C2015	H	Celsius II Sym Abln Cath	2015				
*C2016	H	Navi-Star DS, Navi-Star Ther	2016				
*C2017	H	Navi-Star Abln Cath	2017				
*C2018	H	Polaris T Ablation Cath	2018				
*C2019	H	EP Deflectable Cath	2019				
*C2020	H	Catheter, ablation, Blazer II XP	2020				
*C2021	H	SilverFlex EP Cath	2021				
*C2022	H	CP Chilli Cooled Abln Cath	2022				
*C2023	H	Chilli Cld AblnCath-std, lg	2023				
*C2100	H	CP CS Reference Cath	2100				

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
*C2101	H	CP RV Reference Cath	2101				
*C2102	H	CP Radii 7F EP Cath	2102				
*C2103	H	CP Radii 7F EP Cath w/Track	2103				
*C2104	H	Lasso Deflectable Cath	2104				
*C2151	H	Veripath Guiding Cath	2151				
*C2152	H	Cordis Vista Brite Tip Cath	2152				
*C2153	H	Bard Viking Cath	2153				
*C2200	H	Arrow-Trerotola PTD Cath	2200				
*C2300	H	Varisource Stnd Catheters	2300				
*C2597	H	CliniCath/kit 16/18 sgl/dbl	2597				
*C2598	H	CliniCath 18/20/24G-single	2598				
*C2599	H	CliniCath 16/18G-double	2599				
*C2600	E	Gold Probe Catheter					
*C2601	H	Bard DL Ureteral Cath	2601				
*C2602	H	Vitesse Laser Cath 1.4/1.7mm	2602				
*C2603	H	Vitesse Laser Cath 2.0mm	2603				
*C2604	H	Vitesse E Laser Cath 2.0mm	2604				
*C2605	H	Extreme Laser Catheter	2605				
*C2606	H	SpineCath XL Catheter	2606				
*C2607	H	SpineCath Intradiscal Cath	2607				
*C2608	H	Scimed 6F Wiseguide Cath	2608				
*C2609	H	Flexima Bil Drainage Cath	2609				
*C2610	H	FlexTipPlus Intraspinal Cath	2610				
*C2611	H	AlgoLine Intraspinal Cath	2611				
*C2612	H	InDura Catheter	2612				
*C2676	E	Response CV Catheter					
*C2700	H	MycroPhylax Plus SC defib	2700				
*C2701	H	Phylax XM SC defib	2701				
*C2702	H	Ventak Prizm 2 VR Defib	2702				
*C2703	H	Ventak Prizm VR HE Defib	2703				
*C2704	H	Ventak Mini IV+ Defib	2704				
*C2801	H	Defender IV DR 612 DC defib	2801				
*C2802	H	Phylax AV DC defib	2802				
*C2803	H	Ventak Prizm DR HE Defib	2803				
*C2804	H	Ventak Prizm 2 DR Defib	2804				
*C2805	H	Jewel AF 7250 Defib	2805				
*C2806	H	GEM VR 7227 Defib	2806				
*C2807	H	Contak CD 1823	2807				
*C2808	H	Contak TR 1241	2808				
*C3001	H	Kainox SL/RV defib lead	3001				
*C3002	H	EasyTrak Defib Lead	3002				
*C3003	H	Endotak SQ Array XP lead	3003				
*C3004	H	Intervene Defib Lead	3004				
*C3400	H	Siltex Spectrum,Contour Prof	3400				
*C3401	H	Saline-Filled Spectrum	3401				
*C3500	H	Mentor Alpha I Inf Penile Pros	3500				
*C3510	H	AMS 800 Urinary Pros	3510				
*C3551	H	Choice/PT Graphix/Luge/Trooper	3551				
*C3552	H	Hi-Torque Whisper	3552				
*C3553	H	Cordis guidewires	3553				
*C3554	H	Jindo guidewire	3554				
*C3555	H	Wholey Hi-Torque Plus GW	3555				
*C3556	H	Wave/FlowWire Guidewire	3556				
*C3557	H	HyTek guidewire	3557				
*C3800	H	SynchroMed EL infusion pump	3800				
*C3801	H	Arrow/MicroJect PCA Sys	3801				
*C3851	H	Elastic UV IOL AA-4203T/TF/TL	3851				
*C4000	H	Opus G 4621, 4624 SC pmkr	4000				
*C4001	H	Opus S 4121/4124 SC pmkr	4001				
*C4002	H	Talent 113 SC pmkr	4002				
*C4003	H	Kairos SR SC pmkr	4003				
*C4004	H	Actros SR, Actros SLR SC pmkr	4004				
*C4005	H	Philos SR/SR-B SC pmkr	4005				
*C4006	H	Pulsar Max II SR pmkr	4006				
*C4007	H	Marathon SR pmkr	4007				
*C4008	H	Discovery II SSI pmkr	4008				
*C4009	H	Discovery II SR pmkr	4009				
*C4300	H	Integrity AFx DR 5342 pmkr	4300				
*C4301	H	Integrity AFx DR 5346 pmkr	4301				
*C4302	H	Affinity VDR 5430 pmkr	4302				
*C4303	H	Brio 112 DC pmkr	4303				
*C4304	H	Brio 212, Talent 213/223 DC pmkr	4304				
*C4305	H	Brio 222 DC pmkr	4305				
*C4306	H	Brio 220 DC pmkr	4306				

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
*C4307	H	Kairos DR DC pmkr	4307				
*C4308	H	Inos2, Inos2+ DC pmkr	4308				
*C4309	H	Actros DR,D,DR-A,SLR DC pmkr	4309				
*C4310	H	Actros DR-B DC pmkr	4310				
*C4311	H	Philos DR/DR-B/SLR DC pmkr	4311				
*C4312	H	Pulsar Max II DR pmkr	4312				
*C4313	H	Marathon DR pmkr	4313				
*C4314	H	Momentum DR pmkr	4314				
*C4315	H	Selection AFm pmkr	4315				
*C4316	H	Discovery II DR	4316				
*C4317	H	Discovery II DDD	4317				
*C4600	H	Snynox,Polyrox,Elox,Retrox	4600				
*C4601	E	Aescula LV pmkr lead					
*C4602	H	Tendril SDX, 1488K pmkr lead	4602				
*C4603	H	Oscor/Flexion pmkr lead	4603				
*C4604	H	CrystallineActFix,CapsureFix	4604				
*C4605	H	CapSure Epi pmkr lead	4605				
*C4606	H	Flextend pmkr lead	4606				
*C4607	H	FinelineII/EZ, ThinlineII/EZ	4607				
*C5000	H	BX Velocity w/Hepacoat	5000				
*C5001	H	Memotherm Bil Stent, sm, med	5001				
*C5002	H	Memotherm Bil Stent, large	5002				
*C5003	H	Memotherm Bil Stent, x-large	5003				
*C5004	H	PalmazCorinthian IQ Bil Stent	5004				
*C5005	H	PalmazCorinthian IQ Trans/Bil	5005				
*C5006	H	PalmazTrans Bil Stent Sys-Med	5006				
*C5007	H	PalmazTrans XL Bil Stent--40mm	5007				
*C5008	H	PalmazTrans XL Bil Stent--50mm	5008				
*C5009	H	Stent, biliary, Biliary VistaFlex Stent	5009				
*C5010	H	Rapid Exchange Bil Stent Sys	5010				
*C5011	H	Stent, biliary, IntraStent, IntraStent LP	5011				
*C5012	H	Stent, biliary, IntraStent DoubleStrut LD	5012				
*C5013	H	IntraStent DoubleStrut, XS	5013				
*C5014	H	AVE Bridge Stent Sys-10/17/28	5014				
*C5015	H	AVE/X3 Bridge Sys, 40-100	5015				
*C5016	H	Biliary stent single use cov	5016				
*C5017	H	WallstentRP Bil--20/40/60/68mm	5017				
*C5018	H	WallstentRP Bil--80/94mm	5018				
*C5019	H	Flexima Bil Stent Sys	5019				
*C5020	H	Smart Nitinol Stent--20mm	5020				
*C5021	H	Smart Nitinol Stent--40/60mm	5021				
*C5022	H	Smart Nitinol Stent--80mm	5022				
*C5023	H	BX Velocity Stent--8/13mm	5023				
*C5024	H	BX Velocity Stent--18mm	5024				
*C5025	H	BX Velocity Stent--23mm	5025				
*C5026	H	BX Velocity Stent--28/33mm	5026				
*C5027	H	BX Velocity w/Hep--8/13mm	5027				
*C5028	H	BX Velocity w/Hep--18mm	5028				
*C5029	H	BX Velocity w/Hep--23mm	5029				
*C5030	H	Stent, coronary, S660 9/12mm	5030				
*C5031	H	Stent,coronary, S660 15/18mm	5031				
*C5032	H	Stent,coronary, S660 24/30mm	5032				
*C5033	H	Niroyal Stent Sys, 9mm	5033				
*C5034	H	Niroyal Stent Sys, 12/15mm	5034				
*C5035	H	Niroyal Stent Sys, 18mm	5035				
*C5036	H	Niroyal Stent Sys, 25mm	5036				
*C5037	H	Niroyal Stent Sys, 31mm	5037				
*C5038	H	BX Velocity Stent w/Raptor	5038				
*C5039	H	IntraCoil Periph Stent--40mm	5039				
*C5040	H	IntraCoil Periph Stent--60mm	5040				
*C5041	H	BeStent Over-the-Wire 24/30mm	5041				
*C5042	H	BeStent Over-the-Wire 18mm	5042				
*C5043	H	BeStent Over-the-Wire 15mm	5043				
*C5044	H	BeStent Over-the-Wire 9/12mm	5044				
*C5045	H	Multilink Tetra Cor Stent Sys	5045				
*C5046	H	Radius 20mm cor stent	5046				
*C5047	H	Niroyal Elite Cor Stent Sys	5047				
*C5048	H	GR II Coronary Stent	5048				
*C5130	H	Wilson-Cook Colonic Z-Stent	5130				
*C5131	H	Bard Colorectal Stent-60mm	5131				
*C5132	H	Bard Colorectal Stent-80mm	5132				
*C5133	H	Bard Colorectal Stent-100mm	5133				
*C5134	H	Enteral Wallstent--90mm	5134				
*C5279	H	Contour/Perculflex Stent	5279				

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
*C5280	H	Inlay Dbl Ureteral Stent	5280				
*C5281	H	Wallgraft Trach Sys 70mm	5281				
*C5282	H	Wallgraft Trach Sys 20/30/50	5282				
*C5283	H	Wallstent/RP TIPS --80mm	5283				
*C5284	H	Wallstent TrachUltraFlex	5284				
*C5600	H	Closure dev, VasoSeal ES	5600				
*C5601	H	VasoSeal Model 1000	5601				
*C6001	H	Composix Mesh 8/21 in	6001				
*C6002	H	Composix Mesh 32 in	6002				
*C6003	H	Composix Mesh 48 in	6003				
*C6004	H	Composix Mesh 80 in	6004				
*C6005	H	Composix Mesh 140 in	6005				
*C6006	H	Composix Mesh 144 in	6006				
*C6012	H	Pelvicol Collagen 8/14 sq cm	6012				
*C6013	H	Pelvicol Collagen 21/24/28 sq cm	6013				
*C6014	H	Pelvicol Collagen 40sq cm	6014				
*C6015	H	Pelvicol Collagen 48 sq cm	6015				
*C6016	H	Pelvicol Collagen 96 sq cm	6016				
*C6017	H	Gore-Tex DualMesh 75/96 sq cm	6017				
*C6018	H	Gore-Tex DualMesh 150 sq cm	6018				
*C6019	H	Gore-Tex DualMesh 285 sq cm	6019				
*C6020	H	Gore-Tex DualMesh 432 sq cm	6020				
*C6021	H	Gore-Tex DualMesh 600 sq cm	6021				
*C6022	H	Gore-Tex DualMesh 884 sq cm	6022				
*C6023	H	Gore-TexPlus 1mm, 75/96sq cm	6023				
*C6024	H	Gore-TexPlus 1mm, 150sq cm	6024				
*C6025	H	Gore-TexPlus 1mm, 285sq cm	6025				
*C6026	H	Gore-TexPlus 1mm, 432sq cm	6026				
*C6027	H	Gore-TexPlus 1mm, 600sq cm	6027				
*C6028	H	Gore-TexPlus 1mm, 884 sq cm	6028				
*C6029	H	Gore-TexPlus 2mm, 150 sq cm	6029				
*C6030	H	Gore-TexPlus 2mm, 285 sq cm	6030				
*C6031	H	Gore-TexPlus 2mm, 432 sq cm	6031				
*C6032	H	Gore-TexPlus 2mm, 600 sq cm	6032				
*C6033	H	Gore-TexPlus 2mm, 884 sq cm	6033				
*C6034	H	Bard ePTFE: 15 sq cm--2mm	6034				
*C6035	H	Bard ePTFE150sqcm-1mm,75-2mm	6035				
*C6036	H	Bard ePTFE: 50/75sqcm-1,2mm	6036				
*C6037	H	Bard ePTFE: 300sq cm-1,2mm	6037				
*C6038	H	Bard ePTFE: 600sq cm-1mm	6038				
*C6039	H	Bard ePTFE: 884sq cm-1mm	6039				
*C6040	H	Bard ePTFE: 600sq cm-2mm	6040				
*C6041	H	Bard ePTFE: 884sq cm-2mm	6041				
*C6050	H	Female Sling Sys w/wo Matrl	6050				
*C6051	H	Stratasis Urethral Sling, 20/40 cm	6051				
*C6052	H	Stratasis Urethral Sling, 60 cm	6052				
*C6053	H	Surgisis Soft Graft	6053				
*C6054	H	Surgisis Enhanced Graft	6054				
*C6055	H	Surgisis Enhanced Tissue	6055				
*C6056	H	Surgisis Soft Tissue Graft	6056				
*C6057	H	Surgisis Hernia Graft	6057				
*C6058	H	SurgiPro Hernia Plug, med/lg	6058				
*C6060	H	Male Sling Sys w/wo Matrl	6060				
*C6200	H	Exxcel Sft ePTFE vas graft	6200				
*C6201	H	Impra Venaflo--10/20cm	6201				
*C6202	H	Impra Venaflo-30/40cm	6202				
*C6203	H	Impra Venaflo-50cm,vt45	6203				
*C6204	H	Impra Venaflo-stepped	6204				
*C6205	H	Impra Carboflo--10cm	6205				
*C6206	H	Impra Carboflo--20cm	6206				
*C6207	H	Impra Carboflo--30/35/40cm	6207				
*C6208	H	Impra Carboflo--40/50cm	6208				
*C6209	H	Impra Carboflo--ctrflex	6209				
*C6210	H	Exxcel ePTFE vas graft	6210				
*C6300	H	Vanguard III Endovas Graft	6300				
*C6500	H	Preface Guiding Sheath	6500				
*C6501	H	Sheath, Soft Tip Sheaths	6501				
*C6502	H	Perry Exchange Dilator	6502				
*C6525	H	Spectranetics Laser Sheath	6525				
*C6600	H	Micro Litho Flex Probes	6600				
*C6650	H	Fast-Cath Guiding Introducer	6650				
*C6651	H	Seal-AwayGuiding Introducer	6651				
*C6652	H	Bard Excalibur Introducer	6652				
*C6700	H	Focal Seal-L	6700				

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
*C8099	H	Spectranetics Lead Lock Dev	8099				
C8100	H	Adhesion barrier, ADCON-L	8100				
*C8102	H	SurgiVision Esoph Coil	8102				
C8103D	E	Capio Capturing Dev					
*C8500	X	Atherocath-GTO	0991		$1,278.59		$255.72
*C8501	X	Pacemaker, single chamber, Vigor SSI	0992		$1,790.03		$358.01
*C8502	X	Livewire Steerable EP Cath	0988		$383.58		$76.72
*C8503	X	SyncroMed Vas Cath	0988		$383.58		$76.72
*C8504	X	VasoSeal Hemostasis Dev	0987		$127.86		$25.57
*C8505	X	SynchroMed Infusion Pump	0997		$8,182.96		$1,636.60
*C8506	X	Pmkr leads 4057M,4058M	0990		$895.01		$179.00
*C8507	X	6721L/M/S,6939 lead	0990		$895.01		$179.00
*C8508	X	Lead, defibrillator, CapSure 4965	0990		$895.01		$179.00
*C8509	X	Transvene 6933/6937 lead	0990		$895.01		$179.00
*C8510	X	Lead, defibrillator, DP-3238	0990		$895.01		$179.00
*C8511	X	Lead, defibrillator, EndoTak DSP	0996		$6,137.23		$1,227.45
*C8512	X	On-Point,Pieces-Quad lead	0990		$895.01		$179.00
*C8513	X	Pieces,Resume II lead	0990		$895.01		$179.00
*C8514	X	Dura II Penile Pros	0993		$2,557.18		$511.44
*C8515D	X	Alpha 1 narrow base prosthesis	0995		$4,602.92		$920.58
*C8516	X	Mentor Acu-Form/Mal Pros	0992		$1,790.03		$358.01
*C8517D	X	Ambicor prosthesis	0994		$3,580.05		$716.01
*C8518	X	Pacemaker, dual chamber, Vigor DDD	0994		$3,580.05		$716.01
*C8519	X	Pacemaker, dual chamber, Vista DDD	0994		$3,580.05		$716.01
*C8520	X	Pacemaker, single chamber, Legacy II S	0992		$1,790.03		$358.01
*C8521	X	Medtronic Mattrix rcvr/trnmr	0997		$8,182.96		$1,636.60
*C8522	X	Palmaz Bal Stent	0990		$895.01		$179.00
*C8523	X	Wallstent Trans Bil	0991		$1,278.59		$255.72
*C8524	X	Wallstent Esop	0991		$1,278.59		$255.72
*C8525	X	Esoph stent--double	0992		$1,790.03		$358.01
*C8526	X	OptiPlast XT 5F PTA Cath	0987		$127.86		$25.57
*C8528	X	MS Classique Balloon Dilation Catheter	0987		$127.86		$25.57
*C8529	X	Crista Cath II Def 20-Pole	0990		$895.01		$179.00
*C8530	X	Gel-Filled/Smooth Mammary Pros	0989		$639.30		$127.86
*C8531	X	Wilson-Cook Esoph Z-Stent	0989		$639.30		$127.86
*C8532	X	UltraFlex Esoph	0991		$1,278.59		$255.72
*C8533	X	SynchroMed Vas Cath 8700A/V	0988		$383.58		$76.72
*C8534	X	AMS Malleable 650 Penile Prosthesis	0992		$1,790.03		$358.01
*C8535	X	Za/Spiral Z Bil Stent	0990		$895.01		$179.00
*C8536	X	Esoph Z Metal Stent	0991		$1,278.59		$255.72
*C8539	X	Quantum Dil Balloon	0987		$127.86		$25.57
*C8540	X	Flex-EZ Bal Dilator	0988		$383.58		$76.72
*C8541	X	Carson/Passprt Dil	0988		$383.58		$76.72
*C8542	X	UrethraMax Dil Cath	0987		$127.86		$25.57
*C8543	X	Amplatz Renal Dil	0987		$127.86		$25.57
*C8550	X	Livewire 5F, 7F EP Cath	0989		$639.30		$127.86
*C8551	X	Livewire 7F Duo-Decapolar	0990		$895.01		$179.00
*C8552	X	Santuro Fixed Curve Cath	0989		$639.30		$127.86
*C8597	X	Wisdom ST guidewire	0987		$127.86		$25.57
*C8598	X	SV Guidewire-5/8/14cm	0987		$127.86		$25.57
*C8599	X	Stabilizer XS guidewire	0987		$127.86		$25.57
*C8600	X	Shinobi Plus guidewire	0987		$127.86		$25.57
*C8650	X	XL Check-Flo Introducer	0987		$127.86		$25.57
*C8724	X	Octad neuro lead	0991		$1,278.59		$255.72
*C8725	X	SymMix neuro lead	0990		$895.01		$179.00
*C8748	X	Endotak SQ Patch defib lead	0990		$895.01		$179.00
*C8749	X	Endotak SQ Array defib lead	0993		$2,557.18		$511.44
*C8750	X	Unity VDDR dc pmkr	0994		$3,580.05		$716.01
*C8775	X	2188 Cor pmkr lead	0991		$1,278.59		$255.72
*C8776	X	Innomedica pmkr lead	0990		$895.01		$179.00
*C8777	X	Unipass pmkr lead	0991		$1,278.59		$255.72
*C8800	X	Lg Palmaz Bil Stent	0990		$895.01		$179.00
*C8801	X	Gianturco Bil Z Stent	0989		$639.30		$127.86
*C8802	X	Oasis Stent Intro Sys	0987		$127.86		$25.57
*C8830	X	Gianturco-Roubin Cor Snt	0991		$1,278.59		$255.72
*C8890	X	Perfluoron, per 2ml	0987		$127.86		$25.57
*C8891	X	Perfluoron, per 5/7ml	0988		$383.58		$76.72
C9000	G	Na chromate Cr51, per 0.25mCi	9000		$259.36		$34.75
C9001	J	Linezolid inj, 200mg	9001		$34.14		$4.57
C9002	J	Tenecteplase, 50mg/vial	9002		$2,612.50		$350.06
C9003	J	Palivizumab, per 50mg	9003		$664.49		$89.04
C9004	J	Gemtuzumab ozogamicin inj,5mg	9004		$1,929.69		$258.56
C9005	G	reteplase, 18.1 mg (one single-use vial)	9005		$1,306.25		$175.04
C9006	J	Tacrolimus inj, per 5mg (1 amp)	9006		$109.83		$14.72

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
C9007	G	Baclofen Intrathecal kit-1amp	9007		$79.80		$10.69
C9008	G	Baclofen Refill Kit--500mcg	9008		$222.30		$29.79
C9009	G	Baclofen Refill Kit--2000mcg	9009		$467.40		$62.63
C9010	G	Baclofen Refill Kit--4000mcg	9010		$820.80		$109.99
C9011	G	Caffeine Citrate, inj, 1ml	9011		$12.22		$1.57
*C9100	G	Iodinated I-131 Albumin	9100		$246.05		$30.02
C9102	G	51 Na chromate, 50uCi	9102		$216.60		$26.43
C9103	G	Na Iothalamate I-125, 10uCi	9103		$12.27		$1.50
C9104	G	Anti-thymocyte globulin,25mg	9104		$251.75		$33.73
C9105	G	Hep B imm glob, per 1 ml	9105		$152.00		$20.37
C9106	J	Sirolimus 1mg/ml	9106		$6.51		$.87
*C9107	J	Tinzaparin sodium, 2ml vial	9107		$159.60		$20.50
C9108	G	Thyrotropin alfa, 1.1 mg	9108		$494.00		$70.72
C9109	G	Tirofiban hcl, 6.25 mg	9109		$199.50		$26.56
C9500	K	Platelets, irradiated, each unit	9500	1.77	$87.97		$17.59
C9501	K	Platelets, pheresis, each unit	9501	9.69	$480.75		$96.15
C9502	K	Platelets, pheresis, irradiated, each unit	9502	10.52	$521.66		$104.33
C9503	K	Fresh frzn plasma, donor retested, unit	9503	1.65	$81.83		$16.37
C9504	K	Red blood cells, deglycerolized, unit	9504	4.35	$215.83		$43.17
C9505	K	Red blood cells, irradiated, each unit	9505	2.58	$127.86		$25.57
*C9700	T	Water-induced thermotherapy	0977	23.20	$1,150.63		$230.13
*C9701	S	Stretta Procedure	0976	18.05	$895.21		$179.04
*C9702	S	Chkmate Intra Brachytx Sys	0981	46.40	$2,301.26		$460.25
D0120	E	Periodic oral evaluation					
D0140	E	Limit oral eval problm focus					
D0150	S	Comprehensve oral evaluation	0330	1.51	$74.89	$14.98	$14.98
D0160	E	Extensv oral eval prob focus					
D0170	E	Re-eval,est pt,problem focus					
D0210	E	Intraor complete film series					
D0220	E	Intraoral periapical first f					
D0230	E	Intraoral periapical ea add					
D0240	S	Intraoral occlusal film	0330	1.51	$74.89	$14.98	$14.98
D0250	S	Extraoral first film	0330	1.51	$74.89	$14.98	$14.98
D0260	S	Extraoral ea additional film	0330	1.51	$74.89	$14.98	$14.98
D0270	S	Dental bitewing single film	0330	1.51	$74.89	$14.98	$14.98
D0272	S	Dental bitewings two films	0330	1.51	$74.89	$14.98	$14.98
D0274	S	Dental bitewings four films	0330	1.51	$74.89	$14.98	$14.98
D0277	S	Vert bitewings-sev to eight	0330	1.51	$74.89	$14.98	$14.98
D0290	E	Dental film skull/facial bon					
D0310	E	Dental saliography					
D0320	E	Dental tmj arthrogram incl i					
D0321	E	Dental other tmj films					
D0322	E	Dental tomographic survey					
D0330	E	Dental panoramic film					
D0340	E	Dental cephalometric film					
D0350	E	Oral/facial images					
D0415	E	Bacteriologic study					
D0425	E	Caries susceptibility test					
D0460	S	Pulp vitality test	0330	1.51	$74.89	$14.98	$14.98
D0470	E	Diagnostic casts					
D0472	S	Gross exam, prep & report	0330	1.51	$74.89	$14.98	$14.98
D0473	S	Micro exam, prep & report	0330	1.51	$74.89	$14.98	$14.98
D0474	S	Micro w exam of surg margins	0330	1.51	$74.89	$14.98	$14.98
D0480	S	Cytopath smear prep & report	0330	1.51	$74.89	$14.98	$14.98
D0501	S	Histopathologic examinations	0330	1.51	$74.89	$14.98	$14.98
D0502	S	Other oral pathology procedu	0330	1.51	$74.89	$14.98	$14.98
D0999	S	Unspecified diagnostic proce	0330	1.51	$74.89	$14.98	$14.98
D1110	E	Dental prophylaxis adult					
D1120	E	Dental prophylaxis child					
D1201	E	Topical fluor w prophy child					
D1203	E	Topical fluor w/o prophy chi					
D1204	E	Topical fluor w/o prophy adu					
D1205	E	Topical fluoride w/ prophy a					
D1310	E	Nutri counsel-control caries					
D1320	E	Tobacco counseling					
D1330	E	Oral hygiene instruction					
D1351	E	Dental sealant per tooth					
D1510	S	Space maintainer fxd unilat	0330	1.51	$74.89	$14.98	$14.98
D1515	S	Fixed bilat space maintainer	0330	1.51	$74.89	$14.98	$14.98
D1520	S	Remove unilat space maintain	0330	1.51	$74.89	$14.98	$14.98
D1525	S	Remove bilat space maintain	0330	1.51	$74.89	$14.98	$14.98
D1550	S	Recement space maintainer	0330	1.51	$74.89	$14.98	$14.98
D2110	E	Amalgam one surface primary					
D2120	E	Amalgam two surfaces primary					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
D2130	E	Amalgam three surfaces prima					
D2131	E	Amalgam four/more surf prima					
D2140	E	Amalgam one surface permanen					
D2150	E	Amalgam two surfaces permane					
D2160	E	Amalgam three surfaces perma					
D2161	E	Amalgam 4 or > surfaces perm					
D2330	E	Resin one surface-anterior					
D2331	E	Resin two surfaces-anterior					
D2332	E	Resin three surfaces-anterio					
D2335	E	Resin 4/> surf or w incis an					
D2336	E	Composite resin crown					
D2337	E	Compo resin crown ant-perm					
D2380	E	Resin one surf poster primar					
D2381	E	Resin two surf poster primar					
D2382	E	Resin three/more surf post p					
D2385	E	Resin one surf poster perman					
D2386	E	Resin two surf poster perman					
D2387	E	Resin three/more surf post p					
D2388	E	Resin four/more, post perm					
D2410	E	Dental gold foil one surface					
D2420	E	Dental gold foil two surface					
D2430	E	Dental gold foil three surfa					
D2510	E	Dental inlay metalic 1 surf					
D2520	E	Dental inlay metallic 2 surf					
D2530	E	Dental inlay metl 3/more sur					
D2542	E	Dental onlay metallic 2 surf					
D2543	E	Dental onlay metallic 3 surf					
D2544	E	Dental onlay metl 4/more sur					
D2610	E	Inlay porcelain/ceramic 1 su					
D2620	E	Inlay porcelain/ceramic 2 su					
D2630	E	Dental onlay porc 3/more sur					
D2642	E	Dental onlay porcelin 2 surf					
D2643	E	Dental onlay porcelin 3 surf					
D2644	E	Dental onlay porc 4/more sur					
D2650	E	Inlay composite/resin one su					
D2651	E	Inlay composite/resin two su					
D2652	E	Dental inlay resin 3/mre sur					
D2662	E	Dental onlay resin 2 surface					
D2663	E	Dental onlay resin 3 surface					
D2664	E	Dental onlay resin 4/mre sur					
D2710	E	Crown resin laboratory					
D2720	E	Crown resin w/ high noble me					
D2721	E	Crown resin w/ base metal					
D2722	E	Crown resin w/ noble metal					
D2740	E	Crown porcelain/ceramic subs					
D2750	E	Crown porcelain w/ h noble m					
D2751	E	Crown porcelain fused base m					
D2752	E	Crown porcelain w/ noble met					
D2780	E	Crown 3/4 cast hi noble met					
D2781	E	Crown 3/4 cast base metal					
D2782	E	Crown 3/4 cast noble metal					
D2783	E	Crown 3/4 porcelain/ceramic					
D2790	E	Crown full cast high noble m					
D2791	E	Crown full cast base metal					
D2792	E	Crown full cast noble metal					
D2799	E	Provisional crown					
D2910	E	Dental recement inlay					
D2920	E	Dental recement crown					
D2930	E	Prefab stnlss steel crwn pri					
D2931	E	Prefab stnlss steel crown pe					
D2932	E	Prefabricated resin crown					
D2933	E	Prefab stainless steel crown					
D2940	E	Dental sedative filling					
D2950	E	Core build-up incl any pins					
D2951	E	Tooth pin retention					
D2952	E	Post and core cast + crown					
D2953	E	Each addtnl cast post					
D2954	E	Prefab post/core + crown					
D2955	E	Post removal					
D2957	E	Each addtnl prefab post					
D2960	E	Laminate labial veneer					
D2961	E	Lab labial veneer resin					
D2962	E	Lab labial veneer porcelain					
D2970	S	Temporary- fractured tooth	0330	1.51	$74.89	$14.98	$14.98

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
D2980	E	Crown repair					
D2999	S	Dental unspec restorative pr	0330	1.51	$74.89	$14.98	$14.98
D3110	E	Pulp cap direct					
D3120	E	Pulp cap indirect					
D3220	E	Therapeutic pulpotomy					
D3221	E	Gross pulpal debridement					
D3230	E	Pulpal therapy anterior prim					
D3240	E	Pulpal therapy posterior pri					
D3310	E	Anterior					
D3320	E	Root canal therapy 2 canals					
D3330	E	Root canal therapy 3 canals					
D3331	E	Non-surg tx root canal obs					
D3332	E	Incomplete endodontic tx					
D3333	E	Internal root repair					
D3346	E	Retreat root canal anterior					
D3347	E	Retreat root canal bicuspid					
D3348	E	Retreat root canal molar					
D3351	E	Apexification/recalc initial					
D3352	E	Apexification/recalc interim					
D3353	E	Apexification/recalc final					
D3410	E	Apicoect/perirad surg anter					
D3421	E	Root surgery bicuspid					
D3425	E	Root surgery molar					
D3426	E	Root surgery ea add root					
D3430	E	Retrograde filling					
D3450	E	Root amputation					
D3460	S	Endodontic endosseous implan	0330	1.51	$74.89	$14.98	$14.98
D3470	E	Intentional replantation					
D3910	E	Isolation- tooth w rubb dam					
D3920	E	Tooth splitting					
D3950	E	Canal prep/fitting of dowel					
D3999	S	Endodontic procedure	0330	1.51	$74.89	$14.98	$14.98
D4210	E	Gingivectomy/plasty per quad					
D4211	E	Gingivectomy/plasty per toot					
D4220	E	Gingival curettage per quadr					
D4240	E	Gingival flap proc w/ planin					
D4245	E	Apically positioned flap					
D4249	E	Crown lengthen hard tissue					
D4260	S	Osseous surgery per quadrant	0330	1.51	$74.89	$14.98	$14.98
D4263	S	Bone replce graft first site	0330	1.51	$74.89	$14.98	$14.98
D4264	S	Bone replce graft each add	0330	1.51	$74.89	$14.98	$14.98
D4266	E	Guided tiss regen resorble					
D4267	E	Guided tiss regen nonresorb					
D4268	S	Surgical revision procedure	0330	1.51	$74.89	$14.98	$14.98
D4270	S	Pedicle soft tissue graft pr	0330	1.51	$74.89	$14.98	$14.98
D4271	S	Free soft tissue graft proc	0330	1.51	$74.89	$14.98	$14.98
D4273	S	Subepithelial tissue graft	0330	1.51	$74.89	$14.98	$14.98
D4274	E	Distal/proximal wedge proc					
D4320	E	Provision splnt intracoronal					
D4321	E	Provisional splint extracoro					
D4341	E	Periodontal scaling & root					
D4355	S	Full mouth debridement	0330	1.51	$74.89	$14.98	$14.98
D4381	S	Localized chemo delivery	0330	1.51	$74.89	$14.98	$14.98
D4910	E	Periodontal maint procedures					
D4920	E	Unscheduled dressing change					
D4999	E	Unspecified periodontal proc					
D5110	E	Dentures complete maxillary					
D5120	E	Dentures complete mandible					
D5130	E	Dentures immediat maxillary					
D5140	E	Dentures immediat mandible					
D5211	E	Dentures maxill part resin					
D5212	E	Dentures mand part resin					
D5213	E	Dentures maxill part metal					
D5214	E	Dentures mandibl part metal					
D5281	E	Removable partial denture					
D5410	E	Dentures adjust cmplt maxil					
D5411	E	Dentures adjust cmplt mand					
D5421	E	Dentures adjust part maxill					
D5422	E	Dentures adjust part mandbl					
D5510	E	Dentur repr broken compl bse					
D5520	E	Replace denture teeth complt					
D5610	E	Dentures repair resin base					
D5620	E	Rep part denture cast frame					
D5630	E	Rep partial denture clasp					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
D5640	E	Replace part denture teeth					
D5650	E	Add tooth to partial denture					
D5660	E	Add clasp to partial denture					
D5710	E	Dentures rebase cmplt maxil					
D5711	E	Dentures rebase cmplt mand					
D5720	E	Dentures rebase part maxill					
D5721	E	Dentures rebase part mandbl					
D5730	E	Denture reln cmplt maxil ch					
D5731	E	Denture reln cmplt mand chr					
D5740	E	Denture reln part maxil chr					
D5741	E	Denture reln part mand chr					
D5750	E	Denture reln cmplt max lab					
D5751	E	Denture reln cmplt mand lab					
D5760	E	Denture reln part maxil lab					
D5761	E	Denture reln part mand lab					
D5810	E	Denture interm cmplt maxill					
D5811	E	Denture interm cmplt mandbl					
D5820	E	Denture interm part maxill					
D5821	E	Denture interm part mandbl					
D5850	E	Denture tiss conditn maxil					
D5851	E	Denture tiss conditn mandbl					
D5860	E	Overdenture complete					
D5861	E	Overdenture partial					
D5862	E	Precision attachment					
D5867	E	Replacement of precision att					
D5875	E	Prosthesis modification					
D5899	E	Removable prosthodontic proc					
D5911	S	Facial moulage sectional	0330	1.51	$74.89	$14.98	$14.98
D5912	S	Facial moulage complete	0330	1.51	$74.89	$14.98	$14.98
D5913	E	Nasal prosthesis					
D5914	E	Auricular prosthesis					
D5915	E	Orbital prosthesis					
D5916	E	Ocular prosthesis					
D5919	E	Facial prosthesis					
D5922	E	Nasal septal prosthesis					
D5923	E	Ocular prosthesis interim					
D5924	E	Cranial prosthesis					
D5925	E	Facial augmentation implant					
D5926	E	Replacement nasal prosthesis					
D5927	E	Auricular replacement					
D5928	E	Orbital replacement					
D5929	E	Facial replacement					
D5931	E	Surgical obturator					
D5932	E	Postsurgical obturator					
D5933	E	Refitting of obturator					
D5934	E	Mandibular flange prosthesis					
D5935	E	Mandibular denture prosth					
D5936	E	Temp obturator prosthesis					
D5937	E	Trismus appliance					
D5951	E	Feeding aid					
D5952	E	Pediatric speech aid					
D5953	E	Adult speech aid					
D5954	E	Superimposed prosthesis					
D5955	E	Palatal lift prosthesis					
D5958	E	Intraoral con def inter plt					
D5959	E	Intraoral con def mod palat					
D5960	E	Modify speech aid prosthesis					
D5982	E	Surgical stent					
D5983	S	Radiation applicator	0330	1.51	$74.89	$14.98	$14.98
D5984	S	Radiation shield	0330	1.51	$74.89	$14.98	$14.98
D5985	S	Radiation cone locator	0330	1.51	$74.89	$14.98	$14.98
D5986	E	Fluoride applicator					
D5987	S	Commissure splint	0330	1.51	$74.89	$14.98	$14.98
D5988	E	Surgical splint					
D5999	E	Maxillofacial prosthesis					
D6010	E	Odontics endosteal implant					
D6020	E	Odontics abutment placement					
D6040	E	Odontics eposteal implant					
D6050	E	Odontics transosteal implnt					
D6055	E	Implant connecting bar					
D6056	E	Prefabricated abutment					
D6057	E	Custom abutment					
D6058	E	Abutment supported crown					
D6059	E	Abutment supported mtl crown					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
D6060	E	Abutment supported mtl crown					
D6061	E	Abutment supported mtl crown					
D6062	E	Abutment supported mtl crown					
D6063	E	Abutment supported mtl crown					
D6064	E	Abutment supported mtl crown					
D6065	E	Implant supported crown					
D6066	E	Implant supported mtl crown					
D6067	E	Implant supported mtl crown					
D6068	E	Abutment supported retainer					
D6069	E	Abutment supported retainer					
D6070	E	Abutment supported retainer					
D6071	E	Abutment supported retainer					
D6072	E	Abutment supported retainer					
D6073	E	Abutment supported retainer					
D6074	E	Abutment supported retainer					
D6075	E	Implant supported retainer					
D6076	E	Implant supported retainer					
D6077	E	Implant supported retainer					
D6078	E	Implnt/abut suprtd fixd dent					
D6079	E	Implnt/abut suprtd fixd dent					
D6080	E	Implant maintenance					
D6090	E	Repair implant					
D6095	E	Odontics repr abutment					
D6100	E	Removal of implant					
D6199	E	Implant procedure					
D6210	E	Prosthodont high noble metal					
D6211	E	Bridge base metal cast					
D6212	E	Bridge noble metal cast					
D6240	E	Bridge porcelain high noble					
D6241	E	Bridge porcelain base metal					
D6242	E	Bridge porcelain nobel metal					
D6245	E	Bridge porcelain/ceramic					
D6250	E	Bridge resin w/high noble					
D6251	E	Bridge resin base metal					
D6252	E	Bridge resin w/noble metal					
D6519	E	Inlay/onlay porce/ceramic					
D6520	E	Dental retainer two surfaces					
D6530	E	Retainer metallic 3+ surface					
D6543	E	Dental retainr onlay 3 surf					
D6544	E	Dental retainr onlay 4/more					
D6545	E	Dental retainr cast metl					
D6548	E	Porcelain/ceramic retainer					
D6720	E	Retain crown resin w hi nble					
D6721	E	Crown resin w/base metal					
D6722	E	Crown resin w/noble metal					
D6740	E	Crown porcelain/ceramic					
D6750	E	Crown porcelain high noble					
D6751	E	Crown porcelain base metal					
D6752	E	Crown porcelain noble metal					
D6780	E	Crown 3/4 high noble metal					
D6781	E	Crown 3/4 cast based metal					
D6782	E	Crown 3/4 cast noble metal					
D6783	E	Crown 3/4 porcelain/ceramic					
D6790	E	Crown full high noble metal					
D6791	E	Crown full base metal cast					
D6792	E	Crown full noble metal cast					
D6920	S	Dental connector bar	0330	1.51	$74.89	$14.98	$14.98
D6930	E	Dental recement bridge					
D6940	E	Stress breaker					
D6950	E	Precision attachment					
D6970	E	Post & core plus retainer					
D6971	E	Cast post bridge retainer					
D6972	E	Prefab post & core plus reta					
D6973	E	Core build up for retainer					
D6975	E	Coping metal					
D6976	E	Each addtnl cast post					
D6977	E	Each addtl prefab post					
D6980	E	Bridge repair					
D6999	E	Fixed prosthodontic proc					
D7110	S	Oral surgery single tooth	0330	1.51	$74.89	$14.98	$14.98
D7120	S	Each add tooth extraction	0330	1.51	$74.89	$14.98	$14.98
D7130	S	Tooth root removal	0330	1.51	$74.89	$14.98	$14.98
D7210	S	Rem imp tooth w mucoper flp	0330	1.51	$74.89	$14.98	$14.98
D7220	S	Impact tooth remov soft tiss	0330	1.51	$74.89	$14.98	$14.98

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
D7230	S	Impact tooth remov part bony	0330	1.51	$74.89	$14.98	$14.98
D7240	S	Impact tooth remov comp bony	0330	1.51	$74.89	$14.98	$14.98
D7241	S	Impact tooth rem bony w/comp	0330	1.51	$74.89	$14.98	$14.98
D7250	S	Tooth root removal	0330	1.51	$74.89	$14.98	$14.98
D7260	S	Oral antral fistula closure	0330	1.51	$74.89	$14.98	$14.98
D7270	E	Tooth reimplantation					
D7272	E	Tooth transplantatio					
D7280	E	Exposure impact tooth orthod					
D7281	E	Exposure tooth aid eruption					
D7285	E	Biopsy of oral tissue hard					
D7286	E	Biopsy of oral tissue soft					
D7290	E	Repositioning of teeth					
D7291	S	Transseptal fiberotomy	0330	1.51	$74.89	$14.98	$14.98
D7310	E	Alveoplasty w/ extraction					
D7320	E	Alveoplasty w/o extraction					
D7340	E	Vestibuloplasty ridge extens					
D7350	E	Vestibuloplasty exten graft					
D7410	E	Rad exc lesion up to 1.25 cm					
D7420	E	Lesion > 1.25 cm					
D7430	E	Exc benign tumor to 1.25 cm					
D7431	E	Benign tumor exc > 1.25 cm					
D7440	E	Malig tumor exc to 1.25 cm					
D7441	E	Malig tumor > 1.25 cm					
D7450	E	Rem odontogen cyst to 1.25cm					
D7451	E	Rem odontogen cyst > 1.25 cm					
D7460	E	Rem nonodonto cyst to 1.25cm					
D7461	E	Rem nonodonto cyst > 1.25 cm					
D7465	E	Lesion destruction					
D7471	E	Rem exostosis any site					
D7480	E	Partial ostectomy					
D7490	E	Mandible resection					
D7510	E	I&d absc intraoral soft tiss					
D7520	E	I&d abscess extraoral					
D7530	E	Removal fb skin/areolar tiss					
D7540	E	Removal of fb reaction					
D7550	E	Removal of sloughed off bone					
D7560	E	Maxillary sinusotomy					
D7610	E	Maxilla open reduct simple					
D7620	E	Clsd reduct simpl maxilla fx					
D7630	E	Open red simpl mandible fx					
D7640	E	Clsd red simpl mandible fx					
D7650	E	Open red simp malar/zygom fx					
D7660	E	Clsd red simp malar/zygom fx					
D7670	E	Closd rductn splint alveolus					
D7680	E	Reduct simple facial bone fx					
D7710	E	Maxilla open reduct compound					
D7720	E	Clsd reduct compd maxilla fx					
D7730	E	Open reduct compd mandble fx					
D7740	E	Clsd reduct compd mandble fx					
D7750	E	Open red comp malar/zygma fx					
D7760	E	Clsd red comp malar/zygma fx					
D7770	E	Open reduc compd alveolus fx					
D7780	E	Reduct compnd facial bone fx					
D7810	E	Tmj open reduct-dislocation					
D7820	E	Closed tmp manipulation					
D7830	E	Tmj manipulation under anest					
D7840	E	Removal of tmj condyle					
D7850	E	Tmj meniscectomy					
D7852	E	Tmj repair of joint disc					
D7854	E	Tmj excisn of joint membrane					
D7856	E	Tmj cutting of a muscle					
D7858	E	Tmj reconstruction					
D7860	E	Tmj cutting into joint					
D7865	E	Tmj reshaping components					
D7870	E	Tmj aspiration joint fluid					
D7871	E	Lysis + lavage w catheters					
D7872	E	Tmj diagnostic arthroscopy					
D7873	E	Tmj arthroscopy lysis adhesn					
D7874	E	Tmj arthroscopy disc reposit					
D7875	E	Tmj arthroscopy synovectomy					
D7876	E	Tmj arthroscopy discectomy					
D7877	E	Tmj arthroscopy debridement					
D7880	E	Occlusal orthotic appliance					
D7899	E	Tmj unspecified therapy					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
D7910	E	Dent sutur recent wnd to 5cm					
D7911	E	Dental suture wound to 5 cm					
D7912	E	Suture complicate wnd > 5 cm					
D7920	E	Dental skin graft					
D7940	S	Reshaping bone orthognathic	0330	1.51	$74.89	$14.98	$14.98
D7941	E	Bone cutting ramus closed					
D7943	E	Cutting ramus open w/graft					
D7944	E	Bone cutting segmented					
D7945	E	Bone cutting body mandible					
D7946	E	Reconstruction maxilla total					
D7947	E	Reconstruct maxilla segment					
D7948	E	Reconstruct midface no graft					
D7949	E	Reconstruct midface w/graft					
D7950	E	Mandible graft					
D7955	E	Repair maxillofacial defects					
D7960	E	Frenulectomy/frenulotomy					
D7970	E	Excision hyperplastic tissue					
D7971	E	Excision pericoronal gingiva					
D7980	E	Sialolithotomy					
D7981	E	Excision of salivary gland					
D7982	E	Sialodochoplasty					
D7983	E	Closure of salivary fistula					
D7990	E	Emergency tracheotomy					
D7991	E	Dental coronoidectomy					
D7995	E	Synthetic graft facial bones					
D7996	E	Implant mandible for augment					
D7997	E	Appliance removal					
D7999	E	Oral surgery procedure					
D8010	E	Limited dental tx primary					
D8020	E	Limited dental tx transition					
D8030	E	Limited dental tx adolescent					
D8040	E	Limited dental tx adult					
D8050	E	Intercep dental tx primary					
D8060	E	Intercep dental tx transitn					
D8070	E	Compre dental tx transition					
D8080	E	Compre dental tx adolescent					
D8090	E	Compre dental tx adult					
D8210	E	Orthodontic rem appliance tx					
D8220	E	Fixed appliance therapy habt					
D8660	E	Preorthodontic tx visit					
D8670	E	Periodic orthodontc tx visit					
D8680	E	Orthodontic retention					
D8690	E	Orthodontic treatment					
D8691	E	Repair ortho appliance					
D8692	E	Replacement retainer					
D8999	E	Orthodontic procedure					
D9110	N	Tx dental pain minor proc					
D9210	E	Dent anesthesia w/o surgery					
D9211	E	Regional block anesthesia					
D9212	E	Trigeminal block anesthesia					
D9215	E	Local anesthesia					
D9220	E	General anesthesia					
D9221	E	General anesthesia ea ad 15m					
D9230	N	Analgesia					
D9241	E	Intravenous sedation					
D9242	E	IV sedation ea ad 30 m					
D9248	N	Sedation (non-iv)					
D9310	E	Dental consultation					
D9410	E	Dental house call					
D9420	E	Hospital call					
D9430	E	Office visit during hours					
D9440	E	Office visit after hours					
D9610	E	Dent therapeutic drug inject					
D9630	S	Other drugs/medicaments	0330	1.51	$74.89	$14.98	$14.98
D9910	E	Dent appl desensitizing med					
D9911	E	Appl desensitizing resin					
D9920	E	Behavior management					
D9930	S	Treatment of complications	0330	1.51	$74.89	$14.98	$14.98
D9940	S	Dental occlusal guard	0330	1.51	$74.89	$14.98	$14.98
D9941	E	Fabrication athletic guard					
D9950	S	Occlusion analysis	0330	1.51	$74.89	$14.98	$14.98
D9951	S	Limited occlusal adjustment	0330	1.51	$74.89	$14.98	$14.98
D9952	S	Complete occlusal adjustment	0330	1.51	$74.89	$14.98	$14.98
D9970	E	Enamel microabrasion					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
D9971	E	Odontoplasty 1-2 teeth					
D9972	E	Extrnl bleaching per arch					
D9973	E	Extrnl bleaching per tooth					
D9974	E	Intrnl bleaching per tooth					
D9999	E	Adjunctive procedure					
E0100	A	Cane adjust/fixed with tip					
E0105	A	Cane adjust/fixed quad/3 pro					
E0110	A	Crutch forearm pair					
E0111	A	Crutch forearm each					
E0112	A	Crutch underarm pair wood					
E0113	A	Crutch underarm each wood					
E0114	A	Crutch underarm pair no wood					
E0116	A	Crutch underarm each no wood					
E0130	A	Walker rigid adjust/fixed ht					
E0135	A	Walker folding adjust/fixed					
E0141	A	Rigid walker wheeled wo seat					
E0142	A	Walker rigid wheeled with se					
E0143	A	Walker folding wheeled w/o s					
E0144	A	Enclosed walker w rear seat					
E0145	A	Walker whled seat/crutch att					
E0146	A	Folding walker wheels w seat					
E0147	A	Walker variable wheel resist					
E0148	A	Heavyduty walker no wheels					
E0149	A	Heavy duty wheeled walker					
E0153	A	Forearm crutch platform atta					
E0154	A	Walker platform attachment					
E0155	A	Walker wheel attachment,pair					
E0156	A	Walker seat attachment					
E0157	A	Walker crutch attachment					
E0158	A	Walker leg extenders set of4					
E0159	A	Brake for wheeled walker					
E0160	A	Sitz type bath or equipment					
E0161	A	Sitz bath/equipment w/faucet					
E0162	A	Sitz bath chair					
E0163	A	Commode chair stationry fxd					
E0164	A	Commode chair mobile fixed a					
E0165	A	Commode chair stationry det					
E0166	A	Commode chair mobile detach					
E0167	A	Commode chair pail or pan					
E0168	A	Heavyduty/wide commode chair					
E0175	A	Commode chair foot rest					
E0176	A	Air pressre pad/cushion nonp					
E0177	A	Water press pad/cushion nonp					
E0178	A	Gel pressre pad/cushion nonp					
E0179	A	Dry pressre pad/cushion nonp					
E0180	A	Press pad alternating w pump					
E0181	A	Press pad alternating w/ pum					
E0182	A	Pressure pad alternating pum					
E0184	A	Dry pressure mattress					
E0185	A	Gel pressure mattress pad					
E0186	A	Air pressure mattress					
E0187	A	Water pressure mattress					
E0188	E	Synthetic sheepskin pad					
E0189	E	Lambswool sheepskin pad					
E0191	A	Protector heel or elbow					
E0192	A	Pad wheelchr low press/posit					
E0193	A	Powered air flotation bed					
E0194	A	Air fluidized bed					
E0196	A	Gel pressure mattress					
E0197	A	Air pressure pad for mattres					
E0198	A	Water pressure pad for mattr					
E0199	A	Dry pressure pad for mattres					
E0200	A	Heat lamp without stand					
E0202	A	Phototherapy light w/ photom					
E0205	A	Heat lamp with stand					
E0210	A	Electric heat pad standard					
E0215	A	Electric heat pad moist					
E0217	A	Water circ heat pad w pump					
E0218	E	Water circ cold pad w pump					
E0220	A	Hot water bottle					
E0225	A	Hydrocollator unit					
E0230	A	Ice cap or collar					
E0235	A	Paraffin bath unit portable					
E0236	A	Pump for water circulating p					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
E0238	A	Heat pad non-electric moist					
E0239	A	Hydrocollator unit portable					
E0241	E	Bath tub wall rail					
E0242	E	Bath tub rail floor					
E0243	E	Toilet rail					
E0244	E	Toilet seat raised					
E0245	E	Tub stool or bench					
E0246	E	Transfer tub rail attachment					
E0249	A	Pad water circulating heat u					
E0250	A	Hosp bed fixed ht w/ mattres					
E0251	A	Hosp bed fixd ht w/o mattres					
E0255	A	Hospital bed var ht w/ mattr					
E0256	A	Hospital bed var ht w/o matt					
E0260	A	Hosp bed semi-electr w/ matt					
E0261	A	Hosp bed semi-electr w/o mat					
E0265	A	Hosp bed total electr w/ mat					
E0266	A	Hosp bed total elec w/o matt					
E0270	E	Hospital bed institutional t					
E0271	A	Mattress innerspring					
E0272	A	Mattress foam rubber					
E0273	E	Bed board					
E0274	E	Over-bed table					
E0275	A	Bed pan standard					
E0276	A	Bed pan fracture					
E0277	A	Powered pres-redu air mattrs					
E0280	A	Bed cradle					
E0290	A	Hosp bed fx ht w/o rails w/m					
E0291	A	Hosp bed fx ht w/o rail w/o					
E0292	A	Hosp bed var ht w/o rail w/o					
E0293	A	Hosp bed var ht w/o rail w/					
E0294	A	Hosp bed semi-elect w/ mattr					
E0295	A	Hosp bed semi-elect w/o matt					
E0296	A	Hosp bed total elect w/ matt					
E0297	A	Hosp bed total elect w/o mat					
E0298	A	Heavyduty/xtra wide hosp bed					
E0305	A	Rails bed side half length					
E0310	A	Rails bed side full length					
E0315	E	Bed accessory brd/tbl/supprt					
E0325	A	Urinal male jug-type					
E0326	A	Urinal female jug-type					
E0350	E	Control unit bowel system					
E0352	E	Disposable pack w/bowel syst					
E0370	E	Air elevator for heel					
E0371	A	Nonpower mattress overlay					
E0372	A	Powered air mattress overlay					
E0373	A	Nonpowered pressure mattress					
E0424	A	Stationary compressed gas O2					
E0425	E	Gas system stationary compre					
E0430	E	Oxygen system gas portable					
E0431	A	Portable gaseous O2					
E0434	A	Portable liquid O2					
E0435	E	Oxygen system liquid portabl					
E0439	A	Stationary liquid O2					
E0440	E	Oxygen system liquid station					
E0441	A	Oxygen contents gas per/unit					
E0442	A	Oxygen contents liq per/unit					
E0443	A	Port O2 contents gas/unit					
E0444	A	Port O2 contents liq/unit					
E0450	A	Volume vent stationary/porta					
E0455	A	Oxygen tent excl croup/ped t					
E0457	A	Chest shell					
E0459	A	Chest wrap					
E0460	A	Neg press vent portabl/statn					
E0462	A	Rocking bed w/ or w/o side r					
E0480	A	Percussor elect/pneum home m					
E0500	A	Ippb all types					
E0550	A	Humidif extens supple w ippb					
E0555	A	Humidifier for use w/ regula					
E0560	A	Humidifier supplemental w/ i					
E0565	A	Compressor air power source					
E0570	A	Nebulizer with compression					
E0571	A	Aerosol compressor for svneb					
E0572	A	Aerosol compressor adjust pr					
E0574	A	Ultrasonic generator w svneb					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
E0575	A	Nebulizer ultrasonic					
E0580	A	Nebulizer for use w/ regulat					
E0585	A	Nebulizer w/ compressor & he					
E0590	A	Dispensing fee dme neb drug					
E0600	A	Suction pump portab hom modl					
E0601	A	Cont airway pressure device					
E0602	E	Breast pump					
E0605	A	Vaporizer room type					
E0606	A	Drainage board postural					
E0607	A	Blood glucose monitor home					
E0608	A	Apnea monitor					
E0609	A	Blood gluc mon w/special fea					
E0610	A	Pacemaker monitr audible/vis					
E0615	A	Pacemaker monitr digital/vis					
E0616	N	Cardiac event recorder					
E0617	A	Automatic ext defibrillator					
E0621	A	Patient lift sling or seat					
E0625	E	Patient lift bathroom or toi					
E0627	A	Seat lift incorp lift-chair					
E0628	A	Seat lift for pt furn-electr					
E0629	A	Seat lift for pt furn-non-el					
E0630	A	Patient lift hydraulic					
E0635	A	Patient lift electric					
E0650	A	Pneuma compresor non-segment					
E0651	A	Pneum compressor segmental					
E0652	A	Pneum compres w/cal pressure					
E0655	A	Pneumatic appliance half arm					
E0660	A	Pneumatic appliance full leg					
E0665	A	Pneumatic appliance full arm					
E0666	A	Pneumatic appliance half leg					
E0667	A	Seg pneumatic appl full leg					
E0668	A	Seg pneumatic appl full arm					
E0669	A	Seg pneumatic appli half leg					
E0671	A	Pressure pneum appl full leg					
E0672	A	Pressure pneum appl full arm					
E0673	A	Pressure pneum appl half leg					
E0690	A	Ultraviolet cabinet					
E0700	E	Safety equipment					
E0710	E	Restraints any type					
E0720	A	Tens two lead					
E0730	A	Tens four lead					
E0731	A	Conductive garment for tens/					
E0740	E	Incontinence treatment systm					
E0744	A	Neuromuscular stim for scoli					
E0745	A	Neuromuscular stim for shock					
E0746	E	Electromyograph biofeedback					
E0747	A	Elec osteogen stim not spine					
E0748	A	Elec osteogen stim spinal					
E0749	N	Elec osteogen stim implanted					
E0751D	N	Pulse generator or receiver					
E0753	N	Neurostimulator electrodes					
E0755	E	Electronic salivary reflex s					
E0756	N	Implantable pulse generator					
E0757	N	Implantable RF receiver					
E0758	A	External RF transmitter					
E0760	E	Osteogen ultrasound stimltor					
E0765	A	Nerve stimulator for tx n&v					
E0776	A	Iv pole					
E0779	A	Amb infusion pump mechanical					
E0780	A	Mech amb infusion pump <8hrs					
E0781	A	External ambulatory infus pu					
E0782	N	Non-programble infusion pump					
E0783	N	Programmable infusion pump					
E0784	A	Ext amb infusn pump insulin					
E0785	N	Replacement imp pump cathet					
E0786	N	Implantable pump replacement					
E0791	A	Parenteral infusion pump sta					
E0830	A	Ambulatory traction device					
E0840	A	Tract frame attach headboard					
E0850	A	Traction stand free standing					
E0855	A	Cervical traction equipment					
E0860	A	Tract equip cervical tract					
E0870	A	Tract frame attach footboard					
E0880	A	Trac stand free stand extrem					

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
E0890	A	Traction frame attach pelvic					
E0900	A	Trac stand free stand pelvic					
E0910	A	Trapeze bar attached to bed					
E0920	A	Fracture frame attached to b					
E0930	A	Fracture frame free standing					
E0935	A	Exercise device passive moti					
E0940	A	Trapeze bar free standing					
E0941	A	Gravity assisted traction de					
E0942	A	Cervical head harness/halter					
E0943	A	Cervical pillow					
E0944	A	Pelvic belt/harness/boot					
E0945	A	Belt/harness extremity					
E0946	A	Fracture frame dual w cross					
E0947	A	Fracture frame attachmnts pe					
E0948	A	Fracture frame attachmnts ce					
E0950	E	Tray					
E0951	E	Loop heel					
E0952	E	Loop tie					
E0953	E	Pneumatic tire					
E0954	E	Wheelchair semi-pneumatic ca					
E0958	E	Whlchr att- conv 1 arm drive					
E0959	E	Amputee adapter					
E0961	E	Wheelchair brake extension					
E0962	A	Wheelchair 1 inch cushion					
E0963	A	Wheelchair 2 inch cushion					
E0964	A	Wheelchair 3 inch cushion					
E0965	A	Wheelchair 4 inch cushion					
E0966	E	Wheelchair head rest extensi					
E0967	E	Wheelchair hand rims					
E0968	E	Wheelchair commode seat					
E0969	E	Wheelchair narrowing device					
E0970	E	Wheelchair no. 2 footplates					
E0971	E	Wheelchair anti-tipping devi					
E0972	A	Transfer board or device					
E0973	E	Wheelchair adjustabl height					
E0974	E	Wheelchair grade-aid					
E0975	E	Wheelchair reinforced seat u					
E0976	E	Wheelchair reinforced back					
E0977	E	Wheelchair wedge cushion					
E0978	E	Wheelchair belt w/airplane b					
E0979	E	Wheelchair belt with velcro					
E0980	E	Wheelchair safety vest					
E0990	E	Whellchair elevating leg res					
E0991	E	Wheelchair upholstry seat					
E0992	E	Wheelchair solid seat insert					
E0993	E	Wheelchair back upholstery					
E0994	E	Wheelchair arm rest					
E0995	E	Wheelchair calf rest					
E0996	E	Wheelchair tire solid					
E0997	E	Wheelchair caster w/ a fork					
E0998	E	Wheelchair caster w/o a fork					
E0999	E	Wheelchr pneumatic tire w/wh					
E1000	E	Wheelchair tire pneumatic ca					
E1001	E	Wheelchair wheel					
E1031	A	Rollabout chair with casters					
E1035	A	Patient transfer system					
E1050	E	Whelchr fxd full length arms					
E1060	E	Wheelchair detachable arms					
E1065	E	Wheelchair power attachment					
E1066	E	Wheelchair battery charger					
E1069	E	Wheelchair deep cycle batter					
E1070	E	Wheelchair detachable foot r					
E1083	E	Hemi-wheelchair fixed arms					
E1084	E	Hemi-wheelchair detachable a					
E1085	E	Hemi-wheelchair fixed arms					
E1086	E	Hemi-wheelchair detachable a					
E1087	E	Wheelchair lightwt fixed arm					
E1088	E	Wheelchair lightweight det a					
E1089	E	Wheelchair lightwt fixed arm					
E1090	E	Wheelchair lightweight det a					
E1091	E	Wheelchair youth					
E1092	E	Wheelchair wide w/ leg rests					
E1093	E	Wheelchair wide w/ foot rest					
E1100	E	Whchr s-recl fxd arm leg res					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
E1110	E	Wheelchair semi-recl detach					
E1130	E	Whlchr stand fxd arm ft rest					
E1140	E	Wheelchair standard detach a					
E1150	E	Wheelchair standard w/ leg r					
E1160	E	Wheelchair fixed arms					
E1170	E	Whlchr ampu fxd arm leg rest					
E1171	E	Wheelchair amputee w/o leg r					
E1172	E	Wheelchair amputee detach ar					
E1180	E	Wheelchair amputee w/ foot r					
E1190	E	Wheelchair amputee w/ leg re					
E1195	E	Wheelchair amputee heavy dut					
E1200	E	Wheelchair amputee fixed arm					
E1210	E	Whlchr moto ful arm leg rest					
E1211	E	Wheelchair motorized w/ det					
E1212	E	Wheelchair motorized w full					
E1213	E	Wheelchair motorized w/ det					
E1220	E	Whlchr special size/constrc					
E1221	E	Wheelchair spec size w foot					
E1222	E	Wheelchair spec size w/ leg					
E1223	E	Wheelchair spec size w foot					
E1224	E	Wheelchair spec size w/ leg					
E1225	E	Wheelchair spec sz semi-recl					
E1226	E	Wheelchair spec sz full-recl					
E1227	E	Wheelchair spec sz spec ht a					
E1228	E	Wheelchair spec sz spec ht b					
E1230	A	Power operated vehicle					
E1240	E	Whchr litwt det arm leg rest					
E1250	E	Wheelchair lightwt fixed arm					
E1260	E	Wheelchair lightwt foot rest					
E1270	E	Wheelchair lightweight leg r					
E1280	E	Whchr h-duty det arm leg res					
E1285	E	Wheelchair heavy duty fixed					
E1290	E	Wheelchair hvy duty detach a					
E1295	E	Wheelchair heavy duty fixed					
E1296	E	Wheelchair special seat heig					
E1297	E	Wheelchair special seat dept					
E1298	E	Wheelchair spec seat depth/w					
E1300	E	Whirlpool portable					
E1310	A	Whirlpool non-portable					
E1340	A	Repair for DME, per 15 min					
E1353	A	Oxygen supplies regulator					
E1355	A	Oxygen supplies stand/rack					
E1372	A	Oxy suppl heater for nebuliz					
E1375D	A	Oxygen suppl nebulizer porta					
E1377D	E	Oxygen concentrator to 244 c					
E1378D	E	Oxygen concentrator to 488 c					
E1379D	E	Oxygen concentrator to 732 c					
E1380D	E	Oxygen concentrator to 976 c					
E1381D	E	Oxygen concentrat to 1220 cu					
E1382D	E	Oxygen concentrat to 1464 cu					
E1383D	E	Oxygen concentrat to 1708 cu					
E1384D	E	Oxygen concentrat to 1952 cu					
E1385D	E	Oxygen concentrator > 1952 c					
E1390	A	Oxygen concentrator					
E1399	A	Durable medical equipment mi					
E1405	A	O2/water vapor enrich w/heat					
E1406	A	O2/water vapor enrich w/o he					
E1510	A	Kidney dialysate delivry sys					
E1520	A	Heparin infusion pump for di					
E1530	A	Air bubble detector for dial					
E1540	A	Pressure alarm for dialysis					
E1550	A	Bath conductivity meter					
E1560	A	Blood leak detector for dial					
E1570	A	Adjustable chair for esrd pt					
E1575	A	Transducer protector/fluid b					
E1580	A	Unipuncture control system					
E1590	A	Hemodialysis machine					
E1592	A	Auto interm peritoneal dialy					
E1594	A	Cycler dialysis machine					
E1600	A	Deliv/install equip for dial					
E1610	A	Reverse osmosis water purifi					
E1615	A	Deionizer water purification					
E1620	A	Blood pump for dialysis					
E1625	A	Water softening system					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
E1630	A	Reciprocating peritoneal dia					
E1632	A	Wearable artificial kidney					
E1635	A	Compact travel hemodialyzer					
E1636	A	Sorbent cartridges for dialy					
E1640	A	Replacement components for d					
E1699	A	Dialysis equipment unspecifi					
E1700	A	Jaw motion rehab system					
E1701	A	Repl cushions for jaw motion					
E1702	A	Repl measr scales jaw motion					
E1800	A	Adjust elbow ext/flex device					
E1805	A	Adjust wrist ext/flex device					
E1810	A	Adjust knee ext/flex device					
E1815	A	Adjust ankle ext/flex device					
E1820	A	Soft interface material					
E1825	A	Adjust finger ext/flex devc					
E1830	A	Adjust toe ext/flex device					
E1900	A	Speech communication device					
G0001	A	Drawing blood for specimen					
G0002	N	Temporary urinary catheter					
G0004	E	ECG transm phys review & int					
G0005	X	ECG 24 hour recording	0097	1.62	$80.35	$62.40	$16.07
G0006	X	ECG transmission & analysis	0097	1.62	$80.35	$62.40	$16.07
G0007	N	ECG phy review & interpret					
G0008	K	Admin influenza virus vac	0354	0.13	$6.33		
G0009	K	Admin pneumococcal vaccine	0354	0.13	$6.33		
G0010	N	Admin hepatitis b vaccine					
G0015	X	Post symptom ECG tracing	0097	1.62	$80.35	$62.40	$16.07
G0016	E	Post symptom ECG md review					
G0025	X	Collagen skin test kit	0343	0.45	$22.32	$12.16	$4.46
G0026	A	Fecal leukocyte examination					
G0027	A	Semen analysis					
G0030	S	PET imaging prev PET single	0285	15.06	$746.92	$415.21	$149.38
G0031	S	PET imaging prev PET multple	0285	15.06	$746.92	$415.21	$149.38
G0032	S	PET follow SPECT 78464 singl	0285	15.06	$746.92	$415.21	$149.38
G0033	S	PET follow SPECT 78464 mult	0285	15.06	$746.92	$415.21	$149.38
G0034	S	PET follow SPECT 76865 singl	0285	15.06	$746.92	$415.21	$149.38
G0035	S	PET follow SPECT 78465 mult	0285	15.06	$746.92	$415.21	$149.38
G0036	S	PET follow cornry angio sing	0285	15.06	$746.92	$415.21	$149.38
G0037	S	PET follow cornry angio mult	0285	15.06	$746.92	$415.21	$149.38
G0038	S	PET follow myocard perf sing	0285	15.06	$746.92	$415.21	$149.38
G0039	S	PET follow myocard perf mult	0285	15.06	$746.92	$415.21	$149.38
G0040	S	PET follow stress echo singl	0285	15.06	$746.92	$415.21	$149.38
G0041	S	PET follow stress echo mult	0285	15.06	$746.92	$415.21	$149.38
G0042	S	PET follow ventriculogm sing	0285	15.06	$746.92	$415.21	$149.38
G0043	S	PET follow ventriculogm mult	0285	15.06	$746.92	$415.21	$149.38
G0044	S	PET following rest ECG singl	0285	15.06	$746.92	$415.21	$149.38
G0045	S	PET following rest ECG mult	0285	15.06	$746.92	$415.21	$149.38
G0046	S	PET follow stress ECG singl	0285	15.06	$746.92	$415.21	$149.38
G0047	S	PET follow stress ECG mult	0285	15.06	$746.92	$415.21	$149.38
G0050	S	Residual urine by ultrasound	0265	1.17	$58.03	$38.08	$11.61
G0101	V	CA screen;pelvic/breast exam	0601	1.00	$49.60	$9.92	$9.92
G0102	N	Prostate ca screening; dre					
G0103	A	Psa, total screening					
G0104	S	CA screen;flexi sigmoidscope	0159	2.83	$140.36		$35.09
G0105	S	Colorectal scrn; hi risk ind	0158	7.98	$395.78		$98.94
G0106	S	Colon CA screen;barium enema	0157	1.79	$88.78		$22.19
G0107	A	CA screen; fecal blood test					
G0108	A	Diab manage trn per indiv					
G0109	A	Diab manage trn ind/group					
G0110	A	Nett pulm-rehab educ, ind					
G0111	A	Nett pulm-rehab educ; group					
G0112	A	Nett nutrition guid, initial					
G0113	A	Nett;nutrition guid,subseqnt					
G0114	A	Nett; psychosocial consult					
G0115	A	Nett; psychological testing					
G0116	A	Nett; psychosocial counsel					
G0120	S	Colon ca scrn; barium enema	0157	1.79	$88.78		$22.19
G0121	E	Colon ca scrn not hi rsk ind					
G0122	S	Colon ca scrn; barium enema	0157	1.79	$88.78		$22.19
G0123	A	Screen cerv/vag thin layer					
G0124	A	Screen c/v thin layer by MD					
G0125	S	Lung image (PET)	0981	46.40	$2,301.26		$460.25
G0126	S	Lung image (PET) staging	0981	46.40	$2,301.26		$460.25
G0127	T	Trim nail(s)	0009	0.74	$36.70	$9.63	$7.34

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
G0128	E	CORF skilled nursing service					
G0129	P	Partial hosp prog service	0033	4.17	$206.82	$48.17	$41.36
G0130	X	Single energy x-ray study	0261	1.38	$68.44	$38.77	$13.69
G0131	S	CT scan, bone density study	0282	2.38	$118.04	$94.51	$23.61
G0132	S	CT scan, bone density study	0282	2.38	$118.04	$94.51	$23.61
G0141	E	Scr c/v cyto,autosys and md					
G0143	A	Scr c/v cyto,thinlayer,rescr					
G0144	A	Scr c/v cyto,thinlayer,rescr					
G0145	A	Scr c/v cyto,thinlayer,rescr					
G0147	A	Scr c/v cyto, automated sys					
G0148	A	Scr c/v cyto, autosys, rescr					
G0151	E	HHCP-serv of pt,ea 15 min					
G0152	E	HHCP-serv of ot,ea 15 min					
G0153	E	HHCP-svs of s/l path,ea 15mn					
G0154	E	HHCP-svs of rn,ea 15 min					
G0155	E	HHCP-svs of csw,ea 15 min					
G0156	E	HHCP-svs of aide,ea 15 min					
G0159D	T	Perc declot dialysis graft	0103	13.09	$649.21	$295.70	$129.84
*G0160D	S	Cryo. ablation, prostate	0981	46.40	$2,301.26		$460.25
G0161D	X	Echo guide for cryo probes	0268	2.23	$110.60	$69.51	$22.12
G0163	S	Pet for rec of colorectal ca	0981	46.40	$2,301.26		$460.25
G0164	S	Pet for lymphoma staging	0981	46.40	$2,301.26		$460.25
G0165	S	Pet,rec of melanoma/met ca	0981	46.40	$2,301.26		$460.25
G0166	T	Extrnl counterp se, per tx	0972	3.09	$153.26		$30.65
G0167	E	Hyperbaric oz tx;no md reqrd					
G0168	T	Wound closure by adhesive	0970	0.52	$25.79		$5.16
G0169D	T	Removal tissue; no anesthsia	0013	0.91	$45.13	$17.66	$9.03
G0170D	T	Skin biograft	0025	3.74	$185.49	$70.66	$37.10
G0171D	T	Skin biograft add-on	0025	3.74	$185.49	$70.66	$37.10
G0172D	P	Partial hosp prog service	0033	4.17	$206.82	$48.17	$41.36
G0173	S	Stereotactic radiosurgery	0302	8.21	$407.18	$216.55	$81.44
G0174	S	IMRT , per session	0302	8.21	$407.18	$216.55	$81.44
G0175	V	Interdisciplinary team conf	0602	1.66	$82.33	$16.47	$16.47
*G0176	P	OPPS/PHP;activity therapy	0033	4.17	$206.82	$48.17	$41.36
*G0177	P	OPPS/PHP; train & educ serv	0033	4.17	$206.82	$48.17	$41.36
*G0178	S	Intensity modulated radiation	0302	8.21	$407.18	$216.55	$81.44
*G0179	E	Phys recertification, HHA pt					
*G0180	E	Phys certification, HHA pt					
*G0181	E	Home health care supervision					
*G0182	E	Hospice care supervision					
*G0183	T	Ocular photodynamic therapy	0235	2.94	$145.81	$78.91	$29.16
*G0184	T	Ocular photocoagulation	0235	33.96	$1,684.28	$852.68	$336.86
*G0185	T	Transpupillary thermotx	0235	6.70	$332.29	$147.96	$66.46
*G0186	T	Dstry eye lesn,fdr vssl tech	0235	6.70	$332.29	$147.96	$66.46
*G0187	T	Dstry mclr drusen,photocoag	0235	33.96	$1,684.28	$852.68	$336.86
*G0188	X	Xray lwr extrmty-full lngth		1.38	$68.44	$38.77	$13.69
*G0190	N	Immunization administration					
*G0191	N	Immunization admin,each add					
*G0192	N	Immunization oral/intranasal					
*G0195	A	Clinical eval, swallowing					
*G0196	A	Radioisotope eval, swallowing					
*G0197	A	Eval, speech generating device					
*G0198	A	Trng, speech generating device					
*G0199	A	Re-evaluation, speech device					
*G0200	A	Eval, voice prosthetic					
*G0201	A	Trng, voice prosthetic					
*G9001	E	Coordinated care fee					
*G9002	E	Coordinated care fee					
*G9003	E	Coordinated care fee					
*G9004	E	Coordinated care fee					
*G9005	E	Coordinated care fee					
*G9006	E	Coordinated care fee					
*G9007	E	Coordinated care fee					
*G9008	E	Coordinated care fee					
*G9016	A	Demo-smoking cessation coun					
J0120	N	Tetracyclin injection					
*J0130	G	Abciximab injection	1505		$513.02		$88.74
J0150	K	Injection adenosine 6 MG	0917	0.36	$17.86		$3.57
J0151	E	Adenosine injection					
J0170	N	Adrenalin epinephrin inject					
J0190	N	Inj biperiden lactate/5 mg					
J0200	N	Alatrofloxacin mesylate					
J0205	G	Alglucerase injection	0900		$37.53		$5.03
J0207	G	Amifostine	7000		$350.31		$46.94

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
J0210	N	Methyldopate hcl injection					
J0256	G	Alpha 1 proteinase inhibitor	0901		$2.09		$.28
J0270	E	Alprostadil for injection					
J0275	E	Alprostadil urethral suppos					
J0280	N	Aminophyllin 250 MG inj					
J0282	N	Amiodarone HCl					
J0285	N	Amphotericin B					
J0286	G	Amphotericin B lipid complex	7001		$95.00		$12.73
J0290	N	Ampicillin 500 MG inj					
J0295	N	Ampicillin sodium per 1.5 gm					
J0300	N	Amobarbital 125 MG inj					
J0330	N	Succinycholine chloride inj					
J0340	N	Nandrolon phenpropionate inj					
*J0350	G	Injection anistreplase 30 u	1606		$2,693.80		$360.97
J0360	N	Hydralazine hcl injection					
J0380	N	Inj metaraminol bitartrate					
J0390	N	Chloroquine injection					
J0395	N	Arbutamine HCl injection					
J0400	N	Inj trimethaphan camsylate					
J0456	N	Azithromycin					
J0460	N	Atropine sulfate injection					
J0470	N	Dimecaprol injection					
J0475	N	Baclofen 10 MG injection					
J0476	E	Baclofen 50 mcg intrathecal trial					
J0500	N	Dicyclomine injection					
J0510	N	Benzquinamide injection					
J0515	N	Inj benztropine mesylate					
J0520	N	Bethanechol chloride inject					
J0530	N	Penicillin g benzathine inj					
J0540	N	Penicillin g benzathine inj					
J0550	N	Penicillin g benzathine inj					
J0560	N	Penicillin g benzathine inj					
J0570	N	Penicillin g benzathine inj					
J0580	N	Penicillin g benzathine inj					
J0585	G	Botulinum toxin a per unit	0902		$4.39		$.59
J0590	N	Ethylnorepinephrine hcl inj					
J0600	N	Edetate calcium disodium inj					
J0610	N	Calcium gluconate injection					
J0620	N	Calcium glycer & lact/10 ML					
J0630	N	Calcitonin salmon injection					
J0635	N	Calcitriol injection					
J0640	G	Leucovorin calcium injection	0725		$49.73		$8.66
J0670	N	Inj mepivacaine HCL/10 ml					
J0690	N	Cefazolin sodium injection					
J0694	N	Cefoxitin sodium injection					
J0695	N	Cefonocid sodium injection					
J0696	N	Ceftriaxone sodium injection					
J0697	N	Sterile cefuroxime injection					
J0698	N	Cefotaxime sodium injection					
J0702	N	Betamethasone acet&sod phosp					
J0704	N	Betamethasone sod phosp/4 MG					
J0710	N	Cephapirin sodium injection					
J0713	N	Inj ceftazidime per 500 mg					
J0715	N	Ceftizoxime sodium / 500 MG					
J0720	N	Chloramphenicol sodium injec					
J0725	N	Chorionic gonadotropin/1000u					
J0730	N	Chlorpheniramin maleate inj					
J0735	N	Clonidine hydrochloride					
J0740	N	Cidofovir injection					
J0743	N	Cilastatin sodium injection					
J0745	N	Inj codeine phosphate /30 MG					
J0760	N	Colchicine injection					
J0770	N	Colistimethate sodium inj					
J0780	N	Prochlorperazine injection					
J0800	N	Corticotropin injection					
J0810	N	Cortisone injection					
J0835	N	Inj cosyntropin per 0.25 MG					
J0850	G	Cytomegalovirus imm IV /vial	0903		$370.50		$49.65
J0895	N	Deferoxamine mesylate inj					
J0900	N	Testosterone enanthate inj					
J0945	N	Brompheniramine maleate inj					
J0970	N	Estradiol valerate injection					
J1000	N	Depo-estradiol cypionate inj					
J1020	N	Methylprednisolone 20 MG inj					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
J1030	N	Methylprednisolone 40 MG inj					
J1040	N	Methylprednisolone 80 MG inj					
J1050	N	Medroxyprogesterone inj					
J1055	E	Medrxyprogester acetate inj					
J1060	N	Testosterone cypionate 1 ML					
J1070	N	Testosterone cypionat 100 MG					
J1080	N	Testosterone cypionat 200 MG					
J1090	N	Testosterone cypionate 50 MG					
J1095	N	Inj dexamethasone acetate					
J1100	N	Dexamethasone sodium phos					
J1110	N	Inj dihydroergotamine mesylt					
J1120	N	Acetazolamid sodium injectio					
J1160	N	Digoxin injection					
J1165	N	Phenytoin sodium injection					
J1170	N	Hydromorphone injection					
J1180	N	Dyphylline injection					
J1190	G	Dexrazoxane HCl injection	0726		$161.11		$21.59
J1200	N	Diphenhydramine hcl injectio					
J1205	N	Chlorothiazide sodium inj					
J1212	N	Dimethyl sulfoxide 50% 50 ML					
J1230	N	Methadone injection					
J1240	N	Dimenhydrinate injection					
J1245	K	Dipyridamole injection	0917	0.36	$17.86		$3.57
J1250	N	Inj dobutamine HCL/250 mg					
J1260	G	Dolasetron mesylate	0750		$14.81		$1.98
J1320	N	Amitriptyline injection					
J1325	G	Epoprostenol injection	7003		$16.53		$2.22
*J1327	G	Eptifibatide injection	1607		$12.57		$1.68
J1330	N	Ergonovine maleate injection					
J1362	N	Erythromycin glucep / 250 MG					
J1364	N	Erythro lactobionate /500 MG					
J1380	N	Estradiol valerate 10 MG inj					
J1390	N	Estradiol valerate 20 MG inj					
J1410	N	Inj estrogen conjugate 25 MG					
J1435	N	Injection estrone per 1 MG					
J1436	G	Etidronate disodium inj	0727		$63.65		$8.53
*J1438	G	Etanercept injection	1606		$134.42		$18.01
J1440	G	Filgrastim 300 mcg injection	0728		$171.38		$22.96
J1441	G	Filgrastim 480 mcg injection	7049		$273.00		$35.06
J1450	N	Fluconazole					
J1452	N	Intraocular Fomivirsen na 1.65 MG					
J1455	N	Foscarnet sodium injection					
J1460	N	Gamma globulin 1 CC inj					
J1470	E	Gamma globulin 2 CC inj					
J1480	E	Gamma globulin 3 CC inj					
J1490	E	Gamma globulin 4 CC inj					
J1500	E	Gamma globulin 5 CC inj					
J1510	E	Gamma globulin 6 CC inj					
J1520	E	Gamma globulin 7 CC inj					
J1530	E	Gamma globulin 8 CC inj					
J1540	E	Gamma globulin 9 CC inj					
J1550	E	Gamma globulin 10 CC inj					
J1560	E	Gamma globulin > 10 CC inj					
J1561	G	Immune globulin 500 mg	0905		$27.28		$3.33
J1562D	G	Immune globulin 5 gms	7004		$272.80		$33.29
J1563D	N	IV immune globulin 1 GM					
J1565	G	RSV-ivig	0906		$427.73		$57.32
J1570	K	Ganciclovir sodium injection	0907	0.45	$22.26		$4.45
J1580	N	Garamycin gentamicin inj					
J1600	N	Gold sodium thiomaleate inj					
J1610	N	Glucagon hydrochloride/1 MG					
J1620	G	Gonadorelin hydroch/ 100 mcg	7005		$14.80		$1.98
J1626	G	Granisetron HCl injection	0764		$1.85		$.25
J1630	N	Haloperidol injection					
J1631	N	Haloperidol decanoate inj					
J1642	N	Inj heparin sodium per 10 u					
J1644	N	Inj heparin sodium per 1000u					
J1645	N	Dalteparin sodium					
J1650	G	Enoxaparin sodium 10 mg	9998		$5.52		$.76
J1670	G	Tetanus immune globulin inj	0908		$102.60		$13.75
J1690	N	Prednisolone tebutate inj					
J1700	N	Hydrocortisone acetate inj					
J1710	N	Hydrocortisone sodium ph inj					
J1720	N	Hydrocortisone sodium succ i					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
J1730	N	Diazoxide injection					
J1739	N	Hydroxyprogesterone cap 125					
J1741	N	Hydroxyprogesterone cap 250					
J1742	N	Ibutilide fumarate injection					
J1745	G	Infliximab injection	7043		$58.08		$7.78
J1750	N	Iron dextran					
J1785	G	Injection imiglucerase /unit	0916		$3.75		$.50
J1790	N	Droperidol injection					
J1800	N	Propranolol injection					
J1810	G	Droperidol/fentanyl inj	7047		$7.02		$.90
J1820	N	Insulin injection					
J1825	G	Interferon beta-1a	0909		$204.73		$27.43
J1830	G	Interferon beta-1b / .25 MG	0910		$57.00		$7.64
J1840	N	Kanamycin sulfate 500 MG inj					
J1850	N	Kanamycin sulfate 75 MG inj					
J1885	N	Ketorolac tromethamine inj					
J1890	N	Cephalothin sodium injection					
J1910	N	Kutapressin injection					
J1930	N	Propiomazine injection					
J1940	N	Furosemide injection					
J1950	G	Leuprolide acetate /3.75 MG	0800		$492.71		$63.27
J1955	N	Inj levocarnitine per 1 gm					
J1956	N	Levofloxacin injection					
J1960	N	Levorphanol tartrate inj					
J1970	N	Methotrimeprazine injection					
J1980	N	Hyoscyamine sulfate inj					
J1990	N	Chlordiazepoxide injection					
J2000	N	Lidocaine injection					
J2010	N	Lincomycin injection					
J2060	N	Lorazepam injection					
J2150	N	Mannitol injection					
J2175	N	Meperidine hydrochl /100 MG					
J2180	N	Meperidine/promethazine inj					
J2210	N	Methylergonovin maleate inj					
J2240	N	Metocurine iodide injection					
J2250	N	Inj midazolam hydrochloride					
J2260	K	Inj milrinone lactate / 5 ML	7007	0.47	$23. 1		$4.68
J2270	N	Morphine sulfate injection					
J2271	N	Morphine so4 injection 100mg					
J2275	G	Morphine sulfate injection	7010		$7.41		$.99
J2300	N	Inj nalbuphine hydrochloride					
J2310	N	Inj naloxone hydrochloride					
J2320	N	Nandrolone decanoate 50 MG					
J2321	N	Nandrolone decanoate 100 MG					
J2322	N	Nandrolone decanoate 200 MG					
J2330	N	Thiothixene injection					
J2350	N	Niacinamide/niacin injection					
J2352	G	Octreotide acetate injection	7031		$115.34		$15.46
J2355	G	Oprelvekin injection	7011		$236.31		$31.67
J2360	N	Orphenadrine injection					
J2370	N	Phenylephrine hcl injection					
J2400	N	Chloroprocaine hcl injection					
J2405	G	Ondansetron hcl injection	0768		$6.09		$.82
J2410	N	Oxymorphone hcl injection					
J2430	G	Pamidronate disodium /30 MG	0730		$232.51		$31.16
J2440	N	Papaverin hcl injection					
J2460	N	Oxytetracycline injection					
J2480	N	Hydrochlorides of opium inj					
J2500	N	Paricalcitol					
J2510	N	Penicillin g procaine inj					
J2512	N	Inj pentagastrin per 2 ML					
J2515	N	Pentobarbital sodium inj					
J2540	N	Penicillin g potassium inj					
J2543	N	Piperacillin/tazobactam					
J2545	A	Pentamidine isethionte/300mg					
J2550	N	Promethazine hcl injection					
J2560	N	Phenobarbital sodium inj					
J2590	N	Oxytocin injection					
J2597	E	Inj desmopressin acetate					
J2640	N	Prednisolone sodium ph inj					
J2650	N	Prednisolone acetate inj					
J2670	N	Totazoline hcl injection					
J2675	N	Inj progesterone per 50 MG					
J2680	N	Fluphenazine decanoate 25 MG					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
J2690	N	Procainamide hcl injection					
J2700	N	Oxacillin sodium injection					
J2710	N	Neostigmine methylslfte inj					
J2720	N	Inj protamine sulfate/10 MG					
J2725	N	Inj protirelin per 250 mcg					
J2730	N	Pralidoxime chloride inj					
J2760	N	Phentolaine mesylate inj					
J2765	G	Metoclopramide hcl injection	0754		$2.00		$.27
J2770	G	Quinupristin/dalfopristin	1024		$102.05		$13.67
J2780	N	Ranitidine hydrochloride inj					
J2790	G	Rho d immune globulin inj	0884		$35.91		$4.36
*J2792	G	Rho(D) immune globulin h, sd	1609		$20.55		$2.51
J2795	N	Ropivacaine HCl injection					
J2800	N	Methocarbamol injection					
J2810	N	Inj theophylline pe 40 MG					
J2820	G	Sargramostim injection	0731		$27.42		$3.67
J2860	N	Secobarbital sodium inj					
J2910	N	Aurothioglucose injection					
J2912	N	Sodium chloride injection					
J2915	N	NA Ferric Gluconate Complex					
J2920	N	Methylprednisolone injection					
J2930	N	Methylprednisolone injection					
J2950	N	Promazine hcl injection					
J2970	N	Methicillin sodium injection					
J2993	G	Reteplase injection	9005		$1,306.25		$175.04
J2994D	G	Reteplase double bolus	0914		$2,612.50		$350.08
J2995	K	Inj streptokinase /250000 IU	0911	1.76	$87.25		$17.45
J2996D	K	Alteplase recombinant inj	0915	3.80	$188.46		$37.69
J2997	G	Alteplase recombinant, mg	7048	0.38	$18.70		$3.74
J3000	N	Streptomycin injection					
J3010	G	Fentanyl citrate injection	7014		$.96		$.13
J3030	N	Sumatriptan succinate / 6 MG					
J3070	N	Pentazocine hcl injection					
J3080	N	Chlorprothixene injection					
J3105	N	Terbutaline sulfate inj					
J3120	N	Testosterone enanthate inj					
J3130	N	Testosterone enanthate inj					
J3140	N	Testosterone suspension inj					
J3150	N	Testosteron propionate inj					
J3230	N	Chlorpromazine hcl injection					
*J3240	E	Thyrotropin injection					
J3245	G	Tirofiban hydrochloride	7041		$399.00		$53.47
J3250	N	Trimethobenzamide hcl inj					
J3260	N	Tobramycin sulfate injection					
J3265	N	Injection torsemide 10 mg/ml					
J3270	N	Imipramine hcl injection					
J3280	G	Thiethylperazine maleate inj	0755		$5.02		$.67
J3301	N	Triamcinolone acetonide inj					
J3302	N	Triamcinolone diacetate inj					
J3303	N	Triamcinolone hexacetonl inj					
J3305	G	Inj trimetrexate glucoronate	7045		$69.83		$9.36
J3310	N	Perphenazine injection					
J3320	N	Spectinomycn di-hcl inj					
J3350	N	Urea injection					
J3360	N	Diazepam injection					
J3364	N	Urokinase 5000 IU injection					
J3365	K	Urokinase 250,000 IU inj	7036	6.78	$336.29		$67.26
J3370	N	Vancomycin hcl injection					
J3390	N	Methoxamine injection					
J3400	N	Triflupromazine hcl inj					
J3410	N	Hydroxyzine hcl injection					
J3420	N	Vitamin b12 injection					
J3430	N	Vitamin k phytonadione inj					
J3450	N	Mephentermine sulfate inj					
J3470	N	Hyaluronidase injection					
J3475	N	Inj magnesium sulfate					
J3480	N	Inj potassium chloride					
J3485	N	Zidovudine					
J3490	N	Drugs unclassified injection					
J3520	E	Edetate disodium per 150 mg					
J3530	N	Nasal vaccine inhalation					
J3535	E	Metered dose inhaler drug					
J3570	E	Laetrile amygdalin vit B17					
J7030	N	Normal saline solution infus					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
J7040	N	Normal saline solution infus					
J7042	N	5% dextrose/normal saline					
J7050	N	Normal saline solution infus					
J7051	N	Sterile saline/water					
J7060	N	5% dextrose/water					
J7070	N	D5w infusion					
J7100	N	Dextran 40 infusion					
J7110	N	Dextran 75 infusion					
J7120	N	Ringers lactate infusion					
J7130	N	Hypertonic saline solution					
J7190	G	Factor viii	0925		$.88		$.12
J7191	G	Factor VIII (porcine)	0926		$2.09		$.28
J7192	G	Factor viii recombinant	0927		$1.17		$.16
J7194	G	Factor ix complex	0928		$.71		$.10
J7197	G	Antithrombin iii injection	0930		$.82		$.11
J7198	G	Anti-inhibitor	0929		$1.43		$.19
J7199	E	Hemophilia clot factor noc					
J7300	E	Intraut copper contraceptive					
J7310	G	Ganciclovir long act implant	0913		$4,750.00		$636.50
J7315	G	Sodium hyaluronate injection	7315		$125.59		$16.83
*J7320	G	Hylan G-F 20 injection	1611		$204.87		$27.45
J7330	G	Cultured chondrocytes implnt	1059		$14,250.00		$2,010.00
J7500	G	Azathioprine oral 50mg	0886		$1.24		$.17
J7501	G	Azathioprine parenteral	0887		$67.88		$9.10
J7502	G	Cyclosporine oral 100 mg	0888		$5.80		$.78
J7504	G	Lymphocyte immune globulin	0890		$249.13		$30.39
J7505	G	Muromonab-CD3, 5 mg	7038		$741.00		$99.29
J7506	N	Prednisone oral					
J7507	G	Tacrolimus oral per 1 MG	0891		$2.66		$.36
J7508	E	Tacrolimus oral per 5 MG					
J7509	N	Methylprednisolone oral					
J7510	N	Prednisolone oral per 5 mg					
*J7513	G	Daclizumab, parenteral	1612		$397.29		$53.24
J7515	N	Cyclosporine oral 25 mg					
J7516	G	Cyclosporin parenteral 250mg	0889		$15.81		$2.12
J7517	N	Mycophenolate mofetil oral					
J7520	G	Sirolimus, oral	9106		$6.51		$.87
J7525	E	Tacrolimus injection					
J7599	E	Immunosuppressive drug noc					
J7608	A	Acetylcysteine inh sol u d					
J7610D	A	Acetylcysteine 10% injection					
J7615D	A	Acetylcysteine 20% injection					
J7618	A	Albuterol inh sol con					
J7619	A	Albuterol inh sol u d					
J7620D	A	Albuterol sulfate .083%/ml					
J7625D	A	Albuterol sulfate .5% inj					
J7627D	A	Bitolterolmesylate inhal sol					
J7628	A	Bitolterol mes inhal sol con					
J7629	A	Bitolterol mes inh sol u d					
J7630D	A	Cromolyn sodium injection					
J7631	A	Cromolyn sodium inh sol u d					
J7635	A	Atropine inhal sol con					
J7636	A	Atropine inhal sol unit dose					
J7637	A	Dexamethasone inhal sol con					
J7638	A	Dexamethasone inhal sol u d					
J7639	A	Dornase alpha inhal sol u d					
J7640D	A	Epinephrine injection					
J7642	A	Glycopyrrolate inhal sol con					
J7643	A	Glycopyrrolate inhal sol u d					
J7644	A	Ipratropium brom inh sol u d					
J7645D	A	Ipratropium bromide .02%/ml					
J7648	A	Isoetharine hcl inh sol con					
J7649	A	Isoetharine hcl inh sol u d					
J7650D	A	Isoetharine hcl .1% inj					
J7651D	A	Isoetharine hcl .125% inj					
J7652D	A	Isoetharine hcl .167% inj					
J7653D	A	Isoetharine hcl .2%/ inj					
J7654D	A	Isoetharine hcl .25% inj					
J7655D	A	Isoetharine hcl 1% inj					
J7658	A	Isoproterenolhcl inh sol con					
J7659	A	Isoproterenol hcl inh sol ud					
J7660D	A	Isoproterenol hcl .5% inj					
J7665D	A	Isoproterenol hcl 1% inj					
J7668	A	Metaproterenol inh sol con					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
J7669	A	Metaproterenol inh sol u d					
J7670D	A	Metaproterenol sulfate .4%					
J7672D	A	Metaproterenol sulfate .6%					
J7675D	A	Metaproterenol sulfate 5%					
J7680	A	Terbutaline so4 inh sol con					
J7681	A	Terbutaline so4 inh sol u d					
J7682	A	Tobramycin inhalation sol					
J7683	A	Triamcinolone inh sol con					
J7684	A	Triamcinolone inh sol u d					
J7699	A	Inhalation solution for DME					
J7799	A	Non-inhalation drug for DME					
J8499	E	Oral prescrip drug non chemo					
J8510	G	Oral busulfan	7015		$1.73		$.23
J8520	G	Capecitabine, oral, 150 mg	7042		$1.94		$.26
J8521	N	Capecitabine, oral, 500 mg					
J8530	G	Cyclophosphamide oral 25 MG	0801		$2.12		$.28
J8560	G	Etoposide oral 50 MG	0802		$45.95		$6.16
J8600	G	Melphalan oral 2 MG	0803		$2.07		$.30
J8610	G	Methotrexate oral 2.5 MG	0826		$2.92		$.39
J8700	G	Temozolmide, oral 5 mg	1086		$5.70		$.76
J8999	E	Oral prescription drug chemo					
J9000	G	Doxorubic hcl 10 MG vl chemo	0847		$15.79		$2.12
J9001	G	Doxorubicin hcl liposome inj	7046		$311.72		$41.77
J9015	G	Aldesleukin/single use vial	0807		$569.76		$76.35
J9020	G	Asparaginase injection	0814		$57.41		$7.69
J9031	G	Bcg live intravesical vac	0809		$159.39		$19.45
J9040	G	Bleomycin sulfate injection	0857		$294.46		$39.46
J9045	G	Carboplatin injection	0811		$98.90		$13.25
J9050	G	Carmus bischl nitro inj	0812		$103.27		$13.84
J9060	G	Cisplatin 10 MG injection	0813		$42.18		$5.65
J9062	E	Cisplatin 50 MG injection					
J9065	G	Inj cladribine per 1 MG	0858		$53.47		$7.16
J9070	G	Cyclophosphamide 100 MG inj	0815		$6.13		$.82
J9080	E	Cyclophosphamide 200 MG inj					
J9090	E	Cyclophosphamide 500 MG inj					
J9091	E	Cyclophosphamide 1.0 grm inj					
J9092	E	Cyclophosphamide 2.0 grm inj					
J9093	G	Cyclophosphamide lyophilized	0816		$6.13		$.82
J9094	E	Cyclophosphamide lyophilized					
J9095	E	Cyclophosphamide lyophilized					
J9096	E	Cyclophosphamide lyophilized					
J9097	E	Cyclophosphamide lyophilized					
J9100	G	Cytarabine hcl 100 MG inj	0817		$5.94		$.80
J9110	E	Cytarabine hcl 500 MG inj					
J9120	G	Dactinomycin actinomycin d	0818		$12.73		$1.71
J9130	G	Dacarbazine 10 MG inj	0819		$1.13		$.15
J9140	E	Dacarbazine 200 MG inj					
J9150	G	Daunorubicin	0820		$80.04		$10.73
J9151	G	Daunorubicin citrate liposom	0821		$64.60		$8.66
J9160	G	Denileukin diftitox, 300 mcg	1084		$942.88		$126.35
J9165	G	Diethylstilbestrol injection	0822		$4.20		$.56
J9170	G	Docetaxel	0823		$268.65		$36.01
J9180	E	Epirubicin HCl injection					
J9181	G	Etoposide 10 MG inj	0824		$4.06		$.54
J9182	E	Etoposide 100 MG inj					
J9185	G	Fludarabine phosphate inj	0842		$237.03		$31.76
J9190	G	Fluorouracil injection	0859		$2.75		$.37
J9200	G	Floxuridine injection	0827		$129.56		$17.36
J9201	G	Gemcitabine HCl	0828		$88.46		$11.85
J9202	G	Goserelin acetate implant	0810		$446.49		$59.83
J9206	G	Irinotecan injection	0830		$117.81		$15.79
J9208	G	Ifosfomide injection	0831		$141.50		$18.96
J9209	G	Mesna injection	0732		$36.51		$4.89
J9211	G	Idarubicin hcl injection	0832		$341.38		$45.75
J9212	G	Interferon alfacon-1	0833		$3.91		$.52
J9213	G	Interferon alfa-2a inj	0834		$33.22		$4.45
J9214	G	Interferon alfa-2b inj	0836		$11.28		$1.51
J9215	G	Interferon alfa-n3 inj	0865		$7.86		$1.05
J9216	G	Interferon gamma 1-b inj	0838		$199.50		$26.73
J9217	G	Leuprolide acetate suspnsion	9217		$592.60		$79.40
J9218	G	Leuprolide acetate injection	0861		$22.90		$3.07
J9219	N	Leuprolide acetate implant					
J9230	G	Mechlorethamine hcl inj	0839		$11.01		$1.48
J9245	G	Inj melphalan hydrochl 50 MG	0840		$363.48		$48.71

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
J9250	G	Methotrexate sodium inj	0641		$.45		$.06
J9260	E	Methotrexate sodium inj					
J9265	G	Paclitaxel injection	0863		$173.50		$23.25
J9266	G	Pegaspergase/singl dose vial	0843		$1,321.65		$177.10
J9268	G	Pentostatin injection	0844		$1,562.75		$209.41
J9270	G	Plicamycin (mithramycin) inj	0860		$93.80		$12.57
J9280	G	Mitomycin 5 MG inj	0862		$121.65		$16.30
J9290	E	Mitomycin 20 MG inj					
J9291	E	Mitomycin 40 MG inj					
J9293	G	Mitoxantrone hydrochl / 5 MG	0864		$223.02		$29.88
J9310	G	Rituximab cancer treatment	0849		$420.29		$56.32
J9320	G	Streptozocin injection	0850		$65.79		$8.82
J9340	G	Thiotepa injection	0851		$100.30		$13.44
J9350	G	Topotecan	0852		$573.75		$76.88
*J9355	G	Trastuzumab	1613		$48.85		$6.55
*J9357	G	Valrubicin, 200 mg	1614		$423.23		$56.71
J9360	G	Vinblastine sulfate inj	0853		$4.11		$.55
J9370	G	Vincristine sulfate 1 MG inj	0854		$30.16		$4.04
J9375	E	Vincristine sulfate 2 MG inj					
J9380	E	Vincristine sulfate 5 MG inj					
J9390	G	Vinorelbine tartrate/10 mg	0855		$75.51		$10.12
J9600	G	Porfimer sodium	0856		$2,603.67		$348.89
J9999	E	Chemotherapy drug					
K0001	A	Standard wheelchair					
K0002	A	Stnd hemi (low seat) whlchr					
K0003	A	Lightweight wheelchair					
K0004	A	High strength ltwt whlchr					
K0005	A	Ultralightweight wheelchair					
K0006	A	Heavy duty wheelchair					
K0007	A	Extra heavy duty wheelchair					
K0008	A	Cstm manual wheelchair/base					
K0009	A	Other manual wheelchair/base					
K0010	A	Stnd wt frame power whlchr					
K0011	A	Stnd wt pwr whlchr w control					
K0012	A	Ltwt portbl power whlchr					
K0013	A	Custom power whlchr base					
K0014	A	Other power whlchr base					
K0015	A	Detach non-adjus hght armrst					
K0016	A	Detach adjust armrst cmplete					
K0017	A	Detach adjust armrest base					
K0018	A	Detach adjust armrst upper					
K0019	A	Arm pad each					
K0020	A	Fixed adjust armrest pair					
K0021	A	Anti-tipping device each					
K0022	A	Reinforced back upholstery					
K0023	A	Planr back insrt foam w/strp					
K0024	A	Plnr back insrt foam w/hrdwr					
K0025	A	Hook-on headrest extension					
K0026	A	Back upholst lgtwt whlchr					
K0027	A	Back upholst other whlchr					
K0028	A	Manual fully reclining back					
K0029	A	Reinforced seat upholstery					
K0030	A	Solid plnr seat sngl dnsfoam					
K0031	A	Safety belt/pelvic strap					
K0032	A	Seat uphols lgtwt whlchr					
K0033	A	Seat upholstery other whlchr					
K0034	A	Heel loop each					
K0035	A	Heel loop with ankle strap					
K0036	A	Toe loop each					
K0037	A	High mount flip-up footrest					
K0038	A	Leg strap each					
K0039	A	Leg strap h style each					
K0040	A	Adjustable angle footplate					
K0041	A	Large size footplate each					
K0042	A	Standard size footplate each					
K0043	A	Ftrst lower extension tube					
K0044	A	Ftrst upper hanger bracket					
K0045	A	Footrest complete assembly					
K0046	A	Elevat legrst low extension					
K0047	A	Elevat legrst up hangr brack					
K0048	A	Elevate legrest complete					
K0049	A	Calf pad each					
K0050	A	Ratchet assembly					
K0051	A	Cam relese assem ftrst/lgrst					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
K0052	A	Swingaway detach footrest					
K0053	A	Elevate footrest articulate					
K0054	A	Seat wdth 10-12/15/17/20 wc					
K0055	A	Seat dpth 15/17/18 ltwt wc					
K0056	A	Seat ht <17 or >=21 ltwt wc					
K0057	A	Seat wdth 19/20 hvy dty wc					
K0058	A	Seat dpth 17/18 power wc					
K0059	A	Plastic coated handrim each					
K0060	A	Steel handrim each					
K0061	A	Aluminum handrim each					
K0062	A	Handrim 8-10 vert/obliq proj					
K0063	A	Hndrm 12-16 vert/obliq proj					
K0064	A	Zero pressure tube flat free					
K0065	A	Spoke protectors					
K0066	A	Solid tire any size each					
K0067	A	Pneumatic tire any size each					
K0068	A	Pneumatic tire tube each					
K0069	A	Rear whl complete solid tire					
K0070	A	Rear whl compl pneum tire					
K0071	A	Front castr compl pneum tire					
K0072	A	Frnt catr cmpl sem-pneum tir					
K0073	A	Caster pin lock each					
K0074	A	Pneumatic caster tire each					
K0075	A	Semi-pneumatic caster tire					
K0076	A	Solid caster tire each					
K0077	A	Front caster assem complete					
K0078	A	Pneumatic caster tire tube					
K0079	A	Wheel lock extension pair					
K0080	A	Anti-rollback device pair					
K0081	A	Wheel lock assembly complete					
K0082	A	22 nf deep cycl acid battery					
K0083	A	22 nf gel cell battery each					
K0084	A	Grp 24 deep cycl acid battry					
K0085	A	Group 24 gel cell battery					
K0086	A	U-1 lead acid battery each					
K0087	A	U-1 gel cell battery each					
K0088	A	Battry chrgr acid/gel cell					
K0089	A	Battery charger dual mode					
K0090	A	Rear tire power wheelchair					
K0091	A	Rear tire tube power whlchr					
K0092	A	Rear assem cmplt powr whlchr					
K0093	A	Rear zero pressure tire tube					
K0094	A	Wheel tire for power base					
K0095	A	Wheel tire tube each base					
K0096	A	Wheel assem powr base complt					
K0097	A	Wheel zero presure tire tube					
K0098	A	Drive belt power wheelchair					
K0099	A	Pwr wheelchair front caster					
K0100	A	Amputee adapter pair					
K0101	A	One-arm drive attachment					
K0102	A	Crutch and cane holder					
K0103	A	Transfer board < 25″					
K0104	A	Cylinder tank carrier					
K0105	A	Iv hanger					
K0106	A	Arm trough each					
K0107	A	Wheelchair tray					
K0108	A	W/c component-accessory NOS					
K0112	A	Trunk vest supprt innr frame					
K0113	A	Trunk vest suprt w/o inr frm					
K0114	A	Whlchr back suprt inr frame					
K0115	A	Back module orthotic system					
K0116	A	Back & seat modul orthot sys					
K0182D	A	Water distilled w/ nebulizer					
K0183	A	Nasal application device					
K0184	A	Nasal pillows/seals pair					
K0185	A	Pos airway pressure headgear					
K0186	A	Pos airway prssure chinstrap					
K0187	A	Pos airway pressure tubing					
K0188	A	Pos airway pressure filter					
K0189	A	Filter nondisposable w PAP					
K0195	A	Elevating whlchair leg rests					
K0268	A	Humidifier nonheated w PAP					
K0269D	A	Aerosol compressor cpap dev					
K0270D	A	Ultrasonic generator w nebul					

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
K0280D	A	Extension drainage tubing					
K0281D	A	Lubricant catheter insertion					
K0283D	A	Saline solution dispenser					
K0407D	A	Urinary cath skin attachment					
K0408D	A	Urinary cath leg strap					
K0409D	A	Sterile H2O irrigation solut					
K0410D	A	Male ext cath w/adh coating					
K0411D	A	Male ext cath w/adh strip					
K0415	E	RX antiemetic drg, oral NOS					
K0416	E	Rx antiemetic drg,rectal NOS					
K0440D	A	Nasal prosthesis					
K0441D	A	Midfacial prosthesis					
K0442D	A	Orbital prosthesis					
K0443D	A	Upper facial prosthesis					
K0444D	A	Hemi-facial prosthesis					
K0445D	A	Auricular prosthesis					
K0446D	A	Partial facial prosthesis					
K0447D	A	Nasal septal prosthesis					
K0448D	A	Unspec maxillofacial prosth					
K0449D	A	Repair maxillofacial prosth					
K0450D	A	Liq adhes for facial prosth					
K0451D	A	Adhesive remover wipes					
K0452	A	Wheelchair bearings					
K0455	A	Pump uninterrupted infusion					
K0456D	A	Heavyduty/xtra wide hosp bed					
K0457D	A	Heavyduty/wide commode chair					
K0458D	A	Heavyduty walker no wheels					
K0459D	A	Heavy duty wheeled walker					
K0460	A	WC power add-on joystick					
K0461	A	WC power add-on tiller cntrl					
K0462	A	Temporary replacement eqpmnt					
K0501D	A	Aerosol compressor for svneb					
K0529D	A	Sterile H20 or nss w lv neb					
K0531	A	Heated humidifier used w pap					
K0532	A	Noninvasive assist wo backup					
K0533	A	Noninvasive assist w backup					
K0534	A	Invasive assist w backup					
K0535D	A	Gauze, impregnated hydrogel					
K0536D	A	Gauze, impregnated hydrogel					
K0537D	A	Gauze, impregnated hydrogel					
K0541	A	Speech generating device					
K0542	A	Speech generating device					
K0543	A	Speech generating device					
K0544	A	Speech generating device					
K0545	A	Speech generating software					
K0546	A	Accessory for sgd,mntng syst					
K0547	A	Accessory for sgd,not clasfd					
L0100	A	Cerv craniosten helmet mold					
L0110	A	Cerv craniostenosis hel non-					
L0120	A	Cerv flexible non-adjustable					
L0130	A	Flex thermoplastic collar mo					
L0140	A	Cervical semi-rigid adjustab					
L0150	A	Cerv semi-rig adj molded chn					
L0160	A	Cerv semi-rig wire occ/mand					
L0170	A	Cervical collar molded to pt					
L0172	A	Cerv col thermplas foam 2 pi					
L0174	A	Cerv col foam 2 piece w thor					
L0180	A	Cer post col occ/man sup adj					
L0190	A	Cerv collar supp adj cerv ba					
L0200	A	Cerv col supp adj bar & thor					
L0210	A	Thoracic rib belt					
L0220	A	Thor rib belt custom fabrica					
L0300	A	TLSO flex surgical support					
L0310	A	Tlso flexible custom fabrica					
L0315	A	Tlso flex elas rigid post pa					
L0317	A	Tlso flex hypext elas post p					
L0320	A	Tlso a-p contrl w apron frnt					
L0330	A	Tlso ant-pos-lateral control					
L0340	A	Tlso a-p-l-rotary with apron					
L0350	A	Tlso flex compress jacket cu					
L0360	A	Tlso flex compress jacket mo					
L0370	A	Tlso a-p-l-rotary hyperexten					
L0380	A	Tlso a-p-l-rot w/ pos extens					
L0390	A	Tlso a-p-l control molded					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L0400	A	Tlso a-p-l w interface mater					
L0410	A	Tlso a-p-l two piece constr					
L0420	A	Tlso a-p-l 2 piece w interfa					
L0430	A	Tlso a-p-l w interface custm					
L0440	A	Tlso a-p-l overlap frnt cust					
L0500	A	Lso flex surgical support					
L0510	A	Lso flexible custom fabricat					
L0515	A	Lso flex elas w/ rig post pa					
L0520	A	Lso a-p-l control with apron					
L0530	A	Lso ant-pos control w apron					
L0540	A	Lso lumbar flexion a-p-l					
L0550	A	Lso a-p-l control molded					
L0560	A	Lso a-p-l w interface					
L0565	A	Lso a-p-l control custom					
L0600	A	Sacroiliac flex surg support					
L0610	A	Sacroiliac flexible custm fa					
L0620	A	Sacroiliac semi-rig w apron					
L0700	A	Ctlso a-p-l control molded					
L0710	A	Ctlso a-p-l control w/ inter					
L0810	A	Halo cervical into jckt vest					
L0820	A	Halo cervical into body jack					
L0830	A	Halo cerv into milwaukee typ					
L0860	A	Magnetic resonanc image comp					
L0900	A	Torso/ptosis support					
L0910	A	Torso & ptosis supp custm fa					
L0920	A	Torso/pendulous abd support					
L0930	A	Pendulous abdomen supp custm					
L0940	A	Torso/postsurgical support					
L0950	A	Post surg support custom fab					
L0960	A	Post surgical support pads					
L0970	A	Tlso corset front					
L0972	A	Lso corset front					
L0974	A	Tlso full corset					
L0976	A	Lso full corset					
L0978	A	Axillary crutch extension					
L0980	A	Peroneal straps pair					
L0982	A	Stocking supp grips set of f					
L0984	A	Protective body sock each					
L0999	A	Add to spinal orthosis NOS					
L1000	A	Ctlso milwauke initial model					
L1010	A	Ctlso axilla sling					
L1020	A	Kyphosis pad					
L1025	A	Kyphosis pad floating					
L1030	A	Lumbar bolster pad					
L1040	A	Lumbar or lumbar rib pad					
L1050	A	Sternal pad					
L1060	A	Thoracic pad					
L1070	A	Trapezius sling					
L1080	A	Outrigger					
L1085	A	Outrigger bil w/ vert extens					
L1090	A	Lumbar sling					
L1100	A	Ring flange plastic/leather					
L1110	A	Ring flange plas/leather mol					
L1120	A	Covers for upright each					
L1200	A	Furnsh initial orthosis only					
L1210	A	Lateral thoracic extension					
L1220	A	Anterior thoracic extension					
L1230	A	Milwaukee type superstructur					
L1240	A	Lumber derotation pad					
L1250	A	Anterior asis pad					
L1260	A	Anterior thoracic derotation					
L1270	A	Abdominal pad					
L1280	A	Rib gusset (elastic) each					
L1290	A	Lateral trochanteric pad					
L1300	A	Body jacket mold to patient					
L1310	A	Post-operative body jacket					
L1499	A	Spinal orthosis NOS					
L1500	A	Thkao mobility frame					
L1510	A	Thkao standing frame					
L1520	A	Thkao swivel walker					
L1600	A	Abduct hip flex frejka w cvr					
L1610	A	Abduct hip flex frejka covr					
L1620	A	Abduct hip flex pavlik harne					
L1630	A	Abduct control hip semi-flex					

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L1640	A	Pelv band/spread bar thigh c					
L1650	A	HO abduction hip adjustable					
L1660	A	HO abduction static plastic					
L1680	A	Pelvic & hip control thigh c					
L1685	A	Post-op hip abduct custom fa					
L1686	A	HO post-op hip abduction					
L1690	A	Combination bilateral HO					
L1700	A	Leg perthes orth toronto typ					
L1710	A	Legg perthes orth newington					
L1720	A	Legg perthes orthosis trilat					
L1730	A	Legg perthes orth scottish r					
L1750	A	Legg perthes sling					
L1755	A	Legg perthes patten bottom t					
L1800	A	Knee orthoses elas w stays					
L1810	A	Ko elastic with joints					
L1815	A	Elastic with condylar pads					
L1820	A	Ko elas w/ condyle pads & jo					
L1825	A	Ko elastic knee cap					
L1830	A	Ko immobilizer canvas longit					
L1832	A	KO adj jnt pos rigid support					
L1834	A	Ko w/0 joint rigid molded to					
L1840	A	Ko derot ant cruciate custom					
L1843	A	KO single upright custom fit					
L1844	A	Ko w/adj jt rot cntrl molded					
L1845	A	Ko w/ adj flex/ext rotat cus					
L1846	A	Ko w adj flex/ext rotat mold					
L1847	A	KO adjustable w air chambers					
L1850	A	Ko swedish type					
L1855	A	Ko plas doub upright jnt mol					
L1858	A	Ko polycentric pneumatic pad					
L1860	A	Ko supracondylar socket mold					
L1870	A	Ko doub upright lacers molde					
L1880	A	Ko doub upright cuffs/lacers					
L1885	A	Knee upright w/resistance					
L1900	A	Afo sprng wir drsflx calf bd					
L1902	A	Afo ankle gauntlet					
L1904	A	Afo molded ankle gauntlet					
L1906	A	Afo multiligamentus ankle su					
L1910	A	Afo sing bar clasp attach sh					
L1920	A	Afo sing upright w/ adjust s					
L1930	A	Afo plastic					
L1940	A	Afo molded to patient plasti					
L1945	A	Afo molded plas rig ant tib					
L1950	A	Afo spiral molded to pt plas					
L1960	A	Afo pos solid ank plastic mo					
L1970	A	Afo plastic molded w/ankle j					
L1980	A	Afo sing solid stirrup calf					
L1990	A	Afo doub solid stirrup calf					
L2000	A	Kafo sing fre stirr thi/calf					
L2010	A	Kafo sng solid stirrup w/o j					
L2020	A	Kafo dbl solid stirrup band/					
L2030	A	Kafo dbl solid stirrup w/o j					
L2035	A	KAFO plastic pediatric size					
L2036	A	Kafo plas doub free knee mol					
L2037	A	Kafo plas sing free knee mol					
L2038	A	Kafo w/o joint multi-axis an					
L2039	A	KAFO,plstic,medlat rotat con					
L2040	A	Hkafo torsion bil rot straps					
L2050	A	Hkafo torsion cable hip pelv					
L2060	A	Hkafo torsion ball bearing j					
L2070	A	Hkafo torsion unilat rot str					
L2080	A	Hkafo unilat torsion cable					
L2090	A	Hkafo unilat torsion ball br					
L2102	A	Afo tibial fx cast plstr mol					
L2104	A	Afo tib fx cast synthetic mo					
L2106	A	Afo tib fx cast plaster mold					
L2108	A	Afo tib fx cast molded to pt					
L2112	A	Afo tibial fracture soft					
L2114	A	Afo tib fx semi-rigid					
L2116	A	Afo tibial fracture rigid					
L2122	A	Kafo fem fx cast plaster mol					
L2124	A	Kafo fem fx cast synthet mol					
L2126	A	Kafo fem fx cast thermoplas					
L2128	A	Kafo fem fx cast molded to p					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L2132	A	Kafo femoral fx cast soft					
L2134	A	Kafo fem fx cast semi-rigid					
L2136	A	Kafo femoral fx cast rigid					
L2180	A	Plas shoe insert w ank joint					
L2182	A	Drop lock knee					
L2184	A	Limited motion knee joint					
L2186	A	Adj motion knee jnt lerman t					
L2188	A	Quadrilateral brim					
L2190	A	Waist belt					
L2192	A	Pelvic band & belt thigh fla					
L2200	A	Limited ankle motion ea jnt					
L2210	A	Dorsiflexion assist each joi					
L2220	A	Dorsi & plantar flex ass/res					
L2230	A	Split flat caliper stirr & p					
L2240	A	Round caliper and plate atta					
L2250	A	Foot plate molded stirrup at					
L2260	A	Reinforced solid stirrup					
L2265	A	Long tongue stirrup					
L2270	A	Varus/valgus strap padded/li					
L2275	A	Plastic mod low ext pad/line					
L2280	A	Molded inner boot					
L2300	A	Abduction bar jointed adjust					
L2310	A	Abduction bar-straight					
L2320	A	Non-molded lacer					
L2330	A	Lacer molded to patient mode					
L2335	A	Anterior swing band					
L2340	A	Pre-tibial shell molded to p					
L2350	A	Prosthetic type socket molde					
L2360	A	Extended steel shank					
L2370	A	Patten bottom					
L2375	A	Torsion ank & half solid sti					
L2380	A	Torsion straight knee joint					
L2385	A	Straight knee joint heavy du					
L2390	A	Offset knee joint each					
L2395	A	Offset knee joint heavy duty					
L2397	A	Suspension sleeve lower ext					
L2405	A	Knee joint drop lock ea jnt					
L2415	A	Knee joint cam lock each joi					
L2425	A	Knee disc/dial lock/adj flex					
L2430	A	Knee jnt ratchet lock ea jnt					
L2435	A	Knee joint polycentric joint					
L2492	A	Knee lift loop drop lock rin					
L2500	A	Thi/glut/ischia wgt bearing					
L2510	A	Th/wght bear quad-lat brim m					
L2520	A	Th/wght bear quad-lat brim c					
L2525	A	Th/wght bear nar m-l brim mo					
L2526	A	Th/wght bear nar m-l brim cu					
L2530	A	Thigh/wght bear lacer non-mo					
L2540	A	Thigh/wght bear lacer molded					
L2550	A	Thigh/wght bear high roll cu					
L2570	A	Hip clevis type 2 posit jnt					
L2580	A	Pelvic control pelvic sling					
L2600	A	Hip clevis/thrust bearing fr					
L2610	A	Hip clevis/thrust bearing lo					
L2620	A	Pelvic control hip heavy dut					
L2622	A	Hip joint adjustable flexion					
L2624	A	Hip adj flex ext abduct cont					
L2627	A	Plastic mold recipro hip & c					
L2628	A	Metal frame recipro hip & ca					
L2630	A	Pelvic control band & belt u					
L2640	A	Pelvic control band & belt b					
L2650	A	Pelv & thor control gluteal					
L2660	A	Thoracic control thoracic ba					
L2670	A	Thorac cont paraspinal uprig					
L2680	A	Thorac cont lat support upri					
L2750	A	Plating chrome/nickel pr bar					
L2755	A	Carbon graphite lamination					
L2760	A	Extension per extension per					
L2770	A	Low ext orthosis per bar/jnt					
L2780	A	Non-corrosive finish					
L2785	A	Drop lock retainer each					
L2795	A	Knee control full kneecap					
L2800	A	Knee cap medial or lateral p					
L2810	A	Knee control condylar pad					

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L2820	A	Soft interface below knee se					
L2830	A	Soft interface above knee se					
L2840	A	Tibial length sock fx or equ					
L2850	A	Femoral lgth sock fx or equa					
L2860	A	Torsion mechanism knee/ankle					
L2999	A	Lower extremity orthosis NOS					
L3000	E	Ft insert ucb berkeley shell					
L3001	E	Foot insert remov molded spe					
L3002	E	Foot insert plastazote or eq					
L3003	E	Foot insert silicone gel eac					
L3010	E	Foot longitudinal arch suppo					
L3020	E	Foot longitud/metatarsal sup					
L3030	E	Foot arch support remov prem					
L3040	E	Ft arch suprt premold longit					
L3050	E	Foot arch supp premold metat					
L3060	E	Foot arch supp longitud/meta					
L3070	E	Arch suprt att to sho longit					
L3080	E	Arch supp att to shoe metata					
L3090	E	Arch supp att to shoe long/m					
L3100	E	Hallus-valgus nght dynamic s					
L3140	E	Abduction rotation bar shoe					
L3150	E	Abduct rotation bar w/o shoe					
L3160	E	Shoe styled positioning dev					
L3170	E	Foot plastic heel stabilizer					
L3201	E	Oxford w supinat/pronat inf					
L3202	E	Oxford w/ supinat/pronator c					
L3203	E	Oxford w/ supinator/pronator					
L3204	E	Hightop w/ supp/pronator inf					
L3206	E	Hightop w/ supp/pronator chi					
L3207	E	Hightop w/ supp/pronator jun					
L3208	E	Surgical boot each infant					
L3209	E	Surgical boot each child					
L3211	E	Surgical boot each junior					
L3212	E	Benesch boot pair infant					
L3213	E	Benesch boot pair child					
L3214	E	Benesch boot pair junior					
L3215	E	Orthopedic ftwear ladies oxf					
L3216	E	Orthoped ladies shoes dpth i					
L3217	E	Ladies shoes hightop depth i					
L3218	E	Ladies surgical boot each					
L3219	E	Orthopedic mens shoes oxford					
L3221	E	Orthopedic mens shoes dpth i					
L3222	E	Mens shoes hightop depth inl					
L3223	E	Mens surgical boot each					
L3224	A	Woman's shoe oxford brace					
L3225	A	Man's shoe oxford brace					
L3230	E	Custom shoes depth inlay					
L3250	E	Custom mold shoe remov prost					
L3251	E	Shoe molded to pt silicone s					
L3252	E	Shoe molded plastazote cust					
L3253	E	Shoe molded plastazote cust					
L3254	E	Orth foot non-stndard size/w					
L3255	E	Orth foot non-standard size/					
L3257	E	Orth foot add charge split s					
L3260	E	Ambulatory surgical boot eac					
L3265	E	Plastazote sandal each					
L3300	E	Sho lift taper to metatarsal					
L3310	E	Shoe lift elev heel/sole neo					
L3320	E	Shoe lift elev heel/sole cor					
L3330	E	Lifts elevation metal extens					
L3332	E	Shoe lifts tapered to one-ha					
L3334	E	Shoe lifts elevation heel /i					
L3340	E	Shoe wedge sach					
L3350	E	Shoe heel wedge					
L3360	E	Shoe sole wedge outside sole					
L3370	E	Shoe sole wedge between sole					
L3380	E	Shoe clubfoot wedge					
L3390	E	Shoe outflare wedge					
L3400	E	Shoe metatarsal bar wedge ro					
L3410	E	Shoe metatarsal bar between					
L3420	E	Full sole/heel wedge btween					
L3430	E	Sho heel count plast reinfor					
L3440	E	Heel leather reinforced					
L3450	E	Shoe heel sach cushion type					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L3455	E	Shoe heel new leather standa					
L3460	E	Shoe heel new rubber standar					
L3465	E	Shoe heel thomas with wedge					
L3470	E	Shoe heel thomas extend to b					
L3480	E	Shoe heel pad & depress for					
L3485	E	Shoe heel pad removable for					
L3500	E	Ortho shoe add leather insol					
L3510	E	Orthopedic shoe add rub insl					
L3520	E	O shoe add felt w leath insl					
L3530	E	Ortho shoe add half sole					
L3540	E	Ortho shoe add full sole					
L3550	E	O shoe add standard toe tap					
L3560	E	O shoe add horseshoe toe tap					
L3570	E	O shoe add instep extension					
L3580	E	O shoe add instep velcro clo					
L3590	E	O shoe convert to sof counte					
L3595	E	Ortho shoe add march bar					
L3600	E	Trans shoe calip plate exist					
L3610	E	Trans shoe caliper plate new					
L3620	E	Trans shoe solid stirrup exi					
L3630	E	Trans shoe solid stirrup new					
L3640	E	Shoe dennis browne splint bo					
L3649	E	Orthopedic shoe modifica NOS					
L3650	A	Shlder fig 8 abduct restrain					
L3660	A	Abduct restrainer canvas&web					
L3670	A	Acromio/clavicular canvas&we					
L3675	A	Canvas vest SO					
L3700	A	Elbow orthoses elas w stays					
L3710	A	Elbow elastic with metal joi					
L3720	A	Forearm/arm cuffs free motio					
L3730	A	Forearm/arm cuffs ext/flex a					
L3740	A	Cuffs adj lock w/ active con					
L3760	A	EO withjoint, Prefabricated					
L3800	A	Whfo short opponen no attach					
L3805	A	Whfo long opponens no attach					
L3807	A	Whfo w inflatable airchamber					
L3810	A	Whfo thumb abduction bar					
L3815	A	Whfo second m.p. abduction a					
L3820	A	Whfo ip ext asst w/ mp ext s					
L3825	A	Whfo m.p. extension stop					
L3830	A	Whfo m.p. extension assist					
L3835	A	Whfo m.p. spring extension a					
L3840	A	Whfo spring swivel thumb					
L3845	A	Whfo thumb ip ext ass w/ mp					
L3850	A	Action wrist w/ dorsiflex as					
L3855	A	Whfo adj m.p. flexion contro					
L3860	A	Whfo adj m.p. flex ctrl & i.					
L3890	E	Torsion mechanism wrist/elbo					
L3900	A	Hinge extension/flex wrist/f					
L3901	A	Hinge ext/flex wrist finger					
L3902	A	Whfo ext power compress gas					
L3904	A	Whfo electric custom fitted					
L3906	A	Wrist gauntlet molded to pt					
L3907	A	Whfo wrst gauntlt thmb spica					
L3908	A	Wrist cock-up non-molded					
L3910	A	Whfo swanson design					
L3912	A	Flex glove w/elastic finger					
L3914	A	WHO wrist extension cock-up					
L3916	A	Whfo wrist extens w/ outrigg					
L3918	A	HFO knuckle bender					
L3920	A	Knuckle bender with outrigge					
L3922	A	Knuckle bend 2 seg to flex j					
L3923	A	HFO, no joint, prefabricated					
L3924	A	Oppenheimer					
L3926	A	Thomas suspension					
L3928	A	Finger extension w/ clock sp					
L3930	A	Finger extension with wrist					
L3932	A	Safety pin spring wire					
L3934	A	Safety pin modified					
L3936	A	Palmer					
L3938	A	Dorsal wrist					
L3940	A	Dorsal wrist w/ outrigger at					
L3942	A	Reverse knuckle bender					
L3944	A	Reverse knuckle bend w/ outr					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L3946	A	HFO composite elastic					
L3948	A	Finger knuckle bender					
L3950	A	Oppenheimer w/ knuckle bend					
L3952	A	Oppenheimer w/ rev knuckle 2					
L3954	A	Spreading hand					
L3956	A	Add joint upper ext orthosis					
L3960	A	Sewho airplan desig abdu pos					
L3962	A	Sewho erbs palsey design abd					
L3963	A	Molded w/ articulating elbow					
L3964	A	Seo mobile arm sup att to wc					
L3965	A	Arm supp att to wc rancho ty					
L3966	A	Mobile arm supports reclinin					
L3968	A	Friction dampening arm supp					
L3969	A	Monosuspension arm/hand supp					
L3970	A	Elevat proximal arm support					
L3972	A	Offset/lat rocker arm w/ ela					
L3974	A	Mobile arm support supinator					
L3980	A	Upp ext fx orthosis humeral					
L3982	A	Upper ext fx orthosis rad/ul					
L3984	A	Upper ext fx orthosis wrist					
L3985	A	Forearm hand fx orth w/ wr h					
L3986	A	Humeral rad/ulna wrist fx or					
L3995	A	Sock fracture or equal each					
L3999	A	Upper limb orthosis NOS					
L4000	A	Repl girdle milwaukee orth					
L4010	A	Replace trilateral socket br					
L4020	A	Replace quadlat socket brim					
L4030	A	Replace socket brim cust fit					
L4040	A	Replace molded thigh lacer					
L4045	A	Replace non-molded thigh lac					
L4050	A	Replace molded calf lacer					
L4055	A	Replace non-molded calf lace					
L4060	A	Replace high roll cuff					
L4070	A	Replace prox & dist upright					
L4080	A	Repl met band kafo-afo prox					
L4090	A	Repl met band kafo-afo calf/					
L4100	A	Repl leath cuff kafo prox th					
L4110	A	Repl leath cuff kafo-afo cal					
L4130	A	Replace pretibial shell					
L4205	A	Ortho dvc repair per 15 min					
L4210	A	Orth dev repair/repl minor p					
L4350	A	Pneumatic ankle cntrl splint					
L4360	A	Pneumatic walking splint					
L4370	A	Pneumatic full leg splint					
L4380	A	Pneumatic knee splint					
L4392	A	Replace AFO soft interface					
L4394	A	Replace foot drop spint					
L4396	A	Static AFO					
L4398	A	Foot drop splint recumbent					
L5000	A	Sho insert w arch toe filler					
L5010	A	Mold socket ank hgt w/ toe f					
L5020	A	Tibial tubercle hgt w/ toe f					
L5050	A	Ank symes mold sckt sach ft					
L5060	A	Symes met fr leath socket ar					
L5100	A	Molded socket shin sach foot					
L5105	A	Plast socket jts/thgh lacer					
L5150	A	Mold sckt ext knee shin sach					
L5160	A	Mold socket bent knee shin s					
L5200	A	Kne sing axis fric shin sach					
L5210	A	No knee/ankle joints w/ ft b					
L5220	A	No knee joint with artic ali					
L5230	A	Fem focal defic constant fri					
L5250	A	Hip canad sing axi cons fric					
L5270	A	Tilt table locking hip sing					
L5280	A	Hemipelvect canad sing axis					
L5300	A	Bk sach soft cover & finish					
L5310	A	Knee disart sach soft cv/fin					
L5320	A	Ak open end sach soft cv/fin					
L5330	A	Hip canadian sach sft cv/fin					
L5340	A	Hemipelvectomy canad cv/fin					
L5400	A	Postop dress & 1 cast chg bk					
L5410	A	Postop dsg bk ea add cast ch					
L5420	A	Postop dsg & 1 cast chg ak/d					
L5430	A	Postop dsg ak ea add cast ch					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L5450	A	Postop app non-wgt bear dsg					
L5460	A	Postop app non-wgt bear dsg					
L5500	A	Init bk ptb plaster direct					
L5505	A	Init ak ischal plstr direct					
L5510	A	Prep BK ptb plaster molded					
L5520	A	Perp BK ptb thermopls direct					
L5530	A	Prep BK ptb thermopls molded					
L5535	A	Prep BK ptb open end socket					
L5540	A	Prep BK ptb laminated socket					
L5560	A	Prep AK ischial plast molded					
L5570	A	Prep AK ischial direct form					
L5580	A	Prep AK ischial thermo mold					
L5585	A	Prep AK ischial open end					
L5590	A	Prep AK ischial laminated					
L5595	A	Hip disartic sach thermopls					
L5600	A	Hip disart sach laminat mold					
L5610	A	Above knee hydracadence					
L5611	A	Ak 4 bar link w/fric swing					
L5613	A	Ak 4 bar ling w/hydraul swig					
L5614	A	4-bar link above knee w/swng					
L5616	A	Ak univ multiplex sys frict					
L5617	A	AK/BK self-aligning unit ea					
L5618	A	Test socket symes					
L5620	A	Test socket below knee					
L5622	A	Test socket knee disarticula					
L5624	A	Test socket above knee					
L5626	A	Test socket hip disarticulat					
L5628	A	Test socket hemipelvectomy					
L5629	A	Below knee acrylic socket					
L5630	A	Syme typ expandabl wall sckt					
L5631	A	Ak/knee disartic acrylic soc					
L5632	A	Symes type ptb brim design s					
L5634	A	Symes type poster opening so					
L5636	A	Symes type medial opening so					
L5637	A	Below knee total contact					
L5638	A	Below knee leather socket					
L5639	A	Below knee wood socket					
L5640	A	Knee disarticulat leather so					
L5642	A	Above knee leather socket					
L5643	A	Hip flex inner socket ext fr					
L5644	A	Above knee wood socket					
L5645	A	Ak flexibl inner socket ext					
L5646	A	Below knee air cushion socke					
L5647	A	Below knee suction socket					
L5648	A	Above knee air cushion socke					
L5649	A	Isch containmt/narrow m-l so					
L5650	A	Tot contact ak/knee disart s					
L5651	A	Ak flex inner socket ext fra					
L5652	A	Suction susp ak/knee disart					
L5653	A	Knee disart expand wall sock					
L5654	A	Socket insert symes					
L5655	A	Socket insert below knee					
L5656	A	Socket insert knee articulat					
L5658	A	Socket insert above knee					
L5660	A	Sock insrt syme silicone gel					
L5661	A	Multi-durometer symes					
L5662	A	Socket insert bk silicone ge					
L5663	A	Sock knee disartic silicone					
L5664	A	Socket insert ak silicone ge					
L5665	A	Multi-durometer below knee					
L5666	A	Below knee cuff suspension					
L5667	A	Socket insert w lock lower					
L5668	A	Socket insert w/o lock lower					
L5669	A	Below knee socket w/o lock					
L5670	A	Bk molded supracondylar susp					
L5672	A	Bk removable medial brim sus					
L5674	A	Bk latex sleeve suspension/e					
L5675	A	Bk latex sleeve susp/eq hvy					
L5676	A	Bk knee joints single axis p					
L5677	A	Bk knee joints polycentric p					
L5678	A	Bk joint covers pair					
L5680	A	Bk thigh lacer non-molded					
L5682	A	Bk thigh lacer glut/ischia m					
L5684	A	Bk fork strap					

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CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L5686	A	Bk back check					
L5688	A	Bk waist belt webbing					
L5690	A	Bk waist belt padded and lin					
L5692	A	Ak pelvic control belt light					
L5694	A	Ak pelvic control belt pad/l					
L5695	A	Ak sleeve susp neoprene/equa					
L5696	A	Ak/knee disartic pelvic join					
L5697	A	Ak/knee disartic pelvic band					
L5698	A	Ak/knee disartic silesian ba					
L5699	A	Shoulder harness					
L5700	A	Replace socket below knee					
L5701	A	Replace socket above knee					
L5702	A	Replace socket hip					
L5704	A	Custom shape covr below knee					
L5705	A	Custm shape cover above knee					
L5706	A	Custm shape cvr knee disart					
L5707	A	Custm shape cover hip disart					
L5710	A	Kne-shin exo sng axi mnl loc					
L5711	A	Knee-shin exo mnl lock ultra					
L5712	A	Knee-shin exo frict swg & st					
L5714	A	Knee-shin exo variable frict					
L5716	A	Knee-shin exo mech stance ph					
L5718	A	Knee-shin exo frct swg & sta					
L5722	A	Knee-shin pneum swg frct exo					
L5724	A	Knee-shin exo fluid swing ph					
L5726	A	Knee-shin ext jnts fld swg e					
L5728	A	Knee-shin fluid swg & stance					
L5780	A	Knee-shin pneum/hydra pneum					
L5785	A	Exoskeletal bk ultralt mater					
L5790	A	Exoskeletal ak ultra-light m					
L5795	A	Exoskel hip ultra-light mate					
L5810	A	Endoskel knee-shin mnl lock					
L5811	A	Endo knee-shin mnl lck ultra					
L5812	A	Endo knee-shin frct swg & st					
L5814	A	Endo knee-shin hydral swg ph					
L5816	A	Endo knee-shin polyc mch sta					
L5818	A	Endo knee-shin frct swg & st					
L5822	A	Endo knee-shin pneum swg frc					
L5824	A	Endo knee-shin fluid swing p					
L5826	A	Miniature knee joint					
L5828	A	Endo knee-shin fluid swg/sta					
L5830	A	Endo knee-shin pneum/swg pha					
L5840	A	Multi-axial knee/shin system					
L5845	A	Knee-shin sys stance flexion					
L5846	A	Knee-shin sys microprocessor					
L5850	A	Endo ak/hip knee extens assi					
L5855	A	Mech hip extension assist					
L5910	A	Endo below knee alignable sy					
L5920	A	Endo ak/hip alignable system					
L5925	A	Above knee manual lock					
L5930	A	High activity knee frame					
L5940	A	Endo bk ultra-light material					
L5950	A	Endo ak ultra-light material					
L5960	A	Endo hip ultra-light materia					
L5962	A	Below knee flex cover system					
L5964	A	Above knee flex cover system					
L5966	A	Hip flexible cover system					
L5968	A	Multiaxial ankle w dorsiflex					
L5970	A	Foot external keel sach foot					
L5972	A	Flexible keel foot					
L5974	A	Foot single axis ankle/foot					
L5975	A	Combo ankle/foot prosthesis					
L5976	A	Energy storing foot					
L5978	A	Ft prosth multiaxial ankl/ft					
L5979	A	Multi-axial ankle/ft prosth					
L5980	A	Flex foot system					
L5981	A	Flex-walk sys low ext prosth					
L5982	A	Exoskeletal axial rotation u					
L5984	A	Endoskeletal axial rotation					
L5985	A	Lwr ext dynamic prosth pylon					
L5986	A	Multi-axial rotation unit					
L5987	A	Shank ft w vert load pylon					
L5988	A	Vertical shock reducing pylo					
L5999	A	Lowr extremity prosthes NOS					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L6000	A	Par hand robin-aids thum rem					
L6010	A	Hand robin-aids little/rin					
L6020	A	Part hand robin-aids no fing					
L6050	A	Wrst MLd sck fix hng tri pad					
L6055	A	Wrst mold sock w/exp interfa					
L6100	A	Elb mold sock flex hinge pad					
L6110	A	Elbow mold sock suspension t					
L6120	A	Elbow mold doub splt soc ste					
L6130	A	Elbow stump activated lock h					
L6200	A	Elbow mold outsid lock hinge					
L6205	A	Elbow molded w/ expand inter					
L6250	A	Elbow inter loc elbow forarm					
L6300	A	Shlder disart int lock elbow					
L6310	A	Shoulder passive restor comp					
L6320	A	Shoulder passive restor cap					
L6350	A	Thoracic intern lock elbow					
L6360	A	Thoracic passive restor comp					
L6370	A	Thoracic passive restor cap					
L6380	A	Postop dsg cast chg wrst/elb					
L6382	A	Postop dsg cast chg elb dis/					
L6384	A	Postop dsg cast chg shlder/t					
L6386	A	Postop ea cast chg & realign					
L6388	A	Postop applicat rigid dsg on					
L6400	A	Below elbow prosth tiss shap					
L6450	A	Elb disart prosth tiss shap					
L6500	A	Above elbow prosth tiss shap					
L6550	A	Shldr disar prosth tiss shap					
L6570	A	Scap thorac prosth tiss shap					
L6580	A	Wrist/elbow bowden cable mol					
L6582	A	Wrist/elbow bowden cbl dir f					
L6584	A	Elbow fair lead cable molded					
L6586	A	Elbow fair lead cable dir fo					
L6588	A	Shdr fair lead cable molded					
L6590	A	Shdr fair lead cable direct					
L6600	A	Polycentric hinge pair					
L6605	A	Single pivot hinge pair					
L6610	A	Flexible metal hinge pair					
L6615	A	Disconnect locking wrist uni					
L6616	A	Disconnect insert locking wr					
L6620	A	Flexion-friction wrist unit					
L6623	A	Spring-ass rot wrst w/ latch					
L6625	A	Rotation wrst w/ cable lock					
L6628	A	Quick disconn hook adapter o					
L6629	A	Lamination collar w/ couplin					
L6630	A	Stainless steel any wrist					
L6632	A	Latex suspension sleeve each					
L6635	A	Lift assist for elbow					
L6637	A	Nudge control elbow lock					
L6640	A	Shoulder abduction joint pai					
L6641	A	Excursion amplifier pulley t					
L6642	A	Excursion amplifier lever ty					
L6645	A	Shoulder flexion-abduction j					
L6650	A	Shoulder universal joint					
L6655	A	Standard control cable extra					
L6660	A	Heavy duty control cable					
L6665	A	Teflon or equal cable lining					
L6670	A	Hook to hand cable adapter					
L6672	A	Harness chest/shlder saddle					
L6675	A	Harness figure of 8 sing con					
L6676	A	Harness figure of 8 dual con					
L6680	A	Test sock wrist disart/bel e					
L6682	A	Test sock elbw disart/above					
L6684	A	Test socket shldr disart/tho					
L6686	A	Suction socket					
L6687	A	Frame typ socket bel elbow/w					
L6688	A	Frame typ sock above elb/dis					
L6689	A	Frame typ socket shoulder di					
L6690	A	Frame typ sock interscap-tho					
L6691	A	Removable insert each					
L6692	A	Silicone gel insert or equal					
L6693	A	Lockingelbow forearm cntrbal					
L6700	A	Terminal device model #3					
L6705	A	Terminal device model #5					
L6710	A	Terminal device model #5x					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L6715	A	Terminal device model #5xa					
L6720	A	Terminal device model #6					
L6725	A	Terminal device model #7					
L6730	A	Terminal device model #7lo					
L6735	A	Terminal device model #8					
L6740	A	Terminal device model #8x					
L6745	A	Terminal device model #88x					
L6750	A	Terminal device model #10p					
L6755	A	Terminal device model #10x					
L6765	A	Terminal device model #12p					
L6770	A	Terminal device model #99x					
L6775	A	Terminal device model #555					
L6780	A	Terminal device model #ss555					
L6790	A	Hooks-accu hook or equal					
L6795	A	Hooks-2 load or equal					
L6800	A	Hooks-aprl vc or equal					
L6805	A	Modifier wrist flexion unit					
L6806	A	Trs grip vc or equal					
L6807	A	Term device grip1/2 or equal					
L6808	A	Term device infant or child					
L6809	A	Trs super sport passive					
L6810	A	Pincher tool otto bock or eq					
L6825	A	Hands dorrance vo					
L6830	A	Hand aprl vc					
L6835	A	Hand sierra vo					
L6840	A	Hand becker imperial					
L6845	A	Hand becker lock grip					
L6850	A	Term dvc-hand becker plylite					
L6855	A	Hand robin-aids vo					
L6860	A	Hand robin-aids vo soft					
L6865	A	Hand passive hand					
L6867	A	Hand detroit infant hand					
L6868	A	Passive inf hand steeper/hos					
L6870	A	Hand child mitt					
L6872	A	Hand nyu child hand					
L6873	A	Hand mech inf steeper or equ					
L6875	A	Hand bock vc					
L6880	A	Hand bock vo					
L6890	A	Production glove					
L6895	A	Custom glove					
L6900	A	Hand restorat thumb/1 finger					
L6905	A	Hand restoration multiple fi					
L6910	A	Hand restoration no fingers					
L6915	A	Hand restoration replacmnt g					
L6920	A	Wrist disarticul switch ctrl					
L6925	A	Wrist disart myoelectronic c					
L6930	A	Below elbow switch control					
L6935	A	Below elbow myoelectronic ct					
L6940	A	Elbow disarticulation switch					
L6945	A	Elbow disart myoelectronic c					
L6950	A	Above elbow switch control					
L6955	A	Above elbow myoelectronic ct					
L6960	A	Shldr disartic switch contro					
L6965	A	Shldr disartic myoelectronic					
L6970	A	Interscapular-thor switch ct					
L6975	A	Interscap-thor myoelectronic					
L7010	A	Hand otto back steeper/eq sw					
L7015	A	Hand sys teknik village swit					
L7020	A	Electronic greifer switch ct					
L7025	A	Electron hand myoelectronic					
L7030	A	Hand sys teknik vill myoelec					
L7035	A	Electron greifer myoelectro					
L7040	A	Prehensile actuator hosmer s					
L7045	A	Electron hook child michigan					
L7170	A	Electronic elbow hosmer swit					
L7180	A	Electronic elbow utah myoele					
L7185	A	Electron elbow adolescent sw					
L7186	A	Electron elbow child switch					
L7190	A	Elbow adolescent myoelectron					
L7191	A	Elbow child myoelectronic ct					
L7260	A	Electron wrist rotator otto					
L7261	A	Electron wrist rotator utah					
L7266	A	Servo control steeper or equ					
L7272	A	Analogue control unb or equa					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L7274	A	Proportional ctl 12 volt uta					
L7360	A	Six volt bat otto bock/eq ea					
L7362	A	Battery chrgr six volt otto					
L7364	A	Twelve volt battery utah/equ					
L7366	A	Battery chrgr 12 volt utah/e					
L7499	A	Upper extremity prosthes NOS					
L7500	A	Prosthetic dvc repair hourly					
L7510	A	Prosthetic device repair rep					
L7520	A	Repair prosthesis per 15 min					
L7900	A	Vacuum erection system					
L8000	A	Mastectomy bra					
L8010	A	Mastectomy sleeve					
L8015	A	Ext breastprosthesis garment					
L8020	A	Mastectomy form					
L8030	A	Breast prosthesis silicone/e					
L8035	A	Custom breast prosthesis					
L8039	A	Breast prosthesis NOS					
L8040	A	Nasal prosthesis					
L8041	A	Midfacial prosthesis					
L8042	A	Orbital prosthesis					
L8043	A	Upper facial prosthesis					
L8044	A	Hemi-facial prosthesis					
L8045	A	Auricular prosthesis					
L8046	A	Partial facial prosthesis					
L8047	A	Nasal septal prosthesis					
L8048	A	Unspec maxillofacial prosth					
L8049	A	Repair maxillofacial prosth					
L8100	E	Compression stocking BK18-30					
L8110	E	Compression stocking BK30-40					
L8120	E	Compression stocking BK40-50					
L8130	E	Gc stocking thighlngth 18-30					
L8140	E	Gc stocking thighlngth 30-40					
L8150	E	Gc stocking thighlngth 40-50					
L8160	E	Gc stocking full lngth 18-30					
L8170	E	Gc stocking full lngth 30-40					
L8180	E	Gc stocking full lngth 40-50					
L8190	E	Gc stocking waistlngth 18-30					
L8195	E	Gc stocking waistlngth 30-40					
L8200	E	Gc stocking waistlngth 40-50					
L8210	E	Gc stocking custom made					
L8220	E	Gc stocking lymphedema					
L8230	E	Gc stocking garter belt					
L8239	E	G compression stocking NOS					
L8300	A	Truss single w/ standard pad					
L8310	A	Truss double w/ standard pad					
L8320	A	Truss addition to std pad wa					
L8330	A	Truss add to std pad scrotal					
L8400	A	Sheath below knee					
L8410	A	Sheath above knee					
L8415	A	Sheath upper limb					
L8417	A	Pros sheath/sock w gel cushn					
L8420	A	Prosthetic sock multi ply BK					
L8430	A	Prosthetic sock multi ply AK					
L8435	A	Pros sock multi ply upper lm					
L8440	A	Shrinker below knee					
L8460	A	Shrinker above knee					
L8465	A	Shrinker upper limb					
L8470	A	Pros sock single ply BK					
L8480	A	Pros sock single ply AK					
L8485	A	Pros sock single ply upper l					
L8490	A	Air seal suction reten systm					
L8499	A	Unlisted misc prosthetic ser					
L8500	A	Artificial larynx					
L8501	A	Tracheostomy speaking valve					
L8600	N	Implant breast silicone/eq					
L8603	N	Collagen imp urinary 2.5 CC					
L8606	N	Synthetic implnt urinary 1ml					
L8610	N	Ocular implant					
L8612	N	Aqueous shunt prosthesis					
L8613	N	Ossicular implant					
*L8614	H	Cochlear device/system	1002				
L8619	A	Replace cochlear processor					
L8630	N	Metacarpophalangeal implant					
L8641	N	Metatarsal joint implant					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L8642	N	Hallux implant					
L8658	N	Interphalangeal joint impint					
L8670	N	Vascular graft, synthetic					
L8699	N	Prosthetic implant NOS					
L9900	A	O&P supply/accessory/service					
M0064	X	Visit for drug monitoring	0374	1.17	$58.03	$13.06	$11.61
M0075	E	Cellular therapy					
M0076	E	Prolotherapy					
M0100	E	Intragastric hypothermia					
M0300	E	IV chelationtherapy					
M0301	E	Fabric wrapping of aneurysm					
M0302	T	Assessment of cardiac output	0970	0.52	$25.79		$5.16
P2026	A	Cephalin floculation test					
P2029	A	Congo red blood test					
P2031	E	Hair analysis					
P2033	A	Blood thymol turbidity					
P2038	A	Blood mucoprotein					
P3000	A	Screen pap by tech w md supv					
P3001	E	Screening pap smear by phys					
P7001	E	Culture bacterial urine					
P9010	K	Whole blood for transfusion	0950	2.08	$103.33		$20.67
P9011	E	Blood split unit					
P9012	K	Cryoprecipitate each unit	0952	0.70	$34.70		$6.94
P9013D	K	Unit/s blood fibrinogen	0953	0.48	$23.90		$4.78
P9016	K	Leukocyte poor blood, unit	0954	2.83	$140.35		$28.07
P9017	K	One donor fresh frozn plasma	0955	2.26	$111.85		$22.37
P9018D	K	Plasma protein fract, unit	0956	1.26	$62.49		$12.50
P9019	K	Platelet concentrate unit	0957	0.98	$48.55		$9.71
P9020	K	Plaelet rich plasma unit	0958	1.16	$57.54		$11.51
P9021	K	Red blood cells unit	0959	2.04	$101.31		$20.26
P9022	K	Washed red blood cells unit	0960	3.81	$188.75		$37.75
P9023	K	Frozen plasma, pooled, sd	0949	2 94	$145.76		$29.15
P9031	K	Platelets leukocytes reduced	0954	2.83	$140.35		$28.07
P9032	K	Platelets, irradiated	9500	1.77	$87.97		$17.59
P9033	K	Platelets leukoreduced irrad	0954	2.83	$140.35		$28.07
P9034	K	Platelets, pheresis	9501	9.69	$480.75		$96.15
P9035	K	Platelet pheres leukoreduced	9501	9.69	$480.75		$96.15
P9036	K	Platelet pheresis irradiated	9502	10.52	$521.66		$104.33
P9037	K	Plate pheres leukoredu irrad	9501	9.69	$480.75		$96.15
P9038	K	RBC irradiated	9505	2.58	$127.86		$25.57
P9039	K	RBC deglycerolized	9504	4.35	$215.83		$43.17
P9040	K	RBC leukoreduced irradiated	9504	4.35	$215.83		$43.17
P9041	K	Albumin(human), 5%, 500 ML	0961	2.77	$137.38		$27.48
P9042	K	Albumin (human), 25%, 50 ML	0962	1.38	$68.44		$13.69
P9043	K	Plasma protein fraction	0956	1.26	$62.49		$12.50
P9044	K	Cryoprecipitate reduced plasma	1009	0.86	$42.76		$8.55
P9603	A	One-way allow prorated miles					
P9604	A	One-way allow prorated trip					
P9612	N	Catheterize for urine spec					
P9615	N	Urine specimen collect mult					
Q0034D	K	Admin of influenza vaccine	0354	0.13	$8.33		
Q0035	X	Cardiokymography	0100	1.70	$84.32	$71.57	$16.86
Q0081	T	Infusion ther other than che	0120	1.66	$82.33	$42.67	$16.47
Q0082D	P	Activity therapy w/partial h	0033	4.17	$206.82	$48.17	$41.36
Q0083	S	Chemo by other than infusion	0116	2.34	$116.06	$23.21	$23.21
Q0084	S	Chemotherapy by infusion	0117	1.84	$91.26	$71.80	$18.25
Q0085	S	Chemo by both infusion and o	0118	2.90	$143.83	$72.03	$28.77
Q0086	A	Physical therapy evaluation/					
Q0091	T	Obtaining screen pap smear	0191	1.19	$59.02	$17.43	$11.80
Q0092	N	Set up port xray equipment					
Q0111	A	Wet mounts/ w preparations					
Q0112	A	Potassium hydroxide preps					
Q0113	A	Pinworm examinations					
Q0114	A	Fern test					
Q0115	A	Post-coital mucous exam					
Q0136	G	Non esrd epoetin alpha inj	0733		$11.40		$1.53
Q0144	E	Azithromycin dihydrate, oral					
Q0156D	K	Human albumin 5%	0961	2.77	$137.38		$27.48
Q0157D	K	Human albumin 25%	0962	1.38	$68.44		$13.69
Q0160	G	Factor IX non-recombinant	0931		$.72		$.10
Q0161	G	Factor IX recombinant	0932		$1.12		$.10
Q0163	G	Diphenhydramine HCl 50mg	1400		$1.18		$.16
Q0164	G	Prochlorperazine maleate 5mg	1401		$1.31		$.18
Q0165	E	Prochlorperazine maleate10mg					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
Q0166	G	Granisetron HCl 1 mg oral	0765		$44.70		$5.99
Q0167	G	Dronabinol 2.5mg oral	0762		$3.20		$.46
Q0168	E	Dronabinol 5mg oral					
Q0169	G	Promethazine HCl 12.5mg oral	1402		$.05		
Q0170	E	Promethazine HCl 25 mg oral					
Q0171	G	Chlorpromazine HCl 10mg oral	1403		$.55		$.07
Q0172	E	Chlorpromazine HCl 25mg oral					
Q0173	G	Trimethobenzamide HCl 250mg	1404		$.36		$.05
Q0174	G	Thiethylperazine maleate10mg	1405		$.69		$.09
Q0175	G	Perphenazine 4mg oral	1406		$.71		$.10
Q0176	E	Perphenazine 8mg oral					
Q0177	G	Hydroxyzine pamoate 25mg	1407		$.20		$.03
Q0178	E	Hydroxyzine pamoate 50mg					
Q0179	G	Ondansetron HCl 8mg oral	0769		$25.15		$3.37
Q0180	G	Dolasetron mesylate oral	0763		$65.21		$8.74
Q0181	G	Unspecified oral anti-emetic	0761		$.60		$.08
Q0183	N	Nonmetabolic active tissue					
Q0184	N	Metabolically active tissue					
Q0185	N	Metabolic active D/E tissue					
Q0186D	E	Paramedic intercept, rural					
Q0187	G	Factor viia recombinant	1409		$1,596.00		$213.86
Q0188D	N	Contrast medium					
Q1001	E	Ntiol category 1					
Q1002	E	Ntiol category 2					
Q1003	E	Ntiol category 3					
Q1004	E	Ntiol category 4					
Q1005	E	Ntiol category 5					
Q2001	N	Cabergoline, 0.5 mg, oral					
Q2002	G	Elliot's B solution, per ml	7022		$14.25		$1.91
Q2003	G	Aprotinin, 10,000 kiu	7019		$196.35		$26.31
Q2004	G	Treatment for bladder calculi, per 500 ml	7023		$23.54		$3.15
Q2005	G	Corticorelin ovine triflutate, per 0.1 mg	7024		$353.66		$45.77
Q2006	G	Digoxin immune FAB (Ovine), 40 mg vial	7025		$530.44		$64.71
Q2007	G	Ethanolamine oleate, 100 mg	7026		$27.21		$3.65
Q2008	G	Fomepizole, 1.5 mg	7027		$728.33		$97.60
Q2009	G	Fosphenytoin, 50 mg	7028		$8.55		$1.15
Q2010	G	Glatiramer acetate, 20 mg	7029		$27.40		$3.67
Q2011	G	Hemin, 1 mg	7030		$.90		$.12
Q2012	G	Pegademase bovine inj 25 I.U	7039		$139.33		$18.67
Q2013	G	Pentastarch 10% inj, 100 ml	7040		$15.11		$2.04
Q2014	G	Sermorelin acetate, 0.5 mg	7032		$15.78		$2.11
Q2015	G	Somatrem, 5 mg	7033		$199.50		$26.73
Q2016	G	Somatropin, 1 mg (any derivation)	7034		$39.90		$5.35
Q2017	G	Teniposide, 50 mg	7035		$195.26		$26.17
Q2018	G	Urofollitropin, 75 I.U.	7037		$69.73		$9.34
*Q2019	G	Basiliximab, 20 mg	1615		$1,250.01		$167.50
*Q2020	G	Histrelin Acetate, 0.5 mg	1616		$14.91		$2.00
*Q2021	G	Lepirdin, 50 mg	1617		$124.49		$16.68
*Q2022	G	Von Willebrand factor, per iu	1618		$.95		$.13
Q3001	H	Brachytherapy Seeds	.0918				
*Q3002	G	Ga 67, per mCi	1619		$25.97		$3.17
*Q3003	G	TC 99M Bicisate, per vial	1620		$417.53		$55.95
*Q3004	G	Xe 133, per mCi	1621		$28.50		$3.66
*Q3005	G	TC 99M Mertiatide, per vial	1622		$185.82		$24.90
*Q3006	G	TC 99M Gluceptate	1623		$22.61		$2.76
*Q3007	G	P32 sodium, per mCi	1624		$74.10		$9.04
*Q3008	G	IN 111 Pentetreotide, per mCi	1625		$283.42		$37.98
*Q3009	G	TC 99M Oxidronate, per vial	1626		$38.36		$4.68
*Q3010	G	TC-99 labeled red blood cell, per test	1627		$38.95		$4.75
*Q3011	G	P32 phosphate chromic, per mCi	1628		$137.12		$16.73
Q9920	A	Epoetin with hct <= 20					
Q9921	A	Epoetin with hct = 21					
Q9922	A	Epoetin with hct = 22					
Q9923	A	Epoetin with hct = 23					
Q9924	A	Epoetin with hct = 24					
Q9925	A	Epoetin with hct = 25					
Q9926	A	Epoetin with hct = 26					
Q9927	A	Epoetin with hct = 27					
Q9928	A	Epoetin with hct = 28					
Q9929	A	Epoetin with hct = 29					
Q9930	A	Epoetin with hct = 30					
Q9931	A	Epoetin with hct = 31					
Q9932	A	Epoetin with hct = 32					
Q9933	A	Epoetin with hct = 33					

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Addendum B.—Hospital Outpatient Department (HOPD) Payment Status by HCPCS Code and Related Information—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
Q9934	A	Epoetin with hct = 34					
Q9935	A	Epoetin with hct = 35					
Q9936	A	Epoetin with hct = 36					
Q9937	A	Epoetin with hct = 37					
Q9938	A	Epoetin with hct = 38					
Q9939	A	Epoetin with hct = 39					
Q9940	A	Epoetin with hct >= 40					
R0070	N	Transport portable x-ray					
R0075	N	Transport port x-ray multipl					
R0076	N	Transport portable EKG					
V2020	A	Vision svcs frames purchases					
V2025	E	Eyeglasses delux frames					
V2100	A	Lens spher single plano 4.00					
V2101	A	Single visn sphere 4.12-7.00					
V2102	A	Singl visn sphere 7.12-20.00					
V2103	A	Spherocylindr 4.00d/12-2.00d					
V2104	A	Spherocylindr 4.00d/2.12-4d					
V2105	A	Spherocylinder 4.00d/4.25-6d					
V2106	A	Spherocylinder 4.00d/>6.00d					
V2107	A	Spherocylinder 4.25d/12-2d					
V2108	A	Spherocylinder 4.25d/2.12-4d					
V2109	A	Spherocylinder 4.25d/4.25-6d					
V2110	A	Spherocylinder 4.25d/over 6d					
V2111	A	Spherocylindr 7.25d/.25-2.25					
V2112	A	Spherocylindr 7.25d/2.25-4d					
V2113	A	Spherocylindr 7.25d/4.25-6d					
V2114	A	Spherocylinder over 12.00d					
V2115	A	Lens lenticular bifocal					
V2116	A	Nonaspheric lens bifocal					
V2117	A	Aspheric lens bifocal					
V2118	A	Lens aniseikonic single					
V2199	A	Lens single vision not oth c					
V2200	A	Lens spher bifoc plano 4.00d					
V2201	A	Lens sphere bifocal 4.12-7.0					
V2202	A	Lens sphere bifocal 7.12-20.					
V2203	A	Lens sphcyl bifocal 4.00d/.1					
V2204	A	Lens sphcy bifocal 4.00d/2.1					
V2205	A	Lens sphcy bifocal 4.00d/4.2					
V2206	A	Lens sphcy bifocal 4.00d/ove					
V2207	A	Lens sphcy bifocal 4.25-7d/.					
V2208	A	Lens sphcy bifocal 4.25-7/2.					
V2209	A	Lens sphcy bifocal 4.25-7/4.					
V2210	A	Lens sphcy bifocal 4.25-7/ov					
V2211	A	Lens sphcy bifo 7.25-12/.25-					
V2212	A	Lens sphcyl bifo 7.25-12/2.2					
V2213	A	Lens sphcyl bifo 7.25-12/4.2					
V2214	A	Lens sphcyl bifocal over 12.					
V2215	A	Lens lenticular bifocal					
V2216	A	Lens lenticular nonaspheric					
V2217	A	Lens lenticular aspheric bif					
V2218	A	Lens aniseikonic bifocal					
V2219	A	Lens bifocal seg width over					
V2220	A	Lens bifocal add over 3.25d					
V2299	A	Lens bifocal speciality					
V2300	A	Lens sphere trifocal 4.00d					
V2301	A	Lens sphere trifocal 4.12-7.					
V2302	A	Lens sphere trifocal 7.12-20					
V2303	A	Lens sphcy trifocal 4.0/.12-					
V2304	A	Lens sphcy trifocal 4.0/2.25					
V2305	A	Lens sphcy trifocal 4.0/4.25					
V2306	A	Lens sphcyl trifocal 4.00/>6					
V2307	A	Lens sphcy trifocal 4.25-7/.					
V2308	A	Lens sphc trifocal 4.25-7/2.					
V2309	A	Lens sphc trifocal 4.25-7/4.					
V2310	A	Lens sphc trifocal 4.25-7/>6					
V2311	A	Lens sphc trifo 7.25-12/.25-					
V2312	A	Lens sphc trifo 7.25-12/2.25					
V2313	A	Lens sphc trifo 7.25-12/4.25					
V2314	A	Lens sphcyl trifocal over 12					
V2315	A	Lens lenticular trifocal					
V2316	A	Lens lenticular nonaspheric					
V2317	A	Lens lenticular aspheric tri					
V2318	A	Lens aniseikonic trifocal					
V2319	A	Lens trifocal seg width > 28					

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Addendum B.—Hospital Outpatient Department (HOPD) Payment Status by HCPCS Code and Related Information—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
V2320	A	Lens trifocal add over 3.25d					
V2399	A	Lens trifocal speciality					
V2410	A	Lens variab asphericity sing					
V2430	A	Lens variable asphericity bi					
V2499	A	Variable asphericity lens					
V2500	A	Contact lens pmma spherical					
V2501	A	Cntct lens pmma-toric/prism					
V2502	A	Contact lens pmma bifocal					
V2503	A	Cntct lens pmma color vision					
V2510	A	Cntct gas permeable sphericl					
V2511	A	Cntct toric prism ballast					
V2512	A	Cntct lens gas permbl bifocl					
V2513	A	Contact lens extended wear					
V2520	A	Contact lens hydrophilic					
V2521	A	Cntct lens hydrophilic toric					
V2522	A	Cntct lens hydrophil bifocl					
V2523	A	Cntct lens hydrophil extend					
V2530	A	Contact lens gas impermeable					
V2531	A	Contact lens gas permeable					
V2599	A	Contact lens/es other type					
V2600	A	Hand held low vision aids					
V2610	A	Single lens spectacle mount					
V2615	A	Telescop/othr compound lens					
V2623	A	Plastic eye prosth custom					
V2624	A	Polishing artifical eye					
V2625	A	Enlargemnt of eye prosthesis					
V2626	A	Reduction of eye prosthesis					
V2627	A	Scleral cover shell					
V2628	A	Fabrication & fitting					
V2629	A	Prosthetic eye other type					
V2630	N	Anter chamber intraocul lens					
V2631	N	Iris support intraoclr lens					
V2632	N	Post chmbr intraocular lens					
V2700	A	Balance lens					
V2710	A	Glass/plastic slab off prism					
V2715	A	Prism lens/es					
V2718	A	Fresnell prism press-on lens					
V2730	A	Special base curve					
V2740	A	Rose tint plastic					
V2741	A	Non-rose tint plastic					
V2742	A	Rose tint glass					
V2743	A	Non-rose tint glass					
V2744	A	Tint photochromatic lens/es					
V2750	A	Anti-reflective coating					
V2755	A	UV lens/es					
V2760	A	Scratch resistant coating					
V2770	A	Occluder lens/es					
V2780	A	Oversize lens/es					
V2781	E	Progressive lens per lens					
V2785	F	Corneal tissue processing					
V2790	N	Amniotic membrane					
V2799	A	Miscellaneous vision service					
V5008	E	Hearing screening					
V5010	E	Assessment for hearing aid					
V5011	E	Hearing aid fitting/checking					
V5014	E	Hearing aid repair/modifying					
V5020	E	Conformity evaluation					
V5030	E	Body-worn hearing aid air					
V5040	E	Body-worn hearing aid bone					
V5050	E	Body-worn hearing aid in ear					
V5060	E	Behind ear hearing aid					
V5070	E	Glasses air conduction					
V5080	E	Glasses bone conduction					
V5090	E	Hearing aid dispensing fee					
V5100	E	Body-worn bilat hearing aid					
V5110	E	Hearing aid dispensing fee					
V5120	E	Body-worn binaur hearing aid					
V5130	E	In ear binaural hearing aid					
V5140	E	Behind ear binaur hearing ai					
V5150	E	Glasses binaural hearing aid					
V5160	E	Dispensing fee binaural					
V5170	E	Within ear cros hearing aid					
V5180	E	Behind ear cros hearing aid					
V5190	E	Glasses cros hearing aid					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
V5200	E	Cros hearing aid dispens fee					
V5210	E	In ear bicros hearing aid					
V5220	E	Behind ear bicros hearing ai					
V5230	E	Glasses bicros hearing aid					
V5240	E	Dispensing fee bicros					
V5299	E	Hearing service					
V5336	E	Repair communication device					
V5362	A	Speech screening					
V5363	A	Language screening					
V5364	A	Dysphagia screening					
25310	T	Transplant forearm tendon	0051	27.76	$1,376.79	$675.24	$275.36
25312	T	Transplant forearm tendon	0051	27.76	$1,376.79	$675.24	$275.36
25315	T	Revise palsy hand tendon(s)	0051	27.76	$1,376.79	$675.24	$275.36
25316	T	Revise palsy hand tendon(s)	0051	27.76	$1,376.79	$675.24	$275.36
25320	T	Repair/revise wrist joint	0051	27.76	$1,376.79	$675.24	$275.36
25332	T	Revise wrist joint	0047	22.09	$1,095.58	$537.03	$219.12
25335	T	Realignment of hand	0051	27.76	$1,376.79	$675.24	$275.36
25337	T	Reconstruct ulna/radioulnar	0051	27.76	$1,376.79	$675.24	$275.36
25350	T	Revision of radius	0051	27.76	$1,376.79	$675.24	$275.36
25355	T	Revision of radius	0051	27.76	$1,376.79	$675.24	$275.36
25360	T	Revision of ulna	0050	21.13	$1,047.96	$513.86	$209.59
25365	T	Revise radius & ulna	0050	21.13	$1,047.96	$513.86	$209.59
25370	T	Revise radius or ulna	0051	27.76	$1,376.79	$675.24	$275.36
25375	T	Revise radius & ulna	0051	27.76	$1,376.79	$675.24	$275.36
25390	C	Shorten radius or ulna					
25391	C	Lengthen radius or ulna					
25392	C	Shorten radius & ulna					
25393	C	Lengthen radius & ulna					
25400	T	Repair radius or ulna	0050	21.13	$1,047.96	$513.86	$209.59
25405	T	Repair/graft radius or ulna	0050	21.13	$1,047.96	$513.86	$209.59
25415	T	Repair radius & ulna	0050	21.13	$1,047.96	$513.86	$209.59
25420	C	Repair/graft radius & ulna					
25425	T	Repair/graft radius or ulna	0051	27.76	$1,376.79	$675.24	$275.36
25426	T	Repair/graft radius & ulna	0051	27.76	$1,376.79	$675.24	$275.36
25440	T	Repair/graft wrist bone	0051	27.76	$1,376.79	$675.24	$275.36
25441	T	Reconstruct wrist joint	0048	29.06	$1,441.26	$725.94	$288.25
25442	T	Reconstruct wrist joint	0048	29.06	$1,441.26	$725.94	$288.25
25443	T	Reconstruct wrist joint	0048	29.06	$1,441.26	$725.94	$288.25
25444	T	Reconstruct wrist joint	0048	29.06	$1,441.26	$725.94	$288.25
25445	T	Reconstruct wrist joint	0048	29.06	$1,441.26	$725.94	$288.25
25446	T	Wrist replacement	0048	29.06	$1,441.26	$725.94	$288.25
25447	T	Repair wrist joint(s)	0047	22.09	$1,095.58	$537.03	$219.12
25449	T	Remove wrist joint implant	0047	22.09	$1,095.58	$537.03	$219.12
25450	T	Revision of wrist joint	0051	27.76	$1,376.79	$675.24	$275.36
25455	T	Revision of wrist joint	0051	27.76	$1,376.79	$675.24	$275.36
25490	T	Reinforce radius	0051	27.76	$1,376.79	$675.24	$275.36
25491	T	Reinforce ulna	0051	27.76	$1,376.79	$675.24	$275.36
25492	T	Reinforce radius and ulna	0051	27.76	$1,376.79	$675.24	$275.36
25500	T	Treat fracture of radius	0044	2.17	$107.63	$38.08	$21.53
25505	T	Treat fracture of radius	0044	2.17	$107.63	$38.08	$21.53
25515	T	Treat fracture of radius	0046	22.29	$1,105.50	$535.76	$221.10
25520	T	Treat fracture of radius	0044	2.17	$107.63	$38.08	$21.53
25525	T	Treat fracture of radius	0046	22.29	$1,105.50	$535.76	$221.10
25526	T	Treat fracture of radius	0046	22.29	$1,105.50	$535.76	$221.10
25530	T	Treat fracture of ulna	0044	2.17	$107.63	$38.08	$21.53
25535	T	Treat fracture of ulna	0044	2.17	$107.63	$38.08	$21.53
25545	T	Treat fracture of ulna	0046	22.29	$1,105.50	$535.76	$221.10
25560	T	Treat fracture radius & ulna	0044	2.17	$107.63	$38.08	$21.53
25565	T	Treat fracture radius & ulna	0044	2.17	$107.63	$38.08	$21.53
25574	T	Treat fracture radius & ulna	0046	22.29	$1,105.50	$535.76	$221.10
25575	T	Treat fracture radius/ulna	0046	22.29	$1,105.50	$535.76	$221.10
25600	T	Treat fracture radius/ulna	0044	2.17	$107.63	$38.08	$21.53
25605	T	Treat fracture radius/ulna	0044	2.17	$107.63	$38.08	$21.53
25611	T	Treat fracture radius/ulna	0046	22.29	$1,105.50	$535.76	$221.10
25620	T	Treat fracture radius/ulna	0046	22.29	$1,105.50	$535.76	$221.10
25622	T	Treat wrist bone fracture	0044	2.17	$107.63	$38.08	$21.53
25624	T	Treat wrist bone fracture	0044	2.17	$107.63	$38.08	$21.53
25628	T	Treat wrist bone fracture	0046	22.29	$1,105.50	$535.76	$221.10
25630	T	Treat wrist bone fracture	0044	2.17	$107.63	$38.08	$21.53
25635	T	Treat wrist bone fracture	0044	2.17	$107.63	$38.08	$21.53
25645	T	Treat wrist bone fracture	0046	22.29	$1,105.50	$535.76	$221.10
25650	T	Treat wrist bone fracture	0044	2.17	$107.63	$38.08	$21.53
25660	T	Treat wrist dislocation	0044	2.17	$107.63	$38.08	$21.53
25670	T	Treat wrist dislocation	0046	22.29	$1,105.50	$535.75	$221.10

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
25675	T	Treat wrist dislocation	0044	2.17	$107.63	$38.08	$21.53
25676	T	Treat wrist dislocation	0046	22.29	$1,105.50	$535.76	$221.10
25680	T	Treat wrist fracture	0044	2.17	$107.63	$38.08	$21.53
25685	T	Treat wrist fracture	0046	22.29	$1,105.50	$535.76	$221.10
25690	T	Treat wrist dislocation	0044	2.17	$107.63	$38.08	$21.53
25695	T	Treat wrist dislocation	0046	22.29	$1,105.50	$535.76	$221.10
25800	T	Fusion of wrist joint	0051	27.76	$1,376.79	$675.24	$275.36
25805	T	Fusion/graft of wrist joint	0051	27.76	$1,376.79	$675.24	$275.36
25810	T	Fusion/graft of wrist joint	0051	27.76	$1,376.79	$675.24	$275.36
25820	T	Fusion of hand bones	0053	11.32	$561.42	$253.49	$112.28
25825	T	Fuse hand bones with graft	0054	19.66	$975.06	$472.33	$195.01
25830	T	Fusion, radioulnar jnt/ulna	0051	27.76	$1,376.79	$675.24	$275.36
25900	C	Amputation of forearm					
25905	C	Amputation of forearm					
25907	T	Amputation follow-up surgery	0049	15.04	$745.93	$356.95	$149.19
25909	C	Amputation follow-up surgery					
25915	C	Amputation of forearm					
25920	C	Amputate hand at wrist					
25922	T	Amputate hand at wrist	0049	15.04	$745.93	$356.95	$149.19
25924	C	Amputation follow-up surgery					
25927	C	Amputation of hand					
25929	T	Amputation follow-up surgery	0026	12.11	$600.61	$277.92	$120.12
25931	C	Amputation follow-up surgery					
25999	T	Forearm or wrist surgery	0044	2.17	$107.63	$38.08	$21.53
26010	T	Drainage of finger abscess	0006	2.00	$99.19	$33.95	$19.84
26011	T	Drainage of finger abscess	0007	3.68	$182.51	$72.03	$36.50
26020	T	Drain hand tendon sheath	0053	11.32	$561.42	$253.49	$112.28
26025	T	Drainage of palm bursa	0053	11.32	$561.42	$253.49	$112.28
26030	T	Drainage of palm bursa(s)	0053	11.32	$561.42	$253.49	$112.28
26034	T	Treat hand bone lesion	0053	11.32	$561.42	$253.49	$112.28
26035	T	Decompress fingers/hand	0053	11.32	$561.42	$253.49	$112.28
26037	T	Decompress fingers/hand	0053	11.32	$561.42	$253.49	$112.28
26040	T	Release palm contracture	0054	19.66	$975.06	$472.33	$195.01
26045	T	Release palm contracture	0054	19.66	$975.06	$472.33	$195.01
26055	T	Incise finger tendon sheath	0053	11.32	$561.42	$253.49	$112.28
26060	T	Incision of finger tendon	0053	11.32	$561.42	$253.49	$112.28
26070	T	Explore/treat hand joint	0053	11.32	$561.42	$253.49	$112.28
26075	T	Explore/treat finger joint	0053	11.32	$561.42	$253.49	$112.28
26080	T	Explore/treat finger joint	0053	11.32	$561.42	$253.49	$112.28
26100	T	Biopsy hand joint lining	0053	11.32	$561.42	$253.49	$112.28
26105	T	Biopsy finger joint lining	0053	11.32	$561.42	$253.49	$112.28
26110	T	Biopsy finger joint lining	0053	11.32	$561.42	$253.49	$112.28
26115	T	Removal of hand lesion	0022	12.49	$619.45	$292.94	$123.89
26116	T	Removal of hand lesion	0022	[illegible].49	$619.45	$292.94	$123.89
26117	T	Remove tumor, hand/finger	0022	12.49	$619.45	$292.94	$123.89
26121	T	Release palm contracture	0054	19.66	$975.06	$472.33	$195.01
26123	T	Release palm contracture	0054	19.66	$975.06	$472.33	$195.01
26125	T	Release palm contracture	0054	19.66	$975.06	$472.33	$195.01
26130	T	Remove wrist joint lining	0053	11.32	$561.42	$253.49	$112.28
26135	T	Revise finger joint, each	0054	19.66	$975.06	$472.33	$195.01
26140	T	Revise finger joint, each	0053	11.32	$561.42	$253.49	$112.28
26145	T	Tendon excision, palm/finger	0053	11.32	$561.42	$253.49	$112.28
26160	T	Remove tendon sheath lesion	0053	11.32	$561.42	$253.49	$112.28
26170	T	Removal of palm tendon, each	0053	11.32	$561.42	$253.49	$112.28
26180	T	Removal of finger tendon	0053	11.32	$561.42	$253.49	$112.28
26185	T	Remove finger bone	0053	11.32	$561.42	$253.49	$112.28
26200	T	Remove hand bone lesion	0053	11.32	$561.42	$253.49	$112.28
26205	T	Remove/graft bone lesion	0054	19.66	$975.06	$472.33	$195.01
26210	T	Removal of finger lesion	0053	11.32	$561.42	$253.49	$112.28
26215	T	Remove/graft finger lesion	0053	11.32	$561.42	$253.49	$112.28
26230	T	Partial removal of hand bone	0053	11.32	$561.42	$253.49	$112.28
26235	T	Partial removal, finger bone	0053	11.32	$561.42	$253.49	$112.28
26236	T	Partial removal, finger bone	0053	11.32	$561.42	$253.49	$112.28
26250	T	Extensive hand surgery	0053	11.32	$561.42	$253.49	$112.28
26255	T	Extensive hand surgery	0054	19.66	$975.06	$472.33	$195.01
26260	T	Extensive finger surgery	0053	11.32	$561.42	$253.49	$112.28
26261	T	Extensive finger surgery	0053	11.32	$561.42	$253.49	$112.28
26262	T	Partial removal of finger	0053	11.32	$561.42	$253.49	$112.28
26320	T	Removal of implant from hand	0020	6.51	$322.87	$130.53	$64.57
26350	T	Repair finger/hand tendon	0054	19.66	$975.06	$472.33	$195.01
26352	T	Repair/graft hand tendon	0054	19.66	$975.06	$472.33	$195.01
26356	T	Repair finger/hand tendon	0054	19.66	$975.06	$472.33	$195.01
26357	T	Repair finger/hand tendon	0054	19.66	$975.06	$472.33	$195.01
26358	T	Repair/graft hand tendon	0054	19.66	$975.06	$472.33	$195.01

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
26370	T	Repair finger/hand tendon	0054	19.66	$975.06	$472.33	$195.01
26372	T	Repair/graft hand tendon	0054	19.66	$975.06	$472.33	$195.01
26373	T	Repair finger/hand tendon	0054	19.66	$975.06	$472.33	$195.01
26390	T	Revise hand/finger tendon	0054	19.66	$975.06	$472.33	$195.01
26392	T	Repair/graft hand tendon	0054	19.66	$975.06	$472.33	$195.01
26410	T	Repair hand tendon	0053	11.32	$561.42	$253.49	$112.28
26412	T	Repair/graft hand tendon	0054	19.66	$975.06	$472.33	$195.01
26415	T	Excision, hand/finger tendon	0054	19.66	$975.06	$472.33	$195.01
26416	T	Graft hand or finger tendon	0054	19.66	$975.06	$472.33	$195.01
26418	T	Repair finger tendon	0053	11.32	$561.42	$253.49	$112.28
26420	T	Repair/graft finger tendon	0054	19.66	$975.06	$472.33	$195.01
26426	T	Repair finger/hand tendon	0054	19.66	$975.06	$472.33	$195.01
26428	T	Repair/graft finger tendon	0054	19.66	$975.06	$472.33	$195.01
26432	T	Repair finger tendon	0053	11.32	$561.42	$253.49	$112.28
26433	T	Repair finger tendon	0053	11.32	$561.42	$253.49	$112.28
26434	T	Repair/graft finger tendon	0054	19.66	$975.06	$472.33	$195.01
26437	T	Realignment of tendons	0053	11.32	$561.42	$253.49	$112.28
26440	T	Release palm/finger tendon	0053	11.32	$561.42	$253.49	$112.28
26442	T	Release palm & finger tendon	0054	19.66	$975.06	$472.33	$195.01
26445	T	Release hand/finger tendon	0053	11.32	$561.42	$253.49	$112.28
26449	T	Release forearm/hand tendon	0054	19.66	$975.06	$472.33	$195.01
26450	T	Incision of palm tendon	0053	11.32	$561.42	$253.49	$112.28
26455	T	Incision of finger tendon	0053	11.32	$561.42	$253.49	$112.28
26460	T	Incise hand/finger tendon	0053	11.32	$561.42	$253.49	$112.28
26471	T	Fusion of finger tendons	0053	11.32	$561.42	$253.49	$112.28
26474	T	Fusion of finger tendons	0053	11.32	$561.42	$253.49	$112.28
26476	T	Tendon lengthening	0053	11.32	$561.42	$253.49	$112.28
26477	T	Tendon shortening	0053	11.32	$561.42	$253.49	$112.28
26478	T	Lengthening of hand tendon	0053	11.32	$561.42	$253.49	$112.28
26479	T	Shortening of hand tendon	0053	11.32	$561.42	$253.49	$112.28
26480	T	Transplant hand tendon	0054	19.66	$975.06	$472.33	$195.01
26483	T	Transplant/graft hand tendon	0054	19.66	$975.06	$472.33	$195.01
26485	T	Transplant palm tendon	0054	19.66	$975.06	$472.33	$195.01
26489	T	Transplant/graft palm tendon	0054	19.66	$975.06	$472.33	$195.01
26490	T	Revise thumb tendon	0054	19.66	$975.06	$472.33	$195.01
26492	T	Tendon transfer with graft	0054	19.66	$975.06	$472.33	$195.01
26494	T	Hand tendon/muscle transfer	0054	19.66	$975.06	$472.33	$195.01
26496	T	Revise thumb tendon	0054	19.66	$975.06	$472.33	$195.01
26497	T	Finger tendon transfer	0054	19.66	$975.06	$472.33	$195.01
26498	T	Finger tendon transfer	0054	19.66	$975.06	$472.33	$195.01
26499	T	Revision of finger	0054	19.66	$975.06	$472.33	$195.01
26500	T	Hand tendon reconstruction	0053	11.32	$561.42	$253.49	$112.28
26502	T	Hand tendon reconstruction	0054	19.66	$975.06	$472.33	$195.01
26504	T	Hand tendon reconstruction	0054	19.66	$975.06	$472.33	$195.01
26508	T	Release thumb contracture	0053	11.32	$561.42	$253.49	$112.28
26510	T	Thumb tendon transfer	0054	19.66	$975.06	$472.33	$195.01
26516	T	Fusion of knuckle joint	0054	19.66	$975.06	$472.33	$195.01
26517	T	Fusion of knuckle joints	0054	19.66	$975.06	$472.33	$195.01
26518	T	Fusion of knuckle joints	0054	19.66	$975.06	$472.33	$195.01
26520	T	Release knuckle contracture	0053	11.32	$561.42	$253.49	$112.28
26525	T	Release finger contracture	0053	11.32	$561.42	$253.49	$112.28
26530	T	Revise knuckle joint	0047	22.09	$1,095.58	$537.03	$219.12
26531	T	Revise knuckle with implant	0048	29.06	$1,441.26	$725.94	$288.25
26535	T	Revise finger joint	0047	22.09	$1,095.58	$537.03	$219.12
26536	T	Revise/implant finger joint	0048	29.06	$1,441.26	$725.94	$288.25
26540	T	Repair hand joint	0053	11.32	$561.42	$253.49	$112.28
26541	T	Repair hand joint with graft	0054	19.66	$975.06	$472.33	$195.01
26542	T	Repair hand joint with graft	0053	11.32	$561.42	$253.49	$112.28
26545	T	Reconstruct finger joint	0054	19.66	$975.06	$472.33	$195.01
26546	T	Repair nonunion hand	0054	19.66	$975.06	$472.33	$195.01
26548	T	Reconstruct finger joint	0054	19.66	$975.06	$472.33	$195.01
26550	T	Construct thumb replacement	0054	19.66	$975.06	$472.33	$195.01
26551	C	Great toe-hand transfer					
26553	C	Single transfer, toe-hand					
26554	C	Double transfer, toe-hand					
26555	T	Positional change of finger	0054	19.66	$975.06	$472.33	$195.01
26556	C	Toe joint transfer					
26560	T	Repair of web finger	0053	11.32	$561.42	$253.49	$112.28
26561	T	Repair of web finger	0054	19.66	$975.06	$472.33	$195.01
26562	T	Repair of web finger	0054	19.66	$975.06	$472.33	$195.01
26565	T	Correct metacarpal flaw	0054	19.66	$975.06	$472.33	$195.01
26567	T	Correct finger deformity	0054	19.66	$975.06	$472.33	$195.01
26568	T	Lengthen metacarpal/finger	0054	19.66	$975.06	$472.33	$195.01
26580	T	Repair hand deformity	0054	19.66	$975.06	$472.33	$195.01

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
26585	T	Repair finger deformity	0054	19.66	$975.06	$472.33	$195.01
26587	T	Reconstruct extra finger	0053	11.32	$561.42	$253.49	$112.28
26590	T	Repair finger deformity	0054	19.66	$975.06	$472.33	$195.01
26591	T	Repair muscles of hand	0054	19.66	$975.06	$472.33	$195.01
26593	T	Release muscles of hand	0053	11.32	$561.42	$253.49	$112.28
26596	T	Excision constricting tissue	0054	19.66	$975.06	$472.33	$195.01
26597	T	Release of scar contracture	0054	19.66	$975.06	$472.33	$195.01
26600	T	Treat metacarpal fracture	0044	2.17	$107.63	$38.06	$21.53
26605	T	Treat metacarpal fracture	0044	2.17	$107.63	$38.06	$21.53
26607	T	Treat metacarpal fracture	0044	2.17	$107.63	$38.06	$21.53
26608	T	Treat metacarpal fracture	0046	22.29	$1,105.50	$535.76	$221.10
26615	T	Treat metacarpal fracture	0046	22.29	$1,105.50	$535.76	$221.10
26641	T	Treat thumb dislocation	0044	2.17	$107.63	$38.06	$21.53
26645	T	Treat thumb fracture	0044	2.17	$107.63	$38.06	$21.53
26650	T	Treat thumb fracture	0046	22.29	$1,105.50	$535.76	$221.10
26665	T	Treat thumb fracture	0046	22.29	$1,105.50	$535.76	$221.10
26670	T	Treat hand dislocation	0044	2.17	$107.63	$38.06	$21.53
26675	T	Treat hand dislocation	0045	11.02	$546.55	$277.12	$109.31
26676	T	Pin hand dislocation	0046	22.29	$1,105.50	$535.76	$221.10
26685	T	Treat hand dislocation	0046	22.29	$1,105.50	$535.76	$221.10
26686	T	Treat hand dislocation	0046	22.29	$1,105.50	$535.76	$221.10
26700	T	Treat knuckle dislocation	0043	1.64	$81.34	$25.46	$16.27
26705	T	Treat knuckle dislocation	0045	11.02	$546.55	$277.12	$109.31
26706	T	Pin knuckle dislocation	0044	2.17	$107.63	$38.06	$21.53
26715	T	Treat knuckle dislocation	0046	22.29	$1,105.50	$535.76	$221.10
26720	T	Treat finger fracture, each	0043	1.64	$81.34	$25.46	$16.27
26725	T	Treat finger fracture, each	0043	1.64	$81.34	$25.46	$16.27
26727	T	Treat finger fracture, each	0046	22.29	$1,105.50	$535.76	$221.10
26735	T	Treat finger fracture, each	0046	22.29	$1,105.50	$535.76	$221.10
26740	T	Treat finger fracture, each	0043	1.64	$81.34	$25.46	$16.27
26742	T	Treat finger fracture, each	0044	2.17	$107.63	$38.06	$21.53
26746	T	Treat finger fracture, each	0046	22.29	$1,105.50	$535.76	$221.10
26750	T	Treat finger fracture, each	0043	1.64	$81.34	$25.46	$16.27
26755	T	Treat finger fracture, each	0043	1.64	$81.34	$25.46	$16.27
26756	T	Pin finger fracture, each	0046	22.29	$1,105.50	$535.76	$221.10
26765	T	Treat finger fracture, each	0046	22.29	$1,105.50	$535.76	$221.10
26770	T	Treat finger dislocation	0043	1.64	$81.34	$25.46	$16.27
26775	T	Treat finger dislocation	0045	11.02	$546.55	$277.12	$109.31
26776	T	Pin finger dislocation	0046	22.29	$1,105.50	$535.76	$221.10
26785	T	Treat finger dislocation	0046	22.29	$1,105.50	$535.76	$221.10
26820	T	Thumb fusion with graft	0054	19.66	$975.06	$472.33	$195.01
26841	T	Fusion of thumb	0054	19.66	$975.06	$472.33	$195.01
26842	T	Thumb fusion with graft	0054	19.66	$975.06	$472.33	$195.01
26843	T	Fusion of hand joint	0054	19.66	$975.06	$472.33	$195.01
26844	T	Fusion/graft of hand joint	0054	19.66	$975.06	$472.33	$195.01
26850	T	Fusion of knuckle	0054	19.66	$975.06	$472.33	$195.01
26852	T	Fusion of knuckle with graft	0054	19.66	$975.06	$472.33	$195.01
26860	T	Fusion of finger joint	0054	19.66	$975.06	$472.33	$195.01
26861	T	Fusion of finger jnt, add-on	0054	19.66	$975.06	$472.33	$195.01
26862	T	Fusion/graft of finger joint	0054	19.66	$975.06	$472.33	$195.01
26863	T	Fuse/graft added joint	0054	19.66	$975.06	$472.33	$195.01
26910	T	Amputate metacarpal bone	0054	19.66	$975.06	$472.33	$195.01
26951	T	Amputation of finger/thumb	0053	11.32	$561.42	$253.49	$112.28
26952	T	Amputation of finger/thumb	0053	11.32	$561.42	$253.49	$112.28
26989	T	Hand/finger surgery	0043	1.64	$81.34	$25.46	$16.27
26990	T	Drainage of pelvis lesion	0049	15.04	$745.93	$356.95	$149.19
26991	T	Drainage of pelvis bursa	0049	15.04	$745.93	$356.95	$149.19
26992	C	Drainage of bone lesion					
27000	T	Incision of hip tendon	0049	15.04	$745.93	$356.95	$149.19
27001	T	Incision of hip tendon	0050	21.13	$1,047.96	$513.86	$209.59
27003	T	Incision of hip tendon	0050	21.13	$1,047.96	$513.86	$209.59
27005	C	Incision of hip tendon					
27006	C	Incision of hip tendons					
27025	C	Incision of hip/thigh fascia					
27030	C	Drainage of hip joint					
27033	T	Exploration of hip joint	0051	27.76	$1,376.79	$675.24	$275.36
27035	C	Denervation of hip joint					
27036	C	Excision of hip joint/muscle					
27040	T	Biopsy of soft tissues	0021	10.49	$520.26	$236.51	$104.05
27041	T	Biopsy of soft tissues	0022	12.49	$619.45	$292.94	$123.89
27047	T	Remove hip/pelvis lesion	0022	12.49	$619.45	$292.94	$123.89
27048	T	Remove hip/pelvis lesion	0022	12.49	$619.45	$292.94	$123.89
27049	T	Remove tumor, hip/pelvis	0022	12.49	$619.45	$292.94	$123.89
27050	T	Biopsy of sacroiliac joint	0049	15.04	$745.93	$356.95	$149.19

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
27052	T	Biopsy of hip joint	0049	15.04	$745.93	$356.95	$149.19
27054	C	Removal of hip joint lining					
27060	T	Removal of ischial bursa	0049	15.04	$745.93	$356.95	$149.19
27062	T	Remove femur lesion/bursa	0049	15.04	$745.93	$356.95	$149.19
27065	T	Removal of hip bone lesion	0049	15.04	$745.93	$356.95	$149.19
27066	T	Removal of hip bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
27067	T	Remove/graft hip bone lesion	0050	21.13	$1,047.96	$513.86	$209.59
27070	C	Partial removal of hip bone					
27071	C	Partial removal of hip bone					
27075	C	Extensive hip surgery					
27076	C	Extensive hip surgery					
27077	C	Extensive hip surgery					
27078	C	Extensive hip surgery					
27079	C	Extensive hip surgery					
27080	T	Removal of tail bone	0050	21.13	$1,047.96	$513.86	$209.59
27086	T	Remove hip foreign body	0019	4.00	$198.39	$78.91	$39.68
27087	T	Remove hip foreign body	0049	15.04	$745.93	$356.95	$149.19
27090	C	Removal of hip prosthesis					
27091	C	Removal of hip prosthesis					
27093	N	Injection for hip x-ray					
27095	N	Injection for hip x-ray					
27096	N	Inject sacroiliac joint					
27097	T	Revision of hip tendon	0050	21.13	$1,047.96	$513.86	$209.59
27098	T	Transfer tendon to pelvis	0050	21.13	$1,047.96	$513.86	$209.59
27100	T	Transfer of abdominal muscle	0051	27.76	$1,376.79	$675.24	$275.36
27105	T	Transfer of spinal muscle	0051	27.76	$1,376.79	$675.24	$275.36
27110	T	Transfer of iliopsoas muscle	0051	27.76	$1,376.79	$675.24	$275.36
27111	T	Transfer of iliopsoas muscle	0051	27.76	$1,376.79	$675.24	$275.36
27120	C	Reconstruction of hip socket					
27122	C	Reconstruction of hip socket					
27125	C	Partial hip replacement					
27130	C	Total hip replacement					
27132	C	Total hip replacement					
27134	C	Revise hip joint replacement					
27137	C	Revise hip joint replacement					
27138	C	Revise hip joint replacement					
27140	C	Transplant femur ridge					
27146	C	Incision of hip bone					
27147	C	Revision of hip bone					
27151	C	Incision of hip bones					
27156	C	Revision of hip bones					
27158	C	Revision of pelvis					
27161	C	Incision of neck of femur					
27165	C	Incision/fixation of femur					
27170	C	Repair/graft femur head/neck					
27175	C	Treat slipped epiphysis					
27176	C	Treat slipped epiphysis					
27177	C	Treat slipped epiphysis					
27178	C	Treat slipped epiphysis					
27179	C	Revise head/neck of femur					
27181	C	Treat slipped epiphysis					
27185	C	Revision of femur epiphysis					
27187	C	Reinforce hip bones					
27193	T	Treat pelvic ring fracture	0044	2.17	$107.63	$38.08	$21.53
27194	T	Treat pelvic ring fracture	0045	11.02	$546.55	$277.12	$109.31
27200	T	Treat tail bone fracture	0043	1.64	$81.34	$25.46	$16.27
27202	T	Treat tail bone fracture	0046	22.29	$1,105.50	$535.76	$221.10
27215	C	Treat pelvic fracture(s)					
27216	C	Treat pelvic ring fracture					
27217	C	Treat pelvic ring fracture					
27218	C	Treat pelvic ring fracture					
27220	T	Treat hip socket fracture	0044	2.17	$107.63	$38.08	$21.53
27222	C	Treat hip socket fracture					
27226	C	Treat hip wall fracture					
27227	C	Treat hip fracture(s)					
27228	C	Treat hip fracture(s)					
27230	T	Treat thigh fracture	0044	2.17	$107.63	$38.08	$21.53
27232	C	Treat thigh fracture					
27235	C	Treat thigh fracture					
27236	C	Treat thigh fracture					
27238	T	Treat thigh fracture	0044	2.17	$107.63	$38.08	$21.53
27240	C	Treat thigh fracture					
27244	C	Treat thigh fracture					
27245	C	Treat thigh fracture					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
27246	T	Treat thigh fracture	0044	2.17	$107.63	$38.08	$21.53
27248	C	Treat thigh fracture					
27250	T	Treat hip dislocation	0044	2.17	$107.63	$38.08	$21.53
27252	T	Treat hip dislocation	0045	11.02	$546.55	$277.12	$109.31
27253	C	Treat hip dislocation					
27254	C	Treat hip dislocation					
27256	T	Treat hip dislocation	0044	2.17	$107.63	$38.08	$21.53
27257	T	Treat hip dislocation	0045	11.02	$546.55	$277.12	$109.31
27258	C	Treat hip dislocation					
27259	C	Treat hip dislocation					
27265	T	Treat hip dislocation	0044	2.17	$107.63	$38.08	$21.53
27266	T	Treat hip dislocation	0047	22.09	$1,095.58	$537.03	$219.12
27275	T	Manipulation of hip joint	0045	11.02	$546.55	$277.12	$109.31

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Addendum C—[Reserved]

ADDENDUM D.—STATUS INDICATORS: HOW VARIOUS SERVICES ARE TREATED UNDER THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

Indicator	Service	Status
A	Pulmonary Rehabilitation Clinical Trial	Not Paid Under Ourpatient PPS.
C	Inpatient Procedures	Admit Patient; Bill as Inpatient.
A	Durable Medical Equipment, Prosthetics and Orthotics	DMEPOS Fee Schedule.
E	Non-Covered Items and Services	Not Paid Under Outpatient PPS.
A	Physical, Occupational and Speech Therapy	Rehabilitation Fee Schedule.
A	Ambulance	Ambulance Fee Schedule.
A	EPO for ESRD Patients	National Rate.
A	Clinical Diagnostic Laboratory Services	Laboratory Fee Schedule.
A	Physician Services for ESRD Patients	Not Paid Under Outpatient PPS.
A	Screening Mammography	Lower of Charges or National Rate.
N	Incidental Services, packaged into APC Rate	Packaged.
P	Partial Hospitalization	Paid Per Diem APC.
S	Significant Procedure, Not Discounted When Multiple	Paid Under Outpatient PPS.
T	Significant Procedure, Multiple Procedure Reduction Applies	Paid Under Outpatient PPS.
V	Visit to Clinic or Emergency Department	Paid Under Outpatient PPS.
X	Ancillary Service	Paid Under Outpatient PPS.
F	Acquisition of Corneal Tissue	Paid at Reasonable Cost.
G	Current Drug/Biological Pass-Through	Additional Payment.
H	Device Pass-Through	Additional Payment.
J	New Drug/Biological Pass-Through	Additional Payment.
K	Non Pass-Through Drug/Biological	Paid Under Outpatient PPS.

ADDENDUM E.—CPT CODES WHICH WILL BE PAID ONLY AS INPATIENT PROCEDURES

[Calendar Year 2001]

CPT/ HCPCS	HOPD status indicator	Description
15756	C	Free muscle flap, microvasc
15757	C	Free skin flap, microvasc
15758	C	Free fascial flap, microvasc
16035	C	Incision of burn scab
*16036	C	Incision of burn scab
19200	C	Removal of breast
19220	C	Removal of breast
19271	C	Revision of chest wall
19272	C	Extensive chest wall surgery
19361	C	Breast reconstruction
19364	C	Breast reconstruction
19367	C	Breast reconstruction
19368	C	Breast reconstruction
19369	C	Breast reconstruction
20660	C	Apply, remove fixation device
20661	C	Application of head brace
20662	C	Application of pelvis brace

ADDENDUM E.—CPT CODES WHICH WILL BE PAID ONLY AS INPATIENT PROCEDURES—Continued

[Calendar Year 2001]

CPT/ HCPCS	HOPD status indicator	Description
20663	C	Application of thigh brace
20664	C	Halo brace application
20802	C	Replantation, arm, complete
20805	C	Replant, forearm, complete
20808	C	Replantation hand, complete
20816	C	Replantation digit, complete
20822	C	Replantation digit, complete
20824	C	Replantation thumb, complete
20827	C	Replantation thumb, complete
20838	C	Replantation foot, complete
20930	C	Spinal bone allograft
20931	C	Spinal bone allograft
20936	C	Spinal bone autograft
20937	C	Spinal bone autograft
20938	C	Spinal bone autograft

ADDENDUM E.—CPT CODES WHICH WILL BE PAID ONLY AS INPATIENT PROCEDURES—Continued

[Calendar Year 2001]

CPT/ HCPCS	HOPD status indicator	Description
20955	C	Fibula bone graft, microvasc
20956	C	Iliac bone graft, microvasc
20957	C	Mt bone graft, microvasc
20962	C	Other bone graft, microvasc
20969	C	Bone/skin graft, microvasc
20970	C	Bone/skin graft, iliac crest
20972	C	Bone/skin graft, metatarsal
20973	C	Bone/skin graft, great toe
21045	C	Extensive jaw surgery
21141	C	Reconstruct midface, lefort
21142	C	Reconstruct midface, lefort
21143	C	Reconstruct midface, lefort
21145	C	Reconstruct midface, lefort
21146	C	Reconstruct midface, lefort
21147	C	Reconstruct midface, lefort

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ADDENDUM E.—CPT CODES WHICH WILL BE PAID ONLY AS INPATIENT PROCEDURES—Continued

[Calendar Year 2001]

CPT/ HCPCS	HOPD status indicator	Description
21150	C	Reconstruct midface, lefort
21151	C	Reconstruct midface, lefort
21154	C	Reconstruct midface, lefort
21155	C	Reconstruct midface, lefort
21159	C	Reconstruct midface, lefort
21160	C	Reconstruct midface, lefort
21172	C	Reconstruct orbit/forehead
21175	C	Reconstruct orbit/forehead
21179	C	Reconstruct entire forehead
21180	C	Reconstruct entire forehead
21182	C	Reconstruct cranial bone
21183	C	Reconstruct cranial bone
21184	C	Reconstruct cranial bone
21188	C	Reconstruction of midface
21193	C	Reconstruct lower jaw bone
21194	C	Reconstruct lower jaw bone
21195	C	Reconstruct lower jaw bone
21196	C	Reconstruct lower jaw bone
21247	C	Reconstruct lower jaw bone
21255	C	Reconstruct lower jaw bone
21256	C	Reconstruction of orbit
21268	C	Revise eye sockets
21343	C	Treatment of sinus fracture
21344	C	Treatment of sinus fracture
21346	C	Treat nose/jaw fracture
21347	C	Treat nose/jaw fracture
21348	C	Treat nose/jaw fracture
21356	C	Treat cheek bone fracture
21360	C	Treat cheek bone fracture
21365	C	Treat cheek bone fracture
21366	C	Treat cheek bone fracture
21385	C	Treat eye socket fracture
21386	C	Treat eye socket fracture
21387	C	Treat eye socket fracture
21390	C	Treat eye socket fracture
21395	C	Treat eye socket fracture
21408	C	Treat eye socket fracture
21422	C	Treat mouth roof fracture
21423	C	Treat mouth roof fracture
21431	C	Treat craniofacial fracture
21432	C	Treat craniofacial fracture
21433	C	Treat craniofacial fracture
21435	C	Treat craniofacial fracture
21436	C	Treat craniofacial fracture
21495	C	Treat hyoid bone fracture
21510	C	Drainage of bone lesion
21557	C	Remove tumor, neck/chest
21615	C	Removal of rib
21616	C	Removal of rib and nerves
21620	C	Partial removal of sternum
21627	C	Sternal debridement
21630	C	Extensive sternum surgery
21632	C	Extensive sternum surgery
21705	C	Revision of neck muscle/rib
21740	C	Reconstruction of sternum
21750	C	Repair of sternum separation
21810	C	Treatment of rib fracture(s)
21825	C	Treat sternum fracture
22100	C	Remove part of neck vertebra
22101	C	Remove part, thorax vertebra
22102	C	Remove part, lumbar vertebra
22103	C	Remove extra spine segment
22110	C	Remove part of neck vertebra
22112	C	Remove part, thorax vertebra
22114	C	Remove part, lumbar vertebra
22116	C	Remove extra spine segment
22210	C	Revision of neck spine
22212	C	Revision of thorax spine
22214	C	Revision of lumbar spine
22216	C	Revise, extra spine segment
22220	C	Revision of neck spine
22222	C	Revision of thorax spine
22224	C	Revision of lumbar spine
22226	C	Revise, extra spine segment
22318	C	Treat odontoid fx w/o graft
22319	C	Treat odontoid fx w/graft
22325	C	Treat spine fracture
22326	C	Treat neck spine fracture
22327	C	Treat thorax spine fracture
22328	C	Treat each add spine fx
22548	C	Neck spine fusion
22554	C	Neck spine fusion
22556	C	Thorax spine fusion
22558	C	Lumbar spine fusion
22585	C	Additional spinal fusion
22590	C	Spine & skull spinal fusion
22595	C	Neck spinal fusion
22600	C	Neck spine fusion
22610	C	Thorax spine fusion
22612	C	Lumbar spine fusion
22614	C	Spine fusion, extra segment
22630	C	Lumbar spine fusion
22632	C	Spine fusion, extra segment
22800	C	Fusion of spine
22802	C	Fusion of spine
22804	C	Fusion of spine
22808	C	Fusion of spine
22810	C	Fusion of spine
22812	C	Fusion of spine
22818	C	Kyphectomy, 1-2 segments
22819	C	Kyphectomy, 3 or more
22830	C	Exploration of spinal fusion
22840	C	Insert spine fixation device
22841	C	Insert spine fixation device
22842	C	Insert spine fixation device
22843	C	Insert spine fixation device
22844	C	Insert spine fixation device
22845	C	Insert spine fixation device
22846	C	Insert spine fixation device
22847	C	Insert spine fixation device
22848	C	Insert pelv fixation device
22849	C	Reinsert spinal fixation
22850	C	Remove spine fixation device
22851	C	Apply spine prosth device
22852	C	Remove spine fixation device
22855	C	Remove spine fixation device
23035	C	Drain shoulder bone lesion
23125	C	Removal of collar bone
23195	C	Removal of head of humerus
23200	C	Removal of collar bone
23210	C	Removal of shoulder blade
23220	C	Partial removal of humerus
23221	C	Partial removal of humerus
23222	C	Partial removal of humerus
23332	C	Remove shoulder foreign body
23395	C	Muscle transfer, shoulder/arm
23397	C	Muscle transfers
23400	C	Fixation of shoulder blade
23440	C	Remove/transplant tendon
23470	C	Reconstruct shoulder joint
23472	C	Reconstruct shoulder joint
23900	C	Amputation of arm & girdle
23920	C	Amputation at shoulder joint
24149	C	Radical resection of elbow
24150	C	Extensive humerus surgery
24151	C	Extensive humerus surgery
24152	C	Extensive radius surgery
24153	C	Extensive radius surgery
24900	C	Amputation of upper arm
24920	C	Amputation of upper arm
24930	C	Amputation follow-up surgery
24931	C	Amputate upper arm & implant
24940	C	Revision of upper arm
25170	C	Extensive forearm surgery
25390	C	Shorten radius or ulna
25391	C	Lengthen radius or ulna
25392	C	Shorten radius & ulna
25393	C	Lengthen radius & ulna.
25420	C	Repair/graft radius & ulna
25900	C	Amputation of forearm
25905	C	Amputation of forearm
25909	C	Amputation follow-up surgery
25915	C	Amputation of forearm
25920	C	Amputate hand at wrist
25924	C	Amputation follow-up surgery
25927	C	Amputation of hand
25931	C	Amputation follow-up surgery
26551	C	Great toe-hand transfer
26553	C	Single transfer, toe-hand
26554	C	Double transfer, toe-hand
26556	C	Toe joint transfer
26992	C	Drainage of bone lesion
27005	C	Incision of hip tendon
27006	C	Incision of hip tendons
27025	C	Incision of hip/thigh fascia
27030	C	Drainage of hip joint
27035	C	Denervation of hip joint
27036	C	Excision of hip joint/muscle
27054	C	Removal of hip joint lining
27070	C	Partial removal of hip bone
27071	C	Partial removal of hip bone
27075	C	Extensive hip surgery
27076	C	Extensive hip surgery
27077	C	Extensive hip surgery
27078	C	Extensive hip surgery
27079	C	Extensive hip surgery
27090	C	Removal of hip prosthesis
27091	C	Removal of hip prosthesis
27120	C	Reconstruction of hip socket
27122	C	Reconstruction of hip socket
27125	C	Partial hip replacement
27130	C	Total hip replacement
27132	C	Total hip replacement
27134	C	Revise hip joint replacement
27137	C	Revise hip joint replacement
27138	C	Revise hip joint replacement
27140	C	Transplant femur ridge
27146	C	Incision of hip bone
27147	C	Revision of hip bone
27151	C	Incision of hip bones
27156	C	Revision of hip bones
27158	C	Revision of pelvis
27161	C	Incision of neck of femur
27165	C	Incision/fixation of femur
27170	C	Repair/graft femur head/neck
27175	C	Treat slipped epiphysis
27176	C	Treat slipped epiphysis
27177	C	Treat slipped epiphysis
27178	C	Treat slipped epiphysis
27179	C	Revise head/neck of femur
27181	C	Treat slipped epiphysis
27185	C	Revision of femur epiphysis
27187	C	Reinforce hip bones
27215	C	Treat pelvic fracture(s)
27216	C	Treat pelvic ring fracture
27217	C	Treat pelvic ring fracture
27218	C	Treat pelvic ring fracture
27222	C	Treat hip socket fracture
27226	C	Treat hip wall fracture
27227	C	Treat hip fracture(s)
27228	C	Treat hip fracture(s)
27232	C	Treat thigh fracture
27235	C	Treat thigh fracture

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ADDENDUM E.—CPT CODES WHICH WILL BE PAID ONLY AS INPATIENT PROCEDURES—Continued

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CPT/ HCPCS	HOPD status indicator	Description
27236	C	Treat thigh fracture
27240	C	Treat thigh fracture
27244	C	Treat thigh fracture
27245	C	Treat thigh fracture
27248	C	Treat thigh fracture
27253	C	Treat hip dislocation
27254	C	Treat hip dislocation
27258	C	Treat hip dislocation
27259	C	Treat hip dislocation
27280	C	Fusion of sacroiliac joint
27282	C	Fusion of pubic bones
27284	C	Fusion of hip joint
27286	C	Fusion of hip joint
27290	C	Amputation of leg at hip
27295	C	Amputation of leg at hip
27303	C	Drainage of bone lesion
27365	C	Extensive leg surgery
27445	C	Revision of knee joint
27446	C	Revision of knee joint
27447	C	Total knee replacement
27448	C	Incision of thigh
27450	C	Incision of thigh
27454	C	Realignment of thigh bone
27455	C	Realignment of knee
27457	C	Realignment of knee
27465	C	Shortening of thigh bone
27466	C	Lengthening of thigh bone
27468	C	Shorten/lengthen thighs
27470	C	Repair of thigh
27472	C	Repair/graft of thigh
27475	C	Surgery to stop leg growth
27477	C	Surgery to stop leg growth
27479	C	Surgery to stop leg growth
27485	C	Surgery to stop leg growth
27486	C	Revise/replace knee joint
27487	C	Revise/replace knee joint
27488	C	Removal of knee prosthesis
27495	C	Reinforce thigh
27506	C	Treatment of thigh fracture
27507	C	Treatment of thigh fracture
27511	C	Treatment of thigh fracture
27513	C	Treatment of thigh fracture
27514	C	Treatment of thigh fracture
27519	C	Treat thigh fx growth plate
27535	C	Treat knee fracture
27536	C	Treat knee fracture
27540	C	Treat knee fracture
27556	C	Treat knee dislocation
27557	C	Treat knee dislocation
27558	C	Treat knee dislocation
27580	C	Fusion of knee
27590	C	Amputate leg at thigh
27591	C	Amputate leg at thigh
27592	C	Amputate leg at thigh
27596	C	Amputation follow-up surgery
27598	C	Amputate lower leg at knee
27645	C	Extensive lower leg surgery
27646	C	Extensive lower leg surgery
27702	C	Reconstruct ankle joint
27703	C	Reconstruction, ankle joint
27712	C	Realignment of lower leg
27715	C	Revision of lower leg
27720	C	Repair of tibia
27722	C	Repair/graft of tibia
27724	C	Repair/graft of tibia
27725	C	Repair of lower leg
27727	C	Repair of lower leg
27880	C	Amputation of lower leg
27881	C	Amputation of lower leg
27882	C	Amputation of lower leg
27886	C	Amputation follow-up surgery
27888	C	Amputation of foot at ankle
28800	C	Amputation of midfoot
28805	C	Amputation thru metatarsal
31225	C	Removal of upper jaw
31230	C	Removal of upper jaw
31290	C	Nasal/sinus endoscopy, surg
31291	C	Nasal/sinus endoscopy, surg
31292	C	Nasal/sinus endoscopy, surg
31293	C	Nasal/sinus endoscopy, surg
31294	C	Nasal/sinus endoscopy, surg
31360	C	Removal of larynx
31365	C	Removal of larynx
31367	C	Partial removal of larynx
31368	C	Partial removal of larynx
31370	C	Partial removal of larynx
31375	C	Partial removal of larynx
31380	C	Partial removal of larynx
31382	C	Partial removal of larynx
31390	C	Removal of larynx & pharynx
31395	C	Reconstruct larynx & pharynx
31582	C	Revision of larynx
31584	C	Treat larynx fracture
31587	C	Revision of larynx
31725	C	Clearance of airways
31760	C	Repair of windpipe
31766	C	Reconstruction of windpipe
31770	C	Repair/graft of bronchus
31775	C	Reconstruct bronchus
31780	C	Reconstruct windpipe
31781	C	Reconstruct windpipe
31785	C	Remove windpipe lesion
31786	C	Remove windpipe lesion
31800	C	Repair of windpipe injury
31805	C	Repair of windpipe injury
32035	C	Exploration of chest
32036	C	Exploration of chest
32095	C	Biopsy through chest wall
32100	C	Exploration/biopsy of chest
32110	C	Explore/repair chest
32120	C	Re-exploration of chest
32124	C	Explore chest free adhesions
32140	C	Removal of lung lesion(s)
32141	C	Remove/treat lung lesions
32150	C	Removal of lung lesion(s)
32151	C	Remove lung foreign body
32160	C	Open chest heart massage
32200	C	Drain, open, lung lesion
32201	C	Drain, percut, lung lesion
32215	C	Treat chest lining
32220	C	Release of lung
32225	C	Partial release of lung
32310	C	Removal of chest lining
32320	C	Free/remove chest lining
32402	C	Open biopsy chest lining
32440	C	Removal of lung
32442	C	Sleeve pneumonectomy
32445	C	Removal of lung
32480	C	Partial removal of lung
32482	C	Bilobectomy
32484	C	Segmentectomy
32486	C	Sleeve lobectomy
32488	C	Completion pneumonectomy
32491	C	Lung volume reduction
32500	C	Partial removal of lung
32501	C	Repair bronchus add-on
32520	C	Remove lung & revise chest
32522	C	Remove lung & revise chest
32525	C	Remove lung & revise chest
32540	C	Removal of lung lesion
32650	C	Thoracoscopy, surgical
32651	C	Thoracoscopy, surgical
32652	C	Thoracoscopy, surgical
32653	C	Thoracoscopy, surgical
32654	C	Thoracoscopy, surgical
32655	C	Thoracoscopy, surgical
32656	C	Thoracoscopy, surgical
32657	C	Thoracoscopy, surgical
32658	C	Thoracoscopy, surgical
32659	C	Thoracoscopy, surgical
32660	C	Thoracoscopy, surgical
32661	C	Thoracoscopy, surgical
32662	C	Thoracoscopy, surgical
32663	C	Thoracoscopy, surgical
32664	C	Thoracoscopy, surgical
32665	C	Thoracoscopy, surgical
32800	C	Repair lung hernia
32810	C	Close chest after drainage
32815	C	Close bronchial fistula
32820	C	Reconstruct injured chest
32850	C	Donor pneumonectomy
32851	C	Lung transplant, single
32852	C	Lung transplant with bypass
32853	C	Lung transplant, double
32854	C	Lung transplant with bypass
32900	C	Removal of rib(s)
32905	C	Revise & repair chest wall
32906	C	Revise & repair chest wall
32940	C	Revision of lung
32997	C	Total lung lavage
33015	C	Incision of heart sac
33020	C	Incision of heart sac
33025	C	Incision of heart sac
33030	C	Partial removal of heart sac
33031	C	Partial removal of heart sac
33050	C	Removal of heart sac lesion
33120	C	Removal of heart lesion
33130	C	Removal of heart lesion
33140	C	Heart revascularize (tmr)
*33141	C	Heart revascularize (tmr)
33200	C	Insertion of heart pacemaker
33201	C	Insertion of heart pacemaker
33236	C	Remove electrode/ thoracotomy
33237	C	Remove electrode/ thoracotomy
33238	C	Remove electrode/ thoracotomy
33243	C	Remove eltrd/thoracotomy
33245	C	Insert epic eltrd pace-defib
33246	C	Insert epic eltrd/generator
33250	C	Ablate heart dysrhythm focus
33251	C	Ablate heart dysrhythm focus
33253	C	Reconstruct atria
33261	C	Ablate heart dysrhythm focus
33300	C	Repair of heart wound
33305	C	Repair of heart wound
33310	C	Exploratory heart surgery
33315	C	Exploratory heart surgery
33320	C	Repair major blood vessel(s)
33321	C	Repair major vessel
33322	C	Repair major blood vessel(s)
33330	C	Insert major vessel graft
33332	C	Insert major vessel graft
33335	C	Insert major vessel graft
33400	C	Repair of aortic valve
33401	C	Valvuloplasty, open
33403	C	Valvuloplasty, w/cp bypass
33404	C	Prepare heart-aorta conduit
33405	C	Replacement of aortic valve
33406	C	Replacement of aortic valve
33410	C	Replacement of aortic valve
33411	C	Replacement of aortic valve

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ADDENDUM E.—CPT CODES WHICH WILL BE PAID ONLY AS INPATIENT PROCEDURES—Continued

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CPT/ HCPCS	HOPD status indicator	Description
33412	C	Replacement of aortic valve
33413	C	Replacement of aortic valve
33414	C	Repair of aortic valve
33415	C	Revision, subvalvular tissue
33416	C	Revise ventricle muscle
33417	C	Repair of aortic valve
33420	C	Revision of mitral valve
33422	C	Revision of mitral valve
33425	C	Repair of mitral valve
33426	C	Repair of mitral valve
33427	C	Repair of mitral valve
33430	C	Replacement of mitral valve
33460	C	Revision of tricuspid valve
33463	C	Valvuloplasty, tricuspid
33464	C	Valvuloplasty, tricuspid
33465	C	Replace tricuspid valve
33468	C	Revision of tricuspid valve
33470	C	Revision of pulmonary valve
33471	C	Valvotomy, pulmonary valve
33472	C	Revision of pulmonary valve
33474	C	Revision of pulmonary valve
33475	C	Replacement, pulmonary valve
33476	C	Revision of heart chamber
33478	C	Revision of heart chamber
33496	C	Repair, prosth valve clot
33500	C	Repair heart vessel fistula
33501	C	Repair heart vessel fistula
33502	C	Coronary artery correction
33503	C	Coronary artery graft
33504	C	Coronary artery graft
33505	C	Repair artery w/tunnel
33506	C	Repair artery, translocation
33510	C	CABG, vein, single
33511	C	CABG, vein, two
33512	C	CABG, vein, three
33513	C	CABG, vein, four
33514	C	CABG, vein, five
33516	C	Cabg, vein, six or more
33517	C	CABG, artery-vein, single
33518	C	CABG, artery-vein, two
33519	C	CABG, artery-vein, three
33521	C	CABG, artery-vein, four
33522	C	CABG, artery-vein, five
33523	C	Cabg, art-vein, six or more
33530	C	Coronary artery, bypass/reop
33533	C	CABG, arterial, single
33534	C	CABG, arterial, two
33535	C	CABG, arterial, three
33536	C	Cabg, arterial, four or more
33542	C	Removal of heart lesion
33545	C	Repair of heart damage
33572	C	Open coronary endarterectomy
33600	C	Closure of valve
33602	C	Closure of valve
33606	C	Anastomosis/artery-aorta
33608	C	Repair anomaly w/conduit
33610	C	Repair by enlargement
33611	C	Repair double ventricle
33612	C	Repair double ventricle
33615	C	Repair, simple fontan
33617	C	Repair, modified fontan
33619	C	Repair single ventricle
33641	C	Repair heart septum defect
33645	C	Revision of heart veins
33647	C	Repair heart septum defects
33660	C	Repair of heart defects
33665	C	Repair of heart defects
33670	C	Repair of heart chambers
33681	C	Repair heart septum defect

ADDENDUM E.—CPT CODES WHICH WILL BE PAID ONLY AS INPATIENT PROCEDURES—Continued

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CPT/ HCPCS	HOPD status indicator	Description
33684	C	Repair heart septum defect
33688	C	Repair heart septum defect
33690	C	Reinforce pulmonary artery
33692	C	Repair of heart defects
33694	C	Repair of heart defects
33697	C	Repair of heart defects
33702	C	Repair of heart defects
33710	C	Repair of heart defects
33720	C	Repair of heart defect
33722	C	Repair of heart defect
33730	C	Repair heart-vein defect(s)
33732	C	Repair heart-vein defect
33735	C	Revision of heart chamber
33736	C	Revision of heart chamber
33737	C	Revision of heart chamber
33750	C	Major vessel shunt
33755	C	Major vessel shunt
33762	C	Major vessel shunt
33764	C	Major vessel shunt & graft
33766	C	Major vessel shunt
33767	C	Major vessel shunt
33770	C	Repair great vessels defect
33771	C	Repair great vessels defect
33774	C	Repair great vessels defect
33775	C	Repair great vessels defect
33776	C	Repair great vessels defect
33777	C	Repair great vessels defect
33778	C	Repair great vessels defect
33779	C	Repair great vessels defect
33780	C	Repair great vessels defect
33781	C	Repair great vessels defect
33786	C	Repair arterial trunk
33788	C	Revision of pulmonary artery
33800	C	Aortic suspension
33802	C	Repair vessel defect
33803	C	Repair vessel defect
33813	C	Repair septal defect
33814	C	Repair septal defect
33820	C	Revise major vessel
33822	C	Revise major vessel
33824	C	Revise major vessel
33840	C	Remove aorta constriction
33845	C	Remove aorta constriction
33851	C	Remove aorta constriction
33852	C	Repair septal defect
33853	C	Repair septal defect
33860	C	Ascending aortic graft
33861	C	Ascending aortic graft
33863	C	Ascending aortic graft
33870	C	Transverse aortic arch graft
33875	C	Thoracic aortic graft
33877	C	Thoracoabdominal graft
33910	C	Remove lung artery emboli
33915	C	Remove lung artery emboli
33916	C	Surgery of great vessel
33917	C	Repair pulmonary artery
33918	C	Repair pulmonary atresia
33919	C	Repair pulmonary atresia
33920	C	Repair pulmonary atresia
33922	C	Transect pulmonary artery
33924	C	Remove pulmonary shunt
33930	C	Removal of donor heart/lung
33935	C	Transplantation, heart/lung
33940	C	Removal of donor heart
33945	C	Transplantation of heart
33960	C	External circulation assist
33961	C	External circulation assist
33968	C	Remove aortic assist device
33970	C	Aortic circulation assist
33971	C	Aortic circulation assist
33973	C	Insert balloon device

ADDENDUM E.—CPT CODES WHICH WILL BE PAID ONLY AS INPATIENT PROCEDURES—Continued

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CPT/ HCPCS	HOPD status indicator	Description
33974	C	Remove intra-aortic balloon
33975	C	Implant ventricular device
33976	C	Implant ventricular device
33977	C	Remove ventricular device
33978	C	Remove ventricular device
34001	C	Removal of artery clot
34051	C	Removal of artery clot
34151	C	Removal of artery clot
34401	C	Removal of vein clot
34451	C	Removal of vein clot
34502	C	Reconstruct vena cava
*34800	C	Repair abdominal aortic aneurysm
*34802	C	Repair abdominal aortic aneurysm
*34804	C	Repair abdominal aortic aneurysm
*34808	C	Repair abdominal aortic aneurysm
*34812	C	Repair abdominal aortic aneurysm
*34813	C	Repair abdominal aortic aneurysm
*34820	C	Repair abdominal aortic aneurysm
*34825	C	Repair abdominal aortic aneurysm
*34826	C	Repair abdominal aortic aneurysm
*34830	C	Repair abdominal aortic aneurysm
*34831	C	Repair abdominal aortic aneurysm
*34832	C	Repair abdominal aortic aneurysm
35001	C	Repair defect of artery
35002	C	Repair artery rupture, neck
35005	C	Repair defect of artery
35013	C	Repair artery rupture, arm
35021	C	Repair defect of artery
35022	C	Repair artery rupture, chest
35045	C	Repair defect of arm artery
35081	C	Repair defect of artery
35082	C	Repair artery rupture, aorta
35091	C	Repair defect of artery
35092	C	Repair artery rupture, aorta
35102	C	Repair defect of artery
35103	C	Repair artery rupture, groin
35111	C	Repair defect of artery
35112	C	Repair artery rupture,spleen
35121	C	Repair defect of artery
35122	C	Repair artery rupture, belly
35131	C	Repair defect of artery
35132	C	Repair artery rupture, groin
35141	C	Repair defect of artery
35142	C	Repair artery rupture, thigh
35151	C	Repair defect of artery
35152	C	Repair artery rupture, knee
35161	C	Repair defect of artery
35162	C	Repair artery rupture
35182	C	Repair blood vessel lesion
35189	C	Repair blood vessel lesion
35211	C	Repair blood vessel lesion
35216	C	Repair blood vessel lesion
35221	C	Repair blood vessel lesion
35241	C	Repair blood vessel lesion
35246	C	Repair blood vessel lesion
35251	C	Repair blood vessel lesion
35271	C	Repair blood vessel lesion
35276	C	Repair blood vessel lesion
35281	C	Repair blood vessel lesion

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ADDENDUM E.—CPT CODES WHICH WILL BE PAID ONLY AS INPATIENT PROCEDURES—Continued

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CPT/ HCPCS	HOPD status indicator	Description
35301	C	Rechanneling of artery
35311	C	Rechanneling of artery
35331	C	Rechanneling of artery
35341	C	Rechanneling of artery
35351	C	Rechanneling of artery
35355	C	Rechanneling of artery
35361	C	Rechanneling of artery
35363	C	Rechanneling of artery
35371	C	Rechanneling of artery
35372	C	Rechanneling of artery
35381	C	Rechanneling of artery
35390	C	Reoperation, carotid add-on
35400	C	Angioscopy
35450	C	Repair arterial blockage
35452	C	Repair arterial blockage
35454	C	Repair arterial blockage
35456	C	Repair arterial blockage
35480	C	Atherectomy, open
35482	C	Atherectomy, open
35483	C	Atherectomy, open
35501	C	Artery bypass graft
35506	C	Artery bypass graft
35507	C	Artery bypass graft
35508	C	Artery bypass graft
35509	C	Artery bypass graft
35511	C	Artery bypass graft
35515	C	Artery bypass graft
35516	C	Artery bypass graft
35518	C	Artery bypass graft
35521	C	Artery bypass graft
35526	C	Artery bypass graft
35531	C	Artery bypass graft
35533	C	Artery bypass graft
35536	C	Artery bypass graft
35541	C	Artery bypass graft
35546	C	Artery bypass graft
35548	C	Artery bypass graft
35549	C	Artery bypass graft
35551	C	Artery bypass graft
35556	C	Artery bypass graft
35558	C	Artery bypass graft
35560	C	Artery bypass graft
35563	C	Artery bypass graft
35565	C	Artery bypass graft
35566	C	Artery bypass graft
35571	C	Artery bypass graft
35582	C	Vein bypass graft
35583	C	Vein bypass graft
35585	C	Vein bypass graft
35587	C	Vein bypass graft
*35600	C	Harvest artery graft
35601	C	Artery bypass graft
35606	C	Artery bypass graft
35612	C	Artery bypass graft
35616	C	Artery bypass graft
35621	C	Artery bypass graft
35623	C	Bypass graft, not vein
35626	C	Artery bypass graft
35631	C	Artery bypass graft
35636	C	Artery bypass graft
35641	C	Artery bypass graft
35642	C	Artery bypass graft
35645	C	Artery bypass graft
35646	C	Artery bypass graft
35650	C	Artery bypass graft
35651	C	Artery bypass graft
35654	C	Artery bypass graft
35656	C	Artery bypass graft
35661	C	Artery bypass graft
35663	C	Artery bypass graft
35665	C	Artery bypass graft

ADDENDUM E.—CPT CODES WHICH WILL BE PAID ONLY AS INPATIENT PROCEDURES—Continued

[Calendar Year 2001]

CPT/ HCPCS	HOPD status indicator	Description
35666	C	Artery bypass graft
35671	C	Artery bypass graft
35681	C	Composite bypass graft
35682	C	Composite bypass graft
35683	C	Composite bypass graft
35691	C	Arterial transposition
35693	C	Arterial transposition
35694	C	Arterial transposition
35695	C	Arterial transposition
35700	C	Reoperation, bypass graft
35701	C	Exploration, carotid artery
35721	C	Exploration, femoral artery
35741	C	Exploration popliteal artery
35800	C	Explore neck vessels
35820	C	Explore chest vessels
35840	C	Explore abdominal vessels
35870	C	Repair vessel graft defect
35901	C	Excision, graft, neck
35905	C	Excision, graft, thorax
35907	C	Excision, graft, abdomen
36510	C	Insertion of catheter, vein
36660	C	Insertion catheter, artery
36822	C	Insertion of cannula(s)
36823	C	Insertion of cannula(s)
37140	C	Revision of circulation
37145	C	Revision of circulation
37160	C	Revision of circulation
37180	C	Revision of circulation
37181	C	Splice spleen/kidney veins
37195	C	Thrombolytic therapy, stroke
37616	C	Ligation of chest artery
37617	C	Ligation of abdomen artery
37618	C	Ligation of extremity artery
37660	C	Revision of major vein
37788	C	Revascularization, penis
38100	C	Removal of spleen, total
38101	C	Removal of spleen, partial
38102	C	Removal of spleen, total
38115	C	Repair of ruptured spleen
38380	C	Thoracic duct procedure
38381	C	Thoracic duct procedure
38382	C	Thoracic duct procedure
38562	C	Removal, pelvic lymph nodes
38564	C	Removal, abdomen lymph nodes
38700	C	Removal of lymph nodes, neck
38724	C	Removal of lymph nodes, neck
38746	C	Remove thoracic lymph nodes
38747	C	Remove abdominal lymph nodes
38765	C	Remove groin lymph nodes
38770	C	Remove pelvis lymph nodes
38780	C	Remove abdomen lymph nodes
39000	C	Exploration of chest
39010	C	Exploration of chest
39200	C	Removal chest lesion
39220	C	Removal chest lesion
39499	C	Chest procedure
39501	C	Repair diaphragm laceration
39502	C	Repair paraesophageal hernia
39503	C	Repair of diaphragm hernia
39520	C	Repair of diaphragm hernia
39530	C	Repair of diaphragm hernia
39531	C	Repair of diaphragm hernia
39540	C	Repair of diaphragm hernia
39541	C	Repair of diaphragm hernia
39545	C	Revision of diaphragm
39560	C	Resect diaphragm, simple

ADDENDUM E.—CPT CODES WHICH WILL BE PAID ONLY AS INPATIENT PROCEDURES—Continued

[Calendar Year 2001]

CPT/ HCPCS	HOPD status indicator	Description
39561	C	Resect diaphragm, complex
39599	C	Diaphragm surgery procedure
41130	C	Partial removal of tongue
41135	C	Tongue and neck surgery
41140	C	Removal of tongue
41145	C	Tongue removal, neck surgery
41150	C	Tongue, mouth, jaw surgery
41153	C	Tongue, mouth, neck surgery
41155	C	Tongue, jaw, & neck surgery
42426	C	Excise parotid gland/lesion
42842	C	Extensive surgery of throat
42845	C	Extensive surgery of throat
42894	C	Revision of pharyngeal walls
42953	C	Repair throat, esophagus
42961	C	Control throat bleeding
42971	C	Control nose/throat bleeding
43030	C	Throat muscle surgery
43045	C	Incision of esophagus
43100	C	Excision of esophagus lesion
43101	C	Excision of esophagus lesion
43107	C	Removal of esophagus
43108	C	Removal of esophagus
43112	C	Removal of esophagus
43113	C	Removal of esophagus
43116	C	Partial removal of esophagus
43117	C	Partial removal of esophagus
43118	C	Partial removal of esophagus
43121	C	Partial removal of esophagus
43122	C	Parital removal of esophagus
43123	C	Partial removal of esophagus
43124	C	Removal of esophagus
43135	C	Removal of esophagus pouch
43300	C	Repair of esophagus
43305	C	Repair esophagus and fistula
43310	C	Repair of esophagus
43312	C	Repair esophagus and fistula
43320	C	Fuse esophagus & stomach
43324	C	Revise esophagus & stomach
43325	C	Revise esophagus & stomach
43326	C	Revise esophagus & stomach
43330	C	Repair of esophagus
43331	C	Repair of esophagus
43340	C	Fuse esophagus & intestine
43341	C	Fuse esophagus & intestine
43350	C	Surgical opening, esophagus
43351	C	Surgical opening, esophagus
43352	C	Surgical opening, esophagus
43360	C	Gastrointestinal repair
43361	C	Gastrointestinal repair
43400	C	Ligate esophagus veins
43401	C	Esophagus surgery for veins
43405	C	Ligate/staple esophagus
43410	C	Repair esophagus wound
43415	C	Repair esophagus wound
43420	C	Repair esophagus opening
43425	C	Repair esophagus opening
43460	C	Pressure treatment esophagus
43496	C	Free jejunum flap, microvasc
43500	C	Surgical opening of stomach
43501	C	Surgical repair of stomach
43502	C	Surgical repair of stomach
43510	C	Surgical opening of stomach
43520	C	Incision of pyloric muscle
43605	C	Biopsy of stomach
43610	C	Excision of stomach lesion
43611	C	Excision of stomach lesion
43620	C	Removal of stomach
43621	C	Removal of stomach
43622	C	Removal of stomach
43631	C	Removal of stomach, partial
43632	C	Removal of stomach, partial

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Addendum E.—CPT Codes Which Will Be Paid Only as Inpatient Procedures—Continued

[Calendar Year 2001]

CPT/HCPCS	HOPD status indicator	Description
43633	C	Removal of stomach, partial
43634	C	Removal of stomach, partial
43635	C	Removal of stomach, partial
43638	C	Removal of stomach, partial
43639	C	Removal of stomach, partial
43640	C	Vagotomy & pylorus repair
43641	C	Vagotomy & pylorus repair
43800	C	Reconstruction of pylorus
43810	C	Fusion of stomach and bowel
43820	C	Fusion of stomach and bowel
43825	C	Fusion of stomach and bowel
43832	C	Place gastrostomy tube
43840	C	Repair of stomach lesion
43842	C	Gastroplasty for obesity
43843	C	Gastroplasty for obesity
43846	C	Gastric bypass for obesity
43847	C	Gastric bypass for obesity
43848	C	Revision gastroplasty
43850	C	Revise stomach-bowel fusion
43855	C	Revise stomach-bowel fusion
43860	C	Revise stomach-bowel fusion
43865	C	Revise stomach-bowel fusion
43880	C	Repair stomach-bowel fistula
44005	C	Freeing of bowel adhesion
44010	C	Incision of small bowel
44015	C	Insert needle cath bowel
44020	C	Exploration of small bowel
44021	C	Decompress small bowel
44025	C	Incision of large bowel
44050	C	Reduce bowel obstruction
44055	C	Correct malrotation of bowel
44110	C	Excision of bowel lesion(s)
44111	C	Excision of bowel lesion(s)
44120	C	Removal of small intestine
44121	C	Removal of small intestine
44125	C	Removal of small intestine
*44130	C	Bowel to bowel fusion
*44132	C	Donor enterectomy
*44133	C	Donor enterectomy
*44135	C	Intestinal allotransplantation
*44136	C	Intestinal allotransplantation
44139	C	Mobilization of colon
44140	C	Partial removal of colon
44141	C	Partial removal of colon
44143	C	Partial removal of colon
44144	C	Partial removal of colon
44145	C	Partial removal of colon
44146	C	Partial removal of colon
44147	C	Partial removal of colon
44150	C	Removal of colon
44151	C	Removal of colon/ileostomy
44152	C	Removal of colon/ileostomy
44153	C	Removal of colon/ileostomy
44155	C	Removal of colon/ileostomy
44156	C	Removal of colon/ileostomy
44160	C	Removal of colon
44202	C	Laparo, resect intestine
44300	C	Open bowel to skin
44310	C	Ileostomy/jejunostomy
44314	C	Revision of ileostomy
44316	C	Devise bowel pouch
44320	C	Colostomy
44322	C	Colostomy with biopsies
44345	C	Revision of colostomy
44346	C	Revision of colostomy
44602	C	Suture, small intestine
44603	C	Suture, small intestine
44604	C	Suture, large intestine
44605	C	Repair of bowel lesion
44615	C	Intestinal stricturoplasty
44620	C	Repair bowel opening

Addendum E.—CPT Codes Which Will Be Paid Only as Inpatient Procedures—Continued

[Calendar Year 2001]

CPT/HCPCS	HOPD status indicator	Description
44625	C	Repair bowel opening
44626	C	Repair bowel opening
44640	C	Repair bowel-skin fistula
44650	C	Repair bowel fistula
44660	C	Repair bowel-bladder fistula
44661	C	Repair bowel-bladder fistula
44680	C	Surgical revision, intestine
44700	C	Suspend bowel w/prosthesis
44800	C	Excision of bowel pouch
44820	C	Excision of mesentery lesion
44850	C	Repair of mesentery
44899	C	Bowel surgery procedure
44900	C	Drain app abscess, open
44901	C	Drain app abscess, percut
44950	C	Appendectomy
44955	C	Appendectomy add-on
44960	C	Appendectomy
45110	C	Removal of rectum
45111	C	Partial removal of rectum
45112	C	Removal of rectum
45113	C	Partial proctectomy
45114	C	Partial removal of rectum
45116	C	Partial removal of rectum
45119	C	Remove rectum w/reservoir
45120	C	Removal of rectum
45121	C	Removal of rectum and colon
45123	C	Partial proctectomy
45126	C	Pelvic exenteration
45130	C	Excision of rectal prolapse
45135	C	Excision of rectal prolapse
45540	C	Correct rectal prolapse
45541	C	Correct rectal prolapse
45550	C	Repair rectum/remove sigmoid
45562	C	Exploration/repair of rectum
45563	C	Exploration/repair of rectum
45800	C	Repair rect/bladder fistula
45805	C	Repair fistula w/colostomy
45820	C	Repair rectourethral fistula
45825	C	Repair fistula w/colostomy
46705	C	Repair of anal stricture
46715	C	Repair of anovaginal fistula
46716	C	Repair of anovaginal fistula
46730	C	Construction of absent anus
46735	C	Construction of absent anus
46740	C	Construction of absent anus
46742	C	Repair of imperforated anus
46744	C	Repair of cloacal anomaly
46746	C	Repair of cloacal anomaly
46748	C	Repair of cloacal anomaly
46751	C	Repair of anal sphincter
47001	C	Needle biopsy, liver add-on
47010	C	Open drainage, liver lesion
47011	C	Percut drain, liver lesion
47015	C	Inject/aspirate liver cyst
47100	C	Wedge biopsy of liver
47120	C	Partial removal of liver
47122	C	Extensive removal of liver
47125	C	Partial removal of liver
47130	C	Partial removal of liver
47133	C	Removal of donor liver
47134	C	Partial removal, donor liver
47135	C	Transplantation of liver
47136	C	Transplantation of liver
47300	C	Surgery for liver lesion
47350	C	Repair liver wound
47360	C	Repair liver wound
47361	C	Repair liver wound
47362	C	Repair liver wound
47400	C	Incision of liver duct
47420	C	Incision of bile duct
47425	C	Incision of bile duct

Addendum E.—CPT Codes Which Will Be Paid Only as Inpatient Procedures—Continued

[Calendar Year 2001]

CPT/HCPCS	HOPD status indicator	Description
47460	C	Incise bile duct sphincter
47480	C	Incision of gallbladder
47490	C	Incision of gallbladder
47550	C	Bile duct endoscopy add-on
47570	C	Laparo cholecystoenterostomy
47600	C	Removal of gallbladder
47605	C	Removal of gallbladder
47610	C	Removal of gallbladder
47612	C	Removal of gallbladder
47620	C	Removal of gallbladder
47700	C	Exploration of bile ducts
47701	C	Bile duct revision
47711	C	Excision of bile duct tumor
47712	C	Excision of bile duct tumor
47715	C	Excision of bile duct cyst
47716	C	Fusion of bile duct cyst
47720	C	Fuse gallbladder & bowel
47721	C	Fuse upper gi structures
47740	C	Fuse gallbladder & bowel
47741	C	Fuse gallbladder & bowel
47760	C	Fuse bile ducts and bowel
47765	C	Fuse liver ducts & bowel
47780	C	Fuse bile ducts and bowel
47785	C	Fuse bile ducts and bowel
47800	C	Reconstruction of bile ducts
47801	C	Placement, bile duct support
47802	C	Fuse liver duct & intestine
47900	C	Suture bile duct injury
48000	C	Drainage of abdomen
48001	C	Placement of drain, pancreas
48005	C	Resect/debride pancreas
48020	C	Removal of pancreatic stone
48100	C	Biopsy of pancreas
48120	C	Removal of pancreas lesion
48140	C	Partial removal of pancreas
48145	C	Partial removal of pancreas
48146	C	Pancreatectomy
48148	C	Removal of pancreatic duct
48150	C	Partial removal of pancreas
48152	C	Pancreatectomy
48153	C	Pancreatectomy
48154	C	Pancreatectomy
48155	C	Removal of pancreas
48160	C	Fuse pancreas and bowel
48400	C	Injection, intraop add-on
48500	C	Surgery of pancreas cyst
48510	C	Drain pancreatic pseudocyst
48511	C	Drain pancreatic pseudocyst
48520	C	Fuse pancreas cyst and bowel
48540	C	Fuse pancreas cyst and bowel
48545	C	Pancreatorrhaphy
48547	C	Duodenal exclusion
48556	C	Removal, allograft pancreas
49000	C	Exploration of abdomen
49002	C	Reopening of abdomen
49010	C	Exploration behind abdomen
49020	C	Drain abdominal abscess
49021	C	Drain abdominal abscess
49040	C	Drain, open, abdom abscess
49041	C	Drain, percut, abdom abscess
49060	C	Drain, open, retrop abscess
49061	C	Drain, percut, retroper absc
49062	C	Drain to peritoneal cavity
49200	C	Removal of abdominal lesion
49201	C	Removal of abdominal lesion
49215	C	Excise sacral spine tumor
49220	C	Multiple surgery, abdomen
49255	C	Removal of omentum
49425	C	Insert abdomen-venous drain
49428	C	Ligation of shunt
49605	C	Repair umbilical lesion

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Addendum E.—CPT Codes Which Will Be Paid Only as Inpatient Procedures—Continued

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CPT/HCPCS	HOPD status indicator	Description
49606	C	Repair umbilical lesion
49610	C	Repair umbilical lesion
49611	C	Repair umbilical lesion
49900	C	Repair of abdominal wall
49905	C	Omental flap
49906	C	Free omental flap, microvasc
50010	C	Exploration of kidney
50020	C	Renal abscess, open drain
50021	C	Renal abscess, percut drain
50040	C	Drainage of kidney
50045	C	Exploration of kidney
50060	C	Removal of kidney stone
50065	C	Incision of kidney
50070	C	Incision of kidney
50075	C	Removal of kidney stone
50100	C	Revise kidney blood vessels
50120	C	Exploration of kidney
50125	C	Explore and drain kidney
50130	C	Removal of kidney stone
50135	C	Exploration of kidney
50205	C	Biopsy of kidney
50220	C	Removal of kidney
50225	C	Removal of kidney
50230	C	Removal of kidney
50234	C	Removal of kidney & ureter
50236	C	Removal of kidney & ureter
50240	C	Partial removal of kidney
50280	C	Removal of kidney lesion
50290	C	Removal of kidney lesion
50300	C	Removal of donor kidney
50320	C	Removal of donor kidney
50340	C	Removal of kidney
50360	C	Transplantation of kidney
50365	C	Transplantation of kidney
50370	C	Remove transplanted kidney
50380	C	Reimplantation of kidney
50400	C	Revision of kidney/ureter
50405	C	Revision of kidney/ureter
50500	C	Repair of kidney wound
50520	C	Close kidney-skin fistula
50525	C	Repair renal-abdomen fistula
50526	C	Repair renal-abdomen fistula
50540	C	Revision of horseshoe kidney
*50545	C	Laparoscopic nephrectomy
50546	C	Laparoscopic nephrectomy
50547	C	Laparo removal donor kidney
50548	C	Laparo-asst remove k/ureter
50570	C	Kidney endoscopy
50572	C	Kidney endoscopy
50574	C	Kidney endoscopy & biopsy
50575	C	Kidney endoscopy
50576	C	Kidney endoscopy & treatment
50578	C	Renal endoscopy/radiotracer
50580	C	Kidney endoscopy & treatment
50600	C	Exploration of ureter
50605	C	Insert ureteral support
50610	C	Removal of ureter stone
50620	C	Removal of ureter stone
50630	C	Removal of ureter stone
50650	C	Removal of ureter
50660	C	Removal of ureter
50700	C	Revision of ureter
50715	C	Release of ureter
50722	C	Release of ureter
50725	C	Release/revise ureter
50727	C	Revise ureter
50728	C	Revise ureter
50740	C	Fusion of ureter & kidney
50750	C	Fusion of ureter & kidney
50760	C	Fusion of ureters
50770	C	Splicing of ureters

Addendum E.—CPT Codes Which Will Be Paid Only as Inpatient Procedures—Continued

[Calendar Year 2001]

CPT/HCPCS	HOPD status indicator	Description
50780	C	Reimplant ureter in bladder
50782	C	Reimplant ureter in bladder
50783	C	Reimplant ureter in bladder
50785	C	Reimplant ureter in bladder
50800	C	Implant ureter in bowel
50810	C	Fusion of ureter & bowel
50815	C	Urine shunt to bowel
50820	C	Construct bowel bladder
50825	C	Construct bowel bladder
50830	C	Revise urine flow
50840	C	Replace ureter by bowel
50845	C	Appendico-vesicostomy
50860	C	Transplant ureter to skin
50900	C	Repair of ureter
50920	C	Closure ureter/skin fistula
50930	C	Closure ureter/bowel fistula
50940	C	Release of ureter
51060	C	Removal of ureter stone
51525	C	Removal of bladder lesion
51530	C	Removal of bladder lesion
51535	C	Repair of ureter lesion
51550	C	Partial removal of bladder
51555	C	Partial removal of bladder
51565	C	Revise bladder & ureter(s)
51570	C	Removal of bladder
51575	C	Removal of bladder & nodes
51580	C	Remove bladder/revise tract
51585	C	Removal of bladder & nodes
51590	C	Remove bladder/revise tract
51595	C	Remove bladder/revise tract
51596	C	Remove bladder/create pouch
51597	C	Removal of pelvic structures
51800	C	Revision of bladder/urethra
51820	C	Revision of urinary tract
51840	C	Attach bladder/urethra
51841	C	Attach bladder/urethra
51845	C	Repair bladder neck
51860	C	Repair of bladder wound
51865	C	Repair of bladder wound
51900	C	Repair bladder/vagina lesion
51920	C	Close bladder-uterus fistula
51925	C	Hysterectomy/bladder repair
51940	C	Correction of bladder defect
51960	C	Revision of bladder & bowel
51980	C	Construct bladder opening
53085	C	Drainage of urinary leakage
53415	C	Reconstruction of urethra
53443	C	Reconstruction of urethra
54125	C	Removal of penis
54130	C	Remove penis & nodes
54135	C	Remove penis & nodes
54332	C	Revise penis/urethra
54336	C	Revise penis/urethra
54390	C	Repair penis and bladder
54430	C	Revision of penis
54535	C	Extensive testis surgery
54560	C	Exploration for testis
54650	C	Orchiopexy (Fowler-Stephens)
55600	C	Incise sperm duct pouch
55605	C	Incise sperm duct pouch
55650	C	Remove sperm duct pouch
55801	C	Removal of prostate
55810	C	Extensive prostate surgery
55812	C	Extensive prostate surgery
55815	C	Extensive prostate surgery
55821	C	Removal of prostate
55831	C	Removal of prostate
55840	C	Extensive prostate surgery
55842	C	Extensive prostate surgery
55845	C	Extensive prostate surgery
55862	C	Extensive prostate surgery

Addendum E.—CPT Codes Which Will Be Paid Only as Inpatient Procedures—Continued

[Calendar Year 2001]

CPT/HCPCS	HOPD status indicator	Description
55865	C	Extensive prostate surgery
56630	C	Extensive vulva surgery
56631	C	Extensive vulva surgery
56632	C	Extensive vulva surgery
56633	C	Extensive vulva surgery
56634	C	Extensive vulva surgery
56637	C	Extensive vulva surgery
56640	C	Extensive vulva surgery
57110	C	Remove vagina wall, complete
57111	C	Remove vagina tissue, compl
57112	C	Vaginectomy w/nodes, compl
57270	C	Repair of bowel pouch
57280	C	Suspension of vagina
57282	C	Repair of vaginal prolapse
57292	C	Construct vagina with graft
57305	C	Repair rectum-vagina fistula
57307	C	Fistula repair & colostomy
57308	C	Fistula repair, transperine
57311	C	Repair urethrovaginal lesion
57335	C	Repair vagina
57531	C	Removal of cervix, radical
57540	C	Removal of residual cervix
57545	C	Remove cervix/repair pelvis
58140	C	Removal of uterus lesion
58150	C	Total hysterectomy
58152	C	Total hysterectomy
58180	C	Partial hysterectomy
58200	C	Extensive hysterectomy
58210	C	Extensive hysterectomy
58240	C	Removal of pelvis contents
58260	C	Vaginal hysterectomy
58262	C	Vaginal hysterectomy
58263	C	Vaginal hysterectomy
58267	C	Hysterectomy & vagina repair
58270	C	Hysterectomy & vagina repair
58275	C	Hysterectomy/revise vagina
58280	C	Hysterectomy/revise vagina
58285	C	Extensive hysterectomy
58400	C	Suspension of uterus
58410	C	Suspension of uterus
58520	C	Repair of ruptured uterus
58540	C	Revision of uterus
58605	C	Division of fallopian tube
58611	C	Ligate oviduct(s) add-on
58700	C	Removal of fallopian tube
58720	C	Removal of ovary/tube(s)
58740	C	Revise fallopian tube(s)
58750	C	Repair oviduct
58752	C	Revise ovarian tube(s)
58760	C	Remove tubal obstruction
58770	C	Create new tubal opening
58805	C	Drainage of ovarian cyst(s)
58822	C	Drain ovary abscess, percut
58823	C	Drain pelvic abscess, percut
58825	C	Transposition, ovary(s)
58940	C	Removal of ovary(s)
58943	C	Removal of ovary(s)
58950	C	Resect ovarian malignancy
58951	C	Resect ovarian malignancy
58952	C	Resect ovarian malignancy
58960	C	Exploration of abdomen
59100	C	Remove uterus lesion
59120	C	Treat ectopic pregnancy
59121	C	Treat ectopic pregnancy
59130	C	Treat ectopic pregnancy
59135	C	Treat ectopic pregnancy
59136	C	Treat ectopic pregnancy
59140	C	Treat ectopic pregnancy
59325	C	Revision of cervix
59350	C	Repair of uterus
59514	C	Cesarean delivery only

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ADDENDUM E.—CPT CODES WHICH WILL BE PAID ONLY AS INPATIENT PROCEDURES—Continued

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CPT/HCPCS	HOPD status indicator	Description
59525	C	Remove uterus after cesarean
59620	C	Attempted vbac delivery only
59830	C	Treat uterus infection
59850	C	Abortion
59851	C	Abortion
59852	C	Abortion
59855	C	Abortion
59856	C	Abortion
59857	C	Abortion
60254	C	Extensive thyroid surgery
60270	C	Removal of thyroid
60271	C	Removal of thyroid
60502	C	Re-explore parathyroids
60505	C	Explore parathyroid glands
60520	C	Removal of thymus gland
60521	C	Removal of thymus gland
60522	C	Removal of thymus gland
60540	C	Explore adrenal gland
60545	C	Explore adrenal gland
60600	C	Remove carotid body lesion
60605	C	Remove carotid body lesion
60650	C	Laparoscopy adrenalectomy
61105	C	Twist drill hole
61107	C	Drill skull for implantation
61108	C	Drill skull for drainage
61120	C	Burr hole for puncture
61140	C	Pierce skull for biopsy
61150	C	Pierce skull for drainage
61151	C	Pierce skull for drainage
61154	C	Pierce skull & remove clot
61156	C	Pierce skull for drainage
61210	C	Pierce skull, implant device
61250	C	Pierce skull & explore
61253	C	Pierce skull & explore
61304	C	Open skull for exploration
61305	C	Open skull for exploration
61312	C	Open skull for drainage
61313	C	Open skull for drainage
61314	C	Open skull for drainage
61315	C	Open skull for drainage
61320	C	Open skull for drainage
61321	C	Open skull for drainage
61332	C	Explore/biopsy eye socket
61333	C	Explore orbit/remove lesion
61334	C	Explore orbit/remove object
61340	C	Relieve cranial pressure
61343	C	Incise skull (press relief)
61345	C	Relieve cranial pressure
61440	C	Incise skull for surgery
61450	C	Incise skull for surgery
61458	C	Incise skull for brain wound
61460	C	Incise skull for surgery
61470	C	Incise skull for surgery
61480	C	Incise skull for surgery
61490	C	Incise skull for surgery
61500	C	Removal of skull lesion
61501	C	Remove infected skull bone
61510	C	Removal of brain lesion
61512	C	Remove brain lining lesion
61514	C	Removal of brain abscess
61516	C	Removal of brain lesion
61518	C	Removal of brain lesion
61519	C	Remove brain lining lesion
61520	C	Removal of brain lesion
61521	C	Removal of brain lesion
61522	C	Removal of brain abscess
61524	C	Removal of brain lesion
61526	C	Removal of brain lesion
61530	C	Removal of brain lesion
61531	C	Implant brain electrodes
61533	C	Implant brain electrodes
61534	C	Removal of brain lesion
61535	C	Remove brain electrodes
61536	C	Removal of brain lesion
61538	C	Removal of brain tissue
61539	C	Removal of brain tissue
61541	C	Incision of brain tissue
61542	C	Removal of brain tissue
61543	C	Removal of brain tissue
61544	C	Remove & treat brain lesion
61545	C	Excision of brain tumor
61546	C	Removal of pituitary gland
61548	C	Removal of pituitary gland
61550	C	Release of skull seams
61552	C	Release of skull seams
61556	C	Incise skull/sutures
61557	C	Incise skull/sutures
61558	C	Excision of skull/sutures
61559	C	Excision of skull/sutures
61563	C	Excision of skull tumor
61564	C	Excision of skull tumor
61570	C	Remove foreign body, brain
61571	C	Incise skull for brain wound
61575	C	Skull base/brainstem surgery
61576	C	Skull base/brainstem surgery
61580	C	Craniofacial approach, skull
61581	C	Craniofacial approach, skull
61582	C	Craniofacial approach, skull
61583	C	Craniofacial approach, skull
61584	C	Orbitocranial approach/skull
61585	C	Orbitocranial approach/skull
61586	C	Resect nasopharynx, skull
61590	C	Infratemporal approach/skull
61591	C	Infratemporal approach/skull
61592	C	Orbitocranial approach/skull
61595	C	Transtemporal approach/skull
61596	C	Transcochlear approach/skull
61597	C	Transcondylar approach/skull
61598	C	Transpetrosal approach/skull
61600	C	Resect/excise cranial lesion
61601	C	Resect/excise cranial lesion
61605	C	Resect/excise cranial lesion
61606	C	Resect/excise cranial lesion
61607	C	Resect/excise cranial lesion
61608	C	Resect/excise cranial lesion
61609	C	Transect artery, sinus
61610	C	Transect artery, sinus
61611	C	Transect artery, sinus
61612	C	Transect artery, sinus
61613	C	Remove aneurysm, sinus
61615	C	Resect/excise lesion, skull
61616	C	Resect/excise lesion, skull
61618	C	Repair dura
61619	C	Repair dura
61624	C	Occlusion/embolization cath
61626	C	Occlusion/embolization cath
61680	C	Intracranial vessel surgery
61682	C	Intracranial vessel surgery
61684	C	Intracranial vessel surgery
61686	C	Intracranial vessel surgery
61690	C	Intracranial vessel surgery
61692	C	Intracranial vessel surgery
*61697	C	Intracranial aneurysm surgery
*61698	C	Intracranial aneurysm surgery
61700	C	Inner skull vessel surgery
61702	C	Inner skull vessel surgery
61703	C	Clamp neck artery
61705	C	Revise circulation to head
61708	C	Revise circulation to head
61710	C	Revise circulation to head
61711	C	Fusion of skull arteries
61720	C	Incise skull/brain surgery
61735	C	Incise skull/brain surgery
61750	C	Incise skull/brain biopsy
61751	C	Brain biopsy w/ ct/mr guide
61760	C	Implant brain electrodes
61770	C	Incise skull for treatment
61791	C	Treat trigeminal tract
61850	C	Implant neuroelectrodes
61860	C	Implant neuroelectrodes
61862	C	Implant neurostimul, subcort
61870	C	Implant neuroelectrodes
61875	C	Implant neuroelectrodes
62000	C	Treat skull fracture
62005	C	Treat skull fracture
62010	C	Treatment of head injury
62100	C	Repair brain fluid leakage
62115	C	Reduction of skull defect
62116	C	Reduction of skull defect
62117	C	Reduction of skull defect
62120	C	Repair skull cavity lesion
62121	C	Incise skull repair
62140	C	Repair of skull defect
62141	C	Repair of skull defect
62142	C	Remove skull plate/flap
62143	C	Replace skull plate/flap
62145	C	Repair of skull & brain
62146	C	Repair of skull with graft
62147	C	Repair of skull with graft
62180	C	Establish brain cavity shunt
62190	C	Establish brain cavity shunt
62192	C	Establish brain cavity shunt
62200	C	Establish brain cavity shunt
62201	C	Establish brain cavity shunt
62220	C	Establish brain cavity shunt
62223	C	Establish brain cavity shunt
62256	C	Remove brain cavity shunt
62258	C	Replace brain cavity shunt
62351	C	Implant spinal canal cath
63001	C	Removal of spinal lamina
63003	C	Removal of spinal lamina
63005	C	Removal of spinal lamina
63011	C	Removal of spinal lamina
63012	C	Removal of spinal lamina
63015	C	Removal of spinal lamina
63016	C	Removal of spinal lamina
63017	C	Removal of spinal lamina
63020	C	Neck spine disk surgery
63030	C	Low back disk surgery
63035	C	Spinal disk surgery add-on
63040	C	Neck spine disk surgery
63042	C	Low back disk surgery
*63043	C	Repair of skull
*63044	C	Repair of skull
63045	C	Removal of spinal lamina
63046	C	Removal of spinal lamina
63047	C	Removal of spinal lamina
63048	C	Remove spinal lamina add-on
63055	C	Decompress spinal cord
63056	C	Decompress spinal cord
63057	C	Decompress spine cord add-on
63064	C	Decompress spinal cord
63066	C	Decompress spine cord add-on
63075	C	Neck spine disk surgery
63076	C	Neck spine disk surgery
63077	C	Spine disk surgery, thorax
63078	C	Spine disk surgery, thorax
63081	C	Removal of vertebral body
63082	C	Remove vertebral body add-on
63085	C	Removal of vertebral body

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ADDENDUM E.—CPT CODES WHICH WILL BE PAID ONLY AS INPATIENT PROCEDURES—Continued

[Calendar Year 2001]

CPT/HCPCS	HOPD status indicator	Description
63086	C	Remove vertebral body add-on
63087	C	Removal of vertebral body
63088	C	Remove vertebral body add-on
63090	C	Removal of vertebral body
63091	C	Remove vertebral body add-on
63170	C	Incise spinal cord tract(s)
63172	C	Drainage of spinal cyst
63173	C	Drainage of spinal cyst
63180	C	Revise spinal cord ligaments
63182	C	Revise spinal cord ligaments
63185	C	Incise spinal column/nerves
63190	C	Incise spinal column/nerves
63191	C	Incise spinal column/nerves
63194	C	Incise spinal column & cord
63195	C	Incise spinal column & cord
63196	C	Incise spinal column & cord
63197	C	Incise spinal column & cord
63198	C	Incise spinal column & cord
63199	C	Incise spinal column & cord
63200	C	Release of spinal cord
63250	C	Revise spinal cord vessels
63251	C	Revise spinal cord vessels
63252	C	Revise spinal cord vessels
63265	C	Excise intraspinal lesion
63266	C	Excise intraspinal lesion
63267	C	Excise intraspinal lesion
63268	C	Excise intraspinal lesion
63270	C	Excise intraspinal lesion
63271	C	Excise intraspinal lesion
63272	C	Excise intraspinal lesion
63273	C	Excise intraspinal lesion
63275	C	Biopsy/excise spinal tumor
63276	C	Biopsy/excise spinal tumor
63277	C	Biopsy/excise spinal tumor
63278	C	Biopsy/excise spinal tumor
63280	C	Biopsy/excise spinal tumor
63281	C	Biopsy/excise spinal tumor
63282	C	Biopsy/excise spinal tumor
63283	C	Biopsy/excise spinal tumor
63285	C	Biopsy/excise spinal tumor
63286	C	Biopsy/excise spinal tumor
63287	C	Biopsy/excise spinal tumor
63290	C	Biopsy/excise spinal tumor
63300	C	Removal of vertebral body
63301	C	Removal of vertebral body
63302	C	Removal of vertebral body
63303	C	Removal of vertebral body
63304	C	Removal of vertebral body
63305	C	Removal of vertebral body
63306	C	Removal of vertebral body
63307	C	Removal of vertebral body
63308	C	Remove vertebral body add-on
63655	C	Implant neuroelectrodes
63700	C	Repair of spinal herniation
63702	C	Repair of spinal herniation
63704	C	Repair of spinal herniation
63706	C	Repair of spinal herniation
63707	C	Repair spinal fluid leakage
63709	C	Repair spinal fluid leakage
63710	C	Graft repair of spine defect
63740	C	Install spinal shunt
64752	C	Incision of vagus nerve
64755	C	Incision of stomach nerves
64760	C	Incision of vagus nerve
64763	C	Incise hip/thigh nerve
64766	C	Incise hip/thigh nerve
64802	C	Remove sympathetic nerves
64804	C	Remove sympathetic nerves
64809	C	Remove sympathetic nerves
64818	C	Remove sympathetic nerves
64820	C	Remove sympathetic nerves
64866	C	Fusion of facial/other nerve
64868	C	Fusion of facial/other nerve
65273	C	Repair of eye wound
69150	C	Extensive ear canal surgery
69155	C	Extensive ear/neck surgery
69502	C	Mastoidectomy
69535	C	Remove part of temporal bone
69554	C	Remove ear lesion
69950	C	Incise inner ear nerve
69970	C	Remove inner ear lesion
75900	C	Arterial catheter exchange
*75952	C	Abdominal aortic aneurysm repair
*75953	C	Abdominal aortic aneurysm repair
92970	C	Cardioassist, internal
92971	C	Cardioassist, external
92975	C	Dissolve clot, heart vessel
92986	C	Revision of aortic valve
92987	C	Revision of mitral valve
92990	C	Revision of pulmonary valve
92992	C	Revision of heart chamber
92993	C	Revision of heart chamber
92997	C	Pul art balloon repr, percut
92998	C	Pul art balloon repr, percut
94652	C	Pressure breathing (IPPB)
99190	C	Special pump services
99191	C	Special pump services
99192	C	Special pump services
99251	C	Initial inpatient consult
99252	C	Initial inpatient consult
99253	C	Initial inpatient consult
99254	C	Initial inpatient consult
99255	C	Initial inpatient consult
99261	C	Follow-up inpatient consult
99262	C	Follow-up inpatient consult
99263	C	Follow-up inpatient consult
99295	C	Neonatal critical care
99296	C	Neonatal critical care
99297	C	Neonatal critical care
99298	C	Neonatal critical care
99356	C	Prolonged service, inpatient
99357	C	Prolonged service, inpatient
99433	C	Normal newborn care/hospital

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* Code is new in 2001.

ADDENDUM F—WAGE INDEX FOR URBAN AREAS

Urban Area (Constituent Counties)	Wage Index
0040 Abilene, −+*	0.8240
Taylor, TX	
0060 Aguadilla, PR	0.4391
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9736
Portage, OH	
Summit, OH	
0120 Albany, GA	0.9533
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8549
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9136
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8170
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9925
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9346
Blair, PA	
0320 Amarillo, TX Potter, TX	0.8715
Randall, TX	
0380 Anchorage, AK	1.2865
Anchorage, AK	
0440 Ann Arbor, MI	1.1254
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8284
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.9052
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4525
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9516
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9739
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA [1]	1.0096
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic-Cape May, NJ	1.1182
Atlantic, NJ	

ADDENDUM F—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage Index
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8106
Lee, AL	
0600 Augusta-Aiken, GA–SC	0.9160
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX[1]	0.9577
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA[2]	0.9661
Kern, CA	
0720 Baltimore, MD[1]	0.9365
Anne Arundel, MD	
Baltimore County, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Anne's, MD	
0733 Bangor, ME	0.9561
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.0039
Barnstable, MA	
0760 Baton Rouge, LA	0.8842
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8744
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1439
Whatcom, WA	
0870 Benton Harbor, MI[2]	0.9021
Berrien, MI	
0875 Bergen-Passaic, NJ[1]	1.1605
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9591
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8236
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8690
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.8477
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7897
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8733
Monroe, IN	
1040 Bloomington-Normal, IL	0.9156
McLean, IL	
1080 Boise City, ID	0.9042
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (MA Hospitals)[1,2]	1.1204
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (NH Hospitals)[1]	1.1160
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9731
Boulder, CO	
1145 Brazoria, TX	0.8658
Brazoria, TX	
1150 Bremerton, WA	1.0975
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8722
Cameron, TX	
1260 Bryan-College Station, TX	0.8237
Brazos, TX	
1280 Buffalo-Niagara Falls, NY[1]	0.9580
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0735
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4562
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH[2]	0.8670
Carroll, OH	
Stark, OH	
1350 Casper, WY[2]	0.8817
Natrona, WY	
1360 Cedar Rapids, IA	0.8736
Linn, IA	
1400 Champaign-Urbana, IL	0.9198
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9067
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9240
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC–SC[1]	0.9391
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0789
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.9833
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY[2]	0.8817
Laramie, WY	
1600 Chicago, IL[1]	1.1146
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	0.9918
Butte, CA	
1640 Cincinnati, OH–KY–IN[1]	0.9415
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN–KY	0.8277
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH[1]	0.9593
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9697
El Paso, CO	
1740 Columbia, MO	0.8961
Boone, MO	
1760 Columbia, SC	0.9554
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL Russell, AL	0.8568
Chattahoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH[1]	0.9619
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8726
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1326
Benton, OR	
1900 Cumberland, MD–WV (MD Hospitals)[2]	0.8651
Allegany, MD	
Mineral, WV	
1900 Cumberland, MD–WV (WV Hospital)	0.8369
Allegany, MD	
Mineral, WV	
1920 Dallas, TX[1]	0.9913
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8589
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA–IL	0.8898

ADDENDUM F—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage Index
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9442
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9147
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8534
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL[2]	0.8160
Macon, IL	
2080 Denver, CO[1]	1.0181
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.9118
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI[1]	1.0510
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.8013
Dale, AL	
Houston, AL	
2190 Dover, DE	1.0078
Kent, DE	
2200 Dubuque, IA	0.8746
Dubuque, IA	
2240 Duluth-Superior, MN–WI	1.0043
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	0.9491
Dutchess, NY	
2290 Eau Claire, WI[2]	0.8880
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9346
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9145
Elkhart, IN	
2335 Elmira, NY	0.8546
Chemung, NY	
2340 Enid, OK	0.8610
Garfield, OK	
2360 Erie, PA	0.8965
Erie, PA	
2400 Eugene-Springfield, OR	1.0965
Lane, OR	
2440 Evansville-Henderson, IN–KY (IN Hospitals)[2]	0.8602
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2440 Evansville-Henderson, IN–KY (KY Hospitals)	0.8173
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.8749
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8655
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7910
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	1.0686
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1205
Genesee, MI	
2650 Florence, AL	0.7652
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8777
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0647
Larimer, CO	
2680 [1]Ft. Lauderdale, FL	1.0152
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9247
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	0.9622
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.8052
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9607
Okaloosa, FL	
2760 Fort Wayne, IN	0.8865
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX[1]	0.9527
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0104
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8423
Etowah, AL	
2900 Gainesville, FL	1.0074
Alachua, FL	
2920 Galveston-Texas City, TX	0.9918
Galveston, TX	
2960 Gary, IN	0.9454
Lake, IN	
Porter, IN	
2975 Glens Falls, NY[2]	0.8499
Warren, NY	
Washington, NY	
2980 Goldsboro, NC[2]	0.8441
Wayne, NC	
2985 Grand Forks, ND–MN	0.8954
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9471
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI[1]	1.0246
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.9330
Cascade, MT	
3060 Greeley, CO	0.9814
Weld, CO	
3080 Green Bay, WI	0.9306
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC[1]	0.9124
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9384
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9003
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9409
Washington, MD	
3200 Hamilton-Middletown, OH	0.9061
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9386
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT[1,2]	1.1715
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS[2]	0.7491
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.8755
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1866
Honolulu, HI	
3350 Houma, LA	0.8066
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX[1]	0.9732
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV–KY–OH	0.9676
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8932
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN[1]	0.9787
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9657
Johnson, IA	
3520 Jackson, MI	0.9134
Jackson, MI	
3560 Jackson, MS	0.8612
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8796
Madison, TN	
Chester, TN	
3600 Jacksonville, FL[1]	0.9206
Clay, FL	
Duval, FL	

ADDENDUM F—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage Index
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC[2]	0.8441
Onslow, NC	
3610 Jamestown, NY[2]	0.8499
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.9585
Rock, WI	
3640 Jersey City, NJ	1.1573
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8326
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8578
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7832
Craighead, AR	
3710 Joplin, MO	0.8148
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0453
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.9902
Kankakee, IL	
3760 Kansas City, KS–MO[1]	0.9661
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9611
Kenosha, WI	
3810 Killeen-Temple, TX	1.0119
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8340
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9525
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.9211
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8490
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.8834
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA[2]	0.7713
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8926
Polk, FL	
4000 Lancaster, PA	0.9259
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9904
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8168
Webb, TX	
4100 Las Cruces, NM	0.8658
Dona Ana, NM	
4120 Las Vegas, NV–AZ[1]	1.0796
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8190
Douglas, KS	
4200 Lawton, OK	0.8996
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9036
Androscoggin, ME	
4280 Lexington, KY	0.8666
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9320
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9666
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8906
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8922
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA[1]	1.2033
Los Angeles, CA	
4520 Louisville, KY–IN	0.9350
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8838
Lubbock, TX	
4640 Lynchburg, VA	0.8867
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8974
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0271
Dane, WI	
4800 Mansfield, OH	0.8690
Crawford, OH	
Richland, OH.	
4840 Mayaguez, PR	0.4589
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8566
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0344
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9688
Brevard, Fl	
4920 Memphis, TN–AR–MS[1]	0.8723
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA[2]	0.9661
Merced, CA	
5000 Miami, FL[1]	1.0059
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ[1]	1.0333
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI[1]	0.9767
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN–WI[1]	1.1017
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.9332
Missoula, MT	
5160 Mobile, AL	0.8163
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0396
Stanislaus, CA	
5190 Monmouth-Ocean, NJ[1]	1.1283
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8396
Ouachita, LA	
5240 Montgomery, AL	0.7653
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	1.0969
Delaware, IN	
5330 Myrtle Beach, SC	0.8440
Horry, SC	
5345 Naples, FL	0.9861
Collier, FL	
5360 Nashville, TN[1]	0.9490
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY[1]	1.3932
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT[1]	1.2034
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.2063
New London, CT	
5560 New Orleans, LA[1]	0.9295
Jefferson, LA	
Orleans, LA	

ADDENDUM F—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage Index
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY[1]	1.4651
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ[1]	1.0757
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY–PA	1.0847
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA-NC[1]	0.8422
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA[1]	1.4953
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9243
Marion, FL	
5800 Odessa-Midland, TX	0.9205
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK[1]	0.8822
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0677
Thurston, WA	
5920 Omaha, NE–IA	0.9572
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA[1]	1.1411
Orange, CA	
5960 Orlando, FL[1]	0.9610
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8159
Daviess, KY	
6015 Panama City, FL	0.9010
Bay, FL	
6020 Parkersburg-Marietta, WV-OH (WV Hospitals)	0.8274
Washington, OH	
Wood, WV	
6020 Parkersburg-Marietta, WV-OH (OH Hospitals)[2]	0.8670
Washington, OH	
Wood, WV	
6080 Pensacola, FL[2]	0.8928
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8646
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ[1]	1.0937
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ[1]	0.9689
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7791
Jefferson, AR	
6280 Pittsburgh, PA[1]	0.9741
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA[2]	1.1204
Berkshire, MA	
6340 Pocatello, ID	0.9076
Bannock, ID	
6360 Ponce, PR	0.5006
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9748
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver,[1] OR-WA	1.0910
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI[1]	1.0864
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	1.0041
Utah, UT	
6560 Pueblo, CO[2]	0.8968
Pueblo, CO	
6580 Punta Gorda, FL	0.9613
Charlotte, FL	
6600 Racine, WI	0.9246
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC[1]	0.9646
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8865
Pennington, SD	
6680 Reading, PA	0.9152
Berks, PA	
690 Redding, CA	1.1664
Shasta, CA	
6720 Reno, NV	1.0550
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1460
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9617
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA[1]	1.1115
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8782
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.1315
Olmsted, MN	
6840 Rochester, NY[1]	0.9182
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.8819
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.8649
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA[1]	1.1957
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9575
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	1.0016
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.9071
Andrew, MO	
Buchanan, MO	
7040 St. Louis, MO–IL[1]	0.9049
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	1.0132
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4502
Monterey, CA	
7160 Salt Lake City-Ogden, UT[1]	0.9811

ADDENDUM F—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties)	Wage Index
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8083
Tom Green, TX	
7240 San Antonio, TX[1]	0.8560
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA[1]	1.1784
San Diego, CA	
7360 San Francisco, CA[1]	1.4193
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA[1]	1.3564
Santa Clara, CA	
7440 San Juan-Bayamon, PR[1]	0.4690
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.0673
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0597
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.4095
Santa Cruz, CA	
7490 Santa Fe, NM	1.0537
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2646
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9609
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9697
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton-Wilkes-Barre-Hazleton, PA[2]	0.8578
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA[1]	1.1016
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA[2]	0.8576
Mercer, PA	
7620 Sheboygan, WI[2]	0.8880
Sheboygan, WI	
7640 Sherman-Denison, TX	0.8795
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.8750
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.8473
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.8790
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	1.0029
St. Joseph, IN	
7840 Spokane, WA	1.0513
Spokane, WA	
7880 Springfield, IL	0.8665
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8468
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA[2]	1.1204
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9036
Centre, PA	
8080 Steubenville-Weirton, OH–WV[2] (OH Hospitals)	0.8670
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8080 Steubenville-Weirton, OH–WV (WV Hospitals)	0.8548
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0629
San Joaquin, CA	
8140 Sumter, SC[2]	0.8370
Sumter, SC	
8160 Syracuse, NY	0.9594
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1564
Pierce, WA	
8240 Tallahassee, FL[2]	0.8928
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL[1]	0.9099
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN[2]	0.8602
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8427
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9664
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9117
Shawnee, KS	
8480 Trenton, NJ	1.0137
Mercer, NJ	
8520 Tucson, AZ	0.8821
Pima, AZ	
8560 Tulsa, OK	0.8454
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8064
Tuscaloosa, AL	
8640 Tyler, TX	0.9404
Smith, TX	
8680 Utica-Rome, NY	0.8560
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.2266
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.0479
Ventura, CA	
8750 Victoria, TX	0.8154
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0501
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA[2]	0.9861
Tulare, CA	
8800 Waco, TX	0.8314
McLennan, TX	
8840 Washington, DC–MD–VA–WV[1]	1.0755
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpeper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8802
Black Hawk, IA	
8940 Wausau, WI	0.9426
Marathon, WI	
8960 [1] West Palm Beach-Boca Raton, FL	0.9615
Palm Beach, FL	
9000 Wheeling, WV–OH[2] (WV Hospitals)	0.8231
Belmont, OH	
Marshall, WV	
Ohio, WV	
9000 Wheeling, WV–OH[2] (OH Hospitals)	0.8670
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9544
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7668
Archer, TX	
Wichita, TX	
9140 Williamsport, PA[2]	0.8578
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.1191
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9402
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA[2]	1.0434
Yakima, WA	
9270 Yolo, CA	1.0199
Yolo, CA	
9280 York, PA	0.9264
York, PA	
9320 Youngstown-Warren, OH	0.9543
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0706
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9529
Yuma, AZ	

[1] Large Urban Area

[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2001.

ADDENDUM G—WAGE INDEX FOR RURAL AREAS

Nonurban area	DWage index
Alabama	0.7528
Alaska	1.2392
Arizona	0.8317
Arkansas	0.7445
California	0.9861
Colorado	0.8968
Connecticut	1.1715
Delaware	0.9074
Florida	0.8928
Georgia	0.8329
Hawaii	1.1059
Idaho	0.8678
Illinois	0.8160
Indiana	0.8602
Iowa	0.8030
Kansas	0.7605
Kentucky	0.7931
Louisiana	0.7713
Maine	0.8766
Maryland	0.8651
Massachusetts	1.1204
Michigan	0.9021
Minnesota	0.8881
Mississippi	0.7491
Missouri	0.7707
Montana	0.8686
Nebraska	0.8109
Nevada	0.9232
New Hampshire	0.9845
New Jersey[1]	....
New Mexico	0.8497
New York	0.8499
North Carolina	0.8441
North Dakota	0.7716
Ohio	0.8670
Oklahoma	0.7491
Oregon	1.0132
Pennsylvania	0.8579
Puerto Rico	0.4264
Rhode Island[1]	....
South Carolina	0.8370
South Dakota	0.7570
Tennessee	0.7838
Texas	0.7507
Utah	0.9037
Vermont	0.9409
Virginia	0.8189
Washington	1.0434
West Virginia	0.8231
Wisconsin	0.8880
Wyoming	0.8817

[1] All counties within the State are classified as urban.

ADDENDUM H—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage Index
Abilene, TX	0.8240
Akron, OH	0.9736
Alexandria, LA	0.8170
Amarillo, TX	0.8715
Anchorage, AK	1.2865
Ann Arbor, MI	1.1064
Atlanta, GA	1.0096
Atlantic-Cape May, NJ	1.0822
Augusta-Aiken, GA–SC	0.9160
Barnstable-Yarmouth, MA	1.3583
Baton Rouge, LA	0.8734
Benton Harbor, MI	0.9021
Bergen-Passaic, NJ	1.1605
Billings, MT	0.9591
Binghamton, NY	0.8690
Birmingham, AL	0.8477
Bismarck, ND	0.7897
Bloomington-Normal, IL	0.9156
Boise City, ID	0.9042
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (NH, RI, and VT Hospitals)	1.1160
Burlington, VT	1.0236
Casper, WY	0.8817
Champaign-Urbana, IL	0.9084
Charleston-North Charleston, SC	0.9057
Charleston, WV	0.8904
Charlotte-Gastonia-Rock Hill, NC–SC	0.9391
Chattanooga, TN–GA	0.9624
Chicago, IL	1.1015
Cincinnati, OH–KY–IN	0.9415
Clarksville-Hopkinsville, TN–KY	0.8277
Cleveland-Lorain-Elyria, OH	0.9593
Columbia, MO	0.8756
Columbia, SC	0.9433
Columbus, OH	0.9619
Dallas, TX	0.9913
Danville, VA	0.8212
Davenport-Moline-Rock Island, IA–IL	0.8898
Dayton-Springfield, OH	0.9442
Denver, CO	1.0181
Des Moines, IA	0.9011
Dothan, AL	0.8013
Dover, DE	0.9769
Duluth-Superior, MN–WI	1.0043
Eau Claire, WI	0.8880
Erie, PA	0.8965
Eugene-Springfield, OR	1.0965
Fargo-Moorhead, ND–MN	0.8517
Fayetteville, NC	0.8469
Flagstaff, AZ–UT	1.0525
Flint, MI	1.1058
Florence, AL	0.7652
Florence, SC	0.8777
Fort Collins-Loveland, CO	1.0647
Ft. Lauderdale, FL	1.0152
Fort Pierce-Port St. Lucie, FL	0.9622
Fort Smith, AR–OK	0.7947
Fort Walton Beach, FL	0.9358
Fort Wayne, IN	0.8665
Forth Worth-Arlington, TX	0.9527
Gadsden, AL	0.8423
Grand Forks, ND–MN	0.8954
Grand Junction, CO	0.9471
Grand Rapids-Muskegon-Holland, MI	1.0248
Great Falls, MT	0.9330
Greeley, CO	0.9573
Green Bay, WI	0.9308
Greensboro-Winston-Salem-High Point, NC	0.9124
Greenville, NC	0.9172
Greenville-Spartanburg-Anderson, SC	0.9003
Harrisburg-Lebanon-Carlisle, PA	0.9386
Hartford, CT (MA Hospital)	1.1420
Hattiesburg, MS	0.7491
Hickory-Morganton-Lenoir, NC	0.8577
Honolulu, HI	1.1866
Houston, TX	0.9732
Huntington-Ashland, WV–KY–OH	0.9605
Huntsville, AL	0.8779
Indianapolis, IN	0.9767
Jackson, MS	0.8698
Jackson, TN	0.8796
Jacksonville, FL	0.9206
Jersey City, NJ	1.1573
Johnson City-Kingsport-Bristol, TN–VA	0.8328
Joplin, MO	0.8148
Kalamazoo-Battlecreek, MI	1.0291
Kansas City, KS–MO	0.9509
Knoxville, TN	0.8340
Kokomo, IN	0.9525
Lafayette, LA	0.8490
Lansing-East Lansing, MI	0.9934
Las Cruces, NM	0.8510
Las Vegas, NV–AZ	1.0796
Lexington, KY	0.8712
Lima, OH	0.9320
Lincoln, NE	0.9666
Little Rock-North Little Rock, AR	0.8791
Longview-Marshall, TX	0.8732
Los Angeles-Long Beach, CA	1.2033
Louisville, KY–IN	0.9350
Lynchburg, VA	0.8749
Macon, GA	0.8974
Madison, WI	1.0271
Mansfield, OH	0.8690
Memphis, TN–AR–MS	0.8584
Milwaukee-Waukesha, WI	0.9767
Minneapolis-St. Paul, MN–WI	1.1017
Missoula, MT	0.9332
Mobile, AL	0.8163
Monmouth-Ocean, NJ	1.1283
Montgomery, AL	0.7653
Myrtle Beach, SC (NC Hospital)	0.8441
Nashville, TN	0.9301
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2034
New London-Norwich, CT	1.1926
New Orleans, LA	0.9295
New York, NY	1.4463
Newburgh, NY–PA	1.0317
Norfolk-Virginia Beach-Newport News, VA–NC	0.8441
Oakland, CA	1.4963
Ocala, FL	0.9243
Odessa-Midland, TX	0.9074
Oklahoma City, OK	0.8822
Omaha, NE–IA	0.9572
Orange County, CA	1.1411
Orlando, FL	0.9610
Peoria-Pekin, IL	0.8846
Philadelphia, PA–NJ	1.0937
Pine Bluff, AR	0.7680
Pittsburgh, PA	0.9575
Pittsfield, MA (VT Hospital)	0.9914
Pocatello, ID	0.8715
Portland, ME	0.9629
Portland-Vancouver, OR–WA	1.0910
Provo-Orem, UT	1.0041
Raleigh-Durham-Chapel Hill, NC	0.9646
Rapid City, SD	0.8865
Redding, CA	1.1664
Reno, NV	1.0436
Richland-Kennewick-Pasco, WA	1.1147
Roanoke, VA	0.8762
Rochester, MN	1.1315
Rockford, IL	0.8819
Sacramento, CA	1.1957

ADDENDUM H—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage Index
Saginaw-Bay City-Midland, MI	0.9575
St. Cloud, MN	1.0016
St. Joseph, MO	0.8848
St. Louis, MO–IL	0.9049
Salinas, CA	1.4502
Salt Lake City-Ogden, UT	0.9811
San Diego, CA	1.1784
Santa Cruz-Watsonville, CA	1.3897
Santa Fe, NM	1.0000
Santa Rosa, CA	1.2398
Seattle-Bellevue-Everett, WA	1.1016
Sherman-Denison, TX	0.8795
Sioux City, IA–NE	0.8473
South Bend, IN	1.0029
Spokane, WA	1.0333
Springfield, IL	0.8685
Springfield, MO	0.8212
Syracuse, NY	0.9594
Tampa-St. Petersburg-Clearwater, FL	0.9099
Texarkana, AR-Texarkana, TX	0.8427
Toledo, OH	0.9664
Topeka, KS	0.9117
Tucson, AZ	0.8821
Tulsa, OK	0.8454
Tuscaloosa, AL	0.8064
Tyler, TX	0.9141
Victoria, TX	0.8154
Washington, DC–MD–VA–WV	1.0755
Waterloo-Cedar Falls, IA	0.8802
Wausau, WI	0.9426
Wichita, KS	0.9262
Rural Alabama	0.7528
Rural Florida	0.8928
Rural Illinois	0.8160
Rural Louisiana	0.7713
Rural Michigan	0.9021
Rural Minnesota	0.8881
Rural Missouri	0.7707
Rural Montana	0.8686
Rural Oregon	1.0132
Rural Texas	0.7507
Rural Washington	1.0434
Rural West Virginia	0.8231
Rural Wisconsin	0.8880
Rural Wyoming (NE Hospital)	0.8671

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Part III

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1 and 60–2
Government Contractors, Affirmative Action Requirements; Final Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1, 60–2

RIN 1215–AA01

Government Contractors, Affirmative Action Requirements

AGENCY: Office of Federal Contract Compliance Programs (OFCCP), ESA, Labor.

ACTION: Final rule.

SUMMARY: The Office of Federal Contract Compliance Programs (OFCCP) is revising certain regulations implementing Executive Order 11246, as amended. The Executive Order prohibits Government contractors and subcontractors, and Federally assisted construction contractors and subcontractors, from discriminating in employment, and requires these contractors to take affirmative action to ensure that employees and applicants are treated without regard to race, color, religion, sex, or national origin. The final rule will refocus, revise, and restructure 41 CFR part 60–2, the regulations that establish the requirements for affirmative action programs, and related sections in 41 CFR part 60–1. The rule will refocus the regulatory emphasis from the development of a document that complies with highly prescriptive standards, to a performance based standard that effectively implements an affirmative action program into the overall management plan of the contractor. The rule also will introduce a new tool, the Equal Opportunity Survey, that will aid contractors in assessing their pay and other personnel practices, while increasing the efficiency and effectiveness of program monitoring. OFCCP is encouraging contractors to file the Survey electronically.

The rule will help fulfill the Administration's Equal Pay Initiative to provide contractors with the necessary tools to assess and improve their pay policies. The rule also will help fulfill the Department's goal of increasing the number of Federal contractors brought into compliance. A means to fulfill that goal is for OFCCP to more effectively monitor the pay practices of Federal contractors.

In addition, the final rule revising and restructuring the regulations relating to affirmative action programs is part of OFCCP's continuing efforts to meet the objectives of the Reinventing Government Initiative. These objectives include obtaining input from those most directly affected by the regulations, reducing paperwork and compliance burdens wherever possible, more effectively focusing Government resources where most needed in order to administer the law most efficiently, making the regulations easier to understand by streamlining and simplifying them and writing them in plain language, and updating the regulations to accommodate modern organizational structures and to take advantage of new technologies.

EFFECTIVE DATES: These regulations are effective December 13, 2000.

FOR FURTHER INFORMATION CONTACT: James I. Melvin, Director, Division of Policy, Planning and Program Development, OFCCP, Room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–0102 (voice), (202) 693–1308 (TTY). Copies of this rule in alternative formats may be obtained by calling (202) 693–0102 (voice) or (202) 693–1308 (TTY). The alternative formats available are large print, electronic file on computer disk, and audiotape. The rule also is available on the Internet at. *http://www.dol.gov/dol/esa.*

SUPPLEMENTARY INFORMATION:

Current Regulations and Rulemaking History

Executive Order 11246, as amended, requires that Federal Government contractors and subcontractors "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin." Affirmative action under Executive Order 11246, as amended, connotes more than passive nondiscrimination; it requires that contractors take affirmative steps to identify and eliminate impediments to equal employment opportunity.

The history, principles and concepts underlying the current blueprint for affirmative action under Executive Order 11246, as amended, were recounted in the notice of proposed rulemaking (NPRM), 65 FR 26088, published on May 4, 2000, and readers interested in that background information may refer to that discussion.

The current regulations require Federal Government nonconstruction contractors and subcontractors with 50 or more employees and a contract of $50,000 or more to prepare and implement a written Affirmative Action Program (AAP) for each of their establishments. The basic elements of the AAP are discussed in more detail in the Section-by-Section Analysis which follows.

On May 4, 2000, OFCCP published a proposed rule, 65 FR 26088, to revise specific regulations found at 41 CFR parts 60–1 and 60–2. The comment period closed on July 3, 2000. A total of 187 comments were received within the comment period from five contractor advocacy organizations; 137 labor, civil rights, and women's advocacy organizations and their individual members; four law firms that advise or represent contractors or contractor advocacy organizations; 14 contractors; 17 consulting firms; 9 civil rights and affirmative action officials of state and local governments and institutions of higher learning; and one Member of Congress. All the comments were reviewed and carefully considered in the development of this final rule.

The final rule revises the regulations at 41 CFR part 60–2, which address the content of AAPs. The rule also makes a corresponding revision of § 60–1.12, which covers records that must be retained, and § 60–1.40, which covers who must develop and maintain an AAP.

The rule also performs several "housekeeping" functions with respect to the part 60–2 regulations. A final rule was published on December 30, 1980 (45 FR 86215; corrected at 46 FR 7332, January 23, 1981), but was stayed in accordance with Executive Order 12291 on January 28, 1981 (46 FR 9084). This rule later was stayed indefinitely on August 25, 1981 (46 FR 42865), pending action on an NPRM published on that same date (46 FR 42968; supplemented at 47 FR 17770, April 23, 1982). No further action on the August 25, 1981, proposal, or consequently on the 1980 stayed final rule, has been taken. Both the 1980 final rule and the 1981 proposal addressed 41 CFR part 60–2. To avoid conflict with the rule published today, OFCCP hereby withdraws part 60–2 of the 1980 final rule. Additionally, consistent with the President's 1998 "Plain Language" Memorandum, OFCCP has replaced the word "shall" with "must" or "will" as appropriate to the context.

Overview of the Final Rule

The final rule, for the most part, adopts the revisions that were proposed in the May 4 NPRM. However, some of the proposed provisions have been modified in response to the public comments. The changes between the NPRM and the final rule are explained in detail in the Section-by-Section Analysis.

The discussion which follows identifies the significant comments received in response to the NPRM, provides OFCCP's responses to those comments, and explains any resulting changes to the proposed revisions.

Section-by-Section Analysis of Comments and Revisions

Section 60–1.12 Record Retention

OFCCP published a final rule revising 41 CFR part 60–1 on August 19, 1997. The proposed rule published on May 4, 2000 would further amend the record retention provisions in § 60–1.12 to harmonize them with the proposed changes to part 60–2. Specifically, the NPRM would amend paragraph (b) to eliminate the modifier "written" from a contractor's current requirement to develop a written affirmative action program. Furthermore, the proposal called for a new paragraph (c) that would codify in this part a longstanding regulatory obligation for contractors to be able to identify their employees and, where possible, applicants by gender, race, and ethnicity. Existing paragraph (a) would remain unchanged, while paragraphs (c) and (d) would be redesignated as paragraphs (d) and (e) respectively, with the first sentence of the newly designated paragraph (d) reflecting the addition of new paragraph (c).

Section 60–1.12(b) Affirmative Action Programs

In response to a number of comments, OFCCP has decided not to remove the modifier "written" from the phrase "written affirmative action program." See further discussion under § 60–1.40 below.

Section 60–1.12(c)

The NPRM proposed a new paragraph (c) that would require that the contractor be able to identify the gender, race, and ethnicity of each employee, and where possible, the gender, race, and ethnicity of each applicant in any records the contractor maintains pursuant to this section. In addition, the contractor would be required to supply this information to OFCCP upon request. This provision is necessary for OFCCP to verify EEO data.

The agency received fifteen comments pertaining to paragraph (c), which fit into several categories. Most prominently, three consultants and two law firms sought a clear definition of which job seekers contractors must track as "applicants." More narrowly, a contractor objected to tracking as job applicants those persons it perceives as lacking requisite skills. Still another contractor hoped that the "where possible" language in the proposal indicated OFCCP has not definitively resolved the applicant issue, but rather intends to pursue a flexible approach that reflects modern realities.

Three contractors, three consultants, and a law firm representing an employer association expressed their view that it is an undue burden to obtain demographic data for prospective employees, especially unsolicited applicants. Another commenter, an organization representing contractors, agreed that this practice is burdensome, but also observed that collection of such demographic information for employee and applicant records is already required. In actuality, all employers with fifteen or more employees, including Federal contractors, have been covered by the Uniform Guidelines on Employee Selection Procedures since 1978.

The agency wishes to make clear that it is not revising the meaning of "applicant" in the final rule. OFCCP and other Federal civil rights agencies have adhered to the same definition since Question and Answer 15 was published in the **Federal Register** in 1979 (see "Adoption of Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures," 44 F.R. 11996, 11998 (March 2, 1979)) On the other hand, the final rule recognizes that some job applicants refuse to divulge demographic information to identify themselves. Therefore, OFCCP wishes to be reasonable through inclusion of the "where possible" phrase referring to applicants in § 60–1.12(c)(1)(ii).

A consultant and a law firm representing a business association expressed concern about marking the actual records of employees and applicants with demographic information. As one of them noted, such a requirement would be contrary to normal equal employment opportunity procedures. OFCCP agrees and does not intend for contractors to place gender, race, and ethnicity information directly on the employment records of their employees or job candidates. Thus, for sake of clarity, in the final rule the agency substitutes the preposition "for" for "in," which appeared in the proposed rule. Therefore, § 60–1.12(c)(1) now reads: "For any record the contractor maintains pursuant to this section, the contractor must be able to identify: (i) The gender, race, and ethnicity of each employee; and (ii) where possible, the gender, race, and ethnicity of each applicant." Consistent with the Uniform Guidelines on Employee Selection Procedures (UGESP), the burden is on the contractor to demonstrate that every reasonable effort has been made to identify the gender, race, and ethnicity of the applicant. In the case of electronic applications, the contractor may use an electronic tear-off sheet.

Each of the remaining categories of comments on proposed § 60–1.12(c) came from just one or two commenters. A consultant wondered whether a contractor could be found in violation if an employee or job applicant refused to provide demographic information. In a similar vein, the same commenter wanted to know whether a contractor could justifiably discipline such a person. In fact, such concerns are groundless because a contractor's invitation to an employee or applicant to self-identify his or her gender, race, and ethnicity should always make plain that the provision of such information is voluntary. Consequently, OFCCP would not hold a contractor responsible for an employee or applicant's refusal to self-identify.

One contractor requested more guidance on how to collect applicant data. Such detailed "how-to" information does not belong in the regulation itself. However, the agency does offer some guidance here in today's preamble. Specifically, while self-identification is the most reliable and the preferred method for compiling information about a person's race, sex, and ethnicity, such as through use of a "tear off sheet," other alternatives are likewise acceptable. Some contractors send a short form or post card requesting demographic information from applicants who respond to job advertisements in newspapers, electronic job posting services, or other places. Although self-identification is the preferred method, visual observation also can be an acceptable method for identifying demographic data, although it may not be reliable in every instance. Methods for collecting data on gender, race, and ethnicity are also discussed in Question and Answer 88 in the "Adoption of Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures," 44 FR 11996, 12008 (March 2, 1979).

Two other commenters urged delaying implementation of § 60–1.12(c) until 2002, arguing that collection of race and ethnicity information is not required until then. In fact, OMB published a Notice stating that "Federal programs should adopt the standards [for race and ethnicity classification] as soon as possible, but not later than January 1, 2003," 62 FR 58781, 58782

(October 30, 1997). As per these requirements, OFCCP is adopting the new standards as soon as possible.

Finally, a contractor asserted that the proposal at § 60–1.12(c)(2) to require contractors to supply demographic information to OFCCP upon request would violate the attorney-client privilege. In fact, contractor personnel prepare most such documentation without the involvement of legal counsel. Even when they do not, it is clear that an enforcement agency must have access to pertinent records in order to carry out its lawful duties.

Accordingly, except as noted above, § 60–1.12(c) is adopted as proposed.

Section 60–1.40 Affirmative Action Programs

OFCCP proposed several modifications to § 60–1.40. The proposal retained in paragraph (a) current standards for those who must develop and maintain an affirmative action program, removed from paragraph (a) references to "written" affirmative action program, and deleted the remainder of paragraph (a), as well as all of paragraphs (b) and (c).

Several commenters strongly encouraged the retention of the designation "written" affirmative action programs. One commenter asserted, in part, that "the 'written' AAP provides a structure on which to build and subsequently evidence a company's affirmative action efforts." Another commenter asserted that the "written AAP is essential to adequate discussions of: the nature of an organization, the methodology used to develop goals, identify problem areas, good faith efforts; and to aid in the development of a Program Summary." OFCCP believes that these comments have merit. Consequently, OFCCP has decided to retain the reference to "written" affirmative action program in paragraph (a) of this section. "Written" also is reinserted into § 60–2.1 and inserted into § 60–2.2 for clarity. A "written" AAP may include electronic maintenance of the AAP. A contractor may maintain its AAP in electronic format if all of its employees who are permitted or required to have access to the AAP have equal access to the electronic version of the AAP. If some of a contractor's employees lack access to an electronic version of the AAP, the contractor also must provide access to a hard (paper) copy of the AAP.

The retention of the current language "written" by no means vitiates the spirit of the proposed language that affirmative action is more than a paper exercise and that it be an indelible aspect of the entire corporate enterprise or business process. Pursuant to these regulatory changes, OFCCP will focus its resources on the action undertaken to promote equal employment opportunity, rather than on the technical compliance.

One commenter, noting what it characterized as "the magnitude of the systems and other changes that will be required," recommended that the new regulations apply only to AAPs created or updated after January 1, 2002, or after one full AAP year has elapsed after the new requirements become effective. The new regulations impose very few, if any, new requirements other than the Equal Opportunity Survey. Therefore, contractors will not need to make substantial changes to their AAPs in order to comply with the revised regulations. Nevertheless, a contractor that has prepared an AAP under the old regulations may maintain that AAP without penalty for the duration of the AAP year even if that AAP year overlaps with the effective date of the regulations.

In addition, in order to avoid confusion OFCCP has inserted into §§ 60–1.40(a)(1) and 60–2.1(a), the phrase "(supply and service)" after the term "nonconstruction." Finally, OFCCP has revised slightly the structure of paragraph (a) to conform to **Federal Register** format requirements; no change of substance is intended by the revision.

Part 60–2

Subpart A—General

Section 60–2.1 Scope and application

Existing § 60–2.1 describes the purpose and scope of the regulations contained in 41 CFR part 60–2. Current paragraph (a) specifies which contractors are required to develop AAPs and provides a general overview of the regulations contained in part 60–2. Paragraph (b) of the current regulation states that relief, including back pay where appropriate, must be provided for an affected class in all conciliation agreements entered into to resolve violations uncovered during a compliance review. Paragraph (b) also states that an "affected class" problem must be remedied in order for a contractor to be considered in compliance, and indicates that a contractor may be subject to the enforcement procedures set forth in § 60–2.2 for its failure to remedy past discrimination.

Consistent with the goals of streamlining and simplifying the regulations, the rule revises and restructures § 60–2.1. The rule revises paragraph (a) by limiting the language to a brief description of the scope of the regulations contained in Part 60–2. No comments were received on this provision. The final rule adopts paragraph (a) as proposed.

The final rule deletes as redundant the contents of paragraph (b) of current § 60–2.1, because the requirement that conciliation agreements include provisions for back pay and other remedies also is set forth in § 60–1.33. The removal of the back pay and affected class language from paragraph (b), however, is not intended to affect OFCCP's ability to recover back pay or other affirmative relief for victims of discrimination.

The final rule also deletes the historical reference to "Revised Order No. 4," the predecessor to the current Part 60–2, as it would not be appropriate or necessary in light of the changes to be made to part 60–2.

Paragraph (b) of the new § 60–2.1 specifies who must develop an AAP; it repeats the standards found in § 60–1.40, because recitation of the scope of coverage is important for completeness in both parts of the regulation. OFCCP has written the requirements in a list form for the reader's ease of understanding. As OFCCP did in § 60–1.40, OFCCP has revised slightly the structure of paragraph (b) to conform to **Federal Register** format requirements; no change of substance is intended by the revision.

Several commenters recommended that in the final rule this provision not be limited to full-time employees only. OFCCP did not intend for this provision to be read as including only full time employees. Some of the confusion concerning the provision may have arisen because the Equal Opportunity (EO) Survey form requested information about full time employees only. The request for information about full-time employees in the Survey was not intended to signal any change in OFCCP's requirement for reporting part-time, temporary and full time employees in written AAPs now or in the future.

The new § 60–2.1 provision does not make reference to particular categories of employees but rather refers generally to "employees." The term "employees" is broad enough to include part-time, temporary and full time employees. Therefore, the final rule adopts paragraph (b) of the proposal without change.

The final rule adds a paragraph (c) that specifies that the contractor must develop AAPs within 120 days from the commencement of the contract. This requirement was previously set out in 41 CFR § 60–1.40(c). Since Part 60–2 addresses the requirements of AAPs, it appears more appropriate to include information specifying when the obligation to develop AAPs begins as part of part 60–2. One commenter, a law firm representing a business group, recommended that the final rule specify when the next AAP is to be in place. OFCCP has consistently held that the new AAP should be developed and in effect on the date that the old AAP expires. OFCCP believes that the AAP should be an ongoing management tool and not just an exercise to be performed annually. The provision is carried forward in the final rule as proposed.

The final rule contains a paragraph (d) describing who is included in affirmative action programs. Subparagraph (2) provides three options for contractors with fewer than 50 employees at a particular establishment to account for those employees for AAP purposes. Subparagraph (3) is designed to clarify that the AAP at the establishment that makes the selection decision is the appropriate establishment for inclusion of their selectees. This is particularly important for corporate headquarters AAPs, since selection decisions are likely to be made at corporate headquarters for employees who are assigned to other establishments within the corporation. This reflects OFCCP's "corporate initiative" (53 FR 24830, June 28, 1988).

Several commenters recommended that OFCCP permit contractors to develop their AAPs based on how their businesses actually are organized. Specifically these commenters asked to be allowed to prepare a single workforce analysis (and AAP) based on a business function or a line of business, without regard to the geographic locations of the establishments and employees (sometimes referred to as a "functional" AAP).

In response to these commenters, OFCCP has added a subparagraph 4 to the final rule. This provision reads as follows:

> (4) Contractors may reach agreement with OFCCP on the development and use of affirmative action plans based on functional or business units. The Deputy Assistant Secretary, or his or her designee, must approve such agreements. Agreements allowing the use of functional or business unit affirmative action programs cannot be construed to limit or restrict how the OFCCP structures its compliance evaluations.

The purpose of this provision is to permit contractors to negotiate with OFCCP, subject to the approval of the Deputy Assistant Secretary, for permission to use affirmative action programs organized along business or functional lines. Some contractors have indicated that they would prefer a functional affirmative action program because it would allow them to better manage their equal employment opportunity programs and to hold the appropriate managers accountable for the performance of that program. This provision provides a mechanism by which the contractor can achieve these efficiencies. The provision also makes it clear that while OFCCP is willing to negotiate the structure of the contractor's affirmative action program, it is not offering to negotiate how the agency will conduct its compliance evaluations. Thus, while a contractor may receive permission to use functional or business unit affirmative action programs, OFCCP could still conduct an evaluation of a facility at a single geographic location. OFCCP hopes to have procedures for handling requests for functional AAPs in place before the effective date of the regulations. When the procedures are completed, OFCCP will post them on its Web site and/or include them in its Federal Contract Compliance Manual (FCCM).

At the suggestion of one commenter, the final rule substitutes "work" for the reference to "perform their normal and customary duties" in paragraph (d)(1). This change is necessary to clarify that "work" is the consistent meaning that OFCCP desires to convey throughout this provision. The proposed language implied a different meaning. Thus, the final rule provides, in relevant part, "Employees who work at locations other than that of the manager to whom they report, must be included in the affirmative action program of their manager."

Paragraph (e) of the proposed regulation explains how to identify employees who are included in AAPs at establishments other than where they are located. AAPs created according to paragraphs (d)(1) through (3) must identify these employees according to paragraph (e). Paragraph (d)(4) is not included in the requirements of paragraph (e) because the reporting formats for "functional" AAPs will be addressed on a case-by-case basis as part of the approval process.

One commenter, a law firm, suggested that the requirement to annotate where the employees are located would present an additional burden. As noted in the NPRM, the purpose of the proposed subparagraph was to clarify that the AAP at the establishment where the selection decision is made is the appropriate establishment for inclusion of their selectees. OFCCP does not agree that this requirement creates additional burden; it simply clarifies the agency's current policy and practice. Paragraph (e) of the proposal is adopted in the final rule as proposed.

Several commenters stated that OFCCP's use of more than one term when referring to a contractor's "establishment" or "location" was inconsistent or confusing. OFCCP agrees that using one term is clearer. Therefore, the final rule replaces the term "location" with "establishment" whenever "location" was used as a synonym for "establishment." OFCCP replaced "location" with "establishment" in §§ 2.1 and 2.30.

Section 60–2.2 Agency Action

Paragraph (a) deals with agency approval of AAPs. In the NPRM, OFCCP proposed revising paragraph (a) for clarity. One proposed change was to state that a contractor's AAP would be deemed to be accepted by the Government "at the time OFCCP notifies the contractor of the completion of the compliance evaluation or other action"; the existing provision says that the AAP is deemed accepted "at the time the appropriate OFCCP * * * office has accepted such plan. * * *" A commenter expressed concern that the change in paragraph (a) resulted in a change in the acceptance requirements. That is not the case. OFCCP has not changed the acceptance date requirements in paragraph (a). The only changes were for clarity.

OFCCP proposed in the NPRM to delete paragraphs (c) and (d) of the current § 60–2.2 which address show cause notices and other enforcement procedures for a contractor's failure to develop an AAP as prescribed in the regulations. OFCCP stated that since these subjects are addressed in §§ 60–1.26 and 60–1.28 there was no reason to repeat them in § 60–2.2.

Four commenters representing the interests of contractors objected to the deletion of these paragraphs. They expressed concern that the deletion of these paragraphs eliminates contractors' due process protections and the procedural safeguards of the show cause notice (SCN) process. They stated that without the SCN procedure, OFCCP could proceed directly to enforcement without offering contractors the opportunity to cure apparent violations.

OFCCP is persuaded that the proposed deletion may not have the limited impact originally contemplated by the agency. Therefore, the final rule restores the provisions in paragraphs (c) and (d) of § 60–2.2 with a minor change; paragraph (c)(1) has been modified to reflect the existing exceptions in § 60–1.26(b)(1) to the general rule that a show cause notice will be issued whenever administrative enforcement is contemplated.

The existing exceptions in § 1.26(b)(1) are as follows:

> * * * if a contractor refuses to submit an affirmative action program, or refuses to supply records or other requested information, or refuses to allow OFCCP access to its premises for an on-site review, and if conciliation efforts under this chapter are unsuccessful, OFCCP may immediately refer the matter to the Solicitor, notwithstanding other requirements of this chapter.

Subpart B—Purpose and Contents of Affirmative Action Programs

Section 60–2.10 General Purpose and Contents of Affirmative Action Programs

A complete rewrite of § 60–2.10 was proposed. The rewrite was intended to convey that an AAP should be considered a management tool—an integral part of the way a corporation conducts its business. Further, the intent of the proposed revision was to encourage self-evaluation in every aspect of employment by establishing systems to monitor and examine the contractor's employment decisions and compensation systems to ensure that they are free of discrimination.

Two commenters opposed portions of this section: One stated the belief that the proposed section was redundant; and the other asserted that it was "not aware of any authority for the OFCCP to dictate or prescribe the 'management approach' or policies of firms that perform federal contracts."

One commenter, a civil rights organization, supported the proposal, stating that "wholly integrating the monitoring and evaluative components of the AAP will ensure that contractors are assuming full responsibility for meaningful compliance as opposed to merely complying with a paperwork obligation."

OFCCP continues to believe that this introductory section should emphasize the philosophy that an affirmative action program is "more than a paperwork exercise. * * * Affirmative action, ideally, is a part of the way the contractor regularly conducts its business." Accordingly, § 60–2.10 is adopted as proposed.

Section 60–2.11 Organizational profile

The current § 60–2.11 is entitled "Required utilization analysis." It contains an introductory paragraph which identifies broad job areas (EEO–1 categories) in which racial and ethnic minorities and women are likely to be underutilized, and sets forth in lettered paragraphs the core contents of a written AAP.

This final rule addresses only paragraph (a) of the current § 60–2.11, which deals with the workforce analysis. Paragraph (b) of the current regulations, which addresses the job group analysis, has been revised and moved to new 60–2.12 discussed below in this preamble. The introductory paragraph of current § 60–2.11 has been deleted as outdated and unnecessary.

Paragraph (a) of the current § 60–2.11 provides that a workforce analysis is a listing of job titles (not job groups) ranked from the lowest paid to highest paid within each department or similar organizational unit. The workforce analysis also shows lines of progression or promotional sequences of jobs, if applicable. If no lines of progression or usual promotional sequences exist, job titles are listed by departments, job families or disciplines, in order of wage rates or salary ranges. For each job title, the workforce analysis must reflect the wage rate or salary range, and the number of incumbents by race, ethnicity, and sex. In short, the workforce analysis is a map pinpointing the location of jobs and incumbent employees and their relationship to other jobs and employees in the contractor's workforce.

In the NPRM, OFCCP proposed to "reengineer" the workforce analysis into a shorter, simpler format called an "organizational profile." In basic terms, the organizational profile was an organization chart showing each of the organizational units and their relationships to one another, and the gender, racial, and ethnic composition of each organizational unit. Unlike the current workforce analysis, the proposed profile focused only on organizational units and did not require the identification of individual job titles with the exception of the supervisor, if any. Likewise, reporting of race, sex, and salary information by job title would be eliminated using the organizational profile.

Eleven commenters stated that the organizational profile would be more burdensome than the workforce analysis. A number of commenters indicated that most of their companies either did not have an organizational chart or that if they had such charts, the charts only reflected the top levels of the organization. Other commenters indicated that the organizational structure of their companies was so fluid that charts would become quickly outdated. Many commenters representing or servicing the contractor community indicated that the current workforce analysis was not a burden to produce because their systems are configured to produce the analysis with very little effort. These commenters also indicated that there are numerous software products that facilitate the creation of a workforce analysis. Ten commenters specifically recommended that OFCCP permit contractors the option of continuing to use the workforce analysis if the contractor found this less burdensome.

In addition, some commenters, including women's and civil rights groups and a labor organization, raised concerns that adoption of the organizational profile, in lieu of the workforce analysis, might result in the loss of valuable compliance information. Others supported the organizational profile but cautioned against any further simplification because of the potential of the loss of important information.

OFCCP proposed the adoption of an organizational profile, in part, to decrease the burden on contractors. Prior to the publication of the NPRM, many stakeholders had raised concerns about the workforce analysis and had indicated that it was burdensome. However, since many contractors have now indicated that there is very little burden in preparing a workforce analysis and that there may be more burden for them in preparing an organizational profile, in this final rule OFCCP permits contractors to submit either the old style workforce analysis or an organizational display as the organizational profile. OFCCP believes that this is responsive to concerns about burden and to concerns that OFCCP not further simplify the organizational profile.

A number of commenters from the contractor community objected to the requirement that the proposed organizational profile be presented as a "detailed organizational chart or similar graphical representation." Five commenters indicated that the creation of a graphical representation would be burdensome because they did not have the software or systems to create such a chart and significant manual work would be required. In response to these concerns, OFCCP has made the provision of a "graphical representation" optional. The final rule permits contractors choosing the organizational display to use "detailed graphical or tabular chart, text, spreadsheet, or similar presentation of the contractor's organizational structure" for displaying the required information.

Following is a sample organizational display. This sample is provided for illustrative purposes only, and should

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not be construed to represent a required format or template.

BILLING CODE 4510–15–P

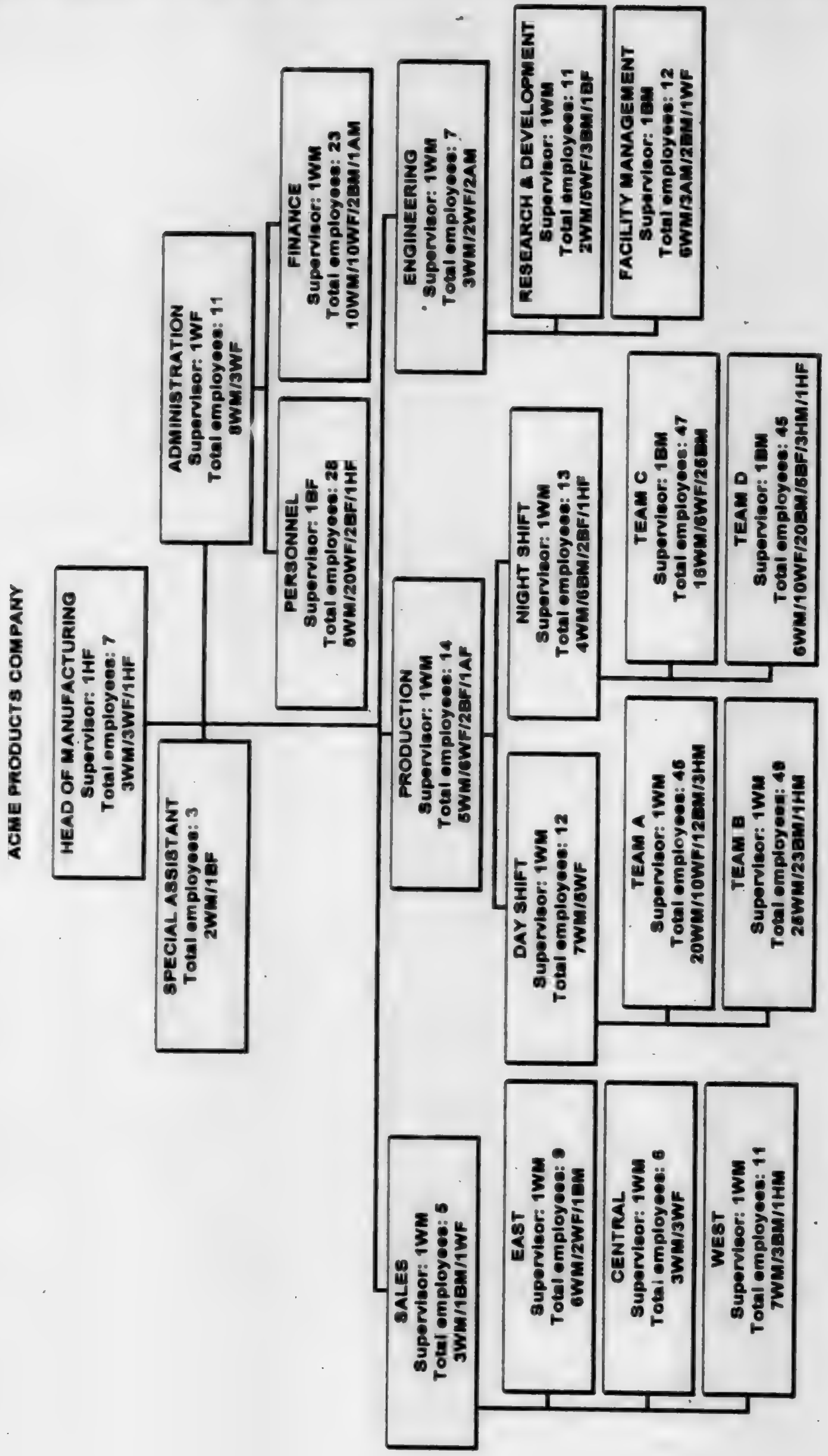
ACME PRODUCTS COMPANY
HEAD OF MANUFACTURING
Supervisor: 1HF
Total employees: 7
3WM/3WF/1HF
SPECIAL ASSISTANT
Total employees: 3
2WM/1BF
ADMINISTRATION
Supervisor: 1WF
Total employees: 11
8WM/3WF
FINANCE
Supervisor: 1WM
Total employees: 23
10WM/10WF/2BM/1AM
PERSONNEL
Supervisor: 1BF
Total employees: 28
5WM/20WF/2BF/1HF
ENGINEERING
Supervisor: 1WM
Total employees: 7
3WM/2WF/2AM
RESEARCH & DEVELOPMENT
Supervisor: 1WM
Total employees: 11
2WM/5WF/3BM/1BF
FACILITY MANAGEMENT
Supervisor: 1BM
Total employees: 12
6WM/3AM/2BM/1WF
PRODUCTION
Supervisor: 1WM
Total employees: 14
5WM/6WF/2BF/1AF
NIGHT SHIFT
Supervisor: 1WM
Total employees: 13
4WM/6BM/2BF/1HF
TEAM C
Supervisor: 1BM
Total employees: 47
16WM/6WF/25BM
TEAM D
Supervisor: 1BM
Total employees: 45
6WM/10WF/20BM/5BF/3HM/1HF
DAY SHIFT
Supervisor: 1WM
Total employees: 12
7WM/5WF
TEAM A
Supervisor: 1WM
Total employees: 45
20WM/10WF/12BM/3HM
TEAM B
Supervisor: 1WM
Total employees: 49
25WM/23BM/1HM
SALES
Supervisor: 1WM
Total employees: 5
3WM/1BM/1WF
EAST
Supervisor: 1WM
Total employees: 9
6WM/2WF/1BM
CENTRAL
Supervisor: 1WM
Total employees: 6
3WM/3WF
WEST
Supervisor: 1WM
Total employees: 11
7WM/3BM/1HM

BILLING CODE 4510-45-C

Under the final rule, the organizational display would still not require the itemization of individual job titles, or the reporting of gender, race, ethnicity, and salary information by job title. Thus, the volume of the organizational display should be less than the volume of a workforce analysis (which often is one of the largest sections of the AAP).

Some commenters requested that OFCCP specify that it intends for the organizational profile to reflect the organization down to the level of the first line supervisor. It is OFCCP's intent that each organizational unit and all subordinate units, including the first-line supervisor level be accounted for in the organizational profile. OFCCP believes that the language of § 60–2.11 accomplishes this.

Some commenters questioned the usefulness of the proposed organizational profile. Contractors who feel it would be more helpful for their self-audit and affirmative action purposes to continue to develop a workforce analysis are at liberty to do so under the final rule. However, for those contractors electing to submit an organizational display, OFCCP believes that the display will provide a representation of where minorities and women may be underrepresented or concentrated, which permits preliminary review for potential discrimination and the need for affirmative action. This representation will be useful to many contractors engaging in self-analysis, and it is useful to OFCCP's compliance evaluation process. By introducing the flexibility to continue using the current workforce analysis or to adopt an organizational display that is not necessarily a graphic representation, OFCCP allows contractors to elect the method that is most meaningful for the particular contractor.

As noted in the NPRM, in subsection (c)(4), the minority group designations conform to the designations of minorities currently used in the EEO–1 report. OFCCP intends the racial and ethnic designations used in the regulations at 41 CFR Chapter 60, to be consistent with the revised standards set forth by OMB. OFCCP will coordinate any changes in these designations with the Equal Employment Opportunity Commission (EEOC) so that record keeping and reporting requirements for both agencies are compatible.

Section 60–2.12 Job Group Analysis

The NPRM would provide much greater guidance and clarification on how to structure job groups than is contained in the current regulation at § 60–2.11(b). Many commenters supported the majority of the proposal but added specific recommendations, especially for paragraph (e).

Section 60–2.12(a) Purpose

Job group analysis is the first step in comparing the representation of minorities and women in the contractor's workforce with the estimated availability of qualified minorities and women who could be employed. When the representation of minorities or women within a job group is less than their availability by some identifiable measure (see discussion of § 60–2.16, below) the contractor must establish goals.

No comments were received regarding proposed paragraph (a) and it is adopted without change.

Section 60–2.12(b)

The reason for combining job titles is to organize the workforce into manageable size groups to facilitate analysis, while still maintaining elements of commonality among the jobs grouped together. The jobs included in a job group must have three elements in common, *i.e.*, similar job duties, similar compensation, and similar opportunities for advancement within the contractor's workforce. Contractors have considerable discretion in determining which jobs to combine, but the resulting job groups must contain jobs with the requisite common elements. If the job groups are inappropriately drawn, the availability and utilization analyses based on those job groups will be flawed.

As was noted in the NPRM, some view the current instruction to combine jobs by similar content, wage rates, and opportunities as too general to provide clear, consistent guidance. Therefore, as proposed, paragraph (b) of the final rule describes similarity of content and similarity of opportunities, the two criteria most open to divergent interpretations. This rule states "similarity of content refers to the duties and responsibilities of the job titles which make up the job group." In addition, it provides that "similarity of opportunities refers to training, transfers, promotions, pay, mobility, and other career enhancement opportunities offered by the jobs within the job group." One commenter desired an explanation of similar wage rates. However, OFCCP believes "wage rates" to be a generally understood term. Moreover, the degree of similarity in wage rates appropriate for job group formation varies depending upon the size of a contractor's workforce and the structure of its compensation system.

Two other comments were received concerning paragraph (b). One explicitly expressed support for OFCCP's traditional method of job group formation based on similarity of jobs' content, wage rates, and opportunities, an approach that is continued in this final rule. The other commenter wanted the regulation to state that contractors have discretion in forming their job groups. However, such a provision is unnecessary, since contractors themselves decide which job titles are appropriately grouped to produce job groups, given the three regulatory parameters. Paragraph (b) is adopted as proposed.

Section 60–2.12(c)

Paragraph (c) of the final rule provides that a contractor's job group analysis must include a list of the job titles comprising each job group, a requirement that OFCCP's experience demonstrates most contractors already incorporate into their affirmative action programs. No comments were received on this provision.

Paragraph (c) also would reflect the provisions of §§ 60–2.1(d) and (e) relating to jobs located at another establishment. Specifically, new § 60–2.1(d) requires inclusion of each employee in the affirmative action program of the establishment at which he or she works, with exceptions made for employees who normally work at establishments other than that of the manager to whom they report, employees at establishments with fewer than 50 employees, and employees for whom selection decisions are made at a higher level establishment. Then, for identification purposes, § 60–2.1(e) requires contractors to annotate their affirmative action programs to indicate when employees are included in affirmative action programs for establishments other than where they are physically located. Five commenters objected to having to annotate the job group analysis as too burdensome. Most contractors would have to make only a small number of annotations. Without notations showing who is accountable for personnel actions affecting particular employees, or which affirmative action programs cover specific workers, it is difficult for designated contractor official(s) to adequately monitor progress or address problem areas. Similarly, OFCCP needs the ability to easily identify where responsibility lies for each of a contractor's employees in order to carry out its regulatory obligations during compliance evaluations. For these reasons, paragraph (c) is adopted in the final rule without change.

Section 60–2.12(d)

The NPRM proposed in § 60–2.12(d) that all jobs located at an establishment must be included in that establishment's job group analysis, except as provided in § 60–2.1(d). Just two commenters opposed the proposal, on the grounds that it would be too restrictive by preventing contractors from forming "functional" job groups across establishments. The discussion of functional AAPs in the preamble discussion of § 60–2.1 above addresses this issue. OFCCP adopts § 60–2.12(d) without change in the final rule.

Section 60–2.12(e) Smaller Employers

As a way of reducing unnecessary burden, the final rule makes explicit that a contractor with fewer than 150 employees may choose to utilize EEO–1 categories as job groups. The agency considers job grouping by EEO–1 category to be simpler both for smaller employers and for OFCCP.

Most commenters welcomed this regulatory revision for reducing the burden on smaller contractors when preparing their affirmative action programs. However, some felt the revision carried risks by going too far, while a few maintained the change should apply to a wider group of contractors.

Five commenters wrote that this proposal should go further. For example, a law firm and a contractor wanted to extend the optional use of EEO–1 categories to small establishments of larger employers. Another law firm would have OFCCP expand the option so as to grant it to any contractor with no more than fifty employees in an EEO–1 category. Finally, a municipality and a consultant recommended widening the option so that all contractors, regardless of size, could choose to use EEO–1 categories as job groups.

These recommendations are problematic. The agency is concerned with reducing burden on smaller employers, which lack the financial and human resources larger contractors possess. However, inappropriate mingling of many highly disparate jobs in large EEO–1 category-based job groups would likely occur for larger employers. Such mingling risks ignoring potentially vast differences in job content, wage rates and opportunities.

Here is an example of what happens if a larger contractor uses EEO–1 categories for job groups: Contractor Y has 450 employees. Of the 450 employees, 300 are classified as EEO–1 Professional. The breakdown is as follows:

	Total number of employees	Number of females	Females (percent)	Number of minorities	Minorities (percent)
Accountants	25	10	40	5	20
Financial Analysts	25	5	20	5	20
Human Resource Specialists	50	40	80	10	20
Computer Programmers	100	30	30	50	50
Electrical Engineers	50	10	20	20	40
Systems Analysts	50	5	10	10	20

A job group analysis by content, wage rate, and opportunities would look something like this: (Job Groups are in **bold** with Job Titles underneath)

ACCOUNTANTS
  Accountant I
  Accountant II
  Accountant III

Computer programmers
  Computer programmer I
  Computer Programmer II
  Computer programmer III

FINANCIAL ANALYSTS
  Jr. Financial analyst
  Sr. Financial analyst

Electrical engineers
  Electrical engineer I
  Electrical Engineer II
  Electrical engineer III

HUMAN RESOURCE SPECIALISTS
  Staffing specialists.
  Benefits specialists.
  Payroll specialists.

Systems analysts
  Jr. Systems analyst.
  Sr. Systems analyst.

If jobs are grouped by EEO–1 category, all professional jobs go into one Job Group as follows: (Job Groups are in **bold** with Job Titles underneath)

Professionals
  Accountant I
  Accountant II
  Accountant III
  Computer Programmer I
  Computer Programmer II
  Computer Programmer III
  Electrical Engineer I
  Electrical Engineer II
  Electrical Engineer III
  Jr. Systems Analyst
  Sr. Systems Analyst
  Jr. Financial Analyst
  Sr. Financial Analyst
  Staffing Specialists
  Benefits Specialists
  Payroll Specialists

The problem with using EEO–1 categories for job groups becomes clear when the percentages of employees, availability, and utilization data are examined:

A job group analysis using content, wage rates, and opportunities looks like this:

Job group	Total number of employees	Percent of females	Female availability (percent)	Females underutilized?	Percent of minorities	Minority availability (percent)	Minorities underutilized?
Accountants	25	40	24	N	20	28	Y
Financial Analysts	25	20	32	Y	20	16	N
Human Resource Specialists	50	80	54	N	20	30	Y
Computer Programmers	100	30	30	N	50	65	Y
Electrical Engineers	50	20	28	Y	40	40	N
Systems Analysts	50	10	10	N	20	36	Y

EEO–1 based grouping looks like this:

Job group	Total number of employees	Percent of females	Female availability (percent)	Females underutilized?	Percent of minorities	Minority availability (percent)	Minorities underutilized?
Professionals	300	33	30	N	33	43	Y

EEO–1-based grouping masks the utilization problems in six areas:

- Female utilization problems in **Financial Analysts** and **Electrical Engineers.**
- Minority utilization problems in **Accountants, Human Resource Specialists, Computer Programmers,** and **Systems Analysts.**

With EEO–1 based grouping:

- There do not appear to be any utilization problems among female professionals, which is incorrect. Grouping all female professionals together masks the utilization problems and the need to set goals for female Financial Analysts and Electrical Engineers.
- There appear to be utilization problems among all minority professionals, which is incorrect. Grouping all minority professionals together makes it unlikely that the contractor will focus affirmative action efforts on the four job areas in which utilization problems actually occur.

Five commenters urged OFCCP to limit its burden reduction proposal to contractors with total workforces of 100 or fewer employees, instead of 150. The 150 threshold is consistent with the threshold for smaller employers in the record keeping provisions of part 60–1. Two women's organizations and a labor organization were concerned that allowing larger employers to use EEO–1 categories would sacrifice "meaningful data, (given that) proper job groupings are central to the aims of 60–2 and vital to the mission of OFCCP." Two consultants were more specific about their worries, fearing that even smaller employers could mask discrimination. One pointed out that a smaller contractor might easily have two or three levels of management in its officials and managers job group. For example, a chief executive officer, a chief financial officer, and a vice president could be joined with a director of the mailroom, hiding potential race or gender discrimination.

While these concerns may be valid in some instances, they must be balanced with the goal of reducing contractors' burdens whenever possible without undue sacrifice to the agency's ability to enforce its mission. Section 60–2.12(e) is adopted as proposed.

Section 2.13 Placement of Incumbents in Job Groups

No comments were received on this section. It is adopted without change.

Section 60–2.14 Determining availability

(Current § 60–2.14 entitled "Program summary" is found at § 60–2.31.)

Section 60–2.14 in the final rule, contains the guidelines for determining availability and replaces the current regulations at §§ 60–2.11(b)(1) and (2). The purpose of the availability analysis is to determine the representation of minorities and women among those qualified (or readily qualifiable) for employment for each job group in the contractor's workforce. Availability is the yardstick against which the actual utilization of minorities or women in the contractor's job group is measured.

In the current rule, the contractor is required to compute availability, separately for minorities and for women, for each job group. In determining availability, the contractor considers each of eight factors listed in the regulations. The factors are similar, but not identical, for minorities and women. Although contractors are required to consider all eight factors, they are not required to utilize each factor in determining the final availability estimate. Only the factors that are relevant to the actual availability of workers for the job group in question are to be used. Most contractors actually use only a few of the eight factors to compute the final availability estimates.

The "eight-factor analysis" for determining availability is one of the most frequently criticized elements of the Executive Order 11246 program. Common complaints among contractors are that the requirements are unnecessarily complex and not sufficiently focused. As proposed in the NPRM, this section simplifies the availability computations by reducing the number of factors from eight to two. These two factors are the same for minorities and for women.

Under this final rule, as under the current regulation the contractor is required to compute availability, separately for minorities and for women, for each job group.

Fourteen commenters specifically supported the proposed reduction from eight factors to two. The proposed rule was equally popular among contractors, contractor associations, consultants, and civil rights and women's organizations.

One commenter association recommended that a reasonableness standard be included in the definition of "trainable" described in the second of the two factors. This commenter noted that the current regulation contains such a standard. Without this limitation, the commenter was concerned that the calculation of availability would be rendered impractical.

The inclusion of individuals who are "trainable" is intended to address the recommendations of civil rights and women's groups that the availability computation include consideration of training opportunities. It is a refinement of the requirement in the previous regulations (§§ 60–2.11(b)(1)(viii) and (b)(2)(viii)) that the contractor consider the degree of training which it is reasonably able to undertake as a means of making all job classes available to minorities and to women.

In response to this comment, OFCCP has revised the final rule to restore a reasonableness standard regarding the concept of "trainable employees." OFCCP believes that this modification will make it easier for contractors to calculate "trainable employees" while achieving the goal of requiring contractors to consider this pool of available workers.

The final rule now provides at § 60–2.14(c) that the two factors to be considered in determining availability are:

(1) The percentage of minorities or women with requisite skills in the reasonable recruitment area. The reasonable recruitment area is defined as the geographical area from which the contractor usually seeks or reasonably could seek workers to fill the positions in question.

(2) The percentage of minorities or women among those promotable, transferable, and trainable within the contractor's organization. Trainable refers to those employees within the contractor's organization who could, with appropriate training which the contractor is reasonably able to provide,

become promotable or transferable during the AAP year.

Contractors would be required to determine the percentages in § 60–2.14(c)(2), by undertaking one or both of the following steps:

1. Determine which job groups are "feeder pools" for the job group in question. The feeder pools are job groups from which individuals are promoted.

2. Ascertain which employees could be promoted or transferred with appropriate training which the contractor is reasonably able to provide.

Example #1: a contractor has a job group of Engineering Managers. Over the past year, all individuals who have been promoted into the Engineering Managers job group have been promoted from only two other job groups: Chemical Engineering Project Leaders and Petroleum Engineering Project Leaders. The Chemical Engineering Project Leaders job group has 100 incumbents, of whom 20 are minority and 25 are female. The Petroleum Engineering Project Leader job group also has 100 incumbents, of whom 15 are minority and 20 are female. The "feeder pool" availability is the total number of minority or female incumbents divided by the total number of incumbents for the two job groups.

Job Group	Total Incumbents	Minority Incumbents	Female Incumbents
Chem.E PL	100	20	25
Pet.E PL	100	15	20

Minority Availability (20+15)/(100+100)=17.5%
Female Availability (25+20)/(100+100)=22.5%

Example #2: A contractor has a job group of Entry Level Managers. This contractor has a management training program. A review of the training program shows that of the 200 employees in the program last year, 100 completed the program and are eligible for Entry Level Manager positions this AAP year. Of those 100 who completed the program, 45 are minority and 40 are female. The availability in this example is the percentage of minorities or females that completed the training program.

Total individuals eligible for promotion	Minorities eligibile for promotion	Females eligible for promotion	Minority availability (percent)	Female availability (percent)
100	45	40	45	40

OFCCP's experience has shown that these factors are the ones most contractors use to compute availability estimates. Taken together, they reflect contractors' assertions of who is qualified and available for employment.

Section 60–2.14(e) requires a contractor to define its reasonable recruitment area so as not to exclude minorities and women, and to develop a brief written rationale for selection of that recruitment area. On occasion, defining the recruitment area in a slightly different way can significantly enlarge or reduce the proportion of minorities or women with requisite skills available for employment. In such a case, the contractor is required to assure that the recruitment area chosen will not have the effect of excluding minorities or women.

Three commenters, a contractor and two consultants, expressed concern about the prohibition against drawing the reasonable recruitment area in a way that has the effect of excluding minorities or women. One noted that even if such exclusion is unintentional, contractors will be found in violation. Accordingly, the commenters recommended adding the term "unreasonably" or "intentionally" in front of the word "excluding." OFCCP does not agree that this change is necessary or desirable. The objective of this section of the regulations is to have the contractor compute, as accurately as possible, the availability of minorities and women for employment. Accurate computation of availability is essential to the entire goal setting process. Improper drawing of the reasonable recruitment area has the effect of misstating availability. The effect is the same, whether the improper drawing is intentional or inadvertent, and it cannot be accepted. If a contractor is found in violation for unintentionally drawing its recruitment area in a way that excludes minorities or women, it will be given ample opportunity to correct the error before the conclusion of the compliance evaluation.

Section 60–2.14(f) requires that contractors define the pool of promotable, transferable, and trainable employees in such a way as not to exclude minorities or women, and to develop a brief documented rationale for the selection of the pool. One commenter recommended a clarification that this subsection will not be interpreted to mean that contractors will be found in violation for defining feeder groups in a way that unintentionally has the effect of excluding minorities or women. For reason similar to that discussed above, OFCCP declines to add this clarification.

Further, § 60–2.14(d) requires that the contractor use the most current and discrete statistical data to conduct its availability analyses. This is addressed in Section 2G05(e) and Appendix 2B of the FCCM. Examples of such information include census data, data from local job service offices, and data from colleges and other training institutions. One commenter asserted that it is difficult to identify the most current statistical data in practice because few contractors have access to data more current than the decennial census. Sections 2G04 and 2G05 of the FCCM provide guidance on other sources of availability data. Moreover, decennial census data or some variant thereof often will satisfy the requirement to use the most current information "available." Another commenter asserted that determining availability is laborious for large, national companies that hire from the top educational institutions across the nation for professional ranks. OFCCP disagrees as to the difficulty of this task. Data on college and university graduates are readily available in private publications, from the U.S. Department of Education, and from the schools themselves.

When a job group is composed of job titles with different availability rates, § 60–2.14(g) requires the contractor to compute a composite availability estimate. The composite availability figure would represent a weighted

average of the availability estimates for all the job titles in the job group.

The composite weighted average availability is computed by determining the percentage of total job group incumbents represented by the incumbents in each job title, multiplying each incumbent percentage by the corresponding availability for that job title, and summing the results.

The computation is illustrated by the following job group of professionals with a total of 80 incumbents:

Job Title	Number of incumbents	Availability (percent)
Accountant	20	35
Auditor	40	20
Analyst	20	15

1. Accountant=20/80 incumbents, or .25 Auditor=40/80 incumbents, or .5 Analyst=20/80 incumbents, or .25
2. Accountant=.25 x .35=.0875 Auditor=.5 x .20=.1 Analyst=.25 x .15=.0375
3. Composite Availability=.0875+.1+.0375=.225 or 22.5%.

A comment from a law firm representing a business association urged OFCCP to delete the composite availability requirement entirely, or to at least clarify it to provide that determining availability for each job title is not required when a contractor uses "appropriate census data that encompasses a broader range of job titles and/or occupational categories." The basis for the request was the commenter's assertion that "census data already encompasses a range of job titles" and "already represents "composite" availability data when applied to a specific job group." OFCCP does not object, *per se*, to the use of aggregated census data in lieu of the job title by job title computation of composite availability, *when the aggregated data truly represent composite availability data for the job group in question.* However, in order for the use of aggregated census data to be acceptable, there must be a close match between the actual jobs included in the census data and those in the contractor's job group. Additionally, so as to remain true to the concept of weighted averaging, the percentage representation of each job in the census group must closely match the percentage representation of the corresponding job in the contractor's job group.

In the NPRM, OFCCP requested comments concerning whether contractors should be required to compute availability separately for individual minority subgroups as a general rule. Five commenters—two law firms, a contractor, a contractor representative, and an individual consultant— expressed opposition to computing availability separately for individual minority subgroups. One of these commenters expressed concern that it would cause confusion in that employees or applicants could identify themselves with multiple ethnic or racial characteristics. A law firm indicated that it would create rivalry between minority subgroups.

One commenter, a consultant, noted examples where it may be beneficial to calculate minority subgroups. This commenter stated that using total minorities allows the masking of discrimination against specific minority subgroups. This commenter indicated this practice of discriminating against minority subgroups could be self-perpetuating because management hires new employees as a result of referrals from current employees, with the effect of excluding other groups.

The regulation retains the requirement that contractors determine the availability of total minorities. The language in the proposal, which does not require calculating availability separately by individual minority subgroup, was not modified and has been adopted in the final rule.

Section 60–2.15 Comparing incumbency to availability

(Current § 60–2.15 entitled "Compliance status" was revised and moved to § 60–2.35, discussed below in the preamble.)

Section 60–2.15 addresses an aspect of the current regulations that is referred to as the "utilization analysis," and replaces one portion of the current § 60–2.11(b). Section 60–2.15(a) requires the contractor to compare the representation of minorities and women in each job group with their representation among those available to be employed in that group. During compliance reviews, OFCCP typically finds that more minorities and women are available for employment in particular occupations and job groups than are actually employed in those positions. If the availability for a job group is greater than incumbency, and the difference is of a sufficient magnitude, the contractor must establish a goal.

The current regulation refers to the difference between availability and incumbency as "underutilization," defined as "having fewer minorities or women in a particular job group than would reasonably be expected by their availability." When this condition exists, the contractor must establish a goal. As noted in the preamble to the NPRM, OFCCP traditionally has permitted contractors to identify underutilization using a variety of methods, including: The "any difference" rule, *i.e.*, whether any difference exists between the availability of minorities or women for employment in a job group and the number of such persons actually employed in the job group; the "one person" rule, *i.e.*, whether the difference between availability and the actual employment of minorities or women equals one person or more; the "80 percent rule," *i.e.*, whether actual employment of minorities or women is less than 80 percent of their availability; and a "two standard deviations" analysis, *i.e.*, whether the difference between availability and the actual employment of minorities or women exceeds the two standard deviations test of statistical significance.

Seven commenters addressed the standards for comparing incumbency to availability. Five of the seven commenters—two organizations representing women, a consultant, an association and a labor organization—advocated that OFCCP adopt some variation of the "any difference" standard across the board. They argued that contractors should be required to set placement goals for women and minorities whenever analysis demonstrates any difference between availability and utilization. They indicated that allowing contractors to choose the standard by which they will be evaluated introduces unnecessary inconsistency to the process, resulting in similarly situated establishments being held to different measures in assessing their employment of women and minorities. Another civil rights membership organization commented that contractors should be required to set placement goals whenever analysis reveals a difference of one person between availability and utilization. One commenter, a consultant, stated that the proposal does not address the "inappropriate nature" of using the standard deviation approach when either the job groups or availability are too small. The commenter further stated that OFCCP continues to avoid implementing a regulation regarding determination of underutilization.

Conversely, two commenters, both law firms, recommended that OFCCP continue to permit contractors flexibility, arguing that the various acceptable methods be included in the regulatory text.

On balance, OFCCP believes that retaining the current practice of permitting various methods for determining availability is the appropriate approach to take. OFCCP further believes that the proposed wording of § 60–2.15 is sufficient to suggest to the contractor community when there exists the need to establish a goal. Therefore, the provision, § 60–2.15(b), is adopted without change.

Finally, current § 60–2.11(b) specifies that the AAP shall contain "(a)n analysis of all *major* job groups" for which underutilization determinations will be made (emphasis added). The regulations do not define "major," nor do they distinguish major job groups from other job groups. Most contractors have treated all job groups as major, and have conducted the analyses for each. In the NPRM, OFCCP proposed to discontinue the use of the word "major," thereby requiring that contractors determine availability, compare incumbency to availability, and set placement goals (where comparison of availability to incumbency indicates a need to do so) for all job groups.

In the preamble of the NPRM, OFCCP expressly solicited comments on the proposal to drop the word "major" in reference to job groups. OFCCP received a comment from a law firm representing a business association objecting to the proposal to drop the term major. This commenter stated this change would "make little practical difference to large contractors" but would "negatively impact small contractors." This commenter further stated that small contractors, "relied on the current language to reasonably conclude they need not assess utilization of those job groups that are too small to permit meaningful analysis." This commenter concluded that the deletion of "major" would "only add work, but no additional value, to a small contractor's AAP." OFCCP believes that this concern becomes less of an issue inasmuch as § 60–2.12 allows smaller contractors to use EEO–1 categories as their job groups.

In contrast, another association commented that it anticipated no added burden because contractors already have a practice of treating all job groups as "major" and stated that contractors already perform these analyses on each job group. A labor organization commented that requiring that underutilization analysis be performed for each job group rather than just "major" job groups is a sound step, consistent with the program's goals of promoting equal opportunity.

This section is adopted as proposed in the NPRM. This language assures that no one is excluded when comparing incumbency to availability because of the size of the job group.

Section 60–2.16 Placement Goals

The earlier sections of the final rule require a Federal contractor to analyze its workforce and evaluate its employment practices for the purpose of identifying and correcting gender-, race-, and ethnicity-based obstacles to equal employment opportunity. Where the need for corrective action is revealed, the AAP must include outreach and other steps precisely tailored to eliminate the barriers disclosed, and placement goals to target and measure the effectiveness of efforts directed towards achieving that result. In the preamble to the NPRM, OFCCP provided a brief history of how it has addressed the question of goals and how the regulatory provisions requiring goals fits into that history.

Section 60–2.16(a) sets out the purpose of placement goals. It explains that goals "serve as objectives or targets reasonably attainable by every good faith effort." It also explains that goals are used to measure progress toward equal employment opportunity.

One contractor association commented that in its view there was no meaningful distinction between the use of goals and the use of quotas. The commenter stated, "OFCCP requires contractors to pursue a race-based or gender-based hiring and promotion system." The commenter suggested that goals could only be justified by a demonstration that they are needed to remedy specifically identified past discrimination. Absent evidence of such demonstration, the commenter suggests that there is no "compelling governmental interest" that would justify the setting of goals and that to do so would violate the equal protection clause of the U.S. Constitution. The commenter cites a number of court decisions to support its position.

OFCCP disagrees with this commenter. OFCCP does not require contractors to pursue a race- or gender-based hiring and promotion system. As noted in the NPRM, what OFCCP requires is that contractors engage in outreach and other efforts to broaden the pool of qualified candidates to include minorities and women. Contrary to the suggestion made by the commenter, goals are not a device to achieve proportional or equal results; rather the goal setting process is used to target and measure the effectiveness of affirmative action efforts to eradicate and prevent barriers to equal employment opportunity. OFCCP's position with respect to goals is explained more fully in an OFCCP Administrative Notice entitled "Numerical Goals under Executive Order 11246," which was issued in December 1995.

A contractor association questioned whether the first sentence of § 2.16(b) was necessary, since § 60–2.15 discusses when a goal must be set and § 60–2.16(c) establishes the level at which a goal must be set. Another commenter requested clarification of terms in this same sentence. In response to these comments, OFCCP has deleted the first sentence of § 60–2.16(b) in the final rule.

Another commenter urged OFCCP to "state loud and clear, that there is no presumption of discrimination" based on the fact that a contractor is required under the regulations to set a goal. OFCCP believes that the statement at § 60–2.16(b) that "A contractor's determination under § 2.15 that a placement goal is required constitutes neither a finding nor an admission of discrimination" is a very "loud and clear" statement of this point.

Commenters, generally, raised no concerns about § 60–2.16(c). This provision is adopted without change in the final rule.

Two commenters representing a number of contractors raised a concern about the statement at § 60–2.16(d) that "In the event of a substantial disparity in the utilization of a particular minority group, a contractor may be required to establish separate goals for those groups." The commenter was concerned because the term "substantial disparity" is not defined and feared that the requirement "will have the practical result of producing quotas and will, no doubt pit one minority group against another."

As indicated in § 60–2.16(d), setting a single goal for all minorities is expected to continue to be the norm for most contractors. The purpose of the additional language concerning substantial disparities for a particular group is intended to address specific situations where a particular minority group, or men and women of a particular minority group, are substantially underutilized. This approach is taken directly from OFCCP's current regulations at § 60–2.12(l). In appropriate circumstances, OFCCP will continue to require separate goals for particular minority groups or by gender within minority groups. It is not intended to represent a change. Therefore, OFCCP has not changed this language in the final rule.

Section 60–2.17 Additional Required Elements of Affirmative Action Programs

The preceding sections of the regulations have focused primarily on the diagnostic component of written AAPs—the statistical analyses of the contractor's workforce to identify equal employment opportunity problems. However, meaningful affirmative action also requires that the contractor develop and carry out action-oriented programs to eliminate the identified problems, and establish procedures for monitoring its employment activities to determine whether the AAP is effective.

The existing regulations address the action-oriented and evaluative components of AAPs in a section designated "Additional required ingredients of affirmative action programs." That provision appears at § 60–2.13 in the existing regulations. OFCCP has eliminated a number of elements that no longer need to be specifically and separately set forth in regulatory form. The remaining provisions have been moved to § 60–2.17 and are now named "Additional required elements of affirmative action programs." Although OFCCP has eliminated these provisions from the mandatory requirements of the AAP, the contractor may voluntarily choose and is encouraged to retain these elements in its program.

In the final rule, OFCCP has deleted, as specific required elements, the following items:

§ 60–2.13(a)—reaffirmation of the contractor's EEO policy in all personnel matters;

§ 60–2.13(b)—formal internal and external dissemination of the contractor's EEO policy;

§ 60–2.13(e)—establishment of goals and objectives by organizational units and job groups, including timetables for completion;

§ 60–2.13(i)—active support of local and national community action programs and community service programs; and

§ 60–2.13(j)—consideration of minorities and women not currently in the workforce having requisite skills.

In addition, OFCCP has deleted existing § 60–2.13(h)—compliance of personnel policies and practices with the Sex Discrimination Guidelines (41 CFR part 60–20). The Sex Discrimination Guidelines are an independent regulatory requirement to which contractors are subject, regardless of whether the Guidelines are mentioned as "additional required elements." Eliminating redundancy by not referencing the Guidelines in § 60–2.17, therefore, in no way affects the contractor's obligation to comply with the Guidelines nor OFCCP's commitment to enforcing the Guidelines.

OFCCP has retained four of the original 10 "additional required ingredients." OFCCP believes that these remaining items capture the essence of effective affirmative action, including subsuming many aspects of the specific "ingredients" that were deleted. They should energize and encourage contractors to improve upon and eliminate any weaknesses in their equal employment opportunity performance. The following elements in the existing § 60–2.13 are retained in the new § 60–2.17:

§ 60–2.13(c)—establishment of responsibilities for implementation of the contractor's AAP (codified as § 60–2.17(a));

§ 60–2.13(d)—identification of problem areas by organizational units and job groups (codified as § 60–2.17(b));

§ 60–2.13(f)—development and execution of action-oriented programs designed to eliminate problems and further designed to attain established goals and objectives (codified as § 60–2.17(c)); and

§ 60–2.13(g)—design and implementation of internal audit and reporting systems to measure effectiveness of the total program (codified as § 60–2.17(d)).

OFCCP proposed to modify the provision in § 60–2.13(c) of the existing regulations (§ 60–2.17(a) of this rule) concerning the "establishment of responsibilities for implementation of the contractor's affirmative action program." This modification is derived from § 60–2.22(a) of the existing regulations, which recommends, but does not require, that the contractor assign an executive as director or manager of company equal opportunity programs and give that person the management support and staffing to carry out the assignment. The proposal expressly requires that the contractor provide for the implementation of the affirmative action program by assigning responsibility and accountability to a company official. However, the official is not required to be an executive of the company.

OFCCP received several comments on proposed subsection 60–2.17(a), the majority of which strongly supported the proposal. Those commenters stated, for example, that for the affirmative action program to be effectively implemented, adequate attention and resources must be devoted to its administration.

One commenter, an organization representing contractors, agreed that management responsibility and accountability are important factors in implementing a successful affirmative action program, but noted that many experienced human resources professionals believe that an "affirmative action czar" approach is not particularly effective. According to the commenter, this is because the czar model "allows others in the organization to believe that nondiscrimination and affirmative action are the czar's responsibility not theirs." Therefore, the commenter argued, exactly how accountability and responsibility are to be accomplished should be left to the contractor. Another commenter took a different approach, writing, "The OFCCP fails to recognize that frequently the person assigned with the responsibility for equal employment opportunity is often a staff member who serves in an advisory capacity, without the authority to implement these changes and therefore cannot be held accountable."

OFCCP certainly encourages contractors to hold all managers accountable for equal employment opportunity and affirmative action. However, OFCCP also feels strongly that a company official must oversee equal opportunity and affirmative action efforts, and must have the authority and responsibility to make them effective, lest no-one is held accountable and responsible.

Finally, a few commenters expressed concern about the last sentence of subsection (a), which states that the official responsible for equal employment opportunity must have the authority, resources, support of and access to top management to ensure effective implementation of the AAP.

One wondered how a contractor would demonstrate to the compliance officer that the designated official has the required authority. OFCCP is confident that authority would be easily demonstrated by a few inquiries during the compliance evaluation process. The commenter also wondered whether, over time, this would lead to more boilerplate in AAPs designed to prove the necessary authority and access to top management. OFCCP considers this concern to be highly speculative.

A contractor, a law firm, and several consultants and organizations representing contractors expressed concerns with proposed subsection (b). Subsection (b) requires the contractor to perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist. Areas to be analyzed include: (1) The workforce by organizational unit and job group; (2) personnel activity; (3) compensation systems; (4) selection, recruitment, referral and other personnel procedures; and (5) other areas that might impact the success of the affirmative action program. Many of the comments focused on the requirement to review compensation systems, with several commenters asserting that OFCCP does not have authority to enforce equal pay concerns, that analysis of compensation systems is not required by the current regulations, that compensation analyses impose an additional burden, or that OFCCP did not specify the types of analyses it would find acceptable. However, one of the contract clauses that Executive Order 11246 requires be inserted in all government contracts requires that the contractor agree not to discriminate on the basis of race, color, religion, sex or national origin. Areas in which discrimination expressly is prohibited include "rates of pay and other forms of compensation." Section 202(1). Since the compensation analysis requirement is not new, it imposes no additional burden. The question of burden is also discussed in the Paperwork Reduction Act section below. In addition, contractors have the ability to choose a type of compensation analysis that will determine whether there are gender-, race-, or ethnicity-based disparities.

Commenters also expressed confusion about how the information gained from the analyses conducted under subsection (b) should be used by contractors, and how the contractor's actions will be evaluated by OFCCP. Much of the answer is found in subsection (c), which requires the contractor to develop and execute action-oriented programs designed to correct any problem areas identified pursuant to subsection (b), and to demonstrate that it has made good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results. Of course, if the contractor's analyses disclosed discrimination, the contractor would be expected to eliminate the discriminatory practices and provide appropriate remedies.

A few commenters asserted that little or no reduction of the burden or cost of implementing provisions of the rule would result from the revisions that were made to § 60–2.17. See discussion of burden reduction in the section below addressing the Paperwork Reduction Act.

Section 60–2.18 Equal Opportunity Survey

The proposed § 60–2.18 requires that nonconstruction contractor establishments designated by OFCCP prepare and file an Equal Opportunity (EO) Survey. The EO Survey contains information about personnel activities, compensation and tenure data and specific information about the contractor's affirmative action programs.

Virtually every commenter addressed the EO Survey. There were two general categories of comments: (1) comments on the Survey as a concept and its utility as an instrument to select contractors for compliance evaluations, including comments on the burden hours and (2) comments on the specific format and content of the Survey document.

There were numerous comments from women's and civil rights groups, labor organizations, and a consultant in favor of the EO Survey as a useful instrument to select contractors for compliance evaluations. These comments indicated that it will enhance, strengthen, and improve enforcement efforts; it will increase contractor accountability; it will aid in disclosing possible discriminatory personnel and compensation practices; it will encourage contractor self-audits and corrective actions; it will aid OFCCP in tailoring its evaluation activities to those contractors that appear to need the most help; and it will not be a burden on contractors. However, there were also numerous comments from contractors, law firms, employer associations, and consultants that asserted that the EO Survey is not a useful instrument, or expressed other concerns about the EO Survey.

One commenter asserted that the Administrative Procedure Act requires that OFCCP subject the actual EO Survey format to notice and comment rulemaking. OFCCP disagrees. As the Federal agency charged with enforcing Federal contractor compliance with Executive Order 11246, OFCCP has ample authority to investigate such compliance by, among other things, requesting general information relevant to whether a contractor is fulfilling its affirmative action duties or engaging in discriminatory employment practices. Section 202(5) of Executive Order 11246, and the regulations promulgated thereunder, mandate as a condition of each Government contract, that the contractor agree to furnish all information required by the Executive Order and to permit the Secretary of Labor access to the contractor's books, records and accounts for purposes of investigation to ascertain compliance with the rules, regulations and orders. 41 CFR 60–1.4(a)(5). The requirements of § 60–1.4(a) with respect to the production of data are not limited to information sought by OFCCP as part of a compliance evaluation. Nothing in the Administrative Procedure Act or elsewhere requires OFCCP to publish for notice and comment an enumeration of, or the format for, every item it will examine to determine whether contractors are complying with their contractual obligations. Moreover, OFCCP notes that public notice and comment on the Survey format were provided under the Paperwork Reduction Act.

Several comments were related to OFCCP's projection of the burden hours that it should take contractors to complete the EO Survey. Three organizations representing contractors surveyed a sample of their members concerning the length of time it took to complete the EO Survey. One organization found that the average completion time was 23 hours; the second, 30 hours, and the third stated that 80% of its sample took longer than 12 hours to complete the EO Survey. Given the newness of the EO Survey and the requisite learning curve of the individuals completing the EO Survey, the time required to complete a contractor establishment's initial EO Survey is undoubtedly greater than the time that will be required for subsequent EO Survey submissions. To take this learning curve into account, OFCCP has increased the estimated time to complete the EO Survey from 12 hours to 21 hours for the first two years the Survey is distributed. See Paperwork Reduction Act section below.

Several commenters believed OFCCP should explain how the EO Survey data would be used to select contractors for compliance evaluations. Another commenter indicated that Part C of the EO Survey (which collects compensation data) is inadequate to help OFCCP select contractors for compliance evaluations. In actuality, the data in all three components of the EO Survey—Parts A, B and C—as well as other information, will be used in the contractor selection process.

Each part of the Survey will provide indicators of potential compliance problems for which further inquiry may be appropriate. For example, negative answers to the questions in Part A about the contractor maintaining AAPs under each of the laws enforced by OFCCP might suggest the need for follow-up in that area. Likewise, Part C data that indicate possible disparities in pay between men and women in particular EEO–1 categories might suggest the need for closer scrutiny of actual pay practices. The Survey responses do not prove that a problem exists, but rather are used as an indicator to guide OFCCP compliance evaluations.

One commenter suggested that construction contractors also be required to submit the EO Survey. Part 60–2 pertains solely to contractors with supply and service contracts. The current EO Survey was intended for nonconstruction contractors. OFCCP will, however, consider expanding the Survey to cover construction contractors in the future. It should be noted also that construction companies that have supply and service contracts, e.g., architectural, engineering, survey and the like, are subject to part 60–2.

Several other commenters indicated that the Survey was not appropriate for colleges and universities because they complete the IPEDS or EEO–6 form rather than the EEO–1 form. Currently OFCCP is not requiring colleges and universities to complete the Survey and there are no current plans to expand the EO Survey to include higher education contractors; however, OFCCP will consider this comment if the Survey is subsequently expanded to include higher education contractors.

A recurring concern of contractors is that information submitted to OFCCP, compensation information being the most frequently cited item, may be disclosed to competitors or the public under the Freedom of Information Act (FOIA).

Paragraph (d) states that OFCCP will treat information contained in the Equal Opportunity Survey as confidential to the maximum extent the information is exempt from public disclosure under FOIA. OFCCP explains in paragraph (d) that its practice is not to release data where the contractor still is in business and where the contractor asserts, and through the Department of Labor review process it is determined, that the data are confidential and that disclosure would subject the contractor to commercial harm. Several comments suggested that neither regulations nor case law under FOIA is adequate to ensure protection of information in the EO Survey. However, the more specific the information is about a particular employer, the more protection it is afforded under FOIA. Moreover, the Department's FOIA regulations at 29 CFR 70.26 require OFCCP to notify contractors on a case-by-case basis whenever a FOIA request is made. This notification gives contractors the opportunity to object to the disclosure of any data they consider confidential.

Throughout its history OFCCP has routinely collected compensation information during the course of its compliance evaluations, and OFCCP is not aware of any instance in which compensation data were disclosed without the consent of the contractor. It has always been OFCCP's policy not to release data that is determined to be confidential or has the potential to subject the contractor to commercial harm if disclosed, and this policy will be applied to EO Survey data as well. OFCCP believes that the concerns about the security of EO Survey data are unfounded.

Paragraph (b) of the NPRM provided that the Survey must be prepared in accordance with the format specified by the Deputy Assistant Secretary, but the specific format was not published in the NPRM. Paragraph (b) further stipulated that the Survey will include information that will allow for an accurate assessment of contractor personnel activities, pay practices, and affirmative action performance.

The NPRM also indicated that the Survey "may" include data elements such as applicants, hires, promotions, terminations, and compensation by race and gender. In this final rule, this provision is made mandatory, because these data are essential to OFCCP's analyses of contractors' personnel and compensation practices.

As use of the EO Survey develops and evolves, the Department may at some time determine that one or more of the data elements currently included in the EO Survey should be altered or deleted. In the event consideration is given to changing a data element requirement, the following circumstances must exist: (1) the Secretary must clearly demonstrate through statistical analyses of EO Survey submissions that the data element in question is no longer of value; and (2) the Secretary must follow Notice and Comment procedures.

Many comments addressed the content (i.e., format, definitions, etc.) of the EO Survey form as it is being implemented by OFCCP. Because § 60–2.18 does not provide for a specific format, OFCCP does not consider the specific contents of the Survey form now in use to have been part of the NPRM. Nevertheless, in the interest of full discussion of the EO Survey, OFCCP addresses those comments below.

During the first implementation phase of the EO Survey, which began in April 2000, a Survey format, reviewed and approved by OMB, was sent to approximately 7,000 contractors to complete and submit. While many of the comments concerning the format were favorable, a number of comments from law firms, employer associations, consultants and one or two contractors were critical of the format for a variety of reasons. Some indicated that the use of EEO–1 categories rather than job groups renders the data too broad to be meaningful in identifying noncompliance, as an indicator for potential problems, or as a self-auditing tool for contractors. Some other commenters said that using EEO–1 data would require companies to maintain two sets of data: one set for the AAP based on job groups and one for the EO Survey. On August 31, 2000, four organizations representing contractors met pursuant to Executive Order 12866 with OMB and OFCCP to discuss the Survey. These four organizations asserted that reporting Survey data by EEO–1 category represented an additional burden, because contractors usually maintain data by job groups.

OFCCP proposed the use of the nine EEO–1 job categories because (1) they are well known to Federal contractors, and have been in use for several decades; (2) many contractors now use the categories as job groups; (3) the categories are fixed and common across industries and therefore provide a ready means of comparing employment data from one contractor to another (this would not be the case with job groups, whose makeup varies from contractor to contractor); and, (4) job groups generally do not cross EEO–1 categories, which means that a contractor could determine EEO–1 category data simply by combining the data from several job groups. Additionally, OFCCP intends to use the EO Survey data to identify indicators of potential problems for purposes of scheduling and focusing compliance evaluations and not as evidence of discrimination, so detailed data are not necessary. While OFCCP's Equal Employment Data System (EEDS) is also based on EEO–1 data, the EO

Survey provides more in-depth data than the EEDS does, thus greatly increasing OFCCP's ability to predict potential problems when using the EO Survey as the instrument to select contractors for compliance evaluations. By the same token, the EO Survey should also be a useful tool for self-auditing purposes, to enable companies to focus on specific potential problems that may exist.

In response to the requests that OFCCP permit reporting by job group, and in the interest of flexibility, OFCCP has decided to allow contractors the option of submitting personnel activity and compensation data either by job group or by EEO–1 category. Contractors may submit EO Survey data by job group only under these circumstances:

(1) Contractors must submit both personnel activity and compensation data by job groups.

(2) Contractors may submit EO Survey data by job groups only via the Internet.

(3) Contractors must identify the EEO–1 category to which each job group belongs.

(4) Contractors may not submit a job group that crosses EEO–1 category lines.

One consultant asserted that the 30-day timeframe for completion of the Survey did not allow contractors sufficient time, and extensions beyond the May 31, 2000, due date were not granted. OFCCP will take this comment under advisement when determining the due date for future EO Survey submissions.

Several commenters expressed concern over the fact that the EO Survey does not allow for the reporting of data on part-time employees. Some commenters felt that this lack of data would impair OFCCP's ability to identify areas of potential discrimination. One commenter asserted that since many women and minorities are part-time employees, excluding them on the Survey underrepresents the number of women and minorities employed by contractors. Others objected to the exclusion of part-time employees as it was inconsistent with their Affirmative Action Program reporting systems.

OFCCP recognizes that excluding part-time employees from the EO Survey may restrict the Survey's effectiveness as a predictor of potential problems in the area of part-time employment. As a practical matter, including data on part-time incumbency and compensation would have increased the size of the EO Survey by several pages. OFCCP intends to use the EO Survey data as merely an indicator of potential problems and not as evidence of discrimination, so areas of potential discrimination concerning part-time employees can and will still be investigated during compliance evaluations.

Several commenters complained that the definition of "applicant" contained in the EO Survey instructions is ambiguous, and were concerned with how contractors could obtain race/gender information. The definition of applicant contained in the EO Survey is the same definition OFCCP and other civil rights agencies have relied upon for more than 20 years. It is taken from and is consistent with the Uniform Guidelines on Employee Selection Procedures (refer to Question and Answer No. 15, Adoption of Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures (Qs and As), 44 FR 11996, 11998 (March 2, 1979)). With regard to obtaining race and gender information for reporting on the EO Survey, OFCCP notes that this is not a new requirement nor an additional burden, as contractors have had an affirmative obligation to ascertain the race and gender of their applicants, where possible, for as long as OFCCP has enforced Executive Order 11246. It is also consistent with § 60–3.4 of the Uniform Guidelines on Employee Selection Procedures.

Several commenters stated that they had problems with the definition of "promotion" used in the EO Survey, as it differed from the definition they used. The definition is consistent with previous guidance issued by OFCCP, as it was taken verbatim from the Glossary in Chapter 1 of OFCCP's FCCM. Promotions are to be captured within EEO–1 categories as well as from one EEO–1 category to a higher category (*e.g.*, from Professionals to Officials and Managers). To offer an alternative definition in the EO Survey would only create confusion and possibly additional burden on contractors.

One commenter said that the definition of "hire" needed clarification. OFCCP did not include a definition of "hire" in the most recent EO Survey, as it was found during cognitive testing that the word was well understood and no definition was necessary. OFCCP recognizes that while there may be slight variations in the way hires are reported (*i.e.*, the date the employee accepts the position, the date the employee first reports for work, etc.) from contractor to contractor, the variations are acceptable as long as the contractor is internally consistent. OFCCP does not see the need for a restrictive definition of this term.

A number of comments addressed the compensation data requested by the EO Survey. Many commenters supported requesting compensation data, because of the role of compensation in employment discrimination. Other commenters were not in favor of including compensation data. One such commenter indicated that the EO Survey fails to identify compensation discrimination. Another indicated that the contractor should be allowed to explain all the factors that influence compensation. One commenter noted that tenure is not a good indicator of compensation discrimination. Another stated that the EO Survey erroneously assumes that tenure with a company is the only important pay variable. Still another commenter was of the opinion that only tenure within the position currently held was relevant to compensation analysis. Another indicated that salary data should be aggregated to protect the confidentiality of individual salary data.

OFCCP believes that compensation data must be used in identifying potential problems as early in the process as possible and it, therefore, intends to retain compensation data in the EO Survey. Furthermore, the compensation data are used only as an indicator, a reason for further inquiry, not as evidence of discrimination. Therefore, OFCCP has decided to retain "tenure" in future versions of the EO Survey, and tenure is included as a required data element in § 2.18(b). If a compliance evaluation is scheduled and compensation is a focus area, the contractor will have the opportunity to explain all the additional factors that influence compensation.

Finally, the compensation information requested in the EO Survey is aggregated by gender and minority/non-minority status within each EEO–1 category and does not contain identifying information on individuals.

In the preamble to the NPRM OFCCP stated that it contemplated sending the Survey to no fewer than half of all nonconstruction contractor establishments each year; the most likely scenario was described as contractors submitting the Survey biennially, with approximately one half of all establishments submitting the Survey each year. OFCCP also stated that it was considering whether to codify this one half floor as part of the final rule. Several commenters, including women's organizations and labor unions, felt that codification of the number of Surveys was critical to the success of the project. OFCCP has decided that sending the Survey to half of all nonconstruction contractor establishments each year is the only way to ensure that the Survey will

continue to be a credible evaluation tool. Therefore, OFCCP will send the Survey to half of all nonconstruction contractor establishments each year. The final rule states that "OFCCP will designate a substantial portion of all nonconstruction contractor establishments to prepare and file and Equal Opportunity Survey." OFCCP interprets "a substantial portion" to mean half of all nonconstruction contractor establishments. Interpreting "substantial portion" as "half" enhances OFCCP's ability to achieve the three stated objectives of the Survey:

(1) To increase compliance with equal opportunity requirements by improving contractor self-awareness and encourage self-evaluations.

(2) To improve the deployment of scarce federal government resources toward contractors most likely to be out of compliance.

(3) To increase agency efficiency by building on the tiered-review process already accomplished by OFCCP's regulatory reform efforts, thereby allowing better resource allocation.

Proposed paragraph (c) described how, when, and where contractors must file the Equal Opportunity Survey. The NPRM stated that contractors are encouraged to file the EO Survey in electronic format. Since "electronic format" may refer either to the means of transmission or the form in which the data are sent, OFCCP has clarified paragraph (c) to state that contractors are encouraged to submit the EO Survey via the Internet. Internet submission will greatly expedite OFCCP's receipt and analysis of submitted data. Contractors also may mail or fax the EO Survey to OFCCP. For clarification, paragraph (c) now states that the fax telephone number will be indicated in the EO Survey instructions. Two commenters suggested that the EO Survey due dates should be staggered. Staggered filing/submission dates are currently under consideration by OFCCP.

After considering all the comments received, the final rule adopts the EO Survey as a regulatory instrument. Certain issues such as the submission date and the time allowed for completion of the Survey are not part of this rule and will be addressed at a later date.

Section 60–2.30 Corporate Management Compliance Evaluations

This new section draws upon OFCCP's experience in conducting glass-ceiling reviews, addressing several issues that are unique to the corporate management environment.

Paragraph (a) briefly explains that the purpose of Corporate Management Compliance Evaluations is to ascertain whether individuals are encountering artificial barriers to advancement into mid-level and senior corporate management positions.

Paragraph (b) provided that OFCCP may expand the scope of a Corporate Management Compliance Evaluation beyond a company's headquarters establishment, if during the course of a compliance evaluation it comes to OFCCP's attention that compliance problems exist at other locations outside the corporate headquarters.

A number of commenters endorsed this section. Other commenters endorsed or did not oppose the general concept of codifying Corporate Management Evaluations, even as they expressed concerns about a particular portion of the proposal.

Several commenters, including a law firm, consultants, and organizations representing contractors, stated concern about paragraph (b) of the proposal. They felt that the provision would give OFCCP unlimited authority to expand the scope of Corporate Management Evaluations beyond corporate headquarters to any and all facilities within a corporation. OFCCP's purpose in looking beyond corporate headquarters is to examine "glass ceiling" barriers to promotional opportunities that are found at facilities outside the headquarters. For example, OFCCP may wish to analyze "feeder pools" at lower-level establishments from which selections for management positions at the headquarters establishment are made. See, generally, FCCM Section 5A04. It is not OFCCP's policy or practice to routinely expand corporate management compliance evaluations into broad-ranging reviews of subordinate facilities, or to audit for issues outside the scope of the glass ceiling. However, if in the course of pursuing a corporate management evaluation at a subordinate establishment, the agency learns of other practices or conditions that may violate the Executive Order (racially discriminatory graffiti in a restroom, for example), OFCCP believes that it has the right and the obligation to investigate those practices or conditions.

In the preamble to the NPRM, OFCCP asked for comments on whether to incorporate into the regulatory text a number of approaches that the agency has found to be particularly effective in addressing glass-ceiling problems. The comments were about equally divided between including the material in the regulations and including it in subregulatory guidance. Upon consideration, OFCCP finds persuasive the argument that inclusion in the regulations would be inconsistent with the objective of simplifying and streamlining the rules. OFCCP encourages contractors to seek guidance on eliminating barriers to the executive suite from publications on the subject of the glass ceiling, including OFCCP's 1997 report on the glass ceiling.

Section 60–2.31 Program Summary

OFCCP proposed to redesignate the current regulation at § 60–2.14 (Program Summary) as § 60–2.31, and to make one technical change to substitute the title "Deputy Assistant Secretary" for "Director." OFCCP stated that it would replace the program summary requirement at some point in the future should the summary be found to be duplicative of the Equal Opportunity Survey. Comments were not sought on this simple redesignation. The changes have been adopted.

Section 60–2.32 Affirmative action records

This regulation adds a provision specifying that the contractor must make relevant records, including records maintained pursuant to §§ 60–1.12 and 2.10, available to OFCCP on request. This provision is derived from the last sentence of § 60–1.40(c) of the current regulations. It is designed to ensure that OFCCP will have access to the records it needs to ascertain a contractor's compliance with its obligations under part 60–2.

Six organizations representing the interests of organized labor, women, minorities, and affirmative action officers characterized the proposal as reasonable and stated that it will aid OFCCP in enforcing the requirements of Executive Order 11246.

On the other hand, one contractor and two consultants representing the interests of contractors were concerned that OFCCP would: request attorney-client privileged material; seek records and information "outside" the compliance evaluation process thereby potentially violating the Fourth Amendment to the Constitution; and, not protect contractors' secret data and confidential information.

There is no foundation for these concerns. Because OFCCP most commonly requests only the AAP and supporting documentation that are developed by the contractor pursuant to its contractual obligations, OFCCP does not usually request documents that would be subject to the attorney-client privilege. In fact, contractor personnel prepare most such documentation without the involvement of legal counsel. Even when they involve legal counsel, it is clear that an enforcement agency must have access to pertinent records in order to carry out its lawful duties. OFCCP does not request material "outside" the compliance evaluation process other than to investigate complaints of alleged violations of the regulations. The confidentiality of contractors' information is protected by the requirements of the Trade Secrets Act and the Freedom of Information Act, and the Department's regulations implementing the FOIA.

The final rule adopts the proposal without change.

Section 60–2.33 Preemption

In the NPRM OFCCP stated its intent to move this provision from § 60–2.31 in the current regulation to § 60–2.33 without alteration, except for several technical wording changes. Notice and comment were not required, and comments were not solicited. The final rule adopts § 60–2.33 without change.

Section 60–2.34 Supersedure

OFCCP proposed to move this provision from § 60–2.32 in the current regulation to § 60–2.34, and to omit as outdated and unnecessary the second and third sentences of the current regulation. No comments were submitted.

The final rule adopts § 60–2.34 without change.

Section 60–2.35 Compliance Status

OFCCP proposed to expand upon and restructure a provision that appears at § 60–2.15 of the current regulations.

One commenter, a law firm, objected to a proposed sentence providing that the contractor's compliance status will be determined by analysis of statistical data and other non-statistical information that would indicate whether employees and applicants are being treated without regard to their race, color, religion, sex, or national origin. The commenter felt that "OFCCP's current approach to 'statistical analyses' in the investigation or compliance process * * * does not provide for a reliable means to measure compliance status." The commenter referred to the "median analysis" OFCCP uses at the investigative stage to examine pay equity issues. OFCCP disagrees with the commenter's view. Median analysis is a valid tool for the first step of the investigative process and may demonstrate the need for further inquiry. The final rule adopts § 60–2.35 as proposed.

Regulatory Procedures

Executive Order 12866

The Department is issuing this final rule in conformance with Executive Order 12866. This rule has been determined to be nonsignificant for purposes of Executive Order 12866. In the NPRM, OFCCP stated that the proposed changes to the regulations in this NPRM would decrease the total estimated annualized cost to contractors of developing, updating, and maintaining an AAP by $147,950,698 and that the estimated average cost savings per establishment of developing, updating, and maintaining an AAP would be $1378, therefore making this regulation significant for purposes of Executive Order 12866.

Upon reviewing the comments to the NPRM concerning burden hours for the EO Survey and AAP, OFCCP has determined that this initial estimated decrease was too high. In the final rule, OFCCP is taking into account the reduction of the decrease in burden hours. Therefore, the changes to the regulations in this final rule will decrease the total estimated annualized cost to contractors of developing, updating, and maintaining an AAP by $89,357,163. The estimated average cost savings per establishment of developing, updating, and maintaining an AAP is $831. See Paperwork Reduction Act section below.

Congressional Review Act

In view of the revised cost savings as discussed above, this regulation is not a major rule for purposes of the Congressional Review Act.

Executive Order 13132

OFCCP has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Regulatory Flexibility Act

The rule will not have a significant economic impact on a substantial number of small business entities.

Permitting contractors to prepare either a traditional workforce analysis or the new-style organizational profile, allowing smaller contractors to use EEO–1 categories for their job groups, reducing the number of factors that must be considered to determine the availability of women and minorities from eight to two, and eliminating more than half of the additional required ingredients of the documentation of the AAP, will reduce costs associated with these provisions for all affected contractors. The Equal Opportunity Survey requirement will increase costs, but the overall result of the rule should be a reduction in the recordkeeping and reporting burden.

Thus, the Department concludes that the rule will not have a significant economic impact on a substantial number of small entities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 13132, the rule does not include any Federal mandate that may result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector, of $100,000,000 or more in any one year.

Paperwork Reduction Act

This rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The rule revises regulations which contain information collection requirements (ICR) which are currently approved under OMB No. 1215–0072. The rule codifies a new requirement, the Equal Opportunity Survey, which was reviewed and approved by OMB under OMB No. 1215–0196. The EO Survey burden is being adjusted to 21 hours. That ICR is being adjusted in conjunction with this final rule.

The information collections affected by this final rule were identified in the NPRM. Those collections and their predicted effect on the recordkeeping hours contained in the approved 1215–0072 on file at OMB are summarized as follows:

- 60–1.12 Record Retention—5 percent increase
- 60–2.11 Organizational Profile—20 percent decrease
- 60–2.12 Job Group Analysis—10 percent decrease for contractors with fewer than 150 employees
- 60–2.14 Determining Availability—10 percent decrease
- 60–2.17 Additional Required Elements of Affirmative Action Programs—20 percent decrease

OFCCP invited the public to comment on whether each of the proposed collections of information: (1) Ensures that the collection of information is necessary to the proper performance of the agency, including whether the information will have practical utility; (2) estimates the projected burden, including the validity of the methodology and assumptions used, accurately; (3) enhances the quality, utility, and clarity of the information to be collected; and (4) minimizes the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

There were no responses that specifically addressed the issues listed above. However, a significant number of commenters representing the contractor community expressed opinions about the burdens associated with the organizational profile requirement in their comments on the regulatory provision. They indicated that the current workforce analysis, for most contractors, is a computer generated product that is easily updated from data routinely stored for other purposes. Furthermore, it was indicated that, for many contractors, creating an organizational profile may prove to be time consuming and costly because it is not something they currently do. There appears to be general agreement that moving from the work force analysis to the organizational profile will not result in the 20 percent burden reduction that OFCCP estimated in the NPRM. Upon further consideration, OFCCP agrees that the original estimate may be too high. In its final ICR submission to OMB, OFCCP is revising the organizational profile burden reduction from 20% to 10%. In the absence of experience data, we estimate 50% of the contractors will use the organizational profile, resulting in a reduction in the estimated burden savings from 20% to 10%.

A few commenters also argued that OFCCP overstated the expected cost savings from the changes in the "Additional required elements" section of the rule (§ 60–2.17), primarily based upon their notion that the "required elements" being retained impose new burdens. Contrary to the commenters' beliefs, virtually everything required of contractors under the new § 60–2.17 already is required of contractors under existing regulations. Notably, no commenter disputed the basic proposition that the reduction in the number of required elements would reduce burdens. Further, OFCCP believes that the commenters disputing the size of the cost saving underestimate the efforts contractors should be making under the existing regulations.

At this time, OFCCP records indicate that the number of establishments has increased from approximately 89,807 to 107,414. Application of the estimated changes in burden hours discussed above for §§ 60–1.12, 60–2.11, 60–2.12, 60–2.14, and 60–2.17 results in the following burden estimates as compared with the current inventory under 1215–0072.

BURDEN CHANGE SUMMARY

	Current inventory	Current inventory adjusted for number of firms	Revised estimate	Changes
AAP Development	161,155	192,750	118,903	−73,847
AAP Updating	6,656,288	7,963,670	5,268,677	−2,694,993
AAP Maintenance	6,725,543	8,044,110	5,321,896	−2,722,214
Total Recordkeeping Burden	13,544,986	16,200,530	10,709,476	−5,491,054
Average hours per respondent	@150	@150	@99	

Section 60–2.18 requires contractors to submit an Equal Opportunity Survey to OFCCP. The information required for the Survey would come from the records contractors are required to retain by 41 CFR part 60. The Survey would not impose any new recordkeeping requirements. We estimate that this proposal would increase burden by 21 hours per respondent, for a total increased burden of 1,050,000 hours.

The estimated annualized cost to respondents is based on Bureau of Labor Statistics data in the publication "Employer Costs for Employee Compensation" (USDL: 99–173), which lists total compensation for executive, administrative, and managerial as $35.18 per hour and administrative support as $16.63 per hour. OFCCP estimates that for the Survey, 25 percent of the burden hours will be executive, administrative, and managerial and 75 percent will be administrative support. OFCCP has calculated the total estimated annualized cost of the Survey as follows:

Executive 1,050,000 × .25 × $35.18 = $9,234,750

Admin. Supp. 1,050,000 × .75 × $16.63 = $13,096,125

Total annualized cost estimate = $22,330,875

For §§ 60–1.12, 60–2.11, 60–2.12, 60–2.14, and 60–2.17 concerning AAP development, maintenance, and updating, OFCCP estimates that 20 percent of the burden hours will be executive, administrative, and managerial and 80 percent will be administrative support. OFCCP has calculated the total estimated annualized cost savings as follows:

Executive 5,491,054 × .20 × $35.18 = $38,635,056

Admin. Supp. 5,491,054 × .80 × $16.63 = $73,052,982

Total annualized cost savings estimate = $111,688,038

Total annualized cost savings estimate of sect;§ 60–1.12, 60–2.11, 60–2.12, 60–2.14, and 60–2.17 = $111,688,038

Total annualized cost estimate of EO Survey = $22,330,875

Total annualized cost savings estimate = $89,357,163

Estimated average cost savings per respondent = $831

List of Subjects in 41 CFR Parts 60–1 and 60–2

Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Government contracts, and Labor.

Signed at Washington, DC, this 3rd day of November, 2000.

Alexis M. Herman,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

Accordingly, Part 60–2 of the rule amending 41 CFR Chapter 60 published on December 30, 1980 (45 FR 86216), which was delayed indefinitely on August 25, 1981 (46 FR 42865), is hereby withdrawn; and Parts 60–1 and 60–2 of Title 41 of the Code of Federal Regulations are amended as follows.

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

1. The authority citation for part 60–1 continues to read as follows:

Authority: Sec. 201, E.O. 11246 (30 FR 12319), as amended by E.O. 11375 (32 FR 14303) and E.O. 12086 (43 FR 46501).

2. Section 1.12 is revised to read as follows:

§ 60–1.12 Record retention.

(a) *General requirements.* Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least $150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship, and other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications and resumes, tests and test results, and interview notes. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of not less than two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least $150,000 shall keep such records for a period of not less than one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance evaluation or enforcement action until final disposition of the complaint, compliance evaluation or enforcement action. The term "personnel records relevant to the complaint," for example, would include personnel or employment records relating to the complainant and to all other employees holding positions similar to that held or sought by the complainant and application forms or test papers submitted by unsuccessful applicants and by all other candidates for the same position as that for which the complainant unsuccessfully applied. Where a compliance evaluation has been initiated, all personnel and employment records described above are relevant until OFCCP makes a final disposition of the evaluation.

(b) *Affirmative action programs.* A contractor establishment required under § 60–1.40 to develop and maintain a written affirmative action program (AAP) must maintain its current AAP and documentation of good faith effort, and must preserve its AAP and documentation of good faith effort for the immediately preceding AAP year, unless it was not then covered by the AAP requirement.

(c) *Contractor identification of record.* (1) For any record the contractor maintains pursuant to this section, the contractor must be able to identify:

(i) The gender, race, and ethnicity of each employee; and

(ii) where possible, the gender, race, and ethnicity of each applicant.

(2) The contractor must supply this information to the Office of Federal Contract Compliance Programs upon request.

(d) *Failure to preserve records.* Failure to preserve complete and accurate records as required by paragraphs (a) through (c) of this section constitutes noncompliance with the contractor's obligations under the Executive Order and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: Provided, That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from the circumstances that are outside of the contractor's control.

(e) *Applicability.* The requirements of this section shall apply only to records made or kept on or after December 22, 1997.

3. Section 60–1.40 is revised to read as follows:

§ 60–1.40 Affirmative action programs.

(a)(1) Each nonconstruction (supply and service) contractor must develop and maintain a written affirmative action program for each of its establishments, if it has 50 or more employees and:

(i) Has a contract of $50,000 or more; or

(ii) Has Government bills of lading which in any 12-month period, total or can reasonably be expected to total $50,000 or more; or

(iii) Serves as a depository of Government funds in any amount; or

(iv) Is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.

(2) Each contractor and subcontractor must require each nonconstruction subcontractor to develop and maintain a written affirmative action program for each of its establishments if it has 50 or more employees and:

(i) Has a subcontract of $50,000 or more; or

(ii) Has Government bills of lading which in any 12-month period, total or can reasonably be expected to total $50,000 or more; or

(iii) Serves as a depository of Government funds in any amount; or

(iv) Is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.

(b) Nonconstruction contractors should refer to Part 60–2 for specific affirmative action requirements. Construction contractors should refer to Part 60–4 for specific affirmative action requirements.

PART 60–2—AFFIRMATIVE ACTION PROGRAMS

4. Part 60–2 is revised to read as follows:

Subpart A—General

Sec.
60–2.1 Scope and application.
60–2.2 Agency action.

Subpart B—Purpose and Contents of Affirmative Action Programs

60–2.10 General purpose and contents of affirmative action programs.
60–2.11 Organizational profile.
60–2.12 Job group analysis.

60–2.13 Placement of incumbents in job groups.
60–2.14 Determining availability.
60–2.15 Comparing incumbency to availability.
60–2.16 Placement goals.
60–2.17 Additional required elements of affirmative action programs.
60–2.18 Equal Opportunity Survey.

Subpart C—Miscellaneous

60–2.30 Corporate management compliance evaluations.
60–2.31 Program summary.
60–2.32 Affirmative action records.
60–2.33 Preemption.
60–2.34 Supersedure.
60–2.35 Compliance status.

Authority: E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303, as amended by E.O. 12086, 43 FR 46501.

Subpart A—General

§ 60–2.1 Scope and application.

(a) *General.* The requirements of this part apply to nonconstruction (supply and service) contractors. The regulations prescribe the contents of affirmative action programs, standards and procedures for evaluating the compliance of affirmative action programs implemented pursuant to this part, and related matters.

(b) *Who must develop affirmative action programs.*

(1) Each nonconstruction contractor must develop and maintain a written affirmative action program for each of its establishments if it has 50 or more employees and:

(i) Has a contract of $50,000 or more; or

(ii) Has Government bills of lading which in any 12-month period, total or can reasonably be expected to total $50,000 or more; or

(iii) Serves as a depository of Government funds in any amount; or

(iv) Is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.

(2) Each contractor and subcontractor must require each nonconstruction subcontractor to develop and maintain a written affirmative action program for each of its establishments if it has 50 or more employees and:

(i) Has a subcontract of $50,000 or more; or

(ii) Has Government bills of lading which in any 12-month period, total or can reasonably be expected to total $50,000 or more; or

(iii) Serves as a depository of Government funds in any amount; or

(iv) Is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.

(c) *When affirmative action programs must be developed.* The affirmative action programs required under paragraph (b) of this section must be developed within 120 days from the commencement of a contract and must be updated annually.

(d) *Who is included in affirmative action programs.* Contractors subject to the affirmative action program requirements must develop and maintain a written affirmative action program for each of their establishments. Each employee in the contractor's workforce must be included in an affirmative action program. Each employee must be included in the affirmative action program of the establishment at which he or she works, except that:

(1) Employees who work at establishments other than that of the manager to whom they report, must be included in the affirmative action program of their manager.

(2) Employees who work at an establishment where the contractor employs fewer than 50 employees, may be included under any of the following three options: In an affirmative action program which covers just that establishment; in the affirmative action program which covers the location of the personnel function which supports the establishment; or, in the affirmative action program which covers the location of the official to whom they report.

(3) Employees for whom selection decisions are made at a higher level establishment within the organization must be included in the affirmative action program of the establishment where the selection decision is made.

(4) If a contractor wishes to establish an affirmative action program other than by establishment, the contractor may reach agreement with OFCCP on the development and use of affirmative action programs based on functional or business units. The Deputy Assistant Secretary, or his or her designee, must approve such agreements. Agreements allowing the use of functional or business unit affirmative action programs cannot be construed to limit or restrict how the OFCCP structures its compliance evaluations.

(e) *How to identify employees included in affirmative action programs other than where they are located.* If pursuant to paragraphs (d)(1) through (3) of this section employees are included in an affirmative action program for an establishment other than the one in which the employees are located, the organizational profile and job group analysis of the affirmative action program in which the employees are included must be annotated to identify the actual location of such employees. If the establishment at which the employees actually are located maintains an affirmative action program, the organizational profile and job group analysis of that program must be annotated to identify the program in which the employees are included.

§ 60–2.2 Agency action.

(a) Any contractor required by § 60–2.1 to develop and maintain a written affirmative action program for each of its establishments that has not complied with that section is not in full compliance with Executive Order 11246, as amended. When a contractor is required to submit its affirmative action program to OFCCP (e.g., for a compliance evaluation), the affirmative action program will be deemed to have been accepted by the Government at the time OFCCP notifies the contractor of completion of the compliance evaluation or other action, unless within 45 days thereafter the Deputy Assistant Secretary has disapproved such program.

(b) If, in determining such contractor's responsibility for an award of a contract it comes to the contracting officer's attention, through sources within his/her agency or through the OFCCP or other Government agencies, that the contractor does not have an affirmative action program at each of its establishments, or has substantially deviated from such an approved affirmative action program, or has failed to develop or implement an affirmative action program which complies with the regulations in this chapter, the contracting officer must declare the contractor/bidder nonresponsible and so notify the contractor and the Deputy Assistant Secretary, unless the contracting officer otherwise affirmatively determines that the contractor is able to comply with the equal employment obligations. Any contractor/bidder which has been declared nonresponsible in accordance with the provisions of this section may request the Deputy Assistant Secretary to determine that the responsibility of the contractor/bidder raises substantial issues of law or fact to the extent that a hearing is required. Such request must set forth the basis upon which the contractor/bidder seeks such a determination. If the Deputy Assistant Secretary, in his/her sole discretion, determines that substantial issues of law or fact exist, an administrative or judicial proceeding may be commenced in accordance with the regulations contained in § 60–1.26; or the Deputy Assistant Secretary may require the investigation or compliance evaluation be developed further or additional conciliation be conducted: Provided, That during any pre-award conferences, every effort will be made through the processes of conciliation, mediation, and persuasion to develop an acceptable affirmative action program meeting the standards and guidelines set forth in this part so that, in the performance of the contract, the contractor is able to meet its equal employment obligations in accordance with the equal opportunity clause and applicable rules, regulations, and orders: Provided further, That a contractor/bidder may not be declared nonresponsible more than twice due to past noncompliance with the equal opportunity clause at a particular establishment or facility without receiving prior notice and an opportunity for a hearing.

(c)(1) Immediately upon finding that a contractor has no affirmative action program, or has deviated substantially from an approved affirmative action program, or has failed to develop or implement an affirmative action program which complies with the requirements of the regulations in this chapter, that fact shall be recorded in the investigation file. Except as provided in § 60–1.26(b)(1), whenever administrative enforcement is contemplated, the notice to the contractor shall be issued giving the contractor 30 days to show cause why enforcement proceedings under section 209(a) of Executive Order 11246, as amended, should not be instituted. The notice to show cause should contain:

(i) An itemization of the sections of the Executive Order and of the regulations with which the contractor has been found in apparent violation, and a summary of the conditions, practices, facts, or circumstances which give rise to each apparent violation;

(ii) The corrective actions necessary to achieve compliance or, as may be appropriate, the concepts and principles of an acceptable remedy and/or the corrective action results anticipated;

(iii) A request for a written response to the findings, including commitments to corrective action or the presentation of opposing facts and evidence; and

(iv) A suggested date for the conciliation conference.

(2) If the contractor fails to show good cause for its failure or fails to remedy that failure by developing and implementing an acceptable affirmative action program within 30 days, the case file shall be processed for enforcement proceedings pursuant to § 60–1.26 of this chapter. If an administrative complaint is filed, the contractor shall have 20 days to request a hearing. If a request for hearing has not been received within 20 days from the filing of the administrative complaint, the matter shall proceed in accordance with part 60–30 of this chapter.

(3) During the "show cause" period of 30 days, every effort will be made through conciliation, mediation, and persuasion to resolve the deficiencies which led to the determination of nonresponsibility. If satisfactory adjustments designed to bring the contractor into compliance are not concluded, the case shall be processed for enforcement proceedings pursuant to § 60–1.26 of this chapter.

(d) During the "show cause" period and formal proceedings, each contracting agency must continue to determine the contractor's responsibility in considering whether or not to award a new or additional contract.

Subpart B—Purpose and Contents of Affirmative Action Programs

§ 60–2.10 General purpose and contents of affirmative action programs.

(a) *Purpose.* (1) An affirmative action program is a management tool designed to ensure equal employment opportunity. A central premise underlying affirmative action is that, absent discrimination, over time a contractor's workforce, generally, will reflect the gender, racial and ethnic profile of the labor pools from which the contractor recruits and selects. Affirmative action programs contain a diagnostic component which includes a number of quantitative analyses designed to evaluate the composition of the workforce of the contractor and compare it to the composition of the relevant labor pools. Affirmative action programs also include action-oriented programs. If women and minorities are not being employed at a rate to be expected given their availability in the relevant labor pool, the contractor's affirmative action program includes specific practical steps designed to address this underutilization. Effective affirmative action programs also include internal auditing and reporting systems as a means of measuring the contractor's progress toward achieving the workforce that would be expected in the absence of discrimination.

(2) An affirmative action program also ensures equal employment opportunity by institutionalizing the contractor's commitment to equality in every aspect of the employment process. Therefore, as part of its affirmative action program, a contractor monitors and examines its employment decisions and compensation systems to evaluate the impact of those systems on women and minorities.

(3) An affirmative action program is, thus, more than a paperwork exercise. An affirmative action program includes those policies, practices, and procedures that the contractor implements to ensure that all qualified applicants and employees are receiving an equal opportunity for recruitment, selection, advancement, and every other term and privilege associated with employment. Affirmative action, ideally, is a part of the way the contractor regularly conducts its business. OFCCP has found that when an affirmative action program is approached from this perspective, as a powerful management tool, there is a positive correlation between the presence of affirmative action and the absence of discrimination.

(b) *Contents of affirmative action programs.* (1) An affirmative action program must include the following quantitative analyses:

(i) Organizational profile—§ 60–2.11;

(ii) Job group analysis—§ 60–2.12;

(iii) Placement of incumbents in job groups—§ 60–2.13;

(iv) Determining availability—§ 60–2.14;

(v) Comparing incumbency to availability—§ 60–2.15; and

(vi) Placement goals—§ 60–2.16.

(2) In addition, an affirmative action program must include the following components specified in the § 60–2.17 of this part:

(i) Designation of responsibility for implementation;

(ii) Identification of problem areas;

(iii) Action-oriented programs; and

(iv) Periodic internal audits.

(c) *Documentation.* Contractors must maintain and make available to OFCCP documentation of their compliance with §§ 60–2.11 through 60–2.17.

§ 60–2.11 Organizational profile.

(a) *Purpose.* An organizational profile is a depiction of the staffing pattern within an establishment. It is one method contractors use to determine whether barriers to equal employment opportunity exist in their organizations. The profile provides an overview of the workforce at the establishment that may assist in identifying organizational units where women or minorities are underrepresented or concentrated. The contractor must use either the organizational display or the workforce analysis as its organizational profile:

(b) *Organizational display.* (1) An organizational display is a detailed graphical or tabular chart, text, spreadsheet or similar presentation of the contractor's organizational structure. The organizational display must identify each organizational unit in the establishment, and show the relationship of each organizational unit to the other organizational units in the establishment.

(2) An organizational unit is any component that is part of the contractor's corporate structure. In a more traditional organization, an organizational unit might be a department, division, section, branch, group or similar component. In a less traditional organization, an organizational unit might be a project team, job family, or similar component. The term includes an umbrella unit (such as a department) that contains a number of subordinate units, and it separately includes each of the subordinate units (such as sections or branches).

(3) For each organizational unit, the organizational display must indicate the following:

(i) The name of the unit;

(ii) The job title, gender, race, and ethnicity of the unit supervisor (if the unit has a supervisor);

(iii) The total number of male and female incumbents; and

(iv) the total number of male and female incumbents in each of the following groups: Blacks, Hispanics, Asians/Pacific Islanders, and American Indians/Alaskan Natives.

(c) *Workforce analysis.* (1) A workforce analysis is a listing of each job title as appears in applicable collective bargaining agreements or payroll records ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision.

(2) If there are separate work units or lines of progression within a department, a separate list must be provided for each such work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line.

(3) Where there are no formal progression lines or usual promotional sequences, job titles should be listed by department, job families, or disciplines, in order of wage rates or salary ranges.

(4) For each job title, the total number of incumbents, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Hispanics, Asians/Pacific Islanders, and American Indians/Alaskan Natives. The wage rate or salary range for each job title must be given. All job titles, including all managerial job titles, must be listed.

§ 60–2.12 Job group analysis.

(a) Purpose: A job group analysis is a method of combining job titles within the contractor's establishment. This is the first step in the contractor's comparison of the representation of minorities and women in its workforce with the estimated availability of minorities and women qualified to be employed.

(b) In the job group analysis, jobs at the establishment with similar content, wage rates, and opportunities, must be combined to form job groups. Similarity of content refers to the duties and responsibilities of the job titles which make up the job group. Similarity of opportunities refers to training, transfers, promotions, pay, mobility, and other career enhancement opportunities offered by the jobs within the job group.

(c) The job group analysis must include a list of the job titles that comprise each job group. If, pursuant to §§ 60–2.1(d) and (e) the job group analysis contains jobs that are located at another establishment, the job group analysis must be annotated to identify the actual location of those jobs. If the establishment at which the jobs actually are located maintains an affirmative action program, the job group analysis of that program must be annotated to identify the program in which the jobs are included.

(d) Except as provided in § 60–2.1(d), all jobs located at an establishment must be reported in the job group analysis of that establishment.

(e) Smaller employers: If a contractor has a total workforce of fewer than 150 employees, the contractor may prepare a job group analysis that utilizes EEO–1 categories as job groups. EEO–1 categories refers to the nine occupational groups used in the Standard Form 100, the Employer Information EEO–1 Survey: Officials and managers, professionals, technicians, sales, office and clerical, craft workers (skilled), operatives (semiskilled), laborers (unskilled), and service workers.

§ 60–2.13 Placement of incumbents in job groups.

The contractor must separately state the percentage of minorities and the percentage of women it employs in each job group established pursuant to § 60–2.12.

§ 60–2.14 Determining availability.

(a) Purpose: Availability is an estimate of the number of qualified minorities or women available for employment in a given job group, expressed as a percentage of all qualified persons available for employment in the job group. The purpose of the availability determination is to establish a benchmark against which the demographic composition of the contractor's incumbent workforce can be compared in order to determine whether barriers to equal employment opportunity may exist within particular job groups.

(b) The contractor must separately determine the availability of minorities and women for each job group.

(c) In determining availability, the contractor must consider at least the following factors:

(1) The percentage of minorities or women with requisite skills in the reasonable recruitment area. The reasonable recruitment area is defined as the geographical area from which the contractor usually seeks or reasonably could seek workers to fill the positions in question.

(2) The percentage of minorities or women among those promotable, transferable, and trainable within the contractor's organization. Trainable refers to those employees within the contractor's organization who could, with appropriate training which the contractor is reasonably able to provide, become promotable or transferable during the AAP year.

(d) The contractor must use the most current and discrete statistical information available to derive availability figures. Examples of such information include census data, data from local job service offices, and data from colleges or other training institutions.

(e) The contractor may not draw its reasonable recruitment area in such a way as to have the effect of excluding minorities or women. For each job group, the reasonable recruitment area must be identified, with a brief explanation of the rationale for selection of that recruitment area.

(f) The contractor may not define the pool of promotable, transferable, and trainable employees in such a way as to have the effect of excluding minorities or women. For each job group, the pool of promotable, transferable, and trainable employees must be identified with a brief explanation of the rationale for the selection of that pool.

(g) Where a job group is composed of job titles with different availability rates, a composite availability figure for the job group must be calculated. The contractor must separately determine the availability for each job title within the job group and must determine the proportion of job group incumbents employed in each job title. The contractor must weight the availability for each job title by the proportion of job group incumbents employed in that job group. The sum of the weighted availability estimates for all job titles in the job group must be the composite availability for the job group.

§ 60–2.15 Comparing incumbency to availability.

(a) The contractor must compare the percentage of minorities and women in each job group determined pursuant to § 60–2.13 with the availability for those job groups determined pursuant to § 60–2.14.

(b) When the percentage of minorities or women employed in a particular job group is less than would reasonably be expected given their availability percentage in that particular job group, the contractor must establish a placement goal in accordance with § 60–2.16.

§ 60–2.16 Placement goals.

(a) Purpose: Placement goals serve as objectives or targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work. Placement goals also are used to measure progress toward achieving equal employment opportunity.

(b) A contractor's determination under § 60–2.15 that a placement goal is required constitutes neither a finding nor an admission of discrimination.

(c) Where, pursuant to § 60–2.15, a contractor is required to establish a placement goal for a particular job group, the contractor must establish a percentage annual placement goal at least equal to the availability figure derived for women or minorities, as appropriate, for that job group.

(d) The placement goal-setting process described above contemplates that contractors will, where required, establish a single goal for all minorities. In the event of a substantial disparity in the utilization of a particular minority group or in the utilization of men or women of a particular minority group, a contractor may be required to establish separate goals for those groups.

(e) In establishing placement goals, the following principles also apply:

(1) Placement goals may not be rigid and inflexible quotas, which must be met, nor are they to be considered as either a ceiling or a floor for the employment of particular groups. Quotas are expressly forbidden.

(2) In all employment decisions, the contractor must make selections in a nondiscriminatory manner. Placement goals do not provide the contractor with a justification to extend a preference to any individual, select an individual, or adversely affect an individual's employment status, on the basis of that person's race, color, religion, sex, or national origin.

(3) Placement goals do not create set-asides for specific groups, nor are they intended to achieve proportional representation or equal results.

(4) Placement goals may not be used to supersede merit selection principles. Affirmative action programs prescribed by the regulations in this part do not require a contractor to hire a person who lacks qualifications to perform the job successfully, or hire a less qualified person in preference to a more qualified one.

(f) A contractor extending a publicly announced preference for American Indians as is authorized in 41 CFR 60–1.5(a)(6) may reflect in its placement goals the permissive employment preference for American Indians living on or near an Indian reservation.

§ 60–2.17 Additional required elements of affirmative action programs.

In addition to the elements required by § 60–2.10 through § 60–2.16, an acceptable affirmative action program must include the following:

(a) *Designation of responsibility*. The contractor must provide for the implementation of equal employment opportunity and the affirmative action program by assigning responsibility and accountability to an official of the organization. Depending upon the size of the contractor, this may be the official's sole responsibility. He or she must have the authority, resources, support of and access to top management to ensure the effective implementation of the affirmative action program.

(b) *Identification of problem areas*. The contractor must perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist. At a minimum the contractor must evaluate:

(1) The workforce by organizational unit and job group to determine whether there are problems of minority or female utilization (*i.e.*, employment in the unit or group), or of minority or female distribution (*i.e.*, placement in the different jobs within the unit or group);

(2) personnel activity (applicant flow, hires, terminations, promotions, and other personnel actions) to determine whether there are selection disparities;

(3) compensation system(s) to determine whether there are gender-, race-, or ethnicity-based disparities;

(4) selection, recruitment, referral, and other personnel procedures to determine whether they result in disparities in the employment or advancement of minorities or women; and

(5) any other areas that might impact the success of the affirmative action program.

(c) *Action-oriented programs*. The contractor must develop and execute action-oriented programs designed to correct any problem areas identified pursuant to § 60–2.17(b) and to attain established goals and objectives. In order for these action-oriented programs to be effective, the contractor must ensure that they consist of more than following the same procedures which have previously produced inadequate results. Furthermore, a contractor must demonstrate that it has made good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results.

(d) *Internal audit and reporting system*. The contractor must develop and implement an auditing system that periodically measures the effectiveness of its total affirmative action program. The actions listed below are key to a successful affirmative action program:

(1) Monitor records of all personnel activity, including referrals, placements, transfers, promotions, terminations, and compensation, at all levels to ensure the nondiscriminatory policy is carried out;

(2) Require internal reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained;

(3) Review report results with all levels of management; and

(4) Advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

§ 60–2.18 Equal Opportunity Survey.

(a) *Survey requirement*. Each year, OFCCP will designate a substantial portion of all nonconstruction contractor establishments to prepare and file an Equal Opportunity Survey. OFCCP will notify those establishments required to prepare and file the Equal Opportunity Survey. The Survey will provide OFCCP compliance data early in the compliance evaluation process, thus allowing the agency to more effectively identify contractor establishments for further evaluation. The Survey will also provide contractors with a useful tool for self-evaluation.

(b) *Survey format*. The Equal Opportunity Survey must be prepared in accordance with the format specified by the Deputy Assistant Secretary. The Equal Opportunity Survey will include information that will allow for an accurate assessment of contractor personnel activities, pay practices, and affirmative action performance. At a minimum, this will include such data elements as applicants, hires, promotions, terminations, compensation, and tenure by race and gender. As use of the EO Survey develops and evolves, the Department may at some time determine that one or more of the data elements currently included in the EO Survey should be altered or deleted. In the event consideration is given to changing a data element requirement, the following circumstances must exist:

(1) The Secretary must clearly demonstrate through statistical analyses of EO Survey submissions that the data element in question is no longer of value; and

(2) The Secretary must follow Notice and Comment procedures.

(c) *How, when, and where to file*. Contractors are encouraged to submit the Equal Opportunity Survey via the Internet. The Equal Opportunity Survey may also be submitted via facsimile to the telephone number indicated in the Survey instructions. Paper versions of the Equal Opportunity Survey must be mailed to the address indicated in the Survey instructions. The filing deadline will be specified by the Deputy Assistant Secretary.

(d) *Confidentiality*. OFCCP will treat information contained in the Equal Opportunity Survey as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552. It is the practice of OFCCP not to release data where the contractor is still in business, and the contractor indicates, and through the Department of Labor review process it is determined, that the data are confidential and sensitive and that the release of data would subject the contractor to commercial harm.

Subpart C—Miscellaneous

§ 60–2.30 Corporate management compliance evaluations.

(a) Purpose. Corporate Management Compliance Evaluations are designed to ascertain whether individuals are encountering artificial barriers to advancement into mid-level and senior corporate management, *i.e.*, glass ceiling. During Corporate Management Compliance Evaluations, special attention is given to those components of the employment process that affect advancement into mid-and senior-level positions.

(b) If, during the course of a Corporate Management Compliance Evaluation, it comes to the attention of OFCCP that problems exist at establishments outside the corporate headquarters, OFCCP may expand the compliance evaluation beyond the headquarters establishment. At its discretion, OFCCP may direct its attention to and request relevant data for any and all areas within the corporation to ensure compliance with Executive Order 11246.

§ 60–2.31 Program summary.

The affirmative action program must be summarized and updated annually. The program summary must be prepared in a format which will be prescribed by the Deputy Assistant Secretary and published in the **Federal Register** as a notice before becoming effective. Contractors and subcontractors must submit the program summary to OFCCP each year on the anniversary date of the affirmative action program.

§ 60–2.32 Affirmative action records.

The contractor must make available to the Office of Federal Contract Compliance Programs, upon request, records maintained pursuant to § 60–1.12 of this chapter and written or otherwise documented portions of AAPs maintained pursuant to § 60–2.10 for such purposes as may be appropriate to the fulfillment of the agency's responsibilities under Executive Order 11246.

§ 60–2.33 Preemption.

To the extent that any state or local laws, regulations or ordinances, including those that grant special benefits to persons on account of sex, are in conflict with Executive Order 11246, as amended, or with the requirements of this part, they will be regarded as preempted under the Executive Order.

§ 60–2.34 Supersedure.

All orders, instructions, regulations, and memorandums of the Secretary of Labor, other officials of the Department of Labor and contracting agencies are hereby superseded to the extent that they are inconsistent with this Part 60–2.

§ 60–2.35 Compliance status.

No contractor's compliance status will be judged alone by whether it reaches its goals. The composition of the contractor's workforce (*i.e.*, the employment of minorities or women at a percentage rate below, or above, the goal level) does not, by itself, serve as a basis to impose any of the sanctions authorized by Executive Order 11246 and the regulations in this chapter. Each contractor's compliance with its affirmative action obligations will be determined by reviewing the nature and extent of the contractor's good faith affirmative action activities as required under § 60–2.17, and the appropriateness of those activities to identified equal employment opportunity problems. Each contractor's compliance with its nondiscrimination obligations will be determined by analysis of statistical data and other non-statistical information which would indicate whether employees and applicants are being treated without regard to their race, color, religion, sex, or national origin.

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Part IV

Department of Education

34 CFR Parts 100, 104, 106, and 110

Conforming Amendments to the Regulations Governing Nondiscrimination on the Basis of Race, Color, National Origin, Disability, Sex, and Age Under the Civil Rights Restoration Act of 1987; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 100, 104, 106, and 110

RIN 1870–AA10

Conforming Amendments to the Regulations Governing Nondiscrimination on the Basis of Race, Color, National Origin, Disability, Sex, and Age Under the Civil Rights Restoration Act of 1987

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing nondiscrimination on the basis of race, color, national origin, sex, handicap, and age to conform with statutory amendments made by the Civil Rights Restoration Act of 1987 (CRRA). These amendments add a definition of "program or activity" or "program" that adopts the statutory definition of "program or activity" or "program" enacted as part of the CRRA.

DATES: These regulations are effective December 13, 2000.

ADDRESSES: After December 13, 2000, a complete version of the revised regulations will be available on request from OCR's Customer Service Team listed in **FOR FURTHER INFORMATION CONTACT** and will be available on the Internet at the following site: http://www.ed.gov/ocr/regs

FOR FURTHER INFORMATION CONTACT: Jeanette J. Lim, U.S. Department of Education, 400 Maryland Avenue, SW., room 5036 MES, Washington, DC 20202–1100. Telephone: (202) 205–5557. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 260–0471.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to OCR's Customer Service Team at (202) 205–5557 or toll-free at 1–800–421–3481.

SUPPLEMENTARY INFORMATION: On May 5, 2000, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 26464) proposing to amend the regulations governing nondiscrimination on the basis of race, color, national origin, sex, handicap, and age to conform with the CRRA.

We are amending these civil rights regulations to conform to provisions of the CRRA regarding the scope of coverage under civil rights statutes administered by the Department of Education (Department or ED). These statutes include Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.* (Title VI), Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, (Title IX), Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504), and the Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.* (Age Discrimination Act). Title VI prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive Federal financial assistance; Title IX prohibits discrimination on the basis of sex in education programs or activities that receive Federal financial assistance; Section 504 prohibits discrimination on the basis of disability in all programs or activities that receive Federal financial assistance; and the Age Discrimination Act generally prohibits discrimination on the basis of age in all programs or activities that receive Federal financial assistance.

The conforming change amends each of these regulations to add a definition of "program or activity" or "program" that adopts the statutory definition of "program or activity" or "program" enacted as part of the CRRA. We believe that adding this statutory definition to the regulatory language is the best way to avoid confusion on the part of recipients, students, parents, and other interested parties about the scope of civil rights coverage. These amendments also conform in this regard to the final Title IX regulations for 24 Federal agencies published on August 30, 2000 (65 FR 52858). That common rule incorporated the statutory definitions of "program or activity" or "program" enacted as part of the CRRA.

The Department's civil rights regulations, when originally issued and implemented, were interpreted by the Department to mean that acceptance of Federal assistance by a school resulted in broad institutional coverage. In *Grove City College* v. *Bell* 465 U.S. 555 (1984) (*Grove City College*), the Supreme Court held, in a Title IX case, that if the Department provided student financial assistance to a college, the Department had jurisdiction to ensure Title IX compliance in the specific program receiving or benefiting from the assistance, in this case, the student financial aid program, but that the Federal student financial assistance would not provide jurisdiction over the entire institution. Following the Supreme Court's decision in *Grove City College*, the Department did change its interpretation, but not the language, of these regulations to be consistent with the Court's restrictive, "program specific" definition of "program or activity" or "program." Since Title IX was patterned after Title VI, *Grove City College* significantly narrowed the scope of jurisdiction of Title VI and two other statutes based on it: the Age Discrimination Act and Section 504. See S. Rep. No. 100–64, 100th Cong., 1st Sess. 2–3, 11–16 (1987).

Then, in 1988, the CRRA was enacted to "restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws as previously administered" (20 U.S.C. 1687 note 1.) Congress enacted the CRRA in order to remedy what it perceived to be a serious narrowing by the Supreme Court of a longstanding administrative interpretation of the coverage of the regulations. At that time, the Department reinstated its broad interpretation to be consistent with the CRRA, again without changing the language of the regulations. It was and remains the Department's consistent interpretation that—with regard to the differences between the interpretation of the regulations given by the Supreme Court in *Grove City College* and the language of the CRRA—the CRRA, which took effect upon enactment, superseded the *Grove City College* decision and, therefore, the regulations must be read in conformity with the CRRA.

This interpretation reflects the understanding of Congress, as expressed in the legislative history of the CRRA, that the statutory definition of "program or activity" or "program" would take effect immediately, by its own force, without the need for Federal agencies to amend their existing regulations (S. Rep. No. 100–64 at 32). The legislative history also evidences congressional concern about the Department's immediate need to address complaints and findings of discrimination in federally assisted schools under the CRRA definition of "program or activity," citing examples to demonstrate why the CRRA was "urgently" needed (S. Rep. No. 100–64 at 11–16).

These regulatory amendments eliminate an issue recently raised by the Third Circuit Court of Appeals in *Cureton* v. *NCAA*, 198 F. 3d 107 (1999) (*Cureton*). That court determined that, because the Department did not amend its Title VI regulations after the CRRA amended Title VI, application of the Department's Title VI regulations to disparate impact discrimination claims is "program specific" (*i.e.*, limited to specific programs in an institution affected by the Federal funds), rather than institution-wide (*i.e.*, applicable to all of the operations of the institution regardless of the use of the Federal funds). The Department disagrees with the *Cureton* decision for the reasons described in this preamble. That decision would thwart clearly expressed congressional intent. In any event, the regulatory changes address the concerns raised by the Third Circuit in that the regulations track the statutory language and apply to both disparate impact discrimination and different treatment discrimination. ("Different treatment," i.e., intentional discrimination, refers to policies or practices that treat individuals differently based on their race, color, national origin, sex, disability, or age, as applicable. That different treatment is generally barred by the civil rights statutes and regulations. "Disparate impact" refers to criteria or methods of administration that have a significant disparate effect on individuals based on race, color, national origin, sex, disability, or age, as applicable. Those criteria or practices may constitute impermissible discrimination based on legal standards that include consideration of their educational necessity.)

The statutory definition, which is now incorporated into the regulations, addresses four broad categories of recipients: (1) State or local governmental entities. (2) Colleges, universities, other postsecondary educational institutions, public systems of higher education, local educational agencies (LEAs), systems of vocational education, and other school systems. (3) Private entities, such as corporations, partnerships, and sole proprietorships, including those whose principal business is providing education. (4) Entities that are established by a combination of two or more of the first three types of entities.

Under the first part of the definition, if State and local governmental entities receive financial assistance from the Department, the "program or activity" or "program" in which discrimination is prohibited includes all of the operations of any State or local department or agency to which the Federal assistance is extended. For example, if the Department provides financial assistance to a State educational agency, all of the agency's operations are subject to the nondiscrimination requirements of the regulations. In addition, "program or activity" or "program" also includes all of the operations of the entity of a State or local government that distributes the Federal assistance to another State or local governmental agency or department and all of the operations of the State or local governmental entity to which the financial assistance is extended. For example, if the Department provides financial assistance under Title I of the Elementary and Secondary Education Act to a State educational agency and the State educational agency distributes the financial assistance to a local educational agency, then all of the operations of the State educational agency are subject to the nondiscrimination requirements of the regulations, and all of the operations of the local educational agency are covered.

Under the second part of the definition of "program or activity" or "program," if colleges, universities, other postsecondary institutions, public systems of higher education, local educational agencies, systems of vocational education, or other public or private schools or school systems receive financial assistance from the Department, all of their operations are subject to the nondiscrimination requirements of the regulations. For example, if a public school district receives funds from the Department under the Safe and Drug Free Schools and Communities Act, the entire school district is covered, not just the district's Safe and Drug Free Schools and Communities component. Additionally, for example, if a college or university receives student financial assistance from the Department, all of the operations of the college or university are covered, not solely the operations of the student financial assistance office. In addition, the legislative history of the CRRA made it clear that "all of the operations" was not limited to traditional educational operations, but was intended to include other benefits and services of the educational institution, such as faculty and student housing, campus shuttle bus services, and commercial activities, such as cafeterias and bookstores.

Under the third part of the definition, in the case of private entities not already listed under the second part of the definition, if the federally assisted entity or organization is principally engaged in the business of education (or health care, housing, social services, or parks and recreation), then the entire corporation, partnership, or other private organization or sole proprietorship is the covered "program or activity" or "program." For example, if an individual elementary or secondary school that is neither part of an LEA nor part of an assisted private "school system" receives financial assistance from the Department, the school will be covered on an institution-wide basis under this portion of the definition of "program or activity" or "program" because it is an entity principally engaged in the business of providing education. For example, if a proprietary trade school receives student financial assistance from the Department, all of its operations are covered by the nondiscrimination requirements of the regulations.

Also under the third part of the definition, if a private entity is not principally engaged in the business of education (or health care, housing, social services, or parks and recreation) and the Department extends financial assistance to the private entity "as a whole," all of the private entity's operations at all of its locations would be covered. If the Department were to extend general assistance, that is, assistance that is not designated for a particular purpose, to this type of corporation or other private entity, that would be considered financial assistance to the private entity "as a whole." In other instances in which the geographically separate facility receives assistance under the third part of this definition, the coverage would be limited to the geographically separate facility that receives the assistance.

Under the fourth part of the definition, if an entity of a type not already covered by one of the first three parts of the definition is established by two or more of the entities listed under the first three parts of the definition, then all of the operations of that new entity are covered. Under the illustrative example in the legislative history, a public school district (an entity listed under the second part of the definition) and a private corporation (an entity listed under the third part of the definition) may establish a new company, which is a public-private partnership designed to provide remediation, training, and employment to high school students who are at risk of dropping out of school. If the new company applied for and received financial assistance from the Department, then, as an entity listed under the fourth part of the definition, all of its operations would be covered, even if the assistance from the Department were only to one division or component of the new company.

The regulatory changes also modify or delete some sections of the Department regulations that have become superfluous following the CRRA enactment, to conform with the CRRA definitions of "program or activity" or "program." These regulatory changes do not change the requirements of the existing regulations. This is consistent with the approach in the Title IX common rule. As explained in the preamble to the NPRM for the Title IX common rule, that regulatory language in ED's Title IX regulations made superfluous by the enactment of the CRRA was omitted in that rule (64 FR 58571).

The Department's Title IX regulations, promulgated in 1975 by the Department of Health, Education, and Welfare in 49 FR 24128 and adopted by the Department of Education upon its establishment in 1980, 45 FR 30955, defined "recipient" as an entity "to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives or benefits from such assistance." At that time, the words "or benefits from" were necessary to clarify that *all* of the operations of a university or other educational institution that receives Federal funds—not just the particular programs receiving financial assistance—are covered by Title IX's nondiscrimination requirements. As previously discussed, this interpretation was rejected by the Supreme Court in 1984 in *Grove City College,* which held that Federal student financial aid established Title IX jurisdiction only over the financial aid program, not the entire institution. However, Congress' 1988 enactment of the CRRA counteracted this decision by defining "program or activity" and "program" to provide expressly that Title IX covers all educational programs of a recipient institution. Because of this statutory change, the words "or benefits from" are no longer necessary as a regulatory matter, and we deleted them. For the same reason, we deleted the words "or benefits from" from the Section 504 regulations. These deletions do not affect the reach of Title IX or Section 504.

The Department of Education's Title VI regulations, promulgated in 1964 by the Department of Health, Education, and Welfare in 29 FR 16298 and 29 FR 16988 and in 1965 in 30 FR 16988, and adopted by the Department of Education upon its establishment in 1980, (45 FR 30918), previously included an assurance requirement for institutions in § 100.4(d)(2) that created confusion with regard to the scope of "program or activity" and "program" under Title VI. One example is the previously referenced decision in *Cureton*. The regulatory provision previously stated, in part, "The assurance * * * shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought *–*." We have deleted that portion of the assurance that begins with the word "unless" to avoid any further confusion. As previously stated, it was appropriate to apply the CRRA statutory definition of "program or activity" to the regulations. For the same reasons, we have deleted portions of the illustrations in § 100.5(b) and (d), since they could create similar confusion. Specifically, in § 100.5(b), we deleted the language that states that, with regard to university graduate research, training, demonstration, or other grants, the prohibition extends to the entire university "unless it satisfies the responsible Department official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school." Similarly, in § 100.5(d), we deleted the language that states that "In construction grants the assurances required will be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress." These deletions do not affect the reach of Title VI.

In addition, we deleted references to "program" or "program or activity" in the regulations that do not refer to the CRRA broad definition of that phrase, in order to eliminate potential confusion in the use of these terms and to continue the longstanding Department interpretation of the statutes and regulations. For example, in some instances, we deleted "program" or "program or activity" and substituted "Federal financial assistance" or "aid, benefits, or services." In others, we changed "programs *and* activities" to "programs or activities" or "program or activity" to conform the regulations to the phrase used in the CRRA—when it is used in the broad manner defined in the CRRA. We did not modify the term "activity" when it appears separately from the phrase "program or activity" and is used in a manner unrelated to the CRRA phrase "program or activity."

These final regulations use the plural terms "programs" and "programs or activities" to refer generally to multiple programs or activities operated by multiple recipients. The singular terms "program" or "program or activity" are used in all other instances. We have chosen to use the singular in all of those cases because, under the CRRA and these regulations, virtually all of our recipients, such as institutions of higher education, will have only one "program" or "program or activity" encompassing all of the recipient's operations. In addition, since the use of the singular may be interpreted to encompass the plural, these regulations typically use the singular even though in certain cases we may fund a recipient that operates more than one program or activity that receives Federal financial assistance (such as when an individual recipient corporation has multiple plants, each of which is a separate program or activity). Similar regulations of other Federal agencies may use the plural form of these terms more frequently as they may tend to fund a greater number of recipients that operate more than one program or activity. Use of the singular or plural forms of these terms should not be interpreted to imply any legal difference in the intended scope of coverage.

It is important to note that these changes do not in any way alter the requirement of the CRRA that a proposed or effectuated fund termination be limited to the particular program or programs "or part thereof" that discriminates or, as appropriate, to all of the programs that are infected by the discriminatory practices. *See* S. Rep. No. 100–64, at 20, ("The [CRRA] defines 'program' in the same manner as 'program or activity,' and leaves intact the 'or part thereof' pinpointing language.").

We replaced the current definition of "program" in 34 CFR 100.13 with the definition of "program or activity" and "program." We added the definition of "program or activity" and "program" to 34 CFR 106.2. We added the definition of "program or activity" to 34 CFR 104.3 and to 34 CFR 110.3. Conforming changes to the nonregulatory guidance in Appendix B of Part 100, Appendix A of Part 104, and Appendix A of Part 106 will be published in the **Federal Register** in a separate notice. Nothing in these changes affects coverage under the Federal employment nondiscrimination statutes, including Title VII of the Civil Rights Act of 1964, Title I of the Americans with Disabilities Act, and the Age Discrimination in Employment Act.

Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In the NPRM, we invited comments on the proposed regulations. We did not receive any comments. However, we have reviewed the regulations, in consultation with the Department of Justice, since publication of the NPRM and have made minor editorial and technical changes.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that there probably will be no cost impacts because these final regulations merely clarify longstanding Department policy and do not change the Department's practices in addressing issues of discrimination.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (65 FR 26467).

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects

34 CFR Part 100

Administrative practice and procedure, Civil rights.

34 CFR Part 104

Civil Rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

34 CFR Part 106

Education, Sex discrimination.

34 CFR Part 110

Administrative practice and procedure, Aged, Civil rights, Grant programs—education, Loan programs—education.

Dated: September 1, 2000.

Richard W. Riley,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 100, 104, 106, and 110 of title 34 of the Code of Federal Regulations as follows:

PART 100—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF EDUCATION EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 100 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1, unless otherwise noted.

§ 100.2 [Amended]

2. Section 100.2 is amended by—

A. Removing the words "program for which" and adding, in their place, "program to which" in the introductory text;

B. Removing the words "assisted programs and activities" and adding, in their place, "financial assistance" in the introductory text;

C. Removing the words "under any such program" in paragraph (c); and

D. Removing the words ", under any such program" in paragraph (d).

§ 100.3 [Amended]

3. Section 100.3(d) is amended by removing the words "the benefits of a program", and adding, in their place, the word "benefits".

§ 100.4 [Amended]

4. Section 100.4 is amended as follows—

A. Removing the words "to carry out a program" in the first sentence of paragraph (a)(1);

B. Removing the words "except a program" and adding, in their place, the words "except an application" in the first sentence of paragraph (a)(1);

C. Removing the words "for each program" and the words "in the program" in the fifth sentence of paragraph (a)(1);

D. Removing the words "*State programs*" and adding, in their place, the words "*Federal financial assistance*" in the heading of paragraph (b);

E. Removing the words "to carry out a program involving" and adding, in their place, the word "for" in the introductory text of paragraph (b); and

F. Revising paragraph (d)(2).

The revision reads as follows:

§ 100.4 Assurances required.

* * * * *

(d) * * *

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

* * * * *

5. Section 100.5 is amended as follows—

A. Revising paragraph (b); and

B. Removing the last sentence of paragraph (d).

The revision reads as follows:

§ 100.5 Illustrative application.

* * * * *

(b) In a research, training, demonstration, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university.

* * * * *

§ 100.6 [Amended]

6. Section 100.6(b) is amended by removing the words "of any program under" in the last sentence and adding, in their place, the word "in".

§ 100.9 [Amended]

7. Section 100.9(e) is amended by removing the word "programs" in the first sentence and adding, in its place, the words "Federal assistance statutes".

8. Section 100.13 is amended by—

A. Removing "for any program," and "under any such program" in paragraph (i);

B. Removing "for the purpose of carrying out a program" in paragraph (j);

C. Revising paragraph (g); and

D. Adding an authority citation following paragraph (g).

The revision and addition read as follows:

§ 100.13 Definitions.

* * * * *

(g) The term *program or activity* and the term *program* mean all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 42 U.S.C. 2000d–4)

* * * * *

9. Appendix A to part 100 is amended by revising the heading of part 1 and the heading of part 2 to read as follows:

APPENDIX A TO PART 100—FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY

Part 1—Assistance Other Than Continuing Assistance to States

* * * * *

Part 2—Continuing Assistance to States

* * * * *

PART 104—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

10. The heading for part 104 is revised to read as set forth above.

11. The authority citation for part 104 continues to read as follows:

Authority: 20 U.S.C. 1405; 29 U.S.C. 794.

§ 104.2 [Amended]

12. Section 104.2 is amended by removing the word "each" before the words "program or activity" and adding, in its place, the word "the"; and by removing the words "or benefits from".

13. Section 104.3 is amended by redesignating paragraphs (k) and (l) as paragraphs (l) and (m), respectively; adding a new paragraph (k); and adding an authority citation following paragraph (k) to read as follows:

§ 104.3 Definitions.

* * * * *

(k) *Program or activity* means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

* * * * *

§ 104.4 [Amended]

14. Section 104.4 is amended by—

A. Removing the words "or benefits from" in paragraphs (a) and (b)(5);

B. Removing the words "programs or activities" wherever they appear in paragraph (b)(3), and adding, in their place, "aid, benefits, or services";

C. Removing the words "or benefiting from" in paragraph (b)(6); and

D. In paragraph (c), removing the word "*Programs*" in the heading and adding, in its place, the words "*Aid, benefits, or services*"; removing the words "from the benefits of a program" and adding, in their place, the words "from aid, benefits, or services", and removing the words "from a program" and adding, in their place, the words "from aid, benefits, or services".

§§ 104.4, 104.6, 104.12, 104.32, 104.33, 104.36 [Amended]

15. Remove the word "program" and add, in its place, the words "program or activity" in the following sections:

A. Section 104.4(b)(1)(v);

B. Section 104.4(b)(4);

C. Section 104.6(a)(3), wherever it appears;

D. Section 104.12(a), (c) introductory text, and (c)(1);

E. Section 104.32 introductory text;

F. Section 104.33(a); and

G. Section 104.36.

§ 104.5 [Amended]

16. Section 104.5(a) is amended in the first sentence by removing the words "for a program or activity" and by removing the words "the program" and adding, in their place, the words "the program or activity".

§ 104.8 [Amended]

17. Section 104.8(a) is amended by removing the words "programs and activities" in the second sentence and adding, in their place, the words "program or activity".

§ 104.11 [Amended]

18. Section 104.11 is amended by—

A. Removing the words "programs assisted" and adding, in their place, the words "programs or activities assisted" in paragraph (a)(2);

B. Removing the word "programs" and revising "apprenticeship" to read "apprenticeships" in the last sentence of paragraph (a)(4); and

C. Removing the word "programs" and adding the words "those that are" before "social or recreational" in paragraph (b)(8).

Subpart C of Part 104—[Amended]

19. The heading of subpart C is amended by removing the word "Program".

§ 104.22 [Amended]

20. Section 104.22 is amended by—

A. Removing in paragraph (a) the words "*Program accessibility*" in the heading and adding, in their place, the word "*Accessibility*" and removing the words "each program or activity to which this part applies so that the program or activity, when viewed in its entirety," in the first sentence and adding, in their place, the words "its program or activity so that when each part is viewed in its entirety, it";

B. Removing the words "offer programs and activities to" in the last sentence and adding, in their place, the word "serve" in paragraph (b); and

C. Removing the word "program" and adding "in order to comply with paragraph (a) of this section" after the word "accessibility" in paragraph (e)(3).

§ 104.31 [Amended]

21. Section 104.31 is amended by removing the words "or benefit from" wherever they appear; and by removing the words "programs and activities" and adding, in their place, the words "programs or activities".

§ 104.33 [Amended]

22. Section 104.33 is amended by—

A. Removing the words "individualized education program" and adding, in their place, the words "Individualized Education Program" in paragraph (b)(2);

B. Removing the words "in or refer such person to a program other than the one that it operates" and adding, in their place, the words "or refer such a person for aid, benefits, or services other than those that it operates or provides" in the first sentence in paragraph (b)(3);

C. Removing the words "in or refers such person to a program not operated" in the second sentence of paragraph (c)(1), and adding, in their place, the words "or refers such person for aid, benefits, or services not operated or provided";

D. Removing the words "of the program" in the second sentence of paragraph (c)(1) and adding, in their place, the words "of the aid, benefits, or services";

E. Removing the words "in or refers such person to a program not operated" in paragraph (c)(2), and adding in their place, the words "or refers such person for aid, benefits, or services not operated or provided";

F. Removing the words "from the program" in paragraph (c)(2), and adding, in their place, the words "from the aid, benefits, or services";

G. Removing the words "in the program" in paragraph (c)(2), and adding, in their place, the words "in the aid, benefits, or services";

H. Removing the words "If placement in a public or private residential program" and adding, in their place, the words "If a public or private residential placement" in paragraph (c)(3); and removing the words "the program", and adding, in their place, the words "the placement"; and

I. Removing the words "such a program" in the last sentence in paragraph (c)(4), and adding, in their place, the words "a free appropriate public education".

§ 104.35 [Amended]

23. Section 104.35(a) is amended by removing the words "program shall" and adding, in their place, the words "program or activity shall"; removing the word "a" before the word "regular"; and removing the word "program" before the word "and".

§ 104.37 [Amended]

24. Section 104.37(c)(1) is amended by removing the words "programs and activities" in the first sentence and adding, in their place, the words "aid, benefits, or services"; and by removing the words "in these activities" in the last sentence.

25. Section 104.38 is revised to read as follows:

§ 104.38 Preschool and adult education.

A recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits or services to be provided.

§ 104.39 [Amended]

26. Section 104.39 is amended by—

A. Removing the word "programs" in the section heading;

B. Removing the words "operates a" and adding, in their place, the word "provides" in paragraph (a);

C. Removing the word "program" after the word "education" in paragraph (a);

D. Removing the words "from such program" in paragraph (a);

E. Removing the words "the recipient's program" in paragraph (a), and adding, in their place, the words "that recipient's program or activity"; and

F. Removing the words "operates special education programs shall operate such programs" in paragraph (c), and adding, in their place, the words "provides special education shall do so".

§ 104.41 [Amended]

27. Section 104.41 is amended by removing the words "programs and activities" wherever they appear in the section and adding, in their place, the words "programs or activities"; and by removing the words "or benefit from" wherever they appear in the section.

§ 104.43 [Amended]

28. Sections 104.43 is amended by—

A. Removing the words "program or activity" in paragraph (a) and adding, in their place, the words "aid, benefits, or services"; and

B. Removing the words "programs and activities" in paragraph (d), and adding, in their place, the words "program or activity".

§ 104.44 [Amended]

29. Section 104.44 is amended by—

A. Removing the words "program of" in the second sentence of paragraph (a);

B. Removing the words "in its program" in paragraph (c); and

C. Removing the words "under the education program or activity operated by the recipient" in paragraph (d)(1).

§ 104.47 [Amended]

30. Section 104.47 is amended by removing the words "programs and activities" in paragraph (a)(1), and adding, in their place, the words "aid, benefits, or services".

§ 104.51 [Amended]

31. Section 104.51 is amended by removing the words "or benefit from" wherever they appear in the section; and by removing the word "and" before the word "activities" and adding, in its place, the word "or".

§ 104.54 [Amended]

32. Section 104.54 is amended by adding the words "that provides aid,

benefits or services" after the words "supervises a program or activity".

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

33. The heading for part 106 is revised to read as set forth above.

33a. An authority citation for part 106 is added after the table of contents to read as follows:

Authority: 20 U.S.C. 1681 *et seq.*, unless otherwise noted.

34. Section 106.2 is amended by—

A. Redesignating paragraphs (h) through (r) as paragraphs (i) through (s), respectively;

B. Adding a new paragraph (h) and adding an authority citation following paragraph (h);

C. Amending redesignated paragraph (i) to remove the words "or benefits from"; and

D. Amending redesignated paragraph (k) by removing "(k), (l), (m), or (n)" and adding, in its place, "(l), (m), (n), or (o)".

The addition reads as follows:

§ 106.2 Definitions.

* * * * *

(h) *Program or activity* and *program* means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 20 U.S.C. 1687)

* * * * *

§ 106.4 [Amended]

35. Section 106.4 is amended by removing the words "for any education program or activity"; and by removing the word "each" and adding, in its place, the word "the" in the first sentence of paragraph (a).

§ 106.6 [Amended]

36. Section 106.6 is amended by removing the words "or benefits from" in paragraph (c).

§ 106.9 [Amended]

37. Section 106.9 is amended by removing the words "programs or activities" and adding, in their place, the words "program or activity"; and by removing the words "education programs and activities" and adding, in their place, the words "the education program or activity" in paragraph (a)(1).

§ 106.11 [Amended]

38. Section 106.11 is amended by removing the word "each" and adding, in its place, the word "the"; and by removing the words "or benefits from".

§ 106.17 [Amended]

39. Section 106.17 is amended by removing the word "programs" and by removing the word "emphasize" and adding, in its place, the word "emphasizes" in paragraph (d).

Subparts D and E of Part 106—[Amended]

40. The headings of subparts D and E are amended by removing the word "and" and adding, in its place, the word "or".

§ 106.31 [Amended]

41. Section 106.31 is amended by—

A. Removing the word "and" in the section heading and adding, in its place, the word "or";

B. Removing the words "or benefits from" in the first sentence of paragraph (a); and

C. Removing the words "*Programs not operated*" in the heading of paragraph (d), and adding, in their place, the words "*Aid, benefits or services not provided*".

§ 106.40 [Amended]

42. Section 106.40 is amended by removing the words "in the normal education program or activity" in paragraph (b)(2); and by removing the words "instructional program in the separate program" in paragraph (b)(3) and adding, in their place, the words "separate portion".

§ 106.51 [Amended]

43. Section 106.51 is amended by removing the words "or benefits from" in paragraph (a)(1); and by removing the words "social or recreational programs" and adding, in their place, the words "those that are social or recreational" in paragraph (b)(9).

PART 110—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

44. The heading for part 110 is revised to read as set forth above.

45. The authority citation for part 110 continues to read as follows:

Authority: 42 U.S.C. 6101 *et seq.*, unless otherwise noted.

§ 110.1 [Amended]

46. Remove the words "programs and activities" in the last sentence of § 110.1 and add, in their place, the words "programs or activities".

§ 110.2 [Amended]

47. The heading of § 110.2 is amended by adding the words "or activities" after the word "programs".

48. Section 110.3 is amended by adding in alphabetical order a new definition of "Program or activity" and adding an authority citation following the definition to read as follows:

§ 110.3 What definitions apply?

* * * * *

Program or activity means all of the operations of—

(a)(1) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(2) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(b)(1) A college, university, or other postsecondary institution, or a public system of higher education; or

(2) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(c)(1) An entire corporation, partnership, other private organization, or an entire sole proprietorship—

(i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(2) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(d) Any other entity that is established by two or more of the entities described in paragraph (a), (b), or (c) of this section; any part of which is extended Federal financial assistance.

(Authority: 42 U.S.C. 6107)

* * * * *

§§ 110.16, 110.17 [Amended]

49. Remove the word "program" wherever it appears in § 110.16 and in § 110.17, and add, in its place, the words "program or activity".

§ 110.20 [Amended]

50. Section 110.20 is amended by removing the words "programs or activities are" in the first sentence and adding, in their place, the words "program or activity is".

§ 110.23 [Amended]

51. Section 110.23 is amended by removing the words "for a program or activity" and by adding the words "or activity" before the word "will" in paragraph (a).

§ 110.25 [Amended]

52. Section 110.25 is amended by removing the words "and their applicability to specific programs" in paragraph (b).

§ 110.33 [Amended]

53. Section 110.33 is amended by removing the word "program" in paragraph (a).

§ 110.35 [Amended]

54. Section 110.35(c)(2) is amended by removing the word "Federal" in the first sentence.

§ 110.37 [Amended]

55. Section 110.37(b)(2) is amended by removing the words "program or activity" and adding, in their place, "Federal financial assistance".

[FR Doc. 00–28599 Filed 11–9–00; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
November 13, 2000

Part V

The President

Notice of November 9, 2000—
Continuation of Iran Emergency

Notice of November 9, 2000—
Continuation of Emergency Regarding Weapons of Mass Destruction

Federal Register
Vol. 65, No. 219
Monday, November 13, 2000

Presidential Documents

Title 3—

The President

Notice of November 9, 2000

Continuation of Iran Emergency

On November 14, 1979, by Executive Order 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Since that time, notices of the continuation of this national emergency have been transmitted annually by the President to the Congress and published in the **Federal Register**. The most recent notice appeared in the **Federal Register** on November 5, 1999. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 2000. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran for 1 year. This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
November 9, 2000.

[FR Doc. 00–29242
Filed 11–9–00; 1:20 pm]
Billing code 3195–01–P

Presidential Documents

Notice of November 9, 2000

Continuation of Emergency Regarding Weapons of Mass Destruction

On November 14, 1994, by Executive Order 12938, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (weapons of mass destruction) and the means of delivering such weapons. Because the proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency first declared on November 14, 1994, and extended on November 14, 1995, November 12, 1996, November 13, 1997, November 12, 1998, and November 10, 1999, must continue in effect beyond November 14, 2000. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared in Executive Order 12938.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
November 9, 2000.

[FR Doc. 00–29243
Filed 11–09–00; 1:20 pm]
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    - Compatibility with 911 and enhanced 911 emergency calling systems; comments due by 11-20-00; published 9-19-00
- Digital television stations; table of assignments:
  - Arkansas; comments due by 11-24-00; published 10-5-00
  - Florida; comments due by 11-24-00; published 10-5-00
  - North Carolina; comments due by 11-24-00; published 10-5-00
  - South Dakota; comments due by 11-24-00; published 10-5-00
- Radio stations; table of assignments:
  - South Dakota and Wyoming; comments due by 11-20-00; published 10-12-00

FEDERAL HOUSING FINANCE BOARD

- Federal home loan bank system:
  - Capital structure requirements; comments due by 11-20-00; published 9-26-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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  - Food labeling—
    - Foods processed with alternative nonthermal technologies; use of term "fresh"; comments due by 11-20-00; published 9-20-00
    - Plant sterol/stanol esters and coronary heart disease; health claims; comments due by 11-22-00; published 9-8-00
- Human drugs:
  - Cold, cough, allergy, bronchodilator, and antiasthmatic products (OTC)—
    - Antihistamine products; administrative record reopening; comments due by 11-24-00; published 8-25-00
- Medical devices:
  - Physical medicine devices—
    - Ionotophoresis device; identification revision; comments due by 11-20-00; published 8-22-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

- Medicare and State health care programs; fraud and abuse:
  - Revisions and technical corrections; comments due by 11-20-00; published 10-20-00

HEALTH AND HUMAN SERVICES DEPARTMENT

National Institutes of Health

- Grants:
  - National Institutes of Health; research grant applications and research and development contract projects; scientific peer review; comments due by 11-20-00; published 9-21-00

INTERIOR DEPARTMENT

Fish and Wildlife Service

- Endangered and threatened species:
  - Critical habitat designations—
    - California red-legged frog; comments due by 11-20-00; published 10-19-00
    - Mexican spotted owl; comments due by 11-20-00; published 10-20-00
    - Peninsular bighorn sheep; comments due by 11-20-00; published 10-19-00
    - Riverside fairy shrimp; comments due by 11-20-00; published 9-21-00
    - Wintering piping plovers; comments due by 11-24-00; published 10-27-00
- Migratory bird hunting:
  - Tin shot; temporary approval as nontoxic for waterfowl and coots hunting; comments due by 11-24-00; published 9-25-00

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

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  - New Mexico; comments due by 11-22-00; published 10-23-00

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Drug Enforcement Administration

- Records, reports, and exports of listed chemicals:
  - Red phosphorus, white phosphorus, and hypophosphorous acid (and its salts); comments due by 11-24-00; published 9-25-00

JUSTICE DEPARTMENT

Prisons Bureau

- Inmate control, custody, care, etc.:
  - Drug abuse treatment programs; participation requirements; comments due by 11-20-00; published 9-20-00
  - Inmate drug testing programs; comments due by 11-20-00; published 9-21-00

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NUCLEAR REGULATORY COMMISSION

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TENNESSEE VALLEY AUTHORITY

- Tennessee River system; construction approval and regulation of structures:
  - Residential related use on TVA-controlled residential access shoreline and TVA flowage easement shoreline; comments due by 11-20-00; published 9-20-00

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Federal Aviation Administration

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  - Airbus; comments due by 11-24-00; published 10-25-00
  - Boeing; comments due by 11-20-00; published 10-5-00
  - British Aerospace; comments due by 11-20-00; published 10-20-00
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  - Industrie Aeronautiche e Meccaniche; comments due by 11-24-00; published 10-19-00
  - McDonnell Douglas; comments due by 11-20-00; published 10-4-00
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- Class E airspace; comments due by 11-20-00; published 9-8-00

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TREASURY DEPARTMENT

- Privacy Act; implementation; comments due by 11-24-00; published 10-25-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 4811/P.L. 106–429

Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2001, and for other purposes. (Nov. 6, 2000; 114 Stat. 1900)

H.R. 5178/P.L. 106–430

Needlestick Safety and Prevention Act (Nov. 6, 2000; 114 Stat. 1901)

Last List November 7, 2000

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186-199	(869-038-00195-1)	13.00	Oct. 1, 1999
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[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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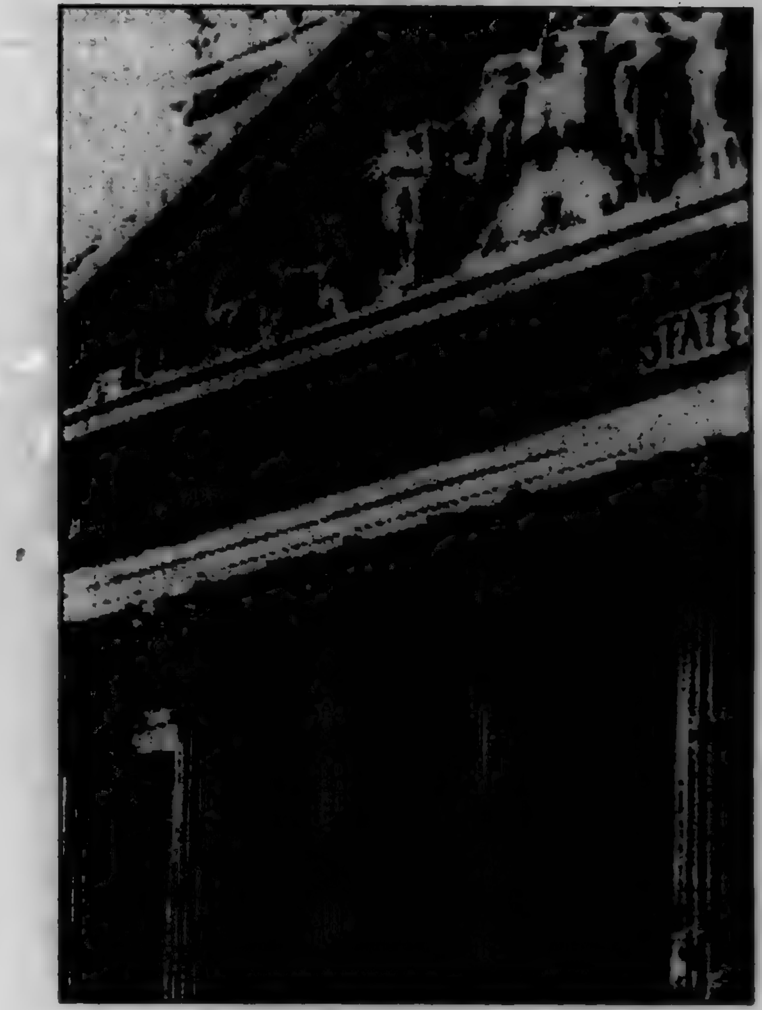

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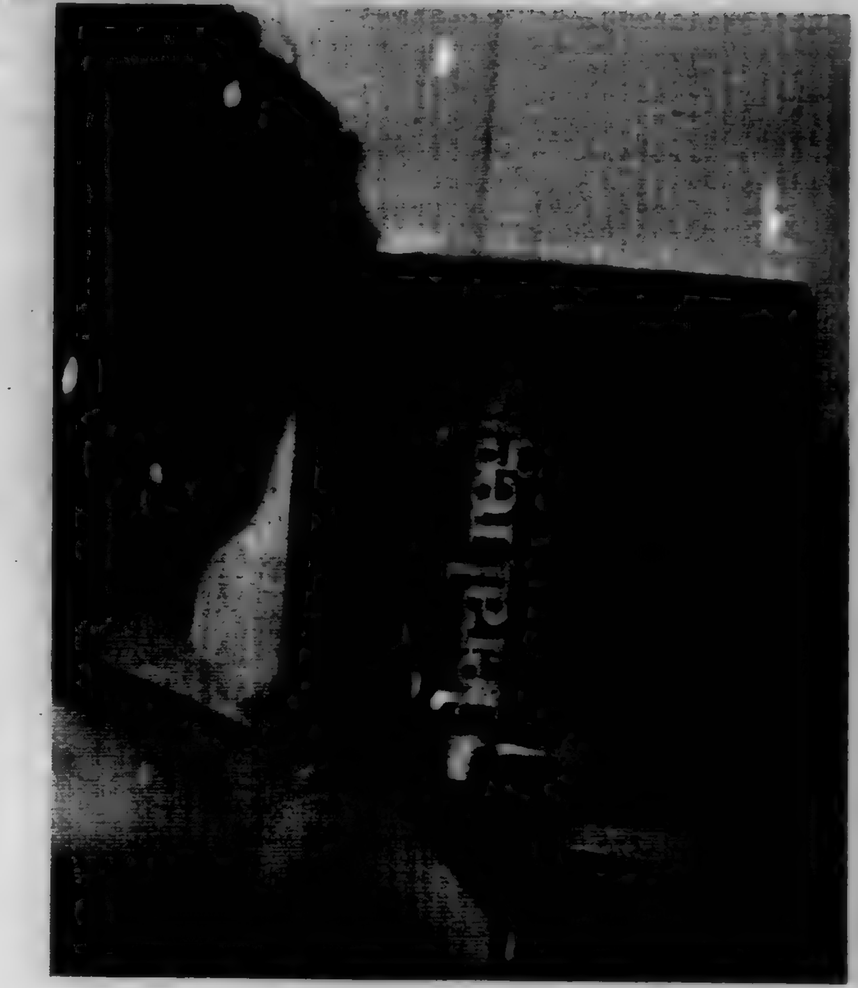

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Rules and Regulations

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Tuesday, November 14, 2000

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 99–052–2]

Brucellosis in Cattle; State and Area Classifications; Louisiana

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations concerning the interstate movement of cattle by changing the classification of Louisiana from Class A to Class Free. We have determined that Louisiana meets the standards for Class Free status. The interim rule relieved certain restrictions on the interstate movement of cattle from Louisiana.

EFFECTIVE DATE: The interim rule became effective on July 27, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Valerie Ragan, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7708.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective July 27, 2000, and published in the **Federal Register** on August 3, 2000 (65 FR 47653–47654, Docket No. 99–052–1), we amended the brucellosis regulations in 9 CFR part 78 by removing Louisiana from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). That action relieved certain restrictions on the interstate movement of cattle from Louisiana.

Comments on the interim rule were required to be received on or before October 2, 2000. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 65 FR 47653–47654 on August 3, 2000.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 6th day of November 2000 .

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–29025 Filed 11–13–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–34–AD; Amendment 39–11964; AD 2000–22–17]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Models MS 880B, MS 885, MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235C, and Rallye 235E Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all SOCATA—Groupe AEROSPATIALE (Socata) Models MS 880B, MS 885, MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235C, and Rallye 235E airplanes. This AD requires you to repetitively inspect, and, if necessary, replace elevator clevis and rudder governor control clevis that are too thin. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified in this AD are intended to correct rudder and elevator control clevis that are too thin because of abnormal wear, with consequent failure of the rudder and elevator clevis. Such failure could lead to loss of directional or pitch control.

DATES: This AD becomes effective on December 29, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 29, 2000.

ADDRESSES: You may get the service information referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aérodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: (33) (0)5.62.41.73.00; facsimile: (33) (0)5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894-1160; facsimile: (954) 964–4191. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–34–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Socata Models MS 880B, MS 885, MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235C, and Rallye 235E airplanes. The DGAC reports one failure of the rudder clevis in a Rallye airplane in flight. Abnormal wear of the part resulted in the failure.

What Happens if You Do Not Correct the Condition?

This condition, if not corrected, could result in failure of the rudder and elevator clevis and consequent loss of directional or pitch control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Socata Models MS 880B, MS 885, MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235C, and Rallye 235E airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 11, 2000 (65 FR 54820). The NPRM proposed to require you to repetitively inspect the elevator and rudder governor control clevis, and, if necessary, replace any clevis that is too thin.

Was the Public Invited To Comment?

Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 81 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish each inspection and possible replacement and lubrication:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. airplane operators
4 workhours $60 per hour = $240 ..	$24 per airplane if clevis replacement is necessary.	$264 per airplane	$264 × 81 = $21,384.

These actions are repetitive. We have no way of determining how many of these repetitive actions each owner/operator may incur over the life of each airplane.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2000–22–17 Socata—Groupe Aerospatiale: Amendment 39–11964; Docket No. 2000–CE–34–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models, all serial numbers, certificated in any category:

MS 880B
MS 892E–150
MS 894A
Rallye 150T
Rallye 235E
MS 885
MS 893A
MS 894E
Rallye 150ST
MS 892A–150
MS 893E
Rallye 100S
Rallye 235C

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct rudder clevis and elevator control clevis that are too thin because of abnormal wear, and the consequent failure of the rudder and elevator clevis. Such failure could lead to loss of directional or pitch control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance times	Procedures
(1) Inspect the elevator and rudder control clevis for abnormal wear. Measure clevis thickness. The thickness at the bent section should be at least 0.043 inch (in)/1.1 millimeter (mm).	Within the next 100 hours time-in-service (TIS) after December 29, 2000 (the effective date of this AD), and thereafter at intervals not to exceed 600 hours TIS.	Do this inspection in accordance with the ACCOMPLISHMENT INSTRUCTIONS of Socata Mandatory Service Bulletin SB 155–27, dated April 2000.
(2) If, during inspection, the elevator or rudder control clevis measures a thickness less than 0.043 in/1.1 mm, replace the clevis.	Before further flight after the inspection where abnormal wear was found.	Do this section in accordance with the ACCOMPLISHMENT INSTRUCTIONS of Socata Mandatory Service Bulletin SB 155–27, dated April 2000.
(3) Lubricate the clevis	Within the next 100 hours TIS after December 29, 2000 (the effective date with the of this AD), and thereafter at intervals not to exceed 100 hours TIS.	Do this action in accordance with the ACCOMPLISHMENT INSTRUCTIONS of Socata Mandatory Service Bulletin SB 155–27, dated April 2000.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Socata Mandatory Service Bulletin SB 155–27, dated April, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: (33) (0)5.62.41.73.00. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on December 29, 2000.

Note 2: The subject of this AD is addressed in French AD number 2000–174(A), dated May 3, 2000.

Issued in Kansas City, Missouri, on October 30, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28430 Filed 11–13–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–344–AD; Amendment 39–11958; AD 2000–22–20]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –9–20, –9–30, –9–40, and –9–50 Series Airplanes and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –9–20, –9–30, –9–40, and –9–50 series airplanes and C–9 (military) airplanes. This action requires, among other actions, measuring the diameter of the hole counterbore of the outboard idler hinge fitting of the left and right wing flap; performing repetitive high frequency eddy current inspections (HFEC) to detect cracks at the flap idler hinge fitting, if necessary; and replacing the flap idler hinge fitting with a new like part, if any crack is detected. This action is necessary to prevent failure of the outboard flap idler hinge fitting due to fatigue cracking, which could result in a deflected flap that may cause an asymmetric lift and consequent reduced controllability and structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective November 29, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the *Federal Register* as of November 29, 2000.

Comments for inclusion in the Rules Docket must be received on or before January 16, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–344–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–344–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received reports of a failed or cracked flap idler hinge fitting at the lower outboard stud location on certain McDonnell Douglas Model DC–9 series airplanes. Investigation revealed that these discrepancies were caused by fatigue cracking initiating at the lower outboard mounting hole with a 1⅛-inch diameter counterbore. Such fatigue cracking, if not corrected, could result in failure of the outboard flap idler hinge fitting. A failed outboard flap idler hinge fitting could result in a deflected flap, which may cause an asymmetric lift and consequent reduced controllability and structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC9–57A218, including Appendix, dated September 20, 2000, which describes the following procedures:

1. Measuring the diameter of the hole counterbore of the outboard idler hinge fitting of the left and right wing flap;
2. Installing a new nut, plain washer, and PLI washer;
3. For certain cases, performing repetitive high frequency eddy current inspections (HFEC) to detect cracks at the flap idler hinge fitting; and
4. Replacing the flap idler hinge fitting with a new like part, if any crack is detected.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model DC–9–10, –9–20, –9–30, –9–40, and –9–50 series airplanes and C–9 (military) airplanes series airplanes of the same type design, this AD is being issued to prevent failure of the outboard flap idler hinge fitting due to fatigue cracking, which could result in a deflected flap that may cause an asymmetric lift and consequent reduced controllability and structural integrity of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–344–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–22–20 McDonnell Douglas: Amendment 39–11968. Docket 2000–NM–344–AD.

Applicability: Model DC–9–10, –9–20, –9–30, –9–40, and –9–50 series airplanes and C–9 (military) airplanes, as listed in Boeing Alert Service Bulletin DC9–57A218, dated September 20, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the outboard flap idler hinge fitting due to fatigue cracking, which could result in a deflected flap that may cause an asymmetric lift and consequent reduced controllability and structural integrity of the airplane, accomplish the following:

Measurement

(a) Before the accumulation of 24,000 total landings, or within 90 days after the effective date of this AD, whichever occurs later, measure the diameter of the hole counterbore of the outboard idler hinge fitting of the left and right wing flap, per Boeing Alert Service Bulletin DC9–57A218, including Appendix, dated September 20, 2000.

Acceptable Measurement of 0.875 (⅞) Inch: Installation of Certain Parts

(1) If the diameter of any hole counterbore is 0.875 (⅞) inch, before further flight, install a new nut, plain washer, and PLI washer, per the service bulletin.

Unacceptable Measurement of 1.125 (1⅛) Inches: Repetitive Inspections and Corrective Actions, If Necessary

(2) If the diameter of any hole counterbore is 1.125 (1⅛) inches, before further flight, do a high frequency eddy current inspection (HFEC) to detect cracks at the flap idler hinge fitting, per the service bulletin.

(i) Condition 1. If no crack is detected, before further flight, install a new nut, plain washer, and PLI washer, per the service bulletin. Repeat the HFEC inspection every 1,000 landings until the replacement specified in paragraph (a)(2)(ii) has been done.

(ii) Condition 2. If any crack is detected, before further flight, replace the flap idler hinge fitting with a new like part, per the service bulletin. Within 24,000 landings after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(2) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin DC9–57A218, including Appendix, dated September 20, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on November 29, 2000.

Issued in Renton, Washington, on November 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28480 Filed 11–13–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–46–AD; Amendment 39–11970; AD 2000–22–22]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP and Hawker 800 (U–125A) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model Hawker 800XP and Hawker 800 (U–125A) series airplanes, that requires inspection of the wire bundle to relay "KT" on panel "JA" for correct routing, adequate clearance from the fuel cross-feed valve operating lever, and the presence of chafing; this amendment also requires corrective action, if necessary. The actions specified by this AD are intended to detect and correct chafing of the wire bundle exiting panel "JA" due to insufficient clearance from the fuel cross-feed valve operating lever. Such chafing of the wire bundle could result in a fire in the area of the fuel system in a confined space. This action is intended to address the identified unsafe condition.

DATES: Effective December 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67206. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Model Hawker 800XP and Hawker 800 (U–125A) series airplanes was published in the **Federal Register** on August 8, 2000 (65 FR 48404). That action proposed to require inspection of the wire bundle to relay "KT" on panel "JA" for correct routing, adequate clearance from the fuel cross-feed valve operating lever, and the presence of chafing. That action also proposed to require corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 148 airplanes of the affected design in the worldwide fleet. The FAA estimates that 60 airplanes of U.S. registry will be affected by this required AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $3,600, or $60 per airplane.

No estimate is provided for the cost impact of repairing the wire bundle or modifying the routing of the wire bundle or ensuring adequate clearance between the wire bundle and the fuel cross-feed valve operating lever because these costs will depend on the extent of the repairs or modifications required.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–22–22 Raytheon Aircraft Company: Amendment 39–11970. Docket 2000–NM–46–AD.

Applicability: Model Hawker 800XP series airplanes, as listed in Raytheon Service Bulletin SB 24–3212, dated August 1999; and Hawker 800 (U–125A) series airplanes, as listed in Raytheon Service Bulletin SB 24–3213, dated February 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct chafing of the wire bundle exiting panel "JA" due to insufficient clearance from the fuel cross-feed valve operating lever, which could result in a fire in the area of the fuel system in a confined space, accomplish the following:

Inspection and Corrective Actions

(a) Within 50 flight hours or 6 months after the effective date of this AD, whichever comes first, conduct a one-time detailed visual inspection of the panel "JA" wire bundle in accordance with the Accomplishment Instructions of Raytheon Aircraft Service Bulletin SB 24–3212, dated August 1999 (for Model 800XP series airplanes); or SB 24–3213, Revision 1, dated February 2000 (for Model 800 (U–125A) series airplanes; as applicable.

(1) Ensure that the wire bundle is routed correctly, in accordance with Figure 1 of the applicable service bulletin.

(2) Ensure that a minimum clearance of 0.25-inch exists between the wire bundle from relay "KT" and the fuel cross-feed valve operating lever throughout its range of travel.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) If the wire bundle is routed correctly and sufficient clearance exists, no further action is required by this AD.

(c) If the wire bundle is not routed correctly or if sufficient clearance does not exist, prior to further flight, perform a detailed visual inspection of the wire bundle to relay "KT" for chafing, in accordance with the Accomplishment Instructions of Raytheon Aircraft Service Bulletin SB 24–3212, dated August 1999 (for Model 800XP series airplanes); or SB 24–3213, Revision 1, dated February 2000 (for Model 800 (U–125A) series airplanes); as applicable.

(1) If no chafing is detected, prior to further flight, ensure that the wire bundle is routed correctly and ensure that a minimum clearance of 0.25-inch exists between the wire bundle and the fuel cross-feed valve operating valve throughout its range of travel, in accordance with the applicable service bulletin.

(2) If any chafing is detected, prior to further flight, repair the chafed wire, ensure that the wire bundle is routed correctly and ensure that a minimum clearance of 0.25-inch exists between the wire bundle and the fuel cross-feed valve operating valve throughout its range of travel, in accordance with the applicable service bulletin.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to

a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Raytheon Aircraft Service Bulletin SB 24–3212, dated August 1999; or Raytheon Aircraft Service Bulletin SB 24–3213, Revision 1, dated February 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67206. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on December 19, 2000.

Issued in Renton, Washington, on November 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28479 Filed 11–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–14–AD; Amendment 39–11967; AD 2000–22–19]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA330F, G, and J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that applies to Eurocopter France Model SA330F, G, and J helicopters and requires inspecting the tail rotor blade (blade) skin for cracks and replacing, as necessary, the blade. This amendment requires skin bonding and eddy current inspections of the blade skin for cracks and would reference a more recent service bulletin (SB). This amendment is prompted by improved inspection methods and by the manufacturer revising the SB referenced in the current AD. The actions specified by this AD are intended to prevent fatigue cracking of a blade, failure of a blade, and subsequent loss of control of the helicopter.

DATES: Effective December 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 80–12–04, Amendment 39–3790 (45 FR 37180, June 2, 1980), which applies to Eurocopter France Model SA330F, G, and J helicopters, was published in the **Federal Register** on August 10, 2000 (65 FR 48936). That action proposed to require skin bonding and eddy current inspections of the blade skin for cracks and referenced a more recent SB.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $360.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–3790 (45 FR 37180, June 2, 1980), and by adding a new airworthiness directive (AD), Amendment 39–11967, to read as follows:

2000–22–19 Eurocopter France: Amendment 39–11967. Docket No. 2000-SW–14–AD. Supersedes AD 80–12–04, Amendment 39–3790, Docket No. 20384.

Applicability: Model SA330F, G, and J helicopters with a tail rotor blade (blade), part number (P/N) 330A12–0000-(all dash numbers), 330A12–0000-(all dash numbers), 330A12–0006-(all dash numbers), installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of a blade, failure of a blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 30 hours time-in-service (TIS), and thereafter at intervals not to exceed 15 hours TIS for blades equipped with deicing systems or 30 hours TIS for blades without deicing systems, conduct skin bonding and eddy current inspections on each affected blade for skin bonding and a crack. Inspect in accordance with paragraph 1.C of Aerospatiale Service Bulletin 05.71R4, dated December 18, 1990. Replace any blade failing the skin bonding inspection or eddy current inspection before further flight.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The inspection shall be done in accordance with paragraph 1.C of Aerospatiale Service Bulletin 05.71R4, dated December 18, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 19, 2000.

Issued in Fort Worth, Texas, on October 30, 2000.

Mark R. Schilling,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–28722 Filed 11–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–315–AD; Amendment 39–11972; AD 2000–23–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B16 (CL–604) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B16 (CL–604) series airplanes. This action requires, among other actions, a general visual inspection to detect gaps between the vane bracket(s) and the adjacent skin; corrective actions, if necessary; and replacement of the six flap vane actuator beams with new beams. This action is necessary to detect and correct corrosion of the inboard flap actuator beam assembly and gaps between the vane brackets and adjacent skin, which could compromise the structural integrity of the flap systems and reduce the controllability of the airplane in the event that a flap vane actuator or a flap vane bracket fails during flight. This action is intended to address the identified unsafe condition.

DATES: Effective November 29, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 2000.

Comments for inclusion in the Rules Docket must be received on or before December 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–315–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2000–NM–315–AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B16 (CL–604) series airplanes. TCCA advises that it has received a report that, during a visual inspection of the flap systems, corrosion was found in the inboard flap actuator beam assembly, part number (P/N) 600–14250–25, as well as gaps between the vane brackets, P/N's 600–14306–1 and –2, and adjacent skin. Both of these discrepancies have been attributed to deficiencies in the manufacturing process. These conditions, if not corrected, could compromise the structural integrity of the flap systems and could reduce the controllability of the airplane in the event that a flap vane actuator or a flap vane bracket fails during flight.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A604–27–006, dated April 18, 2000. The service bulletin describes procedures for a general visual inspection to detect gaps between the vane bracket(s) and the adjacent skin; corrective actions, if necessary; replacement of the six flap vane actuator beams with new beams; and returning certain parts to the airplane manufacturer. The corrective actions involve performing a non-destructive inspection to detect cracks of the vane brackets; replacing any cracked vane bracket with a new vane bracket; eliminating the gap by filling the gap with liquid shim or installing a solid shim, as applicable; and repairing the gap. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition. The TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2000–18, dated July 11, 2000, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of the TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct corrosion of the inboard flap actuator beam assembly and gaps between the vane brackets and adjacent skin, which could compromise the structural integrity of the flap systems and could reduce the controllability of the airplane in the event that a flap vane actuator or a flap vane bracket fails during flight. This AD requires accomplishment of the action specified in the service bulletin described previously, except as discussed below.

This AD also requires operators to return certain parts and submit a data report of those parts to the airplane manufacturer. The FAA finds that these actions are necessary to determine if further rulemaking is needed.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the TCCA (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the TCCA would be acceptable for compliance with this proposed AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–315–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–02 Bombardier Inc. (Formerly Canadair): Amendment 39–11972. Docket 2000–NM–315–AD.

Applicability: Model CL–600–2B16 (CL–604) series airplanes, serial numbers 5301 through 5374 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the inboard flap actuator beam assembly and gaps between the vane brackets and adjacent skin, which could compromise the structural integrity of the flap systems and reduce the controllability of the airplane in the event that a flap vane actuator or a flap vane bracket fails during flight, accomplish the following:

General Visual Inspection

(a) Do a general visual inspection to detect gaps between the vane bracket(s), part number (P/N) 600–14306–1 and –2, and the adjacent skin, per paragraph "2. Accomplishment Instructions," of Bombardier Alert Service Bulletin A604–27–006, dated April 18, 2000; at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For airplanes having serial numbers 5301 through 5334 inclusive: Within 30 days after the effective date of this AD.

(2) For airplanes having serial numbers 5335 through 5354 inclusive: Within 90 days after the effective date of this AD.

(3) For airplanes having serial numbers 5355 through 5374 inclusive: Within 180 days after the effective date of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Actions if Any Gap Is Found

(b) If any gap is found during the general visual inspection required by paragraph (a) of this AD, before further flight, perform a non-destructive inspection to detect cracks of the vane bracket, per paragraph "2. Accomplishment Instructions," of Bombardier Alert Service Bulletin A604–27–006, dated April 18, 2000.

(1) If any crack is detected, before further flight, replace the cracked vane bracket with a new vane bracket per the service bulletin.

(2) If no crack is detected and if the gap is up to 0.100 inch (2.54 mm), eliminate the gap by filling the gap with liquid shim or installing a solid shim, as applicable, per the service bulletin.

(3) If no crack is detected and if the gap is more than 0.100 inch (2.54 mm), before further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA; or the Transport Canada Civil Aviation, (or its delegated agent). For a repair method to be approved by the Manager, New York ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Replacement of Six Flap Vane Actuator Beams

(c) Replace the six flap vane actuator beams with new beams, per paragraph "2. Accomplishment Instructions," of Bombardier Alert Service Bulletin A604–27–006, dated April 18, 2000; at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For airplanes having serial numbers 5301 through 5334 inclusive: Within 30 days after the effective date of this AD.

(2) For airplanes having serial numbers 5335 through 5354 inclusive: Within 90 days after the effective date of this AD.

(3) For airplanes having serial numbers 5355 through 5374 inclusive: Within 180 days after the effective date of this AD.

Return of Parts

(d) Within 30 days after doing the replacement required by paragraph (c) of this AD, forward any cracked vane bracket and any two of the six removed flap vane actuator assemblies to Bombardier, per paragraph "2. Accomplishment Instructions," of Bombardier Alert Service Bulletin A604–27–006, dated April 18, 2000. Data, such as the station location of the flap actuator beam assembly, the number of flight hours and landings of the airplane at removal, must be submitted along with the flap vane actuator beam assemblies. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided in paragraph (b)(3) of this AD, the actions shall be done in accordance with Bombardier Alert Service Bulletin A604–27–006, dated April 18, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–18, dated July 11, 2000.

Effective Date

(h) This amendment becomes effective on November 29, 2000.

Issued in Renton, Washington, on November 3, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28830 Filed 11–13–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–113–AD; Amendment 39–11975; AD 2000–23–05]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAC 1–11 401/AK and 410/AQ Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11 401/AK and 410/AQ airplanes, that requires replacement of certain landing gear brake accumulators with improved accumulators. The actions specified by this AD are intended to prevent loss of hydraulic pressure and possible structural damage to the airplane due to failure of the accumulator. This action is intended to address the identified unsafe condition.

DATES: Effective December 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11 401/AK and 410/AQ airplanes was published in the **Federal Register** on September 19, 2000 (65 FR 56506). That action proposed to require replacement of certain landing gear brake accumulators with improved accumulators.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 13 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $9,940 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $130,000, or $10,000 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–05 British Aerospace Airbus Limited: (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Amendment 39–11975. Docket 2000–NM–113–AD.

Applicability: All Model BAC 1–11 401/AK and 410/AQ airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of hydraulic pressure and possible structural damage to the airplane due to failure of the landing gear brake accumulator, accomplish the following:

Replacement

(a) Within 10 months after the effective date of this AD, replace any Parker landing gear brake accumulator having part number (P/N) 1356–653562 with an accumulator having P/N 1356–653562M2, in accordance with British Aerospace Service Bulletin 32-PM6054, dated February 2000.

Note 2: The British Aerospace service bulletin references Parker Service Bulletin 1356–653562–32–100, dated September 23, 1999, as an additional source of service information for accomplishment of the replacement.

Spares

(b) As of the effective date of this AD, no Parker landing gear brake accumulator having P/N 1356–653562 shall be installed on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with British Aerospace Service Bulletin 32–PM6054, dated February 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on December 19, 2000.

Issued in Renton, Washington, on November 3, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28829 Filed 11–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–26–AD; Amendment 39–11974; AD 2000–23–04]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Model ATR42–500 series airplanes, that requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. This amendment is prompted by issuance of a new revision of the "Time Limits" section of the ATR42–400/500 Maintenance Planning Document, which specifies new inspections and compliance times for inspection and replacement actions. The actions specified by this AD are intended to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: Effective December 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR42–500 series airplanes was published in the **Federal Register** on August 29, 2000 (65 FR 52369). That action proposed to require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $480, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–04 Aerospatiale: Amendment 39–11974. Docket 2000–NM–26–AD.

Applicability: All Model ATR42–500 series airplanes certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

Airworthiness Limitations Revision

(a) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness by incorporating the "Time Limits" section of the ATR42–400/500 Maintenance Planning Document, Revision 3, dated February 1999, into the Airworthiness Limitations Section.

(b) Except as provided in paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(e) This amendment becomes effective on December 19, 2000.

Issued in Renton, Washington, on November 3, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28828 Filed 11–13–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–69–AD; Amendment 39–11982; AD 2000–23–12]

RIN 2120–AA64

Airworthiness Directives; CFE Company Model CFE738–1–1B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CFE Company model CFE738–1–1B turbofan engines, that requires new life limits for certain HPC rotor components in all engines. This amendment is prompted by a reduction in the calculated service life of certain compressor rotor rotating parts to values below currently approved service lives. The actions specified by this AD are intended to prevent failure of certain HPC rotor components, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective January 16, 2001.

ADDRESSES: The rulemaking docket may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7744, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to CFE Company Model CFE 738–1–1B turbofan engines was published in the **Federal Register** on December 14, 1998 (63 FR 68707). Based on additional material stress testing, the FAA published a supplemental notice of proposed rule making (SNPRM) on September 23, 1999 (64 FR 51484). That SNPRM removed the proposal that would have required a dimensional inspection of the curvic couplings for parts that contain a machining mismatch and would have required those parts to be removed from service. That SNPRM, however, also introduced a requirement to remove parts prior to a new reduced cyclic life limit for specific high pressure compressor rotating parts. Since those changes expanded the scope of the originally proposed rule, the FAA determined that it was necessary to reopen the comment period. At the time the SNPRM was published, the manufacturer anticipated that the proposed reduced limits may be increased based upon further testing and analysis for the stage 4 and 5 blisk and impeller aft shaft.

Comments Received

One comment was received. The manufacturer, using the data obtained from additional testing and analysis, and life analysis prediction techniques approved by the FAA, has requested that the cyclic life limits for the stage 4 and 5 blisk proposed in the published SNPRM be increased. This analysis showed that the life predictions of two of the three stage 4 and 5 blisk configurations met initial published part cyclic life requirements. The analysis showed that the life of the remaining stage 4 and 5 blisk configuration should be reduced from the previously approved cyclic life limit.

The FAA agrees with the revised limits for the stage 4 and 5 blisk. This final rule has been revised accordingly by removing two of the stage 4 and 5 blisk configurations listed in the SNPRM and listing the recalculated cyclic life for the third stage 4 and 5 blisk configuration.

In addition, reference to inspection work hours was removed from the economic analysis section. Inspection requirements for these parts were removed in the SNPRM, and are not applicable to this AD.

Economic Analysis

There are approximately 245 engines of the affected design in the worldwide fleet. The FAA estimates that 156 engines would be affected by this proposed AD. Required parts, on a pro-rated basis, would cost approximately $13,613 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $2,123628.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–12 CFE Company: Amendment 39–11982. Docket No. 98–ANE–69–AD.

Applicability: CFE Company Model CFE738–1–1B turbofan engines, installed on but not limited to the Dassault Aviation Falcon 2000 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of certain high pressure compressor

(HPC) rotor components, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Remove from service certain stage 4 and 5 blisks and impeller aft shafts prior to exceeding the new cyclic life limits as follows, and replace with serviceable parts:

Nomenclature	Part No. (P/N)	Cyclic life limit
Stage 4 and 5 Blisk	6079T74P08	6,700 cycles since new (CSN).
Impeller Aft Shaft	6079T80P04	5,100 CSN.
	6079T80P05	2,160 CSN.
	6079T80P06	7,100 CSN.
	6079T80P07	7,100 CSN.

(b) Except for the provisions of paragraph (c) of this AD, no parts, identified by P/N in paragraph (a) of this AD, that exceed the new life limits may be installed.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date of This AD

(e) This amendment becomes effective on January 16, 2001.

Issued in Burlington, Massachusetts, on November 6, 2000.

Donald Plouffe,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–28961 Filed 11–13–00; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–042–7169a; A–1–FRL–6871–2]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; New Hampshire—Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. This action consists of approving regulations in New Hampshire, as well as a case-specific order and two emission quantification protocols for Public Service of New Hampshire (PSNH). The regulations and order are part of a regional nitrogen oxide (NO_X) reduction program designed to reduce stationary source NO_X emissions during the ozone season in the Ozone Transport Region (OTR) of the northeastern United States. Section 184(a) of the Clean Air Act defines the OTR as the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated metropolitan Statistical Area that includes the District of Columbia. These SIP revisions were submitted pursuant to section 110 of the Clean Air Act (CAA).

DATES: This direct final rule is effective on January 16, 2001 without further notice, unless EPA receives adverse comment by December 14, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Manager, Air Quality Planning Unit, Office of Ecosystem

Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and at the New Hampshire Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03301.

FOR FURTHER INFORMATION CONTACT: Dan Brown, (617) 918–1532 or at brown.dan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements

Sections 182(b)(1)(A) and 182(c)(2)(A) of the CAA require States with areas classified as "moderate," "serious," and "severe" ozone nonattainment to submit revisions to their applicable SIPs to provide for specific annual reductions in emissions of volatile organic compounds (VOCs) and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone. Additionally, section 110 of the Act requires that such plans be subject to public notice, comment, and hearing procedures and that the States adopt and submit the plans to EPA.

As part of New Hampshire's efforts to meet the CAA requirements, on July 27, 1998, the New Hampshire Department of Environmental Services (NH DES) submitted a request to revise its SIP by adding CHAPTER Env-A 3200 " NO_X BUDGET TRADING PROGRAM" and Final RACT Order ARD–98–001. The regulations and order impose statewide and source-specific caps on NO_X emissions from certain industrial equipment (*e.g.*, electric utility boilers, industrial boilers, combustion turbines, etc.). New Hampshire's CHAPTER Env-A 3200 is based closely on a model rule which was developed using the EPA's economic incentive program (EIP) guidance (67 FR 16690, April 7, 1994) as the regulatory framework.

B. The OTC MOU Program

The model rule used by New Hampshire was developed by the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA) entitled, "NESCAUM/MARAMA NO_X Budget Model Rule." The NESCAUM/MARAMA model rule was issued on May 1, 1996. The basis for the model rule was a memorandum of understanding entitled, "Memorandum of Understanding Among the States of the Ozone Transport Commission on Development of a Regional Strategy Concerning the Control of Stationary Source Nitrogen Oxide Emissions," dated September 27, 1994, otherwise known as the "OTC MOU."

The OTC MOU committed the MOU signatory States to require certain major stationary sources to reduce their NO_X emissions through several regulatory stages. The NO_X RACT regulations required by section 182 of the Clean Air Act have reduced emissions at major stationary sources of NO_X since 1995. Those reductions are considered "phase I" of the OTC program. Under "phase II" of the program, the MOU committed the signatory states to imposing a cap on regional NO_X emissions during the five month periods between May 1 through September 30 of 1999, 2000, 2001, and 2002. The third stage of the OTC program, *i.e.*, "phase III," will tighten the regional cap and is set to begin on May 1, 2003 and continue in each ozone season thereafter.

II. Chapter Env-A 3200 " NO_X BUDGET TRADING PROGRAM"

New Hampshire's Chapter Env-A 3200 contains both phase II and phase III NO_X budget program reduction requirements. New Hampshire's NO_X budget regulations set a statewide, five month (May through October) NO_X "budget," or mass emission limit in tons, to reduce the aggregate emissions from large fossil fuel fired combustion equipment by as much as 75% from a 1990 baseline. In order to achieve the aggregate NO_X reductions, the regulations proportion NO_X "allowances" (in tons) to the facilities with emission units subject to the program. The regulations require each owner or operator of each unit to hold, by December 31 of each year, at least as many NO_X allowances in their compliance account as total tons of NO_X emitted during the previous five month ozone season.

Under the NO_X Budget regulations, NO_X allowances may be bought or sold and unused allowances may be banked from one year to another in a central registry administered by EPA. The program requires NO_X emissions to be monitored by either a continuous emission monitoring system (CEMS) or equivalent, although the use of alternatives is allowed where approved by the State and EPA. The program began on May 1, 1999. Starting in 2002 and occurring every three years after, New Hampshire and the OTC will conduct an audit of the program to ensure that the expected reductions are occurring.

III. RACT Order 98–001 & Emission Quantification Protocols for Public Service of New Hampshire

In addition to Chapter Env-A 3200, on July 27, 1998, New Hampshire also submitted Final RACT Order 98–001 which was issued to PSNH under Part Env-A 1211. First, the order requires PSNH's unit #2 at its Merrimack Station (MK2) to meet an emission limitation of 15.4 tons of NO_X per 24 hour calendar day by May 31, 1999. This limit can be met directly at MK2 or through the use of approved emission credits generated in the ozone season at other facilities. Second, the order requires PSNH to meet an emissions cap of 4,662 tons during the period between May 1 and October 1 for the combined NO_X emissions from the following units: units #1 and #2 at Merrimack Station, unit #1 at Newington Station, and units #4, #5, and #6 at Schiller Station, during the years 1999, 2000, 2001, and 2002. Beginning on May 1, 2003, the order requires those units, to comply with an ozone season cap of 3,627 tons, minus any tons allocated to new sources subject to the program. Additionally, the order requires the PSNH units to meet a NO_X cap of 8,208 tons between October 1 and April 30 of each year, beginning in 1999.

Order ARD 98–001 also contains provisions that allow PSNH to generate discrete emission reductions (DERs) according to the requirements of Chapter Env-A 3100, New Hampshire's discrete emission reduction trading regulation, by reducing emissions below the NO_X limitations contained in Env-A 1211, Order ARD 97–001, and all other applicable emission limits. However, because Env-A 3100 has not yet been approved into the New Hampshire SIP, New Hampshire submitted the emission reduction protocols as case-specific SIP revisions. The SIP submittal included two credit generation protocols, as well as the credits created by the protocols that were generated by PSNH from May 1, 1995 through September 30, 1997.

IV. EPA Evaluation

Based on the EIP, EPA finds the NO_X cap and trade regulations, case-specific NO_X RACT order, and quantification protocols fully approvable. See "Technical Support Document for the Approval of New Hampshire's CHAPTER Env-A 3200 NO_X BUDGET TRADING PROGRAM and Final RACT Order 98–001," dated January 7, 1999, for EPA's detailed evaluation. The technical support document is available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this document.

V. Issues

One issue related to New Hampshire's NO_X Budget Trading Program involves the overlap of New Hampshire's NO_X Budget Trading Program and the EPA's NO_X SIP Call summarized below.

A. NO_X SIP Call

From 2003 onward, the geographic size of the market for allowances issued by New Hampshire will be directly affected by the promulgation of EPA's rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the " NO_X SIP call." See 63 FR 57356, October 27, 1998, aff'd in part, State of Michigan v. U.S. EPA, No. 98–1497 (D.C. Cir., March 3, 2000).

The NO_X SIP call requires specified States to submit SIP revisions to prohibit specified amounts of NO_X emissions, in order to reduce emissions in each of those States to a level within the statewide NO_X emissions budget established in the NO_X SIP call final rule. The NO_X SIP call gives States the flexibility to choose any mix of pollution-reduction measures that will achieve the required reductions. The NO_X SIP call, however, suggests that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and electricity generators would provide a cost effective means for States to meet their NO_X budgets. In fact, the NO_X SIP call State budgets were set at levels which reflect the NO_X reduction possible assuming a 0.15 lbs/mmBtu-based cap being applied to the large industrial boilers and electricity generators.

One option to comply with the NO_X SIP call is the adoption of a State rule based on the EPA's model NO_X Budget Trading Program (40 CFR part 96), which was finalized in the October 1998 NO_X SIP call rule. Part 96 sets forth a cap-and-trade program for NO_X emissions that employs a cap on total NO_X emissions for the ozone season. This mechanism ensures that emissions reductions are achieved and maintained, while providing the cost-effectiveness of a market-based system. The NO_X SIP call requires the covered states to adopt regulations which implement control strategies starting in 2003 in order to achieve the specific statewide budgets by 2007.

Although EPA's notice of proposed rulemaking (NPR) for the NO_X SIP call (November 7, 1997) examined the effects of transport from the 36 States and the District of Columbia which made up the ozone transport assessment group (OTAG) region, EPA has not yet finalized the NO_X SIP call for all 37 entities specified in the October 1998 final rulemaking notice. EPA is continuing to evaluate air quality modeling for 15 States which were part of the OTAG region, including New Hampshire, in order to make a final determination of whether they significantly contribute to the transport of ozone. Whether New Hampshire ultimately will be part of the NO_X SIP call is uncertain at this time.

B. Overlap of OTC and NO_X SIP call Allowance Trading Programs

Based on the SIP submittals by Connecticut, Massachusetts, New Jersey, and Rhode Island, EPA anticipates that the OTR States which are part of the OTC NO_X budget and allowance trading program and, which are subject to the NO_X SIP call, will participate in a regional cap and trade program to meet the NO_X SIP call requirements. Therefore, the issue associated with the approval of the New Hampshire program relates to the fact that although New Hampshire is an OTC state, it is not a NO_X SIP call state.

EPA is currently administering the emissions tracking and allowance tracking systems for the OTC NO_X budget program. EPA will also be administering the NO_X SIP call emissions and allowance tracking systems. This means that for States subject to both the OTC and NO_X SIP call programs, 1999 through 2002 NO_X allowances will be tracked in the OTC allowance tracking system, and then eligible 2003 and beyond allowances will be tracked in the NO_X SIP call allowance tracking system.

The New Hampshire regulations are not considered a NO_X SIP call submission nor is today's SIP action an approval of trading these allowances for NO_X SIP call purposes. Therefore, because the OTC phase III NO_X cap in New Hampshire is not as stringent as a NO_X SIP call cap would be, New Hampshire OTC phase III allowances will not be transferable to accounts in the NO_X SIP call tracking system. As of May 1, 2003, New Hampshire's NO_X allowances will not be available for compliance purposes in NO_X SIP call affected States. However, because the NO_X SIP call program requirements would be more stringent than the OTC program requirements, NO_X SIP call program allowances will be available for sources to meet the New Hampshire OTC phase III emission limits.

Final Action: EPA is approving New Hampshire's CHAPTER Env-A 3200 " NO_X BUDGET TRADING PROGRAM," Order ARD 98–001, and two emission quantification protocols.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective January 16, 2001 without further notice unless the Agency receives relevant adverse comments by December 14, 2000.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on this action should do so at this time.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 2001. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 6, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraphs (c)(57) and (c)(64) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(57) Revision to the State Implementation Plan submitted by the New Hampshire Air Resources Division on July 27, 1998.

(i) Incorporation by reference.

(A) Regulation Chapter Env-A 3200 NO_X Budget Trading Program adopted and effective on July 17, 1998.

(ii) Additional materials.

(A) Letter from the New Hampshire Air Resources Division dated July 27, 1998 submitting Chapter Env-A 3200 NO_X Budget Trading Program as a revision to the New Hampshire State Implementation Plan.

* * * * *

(64) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on July 27, 1998.

(i) Incorporation by reference.

(A) Order ARD 98–001 issued by the New Hampshire Department of Environmental Services to Public Service Company of New Hampshire on July 17, 1998, with attachments: Discrete emission reduction protocol for Public Service of New Hampshire's Schiller Station, Units 4, 5 and 6, submitted to the New Hampshire Department of Environmental Services on April 10, 1998; and Discrete emission reduction protocol for Public Service of New Hampshire's Newington Station, Unit 1, submitted to the New Hampshire Department of Environmental Services on April 10, 1998.

(ii) Additional materials.

(A) Letter from the New Hampshire Air Resources Division dated July 17, 1998 submitting Final RACT Order 98–001 as a revision to the New Hampshire State Implementation Plan.

* * * * *

3. In § 52.1525, Table 52.1525 is amended by revising the column heading "Comments" to read "Explanation"; adding a new state citation for "Part Env-A 3200" in numerical order to the entries for "Part Env-A"; and by adding Source specific "Order ARD 98–001" in numerical order to the entries for "Order ARD" as follows:

§ 52.1525 EPA-approved New Hampshire state regulations.

* * * * *

TABLE 52.1525.—EPA—APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE

Title/subject	State citation chapter [2]	Date submitted by State	Date approved by EPA	**Federal Register** citation	52.1520	Explanation
*	*	*	*	*	*	*
NO_X Budget Trading Program.	Part Env-A 3200	7/27/98	11/14/00	65 FR 68082	(c)(57)	Approval of OTC NO_X budget and allowance trading program.
*	*	*	*	*	*	*
Source specific order	Order ARD 98–001 ...	7/17/98	11/14/00	65 FR 68082	(c)(64)	Source-specific NO_X RACT order and discrete emission reduction protocols for Public Service of New Hampshire.
*	*	*	*	*	*	*
NO_X Budget Trading Program.	Part Env-A 3200	7/27/98	11/14/00	65 FR 68082	(c)(57)	Approval of OTC NO_X budget and allowance trading program.
*	*	*	*	*	*	*

[1] These regulations are applicable statewide unless otherwise noted in the Explanation section.
[2] When the New Hampshire Department of Environmental Services was established in 1987, the citation chapter title for the air regulations changed from CH Air to Env-A.

[FR Doc. 00–28707 Filed 11–13–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[CS Docket No. 00–2; FCC 00–388]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts regulations to implement certain aspects of the Satellite Home Viewer Improvement Act of 1999, which was enacted on November 29, 1999. Among other things, the act authorizes satellite carriers to add more local and national broadcast programming to their offerings and seeks to place satellite carriers on an equal footing with cable operators with respect to availability of broadcast programming. This document adopts regulations that apply current cable rules for network non-duplication, syndicated program exclusivity and sports blackout to satellite carriers.

DATES: Effective November 29, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eloise Gore at (202) 418–7200 or via internet at *egore@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order ("Order"), FCC 00–388, adopted October 27, 2000; released November 2, 2000. The full text of the Commission's Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via internet at http://www.fcc.gov/csb/ For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

Paperwork Reduction Act

This Report and Order contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission is requesting Office of Management and Budget ("OMB") approval, under the emergency processing provisions of the 1995 Act (5 CFR 1320.13), of the information collection requirements contained in this Report and Order.

Synopsis of the Order

Introduction

1. In this Report and Order ("Order"), we adopt network non-duplication, syndicated exclusivity, and sports blackout rules for satellite carriers. These rules implement provisions of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA," Public Law 106–113, 113 Stat. 1501, 1501A–526 to 1501A–545 (Nov. 29, 1999)), which provides statutory copyright licenses for satellite carriers to provide additional local and national broadcast programming to subscribers. In enacting the SHVIA, Congress sought to create parity between satellite carriers and cable operators with regard to the retransmission of broadcast programming and to expand the availability of such programming to consumers. Prior to enactment of the SHVIA, the copyright laws made it virtually impossible for satellite subscribers to receive television broadcast programming by satellite. In adopting these rules, the Commission implements the statutory requirements and seeks to facilitate competition in the multichannel video programming distribution marketplace.

2. Section 1008 of the SHVIA creates a new section 339 of the Communications Act of 1934, as amended ("Communications Act") entitled "Carriage of Distant Television Stations by Satellite Carriers." Section 339(b) directs the Commission to apply

the network non-duplication, syndicated exclusivity, and sports blackout rules, previously applicable only to cable television systems, to satellite carriers' retransmission of nationally distributed superstations to satellite subscribers. Congress also requires the Commission to apply the cable sports blackout rule to satellite carriers' retransmission of network stations, but only "to the extent technically feasible and not economically prohibitive." The Commission released a Notice of Proposed Rulemaking ("NPRM") on January 7, 2000, seeking comment on how best to apply these rules to satellite carriers (65 FR 4927, February 2, 2000). The Commission received 22 comments and 14 reply comments to the NPRM.

Background

3. The network non-duplication, syndicated exclusivity, and sports blackout rules (collectively referred to herein as "the exclusivity rules"), as applied in the cable context, generally protect exclusive contractual rights that have been negotiated between program providers and broadcasters or other rights holders. These exclusive contractual rights are potentially threatened by cable systems that are capable of importing duplicative programming from distant sources beyond the control of the contracting parties. The cable exclusivity rules provide that specific programs must be deleted from distant television broadcast signals delivered to cable subscribers if the programs are subject to exclusive rights pursuant to contracts with local stations. Additionally, pursuant to the sports blackout rule, sporting events carried on distant stations must be deleted when carriage would violate sporting teams' or leagues' arrangements to protect gate receipts in the local market.

4. Section 339(b)(1)(A) of the Communications Act, as amended by the SHVIA, requires the Commission "to apply network non-duplication protection (47 CFR 76.92), syndicated exclusivity protection (47 CFR 76.151), and sports blackout protection (47 CFR 76.67) to the retransmission of the signals of nationally distributed superstations by satellite carriers to subscribers." Section 339(b)(1)(B) requires the Commission to "apply sports blackout protection (47 CFR 76.67) to the retransmission of the signals of network stations by satellite carriers to subscribers" "to the extent technically feasible and not economically prohibitive." The SHVIA requires that the Commission implement these new rules so that they will be "as similar as possible" to the rules applicable to cable operators.

Summary of Decision

5. In implementing these sections of the SHVIA, the Commission attempts to be faithful to the clear Congressional intent to place satellite carriers on an equal footing with cable operators, while taking into consideration that the operational structures of these two Multichannel Video Programming Distributors ("MVPD"s) are very different. In the context of the SHVIA, which is fundamentally part of the copyright laws, we are cognizant also of the important protection that the exclusivity rules provide to broadcasters and copyright holders. The SHVIA facilitates satellite carriage of additional broadcast stations through the use of a statutory copyright license. By applying the cable exclusivity rules to satellite carriers, Congress sought to keep the competitive marketplace in balance by protecting the broadcasters' private contractual arrangements and ensuring that satellite carriers have regulatory obligations that are as similar as possible to cable operators. The statutory language unambiguously directs us to apply all three of the cable exclusivity rules to satellite carriers with respect to retransmission of nationally distributed superstations. The SHVIA further requires that only the sports blackout rule be applied to satellite carriers' retransmission of network stations and limits application of the cable rule in this context "to the extent technically feasible and not economically prohibitive." Congressional intent, as expressed in the Joint Explanatory Statement, places a heavy burden on showing that rules similar to the cable rules would be "economically prohibitive" for satellite carriers.

6. In general, under the new statutory provisions, the network non-duplication and syndicated exclusivity rules apply when a satellite carrier retransmits a nationally distributed superstation to a household within a local broadcaster's zone of protection, and the nationally distributed superstation carries a program to which the local station has exclusive rights. The program may fall under either the definition of network program (delivered simultaneously to more than one broadcast station, (47 CFR 76.5(m)) or the definition of syndicated program (sold, licensed, distributed or sold to licensees in more than one market (47 CFR 76.5(ii)). In addition, the sports blackout rules will apply when a subject sporting event will not be aired live by any local television station, and a satellite carrier retransmits a nationally distributed superstation or a distant network station carrying that sporting event to a household within the zone of protection of the holder of exclusive distribution rights to the event. In all of these cases, the television broadcast station or other rights holder may require the satellite carrier to blackout these particular programs for the satellite subscriber households within the protected zone.

7. In the NPRM we sought comments on how we could follow the Congressional mandate to apply the cable exclusivity rules as closely as possible to satellite carriers while taking account of the differences between the two industries. In general, the comments did not provide specific data on cost or technical difficulties in applying the exclusivity rules to satellite carriers and leave us with the conclusion that, in most cases, these rules can be applied directly to satellite carriers. There is a general consensus, however, that the "community units" used for identification of cable systems are inapplicable in the satellite context. We decide here to use zip codes in lieu of community units to define the various zones of protection afforded under the satellite exclusivity rules adopted today. In large part, the notification provisions of the cable exclusivity rules can be applied in the satellite context, except with respect to the sports blackout requirements, for which we have the statutory flexibility and record to support slightly different requirements. In a further effort to provide comparable treatment for the cable and satellite rules, we adapt the exceptions to the cable exclusivity rules for small systems to the satellite context. We also require that the contractual language granting exclusive rights in a market clearly apply to satellite carriage, and we provide a period of time for satellite carriers to phase-in implementation of the new rules. Finally, we decline to take the steps advocated by the National Football League to go beyond the statutory requirements to delete non-duplicating sports programming that is part of a sports program "unitary" package because it would unnecessarily and unjustifiably further limit the ability of consumers to view the programming of their choice.

Statutory Interpretation and Definitional Issues

8. Section 339(b)(1), as created by the SHVIA, applies to "satellite carriers." Section 339(d)(4) defines "satellite carrier" by reference to the Copyright Act definition as

> an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing. (17 U.S.C. 119(d)(6))

Contrary to the arguments of several commenters, there is nothing in the SHVIA or the legislative history that suggests that satellite carriers operating in the C-Band were intended to be exempted from the requirements of section 339(b)(1). C-Band satellite carriers are licensed under part 25 of the Commission's rules. We do not agree that an isolated and ambiguous colloquy between two Senators overrides unambiguous statutory language. We recognize, however, that C-Band carriers operate differently from DBS carriers and that the number of C-Band subscribers is steadily decreasing, and to the extent C-Band satellite carriers can be subject to exceptions from any of the exclusivity rules we adopt today, they are specifically described below. In the absence of specific language distinguishing C-Band satellite carriers, references to "satellite carriers" in this Order refer to all satellite carriers that meet the definition in the SHVIA.

9. Section 339(b)(1)(A) of the Communications Act requires the Commission to apply network non-duplication protection, syndicated exclusivity protection, and sports blackout protection to the retransmission of the signals of nationally distributed superstations by satellite carriers to subscribers. For these purposes, a "nationally distributed superstation" is a term that is defined as a television broadcast station, licensed by the Commission, that meets the following three criteria:

(A) is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States;

(B) on May 1, 1991, was retransmitted by a satellite carrier and was not a network station at that time; and

(C) was, as of July 1, 1998, retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code.

Television network means "a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States" (47 U.S.C. 339(d)(5)). A "network station" is "(A) a television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States" or "(B) a noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934)" except that the term does not include "the signal of the Alaska Rural Communications Service, or any successor entity to that service." (17 U.S.C. 119(d)(2).)

10. In the NPRM, we stated that the television broadcast stations that meet the foregoing criteria are limited to KTLA–TV (Los Angeles), WPIX–TV (New York), KWGN–TV (Denver), WSBK–TV (Boston), WWOR–TV (New York) and WGN–TV (Chicago). KTLA, WPIX and KWGN are all now affiliates of the Warner Brothers Network ("WB"). In addition, WSBK and WWOR currently are affiliated with the UPN Network. WGN is affiliated with WB but provides a different "syndex/nondupe proof" signal for uplink and carriage as a superstation. We note that WB and UPN did not qualify as "television networks" as of January 1, 1995, the operative date referenced in section 339(d)(2)(A) because they did not satisfy each of the statutory criteria as of that date. We also stated that since no other station could meet these criteria in the future due to the date-specific conditions set forth in the definition, the foregoing constitutes a finite list of the nationally distributed superstations covered by the statute. Commenters directly addressing this issue generally agree with our conclusion that this list of nationally distributed superstations is complete and finite.

11. By creating this special category known as nationally distributed superstations, Congress permits satellite carriers to retransmit these superstations to subscribers regardless of whether they are "served" or "unserved" pursuant to the Copyright Act. The amended copyright provision provides that the retransmission of nationally distributed superstations to subscribers who do not reside in "unserved households" shall not violate the compulsory copyright license. (An unserved household is defined in part as one that cannot receive over-the-air a signal of Grade B intensity for a primary television network station (17 U.S.C. 119(d)(10)).) Thus, we conclude that as a result of section 1005(b), there is no geographic restriction on the retransmission of "nationally distributed superstations" pursuant to the compulsory copyright license.

12. In addition, the SHVIA amended the retransmission consent section of the Communications Act, which generally prohibits MVPDs from retransmitting the signals of a broadcaster absent the broadcaster's written authorization. The SHVIA allows a satellite carrier to retransmit the signal of a superstation outside the station's local market without the station's consent if: (i) The station was a superstation on May 1, 1991, and (ii) the station was retransmitted by the satellite carrier as of July 1, 1998, provided the satellite carrier complies with the Commission's non-duplication, syndicated exclusivity, and sports black out rules. This provision differs slightly from the definition of a nationally distributed superstation in that it does not specify that the superstation must not be affiliated with a network that existed as such as of January 1, 1995. At this time, this distinction is without practical significance because the six television stations cited above meet the relevant criteria of either definition, and there are no additional stations that are included or excluded by operation of this third criterion. As discussed in the NPRM, we conclude that, pursuant to these new statutory mandates in the SHVIA, satellite carriers are permitted to retransmit the signals of the nationally distributed superstations covered by section 339(b)(1)(A) outside the station's local market to both served and unserved households without the station's consent and without geographic restriction. In a similar but not identical provision, the SHVIA permits a cable operator or other MVPD (other than a satellite carrier) to retransmit a television broadcast station outside of its local market without its consent, provided the MVPD obtains the signal from a satellite, and the station was a superstation on May 1, 1991 and was retransmitted by a satellite carrier under the Section 119 statutory license as of July 1, 1998.

13. In addition to applying the existing cable exclusivity rules to nationally distributed superstations, Section 339(b)(1)(B) requires the

Commission to apply sports blackout protection to the retransmission of the signals of network stations by satellite carriers to subscribers "to the extent technically feasible and not economically prohibitive." By its terms, Section 339(b)(1)(B) applies only to "network stations," which are television broadcast stations owned or operated by, or affiliated with, the television networks. Affiliates of these networks are the only entities that meet the definition of a television network station contained in the Copyright Act and are the only stations covered by Section 339(b)(1)(B). In the cable context, the Commission's sports blackout rule applies to any television broadcast station and is not limited to network stations. Consistent with the provisions of the statute, we confine the application of the satellite sports blackout rule to retransmission of network stations. The SHVIA statutory license for satellite carriers applies only to retransmission of distant network stations. Thus it is consistent for the sports blackout provisions to be similarly limited pursuant to Section 339(b)(1)(B).

14. In the NPRM we observed that the title of new Section 339, "Carriage of Distant Television Stations by Satellite Carriers," indicates that this section is intended to apply to satellite retransmission of distant network stations, notwithstanding that the text of Section 339(b)(1) does not specifically so state. The cable exclusivity rules were originally created and apply today to address cable importation of distant stations. We conclude, and most commenters agree, that it was Congress' intent to apply the sports blackout rules to retransmission of distant network stations and not to local network stations. We note, too, that the statutory copyright license for satellite carriage of distant network stations relies upon the definition of "network station" in the copyright provisions.

15. We also sought comment in the NPRM on whether stations based in foreign countries are affected by the SHVIA provisions requiring application of the cable exclusivity and sports blackout rules to satellite retransmissions. Certain commenters addressing this issue argue that while the blackout protection afforded by the rules should apply to a foreign station's programming carried by a U.S. satellite carrier, a foreign station cannot invoke these protections against satellite importation of programming into its home market. Grupo Televisa, on the other hand, argues that the rules should apply in favor of non-U.S. licensed border stations serving U.S. markets and affiliated with U.S. networks, citing the inclusion of such stations in the compulsory license of Section 1002 of the SHVIA. We agree with MPAA and NHL that foreign stations are beyond our jurisdiction and therefore unable to invoke the protection of the exclusivity and sports blackout rules. With respect to retransmission of a foreign station's programming into U.S. markets by a U.S. licensed satellite carrier, we conclude that the satellite rules will apply as they do with respect to the exclusivity rules governing cable systems. The definition of "television broadcast station" in 47 CFR 76.5(b) includes stations licensed by a foreign government but provides that such foreign station not entitled to assert program exclusivity. Also, in the DISCO II Order the Commission explained that it will license the earth stations that use a non-U.S. licensed satellite to provide service to subscribers in the United States, rather than re-license foreign satellite operators. The earth station operators providing service in the United States through these non-U.S. licensed satellites are "satellite carriers" as defined in the SHVIA because they are licensed under either part 25 or part 100 of the Commission's rules.

Section 339(B)(1)(A): Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout to Retransmission of Nationally Distributed Superstations

16. Section 339(b)(1)(A) requires the Commission to apply network non-duplication protection, syndicated exclusivity protection, and sports blackout protection to the retransmission of signals of nationally distributed superstations by satellite carriers. In this section, we address the application of the network non-duplication and syndicated exclusivity rules to nationally distributed superstations together because these two rules are similar in significant respects.

17. The Commission's cable television network non-duplication rule allows a television broadcast station that has purchased exclusive rights to network programming within a specified area to protect its exclusivity against carriage of duplicating programming on local cable systems. The "specified" or "protected" zone is the smaller of either the area protected by the terms of the contract or the 35 or 55 mile area designated by the rules. In the satellite rules, this area is generally termed the "zone of protection" or protected zone. (47 CFR 76.92). The rule allows a local television broadcast station to demand that a local cable system's duplicate carriage of the same program from an otherwise distant station be blacked out. "Network program" is something of a misnomer in terms of common usage as it appears to suggest a program provided by a recognized network. In fact, it is defined as "any program delivered simultaneously to more than one broadcast station regional or national, commercial or noncommercial" (47 CFR 76.5(m)). It is not necessary that the program be delivered by a "television network." (In addition to full power television stations, 100 watt translator stations are allowed to demand network non-duplication protection under certain circumstances. Translator stations are not entitled to syndicated exclusivity protection (47 CFR 76.92(d)). Due to differential carriage rights, we are not replicating this provision in the satellite non-duplication rules.) A station may assert its exclusivity rights regardless of whether its signal is carried by the cable system in question. Under the cable network non-duplication rule, a television station is entitled to assert its exclusivity rights against a cable system serving any "cable community unit" within the station's "specified zone" that is carrying duplicative programming for which the local station has obtained exclusive distribution rights. (Cable systems are comprised of one or more "community units" that correspond to separate and discrete communities or municipal entities. The rule applies on a community unit basis by requiring the cable system for a particular community unit to black out a specific program based on the priorities established in the rule. The "specified zone" of a television broadcast station is the 35 mile area surrounding its community of license. The 35 mile specified zone, as well as all other mileage zones used in applying the exclusivity rules, is measured from the relevant station's "reference point" in its community of license. The rules provide a list of the reference points to identify television market boundaries used for this purpose. See 47 CFR 76.5(e), (dd); 76.53; and 76.92(a).) A television station's rights within these areas are limited by the terms of the contractual agreement between the station and the holder of the rights to the program ("rights holder"). In addition, for local programming to be protected, the local programming must be the same as the distant programming that is being imported into a local station's market. Even the use of different camera crews and announcers during the production of an imported program may result in the distant program not being

considered the same, per Major League Baseball, 6 FCC Rcd. 5573 (1991).

18. The Commission's syndicated program exclusivity rule allows local stations to protect their exclusive distribution rights for syndicated programming on local cable systems in a local market. (A syndicated program is defined as "any program sold, licensed, distributed or offered to television station licensees in more than one market within the United States other than as network programming. * * *") This rule is similar in operation to the network non-duplication rule, but it applies to exclusive contracts for syndicated programming, rather than for network programming. In this rule, too, a local television station is entitled to assert its exclusivity rights within a specified zone of 35 miles surrounding the television station's city of license. Unlike the network non-duplication rule, however, the maximum zone of protection allowed under the rules is 35 miles surrounding a television station's city of license in a non-hyphenated television market and 35 miles surrounding each named city in any size hyphenated market; the zone of protection is not greater in smaller markets.

19. As with network non-duplication, the syndicated exclusivity rule applies on a community unit basis by requiring the cable system for a particular community unit to black out a specific program based on the priorities established in the rule. In addition, the geographic limits for exclusivity under the Commission's rules are limited by the terms of the contractual agreement between the station and the holder of the rights to the program. As with network non-duplication, the protected zone is the smaller of either the area of exclusivity provided in the contract or the 35 mile area surrounding the relevant reference point(s). Thus, if the rights holder grants the television station a zone of protection of ten miles, then that station would be precluded from exercising its exclusivity rights against any cable system located more than ten miles from that station's city of license. In addition, as with the network non-duplication rules, for syndicated programming to be protected, the programming covered by the contract must be the same as the distant programming. We note that under both of these cable rules, it is not necessary that the broadcast station or rights holder asserting protection actually be carried on the cable system in question, nor is it required that the rights holder asserting its rights actually display the programming for which it asserts protection. These cable rules protect contractual rights and apply even if the programming is not shown at all or if the subscribers subject to the deletion do not have another source to receive the programming.

Separate Satellite Rules

20. Initially, we sought comment on whether we should incorporate the rules we adopt to implement § 339(b)(1)(A) into the existing Commission rules, or whether we should adopt separate rules for satellite carriers. Commenters generally recommend that the Commission adopt separate rules for satellite carriers patterned after the cable exclusivity rules. We concur that, even though Congress specifically cited the existing rule sections in the statute, it will be less confusing and simpler to implement a separate set of rules in the satellite context. We agree with DirecTV that new rules will be easier to understand and comply with if they are contained in a parallel, but distinct, section, which will allow the differences between the rules applicable to the satellite and cable industries to be highlighted. This will enable the Commission to maintain consistency in its rules, while adopting the minor adjustments that are necessary to properly apply the rules to satellite carriers (*e.g.*, application only to nationally distributed superstations). In this regard, we do not agree with WB that the direct references to the corresponding cable rules indicate that Congress intended the rules to be identical. The statutory language directs us to develop rules that apply the exclusivity protections in the satellite context, not merely to add the words "satellite carriers" in the existing cable rules. While we are establishing a separate rule section for the exclusivity rules that apply to satellite carriers, these rules will not be substantially different from the equivalent cable rules.

21. Some satellite industry commenters argue that we must take into account the distinctive characteristics of satellite services and the associated issues of technical feasibility and the cost of compliance. EchoStar contends that the rules for satellite carriers should be significantly different from the cable rules due to the characteristics of satellite services and the onerous burdens of compliance. Echostar raises a variety of technical and administrative issues, such as the need to develop a database to determine affected subscribers and the addition of "untold layers of complexity to its authorization/unscrambling procedures" to delete different programs in different areas of the country if we merely apply the cable exclusivity rules to satellite without change. EchoStar asserts that unless appropriately mitigated, the rules could lead to the cessation of satellite carriage of superstations, which would contravene the legislative goal of parity between cable and satellite operators. EchoStar also argues that if Congress intended for the Commission to automatically employ the cable rules in the satellite context it would not have directed the Commission to conduct a rulemaking. Alternatively, in support of a separate rule section, DirecTV asserts that, given the technological differences between cable and satellites, in certain situations it does not make sense, or is simply not technologically feasible, to merely "lift" the cable rules.

22. We reject the arguments that the satellite exclusivity rules should be substantially different from the cable rules due to technical considerations and the burdens of compliance. Congress directed the Commission to make the rules "as similar as possible" to the cable rules and to protect the contractual exclusivity rights purchased by broadcasters and sold by program rights holders. The statute specifically cites the existing network non-duplication and syndicated exclusivity rules as guidance. In particular, the statute does not provide for any exemption from these rules based on technical feasibility or economic hardship as it does for the application of the sports blackout rules to network stations. We believe, however, that in considering the application of these rules to satellite carriers we must consider several modifications that reflect the practical differences between the two industries and the different delivery systems they employ, as detailed herein.

23. Some broadcasters argue that for there to be parity between cable and satellite providers, the Commission should extend the protections of network non-duplication to all distant network carriage to protect emerging networks and notes that the existing cable rules are not statutorily mandated. Because Congress provided for the application of the sports blackout rule to network stations, but not for the network non-duplication or syndicated exclusivity rules, we believe that extending the rules in this manner is beyond what Congress intended. We reject this proposal on the same basis that we reject the satellite industry's request to adopt significantly different rules for satellite carriers due to technical considerations.

Zone of Protection

24. Under the network non-duplication rules, a commercial or noncommercial television station licensed to a major television market may assert exclusivity rights within its specified zone. That zone is generally the 35-mile area surrounding a broadcast television station's community of license. The zone of protection for stations licensed to smaller television markets extends an additional 20 miles ("secondary zone"), for a total of 55 miles surrounding its community of license. Pursuant to the syndicated exclusivity rules, a local commercial television station is entitled to assert its exclusivity rights only within a 35-mile geographic zone. There is no extended zone of protection for smaller market stations. For both rules, a station licensed to a hyphenated television market, as defined in the rules, is entitled to assert exclusivity within 35 miles surrounding each named city. However, the zone of protection may not exceed the area agreed upon between the program supplier or network and the television station nor the area within which the station has acquired broadcast territorial exclusivity rights. For purposes of all of the rules discussed in this Order, we refer generally to a "zone of protection" or "protected zone" to apply to the entire area protected by the rules' provisions.

25. A majority of commenters support the adoption of the same zones of protection for broadcast stations in this context because they provide a definitive area within which exclusivity rights may be asserted. We agree. We also concur that, as with the cable rules, the zone of protection should be limited by the terms of the contractual agreement between the station and the program rights holder, with the applicable geographic zone set forth in the rules providing an outside limit on the permitted zone of protection. Several commenters mention, but reject, the use of other zones of protection, such as a station's grade B contour or a zone of protection coextensive with the boundaries of "local market" for retransmission consent purposes. As Tribune observes, since Congress did not mention a zone different from that of the cable rules, it appears appropriate to use the existing specified zone. We also believe that this conclusion is consistent with the congressional directive to make these rules as similar as possible to the cable rules. We further believe that implementation in the satellite context is feasible because existing methods (*e.g.*, the geocoding techniques used to determine served and unserved households) can be used to determine whether a household is located in a specified zone. Accordingly, local broadcast television stations will be entitled to assert exclusivity protection throughout the same zones of protection as those specified in the cable rules.

26. We reject EchoStar's proposal that a satellite carrier should not be required to comply with requests for exclusivity (either network or syndicated) unless the program deletion is requested by qualified broadcast stations whose geographic zones (not counting overlaps) cover a substantial majority of the nation. The "geographic zone" is limited to the 35/55 mile area around the reference point in the community of license. EchoStar argues that this requirement is needed in order to deal with the mosaic of diverse deletion requests for the same feed. EchoStar's proposal ignores the exclusivity rights of individual broadcasters and undermines regulatory objectives, contrary to congressional intent and, in our view, defeats the purpose of the statutory mandate to protect the exclusivity rights of local broadcast stations. Moreover, while EchoStar claims that it would have to develop a huge database to determine whether a subscriber is within the specified zone, we observe that satellite carriers already maintain such databases of subscribers for determining eligibility for local-into-local and network signals, for information on the particular services to which a household subscribes, and for billing purposes. In addition, even though satellite carriers use a nationwide or multi-state footprint to deliver programming, they provide signals on a household-by-household basis that enables them to deliver different programming to different households based upon which programming package the subscriber selects. Satellite carriers currently delete programming when it is required by contracts negotiated in the marketplace. Furthermore, as a practical matter, the programming deletions affect only five of the six nationally distributed superstations because WGN is "largely, if not completely syndex and nondupe-proof." With respect to network program deletions, we expect significant uniformity across markets where affiliates of WB or UPN assert their rights since each superstation is affiliated with one of these networks. With respect to syndicated programming, the superstations are large market stations, which typically acquire the most popular syndicated programming that is sold in the vast majority of markets, making EchoStar's fear of a crazy quilt pattern of deletions largely unfounded. Moreover, the statute unambiguously requires that we apply the exclusivity rules in these situations. Adopting EchoStar's proposal to limit application of the rules to the non-existent circumstance in which the broadcaster's geographic zone would cover most of the nation effectively eliminates the application of the exclusivity rules. The statutory language does not give us this choice. We also reject EchoStar's proposal to establish a procedure to exempt satellite carriers on a case-by-case basis upon a showing of extraordinary hardship. We believe that such a policy is contrary to the intent of the statute to protect the rights of local broadcast licensees. We also note that, in adopting exclusivity rules in 1988, we eliminated a similar waiver process.

Use of Zip Codes To Determine the Location of Affected Households

27. The cable rules apply the exclusivity rules on a community unit basis within a station's zone of protection. Community units are political jurisdictions (*i.e.*, a city, town, or county) or portions of political jurisdictions for which a local government body has granted a franchise to operate a cable system. These separate areas may or may not encompass an entire city or county. Several commenters support the application of these rules on a community unit basis in order that they be as similar as possible to the cable rules and to eliminate the possible confusion to customers in the same neighborhood that would be caused by a program being blacked out if a household subscribed to cable, but not if it subscribed to a satellite service. In order to promote parity between cable operators and satellite carriers, they argue that it is important that the blackout areas for satellite carriers be as congruent as possible with the blackout areas for competing cable systems. They further state that requiring satellite carriers to black out programming on the same community unit basis as is applied to cable is the most easily applied, understood, and enforced approach for providers and residents. Other commenters claim that it is impossible or inappropriate to import the community unit concept from cable to satellite as cable systems have specific, municipally-granted franchises to serve discrete communities, the boundaries of which are difficult to determine and unnecessarily complex to apply. They propose that subscribers

subject to the blackout rules be ascertained by means of their zip code, a method currently used by satellite carriers for other purposes. These commenters argue that since satellite providers do not have identifiers assigned to the communities they serve, as is the case for cable, a comparable method for determining the areas to which the zone of protection applies involves reliance on zip codes: This method, like the use of cable community units, is not a perfect means to achieve congruence between the zip code boundary and that of the specified zone, but it is a workable compromise using a fairly stable identifier. Moreover, in their reply comments, several proponents of the use of community units state that they would be willing to support a zip code approach as a reasonable alternative as long the rules would apply throughout the entire zip code.

28. We conclude that it is appropriate to use zip codes rather than community units in the satellite context. There are approximately 38,000 five-digit zip codes in the United States, compared with nearly 33,000 community units. There is no readily applicable measure that will precisely match specified zones in either the cable or satellite context. However, zip codes are already used by satellite providers to determine the location of subscribers for other purposes and it would be more difficult to determine which satellite subscribers are located within a cable community unit, which is tied to the cable franchise process. As with the cable community unit concept, reliance on zip codes can often be overinclusive of the zone covered by the exclusivity rights to be protected. To closely align the rules for satellite carriers with the cable rules, we have been urged to require a satellite provider to provide protection in all relevant zip codes that fall, in whole or in part, within the zone of protection. We conclude, as described below, that if technology permits satellite carriers to more closely align their deletions to the precise areas of the protected zone, they may do so.

29. Satellite interests generally propose that the broadcaster or rights holder asserting its exclusivity rights provide the satellite carrier with an electronic file of the affected zip codes that corresponds to the specified zone. Alternatively, broadcasters contend that the satellite carriers already have zip code information that they use for other purposes and they should be responsible for determining which subscribers are located in the areas where the programming must be blacked out. Since exclusivity contracts vary in their coverage areas and it is the broadcast station or rights holder that has negotiated such contracts, we conclude that the party seeking exclusivity protection will be responsible for identifying the affected zip code areas along with the other information that must be provided to the satellite carrier. This approach is consistent with our existing cable rules that place the notification burdens on the party seeking to assert its exclusivity rights. We do not believe that this requirement places an undue burden on a broadcaster seeking exclusivity. In many cases, the contracts will provide for exclusivity up to the limits of the specified zone and the broadcaster will only have to determine the appropriate zip codes once to cover such contracts. Accordingly, we will require broadcast stations or rights holders to provide satellite carriers with the list of affected zip codes, although we will not mandate that it be in any specific format (*e.g.*, we will not require an electronic file). We encourage satellite carriers and broadcasters to work together to effectuate the provisions of the statute, even though we place the onus of determining the affected zip codes on the party seeking exclusivity protection. We see no reason to make special or separate provisions for satellite carriers to verify that the list of zip codes is accurate. If it comes to light that the list is inaccurate, the satellite carrier may object to the broadcaster or rights holder.

30. We believe that for purposes of complying with these and other provisions of the SHVIA, satellite operators must generally be aware of the actual physical location of a subscriber. Several commenters express concerns regarding the accurate location of a subscriber whose address is a post office box (*e.g.*, a U.S. Post Office Box or a private post office box) or rural route number, stating that a non-street address makes it impossible to apply any rule that relies on a geographic location. Since accurate addresses are the linchpin of a system that relies on geographic location, they propose that satellite carriers be required to certify that they have no basis for believing that subscribers have provided inaccurate addresses for purposes of evading the rules. In opposition, DirecTV argues that there is no parallel provision in the cable rules to serve as a basis for imposing this additional obligation on satellite carriers. In addition, proposals to impose a number of restrictions on satellite carriers to "reduce if not obviate both the domestic and external grey marketing" of satellite programming are rejected as they are beyond the scope of this proceeding.

31. On the basis of the record, there is general agreement that rural route numbers reasonably approximate the actual location of the subscriber and are acceptable because they are generally located close to the residential address where the subscriber receives the satellite programming. Accordingly, we will allow satellite carriers to use the zip codes associated with rural route numbers to determine the location of such subscribers. However, where a subscriber chooses to provide a post office box for a billing address, we will require that satellite carriers obtain a residential street address—or simply a zip code—where the service is actually being received. Upon request, satellite carriers may verify the data provided by broadcasters and vice versa. We decline to adopt the reporting and auditing procedures proposed in the comments, as they would place an undue burden on broadcasters, satellite carriers and the Commission.

32. In addition, MPAA proposes that in instances in which the satellite carriers serve individual households that are within a zip code but outside the specified zone, such subscribers should be permitted to petition for a waiver so that their programming is not blacked out. It contends that, since the satellite rules apply on a household basis, this waiver process would serve the purposes of the statute (*i.e.*, parity with cable and protection of rights holders) without unduly depriving satellite subscribers beyond the specified zone of programming. We acknowledge the cable rules require cable operators to provide exclusivity protection throughout community units, even if some of their subscribers in that unit are located outside the specified zone. This requirement is based on our understanding that it is not technically feasible for cable operators to black out programming to individual households. On the grounds of maintaining regulatory parity, NCTA advocates requiring satellite carriers to delete programming throughout zip code areas that in whole or part overlap the broadcaster's zone of protection. Notwithstanding our general interest in regulatory parity, we are reluctant to require satellite carriers to delete programming beyond the boundaries of the broadcaster's or rights holder's zone of protection if they have the technical capacity to accommodate such fine-tuning. Due to the unavoidable difference in coverage between the zip code areas and the community units, there are likely to be some differences between cable and satellite subscribers in terms of programming required to be deleted. Therefore, there is no reason to require deletions outside the protected zone on the grounds of parity. The satellite rules provide that satellite carriers must delete protected programming from subscribers within the zone of protection, but need not delete programming from subscribers who live in the part of a zip code area that extends beyond the zone of protection.

Terms of Contractual Agreements

33. Pursuant to § 76.93, television stations are entitled to exercise network non-duplication protection in accordance with their network agreements. The syndicated exclusivity rules allow television stations to exercise exclusivity rights in accordance with their syndicated program license agreement, consistent with the requirements to invoke protection specified in § 76.159. Under § 76.159, to be eligible for syndicated exclusivity protection, a station must have a contract or other written indicia that it holds syndication rights for the programming. Section 76.159 requires that contracts contain special language for the licensee to invoke such protection.

34. We find that the current situation is analogous to that of 1988 when the Commission reinstated syndicated exclusivity rights, and the rule we adopt treats these new rights in the same manner as we did syndicated exclusivity contracts at that time. That is, we will give effect to new or existing contracts that unambiguously grant such rights against satellite carriage and permit existing contracts to be clarified or amended if they are ambiguous or did not anticipate a change in the law.

35. The cable rules do not prescribe specific language needed to invoke network non-duplication protection. Such exclusivity is provided in the contractual provisions of network-affiliate agreements that give individual stations the right to be the exclusive distributor of a network's programming in an area, generally within 35 miles of its city of license. Where a network-affiliation agreement does not provide for network non-duplication protection against satellite carriage of superstations because this right was unanticipated or the contract is ambiguous regarding such rights, parties will be given an opportunity to amend their agreements to include clear, specific language, as described below.

36. Some commenters contend that if the special language required by the cable syndicated exclusivity rules appears in a contract, it is applicable to satellite carriers. They contend that this language invokes the two essential elements for protection—retransmission pursuant to the compulsory license and reference to the Commission's rules. They state that any station with exclusivity rights vis-a-vis cable should be considered to hold the same rights with respect to satellite carriers and that parties should not be required to renegotiate existing exclusivity contracts. We disagree. We cannot assume that the parties to these existing contracts negotiated for protection against satellite carriage when duplicating carriage by satellite was not covered by the Commission's exclusivity rules. We agree with other commenters who counter that the rules should only give effect to contracts that unambiguously grant exclusive rights vis-aà-vis satellite carriers. They assert that existing contracts should not be enforceable against satellite carriers unless it is clear that the licensee or rights holder has negotiated for and received such rights. Until the SHVIA was enacted on November 29, 1999, there was no certainty of satellite exclusivity requirements. Arguably, parties could not have a reasonable expectation of exclusivity protection until the rules adopted by this Order take effect. Accordingly, we conclude that only those exclusive contracts that specifically cover satellite-delivered programming or are broad enough to encompass the delivery of duplicating programming by any delivery means (*e.g.*, cable, satellite, wireless cable) entitle a station to assert exclusivity rights under these rules. Without such specificity, it is not clear whether the party granting the exhibition rights for the programming intended to convey network non-duplication or syndicated exclusivity rights to the broadcaster in the satellite context.

37. In reinstituting the syndicated exclusivity rules in 1988, the Commission allowed an opportunity for parties to amend their contracts to reflect the newly granted rights. Because government protection of both network non-duplication and syndicated exclusivity rights vis a vis satellite retransmission did not exist before November 29, 1999, consistent with this precedent we will provide a transition period of six months to allow parties to amend or clarify their network affiliation or syndicated exclusivity agreements to cover the exclusivity rights provided in § 339(b)(1)(A) and the rules we adopt today. We will require also that contracts entered into after release of this Order must include special words to invoke protection against duplication of programming imported under the satellite statutory copyright license. The special words in the satellite context are similar to those required to assert enforceable cable syndicated exclusivity. Parties may use this statement to reference either or both the cable and satellite network non-duplication and syndicated exclusivity rules, depending upon whether their negotiated exclusivity covers protection against cable, satellite or both. Existing affiliate agreements and other contracts that apply to network program non-duplication only in the cable context need not be revised to be effective to provide non-duplication protection pursuant to § 76.92. These special words shall apply to both the network non-duplication and syndicated exclusivity rules to ensure that, in either instance, the contracting parties contemplated protection from satellite carriage. Where existing contracts expressly provide for exclusivity against satellite carriage, albeit without using these special words, there is no need for renegotiation, nor for a six month period for parties to renegotiate. In these situations of remarkable prescience in the contract terms, the normal notification requirements will apply.

38. We will not require, as Echostar proposes, that the contracts be non-discriminatory or be exercised in a non-discriminatory fashion. We believe that such requirements are inconsistent with the rights of parties to negotiate the extent of exclusivity that they determine to be in their best interests and were not contemplated by the statute. Such requirements would also be inconsistent with the cable exclusivity rules.

Notification Requirements

39. In order to exercise network non-duplication rights, a television station must notify each cable system operator of the protection sought. The syndicated exclusivity rules contain similar notification procedures with respect to broadcasters or distributors notifying cable systems of the exclusivity sought. In both cases, the notices must identify the party seeking non-duplication protection and the affected programming. Notices must be provided within 60 calendar days of the signing of the contract. Exclusivity protection begins on the date specified in the notice or the first day of the calendar week that begins 60 days after the cable operator receives notice from the broadcaster. In addition, cable operators may rely on published information sources (*e.g.*, newspapers) to determine which programs must be deleted or obtain the information from the station seeking protection or the station whose

programming is to be deleted. Furthermore, the rules require that the party exercising its exclusivity rights must provide a copy of the relevant portions of its contract to the cable system, upon request.

40. A number of commenters observe that the current notification procedures have proven workable for the parties in the cable context and generally support the same notification requirements and time periods for satellite carriers. For example, DirecTV states that stations should be required to notify satellite carriers of any exclusivity rights in the same manner required under the cable rules. We agree and will model the satellite notification rules on the cable requirements. We apply the same 60-day notice requirement following the signing of a contract providing exclusivity and impose the same contract disclosure requirements for satellite carriers. As in the cable context, the satellite carrier will have sufficient lead time to act on the exclusivity request. Accordingly, exclusivity protection will beginning on the later of: (a) the date specified in the notice; or (b) the first day of the calendar week (Sunday-Saturday) that begins 60 days following the satellite carrier's receipt of the notice from the broadcaster or other rights holder. Using the same notification periods reduces the administrative burden on rights holders and stations and allows them to send a single set of notices to cable systems and satellite carriers, rather than forcing them to send one notice to cable systems at one time and a virtually identical notice to satellite carriers at another time. In this manner, we also minimize the possibility that protection would be lost inadvertently because of differing requirements. It is also consistent with the general goal of making the cable and satellite rules parallel as much as possible.

41. We will require that the notice asserting exclusivity rights contain the same identifying information about the programming to be deleted and the extent of the exclusivity (*e.g.*, the dates on which exclusivity is to begin and end). As indicated above, the notice must identify the zip codes included in the zone of protection (*i.e.*, the specified zone or other permitted area covered by the exclusivity contract). Satellite carriers may request a copy of the relevant contractual provisions, as cable operators may do, but it is not required in the notice. We adopt the suggestion that the notice should be served on satellite carriers with the carrier having the obligation to disseminate the information to their distributors (distributors include parties with exclusive territories for the sale and service of satellite systems, including those distributors that are authorized by the satellite carrier to authorize or de-authorize programming for subscribers), if necessary, since they are in the best position to know which distributors serve which areas. Several commenters suggest that satellite carriers be required to designate (*e.g.*, on their Web sites) the name, title, and address to whom the notices should be sent, with this information updated as necessary to avoid delay and miscommunications. While we recognize that such information might be useful, it should not be necessary to ensure the compliance with exclusivity requests. We have not required cable systems or operators to provide this information and see no reason to do so in the satellite context. Satellite carriers must promptly direct their mail to the appropriate staff. Notice received by the corporation is considered receipt of the notice for purposes of triggering the deletion requirements, so it will be in the best interests of satellite carriers to assure that broadcasters and rights holders have the necessary current information to reach the right person. We urge stations and rights holders to follow DirecTV's suggestion that exclusivity notices be addressed to the "Director of Programming Operations" or marked "Attention: Program Exclusivity Request" to assist satellite carriers in ensuring that the information is directed to the proper department.

42. The cable rules provide that to determine the scheduling of programs that must be deleted, cable operators may rely on newspapers and other published sources, the broadcaster seeking exclusivity protection, or the broadcast station subject to the requested deletion. Similarly, the provision we adopt allows satellite carriers to rely on such published sources, the broadcaster seeking protection, or the nationally distributed superstation. We received no comments on this provision and believe the cable model will work as well for satellite carriers.

43. Under the cable syndicated exclusivity rules, "distributors" of syndicated programming, who own the rights to the programming for purposes of syndication, are entitled to exercise exclusive rights for a period of one year from the initial broadcast syndication licensing of such programming, although not in areas in which the programming has already been licensed. This cable provision is intended to give holders of syndication rights a one year period in which to negotiate their agreements in each market. It originated with private consensus agreements among rights holders, broadcasters and cable operators in 1971. If the programming in question were shown in the market before the syndicator had an opportunity to negotiate for exclusivity, it would diminish the value of the program. In the NPRM, we requested comment on whether to apply this provision in the satellite context, and whether the rights holder should notify the satellite carrier directly. MPAA contends that allowing rights holders to notify carriers directly, as holders of syndication rights can do with cable systems, gives holders a means to protect the value of their programs as well as providing parity in the operation of the rules in the cable and satellite contexts. DirecTV, however, argues that it is unnecessary to import this rule to the satellite context since the rules will apply to a discrete universe of superstations. We believe that it is appropriate to allow distributors to notify satellite carriers directly. We agree they are often the rights holders with the greatest need and incentive to protect their rights. In the satellite context, syndicated exclusivity protection is limited to the six nationally distributed superstations. Allowing the distributor that has the exclusive syndication rights a one year period to negotiate exclusive arrangements for each market has worked well in the cable context and should be applied here in the absence of a specific reason to treat satellite carriers differently in this regard.

44. We also acknowledge that, as with the cable rules, a broadcast station, syndicator, or other rights holder is entitled to assert exclusivity protection based upon contractual rights, as discussed above. It is not necessary that either the entity requesting protection or the program to be protected actually be carried by the satellite carrier. Thus we recognize that in some cases subscribers will not be able to receive the deleted programming from any television broadcast station carried by the satellite carrier. The Commission's network non-duplication and syndicated exclusivity rules protect contractual rights. The rights may apply even in situations in which the rights holder chooses not to display the protected programming or in which the cable system is not carrying the broadcast station asserting protection. We specifically recognize that in markets in which the satellite carrier chooses not to provide local-into-local carriage, a local station may assert network non-duplication or syndicated exclusivity protection for programming that subscribers in that market cannot

receive via satellite because the station demanding protection is not carried on satellite. Viewers may be able to receive this programming, however, through use of over-the-air antennas or on cable.

Substitute Programming

45. The cable syndicated exclusivity rules expressly allow a cable operator to substitute programming from another television station when programming is required to be deleted, provided carriage is consistent with all the exclusivity rules, such as sports blackout. No comparable provision is included in the network non-duplication rules, but cable operators are free to substitute any programming—broadcast or cable—to which they have the legal rights. Commenters addressing this issue generally support a provision to allow satellite carriers to offer substitute programming for the programming covered by exclusivity agreements. We agree that it is reasonable to permit substitute programming so that viewers need not be faced with a blank screen or a slide stating that contractual limitations require programming to be deleted.

46. Carriage of programming by satellite carriers is governed by a number of laws and regulations, including the Copyright Act, the Communications Act, and Commission rules, which differ from those applicable to cable programming. In reinstating the syndicated exclusivity rules in 1988, the Commission encouraged the substitution of programming in response to consumer demands that a distant program be available in place of the original programming that is deleted. At that time, we also noted that such substitution of programming was consistent with the compulsory license provisions of the Copyright Act and the syndicated exclusivity rules repealed in 1981. Unlike the cable compulsory license, however, the satellite statutory license does not include provisions for the substitution of programming. In considering permissible substitute programming under these rules, we observe that there are statutory provisions that impose a number of limits on the retransmission of signals by satellite carriers. Under these provisions, distant network station signals are limited to two per network per day and restricted to unserved households, local signals may be provided only in their own markets, and the satellite carrier must have retransmission consent for carriage of any local broadcast signal. To the extent that carriage of a program is permissible under these laws and regulations, and the satellite carrier has the authority to offer the programming, we believe that satellite carriers should be permitted to use substitute programming. In addition, commenters ask that we not limit substitute programming to broadcast programming. We see no reason to place such a limit on what is permissible and will allow non-broadcast programming to be used as a substitute, as long as its carriage is consistent with the applicable statutory and regulatory provisions, and it is clear to viewers that the substitute programming is not provided by the same broadcast station as the programming for which it is substituted.

47. We further note that the cable rules do not expressly provide for the substitution of programming when a program is deleted pursuant to network non-duplication protection. The absence of an express provision does not necessarily prevent the cable operator from substituting programming to which it has the rights. However, we recognize that if a cable operator were required to delete network programming from a station, and the network programming subject to deletion constitutes a high percentage of the station's programming, the cable operator would likely drop the entire station from carriage. When the Commission originally adopted the network non-duplication rules, there were only three commercial broadcast networks, and network programming constituted the majority of the programming distributed to viewers by each network affiliate. The superstations affected by these new rules are affiliated with emerging networks (*i.e.*, WB, UPN). These networks distribute significantly fewer hours of programming to their affiliates each day and week than the older commercial networks. Thus, we believe that when, for satellite carriers, the non-duplication rules are applied only to nationally distributed superstations, it is likely that a smaller percentage of the programming will be subject to deletion. It is hoped that satellite carriers will continue to provide the nationally distributed superstations to their subscribers, and, thus, the question of substitution programming is relevant. To prevent the possibility of a blank screen and undesirable disruptions for consumers, we will specifically provide for substitution for non-duplication deletions with any programming that the satellite carrier is authorized to carry. Accordingly, we will adopt rules permitting the use of authorized substitute programming for any programs deleted to comply with network non-duplication or syndicated exclusivity protection, or sports blackout. We note that the copyright laws do not provide a statutory copyright license for substitute programming for satellite carriers as they do for cable operators. Therefore, unless the statutory provisions are changed, satellite carriers may only substitute programming for which they have copyright and retransmission consent, or otherwise have legal rights to carry.

Transition Period

48. When the Commission reinstated the syndicated exclusivity rules, it recognized that cable systems would need several months to implement the new regulatory requirements. Satellite industry commenters in this proceeding requested a similar transition period to implement these new rules. Echostar suggests that broadcasters and other rights holders should submit their deletion requests during the transition period, but satellite carriers' compliance would be tolled for one year. We agree that satellite carriers today, like cable operators in 1988, need time to phase-in compliance with these new exclusivity rules. We reject, however, proposals for a transition period one year in duration. The transition period for cable operators was necessary, in part, to allow time to develop and implement new equipment needed to perform the deletions required by the rule. In this proceeding, apart from the concerns raised by the C-Band carriers and discussed below, the satellite carriers have not asserted that they need time to develop new equipment. In addition, we do not believe that EchoStar's one-year proposal would serve its stated purpose of enabling satellite carriers to review deletion notices and plan a year in advance before the implementing the deletions. We believe rights holders would not bother to submit deletion requests knowing that they will not be acted upon for a year.

49. We will allow satellite carriers a reasonable period of time after the new satellite network non-duplication and syndicated exclusivity rules take effect to adjust to the new requirements, to review the contract language, to ensure that they have adequate equipment and personnel to implement the deletions, and to arrange for programming that can be used to substitute for deleted programming. Normally, as set forth above, exclusivity protection begins, at the earliest, within 60 days of notification. However, as described above, broadcasters will have up to six months from the effective date of this Order to renegotiate contracts, and they

must notify satellite carriers of deletion requests within 60 days of signing the renegotiated contract. When no renegotiation is necessary because the existing contract clearly pertains to satellite as well as cable carriage, broadcasters must notify satellite carriers of their exclusivity protection and deletion requests within 60 days of the effective date of this Order. In these instances, satellite carriers will have 120 days in which to implement deletion requests (*e.g.*, this Order is effective on November 29, 2000, therefore a broadcaster could provide deletion notice on January 8, 2001, and the deletion would take effect on or after May 10, 2001). To provide time for satellite carriers to adjust to the new requirements, for notices provided before June 1, 2001, satellite carriers will have 120 days before they are required to implement the necessary deletions. For notices provided to satellite carriers after June 1, 2001, the normal time requirements will apply.

50. Echostar also proposes, as an alternative or complement to the transition period, a "grandfathering" provision that would exempt from application of the network non-duplication and syndicated exclusivity rules all of EchoStar's 700,000 current superstation subscribers. We reject this proposal because there is nothing in the statute to support it, and it is contrary to the letter and the intent of the SHVIA provision requiring the Commission to apply the exclusivity rules to satellite carriers. This proposal is also inconsistent with the goal of placing comparable requirements on cable operators and satellite carriers. Cable subscribers' viewing options are currently subject to the cable exclusivity rules, which allow for the same deletions that affect satellite subscribers. In fact, cable subscribers are generally subject to a greater impact from deletions because the cable rules apply to deletions of programming carried on network stations and other broadcast stations, not only that programming carried on the specially defined six superstations. Adopting EchoStar's proposal would perpetuate the disparity between cable and satellite that Congress clearly sought to eliminate. Moreover, when the Commission implemented the network non-duplication rules and reinstituted the syndicated exclusivity rules with respect to cable operators, it did not provide for grandfathering of existing cable customers. As the Commission explained in those proceedings, the potential impact of the rules is ultimately determined by the negotiations among the parties for exclusivity rights and the decision whether or not to assert them in a given market. Protecting parties' rights to engage in contract negotiations with the knowledge that exclusive agreements would not be abrogated by importation of distant signals was fundamental to the Commission's purpose in creating the exclusivity rules in the cable context, and is relevant today to application of these rules to satellite carriers.

Small System Exception and C-Band Carriers

51. Sections 76.95(a) and 76.156(b) (amended rule § 76.106(b)) provide that small cable systems serving fewer than 1,000 subscribers are exempt from the network non-duplication and syndicated exclusivity requirements, respectively. The Commission originally adopted these exceptions in the mid-1970s to balance the costs of compliance for small cable systems against the impact on broadcast stations. The Commission was concerned that the costs of equipment and manpower needed to comply with the cable exclusivity rules would have a substantial impact on such systems when viewed in relation to their gross revenues. In addition, the Commission concluded that the cumulative number of homes served by small systems nationwide constituted a very small percentage of the total number of television households and there would be no significant adverse economic impact on broadcasters. When the Commission reinstituted the syndicated exclusivity rules and modified the network non-duplication rules in 1988, it again exempted cable systems with fewer than 1,000 subscribers out of the same concern.

52. Some commenters representing the satellite industry seek similar exceptions that take into account the technical feasibility and cost of compliance for satellite carriers. While offering no specific proposal, EchoStar argues that the only way to ensure equivalent protections for satellite operators is to go back to the rationale for the exception. However, since the original rationale for the small system exception was based on the relative cost of compliance compared to such systems' gross revenues, and none of the commenters has provided cost data to justify such an exception, we are unable to conclude that a comparable situation exists in the satellite context. Satellite carriers are among the largest providers of television programming and are not comparable to the "Mom and Pop" cable operators for which the small system exception was designed. Each of the satellite carriers serves millions of subscribers nationally, is well-capitalized and capable of purchasing necessary equipment, is managed through centralized control centers, and already blacks out programming consistent with existing contracts and the programming packages selected by individual subscribers. We conclude that, with no specific evidence to the contrary, the costs of compliance with these rules, on a per subscriber basis and relative to total revenues, will be small given the large subscriber base of each DBS satellite carrier.

53. In contrast to DBS carriers, however, we note that C-Band satellite carriers, while still serving 1.3 million subscribers nationwide, are experiencing a steady decline in subscribers from a high in 1995 of nearly 2.4 million. C-Band commenters contend that Congress intended to exempt them from application of the exclusivity rules. However, they offer only an isolated and ambiguous colloquy between two Senators in support of this assertion. C-Band commenters describe their subscribers as primarily rural and note that many live in areas that are not served by cable systems or are beyond the reach of over-the-air broadcasters. They contend that their centralized system of program delivery and authorization would make deletion and substitution of programming economically prohibitive. As these commenters note, in 1991 the Commission considered applying the syndicated exclusivity rules to C-Band retransmission of television broadcast programming. At that time, Congress had directed the Commission to apply the cable syndicated exclusivity rules to C-Band carriers if the Commission found it would be feasible for the C-Band carriers to comply. The Commission sought comment and concluded that the equipment needed for satellite carriers to implement exclusivity protection was not available and could not be developed and implemented before the expiration in 1994 of the interim compulsory copyright license under which C-Band carriers retransmitted broadcast programming. C-Band commenters contend that nothing has changed in their capability of deleting duplicating programming. They argue that network non-duplication requirements may apply to at least 93 markets, 30 weekly programs, with different times for each program. They ask that we either exempt them from application of the cable exclusivity rules or defer application until after 2004.

54. The circumstances today differ significantly from 1991 in that the provision in the SHVIA does not allow for consideration of feasibility. Congress could have provided an exemption for C-Band carriers from application of the exclusivity rules, but did not. Congress did provide a more generous copyright license to C-Band carriers, than to DBS carriers, to retransmit distant network stations to virtually all C-Band subscribers. As noted, the network non-duplication and syndicated exclusivity rules do not apply to satellite retransmission of network stations. Currently, C-Band carriers provide only four of the six nationally distributed superstations (C-Band carries KTLA, WPIX, KWGN, and WGN. WOR–TV (New York) and WSBK–TV (Boston) are no longer available.) One of these, WGN, provides a satellite feed from which all duplicating programming has been deleted. Thus, the burden on C-Band carriers under the new network non-duplication and syndicated exclusivity rules is to delete programming from only three nationally distributed superstations. The information provided by the satellite commenters in this record describes serious technical and economic difficulties in accomplishing deletions and substituting replacement programming. C-Band carriers contend that Geolocs cannot accomplish the numerous simultaneous deletions that the network non-duplication and syndicated exclusivity rules may require. However, it appears that these comments contemplate more widespread deletions and substitutions than the statute calls for and more than we impose here on either C-Band or DBS carriers.

55. Notwithstanding that we may not provide a blanket exemption for C-Band carriers, we have considered their proposal that we defer application of the rules until after 2004 or pending a further rulemaking proceeding. We determine to do neither. We note that the Commission deferred application of the syndicated exclusivity rules in 1991 due to the expectation of full copyright liability in 1994. Now we are urged again, for the same reasons, to defer because the statutory copyright license is set to expire in 2004. We are not willing to defer application until 2004, and then find that the copyright license is again extended and we are faced again with the same issues and arguments. We believe that C-Band carriers will be able to implement these new regulations, in the limited circumstances in which they will apply to C-Band subscribers, using existing technology modified as necessary. We also believe that this proceeding has given all sides on this issue ample opportunity to present evidence and see no need for a further rulemaking. We do note, however, that we can apply to C-Band carriers an exception comparable to the cable exceptions for small systems. C-Band has persuasively argued that the demands of network non-duplication, syndicated exclusivity, and sports blackout, cumulatively, may exceed the capacity of their existing system. In this case, the C-Band carriers would have to develop a new system or substantially modify their existing system. We believe that this can be a costly burden, and that it is appropriate to provide an exception that recognizes the relatively small size of the C-Band carriers, as compared with the DBS carriers. Therefore, insofar as any C-Band carrier has fewer than 1,000 subscribers within the zone of protection, as expressed by zip code areas within the zone, it is not required to delete programming subject to network non-duplication or syndicated exclusivity protection. (See §§ 76.122(l), 76.123(m), and 76.127(e).) The language of these exceptions is not limited to C-Band carriers and may apply, as well, to any satellite carrier with a similarly small subscriber base, such as a new carrier in the future. We will consider, if presented to us, additional information on how best to tailor a small system exemption that would be meaningful for C-Band carriers without being significantly broader than the exemption for small cable systems. Finally, if Congress amends the SHVIA to expressly exempt C-Band carriers from application of any or all of the exclusivity rules (including sports blackout, discussed below), we can conduct a rulemaking proceeding to exempt C-Band from our rules accordingly.

Exceptions Preventing One Local Station From Blacking Out Another

56. The cable rules contain a number of exceptions that prevent one local station from asserting exclusivity protection against another station that has been deemed "local." Often these situations arise because the rules contain several definitions of "local" station. These exceptions—for significantly viewed stations, stations whose Grade B includes the community unit to be blacked out, and overlapping specified zones—were adopted to ensure that cable subscribers receive the same programming that would be available to over-the-air viewers in their communities. Consideration of these exceptions in the context of satellite carriage is made more complicated because superstations could have dual identities. In the NPRM, we sought comment on the treatment of superstations within their own markets. We noted that for must carry purposes, superstations are treated as local signals in their local markets (DMAs) and distant signals elsewhere. In its own market, a nationally-distributed superstation acts as any other local station and is treated as a local station within its local market. In the context of satellite retransmission of nationally distributed superstations, however, there is an important difference between a station carried as a superstation or carried as a local station. As described above, satellite carriers are not required to obtain retransmission consent to carry the superstations, but are required to obtain retransmission consent to carry a local station within its local market. The SHVIA, as it amended the retransmission consent provisions in the Communications Act, permits satellite carriers to retransmit the six stations that meet the definition of nationally distributed superstation without their consent provided they are transmitted outside their local markets. We believe that the presence or absence of a requirement for retransmission consent for nationally distributed superstations is key to Congress' determination to apply the cable exclusivity and sports blackout rules in this satellite context. Therefore, within their local markets, the nationally distributed superstations are not subject to deletions because they are carried as local stations. However, when a satellite carrier is retransmitting the station as a nationally distributed superstation, without its retransmission consent, it must be treated as a superstation, and the exclusivity and sports blackout rules will apply. Even in those instances in which the superstation's terrestrial over-the-air signal is significantly viewed, or the protected zone is within its Grade B contour, if the satellite retransmission is outside the station's local market, we will look to the manner of carriage to determine whether the station is treated as a superstation subject to deletions and blackouts, or as a local station that cannot be blacked out by another, overlapping local station. To the extent the exceptions for overlapping areas in the cable exclusivity rules are relevant in the satellite context, we will adopt them, as described below.

57. With respect to the "significantly viewed signal exception," a broadcast television station can be declared "significantly viewed" outside what is usually considered its local market on the basis of its over-the-air viewing in a

community. Significantly viewed status confers local treatment on a station under a number of rules and is intended to ensure that cable subscribers have the same local broadcast service that is available to noncable subscribers in their communities. Section 76.92(f) provides that a community unit is not required to delete the duplicating network programming of a significantly viewed signal. Similarly, under Section 76.156 (amended rule § 76.106), syndicated programming covered by an exclusivity agreement need not be deleted from a significantly viewed signal. A few comments note that a superstation could be significantly viewed in areas surrounding its city of license based on over-the-air viewing. DirecTV argues that this exception could only apply in a few cases in which the superstation is functioning as a local station and since local stations are not covered by this section of SHVIA, the significantly viewed exception should not be present in the satellite context. We believe that pursuant to the SHVIA, the local-into-local copyright license can only apply within the station's DMA. Thus, once carried outside the DMA, the station cannot be considered a "local" station. Therefore, we believe the significantly viewed and Grade B contour exceptions will rarely, if ever, be applicable in the satellite context.

Overlapping Specified Zones

58. In a related matter, under the network non-duplication rules, if a cable community is located in one or more overlapping specified zones, neither station can blackout the other station's duplicating programming because both stations have equal priorities. The NPRM stated that we did not believe that a similar situation could occur in the satellite context and sought comment on this issue. The one commenter addressing this issue contends this exception will not be triggered in the satellite context since superstations do not have specified zones outside their local markets and SHVIA only applies network non-duplication to nationally distributed superstations. As mentioned above, a nationally distributed superstation is a "local station" when carried by a satellite carrier within its local market. When carried as a local station, the network non-duplication and syndicated exclusivity rules do not apply to delete its programming. To the extent the overlapping zones situation could occur, it will be covered by the exception for significantly viewed or Grade B contour discussed above.

NCE Must-Carry Exception

59. Under Section 76.92(g) of the rules, a cable community unit is not required to delete the duplicating network programming of any qualified noncommercial educational ("NCE") broadcast television station that is carried pursuant to the must carry rules. Congress mandated that this provision be added to the cable network non-duplication rules as part of the must carry requirements. Congress recognized that in some situations an NCE station could be considered "local" under the must-carry rules, which are based on a 50-mile zone around the station's community of license, and "distant" for purposes of the network non-duplication rules, which are based on a 35-mile specified zone. No commenters addressed this issue and we believe that this exception is not relevant in this context. The SHVIA provision applies only to a local station asserting exclusivity rights against one of six nationally distributed superstations, none of which is an NCE licensee.

Section 339(B)(1)(A) and (B): Application of Sports Blackout to Retransmission of Nationally Distributed Superstations and Network Stations

60. In addition to requiring application of the network non-duplication and syndicated exclusivity rules, section 339(b)(1)(A) also requires that we apply the sports blackout rule to retransmission of nationally distributed superstations, and section 339(b)(1)(B) requires that we apply the sports blackout rule to satellite retransmission of network stations. Unlike the other cable rules we are required to apply to satellite carriers, only the sports blackout rule applies to retransmission of both nationally distributed superstations and network stations. In the case of retransmission of network stations, we are instructed to apply the cable sports blackout rule only "to the extent technically feasible and not economically prohibitive.

61. The Commission's sports broadcasts rule ("sports blackout rule") is designed to allow the holder of the exclusive distribution rights to local programming, in this case sporting events, to control, through contractual agreements, the display of that event on local cable systems. The purpose of the sports blackout rule is to ensure the continued general availability of sports programming to the public. The Commission adopted this rule based on a concern that sports teams would refuse to sell the rights to their local games to television stations serving distant markets due to their fear of losing gate receipts if the local cable system imported the local sporting event carried on a distant station. The cable sports blackout rule is triggered when a subject sporting event will not be aired live by any local television station carried on a community unit cable system. Under the cable sports blackout rule, the holder of the rights to the event (*e.g.*, a sports team or league, rather than a broadcaster) has the power to demand that the local cable system blackout the distant importation of the subject sporting event. The zone of protection afforded by the sports blackout rule is generally 35 miles surrounding the reference point of the broadcast station's community of license in which the live sporting event is taking place. The 35 mile zone of protection is measured from a television station's reference point based upon the list of reference points in 47 CFR 76.53. The same reference point applies to all stations licensed to the same community regardless of where their transmitter or studios are located. When sports facilities are located in suburban areas, the downtown reference points may be inappropriate for purposes of calculating the protected zone (*e.g.*, the New England Patriots play mid way between Boston and Providence). Therefore, the Commission has expressed its willingness to consider waivers "to substitute a zone of protection extending out 35 miles from the site of a sports event for the television station specified zone designated by the rule." As with the Commission's exclusivity rules, the sports blackout rule specifies notification procedures regarding the sports programming to be deleted. However, the time frame allowed for notification is significantly shorter in the case of the sports blackout rule than for network non-duplication and syndicated exclusivity. Notification for sports blackout can be given as little as 24 hours in advance. Notifications for regularly scheduled events subject to the sports blackout rule must be received no later than the Monday preceding the calendar week during which the deletion is to be made. Notifications for events not regularly scheduled, or when the schedule is revised, must be received within 24 hours after the time of the deleted telecast is known, but in no event less than 24 hours before the event will take place. The sports blackout rule does not apply to any community unit with fewer than 1,000 subscribers. This exemption is based on the cost of the equipment needed to delete programming.

Technical and Economic Effects of Sports Blackout on Satellite Carriers

62. With respect to retransmission of nationally distributed superstations, the SHVIA requires us to apply the sports blackout rule from the cable context to satellite carriers. With respect to retransmission of network stations, however, the SHVIA provides that the sports blackout rules should be applied only to the extent technically feasible and not economically prohibitive. The language limits the application of the sports blackout rules in this narrow circumstance but only if the technical and economic difficulties are serious and harmful to the satellite carriers. In the NPRM we asked for specific information on the technical and economic problems that would be encountered by satellite carriers. We requested per subscriber cost data and asked whether the existing conditional access mechanisms would work for this purpose. We did not receive specific data or descriptions of how the requirement to black out sporting events on network stations would be unfeasible or economically prohibitive to the degree of posing a serious economic threat to the health of satellite carriers.

63. DirecTV argues that the Commission should invoke the technical/economic hardship exception of section 339(b)(1)(B) and not apply any sports blackout requirements on satellite retransmission of network stations but does not explain why the methods it uses to perform the blackouts required by its contracts with sports leagues cannot be used to black out network stations. DirecTV does explain that the actual blackouts are "manually triggered" by a person who can watch and monitor only four events at a time. DirecTV states that additional personnel would be needed to monitor and trigger the additional events that will be covered by the sports blackout rule. It asserts there will be "vast numbers of subscribers" and "thousands of blackout requests" creating a "monumental, expensive, and time-consuming task." There are no specific costs provided. The Echostar comments offer even less specific information. Echostar provides no information about particular burdens that would be imposed by the requirement to black out sport events from network stations.

64. As the Network Affiliates point out, no commenting party explains why it would be infeasible to develop the technology to black out sports programming, if such technology is not already in use, nor does any commenter offer cost figures to demonstrate that the technology would be cost prohibitive. We agree with those commenters that observe that the statutory language and expressions of legislative intent place a high burden to justify not imposing the sports blackout requirements for satellite retransmission of network stations. Such burden cannot be satisfied by the vague assertions and undocumented conclusions offered in this record. In contrast, the record provides unrefuted information that the technology to implement the network station sports blackout exists. Indeed, the satellite carriers currently black out sports programming pursuant to geographic restrictions in their contracts with regional sports networks and sports leagues. Consequently, we find that the heavy burden is not met to justify not applying the sports blackout obligations to satellite carriers with respect to network stations.

Notification

65. In one aspect of the sports blackout rules, however, the timing of notification, we find that the record supports some modification from the notification periods in the cable sports blackout rules. DirecTV and Echostar urge that we lengthen the notification periods with respect to sports blackouts. In this respect, DirecTV describes a blackout system that is notably more complex than that of a cable operator. The cable operator controls the programming at a headend, which facilitates blacking out a particular area of limited geographic size. The satellite carrier, in contrast, is controlling programming on a national basis:

> First the programmer must notify DirecTV and provide information about the program to be blacked out, as well as the areas (by zip code) affected. The information provided by the programmer must then be reformatted for DirecTV compatibility. Traffic department employees must then build the blackout by entering the data into the system and notify the scheduling department. The blackout is then scheduled and the data regarding the blackout is processed. The blackout is checked again for accuracy before it hits the air. Finally the actual blackout itself must be manually triggered, both in and out, by an employee who determines when the actual event begins and ends by watching an actual signal of the event.

DirecTV also notes the difficulty of re-programming the time period that has been blacked out, especially with very short advance notice.

66. While the process generally described by DirecTV does not appear to present such a serious technical or economic burden as to excuse compliance with the sports blackout rules altogether, it does suggest that the challenge of implementing multiple, simultaneous blackouts and identifying and arranging substitute programming is greater for satellite carriers than for cable operators. DirecTV correctly notes that the time frame allowed for notification for sports blackouts is significantly shorter than it is for either network non-duplication or syndicated exclusivity, and recognizes that rights holders may not always have the ability to provide more than 24 hours notice. The cable sports blackout rules require notice for regularly scheduled events to be received on the Monday preceding the calendar week during which the deletion is to be made, and, for events not regularly scheduled or revisions to previously submitted notices, within 24 hours after the time of the telecast is known and no later than 24 hours before the telecast is to occur. This timing was instituted in 1975 to address sports interests' concerns that playoffs and weather cancellations often afford little advance notice of scheduling changes. DirecTV explains that while it may be capable of deleting a sporting event on short notice, it cannot accomplish the reprogramming necessary in such a short period of time. DirecTV proposes a notification period of 60 days prior to the start of a season for sports with a specific season, 60 days prior to the event for nonseasonal but regularly scheduled events, 30 days for events not regularly scheduled, and 10 working days for revisions to previously submitted notices.

67. Commenters respond to DirecTV's proposal that, while they sometimes can provide notice as soon as a season's games are scheduled, the televising schedule may not be set until a later date. We agree that a 60 day advance notice may allow time for the games to be scheduled but not for the telecasts to be arranged. Often the televising schedule is not finally decided until a week before the beginning of the season. We find that the satellite carriers, although not providing sufficient data to warrant an exemption from the sports blackout requirements, have offered reasonable arguments in support of revising the notification periods in the satellite sports blackout rules to the extent possible without depriving the teams and leagues of their contractual rights by establishing time frames that afford no practical protection.

68. In light of the differences in the structure and operation of the satellite and cable industries, we are persuaded that some adjustment in the application of the sports blackout rules is justified and consistent with Congressional recognition of these differences. We find, however, that the lack of specific information in the record limits our ability to finely tailor the requirements

while providing the protection the statute requires. Moreover, we take note that satellite carriers currently comply with contractually mandated blackouts, which require that they delete sporting events and provide subscribers with replacement programming. We believe it is appropriate to adjust the notification requirements for satellite carriers to ensure that the holders of rights to sporting events will provide the required notice as promptly as possible. The sports blackout rules for satellite carriers will, therefore, retain the same advance notice requirements for regularly scheduled events, including those events that have a specific season (notice must be received the Monday before the calendar week in which the deletion is to be made) but will also require that rights holders notify satellite carriers within forty-eight hours of the time the telecast is scheduled. We will not make the same requirement for events not regularly scheduled due to the last minute nature of such events. For these unscheduled events, as well as for last minute revisions to previously scheduled events, we must take into account the realities for the sports interests of last minute revisions, particularly due to weather. Therefore, we retain the 24 hour advance notice minimum to revise previously scheduled deletions. We hope that where satellite carriers have had adequate time to line up substitute programming, they will be able to shift the substitute programming into the revised time slot even with only 24 hours notice. Because this adjustment to the notification requirements reflects legitimate differences between satellite carriers and cable operators, we see no reason to limit this distinction to retransmission of network stations. For purposes of uniformity and clarity, the same notification requirements will apply to all sports blackout requirements imposed on satellite carriers, whether with respect to network stations or nationally distributed superstations.

Use of Zip Codes To Determine the Location of Households Subject to Sports Blackout

69. As with the network non-duplication and syndicated exclusivity rules, most commenters agree that the sports blackout rule can best be applied to satellite carriers by reference to zip codes rather than community units. For the same reasons discussed in connection with network non-duplication and syndicated exclusivity, we agree that the zip codes that comprise the specified zones are appropriate for this purpose. As in the cable sports blackout rule, the holder of the broadcast rights, or its agent, shall be responsible for including the appropriate information identifying areas subject to deletion with its blackout notification to the satellite carrier. The notification must include a list of the appropriate zip codes.

Exception for Small Community Units, as Applied to Satellite Carriers

70. DirecTV advocates excepting satellite carriers from the sports blackout requirement if the blackout would affect fewer than 5% of the television households in the relevant DMA, on a provider-by-provider basis. DirecTV asserts that this would have a *de minimis* impact on rights holders. The holders of rights to sporting events strongly disagree. The Commissioner of Baseball states that satellite subscribers generally constitute less than 5% of households in most DMAs and contends such an exception would eliminate sports blackouts in most cases. We agree that there should be exceptions to the blackout requirements imposed on satellite carriers that are analogous to the exceptions for cable systems. We do not agree that 5% of television households in a DMA (which would include cable subscribers as well as satellite subscribers) is analogous to the small community unit exception for cable systems.

71. The cable sports blackout rule does not apply "to any community unit having fewer than 1,000 subscribers." Much has been made by some commenters of the difference between the language of this small system exception and the small system exceptions for non-duplication and syndicated exclusivity, which specifically exempt cable systems with fewer than 1,000 subscribers. However, there appears to be no basis in past Commission Orders for emphasizing this difference in the rule language. The Commission's rationale for exempting either small systems or small community units is the cost of the equipment for the cable system, and the relatively *de minimis* effect on the protected rights holder of exempting such a small system. Because there is no specific cost information in the record in this proceeding, it is difficult for us to draw a direct connection from the Commission's concerns for small cable systems due to the cost of their blackout equipment to the satellite carriers who, by all reports, already possess the necessary equipment to perform the sports blackouts required by statute.

72. We believe that the same type of exception we apply to the satellite network non-duplication and syndicated exclusivity rules is warranted here. Our primary concern here is for the affected subscribers, as well as the expense imposed upon satellite carriers relative to the number of subscribers who will be blacked out. The Commission has found in previous considerations of the cable sports blackout rule that the effect of excepting up to 1,000 subscribers from a blackout requirement will have a *de minimis* effect on the gate receipts. Insofar as we are using zip codes in lieu of community units, we believe an exception based upon the number of satellite subscribers, per carrier, in the zip codes affected by a sports blackout request is analogous to the exception in the cable sports blackout rule for community units with fewer than 1,000 subscribers. In this satellite context we find again that an exception for fewer than 1,000 subscribers per carrier, per zip code area comprising a protected zone, will not be so detrimental to the sports interests as to warrant the expense to satellite carriers and the loss of sports programming for viewers. We will reexamine this issue if, in the future, we receive information that the loss of 1,000 satellite subscribers is more costly to the sports interests than the comparable loss of 1,000 cable subscribers where the small system exception applies in the cable sports blackout rule.

Other Provisions of Sports Blackout Rule for Satellite Carriers

73. Apart from the changes in the use of zip codes and in the notification requirements described above, we do not change the other provisions of the cable sports blackout rules in their application to satellite carriers. Based upon the general consensus in the comments, the same 35 mile zone of protection that applies to cable systems will apply to satellite carriers, and the same willingness to consider waivers for suburban stadiums applies to the satellite sports blackout rules as well as to the cable sports blackout rules. The rights holder will have the obligation of providing a list of the relevant zip codes to the satellite carrier with its deletion notice. If satellite carriers want to evaluate each subscriber's address and black out only those households within the 35 mile zone, the rules will not prevent them from doing so. For the same reasons cited in the network non-duplication and syndicated exclusivity rules, we will not require an electronic list of zip codes, nor will we require that satellite carriers designate a particular name or address for receipt of the notification. We do not have such a requirement for cable systems, which

are far more numerous and varied, and we see no reason to require it from satellite carriers. As in the cable sports blackout rule, satellite carriers may substitute other programming during the time scheduled for a sporting event that must be blacked out. Satellite carriers may only use substitute programming for which they have copyrights, and, when required, retransmission consent. They may substitute a different distant network station provided they do not retransmit more than two network stations affiliated with the same network in a single day. Of course the substitute programming must also comply with the network non-duplication and syndicated exclusivity rules.

74. In addition, to afford satellite carriers an opportunity to adjust their schedules to these new regulatory requirements, we will require that sports rights holders provide 60 days advance notice for any sports blackout to occur on or before March 31, 2001. As of April 1, 2001, the regular notice requirements, including 24 hour notice for changes in previously scheduled blackouts, will apply. Because satellite carriers are currently complying with contractually required sports blackouts, we do not believe it is necessary to provide the same length of time to phase-in the implementation of the sports blackout rules as we find warranted for the network non-duplication and syndicated exclusivity. We believe that this 60 day period will be adequate for satellite carriers to adjust to the additional sports blackout requests.

Other Issues

Digital Signals

75. In the NPRM, we stated that section 339(b)(1) and the relevant part of the Joint Explanatory Statement are silent regarding application of the exclusivity and sports blackout rules to the retransmission of digital broadcast signals. We noted that in the pending proceeding considering cable mandatory carriage of digital signals, we requested comment on how these cable rules would function for cable carriage of digital signals. In the Notice, we repeated our question of whether Congress intended to apply these rules to satellite retransmission of digital broadcast signals. We noted that the SHVIA may be read to apply to both analog and digital broadcast signals. An alternative interpretation we posited was that Congress was only concerned about the carriage of analog signals given that elsewhere in the statute Congress expressly mentioned digital signals and, presumably, could have done so in this context as well. We sought comment on whether and how the exclusivity rules could apply to satellite carriage of digital broadcast signals, and whether there is a meaningful distinction between analog and digital carriage issues for satellite carriers in this context.

76. The responses we received concerning this matter are aligned by industry. Echostar argues that there is no legislative authority for the extension of the exclusivity rules to digital signals. NAB argues that the SHVIA requires exclusivity and sports blackout protection to apply to both analog and digital signals. Other broadcast groups, such as Tribune, argue that Congress did not indicate an intent that digital signals should be excluded from the new exclusivity rules and therefore that there should be no distinction between analog and digital signals under the new rules. MPAA asserts that syndicated exclusivity should apply to both digital and analog signals, pointing out that Congress made exceptions for digital signals in certain instances but did not do so for syndicated exclusivity.

77. Because digital exclusivity issues are closely related to digital carriage issues, we believe that it would be premature to resolve the matters related to this issue at this time. Exclusivity requirements cannot be fully fashioned until both cable operators and satellite carriers know what their carriage responsibilities will be for digital broadcast television. The digital exclusivity issues should be decided either when the Commission issues a Report and Order in the Digital Must Carry proceeding or in another proceeding that discusses a satellite carrier's digital broadcast signal carriage responsibilities.

78. We do address one aspect of this issue here. We are disinclined, in the early stage of the DTV transition, to allow a broadcaster to use an exclusive contract that applies only to digital programming to prevent a cable system or satellite carrier from providing that programming in analog form to its subscribers. However, to the extent contractual rights protect a broadcaster's exclusivity for both the analog and digital versions of the same program, we see no reason to limit the effectiveness of the contract to protect only analog exclusivity. Therefore, contractual language that expressly applies to analog and digital format of the same program content will be effective to require deletion of both. That is, the rule will provide that neither satellite carriers nor cable operators will be permitted to carry the digital version of a program when the analog version is required to be deleted and the contract expressly provides exclusivity for both, any, or all formats.

NFL Proposal to Expand Exclusivity Rules To Apply to Unitary Program Packages

79. The NPRM sought comment on an additional issue concerning the distribution of sports programming that is related to, but not directly covered by, the SHVIA. The National Football League sells packages of programming to networks on a national basis, but different games are broadcast locally on a regional basis, often in two-game packages. To the extent that broadcasts of games are carried into local markets on distant broadcast signals via satellite, the network non-duplication and other rules involved in this proceeding appear to offer neither the stations nor the leagues involved any protection beyond the rights to the particular games that local stations are authorized to broadcast. We sought comment on the question of how the patterns of sports carriage involved are addressed by the new law, and whether they can and should be addressed in the regulations the Commission is required to adopt pursuant to it.

80. The NFL asks the Commission to "complete the work that Congress began" by applying the network non-duplication and syndicated exclusivity rules to network stations as well as to nationally distributed superstations. The NFL admits that damage to stations' contractual rights is limited because only unserved and grandfathered households can receive such stations but argues that the numbers of viewers involved are significant nonetheless. The NFL further contends that the Commission should also recognize the unitary nature of the NFL or any other regional television plan and allow local affiliates to exercise network non-duplication protections to black out other games played at the same time but broadcast in other regions of the country (*e.g.*, Redskins versus Cowboys could blackout Giants versus Packers). Similarly, the National Hockey League expresses concern that a satellite carrier that offers local-into-local service could have access to the four games that the NHL plans to regionalize on ABC this year and could thereby create a multi-game hockey package to compete unfairly with the "Center Ice" package on ABC. We note that in the case of local-into-local carriage, retransmission consent is required, and, presumably, the stations in question could contractually prevent this from occurring.

81. The advocates of this expanded application of network non-duplication have not described why such action would be in the public interest, although we are persuaded it could be in the Leagues' interest. The NFL and other sports interests advocating this change ask us to revise the existing cable rules to require deletion of programming that does not duplicate protected programming. As noted in the discussion of the network non-duplication rules, supra, the Commission has determined in the cable context that the use of different camera crews and announcers for a sporting event results in the distant program not being considered the same as the local program. Here, the NFL asks us to reach a contrary result and decide that a different event between different teams "duplicates" the protected event. The NFL and others ask us to expand the scope of the new satellite exclusivity rules beyond what Congress mandated. In light of the SHVIA's restrictions on households that are eligible to receive distant network signals, it is not clear to what extent carriage of distant signals providing different games merits remedial action. The NFL asserts that allowing satellite carriers (and, presumably, cable systems as well) to import distant signals carrying different games would undermine the NFL's regional television plan. The NFL cautions that it might "be forced" to alter its distribution plan in unspecified ways that would be "less pro-consumer." However, we believe it would not be pro-consumer to take the action the sports interests request. There can be no doubt of the negative impact on viewers of losing access to more and more sports programming. The sports interests have not provided a compelling need for this additional protection, and other commenters have argued that it would deprive viewers unnecessarily. For the reasons given, we decline to expand the exclusivity rules to apply to regional or so-called unitary packages. If the program for which protection is sought is not, in fact, duplicated by the distant programming imported by the cable system or satellite carrier, then neither the network non-duplication nor syndicated exclusivity rules apply.

Two Network Affiliates in One DMA

82. In the NPRM we asked for comment on the possibility and ramifications of a "two-affiliates-in-one market scenario" with respect to the sports blackout rule. We described the possibility that, in areas in which there are two affiliates of the same network within the same DMA, a subscriber would be eligible to receive both network stations based on the satellite carrier's "local-into-local" license because the subscriber resides in the DMA of both stations. Thus, in this circumstance, the sports blackout requirement of the SHVIA could, conceivably, apply to retransmission of local, rather than distant, network stations where the geographic area for purposes of the sports blackout zone surrounding one of the affiliates is smaller than the DMA. If one of the affiliates is not carrying the event, the sports blackout rule might be triggered. If the second affiliate is carrying the event, then the satellite carrier might be required to black out the event being transmitted by the second affiliate to subscribers within the 35 mile zone. We received scant response to this scenario. We believe these comments confirm that this situation is unlikely ever to occur because the contractual arrangements allow the rights holder to prohibit both affiliates from broadcasting the event in question. Therefore, we see no reason at this time to provide for this situation in the rules.

Technical Revisions to the Rules: § 76.5(gg)

83. The NPRM identified several of the cable exclusivity rules that contain out-dated cross-references to other sections. We sought comment on how these editorial corrections should be made. In particular, we noted that the cable sports blackout rule (§ 76.67, amended rule § 76.111) contains a cross-reference to § 76.5(gg) to determine when the sports blackout rule is triggered. Section 76.5(gg) was eliminated for reasons unrelated to the operation of the sports blackout rule, and no replacement reference is provided. The NPRM asked whether we should simply reinstate a standard based on the original criteria incorporated into former § 76.5(gg) or adopt a new standard.

84. Former § 76.5(gg) of the Commission's rules referred to the 1972 must carry rules to determine whether a station was considered "local." The cable sports blackout rule is intended to be triggered only when no "local" television station carried by a cable system is broadcasting the subject sporting event for which protection is sought. In general, the 1972 must carry rules considered a television station "local" if the subject cable community served was located within the station's specified zone. In contrast, the current must carry rules consider a television station "local" if it is located in the same DMA as a cable community. The National Hockey League (NHL) maintains that any replacement for § 76.5(gg) should incorporate the 1972 must carry rules definition of a "local" television station's market area. We agree. The use of DMA's would unnecessarily undermine the application of the sports blackout rule because DMAs may encompass hundreds of miles. In such a DMA, stations carrying the event located hundreds of miles distant from the relevant protected zone would be considered "local." If considered "local," the holder of the rights to the event could not assert the sports blackout rule without blacking out such distant over-the-air carriage if the station had must carry rights.

85. For the limited purpose of the application of the sports blackout rule, the provisions of the former § 76.5(gg) can be substantially shortened and consolidated. Because the purpose of the sports blackout rule is simply to ensure that the rights holders to local events can exercise their contractual exclusivity rights, it is unnecessary to re-instate the complex definition of "local" that was used for the 1972 must carry regime or the 1987 rate regulations. It is not our intention to change the operation of the cable sports blackout rule. This revision merely incorporates within the cable and satellite sports blackout rules the relevant concept from the former § 76.5(gg).

Other Technical Corrections

86. The NPRM also included, in Appendix C, two other provisions that require minor, technical corrections. No comments were received regarding these provisions. In the absence of any objection, we make these modifications, as proposed, including an editorial change to the top 100 market list contained in the rules (correcting the markets listed at § 76.51(a)(2) and (a)(28)), and a correction to § 76.5 to reflect that the reference to § 76.5(o) in § 76.5(ii) should be § 76.5(m).

87. In addition, we note that § 73.658(m) contains a reference to the Arbitron list of smaller markets. As discussed in the Commission's recent Market Modification Order, Arbitron is no longer tracking television viewership. The Nielsen Research Company produces a similar list of markets, which is current. We will, therefore, revise this section of the rules to accomplish this updated cross-reference.

88. We are also taking this opportunity to delete several provisions from the cable exclusivity rules (§§ 76.94, 76.105 (formerly § 76.155), 76.97 and 76.163) that have no further applicability. We find that notice and comment are unnecessary under section 553(b) of the Administrative Procedure Act because the rules are outdated and have no further applicability.

Procedural Matters

89. The SHVIA requires that these rules become effective within one year of enactment. The SHVIA was enacted on November 29, 1999. We find good cause exists under the Administrative Procedure Act ("APA") to have the rules adopted in this Report and Order take effect with fewer than 30 days advance publication in the **Federal Register** pursuant to section 553(d)(3) of the APA due to the statutory deadline. The APA generally requires publication in the **Federal Register** of substantive rules 30 days prior to their effective date but permits substantive rules to become effective with less than 30 days advance publication for good cause. The Commission has acted expeditiously to adopt these complex rules, and they will be adopted and published in the **Federal Register** before the statutory deadline. We note that the rules contemplate a phase-in period to allow parties to implement the new requirements, and thus parties will have time to consider the effect of the rules before they commence implementation.

Final Regulatory Flexibility Analysis

90. As required by the Regulatory Flexibility Act ("RFA"), see 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the NPRM. The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the Notice, including comments on the IRFA. No comments were received on the IRFA. Pursuant to the RFA, see 5 U.S.C. 604, a Final Regulatory Flexibility Analysis is contained in the Report and Order. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

91. Need for, and Objectives of, this Report and Order. Section 339(b) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. 339(b)(1), directed the Commission to "complete all actions necessary to prescribe regulations required by this section so that the regulations shall become effective within 1 year after" enactment of the Satellite Home Viewer Improvement Act of 1999. The relevant provisions concern the application of the cable network non-duplication, syndicated program exclusivity, and sports blackout rules to satellite carriers' retransmission of nationally distributed superstations, and, with respect only to the cable sports blackout rules, to satellite retransmission of network stations.

92. Summary of Significant Issues Raised by Public Comments in Response to the IRFA. We did not receive any comments in direct response to the IRFA. However, we received some comments requesting an exception to the rules analogous to the cable small system exception. As discussed in Sections V.H. and VI.D., we create an exception to the rules that will assist any small entities subject to these rules now or in the future.

93. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction." (5 U.S.C. 601(6)) In addition, the term "small business concern" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). The rules we adopt affect television station licensees and satellite carriers.

94. Television Stations: The rules and policies will apply to television broadcasting licensees, and potential licensees of television service. The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.

95. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

96. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which rules may apply may be over-inclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

97. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,616 operating television broadcasting stations in the nation as of September 1999. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. Thus, the new rules will affect approximately 1,616 television stations; approximately 77%, or 1,230 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

98. Small Multiple Video Program Distributors ("MVPDs"): SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below services individually to provide a more precise estimate of small entities.

99. Direct Broadcast Satellite ("DBS"): There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees which are operational have annual revenues which may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

100. Home Satellite Delivery ("HSD"): The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

101. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program package. This is substantially smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is possible that some program packagers may be smaller.

102. Description of Projected Reporting, Recordkeeping and other Compliance Requirements. This Report and Order establishes a series of rules implementing the Satellite Home Viewer Improvement Act of 1999. We have adopted a regulatory framework for substantive rules and procedures concerning network non-duplication, syndicated program exclusivity, and sports blackout that is substantially similar to, but separate from, these rules in the cable context. There are certain compliance requirements involving the satellite broadcast signal delivery process. Foremost is satellite carriers will have to delete certain programming from the retransmission of nationally distributed superstations to satellite subscribers within the protected zone of the television broadcast station or other rights holder asserting network non-duplication, syndicated program exclusivity or sports blackout rights. With respect to satellite retransmission of network stations, satellite carriers will be required to delete certain sports events from retransmission to satellite subscribers located within the rights holder's zone of protection. There will be costs relating to the time and effort involved in deleting these superstation signals and replacing the deleted programming. These costs will largely be borne by satellite carriers. We do not believe any satellite carrier currently subject to these rules is classified as a small entity.

103. In terms of recordkeeping, entities will likely have to keep a record of the deletion and blackout requests and entities may be required to maintain such information within their business environment. This information is for business purposes and not required to be provided to the Commission as a matter of course.

104. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. (5 U.S.C. 603(c).)

105. As indicated above, the Report and Order implements certain aspects of the Satellite Home Viewer Improvement Act of 1999. Among other things, as described in Sections II and IV, the new legislation requires the Commission to apply the cable network non-duplication rules, syndicated program exclusivity rules, and sports blackout rules to satellite carriers within one year of the November 29, 1999 enactment date. This legislation applies to both small and large entities. Because the Commission was instructed to pattern the satellite rules after the cable rules, the best alternative available to assist small entities was to create an exception for satellite carriers that have 1,000 or fewer subscribers within the zip codes areas that comprise the geographic zone protected by these rules. To the extent small entities come within this exception, they are exempt from these rules.

Ordering Clauses

106. Accordingly, *It is ordered* that, pursuant authority found in sections 4(i) 4(j), 303(r), and 339 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 339, the terms of this Report and Order and rules as set forth in the rule changes *are adopted*. The amendments shall become effective November 29, 2000, provided that this Report and Order (or a summary thereof) and the rules have been published in the **Federal Register** and OMB emergency approval of the information collections has been obtained on or before that date.

107. *It is further ordered* that the Consumer Information Bureau, Reference Information Center, *Shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 73 and 76

Cable television, Satellite carriers, Television broadcast stations.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends Parts 73 and 76 of Title 47 of the Code of Federal Regulations as follows:

PART 73—RADIO BROADCAST SERVICES

The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

1. Section 73.658(m)(1) is revised to read as follows:

§ 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

* * * * *

(m) *Territorial exclusivity in non-network arrangements.* (1) No television station shall enter into any contract, arrangement, or understanding, expressed or implied; with a non-network program producer, distributor, or supplier, or other person; which prevents or hinders another television station located in a community over 56.3 kilometers (35 miles) away, as determined by the reference points contained in § 76.53 of this chapter, (if reference points for a community are not listed in § 76.53, the location of the main post office will be used) from broadcasting any program purchased by the former station from such non-network program producer, distributor, supplier, or other person, except that a television station may secure exclusivity against a television station licensed to another designated community in a hyphenated market specified in the market listing as contained in § 76.51 of this chapter for those 100 markets listed, and for markets not listed in § 76.51 of this chapter, the listing as contained in the Nielsen Media Research DMA Rankings for the most recent year at the time that the exclusivity contract, arrangement or understanding is complete under practices of the industry. As used in this paragraph, the term "community" is defined as the community specified in the instrument of authorization as the location of the station.

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

2. The authority citation for Part 76 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 325, 339, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

3. Section 76.5(ii) is revised to read as follows:

§ 76.5 Definitions

* * * * *

(ii) A *syndicated program* is any program sold, licensed, distributed or offered to television station licensees in more than one market within the United States other than as network programming as defined in § 76.5(m).

4. Section 76.51 is amended by revising the entries for paragraphs (a)(2) and (a)(28) to read as follows:

§ 76.51 Major television markets.

* * * * *

(a) * * *

(2) Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif.

* * * * *

(28) Tampa-St. Petersburg-Clearwater, Florida.

* * * * *

§ 76.67 [Removed]

5. Remove § 76.67.

6. Revise Part 76, subpart F to read as follows:

Subpart F—Network Non-duplication Protection, Syndicated Exclusivity and Sports Blackout

Sec.
76.92 Cable network non-duplication; extent of protection.
76.93 Parties entitled to network non-duplication protection.
76.94 Notification.
76.95 Exceptions.
76.101 Cable syndicated program exclusivity: extent of protection.
76.103 Parties entitled to syndicated exclusivity.
76.105 Notification.
76.106 Exceptions.
76.107 Exclusivity contracts.
76.108 Indemnification contracts.
76.109 Requirements for invocation of protection.
76.110 Substitutions.
76.111 Cable sports blackout.
76.120 Network non-duplication, syndicated exclusivity and sports blackout for satellite carriers: Definitions.
76.122 Satellite network non-duplication.
76.123 Satellite syndicated program exclusivity.
76.124 Requirements for invocation of protection.
76.125 Indemnification contracts.
76.127 Satellite sports blackout.
76.128 Application of sports blackout rules.
76.130 Substitutions.

§ 76.92 Cable network non-duplication; extent of protection.

(a) Upon receiving notification pursuant to § 76.94, a cable community unit located in whole or in part within the geographic zone for a network program, the network non-duplication rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal, except as otherwise provided below.

(b) For purposes of this section, the order of nonduplication priority of television signals carried by a community unit is as follows:

(1) First, all television broadcast stations within whose specified zone the community of the community unit is located, in whole or in part;

(2) Second, all smaller market television broadcast stations within whose secondary zone the community of the community unit is located, in whole or in part.

(c) For purposes of this section, all noncommercial educational television broadcast stations licensed to a community located in whole or in part within a major television market as specified in § 76.51 shall be treated in the same manner as a major market commercial television broadcast station, and all noncommercial educational television broadcast stations not licensed to a community located in whole or in part within a major television market shall be treated in the same manner as a smaller market television broadcast station.

(d) Any community unit operating in a community to which a 100-watt or higher power translator is located within the predicted Grade B signal contour of the television broadcast station that the translator station retransmits, and which translator is carried by the community unit shall, upon request of such translator station licensee or permittee, delete the duplicating network programming of any television broadcast station whose reference point (See § 76.53) is more than 88.5 km (55 miles) from the community of the community unit.

(e) Any community unit which operates in a community located in whole or in part within the secondary zone of a smaller market television broadcast station is not required to delete the duplicating network programming of any major market television broadcast station whose reference point (See § 76.53) is also within 88.5 km (55 miles) of the community of the community unit.

(f) A community unit is not required to delete the duplicating network programming of any television broadcast station which is significantly viewed in the cable television community pursuant to § 76.54.

(g) A community unit is not required to delete the duplicating network programming of any qualified NCE television broadcast station that is carried in fulfillment of the cable television system's mandatory signal carriage obligations, pursuant to § 76.56.

Note: With respect to network programming, the geographic zone within which the television station is entitled to enforce network non-duplication protection and priority of shall be that geographic area agreed upon between the network and the television station. In no event shall such rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights as defined in § 73.658(m) of this Chapter, except that small market television stations shall be entitled to a secondary protection zone of 32.2 additional kilometers (20 additional miles). To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) of this Chapter for each named community in that market.

§ 76.93 Parties entitled to network non-duplication protection.

Television broadcast station licensees shall be entitled to exercise non-duplication rights pursuant to § 76.92 in accordance with the contractual provisions of the network-affiliate agreement.

§ 76.94 Notification.

(a) In order to exercise non-duplication rights pursuant to § 76.92, television stations shall notify each cable television system operator of the non-duplication sought in accordance with the requirements of this section. Except as otherwise provided in paragraph (b) of this section, non-duplication protection notices shall include the following information:

(1) The name and address of the party requesting non-duplication protection and the television broadcast station holding the non-duplication right;

(2) The name of the program or series (including specific episodes where necessary) for which protection is sought; and

(3) The dates on which protection is to begin and end.

(b) Broadcasters entering into contracts providing for network non-duplication protection shall notify affected cable systems within 60 calendar days of the signing of such a contract. In the event the broadcaster is unable based on the information contained in the contract, to furnish all the information required by paragraph (a) of this section at that time, the broadcaster must provide modified notices that contain the following information:

(1) The name of the network (or networks) which has (or have) extended non-duplication protection to the broadcaster;

(2) The time periods by time of day (local time) and by network (if more than one) for each day of the week that the broadcaster will be broadcasting programs from that network (or networks) and for which non-duplication protection is requested; and

(3) The duration and extent (*e.g.*, simultaneous, same-day, seven-day, etc.) of the non-duplication protection which has been agreed upon by the network (or networks) and the broadcaster.

(c) Except as otherwise provided in paragraph (d) of this section, a broadcaster shall be entitled to non-duplication protection beginning on the later of:

(1) The date specified in its notice (as described in paragraphs (a) or (b) of this section, whichever is applicable) to the cable television system; or

(2) The first day of the calendar week (Sunday through Saturday) that begins 60 days after the cable television system receives notice from the broadcaster.

(d) A broadcaster shall provide the following information to the cable television system under the following circumstances:

(1) In the event the protection specified in the notices described in paragraphs (a) or (b) of this section has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the cable system in a notice pursuant to paragraph (b) of this section, for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. Notice to be furnished "as soon as possible" under this paragraph shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

(2) In the event the protection specified in the modified notices described in paragraph (b) of this section has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each cable system operator that has previously received notice of all changes from the original notice.

(e) In determining which programs must be deleted from a television signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available:

(1) Newspapers or magazines of general circulation.

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within ten business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The broadcaster requesting exclusivity.

(f) A broadcaster exercising exclusivity pursuant to § 76.92 shall provide to the cable system, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed.

§ 76.95 Exceptions.

(a) The provisions of §§ 76.92 through 76.94 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection against it.

(b) Network non-duplication protection need not be extended to a higher priority station for one hour following the scheduled time of completion of the broadcast of a live sports event by that station or by a lower priority station against which a cable community unit would otherwise be required to provide non-duplication protection following the scheduled time of completion.

§ 76.101 Cable syndicated program exclusivity: extent of protection.

Upon receiving notification pursuant to § 76.105, a cable community unit located in whole or in part within the geographic zone for a syndicated program, the syndicated exclusivity rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal, except as otherwise provided below.

Note: With respect to each syndicated program, the geographic zone within which the television station is entitled to enforce syndicated exclusivity rights shall be that geographic area agreed upon between the non-network program supplier, producer or distributor and the television station. In no event shall such zone exceed the area within which the television station has acquired broadcast territorial exclusivity rights as defined in § 73.658(m) of this Chapter. To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) of this Chapter for each named community in that market.

§ 76.103 Parties entitled to syndicated exclusivity.

(a) Television broadcast station licensees shall be entitled to exercise exclusivity rights pursuant to § 76.101 in accordance with the contractual provisions of their syndicated program license agreements, consistent with § 76.109.

(b) Distributors of syndicated programming shall be entitled to exercise exclusive rights pursuant to § 76.101 for a period of one year from the initial broadcast syndication licensing of such programming anywhere in the United States; provided, however, that distributors shall not be entitled to exercise such rights in areas in which the programming has already been licensed.

§ 76.105 Notification.

(a) In order to exercise exclusivity rights pursuant to § 76.101, distributors or television stations shall notify each cable television system operator of the exclusivity sought in accordance with the requirements of this section. Syndicated program exclusivity notices shall include the following information:

(1) The name and address of the party requesting exclusivity and the television broadcast station or other party holding the exclusive right;

(2) The name of the program or series (including specific episodes where necessary) for which exclusivity is sought;

(3) The dates on which exclusivity is to begin and end.

(b) Broadcasters entering into contracts on or after August 18, 1988, which contain syndicated exclusivity protection shall notify affected cable systems within sixty calendar days of the signing of such a contract. Broadcasters who have entered into contracts prior to August 18, 1988, and who comply with the requirements specified in § 76.109 shall notify affected cable systems on or before June 19, 1989. A broadcaster shall be entitled to exclusivity protection beginning on the later of:

(1) The date specified in its notice to the cable television system; or

(2) The first day of the calendar week (Sunday through Saturday) that begins 60 days after the cable television system receives notice from the broadcaster;

(c) In determining which programs must be deleted from a television broadcast signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available.

(1) Newspapers or magazines of general circulation;

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within ten business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The distributor or television station requesting exclusivity.

(d) In the event the exclusivity specified in paragraph (a) of this section has been limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the cable television system operator of the occurrence of the relevant contingency. Notice to be furnished "as soon as possible" under this paragraph shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

§ 76.106 Exceptions.

(a) Notwithstanding the requirements of §§ 76.101 through 76.105, a broadcast signal is not required to be deleted from a cable community unit when that cable community unit falls, in whole or in part, within that signal's grade B contour, or when the signal is significantly viewed pursuant to § 76.54 in the cable community.

(b) The provisions of §§ 76.101 through 76.105 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise syndicated exclusivity protection against it.

§ 76.107 Exclusivity contracts.

A distributor or television station exercising exclusivity pursuant to § 76.101 shall provide to the cable system, upon request, an exact copy of those portions of the exclusivity contracts, such portions to be signed by both the distributor and the television station, setting forth in full the provisions pertinent to the duration, nature, and extent of the exclusivity terms concerning broadcast signal exhibition to which the parties have agreed.

§ 76.108 Indemnification contracts.

No licensee shall enter into any contract to indemnify a cable system for liability resulting from failure to delete programming in accordance with the provisions of this subpart unless the licensee has a reasonable basis for concluding that such program deletion is not required by this subpart.

§ 76.109 Requirements for invocation of protection.

For a station licensee to be eligible to invoke the provisions of § 76.101, it must have a contract or other written indicia that it holds syndicated exclusivity rights for the exhibition of the program in question. Contracts entered on or after August 18, 1988, must contain the following words: "the licensee [or substitute name] shall, by the terms of this contract, be entitled to invoke the protection against duplication of programming imported under the Compulsory Copyright License, as provided in § 76.101 of the FCC rules [or 'as provided in the FCC's syndicated exclusivity rules']." Contracts entered into prior to August 18, 1988, must contain either the foregoing language or a clear and specific reference to the licensee's authority to exercise exclusivity rights as to the specific programming against cable television broadcast signal carriage by the cable system in question upon the contingency that the government reimposed syndicated exclusivity protection. In the absence of such a specific reference in contracts entered into prior to August 18, 1988, the provisions of these rules may be invoked only if the contract is amended to include the specific language referenced in this section or a specific written acknowledgment is obtained from the party from whom the broadcast exhibition rights were obtained that the existing contract was intended, or should now be construed by agreement of the parties, to include such rights. A general acknowledgment by a supplier of exhibition rights that specific contract language was intended to convey rights under these rules will be accepted with respect to all contracts containing that specific language. Nothing in this section shall be construed as a grant of exclusive rights to a broadcaster where such rights are not agreed to by the parties.

§76.110 Substitutions.

Whenever, pursuant to the requirements of the syndicated exclusivity rules, a community unit is required to delete a television program on a broadcast signal that is permitted to be carried under the Commission's rules, such community unit may, consistent with these rules and the sports blackout rules at § 76.111, substitute a program from any other television broadcast station. Programs substituted pursuant to this section may be carried to their completion.

§76.111 Cable sports blackout.

(a) No community unit located in whole or in part within the specified zone of a television broadcast station licensed to a community in which a sports event is taking place, shall, on request of the holder of the broadcast rights to that event, or its agent, carry the live television broadcast of that event if the event is not available live on a television broadcast station meeting the criteria specified in § 76.128. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

(b) Notification of the programming to be deleted pursuant to this section shall include the following information:

(1) As to programming to be deleted from television broadcast signals regularly carried by the community unit:

(i) The name and address of the party requesting the program deletion;

(ii) The date, time and expected duration of the sports event the television broadcast of which is to be deleted;

(iii) The call letters of the television broadcast station(s) from which the deletion is to be made.

(2) As to programming to be deleted from television broadcast signals not regularly carried by the community unit:

(i) The name and address of the party requesting the program deletion;

(ii) The date, time and expected duration of the sports event the television broadcast of which is to be deleted.

(c) Notifications given pursuant to this section must be received, as to regularly scheduled events, no later than the Monday preceding the calendar week (Sunday through Saturday) during which the program deletion is to be made. Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

(d) Whenever, pursuant to this section, a community unit is required to delete a television program on a signal regularly carried by the community unit, such community unit may, consistent with the rules contained in subpart F of this part, substitute a program from any other television broadcast station. A program substituted may be carried to its completion, and the community unit need not return to its regularly carried signal until it can do so without interrupting a program already in progress.

(e) The provisions of this section shall not be deemed to require the deletion of any portion of a television signal which a community unit was lawfully carrying prior to March 31, 1972.

(f) The provisions of this section shall not apply to any community unit having fewer than 1,000 subscribers.

§76.120 Network non-duplication protection, syndicated exclusivity and sports blackout rules for satellite carriers: Definitions.

For purposes of §§ 76.122–76.130, the following definitions apply:

(a) *Satellite carrier.* The term "satellite carrier" means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

(b) *Nationally distributed superstation.* The term "nationally distributed superstation" means a television broadcast station, licensed by the Commission, that—

(1) Is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States;

(2) On May 1, 1991, was retransmitted by a satellite carrier and was not a network station at that time; and

(3) Was, as of July 1, 1998, retransmitted by a satellite carrier under the statutory license of Section 119 of title 17, United States Code.

(c) *Television network.* The term "television network" means a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

(d) *Network station.* The term "network station" means—

(1) A television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or

(2) A noncommercial educational broadcast station (as defined in Section 397 of the Communications Act of 1934); except that the term does not include the signal of the Alaska Rural Communications Service, or any successor entity to that service.

(e) *Zone of protection.* The term "zone of protection" means—

(1) With respect to network non-duplication, the zone of protection within which the television station is entitled to enforce network non-duplication protection shall be that geographic area agreed upon between the network and the television station. In no event shall such rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights as defined in § 73.658(m) of this Chapter, except that small market television stations shall be entitled to a secondary protection zone of 32.2 additional kilometers (20 additional miles). To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) of this Chapter for each named community in that market.

(2) With respect to each syndicated program, the zone of protection within

which the television station is entitled to enforce syndicated exclusivity rights shall be that geographic area agreed upon between the non-network program supplier, producer or distributor and the television station. In no event shall such zone exceed the area within which the television station has acquired broadcast territorial exclusivity rights as defined in § 73.658(m) of this Chapter. To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) of this chapter for each named community in that market.

(3) With respect to sports blackout, the zone of protection is the "specified zone" of a television broadcast station, as defined in § 76.5(e). If there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

§76.122 Satellite network non-duplication.

(a) Upon receiving notification pursuant to paragraph (c) of this section, a satellite carrier shall not deliver, to subscribers within zip code areas located in whole or in part within the zone of protection of a commercial television station licensed by the Commission, a program carried on a nationally distributed superstation when the network non-duplication rights to such program are held by the commercial television station providing notice, except as provided in paragraphs (j), (k) or (l) of this section.

(b) Television broadcast station licensees shall be entitled to exercise non-duplication rights pursuant to § 76.122 in accordance with the contractual provisions of the network-affiliate agreement, and as provided in § 76.124.

(c) In order to exercise non-duplication rights pursuant to § 76.122, television stations shall notify each satellite carrier of the non-duplication sought in accordance with the requirements of this section. Non-duplication protection notices shall include the following information:

(1) The name and address of the party requesting non-duplication protection and the television broadcast station holding the non-duplication right;

(2) The name of the program or series (including specific episodes where necessary) for which protection is sought;

(3) The dates on which protection is to begin and end;

(4) The name of the network (or networks) which has (or have) extended non-duplication protection to the broadcaster;

(5) The time periods by time of day (local time) and by network (if more than one) for each day of the week that the broadcaster will be broadcasting programs from that network (or networks) and for which non-duplication protection is requested;

(6) The duration and extent (*e.g.*, simultaneous, same-day, seven-day, etc.) of the non-duplication protection which has been agreed upon by the network (or networks) and the broadcaster; and

(7) A list of the U.S. postal zip code(s) that encompass the zone of protection under these rules.

(d) Broadcasters entering into contracts providing for network non-duplication protection shall notify affected satellite carriers within 60 calendar days of the signing of such a contract; provided, however, that for such contracts signed before November 29, 2000, the broadcaster may provide notice on or before January 31, 2001, or with respect to pre-November 29, 2000 contracts that require amendment in order to invoke the provisions of these rules, notification may be given within sixty calendar days of the signing of such amendment.

(e) Except as otherwise provided in this section, a broadcaster shall be entitled to non-duplication protection beginning on the later of:

(1) The date specified in its notice to the satellite carrier; or

(2) The first day of the calendar week (Sunday through Saturday) that begins 60 days after the satellite carrier receives notice from the broadcaster; Provided, however, that with respect to notifications given pursuant to this section prior to June 1, 2001, a satellite carrier is not required to provide non-duplication protection until 120 days after the satellite carrier receives such notification.

(f) A broadcaster shall provide the following information to the satellite carrier under the following circumstances:

(1) In the event the protection specified in the notices described in paragraph (c) of this section has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the satellite carrier in a notice pursuant to paragraph (c) of this section, for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each satellite carrier that has previously received the notice of all changes from the original notice. Notice to be furnished "as soon as possible" under this paragraph shall be furnished by telephone, telegraph, facsimile, e-mail, overnight mail or other similar expedient means.

(2) In the event the protection specified in the notices described in paragraph (c) of this section has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each satellite carrier that has previously received notice of all changes from the original notice.

(g) In determining which programs must be deleted from a television signal, a satellite carrier may rely on information from newspapers or magazines of general circulation, the broadcaster requesting exclusivity protection, or the nationally distributed superstation.

(h) If a satellite carrier asks a nationally distributed superstation for information about its program schedule, the nationally distributed superstation shall answer the request:

(i) Within ten business days following its receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast, whichever comes later.

(i) A broadcaster exercising exclusivity pursuant to this section shall provide to the satellite carrier, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed.

(j) A satellite carrier is not required to delete the duplicating programming of any nationally distributed superstation that is carried by the satellite carrier as a local station with the station's retransmission consent pursuant to § 76.64

(i) Within the station's local market;

(ii) If the station is "significantly viewed," pursuant to § 76.54, in zip code areas included within the zone of protection; or

(iii) If the zone of protection falls, in whole or in part, within that signal's grade B contour.

(k) A satellite carrier is not required to delete the duplicating programming of any nationally distributed superstation from an individual subscriber who is located outside the zone of protection, notwithstanding that the subscriber lives within a zip code provided by the broadcaster pursuant to paragraph (c) of this section.

(l) A satellite carrier is not required to delete programming if it has fewer than 1,000 subscribers within the relevant protected zone who subscribe to the nationally distributed superstation carrying the programming for which deletion is requested pursuant to paragraph (c) of this section.

§ 76.123 Satellite syndicated program exclusivity.

(a) Upon receiving notification pursuant to paragraph (d) of this section, a satellite carrier shall not deliver, to subscribers located within zip code areas in whole or in part within the zone of protection of a commercial television station licensed by the Commission, a program carried on a nationally distributed superstation when the syndicated program exclusivity rights to such program are held by the commercial television station providing notice, except as provided in paragraphs (k), (l) and (m) of this section.

(b) Television broadcast station licensees shall be entitled to exercise exclusivity rights pursuant to this Section in accordance with the contractual provisions of their syndicated program license agreements, consistent with § 76.1 4.

(c) Distributors of syndicated programming shall be entitled to exercise exclusive rights pursuant to this Section for a period of one year from the initial broadcast syndication licensing of such programming anywhere in the United States; provided, however, that distributors shall not be entitled to exercise such rights in areas in which the programming has already been licensed.

(d) In order to exercise exclusivity rights pursuant to this Section, distributors of syndicated programming or television broadcast stations shall notify each satellite carrier of the exclusivity sought in accordance with the requirements of this paragraph. Syndicated program exclusivity notices shall include the following information:

(1) The name and address of the party requesting exclusivity and the television broadcast station or other party holding the exclusive right;

(2)The name of the program or series (including specific episodes where necessary) for which exclusivity is sought;

(3)The dates on which exclusivity is to begin and end; and

(4) A list of the U.S. postal zip code(s) that encompass the zone of protection under these rules.

(e) A distributor or television station exercising exclusivity pursuant to this Section shall provide to the satellite carrier, upon request, an exact copy of those portions of the exclusivity contracts, such portions to be signed by both the distributor and the television station, setting forth in full the provisions pertinent to the duration, nature, and extent of the exclusivity terms concerning broadcast signal exhibition to which the parties have agreed.

(f) Television broadcast stations or distributors entering into contracts on or after November 29, 2000, which contain syndicated exclusivity protection with respect to satellite retransmission of programming, shall notify affected satellite carriers within sixty calendar days of the signing of such a contract. Television broadcast stations or distributors who have entered into contracts prior to November 29, 2000, and who comply with the requirements specified in § 76.124 shall notify affected satellite carriers on or before January 31, 2001; provided, however, that with respect to pre-November 29, 2000 contracts that require amendment in order to invoke the provisions of these rules, notification may be given within sixty calendar days of the signing of such amendment.

(g) Except as otherwise provided in this section, a television broadcast station shall be entitled to exclusivity protection beginning on the later of:

(1) The date specified in its notice to the satellite carrier; or

(2) The first day of the calendar week (Sunday through Saturday) that begins 60 days after the satellite carrier receives notice from the broadcaster.

Provided, however, that with respect to notifications given pursuant to this section prior to June 1, 2001, a satellite carrier is not required to provide syndicated exclusivity protection until 120 days after the satellite carrier receives such notification.

(h) In determining which programs must be deleted from a television broadcast signal, a satellite carrier may rely on information from the distributor or television broadcast station requesting exclusivity; newspapers or magazines of general circulation; or the nationally distributed superstation whose programs may be subject to deletion.

(i) If a satellite carrier asks a nationally distributed superstation for information about its program schedule, the nationally distributed superstation shall answer the request:

(1) Within ten business days following the its receipt of the request; or

(2) Sixty days before the program or programs mentioned in the request for information will be broadcast: whichever comes later.

(j) In the event the exclusivity specified in paragraph (a) of this section has been limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each satellite carrier that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the satellite carrier of the occurrence of the relevant contingency. Notice to be furnished "as soon as possible" under this Subsection shall be furnished by telephone, telegraph, facsimile, e-mail, overnight mail or other similar expedient means.

(k) A satellite carrier is not required to delete the programming of any nationally distributed superstation that is carried by the satellite carrier as a local station with the station's retransmission consent pursuant to § 76.64:

(1) Within the station's local market;

(2) If the station is "significantly viewed," pursuant to § 76.54, in zip code areas included within the zone of protection; or

(3) If the zone of protection falls, in whole or in part, within that signal's grade B contour.

(l) A satellite carrier is not required to delete the duplicating programming of any nationally distributed superstation from an individual subscriber who is located outside the zone of protection, notwithstanding that the subscriber lives within a zip code provided by the broadcaster pursuant to paragraph (d) of this section.

(m) A satellite carrier is not required to delete programming if it has fewer than 1,000 subscribers within the relevant protected zone who subscribe to the nationally distributed superstation carrying the programming for which deletion is requested pursuant to paragraph (d) of this section.

§ 76.124 Requirements for invocation of protection.

For a television broadcast station licensee or distributor of syndicated programming to be eligible to invoke the provisions of § 76.122 or § 76.123 of this subpart, it must have a contract or other written indicia that it holds network program non-duplication or syndicated exclusivity rights for the exhibition of the program in question. Contracts entered on or after November 29, 2000, must contain the following words: the licensee [or substitute name] shall, by the terms of this contract, be entitled to invoke the protection against duplication of programming imported under the Statutory Copyright License, as provided in § 76.122 or § 76.123 of the FCC rules [or 'as provided in the FCC's satellite network non-duplication or syndicated exclusivity rules']." Contracts entered into prior to November 29, 2000, must contain the foregoing language plus a clear and specific reference to the licensee's authority to exercise exclusivity rights as to the specific programming against signal carriage by the satellite carrier in question, or by satellite carriage in general in a protected, geographic or specified zone. In the absence of such a specific reference in contracts entered into prior to November 29, 2000, the provisions of these rules may be invoked only if the contract is amended to include the specific language referenced in this section or a specific written acknowledgment is obtained from the party from whom the broadcast exhibition rights were obtained that the existing contract was intended, or should now be construed by agreement of the parties, to include such rights. A general acknowledgment by a supplier of exhibition rights that specific contract language was intended to convey rights under these rules will be accepted with respect to all contracts containing that specific language. Nothing in this section shall be construed as a grant of exclusive rights to a broadcaster where such rights are not agreed to by the parties.

§ 76.125 Indemnification contracts.

No television broadcast station licensee shall enter into any contract to indemnify a satellite carrier for liability resulting from failure to delete programming in accordance with the provisions of this Subpart unless the licensee has a reasonable basis for concluding that such program deletion is not required by this Subpart.

§ 76.127 Satellite sports blackout.

(a) Upon the request of the holder of the broadcast rights to a sports event, or its agent, no satellite carrier shall retransmit to subscribers within the area comprising the specified zone a "nationally distributed superstation" or "network station" carrying the live television broadcast of a sports event if the event is not available live on a television broadcast station meeting the criteria specified in § 76.128. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

(b) Notification of the programming to be deleted pursuant to this Section shall include the following information:

(1) The name and address of the party requesting the program deletion;

(2) The date, time and expected duration of the sports event the television broadcast of which is to be deleted;

(3) The call letters of the nationally distributed superstation or network station(s) from which the deletion is to be made;

(4) The U.S. postal zip codes that encompass the specified zone.

(c) Notifications given pursuant to this section must be received by the satellite carrier, as to regularly scheduled events, within forty-eight (48) hours after the time of the telecast to be deleted is known, and no later than the Monday preceding the calendar week (Sunday through Saturday) during which the program deletion is to be made. Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

(d) A satellite carrier is not required to delete a sports event from an individual subscriber who is located outside the specified zone, notwithstanding that the subscriber lives within a zip code provided by the holder of the broadcast rights pursuant to paragraph (b) of this section.

(e) A satellite carrier is not required to delete a sports event if it has fewer than 1,000 subscribers within the relevant specified zone who subscribe to the nationally distributed superstation or network station carrying the sports event for which deletion is requested pursuant to paragraph (b) of this section.

(f) Notwithstanding paragraph (c) of this section, for sports events to be deleted on or before March 31, 2001, notification must be received by satellite carriers at least 60 full days prior to the day the telecast is to be deleted.

§ 76.128 Application of sports blackout rules.

The cable and satellite sports blackout rules (§§ 76.111 and 76.127) may apply when the sports event is not available live on any of the following television broadcast stations carried by a cable system or other MVPD:

(a) Television broadcast stations within whose specified zone the community of the community unit or the community within which the sporting event is taking place is located, in whole or in part;

(b) Television broadcast stations within whose Grade B contours the community of the community unit or the community within which the sporting event is taking place is located, in whole or in part;

(c) Television broadcast stations licensed to other designated communities which are generally considered to be part of the same television market (Example: Burlington, Vt.-Plattsburgh, N.Y. or Cincinnati, Ohio-Newport, Ky., television markets);

(d) Television broadcast stations that are significantly viewed, pursuant to § 76.54, in the community unit or community within the specified zone.

§ 76.130 Substitutions.

Whenever, pursuant to the requirements of the network program non-duplication, syndicated program exclusivity, or sports blackout rules, a satellite carrier is required to delete a television program from retransmission to satellite subscribers within a zip code area, such satellite carrier may, consistent with this Subpart, substitute a program from any other television broadcast station for which the satellite carrier has obtained the necessary legal rights and permissions, including but not limited to copyright and retransmission consent. Programs substituted pursuant to this section may be carried to their completion.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2000–8256]

RIN No. 2127–AI10

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of technical workshop.

SUMMARY: This document announces that NHTSA will hold a technical workshop to give NHTSA an opportunity to make sure it understands the petitioners' issues concerning some of the test procedures for the advanced air bag final rule issued earlier this year.

DATES: The workshop will be held December 6, 2000, at the address listed below. Lists of persons wishing to participate in the workshop and the names of the vehicle models that participants wish to bring to the workshop to demonstrate test dummy positioning problems should be provided to Ed Jettner at the address or telephone number listed below by November 22, 2000. Due to space and time limitations, NHTSA may have to limit the number of representatives per organization as well as the number of problematic vehicles that will be examined.

ADDRESSES: The workshop will be held at the Vehicle Research and Test Center (VRTC), 10820 State Route 347, East Liberty, Ohio 43319. Directions to VRTC and the final agenda will be sent to participants.

FOR FURTHER INFORMATION CONTACT: Ed Jettner, Office of Crashworthiness Standards, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–4917, Fax (202) 366–4329, e-mail ejettner@nhtsa.dot.gov.

SUPPLEMENTARY INFORMATION: On May 12, 2000, NHTSA published a final rule amending Standard No. 208, *Occupant Crash Protection,* to require that future air bags be designed to create less risk of serious air bag-induced injuries than current air bags, particularly for small women and young children; and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology. (65 FR 30680; Docket No. NHTSA 00–7013; Notice 1) The period for submitting petitions for reconsideration closed June 26, 2000.

NHTSA received nine petitions for reconsideration of the final rule, some of which raised questions concerning some of the new test procedures in the final rule. We also received three requests for clarification of those procedures. To enable interested parties and NHTSA personnel to better understand the questions concerning those test procedures, we believe that it would be desirable to hold a technical workshop. The workshop will be limited to those procedures that petitioners have raised as legitimate technical issues. It will not address procedures that were the subject of policy-based objections. For example, NHTSA did not provide detailed test procedures on how to position the child or child dummy in static suppression tests. This lack of specificity was intentional since we wanted this technology to be robust enough to protect all children generally situated in the positions required by the final rule. While there may be a difference of opinion about the appropriateness of the agency's position, there is no need to review that issue at a technical workshop. The agency will respond to this and other non-technical issues in the notice responding to the petitions for reconsideration.

We believe that the petitioners raised legitimate technical issues about the following test procedures, and therefore that only those issues should be addressed at the workshop:

1. Cinchdown procedure for child restraints in vehicles equipped with static suppression technology to comply with the advanced air bag requirements.
2. Procedures for positioning the 6-year-old and 3-year-old child dummies in the passenger seating position in vehicles equipped with low-risk deployment technology to comply with the advanced air bag requirements. The workshop will address the method used to achieve the final position and the effect that the vehicle seat may have on achieving that position.
3. Procedures for positioning for the 5th percentile adult female dummy in the driver seating position for demonstrating compliance with the low-risk deployment test of the advanced air bag requirements. The workshop will address the method used to achieve the final chin-on-rim position, and the effect that the vehicle seat may have on achieving the chin-on-rim and chest-on-module positions.

NHTSA will announce any resolution of these issues in the notice responding to the petitions for reconsideration.

Several petitioners noted that they had problems with the above-listed test procedures in particular vehicles. We request that participants who have experienced problems with specific vehicles bring the vehicles to the workshop so that we may address as many of the different vehicle configurations as possible. If no problematic vehicles are presented at the workshop, we will limit the workshop to the cinchdown procedure for child seats.

We request that persons wishing to participate in the workshop notify Ed Jettner not later than November 22, 2000. Interested persons should indicate the company or organization which they represent. Interested persons wishing to bring a particular vehicle to demonstrate the dummy positioning difficulties should also identify for Mr. Jettner the vehicle models they would like to bring to the workshop. Once we compile a list of interested persons and problematic vehicles, we will determine whether the number of representatives per participant must be limited due to space and time constraints. If this proves to be necessary, we will equitably allocate the available space among the participating companies and organizations and among the identified problematic vehicles.

To facilitate communication, NHTSA will provide auxiliary aids to participants as necessary during the meeting. To ensure their availability, any person desiring assistance of auxiliary aids (*e.g.*, sign-language interpreter) should contact Ed Jettner.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

Issued on November 7, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–28985 Filed 11–13–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 578 and 592

[Docket No. NHTSA 2000–8253]

RIN 2127–AI18

Civil Penalties; Registered Importers of Vehicles Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends NHTSA's regulations on civil penalties and registered importers to reflect related amendments to 49 U.S.C. 30165(a) and 30120(g)(1) made by sections of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, signed by the president on November 1, 2000. Under these amendments, the civil penalty for a single violation of 49 U.S.C. Chapter 301—Motor Vehicle Safety is increased from $1,100 to $5,000, and the maximum civil penalty for a related series of violations is increased from $925,000 to $15,000,000. However, if 49 U.S.C. 30166 (inspections, investigations, and records) or a regulation thereunder has been violated, the maximum penalty is $5,000 per violation per day, and the maximum penalty for a related series of daily violations is $15,000,000.

In addition, the TREAD Act extends from 8 to 10 years the period for which a manufacturer must remedy without charge a noncompliance or safety-related defect. This also requires conforming amendments to the remedial obligations of Registered Importers.

DATES: Effective date: November 1, 2000.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, facsimile (202) 366–3820, electronic mail "TVinson@nhtsa.dot.gov", 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: 49 CFR Part 578 *Civil Penalties* is NHTSA's regulation setting forth the civil penalties authorized by each of the statutes that the agency enforces. It reflects adjustments to penalties in statutes that NHTSA administers, pursuant to the Federal Civil Penalty Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). The principal motor vehicle safety statute is 49 U.S.C. Chapter 301—Motor Vehicle Safety. The civil penalties that are have been adopted for each violation of Chapter 301, or a regulation promulgated under its authority, are a minimum of $1,100 for each violation, and a maximum of $925,000 for a related series of violations (49 CFR 578.6(a)). Penalties for violations of Chapter 301 are authorized by 49 U.S.C. 30165(a).

On November 1, 2000, the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act was signed into law (PL 106–414). Section 5(a) of the TREAD Act amends Section 30165 to establish a new Section 30165(a)(1), which increases the maximum penalty to $5,000 for each violation and the maximum penalty to $15,000,000 for a related series of violations. These penalties are effective as of the date of enactment of the amendment. We are publishing a conforming amendment to 49 CFR 578.6(a) to reflect the statutory increase in these penalties. This amendment will redesignate Section 578.6(a) as 578.6(a)(1) in order to accommodate the separate civil penalty the TREAD Act establishes for violations of Section 30166.

Heretofore, Section 30165(a) has authorized the same penalties for violations of Section 30166 relating to investigations, inspections, and records, as for violations of other sections of Chapter 301. This has also been reflected in 49 CFR 578.6(a). However, Section 5(a)(2) of the TREAD Act amends Section 30165(a) to add a new section (a)(2), *Section 30166.* The new section provides that any person who violates Section 30166 or any regulation issued thereunder is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum penalty for such violation has been set at $5,000 per violation per day. The maximum penalty for a related series of daily violations is $15,000,000. We are therefore amending Section 578.6(a) to add a new section (a)(2) implementing Section 5(a)(2) of the TREAD Act. These penalties apply as of the date of enactment to obligations existing under Section 30166 that were unchanged by the TREAD Act. They also apply to violations of new Sections added by TREAD. For example, this includes *Reporting of Defects in Motor Vehicles and Products in Foreign Countries* under 30166(l). They will also apply to violations of new rules to be published under TREAD such as *Early Warning Reporting Requirements* (30166(m)) *Sale or Lease of Defective or Noncompliant Tire* (30166(n)) upon promulgation of those regulations.

Subsection (1) of section 4, *Remedies Without Charge,* of the TREAD Act amends 49 U.S.C. 30120(g)(1) by increasing from 8 to 10 calendar years the period for which the manufacturer of a motor vehicle or an item of motor vehicle equipment other than a tire must provide a remedy without charge of a noncompliance or safety-related defect. This requires a corresponding change in 49 CFR Part 592, *Registered Importers of Vehicles Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards.* Sec. 592.6(g)(2)(i) relieves a Registered Importer (RI) of the obligation to furnish a remedy without charge of a noncompliance or safety-related defect in a vehicle if the vehicle's first sale occurred more than 8 calendar years before the date of notification by the RI. Remedy without charge is also not required if notification is provided by the original manufacturer and the date of first purchase of the vehicle is more than 8 years from the date of notification. We are amending these provisions to change 8 years to 10 years in accordance with Sec. 4(1) of the TREAD Act. The statutory amendment also has the effect of requiring RIs to ensure that the service insurance policies provided with each vehicle cover a 10-year period.

EFFECTIVE DATE: The amendments restate statutory terms that in effect modified certain regulations; the amendments became effective on November 1, 2000. Therefore, no prior notice and opportunity to comment are required. The penalties apply to violations of 49 U.S.C. Chapter 301 occurring on and after the effective date of the statutory amendment.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action is limited to the restatement of statutory terms that increased civil penalties for violations of 49 U.S.C. Chapter 301 and extended the period of remedy without charge. It has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this rule will have no significant economic impact on a substantial number of small entities. The following is my statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The restatement of statutory terms primarily affect manufacturers and Registered Importers of motor vehicles. Manufacturers of motor vehicles and motor vehicle equipment, and Registered Importers, are generally not small businesses within the meaning of the Regulatory Flexibility Act.

Further, small organizations and governmental jurisdictions will not be significantly affected as the price of motor vehicles ought not to change as the result of this rule. As explained above, this action is limited to restating statutory terms in our regulations.

Finally, this action will not affect our civil penalty policy under the Small Business Regulatory Enforcement Fairness Act (62 FR 37115, July 10, 1997). We shall continue to consider the appropriateness of the penalty to the size of the business charged.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), we state that there are no requirements for information collection associated with this rulemaking action.

National Environmental Policy Act

We have also analyzed this rulemaking action under the National Environmental Policy Act and determined that it has no significant impact on the human environment.

Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" requires us to develop an accountable process to ensure "meaningful and timely input" by State and local officials in the development of "regulatory policies that have federalism implications." The E.O. defines this phrase to include regulations "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule, which increases permissible civil penalties and the length of the period for which remedy must be provided without charge, will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132.

Civil Justice Reform

This rule does not have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (P.L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million effect, no Unfunded Mandates assessment will be prepared.

List of Subjects in 49 CFR Parts 578 and 592

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires, Penalties.

Accordingly, 49 CFR chapter V is amended as follows:

PART 578—CIVIL PENALTIES

1. The authority citation for 49 CFR part 578 is revised to read as follows:

Authority: Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30165); delegation of authority at 49 CFR 1.50.

2. Section 578.6 is amended by revising paragraph (a) to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

(a)(1) *Motor vehicle safety.* A person who violates any of sections 30112, 30115, 30117 through 30122, 30123(d), 30125(c), 30127, or 30141 through 30147 of Title 49 of the United States Code or a regulation prescribed under any of those sections is liable to the United States Government for a civil penalty of not more than $5,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum civil penalty under this paragraph for a related series of violations is $15,000,000.

(2) *Section 30166.* A person who violates section 30166 of Title 49 of the United States Code or a regulation prescribed under that section is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum penalty under this paragraph is $5,000 per violation per day. The maximum penalty under this paragraph for a related series of daily violations is $15,000,000.

* * * * *

PART 592—REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for 49 CFR part 592 is revised to to read as follows:

Authority: Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 322(a), 49 U.S.C. 30141–47); delegation of authority at 49 CFR 1.50.

§ 592.6 [Amended]

2. In 49 CFR 592.6(g)(2)(i), remove the words "8 calendar years" and "8 years" and add, in their place, the words "10 calendar years."

Issued on: November 8, 2000.

Sue Bailey,

Administrator.

[FR Doc. 00–29033 Filed 11–13–00; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 65, No. 220
Tuesday, November 14, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–042–7169b; A–1–FRL–6871–1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire, New Hampshire—Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of New Hampshire (NH). The revisions consists of adding CHAPTER Env–A 3200 NO_X BUDGET TRADING PROGRAM, NO_X RACT Order 98–001, and two emission quantification protocols to the NH SIP. The regulations and source specific order in NH are part of a regional nitrogen oxides (NO_X) emissions budget and allowance trading program designed to reduce stationary source NO_X emissions during the ozone season in the Ozone Transport Region of the northeastern United States. These SIP revisions were submitted pursuant to section 110 of the Clean Air Act. In the Final Rules section of this **Federal Register** EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before December 14, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem protection (mail code CAQ), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and at the New Hampshire Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03301.

FOR FURTHER INFORMATION CONTACT: Dan Brown, (617) 918–1532 or at brown.dan@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 6, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

[FR Doc. 00–28708 Filed 11–13–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–0240; FRL–6897–2]

Disapproval of Implementations Plans; Revision to the California State Implementation Plan, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a revision to the Antelope Valley Air Pollution Control District (AVAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from the transfer of gasoline to storage tanks or to vehicle fuel tanks. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by December 14, 2000.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, (P.O. Box 4038), Lancaster, CA 93539.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1135.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local Agency	Rule No.	Rule Title	Adopted	Submitted
Antelope Valley APCD	461	Gasoline Transfer and Dispensing	09/15/98	05/13/99

On June 10, 1999, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of AVAPCD Rule 461 into the SIP on October 6, 1996 (61 FR 52297). There are no other submittals on which we have not acted.

C. What Are the Changes in the Submitted Rule?

The changes are as follows:

- Section (c)(5) of the SIP rule, along with the related attachments (C) and (D), is deleted. This section and the attachments concern the Self-Compliance Program (SCP), which requires daily inspection to ensure proper operating conditions of all components of the vapor recovery systems and annual inspections to verify compliance with applicable rules and regulations.
- Section (c)(6) of the SIP rule is deleted. This section concerns the training by a District-approved program of a person to perform the inspections and maintenance required in section (c)(5).
- Section (e)(3) of the submitted rule extends the exemption from the rule for mobile fuellers until 12 months after CARB certifies vapor recovery equipment for mobile fuellers.

The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The AVAPCD regulates a severe ozone nonattainment area (see 40 CFR 81), so AVAPCD Rule 461 must meet the requirements of RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

- Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987).
- *Model Volatile Organic Compound Rule for Reasonably Available Control Technology (RACT),"* Office of Air Quality Planning and Standards (June 1992).
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D* (The Blue Book), 52 FR 45105 (November 24, 1987).

For the purpose of assisting state and local agencies in developing RACT rules for nonattainment areas, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). There is no applicable CTG for transfer of gasoline into vehicle fuel tanks. However, EPA issued the following for gasoline vapor recovery guidance:

- Draft *Model Rule, Gasoline Dispensing facility—Stage II Vapor Recovery*, (August 17, 1992).

In evaluating RACT, EPA also considered information published since the 1992 Draft *Model Rule*, including documents associated with development of CARB's *Enhanced Vapor Recovery Guidelines* (March 23, 2000) and South Coast Air Quality Management District's Draft Rule 461, Gasoline Transfer and Dispensing (December 15, 1999). EPA, Region IX, has summarized RACT requirements in the Draft *Gasoline Vapor Recovery Guidelines* (April 24, 2000). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable, meet the requirements of RACT, and maintain or strengthen the SIP.

B. Does the Rule Meet the Evaluation Criteria?

This rule is not consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the Rule Deficiencies?

These provisions conflict with section 110 and part D of the CAA and prevent full approval of the SIP revision:

- The enforceablility is limited, because paragraph (c)(3)(B) references AVAPCD Rule 430. The reference must be removed, because AVAPCD Rule 430 is not in the SIP and is not appropriate as a SIP rule.
- The change of removing the required daily and annual inspections of the SCP without replacement provisions is a SIP relaxation. This change is claimed by AVAPCD to be justified because the program is ineffective and is overly burdensome to the industry, citing studies conducted by the South Coast Air Quality Management District (SCAQMD), which developed the SCP. In 1996 and 1997 SCAQMD conducted reverification of original compliance tests that revealed a high rate of non-compliance in vapor recovery equipment. AVAPCDs conclusion from these tests was that the SCP is ineffective in reducing excess emissions of VOC. Although EPA concurs that there are high non-compliance rates for vapor recovery equipment, we believe that this fact justifies an increased emphasis in an inspection program, and that removal of the SCP requirement will increase VOC emissions. Therefore, removal of the SCP without a replacement program is a SIP relaxation and does not meet the requirements of section 110(l) of the CAA or of RACT.

EPA requires a reasonably available replacement to the inspections of the SCP. EPA recommends that the inspection program contain the following features:

- Require that reverification of the performance tests originally required by the CARB Executive Order be performed once every six months or, for gasoline dispensing facilities with In-Station Diagnostics, once every two years.
- Require that a written inspection be performed once every week for vapor recovery equipment defects listed in AVAPCD Rule 461, attachment A, or in California Code of Regulations (CCR), title 17, section 94006.

The removal of the District-approved training program for inspection and maintenance of vapor recovery equipment program is not inherently a SIP relaxation that leads to an increase in emissions. Gasoline dispensing

equipment owners must still comply with all provisions of the rule and they would still have to provide sufficient non-District-approved training in the inspection and operation of vapor recovery equipment in order to do so. Furthermore, vapor recovery equipment is complex and is usually maintained by outside contractors, who must provide their own training in maintenance of the equipment. Therefore, EPA has determined that removal of the District-approved training requirement from the rule does not violate section 110(l) of the CAA.

D. EPA Recommendations to Further Improve the Rule.

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for consideration the next time the local agency modifies the rule.

E. Proposed Action and Public Comment.

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a disapproval of the submitted rule. If finalized, this action would retain the present SIP rule, which fulfills RACT requirements, in the SIP. No sanctions under section 179 or federal implementation plan (FIP) requirement under section 110(c) of the CAA are associated with this action.

We will accept comments from the public on the proposed disapproval for the next 30 days.

III. Background Information

A. Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 1.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposed rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. E.O. 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP actions under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 20, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–29064 Filed 11–13–00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 210–0173; FRL–6897–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Lake County Air Quality Management District, Monterey Bay Unified Air Pollution Control District, Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from the transfer of gasoline to storage tanks or to vehicle tanks. EPA is proposing a limited approval and limited disapproval without potential sanctions of Lake County Air Quality Management District (LCAQMD) Section (Rule) 439.5 and Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 1002. EPA is also proposing a limited approval and limited disapproval with potential sanctions of Bay Area Air Quality Management District (BAAQMD) Rule 8–7, Sacramento Metropolitan Air Quality Management District (SMAQMD) Rule 449, and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4622. The intended effect of the limited approvals and limited disapprovals is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate these rules into the federally approved SIP.

DATES: Comments must be received in writing on or before December 14, 2000.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94105.

Lake County Air Quality Management District, 883 Lakeport Boulevard, Lakeport, CA 95453.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for limited approval and limited disapproval into the California SIP are LCAQMD Section (Rule) 439.5, Retail Gasoline Service Stations, MBUAPCD Rule 1002, Transfer of Gasoline into Vehicle Fuel Tanks, BAAQMD Rule 8–7, Gasoline Dispensing Facilities; SMAQMD Rule 449, Transfer of Gasoline into Vehicle Fuel Tanks; and SJVUAPCD Rule 4622, Gasoline Transfer into Vehicle Fuel Tanks. These rules were submitted by the California Air Resources Board (CARB) to EPA on May 18, 1998, June 3, 1999, March 23, 2000, May 18, 1998, and August 21, 1998, respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the San Francisco Bay Area, Monterey Bay Area, Sacramento Metro Area, and the San Joaquin Valley Area. 43 FR 8964; 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above district's portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient Reasonably Available Control Technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1]

In section 182(b)(3) of the CAA, Congress required the states to submit a SIP revision to require all owners or operators of gasoline dispensing systems in moderate or higher ozone nonattainment areas to install a gasoline vapor recovery system. The EPA Administrator would issue gasoline vapor recovery guidance as appropriate as to the effectiveness of such a system.

The Monterey Bay Area, San Francisco Bay Area, Sacramento Metro Area, and San Joaquin Valley Area were designated nonattainment; therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline. The San Francisco Bay Area[2] was later designated attainment and then redesignated nonattainment under subpart 1, part D, of the CAA. Subpart 1 nonattainment areas must meet the requirements of RACT according to section 172(c)(1) of the CAA and must meet the requirements of the gasoline vapor recovery guidance according to section 182(b)(3) of the CAA. The Sacramento Metro Area and the San Joaquin Valley Area[3] subpart 2 nonattainment areas classified as moderate or higher must meet the requirements of RACT according to section 182(a)(2)(A) and the gasoline vapor recovery guidance according to section 182(b)(3) of the CAA. The Monterey Bay Area[4] has since been redesignated as a maintenance attainment area. This area must implement all measures in the SIP before redesignation as attainment, according to section 175A(d) of the CAA. Control of emissions from gasoline dispensing facilities is not a measure that is relied on to achieve or maintain attainment; therefore, the Monterey Bay Area is not subject to the requirements of RACT, including gasoline vapor recovery guidance. Lake County Air Basin was designated attainment and is not subject to the requirements of RACT, including gasoline vapor recovery guidance.

This document addresses EPA's proposed action for LCAQMD Section (Rule) 439.5, Retail Gasoline Service Stations, adopted on July 15, 1997; MBUAPCD 1002, Transfer of Gasoline into Vehicle Fuel Tanks, adopted on April 21, 1999; BAAQMD Rule 8–7, Gasoline Dispensing Facilities, adopted on November 17, 1999; SMAQMD Rule 449, Transfer of Gasoline into Vehicle Fuel Tanks, adopted on April 3, 1997; and SJVUAPCD Rule 4622, Gasoline Transfer into Vehicle Fuel Tanks, adopted on June 18, 1998. These rules were submitted on May 18, 1998, June 3, 1999, March 28, 2000, May 18, 1998, and August 21, 1998, respectively. These rules were found to be complete on July 17, 1998, June 24, 1999, May 19, 2000, July 17, 1998, and October 2, 1998, respectively, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V.[5] LCAQMD Section (Rule) 439.5 and MBUAPCD Rule 1002, are being proposed for limited approval and limited disapproval without sanctions. BAAQMD Rule 8–7, SMAQMD Rule 449, and SJVUAPCD Rule 4622 are being proposed for limited approval and limited disapproval with sanctions.

The BAAQMD and LCAQMD rules control the emission of volatile organic compounds (VOCs) from the transfer of gasoline into fuel storage tanks and into vehicle fuel tanks. The MBUAPCD, SMAQMD, and SJVUAPCD rules control the emission of VOCs from the transfer of gasoline into vehicle fuel tanks. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of these Districts' effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) and 182(b)(3) CAA requirements.

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987* ***Federal Register*** *Notice* (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] On July 10, 1998(63 FR 37258), EPA published the final rule redesignating the San Francisco Bay Area to nonattainment with the federal 1-hour ozone NAAQS. The redesignation was authorized under the general nonattainment provisions of subpart 1, part D, title I, of the CAA. The Bay Area, therefore, does not have a subpart 2 classification. When comparing air quality in the Bay Area to the traditional subpart 2 classification system, the Bay Area's design value is equivalent to that of a moderate nonattainment area.

[3] The Sacramento Metro Area and the San Joaquin Valley Area retained their designation and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). The San Joaquin Valley Area is classified as serious. On April 25, 1995, EPA published a final rule granting the State's request to reclassify the Sacramento Metro Area to severe from serious (60 FR 20237).

[4] On January 17, 1997 (62 FR 2597), EPA published a direct final rule redesignating Monterey Bay Area as maintenance attainment for ozone.

[5] EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

The following is EPA's evaluation and proposed action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents including those listed below:

- *Model Volatile Organic Compound Rule for Reasonably Available Control Technology (RACT),"* Office of Air Quality Planning and Standards (June 1992).
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987* ***Federal Register*** (52 FR 45044) (The Blue Book).

Among the requirements for a VOC rule for the nonattainment areas of BAAQMD, SMAQMD, and SJVUAPCD is that it must be enforceable and meet the requirements of RACT. A VOC rule for LCAQMD attainment area must be enforceable but need not meet the requirements of RACT. A rule for a maintenance attainment area must be enforceable and must implement all measures in the SIP before redesignation as attainment, according to section 175A(d). Control of emissions from gasoline dispensing facilities is not a measure that is relied on to achieve attainment in MBUAPCD; therefore, the MBUAPCD is not subject to the requirements of RACT.

For the purpose of assisting state and local agencies in developing RACT rules for nonattainment areas, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). There is no applicable CTG for transfer of gasoline into vehicle fuel tanks. However, EPA issued the following for gasoline vapor recovery guidance:

- Draft *Model Rule, Gasoline Dispensing facility—Stage II Vapor Recovery,* (August 17, 1992).
- Draft *Gasoline Vapor Recovery Guidelines,* (April 24, 2000).

In evaluating RACT, EPA also considered information published since the 1992 Draft *Model Rule,* including documents associated with development of CARB's *Enhanced Vapor Recovery Guidelines* (March 23, 2000) and South coast air Quality Management District's Draft Rule 461, Gasoline Transfer and Dispensing (December 15, 1999). EPA, Region IX, has summarized RACT requirements in the Draft *Gasoline Vapor Recovery Guidelines* (April 24, 2000). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable, meet the requirements of RACT, and maintain or strengthen the SIP.

There is currently no version of LCAQMD Section (Rule) 439.5 in the SIP. There are no versions on which EPA has not acted. The submitted rule includes the following provisions:

- The transfer of gasoline to a storage tank (Phase I) and the transfer of gasoline to a vehicle fuel tank shall have a submerged fill pipe and CARB-certified vapor recovery equipment.
- The transfer of gasoline to a vehicle fuel tank (Phase II) shall have CARB-certified vapor recovery equipment.
- The dispensing equipment shall have appropriate warning signs and a hold open latch.
- The rule contains various exemptions for gasoline stations less than certain minimum sizes.

On February 9, 1996, 61 FR 4892, EPA approved into the SIP a version of MBUAPCD Rule 1002. There are no versions on which EPA has not acted. The submitted rule includes the following significant changes from the current SIP:

- Section 3.1 continues to require that vapor recovery equipment be CARB-certified, but removes the requirement that the vapor recovery equipment prevents 95% of the gasoline vapors from entering the atmosphere.
- Subsection 3.2.2 adds the requirement that equipment be tested in accordance with California Code of Regulations (CCR), Title 17, sections 94000 *et seq.*
- Section 3.4 is added to describe the 7-day period allowed to correct equipment not in good working order because of defects not specified by CARB pursuant to California Health and Safety Code section 41960.2(c).
- Part 4 separates the permitting requirements for new, modified, and existing gasoline dispensing systems.

On March 22, 1995, 60 FR 15062, EPA approved into the SIP a version of BAAQMD Rule 8–7. There are no versions on which EPA has not acted. The submitted rule includes the following significant changes from the current SIP:

- Numerous new standards were added for Phase I and II vapor recovery equipment.
- Numerous definitions were added for clarity.
- Performance tests of newly installed or modified equipment are required according to the required Authority to Construct.
- New performance test methods were added.
- Recordkeeping requirements were added.

On January 23, 1996, 61 FR 1716, EPA approved into the SIP a version of SMAQMD Rule 449. There are no versions on which EPA has not acted. SMAQMD-submitted Rule 449 includes the following significant changes from the current SIP:

- Section 113 deletes the obsolete exemption for fueling fork lifts.
- Section 305 adds a modification to prohibit hold open latches, if prohibited by the local Fire Marshal.
- Section 306 requires that the Dynamic Back Pressure Test for gasoline dispensing nozzles must be passed. Testing could be more frequent than five years, if required by the CARB.

On May 2, 1996, 61 FR 19555, EPA approved into the SIP a version of SJVUAPCD Rule 4622 that had been adopted by SJVUAPCD on February 17, 1994. There are no versions on which EPA has not acted. The submitted includes the following significant changes from the current SIP:

- Section 5.11, which requires that all liquid removal devices be maintained to remove at least five milliliters per gallon, is added.
- Section 6.2.2, which required that certified vapor recovery systems be tested with 60 days of installation or major modification, is deleted.
- Section 6.3.1 has added the requirement that the APCO, CARB, and EPA all approve test methods on vapor recovery systems on which referenced test methods are precluded.
- Sections 6.3.1, 6.3.2, and 6.3.3 have three test methods added.

EPA has evaluated LCAQMD submitted Rule 439.5 for an ozone attainment area for consistency with the CAA, EPA regulations, and EPA policy

and has found that the revisions strengthen the SIP by adding a rule to reduce gasoline vapor emissions during the transfer of gasoline in Phases I and II by the use of CARB-certified vapor recovery equipment. Although LCAQMD Section (Rule) 439.5 will strengthen the SIP, this rule still contains the following enforceability-related deficiencies that must be corrected pursuant to the section 182(a)(2)(A) and 182(a)(3) requirements of the CAA before the rule will qualify for full approval:

- The rule should reference the specific EPA-approved test methods to be used for performance tests or reverification of performance tests for, at a minimum, a static leak test, a dynamic back pressure test, an air-to-liquid volume ratio test, and a liquid removal rate test.
- Performance test records, reverification of performance test records, maintenance records and throughput records (if an exemption is claimed) should be maintained for at least two years.

EPA has evaluated MBUAPCD Rule 1002 for a maintenance attainment area for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions strengthen the SIP with clarifications, by requiring the testing of vapor recovery equipment, and by requiring that defects be repaired in seven days. Although the rule will strengthen the SIP, this rule still contains the following enforceability-related deficiencies that must be corrected pursuant to the section 182(a)(2)(A) and 182(a)(3) requirements of the CAA before the rule will qualify for full approval:

- Paragraph 3.2.2 contains obsolete references, repealed on July 11, 1996, for the vapor recovery equipment to be operated, tested, and maintained.
- The rule should reference specific EPA-approved test methods for performance tests and reverification of performance tests to be used for, at a minimum, a static leak test, a dynamic back pressure test, an air-to-liquid volume ratio test, and a liquid removal rate test.
- Paragraph 3.3 references "pursuant to California Health and Safety Code, section 41960.2(c)," but this reference does not list any vapor recovery equipment defects. The listing of vapor recovery equipment defects in CCR, title 17, section 94006, could be referenced or the defects could be listed specifically in the rule.
- Performance test records, reverification of performance test records, maintenance records and throughput records (if an exemption is claimed) should be maintained for at least two years.

EPA has evaluated BAAQMD Rule 8–7 for section 1 ozone nonattainment area for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions strengthen the SIP by adding new standards, adding test methods, adding recordkeeping requirements, and adding performance tests on new or modified equipment. Although the rule will strengthen the SIP, this rule still contains the following enforceability-related deficiencies that must be corrected pursuant to the section 182(a)(2)(A) and 182(a)(3) requirements of the CAA before the rule will qualify for full approval:

- Paragraphs 302.3 and 306 require maintaining equipment free of defects as defined in California Health and Safety Code 41960.2(c). California Code of Regulations (CCR), title 17, section 94006 should be referenced instead, because it contains a list of the specific defects.
- Reverification of the performance tests of the vapor recovery system originally required by the CARB Executive Order should be performed more frequently, because studies have shown poor compliance with performance standards. EPA recommends once every six months or, if In-Station Diagnostics are used, once every two years.

EPA has evaluated SMAQMD Rule 449 for a severe ozone nonattainment area for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions strengthen the SIP by removing an obsolete exemption for fueling forklifts, by requiring the passing of the Dynamic Back Pressure Test, and by improving clarity. Although the rule will strengthen the SIP, this rule still contains the following enforceability-related deficiencies that must be corrected pursuant to the section 182(a)(2)(A) and 182(a)(3) requirements of the CAA before the rule will qualify for full approval:

- Section 306 should reference the specific EPA-approved test method to be used for performance tests and reverification of performance tests for an air-to-liquid volume ratio test and a liquid removal rate test.
- Performance testing of vapor recovery equipment should start within 30 days of completion of construction of vapor recovery equipment.
- Reverification of the performance tests of the vapor recovery system originally required by the CARB Executive Order should be performed more frequently, because studies have shown poor compliance with performance standards. EPA recommends once every six months or, if In-Station Diagnostics are used, once every two years.
- Section 502 contains no recordkeeping period. We recommend that maintenance records, performance test records, reverification of performance test records, and gasoline throughput records (if an exemption is claimed) be kept for at least two years.

EPA has evaluated SJVUAPCD Rule 4622 for an ozone nonattainment area for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions strengthen the SIP by adding three test procedures to the rule and by requiring a five milliliter per gallon limit for liquid removal devices. Although the rule will strengthen the SIP, this rule still contains the following enforceability-related deficiencies that must be corrected pursuant to the section 182(a)(2)(A) and 182(a)(3) requirements of the CAA before the rule will qualify for full approval:

- Section 5.4.11 contains a reference to CCR, title 17, section 94001 for the certification procedure that CARB uses for vapor recovery equipment. The correct reference is CCR, title 17, section 94011.
- Section 6.1 contains no recordkeeping period. We recommend that maintenance records and reverification of performance test records be kept for at least two years.
- Section 6.2.2 in the SIP rule, which required that certified vapor recovery systems be tested within 60 days of installation or major modification, was deleted from the submitted rule. This is less stringent than the SIP-approved rule. Performance testing of vapor recovery equipment should start within a defined period of completion of construction of vapor recovery equipment.
- Section 6.3.1 should reference the specific EPA-approved test method to be used for performance tests and reverification of performance tests for an air-to-liquid volume ratio test.
- Reverification of the performance tests of the vapor recovery system originally required by the CARB Executive Order should be performed more frequently, because studies have shown poor compliance with performance standards. EPA recommends once every six months or, if In-Station Diagnostics are used, once every two years.

A detailed discussion of rule deficiencies can be found in the Technical Support Documents for LCAQMD Section (Rule) 439.5, MBUAPCD Rule 1002, BAAQMD Rule 8–7, SMAQMD Rule 449, and

SJVUAPCD Rule 4622, which are available from the U.S. EPA, Region IX office.

Because of the enforceability-related deficiencies in LCAQMD Section (Rule) 439.5 and MBUAPCD Rule 1002, EPA cannot grant full approval of these rules under section 110(k)(3) of the CAA. However, sanctions pursuant to section 179(b) will not be applied, because these areas are an attainment area and a maintenance attainment area, respectively.

Because of the deficiencies in BAAQMD Rule 8–7, SMAQMD Rule 449, and SJVUAPCD Rule 4622, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD Rule 8–7, SMAQMD Rule 449, and SJVUAPCD Rule 4622, under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of BAAQMD Rule 8–7, SMAQMD Rule 449, and SJVUAPCD Rule 4622, because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) and 182(a)(3)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. These sanctions would be imposed according to 40 CFR 52.31. Moreover, the final disapproval triggers the Federal Implementation Plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this NPR have been adopted by the LCAQMD, MBUAPCD, BAAQMD, SMAQMD, and SJVUAPCD and are currently in effect in the Districts. EPA's final limited disapproval action will not prevent these Districts from enforcing these rules.

We will accept comments from the public on the proposed limited approvals and limited disapprovals for the next 30 days.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposed rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. E.O. 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment

rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 20, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–29065 Filed 11–13–00; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 65, No. 220

Tuesday, November 14, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. DA-98-03]

United States Standards for Dry Whey

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This document gives notice of the availability of revisions to the United States Standards for Dry Whey. The changes will: lower the bacterial estimate of not more than 50,000 per gram to not more than 30,000 per gram; incorporate maximum scorched particle content as a requirement for U.S. grade; expand the "Test Methods" section to allow product evaluation using the latest methods included in the Standard Methods for Examination of Dairy Products, in the Official Methods of Analysis of the Association of Official Analytical Chemists, and in standards developed by the International Dairy Federation; reference the Food and Drug Administration's requirements for dry whey; and make editorial changes that would provide consistency with other U.S. grade standards for dairy products.

EFFECTIVE DATE: This notice is effective December 14, 2000.

ADDRESSES: The revised Standards are available from Duane R. Spomer, Chief, Dairy Standardization Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2746, South Building, Stop 0230, P.O. Box 96456, Washington, DC 20090-6456 or at *www.ams.usda.gov/dairy/stand.htm*.

FOR FURTHER INFORMATION CONTACT: Duane R. Spomer, (202) 720-7473.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and will make copies of official standards available upon request. The United States Standards for Dry Whey no longer appear in the Code of Federal Regulations (CFR); however, they are maintained by USDA.

AMS is revising the United States Standards for Dry Whey using the procedures it published in the August 13, 1997, **Federal Register** and that appear in Parts 36 of Title 7 of the CFR.

The notice, which included a request for comments on the proposed changes, was published in the **Federal Register** on June 20, 2000 (65 FR 38235-38239), and a correction to the notice was published in the **Federal Register** on July 17, 2000 (65 FR 44024-44025).

The current United States Standards for Dry Whey have been in effect since October 1, 1990. AMS initiated a review of this standard and discussed possible changes with the dairy industry. The American Dairy Products Institute, a trade association representing the dry whey industry, provided specific suggestions, including a suggestion to lower the maximum bacterial content requirement. AMS proposed other changes to reflect improvements in the quality of dry whey that have occurred since the standards were last revised and to promote greater uniformity and consistency in the application of this standard.

AMS published the notice in the **Federal Register** with an outline of the specific proposed changes and provided a comment period of 60 days, which ended on August 21, 2000.

The American Dairy Products Institute filed a comment supporting the proposed changes. No other comments were received.

AMS discovered a typographical error in the ZIP code for the Association of Official Analytical Chemists. The ZIP code that appears in the "Test Methods" section of the revised standard should read 20877-2417. Accordingly, the notice revising the United States Standards for Dry Whey published in the **Federal Register** at 65 FR 38235-38239 on June 20, 2000, the notice of correction published in the **Federal Register** at 65 FR 44024-44025 on July 17, 2000, and the correction to the ZIP code as made above are incorporated in the revised United States Standards for Dry Whey.

The revised United States Standards for Dry Whey are available either through the above address or by accessing AMS Home Page on the Internet at *www.ams.usda.gov/dairy/stand.htm*.

Authority: 7 U.S.C. 1621-1627.

Dated: November 7, 2000.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 00-29024 Filed 11-13-00; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Agricultural Biotechnology Meeting

AGENCY: Agricultural Research Service, Agriculture.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the Advisory Committee on Agricultural Biotechnology (ACAB).

SUPPLEMENTARY INFORMATION: The third meeting of the ACAB has been scheduled for November 29-30, 2000. The topics to be discussed will include: (1) The USDA's public seed breeding program and plant germplasm repositories; (2) impacts of gene flow from transgenic crops to other plants and current and potential USDA roles in addressing them; and (3) biotechnology budget priorities for FY 2002. There will in addition be several updates on current biotechnology developments, including the Starlink® corn situation, and on ongoing USDA biotechnology-related activities.

Background information regarding the work of the ACAB is available on the USDA web site at *http://www.usda.gov/agencies/biotech/acab.html*. Members of the public who wish to make oral statements should also inform Dr. Schechtman in writing or via E-mail at the indicated addresses at least three business days before the meeting. On November 29, 2000, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration. Written statements may be submitted to the Committee before or after the meeting at the address indicated below.

DATES: The meeting will be held in the Empire Room in the Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008, on November 29-30, 2000. The meeting is scheduled to run from 8:30 am until 6:30 pm on November 29 and 8:30 am until 5:30 pm on November 30. The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720-4074, by fax at (202) 720-3191 or by E-mail at dharmon*@ars.usda.gov* at least 7 days prior to the meeting. Please provide your name, title, business affiliation, address, telephone, and fax number when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue, SW, Washington, DC 20250; Telephone (202) 720-3817; Fax (202) 690-4265; E-mail *mschechtman@ars.usda.gov*.

Dated: November 8, 2000.

Richard M. Parry, Jr.,

Acting Administrator.

[FR Doc. 00-29116 Filed 11-13-00; 8:45 am]

BILLING CODE 3410-03-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request an extension of a currently approved information collection for a regulation used in support of the FSA Farm Loan Program (FLP). This renewal does not involve any revisions to the program rules.

DATES: Comments on this notice must be received on or before January 16, 2001 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Phillip Elder, Senior Loan Officer, USDA, Farm Service Agency, Loan Servicing Division, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20013-0523; Telephone (202) 690-4012; Electronic mail: phillip_elder@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR, Part 1951-S—Farmer Program Account Servicing Policies.

OMB Control Number: 0560-0161.

Expiration Date of Approval: January 31, 2001.

Type of Request: Extension of Currently Approved Information Collection.

Abstract: The regulations describe the policies and procedures the Agency will use in servicing delinquent FLP loans. Servicing of accounts is administered in accordance with the provisions of the Consolidated Farm and Rural Development Act (CONACT), as amended by the Food Security Act of 1985, the Agriculture Credit Act of 1987, the Food, Agriculture, Conservation and Trade Act of 1990, the Agricultural Credit Improvement Act of 1992, and the Federal Agriculture Improvement and Reform Act of 1996. The CONACT establishes notification by the Agency and response by the borrower and actions on the borrower's request. Specifically, it requires a borrower to document that they can meet family living and farm operating expenses and service all debts, including the loans they are proposing be restructured by the Agency. This information collection is submitted by Agency borrowers to FSA and used by Agency officials to consider a financially distressed or delinquent borrower's request for debt restructuring including rescheduling, reamortization, consolidation, deferral, and write down.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 47 minutes per response.

Respondents: Individuals or households, businesses or other for profits and farms.

Estimated Number of Respondents: 12,000.

Estimated Number of Responses per Respondent: 1.73.

Estimated Total Annual Burden on Respondents: 16,000 hours.

The Agency is soliciting comments on the burden of all of the above subparts regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Avenue, SW, STOP 0523, Washington, DC 20250-0523.

Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC, on November 3, 2000.

L.W. Mitchell,

Administrator, Farm Service Agency.

[FR Doc. 00-29053 Filed 11-13-00; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-508-809, A-821-813, A-570-864]

Initiation of Antidumping Duty Investigations: Pure Magnesium From Israel, the Russian Federation, and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigations.

EFFECTIVE DATE: November 14, 2000.

FOR FURTHER INFORMATION CONTACT: Craig Matney or James Nunno at (202) 482-1778 and (202) 482-0783, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

INITIATION OF INVESTIGATIONS:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR Part 351 (April 2000).

The Petitions

On October 17, 2000, the Department received petitions filed in proper form by the Magnesium Corporation of America (Magcorp) and the United Steel Workers of America, Local 8319. On October 26, 2000, the petitioners amended the petitions to include the United Steelworkers of America, Local 482, as co-petitioners. Collectively, these entities are hereinafter referred to as "the petitioners." The Department received information supplementing the petitions throughout the initiation period.

In accordance with section 732(b) of the Act, the petitioners allege that imports of pure magnesium from Israel, the People's Republic of China (PRC), and the Russian Federation (Russia) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

On November 3 and 6, 2000, we received a submission from producers of granular pure magnesium. On November 6, 2000, the petitioners filed a response. The Department has taken these submissions into consideration in making the initiation determination.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate (*see* the following section, below).

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product described in the petitions is pure magnesium in all forms. Based upon our review of petitioners' claims we concur that there is a single domestic like product: pure magnesium, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes. Moreover, because the Department specifically excluded granular magnesium from earlier proceedings covering pure magnesium (*see, e.g., Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094, 6095 (February 20, 1992) *aff'd in Pure and Alloy Magnesium From Canada: Final Affirmative Determination; Rescission of Investigation and Partial Dismissal of Petition*, 57 FR 30939 (July 13, 1992)), we have examined whether conditions in the magnesium industry have changed to an extent that it is now appropriate to include both forms in the proceedings covering Israel and Russia. Based on our review of the information provided in the petitions, we have concluded that conditions have changed and that we should include both granular magnesium and magnesium in ingot form in the same proceeding. See the Memorandum from the team to Richard W. Moreland, Deputy Assistant Secretary, Office of AD/CVD Enforcement, Group I entitled "Like Product and Industry Support Determinations in the Antidumping Duty Investigations of Pure Magnesium from Israel, the People's Republic of China, and the Russian Federation and the Countervailing Duty Investigation of Pure Magnesium from Israel," dated November 6, 2000 ("Like Product/ Industry Support Memo").

Concerning industry support, for all three countries covered by the petitions, the petitioners established industry support by demonstrating that they account for over 25 percent of total production of the domestic like product (*see Antidumping Investigations Initiation Checklist*, dated November 6, 2000 (*Initiation Checklist* and the Like Product/Industry Support Memo)), thereby meeting the first requirement under section 732(c)(4)(A) of the Act. On October 30, 2000, the Department obtained information from another significant producer of pure magnesium indicating that this company is neutral with respect to the petitions (*see* November 2, 2000, memorandum to the file regarding submission of additional domestic production data). Since those parties expressing an opinion support the petitions, the second requirement under section 732(c)(4)(A) of the Act is also met.

Because the petitioners represent less than 50 percent of the domestic industry we have additionally examined industry support as required by section 732(c)(4)(D) of the Act. We find that, based on other information, there is sufficient support for the petition. Specifically, because the vast majority of the industry has officially stated its position for the record as either supportive or neutral, any potential opposition could not represent over 50 percent of the industry that has expressed support or opposition to the petition (*see* the Like Product/Industry Support Memo). Accordingly, we determine that these petitions are filed on behalf of the domestic industry within the meaning of section 732(c)(4)(A) of the Act.

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[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Scope of Investigations

There is an existing antidumping duty order on pure magnesium from the PRC. *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation*, 60 FR 25691 (May 12, 1995).[2]

The scope of these investigations for Israel and the Russian Federation includes imports of pure magnesium products, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes. The scope of the PRC investigation includes all of the foregoing pure magnesium products except pure magnesium that is already covered by the existing order, and classifiable under 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as "pure" magnesium); and (3) products that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to an "ASTM Specification for Magnesium Alloy"[3] (generally referred to as "off-specification pure" magnesium).

The merchandise subject to the Israel and the Russian Federation investigations is classifiable under 8104.11.00, 8104.19.00, and 8104.30.00 of the HTSUS. The merchandise subject to the PRC investigation is classifiable under 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petitions, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. price, constructed value (CV), and factors of production are also discussed in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Regarding the information involving non-market economies (NME), the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issues of a country's NME status and the granting of separate rates to individual exporters. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994).

Israel

Export Price

The petitioners based export price (EP) on the unit values for the period October 1999 through July 2000, as reported in the Bureau of the Census IM–145 data. Because this data represents a FOB foreign-port price, it was not necessary to adjust for U.S. and international movement expenses. Furthermore, the petitioners were not able to quantify foreign market brokerage, handling and inland freight expenses; therefore, they conservatively made no adjustment for such expenses. No other adjustments to the starting price were made to arrive at net U.S. price.

Normal Value

The petitioners claimed that there were no home market sales of pure magnesium in Israel. Based on the data in the petition, however, there is insufficient evidence to conclude that the home market for pure magnesium in Israel is not viable. Because the petitioners were unable to provide home market price information, we have relied on CV for purposes of calculating NV for this initiation. For further discussion, see the *Initiation Checklist* at page 8.

According to the petitioners, there is only one producer of pure magnesium in Israel, Dead Sea Magnesium Ltd. (DSM). Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners calculated CV using the manufacturing costs for pure magnesium shown for DSM in the 1999 financial statements of its parent company, Dead Sea Works Ltd. (DSW). Pursuant to section 773(b)(3) of the Act, the petitioners calculated CV as the sum of the cost of materials and fabrication, plus amounts for home market general expenses (*i.e.*, selling, general and administrative expenses (SG&A) and interest), and packing. We relied on the reported CV amounts except for interest, which we recalculated using cost of sales as the denominator in the interest expense ratio consistent with our normal practice. Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Profit was based upon the 1999 financial statements of DSW. We also made the following circumstance-of-sale adjustments to the data above: (1) Deducted HM imputed credit expenses and HM royalty expenses; and (2) added U.S. imputed credit expenses and U.S. royalty expenses. The Department adjusted the petitioners' calculation of the U.S. imputed credit expense based on the average U.S. prime rate (*see Initiation Checklist* at page 9).

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[2] The antidumping duty order with respect to the Russian Federation was revoked. *See Notice of final results of five-year ("Sunset") review: Revocation of antidumping duty order on pure magnesium from Russia*, 65 FR 41944 (July 7, 2000).

[3] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys*.

Based upon the comparison of EP to CV, the revised calculated estimated dumping margins range from 85.86 to 96.35 percent.

Sales Below Cost Allegation

Based upon the petitioners' claim that no viable Israeli market existed for pure magnesium, the petitioners looked to the largest export market other than the United States for pure magnesium sales. The petitioners determined this market to be Belgium and stated that Belgium would be the appropriate third-country market for NV. The petitioners alleged, however, that there were reasonable grounds to believe or suspect that sales of pure magnesium to Belgium were made at prices below the cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Because we find that the petitioners did not adequately support their claim that the home market in Israel is not viable, however, we have not used this third-country price information for purposes of determining whether there are reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Since we have rejected the use of Belgian prices and the petitioners have stated that there are no Israeli prices for pure magnesium, we have no price data upon which to perform a sales-below-cost analysis. Accordingly, we have not initiated a country-wide cost investigation. For further discussion, see the *Initiation Checklist* at pages 8–9.

The PRC

Export Price

The petitioners based EP on the average unit value for the period April through July 2000, as reported in the Bureau of the Census IM–145 data. The petitioners made no adjustments to the average unit value.

Normal Value

The petitioners allege that the PRC is an NME country, and that in all previous investigations the Department has determined that the PRC is an NME. *See, e.g., Notice of Preliminary Results of Antidumping Duty Administrative Review: Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China*, 65 FR 13944, 13946 (Mar. 15, 2000). In accordance with section 771(18)(c) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. Therefore, the PRC will continue to be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as an NME remains in effect, the petitioners determined the dumping margin using an NME analysis.

The petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to the PRC in terms of per-capita gross national product. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiation of this investigation.

In accordance with 773(c)(4) of the Act, the petitioners valued the factors of production, where possible, on reasonably available, public surrogate country data. Values for calcinate, No. 2 flux, flourite powder, sulfur powder, and barium chloride were based on 1998 Indian import statistics as published by the United Nations. The value for ferrosilicon was based on the average unit value of ferrosilicon reported in the 1999 financial statements of an Indian producer of magnesium metal. Values for dolomite and sulfuric acid were based on the values obtained from the 1995–96 financial statements of a producer of ferro-alloys and *The Financial Express*, respectively. Labor was valued using the Department's regression-based wage rate for the PRC, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using the 1998 rates for India published by the International Energy Agency (IEA) in 1999. Coal was valued using 1998 Indian import statistics as published by the United Nations. All surrogate values that fell outside the anticipated period of investigation (POI), which in the PRC case is April 1, 2000, through September 30, 2000, were adjusted for inflation.

To determine factory overhead, depreciation, selling, general, and administrative (SG&A) expenses, and interest expenses, the petitioners relied on rates derived from the financial statements of the magnesium metal producer noted above. Because these financial statements showed a loss, the petitioners relied on the 1998 financial statements of two Indian producers of aluminum to derive the profit ratio used in their calculations. We, however, have excluded profit from the calculation of normal value. Based on the information provided by the petitioners, we believe that the surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiation of this investigation.

Based upon comparisons of EP to NV, the revised calculated estimated dumping margins range from 161.36 to 305.56 percent.

Russia

Export Price

The petitioners calculated EP using two methodologies. First, the petitioners based EP on their information regarding sales of Russian magnesium. The petitioners calculated a net U.S. price by deducting from this value the cost of transporting the subject merchandise from the plant to St. Petersburg, international freight, U.S. import duties, and an estimated importer markup of five percent. Because we could not ascertain the validity of the above-referenced price of Russian magnesium, we based the export price on alternate information contained in the petition regarding prices of Russian magnesium. We made deductions for foreign inland freight, an importer markup, international freight and handling charges, and U.S. import duties as described above.

The petitioners also based EP on the unit values for the period April through July 2000, as reported in the Bureau of the Census IM–145 data. The petitioners calculated a net U.S. price by deducting from this value the cost of transporting the subject merchandise from the plant to St. Petersburg.

Normal Value

The petitioners assert that Russia is an NME country, and that in all previous investigations, the Department has determined that Russia is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*, 65 FR 42669, 42670–71 (July 11, 2000). Russia will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because Russia's status as an NME remains in effect, the petitioners determined the dumping margin using an NME analysis.

NV was calculated using the same methodology described above for the PRC, except as noted below. Further, South Africa was used as the surrogate country. We believe that South Africa is an appropriate surrogate for purposes of initiating this case with respect to

Russia because South Africa is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to Russia in terms of per-capita gross national product.

Regarding NV, the petitioners valued petroleum coke, magnesium chloride, fluorspar, sulfuric acid, barium chloride, barium fluoride, potassium chloride, and packing materials using South African import statistics as published by the United Nations. The petitioners valued chlorine using a contemporaneous South African price quote. The petitioners deducted from the surrogate values of the two by-products (*i.e.*, chlorine and potassium chloride) an amount for profit based on their own production experience in order to account for additional costs incurred to render these by-products marketable for sale. The petitioners also added to the surrogate value for chlorine an amount for re-vaporization based on the petitioners' production experience. The petitioners valued carnallite using a price quote for dolomite because the petitioners were unable to find a carnallite price quote. Because they were unable to find a surrogate value for dehydrated carnallite, the petitioners estimated the value of dehydrated carnallite as twenty times the value of carnallite. Labor was valued using the methodology described above for the PRC. Electricity was valued using the 2000 electricity rate schedule for large-volume users as published by one of South Africa's largest utility companies. The petitioners valued heavy oil using a 1999 price published by the International Energy Agency. All surrogate values that fell outside the anticipated POI were adjusted for inflation. The petitioners made purity adjustments for certain factors of production based on information from the investigation of pure and alloy magnesium from Russia.

To determine fixed factory overhead, depreciation, SG&A, interest expenses, and profit, the petitioners relied on rates derived for the aluminum operations of two aluminum producers, as reflected on their parent company's financial statement, and a South African zinc producer. Although there are no producers of magnesium in South Africa, the petitioners identified two primary aluminum producers in South Africa. The petitioners used the consolidated financial statement of the South African aluminum producers' parent company because no separate financial statements for the two aluminum producers were available. Because the parent company's financial statements did not separately identify SG&A expenses, the petitioners relied on a zinc producer whose electrolytic process is similar to the magnesium production process. In addition, the petitioners adjusted the factory overhead rate to account for higher electrolytic cell rebuilding costs associated with the production of magnesium. Based on the information provided by the petitioners, we believe that the surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiation of this investigation.

Because we found certain discrepancies with the petitioners' calculations of surrogate values and constructed value, we recalculated margins for both Russian producers using both revised United States price information from the petition and the United States price based on Census Bureau data. *See Initiation Checklist* at pages 14 and 15. Based on comparisons of EP to NV, the calculated estimated dumping margins range from 23.45 to 39.14 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of pure magnesium from Israel, the PRC, and Russia are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise. The petitioners contend that the industry's injured condition is evident in the declining trends in net operating income, net sales volume and value, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence, and meet the statutory requirements for initiation (*see Initiation Checklist*). In accordance with section 771(7)(G)(ii)(IV), which provides an exception to the mandatory cumulation provision for imports from Israel, we have considered the petitioners' allegation of injury with respect to Israel independent of their allegations with respect to the PRC and Russia.

Initiation of Antidumping Investigations

Based upon our examination of the petitions on pure magnesium, we have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of pure magnesium from Israel, the PRC, and Russia are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Israel, the PRC, and Russia. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, no later than December 1, 2000, whether there is a reasonable indication that imports of pure magnesium from Israel, the PRC, and Russia are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigations being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 6, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–29083 Filed 11–13–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–508–605]

Notice of Extension of Time Limit for Countervailing Duty Administrative Review of Industrial Phosphoric Acid From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative review of the countervailing duty order on industrial phosphoric acid from Israel, covering the period January 1, 1998 through December 31, 1998.

EFFECTIVE DATE: November 14, 2000.

FOR FURTHER INFORMATION CONTACT: Sean Carey, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–3964.

SUPPLEMENTARY INFORMATION: Under section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the "Act"), the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 120 days after the date on which the notice of preliminary results was published in the **Federal Register**. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit. *See* Memorandum from Barbara E. Tillman to Joseph A. Spetrini (November 1, 2000). Therefore, pursuant to section 751(a)(3)(A) of the Act, the Department is extending the time limit for the final results to no later than March 5, 2001, which is 180 days after the publication date in the **Federal Register** of the notice of preliminary results for this review. The preliminary results were published in the **Federal Register** on September 6, 2000 (65 FR 53984).

Dated: November 1, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement Group III.

[FR Doc. 00–29081 Filed 11–13–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–508–810]

Notice of Initiation of Countervailing Duty Investigation: Pure Magnesium From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 14, 2000.

FOR FURTHER INFORMATION CONTACT: Marian Wells, Blanche Ziv, or Ryan Langan, Office of CVD/AD Enforcement I, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–6309, (202) 482–4207, or (202) 482–1279, respectively.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

The Petition

On October 17, 2000, the Department of Commerce ("the Department") received a petition filed in proper form by the Magnesium Corporation of America ("Magcorp") and the United Steel Workers of America, Local 8319. On October 26, 2000, the petitioners amended the petition to include the United Steelworkers of America, Local 482, as co-petitioners. (Collectively, these entities are hereinafter referred to as "the petitioners.") The Department received information supplementing the petition throughout the initiation period.

On November 3 and November 6, 2000, we received a submission from producers of granular pure magnesium. On November 6, 2000, petitioners filed a response. The Department has taken these submissions into consideration in making the initiation determination.

In accordance with section 702(b)(1) of the Act, the petitioners allege that manufacturers, producers, or exporters of the subject merchandise from Israel receive countervailable subsidies within the meaning of section 701 of the Act.

The petitioners state that they have standing to file the petition because they are interested parties, as defined under sections 771(9)(C) and (D) of the Act. *See Determination of Industry Support for the Petition* section below.

Scope of the Investigation

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as "pure" magnesium); and (3) products that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to an "ASTM Specification for Magnesium Alloy"[1] (generally referred to as "off-specification pure" magnesium).

The merchandise subject to this investigation is classifiable under 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

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[1] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of Israel ("GOI") for consultations with respect to the petition filed. The Department held consultations with the GOI on October 31, 2000. (*See* the October 31, 2000 memorandum to the File regarding these consultations.)

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether or not "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product described in the petitions is pure magnesium in all forms. Based upon our review of petitioners' claims we concur that there is a single domestic like product: pure magnesium, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes. Moreover, because the Department specifically excluded granular magnesium from earlier proceedings covering pure magnesium (*see Preliminary Determination of Sales at Less than Fair Value; Pure and Alloy Magnesium from Canada*, 57 FR 6094, 6095 (February 20, 1992), which was upheld in the final determination), we have examined whether conditions in the magnesium industry have changed to an extent that it is now appropriate to include both forms in this proceeding. Based on our review of the information provided in the petition, we have concluded that conditions have changed and that we should include both granular magnesium and magnesium in ingot form in the same proceeding. See the Memorandum from the team to Richard W. Moreland, Deputy Assistant Secretary, Office of AD/CVD Enforcement, Group I entitled "Like Product and Industry Support Determinations in the Antidumping Duty Investigations of Pure Magnesium from Israel, the People's Republic of China, and the Russian Federation and the Countervailing Duty Investigation of Pure Magnesium from Israel," dated November 6, 2000 ("Like Product/Industry Support Memo").

Concerning industry support, the petitioners established industry support by demonstrating that they account for over 25 percent of total production of the domestic like product (*see* Initiation Checklist, dated November 6, 2000 (Initiation Checklist) and the Like Product/Industry Support Memo), thereby meeting the first requirement under section 702(c)(4)(A) of the Act. On October 30, 2000, the Department obtained information from another significant producer of pure magnesium indicating that this company is neutral with respect to the petition (see November 2, 2000, memorandum to the file regarding submission of additional domestic production data). Since those parties expressing an opinion support the petition, the second requirement under section 702(c)(4)(A) of the Act is also met.

Because the petitioners represent less than 50 percent of the domestic industry we have additionally examined industry support as required by section 702(c)(4)(D) of the Act. We find that based on other information, there is sufficient support for the petition. Specifically, the vast majority of the industry has officially stated its position for the record, as either supportive or neutral, meaning that any potential opposition could not represent over 50 percent of the industry that has support or opposition to the petition. Accordingly, we determine that the petition is filed on behalf of the domestic industry within the meaning of section 702(c)(4)(A) of the Act. (*See* Like Product/Industry Support Memo.)

Injury Test

Because Israel is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise. The petitioner contends that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence, and meet the statutory requirements for initiation (*see* Initiation Checklist).

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[2] *See Algoma Steel Corp. Ltd., v. United States*, [illegible] 8 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

Initiation of Countervailing Duty Investigation

The Department has examined the countervailing duty petition on pure magnesium from Israel and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of pure magnesium from Israel receive countervailable subsidies. *See* Initiation Checklist.

Privatization

According to the information in the petition and presented at consultations, one of the parent companies of the Israeli manufacturer of magnesium, Dead Sea Magnesium ("DSM"), was almost entirely privatized as of 1998. Since some of the alleged subsidies were provided prior to that date, the Department intends to examine whether those subsidies continue to benefit the privatized company, in light of the Court of Appeals for the Federal Circuit's ruling in *Delverde, SRL* v. *United States*, 202 F.3d 1360 (Fed. Cir. 2000).

Creditworthiness

The petitioners allege DSM was uncreditworthy from its inception through the end of the POI. This allegation was supported by financial ratios for DSM and its parent company. We will investigate DSM's creditworthiness in years in which we find that government equity infusions, loans or loan guarantees were provided.

Programs

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Israel:

1. Encouragement of Capital Investments Law ("ECIL") Grants.
2. Reduced Tax Rates under ECIL.
3. ECIL Preferential Accelerated Depreciation.
4. Encouragement of Research and Development Law ("EIRD") Grants.
5. The Infrastructure Grant Program.

We are not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in Israel: Subsidies under the Magnesium Research Institute and the Consortium Research Programs.

The petitioners allege that the Magnesium Research Institute ("MRI") and the Consortium Research programs should be investigated by the Department to determine whether the Israeli government is conferring countervailable subsidies as a result of the involvement of public universities in these programs. The petitioners support their allegation with documentation from DSM's web page concerning research. The petitioners explain that one of the Israeli Ministry of Industry and Trade's major goals is to transition from capital investment grants to alternative forms of aid, including research and development grants. Petitioners request that the Department initiate an investigation to determine whether the Israeli government is conferring countervailable subsidies by mean of the academic involvement in these programs.

The petitioners have not provided sufficient evidence regarding the nature of the financial contribution or the benefits conferred on DSW/DSM. Accordingly, we are not including this program in our investigation.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to the GOI. We will attempt to provide copies of the public version of the petition to all the exporters named in the petition, as provided for under section 351.203(c)(2) of the Department's regulations.

ITC Notification

Pursuant to section 702(d) of the Act, we will notify the ITC of this initiation.

Preliminary Determination by the ITC

The ITC will determine by December 1, 2000, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of pure magnesium from Israel. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: November 6, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–29080 Filed 11–13–00; 8:45 am]

BILLING CODE 3510–DS–P

THE COMMISSION OF FINE ARTS

2001 National Capital Arts and Cultural Affairs Program

Notice is hereby given that Public Law 99–190, as amended, authorizing the National Capital Arts and Cultural Affairs Program, has been funded for 2001 in the amount of $7,000,000.00. All requests for information and applications for grants should be received by December 31, 2000 and addressed to: Charles H. Atherton, Secretary, Commission of Fine Arts, National Building Museum, Suite 312, 441 F Street, NW., Washington, DC 20001. Phone: 202–504–2200.

Deadline for receipt of grant applications is March 1, 2001.

This program provides grants for general operating support of organizations whose primary purpose is performing exhibiting, and/or presenting the arts. To be eligible for a grant, organizations must be located in the District of Columbia, must be non-profit, non-academic institutions of demonstrated national repute, and must have annual incomes, exclusive of federal funds, in excess of one million dollars for each of the past three years.

Charles H. Atherton,

Secretary.

[FR Doc. 00–29076 Filed 11–13–00; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Patents for Exclusive, Partially Exclusive or Nonexclusive Licenses

AGENCY: U.S. Army Soldier and Biological Chemical Command, U.S. Army, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patents that are listed in the **SUPPLEMENTARY INFORMATION** paragraph. Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or E-mail: Robert.Rosenkrans@natick.army.mil .

SUPPLEMENTARY INFORMATION: The following Patent Numbers, title and issue dates are provided:

Patent Number: 5,538,583.

Title: Method of Manufacturing a Laminated Textile Substrate for a Body Heating or Cooling Garment.

Issue Date: July 23, 1996.

Patent Number: 5,320,164.

Title: Body Heating or Cooling Garment.

Issue Date: June 14, 1994.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–29085 Filed 11–13–00; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Patents for Exclusive, Partially Exclusive or Nonexclusive Licenses

AGENCY: U.S. Army Soldier and Biological Chemical Command, U.S. Army, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following Australia patent that is listed in the **SUPPLEMENTARY INFORMATION** paragraph. Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or E-mail: Robert.Rosenkrans@natick.army.mil .

SUPPLEMENTARY INFORMATION: The following Australia Patent Number, title and issue date is provided:

Australia Patent Number: 720323.

Title: Load Securing and Releasing System.

Issue Date: May 25, 2000.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–29086 Filed 11–13–00; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Draft Supplement II to the Final EIS for the Proposed New Water Supply Reservoir Located in Williamson and Johnson Counties, for the City of Marion, IL

AGENCY: U.S. Army Corps of Engineers, Louisville District, DoD.

ACTION: Notice of availability.

SUMMARY: The City of Marion Illinois, has previously applied to the U.S. Army Corps of Engineers (Corps), Louisville District for a Department of the Army permit pursuant to Section 404 of the Clean Water Act for placement of material in Sugar Creek, Williamson County, as part of the construction of a new municipal water supply reservoir.

DATES: Written comments received by January 14, 2001, will be considered by the Corps in decision making for the Final Supplement II to the Final EIS.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Draft Supplement II to the Final EIS may be directed to Mr. Ronny J. Sadri, Project Manager, Regulatory Branch, U.S. Army Corps of Engineers, Louisville District, P.O. Box 59, Louisville, KY 40201–0059, ATTN: CELRL–OP–FN, (502) 315–6681.

SUPPLEMENTARY INFORMATION: The proposed action by the City of Marion is a new 1,172-acre water supply reservoir located in Williamson and Johnson Counties, Illinois, near the community of Creal Springs. The Lake of Egypt Water District has an agreement in principle with the City of Marion to purchase water if a new lake on Sugar Creek is built. Two pipelines would be constructed for transport of water for treatment.

As part of the Corps review process, this Draft Supplement II to the Final Environmental Impact Statement (EIS) has been prepared. The Louisville District prepared a Draft EIS and released it to the public for comment in October 1994. A public hearing was held in December 1994. A Final EIS was prepared and released to the public for comment in July 1995. A Draft Supplement I was prepared and released to the public for comment in May 1996.

This Draft Supplement II to the Final EIS examines single source options as well as combinations of separate alternatives to satisfy current and future water needs of Marion and the Lake of Egypt Water District as separate entities. This Draft Supplement II incorporates the Draft and Final EIS and the Draft and Final Supplement I by reference.

Gary J. Gumm,

LTC, Corps of Engineers, Deputy Commander.

[FR Doc. 00–29084 Filed 11–13–00; 8:45 am]

BILLING CODE 3710–JB–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

TIME AND DATE OF MEETING: 6:30 p.m., November 30, 2000.

PLACE: The Conference Center, 215 The Alley, Aiken, South Carolina 29801.

STATUS: Open. While the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interest underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: The Board is visiting the Savannah River Site (SRS) as part of its oversight of the Department of Energy's (DOE) management and operation of defense nuclear facilities. The site visit will include discussions of tritium activities at Defense Programs facilities as well as nuclear material stabilization activities at Environmental Management facilities.

The Board wishes also to avail itself of the opportunity of this visit to meet with members of the public and other interested persons. This public meeting is intended to be informal and to provide an opportunity for members of the public, DOE employees, and DOE's contractor employees to provide comments and information directly to the Board regarding any matter affecting health and safety at SRS. Specific matters of particular interest to the Board during this visit include:

1. Utilization of F- and H-Canyon Facilities.
2. Stabilization, Packaging and Storage of Plutonium-bearing Materials.
3. Stabilization of Highly Enriched Uranium Solutions.
4. High Level Waste Management; Including Selection of an Alternative Salt Processing Technology.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

Dated: November 9, 2000.

John T. Conway,

Chairman.

[FR Doc. 00–29228 Filed 11–9–00; 12:47 pm]

BILLING CODE 3670–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84.116M]

Fund for the Improvement of Postsecondary Education—Special Focus Competition (Invitational Priority: Institutional Cooperation and Student Mobility in Postsecondary Education Between the United States and Brazil); Notice Inviting Application for New Awards for Fiscal Year (FY) 2001.

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Eligible Applicants: Institutions of higher education or combinations of institutions and other public and private nonprofit institutions and agencies.

Deadline for Transmittal of Applications: March 30, 2001.

Deadline for Intergovernmental Review: May 29, 2001.

Applications Available: November 17, 2000.

Available Funds: $300,000 for FY 2001. The estimated amount of funds available for awards is based on the Administration's request for this program for FY 2001. The actual level of funding, if any, is contingent upon final congressional action.

Estimated Range of Awards: $25,000–$30,000 for FY 2001; $190,000–$210,000 for four-year duration of grant.

Estimated Average Size of Awards: $30,000 for FY 2001; $200,000 for four-year duration of grant.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: This program is a Special Focus Competition to support projects addressing a particular problem area or improvement approach in postsecondary education. The competition also includes an invitational priority to encourage proposals designed to support the formation of educational consortia of American and Brazilian institutions to encourage cooperation in the coordination of curricula, the exchange of students and the opening of educational opportunities between the United States and Brazil. The invitational priority is issued in cooperation with Brazil. Brazilian institutions participating in any consortium proposal responding to the invitational priority may apply, respectively, to the Coordination of Improvement of Personnel of Superior Level (CAPES), Brazilian Ministry of Education for additional funding under a separate but parallel Brazilian competition.

Priority

Invitational Priority

We are particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority: Projects that support consortia of institutions of higher education that promote institutional cooperation and student mobility between the United States and Brazil.

Methods for Applying Selection Criteria

The Secretary gives equal weight to the listed criteria. Within each of the criteria, the Secretary gives equal weight to each of the factors.

Selection Criteria: In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 75.210.

(1) The significance of the proposed project, as determined by—

(a) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies;

(b) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used in a variety of other settings; and

(c) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(2) The quality of the design of the proposed project, as determined by—

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable; and

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(3) The adequacy of resources, as determined by—

(a) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project;

(b) The potential for continued support of the project after FIPSE/CAPES funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support; and

(c) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(4) The quality of the project personnel, as determined by—

(a) The qualifications, including training and experience, of key project personnel; and

(b) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

For Applications Contact: U.S. Department of Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827, fax 301–470–1244, e-mail: edpubs@inet.ed.gov

You may also contact EDPubs at its website: http://www.ed.gov/pubs/edpubs.html.

If you request an application from EDPubs, be sure to identify the US-Brazil Competition as CFDA number 84.116M.

FOR FURTHER INFORMATION CONTACT: Copies of the application materials may also be obtained from the Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, NW., 8th Floor, Washington, D.C. 20006–8544, telephone 202–502–7500. For additional program information call Cindy Fisher at the FIPSE office (202–502–7500) between the hours of 8 a.m. and 5 p.m., Eastern Time, Monday through Friday. You may also request application guidelines by submitting the name of the competition (US-Brazil) and your name and postal address to fipse@ed.gov (e-mail). Applications are also available on the FIPSE website at the following site: http://www.ed.gov/offices/OPE/FIPSE/Brazil/

Individuals who use a telecommunications device for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 1138–1138d.

Dated: November 7, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–290[illegible]7 Filed 11–13–00; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 91–51–NG, 00–65–NG, 00–68–NG, 00–64–NG, 00–73–NG, 00–63–NG, 00–66–NG, 99–89–NG, 99–96–LNG, 00–69–LNG, 99–22–NG, 99–12–NG, 00–72–NG, 00–78–NG, 00–75–NG, 00–71–NG, 00–81–NG]

Fina Natural Gas Company, et al.; Orders Granting and Amending Authority To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during October 2000, it issued Orders granting and amending authority to import and export natural gas. These Orders are summarized in the attached appendix and may be found on the FE website at http://www.fe.doe.gov, or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on November 7, 2000.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

Appendix—Orders Granting and Transferring Import/Export Authorizations

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
563–A	10/02/00	Fina Natural Gas Company, 91–51–NG			Amendment to blanket import and export authority to include the import of LNG from any international source.
1627	10/02/00	Pioneer Natural Resources Canada Inc., 00–65–NG.	76.8 Bcf		Import from Canada, beginning on October 30, 2000, and extending through October 29, 2002.
1628	10/05/00	Coastal Oil & Gas Corporation, 00–68–NG	300 Bcf		Import and export combined total, including LNG, from and to Canada, beginning on November 1, 2000, and extending through October 31, 2002.
1629	10/05/00	Montána-Dakota Utilities Co., a Division of MDU Resources Group, Inc., 00–64–NG.	10 Bcf		Import from Canada, beginning on December 1, 2000, and extending through November 30, 2002.
1630	10/16/00	Numac Energy (U.S.) Inc., 00–73–NG	50 Bcf		Import from Canada, beginning on October 15, 2000, and extending through October 14, 2002.
1631	10/18/00	WPS Energy Services, Inc., 00–63–NG	25 Bcf	5 Bcf	Import and export from and to Canada beginning on November 1, 2000, and extending through October 31, 2002.
1632	10/18/00	Rochester Gas and Electric Corporation, 00–66–NG.	30 Bcf		Import from Canada beginning on December 1, 2000, and extending through November 30, 2002.
1540–A	10/19/00	BP Energy Company (Formerly Amoco Energy Trading Corp.), 99–89–NG.			Name change.
1542–A	10/19/00	BP Energy Company (Formerly Amoco Energy Trading Corp.), 99–96–LNG.			Name change.
1633	10/19/00	Duke Energy Trading and Marketing, L.L.C., 00–69–LNG.	200 Bcf		Import and export an aggregate from and to Canada and Mexico, including LNG, and import LNG from other countries beginning on October 31, 2000, and extending through October 30, 2002.
1474–B	10/24/00	Cascade Natural Gas Corporation, 99–22–NG.			Amendment extending long-term authority for one year.

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1464–A	10/24/00	Powerex Corp., 99–12–NG			Name change.
1634	10/24/00	The Montana Power Company, 00–72–NG		4 Bcf	Export to Canada beginning on November 1, 2000, and extending through October 31, 2002.
1635	10/25/00	Prairielands Energy Marketing, Inc., 00–78–NG.	25 Bcf	25 Bcf	Import and export from and to Canada beginning on June 1, 2000, and extending through May 31, 2002.
1636	10/26/00	Equitable Energy, L.L.C., 00–75–NG	100 Bcf	100 Bcf	Import combined total from Canada and Mexico, and export combined total to Canada and Mexico, beginning on December 1, 2000, and extending through November 30, 2002.
1637	10/27/00	The Consumers' Gas Company Ltd., 00–71–NG.	100 Bcf		Import from Canada beginning on the date of first delivery after October 27, 2000.
1638	10/30/00	TransCanada Gas Services Inc., 00–81–NG	700 Bcf	300 Bcf	Import from Canada, and export combined total to Canada and Mexico, beginning on November 1, 2000, and extending through October 31, 2002.

[FR Doc. 00–29069 Filed 11–13–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–042, North Carolina]

Alcoa Power Generating, Inc.; Notice Extending Public Comment Period for Non-Project Use of Project Lands Application

November 7, 2000.

On August 1, 2000, Alcoa Power Generating, Inc. (Alcoa) filed a non-project use of project lands application for Commission approval. In its application, Alcoa proposes to grant a permit to KEJ Marketing Co., Inc., for the construction of four boat docks with a total of 48 boat slips and one boat launch ramp on Narrows Reservoir, part of the Yadkin Hydroelectric Project. Alcoa proposes to grant a second permit to Heron Bay Homeowners Association for the use and operation of the above facilities. The above facilities would not be open to the public; they would be for Heron Bay residents only. The Yadkin Project contains the following reservoirs: High Rock, Tuckertown, Narrows (Badin) and Falls.

On October 2, 2000, Commission staff issued a public notice for the above application soliciting comments, recommendations for terms and conditions, protests, and motions to intervene by November 13, 2000. On November 3, 2000, the North Carolina Wildlife Resources Commission (NCWRC) filed a request for an additional weeks to provide comments. Upon consideration, the comment closing date for all interested entities to file comments, recommendations for terms and conditions, protests, and motions to intervene is extended to and including November 27, 2000.

Anyone may file comments, recommendations for terms and conditions, protests, and motions to intervene on the application. The public, federal and state resource agencies are encouraged to provide comments. Send an original and eight copies of all comments marked with the project number P–2197–042 to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. If you have any questions regarding this notice, please call Steve Hocking at (202) 219–2656. Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–29019 Filed 11–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–447–000]

Distrigas of Massachusetts LLC; Notice of Site Visit

November 7, 2000.

On November 14, 2000, staff from the Office of Energy Projects (OEP) will conduct a pre-certification site visit of the proposed High Pressure Expansion Project at Distrigas of Massachusetts LLC's (DOMAC) existing liquefied natural gas storage facility in Everett, Massachusetts. Representatives of DOMAC will accompany the OEP staff.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. For further information on attending the site visit, please contact the Commission's Office of External Affairs at (202) 208–0004.

David P. Boergers,

Secretary.

[FR Doc. 00–29017 Filed 11–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–000, EL00–98–000, EL00–107–000, ER00–3461–000, ER00–3673–000.

San Diego Gas & Electric Company, Complaint, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Public Meeting in San Diego, California; California Power Exchange Corporation; California Independent System Operator Corporation; Notice of Public conference

November 7, 2000.

Notice is hereby given that, on November 14, 2000, the Federal Energy Regulatory Commission will convene a public conference before the Chairman and Commission staff in San Diego. This conference supplements the Commission's November 9, 2000 conference, and it is being held primarily to accord an opportunity to citizens of San Diego, and others who are unable to attend the November 9, 2000, meeting, to address the impacts on ratepayers of the Commission's proposed remedies for California wholesale electric markets, as set forth in the Commission's order dated November 1, 2000. The conference will commence at 8 a.m. and close at 12 noon. All interested persons may attend the conference.

Persons wishing to speak at the conference must submit a request to make a statement in the above-captioned dockets. The request should be submitted by e-mail to David Boergers at *david.boergers@ferc.fed.us* (include Docket No. EL00–95–000 in the subject heading of the e-mail), and should be followed up, at the same time, with a letter to the Secretary of the Commission. The request should clearly specify the name of the person desiring to speak, his or her title and affiliation, and the party or parties the speaker represents. In addition, the request should include a telephone number for notifying the speaker. The request should also include a brief summary of the issue or issues the speaker wishes to address, not to exceed one page. All e-mail requests must be submitted on or before November 9, 2000.

The number of persons desiring to speak at the conference may exceed the time available. Thus, interested persons are encouraged to join with other persons with similar interests. Based on the requests to participate, panels of speakers will be specified. The Secretary will issue a notice listing the speakers and panels for the conference.

In addition, all interested persons are invited to submit written comments on matters addressed at the conference. These comments should be submitted on or before November 22, 2000, in the above-captioned proceedings. All comments will be placed in the Commission's public files and will be available for inspection or copying in the Commission's Public Reference Room during normal business hours. Comments are also accessible via the Commission's Records Information Management System (RIMS).

The conference will be transcribed. Information about obtaining transcripts will be provided on the Commission's website, www.ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 00–29018 Filed 11–13–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6901–7]

Clean Air Act Advisory Committee; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The charter for the Environmental Protection Agency's Clean Air Act Advisory Committee (CAAAC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App § 9(c). The purpose of CAAAC is to provide advice and recommendations to the Administrator of EPA on issues associated with policy and technical issues associated with implementation of the Clean Air Act.

It is determined that CAAAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Paul Rasmussen, CAAAC Designated Federal Officer, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 (Mail code 6102A).

Dated: October 31, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–29062 Filed 11–13–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6901–9]

Notice of Availability for Draft Guidance Document on "Guidance for the Submission of State/Local/Tribal Rules in Place of Section 112 Requirements"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The EPA is making available for public review and comment a preliminary draft of its pending guidance on delegation of Federal section 112 hazardous air pollutant (HAP) requirements to State, Local, and Tribal Air Pollution Control Agencies (S/L/T). The guidance also includes information on the substitution of Federal section 112 requirements with S/L/T requirements. Under section 112(l) of the Clean Air Act, the EPA is authorized to approve alternative S/L/T HAP standards or programs when such requirements are demonstrated to be no less stringent than EPA's rules or requirements.

On August 30, 2000, the EPA revised the 40 CFR part 63, subpart E "Approval of State Programs and Delegation of Federal Authorities" to address concerns of S/L/T regarding flexibility and burdensome requirements. The changes will help S/L/T preserve the integrity of their existing HAP programs by offering a range of options for demonstrating equivalence with corresponding Federal requirements and expediting the approval process.

DATES: The comment period on the draft guidance will close on December 14, 2000.

ADDRESSES: Comments should be sent to Pamela J. Smith, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone 919–541–0641, telefax 919–541–5509 or E-mail *Smith.pam@epa.gov.*

FOR FURTHER INFORMATION CONTACT: For more information, please contact Thomas A. Driscoll, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone 919–541–5135, telefax 919–541–5509 or E-mail *driscoll.tom@epa.gov.*

SUPPLEMENTARY INFORMATION: A draft of EPA's guidance is available at *http://www.epa.gov/ttn/uatw/112(l)/112–lpg.html* for public review and comment. The EPA does not intend to respond to individual comments, but rather to consider comments and information from the public in the preparation of a final guidance document.

Dated: October 19, 2000.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 00–29063 Filed 11–13–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6900–4]

Notice of Availability of Draft Reference Dose Document for Methylmercury

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft reference dose document for methylmercury.

SUMMARY: Section 304(a)(1) of the Clean Water Act requires the Environmental Protection Agency to develop and publish, and from time to time revise, criteria for water to accurately reflect the latest scientific knowledge. EPA is revising its reference dose in support of a revised ambient water quality criterion for methylmercury. Today, EPA is notifying the public of the availability of the draft reference dose document and is also announcing that the draft document is ready for external scientific peer review.

EPA is notifying the public about the availability of this draft document and its peer review in accordance with the Agency's new process for developing or revising criteria (63 FR 68354, December 10, 1998). As indicated in the December 10, 1998 **Federal Register** document, the Agency believes it is important to provide the public with an opportunity to submit scientific information on draft criteria. EPA is soliciting views from the public on issues of science pertaining to the information used in deriving the draft reference dose.

DATES: All significant scientific information must be submitted to the Agency under docket number W–00–29. All submissions of significant scientific information are requested to be submitted on or before December 14, 2000. Information submitted after this date may not receive the degree of consideration of information submitted earlier. The Administrative Record supporting this draft reference dose document is available at the Water Docket, Room EB–57, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 on Monday through Friday, excluding Federal holidays, between 9 a.m. and 4 p.m. For access to docket materials call (202) 260–3027 for an appointment. A reasonable fee will be charged for photocopies.

ADDRESSES: Send an original and three copies of any written significant scientific information to W–00–15 Comment Clerk, Water Docket, Ariel Rios 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may be hand-delivered to the Water Docket, Room EB57, 401 M Street, SW., Washington, DC 20460. Issues may also be submitted electronically to *OW-Docket@epa.gov*. Information should be submitted as a WP5.1, 6.1 and/or 8.0 or an ASCII file with no form of encryption.

Copies of the draft reference dose document entitled, Reference Dose for Methylmercury, may be obtained from EPA's Water Resource Center by phone at (202) 260–7786, or by e-mail to *center.water-resource@epa.gov* or by conventional mail to EPA Water Resource Center, RC–4100, 401 M Street SW., Washington, DC 20460. Alternatively, consult *www.epa.gov/ost/criteria/methylmercury/* for download availability.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Manibusan, Health and Ecological Criteria Division (4304), US EPA, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460; (202) 260–3688; *manibusan.mary@epa.gov*

SUPPLEMENTARY INFORMATION:

What Is a Reference Dose?

The reference dose is defined as an estimate, with uncertainty spanning perhaps one order of magnitude, of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable level of risk of deleterious effects during a lifetime. The RfD is useful as a reference point from which to gauge the potential effects of the chemical at other doses. Usually, doses less than the RfD are not likely to be associated with adverse health risks and are, therefore, less likely to be of regulatory concern. As the frequency and/or magnitude of the exposures exceeding the RfD increase, the probability of adverse effects in a human population increases. However, it should not be categorically concluded that all doses below the RfD are "acceptable" or risk-free and that all doses in excess of the RfD are "unacceptable" or will result in adverse effects.

Why Is EPA Notifying the Public About the Draft Reference Dose Document and Peer Review?

Today, in order to expand the public's involvement in the criteria development process, EPA is notifying the public about the availability of the draft reference dose document for methylmercury and its peer review.

In following the Agency's new process, EPA notified the public of its intentions to revise the ambient water quality criteria in the **Federal Register** on October 12, 2000 (65 FR 60664). At that time EPA made available to the public a list of all references identified by a recent literature review and solicited any additional pertinent data or scientific views that would be useful in revising the ambient water quality criteria. EPA is revising the ambient water quality criteria for methylmercury based on new data and new analyses. The draft reference dose document to support the ambient water quality criterion is ready for external scientific peer review.

As indicated in the December 10, 1998 **Federal Register** document, the Agency believes it is important to provide the public with an opportunity to submit scientific information on draft criteria. EPA is soliciting views from the public on issues of science pertaining to the information used in deriving the draft reference dose. EPA will review and consider significant scientific information submitted by the public that might not have otherwise been identified during development of this criterion.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 00–29061 Filed 11–13–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Firstar Corporation*, Milwaukee, Wisconsin; to merge with U.S. Bancorp, Minneapolis, Minnesota; and thereby indirectly acquire U.S. Bank National Association, Minneapolis, Minnesota; U.S. Bank National Association ND, Fargo, North Dakota; U.S. Bank National Association MT, Billings, Montana; and U.S. Bank National Association OR, Canby, Oregon.

In connection with this transaction, Applicant and U.S. Bancorp also have granted cross–options to purchase up to 19.9 percent of the outstanding shares of each other's common stock. These options would expire on consummation of the merger. Firstar Corporation's subsidiary banks are Firstar Bank, National Association, Cincinnati, Ohio; Firstar Bank, National Association, Overland Park, Overland Park, Kansas; and Firstar Bank U.S.A., National Association, Waukegan, Illinois.

Board of Governors of the Federal Reserve System, November 7, 2000.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 00–29014 Filed 11–13–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting Notice

TIME AND DATE: 10:00 a.m., Friday, November 17, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 9, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–29229 Filed 11–9–00; 12:47 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—09/18/2000			
20004705	August Capital III, L.P.	Seagate Technology, Inc	Seagate Technology, Inc.
20004778	Genlyte Group Inc. (The)	Chloride Group PLC	Chloride Power Electronics, Inc.
20004843	Pegusus Partners II, L.P	Paperloop.com, Inc	Paperloop.com, Inc
20004844	United News & Media plc	Paperloop.com, Inc	Paperloop.com, Inc.
20004871	TNT Post Group N.V	CSX Corporation	CTI Logistix, Inc.
20004896	Steven M. Scott, M.C	HIP Foundation, Inc	HIP Health Plan of Florida, Inc., HIP Insurance Company of Florida, Inc.
20004900	The Cirrus Trust	Robert L. Brown	Employee Management Services II, Inc., Employee Management Services III, Inc., Robert Lee Brown, Inc.
20004905	Gerald W. Schwartz	LBI Holdings, Inc	LBI Holdings, Inc.
Transactions Granted Early Termination—09/19/2000			
20004847	Whitehall Street Real Estate Fund XIII, L.P.	ixPedite Communications, Inc	ixPedite Communications, Inc.
20004851	Apollo Investment Fund IV, L.P	Horizon Telecom, Inc	Horizon PCS, Inc.
20004858	Adobe Systems Incorporated	Hewlett-Packard Company	Glassbook, Inc.
20004862	Caraustar Industries, Inc	Crane Carton Company LLC	Crane Carton Company LLC
20004865	Paxton Media Group, Inc	John W. Troutt, Jr	Troutt Brothers, Inc.
20004866	Ford Motor Company	Alfa, S.V. de C.V	Tenedora Nemak S.A. de C.V.
20004872	Dover Corporation	Sangyup Steve Lee	National Cooler Corporation.
20004878	Sara Lee Corporation	Host Apparel, Inc	Host Apparel, Inc
20004887	Copart, Inc	Charles H. Powers	Charles H. Powers

Trans #	Acquiring	Acquired	Entities
20004888	DLJ Merchant Banking Partners III, L.P.	Hellman & Friedman Capital Partners III, L.P.	Advanstar, Inc.
20004895	Foreset Laboratories, Inc	Luca & Lucio Rovati	Rotta Research Laboratorium.
20004898	Ohio Farmers Insurance Company	Old Guard Group, Inc	Old Guard Group, Inc.
20004899	Clear Channel Communications, Inc	Cumulus Media, Inc	Cumulus Media, Inc.
20004901	Donald B. Marron	UBS AG	UBS AG.
20004904	Joseph J. Grano, Jr	UBS AG	UBS AG.
20004958	Bain Capital Fund VII, L.P	Westpoint Stevens, Inc	Westpoint Stevens, Inc.

Transactions Granted Early Termination—09/20/2000

Trans #	Acquiring	Acquired	Entities
20004706	Halliburton Company	Petroleum Place, Inc	Petroleum Place, Inc.
20004736	CFW Communications Company	R&B Communications Inc	R&B Communications Inc.
20004758	Centennial Fund IV, L.P	Grande Communications, Inc	Grande Communications, Inc.
20004798	Adelphia Communications Corporation.	Andre' Chagnon	OpTel Inc. (debtor-in-possession), Richey Pacific Cable Partners V, L.P. (debtor-in-possession), Richey Pacific Cablevision, Inc. (debtor-in-possession), Transmission Holdings, Inc. (debtor-in-possession), TVMAX Telecommunications, Inc. (debtor-in-possession).
20004810	Horry Telephone Cooperative, Inc	BellSouth Corporation	BellSouth Carolinas PCS, L.L.C. BellSouth Carolinas PCS, L.P.
20004873	Dover Corporation	Chun Suk Lee	National Cooler Corporation.
20004906	Cascades, Inc	James A. Wyant	Wyant Corporation.
20004908	SCF–VI, L.P	Q Services, Inc	Q Services, Inc.
20004909	American Power Conversion Corporation.	Marduk Holding Corporation	Marduk Holding Corporation.
20004915	Tysssen Krupp AG	Siemans AG	Advanced Turbine Components, Inc.
20004919	Kjell Inge Rokke	Kjell Inge Rokke	Aker Gulf Marine.
20004924	Palladium Equity Partners II, L.P	Whitehall Associates, L.P	WFI, Inc
20004925	Premier Construction Products Statutory Trust.	Republic Group Incorporated	Republic Group Incorporated.
20004926	Lehman Brothers Holdings, Inc	Abraham D. Gosman	CCC of New Jersey, Inc.

Transactions Granted Early Termination—09/21/2000

Trans #	Acquiring	Acquired	Entities
20004683	Courier Corporation	Blanche Cirker and the Estate of Hayward Cirker.	Dover Book Store, Inc., Dover Publications, Inc., Transfolio Express, Inc.
20004775	Flextronics Internatoinal Ltd	Siemens AG	Siemens Information and Communication Mobile, LLC.
20004801	F.S. Equity Partners IV, L.P	Sur La Table, Inc	Sur La Table, Inc.
20004897	The Liberty Corporation	The Henry/Melton Voting Trust	Civic Communications Corporation II.
20004918	Thyssen Krupp AG	Mr. Alex Sobel	Serge Elevator Co., Inc.
20004925	Bain Capital Fund VI, L.P	Michael D. McCreary	St. Louis T's, Inc.
20004930	E.D. & F. Man Group Plc	Frank C. Meyer	Glenwood Capital Investments, LLC, Glenwood Global Management LLC, Glenwood Holdings, LLC.
20004931	Gerald W. Schwartz	Bostrom plc	Bostrom plc.
20004933	Michael L. Foster	JDS Uniphase Corporation	JDS Uniphase Corporation.
20004955	Franz Haniel & Cie, GmbH	Bridgeway Construction Company	Bridgeway Construction Company.

Transactions Granted Early Termination—09/22/2000

Trans #	Acquiring	Acquired	Entities
20004699	Newell Rubbermaid Inc.	The Gillette Company	Fountain Holdings Limited, Parker Pen Products, The Gillette Company, Waterman SA.
20004934	Donald R. Scifres	JDS Uniphase Corporation	JDS Uniphase Corporation.
20004935	David F. Welch	JDS Uniphase Corporation	JDS Uniphase Corporation.
20004936	MediaNews Group, Inc.	Gannett Co., Inc	California Newspapers, Inc., Media West-CNI, Inc.
20004937	iXL Enterprises, Inc	CyberStarts, Inc	CyberStarts, Inc.
20004945	Quantum Industrial Holdings, Ltd	Silicon Access Networks, Inc	Silicon Access Networks, Inc.

Transactions Granted Early Termination—09/25/2000

Trans #	Acquiring	Acquired	Entities
20004946	Boise Cascade Corporation	IdentityNow, Inc	IdentityNow, Inc.
20004947	Jupiter Partners LP	IndentityNow, Inc	IndentityNow, Inc.
20004970	Softbank Corp	Odimo Incorporated	Odimo Incorporated.
20004980	The Chase Manhattan	First Tennessee National Corporation.	First Tennessee Bank National Association.
20005038	MBNA Corporation	First Financial Credit Union	First Financial Credit Union.

Transactions Granted Early Termination—09/26/2000

Trans #	Acquiring	Acquired	Entities
20003184	BASF Aktiengesellschaft	Basell N.V	Basell N.V.
20003185	N.V. Koninklijke Nederlandshe Petroleum Maatschappij.	Basell N.V	Basell N.V.
20004398	Cap Gemini S.A	Corio, Inc	Corio, Inc.
20004485	J.R. Simplot Company	Nestle' S.A.	Nestle' USA, Inc.
20004777	ING Groep N.V	Aetna Inc	Aetna Inc. (Financial Services and International Businesses).
20004783	Medicis Pharmaceutical Corporation	Corixa Corporation	Corixa Corporation.
20004813	Pacific Partners, LLC	Del Webb Corporation	Del Webb Corporation.
20004850	GS Capital Partners 2000, L.P	ixPedite Communications, Inc	ixPedite Communications, Inc.
20004863	Nextel Partners, Inc	Nextel Communications, Inc	Nextel Communications, Inc.
20004864	Nextel Communications, Inc	Nextel Partners, Inc	Nextel Partners, Inc.
20004868	Clear Channel Communications, Inc.	Randall T. Odeneal	Mississippi Valley Broadcasting, Inc.
20004869	Clear Channel Communications, Inc.	Scott R. McQueen	Mississippi Valley Broadcasting, Inc.
20004891	Efficient Networks, Inc	Barry McConachie	MultiMedia Development Corporation.
20004892	Barry McConachie	Efficient Networks, Inc	Efficient Networks, Inc.
20004893	Duane Schrodt	Efficient Networks, Inc	Efficient Networks, Inc.
20004894	Efficient Networks, Inc	Duane Schroft	MultiMedia Development Corporation.
20004907	Electronic Data Systems Corporation	Engineering Animation, Inc	Engineering Animation, Inc.
20004914	TCV III (Q), L.P	YOUcentric, Inc	YOUcentric, Inc.
20004923	Fiserv, Inc	Agio Capital Partners I, L.P	National Flood Services, Inc.
20004940	Magnequench, Inc	Le Carbone Lorraine, S.A	Carbone Lorraine North America, Corporation, Deutsche Carbone AG, Ugimag Limited, Ugimag, Inc.
20004943	ConAgra, Inc	John Marburger	Marburger Group, L.L.C. Marburger Packing, Inc
20004944	ConAgra, Inc	JSM Corporation	Marburger Group, L.L.C. Marburger Packing, Inc.
20004948	CDC Finance	Nvest Companies, L.P	Nvest Companies, L.P.
20004949	CDC Finance	Nvest, L.P	Nvest, L.P
20004954	Dennis Mehiel	Howard P. Hoeper	Packaging Resources Group, Inc.
20004959	Puget Sound Energy, Inc.	Ronald A. Cindrich, Sr	General Industries, Inc.
20004964	Paul G. Allen	eStyle, Inc	eStyle, Inc.
20004967	Aktiebolaget Volvo	Ingersoll-Rand Company	Dresser-Rand Company.
20004972	Entravision Communications Corporation.	Martin W. Hoffman, Trustee in Bankruptcy for Astroline.	Astroline Communications Company, Limited Partnership.
20004976	Cumberland Swan Holdings, Inc	Benjamin Ansehl Company	Benjamin Ansehl Company.
20004977	Zoran Corporation	Nogatech, Inc	Nogatech, Inc.
20004979	The Bryce Company, L.L.C	Simpro Holding Corporation, Ltd	Simpro Films Corporation, JP Pack Holdings, Inc.
20004984	Mr. William E. Sagan	HealthPlan Services Corporation	HealthPlan Services Corporation.
20004985	CH Energy Group, Inc	National Grid Group PLC	AllEnergy Marketing Company, L.L.C.
20004986	The Goldman Sachs Group, Inc	SLKLLC	SLKLLC.
20004989	Patterson Energy, Inc	Ambar, Inc	Fluid Services Division.

Transactions Granted Early Termination—09/27/2000

Trans #	Acquiring	Acquired	Entities
20001806	The Boeing Company	General Motors Corporation	Hughes Space and Communications Company, Spectrolab, Inc.
20004755	CGW Southeast Partners IV, L.P	Mail-Well, Inc	Jen-Coat, Inc.
20004969	Citizens Communications Company	Qwest Communications International Inc.	Qwest Communications International Inc.
20004995	Siemens Aktiengesellschaft	PSI Group, Inc	PSI Group, Inc.
20004996	DSM N.V	Catalytica, Inc	Catalytica, Inc.
20004999	Fenway Partners Capital Fund II, L.P	HW Holdings, Inc	HW Holdings, Inc.
20005003	Shahid R. Khan	Jay Alix	Peregrine Metalforming, Inc.
20005004	Sunburst Dallas, L.P	Salem Communications Corp	Salem Communications Corp.
20005005	Salem Communications Corp	Sunburst Dallas, L.P	Sunburst Dallas, L.P.
20005006	AXA	IP Communications, Inc	IP Communications, Inc.
20005007	Private Equity Investors IV, L.P	IP Communications, Inc	IP Communications, Inc.
20005009	NUI Corporation	Virginia Gas Company	Virginia Gas Company.
20005010	Gerald T. Vento	Poka Lambro Telephone Cooperative, Inc.	Poka Lambro Telephone Cooperative, Inc.

Transactions Granted Early Termination—09/28/2000

Trans #	Acquiring	Acquired	Entities
20004458	Republic Services, Inc	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
20004785	ADC Telecommunications, Inc	Broadband Access Systems, Inc	Broadband Access Systems, Inc.
20004805	Broadcom Corporation	Newport Communications, Inc	Newport Communications, Inc.

Trans #	Acquiring	Acquired	Entities
20004879	Paxton Media Group, Inc	Hollinger Inc	American Publishing Company of Indiana, American Publishing Company of Michigan, APAC–95 Texas Holdings Inc., Hollinger International Inc.
20004883	Advocate Healthcare Network	Illinois Masonic Medical Center	Illinois Masonic Medical Center.
20004950	Dominion Resources, Inc	National Grid Group plc	New England Power Company.
20004951	Dominion Resources, Inc	UIL Holdings Corporation	UIL Holdings Corporation.
20004952	Dominion Resources, Inc	Northeast Utilities	New England Power Company.
20004982	SSCI Investors LP	NS Group, Inc	Imperial Adhesives, Inc.
20004990	Citigroup Inc	MSX International, Inc.	MSX International, Inc.
20004992	Dominion Resources, Inc	Energy East Corporation	New England Power Company.
20005011	Thomas H. Sullivan	Poka Lambro Telephone Cooperative, Inc.	Poka Lambro Telephone Cooperative, Inc.
20005013	Applied Micro Circuits Corp	MMC Networks, Inc	MMC Networks, Inc.
20005014	Edward P. Roski, Jr	Park Place Entertainment Corporation.	LVH Corporation.
20005015	McWane, Inc	Brunner Engineering & Mfg., Inc	Brunner Engineering & Mfg., Inc.
20005016	Celltech Group Plc	Cistron Biotechnology, Inc	Cistron Biotechnology, Inc.
20005019	Clear Channel Communications, Inc	Clifford N. Burnstein	Atmosphere Broadcasting Limited Partnership.
20005020	Clear Channel Communications, Inc	Peter D. Mensch	Atmosphere Broadcasting Limited Partnership.
20005021	Carlyle Partners III, L.P	Gentiva Health Services Inc	Olsten Flying Nurses Corp., Olsten Health Services (Staffing) Inc.
20005022	SCF–III, L.P	SCF–IV, L.P	Sooner, Inc.
20005023	SCF–IV, L.P	SCF–III, L.P	Oil States International, Inc.
20005055	Dan L. Duncan	Dixie Pipeline Company	Dixie Pipeline Company.
Transactions Granted Early Termination—09/29/2000			
20001668	Agrium Inc	Unocal Corporation	Alaska Nitrogen Products LLC, Prodica LLP.
20003720	Novartis AG	Wesley Jessen VisionCare, Inc	Wesley Jessen VisionCare, Inc.
20004803	Charles T. Angell	A.M. Todd Group, Inc	Flavorite Laboratories, Inc.
20004832	Titan Cement Company S.A	Anglo American PLC	Tarmac America, Inc.
20004835	Vulcan Materials Company	Titan Cement Company S.A	Tarmac America, Inc., Tarmac, Inc.
20004885	Penton Media, Inc	First Communications, Inc	Professional Trade Shows, Inc., PTS Delaware, Inc.
20005012	The Hearst Trust	WMUR–TV, Inc	WMUR–TV, Inc.
20005024	FCCI Mutual Insurance Holding Company.	Monroe Guaranty Companies, Inc	Monroe Guaranty Companies, Inc.
20005027	Ciba Specialty Chemicals Holdings Inc.	Cytec Industries, Inc	Cytec Industries, Inc.
20005028	Dr. Yogi Bhardwaj	USX Corporation	Speedway SuperAmerica LLC.
20005031	2000 Riverside Capital Appreciation Fund L.P.	Aurora Equity Partners L.P	ATC Distribution Group, Inc.
20005032	Carlyle Partners III, L.P	IntelStaf Holdings, Inc	IntelStaf Holdings, Inc.
20005034	The MONY Group, Inc	The Advest Group, Inc	The Advest Group, Inc.
20005040	Peguot Private Equity Fund II, L.P	US Search.Com Inc	US Search.Com Inc.
20005041	American International Group, Inc	HSB Group, Inc	HSB Group, Inc.
20005048	Kerry Group plc	ConAgra, Inc	ConAgra, Inc.
20005051	Softbank Technology Ventures VI, L.P.	TeraBeam Networks, Inc	TeraBeam Networks, Inc.
20005052	SOFTBANK Corp	TeraBeam Networks, Inc	TeraBeam Networks, Inc.
20005053	Teligent, Inc	Executive Conference, Inc	Executive Conference, Inc.
20005057	Enron Corp	HSB Group, Inc	Integrated Process Technologies, L.L.C.
20005065	Quokka Sports, Inc	Total Sports Inc	Total Sports Inc.
20005066	Coachmen Industries, Inc	Miller Building Systems, Inc	Miller Building Systems, Inc.
20005067	WPS Resources Corporation	Wisconsin River Power Company	Wisconsin River Power Company.
20005068	Salzgitter AG	Vodafone Group Plc	Mannesmannrohren-Werke.
20005083	Arrow Electronics, Inc	Stonington Capital Appreciation 1994 Fund, L.P.	Merisel Open Computing Alliance, Inc.
20005085	H Group Holding, Inc	Eli Lilly and Company	Eli Lilly and Company.
20005102	CGW Southeast Partners IV, L.P	CapeSuccess LLC	CapeSuccess LLC.
20005125	Harbin Clinic, LLC	PhyCor, Inc	PhyCor, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

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FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—10/02/2000			
20001575	Cox Enterprises, Inc	Tyco International Ltd	ADT Automotive Holdings, Inc.
20004903	Sanpaolo IMI S.p.A	Assicurazioni Generali S.p.A	Gruppo Bancario Banco di Napoli.
20004956	ConAgra, Inc	Basic American Inc	Basic Vegetable Products, L.P.
20004957	North Castle Partners II, L.P	MaryGrace and Robert Sexton	Orchid Island Juice Company.
20004988	Caisse de depot et placement du Quebec.	Mosaic Entertainment Group, Inc	Mosaic Entertainment Group, Inc.
20005030	Spencer F. Eccles	Wells Fargo & Company	Wells Fargo & Company.
20005050	Wolseley plc	T.N. Morris, Jr	Calcasieu Lumber Company.
20005054	Illinois Tool Works Inc	Tony Tako	A.J. Gerrard & Company.
20005056	Brian L. Roberts	Global Sports, Inc	Global Sports, Inc.
20005071	Trans World Entertainment Corporation.	Terry Woodward	Waxworks, Inc
20005086	KMR Power Corporation	FPL Group, Inc	FPL International Holdings, Inc., FPL Termovalle, Inc.
20005089	Exelixis, Inc	Agritope, Inc	Agritope, Inc.
20005092	Coloniale S.r.l	Specialty Foods Acquisition Corp. (debtor-in-possession).	Specialty Foods Acquisition Corp. (debtor-in-possession).
20005106	The SKM Equity Fund III, L.P	Radiologix, Inc	Radiologix, Inc.
20005110	Anthony Gartland	David J. Cherry	UVTEC Holdings, Inc.
20005114	SR. Teleperformance	Dominion Resources, Inc	Dominion Resources, Inc.
20005115	Conoco Inc	LG&E Energy Corporaiton	LG&E Facilities Inc.
20005135	Nordson Corporation	John Carter	Electron Fusion Devices, Inc.
20005141	Charterhouse Equity Partners III, L.P	Edgewater Technology, Inc	CFRC, Inc., ClinForce, Inc.
Transactions Granted Early Termination—10/03/2000			
20004243	FleetBoston Financial Corporation	Switch & Data Facilities Company, Inc.	Switch & Data Facilities Company, Inc.
20004902	Intel Corporation	Ziatech Corporation	Ziatech Corporation.
20004911	Safeguard Scientifics, Inc	Techspace, Inc	Techspace, Inc.
20004929	Morgan Stanley Dean Witter Venture Partners.	Novalux, Inc	Novalux, Inc.
20005018	ITT Industries, Inc	TRW, Inc	TRW, Inc.
20005073	RTM, Inc	Myron J. Nadler	Franchise Associates, Inc.
20005123	Irrevocable Trust of Lynn D. Moore U/T/A March 18, 1997.	MiTAC International Corporation	eManage.com.
20005124	MiTAC International Corproation	Irrevocable Trust of Lynn D. Moore U/T/A March 18, 1997.	TelePlace, Inc.
Transactions Granted Early Termination—10/04/2000			
20005091	Elan Corporation plc	Dura Pharmaceuticals, Inc	Dura Pharmaceuticals, Inc.
Transactions Granted Early Termination—10/05/2000			
20004916	Citigroup Inc	Associates First Capital Corporation	Associates First Capital Corporation.
20005166	Pegasus Partners II, L.P	Time Products, plc	Time Products, Inc.
Transactions Granted Early Termination—10/06/2000			
20004993	United Auto Group, Inc	Geza Bodnar	Bodrier Trust Dated May 19, 1992, Continental Motors, Inc.

Trans #	Acquiring	Acquired	Entities
20005039	Warburg, Pincus Equity Partners, L.P.	Gryphon Exploration Company	Gryphon Exploration Company.
20005088	Wachovia Corporation	Davis Baldwin, Inc	Davis Baldwin, Inc.
20005113	Biovail Corporation	William Blair Capital Partners VI, L.P	DJ Pharma, Inc.
20005136	GS Capital Partners III, L.P	New Edge Holding Company	New Edge Holding Company.
20005172	United Technologies Corporation	Linda Sue Shollmier Trust	Shollmier Distributing, Inc.
20005173	United Technologies Corporation	J. Kenneth Shollmier Trust	Shollmier Distributing, Inc.
20005184	Omnicom Group, Inc	Novus Marketing, Inc	Novus Marketing, Inc.
Transactions Granted Early Termination—10/10/2000			
20004922	Harshad Dharod	CKE Restaurants, Inc	Carl Karcher Enterprises, Inc.
20004974	University Hospitals Health System	Heather Hill, Inc	Heather Hill Rehabilitation Hospital.
20004981	Zale Lipshy University Medical Center, Inc.	Texas Health Resources	St. Paul Medical Center.
20005008	RailWorks Corporation	United Industrial Corporation	AAI Corporation.
20005042	Prison Realty Trust, Inc	Prison Management Services, Inc	Prison Management Services, Inc.
20005044	Prison Realty Trust, Inc	Juvenile and Jail Facility Management Services, Inc.	Juvenile and Jail Facility Management Services, Inc.
20005079	Jeffrey H. Smulyan	Salem Communications Corporation	Salem Communications Corporation.
20005082	Frontenance VII Limited Partnership	International Data Group, Inc	FCW Government Technology Group, Inc.
20005093	Oak Investments Partners VIII, L.P	GenOA Corporation	GenOA Corporation.
20005107	Brian L. Roberts	Global Interactive Communications Group, Inc.	Global Interactive Communications Group, Inc.
20005120	Manugistics Group, Inc	Talus Solutions	Talus Solutions.
20005121	GAP Coinvestment Partners, L.P	Manugistics Group, Inc	Manugistics Group, Inc.
20005122	GAP Coinvestment Partners, L.P	Manugistics Group, Inc	Manugistics Group, Inc.
20005133	First Data Corporation	FleetBoston Financial Corporation	BankBoston Merchant Services, L.L.C.
20005137	Atos S.A	Koninklijke Philips Electronics N.V	Origin B. V.
20005157	Hewlett-Packard Company	Oscar and Zlata Foundation	Indigo N.V.
20005186	VINCI S.A	Suez Lyonnaise des Eaux	GROUPE GTM.
Transactions Granted Early Termination—10/11/2000			
20004978	Finisar Corporation	Gregory H. Olsen	Sensors Unlimited, Inc.
2000–4987	Gregory H. Olsen	Finisar Corporation	Finisar Corporation.
20005138	Thomas F. Pyle, Jr., and Judith D. Pyle.	Commonwealth Investors II, L.P	National Picture & Frame Company, debtor-in-possession.
20005143	Tyco International Ltd	Urban Media Communications Corportion.	Urban Media Communications Corportion.
20005144	Koninklijke Philips Electronics N.V	Digimarc Corporation	Digimarc Corporation.
20005146	AT&T Corp	Pogo.com Inc (fka TE Networks, Inc.).	Pogo.com Inc (fka TE Networks, Inc.)
20005147	Pohlad Companies	Whitman Corporation	Whitman Corporation.
20005148	Whitman Corporation	Pohlad Companies	PepsiAmericas, Inc.
20005151	Chevron Corporation	Petrocosm Corporation	Petrocosm Corporation.
20005152	Motorola, Inc	Printrak International Inc	Printrak International Inc.
20005159	Reliant Energy, Incorporated	Grande Communications, Inc	Grande Communications, Inc.
20005160	WESCO International, Inc	Harry Felber	Champion Industries.
20005161	Timothy J. Mott	All Bases Covered, Inc	All Bases Covered, Inc.
20005162	TCV IV, L.P	All Bases Covered, Inc	All Bases Covered, Inc.
20005167	Franz Haniel & Cie GmbH	Hubert Family Trust	Fusion, LLC, Hurbert Distributing Co., Hubert Enterprises Incorporated.
20005174	Inktomi Corporation	FastFoward Networks, Inc	FastFoward Networks, Inc.
20005175	UIL Holdings Corporation	Michael McPhee	McPhee Electric, Ltd., LLC, McPhee Utility Power and Signal, Ltd.
20005176	Olympus Growth Fund III, L.P	Symmetry Medical, Inc	Symmetry Medical, Inc.
20005177	Ace Cash Express, Inc	Morris Silverman	U.S. Money Order Company, Inc.
20005178	Cadbury Schweppes plc	Triarc Companies, Inc	Snapple Beverage Group, Inc., Royal Crown Company, Inc.
20005180	Societe Generale	Unocal Corporation	Poco Graphite, Inc., Unocal Corporation.
20005182	Hellman & Friedman Capital Partners IV. L.P.	UPromise, Inc	UPromise, Inc.
20005183	Interpublic Group of Companies, Inc. (The).	Michael W. Kempner	The MWW Group, Inc.
20005190	Macrovision Corporation	Digimarc Corporation	Digimarc Corporation.
20005194	Houghton Mifflin Company	Classwell Learning Group, Inc	Classwell Learning Group, Inc.
20005198	Wilsons The Leather Experts Inc	Donald E. Borsack	El Portal Group, Inc.
20005208	Alec E. Gores	Mattel, Inc	Mattel, Inc.
20005220	Reed International PLC	PartMiner, Inc	PartMiner, Inc.
20010004	Estate of Pierre Peladeau	Andre Chagnon	La Groupe Videotron Ltee.
Transactions Granted Early Termination—10/12/2000			
20005221	Elsevier NV	PartMiner, Inc	PartMiner, Inc.
Transactions Granted Early Termination—10/13/2000			
20004544	William and Jerry Ungar (husband and wife).	American Pad & Paper Company	American Pad & Paper Company. American Pad & Paper Company of Delaware, Inc., American Pad & Paper Sales Company, Inc., AP&P Manufacturing, Inc., WR Aquisition, Inc.
20004971	Exelon Corporation	Vivendi S.A	Sithe Energies, Inc.
20005215	Warburg, Pincus Equity Partners, L.P.	ChartOne, Inc	ChartOne, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

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FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b) (2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
20010027	United Technologies Corporation	Donald Derych	A.T. Distributors, Inc.
Transactions Granted Early Termination—10/17/2000			
20005058	America Online, Inc.	Synapse Group, Inc.	Synapse Group, Inc.
20005076	American Tower Corporation	William F. Somers	Flash Technology Corporation of America, Modern Technical Service, Inc.
20005127	Credit Suisse Group	Manufacturers Services Limited	Manufacturers Services Limited.
20005139	Credit Suisse Group	Duane Reade Inc.	Duane Reade Inc.
20005181	Waste Connections, Inc	Waste Corporation of America, Inc	Northern Plains Disposal, Inc., Oklahoma Landfill Holdings, Inc., Osage Landfill, Inc., Southern Plains Disposal, Inc.
20005189	Credit Suisse Group	DLJ Merchant Banking Partners II, L.P.	Charles River Laboratories, Inc.
20005191	Credit Suisse Group	Nextel Partners, Inc	Nextel Partners, Inc.
20005193	Aether Systems, Inc	Motient Corporation	Motient Corporation.
20005195	Century Aluminum Company	Southwire Company	Southwire Company, Metalsco Ltd.
20005199	Dover Corporation	OK Holdings, Inc	OK Holdings, Inc.
20010005	Alberta Energy Company Ltd	TransCanada Pipelines Limited	TransCanada Pipelines Limited.
20010007	Eastman Chemical Company	Hercules Incorporated	Hercules Incorporated.
20010020	Mr. Irvine Laidlaw	Tribune Company	AchieveGlobal, Inc.
20010025	Omnicom Group Inc	Icon Holding Corp	Icon Holding Corp.
20010035	Brunswick Corporation	K2 Inc	K2 Inc.
20010036	K2 Inc.	Brunswick Corporation	Brunswick Corporation.
20010077	Morgan Stanley Dean Witter Capital Partners IV, L.P.	Yuasa Corporation	Yuasa, Inc.
20010110	Morgan Stanley Dean Witter Capital Partners IV, L.P.	HoldCo	HoldCo.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—10/18/2000			
20005080	Intersil Holding Corporation	John Walton	SiCom, Inc.
20005132	Goodyear Tire & Rubber Company (The).	Arkansas Best Corporation	Treadco, Inc.
20005222	The 1818 Fund III, L.P	MedSource Technologies, Inc	MedSource Technologies, Inc.
20010033	Harvest Partners III, L.P	John McSweeney	CFI Holdings, Inc.
20010034	Harvest Partners III, L.P	Truman Bassett	CFI Holdings, Inc.
Transactions Granted Early Termination—10/19/2000			
20005078	Tom T. Gores	Billing Concepts Corp	Billing Concepts Corp.
20005119	The AES Corporation	KMR Power Corporation	KMR Power Corporation.
20005165	Mallinckrodt Inc	Bank One Corporation	First Lafayette Holdings, Inc., Inovision Radiation Measurements, LLC, Victoreen, LLC.
20005187	Time Warner, Inc	SignCast, Inc	SignCast, Inc.
20005200	Enron Corp	Baycorp Holdings, Ltd	Baycorp Holdings, Ltd
20005203	Tyco International Ltd	CIGI Investment Group, Inc	CIGI Investment Group, Inc.
20005204	Sylvan Learning Systems, Inc	Classwell Learning Group, Inc	Classwell Learning Group, Inc.
20005212	RGS Energy Group, Inc	Avrimac Corporation	Avrimac Corporation.
20005213	RWE Aktiengesellschaft	Thames Water Plc	Thames Water Plc.
20005218	Dawn Chemical Company	James M. Moran	Petro Chemical Products, Inc.
20005223	barnesandnoble.com, Inc	Fatbrain.com, Inc	Fatbrain.com, Inc.
20005224	Vigilant Holdings LLC	Earl Payton	Cowden International, Inc., Cowden Metal Finishing, Inc., Hitek Product Finishing, Inc.
20005225	Earl Payton	Vigilant Holdings LLC	Vigilant Holdings LLC.
20010002	Community Newspaper Holdings Inc	Hollinger Inc	Hollinger International Inc.
20010003	Eltek, ASA	CC Industries, Inc	Power Conversion Products, LLC.
20010006	Vulcan Materials Company	Titan Cement Company S.A.	Tarmac Mid-Atlantic.
20010015	Wisconsin Label Corporation	Superior Label Systems, Inc	Superior Label Systems, Inc.
Transactions Granted Early Termination—10/20/2000			
20010026	Thomas Weisel Capital Partners, L.P	Ion Systems, Inc	Ion Systems, Inc.
20010030	Brian L. Roberts	Maryland Baseball, LLLP	Maryland Baseball, LLLP.
20010043	Anthony Gartland	Daniel M. Provenzano	Tella Tool and Manufacturing Company.
20010060	SCI Systems, Inc	CMS Hartzell Incorporated	CMS Hartzell Incorporated.
20010069	Willis Stein & Partners II, LP	ECCLETTS, LTD	GFS Holdings Co.
20010149	J.H. Whitney IV, L.P	Gabriel Communications, Inc	Gabriel Communications, Inc.
Transactions Granted Early Termination—10/23/2000			
20005118	Joe Fojasek	Gary R. Chapman	WWLP Holdings, Inc.
20005140	VoiceStream Wireless Corporation	STPCS Joint Venture, LLC	STPCS Joint Venture, LLC.
20005145	SM Cable Holdings, LLC	Cox Enterprises, Inc	Peak Cablevision, L.L.C.
20005164	Kohler Family Partnership Ltd	Internacional de Ceramica, S.A. de C.V.	Internacional de Ceramica, S.A. de C.V.
20005188	Professor Kurt Jenny	TriPath Imaging, Inc	TriPath Imaging, Inc.
20010016	Superior Label Systems, Inc	Wisconsin Label Corporation	Wisconsin Label Corporation.
20010021	AT&T Corp	Dana H. Dalton	GCI, Incorporated.
20010024	VS&A Communications Partners III, L.P.	Thomas L. Phillips	Infotech Consulting, Inc., Knowledge Sciences, Inc., MIN Publishing Co., Inc., Optic Music, Inc., Phillips Business Holdings Limited, Phillips Business Information Limited, Phillips Business Information, Inc., Phillips International Inc., Phillips Management Group, LLC.
20010028	VS&A Communications Partners II, L.P.	Thomas L. Phillips	Thomas L. Phillips.
20010031	Credit Suisee First Boston Equity Partners, L.P.	MascoTech, Inc	MascoTech, Inc.
20010037	Scott K. Ginsburg	Digital Generation Systems, Inc	Digital Generation Systems, Inc.
20010038	Digital Generation Systems, Inc	Scott K. Ginsburg	StarGuide Digital Networks, Inc.
20010040	barnesandnoble.cominc.	MightyWords, Inc	MightyWords, Inc.
20010042	Primedia, Inc	Media/Communications Partners II Limited Partnership.	Adam/Laux Company, Inc.
20010044	Paradigm Investment Group, LLC	CKE Restaurants, Inc	Hardee's Food Systems, Inc.
20010058	DHL International Limited	DHL Worldwide Express, Inc	DHL Worldwide Express, Inc.
20010059	KKR 1996 Fund LP	Laporte plc	Laporte America Inc.
20010067	The Edward W. Scripps Trust	A.H. Belo Corporation	Henderson Gleaner, Inc.
20010075	The Savage Companies	Waste Management, Inc	Waste Management, Inc.
20010078	St. Joseph's Healthcare System, Inc	Saint Barnabas Corporation	Wayne General Hospital.
20010082	First Data Corporation	Kirk E. Sanford	CCI Acquisition LLC.
20010083	Corning Incorporated	Pirelli S.p.A	Optical Technologies USA Corp.
20010085	Golder, Thoma, Gressey, Raunder Fund V.L.P.	Equifax Inc	RMA Holdings, LLC.
Transactions Granted Early Termination—10/24/2000			
20010023	Sisters of St. Joseph of Orange	Province Healthcare Company	Brim Hospitals, Inc.
20010063	Motorola, Inc	Naspers Limited	OpenTV Corp.
20010086	J.H. Whitney Fund IV, L.P	Affina Corporation	Affina Corporation.
20010096	John P. Rochon	Nu-kote Holding, Inc	Nu-kote Holding, Inc.
20010098	Citizens Communications Company	Global Crossing Ltd	Frontier Communications of AuSable Valley, Inc., Frontier Communications of New York, Inc., Frontier Communications of Rochester, Inc., Frontier Communications of Seneca-Gorham, Inc., Frontier Communications of Sylvan Lake, Inc., Frontier Subsidiary Telco Inc., Frontier Telephone of Rochester, Inc.
20010102	Stewart A. Resnick and Lynda Rae Resnick.	The Chase Manhattan Corporation	AFS Holdings Corp.
20010103	NBA Media Ventures, LLC	Exca Holdings, Inc.	Exca Holdings, Inc.
20010106	Minnesota Corn Processors, LLC	Corn Products International, Inc	Corn Products International, Inc.
20010108	Kenneth D. Tuchman	Boston Communications Group, Inc	Celluar Express, Inc. Wireless Teleservices Corp.
20010115	GN Great Nordic Ltd	Hello Direct, Inc	Hello Direct, Inc.
20010118	DLJ Merchant Banking Partners III, L.P.	Telseon, Inc	Telseon, Inc.
20010127	Conning Capital Partners V, L.P	Comcap Holdings Corp	Comcap Holdings Corp.
20010129	CNET Networks, Inc	Peter Steinlauf	Edmunds Holding Company.
20010130	Cedar Creek Partners LLC	Mr. Donald J. Long, Sr	Imperial, Inc.
20010135	McLeodUSA Incorporated	CapRock Communications Corp	CapRock Communications Corp.
20010140	Alpha Technologies Group, Inc	Mestek, Inc	National Northeast Corporation.
20010141	Teijin Limited	Manville Personal Injury Settlement Trust.	Manville Personal Injury Settlement Trust.
20010147	Promotora de Empresas Zano S.A. de C.V.	Tower Automotive, Inc	Tower Automotive Products Company, Inc.
20010177	Francisco Partners, L.P	Citron Haligman Bedecarre Incorporated.	Citron Haligman Bedecarre Incorporated.
Transactions Granted Early Termination—10/25/2000			
20010032	Minnesota Mining and Manufacturing Company.	ESPE Dental AG	ESPE Dental AG.
20010053	Deutsche Lufthansa AG	Hawker Pacific Aerospace	Hawker Pacific Aerospace.
20010160	Straub Clinic & Hospital, Inc	PhyCor, Inc	PhyCor of Hawaii, Inc.
Transactions Granted Early Termination—10/26/2000			
20005179	Swifty Serve, LLC	Elizabeth Wilson Camp	Camp Oil Company, CHH, Inc., SATFC, Inc.
20005201	Michael Woods	Aztec Technology Partners, Inc	Aztec Technology Partners, Inc.
20005202	O. Bruton Smith	Garry W. McKinney Genesis Auto Group, Inc.	Bay Meadows Catering, Bay Meadows Operating Company LLC.
20010054	Hitachi Ltd	Grant Thornton LLP	Grant Thornton LLP.
20010065	Stronach Trust	Paine Webber Group, Inc	Bay Meadows Catering, Bay Meadows Operating Company, LLC
20010084	Group 1 Automotive, Inc	Thomas W. Kelley	Kelley Automotive Group, Inc.
20010120	Vivendi S.A.	Barry Diller	USA Networks, Inc.
20010156	Hanson PLC	Lloyd Babler	Pacific International Pipe Enterprises of Washington, Inc., Pacific International Pipe Enterprises, Inc.
20010157	Watson Pharmaceuticals, Inc	Rhoda Makoff	Makoff R&D Laboratories, Inc.
20010159	debis AirFinance B.V.	AerFi Group plc	AerFi Group plc.
20010163	GS Capital Partners 2000, L.P	Hexel Corporation	Hexel Corporation.
20010176	Carlyle Partners III, L.P	Steve and Alice Blair (husband and wife).	Forged Metals, Inc.
20010186	Checkpoint Systems, Inc	Richard Kam Man Nip	Auhaus/Wang Hing, Inc.
20010194	MCSi, Inc	Intellisys Group, Inc	Intellisys Group, Inc.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—10/27/2000			
20003546	Schlumberger Limited	Baker Hughes Incorporated	Baker Hughes Incorporated.
20005169	The Dow Chemical Company	Cargill, Incorporated	Cargill, Incorporated.
20010109	Dimension Data Holdings plc	TimeBridge Technologies, Inc	TimeBridge Technologies, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–29056 Filed 11–13–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organizations, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 65 FR 58775, dated October 2, 2000) is amended to (1) restructure the functions and activities of the Office of Program Support; (2) retitle the Office of Program Support as the Office of Program Services; (3) establish the Financial Management Office with a direct organizational reporting relationship to the Office of the Director, CDC; (4) establish the Office of Management and Operations; and (5) revise the Order of Succession for the Centers for Disease Control and Prevention.

The Office of Program Support, retitled as the Office of Program Services, is being restructured to focus its mission on the program service components and functions of the Information Resources Management Office, the Management Analysis and Services Office, and the Procurement and Grants Office. The Office of Management and Operations is being established to provide centralized services for human resource management, facilities-related functions, and special initiatives. As a result, the following organizational changes will occur:

I. Establish the *Office of Management and Operations (CAD).*

II. Delete the following components and functions from the *Office of Program Support (CA5)* and transfer them, in their entirety, to the *Office of Management and Operations (CAD): Physical Security Activity (CA5A2), Real Property and Space Management Activity (CA5A3), Facilities Engineering Office (CA52), Design and Construction Management Office (CA55), Facilities Planning and Project Management Office (CA56),* and *Human Resources Management Office (CA57).*

III. Delete the *Financial Management Office (CA53)* as a component of the *Office of Program Support (CA5)* and establish it as a Staff Office with a direct reporting relationship to the *Office of the Director, CDC (CA).*

IV. Retitle the *Office of Program Support (CA5)* as the *Office of Program Services (CA5).*

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the title and functional statement for the *Office of Program Support (CA5)* and insert the following:

Office of Program Services (CA5). (1) Assists and advises in the development, coordination, direction, and assessment of program services and related management activities throughout the Centers for Disease Control and Prevention, and assures consideration of the implications of such in program decisions; (2) conducts CDC's activities in the area of management analysis, studies, and services; information technologies and systems; grants management, procurement and materiel management; publications management; library and legislative reference services; and other delegated authorities as may be assigned; (3) manages the planning, evaluation, and adoption of innovations and technologies in these areas; (4) directly and/or through the individual staff offices of the Centers for Disease Control and Prevention, provides leadership, guidance, and evaluation of administrative management services performed for or by Centers, Offices, and other components of the CDC; (5) maintains liaison with officials of the Department of Health and Human Services on management matters; and (6) participates in the development of CDC's goals and objectives.

Delete the functional statement for the *Office of the Director (CA5A)* and insert the following:

(1) Manages, directs, and coordinates the activities of the Office of Program Services (OPS); (2) provides the CDC Deputy Director for Program Management and other key officials leadership, guidance, and evaluation of program service and information technology management services performed for or by Centers/Institute/Offices; (3) maintains liaison with officials of HHS on program service and information management matters; and (4) participates in the development of CDC's goals and objectives.

After the functional statement for the *Office of the Director (CAB1), Office of Global Health (CAB),* insert the following:

Financial Management Office (CAC). (1) Provides leadership and coordination in the development and administration of CDC's financial management policies; (2) develops budget submissions for CDC; (3) collaborates with CDC's Office of Program Planning and Evaluation in the development and implementation of long-range program and financing plans; (4) participates in budget reviews and hearings; (5) manages CDC's system of internal budgetary planning and control of funds; (6) develops and implements CDC-wide budgetary, accounting, and fiscal systems and procedures; (7) conducts CDC-wide manpower management (including productivity measurement) activities; provides accounting and auditing services; (8) prepares financial reports; (10) serves as the focal point for domestic and international travel policy, procedures and interpretation; (11) provides legislation reference services; (12) plans, directs, and conducts internal quality assurance reviews; (13) analyzes data and makes recommendations to assure effective safeguards are in place to prevent fraud, waste and abuse; (14) assists in identifying or conducting special financial management training programs; and (15) maintains liaison with the Office of the Secretary, Department of Health and Human Services, and other Government organizations on financial management matters.

Office of the Director (CAC1). (1) Provides leadership and guidance in all areas of financial management; (2) serves as a CDC witness in budget hearings before Committees of Congress, Office of Management and Budget, and Department of Health and Human Services; (3) participates with top management in program planning and policy determinations, evaluations conferences, and decisions concerning financial resources; (4) provides a centralized source for current information on financial management legal and regulatory requirements governing the prevention and control of diseases; (5) advises the CDC Deputy Director for Program Management concerning reprogramming of funds; and (6) provides consultation and assistance in financial management to State and local health departments when requested by CDC officials.

Financial Policy and Internal Quality Assurance Activity (CAC12). (1) Provides leadership, consultation, guidance and advice on financial policy and internal quality assurance matters for CDC; (2) develops, analyzes, and evaluates financial management policies, guidelines, and services which have CDC-wide impact; (3) works with personnel from all disciplines within CDC to identify the areas in which financial policy needs to be strengthened; (4) reviews, assesses, and recommends financial policy that is consistent with internal controls and the hierarchy of Federal and Department of Health and Human Services policies and procedures; (5) ensures that resources are safeguarded against fraud, waste, and abuse; managed economically and efficiently; and desired results are achieved; (6) reviews and independently assesses the soundness, adequacy, and application of budgetary and accounting controls; (7) reviews the reliability and integrity of financial and budget information and the means used to identify, measure, classify, and report such information; (8) reviews the adequacy and effectiveness of systems and procedures having an impact on expenditures of funds and use of resources; (9) assesses the reliability and accuracy of accounting and budgetary data and reports developed within CDC; and (10) identifies problems and weaknesses in internal controls and provides reliable information for management to base corrective action.

Accounting Branch (CAC2). (1) Develops accounting policies and procedures for CDC; (2) provides financial information for management purposes, effective control and accountability of all funds, and suitable integration of CDC accounting with the accounting operations of the U.S. Treasury; (3) coordinates activities of the Accounting Branch with the FMO Director, the FMO Budget Branch and the FMO Financial Systems Branch; (4) coordinates accounting policy issues with the HHS Office of Financial Policy; (5) reviews and develops accounting systems to comply with requirements of HHS and the General Accounting Office and maintains an integrated system of accounts to meet the budgetary and accounting requirements of CDC; (6) reviews and implements the legal, accounting and reporting requirements of the Chief Financial Officers' Act, the Federal Managers' Financial Integrity Act, the Principles of Appropriation Law and other regulatory requirements; (7) compiles all accounting information for the 5-Year Financial Management Plan which provides CDC's financial management vision and objectives for the ensuring 5 year period; and (8) develops strategies for employee training and professional development.

Accounts Payable Section (CAC22). (1) Develops and implements policies and procedures for all accounts payable activities at CDC; (2) develops new financial systems to automate accounts payable operations and maintains and serves as the CDC focal point on all existing automated payment systems; (3) reviews obligation documents and payment requests from a variety of private sector and government sources to determine the validity and legality of the request; (4) compiles and submits a variety of cash management and travel reports required by the Department of the Treasury and various other outside agencies; (5) acts as liaison with CIO's and outside customers to resolve problems and provide training and advice on payment issues; (6) provides electronic authorization to the Department of the Treasury to issue checks or electronic funds transfers; and (7) analyzes various internal reports to provide management information on topics such as interest expenses, workload, and various other performance indicators.

Payments Unit (CAC223). (1) Approves and processes payments on all payment requests for equipment, supplies and services procured by CDC; (2) approves charges and credits from other Federal sources and ensures posting of the expenses to the correct general ledger accounts; (3) approves and posts to CDC's accounting records all payments made to government, quasi-government, and private vendors to ensure the validity, legality and proper accounting treatment of the charges; (4) reviews authorization documents and processes payments and credits related to the documents, including authorization documents such as negotiated and fixed price contracts, purchase orders, delivery orders, blanket purchase orders, and various types of personnel agreements; (5) acts as CDC liaison on all payment issues related to the implementation of the Government Impact Card Program; (6) determines and computes tax liabilities for individuals serving under the visiting scientists' program to ensure proper tax reporting to the Internal Revenue Service; and (7) provides certification for the Department of the Treasury to reissue returned or canceled payments.

Payment Services Unit (CAC222). (1) Performs quality control reviews of various payment processes and systems in the Accounts Payable Section, including reviews to ensure compliance with the Prompt Payment Act and to validate the legality, propriety and accounting treatment of the payments, reviews of payments authorized using the U.S. Government Impact Card, reviews to validate the receipt or acceptance of the goods or services at CDC, and reviews of the Federal Express payment process; (2) identifies recurring or widespread problems in the payment processes and recommends corrective actions or identifies required training to correct the deficiencies; (3) monitors the use of and makes suggestions to improve existing automated payment and payment information systems; (4) defines user requirements for Electronic Commerce (EC) in the Accounts Payable Section, and recruits additional EC trading partners in private industry; (5) identifies automation opportunities in the Section and, when necessary, coordinates with Financial Systems Branch personnel to identify system requirements and test proposed automated systems.; (6) writes and maintains automated system and process documentation and provides training to other employees on new or existing automated systems; (7) serves as the focal point at CDC for vendor and employee payment questions and resolution of payment problems; (8) validates and prepares daily payment schedules for transmission to the Department of the Treasury; (9) monitors and validates open obligations related to payments; and (10) maintains the automated file containing vendor payment address and banking information.

Travel Unit (CAC224). (1) Serves as the focal point at CDC for all travel and permanent change of station payment issues; (2) provides oversite, guidance and interpretations to the CIO's on all aspects of travel procedures and policies at CDC, including the use of the automated travel system; (3) interprets policies, laws, rules and regulations to analyze the validity, legality, and correct accounting treatment of disbursements for local, domestic and international travel, and for change of station vouchers, for civil service employees, foreign service employees, and commissioned officers; (4) examines and approves a variety of transportation claims and credits, including Government Transportation Requests, Government Bills of Lading, unused tickets, and MARTA tickets; and (5) determines Federal Income Tax liabilities and allowances for relocation claims and ensures the proper accounting treatment of the tax liabilities.

Debt and Property Management Section (CAC24). (1) Compiles and submits the quarterly HHS Debt Management report which reports the status of all unpaid debts due to CDC from the public; (2) compiles and submits the annual Treasury report of debts due to CDC; (3) performs all debt collection activities in accordance with the Debt Collection Act of 1982 and in accordance with requirements provided by HHS; (4) prepares customer billings; (5) collects and records all amounts billed to customers; (6) controls billings and collections processed on the On-line Payment and Collection System (OPAC); (7) reconciles accounts receivable subsidiary records to the CDC general ledger receivable accounts; (8) maintains travel advance records and reconciles subsidiary records to general ledger advance accounts; (9) coordinates CDC's debt collection activities with FMO's Accounts Payable Section and with CDC program administrative offices; (10) Coordinates all debt collection activities with the U.S. Justice Department and with private collection agencies; (11) Prepares and controls daily deposits which are delivered to the Federal Reserve Bank; (12) performs property accounting activities including maintenance of general ledger property accounts and reconciliation with the CDC Personal Property System; (13) Reconciles Tax Withholding Account and prepares all monthly, quarterly and annual tax reports which must be submitted to IRS.

Cincinnati Accounting Section (CAC23). (1) Maintains a system of accounts to meet the budgetary and accounting requirements of the NIOSH accounting point; (2) provides financial information for management purposes, effective control and accountability of all accounting point funds, and integration of NIOSH accounting with the accounting and reporting operations of CDC and the U.S. Treasury; (3) coordinates the NIOSH accounting point accounts payable and receivable activities including auditing of vouchers and the certification of payments; (4) reviews the NIOSH accounting point system for compliance with CDC, HHS and General Accounting Office requirements; and (5) reconciles NIOSH accounting point general ledger accounts including cash, property and receivables.

General Ledger Section (CAC25). (1) Compiles and submits the Report of Budget Execution which reports the obligations incurred against the current year appropriations; (2) compiles and submits the annual financial statements required by the Chief Financial Officers' Act; (3) Compiles and submits the monthly Statement of Transactions report to the U.S. Treasury which reports the CDC cash disbursements by appropriation; (4) reconciles general ledger cash accounts with the U.S. Treasury monthly disbursements and receipts; (5) performs daily maintenance on the general ledger accounts including the asset, liability, capital and budgetary accounts; (6) makes recommendations for improvements to the accounting system and monitors internal controls; (7) analyzes the general ledger accounts, prepares system-wide reconciliations and interprets the effect of transactions on the CDC's financial resources; (8) develops new reports to support budget requirements and to support the needs of CDC management; (9) controls input of all funding transactions; (10) performs daily maintenance of accounting system tables; (11) controls grant awards processed through the Payment Management System (PMS) including submission of grant obligations to PMS, recording of disbursements received from PMS and reconciliation of the general ledger accounts.

Budget Branch (CAC3). (1) Provides leadership, consultation, guidance, and advice on budgetary matters to CDC; (2) prepares consolidated appropriation budget estimates including narrative justifications; (3) conducts studies in budget planning to determine proper relationship between program planning and acquisition of funds; (4) develops criteria to be used in estimating program needs; (5) conducts CDC-wide manpower management (including productivity measurement) activities; (6) develops expenditure information for preparation of quarterly and annual budgets; and (7) designs and prepares reports, tables, and analyses to demonstrate fiscal requirements.

Congressional/Legislative Branch (CAC4). (1) Serves as the primary CDC focal point for planning, organizing, and administering a range of activities for legislative issues related to Congressional appropriation legislation matters; (2) summarizes Congressional and legislative positions on national public health program issues in order to establish impact on CDC budgetary requirements; (3) reviews and analyzes new or amended appropriation legislation or report language concerning public health programs, health related research activities, and scientific research pertinent to CDC's mission and responsibilities and prepares related issues papers; (4) in coordination with CIOs, develops appropriation report language related to budget formulation submissions; (5) develops strategy and background documentation regarding appropriation legislative issues and prepares related materials; (6) develops appropriation legislative background materials for presentation to HHS, Office of Management and Budget (OMB) and Congressional Appropriations Committees; (7) assists the Director, FMO, as the CDC representative at appropriations hearings; (9) responds to inquiries regarding appropriation budget-related policy issues; and (10) develops training strategies on legislative issues for the professional development of staff.

Financial Systems Branch (CAC5). (1) Responsible for the analysis, design, programming, implementation, enhancement and documentation of automated accounting systems and subsystems for FMO; (2) provides consultative services to systems implementers within CDC, the Department and other Federal agencies on a broad range of issues including policy, data integrity, systems integration and interfacing issues as they relate to financial management systems; (3) provides technical support and assistance to various committees, teams and users in the integration with FMO financial systems and the access and interpretation of financial system data; and (4) responsible for hardware and software support for microcomputers and local network(s) within FMO.

Office of Management and Operations (CAD). (1) Provides leadership and direction on the development, operation, and appraisal on all aspects of human resource programs and policies; (2) designs human resource programs that support and enhance the CDC mission; (3) provides assistance to the CIOs in building the capacity to evaluate the effectiveness of their human resource programs and policies, (4) provides direction for the Agency's ethics program and alternative dispute resolution activities; (5) carries out facilities and real property and space management functions for CDC, including new or expanded facilities, and a major repair and improvement program; and (6) plans, directs, and coordinates a physical security program for CDC facilities and personnel.

Office of the Director (CAD1). (1) Manages, directs, and coordinates the activities of the Office of Management and Operations (OMO); (2) provides leadership, guidance, and evaluation of management operations, human resources management, and facilities operations performed by or on behalf of the Centers/Institute/Offices; (3) advises and assists the Director, CDC, and other key officials on all phases of these functions; (4) maintains liaison with officials of the HHS on management matters; and (5) participates in the development of CDC's goals and objectives.

Physical Security Activity (CAD12). (1) Plans, directs, and coordinates a physical security program for CDC facilities and personnel; (2) maintains and manages a guard service at CDC-owned facilities in metropolitan Atlanta; (3) operates and maintains a computerized control center for surveillance of thermal, smoke, intrusion, and fire alarms for Atlanta area CDC-owned facilities; (4) maintains and monitors a program of controlled access to CDC facilities and grounds in the Atlanta area; (5) develops lock/key plans for CDC facilities in the Atlanta area and issues card keys and door keys in concert with that plan; (6) develops, implements, and maintains a system for preparing and issuing photo identification cards/badges for employees and an identification badging system for visitors; (7) provides information and visitor registration at Atlanta CDC-owned facilities during regular working hours and emergency telephone and notification service at all times; (8) provides guidance, when requested, in developing security programs or solving security problems at other locations; (9) issues Government driver's licenses and parking and carpool decals; (10) coordinates requests for assistance for police, fire, and other emergency responses, as required; (11) coordinates CDC activities related to tort claims; and (12) maintains liaison and coordinates physical security activities of CDC with HHS.

Facilities Planning and Management Officer (CAD2). (1) Operates, maintains, repairs, and modifies CDC's Atlanta area plant facilities and conducts a maintenance and repair program from CDC's program support equipment; (2) carries out facilities planning functions for CDC, including new or expanded facilities, and a major repair and improvement program; (3) develops services for new, improved, and modified equipment to meet program needs; and (4) conducts CDC's real property and space management activities, including the acquisition of leased space, the purchase and disposal of real property, and provides technical assistance in space planning to meet programmatic needs.

Office of the Director (CAD21). (1) Plans, directs and coordinates the functions and activities of the Facilities Planning and Management Officer (FPMO); (2) provides management and administrative direction for budget planning and execution, property management, and personnel management within FPMO; (3) provides leadership and strategic support to senior managers in the determination of CDC's long term facilities needs; (4) directs the operations of FPMO staff involved in the planning, evaluation, design, construction, and management of facilities and acquisition of property; (5) processes data for management and control systems and develops reports and analyses; and (6) assists and advises senior CDC officials in the development, coordination, direction, and assessment of facilities and real property activities throughout CDC's facilities and operations, and assures consideration of facilities management implications in program decisions.

Real Property and Space Management Activity (CAD212). (1) Conducts the Real Property and Space Management Program throughout CDC, including the acquisition of leased space, the purchase sand disposal of real property of CDC (with emphasis on current and long-range planning for the utilization of existing and future real property resources); (2) provides technical assistance in space planning to meet programmatic needs; (3) administers day-to-day management of leased facilities and ensures contact compliance by lessors; (4) provides technical assistance and prepares contract specifications for all repair and improvement projects in leased space; (5) maintains liaison with the General Services Administration Regional Offices; (6) performs all functions relating to leasing and/or acquisition of real property under CDC delegation of authority for leasing special purpose space; and (7) coordinates the relocation of CDC personnel with owned and leased space.

Design and Construction Management Office (CAD22). (1) Develops architectural designs and engineering specifications for construction of new facilities and major modifications and renovations to CDC-owned facilities; (2) provides architectural and engineering technical services and consultation on facility project designs; (3) provides in-house construction administration services for CDC-owned facilities in Atlanta; (4) manages interior design and furniture standards; and (5) coordinates development and determination of best methods and means for the planning and conduct of assigned projects, including selection of resources.

Facilities Engineering Office (CAD23). (1) Operates, maintains, repairs, and modifies CDC's Atlanta area plant facilities and other designated CDC facilities throughout the United States and Puerto Rico and conducts a maintenance and repair program for CDC's program support equipment; (2) develops services for new, improved, and modified equipment to meet program needs; (3) provides technical assistance, reviews maintenance and operation programs, and recommends appropriate action for all Atlanta area facilities and other designated CDC facilities throughout the United States and Puerto Rico; (4) provides recommendations, priorities, and services for new, improved, or modified equipment to meet program needs; (5) provides maintenance and operation of the central energy plant including structures, utilities production and utilities distribution systems and equipment; (6) conducts a program of custodial services, waste disposal, incinerations, and disposal of biological waste and other building services at all CDC Atlanta area facilities and other designated CDC facilities throughout the United States and Puerto Rico; (7) provides landscape development, repair, and maintenance at all CDC Atlanta area facilities and other designated CDC facilities throughout the United states and Puerto Rico; (8) provides hauling and moving services for CDC in the Atlanta area; (9) provides insect and rodent control services for CDC in Atlanta area facilities; (10) develops required contractual services and provides supervision for work performed in these areas; (11) establishes and maintains a computerized system for maintenance services and for stocking and ordering supplies and replacement parts; (12) provides for pick-up and delivery of supplies and replacement parts to work sites; (13) maintains adequate stock levels of supplies and replacement parts; (14) as needed, prepares designs and contract specifications and coordinates completion of contract maintenance projects; (15) manages CDC's Energy Conservation Program for all CDC facilities; (16) reviews all construction documents for energy conservation goals and compliance with applicable CDC construction standards; (17) participates on all core teams and value engineering teams; (18) provides maintenance and inspection for fire extinguishers and fire sprinkler systems; (19) provides services for the procurement of natural gas; (20) develops and maintains a standard equipment list for all CDC facilities; and (21) assists the Design and Construction Management Office and the facilities Planning and Project Management Office with facility-related issues.

Facilities Planning and Project Management Office (CAD24). (1) Provides professional architectural/engineering capabilities and technical and administrative project support to CDC and the CIOs for renovations and improvements to CDC-owned faciliteis and construction of new facilities; (2) priorotizes design and construction needs for requested CIO projects; (3) manages and administers the CDC renovations and improvement (R&I) budget; (4) develops project management requirements (including determination of methods and means of project completion and selection of resources), funding sources, and budgets; and (5) serves as the point of contact with CIOs for administration and coordination of all facilities-related needs, *i.e.*, project planning, evaluation, estimation, and tracking.

Human Resources Management Office (CAD3). (1) Provides service, support, advice, and assistance to CDC organizations, management, and employees in all areas of human resources management; (2) conducts and coordinates personnel management for CDC's civil service and Commissioned Corps personnel; (3) conducts CDC's fellowship programs; (4) develops and issues policies and procedures; conducts recruitment, special emphasis, staffing, position classification, position management, pay administration, performance management systems, employee training and development, and labor relations programs; (5) maintains personnel records and reports, and processes personnel actions and documents; (6) administers the Federal life and health insurance programs; (7) administers the employee recognition, suggestion, and incentive awards programs; (8) furnishes advice and assistance in the processing of Office of Workers' Compensation Program claims; (9) conducts CDC's personnel security and substance abuse programs; (10) develops, maintains, and supports information systems to conduct personnel activities and provide timely information and analyses of CDC personnel and staff to CDC management and employees: (11) maintains liaison with the Department of Health and Human Services and the U.S. Office of Personnel Management (USOPM) in the area of human resources management; and (12) administers the National Performance Review and Human Resources initiatives to meet current and future requirements.

Office of the Director (CAD31). (1) Provides leadership and technical guidance to CDC in planning, coordinating, and conducting an effective personnel program for civil service (including the Senior Biomedical Research Service [SBRS] and the Senior Executive Service [SES]), Title 38, Commissioned Corps, and fellowship program peresonnel; (2) plans, directs, and evaluates the activities of the Human Resources Management Office (HRMO); (3) advises the Director, CDC, and other CDC management staff on all matters relating to human resources management; (4) administers the National Performance Review and Human Resources initiatives; (5) develops, coordinates, and disseminates personnel policies, programs, and procedures in position management, classification, compensation, and staffing; (6) establishes objectives, standards, and internal controls; evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures; (7) develops and monitors proposals and plans related to the implementation of CDC diversity personnel programs and projects; assists with monitoring progress and the success of existing diversity recruitment and placement programs; and (8) provides all administrative/management support as required in HRMO.

Organizational Development Branch (CAD33). (1) Develops, designs, and implements an accredited comprehensive strategic human resource leadership development and career management program for all occupational series throughout CDC; (2) develops and implements training strategies and activities that contribute to the agency's mission, accomplishments and organizational performance; (3) integrates a variety of learning methods to provide training; (4) provides consultation, guidance, and technical assistance to managers and employees in organizational development, career management, employee development, and training; (5) coordinates the research and acquisition of external training and educational opportunities for CDC employees; (6) conducts the career counselling program; (7) administers special career management programs including the career development program, the long-term training program, cooperative programs, the worker trainee development program, and the mentoring program; (8) conducts comprehensive training needs assessment of CDC employees nationwide; and (9) conducts new employee orientation.

Career Management Section (CAD332). (1) Develops and administers agency intern and professional development programs; (2) provides consultation, guidance, and technical assistance to managers and employees regarding career management and employee development; (3) implements and provides advice on distance-learning programs nationwide; (4) acquires, develops, and supports technology-based training; (5) manages the Learning Resource Center including establishing policy, scheduling room usage, providing technical and audio visual support, and maintaining a Learning Library with individualized learning options; (6) creates marketing tools for the Organizational Development Branch; (7) implements and monitors the CDC Training Management System for compliance with the Government Employees Training Act; (8) maintains employee training records; (9) collaborates with the CDC Corporate University Section to develop, implement, and administer the human resources leadership development and career management program for all occupational series throughout CDC; (10) manages formal career development and mentoring programs; (11) procures and/or instructs training courses as part of existing functional area curriculum; (12) establishes partnerships with professional organizations and academic institutions for the formalization and recognition of CDC programs and the offering of academic programs onsite and through distance learning; and (13) manages the use of technology to offer desktop instruction through web-based training, *e.g.*, interactive CD–ROM.

CDC Corporate University Section (CAD333). (1) Develops, designs, and implements a comprehensive strategic human resources leadership development and career management

program for all occupational series throughout CDC; (2) develops formal organizational and individual needs assessment tools to identify core competency requirements for each occupational series throughout the agency; (3) designs curricula that address specified competencies to inculcate continuous learning; (4) develops program plans and evaluates progress toward program goals and objectives; (5) conducts performance measurement, organizational climate surveys, and survey/focus group assessments; (6) develops internal instructor capacity; (7) provides analysis and data to correlate individual training with corporate strategic plans; (8) maximizes economies of scale through systematic planning and evaluation of agency-wide training initiatives; (9) develops new methodology to determine return on investment on human capital and intellectual investments; (10) designs executive leadership programs in collaboration with CDC C/I/Os; (11) develops agency-wide intern programs for succession planning of staffing requirements; and (12) develops and maintains continuing education unit accreditation for school curricula.

Field Operations Branch (CAD34). (1) Plans, develops, directs, coordinates, implements, and evaluates human resources management programs, policies, procedures, and systems; (2) participates in the development of CDC HRMO policy, strategic, long- and short-range plans, programs, and resource allocations; (3) serves as the primary contact for HRMO remote/field operations providing a full range of personnel management, advisory consulting, and information services; (4) provides leadership, technical direction, and guidance in human resource utilization, program development and evaluation; organizational development, position management, classification and pay administration; employment, recruitment, and staffing; employee/labor/partnership relations; benefits and services; performance management, awards, training and employee development; transactions, personnel records, and file management; (5) coordinates HRMO remote/field operations with Headquarter's staff and other CDC, HHS, Federal, State, local, and private organizations; (6) develops annual staffing and recruitment plans, special recruitment campaigns, crediting plans, announcements, advertisements, and special information materials; (7) conducts position management studies, desk audits, qualifications analyses, peer review panels, training assessments, and reductions-in-force; (8) determines title, series, and grade of positions; qualifications, rating, and ranking of applicants; and (9) executes performance, awards, training, labor relations, merit promotion, delegated examining, summer student, fellowship and special emphasis plans; appointing and classification authority; keys, journalizes and files transactions.

Work Force Relations and Partnership Branch (CAD32). (1) Plans, develops, and provides consultation, guidance, and technical advice on available employee services and assistance; performance, award, and conduct issues; leave administration; on-the-job injuries and exposures to infectious diseases; debt complaints; and other job-related issues; (2) develops and administers labor-management and employee relations program including disciplinary actions, grievances and appeals, labor negotiations, collective bargaining, management representation before third parties, and partnership activities; (3) serves as liaison with the Office of Health and Safety and other CDC staff for personnel matters relating to substance abuse and other employee assistance programs; (4) coordinates the Fare Share and Dependent Care programs; (5) coordinates all Family Friendly programs; (6) administers the incentive and suggestion awards programs; (7) coordinates and processes garnishment, child support, and other collection actions for CDC employees; (8) serves as the primary agency contact on all matters associated with labor-management relations; (9) plans, directs, coordinates, and conducts contract negotiations on behalf of agency management with labor organizations holding exclusive recognition; (10) represents management in third party proceedings involving labor and employee relations issues; (11) serves as the authority to ensure validity, consistency, and legality of employee relations matters concerning grievances (both negotiated and agency procedures), disciplinary actions, adverse actions, and resultant third party hearings; (12) plans and coordinates all programmatic activities to include preparation of disciplinary and adverse action letters and all final agency decisions in grievances and appeals; (13) provides technical advice, consultation, and training on matters of employee conduct and performance and provides personnel services on debt complaints; (14) serves as the authority and primary agency on all matters associated with labor-management partnership activities; (15) provides consultation, guidance, and technical advice to personnel generalists, managers, and employees on all family programs; (16) develops, implements, and coordinates CDC Quality of Work Life initiatives; (17) provides personnel services relating to on-the-job injuries and exposures to infectious diseases; and (18) develops, implements, and coordinates performance management systems for civil service employees other than SES and SBRS.

Operations Branch (CAD35). (1) Serves as the primary contact for CDC management and employees in obtaining the full range of personnel assistance and management services for civil service and Commissioned Corps personnel; (2) provides leadership, technical assistance, guidance, and consultation in human resource utilization, position management, position classification, staffing, employee relations, reorganization, program evaluation, performance management, and personnel records and files management; (3) works as a team with other personnel specialists and CDC organizations to develop staffing plans, identify recruitment needs, and conduct position management studies, desk audits, and job analyses; (4) plans, develops, implements, and evaluates systems to ensure consistently high quality personnel services; (5) processes personnel actions by determining position classifications, issuing vacancy announcements, assisting in development of selection criteria, conducting examining under delegated examining authority, conducting candidate rating and ranking under CDC Merit Promotion Plan, making qualification determinations, determining pay, conducting reductions-in-force, and effecting appointments and other actions; (6) coordinates with other Federal agencies for the assignment of CDC personnel in other countries; (7) establishes and maintains personnel and payroll records, files, and controls; and (8) provides assistance in the implementation of HHS Plan for Drug Free Workplace.

Commissioned Corps Section (CAD352). (1) Provides technical assistance and information on rights, benefits, and obligations of the Commissioned Corps service to Commissioned Corps personnel and CDC management; (2) provides assistance and information on Commissioned Corps policies and systems such as pay, performance management, assignments, health benefits, training, travel, relocation, promotions, and retirement; (3) provides staffing assistance for CDC's

Commissioned Corps promotion and awards programs; and (4) maintains liaison and coordinates personnel services for Commissioned Corps personnel with the Division of Commissioned Personnel.

Central Staffing Section (CAD536). (1) Implements a centralized staffing and placement program; (2) administers the delegated examining authority, the direct hiring authority, and the temporary limited appointment authority granted by USOPM; (3) oversees the overall staffing process and insures quality control; (4) reviews, evaluates, and makes recommendations on the application and implementation of the USOPM delegated authorities and merit promotion program rules and regulations; (5) provides guidance and consultation in job analyses and in development of knowledge/skills/abilities (KSAs) crediting plans; and (6) manages various staffing programs such as the CDC summer program, the Voluntary Employee Referral Program, the Interagency Career Transition Assistance Program, and the Career Transition Assistance Program.

Technical Services Section (CAD357). (1) Provides central personnel services and assistance in the areas of employee benefits, personnel action processing, data quality control/assessment, and files/records management; (2) services as liaison between CDC and the HHS payroll office resolving discrepancies with pay and leave; (3) administers the leave donor program and processes time and attendance amendments; (4) provides policy guidance and technical advice and assistance on retirement, the Thrift Savings Plan, health/life insurance, and savings bonds; (5) codes and finalizes all personnel actions in the automated personnel data system; (6) assists with new employee orientation; (7) establishes and maintains the official personnel files system and administers personnel records storage and disposal program; (8) responds to employment verification inquiries; (9) administers the personnel security program; (10) initiates suitability background checks and fingerprints for all CDC personnel; and (11) provides assistance in the implementation of the HHS Plan for a Drug Free Workplace.

Information Technology and Analysis Branch (CAD36). (1) Develops strategic plans for information technology and information systems to support CDC's and HRMO's personnel information requirements; (2) acquires and implements appropriate technology and develops information systems to meet CDC-wide information needs on personnel, staffing, and work force characteristics and trends; (3) provides support to HRMO organizations and users in achieving automation of functions and use of information technology and systems; (4) develops, manages, and supports centralized information technology and systems in support of personnel activities, including the HHS personnel system; (5) researches and develops new sources of personnel information and access methods including computer-based CDC-wide surveys; (6) coordinates HRMO information resource management activities with IRMO and CDC information resource management committees; (7) conducts demographic analysis of the CDC work force and publishes results in management reports; and (8) develops methodologies to assess the impact of revised personnel policies and practices on the work force.

Outreach and Marketing Branch (CAD37). (1) Develops and implements human resource management marketing campaigns; (2) provides leadership in identifying the Centers/Institute/Offices' (CIOs) recruiting needs, and assesses, analyzes, and develops CDC's short- and long-range recruitment plans to meet these needs; (3) provides consultation, guidance, and technical advice on recruitment and special emphasis policies, practices, and procedures, including search committees; (4) strategizes on the best approach to recruitment at specific events, and designs and develops recruitment materials for events; (5) maintains and manages the Automated Applicant Listing System (AALS/Resumix) for storage and retrieval of applications of those individuals with education and experience appropriate for commonly needed and hard-to-fill positions; coordinates, with CIOs, the referral of appropriate candidates from the applicant pool for position vacancies; (6) provides leadership on recruitment activities through the development of policies and practices for effective communication of HRMO programs, coordinates the development and dissemination of information among HRMO and the CIOs, provides training and technical assistance to CIO staff; (7) manages and operates the CDC Job Information Center, including the automated telephone job line; (8) markets and manages special emphasis programs including the Program for Persons with Disabilities and the Disabled Veterans Affirmative Action Program, the Veterans Readjustment Appointment Program, the Federal Equal Opportunity Recruitment Program, and college relations and student employment programs; and (9) provides leadership in assessing progress in achieving overall staffing, EEO, and Affirmative Action goals.

Delegations of Authority Statement

All delegations and redelegations of authority remain in effect until otherwise modified, superseded, or cancelled.

Section C–C, Order of Succession

Delete in its entirety Section C–C, Order of Succession, and insert the following:

During the absence or disability of the Director, CDC, or in the event of a vacancy in that office, the first official listed below who is available shall act as Director, except that during a planned period of absence, the Director may specify a different order of succession:

1. Deputy Director for Science and Public Health;
2. Deputy Director for Policy and Legislation;
3. Deputy Director for Program Management.

Dated: October 30, 2000.

Jeffrey P. Koplan,

Director.

[FR Doc. 00–29023 Filed 11–13–00; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1555]

Draft Guidance for Industry on Refusal of Inspection or Access to HACCP Records Pertaining to the Safe and Sanitary Processing of Fish and Fishery Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Refusal of Inspection or Access to HACCP Records Pertaining to the Safe and Sanitary Processing of Fish and Fishery Products." This draft guidance sets forth the agency's interpretation of its Hazard Analysis Critical Control Point (HACCP) regulations for fish and fishery products as they pertain to the inspection of facilities and records. The agency is clarifying that a processor's refusal to allow FDA to inspect its processing facilities, or to provide HACCP records or plans to an inspector during an inspection, violates the regulations and thus may trigger a regulatory response by the agency. FDA is issuing this clarification because some domestic firms have questioned whether records can be made available after an inspection (rather than during) and some foreign firms have canceled scheduled inspections by FDA, but offered to make records available for review. This guidance applies to foreign processors that export fish and fishery products to the United States as well as to domestic processors.

DATES: Submit written comments on the draft guidance by December 14, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http://vm.cfsan.fda.gov/dms/guidance.html. Submit written requests for single copies of the draft guidance to the Industry Activities Staff, Office of Constituent Operations (HFS–565), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Send one self-addressed adhesive label to assist that office in processing your reuqests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary I. Snyder, Center for Food Safety and Applied Nutrition (HFS–415), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3133.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Refusal of Inspection or Access to HACCP Records Pertaining to the Safe and Sanitary Processing of Fish and Fishery Products." This guidance is intended to clarify that on-site inspection of a processing facility and concurrent review of HACCP records are essential elements of FDA's Seafood HACCP program as set forth at part 123 (21 CFR part 123). These regulations require processors of fish and fishery products to operate preventive control systems for human food safety that incorporate the principles of HACCP. The regulations further provide that fish and fishery products are adulterated under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(4)) if their processor fails to have and implement a HACCP plan when one is necessary, or otherwise fails to meet any of the requirements of the regulations, including allowing the official review of records (§ 123.6(g)). Processors must make their HACCP records and plans available "for official review and copying at reasonable times" (§ 123.9(c)). The agency expects that it will regard the failure to provide records and plans by a domestic or foreign processor as a significant program violation, even if a firm volunteers the documents after the inspection.

FDA believes that the best way for a regulatory authority to determine whether a processor is effectively operating a HACCP system is by inspecting the processor to assess whether the system is operating properly and is appropriate for the circumstances. Review of monitoring and other records generated by the HACCP system is a critical component of an inspection because it allows the inspector to match records against practices and conditions being observed in the plant and it discourages fraud. Thus, FDA always has intended that its review of processors' HACCP plans and records would occur as part of an inspection of a processor's entire HACCP system.

For domestic processors, failure to allow an inspection would not only violate the HACCP regulations; it is also a prohibited act under section 301(f) of the act (21 U.S.C. 331(f)). Moreover, if a domestic processor refuses an FDA inspection, FDA can obtain an inspectional warrant from the U.S. district court in which the processor is located.

Failure to allow an FDA inspection by a foreign processor can also result in a regulatory response. The definition of "processor" at § 123.3(l) specifically includes persons in foreign countries. Thus, like domestic processors, foreign processors who ship to the United States must operate under conditions that satisfy FDA's HACCP regulations, including the requirement that records be made available during the course of an FDA inspection.

This draft guidance is being issued consistent with FDA's good guidance practices (65 FR 56468, September 19, 2000). The draft guidance represents the agency's current thinking on refusal of inspection or access to HACCP records that pertain to the safe and sanitary processing of fish and fishery products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–29011 Filed 11–13–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1020]

Medical Devices Draft Guidance on Over the Counter (OTC) Screening Tests for Drugs of Abuse: Guidance for Premarket Notifications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Over the Counter (OTC) Screening Tests for Drugs of Abuse: Guidance for Premarket Notifications." FDA is issuing this draft guidance to provide information about studies and labeling considerations applicable to OTC screening tests that use urine as the clinical specimen for any combination of one or more of these drugs: Amphetamine (and, or methamphetamine), cocaine, cannabinoids, opiates, and phencyclidine. This draft guidance defines OTC use for the purposes of this document as use in home, workplace, insurance, and sports settings, and includes requests for comments on confirmatory testing and OTC alcohol testing. This draft guidance is neither final nor in effect at this time.

DATES: Submit written comments on the draft guidance by February 12, 2001.

ADDRESSES: Submit written requests for single copies on a 3.5 " diskette of the draft guidance entitled "Over the Counter (OTC) Screening Tests for Drugs of Abuse: Guidance for Premarket Notifications," to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Jean M. Cooper, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1243.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 30, 1998 (63 FR 71932), FDA announced the availability for comment of a draft guidance entitled "Guidance for Premarket Submissions for Tests for Screening Drugs of Abuse to Be Used By The Consumer." FDA invited interested persons to comment on the draft guidance by March 30, 1999. FDA is replacing that draft guidance document with a new draft guidance entitled "Over the Counter (OTC) Screening Tests for Drugs of Abuse: Guidance for Premarket Notifications." This second draft guidance provides more detailed recommendations on what to include in a premarket notification for this device, and includes new information addressing the relevant least burdensome provisions of the Food and Drug Administration Modernization Act of 1997.

The draft guidance recommends including in the premarket notification:

- OTC studies showing correct results at concentrations 50 percent above and 50 percent below the cutoff;
- Description of the patient reporting format;
- Studies on the stability of the device; and
- The confirmatory laboratory's credentials.

The draft guidance also seeks public comment on premarket review of OTC alcohol tests.

The draft guidance also addresses labeling for these devices.

As part of its efforts to ensure that FDA considers the least burdensome path to market, the agency has drafted the guidance to:

- Clarify that OTC screening tests for drugs of abuse ordinarily will be reviewed as a premarket notification;
- Suggest the use of spiked urine samples instead of urine obtained from individuals using drugs; and
- Suggest combining drugs in these spiked urine samples in order to reduce the number of samples tested.

II. Significance of Guidance

This draft guidance represents the agency's current thinking on submissions for OTC screening tests for drugs of abuse. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), and published the final rule, which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (65 FR 56468, September 19, 2000). This guidance document is issued as a Level 1 guidance consistent with the GGP's.

III. Electronic Access

In order to receive the draft guidance entitled "Over the Counter (OTC) Screening Tests for Drugs of Abuse: Guidance for Premarket Notifications" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (2209) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Over the Counter (OTC) Screening Tests for Drugs of Abuse: Guidance for Premarket Notifications" is available at http://www.fda.gov/cdrh/ode/guidance/2209.pdf.

IV. Comments

Interested persons may submit to Dockets Management Branch (address above) written comments regarding this draft guidance by February 12, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 2, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–29109 Filed 11–8–00; 4:21 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1587]

Medical Devices Draft Guidance on Guidance for Prescription Use Drugs of Abuse Assays Premarket Notifications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Guidance for Prescription Use Drugs of Abuse Assays Premarket Notifications." FDA is issuing this guidance to express the general principles FDA applies in evaluating premarket notifications (510(k)s) for prescription use drugs of abuse assays. The principles described in this draft guidance document apply only to in vitro diagnostic (IVD) submissions for 510(k) clearance for these devices. This draft guidance is neither final nor in effect at this time.

DATES: Submit written comments on the draft guidance by February 12, 2001.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance entitled "Guidance for Prescription Use Drugs of Abuse Assays Premarket Notifications" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax

your request to 301–443–8818. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Jean M. Cooper, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1243.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance recommends data and labeling that manufacturers should submit in support of substantial equivalence for prescription use drugs of abuse assays. The recommendations and general principles in this draft guidance are provided to assist manufacturers in the preparation of premarket notifications (510(k)s) for these devices. This document will supersede the document, "Review Criteria for Assessment of In Vitro Diagnostic Devices for Drugs of Abuse Assays Using Various Methodologies," August 31, 1995. This draft guidance explains the types of studies to conduct and how to present the study data in greater detail than the document it is replacing.

II. Significance of Guidance

This draft guidance represents the agency's current thinking regarding data and labeling for prescription use drugs of abuse device submissions for 510(k) clearance. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's) and published the final rule, which set forth the agency's regulations for the development, issuance, and use of guidance documents (65 FR 56468, September 19, 2000). This guidance document is issued as a Level 1 draft guidance consistent with the GGP's.

III. Electronic Access

In order to receive the draft guidance entitled "Guidance for Prescription Use Drugs of Abuse Assays Premarket Notifications" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (152) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Guidance for Prescription Use Drugs of Abuse Assays Premarket Notifications" will be available at http://www.fda.gov/cdrh/ode/guidance/152.pdf.

IV. Comments

Interested persons may submit to Dockets Management Branch (address above) written comments regarding this draft guidance by February 12, 2001. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 2, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–29110 Filed 11–8–00; 4:21 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: October 2000

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of October 2000, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs.

In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ASKARI, SOHEILA MONTGOMERY, AL	11/20/2000
BEN, ERIC S PORT ST LUCIE, FL	11/20/2000
CARNEVALI, STEVEN ERNEST JR PITTSBURGH, PA	11/20/2000
CASPER, FRANCES C VIRGINIA BCH, VA	11/20/2000
CHACON, RAUL ENRIQUE VALRICO, FL	11/20/2000
CHAMBERS, CHARLES ROOSEVELT, NY	11/20/2000
CUCHEZ, MARIA BELL GARDENS, CA	11/20/2000
CULLINAN, MICHAEL JOSEPH MORGANTOWN, WV	11/20/2000
DE LOS SANTOS, RAMIRO EAGLE PASS, TX	11/20/2000
DE LOS SANTOS GARCIA, MARILU EAGLE PASS, TX	11/20/2000
DEL TORO PHARMACY MIAMI, FL	11/20/2000
DENIS, ALFONSO EL MONTE, CA	11/20/2000
DIAZ, RACHEL M HIALEAH, FL	11/20/2000
DONALDSON, JAMES FRED BERRIEN SPRINGS, MI	11/20/2000
FERREIRO, CARLOS M MIAMI, FL	11/20/2000
FISHER, STEPHEN NEAL PITTSBURGH, PA	11/20/2000
FLORES, JOSE MARTIN DOWNEY, CA	11/20/2000
GALE, STACEY R DONALSONVILLE, GA	11/20/2000
GALIANO, CARMEN SOCORRO MIAMI, FL	11/20/2000
GARCIA, EDUARDO G	11/20/2000

Subject, city, state	Effective date
MIAMI, FL	
HERNANDEZ, ALDO MIAMI, FL	11/20/2000
HERNANDEZ, FRANCISCO HIALEAH, FL	11/20/2000
HUBBARD, EMILY A MYRTLE BEACH, SC	11/20/2000
ISAAC, LAJUANA BLOOMFIELD HILLS, MI	11/20/2000
JOHNSON, VICTOR LEE EVANS, GA	11/20/2000
LIFESTART CLINIC, INC SCHENECTADY, NY	11/20/2000
LITTLEJOHN, JUANITA JO LINDEN, TX	11/20/2000
MARTIN, CASSANDRA JAMAICA, NY	11/20/2000
MERRIMAN, MARTIN JAMES WARREN, MI	11/20/2000
MORENO, JORGE F MIAMI, FL	11/20/2000
MYERS, MARY LU UPPER SANDUSKY, OH	11/20/2000
NELLIS, SCOTT LOUIS LAS VEGAS, NV	11/20/2000
NICKERSON, ANNIE LONG BEACH, CA	11/20/2000
OLADIPO, DOHERTY MARIETTA, GA	11/20/2000
OVAKIMIAN, SAMVEL GLENDALE, CA	11/20/2000
PEDRO, CAPOTE N MIAMI, FL	11/20/2000
PEREZ, ALINA HIALEAH, FL	11/20/2000
PINSKY, ABE NEW YORK, NY	11/20/2000
PURVIS, JOHN AUSTIN WARREN, MI	11/20/2000
RODRIGUEZ, CARLOS MIAMI, FL	11/20/2000
SANCHUK, DANIEL PAUL BEL ALTON, MD	11/20/2000
SCHNEIDER, BRIAN A PORT ST LUCIE, FL	11/20/2000
SCOTT, CHRISTINE RIDGELAND, SC	11/20/2000
SOKOLOW, LLOYD B SCHENECTADY, NY	11/20/2000
SOKUNBI, BAYO MARIETTA, GA	11/20/2000
TAN, EGBERT AUNG KYANG TUCKAHOE, NY	11/20/2000
TAYLOR, ROSALYN ZANESVILLE, OH	11/20/2000
VAINIO, DAVID G BUTTE, MT	11/20/2000
VUONG, TAN VAN SAN DIEGO, CA	11/20/2000
WADE, SHANISHA COMPTON, CA	11/20/2000
WATTS, JOHN SHELBY, JR LOS ANGELES, CA	11/20/2000

FELONY CONVICTION FOR HEALTH CARE FRAUD

Subject, city, state	Effective date
JONES, SHAWN R EAST RIDGE, TN	11/20/2000
KING, NOREEN N ST STEPHENS, SC	11/20/2000
MAPLE, DEBORAH D CAMDEN, SC	11/20/2000
PICARIELLO, JOSEPH MONTGOMERY, PA	11/20/2000

FELONY CONTROL SUBSTANCES CONVICTION

Subject, city, state	Effective date
BRANNON, ROBERT WILLIAM HILLIARD, OH	11/20/2000
FARRIS, DEBRA ANN SEARS CORBIN, KY	11/20/2000
HOPKINS, MARSHA ANN WAYNESBURG, PA	11/20/2000
LOGSDON, LISA D LOUISVILLE, KY	11/20/2000
MARTENS, ALROY VERN HUTCHINSON, KS	11/20/2000
MERCER, MICHAEL J STUTTGART, AR	11/20/2000
RITCHIE, HENRY S SPARTANBURG, SC	11/20/2000
TYSELL, BARBARA ELISABETH ROYAL OAK, MI	11/20/2000

PATIENT ABUSE/NEGLECT CONVICTIONS

Subject, city, state	Effective date
BAZZLE, TINA MARIE YUMA, AZ	11/20/2000
EVANS, CHARLES E LINDEN, TN	11/20/2000
GLOVER, TYRONE B RIDGELAND, SC	11/20/2000
GOODYEAR, SARAH LOS LUNAS, NM	11/20/2000
HACKLER, LEVESTER WARRENVILLE, OH	11/20/2000
HALL, ODESSA LEE SHREVEPORT, LA	11/20/2000
HOSKINS, VIRGINIA GREENVILLE, MS	11/20/2000
IDLEWOOD ASSOCIATES, LTD KNOXVILLE, TN	11/20/2000
LEE, JOHN JOON TUCSON, AZ	11/20/2000
LICHT, DAVID WAYNE PAWNEE, OK	11/20/2000
MILLS, ANNIE ROCHESTER, NY	11/20/2000
MOZEE, PATRINA JACKSON, MS	11/20/2000
SIMMONS, CHRISTIAN LAUREL, MS	11/20/2000
SMITH, CALLIE MAE BROOKHAVEN, MS	11/20/2000
STOKES, PERRY NASHVILLE, TN	11/20/2000
TENNESSEE, MINNIE JACKSON, MS	11/20/2000
THOMAS, LAWRENCE JACKSON, MS	11/20/2000
THOMAS, KATRINA SARDIS, MS	11/20/2000
WHATLEY, LORETTA YOUNGSTOWN, OH	11/20/2000
WILLIAMS, TONY BRANDON, MS	11/20/2000
WOODS, KENDRICK L MEMPHIS, TN	11/20/2000

CONTROLLED SUBSTANCE CONVICTIONS

Subject, city, state	Effective date
ARMENTROUT, ROBERT MARK RIDGELEY, WV	11/20/2000
GRIFFITH, JOHN E JR BELLHAVEN, NC	11/20/2000
MACWAN, NELSON M BROOKLYN, NY	11/20/2000

LICENSE REVOCATION/SUSPENSION/SURRENDERED

Subject, city, state	Effective date
ADAMS, SHARON TOTH VIRGINIA BCH, VA	11/20/2000
ANDERSON, MICHAEL O RANCHO PALOS VERDES, CA	11/20/2000
BALLARD, JAMES VERNON LILLIAN, AL	11/20/2000
BARKER, ROBERTA L SHENANDOAH, IA	11/20/2000
BELLIS, BARBARA PHILADELPHIA, PA	11/20/2000
BENDA, CHERYL DENISE OKARCHE, OK	11/20/2000
BENITEZ, OLGA JACKSON HEIGHTS, NY	11/20/2000
BRIGHT, KRYSTIQUE ANNE VALLEJO, CA	11/20/2000
BROWN, KAREN R MIDDLE ISLAND, NY	11/20/2000
BUCHANAN, WALTER ST LOUIS, MO	11/20/2000
CADLE, NANCY J ONEIDA, TN	11/20/2000
CALCIANO, ANGELA W MEDIA, PA	11/20/2000
CAMPANELLA, CARL JOSEPH DUQUOIN, IL	11/20/2000
CAMPBELL, DARLENE BALTIMORE, MD	11/20/2000
CASTELLON, JANET HORN LAKE, MS	11/20/2000
CHERAMIE, SUSAN CARRIERE, MS	11/20/2000
CHRISTIAN, CYNTHIA ALLISE HOUSTON, TX	11/20/2000
CLEMENT, KEITH ALAN SAN FRANCISCO, CA	11/20/2000
COLLINS, SUE CHATSWORTH, CA	11/20/2000
COLOMBO, JOSEPH STEPHEN PITTSBURGH, PA	11/20/2000
DAVIS, CYNTHIA STEPHENS ROUGEMONT, NC	11/20/2000
DAVIS, DAVID W HOUSTON, TX	11/20/2000
DEAN, JOHNNIE L LONGBEACH, MS	11/20/2000
DEVITT, DANIEL M CARROLTON, OH	11/20/2000
DOLENZ, BERNARD JOSEPH FORREST CITY, AR	11/20/2000
DOUGHTY, MARY E JUPITER, FL	11/20/2000
DRAKE, JEANETTE MARY SANFORD, FL	11/20/2000
DUGAN, PATRICIA GLENSIDE PA	11/20/2000
ELDRIDGE, MELISSA R DANVILLE, IL	11/20/2000
ELSENBACH, THERESA MARIE CHICAGO, IL	11/20/2000
EVANS, DENA LEA SWETT LOUISVILLE, KY	11/20/2000

Subject, city, state	Effective date
FALSION, JACK W BROCKPORT, NY	11/20/2000
FINKEN, CHRISTINE LYNN FREEPORT, MN	11/20/2000
FIZER, LAURA A RED LION, PA	11/20/2000
GENTRY, RHONDA S ROCKVALE, TN	11/20/2000
GIBSON, ROBERT W PONCA CITY, OK	11/20/2000
GILBERT, ANN NIETHHAMER MONROEVILLE, PA	11/20/2000
GILLIS, ROBERT P NEW YORK, NY	11/20/2000
GLENNON, MAUREEN ALICE SUMMITVILLE, NY	11/20/2000
GOLDFARB, ARTHUR N WEST LANCASTER, CA	11/20/2000
GREEN, LYNAYA SILVER SPRING, MD	11/20/2000
GREEN, TANGELIA C MEMPHIS, TN	11/20/2000
GRESKO, JEAN M POTTSTOWN, PA	11/20/2000
GROVE, CYNTHIA K ODEBOLT, IA	11/20/2000
GURLEY, MELANIE A COLUMBIA, TN	11/20/2000
GURULE, MARIE LOUISE MONTCLAIR, CA	11/20/2000
HAM, KEVIN ROBERT POPLAR BLUFF, MO	11/20/2000
HAMILTON, BETTY LOUISE DAVIS PADUCAH, KY	11/20/2000
HANCE, CLAUDIA B NEWPORT, TN	11/20/2000
HARRIS, CLAVE L FOREST PARK, IL	11/20/2000
HARRIS, KAREN JOHNSON UNIVERSAL CITY, TX	11/20/2000
HARTMAN, TED E AUSTIN, TX	11/20/2000
HATCHER, MICHELLE L MILWAUKEE, WI	11/20/2000
HAY, BOYD LARUE HASTINGS, MN	11/20/2000
HEBRON, DELANO N JR CHICAGO, IL	11/20/2000
HEITMEIER, GENEVIEVE A MEDIAPOLIS, IA	11/20/2000
HESTER, PAMELA S W BURLINGTON, IA	11/20/2000
HOLLINSHED-TAYLOR, BARBARA JACKSON, MS	11/20/2000
INGRAM, WILLIAM BRADLEY WEST, MS	11/20/2000
JOHNSON, ROSEMARY CHRISTINE SHEVLIN, MN	11/20/2000
KORANDA, CHARLES L HIRAM, GA	11/20/2000
LEVITT, JEFFREY M SCOTTSDALE, AZ	11/20/2000
LIBBY, EUGENE KARL, SR CYPRESS, CA	11/20/2000
LIGHTFOOTE, WILLIAM E II MCLEAN, VA	11/20/2000
MAGERA, JOHN ALLEN BRADFORDWOODS, PA	11/20/2000
MONSSEN, SHEILA ANN OAK GROVE, MN	11/20/2000
MOORE, VICKIE LEE RALEIGH, NC	11/20/2000
MUCH, WENDY SMITH ASTON, PA	11/20/2000
NICOLAI, TERRY R HARCOURT, IA	11/20/2000
NOONAN, CHARLES ANDREW CONCORD, CA	11/20/2000
NOOR-KHAN, NAVEED BEMUS POINT, NY	11/20/2000
O'DONOHUE, MATTHEW JOSEPH BAKERSFIELD, CA	11/20/2000
OLSON, MARSHA S MT PLEASANT, IA	11/20/2000
PANTUSCO, CATHERINE JEANNETTE POUGHKEEPSIE, NY	11/20/2000
PERKINS, KENNY L DES MOINES, IA	11/20/2000
PROCACINA, THERESA LYNN CARNEGIE, PA	11/20/2000
RAM, GOPAL PRASAD WHITESTONE, NY	11/20/2000
REESE, NONA GREENWOOD SPRINGS, MS	11/20/2000
RICHARD, MICHAEL DAVID KING OF PRUSSIA, PA	11/20/2000
RIDLEY, CHARLES LYNWOOD SANTA ROSA, CA	11/20/2000
ROBERTS, ALVIN LEE ARLINGTON, TX	11/20/2000
RYAN, LINDA GREEN GLASGOW, KY	11/20/2000
RYE, PHYLLIS SPRINGFIELD, TN	11/20/2000
SANDERS, BARBARA JEAN AMARILLO, TX	11/20/2000
SANFORD, CINDY L OSCEOLA, IA	11/20/2000
SPIRES, MELVIN CURTIS CLARKSVILLE, TN	11/20/2000
STANLEY, MARYETTA HAMILTON, IA	11/20/2000
STEVENS, EDGAR VINCENT BALDWINSVILLE, NY	11/20/2000
STORTO, KATHY BECK MARSHALLTOWN, IA	11/20/2000
TAYLOR, SUSAN YANCEY TIPLERVILLE, MS	11/20/2000
TIPPINS, TRICIA RANDALL ELYSBURG, PA	11/20/2000
TISBY, MARY TONAWANDA, NY	11/20/2000
TRABI, GEORGE B HARRISBURG, PA	11/20/2000
UPTON, TONY BOYLE, MS	11/20/2000
VELEZ, AUGUSTINE ORCHARD PARK, NY	11/20/2000
VENNARD, LEIGH DES MOINES, IA	11/20/2000
WALL, CYNTHIA C BETHEL, VT	11/20/2000
WHITE, LARA C BRUCE, MS	11/20/2000
WHITE, PATRICIA BRANDON, MS	11/20/2000
WILLIAMSON, SANDRA T ST PETERSBURG, FL	11/20/2000
YANULAVICH, MARY JANE ESSEX JUNCTION, VT	11/20/2000

FEDERAL/STATE EXCLUSION/SUSPENSION

Subject, city, state	Effective date
H & H MEDICAL SUPPLY LOS ANGELES, CA	11/20/2000

FRAUD/KICKBACKS

Subject, city, state	Effective date
DURAMED, INC THONOTASASSA, FL	05/19/2000
WILLIAMSON, LAURA FLINN THONOTSASSA, FL	05/19/2000

OWNED/CONTROLLED BY CONVICTED EXCLUDED

Subject, city, state	Effective date
BOLTON CHIROPRACTIC SVCS, P C DENVER, CO	11/20/2000
BUENA VISTA PHARMACY, INC NEW YORK, NY	11/20/2000
DR TOM ALDEN & ANATOMY CHOICE CAMBRIDGE, MA	11/20/2000
GALE PHARMACY SERVICE, INC DONALSONVILLE, GA	11/20/2000
GROSS COSMETIC & FAM DENT, P C HOMEWOOD, IL	11/20/2000
MARK F BRADSHAW, D D S, P A WACONIA, MN	11/20/2000

DEFAULT ON HEAL LOAN

Subject, city, state	Effective date
ADDISON, MICHAEL A HARTSVILLE, SC	11/20/2000
BALENT, LAURA BELLEVUE, WA	11/20/2000
BENNETT, JOHN S SAN MARCOS, TX	11/20/2000
BURT, JOSEPH M MYRTLE BEACH, SC	10/16/2000
CANNON, DENNIS J LEWISVILLE, TX	11/20/2000
DOOLIN, GEORGE G DUBUQUE, IA	11/20/2000
DRISCOLL, MICHAEL T TAMPA, FL	11/20/2000
EHLENFELD, JEFFREY W GREENUP, IL	11/20/2000
FARROKHZAD, SARAH SAN DIEGO, CA	11/20/2000
FORD, THOMAS M YORBA LINDA, CA	11/20/2000
HARRIS, LAWRENCE J CLEVELAND, OH	11/20/2000
HILTON, JAMES R JR BEACON FALLS, CT	11/20/2000
HUFF, GREGORY E GAINESVILLE, FL	11/20/2000
JACKSON, DONALD V AUSTIN, TX	11/20/2000
LOWE, DANE E IONE, CA	11/20/2000
MACDONALD, FRANK R	11/20/2000

Subject, city, state	Effective date
ALLENTOWN, PA	
MAEDKE, RICHARD C MILWAUKEE, WI	11/20/2000
MANIER, LINDA A WASHINGTON, DC	11/20/2000
MATHIESEN, DOUGLAS A SHAWNEE, KS	10/16/2000
MCCARTY, DANIEL J BUTLER, PA	11/20/2000
NIEMAN, EDWARD H BEVERLY HILLS, CA	11/20/2000
OSKIN, TERRI A SPOKANE, WA	11/20/2000
PARKER, BENJAMIN L PADUCAH, KY	11/20/2000
RAMIREZ, YOLANDA C ATLANTA, GA	11/20/2000
SADEGHI, MAHYAR PINOLE, CA	11/20/2000
SCHREIBMAN, MARK R GREELEY, CO	11/20/2000
SHAPIRO, FELIX HUNTINGDON VALLEY, PA	11/20/2000
SOLLOM, SHERI L PINE BLUFF, AR	11/20/2000
TESSMER, JOHN F BROWNWOOD, TX	09/26/2000
TICER, LARRY S ELIZABETHTOWN, KY	11/20/2000
TORRES-ORTIZ, HECTOR R CAROLINA, PR	11/20/2000
TYLER, NORMAN E INDIANAPOLIS, IN	11/20/2000
VAN HORN, WILLIAM A RUTHERFORDTON, NC	11/20/2000
WIMER, RUSS A LESLIE, AR	11/20/2000
WOLTER, CHAD C ONALASKA, WI	11/20/2000

Dated: November 3, 2000.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 00–29046 Filed 11–13–00; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Notice of Intent To Negotiate Agreements Among the Central Utah Water Conservancy District, Sanpete Water Conservancy District, Sanpete County, and Department of the Interior for Implementation of Projects in Sanpete County, UT

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate agreements among the Central Utah Water Conservancy District (CUWCD), Sanpete Water Conservancy District, Sanpete County, and the Department of the Interior for implementation of Projects in Sanpete County, Utah.

SUMMARY: Public Law 102–575, Section 206(a)(1) provides:

> After two years from the date of enactment of this Act, the District shall, at the option of an eligible county as provided in paragraph (2), rebate to such county all of the ad valorem tax contributions paid by such county to the District, with interest but less the value of any benefits received by such county and less the administrative expenses incurred by the District to that date.

Sanpete County desires to pursue local water development projects and is requesting a rebate of a portion of the ad valorem taxes it has paid to CUWCD, plus interest, to provide the required 35 percent local funding for such projects.

In a letter dated October 7, 1996, Sanpete County requested federal funding, equal to 65 percent of the costs as set forth in section 206(b)(1), to implement the projects. Section 206(b)(1) states:

> Upon the request of any eligible county that elects not to participate in the project as provided in subsection (a), the Secretary shall provide as a grant to such county an amount that, when matched with the rebate received by such county, shall constitute 65 percent of the cost of implementation of measures identified in paragraph (2).

Sanpete County, located within the Sevier River Basin in Central Utah, is requesting federal funding for the Mayfield New Well Project and the Axtell Culinary Water System Improvement Project. Both projects are municipal improvement projects intended to increase the reliability and stability of their existing culinary water systems. Two agreements will be negotiated—one to provide funding for the Mayfield Project and the other for the Axtell Project.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Reed Murray, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, UT 84606–6154, (801) 379–1237, rmurray@uc.usbr.gov.

Dated: October 13, 2000.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 00–29045 Filed 11–13–00; 8:45 am]

BILLING CODE 4310–RK–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting topics are identified in the SUPPLEMENTARY INFORMATION.

DATES: The Aquatic Nuisance Species Task Force will meet from 8:30 a.m. to 5:00 p.m., Tuesday, November 28, 2000 and 8:30 a.m. to 12:30 p.m., Wednesday, November 29, 2000.

ADDRESSES: The ANS Task Force meeting will be held at the Arlington Hilton and Towers, 950 Stafford Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: *sharon_gross@fws.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force meeting on Tuesday and Wednesday include: updates of activities from the Task Force's regional panels; a discussion on improving the coordination with the regional panels; a discussion of the ballast water management program; an overview of the activities of the Invasive Species Council and Invasive species Advisory Committee; updates from several Task Force sub-committees including the Communications, Education and Outreach Committee and the Risk Assessment committee; and other topics. Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: November 8, 2000.

Cathleen I. Short,

Aquatic Nuisance Species Task Force, Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 00–29074 Filed 11–13–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–HN; Nev–067245]

Notice of Opening Order of Public Lands; Washoe County, NV

SUMMARY: This notice opens the following described 153.48 acres of public land in Spanish Springs Valley to the operation of the public land laws:

Mount Diablo Meridian

T. 20 N., R. 20 E.,
  Sec. 14, lots 1–3, SW¼NE¼.

EFFECTIVE DATE: The effective date of this Notice is November 29, 2000.

FOR FURTHER INFORMATION CONTACT: Jo Ann Hufnagle, Realty Specialist, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701; telephone (775) 885–6000.

SUPPLEMENTARY INFORMATION: On September 5, 1967, Patent No. 27–68–0044 was issued to Washoe County pursuant to the Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741; 43 U.S.C. 869) as amended, for the above-described land. The land was never developed for recreational use and Washoe County has reconveyed that land to the United States.

At 10 a.m. on November 29, 2000, the land will become open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on November 29, 2000 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on December 14, 2000, the land will also be open to location under the United States mining laws. Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: November 1, 2000.

Richard Conrad,

Assistant Manager, Non-renewable Resources.

[FR Doc. 00–29044 Filed 11–13–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Availability of United States Virgin Islands Territorial Submerged Lands Act Boundary Determination and Submerged Lands Jurisdictions

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of United States Virgin Islands Territorial Submerged Lands Act Boundary Determinations and Submerged Lands Jurisdictions.

SUMMARY: Notice is hereby given that the Minerals Management Service's Mapping and Boundary Branch has prepared for review and comment by interested parties on the Territorial Submerged Lands Act Boundary Determinations and Submerged Lands Jurisdictions for the United States Virgin Islands, including St. Thomas, St. John, and St. Croix. The Mapping and Boundary Branch has conducted pursuant to 48 U.S.C. 1705(b), coastline ownership record searches, field investigations, baseline point development, and review and mathematical computations to derive and define these boundaries and jurisdictions. The Terrirotial Submerged Lands Act Boundary and Submerged Lands Jurisdictions referenced in this notice were derived in part by using copies of the most current National Ocean Service nautical charts. The Territorial Submerged Lands Act Boundary was developed as an ambulatory boundary. This means that the boundary will continue to move with the erosions and accretions of the coastline. Outer Continental Shelf Official Protraction Diagrams and Supplemental Official Outer Continental Shelf Block Diagrams approved on the date indicated below are on file and available to the public for review, comment, and information in the Minerals Management Service, Mapping and Boundary Branch, Lakewood, Colorado. In accordance with Title 43, U.S.C. Sections 1457 and 1458 and Title 48, U.S.C. Section 1705, these diagrams listed below are the basic record for the legal description of the Territorial Submerged Lands and Federal and Territorial Submerged Lands jurisdictions in the United States Virgin Islands.

Description	Date
NE20–04, St. Thomas (With supporting Supplemental Official OCS Block Diagrams)	June 4, 2000.
NE20–07, St. Croix (With supporting Supplemental Official OCS Block Diagrams)	June 4, 2000.

Copies of this information may be obtained by logging on to the Minerals Management Service's website at *ftp://mmspub.mms.gov/pub/mapping/vi/*

FOR FURTHER INFORMATION CONTACT: Mr. Leland F. Thormahlen, Chief, Mapping and Boundary Branch, P.O. Box 25165 MS 4011, Denver Federal Center, Lakewood, Colorado 80225, Telephone (303) 275–7120 or E-Mail leland.thormahlen@mms.gov.

Dated: November 8, 2000.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 00–29082 Filed 11–13–00; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–420]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences With Respect to Certain Products Imported From India

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: On October 31, 2000, the Commission received a request from the United States Trade Representative (USTR) for an investigation under section 332(g) of the Tariff Act of 1930 for the purpose of providing advice concerning possible modifications to the Generalized System of Preferences (GSP) with respect to certain products imported from India.

Following receipt of the request and in accordance therewith, the Commission instituted investigation No. 332–420 in order to provide advice as to whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503(c)(2)(A) of the Trade Act of 1974, with respect

to the HTS subheadings[1] listed below imported from India:

7113.19.25
7113.19.29
7113.19.50
7418.19.10
9405.50.30

With respect to the competitive need limit in section 503(c)(2)(A)(i)(I) of the 1974 Act, the Commission, as requested, will use the dollar value limit of $95,000,000.

As requested by USTR, the Commission will seek to provide its advice not later than February 6, 2001.

EFFECTIVE DATE: November 6, 2000.

FOR FURTHER INFORMATION CONTACT: (1) Project Manager, Eric Land (202–205–3349), (2) Deputy Project Manager, Cynthia B. Foreso (202–205–3348). The above persons are in the Commission's Office of Industries. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the General Counsel at 202–205–3091.

Background

The subject articles the product of India are currently ineligible for duty-free treatment under the GSP program because imports from India exceed the competitive need limits. The USTR letter noted that as a result of a White House Initiative with India, the Trade Policy Staff Committee (TPSC) recently announced in the **Federal Register** the initiation of a review to consider modification of the GSP with respect to such products imported from India. Modifications to the GSP which may result from this review will be announced in the spring of 2001.

Public Hearing

A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on December 13, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on November 27, 2000. In addition, persons appearing should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on November 29, 2000. Posthearing briefs should be filed with the Secretary by close of business on December 21, 2000. In the event that no requests to appear at the hearing are received by the close of business on November 27, 2000, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after November 28, 2000 to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to appearing at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on December 21, 2000. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: November 7, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–29072 Filed 11–13–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(I)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 3, 2000, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

The firm plans to import the coca leaves to manufacture bulk controlled substance.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 is such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: October 31, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–29036 Filed 11–13–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on Thursday, December 7, 2000 from 10:00 a.m. until 12:00 p.m. at the DoubleTree Hotel, 300 Army Navy Drive, Arlington, Virginia 22202. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee.

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[1] See USTR **Federal Register** notice of November 1, 2000 (65 FR 65370) for article description.

The DAB's scope of authority is: To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analysis of DNA; To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by forensic laboratories, including statistical and population genetics issues affecting the evaluation of the frequency of occurrence of DNA profiles calculated from pertinent population database(s); To recommend standards for acceptance of DNA profiles in the FBI's Combined DNA Index System (CODIS) which take account of relevant privacy, law enforcement and technical issues; and, To make recommendations for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The topics to be discussed at this meeting include: a review of the minutes from the Wednesday, July 12 and Thursday, July 13, 2000 meeting in San Antonio, Texas and review and discussion of the Privacy Act Notice. This is the final meeting of the DAB before its term expires on December 31, 2000.

The meeting is open to the public on a first-come, first seated basis. Anyone wishing to address the DAB must notify the Designated Federal Employee (DFE) in writing at least twenty-four hours before the DAB meeting. The notification must include the requestor's name, organizational affiliation, a short statement describing the topic to be addressed, and the amount of time requested. Oral statements to the DAB will be limited to five minutes and limited to subject matter directly related to the DAB's agenda, unless otherwise permitted by the Chairman.

Any member of the public may file a written statement for the record concerning the DAB and its work before or after the meeting. Written statements for the record will be furnished to each DAB member for their consideration and will be included in the official minutes of a DAB meeting. Written statements must be type-written on 8½" x 11" xerographic weight paper, one side only, and bound only by a paper clip (not stapled). All pages must be numbered. Statements should include the Name, Organizational Affiliation, Address, and Telephone number of the author(s). Written statements for the record will be included in minutes of the meeting immediately following the receipt of the written statement, unless the statement is received within three weeks of the meeting. Under this circumstance, the written statement will be included with the minutes of the following meeting. Written statements for the record should be submitted to the DFE.

Inquiries may be addressed to the DFE, Dr. Dwight E. Adams, Deputy Assistant Director, Laboratory Division—Room 3821, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW, Washington, DC 20535–0001, (202) 324–6071, FAX (202) 324–1462.

Dated: November 6, 2000.

Dwight E. Adams,

Deputy Assistant Director, Forensic Analysis Branch, Federal Bureau of Investigation.

[FR Doc. 00–29043 Filed 11–13–00; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly accessed.

Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension collection of the Agricultural and Food Processing Clearance Order, Form ETA–790; Agricultural and Food Processing Clearance Memorandum, Form ETA–795; Migrant Worker Itinerary, Form ETA–785; and Job Service Manifest Record, Form ETA–785A.

A copy of the proposed information collection request can be obtained by contacting the employee or office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before January 16, 2001.

ADDRESSES: Roberto Carmona, National Monitor Advocate, Office of Career Transition Assistance, U.S. Employment Service/ALMIS, Employment and Training Administration, 200 Constitution Avenue, NW., Rm. S–4231, Washington, DC 20210; (202) 219–5257 (not a toll-free number); Internet address: *rcarmona@doleta.gov;* and/or Fax: (202) 208–5844.

SUPPLEMENTARY INFORMATION:

I. Background

The Migrant and Seasonal Farm Worker regulations at 20 CFR 653.500 established procedures for agricultural clearance to all local offices to use the interstate clearance forms as prescribed by ETA. Local and State employment offices use the Agricultural and Food Processing Clearance Order to extend job orders beyond their jurisdictions. Applicants holding local offices use the Agricultural Clearance Memorandum to give notice of action on a clearance order, request additional information, report results, and to accept or reject the extended job order. State agencies use the Migrant Worker Itinerary to transmit employment and supportive service information to labor-demand areas, and to assist migrant workers in obtaining employment. The Job Service Manifest Record shows names, addresses, and characteristics of all people named on the Migrant Worker Itinerary.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(C)(2)(a) of an extension to an existing collection of information previously approved and assigned OMB Control No. 1205–0134. There is no change in burden.

Type of Review: Extension.

Agency: Employment and Training Administration.

Titles: Agricultural and Food Processing Clearance Order, Agricultural Clearance Memorandum, Migrant worker Itinerary, and Job Service Manifest Record.

OMB Number: 1205–0134.

Frequency: On occasion.

Affected Public: Individuals and households, employers, and State governments.

Number of Respondents: 52.

Estimated Time Per Respondent:

Form	Volume per year	Hours per response	Hours per year
ETA–790 ...	2,000	1.0	2,000
ETA–795 ...	3,000	.5	1,500
ETA–785 ...	3,500	.5	1,750
ETA–785A	2,500	.5	1,250

Estimated Burden Hours: 6,500.

Total Estimated Cost: None.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 17, 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 00–29037 Filed 11–13–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of data contained on the Job Order and Work Application.

A copy of the proposed information collection request can be obtained by contacting the office listed in the addressees section of this notice.

DATES: Written comments must be submitted to the office listed in the addressees section below on or before January 16, 2000.

ADDRESSES:

Grace A. Kilbane, Administrator, Office of Workforce Security, Employment and Training Administration, 200 Constitution Avenue, NW., Rm. S–4231, Washington, DC 20210; (202) 219–7831 (not a toll-free number); Internet address: *GKilbane@doleta.gov;* and/or Fax: (202) 219–8506); or

Eric R. Johnson, Director, Office of Career Transition Assistance, Employment and Training Administration, 200 Constitution Avenue, NW., Rm. S–231, Washington, DC 20210; (202) 219–7831 (not a toll-free number); Internet address: *ejohnson@doleta.gov;* and/or Fax: (202) 219–0323).

SUPPLEMENTARY INFORMATION:

I. Background

States collect basic labor exchange information, using a system of their choice. The exact information to be collected is determined by the State. It is information that is essential to the operation of the labor exchange job placement service and normally collected as part of Job Matching. At a minimum, information to be collected is that which enables the State to comply with regulations at 20 CFR part 652, and the Wagner-Peyser Act, as amended. The requirement to retain information under 20 CFR 652.8(d)(5) is: "Each State shall retain basic documents for the minimum period specified below:"

(i) work application: one year

(ii) Job order: one year."

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A) of an extension to previously approved record keeping requirement assigned OMB Control No. 1205–0001. There is no change in burden.

Type of Review: Extension, without change.

Agency: Employment and Training Administration.

Title: Work Application/Job Order Record keeping.

OMB Number: 1205–0001.

Frequency: Record keeping.

Affected Public: State governments.

Number of Respondents: 52.

Estimated Cost Per Respondent: No cost to respondent.

Estimated Burden Hours: 208.

Items	States*	Hours per year	Total (hours)
Worker Application ...	52	4	208
Job Order	52	4	208

*52 States include Puerto Rico and the District of Columbia.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 17, 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 00–29038 Filed 11–13–00; 8;45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act: Native American Employment and Training Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, and section 166(h)(4) of the Workforce Investment Act (WIA) [29 U.S.C. 2911(h)(4)], notice is hereby given of the initial meeting of the Native American Employment and Training Council as constituted under WIA.

TIME AND DATE: The meeting will begin at 9 a.m. EST on Monday, December 4, 2000, and continue until 5 p.m. EST that day. The meeting will reconvene at 9 a.m. EST on Tuesday, December 5, 2000, and adjourn at 2:55 p.m. EST on that day. The period from 3 p.m. to 5 p.m. EST on December 4 will be reserved for participation and presentation by members of the public.

PLACE: The Monday session will be held in Room N–5437 A, B, and C, Frances Perkins Building, the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The Tuesday session will be held in the Arlington Room of the Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia 22202.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: The agenda will focus on the following topics: (1) Comments from the Department on overall employment and training issues; (2) FACA orientation for Council Members; (3) status of WIA implementation efforts; (4) discussion of WIA management issues; (5) the Council report to the Department and Congress; (6) status of technical assistance and training provision for PYs 2000 and 2001; and (7) status of the PY 2000 Partnership Plan.

FOR FURTHER INFORMATION CONTACT: James C. DeLuca, Chief, Division of Indian and Native American Programs, Office of National Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210.

Telephone: (202) 219–8502 ext 119 (VOICE) or (202) 326–2577 (TDD) (these are not toll-free numbers).

Signed at Washington, DC, this 7th day of November, 2000.

James C. DeLuca,

Acting Director, Office of National Programs.

[FR Doc. 00–29040 Filed 11–13–00; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 U.S.C. (29 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on December 5–6, 2000, in Room N3437 A–C of the Department of Labor Building located at 200 Constitution Avenue NW., Washington, DC. The meeting is open to the public and will begin at 9 a.m. lasting until approximately 4 p.m. each day.

Since the last meeting on September 13–14, three new members have been added to replace three former members. These include: Public Representative Myrtle I. Turner, a Research Scientist at Georgia Tech Research Institute who will replace Nancy Lessin; Management Representative Judith S. Freyman, Director of Regulatory Affairs at ConAgra Foods who will replace Dennis Scullion; and Safety Representative Rixio Enrique Medina, Manager of Health and Safety Services for CITGO, who will replace Dave Heller. The first day of the meeting will begin with an overview of current activities of the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH). Other agenda items include: a presentation on the new Worker Health Chartbook, 2000, which has just been released by NIOSH; a panel presentation by the National Institute of Environmental Health Sciences (NIEHS) related to its Worker Education and Training Program Partnership; a presentation by the Veterans Health Administration (VHA) related to its safety and health partnership; and a presentation by Dr. Rita C. Richey of Wayne State University related to the evaluation of training programs.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the chair, who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Veneta Chatmon (phone: 202–693–1912; FAX: 202–693–1634) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202) 693–2350). For additional information contact: Joanne Goodell, Occupational Safety and Health Administration (OSHA) N–3641, 200 Constitution Avenue, NW., Washington, DC 20210 (phone 202–693–1925; FAX: 202–693–1641; e-mail *joanne. goodell@osha.gov);* or check the National Advisory Committee on Occupational Safety and Health information pages located at *www.osha.gov.*

Dated: Signed at Washington, DC this 6th day of November 2000.

Charles N. Jeffress.

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 00–29039 Filed 11–13–00; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–137]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Concepts ETI Inc., of White River Junction, has applied for a co-exclusive license to practice the invention described and claimed in NASA Case Number MFS 31303–1, entitled "Generalized Fluid System Simulation Program (GFSSP)," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to: Mr. James McGroary, Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812.

DATES: Responses to this notice must be received by January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Sammy Nabors, Marshall Space Flight Center, Technology Transfer Department/CD30, Huntsville, AL 35812; Tel. (256) 544–5226.

Dated: November 6, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–29016 Filed 11–13–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–136]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Cullimore & Ring Technologies, Inc., of Littleton, CO, has applied for a co-exclusive license to practice the invention described and claimed in NASA Case Number MFS 31303–1, entitled "Generalized Fluid System Simulation Program (GFSSP)," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to: Mr. James McGroary, Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812.

DATES: Responses to this notice must be received by January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Sammy Nabors, Marshall Space Flight Center, Technology Transfer Department/CD30, Huntsville, AL 35812; Tel. (256) 544–5226.

Dated: November 6, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–29015 Filed 11–13–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that five meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506 as follows:

Multidisciplinary (Education category)

November 20–21, 2000, Room 716

A portion of this meeting, from 3:45 p.m. to 4:45 p.m. on November 21st, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on November 20th, and from 9 a.m. to 3:45 p.m. and 4:45 p.m. to 6 p.m. on November 21st, will be closed.

Literature (Access, Education, and Heritage/Preservation categories)

December 4–5, 2000, Room 714

A portion of this meeting, from 11 a.m. to 1 p.m. on December 5th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 7 p.m. on December 4th, and from 9 a.m. to 11 a.m. and 1 p.m. to 5 p.m. on December 5th, will be closed.

Presenting (Access, Education, and Heritage/Preservation categories)

December 11, 2000, Room 730

A portion of this meeting, from 4:45 p.m. to 6 p.m., will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 4:45 p.m. and 6 p.m. to 7 p.m., will be closed.

Multidisciplinary (Access and Heritage/Preservation categories)

December 12–14, 2000, Room 730

A portion of this meeting, from 2:15 p.m. to 3:30 p.m. on December 14th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on December 12th, from 9 a.m. to 6 p.m. on December 13th, and from 9 a.m. to 2:15 p.m. and 3:30 p.m. to 6 p.m. on December 14th, will be closed.

Museums (Access, Education, and Heritage/Preservation categories)

December 12–15, 2000, Room 716

A portion of this meeting, from 11 a.m. to 12:30 p.m. on December 15th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on December 12th–14th and from 9 a.m. to 11 a.m. and 12:30 p.m. to 4 p.m. on December 15th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506; 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: November 7, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–29079 Filed 11–13–00; 8:45 am]

BILLING CODE 7537–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Consumers Energy Company (the licensee) to withdraw its August 28, 2000, application for proposed amendment to Facility Operating License No, DPR–20 for the Palisades Plant, located in Covert, Michigan.

The proposed amendment would have revised the date for implementing the Palisades Plant Improved Technical Specifications as established by Amendment No. 189, dated November 30, 1999. The implementation date would have been changed from "on or before October 31, 2000," to "on or before December 31, 2000." In its letter dated October 24, 2000, the licensee stated that Amendment No. 189 was implemented on October 24, 2000, and that the requested delay of implementing Amendment No. 189 was no longer needed. Therefore, the licensee requested that the amendment application be withdrawn.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 20, 2000 (65 FR 56949). However, by letter dated October 24, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 28, 2000, and the licensee's letter dated October 24, 2000, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 6th day of November 2000.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–29030 Filed 11–13–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440–CivP; ASLBP No. 01–784–01–CivP; EA 99–012]

Atomic Safety and Licensing Board; Notice of Hearing

November 7, 2000.

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. Richard F. Cole, Ann Marshall Young.

In the Matter of First Energy Operating Company (FENOC) (Perry Nuclear Power Plant, Unit 1; Operating License No. NPF–58).

This proceeding involves a proposed civil penalty of $110,000. sought to be imposed by the NRC Staff on First Energy Operating Company (FENOC or Licensee) for an alleged violation of NRC's employee protection regulations, based upon the asserted discrimination by a FENOC management official against an employee for engaging in protected activities (*i.e.*, testifying in a whistleblowing case before the Department of Labor). In response to an Order Imposing Civil Monetary Penalty, published at 65 FR 49,610 (August 14, 2000), FENOC on October 18, 2000 filed a timely request for an enforcement hearing. On October 27, 2000, an Atomic Safety and Licensing Board, consisting of Dr. Richard F. Cole, Ann Marshall Young, and Charles Bechhoefer, who serves as Chairman, was established to preside over this proceeding. 65 FR 65,336 (November 1, 2000).

Notice is hereby given that, by Memorandum and Order dated November 7, 2000, the Atomic Safety and Licensing Board has granted the request for a hearing submitted by FENOC. This proceeding will be conducted under the Commission's hearing procedures set forth in 10 CFR Part 2, Subparts B and G. Parties to this proceeding are FENOC and the NRC Staff. The issues to be considered, as set forth in the Order Imposing Civil Monetary Penalty, are (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, dated May 20, 1999; and (b) whether, on the basis of such violation, the Order Imposing Civil Monetary Penalty should be sustained.

Documents related to this proceeding, issued prior to December 1, 1999, are available in microfiche form (with print form available on one-day recall) for public inspection at the Commission's Public Document Room (PDR), Room—O–1 F21, NRC One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. Documents issued subsequent to November 1, 1999 are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, <*http://www.nrc.gov/NRC/ADAMS/index.html*>). The PDR and many public libraries have terminals for public access to the Internet.

At the joint request of FENOC and the NRC Staff, further proceedings in this case have been suspended until December 18, 2000, to afford the parties an opportunity to pursue settlement negotiations. Except to the extent an early settlement or other circumstance renders them unnecessary, the Licensing Board may, during the course of this proceeding, conduct one or more prehearing conferences and evidentiary hearing sessions. The time and place of these sessions will be announced in Licensing Board Orders. Except as limited by the parameters of telephone conferences (which are in any event to be transcribed), members of the public are invited to attend any such sessions.

For the Atomic Safety and Licensing Board.

Dated: November 7, 2000; Rockville, Maryland.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 00–29031 Filed 11–13–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 123rd meeting on November 27–29, 2000, at the Center for Nuclear Waste Regulatory Analyses (CNWRA), 6220 Culebra Road, Building 189, San Antonio, Texas.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Monday, November 27, 2000

A. *9:00–11:00 A.M.: Opening Statement/Planning and Procedures* (Open)—The Chairman will open the meeting with brief opening remarks. The Committee will then review items under consideration at this meeting and consider topics proposed for future consideration by the full Committee.

B. *11:15–12:00 Noon: Preparation of ACNW Reports* (Open)—The Committee will discuss planned reports on the following topics: 10 CFR Part 40, entombment, transportation and Alloy C–22.

C. *1:00–1:15 P.M.: Objectives of ACNW's CNWRA Review* (Open)—The Committee will discuss the objectives of this review of the CNWRA's research and technical assistance program.

D. *1:15–2:15 P.M.: Program Overview: Developing Review Capability and Risk Information for Pre-and Post-Closure* (Open)—The Committee will discuss and hear presentations from representatives of the NRC staff, the CNWRA and consultants regarding a proposed regulatory framework, regulatory guidance for site 2 recommendation and license application reviews, analytical tools, and field and laboratory experimental facilities.

E. *2:30–4:00 P.M.: Progress Toward Key Technical Issue Resolution* (Open)—The Committee will discuss and hear a presentation from the NRC staff regarding the issue resolution process and its current status.

F. *4:00–6:00 P.M.: ACNW's Sufficiency Review Task Action Plan* (Open)—The Committee will discuss its Sufficiency Review Task Action Plan.

G. *6:00–7:00 P.M.: Discussion of Proposed ACNW Reports* (Open)—The Committee will discuss proposed ACNW Reports on Part 40, entombment, transportation, Alloy C–22 and other matters considered during this meeting.

Tuesday, November 28, 2000

H. *8:30–10:00 A.M.: Yucca Mountain TPA Code and External Review* (Open)—The Committee will discuss the TPA external review and current and planned code capability.

I. *10:15–12:30 P.M.: Capability of NRC Staff to Evaluate Risk-Significance of Information Submitted by DOE for Post-Closure* (Open)—The Committee will hear presentations on the analytical tools and methods for evaluating the relative importance of issues and subissues, parameter-level sensitivity methods, post-processor techniques, philosophy for addressing uncertainty, and the use of the TPA code to support decision making for SR and LA.

J. *1:30–2:45 P.M.: Pre-Closure Safety Analysis (PCSA) Tool* (Open)—The Committee will discuss the status of the PCSA and an example application.

K. *3:00–5:00 P.M.: Alloy C–22 Studies* (Open)—The Committee will review the DOE waste package material selection and degradation studies and applicable CNWRA confirmatory studies.

L. *5:00–6:00 P.M.: Draft NRC/RES Plan for Waste Research* (Open)—The Committee will discuss and review the Draft Plan for Research Supporting the Nuclear Waste Safety Arena.

M. *6:00–7:00 P.M.: Discussion of Proposed ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

Wednesday, November 29, 2000

N. *8:30–10:30 A.M.: Tour of Experimental Facilities*—The Committee will tour selected CNWRA experimental facilities.

O. *10:30–12:00 Noon: Investigation and Importance of Coupled Processes Related to Repository Design* (Open)—The Committee will discuss ongoing CNWRA coupled processes investigations.

P. *12:00–12: 30 P.M.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2000 (65 FR 60475). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Howard J. Larson, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

The ACNW meeting dates for Calendar Year 2001 are provided below:

ACNW Meeting No. and Meeting Date

124th (Rockville, MD): January 16–18, 2001
February 2001—No meeting
125th (Rockville, MD): March 6–8, 2001
April 2001—No meeting
126th (Rockville, MD):
May 15–17, 2001
127th (Rockville, MD): June 19–21, 2001
128th (Rockville, MD): July 17–19, 2001
129th (Rockville, MD): August 28–30, 2001
September 2001—No meeting
130th (Las Vegas, NV): October 16–18, 2001
131st (Rockville, MD): November 27–29, 2001
December 2001—No meeting

Dated: November 7, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–29032 Filed 11–13–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27266]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 6, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The

application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 30, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 30, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company (70–8277)

The Southern Company ("Southern"), 270 Peachtree Street, NW., Atlanta, Georgia 30303, a registered holding company, has filed a post-effective amendment under sections 6(a) and 7 of the Act and rules 53 and 54 under the Act to an application-declaration previously filed under the Act.

By orders dated August 3, 1995 and December 22, 1999 (HCAR Nos. 26349 and 27119), Southern was authorized, among other things, to issue and sell in one or more transactions, through September 30, 2004 ("Authorization Period"), up to 25 million shares of its authorized but unissued common stock, $5 par value ("Authorized Shares"). The number of Authorized Shares may be adjusted to reflect any share split or distribution authorized by the Commission. Southern now requests that the number of Authorized Shares that may be issued during the Authorization Period be increased from 25 million to 35 million.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29022 Filed 11–13–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43520; File No. 4–208]

Intermarket Trading System; Order Approving Fifteenth Amendment to the ITS Plan Relating to Remote Specialists, the National Market System Test System, Trade Adjustment Procedures, and Technical Revisions

November 3, 2000.

On June 6, 2000, the Intermarket Trading System ("ITS") submitted to the Securities and Exchange Commission ("Commission") an amendment to the restated ITS Plan pursuant to Section 11A of theSecurities Exchange Act of 1934 ("Act"),[1] and Rule 11A3a3–2 thereunder.[2] The Participants filed the proposal to recognize the implementation of remote specialists and the National Market Test System. In addition, the Participants proposed to codify procedures for trade adjustment and to make technical revisions. Notice of the proposal appeared in the **Federal Register** on September 8, 2000.[3] The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

The proposal amends Sections 6(a)(ii)(B) and (E), 7(c) and 8(a) of the ITS Plan to reflect the changed manner in which the BSE and the PCX will interact with ITS, in particular that BSE and PCX specialists carry out their specialist operations off the floors of the BSE and the PCX.[4]

The proposal recognizes the National Market Test System ("NMTS") as a stand-alone system that supports testing of the Consolidated Tape System, Consolidated Quotation System, ITS, and the Participants interfaced with these systems. The NMTS can be used during normal business hours and ITS will be responsible for one-third of the costs of the NMTS. The ITS Plan provisions for the NMTS equally divide the ITS costs among all Participants.

The proposal adds Section 6(b)(iv) to the ITS Plan, which codifies the trade adjustment process whereby, and circumstances under which, supervisors monitoring Participants' markets may request the ITS Control Center to enter agreed-upon adjustments to system trades (price, size, buy or sell side, cancel or insert trade "as of" a prior day).

The proposal makes several technical amendments dealing with the ITS/CAES Linkage as adopted by the Commission, eliminating the definition of the term "ITS/CAES security (stock)" and making other conforming changes. In addition, the revision reinserts text in the ITS Plan under Section 5(b)(ii) that the Commission inadvertently omitted.[5] According to the Participants, the revisions are otherwise neutral as to their effect on the Commission's adopted amendment. Lastly, the revisions redesignate current Sections 12, 13, and 14 as Sections 13, 14, and 15 respectively, and current Section 15 as Section 12 (with other conforming changes), and amending Section 3(a) to reflect the change in the Amex's corporate name from "American Stock Exchange, Inc." to "American Stock Exchange LLC."

The Commission finds that the proposed amendment is consistent with the Act in general, and in particular, with Sections 11A(a)(1)(C)(ii) and (D),[6] which provide for fair competition among the Participants and their members, and the linking of markets for qualified securities through communications and data processing facilities that foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders. The Commission also finds that the amendment is consistent with Rule 11Aa3–2(c)(2),[7] which requires the Commission to determine that the amendment is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2. The ITS is a National Market System ("NMS") plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ITS participants include the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") ("Participants").

[3] Securities Exchange Act Release No. 43240 (September 1, 2000), 65 FR 54571 (September 8, 2000).

[4] The BSE and PCX filed proposed rule changes with the Commission to implement these changes. The Commission approved the BSE's proposal on August 8, 2000. *See* Securities Exchange Act Release No. 43127 (August 8, 2000), 65 FR 49617 (August 14, 2000), (SR–BSE–99–01). The Commission approved the PCX's proposal on May 5, 2000. *See* Securities Exchange Act Release No. 42759 (May 5, 2000), 65 FR 30654 (May 12, 2000), (SR–PCX–99–39).

[5] *See* Securities Exchange Act Release No. 42212 (December 9, 1999), 64 FR 70297 (December 16, 1999) (adopting amendments to expand the ITS/CAES linkage to all listed securities).

[6] 15 U.S.C. 78k–1(a)(1)(C)(ii) and (D).

[7] 17 CFR 240.11Aa3–2(c)(2).

The proposal provides for the recognition of the BSE's and the PCX's use of remote specialists to carry out their specialist operations off the floors of the BSE and the PCX. The proposal also provides for the implementation of the National Market Test System, which supports testing of the Consolidated Tape System, Consolidated Quotation System, and ITS. In addition, the proposal provides for the codification of procedures for trade adjustment. The Commission believes that the foregoing measures should improve the efficiency and reliability of ITS. Lastly, the proposal provides additional technical amendments to the ITS Plan consistent with ITS's purpose: to facilitate intermarket trading in exchange-listed equity securities.

For the foregoing reasons, the Commission finds that the proposed amendment is consistent with Act and the rules and regulations thereunder applicable to the ITS and, in particular, Sections 11A(a)(1)(C)(ii) and (D) of the Act[8] and Rule 11Aa3–2(c)(2).[9]

It is therefore ordered, pursuant to Section 11A(a)(3)(B) of the Act,[10] that the proposed amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29021 Filed 11–13–00; 8:45 am]

BILLING CODE 8010-01-M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collection that requires submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collection listed below has been submitted to OMB for clearance. Written comments and recommendations on the information collection would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed after this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

Waiver of Right to Appear, Disability Hearing—0960–0534. The Social Security Administration uses Form SSA–773–U4 to provide claimants with an effective means of requesting waiver of their right to appear at a disability hearing. The information collected will be used as documentation that claimants understand their right to appear and the effects of the decision to waive this right. The respondents are claimants under Title II (Old-Age, Survivors and Disability Insurance) and Title XVI (Supplemental Security Income) of the Social Security Act, who wish to waive their right to appear at a disability hearing.

Number of Respondents: 194.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Average Burden: 81 hours.

(SSA Address) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address) Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503

Dated: November 7, 2000.

Liz Davidson,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–29012 Filed 11–13–00; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF STATE

[Public Notice 3472]

Culturally Significant Objects Imported for Exhibition Determinations: "Egypt in the Walters Art Gallery"

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Egypt in the Walters Art Gallery" imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit objects at The Walters Art Gallery, Baltimore, Maryland, from January 15, 2001, through January 15, 2004, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: October 31, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–29071 Filed 11–13–00; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 3471]

Culturally Significant Objects Imported for Exhibition Determinations:

AGENCY: "Unseen Treasures: Imperial Russia and the New World" United States Department of State.

ACTION: Amendment.

SUMMARY: On July 30, 1999, Notice was published on page 41488 of the **Federal Register** (Volume 64, Number 146) by the Department of State pursuant to Pub. L. 89–259 relating to the exhibition "Unseen Treasures: Imperial Russia and the New World." That referenced Notice is hereby amended as follows: after the words "on or about December 31, 2000," insert the following additional language: "and at the Presidio Trust Exhibition Hall, San Francisco, California, from on or about March 16, 2001, to on or about June 15, 2001,".

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[8] 15 U.S.C. 78k–1(a)(1)(C)(ii) and (D).

[9] 17 CFR 240.11Aa3–2(c)(2).

[10] 15 U.S.C. 78k–1(a)(3)(B).

[11] 17 CFR 200.30–3(a)(29).

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, S.W., Washington, DC 20547–0001.

Dated: November 6, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–29070 Filed 11–13–00; 8:45 am]

BILLING CODE 4710-08-U

DEPARTMENT OF STATE

[Public Notice # 3473]

Discretionary Grant Programs Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 2001 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training to serve as intermediaries administering national competitive programs concerning the countries of Central and East Europe and the New Independent States (NIS) of the former Soviet Union. The grants will be awarded through an open, national competition among applicant organizations.

Authority for this Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union is contained in the Soviet-Eastern European Research and Training Act of 1983 (22 U.S.C. 4501–4508, as amended).

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 2001 under a program administered by the Department of State. The program seeks to build and sustain expertise among Americans willing to make a career commitment to the study of Central and East Europe and the NIS.

Organization of Notice: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by February 2, 2001.

Applications Delivered by Mail

An application sent by mail must be addressed to W. Kendall Myers, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 2251, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520–6510.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If any application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand delivered must be taken to W. Kendall Myers, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 2251, 2201 C Street, NW., Washington, DC. Please phone first at (202) 736–4572 to gain access to the building.

The Advisory Committee staff will accept hand-delivered applications between 9:00 a.m. and 4:00 p.m. EST daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:00 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983, the Congress declared that independently verified factual knowledge about the countries of that area is "of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The program provides financial support for advanced research, training and other related functions on the countries of the region. By strengthening and sustaining in the United States a cadre of experts on Central and East Europe and the NIS, the program contributes to the overall objectives of the FREEDOM Support and SEED Acts.

The full purpose of the Act and the eligibility requirements are set forth in Pub. L. 98164, 97 Stat. 1047–50, as amended. The countries include Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Serbia (including Kosovo and Montenegro), Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes the final determination on awards.

Applications for funding under the Act are invited from U.S. organizations prepared to conduct competitive programs on Central and East Europe and the NIS and related fields. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards based upon an open, nationwide competition, incorporating peer group review mechanisms. Individual end-users of these funds—those to whom the applicant organizations or institutions propose to make awards—must be at the graduate or post-doctoral level, and must have demonstrated a likely career commitment to the study of Central and East Europe and/or the NIS.

Applications sought in this competition among organizations or institutions are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the countries of Central and East Europe and/or the NIS by proposing:

(1) *National programs* which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of post-doctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) *National programs* which offer graduate, post-doctoral and teaching fellowships for advanced training on the countries of Central and East Europe and the NIS, and in related studies, including training in the languages of the region, with such training to be conducted on a shared-cost basis, at American institutions of higher education;

(3) *National programs* which provide fellowships and other support for American specialists enabling them to conduct advanced research on the countries of Central and East Europe and the NIS, and in related studies; and those which facilitate research collaboration between Government and private specialists in these areas;

(4) *National programs* which provide advanced training and research on a reciprocal basis in the countries of Central and East Europe and the NIS by facilitating access for American specialists to research facilities and resources in those countries;

(5) *National programs* which facilitate the public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the countries of Central and East Europe and the NIS in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Support for specific activities will be guided by the following policies and priorities:

- *Support for Transitions*

The Advisory Committee strongly encourages support for research activities which, while building expertise among U.S. specialists on the region, also: (1) Promote fundamental goals of U.S. assistance programs such as helping establish market economies and promoting democratic governance and civil societies; and (2) provide knowledge to both U.S. and foreign audiences related to current U.S. policy interests in the region, broadly defined.

This includes, but is not limited to, such topics as resolution of ethnic and other conflict, transition economics, media studies, women's issues, human rights, and citizen participation in politics and civil society. For on-site research, applicants are encouraged to think creatively about how individuals' work may complement democratization and marketization assistance activities in the region. Examples might include lecturing at a university or participating in workshops with host government and parliamentary officials, nongovernmental organizations, and other assistance target audiences on issues related to market and democratic transitions.

The Advisory Committee gives priority to programs on Ukraine, Central Asia, the Caucasus, and the Balkans, especially the former Yugoslavia, where gaps in knowledge exist. Proposals for research on Russia should focus on the regions and areas outside capital cities. Historical or cultural research that promotes understanding of current events in the region also is encouraged if an explicit connection can be made to contemporary political and/or economic transitions.

- *Publications*

Funds awarded in this competition should not be used to subsidize journals, newsletters and other periodical publications except in special circumstances, in which cases the funds should be supplied through peer-review organizations with national competitive programs.

- *Conferences*

Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, requests for conference funding should be directed to one or more of the national peer-review organizations receiving program funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

- *Library Activities*

Funds may be used for certain library activities that clearly strengthen research and training on the countries of Central and East Europe and the NIS and benefit the fields as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Funds may not be used for activities such as modernization, acquisition, or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered.

- *Language Support*

The Advisory Committee encourages attention to the non-Russian languages of Eurasia and the less commonly taught languages of the Central and East Europe. Support provided for Russian language instruction/study normally will be only for advanced level. Applicants proposing to offer language instruction are encouraged to apply to a national program as described above that has appropriate peer group review mechanisms.

- *Support for Non-Americans*

The purpose of the program is to build and sustain U.S. expertise on the countries of Central and East Europe and the NIS. Therefore, the Advisory Committee has determined that highest priority for support always should go to American specialists (*i.e.*, U.S. citizens or permanent residents). Support for such activities as long-term research fellowships, *i.e.*, nine months or longer, should be restricted solely to American scholars.

Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the American scholarly community. In such special instances, the applicant must justify the expenditure. Despite this restriction on support for non-Americans, collaborative projects are encouraged—where the non-American component is funded from other sources—and priority is given to institutions whose programs contain such an international component.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability on the countries of Central and East Europe and the NIS. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort that will ensure attention to all the countries of the area. Legislation requires and this announcement indicates under *Program Information* of this section that in certain cases grantee organizations must include shared-cost provisions in their arrangements with end-users. Cost-sharing is encouraged, whenever feasible, in all programs.

Part III

Available Funds

Awards are contingent upon the availability of funds. Funding may be available at a level up to $4.5 million. The precise level of funding will not be known until legislative action is complete. In Fiscal Year 2000, the Congress appropriated to the program $4.5 million from the FREEDOM Support and Support for East European Democracies (SEED) Acts, which funded grants to 9 national organizations, with $3.0 million for activities on the NIS and $1.5 million for those on Central and East Europe, including the Baltic states. The number of awards varies each year, depending on the level of funding and the quality of the applications submitted.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Grant agreements may permit the expenditure from a particular year's grant to be made up to three years after the grant's effective date.

Applications

Applications must be prepared and submitted in 20 copies in 12 pitch in the following format: one-page, single-spaced Executive Summary; Budget presentation; narrative description of proposed programs not to exceed 20 double-spaced pages; one-page, single-spaced vitae of key professional staff; and required certifications. Applicants may append other information they consider essential, although bulky submissions are discouraged and run the risk of not being reviewed fully.

Budget

Because funds will be appropriated separately for Central and East Europe (including the Baltic states) and New Independent States programs, proposals must indicate how the requested funds will be distributed by region, country (to the extent possible), and activity. Subsequently, grant recipients must report expenditures by region, country, and activity.

Applicants should familiarize themselves with Department of State grant regulations contained in 22 CFR 145, "Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"; 22 CFR 137, "Department of State Government-wide Debarment and Suspension (Non-Procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)"; OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations"; and OMB Circular A–133, "Audits of Institutions of Higher Learning and Other Non-Profit Institutions"; and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A–21, "Cost Principles for Educational Institutions," or OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations;"

(2) A detailed program budget indicating direct expenses with clearly identified administrative costs by program element and by region (NIS or Central and East Europe), indirect costs, and the total amount requested. The budget should indicate clearly the total amount requested as a sum of the amount requested for NIS activities plus the amount requested for Central and East Europe activities. The budget also should reflect administrative costs as a percentage of the total requested funding . NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants requesting funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested grant funds. Other funding sources and amounts, when known, should be identified.

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) The organization's most recent audit report (the most recent U.S. Government audit report, if available) and the name, address, and point of contact of the audit agency. N.B.: The threshold for grants that trigger an audit requirement has been raised from $25,000 to $300,000.

(5) An indication of the applicant's priorities if funding is being requested for more than one program or activity.

All payments will be made to grant recipients through the Department of State.

Narrative Statement

The Applicant must describe fully the proposed programs, including detailed information about plans for advertising programs, peer review and selection procedures and identification of anticipated selection committee participants, estimates of the types and amounts of anticipated awards, and benefits of these programs for the Central and East European, Russian, and Eurasian fields.

Applicants who have received previous grants from this State Department program should provide detailed information on the end-user awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. Applicants should specify both past and anticipated applicant to award ratios. A summary of an organization's past grants under this State Department program also should be included.

Proposals from national organizations involving language instruction programs should provide, for those programs supported in the past year, information on the criteria for evaluation, including levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre-and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

Certifications

Applicants must include a description of affirmative action policies and practices and certifications of compliance with the provisions of: (1) The Drug-Free Workplace Act (Pub. L.100–690), in accordance with Appendix C of 22 CFR 137, Subpart F; and (2) Section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), in accordance with Appendix A of 22 CFR 138, New Restrictions on Lobbying Activities.

Technical Review

The Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union will evaluate applications on the basis of the following criteria:

(1) Responsiveness to the substantive provisions set forth above in Program Part II, Information (45 points);

(2) The professional qualifications of the applicant's key personnel and selection committees, and their experience conducting national competitive award programs of the type the applicant proposes on the countries of Central and East Europe and/or the NIS (35 points); and

(3) Budget presentation and cost effectiveness (20 points).

FOR FURTHER INFORMATION CONTACT: For further information, contact W. Kendall Myers, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the

Former Soviet Union, INR/RES, Room 2251, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520–6510. Telephone: (202) 736–4572 or 736–4386, fax: (202) 736-4851 or (202) 736–4807.

Dated: November 6, 2000.

W. Kendall Myers,

Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union.

[FR Doc. 00–29086 Filed 11–13–00; 8:45 am]

BILLING CODE 4710-32-P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1525).

TIME AND DATE: 9 a.m. (CST), November 15, 2000.

PLACE: Eupora Community House, 101 East Clark Street, Eupora, Mississippi.

STATUS: Open.

Agenda

Approval of minutes of meeting held on October 25, 2000.

New Business

A—Budget and Financing

A1. Approval of tax-equivalent payments for Fiscal Year 2000 and the estimated payments in Fiscal Year 2001 in accordance with Section 13 of the TVA Act

A2. Adoption of Tennessee Valley Authority Financial Statements for Fiscal Year 2000.

A3. Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the U.S. Treasury in March 2001, pursuant to Section 26 of the TVA Act.

B—Purchase Awards

B1. Contracts with Verizon Wireless and Suncom for cellular services.

C—Energy

C1. Contract with Innogy Technology Ventures Limited for the design of a Regenesys® energy storage plant and the manufacture and supply of fuel cell modules.

E—Real Property Transactions

E1. Sale of noncommercial, nonexclusive permanent easement to Carl D. Klimek for construction and maintenance of recreational water-use facilities affecting approximately 0.048 acre of Tellico Reservoir shoreline in Loudon County, Tennessee, Tract No. XTELR–218RE.

E2. Grant of a 30-year term easement to the State of Alabama, Department of Conservation and Natural Resources, for the operation of a wildlife management and public recreation area affecting approximately 1,500 acres of Wheeler Reservoir land in Lawrence and Morgan Counties, Alabama, Tract No. XTWR–114WL.

E3. Modification of a release and grant of easement to James B. and Teresa L. Grant affecting approximately 0.3 acre of former TVA land on Norris Reservoir in Anderson County, Tennessee, a portion of Tract No. XNR–15:33.

E4. Abandonment of a portion of transmission line easement right-of-way affecting approximately 1.5 acres of the Weaver-Young Cane transmission line in Union County, Georgia, Tract No. WYC–52A.

For more information: Please call TVA Public Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000.

Dated: November 8, 2000.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 00–29261 Filed 11–9–00; 2:28 pm]

BILLING CODE 8120-08-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Trade and Environment Policy Advisory Committee (TEPAC)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the November 30, 2000, meeting of the Trade and Environment Policy Advisory Committee will be held from 8:30 a.m. to 12 noon. The meeting will be closed to the public from 8:30 a.m. to 11:30 and open to the public from 11:30 a.m. to 12 noon.

SUMMARY: The Trade and Environment Policy Advisory Committee will hold a meeting on November 30, 2000 from 8:30 a.m. to 12 noon. The meeting will be closed to the public from 8:30 a.m. to 11:30 a.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 11:30 a.m. to 12 noon, at which time the implementation of the Executive Order on Environmental Reviews of Trade Agreements, an other issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for November 30, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the USTR Annex Building in Conference Rooms 1 and 2, located at 1724 F Street, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Christina Servilla, Office of the United States Trade Representative, (202) 395–6120.

Charlene Barshefsky,

Untied States Trade Representative.

[FR Doc. 00–29075 Filed 11–13–00; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 907]

Appointment of Individuals To Serve as Members of the Performance Review Board (PRB); Senior Executive Service

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Performance Review Board for the Bureau of Alcohol, Tobacco and Firearms (ATF) for the rating period beginning October 1, 1999, and ending September 30, 2000. This notice effects changes in the membership of the ATF PRB previously appointed November 12, 1999 (64 FR 61688).

The names and titles of the ATF PRB members are as follows:

John J. Manfreda, Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury
John Dooher, Director, Washington Office, Federal Law Enforcement Training Center, Department of the Treasury
H. Douglas Cunningham, Deputy Assistant Director, Office of Administration, U.S. Secret Service, Department of the Treasury

FOR FURTHER INFORMATION CONTACT: Dennis Snyder, Personnel Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927–8610.

Signed: November 6, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–29048 Filed 11–13–00; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on Loans to Executive Officers, Directors, and Principal Shareholders of Savings Associations.

DATES: Submit written comments on or before January 16, 2001.

ADDRESSES:

Mail: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0075.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention 1550–0075.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–7755, Attention 1550–0075; or (202) 906–6956 (if comments are over 25 pages).

E-Mail: Send e-mails to "*public.info@ots.treas.gov*", Attention 1550–0075, and include your name and telephone number.

Public Inspection: Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays or obtain comments and/or an index of comments by facsimile by telephoning the Public Reference Room at (202) 906–5900 from 9 a.m. until 5 p.m. on business days. Comments and the related index will also be posted on the OTS Internet Site at "*www.OTS.treas.gov*".

FOR FURTHER INFORMATION CONTACT: Donna M. Deale, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7488.

SUPPLEMENTARY INFORMATION:

Title: Loans to Executive Officers, Directors, and Principal Shareholders of Savings Associations.

OMB Number: 1550–0075.

Form Number: Not applicable.

Abstract: The regulation requires savings associations to maintain detailed records of their extensions of credit to executive officers, directors, and principal shareholders. The regulation also requires that savings associations report to the OTS all loans to executives and disclose the amount of its extensions of credit following a written request from the public. Indebtedness to correspondent banks must also be disclosed to the board of directors and made available for OTS review during examinations.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1,084.

Estimated Time Per Respondent: 11 hours per response.

Estimated Total Annual Burden Hours: 11,924 hours.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 7, 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–29042 Filed 11–13–00; 8:45 am]

BILLING CODE 6720-01-P

Corrections

Federal Register
Vol. 65, No. 220
Tuesday, November 14, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43338; File No. SR–Amex–00–53]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the streetTracks℠ Dow Jones Global Titans Index Fund

Correction

In notice document 00–25438 appearing on page 59235 in the issue of Wednesday, October 4, 2000 the docket number is corrected to read as set forth above.

[FR Doc. C0–25438 Filed 11–13–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43435; File No. SR–NASD–99–65]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto by the National Association of Securities Dealers, Inc. Amending Certain Listing Standards of the Nasdaq Stock Market, Inc.

Correction

In notice document 00–26803 appearing on page 62779 in the issue of Thursday, October 19, 2000, the docket number is corrected to read as set forth above.

[FR Doc. C0–26803 Filed 11–13–00; 8:45 am]

BILLING CODE 1505–01–D

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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There are no Rules going into effect today.

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1651/P.L. 106–450

To amend the Fishermen's Protective Act of 1967 to extend the period during which reimbursement may be provided to owners of United States fishing vessels for costs incurred when such a vessel is seized and detained by a foreign country, and for other purposes. (Nov. 7, 2000; 114 Stat. 1941)

H.R. 2442/P.L. 106–451

Wartime Violation of Italian American Civil Liberties Act (Nov. 7, 2000; 114 Stat. 1947)

H.R. 4831/P.L. 106–452

To redesignate the facility of the United States Postal Service located at 2339 North California Avenue in Chicago, Illinois, as the "Roberto Clemente Post Office". (Nov. 7, 2000; 114 Stat. 1950)

H.R. 4853/P.L. 106–453

To redesignate the facility of the United States Postal Service located at 1568 South Green Road in South Euclid, Ohio, as the "Arnold C. D'Amico Station". (Nov. 7, 2000; 114 Stat. 195[illegible])

H.R. 5229/P.L. 106–454

To designate the facility of the United States Postal Service located at 219 South Church Street in Odum, Georgia, as the "Ruth Harris Coleman Post Office Building". (Nov. 7, 2000; 114 Stat. 1952)

S. 501/P.L. 106–455

Glacier Bay National Park Resource Management Act of 2000 (Nov. 7, 2000; 114 Stat. 1953)

S. 503/P.L. 106–456

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S. 835/P.L. 106–457

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S. 1088/P.L. 106–458

Arizona National Forest Improvement Act of 2000 (Nov. 7, 2000; 114 Stat. 1983)

S. 1211/P.L. 106–459

To amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner. (Nov. 7, 2000; 114 Stat. 1987)

S. 1218/P.L. 106–460

To direct the Secretary of the Interior to issue to the Landusky School District, without consideration, a patent for the surface and mineral estates of certain lots, and for other purposes. (Nov. 7, 2000; 114 Stat. 1988)

S. 1275/P.L. 106–461

Hoover Dam Miscellaneous Sales Act (Nov. 7, 2000; 114 Stat. 1989)

S. 1586/P.L. 106–462

Indian Land Consolidation Act Amendments of 2000 (Nov. 7, 2000; 114 Stat. 1991)

S. 2300/P.L. 106–463

Coal Market Competition Act of 2000 (Nov. 7, 2000; 114 Stat. 2010)

S. 2719/P.L. 106–464

Native American Business Development, Trade Promotion, and Tourism Act of 2000 (Nov. 7, 2000; 114 Stat. 2012)

S. 2950/P.L. 106–465

Sand Creek Massacre National Historic Site Establishment Act of 2000 (Nov. 7, 2000; 114 Stat. 2019)

S. 3022/P.L. 106–466

Nampa and Meridian Conveyance Act (Nov. 7, 2000; 114 Stat. 2024)

Last List November 9, 2000

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PART II

68261 Department of Labor

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Federal Register

Tuesday,
November 14, 2000

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910
Ergonomics Program; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–777]

RIN 1218–AB36

Ergonomics Program

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration is issuing a final Ergonomics Program standard (29 CFR 1910.900) to address the significant risk of employee exposure to ergonomic risk factors in jobs in general industry workplaces. Exposure to ergonomic risk factors on the job leads to musculoskeletal disorders (MSDs) of the upper extremities, back, and lower extremities. Every year, nearly 600,000 MSDs that are serious enough to cause time off work are reported to the Bureau of Labor Statistics by general industry employers, and evidence suggests that an even larger number of non-lost worktime MSDs occur in these workplaces every year.

The standard contains an "action trigger," which identifies jobs with risk factors of sufficient magnitude, duration, or intensity to warrant further examination by the employer. This action trigger acts as a screen. When an employee reports an MSD, the employer must first determine whether the MSD is an MSD incident, defined by the standard as an MSD that results in days away from work, restricted work, medical treatment beyond first aid, or MSD symptoms or signs that persist for 7 or more days. Once this determination is made, the employer must determine whether the employee's job has risk factors that meet the standard's action trigger. The risk factors addressed by this standard include repetition, awkward posture, force, vibration, and contact stress. If the risk factors in the employee's job do not exceed the action trigger, the employer does not need to implement an ergonomics program for that job.

If an employee reports an MSD incident and the risk factors of that employee's job meet the action trigger, the employer must establish an ergonomics program for that job. The program must contain the following elements: hazard information and reporting, management leadership and employee participation, job hazard analysis and control, training, MSD management, and program evaluation. The standard provides the employer with several options for evaluating and controlling risk factors for jobs covered by the ergonomics program, and provides objective criteria for identifying MSD hazards in those jobs and determining when the controls implemented have achieved the required level of control.

The final standard would affect approximately 6.1 million employers and 102 million employees in general industry workplaces, and employers in these workplaces would be required over the ten years following the promulgation of the standard to control approximately 18 million jobs with the potential to cause or contribute to covered MSDs. OSHA estimates that the final standard would prevent about 4.6 million work-related MSDs over the next 10 years, have annual benefits of approximately $9.1 billion, and impose annual compliance costs of $4.5 billion on employers. On a per-establishment basis, this equals approximately $700; annual costs per problem job fixed are estimated at $250.

DATES: This final rule becomes effective on January 16, 2001.

Compliance. Start-up dates for specific provisions are set in paragraph (w) of § 1910.900. However, affected parties do not have to comply with the information collection requirements in the final rule until the Department of Labor publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB). Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, as the recipient of petitions for review of the standard.

FOR FURTHER INFORMATION CONTACT: OSHA's Ergonomics Team at (202) 693–2116, or visit the OSHA Homepage at www.osha.gov.

SUPPLEMENTARY INFORMATION:

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XVII. The Final Ergonomics Program Standard

References to documents, studies, and materials in the rulemaking record are found throughout the text of the preamble. Materials in the docket are identified by their Exhibit numbers, as follows: "Ex. 26–1" means Exhibit 26–1 in Docket S–777. A list of the Exhibits and copies of the Exhibits are available in the OSHA Docket Office.

I. Introduction

A. Overview

This preamble discusses the data and events that led OSHA to issue the final Ergonomics Program standard (Section II), and the Agency's legal authority for promulgating the rule (Section III). This discussion is followed by a detailed paragraph-by-paragraph summary and explanation of the final rule, including the Agency's reasons for including each provision and OSHA's responses to the many substantive issues that were raised in the proposal and during the rulemaking (Section IV).

The summary and explanation of the standard is followed by a lengthy discussion of the evidence on the health effects that are associated with worker exposure to MSD hazards (Section V). The next section discusses the nature and degree of ergonomic-related risks confronting workers in general industry jobs (Section VI), and assesses the significance of those risks (Section VII). The preamble also contains a summary of the Final Economic and Final Regulatory Flexibility Analysis (Section VIII). Finally, the preamble describes the information collections associated with the final standard (Section XV).

B. The Need for an Ergonomics Program Standard

Work-related musculoskeletal disorders (MSDs) currently account for one-third of all occupational injuries and illnesses reported to the Bureau of Labor Statistics (BLS) by employers every year. Although the number of MSDs reported to the BLS, like all occupational injuries and illnesses, has declined by more than 20% since 1992, these disorders have been the largest single job-related injury and illness problem in the United States for the last decade, consistently accounting for 34% of all reported injuries and illnesses. In 1997, employers reported a total of 626,000 lost worktime MSDs to the BLS, and these disorders accounted for $1 of every $3 spent for workers' compensation in that year. This means that employers are annually paying more than $15 billion in workers' compensation costs for these disorders, and other expenses associated with work-related MSDs, such as the costs of training new workers, may increase this total to $45 billion a year. Workers with severe MSDs often face permanent disability that prevents them from returning to their jobs or handling simple, everyday tasks like combing their hair, picking up a baby, or pushing a shopping cart. For example, workers who must undergo surgery for work-related carpal tunnel syndrome often lose 6 months or more of work.

Thousands of companies have taken action to address and prevent these problems. OSHA estimates that 46 percent of all employees but only 16 percent of all workplaces in general industry are already protected by an ergonomics program, because their employers have voluntarily elected to implement an ergonomics program. (The difference in these percentages shows that many large companies, who employ the majority of the workforce, already have these programs, and that many smaller employers have not yet implemented them.) Based on its review of the evidence in the record as a whole, OSHA concludes that the final standard is needed to protect employees in general industry workplaces who are at significant risk of incurring a work-related musculoskeletal disorder but are not currently protected by an ergonomics program.

C. The Science Supporting the Standard

A substantial body of scientific evidence supports OSHA's effort to provide workers with ergonomic protection (see the Health Effects, Risk Assessment, and Significance of Risk sections (Sections V, VI, and VII, respectively) of this preamble, below). This evidence strongly supports two basic conclusions: (1) There is a positive relationship between work-related musculoskeletal disorders and employee exposure to workplace risk factors, and (2) ergonomics programs and specific ergonomic interventions can substantially reduce the number and severity of these injuries.

In 1998, the National Research Council/National Academy of Sciences found a clear relationship between musculoskeletal disorders and work and between ergonomic interventions and a decrease in the number and severity of such disorders. According to the Academy, "Research clearly demonstrates that specific interventions can reduce the reported rate of musculoskeletal disorders for workers who perform high-risk tasks" (*Work-Related Musculoskeletal Disorders: The Research Base*, ISBN 0–309–06327–2 (1998)). A scientific review of hundreds of peer-reviewed studies involving workers with MSDs by the National Institute for Occupational Safety and Health (NIOSH 1997) also supports this conclusion.

The evidence, which is comprised of peer-reviewed epidemiological, biomechanical and pathophysiological studies as well as other published evidence, includes:

II. More than 2,000 articles on work-related MSDs and workplace risk factors;
II. A 1998 study by the National Research Council/National Academy of Sciences on work-related MSDs;

- A critical review by NIOSH of more than 600 epidemiological studies addressing the effects of exposure to workplace risk factors (1997);
- A 1997 General Accounting Office report of companies with ergonomics programs;

I. Other evidence and analyses in the Health Effects section of the preamble to the final rule;
II. Hundreds of case studies from companies with successful ergonomics programs; and
I. Testimony and evidence submitted to the record by expert witnesses, workers, safety and health professionals, and others, which is discussed throughout the preamble to the final rule.

Taken together, this evidence indicates that:

- High levels of exposure to ergonomic risk factors on the job lead to an increased incidence of work-related MSDs among exposed workers;
- Reducing exposure to physical risk factors on the job reduces the incidence and severity of work-related MSDs;
- Many work-related MSDs are preventable; and
- Ergonomics programs are demonstrably effective in reducing risk, decreasing exposure and protecting workers against work-related MSDs.

As with any scientific field, research in ergonomics is ongoing. The National Academy of Sciences is currently undertaking another review of the science in order to expand on its 1998 study. OSHA has examined all of the research results in the record of this rulemaking in order to ensure that the final Ergonomics Program standard is based on the best available and most current evidence. Although more research is always desirable, OSHA finds that more than enough evidence already exists to demonstrate the need for a final standard. In the words of the American College of Occupational and Environmental Medicine, the world's largest occupational medical society, "there is an adequate scientific foundation for OSHA to proceed * * * and, therefore, no reason for OSHA to delay the rulemaking process * * *."

D. Information OSHA Is Providing To Help Employers Address Ergonomic Hazards

Much literature and technical expertise on ergonomics already exists and is available to employers, both through OSHA and a variety of other sources. For example:

- Information is available from OSHA's ergonomics Web page, which can be accessed from OSHA's World Wide Web site at *http://www.osha.gov* by scrolling down and clicking on "Ergonomics";
- Many publications, informational materials and training courses, which are available from OSHA through Regional Offices, OSHA-sponsored educational centers, OSHA's state consultation programs for small businesses, and through the Web page;
- Publications on ergonomics programs, which are available from NIOSH at 1–800–35–NIOSH. NIOSH's Web page is also "linked" to OSHA's ergonomics Web page;
- OSHA's state consultation programs, which will provide free on-site consultation services to employers requesting help in implementing their ergonomics programs; and
- OSHA-developed compliance assistance materials, which are available as non-mandatory appendices to the standard, electronic compliance assistance training materials (e-cats) on specific tasks (*e.g.*, lifting) or work environments (*e.g.*, nursing homes). OSHA is also making several publications available on the web, such as the Easy Ergonomics Booklet, Fact Sheets, and so on. These materials can be obtained by accessing OSHA's Internet home page at *www.OSHA.gov*.

II. Events Leading to the Development of the Final Standard

In this final standard, OSHA has relied on its own substantial experience with ergonomics programs, the experience of private firms and insurance companies, and the results of research studies conducted during the last 30 years. Those experiences clearly show that: (1) Ergonomics programs are an effective way to reduce occupational MSDs; (2) ergonomics programs have consistently achieved that objective; (3) OSHA's standard is consistent with these programs; and (4) the standard is firmly grounded in the OSH Act and OSHA policies and experience. The primary lesson to be learned is that employers with effective, well-managed ergonomics programs achieve significant reductions in the severity and number of work-related MSDs that their employees experience. These programs also generally improve productivity and employee morale and reduce employee turnover and absenteeism (see Section VI of this preamble, and Chapters IV (Benefits) and V (Costs of Compliance) of OSHA's Final Economic Analysis (Ex. 28–1)).

OSHA's long experience with ergonomics is apparent from the chronology below. As this table shows, the Agency has been actively involved in ergonomics for more than 20 years.

OSHA Ergonomics Chronology

March 1979	OSHA hires its first ergonomist.
Early 1980s	OSHA begins discussing ergonomic interventions with labor, trade associations and professional organizations. OSHA issues citations to Hanes Knitwear and Samsonite for ergonomic hazards.
August 1983	The OSHA Training Institute offers its first course in ergonomics.
February 1986	OSHA publishes "Working Safely with Video Display Terminals," its first publication concerning ergonomics as it applies to the use of computer technology
May 1986	OSHA begins a pilot program to reduce back injuries through review of injury records during inspections and recommendations for job redesign using NIOSH's Work Practices Guide for Manual Lifting.
October 1986	The Agency publishes a Request for Information on approaches to reduce back injuries resulting from manual lifting. (57 FR 34192)
November 1988	OSHA/Iowa Beef Processors reach first corporate-wide settlement to reduce ergonomic hazards at 8 IBP locations nationwide.
July 1990	OSHA/UAW/Ford corporate-wide settlement agreement commits Ford to reduce ergonomic hazards in 96 percent of its plants through a model ergonomics program.
August 1990	The Agency publishes "Ergonomics Program Management Guidelines for Meatpacking Plants."
Fall 1990	OSHA creates the Office of Ergonomics Support and hires more ergonomists.
November 1990	OSHA/UAW/GM sign agreement bringing ergonomics programs to 138 GM plants employing more than 300,000 workers. Throughout the early 90s, OSHA signed 13 more corporate-wide settlement agreements to bring ergonomics programs to nearly half a million more workers.
July 1991	OSHA publishes "Ergonomics: The Study of Work," as part of a nationwide education and outreach program to raise awareness about ways to reduce musculoskeletal disorders.
July 1991	More than 30 labor organizations petition Secretary of Labor to issue an Emergency Temporary Standard on ergonomics.
January 1992	OSHA begins a special emphasis inspection program on ergonomic hazards in the meatpacking industry.
April 1992	Secretary of Labor denies petition for an Emergency Temporary Standard but commits to moving forward with section 6 (b) rulemaking.
August 1992	OSHA publishes an Advance Notice of Proposed Rulemaking on ergonomics.
1993	OSHA conducts a major survey of general industry and construction employers to obtain information on the extent of ergonomics programs in industry and other issues.
March 1995	OSHA begins a series of meetings with stakeholders to discuss approaches to a draft ergonomics standard.
January 1997	OSHA/NIOSH conference on successful ergonomic programs held in Chicago.
April 1997	OSHA introduces the ergonomics web page on the Internet.
February 1998	OSHA begins a series of national stakeholder meetings about the draft ergonomics standard under development.
March 1998	OSHA releases a video entitled "Ergonomic Programs That Work."
February 1, 1999	OSHA begins small business (Small Business Regulatory Enforcement Fairness Act (SBREFA) review of its draft ergonomics rule, and makes draft regulatory text available to the public.
March 1999	OSHA/NIOSH/Institute of Industrial Engineers hold Applied Ergonomics Conference in Houston
April 30, 1999	OSHA's Assistant Secretary receives the SBREFA report on the draft ergonomics program proposal, and the Agency begins to address the concerns raised in that report.
November 23, 1999	OSHA publishes its proposed ergonomics program standard.
March 2000	OSHA/NIOSH/Institute of Industrial Engineers hold Applied Ergonomics Conference in Los Angeles
March–May 2000	OSHA holds 9 weeks of public hearings and receives 18,337 pages of testimony from 714 witnesses.
November 23, 1999 through August 10, 2000.	OSHA receives nearly 11,000 comments and briefs consisting of nearly 50,000 pages collectively, into the docket of the ergonomics rulemaking.
October 27, 2000	The Occupational Safety and Health Review Commission finds that manual lifting of nursing home patients is a known and recognized risk factor for lower back pain.

A. Regulatory and Voluntary Guidelines Activities

In 1989, OSHA issued the *Safety and Health Program Management Guidelines* (54 FR 3904, Jan. 26, 1989), which are voluntary program management guidelines to assist employers in developing effective safety and health programs. These program management guidelines, which are based on the widely accepted safety and health principles of management commitment and employee involvement, worksite hazard analysis, hazard prevention and control, and employee training, also serve as the foundation for effective ergonomics programs. In August 1990, OSHA issued the *Ergonomics Program Management Guidelines for Meatpacking Plants* (Ex. 2–13), which utilized the four program components from the safety and health management guidelines, supplemented by other ergonomics-specific program elements (*e.g.*, medical management). The ergonomic guidelines were based on the best available scientific evidence, the best practices of successful companies with these programs, advice from the National Institute for Occupational Safety and Health (NIOSH), the scientific literature, and OSHA's experience with enforcement

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actions. Many commenters in various industries have said that they have implemented their ergonomics programs primarily on the basis of the OSHA ergonomics guidelines (Exs. 3–50, 3–61, 3–95, 3–97, 3–113, 3–121, 3–125), and there has been general agreement among stakeholders that these program elements should be included in any OSHA ergonomics standard (Exs. 3–27, 3–46, 3–51, 3–61, 3–89, 3–95, 3–113, 3–119, 3–160, 3–184).

OSHA also has encouraged other efforts to address the prevention of work-related musculoskeletal disorders. For example, OSHA has actively participated in the work of the ANSI Z–365 Committee, which was entrusted with the task of developing a consensus standard for the control of cumulative trauma disorders. The Agency also has sponsored and participated in more than 11 Ergonomics Best Practices conferences.

1. Petition for Emergency Temporary Standard

On July 31, 1991, the United Food and Commercial Workers Union (UCFW), along with the AFL–CIO and 29 other labor organizations, petitioned OSHA to take immediate action to reduce the risk to employees of exposure to ergonomic hazards (Ex. 2–16). The petition requested that OSHA issue an emergency temporary standard (ETS) on "Ergonomic Hazards to Protect Workers from Work-Related Musculoskeletal Disorders (Cumulative Trauma Disorders)" under section 6(c) of the Act. The petitioners also requested, consistent with section 6(c), that OSHA promulgate, within 6 months of issuance of the ETS, a permanent standard to protect workers from cumulative trauma disorders in both general industry and construction.

Based on the statutory constraints and legal requirements governing issuance of an ETS, OSHA calculated that the basis to support issuance of an ETS was not sufficient. Accordingly, on April 17, 1992, OSHA decided not to issue an ETS on ergonomic hazards (Ex. 2–29). OSHA agreed with the petitioners, however, that available information, including the Agency's experience and information in the ETS petition and supporting documents, supported the initiation of a rulemaking, under section 6(b)(5) of the Act, to address ergonomic hazards.

2. Advance Notice of Proposed Rulemaking

At the time OSHA issued the *Ergonomic Program Management Guidelines for Meatpacking Plants* (Ex. 2–13), the Agency also indicated its intention to begin the rulemaking process by asking the public for information about musculoskeletal disorders (MSDs). The Agency indicated that this could be accomplished through a Request for Information (RFI) or an Advance Notice of Proposed Rulemaking (ANPR) consistent with the Administration's Regulatory Program. Subsequently, OSHA formally placed ergonomics rulemaking on the regulatory agenda (Ex. 2–17) and decided to issue an ANPR on this topic.

In June 1991, OSHA sent a draft copy of the proposed ANPR questions for comment to 232 parties, including OSHA's advisory committees, labor organizations (including the petitioners), trade associations, occupational groups, and members of the ergonomics community (Ex. 2–18). OSHA requested comments on what questions should be presented in the ANPR. OSHA received 47 comments from those parties. In addition, OSHA met with the Chemical Manufacturers Association, Organization Resources Counselors, Inc., the AFL–CIO and several of its member organizations. OSHA reviewed the comments and submissions received and incorporated relevant suggestions and comments into the ANPR.

On August 3, 1992, OSHA published the ANPR in the **Federal Register** (57 FR 34192), requesting information for consideration in the development of an ergonomics standard. OSHA received 290 comments in response to the ANPR. Those comments have been carefully considered by the Agency in developing the final ergonomics program standard.

3. Outreach to Stakeholders

In conjunction with the process of developing the proposed ergonomics rule, OSHA established various communication and outreach efforts. These efforts were initiated in response to requests by individuals who would be affected by the rule (stakeholders) that they be provided with the opportunity to present their concerns about an ergonomics rule and that they be kept apprized of the efforts OSHA was making in developing a proposed rule. For example, in March and April 1994, OSHA held meetings with industry, labor, professional and research organizations covering general industry, construction, agriculture, healthcare, and the office environment. A list of those attending the meetings and a record of the meetings has been placed in the public record of this rulemaking (Ex. 26–1370).

In March, 1995, OSHA provided a copy of an early draft proposed ergonomics rule and preamble to these same organizations. Thereafter, during April 1995, OSHA met again with these groups to discuss whether the draft proposed rule had accurately responded to the concerns raised earlier. A summary of the comments has been placed in the public record (Ex. 26–1370).

During 1998, OSHA met with nearly 400 stakeholders to discuss ideas for a proposed standard. The first series of meetings was held in February in Washington, D.C. and focused on general issues, such as the scope of the standard and what elements of an ergonomics program should be included in a standard. The second series of meetings, held in July in Kansas City and Atlanta, focused on what elements and activities should be included in an ergonomics program standard. The third set of meetings was held in September in Washington, D.C. and emphasized revisions to the elements of the proposal based on previous stakeholder input. A summary of those meetings was placed on the OSHA web site and in the public docket (Ex. 26–1370). OSHA solicited input from its stakeholders again the next year, when it posted a working draft of its ergonomics standard after its release for Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel review.

4. Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel

In accordance with SBREFA and to gain insight from employers with small businesses, OSHA, the Office of Management and Budget (OMB), and the Small Business Administration (SBA) created a Panel to review and comment on a working draft of the ergonomics program standard. As required by SBREFA, the Panel sought the advice and recommendations of potentially affected Small Entity Representatives (SERs). A total of 21 SERs from a variety of industries participated in the effort. The working draft and supporting materials (a brief summary of a preliminary economic analysis, the risk assessment, and other materials) were sent to the SERs for their review. On March 24–26, 1999, the Panel participated in a series of discussions with the SERs to answer questions and receive comments. The SERs also provided written comments, which served as the basis of the Panel's final report (Ex. 23). The final SBREFA Panel Report was submitted to the Assistant Secretary on April 30, 1999. The findings and recommendations made by the Panel are addressed in the proposed rule, preamble, and economic analysis (see the discussion in Section

VIII, Summary of the Final Economic Analysis and Regulatory Flexibility Analysis).

5. Issuance of Proposed Rule

On November 23, 1999, OSHA published a proposed ergonomics program standard to address the significant risk of work-related musculoskeletal disorders (MSDs) confronting employees in various jobs in general industry workplaces (64 FR 65768). The proposed standard would have required general industry employers covered by the standard to establish an ergonomics program containing some or all of the elements typical of successful ergonomics programs: management leadership and employee participation, job hazard analysis and control, hazard information and reporting, training, MSD management, and program evaluation, depending on the types of jobs in their workplace and whether a musculoskeletal disorder covered by the standard had occurred. Employers whose employees perform manufacturing or manual handling jobs were required to implement a basic ergonomics program in those jobs.

The basic program would have included the following elements: management leadership and employee participation, and hazard information and reporting. If an employee in a manufacturing or manual handling job experienced an OSHA-recordable MSD determined by the employer to be covered by the standard, the employer would have been required to implement a full ergonomics program for that job and all other jobs in that establishment involving the same physical work activities. The full program would have included, in addition to the elements in the basic program, a hazard analysis of the job; the implementation of engineering, work practice or administrative controls to eliminate or substantially reduce the hazards identified in that job; training the employees and their supervisors in that job; and providing MSD management, including where appropriate, temporary work restrictions and access to a health care provider or other professional if a covered MSD occurred. General industry employees in jobs other than manufacturing or manual handling who experienced a covered MSD determined by the employer to be covered by the standard also would have been required by the proposal to implement an ergonomics program for those jobs.

6. Solicitation of Public Comment on the Proposed Rule

The notice of proposed rulemaking invited public comment on any aspects of the proposed ergonomics standard until the close of the comment period ending on February 1, 2000.

After receiving a number of requests for an extension of the written comment period, OSHA published a **Federal Register** notice (65 FR 4795) to extend the deadline for public, pre-hearing comments to March 2, 2000 and to reschedule the informal public hearings in Washington, D.C. to begin March 13, 2000 and run through April 7, 2000. Subsequently, the Agency published a **Federal Register** notice (65 FR 19702) to re-schedule and extend the hearings in Portland, OR by 2 days, from April 24, 2000 through May 3, 2000. In addition, a final week of informal public hearings (65 FR 13254) was scheduled to take place in Washington, D.C. from May 8, 2000 through May 12, 2000.

During the early stages of the public comment period, it was brought to OSHA's attention that the proposed ergonomics program standard published on November 23, 1999 (64 FR 65768) did not provide an analysis of the economic impacts of the rule on State and local governments, the United States Postal Service, or the railroads. To provide this additional information and analysis; OSHA published a supplement (65 FR 33263) to the Agency's Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis (Ex. 28–1) of the economic impact of the Ergonomics Program Rule. OSHA also established pre-hearing and post-hearing comment periods ending June 22, 2000 and August 10, 2000, respectively, to address the analysis of economic impacts in those three industries. An informal public hearing was held in Atlanta, GA on July 7, 2000, to provide an opportunity for witnesses to question the OSHA Panel on the supplemental analysis.

Collectively, the public hearings concerning the proposed ergonomics program standard generated 18,337 pages of transcript based on testimony from 714 hearing witnesses, including those representing public entities, private industry, industry associations, labor unions and private individuals.

More than 5,900 pre-hearing comments were filed in response to the proposed ergonomics program standard. A 45-day post-hearing comment period and a 45-day summary and brief period were established, with final briefs due to be postmarked no later than August 10, 2000. A total of 240 post hearing submissions were received. Collectively, a total of nearly 11,000 exhibits consisting of nearly 50,000 pages were submitted over the whole period.

B. Other OSHA Efforts In Ergonomics

In 1996, OSHA developed a strategy to address ergonomics through a four-pronged program including training, education, and outreach activities; study and analysis of the work-related hazards that lead to MSDs; enforcement; and rulemaking.

1. Training, Education, and Outreach

a. Training. The OSHA ergonomics web page has been an important part of the Agency's education and outreach effort. Other OSHA efforts in training, education and outreach include the following:

- Grants to train workers and employees about hazards and hazard abatement.
- Three training courses in ergonomics through the OSHA Training Institute available for OSHA compliance officers, one of which is open to the public;
- One day training for nursing home operators, at more than 500 nursing homes in each of seven targeted states;
- Booklets on ergonomics, ergonomics programs, and computer workstations, such as "Ergonomics Program Management Guidelines for Meatpacking Plants" and "Ergonomics: the Study of Work," both of which are available on OSHA's Website.
- Videotapes on ergonomics programs in general industry and specifically in nursing homes.

OSHA has awarded almost $3 million for 25 grants addressing ergonomics, including lifting hazards in healthcare facilities and hazards in the red meat and poultry industries. These grants have enabled workers and employers to identify ergonomic hazards and implement workplace changes to abate these hazards.

Some grant program highlights follow:

- The United Food and Commercial Workers International Union (UFCW) conducted joint labor-management ergonomics training at a meatpacking plant that resulted in a major effort at the plant to combat cumulative trauma disorders. The program was so successful that management asked the UFCW to conduct the ergonomics training and work with management at some of its other facilities.
- The University of California at Los Angeles (UCLA) and the Service Employees International Union (SEIU) both had grants for preventing lifting injuries in nursing homes. SEIU developed a training program that was used by UCLA to train nursing home workers in California. UCLA also worked with some national back injury prevention programs. At least one of the nursing home chains has replicated the program in other states.
- Mercy Hospital in Des Moines, Iowa, had a grant to prevent lifting injuries in hospitals. It trained over 3,000 hospital workers in Des Moines and surrounding counties. It had a goal of reducing lost work days by 15 percent. The goal was surpassed, and, six months after the training, none of those trained experienced a lost workday due to back injury.
- Hunter College in New York City trains ergonomics trainers for the United Paperworkers International Union. The trainers then return to their locals and conduct ergonomics training for union members. As a result of this training, changes are being made at some workplaces. Examples include purchasing new equipment that eliminates or reduces workers' need to bend or twist at the workstation, rotating workers every two hours with a ten-minute break before each rotation, and modifying workstations to reduce worker strain.

b. Education and Outreach. To provide a forum to discuss ergonomic programs and to augment information in the literature with the experience of companies of different sizes and from a variety of industries, OSHA and NIOSH sponsored the first in a series of conferences that brought industry, labor, researchers, and consultants together to discuss what works in reducing MSDs. The 1997 OSHA and NIOSH conference was followed by 11 more regional conferences across the country. OSHA and NIOSH held the second national conference on ergonomics in March of 1999. More than 200 presentations were given at the conferences on how companies have successfully reduced MSDs. Presentations were made by personnel from large and small companies in many different industries.

Other examples of successful ergonomics programs have come from OSHA's Voluntary Protection Program (VPP). The VPP program was established by OSHA to recognize employers whose organizations have exemplary workplace safety health programs. Several sites that have been accepted into VPP have excellent ergonomics programs.

In addition to OSHA's enforcement efforts, the Agency's Ergonomics Program Management Guidelines for Meatpacking Plants ("Guidelines") (Ex. 2–13) are viewed by many as essential to the implementation of successful workplace programs addressing ergonomic hazards. For example, in contrasting OSHA's proposal to the *Guidelines,* IBP Inc.'s Bob Wing acknowledged that the *Guidelines* had been successful (Ex. 30–4046, p.1). Similarly, the American Meat Institute ("AMI"), the main representative for the U.S. meat industry, including 276 meat packers and processors, who operate 559 facilities, acknowledged that the industry worked with OSHA on the *Guidelines,* and has been using them for nearly ten years (Ex. 30–3677, p.1). The AMI notes that the *Guidelines* work and that the industry has made substantial progress in addressing ergonomic issues since development of the *Guidelines* (*id.* at 1–4). The AMI recommended that the *Guidelines* be extended throughout general industry (*id.* at 4). The utility of OSHA's *Guidelines* also was hailed by the United Food and Commercial Workers' Union, which noted that upon publication of the *Guidelines,* industry began to respond both from the standpoint of technology as well as ergonomics programs (Ex. 32–210–2, pp. 25–26). The success of the *Guidelines* led to their use and acceptance in other industries. The poultry industry appears to have secured substantial reductions in chronic MSDs from adherence to the principles in the document (Ex. 30–3375, p.1.).

2. Ergonomics Best Practices Conferences

During the period from Sept. 17, 1997 through Sept. 29, 1999, OSHA and its Regional Education Centers co-sponsored 11 Ergonomics Best Practices Conferences. These Conferences were designed to provide good examples of practical and inexpensive ergonomics interventions implemented by local companies. The concept was that if OSHA and its Regional partners could initiate the development of a network of local employers, contractors, and educators to provide practical information to solve ergonomics problems, it would be assisting employers in providing a workplace for employees that would be "free of recognized safety and health hazards." To date, attendance has exceeded 2,400 participants, including employers, contractors, and employees. Finally, OSHA has made hundreds of outreach presentations to labor, trade associations, large and small businesses, and professional organizations during the development of the proposed rule.

3. Enforcement

In the absence of a federal OSHA ergonomics standard, OSHA has addressed ergonomics in the workplace under the authority of section 5(a)(1) of the OSHAct. This section is referred to as the General Duty Clause and requires employers to provide work and a work environment free from recognized hazards that are causing or are likely to cause death or serious physical harm.

OSHA has successfully issued over 550 ergonomics citations under the General Duty Clause. In the majority of these cases, cited employers have recognized that the implementation of ergonomics programs is in their best interest and that of their employees. Examples of companies cited under the General Duty Clause for ergonomics hazards and which then realized a substantial reduction in injuries and illnesses after implementing ergonomics programs include: the Ford Motor Company, Empire Kosher Foods, Sysco Foods, and the Kennebec Nursing Home.

Two cases have been decided so far by the Occupational Safety and Health Review Commission.

In the first general duty clause case litigated by the Occupational Safety and Health Review Commission, *Pepperidge Farm,* the Review Commission recognized that excessive lifting and excessive repetitions were recognized ergonomic hazards that had caused and were likely to cause serious physical harm to employees whose work tasks required such activity. The Commission specifically noted that carpal tunnel syndrome and other soft tissue injuries found at the cited plant were caused by work tasks; the Commission relied principally on direct medical evidence, expert medical opinion, the incidence of injury, and the epidemiological studies and testimony in the record in reaching this finding. The Commission also agreed that an employer could be required to undertake a process-based, incremental approach to abating ergonomic hazards. The citations relating to the excessive lifting hazard were affirmed by the Commission, while those relating to the excessive repetitions were vacated based on a finding that the Secretary had failed to prove feasible means of abatement in addition to those found to have been undertaken by the company.

In the second general duty clause case litigated by the Commission, *Beverly Enterprises,* the Commission held that the company's practices for lifting patients in its nursing homes exposed its nursing assistants to a serious recognized hazard. Beverly's nursing assistants suffered a disproportionate number of cases of lower back pain, which was often so severe that the employee would be off work for long periods of time, in some cases six months to over a year. The Commission found that manual lifting of nursing home residents is a known and recognized risk factor for lower back pain and that the company recognized the hazard.

When serious physical harm cannot be documented in the work environment but hazards have been identified by OSHA, compliance officers both discuss the hazards with the employer during the closing conference of an inspection and write a letter to the employer. These letters are called "Ergonomic Hazard Alert Letters." From fiscal year 1997 through October 3, 2000, approximately 498 such letters have been sent to public and private sector employers under Section 20 of the OSH Act. These letters involve no penalty and are strictly consultative in nature; they reflect OSHA's responsibility to provide consultation on ergonomics to employers. Ergonomic Hazard Alert Letters have been sent to employers in approximately 50% of OSHA's ergonomic inspections.

Since ergonomic solutions vary from one industry to another, OSHA has provided both general and industry-specific training to its compliance officers. Currently, the OSHA Training Institute (OTI) in Des Plaines, IL, offers three main ergonomic courses to OSHA compliance staff: Principles of Ergonomics Applied to Work-Related Musculoskeletal and Nerve Disorders (#225); Ergonomics Compliance (#325), an advanced ergonomics course; and Nursing Home Enforcement Training (#840). A fourth course, Healthcare (#336), has been in development and will be piloted on November 14, 2000 through November 17, 2000. That course will be designed to help OSHA compliance officers, as well as employers, to identify ergonomic and other hazards within healthcare facilities, with a specific emphasis on hospitals. Over 600 OSHA compliance staff members have been trained in these courses within the past three years alone. The courses typically cover three weeks of material.

Currently, the Principles of Ergonomics Applied to Work-Related Musculoskeletal and Nerve Disorders course also is open to the public through OTI's 12 Regional Education Centers throughout the United States. Since that course has been available nationwide, public interest has been high, and the Education Centers have been scheduling courses on a regular basis to meet the constant demand. Although the new Healthcare Course is available currently only to OSHA compliance officers, after the pilot period ends it will be open to the public on a limited basis.

In addition to education and training opportunities, OSHA has appointed one Regional Ergonomics Coordinator in each of OSHA's 10 regional offices, and one Area Office Ergonomics Coordinator in each area office. These coordinators meet on a monthly basis to discuss recent inspections, case developments, and scientific literature on ergonomics; to share knowledge of ergonomic solutions; and to ensure that enforcement resources are provided to compliance staff for enforcement. A PhD level, professionally certified ergonomist serves as the National Ergonomics Enforcement Coordinator in OSHA's Directorate of Compliance Programs.

4. Corporate-Wide Settlement Agreements

Among the companies that have been cited for MSD hazards, 13 companies covering 198 facilities agreed to enter into corporate-wide settlement agreements with OSHA. These agreements were primarily in the meat processing and auto assembly industries, but there also were agreements with telecommunications, textile, grocery warehousing, and paper companies. As part of these settlement agreements, the companies agreed to develop ergonomics programs based on OSHA's *Meatpacking Guidelines* (Ex. 2–13) and to submit information on the progress of their programs.

OSHA held a workshop in March 1999, in which 10 companies described their experience under their settlement agreement and with their ergonomics programs. All the companies that reported results to OSHA showed a substantially lower severity rate for MSDs since implementing their programs (Ex. 26–1420). In addition, most companies reported lower workers' compensation costs, as well as higher productivity and product quality. A report from the March 1999 workshop on corporate-wide settlement agreements summarizing the results achieved by the 13 companies involved has been placed in the docket (Ex. 26–1420). Only 5 of the 13 companies consistently reported the number of MSD cases or MSD case rates. All five companies that reported data on MSD-related lost workday rates showed a significant decline in the number of lost workdays. None of the companies that reported severity statistics showed an increase in lost workdays as a result of the ergonomics program.

Similarly, the success of OSHA enforcement coupled with settlements requiring comprehensive ergonomics programs was confirmed by the United Food and Commercial Workers International Union. The union recognized that "* * * [t]he majority of our successful programs in the meatpacking and poultry industries were propelled by OSHA enforcement. Ergonomic settlement agreements and corporate-wide settlement agreements (CWSAs) * * * demonstrate industry recognition of the existence of MSD hazards and the elements of a program to prevent worker injuries arising from exposure to these hazards" (Ex. 32–210–2, p. 5). The UFCW confirmed the efficacy of these agreements and resulting programs through a number of examples. One was that of IBP's Dakota City meatpacking plant that implemented a comprehensive program as a result of citations and subsequent settlement agreement. Cost savings attributed to the program "* * * were realized in the following areas: [employee] turnover was down significantly * * *; [MSD] incidence dropped dramatically; surgeries fell; [and] workers' compensation costs were reduced significantly" (*id.* at 9).

C. Summary

As this review of OSHA's activities in the last 20 years shows, the Agency has considerable experience in addressing ergonomics issues. OSHA also has used all of the tools authorized by the Act—enforcement, consultation, training and education, compliance assistance, the Voluntary Protection Programs, and the issuance of voluntary guidelines—to encourage employers to address musculoskeletal disorders, the single largest occupational safety and health problem in the United States today. These efforts, and the voluntary efforts of employers and employees, have led to the recent 5-year decline in the number of reported lost workday ergonomics injuries. However, in 1997, there were still more than 626,000 lost workday MSD injuries and illnesses reported.

Promulgation of an ergonomics program standard will add the only tool the Agency has so far not deployed against this hazard—a mandatory standard—to these other OSHA and employer-driven initiatives. Over the first 10 years of the standard's implementation, OSHA predicts that more than 3 million lost workday musculoskeletal disorders will be prevented in general industry. Ergonomics programs can lead directly to improved product quality by reducing errors and rejection rates. In an OSHA survey of more than 3,000 employers, 17 percent with ergonomics programs reported that their programs had improved product quality. In addition, a large number of case studies reported in the literature describe quality improvements. Thus, in addition to better safety and health for workers, the standard will save employers money, improve product quality, and

reduce employee turnover and absenteeism.

Section III. Legal Authority

A. General Criteria for OSH Act Standards

The purpose of the Occupational Safety and Health Act ("OSH Act") is "to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. 651(b). To further this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. Section 6(b) of the OSH Act, 29 U.S.C. 655(b) (authorizing promulgation of standards pursuant to notice and comment); 654(b) (requiring employers to comply with OSH Act standards). This standard is being issued pursuant to section 6(b).

The OSH Act defines an "occupational safety and health standard" as "a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment." Section 3(8) of the Act, 29 U.S.C. 652(8).

A standard is "reasonably necessary or appropriate" within the meaning of section 3(8) if it (1) substantially reduces or eliminates a significant risk of material impairment to worker health, safety, or functional capacity; (2) is technologically and economically feasible to implement; (3) is cost effective; (4) is consistent with prior agency action or supported by a reasoned justification for departing from prior agency action; (5) is supported by substantial evidence; and (6) is at least as protective as any applicable national consensus standard. 58 FR 16612, 16614 (March 30, 1993). To fulfill the congressional purpose underlying the Act, all OSH Act standards must be highly protective. Id. at 16614–15.

OSHA's determination that a particular level of risk is "significant" is based largely on policy considerations. *See Industrial Union Dep't, AFL–CIO* v. *Marshall*, 448 U.S. 607, 656 n. 62 (1980) (Benzene). The factors that enter into such a determination include the seriousness of the injuries or illnesses a standard will prevent, the likelihood that a particular employee will contract such an injury or illness, and the total number of employees affected. Where the standard seeks to prevent fatal illnesses and injuries, OSHA has generally considered an excess risk of 1 death per 1000 workers over a 45-year working lifetime as clearly representing a significant risk. See Benzene, 448 U.S. at 646; *UAW* v. *Pendergrass*, 878 F.2d 389, 393 (D.C. Cir. 1989) (Formaldehyde); *Building & Constr. Trades Dep't* v. *Brock*, 838 F.2d 1258, 1264 (D.C. Cir. 1988) (Asbestos). But nonfatal injuries and illnesses are often disabling and debilitating, and death is clearly not a precondition to a finding of significant risk of material impairment. *See American Textile Mfrs. Inst.* v. *Donovan*, 452 U.S. 490, 506 n. 25 (1981) (Cotton Dust) (upholding OSHA's finding that cotton dust exposure at levels that caused chronic and irreversible pulmonary disease presented a significant risk to workers); *AFL–CIO* v. *OSHA*, 965 F.2d 962, 975 (11th Cir. 1992) (upholding OSHA's finding that "there is a level at which [sensory] irritation becomes so severe that employee health and job performance are seriously threatened."); Formaldehyde, 878 F.2d at 396–399 (upholding OSHA's finding that exposure limit of 1 ppm would eliminate significant risk of sensory irritation due to formaldehyde exposure); *United Steelworkers* v. *Marshall*, 647 F.2d 1189, 1245–51 (D.C. Cir. 1980), cert. denied, 453 U.S. 913 (1981) (Lead I) (upholding OSHA's determination that it was appropriate and necessary to lower lead exposures to reduce cases in which workers experience subclinical effects of lead exposure because such subclinical effects are precursors of serious, lead-related disease); *Forging Indus. Ass'n* v. *Secretary of Labor*. 773 F.2d 1436, 1444–46 (4th Cir. 1985) (en banc) (Noise) (upholding OSHA's significant risk finding that a substantial percentage of workers exposed to existing workplace noise levels would suffer material noise-induced hearing loss). See also *American Dental Ass'n* v. *Martin*, 984 F.2d 823, 826 (7th Cir.), cert. denied, 510 U.S. 859 (1993) (Bloodborne Pathogens) (noting that, in addition to causing death, AIDS and Hepatitis B cause protracted pain and disability).

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. See Cotton Dust, 452 U.S. at 513; Lead I, 647 F.2d at 1272; *American Iron & Steel Inst.* v. *OSHA*, 939 F.2d 975, 980 (D.C. Cir. 1991) (Lead II).

A standard is economically feasible if industry can absorb or pass on the costs of compliance without threatening the industry's long-term profitability or competitive structure. See Cotton Dust, 452 U.S. at 530 n. 55; Lead I, 647 F.2d at 1272; Lead II, 939 F.2d at 980.

A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. Cotton Dust, 453 U.S. at 514 n. 32; *UAW* v. *OSHA*, 37 F.3d 665, 668 (D.C. Cir. 1994) (Lockout/Tagout II).

Within the framework of these principles, OSHA has considerable discretion ("virtually unlimited discretion," in the words of the Lead I decision, 647 F.2d at 1230) in choosing the measures that are reasonably necessary or appropriate to reduce significant risk. A standard may address the hazards associated with an industry (*e.g.*, logging, 29 CFR 1910.266), a kind of work (*e.g.*, hazardous waste cleanup, 29 CFR 1910.120), a category of equipment (*e.g.*, respirators, 29 CFR 1910.134); an environmental area (*e.g.*, confined spaces, 29 CFR 1910.146), a lack of information (*e.g.*, hazard communication, 29 CFR 1910.1200), a class of harmful agents (*e.g.*, bloodborne pathogens, 29 CFR 1910.1030), or may require general measures reasonably necessary and appropriate for safety (*e.g.*, safety and health programs for construction, 29 CFR 1926.20(b)). Depending on the nature of the safety and health issues, some standards require highly specific control measures. *E.g.*, 29 CFR 1926.652 (excavations). Others require the employer to conduct a hazard assessment and establish measures meant to address the problems found. *E.g.*, 29 CFR 1910.119 (process safety management). A typical standard for a toxic chemical will contain permissible exposure limits, a control hierarchy for reaching those limits, and provisions for assessing exposure, medical examinations, medical removal, and training. *E.g.*, 29 CFR 1910.1025 (lead). Some toxic chemical standards also mandate specific work practices that must be used to control exposures. *E.g.*, 29 CFR 1910.1029 (coke oven emissions); 29 CFR 1926.1101 (asbestos). Vaccination against Hepatitis B is one of the protective measures required by the bloodborne pathogens standard, 29 CFR 1910.1030. Medical removal protection benefits have been mandated when they are needed to encourage employees to participate in medical surveillance. 29 CFR 1910.1025 (lead); 29 CFR 1910.1027 (cadmium); 29 CFR 1910.1048 (formaldehyde); 29 CFR 1910.1052 (methylene chloride). Job hazard analysis and employee training are cornerstones of some OSHA standards. *E.g.*, 29 CFR 1910.147 (lockout/tagout).

Section 6(b)(7) of the Act, 29 U.S.C. 665(b)(7), requires standards to include provisions warning employees of hazards, the means needed to protect themselves against those hazards, and, where appropriate, medical examinations or tests to determine whether the health of employees has been adversely affected:

> Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure.

B. Section 6(b)(5)

Standards dealing with "toxic materials or harmful physical agents" must, in addition to meeting the "reasonably necessary or appropriate" test of section 3(8), conform to section 6(b)(5) of the Act, 29 U.S.C. 655(b)(5). That section provides:

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

The standards that are governed by section 6(b)(5) are sometimes referred to as "health" standards, while non-6(b)(5) standards are often referred to as "safety" standards. In enacting section 6(b)(5), Congress recognized "that there were special problems in regulating health risks as opposed to safety risks. In the latter case, the risks are generally immediate or obvious, while in the former, the risks may not be evident until a worker has been exposed for long periods of time to particular substances. It was to ensure that the Secretary took account of these long-term risks that Congress enacted § 6(b)(5)." Benzene, 448 U.S. at 649 n. 54. According to its legislative sponsor, section 6(b)(5) is intended to require OSHA to take into account the potential that an employee may be exposed to the hazard for his entire working lifetime "so that we can get at something which might not be toxic now, if he works in it a very short time, but if he works in it the rest of his life it might be very dangerous." (Remarks of Senator Dominick in colloquy with Senator Williams, Leg. Hist. at 503).

Section 6(b)(5) directs OSHA to set the standard which will, to the extent feasible, protect employees from material impairment to their health even if they are exposed regularly to the toxic chemical or harmful physical agent for their entire working life. Section 6(b)(5) thus requires that any standard governed by that section must reduce significant risk to the lowest feasible level. See Cotton Dust, 452 U.S. at 509. Safety standards, which are not governed by section 6(b)(5), need not reduce significant risk to the lowest feasible level but must provide a high degree of employee protection to be consistent with the purpose of the Act. 58 FR at 16614–15. Safety standards may therefore "deviate only modestly from the stringency required by § 6(b)(5) for health standards." Lockout/Tagout II, 37 F.3d at 669.

The most important consideration in construing the scope of section 6(b)(5), as with any statutory provision, is the language of the statute itself. In many cases, it is obvious whether a hazard is a "toxic material" or "harmful physical agent" subject to section 6(b)(5). Other hazards are less clear cut. OSHA has looked to several factors in determining whether a standard fits within section 6(b)(5). These include: Is the hazard likely to cause harm promptly or after a short period of exposure, or does harm occur only after a lengthy period of exposure? Is the connection between exposure and harm apparent, or is it hidden and subtle? Is the harm coincident with exposure, or is there a latency period with harm frequently manifesting itself long after exposure has ended? See Benzene, 448 U.S. at 649 n. 54; *UAW* v. *OSHA*, 938 F.2d 1310, 1313 (D.C. Cir. 1991) (Lockout/Tagout I); *National Grain & Feed Ass'n* v. *OSHA*, 866 F.2d 717, 733 (5th Cir. 1989) (Grain Dust).

Because the hazardous exposures regulated by this standard cannot be neatly categorized by the factors discussed above, whether this standard is governed by section 6(b)(5) poses difficult legal issues. Some commenters supported characterizing the rule as a section 6(b)(5) rule (Ex. 32–339–1 at p. 15 (AFL–CIO), while others opposed it. Ex. 32–368–1 at p. 41–44 (National Coalition on Ergonomics): Ex. 32–206–1 at p. 32 (American Iron & Steel Institute); Ex. 22–337–1 at pp. 3–7 (Integrated Waste Service Association); Ex. 30–1722 at pp. 33–35 (Chamber of Commerce). For a variety of reasons, OSHA concludes that the standard is not subject to section 6(b)(5).

First, the language of the statute itself suggests that this rule is not governed by section 6(b)(5). That provision applies to "toxic materials or harmful physical agents." The "toxic materials" to which section 6(b)(5) refers include chemicals that are harmful if breathed and/or ingested, such as asbestos, lead, and mercury. S. Rep. No. 91–1282, 91st Cong., 2d Sess. at 2, reprinted in Committee Print, Legislative History of the Occupational Safety and Health Act of 1970, (Leg. Hist.) at 142. Ergonomic risk factors are clearly not a toxic material. The "harmful physical agents" to which Congress referred include laser radiation, ultrasonic energy, ionizing radiation, noise, and vibration. Id. at 142–43. Of the harmful physical agents mentioned by Congress, only vibration is a risk factor addressed by the ergonomics standard. The remaining risk factors addressed by this standard—force, repetition, awkward postures, and contact stress—are fundamentally dissimilar from the harmful physical agents discussed by Congress in that they relate to the position, movement, and loading on the tissues of a worker's body rather than an external agent acting on the body. See *Pulaski* v. *California Occupational Safety & Health Standards Board*, 90 Cal. Rptr. 2d 54, 66 (Cal. Ct. App. 1999) ("a repetitive motion injury is neither a 'toxic material' nor a 'harmful physical agent.' "). Therefore, the language and legislative history of the Act indicate that the majority of the risk factors addressed by this rule are not the type of hazards Congress intended to regulate under section 6(b)(5).

In addition, the hazards addressed by the rule differ from those addressed by section 6(b)(5). A lengthy period of exposure—years, decades, or a working lifetime—is not necessary to create a substantial risk of MSDs. As discussed below, both acute and chronic exposures to ergonomic risk factors can result in MSDs. And, although MSDs frequently develop gradually as a result of exposure over time, the period of time necessary can be days, weeks, or months, rather than the working lifetime referred to in the text of section 6(b)(5). Moreover, MSDs are unlike illnesses, such as cancer, damage to the reproductive system, and kidney failure, that can result from exposure to toxic chemicals and appear long after the

exposure ceased even though the exposure caused no overt symptoms while it was occurring. An employee who is beginning to suffer a work-related MSD will frequently recover fully after the exposure to ergonomic risk factors ceases. For that reason, the standard requires that an employee who develops a work-related MSD be restricted from participating in work activities or removed from exposure that will worsen the condition.

The ability of employers and employees to generally recognize a cause-and-effect relationship between ergonomic risk factors and many MSDs also indicates that this final standard is a non-6(b)(5) rule. In recent years, as both employers and employees have become more aware of the connection between workplace risk factors and MSDs (see Tr. 5817–19), employers have reported over 600,000 work-related MSDs that result in lost workdays each year (64 FR at 65931). Employees themselves are often able to recognize when MSDs result from exposure to risk factors in the workplace. As OSHA noted in the proposal: "Many employers have told OSHA that talking with employees is a quick and easy way to find out what kind of problems are in the job. They said that talking with employees is often the best way to identify the causes of the problem and to identify the most cost-effective solutions to it." 64 FR at 65805 (citing Ex. 26–1370). Testimony at the public hearing made the same point. Dr. Suzanne Rodgers, a physiologist with 32 years' experience in industrial ergonomics, testified that the companies she had worked with learn about ergonomic problems by having employees tell them when a problem exists. (Tr. 2144). Similarly, David Alexander, a certified professional ergonomist with more than 25 years experience, testified that encouraging employees to report early signs and symptoms of developing MSDs was a key feature of a successful ergonomics program. (Tr. 2145–46).

Further, Congress provided for special treatment of health hazards in section 6(b)(5) because it recognized that employers had little incentive to control exposures to toxic chemicals and harmful physical agents when there is a long period between exposure to a hazard and the manifestation of an illness. "In such instances a particular employer has no economic incentive to invest in current precautions, not even in the reduction of workmen's compensation costs, because he seldom will have to pay for the consequences of his own neglect." Leg. Hist. at 144. However, in this respect too, the ergonomics standard is more like a typical safety standard than a health standard because many of the costs of such injuries in terms of workers' compensation claims and lost productivity are borne by employers as MSDs occur. Thus, the ergonomics standard does not implicate section 6(b)(5)'s concern about hazardous exposures that lead to illnesses after lengthy exposure and therefore require special attention because employers can defer or avoid the costs associated with such illnesses.

Finally, the type of information on which this standard is based is far more characteristic of a safety standard than a section 6(b)(5) health standard. The risk assessment for this standard, as for a typical safety standard, is based on the number of injuries that have resulted from past exposures to the hazard being regulated and the percentage of those injuries that are preventable. By contrast, for a typical health standard, the risk assessment is based on mathematical projections to determine the significance of the risk at various levels of exposure. See, *e.g.*, Formaldehyde, 878 F.2d at 392–96 (discussing OSHA's quantitative risk assessment for formaldehyde exposure). In the proposal, OSHA recognized that the risk assessment methodology for this standard was similar to that for a safety standard rather than a typical health standard:

> There is no need, in the case of musculoskeletal disorders, for OSHA to engage in risk modeling, low-dose extrapolation, or other techniques of projecting theoretical risk to identify the magnitude of the risk confronting workers exposed to ergonomic risk factors. The evidence of significant risk is apparent in the annual toll reported by the Bureau of Labor Statistics, the vast amount of medical and indemnity payments being made to injured workers and others every year * * * and the lost production to the U.S. economy imposed by these disorders.

64 FR at 65979.

In the NPRM, OSHA preliminarily concluded that the proposed ergonomics standard was a section 6(b)(5) standard. The NPRM stated that MSDs are caused by chronic and not by short-term exposures. 64 FR at 66057. Some commenters contended that this statement was inconsistent with OSHA's proposed definition of MSD and the inclusion of "traumatic" injuries in its risk assessment. Ex. 22–337–1 at p. 7 (Integrated Waste Service Association); Ex. 32–241–4 at pp. 197–99 (Anheuser-Busch & United Parcel Service); Ex. 32–[illegible]0–1 at pp. 15–16 (Edison Electric Institute). The proposed definition of MSD included musculoskeletal disorders other than those caused by accidents and was intended to include, *e.g.*, back injuries caused by lifting (for employees for whom manual handling is a core job element) without regard to whether the injury resulted from a particular. exertion or the cumulative effect of numerous lifting exertions. As OSHA elsewhere explained:

> The pathogenesis of work-related MSDs can refer to either single, point-in-time injuries, associated with work tasks that result in activities in which tissue tolerance is acutely exceeded, or circumstances in which the performance of specific work tasks or combinations in which the performance of specific work tasks or combinations of tasks over a prolonged period of time result in small and repeated tissue damage.

64 FR at 65900.

Moreover, the BLS injury and illness data on which OSHA based its proposed risk assessment (see 64 FR at 65931, Table VI–3) indicates that many of the injuries considered MSDs resulted from short-term rather than chronic exposures. OSHA has reexamined its reasoning in light of these comments and agrees that the acute-chronic distinction it drew in the proposal is inappropriate when describing MSDs and therefore does not afford a proper basis for classifying this rule as a section 6(b)(5) standard.

As discussed in more detail in the risk assessment section, the injury and illness data reported by BLS categorizes each incident by type of injury or illness and the nature of the exposure event leading to the injury or illness (BLS 1992, Ex. 26–1372). Under the BLS data collection system, employers are instructed to report musculoskeletal injuries and illnesses under various codes, some of which represent musculoskeletal system and connective tissue diseases and disorders that result from repetitive activity and some of which represent other types of exposure events. The BLS category that accounts for most of the reported injuries and illnesses, 021, includes sprains, strains, and tears of muscles, joints, tendons, and ligaments. The category is described as representing traumatic injuries, which generally result from a single event or exposure. Ex. 26–1372 (BLS Occupational Injury and Illness Classification Manual).

In its preliminary risk assessment, the agency closely examined the BLS data, excluded from its analysis injuries caused by accidents (*i.e.*, slips, trips, falls, and being struck by objects), and included those codes that predominantly represented work-related MSDs, including 021, that were reported under the exposure event categories most closely representing ergonomic risk factors. 64 FR at 65928. The largest number of these injuries were classified under the exposure category for "overexertion," which includes primarily lifting, lowering, pushing, pulling, and carrying. 64 FR at 65932. OSHA has followed this same approach in its final rule and in the supporting risk assessment, *i.e.*, excluding musculoskeletal injuries due to accidents but including those resulting from ergonomic risk factors. In OSHA's view, when MSDs result from exposure to ergonomic risk factors, any distinction between acute and chronic exposures is unimportant. OSHA notes that the classification of these disorders as traumatic is in part a convention of the recordkeeping system. OSHA's general recordkeeping guidelines for back disorders instruct that because the specific event causing such a disorder cannot always be pinpointed, to keep recordkeeping determinations as simple and equitable as possible, all back disorders should be classified as (traumatic) injuries rather than (cumulative exposure) illnesses. BLS, Recordkeeping Guidelines for Occupational Injuries and Illnesses (April 1986), at p. 38. Similarly, OSHA's Ergonomics Program Management for Meatpacking Plants states that all back cases are to be classified as injuries even though some back conditions may be triggered by an instantaneous event and others develop as a result of repeated trauma. Ex. 32–210–2–2 at p. 14. Moreover, a number of experts testified in the hearings that a substantial part of the MSD injuries classified under the BLS system as traumatic in fact represent cumulative exposure. (Tr. 2175–77; 2236–44; 5802–04). In short, even though an MSD may be classified as "traumatic" in origin, it will often be the case that, while the onset of the injury was sudden, the cause was exposure to ergonomic risk factors over some period of time. However, it is neither necessary nor meaningful to limit the standard's reach to MSDs that only occur because of exposures that take place over some period of time. The purpose of this standard is to reduce the number and severity of MSDs by protecting workers against excessive exposure to ergonomic risk factors and MSD hazards, and for that purpose it is irrelevant whether those excessive exposures are "acute" or "chronic."

On reflection, OSHA has determined that other considerations relied on in the NPRM are likewise unpersuasive. Although the standard protects against one risk factor—vibration—that qualifies as a "harmful physical agent," OSHA does not believe that factor alone makes this a section 6(b)(5) standard. The standard is not a "vibration" standard but one that addresses the multifactorial causes of MSDs. The risk factors that are not "harmful physical agents"—force, repetition, awkward posture, and contact stress—together contribute substantially more to the vast majority of MSDs than does vibration.

Similarly, that a provision in OSHA's standard governing access to employee exposure and medical records (29 CFR 1910.1020(c)(13)) defines "toxic substance or harmful physical agent" as including "repetitive motion" does not establish that repetitive motion is a harmful physical agent within the meaning of section 6(b)(5). See Ex. 32–339–1 at p. 15 (AFL–CIO). Whether repetitive motion is a harmful physical agent was not central to that rulemaking, which dealt with the access of employees and OSHA personnel to employee records and did not regulate particular hazards. In that rulemaking, interested parties had no reason to argue whether a standard that regulates repetitive motion is a section 6(b)(5) standard, and OSHA had no occasion to address that issue. Moreover, the records access rule was not issued under section 6(b)(5) but under OSHA's general authority to issue standards (section 6(b)) and regulations (section 8(g)). And it was upheld in court as a section 8(g) regulation rather than a section 6(b) standard. *Louisiana Chem. Ass'n* v. *Bingham,* 731 F.2d 280 (5th Cir. 1984), aff'g 550 F. Supp. 1136 (W.D. La. 1982). Therefore, the fact that the records access rule applies to repetitive motion cannot be regarded as establishing an OSHA policy that repetitive motion is a harmful physical agent for purposes of section 6(b)(5).

C. This Final Rule Does Not Regulate non-Workplace Activities

Some commenters have pointed out that MSDs can result from personal activities as well as from workplace exposures. Ex. 32–368–1 at p. 40 (National Coalition on Ergonomics); Ex. 32–241–4 at p. 49 (Anheuser-Busch & United Parcel Service). They argue that OSHA is attempting through this rule to regulate the nonwork activities that may contribute to MSDs and that the rule is therefore outside OSHA's authority. However, the rule regulates only conditions or activities in workplaces, and OSHA clearly has the authority to issue the rule.

Many adverse health conditions can be caused or aggravated by both work and nonwork exposures. For example, exposures to high noise levels both inside and outside the workplace can contribute to a worker's hearing loss. Nevertheless, OSHA has the authority to regulate harmful noise levels in the workplace as long as the workplace exposures create a significant risk of material impairment of health. *Forging Indus. Ass'n* v. *Secretary of Labor,* 773 F.2d 1436, 1442 (4th Cir. 1985) (en banc) (Noise).

Noise dealt with a challenge to the Hearing Conservation Amendment to OSHA's occupational noise standard. That amendment establishes certain requirements that must be met to reduce the incidence of and/or prevent hearing impairment due to occupational noise exposure. Before issuing the amendment, OSHA found that 10–15% of workers exposed to noise levels below the permissible exposure limit (PEL) would suffer material hearing impairment. 773 F.2d at 1443. OSHA based this finding on a "panoply of scientific reports and studies," including studies done by the National Institute for Occupational Safety and Health (NIOSH) and the Environmental Protection Agency (EPA). *Id.* OSHA also found that those employees who had suffered a hearing decrement of 10 decibels in either ear faced a greater risk from continued exposure to high levels of workplace noise than workers whose hearing was unimpaired. Id. OSHA's Hearing Conservation Amendment provided hearing-endangered workers with protection in the workplace in order to decrease the risk of hearing impairment.

The Forging Industry Association (FIA) argued that "because hearing loss may be sustained as a result of activities which take place outside the workplace—such as listening to loud music, age, or engaging in certain recreational activities—OSHA acted beyond its statutory authority by regulating non-occupational conditions or causes." Noise, 773 F.2d at 1442. The court found "no merit" in FIA's argument. The court ruled that OSHA properly relied on "the extensive and thorough research of several scientific institutions in defining the problems related to industrially-caused hearing loss in designing its proposal." Id. at 1443. The court also stressed that OSHA excluded non-occupational hearing loss from the rule. Id. at 1444 ("To be sure, some hearing loss occurs as a part of the aging process and can vary according to non-occupational noise to which employees are exposed. The amendment, however, is concerned with occupational noise—a hazard of the workplace."). The court ruled that the fact that non-occupational hazards may contribute to hearing loss does not mean that OSHA should refrain from

regulating workplace conditions that are shown to cause such loss:

> The amendment provides that non-occupationally caused hearing loss be excluded from its regulation. See 29 CFR 1910.95(g)(8)(ii), 1910.95(g)(10)(ii) (1984). Assuming, however, that some loss caused by aging or smaller amounts of noise sustained for shorter periods also aggravates the hearing loss incurred by an individual employed in a high noise-producing industry, that is scant reason to characterize the primary risk factor as non-occupational. Breathing automobile exhaust and general air pollution, for example, is damaging to lungs, whether healthy or not. The presence of unhealthy lungs in the workplace, however, hardly justifies failure to regulate noxious workplace fumes. Nor would there be logic to characterizing regulation of the fumes as non-occupational because the condition inflicted is aggravated by outside irritants.

Noise, 773 F.2d at 1444.

Like the Hearing Conservation Amendment to the Noise standard, this final ergonomics rule regulates workplace hazards. As discussed in the health effects section of this preamble, this rule addresses only exposure to ergonomic risk factors that occurs in the workplace. The MSDs that trigger action under the rule must be work-related and they must have occurred in workers whose jobs place them at a heightened risk of incurring a MSD because they are exposed to risk factors at the levels in the Basic Screening Tool.

A decision by the Occupational Safety and Health Review Commission supports OSHA's conclusion that the Act can properly address work-related ergonomic hazards even though employees can also be exposed to such hazards outside the workplace. In Pepperidge Farm, Inc., 17 O.S.H. Cas. (BNA) 1993 (1997), the Commission held that where work was shown to be a substantial contributing factor to MSDs, the fact that non-work factors may also play a role did not preclude OSHA from requiring the employer to abate the workplace hazards. In that case, Pepperidge Farm contested a number of citations for ergonomic violations that OSHA had issued under section 5(a)(1) of the Act. In order to prove a section 5(a)(1) violation, OSHA had to show that a condition or activity in the employer's workplace presents a "hazard to employees." 17 O.S.H. Cas. (BNA) at 2009 (emphasis added). The company argued that section 5(a)(1) should not apply to MSD workplace hazards because, among other things, "non-workplace factors may cause or contribute to the illnesses at issue and that individuals differ in their susceptibility to potential causal factors." Id. at 2013. The Commission held that such factors should not "ipso facto" preclude the possibility of enforcement under section 5(a)(1). Id. The Commission also analyzed a significant amount of evidence that showed a causal relationship between MSDs and workplace hazards, including testimony from medical personnel who examined injured workers, epidemiological data, and injury incidence at a Pepperidge Farm plant. Id. at 2020–26. The Commission ultimately found that there was a causal connection:

> We therefore conclude that the Secretary has established on this record a causal connection between [MSDs] affecting the employees at Downington [a Pepperidge Farm plant] and their work on the biscuit lines. In doing so, we are mindful that many of these injuries may have had more than one causal factor and of the experts who contend that the specific cause of such injuries is, essentially, unknowable or presently unknown. As is the case with many occupational ills with multiple possible causes, employees are more or less susceptible to injury on the job because of the individual attributes and backgrounds they bring to the workplace. As with these other ills, the Secretary is not thus foreclosed from attempting to eliminate or significantly reduce the hazard by regulating what is shown to be a substantial contributing factor to the worker injuries.

17 O.S.H. Cas. (BNA) at 2029.

The Commission's holding in Pepperidge Farm that the susceptibility of some employees to a particular ailment does not preclude OSHA from regulating workplace conditions or practices that cause or contribute to that type of ailment is supported by other cases. In the asbestos rulemaking, OSHA based its significant risk determination, in part, on epidemiologic studies that included workers who smoked and were therefore significantly more likely to contract cancer than those who did not. Asbestos, 838 F.2d at 1265. The court held that OSHA was justified in doing so. Smokers were not, the court said, "so far beyond the pale as to *require* OSHA to ignore them in computing the risks of asbestos." Id. (emphasis added). See also *Reich* v. *Arcadian Corp.,* 110 F.3d 1192, 1198 (5th Cir. 1997) (Congress intended Act's general duty clause to protect all employees, including those who are especially susceptible). Thus, workers who engage in activities outside the workplace that expose them to ergonomic risk do not thereby forfeit on-the-job protection against exposure to excessive ergonomic risk factors.

IV. Summary and Explanation

(a) What Is the Purpose of This Rule?

The first paragraph of the final standard sets out the purpose of this ergonomics program standard. OSHA did not propose a purpose paragraph, and thus no comments on this topic were received. OSHA has decided to include a purpose statement in the final rule to clearly indicate the goal of the standard and to differentiate between those musculoskeletal disorders (MSDs) that are covered by the standard and those that are not. It clarifies that the standard's purpose is to reduce the number and severity of MSDs that are caused by occupational exposure to ergonomic risk factors (also called "ergonomic stressors") on the job.

As discussed in more detail below, the disorders addressed by this rule include those of the muscles, nerves, tendons, ligaments, joints, cartilage, blood vessels, and spinal discs occurring in the neck, shoulder, forearm, wrist, hand, abdomen (hernias only), back, knee, ankle, and foot. They include conditions classified by the Bureau of Labor Statistics in its Annual Survey as illnesses (*e.g.*, carpal tunnel syndrome) and as injuries (*e.g.*, low back pain), because MSDs include many different disorders, affect many tissues and areas of the body, and may be described by a wide range of medical diagnoses.

The terms used to describe this group of conditions have varied over time and geographic region. For example, in Australia, MSDs are often called "Occupational Overuse Syndrome" injuries. Other frequently used terms include "repetitive stress injuries," "cumulative trauma disorders," and "soft tissue injuries." In recent years, however, the term "musculoskeletal disorders" has gained widespread acceptance by the scientific community, and OSHA uses this term, or its abbreviation, MSD, throughout the regulatory text and supporting analyses.

Paragraph (a) makes explicit that OSHA's ergonomics program standard does not apply to injuries or illnesses caused by motor vehicle accidents, slips, trips, falls, or similar accidents that result in traumatic injuries on the job. By "other similar accidents," OSHA means, for example, caught in or caught between injuries or other accidents resulting in blunt trauma. (Throughout this notice, OSHA uses the terms "work-related," "caused by," "musculoskeletal disorders," "risk factors," and "exposure." For a detailed discussion of these terms, see the relevant sections of the Health Effects (Section V of the preamble), Summary and Explanation (Section XI), and Legal Authority (Section III) sections of this preamble.)

As stated in paragraph (a), the purpose of this standard is to reduce the number and severity of MSDs caused by workplace exposure to ergonomic risk factors, such as force, awkward postures, or repetition, either alone or in combination. The standard requires employers to implement an ergonomics program to address risk factors in jobs that pose an MSD hazard to the employees in those jobs. As discussed in detail in Section VI of the preamble, Risk Assessment, ergonomics programs have been shown to reduce the number and severity of MSDs in old and new facilities, in large and small workplaces, and in a wide variety of jobs ranging from computer use to solid waste handling, from assembly line operations to patient handling, and from beverage distribution to meat processing.

Reducing the number and severity of MSDs in the workplace is the goal of successful ergonomics programs everywhere. As the more detailed discussions in this preamble and in the Agency's economic analysis will show, this goal cannot be achieved overnight, although positive results are generally observed soon after program implementation. One effect of a new ergonomics program, which at first glance may not appear to be a positive one, is that the number of MSDs and MSD signs and symptoms reported in the first months after the implementation of the program may actually increase. This initial increase in the number of MSD reports reflects the heightened awareness of ergonomics, the importance of early reporting, and the value of conservative treatment that routinely accompanies program implementation. In most workplaces, this increase is short-lived, generally lasting less than a year and almost never more than two years. The severity of the MSDs reported, however, generally decreases in the first few months after program initiation and declines steadily thereafter, before leveling off as the program matures. Thus, OSHA intends and expects the final rule to reduce the number and severity of MSDs in the workplaces covered by the standard over the first few years after the standard is fully in effect; OSHA is aware that the standard's purpose will not be fully achieved in the short run. When ergonomic programs mature, they continue to demonstrate ongoing reductions in the number of MSDs caused by workplace risk factors and in the severity of those MSDs that do occur.

The standard's purpose paragraph also reflects OSHA's awareness that work-related MSDs will continue to occur in many workplaces even after implementation of an effective ergonomics program that complies fully with this final rule. The standard being issued today is thus not a "zero-risk" standard. It recognizes that substantially reducing the number and severity of these disorders is possible in most, if not all workplaces, although many establishments may not be able to eliminate MSDs completely. (For a discussion of OSHA's analysis of the standard's projected effectiveness, see the Risk Assessment section of the preamble (Section VI) and Chapter IV, Benefits, of the Final Economic and Regulatory Flexibility Analysis.)

Paragraph (b)—Does This Standard Apply To Me? (Scope and Application)

Discussion of the scope and application of the final rule is divided into three parts. Part I discusses which employers and operations the standard covers. Part II explains the exclusions from coverage of the rule and OSHA's authority to limit the standard's coverage to general industry. Part III addresses other scope and application issues raised during the rulemaking.

Part I—Scope and Application of Standard to General Industry Employers

A. Scope of Coverage

Paragraph (b) states that the standard applies to general industry employment, which means all employment except for railroads and employment covered by OSHA's agriculture, construction, and maritime standards. Unlike other OSHA general industry standards, however, this standard does not cover general industry work performed incidentally to or in support of construction, maritime, or agricultural employment or railroad operations. This means that functions such as office work, management and support services are not covered by the standard, and that, for example, a construction company office or a marine terminal cafeteria would not be covered. However, a construction company real estate division engaged in selling the finished properties would not be performing functions directly in support of the construction operations and would be within the scope of the standard.

The final rule thus imposes coverage based on the business category in which the employer belongs, *e.g.*, general industry as opposed to construction. This marks a departure from the Agency's past practice of imposing coverage based solely on the job that an employee is performing. The approach adopted in this standard, *i.e.*, basing coverage on the industry classification of the employer, is appropriate here because of the unique nature of ergonomic problems and solutions. The requirement to implement an entire program when an MSD incident occurs in a job that meets the Action Trigger is more practical administratively if employers are required to take this broad approach.

Moreover, the standard does not apply to jobs or operations that are normally covered exclusively by the construction, agriculture and maritime standards, even if those operations are performed in a general industry establishment or for a general industry employer. Thus a construction crew whose sole job is to build in-plant structures in a steel mill is engaged in construction and is not covered by this standard, even though the steel mill itself is a general industry operation. This is consistent with the operation of other OSHA standards.

Although the proposal also applied only in general industry, its scope provision stated that coverage was further limited to general industry manufacturing jobs, manual handling jobs, and jobs with MSDs. Manufacturing jobs were defined as "production jobs" in which the activities of producing a product made up a "significant amount" of the employee's worktime. Manual handling jobs were those in which the employee performed "forceful" lifting (*i.e.*, lifting or lowering, pushing or pulling, or carrying) and the forceful lifting tasks were a "core element" of the employee's job. Jobs with MSDs were defined as jobs in which an OSHA recordable MSD occurred in a job in which the physical work activities and conditions were reasonably likely to cause that type of MSD, and the activities were a core element of the job or accounted for a significant amount of the employee's worktime (64 FR 65779–82).

The proposal explained that OSHA was focusing on general industry in this first ergonomics rulemaking because the problems in general industry are particularly severe and the solutions are well-understood (64 FR 65776). Some commenters agreed with the proposed rule's scope, and its emphasis on manufacturing and manual handling jobs (Exs. 31–3, 31–71, 31–180, 31–252, 31–284, 32–300). More, however, argued either that the rule should not exempt construction, maritime and agricultural employment (Exs. 30–400, 30–1294, 31–14, 31–105, 31-143, 31–156, 31–345, 31–352, 32–198–4, 32–210, 32–359–1, 32–461–1, 30–1294, 500–218), or that the rule should exempt even more industries or jobs (Exs. 30–372, 30–494, 1–248, 31–280, 32–77-2, 32–78, 32–234, 30–2208, 30–3167, 32–77–2, 601–X–1, Tr. 3126).

Many of the commenters who believed that the scope of the proposed rule was too broad argued that it incorporated a "one size fits all" approach that was inappropriate for the wide variety of operations found in general industry (Ex. 30–494, see also Exs. 30–380, 30–372, 30–531, 30–3167, Tr. 3126, 3332). Some of these commenters pointed out that there was great variation in MSD rates, prevalence of ergonomic risk factors, and levels of exposure to those risk factors across general industry (Exs. 30–541, 30–3167). Others pointed out that jobs differed greatly within and across industries, and claimed that OSHA did not have enough information about effective controls in all industries (Exs. 30–425, 30–3167, 32–77, 32–211–1, 32–2208). The focus of both these groups of comments was that OSHA did not have enough knowledge or evidence to find that the same approach to controlling ergonomic hazards would be appropriate in all of these disparate circumstances.

A number of commenters suggested ways to limit the standard's scope. Some urged OSHA to focus the rule more narrowly on those jobs or industries with the highest MSD rates or those deemed to have high risk potential (Exs. 30–13, 30–425, 30–2208, 30–3167, 31–248, 31-280, 32–78, 32–234, Tr. 2729–30). For example, Larry Leahy of Ruth Constant & Associates, a home health care service agency, questioned why OSHA was covering all of general industry when 60 percent of the MSDs occurred in industries representing a fairly small percentage of the national workforce (Ex. 30–611). Todd McCracken, of National Small Business United, argued:

> There is a need to focus on particular types of jobs . . . There are specific types of jobs in specific industries where MSDs are much more likely to occur (Tr. 2729–30).

Similarly, Organization Resources Counselors, Inc. (ORC) recommended that the rule only cover high risk occupations or employers whose MSD incident rates were above the national background level (Ex. 32–78; see also Tr. 10633–35). The Small Business Administration's Office of Advocacy suggested covering only manual handling jobs, which it claimed accounted for 78 percent of all MSDs (Ex. 601–X–1).

As discussed in detail throughout this preamble, OSHA believes that the record supports coverage of all of general industry within the overall scope of the standard. The final standard does not, however, prescribe a one-size-fits-all solution for a wide range of problems in diverse jobs and industries. Even in those situations where significant ergonomic hazards exist, the commonality of the response required by this standard is to implement an ergonomics program. The specific focus of that program will be targeted to the particular hazards and conditions at each workplace. The control strategies for ergonomic hazards will be targeted even more specifically to the needs of each workplace. And the extent of each employer's compliance obligation will be determined by the extent of the problem at that employer's workplace. Thus the fact that the rule applies to a variety of hazards at differing workplaces does not in any way mean that the employers in all of those workplaces need to take the same actions.

Work-related MSDs are widespread throughout general industry. They occur in every single sector within general industry, according to the Bureau of Labor Statistics (BLS). In 1996, according to BLS, there was no industry sector that did not report the occurrence of at least several hundred work-related MSDs, with a large number of industries reporting tens of thousands of work-related MSDs. Moreover, high concentrations of work-related MSDs are reported in a wide variety of occupations that are found throughout general industry establishments. BLS data for 1996 show that general industry truck drivers, laborers, and janitors, occupations found widely dispersed throughout general industry sectors, experienced more than 48,000, 38,000 and 15,000 lost workday (LWD) MSDs, respectively. (See Section VII (Risk Assessment) of this preamble.)

Evidence submitted by rulemaking participants confirms the broad distribution of MSDs and MSD hazards throughout general industry. For example, the Service Employees International Union (SEIU) submitted evidence that union members working in a variety of health care settings (*e.g.*, hospitals, nursing homes, private homes, pharmacies) have suffered MSDs (Ex. 32–311–1). These health care workers include registered nurses, licensed practical nurses, nurses' aides, orderlies, physical therapists, radiology technicians, housekeepers (maids and housemen), laundry workers, laundry machine operators, maintenance workers, kitchen and food preparation workers, central supply workers, and janitors and cleaners. In addition, SEIU said that other union members such as janitors and cleaners working in a variety of other industries, including hotels/motels, restaurants, offices have also experienced MSDs (Ex. 32–311–1).

At the rulemaking hearing, many employees testified that they had suffered serious work-related MSDs. Occupations in which these employees were working when they became injured include:

- Nurse
- Home health care aide
- Nurses' aide
- Package delivery
- Package sorting
- Meatpacking and poultry processing
- Office clerical worker
- Internet publishing
- Machinists
- Sewing machine operator
- Truck driver
- Food warehousing and distribution
- Grocery store cashier
- Physical therapist
- Mail carrier
- Letter sorter
- Teacher
- Teachers' aide
- Auto assembly
- Molding and casting machine operator
- Reporter
- Grocery shelf stocker
- Sonographer
- Television film editor
- Electrical workers

(Exs. 30–4200, 32–185–3, 32–210–2, 32–198–3, 32–311, 500–218, Tr. 4009–10, 4235, 4240, 4234, 6004, 6009, 6319, 6321–22, 6333, 7320–21, 7335–37, 7341–42, 17950).

Doctors and other health care professionals (HCPs) also testified that they had treated employees in many different jobs and industries for work-related MSDs (Exs. 37–12, 37–28, Tr. 14973, 15045–46, 16819, 16829). Dr. Robert Harrison testified that, in his research and practice, he had diagnosed and treated over 1,000 patients with work-related MSDs from a wide variety of industries and occupations, including (Ex. 37–12):

- Postal workers
- Materials handlers
- Computer operators
- Grocery checkout clerks
- Meat processors
- Assemblers
- Seamstresses
- Telephone operators
- Pipefitters
- Customer service agents
- Machine operators
- Automotive manufacturing workers
- Aircraft manufacturing workers
- Optical scanners
- Graphic artists
- Restaurant workers
- Bakers
- Plumbers
- Letter sorters

Dr. Robin Herbert, the medical co-director of the Mt. Sinai Center for Occupational and Environmental Medicine, testified that she had treated or supervised the treatment of more than 2,000 patients with upper extremity MSDs in the past 12 years:

> My patients have included journalists, computer graphic artists, health care workers, technicians for telephone companies, automobile manufacturing workers, cashiers, garment workers, meat wrappers, dental hygienists, secretaries, and chefs. Industries from which I have seen patients include publishing, journalism, entertainment, manufacturing, health care, transportation, and telecommunications (Ex. 37–28).

Dr. George Piligian, who also works at the Mount Sinai Center, testified about finding and treating MSDs in dancers, musicians, editors, secretaries, telephone operators, sewing machine operators and hospital workers (Tr. 7813–20).

Similarly, insurance companies, employers and trade associations representing the following industries testified about the implementation of ergonomics interventions and programs because work-related MSDs were occurring among workers in the following environments:

- Chemical manufacturing
- Pharmaceutical manufacturing
- Automotive manufacturing
- Automotive repair
- Boat manufacturing
- Textile manufacturing
- Clothing manufacturing
- Printing
- Dental
- Meatpacking
- Electric utility
- Hospitals
- Office workers
- Hotel/motel
- Emergency medical services
- Furniture manufacturing
- Oil and gas drilling
- Moving and storage
- Fabricare
- Nursing homes
- Telephone operation and installation
- Funeral and cemetery
- Insurance
- Solid waste removal and recycling
- Paint manufacturing
- Poultry processing
- Food warehousing and distribution
- Beverage delivery
- Assembly line
- Grocery store
- Retail clothing
- Foundry

(see, *e.g.*, Tr. 3337–9, Tr. 5104, Tr. 8458–8480, Tr. 16553–57).

Finally, several of the ergonomists who appeared as OSHA's expert witnesses, including David Alexander (Ex. 37–7), David Caple (Ex. 37–20), Dennis Mitchell (Ex. 37–11), Maurice Oxenburgh (Ex. 37–24), Suzanne Rodgers (Ex. 37–25), and John Rosecrance (Ex. 37–26), testified that employers in the following different industries had hired them to help reduce the incidence of work-related MSDs among employees:

- Newspaper
- Luggage manufacturing
- Meatpacking
- Packaging
- Papermaking
- Plumbing supply
- Route sales and delivery
- Film products manufacturing
- Hospitals
- Heavy appliance manufacturing
- Automobile manufacturing and subassembly
- Furniture manufacturing
- Paper and pulp products
- Forest products
- Food service
- Clerical
- Electronics
- Clothing and textile manufacturing
- Baking
- Restaurant
- Home and office furniture manufacturing
- Hospitality—hotel/motel
- Fiber manufacturing
- Logistic and supply warehousing
- Telecommunication
- Textile and apparel manufacturing
- Metal forging and cast metals
- Electronics manufacturing
- Health care
- Petroleum
- Electrical manufacturing
- Airline freight handling
- Steel manufacturing
- Fishing
- Aircraft manufacturing
- Gas and electric utility
- Flooring products
- Computer and computer accessory manufacturing
- Plumbing fixtures manufacturing
- Food products manufacturing and processing
- Chemical manufacturing
- Printing
- Waste treatment
- Plastic manufacturing
- Clothing retail
- Power plants
- Research laboratories
- Transportation
- Printing
- Upholstery
- Rubber manufacturing
- Welding
- Mail sorting and delivery
- Transportation
- Electronics
- Medical products manufacturing

All of this evidence supports OSHA's decision to provide the protections of this standard to all general industry employees. On the other hand, OSHA recognizes that there may be some general industry employers with few or no MSD hazards. Until an MSD is reported, the employer's obligation is limited to distributing the information in paragraph (d).

B. Application of Requirements

Unlike the proposal, this final standard does not differentiate among general industry employers. Under the proposal, employers of employees engaged in manufacturing or manual handling would have been required to implement some elements of an ergonomics program whether or not their employees had suffered any MSDs. Other general industry employers would not have had to take any action until a "covered MSD" occurred, and a covered MSD was defined differently for them than for manufacturing and manual handling employers (64 FR 65782–84, 65791). In this final standard all general industry employers are required, as specified in paragraph (d), to provide basic information on ergonomics and the standard to their employees. The employer has no further obligation until the employee reports an MSD or the signs or symptoms of an MSD (see paragraph (e)).

OSHA developed its bifurcated proposal because about 60 percent of all reported MSDs occurred in manufacturing and manual handling jobs, even though those jobs accounted for less than 30 percent of general industry employment. Although some commenters agreed that this might justify a focus on manufacturing and manual handling (Ex. 30–4837), very few expressed satisfaction with the proposed approach (Exs. 30–400, 31–78, 32–198, 32–210, 32–461, 500–218, Tr. 3224). Many commenters said that manufacturing and manual handling jobs should not be singled out because MSD hazards were present and MSD rates were high in other jobs and industries (Exs. 30–626, 30–2208, 31–156, 500–218). For example, participants said that there were many MSD hazards and MSDs in "any job involving regular computer use," therefore, programming, journalism, data entry, system administration, accounting, analysis, and insurance jobs should have been included by name (Exs. 30–49, 30–400, 31–3, 31–12, Tr. 2783, 2932). Likewise, other commenters argued that custodians and supermarket employees including cashiers, bakery personnel, baggers and

stockers should be treated on par with manufacturing and manual handling jobs because they involved the same hazards (Ex. 31–23, 32–210; see also Exs. 30–400, 31–78, 32–198, 32–210, 32–461, 500–218, Tr. 3224).

Another group of commenters opposed requiring any employers to take any type of action before a work-related MSD is reported (Ex. 30–240, 32–300, 30–542, 601–X–1) on the grounds that it was a "waste of resources" to require a basic program for employers with manufacturing and manual handling jobs that have no MSDs (Ex. 30–542). For example, one said:

> If an employer is in one of the targeted industries but has not had MSDs, why force the bureaucracy of program implementation upon him or her * * * (Ex. 30–240).

And while some participants found the definitions of manufacturing and manual handling jobs adequate to identify whether a particular job was covered (Exs. 30–3934, 30–4837, 31–38, 31–36, 31–113, 31–173, 31–205, 31–229, 31–347), most disagreed (Exs. 30–5, 30–46, 30–75, 30-293, 30–1722, 30–3032, 30–3853, 31–4, 31–27, 31–92, 31–106, 31–125, 31–135, 31–211, 31–245, 31–246, 32–78, 32–300, 32–337). Many said that the definitions, particularly the definition of manual handling jobs, were too vague (Exs. 30–137, 30–425, 30–1722, 30–3167, 31–77, 31–180, 31–225, 31–227, 31–248, 31–260, 31–342, 32–78, 32–300, 32–337, Tr. 3255–56). For example, one commenter said:

> The definitions of manufacturing and manual handling jobs covered by the standard are guaranteed to leave employers as much in the dark as they are now. What constitutes "forceful" manual handling? How much force must be involved to be covered? Should the strength capabilities of individual employees be considered? (Ex. 31–211)

Others were concerned that the definitions were too broad and could include any job or "almost every employer" (Exs. 31–135, 31–180, 31–342).

Many participants told OSHA that they did not know what the terms used in the definitions ("forceful" lifting, "core element," and "significant amount" of worktime) meant (Exs. 30–46, 30–293, 30–300, 30–3032, 30–3853, 30–4837, 31–187, 31–202, 31–223, 31–260, 31–289, 32–337, Tr. 3337). For example:

> How much is significant? 6 hours per 8-hr shift? 4 hours per 8-hr. shift? 2 hours per 8-hr. shift? Or 2 2-hr. periods per 8-hr. shift? (Ex. 30–4837)

Moreover, commenters did not find the examples of manufacturing and manual handling jobs to be of use:

> [T]he examples of jobs are not very helpful. A careless reader could conclude that the lists were exhaustive and, not seeing the jobs in this workplace named, decide he had to do nothing. A more thorough reader would note the disclaimer to the effect that "* * * each job must be considered on the basis of its actual physical work condition * * *" and correctly conclude that there is no standard against which to compare the actual physical work conditions" (Ex. 31–211).

(See also Exs. 30–3032, 30–3853, 32–300.)

OSHA is accounting for these concerns in this restructuring of the standard's scope and application provisions. This final rule applies to all general industry employers, but no employer is required to evaluate or implement control measures or MSD management until an MSD incident occurs in a job that involves exposure to risk factors at levels meeting those in the Basic Screening Tool in Table 1. The only obligation employers have until that point is to provide information about ergonomics and the standard to their employees. And, as explained in the discussion of paragraph (d) below, OSHA is providing that information in Appendices A and B and on its website.

OSHA believes that these changes respond to most complaints about the scope and application provisions of the proposal. By eliminating the additional requirements for manufacturing and manual handling employment, OSHA is eliminating both the need to define those terms and much of the complexity and vagueness commenters found in the proposal. By limiting employers' obligations in establishments that have not experienced MSD incidents, OSHA is also taking account of the facts that not all manufacturing and manual handling jobs involve more significant ergonomic hazards than do other general industry jobs, and that some of those other jobs are also hazardous.

The minimal burden in paragraph (d) for all general industry employers to disseminate information is necessary so that employees will know how and when to report MSDs. Given the importance of providing information at the earliest possible point and the minimal burden this requirement will impose, OSHA believes that it is appropriate to apply the initial requirement to all general industry employers. (The issue of the need for information is discussed in more detail below in the summary and explanation on paragraph (d)).

II. Industries/Employment/Operations Excluded From the Final Rule

Like the proposal, the final standard does not cover construction, agriculture, and maritime employment. Although many participants agreed with this exclusion (Exs. 30–3032, 30–3752, 31–68, 31–160, 31–187, 31–207, 31–219, 31–245, 31–252, 31–259, 32–300), a number favored expanding the scope of the rule to cover all industries regulated by OSHA (Exs. 30–400, 30–428, 30–1294, 32–210, 500–218, Tr. 2859, 3224, 5592, 9080, 13445, 113745, 14002, 17362, 17652). Their arguments fell into three categories.

First, many of these commenters pointed to the high number and rate of MSDs, especially back injuries, occurring in industries excluded from the proposed rule (Exs. 30–626, 30–2208, 31–156, 31–183, 31–225, 500–218). The Mount Sinai Center for Occupational and Environmental Medicine Construction Hygiene and Ergonomics Program (CHEP) pointed out that, aside from the transportation industry, construction has the highest rate of back injury of any industry:

> Every year 1 in 100 construction workers will miss between 7 and 30 days of work due to back injuries * * * At one surveyed worksite all wallcoverers who had worked 15 years or more in the trade had required surgery or medical intervention for problems including carpal tunnel syndrome, pain in the neck, shoulder and back, and knee problems (Ex. 31–183).

Some commenters also favored expanding coverage because they said that employees in construction, agriculture and maritime are exposed to the same risk factors and MSD hazards as are employees in general industry (Exs. 30–626, 31–22, 31–183, 31–263, 31–303, 500–218). They said there was no reason to distinguish coverage by industries if the rule was also incorporating an MSD trigger because, as one put it, "[a]n injury is an injury, and I have no doubt there are always ways to handle these jobs just as safely as any others" (Ex. 31–19).

A number of commenters said that at least jobs in construction, agriculture and maritime that are essentially the same as in general industry, primarily manual handling jobs, should be added to the rule (Exs. 31–14, 31–19, 31–65, 31–98, 31–192, 31–219, 31–307, Tr. 2850–51). For example:

> Many jobs, especially manual handling jobs, have similar if not identical hazards to that of general industry. If an employee is performing lifting that requires excessive force it does not matter in which industry he is performing the lifting. The actions to reduce the risk of injury would be similar for each industry (Ex. 31–307).

See also (Ex. 31–19; 31–65).

Another group of participants said that the record contains sufficient evidence on the availability and effectiveness of ergonomic interventions to support expanding the rule to the construction, agriculture and maritime industries (Exs. 31–183, Tr. 2849–51, 7478–80, 7482, 7485, 15761–71, 17540–41, 17561). Members of this group pointed to a number of articles and studies about effective controls in those industries, especially construction (Tr. 15761–71). For example, Nancy Clark, co-director of Mt. Sinai CHEP, said:

> Practical interventions are available for many identified risk factors. Many workers devise quick fix, homemade solutions to reduce the impact of musculoskeletal stress and promote self-preservation. They use team lifting, mechanized material handlers when available, floor padding for kneeling and standing on, stacking supplies to bring the work closer, and alternating work tasks or body position (Ex. 31–183)

Scott Schneider, director of occupational safety and health for the Laborers Health and Safety Fund of North America, testified:

> [T]here have been many tool manufacturers who have jumped on the ergonomic bandwagon and hired ergonomists to develop better and safer tool designs, from ergonomic hammers with more comfortable shock-absorbing handles to pliers with soil handles and spring returns to reduce the stress of opening them after each use. The use of portable power tools has increased dramatically in construction as batteries have gotten lighter and more powerful. Cordless screw guns have become commonplace in construction over the past few years, reducing the repetitive use of screwdrivers by hand and the force that had to be used. There are simple pieces of equipment, like drywall carrying handles, which I have here, and a mortar-pan stand to raise the height of the pan, which cost less than $50 and can make the work much easier. A D-handle attachment for a shovel, which I have here, costs less than $20, and has been shown to reduce awkward postures during shoveling. There are simple carts for moving glass or drywall, vibration-dampened jackhammers and equipment for moving them on and off of trucks. (Tr. 15762–63).

These commenters also pointed out that many of the controls used in general industry, such as manual handling aids, were applicable or readily adaptable to construction, agriculture and maritime industries (Ex. 31–183). Moreover, tool and equipment interventions are becoming more widely available "as manufacturers are responding to the need for better ergonomically designed tools" (Ex. 3–183; see also Tr. 15761–62, 17561).

Finally, several participants were concerned that OSHA's stated intent to promulgate an ergonomics standard for the excluded industries in the future would never come to fruition:

> OSHA's standard-setting history during the past 30 years raises serious doubt that workers excluded from this standard will ever have legal protection from MSD hazards. When OSHA has excluded workers from coverage under a promulgated standard, only in two cases has the Agency followed up to extend coverage to those workers—Hazard Communication and Construction. But those actions were as the result of a court decisions and order (hazard communication) * * * or legislative mandate by Congress (lead) (Ex. 500–218, p. 132–33).

These participants said that if OSHA does not cover construction, agriculture and maritime in the current rulemaking, the Agency should begin further rulemaking immediately and even establish a deadline for completing that project (Exs. 30–400, 30–576, 30–4837, 31–12, 31–263).

OSHA is aware that there is significant evidence in the record indicating that work-related MSDs exist in operations and employment beyond general industry (Exs. 31–183, 500–218, Tr. 7475, 7484–85, 17538–39). Indeed, the problem appears to exist in virtually every industry. Nonetheless, for several reasons OSHA believes its decisions to regulate MSD hazards through sequential rulemaking proceedings, and to limit the first proceeding to general industry, is appropriate and supported by the record.

A primary basis for the Agency's decision to limit the scope of this rulemaking to general industry is that most of the available evidence and data relating to ergonomic interventions addresses general industry. For example, the vast majority of the studies reviewed in both the NIOSH and NAS reports pertained to general industry (Exs. 26–1, 26–37). Similarly, the majority of case studies on the effectiveness of ergonomics programs and control interventions that OSHA had gathered focused on general industry (64 FR 65954–75). Although some participants submitted evidence on ergonomics programs and controls in the excluded industries, mostly in construction (Exs. 32–339–1–25, 32–3888, 38–65, 38–66, 500–210), most of the available evidence continues to pertain to general industry jobs, operations and workplaces.

If it included construction, agriculture and maritime within the scope of this rule, OSHA would have had to delay issuing the rule for general industry while it gathered and analyzed the necessary evidence. Because it is likely that the rule would have a significant impact on small employers in construction, agriculture and maritime, OSHA would also have had to convene a small business review panel pursuant to SBREFA. Further, in order to include construction, agriculture, and maritime in its final rule, OSHA, in the interest of fair notice, would have had to amend the ergonomics proposal or re-propose to include these industries and hold additional hearings. Expanding the rule to cover agriculture, construction and maritime would seriously delay addressing the urgent need for protection for general industry employees, who work in the jobs in which more than 90 percent of MSDs are reported.

In addition, as the proposal pointed out, work conditions and factors present in agricultural, construction and maritime employment often differ from those in general industry. OSHA listed a number of aspects of construction work to illustrate this statement (64 FR 65787):

- They consist primarily of jobs of short duration,
- Employees work under a variety of adverse environmental and workplace conditions (*e.g.*, cold, heat, confined spaces, heights),
- At non-fixed workstations or non-fixed work sites,
- On multi-employer work sites,
- They involve the use of "day laborers" and other short-term "temporary workers,'
- Involve situations in which employees provide their own tools and equipment, and
- Involve employees who may be trained by unions or other outside certifying organizations, rather than by the employer.

OSHA did not mean to imply that the mere existence of any of these factors, alone or in combination, would be enough to justify excluding an entire industry from the rule. This fact was apparently not clear to some commenters, however, who argued that the presence of some of the listed factors in their industries meant that they too should be excluded from the standard (Exs. 30–297, 30–626, 31–147, 32–234, 32–300). For example, Broccolo Tree and Lawn Care Inc., pointed out that landscaping jobs involve short-duration tasks and no fixed workstations (Ex. 31–147). The National Solid Waste Management Association (NSWMA) said that its employees are also exposed to adverse environmental conditions and work at non-fixed work sites (Ex. 32–234, p. 6–7).

In the proposal, OSHA discussed its discretion to set appropriate rulemaking priorities, and to promulgate standards applicable to less than all of American industry. 64 FR 65786–65788. General industry accounts for more than 90 percent of the more than 620,000 LWD MSDs reported each year. By

promulgating a standard addressing general industry first, OSHA is giving "due regard to the urgency of the need" for a standard to protect general industry employees. 29 U.S.C. 655(b)(7). OSHA has thus ensured that the greatest number of MSD hazards will be addressed by this final rule, while the Agency determines appropriate regulatory approaches for other industries. For example, OSHA has been working closely with NIOSH on a study of ergonomic hazards and solutions in the maritime industry. In addition, OSHA recently published an ergonomics best practices guide for the construction industry on its Web page. OSHA has also provided training grant money targeted to ergonomic hazards in the construction industry.

OSHA intends to develop ergonomics rules that can be tailored to the conditions that are unique to the firms in these industries. OSHA agrees with commenters who have said that the experience the Agency gains from this first phase will provide valuable assistance in developing an effective ergonomics rule for the construction, agriculture, and maritime industries (see, *e.g.*, Ex. 31–252).

As noted earlier, OSHA has decided that the final standard should not cover work performed by persons employed incidentally to or in support of construction, agriculture and maritime operations, regardless of what type of activity they perform. To illustrate, the standard does not cover employees of a residential home building company performing office work in support of construction activities, even though office work is a general industry operation under other OSHA standards. Similarly, the final rule does not cover janitorial workers employed by a shipyard or employees performing regular maintenance on power industrial trucks in a marine terminal. Applying the rule to general industry jobs of a construction employer (the office manager of a construction company, for example) would present the employer with logistical difficulties. Requiring construction, agriculture and maritime employers to set up an ergonomics program for the few general industry employees performing ancillary functions in their workplaces would not be an efficient allocation of safety and health resources. Several commenters have told OSHA that it is most efficient to set up an ergonomics program on a company-wide basis (see, *e.g.*, Exs. 26–1370). Doing so allows employers to implement program elements such as providing employee information and training more efficiently.

B. Railroad Work

Paragraph (b)(3) states that this standard does not cover railroad work. Although some railroad operations are normally covered by OSHA general industry standards, other railroad work is regulated by the Federal Railway Administration (FRA) and not by OSHA. 29 U.S.C. 653(b)(4). In addition, the Preliminary Economic Analysis indicated that the standard would not cover any railroad employment, and this statement caused some uncertainty among affected parties as to the Agency's intent (Ex. 28–1, chapter II, p.3).

In a May 23, 2000 **Federal Register** notice (65 FR 33263), OSHA provided an analysis of the economic impacts of the proposed rule on railroads. On July 7, 2000, OSHA also held a supplemental hearing on this economic analysis, in which the Association of American Railroads (AAR) participated. AAR's comments and testimony, however, highlighted the complexity of the OSHA/FRA jurisdictional issues (Ex. 703–3, Tr. 18272, 18313–16, 18321). OSHA has determined that it needs to gather additional information and conduct further analysis on these issues before it can decide whether and how to address ergonomic hazards in the railroad industry. Therefore, OSHA has decided not to cover any aspect of railroad work at this time.

C. Other Exemptions Requested.

A number of other rulemaking participants also requested that certain jobs, industries or employers be excluded from this rule (*e.g.*, ambulances, landscaping, transfer and storage, petroleum and chemical industries, forging industry). Many requesting exemptions did not provide any reasons why they should be excluded (see, *e.g.*, Exs. 30–303, 30–491, 30–2102, 30–3005, 30–4439, 30–4444, 30–4598, 601–X–1163, 601–X–1438). Some merely said they had "many work conditions and factors present in the industries OSHA has chosen to exempt," but did not discuss either what those factors were or why they supported an exclusion (see, *e.g.*, Exs. 30–2348, 30–3005, 30–3186, 30–3311 30–3462, 30–3482, 30–3582, 33–1181). OSHA does not find any basis for excluding those industries from this rule.

A few requests that included more discussion supporting an exemption are discussed individually:

1. Solid Waste Management

The National Solid Waste Management Association (NSWMA) urged OSHA to exempt the trash collection industry from the standard (Ex. 32–234). NSWMA said an exemption was warranted because, like the construction industry, its working conditions include non-fixed worksites, limited supervisory oversight, adverse environmental conditions, and high employee turnover. In addition, according to NSWMA, "uncontrollable" factors, such as variable load weights, municipal regulations, and its members' lack of control over the location of the garbage they collect, also support an exemption. Finally, NSWMA also argued that there is little available information about health effects and effective solutions in the industry. The West Coast Refuse and Recycling Coalition and the Municipal Waste Management Association (MWMA), representing municipal solid waste agencies in larger cities, requested an exemption for some of the same reasons (Ex. OR 323, Tr. 17972–73). Although OSHA recognizes that employers in this industry face particular challenges in implementing some types of ergonomic controls, it does not believe that the arguments presented compel exemption of the solid waste and recycling industry from this standard.[1]

As noted above, OSHA does not believe that the fact that some aspects of an industry's working conditions are similar to some of the conditions in exempted industries necessarily warrants exempting those industries. In any event, the working conditions in the solid waste industry differ significantly from those in construction. In the solid waste industry employees repeat the same routes every week or more frequently. The route is a fixed worksite that the employee gets to know. Because the route is fixed, the employer is able to anticipate and plan for the hazards that the employees might encounter. Likewise, the fixed routes enable employers to plan for how the changing seasons will affect collection on the route. NSWMA's testimony that a "vast majority * * * if not all" of its member companies have safety and health programs that include addressing ergonomic hazards on a "day to day" basis indicates that most industry employers already are taking these steps (Tr. 18074).

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[1] A number of participants who argued that compliance with an ergonomics standard would be infeasible in their industries also submitted examples of industry "best practice" guidelines and similar recommendations to the record. The participants said that even these "best practices" do not result in enough of a reduction in employee exposure to MSD hazards that further MSDs are "unlikely." OSHA recognizes that some industries will not be able to control exposures completely. OSHA also, however, approves of the steps these industries are taking to control MSD hazards to the extent they can, and commits to working with the industries in the future. This type of arrangement will help provide employees in these industries with as much protection as possible, while reassuring their employers that OSHA understands the limits of their capabilities.

Although NSWMA argued that high turnover in the industry supports exemption in the same way that the use of "day laborers" in the construction industry does, NSWMA did not provide any evidence on turnover rates in its industry, or on how those rates compare to other industries this rule covers. Nor did NSWMA explain why high turnover rates pose the same issues as day laborers. Other solid waste associations and employers did not indicate that high turnover rates are a problem in the industry. The solid waste industry has the opportunity to train its workers; in fact NSWMA and MWMA testified that their members already provide training (Tr. 13404–405, 18079). It explained that this training is the most effective way to deal with the fact that its workers are often unsupervised:

> MR. BEDERMAN: No the most important way to monitor this type of thing is actually not to monitor it, but * * * actually good training (Tr. 18079).

The record also does not support industry claims that solid waste industry employers have little control over their employees' working conditions. For example, NSWMA said that, because of municipal ordinances, its members have no control over the weight and location of the garbage they collect and that municipalities were "very hesitant" to make changes (Ex. 32–234–2, Tr. 18041). But 60 percent of residential collection is privately controlled (Tr. 18046). For the 40 percent of trash collection that is under the control of municipalities, as noted below, the testimony of NSWMA and MWMA suggest there is not a significant problem.

NSWMA testified that a majority of municipalities have already implemented container requirements (Tr. 18071; see also Tr. 13402). Both NSWMA and MWMA testified that the growing trend is toward requiring customers to place garbage containers at the curbside (to eliminate the need for employees to carry heavy containers) and limiting container size (to reduce injury associated with heavy lifting) (Tr. 18070–71, 13402–3; see also Tr. 12019). Bruce Walker, of Portland's solid waste and recycling agency, said that such weight limits had been positively received in that city (Tr. 12014–15). NSWMA, MWMA and Mr. Walker also said that employers are instructing their employees not to lift containers that exceed the weight limits (Tr. 12014, 13404–06, 18073). In addition, container size and location issues are regularly addressed as part of contract negotiations between private collectors and municipalities (Tr. 18041). All of this evidence suggests that solid waste employers should not have difficulties continuing to negotiate contracts that will assist them in complying with this final standard.

And contrary to NSWMA's argument, the record contains abundant evidence on MSD hazards and ergonomic solutions in this industry (Ex. 32–234–2). The industry recognizes that lifting heavy loads creates a hazard for employees (Tr. 13406, 13413, 18009). Industry representatives testified that their workers experience work-related MSDs, particularly MSDs of the lower back (Tr. 13379, 13396, 13412, 18009). In fact, NSWMA submitted a manual of recommended ergonomic practices developed by Environmental Industry Associations (EIA), NSWMA's parent organization, that identified lifting bulky loads and twisting and carrying loads as risk factors for the industry and identified back pain, hernias and strains, sprains and tears as common MSDs in the industry (Ex. 32–234–2–1). EIA also recommended that employers establish ergonomics programs for trash collection and recycle operations (Ex. 32–234–2–1).

The record also includes evidence on a wide range of controls that are successfully in use in the industry. The EIA manual on ergonomic practices said the industry "has many options" for addressing ergonomic hazards, including weight limits built into residential contracts, the use of lifting devices, and training (Ex. 32–234–2–1). The record indicates that the following controls are also in use in the industry:

- Mechanical container lifts,
- Limits on container size and weight and requirements for container handles,
- Carts, dollies and other mechanical assists for pushing, carrying and lifting containers,
- Collection trucks designed for use in narrow alleys and streets to eliminate carrying containers long distances,
- Changes in municipal collection regulations to reduce lifting hazards (*e.g.*, curbside service, container size and weight limits, reduction in loads through increases in collections per week, separate collections for large bulky items),
- Training in proper lifting techniques,
- Work practice controls (*e.g.*, training not to lift overweight loads),
- Changes in compensation systems to eliminate incentives for hazardous work speed and lifting (Tr. 12017, 13402–06, 17969, 18212).

John Legler, of Waste Equipment Technology Association, added that garbage trucks are being retrofitted with mechanical lifts "quite regularly" (Tr. 18012–13). Bruce Walker, of Portland's residential solid waste and recycling agency, testified that enforcing container weight limits had been established had led to low MSD rates (Tr. 11968–70).

This evidence not only does not support exemption, it is clear evidence that effective ergonomic programs and controls are technologically and economically feasible for the industry as a whole. OSHA recognizes that some of the hazards facing waste industry employees cannot be eliminated completely. But the standard only requires employers to control MSD hazards "to the extent feasible." It expects NSWMA's member companies to continue to implement the type of safety programs they are already using, and to continue improving those programs as knowledge and technology advance.

2. Utility Workers

Utility companies asked OSHA to exempt utility line workers and power plant maintenance workers from the standard for two reasons. First, they pointed out that line workers face some of the same conditions as construction, agriculture and maritime (*e.g.*, adverse environmental conditions). They also argued that these jobs involve both general industry and construction activities because utility line workers not only maintain and repair utility lines, a general industry activity, but also they install, alter, and improve lines, activities which are governed by OSHA construction standards (Exs. 30–3853, 32–300, Tr. 2893–95). Edison Electric Institute (EEI) testified:

> As you know, a line worker working on a pole may at one moment be engaged in what is considered to be construction work under 1910.12(b) and under 1926(b) and at the next moment be engaged in what is considered to be general industry work under 1910.269. That is to say that if a person is doing work for the improvement of the facility, that is construction as defined by OSHA and the Review Commission. And if not, then general maintenance (Tr. 97–98).

EEI also pointed out that it would not be practical for its employees to be covered by the standard for only some of their tasks:

> EEI recommends that OSHA clarify that to perform a job hazard analysis means to analyze a job, not a task. A job may not involve only one task, but may involve multiple tasks depending upon the nature of the work on that given day (Ex. 32–300, p. 29).

OSHA agrees with EEI that determining whether a job exposes an employee to an MSD hazard requires looking at all of the tasks and activities that comprise that job. That is what this job-based standard requires. But as EEI itself pointed out, some utility companies already have programs in place for analyzing and controlling MSD hazards (Ex. 30–2725, Tr. 2384, 2396–98). Presumably, these companies analyzed the entire jobs of utility line workers and power plant maintenance personnel rather than just the general industry tasks in those jobs. None of the utility companies indicated that construction activities constitute the primary operations of utility companies. Thus, including all rather than part of the tasks of these jobs in the ergonomics program this rule requires should not impose a substantial additional burden for utility companies. OSHA requires utility companies to protect their employees, including those that spend part of their days performing construction work.

3. Building Materials Distributors

A number of building materials distributors argued that they should be exempted because a large portion of their business involves delivering supplies to construction sites and to various places on construction sites (Exs. 30–541, 30–4267, 30–4351). Because of this, they said, their employees are exposed to the same ergonomic risk factors and adverse working conditions that justified an exclusion for the construction industry. OSHA has never excluded general industry employers from standards because they provide equipment or materials for exempted industries. Thus, while marine terminals are excluded from this standard, manufacturers and transportation companies that deliver new equipment to marine terminals are still covered.

In addition, almost every comment received from building materials distributors indicated that the industry has already taken substantial steps to control MSD hazards. For example, Panther Building Materials, Inc., said that it provides hydraulics crane, carts and other material handling equipment in order to safely deliver supplies (Ex. 30–4351). It also provide at least two employees per truck crew in order to minimize carrying.

4. Home Health Care.

The American Association for Homecare (AAHomecare), asked that the home health care industry be exempted from the standard because home health care employees perform work in private homes that are not under the employer's control.

AAHomecare said its industry should be exempted because OSHA has indicated that it will not impose OSHA standards on private homes, unless they are being used as part of the "manufacturing process" (Ex. 30–3862). But the OSHA policy AAHomecare refers to only addresses work that employees perform in their own homes.

AAHomecare also argues that the court in the Bloodborne Pathogens decision (*American Dental Association.* v. *Martin*, 994 F.2d 823 (7th Cir. 1993)), held that the OSH Act "does not authorize OSHA to impose work-site related standards on home work sites that are not under the employers control" and that the Agency's directive limiting the application of the Bloodborne Pathogens rule at home-based worksites (CPL 2–2.44D) should apply to this standard as well (Ex. 30–3862). But the Seventh Circuit did not make as broad a holding as AAHomecare suggests. The court said only that OSHA has an "obligation to consider such questions and the general issue that they present before imposing" a standard. American Dental Assn., 984 F.2d at 830.

In this case, OSHA is considering these issues and addressing them here. In general, employers sending their employees to work at sites they do not control are required to do everything within their control to protect those employees, but will not be held liable for the existence of conditions they cannot control. Thus home health care agencies must provide their employees with the information required by paragraph (d), provide those employees with MSD management where an MSD incident occurs in a job that meets the levels in the Basic Screening Tool, and perform job hazard analyses when necessary. In addition, they must comply with the other programmatic elements of the standard, in particular providing the employees with necessary training and equipment to minimize ergonomic hazards.

But employers' control obligations will be limited by the control they have over their employees' actual working conditions. Thus an employee who is expected to move patients in their own homes should be taught how to do so as safely as possible. For example, evidence was submitted to the record that portable lifting devices and other control measures are available for use in home settings (Ex. 37–4, Tr. 11743–45). According to witnesses, some portable lifting devices have been designed especially for home settings (Tr. 11743–45). The witnesses said that these devices allow mechanical transfer in and out of bed, onto a toilet, and even into a tub (Tr. 11745). Other control measures described in the record include friction reduction sheets, gait belts, toilet and shower chairs, slide boards, and convertible chairs and wheelchairs (Ex. 37–4). To the extent these controls are feasible, and employers find them to be effective, employers could provide them to their home health worker employees. But an employer is not expected to change the configuration of a patient's bedroom or bathroom, although it must provide the worker with the training and controls necessary to allow him or her work as safely as possible in that location.

5. Small Businesses

A number of commenters said OSHA should exempt small businesses because compliance would be too burdensome (Ex. 30–3167, Tr. 3126–27, 3332). They said that small businesses do not have the knowledge or resources to hire outside experts to help identify and address MSD hazards (Tr. 3127). They also said that MSD rates were low for small businesses (Exs. 30–3167, 600–X–1, Tr. 3332). National Small Business United (NSBU) said that for the majority of small businesses the occurrence of an MSD was rare (Ex. 30–3167). By contrast, another participant (Ex. 26–1370) at OSHA's stakeholder meetings for Ergonomics Program Standard Development specifically supported the inclusion of small employers in the rule, saying that the rule was particularly needed in these facilities because they were less likely already to have either an ergonomics or a safety and health program (Exs. 26–1370).

OSHA considered whether to apply alternative regulatory provisions to small employers as part of the analysis required by SBREFA and the Regulatory Flexibility Act (64 FR 66040–53). OSHA does not believe the record supports such an approach for small business. First, employees who work for small businesses are experiencing work-related MSDs, and they need the protection this standard will provide. According to BLS, employees in establishments of all sizes have reported MSDs that are serious enough to involve days away from work.

In a number of industries comprised predominantly of small businesses, the risk of MSDs is particularly high. This is especially true in the health care industry. For example, many medical sonographers are employed by small businesses. Joan Baker, of the Society of Diagnostic Medical Sonographers, testified that the MSD prevalence rate among sonographers exceeds 80 percent and that the frequency and severity of these MSDs appears to be increasing (Tr. 11881–82). Dr. Linda Morse, chief of occupational medicine at Kaiser San Francisco, said that the injury rate among ultrasound technicians in Northern California was almost 100 percent (Tr. 15045). Many nurses, nurses' aides, and orderlies are also employed by small businesses, including small nursing homes and small health care agencies. According to BLS, in 1996 about 15 percent (more than 103,000) of all MSDs resulting in days away from work were reported by health care workers. In addition, the American Nurses Association and the Service Employees International Union, among others, testified that the occurrence of MSDs among home health workers is particularly high (Exs. 32–274–1, 502–215).

OSHA does not believe this standard will be too burdensome for small businesses. The record shows that many small businesses have successfully implemented ergonomics programs (see, *e.g.*, Exs. DC 66, 500–208–3, Tr. 17350–17355). These programs have paid for themselves in terms of reductions in medical costs, lost workdays and product reject rates (Tr. 17354). Moreover, if small businesses have low rates of MSDs, the obligations for those employers will be commensurately small (Ex. 30–3167). The only obligation that many small employers will have is a one-time requirement to provide basic information to their employees. And these employers can satisfy that burden by copying, distributing, and posting the information sheets in Appendices A and B.

The record shows that small businesses are easily able to get the information they need to address MSD hazards. A number of organizations have developed and are providing model programs, checklists, "best practices" guides and control information to small businesses (see, *e.g.*, Exs. 32–234–2–1, OR 351). A number of organizations have developed and are providing model programs, checklists, "best practices" guides and control information (Exs. 32–234–2–1, OR 351). For example, the American Dental Association and state affiliates, such as the Oregon Dental Association, have developed and disseminated information on ergonomics for its members and held a "Dental Ergonomics Summit Conference" this year (Ex. OR 351). A number of trade associations are also providing ergonomics training for small businesses (Ex. 37–25, OR 351). For example, Suzanne Rodgers, an ergonomist with 32 years of experience assisting a wide range of companies in addressing MSD hazards, said that she has provided training to small businesses at various conferences organized by the Chamber of Commerce (Ex. 37–25).

There are also other sources of information and assistance for small employers. OSHA and NIOSH provide free hazard evaluation services for small employers. OSHA will be providing additional information in the appendices to this final rule and other materials on the OSHA Webpage (*www.osha.gov*). Many other Internet sites also provide free ergonomics information.

III. Other Scope and Application Issues

A. Jobs Involving Both General Industry and Non-General Industry Tasks

Several commenters raised questions about whether this standard applies when an employee's job involves both general industry and non-general industry activities (Exs. 30–3853, 32–300, Tr. 2893–95). As explained above in reference to utility workers, because this is a job-based standard, OSHA intends employers to include all employees who perform general industry work within this standard, even if those employees also perform some work that may be classified as construction, agriculture, or maritime. Thus, employers engaged in landscaping or lawn and garden services, a general industry classification, are covered by this standard even if their employees' jobs include some harvesting of sod or trees, an agricultural classification. On the other hand, nurseries and tree farms, which are agricultural classifications, need not comply with the standard even if their employees perform some minor landscaping or horticultural services. Comments by the AFL–CIO best sum up the need for defining the application of the standard in this way:

> Since this is a job-based standard, it is important that jobs in fact are covered. To apply the standard in some aspects of a job and not others would leave workers without protection and make compliance and enforcement confusing and difficult (Ex. 500–218, p. 133).

In addition, as stated in the discussion of utility line workers, the only way an employer can determine whether a job exposes an employee to an MSD hazard is to look at all the tasks and activities that comprise that job. Eliminating some tasks from this analysis may prevent identification of risk factors that are causing or contributing to the hazard. If employers do not have that information, the controls they implement may not be successful. Therefore, in order to ensure that an employee is protected from MSD hazards while performing the general industry tasks, it may be necessary to control risk factors for the job as a whole.

B. Multiple Employer Worksites and Contract or Shared Employee Situations

A number of participants asked how the standard would apply at multi-employer worksites. Similar situations arise under many standards, and OSHA has published a "Multi-Employer Citation Policy" that discusses the allocation of responsibility among various categories of employers. CPL–0.124 (Eff. Dec, 10, 1999). OSHA has not historically discussed the operation of this policy in rulemaking documents, viewing it as an enforcement issue. In a challenge to OSHA's Bloodborne Pathogens standard, however, the United States Court of Appeals for the Seventh Circuit held that, where parties to a rulemaking raise issues about the application of the standard in this circumstance, OSHA should discuss the application of this policy. *American Dental Ass'n.* v. *Martin*, 984 F.2d 823 (7th Cir. 1993). Such a discussion is particularly useful with respect to some of the issues raised by this standard.

Under the multi-employer worksite policy, employers are generally required to take whatever steps are within their power to protect their own employees, and also to abate hazards within their control when other employees are exposed to those hazards. This means that an employer whose employees are working at a location controlled by another employer, for example a temporary services agency, must provide its employees with the information required by paragraph (d). Both employers will need to know if an employee reports an MSD, and must implement measures to share this information. They should consult to determine whether the report qualifies as an MSD incident under this standard, but the employer with control over the workplace must screen the job to determine whether further action is required. If so, the employer with control over the workplace must also implement the program elements required by this standard. And if such an employer hires a temporary worker to work in a job for which an ergonomics program under this standard is already in place, that employer must provide the temporary employee with any necessary training. The employing agency, however, will necessarily be responsible for providing the employee

with any necessary MSD management, including WRP. OSHA believes that this is basically how businesses are currently operating. OSHA expects that they may pay more attention to these issues and address them explicitly in their contracts after the standard is in effect.

C. United States Postal Service

Questions were also raised as to the effect of this standard on the United States Postal Service. In 1998, Congress amended Section 3(5) of the OSH Act to include the United States Postal Service within the Act's definition of employer. 29 U.S.C. 652(5). Postal Service Enhancement Act, P.L. 105–241. As a result, this standard applies to all USPS operations that are not construction, agriculture or maritime operations.

D. Municipalities

A number of municipalities asked whether the standard applies to local governments. States and their political subdivisions are not employers under the OSH Act, and they are not covered by this final rule or any other federal OSHA standards. However, the 23 States and 2 Territories with approved State Plans are required by Section 18(c)(2) of the OSH Act to issue standards that are "at least as effective" as Federal standards. 29 U.S.C. 667. Therefore, State Plan States must adopt ergonomics program standard within six months of the publication of this standard. Under Section 18(c)(6), State Plan States must apply such standards to State employees and to employee's of the State's political subdivisions. (See State Plan States section of this preamble for the list of State plan States.)

Industries and Jobs This Standard Covers

- Agricultural services
- Soil preparation and crop services, including crop planting, cultivating and protecting
- Crop harvesting
- Veterinary services
- Lawn and garden services
- Ornamental shrub and tree service
- Tree trimming
- Landscaping and horticultural services
- Oil and gas drilling/extraction operations
- Health care employees
- Truck driving
- Office workers employed by general industry establishments
- Office workers employed by agricultural services establishments
- Utility line operations including maintenance, repair, installation, construction, alteration and improvement operations
- Power plant maintenance operations including repair, alteration and improvements
- Boat building and repair
- Airline baggage handlers
- Airline reservation and ticket agents
- Airline maintenance crews
- Railroad equipment building and rebuilding
- Maintenance of equipment or structures
- Forestry services
- Forestry nurseries and gathering of forest products
- Commercial fishing
- Fish hatcheries and preserves
- Hunting and trapping
- Game propagation
- State and municipal employees (in State Plan States) performing general industry operations
- U.S. Postal Service
- Federal government employees performing general industry operations

Industries and Jobs This Standard Does Not Cover

- Construction employment and operations
- Agriculture employment and operations
- Farm labor and management services
- Livestock and animal specialty services
- Maritime employment and operations
- Ship building and repair
- Longshoring
- Office workers employed by construction, agriculture or maritime establishments
- Maintenance workers employed by construction, agriculture or maritime establishments
- Work at the employee's own home
- Railroad work
- Railroad terminal and switching
- Airline attendants
- Airline pilots

Paragraph (c)—How Does This Standard Apply if I Already Have an Ergonomics Program in Place When the OSHA Ergonomics Program Standard Becomes Effective?

Paragraph (c) of the final standard is a grandfather clause, which, under certain conditions, permits an employer who has already implemented and evaluated his or her ergonomics program by the date on which the final rule becomes effective to continue that program instead of complying with the OSHA standard. This paragraph permits employers to do this only if the program: is in writing, contains the core elements of basic ergonomics programs, and is demonstrably effective. The criteria for judging whether an employer's program adequately addresses the core elements are contained in paragraphs (c)(1)(i) through (v). Examples of criteria for judging the effectiveness of the program are contained in paragraph (c)(1)(v). Paragraph (c)(2) requires that, within 1 year of the standard's effective date, grandfathered programs have in place an MSD management policy that meets the requirements of paragraphs (p) through (s) of the final rule. Final paragraph (c)(3) denies grandfather status to employers who have policies or procedures that discourage employees from participating in the program or reporting signs or symptoms of MSDs or the presence of MSD hazards in the workplace.

In the final rule, OSHA is requiring that grandfathered programs be in writing. The final rule's grandfather clause requires the employer to demonstrate program effectiveness and, like the proposal, to have a program that includes the core elements of effective programs. The Agency believes that this can best be accomplished with a written program. Further, both OSHA and the employer will find compliance with the grandfather clause easier to demonstrate if the program is written. By "written," OSHA also intends that the program can be maintained electronically.

Final paragraph (c)(1) requires grandfathered programs to include the core elements of effective ergonomics programs: management leadership and employee involvement; job hazard analysis and control; training; and program evaluation. This paragraph also indicates the subelements within each core element that OSHA believes are essential to the proper functioning of that core element. These subelements are stated broadly. For example, a subelement of management leadership (paragraph (c)(1)(i)) that OSHA considers essential is the establishment of an effective reporting system that permits employees to report the signs and symptoms of MSDs and to receive prompt responses to their reports. The employer's program must include all of the subelements of the core elements to qualify for grandfather status.

The following discussion explains the subelements comprising each of the core elements. Employers are free to include additional elements or subelements in their program, and doing so will not interfere with the program's grandfather status, provided that the program includes the core elements identified by paragraphs (c)(1)(i) through (v), and the subelements associated with them.

The proposed rule would have required an existing program to meet a "basic obligation" provision for each core element. Basic obligations, which were intended to capture the essence of the more detailed subelements proposed for each core element, were proposed for each program element. Table 1 compares the proposed rule's basic obligations sections with the corresponding subelements of the final rule's grandfather clause. The following discussion also explains OSHA's reasons for revising the basic obligations proposed.

Final paragraph (c)(1)(i) states that grandfathered programs must include management leadership and identifies the subelements for that core element. Employers are required to demonstrate management leadership of their ergonomics program through the following subelements: an effective MSD reporting system and prompt responses to employee reports, the assignment of clear program responsibilities, and regular communication with employees about the ergonomics program. OSHA's experience has shown that, to be effective, management leadership must be active rather than passive. Leadership that is limited to a "paper program" with written policies and procedures but is not translated into practice by management would not meet the intent of this provision. On the other hand, management leadership that is known throughout the organization because of management's active engagement in the ergonomics process and appropriate follow-through on commitments would clearly fulfill this intent. The final rule's management leadership subelements are equivalent to those of the proposed basic obligation for this core element, except that OSHA has added "regular communication with employees" and "prompt" responses to reports to the subelements of the final rule's grandfather clause. The Agency has added these subelements to make sure that management leadership is responsive to employee reports and that management's commitment to the ergonomics program is communicated from top management down to the employees performing the work and implementing the program. Taken as a whole, OSHA believes that the subelements in final paragraph (c)(1)(i) will ensure that grandfathered programs have active rather than passive management leadership.

Final paragraph (c)(1)(ii) requires that grandfathered programs include employee involvement, as demonstrated by the early reporting of MSDs and active employee involvement in the implementation, evaluation, and future development of the employer's ergonomics program. OSHA has vigorously advocated employee participation in workplace safety and health issues for many years and is pleased by the growing recognition of the importance of employee participation on the part of private-sector companies, trade associations, safety and health professionals, and employees themselves. OSHA supports employee participation because employees have the most direct interest in their safety and health on the job, they have an in-depth knowledge of the tasks they conduct at the worksite, they often have excellent ideas on how to solve ergonomic problems, and their interest in the program is vital to its success. If employees do not report their MSD signs and symptoms or MSD hazards, any ergonomics program will fail. OSHA has specifically included in paragraph (c)(1)(ii) a provision that employees be involved in the implementation, evaluation, and future development of grandfathered programs to make it clear that employee involvement extends to every element of the program, including program evaluation and future modifications to the program to reflect changes over time.

Final paragraph (c)(1)(iii) requires grandfathered programs to contain job hazard analysis and control, as demonstrated by a process for identifying, analyzing, prioritizing (if necessary), and controlling MSD hazards in affected jobs and following up to ensure control effectiveness. This is the heart of any ergonomics program. For employees to be protected from MSD hazards, it is obvious that those hazards must be eliminated or controlled. A note following this paragraph explains that personal protective equipment (PPE) may be used as a supplement to engineering, work practice, and administrative controls. The employer may only use PPE alone where other controls are not feasible. In addition, the note explains that, if PPE is used, the employer must provide it at no cost to employees.

As can readily be seen from Table 1, this provision has been changed substantially from the corresponding requirement in the proposal. The job hazard analysis and control subelements in the final rule's grandfather clause are designed to be less prescriptive and more flexible than those proposed and to fit better with the way rulemaking participants (see, *e.g.*, Ex. 32–77, Tr. 14723, Tr. 4973) described this process in their existing ergonomics programs.

The final rule's grandfather clause requires employers to use a process for identifying, analyzing, and controlling MSD hazards in problem jobs. Employers may also prioritize jobs identified as having MSD hazards and then follow their prioritization scheme when controlling these hazards. Employers with grandfathered programs must also follow up on their hazard control measures to ensure that the controls implemented are effective. This is the process that participants in the rulemaking told OSHA they use in their existing ergonomics programs. Companies like the Dow Chemical Company (Ex. 32–77; Tr. 5297), Levi Strauss (Tr. 14723, 14736, 14746), the Consolidated Edison Company of New York (Tr. 4644), and IBP, Inc. (Tr. 4973) described a process that includes these job hazard analysis features.

As discussed in the summary and explanation for the standard's job hazard analysis and control requirements (paragraphs (j) through (m)) later in this section of the preamble, the rulemaking record demonstrates that, currently, employers with existing programs do not always fix all problem jobs, nor do they eliminate all MSDs. To address these facts, the final rule's grandfather clause (1) permits employers to bring all problem jobs into their programs, and (2) acknowledges that employers will not eliminate all MSDs. Employers with grandfathered programs must, however, implement controls that (1) control the MSD hazards, (2) reduce MSD hazards to the levels specified in Appendix D, or (3) reduce MSD hazards to the extent feasible. These are the same compliance endpoints specified in paragraph (k)(1) of the final rule. These endpoints are explained in the summary and explanation for that paragraph.

Thus, the grandfather clause in the final rule will enable employers with existing programs that only address certain jobs to qualify for the grandfather clause if they include all problem jobs in their program before the standard's effective date. Thus, even programs that do not currently address all problem jobs would not be precluded from qualifying for grandfather status, providing that they revise their approach to include all such jobs before the standard is in effect.

Final rule paragraph (c)(1)(iv) requires grandfathered programs to provide for the training of managers, supervisors, and employees in the employer's ergonomics program and their role in it; the recognition of MSD signs and symptoms; the importance of early reporting; the identification of MSD hazards, and methods that the employer is using to abate them. Training is to be provided at no cost to the employees trained. Training is necessary to ensure that employees in problem jobs, their supervisors, and the individuals who set up and manage the ergonomics program are provided with the knowledge and skills necessary to recognize MSD signs, symptoms, and hazards in their workplace and to effectively participate in the ergonomics program. These individuals also need to be trained in the need for early reporting. The length and frequency of training is determined

by the needs of the workplace. Periodic training is necessary to address new developments in the workplace and to reinforce and retain the knowledge already acquired in previous training, but to make this element as flexible as possible, OSHA is not specifying the frequency with which training must be provided.

Final rule paragraph (c)(1)(v) requires grandfathered programs to include evaluations of the program, as demonstrated by regular reviews of the elements of the program, the effectiveness of the program as a whole, and the correction of identified deficiencies. This means that employers must, at a minimum, assess the functioning of their ergonomics program, compare its provisions to the elements and subelements specified in the grandfather clause, identify any deficiencies in the program, and correct them. Employers are required to make sure that the ergonomics program they have implemented is eliminating or controlling the MSD hazards in jobs in their workplace. A program designed for a large site with many different jobs, for example, is likely to be more formal and extensive than one designed for a small site with one or two high-risk jobs. Similarly, an ergonomics program that fits a manufacturing facility may not be appropriate for a work environment in the service sector. To make the evaluation requirements for grandfathered programs as flexible as possible, OSHA is not specifying the frequency with which evaluations must be conducted. However, employers do need to reevaluate their programs periodically to ensure that they are performing up to expectations.

Final rule paragraph (c)(1)(v) also requires the program evaluation to review the effectiveness of the program, using such measures as: reductions in the number or severity of MSDs, increases in the number of jobs in which ergonomic hazards have been controlled, reductions in the number of jobs posing MSD hazards to employees, or any other measure that demonstrates program effectiveness.

Lastly, final rule paragraph (c)(1)(v) requires the employer to conduct at least one review of the elements and effectiveness of the program before January 16, 2001. This provision, which is discussed in detail below, ensures that only effective programs are grandfathered. Although paragraph (c)(1)(v) requires employers to correct deficiencies in the program, OSHA would not consider an employer who uncovers major deficiencies in the program elements or whose evaluation does not demonstrate the overall effectiveness of the program to be in compliance with this paragraph. Requiring any program that is grandfathered to be demonstrably effective is basic to employee protection and to ensuring that grandfathered programs are at least as effective as the programs required by the standard OSHA is promulgating for all general industry employers and employees.

The final rule's grandfather clause does not identify specific rates of MSDs or other similar measures of effectiveness that a grandfathered program must achieve because OSHA is aware that the programs grandfathered in will be at many different stages of program development and because OSHA wishes to recognize as wide a range of existing effective programs as possible. Although the grandfather clause does not set a specific reduction goal, employers are required by paragraph (c)(1)(v) to demonstrate the effectiveness of their programs.

Paragraph (c)(2) of the final rule requires employers with grandfathered programs to institute an MSD management policy (including work restriction protection) that meets paragraphs (p) through (s) of the final rule within 12 months of the effective date of the standard. Thus, the final rule's grandfather clause is designed to recognize existing ergonomics programs that are effective even if they do not have an MSD management policy until a year after the effective date of the standard.

OSHA believes that all successful ergonomics programs depend on the early reporting of and intervention with regard to MSD signs and symptoms; this is as true for grandfathered programs as for those that are not grandfathered. As discussed at length in connection with paragraph (r), OSHA has found, both on this record and in the records of many other OSHA standards, that wage and benefit protection is essential to early reporting and employee participation in the employer's program. Without such protection, employees fear economic loss and often simply do not report their signs and symptoms until the injury has progressed to the point where work (and perhaps full recovery) is no longer possible. In addition, as fully explained in the summary and explanation for paragraphs (p) through (s) of the final rule, when an employee reports an MSD, early intervention is required to ensure appropriate treatment, work restrictions, and follow up. OSHA anticipates that many existing programs will be able to meet the requirements of paragraph (s) by use of the dispute resolution mechanisms described in paragraph (s)(5).

Final rule paragraph (c)(3) states that an ergonomics program of an employer who has policies or procedures that discourage employee from participating in the program or reporting the signs or symptoms of MSDs or the presence of MSD hazards in the workplace does not qualify for grandfather status. This provision, which is equivalent to paragraph (h)(3) of the final rule, ensures that employees are as free to participate fully in grandfathered programs as employees in programs that are not grandfathered. As discussed at length in connection with paragraph (h)(3), OSHA has found that employee participation is essential to a program's effectiveness and that a prohibition on policies that inhibit that participation is warranted.

TABLE 1—COMPARISON OF PROPOSED BASIC OBLIGATIONS WITH FINAL GRANDFATHER CLAUSE PROGRAM ELEMENT CORE ELEMENTS AND SUBELEMENTS

Proposed basic obligation	Corresponding core elements and subelements of the final grandfather clause
Proposed Management Leadership Obligation You must demonstrate management leadership of your ergonomics program. Employees (and their designated representatives) must have ways to report MSD signs and MSD symptoms; get responses to reports; and be involved in developing, implementing and evaluating each element of your program. You must not have policies or practices that discourage employees from participating in the program or from reporting MSD signs or symptoms.	Final § 1910.900(c)(1)(i) and (ii) and (c)(3): [Your program must contain the following elements:] (c)(1)(i) Management leadership, as demonstrated by an effective MSD reporting system and prompt responses to reports, clear program responsibilities, and regular communication with employees about the program; (c)(3) An employer who has policies or procedures that discourage employees from participating in the program or reporting the signs or symptoms of MSDs or the presence of MSD hazards in the workplace does not qualify under paragraph (c) of this section.

TABLE 1—COMPARISON OF PROPOSED BASIC OBLIGATIONS WITH FINAL GRANDFATHER CLAUSE PROGRAM ELEMENT CORE ELEMENTS AND SUBELEMENTS—Continued

Proposed basic obligation	Corresponding core elements and subelements of the final grandfather clause
Proposed Employee Participation Obligation:	
You must set up a way for employees to report MSD signs and symptoms and to get prompt responses. You must evaluate employee reports of MSD signs and symptoms to determine whether a covered MSD has occurred. You must periodically provide information to employees that explains how to identify and report MSD signs and symptoms.	(c)(1)(ii) Employee participation, as demonstrated by the early reporting of MSDs and active involvement by employees and their representatives in the implementation, evaluation, and future development of your program; [See also paragraph (c)(1)(iv).]
Proposed Job Hazard Analysis and Control Obligation:	Final § 1910.900(c)(1)(iii): [Your program must contain the following elements:]
You must analyze the problem job to identify the ergonomic risk factors that result in MSD hazards. You must eliminate the MSD hazards, reduce them to the extent feasible, or materially reduce them using the incremental abatement process in this standard. If you show that the MSD hazards only pose a risk to the employee with the covered MSD, you may limit the job hazard analysis and control to that individual employee's job.	Job hazard analysis and control, as demonstrated by a process that identifies, analyzes, and uses feasible engineering and administrative controls to control MSD hazards or to reduce MSD hazards to the levels specified in Appendix D or to the extent feasible, and evaluates controls to assure that they are effective. **Note to Paragraph (c)(1)(iii):** Personal protective equipment (PPE) may be used to supplement engineering and administrative controls, but you may only use PPE alone where other controls are not feasible. Where PPE is used you must provide it at no cost to employees.
Proposed Training Obligation:	Final § 1910.900(c)(1)(iv): [Your program must contain the following elements:]
You must provide training to employees so they know about MSD hazards and your ergonomics program and measures for eliminating or materially reducing the hazards. You must provide training initially, periodically, and at least every 3 years at no cost to employees.	Training of managers, supervisors, and employees (at no cost to these employees) in your ergonomics program and their role in it; the recognition of MSD signs and symptoms; the importance of early reporting; the identification of MSD hazards in jobs in your workplace; and the methods you are taking to control them.
Proposed MSD Management Obligation:	Final § 1910.900(c)(2): [Your program must contain the following elements:]
You must make MSD management available promptly whenever a covered MSD occurs. You must provide MSD management at no cost to employees. You must provide employees with the temporary "work restrictions" and "work restriction protection (WRP)" this standard requires.	By January 16, 2002, you must have implemented a policy that provides MSD management as specified in paragraphs (p), (q), (r) and (s) of this section.
Proposed Program Evaluation Obligation:	Final § 1910.900(c)(1)(v): [Your program must contain the following elements:]
You must evaluate your ergonomics program periodically, and at least every 3 years, to ensure that it is in compliance with this standard.	Program evaluation, as demonstrated by regular reviews of the elements of the program; regular reviews of the effectiveness of the program as a whole, using such measures as reductions in the number and severity of MSDs, increases in the number of jobs in which ergonomic hazards have been controlled, or reductions in the number of jobs posing MSD hazards to employees; and the correction of identified deficiencies in the program. At least one review of the elements and effectiveness of the program must have taken place prior to [insert date 60 days after the publication date of this standard].

The following paragraphs discuss the comments, evidence and testimony received on the proposed grandfather clause and present OSHA's reasons for accepting or rejecting the rulemaking participants' suggestions and for including the final rule's grandfather clause requirements.

1. Whether the Proposed Standard Would Recognize Existing Effective Programs

Many rulemaking participants said that the proposed rule's grandfather clause would not, as drafted, recognize existing effective programs (see, *e.g.*, Exs. 30–574, 30–973, 30–1722, 30–3765, 30–3813, 30–3815, 30–3845, 30–3853, 30–3934, 30–3956, 30–4185, 31–297, 32–141; 500–188; Tr. 3320, 4137, 11265, 11290, 11615). Most of these commenters argued that the proposed standard would only permit existing programs that already met all of the details of the program required by OSHA's standard to be grandfathered (see, *e.g.*, Exs. 30–1722, 30–3853, 30–3934, 30–3956, 32–141; Tr. 11265, Tr. 11290, Tr. 11615). According to these commenters, the basic obligation OSHA proposed for each core element would in actuality have required an employer to meet each of the proposed subrequirements under that core element. Thus, they reasoned that the proposed grandfather clause would only recognize existing programs that already met all of the particulars of the program envisioned by OSHA's proposed standard even in cases where the employer's program had been demonstrated to be effective in preventing MSDs. For example, the U.S. Chamber of Commerce stated this view as follows:

> OSHA claims that employers who already have ergonomics programs in place "may continue that program, even if it differs from the one [the proposed] standard requires" if the program meets certain requirements * * *. The Proposed Rule requires that ergonomics programs that were implemented and evaluated before the effective date of the Proposed Rule must, among other things, (1) satisfy the "basic obligation" of each of the standard's six program elements; and (2) demonstrate that the elements of the preexisting program are "functioning properly * * *." This provision is completely inadequate to assist employers with preexisting programs. The qualifications written in to this provision essentially require that employers reconstruct their existing programs, even if any given program is effective in addressing supposed "MSD hazards," so that it mirrors the Proposed Rule's notion of an appropriate ergonomics program.
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> [A]n employer is supposed to ensure that his program satisfies the "basic obligation" of each program element. The "basic obligation" of each [proposed] element is so broadly written that it encompasses all requirements enumerated under that particular element. Thus, employers, including those Chamber members who have [spent] a great deal of effort and money to establish voluntary ergonomics programs, will be forced to [alter] their preexisting programs to comply with the Proposed Rule (Ex. 30–1722).

Edison Electric Institute's (EEI's) comments were similar:

> EEI supports the concept of a "grandfather" clause. However, the proposed version is more illusory than real, for it appears to require that all newly proposed controls be put in place before the effective date of the standard. It is unrealistic and unfair to "grandfather" only those programs that track the proposed standard. It is as if OSHA is saying, "You don't have to do anything, provided that you have done everything." A true "grandfather" provision would give credit for effective past programs, regardless of whether those programs conform to the scheme of the proposed program (Ex. 30–3853).

The American Hotel and Motel Association gave examples of how an effective existing program might fail OSHA's proposed grandfather test:

> OSHA does not allow for any variation from OSHA's regulation if a [company's] ergonomics program does not satisfy "the basic obligation section of each program element in this standard." An ergonomics program that is proven to be 100 percent effective would fail if it only offered, for example, training every five years. An ergonomics program also would likely fail if it provided program evaluation only upon a report of an ergonomic injury yet did not have a reportable injury in less than three years (Ex. 30–3233).

The Center for Office Technology noted that none of the exemplary ergonomics programs that have won the Center's ergonomics award have requirements for work restriction protection, which would have been required by the proposed standard to be in place by the standard's effective date in order for a program to be grandfathered (Ex. 30–2208). Thus, the Center pointed out that these very good programs would not meet OSHA's proposed grandfather clause. The Center recommended that OSHA include in the final rule a grandfather clause that would allow any program to be grandfathered in that was reducing MSD incidence and severity rates and educating employees about how to minimize discomfort on and off the job.

The National Association of Manufacturers (NAM) and others noted that some companies have adopted effective ergonomics programs under OSHA's Voluntary Protection Program (VPP) or through corporate settlement agreements (see, *e.g.*, Exs. 30–3392, 30–3815, 30–3819, 30–4499). These rulemaking participants observed that these ergonomic programs would not be acceptable under the proposed grandfather clause even though they have been recognized as effective by the Agency in the past. NAM urged OSHA in the final rule to grant employers' existing ergonomics programs greater acceptance for grandfather status based on the results they achieve.

Similarly, Organization Resources Counselors, Inc. (ORC) noted that a recent General Accounting Office (GAO) study recommended that OSHA adopt a flexible approach in its ergonomics standard (Ex. 500–214). ORC argued that OSHA ignored this GAO recommendation in drafting the proposed grandfather clause. As evidence, ORC pointed out that even the best ergonomics programs would not qualify for status under the proposal's grandfather clause, stating:

> OSHA has predicated its proposed Ergonomics Program Standard on its observations that many businesses are successfully addressing ergonomics issues using similar approaches. In recognition of this conclusion and in order to focus its own scarce resources on the areas of greatest need, OSHA has proposed a "limited grandfather clause" for employers with existing ergonomics programs that meet certain criteria. OSHA's proposal made numerous references to the 1997 General Accounting Office (GAO) study of several companies with ergonomics programs which found that the companies' programs reduced work-related MSDs and associated costs, and that the programs and controls selected by employers to address ergonomic hazards in the workplaces were not necessarily costly or complex. As a result, OSHA said, "GAO recommended that OSHA use a flexible regulatory approach in its ergonomics standard that would enable employers to develop their own effective programs." OSHA claimed that the standard it proposed reflects this recommendation and "builds on the successful programs that thousands of proactive employers have found successful in dealing with their ergonomic problems" (64 FR 65770). Unfortunately, in crafting the proposed grandfather clause, OSHA ignored a major finding of the GAO report: that although there were common elements in each of the employer's programs studied, there was significant variety in the way each program element was implemented (GAO/HEHS–97163, page 4). There was no evidence in the GAO study that one method of implementation was better than another, yet OSHA has drafted a rule that makes only one program approach—OSHA's—acceptable.
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> * * * [A]s written, virtually no employer would qualify under [the proposed grandfather clause's] terms, rendering it a nullity. As was attested to by several industry representatives during the public hearings, even those programs that OSHA has acknowledged as being among the best in industry today would not be in compliance with the proposal. As pointed out in ORC's oral testimony, it is unlikely that any of the approximately 150 member companies of ORC's occupational safety and health groups, whose safety and health programs are among the most sophisticated and effective in the world, would meet the criteria under section 908 of the proposal. This is because of the proposed requirement that an employer must meet all of the "basic obligation" sections of each program element. Virtually all of the proposed "basic obligations" are too prescriptive and should be simplified as described more fully in ORC's written comments. In particular, many ORC employers would not meet the provisions of [proposed] sections 911, 917, 923 or 929, individually, and almost none would meet all four (Ex. 500–214).

Summing up the concerns of commenters wanting a more flexible grandfather clause, the American Dental Association argued that the proposal would reject alternative programs that might be equally or even more effective (Ex. 32–141). The Association recommended that OSHA establish a standard based on objective measures or performance and leave the methods of achieving those objectives to employers.

Several employer representatives illustrated how various effective existing ergonomics programs would fail to meet the proposed grandfather clause (see, *e.g.*, Ex. 30–4185; Tr. 8634, 9181, 11265). For example, IBP, Inc., which has a corporate-wide ergonomics settlement agreement with OSHA, identified several aspects of the proposed program that their program does not address: responses to every MSD symptom, communication with the health care provider, and WRP (Tr. 4929, Tr. 5041). In the hearings, an IBP representative stated that its program would not meet the grandfather clause because of proposed requirements in these three areas (Tr. 5041). Many other employer representatives also noted that their programs did not include provisions providing for work restriction protection and, consequently, would not qualify under the grandfather clause (Tr. 8634, Tr. 9181).

Constangy, Brooks and Smith stated that their clients could not meet the hazard control endpoints in the proposed standard (Ex. 30–4185). They argued that, as drafted, the proposal would mean that the occurrence of even a single MSD would require their clients to implement new engineering controls. Consequently, they believed that their clients' programs would not qualify under the proposed grandfather clause. Other commenters also noted that their, their members', or their clients' programs would not meet the proposed standard's grandfather clause for similar reasons (see, *e.g.*, Exs. 30–3344, 30–3347, 30–3368, 30–3845, 30–4137).

One witness at the hearing, Thomas J. Durbin of PPG Industries, noted that since no one would benefit from the grandfather clause as it was proposed, OSHA should either put in a true grandfather clause that recognizes programs containing the six core elements or eliminate it altogether (Tr. 3135, Tr. 3147). In questioning, he stated that he interpreted the proposal to require the full program as long as MSDs continued to occur (Tr. 3140).

The Boeing Company argued that the restrictive nature of the proposal's grandfather clause ran counter to the intent of the OSH Act (Ex. 30–1547). In support of their position, they pointed to section 6(d) of the Act, which provides for a variance procedure to recognize alternative approaches to compliance with OSHA standards, provided that the alternative provides equivalent employee protections. Boeing was particularly concerned that the standard, as proposed, would deny grandfather status to an employer who had a program but who had not yet completed the implementation of all of the control measures required by the proposal.

On the other hand, many rulemaking participants indicated that the proposed standard's grandfather clause would allow ineffective programs to be grandfathered (see, *e.g.*, Exs. 30–4200, 32–111, 32–182, 32–198, 32–210, 32–339; Tr. 3477). For example, the United Steelworkers of America and others were concerned that employers whose program evaluations failed to identify deficiencies simply because the evaluations were not done properly could be grandfathered in under the proposed standard (see, *e.g.*, Exs. 32–111, 32–182). They recommended that OSHA develop additional regulatory text to strengthen the program evaluation provisions. The Union of Needletrades, Industrial and Textile Employees (UNITE) was also very concerned that the proposed grandfather clause would inadequately protect employees (Ex. 32–198), stating:

> The acceptability of existing programs depends largely on the criteria used to determine acceptability. Therefore, the correctness of the current criteria—compliance solely with the "basic obligation" provisions—is critical to the protection of workers from OSHA's approval of programs which are in fact ineffective. For the reasons [summarized by OSHA] below, UNITE does not believe that these criteria will provide the appropriate level of workers protection (Ex. 32–198).

Several unions, including UNITE and the United Food and Commercial Workers International Union (UFCW), gave the following reasons why the proposal's grandfather clause was inadequate:

- The detailed provisions implementing each of the proposed program elements, which would not be required for grandfathered programs, are necessary for adequate protection of employees. UNITE pointed to OSHA's extensive justification for each of these proposed provisions in the preamble and indicated that the justification applied just as well to programs in existence before the rule becomes effective as to programs implemented afterward (Ex. 32–198).
- The proposed basic obligation sections for the management leadership and training elements, which would be the only requirements employers with grandfathered programs would have to meet, would allow poorly trained managers to make determinations that their program complies with the standard. The unions noted that training for managers was not included as part of the proposed basic obligation for these elements. They were particularly concerned that inadequate training of managers would result in improper program evaluations (see, *e.g.*, Exs. 30–4200, 32–198, 32–210, 32–421).
- Job hazard analysis and control and quick fixes could be performed without the input of employees because employee participation is not a part of the proposed basic obligation of those provisions.[2] The unions argued that, without feedback from employees, a provision not addressed in the proposed basic obligation for the job hazard analysis section, employers would be likely to improperly identify risk factors or select improper hazard controls (see, *e.g.*, Exs. 30–4200, 32–198, 32–210, 32–461).
- The proposed MSD management basic obligation is missing a requirement for health care professionals to be provided with information about the workplace and the employee's job (Ex. 32–198). According to UNITE, which has had first-hand experience with programs that do not require such information sharing, this omission would result in ill-conceived recommendations from the health care professional (Ex. 32–198).
- The basic obligation for the proposed job hazard analysis and control section omitted requirements that limited the use of personal protective equipment and mandated that employers provide it at no cost to employees (Ex. 32–210).
- The proposal's requirements for program evaluation were inadequate and would allow employers to overlook serious program deficiencies (see, *e.g.*, Exs. 30–4200, 32–198, 32–210). The unions believed that, because the rule's evaluation provisions are the primary means for determining the acceptability of an existing program under the grandfather clause, these provisions should be revised in the final rule to prevent employers from inappropriately approving unacceptably weak programs for grandfather status. (Also see the summary and explanation for paragraph (u), later in this section of the preamble.)

The International Brotherhood of Teamsters (IBT) observed that the proposed standard would consider any new ergonomics program coming into effect to comply with the standard as deficient if the new program did not meet one or more of the standard's requirements (Exs. 30–4200, 32–461). The IBT argued that existing programs should be held to the same standard:

> Any program grandfathered under this proposal would essentially be judged by a different set of criteria than a program developed after the effective date. The grandfathered program would be considered to be in compliance despite having missing components, provided that the [proposed] basic obligations as currently defined, are met. An identical program, that was developed after the effective date and was not grandfathered would not be considered to be fully in compliance and would be cited by compliance officers for each component of the standard that was lacking, despite meeting the very same basic obligations that the grandfathered program met. This weakness can not be used as an argument that compliance is too difficult to determine, but rather must be viewed as an argument that the grandfathering provision, as it currently stands, has serious flaws and must be significantly improved such that every worker is provided the same protections under this standard (Ex. 32–461).

At the hearing, OSHA stated that the Agency's intent in the proposal was to include a grandfather provision that recognized existing effective ergonomics programs:

> Other requirements of the proposal that OSHA has designed to be flexible include a grandfather clause that permits employers who have already implemented an Ergonomics Program to continue to operate that program as long as it meets minimal requirements (Tr. 19).

It is readily apparent from the rulemaking record that very few, if any, existing ergonomics programs would be able to fulfill the requirements of the proposed grandfather clause. Although OSHA drafted the language in the proposed standard generally and in the grandfather clause specifically to be flexible, the Agency recognizes that the grandfather clause, as proposed, was not sufficiently flexible to allow existing programs that are effective in protecting employees from MSD hazards to be grandfathered in. On the other hand OSHA agrees with many of the union comments, discussed above, that it is important that the grandfather clause not recognize programs that are ineffective in protecting employees from MSD hazards. OSHA has structured the final rule's grandfather clause to strike an appropriate balance between flexibility, on the one hand, and program effectiveness, on the other.

In drafting the proposed and final rules, OSHA has relied heavily on the Agency's experience with effective ergonomics programs that proactive employers have implemented; in fact, the final rule is modeled after such programs. OSHA has concluded that it is reasonable for the Agency to include in the final rule a grandfather clause that is less prescriptive than the one proposed and is more closely focused on the effectiveness of existing programs. The Agency has made several changes to the final rule's grandfather clause to achieve this end. First, OSHA has streamlined the subelements (called "basic obligations" in the proposed rule) under each core element and has removed some of the more prescriptive requirements. For example, the final rule has not carried forward the proposal's provision that periodic training and program evaluations in grandfathered programs be conducted at intervals of no more than 3 years. Second, OSHA is permitting employers to add or strengthen elements of their programs, provided that they do so, and evaluate the program at least once, before the effective date of this rule. Third, because so many commenters with otherwise effective programs reported that their program would not qualify for grandfather status solely because it did not have a WRP component, the final rule gives employers a year from the effective date of the standard to add such protections (which are a part of MSD management) to their existing programs. Fourth, OSHA has included, in the final rule, examples of some of the specific measures that employers may use to demonstrate that their programs are effective. These changes will enable more employers' programs to qualify for the grandfather clause but will also ensure that only effective existing programs are recognized. The changes also shift the focus from compliance with the rule to effectiveness in preventing MSDs. Although OSHA believes that having all six elements is vital to qualify a program for grandfather status, OSHA is not interested in technical compliance but in real effectiveness.

2. Whether Effectiveness of an Ergonomics Program Is All That Matters

Many rulemaking participants believed that it would be more appropriate for the standard to simply accept proven, effective programs than to require that grandfathered programs also include the core elements of successful programs (see, *e.g.*, Exs. 30–523, 30–1090, 30–1901, 30–1722, 30–2208, 30–3211, 30–3765, 30–3813, 30–3934, 30–3956; Tr. 3319, 15657). In their view, effectiveness is the only part of the program that matters, and therefore any existing program that is effective should be grandfathered. Doerle Food Services, Inc., exemplified many of these comments:

> OSHA has made its position clear, at 64 Fed. Reg. 65791, in which it states that the agency believes "enforcement of the standard will be more consistent and more equitable * * * if the test of an employer's program is whether it contains the core elements, rather than whether it is effective." This is, we submit, an incredible statement, and reflects OSHA's devotion to its mandated program and "control" strategy, as opposed to actual effective programs. It is this outlook which is at the core of the "grandfather" provision, since it does not accord recognition in any meaningful way to a pre-existing effective program that can be shown to have minimized the conditions that are at issue. This portion of the standard clearly needs to be reconsidered and expanded (Ex. 30–523).

The Washington Aviation Group gave examples of how an employer's ergonomics program might be effective without meeting the proposal's grandfather criteria:

> There are a variety of reasons why a company might experience few or no ergonomics problems. The business owner may have an intuitive sense of how to promote comfort among the employees that has a beneficial effect on ergonomics issues. The nature of the work might be such that it does not lend itself to repetitive motion disorders or other ergonomics problems. Management may have established an effective rapport with the employees that is sufficiently responsive so that potential problems are generally resolved in an expedient manner before they represent hazards. While all of these are approaches that can support safety in an effective and expedient manner, none of these would represent sufficient ergonomics programs under the proposal; and that is part of the problem with the proposal: it discounts systems that work; but that are not as comprehensive or well-documented as the proposal (Ex. 30–3849).

Some rulemaking participants recommended that programs be grandfathered based solely on one or more measures of effectiveness (see, *e.g.*, Exs. 30–1901, 30–3211, 30–3344, 30–3348, 30–3361). For example, Armstrong World, Inc., recommended accepting for grandfather status programs based on the employer's injury incidence rates:

> Employers should be exempt from any proposed standard based on their performance in preventing such injuries. We would suggest using 50% of the employers' industry's respective SIC Code rates for Total Recordable Cases and Cases With Days Away From Work as a meaningful measure of accepting existing employer ergonomics processes as they are (Ex. 30–1901).

Other rulemaking participants also recommended using injury rates, either in absolute terms or in terms of showing a reduction, as a measure of effectiveness and qualification for grandfather status (see, *e.g.*, Exs. 30–3344, 30–3348, 30–3361). For example, the Exxon Mobil Production Company suggested that the standard grandfather a program if the employer's records demonstrate that the program is preventing MSDs and is managing ergonomic concerns (Ex. 30–2433). John W. Braddock suggested that employers be permitted to produce evidence that the existing program was working and that there is an effective early reporting mechanism in place and to qualify for grandfather status on this basis (Ex. 30–4301).

ORC argued that there are a number of ways to measure program effectiveness, which should be the true gauge of the worthiness of any ergonomics program (Ex. 30–3813; Tr. 4112). They suggested several possible ways to measure effectiveness:

> OSHA might place the initial burden of demonstrating effectiveness of the program on the employer and include in a non-mandatory appendix a number of types of performance measures and approaches that OSHA would consider appropriate. OSHA mentions some in the preamble, *e.g.*, decreases in the numbers or rates of MSDs and decreases in severity. Other measures might include reduced workers' compensation claims for MSDs, use by the employer of periodic symptoms surveys and other indicia of effective early reporting, or

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[2] UNITE also noted that the proposed quick fix section had no basic obligation section at all.

> demonstration that risk factors have been reduced and/or tools and equipment have been modified. An employer might demonstrate effectiveness based on periodic program evaluation that measures effectiveness based on an internal "score card" that looks at a number of appropriate effectiveness measures.
>
> * * * * *
>
> ORC believes strongly that OSHA should be focusing its attention on results or performance, not methodology (Ex. 30–3813).

However, even though ORC objected to the proposed grandfather clause's emphasis on core elements and their basic obligations, they did agree with OSHA that there is a need to ensure that any demonstration of effectiveness that relies on numbers or rates of MSDs not mask any underreporting of MSDs (Exs. 30–3813, 32–78).

Unisea, Inc. suggested the following language for OSHA to use in the final rule to recognize existing ergonomics programs based on effectiveness:

> If a company is able to show by operation redesign with ergonomics considerations made, or injury records or near-miss reports that a reduction of reported MSD's has occurred, that company shall be considered in compliance of the standard and its intent.
>
> OR, If a company is able to show a steady overall reduction of injuries, either by total number or incident rate, that company shall be considered in compliance of the standard and its intent (Ex. 500–158).

Abbott Laboratories argued along similar lines and submitted data in support of its position. According to a comment in the record, Abbott Laboratories instituted ergonomics programs at three laboratories in the late 1980's (Ex. 500–153). Abbott's comment presented the OSHA-recordable illness rates at those facilities over the last 9 years. These data are shown in Table 2. Abbott states that the fall in rates over that period reflected ergonomic improvements made at each facility and should qualify these establishments for grandfather status.

TABLE 2.—OSHA RECORDABLE ILLNESS CASE RATES AT THREE ABBOTT LABORATORIES PLANTS

Year	Plant A	Plant B	Plant C
1999	1.03	1.44	1.46
1998	0.47	1.90	2.87
1997	1.02	1.81	2.50
1996	0.43	1.00	2.30
1995	0.71	3.27	2.74
1994	2.69	3.13	3.47
1993	3.70	4.27	4.51
1992	3.25	2.52	5.66
1991	4.41	4.54	7.06

Source: Ex. 500–153.

Another point raised by commenters concerned the proposed requirement that grandfathered programs must be in place and be judged effective by the time the standard is effective in order to be grandfathered. The Departments of Defense and Navy recommended that the standard provide employers wishing to grandfather their programs in with sufficient time to conduct a statistically significant evaluation of the effectiveness of the program even if the evaluation did not take place until after the effective date (Ex. 30–3818; Tr. 3228). They were concerned that it would not be possible to perform such an evaluation before the effective date of the standard, as the proposal required. In addition, they suggested that the standard clarify what effectiveness measures or evaluation points OSHA would accept for each program element in grandfathered programs (Ex. 30–3818; Tr. 3228).

Other commenters suggested a variety of indicators of program effectiveness. For example, the American Industrial Hygiene Association (Ex. 32–133) stressed measures of effectiveness other than injury rates:

> OSHA needs to be more specific on what constitutes an equivalent program so that mediocre programs do not pass compliance, but programs showing improvements will have a reasonable chance to be considered acceptable. The evaluation of quality of the program should rely on real evidence of hazards identified and risk reduction. Specifically, have physical risk factors been reduced and have ergonomics improvements been made? Indeed, this is the "bottom line." Other things to look at include whether training has been done, and if there is a reduction in MSDs and associated workers' compensation costs (Ex. 32–133).

Herman Miller, Inc., listed several measures that employers could use to measure effectiveness: "Reduction in MSD hazards, MSD severity rates, lost workdays or benchmarked improvements in employee satisfaction rates" [Ex. 30–518]. They suggested leaving the specific protocol to the discretion of the employer and noted that OSHA compliance officers would need to be given proper training and tools so that they could make logical and qualitative assessments of ergonomics programs and determine whether they were effective enough to qualify for grandfather status.

Dennis Morikawa, testifying on behalf of Morgan, Lewis and Bockius, did not specify a particular measure of effectiveness but recommended instead that OSHA make the grandfather clause widely available to employers to encourage as many of them as possible to adopt programs before the final rule's effective date (Tr. 15657). He argued that this approach would further OSHA's real goal: The reduction in the number of MSDs experienced by workers.

In their post-hearing submission, the U.S. Chamber of Commerce criticized the proposed grandfather clause's reliance on the proposed core elements' basic obligations instead of effectiveness:

> The Agency claims that existing programs will be evaluated upon the existence of the core elements rather than a program's effectiveness * * * because it will make such evaluation "less time-consuming" and "administratively simpler" for both OSHA and the employers. 64 Fed. Reg. at 65791. Of course, the real reason that the Agency has chosen to focus on content is that OSHA simply cannot judge effectiveness and has no idea what it means to be an effective program. Indeed, in order to qualify under the Grandfather Clause, an employer's existing program must not only contain the core elements of the Proposed Rule, but must also be "functioning properly." And although according to the Preamble "effectiveness" is not a measure of whether or not the program is "functioning properly," 64 Fed. Reg. at 65791, Marthe Kent testified to precisely the opposite effect:
>
> And further [proposed 1910.908], which says the evaluation indicates that the program elements are functioning properly, what we mean there is [that the elements] are effective. I mean, you cannot have a program with the elements functioning properly and it not be effective.
>
> Tr. at 1–182. Thus, not only can the Agency not determine what "effectiveness" means, it also apparently cannot decide whether or not "effectiveness" means the same thing as "functioning properly." Until the Agency sorts out this conundrum in some understandable way, there can be no real Grandfather Clause in the Proposed Rule (Ex. 500–188).

OSHA did not propose a grandfather clause that relied heavily on injury rate goals to demonstrate effectiveness because, as the Agency noted in the proposal (see 64 FR 65980 *et seq.*), MSDs are currently substantially underreported, and relying on reported rates would therefore, in many cases, overstate effectiveness. Some commenters, however, argued that MSD rates were appropriate for this purpose (see, *e.g.*, Exs. 30–2989, 30–3845). For example, the Forum for a Responsible Ergonomics Standard stated:

> If OSHA is concerned with how to measure "effectiveness," it can prescribe the manner in which effectiveness is to be measured, such as reductions in the number and severity of MSDs. OSHA contends, however, that most means of measuring "effectiveness" have built-in incentives to discourage reporting. See *id.* This contention ignores the fact that companies are subject to regulatory requirements in the proposed rule, backed up by OSHA fines and penalties, to facilitate employee reporting (Ex. 30–3845).

A. O. Smith Corporation commented that, in its experience, few employers discourage reporting of workplace injuries:

> The provisions in the standard that allude to the employer having programs in place that discourage the reporting of MSD injuries tends to suggest that entire safety and health awareness and accident prevention programs would be construed as disincentives to reporting. We do not accept this premise and find that most employers work hard at making sure their employees are provided a safe work environment and a mechanism to report injuries should they occur (Ex. 30–2989).

Other rulemaking participants agreed with the approach taken in OSHA's proposal and opposed basing the grandfather clause solely on a measure of the reduction in the number of MSDs in a workplace (see, *e.g.*, Exs. 30–2387, 32–339, 500–207). For example, the AFL–CIO stated that the elements that OSHA included in the proposal's grandfather clause are widely recognized as the basic elements of an effective program (Ex. 32–339). The International Brotherhood of Teamsters argued that, to be grandfathered, an existing program needed to be comprehensive and to provide workers and their representatives with full information and rights of participation in addition to being effective in reducing the number of MSDs (Ex. 500–207).

In response to these comments, OSHA finds that the record evidence demonstrates that the Agency should emphasize the effectiveness of grandfathered programs much more in the final rule than it did in the proposal. Record evidence also demonstrates that the core elements are essential to effectiveness (see the discussion of the core elements below). If a program is not demonstrably effective in protecting employees from MSD hazards, OSHA believes that such a program should not qualify for grandfather status and should instead have to comply with all the requirements of the final rule. On the other hand, if an existing ergonomics program has the core elements and is truly effective in protecting employees, it merits grandfather status. The central question then becomes how to measure effectiveness; if effectiveness measures are not carefully chosen, ineffective programs will be grandfathered in and the employees in the establishments covered by such ineffective programs will be inadequately protected.

One widely used method of measuring effectiveness is the tracking of MSD incidence and severity rates. However, MSD incidence and severity rates can be misleading if efforts are not made to ensure that the rates reported are accurate and that the use of such rates is appropriate for the workplace. Some of the problems with various objective measures of effectiveness are described below.

(a) *Incidence rates are dependent on accurate reporting.* An employer's recordkeeping system must accurately count work-related MSDs if incidence rates are to be a meaningful index of effectiveness. An employer whose employees are reluctant to report, or one who does not record all MSDs, will appear to have a lower incidence rate than a comparable employer with an accurate recordkeeping system, and the incidence rate in the first employer's establishment will bear no relationship to program effectiveness. There are many reasons why MSDs are underreported (see the discussion of this issue in the summary and explanation for MSD management). If there are disincentives to reporting, employees may not report all MSDs. If an employee is not well informed about MSD signs and symptoms, he or she probably will not realize that the signs and symptoms of an MSD are work-related and will fail to report them. Employees also fail to report MSDs in some cases because they do not want to submit a claim to the workers' compensation system. Thus, incidence rates must be used with care.

(b) *Severity rates are dependent on consistency in return-to-work policies.* Severity rates are typically measured in terms of days away from work or days on restricted duty. Changes in how employers treat injured workers can affect severity rates. For example, if an employer who has traditionally measured severity in terms of lost workdays institutes a new policy of placing employees with MSDs on restricted duty rather than removing the employee from work, the number of days away from work will decrease. Thus, severity rates must also be used carefully to ensure that they are not reflecting a change in the employer's MSD management process rather than a true decrease in MSD severity.

(c) *The randomness inherent in injury and illness statistics may make incidence rates an unreliable indicator of effectiveness.* Injuries and illnesses are events that occur based on probability. In other words, hazards do not automatically lead to injuries or illnesses; the presence of hazards simply increases the probability that an injury or illness will occur. Just as a coin flipped 10 times will not automatically land heads up 5 times, a workplace with an average MSD incidence rate of 19.3 per 1000 employees[3] will experience an MSD incidence rate that varies about that number from year to year. If employee exposure to MSD hazards at this workplace remains relatively constant, the actual incidence rate in any one year (assuming that the number of employees and other factors also remain constant) will probably be reasonably close to that value. In one year, for example, 17 of the 1000 employees could suffer an MSD, while in the next year, 21 might be injured. This variability can be seen in the Abbott Laboratories data in Table 2, especially in the last 5 years, after the program had matured.

Variability is even more pronounced in a workplace with few employees. If the employer in the earlier example had 10 full-time employees and the same overall average MSD incidence rate, the establishment could be expected to have 0, 1, or 2 MSDs in a given year.[4] The corresponding incidence rates per 1000 employees, however, would be 0, 100, and 200. If incidence rates alone were used as the measure of effectiveness at such a facility, the program would be rated very effective in one year and in need of major correction in the other years.

In the context of the grandfather clause, this year-to-year variability poses problems for OSHA and for employers. If the final rule were to identify a specific rate as the sole criterion for grandfathering existing programs, then an employer whose program was acceptable one year might be unacceptable the next simply as a result of this variability. For example, suppose that the final rule selected 1.45 as the maximum acceptable incidence rate for a grandfathered program. Abbott Laboratories Plant A (from Table 2) would have had an acceptable program in terms of grandfathering since 1995 (Ex. 500–153). Abbott's Plant C program (from Table 2) would never have met the incidence rate limit in this period and would therefore have had to comply with the ergonomics standard. Abbott's Plant B (from Table 2) could have had its program grandfathered in 1996 and 1999, but would have had to comply with the standard in 1997 and 1998. From this example, it can be seen that some employers' programs, after initially qualifying for the grandfather clause, would subsequently be required to comply with the ergonomics standard in at least some years.[5] This "sometimes in and sometimes out" phenomenon is not what OSHA or employers with existing ergonomics programs want from a grandfather clause.

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[3] This is the overall MSD incidence rate for SIC 283.

[4] It would take 100 years for this firm to have 1000 employee-years of experience. If the employer had an incidence rate of 17 MSDs per 1000 full-time employees, the employer would see 17 incidents over 100 years. Over that period, in most years, no MSDs would occur. In other years, one or maybe two MSDs would occur.

Alternatively, the final rule could mandate that, to be grandfathered, the employer's MSD incidence rates had to decrease over time, as suggested by some rulemaking participants (see, for example, the comments of Unisea, Inc., Ex. 500–158, above). Again, the Abbott Laboratories data in Table 2 show that this approach would also be problematic (Ex. 500–153). All three of Abbott Laboratories' plants experienced increasing rates in some years in the period reported. Although the overall trend over the full 9-year period is downward for all of the Abbott plants, this is not the case for all time periods. For example, Plant C's incidence rates went up over the 4-year period from 1995 to 1998 (see Table 2). In fact, OSHA's experience is that, as an employer's ergonomics program matures, incidence rates begin to level off, albeit at a much lower rate than before the program was established (see Chapter IV of the Economic Analysis).

Other "objective" measures of effectiveness recommended by rulemaking participants (see *e.g.*, Ex. 30–3813; Tr. 4112) pose similar problems. Decreases in the rate of workers' compensation claims have the same problems as incidence rates when they are used as effectiveness measures. Symptom surveys, although valuable as an early reporting tool, vary from one workplace to another and therefore cannot be used for different sites. Reductions in employee exposure to MSD hazards is a good measure of whether an ergonomics program is working but, OSHA has no benchmark that adequately describes the performance of an effective program. Without a benchmark, reductions in employee exposure to MSD hazards cannot be used as the sole criterion for grandfathering programs at different sites.

In addition, OSHA has concluded that the core elements (management leadership and employee participation, hazard identification and assessment, hazard prevention and control, MSD management, training, and evaluation) are essential to a properly functioning ergonomics program. These elements are included in the safety and health programs recommended or used by many different organizations (the ergonomics standard uses slightly different terminology for some of these elements):

- OSHA's VPP, SHARP, and consultation programs;
- The safety and health programs mandated by 18 states;
- The safety and health programs recommended by insurance companies for their insureds (many of which give premium discounts for companies that implement these programs or impose surcharges on those that do not);
- The safety and health programs recommended by the National Federation of Independent Business, the Synthetic Organic Chemical Manufacturers Association, the Chemical Manufacturers Association, the American Society of Safety Engineers, and many others;
- The strong recommendations of OSHA's Advisory Committees (NACOSH, ACCSH, and MACOSH), which consider these program elements essential to effective worker protection programs.

OSHA also is including WRP, or equivalent protections against wage loss, as a requirement for all programs (both those that are grandfathered and those complying with the standard) because, without it, OSHA believes that many employees will be reluctant to report their MSDs because they fear economic loss. There is strong evidence that such underreporting is currently taking place, as well as evidence that protecting workers from wage loss increases reporting (see the discussion of underreporting in the summary and explanation for MSD management). OSHA's purpose in including a WRP provision, both in the grandfather clause and in the standard, is to ensure employee participation and free and full reporting of MSDs and MSD hazards. Effective ergonomics programs depend on such reporting, and the standard also depends on employee reporting for its effectiveness. Absent such reporting, no ergonomics program will achieve its worker protection goals.

For these reasons, OSHA has concluded that quantitative effectiveness measures alone cannot be the sole basis for judging whether an employer's program should be grandfathered. The Agency's experience over the last two decades, and that of private industry and insurance companies, is that safety and health programs, and ergonomics programs, containing the core elements are effective in lowering injury and illness rates. These programs work because they involve everyone in the organization in finding and fixing hazards. They also establish two-way communication in the form of reporting and response systems. OSHA finds that the core elements are essential to effective ergonomics programs, and the record provides ample evidence of this (see the discussion below on whether the core elements are necessary). Employee participation, for example, is a prominent component of the programs of many leading companies (see, *e.g.*, Exs. 32–77, 32–185, 32–210; Tr. 4973, Tr. 5339). The core elements also help to ensure that employees are reporting their MSDs, that management is responding to these reports, that jobs are being analyzed and fixed, and that the program is functioning as it should. The core elements thus help to ensure that programs are not focusing too heavily on quantitative measures of effectiveness, which, as the discussion above shows, are often misleading.

OSHA agrees, however, that effectiveness measures can be useful in determining the degree to which an ergonomics program is working. Employers and authors of effectiveness studies routinely rely on them as evidence that an ergonomics program is having a positive effect. Of the measures available, incidence and severity rates are most commonly used and were most often recommended in the rulemaking record (see, *e.g.*, Exs. 30–1901, 30–2208, 30–3344, 30–3348, 30–3361). If one of these measures is used, the employer must take care to ensure that the calculated incidence or severity rate accurately reflects conditions at the workplace. First, the effectiveness measure chosen must be appropriate for the size and nature of the workforce and the employer's MSD experience. For example, as explained earlier, an employer with few employees will not find incidence rates useful to measure effectiveness. Instead, such employers could examine whether employee exposure to MSD hazards has been reduced. Second, the employer must check to ensure that some MSDs are not going unreported. If employees are failing to report MSDs, the employer's calculated incidence and severity rates will not accurately reflect the injury experience at the workplace. Third, the employer should check rates over a variety of periods to ensure an overall downward trend in the data. Looking at data over a single period can be misleading.

OSHA finds, based on the evidence in the record as a whole, that reliance on both qualitative (the core elements) and quantitative (effectiveness measures) components will best assure that any program that is grandfathered deserves this status and will continue to operate

effectively in the future. Consequently, the final rule's grandfather clause requires that grandfathered programs contain the core elements of effective ergonomics and be demonstrably effective. Employers may use any of a broad range of measures, including reductions in the number or severity of MSDs, increases in the number of jobs in which ergonomic hazards have been controlled, reductions in the number of jobs posing MSD hazards to employees, or any other measure that demonstrates program effectiveness to meet the grandfather clause's requirement for a demonstration of program effectiveness.

3. Whether the Core Elements Are Necessary

Some industry representatives objected to the proposed requirement that grandfathered programs contain all the core elements of the proposed standard (see, *e.g.*, Exs. 30–1722, 30–3853, 30–3956; Tr. 5699). They argued that any program that was effective in reducing MSD rates should be accepted for grandfather status, even if it did not include all the core elements.

For example, the Washington Legal Foundation was particularly concerned that employee participation was proposed as a required component of grandfathered programs and of the program required by the standard (Tr. 11265). They argued against mandatory employee participation:

> OSHA's proposed ergonomic standard perhaps more so than any other standard mandates full employee involvement in every aspect of its requirements.
>
> In many ways, the proposed standard places employees in the driver's seat.
>
> Certainly many companies have determined that a [cooperative] relationship with their employees is beneficial on both a safety and a production level.
>
> Other companies, however, have reached a different conclusion. And certainly, the conclusion to be reached may differ depending on the type of work involved, the size of the company, the characteristics of the work force, and other factors.
>
> The Washington Legal Foundation does not believe that it is its place to determine that some of these [employers] are right and others are wrong nor is it the place of the federal government to mandate a specific mode of employer/employee relations (Tr. 11265).

On the other hand, some union representatives argued strongly in favor of the core elements (see, *e.g.*, Exs. 32–210, 32–461, 500–218). The International Brotherhood of Teamsters noted that they had worked with various employers through the collective bargaining process to address ergonomic hazards and that some employers' programs took a piecemeal rather than comprehensive approach to the problem and should therefore not be granted grandfather status (Exs. 30–4200, 32–461). The UFCW argued that the proposed core elements are recognized as the basic elements of a good ergonomics program (Ex. 32–210). They presented their experience with successful ergonomics programs as follows:

> The six elements OSHA is proposing in the ergonomics program standard are included in all successful company programs! Further, the experience of the myriad of companies who have successfully tackled the problem through these elements attests to the feasibility of the methods. The settlement agreements OSHA has entered into with IBP, Sara Lee, Cargill, ConAgra Poultry, John Morrell & Co., Empire Kosher, Marshall Durbin Companies, National Beef, Worthington Packing and Tyson Foods contain these six elements—all work, and all are feasible. Many of the companies used ergonomists, they analyzed the jobs and developed engineering solutions to address the most egregious jobs. They developed medical protocols so that workers can get to treatment early rather than waiting until they were crippled and needed surgery. They protect workers wages and benefits when they report MSDs. And in our represented companies, all this included the union in a fundamental way. In order to be effective, ergonomics programs by their very nature must be participatory and include workers at many levels, including those that do the problem jobs (Ex. 32–210).

Mr. Bawan Saravana-Bawan, a representative from the Canadian province of British Columbia, described how that province handled existing programs when its ergonomics standard came into effect (Tr. 14260). He stated that existing programs needed to incorporate any missing elements in order to be accepted. On the basis of his experience he stated that any ergonomics program needed to have all the core elements (management leadership and employee participation, information dissemination, hazard identification, hazard assessment and control, training, and program evaluation) to be successful.

The Department of Defense (DoD) also argued that the program elements are essential. The DoD noted that the success of their program is due to the elements of the program, including, in particular, management leadership, employee participation, hazard prevention and control, and monitoring injury records and responding to potential problem areas (Ex. 30–3826).

OSHA has concluded that it is essential for ergonomics programs, whether grandfathered or not, to address all of the core elements: Management leadership and employee participation, hazard information and reporting, job hazard analysis and control, training, MSD management, and program evaluation. (The Agency has presented evidence supporting each of these core elements in the summary and explanation for the corresponding provisions of the standard, below.) Further, the Agency finds that it is as important for a grandfathered program to include all of the core elements as it is for a program brought into existence to comply with the final rule to include these elements. Although some commenters, as discussed above, argued that a program could be effective without all of the core elements, OSHA finds their arguments unpersuasive, based both on the record and the Agency's own experience with successful programs.

The Agency believes that the core elements provide assurance that the program will work as intended—management leadership will ensure that the program has the continued backing of management, which is essential to continued success; employee participation in the program will help ensure that ergonomic hazards do not go undetected; hazard information and reporting will ensure that employees are informed about MSD symptoms and how to report them so that work-related MSDs are not ignored; work restriction protection helps to ensure that workers report signs and symptoms as early as possible; job hazard analysis and control are needed to ensure that ergonomic hazards are found and abated; MSD management is necessary so that MSDs are managed appropriately and injured employees get well as soon as possible; and program evaluation is necessary for the correction of deficiencies in the program. Without the checks and balances the core elements provide, OSHA believes that ineffective programs may be judged effective on the basis of an inappropriate measure, and once-successful ergonomics programs could deteriorate over time and leave employees unprotected.

Some rulemaking participants agreed that grandfathered programs should include the core elements but argued that compliance with the proposed basic obligation sections for each core element was not essential to having an effective program (see, *e.g.*, Exs. 30–1294, 30–3813, 30–3723, 30–3765). These commenters believe that many employers have effective programs that would not be recognized by the proposed standard because they would not meet the proposed basic obligation sections. ORC reflected the thrust of these comments as follows:

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[5] Using a rolling average incidence rate would help smooth out, but would not eliminate the year-to-year variability.

> Equally important, contrary to OSHA's contention in the preamble, the ability of an employer to continue applying an existing program should not be based on whether the "basic obligation section of each program element in this standard" is satisfied. OSHA has provided no objective evidence that the requirements of the proposed standard will be any more effective than other programs already in place. There is certainly no basis for compelling an employer to rework an effective program to force it to meet the specifics even of the proposed basic obligations (Ex. 30–3813).

Dow, ORC, and others suggested that OSHA simply require grandfathered programs to address the six basic elements of the program instead of requiring them to meet the proposal's full basic obligation for each core element (see, *e.g.*, Exs. 30–2134, 30–2725, 30–3171, 30–3765, 30–3813, 32–77). ORC noted that the proposed work restriction protection requirements were particularly troublesome, since "[v]irtually none of ORC's member companies, whose ergonomics programs are among the most sophisticated and effective in the country, would meet this requirement * * *" (Ex. 30–3813). Dow was concerned that the language in the proposal would not recognize their program, which is tailored to fit their management structure. They stated:

> The so-called Grandfather clause that OSHA has proposed is so demanding in its requirements that companies that have existing and successful ergonomics programs, such as Dow, will not be able to take advantage of this provision to maintain their current programs. The Grandfather clause is so limited that already functioning and successful programs, tailored to the needs of a particular company, business or workplace, will not be able to satisfy the requirement. For example, in Dow's case, we would not be able to satisfy the extensive recordkeeping requirements or elements of the WRP section (since it goes beyond that required by Workers' Compensation laws.) Similarly, given Dow's management structure, we would not satisfy OSHA's communication and training requirements wherein they intend a more archaic management structure, such as one having "supervisors" and the like, than what Dow utilizes. So even though Dow has had a successful ergonomics program for years and has a lower than average MSD incidence rate, we would have to scrap our efforts and use a program which will not fit our needs or management structure, just to comply with this standard. Dow believes this is unacceptable.
>
> Instead, Dow urges OSHA to delete the proposed Grandfather clause and replace it with a provision that allows for an "acceptable" or "appropriate equivalent" program. Such a concept is not foreign to OSHA or the regulated community as other OSHA standards, such as the Process Safety Management ("PSM") standard, utilize this concept so that companies that have existing programs that are functioning successfully can continue to use them. This concept also allows companies who may not yet have an existing program to create one tailored to their own needs, rather than use a more "one size fits all" program as envisioned by this proposal. "Acceptable (or appropriate) Equivalence" would include those programs who have the basic elements of a program, but not all the mandated details or documentation. Such a concept embodies "performance-oriented mandates" at their best as they allow an employer to employ those methods of prevention that best meets the needs of its particular workforce and/or workplace. OSHA should only be concerned with the results (*i.e.* lower injury rates) rather than the methodology a particular employer used to obtain that goal (Ex. 30–3765).

At the hearing and in their notice of intention to appear at the public hearing, Dow described their ergonomics program and detailed how they believe their program would fall short of the proposal's requirements (Ex. 32–77; Tr. 5339). Dow expressed concern that, although their program meets the spirit of the proposed standard, it would not meet the letter of the law.

In response to Dow's concern, OSHA reviewed the perceived discrepancies between the proposed rule and Dow's description of their program. In every respect except one, Dow's program would have satisfied the proposed grandfather clause; the discrepancies Dow was concerned about were apparently the result of misinterpretation rather than deficiencies on the part of Dow's program. For example, Dow stated that, in its program, employees report MSDs using the company's existing injury and illness reporting system rather than a separate system set up just for MSDs; Dow evidently believed that a separate system would have been required by the proposal (Ex. 32–77; Tr. 5340). However, the proposed standard would not have required employers to set up a separate system for reporting MSDs as long as their existing system included a system for the reporting of MSDs. On the other hand, Dow was correct in stating that their program did not include the proposed work restriction protection provisions and would therefore not have been eligible for grandfather status under the proposed rule.

In its post-hearing submission, Edison Electric Institute argued that the specificity of the proposal's basic obligations is counter to the goal of flexibility, and the Institute recommended that the final rule reduce the detail in the basic obligation sections to allow employers greater latitude (Ex. 500–33).

The Mead Corporation suggested that, if the Agency's safety and health program rule was not promulgated before the ergonomics rule, OSHA should alter the grandfather clause in the ergonomics rule in one of two ways: (1) Make the basic obligations less prescriptive and detail acceptable alternatives for prevention-oriented programs, or (2) permit employers with effective programs to maintain them without making sweeping changes (Ex. 30–2216).

On the other hand, the AFL–CIO argued that the standard should require employers to meet the proposed basic obligations for each core element before being grandfathered in (Ex. 32–339; Tr. 3477). The AFL–CIO pointed out, however, that the basic obligation sections for several of the proposed core elements left out important requirements that were included under the core elements:

> The AFL–CIO believes that employers with existing programs should be permitted to continue with these programs if they are comprehensive, provide workers and their representatives full information and rights of participation, and are effectively reducing MSDs and exposure to hazards. However, as proposed, the "grandfather" provisions are deficient in a number of respects and will permit employers to continue programs that do not provide adequate protection.
>
> First, the [proposed] basic obligation requirements which all programs must meet, exclude a number of elements that in our view are essential for an effective program. For example:
>
> - The [proposed] basic obligation section for Hazard Information and Reporting * * * does not [include] any requirement to provide employees information about MSD hazards.
> - The [proposed] basic obligation on training * * * excludes any requirement for training supervisors or individuals responsible for the ergonomics program, thus permitting programs to be "grandfathered" even if persons responsible for the program do not have the necessary training. The basic obligation for training also fails to provide for job specific training on MSD hazards and control measures.
> - The [proposed] basic obligation for Medical Management * * * does not require that medical evaluations be conducted by a health care provider.
> - The [proposed] basic obligation for Program Evaluation * * * does not require consultation with employees in problem jobs or their designated representatives to determine their views on the effectiveness of the program (Ex. 32–339).

As noted earlier, other rulemaking participants also urged OSHA to strengthen the proposed basic obligations sections (see, *e.g.*, Exs. 30–4200, 32–198, 32–210, 32–461). These commenters criticized the proposed rule's lack of basic obligation requirements for the training of managers and for employee participation in job hazard analysis and control. UNITE decried the omission from the proposal of a requirement for the health care provider to be furnished with information about the workplace and the employee's job (Ex. 32–198). Another commenter objected to the omission from the proposal of requirements that limited the use of personal protective equipment and required employers to provide it at no cost to employees (Ex. 32–210).

Another group of commenters were particularly concerned about the fact that the proposal would not have permitted their otherwise excellent programs from being grandfathered because they did not have work restriction protections now (see, *e.g.*, Ex. 30–3723, 30–3765, 30–3813). SBC Communications, Inc., represented those who opposed the proposed grandfather clause's requirement for work restriction protection:

> In order to meet the grandfather clause, a company must have a "functioning properly" Wage Protection Program. Through our extensive research and benchmarking, no company has this element to their ergonomics program. Nor did OSHA provide any evidence of the Wage Protection Program being trialed, researched, and/or tested at a company. OSHA has made it nearly impossible for any company to meet the requirements of the grandfather clause (Ex. 30–3723).

On the other hand, the AFL–CIO noted that the hearing testimony demonstrates that some employers do currently provide wage protection for employees who suffer MSDs:

> The hearing record shows that some employers indeed are maintaining the full wages of workers who are put on medical restrictions as a result of MSDs (Tr. 16014, Tr. 14357) (Ex. 500–218).

The General Electric Company argued that employers who have employee involvement and an environment free of barriers to reporting should not be required to follow the rule's requirements for WRP (Ex. 30–1071). Novartis Corporation went further, suggesting that the entire MSD management element be removed from the standard (Ex. 30–3092). They also recommended that compliance with the endpoint provisions not be a condition for grandfathering existing programs.

The AFL–CIO recommended that OSHA permit existing programs without work restriction protection to be grandfathered as long as the employer incorporates such protections into the ergonomics program before the effective date of the standard (Ex. 500–218). They believed that this would help alleviate the concerns of employers whose programs were missing only that one element.

Although the AFL–CIO provided evidence that some employers do provide wage protection for their employees, OSHA believes, based on the record, that very few employers' existing ergonomics programs incorporate work restriction protection in the form required by the proposed standard. Despite the fact that many employers have policies (such as sick leave, short-term disability, and so on) that assure employees that they will not experience economic loss if they are injured, the record of this rulemaking indicates that many workers fear they will lose wages and benefits if they report their injuries (see the detailed discussion of the record in the summary and explanation for paragraph (r) below). The Agency therefore concludes that grandfathered programs must protect against such loss if they are to achieve the early reporting that is essential to program success. Consequently, in paragraph (c)(2) of the final rule, OSHA is allowing existing ergonomics programs that otherwise meet the criteria of the grandfather clause up to an additional 12 months to adopt an MSD management policy, including work restriction protection. The MSD management policy must meet paragraphs (p) through (s) of the final rule. The MSD management requirements in the final rule contain many inter-related provisions that are key to a successful ergonomics program. (See the summary and explanation for paragraphs (p) through (s) of the final rule.) The Agency has concluded that, because of the many interdependencies in final rule paragraphs (p) through (s), employers need to follow all of the detailed requirements of those paragraphs. However, to ensure that existing programs will still be able to qualify for grandfather status even if they do not meet the final rule's MSD management requirements, OSHA is allowing employers up to a year to meet those provisions.

Based on a review of the evidence in the record, OSHA has concluded that the proposed standard's basic obligation requirements failed to provide employers with effective existing programs sufficient flexibility with regard to grandfather status. Accordingly, in paragraph (c)(1) of the final rule, OSHA has not carried forward the proposed requirement that employers' programs satisfy the basic obligation of each element and instead requires that those programs simply contain the core elements and certain subelements, which the Agency has pared to the minimum necessary to ensure the continued effectiveness of grandfathered programs. In particular, OSHA has streamlined and made more flexible the provisions that rulemaking participants claimed were most problematic such as the employee participation and WRP provisions. OSHA also has placed the required subelements in the text of the grandfather clause itself rather than in the basic obligations sections for each of the core elements, as proposed. OSHA believes that these changes will make the core elements that grandfathered programs must currently have as flexible as possible while still ensuring that the basic components that make each core element effective are present.

In addition to considering the comments of industry representatives objecting to the core elements and their subelements, OSHA has reviewed the list of subelements that several labor organizations believed were essential to determine whether they should be included in the final rule's grandfather clause requirements (Exs. 32–198, 32–339; Tr. 3477). The Agency has included several improvements in the final rule's grandfather clause as a result of this review. First, the grandfather clause's training element now contains a requirement that employees be trained in MSD risk factors (see paragraph (c)(1)(iv)). This provision ensures that employees will be informed of MSD hazards in their workplace. Second, OSHA has added a requirement for the training of managers and supervisors to this core element. Third, OSHA has included language specifically requiring employees to be involved in program evaluation to the core element for employee participation (see paragraph (c)(1)(ii)). These additions will help ensure that ineffective programs are not accepted under the grandfather clause.

The remaining suggestions from these commenters, such as UNITE's recommendation to include a requirement for the health care provider to be furnished with information about the workplace and the employee's job (Ex. 32–198), have been accommodated by paragraph (c)(2) of the final rule. Existing programs need not currently have MSD management as a core element in order to qualify for grandfather status. However, grandfathered programs will need to add an MSD management element meeting paragraphs (p) through (s) within 1 year after the final standard's effective date. Thus, grandfathered programs will have to meet the same MSD management requirements as programs that are not grandfathered.

4. Whether the Language of the Grandfather Clause Is Vague

Some rulemaking participants argued that the language in the proposed grandfather clause was vague (see, *e.g.*, Exs. 30–494, 30–2208, 30–3922, 30–4467; Tr. 16470). They thought that this language would make it difficult for an employer to determine if he or she qualified under the grandfather clause. For example, Dennis Morikawa of Morgan, Lewis, and Bockius stated:

> These vague requirements do not inform employers which ergonomic programs OSHA would accept. Specifically, OSHA does not explain what a "basic obligation" is; nor does the Proposed Rule specify the level of detail employers must achieve when they attempt to comply with a basic obligation. Moreover, the grandfather clause does not make clear whether an effective, existing program without a single-incident trigger would be acceptable. For example, if programs that satisfy the CAL/OSHA standard discussed above would be accepted under the grandfather clause, then most companies would seek to design and install ergonomics programs before the effective date of the new Proposed Rule. But if a two-incident trigger would not satisfy a "basic obligation," employers would be forced to re-design existing programs in order to meet the Proposed Rule, thereby creating a double standard of compliance. This, of course, would effectively eviscerate the notion of a grandfather clause. OSHA needs to specify which aspects of the Proposed Rule would be considered basic obligations, and the amount of attention to detail that employers must pay when adhering to these basic obligations. Without an assurance from the agency that an adherence to basic obligations would not require major overhauls of effective programs, the grandfather clause is illusory (Ex. 30–4467, p. 13).

Some rulemaking participants stated that the vagueness of the grandfather clause would force employers to refer to the more detailed provisions of the standard to understand their compliance obligations (see, *e.g.*, Exs. 30–494, 30–4340). They argued that the effect of this vagueness would be that employers would be forced to comply with the entire standard, which would render the grandfather clause useless.

Even some of those who supported OSHA's proposal in general agreed that the proposed grandfather clause was vague (see, *e.g.*, Exs. 30–4538, 32–210). These rulemaking participants and others urged the Agency to provide compliance assistance material, such as flowcharts, checklists, and other tools, to help employers determine whether their programs qualified under the grandfather clause (see, *e.g.*, Exs. 30–4538, 32–210, 32–339, 500–207). For example, the International Brotherhood of Teamsters stated:

> [W]e strongly urge OSHA to provide checklists and evaluation tools to assist employers with the evaluation of their programs. Employers who want to take advantage of the "grandfather" provisions should be required to use a checklist based on objective criteria to demonstrate that their program is effectively reducing exposures to ergonomic risk factors, reducing the incidence and severity of musculoskeletal disorders, and complies with the standard's basic obligations. These materials are currently used by many ergonomics programs and could be made available by OSHA through its website (Ex. 500–207).

OSHA believes that the grandfather clause in the final standard is clear. For example, the training element requires the training of managers, supervisors, and employees in: (1) The employer's ergonomics program and their role in it; (2) the recognition of MSD signs and symptoms; (3) the importance of early reporting; (4) the identification of MSD risk factors and methods that may be used to abate them; and (5) the risk factors in problem jobs in the workplace and methods of controlling them. To provide employers flexibility, the standard does not address the details of how that training is provided, but it is clear about the topics the training must cover.

Other elements provide clear direction about how an employer is to demonstrate compliance. For example, the employer must evaluate the program, as demonstrated by regular reviews of the elements of the program, the effectiveness of the program as a whole, and the correction of identified deficiencies. Again, this language provides clear criteria that employers' evaluations must meet in order to be grandfathered in.

There are two aspects to Mr. Morikawa's comments (Ex. 30–4467) about the acceptability for grandfather clause status of programs meeting the California standard's two-incident trigger. The first relates to Federal OSHA's acceptance of the California ergonomics rule under the Act's provisions for ensuring that state standards developed by the State Plan States are as effective as the Federal standard. OSHA will, after it promulgates this final ergonomics program standard, evaluate the ergonomic standards developed by State Plan States (such as California and Washington) to determine whether they are "as effective as" the Federal standard. OSHA clearly could not have made such a determination at the time of the proposal, as Mr. Morikawa suggests, because the form and content of the final OSHA rule could not be known at that time. However, OSHA is unlikely to find any standard that delays protection to employees, including those in small firms, or that provides less protection to employees overall, as effective as the final rule.

The second relates to the details of grandfathered programs. Paragraph (c) of the final rule does not attempt to dictate precisely what form a grandfathered program must have, beyond stating that it must have the core elements of successful programs, be demonstrably effective, and be evaluated and in place by the final rule's effective date. OSHA has not mandated such program specifics because grandfathered programs will take many different forms, be at many different stages of development, and be taking various approaches to achieving success. The grandfather clause thus insists on the fundamentals but leaves the specifics to employers.

The final standard also requires the employer to demonstrate that an existing program is effective before that program qualifies under the grandfather clause (see paragraph (c)(1)(v)). The employer is free to use one of the measures specified in the standard itself (that is, reductions in the number or severity of MSDs, increases in the number of jobs in which ergonomic hazards have been controlled, reductions in the number of jobs posing MSD hazards to employees) or any other valid measure that the employer chooses to evaluate the program and demonstrate effectiveness. The Agency currently provides some compliance assistance materials that include ways to measure the effectiveness of ergonomic interventions. For example, the "Ergonomic Program Management Guidelines for Meatpacking Plants" (Ex. 2–13) provides a method for monitoring trends in cumulative trauma disorders that may be used for this purpose. OSHA's 1989 Voluntary Safety and Health Program Management Guidelines (Ex. 2–12) also describe effective program evaluations. These documents are available on OSHA's Website (http://www.osha.gov). OSHA also intends, as resources permit, to provide additional compliance assistance materials that will help employers determine whether or not their programs are effectively addressing MSDs.

In sum, OSHA believes that the final grandfather clause provides sufficient information for employers to determine if their programs qualify for the grandfather clause. OSHA compliance officers also will be able to assess whether the employer's program qualifies for grandfather status. OSHA will include directions on how this is to be done in a compliance directive to be issued soon after promulgation of the final rule.

5. Alternatives and Revisions to the Grandfather Clause

Several rulemaking participants suggested approaches that would permit alternative programs developed after the standard is in effect to be followed by employers in lieu of compliance with the standard (see, *e.g.*, Exs. 30–2216, 30–3765; 30–3813, 32–339, 500–44; Tr. 3477). Many of these commenters argued that their recommendations would address the previously discussed concerns with the proposed rule's grandfather clause—concerns such as the perceived illusory nature, vagueness, and subjectivity of the proposed grandfather clause. The alternatives or revisions to the proposed grandfather clause suggested by these commenters included:

- Revising the clause to allow programs that are incomplete at the time of the effective date to be grandfathered (see, *e.g.*, Ex. 30–3813; Tr. 4111);
- Revising the clause to make clear that a company whose program had been grandfathered could extend that program (and grandfather status) to establishments newly built or owned, or acquired through mergers or acquisitions (see, *e.g.*, Exs. 30–3813, 30–3922, 32–78; Tr. 5538);
- Revising the clause to allow any program developed by an employer at any time, including after the standard has become effective, to be implemented without fear of citation for noncompliance with the OSHA standard (see, *e.g.*, 30–429, 30–1090; Tr. 15657);
- Revising the clause to specify that OSHA will certify or approve employers' programs as qualified for grandfather status (see, *e.g.*, Ex. 32–133, 500–139);
- Revising the clause to recognize for grandfather status any program that complies with either the Washington State or the California standard (see, *e.g.*, Exs. 30–429, 30–434, 30–973, 30–1090, 30–1547, 30–1671, 30–2835, 30–3813, 30–4134, 31–337, 32–311);
- Delete the grandfather clause and substitute instead provisions giving employers credit for already having performed some of the required elements, such as training, before the effective date (see, *e.g.*, Exs. 30–1547, 32–185, 32–311, 32–339, 32–461, 500–207; Tr. 6423, 11129, 13092).

For example, ORC made several suggestions along these lines (Ex. 30–3813; Tr. 4111). First, they recommended that OSHA rename this section "Alternative Programs Provision." They also suggested that, as a stimulus to innovation, OSHA allow employers who do not now have fully developed programs to qualify for grandfather status in the future when they do have such programs. DuPont SHE Excellence Center made a similar recommendation:

> [One] improvement in the flexibility would be to allow whichever elements that have been put in place to be grandfathered and those which are not in place to be added. The grandfather clause should not be an "all-or-nothing" clause (Ex. 30–2134).

In addition, ORC, along with other rulemaking participants, recommended allowing an employer's program to be grandfathered after the effective date of the standard, which would permit employers involved in mergers and acquisitions to put their already grandfathered programs into place in new establishments (see, *e.g.*, Exs. 30–3813, 30–3922, 32–78; Tr. 5538). ORC also recommended that OSHA permit employers to extend existing grandfathered programs to new establishments operated by the same employer (Ex. 500–214).

The rulemaking participants who recommended that the standard permit future alternative ergonomics programs to be grandfathered did not address how an employer might avoid noncompliance while developing the program or in the period before the employer had demonstrated the effectiveness of the new program. OSHA does not believe that such an approach would be workable. First, it would be administratively difficult (if not impossible) to enforce. Second, OSHA is issuing a final standard addressing ergonomic injuries because the varied approaches and often isolated interventions that many employers have adopted have not effectively addressed the problem, and a uniform and comprehensive approach to this most serious of occupational safety and health issues is clearly necessary. The approach recommended by the commenters would mean that, while employers try different programmatic approaches, employees would continue to be exposed to ergonomic hazards with no guarantee that the employers would ever qualify for "grandfather" status. Third, OSHA is loathe to require the expenditure of resources to make existing, effective programs containing all the core elements meet all the requirements being imposed by the full ergonomics standard. Employers without programs and employers with ineffective programs or programs missing key elements would need to expend resources to meet whatever requirements OSHA imposed on alternative programs. The Agency believes that these resources should be expended to meet the final standard in all its details so as to ensure adequate protection for employees.

OSHA agrees, however, that a company that meets the rigorous standards of paragraph (c) and thus qualifies for grandfather status should be permitted to apply the same excellent program that was grandfathered to new plants it builds or acquires by merger or acquisition. OSHA believes that permitting a grandfathered program to be extended in this way makes sense from two perspectives: first, it ensures that the new establishments will benefit from the expertise in ergonomics programs that the parent company brings, and, second, it ensures that the company will have a single, cohesive corporate ergonomics program. For these reasons, OSHA has decided to extend grandfather status to the programs implemented in newly acquired or built plants of a corporation that already has a grandfathered program.

The American Industrial Hygiene Association (Ex. 32–133) recommended that employers formally request OSHA to recognize their programs:

> As the standard puts much of the burden on employers to adapt the program to their own needs, it would be appropriate for OSHA to say that employers can ask to have their program "grandfathered". This would require them to formally document their program and compare it with the OSHA requirements. This should not be a problem if the company has a functional program (Ex. 32–133).

Kaiser Permanente made the same recommendation in their post-hearing comments (Ex. 500–139).

However, OSHA's resources do not permit it to evaluate employers' programs for grandfather status; in addition, a "paper" review of a program is not adequate to determine how it is working in practice. OSHA continues to believe that employers are in the best position to determine whether their programs qualify for grandfather status.

The Eastman Kodak Company (Exs. 30–429, 30–1090) suggested that the Agency adopt a flexible grandfather clause that recognizes good faith on the part of employers:

> We believe that what OSHA needs is a "good faith" grandfather clause that recognizes employers for a positive effort and ongoing solutions. We believe that it should be sufficient for an employer to have a written active program and show intent, to be compliant. The existing program rule (WAC 296–62–05110) of the Washington State proposed standard is better suited to this end and is recommended for incorporation (Ex. 30–429).

Other rulemaking participants also recommended that OSHA adopt the proposed Washington State approach towards existing programs (see, *e.g.*, Exs. 30–434, 30–2835, 30–3813, 30–4134, 31–337, 32–311). They argued that Washington's approach, which accepts alternative programs when the employer can demonstrate that the alternate methods taken as a whole are as effective as the requirements of the standard, would grandfather far more effective programs than OSHA's proposal. They also noted that this approach would focus the Agency's efforts on results rather than on details they perceived as minor.

The Washington State standard's grandfather clause reads as follows:

> *WAC 296–62–05110 When Do Employers' Existing Ergonomics Activities Comply With This Rule?*
>
> Employers may continue to use effective alternative methods established before this rule's adoption date. If used, the employer must be able to demonstrate that the alternative methods, taken as a whole, are as effective as the requirements of this rule in reducing the WMSD hazards of each job and providing for employee education, training and participation (Ex. 500–71).

Other commenters (see, *e.g.*, Ex. 30–4467) urged OSHA to accept compliance with the California ergonomics standard as constituting acceptance under the grandfather clause.

Again, as discussed above, formal recognition of the "as effective as" status of these two State-plan State standards must await a formal determination by Federal OSHA. However, since acceptance under the final rule's grandfather clause depends on program effectiveness, confirmation of that effectiveness through evaluation, and the inclusion in the program of the core elements, many proactive California and Washington employers' programs are likely to meet the final standard's requirements for grandfather status. The programs of many employers in these states may not meet these requirements, however, since neither State standard requires all of the core elements.

The AFL–CIO, the International Brotherhood of Teamsters, and others suggested that OSHA give employers credit for steps, such as training and job hazard analysis, they have taken toward controlling ergonomic hazards or for controlling hazards in problem jobs in their workplaces (see, *e.g.*, Exs. 30–1547, 32–185, 32–311, 32–339, 32–461, 500–207; Tr. 6423, Tr. 11129, Tr. 13092). These commenters believed that such credit could substitute for a true grandfather clause.

The final ergonomics standard does give credit to employers who have already carried out certain procedures or voluntarily complied with portions of the standard. For example, employers who have already performed job hazard analysis in some jobs would not have to re-analyze those jobs (see paragraph (j)(1) of the final rule). Likewise, employers who have already trained their employees in the ergonomic control measures they instituted would not have to duplicate that training (see paragraph (t)(5) of the final rule).

Some rulemaking participants suggested that OSHA recognize for grandfather status any ergonomics program in effect at the time the final rule becomes effective (see, *e.g.*, Exs. 30–494, 30–2989, 30–3781, 500–213; Tr. 10089). These commenters believe that these employers should be rewarded for their proactive stance toward ergonomics. For example, the National Council of Agricultural Employers said, "a grandfather clause should recognize and exempt forward-thinking employers that have already implemented an ergonomics program" [Ex. 30–3781]. The National Association of Convenience Stores went further to suggest that OSHA also grandfather trade-association-provided programs: "OSHA [should] consider grandfathering existing risk management programs or industry-specific programs which trade associations may be able to provide to their members' (Tr. 10089). The Air Conditioning Contractors of America recommended that OSHA recognize virtually any existing ergonomics program under the grandfather clause (Ex. 500–53). It said that OSHA could require grandfathered programs to be improved at such time in the future as MSD hazards became better understood.

As explained earlier, OSHA believes that it is essential for grandfathered ergonomics programs to include all of the core elements of successful ergonomics programs and to meet demonstrable effectiveness criteria. OSHA agrees that employers who have already adopted existing programs are proactive; however, some of these employers are likely to have programs that are not as protective as the program OSHA is requiring or programs that do not include those elements shown to be essential to program effectiveness. It would therefore be inappropriate for OSHA to grandfather these programs.

Several hearing participants provided OSHA with alternative regulatory language for the grandfather clause in their post-hearing submissions (Exs. 500–44, 500–78, 500–80). Southwestern Bell recommended the following language (Ex. 500–78):

How does this standard apply if I already have an ergonomics program?

If you already have an ergonomics program for the jobs this standard covers, you may continue that program provided:

(a) You have a written program that contains:

(i) Defined roles and responsibilities;

(ii) Training on the prevention of work-related MSD's; and

(iii) Procedures for completing job hazard analysis for work-related MSD's.

(b) The controls implemented are intended to reduce or eliminate risk factors for work-related MSD's;

(c) You have a program evaluation process; and you have implemented your program before the effective date of the final rule (Ex. 500–78).

OSHA has considered Southwestern Bell's suggested language but has rejected it because the programs that would be grandfathered in by such language would be missing several important elements—employee participation, hazard information and reporting, and MSD management, for example. As explained earlier, OSHA considers these elements essential to any successful ergonomics program. In addition, Southwestern Bell's approach does not contain any requirement that the program be effective, be achieving positive results, or be reducing the number of MSDs.

The American Petroleum Institute (API) proposed language that would accept an employer's existing program if it contained the following seven elements: (1) Management leadership and employee participation, (2) hazard information and reporting, (3) job hazard analysis and control, (4) training, (5) MSD management, (6) program evaluation, and (7) recordkeeping (Ex. 500–80). API's proposal also would require grandfathered programs to contain subelements under each element. For example, under job hazard analysis and control, API's language included the following provisions: "Jobs in the workplace must be assessed to identify the potential for MSD hazards. Consistent with the job assessment, an action plan is developed to control identified or potential MSD hazards determined to present a significant risk." Their language also suggested that grandfathered programs demonstrate effectiveness via measures such as the following: Decreases in the frequency of reported MSDs, decreases in the severity of MSDs, reduced workers' compensation claims related to MSDs, symptoms surveys, and a reduction of MSD risk factors. API did not include work restriction protection among the elements grandfathered programs must have.

API's suggested grandfather clause had two other features. First, it specifically recognized any program meeting the requirements of an employer's State OSHA ergonomics standard. Second, it recognized existing programs in both existing workplaces and newly acquired or built plants of a corporation that has a grandfathered program (Ex. 500–80).

API's approach is similar to the one OSHA is taking in the final standard's grandfather clause. The final standard includes all of API's recommended elements, and also requires the employer to demonstrate that the ergonomics program is effective. API's suggested criteria for determining effectiveness are also similar to those listed as examples in the final standard. Further, the final rule permits employers with grandfathered programs to extend those programs to new corporate plants.

On the other hand, OSHA is not, as discussed above, automatically grandfathering in employers' programs that comply with State-plan State ergonomics programs. In addition, API's suggested regulatory text would not require employers to provide WRP to employees who suffer work-related MSDs. As discussed earlier, OSHA has concluded that WRP is an essential part of any ergonomics program whether it is grandfathered or not.

The Dow Chemical Company also provided alternative language for a grandfather clause (Ex. 500–44). Their alternative provided criteria for seven core elements that ergonomics programs would have to meet to be grandfathered: hazard communication, MSD reporting, hazard identification, hazard evaluation and prioritization, risk mitigation or control, appropriate knowledge and skills (that is, training), and program evaluation. Dow included specific criteria for each of these elements and an explanation of how the criteria could be met for each of the elements. Dow likened their proposal to OSHA's Process Safety Management Standard (§ 1910.119), which sets the basic elements of a process safety management program and requires the employer to spell out the details.

However, OSHA is not adopting Dow's alternative grandfather clause approach in the final rule, for several reasons. First, Dow's language does not address several elements of ergonomics programs that OSHA considers essential, including management leadership, employee participation, and MSD management. Second, Dow's alternative is overly detailed. For example, the hazard communication element incorporates separate provisions on general information regarding MSDs and general information on warning signs associated with MSDs. It also includes a provision for providing specific information on potential ergonomic hazards in an employee's work area. Third, Dow's suggested grandfather clause appears to be designed to tightly match the company's own program rather than to fit a more widely recognized model ergonomics program, such as that in OSHA's meatpacking guidelines, a program lauded by many rulemaking participants who had experience with ergonomics programs (see, *e.g.*, Exs. 30–1294, 30–2216, 30–3046, 30–3677, 32–185; Tr. 14713). OSHA believes that more employers with effective existing programs will be able to qualify under OSHA's final grandfather clause, which is modeled after the Meatpacking Guidelines program, than those required by Dow's alternative.

Dow also commented on the enforcement implications of a performance-based grandfather clause:

> The verification of compliance to a performance language regulation is most effectively achieved when the method used for prescriptive regulation compliance verification is modified. The method used by Compliance Officers for a prescriptive regulation is based on the Officer's knowledge of what is specified by the regulation to be the practice, *i.e.* guard rail specification. However, for performance language regulations, such as the Process Safety Management regulation and the language suggested by Dow for this proposed regulation. The Compliance Officer only knows what elements are to be addressed by an employer's program: They will not know what to expect for practices. The means to address those elements are left to the employer so that they can use whatever means best match their workplace needs and the local culture. The Compliance Officer can only gain an understanding of that workplace program from the employer. This, we believe, is where the modification in approach should occur (Ex. 500–44).

OSHA believes that, like a true performance standard, the final grandfather clause is not prescriptive in nature and leaves the details of compliance to employers to determine. OSHA compliance personnel will look first to the employer's demonstration that the program includes the core elements and subelements and second that the program is effectively addressing MSDs. Compliance officers also may assess whether the employer's program in practice matches the written program that the employer has developed.

Magnus Farley, Inc., did not provide alternative language for the grandfather clause; however, they did recommend that OSHA develop revised language and publish it for comment before adopting a final rule (Ex. 500–102). They argued that this would give industry time to evaluate the new provision and respond to it. OSHA finds a re-proposal unnecessary, because participants had ample opportunity to provide comments on the proposed grandfathered clause. The sheer volume of comments received on this topic provides evidence of this fact. Further the final rule's grandfather clause is a logical outgrowth of the proposal. In fact, the final rule responds to the overwhelming public comment that OSHA should focus on effectiveness and recognize existing programs that do not look exactly like the one required by the rule.

Some rulemaking participants supported the proposal's approach toward existing programs with only minor modification (see, *e.g.*, Exs. 30–973, 30–1547, 30–2387, 30–3748, 32–85, 32–111, 32–339, 500–207; Tr. 15893). For example, the American Association of Occupational Health Nurses supported the proposed grandfather clause, but recommended that OSHA provide guidance for employers to use in evaluating their programs (Ex. 30–2387). The American Nurses Association supported the proposed requirement that existing program meet the basic obligation of each of the core elements of an ergonomics program (Ex. 30–3686). They did, however, recommend allowing employers up to 6 months to modify their programs so that they meet these basic obligations.

As noted earlier, program evaluation guidance is already available from the Agency. In addition, OSHA will be providing additional compliance assistance materials in the period following publication of the final rule. These materials will help employers judge whether their programs are effective and whether they qualify for grandfather status.

The final grandfather clause essentially accommodates the American Nursing Association's suggestion. Employers who, through one of the measures given in paragraph (c)(1)(v), can demonstrate that their programs are effective are free to add features that will bring them into compliance with the criteria given in paragraph (c)(1) any time before the effective date of the final standard. In addition, employers are given an extra 12 months to incorporate work restriction protection into their programs.

The Eastman Kodak Company argued that the proposal's grandfather clause would have required employers to fix all problem jobs before their programs were recognized (Exs. 30–429, 30–1090). The Boeing Company also noted that employers may have an acceptable program that covers some, but not all, of the jobs covered by the standard (Exs. 30–973, 30–1547). Boeing suggested allowing employers up to 2 years after the effective date to cover all such jobs.

As noted earlier, the final grandfather clause would permit employers to extend an ergonomics program that was successful in addressing some problem jobs to all problem jobs. In addition, because the final rule's compliance endpoints do not contain a set compliance deadline, employers may prioritize jobs for analysis and control if all jobs could not be controlled by the final rule's effective date.[6] Thus, the final standard addresses the concerns of these two rulemaking participants.

Some rulemaking participants suggested making the grandfather provisions more comprehensive (see, *e.g.*, Exs. 32–182, 32–198, 32–210, 32–339, 32–461). First, as noted earlier, the AFL–CIO and others recommended strengthening the basic obligations for four of the six core elements (see, *e.g.*, Exs. 32–198, 32–210, 32–339). Second, some participants urged OSHA to develop and publish checklists and evaluation tools to assist employers with the evaluation of their programs (see, *e.g.*, Exs. 32–85, 32–210, 32–339). Without these tools, they argued, an employer's program could be grandfathered without any solid demonstration that it is effective. The AFL–CIO argued that the standard should be as protective as, and consistent with, existing effective ergonomics programs, OSHA general duty clause settlement agreements, and OSHA and NIOSH recommended practice (Ex. 32–339). In keeping with this goal, they developed principles that they believe should guide OSHA in casting the final standard:

> The standard should codify and reflect the good industry practices and programs implemented by employers who have effectively addressed ergonomic hazards. It should build on the agency's enforcement actions and settlement agreements on ergonomic hazards under the general duty clause. The standard also should be consistent with the measures used in other agency standards on toxic substances and physical agents such as the lead and formaldehyde standards and those which follow a programmatic approach, such as the Process Safety Management and Hazard Communication Standards (Ex. 32–339).

OSHA believes that the final rule's grandfather clause is comprehensive enough to ensure that inadequate programs do not qualify and is flexible enough to permit many different kinds of effective programs to qualify. As explained previously, the Agency believes that requiring programs to meet a combination of essential program elements and recognized effectiveness measures will prevent inadequate ergonomics programs from achieving grandfather status. On the other hand, OSHA does not agree that it is necessary to codify the precise practices used in the most effective programs, as the AFL–CIO suggests. Doing so would unnecessarily limit an employer's flexibility in complying with the final standard. The Agency believes that the final rule has achieved a balance between flexibility and comprehensiveness that will recognize effective ergonomics programs and deny grandfather status to inadequate ones.

6. Other Comments on the Proposed Grandfather Clause

The National Soft Drink Association objected to the requirement that the employer's program be evaluated and found to be functioning properly before the effective date of the standard (Ex. 30–3368). The trade association argued that a thorough evaluation of any program will probably uncover areas that could be improved. Other rulemaking participants also recommended that the standard allow employers to modify their programs so that they could be improved (see, *e.g.*, Exs. 30–1547, 30–3765, 30–4130, 30–4537). For example, the Boeing Company was concerned that an employer would not be able to improve an existing program without falling out of compliance with the grandfather clause (Ex. 30–1547). In response, OSHA recognizes that all ergonomics programs will need to be modified over time to correct deficiencies. The standard not only accommodates this, but requires it in paragraph (c)(1)(v).

Some commenters stated that the proposed grandfather clause would force existing programs to include the six core elements if they wished to be grandfathered even if the employer did not have an employee with an MSD that triggered the standard (see, *e.g.*, Exs. 30–715, 30–3678). In response, OSHA considers it most unlikely that an employer with an effective existing program would not have employees experiencing MSDs.

Some rulemaking participants suggested that OSHA strengthen the grandfather clause in various ways (see, *e.g.*, Exs. 30–2039, 30–4538, 32–182, 32–185). For example, the American Federation of Government Employees recommended that employers have a documented program in place for at least 2 years before being eligible and that a grandfathered program be required to comply with the full standard if any MSDs occur (Ex. 30–4538). They also urged OSHA to require that, in evaluating the program, the employer determine that it is effective in addition to functioning properly. The American Federation of State, County, and Municipal Employees recommended that OSHA require that all elements of an employer's ergonomic program be effective before the employer is eligible under the grandfather clause (Ex. 32–182). Mr. Howard Egerman was concerned that having the employer evaluate its own program was bound to be ineffective because the employer could not be disinterested (Ex. 30–115). Communication Workers of America Local 2222 recommended that the standard require employees to agree with the employer's evaluation before an existing program would be acceptable and that OSHA mediate any disputes (Ex. 30–2039).

OSHA believes that the grandfather clause in the final rule will be protective of employees' safety and health without the addition of these suggestions. The Agency is therefore not setting a minimum time period that an employer's program must have been in place to be judged effective to qualify for the grandfather clause. The final grandfather clause requires the employer to be able to demonstrate that the program is effective and to evaluate its elements and correct any deficiencies identified before the effective date.[7] This will ensure that only relatively mature programs qualify for grandfathering.

Many rulemaking participants testified that MSDs still occur in workplaceswith the best ergonomics programs in place (Exs. 30–3765; 30–4046; Tr. 14730). OSHA agrees that this is often the case, and the final rule specifically notes that the occurrence of MSDs does not constitute a violation of

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[6] Even though the final rule's grandfather clause does not contain a fixed deadline for implementing controls for a problem job, an employer with a grandfathered program is expected to institute permanent controls as soon as possible. An employer who postponed the control of MSD hazards beyond a reasonable amount of time would have difficulty demonstrating the effectiveness of the program.

[7] However, as explained earlier, the final grandfather clause does permit an employer to incorporate work restriction protection in the ergonomics program within 12 months of the effective date.

the standard (see the note to paragraph (k)).

Although the employer will be evaluating the program, OSHA believes that Mr. Egerman's concern is unfounded, because paragraph (c)(1)(v) requires the employer to be able to demonstrate that the program is effective. This provision, and the inclusion of the core elements, should ensure that the evaluation is appropriate. In addition, the final grandfather clause requires qualifying programs to include employee participation in program evaluation. This will also act as a check on the accuracy of the evaluation process. For these reasons, the Agency believes that the grandfather clause in the final ergonomics standard will provide an appropriate level of protection for employees.

Some rulemaking participants objected to language in the proposal that required the employer to show that their program complies with the basic obligations and is functioning properly (see, *e.g.*, Exs. 30–541, 30–562, 30–1355, 30–1547, 30–3117, 30–3783, 30–4607). They argued that the burden should be on OSHA's compliance staff to address ergonomic hazards rather than on the employer to demonstrate that its program qualifies. Some of these rulemaking participants argued that placing the burden on employers to demonstrate program effectiveness would disproportionately affect small employers, who do not have the resources of larger ones (see, *e.g.*, Exs. 30–3117, 30–3783). Caterpillar, Inc. stated that the subjective nature of the grandfather clause would lead to uneven enforcement across employer groups and across the nation (Ex. 30–4607).

The American Apparel Manufacturers Association also was concerned about enforcement and gave the following example of how an employer's interpretation of what constitutes a problem job could differ from that of an OSHA compliance officer:

> An apparel manufacturer may see two sewing jobs as extremely different, involving different activities and physical requirements, but an OSHA inspector with no experience in the apparel industry may well see them as the same. This ambiguity of language may cause penalties against companies who believed they were, in good faith, running a successful ergonomics program (Ex. 30–4470).

The Boeing Company was also concerned about being second guessed by OSHA enforcement personnel (Exs. 30–973, 30–1547). They recommended that the standard unambiguously recognize programs addressing the basic obligations. In particular, Boeing urged OSHA to clarify that an employer who is complying with a written program that meets the grandfather clause is in compliance with the standard (Ex. 30–1547). They argued as follows:

> Where employers are already undertaking what can reasonably be done in good faith to minimize problem jobs, they should be protected from second-guessing by inspectors. OSHA's limited resources are better used focusing on worksites where ergonomic hazards have yet to be addressed, not on worksites which have already implemented effective ergonomics programs (Ex. 30–1547).

Others believed that it is appropriate for OSHA to require employers to demonstrate the effectiveness of their programs (see, *e.g.*, Exs. 30–429, 30–2835, 30–3813, 30–4134, 31–337, 500–214). These commenters argued that this was the approach taken by Washington State in its ergonomics standard, and they believed that it was reasonable.

OSHA finds, based on a review of the evidence in the record as a whole, that the final grandfather clause is not likely to lead to uneven enforcement. It is true that employers will need some method of assuring themselves that their ergonomics program qualifies for the grandfather clause, and the method chosen also will be useful to OSHA compliance personnel. However, OSHA will not cite employers who make an adequate demonstration[8] that their programs are effective and include the elements and subelements in paragraph (c)(1). However, if the Agency finds objective evidence that the employer is basing the demonstration on inaccurate information, OSHA will not consider that employer's program as qualifying for grandfather status.

OSHA also believes that it is reasonable and appropriate to place the burden of demonstrating that their programs qualify for grandfather status on employers because grandfathered programs are the "exception" to the standard. Employers who choose to take advantage of using a program that is not required to meet the full ergonomics standard in all its details can reasonably be expected to produce evidence that their programs qualify for the grandfather clause. OSHA needs assurance that employees in workplaces with grandfathered programs will be adequately protected by these programs. For these reasons, the final grandfather clause requires the employer to demonstrate that their programs qualify for grandfather status.

Some rulemaking participants complained that the proposal would require employers wanting to take advantage of the grandfather provision to keep unnecessary records (see, *e.g.*, Exs. 30–2645, 30–2815, 30–2835, 30–4628). For example, the Chemical Manufacturers Association and others stated that an unwarranted paperwork burden would be forced on an employer because it would have to document that the program met the basic obligations and that the program is functioning properly (see, *e.g.*, Exs. 30–2835, 30–3356, 30–4628).

The final grandfather clause does not require the employer to maintain any records. In fact, the final standard does not require employers whose programs are grandfathered to maintain any of the records required by the full standard in paragraph (v). Some employers may choose to maintain certain records to facilitate their demonstration of effectiveness. However, some effectiveness measures require no records. For example, the Dow Chemical Company, whose program involves the evaluation of all tasks in high risk jobs and control of all ergonomic hazards in those jobs, would need only show that adequate controls are in place to demonstrate effectiveness. (They also would need to show that their program includes the elements and subelements given in paragraph (c)(1).) In addition, most employers with existing programs are already required, under 29 CFR Part 1904, to maintain injury and illness records. Employers should be able to use those records, with little or no modification, to demonstrate effectiveness. Thus, OSHA has concluded that comments that the grandfather clause would create an unwarranted paperwork burden are unfounded.

Some rulemaking participants argued that companies would be forced to alter their existing safety and health programs to meet the OSHA ergonomics standard, forcing them to inefficiently allocate resources away from their safety and health programs (see, *e.g.*, Exs. 30–2216, 30–3845, 30–4818, 31–310; Tr. 11379, 11403). These commenters apparently believe that two separate and incompatible programs would be required or that grandfathering would require major restructuring of their current ergonomics program. For example, the Forum for a Responsible Ergonomics Standard recommended that OSHA recognize existing programs that met the goal of reducing or eliminating MSD hazards regardless of whether or not they met the technical specifications of the six proposed program elements (Ex. 30–3845).

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[8] An adequate demonstration is one that touches on all subelements spelled out in paragraph (c)(1) and that shows effectiveness using an appropriate measure of effectiveness.

Otherwise, they argued, the standard would not only upset the performance of existing programs but would result in poor allocation of risk control resources. They gave examples of what they believed might occur:

> [O]ne Forum member, CCE, has spent millions of dollars researching and developing methods to reduce injuries related to various warehousing and delivery activities, such as improving new order fulfillment systems. In this respect, CCE is pioneering achievements that likely will eventually be adopted throughout its industry. However, particularly with respect to employee participation in developing safety programs, CCE is unlikely to meet the strict requirements for grandfathering. As a result, CCE anticipates that many of its current efforts will be derailed as resources, especially the time of its highly trained staff, will have to be diverted to ensuring compliance with the OSHA standard. Instead of developing fixes that will prevent injuries, these resources will be directed towards "fixing" the administrative structure of its program.
>
> Similarly, many NACS members (convenience store operators and petroleum marketers) incorporate MSD prevention and ergonomics issues into their general worker safety programs that cover a wide range of issues, from dealing with slips and falls to robbery deterrents to customer safety issues. These programs have been extremely effective in reducing MSD injuries. If not grandfathered, implementing OSHA's proposed standard would require upsetting and dramatically changing these already effective programs (Ex. 30–3845).

Mead Corporation (Ex. 30–2216) made a similar comment:

> Responsible employers would be forced to alter achieving programs and pursue measures that we know are not as effective as what we are already doing. The resources that are focused on MSD prevention would be shifted toward less meaningful activities. A new infusion of MSDs may result at many workplaces that have effectively controlled these types of accidents to date because of the shift in emphasis brought on by compliance demands.
>
> Consider:
>
> - Many companies utilize periodic risk assessments to update priorities for ergonomics projects. Risk assessments commonly include a survey of the workplace, discussions with employees about potential concerns, and analysis of MSDs. Priorities are established and incorporated into a work plan for the site's ergonomics/safety team.
> - When ergonomics teams in Mead conduct analyses of jobs, they are encouraged to identify as many opportunities for continuous improvement (potential risk factors) as possible and then to prioritize based upon risk. Action plans are developed for high risk concerns. Lower priorities are not addressed at the time unless they are low cost. Teams maintain documentation of these items and may revisit them in the future once higher priority items are resolved
>
> In each of these examples, employers are pursuing activities that should be recognized as meaningful and exceeding the level of protection OSHA is currently seeking for the control of MSDs. With the proposed standard, however:
>
> - When persistent symptoms develop at a job considered to be moderate priority for continuous improvement, higher priority changes would be delayed, placing more employees at higher risk for developing MSDs;
> - Similarly, when partial work aggravation associated with a low risk task triggers a manufacturing job, high priority changes recommended by the ergonomics team based upon comprehensive analysis will be delayed; and
> - Documentation of MSD prevention activities will be increasingly scrutinized and restricted due to concerns over how OSHA would interpret the information (Ex. 30–2216).

On the other hand, the American Society of Safety Engineers stated that ergonomics programs fit easily into existing safety and health programs:

> The establishment of basic ergonomic management programs, increasing employee awareness and involvement on these issues is not a burden to employers when compared to other safety and health compliance requirements.
>
> In fact, most efficient and effective ergonomic initiatives will usually dovetail with other existing safety and health programs (Tr. 11611).

The final rule in general, and the grandfather clause in particular, will not, in OSHA's view, require an inefficient reallocation of resources. In fact, because MSDs are the leading cause of on-the-job injuries and illnesses, OSHA believes that the final rule will ensure that resources will be devoted to areas where significant improvement in injury and illness rates can be realized.

OSHA agrees with the American Society of Safety Engineers that ergonomics programs fit well as part of comprehensive workplace safety and health programs. The final grandfather clause does not require employers to divorce ergonomics from their existing safety and health programs. Thus, employers who address ergonomics in existing effective safety and health programs typically will not need to reinvent their ergonomics program just to qualify for the grandfather clause.

In addition, as noted earlier, the final rule accommodates prioritization of the implementation of permanent controls, as Mead Corporation is doing, where the employer cannot fix all problem jobs at once. Therefore, OSHA does not believe that the final rule's grandfather clause will be disruptive or result in an unwarranted reallocation of resources.

Union Carbide recommended that the standard not require employee participation in the *development* of existing programs that would otherwise qualify under the grandfather clause (Ex. 30–3784). ORC also identified employee participation in the development of each element of the program as one area that few of its member companies could comply with (Tr. 4135).

OSHA agrees with these rulemaking participants that employee participation in the development of ergonomics programs is not necessary where an existing program that qualifies for the grandfather clause is at issue. The primary purpose of the grandfather clause is to recognize ergonomics programs that employers have already put into place, *i.e.*, that are already well past the developmental stage. According to ORC, some of these programs have not involved employees in the past development, implementation, or evaluation of the program. As drafted in the final rule, employee participation in these stages of program implementation is required as appropriate, from this time forward. In other words, OSHA is not requiring employee participation in the past development of a program as a condition of the grandfather clause; it is requiring employee participation in the implementation, evaluation, and future development of grandfathered programs, however.

Alcoa, Inc., recommended that, for existing capital-intensive industries and equipment, OSHA allow employers additional time to come into compliance with the grandfather clause (Ex. 30–3922). They argued that the implementation of permanent controls within 2 years, as proposed, was neither realistic nor economically feasible for some employers. The final rule's grandfather clause allows an employer to have a process for identifying, analyzing, and controlling MSD hazards in problem jobs and following up to ensure control effectiveness. Through a prioritization process, an employer may choose to temporarily implement interim controls. Although the employer is expected to institute permanent controls as soon as possible, the final rule does not provide a date when this must be accomplished. Thus, employers in all industries with qualifying programs will be able to prioritize their jobs for control in a rational manner that permits them to take advantage of the capital involvement and replacement schedules of their industries.

Paragraph (d)—What Information Must I Provide to my Employees?

Paragraph (d) of the final rule requires employers to provide their employees with basic information about five items:

(i) Common musculoskeletal disorders (MSDs) and their signs and symptoms;

(ii) The importance of reporting MSDs and their signs and symptoms early and the consequences of failing to report them early;

(iii) How to report MSDs and their signs and symptoms in the workplace;

(iv) The kinds of risk factors, jobs and work activities associated with MSD hazards; and

(v) A description of the requirements of OSHA's ergonomics program standard.

This information must be provided to new employees within 14 days of hiring, and must be posted conspicuously in the workplace. Consistent with applicable law, information may be posted or provided electronically to employees who have electronic access. To assist employers in meeting their obligation under this paragraph, OSHA has included nonmandatory Appendices A and B, which contain all the information needed to comply with this paragraph, except for the workplace-specific information on reporting MSDs and their signs and symptoms.

The proposed rule also would have required employers to provide employees with information on how to recognize MSDs (and their signs and symptoms); on the importance of early reporting of MSDs; and on how to report MSDs at their workplace. It also would have required employees to establish a reporting system for MSDs. These provisions in the proposed rule, however, would only have applied to manufacturing and manual handling employers. OSHA expected the provisions to serve three purposes: to facilitate employees' active participation in their employers' ergonomics programs; to promote early reporting so that MSDs could be treated most effectively; and to assure prompt identification of MSD hazards so that the incident trigger of the standard would work properly.

There was a great deal of support, in general, for requiring employers to provide hazard and reporting information to employees (see, *e.g.*, Exs. 30–2116, 30–3813, 30–3748, 30–3765, 30–3934, 32–339–1, 32–111–4, 32–185–3, 30–3686, 32–461, 32–210–2, 30–3826, 30–3686, 32–182–1, 30–2116, 30–3748, 30–4564, 32–198–2, 500–33, 32–21–1, 32–450–1, 30–4247 and 32–450–1). Mr. Mark Davidson, Risk Manager for Safeway Stores testified (Tr. 13674, 13658) that he adamantly supported pre-injury efforts to train and evaluate people. He stated the fact that Safeway had produced a video to educate employees on symptoms of soft tissue injury and had merely shown it to employees across the United States. Both Akers Logging (Tr. 12325) and Swift Company Timber Management (Tr. 12315–16) believed that this information could be incorporated into regular safety meetings, and Mr. Swift testified that the cost would be nominal, if anything.

In fact, a number of participants urged OSHA to go even further and require employers to survey their employees to identify existing signs and symptoms (see, *e.g.*, Exs. 31–113, 31–150, 30–4538, 31–243, 31–186, 30–2387, 31–156, 31–125, 31–105, 31–43, 31 23, and Tr. 4732–33). One commenter (Ex. 31–186) said that, as well as promoting the early detection of MSDs, thereby saving employers money and lost work time, surveys also send the message that the employer cares about employee health and safety. The American Association of Occupational Health Nurses (AAOHN) (Ex. 30–2387) also said that MSD symptoms surveys should be strongly encouraged, if not required.

Other commenters argued that the benefits of this information provision should not be limited to jobs involving manufacturing and materials handling (Ex. 30–3826). Since implementation of any ergonomics program outside manufacturing and manual handling would have been based on the occurrence of an OSHA-recordable MSD, it made little sense, these commenters felt, not to provide employees in other jobs with information on what and how to report:

> Employees cannot be expected to report early if they are not educated on what signs and symptoms of MSDs are and if the employer is not communicating with them the importance of reporting early. Also, if employees are not aware of, or do not know the mechanism of reporting, than it is surely less likely that they will report * * *. This will be a great disincentive for reporting (Ex. 32–210–2, pg. 130).

See also, *e.g.*, Exs. 500–126, 32–65–3, 30–4538, 32–198–4, 30–2387.

Some commenters, however, objected that employers should not be required to provide hazard and reporting information before an MSD occurred (see, *e.g.*, 30–3723, 30–3867, 30–3086, 30–4465, 30–4607, 30–1012). These commenters argued that providing the information would be an unjustified consumption of resources, infrastructure capacity, and support, adding overhead and cost with no potential benefit. The General Electric Company (Ex. 30–1071) felt that an employer proactively identifying ergonomic issues would likely unearth complaints of MSD signs and symptoms. The American Iron and Steel Institute (AISI) (Ex. 32–206–1) stated:

> The provisions in proposed Sections 1910.914 and 1910.916 requiring the employer * * * to inform workers of the signs and symptoms of MSDs and how to report them would create an enormous potential for abuse of the system. The manner in which OSHA is expected to enforce those provisions will only exacerbate the problem (Ex. 32–206–1, pg. 40).

Other participants also expressed concern that providing employees with additional information about MSDs will cause workers to misattribute benign symptoms to serious injury or disease, thereby heightening symptoms and distress, or otherwise to make false reports (Exs. 32–241–3–2, 30–3716, 30–3000, 30–4843, Tr.16087, Tr. 10445–6). Omni Services Incorporated (Ex. 30–4496–35) believes it would be easy for employees to report almost any ache or pain as work-related and get paid time off until they feel better.

The Painting and Decorating Contractors of America (Ex. 30–3716) voiced concern that the information presented to employees about MSD signs and symptoms and the importance of reporting them early.would not only require employers to develop expertise in ergonomics-related injuries, but would encourage employees to classify almost any job-related ache or pain as an MSD. The Plastics Engineering Company (Ex. 30–2435) stated that the requirements would encourage employees to report both real and phoney or exaggerated MSDs. The American Road and Transportation Builders Association (Ex. 30–4676) argued that the number of work-related MSD claims, and the number determined to be work-related, would significantly increase. See also Exs. 500–127, 31–106, 31–344, 32–82–1, 30–3749, 30–3336, 30–3367. The AAOHN (Ex. 30–2387), however, pointed out that often, after ergonomic training, employers experience an increase in MSD complaints and should be prepared for this eventuality. As noted elsewhere in the Preamble, these are not "new" MSDs, but instead the expected earlier reporting of MSDs that are already occurring.

OSHA does not find evidence that encouraging early reporting of MSDs promotes abuse. Evidence discussed in other sections of this Preamble indicates that programs that encourage early reporting of MSDs, so that employees can enter an MSD management program, actually reduce the time employees are subject to work restrictions. OSHA also has analogous requirements in other standards, for example, the Bloodborne Pathogens standard (29 CFR 1910.1030) and several of its chemical exposure standards (Cadmium, 29 CFR 1910.1027; 1,3-Butadiene, 29 CFR 1910.1051; Methylene Chloride, 29 CFR 1910.1052), and has seen no evidence that the provisions are abused. These provisions simply require that the employer provide basic information to employees; have a system in place for employees to report possible injuries, illnesses, and exposures; and evaluate and respond to these reports. As is discussed more fully in connection with paragraphs (e) and (f), a report of an MSD does not impose any obligations on employers unless the employer determines that the MSD is work related and meets the severity criteria, and the job itself meets the levels of the Basic Screening Tool in Table 1.

OSHA also agrees with the comments discussed above urging that all general industry employees be provided with this information. It believes the incident trigger in the standard can only be fully effective if all employees have basic information about MSDs and how and why to report them promptly. This means that some general industry employers, who under the proposal would have had no obligations at all until receiving a report of an MSD, will now have to provide this information. OSHA emphasizes, however, the minimal nature of the burden imposed by this paragraph. All of the information, except that on how to report MSDs and signs and symptoms to a particular employer, is contained in Appendices A and B to this standard, and will also be posted on OSHA's website. Employers need only copy or download the information for distribution to their employees. This responds to a number of comments asking OSHA to provide materials to assist employers in providing information to employees (see, *e.g.*, Exs. 30–429, 30–4492, 30–2987, 30–3232, 30–3853, 32–337–1, 32–210–2, 32–461–1, 32- 461–1, 30–3826, 30–4538, 30–3686, 30–2387).

The requirement that employees be given information on how to report MSDs and their signs and symptoms is also necessary to ensure the effectiveness of the standard's exposure trigger. This requirement is even more basic than that contained in the proposed rule. It does not require employers to set up any particular reporting system, only that employees know how to report their MSDs or signs and symptoms. Particularly for a very small employer, this could be as basic as telling them to report them to a supervisor or safety official. Larger employers may use their existing reporting systems (Ex. 30–3826). Although OSHA intended this option also to be available under the proposed rule, several commenters interpreted the proposal as requiring a reporting system specific to MSD signs and symptoms (Exs. 31–78, 30–240, 30–3723, 30–3765, 32–77–2, Tr. 5340, 30–3853, 32–337–1, 30–716, 30–2215, 500–127). In light of the revised language in the final standard, these comments are now moot.

Other commenters, however, urged OSHA to adopt a more elaborate MSD reporting system. The American Federation of Teachers (Ex. 32–326–1) urged OSHA to strengthen the reporting requirements by stipulating that employers document a method for encouraging employees to report. Morgan, Lewis, and Bockius (Ex. 30–4467) expressed concern that employers would have no sure way of knowing whether a reporting system would satisfy an OSHA compliance officer's interpretation of the standard's requirements. OSHA does not agree that more detail is necessary in this provision.

The final standard allows employers extensive flexibility to tailor reporting systems to the demands of individual workplaces. Variations among employers (*e.g.*, size, management structure, number and type of facilities) could lead to some types of reporting systems being more effective than others for different employers. Some may choose written reporting systems, while others may feel that an oral system is a "better fit" for their particular situation. OSHA demands only that, whatever approach is used, it must be accessible and carried out in an orderly way that is recognized and understood by the involved parties.

A few commenters questioned the requirement to provide employees with a summary of the standard (see, *e.g.*, Exs. 30–3765, 30–1336, 30–3782–12, 30–2836, 30–2940, 30–240). The G. Leblanc Corporation (Ex. 30–4837) stated that, with the exception of this item, the information to be provided to employees would be very helpful in making the reporting/response system successful. It also felt that inclusion of the summary resulted in additional cost and expertise necessary for providing the information. The Dow Chemical Company (Ex. 30–3765) also commented that, while it supports telling employees about MSD hazards, signs and symptoms, the importance of reporting them early, and the mechanics of how to report them and uses a program that emphasizes the information envisioned by this provision, it does not support providing a summary of the requirements of the standard. The Edison Electric Institute (Ex. 32–300–1) also objected to the requirement that supervisors and employees be trained in the requirements of the standard.

Some of these commenters (see, *e.g.*, Exs. 30–1336, 30–2836, 30–2940) voiced concern about not knowing how many pages of information were sufficient to comply with this requirement, while others (see, *e.g.*, Ex. 30–3782–12) felt that how to interpret a "summary of the standard" and how to provide this to the employee was left to the employer's imagination. These concerns are addressed by the inclusion of nonmandatory Appendix B to the standard.

On the other hand, several commenters stated that employees should receive even more information (Exs. 30–4538 31–242, 32–461–1, 32–210–2, 32–182–1, 32–111–4, 32–339–1, 500–218, Tr. 3481–82, 500–126, 31–280, Tr. 4542–43). For example, the AFL–CIO recommended that the hazard information and training requirements be restructured to move some of the training requirements up-front and stated:

> Specifically, we recommend that the Hazard Information and Reporting section require information and awareness initial training on the following:
>
> 1. Common MSD hazards;
> 2. The signs and symptoms of MSDs and the importance of recognizing and reporting them early;
> 3. How to report MSDs, signs and symptoms of MSDs, and MSD hazards and the prohibition against discouraging employee reports;
> 4. An explanation of this standard, including ways for employees to participate and how to get a copy of the standard;
> 5. An explanation of MSD management, including temporary work restrictions and work restriction protection; and
> 6. The principles for controlling common MSD hazards. (Ex. 32–339–1, pgs. 32–33)

Other commenters suggested that additional topics such as employee rights to job protection, right to report reporting procedures, symptom reporting procedures and training be included (see, *e.g.*, Exs. 32–461–1, 30–4538, 30–3686, 32–198–4, 32–198–4–1, 32–198–4–13)

OSHA has considered these comments and incorporated some of the suggestions. Other topics are addressed in the context of ergonomics program training under paragraph (t). The information requirement in this paragraph (d), however, is intended to provide employees with the minimum amount of information they need to perform their function under the standard: recognizing and reporting MSDs and their signs and symptoms, and doing so as early as possible. Employers are free to provide additional information (*e.g.*, explaining their particular ergonomics program), but OSHA does not believe that more detailed information is necessary before any MSD hazards have been found. As previously discussed, the Agency has attached an information sheet for the employer to use in providing the required information.

Finally, the issue of the posting of this information was also raised by several commenters (see, *e.g.*, Exs. 31–70, 31–342, 30–240, 30–1726, 30–1104, Tr. 10586). One commenter (Ex. 31–70) stated that the final standard should require mandatory posting of information for employees. Similarly, another commenter (Ex. 31–342) commented that there should be a requirement to either post a notice that employees should report possible MSDs promptly or inform employees in another effective manner. The National Association of Orthopaedic Nurses (Ex. 30–1104, Tr. 10586) supported a readily identifiable posting of MSD signs and symptoms, who to report to, and how to report. In addition, the University of Wisconsin Extension (Ex. 30–1726) urged OSHA to develop "more boilerplate" on a policy that encourages reporting and to require that this policy be posted in the workplace. On the other hand, August Mack Environmental (Ex. 30–240) argued that posting was redundant, unnecessary and posed a problem due to often limited space available for postings. It felt that the currently required OSHA poster already contains information on how to get additional information about OSHA standards.

Paragraph (d)(2) of the final standard requires that the information provided to employees must also be posted in a conspicuous place. In addition to an employee bulletin board, such places may be the employee locker room, lunch room, or near the time clock. Electronic posting is also permissible where all employees have access. While the Agency realizes that these options are not available in all facilities, most employers have some area, recognized by employees, where the employer posts company announcements and information. OSHA believes the posting requirement is necessary because many employees may not have immediate access to their original information sheet when they are beginning to develop an MSD.

In conclusion, OSHA has considered all of the comments and testimony received on the proposed provisions requiring employers to provide hazard information and reporting. It has decided to retain the requirement that employers covered by the final rule to provide minimal information to employees before an MSD incident occurs. OSHA believes the final rule provision is adequate without requiring additional measures such as surveying employees to identify signs and symptoms of MSDs.

Paragraph (e)—When Must I Take Further Action?

A. Introduction

The final rule incorporates a two-stage action trigger. It requires further action when (1) an employee experiences a work-related MSD involving either one or more days away from work, one or more days of limitations on the work activities of the employee, medical treatment beyond first aid, or 7 days of persistent MSD signs or symptoms (2) in a job with exposures to risk factors that meet the Basic Screening Tool in Table 1. Unless both stages of this action trigger are reached, the standard does not require employers to take any action beyond providing the information in paragraph (d) to their employees.

The action trigger in this standard serves a purpose analogous to that served by action levels in OSHA standards regulating exposures to air contaminants. Those standards generally require that airborne levels of the contaminant be kept below a permissible exposure level (PEL). At a much lower level, however, employers are required to take actions such as conducting air monitoring and providing training and medical surveillance to exposed employees, although they do not actually need to implement controls to reduce exposures to the regulated substance. Similarly, in this standard, once a job meets the action trigger, the employer must implement an ergonomics program that includes job hazard analysis, training, and MSD management (for the injured employee), although it may not actually be necessary to control or reduce the MSD hazard.

This concept is similar to the approach OSHA took in the proposed rule. In the proposal, an employer was required to take further action if an OSHA-recordable MSD occurred in a job meeting certain "screening criteria," *i.e.*, the job involved physical work activities and conditions that were reasonably likely to result in the MSD, and those activities were either a "core element" of the job or accounted for a "significant amount" of the employee's worktime. In manufacturing and manual handling jobs, an OSHA-recordable MSD was not necessary if an employee reported persistent symptoms and the employer had knowledge of problems in the job.

OSHA received a large number of comments about the proposal's triggering mechanism. These comments fell into several categories. Many parties objected that the single MSD incident trigger included in the proposal was either too sensitive or not protective enough. Others objected to the use of an OSHA-recordable MSD, often pointing out that OSHA has proposed to amend its recordkeeping regulation, and that those amendments could also affect this ergonomic standard. In addition, commenters complained that the proposed standard's screening criteria would be extremely difficult to apply in practice, pointing in particular to the terms "core element," "substantial part of the workday," and "reasonably likely to result in the MSD."

As explained below, OSHA has made a number of changes in response to these comments. The triggering mechanism in the final rule has more precisely defined elements, and OSHA believes it should be much easier to apply.

A job meets the action trigger in the final standard based on two criteria. The first is what has been called the "single-incident trigger." Under this criterion, an employee working in the job must have incurred either a work-related MSD severe enough to result in a work restriction, medical treatment beyond first aid, or MSD signs or symptoms lasting at least 7 consecutive days after being reported to the employer. A work restriction is defined in the standard as one or more days away from work, one or more days of limitations on the work activities of the employee's current job, or one or more days of temporary transfer to alternative duty (see paragraph (z)). Under the final rule, an MSD meeting this description is an "MSD incident." The employer's first duty, after receiving a report of an MSD or MSD signs or symptoms, is to determine whether the report constitutes an MSD incident.

The second step of the action trigger, which must only be addressed after an MSD incident occurs, is based on the employee's exposures to ergonomic risk factors. If the employee is exposed to one or more of the risk factors described in the Basic Screening Tool in Table 1 for longer than the time listed for that risk factor, then the job meets the screen.

B. MSD Incident Trigger

1. Incident-Based Approach

The proposed standard also included a single-incident trigger. Under the proposal, employers of workers engaged in manufacturing and manual handling would have been required to implement some elements of an ergonomics program standard soon after the standard took effect, whether or not MSDs had occurred in their jobs. Once a "covered MSD" meeting the screening criteria occurred, those employers would have been required to adopt a full ergonomics program. Other employers would not be required to take any action before a "covered MSD" meeting the screening criteria occurred, but once that happened, they also were required to adopt the full program. In this final rule, OSHA has clarified that the only action explicitly triggered by an MSD incident is to apply the Table 1 screen. OSHA finds that the record supports using an MSD incident for this purpose.

A number of participants objected to the proposal's incident trigger on the basis that it was reactive and appeared inconsistent with OSHA's mission "to prevent the first injury" (Ex. 500–218, Tr. 9071, 9156, 12277, 12477). A number of labor organizations favored a proactive approach because, according to the International Chemical Workers' Union, "[w]aiting for a covered MSD or persistent MSD symptoms to arise, versus evaluation and prevention, is a lose-lose proposition" (Ex. 32–198–4, 32–461–1, 500–137; see also Ex. 500–218, Tr. 12365, 17543). The Farm Workers Justice Fund urged OSHA to adopt a hazard-based approach because in many workplaces employees experience a great deal of pressure not to report injuries (Tr. 17515).

Some employers and representatives of employers also supported a hazard-based rather than an incident-based rule (Ex. 30–1294, DC67, Tr. 9070–74, 12277, 13633, 10631, 10636). Mark Davidson, of the Oregon Self Insurance Association, preferred a proactive approach because:

> If the goal is to cut down on the occurrence of MSD complaints, shouldn't the regulatory effort [focus on] preventing the occurrence rather than punish it (Tr. 13633).

Anthony Barsotti, of Hoffman Construction Company, said that an incident-based approach was "heading backwards in terms of prevention" versus reaction:

> [H]aving the standard be triggered by the injuries seems inconsistent with where we have been going, both as a safety profession and as a society in terms of identifying hazards, developing systems and processes to control them. And then, kind of when those systems fail and we have an injury, then what are our back-up systems and our approaches? (Tr. 12277).

See also (Tr. 9115–16).

OSHA has carefully considered these comments. In response, it has added a proactive element to the definition of an MSD incident. MSD signs and symptoms that last for 7 consecutive days since first reported to the employer are considered MSD incidents under this standard. Several health care professionals testified that, in most cases, MSD signs and symptoms are completely reversible when they are caught at such an early stage (see, *e.g.*, Exs. 37–1; 37–2, pp. 14–15; 37–12, p. 5; 37–16, p. 8; 37–17, p. 4; Tr. 7687–88, 9884, 13397–98, 13410). Thus, OSHA has concluded that its incident-based approach can prevent employees from experiencing permanent damage or disability, while at the same time minimizing burdens for employers who have few or no ergonomics problems (Ex. 16969–70).

Where employers have provided their employees with appropriate information to allow the employees to recognize MSDs and MSD signs and symptoms, and have also instituted good reporting systems, and employees still are not reporting MSDs, a full ergonomics program may not be necessary. OSHA agrees with commenters who said that a purely hazard-based approach, which would require all employers to analyze all jobs, regardless of whether those jobs have ever caused an MSD, might result in an inefficient use of resources (Exs. 500–1–329, 500–75, Tr. 3095).

This is particularly true because the vast majority of employers will not have an MSD incident reported in their workplace during any given year (Exs. 30–542, 30–3167, 500–1–128, Tr. 2980, 3073, 3096). One report prepared for the Small Business Administration's Office of Advocacy estimated that as many as 75 percent of manufacturers employing fewer than 11 employees are not likely to experience any MSD incident for up to six years. (Ex. 30–542). (See also Ex. 500–67; Final Economic Analysis, chapters II and IV). The testimony of a number of hearing participants representing small businesses confirmed this (Exs. 30–3167, 500–1–128). They told OSHA that they had never had a report of an MSD in their workplace (Tr. 2980), did not have MSDs every year, or had only isolated or few occurrences (Tr. 3073, 3096). Small employers comprise 75 percent of all private industry establishments (Final Economic Analysis, Industry Profile, chapter II), and the incident trigger ensures that most of these employers will have only minimal obligations under the final rule.

The record also shows that an incident trigger is a reasonable proxy for an increased risk of exposure to MSD hazards. For example, some employers with successful ergonomics or safety and health programs use reports of MSD symptoms or symptom surveys to identify jobs posing MSD hazards (Ex. 37–2, Tr. 5503, 5358; Tr. 14707, 14723–26). Dr. Frederick Gerr, Associate Professor of Environmental and Occupational Health at the Rollins School of Public Health at Emory University, testified:

> The use of reported cases of illness, such as MSDs, to trigger investigation into potentially excessive exposure to known MSD hazards is a well-established method of protecting others with similar exposures (Ex. 37–2, p. 15).

Many employers also use MSD reports as a way to prioritize their control activities (Tr. 10631, 14723, 14746). Sean Cady, of Levis Strauss & Co., testified:

> If we have repetitive motion injuries or musculoskeletal disorders on various jobs that occur at the same time how do we prioritize which jobs we select for job modification, because we don't have unlimited resources in the company. So what we do is we review many factors of that job and we qualitatively prioritize jobs. And we review things like the number of symptoms reported on a job, possibly the number of injuries, or the severity of injuries on a job (Tr. 14723–24).

OSHA has made clear throughout this rulemaking that a portion of its intent is to require more employers to implement the kinds of effective programs that are already in place in many industries (64 FR 65770). Incorporating an approach already in wide use is consistent with this purpose, and will reduce employer burden while increasing compliance with the standard.

Other commenters were concerned that OSHA's use of an incident trigger would doom those preexisting programs that involve what these participants view as a more proactive method of identifying ergonomic hazards (Ex. 500–1–452, Tr. 9070–74, 10630–32). But nothing in this rule prohibits employers from taking action, analyzing jobs or setting up an ergonomics program before MSD incidents are reported. And the grandfather clause in paragraph (c) of this standard specifically allows qualifying employers to continue their preexisting programs. Based on the record, OSHA expects that many employers who have established

ergonomics programs that do not rely on MSD reports to identify MSD hazards will maintain those programs (Tr. 3130–33, 5539, 9070–74, 10631).

2. One MSD Trigger

A separate group of rulemaking participants complained that the single-incident trigger in the proposal was too sensitive (Exs. 30–2208, 31–324, 500–1–27, 500–1–28, 500–1–45, 500–1–128, 500–52, 500–75, Tr. 5506–07). For instance, the Association of Independent Corrugated Converters said that the "one-incident threshold makes full coverage a virtual certainty for virtually every sizable employer, and for the vast majority of small employers" (Ex. 500–1–128, Tr. 16930–31). The National Tooling and Machining Association also said that a single MSD incident was too low a threshold:

> On its own, a single reported MSD might not be statistically significant to warrant the corrective measures required by the proposed regulation. NTMA contends that a trigger mechanism of at least two MSDs should be the minimum threshold for the full program, especially for small businesses (Ex. 500–2).

Jack Pohlman, of the American Foundryman's Society, added that a report of one MSD "is simply not indicative of systematic problems" (Tr. 5636). Marathon Ashland Petroleum agreed, saying that a single incident "is not reflective of the true nature of risk that exists in a given facility" (Tr. 5540). And the National Paint and Coating Association complained that a one MSD trigger was biased against large employers (Ex. 30–4340).

A number of commenters said that a one MSD trigger also would unduly burden employers by requiring them to respond to "every ache and pain" an employee reports (Exs. 30–4340, 500–1–18 ("a single complaint of pain"), 500–1–385, 500–1–386, Tr. 8772 ("perceived minor problems"), 12256). The National Telecommunications Safety Panel testified:

> Extremely minor conditions with little or no connection to the workplace may trigger the standard in many facilities (Tr. 8774).

Several commenters said that the one MSD trigger ignores that "unique physical characteristics" or "predisposing medical conditions" of the worker may be involved (Exs. 30–328, 30–1651, 30–2208, Tr. 5560–61). James Haney, of Wisconsin Manufacturers & Commerce, said:

> Thus, the most injury- or illness-prone employee becomes the benchmark for implementing the proposed standard's requirements (Ex. 500–1–27).

Finally, some commenters argued that imposing a one MSD trigger would be very costly for employers (Exs. 30–2208, 30–4340, 500–1–26, Tr. 8772). David Potts of the National Electrical Contractors Association testified:

> [B]ecause [of] the broad scope of what constitutes an MSD, the program standard's coverage will be easily activated. As such, an employer could be required to institute costly job analysis and corrective actions as a result of a single injury illness to an overly susceptible employee while all other employees in the same operation or job location has no discernable adverse reaction. Considering this hair trigger and that the Agency has only offered general remediation measures in the proposed rule, small business will surely face burdensome compliance responsibilities and stressful decisions including where to best place their limited resources (Tr. 5645).

These commenters urged the Agency to adopt a MSD trigger having a higher threshold. A number of commenters urged OSHA to increase the trigger to two or more MSDs (Ex. 30–3731–1, 500–2, 601–X–1). Other commenters said that incidence rates should be used to trigger action (Exs. 30–3845, 30–3853, 30–4137, 32–77–2, 500–1–128, Tr. 5370, 8842). Several commenters recommended that the trigger be a "pattern" or "cluster" of MSDs or MSD reports (Ex. 32–330–1, 500–23–1, 500–92). Paul Adams, director of ergonomics at Owens-Corning, suggested that OSHA should adopt a set of alternative triggers from which employers could choose (Tr. 10630, 10633).

OSHA believes many of these concerns resulted from a misunderstanding of the screening criteria in the proposal. However, the Agency also recognizes the validity of the concerns that those screening criteria were not clear enough to provide adequate assistance to employers trying to screen out non-work-related MSDs (Exs. 30–1722, 30–3956, 500–18, Tr. 8847, 16969–70). OSHA has addressed these concerns through the new definition of "MSD incident" in paragraph (e)(1) and the Basic Screening Tool in Table 1. The result is a single-incident trigger that is only half of the standard's action trigger and does not, by itself, require employers to implement a full ergonomics program or impose other substantial obligations on them.

A single-MSD trigger is appropriate for this purpose. Most important, a one MSD trigger is necessary to prevent the occurrence of serious and disabling MSDs. There is abundant record evidence that early detection and intervention can halt the progression of most MSDs, and reduce their severity (Tr. 7687–88, Ex. 32–450–1). On the other hand, where medical treatment and ergonomic interventions are delayed, it is more likely that conservative treatment will be less effective or will not even be an available option, or that the MSD condition will not be reversible and the employee will be permanently disabled (Ex. 38–285). For example, if carpal tunnel syndrome and other nerve-related MSDs go untreated long enough, damage to the nerves will be irreversible (Ex. 37–17, Tr. 13349 (the nerve dies)). If OSHA included a multiple-incident trigger, the first employee to be injured could become permanently disabled while waiting for other MSDs to trigger the employer's obligations to provide MSD management and ergonomic intervention. This would be particularly likely in small businesses and in workplaces where relatively few people perform the same job (Ex. 32–450–1). In addition, not acting on the first MSD may discourage other employees from reporting their MSD signs and symptoms (Ex. 32–450–1).

The use of a single MSD trigger is also consistent with employer practice. Many employers testified that they respond to all employee reports of injury or illness, including MSDs (Ex. 37–2, Tr. 5358, 5359–60, 5503, 5539, 14707, 14739, 17312–13). Even employers who recommended that OSHA adopt a multiple-incident trigger testified that they themselves conduct investigations of every report of injury, including MSD signs and symptoms (Tr. 2920, 5503, 5358). For example, James Lancour, safety and health regulatory consultant with Southern Company Services, testifying on behalf of Edison Electric Institute, said:

> [We] have a reporting mechanism where signs and symptoms are reported. Then we have, it's turned over to the industrial hygiene group to go out and do a job assessment. And, again, depending upon what they find out it may be something that can be unique to that particular person or workstation, et cetera, or it may require more in-depth analysis. So basically depending upon the job they take a look at what they're trying to determine how simple or complex the problem might be, and then go through and develop an assessment protocol based on that operation (Tr. 2920).

When questioned, no employer testified that it was company policy to wait until a second or third employee gets hurt in a job before investigating the first injury. This suggests that employers understand the importance of responding to each report of injury and, in practice, do not consider it appropriate to ignore individual reports of injury.

Other evidence in the record also shows that a one MSD trigger should not impose an undue burden on employers. As discussed above, most small manufacturing establishments do not experience any injuries or illnesses in any given year (Exs. 30–542, 30–3167, 500–1–128, Tr. 2980, 3073, 3096). In fact, many establishments do not experience any injuries or illnesses over a considerable period. According to a report prepared for the Small Business Administration Office of Advocacy, 75 percent of manufacturing establishments with fewer than 11 employees, 50 percent with 11–50 employees, and 25 percent of those with 50–249 employees would experience almost no MSD incidents in any given 6-year period. (See also Economic Analysis, chapters III and IV.) If this standard were to adopt a multiple MSD requirement, particularly one requiring at least two MSDs in the same job during a single year, injured employees in many establishments might never be provided with needed medical intervention or protection from additional injuries because it would take so long for the triggering event to occur.

The changes in the definition of "MSD incident," and the new Basic Screening Tool, both discussed below, will also help to address the concerns of some commenters that significant employer action will be triggered by the report of "any ache or pain," whether or not it is work related (Exs. 30–1722, 30–2208, 30–3956, 500–52). P.J. Edington, executive director of the Center for Office Technology, said:

> OSHA assumes any discomfort on the job is work-related. That leaves all employers in a continuous and costly cycle of trying to eliminate all "signs and symptoms" of MSDs (Ex. 30–2208).

But employers have the right under this final rule to make reasonable determinations that particular MSDs are not work related. And only MSDs severe enough to require medical treatment or a job restriction, or signs and symptoms persistent enough to last for seven consecutive days, have any triggering effect. Moreover, the standard's Basic Screening Tool establishes specific thresholds for the duration, magnitude and frequency of exposure to risk factors that a job must involve in order for an MSD incident in that job to be one that triggers the standard's program requirements.

The final rule also takes into account the concerns of commenters that a single incident trigger ignores the fact that an MSD may be related to the "unique physical characteristics" of the worker (Exs. 30–328, 30–1651, 30–2208, 500–1–27, Tr. 5660–61). For example, where the employer has reason to believe that only the injured employee is exposed to awkward postures because he or she is very tall or very short, the employer can limit the response to that individual employee's job or workstation. See paragraph (j), below.

3. Definition of "MSD Incident"

In this standard, the term "MSD incident" means either an MSD that is work-related and:

- Involves a work restriction, or
- Requires medical treatment beyond first aid, or
- Involves MSD signs or symptoms that are work-related and persist for 7 or more consecutive days after the employee reports them to the employer.

Work restriction is defined to mean one or more days away from work, one or more days of limitations on the work activities of the employee's current job or temporary transfer to alternative duty. Reducing an employee's work requirements in a new job to reduce muscle soreness from the use of muscle in an unfamiliar way is not considered a work restriction under this final rule. Also, the day an employee first reports an MSD is not considered a day away from work or a work restriction even if the employee is temporarily removed from work to recover.

Relationship to Recordkeeping Rule. The proposed rule defined a "covered MSD" as an OSHA recordable MSD that occurred in a job in which the physical work activities and conditions were reasonably likely to cause or contribute to that type of MSD, and those activities and conditions were a core element or took up a significant amount of the employee's worktime. In this final rule OSHA has changed the term "covered MSD" to "MSD incident" to dispel any implication that any such MSD immediately triggers a full ergonomics program. Although some participants found the definition of covered MSD to be "relatively clear" (Exs. 30–3934, 30–4837; 31–173, 31–186, 31–205, 31–229, 31–347), many more objected that it covered too many MSDs, was too vague, or was improperly linked to OSHA's recordkeeping rule (Exs. 30–1364, 30–1722, 30–2088, 30–3167, 30–3845, 30–3956, 500–73, 500–104, 32–337–1, Tr. 4366, 8226, 10000, 12797, 15977). The new definitions of MSD and Action Trigger in this standard address these concerns.

OSHA received a great deal of comment on the proposal's use of an OSHA-recordable MSD, *i.e.*, an MSD required by 29 CFR Part 1904 to be recorded on the employer's injury/illness log, as a trigger for further action. Many of these comments pointed out potential problems that could be caused by linking an employer's obligations under this standard to obligations and interpretations contained in a separate rule (Exs. 30–3853, 30–4137, 32–77–2, Tr. 10632). This problem was highlighted by the facts that OSHA has proposed to amend its recordkeeping rule, so that it has not been clear at any stage of this ergonomics rulemaking what the definition of an OSHA-recordable MSD would be, and that OSHA incorrectly described the recordability of one class of MSDs in the proposal (Exs. 30–3853, 32–78–1, 32–300–1). Moreover, according to commenters, linking the definition of MSD incident to the recordkeeping regulations would give employers a strong incentive to underreport MSDs or would punish employers who already have effective early intervention programs (Exs. 30–46, 30–75, 30–137, 30–1294, 30–1902, 30–4137, Tr. 8848, 10630–32).

OSHA agrees that these concerns, particularly those related to the ongoing recordkeeping rulemaking, outweigh any potential benefit employers would gain from being able to use recordability criteria to determine whether an MSD report triggers further action under this standard. Therefore, in this final standard, OSHA has dropped any reference to the recordkeeping rule's recordability criteria. Although the definition of an MSD incident in this standard uses criteria similar to those used in determining recordability, each of the criteria used in this rule is supported by evidence in this rulemaking record. This has also allowed OSHA to tailor the definition of an MSD incident so that it more closely corresponds with the purposes of this standard.

Definition of "musculoskeletal disorder." For purposes of this rule, an MSD is a disorder of the soft tissues, specifically of the muscles, nerves, tendons, ligaments, joints, cartilage, blood vessels and spinal discs that is not caused by a slip, trip, fall, or motor vehicle accident. See paragraph (z). This standard covers MSDs affecting the neck, shoulder, elbow, forearm, wrist, hand, back, knee, ankle, and foot as well as abdominal hernias. It does not, however, cover eye disorders, even when associated with jobs involving computer monitors.

Although some commenters recommended that the standard address conditions resulting from slips, trips, and falls (Ex. DC 58, DC 405), those injuries are not caused by exposure to the risk factors this standard covers. For the same reason the final rule does not cover computer-related eyestrain, which

is caused by factors such as glare from lights and windows, computer flicker and other monitor resolution problems, and by not blinking or looking away from the screen (Tr. 16159–66).

"Work-related." In paragraph (z), "work-related," is defined to mean that a workplace exposure caused or contributed to an MSD incident or significantly aggravated a pre-existing MSD. This is a change from the proposal, which would have considered an MSD work-related if physical work activities and conditions caused or contributed to an MSD or aggravated a pre-existing one. Many commenters complained that the proposed definition of work-related, in essence, established a presumption of work-relatedness (Exs. 30–1722, 30–3934, 30–3956, DC65, 500–1–28). The Chamber of Commerce said that the rule should not cover "minimal workplace exposure that merely aggravates non-work exposures" (Ex. 30–1722, p. 62). Mike Edmunds, corporate safety director for Tyson Foods, said:

> Even if upper extremity musculoskeletal pain (*e.g.*, wrist pain) arises solely as a result of non-work-related activities, it is virtually impossible for an employer or physician to establish that subsequent work activities did not in some minor way 'aggravate' or 'contribute' in some way to the condition—regardless of the job (Ex. 30–4137).

To address this concern, a number of commenters recommended incorporating language from various State workers' compensation regulations so that an MSD would be considered work-related only where work was the predominant cause of the injury or was more than 50 percent responsible for the injury (Exs. 30–3934, 32–77–2, Tr. 5507). Others recommended that OSHA adopt the definition of work-relatedness from California's ergonomics standard, *i.e.*, that work must be 51 percent responsible for the MSD (Ex. 32–300–1). Several suggested that the MSD incident not include pre-existing MSDs (Tr. 3097–98).

OSHA believes that some of these concerns resulted from a misunderstanding about what "contribute to" means. It does not mean that an MSD is considered to be work-related if work contributes in some de minimis (*e.g.*, "1% contribution" (Ex. 30–3934)) or vague way. Rather, work contributes to an MSD if a specific physical work activity or condition can be identified as having contributed in some discernable way to the onset of the MSD or the signs or symptoms of an MSD. If nothing specific can be identified as a factor, then work is not considered to have contributed to the MSD.

OSHA also has responded to concerns that, once an employee has an MSD, minor aggravations of the MSD can occur very easily (Tr. 3315). In the final rule, only "significant" aggravation of a pre-existing MSD is considered to be an MSD incident. "Significant aggravation" occurs only when risk factor exposures in the workplace aggravate a pre-existing MSD to the extent that it results in an outcome that it would not otherwise have caused. For example, workplace exposure is considered to have significantly aggravated an employee's pre-existing MSD if the MSD would have resolved on its own or with only first aid, but because of the employee's exposure to identified risk factors in the workplace, the MSD has progressed to the extent that medical treatment is now necessary. On the other hand, if an employee experiences more pain when at work, simply because the employee is using an injured body part, that extra pain does not constitute significant aggravation. In addition, workplace exposure aggravates an MSD only where a specific physical work activity or condition can be identified as a factor in the progression of the pre-existing MSD.

Although the employer is ultimately responsible for determining whether an MSD is work-related, employers may consult with others, such as HCPs or safety and health personnel at the workplace, in making that determination. Where an employer uses an HCP to provide assistance in determining the work-relatedness of an MSD, the HCP must use the definition of work-related in this final rule and not criteria for determining work-relatedness under workers' compensation.

Another frequent objection to the proposed definition was that it did not establish an adequate severity threshold and, as a result, would have captured all the "aches and pains of life" that employees experience while performing work activities (Ex. 30–3956, see also Exs. 30–1722, 30–2208, Tr. 9824). The Chamber of Commerce said that MSD was "so loosely defined as to cover unverified complaints of pain rather than just objectively verifiable medical conditions" (Ex. 30–1722, p. 61). The severity criteria in the final rule address this complaint. In deciding to include within its definition only those MSDs resulting in a work restriction, in medical treatment beyond first aid, and in MSD signs or symptoms lasting at least 7 days after being reported to the employer, OSHA is adopting appropriate medical severity thresholds.

Work restriction. A work restriction in this context means at least one full day when the injured employee either must take off the entire work day for recuperation or medical treatment, or is able to work for only a portion of the workday or to perform only some job functions, either regular or alternative tasks, during the recovery period. The latter category includes job transfer, light duty jobs, and alternative duty jobs. Employees who cannot work regularly scheduled or mandatory overtime during the recovery period are also considered to be on work restriction. Neither the initial day on which the MSD is reported or occurred, nor any day on which the employee is not scheduled to work, is counted as a day of work restriction.

On the other hand, the standard now makes clear that work restrictions do not include situations where an employer adjusts the work assignments to deal with the temporary muscle soreness that an employee may experience as a result of starting a job that requires the use of muscles in an unfamiliar way (paragraph (z)). The record indicates that some employers have "conditioning" programs, most often lasting about two weeks, to help employees adjust to this type of new job assignment (64 FR 65955 (Case Study No. 2), (Exs. 26–1175, 30–4340, Tr. 9225, 9403, 13589). These programs recognize that it is not uncommon for employees to experience pain or stiffness when they begin exercising muscle groups in new or more strenuous ways (Exs. 26–1175, 30–4340). In these situations, pain or soreness may not indicate the presence of an MSD hazard. In most cases these symptoms resolve as the employee becomes accustomed to the physical activities of the job (Ex. 26–1175). They do not indicate that a hazard needing to be controlled may exist. OSHA believes that this clarification will help alleviate the concerns of some commenters that the single-incident trigger would not only trigger coverage of passing aches and pains, but could also trigger WRP obligations for employees who experience symptoms while they are becoming accustomed to a new job (Ex. 30–4340, Tr. 4316–17).

Medical conditions that result in work restrictions are widely recognized as serious (Exs. 26–1039, 37–1, 37–12, 37–28). Repeatedly, physicians and other HCPs testified that they consider MSDs that rise to this level to warrant both medical evaluation and intervention and job interventions (Exs. 37–1, 37–12, 37–28). Accepted standards of clinical practice, reflected in guidelines published by medical associations, also recommend intervention at least at this stage (Exs. 37–12, 500–34, 26–1039). For example, guidelines on low back disorders (developed by a panel of private sector clinicians for the Agency for Health Care Policy and Research that recommend strategies for assessing and treating low back problems) defined low back problems as "activity intolerance due to low back symptoms," such as pain (Ex. 26–1039, p. 1).

The insurance industry also considers conditions that are severe enough to require work restrictions to constitute medical disability (Exs. 37–1, 37–6, 37–12, 37–28). These conditions are often compensable through workers' compensation, and insurance companies consider them to be serious (Ex. 37–6). According to Stover Snook, former director of the Ergonomics Laboratories at Liberty Mutual Insurance Company who conducted ergonomics research at the company for more than 30 years, the accepted definition of "low back disability" in the insurance industry is "lost time or restricted duty that results from low back pain" (Ex. 37–6, p. 3).

Medical treatment beyond first aid. The definition of MSD incident includes MSD signs and symptoms that require medical treatment beyond first aid. This is a familiar concept that is also used in OSHA's recordkeeping regulation. It also makes no difference whether an employee obtains medical treatment from his or her own HCP or one selected by the employer; or whether the employee obtains medical treatment before or after reporting the MSD signs or symptoms to the employer. Physicians and other HCPs testified that MSDs that require medical treatment such as physical therapy, prescription medication or surgery are more serious than conditions where resting the injured body area is enough to allow the injury to heal (Exs. 37–1, 37–12, 37–16, 37–17, 37–28).

Persistent MSD signs or symptoms. The third type of MSD incident is MSD signs or symptoms that persist for at least 7 days after being reported to the employer. "MSD signs" are defined in paragraph (z) as objective physical findings that an employee may be developing an MSD. MSD signs include deformity, decreased grip strength or range of motion, and loss of function. Some signs are readily observable, for instance, loss of function when an employee with carpal tunnel syndrome cannot hold a powered hand tool because of muscle atrophy in the hand. Other signs, commenters said, may not be as observable to non-HCPs (Tr. 7677). For this and other reasons, MSD signs are treated in the same way as MSD symptoms in the final rule. Under the proposed rule, any MSD sign would have been a "covered MSD" because it is a recordable event under OSHA's recordkeeping rule. This raised concerns for a number of commenters, who pointed out that some signs, such as redness, may be mild and transitory, not warranting a full program response (Exs. 30–3344, 30–3749, 30–4674, 32–211).

"MSD symptoms," as defined in paragraph (z), are other physical indications that an employee may be developing an MSD. Symptoms include pain, numbness, tingling, burning, cramping, and stiffness. The proposed rule would only have addressed persistent symptoms in manufacturing and manual handling jobs, and then only if the employer knew that an MSD hazard existed in the injured employee's job.

A number of commenters opposed the proposal's inclusion of persistent symptoms in its trigger mechanism (Exs. 30–623, 30–898, 30–1722, 30–4777, 30–4821, 32–78, Tr. 10634). Some recommended at least limiting the types of symptoms included in the definition of an MSD incident (Ex. 32–78, Tr. 10634). For example, ORC said:

> At a minimum, * * * OSHA must limit coverage to those symptoms that can be medically verified and that fall somewhere in the severity range between minor/transient and severe enough to interfere materially with job performance (Ex. 32–78, p. 17).

Other commenters, however, agreed with the inclusion of persistent symptoms in the incident trigger (Ex. 500–218, Tr. 12295), and virtually all of those urged OSHA to extend this criterion to all jobs, not just those in manufacturing and manual handling (Exs. 32–198, 500–218). A number of HCPs were among those supporting, including persistent signs and symptoms in the MSD incident trigger (Exs. 37–1, 37–12, 37–28, Tr. 7660, 13349). They said that persistent signs and symptoms should be evaluated because, left untreated, they often progress into more serious disorders and permanent damage (Tr. 7660, 7884, see also Ex. 32–450–1). One study has shown that employees experiencing MSD symptoms alone are at approximately 2 to 4 times the risk of being off work as employees without such symptoms (Ex. 500–71–27). A number of employers now encourage employees to report signs and symptoms to prevent such results and related costs (Tr. 5539, 5550, 14707, 14739).

The record establishes clearly that MSD signs and symptoms that persist uninterrupted warrant further investigation (Ex. 30–4468, 500–71–27, 37–12, Tr. 1531, 13382, 1763–65). Sound medical judgment supports intervening when an employee has experienced at least a week of MSD signs or symptoms. Dr. Bradley Evanoff, Assistant Professor of Medicine at Washington University School of Medicine specializing in research and clinical practice addressing occupational MSDs, testified:

> I think whatever the occupation, whatever the type of work, if someone has had persistent musculoskeletal symptoms for some period [of] time, and I think a week is a reasonable period of time, then they should be evaluated to see if they have a musculoskeletal disorder (Tr. 1531).

Dr. Robin Herbert, medical director of the Mount Sinai Center for Occupational and Environmental Medicine, testified that providing early intervention for employees whose symptoms persist beyond a few days is "consistent with accepted medical practice" (Tr. 1653). In fact, according to ACOEM, such intervention is "essential" (Ex. 30–4468). Dr. Robert Harrison, who has treated more than 1,000 patients with work-related MSDs over the past 20 years, and has also conducted research in the area of work-related MSDs, testified that there is "broad consensus among the medical profession that effective treatment and prevention of MSDs relies on early reporting of symptoms. * * *" (Ex. 37–12). He also summed up why 7 days is an appropriate threshold:

> [S]even days is early enough to catch the symptoms early but is late enough so that transient symptoms that may last only two or three days don't come through as a reportable symptom to a health care provider. I think it's a reasonable line (Tr. 1764).

The record shows that where signs and symptoms persist beyond a few days, they are likely to indicate that an MSD has occurred. Dr. Gary Franklin confirmed that MSDs can develop in a very short period of time:

> If I was taking the history of the person and getting these kinds of symptoms of numbness and tingling and burning particularly at night, it would not matter to me whether it was two days or seven days or 14 days, if I thought clinically the symptoms were correct. I have seen patients that developed [carpal tunnel syndrome] in a day or two (Tr. 13382).

HCPs also testified that employees who have had MSD signs or symptoms for only a short period of time can already be experiencing physiologic changes or damage (Ex. 37–16). For instance, Dr. Evanoff testified:

> I think people who have prolonged symptoms, lasting more than a few days * * * if you want to use the cut off of a week or more, I think that that's very likely to represent some underlying tissue damage. * * * (Tr. 1563).

Peter Boyle, former professor of orthopedic physical therapy, agreed:

> A large amount of force in a short time could create a pathoanatomic injury causing disruption, and [tissue] failure (Tr. 2797–98).

In addition, persistent signs and symptoms can themselves be severe enough to interfere significantly with major life activities (Tr. 13356. 13360, 13373). Dr. Connell testified:

> A typical carpal tunnel patient would come in complaining of numbness and tingling in the distribution of the median nerve. Typically it occurs initially at night and wakes one out of a sleep for some reason—4 a.m. seems to be the magic number (Tr. 2817).

Moreover, the persistence of signs and symptoms can be an indication that an MSD is worsening, and early detection and intervention are "critical to prevention of more serious disorders," in the words of Dr. Robert McCunney, president of the American College of Occupational and Environmental Medicine (ACOEM) (Tr. 7660). Dr. Marc Connell, an orthopedic surgeon at Georgetown University Hospital, added: "I think that's common medical sense that the earlier the treatment is rendered the less severe will be the MSD" (Tr. 2833). Dr. Edward Bernacki, vice-president of ACOEM, said:

> Obviously, the earlier you pick up a problem, the more reversible it is, so obviously, the encouragement of employees to come in at the first signs of a problem, so that we could work it up, and then basically start treating the illness when it is reversible, in other words, if you have irreversible nerve damage, that is basically too late. Then, you need surgical intervention. However, for example, in carpal tunnel early on when the disease is reversible, mere splinting and restriction of activities are fine, it takes care of the problem, it disappears (Tr. 7687–88).

(See also Exs. 26–1367, 32–450–1, 37–24, Tr. 1530, 1697–98, 2853, 2833, 7649–50, 7687–88, 7883–84, 9831.)

In addition to reducing the severity of MSDs, early intervention has been shown to reduce MSD rates and associated medical costs (Exs. 32–12, 32–339–1–87, 32–399–1–4, 32–450–1 (citing Hales *et al.* 1993)). Dr. Bernacki described a study of the effect on 22,000 employees at Johns Hopkins Hospital and University of an ergonomics program that stressed early reporting of MSD signs and symptoms (Ex. 32–399–1–4, Tr. 7691–92). The study reported an 80 percent reduction in MSDs after the program and early intervention were implemented.

Early intervention also increases the availability and effectiveness of conservative therapy. Several HCPs told OSHA that, when MSDs are treated early, symptoms "have been completely resolved with a brief period of restricted work activities" (Ex. 37–12, Tr. 13345–46). Dr. Harrison said:

> Employees often rapidly and completely recover from their MSD with simple modification of the work process or change of job duties to minimize or reduce exposure to ergonomic risk factors (Ex. 37–12, p. 5).

Dr. Franklin added that where employees with carpal tunnel syndrome are provided with early intervention they should be able to return right away to modified work and that work restrictions should not be needed for a prolonged period of time (Tr. 13345–46). Dr. Bernacki testified that, as a result of the early reporting and intervention program at Johns Hopkins, there had been only one surgery for work-related carpal tunnel syndrome during the past 5 years, compared with 26 such surgeries in the previous three years (Exs. 32–399–1–4, p. 7–8).

Early intervention also is likely to be more effective in helping patients recover fully (Exs. 37–12, 38–222, 38–451, 500–71–57). Dr. Harrison said:

> At an early stage of symptom management, treatment with anti-inflammatory medications, splints, and rest of the affected body part often results in complete clinical improvement without any permanent injury (Ex. 37–12, p. 5).

Dr. Michael Erdil, medical director of the Connecticut Occupational Health Network, said that both scientific evidence and his own clinical experience show that conservative therapy is much more likely to be effective as an early intervention (Ex. 37–16, citing Kruger *et al.* (1991) (Ex. 26–910), Gelberman *et al.* (Ex. 26–916) (1980), Quebec (1987), Zigenfus *et al.* (2000) (Ex. 38–285). Zigenfus found that patients with low back injuries who were provided with medical treatment earlier (*i.e.*, less than 8 days after injury) required fewer days away from work and restricted work and had shorter case duration (Ex. 38–285). Dr. Evanoff explained that the medical literature consistently shows that:

> [C]onservative management of MSDs is most effective when begun in early stages of these disorders, and that patients who are treated only after a prolonged symptomatic period are less likely to respond favorably than those treated earlier (Ex. 37–1, citing Dellon (1989), Stern (1990), Rystrom & Eversman (1991)).

Similarly, Dr. McCunney of ACOEM testified that:

> ACOEM supports the requirement of a mechanism for employees to report MSD signs and symptoms since early detection is critical * * * [M]y colleague and I can regale you with all sorts of anecdotes about people who have waited too long to seek medical treatment, and then once they come for medical treatment, the treatment is not as effective as it could have been were they to have come earlier (Tr. 7649–50).

Dr. Harrison discussed the case of one worker who did not receive early intervention:

> [A] twenty-five year old machine operator recently came into my office for treatment of severe hand pain and swelling. She had worked 9 months in a job that required her to use excessive force to press a lever over 20,000 times per day, using her hands in a pinch grip with her wrist in an awkward posture. She had developed symptoms after three months of work, but had not seen a health care provider after her supervisor told her that she would "feel better" after she "got used to the job." By the time she finally came to see me, she was unable to drive her car, shake my hand or open a door. My examination showed marked swelling and redness of the right wrist, and the pain was so severe she cried [at] my touch or gentle movement. My diagnosis was chronic, stenosing tenosynovitis. I had little option but to remove her from work completely for four weeks to let the hand rest. Unfortunately, she was unable to return to work in spite of corticosteroid injections, splints, analgesic medication and physical therapy. She required surgery to release the tendon, and is now in a prolonged rehabilitation program.

This case is not unusual. (Ex. 37–12).

By including persistent signs and symptoms within the standard's definition of an MSD incident, OSHA assures that early intervention can occur and that medical outcomes like that described by Dr. Harrison will not occur.

For these reasons, a number of HCPs and employers said that they investigate MSD signs or symptoms as soon as they are reported (Exs. 30–390, 30–398, 500–218, Tr. 5539, 5550, 9906, 13382). Dr. Franklin stated:

> If I was taking the history from the person and getting these kinds of symptoms of numbness and tingling and burning particularly at night, it would not matter to me whether it was two days or seven days or 14 days, if I thought clinically the symptoms were correct. I have seen patients that developed [carpal tunnel] in a day or two (Tr. 13382).

Several employers said that their standard response is to investigate any report of MSD signs or symptoms (Tr. 5539, 5550, 14715–16). Sean Cady, of Levi Straus & Co., said:

> Well we believe that symptoms could be precursors to a possible repetitive motion injury. And therefore if we know about a symptom early we can evaluate a job for ergonomic risk factors and possibly modify that job to reduce risk factors prior to the

> possible occurrence of an injury. And also, early reporting of symptoms is a trigger for our quick response system or quick response process (Tr. 14715–16).

Some employers provide restricted work when an employee reports MSD signs or symptoms to let the symptoms resolve quickly without medical treatment, and to allow the employer to examine the job (Ex. 26–1370). Other employers said their standard practice is to send any employee who reports MSD signs or symptoms to an HCP immediately (Tr. 3867).

These employers told OSHA that their early intervention programs, particularly restricted work and light duty, have proven to reduce the severity and costs of MSDs significantly (Ex. 30-4137). Even after the rule becomes effective, OSHA believes that employers who have seen the advantage and effectiveness of such intervention programs will continue to follow them rather than delaying intervention while they wait to see whether the employee's MSD signs or symptoms persist. However, for those employers who have not yet implemented early intervention programs, including the persistent signs and symptoms criterion in the final rule will help to ensure that employees are provided with appropriate MSD management and work restrictions while their condition is still reversible.

This evidence is part of the reason that OSHA does not agree with the commenters who argued that signs and symptoms are too subjective and difficult to verify to be an appropriate trigger for action under this standard (Exs. 30–1722, 30–3345, 30–4340, 500–1–23, 500–1–117, Tr. 5507). Other evidence establishes that MSD signs are often easily observable (Tr. 2828). For example, an employee's decreased range of motion can be identified by the employee's inability to raise his arms above his shoulders or to bend over to lift an object. Objective physical findings also include positive results on medical tests such as nerve conduction velocity tests, CT scans, or x-rays.

The presence of MSD symptoms can also be confirmed through physical examination by an HCP (Ex. 37–12, 37–28, Tr. 13404). Dr. Robert Harrison testified that there are several ways to confirm the presence of both MSD signs and symptoms, including palpation or movement of the affected body part during the physical examination (Ex. 37–12). Dr. Gary Franklin, of the University of Washington School of Public Health and Community Medicine, testified that symptoms of carpal tunnel syndrome, for instance, can be verified through absence of reflexes and nerve conduction tests and even the Katz hand paint diagram (Tr. 13380, 13404). According to Dr. Franklin, the best case definition of carpal tunnel syndrome is the presence of symptoms plus a positive nerve conduction test. However, Dr. Franklin also said that in some circumstances HCPs can reliably determine, based on symptoms alone, whether a patient has carpal tunnel syndrome: "one could make a reasonable determination based on symptoms alone if you thought it was possible that somebody had carpal tunnel syndrome." (Tr. 13384–88). Dr. Margit Bleecker, Director of the Center for Occupational and Environmental Neurology at Johns Hopkins University, testified:

> I think as somebody who has worked many years in this area, you certainly can diagnose carpal tunnel syndrome by the history and the physical examination. The only time that you absolutely need to have the EMG is if you're considering surgery (Tr. 16901).

Dr. George Piligian, who is with the Mount Sinai Center for Occupational and Environmental Medicine and for the past 10 years has been treating workers with MSDs, added:

> We use principles in medicine, and as you may or may not know, 80 percent of medical diagnoses, all medical diagnoses, not just work-related ones, are arrived at by history and complaints. Then, we add to them, the physical diagnosis, and finally, the testing. This has been the way medicine has gone on for ages, and those who have written the most respectable textbooks say that, and many doctors who go right to the objective number, which they worship, and leave out those 80 percent arrive at the wrong diagnosis, and thereby give the wrong treatment. So, it is still seeing, listening, recording, putting it all together that arrives at the medical diagnosis, and they can be arrived at (Tr. 7851–52).

OSHA has, however, responded to the comments that certain MSD signs, such as redness, may be transient or may be a sign of something other than an MSD (Tr. 5507). As mentioned, in this final rule, MSD signs are treated the same way as MSD symptoms, so that only those signs that persist for 7 days after being reported to the employer or that meet the other severity criteria require further action. The proposal would have required action whenever an employee reported an MSD sign because all positive signs must be recorded under OSHA's recordkeeping rule. OSHA has also eliminated the reference in the proposal to Finkelstein's, Phalen's and Tinel's tests as examples of the kinds of positive tests that would constitute MSD signs. The record shows that these tests are not considered reliable by a growing number of HCPs and, in any event, have been replaced with other medical tests such as nerve conduction tests (Ex. 37–2, Tr. 13363, 13375).

Other differences between the proposed definition of a "covered MSD" and this final standard's definition of an "MSD incident" further show OSHA's intent not to address the type of minor and transient symptoms that can be expected to resolve spontaneously in a matter of days even without intervention. The final rule, unlike the proposal, does not include the diagnosis of an MSD in the definition of MSD incident. As mentioned, the standard also now makes clear that an MSD is not work-related unless workplace exposures caused or contributed to it, or were responsible for a significant aggravation of a preexisting injury. These changes respond to comments that the proposal could have required a full ergonomics program in situations where workplace exposures contributed only trivially to the employee's condition (Exs. 30–1722, 30–3934, 30–3956, 500–73, Tr. 3097–98).

Clearly, MSDs qualifying as MSD incidents under the definition in the final rule are the types of conditions that OSHA may act to prevent. See Occupational Noise Exposure (29 CFR 1910.95, 46 FR 46236), Occupational Exposure to Formaldehyde (29 CFR 1910.1048, 52 FR 46168, 46234–37), and Section VII (Significance of Risk) of the Preamble. It is even more clearly within OSHA's authority to require employees to investigate them further to determine whether they were caused by hazards that this standard addresses.

Paragraph (f)—How Do I Determine Whether the Employee's Job Meets the Action Trigger?

Paragraph (f) tells employers how to determine whether a job where an MSD incident has occurred meets the standard's two-part Action Trigger. According to paragraph (f)(1)(i), the first part of the Action Trigger is a determination that an MSD incident has occurred. Paragraph (f)(1)(ii) states that the second step is a determination that the injured employee's job meets the Basic Screening Tool in Table 1 of this standard. Paragraph (f)(2) explains that if the job does not meet the Action Trigger, the employer has no further obligations with respect to that job.

The second step of the action trigger requires application of the Basic Screening Tool in Table 1 to the injured employee's job. A job is screened in, *i.e.*, is determined to meet the levels in the Basic Screening Tool, if it regularly involves exposure to one or more of the risk factors in the Basic Screening Tool at levels above those specified in the tool. Only where the job is screened in

does the employer have further obligations under the standard.

The proposed rule also included an exposure screen. The proposed screen would have ruled out jobs where the "physical work activities and conditions" in the job were not associated with the "type of MSD reported," or were not "reasonably likely" to cause or contribute to an MSD. It also would have ruled out jobs in which the employee's exposure to the risk factors was not a "core" element of his or her job, or did not make up a "significant" amount of the employee's workday.

Thus, the proposed standard contained performance-oriented language ("core element," "significant amount" of time) to define the terms of the screening criteria. In the preamble to the proposal, OSHA also used performance-oriented language in discussing the meaning of core element, describing the term as a "regular and routine exposure." On the whole, most commenters supported the concept of an exposure screen, but many said that OSHA had not provided enough guidance for them to understand when a nexus existed between an MSD and a job or what the exposure severity threshold was for a job. For example, they complained that the terms were too vague and undefined to answer those questions (see, *e.g.*, Exs. 30–1722, 30–3032, 30–3853, 30–3956, 30–4340, 30–4837, 31–92, 31–125, 31–223, 31–225, 31–260, 31–307, 30–300, 32–337, DC66, Tr. 3337, 8849, 8850).

The following comments are representative:

> The terms "core element" and "significant amount" are not clear. While extreme examples can be easily defined, extreme examples are few and far between in the real world. Most of the time, examples fall into "grey" areas. These terms either need specific definitions or should be replaced with other terms (Ex. 30–4837).
>
> Does [core element] indicate that the employee will be required to perform a manual handling task some time during his/her shift, *i.e.*, one 50-lb. Lift throughout an 8-hour work shift, or does it indicate that some repetition is involved with the manual handling portion of the task, *i.e.*, lifting 20 10-lb. packages per hour for 8 hours? (Ex. 30–4837).
>
> How much is significant? 6 hours per 8-hr shift? 4 hours per 8-hr. shift? 2 hours per 8-hr. shift? Or 22-hr. periods per 8-hr. shift? (Ex. 30–4837).

The Rohm and Haas Company said:

> [I]t is unclear what OSHA means by the subjective terms used as shown below. "* * * significant amount of their worktime * * *" * * * [and] "* * * core element of the employee's job." It is unclear how OSHA would be able to determine consistently the applicability of the standard in specific situations in the absence of a criteria to guide decision-making on whether the work time was significant, the applied force was forceful, or whether the material handling was a core element of the employee's job. * * * In the absence of an explanation of what OSHA intends these subjective terms to mean, it is unclear how to decide whether a particular activity fits the definitions and therefore whether it is covered by the standard. (Ex. 31–289)

National Small Business United testified that:

> The employers, especially the smaller employer, * * * needs more specific guidance in terms of the types of jobs to be looking at and specifically as the types of activities in those jobs and how much of what kind of activities is too much for what type of person. (Tr. 2746)

Con Ed stated:

> Throughout the standard, OSHA uses terms that are vague and open to interpretation such as: reasonably likely, core job element and other similar terms. These terms require clarification so OSHA and employers interpret them consistently. (Tr. at 4628)

In addition, ORC added that:

> The proposed trigger simply does not fulfill OSHA's responsibility to provide adequate guidance with respect to employer's obligations. * * * OSHA must do a better job of defining a point at which an employer's obligations are triggered and do a better job in establishing more objective criteria. (Tr. at 4097)

Similar comments were submitted by EEI (Ex. 32–300–1); Chamber of Commerce (Ex. 500–188; Tr. at 3044), Color Works (Tr. at 10069), Indiana Chamber of Commerce (Tr. at 3335), National Roofing Contractors Association (Tr. at 4905), Food Distributors International (Tr. at 5634–35), and many others.

Commenters further recommended that the screening criteria should include specific, exposure-based criteria (Ex. 500–218; Ex. 500–214, Tr. at 17905–6). In particular, ORC stated that:

> In place of the proposed screening criteria of section 902, OSHA would set forth flexible, but objective, risk-based criteria * * * (Ex. 500–214)

ORC added that such criteria are already contained in the record and that "a number of models to define at-risk conditions and work routines are available in the literature and are cited by OSHA in its preamble." (Ex. 32–78–1)

Similarly, the AFL–CIO stated:

> While we believe the content and intent of OSH's proposed screening criteria were clear from the text and Preamble of the proposed rule, the AFL-CIO has several recommendations for ways in which OSHA can respond to industry's requests for more specific guidance and definitions. We recommend two possible approaches. The first is to incorporate a list of risk factors and criteria similar to the "caution zone job" criteria included in the state of Washington's Ergonomic Standard (WAC 296–62–0515) which serve a similar purpose as the screening criteria in the federal OSHA proposal. These "caution zone job" criteria provide more specific definitions of risk factors and the amount of time or frequency that must be exceeded for these risk factors to be covered by the standard. (Ex. 500–218)

ORC also expressed qualified support for using the state of Washington's "caution zone job" criteria:

> Although the Washington State proposal itself contains significant deficiencies, ORC believes its approach to providing quantified alternative triggers is a rational one that could be considered by OSHA. (Ex. 32–78–1)

See also Tr. 9071–74.

A preliminary exposure-based assessment as a trigger for further actions is also widely used by participants in the rulemaking who provided testimony on the specifics of their own ergonomics programs (see, *e.g.*, Ex. 32–300–1, Tr. at 2920–2927; Tr. at 5302, Tr. at 10802; Tr. at 14142; Ex. 32–339–1–4, Tr. at 16839; Tr. at 4643–4647; Tr. at 5539–5540, 5566–5567, Tr. at 14801; Tr. at 14715). Many of these commenters use a checklist format which contained specific descriptions of risk factors. The Dow Chemical Company, for example, uses a short checklist printed on a pocket size card that contains descriptions of specific risk factors along with a duration/timing component (see, *e.g.*, Tr. 5311–5312, 5359, Ex. 32–77–2–1). NIOSH's Elements of an Ergonomics Program (Ex. 26–2), also contains checklists that have specific descriptions of risk factors, some with a duration component.

A number of other participants also suggested that OSHA adopt quantitative methods of defining the screen (Ex. 30–46, 30–75, 30–137, 30–293, 30–328, 30–3032, 30–3284, 30–4837, 31-23, 31–27, 31–95, 31–137, 31–187, 31–31–202, 31–301, 31–307, 31–337). Specific suggestions included defining a core element of manual handling jobs in terms of frequency rates for lifts (Ex. 31–337), or saying lifting was a core element of a job that required one lift per hour (Ex. 31–259). Suggestions for a definition of the term "significant amount of worktime" included 50 percent or more of the employee's worktime, Southern California Edison (Ex. 31–23), more than 2 hours a day, UNITE (Ex. 32–198), or routine performance of the same task 4 hours or more per shift or 2 hours or more continuously per shift, Monsanto (Ex. 30–434).

Some commenters thought that the screen would require them to conduct a job hazard analysis every time an MSD was reported, just to know whether the MSD was reasonably likely to have been caused by the job. Rodney Smith of Freeborn & Peters said:

> Identifying ergonomic risk factors is difficult due to the vagueness of their definition [in the proposed rule]. But how in the world does my employer tell whether those risk factors constitute a hazard, as that term has been defined in the standard. That is, risk factors reasonably likely to cause or contribute to a covered MSD (Tr. 8850).

Others also complained that it would be virtually impossible for them ever to establish that it was not reasonably likely that exposure to risk factors in a job could cause MSDs, when at least one MSD would have already occurred (Ex. 30–1722, 30–4137, DC 65). In addition, several commenters found the crucial terms "extremely subjective," and believed they would be "open to the individual interpretation of OSHA inspectors" (Ex. 30–3032, 31–22, 31–303, 31–307, 32–337).

In response to those and other comments, OSHA has further clarified and operationalized the proposed exposure screen, or severity threshold. Once the employer determines that an MSD incident has occurred in a job, the employer must screen the job to determine whether it meets criteria requiring a job hazard analysis to determine the potential hazard associated with exposure to risk factors. For ease of use, the criteria are presented in a "Basic Screening Tool," which is a chart that contains specific descriptions of the risk factors covered in the final rule along with duration specifications and illustrations (see Table 1 of the regulatory text). In jobs where an MSD incident has occurred and employee exposure to risk factors meets the criteria laid out in the screen, the employer must proceed with the program requirements in paragraph (g) of the standard.

Employers with employees who report MSDs in jobs that do not meet the specific screening criteria are not required to proceed with any of the remaining requirements of the standard. This could include jobs that do not involve the risk factors this standard covers or where the injured employee's work activities do not involve the injured body area. The screen also allows employers to screen out jobs in which the employee's work activities do not involve enough exposure to risk factors to require further action under this standard. In these cases, the employer need not perform a job hazard analysis, eliminate or control any MSD hazards, or provide training or MSD management. Where application of the screening tool results in a job being screened in, however, employers must implement the ergonomics program described in paragraph (g).

The Basic Screening Tool has been designed to minimize employer burdens in screening jobs. It is similar to a number of screening tools that are already in use (Exs. 26–1008 (Snook Push/Pull Tables), 32–77–1–2 and Tr. 5336–37 (Dow Chemical), 502–12 (NIOSH Lifting Equation), 502–35 (GM–UAW checklist)). It is limited to five risk factors and, to streamline the screening process, the tool applies the same duration criteria to almost every risk factor/activity.

The Basic Screening Tool in the final standard serves the same function as the screen in the proposed rule, but, instead of performance language, it contains specific definitions of the risk factors and exposure durations that define a job requiring further analysis. The definitions used in this chart are consistent with a number of approaches and screening tools contained in the rulemaking record, including the state of Washington's Ergonomic Standard's "caution zone job" checklist (Ex. 500–41); the checklists contained in the NIOSH Elements of an Ergonomics Program (Ex. 26–2); the checklist developed by tripartite committee of employer, employees and government representatives for use in conducting a preliminary job analysis under the British Columbia Ergonomics Standard (Ex. OR–388); and others (Exs. 500–108; 32–77–2–1, 26–2, OR–348–1; 502–67)

By utilizing language from programs and checklists that have been used successfully by both employers and employees for many years, OSHA fully anticipates that employers will have no difficulty in determining whether a job meets the standard's Action Trigger. Further, as with the proposed rule, OSHA expects that employers will be able to determine, quickly and efficiently, if the job activities of any employee reporting a MSD meet or exceed the criteria of the screen.

Similar to the concept expressed in the proposed rule, the basic screening tool in the final standard, when coupled with the occurrence of an MSD incident in a specific job, represents an exposure-based "action trigger", that requires the employer to proceed with some other provisions of the standard (in particular, job hazard analysis and MSD management). However, jobs where the employer has determined that an MSD incident occurred and that meet the screening criteria do not necessarily require corrective action; the need for corrective action is based on the results of a more detailed job hazard analysis (see Summary and Explanation, Job Hazard Analysis section). In this way, the screening criteria concept is similar to action levels contained in OSHA's health standards (*e.g.*, Benzene, 29 CFR 190.1028; Ethylene Oxide, 29 CFR 1910.1047; Formaldehyde, 1910.1048.) In those standards, as in the final ergonomic program standard, the inclusion of an action level is used to differentiate between more hazardous and less hazardous work operations, and to identify those operations where the employer needs to focus resources.

The screening criteria in the final standard consist of the five risk factors that are covered in the final rule: repetition, force, awkward postures, contact stress, and vibration. Most of the screening tools submitted to the record contained similar risk factors. For example, the screening tools submitted by NIOSH (Ex. 32–30–1–45), UFCW (Ex. IL–228), the AFL–CIO (Ex. 500–71–70), the Worker's Compensation Board of British Columbia (Ex. 500–142–12), the UAW/General Motors (Ex. Or 348–1), Dow (Ex. 502–77–2–1), and the Washington State Department of Labor and Industries (Ex. 502–313–6) included these same five risk factors as specific risk categories in their screens or included narrative questions directly related to or incorporating these same risk factors. In addition, these are the risk factors addressed in the epidemiological literature on ergonomics and discussed in the Health Effects section (Section V) of this preamble.

The proposal also included static postures, whole body vibration, and cold in the list of risk factors. The evidence discussed in the Health Effects section of this Preamble has convinced OSHA that these risk factors should no longer be addressed independently. Static postures will be covered to some extent by the awkward postures element of the screen, and employers should be aware that cold temperatures may aggravate the effects of other risk factors.

To give further guidance to employers, each risk factor in the chart is clearly described (*i.e.*, descriptions of specific job or task activities) and includes specific duration, frequency. and magnitude components. In the chart, repetition includes a separate description for keyboarding/mouse use; force is broken down into lifting, pushing/pulling, and pinching and gripping unsupported objects of specified weights; awkward postures are defined by specific postures, as well as pictures; and vibration includes a description for both high vibration levels from equipment such as chainsaws, and moderate vibration levels from equipment such as jigsaws, grinders or sanders.

In addition, the chart contains a simple grid for employers to use in relating the body area affected by an MSD incident to a relevant risk factor. Thus, the grid serves to further simplify this initial determination by assisting the employer in focusing on only those risk factors that have a clear nexus with the MSD incident that triggered the use of the screening tool; this also reflects OSHA's intent in the proposal. For example, if an MSD of the back or lower extremity is reported, the employer, when evaluating the risk factor for repetition, would focus only on job or task activities where the employee is performing the same motions every few seconds or repeating a cycle of motions involving the affected body part more than twice per minute for more than 2 consecutive hours in a workday. The employer would not need to consider use of a keyboard and/or mouse in steady manner (the shaded portion of the chart under the risk factor repetition). Similarly, for a reported MSD affecting the back or lower extremity, the employer, when evaluating the risk factor for force, would only need to focus on job or task activities involving lifting or pushing/pulling and not on work tasks involving pinching or gripping.

Each job or task activity also includes a duration/frequency limit. In selecting the duration limit for the risk factors, OSHA based its decision on balancing the weight of the scientific evidence against the need for the screening tool to be clear and easy to use. For many items in the chart, the agency has chosen to use more than 2 hours total per day as an exposure duration that triggers jobs for job hazard analysis; this determination is based on an analysis of relevant epidemiological data contained in the rulemaking record.

Many studies in the epidemiological literature clearly demonstrate that the incidence of MSDs increase with increased duration of exposure to certain risk factors or a combination of risk factors. Table IV—SCREEN lists studies that included duration, either qualitatively or quantitatively, as a component of the investigation. These studies reflect a subset of the many studies identified by the Agency that demonstrate positive exposure-response relationships between the intensity and/or duration of exposure to biomechanical risk factors and the prevalence or incidence of MSDs. The results of these studies show increases in odds ratios or other risk measures with increases in the daily or weekly duration of exposure for a number of risk factors such as repetitive precision movements, awkward postures (*e.g.*, hands above the shoulders, kneeling, stooping), gripping, lifting, and carrying. For example, Ekberg *et al.* (Ex. 26–1238) reported that the risk of MSDs of the neck and shoulder increased with the hours per day that repetitive precision movements were performed and that arms were lifted above the head. Similarly, Kelsey *et al.* (Ex. 26–709) reported an increased risk of prolapsed lumbar disc when the frequency of lifting or carrying loads greater than approximately 25 pounds increased from 0 to more than 25 times per day. Similar dose-response observations were reported by Latza *et al.* (Ex. 38–424), Matsui *et al.* (Ex. 26–309), Smedley *et al.* (Ex. 500–41–40) and Tola *et al.* (Ex. 26–1018).

OSHA's review of the studies that quantified duration of exposure indicate that, in general, the MSD risk in exposed groups of workers increases above that in unexposed groups when the duration of exposure to certain risk factors or combinations of risk factors comprises about one-fourth to one-half of the workday or workweek. For example, Holmstrom *et al.* (Exs. 26–1231, 26–36) studied workers using awkward positions such as stooping, kneeling, and raising the hands above the shoulder and found an increased risk of low back pain (Odds Ratio of 1.4, 1.9, and 1.5 for stooping, kneeling and hands above the shoulder, respectively) with 1 to 4 hours per day of exposure. Similarly, Nordstrom *et al.* (Ex. 26–900) observed that the risk of carpal tunnel syndrome began to increase among workers whose jobs involved wrist bending or twisting after exposures of 3.5 hours compared to groups exposed for less than 3 hours (Odds Ratios of 1.34 with 0.25–1.75 hours exposure, 1.23 with 2–3 hours exposure, and 2.33 with 3.5–6 hours of exposure). Similar quantitative observations were reported by deKrom (Ex. 26–102) for wrist flexion, Baron *et al.* (Ex. 26–697) for grocery checking, and Xu *et al.* (Ex. 500–71–53) for frequent twisting and bending and for physically hard work (see Table IV—SCREEN). Other studies reported results using qualitative ordinal scales that indicate that risks increase, sometimes substantially, with exposure to risk factors of one-half a day or more. Ekberg *et al.* (Ex. 26–1238) reported ORs of 3.8 and 2.4 for neck/shoulder disorders that were associated with a "medium" duration (in hours per day) of repetitive precision movement or arms lifted, respectively, compared to workers with "low" exposure in terms of daily duration. Stetson *et al.*(Ex. 26–1221) found an increased prevalence (65%) of hand/wrist symptoms among workers using a high grip force (> 6 pounds) for more than half of a shift (defined as "frequently" in the study), compared to the prevalence in workers with "some" (40%) or no (41%) exposure. A study by Viikari-Juntura *et al.* (Ex. 500–41–50) of trunk twisting reported a non-statistically significant elevation in risk of neck disorders (OR = 1.3) among workers having "little" exposure (in hours per day), and statistically significant increases in risk among workers with "moderate" (OR=1.9) and "much" (OR = 2.3) exposure.

However, there were also studies that showed increased risk of MSDs associated with exposures of less than 2 hours daily. For example, Vingard *et al*, (Ex. 500–41–51) showed an increased risk MSDs of low back area among workers in jobs involving forward bending for approximately 1 hour per day (statistically significant for male workers, but not for female workers). Holmstrom *et al.* (Ex. 26–36) found a significantly increased OR (2.4) for severe low back pain with impairment for less than 1 hour per day of kneeling). DeKrom *et al.* (Ex. 26–102) reported a significantly increased OR (1.4) for carpal tunnel syndrome among workers having 1 to 7 hours per week of wrist flexion; 1 to 7 hours per week of wrist extension was also associated with an elevated OR for CTS (1.4), but that result was not statistically significant. Latza *et al.* (Ex. 38–24) reported an increase (not statistically significant) in low-back pain among workers laying sandstone for less than 2 hours per day compared to unexposed workers. English *et al.* (Ex. 26–848) found positive exposure-response relationships where ORs for carpal tunnel syndrome or hand/wrist disorders increased by 1.8 and 1.6 per hour worked per day, respectively, for workers performing tasks involving shoulder rotation once per minute. These studies, taken as a whole, demonstrate that for the risk factors listed in the basic screening tool, the risk of MSDs increased with daily duration of exposure.

The studies described above and contained in Table IV—SCREEN show that, where researchers have investigated relationships between MSD risk and daily duration of exposure, the risk of MSDs has been consistently elevated in groups of workers exposed for half of the workshift or more (Exs. 26–1238, 26–697, 26–1221, 38–428, 26–

1231, 26–36, 26–1018, 500–41–50, 26–102, 26–900, 26–58, 500–71–53). For exposure durations of one-fourth to one-half of the shift, or durations described as "some" or "moderate," several studies showed statistically significant increases in MSD risk (*e.g.*, Exs. 26–697, 38–428, 26–1231, 26–36, 500–41–50, 26–102) and others reported increased ORs that were not statistically significant (*e.g.*, Exs. 26–1018, 500–41–50, 26–102, 26–58). For exposures of less than 2 hours daily duration, results from these studies are more equivocal; some reported significantly increased ORs (*e.g.*, Exs. 500–41–51, 26–848, 26–102, 26–36) while several found non-statistically significant increases in ORs (*e.g.*, Exs. 500–41–50, 26–102, 500–41–51, 26–36, 26–1231, 38–24). Based on these studies, OSHA finds it reasonable to trigger jobs for job hazard analysis where employees are exposed to the risk factors indicated on the screen for more than 2 hours during the work shift. OSHA believes that a 2-hour duration criterion for the screen will capture those exposure situations where the epidemiological evidence indicates that MSD risk is most likely to be elevated (*i.e.*, jobs involving more than 4 hours per day of exposure) as well as those jobs involving 2 to 4 hours of exposure during the shift where the evidence suggests that the risk may already be increased, at least in some situations. The 2-hour trigger will exclude those jobs where the evidence has been less consistent in finding an elevated risk of MSDs (*i.e.*, jobs involving less than 2 hours of exposure). This is consistent with OSHA's statutory mandate to be protective of workers. However, because the screen does not necessarily trigger an obligation to control a job, OSHA also is not imposing unnecessary costs on employers.

In using this 2-hour cutpoint, OSHA does not intend to imply that all workers will experience significant adverse effects after 2 hours or more of exposure. Rather, OSHA is using this cutpoint in the screen criteria to give employers guidance about which jobs might involve a sufficient duration of exposure such that the job warrants closer examination. In addition to being supported by the scientific literature, this value is also administratively simple for employers to use, thus allowing the screening tool to be used quickly and consistently for a number of different jobs.

For repetitive motion other than use of a keyboard or mouse, the screen triggers jobs into the requirements of the standard only if the exposure occurs for more than 2 *consecutive* hours in a workday, as opposed to more than two hours total per day. This reflects OSHA's belief, based on the health evidence, that 2 hours of repetitive motion will be less hazardous if spread out over the workday because musculoskeletal tissue will have an adequate opportunity to recover. By capturing only those jobs that involve more than 2 consecutive hours of repetitive motion, the standard will not capture those jobs where employees change tasks during the day, even if the repetitive motion occurs for a total of 2 hours over the work shift.

The screening tool departs from the 2-hour duration criterion for a few items. These include the following: For use of keyboard and mouse in a steady manner, the duration is set at 4 hours total per workday; for lifting, the screen sets weight and frequency criteria; and for use of tools or equipment that typically have high vibration levels (such as chainsaws, jack hammers, percussive tools, riveting or chipping hammers) the duration is set at 30 minutes total per day.

For use of a keyboard or mouse in a steady manner, OSHA has set the duration for more than four hours total per day. In this case, OSHA has chosen more than four hours based on the epidemiological evidence that demonstrates that, in general, the risk of MSDs for workers performing keying activities begins to increase after four hours of exposure (see Table IV—SCREEN). For example, Bernard *et al.* (Ex. 26–842) studied workers typing at video display units and reported an increased risk of hand/wrist MSDs for exposures of 4 four to six hours. Oxenburgh (Ex. 26–1367), observed an increased prevalence of hand, wrist, forearm and/or elbow MSDs after 4 hours per day at a keyboard. Similarly, Polanyi *et al.* (Ex. 38–3) studied keyboard workers and observed that upper extremity MSDs significantly increased after exposure durations of approximately four hours per day. Based on this evidence, OSHA has determined that it is appropriate to deviate from the 2 hour duration criterion set for other job or task activities, and to set a greater than four hours total per day for the use of a keyboard or mouse in a steady manner.

For using tools or equipment that typically have high vibration levels (such as chainsaws, jack hammers, percussive tools, riveting or chipping hammers) OSHA has set the duration at 30 minutes total per day. This level is based on a time-energy equivalent exposure determination. For example, the time duration for using tools or equipment that have moderate vibration levels (such as jig saws, grinders, or sanders) is set at 2 hours total per day. Vibration level can be expressed as the amount of energy transmitted by the tool over a certain period of time (*e.g.*, m/s^2). OSHA assumes that a moderate vibration level is approximately $2.5m/s^2$. The duration for moderate vibration level is more than 2 hours total per day. Assuming that a high vibration level is approximately $10m/s^2$ (4 times the moderate vibration), the time-energy equivalent exposure duration level at which risk is increased for activities involving high vibration levels would be 30 minutes (*i.e.*, ¼ of 2 hours). That is, risks for activities at four times the vibration level would occur ¼ the amount of time.

For lifting, the chart contains specific weight limits, coupled with a specific limit on the number of times per day the weight can be lifted. Weight limits are specified for weights lifted from below the knee, above the shoulder and at arm's length. The limits specified are as follows: lifting more than 75 pounds at any one time; more than 55 pounds more than 10 times per day; or more than 25 pounds below the knees, above the shoulder, or at arms' length more than 25 times per day. OSHA has based these limits on recommendation found in other screening tools as well as evidence in the epidemiological literature that shows increased risk of low back disorders when lifting certain weights at certain frequencies or postures. For example, Arad and Ryan (Ex. 500–41–7) and Smedley *et al.* (Ex. 1249) reported an increase in risk low back MSDs among healthcare workers lifting one to four patients per day. Kelsy *et al.* (Ex. 500–41–73) reported increased risks of lumbar disorder among workers in jobs requiring lifting more than 25 pounds more than 25 times per day compared to workers who did not lift these weight. Similar findings were reported by Macfarlane *et al.*(Ex. 500–41).

OSHA finds that the weight of evidence clearly demonstrates that heavy, frequent or awkward lifting increases the risks for MSDs. Particular studies, such as those described above, provide support for the specific weight criteria used in OSHA's screening tool for the final standard. Washington State has used similar data to support its "caution zone job criteria" for lifting (Ex. 500–313–6). OSHA believes that these are reasonable criteria to use for the screening purposes of this standard and that, in general, these criteria reflect the evidence in the record.

The exposure screen also contains an entry for activities involving pushing and pulling. In a questionnaire survey of insurance company policyholders,

Snook *et al.*(1978) found 9% of low back injuries to be associated with pushing and 9% to be associated with pulling (Ex. 26–35). NIOSH (1981) cited evidence that 20% of overexertion incidents involve pushing and pulling objects (Ex. 26–393). Thus, OSHA finds that it is appropriate to include pushing and pulling on the screen as a specific exposure criterion.

For job activities involving pushing or pulling, the chart specifies 20 pounds of initial force as the trigger criterion. To provide a basis for determining appropriate workloads for these activities, Snook and Ciriello (1991) developed tables of maximum acceptable forces for pushing and pulling (Ex. 26–1008). Maximum acceptable forces were expressed in terms of the percentage of the industrial population capable of performing the task. Data were presented separately for males or females either pushing or pulling, and were given for both initial forces (the force required to get an object in motion) and sustained forces (the force required to keep an object in motion). Variables included frequency, distance, and height (vertical distance from floor to hands).

The tables were developed based on experiments employing a psychophysical methodology (Ex. 37–6). This approach assumes that workers are able to determine with some accuracy their highest acceptable workload. Subjects were given a task with a set frequency, distance, and height and were allowed to control the amount of force used. Subjects were instructed to work as hard as they could without straining themselves or becoming unusually tired, weakened, overheated, or out of breath.

Although acute fatigue was the basis of the limitations established by this series of experiments, the results have been shown to predict the risk of developing MSDs. Snook *et al.*(1978) reported that workers performing manual handling tasks that less than 75% of workers are capable of performing without overexertion are three times more likely to suffer from low back injuries than those workers performing manual handling tasks that more than 75% of workers are capable of performing (Ex. 26–35).

Other research has also supported a relationship between psychophysically derived exposure levels and risk of MSDs. Using an index derived from the tables developed by Snook and applying it to 6,912 workers in 55 industrial jobs, Herrin *et al.*(1986) found that the number of overexertion incidents was related to the psychophysical stress of the job. The severity of these incidents as measured by lost or restricted work days was also found to be associated with psychophysical stress (Ex. 26–961). Additionally, Park and Punnett found psychophysical ratings of ergonomic stressors to predict the incidence of in-plant medical visits for MSDs among 1064 workers in two automobile manufacturing plants (Ex. 38–160).

Based on the reported association between pushing and pulling and the development of MSDs, and the evidence of a relationship between psychophysically derived exposure limits and reported injuries, OSHA concludes that an exposure criterion based on psychophysically derived limits will serve as a reasonable basis for determining when a hazard analysis is necessary for jobs involving pushing and pulling activities.

The 20-pound force criterion for pushing and pulling will capture all jobs that are designed such that less than 75% of workers (male or female) are capable of performing them without experiencing overexertion. As explained above, lifting jobs that cannot accommodate at least 75-percent of the working population's physical capacity have been associated with a three-fold higher risk of low back disorders. This suggests that jobs should be subject to more detailed hazard analysis if an initial screen indicates that a task involving pushing or pulling is not designed within 75-percent of the working population's physical capacity.

While the screening threshold for pushing and pulling forces is based upon an exposure level that is protective of 75 percent of the industrial population based on psychophysical measurements relating to overexertion, this should not be construed as an endorsement by the Agency of exposure to ergonomic risk factors based on what is considered to be an acceptable level for any given percentage of the population. The level chosen in this instance resulted from the fact that the evidence in the record indicates that an increased risk of developing MSDs exists among workers who perform pushing or pulling activities at levels above those found to be acceptable to 75 percent of the industrial population based on psychophysical measurements relating to overexertion, not because any particular proportion of the exposed population was considered to be protected from developing MSDs.

The 20-pound force criterion for pushing and pulling tasks is consistent with the OSHA "safe harbor" for pushing/pulling, which is based on the 90th-percentile values for female workers. Using 20 pounds as screening criteria will help to ensure that employers are not screening in jobs for which they have already implemented controls based on the safe harbor value, but instead are screening in those jobs where risks may begin to occur and for which a job hazard analysis is appropriate.

For performing activities that require pinching or gripping unsupported objects, the chart specifies weights of two pounds or more per hand for pinching and 10 pounds or more per hand for gripping. These values are generally supported by studies such as those by Chiang *et al.* (Ex. 500–41–25), Stetson (Ex. 500–41–44), English (Ex. 500–41–30) and Roquelaure *et al.* (Ex. 500–41–112). These investigators reported increased risks of carpal tunnel syndrome, thumb disorders, shoulder disorders, and nerve abnormalities among workers repetitively pinching objects approximately in the range of two pounds or gripping objects approximately in the range of 10 pounds. OSHA believes that the weights specified represent reasonable screening criteria for identifying conditions likely to cause the type of MSDs reported and are similar to values recommended in other screening tools. While there may be more precise ways of measuring force associated with pinching or gripping, OSHA believes that using the weight of objects handled is more administratively simple for employers to use and thus will enable employers to more quickly and consistently evaluate jobs.

Similarly for contact stress, OSHA has specified a frequency of 10 times per hour when using the hand or knee as a hammer. OSHA believes that this value is also administratively simple and reasonable to use for the screening purposes of this standard. Studies have shown increased risk in MSDs among workers using the hand or knee as a hammer (*e.g.*, Little and Ferguson, Ex. 26–1144 and Thun, Ex. 26–60). However, little data is available that quantifies the frequency of exposure at which increased risks are observed. Washington State chose a value of 10 times per hour for their "caution zone job" criteria. OSHA believes that this is a reasonable value to use for screening purposes and that it gives the employer guidance in identifying work activities likely to contribute to the type of MSDs reported.

In summary, the specific description of risk factors contained in the screen, coupled with the duration specifications, all have a sufficient degree of risk to trigger some simple additional requirements (job hazard analysis, MSD management, training and evaluation). It should be kept in mind however, that these are not intended to imply that a hazard exists and requires control be instituted. There is substantial evidence in the record that supports the agency's choice of risk factors and duration levels. As with "action levels'" contained in other health standards, the duration levels were set at levels where the risk begins to rise and additional, simple steps are necessary.

The purpose of this screen is to focus on those jobs that are likely to have caused or contributed to the MSDs that are reported. In general, activities causing or contributing to such MSDs are more likely to be ones that make up significant amounts of the employee's worktime and represent a core element of the employee's job. As such, these activities are likely to be a foreseeable part of the job that can be reasonably predicted and thus can be taken into account when designing an ergonomics program. These are the types of jobs that OSHA seeks to capture under the final standard so that programs can be put in place to prevent further MSDs from occurring.

In order to better enable employers to capture such jobs, OSHA is setting a minimum frequency for job or task activities that must occur as a part of the screening tool. OSHA is setting this frequency at one day per week or more. Obviously, there are numerous values that could be chosen. However, OSHA believes that this value can reasonably be used to determine those job or task activities that are core element of an employee's job, and are foreseeable or reasonably predictable. In addition, a frequency of once a week or more is likely to capture many work activities that are an element of an employee's job that occur on a weekly basis (*e.g.*, deliveries or maintenance activities). To meet the screen, a job must "routinely" involve tasks that meet the designated criterion at least one day a week. This value will also provide guidance in that it can be used to rule out job or task activities that are rare occurrences, that are not predictable, or that result from unusual work circumstances.

In conclusion, in response to the comments received on the proposed standard, OSHA has developed a screening tool that will provide employers with quantitative guidance for determining work activities and conditions that are likely to cause or contribute to MSDs and that are a core element of a job or make up a significant amount of the employee's worktime. This screening tool includes specific descriptions of tasks and durations that will enable employers to evaluate jobs, quickly and consistently, at their worksites. To the extent possible, these descriptions and durations were developed using to the extent possible using the best available epidemiological literature as well as expert opinion from other groups who have developed very similar screening tools. This screen is intended to be used in conjunction with the event of an MSD incident to identify work conditions where exposure risks may exist such that a job analysis must be conducted to determine whether job controls are quickly and consistently necessary.

Paragraph (g)—What Actions Must I Take if the Employee's Job Meets the Action Trigger?

Paragraph (g) of the final rule defines the actions that employers must take if an employee with an MSD incident is employed in a job that meets or exceeds the action trigger. The paragraph requires that the employer must either implement the Quick Fix option in paragraph (o) of the final rule, or develop and implement an ergonomics program that includes the following elements:

(i) Management leadership as specified in paragraph (h) of this section;

(ii) Employee participation as specified in paragraph (i) of this section;

(iii) MSD management as specified by paragraphs (p), (q), (r), and (s) of this section;

(iv) Job hazard analysis as specified by paragraph (j) of this section;

(v) Hazard reduction and control measures as specified in paragraphs (k), (l), and (m) of this section, and evaluations as specified in paragraph (u) of this section, if the job hazard analysis determines that the job presents an MSD hazard;

(vi) Training as specified in paragraph (t) of this section.

A few commenters suggested that the effectiveness of ergonomics programs in reducing workplace MSD hazards was not demonstrated for the proposed rule. For example, the post hearing brief submitted on behalf of the U.S. Chamber of Commerce stated:

> None of this "evidence" * * * begins to support the proposition that an Ergonomics Program Standard such as the one contained in the Proposed Rule will reduce at all the incidence of workplace musculoskeletal complaints. [Ex. 500–188]

In contrast, the use of ergonomics programs as an effective method for addressing workplace MSD hazards was endorsed by the vast majority of commenters in the rulemaking record (see, *e.g.* Exs. 30–3855, 32–185, 500–209, Tr. 4940, Tr. 1491). For example, Mr. McCauseland, representing the American Meat Institute (AMI), testified during the rulemaking hearing: So what has happened in the 10 years since the meat packing guidelines were issued? Well, a number of things. In our industry, reduced levels of injuries and illnesses have been approximately one third of all incidents. Nearly one-half of lost time incidents have been reduced as well. * * * The guidelines have fostered proactive efforts to eliminate ergonomic risks and hazards in a wide ranging number of applications [Tr. 4940].

A complete discussion of the widespread support for the proposition that ergonomics programs are effective is contained in Chapter III of the Final Economic Analysis for the final rule. In that chapter, OSHA discusses the history of successful ergonomics programs and describes the extensive use of ergonomic programs throughout broad sectors of industry. In fact, the number, longevity, and extensive use of ergonomic programs that are similar to those required by OSHA's final rule clearly validate the Agency's regulatory approach, as well as demonstrating the inherent feasibility of the standard for covered employers who establish such programs.

Many of these programs have most or all of the program elements required by paragraph (g) of the final rule. The wide use of these elements in current programs is evidence that employers believe them to be essential, workable concepts. The program elements contained in the final rule are summarized and explained in other sections of this preamble and therefore will be discussed only briefly here in the context of the overall program requirement.

Paragraph (g) of the final rule specifies that if an employee's job exceeds the action trigger, the employer may implement a quick fix option for that job under paragraph (o). An employer who qualifies for the quick fix option does not need to establish an ergonomics program, although he or she must follow all of the quick fix procedures. However, if the employer cannot or does not implement a quick fix, then the standard requires an ergonomics program with the following elements:

- Management leadership,
- Employee participation,
- MSD management,
- Job hazard analysis,
- Hazard reduction and control,
- Training, and
- Evaluation.

Management leadership is critical to the successful implementation and operation of ergonomics programs.

Management leadership provides the focus and direction of the program's effort as well as the needed resources in terms of both personnel commitment and funding. The requirements for management leadership are described in the summary and explanation for paragraph (h).

Employee participation is equally important. Employees are essential sources of information about MSDs, risk factors, and MSD hazards in their work areas. They have valuable insights into effective control measures that can be used to reduce risk factors inherent in their jobs. The requirements for employee participation are described in the summary and explanation for paragraph (i).

MSD management provides for prompt and appropriate management when an employee has experienced an MSD incident. MSD management includes access to a health care professional, work restrictions as needed, work restriction protection, and evaluation and follow-up of the MSD incident. MSD management is important largely because it helps ensure that employees promptly report MSDs and signs and symptoms of MSDs. This, in turn, ensures that jobs that present MSD hazards will be included in the ergonomics program. The requirements for MSD management are described in the summary and explanation for paragraphs (p), (q), (r) and (s).

Job hazard analysis provides for the identification of the risk factors for jobs that meet the action trigger. The job hazard analysis provides a systematic approach to identifying and addressing the risk factors in the job. The requirements for job hazard analysis are described in the summary and explanation for paragraph (j).

Hazard reduction and control is the heart of the ergonomics program. Under this program element, employers control the risk factors in problem jobs identified during the job hazard analysis. The requirements for hazard reduction and control are described in the summary and explanation for paragraphs (k), (l), and (m).

Training provides employees with the information and understanding that they need to participate effectively in the ergonomics program. In addition, the training required by the final rule provides the more detailed information that supervisors, team leaders and other employees involved in setting up and managing ergonomics programs need to carry out their program-related responsibilities effectively. The training requirements are described in the summary and explanation for paragraph (t).

Evaluation is the process employers use to ensure that the program they have established is functioning as intended. Employers are required to evaluate their programs every three years and at other times if they have reason to beleive that the program is not functioning properly. The requirements for program evaluation are found in paragraph (a).

In summary, ergonomic programs similar to OSHA's in structure have been effectively reducing the incidence and/or the severity of MSDs for at least 10 years throughout the vast majority of general industry sectors. Model programs that contain OSHA's program elements have been implemented by a wide range of employers, such as large and small manufacturing establishments, utilities, and government agencies (see, *e.g.*, Exs. 32–185, 500–108, 38–50, Tr. 4693, Tr. 5696, Tr. 6310, Tr. 5931, Tr. 7031, Tr. 7068, Tr. 7074, Tr.7918, Tr. 7934, Tr. 7937, Tr. 7963, Tr.7948, Tr. 7999, Tr. 8826, Tr. 14707, Tr. 17350)

Paragraph (h)—Management Leadership

Paragraph (h) contains the final rule's requirements for management leadership. It requires that employers assign and communicate responsibilities for setting up and managing the ergonomics program; provide the authority, resources, and information necessary to meet those responsibilities; ensure that existing policies and practices encourage and do not discourage reporting and participation in the ergonomics program; and communicate periodically with employees about the program and their concerns about MSDs.

Paragraph (h) of the final rule is nearly identical in content to the proposed management leadership section (Section 1910.912). OSHA has elected to retain the management leadership requirements as proposed due to evidence in the record that supports the need for management commitment in any effective ergonomics program. Minor changes have been made to clarify the provision regarding the assignment and communication of responsibilities and to allow for more concise application of the subelement relating to the encouragement of reporting and participation.

OSHA proposed to require management leadership because the literature on ergonomics programs consistently cites management commitment as a vital component of an effective program (see, *e.g.*, Exs. 2–13, 26–2, 26–5, 26–9, 26–10, 26–13, 26–14, 26–17, 26–18, 26–22, 26–27). The need for management commitment was also supported by a number of responses to the ANPR (see, *e.g.*, Exs. 3–27, 3–124, 3–173).

The elements of the proposed and final management leadership requirements are based on the concept of management leadership expressed in the literature. OSHA considers the proposed and final management leadership provisions to be necessary to the exercise of leadership of the ergonomics program.

Responses to the proposed management leadership provisions indicated general support for the concept of management leadership. Comment on the provisions pertaining to the assignment and communication of responsibilities; provision of authority, resources, and information; and periodic communication focused on the interpretation, rather than the concept, and often criticized the proposal as vague. Comments regarding policies and practices that discourage reporting and participation revealed sharply divided opinion on the merits of the proposed provision.

The importance of management leadership as a component of an effective ergonomics program was supported in a number of comments on the proposed rule (see, *e.g.*, Exs. 30–2387, 30–3745, 30–3765, 32–78–1, 32–85–3, 32–182–1, 32–198–4, 32–339–1, 30–428, 30–3860, 30–4333, Tr. 3479, Tr. 3565, 32–450–1–18–1, Tr. 8004, Tr. 1496, Tr. 9070). David LeGrande of the Communications Workers of America, for example, when asked to indicate what characteristics distinguished successful ergonomics programs from those that fail, explained that the commitment of management is the primary factor in determining if a program will succeed (Tr. 9018).

The inclusion of a distinct requirement for management leadership in the proposed ergonomics standard, however, was considered by some parties to be inappropriate (see, *e.g.*, Exs. 32–78–1, 30–2830, 30–3853, 30–3765, 32–368–1, 500–223, 30–3426). Mandating the assignment of responsibilities and provision of authority, resources, and information, it was argued, is so vague as to lead to uneven enforcement by OSHA personnel, according to these commenters (see, *e.g.*, Exs. 30–74, 30–240, 30–1336, 30–3284, 30–3336, 30–3344, 30–3367, 30–3763, 30–3782, 30–3849, 30–3951, 30–4496, 30–4674, 30–4837, 30–4247). The Ameren Corporation, for example, stated:

> Whether an employer has committed enough "resources", has "ensured" that they have encouraged their employees to report or participate, or is communicating often

enough are all highly subjective judgement calls which cannot be consistently made by OSHA (Ex. 30–4247).

Bruno's Supermarkets and others (see, *e.g.*, Exs. 30–2836, 30–2837, 30–2828, 30–2839, 30–2840, 30–2841, 30–2842, 30–2843, 30–2844, 30–2940) concurred with this assessment, stating:

> [The proposed standard] requires that employers communicate "periodically" with employees about the ergonomics program. Suppose, for example, that an employer distributes an annual ergonomics bulletin. How will the employer know whether an OSHA inspector will expect us to communicate more frequently, such as once a week or once a month? This section also requires employers to provide those managing the ergonomics program with "resources," which are vaguely and broadly defined as "the provisions necessary to develop, implement, and maintain an effective ergonomics program," including money, etc. We may feel that we have provided adequate resources necessary for such an effort, but we will have no way of knowing whether the OSHA inspector will agree. The lack of objective, attainable standards will leave employers at the whims of OSHA inspection personnel. (Ex. 30–2836)

The term "periodically" was specifically cited by a number of parties as being unduly subjective and open to interpretation (see, *e.g.*, Exs. 30–1101, 30–1336, 30–3826, 32–337–1, 30–1671, 30–3336, 30–3367, 30–3782, 30–4674, 30–3512). Some commenters said that determinations about the delegation of authority and assignment of resources were outside of OSHA's expertise and created excessive administrative burdens on employers (see, *e.g.*, Exs. 32–78–1, Tr. 12250). Such mandates were believed by some to be beyond the Agency's authority (see, *e.g.*, Exs. 30–2914, 30–4335).

OSHA has decided to retain a requirement for management leadership in the final rule. Management leadership is widely believed to be one of the core elements of any effective safety and health (including ergonomics) program. If no individuals in a given workplace have been assigned responsibilities for the ergonomics program, it is clearly unreasonable to expect that a successful program will somehow emerge. Likewise, if responsibilities are assigned but no authority is granted and no resources are provided, an ergonomics program is destined to fail. For example, if an individual is assigned responsibility for training workers in a problem job, that person needs access to relevant information about the MSD hazards and controls in the job, sufficient time to administer the training, and a suitable location for the training to take place. Communicating periodically with employees about the program and their concerns about MSDs is similarly essential to creating an environment where both the employer and employees are fully aware of issues relating to the ergonomics program. If a regular, two-way exchange does not take place, it would be impossible for employees to keep abreast of changes in the ergonomics program, or for the employer to receive feedback regarding the program. Without full knowledge, the benefits of the program will be diminished. The endorsement of management leadership in comments and the incorporation of this element in successful ergonomics programs supports OSHA's conviction that management leadership is a critical component of an ergonomics program.

Those who expressed the sentiment that the management leadership requirements of the proposal were vague or burdensome appeared to believe that OSHA compliance personnel would arbitrarily decide if the authority, resources, and information provided were satisfactory, or if the frequency of communication was adequate. OSHA reaffirms its belief, expressed in the proposal, that employers should retain broad discretion in deciding who should bear responsibility for the various components of the ergonomics program, and what authority, resources, and information are necessary and appropriate to meet the assigned responsibilities in a given workplace.

The frequency of communication with employees is also subject to wide latitude in order to account for the needs of different workplaces. The term "periodically" is used in the standard to indicate that communication must be performed on a regular basis that is appropriate for the conditions in the workplace. A rigid schedule, however, is not specified, in order to provide flexibility to account for the circumstances found in different workplaces and even at different times in the same workplace. Additional discussion of this topic can be found in the section of this preamble devoted to additional statutory issues (see Section XII of the preamble).

The general requirements in paragraph (h) of the final rule for the assignment of responsibilities and provision of authority, resources and information are designed to complement the more specific requrements for action found elsewhere in the standard. For instance, under paragraph (i) of this final rule, employees must receive prompt responses to reports of MSDs. It is the duty of the employer to assign the responsibility for providing those responses and to provide the necessary authority, resources, and information needed to do so. If a prompt, correct response is given to the employee, then the employer's assignment of responsibility and provision of authority, resources, and information will clearly have been satisfactory.

The final rule does not describe how responsibility is to be allocated or how individuals will be held accountable for their responsibilities. This is to allow employers the greatest possible flexibility in adapting the program to their particular situation. A concern was registered that the proposed requirement for assigning responsibility would conflict with a management structure that did not include supervisors (see, *e.g.*, Ex. 30–3765). OSHA does not intend to prescribe what program responsibilities are vested in any party. An employer may choose to designate and empower front line employees with any responsibility associated with the program, so long as the authority, resources, and information necessary to meet those responsibilities are provided.

The role that contractors, consultants, and other outside parties may play in an ergonomics program has also been recognized by the Agency. Although not required by the standard, OSHA is aware that outside expertise may be beneficial in some instances. Accordingly, the final rule allows the employer to chose who is designated with regard to the assignment of responsibility. Ergonomists, safety professionals, industrial hygienists, and others may be involved in the employer's program.

Several commenters suggested that OSHA place requirements on employees as well as employers in the final rule (see, *e.g.*, Exs. 30–3765, 30–584, 30–3368). These commenters believe that employees must take responsibility for their actions. OSHA agrees that active employee involvement in the ergonomics program is essential to program effectiveness but does not believe that this principle should be stated in the standard, for a number of reasons. First, the OSH Act itself, at Section 5(b), states that "Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to the OSH Act which are applicable to his own actions and conduct." However, the courts have repeatedly held that employers are responsible under Section 5(a)(2) of the Act for ensuring worker protection. For example, the court in *Brock* v. *City Oil Well Service Co.*, 795 F. 2d 507, 511 (5th Cir. 1986) held, "it is the employer's responsibility to ensure that the

employees are protected. It may accomplish this objective through others if it chooses, but the duty to provide the protection remains the employer's." If, for example, an employer has determined that lifting an 80-pound box poses an MSD hazard to employees, the employer can establish a policy of requiring employees to use a mechanical lift to raise such a box and train employees how to do this. The employer could then hold the employee accountable for adhering to this policy in the same manner as other policies or rules are enforced.

In addition to providing authority, resources, and information, the proposed management leadership section included a requirement to provide the training necessary to meet assigned responsibilities. Because training for those responsible for setting up and managing the program is addressed in paragraph (t) of this final rule, training has been deleted from this paragraph in order to avoid potential confusion.

Some commenters expressed the belief that management leadership is implicit in an effective ergonomics program, and an independent requirement for management leadership is therefore unwarranted (see, *e.g.*, Exs. 30–3765, 30–1293). Dow Chemical, for example, while strongly supporting the need for management leadership in safety and health activities, expressed the view that it is not appropriate for OSHA to attempt to regulate and enforce leadership. By establishing and evaluating the effectiveness of an ergonomics program, Dow argued, the employer has in effect demonstrated leadership (Ex. 30–3765).

In a similar vein, some parties argued that the requirements for management leadership were largely redundant with other sections of the proposal. They pointed out, for example, that communicating periodically with employees about the ergonomics program and their concerns about MSDs was part of the proposed management leadership provision, while separate, specific requirements for communication with employees were proposed as part of the provisions pertaining to quick fix, employee participation, hazard information and reporting, job hazard analysis and control, training, MSD management, and program evaluation. This "duplication," it was argued, could subject employers to being cited twice for a single violation (see, *e.g.*, Exs. 30–3344, 30–4674).

OSHA believes that there is little, if any, overlap with other parts of this standard. The management leadership and employee participation elements of the final rule should be considered the overall conceptual foundation of an effective ergonomics program and a vital part of the organizational framework of an effective program. By fully understanding the importance of management leadership and employee participation, it is expected that program managers will determine how best to apply these concepts in a particular workplace and how the individual subelements will work most efficiently in their environment. Even where some overlap could be perceived, it is not OSHA's policy to issue duplicate citations for a single violation.

The management leadership element also includes requirements unique to this paragraph, such as the requirement in paragraph (h)(3). That requirement specifies that the employer must ensure that their policies and practices encourage and do not discourage reporting or participation in the program. OSHA believes that applying this provision in an ergonomics program is a logical component of management's effort to direct the ergonomics program in a manner that will be protective of employee health.

OSHA's proposed requirement for employers to ensure that their existing policies and practices encourage and do not discourage reporting and participation in the ergonomics program elicited a substantial volume of comment. As explained in the preamble of the proposal, this proposed provision was intended to encourage the early reporting of MSDs and meaningful employee participation in the ergonomics program. OSHA believes that employees in all workplaces should be encouraged by their employers to report injuries, illnesses, and hazards of all kinds—not just those related to ergonomic issues—because only full and frank reporting allows employers to identify hazards and do something about them.

Particular attention was paid by participants regarding the requirement that employers ensure that their policies and practices do not discourage reporting and participation in the program, and the effect of this provision on existing employer programs, including safety incentive programs and employee drug testing programs.

Policies and practices given in the preamble to the proposal as examples of those that may discourage reporting included:

- Programs that reward or punish employees on the basis of injury or illness reports by offering incentives or awards based on low numbers or rates of reported MSDs.
- Policies that require every employee reporting an MSD or MSD signs and symptoms to submit to a drug or alcohol test.
- Direct or reasonably perceived threats of retaliation, including firing or suspension, withholding overtime work for anyone who reports MSD signs or symptoms, (even from jobs that do not involve exposure to risk factors), prohibiting the use of sick leave for a work-related injury; and sending every employee who reports MSD signs and symptoms home without pay.

Expressed or implied warnings of retaliation for reporting MSDs, MSD signs and symptoms, or MSD hazards would clearly be considered a practice that would discourage reporting. If, for example, a supervisor were to inform employees working the day shift that reporting MSD signs and symptoms would automatically result in transfer to the night shift, this action could be reasonably anticipated to suppress reporting. An example of a situation similar to this was described by the UFCW. The union explained that employees were reluctant to report injuries in this situation due to the consequences they would face:

> [The company] had established a special "C" shift—the graveyard shift—for employees suffering from work-related injuries, many of which were cumulative trauma disorders. The purported purpose of the C shift crew was to assist injured workers with long term medical restrictions in returning to regular duty. In fact, however, a number of employees assigned to the crew were taken off regular duty jobs which they had been performing successfully with their restrictions. They were then isolated and segregated on the C shift and assigned degrading, demeaning, make-work tasks such as picking up cigarette butts in the parking lot at night with flashlights or scraping rust off of pipes in the rendering department (Ex. 32–210–2).

Some employers have taken this a step further, pursuing policies that discipline workers for reporting injuries, without considering the cause of those injuries. When rewards or punishment are linked to the reporting of MSDs or MSD signs and symptoms, employee reporting behavior can clearly be influenced. Punishment for reporting in the form of wage reductions, loss of overtime, reprimands, suspensions, or other means can be expected to discourage reporting.

An example of this approach is a system of imposing progressively more severe penalties when injuries are reported, such as a written reprimand for the first incident, followed by suspension, and finally termination (see, *e.g.*, Exs. 32–298–2). Another example is a system that assigns a point value to an incident based on factors such as the cost of the incident to the employer or whether lost workdays were involved. Progressive levels of punishment are meted out based upon the number of points that an employee accumulates (see, *e.g.*, Ex. 500–111–1). Kathy Saumier of the United Steelworkers described such a program and its results in the plastics plant where she worked:

> The company had a policy to give out points if an employee missed work even due to work related injury. After an employee accumulated seven points, the company reduced the employees' pay by 50 cents per hour. If the employee accumulated 15 points an employee was then terminated. This system caused many workers to go to work injured for fear of pay reduction or termination (Tr. 10992).

The record also included many instances where, intentionally or inadvertently, employer policies and practices were said to discourage employees from reporting MSDs (see, *e.g.*, Exs. 20–626, 32–111–4, 32–198–4–1, 32–198–4–2, 32–210–2, 32–298–2, Tr. 5598, Tr. 6980, Tr. 7715, Tr. 7729, Tr. 7387, Tr. 7730, Tr. 8041, Tr. 10153, Tr. 10230, Tr. 10763, Tr. 13870, Tr. 14535, Tr. 15131, Tr. 15453, Tr. 16766).

Incentive programs that offer rewards to employees or groups of employees based on a low number of reported injuries were also mentioned as factors inhibiting the reporting of MSDs. Bill Byington of the IBT described how employees in his workplace were being taken to a baseball game for completing a month of work without a reported injury; he was aware, however, that at least one of the members of the group had sustained an injury and not reported it (Tr. 15453). Sandy Brooks of the United Steelworkers related her experience with a "safety bingo" program, where employees receive a bingo number each day, and the employee who wins the bingo game receives cash, weekend trips, and dinners as prizes. The bingo game ends for all employees, however, when an OSHA recordable injury is reported. Ms. Brooks was also aware of workers who did not report injuries because of the incentive program (Tr. 7703).

An additional factor in group incentive programs that can serve to coerce employees to refrain from reporting MSDs is the peer pressure that can be exerted when group awards are at stake. Joe Enos of the UAW described the result of an incentive program that offered a microwave oven to a team of workers if they reduced reported injuries 25% from the previous year:

> The group had achieved that goal going into November and they still had a month to go. And one of the workers got hurt. And the rest of his coworkers told him, "Hey, you go to medical, there goes the microwave." And this guy realized that his health was more important than some microwave. But a good many of his coworkers wouldn't even talk to him for a couple of weeks as a result of that (Tr. 15453).

Dr. Richard Bunch of the Industrial Safety and Rehabilitation Institute told of an injury sustained but not reported early, in order to preserve workers' chances of winning a barbeque pit:

> One company was giving a barbeque pit as a prize if you went so many months without reporting an injury. And one gentleman had a back problem and did not report it because the other six members on his team threatened him with violence. So in that case, he did not report it, but ended up going to a full blown frank rupture of the disc (Tr. 11638).

These accounts of individuals support the impression that incentive programs that tie rewards or punishment to the report of an injury may result in reductions in reported injuries and illnesses, at least in part due to lack of reporting rather than an actual reduction in the number of injuries that occur. Nancy Lessin of the Massachusetts AFL–CIO espoused this view:

> Workers can not control the conditions which lead to most work-related injuries and illnesses. They can control whether or not they report an injury or illness. Safety incentive programs manipulate the thing workers can control—the reporting of workplace injuries and illnesses * * * (Ex. 32–298–2).

The United Steelworkers concurred with that assessment:

> We know better than to believe that worker behavior is the primary cause of most workplace accidents. We know that exposure to workplace hazards causes injuries and illness and exposure to ergonomic hazards causes MSDs. Ergonomic hazards need to be controlled to eliminate MSDs in the same manner that we address any workplace hazard. Incentive programs based on injury rates, and behavior-based safety programs do not correct hazards. In fact, these programs can make a bad situation worse by diverting attention from correctable hazards, and promoting the under reporting of injuries (Ex. 32–111–4).

Several commenters argued that OSHA had not made a determination that incentive programs result in the underreporting of MSDs (see, *e.g.*, Exs. 30–4185, 30–1070, 30–3347, 30–4185). The Synthetic Organic Chemical Manufacturers Association suggested that OSHA obtain data to support its position, stating:

> If OSHA believes that employers are not properly reporting injuries and illnesses, it should address this issue by gathering the data to substantiate its position. OSHA should not discourage employers from utilizing all necessary injury/illness prevention tools. There is no basis for the proposed Ergonomics Standard to suggest that these effective programs should be subject to further scrutiny (Ex. 30–3843).

Sufficient evidence has already been entered in the record, however, for OSHA to reach the conclusion that MSDs are substantially underreported (see the discussion of underreporting in the Significance of Risk section of this preamble as well as the Benefits chapter of the Final Economic Analysis). Evidence also supports the belief that employer policies and practices often contribute to this underreporting by discouraging the reporting of MSDs.

A review of the literature on safety incentives commissioned by OSHA and published in 1998 divided incentive programs into two categories based on the behavior they reward. The review found that the literature strongly indicates that programs that measure safe work practices, such as wearing safety glasses for eye protection or using a seat belt when driving, may increase the frequency of such practices. The literature review further disclosed that incentive programs that focus on reductions in the number of injuries and illnesses reported do not improve safety practices. No scientific studies were found indicating that such programs had either a positive or a negative impact (Ex. 502–281).

Some policies and practices can affect employee participation in the ergonomics program, as well as employees' incentive to report. Employees who are punished or discouraged from reporting MSDs or MSD signs and symptoms, may also feel discouraged from participating in any meetings or discussions about ergonomic problems in the workplace and how to address them. If a worker is threatened with retaliation for pointing out hazards or for participating in a job hazard analysis, that worker and his or her co-workers are unlikely to take part in this activity or future activities. Employees are likely to be discouraged from requesting information to which they may be entitled, such as training materials or information about this standard, if they fear retaliation or if obtaining the information is made inconvenient. Likewise, if employees in a problem job are asked for recommendations about eliminating or controlling MSD hazards, but are required to attend a meeting at an unreasonable time in an inconvenient place, or that may involve loss of pay in order to submit those recommendations, the likelihood of those employees participating in the process would be diminished.

Some commenters were concerned that a wide variety of employer policies and practices could have the potential to impact employee participation and reporting of injuries; even a review of a manager's or supervisor's performance could be found to constitute a violation of the standard when performance criteria in that review include the number of injuries and illnesses recorded by employees under his or her supervision (Ex. 30–4185).

OSHA is concerned with the effect of a policy on employees' participation in the ergonomics program and whether the program or policy discourages reporting. In some cases, making the number of injuries and illnesses recorded a part of a manager's performance review can result in a policy the discourages reporting. Larry Hall of the United Food and Commercial Workers described such a situation.

> One of the things that happens with the [manager] bonuses is the worker reports a problem, and the manager immediately tells them how that is going to affect their bonus. If you are working for me and I say, "Gee, that is going to really affect my bonus. So, for the rest of your life, you get to work nights," these people write their schedules. They control their lives. If you are going to displease me and take money out of my pocket, I can really do a lot to you and stay within the union contract. (Tr 14538)

OSHA finds that the evidence strongly demonstrates that employer policies and practices that reward non-reporting and punish, threaten, or otherwise discourage employee reporting of MSD incidents have the effect, in many instances, of suppressing incident reports. This conclusion is based on the strong record presented by witnesses and documentary submissions as well as on the logic that providing incentives to not report accidents or illnesses is likely to reduce the number of such reports, but unless the cause of those incidents is addressed, it is unreasonable to believe that MSD incidents themselves will be reduced in number. The litany of case reports in the record where employer policies and practices were said to deter reporting reinforce this position. The concealment of MSD incidents would in fact have an effect directly opposed to the purpose of this standard. Hazards that would otherwise be identified and eliminated or controlled would remain and continue to threaten employees. MSD incidents that, if reported, could be limited in severity through rest or treatment would instead be allowed to progress.

In contrast to these comments describing the pressures on employees not to report MSDs, a number of parties were concerned that the proposed prohibition on policies or practices could inadvertently eliminate widely accepted, sensible, and successful safety practices. Many commenters indicated concern that the proposed prohibition on policies or practices that discourage worker reporting could be interpreted to eliminate demonstrably successful employee incentive programs (see, *e.g.*, Exs. 30–3765, 32–368–1, 30–656, 30–1046, 30–1070, 30–1349, 30–1551, 30–1567, 30–1616, 30–1652, 30–1671, 30–1901, 30–2038, 30–2050, 30–2061, 30–2499, 30–2514, 30–2799, 30–2811, 30–2812, 30–2814, 30–2815, 30–2846, 30–2988, 30–2990, 30–3086, 30–3174, 30–3177, 30–3336, 30–3349, 30–3353, 30–3354, 30–3678, 30–3721, 30–3736, 30–3745, 30–3819, 30–3848, 30–3951, 30–4122, 30–4185, 30–4334, 30–4496, 30–4540, 30–4607, 30–4674, 30–4702, 30–4818, 30–4822, 30–4839, 30–4843, 31–310, 32–21–1, 32–82–1, 32–120–1, Tr. 10445, Tr. 11502, Tr. 12857, Tr. 16924, Tr. 17461, Tr. 17483, 30–4340, 500–1–28, 500–1–29, 500–1–42, 500–1–69, 500–1–70, 500–1–79, 500–1–86, 500–1–95, 500–1–106, 500–1–112, 500–1–113, 500–1–114, 500–1–136, 500–1–147, 500–1–181, 500–1–117, 500–1–119, 500–1–121, 500–1–124, 500–1–125, 500–1–127, 500–1–135, 500–1–137, 500–1–152, 500–1–193, 500–1–442, 32–258–2, 30–911, 30–1942, 30–3236, 30–3339, 500–219, 601–x–1710, 601–x–1711, 30–4527, 30–980, 30–2668, 30–4565, 30–3847, 30–2684, L30–4985, 30–4029, 30–4335, 30–4443, 30–1004, 30–1010, 30–1017, 30–1025, 30–1027, 30–1035, 30–1038, 30–1042, 30–1044, 30–1045, 30–1079, 30–1080, 30–1089, 30–1099, 30–1163, 30–1164, 30–1401, 30–1403, 30–1423, 30–1424, 30–1436, 30–1440, 30–1455, 30–1460, 30–1463, 30–1495, 30–1497, 30–1566, 30–1658, 30–1659, 30–1674, 30–1675, 30–1682, 30–1684, 30–1685, 30–1686, 30–1687, 30–1688, 30–1689, 30–1690, 30–1691, 30–1916, 30–2124, 30–2126, 30–2234, 30–2235, 30–2236, 30–2237, 30–2275, 30–2279, 30–2311, 30–2369, 30–2376, 30–2588, 30–2673, 30–2674, 30–2768, 30–2850, 30–2925, 30–3002, 30–3042, 30–3044, 30–3080, 30–3083, 30–3087, 30–3229, 30–3380, 30–344, 30–346, 30–3822, 30–3985, 30–3988, 30–4037, 30–4059, 30–4507, 30–4770, 30–4841, 30–5044, 30–5106, 30–634, 30–636, 30–638, 30–643, 30–649, 30–871, 30–883, 30–891, 30–903, 30–905, 30–918, 30–978, 30–994, 30–995, 600–x–10, 600–x–11, 600–x–12, 600–x–13, 600–x–45, 600–x–46, 600–x–5, 600–x–6, 600–x–7, 600–x–9, 601–x–1358, 601–x–1363, 601–x–1364, 601–x–1365, 601–x–1366, 601–x–1367, 30–1416, 30–1453, 30–1457, 30–1616, 30–1998, 30–1999, 30–2131, 30–2142, 30–2184, 30–2233, 30–2250, 30–2304, 30–2395, 30–2396, 30–2423, 30–2431, 30–2736, 30–2829, 30–2889, 30–2891, 30–2992, 30–3003, 30–3254, 30–3334, 30–3393, 30–3551, 30–3597, 30–3791, 30–3882, 30–3936, 30–3944, 30–3974, 30–3977, 30–3999, 30–4464, 30–4532, 30–4539, 30–4544, 30–4629, 30–4657, 30–4667, 30–4669, 30–4980, 30–5034, 30–5076, 30–5095, 30–5101, L30–4952, L30–4953, L30–5096).

Caterpillar Inc., for instance, attested to the favorable impact of incentive programs in that firm:

> Incentive programs have always been an excellent vehicle to raise awareness, communicate various issues throughout the workplace and show employer concern about employee safety. While OSHA considers these programs to be disincentives [to the reporting of MSDs and MSD signs and symptoms], our experience shows that they have positive benefits. By increasing awareness and rewarding safe behaviors through incentive programs, employers have seen a reduction in all injury categories (Ex. 30–4607).

Nothing in this final rule would prohibit incentive or award programs. The obligation that an employer would have, should they chose to adopt an incentive program, would be to ensure that the incentive program did not discourage the reporting of MSDs, MSD signs and symptoms, or MSD hazards, or discourage participation in the ergonomics program. As explained previously, OSHA's concern is that discouraging full reporting and participation in the ergonomics program will diminish the effectiveness of the program.

Although incentive programs that are successful in promoting workplace safety can be expected to result in a reduction in the number of injuries reported, an unsuccessful program that does not improve workplace safety can also result in fewer reported injuries. When the yardstick for measuring the success of the program is only the number of injuries reported, the program can distort the true state of affairs and preclude early intervention by inducing employees to avoid reporting their injuries. This problem is particularly critical with regard to MSD signs and symptoms, where early intervention can be of great importance. OSHA encourages employers to focus any incentives on safe work practices, active participation in safety programs, and identification of hazards in the workplace. By doing so, the root causes of injuries and illnesses can be addressed, and a safer workplace can be created. The Incentive Federation described the types of activities that a safety incentive program can target, rather than using the number or rate of reported injuries as its objective:

> * * * a good safety incentive program often focuses on proactive behavior. For example, it might encourage employees to make safety suggestions, attend safety meetings, promote safety awareness, participate in safety inspections, report safe behavior, report near misses, and so forth. In addition, self-directed safety teams, where employees observe each other at work and report good and bad safety conduct (without necessarily using the names of the specific employees), encourage safe behavior. Encouraging this type of employee participation is extremely useful, because employees are reasonably objective in observing their peers, and they report good and bad behavior. The conduct observed can then be included in periodic reports or reviewed in safety meetings to stress safe behavior. (Ex. 30–1100).

Drug testing programs, when applied to all workers who report MSDs, were also said to hinder full reporting of injuries. Chuck Monohan of the International Brotherhood of Electrical Workers explained that a fear of false positive results was responsible for non-reporting (Tr. 7378). Other commenters also discussed the chilling effect that drug testing programs can have on reporting injuries (Tr. 5997, Tr. 13869, Tr. 17509)

A large number of commenters expressed concern that the proposed prohibition on policies or practices that discourage worker reporting could be interpreted to eliminate widely accepted drug testing policies (see, *e.g.*, Exs. 30–536, 30–2208, 32–368–1, 30–3765, 30–419, 30–519, 30–1012, 30–1048, 30–1070, 30–1261, 30–1332, 30–1348, 30–1349, 30–1358, 30–1536, 30–1551, 30–1567, 30–1616, 30–1652, 30–1671, 30–1901, 30–2050, 30–2061, 30–2499, 30–2514, 30–2645, 30–2675, 30–2799, 30–2811, 30–2812, 30–2814, 30–2815, 30–2988, 30–2990, 30–3174, 30–3177, 30–3348, 30–3349, 30–3353, 30–3356, 30–3359, 30–3721, 30–3723, 30–3736, 30–3745, 30–3819, 30–3951, 30–4046, 30–4122, 30–4567, 30–4607, 30–4628, 30–4674, 30–4702, 30–4713, 30–4818, 30–4822, 30–4839, 30–4844, 31–282, 31–298, 31–310, 32–335, Tr. 4335, Tr. 4909, Tr. 6112, Tr. 8350, Tr. 9190, Tr. 10444, Tr. 12857, Tr. 12958, Tr. 15621, Tr. 15644, Tr. 15976, Tr. 17461, Tr. 17483, 30–3725, 30–4340, 30–4146, 500–1–28, 500–1–42, 500–1–69, 500–1–70, 500–1–79, 500–1–86, 500–1–95, 500–1–106, 500–1–112, 500–1–113, 500–1–114, 500–1–136, 500–1–140, 500–1–147, 500–1–181, 500–1–185, 500–1–117, 500–1–119, 500–1–121, 500–1–124, 500–1–125, 500–1–127, 500–1–135, 500–1–137, 500–1–152, 500–1–193, 500–1–411, 500–1–384, 500–1–385, 500–1–386, 500–1–413, 500–1–423, 500–1–442, 500–16, 500–52, 500–23–1, 32–258–2, 30–904, 30–911, 30–1942, 30–3236, 30–3339, 500–219, 30–4550, 601–x–1711, 30–1363, 30–4248, 30–4778, 30–2455, 30–4527, 30–2668, 30–4565, 30–3847, 30–2684, L30–4985, 30–3472, 30–3582, 30–4029, 30–4335, 30–4443, 30–4475, 30–4528, 30–4688, 30–1004, 30–1010, 30–1017, 30–1025, 30–1027, 30–1035, 30–1038, 30–1042, 30–1044, 30–1045, 30–1079, 30–1080, 30–1089, 30–1099, 30–1163, 30–1164, 30–1401, 30–1403, 30–1423, 30–1424, 30–1436, 30–1440, 30–1455, 30–1460, 30–1463, 30–1495, 30–1497, 30–1566, 30–1658, 30–1659, 30–1674, 30–1675, 30–1682, 30–1684, 30–1685, 30–1686, 30–1687, 30–1688, 30–1689, 30–1690, 30–1691, 30–1916, 30–2124, 30–2126, 30–2234, 30–2235, 30–2236, 30–2237, 30–2275, 30–2279, 30–2311, 30–2369, 30–2376, 30–2588, 30–2673, 30–2674, 30–2768, 30–2850, 30–2925, 30–3002, 30–3042, 30–3044, 30–3080, 30–3083, 30–3087, 30–3229, 30–3380, 30–344, 30–346, 30–3822, 30–3985, 30–3988, 30–4037, 30–4059, 30–4507, 30–4770, 30–4841, 30–5044, 30–5106, 30–634, 30–636, 30–638, 30–643, 30–649, 30–871, 30–883, 30–891, 30–903, 30–905, 30–918, 30–978, 30–994, 30–995, 600–x–10, 600–x–11, 600–x–12, 600–x–13, 600–x–45, 600–x–46, 600–x–5, 600–x–6, 600–x–7, 600–x–9, 601–x–1358, 601–x–1363, 601–x–1364, 601–x–1365, 601–x–1366, 601–x–1367, 30–2410, 30–2289, 30–3877, 30–2601, 30–3160, 30–3598, 30–2912, 30–1332, L30–5025, 30–4280, 30–1416, 30–1453, 30–1457, 30–1616, 30–1998, 30–1999, 30–2131, 30–2142, 30–2184, 30–2233, 30–2250, 30–2304, 30–2395, 30–2396, 30–2423, 30–2431, 30–2736, 30–2829, 30–2889, 30–2891, 30–2992, 30–3003, 30–3254, 30–3334, 30–3393, 30–3551, 30–3597, 30–3791, 30–3882, 30–3936, 30–3944, 30–3974, 30–3977, 30–3999, 30–4464, 30–4532, 30–4539, 30–4544, 30–4629, 30–4657, 30–4667, 30–4669, 30–4980, 30–5034, 30–5076, 30–5095, 30–5101, L30–4952, L30–4953, L30–5096).

The sentiment that the contribution of drug-testing programs to workplace safety should not be compromised by the requirements of the ergonomics standard was expressed by Food Distributors International:

> In the view of FDI and its members, the possibility that some individuals will feel constrained to avoid reporting workplace injuries or accidents because of a drug test requirement that might be triggered is not an overriding concern. These fears largely will relate only to those whose drug use may be discovered, and their protection should not be the goal of a major OSHA regulatory scheme. In addition, any such inhibiting effect is more than outweighed by the workplace accidents and injuries that are avoided through maintenance of an effective drug-free workplace program (Ex. 30–3819)

OSHA is not aware of any basis for concluding that the development of MSDs is in any way associated with the use of drugs or alcohol. The reporting of MSDs or MSD signs and symptoms covered under this rule, therefore, cannot be considered by itself to provide any justification for testing. Although subjecting all parties reporting injuries or all OSHA recordable cases to testing has sometimes been used by employers as a matter of administrative convenience in identifying individuals for testing, the lack of a relationship between drug or alcohol use and the MSDs covered by this rule, along with the detrimental effect on reporting behavior that testing can have, combine to make this an inappropriate practice where MSDs are concerned.

Furthermore, there is no evidence that drug tests discourage workers from reporting injuries only if they fear that drug use will be discovered. Adrienne Markowitz of the UFCW described a poultry processing plant where workers who reported pain in the hands and wrists were required to be tested for illegal drugs:

> This is a church going and religious community. Most people were not worried that drugs would be found because they didn't take them. But they weren't happy with having to suffer the indignities of having someone watch them urinate, were afraid that inaccurate testing and laboratory practices [would erroneously indicate illegal drug use], were concerned that the medications they took would show up as illegal drugs, and [were] fearful that the company supervisors would doctor the records. Many, for the reasons I have just stated, refused to take the test and were fired. And many others just never reported their illnesses (Tr. 5998).

This rule does not in any way prevent an employer from conducting testing if it is required by law, is based on reasonable suspicion, is part of the job application process, is part of routine fitness-for duty examination, is done as follow-up after entering an employee assistance or drug rehabilitation program, or is administered to assist in post-accident investigation. A blanket policy that requires all employees reporting MSDs or signs and symptoms of MSDs to submit to drug or alcohol testing, however, would hinder the effectiveness of the ergonomics program if such a policy results in underreporting.

Nor is the fear that a back injury or other MSD may be the result of an accident caused by drug or alcohol use a reason for testing employees for drugs when reporting an MSD or MSD signs or symptoms. As stated in paragraph (a), this standard does not address injuries caused by slips, trips, falls, vehicle accidents, or other similar accidents. The standard addresses injuries that are the result of exposure to force, repetition, awkward postures, vibration, and contact stress. Injuries covered by the standard are commonly associated with prolonged or excessive exposures to these ergonomic risk factors. There is no reason to believe that drugs or alcohol have any relevance to the development of these conditions and certainly no evidence that impairment at the time of reporting has any relevance. Simply reporting MSD signs and symptoms therefore cannot be viewed as a legitimate reason to suspect drug or alcohol abuse.

Some commenters argued that if an ergonomics standard did restrict drug testing programs, this could conflict with regulatory requirements of the Department of Transportation or Nuclear Regulatory Commission, or with policies established through collective bargaining (see, *e.g.*, Exs. 30–3853, 30–3765, 30–1070, 30–1332, 30–1671, 30–3284, 30–3359, 32–335, Tr. 15621, 500–1–28, 30–4527, 30–4029, 30–4475, 30–4248). Restrictions on drug testing were also said to conflict with requirements for companies with government contracts (see, *e.g.*, Exs. 601–x–1711, 30–4475).

Language in the proposal that could affect certain employer drug testing policies was said to conflict with state workers' compensation laws, and thus violate Section 4(b)(4) of the Occupational Safety and Health Act. State workers' compensation laws, it was said, may require drug testing in certain instances, allow reduced insurance premiums for those employers with testing programs, or allow impairment to be used as a defense in contesting compensation claims (see, *e.g.*, Exs. 500–104, 500–104–1).

It was argued that restrictions on drug testing programs could result in liability claims against those employers whose employees acted in an unsafe manner due to impairment. The New Mexico Self Insurers Fund stated:

> OSHA may have had the best intentions when writing the preamble, however if state and local government municipal employers were to neglect the possibility that alcohol and drug use was a factor in an injury, whether or not it is an MSD, municipal liability would rise exponentially. The bottom line is that many local governments would not be immune from lawsuits where gross negligence is alleged. It would be easy to show negligence on the part of a local government that allowed "waivers" of its alcohol and drug testing ordinances for employees in order to permit full and free reporting of MSDs (Ex. 30–4810).

OSHA's concern is that testing not be conducted in a manner that penalizes individuals reporting MSDs or participating in ergonomics programs. This final rule does not restrict employers' drug or alcohol testing policies where such policies are authorized by state or federal law. It should be noted, however, that DOT regulations, which require post accident testing and testing of safety sensitive employees and under certain other circumstances, do not require drug testing when MSDs or any other type of injury or illness is reported.

Workers compensation and other state and federal laws that require drug testing following a traffic or other accident, are also not generally relevant to the application of this standard, because as explained above, MSDs resulting from accidents, slips, trips and falls are specifically exempted from this rule.

A number of employee representatives expressed the opinion that policies or practices that can discourage worker participation in the ergonomics program, such as incentive programs and post-injury drug testing, should be explicitly prohibited in the rule (see, *e.g.*, Exs. 32–339–1, 32–111–4, 32–198–4, 32–210–2, 500–50). Absent such a prohibition, it was argued, an ergonomics standard triggered by employee reports of injury would be undermined by employers who would pressure employees to avoid reporting injuries. These commenters argued that the case-by-case determination approach described in the preamble to the proposal would be inadequate to deter practices that discourage participation and reporting, and a blanket prohibition in the rule itself is necessary.

Some parties indicated that they did not find the proposal sufficiently clear in indicating what policies or practices would be considered by OSHA to discourage worker participation in the ergonomics program (see, *e.g.*, Exs. 30–3853, 30–4185, 32–337–1, 30–653, 30–1350, 30–2216, 30–3233, 30–3344, 32–82–1, 30–1101, 500–33). Concern was expressed that compliance would be dependent upon whether or not employees feel discouraged, and would thus be determined by the subjective perceptions of employees (see, *e.g.*, Ex. 30–3853, 30–4247, 500–33, 32–266–1). TXU Business Services, for example, stated:

> Any regulation that has provisions for employees "not feeling discouraged" would be impossible to enforce fairly. For example, identical employer conduct could be legal in one plant, or part of a plant, and illegal in another and the employer might never know it (Ex. 500–1–28).

In order to provide an objective basis for enforcement of this provision, OSHA has concluded that a pattern of underreporting must be evident in the workplace before a determination will be made that any given employer policy or practice discourages reporting of MSDs or signs and symptoms of MSDs. If underreporting or discouragement of employee participation in the ergonomics program is found at a particular establishment as a result of a records review or employee interviews, OSHA will evaluate the situation to determine if employer policies and practices have had the effect of discouraging reporting or participation in the ergonomics program. OSHA's position is that these policies and procedures are not per se illegal, but they can clearly discourage reporting and participation. If an employer has policies or procedures with this potential, the employer must ensure that these policies and procedures are not actually discouraging reporting or participation.

OSHA expects that employers will have ample opportunity to discover whether employees are being discouraged through the periodic communication that will take place under the standard. If policies and practices are determined to discourage reporting or participation, employers would need to take action to remedy this situation.

OSHA considers it important that the employer not only not discourage, but actively encourage reporting and participation in the ergonomics program. The Agency believes that this goal can be accomplished by providing information to employees about the importance of early reporting in accordance with paragraph (d), along with effective training on reporting and the ergonomics program in accordance with paragraph (t) of this final rule.

Several parties asked whether the proposed prohibition on policies or practices that discourage reporting would apply to an employer's decision as to whether or not an employee can work overtime (see, *e.g.*, Exs. 32–368–1, 30–2208, 30–3765, 30–1671, 30–2050, 30–2499, 30–3344, 30–3348, 30–3356, 30–4628, 30–4674, 500–1–140). Withholding overtime, it was argued, may be based on a desire to prevent aggravation of the potential MSD, and limiting the employer's ability to restrict overtime would thus conflict with provisions in the proposed standard that allow employers to use administrative controls (Ex. 30–1671). The Association of Independent Corrugated Converters stated:

> While some employers do not choose to impose such restrictions, it seems unfathomable that involuntary restrictions on some overtime work would be deemed an inappropriate management step, both before and after symptoms reported by employees are analyzed by a health care provider. The essence of some MSDs, at least in OSHA's own construct of such conditions, is that overuse in the form of "excessive" repeated exposure is the source of problems in many circumstances. It seems oddly inconsistent that on the one hand, the overall thrust of the "incremental abatement" and job re-design obligation of OSHA's full ergonomics program will focus on avoiding or reducing exposures, while on the other, an employer's judgement to limit additional exposure is retaliatory or aimed at discouraging reporting (Ex. 500–1–140).

As with incentive programs and drug and alcohol testing policies, OSHA's concern about withholding overtime is based on the discriminatory application of this practice to discourage reporting or participation in the ergonomics program. The Agency realizes that work restrictions, including limitations on the number of hours worked, are often necessary to prevent an injured employee's condition from worsening and to allow damaged tissues to recover. The provision of work restrictions, however, must be viewed separately from the reporting of MSDs and MSD signs and symptoms.

If overtime is withheld as a matter of policy simply because a report of an MSD has been made, this could have the effect of discouraging reporting. An example of such a situation would be an employee who uses a keyboard in a steady manner for eight hours per day, then works an additional two hours as a receptionist and does not perform any work involving typing or hand activity during that two hours. If this employee were to report the signs and symptoms of an MSD of the wrist, and as a matter of policy was denied the opportunity to work overtime as a receptionist but continued working eight hours at a keyboard, the effect would be to discourage reporting and would be evaluated by OSHA as described above.

OSHA does not include production incentives in the category of policies and practices that may discourage reporting or participation in the program. Mosely and Associates registered concern as to how such systems would be viewed, and expressed concern that plants may lose their competitiveness if piece rate compensation systems or production incentives are abandoned (Ex. 30–4362).

OSHA recognizes that these systems sometimes cause employees to expose themselves to MSD hazards in order to achieve higher rates of compensation. Because piece rate incentives are not directly tied to reporting or participation in the ergonomics program, however, the Agency does not view them as potential sources of discouragement to reporting and participation. With full participation in the ergonomics program, employees compensated under these systems will be provided with the protections of the ergonomics standard, including the information and training that will confer with it the ability to recognize the potential causes of MSDs and knowledge of the importance of early intervention.

Several commenters (see, *e.g.*, Exs. 30–3853, 30–4247) argued that subjecting an employer to citation for maintaining policies or practices that discourage worker participation would be contrary to the intent of Congress. These commenters argued that, by placing a discrimination provision in Section 11(c) of the OSH Act, Congress had made clear that anti-discrimination provisions should not be included in standards. These commenters therefore believe it inappropriate for OSHA to include a discrimination provision in an ergonomics standard.

Paragraph (h)(3) of the final rule is intended to prevent employers not only from discriminating against employees for reporting and participating in the ergonomics program, but also to prevent employers from having policies that discourage employees from reporting and participating, even where no discrimination has taken place. Paragraph (h)(3) thus has a different scope than section 11(c). In addition, insofar as paragraph (h)(3) addresses discrimination, it does so as part of a broader standard that is reasonably necessary and appropriate to address a serious hazard . Nothing in Section 11(c) indicates that a standard issued in accordance with Section 6(b) may not include such a provision. Provides a different enforcement mechanism than section 11(c), and nothing in section 11(c) indicates that it is the exclusive means of addressing discriminatory policies.

Paragraph (i)—Employee Participation

Paragraph (i) sets forth the final rule's provisions regarding employee participation. It requires that employers ensure that employees and their representatives, if the employees are represented by a recognized or certified collective bargaining agent, have ways to report MSDs, MSD signs and symptoms, and MSD hazards; that employees receive prompt responses to those reports when they are made; that access to the standard and to information about MSDs and the ergonomics program be provided to employees; and that employees have ways to be involved in the development, implementation, and evaluation of the ergonomics program.

The requirements of paragraph (i) closely correspond with the requirements of the proposed employee participation section. This reflects OSHA's determination, based on evidence in the record, that the involvement of employees and their representatives in an ergonomics program is critical to the effectiveness of the program. It also reflects the support for the proposed employee participation provisions expressed by commenters.

The proposed employee participation requirements were designed to cover those circumstances where the involvement of workers was essential to the success of an ergonomics program. The duty to establish a means of reporting and to provide prompt responses to reports was included because of the vital importance of an effective reporting system to the proper function of the injury-based trigger of the standard. Access to the standard and information about the ergonomics program was considered by the Agency to be necessary for employees to participate effectively in the ergonomics program. Employee input into the development, implementation, and evaluation of ergonomic programs was considered critical to program success because of the first-hand knowledge that employees could offer regarding potential solutions to MSD hazards, the appropriate content and level of training, and the effectiveness of control measures.

The proposed provisions for employee participation generated a considerable volume of comment. Support for the concept of involving employees in the ergonomics program was widespread among commenters, and few disagreed with the proposed requirements pertaining to reporting, providing responses, and furnishing access to the standard and to information. Comment on these provisions in the context of employee participation was primarily limited to requests for clarification about how the provisions would apply in practice. Substantial differences were expressed, however, concerning the level of employee involvement appropriately included in a final standard.

The importance of employee participation in the successful implementation of an ergonomics program was stressed in a number of comments (see, *e.g.*, Exs. 30–276, 30–428, 30–651, 30–3860, 30–4333, 30–4468, 32–21–1–2, 32–82–1,Tr. 3479, Tr. 6930, Tr. 3565, Tr. 5596–5597, Tr. 10202, 32–450–1–18–1, Tr. 11182, Tr. 11380, Tr. 12947, Tr. 14479, Tr. 14902, Tr. 16526, Tr. 12366, 500–29, 500–117–2, 500–177–2, 500–220, 500–215, 601-x-1587, 20–605). Mark Catlin of the Alice Hamilton Occupational Health Center, for example, stated:

> Our experience has been * * * that when there is true employee involvement from beginning to end, especially in the development of solutions, that can be a great benefit in coming up with a program that works for that specific site that is cost effective and will be maintained after it is initially set up (Tr. 5597).

The advantages that the knowledge and skills of employees have lent to successful ergonomics programs were remarked upon by a number of commentors (see, *e.g.*, Tr. 4084, Tr. 4697, Tr. 6188, Tr. 7011, Tr. 7111, Tr. 7135, Tr. 7142, Tr. 9489, Tr. 10224, Tr. 10547, Tr. 11076, Tr. 12366, Tr. 12297, Tr. 13004, Tr. 14248, Tr. 14320, 20–406, Tr. 17623). For instance, Dr. Robert McCunney of the American College of Occupational and Environmental Medicine stated:

> In my experience as a physician, I have been impressed with the knowledge that a lot of workers have about their jobs and the recommendations that can be made to improve it and reduce factors associated with illness * * * [Tr. 17633].

One aspect of employee participation included in the proposal was a means for the employee to inform the employer when MSDs or MSD signs and symptoms occur. Reporting is essential to allow the employer to become aware of those job situations where further action is necessary. For example, if an employee experiences pain and stiffness in the shoulders and believes this to be the result of workplace factors, the employer cannot be expected to make changes to the workplace to mitigate the risk factors unless the employer is aware of the existence of a problem.

Belief in the importance of employee reporting of MSDs and their signs and symptoms was expressed in a number of comments on the proposed rule (see, *e.g.*, Exs. 30–240, 30–1104, 30–2116, 30–2215, 30–2387, 30–2809, 30–3686, 30–3765, 32–77–2, 30–3813, 30–3826, 30–3849, 30–3859, 30–4185, 30–4468, 30–4538, 30–4548, 30–4562, 30–4564, 30–4837, 31–78, 31–174, 31–192, 31–227, 31–303, 31–353, 32–82–1, 32–85–3, 32–461–1, 32–111–4, 32–210–2, 32–339–1, 500–33). For example, Shipman and Goodwin LLP, on behalf of an unnamed client, stated:

> Requesting that employees report signs and symptoms encourages the success of any early intervention program (Ex. 30–2215).

Comments received on this issue are presented in greater detail in the discussion of paragraph (d), which includes a requirement that employers provide information to their employees on how to report MSDs and their signs and symptoms. The ability of employees to report MSDs and MSD signs and symptoms depends upon their understanding of the reporting mechanism, and knowledge of what constitutes a possible MSD or MSD sign or symptom.

The final rule, at paragraph (h), adds "MSD hazards" to the list of things employers must ensure that employees report. OSHA believes that trained employees will be able to identify MSD hazards in their workplace *before* they cause MSDs, and this will result, in turn, in steps by proactive employers to protect workers at risk even before they suffer an MSD incident. The reporting of MSD hazards has therefore been added to paragraph (i)(2) of the final rule.

The specific process employers must establish for reporting MSDs, their signs and symptoms, and MSD hazards is not prescribed in this final rule. OSHA anticipates that the process will vary from workplace to workplace, based on the size and nature of the workplace. A large facility with an on-site health care professional (HCP), for example, may choose to handle reports through the HCP. Smaller facilities may elect to have reports made directly to supervisors. The method of submitting a report is likewise not specified. Employers may chose to adopt written, electronic, or other systems for receiving reports. (Note, however, that employers are required by paragraph (v) to keep records of employee reports, primarily for evaluation purposes.)

The final rule requires the employer to ensure that employees have ways "to promptly report" their MSDs, signs and symptoms, and hazards. OSHA received many comments on its use of the word "prompt" in the proposed rule (see, *e.g.*, Exs. 30–3826, 30–3853, 30–4467, 30–3284, 30–3367, 30–4674). These commenters asked OSHA to clarify what was meant by "prompt." OSHA is using the word to indicate that timely reporting is required; the effectiveness of the standard and the employer's program would clearly be compromised if employees did not report their problems quickly, at a time when preventive action can still be taken. A rigid time frame, however, is not specified in the rule, because the Agency recognizes that some flexibility is needed to account for the circumstances found in different workplaces. In general, OSHA believes that reports should be received within a few days in almost all cases, and the Agency expects employers to inform their employees about the importance of early reporting, as required by paragraph (d).

OSHA proposed that employers provide prompt responses to employee reports of MSD signs and symptoms to encourage reporting and provide feedback. OSHA's reasons for proposing that employer responses to reports be made promptly was that timely and good faith responses are essential to reinforcing the information exchange process. Several commenters asked for clarification of this proposed provision (see, *e.g.*, Exs. 30–3344, 30–3367, 30–249, 30–3749). The Society for Human Resources Management, for example, asked OSHA to specify what it would consider an adequate response. The Society questioned whether OSHA would consider acknowledgment of receipt of the report, evaluation of the report, or action to prevent the condition from worsening as responses to the report. Others asked whether the response must be in writing or whether alternative methods of communication (*e.g.*, oral) would be acceptable (see, *e.g.*, Exs. 30–3344, 30–3367, 30–3826).

If an employee experiences persistent MSD symptoms and reports that condition to the employer but receives no response, that employee is likely to consider the ergonomics program ineffective. Such a loss of confidence in the program would clearly discourage future reporting and participation. If the employer communicates the results of evaluations made based on the report, or informs the employee of any actions that are being taken as a result, the reporting employee will better understand the process and will be more likely to participate in the future. OSHA also recognizes that employers will sometimes inform the employee that a given report requires no action, *e.g.*, when an MSD hazard turns out, on closer examination, not to warrant further action. OSHA continues to believe that prompt responses to reports are an essential part of the communication that must occur between employers and employees in a functioning ergonomics program, and final paragraph (i)(2) reflects this conviction.

In order to provide flexibility to employers to tailor communication methods to the needs of a particular workplace, the method of providing a response to employees who report is not specified. Employers may chose to adopt written, electronic, or other systems for providing responses, although a record of the response must be maintained, as required by paragraph (v).

OSHA proposed to require the employer to grant employees access to the standard and to include information about the ergonomics program. OSHA proposed this requirement to ensure that employees understood what the OSHA standard required and how the employer's program worked. The program was to include assignment of responsibilities in the ergonomics program; job hazard analysis results; hazard control plans; records of the occurrence of MSDs and reports of MSD hazards; ergonomic program evaluation results; and lists of alternative duty jobs, according to the preamble to the proposed rule [64 FR65799]. This provision recognized that information is important to full employee understanding of and participation in the ergonomics program.

OSHA was requested by commenters to define more clearly what was meant by "access" to the standard (Ex. 32–337–1). The Dow Chemical Company, for example (Ex. 30–3765) felt that employers should not be required to provide employees access to the standard. Dow argued that employers were required to comply with the provisions of the rule but should not be additionally burdened by providing access to the standard. In Dow's view, employees could be confused by receiving information both on the employer's ergonomics program and the standard.

The National Coalition on Ergonomics (Ex. 32–368–1) expressed concern that the employee participation provisions of the proposed standard would require employers to provide employees with access to the employer's confidential documents, which might address personnel issues, financial issues, or safety audits. If this were the case, the Coalition argued, employees with grudges or those involved in labor disputes would be able to harass their employer by disclosing or threatening to disclose proprietary information out of context or in a fashion that might have an adverse impact on the employer. The Coalition argued that this would discourage employers from performing audits with appropriate depth and thoroughness. Concern was also expressed that employee access might jeopardize medical confidentiality. (Ex. 500–1–116).

OSHA does not believe that providing employee access to the ergonomics standard is an unreasonable burden on employers, nor that providing the standard will confuse employees. Employee access to OSHA standards that affect them is a longstanding OSHA practice (see, for example, OSHA's rule's governing lead exposure, noise exposure, and so on). Access to the standard can be provided in several forms. A printed copy of the standard may be made available, or an electronic version may be provided on CD or via internet access to OSHA's web site if employees have access to a computer. OSHA believes that the standard will not be confusing to employees because they will be trained to understand the ergonomics program in their workplace and their role in it, in accordance with paragraph (t) of the final rule. OSHA does not believe that employees will flood their employees with requests to obtain and review the final standard; instead, the Agency believes that the standard is likely to be used primarily as a reference to compare the functioning of their workplace ergonomics program with the provisions of the standard to assure that the program is functioning properly and is in compliance.

Because of the importance OSHA attaches to employee access to the standard, and the relative ease of providing it, the final rule adds the term "ready" to the original access provision. This means that whenever an employee requests access to the standard, the employer must assure that ready access is provided, *i.e.*, that access is provided within a reasonable time and place.

Because of the importance OSHA places on employees being able to easily understand the requirements of the standard, the final rule requires employers to provide employees with a copy of the summary of the standard that is required to be made accessible in paragraph (d). Although the employer is required in paragraph (d) to make this information available to employees when they start a job, the employee should receive the summary at the time the program is implemented due to the fact that the exposures in the employees job have now been shown to exceed the levels in the Basic Screening Tool and considerable time may have passed since the employee was informed that he or she had access to this information. The summary sheet provided in Appendix B may be used for this purpose.

The Agency is also not persuaded by arguments that confidential company information or medical records would be distributed if employers provide employee access to information about the ergonomics program. The proposal specifically stated [64 FR 65799], and OSHA reiterates here, that information of a personal nature such as the medical records of other employees, is *not* included in the information to which employees are required to have access. Records of the occurrence of MSDs, for example, can be presented in a general form and do not need to include personal details. General injury and illness information is already available to employees under the provisions of 29 CFR 1904.7 with regard to the Log and Summary of recordable occupational injuries and illnesses.

OSHA also is not convinced by comments suggesting that proprietary information would be revealed if employees have access to program information. The information required to be made available, on request, is general information. For example, although an employee's detailed process and production plans might be trade secrets, the information required by this provision relates only to the control of ergonomic hazards. Technical information regarding machinery or production methods is clearly not required to be provided. Reports of MSD hazards and job hazard analysis results are not confidential and are critical information for employees if they are to participate meaningfully in the ergonomics program.

Providing employees with basic information about the common kinds of MSDs and their signs and symptoms is required by paragraph (d) of the final rule. The comments pertaining to this paragraph can be found in the summary and explanation for paragraph (d). OSHA has decided that information on MSDs and their signs and symptoms is so basic, and so important to employees, that it must be provided as part of employee participation as well. The final rule's employee participation provisions are only triggered when MSD incidents have been reported in a job that meets the action trigger. This means that the employees covered by final paragraph (i) are those who work in higher-risk jobs; these employees clearly need to be informed about MSDs and their signs and symptoms. Thus paragraph (i)(3) requires employers to inform their employees with, at a minimum, the information sheet in non-mandatory Appendix A. OSHA believes that most employers will choose to provide more detailed and specific information, such as information about the MSDs and signs and symptoms occurring among employees in jobs in their establishment.

The fourth component of the proposed employee participation section was a broad requirement that "ways to be involved in developing, implementing and evaluating each element of the ergonomics program" be provided to employees. This component, as explained in the preamble to the proposal, was designed to allow employers to take advantage of the knowledge, skills, and abilities that workers could contribute to the ergonomics program.

The United Steelworkers concurred with OSHA's initial assessment that employee involvement in each element of the ergonomics program was appropriate. The union stated:

> Workers and their representatives have to be involved in all aspects of the introduction and implementation of an ergonomics program in [the] workplace. After all, it is their bodies and lives that are on the line (Ex. Tr. 11047).

Vagueness was a concern of some commenters. A number of interested parties indicated that they did not understand what level of employee involvement would be required under the proposed standard (see, *e.g.*, Exs. 30–3344, 30–3848, 30–4607, 30–4674, 30–4713, Tr. 4372). These commenters stated that the proposal did not make it clear whether an employer would have unlawfully limited employee participation if, for example, employee suggestions for ergonomics improvements were rejected (see, *e.g.*, Exs. 32–78–1, 30–4467, 30–541, 30–627, 30–652, 30–1355, 30–1697, 30–1717, 30–4843, 601–x–1710). These participants argued that employers should not be required to follow the recommendations of employees or obtain their concurrence on a course of action, and should retain the authority to make all final decisions about compliance with the requirements of the standard (see, *e.g.*, Exs. 30–3934, 30–2208).

Some industry representatives stated that the level of employee involvement proposed by the requirement that employers involve employees in developing, implementing and evaluating each element of the program was excessive (see, *e.g.*, Exs. 32–368–1, 32–78–1, 30–4467, 30–240, 30–276, 30–368, 30–429, 30–434, 30–541, 30–562, 30–652, 30–1070, 30–1294, 30–1671, 30–2830, 30–2846, 30–2991, 30–3344, 30–3348, 30–3784, 30–3951, 30–4185, 30–4713, 32–21–1, 32–120–1, Tr. 11679, 500–33, 30–3744). In the view of these commenters, OSHA did not demonstrate that this level of employee involvement was necessary for an effective ergonomics program (see, *e.g.*, Exs. 32–78–1, 30–4467, 30–541, 30–627, 30–1355, 30–1545, 30–1697, 30–1717, 30–2830). Employee involvement, although commonly acknowledged as often beneficial, was not needed in every situation, and should therefore not be mandated, according to these commenters. For example, Dr. Kurt Hegmann stated:

> Hazard remediation efforts are frequently enhanced and accelerated with employee participation since the ones doing the work 40 hours a week have often thought of the most effective solution. Yet, requiring employee participation in this and other aspects of the rule is inappropriate, as these assumptions are not always true [Ex. 30–4779].

Employee involvement in supervisory training or the evaluation of management leadership, for example, were cited as program elements where employee involvement was not considered necessary (Ex. 32–78–1). In its comments on employee participation, the American College of Occupational and Environmental Medicine stated:

> * * * employee participation in the design, modification, and evaluation of all aspects of an employer's operation is unnecessary. In most facilities, manufacturing or industrial engineers effectively perform many aspects of their jobs without employee participation. OSHA's requirement for employee participation should be limited to participation on ergonomics teams and participation in the job-specific problem solving process [Ex. 30–4468].

Another commenter with a similar view argued that an employer who is able to eliminate MSD hazards without employee participation should not be required to consult employees (Ex. 30–4467).

Several practical problems about how the proposed requirements would actually work in different situations were also raised. Union Carbide Corporation indicated that such involvement would be difficult to implement when the ergonomics program is developed on a corporate level:

> Large employers such as Union Carbide develop their ergonomic programs on a corporate basis using professional staff. Of necessity, they rely on employees to assist in implementing the program, and employee evaluation of the program is always welcome. But where programs are developed on a corporate basis, it is sometimes difficult to involve employees in that development [Ex. 30–3784].

The Whirlpool Corporation believes that adhering to the requirements of the standard would hinder the company's ability to respond to ergonomic hazards when they are first identified. Safety teams that are trained to quickly identify, assess, and fix a hazard would be supplanted by the more cumbersome process required by the standard. Whirlpool believes that the standard requires the employer to obtain input from people who may have nothing to add to the process, which would increase the time and expense involved without providing any assurance that a better solution would be found (Ex. 30–4779).

Some employers interpreted the proposed requirement that employees be involved in developing the program to mean that, where a current ergonomics program already exists, the employer would be required to develop a new program (Ex. 30–3765). The Edison Electric Institute stated that it is impossible to consistently include employee involvement in all elements of the ergonomics program, and therefore recommended that the final rule allow greater flexibility to employers and only require that employees "be provided adequate, regular opportunities to be involved in developing, implementing and evaluating appropriate elements of the program" (Ex. 500–33).

The Northwest Food Processors Association expressed concern that engaging employees and their designated representatives in the ergonomics program could be inappropriate in some cases because the ergonomic interventions they suggested might result in the elimination of jobs or otherwise negatively impact employment opportunities. The association stated that employers should be given flexibility in the final rule to determine the appropriate approach to such situations (see, *e.g.*, Tr. 12198).

Some employers were concerned that employees could disrupt the program or decline to participate in it. These commenters believe that employee representatives may attempt to use the standard as a way to force unnecessary or costly changes for reasons unrelated to safety (see, *e.g.*, Exs. 30–2208, 30–1294, 30–3348). The Nabisco Company was concerned that requirements for employee participation could not be met if employees were unwilling to participate in the program. The company stated:

> Nabisco strongly supports the concept of employee involvement and encourages participation of employees at all levels of our organization. However, this requirement assumes that employees and their representatives will readily volunteer to participate in a management program. It has been the experience within some of our locations that union representatives do not

always encourage employee participation in management programs [Ex. 30–4201].

A common concern expressed by employers with unionized employees was that the requirements of the proposed standard for employee involvement could serve to disrupt established collective bargaining relationships (see, *e.g.*, Exs. 30–3853, 30–3765, 32–337–1, 30–323, 30–345, 30–538, 30–574, 30–1022, 30–1113, 30–1349, 30–1567, 30–1616, 30–1652, 30–2426, 30–2725, 30–2773, 30–3086, 30–3184, 30–3284, 30–3344, 30–3951, 31–332, 500–1–128, 32–266–1, 30–3841). Many companies and their unions, according to these commenters, have well-established contractual mechanisms for addressing employee safety and health issues. A typical example is a contract provision establishing a joint labor-management safety committee. According to the views of these commenters, requiring the employer to engage individual employees in the ergonomics program would stimulate resentment and conflict by forcing the employer to circumvent the union. PEPCO, for example, expressed this view:

> PEPCO, like most utility companies, has a long-established relationship with a collective-bargaining agent that represents most of our employees (International Brotherhood of Electrical Workers, AFL–CIO). PEPCO has well-established contractual mechanisms for addressing employee safety and health issues. We have joint labor-management safety committees and include our union in accident investigations. The proposal would interfere in established relationships such as these, for in several instances, it would require the employer to deal with or involve not just the employee designated representative, but also the individual unionized employee. This places the employer in the position of having to deal apart from, or even circumventing, the union in order to avoid the risk of citation [Ex. 31–332].

Consolidated Edison Company of New York urged OSHA to address this issue by indicating that the obligations for employee involvement in the final rule could be met by affording those rights to the union (Ex. 30–2816). Alan Ferranto of the National Association of Letter Carriers, however, did not believe that collective bargaining relationships would be affected by the proposed rule:

> Inevitably, when a proposal of this nature is put forth, there are those who will argue that collective bargaining will be affected. As the safety and health officer for a union which represents almost a quarter million postal employees, I'm here to say that this proposal will not affect our collective bargaining agreement with the postal service. In fact, we are satisfied that the employee involvement envisioned under OSHA's proposed ergonomic standard will complement the already agreed-upon procedures in place to address safety and health issues [Tr. 3570].

A number of labor representatives felt that the proposed requirement to involve employees and their designated representatives in developing, evaluating and implementing each element of the ergonomics program should be modified. Some parties expressed the opinion that the standard should be revised to add employee representatives to each provision where rights are granted to employees. For example, the proposed job hazard analysis provision would require the employer to ask employees whether performing the job poses physical difficulties; in the view of these commenters, this should be changed so that employees *and* their designated representatives should be consulted. The unions also suggested that the proposed control obligation section be revised to add designated representatives to the requirement to ask employees for control recommendations (see, *e.g.*, Exs. 32–339–1, 32–182–1, 32–198–4, 32–210–2, Tr. 3566).

Another commonly expressed concern of the employer community was that the proposed provision that employers provide employees ways to be involved in developing, implementing and evaluating each element of the ergonomics program would conflict with provisions of the National Labor Relations Act (NLRA) or with state laws addressing labor relations (see, *e.g.*, Exs. 30–296, 30–323, 30–328, 30–345, 30–368, 30–377, 30–397, 30–523, 30–532, 30–536, 30–380, 30–538, 30–540, 30–541, 30–562, 30–574, 30–589, 30–594, 30–598, 30–627, 30–630, 30–632, 30–648, 30–688, 30–1022, 30–1113, 30–1131, 30–1216, 30–1294, 30–1296, 30–1332, 30–1349, 30–1355, 30–1356, 30–1357, 30–1358, 30–1367, 30–1370, 30–1413, 30–1545, 30–1551, 30–1552, 30–1567, 30–1584, 30–1616, 30–1652, 30–1683, 30–1697, 30–1717, 30–1727, 30–1898, 30–1901, 30–2049, 30–2050, 30–2054, 30–2061, 30–2062, 30–2133, 30–2134, 30–2427, 30–2499, 30–2506, 30–2645, 30–2773, 30–2799, 30–2811, 30–2812, 30–2813, 30–2814, 30–2824, 30–2830, 30–2896, 30–2990, 30–3061, 30–3062, 30–3086, 30–3095, 30–3131, 30–3174, 30–3177, 30–3210, 30–3231, 30–3233, 30–3284, 30–3336, 30–3344, 30–3716, 30–3745, 30–3765, 30–3845, 30–3853, 32–337–1, 32–368–1, 30–3349, 30–3353, 30–3356, 30–3364, 30–3367, 30–3473, 30–3513, 30–3622, 30–3723, 30–3728, 30–3819, 30–3849, 30–4122, 30–4143, 30–4153, 30–4158, 30–4167, 30–4187, 30–4355, 30–4499, 30–4607, 30–4628, 30–4674, 30–4702, 30–4818, 30–4843, 31–266, 31–310, 31–332, 32–211–1, 32–234–2, Tr. 4320, Tr. 4908, Tr. 15537, Tr. 8896–8897, 30–3345, 500–1–27, 500–1–28, 500–1–29, 500–1–42, 500–1–79, 500–1–86, 500–1–106, 500–1–112, 500–1–113, 500–1–114, 500–1–116, 500–1–181, 500–1–117, 500–1–124, 500–1–125, 500–1–193, 500–1–248, 500–1–249, 500–1–307, 500–1–329, 500–1–331, 500–1–411, 500–1–423, 500–1–442, 500–177–2, 30–1942, 30–3236, 30–3339, 30–4535, 30–2600, 30–2592, 30–2577, 30–2583, 30–2256, 30–2259, 30–2201, 30–2243, 30–2260, 30–2272, 30–3428, 30–3157, 30–3158, 30–3196, 30–3623, 30–2550, 30–2543, 30–2529, 30–2535, 30–4583, 30–2896, 30–2894, 30–2886, 30–2868, 30–2863, 30–2862, 30–2854, 30–4668, 30–4302, 30–2106, 30–2404, 30–2405, 30–2407, 30–2406, 30–2412, 30–2292, 30–2293, 30–2300, 30–2287, 30–2447, 30–2370, 30–2605, 30–2614, 30–2772, 30–2791, 30–2793, 30–2828, 30–2831, 30–4058, 30–2474, 30–2487, 600–x–34, 600–x–36, 30–4762, 30–2901, 30–5036, 30–4566, 30–1971, 30–1972, 30–1973, 30–2571, 30–4541, 30–4786, 30–5027, 601–x–1370, 601–x–1698, 601–x–1712, 601–x–1439, 601–x–1440, 601–x–1441, 601–x–1442, 601–x–1444, 601–x–212, 601–x–213, 601–x–1368, 500–1–397, 30–3839, 30–4247, 30–4486, 601–x–1711, 601–x–1360, 30–3858, 30–3923, 30–4778, 30–2432, 30–3850, 30–2593, 30–3728, 30–2270, 30–1995, 30–2209, 30–3036, 30–2832, 30–2472, 30–2439, 30–2438, 30–2397, 30–2389, 30–4300, 30–4326, 30–1076, 30–4712, 30–2103, 30–3806, 30–1730, 30–1446, 30–3220, 30–3235, 30–4335, 30–4337, 30–4362, 30–4394, 30–4443, 30–4528, 30–4709, 30–1651, 30–2410, 30–2289, 30–3877, 30–2601, 30–3160, 30–3598, 30–2912, 30–1332, L30–5025, 30–4280, 30–1416, 30–1453, 30–1457, 30–1616, 30–1998, 30–1999, 30–2131, 30–2142, 30–2184, 30–2233, 30–2250, 30–2304, 30–2395, 30–2396, 30–2423, 30–2431, 30–2736, 30–2829, 30–2889, 30–2891, 30–2992, 30–3003, 30–3254, 30–3334, 30–3393, 30–3551, 30–3597, 30–3791, 30–3882, 30–3936, 30–3944, 30–3974, 30–3977, 30–3999, 30–4464, 30–4532, 30–4539, 30–4544, 30–4629, 30–4657, 30–4667, 30–4669, 30–4980, 30–5034, 30–5076, 30–5095, 30–5101, L30–4952, L30–4953, L30–5096, 30–3497, 30–1938, 30–1989, 30–2217, 30–2384, 30–2403, 30–2403, 30–2416, 30–2480, 30–2486, 30–2555, 30–2556, 30–2607, 30–2639, 30–2734, 30–2735, 30–2873, 30–2878, 30–3578, 30–3742, 30–3776, 30–4325, 30–4452, 30–4790, L30–4998). A discussion of the relationship between the requirements of this final rule and the NLRA can be found in the Legal Issues section of this preamble.

As has already been discussed, the potential value of employee contributions to the development, implementation, and evaluation of an ergonomics program is well-established. The intent of the proposed requirement that employees have ways to be involved in developing, implementing, and evaluating each program element was to allow employers to take advantage of this potential value to construct and administer the most effective program possible.

A requirement that employees be involved in the program in no way abrogates the authority of the employer to manage the workplace or administer the ergonomics program. Regarding employee suggestions, this general requirement of the final rule for employee involvement requires only that employers provide a reasonable opportunity for employees to be heard, for them to be involved, and for their suggestions to be fairly considered. An employee recommendation made as part of this process, in and of itself, does not oblige the employer to take action. For example, if an employer asks employees in a problem job for recommendations about eliminating or controlling MSD hazards, the employer is not compelled to adopt any of the suggestions that the employees may make. Rather, this is an opportunity for the employer to draw on the knowledge of these workers in identifying and examining alternative approaches to addressing hazards. The suggestions of employees may be used to supplement those of professional staff or consultants.

Along with the authority for making decisions, the employer retains the responsibility for ensuring the effectiveness of the program. If consultation with employees about the effectiveness of the program reveals, for example, that training has not been understood, then this deficiency must be promptly corrected (see paragraph (u) of the final rule).

OSHA realizes that the input of employees will not in every instance prove to be beneficial to the ergonomics program. Nevertheless, the evidence in the record shows that contributions to the success of ergonomics programs have consistently been made by participating employees. The involvement of employees need not be cumbersome or time-consuming. Brief discussions are often sufficient to elicit employee input.

The proposal would have required that employees have ways to be involved in developing, implementing, and evaluating each element of the ergonomics program. The final rule requires that employees be involved in developing, implementing, and evaluating the program; however, reference to "each element" of the program has been deleted. This change has been made to grant the employer flexibility to adapt employee involvement to the circumstances in a given workplace. OSHA is convinced that the proposed level of employee involvement is not practical or justified in every instance. The Agency never intended for employee involvement to pervade every aspect of the program. As explained in the preamble to the proposal, the "elements" referred to were the broad ergonomics program elements (e.g. training, program evaluation). A requirement for employee participation in each component of these elements, such as supervisory training, was not envisioned. OSHA considers, however, that even greater latitude is appropriate in order to allow the employer to most effectively construct and administer the ergonomics program. For example, a small employer could adopt a training presentation developed by a trade association even if employees in that workplace did not participate in the development of the presentation. The Agency believes, however, that such circumstances are the exception rather than the rule, and has retained the requirement for employee participation in the development, implementation, and evaluation of the ergonomics program due to the evidence of the value of worker involvement in each of these stages in the administration of the program.

OSHA considers that the development of an ergonomics program is not an event, but a continuing process. The work environment is rarely static; work methods and equipment often change over time, and as a result the physical demands upon workers and associated MSD hazards can change as well. Likewise, hazard control methods and training procedures can evolve over time. Changes in the workforce can also impact the effectiveness of an ergonomics program. The program may require adjustments to account for these changes. For example, if ergonomics training is conducted in English in a workplace where the employees speak and understand English, it may be effective. If that employer subsequently hires employees who do not understand English, an adjustment would be necessary to provide the training in a language the employees understand. Similarly, if new equipment is brought into a workplace, modifications to the ergonomics program may be necessary to control MSD hazards related to use of the new equipment or to provide appropriate training. It is in these types of situations, as well as in the initial creation of the ergonomics program, where the record demonstrates that the involvement of employees can prove invaluable.

In response to those employers who were concerned that the proposed standard would necessitate discontinuation of successful programs that did not incorporate employee involvement in their development, OSHA does not intend for the requirement in the final rule for employee participation in the development of ergonomics programs to apply retroactively to programs that have already been established. The Agency believes that such a requirement would result in an unnecessary expenditure of resources to duplicate the existing program. Rather, OSHA believes that the evaluation of the effectiveness of the existing program will result in the identification and correction of any deficiencies which may currently exist, and that employee involvement in the ongoing development of the program will result in continuous improvement in the program over time. Moreover, OSHA anticipates that the grandfather clause in paragraph (c) of this final rule will apply to many existing programs.

A successful ergonomics program also requires employee involvement in its implementation. Clearly, hazard controls cannot be effective if workers do not use them, and MSD management cannot be effective if injured workers do not report their injuries. A program cannot fulfill its objectives if it exists only on paper, and is not applied in the workplace. Ample opportunity is provided to demonstrate employee involvement in the implementation of the program through compliance with the specific requirements of the standard. For example, if a job has been found to be an MSD hazard due to repetition, and the appropriate control method has been determined to be rotating jobs so that no single employee spends more than three hours per day in that job, the employer must ensure that employees carry out the job rotation in order for it to be effective as a control measure.

Employee involvement in the evaluation of the ergonomics program is also needed to assure program effectiveness. For instance, workers in problem jobs are in the best position to determine if control measures are successfully controlling MSD hazards, or if new hazards have been created. Employees are also best able to recognize when training is inadequate or when opportunities for reporting of MSD hazards or MSD signs and symptoms are unsatisfactory. As with employee involvement in the implementation of the program, opportunities to demonstrate employee involvement in the evaluation of the program can be found in the specific requirements for evaluation found in the standard, such as the requirement of paragraph (m)(4) for consultation with employees regarding the effectiveness of controls and the requirement of (u)(1)(i) for consultation with employees on effectiveness and problems with the program.

OSHA does not believe that employee participation in the ergonomics program under this final rule will result in adverse repercussions on collective bargaining relationships. The final rule also does not require employers in any way to circumvent any process that may currently exist for employer communication with the employee. The rule does not specify a precise mechanism that must be used for employee participation. Where a system is already in place, such as a union/management safety and health committee, nothing in this rule prohibits an employer from using that system to meet its employee participation obligations.

Paragraph (j)—What Must I Do To Determine Whether a Job That Meets That Action Trigger Poses an MSD Hazard to Employees in That Job?

This paragraph addresses the job hazard analyses employers must perform to identify those MSD hazards that must be controlled under this final standard. Paragraph (j)(1) of the final standard requires employers with jobs that meet the standard's two-part action trigger—*i.e.*, who have employees who have experienced an MSD incident and who work in jobs that have risk factors present at levels that meet the screen in Table W–1—to conduct a job hazard analysis of the job to determine whether it presents an MSD hazard to employees. (Employers who qualify for and choose to use the Quick Fix option contained in paragraph (o) of the standard must follow the procedures of that paragraph and are not required to conduct the job hazard analysis specified in this paragraph (j).)

Paragraph (j)(2) tells employers what steps they must include in a job hazard analysis, and paragraph (j)(3) lists the methods of job hazard analysis that are acceptable under the rule, including referring to a number of tools, included in Appendices D–1 and D–2 of the standard, that employers can use to conduct their analyses. Paragraph (j)(4) explains that if the job hazard analysis shows that hazards need to be reduced, the job is terms a "problem job" under this standard.

The proposal's job hazard analysis provisions listed the steps required to analyze a job, and contained a list of 20 physical work activities and conditions associated with particular risk factors. The proposal did not provide specific guidance on how to determine whether the risk factors presented an MSD hazard in any particular case. Several commenters argued that the proposal's approach was vague and asked for more specific measures for identifying MSD hazards (see, *e.g.*, Exs. 500–197, 30–2435, 30–973, 30–1274, 30–2426, 30–1350, 30–2428, 30–2986, 30–3000, 30–3086, 30–3853, 30–326, 30–546, 30–4189). Others (*e.g.*, Ex. 30–3593) thought that the requirements in the proposed job hazard analysis section were too specific, and still others stated that the table oversimplified the complex interactions between various risk factors in a job and urged OSHA to eliminate the table of physical work activities from the final rule (see, *e.g.*, Ex. 30–3436). The argument made by several commenters was that the work activities and risk factors included in the table in the proposal would be hard for employers to identify in the workplace (see, *e.g.*, Exs. 500–197, p. III–12, 30–3745, 30–2134, 30–2426, 30–2919).

Although some provisions in final paragraph (j) are essentially the same as the corresponding sections of the proposed rule, several have been revised in response to comments that the proposal did not provide enough information on how employers could determine whether MSD hazards were present. In particular, the inclusion of the tools in this rule provides employers with much more assistance in compliance than the job hazard analysis provisions in the proposal (proposed sections 1910.917 and 1910.918) would have, while preserving a high degree flexibility for employers who do not choose to use any of the listed tools. In addition, the final rule has been modified to allow employers additional flexibility in several aspects of the job hazard analysis process. The following discussion describes each provision of paragraph (j) of the final rule and OSHA's responses to the comments received on the proposed job hazard analysis provisions.

Paragraph (j)(1)

Paragraph (j)(1) of the final rule states that employers must conduct a job hazard analysis to determine whether a job that meets the action trigger presents an MSD hazard to employees in that job. This requirement is essentially identical to the job hazard analysis obligation in Section 1910.917 of the proposed rule. Like the proposal, the final rule does not require the employer to perform a job hazard analysis for every reported MSD, but only for those that meet screening criteria. Unlike proposed Section 1910.917, however, Paragraph (j)(1) also permits an employer to rely on a job hazard analysis that was conducted previously for the job, provided that the analysis was performed in accordance with the procedures of this paragraph (j) and is still relevant to the job (*i.e.*, the job has not been altered in the meantime in a way likely to change or increase exposure).

The purpose of job hazard analysis is threefold: (1) To identify all the ergonomic risk factors that are associated with the job being analyzed; (2) to measure the duration, frequency and magnitude of employee exposure to these risk factors; and (3) to evaluate the risk factors identified, individually and in combination. This analysis allows employers to determine if the job poses an MSD hazard to employees, *i.e.*, is a "problem job," as that term is used in the standard. The results of the job analysis, which identify the extent of the risk factors present in the job, can later be used as the benchmark against which to measure the effectiveness of controls.

The NIOSH publication, Elements of Ergonomics Programs (Ex. 26–2), describes a job hazard analysis as an examination of the workplace conditions and individual elements or tasks of a job to identify and assess the risk factors that are reasonably likely to be causing or contributing to the reported MSDs. OSHA received many comments supporting its proposed approach to job hazard analysis (see, *e.g.*, Tr. 5342, Tr. 8978, Exs. 37–1, 37–25, 500–218, 500–137–1–1). OSHA thus believes that the requirements of paragraph (j) are consistent with the objectives and steps of job hazard analysis as the process is currently applied by employers with effective ergonomics programs.

The quality of the job hazard analysis performed is critical to the success of the entire ergonomics program, as the United Auto Workers noted:

> The heart of an ergonomics program is the measurement of risk factors on jobs. The presence of risk tactors demonstrates that a reported MSD is related to a job or workstation, while their absence suggests the MSD arose from other causes. Risk factors predict MSDs will arise in the future, even if none are currently reported. And, reductions in risk factors indicate that a job has been improved (Ex. 500–220).

A job hazard analysis can also rule out jobs that do not need to be controlled, and can provide employers with the information they need to prioritize their efforts on the most hazardous jobs or tasks that pose the most severe problems. Similarly, a job hazard analysis is an efficient way to help employers focus their resources on the most likely causes of a problem. For example, after analyzing a job, the employer may find that the amount of repetition is acceptable if the force and awkward posture in the job can be controlled sufficiently.

Despite these benefits, several commenters (see, *e.g.*, Exs. 30–1393, 30–1275, 30–3061, 30–3062) were concerned that the standard's requirements for job hazard analysis would be too costly. Typical of these comments was one from the Navy Federal Credit Union:

> The requirement for employers to perform job hazard analyses is extremely onerous and costly. It requires every employer to perform hazard analyses on the same or similar jobs within their industry. OSHA has already amassed a substantial amount of data on the likely causes and remedies of MSDs that occur in the workplace. The ergonomics standard should permit employers to rely on OSHA's identification of hazards and possible remedies for problem occupations (Ex. 30–1273).

Other employers, such as August Mack Environmental, Inc., disagreed, however:

> I do agree that conducting a hazard analysis, if done properly and very objectively, requires significant resources. However, if the result were to find that MSD risk factors were not prevalent, and the need for full implementation of a comprehensive ergonomics program were eliminated, this [expense] could easily be justified. This is due to the estimated amount of resources required for the hazard analysis compared to the resources required to implement a formalized ergonomics program and maintain it over time (Ex. 30–240).

Other record evidence also makes clear that the cost of MSDs far exceeds the costs of controlling MSD hazards (Tr. 7122, Tr. 10225, Tr. 4811).

Similarly, some commenters also expressed concern that performing job hazard analysis could be too difficult for small companies (see, *e.g.*, Exs. 601–x–1, 30–3469, 30–2846). However, OSHA's experience is that small companies can and do conduct these analyses effectively. For example, Wood Pro Industries in Cabool, Missouri is a VPP employer with only 100 employees. Its safety director (David Carroll, who also wears a number of other hats) began a safety and health program that identified and controlled ergonomic risk factors several years ago. The program has resulted in a decrease of almost 40% in workers' compensation costs (mostly due to reductions in MSD hazards), with premium costs declining from $103,824 to $61,000, which Mr. Carroll described as "not chicken feed for a small company" (Ex. 502–17). Based on this record, OSHA agrees with those who commented that an appropriate job hazard analysis actually limits MSD hazard control costs, either by determining that no MSD hazard is present or by identifying risk factors that, in turn, allow the company to focus on the activities that are associated with the MSD incident.

The UAW also has experience with small companies that have implemented ergonomics programs:

> Employers in the many small facilities have voluntarily or through the collective bargaining process, adopted a common approach to preventing ergonomic injuries and abating ergonomic risk factors in the workplace. The program includes all components established in the proposed standard, except appropriate medical management and that can be established without hindering the established processes at the facilities (Ex. 500–220).

Other commenters argued that the proposed approach to job hazard analysis would require the employer to hire a consultant (see, *e.g.*, Exs. 30–3783, 30–2810, 30–3336, 30–715, 30–2834). For example, the Texas Association of Business and Chamber of Commerce stated:

> Because the proposed standard inadequately defines the alleged "risk factors" or "conditions or activities" or even to provide a complete list of the "conditions or activities" during which the "MSD hazards" allegedly occur, small employers will be forced to seek assistance—at substantial cost—from those with experience and knowledge in the ergonomics field. In addition, the proposed standard does not adequately explain which controls will abate particular hazards and they will again be forced, and as encouraged by OSHA, to seek expensive outside help (Ex. 30–2810).

But contrary evidence is also in the record:

> I am not an ergonomist and I do not believe you need an ergonomist to do a general check on the risk factors of most jobs, that most workers, especially if you give them a framework for thinking about and analyzing their own job, can tell you where those risk factors are present, where they're not present, where they're present in large quantities versus small quantities. You do not need to be an ergonomist to do that. Many workers are extremely capable, if you give them a framework for analyzing their own jobs * * * (Tr. 13764).

A recent study in the record (Ex. 500–71–64) reports that trained workers were able, in 65 to 85% of cases, to identify the same risk factors as hired ergonomists and to successfully identify solutions.

The job hazard analysis required by Paragraph (j) of the final rule serves a very different function from the Basic Screening Tool in Table W–1 of the standard. The Basic Screening Tool is a simple hazard identification tool that can be used to identify jobs with the *potential* to expose workers in them to ergonomic risk factors at levels that *may* pose an MSD hazard. It cannot take the place of a job hazard analysis. It can only point to possible problems with the job; it takes a job hazard analysis to determine whether controls are actually necessary. A job hazard analysis identifies specific risk factors, or combinations of risk factors, that need to be controlled.

Paragraph (j)(1) also allows employers to rely on a previously conducted analysis of a job if it was performed in accord with the requirements of this paragraph, and the analysis is still relevant. This provision responds to concerns expressed by some participants that employers that the standard would require significant action every time a new MSD occurred, even if a job hazard analysis that complied with the standard had already shown that no additional controls are necessary (*e.g.*, Ex. 30–3956). To take advantage of this provision, the employer must confirm that the job is still being performed in the same way, and that the same risk factors are still present. Any changes to the work methods or equipment may have introduced new MSD hazards, and a new job hazard analysis would then be required. Additionally, if new employees are present, the employer must make sure that no new employee is performing the job in a different way or has physical characteristics that expose that employee to risk factors not present for others. For example, a particularly tall or short employee might need to work in a more awkward position, or reach further than others in order to perform the same tasks. If that is true, the employer must analyze the job to identify the risk factors affecting that employee.

The "new employee" situation described above is one of the scenarios addressed by the Note to paragraph (j). That note allows the employer to limit the job hazard analysis (and response) to the employee who reported the MSD incident when the MSD hazard is limited only to that employee. Evidence in the record points to situations in which the physical work activities or conditions of a job pose a risk to only a single employee (see, *e.g.*, Exs. 30–

4709, p. 6, 500–145, 30–2206). For example, a five-foot tall employee in a commercial bakery may report a back or shoulder MSD related to extended reaches involved in sorting rolls. However, other, taller, employees who have performed the job for several years do not have (and never have had) difficulty performing the physical work activities of the job. In this case, the employer could conclude, based on the job hazard analysis, that the problem is limited to the injured employee. The employer then may limit the further action required by the standard (*e.g.*, analysis, control, training, recordkeeping, evaluation) to that employee's workstation.

A similar situation could occur where one employee is much taller than others in the same job. The tall employee reports persistent back pain that rises to the level of an MSD incident, and the employer observes that having to bend much further than the other employees to work at the work surface is likely to have caused the back problem. Allowing employers to limit the analysis and control to a single employee if the analysis reveals that the problem is unique to that employee is consistent with the approach taken by several commenters who have successful ergonomics programs (see, *e.g.*, Exs. 30–1071, 30–3755, 30–3745). As one of these commenters reported, "we have often modified the job to fit that one individual—however, modification was not needed for co-workers at similar or identical duty stations" (Ex. 30–1071).

Paragraph (j)(2)

Paragraph (j)(2) of the final rule describes the steps the employer must take in performing the job hazard analysis. Paragraph (j)(2)(i) states that the employer must talk to the employees who perform the job, and their representatives, about tasks that may relate to the MSD incident. Paragraph (j)(2)(ii) requires the employer to observe the employees performing the job to identify the risk factors and assess the extent of their exposure (its magnitude, frequency, and duration) to those risk factors. The employer must include all of the employees performing the job, or a sample of those with the greatest exposure to risk factors, in this analysis.

According to the record (see, *e.g.*, Exs. 26–2, 26–5, 26–1370, 37–1, 37–25) effective job hazard analyses have the following steps or activities in common:

- Obtaining information about the specific tasks or actions the job involves;
- Obtaining information about the job and problems in it from employees who perform the job;
- Observing employees performing the job;
- Identifying specific risk factors in the job; and
- Evaluating those factors (*i.e.*, their duration, frequency and magnitude) to determine whether they are causing or contributing to the problem.

The job hazard analysis requirements of the final rule reflect these steps. Unless the employer qualifies for and chooses the Quick Fix Option in paragraph (o), the employer must use the job hazard analysis process in this paragraph to determine whether the physical work activities and job conditions pose an MSD hazard to workers in that job. Jobs that pose an MSD hazard to employees are called "problem jobs," and must be controlled in accordance with paragraphs (k) through (m) of this final rule.

When employers perform a comprehensive job hazard analysis, their goal is to identify those ergonomic risk factors that impose biomechanical stress on the worker and evaluate magnitude, frequency, and duration as required by paragraphs (j)(2)(ii) and (j)(3). Once the risk factors and their magnitude, frequency, and duration have been determined, the employer is required to assess whether the risk factors identified pose an MSD hazard to employees. The standard defines an MSD hazard as the "presence of risk factors in a job at a level of magnitude, frequency, and/or duration that is reasonably likely to cause MSDs that result in work restrictions or medical treatment beyond first aid." Ergonomic risk factors are the elements of MSD hazards, and they often work synergistically. That is, jobs that have multiple risk factors pose a greater risk, all things equal, than a single risk factor.

Paragraph (j)(2)(i)

Paragraph (j)(2)(i) of the final rule requires employers to talk with employees and their representatives about the tasks the employees perform that may relate to MSDs. Much has been written about the value of employee participation in the identification of risk factors and controls at the hazard analysis stage (see, *e.g.*, Exs. 3–232, 26–4, 26–11, 26–15, 26–18, 26–19, 26–21, 26–1370, 26–1420, 32–339–1–42, 38–32). Studies have shown substantial improvements in health and safety after participatory ergonomics programs are implements (*e.g* Ex. 32–38). A comment from Johnson & Johnson sums up the opinion of many participants:

> Hazards cannot be addressed efficiently without an accurate evaluation of the situation. The line employee is one of the best sources of this information * * * [those employees are] local process experts (Ex. 3–232).

The record contains considerable evidence that many employers talk to employees to get insight into the job requirements that only those who work at the job can provide (see, *e.g.*, Exs. 30–3755, 30–3748, 500–117, 500–137–1–1, 500–137–6–1, 500–218, 500–220, Tr. 3890, 13808). These commenters stated that talking with employees is often the best way to identify the causes of the problem and to identify the most cost-effective solutions to it (see, *e.g.*, Ex. 26–1370). One stated:

> Employee participation is vital to this element. Job Safety Analysis (JSA) [another name for job hazard analysis] has been part of the safety vocabulary for many years. Many employers are working with the workers to determine the safest way to do a job. Controlling a hazard can be a productive tool in many ways. Minimize lost time; reduce training and overtime; and a positive outlook from the workplace. A worker who is set up to succeed is a productive worker. A worker who has to jury rig or perform a task that leaves him or her in discomfort at the end of every shift can not be productive for a prolonged period of time. (Ex. 500–137)

Discussions with employers who have set up ergonomics programs in response to corporate settlement agreements with OSHA also confirm the need for employee input into the job hazard analysis process (Ex. 26–1420). A number of these employers said that employees need to be involved in the analysis and control process because "no one knows the job better than the person who does it" (Ex. 26–1420, See also Ex. 3–164). Other evidence echoed this concept, confirming that employees often have the best understanding of what it takes to perform each task in a job, and thus, what parts of the job are the hardest to perform or pose the greatest difficulties: "The people that are closest to doing the work seem to come up with the best solutions." Tr. 4697.

In addition to helping to ensure that the job hazard analysis is accurate, involving employees can make the job hazard analysis and control process more efficient, because employees can help employers pinpoint the causes of problems more quickly. Employees often come up with some of the most practical, no-cost or cost-effective, solutions (see, *e.g.*, Ex. 26–Tr. 1370, 2136, 2582, 12297).

Some participants opposed this provision, however (see, *e.g.*, Exs. 30–3344, 30–74, 30–3557). Several expressed concern that asking

employees about ergonomic problems would influence the employees' response, with the result that specious problems would be identified:

> This section is a regulatory "Field of Dreams." Ask it and they will answer. Sooner or later, for reasons good, bad, or indifferent, somebody will answer "yes" [when asked if the job presents physical difficulties]. (Ex. 30–74)

Another participant was concerned that employee comments would vary from employee to employee and thus not be useful (Tr. 6861). Finally, several commenters argued that the employer and employee should not discuss the risk factors present in "normal job activities" because doing so might cause employees to feel that there should be no stress on the job (Exs. 30–3354, 30–3848).

OSHA continues to believe that employees' views add significant value to the job hazard analysis process and, in fact, that not asking employees about their perception of the tasks that may cause MSDs would be akin to performing a quality survey without involving the customer. Therefore, the final rule requires the employer to talk with the employees who perform the task when conducting this step of the job hazard analysis process.

OSHA is, moreover, providing enough flexibility in this provision to accommodate employers' concerns. OSHA is not requiring employers to use any particular method to talk with employees about the tasks they perform. Employers may do something as simple as talking with employees informally while observing the job being performed, or they may choose to talk with employees as part of a regular staff or production meeting. Alternatively, employers may have affected employees fill out a survey form or questionnaire. Many employers have developed effective tools for gathering important job information from employees who do the job. For example:

> AMP Inc., a manufacturer of electronic components, with 300 employees, uses a one-page "Ergonomic Evaluation Form" that asks employees to answer simple "yes/no" questions about the employee's ease and comfort when performing certain job tasks. After the company's ergonomic team (comprised of line employees) reviews the form, a member of the team interviews the employee. (Ex. 26–5).

In addition, there are ways to ask questions that respond to the concerns expressed above. The questions may be posed to minimize bias. For example, questions like "Are parts of your job more difficult than others?", "Does your injury hurt more when performing certain tasks?", or "Could you recommend improvements to the job?" tend to elicit useful information and do not prejudge the answer (Exs. 32–339–1–82, 500–121–61). In any event, the employee input is only one aspect of the job hazard analysis. The employer need not place great weight on the views of a single employee when those views are inconsistent with the rest of the information obtained during the analysis.

The final rule adds the language "and employee representatives" to this provision consistent with the practice in the rest of the rule to include the "employee representative" language included in each provision of the standard where OSHA is requiring such participation. The proposal took a more general approach to this issue, *i.e.*, it would have required employers to decide when including employee representatives was important in "developing, implementing, and evaluating the employer's program" (64 FR 66070).

A few commenters also stated that the appropriate focus for a job hazard analysis is the task rather than the job and objected to OSHA's use, in the proposal, of the word "job" in connection with the component to be analyzed in a job hazard analysis (see, *e.g.*, Exs. 32–300–1, 30–3755). OSHA agrees, and the language of the final rule uses "tasks" instead of "jobs" when referring to the units of analysis in this process.

Paragraph (j)(2)(ii) requires employers to observe the employees performing the job to identify the risk factors in the job, and to evaluate the magnitude, frequency, and duration of exposure to these risk factors. Job observation allows the employer to see how the employee does the job and provides information about the workstation layout, tools, methods, equipment and general environmental conditions in the workplace. A number of commenters recognized the value of this step (Ex. 30–3755). This paragraph of the final rule combines paragraphs (c) and (d) of proposed section 1910.918. Observing the employees at work is important because it allows employers to see precisely which tasks may be imposing biomechanical stress on the worker. Observation is a necessary addition to the discussion required by paragraph (j)(2)(i) because some things may be overlooked in the discussion, or employees may not remember to mention certain activities (particularly those that are short term).

There are several ways employers may comply with the observation requirement in paragraph (j)(2)(ii) of the standard, and participants described how they integrate job observations into their job hazard analysis (see, *e.g.*, Tr. 8171, Tr. 11133). First, employers may simply observe employees perform the job tasks; this is often all it takes to identify the problem. For example, watching a data processor reaching to use the mouse because the keyboard tray is not long enough to accommodate it may be all it takes to identify the likely cause of the employee's shoulder pain. Videotaping the job is another common practice for observing jobs (see, *e.g.*, Ex. 32–198–4). A number of employers, especially in situations where the work activities are complex or the causes of the problem not be easily identifiable, report that they videotape or photograph the job (see, *e.g.*, Ex. 26–1370; Tr. 3059, 4696, 6979, 7075, 5805, 5540, 10183).

The value of simply looking at people performing a job was demonstrated graphically at the hearing. A law firm representing a number of participants showed several ergonomist witnesses pictures of two workers seated at computer workstations (Ex. DC 42), and asked the witnesses to identify the risk factors observable in the photo. Virtually all of the witnesses (Tr. 1754, Tr. 1756, Tr. 2249, Tr. 2325–2327, Tr. 5397, Tr. 9045, Tr. 13228, Tr. 13235, Tr. 13307, Tr. 13762) explained that it would normally be necessary to ask the employees in the jobs reflected in the photos pertinent facts about the job before being able to determine with any certainty whether the exposure represented in the snapshot posed an MSD hazard to the worker:

> Well, again, it would go back to what they were doing. If they were doing this job for a long period of time (Tr. 928).

Nonetheless, when pressed to give the best answer possible based on the limited amount of available evidence, the witnesses reviewing the photos were surprisingly consistent in their identification of ergonomic risk factors across witnesses. The table below summarizes the witnesses' responses to the snapshot.

Risk factors—shorter worker	Identified by	Risk factors—taller worker	Identified by
Contact Stress	Armstrong (TR. 928), Alexander (TR. 2249), Fernandez (TR. 5384), LeGrande (TR. 9047), Brossard (TR. 13221), Robbins (TR. 1362).	Awkward neck posture	Armstrong (TR. 929), Alexander (TR. 2250), Fernandez (TR. 5380), Brossard (TR. 13228), Rich (TR. 9590).
Static Posture	Armstrong (TR. 928), Fernandez (TR. 5384), LeGrande (TR. 4096), Rich (TR. 9592).	Static posture	Fernandez (TR. 5380), Rich (TR. (9592).
Awkward neck posture	Alexander (TR. 2250), Fernandez (TR. 5385), Brossard (TR. 13224).	Awkward wrist posture	Rich (TR. 9598).
Awkward back posture	LeGrande (TR. 4096), Brossard (TR. 13225), Rich (TR. 9601).	Awkward back posture	Brossard (TR. 13227).
		Awkward knee posture	Fernandez (TR. 5381), Brossard (TR. 13226), Rich (TR. 9596).
		Contact Stress	Brossard (TR. 13230).

Although the participants who questioned these experts later claimed that the exchanges demonstrated "erratic inconsistency" in the identification of MSD hazards among OSHA's own experts (Ex. 500–197 at II–23), OSHA believes they show just the opposite: that it is often possible to identify risk factors easily even with only limited knowledge of the employee's activities. If the witnesses had had access to the extra information they all agreed was necessary, OSHA expects that there answers would have demonstrated much more uniformity.

"Same Jobs"

Paragraph (j)(2) of the final rule requires that employers include in the job hazard analysis (and control process) not only the injured employee's individual job but also all other jobs in the establishment that are the "same" as that job. "Same jobs" are jobs that involve the same physical work activities and tasks as the job that the injured employee performs, regardless of their job title or classification. (See the definition of "job" in paragraph (z)). All same jobs in the establishment must be included in the job hazard analysis and control process, even if they are performed at different locations or on different shifts. The standard, however, does not require employers to apply the job hazard analysis and control process to same jobs in other establishments.

The proposed rule contained an analogous provision, which a number of commenters supported (Exs. 30–4200, 500–215, Tr. 12894). For example, Suzanne Rodgers, a nationally recognized ergonomist who has been helping companies to develop effective ergonomics programs for more than 32 years, wrote in Occupational Medicine:

> The questions asked on site will give a good appreciation of the overall demands of the job * * * It is important, therefore, to look at more than one person doing the job, so individual methods can be assessed and the degree of individual control is known (Ex. 500–121–61).

Other commenters, however, objected to including all same jobs in the analysis (Exs. 30–2208, 30–3765, 500–145). For instance, Larry Feeler, a physical therapist and president of WorkSTEPS, Inc., said that including all same jobs would be too burdensome and costly for employers (Ex. 500–145). And P.J. Edington, of the Center for Office Technology, was concerned that it would be difficult for some employers to determine whether employees were performing the "same job" and that OSHA compliance officers might mistakenly classify all office work jobs as the "same job" (Ex. 30–2208; see also Ex. 500–197). Some commenters urged OSHA to limit the job hazard analysis requirement only to the injured employee's individual job (see, *e.g.*, Exs. 500–145, 30–2208), or only to other employees on the same shift (see, *e.g.*, 30–3765).

For several reasons, OSHA believes the requirement to analyze other jobs that are the same as that in which an MSD incident occurred is necessary to the final rule. At the same time, OSHA acknowledges the commenters' concerns and has included additional explanation and examples of "same jobs" in this preamble section, as well as providing flexibility for employers who have a large number of employees in the same job. The requirement is important because it helps to make the final rule more proactive and preventive. It ensures that employees performing the same physical work activities or tasks as someone who already has been injured are provided with protection before they too are hurt. As one commenter put it, the first injured employee may well be a "harbinger" of other MSDs among employees in the same job (Ex. 30–3755).

Second, it is likely that other employees performing the same job will need protection since the job has already been shown to involve exposure levels that are associated with increased risks of injury. As explained in the discussion of paragraph (f), jobs that meet the Basic Screening Tool generally pose a risk of MSDs that is three times higher than jobs that do not. Third, the requirement is necessary to ensure that employers have complete information about the hazards in the job. If the job hazard analysis is limited to the injured employee's job, employers may not get the information necessary to identify the causes of the problem accurately. Without this information, the control measures employers implement might not be successful in controlling or reducing the hazards to the required levels.

In any event, OSHA believes that the "same job" requirement will not impose undue burdens on employers. As the Note to this paragraph explains, like the proposal, the requirement does not apply where employers have reason to believe that an MSD hazard only poses a risk to the employee who experienced the MSD incident. Commenters generally supported this limitation (Exs. 30–4540, 30–1353, 500–145). Similarly, where employers have reason to believe that MSD hazards are present in only a subset of the same jobs, then employers would be permitted to limit their response to that group. For example, where it is clear that the size or width of the grip on a knife poses a hazard only for employees with small hands (*i.e.*, need for high hand force in order to hold knife), the employer would be free to limit the analysis to employees with small hands.

In addition, in most establishments, relatively few employees perform the same job. This is especially true for small employers. However, even where many employees at an establishment perform the same job (*e.g.*, telephone operators, letter sorters, package sorters, package delivery, beverage delivery, trash collectors, janitors, hotel maids), the final rule gives employers the option of including only a sample of those employees in the analysis.

Some commenters asked OSHA to clarify when jobs are the same (see, *e.g.*, Ex. 30–3784). Jobs are the same when workers perform the same physical work activities or same job tasks. Employees perform the same job when the discrete elements or physical actions they perform are the same, even if not every aspect of their jobs is identical. For example,

- Employees whose jobs involve picking up packages from one conveyor and putting them onto another are performing the same job, even if the packages contain different products, or are placed on different conveyors.
- Orderlies whose job tasks involve lifting and moving patients have the same job even though some characteristics of the patients, room layout and the purpose of the lift or move may vary each time.
- Garbage collectors who pick up trash cans and recycle bins, and dump their contents into the garbage truck, have the same job even though their routes are not identical (*e.g.*, variations in terrain, traffic, distance from residences).

On the other hand, just because the workstations, tools and equipment employees use is the same does not mean that these employees have the same job. For example:

- Employees who use VDTs do not have the same job where one employee's job involves steady typing for most of the workday while the other employee uses the VDT to read and send electronic messages for only a few hours a day.
- Employees in an automotive assembly plant who use glue guns or staple guns do not necessarily have the same job if they are assembling different aspects of the product (installing seats versus windshields), particularly if they use the tools in different ways, with different force, and in different positions.

For purposes of this standard, job titles or classifications do not determine whether employees are in the same job. Where employees are performing the same physical work activities or tasks, they are in the same job even if they have different job titles. Often jobs involving the same physical work activities may have different job titles if there are working supervisors, some kinds of seniority systems, or different work shifts. For example, a "Fabricator II" on the third shift may be performing the same physical work activities as a "Junior Fabricator II" or "Apprentice Fabricator" on the first shift.

At the same time, just because employees have the same job title does not mean that the employer must include them in the job hazard analysis if the job tasks are not the same. This is especially true when employers have general job classifications, such as office worker, assembly line workers, production staff. "Office workers" may be assigned to tasks as varied as answering phones, operating copy machines, filing, or typing. If the MSD incident affected an office worker typing documents, the employer would only need to include in the job hazard analysis other office workers whose work task is to type documents. Likewise, "lineworkers" or "production workers" in a poultry processing plant may perform very different tasks.

Sample of Employees

Paragraph (j)(2) also gives employers the option to include in the job hazard analysis only a sample of the employees in the same job. Where the employer elects to use a sample of employees, the sample must include those employees with the greatest exposure to the "relevant risk factors" (*i.e.*, those risk factors that exceed the levels on the Basic Screening Tool). The proposed rule also included a similar option and many commenters supported it (see *e.g.*, Exs. 30–3344, 30–3745, 30–3749).

OSHA believes that this option should help to reduce burdens for employers while at the same time ensuring that the analysis of risk factors exposure in the job is accurately characterized and not underestimated. Some commenters, including Anheuser-Busch and United Parcel Service reported that they had dozens to hundreds of employees in their establishments who perform the same job (Exs. 32–241). This option also should help establishments employing telephone operators, customer service representatives, catalog sales representatives, data processors, trash collectors, warehouse selectors, grocery store cashiers, meatpackers, poultry processors and others. Including every employee in these "same jobs" in the job hazard analysis may be unnecessarily resource intensive, especially where the workstation layout and tools are identical (Ex. 500–145). Employers may be able to identify the problem and possible controls after analyzing the jobs of only a handful of employees.

This option will also help in situations where jobs are of short duration or do not have fixed workstations (*e.g.*, visiting nurses, home health aides, home repairmen, furniture movers, beverage delivery, package delivery, utility line workers, trash collectors) (Exs. 30–339–22, 30-3714, 32–234–2–1, 500–73, 500–147–33, Tr. 14300). Changes in job locations and job conditions may make it very difficult to analyze the job of each employee. However, analyzing the job for a sample of employees allows employers to identify the MSD hazards facing all of the employees.

OSHA is requiring employers to sample those employees with the greatest exposure to the relevant risk factors to ensure that exposure levels in the job are characterized accurately. OSHA has used the concept of "representative sampling" for hazard identification purposes in several of its standards, such as the asbestos standard (29 CFR 1910.1001), the formaldehyde standard (29 CFR 1910.1048), and the lockout/tagout standard (29 CFR 1910.147). The principle behind this concept is that, if the job hazard analysis (or the exposure monitoring, in the case of chemical exposures) reveals that the exposures to this group of most highly exposed workers are not at levels of concern, it is likely that those of other lesser exposed workers will also not be of concern.

A few participants disagreed that the representative sampling option would be useful to reduce burdens for employers:

> OSHA concedes that "conducting a job hazard analysis that covers all employees in a problem job may be burdensome" * * * It is not possible for an employer to know of and account for the multitude of physical factors that affect the way its employees work. A sample selected, for instance, could inadvertently ignore the employee with the widest fingers, the smallest feet or the most sensitive hearing, in violation of the proposed rule. OSHA's "shortcut" for performing a job analysis is to us insignificant and illusory—employers will, in practice, have to observe virtually every employee in the problem job—a task that even OSHA admits can be burdensome (Ex. 500–197).

OSHA does not believe that employers will have difficulty identifying the employees in a job who are most likely to have the greatest exposure to the risk factors. The specific criteria in the Basic Screening Tool will be particularly useful in helping employers identify, for example, those employees who:

- Repeat the same motion for the longest continuous period during the workshift;
- Lift the heaviest objects or packages or the most objects per workshift;
- Have the greatest degree of flexion or extension of their wrists;
- Use vibrating hand tools for the most time during the workshift; and

- Make the longest reaches during the workshift.

In addition, the body location component in the Basic Screening Tool will help employers identify whether particular physical capabilities, limitations and characteristics may be relevant in selecting the sample of employees for the analysis. For example, employers do not need to consider the width of employees' fingers when it is kneeling or squatting for more than 2 hours that has triggered the need for job hazard analysis. And foot size is not relevant when the risk factors being addressed are vibration, intensive keyboarding, or high hand force.

Moreover, once the people responsible for conducting job hazard analyses have been trained in the hazard identification and job hazard analysis process, their knowledge of ergonomic risk factors and the causes of MSDs will help them determine which employee physical capabilities and limitations may be relevant. They will understand that, if the relevant risk factor is awkward posture associated with bending down to monitor a gauge positioned close to the floor, the employees with the greatest exposure would be those who are taller. And if the risk factor is awkward posture caused by reaching above the head, then shorter employees and those with short reaches would be the most exposed.

Risk Factors

Paragraph (j)(2)(ii) requires employers to identify the risk factors present in the job and to evaluate their magnitude, frequency, and duration. These risk factors include force, repetition, awkward postures, vibration, and contact stress. Unlike the proposal, the final rule does not include cold temperature and static postures as independent risk factors. In addition, contact stress and vibration are defined somewhat more narrowly than they were in the proposal. 64 FR 65808.

Force. Force refers to the amount of physical effort that is required to accomplish a task or motion. Force also refers to the degree of loading to muscles and other issues as result of applying force to perform work. Tasks or motions that require the application of higher force place higher mechanical loads on muscles, tendons, ligaments, and joints (Ex. 26–2). Tasks involving high forces may cause muscles to fatigue more quickly. Some commenters were unclear about the meaning of fatigue in the context of MSDs (see, *e.g.*, Ex. 30–3866). The common use of fatigue, of course, is as a synonym for "tired." However, ergonomics has its roots in engineering, where fatigue has a meaning closer to "breaking point," as in metal fatigue. In other words, fatigue, when used in the context of ergonomics, generally means that the muscle is no longer able to work and must be allowed to recover, or that the point of damage or deformation of a tissue has been reached. Thus, in ergonomics, the term implies more than simply being tired or uncomfortable. The force required to complete a movement increases when other risk factors are also involved. For example, more physical effort may be needed to perform tasks when the speed or acceleration of motions increases, when vibration is present, or when the task also requires awkward postures. Hand tools that require use of pinch grips require more forceful exertions to manipulate the tool than do those that permit use of power grips.

Force can be assessed qualitatively or quantitatively. Quantitative measures include strain gauges, spring scales, and electromyography to measure muscle activity. A qualitative assessment of force is based on direct observation of the amount of physical exertion required to complete a task, and is usually graded on an ordinal scale (*i.e.*, low, medium, high).

Repetition. Repetition refers to the frequency with which a task or series of motions is repeated over and over again with little variation in movement. When motions are repeated frequently (*e.g.*, every few seconds) for prolonged periods such as several hours or an entire work shift, fatigue and strain of the muscle and tendons can occur because there may be inadequate time for recovery. Repetition often involves the use of only a few muscles and body parts, which can become extremely fatigued even though the rest of the body is unaffected.

Repetitive motions occur frequently in manufacturing operations where production and assembly processes have been broken down into small sequential steps, each performed by different workers. Repetition is also present in many manual handling operations, such as warehouse operation and baggage handling. Repetition is typically assessed by direct observation or videotaping or as a percent of task cycle time, where a cycle is a pattern of motions.

Awkward postures. Awkward postures are positions of the body (*e.g.*, limbs, joints, back) that deviate significantly from the neutral position[9] while job tasks are being performed. For example, when a person's arm is hanging straight down (*i.e.*, perpendicular to the ground) with the elbow close to the body, the shoulder is in a neutral position. However, when employees are performing overhead work (*e.g.*, installing or repairing equipment, grasping objects from a high shelf) their shoulders are far from the neutral position. Other examples include wrists bent while typing, bending over to grasp or lift an object, twisting the back and torso while moving heavy objects, and squatting. Awkward postures often are significant contributors to MSDs because they increase the exertion and the muscle force that is required to accomplish the task, and compress soft tissues like nerves, tendons, and blood vessels. As used in the final rule's basic screening tool, awkward postures may be either static postures held for prolonged periods of time, or they may occur repetitively.

Awkward posture is the primary ergonomic risk factor to which employees are exposed when the height of the working surfaces is not correct. Working in awkward postures increases the amount of force needed to accomplish an exertion. Awkward postures create conditions where the transfer of power from the muscles to the skeletal system in inefficient. To overcome muscle inefficiency, employees must apply more force both to initiate and complete the motion or exertion. In general, the more extreme the postures (*i.e.*, the greater the postures deviate from neutral positions), the more inefficiently the muscles operate and, in turn, the more force is needed to complete the task. Thus, awkward postures make forceful exertions even more forceful, from the standpoint of the muscle, and increase the amount of recovery time that is needed.

Awkward postures are assessed in the workplace by observing joint angles during the performance of jobs tasks. Observed postures can be compared qualitatively to diagrams of awkward postures, such as is done in many job analysis tools, or angles can be measured quantitatively from videotape recordings.

Contact stress. Contact stress results from activities involving either repeated or continuous contact between sensitive body tissue and a hard or sharp object. The basic screening tool in the final rule includes a particular type of contact stress, which is using the hand or knee as a hammer (*e.g.*, operating a punch press or using the knee to stretch carpet during installation). Thus, although

contact stress is covered in the final rule as a single risk factor, it is really a combination of force and repetition. Mechanical friction (*i.e.*, pressure of a hard object on soft tissues and tendons) causes contact stress, which is increased when tasks require forceful exertion. The addition of force adds to the friction created by the repeated or continuous contact between the soft tissues and a hard object. It also adds to the irritation of tissues and/or to the pressures on parts of the body, which can further inhibit blood flow and never conduction.

Contact stress commonly affects the soft tissue on the fingers, palms, forearms, thighs, shins and feet. This contact may create pressure over a small area of the body (*e.g.*, wrist, forearm) that can inhibit blood flow, tendon and muscle movement and nerve function. The intensity of exposure to contact stress is usually determined qualitatively through discussion with the employee and observation of the job.

Segmental vibration. Vibration refers to the oscillatory motion of a physical body. Segmental, or localized vibration, such as vibration of the hand and arm, occurs when a specific part of the body comes into contact with vibrating objects such as powered hand tools (*e.g.*, chain saw, electric drill, chipping hammer) or equipment (*e.g.*, wood planer, punch press, packaging machine). Although using powered hand tools (*e.g.*, electric, hydraulic, pneumatic) may help to reduce MSD risk factors such as force and repetition, the tools can expose employees to vibration. Vibrating hand tools transmit vibrations to the operator and, depending on the level of the vibration and duration of exposure, may contribute to the occurrence of hand-arm vibration syndrome or Raynaud's phenomenon (*i.e.*, vibration-induced white-finger MSDs) (Ex. 26–2).

The level of vibration can be the result of bad design, poor maintenance, or the age of the powered hand tool. For example, even new powered hand tools can expose employees to excessive vibration if it they do not include any devices to dampen the vibration or in other ways shield the operator from it. Using vibrating hand tools can also contribute to muscle-tendon contractile forces owing to operators having to use increased grip force to steady tools having high vibration.

Vibration from power tools is not easy to measure directly without the use of sophisticated measuring equipment. However, vibration frequency rating are available for many recently designed hand tools.

Exposure to a single ergonomic risk factor may be enough to cause an MSD incident. For example, a task may require the exertion of so much physical force that, even though the task does not involve additional risk factors such as awkward postures or repetition, an MSD is likely to occur. For example, using the hand or knee as a hammer (*e.g.*, operating a punch press or using the knee to stretch carpet during installation) alone may expose the employee to such a degree of physical stress that the employee has a significant risk of a serious injury.

Generally, however, ergonomic risk factors act in combination to create an MSD hazard. Evidence in the Health Effects section (Section V) shows that jobs that involve exposure to multiple risk factors are likely to cause MSDs, depending on the duration, frequency and/or magnitude of exposure. Thus it is important that ergonomic risk factors be considered in light of their combined effect in causing or contributing to an MSD. This can only be achieved if the job hazard analysis and control process includes identification of all the ergonomic risk factors that may be present in a job. If all of the risk factors are not identified, employers will not have the information that is needed to determine the cause of the MSD incident or understand what risk factors need to be controlled to eliminate or reduce the MSD hazard in the job.

Based on its review of the scientific literature available at the time of the proposal, OSHA also identified prolonged sitting and standing (a form of static posture) and whole-body vibration as risk factors for MSDs; in addition, OSHA identified cold temperatures as a risk factor because it could require workers to increase the force necessary to perform their jobs (such as having to grip a tool more tightly) (64 FR 65808). The final rule does not explicitly include these risk factors. For prolonged standing and sitting, and for cold temperatures, although there is evidence of an increased risk of MSDs with exposure, the available evidence did not permit the Agency to provide sufficient guidance to employers and employees on the levels of exposures that warrant attention. For whole-body vibration, there was substantial evidence of a causal association with low back disorders (*e.g.*, see NIOSH 1997); however, heavy equipment and trucks, the most common sources of whole-body vibration, are seldom rated for vibration frequencies and intensities. In addition, measurement of whole-body vibration levels requires special equipment and training that would be difficult for most employers to obtain. Therefore, OSHA determined that it was appropriate not to include whole-body vibration in the final rule at this time.

Cold temperatures can, however, increase the effect of other risk factors. By reducing the dexterity and sensitivity of the hand, cold temperatures may cause a worker to apply more grip force to hold hand tools and objects. Also, prolonged contact with cold surfaces (*e.g.*, handling cold meat) can impair dexterity and induce numbness. Cold air blowing from a pneumatic tool, or a draft from the HVAC system, also can result in localized cold stress on the hands, arms, neck, or shoulder. Cold also increases the effects of vibration, such as in tree felling and cutting to length with a chainsaw on a cold day.

Performing a job hazard analysis includes determining the magnitude, frequency, and duration of employee exposure to the risk factors described above. These terms are discussed below.

Duration. Duration refers to the cumulative time an employee is exposed to one or more risk factor(s). The duration of exposure has a substantial effect on the likelihood of both localized tissue fatigue and general cardiovascular fatigue. (Again, the word "fatigue" is used in the ergonomics sense.) In general, the longer the period of continuous work (*i.e.*, the longer the task requires sustained muscle contraction), the longer the recovery or rest time required (Ex. 26–2). Changing the sequence of activities or the recovery time and pattern of exposure may mitigate the effects of long duration. Breaks or short pauses in the work routine help to reduce the effects of prolonged exposure.

Frequency. Frequency refers to the number of times the exposure is repeated within some unit of time, in contrast to duration, which relates to the cumulative length of exposure. This factor also can be obtained by observing and counting (either by video tape, in person, or mechanically) the number of repetitions or the cycle time associated with each task. The response of muscles and tendons to work is dependent on the number of times the tissue is required to respond and the recovery time between these responses. The frequency of an activity can be measured at the micro level, such as grasps per minute or lifts per hour. However, there are some tasks, such as lifting a 150-pound package or pushing a 400-pound beer barrel, where simply knowing that the activity occurs, say, on one day every week, is sufficient to establish that an MSD hazard is present.

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[9] Neutral posture is the position of a body joint that requires the least amount of muscle activity to maintain. For example, the wrist is neutral in a handshake position, the shoulder is neutral when the elbow is near the waist, and the back is neutral when standing up straight.

Magnitude is a measure of the strength of the risk factor; for example: how much force, how deviated the posture, how great the velocity or acceleration of motion, how much pressure due to compression. Magnitude can be measured either in absolute terms or relative to an individual's capabilities. There are many qualitative and quantitative ways to determine the magnitude of exposure to ergonomic risk factor(s) (some of these measurement tools are provided in Appendix D–1). In relatively simple cases, one approach is to ask employees to classify the force requirements or physical difficulties posed by the job on a scale of 1 to 5, or on a scale as simple as "low," "medium," and "high." When magnitude is assessed qualitatively, the employee is making a relative rating, *i.e.*, is rating the perceived magnitude of the risk factor relative to his or her own capabilities. Relative ratings can be very useful in understanding whether the job fits the employees currently doing the job.

There are a number of ways to measure the magnitude of exposure quantitatively (see, *e.g.* Exs. 500–218, 500–220). For example, the NIOSH Lifting Equation is widely used to determine recommended weight limits for safe lifting and carrying (see, *e.g.*, Exs. 26–521). The Snook Push-Pull Tables are also used by many employers to evaluate and design pushing, pulling and carrying tasks (see, *e.g.*, Ex. 26–1008). For work-related upper extremity MSDs the Rapid Upper Limb Assessment (RULA) evaluation tool is often used to investigate and evaluate jobs (see, *e.g.*, Ex. 26–1421). These three tools are included in Appendix D–1, and are discussed at greater length in connection with that Appendix.

Paragraph (j)(3)

Paragraph (j)(3) of the final rule requires the employer to use one of the following methods or tools to conduct the job hazard analysis:

a. One or more of the hazard identification tools listed in Appendix D–1 of this section, if the tools are relevant to the risk factors being addressed; or

(ii) The occupation-specific hazard identification tool in Appendix D–2 of this section; or

III. A job hazard analysis conducted by a professional trained in ergonomics; or

(iv) Any other reasonable method that is appropriate to the job and relevant to the risk factors being addressed.

The final rule, like the proposal, requires employers to evaluate the ergonomic risk factors they have identified to determine whether the employee's exposure to them is the result of an MSD hazard or hazards in the job. To make this determination, employers must look at the duration, frequency and magnitude of the ergonomic risk factors in the job, as required by paragraph (j)(3). This evaluation may allow the employer to rule out some risk factors that do not pose a significant risk of injury, as well as to identify risk factors that do rise to the level of an MSD hazard. Risk factors are sometimes ruled out because the exposure does not last long enough, is not repeated frequently enough, or is not intensive enough to pose a risk. On the other hand, a job that requires significant bending from a neutral posture for most of the day would be identified as an MSD hazard by the appropriate hazard identification tool in Appendix D–1, and the job would therefore be labeled a "problem job," as noted in paragraph (j)(4) of the standard.

The approach to hazard identification reflected in paragraph (j)(3) of the final rule differs from the proposed approach and responds to comments that objected to the proposed approach (see, *e.g.*, Exs. 32–300–1, 30–3032). The proposal included a table that listed 20 physical work activities and job conditions such as "exerting considerable physical effort to complete a motion" and "using hand and power tools," linked each of these activities to a number of risk factors likely to be associated with the performance of such activities, and directed employers to evaluate these risk factors to determine whether an MSD hazard was present.

The National Telecommunications Safety Panel was one of many participants who found the proposed hazard identification approach unhelpful:

> The members of the Panel strongly believe that the matrix of "physical work activities and conditions" and ergonomic risk factors that may be present * * * provides insufficient guidance to be included as a mandatory item in a federal rule. (Ex. 30–3745).

A similar comment was that the proposed job analysis approach shifted the burden of hazard identification from OSHA to the employer (Ex. 30–4334). Commenting on this point, however, the AFL–CIO stated:

> * * * the obligation placed upon employers in the proposed ergonomics standard, as with other standards, is to eliminate or reduce an occupational hazard. In the proposed ergonomics standard, OSHA has defined "hazard" not in numerical terms but in descriptive terms: "MSD hazards are physical work activities and/or physical work conditions," in which ergonomic risk factors are present, that are reasonably likely to cause or contribute to a covered MSD (Ex. 500–218).

Other commenters argued that the proposed approach to the identification of risk factors and MSD hazards was vague and that OSHA should instead provide a permissible exposure limit (PEL) for each risk factor and each possible combination of risk factors (see, *e.g.*, Exs. 500–197, 30–2435, 30–973, 30–1274, 30–2426, 30–1350, 30–2428, 30–3986, 30–3993, 30–3000, 30–3086). Since some employers have been very successful in using simple approaches, such as the one proposed, to identify and control MSD hazards, however, OSHA finds this argument unpersuasive. Risk factors and MSD hazards are being identified and addressed in thousands of workplaces every day, and employers and employees are using a wide variety of approaches to do so.

OSHA recognizes, however, that although certain of the risk factors described above are easy to identify and understand, others are not as apparent or observable. Employers who already have ergonomics programs and persons who manage ergonomics programs generally have no difficulty identifying risk factors in the workplace, because they have learned to look for them (see, *e.g.*, Exs. 30–3755, 500–220, 32–359–1, 32–210–2, 32–198–4, 30–3805, Tr. 11427). Because these individuals have training and experience, ergonomic risk factors are familiar concepts for them. Through the process of developing and implementing their ergonomics programs, these individuals have gained a good working knowledge of the ergonomic risk factors that are most likely to be present in their workplaces. For those employers who are just beginning their programs and have little or no training and experience dealing with ergonomic risk factors, OSHA has tried in the standard to make the process of identifying them as straightforward and easy as possible. For this reason, OSHA has provided employers with many different hazard identification tools in mandatory Appendix D–1 and mandatory D–2.

The large number of risk evaluation tools in the record and the many comments OSHA received on the proposed list of physical activities and conditions have led the Agency to include in the final rule several options for hazard identification that employers may choose from. Many commenters discussed hazard identification tools that are currently used by employers (see, *e.g.*, Exs. 500–200, 500–218, 30–3813, 30–276). Thus, the final rule allows a choice of hazard identification

approaches, including simple checklists, more structured assessment tools, and reliance on expert consultants.

The United Automobile Workers (UAW) submitted a number of checklists that its members use (Exs. 32–185–3–26, 32–185–3–33), and described several approaches to hazard identification that employers have used to identify ergonomic risk factors effectively (Ex. 500–220). These approaches include:

- Development of consistent methods to measure the physical stresses on the body. Stress is determined by the force exerted on a body part, the frequency of the motion and the posture of the joint. The Force-Frequency-Posture paradigm is common to both expert and checklist approach to ergonomics analysis.
- Development of simplified non-expert approaches to measurement of risk factors (checklists)
- Formulation of the NIOSH lifting guide and related biochemical models which take into account the weight of an object, distance from the body and motion of the body in lifting.
- Validation of symptom surveys and discomfort surveys (psychophysical measures) as risk factor identification tools
- Validation of the use of risk factor checklists and symptom surveys by workforce personnel to identify high risk jobs and propose abatement methods.

Dr. Don Chaffin, founder of the Center for Ergonomics at the University of Michigan, testified that the precision of many tools used to evaluate risk factors is very high (Tr. 8255–8286). Ms. Lisa Brooks, corporate ergonomist for International Paper, commented that there were many different analysis tools used throughout the company (Tr. 11427).

The AFL–CIO also commented on the widespread availability of risk factor evaluation tools (Ex. 500–218):

> Testimony and evidence in the record demonstrate the job analysis tools such as the NIOSH Lifting Equation and Snook—Ciriello Push-Pull Tables are widely utilized by employers, unions, consultants and others to evaluate exposure to ergonomic risk factors throughout a wide range of industries and businesses. Representatives of International Paper (Tr. 11425–26), Owens-Corning (Tr. 10856), Conti Group Corp. (Tr. 10788), Coca Cola (Tr. 14356) and Levi Strauss (Tr. 14710) testified that they routinely used these tools in their ergonomic programs to analyze jobs for ergonomic risk factors. Representatives from the UAW and UNITE! testified how these and other tools such as UAW–GM Check Lists were used by employers and union representatives to evaluate ergonomic hazards at Ford (Ex. 32–185–3–42; 46, Tr. 5827, 5828), GM (Tr. 5831), Maytag (Tr. 8062), VF Corp. (Tr. 7074), Owens-Corning (Tr. 10858), Levi Strauss (Tr. 14710), Coca Cola (Tr. 14356), PPG Industries (Tr. 3131).

OSHA has included several of these tools in Appendix D–1.

Paragraph (j)(3)(i)

Paragraph (j)(3)(i) of the final rule allows the employer to evaluate ergonomic risk factors using one or more of the hazard identification tools listed in Appendix D–1 of this section. Appendix D–1 list eight hazard identification tools: (1) The Job Strain Index (Ex. 26–883), (2) the NIOSH lifting equation (Ex. 26–572), (3) the UAW–GM checklist (Ex. 32–185–3–26), (4) the applicable ACGIH threshold limit values for physical agents (Exs. DC 389, 500–166–1, 502–273), (5) the Rapid Entire Body Assessment (REBA) (Ex. 500–121–26), (6) the Rapid Upper Limb Assessment (RULA) (Ex. 26–1421), (7) Appendix B to the final Washington State ergonomics standard (WAC 296–05174) (Ex. 32–210–2–99), (8) the Snook Push/Pull Hazard Table (Ex. 26–1008). Tools selected must be relevant to the risk factors being addressed. This means, for example, that an employer could not use the NIOSH Lifting Equation, which is appropriate for employees exposed to certain types of force, to analyze a job involving repetition and awkward posture.

A number of participants submitted evaluation tools to the record (see, *e.g.*, Exs. 26–2, 26–5, 32–77–2–1, 502–67, 26–883, IL–162–Q, 32–185–3–31, 500–142–12, OR–348–1, 32–185–3–26, 500–121–61, 38–260, IL–218, IL–228, 32–339–1–82, DC 417–6, 500–121–21, 38–93, 500–121–28, 32–111–1, 32–198–4–27–1), while others (see, *e.g.*, Exs. 500–220, 500–218, Tr. 5567) suggested that the final rule include tools, such as the Snook tables and the OSHA *Meatpacking Guidelines* (Ex. 30–2387). Still other participants merely asked the Agency to provide more guidance in the final rule for companies to identify ergonomics risk factors (see, *e.g.*, Exs. 30–276, 30–3818 30–4290, 500–197, 500–218, 30–386[illegible], Tr. 11601, Tr. 9070, Tr. 17419), and many commenters suggested that OSHA provide non-mandatory checklists (see, *e.g.*, Exs. 30–3765, 30–1671, 30–3284, 30–2387, 32–300–1, 30–519, 30–4844, 30–3032, 30–3748, 30–3813).

Based on this evidence, OSHA has decided to allow employers to demonstrate compliance with paragraph (j)(3) by using one or more of the tools in Appendix D–1, assuming it is appropriate to the risk factors being addressed for job hazard analysis purposes. These hazard identification tools were suggested by several commenters (see, *e.g.*, Exs. 30–276, 32–339–1, 500–218, 30–3813, 500–220, 30–3361, 30–2134, 32–210–2, 32–210–2, Tr. 5567, Tr. 8706, Tr. 10629, Tr. 16487). For example, Marathon Oil stated:

> Since the proposed rule is job-based (particularly targeted to problem jobs), OSHA should have reviewed the scientific literature to identify and publish exposure assessment methods capable of distinguishing problem jobs from non-problem jobs. In its proposed rule, OSHA fails to mention existing methods capable of such prediction (*e.g.* the Strain Index) or methods that have the potential for such predictions (*e.g.* the Revised NIOSH lifting equation) (Ex. 30–3361).

OSHA selected the tools in Appendix D–1 for several reasons. They were developed by professionals who have extensive training and experience in the identification, analysis and control of MSD hazards. For instance, the Snook Push/Pull Hazard Table was developed by Dr. Stover Snook , a certified professional ergonomist with a PhD. in experimental psychology, who has spent 38 years researching MSDs and 25 years teaching ergonomics at the Harvard University School of Public Health (Ex. 37–6).

The eight tools in Appendix D–1 are also well-documented. They are based on scientific evidence on the relevant risk factors, and most been published in peer-reviewed scientific journals (*e.g.*, Job Strain Index, NIOSH Lifting Equation, RULA, REBA, Snook Push/Pull Hazard Table). To illustrate, the steps in the Job Strain Index by Moore and Garg were based on the findings and data of a number of peer-reviewed studies, including the Borg CR–10 scale (Ex. 26–883). The summary and explanation of Appendix B to the Washington State Ergonomics Standard includes extensive discussion and tables documenting the scientific support for each element in that tool (Ex. 32–210–2–99).

The tools have also been tested, most of them extensively. For instance, to develop the Rapid Entire Body Assessment (REBA) tool, three ergonomists/physiotherapists independently coded 144 posture combinations and then incorporated the sensitizing concepts of load, coupling and activity scores to produce the final REBA score, with accompanying action levels (Ex. 500–121–26). Thereafter, two workshops were held involving 14 occupational safety and health processionals (including ergonomists, occupational therapists, physiotherapists and nurses) to code more than 600 additional samples of postures from several industries (*i.e.*, health care, manufacturing and electrical) in order to further refine the REBA scores. There was between 62 to 85% agreement among the 14 professionals (Ex. 500–121–26).

Dr. Snook testified at the hearing about the years of extensive testing he did to develop the Push/Pull Hazard Table:

> Most of my experiments were psychophysical investigations of manual handling tasks, viz., lifting, lowering, pushing, pulling, and carrying. The purpose of these experiments was to collect hard data for use in evaluating the risk of manual handling tasks, and to aid in the redesign of these tasks. At the time, psychophysics was the only method that could yield usable data for task evaluation. Psychophysics is a very old method that is concerned with the mathematical relationship between sensation and their physical stimuli. Psychophysics has been applied to practical problems in many areas, including the decibel scale of loudness, and ratings of perceived exertion (RPEs) * * *
>
> My colleagues and I conducted eleven major manual handling experiments over a period of 25 years [citations omitted]. Each experiment lasted two to three years. These experiments were unique in hat they used realistic manual handling tasks performed by industrial workers (68 males and 51 females) over long periods of time (at least 80 hours of testing each subject). Physiological measurements of oxygen consumption and heart rate were recorded for comparison with psychophysical measurements. The experimental design also included 16 to 20 hours of physical conditioning and psychophysical training. A battery of 41 anthropometric measurements were recorded for each subject to insure that the sample was representative of the industrial population. The results of these experiments were combined and integrated into tables of maximum acceptable weights and forces for various percentages of the working population (Ex. 37–6).

These tools were also designed for use by persons with only minimal training in hazard identification. For example, Washington State said that it designed Appendix B particularly for small employers with limited resources who wanted "maximum clarity and certainty." Washington State Appendix B includes illustrations of the relevant risk factors and a simple 5-step process for determining whether particular lifting tasks pose a hazard. The other tools in Appendix D–1 use similar approaches. For instance, the GM–UAW checklist uses a simple stars and checks approach to those tasks and activities that may warrant further investigation or controls.

Finally, OSHA has selected these eight tools because they all include specific and well-defined recommended criteria for when employers need to take action and when no further action would be necessary. As such, these tools address commenters' arguments that the standard must provide clear guidance to employers in identifying risk factors and knowing when they have done enough to control them (see, *e.g.*, Exs. 30–276, 30–3818, 30–4290, 500–197, 500–218, 30–3864, Tr. 11601, Tr. 9070, Tr. 17419). These tools specifically and clearly operationalize the table of physical work activities and conditions in the proposed rule so they answer commenters' repeated questions about what proposed terms such as "over and over," "considerable physical effort," "long reaches" and "heavy" objects mean. For example, the Job Strain Index (Ex. 26–883) defines "over and over" in terms of efforts per minute (number of exertions/total observation time). The NIOSH Lifting Equation defines a "heavy" object as weighing 51 pounds or more, and then shows users how to reduce the amount of weight that can be lifted within the equation's limits on the basis of particular conditions in the workplace.

There are tasks for which each of the evaluation techniques in Appendix D–1 are well suited and tasks where the tool is not appropriate. The following information explains the limits and appropriate uses for each tool in Appendix D–1.

Job Strain Index

The Job Strain Index is designed to identify jobs associated with MSDs of the hand. It does this by measuring or estimating six task variables: intensity or exertion, duration of exertion per cycle, efforts per minute, wrist posture, speed of exertion and duration of task per day (Ex. 26–883). The Job Strain Index and documentation supporting it was published in a peer-reviewed scientific journal.

Area of the body covered by the Job Strain Index: Hand/wrist.

Risk factors evaluated: Force, awkward postures, repetition (speed of work).

Examples of jobs that Job Strain Index is applicable to or well-designed for: Jobs involving high hand repetition, small parts assembly, keyboarding, inspecting (assembly line), sorting, meatpacking, sewing, packaging.

NIOSH Lifting Equation

The NIOSH Lifting Equation, which is already widely used, was developed to evaluate manual lifting demands. It provides an empirical method for computing a weight limit for manual lifting tasks to prevent or reduce the occurrence of lifting-related low back pain among workers. Six factors are used to determine the recommended weight for the specific working conditions: horizontal distance, vertical distance, travel distance, frequency, twist, coupling. Then the actual weight is compared with the recommended weight to determine the "allowable" lift index. The NIOSH Lifting Equation and documentation supporting it has been published in a peer-reviewed scientific journal.

Area of the body addressed by NIOSH Lifting Equation: Lower back.

Risk factors evaluated: Force (distance, coupling), repetition (frequency), awkward postures (location of the object, travel distance, twist).

Examples of jobs that NIOSH Lifting equation is applicable to or well-designed for: manual handling tasks involving objects weighing more than 10 pounds; forceful lifting tasks in production and assembly work; package sorting, handling, delivery and pickup.

ACGIH TLV Hand/Arm (Segmental) Vibration TLV

The ACGIH Hand/Arm (Segmental) Vibration TLV describes how to measure hand tool vibration and provides threshold limit values for exposure.

Areas of the body addressed: Hands, Arms/Shoulders.

Risk factors evaluated: Vibration.

Examples of jobs that the Hand/Arm (Segmental) Vibration TLV is applicable to or well-designed for: Jobs involving use of powered and vibrating hand tools (*e.g.*, grinding, sanding furniture, sawing, jigsawing, chain saws).

GM–UAW Checklist

The UAW–GM checklist was developed to evaluate a range of risk factors in production jobs. The checklist uses checks (√) and stars (*) to indicate whether the certain activities and conditions are present for less than or more than one-third of the production cycle or workday. The number of checks and stars, in conjunction with the report of an MSD, is used to determine if the job requires further investigation or control action.

Areas of the body addressed: Hand/wrists, Forearms/elbows, Shoulders, Neck, Back/Trunk, Legs/knees.

Risk factors evaluated: Force (including manual handling), Repetition, Awkward Postures (including Static Postures), Vibration, Contact stress

Examples of jobs that the GM–UAW checklist is applicable to or well-designed for: cyclical production and assembly work jobs.

RULA

The Rapid Upper Limb Assessment (RULA) was developed to evaluate

ergonomic exposures of the upper body. The range of motion for each body part (upper arms, lower arms, wrists, neck) is rated based on the amount of posture deviation. Posture combinations are ranked to reflect musculoskeletal loading with force, static work and repetition factors. RULA and documentation supporting it has been published in a peer-reviewed scientific journal.

Areas of the body addressed: Wrists, Forearms/elbows, Shoulders, Neck, Trunk.

Risk factors evaluated: Awkward posture, force, repetition.

Examples of jobs that RULA is applicable to or well-designed for: assembly and production work, janitorial and maintenance, meatpacking, restaurant, grocery cashier, telephone operator.

REBA

The Rapid Entire Body Assessment (REBA) is similar to RULA, but it has been modified to be more useful for the working postures found in the health care and other service industries. REBA and documentation supporting it has been published in a peer-reviewed scientific journal.

Areas of the body addressed: Wrists, Forearms/elbows, Shoulders, Neck, Legs/knees, Trunk, Back

Risk factors evaluated: Awkward posture, force (load and coupling), repetition.

Examples of jobs that REBA is applicable to or well-designed for: Patient lifting and transfer, assembly and production work, janitorial and maintenance work, meatpacking, restaurant work, grocery cashier, telephone operator.

Washington State Appendix B

The Washington State Appendix B was developed to determine if jobs that were in the Washington State "caution zone" actually pose an MSD hazard to employees in them. The checklist shows physical risk factors and lists duration (from 2 to 6 hours) by body part. If the work activities or conditions apply, the job poses an MSD hazard.

Areas of the body: Shoulders, Neck, Back, Trunk, Knees, Forearms, Wrists, Hands, Elbows.

Risk factors evaluated: Awkward postures, Force (including manual lifting and high hand force), Repetition, Contact Stress, Vibration.

Examples of jobs that Washington State Appendix B is applicable to or well-designed for: very wide range of jobs including patient lifting and transfer, assembly and production work, janitorial and maintenance, meatpacking, restaurant, grocery cashier, telephone operator, keyboarding, manual handling, meatpacking, jobs involving use of powered and vibrating hand tools, janitorial, solid waste.

Snook Push/Pull Hazard Table

The Snook Push/Pull Table is designed to identify whether pushing, pulling and carrying activities meet or exceed established maximum acceptable loads or force levels for those activities. It does this by examining initial and sustained forces of loads, horizontal distance, vertical distance, frequency and object weights. These measurements are compared with the tabled values corresponding to the task and considered acceptable for 75% and 90% of the adult male and female population. The Snook Push/Pull Table and documentation supporting it has been published in numerous peer-reviewed scientific journal articles. In addition, the table was used in developing the NIOSH Lifting Equation.

Body areas addressed: Back/Trunk, Legs, Shoulders.

Risk factors evaluated: Force, repetition, awkward posture.

Examples of jobs that Snook Push/Pull Hazard Table is applicable to or well-designed for: manual handling jobs involving pushing or pulling objects or carrying objects a long distance, and hospital laundry and janitorial jobs, among others.

Paragraph (j)(3)(ii)

Paragraph (j)(3)(ii) allows employers to use the video display terminal (VDT) hazard identification tool in Appendix D–2 of this section for jobs involving risk factors related to computer use. Appendix D–2 is a simple checklist to assess the physical activities and layout of workstations with a VDT. Like the tools in Appendix D–1, the VDT checklist was added to the final rule to address comments that the physical activities and conditions listed in the proposal were too vague to be used for job hazard analysis and control (see, *e.g.*, Exs. 500–197, 30–2435, 30–973, 30–1274, 30–2426, 30–1350, 30–2428, 30–2986, 30–2993, 30–3000, 30–3066, 30–3853, 30–326, 30–546, 30–4189, 30–3845).

The function of the checklist is to determine if the computer workstation and layout address the risk factors most commonly found in VDT jobs. The analyst using this checklist would talk with and observe the worker(s) while they are at the computer workstation. If a condition or activity in the job merits the checklist's "Yes," the analyst would check the "Yes" box. If there are no more that two "No" answers to the checklist questions, the computer workstation design, layout or equipment needs no further evaluation or control to be in compliance with paragraph (j)(3)(ii).

Intensive computer use accounts for a significant number of MSDs each year and occupational computer use is growing. MSDs associated with computer use are reported in a wide range of industries (*e.g.*, telecommunication, telephone, banking, insurance, catalog and telephone sales, customer service, package delivery service, newspaper) and in businesses of all sizes, including very small establishments. OSHA believes that its VDT checklist provides these businesses with an easy and quick way to identify and control hazards in a large number of jobs.

OSHA designed this checklist after considering the many examples of computer workstation checklists in the record (see, *e.g.*, Exs. 26–2, 26–1517, 26–1337, 32–182–1–6, 502–313–3, IL–258, 500–142–10). The checklist is designed to provide employers with a simple way to identify the five risk factors this standard covers, as they most commonly occur in computer work and workstations. All the employer need do is check whether the risk factor is or is not present in the employee's working conditions and workstation equipment, and address those that are present.

The checklist provides clear and specific guidance in how the employer can provide or adjust a computer workstation so it will be comply with the control requirements of this standard. Each checklist item is written to provide the solution to the problem it identifies. For example, the checklist items addressing awkward neck postures actually show how to position the computer monitor to eliminate those postures (*e.g.*, "Top line of screen is at or below eye level so employee is able to read it without bending head or neck down/back," "Monitor position is directly in front of employee so employee does not have to twist head or neck," "No reflected glare (*e.g.*, from windows, lights) is present which might cause employee to assume an awkward posture to read screen.").

OSHA expects the VDT checklist to provide significant assistance for employers in industries where MSD hazards associated with computer use are the major, or even the only, MSD hazards they face. Unlike other checklists in the record, which include a range of risk factors such as vision and general environmental conditions, OSHA's checklist addresses only those risk factors this standard covers. Second, the OSHA VDT checklist is also more flexible than some other checklists in the record because it is risk factor-based rather than equipment-based. In equipment-based checklists, employers get a passing score only if they have purchased and installed particular equipment at each computer workstation. OSHA's risk factor-based checklist, however, gives employers the flexibility of deciding how to best control the identified hazards. For example, an equipment-based checklist asks employers whether they have provided adjustable height tables and monitor risers. A risk factor-based checklist, on the other hand, asks employers whether the employees' heads and necks are in a straight rather than awkward positions (*i.e.*, bent down or back), when they look at the monitor screen. If an employer can achieve this result without purchasing new adjustable equipment, this will satisfy the standard. A number of participants said that they have controlled risk factors at VDT workstations without purchasing new adjustable equipment (see *e.g.*, Tr. 2707).

OSHA stresses that, like the other tools in Appendix D, its VDT checklist is only one of a number of methods employers may use to identify and control MSD hazards related to computer use. Employers are free to use other checklists in the record or to continue using whatever method they currently use to identify and evaluate MSD hazards associated with computer use, provided those methods address the risk factors this standard covers.

Paragraph (j)(3)(iii)

Paragraph (j)(3)(iii) allows employers to choose to have a job hazard analysis conducted by a professional trained in ergonomics. By a "professional trained in ergonomics," OSHA means an ergonomist, safety professional, industrial hygienist, engineer, or other safety and health professional who has received training in the principles of ergonomics and their application in job hazard analysis and control. Reliance on a trained professional or competent person is a concept used in many OSHA rules, such as the Asbestos Standard (29 CFR 1910.1001), the Process Safety Management Standard (29 CFR 1910.119), and the Telecommunications Standard (29 CFR 1910.268).

A few commenters suggested that the final rule should require specific qualifications for those individuals permitted by the rule to perform job hazard analyses (see, *e.g.*, Exs. 30–4674, 32–210–2). OSHA rejected this idea because the record contains many examples of cases where employers and employees are doing an effective job of analyzing their jobs and then controlling them (see, *e.g.*, Exs. 32–377–2–1, 32–111–1, 32–198–4–27–1). In fact, OSHA believes that in about 85% of cases, managers, supervisors, and employees can, with some training in ergonomic principles and job hazard analysis, perform the required analysis of jobs in their workplace that have met the action trigger. Thus, OSHA believes that, in most cases, employers will be able to perform job hazard analyses without expert outside help, and that the sheer number of employers who have already established effective ergonomics programs on their own (Ex. 502–17) is testimony to the ability of companies to initiate a program without hiring a consultant. The record has many comments (see, *e.g.*, Exs. 502–17, 500–215, Tr. 11427, Tr. 1008, Tr. 13764) reporting that employers and employees are "going it alone."

The hazard identification method permitted by paragraph (j)(3)(iii), however, is based on the expert judgment of a safety and health professional trained in ergonomics and its application in the workplace. This job hazard analysis option, therefore, assumes that the employer has chosen to seek outside help (unless, of course, the workplace has such a safety or health professional on staff). Paragraph (j)(3)(iii) is unlike paragraphs (j)(3)(i) and (ii) in this respect. OSHA is aware that some employers (see., *e.g.*, Ex. 502–17) currently rely on outside experts or OSHA's consultation program for job hazard analyses. For most employers and most jobs, however, OSHA believes that employers will choose to develop the level of in-house expertise needed to implement the job hazard and control requirements of the standard.

Paragraph (j)(3)(iv)

Paragraph (j)(3)(iv) allows the employer the flexibility to use any other reasonable method of job hazard analysis that is appropriate to the job and relevant to the risk factors being addressed. This method could consist of a hazard identification tool of the type in Appendix D, or of a job hazard analysis methodology developed by the company itself. Many employers utilize trained workplace ergonomic committees to perform these job analyses. OSHA has included this job hazard analysis option in the final rule in recognition of the fact that other hazard identification tools and methods are effective in identifying MSD hazards, and that many employers have instituted effective ergonomic programs that include job hazard analysis methods that do not rely on ergonomist-consultants or on the tools in Appendix D. OSHA does not wish to stifle creativity or to foreclose the option to use existing hazard identification tools or methods that will get the job done.

If employers choose to avail themselves of the option in paragraph (j)(3)(iv), they must be sure that the method of job hazard analysis they choose is one that is reasonable and appropriate for the risk factors present, *i.e.*, the risk factors identified in the job by the Basic Screening Tool. For example, if the job requires the employee to sit in a chair and assemble cellular phones for 8 hours a day, then the method must be appropriate for seated work, hand/arm force, and the motions that are required by the job. A method that only measures strain to the back would clearly not be a reasonable method of job hazard analysis for this phone assembly job. Paragraph (j)(3)(iv) encourages employers to continue to use their own effective analysis techniques, provided they are appropriate, or to develop a tool that fits their needs.

Many participants submitted ergonomic risk factor evaluation tools that they have used in their workplaces to the record (see, *e.g.*, Exs. 26–2, 26–5, 32–77–2–1, 502–67, 26–883, IL–162–Q, 32–185–3–31, 500–142–12, OR–348–1, 32–185–3–26, 500–121–61, 38–260, IL–218, IL–228, 32–339–1–82, DC 417–6, 500–121–21, 38–93, 500–121–28, –3, 32–111–1, 32–198–4–27–1). For example, the Dow Chemical Company uses a method that measures posture, repetition, force and duration and takes into consideration frequency and environmental factors, such as lighting, for computer workstations (see, *e.g.*, Ex. 32–77–2–1). The Dow Chemical method provides for scoring of jobs based on the number of words typed or keystrokes per minute (frequency), the time spent doing the task (duration), and the amount of force or amount of deviated posture (magnitude) used by the worker to perform the task (see, *e.g.*, Ex. 32–77–2–1). The final score on the "Dow card" allows the person performing the job analysis (usually the employee in the job) to determine if there is a problem.

The United Steelworkers of America developed a survey as a job hazard analysis tool for bus drivers. The survey includes qualitative measurements of reach distances for the steering wheel, floor pedals, clutch, and door handles, as well as the force required to use work site tools. Seating support and visibility are also evaluated using the tool that has been developed to evaluate exposures for bus drivers see, *e.g.*, Ex. 32–111–1). Levi Strauss uses a checklist with measurements by body part for posture, repetition, duration, force, and allows for other factors, such as the use of PPE, concrete flooring, kneeling, slippery floors, vibration and temperature that might be found in apparel industry jobs (see, *e.g.*, Ex. 32–198–4–27–1). These methods of analysis are applicable to the tasks and work environments for which they were developed because they measure the risk factors that are reasonably expected to be found in those tasks and jobs in their respective industries.

In fact, the record contains many examples of employers who are identifying and controlling ergonomics risk factors on a daily basis. Dow Chemical sites across the country have been recognized by OSHA and the Voluntary Protection Program (VPP) for their outstanding safety and health efforts. Their programs include the analysis of ergonomics risk factors:

> Dow analyzes tasks utilizing a risk evaluation card. This card looks at the various ergonomic hazards that may be present in our workplaces and rates these hazards by a relative risk index or weighting method. This weighting or indexing approach is consistent with other risk indices, which OSHA has supported or recommended. Indexing allows employers like Dow to prioritize its limited safety and health resources in such a way to get the most "bang for the buck" not only from an economic perspective concerning appropriate controls, but also from a risk perspective as well. Such an approach has been successful in our workplaces and has been borne out through our experience. Dow's recordable rates and incidence of MSDs are much lower than the general industry experience (Ex. 30–3755).

Employers are free to select the method or tool that best fits their own jobs, workplace conditions, and culture. A job hazard analysis is effective as long as it allows the person who is performing it to determine whether a job has risk factor(s) that rise to the level of an MSD hazard or does not pose an MSD hazard. Some employers reported using simple and fairly informal procedures to identify hazards in a job (see, *e.g.*, Tr. 17353, 2979). This was especially true for employers who have only limited or isolated ergonomics problems.

A job hazard analysis approach used by many employers is the narrative approach. This method of hazard identification is similar to job analyses used to identify other potential safety and health hazards (see, for example, OSHA's Process Safety Management Standard, 29 CFR 1910.119, which allows employers to use this approach). With the narrative approach, the employer and employee discuss the job requirements and the relationship (if any) between the tasks and the reported MSD. Where the problem identified through the narrative approach is easy to identify and control and the establishment has few MSDs, the employer may be able to use the Quick Fix option permitted by paragraph (o). If the Quick Fix method can be used, the employer does not need to continue with the job hazard analysis, although he or she must observe all the steps in the Quick Fix process. For more complex problems and solutions, the employer is required to comply with the requirements of paragraphs (k), (l), and (m) to control the MSD hazard identified.

In other cases, however, the problem may require a more detailed analysis that could involve breaking the task down into its various discrete elements or activities and then identifying and evaluating the extent to which employees are exposed to risk factors in these activities (see, *e.g.*, Ex. 32–210–2). The quantified risk factors are then compared to values that have been shown to contribute to the MSD hazard (*see, e.g.*, Exs. 26–2, 26–1247, 500–121–26, 32–210–2–99, DC–386, 500–121–21).

A job hazard analysis approach that is intermediate between the narrative approach and the detailed analysis discussed above is the use of a checklist. Checklists provide more structure than the narrative approach, but are less time consuming than a detailed job analysis. Several commenters suggested that OSHA include checklists in the standard (see, *e.g.*, Exs. 30–3748, 30–3755, 32–182–1, 30–3826, 30–3818). OSHA agrees that well-designed checklists, when used as intended, can provide an effective hazard identification approach for a range of employers, especially small business owners. There are many ways in which checklists are useful: identifying physical work activities and conditions, identifying ergonomic risk factors, evaluating jobs, prioritizing jobs for further analysis, and providing a method of evaluating the effectiveness of controls. The American Physical Therapy Association (APTA) endorsed the usefulness of checklists as a job hazard analysis option:

> In APTA's review, checklists would be an extremely helpful resource to small businesses conducting job hazard analyses. (Ex. 30–3748).

The following example of a job hazard analysis includes a combination of qualitative and quantitative observations and measurements (Ex. 38–438):

Title: Turkey processing—thigh boning.

Objective: Remove thigh bones from the turkey carcasses.

Standard: 540 thighs deboned per 8-hour shift, 15 minute a.m. break, 30 minute lunch, 15 minute p.m. break.

Workstation: Overhead conveyor, shackles 44 inches above the floor.

Equipment: Thigh boning knife; wire mesh glove for non-knife hand; optional rubber gloves for both hands; hard hat; smock; boots.

Methods: (1) Grasp and position thigh with non-knife hand, (2) Cut along thigh bone to separate meat from bone 2–3 cuts, (3) Cut remaining tendinous attachments (bone drops into conveyor as work release meat and bone.

Environment: Air-conditioned turkey plant; turkeys at 38°F, ambient air 45°F.

Risk Factors:

1. Forceful exertions—(knife hand) holding knife, cutting thighs, (non-knife hand) holding thighs for cutting. Force depends on user's technique, sharpness of the blade, worker's position relative to the moving turkey. Forces on the cutting hand are greater (up to 38 pounds) than the hand holding the thigh (up to 19 pounds). Holding hand is relaxed between cuts, while the knife hand continues to grasp the knife handle (4 pounds).
2. Repetition—4,320 cuts per hour, holding thigh 1,080 times per hour.
3. Awkward/Static posture—Wrist bent and forearm rotated while cutting thighs. The wrist is angled due to the straight knife, type of cut, location and orientation of the turkey.

Paragraph (j)(4) of the final rule simply states that jobs that have been determined, through the job hazard analysis process, to pose an MSD hazard to employees in that job are called "problem jobs" for the purposes of the standard.

OSHA finds, based on the comments, data, and other evidence on job hazard analysis in the record, that the job hazard analysis approach adopted in paragraph (j) of the final rule is widely used by employers and employees and is highly effective. Further, the hazard identification tools and methods permitted by this paragraph are commonly used in workplaces large and small, for workers with fixed and mobile worksites, and in the analysis of both traditional and "non-traditional" jobs.

Paragraph (k)—What Is My Obligation To Reduce MSD Hazards?

Paragraph (k) of the final ergonomics standard tells employers how far they must go in reducing MSD hazards at the workplace. This paragraph sets the control endpoint that employers must achieve. Final paragraph (k) presents three options. Employers are in compliance with this paragraph when the controls they have implemented:

- Control the MSD hazards to the extent that they are no longer reasonably likely to cause MSDs that result in work restrictions or medical treatment beyond first aid,
- Reduce MSD hazards in accordance with or to levels below those in the hazard identification tools in Appendix D that the employer used to conduct the job hazard analysis, or
- Reduce MSD hazards to the extent feasible.

As described in the Risk Assessment and Economic Analysis sections of this preamble, much evidence in the record demonstrates that employers with existing programs are able to successfully control the MSD hazards in problem jobs to a level where an MSD is reasonably unlikely to occur.

Paragraph (k) of the final rule does not require employers to eliminate all MSDs. OSHA recognizes that, in a number of jobs, workplaces, and physical work activities it may not be possible to eliminate MSDs. OSHA is also aware that employers who have an effective ergonomics program may still receive reports of MSDs. The goal of the final rule is to assure that employers take effective action to control MSD hazards, and paragraph (k) tells employers how far they must go in implementing controls.

Paragraph (k)(1)(i)

An employer is in compliance with paragraph (k)(1)(i) when it reduces MSD hazards to the extent that they are no longer reasonably likely to cause MSDs that result in work restrictions or medical treatment beyond first aid. The hazard analysis conducted under paragraph (j) will have identified the risk factors of concern. To control the MSD hazard, the employer must reduce the magnitude, duration, or frequency of the risk factors to the level where they are reasonably unlikely to cause such MSDs. There are several ways an employer can achieve this goal.

First, the employer can reduce ergonomic risk factors below the levels in the Basic Screening Tool. The final standard recognizes that risk factors below the levels in the screening tool are not reasonably likely to cause MSDs, and allows an employer to discontinue his or her ergonomics program if it has reached those levels.

Second, the employer can otherwise control the hazards such that they are reasonably unlikely to cause MSDs. In some cases, the needed controls may be obvious or readily discoverable by reference to compliance assistance materials. In other cases, judgment may be required. In any event, the employer may refer to the method it used under paragraph (j) to determine whether the job presents a hazard. For example, the employer may use a professional trained in ergonomics to conduct the analysis and determine whether job conditions present a hazard and to recommend measures to control the hazard. The employer can also make use of its own knowledge and experience gained under its program.

The employer may also use hazard identification tools. As described above in the explanation of paragraph (j), the employer may choose from a variety of such tools. Appendix D lists a number of specific tools that provide safe harbors for compliance under paragraph (k)(1)(ii); however, the employer may also consider other tools that are effective in identifying hazardous levels of exposure in determining what controls to implement.

These examples are not intended to be exhaustive. They are intended to illustrate means employers may use to "control MSD hazards."

Several points bear noting. First, the obligation is not to reach a level of absolute safety or to assure that no further MSDs will occur: it is to reduce the hazard so that work activities are not reasonably likely to cause MSDs. Second, the hazard reduction is targeted to MSDs that result in work restrictions (including days away from work) or medical treatment beyond first aid. These are serious conditions by any measure. Finally, the standard allows the employer to take up to two years to implement permanent controls. This extended period should be sufficient to allow for situations in which installation of effective controls requires a period of adjustment.

Paragraph (k)(1)(ii)

The second option is to reduce MSD hazards in accordance with or to levels below those in the hazard identification tools in Appendix D that the employer used to conduct the job hazard analysis. This appendix is intended to give employers specific guidance to help them determine whether or not they have gone far enough in controlling MSD hazards. As discussed more fully below, many rulemaking participants felt that the proposed rule was vague and shifted the burden of determining how far to control MSD hazards to employers (see, *e.g.*, Exs. 30–1722; 30–3956, 35–106; Tr. 4110, 15648–15649) or suggested that OSHA provide, in the final rule, more guidance on how to make that determination (see, *e.g.*, Exs. 30–1557, 30–2987, 30–3748, 30–3765, 32–133, 32–300). OSHA has responded to these comments by allowing employers the option of controlling MSD hazards to the specific levels set out in Appendix D.

Paragraph (k)(1)(iii)

Paragraph (k)(1)(iii) of the final rule states that employers are in compliance with the endpoint if they have reduced the hazard to the extent feasible. This paragraph applies when it is not feasible for employers to reach one of the endpoints in paragraphs (k)(1)(i) and (ii). It is included because OSHA has no authority to require employers to do what is not feasible or "capable of being done." *American Textile Mfrs. Institute* v. *Donovan (Cotton Dust)*, 452 U.S. 490, 509, 513 n. 31, 540 (1981). A control that will reduce a hazard in a job is feasible if it is achievable within the limits of current technology and knowledge and the employer's financial resources. An employer's inability to afford controls will not establish infeasibility if its level of compliance lags significantly behind the rest of its industry. See Section IV–A.6.a(4)(a) and (b) of OSHA's Field Inspection Reference Manual (CPL 2.103). See also, *United Steelworkers* v. *Marshall*, 647 F.2d 1189, 1269 (D.C. Cir. 1980).

OSHA is also requiring that employers who meet the compliance endpoint by being at the limits of feasibility, but have not fully controlled MSD hazards, periodically check to see whether new technology has been developed and is available. These checks must be carried out at least once every 3 years. When additional feasible controls are identified, the final rule requires employers to implement them until one of the compliance endpoints given in paragraph (k)(1)(i) or (k)(1)(ii) is reached. Requiring employers to look for and implement new control methodology ensures that an employer who has not fully controlled ergonomic hazards is not relying on obsolete control measures.

What Happens When a New MSD Is Reported After Controls Have Been Implemented?

Paragraph (k)(2) of the final rule tells employers what to do if an employee reports an MSD in a job in which the employer has implemented MSD hazard controls. If an employee makes such a report, the employer must check to see if the controls are still in place and are functioning and being used properly. The employer must also check to see if any new hazards exist that were not present when the job hazard analysis was conducted. The employer need not conduct another full job hazard analysis

but may undertake a review of the previous job hazard analysis to determine if it is adequate.

Sometimes, after ergonomic control measures have been implemented in a problem job, another employee will experience and report an MSD. The injury could be a sign that the controls are not functioning correctly or that new hazards have arisen. For example, an employer might have, among other things, installed adjustable keyboard trays at each VDT station and trained employees in their use. If one of the keyboard trays gets out of adjustment, the operator using that tray might experience and report tendinitis in his or her wrists. An employer following paragraph (k)(2) of the final rule would check to ensure that the keyboard tray is still present and is adjusted properly.

Note to Paragraph (k)

A clarifying note at the end of paragraph (k) explains that the occurrence of an MSD in a problem job is not in itself a violation of the standard. This note emphasizes that the focus of the final rule's compliance endpoint is on the control of MSD hazards and not on the elimination of MSDs from the workplace. OSHA recognizes that, for a number of jobs, workplaces, and physical work activities, it may not be possible to eliminate MSDs. OSHA is also aware that employers who have effective ergonomics programs may still receive reports of MSDs. The goal of the final rule is to have employers put a good working system into place so that they can take effective action to control MSD hazards.

The Proposed Rule

The proposed rule would have required employers to meet one of three compliance endpoints:

- Materially reduce MSD hazards in the problem job using the incremental abatement process;
- Reduce MSD hazards in the problem job to the extent feasible; or
- Eliminate MSD hazards in the problem job.

OSHA explained the first endpoint with a definition of "materially reduce MSD hazards." The definition, which was repeated in a note following proposed § 1910.921(a), read as follows: "'Materially reduce MSD hazards" means to reduce the duration, frequency and/or magnitude of exposure to one or more ergonomic risk factors in a way that is reasonably anticipated to significantly reduce the likelihood that covered MSDs will occur."

The following paragraphs discuss the comments, evidence, and testimony received on the proposed compliance endpoint and present OSHA's reasons for accepting or rejecting the rulemaking participants' suggestions and for including the final rule's compliance endpoint requirements.

1. Comments That the Proposed Compliance Endpoint Was Vague

Many of the comments and much of the testimony OSHA received on the issue of compliance endpoints stated that the language used to set compliance goals was vague and confusing (see, *e.g.*, Exs. 30–333, 30–1722, 30–2208, 30–2387, 30–3765, 30–3813, 30–3853,30–3956, 30–4185, 30–4334, 30–4467, 32–300, 32–337, 440, 500–118, 500–188, 500–197, 500–221 Tr. 2960, 4109, 14986). In particular, these rulemaking participants argued that the related terms "material reduction or elimination of MSD hazards" and "materially reduce the MSD hazards" were so vague that employers would not know how far they had to go to control MSD hazards. For example, ORC said that those terms, together with the phrase "reasonably anticipated to significantly reduce the likelihood" in the clarifying note following § 1910.921(a), would prove to be compliance nightmares for employers and enforcement nightmares for OSHA (Ex 30–3813, 32–78). ORC claimed that the language in the note would breed unnecessary confusion. Further, Edison Electric Institute stated that the definition of "materially reduce MSD hazards" uses three terms, "reasonably," "significantly," and "likelihood," that are themselves vague (Ex. 32–300). Several rulemaking participants believed that this vagueness would lead to unnecessary litigation (see, *e.g.*, Exs. 30–3813, 30–3956, 30–4185, 30–3853, 32–337). James Lancour, representing EEI, was concerned that the vagueness would cause employers difficulty in program and training development, stating:

> To provide reasonable program development and training one must clearly define the program endpoints and the steps to achieve these endpoints. The endpoints must also be objectively measurable to achieve the desired results. This proposed standard is so vague and ambiguous that neither the endpoints nor the measurement criteria are specifically defined.
>
> How does one develop an ergonomic program, give guidance in determining compliance and provide general and specific training to facility program facilitators, managers and supervisors and employees when the terms of compliance are so poorly defined? [Tr. 2897]

Some rulemaking participants argued that OSHA left the word "feasible" undefined (see, *e.g.*, Exs. 30–3956, 30–4334; Tr. 14986). For example, United States Senator Kit Bond observed that OSHA ignored comments from the Small Business Advocacy Review panel about the vagueness of the word "feasible" (Ex. 30–4334). The National Coalition on Ergonomics (NCE) stated that the lack of a suitable definition rendered the option to "implement controls that reduce the MSD hazards to the extent feasible" unclear (Ex. 30–3956). The Coalition said that OSHA had not provided any reliable guidance as to what "feasible" meant from either a technological or an economic standpoint. The Coalition believed that this left employers with no way of determining whether a particular hazard control was feasible for them.

Paul, Hastings, Janofsky, and Walker LLP also argued that the proposed standard's attempt at flexibility resulted in a standard using terminology full of ambiguity (Ex. 30–3231). The law firm believed that OSHA's enforcement staff would likewise struggle to understand the rule.

The National Coalition on Ergonomics (Ex. 30–3956) went further to suggest that the proposed language was so vague as to be unconstitutional:

> It is fundamental that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." Connally v. General Constr. Co.. 269 U.S. 385, 39 (1926). [Footnote omitted.] Thus, an occupational safety and health standard must give an employer fair warning of the conduct it prohibits or requires, and it must provide a reasonably clear standard of culpability to circumscribe the discretion of the enforcing authority and its agents. Dravo Corp. v. OSHRC, 613 F.2d 1227, 1232, 7 BNA OSHC 2089 (3d Cir. 1980). [Footnote omitted.]
>
> * * * * *
>
> The language and terminology used by OSHA in much of the proposed standard and Preamble is so vague and ambiguous that it fails to provide employers with adequate notice of what the standard will require and prohibit and, accordingly, is unconstitutionally vague. The proposed standard fails to provide employers with adequate notice as to the conditions, circumstances or activities in the workplace that cause MSDs and what employers must do to eliminate MSDs under the standard.
>
> The following is a partial list of terms which are either vague and/or undefined and fail to provide employers with notice of the required performance under the standard—"material reduction or elimination of MSD hazards * * *" and "ergonomic hazard." These terms are so ambiguous as to fail to provide employers * * * notice of what is required with respect to the fundamental provision of feasible control measures. [Ex. 30–3956]

The AFL–CIO (Ex. 500–218) believed that the proposed standard was clear and that employers would be able to successfully carry out the obligations imposed by it. The union countered some of the vagueness arguments in its post-hearing submission:

> Employers must control exposure to ergonomic risk factors to the point that covered MSDs are no longer "reasonably likely to occur," in other words, to eliminate the "MSD hazard," or reduce it to the extent feasible. * * *
>
> The record demonstrates that employers will be able to accomplish this task. Utilizing various tools and other available guidance, employers have been able to measure and evaluate exposure to ergonomic risk factors and identify and implement controls to reduce those exposures. There is plentiful testimony in the record demonstrating that employers are able to ascertain conditions that present an ergonomics hazard and to identify and implement measures to reduce or eliminate the hazard.
>
> * * * * *
>
> The proposed standard is clear, and with the inclusion of the AFL–CIO's recommendations, will be even clearer, that an employer's obligation extends only to eliminating hazardous exposures at work. An employer's obligation to conduct job analysis and institute controls applies only where there is exposure on the job to an ergonomic risk factor or risk factors that occurs at a sufficient level of duration, intensity, or magnitude to present a risk of MSDs. Under OSHA's proposed screening criteria, an employer is only required to conduct a job analysis if there are "physical work activities and conditions in the job" that are "reasonably likely to cause or contribute to the type of MSD" being addressed, and "[t]hese activities and conditions are a core element of the job and/or make up a significant amount of the employee's worktime." * * * If these screening criteria are not met, the occurrence of an MSD does not trigger any obligations on the employer's part. And the proposed standard limits an employer's control obligations to situations where there is substantial exposure to ergonomic risk factors on the job. If the employer's job analysis does not show the existence of a hazard, *i.e.*, exposure to ergonomic risk factors that are reasonably likely to cause or contribute to a covered MSD, the employer is under no obligation to institute controls. The standard clearly limits employers' obligations to situations where there is significant exposure in the workplace, and limits employers' obligations to addressing hazardous exposures at work. [Ex. 500–218]

Dr. Frank Mirer of the UAW also believed the proposed rule was clear based on General Duty Clause ergonomic settlement language that was similar to that in the proposal (Tr. 5932).

OSHA does not agree that the language of the proposed rule was impermissibly vague. Nevertheless, OSHA has changed the compliance endpoints to respond to the vagueness comments and provide greater clarity. OSHA believes that the language of the final rule's three endpoints gives employers clear and understandable guidance as to what they must do. Employers who achieve the objective "safe harbor" endpoints in Appendix D are assured they are in compliance. This avoids the problem most frequently raised by commenters: That the proposal did not give employers objective criteria by which to measure their compliance obligations. The objective criteria in the Basic Screening Tool give employers an alternate clear means of assuring they are in compliance. OSHA has also sought to clarify the general performance terms like "MSD hazard" and "control MSD hazards" used in the standard. OSHA has clarified that an employer may rely on a safe-harbor hazard identification tool, a professional consultation, or any other reasonable method to define whether a hazard exists requiring control. OSHA has also dropped terms, like "incremental abatement process" and "material reduction," that commenters asserted were especially unclear.

a. *Comments that the language used in the proposed standard is so vague and subjective that it would lead to uneven enforcement.* Some rulemaking participants who claimed the proposed endpoints were vague were also concerned about the possibility that the alleged vagueness would lead to uneven enforcement (see, *e.g.*, Exs. 30–333, 30–1274, 30–3765, 30–3839, 30–3845, 30–4185, 440, 500–188, 500–197; Tr. 3330, 5439, 7211, 17891). They believed that the proposed definition of "materially reduce" and the corresponding explanation of that term in the preamble to the proposal would call for subjective judgments and would lead to disagreements between employers and OSHA enforcement staff. For example, The Forum for a Responsible Ergonomics Standard stated:

> Enforcement of the proposed ergonomics program standard would require a degree of subjectivity in determining compliance unprecedented in the Agency's history. This is because of the nature of the area regulated combined with the vagueness of the proposed standard's requirements.
>
> For example, proposed Section 1910.921 (a) provides that employers are in compliance if they implement controls that "materially reduce" MSD hazards in the job * * * OSHA recognizes that "a number of MSD hazards are complex and it may not always be clear what control(s) will achieve a material reduction in the probability that MSDs will occur." * * * In an attempt to clarify what constitutes compliance with this requirement, OSHA then proposes that employers will be considered in compliance "if they select and implement the controls that a reasonable person would anticipate would achieve a material reduction in the likelihood of injury." * * * However, the "reasonable person" standard is hardly a bright-line means of determining whether an OSHA inspector will find an employer in compliance.
>
> This is only one example of how compliance with the proposed standard, at best, is dependent on interpretations of vague standards by OSHA inspection officials—individuals, at least to date, with little or no training in ergonomics, who inevitably will establish differing criteria to be applied to employer efforts in this area. [Footnote omitted.] This approach invites litigation over the meaning of such vague terms. Indeed, the "reasonable person" is a long-standing standard of tort law used by juries to assess the culpability of an individual; by its nature, it is open to interpretation.
>
> Forum members fear that the vagaries of complying with the proposed standard may be held against them during the OSHA inspection process. By leaving too much to interpretation and failing to provide significant guidance, inspectors may be able to cite facilities despite their good faith efforts to comply. The lack of compliance guidance potentially is a fundamentally fatal flaw with OSHA's mandatory proposed standard and must be addressed by OSHA before a reasonable standard can be promulgated. [Ex. 30–3845]

The National Association of Manufacturers' post-hearing submission (Ex. 500–1) contained a letter from Scott Ward of Windings, Inc. Mr. Ward presented an analogy with how an existing performance standard is enforced. He described an example of how the existing standard on personal protective equipment has led to disagreements with OSHA's compliance staff and a citation:

> [W]e provided gloves and design changes to a material (woven fiberglass tape) to reduce an irritation—not even a hazard, for there is no injurious nature to the material—and re-assigned an employee who suffered the most irritation so as to not aggravate a skin condition. However, a field inspector cited us for lack of an effective program even though we had reviewed the material's MSDS, provided the recommended (not required) personal protection equipment, accommodated employee's complaints and the inspector's own testing indicated that the fiberglass dust was well below exposure level limits. We had begun work on ventilation equipment to provide extra equipment and this engineer, who doesn't have air fluid dynamics training, said it wouldn't work. The citation was reduced but it stood. [Ex. 500–1]

OSHA received comments and testimony that the training of its field staff would significantly affect the reasonableness of the Agency's compliance efforts (see, *e.g.*, Ex. 30–

1107; Tr. 5439, 7210). William Goldsmith, representing the U.S. Chamber of Commerce, was particularly concerned that the lack of training of OSHA field staff would lead to enforcement difficulties:

> And it also bears noting that the companies at least the ones that I am familiar with involved in these cases had ergonomics programs. Dayton Tire did. Hudson Foods did. So when one looks at the past history of what has happened with trying to enforce the terms and the concepts that are ripe throughout this proposed standard, you I think get a fair picture of what will happen if the proposed standard becomes a final rule.
>
> That is a compliance officer doing the best he or she can will come into a facility, will probably not be not very well trained through no fault of his own or indeed the agency's own, but because resources are limited, be making guesses as to what ergonomics stressors appear in what jobs and the litigation if that is what it is, if that is where results will begin. [Tr. 7210]

In their post-hearing submission, the Chamber noted that the American Society of Safety Engineers (at Tr. 11616) and the AFL–CIO (at Tr. 3498) agreed that training of OSHA's compliance staff would be crucial to the enforcement of the ergonomics standard (Ex. 500–188). The Chamber doubted, however, that such training would be successful:

> Thus, it is beyond dispute that additional training is required. Of course, it is difficult to understand how the Agency will successfully provide such training since * * * even the individuals who drafted the Proposed Rule do not know what it means. [Ex. 500–188]

Craig Brightup of the National Roofing Contractors' Association, which was concerned about the impact on small businesses, expressed similar concerns:

> OSHA's lack of enforcement restraint, coupled with the vagueness of the ergonomic standard, would be a disaster for small business. Chairman Talent stated in his comments, and I quote, "Instead of developing a standard that gives small businesses guidance and assistance in implementing physical changes to the workplace that reduce and eliminate MSDs, OSHA has left it up to employers to figure out how to prevent or eliminate MSDs. These vast regulatory crevices into which small businesses will inevitably fall will be filled by the unfettered discretion of OSHA inspectors as they determine compliance. (Tr. 3330)

Edison Electric Institute noted the possibility that compliance officers would second guess employers' decisions on control measures (Ex. 32–300). The Center for Office Technology was similarly concerned that the "subjective terms 'reasonable' and 'likelihood' make it impossible for either the employer or the OSHA inspector to know when an employer is in compliance [Ex. 30–2208]."

Some rulemaking participants went further, arguing that the vague language in the proposal forces employers to make subjective judgements about whether they have gone far enough to control hazards (see, *e.g.*, Exs. 30–3853, 30–3956, 32–337, 500–27; Tr. 6219). The Integrated Waste Services Association and the National Coalition on Ergonomics (citing *AFL–CIO* v. *OSHA*, 965 F.2d 962 (11th Cir. 1992) at 976) stated that this is in conflict with the requirements of section 6(b)(5) of the OSH Act for the Agency to set standards using objective criteria. The Coalition stated that the Agency cannot expect an employer to decide about permissible exposure to MSD hazards when OSHA is unwilling or unable to make that determination.

Mr. Edward C. Laux of the International Cemetery and Funeral Association believed that the term "to the extent feasible" was subjective and would present compliance difficulties for employers. Mr. Laux compared compliance under the proposal's requirement to control MSD hazards to the extent feasible with the reasonable accommodation test in Title I of the Americans with Disabilities Act:

> [Section 1910.921] provides that businesses must eliminate or materially reduce musculoskeletal disorder (MSD) hazards in the workplace "to the extent feasible." This highly subjective standard presents difficulties of interpretation similar to the "reasonable accommodation" test in Title I of the Americans with Disabilities Act (ADA).
>
> The ADA "reasonable accommodation" test at 42 U.S.C. 102(b)(5) and at 1630.9 of the U.S. Equal Employment Commission regulations requires employers to make alterations in the workplace for disabled workers unless the accommodation would impose "undue hardship" on the covered business. Interpretation of the terms "reasonable accommodation" and "undue hardship" must be made on a case-by-ease and business-by-business basis. As a result, interpreting these ADA terms has been the subject of administrative appeals and expensive litigation of which small businesses, in particular, are ill-equipped to afford.
>
> The ICFA believes that the "feasibility" provision at 1910.921 of the proposed Ergonomics programs will result in similar conflicts of interpretation that cannot be resolved in a "one size fits all" application. Small businesses, which comprise 87 percent of the cemeteries and funeral homes in the United States, will be confronted by OSHA inspectors second-guessing their understanding of this vague provision and imposing fines on these businesses where they disagree with their judgment.
>
> At that point, small businesses will be forced to choose between two highly unattractive alternatives: either to pay expensive penalties for noncompliance with a vague and subjective standard or to hire expensive lawyers to appeal and litigate the fines. The litigious history of similar language in the ADA removes any doubt that this scenario as applied to the Ergonomics standard is not only probable but certain. [Ex. 500–27]

b. *Comments that the vagueness of the rule is compounded by the lack of scientific certainty.* Some rulemaking participants argued that the lack of guidance was compounded by the scientific uncertainty of whether a given control measure would abate the hazards (see, *e.g.*, Exs. 30–294, 30–461, 30–494, 30–1722, 30–2986, 30–3853, 32–337, 500–197; Tr. 3232, 11375). For example, the U.S. Chamber of Commerce stated, "At first glance, the 'reasonableness' element of these definitions seems to provide an employer a certain amount of leeway in eliminating or reducing the hazards. This, however, is not the case. Under current scientific principles, nobody knows the point at which the likelihood of an MSD occurring will be reduced." The Chamber alleged that OSHA's experts admitted as much. The Chamber quoted small portions of two OSHA expert witnesses in *Secretary of Labor* v. *Hudson Foods* and *Secretary of Labor* v. *Dayton Tire* to support this point. The Chamber suggested that the witnesses could not quantify the reduction in the rate of MSDs resulting from a given control measure. The Chamber concluded:

> These statements were made, it bears repeating, by people called by OSHA in litigated matters to support particular ergonomics allegations individuals whom, presumably, OSHA believed qualified enough to sponsor as experts at trial. Yet neither of them could support the efficacy of their particular recommended abatements in a particular workplace cited for particular violations of the General Duty Clause. Nevertheless, somehow OSHA expects employers * * * even small employers like the overwhelming majority of the Chamber's members * * * to develop their own effective control measures.
>
> Although OSHA has shifted to the employer the burden to identify to what degree a "risk factor" must be reduced to prevent an MSD from occurring, that is a question nobody can answer. Indeed, OSHA concedes that "[b]ecause of the multifactoral nature of MSD hazards it is not always clear whether the selected controls will achieve the intended reduction in exposure to MSD hazards." 64 Fed. Reg. at 65827. Furthermore, in some cases, particular ergonomic controls may cause more harm than good. 64 Fed. Reg. 65827 "[m]any employers evaluate controls within 30 to 60 days after implementation. This gives employees enough time to get accustomed to the controls and to see whether the controls

> have introduced other problems into the job." (emphasis added). Because no one, including OSHA, is equipped to identify at what point an MSD is less likely to occur or to identify which abatement measures are effective in reducing such likelihood, this requirement is flawed beyond repair. [Ex. 30-1722]

The National Coalition on Ergonomics (Ex. 500–197) echoed the Chamber's point and argued that the rulemaking record demonstrated a lack of consensus regarding what control measures would be effective in reducing the rate of MSDs:

> Ergonomics experts likewise admit the impossibility of predicting with any degree of accuracy the ergonomic modifications that will successfully reduce musculoskeletal complaints. [Footnote omitted.] In fact an expert testifying for OSHA in a general duty clause enforcement action said he would need a "crystal ball" to determine whether a particular abatement measure would eliminate ergonomic stressors.[10] [Footnote: Transcript, April 6, 2000, at 7191–92. In March of 1999, an expert ergonomist hired by OSHA in another matter confessed that there is simply no way to predict in advance the outcome of a particular abatement measure. He testified that it is impossible for an employer to know ahead of time whether a control measure will materially reduce or even reduce at all the rate of musculoskeletal complaints. Transcript, April 6, 2000, at 7194.] The lack of consensus regarding appropriate ergonomic interventions among the people who ultimately would be relied on to implement the proposed rule surfaced repeatedly in the hearings. The hearings also revealed the highly uneven track record of ergonomic interventions in the workplace and the consistent inability of ergonomics professionals to measure the effects of ergonomic interventions, or to predict when a particular intervention will be effective in controlling or abating targeted musculoskeletal complaints. [Ex. 500–197]

The Coalition further contended that no consensus exists as to who is best situated to identify effective ergonomic solutions (Ex. 500–197). The Coalition noted that some ergonomics professionals testified that employees are the best persons to identify controls but that others, including one of OSHA's expert witnesses, occupational health professionals, and employees themselves, stated that employees did not have the expertise necessary to identify control measures. NCE concluded this argument by stating: "OSHA has put the cart before the horse in promulgating a rule that requires employers to produce solutions that reduce ergonomic hazards when no available or reliable means exist for predicting or measuring the efficacy of ergonomic interventions."

LPA, Inc., also objected to the proposed control endpoints because ergonomics is not an exact science (Ex. 30–494). LPA noted that the studies on which NIOSH and OSHA relied did not provide sufficient information to employers so that they could evaluate jobs, assess exposure to risk factors, and select controls that will eliminate the risk factors.

The Honorable David McIntosh, Chairman of the House Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, noted that even OSHA admits that most ergonomic fixes are not 100 percent effective (Ex. 30–542, 30–3010). He wrote:

> A second problem is the lack of end points or clear criteria for determining when an employer has fulfilled his obligations. OSHA is an enthusiastic proponent of ergonomic "solutions." But even OSHA admits that most ergonomic fixes are not 100 percent effective. [Footnote omitted.] For example, in shoe manufacturing, installing armrests and footrests, elevation and tilt equipment, better designed chairs, and pallet levelers to minimize bending while lifting reduced the "number of damaging wrist motions in assembly jobs by one-third," reduced "disc compression forces in clerical jobs by about 17 percent," and reduced "disc compression forces during lifting jobs by more than 50 percent." [Footnote omitted.] Such workstation modifications undoubtedly reduce the risk of MSDs. But, suppose another MSD occurs after the employer has implemented those changes. What is the employer's obligation? Must he experiment with more engineering options? Must he slow the pace of work, or implement a job rotation system? [Footnote: "The answer appears to be 'yes.' Here is the regulatory language: '[Y]ou must continue this incremental abatement process if other feasible controls are available' (1910.922(c))."] How practical would that be in a small establishment? What if the only way to eliminate damaging wrist motions and disc compression forces is to eliminate the jobs that require wrist flexion and bending while lifting?
>
> An employer can only guess when his efforts to reduce MSDs are adequate in OSHA's eyes, because the rule contains no outcome performance measures or benchmarks. Reducing MSDs by 50 percent or even 70 percent below current levels is no guarantee that an employer has done enough. Nor is it clear that reducing MSDs 50–70 percent below national average rates for particular kinds of jobs assures compliance with the rule. As long as MSDs occur, an employer remains vulnerable to legal challenge by his employees and OSHA. Yet eliminating all MSDs is beyond any employer's technical and financial resources. To say nothing of the fact that ergonomic "science" is still in its infancy, many MSDs are caused or aggravated by activities—sports, yard work, a second job—that may be completely outside an employer's control. The proposed rule thus gives OSHA an open-ended pretext to inspect, cite, and prosecute American companies. [Ex. 30–542]

Mayville Engineering Company, Inc.(Ex. 30–294) noted that it had difficulty applying controls to abate ergonomic hazards without having MSD symptoms surface in previously unaffected employees:

> We had a facility that had 10 identical workstations that assembled radiator cores. We had 3 individuals, within a month, report MSDs. The three individuals had worked at these workstations less [than] 1 year. One of the individuals had only been doing this job 6 months. The other individuals working at the other 7 workstations had been working on these jobs from 3–10 years each and had not reported any MSD symptoms. During the hazard evaluation we questioned the 7 as to any problems they had with the workstations and they felt that the workstations were fine the way they were.
>
> We made modifications to all 10 of the workstations based on the MSDs reported. The other 7 individuals started to report MSD symptoms with in 3 weeks. How would this be addressed in your Proposed Standard? [Ex. 30–294]

The National Coalition on Ergonomics noted that the hearing transcript included evidence of other similar instances that the Coalition claimed showed that ergonomic interventions were either ineffectual or created more problems than they solved (Ex. 500–197). On this point, NCE cited the experience of an office that handles 9–1–1 calls, a municipal solid waste department, the Social Security Administration, the Communications Workers of America, and Levi Strauss and Company. The Coalition also cited a passage from Dr. Emil Pascarelli's book, *Repetitive Strain Injury: A Computer User's Guide:* "All the ergonomic equipment in the world won't prevent RSI unless people who use computer keyboards learn how to type safely, pace themselves, and care for their upper bodies."

Ms. Lisa Brooks, testifying on behalf of International Paper Company, stated that the current science of ergonomics did not support interpreting the proposed standard consistently for a particular job or task (Tr. 11375). She noted specifically that two lifting guides, Liberty Mutual's manual handling tables and the 1991 NIOSH lifting equation, provide different levels of acceptable risk. She was concerned that, if an employee's condition did not improve after applying the more liberal of the two guides, OSHA would force an employer to use the more conservative even though both are nationally recognized. Ms. Brooks argued that the language in the proposal left the employer in doubt:

> Would the determination of the compliance end point change if the injured employee's condition did not improve?
>
> The answer to this question depends upon the interpretation of reasonably likely to occur and significantly reduce the likelihood for a particular job or task.
>
> Some could argue that since the injured employee's condition did not improve, the facility only materially reduced the musculoskeletal disorder hazards at the facility and that the facility must continue in the incremental abatement process and implement additional feasible controls.
>
> Once in the incremental abatement process, the compliance end point becomes tied to the recuperation of an individual. [Tr. 11377]

Ms. Brooks concluded by urging OSHA to postpone the promulgation of the ergonomics standard until it could be written so that compliance can be consistently and objectively measured (Tr. 11381).

c. *Comments that OSHA has not provided sufficient guidance for employers to comply with the proposed standard's compliance endpoint.* Many rulemaking participants were concerned that the proposed standard and the preamble discussion of the regulatory text provided little hazard control guidance for employers (Ex 30–1536, 30–1722, 30–3813, 30–3845, 30–3956, 30–4185, 32–300, 35–106, 500–197). Some were concerned that employers, particularly small ones, would not have the resources to implement the requirements in the proposed standard or to make the judgments it calls for (see, *e.g.*, Exs. 30–1536, 30–2834, 30–3077, 30–3348, 30–3751; Tr. 3330, 8226). These commenters argued that this would force many employers to hire an expert.

Some rulemaking participants believed that OSHA should provide additional guidance for the terms and concepts used in this part of the standard (see, *e.g.*, Exs. 30–1557, 30–2987, 30–3748, 30–3765, 32–133, 32–300). For example, ORC and Edison Electric Institute urged OSHA to include a nonmandatory appendix listing risk factors and examples of acceptable controls (Ex. 32–300). The American Association of Occupational Health Nurses urged OSHA to provide clarification for situations in which MSDs are still being reported after all feasible controls have been implemented (Ex. 30–2387). Dow Chemical Company suggested that the Agency could put appendix-like material on its Web site (Ex. 30–3765). Dow also asked for guidance on the type and amount of improvement that was expected under the incremental abatement process and on the amount of time that was allowed to pass between incremental abatement measures. The American Health Care Association recommended defining "feasible" and better explaining the term "materially reduce" (Ex. 30–2987). At the hearing, Frank White described ORC's position as follows:

> How do I know when I've achieved compliance? Now I understand that OSHA struggles with this issue, but the proposed sections 921 and 922 we believe are off the mark.
>
> In ORC's opinion, the difficulty of establishing precise exposure response relationships between the particular health effects being regulated and a specific workplace risk factors that allegedly cause those condition does not relieve OSHA of the [basic] obligation to provide some quantitative guidance to employers on a point at which significant risk is substantially reduced.
>
> Only in this way will an employer be able to determine whether taking action to control particular workplace risk factors is likely to materially reduce the risk of the specific musculoskeletal disorder that has occurred. [Tr. 4109]

The American Industrial Hygiene Association (AIHA) supported the proposed standard's performance-based compliance endpoint (Ex. 32–133). However, AIHA also believed that OSHA should provide additional guidance. The Association stated:

> AIHA supports the fundamental performance-related elements of the proposed ergonomics standard.
>
> The requirement to eliminate or materially reduce ergonomic problems to the extent feasible is a valid performance criterion. Similarly, the "incremental abatement process" is performance-based and recognizes the complex nature of ergonomic problems.
>
> Whether a risk-based approach is considered or not, OSHA should add some appropriate examples of risk assessments so that employers can utilize appropriate guidelines and have an idea of what compliance officers will be looking for. OSHA should recommend a variety of risk assessment approaches and describe how enforcement of the standard will take place. [Ex. 32–133]

The Employment Policy Foundation suggested that OSHA include a detailed table to serve as a guide to compliance and to facilitate verification of the Agency's cost estimates (Ex. 30–1557). The Foundation argued that each of the major compliance elements involves several subsidiary compliance tasks. The Employment Policy Foundation provided a table of the tasks that it believed the standard required and recommended that OSHA include one like it in the final rule. The Foundation's table included not only compliance endpoint-related tasks, but tasks related to all aspects of the standard.

d. *OSHA's response to these comments.* In response to the many commenters arguing that the proposed compliance endpoints were too vague and failed to give adequate notice to employers, would lead to uneven enforcement, OSHA has added objective compliance endpoints to the final rule. The three acceptable endpoints are: (1) Control of MSD hazards, (2) reducing MSD hazards in accordance with or to levels below those in the hazard identification tools in Appendix D that the employer used to conduct the job hazard analysis, and (3) controlling hazards to the extent feasible. The Agency has explained each of these options above.

The second compliance endpoint, reducing MSD hazards in accordance with or to levels below those in the hazard identification tools in Appendix D, provides objective criteria to help employers attain an endpoint. In Appendix D–2, OSHA is providing a chart outlining reasonably objective measures of acceptable levels of ergonomic risk factors for VDT operations. In Appendix D–1, OSHA is referencing existing tools that employers are currently using to identify and control ergonomic risk factors. OSHA believes that these tools will provide employers with a bright line method against which they can judge whether their compliance efforts meet the final standard's compliance endpoint.

The employer also has the option "to reduce MSD hazards to the extent that they are no longer reasonably likely to cause MSDs that result in work restrictions or medical treatment beyond first aid." OSHA is providing sufficient guidance, in the preamble, appendices to the standard, and compliance assistance materials, to help employers understand and follow this compliance endpoint. The employer will have to use some judgment and will need to be knowledgeable about the relationship between risk factors and the different types of MSDs when using this endpoint. Many rulemaking participants presented examples of measures they have used to adequately control ergonomics hazards (see, *e.g.*, Exs. 32–274, 500–6, 500–12, 500–50; Tr. 8557, 8579, 11533, 12564, 14972). They clearly understood what needed to be done to control the hazards and where to find the tools to accomplish that goal.

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[10] The full text of the transcript cited in the Coalition's footnote reads as follows:

"With respect to all of your proposed abatements, proposed possible solutions, as you call them, that if every single one were implemented with respect to every single job, there would still be ergonomic stressors in every single job?"

Answer, "I don't know if there still would be ergonomic stressors in every single job, but there might be ergonomic stressors in some jobs, but I can't say that there still would be ergonomic stressors in every single job. No, sir, I cannot say that."

What would it take for you to say one way or another whether that would be so?"

Answer, "A crystal ball."

It is clear from this exchange that the witness was talking about more than one control measure being applied to more than one job.

The extensive scientific basis for OSHA's standard is discussed in the Health Effects and Risk Assessment sections of this preamble. However, it is not necessary for an employer to have a complete grasp of ergonomics science in order to comply with the final rule. Many witnesses testified that they had little or no difficulty in addressing jobs successfully (See, *e.g.*, Ex. 32–274; Tr. 11532, 12461, 14708, 14836, 15046), and OSHA has given employers extensive flexibility in addressing these hazards, together with many tools and models to use. In addition, many problems and solutions are readily apparent after observing a job and talking with employee. The availability of professionally-developed tools and the compliance assistance tools being provided by the Agency will also help employers select appropriate control measures to reduce MSD risk factors sufficiently. These risk reductions will lead to a corresponding reduction in the incidence and severity of MSDs at the workplace.

With respect to Mayville Engineering Company's and the National Coalition on Ergonomics' comments that efforts to control MSD may create other MSD hazards and lead to more injuries, OSHA notes that it is possible for certain interventions to increase some risk factors at the expense of the ones an employer is trying to control. However, it does not automatically—or normally—follow that decreasing the duration, frequency, or magnitude of one risk factor will increase another. If that were the case, ergonomic intervention studies, such as those depicted in the Risk Assessment section of the preamble, would be very infrequent, rather than the norm for those employers making a good faith effort at addressing these hazards. It should also be noted that in one of the cases cited by the Coalition, the employer saw an overall decrease in the number of MSDs from the control measures, and further measures were taken to lower the risk factors causing the new MSDs (Tr. 17822 [11]). In another case, a company representative testified that the company "put in place a wide variety of effective controls" (Tr. 14706).

Thus, OSHA has concluded that the final rule's endpoint is scientifically sound and will help reduce the number and severity of MSDs in the workplace.

OSHA agrees with commenters, like the National Coalition on Ergonomics, the AFL–CIO, and the American Society of Safety Engineers (Tr. 3498, 7210, 11616), who stated that enforcement of the final ergonomics standard will necessitate extensive training of the Agency's compliance staff. OSHA compliance officers will need to be educated in the requirements of the standard, signs and symptoms of MSDs, ergonomic risk factors, and appropriate control measures, among other things, so that the Agency can enforce the standard in a uniform and reasonable manner. Such training, based on the final standard and on the compliance guidelines contained in this preamble and the appendices to the final rule, is currently being developed and will be provided before the compliance deadlines in the standard.

2. Comments on Whether the Proposed Compliance Endpoint Would Illegally Delegate Rulemaking Responsibility

a. *Comments that the proposed rule would shift the burden of determining the compliance endpoint to employers.* Some rulemaking participants objected that the vagueness inherent in the proposed language shifted much of the burden placed by the OSH Act on OSHA to employers (see, *e.g.*, Exs. 30–1722; 30–3956, 35–106; Tr. 4110, 15648–15649). The U.S. Chamber of Commerce argued that the proposal left to employers the determination of the safe exposure level and the appropriate controls (Ex. 30–1722). Even though it recognized that the proposed standard properly allowed the employer flexibility, the Chamber stated that the proposal went too far:

> Under the Proposed Rule, it is up to the employer to do the Secretary's job of setting a standard that "most adequately assures, to the extent feasible, * * * that no employee will suffer material impairment of health or functional capacity," 29 U.S.C. § 655(b)(5), from exposure to perceived ergonomic hazards. It is the employer that must determine when an employee is at risk from hazards that are "reasonably likely to cause or contribute to MSD[s]." Proposed §§ 1910.917, 1910.944, 64 Fed. Reg. at 65832. 65864. And it is up to the employer to determine any combination" controls either to eliminate the hazards or to at least reduce them "to the extent feasible." Proposed §§ 1910.917, 1910.920(a), 64 Fed. Reg. at 65803, 65828. While the Preamble contends that [t]here are many qualitative and quantitative ways to determine the magnitude of exposure," * * * the Proposed Rule fails to set objective levels at which an employer would be required to act. Moreover, the Proposed Rule fails to identify specific measures that an employer must implement to control these supposed hazards. The Act requires the Secretary to make these decisions * * * which the Secretary concedes are impossible to make * * * and not simply to foist that obligation on the regulated community under threat of considerable civil penalties and compliance costs. [Ex. 30–1722]

The National Coalition on Ergonomics made a similar point:

> The proposed standard is so vague and ambiguous that arguably, through its adoption, OSHA will have shifted the burden of identifying the hazard (which is clearly OSHA's duty) and the appropriate response to the hazard (which is also clearly OSHA's duty) to employers. At the same time, the proposed standard fails to clearly state or place meaningful boundaries on what may be required by enforcement personnel to such [a] degree that, if adopted, the standard would represent an unconstitutional delegation of authority from Congress to OSHA. [Ex. 30–3956]

OSHA believes that the final standard is sufficiently clear to inform employers of their obligations, and therefore does not place impossible burdens on employers. The final rule gives employers options. Employers may, but are not required, to use the objective criteria in Appendix D to determine the hazard control level. The rule also gives employers the flexibility to use alternate performance-based measures.

b. *Comments that the proposed rule would shift the burden of determining feasibility and compliance endpoints to OSHA compliance staff.* The American Iron and Steel Institute (AISI) stated that the proposed standard improperly delegated rulemaking authority to OSHA's compliance staff (Ex. 500–223). AISI contended that the proposed rule was equivalent to requiring each employer to issue an unlimited number of blank checks for ergonomic control measures and allow OSHA to fill in the amounts. The Institute argued: "The mere possibility that the proposed standard is written in such a way as to permit OSHA to adopt * * * an unreasonable and impermissible enforcement strategy, contrary to applicable Constitutional and statutory requirements, leads to the unavoidable conclusion that the proposed standard is fatally defective and should be withdrawn. [Ex. 500–223]"

As noted in the discussion of the previous issue, OSHA has given employers sufficient guidance so that they can determine, before an inspection occurs, whether or not they are in compliance with the rule. In fact, if an employer reduces MSD hazards in accordance with or to levels below those in the hazard identification tools in Appendix D (or the more stringent Basic Screening Tool), there is no doubt that an employer is complying with the final rule's compliance endpoint. OSHA compliance staff will therefore have no difficulty determining whether an employer is complying with Appendix D. The remaining endpoints, controlling MSD hazards and feasibility, give added flexibility to those employers who believe that they can control MSD hazards by means other than the endpoints in Appendix D or who cannot feasibly reach those levels. Consequently, the final rule does not improperly delegate rulemaking authority to OSHA compliance staff.

3. Comments on Whether the Proposed Compliance Endpoint Would Force Employers To Go Too Far in Controlling MSD Hazards

a. *Comments that the proposed standard would force employers into a never-ending circle of hazard control improvements.* Some rulemaking participants were concerned that employers would face a never-ending circle of hazard control improvements (see, *e.g.*, Exs. 30–1722, 30–3956; Tr. 3171). For example, the National Coalition on Ergonomics stated that as long as ergonomic complaints [12] continued, employers would need to go further and further in the incremental abatement process (Ex. 30–3956). In addition, the Coalition asserted that, except where the employer can show the problem is unique to an individual employee, the employer would be obligated to implement corrective action not only for the complaining employee but for every employee doing the same job or another job involving the same or similar work activities. The Forum for a Responsible Ergonomics Standard went further, arguing that this portion of the standard was infeasible:

> OSHA's proposal is infeasible, however, because it requires an undefined "material reduction" in MSDs, despite the fact that no technology, work practice, or other type of control exists that will ensure such reductions. Any mandatory standard must take into account the fact that numerous controls may be available and, perhaps, effective to some degree, but that they cannot ensure any rate of success in reducing MSD injuries or hazard factors. Employers simply will not be able to guarantee compliance with the standard, no matter what efforts they make to adhere to OSHA's proposed program. [Ex. 30–3845]

The American Iron and Steel Institute argued that the standard would necessitate more and more controls as employees deconditioned by an increasingly sedentary workplace would have less capacity to tolerate demanding physical activity (Ex. 30–3951, 32–206).

Under questioning at the hearing, Mr. Thomas Durbin of PPG Industries was concerned that an employer following the incremental abatement process would need to continue to apply control measures even after all workplace ergonomic stress factors were eliminated as long as MSDs continue to occur (Tr. 3171).

These comments are based on the false premise that an employer would not be finished applying ergonomic control measures until all MSDs disappear from the workplace. OSHA has drafted the final ergonomics standard to make it clear that this is not the case. The goal of the final rule is the reduction in workplace MSD hazards, that is the reduction in the frequency, magnitude, or duration of the risk factors causing MSDs in problem jobs. When an employer controls these risk factors to a level meeting one of the compliance endpoints given in paragraphs (k)(1)(i) through (k)(1)(iii), the employer does not have to institute further controls even if MSDs continue to occur. Consequently, OSHA has concluded that the final compliance endpoints will not force employers into a never-ending circle of hazard control improvements.

b. *Comments that the proposed standard forces employers to experiment with control measures until they find one that works.* Some rulemaking participants objected that the incremental abatement process would require employers to experiment with hazard control technologies of uncertain efficacy until the employer cannot afford to implement additional controls (see, *e.g.*, Exs. 30–296, 30–402, 30–1722, 30–2134, 30–4185; Tr. 4906, 5645). For example, the Chamber (Ex. 30–1722) argued that OSHA has left to employers what the Agency cannot do itself, that is, determine what controls will reduce significant risk to employees:

> In sum, it is plain that the Agency is unable to make the difficult policy choices that Section 6(b)(5) places squarely in its hands, and that instead OSHA has chosen to defer these choices to the regulated community. The only justification that the Agency proffers for this flawed approach is that OSHA simply cannot determine broad standards that would be appropriate for the wide variety of covered industries and jobs. However, OSHA has fared no better in assessing causation and appropriate abatement when dealing with individual workplaces and specific jobs in enforcement proceedings. Thus, as noted above, OSHA has lost on one or both of those grounds in every ergonomics case it has litigated on the merits * * *. If, as these cases show, OSHA cannot determine what causes musculoskeletal complaints in a particular job-and how to abate them properly, there is no reason to think that employers will fare any better. [Ex. 30–1722]

The National Coalition on Ergonomics detailed this argument in their post-hearing submission (Ex. 500–197). The Coalition contended that ergonomics professionals are unable to articulate effective solutions to ergonomic problems in other than vague generalities, leaving employers little choice but to engage in trial and error experimentation. Because its review of the hearing transcript could not identify a single witness who was able to identify a particular ergonomic intervention that is sufficient to satisfy the rule, the Coalition questioned how well employers would be able to choose controls that would bring them into compliance.

In its post-hearing submission, Federal Express (FedEx) gave an example purporting to show how the company would be forced into experiments to try to reduce ergonomic risk factors further (Ex. 32–208). Federal Express noted that the existing workspace for package handlers is optimized so that a single employee reaches as short a distance as possible given the design of the conveyors, trucks, and other equipment. FedEx indicated that redesigning the space to accommodate a second employee would actually increase the distance packages are handled. The company argued that trading one risk factor for another, as such a redesign would cause, would have an unpredictable effect on the number of MSDs for that job.

On the other hand, Mr. Sittichoke Huckuntod, testifying on behalf of Levi Strauss and Company, acknowledged that industrial safety design is a system of trial and error by its very nature (Tr. 14747). The Forum for a Responsible Ergonomics Standard noted that addressing MSD hazards is an iterative process, often requiring significant trial and error before improvements are realized (Ex. 30–3845).

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[11] With respect to the initial ergonomic interventions taken at the 9–1–1 center, Mr. James August of the American Federation of State, County and Municipal Employees testified: "This intervention drastically reduced the injuries. It did not create more injuries * * *. [F]rom the entire work force of very high injury rates, virtually all of the carpal tunnel and wrist injuries were eliminated." (Tr. 17822)

With respect to the follow-up on the few new MSDs that developed, Mr. August stated:

> [T]here were a couple of employees where there were some shoulder problems that started to surface early on when the intervention was made * * *. But the same analysis that was done to identify the original problem was used to quickly remedy the resulting problem from the intervention.
>
> So it was not a matter of having to junk the whole system that was put in and start from scratch. This was a refinement which is what all of us involved in the field of ergonomics do on a continuous basis. [Tr. 17823]

[12] As noted elsewhere in this preamble, the Coalition has mischaracterized the proposal's use of the term "covered MSD" as "complaints."

OSHA acknowledges that fully solving ergonomics problems is not always straightforward. Some employers who have little or no expertise in ergonomics will indeed need to undergo some trial and error in their hazard control efforts. As noted by Ms. Sharon Murray, the former director of Rochester Office of Emergency Communications (a 9–1–1 call center), employees might not use new equipment intended to reduce risk factors in the manner anticipated by the employer (Tr. 17819). For example, when an employer institutes a control measure designed to reduce awkward wrist postures, it might increase long reaches for some employees. In Ms. Murray's case, the unanticipated hazard was a relatively simple problem to resolve (Tr. 17823).

The Agency does not believe that this trial and error is unique to ergonomic hazards. As Mr. Huckuntod acknowledged, industrial safety design is a system of trial and error by its very nature (Tr. 14747). A new ventilation system, for example, might not work as it is designed to, and the employer might have to modify it after its initial installation.

OSHA has removed the proposal's incremental abatement option and believes that employers will be able to meet the final rule's compliance endpoints with a minimum of experimentation. As the AFL–CIO (Ex. 500–218) noted, "Several experts, including David Alexander (Tr. 2518, 2716), David Caple (Tr. 2716), and Dennis Mitchell (Tr. 2530), testified that in 80–85 percent of cases, ergonomic problems can be solved with one intervention." With the compliance assistance tools provided by the Agency, even small employers should be able to reduce MSD risk factors to acceptable levels with a minimum of experimentation. For these reasons, OSHA concludes that the final rule will not lead to undue experimentation by employers.

c. *Comments that the proposed standard places no limit on how far an employer must go in controlling MSD hazards.* Some rulemaking participants objected to any compliance endpoint that required an employer to eliminate MSD hazards from the workplace because such an endpoint places no limits on how far an employer must go in controlling MSD hazards (see, *e.g.*, Exs. 30–2208, 30–3765, 30–3956, 30–4185). For example, Dow Chemical Company noted that there is no such thing as zero risk and that this approach was inconsistent with OSHA's standards on toxic chemicals, which set exposure levels that entail some residual risk to employees (Ex. 30–3765). The National Coalition on Ergonomics also argued that the open-ended requirement to use all feasible control methods until the risk of an MSD reaches zero conflicts with well-established case law to the contrary (Ex. 30–3956). The Center for Office Technology also believed that OSHA is obligated to set a threshold above zero risk (Ex. 30–2208). Patrick Tyson of Constangy, Brooks and Smith asserted that the proposed rule, in essence, defined an MSD hazard as the existence of even one MSD in a 3-year period (Ex. 30–4185). Mr. Tyson contended that a rate of one OSHA recordable MSD every 3 years does not constitute a significant risk.

Some rulemaking participants were concerned that the standard placed no limits on the controls that an employer would be forced to implement (see, *e.g.*, Exs. 30–494, 30–2208, 30–3765, 32–211, 32–234; Tr. 10429, 10950). For example, Dow Chemical Company questioned the extent to which employers would need to go to avoid citations (Ex. 30–3765). Dow believed that the proposal would require employers to adopt the latest technology regardless of cost or how great the reduction in hazards. Mr. Gregory Watchman of Paul, Hastings, Janofsky and Walker stated that, if MSD signs and symptoms continue to occur, even on a sporadic basis, the employer would be forced to implement additional abatement measures indefinitely (Ex. 32–211). Mr. Watchman reasoned that the duty to implement additional controls would be triggered very frequently in most workplaces because of the frequency with which workers experience short-term discomfort, aches, and pains.

Mr. George Page, the owner of a small industrial engineering and ergonomics consulting firm, provided an example of why he thought the proposal's compliance endpoints went too far (Tr. 10429). He testified about a client who had instituted a variety of ergonomic initiatives with good results. Mr. Page was not sure whether the employer would be in compliance with the proposed rule.

The American Dental Association provided a theoretical example of how far the Association would have to go to control MSD hazards at their headquarters:

> The ADA headquarters is located in a building that was built more than 35 years ago. The work areas were designed and furnished before the proliferation of modem computing activities. It would not be cost-effective, or in some cases even possible, to retrofit them to satisfy the proposed standard. Thus, the ADA could be required to substantially rebuild or replace affected work areas, furnishings and equipment in order to comply. It is difficult at this point to determine the full scope of the ADA's compliance burden, because the proposed standard would require the ADA to continue to implement incremental changes to its work environment until it substantially reduced or eliminated the incidence of covered MSDs. Because 50% of the ADA's workforce is engaged in the same or similar work activities, the Association would be required to implement these changes for 200 employees simultaneously, even though only one employee reported a problem.
>
> The ADA has made—and will continue to make—adjustments to keyboards, monitors and other peripheral aspects of its work environment, but for reasons of providing a more comfortable and efficient workplace for its employees, not because of some highly speculative benefit. However, there is no assurance that these simple measures would be sufficient to achieve compliance under the standard's incremental approach to compliance. [Ex. 32–141]

Federal Express argued that, because of the unique nature of its facilities, the company would see no appreciable effect from incremental changes to its workstations (Ex. 32–208). Federal Express further argued that only a complete redesign would accomplish anything more than negligible improvements in the number of workplace MSDs:

> While the proposed ergonomics standard provides for incremental changes to the work environment until "covered MSD" are significantly reduced, [footnote omitted] the unique nature of the facilities at and the corporate experience of FedEx is such that incremental changes would have no appreciable effect upon * * * reducing "covered MSD," and only a quantum change involving complete redesign and reconstruction of facilities may potentially yield measurable results. Even then, it is not clear that the changes in outcome in which OSHA is interested is the result of these changes. The reason for the nebulous impact of incremental change is two-fold. First, the nature of the physical facilities which FedEx operates is such that space limitations do not allow further design alterations, added equipment, or additional, extraneous staffing. Second, FedEx's facilities, operational process and equipment have all been designed and employed with the application of ergonomic principles for the purpose of improving productivity. As a result, incremental changes to the workplace in the context of FedEx's facilities, which are already at or near the frontier of automation and technical feasibility will fail to have an appreciable impact upon the reduction rate of "covered MSD."
>
> * * * * *
>
> To be sure, some incremental changes can be made. FedEx does not assert an "all or nothing" position, wherein absolutely no space whatsoever remains for incremental changes to be made in the existing facilities.

> Rather, FedEx asserts that, to effect a material reduction in work-related "covered MSD," the changes required would be quantum in nature, so as to necessitate an entirely new facility. The space limitation upon the existing facility will admit of some, very limited incremental changes, but those changes would be so limited by space, so ephemeral in nature, as to be ineffective in reducing "covered MSD."
>
> For example, the design for the existing facilities, while tailored to the number of employees required to complete a task, is not precise to the person with regard to every position in the sort facility or even in the trucks or customer service stations. Rather, one additional person can, conceivably, be added to the workforce in some capacity in some facilities, in a manner where he or she will not detract from the efficiency of FedEx's operations. FedEx maintains, however, that the increase of one additional individual is not an administrative or work practice control which will render a material reduction of any hazard at all. In fact, the effect will not be noticeable, except on reduced efficiency. Once the workplace is increased significantly beyond one additional person, however, the facilities's space limitations operate to reduce both operational efficiency and workplace safety. [Ex. 32–208]

Patrick Tyson of Constangy, Brooks and Smith objected to the extent to which the proposed endpoint would require employers to go to reduce ergonomic hazards (Ex. 30–4185). He stated:

> Having stated our objections, not to the need to implement engineering controls, but to the point at which such controls must be implemented, we also submit that contrary to OSHA's assertion in the Preamble that the proposed Standard establishes "control endpoints" which define when an employer is in compliance, there are two inter-related problems with § 1910.921. First, for any manufacturing jobs in which employees perform repetitive motion tasks for a significant part of the work day, as a practical matter, an employer's legal duty will never be satisfied until employees are no longer performing the manual tasks. We question whether the Agency should promulgate a Standard with this result, even if unintended. Secondly, although § 1910.921 is apparently intended to state that employers can be in compliance short of automating the job functions, we believe that there is no objective measure of compliance short of either automating the job task or function or eliminating it. [Ex. 30–4185]

He contrasted this with the expectation of OSHA enforcement staff that employers, under their existing general duty clause obligations, must institute controls that lead to a reduction in the seriousness of MSDs, not in their numbers. He also contrasted the standard's requirements with the experience of one of his firm's clients, who had instituted an ergonomics program and had 6-years' experience with it. This employer had spent over $19.5 million in capital improvements to reduce lifting hazards in six facilities and reduced the number of recordable MSD cases, including back cases, by less than 50 percent over the last 5 years of the program (through 1999). Mr. Tyson was particularly concerned that the standard would require this employer to institute further controls.

Here again, these comments are based on the false premise that an employer would not be finished applying ergonomic control measures until all MSDs disappear from the workplace. The final rule's compliance endpoints do not require employers to go that far in controlling MSD hazards. In fact, all the compliance endpoints in the final rule contain discrete stopping points that allow an employer to stop even if MSDs continue to occur. One of the endpoints, reducing MSD hazards in accordance with or to levels below those in the hazard identification tools in Appendix D, provides objective measures against which an employer can determine whether it has fulfilled its compliance obligations. When the employer reduces the risk factors below those levels, he or she is finished instituting control measures. The control of MSD hazards endpoint, although not as specific, also allows an employer to stop even if MSDs continue to occur. That endpoint, paragraph (k)(1)(i), requires reducing the hazard to the level where MSDs resulting in work restrictions or medical treatment are reasonably unlikely, not to the level of absolute safety or no MSDs. The endpoint will not require employers to seek to eliminate all aches and pains or symptoms of discomfort, as feared by Mr. Watchman. The required hazard reduction is directed at MSDs that require work restriction or medical treatment. The last endpoint is reducing MSD hazards to the extent feasible. When the employer has reached the limits of feasibility, he or she is in compliance regardless of whether MSDs are continuing to occur, at least until additional controls become feasible.

d. *Comments that requiring employers to go to the limits of feasibility is unreasonable.* Some rulemaking participants were concerned that the proposed requirement to control hazards to the extent feasible would require employers to continually review ergonomic research for the latest in control technology (see, *e.g.*, Exs. 30–2208, 30–2987, 30–4607, 32–234). For example, the Center for Office Technology argued that this requirement would be very costly as employers would be forced to replace office furniture every time a new desk is offered for sale. Concerned that employers would be forced to conduct constant reviews of new technology, the American Health Care Association recommended that OSHA provide technology and program upgrade information (Ex. 30–2987). The Association believed that the Agency was in a better position to determine when new and credible research made new control measures available. Caterpillar, Inc., stated that once ergonomic complaints cease there would be no need to review new technology (Ex. 30–4607). Caterpillar recommended that the standard not require the employer to assess additional controls unless a new MSD occurs.

Federal Express argued that, because an employee must handle every package at some point in the delivery process, complete elimination of human involvement cannot be achieved in its line of work (Ex. 32–208). In addition, Federal Express believes that it has reduced manual handling at its facilities as much as it can and, thus, is already at the limits of technological feasibility.

Keller and Heckman, L.L.P. believed that the proposed standard would require employers to research and develop technology to meet the proposal's compliance endpoint (Ex. 500–221). The law firm argued that the approach taken by the proposal was legally indistinguishable from the research and development requirement that the Third Circuit invalidated in *American Iron & Steel Institute* v. *OSHA*, 577 F.2d 825, 838 (3rd Cir. 1978). In that case, the Court held:

> 29 U.S.C. § 665(b)(5) grants authority to the Secretary to develop and promulgate standards dealing with toxic materials or harmful agents "based upon research, demonstrations, experiments, and such other information as may be appropriate." Under the same statutory provision the Secretary is directed to consider the latest scientific data in the field. As we have construed the statute, the Secretary can impose a standard which requires an employer to implement technology "looming on today's horizon," and is not limited to issuing a standard solely based upon technology that is fully developed today. Nevertheless, the statute does not permit the Secretary to place an affirmative duty on each employer to research and develop new technology. Moreover, the speculative nature of the research and development provisions renders any assessment of feasibility practically impossible. In holding that the Secretary lacks statutory authorization to promulgate the research and development provision, we note in passing that we need not reach petitioners' challenge to the provision as fatally vague. Accordingly, we hold the research and development provision of the standard to be invalid and unenforceable.

[*American Iron & Steel Institute* v. *OSHA*, 577 F.2d 825, 838 (3rd Cir. 1978) as quoted by Ex. 500–221]

Paul, Hastings, Janofsky, and Walker LLP stated that the preamble to the proposal indicated that the standard would be technology forcing:

> The agency's impossibly burdensome definition of technological feasibility would make compliance * * * virtually impossible. OSHA asserts that a hazard control methodology is technologically feasible even if it is not currently available.
>
> Thus, OSHA could issue citations and civil penalties to a small employer for failing to implement non-existent equipment that "can be developed by improving existing technologies" or that is "on the horizon of technological development." 64 FR at 65823. [Ex. 30–3231]

The National Solid Wastes Management Association (Ex. 32–234) argued that OSHA's description of "technological feasibility" would make compliance with the proposed endpoint virtually impossible:

> OSHA asserts that a hazard control methodology is technologically feasible even if it is not currently available. Thus, OSHA could issue citations and civil penalties to a small solid waste industry employer for failing to implement non-existent equipment that "can be developed by improving existing technologies" or that is "on the horizon of technological development." 64 FR at 65823. [Ex. 32–234]

The American Transportation Association argued that OSHA could conclude that the employer had not gone far enough to control hazards even in the absence of continued MSDs (Ex. 30–4465). In support of this argument, the Association stated, "if MSD symptoms persist, even on an occasional basis, an employer must continue to implement additional measures until it has exhausted all feasible controls."

LPA, Inc., and others contrasted the types of controls OSHA has required when it cited employers for failing to abate ergonomic hazards under the general duty clause with the types of controls the Agency has stated that it will accept under the proposed rule (see, *e.g.*, Exs. 30–494, 32–208). LPA argued as follows:

> Once a hazard is identified, an employer must implement "feasible" controls to try to eliminate it. A feasible control is one that is already being used elsewhere in the same job, can be adapted for the job, or "is on the horizon of technological development." [Footnote omitted] OSHA insists that the available controls to fix hazards are usually neither complex nor costly. Although such controls may be accomplished through physical changes to the job, changes in work practices, or training in proper work techniques, [Footnote omitted] the standard expresses a preference for physically redesigning the job.
>
> When citing ergonomics hazards under the general duty clause, however, OSHA has often required substantial physical changes, such as completely redesigning an assembly line and rebuilding the cab of a large crane. In many cases, these engineering controls favor automation and result in lost jobs. [Ex. 30–494]

The AFL–CIO noted that requiring employers to eliminate ergonomic hazards or implement controls to the extent feasible was similar to the approach OSHA uses in many other standards (Ex. 32–339). The union held that any incremental abatement process included in the final standard must have as its goal and endpoint the elimination of MSD hazards or the reduction of MSD hazards to the extent feasible.

The final rule contains an endpoint that would recognize that an employer is in compliance when he or she has done all that is feasible to reduce MSD hazards. This endpoint is statutorily driven. The OSH Act does not give the Agency the authority to require controls that are not capable of being done. This endpoint places a technological and financial limit on how far an employer must go in controlling MSD hazards.

As demonstrated by its feasibility analyses described in Chapter 3 of the Economic Analysis OSHA believes that most employers will be able to reach one of the other two endpoints (control MSD hazards or reduce MSD hazards in accordance with or to levels below those in the hazard identification tools in Appendix D) using existing technology at a cost that is economically feasible. The third endpoint, control MSD hazards to the extent feasible, is not technology-forcing in the sense feared by some commenters. As discussed earlier, what is feasible under the standard is determined by the limits of current technology and knowledge, not the potential for future technology.

Furthermore, OSHA believes that many of the comments on the corresponding compliance endpoint in the proposal were founded on the impression that the proposed rule would have required employers to eliminate MSDs from the workplace subject only to the limits of feasibility (see, *e.g.*, Exs. 30–3231, 30–3347, 30–3750, 30–4465, 32–211, 32–234). The language of the final rule's compliance endpoint makes it clear that this is not the case. The feasibility compliance endpoint in the final rule supplements the other two and ensures that no employer is required to go beyond the limits of feasibility.

OSHA has addressed the concerns of the American Health Care Association that employers would be forced to continually review new technology (Ex. 30–2987). Paragraph (k)(1)(iii) of the final rule requires employers to assess whether additional feasible controls are available every 3 years. This provision limits the frequency with which an employer would need to review technology, and the assessment could easily be done as part of the overall program evaluation. The Agency will be providing information on available control technology on its Web site and updating this information periodically. Employers should, however, check other sources of information to ensure that they have not overlooked new hazard controls that are appropriate for the MSD hazards in their workplaces.

The final compliance endpoint does not require employers to perform research and development to extend the limits of technological feasibility. As explained above, MSD control technology is feasible if the control method is available or adaptable to the employer's specific circumstances. Employers are not required to perform research on MSD control methodology or develop new technology to abate the MSD hazards in their workplaces.

e. *Comments that the proposed rule would force employers to automate jobs out of existence.* Some rulemaking participants argued that the ergonomics standard will lead to the elimination of jobs (see, *e.g.*, Exs. 30–1616, 30–3845, 30–3956, 30–4185; Tr. 5701). These commenters asserted that employers would act to reduce MSD hazards in the workplace by automating jobs out of existence, shifting jobs overseas, or converting full-time jobs to part-time to reduce exposure (see, *e.g.*, Exs. 30–3845, 30–3956). Several rulemaking participants were concerned about the feasibility of automating certain jobs (see, *e.g.*, Exs. 30–2208; Tr. 18033). For example, the Center for Office Technology stated:

> To eliminate the hazard one must automate the work environment thus eliminating any exposure. Those are not OSHA's words but those are the examples OSHA gives (Fed. Reg. Page 65832). And in the case of the office, OSHA suggests that the only way an employer of office workers has eliminated the hazard is to use a voice-activated computer to eliminate highly repetitive motions. Here is where OSHA's definition of feasible falls apart for the office industry. Is it feasible to have voice recognition for computer input when for many applications, given the state of the technology, it is neither effective nor an adequate or available solution? Voice activation technology has come a long way, however, this technology is not at a point which it can be used for all applications. To use a technology that is still evolving and has limited effectiveness in some applications as an endpoint leaves employers in a never ending cycle with no true solutions. [Ex. 30–2208]

OSHA does not believe that this ergonomics standard will result in the elimination of a significant number of jobs through automation or in the conversion of full-time jobs to part-time. Employers use automation to promote efficiency and increase productivity, and reduction of MSD hazards is often a byproduct. The specific concern expressed by the Center for Office Technology is unfounded. OSHA referred to a voice—activated computer as an example of a control that would eliminate a repetitive motion hazard but did not mean to imply that all computer input would henceforth need to be done using voice-activation software. Appendix D makes clear that is not the case.

Automation for the sole purpose of reducing MSD hazards is typically unnecessary. Testimony by the United Auto Workers indicated that, in one of their programs covering about 4400 employees and involving over 1000 processes, only one problem job was fixed by automation (Tr. 14797). In addition, Mr. David Alexander (Tr. 2564), one of OSHA's expert witnesses with extensive experience in ergonomics, testified that most ergonomic solutions were low cost:

> In my work, I found that about half of the projects cost less than $500 and can be done on a standard work order without the need for detailed justification. Perhaps that is why we do not hear about many of these low-cost solutions. Only a third of the projects need to cost more than $1,000. In other words, an ergonomics project is likely to cost, two times out of three, less than $1,000 and usually can fit within most budgets. [Tr. 2564]

These control methods do not approach the cost of automation. Consequently, simple economics will keep most employers from automating jobs simply to control ergonomic hazards. Mr. Alexander also stated that for a single set of risk factors as many as five to ten different solutions can be developed and employers should not be forced to convert full-time jobs to part-time. If reduction of exposure time is a control an employer selects, rotating employees among different jobs would normally be a cost-effective alternative to the use of part-time workers to replace full-time employees.

4. Comments on Whether the Proposed Compliance Endpoint of Eliminating MSD Hazards Is Illusory Because MSDs Cannot Be Eliminated

Some rulemaking participants criticized the final means of compliance, "eliminating MSD hazards" (see, *e.g.*, Exs. 30–323, 30–1107, 30–1722, 30–3845; Tr. 8328). For example, the US Chamber of Commerce stated that activities that the Agency characterizes as MSD hazards are "universal activities of life, both in and out of the workplace that can never be completely eliminated." The Chamber also noted that certain risk factors may pose MSD hazards to some employees but not to others due to their unique susceptibilities and prior medical history. Thus, the Chamber concluded, "Without knowing how an innumerable list of confounding factors might coalesce to cause an MSD in a given individual, neither OSHA nor an employer can ever say whether a significant risk of harm exists and, short of eliminating the job altogether, it will be impossible to say when all possible ergonomic "risks" have been eliminated. [Ex. 30–1722]" Other rulemaking participants made similar arguments (see, *e.g.*, Exs. 30–297, 30–323, 30–2208, 30–3765, 30–3845, 30–3934, 30–4185; Tr. 2960, 5342). These commenters said that nonwork-related factors also cause MSDs and that some MSDs will continue to occur even after employers control all work-related hazards. For example, the Forum for a Responsible Ergonomics Standard stated that employers cannot control the predisposition of their employees to contract MSDs (Ex. 30–3845). The Forum asserted that women are susceptible to carpal tunnel syndrome for a variety of reasons, including because they have smaller wrists and greater fluid retention. Similarly, Metz Baking Company stated: "* * * OSHA's proposal essentially forces companies into the pursuit of continuous efforts to reconfigure their workplaces and methods of operation down to a level that is without physical stressors for the most vulnerable of its employees [Ex. 30–323]." Some rulemaking participants noted that the standard did not hold employees accountable for their own behavior on and off the job (see, *e.g.*, Exs. 30–3355, 30–3723; Tr. 8328). For example, Mr. Perry Ozburn, the chairman of the International Warehouse Logistics Association, recounted a case in which his company had to pay benefits to an employee who Mr. Ozburn believed was injured off the job (Tr. 8328).

Mike Redman of the National Soft Drink Association argued the fact that employees in certain jobs will experience MSDs despite the best efforts of their employers (Tr. 2960). He reasoned that, because the probability of an MSD occurring in such jobs is always 100 percent, the employer will not be able to materially reduce the likelihood that an injury will occur.

Once again, the premise of these comments is that the proposed standard would have required employers to eliminate MSDs from the workplace. As noted earlier, the final rule's compliance endpoints stop short of this and provide clearly defined goals. OSHA realizes that employers cannot prevent all MSDs. In addition, the final rule, like the proposal before it, includes a note that the occurrence of an MSD is not, in and of itself, a violation of the hazard control endpoint.

5. Comments on Whether Some MSD Hazards Are Beyond the Employer's Control

Some rulemaking participants, particularly those representing the ambulance service, solid waste, and moving and storage industries, were concerned that employees were exposed to ergonomic hazards that were out of the employer's control (see, *e.g.*, Ex. 30–3686, 30–3845; Tr. 8140, 14957, 18030). For example, Mr. Ron Thackery, representing the American Ambulance Association, testified that not only were the lifting hazards faced by ambulance crews beyond the control of employers but that there were no feasible control measures that his industry could use to meet the compliance endpoint required by the proposed standard (Tr. 15017).

The final rule's compliance endpoint recognizes that some aspects of an employer's hazard control efforts may be limited by the availability of feasible controls. To the extent that the MSD hazards an employee faces are completely out of the employer's control, the final rule does not require the employer to control them. (For an analysis of the comments on the feasibility of controls in various jobs, see the discussion of technological feasibility in the Economic Analysis section later in the preamble.) For example, for paramedics responding to an automobile accident, the employer would have no control over the weight of the accident victims or their positions at the accident scene. These factors are highly variable and cannot be controlled by the employer. However, there are certain administrative and engineering controls that are available and, to the extent they can be used, the employer is required to implement them. For example, work rules (with associated training) can assure that employees minimize the risk involved in moving accident victims.

When work rules are used as an administrative control of MSD hazards, the employer is obligated to institute an adequate work rule, train employees in it, take steps to find violations, and enforce the rule uniformly. If the employer has done those things and an employee violates that rule without the employer's knowledge, then the employer will not be cited for that violation (see section III.C.8.c(1) of OSHA's Field Inspection Reference Manual, CPL 2.103.). The courts and OSHA Review Commission do recognize a defense of unpreventable employee misconduct. See, *e.g., D.A. Collins Constr. Co.* v. *Secretary of Labor*, 117 F.3d 691 (2nd Cir. 1997). Thus, the fears expressed by Guilford Mills (Ex. 30–2990) and the Oregon Dental Association (Ex. 32–233) that employers would be held responsible for unpreventable violations of work rules by their employees is unfounded.

7. Whether the Proposed Incremental Abatement Process Endpoint is Appropriate

The proposed incremental abatement process (§ 1910.922) would have allowed employers to test solutions in a problem job, so long as they would result in some hazard reduction and wait and see whether an additional MSD occurred before trying out further controls.

This proposed provision drew substantial comment on both sides. Many commenters objected to it as written because they believed it would permit employers to delay implementing controls that were needed to protect workers. The AFL–CIO recommended changing the provision to avoid this problem.

> The AFL–CIO believes that any incremental abatement process included in the final standard must have as its goal and endpoint the elimination of MSD hazards or the reduction of MSD hazards to the extent feasible. Employers can eliminate or reduce these hazards incrementally, focusing first on the high duration, high frequency and high intensity risk factors identified in the job analysis. Employee reports of MSDs or symptoms can and should be used to help set priorities for action and to help determine which jobs need further attention, but they should not be the endpoint for when and whether an employer has instituted sufficient controls.
>
> The final standard must also set a compliance deadline for implementing all feasible controls through the incremental abatement process. OSHA should make clear that the same compliance deadlines for permanent controls (*i.e.*, within three years during the startup period and within one year thereafter) apply, regardless of the abatement process an employer chooses to utilize. [Ex. 32–339]

The International Brotherhood of Teamsters stated that the incremental abatement of hazards would be acceptable within a framework of continuous ergonomic improvement that incorporated symptom surveillance, reaction to ergonomic complaints, active risk factor analysis, and continuing training (Ex. 500–207). The IBT also believed, however, that the final ergonomics standard must specify time frames and deadlines for the incremental abatement process.

Other rulemaking participants were also concerned about the lack of a time limit between incremental control steps (see, *e.g.*, Exs. 32–111, 32–210). The United Steelworkers of America suggested that OSHA provide additional guidance to assist employers in determining how long they may wait for an injured employee's condition to improve before implementing additional control measures (Ex. 32–111). The United Food and Commercial Workers International Union also recommended that the incremental abatement process have the same endpoint as the other two compliance options (Ex. 32–210).

On the other hand, the Integrated Waste Services Association urged the Agency to allow for flexibility in this regard, stating:

> The timing of the incremental abatement process will require it to be very specific to the situation. Consequently, standardized measures of timeliness would be ineffective and impractical. The employer should be permitted to gauge its own unique time frame for each and every WMSD. [Ex. 32–337]

In its post-hearing submission (Ex. 500–218), the AFL–CIO criticized the provision as allowing an employer to implement minimal controls for a problem job until a new injury occurs. According to the AFL–CIO, "[r]equiring employers only to 'significantly reduce the likelihood that covered MSDs will occur,' and then allowing them to avoid further intervention until another injury occurs is an unacceptable, unprotective compliance endpoint that is totally at odds with the language and purpose of the Act." The United Auto Workers expressed similar concerns. "The plain meaning of 'incremental abatement' is that all feasible controls will not be implemented in the first instance. Instead, the employer is permitted to implement some but not all feasible controls, and then wait for a second employee to be injured before going the rest of the way." (Ex. 32–185).

Other rulemaking participants supported the proposed incremental abatement process (see, *e.g.*, Exs. 30–434, 32–450; Tr. 14854). For example, Ms. Barbara Fritz testified that she used an incremental process of applying a control measure and seeing if it works in her efforts to abate ergonomic hazards (Tr. 14854). Monsanto Company stated:

> We agree that using an "incremental abatement process" is a valid method of dealing with physical stresses. In some instances you implement a potential solution to a problem and find that once in place additional improvements are either necessary or possible. It is also possible that from a budgeting standpoint you may not be able to implement the full-scale solution until you can obtain the necessary capital, so you implement partial solutions until capital is available. [Ex. 30–434]

NIOSH (Ex. 32–450) also supported the incremental abatement process in the proposed standard:

> We agree that control of MSD hazards can be appropriately achieved through the use of the incremental hazard abatement process proposed in Section 1910.922, allowing employers to implement controls in increments in order to understand which solutions work among all potentially necessary controls, and to implement only those controls that are necessary. We believe that it is essential and standard practice in many existing ergonomic programs for the routine reassessment of jobs in which initial control measures fail to reduce the severity or occurrence of MSDs. This reassessment should trigger implementation of additional feasible control measures. This process also allows employers to select the best solutions to eliminate or materially reduce the MSD hazard most efficiently, and to periodically check for new controls capable of further material reduction of the hazard. [Ex. 32–450]

Having considered the views expressed by the commenters, OSHA concludes that it is not necessary to include a separate provision in the standard on incremental abatement as the time frames for implementing controls allow employers to follow an incremental abatement process without a separate provision to that effect. The proposed incremental abatement provision recognized that the most cost-effective approach to reducing or eliminating MSD hazards is at times an incremental one. Employers may try some basic, inexpensive controls and see how well they work in reducing hazardous exposures before determining whether additional controls are needed. The proposed incremental abatement process was intended to make clear that employers are permitted to follow such an approach. OSHA has concluded, however, that it is not necessary to include a separate provision about incremental abatement in the standard. The standard allows employers up to 2 years (4 years initially) to control problem jobs, and these time frames are sufficiently long to enable those employers who wish to do so to follow an incremental abatement approach. A separate provision on incremental abatement would therefore be redundant.

Elimination of the incremental abatement provision also accommodates the concern expressed by the AFL–CIO and UAW that the provision allowed employers to implement minimal controls and wait until additional MSDs occur before completing abatement. Under the final standard, once an employer has identified a problem job, it must now attain one of the compliance endpoints for all employees in that job within the time frame set out by the standard. Thus, while the final standard allows incremental abatement within its time frames, once a problem job has been identified that the employer must control, the employer's abatement obligation does not depend on the occurrence of additional MSDs.

7. Whether the Final Ergonomics Standard Should Allow Employers to Prioritize the Control of MSD Hazards

Some rulemaking participants were concerned that the proposed compliance endpoints limited the ability to prioritize the control of MSD hazards (see, *e.g.*, Ex. 30–3813; Tr. 3135, 14722). For example, PPG Industries believed that the incremental abatement process outlined in the proposal limited the employer's ability to prioritize hazards (Tr. 3135).

Sean Cady, representing Levi Straus and Company, testified that the proposal did not provide sufficient guidance for the employer to prioritize jobs for the analysis and control of hazards:

> Well I would say first that we're here today to talk about our ergonomic program and what we've learned over the last 10 years of having a formal program in place. But one of the concerns that comes to mind is the proposal doesn't seem to provide enough guidance on how an employer should prioritize jobs for things like hazard analysis and job modification and control if more than one job is triggered at the same time. [Tr. 14722]

The United Auto Workers believed that it is important to prioritize jobs and hazards for control (Ex. 32–185; Tr. 8102–8104). The UAW suggested that the employer could use tools such as the NIOSH Lifting Equation, Snook and Ciriello Push-Pull tables, and various checklists, to identify which job elements and risk factors are most important (Ex. 32–185). The union recommended that employers be required to abate all risk factors classified as high priority but be allowed to abate other MSD hazards at a later time. The UAW argued that this was the proper way for employers to materially reduce risk factors under the incremental abatement process.

In its post-hearing submission, the AFL–CIO recognized that some employers may have difficulty in meeting the proposed rule's compliance endpoints by the deadlines contained in the proposal (Ex. 200–218). To remedy this problem, the AFL–CIO suggested that the final ergonomics standard allow employers an additional year to meet the compliance endpoint if the employer:

(1) Has conducted the job hazard analysis required by the standard,

(2) Has identified MSD hazards,

(3) Has consulted with employees and their designated representatives, and

(4) Has developed an action plan for eliminating MSD hazards.

According to the union, the action plan should prioritize the control of MSD hazards and provide for measurable reductions in exposure to those hazards, and the employer should be required to implement controls in accordance with the action plan and evaluate whether the controls have reduced exposures.

The AFL–CIO reasoned that its recommendation, which was consistent with other OSHA standards, would provide employers with sufficient time to eliminate MSD hazards without unnecessarily exposing employees to injury:

> The concept of an action plan or compliance program to set forth the process and means by which an employer will achieve compliance is an established practice under OSHA standards. The majority of OSHA's health standards, including standards on lead (1910.1025), cadmium (1910.1027), arsenic (1910.1018), and methylene dianaline (MDA) (1910.1050) contain a requirement for the establishment and implementation of a written compliance program.
>
> Similarly, a number of OSHA standards have recognized that in some industries or some establishments it may not be possible to achieve the control endpoint by the compliance date established for other industries and employers. In these cases, OSHA has on occasion included provisions to extend the compliance date for the implementation of controls.
>
> Under the arsenic standard, employers who were unable to achieve compliance with the PEL through engineering controls and work practices by the compliance date of December 1, 1979, were required to include in their compliance plan an analysis of the effectiveness of controls, and were required to install engineering controls, and institute work practice controls on the quickest schedule feasible [1910.1018(g)(2)(ii)(F)].
>
> The AFL–CIO believes that the provision of a one year extension in the abatement date accompanied by the development and implementation of an action plan is an appropriate means to address more complex hazards and is consistent with the practice under other standards. We recommend that such a provision be included in the final standard. [Ex. 500–218]

OSHA acknowledges that some employers will have difficulty controlling MSD hazards in all problem jobs within the deadlines that would have been imposed by the proposed standard—permanent controls would have had to be in place within 3 years after the effective date initially and, if the initial compliance deadline has passed before an MSD occurs, within 1 year of the incident. To alleviate this problem, the final ergonomics standard gives employers an additional year to implement permanent controls—permanent controls must be in place within 4 years after the effective date initially and, if the initial compliance deadline has passed before an MSD occurs, within 2 years after the employer determines that the job meets the Action Trigger. (These deadlines and the reasoning behind them are explained in more detail in the summary and explanation for paragraph (x), later in this section of the preamble.)

OSHA is not, however, providing a prioritization requirement in the final rule. With the extended deadlines for the implementation of permanent controls, employers will have sufficient time to install all controls necessary to meet the final rule's compliance endpoint.

Employers are free to prioritize the installation of permanent controls within the compliance deadline for MSD problem jobs. There are many ways of assigning priorities to jobs. Priorities can be assigned on the basis of risk, severity, cost, or other reasons. As long as all required permanent controls are in place by the compliance deadline, the Agency does not believe it is necessary or appropriate for the standard to specify a prioritization schedule. Consequently, the final rule contains no requirements on prioritization.

Paragraph (l)—What Kinds of Controls Must I Use to Reduce MSD Hazards?

Paragraph (l) of the final rule requires the employer to use feasible engineering, work practice, or administrative controls, or any combination of them, to reduce MSD hazards in problem jobs. The standard also allows employers to use personal protective equipment (PPE) to supplement these controls but stipulates that PPE may not be used alone unless other controls are not feasible. In addition, the standard requires any PPE that is provided to be furnished to employees at no cost.

This paragraph of the standard is almost identical to the parallel proposed provision, with one exception. A footnote to this paragraph in the proposal would have prohibited the use of back belts/braces and wrist braces/splints as PPE; this footnote has been deleted from this paragraph of the final rule. As explained below, OSHA believes that evidence in the record suggests that back belts, in some limited applications, may help to reduce MSD hazards. However, back belts, like other PPE, may not be used alone if other controls are feasible. Wrist splints, wrist braces, and back braces, which are post-injury devices used to speed rehabilitation, are not considered PPE for the purposes of this standard.

Paragraph (l)(i)—Feasible Controls

Paragraph (l)(i) of the final standard mandates the use of feasible controls (engineering, work practice, and administrative controls) or any combination of them to control or reduce MSD hazards in problems jobs. This paragraph also states that engineering controls, where feasible, are the preferred method of control. This paragraph of the final rule is essentially unchanged from the proposal. OSHA is allowing employers this flexibility in the choice of controls because the Agency's experience and information in the rulemaking record indicates that these control approaches have been effective in contributing to reductions in the number and severity of workplace MSDs. In addition, OSHA believes that the broad range of jobs to which the standard will apply, and the great variation in workplace conditions covered, make compliance flexibility essential.

The final standard defines engineering controls as controls that physically change the job in a way that controls or reduces MSD hazards. Examples of engineering controls that are used to address ergonomic hazards are workstation modifications, changes to the tools or equipment used to do the job, facility redesigns, altering production processes, and/or changing or modifying the materials used. Engineering controls range from very simple to complex: from putting blocks under a desk to raise the work surface for a taller-than-average worker to providing a lumbar support pillow or rolled-up towel to a video display unit (VDU) operator, to redesigning an entire facility to enhance productivity, reduce product defects, and reduce workplace MSDs.

When choosing an engineering control to address a particular ergonomic problem, employers often have many choices, depending on how much they wish to spend, how permanent a solution they seek, how extensive a production process change they need, and employee acceptance and preference (see the discussion of control approaches in the summary and explanation for paragraph (m)). For example, as MacLeod (Ex. 26–1425) points out, an employer whose VDU operators are experiencing neck and shoulder problems has many options available, including the following:

- Raising the height of the monitor by putting it on phone books, building a monitor stand, buying an adjustable monitor stand, buying an adjustable wall-mounted monitor stand, or buying an adjustable desk-mounted monitor stand;
- Putting the desk on blocks; or
- Providing an adjustable-height desk or workstation.

Work practice controls involve changes in the way an employee does the job. They are defined by the standard as changes in the way an employee performs the physical work activities of a job that reduce exposure to MSD hazards. Work practice controls involve procedures and methods for safe work. Examples of work practices that reduce the potential for exposure to ergonomic risk factors are the use of neutral positions or postures to perform tasks (keeping wrists straight, lifting close to the body), use of two-person lifts when mechanical lifts are not available, and the observance of micro-breaks as necessary to minimize muscle fatigue. In the context of ergonomic programs, work practice controls are essential, both because they reduce ergonomic stressors in their own right and because they are critical if engineering controls are to work effectively. For example, workers need to be trained to use a power grip rather than a trigger grip if a new tool is to be successful, and they need to know how to adjust an ergonomically designed chair properly if it is to substantially reduce the risk of neck disorders, shoulder tendinitis, or another type of MSD. Work practices, like learning to vary job activities during the day (*e.g.*, moving from filing to sorting mail to using the computer and back again) can often reduce the magnitude and duration of exposure to the relevant risk factor sufficiently to make MSDs unlikely. To be effective, the culture at the workplace and supervisory support and reinforcement are necessary to ensure that safe work practices are routinely observed.

Administrative controls are work practices and policies implemented by the employer that are designed to reduce the magnitude, duration, and/or frequency of employee exposure to risk factors by changing the way work is assigned or scheduled. Examples of administrative controls that are used in the ergonomics context are employee rotation, job enlargement, and employer-initiated changes in the pace of work.

Administrative controls have been effective in addressing MSD hazards in a number of cases. For example, one case study cited in the Benefits chapter (Chapter IV of the Final Economic Analysis) describes a lift team approach that has been effective in reducing work-related back injuries among nursing personnel in a long-term care facility for the elderly (Ex. 26–1091). The table of ergonomic program and intervention case studies in Section VI shows dozens of examples of the successful use of administrative controls, either alone or in combination with other controls.

However, administrative controls must be used carefully if they are to provide effective protection to employees. A well-known ergonomics book, MacLeod's "The Ergonomic Edge," cautions:

> * * * job rotation is only beneficial if the tasks involve different muscle-tendon groups or if the workers are rotated to a rest cycle * * *. Furthermore, job rotation alone does not change the risk factors present in a facility. Although job rotation may have beneficial effects, engineering changes should remain the goal of the ergonomics program (Ex. 26–1425).

OSHA agrees, and paragraph (l)(1) notes, that engineering controls are the preferred method of controlling MSD hazards in cases where these controls are feasible. In contrast to administrative and work practice controls or personal protective equipment (PPE), which traditionally have occupied lower tiers of the hierarchy, engineering controls fix the problem once and for all.

Many commenters agreed that engineering controls are generally superior to other controls, *i.e.*, administrative controls, work practices, or personal protective equipment (see, *e.g.*, Exs. 26–1487, 26–1428, 26–1424, 26–2; 26–1426, 26–1425, 26–1408; and 26–3). For example, a recent ergonomics text states:

> Ergonomic hazards can be effectively eliminated by introducing engineering controls and applying ergonomic principles when developing workstations, tools, or jobs * * * only engineering controls eliminate the workplace hazards. Other strategies [work practices, administrative controls] only minimize the risk of injury (Ex. 26–1408).

However, a number of commenters mistakenly understood OSHA's statement in the proposal about the preferred status of engineering controls. These commenters understood this statement to mean that administrative or work practice controls could not be used in lieu of engineering controls. This was not OSHA's intent, nor is the inclusion of this statement in the final rule to be interpreted that way. In the final rule, as in the proposal, OSHA is permitting any combination of controls (except PPE) to be used to control MSDs, either alone or in combination. OSHA agrees, as these parties (see, *e.g.*, Exs. 30–3344, 30–4628) argued, that in many cases, the use of administrative or work practice controls alone may eliminate the hazard and thus obviate the need for more expensive engineering controls. For example, the Milliken Company stated:

> The authorization in [proposed] section 1910.920(a) for employers to use any combination of engineering, administrative, and work practice controls is effectively rendered meaningless with the statement that follows, which specifies that engineering controls are the preferred method for eliminating or materially reducing MSD hazards. This provides too much latitude for OSHA area directors to issue citations when an employer has used administrative and work practice controls rather than engineering controls (Ex. 30–3344).

Other commenters who misinterpreted the proposed statement about the preference for engineering controls were concerned that this preference could greatly increase the costs of compliance if OSHA enforced this provision. For example, the Rubber Manufacturers Association emphasized that "* * * the hierarchy placing engineering controls over other alternatives * * * restricts employers' discretion to choose less expensive, non-engineered alternatives" (Ex. 500–95). Other groups, such as Pharmteck (Ex. 30–4122) and Southern States Cooperative Inc. (Ex. 30–394), argued that "* * * a vast percentage of workplace injuries result not from exposure that might be limited through engineering solutions, but from problematic employee behavior and safety related decisions." Issues of feasibility were pointed to by several commenters (see, *e.g.*, Exs. 30–3368, 30–4264) such as the National Soft Drink Association, which stated:

> Although the employer is allowed to use any combination of controls, OSHA makes clear that engineering controls are preferred, where feasible. Lacking any definition or guidance of the term "feasible" complicates understanding or complying with OSHA's intent in this regard. Such ambiguity will undoubtedly lead to disagreements between employers and OSHA compliance personnel (Ex. 30–3368).

In response, OSHA notes that the hierarchy of controls has been an established industrial hygiene practice since the 1950s and has been a longstanding OSHA policy, as evidenced by many of the Agency's standards (*e.g.*, asbestos, § 1910.1001; benzene, § 1910.1047; cadmium, § 1910.1027; and methylene chloride, § 1910.1052). As was stated in the proposal, ergonomists endorse the hierarchy of controls because they believe that control technologies should be selected based on their reliability and efficacy in controlling or reducing the workplace hazard (exposure to risk factors) giving rise to the MSD. OSHA does not agree that "problematic employee behavior" is the cause of occupational injuries and illnesses, nor that feasibility will be a concern with this standard, in large part because the standard allows such flexibility in control approach and requires only that employers implement feasible controls.

Many groups (see, *e.g.*, Exs. 32–21–1–2–19, 20–69, 20–22, 30–4538, 30–3683) commenting on the proposal strongly supported the hierarchy of controls. For example, the American Association of Safety Engineers stated:

> We agree that engineering controls should be the first option in alleviating WMSDs. While this type of approach could be the most expensive from the short-term perspective, our experience is that engineering controls are the most efficient/effective approach in the long-term (Ex. 32–21–1–2–19).

OSHA agrees that the use of engineering controls is the most effective way of controlling the MSD hazards. However, as discussed above, this standard permits employers to use any combination of controls, except PPE alone, to address MSD hazards in their workplace.

Paragraph (l)(2)—Personal Protective Equipment

Paragraph (l)(2) of the final standard permits employers to use personal protective equipment (PPE) to supplement engineering, work practice, and administrative controls. However, personal protective equipment may not be used alone, *i.e.*, as the sole means of employee protection, unless no other controls are feasible. In addition, any PPE that is provided must be made available to employees at no cost.

PPE is equipment that is worn by the employee and reduces exposure to risk factors and MSD hazards in the job. Examples are palm pads and knee pads to reduce contact stress, vibration-attenuation gloves, and gloves worn to protect against cold temperatures.

The hierarchy of controls, which, as discussed above, is widely endorsed by ergonomists, occupational safety and health specialists, and health care professionals, accords last place to PPE because:

- Its efficacy in practice depends on human behavior (the manager's, supervisor's and worker's),
- Studies have shown that the effectiveness of PPE is highly variable and inconsistent from one worker to the next,
- The protection provided cannot be measured reliably,
- PPE must be maintained and replaced frequently to maintain its effectiveness,
- It is burdensome for employees to wear, because it decreases mobility and is often uncomfortable,
- It may pose hazards of its own (*e.g.*, the use of vibration-reduction gloves may also force workers to increase their grip strength).

One author (Ex. 26–1408) notes that: "* * * in most cases, the use of PPE focuses attention upon worker responses and not the causes of ergonomic hazards.* * * PPE does not eliminate ergonomic hazards * * * [and] must be considered as the last line of defense against ergonomic hazard exposure." Thus, although the final standard permits PPE to be used as a supplemental control, it cannot be relied on as a permanent solution to MSD hazards unless other feasible controls are unavailable.

In the proposal, OSHA included a note to the proposed section on the hierarchy of controls that stated that back belts/braces and wrist braces/splints were not to be considered PPE for purposes of the standard. This note was added to alert employers to the fact that back belts and wrist braces, which are widely used in U.S. workplaces, were not to be considered a control to reduce ergonomic hazards under the proposed standard. OSHA pointed out that these devices were being marketed as equipment that could prevent MSDs, although the evidence to support these claims was inconclusive.

A number of commenters and studies in the record (see, *e.g.*, 32–30–1–15, 32–30–1–6, 32–30–1–7, 32–30–1–29, 32–30–1–14) suggest that OSHA should allow the use of back belts as PPE on the grounds that these devices have been shown to reduce workplace injuries. For example, Mr. Jeffrey Whitaker commented that:

> As safety professionals we realize that back supports alone are not a solution and we apply the hierarchy of controls in our work with our customers on a daily basis. We recommend engineering and work practice controls be used whenever possible but we all know of hundreds of workers' whose jobs will never or cannot be changed. These workers need at least a modicum of support when doing their jobs. Back supports are used in these situations to provide a basic line of defense for vulnerable workers (Ex. 30–2724).

Commenters from Chase Ergonomics were of the same opinion:

> Back supports should be recognized as an acceptable component of an overall back safety program under the hierarchy of controls. As with any PPE, back supports are not the first intervention option. In many jobs, however, neither engineering controls nor work practice or administrative controls are feasible or practicable. In these circumstances, OSHA's PPE standard allows employers to provide workers with protective equipment that is appropriate for the hazards present * * * OSHA should clarify that employers may use back supports as a supplement to their overall back injury prevention program (Ex. 30–3857).

However, other organizations and commenters cautioned against the use of back belts as PPE. For example, in a 1994 report reviewing the available scientific literature on the use of back belts, NIOSH expressed concern that wearing a belt may alter workers' perceptions of their capacity to lift heavy workloads (*i.e.*, belt wearing may foster an increased sense of security, which may not be warranted or substantiated) (Ex. 15–16). NIOSH does not recommend the use of back belts as PPE, and neither do a number of professional societies (Exs. 15–15, 15–17, 15–33, and 500–41–99).

However, in response to comments submitted to the record regarding back belts, OSHA has reviewed the available scientific literature addressing the efficacy of back belts in reducing MSDs. OSHA has conducted an extensive review of the evidence in the record on the effectiveness of back belts in industrial use. The evidence is mixed. Several studies (see, *e.g.*, Exs. 32–30–1–21, 32–30–1–22, 32–30–1–2, 32–30–1–8, 33–30–1–16, 32–31–1–23) of back belt use showed negative results. For example, a 1996 study by Rafacz and McGill (Ex. 32–30–1–21) that investigated the effectiveness of back belts in 20 healthy male subjects found that belt wearing increased diastolic blood pressure during every task performed by the study subjects. The authors concluded that "wearing an abdominal belt may put undue strain on the cardiovascular system and * * * that screening for cardiovascular compromise should be conducted before occupational belt-wearing." Another study (Alexander *et al*. 1995) that evaluated belt use in nursing, dietary, and environmental services workers found no significant differences in the number of self-reported back injuries. The authors concluded that "This finding supports research [showing] that universal prescription of back belts did not decrease the number of back injuries and that there [is] no support for uninjured workers wearing back belts to reduce risk of injury." (Ex. 32–30–1–2).

A number of back belt studies in the literature report inconclusive results (see, *e.g.*, Exs. 32–30–1–22, 32–30–1–8, 32–30–1–24, 32–30–1–12). For example, a study by Kraus *et al*.1996 (Ex. 32–30–1–12) reported a lower acute back injury rate among belt users than non-users, but cautioned that a number of confounders, such as the inability to evaluate injury status, job lifting intensity, or length of employment "may be important confounders or effect modifiers that delimit the potential effect of back supports."

However, a number of recent studies (see, *e.g.*, Exs. 32–30–1–25, 32–30–1–6, 32–30–1–7, 32–30–1–14, 32–30–1–19) contain limited evidence that back belt use can, in certain circumstances, provide some protection to workers. For example, a 1998 study evaluated trunk stiffening during flexion and lateral bending and concluded that "increased spine stability may provide greater protection against injury following unexpected or sudden loading" (Ex. 32–30–1–6). A 1995 review of the literature on back belt effectiveness (Ex. 32–30–1–7) concluded: "Based on our assessment of the * * * studies reviewed in this paper, a major finding is that back supports designed solely for specific purposes could be biomechanically, physiologically, and psychophysically effective in relieving the loads on the lumbar spine for employees engaged in many industrial operations." A study by one of OSHA's expert witnesses, Dr. Stephen Lavender (Ex. 32–30–1–14) that evaluated the effect of lifting belts, foot movement, and lift asymmetry on trunk motions, concluded that the lateral bending and twisting motions of the torso are controlled with belt use.

OSHA's review of the voluminous record on the back belt issue shows that back belts may have protective effects in certain industrial settings, such as sudden unexpected loading of the spine (Ex. 32–30–1–14). OSHA is aware that several of these studies had small sample sizes (*e.g.*, 10 subjects) (Ex. 32–30–1–6), lacked control groups, and were of short duration. Nevertheless, the Agency is persuaded that the evidence for the effectiveness of back belts, although limited, exceeds that available for other types of equipment that workers wear that is classified as PPE (*e.g.*, palms pads, knee pads). OSHA has therefore decided not to prohibit the classification of back belts as PPE for the purposes of this standard. Accordingly, the note to that effect contained in the proposal does not appear in the final rule. Permitting back belts to be used as PPE means that employers will be required to provide them to their workers, if they choose to do so, at no cost to employees. Further, as with any PPE, back belts used in this manner are subject to OSHA's standard for PPE (29 CFR 1910.132).

OSHA does not believe that the record in this rulemaking does not support permitting other devices, such as back braces and wrist braces or splints, which are generally prescribed as part of a treatment regimen, to be considered PPE. These devices are generally prescribed for individuals who have already been injured, and are not intended to be used in the prevention of injuries. In some cases, they may even exacerbate an existing MSD hazard. As explained by the AIHA, wrist splints and braces may present serious problems:

> Wrist splints or braces used to keep the wrist straight during work are not recommended, unless prescribed by a physician for rehabilitation. * * * using a splint to achieve the same end may cause more harm than good since the work orientation may require workers to bend their wrists. If workers are wearing wrist splints, they may have to use more force to work against the brace. This is not only inefficient, it may actually increase the pressure in the carpal tunnel area, causing more damage to the hand and wrist." (Ex. 26–1424).

Because these devices are used for treatment after an injury has occurred and because they are not intended to reduce exposure, OSHA finds that it would be inappropriate to consider back braces or wrist braces/splints as PPE under the final standard.

Paragraph (m)—What Steps Must I Take to Reduce MSD Hazards?

Paragraph (m) of the final rule establishes the steps employers must follow to reduce the MSD hazards in their jobs. The employer's obligation to control these hazards is established in paragraph (k); this paragraph (m) sets out the procedures to be followed and the timelines to be met to achieve the necessary hazard reduction.

The procedures in paragraph (m) are similar to those in proposed § 1910.919, although they have been revised in the final rule to reflect the Action Trigger and to state what employers must do if the controls they have implemented are not effectively reducing MSD hazards. The steps specified in paragraph (m) are widely recognized as basic procedures in effective control selection and problem-solving. For example, the NIOSH publication, *Elements of Ergonomic Programs*, describes a similar process (Ex. 26–2). Paragraph (m) also sets the deadlines for the implementation of initial and permanent controls to reduce MSD hazards. OSHA received very few comments on the proposed control steps provision.

The corresponding provision in the proposal also contained a requirement that employers identify and evaluate MSD hazards when they changed, designed, or purchased equipment or processes in problem jobs. The final rule contains no similar requirement.

OSHA does not believe that a separate provision is necessary, because the final rule includes a "feedback" loop between paragraph (m)(4) of the rule and paragraphs (m)(1) and (m)(2). OSHA received only one comment on this proposed provision (Ex. 32–300–1). This commenter asked whether OSHA intended this provision to be similar to the management of change provision in the Process Safety Management standard (29 CFR 1910.119). Since this proposed provision has not been carried forward in the final rule, the issue raised by this commenter is moot.

Paragraph (m)(1)—Ask Employees

This paragraph requires employers who have determined that they have a problem job to ask the employees in the problem job, and employee representatives, to recommend measures to reduce the MSD hazard in the job. This provision is essentially unchanged from the proposal, except that employee representatives are mentioned specifically in the regulatory text, which reflects OSHA's decision to add this language to provisions of the regulatory text where the involvement of employee representatives is particularly important. Several commenters (see, *e.g.*, Exs. 32–339–1, 32–182–1) urged OSHA to include employee representatives in this step of the hazard identification and control process because of the contribution they could make. OSHA agrees and has revised the text accordingly.

Asking employees and their representatives for recommendations of controls that will reduce MSD hazards is an effective and efficient way of solving ergonomic problems. Many commenters (see, *e.g.*, Exs. 3–112, 3–164, 30–3765, 30–3748, 500–137, 500–220) reported that the employees who are doing the job are usually the best source of information on the tasks causing the hazard and ways of solving the problem. For example, the American Health Care Association stated:

> Employers and employees who work in the industry are in the best possible position to identify risk factors in their workplace and to develop prevention methods that concentrate on the significant problems unique to their particular industry's environment (Ex. 3–112).

In many problem jobs, employees and their representatives will be able to pinpoint the problem quickly and to suggest easily adopted controls. In many cases, the solution will become obvious at the job hazard analysis stage; many problems also can be addressed with simple, off-the-shelf controls. Examples are:

- Eliminating awkward postures (such as bending when leaning across the workstation to reach a tool) by putting blocks under a work bench to raise the work surface height.
- Eliminating awkward postures of the neck and reducing stress on the back by putting packages of copy paper under a VDT monitor to raise it or taking the VDT off the CPU to lower it.
- Reducing awkward postures of the neck by moving the light source or removing the light bulbs that were causing glare on the VDT monitor screen.
- Reducing force by cleaning thread from the wheels of a cart that has been hard to push. (Many of these controls would qualify for the Quick Fix option (see paragraph (o).)

Some commenters (see, *e.g.*, Tr. 63354, 9038, 12647), however, were concerned that consulting with employees and their representatives could lead to disagreements about the controls selected. OSHA's experience, and comments to the record (see, *e.g.*, Exs. 3–112, 26–5, 30–3765, 30–3748, 500–137, 500–220, 500–218), do not suggest that this is a problem. Instead, these commenters point to the value of employee input. OSHA expects, however, that employers will use their management experience and judgment to resolve any disagreement that may arise. As is the case for all OSHA standards, the employer is clearly responsible for selecting controls and evaluating their effectiveness.

Another commenter (Ex. 32–300–1) argued against involving employees in the problem-solving and control identification process on the grounds that doing so might disappoint the employees if their suggestions were not taken. OSHA's experience suggests just the opposite, *i.e.*, that nothing disappoints employees more than not being part of a process that affects their working conditions so directly. Some employers also report that they bring their in-house resources (ergonomics committee members, safety and health professionals, ergonomists) into the process at this stage (see, *e.g.*, Exs. 26–1370, 502–17).

Paragraph (m)(2)—Initial Controls

This provision requires employers to identify and implement initial controls (referred to as "interim" controls in the proposal) to reduce MSD hazards within 90 days of the time the employer determines that the job is a problem job. Because the final rule allows employers to choose from engineering controls, administrative controls, work practice controls, and—as a supplement to these controls—personal protective equipment, OSHA believes that employers will be able to meet this timetable, which is essential to the protection of employees in problem jobs. OSHA anticipates that many employers, particularly those whose jobs can be controlled with off-the-shelf controls, will simply implement permanent controls within 90 days and be done with it. Others, however, will develop a plan and timetable for permanent control implementation and may need the full 4 years (2 years after the standard has been in effect for some time) to reach the control levels specified in paragraphs (k)(1) or (k)(2) of the final rule.

For these employers, the implementation of initial controls will generally mean a greater reliance on administrative controls, work practices, and, in those situations where personal protective equipment is effective, on PPE, in the period between the 90-day deadline in paragraph (m)(2) and the permanent control compliance deadline in paragraph (m)(3). OSHA recognizes that initial controls may not, in all cases, reach the control levels required by paragraph (k)(1) or (k)(2) for permanent controls; nevertheless, employers are required to make good faith efforts to address problem jobs promptly to protect the employees in them.

OSHA expects employers to implement initial controls that will substantially reduce employee exposure to the risk factors that are contributing to the MSD hazard. For example, employers might provide employees required to manually carry loads from one point to another with a cart or a hand dolly as an initial control, or they might reduce the weight of the object being carried while waiting to install a permanent conveyor system. In other cases, an employer might decide to implement a system of employee rotation while waiting to install new power tools throughout the plant. Other examples of controls employers often implement initially and then replace with more permanent controls later are the provision of tools with longer handles when excessive reaching is involved, anti-fatigue mats and sit-stand stools when excessive standing is the problem, and vibration-reduction gloves while waiting for new power tools with lower vibration levels to be installed. By substantial reduction, OSHA means that the initial controls must reduce the MSD hazard materially by decreasing the magnitude, frequency or duration of the employee's exposure to the relevant risk factors. Examples of controls that would not meet the employer's obligations under paragraph (m)(2) would be decreasing the weight of a package that is manually lifted from 90 to 85 pounds (because both weights substantially exceed the weight an employee should lift alone) or rotating employees into a second job that has the same risk factors (because this would not reduce the magnitude or duration of exposure).

The purpose of paragraph (m)(2) is to ensure that the employer takes steps quickly (*i.e.*, no more than 90 days after the job is identified as a problem job) to reduce the exposures of at-risk employees (*i.e.*, those in jobs that have identified MSD hazards). Waiting until permanent controls are installed, which may take as long as 4 years, would leave these employees unprotected and increase the likelihood that another MSD incident will occur. The concept of initial controls (interim controls) is a well-established principle of worker safety and health protection and is incorporated in many OSHA standards, as one commenter noted (Ex. 26–1370).

Paragraph (m)(3)—Permanent Controls

This paragraph requires employers to identify and implement permanent controls that will achieve the hazard reductions required by paragraphs (k)(1) and (k)(2) of the standard. This provision is essentially unchanged from the proposal, except that it has been revised to reflect the final rule's objective compliance endpoints and the function of the action trigger.

There are many ways employers can identify permanent controls in addition to asking employees and their representatives for control ideas. These include:

- Asking other establishments in the company how they have solved a similar problem; many companies with OSHA corporate-wide settlements have found this approach useful (see, *e.g.*, Ex. 32–185–3).
- Asking the industry trade associations for suggestions (the food retail industry, for example, worked as a group to reduce package weights (Tr. 4948).
- Attending ergonomics conferences and trade shows.
- Talking to the company's insurance agent about solutions that have worked for other companies.
- Reviewing equipment catalogs (one commenter reported using this approach to identify mechanical alternatives to drum handling (Tr. 6981)).

Several commenters stated that employers are best positioned to choose their own sources of control information and ideas (see, *e.g.*, Exs. 30–434, 30–240, 30–133, 30–3122, 30–3284, 32–300–1), and OSHA agrees, except that employees in the problem job and their representatives must also be involved in the process, as required by paragraph (m)(1).

Employers have many control strategies to choose from when identifying permanent controls. The controls selected may be any one, or any combination of, engineering, work practice, or administrative controls. These controls may be supplemented by PPE, but PPE may not be used alone unless other feasible controls are not available (see paragraph (l) of the standard). Among the factors employers consider when selecting controls are:

- Which control achieves the greatest reduction in employee exposure to the MSD hazard
- Which is likely to be accepted and used by employees
- Which takes the least amount of time to implement
- Which achieves a substantial reduction in exposure at the lowest cost.

These criteria are included as examples only; the standard does not require employers to use these criteria because OSHA recognizes that employers will choose those factors to consider that are most appropriate to their workplace. The following chart lists many controls that may be appropriate to reduce employee exposure to the risk factors that are responsible for MSD hazards, depending on the circumstances of a particular workplace. This list is illustrative only; it is not exhaustive but is provided merely to show that there are often many different control approaches that will reduce the magnitude, duration, or frequency of risk factor exposure.

Ergonomic risk factors that may be present	Examples of controls
Force (Exertions)	Use powered tools Change pinch to power grip Use longer handle Use appropriate size handle Use powered lift assist Counterbalance the weight Use lift tables Reduce the weight of the object Ensure that the center of gravity of the tool is over the hand Use a fixture, clamp or jig Provide periodic tool or equipment maintenance
Force (Manual Handling)	Lighten the load Use lift assist Use lift table Place package in larger containers that are then mechanically handled Use two-person lift team Rely on gravity to move the object Reduce friction when objects must be pushed or pulled Reposition object closer to the employee Provide pallet or table that can be rotated Provide space so that the employee can move closer to the object Reduce the size of the object Slide the object closer before lifting Place objects to be lifted above floor level Use adjustable height tables Store heavy objects at waist height Put handles on the object Modify the process to eliminate or reduce moves over a significant distance Convey the object (*e.g.*, conveyor, ball casters, air) Use fork lifts, hand dollies, or carts Use appropriate wheels on carts (and maintain the wheels) Provide handles for pushing, pulling or carrying Arrange workstation so that work is done in front of the worker Use conveyors, chutes, slides, or turntables to change direction of the object Provide belt with handholds to assist in moving patients Provide gloves that assist in holding slippery objects Redesign the handling job to avoid movement over poor surfaces Use surface treated with anti-slip material or anti-skid strips Provide footwear that improves friction
Awkward posture	Provide workstation adjustability Raise/lower the worker's position Raise/lower the workstation Provide better mechanical advantage, such as with a longer handle Design task for smooth movements Redesign the flow of the workplace layout Reposition object to allow for a neutral posture Train workers to use less stressful postures Provide better access to machinery Rotate pallet or work surface Allow short breaks Position work in front of the worker Use a tool to extend the reach Provide lumbar support for a seated worker Provide workstation adjustability Provide tool holders Provide a strap on the tool handle to allow the hand to relax while maintaining control Provide sit/stand workstations Rotate workers to jobs that do not involve the same posture Provide anti-fatigue mats Provide foot rests
Repetition	Use power tools Distribute the work so that less time is spent at repetitious tasks
Contact stress	Attach a well-designed handle to the tool Wrap or coat the handle with cushioning and non-slip material Provide a handle that does not press into the palm Wear knee pads or palm pads Use a soft mallet for hand hammering
Vibration	Use low vibration tools Isolate source of vibration from the worker Maintain tools regularly

The final rule allows employers coming into compliance with the standard initially to take up to 4 years, if necessary, to implement permanent controls; this period is reduced to 2 years for employers who identify problem jobs more than 2 years after the standard's effective date. Several commenters (see, *e.g.*, Exs. 32–339–1, 32–185–3, 32–210–2, 30–3815, 32–368–1) were concerned with the proposed compliance deadlines for the implementation of controls. The final rule has extended the permanent control deadline to 4 years from the standard's effective date; this phase-in drops to 2 years after the standard has been in effect for 2 years. For OSHA's responses to the record on compliance deadlines, see the Summary and Explanation for paragraph (x). OSHA believes that these control implementation deadlines will provide smaller employers, and employers with more complex control requirements, the time they need to plan for, obtain, and implement permanent controls.

Paragraph (m)(4)—Track Progress

Paragraph (m)(4) of the final rule requires employers to make sure that the controls they have identified and implemented are reducing MSD hazards and have not unintentionally created new MSD hazards. This paragraph has been revised from the proposal to include additional steps employers must take if they discover that their controls are not achieving the levels required or have introduced new MSD hazards. The proposal, in contrast, simply required employers to track their progress but did not specify what they were to do if their controls were not working as planned.

OSHA believes that this paragraph is essential, for several reasons. First, unless employers follow up on their control efforts, they will not know whether they are protecting their employees and are in compliance with paragraphs (k)(1) or (k)(2) of the rule. Second, in establishments with many problem jobs and a job prioritization plan in place, ascertaining the effectiveness of controls is important to ensuring that the employer's abatement strategy is an effective one. Third, control effectiveness is the basis of any effective program, and thus plays a critical role in evaluating the elements of the program. For example, an evaluation of work practice controls is an excellent way of determining whether training in these controls has been effective.

This step of the control monitoring process requires employers to consult with employees in the problem job and their representatives to ensure that the controls have been effective in reducing the physical difficulties employees associated with the job. The standard does not require employers to use quantitative or qualitative measures to evaluate control effectiveness, but many employers use such methods. Examples of before-and-after approaches used over a longer (*i.e.*, 6-month) period include:

- Reductions in severity (measured as fewer days away from work)
- Reductions in the number of symptoms reported in a symptoms survey
- Reductions in workers' compensation costs
- Reductions in MSD incidence rates.

Methods used in shorter-term evaluations, *i.e.*, those conducted within 30 days, include talking with employees and their representatives and symptoms surveys. NIOSH (Ex. 26–2) recommends that employers wait at least 2 to 4 weeks after control implementation to assess the effectiveness of controls, because this period of time is often enough to allow employees to tell whether the situation has improved.

OSHA believes that the process of hazard identification, control selection, and control evaluation has been greatly facilitated by the fact that the final rule identifies objective criteria against which employers can measure the extent of the risk factors present and the effectiveness of their efforts to control or reduce the hazard. Employers are not required to use the hazard identification tools referenced in Appendix D–1 or provided in Appendix D–2, but they are free to do so. OSHA believes that employers will generally find that the greater certainty that results from the appropriate use of these tools enhances their ability to protect their employees and increase the employer's confidence that the standard's control endpoints are being met.

Paragraph (o)—May I Use a Quick Fix Instead of Setting up a Full Program?

Paragraph (o) of the final rule sets out alternative provisions that employers may follow in lieu of setting up a full ergonomics program. These alternative provisions are referred to as the Quick Fix approach. The Quick Fix option allows employers to control an MSD hazard quickly and more informally without, for example, conducting a complete job hazard analysis, setting up a training program or a periodic program evaluation process.

OSHA has included a Quick Fix option in this standard to provide compliance flexibility for those employers who have:

- Only a few isolated MSD hazards (that is, they have had one prior MSD incident in any job in which an MSD incident is reported after the effective date and only 2 prior MSD incidents in the workplace during the 18 months before the new MSD incident is reported), and
- MSD hazards that can be identified easily and addressed quickly (that is, they can fix the job within 90 days after the MSD incident is determined to meet the Action Trigger).

OSHA believes that the Quick Fix option is an efficient mechanism for providing ergonomic protection for employees, while at the same time reducing regulatory burdens for those employers who have only a few isolated problems.

The proposed rule also included a Quick Fix provision, which a number of commenters supported (*e.g.*, Exs. 30–3813, 30–3436, 32–210–1, 30–294, OR 326, 500–218, Tr. 2134, 13642). For example, one commenter stated, "I think that the Quick Fix is an outstanding idea that will reduce the burden of this standard for many companies" (Ex. 30–3436). Portland General Electric Company agreed:

> We believe that the *Quick Fix option is extremely valuable*. We operate on a system of early reporting and *effective individual case management*, to the benefit of both the employee and the company (Ex. OR 326).

Some employers said that they had implemented types of Quick Fix approaches in their workplaces (see, *e.g.*, Exs. OR 326, Tr. 14715–16).

A number of commenters maintained that the Quick Fix would not be helpful or would not work. For instance, Integrated Waste Services Association said: "While the "quick fix" idea sounds reasonable, quickly 'fixing a problem job' is unrealistic and illusory" (Ex. 30–3853). Some of these commenters said the Quick Fix approach would not reduce regulatory burdens for employers (see, *e.g.*, Exs. 30–3853, 30–2988, 30–3815). And the National Association of Manufacturers (Ex. 30–3815) said that the Quick Fix "is next to meaningless for an establishment of any size."

Other commenters were more optimistic about the Quick Fix concept, but said that changes were needed to make it more useful for employers. Kaiser Permanente, for instance, supported the Quick Fix idea as a "practical and cost effective idea" in principle, but argued that the proposed provision was too limited and too vague to be workable (Ex. 30–3934). Others said the proposed Quick Fix offered an "inappropriately narrow opportunity" and urged OSHA to allow more abatement time and allow more than one Quick Fix in any one job (Ex. 30–2988, 500–145). Some commenters, however, argued that allowing more than one Quick Fix in a job was not protective enough (see, *e.g.*, Ex. 30–2825, 32–182–1). In addition, AFSCME opposed extending the Quick Fix option this way because it would be "encouraging a piecemeal and disjointed approach to ergonomics" (Ex. 32–182–1).

On the other hand, some commenters were concerned that the proposed Quick Fix was not adequately targeted to those workplaces where such an approach would be appropriate. The AFL–CIO said:

> In our view, the quick fix provisions proposed by OSHA are more properly suited to those workplaces where the number of jobs with MSD hazards is limited and where there are few MSDs. In those situations, focused efforts to identify and correct hazards quickly may be the best solutions, and a full ergonomics program may not be needed (Ex. 32–339–1).

The AFL–CIO and others also identified specific high hazard workplaces in which the Quick Fix would not be appropriate, such as nursing homes, warehouses, automotive assembly plants, and meatpacking and poultry processing plants (Exs. 32–339–1).

OSHA has made a number of changes to the Quick Fix provision in this final standard to address these concerns. These changes include:

- Focusing the Quick Fix more carefully on those employers with limited MSD problems by specifying that it applies where there have been only 2 prior MSDs in the workplace in the past 18 months,

- Providing clearer criteria for hazard identification and control (*i.e.*, the Basic Screening Tool) and compliance "endpoint" (*i.e.*, the levels in Appendix D),
- Ensuring that employees receive training in using the implemented controls so that the Quick Fix is more likely to be successful, and
- Simplifying the criteria for determining whether a Quick Fix has been successful or has failed.

Paragraph (o)(1)

Paragraph (o)(1) defines which employers may avail themselves of the Quick Fix approach instead of implementing a complete ergonomics program. Employers may use the Quick Fix approach if, within the last 18 months:

- No more than 1 prior MSD incident has occurred in the job in which another MSD incident is reported, and
- There have been no more than 2 prior MSD incidents in the workplace as a whole.

This represents a change from the proposed rule, which would have allowed employers to use Quick Fix option in every job in the workplace, but only for the first MSD incident in that job.

OSHA believes that the changes in the final rule provide more compliance flexibility, and thus will allow more employers to take advantage of the Quick Fix option. First, changing the Quick Fix provision to allow employers to use it 2 times in the same job makes the option available for more jobs. Allowing 2 Quick Fixes in one job recognizes, as Kaiser Permanente pointed out, that the occurrence of a second MSD in the same job may not necessarily mean that a previous control measure has not worked, but rather that a different combination of risk factors may be present (Ex. 30–3934):

> [T]he conclusion in the proposed rule that the "Quick Fix does not work" if another MSD is reported in the same job within 36 months * * * wrongly assumes that the same fix should work for the same physical work activities and conditions. The fix that works for one employee's condition may not work for another because of that employee's physical characteristics or non-work related contributing factors. A second or third MSD in the same job does not mean the initial quick fix did not work, and employers should have the option to apply a quick fix to newly reported MSDs (Ex. 30–3934; see also Exs. 30–2088, 500–215).

Second, not restricting the 2 MSD incidents to ones caused by different risk factors, as the proposed rule would have done, will also make the Quick Fix option available to more jobs. Eliminating this restriction on the second MSD incident also addresses commenters' concerns that this provision was not clear enough to be workable (see, *e.g.*, Exs. 30–1349, 30–358, 30–595, 30–538, 30–323, 30–1022, 30–1551, 30–3745, 30–3723).

Third, halving the Quick Fix time frame to 18 months should make the Quick Fix option available to more employers because MSDs that occurred several years ago would not disqualify employers from using the Quick Fix option. In addition, it makes the Quick Fix option more attractive, as Kaiser Permanente noted:

> For large employers, tracking MSDs to determine whether another covered MSD is reported in the same job within 36 months would be cumbersome (Ex. 30–3934).

Organization Resources Counselors, Inc. (ORC), agreed:

> The proposed requirement that the employer establish a full ergonomics program if another similar MSD occurs in the job within 36 months is too rigid because the occurrence of MSDs is so closely related to individual worker characteristics. If the employer determines that additional feasible controls will eliminate the significant risk from that job for that worker, another quick fix should be permitted (Ex. 30–3812).

OSHA estimates that these changes should allow a large percentage of jobs, as high as 25 percent of all jobs meeting the Action Trigger, to be controlled using a Quick Fix. (See Chapter V of the Final Economic Analysis).

At the same time, limiting the Quick Fix option to employers who have only 2 MSDs in their workplace during the prior year and a half also helps to target more precisely the provision to those workplaces that have only isolated MSD problems. OSHA agrees with commenters that where only a few MSDs are occurring, employers may be able to address the problems effectively in an informal way, but that the occurrence of several MSDs in a workplace in just over a year "may be indicative of a bigger problem" that requires a more systematic approach to adequately address (Ex. 32–210–2).

Although OSHA believes that targeting the Quick Fix to workplaces with few isolated MSD hazards will likely make the option most useful to small businesses, larger employers may also find the Quick Fix a useful mechanism. For example, large employers who have ergonomics programs in some jobs would be free to use the Quick Fix option if an MSD hazard were identified in another job.

Paragraph (o)(2)

Paragraph (o)(2) of the final rule sets up the process that employers using the Quick Fix option must follow. Employers must use this process to fix the injured employee's job and all "same jobs" in the establishment. Although this process is informal and flexible, it nonetheless includes those basic steps that employers who have Quick Fix or "quick response" processes use (Ex. 32–198–4–27–1). This process includes:

- Providing prompt MSD management to the injured employee (paragraph (o)(2)(i));
- Talking with employees to identify those tasks they associate with the MSD incident (paragraph (o)(2)(ii));
- Observing employees performing the job to identify the risk factors likely to have caused the MSD incident (paragraph (o)(2)(iii));
- Asking employees for their ideas for reducing exposure to the MSD hazards (paragraph (o)(2)(iv));
- Implementing measures within 90 days to control or reduce the MSD hazards (paragraph (o)(2)(v));
- Training employees in using the controls implemented (paragraph (o)(2)(vi)); and
- Keeping records of the Quick Fix (paragraph (o)(2)(vii)).

These provisions of the final rule are similar to steps in the proposed Quick Fix, although they have been revised in some respects to respond to comments received.

Same Jobs

Also similar to the proposed rule, those employers who qualify for and select the Quick Fix option must fix not only the injured employee's job but also all other "same jobs" in the establishment. This requirement applies both to employers using the Quick Fix and to those who must implement ergonomics programs. Several commenters objected to requiring employers to apply the Quick Fix beyond the injured employee's individual job (see, *e.g.*, Exs. 30–2208, 30–2725, 30–3745, Tr. 9183). Some said having to fix all same jobs was not necessary and would impose excessive cost. For example, the Center for Office Technology (Ex. 30–2208) stated:

> The Quick Fix section is worded so that if one office worker is experiencing discomfort and his workstation is changed—the example given is purchasing an adjustable workstation for a VDT operator—all the "same job" employees at that worksite would also have to get an adjustable workstation when in fact no other employees may need them.

OSHA believes this requirement is necessary because it helps to ensure that other employees performing the same physical work activities and exposed to the same MSD hazards are provided with protection before they too get hurt. In this sense, the "same job" requirement helps to make the final rule more proactive and preventive. OSHA believes that controlling other same jobs will also be cost-effective for employers because it is only a matter of time, in jobs meeting the Action Trigger, until another MSD incident occurs.

For several reasons, OSHA does not believe that the "same job" requirement will impose an undue burden on employers. First, OSHA believes that the number of "same jobs" in the establishments likely to use the Quick Fix option will be small, because OSHA believes that many qualifying employers will generally be small businesses. Second, the final rule allow employers to limit the Quick Fix to the injured employee's job where the employer has reason to believe that the risk factors in the job only pose a problem to the injured employee. (See note to paragraph (j).) Thus, if the case referred to by COT (Ex. 30–2208) meets the requirements described in the note to paragraph (j), the employer would only be required to fix that employee's job. This provision was included in the proposed rule, and a number of commenters supported it, saying that such an exception was needed because the individual characteristics of one worker may require controls that don't work for or are not needed by other workers (see, *e.g.*, Exs. 30–3745, 30–358).

Finally, even where there are "same jobs" that also must be Quick Fixed, OSHA does not believe that the Quick Fix process will be burdensome for employers. The Quick Fix process is very informal and thus provides employers with great flexibility in complying with each step in the Quick Fix process. In addition, the final rule allows employers to include a sample of employees, rather than all employees in the same jobs, in the hazard identification and solution consultation process. OSHA agrees with commenters that allowing employers to rely on a sample of the employees who are likely to have the greatest risk factor exposure in the job should help reduce burdens for large employers and for employers with many employees in the same job (Ex. 30–2208).

1. Provide MSD Management

Like employers who must implement an ergonomics program, employers who select the Quick Fix option must provide the injured employee with prompt MSD management after they have determined that an MSD incident has occurred and the job meets the Action Trigger. This includes providing the injured employee with access to an HCP and work restrictions during the recovery period, if necessary. Where work restrictions are needed, employers who select the Quick Fix option also must provide the work restriction protection (WRP) that this standard requires. (For further discussion of MSD management requirements, see summary and explanation for paragraphs ( ), (q), (r), and (s) below.)

2. Talk With Employees

Paragraph (o)(2)(ii) requires that, as part of the process of identifying the MSD hazards, employers using the Quick Fix option must at least to talk with the employees in the job (and their representatives). The purpose of this consultation is to ensure that employers ask those who know the most about the job-those that perform it-for their help in identifying the physical work activities and job conditions that they believe are mostly likely to be associated with the MSD incident. OSHA believes that including this step in the Quick Fix process will help employers more quickly and fully identify the problem so they will have the chance to fix the problem within the Quick Fix deadline.

Many commenters agreed with the importance of including employees in the hazard identification process (see, *e.g.*, Exs. 500–200, 500–215, 30–1100, Tr. 3565). The record consistently shows that employers with effective ergonomics programs consult with their employees because employees know what tasks are contributing to their MSD signs and symptoms and because they often have the best and least expensive ideas for solutions (Exs. 30–1100, 500–200, 500–215, Tr. 14903, Tr. 3062). Talking to other employees who perform the same job as the injured employee also provides employers with an opportunity to identify the problems with the job more fully, and this, in turn, will help ensure that the right solutions will be found to address the problem.

3. Observe the Job

Paragraph (o)(2)(iii) specifies that employers must observe employees performing the job to identify the MSD hazards that caused the MSD incident. This step helps to ensure that nothing has been overlooked in the discussion with employees. In addition, as several commenters have pointed out, often problems in jobs become readily apparent as soon as the person responding to the report has an opportunity to watch employees performing the job (Exs. 30–3436, 26–2, Tr. 1038).

To provide employers with maximum flexibility in complying with this step, paragraph (o)(2)(iii) allows employers to select the method of job observation that works best for the conditions in their workplace. For example, employers may simply watch employees perform the job; videotape the job; or use a simple checklist, such as the VDT checklist in Appendix D–2 or checklists similar to the one developed by the Dow Chemical Company (Ex. 32–77–2–1). In addition, employers are free to determine in what order they want to conduct the steps of the Quick Fix process. Some commenters said that they observe the job first as a way to better focus their discussions with employees.

4. Ask Employees for Solutions

Paragraph (o)(2)(iv) specifies that employers using the Quick Fix option must ask employees in the problem job for their ideas to fix the job. OSHA has included this step in the Quick Fix process because time and again employers have said that their employees often come up with the best and least expensive solutions to problems (Tr. 8725, 1160, 9508). For example, PPG stated that:

> We [management] do not have to look over their shoulders to make sure that they are implementing every—dotting every I. And it is a successful program. Essentially, the workers run it (Tr. 3062).

This step also was included in the proposed Quick Fix. Some commenters asked OSHA to clarify whether employers were obligated to implement the recommendations that employees make (Ex. 30–595). The requirement that employers ask employees for their recommendations does not limit them to implementing only those solutions recommended by employees. OSHA expects employers to use their judgment when responding to employee suggestions and to select controls that will achieve the reduction in MSD hazards mandated by the rule. OSHA notes that the records shows that employee suggestions for ergonomic improvements are often both practical and effective.

5. Implement Controls Within 90 Days

Paragraph (o)(2)(v) of the final rule requires employers, within 90 days, to implement measures that either:

- Control the MSD hazards (*i.e.*, reduce hazards to the extent that they are no longer reasonably likely to cause MSDs requiring days away, work restrictions or medical treatment), or

- Reduce the hazards to the levels indicated in the appropriate hazard identification tool in Appendix D.

Employers must put controls into place within 90 days of the time the employer determines that the job meets the Action Trigger. Employers are free to use any combination of engineering, work practice or administrative controls to fix the job. As part of the Quick Fix, employers must also train employees how to use the controls that have been implemented.

Implement Controls

The proposal would have allowed employers to use the Quick Fix option only where they could "eliminate MSD hazards," which was defined as controlling physical work activities and conditions to the extent that an MSD was not reasonably likely to occur, which was a higher level of control than for employers who were implementing full ergonomics programs. Several commenters opposed the proposed Quick Fix control endpoint, generally saying that it was either too vague to be workable or impossible to attain (see, *e.g.*, Exs. 30–4290, 30–3812, 30–2208, Tr. 2998, 8394, 9182). The comment of ORC was typical of this opposition:

> One fundamental change that must be made to this provision is the revision of the proposed requirement to eliminate MSD hazards; the formulation is problematic and may be legally impermissible. It is well established that employers may only be required to take technologically and economically feasible abatement measures. The second problem is that employers cannot be required to establish a risk-free environment, so that to the extent that the terms "eliminate MSD hazards and eliminate employee exposure" suggest that an employer must go beyond reducing the significant risk of harm in a particular instance, these terms must be revised and clarified (Ex. 30–3812).

OSHA believes that the changes in this provision address the commenters' concerns. The final rule's Action Trigger helps to ensure that employers will only have to take action in higher-risk jobs. As mentioned in the summary and explanation for paragraph (f), jobs that meet the Action Trigger (*i.e.*, exceed the exposure levels in the Basic Screening Tool) are ones that generally pose a risk of MSDs that is three times higher than those that do not. Second, the control endpoints employers must meet under the Quick Fix option do not require the elimination of all risk. For example, employers will be considered in compliance with the Quick Fix control requirement if they reduce exposure levels to below those in Appendix B of Washington State's ergonomics rule. The acceptable exposure levels in the Appendix B are almost twice as high as those in the Basic Screening Tool. Thus, the standard does not require employers to achieve a "risk-free environment." Third, the Quick Fix now contains more specific criteria for identifying and controlling hazards so that employers more clearly understand when a hazard is present and when they have done enough to fix the job. Thus, the final rule is not requiring employers to take "technologically or economically" infeasible abatement measures.

90-day Control Time Line

The final rule continues the proposed 90-day time line for implementing Quick Fix controls, but now specifies that the time begins to run only after the employer has determined that the job in which the MSD incident occurred meets the Action Trigger. Comments on the proposed 90-day time line were mixed. Some commenters testified that many MSD hazards can be controlled quickly (see, *e.g.*, Exs. 30–3813, 30–3436, 32–210–2, 30–294, Tr. 13642, Tr. 2134), while others said that controls, especially engineering controls, could not be implemented in 90 days (see, *e.g.*, Exs. 30–3815, 30–240, 31–307, Tr. 4628, 30–3853, 30–1091, 30–1048). As a result, some commenters requested that OSHA provide extended abatement time for employers who could not implement Quick Fix within the allotted time frame (Ex. 30–3853).

For several reasons, OSHA believes that the Quick Fix deadline should not be extended. First, OSHA believes that extending the deadline negates the principle underlying the Quick Fix concept. Second, OSHA believes that controls that take longer than 90 days to implement indicate that the problem may be more complex than originally anticipated, and therefore, may more appropriately be addressed in the context of a comprehensive ergonomics program.

Third, OSHA does not believe that extending the 90-day Quick Fix deadline is necessary, because the record shows that there are many controls that can be implemented quickly to control or reduce MSD hazards. Many of these are obvious and low-cost fixes that can be made to workstations (*e.g.*, raising or lowering work surface or chair, placing equipment directly in front of an employee to eliminate extended reaches or awkward postures, providing a platform or box to stand on as a way to eliminate overhead reaching, putting reams of copy paper under a monitor as a way to eliminate awkward neck postures), tools or equipment (*e.g.*, servicing of powered hand tools, changing the way bags move on a conveyor), and work schedules (*e.g.*, rest breaks, job rotation, job enlargement) (see, *e.g.*, Tr. 2147, 6510). One participant discussed the effectiveness of these types of Quick Fix adjustments in office environments:

> If you're looking, say, at the office environment, the quick fix situation is very often the one that's there in any case, because you're looking at people who need improvements to their posture and so on and so forth. And very often, the whole work environment is already there to be adjusted. It just needs a quick-fix, which in this case is often training and showing people how they should be adjusting their workstation for their particular tasks. So very often, in the office environment, the quick fix is the only way to do it. (Tr. 2707)

The record also includes information on a wide variety of inexpensive "off-the-shelf" controls and technology that can be put into place quickly. Some of these measures include telephone headsets; foot rests; "anti-fatigue" mats or other cushioned surfaces; monitor risers; wider grips for hand tools; knife sharpeners; and carts and other mechanical devices to assist with lifting, pushing, pulling and carrying tasks (Tr. 3946). According to David Alexander, a certified professional ergonomist and president of Auburn Engineers, one reason why "off-the-shelf" controls can be implemented so quickly and inexpensively is that they do not require "custom engineering" (Ex. 37–12). In addition, Mr. Alexander said that many of these controls can be easily identified and purchased by looking at equipment catalogs, calling regular vendors, contacting trade associations, and even searching the Internet (Ex. 37–7). For example, he said that the Job Accommodation Network, a free service offered by the President's Commission on Employment of People with Disabilities, has "a huge database of specific solutions to accommodation problems," many of which are also solutions to ergonomics problems, that are available to anyone who calls the network's toll-free number (Ex. 37–12). In addition, many other examples of quick and inexpensive fixes are in the cost chapter (Chapter V) of the final economic analysis.

Finally, the fact that employers are free to Quick Fix hazards using any combination of engineering, work practice and administrative controls also supports the 90-day time line. Administrative controls, in particular, should not take long to implement. And employers would be free to Quick Fix jobs with administrative controls initially and later substitute engineering controls when they become available.

In addition to requests for more time to Quick Fix jobs, at least one commenter urged OSHA to delay the start of the 90-day Quick Fix deadline until after the MSD incident has been confirmed by the employer's HCP and perhaps even an "independent" HCP, the employee's medical history has been evaluated, and diagnostic measures have been conducted (Ex. 30–3853). Paragraph (e) already allows employers to consult with an HCP in determining whether an MSD incident has occurred. In addition, after that determination is made, employers have another 7 days in which to determine whether exposure levels in the job exceed the levels in the Basic Screening Tool before the 90-day control time begins to run. Nonetheless, OSHA believes that, in the overwhelming number of cases, employers rather than HCP's will make the determination about the work-relatedness and seriousness of the reported MSD, as they have done for years in the context of the recordkeeping rule. Therefore, OSHA does not believe that initiation of the control implementation deadline needs to be delayed.

Finally, one commenter asked OSHA to clarify whether the Quick Fix option could be used in jobs that do not last for 90 days (Tr. 12179). OSHA is not clear whether the commenter was referring to (1) the same short duration job that is repeated (*e.g.*, seasonal work, temp agency work assignments) or (2) one-time job of short duration (*e.g.*, special project). OSHA realizes that where an MSD occurs toward the end of a short duration job that there may be some limits on what measures the employer may be able to take, that is, the employer may not have enough time to fully implement either a Quick Fix or an ergonomics program. Nonetheless, the employer must still implement those measures, such as interim controls, that are feasible to implement during the remaining time. (See summary and explanation for paragraph (m) for discussion of the term "interim controls.") In addition, where the short duration job is repeated on some regular or foreseeable cycle, such as seasonal fish processing, each cycle is, in essence, a serial "same job." As such, in order for employers to use the Quick Fix option in these situations, they will be required to have controls in place before the next job cycle begins.

Control Training

As part of the requirement to fix jobs, paragraph (o)(2)(v) also requires employers to train employees in jobs that are Quick Fixed so that they know how to use the controls that have been implemented. OSHA added this provision after commenters pointed out that Quick Fix controls may not be successful, and therefore employees may not be protected from MSD hazards, if they do not know how to use those controls correctly (see, *e.g.*, Exs. 32–339–1, Tr. 6985). In fact, a number of employees who testified at the hearings reported that, although they had been provided with ergonomically appropriate controls (*e.g.*, adjustable chairs), they had never been taught how to properly use or adjust the controls (see, *e.g.*, Tr. 8461).

6. Check Success of the Controls

Paragraph (o)(2)(vi) requires employers, within 30 days after implementing Quick Fix controls, to review the job to determine whether the measures implemented have controlled the hazards or reduced them to the levels in Appendix D. An analogous provision also was included in the proposed rule. A number of commenters complained that a 30-day time line for checking the success of the Quick Fix controls was too short (see, *e.g.*, Exs. 31–307, 30–240, 30–3815, 30–3853, 30–2988, 30–3934, Tr. 4628). For examplé, Kaiser Permanente said:

> If a person has serious MSD symptoms, the symptoms may not subside in this short time. Kaiser Permanente recommends that OSHA modify the proposed Quick Fix deadline for elimination of the MSD hazard to 120 days from the date of implementation of the hazard controls.

Likewise, the Tennessee Valley Authority expressed concerns that 30 days might not be long enough to evaluate control effectiveness (Ex. 31–307).

For several reasons, OSHA believes that 30 days provides employers with sufficient time to check up on whether the controls have been successful. In its Elements of Ergonomics Programs, NIOSH said that evaluations of control effectiveness should be made within 2 to 4 weeks of control implementation. NIOSH's concern was not that 30 days was too short a period of time for conducting post-implementation followup, but rather with checking up on controls too quickly:

> Because some changes to work methods (and the use of different muscle groups) may actually make employees feel sore or tired for a few days, followup should occur no sooner than 1 to 2 weeks after implementation, and a month is preferable. Recognizing this fact may help avoid discarding an otherwise good solution (Ex. 26–2).

At the same time, if controls are not working and the employer is allowed to wait for an extended period of time before checking up on the job, the injured employee's condition may worsen. Retaining the 30-day followup helps to ensure that employers initiate further and more comprehensive action to prevent the employee from suffering permanent damage or disability. In any event, OSHA believes that the availability of various tools and checklists as well as the final standard's more clearly-defined control endpoints will make the control evaluation process easier and quicker.

7. Keep Records of the Quick Fix

Paragraph (o)(2)(vi) specifies that employers must keep records of their Quick Fixes for 3 years, or until replaced with updated records. Paragraph (v), however, limits the recordkeeping requirement to employers with 11 or more employees. This provision was included in the proposed rule. While some commenters agreed that such records were necessary (Ex. 30–710), several commenters opposed this requirement (see, *e.g.*, Exs. 601–X–1, 30–3755, 30–1019, 30–294, 30–3745, Tr. 2983, Tr. 5758). Some said the recordkeeping requirement would be burdensome, especially for small businesses. The Office of Advocacy of the Small Business Administration (Ex. 601–x–1) submitted the following comment:

> The Quick Fix option also limits the one small business exemption which exists within the ergonomics program standard proposal. This option states that an employer must keep records of the Quick Fix controls they implement, when they are implemented and the results of any evaluations. [The Office of Advocacy of the SBA] strongly recommends that the language within this option be clarified to indicate that employers with less than ten employees do not need to keep records for any provision in the standard. Without this clarification, the option is not a real one for small business and will have the [effect] of mandating compliance with the total rule for employers with less than ten employees.

Paragraph (v) of the final rule does not require employers with fewer than 11 employees to keep records, including Quick Fix records.

Other commenters said that the recordkeeping requirement added unnecessary complexity to the Quick Fix option. For example, Dow Chemical Company (Ex. 30–3755) stated:

> The use of this provision should be such that it encourages its use in order to take advantage of the fact that it exempts an employer out of the full rigors of the ergonomic program rule. To insist on, for example, recordkeeping of the quick fix controls will be a disincentive to its use and thus may defeat its purpose. To require that such documentation be retained for three years is absurd. [Dow] * * * suggests 45 days or until the "quick fix" is implemented and results validated.

OSHA believes that records are necessary where employers substitute one-time action for a comprehensive approach to controlling MSD hazards. First, the Quick Fix option does not include the "checks and balances" of a comprehensive program (*i.e.*, management leadership, employee training, and program evaluation). Second, employers who use this option will need these records to demonstrate that the Quick Fix process has been successful in controlling the hazards. In addition, employers themselves need records to be able to demonstrate that they continue to qualify for using the Quick Fix option. Finally, OSHA believes that keeping the Quick Fix records for just 3 years will not pose a burden for employers, especially since these employers will not have to put resources into keeping the other records that employers who have full ergonomics programs must maintain.

Paragraphs (o)(3) and (o)(4)

The last two provisions of the Quick Fix process provide that employers are not required to take additional action as long as the job hazards remain controlled or exposures do not exceed the levels in Appendix D. As long as these control levels are maintained, employers need only provide training in the use of the controls to new employees who are assigned to Quick Fixed jobs. If, however, hazards cannot be reduced to those levels within the Quick Fix time frame, or be maintained at those levels, employers must implement an ergonomics program in that job, *i.e.*, if more than one MSD incident has already occurred in the job. However, if this is the first Quick Fix in that job, the employer would be free to repeat the Quick Fix to see if a second effort might be more successful.

The proposed rule, on the other hand, would have adopted a "wait and see" approach, requiring employers to implement a full ergonomics program if it turned out that the controls did not eliminate the hazards with the deadline or if another MSD occurred in the job sometime during the following 36 months. The proposed rule would have provided one exception to moving onto a full ergonomics program in those cases where the second MSD incident in the job was caused by different risk factors.

Several participants commented on this proposed provision (see, *e.g.*, Exs. 30–3813, 30–3815, 30–710, 30–1107, 30–494, 30–4540, Tr. 14985). Most commenters (see, *e.g.*, Exs. 30–3813, 30–3815) argued that the 36-month "wait and see" period was too long. OSHA has responded by reducing the "wait and see" period to 18 months. This means that employers continue to qualify to use the Quick Fix option if no more than 2 MSD incidents have occurred in the past 18 months. MSD incidents that occurred more than 18 months previously would not be considered in determining whether the employer could continue to use the Quick Fix option in that workplace.

MSD Management and Work Restriction Protection

Paragraphs (p), (q), (r), and (s) of the final rule set forth the final rule's requirements for MSD management and work restriction protection (WRP). These provisions require employers to set up a process to manage MSD incidents when they occur. OSHA's final rule requires that employers make MSD management available promptly to workers in jobs that meet the action trigger whenever an MSD incident occurs; provide this MSD management at no cost to the employee; provide temporary work restrictions and "work restriction protection", and provide a mechanism for multiple health care professional (HCP) review when health care providers disagree about the proper course of action the employer should take. The discussion of these sections is divided into two parts; the first section discusses MSD management, and the second, worker restriction protection and multiple HCP review.

MSD Management

Under the final rule, employers would be required to make MSD management available promptly whenever an MSD incident occurs; provide this MSD management at no cost to the employee; and evaluate, manage, and follow-up on the MSD incident. Specifically, employers are required by the final rule to:

- promptly provide effective MSD management at no cost to the employee,
- provide employees with access to a health care provider (HCP),
- provide work restrictions the employer or the HCP find necessary,
- provide the HCP with information about MSD management and the employee's job,
- obtain a written opinion from the HCP about the MSD,
- provide the employee with the HCP's opinion, and
- evaluate, manage and follow-up on the MSD incident.

The final rule's MSD management provisions are quite similar to the provisions in the proposed rule. The final rule differs from the proposed rule section in the following ways:

- MSD management is provided under different circumstances (only when a worker has an MSD incident and the job rises above the action trigger),
- MSD management is no longer described as being for the purpose of "to prevent their (the employee's) condition from getting worse",
- the employer is not required to determine the need for work restrictions or other actions before consultation with a health care provider,
- the employer must provide slightly different information to the health care provider,
- the health care provider is not afforded a right to walk through the employers workplace,
- minor editorial changes to the numbering, language and sequence of the requirements to simplify the sections and reduce duplication, and
- changes to the work restriction protection (WRP) requirements reducing WRP payments from 6 months to 3 months, and allowing the use of sick leave during the WRP period.

These changes reflect OSHA's review and analysis of the many comments and other evidence in the record pertaining to MSD management, which are discussed below. OSHA also asked for input on several specific issues in Section XIV of the proposal, Issues on Which OSHA Seeks Comment. The comments provided in response to those questions are included in the discussion of the relevant issues below.

Is MSD Management Needed?

OSHA received many comments on the proposed MSD management section. Many commenters generally supported the inclusion of MSD management provisions in the standard (see, *e.g.*, Exs. 30–626, 30–651, 30–2387, 30–3033, 30–3034, 30–3035, 30–3258, 30–3259, 30–3686, 30–3813, 30–3826, 30–4538, 30–3934, 30–4159, 30–4468, 30–4536, 30–4538, 30–4547, 30–4549, 30–4562, 30–4627, 30–4776, 30–4777, 30–4800, 31–23, 31–31, 31–43, 31–71, 31–92, 31–105, 31–113, 31–150, 31–156, 31–160, 31–161, 31–163, 31–186, 31–229, 31–243, 31–259, 31–301, 31–309, 31–342, 31–345, 31–347, 32–182–1, 32–210–2, 32–339–1, 32–85–3, 32–111–4, 32–133–1, 32–450–1, 30–4468, DC 75, 30–1104, L–30–4860, 37–12, 37–28).

Several commenters stated that MSD management is an essential component of an ergonomics program. For example, Lieutenant Colonel Mary Lopez, of the Department of Defense, reported at the hearing that healthcare management (*i.e.*, MSD management) is a critical element in any ergonomics program (Tr. 3221, Ex. 30–3826–14, 500–218). The 3M Company stated that "The need for effective MSD management is universally accepted" (Ex. 30–3185). Dr. Robert Harrison stated that "The medical and scientific literature and my own clinical experience confirm that MSD management is an essential part of an ergonomics program" (Ex. 37–12).

Evidence in the record shows that many companies, through early intervention and the effective management of MSDs, have achieved substantial reductions in the number and severity of MSDs, which have in turn, translated into less lost-work time, fewer lost-workdays, lower costs per case, and fewer workers' compensation claims (see, *e.g.*, Exs. 3–56; 3–59; 3–73; 3–95; 3–113; 3–118; 3–147; 3–175; 3–217; 26–23, 26–24, 26–25, 26–26, 30–3185, 500–20–3, 500–71–84, Tr. 14357, Tr. 14721, Tr. 17431). Representative of these comments, Dr. Colin Baigel of the Bristol Myers Squibb Company reported at the hearing that "[o]ne of our keys is early medical intervention with any sorts [of] symptoms or signs of physical illness" (Tr. 10516). He commented further that, in his company's program, they see and evaluate employees early, modify the workplace, and institute aggressive conservative treatment if necessary (Tr. 10516).

North Carolina State University discussed the consequences of not providing prompt MSD management, stating that "I know of employees who were ordered by a non-medical supervisor to get back to work after an injury—in each case the lack of immediate medical care exacerbated their conditions" (Ex. 31–163)

Several commenters recommended that OSHA strengthen the provisions of this section to achieve early detection and a more proactive approach to MSD management (see, *e.g.*, Exs. 30–626, 30–2387, 30–4583, 32–182–1, 32–339–1, L–30–4860, 500–71–86, 500–218). Many suggested that MSD management should be triggered when an employee reports the signs and/or symptoms of MSDs (see, *e.g.*, Exs. 30–3686, 30–4538, 32–111–4, 32–182–1, 32–339–1, 32–210–2, 32–461–1, 32–85–3, L–30–4860). For example, the American Public Health Association stated that MSD management should be required for *all* MSDs reported to the employer including symptoms of MSDs (Ex. 30–626). The AFL–CIO (Ex. 32–339–1) argued that, as proposed, the MSD management provided by the proposed standard would not achieve the goal of early detection and urged OSHA to rely on employee reports of persistent signs and symptoms to trigger MSD management for all jobs, rather than relying on covered MSDs to trigger action in some jobs, as the proposal did. Others recommended using an even more proactive, risk-based approach to trigger MSD management, instead of waiting for an employee report of an MSD (see, *e.g.*, Exs. 30–626, 30–2387, 30–3686).

Several commenters supported the proposed MSD management provisions with reservations/concerns (Ex. 30–3185, 30–3188, 30–4777). For example, the American Occupational Therapy Association urged OSHA to "[p]rovide guidance about the difference between treatment of a disorder and the management of early symptoms" (Ex. 30–4777).

Other commenters opposed the approach to MSD management taken in the proposal (see, *e.g.*, Exs. 30–276, 30–400, 30–1090, 30–1294, 30–1350, 30–1357, 30–1370, 30–1722, 30–1727, 30–1989, 30–2037, 30–2208, 30–2216, 30–2435, 30–3032, 30–3167, 30–3200, 30–3284, 30–3344, 30–3368, 30–3392, 30–3677, 30–3765, 30–3845, 30–3853, 30–3867, 30–3956, 30–4040, 3–4046, 30–4185, 30–4470, 30–4499, 30–4564, 30–4567, 30–4837, 30–4839, 30–4843, 31–27, 31–77, 31–78, 31–79, 31–125, 31–135, 31–172, 31–180, 31–202, 31–220, 31–225, 31–227, 31–245, 31–246, 31–247, 31–248, 31–252, 31–253, 31–265, 31–280, 31–283, 31–286, 31–307, 31–319, 31–321, 31–337, 32–120–1, 32–300–1, 500–1–127, 500–177–2, 500–208). In a representative comment, PPG industries recommended that OSHA

> Remove these sections completely. These are very onerous requirements and the cost estimates of OSHA for these issues do not begin to approximate the real costs to industry to comply with these provisions. Further, they do nothing to achieve improved ergonomics in the workplace (Ex. 500–177–2).

Some of these commenters objected to the proposed MSD management section because it included provisions protecting the wages and benefits of injured workers (see, *e.g.*, Exs. 30–240, 30–3813, 30–3765, 30–3845, 601–x–1). These comments are discussed in detail below in conjunction with the comments received on the proposed rule's provisions on work restriction protection. Other commenters objected for the following reasons:

- The proposed provisions exceed OSHA's legal authority (see, *e.g.*, Exs. 30–710, 30–1350, 30–3956, 30–1722, 30–2208, 30–3765, 30–3845, 30–3956, 30–4499, 31–319, 32–241–4);
- The proposed provisions are unnecessary (Exs. 30–3677, 30–3765, 30–4185, 500–177–2); employers already have systems in place for medical management of all injuries (Exs. 30–3677, 30–3765, 30–4185, 31–79, 31–321, 500–177–2);
- Medical management is addressed in other OSHA standards (1910.151 Medical services and first aid.) (Exs. 30–3765);
- The proposed provisions add burden on employers (see, *e.g.*, Exs. 30–1294, 30–3765, 30–4040, 30–4499, 30–4564, 500–177–2), the cost for medical assessment of illnesses is too high (see, *e.g.*, 30–1026, 30–1302, 30–0295, 30–1362, 30–0070, 30–0262, 30–0586, 30–0280, 30–3760), and the proposed requirements are too prescriptive (Ex. 30–400, 30–1294, 500–177–2);
- The proposed provisions are unclear about what the employer is supposed to do (Ex. 30–3344), fails to tell an employer when to provide access to an HCP (Ex. 32–120–1), or uses vague terms (see, *e.g.*, Exs. 30–2987, 30–3364, 30–3677);
- The proposed provisions conflict with workers' compensation laws (see, *e.g.*, Exs. 30–300–1, 30–710, 30–1350, 30–1722, 30–2435, 30–2987, 30–3284, 30–3745, 30–3765, 30–3845, 30–4026, 30–4564, 30–3677, 30–4499, 31–172, 31–180, 31–220, 31–252, 32–206–1);
- The proposed provisions create a preferential system for MSDs and enforces the notion that ergonomics injuries are more important than other injuries (see, *e.g.*, Exs. 30–1294, 30–3765, 30–4470, 30–4843, 31–280, 500–177);
- The proposed provisions would interfere with existing collective bargaining agreements (see, *e.g.*, Exs. 30–3284, 30–3765, 32–266–1);
- The proposed provisions would address a problem that was, in the opinion of these commenters, largely or exclusively non-occupational in origin (see, *e.g.*, Exs. 30–240, 32–241–4, 30–3167, 30–3956, 30–3956, 30–4046, 30–4713, 32–241–4); and
- The proposed provisions change the traditional relationship between doctors, patients and employers (Exs. 30–4470) or inappropriately inject the employer into the employee-patient relationship (Ex. 30–4567).

In a representative comment, the Dow Chemical Company (Ex. 30–3765) stated that (1) a management system for work-related injuries already exists through workers' compensation laws, (2) the proposal may conflict with some collective bargaining agreements, and (3) a special work restriction protection is not warranted for MSDs because of their multifactorial nature. The Anheuser-Busch Companies, Inc. and United Parcel Service, Inc. added "[t]he proposed rule is doomed to fail as a result of its exclusive focus on

workplace activity" *i.e.*, on the work-related rather than non-occupational causes of MSDs (Ex. 32–241–4, p. 182).

The proposed rule would have required employers to provide injured employees with prompt access to an HCP, *when necessary*, for evaluation, management and follow-up. OSHA has reconsidered the issue, and now believe that any MSD incident is serious enough to warrant MSD management.

Several commenters recommended that OSHA require an employer to refer an employee with complaints or signs or symptoms of an MSD to a HCP for evaluation, management, and follow-up immediately, rather than "when necessary," as proposed (Exs. 30–651, 30–3826, 30–3686, 30–2387, 30–4468, 32–339–1, 32–111–4, 32–182–1, 30–4538, 32–210–2, 32–461–1, 32–85–3, 32–210–2, 32–450–1). For example, the United Food and Commercial Workers (UFCW) argued that having every worker assessed initially by an HCP would resolve many issues raised by the proposal, such as "when to refer the employee to the HCP," "follow-up," and "deciding appropriate work restrictions" (Ex. 32–210–2). The American Association of Occupational Health Nurses (AAOHN) (Ex. 30–2387) commented that "[e]mployers should automatically be required to refer employees with MSD complaints to health care professionals for evaluation and determination about physical capabilities and work restrictions. Most employers are not qualified to make this determination." The AAOHN also stated that "[d]ecisions related to signs and symptoms of MSD[s] and placement of temporary work restrictions should be made by a health care professional" (Ex. 30–2387). Some commenters stated that the phrase "when necessary" was unclear, confusing, and vague (Exs. 30–2987, 30–3782, 30–3826, 30–3845). Other commenters, however, agreed with the "when necessary" language, on the grounds that it gave the employer the flexibility to decide when an employee needs to be referred to an HCP (see, *e.g.*, Exs. 30–3813, 30–4467, 32–300–1).

OSHA has deleted the "when necessary" language from the final rule. The final rule only applies to specific injuries (those with restrictions, medical treatment, or persistent signs and symptoms) and OSHA finds that these injuries should always be followed by medical management, including access to an HCP. This change clarifies the final rule and assures prompt medical management for employees who need it.

Several commenters recommended alternative approaches to MSD management. The Pinnacle West Capital Group suggested OSHA simply leave MSD management to the employers discretion (Ex. 30–3032). PPG Industries suggested that OSHA only require an employer to have in place a system that focuses on early intervention (Ex. 30–1294). Ashland Distribution Co recommended OSHA:

> [d]elete [the] last sentence of 1910.919 and [the] remainder of MSD management, and add "You must make MSD management available promptly whenever a covered MSD occurs. You must provide MSD management at no cost to employees. A health care professional should be involved in MSD management when necessary" (Ex. 30–4628) (see also Ex. 31–337).

In the final rule, OSHA has decided to carry forward the MSD management provisions of the proposed rule with only minor modifications. The MSD management provisions of the final rule emphasize the prevention of impairment and disability through prompt evaluation and management of MSD incidents, evaluation by a health care provider, provision of needed work restrictions, and appropriate follow-up. The provisions are included because successful ergonomics programs include MSD management, OSHA has had successful experience with including MSD management as part of an ergonomics program agreement with employers, and OSHA therefore believes that MSD management is essential to the proper functioning of an ergonomics program.

The MSD management provisions of the final rule are based on the many successful ergonomics programs that include policies for the medical management of MSDs, and the final rule contains provisions similar to those in such programs (see, *e.g.*, Exs. 26–2, 32–450–1). The MSD management provisions of the final standard are thus built on the processes that employers with effective ergonomics programs are using to help employees who have work-related MSDs.

MSD management is recognized by employers, HCPs, and occupational safety and health professionals as an essential element of an effective ergonomics program (see, *e.g.*, Exs. 26–1, 26–5, 26–1264, 32–450–1, 30–4468, 37–12, 37–28). Among employers who have told OSHA that they have an ergonomics program, most reported that their programs include MSD management as a key element (see, *e.g.*, Exs. 3–56; 3–59; 3–73; 3–95; 3–113; 3–118; 3–147; 3–175; 3–217; and Exs. 26–23 through 26–26, 500–71–84). This approach is also supported by the scientific literature concerning ergonomics as evidenced by the comments of Robin Herbert, MD (Ex. 37–28):

> The MSD [proposed] management provisions are consistent with approaches enumerated in a number of medical textbooks and peer-reviewed papers * * *. The MSD management section recommendations would be likely to diminish the severity of, and, consequently, the disability and suffering associated with, MSDs.

The final rule's MSD management provisions are also based on OSHA's experience with ergonomics over the last 15 years. For example, MSD management provisions were included in OSHA's 1990 Ergonomics Program Management Guidelines for Meatpacking Plants (Ex. 26–3). In addition, MSD management provisions have been included in all of OSHA's corporate settlement agreements addressing MSD hazards. In a 1999 workshop to discuss the experience of companies with corporate wide settlement agreements, the companies who were involved stated that "[q]uality healthcare is a must" for an ergonomics program, and "[g]ood medical management allows early reports and reduces surgeries" (Ex. 26–1420). Further, to become a member of OSHA's Voluntary Protection Program, employers are required to include "Occupational Heath Care Program" provisions in their safety and health programs that address MSDs and their management, along with other health hazards.

There are many reasons why MSD management is essential to the success of an ergonomics program. As mentioned above, MSD management emphasizes the prompt and effective evaluation and management of MSD incidents, with appropriate follow-up for the injured employee. When MSD incidents are managed effectively, they are more likely to be reversible, to resolve quickly, and not to result in disability or permanent damage. MSD management also helps to reduce the overall number of MSDs in a given establishment because it alerts employers to MSD hazards in their jobs so that they can take action before additional problems occur. An MSD management process that encourages early reporting and evaluation of that first MSD helps to ensure that the analysis and control of the job is accomplished before a second employee on that job develops an MSD. MSD management thus reduces MSDs through prevention. In addition, MSD management helps to prevent future problems through the development and communication of information about the occurrence of MSDs to employees.

Finally, where engineering, design and procurement personnel are alerted to the occurrence of MSDs, they can help to implement the best kinds of ergonomic controls: those that engineer out MSD hazards in the design and purchase phases and thus prevent MSD incidents from occurring.

The final rule does not require the employer to provide MSD management for all MSDs, but only requires MSD management for MSD incidents that occur to a worker in a job that exceeds the action trigger. This helps to assure that MSD management is only required for work-related MSDs, and that non-occupational MSD cases are excluded. The final rule does not require the employer to take any action for non-work-related MSD cases. The only obligation may be to determine the work-relatedness of an MSD report from an employee to make sure that the MSD is non-occupational, but no other action is required.

Requiring MSD management only for MSD incidents, as defined by the final rule, also makes sure that the MSD is a more serious case, and that MSD management, as well as the other elements of an ergonomics program, are not being required for cases that involve only minor pain or soreness but are being provided for disorders that need treatment and cases with persistent signs or symptoms. Requiring MSD management under these circumstances also makes sense because all of the program elements are initiated with the same implementing mechanism; requiring MSD management without the other elements of an ergonomics program would be inconsistent and ineffective.

The final rule requires MSD management for all MSD incidents when the worker's job exceeds the action trigger. OSHA has eliminated the phrase "when necessary" so the MSD management provisions apply to all MSD incidents. If an MSD has resulted in days away from work, restricted work, or medical treatment, and the employee's job exceed the action trigger, there is no further reason for delay. MSD management is clearly needed for these MSDs, and the final rule requires it. The final rule does not mandate MSD management for MSDs that do not rise to that level. For other incidents, the employer will have to make a decision about what MSD management actions are appropriate, but the final rule does not require them.

OSHA also believes that the final rule strikes the necessary balance between being too prescriptive and too vague. The provisions of OSHA's standard 29 CFR 1910.151 Medical services and first aid merely require the employer to "ensure the ready availability of medical personnel for advice and consultation on matters of plant health" and do not provide sufficient guidance for the effective management of MSD incidents. Likewise, simply leaving MSD management to the discretion of the employer, or including a simple reference to provide MSD management "when necessary" would not provide enough guidance for employers, health care professionals, or workers. At the same time, the final rule's provisions requiring employers to provide access to a health care professional, provide work restrictions, and generally evaluate, manage and follow-up on an MSD incident provide the flexibility needed for the variety of MSD cases that employers will encounter. An employee who has suffered a severe back injury from lifting a heavy object and is experiencing agonizing pain and an inability to function may need immediate treatment in an emergency room, while a worker who is experiencing a gradual worsening of pain in the wrists may require prompt (but not immediate) treatment by a specialist.

OSHA finds that the arguments that the rule changes the traditional relationship between doctors, patients and employers (Exs. 30–4470) or inappropriately injects the employer into the employee-doctor relationship (Ex. 30–4567) are without merit. Employers have, for many years, experienced a relationship with the medical community in regards to employees work and non-work related injuries and illnesses. Employees commonly obtain written notification from a physician to explain time off of work for personal illness. Employers frequently consult with a health care provider when an employee is injured or becomes ill at work, to determine appropriate time off, restrictions or medical treatment, and the requirements of the final rule are not much different. Employers also consult with health care professionals when they contest workers' compensation claims, during tort litigation, or when implementing reasonable accommodations for disabled persons as required by the Americans with Disabilities Act (ADA).

Finally, OSHA believes these requirements are needed to make sure that employees get the medical attention they need. As the Thermoquest Corporation stated:

> [i]f there are no clear guidelines, many employers may not allow an employee to seek medical help for various reasons. Also to leave it up to the employee when to see a physician allow for employee abuses. The difficulty lies in getting the injured employee the treatment they need in a timely manner (Ex. 31–301).

OSHA's responses to the comments that the MSD management provisions exceed OSHA's legal authority, affect workers' compensation, or impact collective bargaining agreements are addressed in the section of this preamble dealing with worker removal protection.

Who Provides MSD Management Services?

The preamble to the proposed rule explained that the proposed ergonomics rule would have permitted "persons in the workplace and/or HCPs" to provide injured employees with evaluation, management, and follow-up in connection with the MSD management process (64 FR 65838). The regulatory text required that an employer provide access to a health care professional for evaluation, management and follow-up "when necessary" (64 FR 66073).

Many commenters (see, *e.g.*, Exs. 30–3826, 30–2387, 32–450–1, 32–210–2, 30–2806, 30–4468) argued that the inclusion of individuals without medical training and experience in the MSD management process was inappropriate. For example, the American Association of Occupational Health Nurses (AAOHN) strongly disagreed with the proposal's use of the phrase "or other safety and health professionals as appropriate" in the MSD management process on the grounds that assessing, providing prompt management/treatment to, and following-up individuals with medical problems are clearly activities within the scope of health care professionals' professional licenses but are not included in the scope of practice of other safety and health professionals. The AAOHN stated that "[i]t is imperative that the standard not enable non-licensed individuals to make health assessments and provide health care services without a professional license" (Ex. 30–2387).

The National Institute for Occupational Safety and Health (NIOSH) noted that, although the institute supports "[e]mployers' efforts to train employees in the early signs and symptoms of MSDs and to seek HCP evaluation when appropriate," it "recommend[s] that the standard preclude non-HCPs and non-licensed HCPs from conducting medical evaluations." In addition, NIOSH noted that, the institute "[s]upports OSHA's proposal that permits the MSD management programs to be administered by a variety of licensed HCPs as defined (in the proposal's definition section). However, [it] recommend[s] that the clinical aspects of the program (medical evaluations of symptomatic workers) be performed by licensed HCPs under the supervision of HCPs licensed for independent practice (including physicians, and nurse practitioners and physicians' assistants in those states where they are so licensed)" (Ex. 32–450–1). Other commenters (see, *e.g.*, Exs. 30–3826, 32–210–2, 30–4468, 30–2806) agreed that evaluating an employee's complaint of an MSD or assessing the physical capabilities of the employee to return to work or his or her need to rest the injured part may require expertise that an employer or other safety and health professional does not have.

The American College of Occupational and Environmental Medicine (ACOEM) noted that "[i]f MSD signs are to be included as part of the triggering event, the employee must be examined by a physician with training in medical diagnosis" (Ex. 30–4468). The ACOEM expressed concern that "flexibility" in allowing non-HCPs to evaluate employee reports of signs and symptoms "[w]ould result in employers—who are not likely qualified—making assessments or diagnoses. * * * Therefore, ACOEM recommends that the determination of a recordable MSD be made by a qualified occupational healthcare professional" (Ex. 30–4468).

The United Food and Commercial Workers (UFCW) agreed that HCPs, rather than others, should conduct MSD management, arguing that the OSHA proposal failed to require that an HCP make the initial assessment of the worker's condition, a crucial element of MSD management in the union's view. UFCW stated that "[a]ll successful programs that we have experience with have this core element" (Ex. 32–210–2). The UFCW emphasized this point by stating that, in corporate wide settlement agreements (CWSAs) between companies and OSHA, "OSHA and the industry recognized that lay persons were not capable of assessing symptomatic employees" (Ex. 32–210–2). Arguing along similar lines, the American Association of Orthopaedic Surgeons (AAOS) commented that "[i]t is inappropriate to ask the employee and employer to diagnose the employee's problem and determine if it is or is not related to work and deserving of further attention from the employer" (Ex. 30–2806). In her testimony, Mary Foley, President of the American Nurses Association (ANA), strongly encouraged:

> OSHA to require that employers place the responsibility for evaluating MSDs with the licensed healthcare providers. Evaluating signs and symptoms and determining whether an injury has occurred is the responsibility and within the scope of practice of licensed health care providers. The supervisor and worker relationship is not a relationship that should involve or appropriately involves diagnosing physical injuries. If the employer erroneously decides that a covered MSD has not occurred, continuing to perform the hazardous job would result in a delay in evaluation and treatment, and could intensify the injury or seriously compromise the recovery, permitting managers and supervisors to assume these activities, place the employer and/or manager at risk of litigation for practicing medicine without a license or for denying medical attention to an injured person (DC 5/8/2000, Tr. 15884).

The final rule requires the employer to provide MSD management to employees who have suffered an MSD incident, if they are employed in a job that rises to the level of the action trigger, including prompt access to an HCP. OSHA agrees with these commenters that non HCPs should not provide medical services appropriately reserved to a health care professional. The final rule does not allow a non-HCP to provide medical services, and it was never OSHA's intent in the proposal to allow a non-HCP to provide medical services that are only appropriate to an HCP. Oftentimes, an HCP will have been involved in the MSD case well before the final rule requires MSD management, while the employer is determining the work-relatedness of the MSD case, and because the MSD incident, by definition, must involve days away from work, restricted work, medical treatment, or persistent signs/symptoms before it is covered by the MSD management provisions.

However, there are circumstances where an employer may provide a worker with work restrictions before consultation with an HCP. In some cases, the restrictions may be obvious. For example, if an employee injures his or her back, limiting the lifting the employee is required to perform is a logical action to take. In other instances, the employer may have had experience with similar MSD cases in the past, and the types of restrictions that are needed are familiar to the employer. In the situation where the employer knows what restrictions may be necessary, the final rule requires the employer to provide such restrictions. Providing restrictions even before consultation with an HCP can provide relief to the employee, reduce the severity of the case, and begin the healing processes at an earlier stage.

The Definition of Health Care Professional

The final rule and the proposal define health care professionals as "physicians or other licensed health care professionals whose legally permitted scope of practice (*e.g.* license, registration, or certification) allows them to independently provide or be delegated the responsibility to provide some or all of the MSD management requirements of this standard."

Several commenters supported the proposed definition of "HCP" (see, *e.g.*, Exs. 3–73, 30–519, 30–2387, 30–2807, 30–3745, 30–3748, 30–3813, 30–4567, 30–4844, 32–85–3, IL–182). For example, the Rural/Metro Corporation (Ex. 30–519) stated that the definition of HCP in the proposal was appropriate because OSHA should not attempt to decide scopes of practice for HCPs. The AAOHN (Ex. 30–2387) stressed that a "[k]nowledgeable health care professional, practicing within their legal scope of practice, establishes procedures, or consults with the employer in the establishment of procedures, to determine what is to be done when an employee reports a MSD or persistent MSD symptoms." In her testimony for the AAOHN, Sandy Winzeler stated:

> It is appropriate for OSHA to recognize the roles that different health and safety disciplines play in health and safety programs. * * * Each discipline has a unique contribution to make to the program; in this case, the prevention and management of MSDs. It is only through such collaboration that we are successful. However, it is inappropriate for OSHA to include language in a standard that would restrict the practice of any health care professional. As you are aware, health care professionals are regulated by the States. The current language used in the proposal defers to State law in determining whether the individual can fulfil] the requirements under their licensed scope of practice, and AAOHN supports this. Over half of the States permit nurse practitioners to practice independently without any requirement for physician supervision or collaboration. This includes the ability to make independent medical diagnosis. Registered nurses often work in collaborative arrangements with physicians especially in the occupational health setting. It is impractical to expect that a physician will be on site and available to evaluate every employee, and in fact, it is usually the occupational health nurse that is on the front line, at the work site, working with employees every day. OSHA should recognize the important role that nurses play and by no means should limit our ability to fully practice within our legally defined scope [DC 3/29/2000, Tr. 5588–5590].

The American Physical Therapy Association (APTA) also expressed support for "OSHA's recognition of licensed nonphysician providers" and noted that "[o]ther Federal programs, such as Medicare, defer to the states to determine licensure and scope of practice of the providers that participate in the program" [30–3748].

Other commenters urged OSHA not to limit employers' choice of HCPs to specialists, who are often not available in reasonable proximity, which would delay prompt evaluation, management, and follow-up and make it much more costly (Ex. 3–73, 36–1370, 30–3745, IL–182). For example, the American Feed Industry Association, whose members have facilities in rural areas, expressed concern that the medical profession in a rural area may not have the expertise to deal with work-related MSDs, and pointed out that compliance could be a problem if the standard stipulated that the HCP have a specific background (Ex. 3–73, 30–3745, IL–182).

Other commenters opposed the proposed definition (see, *e.g.*, Exs. 30–494, 30–991, 30–2208, 30–3004, 30–2208, 30–2676, 30–4468, 30–4699, 30–3749, 30–3783, 30–3781, 30–3937, 30–4025, 30–4467, 30–4538, 30–4843, 32–22–1, 32–339–1, 32–111–4, 32–182–1, 32–210–2, 32–300–1, 32–461–1). Many of these commenters held the opinion that the definition was too broad (see, *e.g.*, Exs. 30–991, 30–2208, 30–3004, 30–2208, 30–4468, 30–4699, 30–3749, 30–3783, 30–3781, 30–3937, 30–4025, 30–4467, 30–4538, 30–4843, 32–22, 32–339–1, 32–111–4, 32–182–1, 32–210–2, 32–300–1, 32–461–1). The comments of the Combe Inc. company are representative: "[b]y allowing persons who do not even have a medical degree to diagnose and treat these disorders, the proposed standard creates an environment where the potential for misdiagnosis and improper treatment efforts is dramatically increased" [Exhibit 30–3004]. The Center for Office Technology pointed out that because the definition is so broad, it could include occupations such as emergency medical technicians or licensed vocational nurses who would not be the appropriate professionals to make decisions with respect to MSDs [Ex. 30–2208]. The New Mexico Workers' Compensation Administration argued that a massage therapist could render an opinion on MSDs (Ex. 32–22).

A number of commenters recommended OSHA limit HCPs to physicians, nurse practitioners, or physician's assistants (see, *e.g.*, Exs. 32–339–1, 32–111–4, 32–182–1, 30–4538, 32–210–2, 30–4468, 30–4699, 32–450–1, 30–2806, 32–300–1). Others advised that HCPs be limited only to physicians [Exhibit 30–351, 30–3749, 30–3344]. Several commenters acknowledged OSHA's attempt to reduce the cost of the standard, but noted that fact finders rely heavily upon treating physician's opinions when litigating causation issues under the various worker's compensation laws (Exs. 30–3749, 30–3344, 30–4674).

Other commenters argued that the ergonomics rule should require HCPs to have specific training (see, *e.g.*, Exs. 30–626, 30–3032, 30–4467, 30–4538, 32–339–1, 30–4468, 30–2806, 30–3934, 30–3745, 30–3937, 32–300–1). For example, the law firm of Morgan, Lewis and Bockius argued that HCP's not specifically trained in musculoskeletal disorders would not be able to make accurate diagnoses and that HCPs without MSD specific training "[m]ight actually irritate conditions or prescribe incorrect treatments, or impose unwarranted obligations on employers' (Ex. 30–4467). The International Association of Drilling Contractors (Ex. 30–2676) commented that "According to a recent medical publication, 82% of medical school graduates failed a valid musculoskeletal competency examination. (The Journal of Bone and Joint Surgery, Vol. 80–1, No. 10, October 1998, pp. 1421–1427)" to argue that "This startling statistic makes one question how a general physician may properly diagnose a MSD" and the "[i]nclusion of other fields under its [OSHA's] definition of HCP is all the more unacceptable". However, the International Association of Drilling Contractors did not submit a copy of the article into the rulemaking docket, so OSHA is not able to fully evaluate the journal article. It appears to be a competency examination for a specialized medical field, and it is unclear that the examination uses the same definition of musculoskeletal disorder as OSHA's rule, so OSHA does not believe that the article provides evidence contrary to the final rule's definition of HCP.

Several commenters encouraged OSHA to define the specific competencies an HCP should acquire to be qualified to screen, diagnose and manage MSD cases (see, *e.g.*, Exs. 30–2806, 32–182–1, 32–300–1). For example, the American Association of Orthopaedic Surgeons (Ex. 30–2806) found OSHA's proposed definition to be incomplete, and suggested the ergonomics rule include a requirement to use HCPs who are "[h]ighly trained and qualified" and who are "[k]nowledgeable in the assessment and treatment of MSDs" to ensure appropriate evaluation, management and follow-up of workers' MSDs.

The American College of Occupational and Environmental Medicine (ACOEM) recommended the definition of health care professional be changed to "*occupational* physicians or other licensed *occupational* health care professionals", focusing on the HCP's training and competencies in occupational medicine. ACOEM recognized the important role of non-physicians such as nurses, physician's assistants, and other health care providers, but argued that the healthcare provider must be able to perform four basic functions to perform the duties of an HCP required by the proposed ergonomics standard:

(1) Make independent diagnoses (which is usually limited to physicians, except in those states where nurse practitioners and physician assistants are licensed for independent practice);

(2) Conduct an appropriate physical exam,

(3) Order appropriate treatment, and

(4) Be able to relate musculoskeletal findings to work activities (which requires an understanding of basic epidemiology).

ACOEM further argued that OSHA's definition was questionable because other federal agencies have refused to adopt OSHA's definition of a "licensed health care professional" used in other standards. AECOM cites as examples, a NIOSH policy statement on respirator use, as well as the Department of Energy (DOE) rule on Beryllium. AECOM also cited the variability of state health care licensing laws as a reason for restricting the definition, and that state scope of practice laws were "never intended to be the mechanism to protect a worker from a toxic, carcinogenic, or biological exposure in the workplace" [Exhibit 30: 4699].

The National Institute for Occupational Safety and Health (NIOSH)

> [s]upports OSHA's proposal that permits MSD management programs to be administered by a variety of licenced HCPs * * * However, we recommend that the clinical aspects of the program (medical evaluations of symptomatic workers) be performed by licensed HCPs under the supervision of HCPs licensed for independent practice (including physicians, and nurse practitioners and physician's assistants in those states where they are so licensed) (Exhibit 32–450–1).

In the final rule, OSHA has carried forward the definition from the proposed rule:

> Physicians or other licensed health care professionals whose legally permitted scope of practice (e.g. license, registration or certification) allows them to independently provide or be delegated the responsibility to provide some or all of the MSD management requirements of this standard.

The final rule's definition of HCP is desirable for several reasons. Perhaps most important is that the HCP definition provides employers with the flexibility needed to assure that injured employees receive "prompt and effective" MSD management. Specialists and occupational physicians are not always readily available, and the rule allows the employer to consult health care professionals with these qualifications when needed, but does not require the employer to seek them out for each and every case. In some rural locations, access to specialized HCP's may be limited, and even in more urban settings, it may take significant time to get an appointment for an employee to see a specialist. If the employee can see a physician in general practice promptly, this may be the better option. Likewise, if an employer has an occupational health nurse, the nurse can provide services immediately and avoid delay.

Each MSD case also requires its own level of occupational health services. In some cases, a registered nurse or physician's assistant may be able to recommend restrictions and conservative treatment and resolve the problem. In other cases, the services of a physician or a medical specialist may be needed to treat the employee. The final rule does not restrict the employer's option to obtain more specialized services, and it is a common practice for HCPs to refer cases needing more specialized care to more qualified HCPs. OSHA sees no reason why this system will not continue to function as well as it has in the past.

The HCP definition is consistent with many of OSHA's health standards. In its most recent health standards (*e.g.*, respiratory protection, methylene chloride, proposed tuberculosis rule) the Agency has relied on a broad definition of HCP, to allow HCPs to carry out any of the regulatory requirements specified in a given standard, provided that the medical function performed is within their scope of practice, licensure, or certification. OSHA has not noted any significant problems with the definition in employers implementation of these standards, the definition appears to be working as intended, and OSHA's broad definition of HCP published in the respiratory protection standard has been upheld in the courts (American Iron and Steel Institute v. OSHA, 182 F.3d 1261 (11th Cir. 1999)). In addition, consistency from standard to standard is a desirable feature that makes it easier for employers and workers to understand and follow the standards.

The definition also relies on the licensing requirements imposed by the states. As stated in the proposal (FR 65842), OSHA believes that issues of HCP qualifications and scope of practice are properly addressed by State law and professional organizations. The states have been regulating medical practice for quite some time, and appear to be doing so effectively, so there is no reason to interfere with the licensing procedures the states have implemented. Relying on the state requirements will assure that unqualified or inappropriate individuals do not provide medical services beyond their training and qualifications, and the state licensing boards can continue to handle cases where improper treatment is provided or improper actions are taken.

The final standard does not contain diagnostic or treatment protocols. OSHA believes this is an area for the health care professions to recommend. Also, because standards of care change over time, it is the responsibility of the treating health care professional to select treatments in accordance with current acceptable standards of practice. NIOSH supports OSHA's "[d]ecision not to include particular diagnostic tests, treatment protocols, and clinical case definitions in the MSD management section, or anywhere else in the ergonomic standard. Standards of care change over time, evolving with new research, technological innovations, and new therapies. To allow workers to be provided with current, state-of-the-art clinical care, OSHA is correct to leave diagnostic and therapeutic decisions to HCPs and their professional organizations" [Ex. 32–450–1].

Who Selects the Health Care Professional

Some commenters raised the question of whether the employer or the employee get to choose the health care professional providing services. The American Apparel Manufacturing Association remarked

> OSHA has also failed to address the issue of choosing doctors. In some states, patients have the right to choose their own physicians. In other states, employers choose the doctors. Does the employer choose the HCP under the proposed federal rule, or could employees choose a doctor who will diagnose an MSD without real cause and expose companies to possible fraudulent actions? Does the proposed law supercede state laws in those states where the patient may choose? (Ex. 30–4470)

Several commenters recommended that OSHA specify in the standard that the employer has the right to choose the physician (see, *e.g.* Exs. 30–3188, 30–3284, 30–4301, 30–4467, 30–4564, 30–4607, 32–300–1, 32–337–1) In a representative comment, Southern California Edison argued that:

> Since the employer is required to follow the HCP's advice, the employer must be able to trust the diagnosis. However, not all healthcare providers are qualified by training or experience to evaluate, treat and provide restrictions for musculoskeletal disorders. If the employee is permitted to select the healthcare provider, as they are allowed by some states' workers' compensation laws, they may not select the provider that will have the time or experience to work with the company in determining appropriate restrictions (Ex. 30–3284).

Another group of commenters recommended the opposite, that the employee should be allowed to select the physician (see, *e.g.* Exs. 30–3033, 30–3034, 30–3035, 30–3258, 30–3259, 30–4159, 30–4536, 30–4547, 30–4549, 30–4562, 30–4627, 30–4776, 30–4800, 31–242). A form letter submitted by a number of individual employees made several arguments, including "[t]he HCP must be one of the employee's choosing, not the employer's (or insurance company's) choosing. Otherwise, a biased opinion may result, and the employee's condition can easily worsen"; that general practitioners "are often the HCPs that are chosen by the employer or insurance company to diagnose work-related injuries under the Workers' comp system. It is common to underestimate the seriousness and long term consequences of MSD injuries, and consequently, not enough temporary work restrictions are recommended"; and "HCPs chosen by someone other than the employee may be biased in favor of the employer or insurance company in order to obtain future referrals" (Ex. 30–3332).

The comments from both employers and employees show a large measure of distrust for health care professionals selected by either. It is for this reason that the final rule includes provisions for multiple HCP review. It is OSHA's view that, when the employer provides access to an HCP under the final rule, the employer has the right to select the HCP. However, the employee has a right to a second opinion if he or she disagrees with the employer selected HCP, under the provisions of paragraph (s). A more detailed discussion of HCP selection is contained in the discussion of multiple HCP review.

"Prompt" MSD Management

The proposal would have required employers to respond promptly to the reports of employees with MSDs, and the final rule includes similar language. Whenever an employee reports an MSD, the key is to take action quickly to help ensure that the MSD does not worsen. Many commenters agreed that early reporting and prompt response were the key to resolving MSD problems quickly and without permanent damage or disability (Exs. 30–4468, 32–78–1, 32–85–3, Tr., p 10516). For example, the American College of Occupational and Environmental Medicine (ACOEM) remarked that "[e]mployers should ensure that injured employees are provided with 'prompt access to health care professionals or other safety and health professionals as appropriate.' The early reporting and intervention process is important to the effectiveness of a medical management program" (Ex. 30–4468). Other commenters argued that the first response to any report of MSD should be evaluation by a health care professional (Exs. 30–651, 30–3826, 30–3686, 30–2387, 30–3748, 30–4468, 32–339–1, 32–111–4, 32–182–1, 30–4538, 32–210–2, 32–461–1, 32–85–3, 32–210–2, 32–450–1).

Some commenters stated that "promptly" was vague and ill defined, questioning what the term "promptly" meant in the provision directing employers to respond to employee reports (see, *e.g.* Exs. 30–115, 30–2208, 30–33336, 30–3354, 30–3845, 30–3848, 30–4540). Bruce Cunha RN MS COHN-S (Ex. 31–303) stated that "Five days should be adequate time to start the management process. If it is enough time to arrange a visit with a health care professional is questionable. Since OSHA allows the employer to choose the health care provider, it should be expected that it may take longer than 5 days to get an appointment."

The final rule requires the employer to provide "prompt" MSD management. The term "prompt," as used in this paragraph, means as soon as possible or within a reasonable period of time, consistent with the apparent severity of the MSD or with other conditions (*e.g.*, accessibility of medical care). OSHA believes, as the proposal discussed, that employers will almost always be able to provide MSD management within a one to five day window (64 FR 65840). Action within this interval will generally prevent the employee's condition from becoming more severe.

In the final rule, OSHA has provided clear guidance that prompt is one week. Paragraph (x), Table 2. Compliance Time Frames states that MSD management must be initiated within 7 calendar days after the employer determines that a job where an employee experiences an MSD incident meets the action trigger. OSHA finds that one week is more than enough time to initiate MSD management, select an HCP, and set an appointment for the employee to see an HCP.

In some workplaces, an occupational health nurse is available to take reports of MSDs, and in this case MSD management begins immediately, so promptness is not an issue. In most cases, however, employers will not have an on-site HCP, since smaller workplaces make up the overwhelming majority of all workplaces. In such cases, OSHA is aware that it may take a few days to arrange an appointment with an HCP. There are circumstances, however, where immediate evaluation by an HCP is warranted. For example, an employee experiencing severe shoulder pain with numbness down her arm, an inability to sleep due to pain, and decreased range of motion of the arm and shoulder should immediately be referred to an HCP.

Prompt MSD management helps limit further exposure to the MSD hazard or hazards associated with the employee's job helps to ensure that the employee's condition does not worsen while the employer analyzes the problem job and makes workplace changes to correct the hazard.

Providing MSD Management at no Cost to Employees

Both the proposed rule and the final rule require the employer to provide MSD management at "no cost to employees." The requirement to provide MSD management at no cost drew little comment. Some commenters supported the no cost clause (see, *e.g.*, Exs 30–4536, 30–4547, 30–4549, 30–4562, 32–78–1). Vicorp Restaurants asked OSHA if the employer is required to pay even if the report is ultimately determined to be frivolous, exaggerated, or fraudulent (Ex. 30–3200). Other commenters argued that the cost for medical assessment of illnesses is too high (see, *e.g.*, 30–1026, 30–1302, 30–0295, 30–1362, 30–0070, 30–0262, 30–0586, 30–0280, 30–3760). A few commenters suggested that OSHA clarify that "at no cost" doesn't include loss from production based pay and bonuses (Ex 30–3354, 30–3848, 30–4530, 30–4799).

As OSHA explained in the preamble (64 FR 65841) the term "at no cost to employees" includes making MSD management available at a reasonable time and place for employees (*i.e.* during working hours) and that the term no cost is interpreted in the same way as OSHA's other health standards. If an employee's MSD report is found to be fraudulent, then the employer is not required to pay for MSD management. A fraudulent claim would be one that is found to be non-work-related, and MSD management is only required for work-related MSD incidents. These wages would not include production bonuses or other premium payments, but for workers who are paid on a piecemeal basis, the employer must assure that the employee would not lose pay by visiting an HCP. This can easily be accomplished by paying the worker the average piecemeal rate he or she had been earning.

OSHA recognizes that MSD management imposes costs on employers, and these costs are reflected in the economic analyses for the final rule. However, if employees were made to absorb the costs of MSD management, they would be less likely to report MSDs to their employer, which would have a detrimental effect on the overall functioning of the rule.

Follow-up

The final rule, as did the proposal, requires that the employee receive appropriate follow-up during the recovery period. Follow-up is defined as the process or protocol the employer, safety and health professional, or HCP uses to check up on the condition of employees with covered MSDs when they are given temporary work restrictions or removed from work to recover.

OSHA received very little comment specific to follow-up. The Southern California Edison company stated that the proposed rule:

> [p]laces the responsibility on the employer to ensure that the employee goes to the HCP initially and as required thereafter. This assumes a cooperative employee. The final standard should make clear that an employer could not be cited because an employee refuses to see the HCP (Ex. 30–3284).

OSHA has included the requirement for follow-up in the final rule. Follow-up of injured employees is essential to ensure that MSDs are resolving. Follow-up generally means additional visits to the HCP to see if the employee is getting better or is getting worse. This process helps to ensure that injured employees do not "slip through the cracks," for example, by being left in alternative duty jobs long after they have recovered, or by being given work restrictions but failing to follow up to see whether the restrictions helped. If follow-up is not provided, neither the employer nor the HCP will know whether an employee's MSD symptoms are abating or becoming worse. Where follow-up is not provided or the healing process is not properly monitored, injured employees may never be able to return to their jobs.

The employer need not be fearful of citation if the only reason follow-up is not completed is because the employee refuses to see an HCP. The employer is

required to provide access to an HCP, but is not required to force an employee who does not wish to see the HCP to do so.

Medical Treatment

During the course of reviewing the comments to the proposed ergonomics standard, OSHA has noticed that some commenters believed that the proposed rule would require the employer to provide medical treatment as part of its MSD management provisions (see, *e.g.*, Exs 30–564, 30–1251, 30–2425, 31–353). Roy Gibson (Ex. 30–2526) remarked that "Once employees are aware that medical treatment is an option open to them, they will request treatment." Allfirst Bank (Ex. 30–1251) asked "How can we assure 'effective' treatment?"

OSHA wants to make it clear that the final rule does not require the employer to provide medical treatment to injured employees. While specific medical treatment may be appropriate, such as medicines, physical therapy, chiropractic care, or even surgery, the final rule does not require the employer to provide such services. The rule requires the employer to provide access to an HCP, provide needed restrictions, provide information to HCP's and employees, and provide WRP, but the standard does not address the medical treatment afforded employees. Therefore, if an injured employee needs medical treatment, the employer is not required to pay for them.

Temporary Work Restrictions

The final rule, like the proposal, requires the employer to provide temporary work restrictions, where necessary, to employees with MSDs. Work restrictions include any limitation placed on the manner in which an injured employee performs a job during the recovery period, up to and including complete removal from work.

Many commenters supported the requirement of providing temporary work restrictions, when necessary (see, *e.g.*, Exs. 30–3686, 30–3813, 32–339–1, 32–111–4, 32–185–3–1, 32–182–1, 30–4538, 31–353, 32–461–1, 32–198–4, 32–450–1, 37–12). NIOSH described the role of work restrictions as the first line of defense in addressing MSDs (Ex. 32–450–1) and that "[c]ompanies should be able to continue the practice of placing symptomatic workers in temporary positions until a prompt evaluation by an HCP can be performed * * *" (Ex. 32–450–1). Dr. Robert Harrison stated that:

> Data from several studies suggest that job modification is significantly associated with improvement in clinical outcome. These studies have been summarized in a critical appraisal of the effectiveness of modified work programs (Krause 1998). This comprehensive review found that modified work programs facilitate return to work for temporarily and permanently disable workers. Employees with access to modified work return to work after a disabling injury about twice as often as employees without access to any form of modified duty . . . The findings from these studies conclusively show that early intervention and case management, including modified/restricted duty, will help prevent prolonged disability (Ex. 37–12).

However, some commenters argued against restrictions and recommended deleting the work restriction and work restriction protection provisions from the final rule (see, *e.g.*, Exs. 30–1294, 30–3765, 30–3813, 30–3956, 30–3845, 32–300–1). For example, the Edison Electric Institute argued that providing work restrictions

> [m]ay conflict with existing collective bargaining agreements and current or future company philosophies on accommodating employees on restricted duty when there is no work available which they can perform under the indicated restrictions. This is especially true given the current climate of mergers, divestitures and competition in the electric utility industry (Ex. 32–300–1).

Other commenters asked what an employer is to do if there is no alternative work at the establishment (Exs. 30–2208, 30–3826) or no productive work (Ex. 30–240) available for the employee with the MSD. The Department of Defense stated that it may not be possible to provide work within an employee's work restrictions at some federal agencies (Ex. 30–3826).

A number of commenters stated that it was inappropriate for an employer to determine if an employee needs work restrictions before the employee is seen by a HCP (see, *e.g.*, Exs. 30–3033, 30–3034, 30–3035, 30–3185, 30–3188, 30–3258, 30–3259, 30–3284, 30–3765, 30–4046, 30–4159, 30–4536, 30–4547, 30–4549, 30–4562, 30–4607, 30–4647, 30–4713, 30–4776, 30–4800, 32–300–1, 500–163). For example, IBP Inc. argued that "[a]s a rule, [they] are unable to determine an appropriate work restriction until the medical evaluation is completed. As a result, it is impossible to advise the HCP of available work restrictions" (Ex. 30–4046). The Edison Electric Institute (EEI) argued that:

> An HCP is better qualified to make an initial determination of an employee's physical limitations (*i.e.*, lift no more than 10 pounds, do not stand for more than 4 hours, etc.). The employer then is best qualified to determine appropriate work restrictions taking into account the physical limitations described by the HCP. OSHA provides no valid reason to complicate the process by having the HCP make the choice of work restrictions.
>
> EEI recommends that § 1910.931(b) be deleted. Additionally, the phrase "temporary work restrictions" should be replaced with "physical limitations" in § 1910.932(b). This would then require only that the HCP provide a written recommendation of physical limitations. Additionally, the wording of § 1910.933(a) should be changed to reflect that the employer must take the HCP's physical limitations information and select the proper temporary work restriction that best addresses the limitations (Ex.32–300–1).

The Organization Resource Counselors suggested that there may be circumstances where the HCP makes errors and recommends inappropriate restrictions, suggesting OSHA add the phrase "[e]xcept when you determine those recommendations to be clearly erroneous based on review of the written opinion by a physician or other HCP with specific training and experience in diagnosing and managing MSDs" (Ex. 30–3813).

The United Mine Workers of America (UMWA) commented that complete removal from the workplace "is an unacceptable response to the problem" and that by including this in the definition of work restriction OSHA "[h]as tacitly authorized the termination of employees who suffer from MSDs." The UMA goes on to recommend that all such language be deleted from the standard (Ex. 500–71–86).

However, under the final rule, the employer must provide restrictions deemed to be necessary by either the employer or the health care professional. Both the employer and the employee whose work has been restricted need to understand (1) what jobs or tasks the employee can perform during the recovery period, (2) whether the employee is permitted to perform these jobs or tasks for the entire workshift, and/or (3) whether the employee needs to be removed from work entirely in order to recuperate. Employees for whom restrictions have been assigned must be properly matched with those jobs that involve work activities that will accommodate the requirements of the restriction and thus facilitate healing of the injured tissue.

If an HCP recommends restricted work, employers must follow such restrictions. Thus, in those instances where the employer refers the employee to an HCP, the employer has to follow the temporary work restriction recommendations, if any, included in the HCP's opinion. If the employer receives a restricted work recommendation they believe to be inappropriate, the employer may refer the employee to an HCP with specialized training for further evaluation, but until the employer receives a new recommendation for restrictions, the employer must follow the recommendation of the first HCP. The provision of work restrictions to injured employees is a vital component of MSD management. Work restrictions provide necessary time for the injured tissues to recover. They are often considered one of the most effective means of resolving MSDs, especially if restrictions are provided at the earliest possible stage. If work restrictions are not provided, it may not be possible for the employee to recover, and permanent damage or disability may result.

For work restrictions to be effective, employers must ensure that they fit the functional needs of the injured employee. For example, work restrictions are only effective if they reduce or eliminate the employee's exposure to the workplace risk factors that caused or contributed to the MSD, or significantly aggravated a pre-existing MSD. To find the right fit, employers may need to examine potential alternative duty jobs to ensure that the employee will still be able to rest the affected area while performing the temporary job. Identifying appropriate work restrictions may require the collaboration of different persons such as HCPs, safety and health personnel, persons involved in managing the ergonomics program, and the injured employee.

The final rule's use of the term "work restrictions" includes both restrictions that keep the employee at work, such as half-days or job modifications, as well as full days away from work. This is in contrast to OSHA's recordkeeping rule, which defines restricted work separately from days away from work. Several of the commenters failed to recognize this important definitional aspect of the proposal. Because days away from work are included, the employer is not required to invent restricted duty assignments that keep the employee at work. If the employer does not have restricted work available, restricted work conflicts with collective bargaining agreements, or the employer simply wishes to do so, the employer may use days away from work to meet the requirement to provide restricted work. Of course, if the employee is sent home, he or she must provide WRP benefits as required by paragraph (r) of the final rule.

Although some covered MSDs could be at such an advanced stage that days away from work are the appropriate treatment, such removal is usually the recommendation of last resort. A recent study (Ex. 600–) suggests that removal from the workplace is assigned by HCPs in only about three percent of all MSD cases. Where appropriate, work restrictions that allow the employee to continue working (*e.g.*, in an alternative job, or by modifying certain tasks in the employee's job to enable the employee to remain in that job) are preferable during the recovery period. These types of restrictions allow employees to remain within the work environment. Studies indicate that the longer employees are off work, the less likely they are to return (Exs. 26–685, 26–919, 26–923, 26–924). A case study of a nursing home's early return to work program "saved approximately $1 million in financial losses and improved injured workers' morale" (Ex. 502–486).

If employers provide the HCP with accurate and detailed information about the employees job and, at a minimum, informs the HCP that the employer is willing to accept the employee back into the workplace with job restrictions, it is more likely that the HCP will recommend restricted activity at work rather than complete removal. Employers need to communicate with HCPs and supervisors to coordinate the provision of work restrictions.

Under this provision, employers are not required to provide the employee with the alternative job or work restrictions simply because the employee requests them. Therefore, if an HCP recommends that the employee not perform lifting tasks or not engage in repetitive motions during the recovery period, the employer is free to provide any form of work restriction that effectuates that work restriction recommendation. For example, if the recommended work restriction requires fewer repetitive motions, the employer can move the employee to an alternative duty job as a way of achieving this restriction. Or the employer might reduce the number of repetitions expected to be performed in the employee's current job in a number of ways: by reducing the amount of time the employee performs repetitive motions, by reducing the speed at which the employee performs the tasks, or by eliminating certain repetitive tasks during recovery. In the case of lifting jobs, the work restriction can be as simple as limiting the types or weights of objects the employee must move or lift.

The OSH Act prohibits employers from terminating an employee for reporting an MSD (or any injury or illness). OSHA does not condone the inappropriate termination of any employee for reporting an MSD (or any other injury or illness). "Complete removal from the workplace" simply denotes the provision of time completely off of work (days away from work) to allow the employee to recuperate from the MSD. Of course, some employees may become completely disabled and have to terminate employment. OSHA believes that these cases are fairly infrequent, and the ergonomics programs required by final rule should make them even more so.

Written Opinion From the HCP

The final rule, as did the proposal, requires the employer to obtain a written opinion from the HCP and provide a copy to the employee. This paragraph also instructs the employer that he or she must inform the HCP that the written opinion is not to contain any medical information not related to workplace exposure to risk factors, and that the HCP may not communicate such information to the employer, except when authorized by state or federal law. Paragraph (q) discussed below, then instructs the employer as to the specific items the written opinion must contain.

This section of the proposal received very little comment. A few commenters supported the written opinion requirement (Ex. 30–3813, 30–3686). The American Nurses Association supported the proposed requirement for a written opinion, remarking that "The PLHCP should inform the employee and the employer, in writing, of the results of the evaluation, temporary work restrictions and medical conditions resulting from exposure to ergonomic hazards" (Ex. 30–3686).

Other commenters objected to the requirement for an employer to obtain a written opinion (see, *e.g.*, Exs. 30–1070, 30–3231, 30–3336, 30–3347, 30–3392, 30–3765, 30–4185, 30–4470, 30–4496, 31–353). Several commenters objected to the burden of obtaining a written opinion from the HCP (see, *e.g.*, Exs. 30–3336, 30–4185, 30–4470, 30–4496). Tyson's foods believed that the requirement would be particularly onerous because

> [t]he proposed MSD management provisions also contemplate separate opinions for each MSD case. Under OSHA's injury and illness recordkeeping requirements, the identical condition may result in numerous OSHA recordable cases * * * requiring a separate written opinion for each case has the very real potential to create a mountain of paperwork for the same condition which may repeat itself throughout the year. (Ex. 30–4185).

Other commenters argued that the employer should not be required to tell the HCP what to provide (see, *e.g.*, Exs

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30–1070, 30–2350, 30–4470, 30–4674, 32–234–2) and believed that if the HCP's opinion is incomplete, the employer should not be cited or otherwise be held accountable (see, *e.g.*, Exs 30–1070, 30–4470, 30–4674). The American Apparel Manufacturing Association asked "If the HCP's written opinion fails to include all elements stated in [proposed] § 1910.932, should the HCP or the employer choosing that HCP be held responsible?" (Ex. 30–4470). The Uniform and Textile Services Association added "[e]mployers retain the responsibility for the opinions content but not the control over it. Employers will have no choice but to pay whatever fees HCPs impose to prepare reports * * *" (Ex. 30–3336).

Other commenters stated that HCPs are reluctant to provide written opinions, and that HCPs are too busy to provide written documentation (see, *e.g.*, Exs 30–2350, 30–3231, 32–234–2). On the other hand, Tyson's Food remarked that the written opinion is not necessary because HCP's already keep written medical records and provide employees with access under the OSHA Standard 1910.1020 Access to medical records (Ex. 30–4185). Tyson's Food (Ex 30–4185) and Johnson & Johnson (Ex. 30–3347) provided identical comments expressing concern about which HCP needs to provide an opinion, remarking that:

> [f]or any given MSD complaint, there may be a nurse, in-plant physician, physical therapist, chiropractor, outside specialist physician, and outside physician selected by the employee, who are all involved in the treatment of a case * * * It is not clear who "the" [emphasis in original] HCP is when there are multiple HCPs involved in a case.

OSHA has carried forward the provisions that require the employer to obtain a written report from the HCP and provide a copy to the employee. A written report is needed so it is clear to all parties what needs to be done to resolve the employee's MSD. This opinion must be written because oral communication is more susceptible of misinterpretation. Employers must keep a record, and the easiest way to do this is if the opinion is in writing. OSHA recognizes that the requirement adds burden to the final rule, but believes that the need for the requirement outweighs the minimal burden imposed. OSHA does not find the argument that HCP's will be uncooperative or charge excessive fees to be persuasive. The employer has the right to select the HCP, and if the HCP is uncooperative or charges excessive fees, the employer is free to choose another HCP.

The written opinion must explain what actions the HCP recommends to resolve an MSD. These recommendations may include temporary work restrictions or the work the employee may do during the recovery period as well as the follow-up necessary to ensure that the MSD resolves. It is important that the HCP's opinion be provided in writing to the employer or the person(s) at the workplace who are responsible for carrying out the MSD management requirements of the standard. Employers need to know about the employee's medical condition to ensure that the restricted work activity they provide satisfies the HCP's recommendations, and whether the employee requires time away from work. The HCP's written opinion is especially important for the on-site person who is responsible for follow-up. That person needs to understand the HCP's plan for follow-up to make sure that the plan is implemented effectively. The information is also needed by the safety and health personnel who will be making workplace corrections. As the Organization Resource Counselors stated:

> OSHA seems to assume that an HCP will always be designated by the employer to take a key role in finding and fixing MSD hazards. In fact, in most cases, other professionals will be designated by the employer to assume this role. Therefore, they must be provided with meaningful information regarding the employee's capacity to perform various tasks (Ex. 30–3813).

As to the need to obtain a separate HCP opinion for each recordable MSD, the final rule does not use a recordable MSD as a trigger and the point is no longer valid. An HCP opinion is required only when an MSD incident occurs that exceed the action trigger. Likewise, it is not necessary for each and every HCP that is involved with the case to provide a written opinion. A written opinion from the primary treating HCP is needed to provide the employer with the basic information required by paragraph (q) of the final rule. If the initial is an occupational health nurse, and the case is referred immediately to a physician, there is no need for the occupational health nurse to provide a written opinion, the opinion of the physician will be adequate. Likewise, it makes no sense for a physical therapist or some other HCP who is strictly providing treatment to provide a written opinion. However, if the employer sends the employee to a specialist, a written opinion to the employer would be useful to see if the more specialized knowledge of the specialist HCP changes the need for restrictions, results in a different diagnosis, *etc.*

This paragraph also requires an employer to ensure that the employee promptly receives a copy of the opinion sent to the HCP. Several commenters opposed this provision (Exs. 30–3765, 30–4185, 30–4567), arguing that 29 CFR Part 1910.1020 gives better access to medical info (Exs. 30–4185), that oral communication between HCP and employee is adequate (Exs. 30–4185, 30–4567), that the employer should not be accountable for communications between the HCP and the employee, (Exs. 30–3765, 30–4567), and that similar problems in the bloodborne pathogens standard cause problems (Ex. 30–4567). In a representative comment, the American Ambulance Association stated that:

> A similar provision exists in the Bloodborne Pathogen standard and has been the cause for numerous violations by OSHA inspectors. This proposal will produce the same consequence. Note that during an examination and treatment by a healthcare professional, the employee and healthcare professional are present, while the employer is not. It is appropriate to assume that the healthcare provider communicates with the employee, just as healthcare professionals ordinarily communicate with patients.
>
> To interject the employer into the communications is ludicrous. To further require the physician to produce a written document, that is not produced in the ordinary course of business, and to require the employer to obtain that document and furnish it to the employee is a process fraught with error. If OSHA's intent is to assure that employees receive a written document from a healthcare provider, then OSHA should require the healthcare provider to produce the document and hand it to the employee (Ex. 30–4567).

It appears that these commenters did not realize that the only requirement put upon the employer is to simply provide a copy of the written opinion the employer receives to the employee. A separate written report for the employee is not required. OSHA continues to believe that a copy of the written report is essential if the employee is to participate in his or her own protection. It is particularly important for the employee to be knowledgeable about what work restrictions, if any, he or she has been assigned and for how long they will apply. Therefore, OSHA has included the requirement in the final rule.

Confidentiality for Non-Workplace Information

Paragraph (p)(5) requires employers to instruct the HCP that any findings, diagnoses, or information unrelated to workplace exposure to risk factors must not be included in the written opinion or communicated to the employer, except when authorized by state or federal law. The proposed rule contained a similar provision. This requirement is intended to encourage employees to disclose to the HCP all information about their health, and their activities both on and off the job, that could have a bearing on the MSD.

Full disclosure by employees will assist HCPs in evaluating the causal role of occupational risk factors and in determining the nature and duration of appropriate work restrictions. HCP's need this information to recommend work restrictions and follow-up that fit the employee's capabilities. This information will also enable the HCP to inform employees about activities, including non-work activities, that could aggravate the MSD and delay or prevent recovery. It is important for employees to know about any changes they can make to their on-and-off the job activities that will reduce their exposure to MSD hazards so that they may participate effectively in the recovery process. An example of an activity that sometimes must be postponed is a recreational activity that could place stress on the injured area of the body during the recovery period.

Employees will be reluctant voluntarily to disclose information about their health or outside activities if confidentiality is not maintained. MSDs may be associated with a variety of conditions, including hypertension, diabetes, kidney disorders and pregnancy, as well as the use of certain prescription drugs. See Ex. 30–3004 at p. 5; Ex. 30–3167. However, many employees would not want this health information revealed to their employers. The privacy protection accorded medical records under state and federal laws reflects general agreement that disclosure of information about a person's health status could result in embarrassment, stigmatization and discrimination in the workplace and elsewhere. See *Doe* v. *City of New York*, 15 F.3d 264, 267 (2d Cir. 1994) ("Extension of the right to confidentiality to personal medical information recognizes that there are few matters that are quite so personal as the status of one's health, and few matters the dissemination of which one would prefer to maintain greater control over.") Similarly, information about employees' private off-the-job activities could be embarrassing and harmful if disclosed. Therefore, OSHA believes that it is important to preserve the confidentiality of personal information revealed by employees to the HCP that is not related to workplace exposure to MSD risk factors.

OSHA explained the need for this kind of privacy protection in the proposed rule, as follows:

> The confidentiality provision is necessary to ensure that employees will be willing to provide complete information about their medical condition and medical history. Employees will not divulge this type of personal information if they fear that employers will see it or use it to the employee's disadvantage. For example, employees may fear that their employment status could be jeopardized if employers know that they have certain kinds of medical conditions, which may be completely unrelated to work or exposure to MSD hazards, or if they are taking certain kinds of medication (e.g., seizure medication, an anti depressant). In this sense, the ergonomics rule is * * * intended to be consistent with the confidentiality requirements of the Americans with Disabilities Act. 64 Fed. Reg. 65544.

OSHA recognizes that information subject to protection under the final rule may, in some circumstances, be disclosable under state or other federal law. For example, many state laws authorize the disclosure of medical information to employers in connection with workers' compensation claims. The agency does not intend the final rule's confidentiality requirement to conflict with state or federal law authorizing disclosure, and has included language to that effect in paragraph (p)(5).

The AFL–CIO supported the confidentiality requirement, noting that it is consistent with similar provisions in other OSHA standards and with guidelines in the American College of Occupational and Environmental Medicine (ACOEM) Code of Ethical Conduct (Ex. 500–218, p.117). Other comments were also supportive (See, *e.g.* Exs. 30–3686, 32–185–3–1). However, a substantial number of commenters were critical of the provision. These parties argued that prohibiting HCPs from disclosing information about the contribution of non-occupational risk factors will make it impossible for employers; (i) to determine whether a reported MSD is work-related, (ii) to comply with the final rule's requirements to monitor the condition of an employee with a work restriction to determine whether the MSD is resolving, and to institute effective hazard control measures for the problem job, and (iii) to evaluate a claim for workers' compensation benefits arising from the MSD. These arguments, and OSHA's responses, are discussed below.

1. Confidentiality and Work-Relatedness Determinations

A number of commenters argued that the confidentiality requirement would seriously hamper the employer in making determinations required by this final rule, and by the Recordkeeping rule in 29 C.F.R. Part 1904, about whether reported MSDs are work-related (see, *e.g.* Exs. 30–3004, 30–3061, 30–3086, 30–3167, 30–3177, 30–3231, 30–4334, 30–4564, 30–4674, 30–4713, 30–4843, 30–4844). Combe Inc. argued that:

> The unreasonable restraints the Proposed Standard places on the employer's ability to obtain information to meaningfully evaluate the work-relatedness of an employee's MSD claim further creates an environment of uncertainty and will force the employer into possibly unnecessary or deficient decision-making. Section 1910.932(a) of the Proposed Standard expressly provides that the HCP must be instructed 'that any findings, diagnoses or information not related to workplace exposure to MSD hazards must remain confidential and must not be put in the written opinion or communicated to the employer.' Thus, if Combe were to receive a single carpal tunnel syndrome complaint from an employee on one of its assembly lines * * * It would be barred from learning whether this employee has any of the non-occupational risk factors the scientific literature associates with the development of carpal tunnel syndrome * * * . Because the Proposed Standard would prohibit Combe from learning this essential non-occupational risk factor information or even from learning if the HCP inquired about this critical data or evaluated it properly, Combe would be unable to determine if the new claim is, in fact, the result of non-occupational factors or a deficiency in its heretofore successful ergonomic interventions (Ex. 30–3004, pp. 5–6).

In a similar vein, the Chamber of Commerce argued:

> [T]he fact that employers cannot receive any information related to non-work factors necessarily means that they will conclude that an employee complaint is work-related. After all, if employers are deprived of information about possible non work-related causes, what is left for them to consider? Regardless of the real cause of the muscluloskeletal complaint, in many cases employers will be forced to conclude that the injury is [work-related] because there will be—and because there can be—no evidence of exposures outside the workplace (Ex. 30–1722, p. 78).

These commenters correctly point out that employers must sometimes consider non-occupational factors, including pre-existing medical conditions, in deciding whether events or exposures at work "caused or contributed" to an MSD. See definition of the term *Work-related* in paragraph (z). However, they misunderstand the MSD management provision in arguing that the confidentiality requirement will deprive employers of information necessary to make work-relatedness determinations. The MSD Management

provisions in paragraph (p), including the confidentiality requirement, apply when an employee has experienced an MSD Incident in a job that meets the Action Trigger. "MSD Incident" is defined to include only work-related MSDs meeting certain criteria. See paragraph (z). Therefore, the employer must decide that an MSD is work-related *before* it is required to implement the MSD Management requirements in paragraph (p).

Moreover, OSHA believes that it will rarely be necessary to delve into employees' private lives to make this determination. In most cases, employers will be able to decide if work is a contributing causal factor based on the type of injury and the nature of the employees' work activities. The final rule will facilitate this process because it includes a Basic Screening Tool that allows employers to determine whether risk factors are present in the job at levels of concern. In these cases, confidentiality protection is necessary to assure full disclosure to HCPs.

2. Confidentiality and the Employer's Duty To Follow-Up on the Employee's Recovery and To Control MSD Hazards

Some parties argued that the confidentiality requirement is fundamentally inconsistent with the duty imposed on the employer to check up on the progress of an employee with a work restriction to see that the injury is resolving, and to control the MSD hazards in problem jobs. The comment submitted by Layflat Products, Inc. is representative:

> OSHA cannot have it both ways. * * * Employers should not be forced to undertake workplace accommodations designed, at least in part, to enable the employee to continue to work without aggravating an MSD, or to provide an opportunity to recover, while at the same time effectively barring employers from having any effective means to prevent an employee from continuing to engage in conduct outside of work which the treating HCP has concluded and advised the employee will aggravate or prolong the MSD and, thereby, nullify the remedial efforts which the proposed standard would mandate the employer to take. * * * The preamble to the proposed rule also at least suggests that the employee's progress in recovery may have *some* bearing on the determination whether a proper "job fix" has been accomplished (Ex. 30–3061).

The NSBU voiced concern that "numerous [health] conditions make contributions to musculoskeletal complaints. * * * In addition a vast number of outside activities engaged in by employees may contribute equally or much more substantially to such complaints. Yet employers—who would be required to march their workplaces along the path of incremental abatement at great cost and disruption—are not allowed to even contemplate the potential role of such individual pursuits, activities or conditions" (Ex. 30–3167). (See also Exs. 30–1722, 30–3211, 30–3231, 32–337–1)

OSHA acknowledges that the confidentiality requirement is a compromise. At the same time, OSHA believes that confidentiality is essential to ensure employees' willingness to disclose personal health and other private information to HCPs, who, in many cases, make the initial recommendation about work restrictions. In OSHA's view, assuring that HCPs have access to information necessary to fulfill their central role in the MSD Management process is of overriding importance.

OSHA also believes that maintaining confidentiality in the personal information employees provide to HCPs will not seriously disadvantage employers. The purpose of work restriction requirements is to ensure that the injured employee's exposure to workplace risk factors is reduced or eliminated during the recovery period. The employer must know of the specific activities or motions to be restricted and what jobs, if any, satisfy these restrictions. Once the employee has been placed in a job that rests the affected area, or is removed from work entirely to recover, the employer's compliance obligation is satisfied, even if the employee's recovery is complicated by non-occupational factors. Thus, the confidentiality requirement should not hamper the employer's ability to comply with MSD Management requirements.

It is true that employers have a financial interest in ensuring that employees do not engage in non-work activities that could prolong the period for which WRP benefits must be paid. However, the final rule contains mechanisms to shield employers from the costs of prolonged WRP. The rule provides a procedure for HCPs to inform employees about medical conditions associated with exposures to risk factors, and any non-work activities that could impede their recovery. This information, conveyed directly by the HCP, will go far toward encouraging employees to seek appropriate treatment, and to refrain from potentially harmful outside activities during recovery. The rule also reduces the maximum duration of WRP benefits from six months, as proposed, to ninety calendar days.

OSHA has also addressed the concerns of some commenters that the confidentiality requirement could undermine employer's efforts to control MSD hazards. Under the proposed rule, employers could have been required to institute control measures incrementally when MSDs occurred in problem jobs. Commenters correctly pointed out that if the success of ergonomic interventions is to be measured by the occurrence of MSDs in problem jobs, employer knowledge about non-occupational factors associated with those MSDs assumes greater significance.

However, the final rule establishes different and more definite criteria for reducing MSD hazards. As explained in the preamble discussion of paragraph (k), the final rule sets out concrete steps that employers may take to reduce MSD hazards to acceptable levels. When employers take these steps, the occurrence of an MSD in the job does not require further action as long as the controls are still in place and functioning and no new hazards have arisen. OSHA believes that these changes, reflected in paragraph (k), address the concerns raised about the effect of the confidentiality requirement on the employer's hazard control obligation. For these reasons, OSHA concludes that preserving the confidentiality of information unrelated to occupational exposure to risk factors is necessary to effectuate the purposes of the standard and will not work an undue hardship on employers.

3. Confidentiality and Workers' Compensation

Finally, some commenters argued that the restrictions imposed upon HCPs' disclosure of information could preclude employers from evaluating workers' compensation claims arising from MSDs (see, *e.g.*, Ex. 30–4564, 31–324, 31–338). However, the final rule makes clear that the confidentiality requirement does not apply when disclosure is authorized by state or federal law. Thus, in a case involving a claim for workers' compensation benefits, the HCP is subject to the ordinary processes and procedures established by the state for obtaining relevant information. Nothing in the final rule is intended to conflict with, or hamper the operation of, state workers compensation systems.

Providing Information to the HCP

The final rule, like the proposed rule, requires the employer to provide information about the job and workplace conditions to the HCP conducting the assessment. The employer must provide the HCP with a description of the employee's job and information about the MSD hazards in the job and a copy of the ergonomics standard. These requirements to provide information to the HCP are slightly different than the proposed rule. The final rule does not carry forward the proposed requirements to provide a summary of the standard to the HCP, the requirement to provide workplace walkthroughs to the HCP, or the requirement to provide a description of available work restrictions.

Many commenters supported the proposed provisions pertaining to the information that must be provided to the HCP about the workplace (see, *e.g.*, Exs. 30–710, 30–3826, 30–3686, 30–4540), whereas others stated that some or all of the provisions in this paragraph should be deleted (see, *e.g.*, Exs. 30–3765, 30–3813, 32–300–1, 30–652). For example, the Dow Chemical Company suggested that OSHA delete this entire section, because (1) developing job descriptions would be burdensome, (2) gathering the information would create a time delay in getting an employee to an HCP, and (3) this information would not impact the quality of the care the injured employee receives (Ex. 30–3765).

Some commenters thought the requirement to provide information to the HCP was redundant with other requirements in the proposal or other existing OSHA regulations (see, *e.g.*, Exs. 30–3813). Others stated that creating and providing this material places a burden on employers (see, *e.g.*, Exs. 30–2725, 30–4567, 30–4607).

Information About the Employees Job and the MSD Hazards Within the Job

Both the final rule and the proposal require the employer to provide the HCP with a description of the employee's job and information about the MSD hazards in the job. This provision received very little specific comment. The only specific objection, made by several commenters, was that detailed job descriptions are not available (see, *e.g.*, Exs. 30–2725, 30–3392, 30–3765).

Paragraph (p)(3)(i) of the final rule requires employers to provide a description of the employee's job and information about the hazards in it. This information is needed to assist HCPs in providing both accurate assessment and effective management of MSDs. Without such information the HCP may not be able to make an accurate evaluation about the causes of the MSD or may not be able to prescribe appropriate restricted work activity. OSHA believes that providing HCPs with information about the results of any job hazard analysis that has been done in that job ensures that the HCP has the most complete and relevant information for evaluating and managing the recovery of the injured employee. Many stakeholders have told OSHA that they already provide this type of information to the treating HCP in order to familiarize the provider with the employee's job and associated workplace risk factors and ultimately to facilitate resolution of the MSD (Exs. 26–23 through 26–26).

If the HCP is already on site, he or she is likely to be familiar with the jobs in the workplace, the MSD hazards identified in the hazard determination of the employee's job, and what jobs or temporary alternative duty may be available. However, HCPs who are not routinely on site generally do not have this workplace-specific information and employers must provide it in these cases. It is essential that HCPs charged with the responsibility for MSD management know or be provided with this information if they are to successfully manage the cases of the injured workers. Because employers will have tested the injured employees job against the job hazard screen in paragraph (f), the employer will already have some idea of the hazards in the employee's job, and it should not be difficult to pass this information on to the HCP.

While some companies routinely keep detailed written job descriptions, other companies (especially small firms) may not have detailed written job descriptions immediately available. It is not vital that the employer provide the HCP with an enormously detailed description of the employee's job. A general description of the employee's job duties that contains enough detail to help the HCP perform an appropriate evaluation and develop an informed opinion of the case will suffice.

OSHA recognizes that this requirement places burdens on employers. However, the Agency believes these burdens are more than outweighed by the benefits that accrue from providing the HCP with information about the employees jobs and the MSD hazards in that job. As a recent journal article stated "To make appropriate recommendations about return to work, the health care provider should know the physical demand characteristics of the job the worker is expected to perform" (Ex. 502–284). Of course, the costs associated with this requirement have been included in the economic analyses for the final rule.

Copy of the Standard and a Summary of the Standard

The proposed rule would have required the employer to provide a copy of the ergonomics standard, as well as a summary of the standard, to the health care professional. The final rule simply requires the employer to provide a copy of the standard. Several commenters objected to the proposed requirements (Exs. 30–3765, 30–4567), arguing that they are not needed for diagnosis or treatment (Ex. 30–3765), are burdensome (Ex. 30–4567). The American Ambulance Association asked what would suffice for a summary of the standard (Ex. 30–4567). A few commenters suggested that OSHA create a non-mandatory appendix containing the required summary of the Standard (Ex. 30–3284, 30–3686, 31–307). Several commenters suggested deleting the requirement for a summary (Ex. 30–2216, 30–3813, 30–3922). For example, the Organization Resource Counselors argued that "[t]he standard should be sufficiently straightforward [so] that the HCP can understand it without needing a special 'summary' of the standard" (Ex. 30–3813). The A.O. Smith Corporation suggested that, as an alternative, OSHA could offer training to medical providers and certify them for this practice area (Ex. 30–2989).

OSHA has included the requirement to provide a copy of the standard to the HCP in order to assure that HCPs know how quickly employers must provide employees with access to the HCP and that employers must analyze any job in which an MSD incident is reported. Further, the HCP needs to be informed about the information they are to provide in the written report required by paragraph (q) of the final rule. OSHA has not included the proposed requirement to provide a summary of the standard to the HCP, finding that the summary is a redundant requirement that is not needed, since the standard itself is reasonably short and is easily read.

Descriptions of Available Restrictions

The proposed rule would have required employers to provide information on work restrictions that were available during the recovery period and that were reasonably likely to fit the employee's capabilities during the recovery period. OSHA believed that providing this information to HCP would help facilitate the appropriate matching of the employee's physical capabilities and limitations with a job that would allow an employee to adequately rest the injured area while still remaining productive in other capacities. Employers with ergonomics programs have discovered that the more detailed information and communication provided to the HCP about available alternative duty jobs, the better the HCP understands the causes

of the problem and knows what work capabilities remain. As a result. these employers have found that the HCP is more likely to recommend restricted work activity rather than removal from work during the recovery period. In addition, it is more likely that HCPs are able to recommend much shorter removal periods when removal is combined with restricted work activity as a means of facilitating recovery.

A number of commenters argued that the employer cannot determine the need for restricted work, before an evaluation by a health care professional. (Exs. 30–1091, 30–1671, 30–3033, 30–3034, 30–3035, 30–3185, 30–3188, 30–3258, 30–3259, 30–3284, 30–3392, 30–3765, 30–3813, 30–4159, 30–4536, 30–4547, 30–4549, 30–4562, 30–4607, 30–4647, 30–4713, 30–4776, 30–4800, 32–300–1) In a representative comment, the Southern California Edison company remarked that:

> First, this calls for the employer to somehow anticipate the HCP's diagnoses and evaluation of physical limitations before the employer has even seen the HCP. Second, an HCP is better qualified to make an initial assessment of an employee's physical limitations (*i.e.,* lift no more than 10 pounds, do not stand for more than 4 hours, etc.). The employer then is best qualified to determine appropriate work restrictions taking into account the physical limitations described by the HCP (Ex. 30–3284).

OSHA agrees with these commenters that, for at least some MSD incidents, it is difficult to provide information about appropriate restrictions to the HCP, and that the HCP is in a better position to tell the employer what restrictions or physical restrictions must be implemented while the employee is recuperating from an MSD injury. Therefore, this provision has not been included in the final rule. However, the employer is required to implement any restrictions he or she finds necessary, and OSHA believes that there are some circumstances where the employer can implement restrictions before consultation with an HCP. The employer will also benefit from good communications with the HCP about what types of restricted work may be available, and should try to work cooperatively with the HCP to determine appropriate work.

Walkthrough Rights for the Health Care Professional

The proposed rule included a provision that would have required the employer to allow the health care professional to visit the establishment and walk through the establishment if the HCP wished to do so (64 FR 66073). OSHA's intent was to provide HCPs with opportunities to look at the problem job and the available alternative duty jobs. This would have allowed the HCP to become familiar with the physical work activities the injured employee performs, and allow that the HCP to see if available alternative duty jobs would allow the employee to rest the injured area during the recovery period. OSHA did not intend to require employers to provide HCPs walkthroughs throughout the entire facility, and expected that workplace walkthroughs could be either informal or formal. Several commenters supported the HCP walkthrough provisions (see, *e.g.*, Exs. 3–52, 3–107, 30–4301, 31–242). The Washington Federation of State Employees Local 1488—AFSCME also recommended that the employer should be required to pay for the HCP's time and travel expenses for a walkthrough (Ex. 31–242). The Dow Chemical Company said that it was not opposed to the proposed provision, and that DOW encourages HCPs to visit their worksites (Exs. 30–3765). Southern California Edison stated that they also did not object to the proposed requirement, but recommended that OSHA specify that the employer is under no obligation to pay the HCP for the walkthrough (Ex. 30–3284).

A few commenters opposed the proposed walkthrough rights requirement (Ex. 30–3348, 30–3749, 30–4713, 30–5674). Freeborn and Peters argued that the walkthrough rights are not needed (Ex. 30–4713). The Society for Human Resources Management stated that the proposed requirement:

> [w]ould be particularly burdensome for smaller employers who rarely have the kind of a relationship with an HCP that such a walkthrough would be practical. If OSHA chooses to maintain such a requirement, its application should be limited to larger employers and only for those HCPs whom the employer expects to use regularly * * * (Ex. 30–3749).

The Puerto Rico Manufacturing Association remarked that the proposed provision "[n]eeds to be narrowed, because it is disruptive to many operations * * * " and asked "[w]hat if every employee with a sign or symptom wanted his own HCP to assess his job?" (Ex. 30–3348).

OSHA has decided not to include an HCP walkthrough right in the final rule. While HCP walkthroughs have significant advantages in helping the HCP determine appropriate restrictions for injured workers, they are not absolutely necessary and could result in added burden to employers. As OSHA acknowledged in the proposal, there are other ways HCPs can acquire more in-depth information about the employee's job and the MSD hazards in it. For example, employers can provide HCPs with the results of the job hazard analysis, photographs of the job, or videotapes of the job being performed.

Paragraph (q). What Information Must the HCP's Opinion Contain?

Paragraph (q) describes the types of information that should be included in the HCP's written opinion. This information includes: (1) the HCP's assessment of the employee's medical condition as related to MSD hazards in the employee's job; (2) any recommended work restrictions, including, if necessary, removal from work to allow for recovery, and any follow-up needed; (3) a statement that the HCP has informed the employee of the results of the evaluation, the process to be followed to effect recovery, and any medical conditions associated with exposures to risk factors; and (4) a statement that the HCP has informed the employee about work-related or other activities that could impede recovery from the injury.

These four elements to be addressed in the HCP's opinion were included in the proposal, and OSHA received no significant comment requiring discussion in the final rule. OSHA notes that "work restrictions" are defined in paragraph (z) of the final rule as limitations on the employee's exposure to risk factors present in the job giving rise to the MSD incident, and may include limitations on work activities in the current job, transfer to an alternative duty job, or complete removal from work to permit recovery. OSHA reiterates here the point made in the proposal about the importance of specific work restriction recommendations. 64 Fed. Reg. 65,845. The HCP should describe in as much detail as possible the nature and duration of work restrictions so that employers will have maximum flexibility to ensure that employees can remain productive while resting the affected area.

Paragraph (r) What Must I do if Temporary Work Restrictions or Removal From Work are Needed?

Paragraph (r) describes the actions required when an MSD incident has occurred in a job with risk factors that exceed the action level, and the employer or HCP determines that temporary work restrictions or removal from work are needed.

Paragraph (r)(1) first makes clear that the employer must either determine the work restriction or removal himself or herself, or comply with the recommendations of an HCP, either by temporarily placing the injured employee in an appropriate alternative or "light duty" job, or, if necessary, by temporarily removing the employee from work.

Paragraphs (r) (2) and (3) require the employer to maintain the injured employee's wages and benefits when work restrictions are necessary.

Work Restriction Protection (WRP)

A. Necessity for WRP

"Work restriction protection" or "WRP" refers to the requirements in paragraphs (r)(2) and (3) for maintaining an injured employee's employment rights, wages and benefits when temporary work restrictions are necessary. As explained in the proposed rule, 64 FR 65848–65852, and in the discussion below, WRP requirements are designed to encourage employees to report MSDs and their signs and symptoms as early as possible, and to participate actively in MSD management. Early reporting of MSDs by employees will contribute to the success of the final rule in several important ways. First, unlike other OSHA standards, the rule does not require employers to monitor their workplaces for hazards, but rather to evaluate employee reports of MSD signs or symptoms to determine whether further action is necessary. Employee reports must be evaluated to determine whether an MSD incident has occurred in a job with risk factors exceeding the standard's action level. If the job has risk factors that exceed the action level, the employer must implement several elements of an ergonomics program, including job hazard analysis, and must provide necessary work restrictions (including work removal, if necessary) and MSD management.

This approach depends upon employees' willingness voluntarily to report when they first experience signs or symptoms at work. As the agency noted in the proposed rule, "[i]f employees are not willing to come forward and report MSDs, serious MSD hazards in that job will go uncontrolled, thus potentially placing every employee in that job at increased risk of harm." 64 FR 65861. Early reporting permits employers to identify problem jobs and institute corrective measures before other employees in those jobs become injured. Thus, timely reporting by employees is central to the final rule's hazard identification and control mechanisms.

Early reporting is also crucial in maximizing the standard's benefits for injured employees and in minimizing costs to employers and employees. The record establishes that MSD treatment is more likely to be successful if provided early, before the disorder has become debilitating (see *e.g.*, Exs. 3–56; 3–59; 3–179; 3–184. See also Testimony of Dr. Evanoff (Tr. 1530–31; 1628); Dr. Herbert (Tr. 1698–99); Dr. Connell (Tr. 2833); Dr. McCunney (Tr. 7649–50); Dr. Bernacki (Tr. 7687); Dr. Piligian (Tr. 7883–5); Dr. Frank (Tr. 1368); Dr. Cherniak (Tr. 1234–5). Early detection and intervention also reduces the severity of MSDs and the level of treatment required to address them (see *e.g.*, Exs. 3–23; 3–33; 3–50; 3–56; 3–59; 3–121; 3–124; 3–151; 3–162; 3–179; 3–184) and reduces the number of days employees must spend on restricted duty or away from work entirely (see Ranney 1993, Ex. 26–913; Day 1987, Ex. 26–914; Oxenburgh 1984, Ex. 26–1367). Consequently, the early reporting of MSDs substantially reduces both the physical and economic toll of these disorders.

The participants in the rulemaking had conflicting views on whether, and to what extent, WRP is needed to ensure early reporting of MSDs. After a careful review of the literature, testimony and comments on this issue, OSHA finds persuasive evidence that, without WRP, employees will be reluctant to report MSDs and their signs and symptoms at an early stage. In the preamble to the proposed rule, OSHA discussed a variety of studies in the scientific literature indicating that MSDs are underreported in federal and state occupational injury and illness statistics. These studies show that a substantial percentage of work-related MSDs are not recorded on the OSHA log of occupational injuries and illnesses, and are therefore excluded from the Bureau of Labor Statistics (BLS) data (see *e.g.*, Exs. 26–28; 26–1258; 26–920; 26–922; 26–1259; 26–1261; 26–1260). They also demonstrate that large numbers of workers with medically confirmed MSDs do not file claims for workers' compensation benefits (see *e.g.*, Exs. 26–1258; 26–1212; 26–920). See also 64 FR 65851–52; 65980–83 and Table VII–2. Based on this and other evidence, OSHA preliminarily estimated that at least half of all work-related MSDs are not reflected in the BLS statistics. 64 FR 65981.

Researchers, physicians, and workers themselves supported OSHA's finding that MSDs are underreported at the federal and state levels. NIOSH agreed that there is a substantial likelihood that the actual number of MSDs exceeds the BLS estimates, and that this is due in part to underreporting of the true number of work-related health problems on the OSHA 200 logs (Ex. 32–450–1). Other commenters highlighted the growing literature in the workers' compensation field, including recent studies confirming that only a small percentage of workers with back, upper extremity and other MSDs file claims for benefits (see *e.g.*, Ex. 37–14, p. 9 [Emily Spieler, citing, *e.g.*, Morse 2000]; Ex. 500–203 [Dr. Michael Erdil, citing, *e.g.*, Rosenman 2000]; Ex. 32–339–1, Ex. 500–218; Tr. 2399–2301 [Dr. Boden]).

Physicians and researchers testified that the findings in the literature were consistent with their experiences (Tr. 839–40 [Dr. Armstrong]; Tr. 1021 [Dr. Punnett]; Tr. 1115 [Dr. Erdil]; Tr. 1886–87 [Dr. Owen]; Tr. 2399–2401 [Dr. Boden]). Dr. Michael Erdil stated that "my clinical experience as an occupational physician treating thousands of patients with MSDs is consistent with these studies' finding that employees often do not report MSDs they believe to be caused by work." Tr. 1115. Emily Spieler, an author and lecturer on workers' compensation issues, and a former Commissioner of the West Virginia Workers' Compensation Fund, wrote that

> [t]he findings regarding under-filing are consistent with my own observations regarding workers' claims filing behaviors. Many workers with compensable injuries do not file claims for benefits. Both my own experience and current literature suggest that under filing far exceeds overreporting in workers compensation systems. There are serious implications regarding the prevention and compensation of MSDs that flow from this.

Ex. 37–14, p. 10.

Workers have given a variety of reasons for not reporting MSDs to their employers or failing to seek workers' compensation benefits for these disorders (see 64 FR 65849–50; 65980–81). Many workers expressed the fear that if they report a work-related injury, they will lose their job or be transferred to an alternative job at reduced pay and benefits, or suffer other forms of job discrimination (see Exs. 3–121; 3–151; 3–183; 3–184; 3–186). Employees voiced these concerns repeatedly during the hearing (see Tr. 3602 [Corey Thompson]; Tr. 5820 [Dave [S]aksewski]; Tr. 5832 [Scott Bean]; Tr. 6022 [Dennis Norton]; Tr. 5901–02 [Victor Henderson]; Tr. 7733–34 [Sandy Brooks]; Tr. 7736–37 [Jeanette Di Florio]; Tr. 7545–46 [Penny Siedner]; Tr. 7998 [Al Close]; Tr. 8013 [Bob Zielonka]; Tr. 9561 [Robert Wabol]; Tr. 10,720–21 [Richard Sorokas]; Tr. 12,530 [Buzz Vsetecka]). Dave [S]aksewski recounted his experience at an automobile assembly plant:

> As I was new in the facility, I received many less than desirable jobs. On many of the assembly jobs my hands or arms ached at the end of the shift or my back was so sore from lifting that I could not do the things on weekends that I would have enjoyed doing and I had normally done in the past. Things like fishing or playing ball went on the back burner until I felt like I could do them without further hurting myself.
>
> I never reported any of these problems to the medical department because as a probationary employee you just did not complain about anything, even if I was a union member. * * * The end result of a complaint from me would have been no overtime, maybe a job restriction, or a disputed compensation claim that I had injured myself at home working in the garden.
>
> I can tell you from personal experience that people do not report MSDs until they get bad enough where they can no longer tolerate the job.

Tr. 5822–23. Autoworker Al Close agreed, stating "employees are still reluctant to report early symptoms of injury. This is due to intimidation by middle management and by the fact that they will get work restrictions or be sent home with the loss of pay." Tr. 7998. Employee representatives from a broad spectrum of industries echoed these sentiments (see *e.g.*, Ex. 32–182–1 [AFSCME]; Ex. 32–185–3 [UAW]; Exs. 32–339–1; 500–218 [AFL–CIO]; 32–198–4 [UNITE]).

Employers, physicians, and others acknowledged that concerns about economic loss and retaliation influenced employees' decisions not to report their MSDs or to seek treatment or compensation for them. Peter Meyer, Human Resource Director for Sequins International testified:

> It is true that workers in most situations don't report pain and work-related injuries, especially when they are concerned about their jobs. They are continually concerned about the hours that they are going to work so it makes sense that workers wouldn't report something that they might think jeopardizes their jobs.

Tr. 17350. Dr. George Piligian testified that the most common reason given by employees for delaying treatment for MSDs was the fear of losing income. He stated, "[t]his was the biggest obstacle, especially in those that were not high-paying sectors of the work force. Therefore, wage replacement, especially when you first have symptoms, is vital. People will not come forth." (Tr. 7822–3). See also Tr. 1115 (Dr. Erdil); Tr. 1724 (Dr. Robin Herbert).

This evidence demonstrating that economic concerns are a powerful motivating factor in workers' behavior affecting their health is consistent with that adduced in previous OSHA rulemakings. For example, OSHA commented on the evidence that lead-exposed workers would be reluctant to participate in medical surveillance program, as follows:

> Much of the evidence in the lead proceeding documents the extent to which worker participation is adversely affected by the fear that adverse employment consequences will result from participation in medical surveillance programs. This problem was emphasized by the testimony of many workers and worker representatives. * * * Evidence concerning the issue of worker fear impeding participation, however, was not confined simply to testimony from worker representatives. A wide variety of experts verified the existence of this problem, as did several industry representatives. The evidence suggests that economic disincentives to worker participation are currently a problem in the lead industry.

43 FR 54442.

OSHA believes that the two patterns of employee behavior discussed above—the failure to report work related MSDs to employers, and the failure to claim workers' compensation benefits for these disorders—underscore the need for WRP in the final rule. OSHA's recordkeeping regulations in Part 1904 already require employers to inform employees of the need to report injuries and illnesses promptly, and to have a clear procedure for reporting. Moreover, section 11(c) of the OSH Act protects employees who report their injuries from acts of discrimination or retaliation by employers. In view of the evidence that these provisions do not eliminate underreporting on the OSHA logs, it is unreasonable to believe that similar requirements and protections in the final rule, standing alone, will be sufficient. Indeed, without wage protection, the standard's MSD management provisions, including mandatory work restrictions or work removal when recommended by an HCP, will likely increase the pressure on employees not to inform their employers of work-related MSDs, and thereby exacerbate an already serious problem.

The evidence on employees' dissatisfaction with workers' compensation benefits, and avoidance of workers' compensation systems, is also relevant. There was substantial testimony that employees view the workers' compensation system as ineffective and cumbersome to use (see *e.g.*, Ex. 500–218). Emily Spieler summarized these problems as follows:

> There are several tiers of problems with the adequacy of compensation, for both compensatory and deterrent effects. First, many people do not file claims that, if filed, might be compensable. Second, in some states, many claims involving work-related MSDs may not be compensable, even if filed. Third, payment in apparently compensable claims for MSDs, and in particular for repetitive stress-related MSDs, may not be paid due to controversion, or may be delayed, or may be settled for compensation below the statutory amounts.
>
> The result is twofold. First, workers may be discouraged from filing workers' compensation claims or from otherwise alerting their employers to developing MSDs. Second, workers compensation fails to provide employers with adequate incentives for the prevention of disabling MSDs.

Ex. 37–14, p. 10. This evidence demonstrates that the potential availability of workers' compensation benefits alone is insufficient to ensure full and timely reporting of MSDs and their signs and symptoms, and further underscores the need for a requirement protecting employees' wages and benefits during periods when work restrictions are necessary.

In contrast, OSHA was not convinced by those commenters who argued that the record does not demonstrate the need for WRP. The evidence and argument presented by these commenters was not as concrete or specific. They maintained principally that: (i) OSHA's own audits conducted in 1996 and 1997, and statements made by some OSHA officials and experts, demonstrate that employer logs are accurate; (ii) there is no need for WRP because most MSDs require little or no time away from work; and (iii) OSHA itself concluded that WRP will not rectify underreporting. These arguments are discussed below.

In 1998 and 1999, OSHA performed audits of employers' injury and illness records. The 1998 audit examined a sample group of employers' 1996 records, while the 1999 audit examined records for 1997 (see Ex. 500–168, Appendices A and B). A number of commenters argued that the results of these audits undermined OSHA's finding of widespread underreporting of MSDs on employers' logs (see *e.g.*, Exs. 500–168; 30–3347; 32–78–1; Ex. 30–1722; Ex. 30–3956). The AISI's comment is representative:

> OSHA went to extensive lengths to perform a statistically significant audit of the accuracy of OSHA 200 recordkeeping. The results of the official OSHA audits of OSHA 200 logs for 1996 and 1997 are compelling. OSHA found that, at the 95% threshold of accuracy, the percentage of establishments with accurate records [for total recordable cases (TR) and for lost workday cases (LW)] was [for 1996, 87.96% TR and 86.57% LW; for 1997, 91.93% TR and 89.69% LW] * * *. Based on * * * review of the studies cited by OSHA [in the proposal], it is clear that they do not support OSHA's allegation of a substantial and widespread underreporting of occupational injuries and illnesses. Rather than looking back to limited reviews of

> "ancient history," OSHA is required to look at the best available evidence, which is the 1996 and 1997 audit reports. They demonstrate an extremely high level of accuracy in OSHA 200 recordkeeping from samples determined to be representative * * *.

Ex. 500–168, pp. 9–10, 21. The ORC also pointed to OSHA's audits:

> [t]he [audit] process is centered around comprehensively checking both occupational and nonoccupational injury and illness records to identify misreporting and under reporting. Employee interviews are also used when the compliance staff deems them necessary. The results from the audits provide the only statistically reliable insights available into the quality of the OSHA data and the accuracy of employee reporting and employer recording practices.

Ex. 32–78–1 at 27. ORC noted that most of the studies cited by OSHA examine data that is more than a decade old and that may not reflect improvements due to the Agency's stepped-up recordkeeping enforcement efforts and recent guidance on the proper recording of cumulative trauma disorders (Ex. 32–78–1, p. 26). ORC and others also noted that Agency officials, including Assistant Secretary Charles Jeffress, have expressed confidence in the accuracy of BLS statistics (see *e.g.*, Exs. 32–78–1, p. 27; 30–1722, p. 75–76; 30–3347).

OSHA's recent recordkeeping audits were designed to measure whether employer records accurately reflect injuries and illnesses that employees reported to them. Therefore, the auditors examined occupational records to identify the work-related injuries and illnesses that may have occurred to employees, including, where available, medical records, workers' compensation records, insurance records, payroll records, company safety incident reports, first-aid logs, and light duty rosters (Ex. 500–168–1, Appx. *Analysis of Audits on 1996 Employer Injury and Illness Recordkeeping, Audit Protocol* at 6, (v)). The audit protocol did not require the auditors to examine non-workplace records to determine whether employees within the sample group had suffered work-related MSDs which were not reported because the employees did not seek treatment from the employer or the employers' health insurance, file a worker's compensation claim, take leave, or otherwise enter the employer's records. Id. By contrast, a number of studies in the record examine non-workplace records and other sources in determining that MSDs are not accurately reflected in the OSHA logs. For example, in performing health hazard evaluations (HHEs) at several establishments, NIOSH found that a high proportion of MSDs reflected in the records of employees' private health care providers, in confidential interviews, and in standardized questionnaires and surveys were not included in the employers' logs. NIOSH reported that:

> These HHEs compared the OSHA 200 logs with work-related MSDs ascertained via the following mechanisms: (1) confidential medical interviews; (2) review of employee medical records of private health care providers; (3) health surveys utilizing standardized MSD symptom questionnaires; (4) health surveys defining cases as those with work-related symptoms and positive physical findings conducted by physicians performing physical examinations targeted to the musculoskeletal systems. We have no reason to believe that these HHEs are not representative of the likely widespread under-reporting of work-related MSDs.

Ex. 32–450–1. Moreover, several of the studies discussed in the proposed rule examine data sources that appear to be different from those considered in OSHA's audits (see *e.g.*, Exs. 26–28; 26–1261; 26–1259; 26–1250).

For these reasons, OSHA believes that the recent audits do not undercut the findings in the literature that widespread underreporting exists. The logs are a reasonably accurate reflection of those injuries and illnesses actually reported by employees at work.[13] OSHA believes that many recordable MSDs are omitted from OSHA logs and other workplace records because employees do not inform their supervisors, do not file a claim for workers' compensation, or do not seek treatment from the employer's medical staff or health insurance provider. This is apparent not only from the studies examining the logs, but also from the evidence on employee reporting behavior in the workers' compensation field, and the direct testimony of many workers themselves during the hearing. Considering the record as a whole, OSHA finds that there is reliable, persuasive evidence that MSDs are currently underreported in the OSHA injury and illness records.

Employer representatives also argued that OSHA's estimate in the proposed rule that "most MSDs do not result in any days away from work" (64 FR 65853) undermines the need for WRP (Exs. 32–211–1; 30–1722). The Chamber of Commerce argued that "[b]oth * * * propositions cannot be true: either large numbers of employees are refraining from reporting lost-time injuries to avoid significant financial losses, thus requiring WRP, or few such losses are occurring—which means that [the] WRP provision is unnecessary." (Ex. 30–1722, p. 77.).

OSHA does not believe that the two propositions cited by the Chamber are inconsistent. As discussed above, a significant factor motivating employees not to report MSDs is the fear that they will be placed in a restricted duty job with reduced pay and benefits, and that they may also lose seniority or "bidding" rights. Thus, employees' concern about being out of work altogether is not the only, or necessarily the predominant, factor to be considered in evaluating the need for WRP. Moreover, there is no fundamental tension between OSHA's conclusion that workers' fear of economic loss is a significant contributing factor to the high level of underreporting observed in the literature, and its estimate that most MSDs will not result in time away from work. As discussed further in the Significance of Risk and the Benefits chapter of the Final Economic Analysis supporting this rule, a significant proportion of all MSDs (approximately one-third) will result in some lost work time, and certain types of MSDs, such as carpal tunnel syndrome, require nearly a month to recover sufficiently to return to work (median length of time away is 25 days). Therefore, the prospect of losing work due to an MSD is a tangible one, and serves as a powerful stimulus to employees. Indeed, the record evinces strong and deeply held beliefs by many employees across industry sectors that reporting MSDs and their signs and symptoms will result in loss of pay and benefits, or other adverse employment action. Accordingly, concrete wage and benefit protections are necessary to counter employees' concerns about reporting MSDs.

Some commenters argued that there is no justification for requiring WRP in light of OSHA's preliminary conclusion that WRP would not increase the MSD reporting rate (see *e.g.*, Exs. 32–211–1, p. 9; 32–234–2, p. 27). In the Preliminary Economic Analysis of the proposed rule, OSHA explained that it was then unable to quantify the incentive effects of WRP on employee reporting of MSDs, and therefore had no basis to estimate the costs and benefits attributable to increased numbers of MSDs reported (64 FR 66001). However, the agency "welcome[d] data and comments on the extent of MSD under reporting, possible increases in the reporting of MSDs that may occur after employers implement an ergonomics program, and on the incentive effects of the proposed standard on employee reporting of MSDs." Id.

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[13] The audits show that approximately 10% or more of injuries and illnesses reported by employees are not recorded in the logs.

As explained in the Final Economic Analysis, OSHA has identified several studies from the economics literature permitting the Agency to develop a methodology that enables it to estimate the impact of WRP on MSD reporting rates. Because wage and benefits protection requirements will likely substantially increase the number of employees who will report MSDs and their signs and symptoms, WRP is a reasonably necessary and appropriate component of the final rule.

B. Legal Authority for WRP

1. The OSH Act and Past OSHA Practice Require That OSHA Include WRP In This Standard

It is now well established that OSHA's authority to promulgate occupational safety and health standards "reasonably necessary or appropriate to provide safe or healthful employment and places of employment," 29 U.S.C. § 652(8), encompasses the authority, in appropriate cases, to include WRP provisions in those standards. Section 6(b)(7) provides that a standard should, "[w]here appropriate * * * prescribe suitable * * * control * * * procedures" to prevent hazards. 29 U.S.C. § 655(b)(7), and Section 8(g)(2) of the OSH Act provides that "[t]he Secretary * * * shall * * * prescribe such rules and regulations as he may deem necessary to carry out his responsibilities" under the statute. 29 U.S.C. § 657(g)(2). These provisions give OSHA broad authority to require employers to implement practices, such as WRP, that are reasonably necessary or appropriate to achieve OSHA's statutory mission—providing safe or healthful employment and places of employment. See 64 FR 65848–53 (Nov. 23, 1999).

Relying on both this statutory language and the OSH Act's legislative history, the D.C. Circuit affirmed a WRP provision in OSHA's 1978 lead standard requiring employers to maintain an employee's earnings and other rights and benefits during a work removal period of up to 18 months. *United Steelworkers of America* v. *Marshall (Lead)*, 647 F.2d 1189, 1230 (D.C. Cir. 1980), cert. denied, 453 U.S. 913 (1981). [Note: In the lead standard, the provision at issue was termed medical removal protection (MRP).] The court held that (1) the OSH Act gives OSHA broad authority to include WRP where necessary or appropriate to protect the health of workers, and (2) OSHA's inclusion of WRP in the lead standard was supported by the rulemaking record. Id. at 1228–40. The court held that "OSHA's statutory mandate is, as a general matter, broad enough to include [WRP]." *Id.* at 1230. The court also found that OSHA had met its burden of demonstrating that WRP was reasonably necessary and appropriate by providing evidence that employees would resist cooperating with the medical surveillance program in the lead standard absent assurances that they would have economic protection in the event of a medical removal. *Id.* at 1237.

OSHA has followed a consistent practice of including WRP provisions in standards when the rulemaking records show that the provision is useful or necessary to achieve the purposes of the standard. OSHA has included similar WRP provisions in numerous other standards. See *e.g.*, 29 CFR 1910.1025 (Lead); 29 CFR 1910.1027 (Cadmium); 29 CFR 1910.1028 (Benzene); 29 CFR 1910.1050 (Methylenedianiline); 29 CFR 1910.1052 (Methylene Chloride). OSHA's inclusion of WRP in those standards was based upon findings that absent some wage protection employees would not participate in the medical surveillance provisions of the standards. See *e.g.*, Lead preamble, 43 FR 5440 (Nov. 21, 1978).

In 1987, OSHA omitted a WRP provision from its formaldehyde standard on the bases that the "nonspecificity of signs and symptoms [made] an accurate diagnosis of formaldehyde-induced irritation difficult," the symptoms of formaldehyde exposure often quickly resolved, and some employees would never be able to return to a work environment that contained any formaldehyde. 52 FR 46168, 46282 (Dec. 4, 1987). On review, however, the D.C. Circuit held that these justifications, which it characterized as "feeble" or "vague and obscure," were inadequate to justify OSHA's "swerve" from past practice. See *International Union* v. *Pendergrass (Formaldehyde)*, 878 F.2d 389, 400 (D.C. Cir. 1989). The court remanded the issue for OSHA's further consideration. OSHA eventually included a WRP provision in the standard:

> On reconsideration, the Agency has concluded that [WRP] provisions can contribute to the success of the medical surveillance programs prescribed in the formaldehyde standard. Unlike some other substance-specific standards, the formaldehyde standard does not provide for periodic medical examination for employees exposed at or above the action level. Instead, medical surveillance is accomplished in the final rule through the completion of annual medical questionnaires, coupled with affected employees' reports of signs and symptoms and medical examinations where necessary. This alternative depends on a high degree of employee participation and cooperation to determine if employee health is being impaired by formaldehyde exposure. OSHA believes these new [WRP] provisions will encourage employee participation in the standard's medical surveillance program and avoid the problems associated with nonspecificity and quick resolution of signs and symptoms that originally concerned the agency. 57 FR 22290, 22293 (May 27, 1992).

Formaldehyde makes clear that OSHA may not decline to include WRP in standards absent specific findings justifying such a "swerve" from past practice. The rulemaking record here does not support such a "swerve'; to the contrary, it shows that WRP could serve functions strikingly similar to those it serves in the formaldehyde standard. Substantial evidence shows that MSDs are currently underreported and that a significant reason for this underreporting is employees' fear that they will lose income, or even their jobs. In order to encourage employees to report MSDs, report them at an early stage, and participate in MSD management, OSHA must include WRP in this standard.

Despite the legal principles described above, however, a number of rulemaking participants argued that OSHA does not have authority to include WRP in this standard. Their reasons ranged from factors specific to this rule to more general assertions that OSHA never has authority to require WRP, and that the cases holding to the contrary were wrongly decided. OSHA responds to these comments below.

Some commenters stated that OSHA does not have authority to include WRP (or even provisions for work restrictions) in this standard because there are no "objective" triggers for removal. See *e.g.*, Ex. 500–188, p. 87. These commenters contended that in every other standard where OSHA has included a WRP provision, OSHA established (1) an "objective" exposure level for removal, and (2) "objective" medical criteria for removal. In this standard, they argued, employers will be forced to remove employees from work based solely on reports of "subjective symptoms." Ex. 30–4467, pp. 17–18.

This argument is based on erroneous conceptions of the WRP provisions in both OSHA's earlier standards and this one. First, other standards frequently require removal based upon a physician determination that removal is appropriate, even without "objective" triggers. In the lead standard, for example, an employee can be removed from work when "a final medical determination results in a medical finding * * * that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead." 29 CFR 1910.1025(k)(1)(ii). This determination does not have to be based on objective tests; rather, it can be based upon a physician's independent judgment. In the Cadmium standard, an employee can be removed based upon "signs or symptoms of cadmium-related dysfunction or disease, or any other reason deemed medically sufficient by [a] physician." 29 CFR 1910.1027(11)(i)(A); see also Methylenedianiline 29 CFR 1910.1050(9)(i)(B)(1) (removal shall occur "on each occasion that there is a final medical determination or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to MDA").

Second, this standard does not require employers to provide WRP to employees based solely on employee reports of "subjective" symptoms. The employer makes the determination of whether an employee's report qualifies as an MSD incident under this standard. See Paragraph (e). Employers can seek assistance in making these determinations by referring employees to a health care professional. In the end, however, it is the employer's decision. Moreover, this final standard includes an Action Trigger in paragraph (f). If an employee who has suffered an MSD incident is not exposed on his or her job to risk factors at levels that exceed those on the screening tool in Table 1, the employer has no WRP obligations. See Paragraph (f).

In any event, neither the OSH Act nor any of the court decisions interpreting OSHA's authority suggest that OSHA's WRP authority is limited to protecting workers only against conditions that are easy to diagnose. On the contrary, the OSH Act gives OSHA broad authority to include provisions in standards that are reasonably necessary and appropriate to effectuate its statutory mandate. OSHA has found, based upon substantial evidence in the rulemaking record, that WRP is necessary to the effectiveness of this standard. This finding is not affected by the presence (or absence) of "objective" baseline tests for certain MSDs or the presence (or absence) of "objective" or baseline levels for removal.

Some commenters argued that OSHA does not have authority to include WRP in this standard because employees are exposed to some of the hazards at issue outside of the workplace. See *e.g.*, Ex. 500–197, p. III–76. But while it is true that OSHA may only regulate "conditions that exist in the workplace," *Industrial Union Dep't, AFL–CIO* v. *American Petroleum Institute et al.*(Benzene), 448 U.S. 607, 642 (1980), OSHA is not precluded from regulating such conditions just because they may also exist outside the workplace. *Forging Industry Assn.* v. *Secretary of Labor (Noise)*, 773 F.2d 1436, 1442 (4th Cir. 1985). OSHA's Occupational Noise standard, for example, establishes certain requirements that must be met to prevent or reduce the incidence of hearing impairment, a condition that can also be caused by exposure to excessive noise levels outside of work. And OSHA has previously required WRP where employees are also exposed to the hazard at issue outside of the workplace. For example, employees may be exposed to lead, cadmium, methylene chloride, and formaldehyde in varying degrees outside of work. In this case, OSHA has properly exercised its authority to regulate ergonomic hazards in the workplace. The OSH Act thus does not prevent OSHA from including WRP in this standard merely because employees may be exposed to some ergonomic risk factors outside of work.

OSHA also does not agree that it may not include a WRP provision in a standard that is not promulgated pursuant to section 6(b)(5) of the OSH Act. Ex. 500–223, pp. 81–82. OSHA's authority to include WRP in this standard derives from numerous provisions of the OSH Act, including sections 3(8), 6(b)(7), and 8(g)(2). These provisions give OSHA broad authority to implement measures reasonably necessary or appropriate to effectuate its statutory goal. OSHA's authority to include WRP is not granted by section 6(b)(5) of the OSH Act or limited to standards promulgated pursuant to section 6(b)(5). Section 6(b)(5) applies to toxic materials and harmful physical agents and requires OSHA to "set the standard which most adequately assures, to the extent feasible * * * that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard * * * for the period of his working life." 29 U.S.C. 655(b)(5).

To be sure, OSHA has previously required WRP only in section 6(b)(5) standards. But the reason for that inclusion was record evidence that absent some wage protection employees would not participate in the medical surveillance or medical management programs of those standards. Non-section 6(b)(5) standards, on the other hand, do not include medical surveillance provisions. OSHA has thus found it unnecessary to include WRP in those standards. OSHA's past practice does not indicate that WRP can only be included in section 6(b)(5) standards; rather, it demonstrates that WRP can only be included in standards based upon findings that it is reasonably necessary or appropriate. OSHA has made those findings here.

Some commenters argued that Congress' establishment of the National Commission on State Workmen's Compensation Laws (National Commission) in the OSH Act to examine the effectiveness of state workers' compensation systems suggests that Congress did not want to "federalize" workers' compensation through a provision such as WRP. Ex. 30–3811, pp. 15–16. But Congress established the National Commission to provide an "objective evaluation of State work[ers'] compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation for injury or death arising out of or in the course of employment." See 29 U.S.C. 676. In Lead, the D.C. Circuit examined whether Congress's establishment of the National Commission demonstrated a legislative hostility to WRP. The court held that it did not. Lead, 647 F.2d at 1235 n.70. Of particular importance to the court was that WRP did not "federalize" workers' compensation, rather it left the state workers' compensation scheme wholly intact as a legal matter. Id. Thus, even if Congress evinced a hostility to the "federalization" of workers' compensation through the OSH Act, the WRP provision at issue did not effect such "federalization." Id.

Similarly and as explained in more detail below, WRP in this standard will not affect or supersede workers' compensation systems; nor will WRP have a great practical effect on workers' compensation. WRP is not designed to "compensate" workers who suffer from MSDs, to provide them with medical treatment for their work-related injuries or illnesses, or to determine the extent of their disability, all functions reserved to workers' compensation; WRP is designed to encourage employees to report MSDs early and participate in MSD Management. In that sense, WRP serves as an administrative control, working to prevent injuries from becoming disabling and compensable.

NCE *et al.*also claimed to find additional evidence that Congress did not intend OSHA to have authority to require WRP in Congress' refusal to include the "Daniels Amendment" in the OSH Act. Ex. 500–197, pp. III–73–80. The Daniels Amendment would have required the Secretary of Health, Education, and Welfare to publish an annual list "of all known or potentially toxic substances and the concentrations at which such toxicity is known to occur," and to determine whether the levels of toxic substances present in individual workplaces posed a hazard to employees. It then would have prohibited employers from requiring employees to work in areas that had been determined to be hazardous without certain listed protections, "unless such exposed employee may absent himself from such risk or harm for the period necessary to avoid such danger without loss of regular compensation for such period." See Lead, 647 F.2d at 1233.

In the first place, it is difficult to read significant congressional intent not to grant regulatory authority into the failure of the Congress to enact a provision in the Agency's enabling Act. See *U.S. Ex. Rel. Stinson* v. *Prudential Insurance*, 944 F.2d 1149, 1157 (3d. Cir. 1991); see generally 2A Sutherland Statutory Construction § 48.18. This is especially true when the provision is not identical to the regulation requirement at issue. And the Daniels Amendment has little in common with OSHA's WRP provisions. It would have provided the grounds for removal from work based upon informal action by the Secretary of Health, Education, and Welfare. WRP, however, results from OSHA rulemaking involving notice and comment procedures. See Lead, 647 F.2d at 1233. Further, WRP depends in large measure on a health care professional's determination that removal is appropriate, and the standard also contains a dispute resolution procedure to address disagreements among health care professionals. See Paragraph (s). More important, the Daniels Amendment would have allowed an employee to make an individual judgment that the grounds for removal applied; employees could thus effectively remove themselves from the workplace. Lead, 647 F.2d at 1233. Under WRP, however, removal occurs when certain criteria are met, and may even occur against an employee's will. See Paragraphs (e), (f), and (r). Because of these differences, the D.C. Circuit held in Lead that the Daniels Amendment "would probably invite controversy and abuse in a way that [WRP] would not, so the reasons for which Congress rejected the [Daniels Amendment] may well not apply to [WRP]." Lead, 647 F.2d at 1233–34.

Even so, NCE *et al.*argued that the Lead decision was incorrect because it misinterpreted a 1980 Supreme Court decision, *Whirlpool Corp.* v. *Marshall*, 445 U.S. 1 (1980). Ex. 500–197. OSHA is not convinced by this argument. The D.C. Circuit did not rely on the Whirlpool decision in holding that the Daniels Amendment violated congressional intent. Rather, the D.C. Circuit examined independently the language and history of the Daniels Amendment in reaching its conclusions. See Lead, 647 F.2d 1233–34 n.69. Although the court discussed Whirlpool, which it found consistent with its interpretation of the Daniels Amendment, its analysis did not rely on the Whirlpool decision. Id. Furthermore, the D.C. Circuit did not misread Whirlpool by noting the context of the Supreme Court's holding—that the Daniels Amendment would have allowed employees to unilaterally leave work at full pay under certain circumstances. Id.

Commenters also argued that WRP is barred by the Executive Order on Federalism (Executive Order), specifically sections 2(i) and 3(b). Ex. 30–3811, pp. 16–18. Section 2(i) of the Executive Order states that "[t]he national government should be deferential to the States when taking action that affects the policymaking discretion of the States and should act only with the greatest caution where State or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government." Section 3(b) provides that "[n]ational action limiting policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means." 64 FR 43255 (Aug. 10, 1999). The Executive Order sets forth fundamental federalism principles, federalism policymaking criteria, and provides for consultation by federal agencies with state or local governments when policies are being formulated which potentially affects them. [Note: Section XIII of this preamble describes the Executive Order in more detail and discusses OSHA's interactions with State and local governments in the development of this rule. It also contains a certification by the Assistant Secretary that OSHA has complied with the applicable requirements of the Executive Order.]

WRP is not "barred" by the Executive Order. First, there is no "uncertainty" with respect to OSHA's authority to include WRP in this standard. As explained above, the OSH Act gives OSHA broad authority to include WRP where necessary or appropriate to effectuate its statutory mandate. Indeed, the rulemaking record requires OSHA to include WRP in this standard. Second, OSHA has found that "national action" is necessary to deal with the significant risk of MSDs in the workplace. As shown in great detail in the Risk Assessment and Significance of Risk sections, the problem of MSDs is national in scope. See Sections VI and VII below. Under these circumstances, a national standard to prevent MSDs is appropriate under the OSH Act and entirely consistent with the federalism policies set forth in the Executive Order.

Third and finally, OSHA consulted with stakeholders, including representatives from State and local governments, on WRP (and the standard in general). Numerous representatives from State and local governments testified at the hearing. *See e.g.*, 502–476 (Testimony of The Honorable Eliot Spitzer, New York State Attorney General; Testimony of National League of Cities). These same commenters and many others also submitted written comments on the proposed rule, including comments on WRP. See Section XIII for a larger discussion of the participation of State and local governments in the rulemaking proceedings. OSHA considered these comments in developing the final standard. OSHA also specifically sought comment from the public (including State and local governments) on whether the objectives of WRP could be attained by other non-regulatory means. 64 FR 65858 (Nov. 23, 1999). OSHA considered the various alternatives suggested; OSHA ultimately concluded, however, that those alternatives would be unable to accomplish the objectives of WRP (see Chapter VIII, Non-Regulatory Alternatives, of the Final Economic Analysis).

Finally, representatives of the insurance industry also argued that the McCarran-Ferguson Act prevents OSHA from including WRP in this standard. Ex. 30–3811, pp. 38–39. The McCarran-Ferguson Act states, in pertinent part: "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance." 15 U.S.C. § 1012(b). Congress passed the McCarran-Ferguson Act in reaction to the Supreme Court's decision in *United States* v. *South-Eastern Underwriters Assn. (South-Eastern),* 322 U.S. 533 (1944). In South-Eastern, the Supreme Court held that "insurance transactions were subject to federal regulation under the Commerce Clause, and that the antitrust laws, in particular, were applicable to them." *SEC* v. *National Securities, Inc.,* 393 U.S. 453, 457 (1969). The McCarran-Ferguson Act was an attempt to "turn back the clock [to the time before the Supreme Court decision], to assure that the activities of insurance companies in dealing with their policyholders would remain subject to state regulation." Id. at 458–59.

The McCarran-Ferguson Act does not prevent OSHA from acting pursuant to its own authority under the OSH Act. OSHA derives its authority to issue standards from the OSH Act; OSHA is authorized to implement standards "reasonably necessary or appropriate" to accomplish its statutory goal. As explained in detail above, OSHA is operating well within its statutory authority by including WRP in this standard. The McCarran-Ferguson Act has no bearing on that authority. See *Women in City Government United et al.* v. *City of New York,* 515 F. Supp. 295, 303 (S.D.N.Y. 1981) (The McCarran-Ferguson Act was not intended to be applied "indiscriminately to subsequent federal legislation * * * solely because legislation fails specifically to state that it is applicable in circumstances where insurance interests are implicated.").

And, as explained more fully below in the discussion of section 4(b)(4) of the OSH Act, WRP will not invalidate, impair, or supersede any workers' compensation law or system. The operation of workers' compensation laws will remain unchanged after the standard is promulgated. WRP also will not supersede workers' compensation systems by encouraging or discouraging claims in those systems. The McCarran Ferguson Act does not prevent OSHA from issuing WRP.

2. Section 4(b)(4) Does Not Prohibit OSHA From Including WRP and Other Provisions in This Standard.

(a). *Section 4(b)(4) does not prohibit OSHA from including WRP in this standard.*

The most persistent criticism of WRP is that Section 4(b)(4) of the OSH Act forbids OSHA from imposing any type of wage continuation requirement. Section 4(b)(4) provides:

> "Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment." 29 U.S.C. 653(b)(4).

In the preamble to the proposed rule, OSHA explained in detail how the proposed WRP provision did not violate section 4(b)(4) of the OSH Act. Section 4(b)(4) of the OSH Act was intended to bar "workers from asserting a private cause of action against employers under OSHA standards," and to prevent any party in an employee's claim under a workers' compensation law or other State law from asserting that an OSHA regulation or the OSH Act itself preempts any element of State law. *Lead,* 647 F.2d at 1235–36. In short, section 4(b)(4) prohibits OSHA from legally preempting state workers' compensation law. *Id.* Thus, even if WRP were to have a "great practical effect" on state workers' compensation systems, it would not violate section 4(b)(4) so long as it left the state scheme "wholly intact as a legal matter." *Id.* at 1236 (emphasis in original).

The rulemaking record confirms that WRP in this standard will not change the legal scheme of state workers' compensation systems. Professor Emily Spieler, who is one of the nation's leading scholars on state workers' compensation systems and their interaction with other federal and state laws, submitted written comments and testified at great length on the effects of WRP on state workers' compensation systems. As noted above, Professor Spieler served as the Commissioner of the West Virginia Workers' Compensation Fund, responsible for setting insurance premium rates, premium collection from employers, initial claims review, and adjudication. She has lectured extensively on employment law and public health issues, and has authored and/or co-authored numerous articles on workers' compensation, see Ex. 37–14, Curriculum Vitae of Emily A. Spieler, including:

- Spieler E. Is Workers' Compensation the Only Legal Remedy for Workers Who Are Injured at Work? In Occupational Health: Recognition and Prevention of Work-Related Disease and Injury (4th ed. (Lippincott, Williams & Wilkins, Levy BS, Wegman, DW, eds., 2000).
- Spieler E. Dispute Resolution in Workers' Compensation Managed Care. Report prepared for Robert Wood Johnson funded project, A Guide to Evaluating the Effectiveness of Managed Care Programs in Workers' Compensation.
- Spieler E. Perpetuating Risk? Workers' Compensation and the Persistence of Occupational Injuries, 31 Houston Law Rev. 119–264 (1994).
- Spieler E. Injured Workers, Workers' Compensation, and Work, 95 W.Va. Law Rev. 333–467 (1992–93).

Professor Spieler stated that WRP would not alter or affect the legal scheme of state workers' compensation systems; nor would it "supersede" those systems. Specifically, she stated:

> (1) WRP would in no way change the eligibility criteria for obtaining workers' compensation benefits in the state workers' compensation systems. In fact, she noted that the eligibility criteria for WRP and the eligibility criteria for state workers' compensation were substantially different.
>
> (2) WRP would in no way change the filing requirements for state workers' compensation claims. Thus, an employee report of an MSD under the standard would not constitute the filing of a workers' compensation claim. Every state has its own procedures for filing workers' compensation claims; these would remain unchanged by WRP.
>
> (3) WRP would in no way change the benefit payments paid through workers' compensation systems. Workers' compensation benefits are set by state statute; WRP would not affect the payment of those benefits.
>
> (4) WRP would in no way change the review and adjudication process governing workers' compensation claims. "Because of the no-fault principle of the workers' compensation program[], the level of hazard in the workplace and the general treatment of the injured worker is irrelevant to workers' compensation proceedings. In fact, OSHA rules have largely remained outside of workers' compensation discussions and proof. The existence of an ergonomics standard will not change that."
>
> (5) WRP would not cause an increase in workers' compensation premiums or change the calculation of workers' compensation premium rates.

Id. at 15–18; Ex. 500–140, pp. 1–2.

In summary, Professor Spieler stated that "the proposed ergonomics standard [including WRP would] not interfere with, undermine, or federalize workers' compensation systems or illegally or inappropriately undermine the exclusivity doctrine." Id. at 18. See also Ex. 500–26 (Lynn Marie-Crider).

The Attorney General of New York State, Eliot Spitzer, echoed these same points with respect to the New York State workers' compensation system. General Spitzer stated that WRP would leave New York's workers' compensation system "wholly intact as a legal matter." Ex. DC 75, p. 3. Specifically, WRP would not affect workers' compensation eligibility criteria in New York. Id. at 5. Neither would employers in New York State be effectively admitting liability under the state system by making certain determinations required by the standard, "such as whether an employee has a covered MSD, whether that employee should be referred to a healthcare provider, or whether a WRP payment should be made." Id. at 6. General Spitzer also stated that WRP would not affect state workers' compensation laws by obstructing the states' return-to-work objectives. On the contrary, he stated that "by encouraging early diagnosis and treatment of covered injuries * * * WRP would promote, not obstruct, rehabilitation and early return to work." Id. at 9. Finally, General Spitzer stated that WRP would not interfere with the exclusivity doctrine of workers' compensation: "In my view there is no interference with these provisions because WRP is not providing remedies for injuries. Instead, by reducing the financial risks associated with reporting injuries, the income maintenance provisions of WRP would promote early reporting and treatment of the covered injuries and prompt adjustments in workplace conditions for similarly situated workers." Id. at 9–10. In making these observations, General Spitzer noted that similar WRP provisions in other OSHA standards have not interfered with the functioning of the New York State workers' compensation system. See Tr. 3385–3407.

Eighteen Attorneys General submitted post-hearing letters agreeing with the testimony of General Spitzer that WRP would leave state workers' compensation schemes wholly intact as a legal matter and not "affect" or "supersede" state systems in violation of section 4(b)(4). See Ex. 500–48.

There is also no record evidence to support the assertion that WRP will have a significant practical effect on state workers' compensation systems. Injured workers will still have numerous incentives to file for workers' compensation. First, neither WRP nor other provisions of the standard require employers to pay for or provide medical treatment. If a worker is injured on the job and requires medical treatment, that worker will need to file for workers' compensation. As noted by Professor Spieler, and consistent with the injury data described in Section VII, a large proportion of MSD claims in workers' compensation systems are for medical benefits only. Ex. 37–14, p. 16. Those individuals who are seeking only medical treatment through workers' compensation will not be affected by WRP. Second, WRP only requires employers to maintain 90% of a removed employee's gross earnings and benefits for up to 90 days. See Paragraph (r)(3). If a worker requires benefits for longer than that period of time, the worker will need to file for workers' compensation. Currently, 80% of workers' compensation indemnity benefits are for permanent disability. Id. Ex. 37–14, p. 16. Many of the workers receiving permanent disability benefits would not be eligible for WRP.

At the same time, OSHA does not expect that the number of workers' compensation claims will rise dramatically with WRP. As Professor Spieler stated in her written comments, "the existence of the WRP provision is very unlikely to discourage—or encourage—the filing of workers' compensation claims." Id. This has been confirmed by earlier WRP provisions in other health standards where there has been no dramatic observable increase or decrease in the short run in the number of workers' compensation claims filed for conditions covered by WRP and state workers' compensation systems. See generally id. at 18; Ex. 500–218, p. 128.

For all of these reasons, WRP does not violate section 4(b)(4) of the OSH Act. Some commenters argued the opposite, however. Some argued that the language of section 4(b)(4) is unambiguous on its face: it precludes "any interference [with State workers' compensation systems], whether of a legal, economic, public policy, practical or other kind." Ex. 30–3811, p. 14. These representatives also argued that the Lead decision was incorrectly decided; courts today, they argued, would interpret section 4(b)(4) differently. Id.; see also Ex. 32–22–1, pp. 34–35; Ex. 30–4467, p. 17. In addition, some commenters argued that numerous factual differences exist between WRP in this standard and WRP in the lead standard that make OSHA's reliance on the Lead decision misplaced. See Ex. 500–223, pp. 81–82; Ex. 30–4467, pp. 17–22. One important difference, according to these commenters, was that few employees under the lead standard would be eligible for both workers' compensation and WRP, whereas many employees under this standard will be eligible for both workers' compensation and WRP. See Ex. 500–223, pp. 84–85.

OSHA does not believe that section 4(b)(4) can be interpreted to prohibit OSHA from having any impact, either directly or indirectly, on state workers' compensation systems. Such an interpretation would prevent OSHA from enacting any occupational safety and health standard, for, as the court noted in Lead, "any health standard that reduces the number of workers who become disabled will of course 'affect' and even 'supersede' worker's compensation by ensuring that those workers never seek or obtain work[ers'] compensation benefits." Lead, 647 F.2d at 1235. Congress obviously did not intend section 4(b)(4) to so limit OSHA's standard-setting authority. Instead, section 4(b)(4) is intended to prevent OSHA from affecting or superseding any state workers' compensation law; as the court noted in Lead, it is intended to "bar[] workers from asserting a private cause of action against employers under OSHA standards," and to prevent a worker or employer from asserting in a state proceeding "that any OSHA regulation or the OSH Act itself preempts any element of state law." Id. at 1236. OSHA has shown that WRP does neither.

Furthermore, there are not "numerous" factual differences between WRP in the lead standard and WRP in this standard. In fact, as explained above, there are a substantial number of similarities. To be sure, there may be a greater number of workers who qualify for WRP and state workers' compensation benefits under this standard than under the lead standard. Like the lead standard, however, these numbers will decline after the standard is in place. OSHA predicts that by encouraging early reporting, employees will report signs and symptoms of MSDs before they become disabling and compensable under state workers' compensation systems. Thus, the only "effect" of WRP will be that fewer employees will become disabled under state workers' compensation systems. As the court correctly noted in Lead, this is precisely the effect OSHA standards are intended to have. Lead, 647 F.2d at 1235.

Several commenters argued that WRP improperly "supersedes" the exclusive remedy provisions of state workers' compensation laws, essentially giving employees additional "litigation rights" before the Occupational Safety and Health Review Commission and the federal courts. Ex. 30–3811, pp. 19–22; see also Ex. 32–22–1, pp. 11–12.

Workers' compensation systems were initially designed to provide the sole remedy for injuries and illnesses covered by the systems. Of primary importance was that employees would no longer be permitted to assert a negligence claim against employers for injuries arising out of and in the course of employment. Ex. 37–14, p. 12 (Spieler). "Notably, workers' compensation continues to bar alternative tort-based legal actions against employers that involve negligently caused physical injuries arising out of and in the course of employment." Id. This has been termed the "exclusivity" doctrine.

As explained by Professor Spieler, however, a number of federal and state laws have expanded the rights of injured workers.

> "[A] wide variety of legal rights have developed since workers' compensation laws were initially passed. These include federal employment-based laws (such as OSHA, the Americans with Disabilities Act, the Family Medical Leave Act) that provide additional rights to people with work-related health conditions; state employment-based laws (such as anti-retaliation rights under the public policy exception to the at-will employment doctrine and disability discrimination laws); state common law torts that provide remedies for employer actions other than the specific negligence that caused the injury (such as fraud); and, in a growing minority of states, some expansion of the definition of intentional actions that remove injuries from the state exclusivity provisions. All of these legal developments represent an expansion of workers' rights when they are injured at work. *Id.*

Thus, while the "exclusivity" doctrine still exists in workers' compensation, it exists within the broader framework of other Federal and State rights granted workers by Congress and state legislatures. These rights have not been held to violate or contradict in any way the exclusivity doctrine of state workers' compensation systems; "[t]hey do not change the exclusive nature of workers' compensation for the specific purpose of shielding employers from common law tort actions based on negligence." *Id.*

Neither does WRP. WRP provides employees some wage protection in order to encourage them to report signs and symptoms of MSDs early. "WRP does not create any common law tort remedy for [an] occupational injury." Ex. 500–140, p. 2 (Spieler). WRP does not give employees any additional procedural or substantive legal rights; WRP places a requirement on employers to provide some wage protection to employees when they are placed on temporary work restrictions. WRP does not give employees a right to file a cause of action against an employer for WRP benefits; WRP does not give an employee the right to file a cause of action against an employer for failure to pay WRP. To be sure, the OSH Act confers some procedural rights upon employees and/or their designated representatives to participate in OSHA enforcement proceedings; however, these rights were given employees by Congress and are very limited. Indeed, employees may only question the Secretary of Labor's exercise of prosecutorial discretion in an enforcement case before the Occupational Safety and Health Review Commission on the issue of abatement dates in a citation. 29 U.S.C. 659. WRP does not violate the exclusivity doctrine of state workers' compensation systems.

WRP also does not conflict with, or frustrate the return-to-work policies of state workers' compensation systems. Ex. 30–3811, pp. 22–24; Ex. 32–22–1, pp. 16–18. Most state workers' compensation systems provide temporary total disability (TTD) benefits to injured workers in the amount of 66 2/3rds of their average weekly wage. These payments are not taxed. Dr. Leslie Boden testified at the informal public hearing that OSHA's proposed WRP provision was approximately equal to the amount of TTD benefits provided in state workers' compensation systems. *See* Ex. DC–47. The vast majority of workers who receive WRP because they are removed entirely from work, therefore, will receive approximately the same amount of money with WRP as they would under most state workers' compensation systems. Because WRP and TTD benefits are approximately equal, WRP is no more repugnant to the "return-to-work" philosophy than are state workers' compensation systems.

Even so, many injured workers currently receive supplemental payments above and beyond workers' compensation. Some states specifically authorize such a practice. According to Lynn-Marie Crider, a former member of the Oregon Workers' Compensation Board and an expert in workers' compensation:

> "[T]here is nothing in any workers' compensation system with which I am familiar that forbids workers from receiving greater wage replacement payments than are provided for by the workers' compensation system. Workers may receive supplementary payments from the employer by tapping sick leave benefits, under a disability insurance plan, and so forth. These additional payments are specifically authorized by Oregon law. ORS 656.118. So, at least in this state, it would be impossible to argue * * * that any additional payments that a worker might receive under the WRP provisions of the proposed rule violate an expectation that a worker will receive no more than the maximum benefit amount established for temporary disability compensation." Ex. 500–26, p. 4.

OSHA is unaware of any commenter who has argued that these supplemental benefits are repugnant to the "return-to-work" philosophy of workers' compensation.

Furthermore, current data indicates that 82% of workers with MSDs are returned productively to work by HCPs and only 3% are removed entirely from the workplace. *See* Ex. 500–118. By encouraging employees to report signs or symptoms of MSDs early, OSHA believes that even fewer workers will need to be removed entirely from work. In this respect, this standard (including WRP) actually promotes the "return-to-work" philosophy.

Finally, the record does not show that "return-to-work" is a basic philosophy of workers' compensation. While many representatives of the insurance industry aggressively argued that it is, Professor Spieler had a contrary observation:

> "[I]t is important to note that it is simply incorrect to say that 'return-to-work' is one of the 'foundational concepts of workers' compensation law.' Until the last 25 years, there was absolutely no evidence that return-to-work was a basic component of the workers' compensation world. Workers who collected benefits under the workers' compensation systems had no right to return to work; employers had no obligation to return them to work; and in many cases workers who collected benefits were simply terminated from employment. Recent judicial and legislative developments, combined with an expanded understanding that aggressive return-to-work efforts can increase productivity and decrease workers' compensation costs, has led to a change in the way that this issue is discussed in workers' compensation circles." Ex. 500–140, p. 3 (internal citations omitted).

Commenters also argued that WRP "supersedes" state workers' compensation systems by eliminating injury requirements and lessening causation requirements. *See* Ex. 30–3811, pp. 24–28; Ex. 32–22–1, pp. 12–13.

WRP will not directly change, alter, affect, or eliminate the injury requirements or causation requirements of any state workers' compensation law. States will continue to operate their systems in the manner they deem appropriate. WRP will also not indirectly coerce states to change or alter their injury and causation requirements. As stated by Professor Spieler, "[t]here is no logic to the claim that WRP would force complete revision of state workers' compensation laws. Workers' compensation [will] continue to process claims exactly as they have always done." Ex. 500–140, p. 3. Furthermore, the fact that WRP imposes (or does not impose) certain requirements on employers that are different from workers' compensation in certain ways does not mean that WRP "supersedes" such systems. In the words of Professor Spieler, these differences "underscore the fact that WRP leaves workers' compensation unaffected." *Id.*

For the same reasons, OSHA also disagrees with those commenters who argued that WRP would "supersede" state standards in workers' compensation for determining the

amount of compensation. See Ex. 30–3811, p. 29–33. WRP will not change, alter, or eliminate those state standards. The mere fact that WRP has a "different" benefit level and does not contain maximum or minimum levels does not mean that it "supersedes" or "affects" state workers' compensation systems; as explained above, it means just the opposite.

Some commenters argued that WRP would drastically increase the number of state workers' compensation claims, thus "affecting" state systems in violation of section 4(b)(4). See *e.g.*, Tr. 9786 (Nelson). Other commenters, however, argued just the opposite: because WRP provides "greater benefits" to injured workers, workers will not file workers' compensation claims, thus "affecting" state workers' compensation in violation of section 4(b)(4). See *e.g.*, Ex. 30–4467, pp. 19–20.

OSHA has addressed this issue in great detail above. OSHA does not believe that claims for workers' compensation will increase dramatically after the standard is promulgated; past experience with other standards that include WRP supports this. See Ex. DC–75, p. 11. On the other hand, OSHA does not believe that injured or disabled workers will stop filing valid workers' compensation claims. See id. at 11–12. In order to receive medical benefits or benefits after 90 days, employees will need to file for workers' compensation. As stated by Professor Spieler, "the existence of the WRP provision is very unlikely to discourage—or encourage—the filing of workers' compensation claims." Ex. 37–14, p. 16.

Some commenters argued that WRP "affects" or "supersedes" state workers' compensation systems by providing for double recovery for injured workers. See *e.g.*, Ex. 32–22–1, p. 19–20. These commenters specifically argued that state systems do not permit the attachment of state workers' compensation payments; thus employers would have no mechanism for retrieving from employees payments made pursuant to WRP. Id.

As explained more fully below, WRP does not provide for double recovery for injured workers. WRP includes a provision which allows employers to reduce their WRP payments when an employee receives payments from workers' compensation. It is immaterial in this respect whether states permit or prohibit attachment of workers' compensation payments. WRP does not speak to the issue of attachment of these payments. Rather, WRP permits employers to reduce their WRP payments by the amount received by the employee from other sources. This prevents an employee from receiving "double recovery." See also Discussion of offset provision below.

Some commenters argued that WRP violates section 4(b)(4) because it creates a conflict of interest between employers and insurance carriers. See *e.g.*, Tr. 6472–73 (McGowen).

OSHA is not convinced that WRP will create a conflict of interest between insurance companies and employers. Both employers and their insurance carriers have a common interest: reducing injuries and illnesses at work. Reducing the incidence of MSDs will reduce WRP payments as well as workers' compensation costs. OSHA believes that both employers and insurance carriers currently share this goal and will continue to share this goal after the standard is promulgated.

Even if the standard did introduce some conflict between insurance carriers and employers with respect to any particular workers' compensation claim, however, OSHA does not believe this violates section 4(b)(4). Once again, section 4(b)(4) prohibits OSHA from preempting, in whole or in part, the legal scheme of state workers' compensation systems; any potential conflict of interest does not directly or indirectly affect the legal scheme of any state system.

Two commenters suggested WRP violates section 4(b)(4) because it will (1) Result in "blatant forum shopping by employees and their representatives," (2) serve as "res judicata" or "collateral estoppel" in a later state workers'' compensation proceeding, (3) create incentives for state administrators to encourage employees to "file" for WRP and not file a state workers'' compensation claim, and (4) create disincentives for states to cover MSDs. See Exs. 32–300–1, pp. 12–13; 30–3853, pp. 27–28.

First, OSHA does not understand how WRP, a uniform federal requirement, would encourage "blatant forum shopping" by employees. As shown, state requirements for filing of workers' compensation claims will remain unchanged after the standard is promulgated. WRP would not give employees any additional rights to file for workers' compensation claims in other forums or allow employees to choose in which forums to file workers' compensation claims.

Second, WRP will not serve as "res judicata" or "collateral estoppel," or otherwise be improperly used in any state workers'' compensation proceeding. The Attorney General of New York State addressed this issue in his testimony at the informal public hearing:

> "[E]mployers would not effectively admit liability under state workers' compensation laws by making certain determinations required by the WRP such as whether an employee has a covered MSD, whether that employee should be referred to a health care provider, or whether a WRP payment should be made. None of these determinations would constitute an admission of liability under New York's Workers' Compensation scheme." Ex. DC75, pp. 6–7; see also Ex. 37–14, p. 16.

Indeed, Professor Spieler stated in her written testimony that in the past OSHA rules "have largely remained outside of workers' compensation discussions and proof." Ex. 37–14, p. 16. This, of course, makes sense given that the no-fault principle of workers' compensation makes "the level of the hazard in the workplace and the general treatment of the injured worker" irrelevant to the state proceeding. *Id.*

Third, OSHA does not anticipate that inclusion of WRP in the standard will provide an incentive for state administrators to encourage workers to "file" for WRP instead of for workers' compensation benefits. It is important to reiterate that workers do not file for WRP, as they do under state workers' compensation systems. Employers (and in certain circumstances HCPs) make the determination of whether work restrictions are necessary and thus whether WRP is appropriate; this determination is not made through an employee "filing." State administrators thus could not encourage workers to file for WRP. Furthermore, employees have an independent incentive to file for workers' compensation, an incentive unaffected by the actions of state administrators—WRP does not pay for medical treatment, or for any benefits after 90 days. And finally, these commenters did not explain how state administrators could actually encourage individual workers to file for WRP. While it is true that in most state systems workers' compensation administrators become involved at certain stages of claims proceedings, the determination of whether to initiate a workers' compensation claim is typically made at the plant level, where the injury occurred.

Fourth, WRP will not discourage—or encourage for that matter—states from covering MSDs. As Professor Spieler stated, "[t]here is no logic to the claim that WRP would force complete revision of state workers' compensation laws." Ex. 500–140, p.3. The decision by a particular state system as to whether a certain injury or illness should be covered is a decision made appropriately by state legislatures after consideration of a number of factors.

Inclusion of WRP in this standard will not independently affect this decisionmaking process.

Some commenters argued that the standard violates section 4(b)(4) by denying employees and employers due process in making a claim for WRP under the standard. See *e.g.*, Ex. 32–22–1, pp. 14–16.

Once again, employees do not make a "claim" for WRP under this standard. In this respect, WRP is fundamentally different from workers' compensation. Under this standard, employers make the determination as to whether work restrictions are appropriate; if they are, employers must provide WRP. If an employer is cited for failing to provide WRP, the OSH Act provides an opportunity for the employer to contest the citation. Employers are thus not denied due process with respect to WRP.

That said, OSHA has included a dispute resolution mechanism in the final standard that was not included in the proposed rule in order to address concerns raised both by employer and employee groups. See Paragraph (s). Many commenters from both labor and industry asked OSHA to include some dispute resolution mechanism in the standard so that employers and employees could more efficiently handle disputes related to work restrictions. See *e.g.*, Exs. 500–218, p. 124; 32–300–1, p. 30; Tr. 7654. OSHA has responded to these comments and included such a mechanism in the final standard. See Discussion below. OSHA notes, however, that it is not aware of any employee group that alleged that the proposed standard violated constitutional due process by failing to have a dispute resolution mechanism in the proposed standard for appealing various employer determinations.

Some commenters argued that the standard violates section 4(b)(4) because it does not permit employers to stop paying WRP if it is determined that a worker is engaging in practices that delay or prevent his/her recovery. See *e.g.*, Ex. 32–22–1, p. 26.

OSHA believes that these commenters misunderstood the proposed rule; OSHA has attempted in this rule to clarify the discussion of MSD Management with respect to employer obligations to provide WRP. This standard expressly provides that employers may condition the payment of WRP on employee participation in MSD management. This includes the evaluation and follow-up of employees. Thus, an employer may stop WRP payments if an employee is not participating in the evaluation and follow-up provided for by MSD Management. See Paragraph (r)(4).

Commenters argued in general that because WRP is different from state workers' compensation systems (*i.e.*, different standards, different burdens of proof, different compensation rates, different dates, the presence of a waiting period, etc.), it creates a parallel benefits scheme in violation of section 4(b)(4). See Ex. 32–22–1, pp. 12–18; Tr. 6466 (McGowen).

As OSHA explained above, the fact that differences exist between WRP and state workers' compensation systems demonstrates that WRP does not violate section 4(b)(4). WRP is a federal requirement separate from the requirements and procedures of state workers' compensation systems. It is not intended to replace workers' compensation. It is designed instead to accomplish very different purposes. Workers' compensation is designed to compensate workers after an injury has occurred. WRP is designed to encourage employees to report signs or symptoms of MSDs early, before they become severe and disabling, and to cooperate with the standard's MSD management provisions. As such, it is not surprising that WRP and state workers' compensation systems have different schemes, etc. The fact that WRP operates differently from state workers' compensation systems does not mean that it "supersedes" or in any manner "affects" workers' compensation. In the words of Professor Emily Spieler:

> "All of the differences * * * between WRP and workers' compensation underscore the fact that WRP leaves workers' compensation unaffected. This includes the different process of selection of the evaluating health care provider (HCP); the different role of the HCP; the different enforcement mechanisms; the different standards for evaluation of whether the MSD is covered; the differences in burdens of proof; and any differences in payment levels. The very fact that there will be inconsistent outcomes * * * suggests that WRP will not affect state workers'. compensation programs." Ex. 500–140, p. 3.

See also Ex. 500–26, pp. 3–4.

One commenter, Robert Aurbach, General Counsel of the New Mexico Workers' Compensation Administration, in his capacity as a private citizen argued that WRP violates the second clause of section 4(b)(4) by (1) Providing different requirements for HCP choice, (2) eliminating waiting periods, (3) shifting the burden of proof, (4) requiring employers to "fix" problem jobs, (5) requiring payment for medical care, (6) creating conflicts of interest between employer and insurance carriers, (7) creating additional administrative burdens, and (8) being, in general, overbroad. Ex. 32–22–1, pp. 27–31.

OSHA has addressed some of Mr. Aurbach's specific points above. WRP and other provisions of the standard do not require employers to pay for medical care, do not create conflicts of interest between employers and insurance carriers, and do not affect state workers' compensation waiting periods or burdens of proof. OSHA also does not believe that this standard is overbroad—OSHA has carefully tailored this standard to address exposure to ergonomic risk factors at levels shown to cause a significant risk of MSDs.

OSHA admits that the standard will place certain requirements upon employers to "fix" problem jobs, and keep some records of their ergonomics programs. Imposing these requirements on employers, however, does not violate section 4(b)(4). Virtually every OSHA standard includes some new requirements or places some administrative burdens on employers. This is not surprising given that the scheme of the statute, manifest in both the express language and the legislative history * * * [permits] OSHA to charge to employers the cost of any new means it devises to protect workers." Lead, 647 F.2d at 1230–31. For example, OSHA has required employers to install local exhaust ventilation in numerous health standards, produce and keep medical surveillance records of employees, provide hazard information to employees, etc. These requirements have never been held to violate section 4(b)(4). Indeed, if Mr. Aurbach's interpretation of the second clause of section 4(b)(4) were accurate, section 4(b)(4) would prevent OSHA from issuing any occupational safety and health standard. Under Mr. Aurbach's interpretation of the second clause of section 4(b)(4), if OSHA places any burdens (such as administrative burdens or the requirement to eliminate hazards in dangerous jobs) on employers not already required either by statute or the common law, section 4(b)(4) is violated. This interpretation is not plausible.

Contrary to Mr. Aurbach's assertion, the second clause of section 4(b)(4) must be read in conjunction with the first clause discussed in detail above. Section 4(b)(4) as a whole prevents OSHA from displacing or preempting the legal scheme of state workers' compensation. WRP will do no such thing. Section 4(b)(4) cannot be read to prevent OSHA from issuing safety and health standards.

(b). Section 4(b)(4) does not prohibit OSHA from including certain other provisions in this standard, as some commenters argued.

Several commenters argued that the confidentiality provision (Paragraph (p)(2)) of the standard "supersedes" state workers' compensation systems because such systems permit the employer to obtain any information from an HCP related to a workers' compensation claim. See *e.g.*, Ex. 32–22–1, pp. 25–26.

OSHA admits that the confidentiality provision in the proposal was not clear. OSHA has changed the language in the final rule to clarify it As explained in more detail above, if a state workers' compensation system requires or even allows employers to obtain information related to a workers' compensation claim, the MSD management provisions would not prevent that information from being passed from the HCP to the employer in any manner. OSHA thus does not "supersede" or "affect" the different mechanisms provided by the states for the employer to obtain information from an HCP about a workers' compensation claim.

Commenters also argued that the standard "supersedes" state workers' compensation systems because (1) it allows the employer to select the initial HCP (whereas in numerous states the employee can select the initial HCP) and (2) it permits certain HCPs to participate in MSD management, even though those HCPs would not be qualified under state law to examine state workers' compensation claimants. See *e.g.*, Ex. 30–3811, pp. 34–37; Ex. 32–22–1, pp. 20–26.

This standard does not require employers to select the initial HCP. As explained above, this standard requires employers to make an HCP available to injured employees. Employers may choose to satisfy this requirement by operating within the selection practices of their state workers' compensation systems. (In fact, OSHA anticipates that most employers will do this.) Thus, if a state permits an employee to choose the initial HCP, that practice could continue under this standard.

Furthermore, the fact that OSHA is permitting certain HCPs to participate in MSD management who may not be permitted to examine workers' compensation claimants under state workers' compensation systems does not violate section 4(b)(4). OSHA has determined, based upon the rulemaking record, that certain "HCPs," operating within their scope of practice, can perform certain functions under MSD Management. This is an appropriate exercise of OSHA's authority and one that OSHA has exercised in other standards. See 29 CFR 1910.1052(b) (Methylene Chloride). OSHA is not changing the state requirements for practice of HCPs under workers' compensation laws. Those requirements remain the same.

Commenters argued in general that the standard "supersedes" state workers' compensation systems because it establishes separate requirements for the provision of medical care with different cost structures, treatment guidelines, and regulatory burdens. See *e.g.*, Ex. 30–3811, pp. 34–38.

This standard does not require the employer to pay for or provide medical care and/or treatment. MSD management only requires employers to make an HCP available for evaluation and follow-up. The standard does not establish any cost structures or treatment guidelines, etc. Indeed, OSHA has expressly declined to include such requirements in the standard. See Discussion of MSD management above.

Finally, many commenters argued that WRP (and other provisions of the standard) improperly (1) creates a "most-favored injury" by providing compensation for MSDs at a higher rate than for other occupational injuries and illnesses, and (2) treats employers and employees in different states with different compensation systems differently. See *e.g.*, Tr. 6435–36 (Ewing); 6457 (Situkiendorf).

WRP does not result in workers with MSDs being compensated at a higher level than workers with other injuries and illnesses. As stated above, WRP payments are approximately equal to the amount of TTD payments received by workers through workers' compensation for all occupational injuries and illnesses. The standard also includes an offset provision that prevents an employee from receiving both WRP and workers' compensation. See Discussion of offset provision below. OSHA is thus not creating a separate class of injured workers and paying them at a higher rate than injured workers receive under workers' compensation.

OSHA has acted pursuant to its statutory authority to issue this standard to reduce the significant risk of employees developing MSDs from workplace exposure to ergonomic risk factors. The rulemaking record requires that OSHA include WRP to effectuate the purposes of this standard. WRP is designed to encourage employees to report MSDs early and to participate in MSD Management; it is not designed to, nor will it, compensate injured workers at a higher level than injured workers receive under state workers' compensation. Simply because OSHA has singled out certain injuries and illnesses for regulation, but not others, does not mean that OSHA has acted improperly. OSHA's inclusion of WRP in other standards has never been ruled "improper" because it somehow created a "most-favored injury."

Furthermore, OSHA disputes that by creating a uniform federal requirement it is treating employers and employees differently in the various states. On the contrary, WRP applies equally to employers and employees in general industry. If, for example, two workers from different states must be removed from work due to the same MSD, they both will receive at least 90% of their gross earnings and benefits for up to 90 days. WRP creates no inequality.

To be sure, inequity currently exists in state workers' compensation systems. But as Professor Spieler stated in her written comments on the proposed rule, WRP will not introduce, solve, or affect that inequity:

> "One final and important point: Some have argued that the proposed standard introduces inequity or inequality into the treatment of workers with occupationally-related MSDs. * * * But the proposed standard does not introduce inequity or inequality into the programs that provide protection for the affected workers. Serious inequities exist already. Currently, eligibility criteria for MSDs and payment levels in workers' compensation programs vary wildly from one state jurisdiction to another. So do protections under state-mandated temporary disability programs and under state disability rights laws. Some workers will receive medical treatment, permanent disability benefits, vocational training, and job placement; others, with equivalent MSDs will not. Irrespective of the promulgation of the proposed standard, these inequities will persist. They will persist precisely because state workers' compensation programs will be unaffected by the promulgation of the standard." Ex. 37–14, p. 19.

3. Section 4(b)(1) Does Not Prevent OSHA From Applying WRP to Federal Employees.

The United States Postal Service, as well as certain federal agencies, argued that section 4(b)(1) of the OSH Act prevents OSHA from applying WRP to federal employees because the Federal Employees Compensation Act (FECA) occupies the field with respect to compensation for work-related injuries. Ex. 35–106–1, pp. 14–21.

FECA provides compensation to federal employees injured while in the performance of their duties. 5 U.S.C. 8102. For totally disabled individuals, FECA pays 66 2/3% of their monthly pay. 5 U.S.C. 8105(a). In this respect, FECA is similar to state workers' compensation systems. FECA also has certain maximum and minimum levels for compensation, as well as a three day waiting period. Unlike various state systems, however, FECA contains a continuation of pay mechanism (COP) for employees who suffer traumatic injuries. Under COP, employees may receive a continuation of their pay "without a break in time" for up to 45 days. 5 U.S.C. 8118. Furthermore, the FECA provides that "[a]n employee may use annual or sick leave to his credit at the time the disability begins." 5 U.S.C. 8118(c). Like state workers' compensation systems, FECA was enacted to provide federal employees with a quicker and more certain recovery for work-related injuries.

FECA does not preempt OSHA under section 4(b)(1) of the OSH Act from applying WRP to federal employees. Section 4(b)(1) of the OSH Act provides, in pertinent part:

> Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies * * * exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. 29 U.S.C. 653(b)(1).

Section 4(b)(1) ousts OSHA from jurisdiction over working conditions over which another agency has exercised statutory authority. At the time the OSH Act was passed various federal agencies had statutory authority to prescribe and enforce standards and regulations affecting occupational safety and health. To avoid duplication of effort, Congress included section 4(b)(1) in the OSH Act. Thus, section 4(b)(1)'s broad purpose is to avoid duplicative regulatory burdens without impairing the OSH Act's primary goal of "assur[ing] so far as possible every working man and woman in the Nation safe and healthful working conditions." 29 U.S.C. 651(2)(b).

In order for an agency's action to preempt OSHA under section 4(b)(1), the agency must formally "exercise" its statutory authority to regulate "particular working conditions," or express its view that no action should occur. See *e.g., Baltimore & Ohio R.R.* v. *OSHRC,* 548 F.2d 1052, 1053–55 (D.C. Cir. 1976); *Southern Pacific Transp. Co.* v. *Usery,* 539 F.2d 386, 390–92 (5th Cir. 1976), cert. denied, 434 U.S. 874 (1977). While courts differ slightly in their interpretation of what constitutes "working conditions" for purposes of section 4(b)(1), all approaches are based on the Supreme Court's definition of that term as limited to an employee's "surroundings" and the " 'hazards' " incident to his work." Southern Pacific Transp., 539 F.2d at 390 (quoting and citing *Corning Glass Works* v. *Brennan,* 417 U.S. 188, 202 (1974)). Thus, the courts examine whether the other agency's exercise of authority is directed to the "particular" or "identical" working condition that causes the injury or illness that is addressed by the OSHA standard at issue. In re Inspection of Norfolk Dredging Co., 783 F.2d 1526, 1530–31 (11th Cir.), cert. denied, 479 U.S. 883 (1986).

In this case, FECA is not directed at all to the working conditions addressed by this standard. This standard requires employers to implement an ergonomics program to reduce exposures to ergonomic risk factors in the workplace. It adopts a comprehensive approach to reducing the significant risk of MSDs. One critical aspect of that approach is MSD management and WRP. By encouraging workers to report signs or symptoms of MSDs early (even before they become recordable or compensable), WRP prevents serious injuries from occurring. It also alerts employers to the presence of risk factors in a particular job.

FECA, one the other hand, does not attempt to regulate ergonomic hazards in the workplace to prevent MSDs from occurring in the first instance (*i.e.,* regulate "working conditions" that cause the injury or illness). In fact, it is not concerned with targeting and reducing occupational hazards at all. FECA is a statute that compensates workers after injury occurs. As such, it has a wholly separate purpose from WRP (and, indeed, this standard as a whole). To be sure, FECA may indirectly "affect" the occupational safety and health of workers by providing compensation after injury and encouraging temporary work restrictions; however, it is not targeted to the working conditions that cause MSDs. WRP is not preempted by FECA under section 4(b)(1) of the OSH Act.

C. Other Considerations

1. Non-monetary alternatives

Several commenters argued that non-monetary alternatives can be effective in increasing reporting of MSDs by employees and are preferable to WRP (Exs. 30–4467, p. 23; 32–300–1, p. 24). The EEI wrote:

> EEI does not believe that OSHA has sufficiently proven that WRP is the only effective method to ensure accurate reporting. OSHA acknowledges that a properly designed incentive plan can be successful. OSHA reports that a number of stakeholders have said that employers use various non-monetary incentives to achieve a safer and more healthful workplace. Some of these incentives include recognition and nominal rewards (company caps, plaques) for reporting hazards or presenting ideas to fix problem jobs or reduce severity rates. These types of incentives can and do increase employee reporting.

Ex. 32–300–1, p. 24.

OSHA concludes that there are major drawbacks to relying upon non-monetary alternatives to increase employee reporting and participation in ergonomics programs. As EEI noted, one type of non-monetary alternative involves recognition and nominal rewards for reporting hazards or presenting useful ideas to improve safety. Although OSHA solicited comment on the issue, there was no consensus even among employers that this type of non-monetary incentives is an effective substitute for wage protection policies in motivating employees to report. While there is some evidence non-monetary inducements to reporting hazards can be effective as part of a well designed safety and health program, such programs may also involve full or partial wage protection, sick leave, or disability benefits if employees must lose time from work. While many employers have generous benefits policies that would enhance the effectiveness of non-monetary incentives, many do not (64 FR 65852). Absent persuasive evidence that non-monetary incentives for reporting hazards, standing alone, can achieve increased reporting, OSHA sees no basis to rely on them to the exclusion of WRP.

Another type of incentive plan rewards employees with prizes for reporting low numbers of injuries or no injuries. As the preamble discussion of Paragraph (h)(3) makes clear, incentive plans of this type can effectively deter reporting because employees may value the prize more than any health or safety benefit that reporting would produce. See, *e.g.,* Tr. 15453, 10992, 7703). Moreover, in plans that reward teams of employees for low rates of reported injuries, peer pressure exerted by the group can be an effective deterrent to reporting by team members (Tr. 15453, 11638).

For these reasons, OSHA finds that non-monetary incentives would not be as effective as WRP in encouraging employees to report MSDs.

2. Duration and Level of Benefits

(a). Maximum duration. The proposed rule established a maximum duration of 6 months for each episode of WRP benefits. Several commenters supported the agency's preliminary determination that benefits should be provided for up to six months if necessary (see *e.g.,* Exs. 500–218, p. 131; 32–185–3, p. 11–10). Other commenters argued that a six-month duration is unnecessarily long in light of the data showing that most MSD cases will recover in far less time (Exs. 30–352; 32–300–1; 30-3344). The EEI recommended reducing the maximum duration period to 3 months:

> Even if OSHA chooses to maintain a WRP provision, it has not shown sufficient justification for six months of coverage. OSHA claims that early recognition, diagnosis and treatment interventions will lead to speedier recoveries from MSDs. Given this premise, the six-month WRP period of time is inordinately long and may enhance the tendency for an employee with a mild MSD case to malinger. OSHA recognizes within the [proposed rule's] preamble a median length of disability for all MSDs of 99 days with many of these cases resolving in significantly less time. Reducing the WRP to three months would be consistent with the anticipated benefits of the proposed rule and will reduce the cost and complexity of the program to employers.

Ex. 32–300–1, p. 23.

OSHA preliminarily estimated that while most employees with lost-work-time MSDs would recover within 3 months, over 12% of all lost workday cases involved more than 3 months away from work, and that for some types of serious MSDs, the typical disability duration was more than 3 months (64 FR 65855). OSHA concluded that a six-month maximum time for WRP was reasonable because it would allow the majority of workers with more serious MSDs time to recover before losing their benefits. Id.

In the final rule, OSHA has revised its estimates of the number of days employees will be out of work due to MSDs. The agency now estimates that 90% of all workers who experience lost work-time MSDs will return to work within 3 months. In addition, OSHA estimates that in approximately 70% of cases in which workers' compensation claims for MSDs are filed, benefits will be available to replace up to two-thirds of the employee's lost wages. See OSHA's Final Economic Analysis. While a high percentage of workers with MSDs do not currently file claims for workers' compensation benefits, OSHA expects this rate of under-filing to decrease with the implementation of WRP, particularly in cases in which the recovery period exceeds three months. Employees will have an incentive to pursue benefits since claims-filing will not threaten immediate economic harm, and may be the only avenue to recovery of medical expenses and extended wage loss. See Emily Spieler, Ex. 37–14, pp. 18–19, and Tr. 3353. Employers will also have a greater incentive to encourage employees to file claims, or to initiate claims themselves in the majority of states that permit employer-filed claims, because the final rule permits an offset against WRP for workers' compensation benefits received by employees. Thus, of the relatively few workers who will require more than 3 months to recover from their MSDs, a substantial number will be eligible for workers' compensation benefits to replace a portion of lost income and to pay for medical expenses.

For these reasons, OSHA concludes that a three month maximum time period for WRP is appropriate. Based on the estimates discussed above, OSHA believes that the vast majority of workers with lost-time MSDs will receive, or be eligible to receive, a substantial portion of their wages while recovering. OSHA acknowledges that there will be some workers who will require more than three months to recover, and who will not receive workers' compensation or other benefits after the first three months. However, OSHA estimates that this group will represent a small proportion of all workers with lost-time MSDs.

The Agency does not believe it is appropriate to structure WRP requirements around this small group of employees. WRP is intended to provide temporary benefits to encourage employees to report MSDs and to participate in MSD management. As discussed at length in Section B above, WRP is not intended as a federal remedy for workers who have suffered work-related MSDs, or as a supplement to state workers' compensation systems. Based on the record, OSHA believes that a requirement to provide WRP for up to 3 months will be effective in substantially increasing the number of employees reporting MSDs and their signs or symptoms. While requiring WRP for up to 6 months or longer would provide a greater degree of economic protection to injured workers, it would likely produce little if any additional improvement in reporting. As OSHA noted in the proposal, the available data indicate that overall, the number of workers out of work for less than 6 months is not significantly greater than the number of workers out of work for less than 3 months (64 FR 65855).

In the proposal, OSHA considered several alternatives that would have reduced the maximum duration of MRP benefits to substantially less than 90 calendar days. OSHA preliminarily concluded that limiting MRP benefits to no more than seven days would not provide the requisite protection to employees to encourage them to report MSDs early and to participate in MSD management. 64 FR 65856. The agency noted that employees whose injuries do not resolve within the WRP coverage period would have to rely on workers compensation, and that the effect of the waiting periods required by state systems could be that some of these employees would have no protection for several days. Id. In addition, employees who require more than seven days to recover, but who are not covered by workers' compensation, would face substantial financial pressure to return to work early. For these reasons, OSHA preliminarily concluded that this alternative would have a chilling effect on early reporting. Id.

OSHA solicited comment on whether the alternatives outlined in the proposal, or other alternatives would effectively encourage early reporting and participation. 64 FR 65858. The agency received no evidence that providing WRP for less than 90 calendar days would achieve this purpose. Accordingly, the final rule requires that WRP be provided for up to 90 calendar days.

(b). Interim cutoff points. The final rule permits employers to terminate WRP benefits before the expiration of the 90 calendar day maximum period if one of the following occurs: (i) the employee is able to resume the former work activities without endangering his or her recovery, or (ii) an HCP determines, subject to the dispute resolution procedure in paragraph (s), that the employee can never resume his or her former work activities.

As explained in the preceding discussion, OSHA's data show that in most cases, work restrictions will not be needed for 3 months because the employee will have recovered in less time. The standard permits the employer to end WRP before 3 months if a determination is made that the employee is recovered and able to return to his or her regular job. This is consistent with the principle that work restrictions or removals are temporary and protective in nature, and with OSHA's practice in other standards containing benefits similar to WRP (see *e.g.,* Lead, 43 FR 54440, Formaldehyde, 57 FR 22294). No party opposed the provision that WRP may be ended when the employee is able to return to his or her regular work.

Employers may also reduce their obligation to provide WRP benefits by addressing the MSD hazards in the job at an early date. Once the employer has controlled the MSD hazards so that the employee can resume his/her regular duties without endangering his/her recovery, work restrictions or work removal are no longer necessary. Controlling the MSD hazards in the job quickly is one way that employers may limit the number of days that MRP benefits must be paid.

The proposed rule contained no provision for ending WRP benefits once it becomes clear that the employee will not recover sufficiently to return to the job. Several commenters urged OSHA to include such a provision in the final rule (Exs. 500–218; 32–337–1). The AFL–CIO stated:

> [T]he AFL–CIO recommends that OSHA include [an additional] WRP cut-off point, consistent with the WRP provisions in other standards. An employer should be permitted to terminate WRP if and when it is determined that the employee is unable to return to the job * * *. At this point, temporary removal no longer serves OSHA's health protective goal and the worker presumably becomes eligible for workers' compensation.

Ex. 500–218. pp. 131, 127. OSHA agrees that a work restriction or work removal is no longer necessary once it is clear that the employee will not recover sufficiently to be able to return to the job. Accordingly, the final rule permits employers to end WRP benefits before the expiration of three months if a determination is made that the employee is permanently unable to return to his/her regular job.

Some participants suggested that the final rule should contain a limitation, similar to that in the FMLA, on the maximum number of days of benefits in any year. The Chamber of Commerce urged this approach, arguing that under the proposed structure, an employee could theoretically receive WRP for the maximum period, return to work for a day, and then receive another round of MRP benefits. By repeating this cycle, an employee could receive virtually his full annual pay and benefits while actually working only a few days during the year (Ex. 30–1722, pp. 81–82).

OSHA does not believe that the scenario posited by the Chamber is realistic. Employers can significantly reduce the likelihood of having to pay MRP benefits to the same employee on successive occasions by controlling the MSD hazards in their problem jobs effectively. By acting promptly to address MSD hazards, and effectively managing the MSDs that do occur, employers can ensure that, in most cases, injured employees will be able to return to work at full productivity and without the need for further restrictions. Moreover, while there may be some unusual instances in which employees will legitimately need work restrictions more than once in a year for the same job, employers need not allow employees to cycle endlessly in and out of WRP. If an employee requires work restrictions on several consecutive occasions despite the fact that the MSD hazards have been controlled to the extent required in the standard, that is a strong indication that the employee is physically unable to perform the job. As noted above, the standard permits the employer to end WRP if a determination is made that the employee is permanently unable to return to his regular job. For these reasons, OSHA does not believe that an express limitation on the number of days of WRP during the year is appropriate. The final rule thus contains safeguards which effectively limit the circumstances in which an employee could receive WRP benefits at repeated intervals in a year.

(c) Level of benefits. The final rule requires that the employment rights and benefits of employees be fully maintained for the duration of the WRP period. Employers must maintain the earnings of employees placed in restricted work jobs at their pre-WRP level, and must maintain the earnings of employees temporarily removed from work at 90% of their pre-WRP level. The proposed rule contained the same requirements as the final for maintenance of employment rights and benefits. However, the proposal required maintenance of either 100% or 90% of "after-tax earnings," depending upon whether the employee was assigned restricted work or was temporarily removed.

Many participants criticized this provision. Although OSHA intended the provision to mean that the employee's net earnings should be 90% of the net earnings the employee would have received by working, a number of commenters thought the provision meant that the employee's gross WRP benefits should be equal to 90% of net earnings. Thus, the AFL–CIO argued that this formulation could result in WRP benefits being taxed twice, and would be problematic for employers to implement (Ex. 500–218, pp. 121–122). OSHA agrees, and has deleted the reference to "after-tax earnings." It uses the word "earnings" in the final rule. Earnings generally means gross pay.

The AFL–CIO also objected to providing only 90% of pre-WRP wages to employees temporarily removed from work, arguing that full wage protection is necessary to encourage employee reporting and participation (Ex. 500–218, pp. 122). However, employees who remain at home do not incur certain expenses, such as commuting and child care expenses, incurred by employees who must report to work. Therefore, some reduction from the wages of workers removed from work is appropriate to balance the cost savings that these workers accrue; otherwise employees would reap a financial benefit from WRP (Ex. 32–22–1; p. 17). OSHA considers that restoring 90% of the earnings of employees removed from work approximates the portion of these employees' wages actually lost due to MSDs.

3. Offset Provision

The final rule permits an employer to reduce its WRP obligation to an employee with a work restriction by the amount that the employee receives in compensation for lost earnings during the period of restriction from a publicly or employer-funded compensation program, or receives in income from employment made possible by virtue of the employee's restriction. This provision is designed to ensure that employees will not receive more than current earnings as a result of a work restriction (64 FR 65848).

Several parties maintained that the provision will not achieve its purpose in preventing injured employees from receiving a double recovery because WRP payments will generally be paid before the employee receives workers' compensation benefits and state laws preclude employers from attaching such benefits (Exs. 32–22–1; 30–4467). The General Counsel of the New Mexico Workers' Compensation Administration expressed this view as follows:

> Whenever the workers' compensation system delays benefits for any legitimate reason, the worker is paid WRP under the Proposed Standard, and then later paid for *the same lost work time* by the employer's workers' compensation insurer. The employer has no legal mechanism for recapturing that portion of the WRP pay that was supposed to be offset. Since no state law currently has a provision allowing for reduction of workers' compensation benefits on the ground that WRP pay was already paid for the same injury, the various state workers' compensation laws will need to be revised to make the offset provision for WRP work.

Ex. 32–22–1, pp. 19–20 (emphasis in original).

OSHA does not agree that changes in state laws are needed to effectuate the offset provision. First, contrary to this commenter's assertion, some state laws already have adequate provision for employers to recoup wages paid to employees who later qualify for workers' compensation. For example, the New York state official charged with responsibility for the State's workers' compensation system testified that:

> [t]he offset provision would be effective even if the workers' compensation claim took more than six months to resolve because our system allows for payments of benefits to employers who have provided other compensation such as sick leave to employees prior to the award of compensation benefits.

Tr. 3354 (Eliot Spitzer). Employers are also free to structure their employment contracts to allow recovery of wages paid during a period for which workers' compensation benefits are awarded. Nothing in the record shows that contractual remedies would not be effective, or that employers would have greater difficulty in recouping WRP overpayments than they have in recouping other monies advanced to employees (Ex. 500–218, pp. 128–129). For these reasons, there is no basis to conclude that the offset provision will be unworkable or ineffective.

4. Fraud

A number of commenters argued that the WRP provision will entice large numbers of employees to attempt to secure these benefits fraudulently. These parties were concerned that employees will report MSDs that are not related to work activities, or will exaggerate their MSD symptoms to secure work restrictions that are not necessary or to extend work restrictions longer than needed (Exs. 30–1722; 32–241–4; 30–4467; 32–234–2; Tr. 6470, 9847–8, 14215). NCE *et al.*stated:

> The evidence is clear that the employees most likely to complain of musculoskeletal discomfort are those who do not like their jobs. These employees' subjective complaints must be taken as given under the proposed rule, and cannot be subjected to objective verification. When these workers are given the additional incentive of time off at 90 percent pay, or less demanding job tasks at 100 percent of pay, a vast increase in reported musculoskeletal pain is certain to follow.

Ex. 32–241–4, p. 185. Similarly, the Chamber of Commerce argued that, based on the extent of workers' compensation fraud nationwide, "the only reasonable assumption is that the WRP provision will increase such fraud because the dollar amounts at issue are greater . . . And this problem is likely to be especially acute where, as here, the diagnosis at issue is . . . a loose collection of poorly defined signs and symptoms" (Ex. 30–1722, p. 77).

OSHA does not believe that the record bears out these commenters' concerns. As a threshold matter, there is substantial evidence that worker-perpetrated fraud is but a very small part of the overall fraud problem in workers' compensation systems (see Exs. 500–97; 500–97–1; 500–97–2; 500–97–3; 500–218; 502–254; 502–258). The AFL-CIO noted that:

> [t]wo states that have devoted significant resources to workers compensation fraud investigation and reporting, California and Wisconsin, have found incidences of worker fraud to be minimal. In California, worker fraud was present in less than 3/10ths of one percent of total claims (Ex. 500–97–1); in Wisconsin, it was one tenth of one percent of claims (Ex. DC 78).

Ex. 500–218, p. 131. The former Commissioner of the West Virginia Workers' Compensation Fund testified that in her experience in administering claims, there was little evidence that workers prolonged their benefits by remaining out of work unnecessarily (Tr. 1733–34). Other witnesses agreed with this assessment (Tr. 3559–60 [James Ellenberger], Tr. 11001 [Madeline Sherod], Tr. 11102 [Trevor Schnell]). Accordingly, the experience gained in the worker's compensation field does not demonstrate a high potential for employee abuse of WRP.

In addition, the final rule contains features that will reduce the opportunity for fraud in administering WRP. First, work restrictions are required only for work-related MSDs and only if the employee's job meets certain objective screening criteria. These requirements are designed to ensure that there is a close nexus between the injury and significant exposure to ergonomic hazards at work. Moreover, work restrictions are not required unless an HCP or the employer itself has determined that they are necessary. Thus, even if an employee falsely reports MSD symptoms, work restrictions and WRP are not required unless the employee's job meets the screen and a medical professional selected by the employer determines that they are necessary. Therefore, commenters substantially overstate their case in asserting that subjective symptoms alone trigger work restrictions.

OSHA believes that HCPs, in particular, will play an important role in checking abuse. Health care professionals use a variety of techniques to identify fraud. Nothing in the record supports the notion that HCPs are frequently duped by false symptoms; to the contrary, HCPs are adept at evaluating the objectivity of patient claims. Moreover, data in the record shows that most HCPs are far more likely to recommend work restrictions than time away from work. (Ex. 500–118). Further, since 1992, the percentage of restricted workdays for all occupational injuries and illnesses reported to the BLS has increased by 50%, while the percentage of lost workdays has decreased by a substantial margin.

This is not to suggest that instances of fraudulent claims for WRP benefits will not occur, or that OSHA condones such conduct by employees. Rather, OSHA believes that the final rule provides effective safeguards employers can use to prevent employees from receiving WRP benefits to which they are not entitled. Therefore, the potential for fraud is not a basis for eliminating WRP.

Paragraph(s) What Must I Do if the Employee Consults His or Her Own HCP?

Paragraph (s) of the final rule establishes a procedure for resolving disagreements among HCPs. The proposed rule did not contain a comparable provision.

Numerous commenters, including both employer and employee representatives, argued that accurate medical assessments are critical if parties are to have confidence in decisions about work restrictions and WRP. A representative of the American College of Occupational and Environmental Physicians explained:

> [t]he central role that [medical] evaluations play in triggering requirements of the rule make the inclusion of a three-physician review in the ergonomic standard particularly appealing. We recommend that the standard provide for multiple physician review to sort out the differences of opinion and ambiguities in the diagnosis. The key element to triggering implementation of a program review should be based again on a bona-fide medical diagnosis in light of the corresponding duties.

Tr. 7654 (Dr. Robert McCunney). The AFL-CIO argued that multiple physician review or MPR is necessary to gain the trust and participation of employees. It asserted,

> [w]orkers have always been concerned about the objectivity and allegiance of employer-chosen physicians * * . MPR is important to assure workers that physician hostility to WRP will not result in adverse consequences when workers step forward and report. Without the possibility that a colleague will review, and possibly take issue with, a decision denying worker transfers or prematurely returning workers to hazardous exposures, employer physicians may feel financial pressure from employers to minimize WRP participation.

Ex. 500–218, p. 124. *See also* Exs. 32–111–4 (USWA); 32–85–3 (CWA).

The EEI voiced concern that if employees are allowed to choose the initial HCP, the person they select may not have the time or experience to work with employers in determining appropriate restrictions. It argued that:

> [t]he employee's personal healthcare provider may also not understand that assignment of work hardening and/or returning the employee to work on restricted duty as soon as possible are important in the recovery process. The employer is much more likely to select an HCP that recognizes the need to interface with the health and safety staff in developing restrictions

> appropriate for the job and who will provide the type of care that is consistent for all employees at the work location. The employer will also have more control over the follow-up process, assuring that the follow-up is appropriate for the specific MSD and that it is completed in a timely manner.
>
> Accordingly, EEI urges that any final standard clearly provide that employers shall select the healthcare provider for the WRP program, at least in the first instance. EEI would not object if the standard permits an employee to seek a second opinion.

Ex. 32–300–1, p. 30.

The Agency believes that the concerns expressed by all of these commenters are valid. OSHA agrees with the EEI that the employer should have the option of selecting the HCP to provide the initial recommendation on a work restriction. The final rule requires the employer to implement an MSD management process that includes "access to an HCP." The employer may fulfill this obligation by arranging for the injured employee to visit an HCP selected by the employer. Alternatively, the employer may arrange for the employee initially to visit an HCP selected by the employee. Employers who choose this option should assure themselves that the HCP has the appropriate experience to work with the employer in determining work restrictions.

OSHA also agrees with commenters about the need to assure accuracy and competence in medical assessments. Accordingly, paragraph (s)(1) provides that if the employer selects the health care professional to make a recommendation about a work restriction, the employee may select a second HCP to review the first HCP's finding. If the employer allows the employee to select an HCP to make the initial recommendation on a work restriction, the rule does not provide for further review because OSHA expects that, in this situation, both parties will have confidence in the HCP's findings. On the other hand, if the employee has seen an HCP on his or her own, before the employer has exercised its option to select an HCP, the employer may refer the employee to a different HCP. In this case, the employee may rely on the recommendation he or she has already obtained as the second opinion for purposes of the final rule.

If the second HCP's determination differs from the first, the employer must take reasonable steps to arrange for the two HCPs to discuss and resolve their disagreement. This means that the employer should instruct his HCP to contact the employee's HCP to discuss the matter directly. If the two HCPs cannot resolve the conflict quickly, the employer and the employee, through their HCPs, must designate a third HCP to review the temporary work restriction or work removal determination. The employer must act consistently with the determination of the third HCP, unless the employer and employee agree to a restriction that is consistent with the opinion of at least one of the HCPs. Paragraph (s)(5) allows the employer and the employee to agree upon an alternative dispute resolution mechanism to use in lieu of the one set out in the final rule, if it is at least as protective of the employee. For example, the employer and employee may agree in advance that the employee will see a certain HCP, whose recommendation will be binding. The standard thus allows employers a degree of flexibility in structuring an alternative dispute resolution process, provided that the employee's right to a choice in the selection of HCPs is not compromised, and the process is expeditious. These provisions are similar to the multiple physician review mechanisms contained in OSHA health standards, such as lead and formaldehyde. OSHA adopts them in this final rule because they have proved effective in assuring that all parties have confidence in the accuracy and fairness of medical determinations about work restrictions and therefore contribute to the overall effectiveness of the rule's medical surveillance (MSD management in this rule) provisions.

Paragraph (t). Training

Training is a critically important element of the final ergonomics program standard, as it is of virtually every safety and health standard (Ex. 26–2). In training for ergonomics programs, the goal is to enable employees at all levels of the organization—managers, supervisors or team leaders, and employees—to: (1) Recognize the signs and symptoms of musculoskeletal disorders (MSDs) so that they can report them early (employees) and respond to them appropriately (managers, supervisors, and team leaders); (2) identify those job tasks that pose an increased risk to the worker of developing an MSD; and (3) have the knowledge and skills necessary to participate in the establishment's ergonomics program. The success of ergonomics programs depends to a great extent on the effectiveness of the training in ergonomics the employer provides.

Most comments on the proposed training provisions were supportive, although many commenters suggested modifications to the proposed requirements (see, *e.g.*, Exs. 30–3826, 32–111–4, 32–182–1, 30–3686, 32–198–4, 30–3765, 32–339–1, 32–198–4–15, 30–4538, 32–77–2, 32–185–3). Only a few commenters argued that training should not be addressed by the final rule (see, *e.g.*, Exs. 30–240, 30–541, 30–3867). The following discussion responds to public comment received and explains OSHA's reasons for including the requirements in paragraph (t) of the final rule.

In the proposal, OSHA included, for each core element of the program, a "Basic Obligation" provision. The purpose of these sections of the proposal was to summarize the more detailed subelements proposed for each core element. The final rule does not include these basic obligation provisions, because commenters found them confusing and not useful. Comments on specific aspects of the Basic Obligation section are discussed below, in connection with the individual training requirements of the final rule.

The proposed Basic Obligation section for training provided that any training required by the rule was to be provided "at no cost to employees" (see the Basic Obligation section for proposed section 1910.923). This proposed language expressed OSHA's intention for the employer to bear all of the costs associated with OSHA-required ergonomics training. For example, any training materials given to employees must be provided to them free of charge. Further, employees must be compensated at their regular rate of pay for time spent receiving training during regular work hours, and employees cannot be required to forfeit their regularly scheduled lunch or rest periods to attend training sessions. In addition, where training requires employees to travel, the employer must pay for the cost of travel, including any travel time occurring when the training activities are scheduled outside of the employee's normal work hours.

The final rule does not contain this specific proposed language about the costs of training, because that language is not necessary for OSHA to impose these costs on the employer. The proposed provision merely restated OSHA's longstanding policy, which requires employers to bear the costs of complying with safety and health requirements promulgated under the Act. OSHA finds it reasonable and appropriate for employers to bear the costs of training because, under the Occupational Safety and Health Act of 1970, employers are responsible for providing a safe and healthful workplace, and training is an integral part of this responsibility. It is clear that having employees bear such costs would discourage participation in

training activities, and would thus limit the effectiveness of the rule's training requirements.

Several organizations commented on OSHA's interpretation of the proposed "at no cost to employees" language (see, *e.g.*, Exs. 30–3813, 30–3686, 32–339–1). With reference to the preamble to the proposal [64 FR 65833], which explained that employees could not be required to forfeit regularly scheduled lunch or rest periods to attend training sessions, one organization stated that OSHA had cited no evidence showing that employees receiving training on MSDs during "brown bag" lunch sessions or during "scheduled rest periods" would be harmed by this practice. This commenter contended further that OSHA's interpretation of the "no-cost" provision was an intrusion into workplace management and scheduling, which should be the employer's exclusive prerogative (Ex. 30–3813). In contrast, other organizations supported the "no cost to employees" requirements of the proposed rule (Ex. 30–3686) and additionally urged OSHA to limit training to working hours (Ex. 32–339–1).

OSHA has no objection to training during brown bag sessions or breaks, provided that employees are paid for this time (and, of course, that no laws governing break times are contravened to comply with this provision). Many employers do have paid lunch hours or half-hours and breaks where training can occur without risking non-compliance with this provision. However, if these time periods belong to employees, *i.e.*, are not periods that are on the clock, they cannot be used for the training required by this standard.

Who Should be Trained?

OSHA proposed that employees in "problem" jobs (defined in the proposal as those jobs in which an employee had experienced a covered MSD and performed activities involving exposure to risk factors for a substantial amount (or as a "core element" of the work shift), their supervisors, and persons involved in the ergonomics program (except for outside consultants) be trained initially, periodically as needed, and at least every three years. The final rule, at paragraph (t)(1), includes similar requirements, although the final rule's initial and follow-up training requirements apply only to jobs that meet the Action Trigger, rather than to "problem jobs," as proposed. In addition, while the final rule requires initial and 3-year follow-up training, it does not require "refresher" training at other intervals. The specified initial and follow-up training requirements are well-suited to the revised format of the standard and the Action Trigger concept.

OSHA's reasoning in including these requirements in the final rule is that, once employees in jobs meeting the action trigger have been trained, they will be able to report MSD hazards and problems early enough to prevent problems from becoming worse and to protect other employees in the same job from incurring a similar MSD. Early reporting informs employers of the need to address MSD hazards and provide MSD management. Trained employees can also participate more effectively in the program and thus better protect themselves by working safely. OSHA also believes that the supervisors (or team leaders or lead employees) of employees in these jobs must be trained because they are the personnel to whom employees report their symptoms and the presence of MSD hazards. Supervisors are in a position to ensure that employees in such jobs understand the conditions that may lead to MSDs and use the work practices and procedures established by the employer to control MSD hazards. Also, in many cases, supervisors are in a position to observe MSD hazards first hand and to recognize when MSDs are developing in the workers they supervise.

OSHA also believes that training is critical for those individuals who establish, administer, and implement the employer's ergonomics program. Because these managers represent the employer, it is in the employer's best interest that program administrators and others responsible for implementing the program be as knowledgeable as possible. Also, as these managers become more knowledgeable, they will provide better training to their employees in the ergonomics program. Of course, as the proposal noted, outside consultants do not have to have employer-provided training because consultants are responsible for preparing themselves to perform their professional duties.

The question of who should be trained was a significant issue in the rulemaking. Commenters offered opinions on a variety of issues and represented conflicting viewpoints. The major issues with respect to who should be trained under the ergonomics rule were:

- The scope of the training provision,
- The number of employees to be trained,
- Whether supervisory employees should be trained, and
- The training and qualifications of trainers.

Some commenters urged OSHA to be more inclusive in the employees required to be trained. They stated that all workers, or all general industry employees (see, *e.g.*, Exs. 30–3826, 30–297, 30–4538), or all workers in the industry (see, *e.g.*, Ex. 30–3686) should be trained. Some stated that, although all employees should receive training, employers should conduct more extensive training specifically for those in problem jobs (see, *e.g.*, Ex. 30–4538). The thrust of these comments, in general, was that the training required by the standard should be expanded beyond employees in problem jobs (see, *e.g.*, Exs. 30–3826, 30–3686, 32–182–1, 30–3765, 32–198–4, 30–297, 30–4538). For example, Dow Chemical stated,

> Employees having an active role in the prevention of MSD injuries and information on how best to recognize and control MSD hazards is a necessary component of a successful program. In fact, Dow encourages such training for employees, beyond whether they are in a "problem job" or not. All work activities involve some bodily movement and therefore MSD risks are always present. Dow supports internally a more pro-active sharing of this type of information rather than waiting for an MSD to present itself (Exhibit 30–3765).

Expanding the scope of the required training to include more employees, and to include employees who have not experienced an MSD, would clearly make this program element more proactive, as many commenters urged (see, *e.g.*, Exs. 30–3826, 32–111–4, 30–3686, 32–182–1). Some participants argued that the full program, including training, should be implemented without waiting for workers to report injuries (see, *e.g.*, Ex. 32–198–4). Others suggested that training be part of new employee orientation (see, *e.g.*, Ex. 500–180–51) be provided when workers are transferred (Ex. 32–182–1), or be given when the ergonomics program is first implemented or new employees are hired (see, *e.g.*, Ex. 32–198–4). One commenter stated that the training requirements of the proposed rule, unlike the case in other OSHA rules, do not apply to workers who are only *potentially* exposed but instead apply only to workers who are actually exposed (Ex. 32–339–1).

> Given the central role of the workers in an effective ergonomics program (*e.g.*, reporting symptoms and hazards and making recommendations about controls), we believe that more regular training is warranted (Ex. 32–339–1).

Another comment addressed the effect that training only some employees might have on employee morale. This commenter noted that, in some ergonomics pilot training programs, employees who perceived that they were not going to be included in the program (whether rightly or wrongly) because they were not trained when others were, felt excluded and were later less cooperative (Ex. 32–194–4).

OSHA also received comments recommending that: (1) training be limited to employees with MSDs and the employees' supervisors (Ex. 30–3813) rather than, as proposed, to all employees with the same job as the injured employee; (2) different groups of employees be given different levels of training (Ex. 30–240); and (3) the formal program apply only to specific employees in jobs where ergonomic issues are prevalent (Ex. 30–240). One commenter stated that training should be triggered only when a statistically significant percentage of employees in a job have incurred, within the year, work-related, HCP-diagnosed MSDs that resulted in days away from work (Ex. 30–3344).

The final rule's training provisions (paragraph (t)), together with the informational requirements in paragraph (d), address many of the issues raised by commenters. First, OSHA has adopted a "tiered" approach to training. The Agency agrees that all employees should receive orientation or awareness training (see, *e.g.*, Exs. 30–3686, 32–182–1, 32–198–4) but those at greater risk must receive more extensive training (see, *e.g.*, Exs. 30–3686, 32–339–1, 30–240). Paragraph (d) of the final rule requires that general awareness information be provided to all current employees and new hires. This new provision also addresses the concerns of those commenters (see, *e.g.*, Exs. 30–3826, 30–297, 30–4538, 30–3686, 32–182–1, 30–3715, 32–198–4) who argued that as many employees as possible should be aware of MSD hazards and how to prevent them. The awareness information required by final paragraph (d) also should help to avoid the dampening effect on employee morale noted by one commenter (Ex. 32–194–4). (The summary and explanation for paragraph (d), above, provides more detail on the general information requirements.)

Second, training is required by the final rule for employees in jobs that meet the standard's Action Trigger. OSHA views the occurrence of a work-related MSD and the presence of risk factor(s) at the level(s) indicated by the Basic Screening Tool as an indication that the job is one that warrants a closer look. Such a job has the potential to expose workers in the job to MSD hazards. Because the two-part action trigger in paragraph (e) triggers training for the injured employee and for all other employees in the establishment with the same job, the final rule's structure is more like that of other OSHA standards (*e.g.*, the hearing conservation amendment to the occupational noise standard, 29 CFR 1910.95), as some commenters suggested (see, *e.g.*, Ex. 32–339–1). However, because OSHA has designed the final rule to target those situations where the problem is most serious, the standard's training requirements are triggered for a job only when the action trigger has been met for that job, and not, as some commenters suggested, when the program is first implemented (see, *e.g.*, Exs. 32–198–4).

The Agency does not agree with those commenters who stated that training should be required only for injured employees and their supervisors (Ex. 30–3813), or only for employees in jobs where ergonomic issues are "prevalent" (Ex. 30–240), or only for employees in jobs that have caused MSDs in a statistically significant percentage of employees within the prior year (Ex. 30-3344). Restricting the number of employees receiving training in ways suggested by these commenters would be, in OSHA's view, both inappropriate and insufficiently protective. First, limiting training to injured employees and their supervisors would eliminate one of the standard's proactive features, *i.e.*, that other employees holding the same job as the injured employee be trained in the risk factors in that job, the signs and symptoms associated with the MSDs caused by those risk factors, and ways to protect themselves from experiencing an MSD. OSHA believes that this provision of the standard will contribute substantially to the standard's effectiveness by ensuring that all employees in these higher risk jobs receive training. A recent study showed that employers were likely to limit their efforts to control MSD hazards to the injured worker's job and not to extend preventive practices to other workers in the establishment who had the same job (Ex. 30–651–2). OSHA believes that this provision of the standard will ensure that all at-risk workers in the same job will be protected. Absent such a provision, this preventive effect would be lost.

Third, limiting training only to employees in jobs where ergonomic injuries are "prevalent" (Ex. 30–240) or where a statistically significant percentage of employees have had an MSD in the last year (Ex. 30–3344) would deny the standard's training benefits to all injured and potentially exposed workers except those working in very large establishments, since only such establishments would have enough employees in a given job to meet the prevalence or statistically significant tests suggested by these commenters. Such an approach is clearly unprotective for the many thousands of workers in small- or mid-sized establishments who would not receive training even in cases where they have experienced an MSD incident.

OSHA concludes, after a comprehensive review of the record on the issue of who should receive the training required by the final rule, that paragraph (t)(1) strikes the right balance on inclusiveness. It does this by requiring training for each employee who has experienced an MSD and works in a job that meets the Action Trigger, and all other employees working in that job.

The final rule requires the supervisors or team leaders of these employees to be trained, so that they will encourage early reporting, know how to respond to employee reports, reinforce good work practices, and be familiar with ergonomic principles and practices. Several commenters (Exs. 30–3765, 32–198–4, 30–3859) commented on the proposed requirement to train the supervisors of those in higher risk jobs. One commenter noted that the term "supervisor" is no longer used in some workplaces, which are organized in less traditional management structures (Ex. 30–3765). This commenter pointed out that some managers may direct more than a hundred employees, and that these employees may be widely dispersed geographically. In the view of this commenter, the rule should state that employers must train "knowledgeable resources," rather than stipulating that supervisors must be trained. In the final rule (at paragraph (t)(1)(ii)), OSHA states that employers are required to train the supervisors or "team leaders" of employees in jobs that meet the Action Trigger. The addition of the term "team leaders" conveys OSHA's intent, which is to require first-level management personnel to be trained, whatever their official title may be (supervisor, team leader, team manager, knowledgeable resource, and so forth). OSHA is also aware that many workplaces rely on members of an ergonomics committee, joint labor-management, or a trained group of employees (see, *e.g.*, Ex. 30–115); however, the standard does not specifically address the training of these employees.

Paragraph (t)(1)(iii) specifies that employers also must train "other employees involved in setting up and managing" the employer's ergonomics program. This provision is similar to the proposed provision, except that it

substitutes "employees" for "persons" (the proposed term). OSHA has directed this provision to employees rather than persons because doing so makes it clear that the Agency is not regulating individuals operating outside of the employment relationship.

Initial and Refresher Training. The proposed rule required that training be given in accordance with the following timetable:

For employees in problem jobs and their supervisors.	(1) When a problem job is defined; (2) When initially assigned to a problem job; (3) Periodically as needed (*e.g.*, when new hazards are identified in a problem job or changes are made to a problem job that may increase exposure to MSD hazards); and (4) At least every 3 years.
For persons involved in setting up and managing the ergonomics program.	(1) When they are initially assigned to setting up and managing the ergonomics program; (2) Periodically as needed (*e.g.*, when evaluation reveals significant deficiencies in the program, when significant changes are made in the ergonomics program); and (3) At least every 3 years.

In the final rule, OSHA has revised the timetable for initial training to reflect the addition of the Action Trigger to the standard, and to allow time for the employer to conduct the job screening process and implement the ergonomic program. Accordingly, paragraph (t)(4) provides the fillowing timeframes for initial training: When the employer determines that an employee's job meets the Action Trigger, the employer has 45 days from that time to train employees involved in setting up and managing the program, and 90 days from that time to train each current employee in that job and their supervisor and team leader. Also, if the employer assigns a new or current employee to a job that the employer has already determined meets the Action Trigger, that employee must be trained prior to starting the job.

Paragraph (t)(1) of the final rule also requires follow-up training, every three years, for employees whose jobs meet the Action Trigger. This requirement differs from the corresponding proposed provision, which did not rely upon the Action Trigger concept.

Several commenters (see, *e.g.*, Exs. 32–198–4, 32–198–1/42, 30–3686, 32–339–1, 30–2116, 30–2825, 30–2847, 30–3001, 30–3033, 30–3034, 30–3035, 30–3258, 30–3332, 30–4159–30–4536, 30–4546, 30–4547) urged OSHA to require refresher training more frequently than once every three years.

Some of the reasons cited by these commenters for more frequent training included:

- Many workers experience problems in less than a year (Ex. 32–198–4–1/42).
- Training should be required annually and whenever jobs or conditions change (Ex. 30–3686).
- Employers should train every two years at a minimum because many employers are already providing training on an annual basis (Ex. 32–198–4).

Other commenters requested that OSHA require training less often or require training less often in some situations (see, *e.g.*, Exs. 32–300–1, 30–3813, 30–3765, 30–327, 30–710, 30–2725, 30–3284, 30–4046). Some specific reasons given for less frequent retraining were:

- There should not be a minimum three year retraining provision for employees where the reported MSD has resolved within the three years and no other MSDs (affecting the same part of the body) have been reported in that job (Ex. 30–3813).
- Employees will retain knowledge about their job's core functions, like how to use controls and work practices properly, even without training (Exs. 32–300–1, 30–3284).
- OSHA should allow employees and supervisors to demonstrate knowledge retention so that they can be exempt from the three year retraining requirement (see, *e.g.*, Exs. 32–300-1, 30–327, 30–1671, 30–328).
- Program administrators should be allowed to bypass portions of initial and refresher training if they already possess background training. This group could include health and safety personnel, medically trained personnel, and ergonomists (see, *e.g.*, 32–300–1, 30–327, 30–1671, 30–3284).

OSHA responds to these comments on the appropriate frequency of training as follows. First, OSHA believes that refresher training every three years for those in higher-risk jobs is appropriate, given the very broad range and diverse nature of businesses covered by this standard. For example, the number of employees in the average business covered by this standard is 16; such a business is likely to experience not more than one or two MSDs in a given year, at most, which means that one or two employees will receive initial training every year and one or two will need refresher training (once the standard has been in effect for a few years). In a business such as this, ergonomics awareness is likely to be quite high, both because of the amount of training going on and because of the job hazard anlysis and control activities being conducted. In other words, the initial training and 3-year follow-up training requirements will virtually ensure that ergonomics training will be a regular part of the program for many employers. In response to those commenters who argued that refresher training every three years was unnecessary or burdensome, OSHA notes that the standard allows employers considerable flexibility in the form that training must take. For example, although all of the required topics must be addressed in the refresher training, trainers who observe that trainees "know the basics" are free to spend more of the training time on such workplace-specific topics as changes to workstations that have taken place since the last training.

Some commenters argued that many workplaces are static rather than dynamic in nature and therefore that workers in them do not need refresher training (see, *e.g.*, Exs. 30–2835, 30–3356). OSHA disagrees. MSDs occur in workplaces with fixed workstations, in service industry jobs, and in office settings; indeed, one of the striking characteristics of MSDs is that they occur in all general industry sectors (see the risk assessment section of this preamble, Section V). Whenever MSDs occur in jobs that meet the action trigger, OSHA believes that workers in these jobs should be trained initially, and that they should also receive follow-up training at least every three years. This approach ensures that those workers who are clearly at risk have the knowledge and skills they need to work as safely in those jobs as possible. The approach taken in the final rule—to require refresher training only for employees, and the supervisors of employees, in jobs that meet the Action Trigger—is also responsive to those commenters who argued that no such training should be required if the problem has gone away (see, *e.g.*, Ex. 30–3813). OSHA is unsympathetic to those who believe that employees do not need refresher training because they will remember what they need to know about the "core functions" of their job (see, *e.g.*, Exs. 32–300–1, 30–3284). This is not OSHA's experience, and the thousands of fatal and disabling injuries that occur in U.S. workplaces every year confirm the fact that workers and their supervisors often do not remember the safe operating procedures in which they were trained.

OSHA has not adopted the suggestion of some commenters (see, *e.g.*, Exs. 32–300–1, 30–327, 30–1671, 30–328) that employees and supervisors who can demonstrate that they have retained the information they learned be exempted from refresher training. OSHA has not done so because refresher training is only required every three years and the Agency believes that periodic retraining is appropriate for all employees in the program. For the same reasons, the standard does not permit managers and supervisors to demonstrate knowledge and be exempted from refresher training, as some commenters suggested (see, *e.g.*, Exs. 32–300–1, 30–327, 30–1671, 30–3284). However, the final rule does not use the word "persons," as the proposal did, because OSHA agrees with commenters that persons who are not employees (*e.g.*, independent or self-employed ergonomists, safety specialists, industrial hygienists, and so forth) are responsible for their own training.

To those commenters who argued that more frequent refresher training should be required because many employers are already doing it (see, *e.g.*, Ex. 32–198–4), OSHA responds that employers are always free to provide more frequent training than OSHA requires. OSHA does not agree, as some commenters maintained, that employees will continue to remember the essential elements of their training, such as how to implement controls, without refresher training. Instead, OSHA believes that all employees in jobs posing MSD hazards will benefit from the reminders and updating that refresher training provides.

OSHA also is not persuaded by arguments (see, *e.g.*, Exs. 30–3765, 30–3813) that program managers should not have to be retrained. These personnel, like employees, will benefit from renewing their knowledge base and updating their skills every three years, particularly since they only receive this training if the employees under their supervision are in jobs that warrant it.

OSHA does agree that training is more difficult in workplaces with high turnover. The Agency believes that the standard may help employers to reduce turnover, as good ergonomics programs have done in many workplaces (see the case study table in Section VI of the preamble).

The difficulties of training short-term employees, some of whom may only stay with the host employer for a week or less, were discussed by one commenter (Ex. 30–240). According to this comment, training short-term employees in a high-turnover environment is both time consuming and resource-intensive. OSHA agrees that this is the case; however, ergonomics training is essential for each employee who experiences an MSD incident in a job that meets the Action Trigger, even if that employee is only in the job for a few weeks or months. Employers may also find that training helps to reduce turnover to the extent that ergonomic stress plays a part in employees' decisions to leave employment. As discussed below, paragraph (t)(5) also allows that if an employee has been trained in a topic required by paragraph (t)(2) within the previous 3 years, the employer need not provide initial training in that topic. OSHA believes that this provision will reduce the burden on employers in high-turnover industries, at least to some extent.

The training and qualifications of the individuals providing the training required by the final rule was the topic of several comments (see, *e.g.*, Exs. 32–111–4, 30–3686, 32–194–4, 32–182–1). These participants stressed the importance of the qualifications of the trainers to effective ergonomics programs, and one commenter (Ex. 32–194–4) expressed concern that, if program evaluations were conducted by untrained managers, inadequate evaluations could result.

OSHA agrees that the knowledge and skills of those administering ergonomics training play a major role in the effectiveness of the training. However, the final rule does not specify the credentials or experience such trainers or program managers must have. Ergonomists, safety professionals, industrial hygienists, and individuals who have taken ergonomics courses, attended train-the-trainer sessions, and learned the basics of ergonomics on-the-job are currently providing the training being presented in existing, effective ergonomics programs and have demonstrated their ability to be effective trainers. A recent study (Ex. 500–71–64) from the *International Journal of Industrial Ergonomics* reports that trained workers do an exceptional job in identifying risk factors and solutions: in 65 to 85 percent of cases, professional ergonomists and trained workers identified the same risk factors when they performed job hazard analyses. The authors of this study concluded that "users [trained employees] can identify rather reliably the risk factors in the jobs."

Train-the-trainer sessions involving employees also have achieved excellent results; for example, a hospital that introduced patient handling equipment and conducted extensive train-the-trainer and employee training credits the program with reducing lost-time injuries by 64% within the first year (Ex. 500–71–61). The record thus demonstrates that persons with a wide range of credentials, skills, and experience can effectively train employees, supervisors, and managers, provided that they themselves have been well-trained.

Topics for Training. Paragraph (t)(2) of the final rule requires that the employees identified in paragraph (t)(1) be trained in the following topics (as appropriate to their responsibilities in the ergonomics program):

- The employer's ergonomics program and their role in it;
- The signs and symptoms of MSDs and ways of reporting them;
- The risk factors and MSD hazards present in the employee's job, as identified by the Basic Screening Tool and the job hazard analysis;
- The employer's plan and timetable for addressing the risk factors and hazards identified;
- How to use engineering, work practice, and administrative controls, or any PPE, that will be used in the job; and
- How to evaluate the effectiveness of the control approach adopted to reduce the risk factors and MSD hazards.

With two exceptions, these are the same training topics (with minor editorial changes) that OSHA proposed. The two exceptions are specific training in the requirements of the standard and in the importance of early reporting of MSD signs and symptoms. OSHA has not included these topics in the list of training topics in the final rule because the hazard information provided to employees under paragraph (d) of this standard already includes this information. Thus all employers covered by the standard will have access to a summary of the standard and will be aware of the importance of early reporting.

OSHA believes that training in the topics listed in paragraph (t)(2) is an important way to ensure that employees at all levels of the organization have the information and skills they need to participate effectively in the ergonomics program. Only workers trained to recognize MSD hazards and MSD signs and symptoms, to use the controls implemented to reduce these hazards, and to evaluate the effectiveness of these controls, can make the program work in terms of reducing work-related MSDs.

There was substantial disagreement among those commenters who addressed the content of the proposed training requirements. Several felt that the list of training topics should be

expanded, while others argued that some requirements should be deleted. In addition, many commenters submitted data and information showing that training programs can achieve significant results in reducing workplace MSD hazards and associated MSDs.

Examples of some of the suggestions commenters had for revising the proposed training topics included:

- OSHA should specifically require that employers provide training on the requirements for medical management, Work Restriction Protection, and the standard's prohibition against discouraging workers reports (Exs. 32–111–4, 32–339–1).
- Work Restriction Protection should be explained during the initial training (Exs. 30–4538, 32–339–1).
- First-line supervisors as well as the program manager should have hazard analysis training (Ex. 30–3826).
- Training should include discussions of medical records confidentiality, job hazard analysis (including ergonomic assessment of work stations) and disease and disability related to ergonomic injuries (Ex. 30–3686).
- OSHA should include both detailed and more general topics in initial training, and job-specific training for employees in problem jobs and their supervisors (Ex. 32–198–4).
- Training should cover the importance of height differences among employees, the training of lift team members, and the importance of labeling packages with their weights (Exs. 32–461–1, 30–115, 30–4538).

Other commenters recommended that certain subjects be deleted from the required training topics. For example, several commenters suggested that training on the specific requirements of the standard be deleted from the list (see, *e.g.*, Exs. 30–3765, 32–300–1, 30–240, 30–3284). These commenters were of the opinion that there is no need to provide in-depth training on the standard itself, but that the training should instead focus on elements of the standard only as they specifically apply to the company's program. Further, these commenters believed that employees have ample access and opportunity to familiarize themselves with OSHA standards, including access to OSHA's internet homepage (see, *e.g.*, Ex. 330–3765).

OSHA agrees that the specific suggestions for additional training content made by commenters would be useful to employees. However, the Agency has decided to require only that employees be trained in those basic topics that are essential to worker protection. The required topics are general, in order to allow the flexibility needed in different workplace situations. This approach is consistent with the training content requirements of other OSHA standards (see, *e.g.*, 29 CFR 1910.1018 and 29 CFR 1910.147). The final rule requires training in the employer's ergonomics program and each employee's role in it; the signs and symptoms of MSDs and ways of reporting them; the risk factors and MSD hazards present in the employee's job, as identified by the Basic Screening Tool and the job hazard analysis; the employer's plan for addressing identified hazards, including the employer's timetable to abate the hazards identified; training in how to use the controls in the job, including any personal protective equipment; and how to evaluate the effectiveness of the control approach used.

OSHA believes that the required topics constitute a minimal training program and recognizes that many employers may choose to administer more extensive training. OSHA anticipates that many employers will cover such topics in their training programs as OSHA's discrimination regulations (Section 11(c) of the Act), Work Restriction Protection, MSD management, and multiple HCP review. Several of these topics are briefly addressed in the information on the standard employees receive in response to the requirements of paragraph (d). OSHA believes that training under paragraph (t) should concentrate primarily on MSDs and MSD hazards that are specific to the employee's job. OSHA has also not included the more detailed topics—package weight labeling, the importance of height differences among employees, lift team training, and so forth—suggested by commenters (see, *e.g.*, Exs. 32–461–1, 30–115, 30–4538). Such topics are workplace-specific and thus not appropriate to include in general training requirements that will apply to all workplaces covered by the standard.

Some commenters recommended that OSHA expand its training activities by developing outreach training programs and other compliance assistance materials (see, *e.g.*, Exs. 30–3686, 30–4538, 32–198–4, 30–3826, 30–614, 30–1037, 30–2806). Some specific suggestions were that OSHA develop a sample curriculum, including audiovisuals (Ex. 30–4538), or that OSHA provide a curriculum, instructor materials (and translations), and training videos at minimal cost (Ex. 32–198–4). Other comments urged OSHA to establish an "advice line" for program managers (those setting up and implementing the program) and urged employers to work closely with health care professionals. These commenters were concerned that, without such assistance, managers would be tempted to buy expensive but ineffective ergonomic fixes and purchase products that do not address the root cause of the problem (Exs. 30–614–, 30–898, 30–4139).

Other stakeholders suggested that OSHA train its compliance officers to have, at a minimum, the same level of knowledge as consultants advising employers in ergonomics programs (see, *e.g.*, Exs. 30–1037, 30–3922). These commenters urged the OSHA training centers to make ergonomic certification programs and other courses available to the public or at least to make employers aware of sample programs that already exist (see, *e.g.*, Exs. 30–1037, 30–3123, 30–3128).

OSHA does have programs in place to help employers with their ergonomics programs. The Agency offers free consultation services through the states. The OSHA consultation program is specifically designed for small- and medium-size organizations (*i.e.*, employers with 250 employees or fewer per site or 500 per organization). These services are confidential, and consultants will not issue citations or propose penalties. OSHA also offers off-site services to larger organizations and on-site services on a priority basis if resources permit. OSHA staff are available to answer questions from the public any time during OSHA working hours. In addition, OSHA makes a wide range of ergonomics-related materials available on the Agency's website, www.osha.gov.

With respect to the training of compliance officers and other OSHA staff, OSHA's Training Institute in Des Plaines, Illinois, provides basic and advanced ergonomics courses for Federal and State compliance officers, State consultants, other Federal agency personnel, and private sector employers, employees and their representatives. Also, the Training Institute has established Training Institute Education Centers, which are nonprofit colleges, universities, and other organizations selected after competition for participation in the program. In addition, OSHA provides funds to nonprofit organizations through grants to conduct workplace training. Grants are awarded annually to grant recipients, who contribute at least 20% of the total grant cost. OSHA has already trained many of its CSHOs extensively in ergonomics, and has made regional ergonomics coordinators available in the regional offices. In addition, OSHA is making extensive outreach materials on ergonomics available with the final standard.

Effectiveness of Training. Some stakeholders submitted data to the record on the effectiveness of ergonomics training. Several commenters noted that they had developed training programs, had coordinated programs through outside organizations such as universities, or were in the process of developing or testing training programs (see, *e.g.*, Exs. 30–3826, 32–198–4, 32–77–2, 32–185–3, 30–1294, 30–3336, Tr. 2776, Tr. 2761, 30–449, 30–2713, 30–3368, 30–3758, 30–3867, Tr. 3129–3219, Tr. 14969–15072). Stakeholders described some of the achievements of these programs (see, *e.g.*, Exs. 32–198–4, 32–185–3, 30–449, 30–3336, 30–3758, 30–3867, Tr. 7982), including their contribution to the decrease in the rate of MSDs observed among their members (Tr. 7982) and continued reductions in workers' compensation costs even in the face of increases in wages and health care costs (Exs. 30–3336, 30–3867, 30–4496). The thrust of these comments is that ergonomically aware workers can help their co-workers and their employers to prevent MSDs (Ex. 30–3758).

Several studies in the record demonstrate the benefits of ergonomics training. For example, a study by Parenmark, Engvall, and Malmkvist showed that workers receiving training had a reduced number of lost workdays due to MSDs compared with untrained controls (Ex. 26-6). The number of days lost as a result of arm-neck-shoulder complaints was reduced by half in the trained new hires compared with the control group (Ex. 26–6, Table 2).

An AFGE health and safety representative referenced an Ergonomic Workplace Survey conducted by Rani Lueder, CPE, for the Social Security Administration in 1997 (Ex. 30–449). The large majority of respondents who received the training considered the training helpful, and the trained respondents reported consistently lower rates of discomfort for all body parts, were more willing to report MSD discomfort to their supervisors, and were more satisfied than untrained workers with their supervisors' responses (Ex. 30–499). Also, respondents who were trained were more likely to adjust their chairs, worktables, and other equipment to reduce the risk factors present.

Many commenters at the hearings described the training component of their ergonomics programs (see, *e.g.*, Tr. 12367–12373, Tr. 7977–7982). The extent of the training being administered varied widely, from very simple training to comprehensive efforts. OSHA believes that the training program required by the final rule will do much to increase the level of ergonomics knowledge and understanding among employees, their supervisors, and managers. This knowledge, in turn, will translate in practice to fewer MSDs, improved morale, and greater productivity. There is evidence in the record that good training programs operate in just this way. For example, a 1997 article in the American Journal of Health Promotion [Ex. 500–71–63] reports that ergonomics training programs lasting about an hour and administered to computer operators described in the article as "high risk" led every trainee subsequently to make changes either in their workstations or their work practices. About two-thirds of the trainees made ergonomically advantageous changes to both.

Another study (Ex. 500–71–59) reports that factory processing line workers who were trained in MSD hazard recognition were subsequently better able to recognize hazards and more willing to report them to their supervisors. OSHA believes that the experiences of these companies will be repeated frequently once the final rule's training requirements are implemented.

Retraining of employees who have already received training. The proposed rule stated that employers do not have to provide initial training to current employees, new employees and persons involved in setting up and managing the ergonomics program if they have received equivalent training in the subjects this standard requires within the last 3 years. However, the proposal stated that employers must provide initial training to such individuals in any of the required topics that their prior training did not cover. The final rule, at paragraph (t)(5), provides that if an employee has received training in a required topic within the previous 3 years, the employer need not provide initial training to that employee in that topic.

Several commenters supported this proposed requirement (see, *e.g.*, Exs. 30–3765, 32–300–1, 30–1671, 30–3284). Some organizations asked OSHA to clarify how the Agency expects an employer to verify such prior training (Exs. 30–3826, 32–300–1). OSHA does not require employers availing themselves of this "portability of training" provision to have written documentation of the employee's prior training or to require the employee to pass an examination (Ex. 30–3826). The Agency does, however, expect employers who wish to benefit from this provision to assure themselves that employees have in fact had the prior training and have sufficient knowledge to work safely.

A number of commenters objected either to the prior training exemption altogether or to the fact that OSHA proposed to permit training given in the 3 years prior to the compliance date to qualify for the portability exemption (see, *e.g.*, Exs. 30–3686, 30–2116, 30–2809, 30–2825, 30–2847, 30–3001, 30–3033, 30–3035, 30–3258, 30–3332, 30–4159, 30–4536, 30–4546, 30–4547). OSHA has decided in the final rule to retain the training exemption as proposed, because the Agency believes that employees who have received all of the required training elsewhere do not need to be retrained until their refresher training date comes up. Although employees who have had prior training are not required to take initial training, all employees in jobs that meet the Action Trigger must receive refresher training.

OSHA received several non-specific comments only tangentially related to the proposed training provisions. These primarily concerned what the commenters perceived as "vagueness" in the proposed language of the regulatory text. For example, some participants believe that employers will not be able to train their employees because, in their opinion, the standard isn't clear about the steps that need to be taken (see, *e.g.*, Exs. 32–368–1, 30–325, 30–494, 30–2846) and assert that this will make training more difficult and costly than usual (see, *e.g.*, Exs. 32–368–1, 30–1668, 30–2846, 30–3781, 30–3593).

In the final rule, OSHA has revised the proposed standard's training requirements extensively and has clarified areas of overlap and confusion. For example, the basic information requirements in paragraph (d) now apply to all covered employers and are intended to ensure that all employees are familiar with the elements of the OSHA standard, and this topic is no longer also included in the required training topics.

Some commenters argued that OSHA should phase in compliance requirements for the training provisions because it will take time to develop adequate in-house materials. OSHA is aware that it takes time to develop training materials, but OSHA is also aware that many trade associations and other organizations, as well as employers, already have such materials. Further, OSHA is making many outreach materials available at the time the standard is published and in the months thereafter. Consequently, OSHA

believes that the time allowed for employers to come into compliance with the rule's training requirements (see paragraph (x)) is appropriate. The Agency is phasing in all elements of the final rule; therefore, an employer's earliest requirement to train employees under this standard will not arise for about a year after the publication date of the final rule.

What employers must do to ensure that employees understand training. OSHA proposed that employers provide "training and information in language that employees understand." The proposal also stated that employers must "give and receive answers." The final rule, at paragraph (t)(3), contains essentially the same requirements. These requirements provide individual employers with considerable flexibility in ways of achieving compliance (*e.g.*, the "language" may be one all trainees understand rather than the trainee's native language, so long as the trainee understands the language well enough to fully understand the training). Employees have varying educational levels, literacy, and language skills, and training must be presented in a language and at a level of understanding that accounts for these differences in order to meet the intent of the final requirement that individuals being trained understand the specified training elements.

The final rule requires that employers provide opportunities for employees to ask questions and receive answers about the establishment's ergonomics program and anything covered by the training. Again, employers have complete flexibility in the methods they use to comply with this requirement. For example, employers could choose to to do the training in-house or to use an outside trainer. Other alternatives would be for the employer to have a qualified trainer available by phone, or through a classroom video-conference.

Commenters addressed three issues related to the proposed requirement that training be understandable to the employee and that employees have the opportunity to ask questions and receive answers about their training. These issues were: The meaning of "understanding'; the meaning of "ask questions and receive answers'; and whether specific training methods should be included in the rule.

Several commenters asked OSHA to explain what it meant by requiring training to be provided "in language the employee understands" (see, *e.g.*, Exs. 30–3826, 32–198–4, 30–3686, 30–3686, 30–3765, 32–339–1, 30–1091). Commenters were concerned that, despite their best efforts, some employees might not understand the training well enough to "pass" the test if CSHOs asked them questions (see, *e.g.*, Exs. 30–429, 30–494, 30–1090, 30–3122, 30–3557, 30–3593, 30–3781). These employers fear that they would be vulnerable to citation and penalty in such a circumstance. Commenters also interpreted OSHA's "in language the employee understands" terminology to mean that they would have to test employees to ensure adequate comprehension (see, *e.g.*, Ex. 30–3557). Another commenter specifically suggested that the final rule require the employer to demonstrate that the employees had understood the training (Ex. 32–339–1).

Employers were also concerned about having difficulty finding good translations of training materials (see, *e.g.*, Exs. 30–4538, 30–240, 30–429, 30–1090, 30–3868). One commenter noted, however, that training materials in Spanish could be obtained from the Labor Occupational Safety and Health Program at the University of California in Los Angeles (Ex. 30–4538). Some employers understood the proposed "in language the employee understands" terminology as meaning that they would have to train in each of the languages native to their workforce (see, *e.g.*, Exs. 30–240, 30–429, 30–1090, 30–3336, 30–3557), and expressed concern about the potential costs of such a requirement (Ex. 30–3868).

One commenter (Ex. 30–3336) stated that some companies in their industry had employees on the payroll who spoke 12 different languages; this commenter understood the proposal as requiring native speakers in each of these languages to be available to receive and answer questions on the content of the training and the ergonomics program. Moreover, this commenter argued that OSHA's "multi-lingual" training requirement presented an even greater problem for their industry because it had a history of employing "mentally challenged" individuals (Ex. 30–3336).

In response to these comments, OSHA reiterates that the final rule does not require employers to present training in the native languages of the employees working in the establishments. In many workplaces, although employees many have different "first" languages, they understand English or another language well. The rule merely requires that the employer provide the training in a language the employee *understands*. OSHA does not believe that this will be difficult, because employers are already communicating with their employees about safe working procedures, tool and equipment care, project requirements, work schedules, and dozens of other items of daily importance to workplace operation and productivity. In other words, training is just another form of communicating important information to employees, a process that is going on in all U.S. workplaces at the present time. As to the comment about the difficulty of complying with the rule in workplaces that employ individuals with mental disabilities (Ex. 30–3336), OSHA can only emphasize that the same techniques employers use to transmit other essential workplace information to these individuals can be used to provide the training required by the standard.

The final rule also does not require employers to test employees' understanding or comprehension of the training given. However, employers are free to do so if they wish, and OSHA is aware that many employers do evaluate the effectiveness of their training immediately or soon after it is given. Thus, although the training paragraph does not require employee testing, employers who wish to have some way of ensuring that their employees understand the training content may establish any system that works for them. Employers are required by the standard to evaluate the training component of their programs when they do their periodic evaluations to ensure effectiveness.

Some commenters (see, *e.g.*, Exs. 30–4538, 30–3686, 32–339–1) recommended that the final rule's training requirements be revised to be more consistent with those of other OSHA standards, such as the Bloodborne Pathogens rule (Exs. 32–4538, 32–339–1), the Process Safety Management standard (Ex. 32–339–1) or the Hazardous Waste Operations and Emergency Response standard (Ex. 30–3686). OSHA believes that the final rule's requirements, in paragraph (t)(3), that the training be in language the employee understands and that employees be permitted to ask questions and receive answers will together achieve the objective desired by these commenters, *i.e.*, assurance that employees understand the training thoroughly.

Several commenters asked OSHA to clarify the phrase "ask questions and receive answers" (see, *e.g.*, Exs. 30–3826, 32–198–4, 30–3686, 30–376). These commenters wanted clarification about the methods OSHA requires them to use to accomplish this (see, *e.g.*, Exs. 30–3765, 30–3826). Other commenters recommended that the rule specify that employees be permitted to ask questions and receive answers promptly even if questions occur to them after the training session is over (see, *e.g.*, Exs. 30–2116, 30–2809, 30–2825, 30–2847, 30–3001, 30–3033, 30–3034, 30–3035, 30–3258, 30–3332, 30–4159, 30–4536, 30–4546, 30–4547).

Some commenters suggested that specific training techniques to be included in the rule. Suggestions included:

- Allow the use of electronic media, telephone reviews, and videos (see, *e.g.*, Exs. 30–3826, 30–3765, 30–434, 30–3392).
- Require that training be provided in a supportive atmosphere that encourages discussion of concerns with respect to MSD-related working conditions and encourages opportunities for questions (Ex. 30–3686).
- Require training to be administered "live"; prohibit written training (Ex. 32–198–4).

A commenter argued for the need for live training as follows:

> Employers often do not know at what level their employees are reading and comprehending. Workers are generally reluctant to share information about their literacy limitation (Sarmiento and Kay, "Workers Centered Learning," 1990). It is estimated that between 45%–50% of adults in America struggle due to some limitations in their literacy and/or language proficiency (which result in limitation of "understanding" or "reasoning"), according to "Adult Literacy in America" in publications of the U.S. Department of Education (1993). In addition, many of those functioning at a limited literacy level don't see themselves as having these limitations (Ex. 32–198–4).

The same commenter recommended methods such as visual aids, discussion and problem solving and small group "hands-on" sessions, and noted that workers are more likely to trust the employers' programs and develop confidence if these more oral training methodologies are implemented (Ex. 32–198–4).

In response to these comments, OSHA restates the position it has taken consistently in other standards: OSHA's objectives are to require employers to provide basic training in ergonomics, to ensure that all trained employees understand the training, and to permit employees to ask questions if they need further information. The Agency does not dictate the methods that employers choose to achieve compliance with these requirements. Properly trained employees will be sufficiently informed to recognize the signs and symptoms of MSDs and the value of reporting them early, to identify MSD hazards in their jobs, to know how to use and evaluate the control measures that the employer implements to reduce those hazards, and to work in ways that will reduce the risks in their jobs. The standard also does not state how long the training must last and when the question and answer periods must occur; instead, OSHA is leaving such things to the employer's discretion.

Paragraph (u)—What Must I Do To Make Sure My Ergonomics Program Is Effective?

The intent of the provisions of the Program Evaluation paragraph of the final Ergonomics Program standard is to require employers to evaluate their ergonomics program to ensure that it is effective. Good management, as well as common sense, suggest that periodic review of a program's effectiveness is necessary to ensure that the resources being expended on the program are, in fact, achieving the desired result and that the program is doing so in an efficient way. Program evaluation is a tool that can be used to ensure that an ergonomics program is appropriate for the specific MSD hazards in the employer's problem jobs and that the program is achieving desired results.

OSHA has long considered program evaluation to be an integral component of programs implemented to address health and safety issues in the workplace. For example, the Ergonomics Program Management Guidelines for Meatpacking Plants ("Meatpacking Guidelines") recommend regular program review and evaluation (Ex. 2–13). These guidelines suggest that procedures and mechanisms be developed to evaluate the ergonomics program and to monitor progress accomplished. Program evaluation is described in the Meatpacking Guidelines as a program component whose use reflects both management commitment and employee involvement. OSHA's 1989 voluntary Safety and Health Program Management Guidelines also recommend regular program evaluation as an integral program component (Ex. 2–12). Further, OSHA's Voluntary Protection Programs (V.P.P.) and Consultation Program require periodic evaluations of an employer's safety and health program, including that portion of the program addressing ergonomic issues.

The proposal contained a "basic obligation" section that merely summarized the proposed program evaluation provisions. The proposed basic obligation section also stated that employers were to evaluate their ergonomics program periodically, and at least every 3 years, "to ensure that it is in compliance with this standard." Because the basic obligation sections of the proposed standard led to confusion and were not helpful, OSHA has not included them in the final rule. Since the basic obligation section only summarized the proposed program evaluation requirements, comments on that section are discussed below, in connection with the proposed requirement to which they refer.

The proposed rule contained provisions requiring employers with programs to review them periodically to ensure their effectiveness; identified the procedures employers were required to follow when conducting evaluations; proposed that evaluations be conducted as often as needed and at least every 3 years; and proposed that program deficiencies identified during the evaluation be corrected promptly. The final rule's program evaluation provisions have been revised to reflect comments received, but are generally similar to those proposed.

Paragraph (u)(1) of the final rule provides for the frequency of required program evaluations. The methods and procedures employers are required to use in such evaluations are included in paragraph (u)(1)(i) through (iv). Provision is made for other events that may trigger program evaluations at more frequent intervals in paragraph (u)(2). In addition, the prompt correction of any deficiencies identified during the evaluation is covered in final rule paragraph (u)(3). The following discussion presents OSHA's reasons for including revised program evaluation provisions in the final rule, and summarizes the comments the Agency received on the proposed program evaluation requirements.

Paragraph (u)(1)—Frequency of Program Evaluations

OSHA received many comments (see, *e.g.*, Exs. 30–240; 30–1671; 30–3860; 500–71–86; 500–137; 30–3686; 32–210–2; 32–85; Tr. 8982; 30–2116; 30–2809; 30–2825; 30–2847; 30–3258; 30–3035; 30–3001; 30–3033; 30–3034; 30–4159; 30–4534; 30–4536; 30–4800; 30–4776; 30–4546; 30–4547; 30–4548; 30–4549; 30–4562; 30–4627; 30–3332; 30–3259; 30–4801; 30–3898; 30–4270; 30–4498; 30–3813 ; 500–33; 30–3745; 30–3765; 30–3368; 30–4713; 30–4046; 30–4247) on the proposed frequency of ergonomic program evaluations, as well as on the events that should trigger them. A few commenters (see, *e.g.* Exs. 30–240, 30–1671, 30–3860, 500–137) agreed with OSHA's proposed 3 year time frame, while others stated that they believed a 3-year interval was too long and that program evaluations should take place periodically and at least annually (see, *e.g.*, Exs. 30–3686; 32–210–2; 32–85; and Tr. 8982).

As mentioned above, OSHA received many comments (see, *e.g.*, Exs. 30–2116; 30–2809; 30–2825; 30–2847; 30–3258; 30–3035; 30–3001; 30–3033; 30–3034; 30–3686; 30–4159; 30–4534; 30–4536; 30–4800; 30–4776; 30–4546; 30–4547; 30–4548; 30–4549; 30–4562; 30–4627; 30–3332; 30–3259; 30–4801; 30–3898; 30–4270; 30–4498; 31–242; 32–210–2; 500–71–86) stating that program evaluations should take place at least annually. These commenters generally argued, in the words of Greg Wyatt, an engineer who suffers from a repetitive stress injury and who offered comments as an individual, that "the ergonomics program should be evaluated regularly (at least once a year) because it is easier and more cost effective to fix deficiencies early during the implementation phase" (Ex. 30–3035). In a comment that pertains to all workplaces, the United Mineworkers of America agreed, "Routine audits, no less frequently than once each year, should be performed of the entire workplace and problem areas reported to the appropriate company representative for immediate action" (Ex. 500–71–86).

The need for evaluations at a minimum frequency of less than 3 years was addressed by several commenters (see, *e.g.*, Exs. 30–2116; 30–2809; 30–2825; 30–2847; 30–3258; 30–3035; 30–3001; 30–3033; 30–3034; 30–3686; 30–4159; 30–4534; 30–4536; 30–4800; 30–4776; 30–4546; 30–4547; 30–4548; 30–4549; 30–4562; 30–4627; 30–3332; 30–3259; 30–4801; 30–3898; 30–4270; 30–4498; 32–210–2; 32–111–4; 32–229; 30–4247), who pointed out that workplace changes that adversely affect the functioning of a particular element of the program or of the program as a whole can occur in the interval between periodic evaluations (or "regularly scheduled" evaluations). For example, the United Steelworkers of America (UOWA) agreed that employers should evaluate their ergonomics programs at least every 3 years but asked OSHA to include in the final rule requirements that would trigger evaluations at more frequent intervals as well. "OSHA should provide additional specific requirements for the employer to respond to concerns raised by workers between evaluations. For example, employers should review health and safety committee minutes to determine if ergonomic concerns were identified, [and] then they should verify that those concerns have been promptly addressed or address them at that time" (Ex. 32–111–4).

From a somewhat different perspective, Organization Resources Counselors, Inc. (ORC) (Ex. 30–3813) and Edison Electric Institute (EEI) (Ex. 500–33) asked that the standard's language be changed to reflect their belief that a requirement to evaluate an ergonomics program both periodically and every three years was excessive. Both commenters agreed that the employer was in the best position to determine how often the ergonomics program at a particular worksite needs to be evaluated to ensure its effectiveness. However, in ORC's words, "it is not reasonable that the standard should require both periodic evaluation as well as an evaluation every three years." These commenters urged OSHA to require employers to evaluate their ergonomics programs periodically, "and/or" at least every 3 years.

Another rulemaking participant, the National Soft Drink Association (NSDA) (Ex. 30–368) questioned whether performance of a program evaluation every 3 years also would satisfy the proposed requirement for periodic evaluations. Because, NSDA believes that the two provisions are duplicative, it recommended that the term "periodic" be eliminated. The Dow Chemical Company (Ex. 30–3765) also opposed the "at least every 3 years" language, on the grounds that industry should be able to decide if and when periodic evaluations should be carried out but agreed that periodic reviews are necessary: * * * review on a periodic basis is necessary, especially * * * for dynamic workplaces with continuous turnover, process changes, etc." The National Telecommunications Safety Panel (Ex. 30–3745) agreed, saying the proposed rule's prescribed frequency presented particular problems for them because of their members' geographic sweep and rapidly changing workplaces and that [determining] "program evaluation frequency * * * [should be] the sole responsibility of the employer."

A few commenters (see, *e.g.*, Exs. 30–4713 and 30–4046) stated that the proposal's requirements for program evaluation were excessive: "* * * a complete evaluation, as required by the rule, cannot be realistically performed 'periodically,' as that term is defined."

A number of commenters who have themselves experienced MSDs (see, *e.g.*, Exs. 30–2116; 30–2809; 30–2825; 30–2847; 30–3258; 30–3035; 30–3001; 30–3033; 30–3034; 30–3686; 30–4159; 30–4534; 30–4536; 30–4800; 30–4776; 30–4546; 30–4547; 30–4548; 30–4549; 30–4562; 30–4627; 30–3332; 30–3259; 30–4801; 30–3898; 30–4270; 30–4498) also urged OSHA to require in the final rule that "every time an employee reports persistent MSD symptoms or an MSD injury, Job Hazard Analysis and Control must be performed, and the ergonomics program must be re-evaluated." In the view of these commenters, every report of an MSD injury or persistent MSD symptom points to a deficiency in the ergonomics program that must be evaluated and corrected. OSHA agrees with these commenters that significant changes in workplace conditions, such as the introduction of a new process; changes in management or supervisory personnel, procedures, or policies; or changes in the form or intensity of employee involvement, can affect the functioning of the program substantially and thus may necessitate an evaluation of particular program elements or of the program as a whole.

However, the Agency has chosen not to shorten the minimum interval between program evaluations to once a year from every three years because such a requirement would prove to be too burdensome if imposed on all of industry. Such a frequency would deprive employers of the flexibility which was OSHA's goal in drafting the program evaluation requirements, given the diversity of workplaces covered by this rule.

OSHA also is not persuaded that it would be appropriate to require employers to evaluate their programs every time an MSD incident occurs or an ergonomic concern is expressed, as some commenters urged the Agency to do. Such a requirement would precipitate constant evaluations for employers with large workforces, where the incidence of MSD injuries is often high. OSHA does not expect that the program mandated by the standard will eliminate MDSs in the workplaces covered by the standard; indeed, as the discussion in Section VI of this preamble makes clear, OSHA is projecting that, on average, the standard will prevent about 50% of MSDs in such workplaces. Further, the Agency believes that employee concerns about ergonomics will be addressed regularly as a result of the standard's requirements for prompt responses to employee concerns and regular employer/employee communications about workers' concerns.

After a review of the evidence in the record on the frequency of program evaluations, the final rule requires them when there is reason to believe that the program is not functioning properly, when changes have occurred that may have increased employee exposure to MSD hazards, and at least once every three years. The final rule's requirements are essentially similar to those proposed, although they are somewhat more specific. OSHA's reasons for retaining provisions for program evaluation that require such evaluations at least once every 3 years and at other times if workplace conditions warrant them, are: (1) the diversity of conditions in the workplaces covered by the rule demands the combination of specificity and flexibility provided by the provisions in paragraphs (u)(1) and (2) all programs need to be evaluated at least once every 3 years to ensure that they are functioning optimally and meeting the needs of the organization over time.

Paragraph (u)(2)—Steps Involved in Program Evaluation

In the proposed section titled "What must I do to evaluate my ergonomics program?", the proposed rule stated that program evaluation goes beyond a mere inspection or audit of problem jobs. The final rule, at paragraphs (u)(2)(i), (ii), (iii) and (iv), contains similar requirements. For example, the proposed rule would have required employers to consult with employees in problem jobs to assess their views about program effectiveness and identify program deficiencies, paragraph (u)(2)(i) of the final rule requires employers to consult with employees, "or a representative sample of them," about program effectiveness and any problems with the program. Paragraph (u)(2)(iii) requires employers to evaluate the elements of a program to ensure it is functioning effectively; this language is essentially unchanged since the proposal. The proposal would have required employers to carry out evaluations to ensure that the program was "eliminating or materially reducing" MSD hazards, while the final rule at paragraph (u)(2)(iii) requires the employer to assess whether MSD hazards are being identified and "addressed." The final rule adds, at paragraph (u)(2)(iv), a requirement that employers use the evaluation as an opportunity to assess whether the program as a whole is achieving positive results. OSHA includes examples of measures of effectiveness, such as reductions in the number or severity of MSDs, increases in the number of jobs in which ergonomic hazards have been controlled, reductions in the number of jobs posing MSD hazards to employees, or any other measure that demonstrates program effectiveness.

An adequate evaluation asks questions of employers at all levels of the organization to determine whether the required ergonomics program elements have been adequately implemented and whether they are integrated into a system that effectively addresses MSDs and MSD hazards. Examples of questions an evaluation is designed to explore are:

—Has management effectively demonstrated its leadership?
—Are employees actively participating in the ergonomics program?
—Is there an effective system for the identification of MSDs and MSD hazards?
—Are identified hazards being controlled?
—Is the training program providing employees with the information they need to actively participate in the ergonomics program?
—Are employees using the reporting system?
—Are employees reluctant to report MSDs or MSD hazards because they receive mixed signals from their supervisors or managers about the importance of such reporting?
—Is prompt and effective MSD management available for employees with MSDs?

OSHA finds that these questions, which were included in the proposal, continue to be appropriate points for program evaluations to address. The comments OSHA received on the proposed requirements for conducting evaluations addressed the following topics: the vagueness of the proposed terms used; the inclusion of core elements in the program required by the standard and in the standard's requirements for evaluation; the need for OSHA to specify measures of effectiveness for employers to rely on; the statement in the basic obligation section of the proposed rule that programs should be evaluated to ensure that they are in compliance with the standard itself; who should carry out program evaluations; the records to be reviewed in a program evaluation; and the extent of the recordkeeping required by this provision of the standard. The comments OSHA received on each of these topics are discussed below.

Vagueness of the rule's terminology: The Center for Office Technology (COT) complained that some of the terms used in the context of the proposed evaluation section were vague and "subjective" (Ex. 25–710). Specifically, COT pointed to the proposed requirement that evaluations be conducted "as often as necessary" (defined in the proposal as "periodically") as an example of the vagueness of the proposal's language. COT stated, "* * * training and program evaluation must be conducted "as often as necessary" and the program must be "appropriate" to workplace conditions. How will compliance with these vague, undefined and subjective requirements be assessed?"

Inclusion of core elements in the program: The Forum for a Responsible Ergonomics Standard (Exs. 32–351–1 and 30–3845) and others (Exs. 30–574; 30–2773; 500–33; 30–4040) were critical of the proposed Ergonomics Program standard's requirement that employers include in their programs, and evaluate, six mandatory core elements. By mandating that ergonomics programs have a certain form, *i.e.*, have specific elements, instead of requiring only that the program be effective, OSHA was, according to the Forum, "elevating form over function, divorcing its program from [what should be] the goal of achieving reduced MSD injuries and focusing instead on ensuring that programs fit a bureaucratic mold that is administratively simple." In other words, the Forum believes that the effectiveness of an ergonomics program should be the sole measure of its . success in any evaluation. The Forum stated that the proposed approach to program evaluation could lead to "the perverse possibility" of an employer with a program that successfully reduces MSDs being cited for a violation of the standard merely because the program failed to include a required program element.

Another commenter (Ex. 31–353) questioned how effective a program evaluation could be unless the rule required the effectiveness of each of the individual Ergonomic Program elements to be evaluated. "Without determining the effectiveness of all the aspects of the program, an employer is wasting time and money, and effort." Similarly, the Department of Defense (Tr. 9085–9086) stated, "If the evaluation is focused on the presence and function or process elements of the program then the standard should clarify the essential evaluation points for each program element."

Compliance as a measure of effectiveness: The Dow Chemical Company (Exs. 30–3765 and 32–77–2) asked, "Is the point of program evaluation to evaluate compliance with the standard or the program's 'effectiveness'? Or both?" Dow's comment referred to a statement in the basic obligation section of the proposed rule to the effect that the program was to be evaluated to ensure its compliance with the standard. According to Dow, "If OSHA maintains the requirement to evaluate 'effectiveness' of a program, then it should indicate the method an employer can use for measuring 'effectiveness.' " A program may have all of the required elements and thus be in compliance with the rule, but not address all potential MSDs" (Ex. 30–3765). The Association of Energy

Servicing Contractors (Tr. 15624) and others (Ex. 30–3839) agreed with Dow about the need for measurable criteria with which to gauge compliance with the standard.

Also commenting on this point was the Honorable Senator Christopher S. Bond, Chairman of the United State Senate Committee on Small Business, who submitted a study (Ex. 30–4334–4) carried out by the Regulatory Studies Program of Mercatus Center at George Mason University, entitled, "Over Stressing Business: OSHA and Ergonomics." The study included the following statement: "The draft rule requires employers to evaluate their ergonomics program according to both activity and outcome measures. Yet in the case of MSDs, neither activity nor outcome measures are likely to reflect program effectiveness."

The final rule does not require employers to evaluate their programs for compliance with the standard, as proposed, because this statement confused commenters and is unnecessary. The final rule's requirements (paragraphs (u)(1)(ii) and (iii)) that employers "evaluate the elements of the program to ensure they are functioning effectively" and "assess whether the program is achieving results" will essentially ensure compliance with the standard and eliminate the confusion caused by the proposed statement. Further, as the Dow Chemical Company pointed out, programs may be effective even if they do not contain every sub-element of the OSHA standard; this is certainly the case with grand fathered programs that were put in place well before OSHA's standard was promulgated (Exs. 30–3765 and 32–77–2).

Measures of program effectiveness: Many commenters asked OSHA to identify measures of program effectiveness that the Agency believes are appropriate. For example, the Dow Chemical Company stated, "If OSHA maintains the requirement to evaluate 'effectiveness' of a program, then it should indicate the method an employer can use for measuring 'effectiveness'. A program may have all the required elements and thus be in compliance with the rule, but not address all potential MSDs" (Ex. 30–3765). The Oregon Building Industry Association (Ex. 30–562) and others (Exs. 30–368, 30–541, 30–627, 30–1697, 30–1717, 30–1355, 30–1545, 30–3783; 31–334: 32–210–2) raised the same issue, and the Oregon Association also asked, "Would the occurrence of an injury allow the OSHA inspector to automatically qualify the program as not effective?" (Ex. 30–562).

Organization Resources Counselors, Inc. (ORC) (Ex. 30–3813) voiced a somewhat different concern regarding the need for measures of effectiveness. "OSHA expresses particular concern in the preamble that there is a need to assure that a demonstration of effectiveness does not mask under reporting of MSDs," they wrote. ORC agreed that this was a real concern and suggested that employers should be required to provide evidence that there is an effective early reporting mechanism in place as a part of their demonstration of program effectiveness. In response to the views of commenters, OSHA notes that the final rule identifies a number of measures of effectiveness, including reductions in the number or severity of MSDs, increases in the number of jobs in which ergonomic hazards have been controlled, reductions in the number of jobs posing MSD hazards to employees, or any other demonstrably appropriate measure of effectiveness, that OSHA believes are indicative of program effectiveness. This list of measures is not exhaustive; it is meant to be illustrative only. OSHA is aware that employers with successful programs use other measures, such as reductions in workers' compensation costs, increases in the number of early reports of MSD signs and symptoms, and increases in product quality, to evaluate the effectiveness of their ergonomics programs (DOD Tr. 3296–3297; OR Ex. 32–78–1 p.22; AFL–CIO Ex. 32–339–1–29; Library of Congress Ex. 32–339–1–33 p.143; Paper, Allied-Industrial, Chemical & Energy Workers International Union Local 1202 (PACE) Tr.11206; International Paper Ex. 32–61).

As one rulemaking participant, Organization Resources Counselors (ORC) (Tr. 4147) stated during testimony about the proposed rule, "* * * there are many different ways that companies use to evaluate effectiveness. While they might all have common elements. . .they apply those elements in very different ways, depending on the circumstances, the nature of the work, the employees, and the nature of the workplace." In addition, OSHA does not believe that the "occurrence of an injury" automatically qualifies a program as "ineffective," in the words of the Oregon Building Industry Association (Ex. 30–562). OSHA recognizes that, especially in large workplaces in industries with many problem jobs, MSDs may continue to occur. The final rule takes a comprehensive view of program effectiveness and emphasizes the importance of the essential elements of the program and their proper functioning. In response to ORC's comment about the importance of ensuring that early reporting is present, OSHA agrees that such reporting is essential to program effectiveness and has accordingly built several mechanisms that will ensure early reporting'work restriction protection, multiple HCP review, hazard information and reporting'into the final rule.

Who should conduct program evaluations?: The preamble to the proposal stated that program evaluations may be conducted by those responsible for carrying out the employer's program, but also noted that evaluations performed by persons who are not involved in the day-to-day operation of the program are often even more valuable because these individuals bring a fresh perspective to the task. They often can identify program weaknesses that those routinely involved in program implementation may fail to see (64 FR 65858–65859). OSHA received a number of comments addressing who should perform the required evaluations (Exs. 30–2809; 30–115; 30–2387; 30–3826; 32–339–1; 601–x–1587–2). One commenter cautioned that special care must be taken to ensure continuity within the program when outside entities perform successive program evaluations (Ex. 30–2809). This commenter stated, "It is important to keep records from every evaluation of the ergonomics program so that mistakes are not repeated * * * if a different company performs the evaluation, lessons learned from the previous evaluation may not be recorded * * * It is also important to ensure that all "action items" (issues brought up during previous evaluations) are resolved and not ignored."

The American Federation of Government Employees (AFGE) (Ex. 30–115) suggested that OSHA or some neutral third party was the appropriate entity for evaluating the ergonomics program because "management should not have carte blanche to evaluate their own program." Similarly, the American Society of Safety Engineers (ASSE) (Ex. 601–x–1587–2) commented that the level of expertise needed to perform program evaluation/third party audits under this standard is outside that which many organizations are able to provide. Therefore, "in order to meet the expected need of consultation services, OSHA should consider reviewing a system for voluntary third party audit and evaluations, and work with accredited private sector professional certification bodies, both public and private recognized registries, and membership organizations to ensure that consultants have an acceptable level of competence."

The American Association of Occupational Health Nurses (AAOHN) (Ex. 30–2387) cautioned OSHA about the need to protect employee privacy during the collection and review of program records for evaluation purposes. The AAOHN pointed out that "individuals who are not part of the day to day operation of the program can bring a fresh perspective, however in any evaluation, the employer should ensure that employees' privacy is protected." For example, the AAOHN noted that a co-worker brought in to evaluate a program must understand the need for confidentiality concerning her or his co-worker's personal health information, if such information is part of the program evaluation. OSHA agrees with the AAOHN that the privacy of employee medical and exposure records must be protected at all times, including during a program evaluation. These records are required to be handled at all times in accordance with 29 CFR 1910.1020, OSHA's Access to Employee Exposure and Medical Records standard.

In response to the views of these commenters, OSHA notes that the proposed rule did not specify who was to perform the required program evaluations; the final rule also does not limit the employer's choice of program evaluators. OSHA is aware that employers with effective programs rely on different individuals, both from within and outside their organizations, to perform this function and that the results of doing so are often excellent (see, *e.g.*, Exs. 32–339–1–53, 601–X–1711). Some programs, such as the one at General Motors, rely on trained employees in a Joint Ergonomics Team, consisting of union and management members, to conduct program evaluations (Ex. 32–339–1–53), while other companies, such as Halliburton, Inc. (Ex. 601–X–1711) rely on a Board Certified Professional Ergonomist or other outside expert or organization to carry out their program evaluation. OSHA does not agree either with those commenters who argued that employers are not choosing appropriate and qualified program evaluators or that the Agency should narrow the employer's discretion in this regard. OSHA remains convinced that different approaches are appropriate in different workplaces and that employers are best suited to decide who should conduct the required evaluations. The final rule, therefore, leaves the selection of evaluators to the employer.

Records review in the context of program evaluation: OSHA recognizes in the final rule, as it did in the preamble to the proposed rule (64 FR 65859), that the extent of the evaluation called for by the rule will vary from one workplace to another, based on the characteristics and complexities of the work environment. However, the basic tools of evaluation remain the same from workplace to workplace, even though their application may vary. These tools, which are basic to the evaluation of any safety and health program, include:

—Review of pertinent records, such as those related to MSDs and MSD hazards;
—Consultations with affected employees (including managers, supervisors, and employees) regarding the ergonomics program and its problems (if any); and
—Reviews of MSD hazards and problem jobs.

Examples of the records that are often included in such reviews include the following:

—The OSHA 200 log (if the employer is required to keep a log);
—Reports of workers' compensation claims related to MSDs;
—Reports of job hazard analyses and identification of MSD hazards;
—Employee reports to management of MSDs or persistent MSD signs or symptoms;
—Insurance company reports and audits about ergonomic risk factors or MSD hazards; and
—Reports about MSD hazards from any ergonomic consultants engaged by the employer.

Some employers, especially owners of very small businesses, may have few of these records and will, therefore have to rely on other, less formal, methods to assess effectiveness. Small employers generally place more emphasis on employee interviews and such approaches as surveys of MSD hazards and problem jobs when they perform ergonomics program evaluations. Records reviews can yield valuable information on the effectiveness of an ergonomics program when comparisons are made from year to year and trends are identified. For example, if an employer compares the list of MSD hazards identified during consecutive program evaluations and finds that the number of hazards has decreased over time, the employer may conclude that the program's job hazard analysis and control activities have been effective. Similarly, a reduction in the number of MSDs from year to year suggests that the program may be effective, although numbers alone sometimes can be misleading. However, program evaluation also must consider the accuracy and reliability of the records under review. For example, it is essential to be sure that the identified trends are real and not the product of under reporting, loss of interest in the program, or loss of attention to detail. For example, a downward trend in the number of MSDs or MSD hazards reported may indicate that employees are being discouraged from reporting or that the employees performing job hazard analysis and control are not doing an effective job because they are not adequately trained to do so.

OSHA received a variety of comments about records review in the context of program evaluation (Exs. 30–3765, 30–276; 30–546; 30–2846; 30–1726). For example, the Dow Chemical Company argued that the proposed requirement that employers evaluate different elements of the program would require them to gather records to support this effort and would thus impose an undue burden on certain employers. Dow argued, "depending on the size and makeup of the workplace, a review of all the proposed records by each workgroup would add undue burden on each group" (Ex. 30–3765).

Texas A and M University (Ex. 30–276) also found the records review associated with program evaluation potentially burdensome. "Record keeping is not value-added for the employer or employees. It primarily benefits the regulatory overseer." ElectriCities of North Carolina Inc. (Ex. 30–546) agreed: "[These sections] speak of compulsory Record keeping above and beyond the OSHA 200 log of recordable work place injuries and illnesses * * *". The Manufactured Housing Institute (Ex. 30–2846) noted that "Small business is already overwhelmed with paperwork requirements and OSHA should avoid adding to that burden."

The University of Wisconsin Extension (Ex. 30–1726) asked OSHA to require that all MSD reporting forms be retained by employers for eventual program review. "If a standard reporting form is required for all employees to report MSD problems, signs and symptoms, these forms should be retained and made part of the program review, to follow up each form filed during the program evaluation period."

In response to these concerns about the recordkeeping burden associated with program evaluation records review, OSHA notes that the final rule does not mandate that employers review specific records when conducting their evaluations. In fact, the final rule does

not mandate records review or require the development of new records of any kind. This preamble discussion on records review simply recognizes that reviewing records already maintained by the employer for other purposes is one way of getting the information needed to evaluate a program.

The Agency believes that employers are best able to determine which records in their workplace will provide the most valuable information for evaluation purposes. For example, in a very small firm that is not required to keep the OSHA 200 Log, the only records available for review may be employee reports of MSD incidents, workers' compensation claim information, and records of Quick Fix controls implemented; some workplaces may not even have these records. In most workplaces, however, employers will wish to review a variety of records to identify trends, evaluate the functioning of each program element, and assess the overall performance of the program. OSHA's approach is consistent with that taken by a number of employers who conduct evaluations of their ergonomics programs, in that it allows employers the latitude to decide how best to conduct evaluations of their workplaces. The United Technologies Corp. (Ex. 31–334) agrees that such flexibility is important: "It is important to encourage creativity and innovation on the part of employers in meeting the requirements * * *". This flexibility also means, of course, that employers such as The University of Wisconsin Extension (Ex. 30–1726) who wish to develop standardized MSD reporting forms to use for evaluation and other purposes are free to do so.

The proposal contained a requirement that program evaluation include consultations with employees, and the final rule also includes such a requirement. Affected front-line employees (or a sample of them), and their supervisors and managers, must be included in this process. Consultations with employees elicit information on how well the ergonomics program has been communicated to the people who rely on it the most.

Paragraph (u)(2)(ii) of the final rule requires employers to evaluate the elements of their ergonomics programs to ensure that each of the elements is working properly. If employees cannot explain what MSD hazards they are exposed to in the course of their work, do not know what steps their employer is taking to eliminate or control these hazards, are unclear about the procedures they should follow to protect themselves from these hazards, or do not understand how to report MSDs or MSD hazards, the hazard information and reporting and training components of the program are not working. If a supervisor is unclear about how to reinforce proper work practices, the management leadership and training components of the program are both likely to need improvement. Similarly, if managers are not aware of the MSDs and MSD hazards employees are reporting and what corrective actions are being taken, the management leadership and training components of the ergonomics program should be improved. Because interviews allow the program evaluator to assess how the elements individually and the program as a whole is actually working, there is no substitute for direct input from employees in the evaluation process.

Program evaluation also must include an assessment of MSD hazards and the extent to which they are being addressed (paragraph (u)(1)(iii)). This assessment is concerned not only with identifying MSD hazards but with identifying how well the ergonomic program is addressing them. If the program evaluation identifies jobs that have not been analyzed but exceed the Action Level, the job hazard analysis component of the program needs to be improved. In addition, if jobs with previously identified MSD hazards have not been corrected or prioritized for correction, the evaluator may conclude that the job hazard control component of the program is not effective. Likewise, if an MSD hazard is identified and controlled in a problem job in one part of the facility but the same job has not been controlled in another part of the facility, several program components may need attention: the management leadership component, which may have failed to coordinate and disseminate MSD hazard information throughout the facility, the training component, which may have failed to provide the employees performing the job hazard analyses with adequate training, and the control component, which may have failed to prioritize jobs appropriately for control.

Paragraph (u)(1) (i)–(iv) establishes the steps employers must follow to evaluate the effectiveness of their ergonomics programs. It answers the question, "What must I do to make sure my ergonomics program is effective?" This requirement describes the minimal evaluation procedures necessary to assess whether or not an ergonomics program is working as intended. Paragraph (u)(1) of the final rules reads as follows:

(1) You must evaluate your ergonomics program at least every three years as follows:

(i) Consult with your employees in the program, or a sample of those employees, and their representatives about the effectiveness of the program and any problems with the program;

(ii) Review the elements of the program to ensure they are functioning effectively;

(iii) Determine whether MSD hazards are being identified and addressed; and

(iv) Determine whether the program as a whole is achieving positive results, as demonstrated by such indicators as reductions in the number and severity of MSDs, increases in the number of problem jobs in which MSD hazards have been controlled, reductions in the number of jobs posing MSD hazards to employees, or any other measure that demonstrates program effectiveness.

Paragraph (u)(1)(i) of the final rules requires employers to "consult with your employees in the program, or a sample of those employees, and their representatives about the effectiveness of the program and any problems with the program." Employee participation in the ergonomics program is critical for success, and the involvement of employees in program evaluation is just one more way that employees can take an active role in the program. The requirement that employers consult with employees regarding program evaluation is not unique to the final Ergonomics Program standard. OSHA recently promulgated a similar provision in the Respiratory Protection final rule (29 CFR 1910.134).

Employees in jobs that have been identified as problem jobs are in the best position to judge whether or not job hazard analysis and control measures are effectively reducing or eliminating MSD hazards. Perhaps even more importantly, these employees will be most knowledgeable about whether the implemented controls have introduced new, unintended MSD hazards to the job. By consulting with employees, employers also can have direct feedback on the effectiveness of other ergonomics program elements, such as opportunities for employee participation, hazard information and reporting, and training. OSHA is aware that employers sometimes act in good faith to implement ergonomics program elements, but that the actual result experienced by employees can differ markedly from the intention. Thus, by checking directly with their employees, employers can be sure that their ergonomics program resources are being effectively invested.

Two rulemaking participants commented that the proposed provision on employee consultation did not require consultations with anyone other than employees in problem jobs or allow the employer to select a subset of employees with whom to consult. The Department of Defense (Ex. 30–3826) commented that, for some employers, such as large companies, branches of the military, etc., the requirement to consult with employees could be interpreted to mean consultation with tens of thousands of employees. As a result, DOD requested that the requirement be changed in the final rule to allow for representative sampling of employees. In addition, both the DOD (Ex. 30–3826) and the AFL–CIO (Exs. 32–339–1; 500–218) commented that OSHA had neglected to include employee representatives in the proposed consultation process. The AFL–CIO suggested (Ex. 32–339–1) that this provision of the final rule "should be modified to provide for consultation with the employee representative, in addition to employees in problem jobs. This modification is consistent with the requirement of [the proposed employee participation provision] which calls for both employees and employee representatives to be involved in all aspects of the program."

After reviewing the record on these points, the Agency has revised paragraph (u)(1)(i) of the final rule to reflect the concerns of larger employers and to allow them to consult with employees in the program, or "a sample of those employees" about the effectiveness of the program and any problems with it. In addition, the final rule states clearly that designated employee representatives are to be involved in the consultation process (paragraph (u)(1)(i)). Further, employers are, of course, free to involve other employees in the consultation process if they wish to do so; however, OSHA is not requiring that employees other than those in problem jobs be consulted as part of the evaluation process.

Another concern raised by the Dow Chemical Corp. (Ex. 30–3765) was its interpretation that OSHA was attempting in the preamble for this proposed section to mandate the questions employers must ask in conducting an evaluation: "Dow does not believe that OSHA should mandate the specific questions each employer must ask employees during this review, which it seemingly tries to do in the preamble at page 65858." Dow went on to say, "Scripted questions may not adequately uncover issues or concerns and, from the perspective of the employee, may sound more like an interrogation than a fruitful dialogue." OSHA does not intend the discussion questions included in the preamble to be mandatory. They are presented to provide employers, and particularly smaller employers who are less likely than a company like Dow to be experienced in program evaluation, with ideas about the kinds of topics an evaluator might find useful when consulting with employees.

Some rulemaking participants (Exs. 30–494, 30–3745, 30–3723, 32–351–1, 30–4467) argued that employee participation in the evaluation process might be problematic. They evidently believe that requiring employers to consult with employees in problem jobs could subject the employer to citations. For example, the Forum for a Responsible Ergonomics Standard (Ex. 32–351–1) commented, "If an employee deems the program ineffective, but the employer disagrees and implements no measures to improve effectiveness, the proposal appears to grant OSHA discretion to cite the employer for non-compliance." Morgan, Lewis & Bockius LLP (Ex. 30–4467) also raised concerns about employee participation in developing, implementing and evaluating the employer's ergonomics program: "The latter is the most troublesome; employers could conceivably receive citations by virtue of a compliance officer's subjective determination that employees were not allowed to evaluate every aspect of the program. Moreover, if employees' suggestions for a program are rejected, the employer arguably could be said to have unlawfully limited employee participation in the "development" of a program. (Ex. 30–4467). "

Three other commenters, the Salt River Project (Ex. 30–710), the Integrated Waste Services Association (Ex. 30–3853), and Southern California Edison (Ex. 30–3284), argued that the proposed provision to consult with employees during evaluations was too open to subjective interpretation: "The final standard should make clear that the employer is not required to act on a recommendation from employees if the employer can document that the recommendation is without merit" (Ex. 30–3284).

In response to these comments, OSHA notes that, in the Agency's experience, employee input is invaluable; employees are the best source of information on how a program is working in practice. However, employers are expected to use their judgment and to assess the value of any information they receive in the course of an evaluation, whether from a records review or employee consultations. Weighing input from many sources is standard management practice, and the rule anticipates that employers will continue to use their judgment in these matters. Further, OSHA intends employee participation in the ergonomics program to be active and meaningful, but this does not mean, as Morgan, Lewis & Bockius suggest, that they must be allowed to evaluate "every aspect of the program" (Ex. 30–4467).

Paragraph (u)(1)(ii) of the final standard requires employers to "review the elements of the program to ensure they are functioning effectively." This requirement is nearly identical to the corresponding provision proposed. OSHA received a few comments on this proposed provision (see, *e.g.*, Exs. 30–3031, 30–3813, 30–4334). Tesco Drilling Technology Inc. (Ex. 30–3031) stated: "If OSHA does in fact believe that employers are best able to determine evaluation criteria, and that employers should be able to define "functioning properly," why is OSHA proposing this cumbersome standard to begin with? If there is no specific evaluation criteria or goal in each element, how can a compliance officer issue a citation for noncompliance in any portion of the program?" Organization Resources Counselors, Inc. (ORC) (Ex. 30–3813) stated that the phrase "functioning properly" was vague, and comments received from Senator Bond, Chairman of the United States Senate Committee on Small Business (Ex. 30–4334), agreed with those of ORC: "For an employer to evaluate its ergonomics program, it is to "evaluate the elements of [its] program to ensure they are functioning properly; and evaluate the program to ensure it is eliminating or materially reducing MSD hazards * * * The use of these terms, and others, throughout the proposed standard means that employers will be left to their own instinct and resources to decide whether they have met the obligations and gone far enough."

OSHA's reason for including this provision in the final rule is that evaluations of individual elements and their functioning often reveal program deficiencies that are undermining program effectiveness but could be difficult to detect if the employer only evaluated the program as a whole. For example, if employees are not reporting MSD hazards, it may mean that the management leadership and training components are not working properly. The final rule thus continues to require that employers evaluate each program element as well as the program as a whole. How this is done is left to employers, because the records, methods to be used, and cultures of workplaces differ markedly and no one approach is appropriate for all. The final rule does not include specific effectiveness measures for each element of the program, because these would vary extensively from one workplace to another. However, as commenters recommended, the final rule does include examples of effectiveness measures that are useful in evaluating the effectiveness of programs as a whole.

Paragraph (u)(1)(iii) of the final rule requires employers to "determine whether MSD hazards are being identified and addressed." The primary purpose of implementing an ergonomics program is the identification and control of MSD hazards. OSHA expects employers to establish evaluation criteria to assess the success of their program in meeting this goal. There are a wide variety of methods available to employers, ranging from a simple count of the number of problem jobs controlled to more sophisticated analyses, such as year-to-year trend analyses.

Again, OSHA finds that employers are best able to determine the specific evaluation criteria that will most effectively tell the story of their efforts to identify and address MSD hazards. Commenting on the corresponding proposed paragraph, which would have required employers to evaluate their program to ensure it is "eliminating or materially reducing" MSD hazards, Milliken & Company (Ex. 30–3344) and others (Exs. 30–3749, 30–4674) argued that the proposed provision would require an evaluation to ensure that the program is eliminating MSD hazards, when a better measure might be the extent to which the program is reducing the incidence of MSDs. Nucor Corporation and Vulcraft-South Carolina (Exs. 30–3354, 30–3848, 30–4799, 30–4540, 601–x–1710) asked OSHA to add "to the extent feasible" to this provision on the grounds that doing so "would keep the proposed regulation consistent in its requirements throughout all elements of an ergonomics program."

The Dow Chemical Co. (Ex. 30–3765) asked OSHA to modify this paragraph in the final rule by adding specific language at the end of the paragraph to read, "or maintaining the risks at an acceptable level." In Dow's view, such a change would make it clear that instituting the same "fix" across the board may not eliminate all MSD injuries. Dow also was unclear about what the Agency meant by "materially reducing" MSD hazards.

The National Telecommunications Safety Panel (Ex. 30–3745) expressed similar concerns about the proposed phrase "eliminating or materially reducing MSD hazards." The Panel argued that this language was misleading because, "some MSDs exist epidemiologically in any workplace." SBC Communications Inc. (Ex. 30–3723) urged OSHA to delete the term "eliminating or materially" from the final rule because its use failed to recognize "that some MSDs may exist epidemiologically in any workplace and that the program [envisioned by the standard] is realistic and performance-based."

Footwear Industries of America Inc. (Ex. 30–4040) commented that the inclusion of the proposed "eliminating or materially reducing" phrase suggested that "employers will meet their obligations if they select and implement the controls that a reasonable person would anticipate would achieve a material reduction in the likelihood of injury. " However, according to this commenter, "the "reasonable person" standard is hardly a bright-line test and provides excessive enforcement discretion to OSHA inspectors when determining compliance."

OSHA has revised many provisions of the final rule in response to comments received and data submitted to the record. One of the more important changes is the revision to the language of paragraph (k), which tells employers what they must do to achieve compliance with the final rule's control requirements. The final rule no longer uses the phrase "materially reduce," and paragraph (u)(1)(iii) therefore has been revised as well. The language of this provision now requires employers to "determine whether MSD hazards are being identified and addressed." OSHA believes that this language is responsive to the concerns of those employers who interpreted the proposed language to mean that all MSD hazards had to be eliminated before an ergonomics program could be judged effective. The final rule, at paragraph (k), makes clear that OSHA will consider an employer to be in compliance with the standard's control requirements when it has implemented controls meeting any of the endpoints identified in that paragraph. There are clearly many ways to assess whether the program is identifying MSD hazards and dealing with them appropriately, as discussed above, and any method that is appropriate and accurate in making this assessment is acceptable to OSHA.

A number of rulemaking participants (Exs. 32–182, 32–111–4, 30–167, 30–3826, 32–210–2, 32–85–3, 30–3686, 30–3826, Tr. 9088, Exs. 30–3284, 30–240, Tr. 16578, Exs. 32–339–1, 500–218, 31–307, 30–3860, Tr. 8962, Tr. 4372, Exs. 30–1726, 30–1726) commented that OSHA would clarify the proposed evaluation requirements significantly if it developed guidance materials and model evaluation tools for employers. For example, Organization Resources Counselors (ORC) (Ex. 30–3813) made comments that were representative of those of the above group when it asked OSHA to include a non-mandatory appendix of types of performance measures and approaches that OSHA would consider appropriate. In addition to the measures of effectiveness mentioned by OSHA in the proposed preamble, such as decreases in the numbers or rates of MSDs and decreases in severity, ORC suggested a few others: "Measures might include reduced workers' compensation claims for MSDs, use by the employer of periodic symptoms surveys and other indicia of effective, early reporting, or demonstration that risk factors have been reduced and/or tools and equipment have been modified."

Two other commenters, the American Federation of State, County and Municipal Employees (AFSCME) (Ex. 32–182) and the United Steelworkers of America (Ex. 32–11–4), argued that such tools were necessary. They criticized the proposed evaluation provisions in general, because they failed to provide any criteria to aid employers in determining if their ergonomics programs were effectively eliminating or materially reducing MSDs. The American Association of Occupational Health Nurses (AAOHN) (Exs. 30–3686, 30–2387) also urged OSHA to assist employers by providing standardized evaluation forms.

OSHA agrees that providing employers with evaluation tools and forms would be helpful to employers, employees, and OSHA Compliance Officers. In the period between publication of the final rule and the compliance dates for program evaluation, the Agency plans, if resources permit, to develop and disseminate such materials.

AM Moving and Storage Association (Ex. 500–82) argued that the standard as a whole would be infeasible for its member companies: "if it is not feasible for movers to implement controls that would eliminate and materially reduce MSD hazards, then it is equally impossible for moving and storage companies to monitor and track the progress of the proposed ergonomics program." OSHA is not, in this standard, requiring employers to implement infeasible controls or to reach infeasible hazard control endpoints. Instead, OSHA is requiring employers to take reasonable measures to protect their employees from MSD hazards. OSHA expects that moving companies also will find effective ways of reducing the number and severity of their MSD hazards.

The Union of Needletrades, Industrial and Textile Employees (UNITE) (Ex. 32–198–4) argued that the proposed evaluation section would be ineffective. They commented that the proposed evaluation requirements overall were too narrow and "must be expanded to determine actual effectiveness of the existing program." OSHA agrees, and has expanded the final rule's evaluation requirements to include a requirement that employers assess their programs using indicators of effectiveness, such as reductions in the number, rate, or severity of MSDs. OSHA believes that the final rule's combination of qualitative and quantitative approaches to program evaluation will ensure the effectiveness of the programs implemented to comply with this rule.

Paragraph (u)(2)—Program Evaluations at More Frequent Intervals Triggered by Events

Paragraph (u)(2) of the final rule requires an employer to evaluate the program, or a relevant part of it, when the employer has reason to believe that the program, or an element of the program, is not functioning as intended; when operations in the workplace have changed in a way that is likely to increase employee exposure to ergonomics risk factors and MSD hazards on the job; and, at a minimum, once every three years. Thus, the final rule retains the minimum 3-year evaluation frequency proposed but provides greater specificity than did the proposal about the events that trigger evaluation at more frequent intervals.

The proposed language on the frequency of program evaluation, which required employers to evaluate their programs "periodically, and at least every 3 years," was performance-based rather than specific because of the diversity of workplaces covered by the rule. OSHA defined periodically in the proposal as a process or activity that is "performed on a regular basis that is appropriate for the conditions in the workplace" and "is conducted as often as needed, such as when significant changes are made in the workplace that may result in increased exposure to MSD hazards." Thus, the proposed provision on the frequency of required evaluations was designed to reduce unnecessary burdens on employers whose workplaces, for example, changed little over time, while ensuring that program evaluations, which are essential to program effectiveness, were conducted at some minimal frequency. The final rule reflects the same principles but has been revised to provide the additional specificity requested by commenters.

OSHA continues to believe, as explained in the proposal, that the employer is in the best position to determine how often the ergonomics program at a particular work site needs to be evaluated to ensure its effectiveness. A site undergoing process or production changes, for example, or one experiencing high turnover, may need more frequent evaluations than other, less dynamic, workplaces. Workplaces with these characteristics are addressed by final rule paragraph (u)(2), which requires employers faced with changes in operations that are likely to increase employee exposure to evaluate their programs when such changes occur. Similarly, an increase in the number or severity of MSDs in the workplace would suggest that a program evaluation is warranted. This situation is one that would be covered by paragraph (u)(2) of the final rule; such an increase clearly suggests that the program, or a part of it, has failed to operate properly. In work environments with a stable workforce and work operation, program evaluations conducted once every three years may be sufficient. For these workplaces, the minimum frequency required by paragraph (u)(1) may apply.

As noted in the proposal, current industry practice as to the appropriate frequency of ergonomics program evaluations in specific environments is available from other sources. For example, the Meatpacking Guidelines (Ex. 2–13) recommend semi-annual reviews by top management to evaluate the success of the program in meeting its goals and objectives. In addition, a wide range of companies with successful ergonomics programs evaluate these programs at regular intervals.

Paragraph (u)(3)—Correcting Program Deficiencies

Paragraph (u)(3) of the final rule requires employers to correct any deficiencies identified by the evaluation. It also requires that employers correct such deficiencies promptly. Deficiencies are findings that indicate that the ergonomics program is not functioning effectively because, for example, it is not successfully controlling MSD hazards or is not providing needed MSD management. OSHA requires employers to respond to deficiencies in the ergonomics program by taking actions such as: identifying corrective actions to be taken; assigning the responsibility for these corrective actions to an individual who will be held accountable for the results; setting a target date for completion of the corrective actions; and following up to make sure that the necessary actions were taken. In a very small workplace, of course, such detailed planning would likely not be necessary.

Some commenters, including Milliken & Company (Ex. 30–3344) and (Exs. 30–3749; 30–4674), stated that the proposed requirement to correct program deficiencies discovered during an evaluation would create a "needless second tier of violations on top of the underlying substantive requirement that is not being met." Moreover, they argued that, "the requirement to promptly take action to correct deficiencies does not provide sufficient latitude for employers to implement corrections within a time frame that will be reasonable in every case." Tesco Drilling Technologies (Ex. 30–3031) also expressed concern about an employer's liability once program deficiencies have been identified. Tesco asked, "What are the criteria by which a compliance officer can issue a citation under this provision. * * * If a citation can not be issued, how can this be enforced? If it cannot be enforced, how can it be a rule?".

In response, OSHA wishes to emphasize that its primary goal is to protect employees from MSD hazards, not to hold employers liable for ergonomics program deficiencies. OSHA expects that even the best programs will find deficiencies in their ergonomics program at one time or another. OSHA's concern is whether or not the employer has acted on the information obtained during the program evaluation and is taking steps to correct the problems identified. Employers who act in good faith to correct identified program deficiencies clearly will satisfy this requirement. However, employers who identify ergonomic program deficiencies through the evaluation process and then do not act on this information may not be in compliance with this requirement.

The final rule does not specify the time frame within which identified program deficiencies must be corrected. The Agency recognizes that the time needed to correct a program deficiency will vary according to many factors. For example, the following factors may influence an employer's response time:

—The nature of the MSD hazard;

—Previous attempts to correct the problem;

—The complexity of the needed controls;

—The expense of the needed controls;

—Whether the hazard is a higher or lower priority in the list of identified program deficiencies; and

—The expertise needed to control the hazard.

Some rulemaking participants (Exs. 30–3853, 30–3765, 30–710, 30–240) commented that OSHA was not clear about what kind of program deficiencies needed correction or what "as quickly as possible" meant. Edison Electric Institute's (EEI) comment (Ex. 30–3853) was representative of the views of those commenters concerned about the time frame for correcting deficiencies: EEI stated that the proposed requirement to correct ergonomics program deficiencies "as quickly as possible" was vague and unenforceable. August Mack Environmental Inc. (Ex. 30–240) stated that, in many cases, the responsibility for correcting deficiencies found will be transferred to a program administrator, who may be so overwhelmed with other duties, including those of the ergonomics program, that he or she may not be able to respond in a reasonable period of time. "My concern is that a deficiency may be found and assigned to the program administrator who will work the problem into his or her overall priority system, so that it can be fixed," August Mack posited. "However, if inspected in the meantime, OSHA will find that this is not responsive enough."

Again, OSHA's aim in including program evaluation requirements in the final rule and in requiring deficiencies identified through evaluation to be corrected promptly is not to catch employers in violations but to ensure that the employer's ergonomics program is working correctly. If employers have identified deficiencies, corrected those that can be addressed quickly and easily, prioritized those requiring longer to correct, and are making reasonable progress in addressing prioritized deficiencies, they likely will be in compliance with these requirements.

The Dow Chemical Company (Ex. 30–3765) argued that the proposal was unclear as to what program deficiencies were being addressed. "Dow simply does not understand whether the evaluation in this section is the same evaluation of the program required in other sections as an employer deals with identified problems or whether it is an evaluation of the program addressing every element of this regulation. If it is the first case, then the section is redundant and should be removed. If it is the latter case or both, then the Preamble and section should be rewritten to clearly explain this." OSHA is unclear about the meaning of Dow's comment, but believes that the final rule's clear requirements for program evaluation will shed light on the issues of concern to them.

Dow (Ex. 30–3765) also voiced concern that the proposed evaluation section seemed, in their opinion, to unfairly shift the burden of correcting program deficiencies to the employer without considering the employee's contribution to such deficiencies. Dow argued that the burden of correcting deficiencies should not be placed completely on the shoulders of the employer. "Because ergonomics is focused on how an individual interacts with his or her workplace, Dow believes that the employee must have some responsibility for making appropriate changes in their activities." Dow suggested that OSHA include an "Employee Responsibility" section in the final standard that would state that if employees are not following what they are supposed to do under the rule, their employers will not be cited for violating this standard.

OSHA disagrees with Dow's views in the matter of employee responsibilities. It is the employer, not the employee, who controls the conditions of work. If an employee, as Dow's comment suggests, is not observing appropriate work practices, it is the employer's responsibility to compel compliance. Employers must manage the conditions in their workplace; they must lead by example, train their employees in the use of controls and safe work practices, reinforce such practices, and, if necessary, establish a disciplinary system so that employees understand that they must follow safe and healthful practices on the job. However, OSHA does not believe that employers must be the "insurers" of their employees' behavior. If, for example, an employer establishes, implements, trains employees in, and enforces safe work practices, and does so in a consistent manner, the employer will not be liable for an employee's unforeseeable violation of its safety rules.

In contrast to those commenters who found the proposed provisions vague, some commenters found the proposed evaluation requirements too specific. For example, the Eastman Kodak Company (Ex. 30–429) argued that only the proposed basic obligation should be included in the final rule and that the specific requirements should be deleted: "We believe . . . [these requirements address] general management practices that should not be mandated but should be provided in a non-mandatory appendix."

OSHA believes that the final rule's provisions provide employers with the steps to follow to conduct an effective and efficient program evaluation. Absent such provisions, many employers, particularly smaller ones, would not know how to conduct an evaluation. Accordingly, the final rule includes paragraphs (u)(1) and (2), which mandate certain evaluation steps and procedures and establish the minimal frequencies of periodic program evaluations. Many employers, however, such as Kodak, who have had ergonomics programs for years, are unlikely to need such direction.

The Labor Policy Association, Inc. (LPA) (Ex. 30–494), the Department of Defense (Tr. 9085–9086) and (Ex. 30–3781) cautioned OSHA about the difficulties that could arise from doing a program evaluation shortly after creating a new ergonomics program. Specifically, the LPA argued that "newly implemented ergonomics programs typically experience a spike in reported MSDs that at some point levels off and begins to drop. However, it can take as long as four years before the drop starts to occur. Under the standard, an employer whose reported MSDs were increasing would be required to implement different mechanisms to correct the program's deficiencies. However, an OSHA compliance officer could view this as evidence of an ineffective ergonomics program and launch an in-depth compliance review, even though the increase in MSDs is a natural outcome of having a new but effective program." Similarly, the DOD argued that time must be allowed to elapse for ergonomics programs to gather data needed for evaluations.

OSHA is fully aware that the number of MSDs reported may increase, and often substantially, in the first year or so after program implementation. The Agency believes that the examples of effectiveness measures OSHA includes in final paragraph (u)(1)(iv) are sufficiently varied to be suitable for workplaces with programs at various stages of maturity.

Finally, the UFCW (Ex. 32–210–2) asked OSHA to require employers to respond to and, if warranted, address issues raised by employees during a program evaluation. "The employer should be required to take action to reduce or eliminate hazards uncovered by an evaluation based upon employee concerns. This type of response and evaluation will only serve to strengthen the entire ergonomics program by building confidence among employees that they are a valuable source of information and also can be part of the evaluation process." OSHA believes that employers will respond to employee concerns during evaluations when they seek inputs from them about the effectiveness of the program. To do otherwise would be inefficient as well as non-responsive. This does not mean, of course, that employers must respond to all employee suggestions, as some commenters feared (see, *e.g.*, Exs. 30–

3284, 30–3853, 30–710). Because OSHA believes that such two-way communication will be encouraged by the final rule's evaluation provisions, the Agency has decided not to mandate such responses in the final rule's program evaluation provisions.

Paragraph (v)—What Is My Recordkeeping Obligation?

The final recordkeeping provisions specify that employers (except those with fewer than 11 employees) must keep those records essential to any effective ergonomics program. OSHA observed in the proposal (64 FR 65861) and continues to be convinced that occupational injury and illness records are a vital part of an effective ergonomics program in all but the very smallest establishments. Records provide employers, employees, and consultants with valuable information on conditions in the workplace and can be used to identify trends over time and to pinpoint problems. However, OSHA also continues to recognize the need to reduce paperwork burdens for all employers, especially small employers, to the extent that this can be done without reducing safety and health protections. OSHA proposed to limit both the kinds of records employers were required to keep and the applicability of the standard's recordkeeping requirements to very small employers. With very few changes, the final rule contains the recordkeeping requirements that were proposed. OSHA believes that the approach to recordkeeping in the final rule is consistent with the Paperwork Reduction Act's emphasis on minimizing paperwork burdens for small employers whenever possible.

Because larger employers have more complex workplace organizations, OSHA proposed that larger employers would be required to keep records of employee reports of MSDs and the employer's responses to them; the results of job hazard analyses; records of Quick Fix controls; records of controls implemented in problem jobs; program evaluations; and records of the MSD management process. OSHA proposed to exempt employers with fewer than 10 employees from the standard's recordkeeping requirements because in these very small workplaces, information can be communicated and retained informally. The final rule requires that employers with ergonomics programs keep the same records as those proposed. However, the final rule expands the recordkeeping size threshold from 10 employees to 11 employees. This expansion will make the recordkeeping size threshold for this rule consistent with that for OSHA's recordkeeping rule (29 CFR Part 1904).

The following paragraphs discuss the specific requirements of the recordkeeping provisions of the final ergonomics rule and the comments OSHA received in response to the proposed recordkeeping requirements. OSHA has carefully evaluated participants' comments concerning the records needed for effective ergonomics programs to assure that the final standard only requires employers to keep those records that are necessary, *i.e.*, those records that have utility to employers, employees, and OSHA.

Paragraph (v) of the final rule, entitled "What is my recordkeeping obligation?" establishes which employers must meet the rule's requirements for recordkeeping. This provision requires employers with more than 10 employees at any time during the previous calendar year to keep records of their ergonomics program. Employees to be counted toward this total include part-time and seasonal employees and employees provided through personnel services. Under the proposed rule, employers with fewer than 10 employees would have been exempt from having to keep any ergonomics program-related records. As noted above, the final rule increases this size threshold to "more than 10 employees." OSHA's experience indicates that, because of the absence of management layers and multi-shift work, informal communication may be used in very small companies, and formal recordkeeping systems may not be necessary. A very small establishment may have a very simple and informal, but nevertheless effective, ergonomics program that does not need written records.

OSHA proposed, and the final rule includes part-time and seasonal employees and employees provided through personnel services when they count the number of employees they employed at any time during the previous year. As explained in the proposed preamble (64 FR 65861), these part-time and temporary employees are retained and supervised by the employer on a daily basis even though this may be the case only for a limited time. As discussed above, establishments with more than 10 employees generally should be required to keep records because they are likely to have more than one layer of management and therefore need to have written procedures. In addition, if these employees were not counted toward the size threshold for recordkeeping, large workplaces that operate with few permanent employees but numerous temporary employees (an organizational structure that is increasingly common) would not be required to keep records despite several levels of management and more formal methods of communication.

The proposed rule's exemption for very small employers elicited several comments. These comments addressed the usefulness of the standard's small business recordkeeping exemption and argued that part time, seasonal, or leased employees should not be included in the count of employees that triggers recordkeeping. In addition, the Department of Navy commented on the future applicability of the standard to federal facilities.

Usefulness of the small business recordkeeping exemption. Some rulemaking participants (see, *e.g.*, Exs. 30–2493, 3596; Tr. 2982–83, Tr. 8394, Tr. 15522, Tr. 15565) argued that the proposed small business exemption would not be useful to small businesses because small employers would choose to keep records anyway. For example, the National Federation of Independent Business (Ex. 30–3596, pp. 4–5) stated that

> OSHA has touted its paperwork exemption and "quick fix" alternatives to the full ergonomics program requirements as provisions in the ergonomics standard that were revised to appease small business concerns. Although a "paperwork exemption" may appear to help on its face, a small-business owner would be ill-advised not to write down and keep records of everything related to their ergonomics program when faced with the constant possibility of an OSHA inspection.

This comment echoes statements made by the small entity representatives who participated in the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel for this rule. These representatives maintained that they would choose to keep records even if they were not required by the standard to do so (Ex. 23). In response to these small business commenters, OSHA notes that employers are always free to keep any records that they wish to maintain, but the final rule does not require them to do so.

Part-time workers should not count toward the total. Some rulemaking participants (see, *e.g.*, Tr. 3324, Tr. 5638–39) indicated that the provision describing which employers must keep records needed to be clarified and simplified to state explicitly that seasonal, leased, and part-time employees should be included in the total count. Other commenters (see, *e.g.*, Exs. 30–240, 429, 1090) felt that the inclusion of temporary, seasonal, and part-time employees in the count of employees was burdensome or

unnecessary. For example, The Eastman Kodak Company (Ex. 30–429, p. 8) remarked that

> This creates significant difficulties in that the prior health histories of such workers are unknown to the contracting employers and initial health checks are usually not conducted. Personnel service workers could have pre-existing conditions that could become aggravated without MSD factors being present in their workplaces.

OSHA's rationale for including these employees is that it is the number of employees, not the duration or kind of employment relationship they have with the employer, that necessitates the keeping of records. The size of the workforce is the factor that makes layers of management and more formal methods of communication (and therefore recordkeeping) necessary. In fact, supervising part-time or leased employees often adds considerable complexity to management planning, oversight, and recordkeeping. Thus, the final rule uses a workforce of more than10 employees on any day of the previous calendar year as the size threshold that triggers compliance with the rule's recordkeeping requirements.

Applicability to federal facilities. In a comment unique to federal agencies, the U. S. Department of Navy (Ex. 30–3818, p. 2) recommended that OSHA "acknowledge the different recordkeeping requirements for federal agencies and rewrite * * * [the standard] to include provisions for the federal facilities recordkeeping program of 29 CFR 1960." OSHA has considered this request, but has decided that a separate provision stating the applicability of the rule to federal facility recordkeeping programs is unnecessary because this matter is better addressed in a compliance directive for affected federal agencies.

Paragraph (v) of the final rule, which corresponds to section 1910.940 of the proposed rule, establishes the final rule's requirements for keeping the records required by the standard. It specifies which records employers must keep and how long they must keep them. OSHA proposed that employers required by the standard to keep records maintain the following:

- Employee reports of MSDs and the employer's responses to these reports,

II The results of job hazard analyses and Quick Fixes,

II The controls implemented to reduce or eliminate MSD hazards,

II The MSD management process, and

II The results of ergonomics program evaluations.

OSHA also proposed that most ergonomic program records be retained by the employer for 3 years or until replaced by an updated record, and the final rule mandates the same retention periods. The final rule, like the proposal, makes an exception to the 3-year retention period for MSD management records. These records are required to be maintained for the length of the injured employee's employment plus 3 years, a retention period considerably shorter than that required for other OSHA-mandated medical records. OSHA health standards, for example, generally require exposure records to be kept for 30 years and medical surveillance records to be kept for the duration of employment plus 30 years, as required by 29 CFR 1910.1020, OSHA's access to employee exposure and medical records standard. These lengthy retention periods are appropriate for many toxic substances and harmful physical agent standards because of the long latency between exposure on the job and the onset of disease. However, since the latency period for most musculoskeletal disorders is shorter than is the case for many of the chronic conditions and illnesses covered by other OSHA rules, the Agency believes that a shorter retention period is appropriate for the ergonomics rule. Also, changes in the workplace, such as equipment or process changes, often make older ergonomics records irrelevant to current jobs and the present workplace environment. Employers' ergonomics programs continue to evolve, with records of the most recent aspects of that evolution being the most relevant for employee protection.

The proposed recordkeeping provisions elicited several comments. Commenters addressed the following issues: the potential burden imposed by the recordkeeping requirements; the kinds of records employers should keep; the appropriate retention period for program-related records; the need to permit employees and designated representatives to access the records; and electronic recordkeeping. The paragraphs below discuss the comments; OSHA's responses to the comments follow this discussion.

Several rulemaking participants agreed with OSHA's proposed recordkeeping requirements (see, *e.g.*, Exs. 32–339–1, 182–1; Ex. 500–206; Tr. 3488). Typical of the views of these commenters was the comment of the AFL–CIO (Tr. 3488) "The recordkeeping provisions of the rule * * * are necessary for the effective implementation of the program."

Recordkeeping requirements are burdensome. A number of rulemaking participants (see, *e.g.*, Exs. 30–74, 294, 429, 526, 544, 546, 652, 653, 710, 1070, 1090, 2428, 2433, 2807, 2991, 3284, 3336, 3367, 3557, 3593, 3723, 3745, 3765, 3770, 3781, 4134, 4184, 4185, 4628, 4839; Exs. 32–77–2, 300–1; Exs. 500–7, 16, 113, 130, 145, 163; Tr. 3136–37, Tr. 5039, Tr. 5334–35, Tr. 5493, Tr. 5638, Tr. 9207–9209, Tr. 12198–99, Tr. 12770, Tr. 12860, Tr. 16486–87, Tr. 16491, Ex. 500–163) argued that the proposed recordkeeping requirements were excessive, burdensome and unnecessary. For example, a commenter for Owens Corning (Ex. 500–163, p. 7) stated that

> The recordkeeping requirements in the proposed standard are excessive and poorly defined. In addition, the implied documentation requirements of the proposed standard are inconsistent with the requirements of * * * [the proposed rulemaking section], *i.e.*, the real recordkeeping requirements are much more extensive than those specifically required by this section.

OSHA also received numerous pre- and post-hearing form letters to the effect that the proposed recordkeeping section was burdensome or unnecessary (see, *e.g.*, Exs. 30–2252, 2251, 2360, 4226, 4748, 0382, 2973, 2224, 0591, 0422, 1126, 4684, 4794, 2246, 0382, 2747, 3331, 2244, 2337, 2888, 3517, 0176, 2902, 639, 2874, 4624, 3090, 0070, 2794, 5104, 4402, 1073, 2999, 2033, 2097, 2345, 1304, 2908, 4404, 5187, 4718, 2354, 2359, 4269, 4690, 691, 3201, 3400, 2866, 0597, 1806, 0912, 4605, 2343, 2130, 4422, 1931, 2258, 2998, 2827, 0378, 2342, 2939, 2298, 4946, 2787, 3403, 3293, 2938, 2450, 1672, 2995, 4440, 4944, 2317, 4446, 2853, 0569, 2877, 2994, 2953, 2096, 3130, 1603, 2763, 2885, 3451, 1026, 2884, 2924, 4795, 0455, 2336, 0433, 2197, 1540, 2758, 4796, 2972, 2858, 3294, 4416, 2971, 4798, 4432, 1085, 4657, 2755, 5098, 3982, 5080, 5057, 5053, 2977, 2979, 5009, 3852, 5070, 2978, 3970, 4768, 3983, 4806, 2469, 3971, 3935, 5075, 5078, 2974, 2980, 4802, 2976, 3005, 2975, 2981, 5026, 3798, 2982, 2526, 2285, 3995, 4785; Exs. L30–4958, 4964, 4967, 5211; Exs. 601–X–249, 419, 1298; Exs. 500–1–224, 225, 226, 228, 229, 230, 231, 232, 233, 234, 235, 36, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 249, 250, 251, 252, 253, 254, 255, 256, 257, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 309, 310, 311, 312, 313, 314, 315, 316, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 365, 366, 367, 368, 369, 370, 371, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 398, 399, 400, 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 453, 456, 459).

Some proposed records are not required. Some rulemaking participants questioned the need to keep certain of the records OSHA proposed that employers retain (see, *e.g.*, Exs. 32–3004, 30–294, 30–494, 30–2433, 30–1294, 30–3356, 30–4628, 500–177–2). These commenters argued that the OSHA Log, medical records, and program evaluations were all that were needed (Ex. 32–300–1), that Quick Fix records were unnecessary (Exs. 30–294, 30–494, 30–2433), that records of "preventive" or "voluntary" work restrictions should not have to be kept (Exs. 30–1294, 30–3356, 30–4628, Ex. 500–177–2), and that employee reports of MSDs or their signs and symptoms were not needed (Ex. 30–2433).

The reasons given by these commenters varied. For example, the Edison Electric Institute (Ex. 32–300–1) believes that only a few records are needed for effective programs: "The current required recordkeeping records including the OSHA 200 Log and medical records along with the program evaluation should be sufficient to maintain a current and effective ergonomics program." The Exxon-Mobil Corporation saw no value in keeping records of employee reports of MSDs (Ex. 30–2433, p. 4), stating that

> The [proposed] standard calls for detailed records of job hazard analyses and hazard control tracking which establishments do not normally maintain. For example, if a computer monitor is raised 2 inches by use of a monitor block, that action—and any subsequent adjustment to the height—must be documented and the document retained. Furthermore, most of the records OSHA proposes to be maintained are not necessary for an ergonomics program. OSHA should revisit the recordkeeping requirements and remove the requirements for employee reports and responses, and quick fix controls.

The Dow Chemical Company (Ex. 30–3765) saw no value in keeping records of job hazard analyses for 3 years: "Job hazard analyses should only be kept while the employer is working through solutions to reduce the risk of the hazard to an acceptable level."

The appropriate retention period. The proposed 3-year retention period also elicited several comments; commenters suggested periods ranging from 90 days to more than 30 years. Several rulemaking participants (see, *e.g.*, Exs. 30–297, 3913, 4538; Exs. 32–85–3, 339–1, (185–3–1); Tr. 3488) stated that the standard's record retention periods should be set at five years in the final rule, to be consistent with the retention period for the Log of Injuries and Illnesses and related records found at 29 CFR 1904.6. The Dow Company commented that the proposed retention periods were too long, arguing that "[t]here is no safety or health reason for keeping records beyond their usefulness" and recommending that job hazard analyses "should only be kept while the employer is working through solutions to reduce the risk of the hazard to an acceptable level." (Ex. 30–3765, p. 116) August Mack Environmental Inc. agreed that the proposed 3-year retention period was appropriate, without providing additional reasons why (Ex. 30–240, p. 367).

Some rulemaking participants (see, *e.g.*, Ex. 30–3686; 31–353) stated that medical records related to employee exposure to ergonomic risk factors should be kept for the duration of employment plus 30 years, as OSHA requires for other records covered by 29 CFR 1910.1020, OSHA's access to employee exposure and medical records standard, while another commenter (Ex. 30–525) stated that *all* of the records required by the standard should be kept according to the requirements of 29 CFR 1910.1020. Another commenter, the National Telecommunications Safety Panel (Ex. 30–3745, p. 16), expressed concern that the proposed recordkeeping requirements could potentially conflict with those of 29 CFR 1910.1020 and might raise employee privacy issues because some of the records could be "[p]ersonal and individual in nature (*e.g.* job hazard analyses to accommodate individual injury or illness)" and "[p]rivacy issues beyond mere compliance with [proposed] 1910.940."

Many commenters (see, *e.g.*, Exs. 30–2116, 2809, 2825, 2847; 3001, 3033, 3034, 3035, 3258, 3259, 3332, 4159, 4534, 4536, 4546, 4547, 4548, 4549, 4562, 4627, 4776, 4800, 4801) maintained that all records other than MSD management records should be kept for 10 years. Representative of these comments, Gladys Vereesi argued that a 10 year retention period would allow an ergonomics program to improve upon past history, that a 3-year retention period limited the inputs for ergonomics program evaluation and that "[i]mportant lessons learned will be lost (Ex. 30–2116, p. 9).

Access to the records kept. Many rulemaking participants (see, *e.g.*, Exs. 30–2809, 3001, 2116, 2825, 2847, 3033, 3034, 3035, 3258, 3332, 4159, 4536, 4546, 4547, 4548, 4562, 4627, 4776, 4800; Exs. 32–339–1, 185–3; Ex. 500–218; Tr. 3488) stated that the final rule should explicitly provide for access by employees or their designated representatives to all records required by the standard. Typical of the views of these commenters is the comment of the United Automobile Workers (Ex. 32–185–3–1, p. 7), which stated:

> Other matters discussed in this section * * * are employee reports and responses, and control records. First, it should be clear that these are available to affected employees and their representatives.

Electronic records. The American Trucking Associations, Inc. (Ex. 30–3330) asked OSHA to add the phrase "in paper, photographic, microfilm, microfiche, CD–ROM, electronic or other appropriate format" to allow employers to "[t]ake advantage of less costly records storage alternatives while ensuring retention of the required records * * *"

Responses to comments received. In this section, OSHA specifically responds to the issues raised by commenters on the proposed recordkeeping provisions.

First, some commenters (see, *e.g.*, Exs. 30–297, 30–3913, 32–85–3, 32–339–1, Tr. 3488) argued that the ergonomics standard should not have separate recordkeeping provisions but instead that the Agency's recording and reporting rule (the "recordkeeping rule") (29 CFR Part 1904) should govern such requirements. These commenters are confused about the purpose of that rule, which is to record *all* occupational injuries and illnesses that meet the rule's recordability criteria. Part 1904 does not address the records necessary for an effective safety and health program or the records that must be kept by employers to comply with the Agency's substance-specific or hazard-specific rules, such as this ergonomics program rule. It is routine and appropriate for rules addressing specific hazards, such as the confined spaces rule (29 CFR 1910.146), the lockout/tagout rule (29 CFR 1910.147), and many others, to include recordkeeping requirements geared to those hazards. Accordingly, OSHA has not adopted this suggestion.

Many commenters (see, *e.g.*, Ex. 30–2428, Tr. 9207, Ex. 32–21–1–2) argued that the rule's recordkeeping requirements are unnecessarily burdensome. OSHA disagrees. Employers must keep records of their program activities for a variety of reasons: to ensure that the program is working as intended and that resources are not being wasted; to ensure that MSDs are being addressed effectively, that employees are reporting their signs and symptoms as early as possible, and that Quick Fix and other controls are working; and to ensure that MSD management is helping injured employees to recover as soon as possible. OSHA believes that the records required by the final rule are the minimum necessary for an effective program. Simply relying on 200 Logs, medical records, and evaluation records, as the Edison Electric Institute suggested (Ex. 32–300–1) would mean that an employer would not have records of the controls implemented, the kinds of MSD signs and symptoms occurring, or the methods used to conduct job hazard analysis at the establishment. In this respect, OSHA agrees with the views of one commenter (Tr. 7420) who noted that there is often a discrepancy between the data on an establishment's 200 Log and what is happening on the floor: "When you actually review the first report of injury, you will conclude that the OSHA 200 Log * * * has no report of cumulative trauma and/or repetitive strain injury when in fact musculoskeletal disorders are at epidemic proportions." OSHA believes that most employers would agree that all of the records required by the final rule will provide information essential to effective ergonomics programs.

As to the suggestion (see, *e.g.*, Exs. 30–297, 30–3913, 32–185–3–1) that the retention period be 5 years instead of 3 years to coincide with OSHA's retention periods under the recordkeeping rule, OSHA notes that the 3-year retention period specified in the final rule is consistent with the frequency of required program evaluations, where these records will be most useful. However, employers are always free to keep their records for *longer* retention periods if doing so is consistent with or beneficial to their management practices. Also, even where an employer is permitted under paragraph (y) of the final rule to discontinue the ergonomics program for a job, the employer must still keep the records required to be kept under paragraph (v) for the amount of time listed in paragraph (v)(4).

OSHA agrees that employers may keep these records electronically, and paragraph (v)(1) of the final rule makes this clear.

Some commenters (see, *e.g.*, Exs. 30–1294, 30–3356) urged OSHA not to require that records of temporary work removals or work restrictions be kept if such removals or restrictions were "preventive" or "voluntary" in nature. OSHA is unclear about what the commenters meant by "voluntary" or "preventive" restrictions. If the restriction is assigned *after* the employee reports signs or symptoms, the employee has experienced an MSD incident, and removal or restriction must be treated in accordance with the requirements in paragraph (v)(1). The restriction or removal of a symptomatic employee is thus simply a temporary work removal or restriction, as those terms are used in the final rule. If, on the other hand, the employer assigns an employee to another job *before* that employee is symptomatic, the reassignment is simply an administrative control, *i.e.*, job rotation. Records of work restrictions or removals are required to be kept by the final rule; records of routine job reassignments or rotations (*i.e.*, those not done as part of the employer's strategy to control or eliminate MSD hazards) are not.

OSHA agrees with those commenters (see, *e.g.*, Exs. 30–2809, 32–339–1, 32–185–3, 500–218) who pointed out that the proposal failed to provide access to records by affected employees and their designated representatives. The final rule, at paragraph (v)(2) and (v)(3), corrects this oversight.

Summary. After a review of the rulemaking record, OSHA has decided in the final rule to retain the proposed 3-year (or until replaced by an updated record) retention periods for most of the required program records. The record, as discussed above, contains a wide range of opinion about the appropriate retention period for these records. OSHA was not convinced to change the required retention periods either by comments in favor of very short retention periods (see, *e.g.*, Ex. 30–3765, which recommends a 90-day comment period) or those arguing for a retention period of 30 years or more (see, *e.g.*, Ex. 30–525).

Records of job hazard analyses, hazard controls implemented, Quick Fix controls put in place, ergonomics program evaluations, and MSD management records must be kept for the employees and jobs covered by the employer's program. Further, as required by paragraph (v)(2), employees or their designated representative(s) must be given access to those records that address their report(s) of MSD incidents and the employer's response(s) to those reports.

Paragraph (w)—When Does This Standard Become Effective?

In paragraph (w) of the final rule, which corresponds to § 1910.941 of the proposal, OSHA establishes the date when the final rule becomes effective. The effective date is the date from which the compliance deadlines in this section are counted.

In the proposal, OSHA stated that the ergonomics standard would become effective 60 days after the publication date of the final rule. OSHA stated that this period would provide sufficient time for employers to review the final rule, get assistance, and prepare to meet the initial requirements of the standard as it applied to them.

The proposed effective date section elicited few comments. Some rulemaking participants (see, *e.g.*, Exs. 30–3686, 32–85–3, Tr. 13132) agreed with the 60-day effective date. Other commenters (see, *e.g.*, Exs. 30–74, 30–3765) felt that 60 days was insufficient. For example, the Dow Chemical Company (Ex. 30–3765, p. 118) urged OSHA to change the effective date to 180 days so that companies with existing programs, like Dow, would have sufficient time to review and make any necessary changes prior to the standard becoming effective.

OSHA understands that employers with existing programs will need time to review their programs, either to establish that they qualify for "grandfather" status under paragraph (c) or to modify their programs to match the requirements of the final rule. However, OSHA believes that the 60-day date before the final rule takes effect, together with the additional time allowed for the implementation of the ergonomics program elements, will allow sufficient time for this purpose. Moreover, any further delay would unnecessarily deprive employees of needed protections against MSDs.

George Nagle, the Corporate Senior Director of Environmental Health and Safety for the Bristol-Myers Squibb Company (Ex. 31–302, p. 1, Tr. 10519–10521) suggested that a pilot program of at least one year should be implemented in OSHA's national and regional offices prior to attempting to impose a final ergonomics rule on the regulated community. However, there was insufficient detail in the suggestion to determine how such a program would work, or whether such a pilot program strategy would be beneficial to employees. In addition, there was little or no support in the record for the implementation of such a pilot program. OSHA believes that a significant number of companies have successfully implemented an ergonomics program already; the economic analysis estimates that approximately 20 percent of general industry companies have done so. Although it does not believe a pilot program is necessary, OSHA does intend to provide extensive compliance outreach to industry when the standard is published, and has included useful compliance information in the Appendices to this rule. After reviewing the record on this issue, OSHA has concluded that the 60-day effective date is appropriate and sufficient for employers to read and understand their obligations under this final rule.

Compliance Time Frames

OSHA's approach to compliance deadlines in the proposal differed from that in other OSHA standards. First, OSHA proposed a long start-up period so that employers would have time to get assistance before the compliance deadline. Second, even after the compliance deadlines, OSHA proposed to give employers newly covered by the standard (*e.g.*, employers whose employees develop MSDs after the compliance deadlines have expired) additional time to set up an ergonomics program and implement controls. Third, OSHA proposed to allow employers to discontinue large portions of their ergonomics programs if no MSDs were reported for a specified period of time.

Paragraph (x)—When Must I Comply With the Provisions of the Standard?

In paragraph (x) of the final rule, which corresponds to proposed § 1910.942, OSHA establishes deadlines for compliance with the requirements of the ergonomics standard.

In the proposed rule, OSHA allowed for start-up times for employers to set up the ergonomics program and implement controls in problem jobs. The proposal would have required the employer to implement MSD management promptly when an MSD was reported; to set up management leadership, employee participation, and hazard information and reporting within 1 year of the effective date of the final rule; to implement job hazard analysis, interim controls, and training within 2 years of the effective date of the final rule; and to implement permanent controls and conduct program evaluation within 3 years of the effective date of the final rule. The proposed start-up times thus ranged from 1 to 3 years.

Based on an evaluation of the comments received on the proposed compliance dates, OSHA has revised them in the final rule. The compliance deadlines in the final rule are staggered, as they were in the proposal, although some dates fall earlier and some later than they did in the proposal. Comments received on the proposed dates, and OSHA's response to the comments, are discussed below.

Like the proposal, the final rule recognizes that employers need to begin setting up their ergonomics program soon after the rule is issued so that they will have an effective process in place in time to meet the compliance deadlines. Without phased-in start-up periods, some employers might wait until the last minute to take action. The final rule's phased-in compliance periods are also designed to ensure that employees who report MSD signs and symptoms are provided with prompt intervention (both MSD management and work restrictions) in order to help resolve the problem quickly and without permanent damage to the employee. The phase-in approach taken by the Agency was supported by commenters, such as the AFL–CIO, which stated that "the overall timeframes for compliance * * * are more than sufficient" (Tr. 3488).

Finally, the longer start-up periods will also allow employers to integrate needed job modifications into their regular production schedules or processes. The best way to control MSD hazards is often in the design process; allowing additional compliance time allows establishments of all sizes to make needed changes to their processes as part of regular production changes, and perhaps to make those changes at less cost. The final rule allows an initial period of 4 years for employers to implement permanent controls.

The proposal envisioned two levels of ergonomics programs: a basic program for manual handling and manufacturing jobs (which included management leadership, employee involvement, hazard information, and employee reporting of MSD signs and symptoms) and a full program for employers whose employees developed work-related MSDs that were covered by the standard. The full program would have included all of the elements of the basic program plus job hazard analysis, job controls, training, and program evaluation. Employers who had manufacturing or manual handling jobs in their establishments would have had one year from the effective date of the rule to comply with the basic program requirements, and later compliance deadlines for other requirements of the full program (job hazard analysis, job controls, training, and program evaluation, if a covered MSD is reported).

OSHA has simplified the scope of the final rule by eliminating the distinction between manual handling and manufacturing jobs and other jobs. Accordingly, the phased-in compliance deadlines for manual handling and manufacturing jobs found in the proposal do not appear in the final rule (see the summary and explanation for paragraph (b)).

Like the proposal, the final rule does not contain different compliance deadlines for small and large employers. This is the case because OSHA believes that the compliance deadlines allow enough time even for very small employers to obtain information about the rule and ways to implement an ergonomics program. OSHA also believes that the final rule's 4-year phased-in compliance period for controls is adequate for larger employers who might have more complex processes, employees, problem jobs, and controls to implement.

Some rulemaking participants (see, *e.g.*, Exs. 30–3813, 30–3826) stated that the compliance dates in the proposal were logically inconsistent and needed to be rewritten. These commenters found this section on phased-in dates for program requirements to be difficult to follow and confusing.

Some commenters (see, *e.g.*, Exs. 32–339–1, 182–1, Tr. 383–384) noted that under the compliance deadlines set forth in the proposal, some employees with MSDs who had already been removed from their job might be returned to the problem job before the proposal required the employer to implement interim controls. OSHA agrees that this could be the case in some circumstances and has revised the final rule accordingly.

The compliance time frames in the final rule have been modified as follows: paragraph (x)(1) gives the employer 9 months after the standard becomes effective (60 days after promulgation) to provide the information required in paragraph (d) to employees. This includes information about MSDs and their signs and symptoms and how to report MSDs as well as the kinds of risk factors, jobs and work activities associated with MSDs (see preamble discussion for paragraph (d) for a more complete discussion of the information required to be disseminated).

The rest of the compliance time frames are presented in paragraph (x)(2), Table 2. After an employee reports an MSD (or signs or symptoms of an MSD), the employer must determine whether the MSD is work related, whether it requires a work restriction and, where appropriate, whether the employee's job meets the standard's Action Trigger (see the preamble discussions for paragraphs (e) and (f) for further details on these requirements). If an employer determines that an MSD incident has occurred (*i.e.*, a work-related MSD that requires medical treatment beyond first

aid or restricted work, or MSD signs or symptoms that last for 7 consecutive days) (see definition of MSD incident), then the employer has 7 days in which to determine whether the employee's job meets the Action Trigger (defined in paragraph (f) of the standard). If the employee's job meets the Action Trigger, then the employer has 7 days in which to initiate MSD management, which includes access to a Health Care Professional (HCP), an evaluation of the employee's condition, any appropriate work restrictions (including WRP for up to 90 days) (see preamble discussion of paragraphs (p), (q), (r), and (s) for further details of the employer's MSD management responsibilities). If the employee's job meets the Action Trigger, the employer has 30 days in which to initiate the management leadership element of the program (assign responsibility for setting up and managing the ergonomics program and communicating with employees about the ergonomics program) and the employee participation element (ensuring that employees have ways to report and receive prompt responses to reported MSDs and have ways in which to be involved in the development and implementation of the ergonomics program) (see preamble discussions for paragraphs (h) and (i) for further details of these requirements).

Within 45 days of determining that a job meets the Action Trigger, the employer must train employees in setting up and managing the ergonomics program (see preamble discussion for paragraph (t) for further details of this requirement). Also, a job hazard analysis of the problem job must be initiated within 60 days of a determination that the job meets the Action Trigger (see preamble discussion of paragraph (j) for further details of this requirement). Within 90 days after a determination that a job meets the Action Trigger, the employer must implement interim controls and initiate training for employees, supervisors and team leaders involved in the ergonomics program (see preamble discussion of paragraphs (t) and (m)(2) for further details on these requirements).

Finally, the employer must implement permanent hazard controls to fix a problem job (so that any MSD hazards presented by the job no longer are likely to cause MSDs that result in work restrictions or medical treatment beyond first aid) within 2 years of a determination that a particular job meets the Action Trigger. The final rule allows the employer up to 4 years (after a determination that a job meets the Action Trigger) for initial implementation of the permanent controls provisions (see preamble discussion of paragraph (m)(3) for further details of this requirement). The final standard has kept the proposed requirement to evaluate the effectiveness of the ergonomics program within 3 years (after a determination that a job meets the Action Trigger) and to promptly correct any deficiencies in the program that the evaluation reveals (see preamble discussion of paragraph (u) for further details of this requirement).

Therefore, the effective date section in the final rule has been modified to avoid the unwanted results some commenters (see, *e.g.*, Exs. 30–3813, 30–3826) pointed out might have occurred under the proposal's compliance dates. For example, these commenters noted that, an employee with a work-related MSD could, under the proposal, be returned to a problem job before the employer was required to implement interim controls for that job. In the final rule, the employer has a longer period than in the proposal—up to 9 months from the effective date of the rule—to disseminate information to employees about MSDs. After that date the employer must respond promptly to any reported MSDs by taking steps to determine if the employee has suffered an MSD incident (a determination that the MSD is work-related, is persistent, and requires medical treatment beyond first aid, days away from work or restricted work). Once it is determined that an MSD incident has occurred, the employer has 7 days to determine if the employee's job meets the Action Trigger. If the job meets the Action Trigger, all of the other requirements of the standard spring from the date of the Action Trigger determination, and interim controls would need to be implemented within 90 days of this determination. Therefore under the final rule, an employee on work restriction or WRP would not have to face the possibility of returning to an "unfixed" job because the WRP period has expired before the employer has a duty to implement at least interim controls.

Some rulemaking participants (see, *e.g.*, Ex. 32–339–1, Tr. 3488–3489) observed that the compliance deadline for management leadership and employee participation in the proposal fell due before the deadline for training. Commenters (see, *e.g.*, Ex. 500–218) were concerned that this phase-in discrepancy would mean that employees would not be able to fully participate in the ergonomics program because they had not had training. Although the proposal would not have *prevented* employers from training employees prior to the 2-year deadline articulated in the proposal, OSHA has modified the deadlines for the training requirements in the final rule to address this concern. The final rule separates the employer's training obligations into segments (with the awareness training required by paragraph (d) given earlier than the training triggered by the Action Trigger). As noted, the final rule includes some employee awareness training for all general industry employees; the requirement to provide this training is the first requirement of the standard to go into effect after the effective date. In addition, paragraph (h), management leadership, and paragraph (i), employee participation, have training components (*e.g.*, information on MSDs, information on the ergonomics program and the requirement to provide responsible persons with the information and resources necessary to meet their responsibility under the program).

Some rulemaking participants (see, *e.g.*, Exs. 30–3813, 30–3826) complained that the terms "permanent" and "interim" controls used in the effective date section were undefined. Definitions of "interim" and "permanent" controls have been included in the final rule to further clarify the compliance obligations set forth in the effective date section (see paragraphs (k)(1)(i) and (m)(2)).

A number of commenters (see, *e.g.*, Exs. 30–3745, 30–3913, Tr. 7745–7746, Tr. 16471) felt that the time periods for compliance given in the proposal were inadequate. For example, the National Telecommunications Safety Panel (Ex. 30–3745, pp. 16–17) stated:

> Based on previous discussions of individual program elements within the proposed rule, the Panel believes it would be necessary for employers with more than 10 worksites and 2500 employees across those multiple worksites to have two years after a rule becomes effective to implement "management leadership" and "hazard information and reporting" as defined in the rule, three years to implement "job hazard analysis," "interim controls," and training, and four years for "permanent controls" and "program evaluation." This reflects the distinct probability that most telecommunications companies will maintain a corporate ergonomics program to ensure consistency of compliance, adequate communications and sharing of "best practices" across all of their workplaces.

The National Council of Agricultural Employers (Ex. 30–3781) indicated that small employers needed a longer phase-in period, which would allow them to take advantage of innovations undertaken by larger companies. However, this commenter neither stated what length of time would be appropriate for small employers nor whether more time was needed to comply with all of the provisions of the standard or just the interim and permanent control provisions. OSHA also notes that agricultural employment is not covered by this rule (see the summary and explanation for paragraph (b)). OSHA concludes that the times given to comply with the program elements in the final rule are adequate for all employers, including small employers, who will be able to avail themselves of all of the compliance assistance materials OSHA is disseminating, the OSHA consultation program, and other ergonomic resources available.

A number of other comments were received in response to the compliance date section of the proposal. One rulemaking participant (Ex. 30–3913) argued that training should be phased-in over 5 years rather than the proposed 3 years because at present commercially available ergonomic training materials are of inadequate quality and more time would be needed to improve the overall quality of such training materials. OSHA concludes that a wealth of material is already available that can assist in meeting the training obligations in the final rule. (See Docket 777, *e.g.*, "Ergonomics Awareness Manual (Ex. 32–185–3–11);" "Trainer's Manual Ergonomics Program (32–111–1–21).") In addition even more training materials will become available through OSHA outreach as well as the market for such materials which the promulgation of this rule will create. Further, the training obligations in the final rule are implemented over time, and the materials for them can thus be developed and implemented piecemeal as program development occurs within the workplace.

Some participants (see, *e.g.*, Exs. 30–3922, 30–3032, 30–3284, 30–3922, 32–133–1, 32–300–1, L30–5088, 601–x–1711) thought that the deadlines for interim or permanent controls were too short. Others (see, *e.g.*, Exs. 30–526, 30–710, 30–2433) felt that any deadline for implementing permanent controls was unrealistic, due to the difficulty of providing permanent controls. For example, Pinnacle West Capital Corporation (Ex. 30–3032, p. 12) stated:

> * * * due to the heavy regulation of the plant modification process by the Nuclear Regulatory Commission in electric utility nuclear plants, it is entirely possible that some engineering control implementation could take more than the [proposed] three year permanent control deadline. This is particularly true if the modification can only be accomplished during plant outage times.

This commenter did not indicate how often such plants are off line; however, OSHA notes that the inability of an employer to comply for reasons of infeasibility can always be raised in the context of enforcement. The fact that an employer may confront a highly unusual situation, such as the one this commenter describes, is no reason for the implementation dates for *all* employers to be extended. Another participant stated that the brick-making industry would have problems meeting the proposed three-year phase-in period for permanent controls (Tr. 7745–7746) because they believe that the only permanent controls for their ergonomics problems is automation. OSHA notes that this commenter reported making substantial progress in reducing its MSD hazards, but recognizes that feasibility may be an issue for some establishments.

The American Industrial Hygiene Association (AIHA) (Tr. 16471) noted difficulties that might be encountered in meeting the proposed compliance deadlines for the implementation of interim or permanent controls by stating that "[i]n some cases, substantial reductions in hazards may require reworking an entire material handling system for even a production line. These types of changes usually require a stage process that may run over three years." Again OSHA understands that controls can take some time to implement in certain complex cases, and further that many companies prioritize their jobs for control. OSHA's compliance staff is trained to address these issues on a case-by-case basis, and will do so in enforcing this standard as well.

OSHA has determined that, except in rare cases, employers will be able to meet the compliance deadlines in the final rule. These deadlines are based on a review of the record on the appropriateness of the proposed time given to implement permanent controls. As a result of that review, OSHA has increased the amount of time employers are allowed to implement permanent controls initially to 4 years after the final rule goes into effect, and to 2 years thereafter. This means that the 4-year period is the maximum time that any employer can take to implement permanent controls. In other words, the employer has 4 years after the effective date to install permanent controls or 2 years after the employer determines that a job meets the Action Trigger, whichever is later. For example, if an employer determines that a job meets the Action Trigger 1 year after the effective date, that employer will then have 3 years to install permanent controls. On the other hand, if the employer makes the Action Trigger determination 3 years after the effective date (or 4 years or 5 years after), that employer has 2 years from that date to install permanent controls. This two-tiered approach to the requirement to implement permanent controls initially was adopted to allow employers sufficient time to deal with a possible increase in the number of MSD incidents soon after the standard becomes effective. The Agency believes, once the standard has been in effect for several years, there will be fewer MSD incidents, and that a shorter compliance deadline for permanent controls—2 years—will give these employers sufficient time to implement permanent controls for problem jobs.

The few employers who may find the generous compliance times given in the final rule inadequate also may avail themselves of the temporary variance procedures provided in the Occupational Safety and Health Act of 1970.

Many commenters felt that the compliance deadlines were too long (see, *e.g.*, Exs. 30–2039, 30–2116, 30–2825, 30–2847, 30–3001, 30–3033, 30–3034, 30–3035, 30–3258, 30–3259, 30–30–3332, 30–3686, 30–4159, 30–4534, 30–4536, 30–4546, 30–4547, 30–4548, 30–4549, 30–4562, 30–4627, 30–4776, 30–4800, 30–4801, 31–242, 31–353, 32–85–3, Tr. 11196, 13133).

Typical of comments stating that the deadlines were too long was that of the American Nurses Association (ANA) (Ex. 30–3686, p. 22), which criticized the deadlines on the grounds that they were so long that they would continue to permit opportunities for thousands of nurses and HCWs (health care workers) to be injured. Although the immediate implementation of effective controls on jobs with MSD hazards would be ideal, OSHA recognizes that employers will need time to find, implement, and analyze the effectiveness of controls for each job. OSHA has modified the compliance time frames to address comments such as the ANA's by significantly shortening the amount of time allowed in the final rule for employers to address jobs that meet the Action Trigger. In the final rule, for example, interim controls must be implemented within 90 days of a determination that a job meets the Action Trigger, as opposed to the 2 years given in the proposal. Further, the deadlines in the final rule represent the maximum amount of time employers will have to comply with the elements of the ergonomics program. Employers are encouraged to implement effective controls as soon as possible, and OSHA believes that many employers will do so, because this approach will benefit both employers and employees by

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reducing the number and gravity of MSD injuries.

Other commenters supported the proposed time frames. For example, the AFL–CIO (Tr. 3488) stated "[t]he overall time frames for compliance we think are more than sufficient, particularly given that the standard has been under development for so long." OSHA understands that the compliance deadlines given are generous, but has concluded that some companies will need the extra time to work needed job modifications into their regular production change schedules. From a review of the comments on this section, OSHA has determined that the final rule strikes a rational balance between the need to respond with due speed to MSD incidents and the benefits of developing remedies to problem jobs in an orderly fashion. Substantial evidence in the record supports the compliance time frames adopted in the final rule.

The Communications Workers of America (CWA) (Tr. 13133) supported the requirement for prompt responses to reported MSDs, but felt that the remaining requirements (management leadership and employee participation, hazard information and reporting, job hazard analysis, training, interim and permanent controls, and program evaluation) should all begin one year after the effective date of the standard. The CWA (Tr. 13133) also stated that hazard information training should be conducted within 30 days after the identification of a problem job. In the final rule, this initial training is required before the identification of a problem job. The CWA also suggested that comprehensive training on MSD hazards, controls, and the employer's ergonomics program should be required 90 days after the identification of a problem job. As noted above, in the final rule, all of the training requirements go into effect within 90 days of a determination that a job meets the Action Trigger. Several training requirements, such as the dissemination of MSD awareness information to employees (paragraph (d)) and the training of employees involved in setting up the ergonomics program (paragraph (t)) have to be met substantially sooner.

Some commenters agreed that MSD management should be provided immediately, or as soon as possible (see, *e.g.*, Exs. 30–2387, 30–4538, 31–105, 31–106, 31–129, 31–170, 31–229, 31–276, 31–309, Tr. 13133). Other participants (see, *e.g.*, Exs. 30–74, 30–2987) felt that the requirement for prompt response, *i.e.*, as soon as an MSD is reported after the effective date, could be disruptive and would result in an employer having insufficient time to prepare for the implementation of the overall ergonomic program requirements. The American Health Care Association (AHCA) (Ex. 30–2987) recommended at least a 1-year delayed effective date for MSD management. The AHCA stated "[b]ecause we anticipate that MSDs will be reported early under this proposed standard, we envision that the MSD management component deadline will occur almost immediately after the 60-day start-up. This hardly provides an opportunity for employers to receive assistance on MSD management * * *" In the final rule, the dates in the proposal have been modified to clarify that, although the employer has 11 months from the time the standard is published to disseminate information about MSDs (including their signs and symptoms and how to report them), the employer need not respond to the employee reports initially until the 11-month period has passed. This initial delay in employer response obligations is necessary to permit the employer to develop an ergonomic program in an orderly fashion.

Some commenters felt that after the standard became effective employers should be given 5 days to respond to MSD reports (see, *e.g.*, Exs. 30–400, 30–4837, 31–3, 31–12, 31–113, 31–31–150, 31–160, 31–186, 31–187, 31–192, 31–200, 31–205, 31–243, 31–307, 31–347); others thought that 2 days would be appropriate (Ex. 31–23). These commenters only provided their opinions in this matter, without detail. Other periods of time were also recommended for MSD management deadlines, such as 1 month (Exs. 31–125, 31–265), again without detailed explanation. The proposal (§ 1910.942) had merely required that the employer provide a "prompt" response. This requirement has remained essentially the same in the final rule but has been included in paragraph (e) rather than in the effective date section (see preamble discussion of paragraph (e) for a more detailed discussion of the MSD response requirements).

Some commenters (see, *e.g.*, Exs. 31–27, 31–78, 31–170, 31–180) argued that medical treatment deadlines for MSDs are addressed in state workers' compensation laws and that OSHA should not interfere with those requirements. These commenters misunderstand the rule's MSD management provisions. The OSHA rule does not require employers to obtain medical treatment for employees with MSDs; OSHA assumes that MSDs will continue to be treated under the workers' compensation system, as they have been. The MSD management required by the standard requires the employer to provide access to an HCP, if the employee wishes access, solely for the purposes of evaluation and follow-up and, if necessary, work restrictions. The MSD management system required by the standard does not in any way interfere with workers' compensation (see preamble discussion of paragraph (q)). OSHA included the MSD management provisions pursuant to its statutory authority under the OSH Act (see preamble discussion of paragraph (r)). After reviewing a wide variety of opinions as to how long injured employees should wait before receiving MSD management, OSHA has concluded that MSD management should begin within 7 days after a determination can be made that an MSD incident, as defined by this standard, has occurred. Compliance dates are necessary to effectuate the MSD management provisions included in the standard, and OSHA believes that the time frames included in the final rule for MSD management are appropriate and supported by the record.

In § 1910.943, OSHA proposed to establish different compliance time frames for those employers who had not identified a problem job until after some or all of the start-up compliance deadlines established in proposed § 1910.942 had passed. This was because the occurrence of an MSD incident is difficult to predict and may not occur, in some establishments, for many years, *i.e.*, long after the standard's initial start-up dates have run.

In proposed § 1910.943, if an employer incurred a compliance obligation after the compliance start-up deadline for that obligation had passed, a different timetable applied. OSHA's reasons for this timetable, which was shorter than the initial compliance timetable, was that employers in later years would not need as long to implement ergonomics programs because they could take advantage of program development and remedies that had been developed by other employers in the interim. Accordingly, proposed § 1910.943 gave employers with later incurred compliance obligations some additional time to comply, but the time frame between the MSD incident and the remedy was shorter than that proposed for initial compliance when the standard became effective (see 64 FR at 66074).

From a review of the rulemaking record, it is clear that many participants did not understand proposed § 1910.943 or how it would work (see, *e.g.*, Exs. 30–2116, 30–2809, 30–2825, 30–2847, 30–

3001, 30–3033, 30–3034, 30–3035, 30–3258, 30–3259, 30–3332, 30–3826, 30–4159, 30–4534, 30–4536, 30–4546, 30–4547, 30–4548, 30–4549, 30–4562, 30–4627, 30–4776, 30–4800, 30–4801, Tr. 3236). Additionally. this section of the proposed rule elicited a number of comments, most of which were critical (see, *e.g.*, Exs. 32–85–3, 30–297, 30–424, 30–434, 30–1090, 30–2433, 30–3120, 30–3171, 30–4537, 32–85–3, 500–145). However, few commenters provided detailed reasons for their views.

A few commenters (see, *e.g.*, Exs. 30–4538, 30–3686, 31–353, 32–300–1) recommended that proposed § 1910.943's requirement that MSDs be responded to within 5 days be modified to require MSD management "promptly" when an MSD is reported. The American Federation of Government Employees (Ex. 30–4538, p. 8) stated:

> OSHA should require medical management sooner than five days. If an employee experiencing MSD symptoms continues to work in the same job without medical attention, his condition could get worse. In general, by the time an employee reports a problem, she has been experiencing symptoms for some time and should not have to wait another few days for treatment.

Some rulemaking participants (see, *e.g.*, Exs. 30–240, 30–526, 30–710, 30–3813, 30–3826, 30–3284, 32–300–1, 501–6) disagreed with the idea of providing less time for later-year compliance in § 1910.943 than was proposed for initial compliance in § 1910.942. For example, the Department of Defense (Ex. 30–3826, p. 11) stated "[i]t is not clear why two timetables are provided. It seems capricious to allow some employers up to three years to fully implement their ergonomics programs, while others will have only one year."

Another rulemaking participant (Ex. 32–229–1) observed that the proposed deadline for training expires after the deadline for management leadership and employee participation, which would mean that employees would not be trained before they are expected to participate. In response, OSHA has shortened the deadline for training for employees who are involved in setting up and managing the ergonomics program in the final rule from the proposed 90 days to 45 days after the employer has determined that a job meets the Action Trigger. Employee participation has a deadline of 30 days after the employer has determined that the job meets the Action Trigger.

As noted earlier, in the final rule, the events that trigger an employer's obligations under this standard have been modified since the proposal. All employers covered by the ergonomics standard must comply with the minimal requirements in paragraph (d) (informing employees) within 11 months of the publication of the rule. The remainder of the rule's obligations and time frames for complying with the various requirements are incurred after a determination that an MSD incident has occurred in a job that meets the Action Trigger set forth in paragraph (f). In view of this altered approach in the final rule, it is no longer necessary to provide two separate compliance time frames as was done in the proposal.

Paragraph (y)—When May I Discontinue my Ergonomics Program for a Job?

Paragraph (y) allows employers to discontinue most elements of their ergonomics program for a job if the risk factors in that job have been reduced to levels below those in the Basic Screening Tool (Table 1 of the standard). The only obligations the employer continues to have for jobs that have been controlled to that level are to maintain the controls that reduce the risk factors, continue to provide the training related to those controls, and keep records of the job hazard analysis and the controls implemented for that job.

OSHA proposed to allow employers to discontinue portions of their ergonomics program when no covered MSD had been reported in a problem job for 3 years after the problem job was controlled. Paragraph (y) of the final rule has the same advantages as the proposed provision, but has been revised to reflect changes made to the design of the final rule. That is, the approach taken in the final rule recognizes the role of the Basic Screening Tool in Table 1, which acts, along with the report of an MSD incident, as a trigger for action under the standard and, in paragraph (y), as the mechanism for relieving employers of most of their obligations under the standard.

Some rulemaking participants (see, *e.g.*, Exs. 30–526, 30–710, 30–3686, 31–242) argued that the 3-year timetable for discontinuing elements of the program should be eliminated. These commenters felt that employers with ergonomics programs should be required to maintain all elements of their ergonomics program indefinitely.

Commenters took issue with the proposed timetable for discontinuing parts of the program; some thought the time period was too short, while others argued that it was too long. For example, one rulemaking participant (Ex. 32–185–3) stated that 3 years is too soon to discontinue parts of the ergonomics program, because it gives insufficient time for employers to accurately determine if the controls implemented have been effective. However, this commenter did not suggest what amount of time would be appropriate to wait before discontinuing parts of the program.

On the other hand, some rulemaking participants (see, *e.g.*, Exs. 30–3471, 30–4185, 30–3868, Tr. 3325–3326) thought that 3 years was too long to wait before discontinuing certain aspects of the program. For example, Tyson's Foods (Ex. 30–4185, p. 26) stated "* * * OSHA has set an unrealistically * * * low threshold * * * by premising the obligation to implement engineering controls on the existence of * * * a single reported MSD and then further requiring employers to continue to search for and implement engineering controls until there are no more MSDs for at least three years * * *"

Other commenters (see, *e.g.*, Exs. 30–3344, 30–3749, 30–4674, Tr. 3325–3326, Ex. 601–x–1710) recommended using alternative criteria for discontinuing elements of the program. For example, Abbott Laboratories (Tr. 3325–3326) stated "clearly the bar for ending the full program is too high. We propose that OSHA substitute a performance-based replacement for the 'one MSD in three years' criterion." OSHA has considered this suggestion but has determined that such a performance-based approach, such as the use of industry averages, would be too complex to apply and too difficult to verify during enforcement.

Some commenters (see, *e.g.*, Exs. 30–2116, 30–2825, 30–2847, 30–3001, 30–3035, 30–3258, 30–3259, 30–4159, 30–4534, 30–4536, 30–4546, 30–4547, 30–4548, 30–4549, 30–4562, 30–4627, 30–4801, 32–85–3, Tr.13134) stated that the proposed rule would permit employers to discontinue too many elements of the ergonomics program. The Communications Workers of America (Tr.13134), for example, stated that management leadership and employee participation, hazard information and reporting, awareness training, program evaluation, and maintenance of controls and the training related to those controls should be continued to ensure the control or prevention of MSDs.

OSHA has considered the possibility of increasing the number of program elements employers are allowed to discontinue if they have reduced the MSD hazards in jobs covered by the standard to levels below those in the screen (Basic Screening Tool in Table 1). However, the Agency has decided that maintaining the controls that allowed the employer to control the job,

continuing the training in the use of those controls for employees in these jobs and keeping records of the job hazard analysis and controls for that job are the minimum requirements needed to ensure employee protection. These are the only program requirements the employer is required to continue once the risk factors in the job have been reduced to levels below the screen.

Paragraph (y) contains no time period and no link to the occurrence of MSD incidents, as the proposal did. Instead, both the "entrance" to and "exit" from most program obligations is tied to the extent of the risk factors in the job, as indicated by the screen.

Paragraph (z)—Definitions

Paragraph (z) of the final rule contains a number of definitions of terms used in this final rule. Most of the definitions are straightforward and self-explanatory. A general discussion of each of the terms can be found below; however, clarification of many of the terms is provided in the summary and explanation sections for the provisions where the terms are used. OSHA believes that describing terms where they are used makes it easier for employers and employees to understand what OSHA means when it uses them.

The following terms are defined in the final rule: "administrative controls," "Assistant Secretary," "control MSD hazards," "Director," "employee representative," "engineering controls," "follow-up," "health care professionals (HCPs)," "job," "musculoskeletal disorder (MSD)," "MSD hazard," "MSD incident," "MSD signs," "MSD symptoms," "personal protective equipment," "problem job," "risk factor," "work related," "work practices," "work restriction protection (WRP)," "work restrictions," and "you."

Several terms were defined in the proposal (64 FR 65864 and 64 FR 66075) but are not defined in the final rule: "covered MSD," "eliminate MSD hazards," "ergonomics," "ergonomic design," "ergonomic risk factors," "have knowledge," "manual handling jobs," "manufacturing jobs," "materially reduce MSD hazards," "MSD management," "no cost to employees," "OSHA recordable MSD," "periodically," "persistent MSD symptoms," "physical work activities," and "resources." These terms are either not being used in the final rule, have been replaced by other terms that are defined (either in this paragraph or where they first appear), or have such clear meanings that further definition is unnecessary.

General Comments on Definitions

OSHA received many comments on the definitions for terms used in the proposed ergonomics program standard. A great deal of comment focused on the perceived vagueness of the terms and definitions, with commenters raising concerns about their inability to understand these terms and, thus, their ability to comply appropriately. Others raised concerns about the cost of compliance, arguing that they would spend large sums of money trying to comply because they were unsure what the rule meant (see, *e.g.*, Exs. 32–207–1, 32–206–1, 30–3765, 30–3845, 30–3813, 32–368–1, and 30–3853). One commenter, Monsanto Corporation (Ex. 30–434), recommended moving the definitions to the front of the document for clarity. OSHA has not adopted this recommended change, although a Note to paragraph (a) of the rule states that the definitions for the standard appear in paragraph (z).

OSHA has arranged its discussion of the comments on definitions so that the "general" comments—those that apply to all definitions—are discussed first, and the more specific comments—those that pertain to a particular term or definition—are discussed afterward. Additional discussion of some terms can be found in the summary and explanation of the provision where the term is used.

On the overall issue of the vagueness of the definitions, commenters said that terms were unclear or too broadly defined, which would make it difficult for them to implement the standard (see, *e.g.*, Exs. 30–294, 30–434, 30–1897, 30–3765, 30–2208–2, 30–3845, 30–1722, 30–3813, 30– 185, 30–3739, 30–4006, 30–2705, 30–4038, 601–X–1379, 30–3889, 30–2540, 30–4760, 30–4021, 33–1455, 30–4599, 33–1463, 33–1462, 30–2751, 30–4982, 30–5009, 30–2598, 30–2569, 30–4149, 30–4963, 30–4222, 30–4023, 30–4224, 30–4060, 30–4063, 30–2280, 30–3793, 30–4235, 30–2540), 500–1–4, 500–1–5, and 500–1–28).

The comments of the National Automobile Dealers Association are representative of the comments received on the general issue of the vagueness of the proposed definitions:

> To the extent that the ergonomics rule remains inexorably tied to the reporting of MSD risks, MSD symptoms, MSDs, OSHA recordable MSDs, and covered MSDs, [automobile] dealers will be forced to closely scrutinize reported MSD signs and symptoms, to screen out those that are not tied to real MSDs, and to avoid identifying OSHA recordable MSDs. To be sure, proposed section 1910.145 lists somewhat helpful definitions for each of these terms. Nonetheless, these definitions are lacking in that they fail to provide sufficient guidance to enable dealers to make practical, cost effective, and objective determinations (Ex. 4839).

Some commenters were concerned that the terms lacked objective criteria (see, *e.g.*, Exs. 32–206–1, 30–3765, 30–1722, 30–4185, 30–3826, 30–4538, 32–300–1, 30–3336, 30–2208–1, 30–3853, 30–3749, and 30–3167). Some commenters suggested that OSHA should use definitions for certain terms that had been established by outside organizations (see, *e.g.*, Exs. 30–3765, 30–4499, and 30–3167). Another commented that there was no consensus definition on many of the terms; that experts are not in agreement on the root cause and true definition of MSDs; and that scientists find it difficult to explain why different individuals working on the same job will not experience the same symptoms (Ex. 30–3167). Some of the commenters disagreed with the way the terms were defined or offered suggested alternatives (see, *e.g.*, Exs. 30–3765, 30–4185, 30–3826, 30–2208–2, 30–1722, 32–111–4, 30–4538, 30–3934, 32–198–4, 32–300–1, 30–2208, 30–4499, 30–3818, 30–3000, 31–242, 30–4499, 30–3867, 30–3818 and 30–434).

The Department of Defense (DoD) (Ex. 30–3826) suggested that OSHA eliminate the need for many of the definitions, such as those for manufacturing jobs, manual material handling, and several terms used within those definitions, by simply including all general industry employers in the scope of the standard. OSHA notes that the scope of the final rule has been revised so that it is no longer necessary to define "manufacturing jobs" and "manual handling jobs." (See the summary and explanation discussion on Scope, paragraph (b).)

Some commenters argued that the definitions' vagueness meant that OSHA's cost estimates would be substantially underestimated because employers would do "everything" in an attempt to comply (see, *e.g.*, Exs. 32–206–1, 32–141–1 and 30–3813). Another commenter questioned whether the rule would result in a substantial reduction in MSDs because it was so unclear (Ex. 32–368–1). Others said that if the standard cannot be understood, it is not legally defensible, citing cases such as *Kent Nowlin Construction Co.* v. *OSHRC*, *Connally* v. *General Constr. Co.*, and *Diebold Inc.* v. *Marshall* (Exs. 30–1897, 32–206–1, 32–368–1 and 30–3336).

In response to these comments, OSHA has redefined many terms in the final rule, deleted others, and provided greater clarity in several areas that were particularly singled out for comment such as the level of control employers must reach. Revised provisions of the final rule that provide definite compliance endpoints and "safe harbors" for employers are examples of these changes. The issue of "fair notice" (vagueness) is discussed in the section of the preamble entitled "Other Statutory Issues". Thus the final rule addresses the concerns of employers by providing objective criteria and establishing clear obligations for employers to follow.

Specific Comments on Definitions

Administrative controls are defined as changes in the way that work in a job is assigned or scheduled that reduce the magnitude, frequency, or duration of exposure to ergonomic risk factors. Examples of administrative controls include employee rotation, employer-designated rest breaks designed to reduce exposure, broadening or varying job tasks (job enlargement), and employer-authorized changes in work pace.

The definition of the term *administrative controls* is essentially unchanged from the proposal. OSHA received one comment on the definition (Ex. 30–3748), which noted that the proposed definition was clear.

The term *Control MSD hazards* means to reduce MSD hazards to the extent that they are no longer reasonably likely to cause MSDs that result in work restrictions or medical treatment beyond first aid. This is a new term in the final rule. OSHA has included a definition for this term in the final rule because paragraph (k) of the standard requires employers to control MSD hazards. Controlling hazards means that the risk factors that were occurring at a magnitude, duration, or frequency sufficient to cause an MSD hazard have been reduced to the extent that they are no longer reasonably likely to cause MSDs that result in work restrictions or medical treatment beyond first aid. Employers are to use engineering, work practice, or administrative controls or personal protective equipment to control MSD hazards.

The proposed rule contained two similar terms—"eliminate MSD hazards" and "materially reduce MSD hazards." Commenters alleged that these terms were vague and incapable of quantification (see, *e.g.*, Exs. 30–1897, 32–206–1, 32–368–1, 30–3765, 30–1101 and 30–2986). Statements in the record said that the term "eliminate MSD hazards" should not be used because it is not possible to eliminate hazards so completely that MSDs will no longer occur. There will always be ergonomic risks, according to these commenters (see, *e.g.*, Ex. 30–3765). In addition, there were statements that the term "eliminate MSD hazards" is not really different from "materially reduce MSD hazards" (see, *e.g.*, Ex. 32–300–1). Comments on the term "materially reduce MSD hazards" stated that employers would not be able to evaluate whether or not material reductions in risks have occurred and expressed concern that the term could be interpreted differently by employers, employees, and OSHA inspectors (see, *e.g.*, Ex. 30–3845). Some commenters also objected to some of the phrases used in the proposal definition of "materially reduce MSD hazards," such as "magnitude," "likelihood," and "significantly" (see, *e.g.*, Exs. 30–1897, 30–3765, 30–3866, 32–300–1, 30–4467).

In response to comments in the record, OSHA has decided to delete the terms "eliminate MSD hazards" and "materially reduce MSD hazards" from the final rule. Instead, the Agency has defined "control MSD hazards" more clearly and has additionally provided clear compliance endpoints that essentially cure the vagueness objections raised.

OSHA also received a comment from the Department of Defense (Ex. 30–3826), which recommended that definitions be developed for "interim" and "permanent controls," stating:

> The timetable in [proposed] § 1910.943 included reference to "(e) interim controls" and "(g) permanent controls"; however, there are no corresponding sections nor definitions within section 1910.945 that discusses their distinction. At what point does an interim control become a permanent control, especially when the employer is following the incremental abatement process guidance contained within 1910.922. * * * According to some sources, the only permanent control for ergonomic hazards is an engineering control—administrative and work practice controls can almost always be circumvented in the name of convenience, schedule or production. Unfortunately, in many cases, there are no feasible engineering controls for identified ergonomic hazards. Therefore, permanent controls must be defined, and criteria for determining whether an employer has fulfilled the requirement must be identified (Ex. 30–3826).

The final rule does not use the term "interim" controls. The terms used in the standard, "initial controls" and "permanent controls," are self-explanatory; they are discussed in the summary and explanation for paragraph (m).

The term *Employee representative* means a person or organization that acts on behalf of an employee. This term was not defined in the proposal, but is included in the final rule for clarification. Additional discussion relating to the meaning of this term can be found in the summary of explanation of paragraph (i).

Engineering controls are defined in the final rule as physical changes to a job that reduce MSD hazards. Examples of engineering controls include: changing, modifying, or redesigning workstations, tools, facilities, equipment, materials, or processes.

The definition of the term "engineering controls" has been changed from the proposal. In the proposal, OSHA defined engineering controls as physical changes that eliminated or *materially reduced* the presence of MSD hazards, a term also defined in the proposal. OSHA defined the term "materially reduce MSD hazards" to mean "to reduce the duration, frequency and/or magnitude of exposure to one or more ergonomic risk factors in a way that is reasonably anticipated to significantly reduce the likelihood that covered MSDs will occur." (See the discussion of these terms above, in the section on "Control MSD hazards.") One commenter stated that the definition of engineering controls was clear (Ex. 30–3748).

The term *Follow-up* means the process or protocol an employer or HCP uses (after a work restriction is imposed) to check on the condition of employees who have experienced MSD incidents. The definition of the term "follow-up" is essentially the same as the proposed definition, except that OSHA has removed a sentence from the proposed definition that explained why "follow-up" was necessary. The sentence removed was "Prompt follow-up helps to ensure that the MSD is resolving and, if it is not, that other measures are promptly taken." No substantive comments on this definition were received. Additional discussion relating to the meaning of this term can be found in the summary and explanation for paragraph (p).

Health care professionals (HCPs) are physicians or other licensed health care professionals whose legally permitted scope of practice (*e.g.*, license, registration or certification) allows them to provide independently or be delegated the responsibility to provide some or all of the MSD management requirements of this standard. This definition is identical to the definition in the proposed rule.

One commenter asked OSHA to clarify the definition to specify which occupations (physician, nurse, physical therapist, *etc.*) were included in the term "HCP" (Ex. 30–74). Others were of the opinion that the definition was too broad (*see, e.g.*, Exs. 30–991, 30–3004, 30–3934, 30–3937, 30–2208 and 32–22).

The comments of the Combe Company are representative: "[b]y allowing persons who do not even have a medical degree to diagnose and treat these disorders, the proposed standard creates an environment where the potential for misdiagnosis and improper treatment efforts is dramatically increased" (Ex. 30–3004). In response to these comments, OSHA notes, first, that the final rule's MSD management section does not require the diagnosis and treatment of MSDs; these medical aspects of MSDs are left to the workers' compensation system, as they always have been. The MSD management envisioned by the standard entails the evaluation of an MSD to identify the need for work restrictions and follow-ups to ensure that recovery is progressing. Second, the Agency is deferring to the states on the issue of permitted scopes of practice; that is, different states permit different HCPs to perform different healthcare activities, and employers are expected to ascertain that the HCPs they rely on to carry out the MSD management responsibilities under the standard are licensed, registered, or certified to perform these functions.

Commenters proposed an alternative definition of HCP, *i.e.*, that in addition to requiring licensing, OSHA require HCPs to have sufficient training and experience in diagnosing and treating MSD injuries/illnesses (*see, e.g.*, Exs. 30–3934 and 30–3937). Another organization pointed out that because the definition is so broad, it could include occupations such as emergency medical technicians or licensed vocational nurses who would not be the appropriate professionals to make decisions with respect to MSDs (Ex. 30–2208). The New Mexico Workers' Compensation Administration argued that under the proposed definition, a massage therapist could render an opinion on MSDs (Ex. 32–22). Again, OSHA is confident that the state scope of practice laws that govern HCPs will ensure that only appropriate personnel are permitted to carry out the standard's MSD management functions.

Some commenters urged OSHA to limit the term HCP only to physicians on the grounds that fact finders rely heavily on treating physician's opinions when litigating causation issues under the various workers' compensation laws (*see, e.g.*, Exs. 30–3749, 30–3344 and 30–4674). OSHA's medical management provisions are independent of and unrelated to the workers' compensation system's procedures for determining medical treatment, or extent-of-disability determinations (see the discussion in the summary and explanation for paragraphs (p), (q), (r), and (s)).

The American College of Occupational and Environmental Medicine (ACOEM) recommended that the definition of health care professional be changed to "*occupational* physicians or other licensed *occupational* health care professionals," to focus on the HCP's training and competencies in occupational medicine. OSHA has not revised the definition of HCP in this standard, although OSHA believes that many employers recognize and only rely on the expertise of occupational physicians and nurses. OSHA's more recent standards (*see, e.g.*, the Respirator standard and the Methylene Chloride standard) have used the term HCP, and have defined it in the same way as in this ergonomics standard; changing it would thus be inconsistent with recent usage. The other issues raised by ACOEM—such as the kinds of activities encompassed by the term MSD management—are discussed in the summary and explanation for that paragraph (paragraph p).

The American Society of Safety Engineers (ASSE) (*see, e.g.*, Ex. 30–386) asked OSHA to include a definition of "safety professionals" in the rule and to acknowledge the important role of these professionals in ergonomics programs. The preamble to the final rule does so, and specifically mentions the role of safety professionals, industrial hygienists, and other safety and health professionals in ergonomics program implementation.

The term *Job* is defined in the final rule to mean the physical work activities or tasks that an employee performs. For the purpose of this standard, OSHA considers jobs to be the same if they involve the same physical work activities or tasks, even if the jobs that require those activities or tasks have different titles or job classifications. OSHA is retaining the definition for the term "job" unchanged from that in the proposed rule, except for the addition of the word "tasks".

Comments on the definition of "job" in the proposal stated that the definition gave little guidance on how employers were to determine whether jobs were the same (Ex. 30–3784) and that OSHA should change the word "job" or "job based" to "task" or "task based" (Exs. 30–3765 and 30–3826). The Department of the Navy (Ex. 30–3818) also recommended that OSHA focus on job tasks rather than the job because the term "job" is frequently associated with titles and position descriptions. The Department of the Navy also asked OSHA to define the word "task" in the final rule. OSHA believes that the final rule's definition of a job as the physical activities or tasks that an employee performs is responsive to the Navy's concerns. For a discussion of the meaning of tasks in the context of job hazard analysis, see the summary and explanation for paragraph (j). In addition, the presence of the Basic Screening Tool will enable employers to identify jobs that are the same, despite, for example, differences in job titles.

Musculoskeletal disorders (MSDs) is defined in the final rule as:

> a disorder of the muscles, nerves, tendons, ligaments, joints, cartilage, blood vessels, or spinal discs. For purposes of this standard, this definition only includes MSDs in the following areas of the body that have been associated with exposure to risk factors: neck, shoulder, elbow, forearm, wrist, hand, abdomen (hernia only), back, knee, ankle, and foot. MSDs may include muscle strains and tears, ligament sprains, joint and tendon inflammation, pinched nerves, and spinal disc degeneration. MSDs include such medical conditions as: low back pain, tension neck syndrome, carpal tunnel syndrome, rotator cuff syndrome, DeQuervain's syndrome, trigger finger, tarsal tunnel syndrome, sciatica, epicondylitis, tendinitis, Raynaud's phenomenon, hand-arm vibration syndrome (HAVS), carpet layer's knee, and herniated spinal disc. Injuries arising from slips, trips, falls, motor vehicle accidents, or similar accidents are not MSDs.

The definition of "musculoskeletal disorder (MSD)" in the final rule differs somewhat from the proposed definition. The final rule limits the definition to those MSDs involving certain body parts: the neck, shoulder, elbow, forearm, wrist, hand, abdomen (hernia only), back, knee, ankle and foot. This definition, and the purpose paragraph (paragraph (a)) both also make clear that this standard does not cover injuries caused by slips, trips, falls, motor vehicle accidents, or other similar accidents (*e.g.*, being caught in moving parts). OSHA has made these changes in response to criticisms that the proposed definition was too broad (*see, e.g.*, Ex. 30–1216, 30–2035, 30–3866, 30–4821, 32–208–1, 32–368–1, 30–3937, 500–1–116, Tr. 15310).

Some commenters raised issues about the MSDs covered by the standard and their relationship to psychosocial effects and non-occupational factors (*see, e.g.*, Exs. 500–1–1116, 30–3211, 30–3866). These comments and issues are discussed in the Health Effects section of the preamble, Section V, rather than in this definitions section.

Other commenters objected because the acronyms MSD and MSDs are similar to MSDS, which stands for the Material Safety Data Sheets required by OSHA's hazard communication standard, 29 CFR 1910.1200 (see, *e.g.*, Exs. 30–2041 and 30–0522). However, because "musculoskeletal disorder" is the scientifically correct term for these conditions and MSD is the widely known abbreviation for the term, OSHA continues to use both "musculoskeletal disorders" and its acronym in the final rule.

Some commenters urged OSHA to add other examples such as thoracic outlet syndrome to the list of examples accompanying the definition (see, *e.g.*, Exs. 30–2825 and 30–3332). The list of MSDs included in the final rule is only a list of examples; OSHA recognizes that there are many other MSDs, such as thoracic outlet syndrome, that could be included in this list.

There was some comment that OSHA should adopt a definition of MSDs developed by other organizations such as NIOSH (see, *e.g.*, Exs. 30–3211 and 30–3765). For example, the Dow Chemical Company (Ex. 30–3765) recommended that OSHA adopt the NIOSH definition of MSD and the Society for Human Resource Management (Exs. OR–364, Tr. 15310–15311) suggested that OSHA rely on a medical definition of MSD, such as one taken directly from *Merck's Manual*.

OSHA's definition of MSD is, in fact, very similar to NIOSH's definition, as reflected in the Institute's publication, *Elements of Ergonomics Programs* (DHHS, Publication No. 97–117), particularly with respect to the soft tissues included and the exclusion of accidental injuries.

MSD hazard means the presence of risk factors in the workplace that occur at a level of magnitude, duration, or frequency that is reasonably likely to cause MSDs that result in work restrictions or medical treatment beyond first aid. The definition of "MSD hazard" in the final rule differs from the definition in the proposed rule; it has been revised for clarity, as requested by some commenters (see, *e.g.*, Ex. 30–2986). Other commenters found the proposed definition of MSD hazards circular (see, *e.g.*, Exs. 30–3344 and 30–4674). The revised definition addresses this concern, because it focuses on the magnitude, frequency, and duration of identified risk factors and their relationship to MSD hazards.

MSD incident means an MSD that is work related, requires time away from work, restricted work, or medical treatment beyond first aid, or involves MSD signs or MSD symptoms that last 7 or more consecutive days. (See the discussion of the terms MSD signs and MSD symptoms below.) The definition of MSD incident is new to the final rule. See the summary and explanation section describing the provisions of paragraph (e), in which the term "MSD incident" is used in association with the standard's action trigger.

MSD signs are objective physical findings that an employee may be developing an MSD. Examples of MSD signs are: decreased range of motion; deformity; decreased grip strength; and loss of muscle function. The final rule's definition is essentially the same as the proposed definition, except for minor editorial revisions made for clarity. Additional discussion of this term appears in the summary and explanation for paragraph (d) regarding the reporting of MSD incidents, paragraph (e), the action trigger, and the Health Effects section of the preamble (Section V).

Most of the comments OSHA received on the list of examples of MSD signs included in the proposal concerned the role of the health care professional (HCP) and the phrase "objective physical findings" (see, *e.g.*, Exs. 30–3818, 30–3826, 30–3934, 30–2993, 30–3167, 30–3745, 30–4814 and 30–434). These commenters argued that the rule should be structured so that only an HCP, not the employer, can determine whether a given MSD is associated with objective physical findings. The Newspaper Association of America objected to the list of signs because "[O]SHA has inexplicably chosen to provide only four examples of MSD signs and leaves employers to guess at what may constitute objective physical findings" (Ex. 30–2986). In response, OSHA notes that employers are always free to involve an HCP in their determinations. However, OSHA does not believe that employers will generally have difficulty deciding whether an MSD sign is related to an employee report because, by definition, signs are visible indications observable both by the employee and the employer.

MSD symptoms are defined in the final rule as physical indications that an employee may be developing an MSD. Examples of MSD symptoms are: pain, numbness, tingling, burning, cramping, and stiffness. The final rule's list of examples is essentially the same as the list in the proposal, except that it is more clearly written. Most of the comments relating to this term have already been discussed above under "musculoskeletal disorder." Additional discussion of this term appears in the summary and explanation for paragraph (e) on the reporting of MSD incidents.

Personal protective equipment (PPE) is the equipment employees wear that provides a protective barrier between the employee and an MSD hazard. Examples of PPE are vibration-reduction gloves and carpet layer's knee pads. The final rule's definition is essentially identical to the definition proposed, except that the word "effective" before "protective barrier" has been deleted because the effectiveness of PPE depends on the circumstances in a particular workplace and is therefore not appropriate for a definition. One commenter noted that the definition of PPE was clear. Additional discussion relating to the meaning of this term can be found in the summary and explanation of paragraph (l).

Problem job means a job that the employer has determined poses an MSD hazard to employees in that job. The definition of the term "problem job" has been changed from the definition in the proposal, which defined a problem job as "* * * a job in which a covered MSD is reported. A problem job also includes any job in the workplace that involves the same physical work activities and conditions as the one in which the covered MSD is reported, even if the jobs have different titles or classifications." (See the definition of the term "job" above.)

Commenters were concerned that the definition unnecessarily expanded the scope of the standard (see, *e.g.*, Exs. 32–206–1, 32–368–1, 30–294, 30–2208–1, 30–3284 and 31–336), or requested clarification of ways an employer could use to determine when physical work activities and conditions were the "same" (see, *e.g.*, Ex. 30–3765).

In response, OSHA notes that the Agency intends the "same job" requirements to extend the protections provided by the standard to employees who are fortunate enough not to have experienced an MSD incident but who are in "higher-risk" jobs, as demonstrated by the fact that one employee in the job has already experienced an incident and the job has been determined to meet the action trigger. The standard's "same job" requirements are preventive in nature and will benefit workers in the job as well as saving the employer the costs associated with the MSDs that are averted by fixing the jobs of other employees in the same job. As to the concern about how an employer can know which jobs are the same, OSHA believes that the Basic Screening Tool will be useful in cases where deciding which jobs are the same is difficult.

Risk factor, as used in this standard, means force, awkward posture, repetition, vibration, and contact stress. The term replaces the term "ergonomic risk factors," which was defined in the proposed rule. There was considerable comment in response to the definition of "ergonomic risk factors" in the proposed rule. Commenters stated that the term was vague and too broad (see, *e.g.*, Exs. 30–1011 and 30–2986) and did not provide employers with enough information to allow them to determine if the factors are present in particular jobs and, if so, the duration of exposure to them (see, *e.g.*, Ex. 30–2986). A large number of commenters expressed concern that they would be unable to quantify the risk factors in a job based on the amount of information provided in the proposal (see, *e.g.*, Exs. 30–1722, 30–3032, 30–3336, 30–3765, 30–3813 and 30–3866).

The concerns raised by commenters have largely been addressed by the final rule, which limits the number of risk factors covered by the standard to those most often associated with MSDs and additionally provides clear definitions for each risk factor of the magnitude, frequency, or duration at which exposure poses a potential risk (the Basic Screen levels) and the level deemed to pose an MSD hazard (*e.g.*, the levels indicated by the hazard identification tools in Appendices D–1 and D–2).

Some commenters raised legal issues, *i.e.*, the alleged vagueness of the term "risk factors" and the lack of precise quantitative estimates of the levels at which each risk factor poses risk (see, *e.g.*, Exs. 32–368–1 and 32–206–1), and the perceived need to establish quantitative permissible exposure limits for the risk factors (see, *e.g.*, Ex. 30–3784). These issues are discussed at length in the Other Stautory Issues and Legal Authority sections of this preamble.

Work practices are changes in the way an employee performs the physical work activities of a job that reduce exposure to MSD hazards. Work practice controls involve procedures and methods for safe work. Examples of work practice controls for MSD hazards include:

(a) Using neutral work postures;
(b) Using lifting teams;
(c) Taking micro-breaks; and
(d) Avoiding lifts involving extended reaches or twisted torso.
(e) Conditioning or work-hardening programs.

The proposed rule defined work practices in essentially the same way, except that OSHA has added a conditioning or work-hardening program to the rule in response to comments in the record (see, *e.g.*, Exs. 30–1902, 30–3686, 32–22, and 32–210, and 30–4137, Tr. 8720, Tr. 12472–12479). These commenters stated that they use these program to protect newly assigned workers during the period when they are first exposed to risk factors on the job. OSHA notes in the definition for "work restrictions" that conditioning and work-hardening programs are not to be considered work restrictions for the purposes of this standard.

In the Issues section of the proposal, OSHA asked for comment about the appropriate work practices or controls employers could use to prevent Computer Vision Syndrome (CVS). In response to this inquiry, OSHA received several comments (see, *e.g.*, Exs. 30–3032, 30–2387, 30–2208). One commenter stated that controlling glare, providing adequate lighting, well-designed software, and regularly shifting the static fixed focal point of the eye are all approaches that have been used to address CVS. Other commenters (see, *e.g.*, Exs. 30–3032, 30–2208) urged OSHA not to include CVS in the list of examples of MSDs in the final rule. OSHA agrees that not enough is currently known about CVS and its causes for the final rule to focus on it.

Work related means that an exposure in the workplace "caused or contributed" to an MSD or "significantly aggravated" a pre-existing MSD. "Work-related" was not defined in the proposal. The final rule uses the term "work related" in the definition of an MSD incident. In the proposed rule, OSHA used the term "work relatedness" in the definitions of "covered MSD" and "OSHA recordable MSD."

A number of commenters objected to the term "work-related" in the context of OSHA recordable injuries and illnesses because they believe the term is so broad that it often includes non-work related MSDs (see, *e.g.*, Exs. 500–188, 30–2489, 31–336, 30–2834, 30–2986, 30–1722 and 30–1037). For example, the Center for Office Technology argued that the proposal was designed in a way that would permit a program to be triggered by an episode of weekend overexertion that interfered with work on Monday (Ex. 30–2208–2), and the International Council of Shopping Centers (Ex. 30–2489) expressed the same concern. These commenters are essentially objecting to OSHA's definition of a recordable injury under Part 1904, the Agency's recordkeeping rule; that rule defines a work-related injury as one caused, contributed to, or aggravated by an event or exposure in the workplace, without regard to the extent of the contribution of work to the injury.

Several participants urged OSHA not to include the concept of work aggravation of a pre-existing MSD in the final rule (see, *e.g.*, Exs. 30–629, 30–1037, 30–3159, 30–4185 and 31–336). Typical of those comments was one by Uniservice, Inc. (Ex. 30–2834), which stated, "[w]e will have to make changes to fix a job for a supposed MSD that was not caused by workplace exposure in the first place [if OSHA includes the significant aggravation definition in the standard]." Other commenters focused their concern about including aggravation in the concept of work-relatedness on back injuries because back pain is so common both inside and outside the workplace (see, *e.g.*, Exs. 30–3784, 30–4185, 31–336 and 30–3937). The final rule does not rely on an OSHA recordable injury or illness when defining an MSD incident; the final rule's definition specifies what kinds of MSDs are included (those involving restricted work, for example). OSHA believes that the increased clarity of the final rule will alleviate many of these commenters' concerns.

Work restriction protection (WRP) means the maintenance of the earnings and other employment rights and benefits of employees who are on temporary work restrictions. Benefits include seniority, insurance programs, retirement benefits, and savings plans. In the proposal, OSHA defined "work restriction protection" to mean:

> the maintenance of the earnings and other employment rights and benefits of employees who are on temporary work restriction. For employees who are on restricted work activity, WRP includes maintaining 100% of the after-tax earnings employees with covered MSDs were receiving at the time they were placed on restricted work activity. *For employees* who have been removed *from the workplace*, WRP includes maintaining 90% of the after-tax earnings. Benefits mean 100% of the non-wage-and-salary value employees were receiving at the time they were placed on restricted work activity or were removed from the workplace. Benefits include seniority, insurance programs, retirement benefits and savings plans.

The language beginning with "For employees" and ending with "from the workplace" (outlined in the above quote) has been removed from the final rule's definition. Additional discussion relating to both the meaning of this term and the regulatory requirements on work restriction protection can be found in the summary and explanation of paragraph (r).

Work restrictions are defined as limitations, during the recovery period, on an employee's exposure to MSD hazards. Work restrictions may involve limitations on the work activities of the employee's current job (light duty), transfer to temporary alternative duty jobs, or time away from the workplace to recuperate. For the purposes of this standard, temporarily reducing an employee's work requirements in a new job in order to reduce muscle soreness resulting from the use of muscles in an unfamiliar way is not a work restriction. Further, the day an employee first reports an MSD is not considered a day of work restriction, even if the employee is removed from his or her regular duties for part of the day.

This definition is a revision of the proposed definition. The proposed definition of work restriction included the sentence: "To be effective, work restrictions must not expose the injured employee to the same MSD hazards as were present in the job giving rise to the covered MSD." This sentence has been removed from the definition because it is better suited to the summary and explanation for paragraph (r). See the discussion of the comments received on Work Restriction Protection in general above and in the summary and explanation for paragraph (r).

You means the employer, as defined by the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*). The final rule's definition is identical to the proposed definition (64 FR 66078). There were no comments on this definition.

Several terms that were defined in the proposal are not used in the final rule. They include "manual handling jobs," "manufacturing jobs," and "have knowledge." "MSD management" was also defined separately in the proposal but is now discussed in the regulatory text and summary and explanation for paragraph (p).

Some commenters suggested that OSHA define new terms, including the term "employee." The Alliance of American Insurers (AAI) (Ex. 30–3751) objected to the proposal's cross-reference to the definition of employee contained in the OSH Act. The Alliance asked OSHA to provide additional clarification about who is or is not an employee under various types of employer/employee relationships, such as employee leasing arrangements. The AAI said: "how is OSHA to make WRP determinations? What if one entity is held to be responsible for WRP but the other entity is responsible for workers' compensation benefits?" This issue is discussed in detail in the summary and explanation for paragraph (r).

The DuPont SHE Excellence Center (Ex. 30–2134) recommended the addition of a definition for *workplace,* commenting that in the proposed rule:

> "There is no definition of workplace incorporated in this section [proposed definition of problem job], which creates more confusion. Is the workplace the specific building the job is located, the same physical site (which might contain several buildings), or the entire company with all of its locations within the U.S. and its territories? Some jobs take place out-of-doors, in varied locations which can move from place to place. How are these jobs considered under the "problem job" definition?"

The final rule makes clear that the physical establishment that houses the problem job, or to which the injured employee and other employees in the same job report, limits the program activities required by the standard. The standard does not impose corporate-wide obligations on businesses that have multiple establishments. Instead, the standard is job-based in the first instance, *i.e.*, employers are only required to implement the ergonomics program in those jobs identified as problem jobs. It is establishment-based in the second instance, *i.e.*, employers are only required to include in their program the problem job (and the workers in them) within the establishment to which the problem job is "attached." This means that, where the workforce is mobile, the establishment to which the injured employee reports would be considered the establishment, for the purposes of the standard. Since the standard requires employers to extend the standard's protections to all employees in the same job, the employer is required to "fix" the MSD hazards in the workstations or work environments of all employees in the same job who are located in, or report to, the same establishment.

For the purposes of the standard, OSHA defines an establishment as a single physical location where business is conducted or where services or industrial operations are performed. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary services; and similar operations, the establishment is represented by main or branch offices, terminals, stations, etc., that either supervise such activities or are the base from which personnel carry out these activities.

One commenter (Exs. 30–2825 and 30–3332) suggested that OSHA add a definition of *repetitive motion jobs* to the final rule. OSHA does not believe such a definition is necessary because the final rule contains clear definitions of each of the risk factors (see the Basic Screening Tool in Table 1).

Several commenters asked OSHA to clarify the definitions of industries covered and exempted from the final rule (see, *e.g.*, Exs. 30–1897, 30–3818 and 30–4716). For example, the Honorable James Talent, Chairman of the U.S. House of Representatives Committee on Small Business (Ex. 30–1897), noted that the proposed rule did not apply to agriculture, construction, or maritime operations, but did not clarify each of these terms. Paragraph (b) of the final rule provides clear definitions of the standard's scope and explicitly states that it does not apply to maritime, agricultural, railroad, or construction employment.

Finally, some commenters suggested that OSHA define the term *recovery period,* which was used in the definition of work restriction protection (WRP) (see, *e.g.*, Exs. 30–3749 and 30–3344). OSHA has not done so because this term is used in the final rule in its everyday sense, and is therefore clear on its face.

V. Health Effects

In this section, OSHA presents the evidence contained in the rulemaking record that addresses the causal relationship between exposure to biomechanical risk factors at work and an increased risk of developing musculoskeletal disorders (MSDs). This evidence consists of epidemiological studies of exposed workers in diverse occupational settings, biomechanical studies describing the relationships between exposure to risk factors and associated forces imposed on musculoskeletal tissue, studies of tissue pathology describing the kinds of tissue alterations that have been seen to result from such forces, and medical and diagnostic information relating to MSDs. In making its findings from this evidence, OSHA is relying in part on the extensive scientific evidence presented in the detailed Health Effects Appendices to the proposal (64 FR 65865–65926) (Ex. 27–1), located on OSHA's webpage at *http://www.osha.gov* and summarized in this section. In addition, OSHA's analysis includes results from several other studies placed into the rulemaking record after publication of the proposed rule, as well as comment and testimony from many distinguished scientific experts.

This section is divided into the following seven parts:

- Part A, Description of Biomechanical Risk Factors;
- Part B, Overview of the Health Effects Evidence;
- Part C, Evidence on Neck and Shoulder Disorders;
- Part D, Evidence on Upper Extremity Disorders;
- Part E, Evidence on Back Disorders;
- Part F, Evidence on Lower Extremity Disorders; and
- Part G, OSHA's Response to Issues Raised in the Rulemaking.

A. Biomechanical Risk Factors

Biomechanical risk factors are the aspects of a job or task that impose a physical stress on tissues of the musculoskeletal system, such as muscles, nerves, tendons, ligaments, joints, cartilage, spinal discs, or (in the case of hand-arm vibration syndrome) blood vessels of the upper extremities. To accomplish motion and work, muscle, nerves, connective tissue, and skeleton are affected by a number of external and internal physical demands causing metabolic and compensatory tissue reactions. External demands can include direct pressure on tissues or tissue friction. Internal responses can include inflammatory responses to tissue injury, neurochemical changes, and altered metabolism. The consequences of these external and internal demands associated with work activities can include a spectrum of symptoms or clinical findings. Although some types of tissue, like skeletal muscle, have the ability to recover after an injury that does not physically disrupt the tissue, exceeding tissue limits may result in permanent damage to a tissue. However, skeletal muscle is just one type of tissue that can be affected; other tissues like tendon, ligament, nerve, and cartilage can also be damaged by exposure to excessive physical task factors. These tissues, unlike skeletal muscle, do not have the same capacity for recover and repair after injury. (Each part of this Health Effects section briefly summarizes the pathogenesis of MSDs; OSHA's Health Effects Appendices (Ex. 27–1), developed for the proposed rule, contains detailed discussions of the scientific literature describing the pathogenesis of MSDs).

The biomechanical risk factors addressed by this final rule are repetition, force, awkward postures, vibration to the upper extremity (*i.e.*, segmental vibration), and contact stress. In occupations where an increased prevalence or incidence of MSDs has been observed, these risk factors frequently occur in combination; the level of risk associated with exposure depends on the intensity and duration of exposure as well as the amount of recovery time available to the strained tissues for repair. Soft tissues of the musculoskeletal system will develop tolerance to physical loading if sufficient recovery time is provided. Without adequate recovery time, affected tissues can accumulate damage or become more prone to failure. The need for adequate recovery time between exposure events means that the pattern of exposure also has an important influence on risk. The biomechanical risk factors covered in the final rule are force, repetition, awkward postures, contact stress, and segmental vibration; the basic screening tool in the final rule describes criteria for each of these risk factors that identifies those jobs where there is a potential risk of MSDs. Each of these risk factors is described below.

Force

Force refers to the amount of physical effort that is required to accomplish a task or motion. Force also refers to the degree of loading to muscles and other tissues as a result of applying force to perform work. Tasks or motions that require application of higher force place higher mechanical loads on muscles, tendons, ligaments, and joints (Ex. 26–2). The force required to complete a movement increases when other risk factors are also involved. For example, more physical effort may be needed to perform tasks when the speed or acceleration of motions increases, when vibration is present, or when the task also requires awkward postures. Hand tools that require use of pinch grips require more forceful exertions to manipulate the tool than do those that permit use of power grips.

Relationships among external loads, internal tissue loads, and mechanical and physiological responses have also been studied extensively, using simulation, direct instrumentation, indirect instrumentation, and epidemiological studies. In a report on the Research Base of Work-Related Musculoskeletal Disorders prepared by the National Research Council (NRC) in response to a request from the National Institutes of Health (NIH) (Ex. 26–37), the steering committee provides some rationale for evaluating and controlling biomechanical risk factors, specifically force:

> - The concept of force can be generalized to encompass numerous ways of measuring and characterizing external loads. For example, force can be measured in terms of the weight of parts, tool reaction force, perceived exertion, muscle electrical activity, or observer ratings.
> - Internal loads can be estimated by using external loads. For example, a worker must bend or stoop to lift something from the floor; a worker will exert more force on a stiff keyboard than a light touch keyboard. Understanding these relationships allows prediction of internal loads.
> - Predicted internal loads generally agree with measured internal and external loads. For example, measurements of muscle loads during activity using electromyography generally agree with predicted values.

Force can be assessed qualitatively or quantitatively. Quantitative measures include strain gauges, spring scales, and electromyography to measure muscle activity. A qualitative assessment of force is based on direct observation of the amount of physical exertion required to complete a task, and is usually graded on an ordinal scale (*i.e.*, low, medium, high).

Repetition

Repetition refers to the frequency with which a task or series of motions are repeated with little variation in movement. Although force and/or awkward postures can combine with repetition to increase the risk of MSDs over that of repetition alone, acceleration and velocity of repetitive movement are also important considerations in that they may "cause damage that would not be predicted by muscle forces or joint angles alone" (Washington State CES, p.20, Ex. 500–71–93).

Repetitive motions occur frequently in manufacturing operations where production and assembly processes have been broken down into small sequential steps, each performed by different workers. However, it also applies to many manual handling operations, such as warehouse operations and baggage handling. Repetition is typically assessed by direct observation or videotaping of job tasks. The intensity of exposure is usually expressed as a frequency of motion or as a percent of task cycle time, where a cycle is a pattern of motions.

Awkward Postures

Awkward postures refer to positions of the body (*e.g.*, limbs, joints, back) that deviate significantly from the neutral position while job tasks are being performed. For example, when a person's arm is hanging straight down (*i.e.*, perpendicular to the ground) with the elbow close to the body, the shoulder is said to be in a neutral position. However, when employees are performing overhead work (*e.g.*, installing or repairing equipment, grasping objects from a high shelf) their shoulders are far from the neutral position. Other examples include wrists bent while typing, bending over to grasp or lift an object, twisting the back and torso while moving heavy objects, and squatting. Awkward postures often are significant contributors to MSDs because they increase the exertion and the muscle force that is required to accomplish the task, and compress soft tissues like nerves, tendons, and blood vessels. As used in the final rule's basic screening tool, awkward postures may be either static postures held for prolonged periods of time, or they may occur repetitively.

Awkward posture is the primary ergonomic risk factor to which employees are exposed when the height of working surfaces is not correct. Working at surfaces that are too high can affect several parts of the body. Employees may have to lift and/or move their shoulders, elbows and arms (including hands and wrists) into uncomfortable positions to perform the job tasks on higher surfaces. For example, employees may have to raise their shoulders or move their elbows out from the side of their body to do a task on a high working surface. Also, they may have to bend their heads and necks to see the work they are doing.

Working surfaces that are too high usually affect the shoulders. The muscles must apply considerably more contraction force to raise and hold the shoulders and elbows out to the side, particularly if that position also must be maintained for more than a couple of seconds. The shoulder muscles fatigue quickly in this position.

On the other hand, when surfaces are too low, employees may have to bend their backs and necks to perform their tasks while hunched over the working surface. They may also have to reach down with their arms and backs to do the tasks. Where working surfaces are very low, employees may have to kneel or squat, which places very high forces on the knees to maintain the position and the weight of the body. Working surfaces that are too low usually affect the lower back and occasionally the neck.

Working in awkward postures increases the amount of force needed to accomplish an exertion. Awkward postures create conditions where the transfer of power from the muscles to the skeletal system is inefficient. To overcome muscle inefficiency, employees must apply more force both to initiate and complete the motion or exertion. In general, the more extreme the postures (*i.e.*, the greater the postures deviate from neutral positions), the more inefficiently the muscles operate and, in turn, the more force is needed to complete the task. Thus, awkward postures make forceful exertions even more forceful, from the standpoint of the muscle, and increase the amount of recovery time that is needed.

Awkward postures are assessed in the workplace by observing joint angles during the performance of job tasks. Observed postures can be compared qualitatively to diagrams of awkward postures, such as is done in many job analysis tools, or angles can be measured quantitatively from videotape recordings.

Contact Stress

As used in many ergonomics texts and job analysis tools, contact stress results from activities involving either repeated or continuous contact between sensitive body tissue and a hard or sharp object. The basic screening tool in the final rule includes a particular type of contact stress, which is using the hand or knee as a hammer (*e.g.*, operating a punch press or using the knee to stretch carpet during installation). Thus, although contact stress is covered in the final rule as a single risk factor, it is really a combination of force and repetition. Mechanical friction (*i.e.*, pressure of a hard object on soft tissues and tendons) causes contact stress, which is increased when tasks require forceful exertion. The addition of force adds to the friction created by the repeated or continuous contact between the soft tissues and a hard object. It also adds to the irritation of tissues and/or to the pressures on parts of the body, which can further inhibit blood flow and nerve conduction.

Contact stress commonly affects the soft tissue on the fingers, palms, forearms, thighs, shins and feet. This contact may create pressure over a small area of the body (*e.g.*, wrist, forearm) that can inhibit blood flow, tendon and muscle movement and nerve function. The intensity of exposure to contact stress is usually determined qualitatively through discussion with the employee and observation of the job.

Segmental Vibration

Vibration refers to the oscillatory motion of a physical body. Segmental, or localized vibration, such as vibration of the hand and arm, occurs when a specific part of the body comes into contact with vibrating objects such as powered hand tools (*e.g.*, chain saw, electric drill, chipping hammer) or equipment (*e.g.*, wood planer, punch press, packaging machine).

Although using powered hand tools (*e.g.*, electric, hydraulic, pneumatic) may help to reduce risk factors such as force and repetition over using manual methods, they can expose employees to vibration. Vibrating hand tools transmit vibrations to the operator and, depending on the level of the vibration and duration of exposure, may contribute to the occurrence of hand-arm vibration syndrome or Raynaud's phenomenon (*i.e.* vibration-induced white-finger MSDs) (Ex. 26–2).

The level of vibration can be the result of bad design, poor maintenance, and age of the powered hand tool. For example, even new powered hand tools can expose employees to excessive vibration if they do not include any devices to dampen the vibration or in other ways shield the operator from it. Using vibrating hand tools can also contribute to muscle-tendon contractile forces owing to operators having to use increased grip force to steady tools having high vibration.

Vibration from power tools is not easy to measure directly without the use of sophisticated measuring equipment. However, vibration frequency ratings are available for many recently designed hand tools.

Based on the whole of the scientific literature available at the time of the proposal, OSHA also identified prolonged sitting and standing (a form of static posture) and whole-body vibration as risk factors for MSDs; in addition, OSHA identified cold temperatures as a risk factor modifier because it could require workers to increase the force necessary to perform their jobs (such as having to grip a tool more tightly) (64 FR 65865–65926) (Ex. 27–1). The final rule does not explicitly include these risk factors. For prolonged standing and sitting, and for cold temperatures, although there is evidence of an increased risk of MSDs with exposure (*e.g.*, see Skov, Ex. 26–674), the available evidence did not permit the Agency to provide sufficient guidance to employers and employees on the levels of exposure that warrant attention. For whole-body vibration, there was substantial evidence of a causal association with low back disorders (*e.g.*, see NIOSH 1997); however, heavy equipment and trucks, the most common sources of whole-body vibration, are seldom rated for vibration frequencies and intensities. In addition, measurement of whole-body vibration levels requires special equipment and training that would be difficult for most employers to obtain. Therefore, OSHA determined that it was appropriate not to include whole-body vibration in the final rule at this time.

For the biomechanical risk factors of force, repetition, awkward postures, segmental vibration, and contact stress, OSHA has concluded that strong evidence exists for a positive relationship between exposure to these risk factors and an increased risk of developing MSDs, based on the scientific evidence and testimony described in this section of the final rule's preamble. The risk factors identified by the Agency as being causally related to the development of MSDs and that are covered in the final rule are the same risk factors that have

been addressed by other reputable scientific and regulatory bodies, both nationally and internationally, who face the challenge of either reducing the incidence of MSDs or contributing to the scientific basis for these actions. The two most current and thorough reviews on this topic are NIOSH's Critical Review of Epidemiologic Evidence for Work-Related Musculoskeletal Disorders of the Neck, Upper Extremity, and Low Back (Bernard, 1997; Ex. 26–1) and the National Research Council/National Academy of Science's Work-Related Musculoskeletal Disorders: Report, Workshop Summary, and Workshop Papers (1999; Ex. 26–37). NIOSH's review focused on repetition, force, posture, and vibration when evaluating epidemiologic evidence for the neck, shoulder, elbow, and hand/wrist. For the low-back, the authors looked at the evidence for heavy physical work, lifting and forceful movements, bending and twisting (awkward postures), whole body vibration and static work postures. The "work factors" identified by the NRC in their report on Work-Related Musculoskeletal Disorders are the same as the "biomechanical risk factors" identified by OSHA. Although terms may differ depending upon the part of the body being described, it is easy to see the relationship between heavy physical work and lifting and the concept of force/exertion to the back, for example .

The Steering Committee Report for the NRC workshop on "Examining the Research Base (for Work-Related MSDs)", participants agreed there is

> "enough scientific evidence to confirm that strain on musculoskeletal tissue increases when humans perform activities that involve forceful manual exertions, awkward postures, repetitive or prolonged exertions, exposure to vibrations and exposure to cold temperatures."

However, in a separate paper prepared for the NRC/NAS workshop, Radwin and Lavender also discuss "workplace layout," "interactions with objects,'work scheduling" and other "workplace design factors," as factors that these authors, as well as others, have studied in relation to MSDs. Although there is strong agreement on biomechanical factors associated with MSDs, the science is still evolving with regard to other types of factors. Thus, when sources refer to *biomechanical* risk factors, all literature reviewed from the rulemaking record identified the same basic risk factors, all essentially related to force/exertion, repetition, posture and vibration.

Literature reviews published in the scientific literature also evaluate these same risk factors. Literature reviews of this type use selection criteria to capture the best-designed studies with a particular focus, usually risk factors associated with a specific type of disorder, for analysis. Burdorf and Sorock reviewed 35 articles that evaluated risk factors for back disorders and concluded that lifting or carrying loads (force), whole-body vibration and frequent bending and twisting (awkward postures) were consistently related to work-related low-back disorders (1997; Ex. 500–71–24). In a systematic review of 31 studies, Hoogendoorn et al (1997; Ex. 500–71–32) found strong evidence exists for manual materials handling, bending and twisting (awkward posture), and whole-body vibration as risk factors for back pain, and moderate evidence exists for patient handling and physical work.

In their review of the literature on the role of physical load factors in carpal tunnel syndrome, Viikari-Juntura and Silverstein found an association with carpal tunnel syndrome and forceful, repetitive work, extreme wrist postures and vibration (1999; Ex. 32–339–1–56). Other authors (Ariens *et al.*, 2000; Ex. 500–71–23) found a relationship between neck pain and neck flexion, arm force, arm posture, duration of sitting, twisting or bending of the trunk, hand-arm vibration, and workplace design.

In both written submissions to the record, and in oral testimony, numerous scientific experts confirmed and substantiated OSHA's position that sufficient scientific evidence exists, and is contained in the record, to conclude that workplace exposure to the biomechanical risk factors described above increase the risk for work-related MSDs (Exs. 37–1; 37–2; 37–3; 37–6; 37–8; 38–9; 37–10; 37–13; 37–15; 37–16; 37–17; 37–18; 37–21; 37–27; 37–28; 26–37). Scientists who testified at the hearings also confirmed that each of these risk factors are linked to an increased risk of developing an MSD in exposed workers (Dr. Don Chaffin, University of Michigan, Tr 8254; Dr. Nicholas Warren, University of Connecticut Health Center, Tr.1084–85; Dr. Martin Cherniak, Ergonomics Technology Center of Connecticut, Tr. 1128; Dr. Richard Wells, University of Waterloo, Tr. 1353–54; Dr. Robert Harrison, Tr. 1648; Dr. Amadio, Mayo Clinic, Tr. 9815, 98; Dr. Eckardt Johanning, Eastern New York Occupational and Environmental Health Center, Tr. 16831–33; Dr. Jim McGlothlin, Purdue University, Dr. Malcolm Pope, Tr. 16808; Dr. Margit Bleeker, Tr. 16826). This written and oral testimony from scientific experts provides a compelling case establishing the link between exposure to biomechanical risk factors and an increased risk of MSD incidence.

OSHA heard from a number of scientists and physicians during it's hearing with comments along the lines of that by Dr. Robert Harrison, from the University of California (Tr. 1649–50):

> The jobs and tasks my patients are performing are the ones the literature has identified as high-risk jobs with exposure to many of the same physical risk factors. In fact, my patients are exposed to the identical physical work activities and conditions that have been identified by OSHA as causing excessive exposure to force, frequent repetition, awkward posture, contact stress, vibration and cold temperatures.

The record contains many US and international regulations and guidelines that reflect the same biomechanical risk factors addressed in the final rule; some are listed below:

- National Research Council. (1999) Work-Related Musculoskeletal Disorders: Report, Workshop Summary, and Workshop Papers. National Academy Press. (Ex. 26–37);
- National Institute for Occupational Safety and Health. (1997) Musculoskeletal Disorders and Workplace Factors. Centers for Disease Control and Prevention (Ex. 26–1);
- National Institute for Occupational Safety and Health. (1998) Elements of Ergonomics Programs, A Primer Based on Workplace Evaluations of Musculoskeletal Disorders. (Ex. 26–2);
- European Agency for Safety and Health at Work. Work-related neck and upper limb musculoskeletal disorders (1999). (Ex.500–71–28);
- Department of Labor and Industries, Washington State. (5/25/00) Concise Explanatory Statement, WAC 296–62–051, Ergonomics (Ex. 500–71–93);
- Ergonomics for the Prevention of Musculoskeletal Disorders, Swedish National Board of Occupational Safety and Health on Ergonomics for the Prevention of Musculoskeletal Disorders. AFS 1998:1; (Ex. 500–71–14);
- National Codes of Practice for the Prevention of Occupational Overuse Syndrome-Worksafe Australia [NOHSC:2013(1994)], (Ex. 500–71–2);
- National Standard for Manual Handling and National Code of Practice for Manual Handling, Worksafe Australia. 1990 (Ex. 500–71–4);
- Occupational Overuse Syndrome: Guidelines for Prevention and Management, Occupational Safety and Health Services, Department of Labor, New Zealand (Ex. 500–71–12);
- Ergonomics (MSI) Requirements, British Columbia, Canada (Ex. 32–339–1–6);

- Regulations and Code of Practice, (Manual Handling) Occupational Health and Safety Regulations 1988. Victoria, Canada. (Ex. 500–71–17);
- European Communities Council Directive on Manual Handling (Ex. 32–339–1–12);
- American Conference of Governmental Industrial Hygienists, Threshold Limit Value (TLV) Committee, Nov. 13, 1999. Notice of Intent to Establish a Threshold Limit Value, Hand Activity Level (Ex. 32–339–1–63);
- American Conference of Governmental Industrial Hygienists. 1987. Ergonomic Interventions to Prevent Musculoskeletal Injuries in Industry (Ex. DC–386, Tr. 16291–335);
- American Industrial Hygiene Association. 1994. Ergonomic Guide Series (Ex. 32–133–1);
- American National Standards Institute (ANSI) draft Ergonomic Standard, Z–365 (1998) (Ex.26–1264).

Furthermore, the vast majority of the many job evaluation tools found in the record and reviewed by the Agency collectively address these same risk factors covered under the final rule (Exs. 26–521, 26–1421, 26–1008, 26–883, 26–500–71–92). Also, studies using specific interventions to reduce biomechanical load address these same risk factors (see section VI, Risk Assessment).

B. Overview of Evidence of Health Effects for Work-Related Musculoskeletal Disorders

A substantial body of scientific evidence supports OSHA's effort to provide workers with ergonomic protection (see the Health Effects Appendix of the proposal preamble, and the Health Effects Summary, Risk Assessment, and Significance of Risk sections of this preamble, below). This evidence strongly supports two basic conclusions: (1) there is a positive relationship between exposure to biomechanical risk factors and development of work-related musculoskeletal disorders and (2) ergonomics programs and specific ergonomic interventions can reduce these risks. Although it is recognized that many individual and non-biomechanical workplace factors (such as psychosocial factors) also contribute to the total risk, exposure to biomechanical factors has been shown to contribute to the risk independently from other causal factors; these findings support the appropriateness of designing interventions that reduce exposures to biomechanical factors as a strategy for reducing risk of MSDs.

This section presents an overview of the health evidence summarized from the proposal (64 FR 65865–65926; Ex. 27–1), updates that evidence with more recent information brought to the Agency's attention during the rulemaking process, and presents some additional information and conclusions as to the adequacy and quality of the overall scientific data base used for the final rule. In developing its review of the scientific evidence, the Agency has relied on almost 200 epidemiological studies that describe the prevalence or incidence of MSDs among workers who have been exposed to biomechanical risk factors. Several of these (see Part G of the Health Effects sections) simultaneously evaluated the effects of biomechanical and psychosocial factors in the workplace; these studies generally represent the most recent and best-designed epidemiological studies.

In addition to epidemiological studies, OSHA has reviewed a considerable amount of information and studies that describe the biomechanical aspects of MSD etiology, along with studies that have been conducted to elucidate the physiological responses of tissues to biomechanical stress. Much of this information was presented in detail in OSHA's Health Effects Appendices (Ex. 26–1), prepared at the time of the final rule. OSHA has since supplemented this information with additional material contained in the rulemaking record.

In compiling and evaluating the scientific evidence for its proposed ergonomic program standard OSHA made use of the two major reviews of the evidence for work-relatedness of MSDs available at that time, NIOSH's "Musculoskeletal Disorders and Workplace Factors: A Critical Review of the Epidemiologic Evidence for Work-Related Musculoskeletal Disorders of the Neck, Upper Extremity, and Low Back" (Bernard, 1997; Ex. 26–1) and the National Research Council/National Academy of Sciences' "Workshop on Work-Related Musculoskeletal Injuries: The Research Base" (Ex. 26–37). Because OSHA's reliance on these two important works generated a considerable amount of comment and testimony, these two reviews are described in detail here. However, throughout this Health Effects section, OSHA has made use of several other scientific reviews of the literature as well.

The National Institute for Occupational Safety and Health (NIOSH) conducted a scientific review of hundreds of peer-reviewed studies, and evaluated the evidence for work-related musculoskeletal disorders of the neck, upper extremity, and low back (Bernard, 1997; Ex.26–1). The focus of this review was the epidemiology literature, the goal of which is to identify factors that are associated (positively or negatively) with the development of recurrence of adverse medical conditions. This evaluation and summary of the epidemiologic evidence focuses chiefly on disorders that affect the neck and the upper extremity, including tension neck syndrome, shoulder tendinitis, epicondylitis, carpal tunnel syndrome, and hand-arm vibration syndrome, which have been the most extensive studies in the epidemiologic literature. The document also reviews studies that have dealt with work-related back pain and that address the way work organization and psychosocial factors influence the relationship between exposure to physical factors and work-related MSDs. The literature about disorders of the lower extremity is outside the scope of the NIOSH review, and OSHA has done its own analysis of that literature. The NIOSH work is the most comprehensive review of this scientific literature to date.

A search strategy of bibliographic databases identified more than 2,000 studies. Studies were included if they evaluated exposure so that some inference could be drawn regarding repetition, force, extreme joint posture, static loading or vibration, and lifting tasks. Studies in which exposure was measured or observed and recorded for the body part of concern were considered superior to studies that used self-reports or occupational/job titles as surrogates for exposure.

Because of the focus on the epidemiology literature, studies that were laboratory-based or that focused on MSDs from a biomedical standpoint, dealt with clinical treatment of MSDs, or had other nonepidemiologic orientation were eliminated from further consideration for this document. This strategy yielded over 600 studies for inclusion in the detailed review process. Population-based studies of MSDs, case-control studies, cross-sectional studies, longitudinal cohort studies, and case series were included.

The first step in the analytical process was to classify the epidemiologic studies by the following criteria:

- The participation rate was ≥ 70%. This criterion limits the degree of selection bias in the study.
- The health outcome was defined by symptoms and physical examination. This criterion reflects the preference of most reviewers to have health outcomes that are defined by objective criteria.
- The investigators were blinded to health or exposure status when assessing health or exposure status. This criterion limits observed bias in classifying exposure or disease.
- The joint (part of body) under discussion was subjected to an independent exposure assessment, with characterization of the independent variable of interest (such as repetition or repetitive work). Studies that used either direct observation or actual measurements of exposure were considered to have a more accurate exposure classification scheme, whereas studies that exclusively used job title, interviews, or questionnaire information were assumed to have less accurate exposure information.

During review of the studies, the greatest qualitative weight was given to studies that had objective exposure assessments, high participation rates, physical examinations, and blinded assessment of health and exposure status.

The second step of the analytical process was to divide the studies into those with statistically significant associations between exposures and health outcomes and those without statistically significant associations. The associations were then examined to determine whether they were likely to be substantially influenced by confounding or other selection bias (such as survivor bias or other epidemiologic pitfalls that might have a major influence on the interpretation of the findings). These include the absence of nonrespondent bias and comparability of study and comparison groups.

The third step of the analytical process was to review and summarize studies with regard to the epidemiologic criteria for causality: strength of association, consistency in association, temporal association, and exposure-response relationship. No single epidemiologic study will fulfill all criteria to answer the question of causality. However, results from epidemiologic studies can contribute to the evidence of causality in the relationship between workplace risk factors and MSDs. The exposures examined for the neck and upper extremity were repetition, force, extreme posture, and segmental vibration.

Using the epidemiologic criteria for causality as the framework, the evidence for a relationship between workplace factors and the development of MSDs from epidemiologic studies is classified into one of the following categories: strong evidence of work-relatedness, evidence of work-relatedness, insufficient evidence of work-relatedness, evidence of no effect of work factors. The amount and type of evidence required for each category is described below:

Strong evidence of work-relatedness. A causal relationship is known to be very likely between intense or long-duration exposure to the specific risk factor(s) and MSD when the epidemiologic criteria of causality are used. A positive relationship has been observed between exposure to the specific risk factor and MSD in studies in which chance, bias, and confounding factors could be ruled out with reasonable confidence in at least several studies.

Evidence of work-relatedness. Some convincing epidemiologic evidence shows a causal relationship when the epidemiologic criteria of causality for intense or long-duration exposure to the specific risk factor(s) and MSD are used. A positive relationship has been observed between exposure to the specific risk factor and MSDs in studies in which chance, bias, and confounding factors are not the likely explanation.

Insufficient evidence of work-relatedness. The available studies are of insufficient number, quality, consistence, or statistical power to permit a conclusion regarding the presence or absence of a causal association. Some studies suggest a relationship to specific risk factors, but chance, bias, or confounding may explain the association.

Evidence of no effect of work factors. Adequate studies consistently show that the specific workplace risk factor(s) is not related to development of MSD.

The above framework provides an indication of the selection criteria NIOSH used in identifying studies for inclusion in their review. Studies were included if the exposed and referent populations were well defined, and if they involved neck, upper-extremity, and low-back MSDs measured by well-defined, explicit criteria determined before the study. Studies whose primary outcomes were clinically relevant diagnostic entities, generally had less misclassification and were likely to involve more severe cases. Studies whose primary outcomes were the reporting of symptoms generally had more misclassification of health status and a wider spectrum of severity.

Care should be taken when interpreting some study results regarding individual workplace factors of repetition, force, extreme or static postures, and vibration. As Kilbom (1994; Ex. 26–1352) stated, these factors occur simultaneously or during alternating tasks within the same work, and their effects concur and interact. A single odds ratio (OR) for an individual risk factor may not accurately reflect the actual association, as not all of the studies derive ORs for simultaneously occurring factors. Thus these studies were not only viewed individually (taking into account good epidemiologic principles) but together for making broader interpretations about epidemiologic causality. Many investigators did not examine each risk factor separately but selected study and comparison groups based on combinations of risk factors (such as workers in jobs involving high force and repetition compared with workers having no exposure to high force and repetition.)

Based on the epidemiologic criteria described above, NIOSH made the following findings:

Strong evidence of work-relatedness exists for the following associations:

- High levels of static contraction, prolonged static loads, extreme working postures involving the neck/shoulder muscles and an increased risk for neck/shoulder MSDs;
- Exposure to a combination of risk factors (*e.g.*, force and repetition, force and posture) and CTS;
- Job tasks that require a combination of risk factors (*e.g.*, highly repetitious, forceful hand/wrist exertions) and hand/wrist tendinitis;
- High level exposure to hand-arm vibration and vascular symptoms of hand-arm vibration syndrome;
- Work-related lifting and forceful movements;
- Exposure to whole-body vibration and low-back disorder.

2. *Evidence* exists for the following associations:

- Highly repetitive work and neck and neck/shoulder MSDs, considering both repetitive neck movements (using frequency and duration of movements) and repetitive work involving continuous arm or hand movements;
- Forceful exertion and neck MSDs, with "forceful work" involving forceful arm or hand movements, which generate loads to the neck/shoulder area;
- Highly repetitive work and shoulder MSDs;
- Repeated or sustained shoulder postures with greater than 60 degree of flexion or abduction and shoulder MSDs;
- Highly repetitive work, both alone and in combination with other factors and carpal tunnel syndrome;
- Work involving hand/wrist vibration and CTS;
- Any single factor (repetition, force and posture) and hand/wrist tendinitis;
- Work-related awkward postures and low-back disorders.

3. *Insufficient evidence* of work-relatedness exists for the following associations:

- Vibration and neck disorders;
- Force and shoulder MSDs;
- Extreme posture and CTS.

The NIOSH review (Bernard, 1997; Ex. 26–1) is an authoritative, systematic, critical review of the epidemiologic evidence regarding work-related risk factors and their relationship to MSDs of the neck, shoulder, elbow, hand/wrist, and low back. In considering its purpose, the authors state:

> This review of the epidemiologic literature may assist national and international authorities, academics, and policy makers in assessing risk and formulating decisions about future research or necessary preventive measures.

In 1998, the National Institutes of Health asked the National Academy of Sciences/National Research Council (NRC) to assemble a group of experts to examine the scientific literature relevant to the work-related musculoskeletal disorders of the lower back, neck and upper extremities. A steering committee was convened to design a workshop, to identify leading researchers on the topic to participate, and to prepare a report based on the workshop discussions and their own expertise. Additionally, the steering committee was asked to address, to the extent possible, a set of seven questions posed by Congress on the topic of musculoskeletal disorders. The steering committee includes experts in orthopedic surgery, occupational medicine, epidemiology, ergonomics, human factors, statistics, and risk analysis (NRC, 1999; Ex. 26–37). Note: The steering committee's report was published in 1998, and was referred to in OSHA's proposal as Ex. 26–37. In the final rule, Ex. 26–37 refers to the final report, (Work-Related Musculoskeletal Disorders: Report, Workshop Summary, and Workshop Papers, National Research Council, 1999; Ex. 26–37), which includes the steering committee's report, a summary of the proceedings of the 2-day workshop (Work-Related Musculoskeletal Injuries: The Research Base), and the workshop papers.

The charge to the steering committee, reflected in the focus of the workshop, was to examine the current state of the scientific research base relevant to the problem of work-related musculoskeletal disorders, including factors that can contribute to such disorders, and strategies for intervention to ameliorate or prevent them. The NAS/NRC organized their examination of the evidence of factors that potentially contribute to musculoskeletal disorders:

(1) Biological responses of tissues to biomechanical stressors;

(2) Biomechanics of work stressors, considering both work and individual factors, as well as internal loads;

(3) Epidemiologic perspectives on the contribution of physical (biomechanical) factors;

(4) Non-biomechanical (*e.g.*, psychological, organizational, social) factors; and

(5) Interventions to prevent or mitigate musculoskeletal disorders.

For four of these topics, discussions at the workshop centered on a paper (or papers) commissioned for the workshop, followed by the comments of invited discussants. For the epidemiology of physical factors, the steering committee used a panel format to take advantage of a recent review of this literature, the NIOSH review, published in 1997, and previously discussed here.

Use of this broad approach provided for the examination of evidence from both basic and applied science and a wide variety of methodologies, and considered sources of evidence that extend well beyond the epidemiologic literature alone. In determining whether scientific evidence supports a causal claim for risk factors and work-related musculoskeletal disorders, the NAS/NRC steering committee considered the following five criteria:

- *Temporal ordering* requires that the cause be present before the effect is observed.
- *Cause and effect covary.* For example, when no force is applied to a tendon, it remains in a relaxed state; in the presence of the cause (a force), the tendon responds.
- *Absence of other plausible explanations for the observed effect.* Adequate controlling of confounding factors by the design of the experiment or observation makes other explanations for the observed effect less likely.
- *Temporal contiguity,* amplifies the first (temporal ordering). To the extent that the effect follows the cause closely in time, the plausibility that other factors are operative is reduced.
- *Congruity between the cause and effect,* that is the size of the cause is related to the size or magnitude of the effect.

In its report, the NRC noted that in addressing complex research questions, such as relationships between risk factors and work-related musculoskeletal disorders, single studies rarely, if ever, provide conclusiveness of a causal relationship. Replication and synthesis of evidence across studies, preferably with studies that use a variety of methods (each with different strengths and weaknesses) strengthens causal associations. In performing such synthesis, studies that most completely satisfy the five criteria specified above should be given greatest weight. Inferential strength is gained by examining the evidence from a variety of theoretical perspectives, as well as a variety of research methods. A major strength of the NRC/NAS review is that it takes this broad approach toward evaluating the relevant scientific evidence.

In evaluating the epidemiologic literature and NIOSH's review of that literature, the NRC/NAS steering committee identified the following limitations in the epidemiologic evidence:

> - Temporal contiguity between the stressors and onset of effects, as well as amelioration after reduction of stressors, could not always be established, nor could the clinical course of the observed effects;
> - Methods used for the assessment of exposures and health outcomes vary, rendering the task or merging and combining evidence more challenging than in some other areas of occupational risk assessment;
> - Lack of baseline prevalence and incidence data for the general population.

Despite these limitations, the steering committee reached the following conclusions regarding the epidemiologic evidence:

> - Restricting our focus to those studies involving the highest levels of exposure to biomechanical stressor of the upper extremity, neck, and back and those with the sharpest contrast in exposure among the study groups, the positive relationship between the occurrence of musculoskeletal disorders and the conduct of work is clear. * * * (T)hose associations identified by the NIOSH review (NIOSH, 1997; Ex 26–1) as having strong evidence are well supported by competent research on heavily exposed populations.
> - There is compelling evidence from numerous studies that as the amount of biomechanical stress is reduced, the prevalence of musculoskeletal disorders at the affected body region is likewise reduced. This evidence provides further support for the relationship between these work activities and the occurrence of musculoskeletal disorders.
> - Evidence of a role for biomechanical stress in the occurrence of musculoskeletal disorders among populations exposed to low levels of biomechanical stressors remains less definitive, though there are some high-quality studies suggesting causal associations that should serve as the basis for further investigation. In cases of low levels of biomechanical stress, the possible contribution of other factors to musculoskeletal disorders is important to consider. The report then addresses other factors, including individual factors (*e.g.*, age, prior medical conditions); and organizational and social factors (*e.g.*, job content and demands, job control and social support).

The conclusions from the NAS/NRC report (Ex. 26–37) from the biomechanical literature are presented (in brief) in the previous discussion of "force"in Section A.

In setting forth its conclusions on musculoskeletal disorders in the workplace, NRC/NAS steering committee notes that it has:

> supplemented our professional expertise with workshop presentations, commissioned papers and other submissions, and discussions with invited workshop participants.

and, as a result concluded (in summary):

> - There is a higher incidence of reported pain, injury, loss of work, and disability among individuals who are employed in occupations where there is a high level of exposure to physical loading than for those employed in occupations with lower levels of exposure.
> - There is a strong biological plausibility on the relationship between the incidence of musculoskeletal disorders and the causative exposure factors in high-exposure occupational settings.
> - Research clearly demonstrates that specific interventions can reduce the reported rate of musculoskeletal disorders for workers who perform high-risk tasks.
> - Research can (1) provide a better understanding of the mechanisms that underlie the established relationships between causal factors and outcomes; (2) consider the influence of multiple factors (mechanical, work, social, etc.) on symptoms, injury, reporting, and disability; (3) provide more information about the relationship between incremental change in load and incremental biological response as a basis for defining the most efficient interventions; (4) improve the caliber of measurements for risk factors, outcome variables, and injury data collection systems; and (5) provide better understanding of the clinical course of these disorders.

The relevant scientific literature has been thoroughly and systematically evaluated by two highly-reputable and independent scientific bodies and their experts, who used different approaches to evaluate the literature from different scientific disciplines (while allowing for some overlap), using causality criteria from two related but different frameworks. The NIOSH and NRC/NAS reviews offer two distinct but consistent sets of conclusions that can be drawn from the literature on work-related musculoskeletal disorders. Generally, both reviews agree that the scientific evidence provides compelling support for a higher risk of work-related musculoskeletal disorders and the loss of work, and disability among individuals who are employed in occupations where there is a high level of exposure to physical loading (biomechanical factors), and that evidence clearly demonstrates that specific interventions can reduce the reported rate of musculoskeletal disorders for workers who perform high-risk tasks.

In the face of overwhelming evidence that biomechanical/physical risk factors in the workplace cause MSDs, some critics, such as UPS argue that there is not even *one* study which demonstrates that repetitive motion causes injury (Ex. 32–241–4). When asked at the hearing whether he agreed with this UPS position, Dr. Robert McCunney, representing the American College of Occupational and Environmental Medicine replied "I find this statement incredulous" (Tr. 7662). Dr. McCunney then continued in his testimony to state that there is sufficient scientific literature showing that repetitive motion activities can lead to MSDs. According to Dr. Barbara Silverstein, of the Washington State Department of Labor and Industries, scientific researchers who hold to the UPS view that there is no evidence that repetitive movements causes injury "are in a minority" (Tr. 17415). Likewise, in response to the same question regarding the UPS contention, Dr. Thomas Armstrong (University of Michigan) defended the scientific evidence that repetitive movements can result in injury, by replying:

> There are physiological studies looking at repetitive work as it contributes to muscle fatigue and changes in histology of muscle tissue. There are epidemiological studies that have looked at the relationship between various exposures to repetition and a variety of musculoskeletal types of disorders. These studies from different disciplines all come together and support the same conclusion.

Professional and scientific organizations supporting OSHA's determinations regarding the scientific basis underlying the standard include:

- American Association of Occupational Health Nurses (Ex. 30–2387)
- American College of Occupational and Environmental Medicine (Ex. 30–4468, Tr. 7637–7690)
- American Conference of Governmental Industrial Hygienists (Ex. DC–386, Tr. 16291–335)
- American Industrial Hygiene Association (Ex. 32–133–1, Tr. 16464–72, Tr. 16518–27)
- American Nurses Association (Ex. 30–3686, Tr. 15875–95)
- American Occupational Therapy Association (Ex. 30–4777, Tr. 18095–18121)
- American Public Health Association (Ex..30–626, Tr. 17649–17704)
- American Society of Safety Engineers (Ex. 32–21–1–2; Tr. 11612)
- Human Factors and Ergonomics Society (Ex. 502–472)
- National Association of Orthopedic Nurses (Tr. 10578–10588)
- The American Society of Plastic and Reconstructive Surgery (Ex. DC–46, Tr. 1534)

OSHA finds no merit to assertions that there is insufficient science on which to base its proposal and subsequent final rule. Rather, the Agency finds that the body of scientific evidence on which OSHA based this rule is vast and conclusive. This position was supported by many witnesses and multiple pages of hearing testimony, and added to the substantial base of scientific literature that OSHA relied on for the publication of it's proposal. And, although there have been critics to OSHA's actions, they are in fact, in the vast minority. The science overwhelmingly supports reducing biomechanical risk factors in the workplace as an effective approach to reducing work-related musculoskeletal disorders.

When asked "whether ACOEM believes that detection and elimination of these ergonomic risk factors at work can result in a reduction in the number of these disorders" during the hearing, Dr. McCunney replied "Very much so" (Tr. 7663).

The following parts of this section discuss the evidence for the work-relatedness of MSDs. Tables V–1 through V–8 summarize some key aspects of the epidemiological studies that investigate MSDs, such as the occupations examined, the biomechanical risk factors they were exposed to, whether exposures were directly observed or measured during the study, and whether the health outcomes were verified by trained medical personnel during physical examination. The last column provides a quantitative (if available) risk measure or range of risk measures reported in each study that best captures the strength of the association between the studied biomechanical risk factor(s) and health outcome. Study entries with a single odds (or prevalence) ratio examined the relative risk between an exposed group of workers and unexposed referent population. For most studies, the risk values and confidence intervals were obtained from tables found in the 1997 NIOSH review (Ex. 26–1). For the additional studies not reviewed by NIOSH, OSHA obtained risk values from the material submitted in the docket.

Many studies reported risk ratios for multiple exposed groups and/or several indicators of exposure to biomechanical risk factors. In these cases, the range of reported risk measures were provided in the summary tables. OSHA did not include in this range; (1) risks ratios (high or low) that were inherently unstable because they were based on very low numbers of cases; (2) risk ratios that did not reflect differences in biomechanical risk factors; and (3) risk ratios in which the variation in exposure between groups were so small that a difference in MSD prevalence would have been difficult to detect. The 95 percent confidence interval for the upper end of the risk range were also recorded on the tables.

Some studies on the tables did not report odds (or prevalence) ratios, even though they may have established a statistically significant association between biomechanical risk factor and health outcome. Often, the association was expressed as a regression analysis between a particular biomechanical measurement and number of MSD cases. Sometimes, the study did not provide a risk measure but simply reported the MSD prevalence of different groups of exposed workers. These study entries were designated with a NR (risk ratio not reported).

C. Disorders of the Neck and Shoulder

MSDs of the neck and shoulder that have been documented in the scientific literature include the clinically well-defined disorders, such as tendinitis, and the less clinically well-defined soft tissues disorders, such as tension-neck syndrome (Gerr 1991, Ex. 26–1208; Moore 1992, Ex. 26–984). MSDs of the neck and shoulder often involve tendons, muscles, and bursa; nerves and blood vessels may also be affected. Because of the simultaneous involvement of several regional structures in neck and shoulder MSDs, there may be positive signs and/or symptoms in more than one structure. For example, strong abduction or extension of the upper arm, as well as awkward postures of the neck, can compress parts of the brachioplexus under the scalene muscles and other anatomical structures. This compression can result in nerve and/or blood vessel damage or in eventual damage to the tissues served by these nerves and vessels.

Neck and Upper Back

In this section, OSHA summarizes the evidence for an increased risk for musculoskeletal disorders of the neck and upper back associated with exposure to biomechanical risk factors in the workplace. This region (neck and upper back) includes the cervical and thoracic spine (spine above the lumbar or low back) and supporting structures and tissues. The scientific literature frequently refers to this region as "Neck and Neck/Shoulder," or as "Neck and Shoulder" or as "Neck and Upper Back." With respect to the epidemiologic literature, the studies NIOSH referred to in it's "Neck and Neck/Shoulder" section are included in this section. A summary of the evidence regarding the shoulder only is reviewed in the separate section following this one. For greater detail on the scientific evidence summarized here see 64 FR 65865–65926).

The lifetime prevalence of neck pain is estimated at 40% to 50%, with a 1-year prevalence of about 20% (Takala *et al.*1982, Ex. 26–1169). Using a definition of 2 weeks of neck pain, the prevalence among men and women aged 25 to 74 years in the NHANES Survey II (1976 to 1980) was 8.2% (Praemer, Furner, and Rice 1992, Ex. 26–869). Chronic neck pain is estimated to be present in up to 9% to 10% of males and 12% to 14% of females (Makela *et al.*1991, Ex. 26–980; Revel *et al.*1994, Ex. 26–195). Individuals in the 4th to 6th decades of life have the greatest incidence of neck disorders (Makela *et al.*1991, Ex. 26–980; Praemer, Furner, and Rice 1992, Ex. 26–869).

What is known about the course of neck pain? It is estimated that 90% of patients with acute neck pain are improved within 2 months (Borenstein, Wiesel, and Boden 1996, Ex. 26–1394). The Quebec Spinal Study (1987, Ex. 26–494) series of individuals with work-related spinal disorders suggests that 74% recover by 7 weeks. A 10-year outcome study of patients with neck pain revealed that 79% had less pain and 43% were pain-free. However, 32% still experienced moderate or severe pain (Gore *et al.*1987, Ex. 26–127). With regard to work-related MSDs, some intervention studies have suggested that workplace modifications may decrease both symptoms of neck pain and/or muscle activity as recorded by EMG (Aarås 1994a, Ex. 26–892; Aarås *et al.*1998, Ex. 26–597; Schuldt *et al.*1987, Ex. 26–670).

The extent to which neck pain occurs in or affects workers depends to a great extent on the terms used to define the pain, in terms of intensity and duration, and on the methods used in determining the presence or occurrence (self-report, interview, or physical examination). Point prevalence of neck pain in a general U.S. population has been reported at 10%, matching point prevalence reports of workers in an aeroengineering factory and exceeding a 4% prevalence reported in a group of textile workers (Palmer *et al.*1998, Ex. 26–1529). Other estimates found in the literature include 68% for female and 47% for male Swedish industrial workers performing unskilled tasks (3-month prevalence of MSDs in the neck and in the thoracic back)(Bjorksten *et al.*1996, Ex. 26–604). One-year prevalence of neck pain or neck and upper-back pain was 16% in a group of electricians, excluding neck pain associated with traumatic injury, and 38% with a less restrictive definition (Hunting, *et al.*199, Ex. 26–1273); 26% and 18%, in the Danish wood and furniture industry respectively (Christensen, Pedersen, and Sjogaard 1995, Ex. 26–95). Prevalence of regular discomfort in the posterior neck region was 6.3%, and 9.1% in the upper-back region, in a group of chicken-processing workers. However, the lifetime prevalence was 36%, the point prevalence was 18%, and 9% had sought medical treatment for discomfort (Buckle 1987, Ex. 26–938).

Many studies of neck pain have focused on employees working in health care. Milerad and Ekenvall (1990, Ex. 26–1291) reported cervical symptom prevalence of 45% of male dentists and 63% of female dentists, rates that were 2.6 and 2 times those of male and female pharmacists, respectively. Twelve-month prevalence of self-reported neck pain was 63.1% in a group of medical secretaries and hospital office personnel (Linton and Kamwendo 1989, Ex. 26–978).

With regard to work-related cervical spine disorders, the Quebec Spinal Study (1987, Ex. 26–494) observed an annual incidence of over 0.1%. However, Bjorksten *et al.*(1996, Ex. 26–604) reported a 68%, 3-month prevalence for neck pain in industrial workers performing unskilled tasks, more than double the rate in the general population. Certain jobs appear to have greater associations with neck pain than others, with the lifetime prevalence of neck and shoulder symptoms reaching 81% in machine operators, 73% in carpenters, and 57% in office workers (Tola *et al.*1988, Ex. 26–1018). It must be understood that there may be an underestimation of work-relatedness of neck pain since the onset of pain may, at times, be delayed and the work relation uncertain.

Tension neck syndrome is a myofascial (muscle pain) localized in the shoulder and neck region (Hagberg 1984; Ex. 26–1271). Also called scapulocostal syndrome (Fine and Silverstein 1998; Ex. 38–444), these syndromes are often characterized by diffuse tenderness over the muscle, rather than the tendon origin, and activity limitation. The pathophysiology is unknown; however, a number of mechanism have been proposed, including inflammation. Two types of muscle activity may be important in work-related disorders: low-force, prolonged muscle contractions (*e.g.*, in office workers moderate neck flexion while working on a visual display terminal (VDT) for many hours without rest breaks); and infrequent or frequent high-force muscle contractions (intermittent use of heavy tools) in

overhead work). Sustained static contractions can lead to increases in intramuscular pressure, which in turn may impair blood flow to cells within the muscle (Hagberg, 1984; Ex. 26–1271).

Motor nerve control of the working muscle may be important in sustained static contractions since even if the relative load on the muscle as a whole is low, the active part of the muscle may be working close to it's maximal capacity. Thus, small areas of large muscles such as the trapezius may have disturbances in microcirculation that might contribute or cause the development of muscle damage (red ragged fibers), reduce strength, higher levels of fatigue, sensitization of pain receptors in the muscle, and pain at rest (Armstrong, Buckle and Fine 1993, as cited in Fine and Silverstein 1998, Ex. 38–444). High levels of tension (strong contractions) can lead to muscle fiber Z-line rupture, muscle pain, and large, delayed increases in serum creatine kinase. These changes are reversible and can be completely repaired, often leading the muscle to be stronger. It is hypothesized that if damage occurs daily due to work activity, the muscle may not be able to repair the damage as fast as it occurs, leading to chronic muscle damage or dysfunction. The mechanism of this damage at the cellular level is not understood (Armstrong, Buckle and Fine, 1993 as cited in Fine and Silverstein 1998, Ex. 38–444).

Hagberg (1984, Ex. 26–1271; and Hagberg and Wegman 1987, as cited in Magnusson and Pope Ex. 38–450) described three possible pathophysiological mechanisms for occupational muscle-related disorders, such as tension neck syndrome. The first is mechanical failure, due to temporary high local stress involving eccentric contractions on the shoulders, such as in workers unaccustomed to the work task. The second is local decreased blood flow (ischemia), as seen in assembly workers whose tasks involved dynamic, frequent contractions above 10 to 20% of the maximum voluntary contraction and few rest breaks. Both a reduction in blood flow and pathologic changes were found to be correlated with myalgia (muscle pain) and ragged red fibers in 17 patients doing repetitive assembly work (Larsson *et al.*1990, Ex. 26–1141).

The third pathophysiologic mechanism for muscle pain (Hagberg 1984, Ex. 26–1271) energy metabolism disturbance, occurs when energy demand exceeds production. Long-term static contractions of the muscles result in the prolonged recruitment of limited numbers of motor units, and can deplete available energy, producing eventual fatigue and injury (Lieber and Friden 1994, Ex. 26–559). Higher subjective levels of fatigue as well as electrophysiological evidence of fatigue are more common in large muscle groups, such as the neck and shoulder muscles, when activities are static and repetitive rather than dynamic (Sjogaard 1988, Ex. 26–830).

Pain arising from cervical spine skeletal structures may potentially originate from many locations, since sensory nerve innervation is present in ligaments, joint capsules, the anterior and posterior longitudinal ligaments, the outer third of the annulus fibrosus, and the vertebral body (Bogduk 1982, Ex. 26–1479; Bogduk *et al.*1988, Ex. 26–514; Hirsch, Inglemark, and Miller 1963, Ex. 26–471). The periosteum of the cervical vertebral body may be a source of pain, although some slowly progressive lesions may destroy a significant amount of bony tissue before they are recognized (Borenstein, Wiesel, and Boden 1996, Ex. 26–1394). The spinal nerve roots are the source of pain when there is compression, ischemia, and inflammatory or chemical mediators that stimulate nociceptors.

Cervical spondylosis refers to degenerative changes in the cervical spine that are apparent on radiological examination (Hagberg and Wegman 1987, Ex. 26–32). The pathogenesis of cervical spine degenerative disease has similarities to many other joint structures, although there are important differences. The cervical spine has a great deal more movement, achieved via gliding and sliding on adjacent structures, than the remainder of the spine. And not being subject to repetitive and impulsive loading, cervical spinal segments do not require the strength and stability of the lumbar-sacral spine. However, these zygoapophyseal joints in the cervical spine have fibrocartilagenous, meniscus-like structures that are capable of responding with proliferative changes (Bland 1994, Ex. 26–416). As with other joints, aging, repetitive motion, and some loading result in fissuring of the hyaline cartilage surfaces. Gradually, the hyaline cartilage develops deeper and downward fissuring, larger erosions, and general thinning. In the cervical spine, the chondrocytes proliferate in areas of fibrillation or loosely textured matrix (Bland 1994, Ex. 26–416). And though the matrix may demonstrate some attempts at repair, the repair is generally disorderly. Subchondral bone increases in density, followed by microfracturing and callus formation. New bone, called osteophytes, appear at the margins of the articular cartilage, and may protrude into the joint space or neuroforamen. If large enough, this may cause nerve compression. Posterior spondylotic bars, especially if combined with hypertrophy of the ligamentum flavum, have the potential to compress the spinal cord, causing symptoms of cervical myelopathy. Anatomically, the C4 to C5, C5 to C6, and C6 to C7 intervertebral disc spaces are most commonly affected by osteoarthritis and degenerative disc disease.

Thoracic outlet syndrome (TOS) is defined as a "neurovascular impingement syndrome at different anatomical levels where the brachial plexus and subclavian vessels may be entrapped as they pass through, en route from the cervical spine to the arm." (Hagberg *et al.*1995, Ex. 26–432). The syndrome involves compression of the subclavian artery and the lower trunk of the brachial plexus, at one or more locations between the neck and the axilla. Symptoms are experienced in the upper extremity. Cervical syndrome is defined as "compressions of the nerve root by a herniated disc or a narrowed intervertebral foramen" (Hagberg *et al.*1995, Ex. 26–432).

Epidemiological Evidence

Several muscles act upon the upper spine and shoulder girdle together; Scandanavian studies have often combined neck and shoulder MSDs. Neck pain and MSDs will be discussed here. Those studies that evaluated neck and shoulder pain and MSDs together will also be included. Studies that exclusively evaluate pain and MSDs of the shoulder will be discussed in a subsequent section. Studies that have evaluated objective findings and/or met diagnostic criteria for specific disorders have been given greater weight in this analysis.

There have been several reviews that associate neck disorders work factors, such as repetition, force, static loading, neck posture, and heavy work (NIOSH 1997, Ex. 26–1; Grieco, *et al.*1998, Ex. 26–627; Hagberg *et al.*1995, Ex. 26–432; Hales and Bernard 1996, Ex. 26–896; Viikari-Juntura 1997, Ex. 26–905; Hagberg and Wegman 1987, Ex. 26–32). The majority of neck disorders involve soft tissues (muscle and ligament strains and sprains). Outcomes studied and reported are often non-specific, for example, neck pain or/or stiffness. Some studies relied on combination of symptoms and physical exam confirming tenderness in neck muscles and tendons upon palpitation and/or localized pain during neck movement. Many others simply relied on self-reported symptoms on a questionnaire. While duration of symptoms and case definitions were not always completely consistent, all studies attempted to exclude pain and/or discomfort that was transient or less than significant intensity.

In a few epidemiological studies, objective exposure measurement that pertained to the neck region, such as work load assessments, electromyography, neck angle measurement, was obtained. However in most studies, exposure assessments were based on job titles or self-reports. In some investigations the primary interest and measurement strategy was focused on hand/wrist region, even though neck disorders were studied as one of the outcomes. Hand/wrist exposures will not necessarily reflect the biomechanical status of the neck, and, therefore these studies have potential for considerable exposure misclassification are given less weight.

Bernard (1997, Ex. 26–1) and NIOSH reviewed epidemiological studies for evidence of work-relatedness of neck and neck/shoulder musculoskeletal disorders. In the process of identifying papers for this review, Bernard (1997, Ex. 26–1) first considered the strength of each study based on whether it provided clear definitions of exposed and reference populations and clear definitions of outcomes, as well whether it evaluated exposures in such a way as to classify them with regard to force, repetition, posture, or vibration. Papers that met these standards were then evaluated based on four criteria: a 70% or better response rate in order to limit response bias, health outcome defined by symptoms and physical examination (PE)(1), investigators blinded where appropriate (exposure or health status), and the neck as a focus of the evaluation. Only one of the studies that focused on the neck and two that focused on the neck/shoulder region met all four criteria. The likelihood of bias in each study was examined. Finally, studies were summarized with respect to strength of association, demonstration of temporal association, consistency of association among studies, and exposure-response relationship.

The NIOSH review identified 46 epidemiological studies (1976 to 1995) reporting on the neck and 23 reporting on the neck/shoulder region. Of these studies, 38 were cross-sectional, 2 were case-control, and 6 were prospective studies. Table V–1 summarizes some key aspects of these investigations, such as the occupations examined, the biomechanical risk factors the workers were exposed to, whether exposures were directly observed or measured during the study, and whether the health outcomes were verified by trained medical personnel during physical examination. Thirteen of the studies directly measured or observed a combination of repeated arm/shoulder movements, strenuous work that generates loads to the neck/shoulder muscles, and extreme static postures. The eleven studies also used physical examination by a health professional to define workers with neck disorders. OSHA regards these investigations as more reliable than those in which direct exposure was not observed or in which neck injuries are self-reported. Twelve of the thirteen studies reported a statistically significant association between these disorders and physical work factors (force, repetitive motion, awkward posture).

TABLE V–1.—SUMMARY OF EPIDEMIOLOGY STUDIES EXAMINING NECK AND UPPER BACK MUSCULOSKELETAL DISORDERS

Study	Job type studies	Physical factors	Exposure basis	Diagnosis	Risk Measure (95% CI)[1]
Hunting (1981) Ex. 26–1276	VDT operation	R/P	observation body posture	physical exam	OR=9.9* (3.7–26.9)
Veiersted (1994) Ex. 26–1366	chocolate manufacture.	F/R?/P	EMG	physical exam	OR=6.7–7.2* (2.1–25.3)
Ohlsson (1995) Ex. 26–868	assembly line	R/P	neck flexion cycle time	physical exam	OR=3.6* (1.5–8.8)
Bergqvist (1995) Ex. 26–1195	VDT operators	R/P	observation	physical exam	OR=3.6–4.4* (1.1–17.6)
Bergvist (1995) Ex. 26–1196	VDT operators	R/P	observation	physical exam	OR=6.9* (1.1–42.1)
Onishi (1976) Ex. 26–1222	film rolling	F?/R/P	observation EMG	physical exam	OR=3.8* (2.1–6.6)
Norander (1999) Ex. 38–408	fish processing	R/P	observation cycle time	physical exam	OR=3.0* (1.5–5.9)
Kukkonen (1983) Ex. 26–1138	data entry	R?/P	posture observation	physical exam	OR=2.3* (1.1–4.6)
Bjelle (1981) Ex. 26–1519	industrial plant	F/R/P	flexion EMG	physical exam	NR*
Jonsson (1988) Ex. 26–969; Kilbom (1986) Ex. 500–41–75.	electronics manufacture.	F/R/P	flexor MVC flexion	physical exam	NR*
Dimberg (1989) Ex. 26–1211	automotive	F/R/P	observation	physical exam	NR* (p<0.1)
Sakakibara (1995) Ex. 26–800	fruit bagging	F?/R?/P	observation arm elevation	physical exam	OR=1.5 (1.0–2.3)
Rosecrance (1994) Ex. 38–203	newspaper work	F?/P/R	questionnaire	symptoms only	OR=29*
Andersen (1993) Ex. 26–1502	sewing machine	F/R/P?	job titles	physical exam	OR=6.8* (1.6–28.5)
Baron (1991) Ex. 26–697	grocery checking	F/R/P	job titles	physical exam	OR=2.0 (0.6–2.7)
Bernard (1994) Ex. 26–842	newspaper publishing.	R?/P	observation	symptoms only	OR=1.4* (1.0–1.8)
Blader (1991) Ex. 26–1215	sewing machine	R/P	questionnaire	physical exam	NR*
Hales (1989) Ex. 2–3–pp	poultry processing.	F/R	job title	physical exam	OR=1.6 (0.4–3.2)
Hales (1994) Ex. 26–131	telecommunication.	R?/P	questionnaire	physical exam	OR=3.8* (1.5–9.4)

TABLE V–1.—SUMMARY OF EPIDEMIOLOGY STUDIES EXAMINING NECK AND UPPER BACK MUSCULOSKELETAL DISORDERS—Continued

Study	Job type studies	Physical factors	Exposure basis	Diagnosis	Risk Measure (95% CI)[1]
Hunting (1994) Ex. 26–1273	electrician	V/F/R/P	questionnaire	symptoms only	OR=1.6 (NR)
Kamwendo (1991) Ex. 26–1384	medical secretary	R/P	questionnaire	symptoms only	OR=1.6* (1.0–2.7)
Kiken (1990) Ex. 26–430	poultry processing.	F/R	job title	physical exam	OR=1.3 (0.2–11)
Knave (1985) Ex. 26–753	VDT operation	R/P	questionnaire	symptoms only	OR=1.6 (0.4–3.2)
Kuorinka (1979) Ex. 26–639	scissor production.	R/P	job title	physical exam	OR=4.1* (2.3–7.5)
Luopajarvi (1979) Ex. 26–56	food production	F/R/P?	job title	physical exam	OR=1.6 (0.9–2.7)
Schibye (1995) Ex. 26–1463	sewing machine	F?/R/P?	questionnaire	symptoms only	OR=3.3* (1.4–7.7)
Liss (1995) Ex. 26–55	dental hygienist	F/R/P?	questionnaire	symptoms only	OR=1.7* (1.1–2.6)
Ohlsson (1989) Ex. 26–1290	auto assembly	F/R/P?	job title	symptoms only	OR=1.9 (0.9–3.7)
Andersen (1993) Ex. 26–1451	sewing machine	F/R/P?	job titles	symptoms only	OR=3.2–4.9* (2.0–12.8)
Eckberg (1995) Ex. 26–1193	residents	F?/R/P?	questionnaire	symptoms only	OR=1.2* (1.0–1.3)
Eckberg (1994) Ex. 26–1238	case-control	F?/R/P	questionnaire	symptoms only	OR=3.6–15.6* (3.2–113)
Milerad (1990) Ex. 26–1291	dentist	R/P	questionnaire	symptoms only	OR=2.1* (1.2–3.1)
Punnett (1991) Ex. 26–39	meat processing	F/R/P?	observation	symptoms only	OR=0.9–1.8 (1.0–3.2)
Rossignol (1987) Ex. 26–804	computer operation.	R/P	questionnaire	symptoms only	OR=1.8–4.6* (1.7–13.2)
Viikari-Juntura (1994) Ex. 26–873	machine operation.	F/R?/P/V	observation	symptoms only	OR=3.0–4.2* (2.0–9.0)
Wells (1983) Ex. 26–729	letter carrier	F/R?/P	job title	symptoms only	OR=2.6* (1.1–6.2)
Aaras (1994) Ex. 26–892	telephone assembly.	F/R?/P	EMG muscle load	symptoms only	NR*
Ferguson (1976) Cited in Ex. 26–1	telephone interview.	R?/P	posture measures.	symptoms only	NR
Maeda (1982) Ex. 26–1224	machine operators.	F?/R?/P?	questionnaire	symptoms only	NR*
Linton (1989) Ex. 26–729	medical secretary	R?/P?	questionnaire	symptoms only	NR
Linton (1990) Ex. 26–977	multiple industries.	F?/R?/P	questionnaire	symptoms only	OR=3.5 (2.7–4.5)
Sakakibara (1987) Ex. 26–1199	fruit bagging	F?/R/P	neck/shoulder flexion.	symptoms only	OR=1.6 (0.4–3.2)
Welch (1995) Ex. 26–1268	sheet metal processing.	F?/R/P	questionnaire	symptoms only	OR=7.5 (0.8–68)
Yu (1996) Ex. 26–696	VDT operation	R?/P	questionnaire	symptoms only	OR=29 (2.8–291.8)
Holmstrom (1992) Ex. 26–36	construction	F?/R?/P	questionnaire	symptoms only	OR=2.0* (1.4–2.7)
Ryan (1998) Cited in Ex. 26–1	data processing	R?/P	shoulder flexion	symptoms only	NR*
Ohara (1976) Cited in Ex. 26–1	cash register	F?/R?/P?	job title	physical exam	NR
Tola (1988) Ex. 26–1018	machine operation.	F?/R?/P	job title	symptoms only	OR=1.8* (1.5–2.2)
Vihma (1982) Ex. 26–789	sewing machine	R/P	observation cycle time	symptoms only	PRR=1.6* (1.1–2.3)
Viikari-Juntura (2000) Ex. 500–41–50	forest industry	P/R?	questionnaire	symptoms only	OR=1.4
Botha (1998) Ex. 500–212–10	nurses	P/F	observation	symptoms only	NR*
Björk Cstén (1996) Ex. 26–604	metal working	R/P	questionnaire	symptoms only	NR
Ignatius (1993) Ex. 26–1389	typists	F/R?/P	questionnaire	symptoms only	OR=3.4*
Slov (1996) Ex. 26–674	sales	P	questionnaire	symptoms only	OR=2.8* (1.4–5.59)

F=forceful exertions; R=repetitive motion; P=awkward posture; ?=presence of risk factor unclear
OR=odds ratio; PRR=prevalence rate ratio, NR=not reported;
*=p<0.05

[1] 95% confidence interval expressed for the upper end of the risk measure range

The odds ratios determined from the studies ranged from 1.1 to 9.9. Several studies deserve special mention. Ohlsson *et al.*(1995, Ex. 26–868) compared 82 female industrial workers exposed to short-cycle tasks (less than 30 seconds) to 64 referents with no exposure to repetitive work. The OR for tension neck syndrome was 3.6 (95% CI: 1.5–8.8).

The NIOSH authors concluded that there was "reasonable evidence" for an association between highly repetitive work and neck/shoulder MSDs, where repetitiveness was most often defined in terms of hand activity. They also determined that there was "reasonable evidence" for an association between forceful exertion and neck/shoulder MSDs, where forceful work was conducted by the arms. They concluded there was "strong evidence" for an association between static loads and neck/shoulder MSDs, where "static load" referred to a static load of long duration, high intensity, or extreme amplitude. In many of the situations under study, workers were exposed to more than one of these physical risk factors during the course of their jobs. The NIOSH review found insufficient evidence of an association between vibration and neck disorders.

In an earlier review, Hales and Bernard (1996, Ex. 26–896) concluded that neck disorders were associated with work involving repetitive motions, forceful repetitive work, and constrained or static postures, based on consistency of association across several studies. They noted inconsistent findings regarding neck disorder and work pace, which, they suggested, may be due to the many ways work pace can be quantified. Hales and Bernard also mentioned a consistent association between wearing bifocals, awkward neck postures, and neck disorders.

Hagberg *et al.* (1995, Ex. 26–432) reviewed epidemiological studies for evidence of work-relatedness of selected musculoskeletal disorders of the neck: TOS (neurogenic form), cervical syndrome, and tension neck syndrome. In compiling a list of valid papers for their review, the researchers considered the strength of each study based on minimization of bias (selection bias, information or misclassification bias, confounding or effect modification bias) and study power. Studies that met their validity criteria were then reviewed for causality (strength of association, demonstration of temporal association, consistency of association among studies, predictive power of exposure factors, and plausibility.

Hagberg *et al.* found six cross-sectional studies of TOS (published between 1979 and 1991) that met their inclusion criteria. From those studies they found the strength of association between work and TOS to be generally weak, based on low odds ratios (ORs). Since all studies were cross-sectional in design, temporal associations could not be confirmed. There seemed to be a consistent association between repetitive work and TOS across the studies. One study demonstrated a dose-response relationship between vibration and TOS. The authors also noted an association between TOS and age. Hagberg *et al.* (1995, Ex. 26–432) concluded that the studies demonstrated the existence of a consistent association between repetitive arm movements, manual work, and TOS.

In their review, Hagberg *et al.*(1995, Ex. 26–432) found twelve cross-sectional studies and one laboratory study of tension neck syndrome (published between 1976 and 1988) that met their inclusion criteria. From those studies, Hagberg *et al.*(1995, Ex. 26–432) found the strength of association between work and tension neck syndrome to be moderate, based on ORs from 3 to 7. There seemed to be a consistent association between work with VDTs and tension neck syndrome across several studies, including a determination of an OR for tension neck syndrome of 2.0 in keyboard operators (Hagberg and Wegman 1987, Ex. 26–32). There also seemed to be consistent associations between tension neck syndrome and repetitive work and static head and arm postures. The authors also noted that tension neck syndrome was found more commonly in women, but that finding may have been confounded by differences in work. Hagberg *et al.*(1995, Ex. 26–432) concluded that the studies demonstrated the existence of a consistent association between repetitive work and tension neck syndrome caused by constrained head and arm postures. They also noted that tension neck syndrome had a high prevalence in both work and reference groups.

Three cross-sectional studies of cervical radiculopathy (published between 1979 and 1983) met the criteria of Hagberg *et al.*They observed that all studies showed a low prevalence for cervical radiculopathy. Low numbers meant wide confidence intervals, which made results difficult to interpret. They concluded that more directed research needed to be conducted in this area.

In a review of the epidemiological evidence for three neck-related MSDs, the contributors to Kourinka and Forcier (1995 Ex. 26–432) report consistent associations between exposures to static head and arm postures and outcomes of tension neck syndrome. They did not find convincing evidence of a connection between repetition and cervical radiculopathy.

A recent review of epidemiological studies by Grieco *et al.*(1998, Ex. 26–627) concluded that cervical radiculopathy had not been shown to be associated with data entry work, dockers' work, or food production assembly line work. In contrast, tension neck syndrome was linked to static postures and static loads in several studies on populations of VDT workers, typists, and sewing machine operators. Study selection criteria were not discussed in that review.

Several individual studies of workers performing heavy work (including meat carriers and miners) found increased ORs (most adjusted for age) for cervical spondylosis, as did one study of dentists. Viikari-Juntura (1997, Ex. 26–905) reviewed both epidemiological and experimental studies focused on the neck (among other regions). The author mentioned studies that showed associations between degenerative changes or neck pain and heavy work, repeated impact loading, or static work, whereas the OR for cervical spondylosis in cotton workers was 0.66 (protective). The relationships between work factors and cervical spine arthritis have not been clarified due to (1) few studies of this subject, (2) a lack of universal acceptance for the criteria (*e.g.*, symptoms, signs, imaging) used to make this diagnosis, and (3) cervical spine degenerative changes are common.

Four additional epidemiological studies that address physical work factors and neck and neck/shoulder disorders were submitted into the OSHA docket following publication of the proposal and have been added to Table V–1 (Nordander et. al. 1999, Ex. 38–408; Viikari-Juntura 2000, Ex. 500–41–50; Botha and Bridger 1998, Ex. 500–121–10; Rosecrance et al 1994, Ex. 38–203). OSHA found a few additional studies identified in the NIOSH epidemiological review for other MSDs that also addressed neck and neck/shoulder and are also included in Table V–1 (Dimberg 1989, Ex. 26–1211; Ignatious 1993, Ex. 26–1389; Skov 1996, Ex. 26–674). Two other submitted studies contained some serious methodological flaws and were not included in the table (Leclerc *et al.*, 1999, 500–118–2; Erikson *et al.*, 1999, 500–118–2).

Nordander *et al.*1999 (Ex. 38–408) reported on a cross sectional study of 13 fish processing plants, examining multiple body sites, including the neck and shoulder. Ninety one male and 165

female fish industry workers were compared to men and women with more varied work. The work was partly paid by the work done—piece work. Health outcome was based on questionnaire and physical examination. Exposure was assessed by questionnaire, videotaping of jobs, and the observational method using ALT (Arbeitwissenschaftliche Erbehungverfahren zur Tätigkeitsanalyse) along with the NIOSH lifting equation. Each work task classified according to three factors: weight of the materials handled (<1, 1<5, 5<10, 10–25, >25 kg.), cycle time (<5, 5–10, 10–60, >60); and degree of constrained neck postures (low, high, very high). Neck and shoulder diagnoses among the fish processors was found to be significantly elevated compared to the referents (OR=3.5; 95% CI 2.3–5.3). There was significantly increased prevalence of shoulder tendinitis found among women fish processors (OR from 3.4 to 4.65) compared to referents. No significant effects were found due to age, leisure time and smoking assessed by logistic regression. Job analysis found that several tasks were repetitive, performed in constrained work postures, with fast and continuous wrist and hand movements, mostly with flexed neck, arms raised and lowered intermittently. Because it involved a direct assessment of exposure and verification of neck injury by a health professional, OSHA views the study to be among the more reliable investigations.

Viikari-Juntura *et al.*2000 (Ex. 502–11) recently published findings on a longitudinal study of neck pain among a cohort of 5180 workers in a large forest industry enterprise. Participation rate was only 43% of the originally selected cohort of 7000. Nonrespondents were also followed up—there was no difference with regard to potential predictors except reporting 1.5 times difficulties in coming 5 years due to musculoskeletal health. Four repeated questionnaires were used focusing on "radiating neck pain," categorized as healthy (0–7 days), mild pain (8–30 days), and severe pain (>30 days). Validated exposure assessment questionnaires and psychosocial questionnaires were used. There were several variables related to physical strenuousness, awkward postures, repetitive movements, and stress. Results found a statistically significant dose-response relationship for neck pain and increasing number of hours working with the hands above the shoulder. The risk of neck pain also increased with increasing amounts of twisting movements, but for the combination of twisting of the trunk and stress, neck pain decreased with increasing amounts of stress.

Rosecrance (1994, Ex 38–457) conducted a cross-sectional study of 906 office and production workers from three medium sized newspaper facilities to determine the level of symptomatic workers and to compare the office and production workers. A participation rate of 72% was reported. A physical exam was given to 105 participants. Exposure was assessed by a self-reported job factor survey. The results found that workers who reported repetitive tasks had an odds ratio of 29 (CI not reported, p=0.01) of missing work due to neck symptoms compared to workers who did not report repetitive tasks. Production workers reported more job risk factors compared to office workers. Neck symptoms were the most common symptom among production workers.

Faucett and Rempel, 1994 (Ex 38–67) carried out a cross-sectional study of 150 video display terminal (VDT) operators from large metropolitan newspaper. Participation rate was low at 56%, however, non-respondents had no difference in age, duration of employment, gender, job title, or VDT training. A questionnaire-derived health outcome using a body diagram was employed. Observational exposure assessment was performed on 70 VDT workstations, completed by trained independent observers working in pairs evaluating work posture, wrist, knee and leg contact with workstation, display and seat height, angle measures of wrist, elbow, shoulder, head, trunk at the hip and thigh. Results found that 28% met symptom criteria for MSDs of the upper torso and extremities. Risk of having a MSD increased with a greater number of daily hours of VDT use. After controlling for the ergonomic factors, less decision latitude on the job and less coworker support were found to be significantly associated with certain symptoms (numbness). The limitations of this study are the low participation rate, although the non-responders were followed up and the non-specific nature of the health outcome.

Leclerc *et al.*, 1999 (Ex. 500–118–2) conducted a longitudinal study to evaluate the effects of prevention programs at the workplace aimed at reducing back, neck, and shoulder morbidity among active workers. The intervention group (294 workers) and the referent group (294 workers) were collapsed and analyzed as a whole. Health outcome was based on two questionnaires. Questions "focused more on the potential risk factors for low back pain, such as bending forward and backward, twisting, and handling of materials." The authors note that "the role of specific occupational risk factors of neck disorders, such as awkward postures of the head and neck and static postures, was not studied because these variables were not included in the questionnaire." Analyses were performed with "occupation" as a crude indicator of occupational exposure. Female gender, older age, headaches or pain in the head, psychological distress, and psychosomatic problems were predictors of neck pain. This study found that there was no significant difference in occurrence of neck pain among the different occupations—hospital workers, warehouse workers, and office workers. This is not surprising, as many studies have found increased rates of neck symptoms in these occupational groups. What is lacking in this study, as admitted by the authors, is adequate assessment of risk factors known to be associated with neck MSDs. The poor exposure assessment concerning occupational factors does not detract from the relationship of exposure to certain work factors and neck disorders. Because of its failure to address specific work factors related to neck disorders, OSHA does not regard this study as adequate and it was not included in Table V–1.

Eriksen *et al.*, 1999 (Ex. 500–118–2) carried out a community-based 4-year prospective study of 1429 working Norwegians who completed a questionnaire in 1990, and returned a second questionnaire 4 years later. The participation rate was 67% of original group in 1990; 79.8% of working group from 1990 responded to 2nd questionnaire in 1994. The health outcome was based on the Nordic questionnaire, "presence of any neck pain during the previous 12 months." Workplace exposure also relied on questionnaire data. Questions concerned work with hands over shoulder-level, static work positions, repetitive stereotypic movements, heavy lifting, sitting, standing, and high work pace. The authors note that the responders in 1994 were "less inclined to have jobs that required them to spend a large amount of time with hands above shoulder level, jobs that required a large amount of standing, and jobs that required a large amount of heavy lifting." This admission, without providing further data, makes interpretation of results difficult. It is impossible to tell whether the study sample reflects the overall original sample population. By loss of those exposed to heavy lifting or working with hands above shoulder one cannot assess whether this would have minor or major impact on the findings. Changes in job situations after 1990 were also not recorded, which would weaken association between job factors and neck pain. In responders without neck pain during the previous 12 months in 1990, the "little influence on own work situation" factor predicted neck pain during the previous 12 months (odds ratio = 2.21; 95% confidence interval, 1.18 to 4.14) and previous 7 days in 1994 (OR = 2.85; 95% confidence interval, 1.21 to 6.73) after adjustment for a series of potential confounders. Because of the serious questions with regard to changes in population exposure over time, OSHA believes the results are not interpretable and it was not included in Table V–1.

Biomechanical Evidence

In a series of biomechanical and EMG studies, Harms-Ringdahl (1986, Ex. 26–1128) demonstrated that considerable stress is generated in the ligaments and joint capsule of the cervical spine with extreme neck flexion (more than 45 degrees). The extensor muscle activity is less than in the neutral position while the load moment (or torque) is 3–4 times greater in extreme flexion.

Many hand-intensive jobs and tasks require static neck contraction to permit accuracy in task performance. Thus, significant muscle stress and fatigue may occur with maintenance of static neck postures required in many office and assembly workplace settings (Hales and Bernard 1996, Ex. 26–896; Bernard and Fine 1997, Ex. 26–1; Onishi, Sakai, and Kogi 1982, Ex. 26–991; Stock 1991, Ex. 26–1010; Westgaard and Bjorklund 1987, Ex. 26–239). In confirmation of this postulate, several EMG studies have documented the increase in neck and upper back muscle activity from static work (Erdelyi *et al.*1988, Ex. 26–619; Onishi, Sakai, and Kogi 1982, Ex. 26–991; Schuldt *et al.*1987, Ex. 26–670). Hidalgo *et al.*, 1992 (Ex. 26–631) reviewed the biomechanical literature of the neck and proposed that prolonged static contraction of neck muscles be limited to force levels at or below 1% of maximum voluntary contraction (MVC).

It has also been shown that workplace interventions to mitigate static loading of neck muscles reduce pain, time out of work due to musculoskeletal problems, and EMG measured loading. Aaraås (1994a, Ex. 26–892; 1994b, Ex. 26–62) evaluated users of video display terminals (VDTs) and assembly workers before and after ergonomic interventions consisting of changes in the workstations, tools, and work organization alterations. In assembly workers, mean static trapezius load decreased from 4.3% to 1.4% of MVC, and in VDT users, MVC declined from 2.7% to 1.6%. This was accomplished with more accessible tool placement and support for elevated arms. The median duration for sick leave resulting from MSDs dropped from 23 to 2 days per person/year. As a result of interventions, including the reduction in trapezius loading, the VDT operators also reported less intensity and duration of pain in the neck and shoulder region. The study design did not permit the determination of which intervention(s) were responsible for the decline in MVC and sick leave, but it does support the role of workplace ergonomics.

While epidemiologic studies regarding vibration and non-discogenic neck and shoulder pain have been inconclusive, there is some biomechanical evidence that vibration may affect muscle activity, and therefore could be pathogenic for neck disorders. This is a complex area, particularly since the most common shoulder diagnoses—impingement and rotator cuff tendinitis—are clinically useful but without very specific pathophysiologic meaning. In the following review (Appendix I, Ex. 27–1), the neck, but not the shoulder, is shown to be associated with a vibration-related pathology. The separation of biomechanical, physiologically adaptive, and vibration-specific factors is especially difficult for the neck and shoulder. Scapular stability and posture are the heart of large-muscle activation sequences involving efficient distal muscle group movement (Mackinnon and Novak 1997, Ex. 26–1309). Moreover, static shoulder posture, important for tool stabilization, is an important contributor to early arm fatigue (Sjogaard *et al.*1996, Ex. 26–213). Finally, the quality of a vibratory stimulus (continuous or discrete) has significant impacts on efferent recruitment and firing (Maeda *et al.*1996, Ex. 26–562). The combined effects of this complexity are not easily modeled. This is all the more reason why neck/shoulder symptoms should be carefully scrutinized when a power tool is part of the exposure background. It may prove difficult in practice to distinguish neck/shoulder symptoms that have their origins in strictly biomechanical processes from vibration-induced injuries. However, there is sufficient evidence in support of an etiology to merit intervention.

As discussed earlier, skeletal muscle activity involves oxygen and energy consumption and metabolic end-product generation. Repeated damage from overuse without adequate recovery time for repair therefore has the potential to cause permanent structural damage to skeletal muscle (Armstrong *et al.*1993, Ex. 26–1110). Thus, work pacing can reasonably be expected to affect muscle function in the neck. Froberg *et al.*(1979, Ex. 26–117) compared female production workers performing piece work vs. salaried work. Piece work was associated with increased pain in the shoulders, arms, and back, accompanied by elevated excretion of adrenalin and noradrenalin.

Unfortunately, financial incentives in piece workers may encourage workers to avoid pacing themselves in an effort to exceed production levels. Brisson *et al.*(1989, Ex. 26–937) postulated that the biomechanical stressors involved with piece work performed by female garment workers in Quebec, and the time pressures imposed by their piece work, combined to account for observed disability from MSDs. The association was related to the number of years performing piece work, and was independent of age, smoking, education, and total length of employment. In addition, some researchers suggest that workers may ignore early warning symptoms of work-related MSDs.

Conclusion

The 1997 NIOSH report concluded the following with regard to physical work factors and MSDs of the neck/shoulder region:

> There is strong evidence that working groups with high levels of static contraction, prolonged static loads, or extreme postures involving the neck/shoulder muscles are at increased risk for neck/shoulder MSDs. Consistently high ORs were found (twelve statistically significant studies with ORs over 3.0) providing evidence linking tension neck syndrome with static postures and static loads (Ex 26–1).

OSHA agrees with NIOSH with regard to the epidemiological evidence for an association between neck and neck/shoulder MSDs and physical risk factors related to forceful exertion, repetitive motion and awkward posture. Twelve out of thirteen well-conducted epidemiological investigations that directly observed or measured these factors in the workplace have found a significantly elevated risk of neck/shoulder MSDs in exposed workers verified by physical exam. This link between physical work factors and injury has been established across numerous job areas including VDT operation (Hunting 1981, Ex. 26–1276; electronics manufacture (Kilbom 1986, Ex. 500–41–75; Jonsson 1988, Ex. 26–969) and fish processing (Nordander 1999, Ex 38–408). Several reviews have concluded that specific neck disorders, such as tension neck syndrome, are

consistently associated with repetitive work and prolonged static loads and postures of the neck (Hagberg *et al.*1995, Ex. 26–432; Kourinka and Forcier 1995, Ex 26–432; Grieco *et al.*1998, Ex. 26–627).

The epidemiological evidence is supported by what is known about the biomechanics and pathogenesis of these neck disorders. It has been consistently shown by EMG that extreme postures and static loads on the neck/shoulder increase the internal force on the neck muscles Harms-Ringdahl *et al.*1986, Ex. 26–136; Higado *et al.*1992, Ex. 26–631). Prolonged and frequent stress on these structures leads to muscle fatigue and reduced blood flow. The combination of high oxygen demand and low supply creates ischemia of the surrounding tissue and neck pain. Repeated episodes of stress does not allow adequate recovery time for repair raising the potential for long-term damage to the neck muscles (Armstrong 1993, Ex. 26–1110). OSHA concludes that a combination physical work-related factors, such as repeated movements of the upper arm and shoulder, static loads on the neck/shoulder, and extreme postures of the neck, are able to cause substantial and serious impairment to the neck and shoulder.

Muscoskeletal Disorders of the Shoulder

Much of the evidence that relates physical work factors to shoulder disorders focuses on shoulder tendinitis. To understand how force, repetitive motion, and awkward postures lead to tendon injury one must understand tendon function and repair mechanisms. As muscles contract, tendons are subjected to mechanical loading and viscoelastic deformation. Tendons must have both tensile resistance to loading (to move attached bones) and elastic properties (to enable them to move around turns, as in the hand). When collagen bundles are placed under tension, they first elongate without significant increase in stress. With increased tension, they become stiffer in response to this further loading. If the load on these structures exceeds the elastic limit of the tissue (its ability to recoil to its original configuration), permanent changes occur (Ashton-Miller 1999, Ex. 26–414; Moore 1992a, Ex. 26–985; Chaffin and Andersson 1991, Ex. 26–420). During subsequent loading of the damaged tendon, less stiffness is observed. The ultimate strength of normal tendon and ligament is about 50% of that of cortical bone (Frankel and Nordin 1980, Ex. 26–1125), but structures that have exceeded the elastic limit fail at lower limits. In addition, if recovery time between contractions is too short, deformation can result in pathologic changes that decrease the tendon's ultimate strength (Thorson and Szabo 1992, Ex. 26–1171; Goldstein *et al.*1987, Ex. 26–953). Tendon exhibits additional viscoelastic properties of relaxation and creep. That is, when a tendon is subjected to prolonged elongation and loading, the magnitude of the tensile force will gradually decrease (relaxation) and the length of the tendon will gradually increase (creep) to a level of equilibrium (Chaffin and Andersson 1991, Ex. 26–420; Moore 1992a, Ex. 26–985; Woo *et al.*1994, Ex. 26–596). During repetitive loading, the tendon exhibits these properties and then recovers if there is sufficient recovery time. If the time interval between loadings does not permit restoration, then recovery can be incomplete, even if the elastic limit is not exceeded (Goldstein *et al.*1987, Ex. 26–953).

Shoulder tendinitis includes supraspinatus and bicipital tendinitis. Bicipital tendinitis results when the tendon of the biceps brachii muscle rubs on the lesser tuberosity of the humerus bone, which occurs with motion of the shoulder (glenohumeral) joint during overhead arm movements. Persons affected with this disorder experience pain and tenderness in the shoulder area during shoulder flexion, elbow extension and forearm supination, or when the elbow and arm are extended and the forearm is supinated. Supraspinatus tendinitis is also known as rotator cuff disorder, subdeltoid tendinitis, subacromial tendinitis, or partial tear of the rotator cuff. Affected individuals commonly have pain in the front of the shoulder which is accentuated when they attempt to raise the arm away from the body (abduct the arm), although other movements may also be painful.

There are multiple plausible theories for the pathogenesis of disorders of the rotator cuff. For purposes of this review, it is assumed that supraspinatus tendon tears and calcification represent endpoints of one pathological process as opposed to separate and unique endpoints. Mechanisms related to disorders of the rotator cuff complex with acute onset are excluded from this discussion (*e.g.*, strains, falls, dislocations).

The presence of a watershed or avascular zone in the supraspinatus tendon has been described and demonstrated by several investigators (Moseley and Goldie 1963, Ex. 26–306; Rothman and Parke 1965, Ex. 26–499; Rathbun and Macnab 1970, Ex. 26–1376). It is believed that the avascular zone compromises the ability of the tenocytes within this portion of the tendon to repair damage to collagen fibers or their matrix. This impaired ability to repair the tendon implies that degenerative changes within this portion of the tendon will accumulate over time; therefore, the degree and progression of tendon degeneration will increase with increasing exposure to potential sources of injury, age, or both. Potential sources of injury to the tendon's collagen fibers or matrix may be ischemic, mechanical (impingement), or physiological (contractile load).

According to the ischemia theory, the function and viability of the tenocytes within the supraspinatus tendon are compromised because they are in an avascular zone; therefore, they are unable to sustain the normal structure of the tendon over one's lifetime. This lack of maintenance manifests itself as degenerative changes within the substance of the tendon. The positive correlation between the prevalence of supraspinatus tendon degeneration and tears with age is consistent with this theory. It is not clear that task variables related to work are necessary in this pathogenetic model; however, Rothman and Macnab (1970, Ex. 26–499) postulated that shoulder adduction with neutral rotation would subject this avascular portion of the tendon to pressure from the humeral head, thus "wringing out" the blood from this already avascular area. If this were true, the duration of shoulder adduction is probably more important than the number of shoulder adductions.

Neer (1972, Ex. 26–185) proposed that the subacromial bursa and supraspinatus tendon were mechanically impinged on the underside of the anterior aspect of the acromion process or coracoacromial ligament as the shoulder approached 80 degrees abduction or flexion when internally or externally rotated. Below 80 degrees flexion or abduction, the greater tuberosity of the humerus is generally not in immediate contact with the acromion process or the coracoacromial ligament. Beyond this degree of elevation, the humeral head is displaced down and away from the acromion and the ligament, thus relieving these structures of this contact stress. This contact stress is postulated to cause disruption of collagen fibers within the tendon mechanically. This mechanism of collagen disruption may (or may not) be combined with the phenomenon of impaired healing related to the avascular zone. The critical relationship between this proposed model of supraspinatus tendon disease and biomechanical task variables is the passage of the shoulder through the 80 degrees abduction or flexion arc. Since this biomechanical stress occurs in a limited portion of these arcs, it is anticipated that the number of times the shoulder performs this task (per unit time) is more relevant than the duration of time the shoulder is in this position. Anatomical variations in the size and shape of the acromion (particularly type II [curved] and type III [hooked]) as well as hypertrophy of tissues related to the coracoacromial arch are also important factors. (Bigliani *et al.*1991, Ex. 26–603; Fu, Harner, and Klein 1991, Ex. 26–464).

Posture plays an important role in rotator cuff tendinitis of the shoulder. Work with the arm elevated more than 60 degrees from the trunk is more stressful for the supraspinatus than work performed with the arm at the trunk. As the arm is raised or abducted the supraspinatus tendon becomes in contact with the undersurface of the acromion. They are in closest proximity between 60 and 120 degrees of arm elevation (Amadio 1995, as cited in Fine and Silverstein 1998, Ex.38–444). The precise pathosphysiology of rotator cuff tendinitis is not known. However, the role of overhead work, particularly of a static nature or very forceful exertions, is likely a crucial event (Andersson 1995 and Levitz and Iannotti 1995, as cited in Fine and Silverstein, 1998, Ex. 38–444). Impingement seems important. One suggested histologic pattern is a reversible inflammatory infiltrate, with increased vascularity and edema within the rotator cuff tendons, especially the supraspinatus tendon. This process, if it becomes chronic, has been postulated as leading to degenerative changes in the tendons. Eventually, enough degeneration occurs that a minor trauma causes or seems to cause a partial rotator cuff tear (Fine and Silverstein 1998, Ex. 38–444).

Another shoulder disorder related to physical work factors is osteoarthritis of the acromioclavicular joint. Osteoarthritis refers to degenerative changes in the cervical spine that are apparent on radiological examination. A combination of high exposure to load lifting and high exposure to sports activities that engage the arm was a risk factor for shoulder tendinitis, as well as osteoarthritis of the acromioclavicular joint (Stenlund *et al.*1993, Ex. 26–1459). Kennedy, Hawkins, and Kristof (1978, Ex. 26–1135) found that 15% of competitive swimmers with repetitive overhead arm movements had significant shoulder disability, primarily due to impingement from executing butterfly and freestyle strokes.

Physical work requires both mechanical and physiological responses, for example, muscle force and energy consumption. The mechanical responses include connective tissue deformation and yielding within the muscle; which increases intramuscular pressure. Increased intramuscular pressure in turn decreases blood flow through the muscle (Armstrong *et al.*1993, Ex. 26–1110).

Nerves, vessels, and other soft tissues may be internally compressed under conditions of high-force exertions, awkward postures, static postures, and/or high velocity or acceleration of movement. For example, strong abduction or extension of the upper arm, as well as awkward postures of the neck, can compress parts of the brachioplexus under the scalene muscles and other anatomical structures. This compression can result in nerve and/or blood vessel damage or eventual damage to the tissues served by these nerves and vessels.

Static postures, postures held over a period of time to resist the force of gravity or to stabilize a work piece—are particularly stressful to the musculoskeletal system. More precisely, static postures are usually defined as requiring isometric muscle force—exertion without accompanying movement. Even with some movement, if the joint does not return to a neutral position and continual muscle force is required, the effect can be the same as a non-moving posture. Since blood vessels generally pass through the muscles they supply, static contraction of the muscle can reduce blood flow by as much as 90%. The consequent reduction in oxygen and nutrient supply and waste product clearance results in more rapid onset of fatigue and may predispose muscles and other tissues to injury. The increased intramuscular pressure exerted on neural tissue may result in chronic decrement in nerve function. The viscoelastic ligament and tendon tissues can exhibit "creep" over time, possibly reaching failure thresholds beyond which they are unable to regain resting length.

Chronic reduction of blood flow may be a mechanism by which static muscle contractions lead to MSDs. Several studies have found that the small, slow motor units in patients with chronic muscle pain show changes consistent with reduced local oxygen concentrations (Larsson *et al.*1988, Ex. 26–1140; Dennett and Fry 1988, Ex. 26–104). Reduced blood flow and disruption of the transportation of nutrients and oxygen can produce intramuscular edema (Sjogaard 1988, Ex. 26–206). The effect can be compounded in situations where recovery time between static contractions is insufficient. Eventually, a number of changes can result: muscle membrane damage, abnormal calcium homeostasis, an increase in free radicals, a rise in other inflammatory mediators, and degenerative changes (Sjogaard and Sjogaard 1998, Ex. 26–1322).

Epidemiological Evidence

In its review of the epidemiologic literature on work-related musculoskeletal disorders of the shoulder, NIOSH identified 38 epidemiologic studies that examined workplace factors and their relationship to shoulder MSDs (Bernard 1997, Ex. 26–1). These studies examined the prevalence of shoulder disorders in workers exposed to repeated abduction extension or flexion of the shoulder in combination with strenuous work involving heavy loads or elevated arms. The MSDs were usually shoulder tendinitis or a collection of symptoms defined by stiffness, pain, and weakness. Table V–2 summarizes some key aspects of these investigations, such as the occupations examined, the biomechanical risk factors the workers were exposed to, whether exposures were directly observed or measured during the study, and whether the health outcomes were verified by trained medical personnel during physical examination. Sixteen of the studies relied on direct observation or measurements of exposure and verification of shoulder injury by physical exam. EMG of the forearm flexor muscles, frequency of shoulder movements, or angle of shoulder flexion were quantitatively measured in some of these studies. Another 24 studies relied either on job title information or questionnaire to obtain exposure information and/or used self-reported symptoms to define cases of shoulder MSDs. OSHA considers these investigations to be less reliable. All twelve studies with exposure and medical verification reported statistically significant associations between shoulder disorders and the physical work factors. The odds ratios reported in these studies ranged between 1.6 and 46. The wide range in risks probably relates to differences in magnitude of exposure and case definition among the studies.

TABLE V–2.—SUMMARY OF EPIDEMIOLOGY STUDIES EXAMINING MUSCULOSKELETAL DISORDERS OF THE SHOULDER

Study	Job type studied	Physical factors	Exposure basis	Physical exam	Risk measure (95% CI) [1]
Hughes (1997) Ex. 26–907	Aluminum smelter	F/R?/P	Checklist	Yes	OR=46 * (3–550)
Herberts (1981) Ex. 26–51; (1984) Ex. 26–960	Shipyard welding	F/R?/P	Observation EMG	Yes	PRR=15–18 * (14–22)
Bjelle (1979) Ex. 26–1112	Industry case control	F?/R/P	Observation	Yes	OR=10.6 * (2.3–54.9)
Frost (1999) Ex. 500–205–4	Slaughter-house	F/R/P	Observation	Yes	OR=5.3–7.9 * (2.9–21.2)
Onishi (1976) Ex. 26–1222	Multiple jobs	F/R/P	Observation cycle time.	Yes	OR=1.1–6.0 * (3.0–12.2)
Ohlsson (1995) Ex. 26–866	Assembly line	F?/R/P	Flexion cycle time	Yes	OR=4.2 * (1.4–13.2)
Baron (1991) Ex. 26–967	Grocery checking	F/R/P	Job titles	Yes	OR=3.9 * (1.4–11.0)
Ohlsson (1994) Ex. 26–1189	Fish processing	F/R/P	Observation freq./angles.	Yes	OR=3.5 * (1.6–7.2)
Nordander (1999) Ex. 38–408	Fish processing	F?/R/P	Observation	Yes	OR=3.5 * (2 5–5.3)
Punnet (2000) Ex. 500–41–109	Auto workers case/control.	F/R/P	Cycle/flexionlift load	Yes	OR=1.1–4.0 * (1.7–9.4)
Chiang (1993) Ex. 26–1117	Fish processing	F/R/P?	Cycle time EMG	Yes	OR=1.6–1.8 * (1.2–2.5)
Kilbom (1987) Ex. 26–1277; Jonsson (1988) Ex. 26–833.	Electronics manufacture.	F/R/P	MVC, flexion cycle time.	Yes	NR *
Bjelle (1981) Ex. 26–1519	Industrial plant	F/R/P	Flexion EMG	Yes	NR *
Sakakibara (1995) Ex. 26–800	Fruit bagging	F?/R?/P	Observation arm elevation.	Yes	NR *
Zetterberg (1997) Ex. 26–899	Auto assembly	F/P	Cycle time tool weight.	Yes	NR
English (1995) Ex. 26–848	Patients case/ control.	F/R/P	Question- naire	Yes	OR=2.3 * (NR)
Andersen (1993) Ex. 26–1451	Sewing machine	F/R/P?	Job titles	No	OR=3.2 * (1.7–7.4)
Andersen (1993) Ex. 26–1502	Sewing machine	F/R/P?	Job titles	Yes	NR *
Stenlund (1992) Ex. 26–733; (1993) Ex. 26–1459	Rockblasting bricklaying.	V/F/R?	Questionaire	Yes	OR=0.4–4.0 * (1.8–9.2)
Wells (1983) Ex. 26–729	Letter carrier	F/R?/P	Job title	No	OR=5.7 * (2.1–17.8)
Hoekstra (1994) Ex. 26–725	Video terminal	R/P	Observation	No	OR=5.1 * (1.7–15.5)
Schibye (1995) Ex. 26–1463	Sewing machine	F?/R/P?	Questionaire	No	NR
Burdorf (1991) Ex. 26–454	Riveting	V	Tool aceleration	No	OR=1.5 * (NR)
Bergenudd (1988) Ex. 26–1342	Multiple industries	F/R?/P?	Questionnaire	No	NR
Burt (1990) Ex. 26–698	Computer entry	R/P	Job title	No	OR=2.6–4.1 * (1.8–9.4)
Floodmark (1992) Ex. 26–1209	Vent shaft production	F?/R?/P?	Job title	No	OR=2.2 * (1.4–4.4)
Hales (1989) Ex. DC–139–D	Poultry processing	F/R	Job title	Yes	OR=0.9–3.8 * (0.6–22.8)
Hales (1994) Ex. 26–131	Telecommunication	R/P	Questionnaire	Yes	NR
Ignatius (1993) Ex. 26–1389	Postal work	F/R/P	Job title	No	OR=1.8–2.2 * (1.5–3.1)
Kiken (1990) Ex. 26–430	Poultry processing	F/R/P?	Job title	Yes	OR=1.6–4.0 (0.6–29)
Kvamstrom (1983) Ex. 26–1201	Factory/office	F/R/P?	Questionnaire	Yes	RR=2.2–5.4 (NR)
McCormick (1990) Ex. 26–1334	Textile	F/R/P?	Job title	Yes	OR=1.1–1.3 (0.5–3.8)
Ohara (1976) Ex. 26–1	Cash register	F?/R?/P?	Job title	Yes	OR=1.7–2.2 * (1.4–3.5)
Ohlsson (1989) Ex. 26–1290	Auto assembly	F/R/P?	Job title	No	OR=2.0–3.4 * (1.6–7.1)
Punnett (1985) Ex. 26–995	Garment	R/P?	Job title	Yes	OR=2.2 * (1.0–4.9)
Rossignol (1987) Ex. 26–804	Computer operation	R/P	Questionnaire	No	OR=2.5–4.8 * (1.6–17.2)
Sweeney (1994) Cited Ex. 26–1	Sign language interpreter.	R/P?	Questionnaire	Yes	OR=2.5 (0.8–8.2)
De Zwart (1997) Ex. 26–617	Various occupations	F/R?/P?	Questionnaire	No	OR=1.25–2.5 * (p<0.001)

TABLE V–2.—SUMMARY OF EPIDEMIOLOGY STUDIES EXAMINING MUSCULOSKELETAL DISORDERS OF THE SHOULDER—Continued

Study	Job type studied	Physical factors	Exposure basis	Physical exam	Risk measure (95% CI)[1]
LeMasters (1998) Ex. 500–121–44; Bhattacharya (1997) Ex. 500–121–7; Booth-Jones (1998) Ex. 500–121–9.	Carpenters	F/R/P	Observation, measurement.	Only small subset.	OR=2.3–3.2* (1.1–8.9)
Pope (1997) Ex. 32–137–1–4	Various occupations	F/R?/P	Questionnaire	No	OR=2.1–5.5* (1.8–17.4)
Botha (1998) Ex. 500–121–10	Nurses	F/R?/P	Questionnaire, observation.	No	NR
De Joode (1997) Ex. 500–121–72	Ship maintenance	F/R?/P	Strain gauge	No	RI=1.7–3.9 (NR)

F=forceful exertions; R=repetitive motion; P=awkward posture; IR=incidence rate; OR=odds ratio; PRR=prevalence rate ratio; RI=risk index; NR=not reported; ?=presence of risk factor unclear.

*$p<0.05$.

[1] 95% confidence interval expressed for the upper end of the risk measure range.

The NIOSH noted several well-conducted studies that provided evidence of an exposure—response and temporal relationships. Chiang *et al.*(1993, Ex. 26–1117) divided 207 fish processing workers into three exposure groups based on EMG measurements of forearm flexor muscles and cycle time measurements of shoulder movements of representative job tasks. Exposure groups were: (1) Low force, low repetition (comparison group); (2) high force or high repetition; and (3) high force and high repetition. Shoulder girdle pain was the health outcome as defined by symptoms and palpable hardenings upon physical examination. The results showed a significant increasing trend in the prevalence of shoulder pain from group 1 (10 percent) to group 3 (50 percent).

In another cross-sectional study, Ohlsson *et al.*(1995, Ex. 26–868) compared a group of 82 women who performed industrial assembly work requiring repetitive arm movements with static muscular work of the neck/shoulder with a referent group of unexposed women. The frequency, duration, and critical angles of movement were measured from videotape and observation. Shoulder MSDs such as tendinitis, acromicroclavicular syndrome, and frozen shoulder were determined from symptoms and physical exam. The risk of shoulder tendinitis in the exposed women was significantly greater than the unexposed women (OR=4.2; 95% CI 1.4–13.2). The neck and shoulder disorders were also significantly ($p<0.05$) associated with the number and duration of shoulder elevations greater than 60 degrees. The study of Bjelle *et al.*(1981, Ex. 26–1519) also found that the frequency of shoulder abduction and forward flexion past 60 degrees was significantly greater ($p<0.05$) for cases with neck/shoulder disorders than for controls.

In a prospective study design, Kilbom *et al.*(1986, Ex. 500–41–75; 1987, Ex. 26–1277) assessed the health and exposure status of 06 electronics manufacturing plant employees over a two year period. The employees were evaluated for maximum voluntary isometric contraction (MVC) of the forearm flexors and shoulder strength. Videotape was used to analyze cycle time and working postures and movements. Shoulder MSDs were determined annually based on interview and physical examination assessing tenderness on palpation as well as pain and restriction upon shoulder movement. Symptom severity was also scored. Logistic regression analysis showed significant relationship ($p<0.05$) between MSDs and percentage of work cycle time with upper arm elevated. The number of elevations per hour was a strong predictor for increases in symptom severity over the study period. A follow-up investigation also found that the percent of the work cycle spent with the shoulder elevated was negatively associated with remaining symptom-free (Jonsson *et al.*1988, Ex. 26–833).

NIOSH concluded that there was evidence for a positive association between highly repetitive work and shoulder MSDs. Only three studies specifically address the health outcome of shoulder tendinitis and these studies involve combined exposure to repetition with awkward shoulder postures or static shoulder loads. The other six studies with significant positive associations dealt primarily with symptoms. There was evidence for a relationship between repeated or sustained shoulder posture with greater than 60 degrees of flexion and abduction and shoulders MSDs. This holds for both shoulder tendinitis and nonspecific shoulder pain. NIOSH found insufficient evidence for a positive association between either force or vibration and shoulder MSDs because the studies that principally examined this risk factor relied on self-reported questionnaires for assessment of exposure and health outcome.

Twelve studies that address physical work factors and shoulder MSDs were submitted into the OSHA docket following publication of the proposal (Zetterberg *et al.*Ex. 26–899; De Zwart *et al.*1997, Ex. 500–121–18; Punnett *et al.*2000, Ex. 500–41–109; LeMasters *et al.*Ex. 500–121–9; Bhattacharya *et al.*1997, Ex. 500–121–7; Booth-Jones *et al.*1998; Ex. 500–121–44; Pope *et al.*1997, Ex. 500–71–42; Frost and Anderson 1999, Ex. 500–41–57; Burdorf *et al.*1997, Ex. 500–71–24; Van Wendel de Joode 1997, Ex. 500–121–72; Botha and Bridger 1998, Ex. 500–121–10). Many of these studies showed that high physical loads in combination with elevated shoulder positions were associated with increased prevalence of shoulder disorders (Ex. 500–121–9; Ex. 500–121–7; Ex. 500–121–44; Ex. 500–41–57; Ex. 500–41–109; Ex. 500–121–18; Ex. 500–121–10; Ex. 500–121–72; Ex. 26–899). For example, Frost and Anderson (Ex. 500–41–57) found a strong significant association (OR>5) among meat packers who worked extensively with arm elevation greater than 30 degrees more than 10 times per minute and prevalence of rotor cuff tendinitis compared to those with no shoulder elevation. The risk increased with cumulative exposure years. Punnett *et al.*(Ex. 500–41–109) reported a significant association between repeated shoulder abduction/flexion and shoulder disorders. There was evidence of exposure—response with frequency of shoulder movements to 90 degrees flexion or abduction. Shoulder MSDs were confirmed by physical examination in both studies.

Biomechanical Evidence

Rohmert (1973, Ex. 26–580) found that muscle contractions can be maintained for prolonged periods if kept below 20% of MVC. But other investigators (Westgaard and Aaras 1984, Ex. 26–1026) found chronic deleterious effects of contractions even if they are lower than 5% of MVC. This latter finding is supported by the observation that low-level static loading (such as shoulder loading in keyboard tasks) is associated with shoulder MSDs (Aaras *et al.*1998, Ex. 26–597). The supraspinatus muscle, a muscle severely constrained by bone and ligamentous tissue, demonstrates increased intramuscular pressure during small amounts of shoulder abduction or flexion (Jarvholm *et al.*1990, Ex. 26–285). Tichauer (1966, Ex. 26–1172) looked at the impact of arm posture on trapezius stress. He noted that arm abduction to 40 degrees increased stress in the upper trapezius muscle eight times as much as when the arm was abducted to 20 degrees, and 64 times as much as at a 10 degrees. These study results suggests the possibility of chronic blood vessel and nerve compression during static tasks. Other laboratory evidence for muscle and tendon damage in these areas, as well as secondary compression of blood vessels and nerves, lends support to the connection between work-related static postural requirements and the development of these disorders.

Biomechanical studies of shoulder posture show that muscle activity and subjective fatigue in the shoulder region increases as a function of shoulder elevation angle and load moment at the shoulder joint. There is also evidence of localized muscle fatigue based on a shift in the MPF of the EMG spectrum. Prolonged periods of neck flexion cause increased levels of discomfort and increased EMG activity in the neck extensor muscles.

Herberts, Kadefors, and Broman (1980, Ex. 26–1129) measured EMG activity as a function of static shoulder posture in a laboratory study using 10 male subjects. The primary independent variable was posture. Subjects held a 2-kg load in the hand at waist, shoulder, and overhead heights using different combinations of flexion and abduction at the shoulder. EMG activity was measured using wire electrodes in the anterior and posterior portions of the deltoid, the supraspinatus, the infraspinatus, and the upper portion of the trapezius. Localized fatigue (a shift in EMG mean power frequency [MPF]) was observed in all muscle groups during shoulder-level and overhead work ($p<.05$) during the 1-minute trials. Even at waist level, fatigue was observed when the upper arm was abducted at an angle of 30 degrees.

Hagberg (1981, Ex. 26–955) measured EMG activity and discomfort in the shoulder in a laboratory study of six female subjects. Surface electrodes recorded EMG activity in the descending trapezius, anterior deltoid, and biceps brachii while subjects performed repeated flexion of the shoulder every 4 seconds to an angle of 90 degrees for a period of 60 minutes. Heart rate and perceived exertion using Borg's scale was also recorded. Hand load was the independent variable: weights of 0.6 kg, 1.6 kg, and 3.1 kg were held in the hand (in addition to a no-load treatment). Heart rate and perceived increased over the course of the trial. Heart rate and perceived were greater when a load was held in the hands. EMG activity in the trapezius was closely correlated with the external moment at the shoulder joint.

Oberg, Sandsjo, and Kadefors (1994, Ex. 26–867) measured EMG activity and subjective discomfort in the shoulder-neck region in a laboratory study of 20 subjects (10 male, 10 female). Surface electrodes measured EMG activity in the right trapezius muscle while subjects abducted the arm to a 90 degree angle. Subjects reported fatigue using the Borg 10-point scale. Each subject was tested under two conditions: a 5-minute test with no load in the hand and a 2.5 minute test with a 2-kg load in the hand. At the no-load level, there was no change in EMG MPF over the course of the trial; however, subjective fatigue increased. With the 2-kg. load, there was a small linear decrease in MPF over the trial and there was a negative correlation between MPF and the Borg rating ® = 0.46). The authors concluded that MPF was not a good proxy for perceived fatigue during low-intensity static exertions of the shoulder.

Using EMG, several investigators have demonstrated that the supraspinatus muscle is activated throughout most of the range of motion of the shoulder. Herberts and Kadefors (1976, Ex. 26–470) and Herberts *et al.*(1984), Ex. 26–960 postulated that the level of tension in the supraspinatus muscle during arm elevation (with or without holding an object in the hands) was sufficiently high to increase intramuscular pressure to a point sufficient to compromise intramuscular circulation. As reported by Edwards, Hill, and McDonell (1999; Ex. 26–1232), intramuscular pressures of 20 mm Hg may be sufficient to prevent muscular perfusion. Since many of the blood vessels within the tendon are longitudinal extensions of the blood vessels in the muscle belly, reduced perfusion of the intramuscular blood vessels implies reduced perfusion of the intratendinous blood vessels. If this reduced perfusion is sustained for sufficient durations of time, the tenocytes or other tendon components are susceptible to ischemic injury. In terms of biomechanical task variables, experimental data suggest that overhead work may cause intramuscular pressures capable of reducing intramuscular perfusion. Lifting combined with arm elevation (shoulder load) also contributes to the magnitude of supraspinatus muscle activation. From a temporal perspective, this proposed model is more related to the duration of the intramuscular pressure than to its frequency.

After reviewing the scientific literature, Winkel and Westgaard (1992a, Ex. 26–1163) recommended less than 4 hours of work requiring overhead or extended reach postures. For continuous work, they recommended exposure times of one hour or less, particularly if the work involved highly repetitive tasks, low worker control, or a lack of alternating tasks. When large forces are also exerted, they recommended that the exposure time should be even less.

Wiker, Chaffin and Langolf (1999; Ex. 26–1028) used psychophysical methods to investigate the relationship between strength capacity of the shoulder complex and fatigue/discomfort induced by sustained awkward arm postures in simulated light assembly work. Awkward shoulder postures (arms above shoulder level) produced severe discomfort at less than 10% MVC within one hour and were unrelated to subject strength. These authors recommended elimination of overhead work even in light-weight manual assembly environments, irrespective of individual worker strength or anthropometry.

Conclusion

The 1997 NIOSH report made the following statement with regard to the epidemiological evidence that links physical work factors and shoulder tendinitis:

> The evidence for specific shoulder postures is strongest where there is combined exposure to several physical factors like holding a tool while overhead. The strength of the association was positive and consistent in six studies that used diagnosed cases of shoulder tendinitis or a combination of symptoms and physical findings consistent with tendinitis as the health outcome (Ex. 26–1).

OSHA agrees with NIOSH with regard to the epidemiological evidence for an association between shoulder tendinitis and a combination of physical risk factors related to sustained or repeated shoulder flexion and abduction, particularly when it includes an additional static hand load such as working overhead. Fifteen out of sixteen well-conducted epidemiological investigations that directly observed or measured these factors in the workplace have found a significantly elevated risk of shoulder MSDs in exposed workers verified by physical exam. This link between physical work factors and injury has been established across numerous job areas including assembly line work (Punnett et al.1998, Ex. 38–155; Ohlsson et. al. 1995, Ex. 26–868), electronics manufacture (Kilbom 1986, Ex. 500–41–75; Jonsson 1988, Ex. 26–969) and fish processing (Nordander *et al.*1999, Ex 38–408; Chiang *et al.*1993).

The epidemiological evidence is supported by biomechanical studies and the pathogenesis of these shoulder disorders. It has been consistently shown by EMG that fatigue in the shoulder muscles occurs with abduction and flexion of the shoulder. Addition of a static load or requiring the arm/shoulder motion be performed repeatedly merely increases both muscle fatigue and perceived discomfort. Over time, these repeated actions stress the tendons in the shoulder causing gradual loss of elasticity and strength. Once the damage exceeds the reparative capacity of the tissue, ischemia sets in and the tendon becomes inflamed, resulting in a chronic tendinitis. The rotator cuff is particularly vulnerable to this pathology since muscles and tendons are already somewhat constrained by ligaments and bone. Severe postures can result in impingement of nerves and blood vessels further aggravating the injury. OSHA concludes that sustained or repeated exertions with the arms and shoulders in awkward postures, such as raised overhead, can increase the risk of substantial and serious impairment to the shoulder. During OSHA's hearing on it's proposal, a nurse who injured her back at work provided compelling testimony. Maggie Flannigan, a registered nurse with 19 years experience in various newborn ICUs (intensive care units) across the country told her story for inclusion in OSHA's rulemaking record. Ms. Flannigan reported having back, neck and shoulder pain for years while working and also after work. Then, while moving a 75-pound monitor down from, then back onto a five-foot high shelf, she sustained a severe injury to her upper back and shoulders. Ms. Flannigan said that other nurses had been injured doing similar tasks, but because

> when people think of newborn ICU, they think of, okay, you've got a one-pound baby, so where are your stressors coming from? And they don't realize that we are responding to alarms in high places, that we're doing awkward postures and reaches, and we're pushing heavy equipment, and then sometimes we actually lift heavy equipment which, in my case, gave me a back injury.

It took Ms. Flannigan eight months of treatment to recover and she is fearful of re-injury:

> I'm fearful of what's going to happen to me as I age. And I'm also fearful of losing my ability to work as a nurse. I love my profession. I wouldn't trade it. * * * Since I've been injured at work, my family really suffered. I couldn't bathe my children. I couldn't dress them, couldn't do the laundry. My five-year-old buckled my three-year-old in the car seat if I had to drive. He pushed the cart at the grocery store—my five-year-old pushed the shopping cart.

Ms. Flannigan stated further :

> I know I'm not the first one hurt at my job, but what I can't live with is I won't be the last unless we start protecting American workers immediately with this ergonomic proposal so we can remove the ergonomic hazards or reduce them in the workplace. American workers deserve a place of employment free from recognized hazards because when a worker develops an MSD, it's not just a lost workday. It can be a life lost forever to pain and disability.

D. Disorders of the Upper Extremities

This section summarizes the evidence that exposure to physical risk factors at work contribute to the pathogenesis of specific musculoskeletal disorders (MSDs) of the upper extremities. In this section, the upper extremities of interest are the elbow, forearm, wrist, and hand. The bulk of the evidence demonstrating a work-related risk center around five MSD classifications; these are epicondylitis, tendinitis of the hand and wrist, carpal tunnel syndrome, hand-arm vibration syndrome, and hypothenar hammer syndrome. There is an impressive body of data that address the role of three biomechanical risk factors in epicondylitis, tendinitis, and carpal tunnel syndrome. These risk factors are force exerted on the muscle, tendons, and nerves; repetitive motion involving the hands, wrists, and forearms; and awkward postures of the wrist and arm. Exposure to these factors often occurs concurrently in occupational settings and the evidence shows that the risk of injury is greatest when more than one factor is present. There are also studies that relate another biomechanical work factor, vibration from the use of hand-held power tools, to an increased risk of carpal tunnel syndrome and hand-arm vibration syndrome. Repeated impact or contact stress, as well as vibration, have been implicated in the development of hypothenar hammer syndrome. Contact stress can, itself, be viewed as a specific combination of repetitive motion and force applied directly to a localized area of tissue, in this case the palm.

There are several types of evidence that continue to support force, repetition, awkward posture, and vibration as causative factors for MSDs of the upper extremities. Information on pathophysiology provides evidence that links exposure to risk factors to the physiological, anatomical, and pathological alterations in soft tissues of the upper extremities. This speaks to the biologic plausibility that work-related risk factors contribute to these injuries. There is voluminous epidemiological data that provide evidence of associations between worker exposure to the identified risk factors and the occurrence of upper extremity MSDs. Some of these studies recently have been reviewed by NIOSH (Bernard and Fine 1997, Ex. 26–1) and were discussed by OSHA in the Health Effects Appendicies to the proposed rule (Ex. 27–1). For the final rule, OSHA has evaluated many additional epidemiologic studies that were entered into the record by many rulemaking participants.

Finally, there is biomechanical and psychophysical laboratory research that complement and corroborate the epidemiological evidence. These approaches are able to directly link exposure to ergonomic risk factors to biomechanical and subjective measurements of tissue response under a more controlled set of simulated work conditions. This evidence derives from studies reviewed in the Health Effects Appendices of the Proposed Rule (Ex. 27–1) and testimony of the many expert scientists that appeared at OSHA's rulemaking hearing. The evidence for each specific MSD covered in this section is discussed in the parts that follow.

Epicondylitis

Epicondylitis is a form of tendinitis that affects the forearm extensor muscle-tendon units that extend from the hand and wrist to the epicondyle (elbow). The most common type is lateral epicondylitis (known as "tennis elbow") where the fibrous tissue at the bone-tendon junction (usually the extensor carpi radialis brevis muscle/tendon) on the outer elbow is inflamed. This is believed to be caused by repeated microrupture of the tendon from overuse of the muscles that control the

wrists and fingers. Clinical case reports have noted that patients with lateral epicondylitis were often in occupations that involved repetitive, forceful work, particularly repeated pronation and supination movements with the elbow fully extended. For example, in one case series it was reported that 48 percent of patients with lateral epicondylitis of unknown origin had occupations that involved gripping tools with consequent repetitive supination/pronation of the forearm (Sinclair 1965, Ex. 26–736). In a second smaller group of epicondylitis patients reported on in the same publication, 88 percent worked in jobs with constant gripping or repetitive movements.

National surveillance data consistently show that the incidence of this injury is greatest in occupations requiring manually intensive demands on the upper extremities in a dynamic work environment, such as mechanics, butchers, and construction workers. This body of evidence provides ample biological plausibility to the notion that force, repetition, and awkward posture can contribute to this MSD. The interplay between pathophysiology and physical work factors is concisely summarized by Dr. Niklas Krause in his written testimony on the proposed ergonomic standard (Ex. 37–15).

> There always seems to be a mechanical overuse component in MSDs. Tissues react to mechanical stress or overuse or microtraumitization (whatever term is being used) with inflammation leading to edema, swelling, pain, and local repair mechanisms that lead to stiffness and reduced muscle elasticity (probably due to microadhesions of muscle and tendon sheets), inactivity, loss of strength, and, habitual guarding postures, which in turn set the stage for overuse, and so on, in increments. That is why we call these MSDs "cumulative trauma disorders". My work on the pathogenesis of the tennis elbow measured the impact of these physiological changes, *i.e.*, increased internal workload or muscle resistance due to reduced tissue elasticity leading to electromyographically detectable recruitment of ever more muscle fibers for the same amount of external workload (which was held constant in these electromyographic studies of isometric muscle action). This increased recruitment of more muscle fibers makes the patient more vulnerable to overexertion at even lower levels of external physical demands * * * until the patient is unable to even lift a cup. [Ex. 37–15]

In a chapter of the *Textbook of Clinical Occupational and Environmental Medicine* (1994, Ex. 38–440), Dr. Martin Cherniak described the symptoms and disabling nature of epicondylitis:

> The characteristic symptoms are pain with lifting , gripping, and wrist extension.* * * Because grip and extension are so central to many jobs, lateral epicondylitis is a condition that can be irreconcilably chronic and produce major and undesirable changes in life and work, despite its seeming mundane nature. [Ex. 38–440, pp. 384–385]

Epidemiological Evidence

NIOSH reviewed 18 cross-sectional studies and one cohort study that addressed workplace risk factors and elbow MSDs. Table V–3 summarizes some key aspects of these investigations, such as the occupations examined, the biomechanical risk factors to which workers were exposed, whether exposures were directly observed or measured during the study, and whether the health outcomes were verified by trained medical personnel during physical examination. Most of the studies compared the prevalence of epicondylitis in workers with jobs known to have highly repetitive, forceful tasks (*e.g.* meat and fish processing) to those engaged in less repetitive, forceful work (*e.g.* office workers). In some cases, the work also involved awkward hand and wrist postures. In almost all the studies, workers were concurrently exposed to a combination of 2 or 3 factors. One study specifically examined vibration from the use of chain saws. Eleven of the studies based case definition on physical examination and worker exposure on observational analysis. Diagnosis of epicondylitis was consistent across studies and required the presence of pain on palpation of the epicondylar area and pain at the elbow upon resisted movement of the wrist. The existence of work-related risk factors was generally made based on job/task observation. Some studies videotaped job tasks and estimated cycle times, static loading on the forearm, and wrist posture in order to qualitatively group workers by exposure intensity. Other studies more subjectively evaluated risk factor exposure by job observation alone. Seven cross-sectional studies reviewed by NIOSH relied strictly on self-reports of symptoms or exposure; OSHA considers these investigations to be less reliable.

TABLE V–3.—SUMMARY OF EPIDEMIOLOGY STUDIES EXAMINING EPICONDYLITIS

Study	Job type studied	Physical factors	Exposure basis	Physical exam	Risk Measure (95% CI) [1]
Hughes (1997) Ex. 26–907	Aluminum smelter	F/R?/P	Checklist	Yes	OR=37* (3–470)
Roquelaure (1996) Ex. 500–41–111	Manufacturing	F/R/P	Checklist	Yes	OR=7.7–16.0* (2.2–147)
Kurppa (1991) Ex. 26–53	Meat processing	F/R/P?	Observation	Yes	IR=6.7* (3.3–13.9)
Chiang (1993) Ex. 26–1117	Fish processing	F/R/P?	Cycle time EMG	Yes	OR=1.2–6.7* (1.6–32.7)
Moore (1994) Ex. 26–1364	Meat processing	F/R/P	Measurement	Yes	OR=5.5* (1.5–62)
Bovenzi (1991) Ex. 26–1433	Forestry	V	Measurement	Yes	OR=4.9* (1.3–56)
SHARP (1993) Ex. 500–41–116	Poultry processing	F/R/P?	Measurement	Yes	NR* (p<0.002)
Dimberg (1987) Ex. 26–945	Automotive	F/R/P	Observation	Yes	NR*
Dimberg (1989) Ex. 26–1211	Automotive	F/R/P	Observation	Yes	NR
Ritz (1995) Ex. 26–1473	Utilities	F/R?/P?	Observation	Yes	OR=1.2–1.7* (1.0–2.7)
Luopajarvi (1979) Ex. 26–56	Food production	F/R/P	Measurement	Yes	OR=2.7 (0.7–15.9)
Baron (1991) Ex. 26–697	Grocery checking	F/R/P	Measurement	Yes	OR=2.3 (0.5–11)
Viikari-Juntura (1991) Ex. 26–1197	Meat processing	F/R/P?	Observation	Yes	OR=0.88 (0.3–2.8)

TABLE V–3.—SUMMARY OF EPIDEMIOLOGY STUDIES EXAMINING EPICONDYLITIS—Continued

Study	Job type studied	Physical factors	Exposure basis	Physical exam	Risk Measure (95% CI)[1]
Roto (1984) Ex. 26–666	Meat cutting	F/R/P?	Job title	Yes	OR=6.4* (1.0–41)
Hoekstra (1994) Ex. 26–725	Video terminal	R/P	Observation	No	OR=4.0* (1.2–13)
Burt (1990) Ex. 26–698	Computer entry	R/P	Job title	No	OR=2.8*) Ex. 26–1.4–5.7)
Punnett (1985) Ex. 26–995	Garment	R/P?	Job title	No	OR=2.4* (1.2–4.2)
Ohlsson (1989) Ex. 26–1290	Assembly line	F?/R/P?	Job title	No	OR=1.5–2.8 (0.8–10.7)
Andersen (1993) Ex. 26–1451	Sewing machine	F/R/P?	Observation	No	OR=1.7 (0.9–3.3)
McCormack (1990) Ex. 26–1334	Textile	F/R/P?	Job title	Yes	OR=0.5–1.2 (0.5–3.4)
Bystrom (1995) Ex. 26–897	Auto assembly	F/R/P	Job title	Yes	OR=0.7 (0.04–1.7)

F=forceful exertions; R=repetitive motion; P=awkward posture; ?=presence of risk factor unclear.
IR=incidence rate; OR=odds ratio; NR=not reported.
*=$p<0.05$.
[1] 95% confidence interval expressed for the upper end of the risk measure range.

Seven of the 11 studies that relied on objective exposure assessments and medical confirmation of epicondylitis found statistically significant associations between exposure to work-related risk factors and risk of epicondylitis. The most reliable odds ratios (ORs) ranged between 1.0 to 5.5. Some studies deserve special mention. One study was able to divide fish processing workers into a low-force/low-repetition group, a high-force *or* high-repetition group, and a high-force *and* high-repetition group based on observed cycle times and hand forces from electromyography (EMG) recordings of the forearm flexor muscles (Chiang *et al.*1993, Ex. 26–1117). An increasing trend was found in prevalence of epicondylitis with increased exposure intensity (not statistically significant). There was a significant difference between males in the highest exposed group and males in the lowest exposed group (OR=6.75; 95% CI 1.6–32.7), but this trend was not observed among female workers (OR=1.4; 95% CI 0.3–5.6). A prospective cohort study grouped meat processing workers into those engaged in strenuous (primarily cutters and packers) and non-strenuous work (primarily office work) based on repetitive and forceful tasks (Kurppa *et al.* 1991, Ex. 26–53). They reported a significantly increased incidence ratio (6.7; 95% CI 3.3–13.9) of epicondylitis among workers in strenuous jobs over the 31-month follow-up period. Because of the prospective study design, this study provided direct evidence of a temporal relationship between exposure to biomechanical risk factors and the increased incidence of epicondylitis.

One study evaluated vibration as a risk factor for epicondylitis and reported a significantly greater prevalence of epicondylitis (OR = 4.9; 95% CI 1.3–56) in forestry operators using chain saws compared to a comparison group of maintenance workers (Bovenzi *et al.*1991, Ex. 26–1433).

Evidence of exposure-response trends in the epicondylitis literature is limited because of the preponderance of studies that relied on dichotomous comparisons of exposed versus unexposed workers; however, one study found an increase (not statistically significant) in prevalence with the number of hours per week working as a grocery checker (Baron *et al.*1991, Ex. 26–697). Another reported a positive (not statistically significant) exposure-response relationship between duration of exposure to gas and waterworks jobs regarded as stressful to the elbow (Ritz 1995, Ex. 26–1473).

Some unusually high ORs that were reported by a few studies and contained in the NIOSH (1997, Ex. 26–1) review may have been overstated due to bias. For example, one study of aluminum workers reported an OR of 37 between elbow/forearm disorders and the number of years of forearm twisting; however, the overall participation rate in the study was only 55 percent, leaving open the possibility of selection bias (Hughs and Silverstein 1997, Ex. 26–53). The cohort study by Kurppa *et al.*(1991, Ex. 26–53) reported an epicondylitis incidence rate (IR) of 6.7 for workers performing strenuous tasks but counted recurrences in the same elbow as if they were new cases. Reanalysis by NIOSH placed the IR at 5.5 among workers with strenuous jobs versus those with non-strenuous jobs after correcting for recurrent cases.

A few studies reported ORs between 1–3 that were not statistically significant (Baron *et al.*1991, Ex. 26–697; Luopajarvi *et al.*1979, Ex. 26–56). The low risk ratios reported in these studies may reflect the likelihood that the occupations studied (grocery checkers and assembly line food packers) were associated with relatively low forces directed to the forearm extensors combined with insufficient repetitiveness, as compared to other jobs that involve higher forces and more repetition, such as meat cutters/packers where higher prevalence rates of epicondylitis have been found (Moore and Garg 1994, Ex. 26–1364). In addition, cross-sectional studies are often subject to the "healthy worker" effect because of the exclusion of injured workers who may have left the workforce at the time a study was conducted. This can sometimes lead to an underestimation of prevalence.

Most studies adequately controlled for the important confounder of age but the contribution of non-occupational injury to the elbow was often not addressed among groups of workers. The large number of studies reporting a positive association with exposure make it unlikely that non-occupational injuries were an important confounder. Dr. Cherniak emphasized the importance of work rather than non-work activities in the etiology of epicondylitis: "Its popular epithet of tennis elbow notwithstanding, it is a common condition among industrial workers and is not so common among players of racquet sports." [Ex. 38–440, p. 384]

NIOSH concluded that there was some evidence of an association between exposure to force and epicondylitis based on the existence of several studies with quantitative measures of load on the hand/forearm that showed strong ORs (>5) for this risk factor (Moore and Garg 1994, Ex. 26–1364; Chiang *et al.*1993, Ex. 26–1117). NIOSH concluded there was insufficient evidence of an association between epicondylitis and repetition or awkward posture *alone* based on an inadequate number of studies that examined these risk factors as the dominant exposure factor, particularly in any quantitative fashion. However, it is clear that, in many of the epidmiological studies of epicondylitis, repetition and, in some cases awkward posture, accompanied exposure to force (see Table V–3).

Two additional epidemiological studies that address physical work factors and elbow disorders were submitted to the OSHA docket following publication of the proposal (Roquelaure *et al.*1996, Ex. 500–41–111; SHARP 1993, Ex. 500–41–116), which are summarized below and included in Table V–3. Both studies followed an adequate study design, directly observed or measured exposure to workers, and used physical exam to verify the MSD. OSHA, therefore, finds that the studies add substantially to the evidence that the combination of forceful exertion, repetitive motion, and awkward posture increase risk of injury to the elbow.

The Safety and Health Assessment and Research Program (SHARP) of the Washington State Department of Labor and Industries (1993, Ex. 500–41–116) conducted a cross-sectional study of 104 poultry processing workers. Epicondylitis was assessed by interview and physical examination. Exposure was assessed by a risk factor checklist that evaluated repetitiveness, forcefulness, mechanical stress, and wrist deviation. The study found the prevalence of upper extremity MSD by interview was 25% and by physical exam and interview was 17%. The number of repetitive exertions per hour was significantly predictive of epicondylitis (p=0.002).

Roquelaure *et al.*(1996, Ex 500–41–111) reported that work characteristics of greater than 1 kg of hand force, less than 30-second cycle times, and static hand work in workers were associated with radial tunnel syndrome (RTS). RTS is a disorder in which the radial nerve becomes compressed near the elbow causing pain and tenderness, similar to epicondylitis. Roquelaure used a case-referent study of 21 RTS cases and 21 controls while studying 2,250 television, shoe, and brake manufacturing workers. Participation rate was not reported. Referents were age-, gender-, and plant-matched workers selected at random from the same manufacturing population who had no upper limb disorder for the previous eight years. Exposure was determined by direct observation of two trained assessors using a checklist. RTS was determined by reviewing the past two years of medical files of the 2,250 manufacturing workers. A case of RTS was defined as local tenderness 4–5 cm distal to lateral epicondyle, pain in forearm indirectly induced by supination, no peresis or muscle weakness and positive EMG and nerve conduction studies. For 1 kg or greater of hand force, an odds ratio of 18.0 (CI: 2.2–147.5, p=0.01) was reported compared to those cases exposed to less hand force. For workers with less than 30-second cycle times, an odds ratio of 8.7 (CI: 1.2–23.8, p=0.03) was reported compared to those who had longer cycle times. For workers with static hand work, an odds ratio of 7.7 (CI: 1.4–42.7, p=0.02) was reported compared to those involved in more dynamic work. This study demonstrates that an increased risk of RTS is associated with exposure to force, repetition and static posture of the hand.

Two medical experts supplied written testimony on behalf of UPS indicating that epidemiological evidence to support an association between combined biomechanical factors (*e.g.* force, repetition, awkward posture) and the different types of tendinitis of the upper extremities (*e.g.* elbow (epicondylitis), hand/wrist (tenosynovitis)) likely are flawed because of imprecise case definition. Dr. Peter Nathan wrote:

> There is a startling lack of objective evidence to indicate that actual pathology is involved in many of the soft tissue discomfort complaints that are included under the umbrella of cumulative trauma disorders or musculoskeletal disorders—a primary focus of the ergonomic standard. * * * Dr. Armstrong refers to a Finnish study by Luopajarvi *et al.*(1979, Ex. 26–56) which is one of three valid studies referenced by Dr. Susan Stock in her 1991 meta-analysis of the literature relating work exposure to conditions of the neck and upper extremities. The variable representing tendinitis used by Luopajarvi and his colleagues was primarily symptoms confirmed by physical examination. This does not correspond to the classic medical definition of tendinitis, which requires objective evidence of true inflammation (Ex. 500–118).

Similarly, Dr. Nortin Hadler stated in written testimony:

> The health effect in this paper [Kurppa *et. al.* 1991, Ex. 26–53] is a sick leave consequent to regional disorders of the elbow or wrist/hand. The investigators devised their nosology to capture discomfort about the elbow and distal arm/hand. Essentially, all they are describing is localized soreness and/or tenderness. The criterion of swelling or crepitation and tenderness to palpation along the tendon and pain at the tendon sheath, in the peritendinous area, or the muscle/tendon junction during active movement of the tendon boils down to focal soreness/tenderness and nothing more specific or mysterious than that (Ex. 500–118).

These comments suggest that the two epidemiological studies cited above exclusively rely on a collection of subjective symptoms indicative of non-specific soreness and discomfort, rather than objective measurement of inflammation and tissue pathology. This criticism also applies to virtually all the existing epidemiological studies that examined epicondylitis since they used a similar set of criteria to diagnose this MSD. As a result, the commenters believe OSHA has not made a sufficient case that true epicondylitis (as well as tenosynovitis) is associated with workplace exposure to biomechanical risk factors.

OSHA disagrees with the notion that evidence of tissue pathology among exposed workers is required to infer a causal relationship between exposure to physical risk factors in the workplace and epicondylitis. The studies of Luopajarvi *et al.*(Ex. 26–56) and Kurppa *et al.*(Ex. 26–53) were directed by the Institute of Occupational Health in Helsinki, Finland, which developed systematic methods for screening and diagnosing a number of occupational neck, shoulder, and upper limb disorders, including lateral and medial epicondylitis. The examination procedures and diagnostic criteria have been published in the peer-reviewed literature (Waris *et al.*1979, Ex. 26–1218) and they were devised by a team of clinicians comprised of occupational physicians, an orthopedist, physiologist, and ergonomist. The diagnosis for lateral epicondylitis (the most common form of epicondylitis) is not simply self-reported elbow soreness. The tenderness must be localized over the lateral epicondyle and there must be pain associated with resisted extension of the wrist and fingers (resistence test). In the Finnish studies, these signs were evaluated by either physicians specializing in occupational health or a trained physiotherapist. Other potential causes unrelated to physical work factors, such as fractures, acute trauma, recreational injuries, infection, arthritis, pre-existing neurological diseases, etc., were assessed and screened out through medical histories and personal interview.

The Finnish criteria are consistent with procedures for the assessment, diagnosis, and management of elbow complaints recommended by the American College of Occupational and Environmental Medicine (ACOEM, Ex. 502–240). These guidelines do not call for tissue evidence of inflammation and pathology in diagnosing lateral epicondylitis, but rather depend on expert evaluation of unique signs and symptoms by a trained clinician upon physical examination. The food packers in the cross-sectional investigation by Luopajarvi *et al.* (Ex. 26–56) were examined by a physiotherapist specially trained at the Finnish Institute of Occupational Health. The meat processors in the prospective Kurppa *et al.*(Ex. 26–53) study were primarily diagnosed by occupational physicians at the plant using the criteria developed by the Finnish Institute. The same diagnostic approach was also used by the other key epidemiological studies that found an association between work-related factors and epicondylitis (Chiang *et al.*1993, Ex. 26–1117; Moore and Garg 1994, Ex. 26–1364; Bovenzi *et al.*1991, Ex. 26–1433). More specialized diagnostic tools, such as imaging and electromyography, are only advised if a prudent course of elbow/forearm rest and pain relief do not adequately correct the disorder or more serious complications are suspected (*e.g.* fracture, osteomyelitis, neurological damage).

OSHA finds that the case definition of epicondylitis used by the epidemiological investigators is appropriate for diagnosing this MSD. The evaluations were administered by trained clinicians using specific and standardized criteria that are uniformly accepted by the medical community. This was confirmed by testimony from numerous physicians during the hearings (AFL–CIO, Ex. 500–218). The published clinical guidelines and testimony from the record cited above make clear that the criteria of localized tenderness at a critical bone-tendon junction (MSD symptom) combined with pain upon palpation and extension/flexion of the wrist during physical examination (positive physical finding) are sufficient for the proper diagnosis of epicondylitis without the need for further "objective evidence of true inflammation."

Biomechanical Evidence

There is a very limited amount of specific study information available in the Health Effects Appendices for the proposed rule (Ex. 27–1) that measure the biomechanical forces at the muscle-tendon units of the elbow. However, as discussed in the Health Effects Appendix, there is some evidence suggesting that tensile loading on the extensor carpi radialis brevis (ECRB) muscle created by muscular action in combination with elbow extension and pronation/supination of the forearm causes a compressive force at the tendon, ligament, and radial head of the elbow. Prolonged contact pressure and/or repeated loading is likely to produce fraying of the ECRB. The resulting cycle of damage/repair leads to clinical and pathological manifestations of lateral epicondylitis.

Conclusion

The 1997 NIOSH report concluded the following with regard to the relationship between work-related physical risk factors and epicondylitis:

> There is strong evidence for a relationship between exposure to a combination of risk factors (e.g. force and repetition, force and posture) and epicondylitis. Based on a review of the epidemiologic studies, especially those with some quantitative evaluation of the risk factors, the evidence is clear that an exposure to a combination of exposures, especially at higher levels (as can be seen in, for example, meatpacking or construction work) increases the risk for epicondylitis (Ex. 26–1, Emphasis in original).

OSHA agrees with NIOSH that there is a reasonably strong body of evidence showing a relationship between exposure to combinations of biomechanical risk factors, usually forceful exertion/repetitive motion or forceful exertion/repetitive motion/awkward posture, and an increased risk of epicondylitis. This evidence emanates from the consistently positive associations in epidemiological studies of workers from several different industry sectors, especially those investigations that rely on expert verification of injury and objective determination of exposure. The epidemiological evidence is supported by the large number of clinical reports and investigations in the medical and sports literature. There is biological plausibility that exposure to combinations of risk factors can lead to epicondylitis since forceful and repetitive exertion of the forearm muscles and tendons are also consistent with the pathophysiology of epicondylitis. As described in the NIOSH review of the epidemiological evidence, there is less evidence that exposure to repetition or awkward posture *alone,* is associated with an increased risk of epicondylitis. OSHA concludes that workers who perform job tasks requiring repeated forceful movements, especially flexion, pronation, or supination with the arm extended, are at increased risk of developing epicondylitis.

Tendinitis of the Hand and Wrist

Most cases of tendinitis of the hand and wrist originate as inflammation of the synovial sheath that provides protection for the tendons. This condition is known as tenosynovitis. Inflammation may occur in the flexor tendons on the palmar aspect of the wrist, extensor tendons on the back of the wrist, or the small separate collection of extensor tendons that controls the extension of the thumb. There are a number of pathophysiological outcomes that result from irritation of the tendons. If the sheath becomes aggravated, excessive synovial fluid can build up resulting in swelling along the affected tendon. Sometimes irritation can occur just proximal to the tendon sheath where there is no synovial fluid. This causes a dry rubbing of the tendon called peritendinitis crepitans, so named because of the discernable creaking sensation. There is also a type of tenosynovitis, known as stenosing tenovanginitis, caused by a constriction of the tendons at the mouth of the sheath. If this constriction occurs on the radial aspect of the wrist involving the extensor tendons to the thumb, it is known as De Quervain's syndrome. If the site of injury is the flexor tendons to the fingers, it is known as trigger finger. Stenosing tenovanginitis is thought to be the result of compression caused by the thickening of the retinaculum (band of ligaments around the wrist holding the tendons in place) leading to tendon entrapment.

One publication in the record described the symptoms and prognosis of patients that have trigger finger or thumb:

> The classic picture [of trigger finger/thumb patients] is painful "locking" of the digit in flexion whereby the patient has difficulty extending the proximal interphalangeal joint. Extension can be accomplished passively using the other hand and produces a moderate amount of discomfort and a palpable painful "snap." * * * The prognosis is excellent for a complete recovery barring the occurrence of multiple trigger fingers and/or significant osteoarthritis * * *. In these cases the course is usually prolonged. Patients tend to question their ability to return to their old jobs and, on occasion, any job. In general, workers should be able to return to heavy work, although it may take somewhat longer after surgery because of a tender palmar scar. [Ex. 38–453, pp. 105–106]

Epidemiological Evidence

NIOSH (1997, Ex. 26–1) reviewed seven cross-sectional studies and one cohort study that addressed workplace risk factors and MSDs that specifically addressed hand/wrist tendinitis. Table V–4 summarizes some key aspects of these investigations. In these studies, tendinitis cases were identified primarily by physical examination, which usually included localized pain/tenderness at the tendons upon palpation during movement of the hand/wrist. However, diagnostic criteria varied across studies depending on the types of tenosynovitis of interest. For example, some investigations required the presence of swelling along the tendons of the wrist and/or signs of crepitation. In some cases, a positive Finkelstein's test was used to diagnose DeQuervain's syndrome. Because of the differences in case definition, it is difficult to compare prevalence rates from different studies, although measures of relative risk should be less affected as long as case definitions were non-differentially applied to exposed and unexposed groups (NIOSH 1997, Ex. 26–1).

Exposure assessment was generally restricted to grouping workers in exposed and unexposed categories based on the existence of a combination of excessive force, repetitive motion, and awkward posture. In these studies, most exposed workers were subjected to the combined effect of at least two risk factors. Five studies relied on direct observation of job tasks and expert judgment to determine exposure (Armstrong et. al. 1987, Ex. 26–48; Luopajarvi et. al. 1979, Ex. 26–56; Bystrom et. al. 1995, Ex. 26–897; Kuorinka et. al. 1979, Ex. 26–639; Kurppa et. al. 1991, Ex. 26–53). One of these studies quantified force and repetitiveness for a subset of workers performing different jobs and grouped them according to these measurements (Armstrong et. al. 1987, Ex. 26–48). Three studies used less reliable methods of assessing exposure such as self-reports or general knowledge of job tasks.

TABLE V–4.—SUMMARY OF EPIDEMIOLOGY STUDIES EXAMINING HAND/WRIST TENDINITIS

Study	Job type studied	Physical factors	Exposure basis	Physical exam	Risk measure (95% CI)[1]
Kurppa (1991) Ex. 26–53	Meat processing	F/R/P?	Observation	Yes	IR=14–38.5* (11–56)
Armstrong (1987) Ex. 26–48	Manufacturing	F/R/P?	Measurement EMG.	Yes	PRR=4.8–17* (2.3–126)
Moore (2000) Ex. 500–71–41	Pork processing F/R?/P.	F/R?P	Observation	Yes	PRR=7.0*
Luopajarvi (1979) Ex. 26–56	Food production	F/R/P	Observation	Yes	PRR=4.1* (2.6–6.5)
Latko (1999) Ex. 38–123	Manufacturing	R/F/P?	Measurement, cycle time.	Yes	OR=3.2* (1.3–8.3)
Bystrom (1995) Ex. 26–897	Auto assembly	F/R/P	Forearm load, wrist flex.	Yes	PRR=2.5* (1.0–6.2)
Kuorinka (1979) Ex. 26–639	Scissor production	F?/R/P	Cycle time, wrist flex.	Yes	PRR=1.4 (0.8–2.5)
Amano (1988) Cited in Ex. 26–1	Shoe assembly	F?/R/P	Job title	Yes	PRR=3.7–6.2* (2.7–14)
Roto (1984) Ex. 26–666	Meat cutting	F/R/P?	Job title	Yes	PRR=3.1* (1.4–6.7)
McCormack (1990) Ex. 26–1334	Textile	F/R/P?	Job title	Yes	PRR=0.4–3.0* (1.4–6.4)

F=forceful exertions; R=repetitive motion; P=awkward posture; ?=presence of risk factor unclear.
IR=incidence rate; PRR=prevalence ratios;
*=$p<0.05$.
[1] 95% confidence interval expressed for the upper end of the risk measure range.

Of the five studies with the most reliably documented exposure, four reported statistically significant increases in the prevalence of hand/wrist tendinitis in workers exposed to physical risk factors (Armstrong *et al.*1987, Ex. 26–48; Luopajarvi *et al.*1979, Ex. 26–56; Bystrom *et al.*1995, Ex. 26–897; Kurppa *et al.*1991, Ex.26–53). In their review, NIOSH (1997, Ex. 27–1) chose the prevalence ratio (PR) to represent an estimate of relative risk rather than the more commonly reported OR for hand/wrist tendinitis, because the OR can overestimate relative risk when prevalence rates among unexposed groups are high. A few of the studies on work-related tendinitis reported prevalence rates greater than 25 percent in exposed groups and greater than 10 percent in unexposed groups.

The Armstrong *et al.*(Ex. 26–48) study was able to divide industrial workers at seven manufacturing plants into a low force/low repetition group, a high force/low repetition group, low force/high repetition group, and a high force/high repetition group based on EMG measurements and observed cycle times. They found exposure-related increases in the prevalence of tenosynovitis (including stenosing tenovanginitis). The high-force/low-repetition group and low-force/high-repetition group had PRs of 4.8 (95% CI 0.6–39.7) and 5.5 (95% CI 0.7–46.3), respectively, compared to the low-force/low-repetition group, while the high-force/high-repetition group had a PR of 17.0 (2.3–126.2). The Kourinka *et al.*(Ex. 26–639) study of mostly female scissors makers found a non-statistically significant increase in the prevalence of tenosynovitis (including peritendinitis) with an increase in the number of pieces handled per year. The PR was 1.4 (95% CI 0.8–2.5) among all exposed workers compared to a referent group of department store assistants. In this study, it is unclear whether cashiers (a potentially exposed group) were included in the referent population; if so, this would tend to diminish the association between exposure and outcome. The results of these two studies suggest the presence of a positive exposure-response relationship between exposure to biomechanical risk factors and the risk of hand/wrist tendinitis.

Luopajarvi *et al.*(Ex. 26–56) found a significant increase in PR (4.1; 95% CI 2.6–6.5) of tenosynovitis (including peritendinitis) among female assembly line food packers compared to department store assistants (cashiers excluded from the unexposed group). Bystrom *et al.*(Ex. 26–897) found a significant increase in PR (2.5; 95% CI 1.0–6.2) of DeQuervain's syndrome among automobile assembly line workers compared to randomly selected subjects (adjusted for potential confounders) from the general population. The prospective cohort study by Kurppa *et al.*(Ex. 26–53) found a significant increase in the incidence of tenosynovitis (including peritendinitis and DeQuervain's syndrome) over a 31-month period in meat processing workers (primarily cutters and packers) engaged in strenuous compared to non-strenuous work (primarily office work). They reported relative risks ranging from 14.0 to 38.5 for different job categories, but these may be overestimated since recurrences of tendinitis were counted as new cases and case ascertainment was different for the exposed and referent groups. This study does provide evidence of a temporal relationship between exposure to physical work factors and development of tendinitis. Confounders, such as gender and age, were adequately controlled for in the key studies.

Two studies that address physical work factors and tenosynovitis were submitted to the OSHA docket following publication of the proposal (Moore 2000, Ex. 26–1364; Latko *et al.*1999, Ex. 38–123). Summary results of these studies also appear in Table V–4. Moore (Ex. 500–71–41) found a significant increase in the prevalence of stenosing tenovanginitis as a result of jobs requiring repetitive and forceful use of hand tools compared to jobs without exposure to this risk factor. Latko *et al.*(Ex. 38–123) reported a significant linear trend between repetitive work and hand/wrist tendinitis ($p<0.01$) in a cross-sectional study of 436 manufacturing workers. Worker exposure to physical work factors were directly observed and measured in this study and tendinitis cases were confirmed through physical examination by an occupational physician in both the Moore and Latko studies.

Biomechanical Evidence

Static and dynamic biomechanical models of the wrist have been used to estimate tensile, normal, and frictional forces in finger flexor tendons during static and dynamic work involving the hand (Exs. 26–582, 38–418). Pinching and gripping activities produce tensile forces on the tendons that are three to four times the normal force on the fingers. Static biomechanical models predict that additional compressive and frictional forces are exerted on the tendon when the wrist deviates from a neutral position as the tendon sheaths slide against the bones of the carpal tunnel and flexor retinaculum. These predictions have been confirmed by cadaver studies of forces on the tendons, ligaments, and bones of the hand. A laboratory study showed that peak tensile forces in the flexor tendons were approximately doubled during a simulated caulking task with a straight wrist and approximately tripled during the same task with a flexed wrist (Moore *et al.*1991, Ex. 26–183).

When a dynamic component is added to the biomechanical model, it is predicted that tensile and normal forces on the finger flexor tendons increase rapidly during rapid wrist accelerations. These predictions are supported by a preliminary surveillance study that found wrist acceleration to be substantially higher in jobs with a high rate of upper extremity cumulative trauma disorders (Marras and Shoenmarklin 1993, Ex. 26–172). The biomechanical and laboratory evidence provides additional support that biomechanical risk factors, such as sustained/repetitive forceful exertions and flexion/extension of the wrist, can create internal strain on tendons that could result in injury consistent with tenosynovitis.

Conclusion

The 1997 NIOSH report concluded the following with regard to the relationship between work-related physical risk factors and hand/wrist tendinitis: "There is strong evidence that job tasks that require a combination of risk factors (*e.g.*, highly repetitious, forceful hand/wrist exertions) increase risk for hand/wrist tendinitis" (Ex. 26–1). OSHA also finds clear epidemiologic evidence of a relationship between a combination of physical risk factors, such as repetitive and forceful hand activities with a flexed wrist, and tenosynovitis. This evidence is from the consistently positive associations in the epidemiological studies described above. There are also laboratory studies that confirm that hand-intensive work, particularly with a bent wrist, produces significant load and strain on the flexor tendons. The biomechanical evidence is consistent with the pathophysiology of tenosynovitis where sustained and elevated internal force on the tendon sheaths can be expected to cause synovial fluid accumulation, thickening of the sheath, tendon entrapment, and other physiological responses that lead to clinical symptoms associated with this MSD. These biomechanical studies demonstrate that the increased risk of hand/wrist tendinitis seen among workers exposed to forceful and repetitive hand activities is biologically plausible and consistent with the epidemiologic evidence. OSHA therefore concludes that workers exposed to these risk factors are at increased risk of developing hand/wrist tendinitis.

Carpal Tunnel Syndrome (CTS)

CTS is a disorder that results from compression of the median nerve at the point of passage through the carpal tunnel, the narrow opening in the hand consisting of carpal bones of the wrist on the bottom and the carpal ligament on top. The carpal tunnel is a relatively "tight" compartment filled with flexor tendons as well as the median nerve that serve to move and enervate the fingers. Forceful contraction of the flexor tendons in the fingers that occur during repetitive hand tasks increase the pressure within the carpal tunnel (Ex. 38–444). Chronic intracarpal pressure limits the vascular flow to the median nerve and surrounding tissue leading to swelling of the tendon sheath. The epineural edema leads to compression of the median nerve against the carpal ligament. The ensuing loss of nerve function initially results in painful tingling and numbness in the hand. After several years, eventually the tendon tissue can become fibrotic and result in muscle weakness, reduced grip strength and loss of finger movement. CTS is often accompanied by tenosynovitis, which is not surprising given their common pathophysiology. CTS is a disabling condition that has frequently required surgery to provide the affected individual with relief. For example, in Washington State in 1996, more than one-third of all CTS workers' compensation claimants required surgery as part of their treatment (Ex. 500–71–47, P. 12). Histologic studies of flexor tendon sheaths sampled during carpal tunnel surgery support the above model since vascular changes consistent with ischemia and tissue edema are commonly observed (Ex. 26–838).

National and international surveillance data have consistently indicated that the highest rates of CTS occur in occupations and job tasks (meat processing, assembly line work, intensive use of hand and power tools, etc.) requiring repeated wrist movements, forceful exertions, and wrist bending or other stressful postures.

Epidemiological Evidence

NIOSH reviewed 30 epidemiological studies that addressed workplace risk factors and CTS. Exposed workers in theses studies were usually engaged in job activities involving forceful and repetitive hand/finger or wrist movements and therefore were concurrently subjected to a combination of physical factors. These studies are summarized in Table V–5. Thirteen studies used physical examination or electrophysical indicators to diagnose CTS as well as direct observation or measurement of exposure to risk factors during job activities. The remaining studies either relied on symptom questionnaires to determine health outcomes or self reports and job title descriptions to evaluate exposures. CTS was solely determined by the presence of numbness, pain or tingling in the fingers enervated by the median nerve, and a positive Tinel's or Phalen's test (symptoms triggered upon wrist flexion and palpation) in about half the studies. Nerve conduction (NC) tests were not used in defining cases in these studies. In the other half of the studies, abnormal median nerve conduction was required in addition to symptomatology to diagnose CTS. Since normal NC was often defined and measured differently in various laboratories, CTS case definition is unlikely to be uniform across studies. Several investigations quantitatively estimated force, either from EMG measurements or based on weights of tools or other handled parts, and recorded job task observations. Repetitive hand/wrist movements were sometimes quantitatively measured and categorized based on task frequency, quantity of work performed in a specified time, or ratio of work time to recovery time.

Of the 13 studies (eleven cross-sectional and two case control) that relied on both objective determination of exposure and medical diagnosis of CTS, 10 reported finding statistically significant associations between CTS and exposure to biomechanical risk factors. The reported ORs ranged from 1.1 to 21.3. Some cross-sectional studies provided evidence of an exposure-response relationship with respect to CTS and exposure to force and repetition. Silverstein *et al.*studied 652 workers in 39 jobs from 7 different plants (Silverstein *et al.*1987, Ex. 26–34). Jobs were grouped into high and low repetitiveness and force categories based on cycle time and EMG measurements, respectively. The OR for CTS (defined by physical tests/symptoms) in highly repetitive jobs compared to low repetitive jobs, irrespective of force, was 5.5 ($p<0.05$) in a multiple logistic model that included age, gender, plant site and years on the job. The corresponding OR for high-force jobs, irrespective of repetitiveness, was 2.9 ($p>0.05$) but the OR for combined exposures to high repetition and force was 15.5 ($p<0.05$).

TABLE V–5.—SUMMARY OF EPIDEMIOLOGY STUDIES EXAMINING CARPAL TUNNEL SYNDROME

Study	Job type studied	Physical factors	Exposure basis	Diagnosis	k measure (95% CI)[1]
Bovenzi (1991) Ex. 26–1433	Forestry	V	Measurement	Physical exam	OR=21* (NR)
Roquelaure (1997) Ex. 38–396	Manufacturing	F/R/P	Measurement	Physical exam+NC	OR=9.0* (2.4–33.4)
Silverstein (1987) Ex. 26–34	Manufacturing	V/F/R/P	Measurement	Physical exam	OR=1.8–15.5* (1.7–142)
Chatterjee (1992) Ex. 26–942	Rock drilling	V	Measurement	Physical exam+NC	OR=10.9* (1.0–524)
Osorio (1994) Ex. 26–807	Supermarket	F/R/P?	Observation	Physical exam+NC	OR=6.7–8.3* (2.6–26.4)
Barnhart (1991) Ex. 26–1216	Ski manufacture	F?/R/P	Measurement	Physical exam+NC	OR=1.9–40* (1.0–15.8)
Frost (1998) Ex. 38–198	Slaughter house	F/R/P	Measurements	Physical exam+NC	OR=4.2* (1.8–10.1)
Bovenzi (1994) Ex. 26–774	Stone drilling	V	Measurement	Physical exam	OR=6.4* (1.4–8.3)
Baron (1991) Ex. 26–697	Grocery checking	F/R/P	Measurement	Physical exam	OR=3.7 (0.7–16.7)
Moore (1994) Ex. 26–1364	Meat processing	F/R/P	Measurement	Physical exam+NC	OR=2.8 (0.2–36.7)
Chiang (1990) Ex. 26–1118	Frozen Food Packing.	F?/R/P?	Measurement	Physical exam+NC	OR=1.9–11.7* (2.9–46.6)
Chiang (1993) Ex. 26–1117	Fish processing	F/R/P?	Cycle time, EMG	Physical exam	OR=1.1–1.8* (1.1–2.9)
Stetson (1993) Ex. 26–1221	General industry	F/R/P	Checklist	NC only	NR*
Latko (1999) Ex. 38–123	Manufacturing	F/R/P?	Measurement	Physical exam+NC	OR=2.3–3.1 (0.9–10.9)
Armstrong (1979) Ex. 26–348	Sewing machine use	F/R/P	EMG, flexion	Physical exam	OR=1.1–2.0* (1.6–2.5)
Nathan (1988) Ex. 26–990	Multiple industries	F/R/P	Observation	NC only	PRR=1.0–2.0* (1.1–3.4)
Nathan (1992) Ex. 26–989	Multiple industries	F/R/P	Observation	NC, symptoms	PRR=1.0–1.5 (1.0–2.2)
Canon (1981) Ex. 26–1212	Aircraft plant	V/R	Hand tool measurement.	Workers' comp	OR=2.1–7.0* (3.0–17)
English (1995) Ex. 26–848	CTS case/control	F/R/P	Questionnaire	Physical exam	OR=0.4–1.8* (1.2–2.8)

TABLE V–5.—SUMMARY OF EPIDEMIOLOGY STUDIES EXAMINING CARPAL TUNNEL SYNDROME—Continued

Study	Job type studied	Physical factors	Exposure basis	Diagnosis	Risk measure (95% CI)[1]
Feldman (1987) Ex. 26–1210	Electronics plant	F?/R/P	Cycle time flexion	Questionnaire	OR=2.3* (1.4–4.5)
Koskimies (1990) Ex. 26–973	Forestry	V	Job title	Physical exam+NC	NR*
McCormack (1990) Ex. 26–1334	Textile	F/R/P?	Job title	Physical exam	OR=0.4–0.9 (0.3–2.9)
Morgenstern (1991) Ex. 26–1493	Grocery cashiers	F?/R/P	Job title	Questionnaire	OR=1.9 (0.9–3.8)
Punnett (1985) Ex. 26–995	Garment	F?/R/P?	Job title	Physical exam	OR=2.7* (1.2–7.6)
Schottland (1991) Ex. 26–1001	Poultry processing	F/R/P	Job title	NC only	OR=1.9–2.9* (1.1–7.9)
Weislander (1989) Ex. 26–1027	CTS case/control	V/F/R/P?	Questionnaire	Physical exam+NC	OR=1.8–3.3* (1.6–6.8)
Liss (1995) Ex. 26–55	Dental hygienist	F?/R/P	Questionnaire	Questionnaire	OR=3.7* (1.1–11.9)
DeKrom (1990) Ex. 500–41–26	CTS case/control	F/R?/P	Questionnaire	Physical exam+NC	OR=5.4–8.7* (3.1–24.1)
Tanaka (1997) Ex. 26–1185	Household survey	V/P	Questionnaire	Questionnaire	OR=1.8–5.9* (3.4–10.2)
Farkkila (1988) Ex. 26–947	Chair saw use	V	Questionnaire	Physical exam+NC	NR*
SHARP (1993) Ex. 500–41–116	Poultry processing	F/R	Measurement	Questionnaire	NR* (p< 0.0004)
Rosecrance (1994) Ex. 38–203	Newspaper work	F/P/R/ (pinch)	Questionnaire	Physical exam	NR*
Rossignol (1997) Ex. 500–205–24	Manual labor	F/R?/P?	Questionnaire	Surgery for CTS	OR=4.1* (1.5–3.2)
LeClerc (1998) Ex. 500–41–85	Assembly line	R/P?	Questionnaire	Physical exam+NC	OR=3.1–6.6*
Atroshi (1999) Ex. 38–181	General Population	F/P/R/V	Questionnaire	Physical exam+NC	OR=1.0–3.0* (1.4–6.8)
Gorsche (1999) Ex. 500–121–23	Meat packing	V	Questionnaire	Physical exam	NR
Katz (1998) Ex. 38–393	CTS case control	F/R/P	Questionnaire	Physical exam	NR
Kerns (2000) Ex. 500–71–34	Pork processing	F/R/P	Job title	NC only	NR

F=forceful exertions; R=repetitive motion; P=awkward posture; V=vibration; ?=presence of risk factor unclear.
NCV=nerve conduction; IR=incidence rate; OR=odds ratio; PRR=prevalence rate ratio; NR=not reported.
*=p<0.05.
[1] 95% confidence interval expressed for the upper end of the risk measure range.

Chiang *et al.*studied 207 workers from 8 fish processing factories in Taiwan (Chiang *et al.*1993, Ex. 26–1117). Jobs were divided into three groups based on level of repetitiveness and force using cycle times (upper arm movements, not just wrist) and EMG of the forearm flexor muscles. There was a statistically significant trend in prevalence of CTS (defined by physical tests/symptoms) with exposure from low force/repetition, high force *or* high repetition, and high force/repetition. Force alone, but not repetitiveness, significantly predicted CTS (OR=1.8; 95% CI 1.1–2.9).

Several other epidemiological investigations found physical risk factors to be significantly associated with prevalence of CTS. In another Chiang *et al.*study of 207 workers from 2 frozen food processing plants, job tasks were grouped by low and high repetitiveness based on wrist movement cycle time (Chiang *et al.*1990, Ex. 26–1118). Statistical modeling that included gender, age, and cold temperatures resulted in an OR of 1.9 ($p<0.05$) for CTS (defined by physical tests/symptoms/NC studies). This study stressed the association between CTS and repetitive movements, although some forceful hand/wrist exertion probably existed in the study group.

Stetson *et al.*studied median NC on 103 automotive workers with symptoms consistent with CTS compared with 137 asymptomatic automotive workers and an unexposed group of 105 administrative and professional workers (Stetson *et al.*1993, Ex. 26–1221). Repetitiveness was evaluated by cycle times, hand/wrist grip forces were estimated based on weights of handled tools and parts, and wrist deviation was judged from videotape analysis. Both symptomatic and asymptomatic workers had significantly lower median sensory amplitudes and significantly longer distal latency times than the referent group. The same NC trends were found between automotive workers in jobs requiring grip force greater than 6 pounds compared to those requiring less than 6 pounds. This grip force variable probably combines forceful exertion with wrist deviation. It was not possible to adequately compare repetitive and non-repetitive work since this risk factor was present in almost the entire study group.

Barnhardt *et al.*found ski manufacturing workers with highly repetitive job tasks had a statistically elevated OR of 4.0 (95% CI 1.0–15.8) for CTS (defined by physical tests/NC studies) compared to those workers engaged in non-repetitive tasks (Barnhardt *et al.*1991, Ex. 26–1216). Exposure was evaluated by observational analysis and included repetitive jobs with sustained flexion, extension, or ulnar deviation of the wrists by 45 degrees. The participation rate for this study was lower (less than 70 percent) than most of the other investigations. Armstrong and Chaffin reported that CTS (defined by physical tests/symptoms) was significantly associated (OR=2.0; 95% CI 1.6–2.5) with pinch force exertion (combination of force and deviated wrist posture) in female sewing machine operators (Armstrong and Chaffin 1979, Ex. 26–348). Because of the case-control study design, it is not clear whether deviated postures contributed to the development of CTS or whether the CTS symptoms

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led to the use of abnormal postures during work.

Four of the studies addressed CTS and manual work involving vibrating power tools. A case control study by Chatterjee *et al.*found a significant difference (OR=10.9; 95% CI 1.0–524) in the prevalence of CTS cases (defined by NC studies/symptoms) in rock drillers compared with controls (Chatterjee *et al.*1982, Ex. 26–942). The rock drillers were exposed to vibration frequencies between 31.5 and 62 Hertz. The highest relative risks (OR=21.3; $p<0.002$) for CTS (defined by physical tests/symptoms) were found in forestry workers using chain saws compared to maintenance workers who did not use power tools (Bovenzi *et al.*1991, Ex. 26–1433). Differences in ambient temperatures (potential confounder) between outdoor (chain saw operators) and indoor work (maintenance workers) may have contributed to the results. Koskimies *et al.*reported significant correlations between reductions in NC velocities in the median and ulnar nerves and number of years of vibration exposure in forestry workers who used chain saws greater than 500 hours in the previous 3 years (Koskimies *et al.*1990, Ex. 26–973). The prevalence of CTS (defined by physical tests/symptoms) in these workers was 20 percent. In another study, Bovenzi *et al.*reported an OR of 3.4 (95% CI 1.4–8.3) for CTS (defined by NC studies/symptoms) among stone quarry drillers/carvers exposed to hand-transmitted vibration when compared to polishers who performed manual operations and were not exposed to vibration (Bovenzi et al., 1994, 26–774). In these four studies, flexor tendons and the median nerve of the hand were probably subjected to a considerable degree of forceful exertion as well as mechanical injury during use of these power tools. Vibration can also cause direct damage to the digital arteries leading to sensory loss and numbness.

There were three studies that did not find statistically significant association between CTS and exposure to physical risk factors, even though each reported substantially raised ORs. Moore and Garg found an OR of 2.8 (95% CI 0.2–36.7) for CTS (defined by NC studies/symptoms) among pork processing workers in hazardous jobs compared to safe jobs (Moore and Garg 1994, Ex. 26–1033). Jobs were categorized based on videotape analysis for estimates of force, repetitition and awkward postures. The possible presence of a healthy worker effect (most workers were laid off in the year prior to the study) and the short latency period (6–32 months) limits confidence in the relative risk estimate.

An OR of 6.7 (95% CI 0.8–52.9) for CTS (defined by NC studies/symptoms) was reported in a study of supermarket workers rated for high versus low exposure to repetitive and forceful wrist motions as judged by an ergonomist and industrial hygienist (Osorio *et al.*1994, Ex. 26–807). However, the entire study consisted of only 56 workers grouped into 3 categories for analysis limiting the power of the study to find a statistically significant association. Baron et. al. (Ex. 26–697) also studied CTS (defined by physical tests/symptoms) in 124 grocery store checkers and reported an OR of 3.7 (95% CI 0.7–16.7) compared to 157 non-checkers. Physical examinations were not done on all workers and the relative risk measure was based on responses to a standardized questionnaire. The exposure level for checkers was characterized as having low peak force and a medium level of repetition; therefore, the intensity of exposure to physical risk factors was less than that among workers examined in other studies.

Almost all studies controlled for the obvious confounders of age, gender, and predisposing medical conditions by selection of an appropriate referent population, stratification, or use of a multiple logistic regression model. Many of the cross-sectional studies either excluded workers with pre-existing CTS prior to employment or excluded recently hired workers from the study. Therefore, it is unlikely that the reported associations between CTS and exposure to biomechanical risk factors reflected preferential employment of those with CTS (*i.e.*, the requirements for entry into the cohort made it likely that exposure preceded the onset of CTS).

NIOSH (1997, Ex. 27–1) concluded that there was epidemiological evidence of a positive association between CTS and highly repetitive work, either alone or in combination with other risk factors. They also found evidence of positive associations between forceful work and work involving hand/wrist vibration and CTS. However, NIOSH concluded there was insufficient evidence of an association between CTS and exposure to extreme postures alone because of individual variability in work methods and difficulties in measuring postural characteristics. NIOSH did recognize that there was strong evidence that exposure to a combination of physical risk factors along with non-neutral wrist postures was related to the onset of CTS.

A large number of studies that addressed physical work factors and CTS were submitted into the OSHA docket following publication of the proposal; those that OSHA found to be of adequate study design are included in Table V–5 (Frost *et al.*1998, Ex. 38–198; Roquelaure *et al.*1997, Ex. 500–41–111; Latko *et al.*1999, Ex. 38–123; Rossignol *et al.*1997, Ex. 502–420; Leclerc *et al.*1998, Ex. 500–41–85; Atroshi *et al.*1999, Ex. 38–181; Gorsche *et al.*1999, Ex. 500-121–23; Kearns *et al.*2000, Ex. 500–71–34; Katz *et al.*1998, Ex. 38–393). All but three of these studies (Ex. 500–121–23; Ex. 500–71–34; Ex. 38–393) found significantly increased prevalence of CTS among workers exposed to physical risk factors. The three studies that did not find a statistically significant association did not rely on independent assessment or observation of exposure to physical work factors, but instead used job titles or self-reported survey information to infer exposure. One of these studies, Gorsche *et al.*(Ex. 500–121–23), found an increased prevalence and incidence of CTS in a cross-sectional and longitudinal study of meat packers but it was not statistically significant. Kearns *et al.*(Ex. 500–71–34), who ascertained cases only by nerve conduction studies and did not rely on symptoms or clinical evaluation to diagnose CTS, also failed to find a statistically significant association. Katz *et al.*(Ex. 38–393) studied factors associated with long-term disability rather than the development of CTS.

In contrast, three studies that did measure or observe exposures and used a combination of symptoms, physical tests, and nerve conduction velocity measurements to diagnose CTS found strong associations with exposure to repetition and/or force (Exs. 38–198, 500–41–111, 38–123). Another study, the SHARP study (Ex. 500–41–116) of poultry processing workers summarized in the hand/wrist tendinitis section above, found that the number of forceful exertions per hour was significantly predictive of CTS ($p=0.004$).

Many studies of CTS contained in the rulemaking docket are not included in Table V–5 either because it was questionable whether exposure to physical risk factors occurred or because the study did not address the relationship between physical risk factors and CTS (Nathan and Keniston 1993, F [illegible] 351–14; Stallings *et al.*1997, Ex 35[illegible]–20; Franzblau *et al.*1994, Ex. 38–175; Nordstrom *et al.*1988, Ex. 500–25–9; Zetterberg and Ofverholm 1999, Ex. 500–121–78). Other studies were not included on OSHA's summary table because they used a flawed study design or a flawed statistical analysis to examine the relationship between exposure to biomechanical risk factors and CTS (Malchaive *et al.*1996, Ex. 500–

66–5; Homan *et al.*1999, Ex. 38–172; Olafsdotti *et al.* 2000, Ex 38–288.

One of the above studies is among several papers published by Dr. Peter Nathan and colleagues, which were based on two group of workers whom they have followed prospectively (Ex. 26–990; Ex. 26–988; Ex. 26–989; Ex. 26–1294; Ex. 26–517; Ex. 38–437; Ex. 38–13; Ex. 351–14). Because of the importance of these studies to the ergonomics rulemaking, they are addressed in detail here. In one of the earlier studies (Nathan *et al.*1988, Ex. 26–990), nerve conduction was assessed on 471 randomly chosen individuals from four industries (steel mill, meat/food packaging, electronics, and plastics manufacturing). The group was divided into the following exposure categories:

- Group 1, very low force, low repetition;
- Group 2, low force, very high repetition;
- Group 3, moderate force, moderate repetition;
- Group 4, high force, moderate repetition; and
- Group 5, high force, high repetition.

No significant difference in median nerve sensory latency values was found between Group 1 and Group 2, which differed primarily by the amount of repetition exposure. There was a statistically significantly higher number of subjects with median nerve slowing in Group 5 compared to Group 1, but not when compared to Groups 2, 3, or 4. When individual hands were used to base calculations rather than number of individuals, only Group 3 showed a significantly higher prevalence of median nerve conduction slowing. When prevalence ratios were calculated, Groups 3, 4, and 5 had significantly higher PRs compared to Group 1.

This same group of workers was followed up for five years in a 1992 study (Ex. 26–988) and eleven years in a 1998 study (Ex. 38–13). The study used hands, rather than individuals, as the basis for analysis. The authors stated that they found no significant difference in the prevalence of median nerve slowing among any of the exposure groups. The authors claimed to have confirmed this finding in a second combined cohort of Japanese and American industrial workers (Ex. 38–437) as well as validated their exposure categories (Ex. 26–1294). They went on to show that slowing of nerve conduction was significantly associated with obesity (Ex. 26–989), body mass index (Ex. 26–517), wrist depth/width and a number of other non-occupational risk factors (Ex. 351–14).

However, their research has a number of flaws in the study design, analysis and interpretation of the results, which call their conclusions into doubt. Chief among these is the failure to adequately justify and validate their grouping and rank order of occupational hand use. This provides multiple opportunities for exposure misclassification and will tend to underestimate the association of exposure with health outcome. This aspect of the study has been criticized by several experts (Ex. 26–1010; Ex. 26–952; Tr. 1000). Despite this potential for misclassification, there was a significant increase in prevalence between the lowest (Group I) and higher exposure groups combined (Groups III, IV, and V). in the cross-sectional study (Ex. 26–990). Others have also concluded that, methodological shortcomings aside, the articles by Nathan *et al.*demonstrate a positive exposure-response relationship between "occupational hand activity" and slowed conduction of the median nerve (Tr. 1519–1522; Tr. 9862). Others have testified that alternative exposure grouping of the data resulting in less exposure misclassification would result in a clear exposure-response relationship between job group and median nerve latency (Punnett testimony, Ex. 37–2; Gerr testimony, 27–2). Some who testified at OSHA's informal hearing have also stated that Dr. Nathan's articles use statistical presentation and analysis methods that obscure the evidence, and that not enough data are presented for the reader to independently evaluate whether the authors' conclusions are justified (Tr. 1521; Tr. 7850.). Low participation rates, unusual and inconsistent case definition, and inappropriate statistical analysis may also have limited the ability to detect increases in CTS prevalence over time in these studies with respect to work-related biomechanical factors. For example, the authors reported in the baseline study that they randomly selected the study participants (Ex. 26–990). However, they did not report the proportion of those who were selected and invited that actually participated. Since the 471 subjects represented only 26 percent of the total workforce of the participating companies, the representativeness of the sample is unknown, the ability to generalize from the data is highly limited, and the potential for selection bias is substantial. There is no comparative information on participants and non-participants with respect to demographics, occupational history or exposure, or medical history. The lack of clarifying information is particularly problematic because the direction of the selection bias could be either toward or away from the null value. This problem affects not only the 1988 baseline study but all future follow-up studies of the same cohort. Because of these criticisms, OSHA finds that the Nathan studies do not convincingly demonstrate a lack of association between workplace exposure to biomechanical risk factors and CTS.

In his written testimony, Dr. Peter Nathan calls into question the case definition for CTS relied upon by OSHA in their evaluation of the epidemiological studies (Ex. 32–241–3–13). He testifies that "there is general agreement among experts that classic symptoms associated with positive electrodiagnostic findings for the median nerve are necessary for a diagnosis of CTS" but that "there is no general agreement that symptoms, in the presence of negative electrodiagnostic findings is equivalent to CTS." (Id., pg 4). Dr. Nathan then goes on to criticize OSHA and NIOSH, in their 1997 review, for accepting studies that use CTS case definitions without electrodiagnostic confirmation. He argues that longitudinal studies are the only study design of value for determining causation and concludes "if one required electrodiagnostic studies for a valid case definition of CTS, and a longitudinal design for establishing temporal relationships, then only one [his own] of the 31 studies analyzed by NIOSH would have met standard criteria for establishing causation." (Id., pg 11).

OSHA accepts that specific symptoms determined during clinical exam in combination with objective evidence of median nerve dysfunction through electrodiagnostic tests is the most definitive case definition for CTS at the present time. This has been supported by expert testimony not only from Dr. Nathan but Dr. Frederick Gerr (Ex. 37–2) and Dr. Gary Franklin (Tr. 13363). OSHA also does not dispute lack of agreement among experts on CTS diagnosis when symptoms exist in the presence of normal median nerve conduction. However, the relevant issue is whether clinical symptoms and signs in the absence of electrodiagnostic testing are an invalid CTS case ascertainment for the purposes of evaluating epidemiological evidence to determine if work-related physical factors are associated with the disorder. NIOSH addressed the issue in its 1997 review and cited studies that found satisfactory correlations between CTS diagnosed by nerve conduction and the disorder diagnosed by symptom questionnaire and physical examination (Ex. 26–1501; Ex. 26–439). It was also reported that clinical examination for CTS diagnosis without the benefit of

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nerve conduction studies has a sensitivity of 84 percent and a specificity of 76 percent (Ex. 26–1208). This indicates that without the aid of electrodiagnostics, one would make a CTS diagnosis when the disorder is not present (false positive) in about one in four subjects. On the other hand, clinical exam is expected to miss a diagnosis (false negative) when CTS is present about one in six subjects. While this degree of sensitivity and specificity may not be acceptable when making treatment decisions, such as surgery, OSHA does not believe it introduces substantial bias for purposes of evaluating epidemiological evidence.

OSHA does not agree with Dr. Nathan's assertion that only longitudinal studies are relevant in evaluating causation. Longitudinal prospective cohort studies are indeed the strongest epidemiological study design, especially for establishing temporal relationships. However, they often require extended periods of time, are more costly, and are not as numerous other study designs. Other types of epidemiology, such as cross-sectional and case-control studies, add evidence of causality in terms strength and consistency of association and exposure-response.

OSHA has examined the epidemiological data base and finds that even if one restricts the evidence to studies that used abnormal median nerve conduction to establish CTS case ascertainment, there is reasonable evidence of association between repeated, forceful exertions of the hand and CTS. There were eleven studies either reviewed by NIOSH in their 1997 review or submitted to the OSHA docket during the rulemaking process that found statistically significant associations between combinations of force, repetitive motion, awkward posture, and segmental vibration and CTS defined by electrodiagnostic criteria (Ex. 38–396; 26–942; 38–198; 26–1118; 26–1221; 23–1001; 26–1027; 500–41–28; 500–41–85; 38–181; 26–973). The entire body of epidemiological studies described in the preceding paragraphs is also supported by impressive biomechanical and psychophysical data, discussed in the following subsection, that shows sustained force on the flexor tendons along with flexion/extension of the wrist increases carpal tunnel pressure and reduces exertion and perceptions of discomfort. In his written testimony (Ex. 37–2), Dr. Fredric Gerr discussed his evaluation of the epidemiological studies that used abnormal nerve conduction to diagnose CTS and made the following statement in his oral testimony at the hearing:

> However, when significant positive associations between work and carpal tunnel syndrome are observed repeatedly, in study after study, by investigator after investigator, in country after country and at many different times, we must ask ourselves why. In my opinion, after reading these studies and considering all the possible reasons why so many studies show this relationship, the most reasonable, plausible, and likely explanation is that work really did cause the carpal tunnel syndrome observed in these studies. (Tr. 1525)

Biomechanical and Psychophysical Evidence

Several clinical and cadaver studies confirm that fingertip force, wrist flexion/extension, repetitive tasks and combinations of the above are able to raise carpal tunnel pressure (CTP) in a dose-dependant manner. Mean CTP was raised from 5 mm Hg in a neutral wrist position to approximately 100 mm Hg at 60 degree wrist extension and 80 mm Hg at 60 degree flexion in a population of CTS patients and controls (Weiss et. al. 1995, Ex. 26–236). CTP has been shown to significantly increase with increasing finger tip force (Rempel et. al. 1997, Ex. 26–889) and with clenching a fist or holding an object in a power grip (Seradge et. al. 1995, Ex. 26–325). There was a two- to three-fold increase in CTP when performing a repetitive task involving change in wrist posture 20 times per minute for 5 minutes (Rempel et. al. 1994, Ex. 26–1151). The elevated CTPs found in these human biomechanical studies are within the range of neuronal pressures shown to impair blood flow, axonal transport, and nerve conduction in experimental animals.

Psychophysical data support the biomechanical findings. They show that maximum acceptable weight (MAW) and torque (MAT) decrease and perceived exertion and discomfort increase with the frequency and duration of repetitive wrist motions. The psychophysical method was used to determine the preferred weights for one-handed horizontal transfer tasks (*e.g.* hand/wrist motion used to move an object across a supermarket scanner). Frequency and duration of the transfer movement significantly decreased MAW in an exposure-dependent manner and increased perceived exertion over an eight-hour session (Krawczyk et. al. 1992, Ex. 26–974). In another study, MAT was reduced over the course of a seven-hour trial of repeated flexion and extension of the wrist (Snook et. al. 1995, Ex. 26–212). The magnitude of MAT reduction correlated with the frequency of the task and perceived discomfort increased with increasing repetition.

Conclusion

The 1997 NIOSH report concluded the following with regard to the relationship between work-related physical risk factors and CTS:

> Based on the epidemiologic studies reviewed, especially those with a quantitative evaluation of the risk factors, the evidence is clear that exposure to a combination of the job factors studied (repetition, force, posture, etc.) increases the risk of CTS. This is consistent with the evidence in the biomedical, physiological, and psychosocial literature (Ex. 26–1).

OSHA also finds convincing evidence that jobs involving repetitive and forceful movements of the hand and wrist are linked to CTS. The epidemiological findings are supported by clinical, biomechanical, and psychophysical studies showing that repetitive tasks involving flexion/extension of the wrist and force to the flexor tendons result in substantial increases in CTP, reductions in measured exertion, and perceptions of discomfort. This evidence is clearly consistent with the pathophysiology of CTS in which elevated CTP can lead to compression of the median nerve resulting in the clinical signs and symptoms characteristic of this MSD. OSHA finds that the epidemiological and biomechanical literature convincingly demonstrates a causal relationship between forceful and repetitive exertions to the hand, especially in combination with a flexed wrist, and an increased risk of carpal tunnel syndrome. Forceful and repetitive exertion includes vibration from the use of hand-held power tools.

Hand-Arm Vibration Syndrome

Hand-arm vibration syndrome (HAVS) refers to a collection of signs and symptoms that occurs when vibration from a tool is transferred to a worker's hand or arm. The symptoms include numbness, blanching of the fingers, pain in response to cold exposure, and reduction in grip strength. These manifestations are similar to Raynaud's phenomenon triggered by cold temperatures. HAVS symptoms are believed to be the result of both neurological and circulatory disturbances, probably occurring independently and by unrelated mechanisms. Vibration may directly injure (as opposed to indirect damage from compression as in CTS) peripheral nerve endings and neuroreceptors causing numbness, tingling and pain in the fingers. Histopathology of persons suffering from HAVS indicate that vibration may also directly damage endothelial cells of the digital arteries resulting in a lack of response to certain vasodilators and thickening of the vessel walls. These physiological changes can cause vascular constriction and ischemia of the surrounding musculoskeletal and neural tissue. The clinical outcome is blanching of the fingers ("white finger"), loss of feeling, muscle weakness, and weakened grip strength.

Epidemiological Evidence

NIOSH reviewed 20 post-1988 epidemiological studies that addressed workplace risk factors and HAVS. Table V–6 summarizes some key aspects of these investigations, such as the occupations examined, the biomechanical risk factors they were exposed to, whether exposures were directly observed or measured during the study, and whether the health outcomes were verified by trained medical personnel during physical examination. Previous investigations were reviewed as part of the 1989 NIOSH criteria document on exposure to HAV (Ex. 26–392). In its 1997 evaluation, NIOSH featured four cross-sectional studies (Bovenzi *et al.*1988, Ex. 26–1500; 1994, Ex. 26–1239; 1995, Ex. 26–354; Nilsson *et al.*1989, Ex. 26–1148) and one prospective study (Koskimies *et al.*1992, Ex. 26–1490), which met most of NIOSH's criteria for high quality. These investigations determined HAVS based on medical exam and did not strictly rely on self-reported questionnaires. Standard and relatively uniform diagnostic criteria were used in defining HAVS cases. This generally included episodes of cold-provoked, well-demarcated blanching of the fingers, occurrence of vibration white finger attacks after employment and following use of power tools, and abnormal digital artery response to cold provocation. All studies used the Stockholm Taylor-Palmear scale to grade and stage symptoms. The five investigations included vibration measurements of exposure on tools used by the study subjects combined with information on exposure time obtained by direct interview.

The four cross-sectional studies found statistically significant positive relationship between exposure to vibration and prevalence of HAVS. The strength of this association was high with reported ORs ranging from 6 to 85. The one prospective study showed significant decreases in HAVS prevalence with decreasing exposure to vibration over time. All five investigations contributed evidence of exposure-response relationships between HAVS and vibration acceleration or duration of exposure. One study also documented a relationship between exposure and symptom severity.

TABLE V–6.—SUMMARY OF EPIDEMIOLOGY STUDIES EXAMINING HAND-ARM VIBRATION

Study	Job type studied	Physical Factors	Exposure basis	Diagnosis	Risk measure (95% CI)[1]
Nilsson (1989) Ex. 26–1148	Pulp mill machining.	V	Tool acceleration	Physical exam	OR=14–85 * (15–486)
Bovenzi (1995) Ex. 26–354	Forestry	V	Chain saw acceleration.	Cold provocation	OR=6.2–32 * (11–93)
Bovenzi (1994) Ex. 26–1239	Stone drilling	V	Tool acceleration	Physical exam	OR=9.3 * (4.9–17.8)
Bovenzi (1988) Ex. 26–1500	Stone cutting	V	Tool acceleration	Physical exam	OR=6.1 * (2.0–19.6)
Brubaker (1987) Ex. 26–762	Forestry	V	Chain saw acceleration.	Symptoms ischemia.	NR
Koskimies (1992) Ex. 26–1490	Forestry	V	Chain saw acceleration.	Physical exam	NR
Brubaker (1983) Ex. 26–763	Forestry	V	Questionnaire	Symptoms ischemia.	NR
Dimberg (1991) Ex. 26–1395	Aircraft machining.	V	Questionnaire	Questionnaire	NR
Krivekas (1994) Cited in Ex. 26–1	Forestry	V	Questionnaire	Pyhsical exam	OR=3.4–6.5 * (2.4–17.5)
Letz (1992) Ex. 26–384	Ship-yard	V	Tool acceleration	Questionnaire	OR=5.0–40.6 * (11–176)
McKenna (1993) Ex. 26–745	Machine riveting	V	Questionnaire	Cold provocation.	OR=24 * (3.1–510)
Mirbod (1992) Ex. 26–1492	Forestry	V	Chain saw acceleration.	Physical exam	NR
Mirbod (1997) Ex. 500–121–49	Motorcyclists	V	Handlebar acceleration.	Questionnarie	NR *
Mirbod (1999) Ex. 500–121–48	Metal grinding	V	Job title	Physical tests	NR *
Mirbod (1994) Ex. 26–1491	Multiple industries.	V	Tool acceleration	Questionnarie	OR=3.8 * (2.1–6.8)
Musson (1989) Ex. 26–743	Power tool use	V	Tool acceleration	Questionnaire	NR
Nagata (1993) Ex. 26–1494	Chain saw operation.	V	Job title	Physical exam	OR=7.1 * (2.5–19.9)
Saito (1987) Ex. 26–1440	Chain saw operation.	V	job title	Cold provocation	NR
Palmer (1998) Ex. 500–121–56	Pavement breaking.	V	estimated tool acceleration.	Physical exam cold test.	OR=2.2–2.6* (1.4–4.8)
Palmer (2000) Ex. 500–121–57	Multiple industries.	V	Questionnaire	Questionnaire	PRR=1.5–2.2* (1.9–2.4)
Lindsell (1999) Ex. 500–205–13	Dockyard work	V	Job title	Cold provocations.	NR *
McGeoh (2000) Ex. 500–41–96	Welding	V	Questionnaire	Questionnaire	NR *
Shinev (1992) Ex. 26–836	Polishing	V	Tool acceleration	Physical exam	NR
Starck (1990) Ex. 26–1510	Machining	V	Tool acceleration	Questionnaire	NR
Virokannas (1995) Ex. 26–891	Railway	V	Questionnaire	Questionnaire	NR
Miyashita (1992) Ex. 26–1223	Construction	V	Questionnaire	Questionnaire	OR=0.5 (0.1–11.8)

V=vibration; OR=odds ratio; NR=not reported.

* =p<0.05.

[1] 95% confidence interval expressed for the upper end of the risk measure range.

Bovenzi *et al.*found a significantly greater prevalence of HAVS in a group of 222 active forestry workers engaged in chain saw work as compared to randomly chosen shipyard workers unexposed to hand vibration (Bovenzi *et al.*1995, Ex. 26–354). The reported OR was 11.8 (95% CI 4.5–31.1) for all forestry workers and 6.3 (95% CI 2.3–17.1) for workers only using "anti-vibration" saws. The study found a nearly linear dose-response between HAVS prevalence and both vibration acceleration and years of exposure. Vibration exposure was determined from questionnaire reports on frequency of chain saw work and direct measurement of vibration produced by 30 different saws.

In two earlier studies, Bovenzi *et al.*examined HAVS in stone quarry drillers and carvers exposed to vibration from hand-held power tools along with an unexposed referent group. The first investigation found a statistically significant HAVS prevalence (OR=6.1; 95% CI 2.0–19.6) in 75 drillers/cutters compared to unexposed mill workers (Bovenzi *et al.*1988, Ex. 26–1500). There was a significant association between the level of vibration acceleration and severity of symptoms. In a much larger study of 570 quarry drillers/carvers and 258 polishers/machine operators not using power tools, an OR of 9.3 (95% CI 4.9–17.8) was reported (Bovenzi *et al.*1994, Ex. 26–1239). HAVS prevalence showed a significant increasing trend with estimates of lifetime vibration exposure.

In the Nilsson study, HAVS was examined in 89 platers and 61 office workers from a pulp mill machine manufacturing plant (Nilsson *et al.*1989, Ex. 26–1148). Prevalence of HAVS (OR=85; 95% CI 15–486) was much greater for platers with current exposure to vibration than unexposed office workers. There was a clear dose-response between HAVS and years of exposure.

Koskimies *et al.*investigated HAVS in a group of 124 forestry workers from 1972 to 1990 using a series of ten cross-sectional studies over time (Koskimies *et al.*1992, Ex. 26–1490). Their analysis showed a monotonic decrease in prevalence from 40 percent in 1972 to 6 percent in 1990. In a subcohort of 57 workers followed prospectively, HAVS cases decreased from 35 percent in 1975 to 6 percent in 1986. Over the same time period, modifications in chain saws used by the workers resulted in a reduction vibration acceleration from 14 m/s^2 to 2 m/s^2. While it is likely that the decline in HAVS is due to changes in the vibration acceleration, exposures and outcomes were never linked for individual workers.

The 1989 NIOSH criteria document (Ex. 26–392) provides some epidemiological evidence for an exposure-response relationship and temporal association between HAVS and vibration exposure. NIOSH analyzed HAV acceleration levels and prevalence of HAV-related vascular symptoms from 23 cross-sectional studies and found the two variables linearly correlated (R=0.67; p<0.01). Many of these earlier studies determined latency between vibration exposure and onset of HAVS symptoms providing some evidence of a temporal relationship. Unfortunately these data may be subject to recall bias since the mean latency was about six years and onset of symptomatology was often self-reported.

Most studies accounted for potential age-related effects by stratification of the analysis or through the use of multiple logistic regression. These studies also controlled for non-occupational disorders that involve symptoms similar to HAVS, such as idiopathic Raynaud's phenomena, peripheral neuropathy, alcohol-related illness, etc. According to NIOSH (1997, Ex. 26–1), it does not appear that these potential confounders account for the fairly strong and consistent association between HAVS and vibration.

Four studies that address vibration and HAVS were submitted into the OSHA docket following publication of the proposal (Mirbod *et al.*1999, Ex 500–121–48; Mirbod *et al.*1997; Ex 500–121–49; Ex 500–205–21; Palmer *et al.*1998, Ex 500–121–56; McGeoch and Gilmour 2000, Ex. 500–42–96; These are summarized in Table V–6. Studies that either measured tool acceleration or based HAVS on a combination of symptoms and medical tests found a significant association between segmental vibration exposure and this MSD (Ex. 500–121–49; Ex. 500–121–56 Ex. 500–121–48).

Conclusion

The 1997 NIOSH report concluded the following with regard to the relationship between work-related physical risk factors and HAVS:

> The 20 epidemiological studies show *strong evidence* of a positive association between high level exposure to hand-arm vibration and vascular symptoms of hand-arm vibration syndrome (HAVS). These studies are of workers with high levels of exposures such as forestry workers, stone cutters or carvers, shipyard workers, or platers. These workers were typically exposed to HAV acceleration levels of 5 to 36 m/s^2 * * * There is substantial evidence that as intensity and duration of exposure to vibrating tools increase, the risk of developing HAVS increases. [Ex. 27–1, Emphasis in original]

OSHA agrees with the NIOSH statements that intensity and duration of exposure to vibrating tools is linked to the risk of developing HAVS. Most of the epidemiological studies show a strong and consistent association between high-level exposure to HAV and HAVS symptomatology. The data indicate there are strong exposure-response relationships between the magnitude and duration of exposure and HAVS prevalence and severity. Some studies indicate temporal correlation between the chronic use of vibrating power tools and the onset of the disorder. A causal association between vibration and HAVS is consistent with clinical evidence showing that vibration damages nerve tissue and blood vessels in the fingers leading to symptoms characteristic of this MSD. Therefore, OSHA concludes that workers exposed to segmental vibration exposure, such as from long-term use of hand held power tools, are at increased risk of developing hand-arm vibration syndrome.

Hypothenar Hammer Syndrome

Hypothenar hammer syndrome (HHS) is a collection of vascular and neurological signs and symptoms that have been related to repeated trauma to the hand. HHS is associated with striking or pushing hard objects with the hypothenar region of the hand using the hook of the hamate bone as an anvil. At this location, the palmar blood vessels of the ulnar artery and the sensory branch of the ulnar nerve lie virtually unprotected near the surface of the skin and become trapped between "the hammer" (i.e. the hard object) and "the anvil" (i.e. the hamate bone). As a result, the blood vessels and nerves are especially vulnerable to injury by external mechanical stress. The repeated blunt trauma can lead to ulnar artery spasm, aneurysm formation, and/or thrombosis. These lesions cause arterial occlusion, vascular insufficiency, and post-traumatic ischemia of the surrounding tissue. The damage to neural tissue and reduced blood flow to the fingers are responsible for the most frequently reported symptoms of pain, numbness, cold feeling, discoloration and stiffness of the affected digits. A diagnosis can be made based on symptoms and a physical examination test of the radial and ulnar arterial blood supply to the hand, termed the Allen test. This test measures reflow time through the arteries following compression. Reflow time is substantially delayed in patients that suffer ulnar artery occlusion. More recently, arteriography has been used to confirm diagnosis of HHS. If elimination of the contact stress fails to resolve symptoms, vascular reconstructive surgery is often performed (Ex. 500–41–29).

There are four case studies of hospital or surgery clinic patients with HHS in the OSHA docket that have consistently implicated occupational exposure to repeated palmar trauma as a critical risk factor (Conn *et al.*1970 Ex. 26–821; Vayssairet *et al.*1987 Ex. 500–41–47; DeMonoco *et al.*1999 Ex 500–41–39; Ferris *et al.*2000 Ex. 500–41–33). These studies report on 58 patients altogether. In almost every case, the individuals suffering from the disorder reported a history of repetitive blunt trauma to the hand related to their jobs. Occupations such as carpenter, metal worker, machinist, and mechanic were most often cited. More infrequently, the HHS patients were engaged in hobbies in which the hand was exposed to frequent impact, such as karate and wood working. It should be noted that use of the hand as a hammer or to repeatedly apply direct impact to a hard object is a specialized combination of repetitive motion and mechanical force applied directly to a specific anatomical region. Other studies have reported HHS in workers repeatedly exposed to high-frequency mechanical stress to the palm from occupational use of hand-held vibrating tools (Nilsson *et al.*1989 Ex. 26–1148; Kaji *et al.*1993 Ex. 500–41–70). Thus, HHS is clearly another example of a work-related injury that occurs as a result of combined exposure to biomechanical risk factors (*e.g.* repetition, force, vibration) associated with other MSDs of the upper extremities.

Epidemiological Evidence

Besides the case studies mentioned above, there were two cross-sectional studies in the rulemaking docket that investigated HHS among workers (Little and Ferguson 1972 Ex. 500–41–89; Kaji *et al.*1993 (Ex. 500–41–70). Little and Ferguson examined 79 male vehicle maintenance workers from Australia for HHS who self-reported daily use of the hand as a hammer and 48 employees in the same shops who did not report habitual hand hammering. HHS was identified by both a positive Allen and Doppler test. The Doppler test charted blood flow from the radial artery and had shown good correlation with ulnar artery occlusion as measured by arteriography. The prevalence of HHS was 14 percent (11 out of 79) in the exposed workers and 0 percent in the referent population. The mean duration of employment (29.9 years) was significantly greater ($p<0.02$) in subjects with HHS than in men exposed to repeated trauma without the disorder (mean duration of 18.7 years).

Kaji *et al.*used arteriography to examine the hands of 330 Japanese workers that used vibrating tools in mining, forestry, and several other industries. They found a 7.3 percent (24 cases) prevalence of HHS among the workers. The injured subjects were predominantly coal miners, rock drillers and forestry workers that reportedly used air and jack hammers or chain saws. All suffered from HAVS as well as HHS. The mean duration of vibration exposure was 19.4 years (range 5 to 30 years). There was no unexposed referent group and no direct observation or measurements of vibration exposure in the study.

Conclusion

There is clear evidence that repeated and forceful impact between the hypothenar region of the hand and hard objects, such as hand hammering while on the job or frequent exposure to mechanical stress from use of hand-held vibrating tools increase the risk of developing HHS. The occluded blood vessels that develop in the palmar region of the hand as a result of the blunt trauma created by these occupational risk factors have been cited in numerous case studies. The pathophysiology that links the initial damage with tissue ischemia and the characteristic symptoms that define HHS are also well established in the medical literature. Although limited in terms of numbers and design, the epidemiological findings are consistent with the clinical evidence and provide support for a causal association between repeated and forceful contact stress to the hand and this disorder. OSHA concludes that workers exposed to repeated and forceful impact between the hypothenar region of the hand and hard objects, such as hand hammering while on the job, or frequent exposure to mechanical stress from use of hand-held power tools, are at increased risk of developing hypothenar hammer syndrome.

E. Disorders of the Low Back

Low-back pain has long been associated with the performance of heavy physical work (Hales and Bernard 1996, Ex. 26–896; Klein, Jensen, and Sanderson 1984, Ex. 26–972; Rowe 1969, Ex. 26–318; 1971, Ex. 26–319). Studies have demonstrated that back disorder rates vary substantially by industry, occupation and by job within given industries or facilities (see Bigos *et al.*1986a, Ex. 26–871; Riihimaki *et al.*1989a, Ex. 26–58; Schibye et al 1995, Ex. 26–1463; Skovron *et al.*1994, Ex. 26–795). Recently, a NIOSH review (Bernard and Fine 1997, Ex. 26–1) concluded that several work-related factors are associated with low-back disorders. The National Academy of Sciences (NAS 1999, Ex. 26–37) also concluded that there is an association between certain work factors and low-back disorders. This section summarizes and discusses the evidence that physical work-related risk factors contribute to the pathogenesis of specific disorders of the back. The risk factors are (1) heavy physical work, (2) lifting and forceful movement, (3) bending, twisting and awkward posture, (4) static work postures, and (5) whole body vibration. Exposure to several factors often occurs concurrently in occupational settings and the evidence indicates that the risk of injury is greatest when more than one factor is present, reinforcing the concept that these MSDs are both multi factorial in etiology and that the joint effects of these risk factors can be synergistic. The terms "back disorder" or "back MSDs" are used to encompass all adverse health outcomes related to the back.

There are several types of evidence that interrelate to support the five risk factors stated above as causative factors for MSDs of the back. Information on pathophysiology provides evidence that links risk factors to the physiological, anatomical, and pathological alterations in soft tissues of the back. This speaks to the biologic plausibility that work-related risk factors contribute to these injuries. There is also a large volume of epidemiological data that provides evidence of an association between worker exposure to the identified risk factors and the occurrence of MSDs of the back. Finally, there is biomechanical and psychophysical laboratory research that provides much corroboration and adds to the plausibility and coherence arguments for a causal association determination.

Epidemiologic and laboratory-based research methods have both been used to evaluate the significance of various risk factors associated with work-related musculoskeletal disorders (MSDs). Epidemiologic studies are designed to look for significant associations between exposure to ergonomic risk factors and selected health outcomes (ranging from medically diagnosed disease entities to subjective reports of pain or discomfort) in selected populations of workers. NIOSH (Bernard and Fine, 1997, Ex. 26–1) performed a comprehensive review of the occupational epidemiology back MSD literature and after carefully selecting those highest quality studies, performed an assessment of the 42 studies by type of work-related risk factor. This evaluation draws from the NIOSH assessment and appends it with additional and more recent studies added to the record.

Although epidemiologic studies provide important insights into understanding the causes of MSDs, these studies are sometimes criticized due to their inability to precisely measure exposures to risk factors and the associated biomechanical and/or physiological responses to these exposures. Biomechanical models and laboratory studies do not replace epidemiological studies. However, these approaches provide important complementary information toward understanding the complex process of how exposures to ergonomic risk factors result in physiological responses that may ultimately lead to work-related injuries and illnesses. Presented here is a summary of laboratory studies and biomechanical models of work factors associated with increased risk of low-back injuries and disorders.

Laboratory studies are controlled scientific investigations of how humans respond when exposed to specific ergonomic risk factors (*e.g.*, forceful exertions, awkward work postures, high repetition, etc.) during simulated work activities. Responses include both objective biomechanical/physiological measurements, such as the electromyographic (EMG) activity of a working muscle, and subjective psychophysical measurements, such as ratings of perceived exertion. Most of the studies cited were performed in true laboratory settings. A few studies were performed in operational workplaces modified as necessary to collect data under carefully controlled conditions. Because of ethical issues related to the protection and safety of human subjects, laboratory studies are designed to keep exposures to risk factors at levels below the threshold of injury. As a result, these studies are generally incapable of "proving" a relationship between exposure and injury. Despite this limitation, laboratory studies provide important scientific insights as to how the body responds to ergonomic stresses. Combined with pathophysiological models of musculoskeletal injury mechanisms and epidemiological findings of positive relationships between exposure to ergonomic risk factors and musculoskeletal injury, laboratory studies are an essential element in understanding the causes and prevention of work-related overexertion injuries.

Biomechanical models simulate and/or predict how the musculoskeletal system responds to work factors such as external loads placed on the hands, work posture, and movement dynamics. These models can be used to estimate musculoskeletal stresses in the absence of a human experiment.

To understand the mechanisms by which work causes or contributes to the genesis or expression of low-back pain, it is first necessary to comprehend basic low-back anatomy and potential sources of pain. The majority of low-back disorders involve soft tissues (muscle and ligament) or the three-disc complex (the intervertebral disc and two facets). The latter may involve degenerative disc disease, disc herniation or osteoarthritic conditions. To understand how the performance of work causes lumbar disc disease, a review of lumbar anatomy, disc biochemistry, and disc biomechanics is presented here. With this foundation, pathogenic models are better appreciated. Several references are available for additional information (Bogduk and Twomey 1991, Ex. 26–720; Chaffin and Andersson 1991, Ex. 26–420; Williams, McCulloch, and Young 1990, Ex. 26–1563; Wiesel *et al.*1996, Ex. 26–1394). This discussion of the anatomy of the low back region is followed by a summary of the occupational epidemiology literature on the low back. This section is followed by a discussion of the biomechanical and laboratory research literature on stressors on the back.

The epidemiology literature is examined, to the extent possible, by grouping by specific work-related stress factor. The biomechanical and laboratory section discusses specific stressors separately for soft tissue disorders, disc disorders, and arthritis/spondylosis. In the conclusion section OSHA makes a determination of causality based on the consistency and strength of the epidemiology evidence and the coherence with the biomechanical and laboratory evidence. OSHA makes a determination of causality on each occupational risk factor examined, where possible; however, the final determination of work-related back MSDs is based on the totality of the evidence, not on each factor separately. OSHA believes that determining causal associations between individual work-related risk factors and MSDs is helpful, both in making a final determination of causality and in determining ways to abate risk. However, in discussing the epidemiology evidence it becomes clear that work often involves simultaneous exposure to multiple risk factors, even though in any particular situation exposure to one risk factor may predominate.

Anatomy of the Low Back

The lumbar spine is required to redistribute forces related to both intrinsic weight bearing and extrinsic load carrying. It is composed of five vertebral bodies separated by intervertebral discs acting as shock absorbers and stabilizers, as well as the posterior vertebral ring composed of pedicles, laminae, spinous and transverse processes, and facet joints that enclose and protect the spinal cord and spinal nerve roots. The lumbar vertebrae are numbered from the upper (cephalad) or first lumbar vertebra (L1) to the lower (caudad) or fifth lumbar vertebra (L5). Lumbar vertebrae are larger and wider than those in the dorsal and cervical spine, with the fifth vertebra generally the largest. This affords a larger surface area for the intervertebral disc and for load distribution. Disc anatomy and function will be discussed further in this section. At the lower end of the lumbar spine is the sacrum, a large, triangular bone representing the fusion of five sacral vertebrae, and the small coccyx.

Consistent with the greater vertebral size, the lumbar pedicles are shorter and wider than in the dorsal spine. Lumbar facets are posterior articular processes where the adjacent vertebrae interface. These joints help permit motion and bear some of the compressive load in addition to helping maintain stability of the spine against torsion and shear. Facet joints are synovial, and they contain nerve innervations in the synovial lining.

Anterior and posterior longitudinal ligaments attach to the superior and inferior margins of the lumbar vertebrae, and are innervated by pain fibers. The ligamentum flavum is a non-innervated structure that runs down the vertebral ring, and may hypertrophy after injury. This may become significant when a hypertrophied ligament infolds during spinal extension in an individual with disc bulging and facet arthropathy, thereby creating relative spinal stenosis. The interspinous ligament, also non-innervated, runs down the posterior margins of the spinous processes, posterior projections from the vertebral ring.

In adults, the spinal cord terminates as the conus medullaris at about the level of the first lumbar vertebra in the upper lumbar spine. Branching off from the conus is a bundle of lumbosacral nerve roots that resemble a horse's tail, called the cauda equina. These nerve roots pass through the lumbar and sacral portions of the spinal canal surrounded by the vertebrae, intervertebral discs, pedicles, laminae, facet joints, and spinal ligaments and eventually emerge as individual nerve roots through the intervertebral foramina. The neural foramen is bordered by the transverse processes of adjacent vertebrae, and the spinal nerve root takes its name from the adjacent (cephalad) vertebrae. The spinal cord is covered by the thecal sac, composed of meningeal tissue and cerebrospinal fluid.

Nerve roots in the lumbosacral spine include ventral (motor) and dorsal (sensory) components. Ventral roots contain motor axons sending signals to distal areas and control various skeletal muscle motor functions. Dorsal roots comprise primarily sensory axons receiving signals from distal areas or dermatomes. Thus, symptoms and signs of nerve root compression will vary with the location of the compressive lesion. As the intrathecal nerve roots reach the intervertebral foramen, the root sleeve gradually encloses the nerve more tightly, and eventually become extrathecal. Cell bodies for sensory axons are located in an extrathecal area of swelling called the dorsal root ganglion. These ganglia are encountered in or close to the intervertebral foramina. Axons of the nerve roots consist of collagen tissue called the endoneurium. This is covered by a thin root sheath that separates the endoneurium from a small amount of cerebrospinal fluid, and the epineurium and perineurium covering. Blood flow derives from segmental arteries that divide into three branches when approaching the intervertebral foramen. Nociceptors are present in facet synovium and outer layers of annulus (or extension of the posterior longitudinal ligament).

There are several important muscles of the low back. The psoas muscles are major spinal flexors that originate at the anterior vertebral borders and combine with the iliacus from the crest of the pelvic ilium and insert on the pelvis and lesser trochanter of the hip. Posteriorly, the erector spinae muscles attach to the spinous processes and laminae down to the sacrum to act as major spinal extensors. The interspinales muscles run between the five spinous processes of the lumbar spine and contribute to extension. Several other coactivating muscles assist in spinal stabilization and rotation. The rectus abdominis extends from the lower border of the rib cage to the pelvis and assist in flexion and maintenance of lordosis. The obliques and transversus are coactivators, and contribute to the generation of increased intraabdominal pressure, which some feel helps decrease compressive loading on the spine. External moments imposed on the lumbar spine during lifting are proportional to the weight and distance of the load from the spine and the weight and location of the individual's body segments. This results in a state of equilibrium where the external moments are counteracted by internal moments, primarily created by muscle contractions of flexors balancing extensors with additional stabilization from co-activators. Ligaments provide passive resistance or restorative moment to muscles. It is not clear, however, under what lifting conditions the ligaments play a significant biomechanical role.

Epidemiology of Work-Related Low Back Disorders

When discussing causal factors for low-back disorders, outcome measures vary and include low-back pain, impairment, and disability. Outcome measures may be defined in terms of severity and also whether the information was based on self-reports (interview or questionnaire) or objective criteria, *e.g.*, lumbar disc pathology.

Because there are numerous conditions in the low back which may cause low back pain, regardless of their relationship to work factors, and, in most cases the cause(s) cannot be determined with any degree of clinical certainty, the most common form of back disorder is "non-specific symptoms," which often cannot be diagnosed. Therefore, in its review of the epidemiologic evidence for work-relatedness of low-back musculoskeletal disorders NIOSH (Bernard 1997; Ex. 26–1) included subjectively-defined health outcomes (*e.g.*, "back pain") because they comprise such a large subset of the total. From a total of 42 studies, 24 investigations defined the health outcome only by report of symptoms on questionnaire or interview, 2 used sick leaves and medical disability retirements and 6 used injury/illness reports. The NIOSH review of epidemiologic studies of low-back disorders examined the following potential risk factors related to physical aspects of the workplace: (1) Heavy physical work (HPW, work that has high energy demands or requires some measure of physical strength, jobs that impose large compressive forces on the spine), (2) lifting and forceful movements (LFM), (3) bending and twisting (BT, awkward postures), (4) static work postures (SWP), and (5) whole-body vibration (WBV). These physical risk factors almost always appear in workplaces in combinations with other work-related risk factors, as well as a myriad of personal, psychosocial and other factors. However, to the extent possible the review seeks to examine the physical factors separately. Furthermore, since this ergonomics rule does not contain provisions relating to WBV, this last portion of the NIOSH review will be substantively omitted from this analysis. Table V–7 contains a listing of both the higher quality back studies used in the NIOSH 1997 (Ex. 26–1) review and additional back studies in the record.

TABLE V–7.—SUMMARY OF EPIDEMIOLOGY STUDIES EXAMINING MUSCULOSKELETAL DISORDERS OF THE BACK

Study/exhibit number	Job type studied	Physical factors	Exposure basis	Physical exam	Risk measure (95% CI)[1]
Punnett, 1991 Ex. 26–39	Auto assembly	HPW/BT LFM	Observation measurement.	Yes	OR=2.2–8.1* (1.4–4.4)
Astrand, 1987 Ex. 26–527	Pulp mill	HPW	Questionnaire job title.	Yes	OR=2.3*
Bigos, 1991 Ex. 26–1242	Aircraft assembly	HPW	Observation questionnaire.	No	NR*
Burdorf, 1991 Ex. 26–454	Concrete fabrication.	HPW/BT LFM	Observation measurement.	No	OR=2.8* (1.3–6.0)
Clemmer, 1991 Ex. 26–1345	Offshore drilling	HPW	Questionnaire job title.	No	OR=2.2–4.3*
Hildebrandt, 1995 Ex. 26–1516	Population based	HPW	Questionnaire job title.	No	OR=1.2* (1.33–1.55)
Heliovaara, 1991 Ex. 26–959	Population based	HPW/LFM	Questionnaire job title.	Yes	OR=1.9–2.5* (1.4–4.7)
Hildebrandt, 1996 Ex. 26–770	Steel maintenance	HPW	Questionnaire job title.	No	NR
Johansson, 1994 Ex. 26–1132	Metal workers	HPW/BT LFM	Questionnaire job title.	No	PRR=1.76 (1.25–2.47)
Leigh, 1989 Ex. 26–750	Population based	HPW	Questionnaire job title.	No	OR=1.5* (1.1–2.2)
Masset, 1994 Ex. 26–1470	Steel workers	HPW/BT	Questionnaire job title.	No	NR
Partridge, 1968 Ex. 26–1, pg. 6–61	Dock workers	HPW	Questionnaire job title.	Yes	OR=1.2
Riihimaki, 1989 Ex. 26–998	Concrete workers	HPW/BT	Questionnaire job title.	No	OR/1.0–1.5*
Riihimaki, 1994 Ex. 26–1188	Heavy equipment operators.	BT	Questionnaire job title.	No	NR
Ryden, 1989 Ex. 26–809	Hospital employees.	HPW/BT	Questionnaire job title.	No	OR=2.2* (1.25–4.15)
Svensson, 1989 Ex. 26–732	Population based	HPW/BT LFM	Questionnaire job title.	No	OR=1.2*
Videman, 1990 Ex. 26–1023	Hospital patients	HPW/SWP LFM	Questionnaire job title.	autopsy	OR=2.8–24.6* (1.5–409)
Bergenudd, 1988 Ex. 26–1342	Population based	HPW	Questionnaire job title.	No.	OR=1.8* (1.2–2.7)
Burdorf, 1990 Ex. 26–1518	Crane operators	HPW/SWP LFM	Questionnaire job title.	No	OR=0.5–4.0 (0.8–21.2)
Chaffin, 1973 Ex. 26–876	Electronics manufact..	LFM	Job title	No	OR=5.0*
Holmstrom, 1992 Ex. 26–36	Manual handling	LFM/BT SWP	Questionnaire job title.	Yes	OR=1.3* for BT (1.1–1.5)
Huang, 1988 Ex. 26–1204	School lunch workers.	LFM	Observation measurement.	No	NR
Kelsey, 1975 Ex. 26–1134	Case/control herniated lumbar disc.	LFM/SWP	Questionnaire job title.	No	NR
Kelsey, 1984 Ex. 26–752	Case/control prolapsed lumbar disc.	LFM/BT	Questionnaire job title.	Yes	OR=3.1* (1.3–7.5)
Knibbe, 1996 Ex. 26–766	Nurses	LFM	Questionnaire job title.	No	OR=1.3
Magora, 1972, 1973 Ex. 26–1513	8 occupations	LFM/BT	Observation measurement.	No	OR=1.0–1.7* (1.3–2.1)
Liles, 1984 Ex. 26–33	Manual handling	LFM	Measurement	No	OR=4.5* (1.02–19.9)
Marras, 1995 Ex. 26–14–12	Manufacturing workers.	LFM/BT/ HPW	Observation measurement.	No	OR=10.7* (4.9–23.6)
Toroptsova, 1995 Ex. 26–1, pg. 6–92	Machine builders	LFM/BT/ SWP	Questionnaire job title.	Yes	OR=1.4*–1.7*
Undeutsch, 1982 Ex. 26–731	Airport baggage handlers.	LFM	Questionnaire job title.	Yes	NR
Walsh, 1989 Ex. 26–1437	Population based	LFM/SWP	Questionnaire job title.	No	OR=1.5–2.0* (1.1–3.7)
Skov, 1996 Ex. 26–674	Saleworkers	SWP	Questionnaire job title.	No	OR=2.5* (1.2–4.9)
Mandel, 1987 Ex. 500–41–92	Hospital nurses	LFM	Questionnaire	No	OR=1.4*
Thorbjornsson, 1998 Ex. 500–119–7	Random selection from 2500 medical exams	HPW	Questionnaire	Yes	OR=1.4* (1.0–2.0)

TABLE V–7.—SUMMARY OF EPIDEMIOLOGY STUDIES EXAMINING MUSCULOSKELETAL DISORDERS OF THE BACK—Continued

Study/exhibit number	Job type studied	Physical factors	Exposure basis	Physical exam.	Risk measure (95% CI)[1]
Kuh, 1993 Ex. 500–41–80	Population based	LFM	Job title	No	RR=1.3* (1.0–1.7)
Smedley, 1995 Ex. 500–41–40	Hospital nurses	LFM	Questionnaire	No	OR=1.3–1.8* (1.3–2.5)
Venning, 1987 Ex. 500–41–49	Nurses	LFM	Questionnaire job title.	No	OR=1.7–4.3*
Xu, 1997 Ex. 500–119–9	Population based	BT/HPW	Questionnaire	No	OR=1.3–1.7* (1.51–1.93)
Stobbe, 1988 Ex. 500–41–45	Hospital nurses, LPNs, attendants.	LFM	Questionnaire	No	OR=1.0–2.7*
Park, 1997 Ex. 500–41–104	Population based	HPW/LFM/BT	Questionnaire	No	OR=1.88* (1.64–2.15) for HPW
Latza, 2000 Ex. 500–41–83	Population based	HPW/BT/SWP/LFM	Questionnaire	No	OR=1.77–1.89*
Latza, 2000 Ex. 500–119–6	Laying sandstone	HPW/LFm	Questionnaire	Yes	RR=1.8–2.6* (1.1–6.5) for hours/shift
Kerr, in press Ex. 500–39	Automotive workers.	LFM/BT	Measurement	No	OR=1.7–2.0* (1.22–3.59) for biomechanical factors
Krause, 1998 Ex. 500–87–2	Transit vehicle workers.	HPW	Questionnaire records.	Yes	OR=3.04* (1.85–5.00)
MacFarlane, 1997 Ex. 500–41–91	Population based	LFM	Questionnaire	Yes	OR=1.1–2.5* (1.5–4.1)
Waters, 1999 Ex. 500–41–54	Lifting case/control.	LFM	Questionnaire measurement.	No	OR=2.45* (1.29–4.85)
Wang, 1998 Ex. 500–41–52	Manual handling	LFM	Measurement	No	Significant correlation p<0.01
Van Poppel, 1998 Ex. 500–121–71	Airline baggage handlers.	HPW	Questionnaire	No	NR
Vingard, 2000 Ex. 500–41–51	Population based	HPW/LFM/BT	Questionnaire	No	RR=1.4–2.9* (1.2–6.8)
Luoma, 1998, (2000) Exs. 500–71–39, (38)	Not by identifiable risk factor but by title—office carpenter machine driver		Job title	Yes	OR=2.0–8.1* (2.4–21.1)
SHARP, 1993 Ex. 30–7	Data entry	SWP	Questionnaire	No	NR* (p<0.05)
Larese, 1994 Ex. 38–130	Hospital nurses	LFM	Measurement	Yes	OR=1.9–2.4*
Myers, 1999 Ex. 500–119–10	Case/control municipal workers.	HPW/BT/LFM	Questionnaire measurement job title.	No	OR=1.6–2.0* (1.13–3.67) for BT

HPW=heavy physical work; LFM=lifting or forceful movements;
BT=bending and twisting or other awkward postures; SWP=static work postures
IR=incidence rate; OR=odds ratio; RR=relative risk; NR=not reported; *=p<0.05
[1] 95% confidence limits expressed for the upper end of the risk measure range.

Heavy Physical Work

The NIOSH summary reviewed the eighteen higher quality studies which address the association between HPW and LBP (Ex. 26–1, pgs. 6–4 to 6–13). Of these eighteen, 14 were cross-sectional, 3 were prospective) and one was a case-control (Ryden *et al.* 1989, Ex. 26–801). Study populations included individuals working in health care, office work, manufacturing and construction, and all with different physical work requirements. Despite the fact that the studies assessed different groups of workers, defined disorders and assessed exposures in many ways, nine of these eighteen found statistically significant positive associations. The relative risk estimates for these significant associations generally ranged from 1.1 to 4.3, although one study of cadavers found a significant OR=12.1 (95% C.I. 1.4—107) for the risk of osteophytosis among those in the HPW category. OSHA notes that if there were no true associations only one of these eighteen studies should have shown a statistically significant result.

With regard to temporality, this is usually most easily studied with a cohort study design. Of these three studies, one had no association (Bigos *et al.* 1991, Ex. 26–1241), while two showed statistically significant increases (Clemmer *et al.* 1991, Ex. 26–1345; Bergenudd *et al.* 1988 Ex. 26–1342). Two cross sectional studies also considered temporal relationships by including in the analysis only those MSD-free when starting their current jobs, and both showed positive associations (Burdorf *et al.* 1991, Ex. 26–454; Burdorf and Zondervan 1990, Ex. 26–1518). Thus, these results are consistent with a positive finding for temporality.

OSHA also notes that the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses as well as other health interview surveys have found elevated LBP rates and MSDs in typical HPW associated occupations, (female) nursing aides, orderlies and attendants; personal care; and air transportation workers (see the risk assessment in section VI of this preamble). While survey statistics may not be definitive in themselves, they show a pattern of consistency with the results from the epidemiology studies discussed above. OSHA notes that these types of population-based studies can be less reliable than other epidemiology designs due to generally less knowledge about individual exposures.

Since OSHA's Ergonomics proposal was published, several other studies on HPW and LBP have been put into the record. Several are discussed below:

The Vingard *et al.*, 2000 (Ex. 500–41–114) population-based case-referent study suggests that prolonged exposure to many years of heavy work and forward bending (cumulative exposure) increases the risk of LBP. The Latza *et al.*, 2000 (Ex. 38–424) prospective study, after adjusting for trade, found exposure-response relationships for hours per shift laying sandstone (PR=1.8, 95% C.I. 0.7—4.7, for 0 to <2 hours; PR=2.6, 95% C.I. 1.1—6.5, for ≥ 2 hours; trend test p=0.03), and stone load (PR=1.8, 95% C.I. 0.4—9.5, for intermediate level; PR=4.0, 95% C.I. 0.8—19.8 for high level; trend test p=0.03). The Krause *et al.* 1998 study (Ex. 38–272) found that cable car crews performing the heaviest physical labor had a three-fold increased risk of spinal injury compared with bus driver (OR=3.04, 95% C.I. 1.85—5.00). This five year prospective study of 1,871 transit vehicle operation also found both physical workload and psychosocial job factors independently predict spinal injury in transit vehicle operators.

OSHA has also considered three other studies available since the proposal on HPW. Two of these three studies found at least one statistically significant association between LBP and HPW while the third suffered from methodological problems. Myers *et al.* (1999, Ex. 500–119–10) carried out a case-control study of 274 workers with symptoms and signs of low back pain from four municipal departments (a 73% participation rate). The stated purpose was to identify factors, both physical work characteristics and psychosocial factors, associated with acute low back injury. Two randomly selected controls were chosen, one matched according to work tasks, which the authors stated "could be used to examine importance of non-ergonomic factors" and one matched by department. Cases were defined from reports from the city Occupational Medicine Clinic, and were those who had been assigned restricted work or had lost work time due to back injury. Further information was gathered from questionnaire about work history, work characteristics, work injuries, back pain, psychosocial behaviors, and demographics. Exposure was assessed by questionnaire and measurement; the strenuousness of each worker's job classified as light, medium, or heavy according to weight capacity, frequency and duration of sitting-standing-walking. Analyses screened for 2-way, 3-way and 4-way interactions. The variables examined included a work movement index, which combined twisting, extended reaching, and stooping. Factor analysis was used to determine the important psychosocial factors from the Job Content Questionnaire. There was no difference in the prevalence among the cases and controls regarding physical work demands (light, medium, and heavy), nor twisting or extended reach. However, because the cases and controls were matched on job department and/or job title, the design provided little ability to examine those job factors. This would also preclude any conclusions pertaining to the relative strength between psychosocial and physical factors. Although the authors noted that their "findings underscore the importance of adopting a model that does not focus entirely on physical factors in relation to the multifactorial problem of back injury," their study design did not allow them to focus adequately on the physical factors. This study focused on the psychosocial aspects of the acute back pain but did not adequately address work factors.

Park *et al.* (1997, Ex. 500–41–104) carried out a cross-sectional study using data from the National Health Interview Survey Occupational Health Supplement, 1988. In this survey, 30,074 randomly selected employed persons were asked about back pain occurring every day for a week or more in the previous 12 months. The response rate was 87%. Causes of back pain were classified into 3 groups: (1) Injury and/or repeated activities that occurred at work; (2) injury and/or repeated activities that occurred outside work; and (3) other reasons (illness, diseases, unknown). Self-reported work activities included repeated activities with lifting, pushing, pulling, bending, twisting, or reaching. Occupation was coded according to the 1980 classified Index of Industries and Occupations of the U.S. Bureau of Census. Confounders were controlled for in the regression models. Results found that 17.6% of workers reported back pain every day for one or more weeks during a 12 month period; 26.9% of these reports were attributed to repeated activities (RA) at work; 17% to RA and injury, and 8.2% to injury at work. The majority of back pain found in blue collar workers (OR=1.38, 95% C.I. 1.22—1.54), was attributed to work; whereas the majority of BP in white-collar workers was not attributed to work conditions. A higher proportion of workers with work-related back pain caused by injury or RA had pain in the lower back extending to lower body parts, had missed work more than 5 days, and had changed jobs than had workers with non-work related back pain. Other significant variables were "strenuous physical activities at work more than 4 hours per day [HPW]" (OR=1.88, 95% C.I. 1.64—2.15), "repetitive movements more than 4 hours per day" (OR=2.4, 95% C.I. 2.1—2.77) and current smoking (OR=1.57, 95% C.I. 1.39—1.76), BMI greater than 28 kg/m^2 (OR=1.35, 95% C.I. 1.2—1.52) and age 35–59 (OR=1.31, 95% C.I. 1.2—1.46). The strength of this study is the rigorousness used by the National Center for Health Statistics in their study design and analysis. A weakness is that it is based on questionnaire data.

Thorbjornsson *et al*, (1998, Ex. 500–119–7) used data collected over 24 years for its cohort study. 252 women and 232 men were randomly selected from 2500 for medical examination (a 62% participation rate). In 1969 these subjects had a questionnaire-based interview and an examination. LBP was defined as pain, aching, or stiffness in the lower back in the past 12 months. There was a follow-up a re-examination in 1993. Exposure assessment was based on a questionnaire from 1969 using a dichotomous scale for 11 work factors (*e.g.*, high mental load (hectic work, exhaustion at end of day), poor supervisor social support, monotonous work, full time work; night or shift work, overtime work, high physical load (40 kg for women, 60 kg for men or physical exhaustion at end of day), severe vibrations, and non-working conditions, using a dichotomous scale. (Insufficient or unsatisfactory leisure time, few or unsatisfactory social contacts, additional domestic workload). Risk factors for back pain during 1972–1992 included: for women, unsatisfactory leisure time (OR=1.5, 95% C.I. 1.1—2.0); for men, 1972–1993: high physical load (OR=1.4, 95% C.I.1.0—2.0), vibrations (OR=1.4, 95% C.I. 1.0—2.2), and unsatisfactory leisure time (OR=1.5, 95% C.I. 1.1—2.0). Cumulative incidence ratios for 1972–1993, adjusted for age, and earlier back pain were 38% for women and 43% for men.

Lifting and Forceful Movements (LFM)

The NIOSH summary reviewed the 18 higher quality studies that address the association between LFM and LBP (Ex. 26–1, pgs. 6–13 to 6–21). Of the eighteen studies, 13 were cross-sectional, two were prospective, and three were case-control designs. Only the one case-control study of back pain in auto workers (Punnett *et al.* 1991, Ex. 26–39) fulfilled all four of their quality evaluation criteria. Besides auto workers, among the study groups which showed increased risks to workers with high lifting or manual materials handling (MMH) demands were nursing aides, baggage handlers, workers in manufacturing and electronics, crane operators, and concrete fabricators, although several studies focused more on the actual stresses within the job rather than job title. In all 10 of the eighteen studies showed at least some statistically significant associations between LFM and LBP, with the significant risk estimates generally ranging from 1.2 to 5.2 (Ex. 26–1, pg. 6–41). For the most part, higher ORs were observed in high-exposure populations. The highest risk estimate (OR=10.7) was from a group of workers in a cross-sectional study by Marras *et al.*, (1993, Ex. 26–170; 1995, Ex. 26–171). The MMH workers with this highest OR had the highest combination of exposure measures relating to five specific risk factors associated with lifting, twisting, frequency, angle, and force, again strongly suggesting synergism among the risk factors. The 5 studies reviewed for this chapter which showed no association between lifting and back disorder used subjective measurements of exposure, had poorly described exposure assessment methodology, or showed little differentiation within the study group.

With regard to temporality, both the prospective studies which assessed exposures prior to identification of MSDs, had positive association. Also, of the four (three cross-sectional and one case-control) studies which attempted to address temporality, three found positive relationships between lifting and LBP. OSHA also notes that of the eight studies which examined exposure-response relationships in some manner, six found positive associations, including Punnett *et al.*, 1991, (Ex. 26–39) while two others did not (Ex. 26–1, pg. 6–20).

Since OSHA's Ergonomics proposal was published, several other studies on LFM have been put into the record. Some are more recent, and these are discussed first, while several older studies, not part of the original review, are also discussed below.

With respect to the more recent studies, published since 1996, the studies of LFM and LBP in a wide variety of industries provide substantial additional evidence that repetitive lifting is associated with low back disorders.

There are a limited number of negative studies which provide little evidence to weaken the overall conclusion from the much large number of positive studies. Other reportedly negative studies of lifting and low back disorders have limitations. For example, Feyer, Herbison *et al.* (2000, Ex. 26–1499) conducted a prospective study of low back pain among nursing students, but there was no evaluation of the physical demands of jobs and there was a 1/3 dropout from the study.

In addition to the more recent studies, six older studies, not in the proposal, also discussed the relationship between LFM and LBP. Mandel and Lohman (1987, Ex. 500–41–92) showed an increased risk of back pain with lifting more than10 patients per week (OR=1.39, 95% C.I. 1.05—1.84) in a cross-sectional study in which 428 registered nurses in a Midwestern hospital participated (rate was 65%). Fifteen percent of the nurses had reported experiencing LBP for the first time during the study year, with most episodes occurring in younger workers. However, while intensive care unit nurses lifted significantly more patients, LBP was not associated with work area. The most significant associations were having LBP prior to the study year and having pain in another part of the spine. The limitations of this study are its participation rate and both its exposure assessment and health outcome definition. However, despite these limitations, it provides support for patient lifting as a risk factor for LBP in nurses.

Larese and Fiorto (1994, Ex. 38–130) in a cross-sectional study compared 425 general nursing staff from an urban hospital to 198 oncology nurses (participation rate: 91.4%). LBP cases were based on clinical examination or X-ray findings. Exposure measurements included the analysis of working conditions, which revealed both groups of nurses had to do frequent and heavy lifting, lowering, and pushing-pulling. Differences were found when analyzing the number of patients assisted by the different nursing groups: the staff nurses cared for double the number of patients compared to the oncology nurses. Calculating crude odds ratios showed that general nurses had an OR=1.9 (95% C.I. 1.32—2.76) for LBP and an OR=2.4 (95% C.I. 1.35—4.27) for back pain sick leave compared to the oncology nurses. The authors used the Mantel-Haenzel chi-square statistics to control for age and for occupation among the two groups, but multivariate analysis to control for both factors simultaneously was not done. The authors concluded that "comparison between the two hospitals suggests factors associated with the disorders: work tasks and particularly nurses/patients ratio are more important than age and length of exposure." The authors did not present the data from which they drew these conclusions.

Stobbe *et al.* (1988, Ex. 500–41–45) carried out a retrospective study of three hospital groups at a major medical center including 143 licensed practical nurses, 252 nurses aides, and 20 attendants. Two groups were identified, one exposed to frequent patient lifting, one not. Health outcome was defined as back injuries, including both lost-time and non-lost-time injuries. Lifting frequency was determined through interviews with the nursing director, the head nurse, and nursing supervisors. High frequency lifting was defined as an average of more than 5 patient lifts per shift. Low frequency lifting (control group) was defined as average of less than two patient lifts per shift. Nursing personnel with estimated exposures of 3–5 patient lifts per shift were excluded. Lifting frequency (OR=2.7, p=0.009), and length of employment (p=0.0085) remained significant in the logistic regression model, while occupation did not. The authors used a survivor type conditional analysis which assumed that when a person with a back injury report resumed work, the future probability of injury was the same as if there had been no previous injury. This assumption has not been supported in other studies.

Kuh *et al.* (1993, Ex. 500–41–80) in their longitudinal study of 3262 same age Great Britain natives (born the first week, 1946), looked at risk factors for LBP, mainly the association with stature and height, but also lifting. The study population had been followed every 2 years in childhood, and every 5 years as adults. Participation rate for this study was only 60.8%. Exposure was assessed using job title and occupational histories. A matrix assigned jobs to three levels of lifting—low, intermediate and high. The interaction of height and occupational lifting as a risk factor for LBP was investigated for men. The onset of back pain symptoms was significantly more common in men whose jobs were likely to involve heavy lifting (RR=1.3, 95% C.I. 1.0—1.7). The main occupations of heavy lifting associated with LBP were farming and construction. There was discussion of reporting bias, recall bias, lack of direct information about lifting at work. The weakness of this study is using "job title" as surrogate for exposure, but a bias here is likely to mask true associations.

Smedley *et al.* (1995, Ex. 500–41–40) conducted a cross-sectional survey of 2,405 nurses using a self-administered questionnaire to investigate the risk factors associated with low back pain. The response rate was sixty-nine percent. Among those who responded to the survey, 1616 were women. Due to the low number of male respondents, this study focused on female workers. Low back pain was defined as pain lasting for longer than a day in an area between the twelfth rib and the gluteal folds (indicated on a chart). Questions about non-musculoskeletal symptoms, included in the questionnaire, were designed to investigate whether psychological factors that influence reporting of other symptoms also affect reporting of LBP. After adjustment for age, height and non-musculoskeletal symptoms, significant associations were found for: frequency of manually moving patients around on the bed; manually transferring patients between bed and chair; and manually lifting patients from the floor.

Frequency	OR	95% C.I.	Factors controlled
Manual Movement of Patients on Bed			
5–9 moves	1.5	1.1–2.2	Age/height.
5–9 moves	1.6	1.1–2.3	Age/height/non-musculoskeletal symptoms.
10+ moves	1.7	1.2–2.3	Age/height.
10+ moves	1.7	1.2–2.4	Age/height/non-musculoskeletal symptoms.
Manual transfer of patients between bed and chair			
5–9 moves	1.7	1.2–2.3	Age/height.
5–9 moves	1.8	1.3–2.5	Age/height/non-musculoskeletal symptoms.
10+ moves	1.5	1.1–2.1	Age/height.
10+ moves	1.5	1.1–2.1	Age/height/non-musculoskeletal symptoms.

Evaluation of the task of manually lifting patients from the floor resulted in similar significantly elevated risks regardless of whether age and height alone or all three factors, *i.e.*, age, height, non-musculoskeletal symptoms, were controlled for (OR=1.3, 95% C.I.1.0—1.6). In this study, nurses who often report non-musculoskeletal symptoms, such as low mood or stress, were significantly more likely to report low back pain. For example, frequent low mood was strongly associated with subsequent back pain (OR=3.2, 95% C.I.. 2.2—4.8). Specific manual handling tasks were associated with an increased risk of back pain while no such association was found in this study among nurses using mechanized patient transfer (with hoists).

A study of personal and job-related factors that may affect the incidence of back injuries among 5,649 nurses was conducted by Venning *et al.* (1987, Ex. 500–41–49). A "back complaint" was defined as any work-related injury or complaint of discomfort in the back and reported through an employee health office. Nurses were surveyed by questionnaire and then observed for a 12-month study period. As annual injury rate of 4.9% was observed. Four factors were found to be highly statistically significant ($p<0.01$) predictors of back injury. Risk estimates for all four factors (service area, lifting, job category, and previously reported back injury), remained significantly elevated when a forward stepping model of logistic regression was applied. The observed adjusted odds ratios were: 4.26 for service areas where lifting occurs most often as compared with areas where lifting occurs least; 2.19 for daily lifters as compared with light, occasional, and nonlifters; 1.77 for nursing aides as compared with registered nurses and supervisory personnel; and 1.73 for individuals who have previously reported back injury as compared with those who have not reported previous injury. No other factors, including age, physical activity, availability of lifting aids, height and weight, and instruction in back care and lifting procedures, were significantly associated with reporting of back injury. The influence of service area is not easily explained. The authors chose to define service area as a work activity. With an attitudinal measurement, job satisfaction may have also proven to be a significant factor. The question would then be one of temporality and association between those factors. It is clear, however, that service area assignment is a major risk factor. When two employees who are similar in job category and history of back injury are assigned to different service areas, the risk of back injury is dependent on that ward assignment.

In summary, seven of the eight new studies, and all six of the older studies (all of nurses and nursing assistants who did more frequent patient lifting), found at least one statistically significant association between LFM and LBP. When considered with the 10 studies originally reviewed by NIOSH which found statistically significant associations, this epidemiology data base provides strong evidence for a causal association between LFM and LBP.

Bending and Twisting/Awkward Postures (BT)

The NIOSH summary reviewed the 12 higher quality studies which addressed the association between BT and LBP (Ex. 26–1 pgs. 6–21 to 6–26). Of the twelve, nine also examined the effects of occupational lifting, although for all but the Marras *et al.*, (1993, Ex. 26–170; 1995, Ex. 26–171) analysis discussed above the presented comparisons for LFM and BT are different. As with the analysis for BT above, only the Punnett *et al.*, 1991 case-control study fulfilled all four of the quality evaluation criteria. Nine studies were cross-sectional, two were case-control and one was prospective. Of the twelve studies seven reported statistically significant associations, with the significant risk estimates generally ranging from 1.2 to 3.5. However, two of these ORs were higher; in addition to the previously mentioned OR of 10.7 in the Marras *et al.* (Exs. 26–170, 26–171) study, Punnett *et al.*, 1991, (Ex. 26–39) using a multivariate analysis that adjusted for covariates, found a statistically significant OR=8.09 (95% C.I. 1.4–14) for time in a non-neutral position for auto workers. Several studies suggested that both lifting and awkward postures were important co-contributors to risk of low back disorder.

With regard to temporality and exposure-response, three studies—one prospective, one case-control, and one cross-sectional—attempted designs and analysis to investigate temporality. Only the case-control study of Punnett *et al.*, 1991 (Ex. 26–39) found a strong association between exposure to awkward postures and back pain. The Riihimaki *et al.*, 1994 (Ex. 26–1188) prospective study comparing heavy equipment operators with office workers found a three year prevalence ratio for LBP of 1.4 (95% C.I. 1.0–1.9) (Ex. 26–1, 6–86). For exposure-response relationships between posture and low back disorder, five of the six studies which attempted such an analysis found significant relationships between some incremental index of LBP and exposures relating to awkward postures.

Since OSHA's Ergonomics proposal was published, three other recent studies on BT and LBP have been put into the record. These are discussed below:

With respect to the two most recent studies, both Latza *et al.*, 2000, (Ex. 38–424) and Vingard *et al.*, 2000 (Ex. 502–410) have been discussed above, in both the HPW and LFM sections. The Latza *et al.* study, in a logistic regression analysis controlling for several covariables, found that risk factors for LBP included working in a bent position, for men, with an OR =1.89 (95% C.I. 1.03–3.46). This OR was greater than those, computed in the same regression analysis, for carrying heavy loads, OR=1.47 (95% C.I. 0.97–2.24), and heavy physical work OR=1.77 (95% C.I.1.06–2.93). For the Vingard *et al.* study, there were statistically significant associations for both men and women when related to both heavy and cumulative exposures. When the combined physical exposures of "heavily exposed to forward bending" and "manual handling over the last ten years" were added to current exposures, the estimated RRs in men was 2.8 (95% C.I. 1.1–7.5) and in women 2.9 (95% C.I. 1.2–6.8). Multiple logistic analyses adjusting for a wide range of variables including age, social support at work and outside work, low back pain earlier, and negative life events, did not identify many physical or psychosocial factors as significant predictors. However, for "forward bending greater than one hour" the RR in men was 1.8 (95% C.I. 1.1–3.1), and in women 1.2 (95% CI 0.7–1.8).

The third recent study, Xu *et al.*, (1997, Ex. 500–119–9), examined bending and twisting, as well as physically hard work in the Danish population in a cross-sectional survey conducted in 1990. A random sample of 5,185 workers with similar sex, age, and occupational distributions as in the Danish population was selected, with a response rate of 89.3%. The health outcome was defined as symptoms of back pain in the past 12 months, assessed by structured interview, and included conditions of pain, ache, discomfort localized in the lower back, regardless of intensity and severity. Occupational exposure information included duration of daily exposure, vibrations affecting the whole body, physically hard work, frequently twisting or bending, sitting down, standing up, walking a lot, working with hands raised, concentration demands, repetition, and lifting heavy loads. The psychosocial factor "concentration demands" was also included in the model. Confounders controlled for included gender, age group, educational level, and duration of employment. There was a significant dose-response trend towards the greater prevalence of LBP with a greater proportion of the day exposed to the risk factors, for two physical factors—physically hard work (OR=1.28, 95% C.I. 1.08–1.52), and frequent twisting or bending (OR=1.71, 95% C.I. 1.51–1.93). Concentration demands and standing up were also significantly positively associated with the occurrence of low back pain. The results indicate that the associations of risk factors with LBP were stronger among those required to work for 37 or more hours/wk. The authors addressed issues of recall and participation bias.

In summary, the statistically significant associations of BT and LBP seen in seven of the 12 NIOSH reviewed studies and in all three of the more recent studies, provide by strong evidence that the associations observed are real.

Recent Epidemiology Reviews of Work-Related Low Back Disorders

Since the NIOSH 1997 review, there have been three published reviews which bear on the epidemiology of the work-related risk factors for back pain discussed above. The first is the NAS report, discussed elsewhere in this Health Effects section, which reviews and affirms the appropriateness of the methodology and the conclusions of the NIOSH 1997 review (Exs. 26–37). The other two are recently published reviews relating specifically to risk factors, especially physical stress factors, for back pain. One of these reviews also examines psychosocial factors (Ex. 500–71–24). These are discussed below.

The Burdorf and Sorock (1997, Ex. 500–71–24) review assessed the epidemiologic evidence of occupational risk factors for back disorders. They included only those published studies that clearly described exposure measures, had quantitative estimates of risk for work-related factors, and did not have evidence of a serious methodological problem. In all they included thirty-five articles, which they assessed for associations with physical factors at work, psychosocial factors at work, and individual factors. Of the 19 cited studies reporting on associations between back disorders and lifting or carrying of loads (LFM), sixteen were positive. The risk estimates ranged from 1.12 to 3.07, with attributable fractions estimated between 11% and 54%. Nine out of ten studies reported positive associations with frequent bending or twisting of the trunk (BT), three of which reported exposure-response relationships. Seven studies examined heavy physical load (HPW); six of these demonstrated increased risks of 1.54 to 2.58; however the one large longitudinal study did not demonstrate an association between physical load and the incidence of back injury claims during the study period (Ex. 26–1242). For static work postures (SWP), seven studies were considered and three of these had positive associations, The authors found some evidence of an association between the psychosocial factors of job dissatisfaction and low job decision latitude and back pain, but the evidence was not consistent across different studies and study designs. The review found that age, smoking habit, and education may be important confounders, while the individual characteristics of gender, height, weight, exercise or sport, and marital status were consistently not associated with back disorders. The finding that exercise or sport, the one physical individual characteristic examined, was not associated with back disorders provides supporting evidence that the physical work-related risk factor findings are real and are not confounded by leisure time physical factors.

In making their causality determination, Burdorf and Sorock acknowledged that the majority of cross-sectional design studies in the data base precluded a firm determination of the temporal and specificity criteria of the Hill criteria; they also expressed some concern that "the state of the art does not allow unequivocal conclusions about the contribution of specific work-related risk factors to the incidence of

back disorders." (Ex. 500–71–24, pg. 253). Nevertheless, they concluded that:

> Despite these methodological concerns, the available literature has presented persuasive evidence for several risk factors for work-related back disorders. Various studies with clear differences in design, methodology, and populations have consistently produced comparable findings for MMH, frequent BT, heavy physical load and WBV. With regard to MMH, sufficient biomechanical and physiological evidence is available to support the biological plausibility of lifting as a risk factor for back disorders. The results on lifting do not distinguish between the effect of infrequent lifting of heavy loads and frequent lifting of light loads. The studies among nurses indicate that a single lift of a patient is associated with an increased risk of back pain or back disability [cite to Exs. 500–41–92, 500–41–70, and 500–41–49]. This finding is consistent with biomechanical evaluations that predict high compression forces on the lower back during patient lifting [cite to Ex. 38–141]. Frequent BT of the trunk was consistently related to back disorders in various studies. In one case-referent study with detailed exposure assessment, a clear dose-response relationship was shown [cite to Ex. 26–39]. The findings for heavy physical load demonstrate that this is an important work-related risk factor. Several community-based studies have presented dose-response gradients [cite to Exs. 29–959, and others]. The strength of the gradients is difficult to assess since self reports have been applied to rank exposure to physical load on ordinal scales. A second problem is that this particular risk factor probably includes MMH and frequent BT. Hence, in epidemiologic surveys, heavy physical load might be a surrogate measure for other risk factors rather than a separate risk factor (Ex. 500–71–24, pg. 253).

Finally the review concludes:

> This review concludes that there is a clear relationship between back disorders and physical load, that is, between back disorders and MMH, frequent BT, HPW, and WBV. * * * the evidence presented indicates that preventive measure reducing the exposure to these risk factors will decrease the occurrence of back disorders.

Hoogendoorn *et al.* (1999, Ex. 500–71–32) conducted systematic reviews of the literature for physical load as risk factors for back pain. A rating system was used to assess the evidence based on methodological quality and consistency of the findings; under this scheme cross-sectional studies were excluded based on the authors' quality criteria. The review of studies addressing physical load examined 28 cohort and 3 case-referent studies. For physical load, the review found that strong evidence exists for work-related MMH, BT, and whole-body vibration as risk factors for back pain. Moderate evidence exists for patient handling (LFM) and HPW, and no evidence was found for standing, walking, sitting, sports, and total leisure time physical activity.

OSHA finds that the consistency of findings in the NIOSH 1997 (Ex. 26–1) and the two other recent reviews, all using different study selection and evaluation criteria, provides confirmation of OSHA's emphasis on NIOSH's methodology and conclusions for work-related causes of back pain. The assessment on physical load factors was insensitive to slight changes in the assessment of findings and the methodological quality of the studies. Burdorf and Sorock (Ex. 500–71–24), in their review, also commented that comparable findings were consistently found for heavy physical work, lifting, twisting and bending, and whole body vibration at work in various studies with clear differences in design, methodology, and populations.

Dr. Tapio Videman's Testimony on Twin Back Studies

Dr. Tapio Videman, DrMedSci, University of Helsinki, testified that a weakness with the OSHA proposal was that in the studies OSHA examined, the role of genetic factors was not taken into account in studies estimating the effect of work-related stress factors (Tr. 16996). To make this point, Dr. Videman presented a slide in his testimony (Tr. 16997) that referred to a published paper he had co-authored on the determinants of lumbar disc degeneration in a retrospective cohort study (Ex. 26–71). The study design attempted to control for the role of genetics by comparing disc degeneration scores between identical twins with different exposure factors thought to be associated with back pain. Among the factors examined in the paper were occupational workload, leisure time physical activities, measures of aerobic exercise and other sports participation, occupational driving, and smoking.

The study consisted of 115 pairs of identical twins selected from the Finnish Twin cohort, who were among the most discordant pairs in terms of the exposure factors mentioned above. The objective was to study whether differences in exposure factors correlated with the disc degeneration scores, controlling for genetic factors. Both observational and digital summary scores for disc degeneration, based on an MRI examination, were obtained for both the upper and lower back regions. Occupational and leisure physical activity responses were derived via personal interviews.

An important feature of the study design is that of the 115 pairs of twins only 23 pairs were discordant for heavy work before the age of 20. Also, based on a job scale rating of 1 to 4 to aggregate every job title and associated task descriptions during a subject's lifetime work history, the mean absolute job scale difference in these 115 twin pairs was 0.9. For mean hours working in bending/twisting positions the absolute mean difference within the 115 pairs was 1.6 hours. This means that this study had little statistical power to show differences among physical work factors, after adjusting for genetic factors, since only discordant pair results factor into an individual matched analysis.

The authors examined the associations between the several exposure factors and disc degeneration scores using both univariate and multivariate analyses, and both observational and digital summary scores for disc degeneration for both upper and lower bask disc degeneration scores. In the univariate analyses, which apparently did not factor in the twins matched pair design, only the heavier physical work job code score and mean total occupational lifting per day were significantly adversely associated with disc degeneration score, and then only for the high back discs. Most other increased physical activity and smoking scores were also associated with increased disc degeneration scores, but the associations were not statistically significant. Increased mean time sitting at work was associated with less disc degeneration for both high and low back, but only the high back scores showed statistical significance.

To attempt to control for the genetic effect, the authors also used multiple regression methods in an attempt to explain the observation summary disc scores. Their results found that, for the upper back, only the mean job code and age were jointly statistically significant, with no other specific environmental or behavioral factors contributing significantly. For the lower back, heavy leisure time physical loading was the only specific environmental factor of statistical importance; this one variable explained 2% of the variance in the multiple regression model.

In an attempt to consider the amount contributed by the genetic component in the study design, the authors inserted 114 co-twin (indicator) variables in the model and recalculated the estimates. They found that together, these 114 variables, "those of familial aggregation, reflecting primary genetic and shared early environmental influences * * * explained nearly 75% of the variability in disc degeneration score in the upper region and nearly 50% in the lower lumbar region (*id.*, pg. 2608). The authors concluded, as did Dr. Videman in his testimony, that these "findings suggest that disc degeneration may be explained primarily by genetic and early environmental influences and unidentified factors. * * * If disc degenerative changes are associated with symptomatic conditions, these studies findings suggest a need to rethink future research and prevention strategies in this area." (*id.*, pgs. 2610–2611).

Dr. Videman and associates made similar findings on the importance of genetic factors in disc degeneration in a study comparing 20 pairs of twins with discordant smoking status (Ex. 32–241–3–89; Tr. 16994–16995). Using the same type of multivariate methodology, with one variable for smoking and 18 variables for co-twin status, they concluded, "Whereas smoking status and age explained 0 to 15% of the variability on the various degenerative findings in the discs, 26% to 72% of the variability was explained with the addition of a variable[s] representing co-twin status. These findings are compatible with a marked genetic influence and warrant further investigation." (Ex. 32–241–3–89).

In his testimony at the hearings, Dr. Videman emphasized the relative importance of genetic factors over physical work factors, "(W)e could conclude that, from a blood sample, I can predict MRI [disc] changes better than having a lifetime work history about another interview." (Tr. 16998).

OSHA has considered Dr. Videman's testimony and publications and disagrees with his conclusions about the relative importance of physical work factors and genetics in the prediction of MRI disc changes. Although the agency agrees that the discordant identical twin study design is useful to control for genetic and early environmental factors, other factors in the design are at least as important. As was seen in the first study discussed above (Ex. 26–71), in a matched control study the amount of discordance in the exposure variables within the twin pairs will determine the power of the study to detect an effect. For example, with little discordance in exposure variables and few discordant pairs, the study has little ability to detect a true effect. In fact OSHA believes that in such a situation degenerative disc summary scores between twins should be very similar. To carry this example further in that first study, which involved the 115 twin pairs with little co-twin difference in the exposure variables, it is not surprising that adding 114 co-twin variables to the analysis, it is absolutely no wonder that in total these 114 variables will explain most of the variation in the multiple regression model. OSHA concludes that Dr. Videman's conclusion on the importance of genetic factors in his studies is a function of his analysis and his study design. This type of matched-control study is designed to control for genetic effects, not to study them.

OSHA also notes that in Dr. Videman's smoking study with 20 twin matched-pairs and a mean discordance between siblings of 32 pack years, "a very huge difference" (Tr. 16994), the disc degeneration difference was statistically significant at all of the measured disc levels. Controlling for genetic traits was undoubtedly important, as suggested by the statistical significance of the 18 covariables (Ex. 32–241–3–89, pg. 1666).

In the hearings, Dr. Videman was questioned by Ms. Seminario about a study he co-authored that concluded, "environmental factors [including physical work factors] account for more than 80 percent of the [etiology] of sciatica and more than 90 percent in the case of patients admitted to the hospital." (Tr. 17054, see also Dr. Videman's response to a similar question by Ms. Butterfield, Tr. 17128). Although Dr. Videman acknowledged the correctness of this statement, he appeared to contradict these findings by explaining that "all the data from that study was based on questionnaire data, so the reliability of the diagnosis is unclear." (Tr. 17129). OSHA notes, however, that in the actual paper the authors note that "the cumulative age-specific incidences of sciatica [were] based on both the questionnaire and the hospital discharge records," and that the results are in "accord with the results of a previous Finnish study." (Ex. 502–227, pg. 397). Furthermore, the authors noted that the hospital discharge diagnoses are given by doctors based on the WHO manual of the International Statistical Classification of Diseases (*id.*, 394). The authors also cited studies on the reliability of the nationwide hospital discharge registry (id., 394).

Thus, because that Dr. Videman's conclusions about the relative importance of genetics and physical work factors in back disorders were based on the questionable methodology used in the two twin studies discussed above, and because Dr. Videman's testimony on another study which contradicted those conclusions was not supportable, OSHA is unable to give much weight to Dr. Videman's testimony on this issue.

The Bigos et al., 1991 Back Study

Bigos *et al.*published several papers on a study (see, *e.g.*, Exs. 500–121–8, 38–280, 26–1241) that assesses the role of work perceptions and psychosocial factors in predicting the report of back pain disability. The study group was a cohort of aircraft assembly workers at the Boeing Company in Everett, Washington who volunteered to participate. This longitudinal study ultimately analyzed 1326 out of a cohort of 4027 aircraft assembly workers (33% of the original solicited population) for the final models.

The health outcome studied was "back pain disability lasting longer than 3 months," and the authors used three notification systems—reporting to the company medical department, filing an incident report, or filing an industrial insurance claim. The study did not investigate the actual presence of back symptoms or specific back disorders. At the beginning of the study, subjects answered a series of questionnaires which addressed demographics, psychosocial factors, and cardiovascular risks, as well as a take-home questionnaire including the 566 question Minnesota Multiphasic Personality Inventory (MMPI), the Health Locus of Control Questionnaire, and a modified Work Adaptation, Partnership, Growth, Affection, and Resolve (APGAR) survey (modified from the Family APGAR survey). Other information included previous medical history, previous back discomfort or problem, back injury claims in the previous 10 years, and work perceptions. Subjects were also given a physical examination to assess physical attributes including anthropometry, lifting strength, aerobic capacity, and sagittal flexibility. A back examination including reflexes, girths, sciatic tension, and posture was performed. Thus, each subject provided individual responses to questions concerning these physical and psychosocial factors.

In contrast to the above factors, which were collected for each worker individually, workplace exposure assessment was limited to all jobs that employed more than 19 workers and was not performed on individual workers. These jobs were analyzed for tasks that were heavy and tiring tasks in terms of maximum loads on the spine, based on some unspecified biomechanical mathematic model. Any worker in a job with fewer than 19 people did not get physically measured; also, the authors did not measure workers' cumulative loads. As with the psychosocial factors, workplace exposure was also measured only at initial recruitment.

Subjects were followed for slightly more than four years, during which 279 subjects reported back problems. After analyzing the data to determine which factors could best predict these reports, the authors concluded:

> Other than a history of current or recent back problem, the factors found to be most predictive of subsequent reports in a multivariate model were work perceptions and certain psychological responses. * * * Subjects who stated that they "hardly ever" enjoyed their job tasks were 2.5 times more likely to report a back injury (p=0.0001) than subjects who "almost always" enjoyed their job tasks. These findings emphasize the importance of adopting a broader approach to the multifaceted problem of back complaints in industry, and help explain why past prevention efforts focusing on purely physical factors have been unsuccessful.

OSHA notes that one major problem with the interpretation by other researchers of these results in the Boeing studies is that within the Boeing studies, "physical variables" include only those physical attribute variables that deal with anthropometry, back examination indices, and physical capabilities (*e.g.* flexibility, lifting strength, aerobic capacity) (Ex. 38–280, Table 1, pg. 25). It is under the "nonphysical variables" that the authors included workplace factors—duration of employment, job classification code, and measured peak spinal loading—as well as psychological and psychosocial factors. Other researchers include workplace factors (*e.g.*, measured peak spinal loading and physical workload) as physical variables. Thus, when Bigos *et al.*conclude in their study that none of the physical variables was important in predicting back pain reports (back disability > 3 months)—they are not referring to the same types of work-related physical risk factors—lifting/forceful movements, bending/twisting and awkward postures, heavy physical work, or static work postures—that OSHA refers to in its standard. Bigos *et al.*did not directly address these factors in their study.

OSHA also notes that the overall participation rate for this study was low, which makes representativeness an issue, especially for the 25% of the group that initially chose not to participate. The longitudinal study ultimately analyzed 1326 out of a cohort of 4027 aircraft assembly workers (33% of original solicited population) for the final models. In an attempt to determine whether the voluntary aspect of the study would create a bias, the authors compared the reported injury rates for those who returned incomplete data (n=1451) on their modified APGAR and MMPI packets, with the 1,569 subjects who did complete the forms. The difference in injury report rates was not statistically significant, which suggests that this final study group may be representative of the total.

OSHA also notes that no individual exposure measurements were carried out, although extensive individual psychosocial and psychological measurements were done. Workplace exposure assessment was limited to jobs that employed more than 19 workers, and there was no accounting for individual inter- or intra-variability. Because the exposure data represented the "exposure" of a group of workers rather than the measured exposure of individual workers, the authors would not be able to determine the contribution of physical factors to the observed outcome in as robust a fashion as they would the contributions of medical history, psychological surveys, physical exam, or job satisfaction survey, which were all recorded as individual exposure data. The authors did not report nor provide information on the analysis of the exposure data. There was no report on the data collected on biomechanical loads of the spine. They also did not report nor provide information on the data collected on the workers' perceived physical exertion in their jobs.

Dr. Bigos, in his testimony to OSHA during the hearings, stated that the Schultz model (the only biomechanical model related directly to human intradiscal measurements) was applied to the evaluation of mechanical stress on the Boeing subjects, and it found no significant relationship between mechanical stress on the subjects and the report of back problems or disability (Tr. 6725–6727). OSHA is addressing back pain in its final standard, and intradiscal measurement changes, obtained from the Schultz model, are not directly relevant to the existence of back pain or back disability.

OSHA also notes that this study did not address heavy lifting, or even jobs at the moderate or high end of HPW exposure. Bigos *et al.*report, "the study was done in a diverse, highly sophisticated manufacturing industry where job tasks do not tend to be extremely stressful for the back." (Ex. 500–121–8, pg.5). As Bigos *et al.*(1991, Ex. 26–41) state, "our study may not be representative of workers with extremely physically demanding jobs, where virtually no one remains active until retirement age."

OSHA also has concerns about the interpretation of the results of the "Work" Adaptation, Partnership, Growth, Affection, and Resolve (APGAR) survey score. The authors added two additional untested items to the family APGAR: (1) "I enjoy the tasks involved in my job," and (2) "please check the column that indicates how well you get along with your closest immediate supervisor." (Ex. 26–1242, pg. 2). Results found the strongest statistically significant relationship between back disability and statement (1) "I enjoy the tasks involved in my job." (id., pg. 3). However, this single initial response from a single point in time, rather than from more reliable repeated measures over time, was used to explain the outcome over a four-year period.

OSHA also has some concerns about a potential bias due to subjects who were excluded from strength testing if current back symptoms were present at the time of testing, or had caused them to miss work in the previous six months. This strongly influences the ability to draw from the study conclusions that are related to this variable, *i.e.*, eliminating the back pain subjects from the study population creates a healthy worker effect, which would bias results toward the null.

For the final predictive model, involving 33% of the original solicited population, the percentage of the overall variability explained by the model was 2.2% for job satisfaction, 1.9 for psychological factors, 1.2% for physical examination factors, and 3.3% for medical history; the sum of these individual components was 8.6%; 7% combined (Ex. 38–280, pg.29). This means that 93% of the variability was unexplained by this model for predicting industrial back pain reports (back disability > 3 months).

In sum, with the qualifications discussed above, OSHA acknowledges the importance of the Bigos *et al.*prospective study on the role of psychosocial factors in reports of back injuries. OSHA used this study in its weight of evidence determination for HPW as a risk factor for LBP, and found no association. However, OSHA concludes that physical risk factors were not as well determined in this study as were the psychosocial risk factors, making their relative contributions difficult to assess. Furthermore, the lack of truly HPW, according to the authors, among these workers would further limit the ability to study this physical risk factor. Thus, OSHA concludes that although this study found a significant relationship between psychosocial factors and LBP, this study lacked the ability to concurrently study the relative contribution of the physical work-related risk factors of interest to OSHA. In Section G5 OSHA provides additional discussion of both the Bigos *et al.*study and psychosocial risk factors.

Biomechanical Factors and Laboratory Experiments

For a distilled summary of the literature describing laboratory experiments and biomechanical models of risk factors associated with low back pain in table format, see Table II–1 in the health effects appendices to the proposed rule (Ex. 27–1).

There is some debate as to the exact etiology of low-back pain, and some authorities suggest that it is possible to make a precise diagnosis in perhaps only 20% of patients presenting with acute low-back pain (Frymoyer 1988, Ex. 26–118; Nachemson 1976, Ex. 26–1147; White and Gordon 1982, Ex. 26–1160). Proposed etiologies for low-back pain that have been advanced include the roles of nerve compression, tissue ischemia, sensitization of nerve endings, inflammatory mediators, spinal instability, and other postulates (Frymoyer 1988, Ex. 26–118; Nachemson 1992, Ex. 26–490). The majority of cases of work-related low-back pain are attributed to mechanical causes, such as muscle and ligament strains and sprains and disc herniations. Degenerative disc or facet disease, spinal stenosis, spondylolisthesis and compression fractures have also been attributed, at least in part, to work. Additionally, back disorder is multifactorial in origin and may be associated with both occupational and nonwork-related factors and characteristics (Bernard 1997; Ex. 26–1).

One additional difficulty in evaluating the etiology of low-back pain is that roughly 50% to 60% of patients reporting an episode of work-related low-back pain note an insidious onset of pain rather than a single, point-in-time event with immediate low-back pain (Bergquist-Ullman and Larsson 1977, Ex. 26–933). This study also found that cases with an insidious onset experienced prolonged recovery. Part of the explanation for this may lie in the absence of nociceptors in the disc itself and the facet joints (except for the synovial lining) (Pope *et al.*1991, Ex. 502–502). These load-bearing structures may, therefore, become injured without immediate recognition (*e.g.*, sudden pain), and the eventual manifestation of low-back pain may only occur after a series of point-in-time events have sufficiently injured these spinal structures to the point where nociceptors become irritated (*e.g.*, in the outer one-third annulus or facet synovium).

Specific Low-Back Disorders

Low-back pain symptoms are caused by a variety of injuries and disorders. Although the underlying cause of back pain cannot be determined definitively in up to 90% of patients, work-related cases are believed to result from the following mechanisms: muscle or ligamentous (soft tissue) injury; herniation of the intervertebral disc with irritation of adjacent nerve roots; and degenerative changes (arthritis/spondylosis) in the intervertebral discs (Deyo, Rainville, and Kent 1992, Ex. 26–365). Evidence for work-relatedness for low-back disorders of these three sources of etiology is summarized below.

Soft Tissue/Mechanical Low-Back Disorders

As noted earlier, the exact etiology of low-back pain is unknown in many cases, and therefore, there is a lack of universal agreement on the contribution of muscle and ligament sprains and strains to work-related low-back disorders. In part, the difficulty in diagnosis relates to the inability to easily palpate deep low-back muscles, the lack of imaging information on low-back muscle disorders, and the absence of surgical pathologic specimens to evaluate.

However, in addition to an understanding of muscle anatomy, consideration of muscle function (static and dynamic loading), and repair mechanisms contribute to understanding the role of muscle and ligament sprains and strains in work-related low-back disorders.

Static Loading

In evaluating the pathogenesis of soft-tissue low-back disorders, there are considerations related to static and dynamic work activities. Simple maintenance of posture requires balancing of counteracting mechanical forces about the spine. Static loading affects muscle and connective tissue. During static trunk flexion, low-back extensor muscles must progressively increase their activity to maintain trunk flexion (Schultz *et al.*1982, Ex. 26–581).

Using myoelectric measurements, Andersson *et al.*(1974, Ex. 26–346) ascertained that activity of the erector spinae progressively decreased as the angle of the back rest advanced from 10 degrees of forward inclination to backward inclination. This results from a partial reduction of the lumbar spine load imposed by the upper body as the load is transmitted to the back rest (Andersson and Marras 1996, Ex. 26–412; Chaffin and Andersson 1991, Ex. 26–420). In addition, during unsupported sitting, the lumbar spine flattens, and the use of lumbar supports and back rests can reduce the loss of normal lordosis (Andersson *et al.*1979, Ex. 26–1553).

Using a back rest inclination of 110 degrees and a 4 cm lumbar support, the authors were able to demonstrate that lumbar posture could be similar to normal standing posture. Maintenance of adequate seated posture has further implications for the intervertebral disc, with lower intervertebral disc pressures noted during supported sitting as opposed to unsupported sitting (Andersson *et al.*1974, Ex. 26–346). Inadequate seating can contribute to the development of low-back pain. Individuals who sit in chairs that are too high and have their feet unsupported experience elevated pressure on the back of their thighs (Akerblom 1969, Ex. 26–522; Bush 1969, Ex. 26–455; Schoberth 1962, as cited in Chaffin and Andersson 1991, Ex. 26–420). Burandt and Grandlean (1963, Ex. 26–1569) observed the tendency of subjects in high seat pans to slide forward in their seats to support their feet, negating the benefit of a back rest.

Dynamic Loading

Dynamic loading of the lumbar spine has other implications for muscle and ligament. Stresses induced in the low back during manual materials handling relate to the load weight and the characteristics of the lift. As a result of their anatomic positions, large spinal movements are created from relatively small degrees of muscle shortening. Unfortunately, this results in the generation of relatively large muscle and joint forces, with potential for tissue overloading and injury. This could be particularly important during excessive or rapid movement (Andersson and Marras 1996, Ex. 26–412), or at the point of muscle fatigue.

A study by Hukins *et al.*(1990, Ex. 26–143) revealed that greater forces are exerted on ligaments as the speed of motion increases. In addition, elastic limits of the ligaments and disc may be exceeded (Adams and Dolan 1981, Ex. 26–1348). Bush-Joseph *et al.*(1988, Ex. 26–939) evaluated the effect of the speed of lifting on the external load moment. Subjects were asked to lift at slow, medium, and high speeds. There was a direct linear correlation between increasing speed of lifting and increased peak moment. Furthermore, a study by Marras and Mirka (1992, Ex. 26–982) revealed that muscles must generate a higher percentage of electromyographic (EMG) maximal activity to maintain a

constant muscle force as the speed of trunk velocity increases with bending.

Both lifting frequency and load weight affect back muscle work capacity, in part related to fatigue. Using EMG assessments, Kim and Chung (1995, Ex. 26–858) observed that lifting at 10% of maximum voluntary isometric strength (MVIS) at a rate of 6 times a minute was more fatiguing than lifting at 20% MVIS at a rate of 3 times per minute.

Frequent loading of the lumbar spine with moderate to heavy weights can also cause general physical fatigue with elevation in heart rate and energy expenditure. Uncoordinated muscle activation that could result from local and systemic fatigue could then place other tissues at increased risk with continued lifting (Garg 1986, Ex. 26–121).

Postural Issues

Additional postural factors during lifting significantly affect muscle function and risk of injury. Skeletal muscle is more likely to rupture during eccentric contraction (Friden and Lieber 1994, Ex. 26–546), a factor involved in many manual materials-handling tasks. In addition, muscle length affects the amount of force that muscle can generate, with maximal force produced when muscles are at their resting lengths (Andersson and Marras 1996, Ex. 26–412; Chaffin and Andersson 1991, Ex. 26–420). Therefore, lifting in positions where skeletal muscles are elongated or shortened can increase the risk of injury to these tissues.

Using EMG evaluation of muscle function during lateral flexion of the lumbar spine, Andersson, Ortengren, and Herberts (1977, Ex. 26–1570) demonstrated increased activity on the side contralateral to bending. Other researchers have determined that asymmetric loading in lateral flexion and axial rotation causes high levels of antagonistic activity in abdominal and back extensors. This is associated with increased myoelectric activity on the side of spine contralateral to the load, although there is still significant activity on the ipsilateral side (Astrand 1987, Ex. 26–527; Kelsey 1975, Ex. 26–1134; Magora 1970, Ex. 26–297; Merriam *et al.*1983, Ex. 26–299). Andersson (1977, Ex. 26–449) noted that increased intervertebral disc pressure and intraabdominal pressure occurs when the trunk is loaded in lateral flexion and axial rotation, with rotation being the greater factor.

Muscle Velocity and Acceleration

Marras (Ex. 26–1412) has indicated that several trunk muscle characteristics and demands associated with dynamic lifting may better assess the risk of developing a low-back disorder from manual materials handling. The authors analyzed 400 lifting jobs in 48 industries using a triaxial goniometer (Lumbar Motion Monitor or LMM) that was worn by working subjects. A combination of five trunk motion and workplace factors was able to reasonably predict jobs posing high risk for low-back disorders (Marras *et al.*1995, Ex. 26–1412). These factors include the lift frequency, load moment, trunk sagittal range of motion, trunk lateral velocity and trunk twist acceleration (Marras *et al.*1995, Ex. 26–1412). A recent NIOSH Health Hazard Evaluation provided additional verification that the LMM has predictive capacity equal to the NIOSH Lifting Equation in job analysis (NIOSH 1993, Ex. 26–521), with perhaps greater ease of administration.

Recently, Marras *et al.*(1990, Ex. 26–1523; 1993, Ex. 26–170; 1995, Ex. 26–171) studied the trunk angular motion characteristics of normal and chronic low-back pain subjects. Used in a clinical setting, the LMM appears to have good ability to accurately distinguish between normal individuals and those with chronic low-back pain or structural disease. The authors used anatomic and pain categories previously selected by the Quebec Task Force Study on Spinal Disorders (1987, Ex. 26–494). Normative trunk motion values for age and gender were derived in a study of 339 males and females from ages 20 to 70 years who had never experienced significant low-back pain. While wearing the LMM, subjects performed trunk flexion and extension in five symmetric and asymmetric motion planes (0 degrees, 15 degrees and 30 degrees right and left) while trunk angular position, velocity, and acceleration were recorded with the LMM. In a repeatability study, 20 healthy normal subjects who had never experienced a low-back disorder were tested with the LMM once a week for 5 weeks. No statistically significant differences were observed among the trunk motion characteristics between the five weekly test sessions using multivariate analysis of variance. Correlation coefficients were computed to select reliable trunk motion variables to be used in the next phase of the study. Correlations varied as a function of the angle of asymmetry and measured variables, with motion characteristics in the zero plane demonstrating correlation coefficients of 0.88 to 0.96 (number of conditions performed, twisting range of motion, sagittal range of motion at 0 degrees, sagittal extension velocity at 0 degrees, sagittal extension acceleration at 0 degrees, continuous velocity, continuous acceleration, lateral right range of motion at 0 degrees).

In the next phase, the eight highly reliable trunk motion characteristics evaluated in the healthy subjects were compared with measurements in subjects with chronic low-back pain (96 males and 75 females) who were recruited for study from secondary and tertiary referral practices. These individuals had been symptomatic for at least 7 weeks and had been sufficiently studied, including with appropriate imaging studies, to permit accurate Quebec classification. Dynamic trunk motion characteristics were normalized for age and sex, and using quantitative discriminant analysis, the 510 subjects were correctly classified in 94% of cases as being either healthy or having chronic low-back pain(stage-one analysis).

In a stage-two analysis, nine variables (the eight previously mentioned and continuous position) correctly classified 80% of subjects into one of eleven groups (normal, low-back pain alone, low-back pain with proximal or distal radiation, disc herniation with high or low pain scores, spondylolisthesis, spinal stenosis, postoperative, nonorganic components, other) via modified classification using splines. It was also noted that trunk range-of-motion parameters commonly used to quantify impairment had poor ability to discriminate normal vs. chronic low-back pain, nor was it useful in classification. Furthermore, a characteristic pattern of recovery from low-back pain was noted, with normalization occurring first in range of motion followed by velocity and later acceleration of dynamic trunk motion. It was opined that the LMM's ability to quantify unloaded free-dynamic motion and account for the co-activation of additional structures (*e.g.*, internal and external obliques, lattissimus dorsi) affecting erector spinae function was in part responsible for its enhanced discriminating ability compared to alternate imaging techniques.

Disc Disorders/Disorders of the Three-Joint Complex (Disc and Two Facets) and the Nerve Root

The three-joint complex refers to the intervertebral disc and two facet joints. This complex permits the spine to absorb compression and resist torsion and shear, while permitting translation and rotation of the spine. Epidemiologic evidence suggests that work exposures involving heavy lifting or manual materials handling are associated with low-back disorders, including disc disorders (Bernard and Fine 1997, Ex. 26–1).

Excessive or repeated spinal loading and inadequate rest periods to permit repair mechanisms to function may be associated with biomechanical stresses that damage intervertebral disc cartilage endplates. This may then disturb metabolic transport, hastening the development of degenerative disc disease and disc herniation with secondary nerve root compression or inflammation.

Rowe (1971, Ex. 26–319) opined that up to 70% to 80% of recurring, chronic low-back pain will eventually be diagnosed as discogenic. Discogenic pain can include clear and consistent symptoms and signs expected with lumbar disc herniation and specific nerve root pathology, as well as chronic low-back pain associated with increased pressure in the intervertebral disc or degenerative disc disease. In patients with lumbar disc herniations, approximately 90% to 95% occur at the lower three intervertebral disc spaces (lumbar ¾ disc or lumbar 4th nerve root, lumbar ⅘ disc or lumbar 5th nerve root, lumbosacral L5/Sl or sacral 1st nerve root) (Deyo, Rainville, and Kent 1992, Ex. 26–365). Increased compressive and torsional forces transmitted to the lower levels of the lumbar spine probably account for this observation. Peak incidence of lumbar disc herniation occurs in adults during the working years from ages 30 to 55 (Spangfort 1972, Ex. 26–502). The onset of symptoms may be acute, subacute, or chronic, and the relationship to a single lifting incident may not always be obvious (Berquist-Ullman and Larsson 1977, Ex. 26–933). Symptoms and physical findings depend on the location of the disc herniation and the degree of nerve compression.

An understanding of disc biochemistry and biomechanics assists in the understanding of the pathogenesis of work-related lumbar disc disorders. For ethical reasons the majority of observations on spinal tolerance have been derived from cadaver spines. However, in vitro and in vivo comparisons appear to validate these conclusions. There is a wide biologic variation in human disc and end plate tolerances (Brinckmann *et al.*, 1988, Ex. 26–1318) related to age, gender, genetics, prior injuries, and other factors. The maximum axial compressive force tolerated by the human cadaver lumbar spine has been measured by Brinckmann *et al.*, 1988 (Ex. 26–1318) to range from 2.1 to 8.8 kN (210 to 880 kg), with 30% fracturing at forces below 4 kN and 63% fracturing below 6 kN. Adams and Hutton (1982, Ex. 26–1379) studied cadaver discs from male subjects aged 22 to 46 years. The authors determined that most specimens could withstand an average of 10 kN on single loading prior to failure, usually at the end plate. In contrast, Bartelink (1957, Ex. 26–349) noted that discs were fractured from forces ranging between 1.6 and 6.7 kN, with a mean of 3.1 kN. The wide inter-individual variation in tissue tolerance makes it difficult to assign a single value of compressive force against which to engineer jobs to prevent lumbar disc.

When mechanical failure occurs, it is generally through the cartilage endplates (Adams and Hutton 1982, Ex. 26–1379; Armstrong 1985, Ex. 26–1070; Brinckmann el al., 1988, Ex. 26–1318; Erdil, Dickerson, and Chaffin 1994, Ex. 26–424) Disc height, spinal position, and frequency of bending appear to be risk factors. Creep results in loss of disc height, increased contact between load-bearing surfaces of the facet joints, diminished capacity to dissipate forces, and decreased ability of the spinal column to tolerate loading (Kazarian 1975, Ex. 26–379). Adams and Hutton (1982, Ex. 26–1379) observed maximal single loading tolerances of up to 10 kN; however, when the spines were flexed forward, 40% of discs prolapsed at an average of only 5.4 kN. Repeated lumbar spine loading can cause tissue fatigue with fracture at lower loads than the spine would tolerate for non-repetitive loading. Adams and Hutton (1985, Ex. 26–1315) determined that when repetitive loading was simulated, previously healthy discs failed at an average of 3.8 kN.

These studies support the clinical observation that the intervertebral disc is especially vulnerable when loaded in the flexed position or when subjected to repetitive loading. This becomes more significant when workers with lower tissue tolerance from prior injury, degenerative disc disease, or age lift at high rates for prolonged periods.

Armstrong (1985, Ex. 22–877) noted that small microtears most often occur in the region of the posterior elements of the annulus fibrosus and cartilage end plates. As noted, these are the areas subject to the greatest spinal compressive forces (Gracovetsky and Farfan 1986, Ex. 26–128; Hickey and Hukins 1980, Ex. 26–708; Pope *et al.*1991, Ex. 26–1296). With repeated lumbar spinal stresses and/or injuries, progressive microfractures in cartilage end plates and annular fibers (annulus fibrosus) may develop in the intervertebral discs (initially toward the center of vertebral bodies). This causes altered metabolism and fluid transfer with different mechanical behavior of the disc.

Eventually radial tears result in the development of degenerative disc disease and/or bulging. As a result of this damage, the capacity of the lumbar intervertebral discs to tolerate further compressive loads during lifting is altered. When these smaller tears extend and form complete annular tears, the nucleous pulposis can protrude (disc herniation) (Farfan *et al.* 1970, Ex. 26–113). Over time, sclerosis of cartilage endplates and altered disc loading can facilitate the development of facet arthropathy, osteophytic change, stenosis, or instability. Disc degeneration in combination with facet arthropathy may also lead to foráminal narrowing with resultant nerve compression and radicular pain. These observations are consistent with a cumulative trauma theory that could account for some types of low-back injuries and is supported by the research and opinions of other authorities (Erdil, Dickerson, and Chaffin 1994, Ex. 26–424; Pope *et al.* 1991, Ex. 502–502; Yong-Hing and Kirkaldy-Willis 1983, Ex. 26–405).

While many individuals with degenerative disc disease are asymptomatic; individuals with greater degrees of degeneration are at risk for low-back pain. In one study (Vanharanta *et al.* 1987, Ex. 26–225) 90% of subjects with severe disc degeneration experienced pain during discography, while only 23% of those without disc degeneration reported pain.

Arthritis/Spondylosis

Several studies have suggested a relationship between lumbar degenerative disease and work activities (*e.g.*, heavy work, repetitive lifting, and vibration). This association has come from both radiographic and pathological evaluations in association with work histories. One difficulty in these evaluations is the observation that lumbar spine x-ray changes are common, occurring in about 40% of all low-back x-rays (Rowe 1983, Ex. 26–699). However, the relationship of many x-ray changes with symptoms of low-back pain is unclear (Andersson 1981, Ex. 26–1480; Himmelstein *et al.* 1988, Ex. 26–962; Magora and Schwartz 1976, Ex. 26–389; Rowe 1963, Ex. 26–317; 1969, Ex. 26–318). Videman, Nurminen, and Troup (1990, Ex. 26–1023) noted an increase in vertebral osteophytosis in autopsy specimens from workers who performed heavy work. Of interest is that the heavier work exposures also were observed in association with increased rates of low-back disability.

Riihimaki *et al.* (1991, Ex. 26–966) performed a radiographic study of the lumbar spine in concrete workers and house painters. Lateral lumbar x-rays were obtained in 216 concrete reinforcement workers and 201 house painters aged 25 to 54 years. Disc space narrowing was noted 10 years earlier and spondylophytes 5 years earlier in the concrete workers. Risk ratios for the univariate effect of occupation on disc space narrowing was 1.8, and for spondylophytes it was 1.6. Potential cofounders such as age, prior back accidents, body mass index, and smoking had minimal effect. The authors concluded that heavy physical work with materials handling and postural loading enhances the degenerative process of the lumbar spine.

Wickstrom, Nummi, and Nurminen (1978, Ex. 26–1161) evaluated degree of lumbar flexion, presence of pain, and x-ray findings of degenerative disc disease in 295 concrete reinforcement workers aged 19 to 64 years. These workers commonly perform work involving spinal loading in stooped postures. Radiographic evidence of degenerative disc disease was noted in two-thirds of the 110 individuals with restricted flexion and in one-third of those (n=185) with normal flexion.

Kirkaldy-Willis (1983, Ex. 26–431) described a pathophysiologic spectrum of changes that lead to the development of lumbar spine degenerative disease. In the first phase, there are early and mild changes in the posterior complex, with facet synovitis, joint effusion, capsular stretch, and thickening. Inflamed synovium may become entrapped in the joint between the cartilage surfaces and initiate cartilage damage. Meanwhile, the intervertebral disc develops some circumferential tears in the annulus fibrosus. Tears in the periphery have at least some potential to heal because of the proximity to vascularity, but these deeper tears lack this ability by virtue of their distance from blood flow or metabolic diffusion. As these circumferential tears enlarge, they develop into large radial tears. As a result, the nucleus pulposus begins to lose proteoglycan and exhibits structural changes with grade 1 or 2 degenerative disc disease. Loss of water and disc height as well as a decline in annular resistance can cause increased compression forces on the facets. Individuals may be asymptomatic or have vague low-back pain. However, due to the lack of nociceptors in the disc and facet joints (except the synovium), a significant degree of degenerative disease may occur before pain develops. Lumbar disc herniation may occur at this juncture with symptoms and signs or radiculopathy.

In the next phase, the posterior joint capsule and annulus fibrosus develops laxity and instability. The intervertebral disc progresses to grade 2 or 3 degenerative disease. It may be possible to detect instability on dynamic x-rays. Subperiosteal bone formation, calcification of the ligaments, and capsular fibers manifest as peripheral osteophytes and traction spurs (Dupuis 1987, Ex. 26–1299) in an attempt to stabilize the motion complex (MacNab 1977, Ex. 26–1367). If laxity predominates over repair processes, the degenerative spondylolisthesis (facet laxity) or retrolisthesis (disc laxity) may occur (Dupuis *et al.* 1985, Ex. 26–108).

In the final phase, there is fibrosis of the posterior facet joints, loss of disc material (grade 3 or 4 degenerative disc disease), and progressive osteophyte formation (Wedge 1983, Ex. 26–1035). This increases the load-bearing surface of the three-disc complex, although it decreases motion and results in increased stiffness. The repair process may create narrowing of the central canal (central spinal stenosis) from facet arthropathy, disc bulging, and hypertrophy of the ligamentum flavum. Lateral stenosis may also result from facet arthropathy and osteophyte formation adjacent to the neuroforamina. Spinal stenosis is a diagnostic entity that has only recently been described. A few patients have congenitally small spinal canals; however, most present with this type of acquired spinal stenosis secondary to longstanding degenerative disease. Most patients first become symptomatic after 50 years of age (Turner *et al.* 1992, Ex. 26–1455). By virtue of its long-term degenerative nature, spinal stenosis is not often considered a work-related disorder; however, patients with spinal stenosis may present with co-existing lumbar disc herniation or other degenerative changes that have been exacerbated by work factors.

Conclusions

OSHA finds convincing evidence from the confluence of many investigation on biomechanical models, laboratory research and epidemiology studies that work related risk factors including (1) heavy physical work, (2) lifting and forceful movements, (3) bending, twisting and awkward positions, and (4) static work positions are causally linked to low back disorders and pain. Work often involves several of these risk factors concurrently and there is evidence that the first three of these factors may act together in a synergistic way to increase the risk. However, OSHA considers that each factor, by itself, can increase the risk of back disorder.

F. Disorders of the Lower Extremities

Work-related disorders of the lower extremities have not received the same scrutiny as those of the upper extremities and back. However, existing information from pathophysiology, epidemiological studies, and biomechanical investigations implicate physical work factors related to repetitive, forceful exertion and awkward posture to these disorders, especially osteoarthritis of the knee and hip. As more completely described in Health Effects Appendix III.D (Ex. 27–1), osteoarthritis is considered a disorder of the movable joints characterized by the disintegration of the articular cartilage that covers the end of the bones. The articular cartilage and subchondral bone that lies just beneath the cartilage provide opposing structures and surfaces that are matched in such a way as to allow transmission of joint loads at the lowest and most uniform pressures, (Meisel 1984, Ex. 26–1562).

The arthrosis process is thought to begin with disruption at the thin surface overlying the load-bearing cartilage (Meisel, 1984, Ex. 26–1562). This disruption results in progressive erosion of the cartilage layer and a joint surface less able to withstand normal loads and forces. Continual loading on the joint then disrupts the process of bone/cartilage repair and regeneration, leading to formation of marginal bone in the shape of spurs (osteophytes). The degenerative process continues until the cartilage has been completely destroyed; there is bone-on-bone contact, and the structural integrity of the joint is lost. The clinical manifestations are joint stiffening, pain and loss of movement (Meisel 1984, Ex. 26–1562).

It is well recognized that acute trauma can trigger osteoarthritis, but there is also evidence that less substantial, but repetitive, forces to the joints can lead to microfractures of the articular cartilage and subchondral bone. The disruption in structural integrity results in the onset of the degenerative changes described above (Radin *et al.*, 1994, Ex. 26–578). This process has been observed in animals subjected to repetitive impact loading of one or more limbs (Moskowitz, 1992, Ex. 26–1547). Damage to the joints in these animals involve fibrillation and splitting of the cartilage, evidence of chondrocyte activity as bone remodeling occurs, progressive erosion of the cartilaginous layer, and formation of osteophytes.

Other MSDs of the lower extremity that may be caused by physical work-related factors include bursitis and tarsal tunnel syndrome. Joint overuse may lead to bursitis, an inflammation of a fluid-filled sac or sac-like cavity that serves to reduce friction in a joint (Ex. 502–317). Repetitive use of the foot may be related to tarsal tunnel syndrome, a nerve entrapment syndrome of the lower extremity analogous to carpal tunnel syndrome in the wrists (Day 1996, Ex. 26–615).

In addition to acute and repetitive trauma, MSDs of the lower extremities have been linked with congenital abnormalities, underlying genetic or metabolic disorders, and chronic conditions, such as cancer, diabetes and collagen-vascular disease (Felson 1994, Ex. 26–544; Meisel 1984, Ex. 26–1562).

Epidemiological Evidence

Epidemiological evidence of an association between workplace factors and MSDs of the lower extremities was discussed in Health Effects Appendix I. A summary of the risk factors is presented in Table C–1 (for osteoarthritis of the knee) and Table C–3 (for the hip). Several work-related activities, such as squatting and kneeling for more than 30 minutes per day, were significantly associated (OR≥3) with osteoarthritis of the knee in a population-based case-control study (Cooper *et al.*, 1994, Ex. 26–460). This study also showed that a combination of these activities along with lifting loads greater than 25 kg (which places an additional load on the lower extremities) resulted in an even stronger association (OR≥5) with this knee disorder. Other epidemiological studies associated occupations such as construction work, farming, firefighting, laundry/dry cleaning, and manual labor, with knee osteoarthritis (Anderson and Felson, 1988, Ex.26–926; Vinguard *et al.*, 1991, Ex. 26–1500).

Three case-control studies reported positive associations between MSDs of the hip and work tasks involving biomechanical factors (Coggon *et al.*, 1998, Ex. 26–1285; Croft *et al.*, 1992, Ex. 26–1503; Vinguard *et al.*, 1997, Ex. 26–1617). One study found that jobs requiring lifting over 25 kg more than ten times in an average week for more than 20 years raised the odds of developing hip osteoarthritis (Ex. 26–1285). Farmers, mail carriers, firefighters, and meat processors were occupations reported to be significantly associated with hip osteoarthritis in a registry-based cohort study (Ex. 26–400). Repetitive kneeling, squatting, and lifting are all activities involving the biomechanical risk factors of repetition, forceful exertion, and awkward postures of the lower joints. Table V–8 summarizes some key aspects of these investigations, including: Occupations examined; biomechanical risk factors involved; whether or not exposures were directly observed during the study, whether the health outcomes were verified by medical tests, whether evidence provided of an exposure-response or other temporal relationship between the risk factor and outcome; and the measure of relative risk used along with the results of this measure.

In addition to the evidence previously reviewed, Table V–8 includes five additional studies submitted to the docket that address physical work factors and disorders of the lower joints, primarily the knee (Ex. 500–41–114; Ex. 500–121–44; Ex. 500–41–69; Ex. 502–317; Ex. 500–41–68; Ex. 500–121–18. Three of the studies examined the prevalence of knee disorders among carpet- and floorlayers who spend a substantial amount of time working in knee straining postures. Kivimaki (1992, Ex. 500–41–78) compared 96 floor- and carpetlayers to 72 painters with regard to disorders of the knee. An analysis of videotaped work tasks indicated that floor- and carpetlayers assume a kneeling posture in their job 42% of their work time, compared to 3% of work time by painters. Ultrasonographic examination indicated changes in the prepatellar or superficial infrapatellar bursa in 49% of the carpet and floor layers compared to 7% of painters. On a symptom questionnaire, the floor- and carpetlayers reported a significantly greater prevalence of bursitis in front of the knee cap, knee pain in a kneeling posture, sudden and intense swelling of the knee, aspirations of the knee, and injections to the knee than painters.

TABLE V–8.—SUMMARY OF EPIDEMIOLOGY STUDIES EXAMINING MSDs OF THE LOWER EXTREMITIES

Study	Job type studied	Physical factors	Exposure basis	Diagnosis/body part	Other attributes	Risk measure (95% CI)[1]
Kivimaki (1992) Ex. 500–41–78.	carpet laying; floor laying.	F/R/P	observation questionnaire.	questionnaire ultrasound/knee.		NR*
Jensen (1997) Ex. 500–41–69	carpet laying; carpentry.	F/R/P	questionnaire observation.	questionnaire radiology/knee.	exposure response	OR=1.5–6.4* (3.2–8.9)
Tanaka (1986) Ex. 502–317	floor laying; tile setting.	F/R/P	questionnaire	questionnaire knee	exposure response	PRR=1.1–5.0* (3.2–7.8)
Sandmark (2000) Ex. 500–41–114.	prosthetic knee patients.	F/R/P	questionnaire	surgery/knee	exposure response	OR=0.7–3.2* (2.0–5.2)
Cooper (1994) Ex. 26–460	general population	F/R/P	questionnaire	questionnaire X-ray/knee.		OR=0.8–6.9* (1.8–26.4)
Anderson (1988) Ex. 26–926	general population	F?/R/P	job title questionnaire.	questionnaire X-ray/knee.		OR=0.8–3.5* (1.2–10.5)
Vingard (1991) Ex. 26–1400	various occupations.	F/R?/P?	job title	hospitalization knee or hip.		RR=0.6–3.8* (1,2–12.1)
Coggon (1998) Ex. 26–1285	patients case/control.	F/R/P?	questionnaire	hip replacement		OR=1.0–2.1* (1.1–3.9)
Croft (1992) Ex. 26–1503	patients case/control.	F/R?/P?	questionnaire job title.	joint measurement/hip.		OR=0.8–2.5 (1.1–5.7)
Vingard (1997) Ex. 26–1617	patients case/control.	F/R/P?	questionnaire	hip replacement		RR=0.8–2.3* (1.5–3.6)
De Zwart (1997) Ex. 500–121–18.	Various occupations.	F/R/P	job title	questionnaire lower limbs.	temporal relationship.	NR*

F=forceful exertions; R=repetitive motion; P=awkward posture; ?=presence of risk factor unclear;
RR=relative risk; OR=odds ratio; PRR=prevalence rate ratio
*=p<0.05

[1] 95% confidence interval expressed for the upper end of the risk measure range.

Jensen *et al.* (1997, Ex. 500–41–69) conducted a larger cross-sectional study of knee disorders among current and former floor- and carpetlayers (N=133), carpenters (N=506), and compositors (N=327). Based on telephone interviews and video recording of work activities, the authors determined that floor- and carpetlayers spent 56% of their working time in knee-straining postures. Carpenters were reported to have spent 25% of their working time in such postures, while compositors did not spend any working time in knee-straining positions.

Response to a questionnaire revealed that carpenters experienced a significantly increased frequency of knee complaints within the last 12 months (OR=3.8, 95% CI: 2.7–5.5), within the last seven days (OR=3.6, 95% CI: 2.3–5.8), and for more than 30 days over the preceding 12 months (OR=2.5, 95% CI: 1.6–3.9) when compared to compositors. Floor- and carpetlayers, the highest exposed group, also reported a significantly increased frequency of knee complaints within the last 12 months (OR=6.4, 95% CI: 4.0–10.1), within the last seven days (OR=5.7, 95% CI: 3.3–10.1), and for more than 30 days over the preceding 12 months (OR=5.3, 95% CI: 3.1–8.9) when compared to compositors; the odds ratios reported for floor- and carpetlayers were uniformly higher than those reported for carpenters. Age, weight, body mass index, smoking, and sports activities were reported to have had no significant effect on the incidence of knee complaints. Among 50 floor- and carpetlayers, 51 carpenters, and 49 compositors who had radiological examinations of their knees, an increased prevalence of osteoarthritis was found in floor- and carpetlayers (14%) when compared to carpenters (8%) and compositors (6%).

A third cross-sectional study involving floorlayers by Tanaka *et al.* (1986, Ex. 502–317), and also reported by Thun *et al.* (1987, Ex. 26–60), examined the relationship between work activities involving strain on the knees and the development of knee disorders. Floorlayers (N=112) and tilesetters (N=42) who reported frequent kneeling in a survey questionnaire were compared to a group millwrights, bricklayers, and decorators (N=243) who did not commonly kneel.

The floorlayers reported more frequent bursitis of the knee (20% vs. 6%) and more needle aspirations of knee fluid (32% vs. 6%) than the millwrights and bricklayers. Tilesetters also reported bursitis (11%) and knee aspirations (31%) in excess of those reported by millwrights and bricklayers.

In this study questionnaire responses were compared to responses given by a representative sample of white males to standardized questions about symptoms of knee disease. When compared to sample, floorlayers, tilesetters, and millwright and bricklayers all reported a higher age-adjusted prevalence for each of the seven symptoms than the sample. This result suggests that the relative risk of knee disorders in the highly exposed groups may be understated when millwrights and bricklayers are the reference group since they may, themselves, be at increased risk relative to the general population.

Physical examination that included radiological tests of a subset of the workers was performed to validate the questionnaire. The questionnaire was reported to show low sensitivity (38–44%), but moderate specificity (82–89%), for both bursitis and arthritis.

Other studies examined the relationship between lower limb MSDs and physical work factors in more diverse occupational settings. Using a case-control study design, Sandmark *et al.* (2000, Ex. 500–41–114) compared individuals who had received prosthetic knee replacements due to osteoarthritis to control subjects to examine the relationship between lifetime physical load from work and the risk of knee osteoarthritis. A total of 625 individuals who had received prosthetic knee replacements due to osteoarthritis, and who were between the ages of 55 and 70 at the time of surgery were compared to 548 age- and gender-matched individuals randomly selected from the population of the same geographical area who had not reported osteoarthritis or other dysfunction of the knee.

Through telephone interview and written questionnaire, the subjects provided information on workloads from occupational and non-occupational activities, personal characteristics, and general health status. The duration and frequency of activities (*e.g.*, kneeling, sitting, number of stairs climbed) were computed for each individual. Subjects were then divided into three exposure groups: No or low exposure comprising the lower quartile; medium exposure comprising the middle two quartiles; and high exposure consisting of the top quartile.

Analysis of the data revealed that, among men, lifting at work (OR=3.0, 95% CI: 1.6–5.5), squatting or knee bending (OR=2.9, 95% CI: 1.7–4.9), kneeling (OR=2.1, 95% CI: 1.4–3.3), and jumping (OR=2.7, 95% CI: 1.7–4.1) were significantly associated with osteoarthritis of the knee. Individuals who had spent ten or more years in an occupation considered to involve high physical load on the knee were also more likely to undergo knee replacement due to osteoarthritis than those who had not worked in such occupations (men, OR: 2.5, 95% CI 1.7–3.6; women, OR: 2.5, 95% CI: 1.6–3.9). The analysis controlled for confounders such as age, body mass index, smoking, and sports activities.

The findings of Sandmark *et al.* (Ex. 500–41–114), Jensen *et al.* (Ex. 500–41–69) and Tanaka *et al.* (Ex. 502–317) indicate an exposure—response relationship between the frequency of work involving strain to the knees and osteoarthritis, bursitis and other signs of injury to this joint.

In a longitudinal survey study, de Zwart *et al.* (1997) (Ex. 500–121–18) investigated changes in musculoskeletal complaints among workers performing mentally demanding work (N=4686) and heavy physical work (N=7324). Job demands were determined by occupational title. Mentally demanding work was described as sedentary, while heavy physical work involved tasks such as lifting heavy objects, handling heavy tools, and stooping in combination with standing or walking. The subject groups were stratified by age (20–9, 30–9, 40–9, 50–9 years old). The occurrence of musculoskeletal complaints were compared between two surveys having a mean interval of approximately four years. No physical examination or examination of medical records was performed.

The incidence of musculoskeletal complaints of the lower limbs on the second survey was higher among those who had not reported complaints on the first survey for all age groups. However, the incidence was only statistically significant for the youngest three age groups. The authors concluded that younger and middle-aged employees develop musculoskeletal complaints as a result of exposure to heavy physical work, and that a healthy worker effect served to mask this effect for the oldest age group. Because of its prospective design, this investigation provides a temporal link between MSDs of the lower extremities and heavy physical work.

Lemasters *et al.* (1998) (Ex. 500–121–44) examined the prevalence and risk factors for work-related MSDs among carpenters. (N=522) who completed a questionnaire on musculoskeletal symptoms, work history, and psycholsocial factors. The symptom questions assessed if they experienced pain, numbness, or tingling in a particular body region.

Generally, as duration of employment increased, the prevalence of symptoms increased. An adjusted logistic regression analysis showed that duration of employment in carpentry for at least 20 years was significantly associated with work-related MSDs of the knees (OR: 3.5, 95% CI: 1.3–9.2). Carpenters who indicated they felt exhausted at the end of day experienced significant increases of work-related MSDs of the knees (OR: 1.8, 95% CI: 1.1–3.1). Having minimal influence over their work schedule was also reported to be a risk factor for work-related MSDs of the knees (OR: 2.3, 95% CI:1.2–4.1).

A subset of the subject group received a physical examination including examination of the knees. The authors concluded that reported disorders, including those of the knee, were significantly associated with positive findings upon physical examination.

An examination of the reliability of questionnaire responses was performed by Booth-Jones *et al.* (1998) (Ex. 500–121–9). Ten percent of the subjects examined by Lemasters *et al.* (1998) (Ex. 500–121–44) were subsequently randomly selected and administered the original questionnaire for a second time. All positive responses were categorized as "yes" answers and all other responses were categorized as "no" responses. Comparison of the results of the first and second administrations of the test indicated that the responses were largely consistent, with overall agreement reported to be 85.6%. This result provides a strong indication that the questionnaire responses examined by Lemasters *et al.* (1998, Ex. 500–121–9) are a reliable representation of the recollections of the subjects examined.

A significant concern when evaluating studies in which exposure measurements and health outcome are based on self-reports is the possibility of recall bias. Among the studies pertaining to the lower extremities that are described here, those of Sandmark *et al.* (Ex. 500–41–114), Jensen *et al.* (Ex. 500–41–69), Tanaka *et al.* (Ex. 502–317), and Lemasters *et al.* (Ex. 500–121–44) each depend to a greater or lesser extent upon the accuracy of self-reported exposures to ergonomic risk factors. Such self-reports have been criticized as being unreliable (Exs. 30–276, 500–118). Evidence submitted to the docket regarding the studies discussed above, while not eliminating concerns about the reliability of self-reports, generally support their accuracy.

The validity of self-reporting as a means of measuring knee-straining work postures was examined by Jensen *et al.* 2000, Ex. 500–41–68). Self-reports were compared to timed video recordings for 39 carpenters and 33 floorlayers. The carpenters and floorlayers were videotaped while working and, then immediately afterwards were requested to estimate the amount of time spent in knee-straining postures. A close association was reported between the observed and self-reported durations (Spearman's correlation coefficient: 0.88). While this report provides evidence that immediate self-reports are largely accurate, recall bias associated with self-reports of historical work activities remains a concern.

Biomechanical Evidence

Bhattacharya *et al.* (1985, Ex. 502–270) examined the biomechanical forces associated with different working postures involved in carpet installation when using a knee kicker. The knee kicker is a device consisting of a plate with a set of teeth in one end that grips the carpet while an installer kicks the padded end with a knee to stretch the carpet. A job analysis indicated that carpet installers spend approximately 75% of their time in a kneeling position, and use the knee kicker an average of 141 times per hour. Postures were reported to require near-maximum knee flexion. Knee-flexion angles at impact averaged about 58°, while normal daily activities involve less flexion (*e.g.*, sitting, 87°; tying shoe laces, 74°; walking upstairs, 97°). Workers performing the heaviest of the knee kicks produced peak impact forces averaging over 3000 newtons, equivalent to approximately four times their body weight. The authors suggested that the biomechanical demands of installing carpet may be responsible for the high incidence of knee disorders among these workers.

Conclusion

OSHA concludes that strong evidence is available showing that steoarthritis of the knee and other MSDs of the lower extremities can result from exposure to the combined physical work-related factors of repetition, force, and awkward posture. This evidence comes from the consistently positive associations in epidemiological studies of carpet- and floorlayers who spend considerable amounts of time in knee-straining postures. Biomechanical evidence indicates knee flexion and impact forces can be substantial during installation of carpet. Other occupational activities that involve excessive squatting, kneeling, and climbing stairs have also been shown to be associated with osteoarthritis of the knee and hip. Some studies indicate an exposure—response or temporal relationship between physical risk factor and health outcome. Therefore, it is biologically plaucible that repetitive impact loading on the joints is consistent with the degenerative pathophysiology of osteoarthritis. OSHA concludes that the evidence reviewed in this section demonstrates that workers who perform job tasks requiring repeated forceful flexion of the knee or other joints of the lower extremities are at increased risk of serious musculoskeletal impairment such as osteoarthritis.

G. OSHA's Response to Health Effects Issues Raised in the Rulemaking

1. Comments on OSHA's Use of the NIOSH (1997) and NAS (1999) Reviews

Several commenters (Ex. 30–1722; Ex. 500–109; Ex. 32–368–1; Ex. 32–241–4; Ex. 500–197) criticized OSHA's reliance on the 1997 NIOSH review (Ex. 26–1) and the 1999 NAS report (Ex. 26–37) of the evidence for work-related MSDs. First, the commenters considered the methodology used by NIOSH to evaluate the epidemiological evidence that work-related factors were associated with MSDs to be seriously flawed. Second, they accused OSHA of ignoring obvious limitations of the NIOSH review and then misrepresenting its conclusions. Finally, the commenters claimed that the NAS workshop report did not support the OSHA position with regard to biomechanical risk factors and MSDs. A more detailed description of each assertion will follow along with OSHA's response.

The criticisms of the NIOSH methodology were aimed at nearly every level of evaluation. It was said that NIOSH exercised a "publication bias in favor of positive studies" in its study selection (Ex. 500–197, pg. I–146). It was said that the NIOSH criteria used to assess study quality "emphasize[d] biased and unreliable methodology at the expense of sound scientific approaches." (Ex. 32–241–4, pg. 109). It was said that there was "no indication of any systematic method for assigning weight," (Id. pg. 109), and that the weighting could not be "replicated and, therefore fails to satisfy one of the most basic tenets of scientific inquiry." (Ex. 23–109, pg. 23). It was said that NIOSH "failed to adequately consider other confounding factors in their analysis" (Ex. 32–368–1, pg. 40). Finally, it was said that NIOSH was "forced to draw its conclusions from a larger body of literature that included studies meeting only some, or even none of these criteria." (Ex. 500–197, pg. I–148). One commenter summed up the NIOSH evaluation process as follows:

> The report did not conform to the generally accepted scientific methods for critical analysis. It did not use a weight of the evidence approach. For example, there is no explanation of how studies which met NIOSH's criteria standards were regarded differently than studies which did not. In essence, NIOSH put the 2000 studies into a black box, and out popped 600. Then the 600 went into another black box, and out popped the conclusions (Ex. 32–368–1, pg. 36–37).

OSHA strongly disagrees that the approach used by NIOSH to evaluate the epidemiological studies was flawed or that the conclusions in the 1997 review are weakly supported by the evidence. In the first chapter of its report, NIOSH describes, in detail, where it retrieved information on epidemiological studies, how studies were selected for more detailed review, the procedure used to analyze the overall strength of work-relatedness, the six criteria (strength of association, consistency, temporality, exposure-response, coherence, and role of confounders) employed to evaluate the evidence of causality, and the four categories to classify the evidence. The 600 studies reviewed by NIOSH [out of more than 2,000 identified in initial database searches] were published or accepted for publication in the scientific literature or government reports that had undergone peer review and were widely available. These had to meet some minimum requirement in terms of defined study groups, measurable health outcomes, identifiable exposures related to physical factors, and adequate study design. The NIOSH selection strategy was a common screening approach that has been successfully employed by OSHA and many other groups. There was no bias toward the selection of positive studies; rather NIOSH selected those only studies that met the above criteria. OSHA believes that the NIOSH selection process captured the best epidemiological studies available at the time on which to evaluate the evidence for a causal association between work-related risk factors and MSDs.

NIOSH analyzed the reviewed studies in terms of well-accepted epidemiological principles, such as participation rate, blinded study design, exposure method, and case definition and gave greater weight in its evaluation process to those that minimized selection and observation bias and confirmed the existence of exposure and health outcome by qualified experts. NIOSH applied the highly-regarded Bradford Hill criteria (see six criteria above) for judging the evidence for causation in classifying work-relatedness. These criteria were not applied to any single investigation but to the entire database of studies as a whole. NIOSH judged there was evidence of work-relatedness between biomechanical factors and MSDs when there existed convincing evidence from several studies for a causal relationship using the epidemiologic criteria, and for which chance, bias, and confounding factors were not the likely explanation. OSHA believes that NIOSH clearly did not use a "flawed" methodology and their evaluation process represents a systematic weight of evidence approach that relies on an unbiased set of sound and reliable scientific principles.

NIOSH concluded there was evidence that MSDs of the neck, shoulder, upper extremities, and back that have been subjected to epidemiological investigation were associated with at least some biomechanical factors or combination of factors. In several instances, the evidence was judged to be strong. For most MSDs, there were situations in which the epidemiological evidence was judged insufficient for certain biomechanical factors in isolation (*e.g.* CTS and extreme posture; epicondylitis and repetitive motion). However, these factors were usually found to be associated with the MSD when present in combination with other biomechanical factors (*e.g.* strong evidence of posture/force combination and CTS; strong evidence of repetition/force and epicondylitis). For several MSDs, OSHA found that the strength and consistency of the associations between biomechanical factors and MSDs was even stronger, if the evaluation was restricted to studies where exposure was directly observed or measured and the health outcome was confirmed by physical exam or medical tests (see Health Effects Section V). It is important to note that the NIOSH analysis focused primarily on the epidemiological evidence. OSHA believes these conclusions were reasonable and based on the selected evaluation criteria.

Since the evaluation process involved expert judgment, weighting of individual studies cannot be precisely "replicated" in the same way as a scientific measurement, however, substantial evidence in the rulemaking record supports NIOSH's conclusions. There were a number of written submissions and oral testimony from scientific experts supporting the position that sufficient evidence exists that biomechanical factors can increase the risk of MSDs (*e.g.*, Exs. 30–3805, 32–57, Tr. 9819, 16317, 17358, 17687).

Some notable testimony on the epidemiological evidence from distinguished experts were as follows:

> There is a significant body of epidemiological and case study literature that indicate that a high rate of work-related MSDs, carpal tunnel syndrome, bursitis, tendinitis, and epicondylitis are significantly higher in jobs that involve repetitive motions, localized stress, awkward positions, vibrations, and forceful exertions.
>
> Dr. Robert McCunney (Tr. 17566–67)
>
> OSHA's conclusion that there is an epidemiological evidence of an association between many work factors and certain MSDs is consistent with the literature that I've read and my clinical experience as an occupational medicine physician treating thousands of patients with MSDs over the past 20 years.
>
> Dr. Michael Erdil (Tr. 1112)
>
> We have, first of all, lots of epidemiological studies that show physical factors are involved in MSDs. We have actually no epidemiological study that shows, that proves there is no physical factor involved.
>
> Dr. Niklas Krause (Tr. 1367)

Some commenters thought that OSHA misrepresented the findings from the NIOSH review in order to support its own conclusions that exposure to work-related biomechanical factors increase the risk of serious musculoskeletal impairment. It was claimed that OSHA had seriously overstated the NIOSH conclusions as "having established causation" (Ex. 32–241–4, pg. 98) between biomechanical factors and MSDs regardless of the length and intensity of exposure, instead of the true NIOSH goal of drawing conclusions about the evidence of an association between risk factor and health outcome under conditions of prolonged exposure. Commenters argued that OSHA ignored the restricted scope of the NIOSH analysis that was limited to "certain objectively defined MSDs" and "examined only certain very specific stressors of highly repetitive and forceful work, lifting and forceful movements, awkward and prolonged sustained postures and exposure to vibration." (Ex. 500–109, pg. 24). On the other hand, it was claimed that OSHA used the NIOSH findings to "support causal inferences for all other MSDs * * * which include not only those MSDs studied by NIOSH but also DeQuervain's disease, trigger finger, Raynaud's syndrome and tarsal tunnel syndrome" and "attempts to broaden the NIOSH exposure associations to include not only the factors that NIOSH studied, but also a wide range of other so-called ergonomic risk factors including among others, contact stress and cold temperatures." (Ex. 30–1722, pg. 43).

OSHA does not agree that the findings of the 1997 NIOSH review have been misrepresented in any way. The Agency has not stated that the epidemiological evidence established that MSDs are caused by exposure to work-related biomechanical factors. Epidemiological studies rarely, if ever, prove causation. They are designed to identify associations between two study variables. Depending on the strength and consistency of the associations and whether the association shows aspects of temporality and exposure-response, epidemiological data can provide evidence of a causal relationship. OSHA has stated that there is convincing scientific evidence that biomechanical factors, usually in combination, increase the risk of several specific MSDs. These conclusions are often based, not on epidemiological studies alone, but also on the pathophysiology of the disorder and biomechanical and psychophysical research that are able to link ergonomic risk factors to biomechanical and subjective measurements under a more controlled set of simulated work conditions.

In general, the conclusions drawn by OSHA based on the entire body of scientific evidence track closely with those of NIOSH. OSHA does not stretch the NIOSH findings "far beyond the breaking point" to support causal inferences of the existence of vast numbers of MSDs that are not examined by the epidemiological studies (Ex. 30–1722, pg. 44). For example, DeQuervain's disease and trigger finger are forms of hand tendinitis specifically examined in epidemiological studies (Ex. 26–48; Ex. 26–53; Ex. 26–897) relied on by NIOSH to conclude evidence of an association between repetition, force, and awkward posture and hand/wrist tendinitis. In fact, NIOSH states in its review that "DeQuervain's disease and other tenosynovitis of the hand, wrist, and forearm have been associated for decades with repetitive and forceful hand activities as one of the possible causal factors." (Ex. 26–1, pg. 5b–8).

The other two MSDs cited as not being supported by NIOSH findings are Raynaud's phenomenon and tarsal tunnel syndrome (TTS). Raynaud's phenomenon refers to blanching of one or several fingers and is a characteristic sign of vascular damage that occurs in Hand-Arm Vibration Syndrome (HAVS) due to segmental vibration (Ex. 502–18). NIOSH concluded that there was strong evidence of a positive association between segmental vibration and the vascular symptoms of HAVS. TTS is an MSD of the foot and, therefore, was not addressed in the NIOSH review. However, it is a nerve impingement disorder analogous to CTS in the wrist. Like the carpal tunnel, the tarsal tunnel is a relatively "tight" compartment filled with flexor tendons and the tibial nerve that may be susceptible to compression in response to increases in intra-tarsal pressure as a result of repeated flexion/extension of the ankle.

In the Final Rule, OSHA does not broaden the set of biomechanical risk factors associated with MSDs beyond the four (force, repetition, posture, and vibration) supported by the 1997 NIOSH review (contact stress, which is covered by the standard, is a particular combination of force and repetition). Although OSHA believes that evidence exists that cold temperatures can aggravate some MSDs, this environmental factor principally operates to modify exposure to some of the biomechanical factors listed above and is not regarded as a primary risk factor. OSHA included contact stress in the final rule's Basic Screening Tool because there is reasonable evidence that repeated impact, such as hand hammering, increases the risk of the MSD known as hypothenar hammer syndrome (see Part D of the Health Effects section). In addition, repetitive knee hammering has been shown to be associated with a high risk of bursitis ("carpet layers knee") (see Part F of Health Effects section). The final rule makes clear that it is prolonged and regular exposure to a combination of biomechanical work factors that presents the greatest potential hazard.

It should also be noted that workplace intervention is not required by the ergonomic standard unless there is an MSD incident that the employer has determined to be work-related and there is evidence of exposure to the biomechanical risk factors defined by the OSHA basic screening tool. This action trigger serves to limit the number of stressors and disorders that require action under the OSHA rule.

For the above reasons, OSHA finds that its conclusions with regard to work-related biomechanical factors and risk of MSDs do not misrepresent, but are entirely consistent with, the findings in the 1997 NIOSH review. This view was confirmed by written testimony from the Director of NIOSH, Linda Rosenstock:

> OSHA builds on the evidence of the association between workplace risk factors and the development of MSDs provided in the 1997 NIOSH review and strengthens the evidence with the supporting data provided by laboratory and psychophysical studies * * * NIOSH concurs with OSHA's conclusion from the discussion of the evidence from the epidemiological studies. OSHA concludes that "In sum, although not all of the epidemiological studies reviewed demonstrate significant associations, the overwhelming majority justify a conclusion that the risk factors noted in this section, with effects adjusted by the four modifying factors, cause or exacerbate work-related MSDs." Thus the data justify the conclusion that these factors cause or exacerbate work-related MSDs (Ex. 32–450–1, pg. 7–8)

The commenters also claimed that OSHA misrepresented the findings of the NAS workshop and that the conclusions in their 1999 report "simply do not support OSHA's broad conclusions linking physical work-related factors to musculoskeletal complaints." (Ex. 32–241–4, pg. 117). They allege numerous inadequacies of the workshop, such as the fact that the participants included "only a few scientists who seriously questioned OSHA's ergonomic hypothesis" (Ex. 32–368–1, pg. 33). Despite this, the workshop participants supposedly seriously questioned the NIOSH study and, unlike OSHA, "admitted that the evidence of a link between MSDs and physical risk factors at the workplace is inconclusive at best," (Ex. 32–241–1, pg. 118). This led one NAS panelist, Dr. Howard Sandler, to state "that the NIOSH approach to their review of the evidence was sufficiently flawed to make the conclusions questionable." (Ex. 32–241–4, p. 112). Presumably the NAS report "actually undermines OSHA's decision to limit its analysis to physical, work-related factors" since it cites "individual, organizational, and social factors * * * which are possible influences on physiological pathways that lead from soft tissue to impairment and disability." (Ex. 32–241–4, p. 118). The argument for the OSHA misrepresentation of the NAS report is summarized as follows:

> In sum, the [NAS] Steering Committee advised *against* doing exactly what OSHA does in its analysis—focusing exclusively on physical work-related factors: "Non-biomechanical factors *must* [emphasis added] be considered if understanding of the relationship between biomechanical work factors and MSDs is to expand and inform in the design of workplace interventions to reduce or prevent such disorders." (Ex. 32–241–4, p.120).

OSHA does not believe the NAS report seriously questions findings of the NIOSH review or undermines the OSHA position on the evidence that exposure to biomechanical factors increases the risk of MSDs. Regarding the epidemiological evidence, the NAS Steering Committee Report states:

> Restricting our focus to those studies involving the highest levels of exposure to biomechanical stressor of the upper extremity, neck, and back and those with the sharpest contrast in exposure among the study groups, the positive relationship between the occurrence of musculoskeletal disorders and the conduct of work is clear. The relevant studies have not precisely determined the causal mechanical factors involved nor the full clinical spectrum of the reported MSDs (which are often lumped together nonspecifically as MSDs of a body region); nonetheless, those associations identified by the NIOSH review as having strong evidence are well supported by competent research on heavily exposed populations (Ex. 26–37, pg 15–16).
>
> There is compelling evidence from numerous studies that as the amount of biomechanical stress is reduced, the prevalence of musculoskeletal disorders at the affected body region is likewise reduced. This evidence provides further support for the relationship between these work activities and the occurrence of musculoskeletal disorders (Ex. 26–37. p 16).

OSHA believes these NAS conclusions are not "inconclusive at best" but as the commenters claims, instead clearly support those associations between work-related biomechanical factors and MSDs identified in the NIOSH review where evidence is strong, namely combinations of forceful exertions, repetitive motions, awkward postures, vibration and heavy lifting. The above biomechanical exposures are the same ones that the OSHA standard seeks to reduce.

The NAS Steering Committee did point out some limitations to the epidemiological evidence, particularly that "it was difficult to make strong causal inferences on the basis of evidence from any individual study." (Ex. 26–37, p. 15; emphasis added). They acknowledged that "the occurrence of MSDs among populations exposed to low levels of biomechanical stressors was less definite. * * * In case of low levels of biomechanical stress, the possible contribution of other factors to MSDs is important to consider." (Ex. 26–37, p. 16). OSHA agrees with these statements and has not ignored the contribution of individual, organizational, and psychosocial factors in the etiology of MSDs. The Health Effects section of the rule emphasizes the multifactorial nature of MSDs. Substantial evidence in the rulemaking record, however, demonstrates that biomechanical risk factor show strong associations with elevated MSD risk when other non-work-related factors are controlled for. Thus, OSHA does not believe that the existence of other risk factors should prevent actions that reduce exposures to those work-related biomechanical stressors.

OSHA agrees that the majority of the NAS participants supported the ergonomic hypothesis that OSHA is espousing. This is not because the NAS selection process excluded those with other views, as implied by the commenters. The NAS prides itself on and is regarded world-wide as an organization that renders impartial and unbiased expert judgment on scientific issues. The reason for the NAS participants' support is simply that most ergonomic experts around the world agree there is clear evidence that biomechanical work factors increase the risk of MSDs.

OSHA is aware that one member of the six person panel addressing physical factors and epidemiology, Dr. Howard Sandler, was critical of NIOSH's methodology and findings. OSHA does not agree with Dr. Sandler's statements, and neither did the majority of the other panel members. In the NAS workshop summary, the consensus of the panel was that NIOSH had not overlooked any important body of epidemiological evidence. The panelists generally agreed that the NIOSH analysis resulted in the review on of high quality studies. With the exception of Dr. Sandler, the panelists unanimously agreed that a reassessment of the epidemiological literature would not alter the conclusions drawn by NIOSH regarding the work-relatedness of MSDs.

Finally, it is important to note that in evaluating all the evidence, not just the epidemiology, the NAS Steering Committee made the following conclusions:

> Thus, while there are many points about which we would like to know more, there is little to shake our confidence in the thrust of our conclusions, which draw on converging results from many disciplines, using many methods:
>
> - There is a higher incidence of reported pain, injury, loss of work, and disability among individuals who are employed in occupations where there is a high exposure to physical loading than for those employed in occupations with lower level of exposure.
> - There is a strong biological plausibility between the incidence of MSDs and the causative exposure factors in high exposure occupational settings.
> - Research clearly demonstrates that specific interventions can reduce the reported rate of MSDs for workers who perform high risk tasks. No single intervention is universally effective. Successful interventions require attention to individual, organizational, and job characteristics, tailoring the corrective actions to those characteristics (Ex. 26–37)

OSHA believes the above NAS conclusions support, not undermine, the premise that there is convincing evidence that exposure to work-related physical factors increases the risk of MSDs. There is a higher incidence of MSDs in exposed individuals; there is strong biological plausibility that relates these disorders to biomechanical risk factors; and interventions that reduce exposure to those factors have been demonstrated to reduce the incidence of the MSDs.

In summary, the methodology used by NIOSH to arrive at its findings that there is evidence of an association between a number of work-related physical risk factors and MSDs of the neck, upper extremity, and back is not a flawed "black box," but a scientifically sound approach based on well-accepted epidemiological principles. By NIOSH's own testimony, OSHA's conclusions regarding biomechanical factors and the risk of MSDs in the workplace reinforce and do not misrepresent the 1997 NIOSH findings. Finally, the conclusions in the 1999 NAS report are supportive of both the NIOSH analysis and the OSHA position. In addition, to the NIOSH and NAS, the European Agency for Safety and Health at Work (Ex. 500–71–28) and Washington State (Ex. 500–71–93) have evaluated the scientific evidence and also reached similar conclusions regarding the evidence linking work-related biomechanical factors with the development of MSDs.

2. Issues Relating to Causal Inference in Epidemiology

Several commenters to the Proposal argued that OSHA had failed to show causality between exposure to workplace factors and MSDs; one group of comments emphasized that the types of studies used by NIOSH and OSHA to evaluate causality of the various MSD risk factors were inadequate for that purpose because of the studies design (see, *e.g.*, Ex. 32–241–4, pg 86–91). Specific comments were:

> Only repeated longitudinal prospective studies can establish causation; OSHA relies instead on methodologies prone to error and bias. * * * Cross-sectional studies, upon which OSHA heavily relies, are incapable of providing evidence of cause and effect, because correlation does not establish causation (Id. pg. 86). Case-control studies are highly prone to bias. Prospective cohort studies are the best method of studying etiology. * * * retrospective studies [are prone to] the hazards of * * * "recall bias." (Id. pg. 87). * * * In the case of musculoskeletal pain, which OSHA [has] linked to "awkward postures" and other biomechanical exposures, recall bias [in any retrospective design] can be extreme. * * * Cross-sectional studies are necessarily retrospective and prone to recall bias. (Id. pg. 87). [Cross-sectional studies] are useful for observing patterns and correlations, but can only generate hypotheses. A review seeking evidence of causation must exclude all cross-

> sectional studies, because their methodology is inadequate to test a hypothesis. (Id. pg. 88)

With respect to case-control study designs, the comments continued:

> [C]ase-control studies generally measure exposure to various hypothesized risk factors retrospectively, and consequently are prone to a number of biases, particularly in the recall of exposure to suspected risk factors. * * * Case-control studies are most suitable for examining rare diseases * * * Musculoskeletal complaints are hardly "rare," of course, making OSHA's reliance on retrospective studies particularly unwarranted and puzzling (Id. pg. 89).

With respect to combining studies for a total weight-of-evidence assessment, critics were somewhat divided. Some noted that:

> [In order to do a proper assessment] only prospective cohort studies reliably establish etiology, that is, valid scientific evidence of cause and effect. (Id. pg. 89). * * * Adequate science, however, requires more than mere association. It demands clinically accepted, rigorously controlled studies. (Ex. 32–241–3–1, pg.3),

while others, including Dr. Stanley Bigos, felt that case-control studies could also be used:

> To infer causal relationships, one would look for consistent findings in a number of case-control and prospective cohort studies, as well as other supporting scientific information. Bradford Hill published an influential set of guidelines for causal inference. (Ex. 32–241–3–4, pg. 9).

However, another commenter cautioned about drawing conclusions for a group of studies:

> It should be noted that weaknesses of individual studies cannot be overcome by synthesizing a large number of studies with different weaknesses that suggest the same conclusion. (Ex. 32–241–4, pg. 89).

Still another commenter, Dr. Lloyd Fisher, noted a methodology using a statistical approach for combining studies. This methodology is termed meta-analysis:

> The process for properly formally synthesizing information from multiple studies of the same thing is described in a textbook I coauthored. Requirements for a valid meta-analysis include that (1) *all* studies in the area be considered, without "publication bias" based on treatment effect indicated in the studies; (2) a careful assessment of study quality should be performed; and (3) study results should reflect a homogeneity of results. This was not attempted where possible in the material that I reviewed.
>
> Perhaps the most notable example of meta-analysis discussed by OSHA is [the NIOSH report]. However, it is not clear that the NIOSH report satisfies any of the three conditions. Some relevant studies (such as the Boeing back-injury study) are not included. The quality of the studies is not directly assessed to any great degree. (Ex. 32–241–3–7, pg. 3).

OSHA has carefully considered these comments on the criteria and methodology for selecting and combining studies for a weight-of-evidence approach to evaluating causality and has concluded that OSHA's approach and the approach used in the NIOSH report (Ex. 26–1) are scientifically sound. First, with respect to the NIOSH methodology; OSHA notes that NIOSH did prioritize studies by type of design and did discuss each design's inherent capabilities, weaknesses, and potential biases (Ex. 26–1, App. A). NIOSH also included in its criteria for evaluating the weight of a study the study's population, health outcome, and exposure: "the greatest qualitative weight was given to studies that had objective exposure assessments, high participation rates, physical examinations, and blinded assessment of health and exposure status." (Ex. 26–1, pg. 1–9 and 1–10).

NIOSH then evaluated the data base of studies using guidelines to assess causal inference made famous by Bradford Hill (Ex. 26–726). These consisted of (1) strength of association; (2) consistency of association; (3) specificity of association; (4) temporality; (5) exposure-response relationship; and (6) coherence of evidence (a combination of consistency with other information and biological plausibility). These guidelines are endorsed in the Reference Manual On Scientific Evidence (Federal Judicial Center, 2000) that assists federal judges in interpreting scientific reasoning as it pertains to litigation and is held up by Gibson, Dunn & Crutcher as an authoritative source. The *Manual* states the following about the application of the Hill criteria:

> There is no formula or algorithm that can be used to assess whether a causal inference is appropriate based on these guidelines. One or more factors may be absent even when a true causal relationship exists. Similarly, the existence of some factors does not ensure that a causal relationship exists. Drawing causal inferences after finding an association and considering these factors requires judgment and searching analysis, based on biology, of why a factor or factors may be absent despite a causal relationship and vice versa. While the drawing of causal inferences is informed by scientific expertise, it is not a determination that is made using scientific methodology. (pg. 375)

NIOSH witness Dr. Larry Fine stated in his testimony:

> Again, it's always hard to talk in generalizations, but in a situation where you have evidence of a biologically plausible explanation for the relationship between exposure and disease, where you had a body of cross-sectional studies that had accurate exposure assessment and accurate health outcomes; in that setting, we believe that you may well infer causality, particularly if you see, in studies with a wide range of exposure, a dose-response relationship (Tr. 2095).

Second, OSHA has considered the NAS review of the NIOSH criteria for study inclusion and weighting (Ex. 26–37). In the NAS review seven epidemiologists specializing in ergonomics were asked about the NIOSH assessment's selection and weighting of studies. Each provided individual comments (*Id.*, pgs. 152–174). In general they concurred with the NIOSH approach. Dr. Frederick Gerr, Associate Professor, Rollins School of Public Health, Emory University, thought that NIOSH had included all important epidemiological evidence in its review (*Id.*, pg. 159), an opinion shared by Dr. Laura Punnett, Professor, University of Massachusetts, Lowell (*Id.*, pg. 162), Dr. Alfred Franzblau, Associate Professor of Occupational Medicine, University of Michigan School of Public Health (*Id.*, pg. 155), and Dr. David Wegman, Professor, University of Massachusetts Lowell (*Id.*, pg. 172). With respect to the four criteria NIOSH chose to use to further qualitatively weight each study, some of the NAS participants found that these "criteria for identifying studies of relatively greater methodological rigor are reasonable and appropriate" (*Id.*, pg. 159), and "that the studies most heavily relied on by NIOSH in its assessment of workplace factors and MSDs are of good quality." (*Id.*, pg. 156); and "[t]he quality of the studies that were most heavily weighted was generally quite high because they met the multiple criteria set out by NIOSH for weighting. (*Id.*, pg. 172). One panelist, however, Dr. Howard Sandler (in a study co-authored with non-panelist Dr. Richard Blume), thought that this weighting method was neither fully explained nor tested and validated. (*Id.*, pg.168). Dr. Sandler was scheduled to appear at the OSHA hearing as an expert for Keller/Heckman but never did so.

Because of the NIOSH assessment's use of cross-sectional studies, the comments of Dr. Alfred Franzblau in discussing NIOSH's weighting of cross-sectional studies should be noted:

> What some researchers have done is to perform cross-sectional studies among workers (and jobs) that are known to have been stable for some minimum period of time (*e.g.*, six months or one year). This type of cross-sectional design overcomes some of the shortcomings of cross-sectional studies relative to prospective studies, and serves to greatly strengthen the confidence one can have in the conclusion. Many of the studies that were most heavily weighted in the NIOSH assessment fall into this category (Ex. 26–37, pg. 156).

Dr. David Wegman provided the following summary comments:

> There is no "correct" way to carry out a literature review particularly with as large a scope as the one undertaken by NIOSH. The authors of the NIOSH report are to be commended for developing a methodology that is reasonable, understandable, clearly presented, open and conservative. It is hard to imagine a more effective way to summarize this literature (Ex. 26–37, pg. 173).

Third, several witnesses and commenters on OSHA's ergonomics proposal also addressed the use of multiple types of epidemiological studies to determine causality. Dr. John Frank, Professor of Public Health Sciences, University of Toronto, stated in his testimony:

> The best design cannot be read from a cookbook which automatically requires there to be a rank ordering of study design qualities for all circumstances. Prospective studies can actually make some mistakes that are overcome in well designed case-control studies (Tr. 1472).

Dr. Laura Punnett, Professor, University of Massachusetts Lowell, in support of the conclusions of the NIOSH report pointed out that:

> Almost all of the studies considered in the review have been published in the peer-reviewed scientific literature, meaning that they had already been through the standard scientific quality control process prior to their publication and review by NIOSH. (Tr. 864).

In a statement that contradicts the view of several witnesses stating that medicine must rely on randomized clinical trials (RCT) for determining causality (*e.g.*, see Ex. 32–241–3–4, pg. 7–10), Dr. Niklas Krause, of the Public Health Institute, discussed the necessity of doing a careful evaluation of all the evidence:

> So there are design problems in any study. And there is no gold standard, not even the randomized control trial is the gold standard as some people say. Epidemiologists say it. It is not the gold standard. You have to use all the available evidence. It is a careful evaluation of all the methodological features from measurement to control group to the timing and going through criteria that are important for causation as laid down by Hill and others. There is a discussion among us, you know, [about] which are the most important ones. But I think we all agree * * * we have established temporality in another way than doing a longitudinal study. And it can be established. We have repeated that. Then, all study designs are equally important. (Tr. 1476). * * * If you disregard all the cross-sectional studies for causal inference, you would not have medicine. (Tr. 1411).

When questioned about the cross-sectional design's inability to establish temporality, a key factor for determining causality, Dr. Krause further stated that in his studies this was not the case:

> To give you an example, in our cross-sectional studies of the bus drivers, we measured the years of occupational driving. These years clearly occurred before they said to us I have back pain now. I have no doubt that these risk factors are [temporal], in a [temporal] relationship or coming before the back pain. And so this study qualifies for causal inference as a cross sectional study. I would not disregard this. (Tr. 1411).

The AFL–CIO post-hearing comments provide their analysis of the OSHA record with respect to the evidence for causality (Ex. 500–218). In discussing the types of studies that can be used to determine causality, they stated:

> The record evidence clearly establishes that cross-sectional and case-control studies have been and can be used to identify causal relationships between exposures to risk factors and adverse health outcomes. In fact, the record demonstrates that cross-sectional and case-control studies have been used with great success to infer causal relationships addressing some of our nation's most important public health issues, such as smoking and lung disease, which have led to life-saving intervention measures in the absence of prospective studies. The record also does contain prospective epidemiological studies which have confirmed findings from cross-sectional and case-control studies that exposure to biomechanical/physical factors in the workplace cause MSDs among exposed workers.

(*Id.*, pg. 30)

In summary, with respect to the selection, use, and weighting of studies of multiple designs to make a determination of the causality between work-related stress factors and MSDs, OSHA concludes that the NIOSH approach is sound.

With respect to Dr. Fisher's comment that a formal methodology for combining study results to derive a weighted estimate of effect is a meta-analysis and that NIOSH did not perform a proper meta-analysis, OSHA agrees that NIOSH's analysis was not that of a formal meta-analysis. However, neither Dr. Fisher nor anyone else has provided a formal meta-analysis of the epidemiological literature to the record. Furthermore, OSHA notes that a necessary criteria for combining studies in a successful meta-analysis is that only studies measuring similar factors and estimating very similar effects should be analyzed together. OSHA's review of the database has determined that comparisons both between and within occupations with higher versus lower risk factors can be made in the various studies in a basic weight-of-evidence approach. However, a rigorous meta-analytic approach for a combined risk estimate is much more problematic because of the many factors being studied and the different response measures.

In addressing NIOSH's reliance on a qualitative evaluation of the epidemiology rather than a formal meta-analysis, Dr. David Wegman, Professor, University of Massachusetts Lowell, stated in his review for the NAS

> Meta-analysis is not appropriate when the question under study is as broad as the one NIOSH addressed. In my judgement [another writer] * * * provides the answer which, in his words is: "I question whether quantitative methods can ever be as thoroughgoing, probing and informative as qualitative methods" [Ex. 26–37].

The NAS Panel's Steering Committee concluded, with respect to the findings of the seven epidemiology experts on the NAS panel about combining studies for an overall risk estimate:

> Methods used for the assessment of exposures and health outcomes vary [among studies], rendering the task of merging and combining evidence more challenging than in some other areas of risk assessment. But this variability does provide the benefit of multiple perspective on a common set of problems [Ex. 26–37].

In summary, OSHA finds no support for Dr. Fisher's comment that NIOSH erred by not performing a proper meta-analysis. Neither Dr. Fisher nor anyone else has provided any specific evidence to support his contention that a meta-analysis approach would be appropriate in this case. Instead, OSHA concurs with the National Academy of Science's conclusion that a formal meta-analysis would not be the best methodology in this case.

Gibson, Dunn & Crutcher also claimed that OSHA did not properly evaluate the epidemiological evidence according to the Reference Manual On Scientific Evidence (Ex. 500–197). Gibson, Dunn & Crutcher cited the following alleged weakness: that OSHA characterized the epidemiological evidence as proving cause while the *Manual* makes clear that epidemiological studies address association not causation, and that OSHA relied on studies of "employee's recollection of the details of past job duties * * * and measures such as job titles coupled with the assumption that job duties were consistent across all job titles." (*Id.*, pg. I–55]. The *Manual* criticizes studies that rely on the memory of subjects and states a preference for measurement of exposure. The *Manual* says that the outcome or health effect being studied must be clearly defined, yet OSHA relied on "studies that examine subjective memories regarding an individual's experience with or personal tolerance for pain." (*Id.*, pg. I–56). While NIOSH found that many studies "did not take into account [confounding] factors beyond job duties and produced odds or risk ratios that were not statistically significant" (*Id.*, pg. I–57), OSHA "just picked the ones that purport to show results favoring its hypothesis" and "routinely relied on studies reporting associations or odds ratios well below 9–10 and indeed often below 2." (*Id.*, pg. I–59). According to Gibson, Dunn & Crutcher, the Manual "indicates that where risk ratios are significantly below nine or ten there is a probability that unmeasured factors are the true causes of the effect or disease being studied." (*Id.*, pg. I–58).

Gibson, Dunn & Crutcher mischaracterized the nature of the epidemiological studies on which OSHA relied, the criteria used by OSHA to evaluate those studies, and the conclusions OSHA drew from those studies. They also misconstrue a key section of the *Manual*. OSHA did not simply rely on epidemiological studies in which exposures were assumed but never measured and in which the health outcome was simply self-reported memories of pain. For each MSD, OSHA relied primarily on a subset of studies in which exposure to work-related biomechanical factors was directly observed or measured and for which the health outcome was clearly defined by a combination of symptoms and physical exam. This meets the *Manual's* preference for objective and uniform exposure measures and case definition. It is also compatible with the 1997 NIOSH analysis, which quite properly give the greatest weight to studies that involved objective exposure assessments and physical examinations in their evaluation of the evidence (Ex. 26–1, pg. 1–10).

For example, in the case of epicondylitis and other elbow MSDs, thirteen epidemiological studies based case definition on physical examination and worker exposure determined by observational analysis (see Table V–3). In these studies, the diagnosis of epicondylitis was consistent and required both pain on palpation of the epicondylar area and pain at the elbow with resisted movement of the wrist. Exposures relied on videotaped analysis of job tasks to group exposed and unexposed workers, sometimes with quantitative estimates of cycle times (for repetition), static loading on the forearm (for force), and wrist posture. Nine of the thirteen studies found statistically significant associations between epicondylitis and exposure to work-related physical factors (see, *e.g.*, Exs. 26–907; 500–41–131; 26–53; 26–1117; 26–1364; 26–1433; 500–41–116; 26–945; 26–1473). Six of the studies reported odds ratios or other risk measures of fiye or greater (Exs. 26–907; 500–41–111; 26–43; 26–1117; 26–1364; 26–1433). One study found that the rate of repetitive exertions is highly predictive (p=0.002) of epicondylitis (Ex. 500–41–116). Two studies reported odds ratios greater than ten (Exs. 26–907; 500–41–111). This is a much different pattern of risk ratios than that presented by Gibson, Dunn & Crutcher, which claims that odds ratios are well below 9–10 and often around 2.

The *Manual* does not state risk ratios below 10 may indicate that confounding factors are responsible for the association, as implied by Gibson, Dunn & Crutcher. The *Manual* states "a relative risk of 10 * * * is so high that it is extremely difficult to imagine any bias or confounding factor that might account for it." (pg. 376). The *Manual* goes on to say that "although lower relative risks *can* (emphasis added) reflect causality, the epidemiologist will scrutinize such associations more closely because there is a greater chance that they are the result of uncontrolled confounding or bias." (Pg 377).

The *Manual* also discusses the Hill criteria previously cited. OSHA has evaluated the epidemiological evidence against these criteria. As mentioned above, the large number of studies reporting significant associations and risk ratios above five speaks to the strength of the association and the replicatibility of the findings for MSDs of the elbow. As further explained in the Health Effects section, there was one prospective cohort study of meat cutters that provided evidence of a temporal relationship between repetitive, forceful exertions of the forearm/elbow and epicondylitis (Ex. 26–53). In addition, several cross-sectional studies indicated an exposure-response relationship between the intensity or duration of repetitive exertions and the prevalence of MSDs (Exs. 500–41–116; 500–41–111; 26–1117; 26–697; 26–1473). Two studies reported ORs between 1 and 3 that were not statistically significant, probably because the workers were exposed to relatively low force directed at the forearm (Exs. 26–56; 26–697). Another study that did not find an association may have misclassified exposure, according to NIOSH (Ex. 26–1211). As a group, OSHA found that the studies relied on generally controlled for important confounders and bias, although not every individual study did so. Pathology information that epicondylitis is caused by microrupture of the tendons resulting from overuse of the forearm muscles, and the well-established connection between epicondylitis and racquet sports (*i.e.*, tennis elbow) establish the biological plausibility of the relationship.

The evidence briefly described above led OSHA to conclude that workers that perform job tasks requiring repeated forceful movements, especially flexion, pronation, or supination with the arm extended, are at increased risk of substantial and serious musculoskeletal impairment to the elbow. In its analysis of the epidemiological literature, NIOSH also concluded there was strong evidence for a relationship between exposure to a combination of work-related physical factors and epicondylitis (Ex. 26–1, pg 4–1 to 4–48). It should be noted that these OSHA and NIOSH conclusions do not, in fact, speak of causation as purported by Gibson, Dunn & Crutcher; both OSHA's and NIOSH's conclusions are careful to conform to the language of the *Manual*.

In Section V on health effects, OSHA evaluates the epidemiological evidence for MSDs of the upper extremity, shoulder, neck, back, and lower extremity, be focusing primarily on the most reliable studies. This usually means studies where exposures to physical work factors are directly observed or measured, not assumed based on job title, and the MSDs have been confirmed by a combination of symptoms, physical exam, and medical tests as appropriate. In addition to the evidence for epicondylitis cited above:

- Thirteen studies examined neck and neck/shoulder MSDs using physical exam and direct observation of exposure. All but one found significant associations between biomechanical risk factors and health outcome. At least three studies reported odds ratios greater than five (see Table V–1).
- Seventeen studies examined shoulder MSDs (mostly tendinitis) using physical exam and direct observation of exposure. All but one found significant associations between biomechanical risk factors and health outcome. At least six studies reported odds ratios greater than five (see Table V–2).
- Seven studies examined hand/wrist tendinitis using physical exam and direct observation of exposure. All but one found significant associations between biomechanical risk factors and health outcome. At least four studies reported odds ratios greater than five (Table V–4).
- Seventeen studies examined carpal tunnel syndrome using physical exam and/or nerve conduction and direct observation of exposure. Thirteen found significant associations between biomechanical risk factors and health outcome. At least five studies reported odds ratios greater than five.
- Six studies examined hand/arm vibration syndrome using physical exam and vibration measurements. Four found significant associations between vibration and health outcome; all of which reported odds ratios greater than five.

OSHA has carefully evaluated the collective data base of studies for each MSD category using the criteria for causality cited in the *Manual* (pg. 374–378). OSHA used the epidemiological data, biomechanical research studies, and information addressing biological plausibility to draw its overall conclusions with regard to the evidence that the work-related biomechanical factors were responsible for the observed increase in the risk of health impairment. OSHA finds this evidence compelling and points to the need to take action to provide workers with necessary protection. OSHA does not believe that it is appropriate to wait for "proof of causation" since scientific evidence cannot ever establish causation beyond any doubt. As Sir Bradford Hill wrote over 35 years ago:

> All scientific work is incomplete—whether it is observational or experimental. All scientific work is liable to be upset or modified by advancing knowledge. That does not confer upon us a freedom to ignore the knowledge we already have or to postpone the action that it appears to demand at a give time (Ex. 26–726).

3. Evidence for Exposure Response Relationships

Several submissions, such as those submitted by the U.S. Chamber of Commerce and experts testifying on behalf of United Parcel Service (Exs. 30–1722, 32–241–3–19, 32–241–3–13, 30–4184, 30–1552), claimed that there is no epidemiologic evidence of exposure-response (or "dose-response") relationships between MSDs and the physical ergonomic stressors addressed by the OSHA standard. In their joint written testimony on the proposed rule, Kellie Truppa and Dr. Michael Vender, for example, stated:

> While it may seem very intuitive that decreasing reported ergonomic stressors would decrease disorders, there is no scientific study that has demonstrated a decrease in the incidence of true disease directly attributable to actual ergonomic changes. Unlike other risk factors to health (*e.g.*—smoking) there is no concept of threshold exposure or dose-response in relating ergonomic risk exposure to the development of disease. Therefore, there can be no predictability or guarantee of any benefit with reduction of ergonomic exposures * * * (Ex. 32–241–3–19).

In the preamble to the proposed rule, OSHA presented results of several studies that evaluated exposure-response trends; since publication of the proposal, OSHA has identified many more studies that provide evidence that, as the level (intensity, frequency or duration) of exposure increases, so does the risk of MSDs. OSHA summarizes this evidence in this section of the preamble. Based on these studies, OSHA finds that there is substantial evidence for a positive relationship between duration and intensity of exposure to biomechanical risk factors and the risk of developing MSDs, and that this evidence strengthens the causal relationship between exposure and risk.

One of the key criteria for demonstrating a causal relationship is evidence that the prevalence or incidence of a health outcome increases with an increase in the level of exposure to a hazardous condition. In occupational epidemiological studies, an exposure-response relationship is demonstrated when there is a statistical association between the prevalence or incidence of the health outcome in at least three groups of workers each with a varying degree of exposure (*e.g.*, no exposure, low exposure, high exposure). When exposure response relationships are based on groups of workers, the exposure variable is represented as an ordinal variable. Alternatively, statistical analysis can be performed on data for individual members of study cohorts to derive statistical functions that reflect the exposure-response relationship; in this case, the exposure variable is represented as a continuous variable. For this section, studies were included if the risk between musculoskeletal disorders and exposure to one or more biomechanical risk factors were examined using either of these two approaches. In the studies compiled here, the most common presentations of exposure response relationships are when the prevalence, incidence, odds ratio, or risk ratio for an MSD increases from one exposure category to the next. Typically these are accompanied by confidence intervals or a test of linear trend, as measures of statistical stability. In other studies, the exposure-response relationship may be expressed in the form of a statistically significant linear regression coefficient, or (partial) correlation coefficient, showing that, as exposure increases so does the prevalence or risk.

An exposure-response relationship, when present, is considered to strengthen the evidence of a causal relationship because it is believed to be a characteristic of cause-effect situations, in general, absent evidence to the contrary. In addition, it is thought that it would be more difficult for many or most forms of bias or confounding to produce an artifactual exposure-response relationship than to bias a simple association such as an odds ratio. However, it is not a sine qua non, in that an epidemiologic study can provide valuable information even if both exposure and outcome are represented only as dichotomous variables (*i.e.*, exposed versus unexposed), nor does it make unnecessary consideration of methodologic issues that must be addressed when evaluating a given study. Furthermore, the lack of an exposure-response relationship is not necessarily evidence against a causal effect.

The studies cited in this section utilized a wide range of exposure measures, including worker self-reports, observation, and direct measurement. As several authors have noted, even though exposure units and scaling vary, there is an overall consistency between self-reports and other, presumably more objective, measures in these studies (*e.g.*, Booth-Jones et al., 1998: Ex. 500–121–9; Jensen et al., 2000: Ex. 500–41–68; Neumann et al., 1999: Ex. 38–65; Pope et al., 1998: Ex. 500–71–67). This suggests that worker perception provides a useful guide to the identification of jobs involving high exposures to physical risk factors, and that, in general, the jobs that will be identified as potentially hazardous by workers' own evaluations will generally correspond to those that would be identified as potentially hazardous by other measures. The results of studies that have examined exposure-response relationships are summarized in Tables V–9 through V–13, and are summarized briefly below.

Work Pace and Repetition

There is substantial evidence of an exposure-response relationship for MSDs of the neck and shoulders. For example, in a case-control study of the general population in Sweden, the odds of neck/shoulder disorders increased markedly with work pace levels from slow to medium to rushed, as well as with hours per day of performing repetitive precision movements at work (Ekberg et al., 1994: Ex. 26–1238). Ohlsson *et al.* found positive associations with both the number of items handled per hour in repetitive assembly work and the number of years employed in such work, especially among younger employees (Ohlsson et al., 1989: Ex. 26–1290). Johansson *et al.* studied blue- and white-collar manufacturing employees separately and reported exposure-response relationships with monotonous movements at work in each group (Johansson et al., 1994: Ex. 26–1331).

TABLE V–9.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIPS FOR MUSCULOSKELETAL DISORDERS WITH EXPOSURE TO REPETITIVE MANUAL WORK

Measure of repetitiveness (unit)	Health outcome/body region affected	Measure of effect	Reference
Neck and Shoulder			
Years sewing machine operator (4 categories).	Neck/Shoulder	Odds Ratio [unadj] 0 (control: 1.0 0–7: 2.3 (0.5–11.0) 8–15: 6.8 (1.6–28.5) >15: 16.7 (4.1–67.5)	Andersen *et al.*(1993: Ex. 26–1451).
Years sewing machine operator (4 categories).	Chronic neck pain	Odds Ratio [adj] 0 (control): 1.0 0–7: 1.9 (1.3–2.9) 8–15: 3.8 (2.3–6.4) >15: 5.0 (2.9–8.7)	Andersen *et al*(1993: Ex. 26–1502).
Years sewing machine operator (4 categories).	Chronic should pain	Odds Ratio [adj] 0 (control): 1.0 0–7: 1.4 (0.9–2.4) 8–15: 3.9 (2.3–6.5) >15: 10.3 (5.9–17.9)	Andersen *et al.*(1993: Ex. 26–1502).
Years sewing machine operator (4 categories).	Chronic neck and/or shoulder pain.	Odds Ratio [adj] 0 (control): 1.0 0–7: 1.8 (1.2–2.6) 8–15: 4.3 (2.6–6.9) >15: 8.0 (4.7–13.8)	Andersen *et al.*(1993: Ex. 26–1502).
Data entry at video display unit (hours/week).	Neck (cervical diagnoses)	Odds Ratio [adj] 5–20 hr/wk: 1.2 (0.4–4.3) ≥20 hr/wk: 1.7 (0.7–4.3)	Bergqvist *et al.*(1995: Ex. 26–1195, 500–165–25).
Data entry at video display unit	Neck/shoulder	Odds Ratio [adj] Data entry: 1.4 (0.7–2.9) Data entry plus limited rest breaks: 4.8 (1.3–18.1)	Bergqvist *et al.*(1995: Ex. 26–1195, 500–165–25).
Typing speed	Neck	Prevalence [unadj] (test of trend): Slow: 10% Moderate: 14% Fast: 25% (p<0,001)	Burt *et al.*(1990: Ex. 26–698).
Percentage of time typing	Neck	Odds Ratio [adj] <20: 1.0 20–39: 2.0 (1.0–7.7) 40–59: 2.6 (1.4–5.0) 60–79: 2.2 (1.0–4.7) 80–100: 2.8 (1.4–5.4)	Burt *et al.*(1990: Ex. 26–698).
Typing speed	Shoulder	Odds Ratio [adj] Slow: 1.0 Moderate: 2.6(1.1–5.9) Fast: 4.1 (1.8–9.4))	Burt *et al.*(1990: Ex. 26–698).
Percentage of time typing	Shoulder	Prevalence [unadj] (test of trend): 0–19: 6% 20–39: 10% 40–59: 13% 60–79: 11% 80–100: 15% (p=.10)	Burt *et al.*(1990: Ex. 26–698).
Repetitive precision movements (hours/day) (3 categories).	Neck/Shoulder	Odds Ratio [adj] Low: 1.0 Medium: 3.8 (0.7–20) High: 15.6 (2.2–113)	Ekberg *et al.*(1994: Ex. 26–1238).
Work pace (3 categories)	Neck/Shoulder	Odds Ratio [adj] Low: 1.0 Medium: 7.6 (1.6–36) Rushed: 10.7 (2.2–52)	Ekberg *et al.*(1994: Ex. 26–1238)
Hour per day of video display terminal (VDT) use.	Neck, shoulder, upper back ("upper torso").	Odds Ratio [unadj] per hour 1.4 (1.0–2.0)	Faucett *et al.*(1994: Ex. 38–256)
Monotonous working movements (duration of repetitive movements, static stress and sitting).	Neck (in white collar workers)	Partial correlation coefficient [adj] 0.38 (p < 0.05)	Johansson *et al.*(1994: Ex. 26–1331)
Monotonous working movements (duration of repetitive movements, static stress and sitting).	Shoulder (in white collar workers)	Partial correlation coefficient [adj] 0.32 (p < 0.05)	Johansson *et al.*(1994: Ex. 26 1331)
Monotonous working movements (duration of precision movements, repetitive movements, and static and stress).	Shoulder (in blue collar workers)	Partial correlation coefficient [adj] 0.15 (p < 0.05)	Johansson *et al.*(1994: Ex. 26–1331)
Years employed in repatitive assembly work.	Neck	Increasing odds (graphical presentation only)	Ohlsson *et al.*(1989: Ex. 25–1290)
	Shoulder	Increasing odds (p=0.03); below 35 years of age, p=0.01	
Work pace (items/hour) (4 categories).	Shoulder	Odds Ratio [adj] < 100: 1.0 100–199: est 8.0 (p=0.0006) 200–700: est 9.0 (p=0.0006) > 700: est 2.0 (p-value not given)	Ohlsson et al. (1989: Ex. 26–1290)
Hours per day of VDT use (4 categories).	Neck	Prevalence [unadj] (test of trend): 0 hr: 7% 0.5–3 hr: 7% 4–6 hr: 12% ≥7 hr: 19% (p<0.00001) Odds Ratio [adj] 0 hr: 1.0 0.5–3 hr: 1.8 (0.5–6.8) 4–6 hr: 4.0 (1.1–14.8) ≥7 hr: 4.6 (1.7–13.2)	Rossignol *et al.*(1987: Ex. 26–804)
Hours per day of VDT use (4 categories).	Shoulder	Prevalence [unadj] (test of trend): 0 hr: 6% 0.5–3 hr: 5% 4–6 hr: 10% ≥7 hr: 16% (p=< 0.00001) Odds Ratio [adj] 0 hr: 1.0 0.5–3 hr: 2.5 (0.7–10.8) 4–6 hr: 4.0 (1.0–16.9) ≥7 hr: 4.8 (1.6–17.2)	Rossignol *et al.*(1987: Ex. 26–804)
Sewing machine operation (years of employment).	Neck	Odds Ratio [unadj] < 8 yrs: 1.0 8–14 yrs: 1.1 (0.4–2.6) ≥15 yrs: 2.1 (0.8–5.6	Schibye *et al.*(1995: Ex. 26–1463)
	Shoulder	< 8 yrs: 1.0 8–14 yrs: 1.3 (0.5–3.4) ≥	15 yrs: 4.3 (1.5–12.5)
Arm and Elbow			
Data entry at video display unit (hours/week).	Arm/hand	Odds Ratio [unadj] 5–20 hr/wk: 1.6 (0.6–4.5) ≥ 20 hr/wk: 1.8 (0.8–3.9)	Bergqvist *et al.*(1995: Exs. 26–1195, 500–165–25)
Percentage of time typing	Elbow/forearm	Odds Ratio [adj] 20–39%: 1.2 (0.6–22.5) 40–59%: 1.7 (0.8–3.5) 60–79%: 1.9 (0.9–4.3) 80–100%: 2.8 (1.4–5.7)	Burt *et al.*(1990: Ex. 26–698)
Typing speed	Elbow/forearm	Prevalence [unadj] (test of trend): Slow: 7% Moderate: 11% Fast: 13% (p=0.02)	Burt *et al.*(1990: Ex. 26–698)
Hours per day of VDT use	Arm	Prevelance [unadj] (test of trend): 0 hr: 4% 0.5–3 hr: 2% 4–6 hr: 4% ≥7 hr: 7% (p=0.01)	Rossignol *et al.*(1987: Ex. 26–804)

TABLE V–9.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIPS FOR MUSCULOSKELETAL DISORDERS WITH EXPOSURE TO REPETITIVE MANUAL WORK—Continued

Measure of repetitiveness (unit)	Health outcome/body region affected	Measure of effect	Reference
Hand and Wrist			
Typing at video display unit (hours/day).	Hand/wrist	Odds Ratio [adj] 0–<2 hr: 1.0 2–<4 hr: 1.3 (0.6–1.8) 4–<6 hr: 1.3 (0.8–2.2) 6–≥8 hr: 2.1 (1.3–3.6) ≥8 hr: 3.3 (1.2–8.9)	Bernard *et al.*(1994: Ex. 500–165–21)
Typing speed	Hand/wrist	Odds Ratio [adj] Slow: 0.9 (0.3–2.3) Moderate: 1.3 (0.6–3.1) Fast: 2.5 (1.0–5.6)	Burt *et al.*(1990: Ex. 26–698)
Percentage of time typing	Hand/wrist	Prevalence [unadj] (test of trend): 0–19: 13% 20–39: 23% 40–59: 27% 60–79: 30% 80–100: 24% ($p<0.01$)	Burt *et al.*(1990: Ex. 26–698)
Hours per day of video display terminal (VDT) use.	Hand and arm	Odds Ratio [unadj] per hour 1.5 (1.1–2.0)	Faucett *et al.*(1994: Ex. 38–256)
Repetition rating (1 unit on 0–10 scale).		Odds Ratio [adj]:	Latko *et al.*(1999: Ex. 38–171)
	Dominant wrist/hand/fingers	1.17 (1.06–1.29)	
	Tendinitis (distal upper extremity)	1.23 (1.04–1.46)	
	Carpal tunnel syndrome	1.16 (1.00–1.34)	
Cycle length (seconds), in work performed 4–8 hours per day.	Carpal tunnel syndrome	Odds Ratio [adj] ≥1 min: 1.0 30–59 s: 1.03 (0.56–1.89) 10–29 s: 1.33 (0.75–2.37) <10 s: 1.90 (1.04–3.48)	Leclerc *et al.*(1998: Ex. 500–205–11)
Years employed in repetitive assembly work.	Hand	Increasing odds ($p=0.002$)	Ohlsson *et al.*(1989:Ex. 26–1290)
Repetitive wrist motions (years of exposure). .	Carpal tunnel syndrome	Odds Ratio [unadj] <1 yr: 1.0 1–20 yrs: 2.3 (0.7–7.9) >20 yrs: 9.6 (2.8–33.0)	Wieslander et al.(1989: Ex. 26–1027)
Multiple Body Regions			
Piece-rate wage system (years of employment).	Musculo- skeletal diseases	Odds Ratio [adj] 0–4 yrs: 1.0 5–9 yrs: 4.3 (0.5–35.9) 10–14 yrs: 10.0(1.0–79.3) 15–19 yrs. 8.0 (0.8–76.8) ≥20 yrs: 11.4 (0.9–137.1)	Brisson *et al.*(1989: Ex. 26–937)
Hours per week of video display terminal use.	Upper extremity and back	Mean hours per week [unadj] 30 in cases, 27 in non-cases ($p<0.05$)	Knave *et al.*(1985: Ex. 26–753)
Percentage of recovery time per work cycle.	Upper extremity	Linear regression coefficient [unadj]: Ln(% recovery): 0.6 ($r^2=0.49$, $p<0.001$)	Moore *et al.*(1994: Ex. 26–1033)
Hours per day at keyboard	Hand, wrist, forearm and/or elbow	Prevalence [unadj] (test of trend): 3 hr: 21% 4 hr: 24% 6 hr: 45% 6 hr: 50% >6 hr: 86%($p<0.00001$)	Oxenburgh (1987: Ex. 26–1367)
Keyboarding speed	Upper extremity	Prevalence [unadj] (test of trend): <40 wpm: 17% 40–60 wp,: 22% >60 wpm: 29% ($p=0.025$)	Polanyi *et al.*(1997): Ex. 500–41–106)
Daily time keyboarding (hours per day).	Upper extremity	Means (test of difference) [unadj]: Cases 3.9 hours/day, controls 3.2 hours/day ($p<0.001$)	Polanyi *et al.*(1997: Ex. 500–41–106)

Note: adj = adjusted for other covariate(s)
unadj = not adjusted for other covariates

TABLE V–10.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIPS FOR MUSCULOSKELETAL DISORDERS WITH EXPOSURE TO FORCEFUL MANUAL EXERTION

Measure of manual force (unit)	Health outcome/body region affected	Measure of effect	Reference
Neck and Shoulder			
Grocery checking: hours per week of checking work.	Shoulder	Odds Ration [unadj] <20: 1 20–25: 1 >25: 3.6 ($p<0.05$)	Baron *et al.*(1991: Ex. 26–697)
Forearm rotation while exerting very high forces (Frequency of exposure * Years of exposure).	Shoulder	Odds Ration [adj] per unit:	Hughes *et al.*(1997: Ex. 26–907)
	Interview	92 (7.3–±)	
	Examination	46 (3.8–550)	
Light materials handling [factor formed from frequency and duration of materials handling 0.5–<1 kg and 1–5 kg].	Shoulder (in white collar workers)	Partial correlation coefficient [adj] 0.18 ($p < 0.05$)	Johansson *et al.*(1994: Ex. 26–1331)
Years of carpentry work (<10, 10 to <20, 20+ years).	Shoulder	Odds Ration [adj] 10–<20 yr: 2.3 (1.0–5.4) 20+ yr: 3.2 (1.1–8.9)	Lemasters *et al.*(1998: Ex. 500–121–44)
Load lifted (cumulative exposure, in 3 categories: 0–709; 710–25,999; and >25,999 kg).	Shoulder: acromio-clavicular osteoarthritis.	Odds Ratio [adj] (per category) Right side: 1.55 (1.03–2.34) Left side: 2.55 (1.50–4.35)	Stenlund *et al.*(1992: Ex. 26–733)
Load lifted (cumulative exposure, in 3 categories: 0–709; 710–25,999; and >25,999 kg).	Shoulder tendinitis	Odds Ratio [adj] (per category) Right side: 1.02 (0.59–1.76) Left side: 1.81 (0.95–3.44)	Stenlund *et al.*(1993: Ex. 502–462
Arm and Elbow			
Grocery checking: hours per week of checking work.	Elbow	Elbows Odds Ratio [unadj] <20: 1 20–25: 1.4 >25: 2.8 ($p<0.05$)	Baron *et al.*(1991: Ex. 26–697)
Forearm rotation while exerting very high forces (Frequency of exposure * Years of exposure).	Elbow/forearm:	Odds Ratio [adj] per unit:	Huges *et al.*(1997: Ex. 26–907)
	Interview	4 (0.2–4)	
	Examination	37.0 (3.0–470)	
Strenuous exertions (years of high exposure).	Epicondylitis	Odds Ratio [adj] 0 yr: 1.0 1–14 yr: 1.8(0.6–5.9) 15–38 yr: 3.3 (0.9–12.5)	Ritz (1995: Ex. 26–1473)
Hand and Wrist			
Hand forces (finger flexor muscles on electromyography).	Carpal tunnel syndrome	Average force (test of difference in means): Cases: 4.3 ″ 3.5 kp Noncases: 3.8 ″ 3.2 kp ($p<0.05$)	Armstrong *et al.*(1979: Ex. 500–41–8)
Grocery checking (years of exposure).	Hand/wrist	Odds Ratio [adj] 0–5: 1 5–10: 2 10+: 6 ($p<0.05$)	Baron *et al.*(1991: Ex. 26–697)
Grocery checking (years of exposure).	Carpal tunnel syndrome	Odds Ratio [adj] 0–5: 1 5–10: 4 10+: 15 ($p<0.05$)	Baron *et al.*(1991: Ex. 26–697)
Grocery checking (hours per week of exposure).	Carpal tunnel syndrome	Odds Ratio [adj] <20: 1 20–25: 2.3 >25: 4.8 ($p<0.05$)	Baron *et al.*(1991: Ex. 26–697)
Forearm rotation while exerting very high forces (Frequency of exposure * Years of exposure).	Hand/wrist:	Odds Ratio [adj] per unit	Hughes *et al.*(1997: Ex. 26–907)
	Interview	17.0 (2.9–106)	
	Examination	9.3 (1.0–90)	
Years of carpentry work (<10, 10 to <20, 20+ years).	Hand and wrist	Odds Ratio [adj] 10 – lt;20 yr: 2.4(1.1–5.3) 20+yr: 3.1(1.1–8.4)	Lemasters *et al.*(1998: Ex. 500–121–44)
Biomechanical index from direct measurements of force and posture.	Carpal tunnel syndrome	Linear regression [unadj] Flexion 0.017($r=0.62$) Extension: 0.035($r=0.26$)	Loslever *et al.*(1993: Ex. 26–161)

TABLE V–10.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIPS FOR MUSCULOSKELETAL DISORDERS WITH EXPOSURE TO FORCEFUL MANUAL EXERTION—Continued

Measure of manual force (unit)	Health outcome/body region affected	Measure of effect	Reference
Mean relative finger flexor force (by EMG)/45–90 minute work sampling period.	Wrist	Linear regression coefficient [adj]: Mean relative deviation angle ($p<0.05$) Mean relative EMG signal ($p<0.05$) Seniority (years employed) ($p<0.05$)	Malchaire *et al.*(1996: Ex. 26–1473)
Manual force (as % MVC, in 5 categories).	Upper extremity	Linear regression [unadj]: Ln (Force: 2.0 ($r^2=0.49$, $p<0.001$)	Moore *et al.*(1994: Ex. 26–1033)
Forceful wrist motions (3 categories: low, medium, high).	Carpal tunnel syndrome By history.	Prevalence [unadj] (test of trend) Low: 0% Medium: 10% High: 63% ($p=0.00006$)	Osorio *et al.*(1994: Ex. 26–807)
	By nerve conduction velocity	Low: 0% Medium: 7% High: 33% ($p=0.02$)	
Forceful wrist motions (years exposed).	Carpal tunnel syndrome	Linear regression [adj], $p<0.05$ for: Right median nerve conduction velocity	Osorio *et al.*(1994: Ex. 26–807)
Grip >6 lb. per hand (3 categories of frequency).	Hand/wrist	Prevalence [unadj] (test of trend) None: 41% Some: 40% Frequent: 65% ($p=0.30$)	Stetson *et al.*(1993: Ex. 26–1221)
High load on wrist (years of exposure).	Carpal tunnel syndrome	Odds Ratio [unadj] <1 yr: 1.0 1–20 yr: 2.1 (0.8–5.2) >20 yr: 6.6 (1.4–14.7)	Wieslander *et al.*(1989: Ex. 26–1027)
		Back	
Frequency of lifting per shift	Low back	Prevalence [unadj] 0/shift: 29% 1–5/shift: 33% 6–10/shift: 49% 11–20/shift: 55% >20/shift: 54%	Arad *et al.*(1986: Ex. 500–41–7)
Frequency of lifting >11.3 kg (times per day).	Prolapsed lumbar disc	Odds Ratio [adj] (test of trend): 0: 1.0 <5: 1.6 (0.4–6.1) 5–25: 2.7 (0.8–9.2) >25: 4.9 (0.5–47.6) ($p=0.02$)	Kelsey *et al.*(1984: Ex. 500–41–73)
Frequency of lifting >11.3 kg (times per day).	Prolapsed lumbar disc	Odds Ratio [adj] (test of trend): 0: 1.0 <5: 1.2 (0.7–2.0) 5–25: 1.3 (0.7–2.5) >25: 3.5 (1.5–8.5) ($p=0.01$)	Kelsey *et al.*(1984: Ex. 500–41–73)
Frequency of carrying 11.3 kg (times per day).	Prolapsed lumbar disc	Odds Ratio [adj] (test of trend): 0: 1.0 <5: 1.0 (0.6–1.9) 5–25: 2.1 (1.0–4.3) >25: 2.7 (1.2–5.8) ($p=0.004$)	Kelsey *et al.*(1984: Ex. 500–41–73)
Lifting 11.3 kg while twisting	Prolapsed lumbar disc	Odds Ratio [adj] (test of trend): Never or rare: 1.0 Moderate: 2.5 (0.9–6.8) Often: 3.1 (1.3–7.5) ($p=0.002$)	Kelsey *et al.*(1984: Ex. 500–41–73)
Load on spine (12 continuous biomechanical variables: peak and daily integraetd load).	Low back	Odds Ratio [adj] for inter-quartile spreads: Peak lumbar shear (N): 1.7 (1.0–2.9) Cumulative lumbar disc compression (N s/shift): 2.0 (1.2–3.6) Peak hand force (N): 1.9 (1.2–3.1)	Kerr *et al.*(2000: Ex. 500–41–74)
Index of stone load (weight*hours/day).	Low back	Odds Ratio [adj]: None: 1.0 Intermediate: 1.8 (0.3–9.3) High: 4.0 (0.8–19.8)	Latza *et al.*(2000: Ex. 500–19–6)

TABLE V–10.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIPS FOR MUSCULOSKELETAL DISORDERS WITH EXPOSURE TO FORCEFUL MANUAL EXERTION—Continued

Measure of manual force (unit)	Health outcome/body region affected	Measure of effect	Reference
Lifting demands index ("Job Severity Index").	Back	Injury incidence rate, disabling injury incidence, and severity rate increased with JSI (graphical presentations)	Liles *et al.*(1984: Exs. 26–33, 500–41–88)
Dynamic trunk motions (31 continuous biomechanical.	Low back	Odds Ratio [adj] for combined weighted means of 5 variables: 10.7 (4.9–23.6)	Marras *et al.*(1993: Ex. 500–41–94)
Load on spine (12 continuous biomechanical variables: peak and daily integrated load).	Low back	Higher load in cases vs controls, by each variable (all p-values <0.04). Odds ratios [adj] computed both for full observed ranges of exposure and more conservatively for inter-quartile spreads: Peak shear (N) 1.5 (1.0–2.4) Peak trunk velocity (deg/sec) 1.6 (1.1–2.5) Integrated moment (MN m s) 1.4 (1.0–2.0) Usual hand force (N) 1.7 (1.2–2.6)	Norman *et al.*(1998: Ex. 38–84)
Transfer a patient on canvas and poles (frequency/average working shift).	Low back	Odds Ratio [adj] 0: 1.0 1–4: 1.0 (0.8–1.3) ≥5: 1.3 (0.8–2.1)	Smedley *et al.*(1995: Ex. 500–41–40)
Manually transfer patient between bed and chair (frequency/shift).	Low back	Odds Ratio [adj] 0: 1.0 1–4: 1.4 (1.1–1.9) 5–9: 1.8 (1.3–2.5) ≥10: 1.5 (1.1–2.1)	Smedley *et al.*(1995: Ex. 500–41–40)
Manually move patient around on bed (frequency/shift).	Low back	Odds Ratio [adj] 0: 1.0 1–4: 1.2 (0.8–1.7) 5–9: 1.6 (1.1–2.3) ≥10: 1.7 (1.2–2.4)	Smedley *et al.*(1995: Ex. 500–41–40)
Manually transfer patient between bed and chair (frequency/shift).	Low back	Odds Ratio [adj] 0: 1.0 1–4: 1.3 (0.9–1.7) 5–9: 1.6 (1.1–2.3) ≥10: 1.6 (1.1–2.3)	Smedley *et al.*(1997: Ex. 500–205–25)
Transfer patient between bed and chair with hoist (frequency/shift).	Low back	Odds Ratio [adj] 0: 1.0 1–4: 1.5 (1.0–2.0) ≥5: 1.6 (0.8–3.0)	Smedley *et al.*(1997: Ex. 500–205–25)
Manually move patient around on bed (frequency/shift).	Low back	Odds Ratio [adj] 0: 1.0 1–4: 1.3 (0.8–1.9) 5–9: 1.5 (1.0–2.3) ≥10: 1.7 (1.1–2.5)	Smedley *et al.*(1997: Ex. 500–205–25)
Lift patient in or out of bath with hoist (frequency/shift).	Low back	Odds Ratio [adj] 0: 1.0 1–4: 1.4 (1.0–1.9) ≥5: 2.1 (1.2–3.6)	Smedley *et al.*(1997: Ex. 500–205–25)
Frequent vs. infrequent lifting in patient care.	Back	Length of time at work without back injury longer for those with infrequent lifting demands ($p<0.01$ in survival analysis)	Stobbe *et al.*(1988: Ex. 500–41–45)
Lifting frequency (4 categories of hospital service area, from 1, lifting most, to IV, lifting least).	Back	Odds Ratio [adj] Area IV: 1.0 Area III: 1.26 ($p>0.05$) Area II: 1.73 ($p>0.05$) Area I: 4.26 ($p<0.01$)	Venning *et al.*(1987: Ex. 500–41–49)

TABLE V–10.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIPS FOR MUSCULOSKELETAL DISORDERS WITH EXPOSURE TO FORCEFUL MANUAL EXERTION—Continued

Measure of manual force (unit)	Health outcome/body region affected	Measure of effect	Reference
NIOSH Lifting Equation Lifting Index (LI) (4 categories).	Low back (severity rating, range 0–5).	Mean severity (standard deviation): LI:<1: 0.18 (0.15) 1≤LI ≤3: 3.57 (0.86) LI>3: 4.07 (0.73) RWL*=0: 3.86 (0.75) ANOVA (α=0.05) *Recommended Weight Limit	Wang *et al.*1998 (1998: Ex. 500–41–52)
NIOSH Lifting Equation Lifting Index (LI).	Low back	Odds Ratio [unadj] 0: 1.0 0<LI ≤1: 1.1 (0.2–5.3) 1<LI ≤2: 1.5 (0.6–3.8) 2<LI ≤3: 2.5 (1.3–4.9) LI ≥3: 1.6 (0.7–4.0)	Waters *et al.*(1999: Ex. 500–121–76)
Strenuous physical activity at work (hours per day).	Back	Odds Ratio [unadj] 0–<2 hr: 1.0 2–<4 hr: 4.2 4–<6 hr: 6.4 6–<8 hr: 5.6 ≥8 hr: 6.8 Odds Ratio [adj] per hour of strenuous work: 1.14 (1.11–1.17)	Wild (Ex. 26–1104; 26–1107)
Physically hard work	Low back	Odds Ratio [unadj] (test of trend): No or seldom: 1.0 ¼ of the time: 1.3 ½ of the time 2.3 ¾ of the time: 2.2 All of the time: 2.5 (p<0.001)	Xu *et al.*(1997: Ex. 500–71–53)
Lower Extremity or Multiple Body Regions			
Strength demand of job (3 categories: none, some, much).	Knee (radiographic osteoarthritis)	Odds Ratio [adj] Men, ages 55–64: 1.9 (0.9–4.0) Women, ages 55–64: 3.1 (1.0–9.4)	Anderson *et al.*(1988: Ex. 26–926)
Kneeling, squatting or stair-climbing, with and without heavy lifting.	Knee osteoarthritis	Odds Ratio [adj] Neither kneeling nor lifting: 1.0 Kneeling/squatting: 2.5 (1.1–5.5) Kneeling and lifting: 5.4 (1.4–21.0)	Cooper *et al.*(1994: Ex. 500–41–27)
Maximum compressive force (lb.) on L5/S1 lumbar disc.	"Overexertion incidents" by clinic visit.	Incidence rate (per 200,000 hours): <1000 lb: 65 1000–1500 lb: 150 >1500 lb: 208	Herrin *et al.*(1986: Ex. 26–961)
Index of physically strenuous load	Overall MSD morbidity: Symptoms Findings	Linear regression coefficient [adj]: 0.127 (p=0.002) 0.091 (p=0.026)	Leino *et al.*(1995: Ex. 32–241–3–54)
Years of carpentry work (<10, 10 to <20, 20+ years).	Knee	Odds Ratio [adj] 10–<20 yr: 1.9 (0.9–4.1) ≥20 yr: 3.5 (1.3–9.2)	Lemasters *et al.*(1998: Ex. 500–121–44)
Lifting at work (kilograms per day)	Knee Men: Women:	Odds Ratio [adj] Medium: 2.5 (1.5–4.4) High: 3.0 (1.6–5.5) Medium: 1.2 (0.7–1.9) High: 1.7 (1.0–2.9)	Sandmark *et al.*(2000: Ex. 500–41–114)

TABLE V–11.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIPS FOR MUSCULOSKELETAL DISORDERS OF THE NECK AND SHOULDERS WITH EXPOSURE TO NON-NEUTRAL POSTURE

Measure of posture	Health outcome/body region affected	Measure of effect	Reference
Neck and Shoulder			
Height of video display unit keyboard relative to elbow height (centimeters).	Neck/shoulder	Linear regression coefficient [unadj] 0.18 (−0.03, 0.40)	Bergqvist *et al.*(1995: Ex. 500–165–24)
Duration of shoulder flexion or abduction >60 degrees (hours/day).	Shoulder/neck	Ratio for cases vs. controls: Right: 2.0 (p <0.005) Left: 2.4 (p <0.025)	Bjelle *et al.*(1981: Ex. 26–1519)
Frequency of shoulder flexion or abduction >60 degrees (times/day).	Shoulder/neck	Ratio for cases vs. controls: Right: 2.0 (p <0.001) Left: 2.2 (p <0.005)	Bjelle *et al.*(1981: Ex. 26–1519)
Arms lifted (hours per day, 3 categories).	Neck/shoulder	Odds Ratio [adj] Low: 1.0 Medium: 2.4 (0.8–7.1) High: 4.8 (1.3–18)	Ekberg *et al.*(1994: Ex. 26–1238)
Elbow flexed >1 time/minute (per hour/day).	Shoulder	Odds Ratio [adj] 1.10 (0.98–1.23)	English *et al.*(1995: Ex. 26–848)
Head rotation	Neck, shoulder, upper back ("upper torso").	R-squared [adj] Pain: 0.11 (p<0.01) Stiffness: 0.18 (p<0.01)	Faucett *et al.*(1994: Ex. 38–256)
Keyboard height relative to elbow	Neck, shoulder, upper back ("upper torso").	R-squared [adj] Pain: 0.05 (p<0.05) Stiffness: 0.06 (p<0.05)	Faucett *et al.*(1994: Ex. 38–256)
Years of exposure to repetitive shoulder flexion (angle ≥30 degrees, 600 times/hour) with high forces.	Shoulder impingement syndrome	Increasing prevalence ratio [adj] with cumulative exposure non-linear trend, p=0.002 for quadratic term	Frost *et al.*(1999: Ex. 38–97)
Hands above shoulder level (hours per day).	Neck/shoulder pain with impairment.	Prevalence Ratio [adj] <1 Hr. 1.1 (0.8–1.5) 1–4 hr. 1.5 (1.2–1.9) >4 hr. 2.0 (1.4–2.7)	Holmström et al (1992: Ex. 500–41–64)
Stooping (hours per day)	Neck/shoulder pain with impairment.	Prevalence Ratio [adj] <1 Hr. 1.0 (0.8–1.3) 1–4 hr. 1.4 (1.1–1.8) >4 hr. 1.5 (1.1–2.1)	Holmström et al (1992: Ex. 500–41–64)
Bent work postures [factor=duration of precision movements and head bent foward; frequency and duration of trunk forward flexion (20°–60°)].	Neck (in white collar workers)	Partial correlation coefficient [adj] 0.20 (p<0.05)	Johansson *et al.*(1994: Ex. 26–1331)
Twisted work postures [factor=duration of trunk rotation (>45°) and head rotation (>45°)].	Neck (in white collar workers)	Partial correlation coefficient [adj] 0.23 (p<0.05)	Johansson *et al.*(1994: Ex. 26–1331)
Extreme work postures [factor=frequency and duration of trunk forward flexion (>60°); frequency of trunk forward flexion (20°–60°); and duration of head rotation (>45°), trunk rotation (>45°), and work with hands above shoulders].	Shoulder (in blue collar workers)	Partial correlation coefficient [adj] 0.14 (p<0.05)	Johansson *et al.*(1994: Ex. 26–1331)
Twisted work postures [factor=duration of trunk rotation (>45°) and head rotation (>45°)].	Shoulder (in white collar workers)	Partial correlation coefficient [adj] 0.16 (p<0.05)	Johansson *et al.*(1994: Ex. 26–1331)
Percentage of work cycle with shoulder elevated.	Cervicobrachial (neck to hand)	Odds Ratio [adj] 1.04 (p<0.05)	Jonsson *et al.*(1988: Ex. 26–969)
Neck flexion (percentage of work cycle).	Neck	Regression coefficient p-value [adj] p<0.01	Kilbom *et al.*(1986: Ex. 500–41–75)
Shoulder elevated (percentage of work cycle).	 Neck Shoulder	Regression coefficient p-value [adj] p<0.05 p<0.05	Kilbom *et al.*(1986: Ex. 500–41–75)
Neck flexion (movements per hour)	Neck/shoulder	Ratio of median for cases vs. controls [unadj] Total movements: 1.3 (p=0.008) Flexions ≥30°: 1.3 (p=0.02)	Ohlsson *et al.*(1995: Ex. 26–868)

TABLE V–11.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIPS FOR MUSCULOSKELETAL DISORDERS OF THE NECK AND SHOULDERS WITH EXPOSURE TO NON-NEUTRAL POSTURE—Continued

Measure of posture	Health outcome/body region affected	Measure of effect	Reference
Frequency of shoulder flexion or abduction.	Neck/shoulder	Median elevation >30° (% of time) [unadj]: Cases=16, controls=9 (p=0.05) Median elevation >30° (movements per hour) [unadj]: Cases=60, controls=9 (p=0.004) Median abduction ≥60° (% of time) [unadj]: Cases=1, controls=0 (p=0.04) Median elevation ≥60° (movements per hour) [unadj]: Cases=47, controls=0 (p=0.04)	Ohlsson *et al.*(1995: Ex. 26–868)
Shoulder flexion or abduction >90 degrees (duration, as percentage of work cycle).	Left shoulder Right shoulder Either shoulder	Odds Ratio [unadj] (test of trend) >0%–<10%: 2.5 ≥10%: 5.1 (p=0.0001) >0%–<10%: 1.7 ≥10%: 2.8 (p=0.002) Ratio of mean duration in cases vs. controls [unadj]: 2.6 (p=0.003) Odds Ratio (95% CI) per 10% increment [adj]: 1.4 (1.1–1.8)	Punnett *et al.*(2000: Ex. 500–41–109
Twisted or bent postures (4 categories).	Neck/shoulder	Odds Ratio [adj] Little: 1.0 Moderate: 1.2 (1.0–1.5) Rather much: 1.6 (1.4–1.9) Very much: 1.8 (1.5–2.2)	Tola *et al.*(1988: Ex 26–1018)
Twisting of trunk (hours/day) (4 categories).	Neck	Odds Ratio [adj]: Not at all: 1.0 Little: 1.3 (0.7–2.4) Moderately: 1.9 (1.1–3.5) Much: 2.3 (1.2–4.3)	Viikari-Juntura *et al.*(2000: Ex. 500–41–50)
Working with hand above shoulder level (hours/day) (3 categories).	Neck	Odds Ratio [adj]: <0.5 1.0 0.5–1: 1.2 (1.0–1.3) >1: 1.4 (1.3–1.6)	Viikari-Juntura *et al.*(2000: Ex. 500–41–50)
Twisting or bending of trunk at work (3 categories).	Neck	Odds Ratio [unadj]: Very or rather little: 1.0 Moderate: 1.7 (0.9–9–3.2) Rather or very much: 1.9 (1.2–3.2)	Viikari-Juntura *et al.*(1994: Ex. 26–873)
Hand and Wrist			
Wrist bending or twisting (per 2 hours/day).	Carpal tunnel syndrome	Odds Ratio [unadj] 1.5 (1.2–1.7)	Blanc at al. (1996); Ex. 26–42 500–41–16)
Wrist flexion (hours/week) (hours truncated at 40).	Carpal tunnel syndrome	Odds Ratio [unadj] 0: 1.0 1–7: 1.5 (1.3–1.9) 8–19: 3.0 (1.8–4.9) 20–40: 8.7 (3.1–24.1)	De Krom *et al.*(1990: Ex. 26–102)
Wrist extension (hours/week) (hours truncated at 40).	Carpal tunnel syndrome	Odds Ratio [unadj] 0: 1.0 1–7: 1.4 (1.0–1.9) 8–19: 2.3 (1.0–5.2) 20–40: 5.4 (1.1–27.4)	De Krom *et al.*(1990: Ex. 26–102)
Shoulder rotation with arm elevated, >1 time/minute (per hour/day).		Odds Ratio [adj]	English *et al.*(1995: Ex. 26–848)
	Wrist/forearm	1.6 (1.2–2.3)	
	Carpal tunnel syndrome	1.8 (1.2–2.8)	
Shoulder rotation with elbow flexed, >1 time/minute (per hour/day).	Finger	Odds Ratio [adj] 5.1 (2.0–12.8)	English *et al.*(1995: Ex. 26–848)
Wrist flexion or extension (per 20 repetitions/min).	Thumb	Odds Ratio [adj] 1.4 (1.1–1.8)	English *et al.*(1995: Ex. 26–848)
Ulnar abduction (degrees of "typical" work posture).	Forearm	Increasing percentage of operators w/medical findings vs. angle of ulnar abudction (graphical presentation only)	Hünting *et al.*(1981: Ex. 26–1276)

TABLE V–11.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIPS FOR MUSCULOSKELETAL DISORDERS OF THE NECK AND SHOULDERS WITH EXPOSURE TO NON-NEUTRAL POSTURE—Continued

Measure of posture	Health outcome/body region affected	Measure of effect	Reference
Relative angle of wrist ulnar or radial deviation/45–90 minute work sampling period.	Wrist	Linear regression coefficient [adj]: Mean relative deviation angle (p<0.05) Mean relative EMG signal (p<0.05) Seniority (years employed) (p<0.05)	Malchaire *et al.*(1996: Ex. 26–1473)
Wrist bending or twisting (mean hours/day) (5 categories).	Carpal tunnel syndrome	Odds Ratio [adj] 0: 1.0 0.25–1.75: 1.34(0.64–2.80) 2–3: 1.23(0.60–2.53) 3.5–6: 2.33 (1.24–4.36) 7–16: 2.47 (1.38–4.43) quadratic dose-response effect in alternative model, p=0.03	Nordstrom *et al.*(1997: Ex. 26–900)
Wrist deviation (3 categories of frequency).	Hand/wrist	Prevalence [unadj] (test of trend) None: 35% Some: 43% Frequent: 45% (p=0.43)	Stetson *et al.*(1993: Ex. 26–1221)
Back			
Postural load (index of frequency and/or duration of 4 postures, in 4 categories).	Low back pain	Odds Ratio [adj] (test for trend)	Bovenzi *et al.*(1994: Ex. 26–774)
	Lifetime	Mild: 1.0 Moderate: 1.3(0.8–2.4) Hard: 1.7(1.0–3.0) Very hard: 3.6(2.0–6.5) (p=0.001)	
	12 month pervalence:	Moderate: 1.8 (1.1–3.2) Hard: 2.2(1.3–3.8) Very hard: 4.6 (2.6–8.0) (p=0.0001)	
Hands above should level (hours per day).	Low back (severe pain with impairment).	Prevalence Ratio [adj]: <1 hr: 1.1 0.8–1.5) 1–4: 1.5 (1.2–2.0) >4 hr: 1.6 (1.0–2.6)	Holmström *et al.*(1992: Ex. 500–41–65)
Stopping (hours per day)	Low back (severe pain with impairment).	Prevalence Ratio [adj]: <1 hr: 1.3 (0.9–1.8) 1–4 hr: 1.9 (1.4–2.6) >4 hr: 2.6 (1.7–3.8)	Holmström *et al.*(1992: Ex. 500–41–65)
Kneeling (hours per day)	Low back (severe pain with impairment).	Prevalence Ratio [adj]: <1 hr: 2.4 (1.7–3.3) 1–4 hr: 2.6 (1.9–3.5) >4 hr: 3.5 (2.4–4.9)	Holmström *et al.*(1992: Ex. 500–41–65)
Extreme work postures [factor formed from frequency and duration of trunk forward flexionn (>60°); frequency of trunk forward flexion (20°–60°); and duration of head rotation (>45°), trunk rotation (>45°), and work with hands above shoulders].	Low back (in blue collar workers)	Partial correlation coefficient [adj] 0.16 (p<0.05)	Johansson *et al.*(1994: Ex. 26–1331)
Monotonuous working movements [factor formed from duration of repetitive movements, static stress, and sitting].	Low back (in white collar workers	Partial correlation coefficient [adj] 0.22 (p<0.05)	Johansson *et al.*(1994: Ex. 26–1331)
Driving (hours/week)	Low back	Odds Ratio [adj] for prevalence: <10: 1.0 10–14: 1.5 (1.0–2.4) 15–19: 1.2 (0.8–1.9) 20–24: 2.0 (1.3–3.1) ≥ 25 2.1 (1.3–3.4)	Pietri *et al.*(1992: Ex. 29–309)

TABLE V–11.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIPS FOR MUSCULOSKELETAL DISORDERS OF THE NECK AND SHOULDERS WITH EXPOSURE TO NON-NEUTRAL POSTURE—Continued

Measure of posture	Health outcome/body region affected	Measure of effect	Reference
Driving (hours/week)	Low back	Odds Ratio [adj] for 1 year cumulative incidence: <10: 1.0 10–14: 4.0 (1.1–14.3) 15–19: 4.8 (1.4.8–16.4) 20–24: 3.3 (0.9–12.0) ≥ 25 3.7 (0.9–14.0)	Pietri *et al.*(1992: Ex. 38–309)
Percentage of work cycle in trunk flexion (3 categories).	Low back	Odds Ratio [unadj] (test of trend) Mild flexion: 0%: 1.0 1–10%: 4.2 ≥10%: 6.1 (p=0.014) Severe flexion: 0%: 1.0 0–10%: 4.4 ≥10%: 8.9 (p=0.003)	Punnett *et al.*(1991: Ex. 26–1289)
Percentage of work cycle in non-neutral trunk posture (mild flexion, severe flexion, twist or lateral bend).	Back	Odds Ratio [adj] 8.09 (1.5–44.0)	Punnett *et al.*(1991: Ex. 26–1289)
Twisted or bent postures (4 categories).	Low back	Odds Ratio [adj] Rather or very little: 1.0 Moderate: 1.3 (1.0–1.7) Rather much: 1.5 (1.2–1.9) Very much: 1.5 (1.2–1.9)	Riihimäki *et al.* (1989: Ex. 26–58)
Forward bending (minutes per day)	Low back	Odds Ratio [adj]: Men 1–59 min: 1.6 (1.1–2.5) ≥60 min: 1.8 (1.1–3.1) Women 1–59 min: 1.1 (0.8–1.6) ≥60 min: 1.2 (0.7–1.8)	Vingård *et al.*(2000: Ex. 500–41–51)
Repeated bending, twisting, and reaching at work (hours per day.	Back	Odds Ratio [unadj] 0 hr: 1.0 >0–<2 hr: 5.8 2+–<4 hr: 8.4 4+–<6 hr: 10.4 6+ hr: 14.1 Odds Ratio [adj] per hour of repeated bending, twisting and reaching: 1.09 (1.06, 1.13)	Wild (Ex. 26–1106; 26–1107)
Frequent twisting or banding	Low back	Odds Ratio [unadj] (test of trend): No or seldom: 1.0 1/4 of the time: 1.8 1/2 of the time: 1.9 3/4 of the time: 2.0 All of the time: 2.0 (p<0.001)	Xu *et al.*(1997: Ex. 500–71–53)
Lower Extremity			
Knee-bending demand of job (3 categories: none, some, much).	Knee: radiographic osteoarthritis	Odds Ratio [adj] Men, ages 55–64: 2.5 (1.2–5.0) Women, ages 55–64: 3.5 (1.2–10.5)	Anderson *et al.*(1988: Ex. 26–926)
Kneeling and/or squatting (Floor- and carpetlayers 56%, carpenters 25%, compositors 0% of working time).	Knee	Odds Ratio [unadj] Compositors: 1.0 Carpenters: 3.9 (2.7–5.5) Floor- and carpetlayers: 6.4 (4.0–10.1)	Kirkeskov Jensen *et al.*[Jensen, 1977#1975]
Standing (hours per day)	Knee	Odds Ratio [adj]	Sandmark *et al.*(2000: Ex. 500–41–114)
	Men	Medium: 1.5 (0.9–2.4) High: 1.7 (1.0–2.9)	
	Women	Medium: 1.2 (0.7–1.9) High: 1.6 (1.0–2.8)	
Squatting or knee bending (number per day).	Knee	Odds Ratio [adj]	Sandmark *et al.*(2000: Ex. 500–41–114)
	Men	Medium: 1.3 (0.8–2.2) High: 2.9 (1.7–4.9)	

TABLE V–11.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIPS FOR MUSCULOSKELETAL DISORDERS OF THE NECK AND SHOULDERS WITH EXPOSURE TO NON-NEUTRAL POSTURE—Continued

Measure of posture	Health outcome/body region affected	Measure of effect	Reference
Kneeling (minutes per day)	Knee	Odds Ratio [adj]	Sandmark *et al.*(2000: Ex. 500–41–114)
	Men	Medium: 1.4 (0.9–2.2) High: 2.1 (1.4–3.3)	
Jumping (number per day)	Knee	Odds Radio [adj]	Snadmark *et al.*(2000: Ex. 500–41–114)
	Men	Medium: (0.9–2.4) High: 2.7)1.7–4.1)	
Jumping (number)	Hip	Odds Ratio [adj]	Vingård *et al.*(1977: Ex. 26–1617) Medium: 1.0 (0.5–2.0) High: 2.1 (1.1–4.2)
Stairs climbed (flights)	Hip	Odds Ratio [adj] Medium: 1.3 (0.8–2.0) High: 2.1 (1.2–3.6)	Vingård *et al.*(1997: Ex. 26–1616)

TABLE V–12.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIP FOR MUSCULOSKELETAL DISORDERS WITH EXPOSURE TO SEGMENTAL VIBRATION, BY BODY REGION AFFECTED.

Measure of vibration exposure (unit)	Health outcome/body region affected	Measure of effect	Reference
Vibration exposure (energy equivalent frequency-weighted acceleration) for 4 hours/day.	Upper extremity	Odds Ratio [adj] <7.5 m/sec^2 2.7 >7.5 m/sec^2 14.1 (p<0.005)	Bovenzi *et al.*(1991: Ex. 500–41–18)
Daily vibration exposure (energy equivalent frequency-weighted acceleration).	Upper extremity	Odds Ratio [adj] per unit 1.29 (p<0.5)	Bovenzi *et al.*(1991: Ex. 500–41–18)
Daily vibration exposure (energy equivalent frequency-weighted acceleration).	Upper extremity muscle-tendon syndrome.	Odds Ratio [adj] per unit 1.42 (p<0.5)	Bovenzi *et al.*(1991: Ex. 500–41–18)
Daily vibration exposure (energy equivalent frequency-weighted acceleration).	Carpal tunnel syndrome	Odds Ratio [adj] per unit 1.73 (p<0.5)	Bovenzi *et al.*(1991: Ex. 500–41–18)
Lifetime dose (5 categories of acceleration^2 years).	Hand-arm vibration syndrome	Odds Ratio [adj] per unit 0: 1.0 0–19: 4.1 (1.1–16.4) 19–20: 4.7 (1.3–16.1) 20–21: 9.4 (3.1–28.4) >21: 34.3 (11.9–99.0)	Bovenzi *et al.*(1991: Ex. 500–41–17)
Riveting (years)	Wrist	Odds Ratio [adj] per year 1.12 (p<0.05)	Burdorf *et al.*(1991: Ex. 500–41–21)
Riveting (years)	Hand-arm vibration syndrome	Odds Ratio [adj] per year 1.07 (p<0.05)	Burdorf *et al.*(1991: Ex. 500–41–21)
Power tool usage	Forearm-hand (right)	Median values for workstations with high vs. low symptom prevalence [unadj] Holding time: 12 sec. vs 6 secs. (p<0.05) Total duration: 21 sec. vs 15 secs. (p<0.05)	Fransson Hall *et al.*(1996: Ex. 500–41–56)
Years of exposure to vibration (chain saw use).	Vibration-induced white finger	Positive association with duration of exposure Higher prevalence and earlier onset of symptoms with earlier first exposure (higher acceleration levels) (all data presented graphically)	Futatsuka *et al.*(1985: Ex. 26–1430)

TABLE V–12.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIP FOR MUSCULOSKELETAL DISORDERS WITH EXPOSURE TO SEGMENTAL VIBRATION, BY BODY REGION AFFECTED.—Continued

Measure of vibration exposure (unit)	Health outcome/body region affected	Measure of effect	Reference
Cumulative hours of exposure to vibration.	Median and ulnar motor and sensory nerve function.	Correlation coefficient [unadj] R median motor NCV: 0.274 ($p=0.01$) L median motor NCV: 0.123 ($p>0.05$) R ulnar motor NCV: 0.259 ($p=0.05$) L ulnar motor NCV: 0.389 ($p>0.001$) R median distal latency: 0.172 ($p=0.05$) L median distal latency: 0.214	Koskimies *et al.*[Koskimies, 1990 #1983]
Cumulative exposure to vibration (log hours).	Hand-arm vibration syndrome:	Odds Ratio [adj] per common log unit	Letz *et al.*(1992: Ex. 26–384)
	Vascular	2.9 (1.7–5.0)	
	Sensorineural	1.8 (1.2–2.9)	
Tool use (years)	Hand-arm vibration syndrome (Stockholm workshop scales):.	Odds ratio [adj] per year	McGeoch *et al.*(2000: Ex. 500–41–96)
	Neurological stage ≥ 1	1.09 ($p<0.05$)	
	Vascular stage ≥ 1	1.10 ($p<0.05$)	
Years of exposure to vibration	Hand-arm vibration syndrome	Odds ratio [adj] per year 1.11 (1.05–1.17)	Nilsson *et al.* (1989: Ex. 26–1148)
Years of exposure to vibration	Median nerve latency at carpal tunnel.	Odds ratio [adj] per year Right: 1.12 (1.02–1.23) Left: 1.09 (1.00–1.20)	Nilsson *et al.*(1994: Ex. 26–1190)
Cumulative vibration exposure (3 categories: 0–8999; 9000–255,199; and >255,199 energy-weighted hours).	Shoulder: osteoarthritis of the acromioclavicular joint.	Odds Ratio [adj] (per category) Right side: 1.3 (0.9–1.8) Left side: 1.8 (1.2–2.6)	Stenlund *et al.*(1992: Ex. 26–733)
Cumulative vibration exposure (3 categories: 0–8999; 9000–255,199; and >255,199 energy-weighted hours).	Shoulder tendinitis	Odds Ratio [adj] (per category) Right side: 1.7 (1.1–2.6) Left side: 1.8 (1.1–3.1)	Stenlund *et al.*(1993: Ex. 502–462)

TABLE V–13.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIP FOR MSDS WITH COMBINATION OF EXPOSURES (*e.g.*, REPETITION, FORCE AND POSTURE), BY TYPE OF EXPOSURE AND BODY REGION AFFECTED.

Exposure factors	Health outcome/body region affected	Measure of effect	Reference
Index of physical stress at work (sum of 6 items).	Neck	Odds Ratio [adj] Age 30–64 years: 1.26 (1.18–1.33) Age ≥ 65 years: 1.12 (1.00–1.26)	Mäkelä *et al.*(1991: Ex. 26–980)
Index of mechanical workload (sum of 6 items).	Elbow: epicondylitis	Odds ratio [adj]: Model 2: 1.5 (1.0–2.3) Model 3: 1.7 (1.2–2.6)	Ono *et al.*(1998: Ex. 500–66–4)
Repetition; force (4 categories: LF = low force; LR = low repetition; HF = high force; HR = high repetition.	Hand/wrist: tendinitis	Prevalence Rate Ratio [unadj] LF LR: 1.0 HF LR: 4.8 (0.6–39.7) LF HR: 5.5 (0.7–46.3) HF HR: 17.0 (2.3–126.2)	Armstrong *et al.*(1987: Ex. 26–48)
Work at video display unit, with and without specific job features.	Arm/hand	Odds Ratio [adj] Data entry: 1.5 (0.7–3.4) Data entry plus keyboard too low: 2.8 (0.9–8.6) ≥ 20 hr/week: 0.5 (0.2–1.4) ≥ 20 hr/week plus limited rest breaks, no lower arm support: 4.6 (1.2–17.9)	Bergqvist *et al.*(1995: Ex. 26–1195 500–165–25)
Work at video display unit, with and without specific job features.	Arm/hand	Odds Ratio [adj] Limited rest breaks, plus no lower arm support, vs. one or neither: 10.1 (2.4–43.2)	Bergqvist *et al.*(1995: Ex. 500–165–24)

TABLE V–13.—EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIP FOR MSDS WITH COMBINATION OF EXPOSURES (*e.g.*, REPETITION, FORCE AND POSTURE), BY TYPE OF EXPOSURE AND BODY REGION AFFECTED.—Continued

Exposure factors	Health outcome/body region affected	Measure of effect	Reference
Force and repetition of hand activities (5 classes, from very light/low to very heavy/high).	Hand: Median nerve sensory conduction velocity.	Test of positive linear trend $p < 0.01$	Nathan *et al.*(1988: Ex. 26–990)
Force and repetition of hand activities (5 classes, from very light/low to very heavy/high).	Hand: Median nerve sensory conduction velocity.	Linear regression coefficient [adj]: Class of hand activity: 0.011 ($p < 0.05$)	Nathan *et al.*(1992: Ex. 26–988)
Index of physical risk factors (sum of 3 items: force; 1 kg, cycle time < 30 sec, static hand work).	Hand: Radial tunnel syndrome	$P < 0.001$, test for trend	Roquelaure *et al.*(1996: Ex. 500–41–111)
Index of physical risk factors (sum of 5 occupational items plus parity ≥ 3).	Hand: Carpal tunnel syndrome	Odds ratio [adj] ≤ 2 factors: 1.0 3 factors: 5.6 (1.6–24.5) 4 factors: 93.7 (13.4–93.8) ≥ 5 factors: 90.0 (8.0–366.5)	Roquelaure *et al.*(1997: Ex. 38–396)
Repetition; force (4 categories: LF = low force; LR = low repetition; HF = high force; HR = high repetition).	Hand/wrist	Odds Ratio [adj] LF LR: 1.0 HF LR: 5.2 LF HR: 3.3 HF HR: 29.1 ($p < 0.05$)	Silverstein *et al.*(1986: Ex. 26–1404)
Repetition; force (4 categories: LF = low force; LR = low repetition; HF = high force; HR = high repetition).	Hand: Carpal tunnel syndrome	Odds Ratio [adj] LF LR: 1.0 HF LR: 1.8 LF HR: 2.7 HF HR: 15.5 ($p < 0.001$)	Silverstein *et al.*(1987: Ex. 26–34)
Repetitiveness and forceful exertions of the upper limbs (Group I = neither, Group II = either, Group III = both).		Test of positive linear trend:	Chiang *et al.*(1993: Ex. 26–1117)
	Neck symptoms	$p = 0.04$	
	Shoulder symptoms	$p = 0.000$	
	Shoulder girdle diagnosis	$p = 0.000$	
	Elbow symptoms	$p = 0.11$	
	Epicondylitis	$p = 0.14$	
	Wrist symptoms	$p = 0.03$	
	Hand symptoms	$p = 0.04$	
	Carpal tunnel syndrome	$p = 0.02$	
Index of ergonomic stressors (sum of 9 items, range 0–25).	Upper extremity (neck, shoulder/upper arm, elbow/forearm, and/or hand/wrist).	Prevalence ratio [adj] 0–6: 1.0 7–12: 2.0 (1.2–3.4) 13–18: 2.6 (1.6–4.3) 19–25: 2.8 (1.6–4.8)	Punnett (1998: Ex. 26–38)
	Shoulder/upper arm	0–6: 1.0 7–12: 2.6 (1.1–6.2) 13–18: 3.6 (1.6–8.3) 19–25: 3.3 (1.3–8.3)	
	Wrist/hand	0–6: 1.0 7–12: 1.9 (1.0–3.8) 13–18: 2.4 (1.3–4.7) 19–25: 2.3 (1.1–4.7)	
Index of occupational physical stress (sum of 5 items, range 0–5).	Low back	Odds Ratio [adj]: 0: 1.0 1: 1.2 (0.9–1.6) 2: 1.7 (1.3–2.1) 3: 2.1 (1.6–2.7) 4: 3.2 (2.3–4.5) 5: 2.5 (1.4–4.7)	Heliövaara *et al.*(1991: Ex. 26–959) Lifting >11.3 kg while twisting Low back: Prolapsed lumbar disc Odds Ratio [adj]: Knees bent: 2.7 (0.9–7.9) Knees straight: 6.1 (1.3–27.9) Kelsey *et al.*(1984: Ex. 500–41–73)
Lifting > 11.3 kg while twisting	Low back: Prolapsed lumbar disc	Odds Ratio [adj] Knees bent: 2.7 (0.9–7.9) Knees straight: 6.1 (1.3–27.9)	Kelsey *et al.*(1984: Ex. 500–41–73)
Physical exposure index (sum of 3 items, range 0–3.	Low back	Odds Ratio [adj]: 0: 1.0 1: 1.41 (1.02–1.94) 2: 2.45 (1.63–3.68) 3: 3.18 (1.72–5.81)	Liira *et al.*(1996: Ex. 26–748)
Forward bending and manual materials handling (MMH) (highly exposed now, 5 and 10 years ago).	Low back	Odds Ratio [adj]:	Vingård *et al.*(2000: Ex. 500–41–51)

TABLE V–13.- EVIDENCE OF EXPOSURE-RESPONSE RELATIONSHIP FOR MSDS WITH COMBINATION OF EXPOSURES (*e.g.*, REPETITION, FORCE AND POSTURE), BY TYPE OF EXPOSURE AND BODY REGION AFFECTED.—Continued

Exposure factors	Health outcome/body region affected	Measure of effect	Reference
		Men Forward bending: 1.8 (1.0–3.3) MMH: 2.0 (1.0–4.3) Bending and MMH: 2.8 (1.1–7.5) Women Forward bending: 1.5 (0.8–2.6) MMH: 1.1 (0.6–2.1) Bending and MMH: 2.9 (1.2–6.6)	
Kneeling, squatting or stair-climbing, with and without heavy lifting.	Knee osteoarthritis	Odds Ratio [adj]: Neither kneeling nor lifting: 1.0 Kneeling/squatting: 2.5 (1.1–5.5) Kneeling and lifting: 5.4 (1.4–21.0)	Cooper *et al.*(1994: Ex. 500–41–27)
Kneeling, with (floor layers) and without (tile/terrazzo setters) use of knee kicker.	Knee: bursitis	Prevalence ratio [adj]: Floor layers: 3.2 (1.9–5.4) Tile setters: 1.8 (0.8–3.9)	Thun *et al.*(1987: Ex. 26–60)

In a cross-sectional study of newspaper workers, the risk of both neck and shoulder disorders increased with typing speed and with percentage of time working at the keyboard (Burt *et al.*, 1990: Ex. 26–698). Similarly, several investigators have shown exposure-response relationships for neck and shoulder disorders among video display unit operators with the number of hours per day (or week) of VDU work (Bergqvist *et al.*, 1995: Exs. 26–1195, 500–165–25; Faucett *et al.*, 1994: Ex. 38–256; Rossignol *et al.*, 1987: Ex. 26–804).

Two different studies of sewing machine operators in the garment industry have shown increasing prevalence of neck and shoulder disorders with cumulative years of exposure to repetitive work (Andersen *et al.*, 1993: Ex. 26–1451; Andersen *et al.*, 1993: Ex. 26–1502; Schibye *et al.*, 1995: Ex. 26–1463). (Note that Andersen 1993a (Andersen *et al.*, 1993: Ex. 26–1451) computed both crude and adjusted odds ratios, and the latter estimates were higher. However, in the adjusted model, each of the potential confounders had little association with the risk of neck/shoulder syndromes, so this model was deemed overly conservative and statistically inefficient, and the unadjusted ORs are shown in the table.) Andersen *et al.*, (Andersen *et al.*, 1993: Ex. 26–1502) also computed chi-square tests of trend with exposure for specific diagnoses. The following had a positive trend with years of exposure: cervicobrachial fibromyalgia ($p<<0.001$); rotator cuff syndrome ($p<0.01$); and cervical syndrome ($p<0.001$). The probability of having no MSD symptoms showed a negative trend with years of exposure ($p<0.001$). These findings are compatible with those of Brisson *et al.*, (Brisson *et al.*, 1989: Ex. 26–937), who examined long-term musculoskeletal disability in general, and specifically that due to arthritic and back disorders, including regular pain in the lower back, upper back/neck, shoulders, hands/wrists/elbows, or knees/ankles. The risk of long-term disability, both overall and for musculoskeletal disorders, increased with years of piece-rate garment work.

Elbow and forearm disorders are typically less prevalent, so there are fewer opportunities to evaluate exposure-response relationships with adequate statistical power. Nevertheless, several studies of VDU operators have shown such associations with speed or daily duration of VDU work (Bergqvist *et al.*, 1995: Ex. 26–1195, 500–165–25; Burt *et al.*, 1990: Ex. 26–698; Rossignol *et al.*, 1987: Ex. 26–804).

Intensity and duration of VDU work have shown similar exposure-response relationships with disorders of the hand and wrist region, including carpal tunnel syndrome (Bernard *et al.*, 1994: Ex. 500–165–21; Burt *et al.*, 1990: Ex. 26–698; Faucett *et al.*, 1994: Ex. 38–256), as well as with cases that include both proximal and distal regions of the upper extremity (Knave *et al.*, 1985: Ex. 26–753; Oxenburgh, 1987: Ex. 26–1367; Polanyi *et al.*, 1997: Ex. 500–41–106).

In the manufacturing sector, there is also evidence that the risk of hand and wrist disorders increases with work pace and repetitiveness (Latko *et al.*, 1999: Ex. 38–171; Leclerc *et al.*, 1998: Ex. 500–41–85) and with cumulative years of exposure to repetitive manual work (Ohlsson *et al.*, 1989: Ex. 26–1290; Wieslander *et al.*, 1989: Ex. 26–1027). Moore *et al.*, (Moore *et al.*, 1994: Ex. 26–1033) showed that the risk of reported upper extremity disorders decreased with the percentage of recovery time in each work cycle.

Force

Forceful manual exertions have been characterized by different investigators with a variety of metrics, some of them involving the combination of at least two of object weight, frequency of handling, and duration of exposure. These various approaches have yielded evidence of the risk of shoulder disorders increasing with exposure in white collar, construction, and manufacturing jobs (Hughes *et al.*, 1997: Ex. 26–907; Johansson *et al.*, 1994: Ex. 26–1331; Stenlund *et al.*, 1993: Ex. 502–462), and similar evidence for elbow disorders, even though limited by the smaller numbers of cases mentioned above (Hughes *et al.*, 1997: Ex. 26–907; Ritz, 1995: Ex. 26–1473).

Among grocery store workers, grocery checking has been identified as a job requiring forceful exertions. In two different studies, the risk of shoulder, elbow, and wrist/hand disorders, including CTS, was associated with the level of forcefulness required by each employee's job, the number of hours of checking work per week, and the cumulative number of years of checking (Baron *et al.*, 1991: Ex. 26–697; Osorio *et al.*, 1994: Ex. 26–807). Note that Osorio *et al.* defined three categories of exposure, but there were no CTS cases in the low exposure group, so in multivariate modeling only the odds ratio for low/medium vs. high exposure could be calculated. These dichotomous

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estimates, adjusted for age, gender, medical history and alcohol consumption, ranged from 6 to 40.

In other studies of hand and wrist disorders, exposure-response relationships have been found for finger flexor forces, measured by electromyography, as well as for simpler estimates of force based on object weight and on self-report. In particular, these showed trends in risk of CTS that are compatible with the experimental evidence, as summarized recently by Viikari-Juntura and Silverstein (Viikari-Juntura *et al.*, 1999: Ex. 500–121–73).

There is a particularly large number of studies demonstrating that the risk of back disorders, including prolapsed lumbar disc, increases with the frequency or duration of manual material handling, with load weights, and with other indicators of physically strenuous work including but not limited to lifting and carrying tasks. Again, exposure has been variously characterized on the basis of observation, self-report, and bio-instrumentation measures and/or combined into indices. The volume of evidence is extremely impressive and demonstrates that such exposure-response relationships have been found in nursing and other health care work, in construction, in manufacturing, and in the wide range of jobs encountered in the general population. For example, Venning *et al.* (Venning *et al.*, 1987: Ex. 500–41–49) published a prospective study of a closed cohort, which showed the predictive value of work area classified *a priori* in terms of lifting demands. Kerr, Norman, and colleagues (Kerr *et al.*, Ex. 500–41–74 ; Norman *et al.*, 1998: Ex. 38–84) compared cases to controls on 12 continuous biomechanical variables, representing both peak and daily integrated load on the spine. There was a higher load in the cases by each variable (all p-values < 0.04). There was a moderate amount of correlation among these variables, so the final regression model was reduced to four, with adjustment for demographic and psychosocial factors. The odds ratios, computed both for full observed ranges of exposure and more conservatively for inter-quartile spreads, showed that several dimensions of load on the lumbar spine made independent contributions to risk of back disorders.

It is of particular interest that three different studies (Marras *et al.*, 1993: Ex. 500–41–94 ; Wang *et al.*, 1998: Ex. 500–41–52; Waters *et al.*, 1999: Ex. 500–121–76) showed such a relationship when lifting demands were characterized using the NIOSH lifting index (Waters *et al.*, 1993: Ex. 26–521). (It should be noted that Waters *et al.* (Waters *et al.*, 1999: Ex. 500–121–76) also estimated the odds ratios in a multivariate logistic regression model that included nine other covariates. These estimates so obtained were higher for the category of LI=1–2 and otherwise lower than the crude estimates. However, 7 of the covariates in the model had little association with LBP, so this model was deemed overly conservative and the unadjusted ORs were selected as summary measures of the study results.)

Studies of other, related health outcomes, including knee arthritis and "overexertion incidents" of any body part, provide compatible findings regarding the effects of strenuous work. In addition, Krause *et al.* (Krause *et al.*, 1997: Ex. 26–1281) found that disability retirement was increasingly frequent from jobs with heavy physical demands and also showed an exposure-response trend with an index of repetitive strain that included lifting demands, muscle effort, and non-neutral postures. The cases of disability retirement were due to any medical condition; however, a large proportion was caused by musculoskeletal conditions (see Table 2 of (Krause *et al.*, 1997: Ex. 26–1281)).

Posture

Studies of the effect of non-neutral postures also include a wide range of exposure measures, including estimated frequency or duration of specified postures, as well as tasks that imply specific postural demands (*e.g.*, driving as an indicator of highly constrained static sitting) and workstation characteristics that directly influence posture (*e.g.*, VDU keyboard too high). Since the anatomic segments of the body form a kinematic chain, non-neutral postures may affect not only the same joint region but also other joints along that chain. For example, if the work layout requires the trunk to be twisted while the eyes are facing forward, the neck will also be twisted and health effects may be found all along the spine. Work with the arms elevated may alter wrist posture or impose a biomechanical disadvantage on the arm muscles; it will increase the torque exerted by an object held in the hands, which in turn increases the compressive forces experienced in the lumbar spine (Chaffin *et al.*, 1991: Ex. 26–420).

There are a very large number of studies showing that neck and shoulder disorders exhibit an exposure-response relationship with arm and neck postures, especially arm elevation to form an included angle of at least 30° flexion or abduction. Both Bergqvist *et al.* (Bergqvist *et al.*, 1995: Ex. 500–165–24) and Faucett *et al.* (Faucett *et al.*, 1994: Ex. 38–256) showed an increasing risk as the height of the VDU keyboard increased relative to seated elbow height. In a case-control study within a single automobile assembly plant, Punnett and colleagues found an increasing risk of shoulder disorders with the observed proportion of the work cycle in which the included angle at the shoulder was at least 90 degrees (Punnett *et al.*, 2000: Ex. 500–41–109). This association was not confounded by gender or other demographic or medical history factors.

Viikari-Juntura *et al.* (Viikari-Juntura *et al.*, 2000: Ex. 500–41–50) carried out a longitudinal study with four repeated questionnaires among 5180 workers in a large forest industry enterprise. The authors used a modified Nordic questionnaire (Kuorinka *et al.*, 1987: Ex. 38–204) for the health outcome of " radiating neck pain" and validated exposure assessment and psychosocial questionnaires. There was a statistically significant dose-response relationship for radiating neck pain with the frequency of "twisting movements of the trunk during a work day" (ORs from 1.0 to 2.3), as well as a dose-response relationship for hands above the shoulder. These estimates were adjusted for body mass index and high mental stress.

English *et al.* conducted a study of patients in the general population seeking medical care for upper extremity disorders (English *et al.*, 1995: Ex. 26–848). Conditions affecting the wrist and hand showed exposure-response relationships with several different shoulder and wrist postures (Table 3b). The degree of ulnar deviation has been reported to be associated with the risk of forearm and wrist disorders (Hünting *et al.*, 1981: Ex. 26–1276; Malchaire *et al.*, 1996: Ex. 26–1473). Several authors have found that the risk of carpal tunnel syndrome increases with the number of hours per day or week in which the wrist is flexed or extended (Blanc *et al.*, 1996: Exs. 26–42, 500–41–16; de Krom *et al.*, 1990: Ex. 26–102; Nordstrom *et al.*, 1997: Ex. 26–900).

In studies of back disorders, a number of investigators have reported exposure-response relationships with trunk forward flexion, lateral bending, and rotation. These studies address non-neutral postures in both seated and standing work, and they cover a range of industries and occupations from tractor driving to construction to automobile assembly. Similar data for the U.S. general population were obtained from analysis of the National Health Interview Study (Exs. 26–1106, 26–1107). There is also evidence of increasing risk with static sitting, both assessed directly and through estimated time or distance driving per week (although the latter may also involve exposure to whole-body vibration). In the study by Pietri *et al*. (Pietri *et al*., 1992: Ex. 38–309), the odds ratios for both prevalence and one-year cumulative incidence of low back pain showed increases with hours of driving per week in multivariate models adjusted for age, gender, comfortable car seat (y/n), carrying loads (y/n), standing (y/n), tobacco consumption, and psychosomatic factors.

With regard to disorders affecting the lower extremity, knee-bending, kneeling, squatting, jumping from one level to another, and stair-climbing are all found in these studies. In a series of Danish studies, direct observations showed that the average proportion of time that was spent kneeling and/or squatting by workers in three different trades (Jensen *et al*., 1997: Ex. 500–41–69). The prevalence of knee disorders among the same three trades increased proportionately to the exposure prevalences. Anderson and Felson utilized the U.S. Department of Labor Dictionary of Occupational Titles and characterized each occupation on the basis of the proportion of job titles within it that required knee-bending (0%, up to 50%, more than 50%) (Anderson *et al*., 1988: Ex. 26–926). Among subjects aged 55 to 64 years, there was a two to three-fold increase in risk of radiographic osteoarthritis with each category of knee-bending, adjusted for gender, race, education, and body mass index. These odds ratios represent the increase in risk across the three categories, *i.e.*, from no to some and from some to much knee-bending.

Vibration

Segmental vibration exposure to the distal upper extremity, especially through holding and operating power tools, is another area of research where exposure-response relationships have been reported by numerous authors. Some studies have shown the association with years of exposure, and others combined work history with direct measurements of frequency and acceleration to construct biologically informed cumulative exposure indices. Most of the evidence concerns neurological and circulatory impairment of the hand and wrist. Three different investigations reported an odds ratio of about 1.1 for each year of occupational exposure to hand-arm vibration, which represents a doubling of risk about every 7 years. In addition to those studies shown in Table 4a, Nordstrom *et al*. (Nordstrom *et al*., 1997: Ex. 26–900) reported an "alternative" multivariate model of CTS in which there was a positive quadratic dose-response relationship ($p=0.01$) for use of power tools or machinery. While this variable was not conclusive regarding exposure to segmental vibration, it does suggest an exposure-response trend between segmental vibration and CTS.

In an historical cohort, Futatsuka *et al*. (Futatsuka *et al*., 1985: Ex. 26–1430) found a positive association between the prevalence of "vibration-induced white finger" and the duration of exposure to vibration (chain saw use). In addition, there was an interaction with year of first exposure: higher prevalences and earlier onset of symptoms were observed among workers with earlier first exposure, when the acceleration levels were higher (all data presented graphically). One study team found similar associations for the risk of shoulder disorders (Stenlund *et al*., 1993: Ex. 502–462; Stenlund *et al*., 1992: Ex. 26–733).

Several statements contained in submissions by the Chamber of Commerce and others cited OSHA's statement in the preamble to the proposal that it had not constructed "generalized quantitative exposure-response relationships" for standard-setting (64 Fed. Reg. at 65927), and that the Agency's reluctance to set permissible exposure levels for risk factors provided evidence of a lack of exposure-response relationship in the epidemiologic literature (*e.g.*, Chamber of Commerce, Ex. 30–1722, p. 46 and Ex. 500–188, pp. 10–11; United Parcel Service, Ex. 500–197, pp. I–61 to I–62). Such arguments confuse exposure-response relationships *as evidence of a causal relationship* with the last stage of *quantitative risk assessment*, namely computation of a permissible exposure level.

It is critical to distinguish between these points. Exposure-response relationships have been demonstrated in the epidemiologic literature, using a variety of exposure metrics and for a variety of health outcomes, and a number of reviewers have cited this evidence in concluding that there are causal relationships (eg., Armstrong *et al*., 1993: Ex. 26–1110; Bernard, 1997: Ex.26–1; Burdorf *et al*., 1997: Ex. 500–121–13; Hagberg *et al*., 1992: Ex. 8–1; Hales *et al*., 1996: Ex. 26–896; Viikari-Juntura *et al*., 1999: Ex. 500–121–73). At the same time, although the indicted exposures and their associations with MSDs are qualitatively similar across many studies, the variations in measurement approaches results in very limited numbers of studies with any single exposure metric. More importantly, there is substantial evidence of interactions among physical exposures, so that (for example) jobs requiring both repetitive and forceful motions have a higher risk than jobs requiring either exposure alone (Armstrong *et al*., 1987: Ex. 26–48; Silverstein *et al*., 1986: Ex. 26–1404; Silverstein *et al*., 1987: Ex. 26–34). (Numerous examples of other additive or multiplicative effects between physical ergonomic exposures have been listed in Tables V–9 through V–13). Thus, the exposure-response curve for each exposure should ideally be described as a function of the level of *each* other exposure that might also be present in the same job. This represents an enormous number of *combinations* of exposure, of which only some have been studied epidemiologically to date. Given the available exposure-response relationships, plus evidence that exposures interact with each other, the decision not to attempt quantitative risk assessment calculations at this time is readily justifiable. However, this does not at all imply that the evidence for exposure-response relationships is insufficient to conclude that there is a causal relationship between exposure to risk factors and the risk of MSDs.

Another argument made in the testimony cited above is that if an exposure-response relationship existed, it would necessarily be linear or monotonic, and that it would necessarily provide an exposure level that could be used to differentiate between background risk of MSDs and an elevated risk (United Parcel Service, Ex. 500–197, pp. I–62 to I–67). This assertion is false. An exposure-response relationship need not take the form of a straight line through all data points; it may conceivably be better described as a logistic curve, or as a step-function, or as any other of a variety of mathematical functions. As one example, the analyses presented by Frost *et al*. (Frost *et al*., 1999: Ex. 38–97) clearly show a non-linear exposure-response trend with cumulative exposure to repetitive and loaded shoulder flexion. Two among many other illustrations of non-linear, positive exposure-response relationships can be found in Liles *et al*., 1984 (Liles *et al*., 1984: Ex. 26–33 500–41–88), where the authors suggested that their graphs provided evidence of exposure thresholds, and Moore *et al*., 1994 (Moore *et al*., 1994: Ex. 26–1033), where a log-log transformation improved the fit of the model. A non-linear relationship, for example, accommodates the likelihood that some physical activity is beneficial and that only at more extreme levels do

adverse health effects occur, a point advanced by several in their testimony to the docket (*e.g.*, United Parcel Service, Ex. 500–197, pp. I–68; Vender attachment to UPS post-hearing comments, Ex. 500–118, page 17). Dr. Hadler opined that "whenever a relationship between exposure and effect is not linear (not monotonic), you can be sure there are confounders, * * *." (Hadler attachment to UPS post-hearing comments, Ex. 500–118, page 4). He offered no evidence in support of this assertion, and in fact there is no requirement in epidemiology that the relationship must either be linear or monotonic. OSHA has relied on non-linear dose-response relationships in other health standard rulemakings (see Formaldehyde, 54 FR46168, Cadmium 57 FR 42101).

Second, most exposure-response relationships do not indicate a single exposure level that unambiguously differentiates risk from no risk. This is *especially* true if exposure is treated as continuous and the relationship fits a straight line through the origin, in which case each small increment in exposure increases the probability of an adverse health outcome and, extrapolated downward, there may be no discernable point without excess risk above the zero exposure level. Note that in this regard U.P.S. criticized OSHA for the assumption that, in fact, *UPS* had made: "OSHA has falsely assumed that any increment of human muscle usage is harmful, * * *." (United Parcel Service, Ex. 500–197, pp. I–68).

On the other hand, when exposures have been categorized and are ordinally associated with risk of disease, it can be argued that the first exposure level where an elevated risk is observed above baseline represents an appropriate point for a permissible exposure level (at least until subsequent studies clarify whether there is still excess morbidity occurring below that level). This type of approach was taken recently by the American Conference of Governmental Industrial Hygienists (2000), which used essentially the same epidemiologic evidence available to OSHA—with its variety of exposure metrics—to determine the proposed new Threshold Limit Value® for occupational hand activity level (see Exs. 38–162, DC–387).

Several authors have called attention to the complexity of the process of utilizing exposure-response data for quantitative risk assessment in the multi-dimensional domain of physical ergonomics (*e.g.*, Armstrong *et al*., 1993: Ex. 26–1110; Burdorf *et al*., 1997: Ex. 500–121–13; Frank *et al*., 1996: Ex. 502–407; Kilbom, 1999: Ex. 38–406; Viikari-Juntura *et al*., 1999: Ex. 500–121–73). OSHA finds that it is reasonable to conclude, as these experts have done, that there is a need for continuing study of those relationships and interactions, while at the same time, that it is appropriate to implement the scientific knowledge in hand in order to reduce the risk of work-related MSDs.

In the preamble to the proposed rule (64 FR 65768), OSHA presented the results of several studies that provided evidence for positive trends between exposure to biomechanical risk factors and the prevalence or incidence of MSDs. Three commenters critiqued twelve of these studies, claiming a variety of design or methodological flaws in the studies, computational errors in the studies, or that OSHA misused some of the data (Exs. 30–276, 500–79, 32–241–4). The comments are those of Dr. Steven Moore, Professor, Environmental and Occupational Health, Texas A&M University (Ex. 30–276), Marathon Ashland Petroleum LLC (Ex. 500–79), and Gibson, Dunn & Crutcher (Ex. 32–241–4). Marathon Ashland Petroleum LLC includes Dr. Moore's comments as an Appendix. Gibson, Dunn & Crutcher summarize the critiques of several experts, whose statements are attached to their comment. OSHA responds to all these comments below.

Dr. Moore and Gibson, Dunn & Crutcher criticized the study on risk factors for CTS by deKrom *et al*., (1990, Ex. 500–41–28). They claim that the study does not account for psychosocial factors and that it is methodologically flawed in relying on self-reported information about duration of exposure, rendering the results meaningless. With respect to the lack of analysis on psychosocial factors, OSHA acknowledges that this case-control study, with cases mostly of hospital outpatients and controls from the general population, did not examine or control for psychosocial factors. However, OSHA finds nothing in the design and analysis of this study that would invalidate the statistically significant positive associations among work related physical factors and CTS that the study did find. The authors concluded that activities with a flexed wrist or with an extended wrist (exposure-related increased ORs) were risk factors for CTS. Dr. Moore criticized the duration analysis used to estimate exposure-response as a function of time, claiming that the survey questionnaire instrument for collecting exposure information was unreliable. OSHA responds that with little information about the survey questionnaire in the published paper, the agency cannot determine the reliability. However, from a description in the paper of the blindness with which the survey was administered, OSHA believes that such an imperfect exposure measurement instrument would yield non-differential exposure misclassification. Such non-differential misclassification would bias both the ORs and the slope toward a finding of no increasing trend. The fact the deKrom *et al*. study found statistically significant ORs for each incremental number of weekly hours of activities with extended or flexed wrist separately, plus finding a statistically significant exposure-response trend for both duration variables, despite the negative bias, provides strong evidence that the effect is real. This finding is further strengthened by the final analysis of de Krom *et al*. which used a multiple regression model simultaneously containing both duration of "flex" and "extended" wrist activities as variables, with both variables found to be statistically significant for duration-of-exposure-response trends (Ex. 500–41–28, pg. 1108). The finding of joint statistical significance of collinear variables when simultaneously modeled increases confidence in the significance of the separate variables.

OSHA also responds to the criticism that "in a conclusion that would devastate OSHA's attempt to redesign the American office, [deKrom *et al*.] found no significant risk of CTS related to typing."OSHA notes that of the 156 cases of CTS, only 12 cases reported any work-related typing at all. In a case-control study such as this with only 12 cases exposed to typing, the statistical ability to determine a significant result is very small. Either a different study recruitment procedure or a much larger sample size would be required. With respect to another criticism by Gibson, Dunn & Crutcher on the apparently spurious finding of an association of CTS with varicosis in men, the authors reported this result of their analysis for the scientific world to contemplate, but found it inconsistent with that of other authors (Ex. 32–241–4).

Dr. Moore also criticizes OSHA's use of the MSD prevalence study by Luopajarvi *et al*., (1979, Ex. 26–56) used as part of the agency's determination of causality for hand/wrist tendinitis. Dr. Moore claims the study's poor exposure assessment and lack of statistical comparisons provide poor support. In response, OSHA notes that the same exposure assessment methods were used in the study comparisons between the assembly-line packers and the shop assistants, so that the differences should be unaffected. OSHA also notes that these comparison showed that the assembly-line packers had a highly statistically significant ($p<0.001$) increased prevalence of (1) syndromes found in the neck, shoulders and elbows; and (2) muscle-tendon syndromes in the hands ($p<0.001$). The most common neck syndrome in this study was tension neck and the most common shoulder disorder was humeral tendinitis. For hands, Luopajarvi *et al.* noted the prevalence of tenosynovitis/peritendinitis at 53% in the assembly-line packers, but only 14% in the shop-assistants (who endured prolonged standing, but otherwise physically light work). For the assembly-line packers the authors noted especially the repetitive motions at a high speed, and fingers and hands constantly used at the pace of the machine, up to 25,000 cycles per workday. For these packers the authors also noted difficult static muscle work, extreme work positions of the hands, and difficult lifting. OSHA believes that this study provides a good comparison between similar demographic groups, and that it provides good evidence that work-related physical stress factors were causing shoulder and upper extremities injuries.

Dr. Moore also claims that errors in the evaluations of two other studies are materially related to the NIOSH's and OSHA's conclusions (Ex. 30–276, pg. 2). With respect to the study by Kuorinka and Koskinen, he criticizes NIOSH for not specifically mentioning the "non-positive" finding of no evidence of association of with time spent in deviated wrist postures per day. OSHA responds that the Kuorinka and Koskinen study did not specifically mention peritendinitis and tenosynovitis in its analysis, only the total complex of muscle-tendon syndrome. Their definition of muscle-tendon syndrome used in this study came from an accompanying article they coauthored in the same journal (see Ex. 26–1218); the definition included syndromes of the shoulder and elbow, along with the wrist and hands. Every one of the seventeen (out of 93) manual workers with muscle-tendon syndrome also had tension neck syndrome, but none was specifically identified as having either peritendinitis or tenosynovitis (Ex. 26–639). While Dr. Moore is correct that Kuorinka and Koskinen found no correlation between the number of signs in the wrist and the deviation load of the wrist joint (1979, Ex. 26–639). OSHA finds too few details in the analysis for any conclusions with respect to peritendinitis and tenosynovitis.

Dr. Moore also criticizes the NIOSH 1997 (Ex. 26–1) review for its failure to include the findings of a second study, Armstrong *et al.*, (1987, Ex. 500–41–4) in NIOSH's evaluation on the effect of posture for hand/wrist tendinitis. Dr. Moore claims that NIOSH rated the Armstrong *et al.* study as high quality for other physical risk factors (*i.e.* force and repetition, for which the study found highly statistically significant associations) but didn't include the study at all in the discussion of the effect of posture. Armstrong *et al.* reported no significant associations for differences in posture "comparing the percentage of the time spent in various postures between jobs in which there were workers with tendinitis and those in which there were no workers with tendinitis" (Ex. 500–41–4). Dr. Moore claims that this omission by NIOSH and OSHA is an error in evaluation and that this error "would likely have a material impact on the conclusion" (Ex. 30–276).

OSHA has considered Dr. Moore's claim about NIOSH's evaluation of the Armstrong *et al.* study and has concluded that while Dr. Moore is correct in his claim that Armstrong *et al.* found no associations with the posture variable stated above, there is simply not enough detail in the publication to weight that study highly with regard to the posture variable. With this study group Armstrong *et al.* found a highly statistically significant odds ratio of 29.4 ($p<0.001$) for high force/high repetitiveness hand/wrist motion compared with a low force/low repetitiveness motion group. These groups appeared well defined and well studied with respect to force and repetitiveness, with 652 workers divided fairly evenly among the four groups increasing the statistical power to detect an effect if one exists. However, no detail is given for the posture analysis, only a short paragraph result (Ex. 500–41–4). To study this same highly force- and repetitiveness-stressed group for the effect of posture differences on hand/wrist tendinitis, (and CTS, see Silverstein *et al.*, 1987, Ex. 26–34, and comment in Ex. 32–241–4, pg.143) would appear to be quite difficult, considering the proven effect of force and repetitiveness as risk factors in this worker group. Silverstein *et al.* (1986) studying essentially the same group, discussed postures, stating:

> (Wrist postures required on a job are often determined by the height of the work station with respect to the location of the worker. * * * to test this hypothesis the job of each worker in a job would have to have been videotaped and analyzed. This was not done in this investigation. * * * Awkward postures (wrist deviation, flexion, hyperextension, and finger pinching) * * * were not controlled for in this investigation. (Ex. 26–1404).

OSHA concludes that NIOSH was correct in not considering the Armstrong *et al.* (Ex. 500–41–4) and Silverstein *et al.*1986 and 1987, (Exs. 26–1404, 26–34) study further for posture with this particular study group.

Gibson, Dunn & Crutcher also criticize OSHA's omission that the Armstrong *et al.*, study "found no significant association between * * * vibration and [hand/wrist tendinitis] (Ex.32–241–4, pg. 140). OSHA responds that the Armstrong *et al.*, 1987, (Ex. 500–41–4) publication provided less information about vibration in the study group than it did about posture, and that apparently it was not a well studied factor in this group.

Dr. Moore also criticizes the "NIOSH and OSHA reviews [for] inappropriately generaliz[ing] results of some studies beyond the constructs used to measure or categorize MSD risk factor [*i.e.*, force and repetitiveness]" (Ex. 30–276, pg. 2–3), singling out Armstrong *et al.* (Ex. 500–41–4) and Silverstein *et al.*, 1987, (Ex. 26–34). OSHA has considered this comment and disagrees with Dr. Moore. Most authors define risk factors slightly differently and the NIOSH analysis had to categorize the slightly different definitions into categories. OSHA believes this categorization does not detract from either the NIOSH analysis or the ability to generalize that force and repetitiveness are etiologically related to hand/wrist tendinitis. In fact, OSHA believes that the different studies' abilities to detect significant associations using different definitions actually make the overall results more generalizable.

Gibson, Dunn & Crutcher, also criticize the Silverstein *et al.*, 1986 study of hand wrist cumulative trauma disorders (CTDs, Ex. 26–1404, and by implication Exs. 26–34 and 500–41–4) for being methodologically flawed, specifically citing recall bias and observer bias as leading to an overestimation of the associations between risk factors and health effect (Ex. 32–241–4, pg. 142–143). They also cite the study's cross-sectional design, the omission of a number of jobs from the investigation, and lack of analysis on non-biomechanical factors as serious flaws.

OSHA has considered this criticism of the methodology, but disagrees with the characterization that a cross-sectional design cannot establish causation. In another section of this preamble, OSHA discusses the value of all the studies together in forming a database to determine causality. OSHA also notes the claims of bias in this study, but agrees with the Silverstein *et al.*, 1986 study authors who found significant positive and publishable associations between hand wrist CTDs and high force-high repetitive jobs:

> The findings in this investigation may also have underestimated the prevalence of hand wrist CTDs in several ways. Firstly, subject selection was limited to active workers. those away from the job with CTDs at the time of evaluation (potentially severe cases) would not have been available for study. Secondly, the one year seniority criteria for subject selection excluded those who might have had CTDs and transferred before one year as well as those with CTDs but not on the job for at least one year. The finding that hand wrist CTDs were negatively associated with age and years on the job support the argument of selection/survival bias in the study population [which would underestimate the effect] (Ex. 26–1404, pg. 784).

Gibson, Dunn & Crutcher criticize the study of shoulder pain in shipyard workers (welders and steel plate-workers) by Herberts *et al.*, 1984, (Ex. 26–51), for methodological flaws, including cross-sectional design, and the lack of demographic matching between the exposed and control groups. (Ex. 32–241–4, pg. 142). They also criticized OSHA for not recognizing what Herberts *et al.* did, have "chronic shoulder pain is * * * common in people not necessarily active in arduous physical work." (Ex. 26–51, pg. 167). OSHA responds that the Agency does recognize that people other than those in HPW have shoulder pain; that recognition allows researchers, OSHA and other analysts to compare the prevalence of shoulder pain in workers doing HPW to that in workers not so engaged, in order to estimate the contribution from HPW. Herberts *et al.* also did this and concluded that "Rotator cuff tendinitis constitutes a major problem in people with arduous occupations, *i.e.*, shipyard welders (PR=18.3%), and steel plate-workers (PR=16.2%)." By contrast, of the 57 clerks in the comparison group only one (1.7%) reported this disorder. Of this highly statistically significant difference, Herberts *et al.*, note:

> Since the clerks are on an average older than the other two groups, there would be a higher likelihood of age-induced tendinitis in this [clerks] group. However, the hypothesis is that those with a high physical workload have tendinitis to a greater extent than normal. (Ex. 26–51).

Gibson, Dunn & Crutcher also criticize OSHA's use of the Punnett *et al.*, 1991 (Ex. 26–39) study of back disorders and nonneutral trunk postures in automobile assembly workers. The study is criticized as methodologically flawed in that it is a case-control study that does not consider non-biomechanical variables (Ex. 32–241–4, pg. 140). Gibson, Dunn & Crutcher quote the authors' own cautions of the limitations of such a design, which is necessarily retrospective in recalling exposures and pre-existing conditions. OSHA acknowledges the limitations of such as design. However, OSHA considers the design, conduct, and analysis of this study quite persuasive—in terms of strength of association, temporality, and exposure-response—in the overall determination of causality of BT and LBP; see OSHA's section on back disorders in this preamble. The authors in their publication conclude:

> Back disorders were associated with mild trunk flexion (OR=4.9 (p5% C.I. 1.4–17.4), severe trunk flexion (OR=5.7, 95% C.I. 1.6–20.4), and trunk twist or lateral bend (OR=5.0, 95% C.I. 1.6–21.4). the risk increased with exposure to multiple postures and increasing duration of exposure. (Ex. 26–39, pg. 337).

Gibson, Dunn & Crutcher also criticize Dr. Punnett's more recent study (1998, Ex. 26–38) of upper extremity disorders in vehicle manufacturing, as being methodologically flawed in that it is a cross-sectional design and does not include an analysis of the relative importance of psychosocial factors. OSHA has considered this comment and disagrees. Even though this study is cross-sectional, OSHA considers it well-conducted and analyzed. Using a primary exposure score relating to responses to psychophysical exposure items, Punnett found both statistically significant PRs and significant exposure-response relationships for both (1) shoulder and upper arm disorders and (2) wrist and hand disorders. The results were consistent when the analyses were done both for the symptom cases and the physical examination cases. The authors concluded that "musculoskeletal disorders of the upper extremities were strongly associated with exposure to combined ergonomic stressors." (Ex. 32–241–4) Gibson, Dunn & Crutcher also criticize OSHA's use of the prospective study by Liles and Deivanayagam, 1984 (Ex. 26–33) on job severity index (JSI) for the evaluation and control of lifting injury of the back. The JSI is a function of lifting frequency of task, maximum required weight of lift, adjusted capacity of the individual, and total lifting frequency. Criticism of the study focuses on a potential bias which Gibson, Dunn & Crutcher call a "nocebo effect", a bias due to differential reporting of pain symptoms by the subjects, knowing that their symptoms are being monitored. OSHA responds that such a potential bias is purely speculative, and, in any case, does not explain either the increasing injury rate, the cumulative disabling injury rate or the cumulative severity rates seen with increasing JSI. (Ex. 26–33, pgs. 690–691).

Gibson, Dunn & Crutcher also criticize the study by Snook *et al.*, (1978, Ex. 26–35) on three preventive approaches to low back injury. The study is criticized as being methodologically flawed in that it is a cross-sectional study which looks solely at biomechanical risk factors, and cannot establish causation. However, Gibson, Dunn & Crutcher also quote several portions of the article that it wants OSHA to recognize: (1) that most cases of industrial back injury have no known cause, and recovery occurs before any cause is ever found, (2) some workers never suffer from low back pain regardless of their type of work, and others seem to get it in spite of what they do; and (3) "low back injuries are usually not serious; four out of five workers suffering from low back injuries return to the job within three weeks." (Ex.32–241–4). OSHA responds that this Snook *et al.*, case-series study of 191 low back injuries is of limited usefulness in determining causality, but it does suggest that low back injury is associated with excessive manual handling tasks. OSHA also acknowledges the general apparent truthfulness of statement (2), by Snook *et al.*, but can find no reference for it in the article. Statement (1) of Snook *et al.*, references a 1970 published article and a 1971 editorial. There is more recent science available. Statement (3) cites one 1966 study as its reference.

Gibson, Dunn & Crutcher also criticize a study by (1992, Ex. 26–36) on low back and neck/shoulder pain in construction workers. They claim that the study is methodologically flawed in that it is cross-sectional in design, limiting its ability to show causality. At the same time they criticize OSHA for failing to discuss the study's findings of positive associations between LBP and both psychosocial factors and age, as well as the finding(s) of no significant association between sitting posture and LBP (and severe LBP). OSHA responds that with respect to sitting (>4 hours) posture and the Holmstrom *et al.* (Ex. 26–36) finding of no significant association with either LBP or severe LBP, both NIOSH (Ex. 26–1, pg. 6–47) and OSHA (see Table on back studies considered) do consider the finding of this study as "no association" for SWP and LBP. With respect to specific psychosocial factors being significant in this analysis, OSHA concurs. However, the discussion of psychosocial factors by Holmstrom *et al.* fails to mention whether or not the multiple regression model used also found the physical risk factors simultaneously statistically significant with these data, which would suggest that physical and psychosocial factors are independent risk factors (Ex. 26–36, pg. 667).

4. Comments on the Role of Individual and Non-Work Factors

In their posthearing testimony, Gibson, Dunn and Crutcher assert that:

> In developing its unfounded assertion that biomechanical workplace factors play a predominant role in the development of MSDs, OSHA has also ignored a great number of scientifically valid studies establishing that non-work-related factors, such as genetic predisposition, age, general health, smoking, social activities, and psychosocial factors exert a greater influence than biomechanical factors on the development of MSDs (Ex. 500–118).

Other commenters also expressed concern about the role of non-work factors in the etiology of MSDs (*e.g.*, Exs. 30–1722, 60–2037, 30–4184, 30–3077, 30–1352, 30–4130, 30–3922, 30–3114, 30–3354).

While some commenters tended to lump individual factors along with psychosocial factors, these two types of factors are clearly separate and distinct. OSHA has separated its discussion of individual factors from that of psychosocial factors, and has fully addressed comments on psychosocial factors later in this part of the Health Effects section. In this section OSHA presents it's response to comments in the record on individual factors, sometimes called "personal" factors. The factors that are discussed in the literature include age, susceptibility, either by genetic predisposition or medical conditions, and other factors that may be thought of as those that modify the capacity of individuals to perform work.

The above post-hearing comment (Ex. 500–18) makes two claims:

(1) that OSHA ignored an entire body of literature relevant to this rulemaking, and

(2) that had OSHA not ignored this body of literature, it would have come to an opposite conclusion than that reached by OSHA, *i.e.*, that these factors "exert a greater influence" presumably than biomechanical risk factors, on the development of MSDs.

OSHA, in fact, did not ignore the literature on individual factors. On the contrary, OSHA introduced the appendices to the proposed Health Effects section with a discussion of "Individual Factors and Epidemiology of Work-Related Musculoskeletal Disorders," stating that:

> The multifactorial nature of MSDs requires a discussion of individual factors that have been studied to determine their association with or influence on the incidence and prevalence of work-related MSDs. These factors include age (Guo *et al.*, 1995; Biering-Sorensen *et al.*, 1983; English *et al.*, 1995; Ohlsson *et al.*, 1994); gender (Hales *et al.*, 1994; Johansson, 1994; Chiang *et al.*, 1993; Armstrong *et al.*, 1987a); anthropometry (Werner *et al.*, 1994; Nathan *et al.*, 1993; Heliovaara, 1987); physical activity (Holmstrom, Lindell, and Moritz, 1992; Baron *et al.*, 1991; Craig *et al.*, 1998); strength (Chaffin and Park, 1973; Chaffin *et al.*, 1977; Troup, Martin, and Lloyd, 1981); cigarette smoking (Finkelstein, 1995; Owen and Damron, 1984; Svensson and Andersson, 1983; Kelsey, Golden, and Mundt, 1990; Hildebrandt, 1987); and alcohol, caffeine, and vitamins (Nathan *et al.*, 1996, Keiston *et al.*, 1997). In addition, psychosocial factors have been associated with upper-extremity and back disorders (Ex. 27–1, p. I–1).

OSHA has stated elsewhere that it relied on two major reviews of the evidence for work-relatedness of MSDs available at that time, NIOSH's "Musculoskeletal Disorders and Workplace Factors: A Critical Review of the Epidemiologic Evidence for Work-Related Musculoskeletal Disorders of the Neck, Upper Extremity, and Low Back" (Bernard, 1997; Ex. 26–1) and the National Research Council/National Academy of Sciences' "Workshop on Work-Related Musculoskeletal Injuries: The Research Base" (Ex. 26–37). OSHA believes that it was appropriate to place great weight on these two sources, as they are comprehensive reviews of recent peer-reviewed scientific literature conducted by highly-reputable and independent groups of scientists expert in their respective fields.

To the extent that the studies reviewed by NIOSH considered exposure to nonoccupational physical activities, such as nonoccupational VDT use, hobbies, second jobs, and household activities that might increase risk for MSDs, NIOSH included this information in its review, and acknowledges that:

> a number of factors can influence a person's response to risk factors for MSDs in the workplace and elsewhere. Among these are the following: age, gender, smoking, physical activity, strength, anthropometry.

The literature, as reviewed by NIOSH (NIOSH, 1997; Ex. 26–1): on each of these individual factors is summarized here:

Age: The prevalence of MSDs increases as people enter their working years. By the age of 35, most people have had their first episode of back pain (Guo *et al.* 1995, Ex. 26–1474; Chaffin 1979, Ex. 26–1489). Once in their working years (age 25 to 65), however, the prevalence is relatively consistent (Guo *et al.* 1995, Ex. 26–1274; Biering-Sorenson 1983, Ex. 26–843). Musculoskeletal impairments are among the most prevalent and symptomatic health problems of middle and old age. Nonetheless, age groups with the highest rates of compensable back pain and strains are the 20–24 age group for men, and the 30–34 age group for women.

NIOSH acknowledges that age-related degenerative disorders may result in decreases in musculoskeletal function, and loss of tissue strength with age may also increase the probability or severity of soft tissue damage. NIOSH also notes that:

> Another problem is that advancing age and increasing number of years on the job are usually correlated. Age is a true confounder with years of employment, so that these factors must be adjusted for when determining relationship with work. Many of the epidemiologic studies that looked at populations with a wide age variance have controlled for age by statistical methods.

However,

> Several studies found age to be an important factor associated with MSDs (Guo *et al.* 1995; Biering-Sorenson 1983; English *et al.* 1995; Ohlsson *et al.* 1994; Riihimaki *et al.* 1989a; Toomingas *et al.* 1991) others have not (Herberts *et al*, 1981; Punnett *et al.* 1985). [Ex. 26–1]

Riihimaki *et al.* (1989, Ex. 26–58) found a significant relationship between sciatica and age in machine operators, carpenters, and sedentary workers. Age was also a strong risk factor for neck and shoulder symptoms in these same groups of workers (Riihimaki *et al.* 1989, Ex. 26–58).

When a study does not find a relationship between an increased risk for MSDs and aging, lack of an observed relationship may be due to "survivor bias." If workers who have health problems leave their jobs, or change jobs to one with less exposure, the remaining population includes only those workers whose health has not been adversely affected at their jobs. As an example, in a study of female plastics assembly workers, Ohlsson *et al.* (1989, Ex. 26–1290) reported that the degree of increase in the odds of neck and shoulder pain with the duration of employment depended on the age of the worker. For the younger subjects, the odds increased significantly as the duration of employment increased, but for the older ones no statistical change was found with length of employment. The older women who had been employed for shorter periods of time had more reported symptoms than the younger ones, while older workers with longer employment times reported fewer symptoms than younger workers. Ohlsson *et al.* (1989, Ex. 26–1290) interviewed 76 former assembly workers and found that 26% reported pain as the cause of leaving work. This finding supports the likely role of a survivor bias in this study, the effect of which is to underestimate the true risk of developing MSDs, in this case in the older workers.

Some studies report observing an increased risk for MSDs with age, others do not. Where the effects of age have been controlled for in studies, thus eliminating the influence of "age" in the equation, the physical risk factors discussed here have been consistently shown to be associated with the development of MSDs in exposed populations. This means that, regardless of whether or not age plays a role in the development of a particular MSD in a particular population, the influence of physical risk factors is independent.

Gender Some studies have found a higher prevalence of some MSDs in women (Bernard *et al.* 1994, Ex. 26–842; Hales *et al.* 1994, Ex. 26–131; Johansson 1994, Ex. 26–1331; Chiang *et al.* 1993, Ex. 26–1117). A male-to-female ratio of 1:3 was described for carpal tunnel syndrome (CTS) in a population study in which occupation was not evaluated (Stevens *et al.* 1988, Ex. 26–1009). However, in the Silverstein *et al.* (1985, Ex. 26–1173) study of CTS among industrial workers, no gender difference could be seen after controlling for work exposure. Franklin *et al.* (1991, Ex. 26–948) found no gender difference in workers' compensation claims for CTS. Burt, Hornung, and Fine (1990, Ex. 26–698) found no gender difference in reporting of neck or upper-extremity MSD symptoms among newspaper employees using video display terminals (VDTs). Nathan *et al.* (1988, Ex. 26–990; 1992, Ex. 26–988) found no gender differences for CTS. In contrast, Hagberg and Wegman (1987, Ex. 26–32) reported that neck and shoulder muscular pain is more common among females than males, both in the general population and among industrial workers.

Whether the gender difference seen with some MSDs is due to physiological differences or differences in exposure is unclear. One laboratory study, Lindman *et al.* (1991, Ex. 26–976), found that women have more type I muscle fibers in the trapezius muscle than men, and have hypothesized that myofascial pain originates in these type I muscle fibers. Ulin *et al.* (1993, Ex. 26–223) noted that significant gender differences in work posture were related to stature and concluded that the lack of workplace accommodation to the range of workers' height and reach may, in part, account for the apparent gender differences.

The fact that more women are employed in hand-intensive jobs and industries may account for the greater number of reported work-related MSDs among women. Bystrom *et al.* (1995, Ex. 26–897) reported that men were more likely to have de Quervain's disease than women; they attributed this to more frequent use of hand tools.

The reporting bias may exist because women may be more likely to report pain and seek medical treatment than men (Armstrong *et al.*, 1993; Hales *et al.*, 1994). Some studies have reported that workplace risk factors account for increased prevalence of MSDs among women more than personal factors (*e.g.*, Armstrong *et al.* 1987, Ex. 26–1110; McCormack *et al.* 1990, Ex. 26–1334). In a recent evaluation of Ontario workers' compensation claims for repetitive strain injury (RSI), Asbury *et al.* (1995, Ex. 26–250) reported a relative risk (RR) for female to male claims ranging from 1.3 to 1.6 across industries. Within five different broad occupational categories, females were approximately 2 to 5 times as likely to have a lost-time RSI claim. No information on gender differences in hand-intensive jobs was reported. Many researchers have noted that men and women tend to be employed in different jobs.

Smoking. In the Viikari-Juntura *et al.* (1994, Ex. 26–873) prospective study of machine operators, carpenters, and office workers, current smoking (OR: 1.9; 95% CI: 1.0–3.5), was among the predictors for change from "no neck trouble" to "severe neck trouble." In a study of Finnish adults aged 30 to 64 (Makela *et al.* 1991, Ex. 26–980), neck pain was found to be significantly associated with current smoking (OR: 1.3; 95% CI: 1.0–1.61) when the logistic model was adjusted for age and gender. However, when the model included mental and physical stress at work, obesity, and parity, then smoking (OR: 1.25; 95% CI: 0.99–1.57) was no longer statistically significant (Makela *et al.* 1991, Ex. 26–980). With univariate analysis, Holmstrom (1992, Ex. 26–36) found a prevalence rate ratio (PRR) of 1.2 (95% CI: 1.1–1.3) for neck/shoulder trouble in "current" smokers vs. people who "never" smoked. But using multiple logistic regression, when age, individual, and employment factors were in the model, only "never smoked" contributed significantly to neck/shoulder trouble.

While investigating reasons for higher compensation claims for CTS in certain employee groups, Nathan *et al.* (1996, Ex. 26–882) evaluated the effects of tobacco, caffeine, and alcohol on the prevalence of median entrapment neuropathy at the wrist, CTS symptoms, and CTS confirmed by nerve conduction studies among industrial workers (nonclaimants and working patients referred for upper-extremity symptoms) who volunteered for the study. Nathan *et al.* (1996, Ex. 26–882) stated that greater use of tobacco combined with greater consumption of caffeinated beverages and alcohol abuse was associated with more median nerve slowing, more specific hand/wrist symptoms, and more electrophysiologically confirmed CTS. However, the effects explained only a small portion of the total risk.

Toomingas *et al.* (1991, Ex. 26–1019) found no associations between multiple health outcomes (including tension neck syndrome, rotator cuff tendinitis, CTS, or problems in the neck/scapula or shoulder/upper arm) and nicotine habits among platers, assemblers, and white collar workers. In a case/referent study, Wieslander *et al.* (1989, Ex. 26–1027) found that smoking or using snuff was not related to CTS among men operated on for CTS.

Several papers have presented evidence that a positive smoking history is associated with low-back pain, sciatica, or intervertebral herniated disc (Finkelstein 1995, Ex. 26–369; Frymoyer, Pope, and Clements 1983, Ex. 26–950; Svensson *et al.* 1983, Ex. 26–1158; Kelsey *et al.* 1984, Ex. 26–152); whereas other papers have found a negative relationship (Kelsey, Golden, and Mundt 1990, Ex. 26–52; Riihimaki *et al.* 1989, Ex. 26–997). Boshuizen *et al.* (1993, Ex. 26–81) found a relationship between smoking and back pain only in those occupations that required physical exertion. In their study, smoking was more clearly related to pain in the extremities than to pain in the neck or the back. Deyo and Bass (1989, Ex. 26–105) observed that the prevalence of back pain increased with the number of pack-years of cigarette smoking and with the heaviest smoking level. Heliovaara *et al.* (1991, Ex. 26–959) only observed a relationship in men and women older than 50 years. Two studies did not find a relationship between sciatica and smoking among concrete reinforcement workers and house painters (Heliovaara *et al.* 1991, Ex. 26–959; Riihimaki *et al.* 1989, Ex. 26–997).

Several explanations for the relationship with smoking have been postulated. One hypothesis is that back pain is caused by coughing from smoking. Coughing increases the abdominal pressure and intradiscal pressure and puts strain on the spine. A few studies have observed this relationship (Deyo and Bass 1989, Ex. 26–105; Frymoyer *et al.* 1980, Ex. 26–707; Troup *et al.* 1987, Ex. 26–1307). The other mechanisms proposed include nicotine-induced diminished blood flow to vulnerable tissues (Frymoyer, Pope, and Clements 1983, Ex. 26–950), and smoking-induced diminished mineral content of bone causing microfractures (Svensson *et al.* 1983, Ex. 26–1158). Similar associations with diminished blood flow to vulnerable tissues have been found between smoking and Raynaud's disease.

Strength. Some epidemiologic support exists for the relationship between back injury and a mismatch of physical strength and job tasks. Chaffin and Park (1973, Ex. 26–1115) found a sharp increase in back injury rates in subjects performing jobs requiring strength that was greater than or equal to their isometric strength-test values. The risk was 3 times greater in the weaker subjects. In a second longitudinal study, Chaffin *et al.* (1977, Ex. 26–1111) evaluated the risk of back injuries and strength and found the risk to be 3 times greater in the subjects without lower static strength. Keyserling, Herrin, and Chaffin (1980, Ex. 26–970) strength-tested subjects, biomechanically analyzed jobs, and assigned subjects to either stressed or non-stressed jobs. Following medical records for a year, they found that job matching based on strength criteria appeared to be beneficial. In another prospective study, Troup, Martin, and Lloyd (1981, Ex. 26–1456) found that reduced strength of back flexor muscles was a consistent predictor of recurrent or persistent back pain, but this association was not found for first-time occurrence of back pain.

Other studies have not found the same relationship with physical strength. Two prospective studies of low-back pain reports (or claims) of large populations of blue collar workers (Battié *et al.* 1989, Ex. 26–72; Leino, Aro, and Hasan 1987, Ex. 26–1142) failed to demonstrate that stronger (defined by isometric lifting strength) workers are at lower risk for low-back pain claims or episodes. One study followed workers for 10 years after strength testing and the other followed workers for a few years. Neither of these studies included precise measurement of exposure level for each worker, so the authors could not estimate the degree of mismatch between workers' strength and task demands. Battié compared workers with back pain with other workers on the same job (by isometric strength testing) and did not find that workers with back pain were weaker. In two studies of nurses (Videman *et al.* 1989, Ex. 26–1155; Mostardi *et al.* 1992, Ex. 26–986), lifting strength was not a reliable predictor of back pain.

When examined together, these studies reveal the following: the studies that found a significant relationship between strength and back pain used more thorough job assessment analysis and focused on manual lifting jobs. However, these studies only followed workers for periods of 1 year, and whether this same relationship would hold over a much longer working period remains unclear. The studies that did not find a relationship, although they followed workers for longer periods of time, did not include precise measurements of exposure level for each worker, so they could not assess the strength capabilities that were important in the jobs.

Anthropometry. Weight, height, body mass index (BMI) (a ratio of weight to height squared), and obesity have all been identified in studies as potential risk factors for certain MSDs, especially CTS and lumbar disc herniation. Obesity seems to play a small but significant role in the occurrence of CTS (see Section B.4.a). Anthropometric data are conflicting, but in general indicate that there is no strong correlation between stature, body weight, body build, and low-back pain.

Few studies examining anthropometric risk factors in relationship to CTS have been occupational epidemiologic studies; most have used hospital-based populations that may differ substantially from working populations. Nathan *et al.* (1988, Ex. 26–990; 1992, Ex. 26–989; 1994, Ex. 26–517) have published several papers about a single industrial population and have reported an association between CTS and obesity; however, the methods employed in their studies have been questioned in a number of subsequent publications (Gerr and Letz 1992, Ex. 26–384; Mackinnon *et al.* 1997, Ex. 26–1309; Stock 1991, Ex. 26–1010; Werner *et al.* 1994, Ex. 26–237). Several investigators have reported that their industrial study subjects with CTS were shorter and heavier than the general population (Cannon *et al.* 1981, Ex. 26–1212; Dieck and Kelsey 1985, Ex. 26–944; Falck and Aarnio 1983, Ex. 26–1122; Nathan *et al.* 1992, Ex. 26–989; Werner *et al.* 1994, Ex. 26–237; Wieslander *et al.* 1989, Ex. 26–1027).

Werner *et al.* (1994, Ex. 26–237) studied a clinical population requiring electrodiagnostic evaluation of the right upper extremity, patients classified as obese (BMI > 29) were 2.5 times more likely than slender patients (BMI < 20) to be diagnosed with CTS. These researchers developed a multiple linear-regression CTS model (with the difference between median and ulnar sensory latencies as the dependent variable). The regression highlighted BMI as the most influential variable, but still only accounted for 5% of the variance in the model. In Nathan's (1994, Ex. 26–517) logistic model, BMI accounted for 8.6% of the total risk; however, this analysis used both hands from each study subject as separate observations, although they are not independent of each other. Falck and Aarnio (1983, Ex. 26–1122) found no difference in BMI among 17 butchers with (53%) and without (47%) CTS. Vessey, Villard-Mackintosh, and Yeates (1990, Ex. 26–229) found that the risk for CTS among obese women was double that for slender women.

Nordstrom *et al.* (1997, Ex. 26–900), in a study of risk factors for CTS in a general population, concluded that BMI is one factor that seems to have a causal relation to CTS. These researchers found that for each increase of one unit of BMI, about 6 pounds for the average-sized adult, risk of CTS increases by 8%. Werner *et al.* (1997, Ex. 26–718), in a study at five different worksites (four industrial, one clerical), concluded that obesity (BMI > 29), industrial work, and age were independent risk factors for median mononeuropathies. Their study, which did not define specific work-related exposures, showed no significant interaction between work activity and obesity. However, the authors caution interpretation of the data and urge more investigation. It has been suggested that relationship of CTS with BMI involves increased fatty tissue within the carpal canal or increased hydrostatic pressure throughout the carpal canal in obese persons compared with slender persons (Werner 1994, Ex. 26–237).

Two other anthropometric risk factors, carpal tunnel size and wrist size, have been suggested as risk factors for CTS; however, some studies have linked both small and large canal areas to CTS (Bleecker *et al.* 1985, Ex. 26–934; Winn and Habes 1990, Ex. 26–1029).

Schierhout *et al.* (1995, Ex. 26–403) found that short stature was significantly associated with pain in the neck and shoulder but not in the forearm, hand and wrist, or back, among workers in 11 factories. Height was not a factor for neck, shoulder, or hand and wrist MSDs among newspaper employees (Bernard *et al.* 1994, Ex. 26–842). Kvarnstrom (1983, Ex. 26–1201) found no relationship between neck/shoulder MSDs and body height in a Swedish engineering company with more than 11,000 workers.

Examples exist where biomechanical or physical risk factors have been labeled as individual factors. During the hearing for this rulemaking, Dr. Niklas Krause mentioned two of these examples, the first refers to people in the military who drive tanks, and found that tall people have more back pain than short people. A very logical explanation for the observation of increased back pain was provided by Dr. Krause:

> Well, if you have ever entered a tank, you know that it is not constructed for very tall people. There is not much room in there. [Tr. 1378]

And a second example, also provided by Dr. Krause:

> And we have actually found in our bus drivers, too, and we measured. We had their height and their weight. We found that an ergonomic evaluation of the bus fleet showed that the buses that are running in San Francisco were constructed for people—that is what the ergonomics Professor Thompson from Sanford found out when he looked at them—were constructed for people in the upper 10 percent of the North American population.
>
> You can imagine if you hire small people, Asians and women for example, into that work force and put them on this bus that the fit is bad. And actually, what we see is that over the years, the percentage of small drivers drops on that work force rapidly.
>
> When they enter, when people take the job, there is about 6 percent of drivers who are small, defined as * * * the lower half of the population. * * * After one to five years, only 2.9 percent of these small people are in the workforce. After six to ten years, only 1.3 percent. And after eleven to fifteen years, only 0.4 percent. This is a statistically significant trend. And it clearly shows you that people based on their smallness and misfit probably had to leave the occupation. [Tr. 1378–1380]

When used to determine whether a correlation exists between stature, body weight, body build and low back pain, anthropometric data are conflicting, but in general indicate that there is no strong correlation. Obesity seems to play a small but significant role in the occurrence of CTS.

Genetics. Another type of factor that affects an individual's capacity is genetic make-up. While the term "genetic susceptibility" is often heard; in reality both the amount of genetic information involved in the response and the variability of possible responses are vast and for the most part, not yet understood. The little bit of work done in this area was done by Videman, and is covered in a brief discussion in the section on the low back.

A worker's ability to respond to work factors may be modified by his or her own capacity. The capacity to perform work varies with gender and age, among workers, and for any individual over time. The relationship between biomechanical risk factors, both inside and outside the workplace, these individual as well as other factors and the resulting risk of injury to the worker is complex, but not unique to this OSHA standard.

For each of the "individual factors" discussed here, some studies report observing an increased risk for MSDs, others do not. What they have in common, is their ability to effect the capacity of individuals independently from biomechanical risk factors. In other words, in those studies where the effects of age, gender, smoking, etc. have been controlled for, the physical risk factors discussed here have been consistently shown to be associated with the development of MSDs in exposed populations. This means that, regardless of whether or not age plays a role in the development of a particular MSD in a particular population, the influence of biomechanical risk factors is independent from other associated factors. Furthermore, it has been demonstrated repeatedly, that reducing these biomechanical factors in the workplace results in reductions in the incidence of work-related MSDs.

The AFL/CIO found that the record provides some additional evidence that individuals may vary in their susceptibility to developing certain work-related MSDs, such as carpal tunnel syndrome, based on individual factors including age, body weight and gender (Ex. 26–1, Ex. 26–37, Ex. 500–71–93). They also found that other evidence in the record indicates that for back and neck pain or disorders, for example, no association with age, gender, height or weight has been established (Ex. 500–71–24, Tr. 1332).

The AFL/CIO point out that:

> Obviously the underlying principle of ergonomics is to fit the job to the worker, and so personal physical characteristics do come into play when evaluating certain MSD risk factors. A worker who is 5′2″ may have a much longer reach to an assembly line than her 6′0″ co-worker. But other than as relevant to evaluating exposure to known risk factors, personal characteristics and differences in susceptibility are irrelevant to this rulemaking. This regulation, and all other OSHA standards, are designed to regulate risks that are found in the workplace that may result in the development of an adverse outcome (MSDs) in workers who are exposed to risk factors which have been demonstrated to cause MSDs. The ergonomics regulation is consistent with OSHA's responsibility to regulate hazards which are present in the workplace. To shift the focus toward personal characteristics, as some industry opponents have argued, only clouds this issue by blaming the victims. [Ex. 500–218]

On this same subject, Dr. Frederick Gerr, Emory University (Tr. 1525–26):

> Some will argue that personal factors, such as gender and body weight, are the cause of these disorders among American workers, rather than ergonomics hazards in the workplace. The fact that personal characteristics can increase the risk for these disorders in no way undermines the evidence that work has been clearly shown to increase their risk as well.
>
> The blame-the-victim approach to these disorders is both scientifically and ethically bankrupt. Virtually all occupational illnesses, including asthma, cancer, skin disease, peripheral and central nervous system disorders, and many others, have causes that extend outside of the workplace. This fact does not lessen the added burden of disease that occupational exposures produce.

Non-Work Leisure Activities

The commenters (*e.g.*, Exs. 30–2493, 31–324, 30–3368, 30–605, 30–3783, Tr. 5073) also raise the issue of the relationship of "non-work" to the development of MSDs. By this, OSHA assumes the reference is to those activities such as nonoccupational VDT use, hobbies, second jobs, and household activities, activities that may result in additional exposure to biomechanical factors similar to that the individual is experiencing at the workplace. If this assumption is correct, then "non-work" may actually refer to exposure to the same types of physical/biomechanical factors that may be additive to similar workplace exposure.

And, while it is true that the physical/biomechanical risk factors which increase the risk of MSDs at work can also be found outside of work and may lead to MSDs (Ex. 500–71–93). However, according to Dr. Nicholas Warren from the University of Connecticut (Tr. 1077–78):

> It is very seldom the case that home risk factors are encountered with the same intensity or the same duration as they are encountered in the workplace.

On the same subject, the AFL/CIO (Ex. 500–218) notes:

> Opponents of the standard, while arguing that there is no evidence that physical factors at work cause MSDs, also simultaneously argue that it is non-work leisure physical activities which cause MSDs and that an OSHA standard cannot regulate adverse health conditions and exposures to risk factors which are partially, primarily or exclusively the result of non-work activities (Ex. 32–241–4).

For most musculoskeletal disorder cases, "workplace factors are the predominant risk and it is upon these risks, obviously, that the OSHA proposed rule focuses (Tr.1079). Other evidence in the record confirms that there is little or no impact on the development of MSDs related to the back from non-work participation in sports, exercise, and leisure time physical activity (Ex. 500–71–24, Ex. 500–71–32, Ex. 502–510).

The AFL/CIO also states:

> Thus the record evidence suggests that the non-work exposures to risk factors rarely, if ever, occur at the same frequency, duration or magnitude as workplace exposures. Even where workers are exposed to non-work risk factors off the job, it is important to point out that this standard is designed only to decrease exposures to biomechanic risk factors occurring at the workplace. An analogy may be drawn to the risks of incurring hearing loss from excessive exposure to noise. Exposure to noise at levels and durations which can cause or contribute to noise-induced hearing loss can and do occur both at the workplace as well as in non-work situations. While these work and non-work exposures and risks of developing hearing loss exist, OSHA's noise standard is confined exclusively to addressing excessive noise exposures in the workplace. [Ex. 500–218]

And from Dr. Nicholas Warren, University of Connecticut (Tr. 1078–79):

> When I work with an individual with, for instance, carpal tunnel syndrome, carrying out forceful, repetitive tasks over most of a nominal 40 hour work week and then often into another 10 hours of voluntary overtime, it's painful to hear an insurer gleefully inform me that this person bowls in a league on Saturday night. It is equally painful to hear the worker blame him or herself by saying, "That's probably because I knit," when, in fact, a clear objective assessment of the workplace risk factors reveals that these are much more important in the etiology of his or her disease.

OSHA concludes that, in general, each individual's capacity is affected differently by many factors including some of those presented here: age, gender, smoking, physical activity, strength, anthropometry, genetic factors and activities outside the workplace. This is also true in the more specific case of the development of work-related MSDs. However, it is important to remember that exposure to biomechanical factors in the workplace is independent of those factors that each individual brings to the workplace, *i.e.*, when the influence of individual factors is controlled for in studies, effects due to exposure to biomechanical factors are still observed . It is also true that in the vast majority of cases, where exposure to biomechanical exposures is high, the effects due to biomechanical exposures are far greater than those associated with these types of individual factors.

5. Role of Psychosocial Factors in the Etiology of MSDs

The role of psychosocial factors in the etiology of MSDs was a subject of much debate during the rulemaking. Many participants, in particular the Chamber of Commerce (Ex. 500–188), Gibson, Dunn & Crutcher (Exs. 32–241–4, 500–197), and several research and medical scientists who testified on behalf of UPS (Exs. 32–241–3–2, 32–241–3–3, 32–241–3–5, 32–241–3–8, 32–241–3-12), criticized the proposed rule for its failure to take into account the contribution of psychosocial risk factors to MSD causation and exacerbation, believing that psychosocial factors play a significantly greater role than do biomechanical risk factors in the development of MSDs and the disabilities associated with them.

Much of the scientific literature that addresses the etiology of MSDs has examined aspects of the social and psychological environment that may have a causal or moderating role in MSD development and exacerbation. In this part of the Health Effects section, OSHA first discusses what is meant in the literature by the term "psychosocial factors." Following this discussion, OSHA summarizes the expert testimony of witnesses and rulemaking participants who have evaluated the body of psychosocial literature as it relates to the work-related risk of MSDs. Finally, OSHA presents its own literature review, summarizing specific studies contained in the rulemaking docket that have examined and compared the roles of biomechanical and psychosocial factors in the etiology of MSDs, and summarizes several literature reviews that have been published on this topic.

Definition of Psychosocial Factors

The study of psychosocial factors as it applies to the study of work-related MSDs is surrounded by a measure of confusion because there are several very different definitions of "psychosocial" used in common and in technical parlance. Lack of clarity and consensus in defining psychosocial factors was addressed by some researchers at the public hearing (Tr. 867–868, 1306, 17443). There are three general concepts of psychosocial factors that apply. Most researchers who have examined the role of psychosocial factors in the etiology of MSDs have emphasized the external aspects of the psychological and social work environment that cause the worker to experience "stress", a condition of chronic or prolonged arousal of the human "flight or fight" mechanisms that has been linked to a wide variety of negative health outcomes, including MSDs. The primary aspects of the psychosocial work environment include level of psychological job demands, level of worker control over the job process, and level of social support received from co-workers, supervisors and the organization. Some researchers focus on additional conceptualizations of psychosocial exposures, including job security, monotony, and job satisfaction (for example, Krause, 1998, Ex. 38–242, Bigos, 1991b Ex. 26–1242). Psychosocial factors reflecting these external aspects of the work environment have been the subject of investigation in nearly all of the studies and literature reviews discussed in this section.

As is the case with biomechanical risk factors, proposed exposure-outcome relationships for psychosocial factors are multifactoral, *i.e.*, several of these factors may be in play in any given situation, and may combine and interact in complex ways that are difficult to study and understand (Bongers *et al.*, 1993, Ex. 26–1292, Bernard, 1997, Ex. 26–1 Warren *et al.*, 2000a, b, Exs. 38–75, 38–73). It is unlikely that these psychosocial workplace risk factors occur and act in isolation of biomechanical risk factors (Tr. 868–869, 1264, 5942–5943, NIOSH 1997 (Ex. 26–1), NAS 1999 (Ex. 26–37)).

A growing body of literature also identifies aspects of organizational structure, technology, policy, and culture as potential contributors to occupational disease and characterizes them as organizational risk factors (Shannon, *et al.*, 1996, Ex. 26–1368, 1997, Ex. 26–1369, Warren, 1997, Ex. 38–72, Warren *et al.*, 2000a, Ex. 38–75). Organizational risk factors are proposed as the underlying bases of work design in the company; through their effect on work organization, they determine levels of both psychosocial and biomechanical risk factors experienced by employees. It is this common set of roots that results in the strong co-variation of psychosocial and biomechanical risk factors noted below. The second concept of psychosocial factors that has been used in the literature relates to the internal characteristics of the worker's psychological makeup that affect how he/she appraises, processes and reacts to external biomechanical and psychosocial factors, and thus moderates how these external factors are experienced internally. There are studies demonstrating that individual psychological factors can increase susceptibility to MSD development and affect MSD recognition and reporting (Linton, 2000, Ex. 502–413, NAS, 1999 Ex. 26–37). Emerging research sugg influence care-seeking and disability than initial onset of disease (Linton, 1992, 2000, Ex. 502–413 ests that internal psychological factors more strongly, Waddell & Burton, 2000, Ex. DC–151–A). Some researchers and physicians combine internal and external psychological factors in their definition of psychosocial factors; for example, Dr. Raymond Bellamy, an orthopedic surgeon testifying on behalf of UPS *et al.*, included such factors as dislike of job, recent poor performance evaluation, depression and anxiety, hypochondriasis, and desire for narcotics in his description of psychosocial factors (Ex. 32–241–3–3). Dr. Arthur Barsky, also testifying on behalf of UPS *et al.*, stated that psychosocial factors (his use of the term conflates external factors and internal psychological factors) "exacerbate, perpetuate, and maintain these [musculoskeletal] symptoms and amplify the disability they engender" (post-testimony comments, p.1, Ex. 500–118–1). Thus, it is not always clear in the literature or in the testimony contained in the record when the term "psychosocial factors" is being used to refer to external psychological or social workplace factors, internal psychological makeup of the worker, or both.

The third concept of psychosocial factors relates to aspects of the legal, insurance and medical environment that influence a worker's tendency to identify a particular constellation of symptoms as a disease. At its most extreme, this definition is used to claim that workers make up and fake disease, for "secondary gain". A broader interpretation is the argument that these aspects of legal and medical recognition and possible financial gain may subtly, even unconsciously influence a worker's honest identification of symptoms as a disease and predisposition to report it.

Although individual psychological factors or medical/legal factors may affect MSD perception and reporting to a degree, it is unlikely that they play a major causal role in the etiology of MSDs. This is because the increased prevalence and incidence of MSDs seen among workers who are highly exposed to biomechanical risk factors cannot be adequately explained primarily by psychological factors given the present state of the evidence. As the discussion in this Health Effects section has demonstrated, the epidemiological, laboratory, psychophysical, and intervention literature demonstrating quantifiable links between biomechanical exposures and MSD outcomes is overwhelming. Many studies have demonstrated substantial differences in MSD incidence and prevalence between companies and industry sectors that correlate strongly with the presence of physical risk factors (for example, Franklin *et al.*, 1991, Ex. 26–948, NAS, 1999, Ex. 26–37, see also the Risk Assessment section (Section VI) of this preamble). Thus, it is highly unlikely that an individual with psychological tendencies towards negative reactions at work or tendencies to seek out care-givers would preferentially select themselves into physically demanding jobs. It is also impossible to imagine how prospects for secondary gain would be differentially distributed into occupations or industry sectors that involve highly physical work.

Consequently, this part of the Health Effects section focuses on the large number of studies that have simultaneously examined the roles of biomechanical risk factors along with psychosocial factors that relate to external aspects of the psychological and social work environment. These studies generally represent the most recent studies of work-related MSDs in the literature.

Discussion of Testimony on the Psychosocial Literature

Based on these studies, the Chamber of Commerce (Ex. 500–188) and Gibson, Dunn & Crutcher representing UPS, Anheuser-Busch, the National Coalition on Ergonomics, and others (*e.g.*, Exs. 32–231–4, 500–197, 32,435, 30–3346, Tr. 3655) were critical of OSHA emphasizing the role of biomechanical risk factors over psychosocial factors in its scientific literature review. For example, in their post-hearing brief, Gibson, Dunn & Crutcher commented that

> The science has shown that where psychosocial factors in particular are considered, they generally overwhelm the weak and inconsistent associations between biomechanical exposures and the reporting of MSDs. Yet the * * * [A]gency dismissed the validity of psychosocial factors in cavalier fashion * * * [Ex. 500–197, p. I–33]

Similarly, the Chamber of Commerce stated that "The Agency has egregiously ignored each and every one of these indisputably relevant factors * * *" (Ex. 500–188), and explained the necessity for OSHA to evaluate the role of psychosocial factors in the workplace:

> * * * [D]etermining why individuals feel the need to report and/or to seek medical care for such complaints is a complex problem involving not only the physical exposures, but psychosocial factors such as job satisfaction, ability to control the work environment, interpersonal relationships at work, and the like * * * And, in the vast majority of studies that have assessed whether biomechanical workplace factors and psychosocial factors cause musculoskeletal complaints, psychosocial factors are just as significant, or more significant than, biomechanical factors. (Ex. 500–188, p. 41)

In addition, several research and medical scientists testifying on behalf of UPS *et al.* stated in written or oral comment that the scientific literature strongly supported that psychosocial factors play a dominant role in the etiology of MSDs (Exs. 32–241–3–2,32–241–3–3, 32–241–3–5, 32–241-3–8, 32–241–3–12). For example,

Dr. Alf Nachemson concluded a review of the literature by stating that

> * * * [t]he research indicates that psychosocial factors are not simply an overlay but rather an integral part of the pain disability process that includes emotional, cognitive and behavioral aspects * * * [T]here was strong evidence of the highest level that psychosocial variables generally have more impact than biomedical or biomechanical factors on pain disability." (Ex. 32–241–3–12, p. 13)

Dr. Norton Hadler stated in written comment that

> Associations between disabling regional musculoskeletal symptoms and psychosocial variables overwhelm and explain away any and all associations with biomechanical exposures. (Ex.32–241–3–8, p. 18)

Taking a more moderate interpretation of the literature, Dr. Arthur Barsky agreed that MSDs are not entirely a psychosocial problem; however, he felt that ignoring them in designing intervention programs can make the problem worse (Ex. 500–118–1, p. 1). At the public hearing, he explained that

> * * * [workers'] symptoms really are better understood as a social communication, as a kind of non-verbal way of responding to difficulties in the workplace—job dissatisfaction, role conflicts, insecurity around the job, a whole variety of psychosocial work conditions—and to hear these as a biomedical complaint is to totally miss the point * * * What really concerns me, is * * * [that complaints of MSD symptoms are] a kind of social communication * * * a metaphor for life stress, for psychosocial distress * * * and the response that too often is made to a symptom like that, is [an inappropriate] referral to orthopedics. Tr. 17043–17044]

Dr. Barsky illustrated his point with an example of a widowed mother of two worked two jobs and visited the emergency room of a hospital complaining of tired feet [Tr. 17043–17044], and viewed the proposed ergonomics standard as an inappropriate response to such an "interpersonal communication" (Tr. 17044).

Other scientists testifying on behalf of the UPS echoed the conclusions reached by Dr. Nachemson in his literature review and Dr. Bigos, who referred to his groups Boeing study (Ex. 26–1241, 26–1242,26–1393) in contending that low back pain (LBP) is primarily a psychosocial phenomenon (Exs. 32–241–3–2, 32–241–3–5). Other commenters also remarked on the importance of psychosocial factors in the development of MSDs (*e.g.*, Exs. 32–435, 30–3346, 30–3086, 30–536, 30–4046, 30–1070, Tr. 3655).

Many of OSHA's scientific witnesses disputed these interpretations of the psychosocial literature, stating that the literature is not in conflict with the causal relationship that has been demonstrated between exposure to biomechanical risk factors and development of MSDs, and that psychosocial factors had generally less of an influence than biomechanical factors in these studies (Tr. 842, 874, 1087, 1206, 1364, 1537–1540). For example, Dr. Thomas Armstrong testified that

> * * * [M]ore than a critical mass of epidemiological literature shows that biomechanical factors are important predictors of the occurrence of musculoskeletal disorders and the elevated risk of harm.
>
> In studies where we have included both psychosocial and physical risk factors, the physical factors come out as the strongest predictor. [Tr. 842]

Dr. Laura Punnett testified that "* * * the impact of physical exposures at work is beyond that explained by demographics, medical history, psychosocial features of the work environment or other factors" (Tr. 874). Similarly, Dr. Nicholas Warren testified that in studies that have measured both biomechanical and psychosocial factors

> * * * we almost always find that both contributed. If you control for psychosocial risk factors[,] which well-designed studies allow you to do, you'll find a strong contribution from biomechanical risk factors and that it generally, not in all workplaces, but in most workplaces, is a larger effect than that of the psychosocial risk factors. [Tr. 1087]

When asked whether he would agree with Gibson, Dunn & Crutcher's statement in their pre-hearing submission that "a majority of medical experts who study the causes of MSDs believe most chronic workplace pain is caused by psychosocial issues" (Ex. 32–241–4, p. 36), both Dr. Bradley Evanoff and Dr. Fred Gerr disagreed. Dr. Evanoff believed the opposite was true, that "the majority of people studying work-related musculoskeletal disorders * * * feel that physical exposures are a very strong risk factor" Tr. 1358). Dr. Gerr stated that he was "aware of absolutely no basis in the medical or scientific literature that [would] substantiate that statement" (Tr. 1538). Both also strongly disagreed (Tr. 1538–1539) with Dr. Hadler's statement in his written testimony that psychosocial factors "overwhelm and explain away any and all associations with biomechanical factors" (Ex.32–241–3–8, p. 18).

Several other researchers and medical scientists appearing at the hearing on their own behalf disagreed with the UPS witnesses assessments that psychosocial factors predominate in the etiology of MSDs (Tr. 2838, 2840, 7857–7858, 9504, 9880). Dr. George Piligian of the Mt. Sinai Center for Occupational and Environmental Medicine, when asked whether it was appropriate for OSHA to emphasize the role of biomechanical factors in its proposed rule given the evidence on psychosocial factors, responded with an analogy:

> * * * [Suppose] a person is thirsty and has come from the desert, and if you have only half a glass of water to offer that person[.] * * * Someone argued and said * * * I don't think we should give this person that half a glass of water until it's full * * * I would venture to say that the person who is thirsty would probably beg you to give them that half a glass of water, then, go back and fill it * * * .
>
> We are doing what we can with the knowledge we have rather than using the argument, which I find actually counterintuitive * * * that we must have every single thing that we know of in place before we proceed. [Tr. 7857–7859]

Some of OSHA's expert witnesses who are actively engaged in research on work-related MSDs testified that an important finding from the more recent literature is that biomechanical risk factors have been shown to be associated with MSDs independently from psychosocial factors (Tr. 1327–1328, 1331–1332, 1335, 1343, 1365, 1412). Dr. Niklas Krause, in testifying on his own prospective study of public transit operators and low back disorders (Ex. 500–87–2), stated that

> The main result * * * is that both biomechanical and psychosocial job factors were independently associated with spinal disorders * * * [I]ndependent positive dose response relationships were also found for ergonomic problems * * * I conclude from this new high quality evidence [referring to the Loisel *et al.*(Ex. 38–28) randomized trial study] and the literature that has been already collated by OSHA [in its preamble to the proposed rule and Health Effects Appendices (Ex. 27–1) that high-quality epidemiological studies confirm that physical work place factors cause MSDs independently from individual worker characteristics and psychosocial job factors * * * [Tr. 1331–1335].

Dr. John Frank testified that the Kerr *et al.* case-control study (Ex. 38–82) in which he participated also found an association between MSDs and exposure to biomechanical risk factors independent from psychosocial factors. When asked about the significance of that finding, Dr. Frank responded

> The importance particularly for the proposed standard or any public health efforts to reduce biomechanical hazards at work is that[,] * * * acting on biomechanical risk factors will bring risk reductions according to our understanding of the multifactorial causal process even if we are unable * * * at the present time to conclusively act to reduce psychosocial factors * * * [Tr. 1365–1366]

Dr. Frank also drew a parallel with successful efforts to control cholesterol blood levels to reduce heart disease incidence, despite "two dozen or more" other risk factors that contribute to heart disease because high cholesterol levels are independently associated with an increased risk of heart disease (Tr. 1365–1366).

In the preamble to the proposed rule, OSHA's focus on identification and control of biomechanical risk factors in the workplace was based on two considerations. First, OSHA preliminarily concluded that there was substantial evidence of a clearly demonstrated causal relationship between exposure to physical risk factors and MSD outcomes (64 FR 65926), and that most researchers who studied the etiology of MSDs placed emphasis on biomechanical risk factors. Second, research into role of psychosocial risk factors in the etiology of MSDs was considered to be a less mature field than that addressing the role of biomechanical risk factors, characterized by emerging methodology, as pointed out by Dr. Martin Cherniak at the hearing (Tr. 1307), and sometimes by inconsistent results. Thus, most interventions designed to address work-related MSDs focused on biomechanical, rather than psychosocial factors.

The 1997 NIOSH review (Ex. 26–1) on which OSHA relied heavily, examined psychosocial risk factors that might contribute directly and indirectly to musculoskeletal illness and injury. The review noted that the results from the literature were not entirely consistent, and that a lack of consensus on standard measurements and procedures might be one reason for lack of consistency. Perceptions of intensified workload, monotonous work, low job control, low job clarity, and low social support were associated with MSDs in some studies. NIOSH found that these associations, despite the variance in methods used to assess these factors, were significant in the better studies; however, the size of

effect was relatively weak compared to that of the biomechanical variables.

In his testimony, Dr. Frank (Tr. 1343–1345, 1397–1398) discussed the reasons for this inconsistency, relating it to the field being in the embryonic stage of understanding psychosocial effects, and to imperfect measurement instruments. He pointed out that the Institute for Work and Health study discussed below (Kerr *et al.*, 2000, Ex. 38–82) did not confirm findings of Bigos *et al.* (1991a, b, Exs. 26–1241, 26–1242, 1992, Ex. 26–1393) or Krause (1998, Ex. 500–87–2) that low job satisfaction contributed to risk. In contrast, Dr. Frank (Tr. 1344) noted that, in newer studies that simultaneously assessed the effect of physical and psychosocial factors, biomechanical loads make a consistent and generally stronger contribution to MSD outcomes.

Although psychosocial exposure assessment has grown rapidly in the last decade and is characterized by continually improving methodological developments, it is still a relatively young field. Measurement methodologies are not well standardized; this was addressed by Dr. Barbera Silverstein, who testified that there was no consensus on the kinds of psychosocial issues that should be studied or how they could be assessed "with the same rigor that has been * * * looked at [for] physical load factors" (Tr. 17444).

In addition, less is known about the causal relationship between psychosocial factors and MSDs. Many studies performed so far have been cross sectional, thus making it difficult to evaluate the temporal nature of the association (*i.e.*, whether psychosocial factors preceded the MSD or whether the presence of a disorder led to negative psychosocial outcomes). Dr. Punnett addressed this issue in her testimony:

> * * * [S]ince psychosocial factors may be perceived and reported differently by the worker after the development of musculoskeletal disorders, the reported associations are particularly difficult to interpret with respect to * * * [etiology].
>
> The occurrence of a work-related musculoskeletal disorder * * * may itself cause psychosocial strain. And that strain may also subsequently slow or interfere with the recovery process without necessarily having been involved in the initial etiology. In this context, we should note that associations with cross-sectional * * * [studies] with physical exposures are far less ambiguous. [Tr. 869–870]

As a result, associations found between psychosocial exposures and MSD outcomes are, relative to biomechanical associations, less consistent and generally weaker (NAS, 1999, Ex. 26-37). Further, the underlying mechanisms are still not nearly as well understood as those developed for biomechanical associations (Tr. 1344–1345, NAS, 1999, Ex. 26–37). Similarly, understanding and evaluating psychosocial interventions is also in its infancy, making it difficult to design appropriate interventions.

None of the studies cited by either proponents or opponents of an ergonomics standard can demonstrate that any of the risk factors measured, whether biomechanical, psychosocial, personal, or demographic, can completely explain an increased prevalence or incidence of MSD outcomes. (In other words, the combined contribution of all factors to statistical models never comes close to explaining 100 percent of the variance between exposure groups in the outcome measure; there are always other, unmeasured factors involved.) Dr. Tapio Videman (Ex. 32–241–3–20), Dr. Arthur Barsky (Ex. 500–118–1) and most other researchers agreed that a simple biomechanical model of tissue wear and tear is not sufficient by itself to explain disease development in humans, which is characterized by complicated interactions with external environmental factors and individual characteristics. In fact, testimony at the hearing (Tr. 868, 1264, 5942–5943) made it clear that considering psychosocial and biomechanical factors to be separate kinds of exposures is a somewhat artificial distinction in that the two classes of stressors are strongly linked, both resulting from core aspects of the organization: its technology, culture and work organization.

For example, Dr. Punnett testified that

> There is also a recognized overlap between some characteristics of physical and psychosocial work environment.
>
> A repetitive, monotonous job on a machine paced assembly line can be described equally well by the ergonomist as consisting of stereotyped repetitive motion patterns with rigid pacing and few rest breaks or as having poor psychological job content with few opportunities to make decisions, work collaboratively with co-workers, utilize existing skills or learn new ones.
>
> And I suggest that the worker performing that job would be hard pressed to make a distinction between the physical and the psychosocial characteristics of that job. [Tr. 868–869]

Ms. Sue Rahula, an ergonomist technician with United Auto Workers, described how biomechanical exposure and the presence of an MSD can affect worker morale, which can be reflected in negative psychosocial outcomes:

> When you're feeling pain your morale is going to be low, your discomfort level is low, your attitude is bad, and you may be one of the silent sufferers. * * * When * * * we take our risk factor checklist out and we verify that, yes, these postures are awkward postures and when you add that along with the forces and the exertions that you're using that that's a possibility it sure could cause pain. It's no wonder the morale becomes low. And they [biomechanical and psychosocial factors] do intertwine. But the pain is usually the cause of [low morale], in my opinion, from what I see. [Tr. 5942–5943]

These underlying sources of biomechanical and psychosocial exposures can themselves be seen as a single exposure category known as organizational exposure (Warren, 1997, Ex. 38–72, Warren *et al.*, 2000a, b, Exs. 38–75, 38–73, Shannon *et al.*, 1996, 1997, Exs. 26--1368, 26–1369), which, as Dr. Warren described, recognizes that "the way work is organized will have an effect on the levels of both biomechanical and psychosocial work stresses" (Tr. 1264).

Summary of Primary Literature on Biomechanical and Psychosocial Factors

OSHA's review of the literature presented below shows that most of the best studies available suggest that MSDs are the result of a complicated combination of biomechanical and psychosocial factors, with the prevalence or incidence of MSDs being generally more strongly associated with biomechanical risk factors. Given the present state of research into MSD etiology, there can be little doubt that a multifactoral model, incorporating both biomechanical and psychosocial risk factors, would best explain the differences in MSD prevalence or incidence seen among various groups of workers. Nevertheless, from the testimony presented above and the review of the literature that follows, OSHA concludes that biomechanical risk factors contribute independently from psychosocial factors to MSD etiology, that the association between the risk of MSDs and exposure to biomechanical risk factors has been observed to be generally stronger than for psychosocial factors, and that, consequently, it is reasonable to design interventions that focus on exposures to biomechanical risk factors to reduce the risk of MSDs in exposed workers.

Because the scientific literature summarized in this section addresses the relative strength of association between MSD risk and two broad categories of workplace factors, and because of the potential for interacting or modifying effects between biomechanical and psychosocial factors, it becomes particularly important to consider certain elements of epidemiological study design to ensure that study results are appropriately interpreted. These design considerations include the following:

Best study design. Epidemiological studies can be of three general designs: cross-sectional, case-control, and prospective (longitudinal) cohort. Dr. Stanley Bigos presented a comprehensive review of the advantages and disadvantages of each study design (Ex. 32–241–3–4, pps. 7–9). OSHA also addressed general issues regarding study design and causal inference in a previous part of this Health Effects section. All researchers agree that prospective studies can most persuasively establish causality, with cross-sectional studies presenting the most potential problems in this area. In the absence of any other information, prospective studies are generally preferable. However, several factors may recommend against this design: in particular, the high cost of these studies and the dynamic nature of the modern workplace, which may change job classifications (and hence workers' exposures) over the follow-up period of the study.

Although cross-sectional studies identify associations and cannot by themselves permit a definite attribution of a causal relationship, it is still possible to draw inferences when one causal direction (*i.e.*, exposure precedes disease) is much more plausible than the alternative explanation (*i.e.*, disease precedes exposure). As Dr. Gerr noted in his testimony (Tr. 1525) the many cross-sectional studies showing an association between carpal tunnel syndrome and physical workplace factors strongly indicate that exposure to these workplace factors causes disease. This conclusion arises in part because it is illogical to postulate that the presence of CTS would cause exposure to physical factors (*i.e.*, workers select themselves into physically harmful jobs on the basis of disease status). Dr Gerr testified that this would be "like saying cancer causes smoking. It's as wrong as it is silly to hear" (Tr. 1525). However, for psychosocial factors such as poor job satisfaction or low supervisory support, it is more difficult to logically infer or exclude a temporal relationship between a psychosocial factor and an MSD; this was described by Dr. Punnett in her testimony (Tr. 869). That is, it cannot be known whether having poor job satisfaction preceded development of the MSD or whether the presence of the MSD is causing a worker to become less satisfied with their job. Thus, in evaluating the causal nature of psychosocial factors, the use of a prospective study design that follows groups of workers over time becomes particularly important to evaluate the temporal relationships between exposure to biomechanical risk factors, psychosocial factors, development of MSDs.

In addition, as was the case with the biomechanical literature reviewed in earlier parts of the Health Effects section, determination of exposure and health outcome by objective means, such as direct observation or measurement of exposure and medical assessment of health status, is preferable over sole reliance on worker self-reports because objective measures rule out the possibility of reporting bias (*e.g.*, the possibility that a worker's disease status might influence the self-report of exposure). This design consideration points to another difficulty in studying the role of psychosocial factors in that they can only be assessed by administering questionnaires or interviews.

Simultaneous assessment. It is obvious that to accurately assess the relative contribution of biomechanical and psychosocial risk factors to MSD causation and exacerbation, both classes of exposure must be measured.

Address collinearity. Levels of both biomechanical and psychosocial risk factors are in large part the result of the way work is organized, the technology and sector of the company, and the organizational policies and culture that drive work organization. Thus the two classes of stressor are generally highly correlated in a workplace (Tr. 868–869, 1264, 5942–5943). Concurrent analysis of exposure-outcome associations must be very careful to avoid modeling problems that arise from collinearity.

Assess both stressor categories with equal precision. Some studies assess both categories of exposure, but assess one with more precision or detail than the other. The category characterized in more detail presents fewer opportunities for non-differential exposure misclassification (which biases results towards a lower effect) and will thus show artificially elevated relative associations with outcome. Dr. Wells stated that a factor measured with poor precision in an epidemiological study will often not appear as a risk factor in statistical modeling (Tr. 1355).

Ensure adequate variance in all measures. Studies that assess both categories of exposure, but with little variance between exposure groups in one or the other category of exposure will generally not find effects associated with that category or measure. Regression analysis (a standard modeling method in many studies) cannot assess the contribution of an exposure if its magnitude or intensity is essentially the same in all study participants.

Assess both stressor categories at the same individual or group level. Studies that assess both categories of exposure, but at different levels of analysis (*i.e.*, the level of the individual worker versus groups of workers), will generally not find an effect for the variables measured at a higher (group) level of aggregation; this was addressed by Dr. Frank in his testimony (Tr. 1364–1365). For example, the Boeing study (Bigos, *et al.*, 1991a, b, Exs. 26–1241, 26–1242, 1992 Ex. 26–1393) assessed psychological and emotional variables at the individual level and biomechanical variables at the group level. This error also reflects violation of the preceding two criteria since measurement at the group level reduces both precision in the biomechanical exposure measure (compared to measuring exposure at the individual level) and variance in biomechanical exposure between groups. When one variable is aggregated or represented at the group level, as in the Bigos measurement of biomechanical risk, the variations in exposure within each group are lost; internal variance within each group is reduced to zero.

The studies summarized below relied on assessment of both biomechanical and psychosocial factors in the workplace. Thus, in accordance with the second criteria described above, studies were excluded if they did not assess one class of stressor or did not include both classes in multivariate analysis. Such studies are useless for the exploration of combined biomechanical and psychosocial effects.

The majority of the studies below demonstrate at least equal, and often stronger, associations with biomechanical stressors than with psychosocial. This fact, combined with the independent effects of both stressor classes, as discussed above, is sufficient to support OSHA's focus on biomechanical risk factors in the final rule. However, relative magnitude of the associations for biomechanical and psychosocial risk factors should only be seen as a qualitative indicator of relative strength of association with MSD prevalence or incidence. Actual quantitative effect sizes may not be comparable within or between studies for a number of reasons, including:

- Use of different measurement scales;
- Use of different analytical strategies to categorize risk levels; and

- Use of different outcome measures in different studies.

Table V–14. summarizes the key features of the design of each study as well as the range of measures of association for biomechanical and psychosocial factors.

Wickström & Pentti 1998 (Ex. 500–121–77). This 2-year prospective study of 117 white-collar and 189 blue-collar workers in two metal industry facilities assessed both biomechanical and psychosocial exposures (4 items each) at baseline, using equivalent levels of detail. Back pain was assessed twice in the follow-up period by questionnaire, and data on sick leave attributed to back pain and other MSDs (doctor diagnosis if over 3 days) was obtained from company records. The exposure assessment at baseline plus physician diagnosis at follow-up made this design capable of strongly implying causal status to both physical and psychosocial risk factors. As predictors of self-reported LBP, 3 physical exposures were predictive for both white collar (RRs: 2.82–6.19) and blue-collar workers (RRs: 2.49–3.67). Since other authors (Marras, 2000, Ex. 500–121–46) have hypothesized that psychosocial exposures have less effect if the physical load is high, it is interesting that psychosocial stress was predictive of LBP in white-collar workers, while none of the 4 psychosocial exposures were significantly predictive in blue-collar workers. However, sick leave was predicted for blue-collar workers by both biomechanical exposures (RRs: 1.72–2.04) and psychosocial (RRs 1.58–1.99). In general, this study supports the interpretation that MSDs are caused by both classes of risk factor, with biomechanical showing stronger effects.

TABLE V–14.—STUDIES ASSESSING BOTH BIOMECHANICAL AND PHYSICAL RISK FACTORS

Reference	Number of subjects	Study type	Exposure measure	Outcome measure	Study design	Results: outcome and effect
Association with Biomechanical Factors Stronger than with Psychosocial Factors (or effect size not reported)						
Wickström & Pentti (1998).	306	3	1	1, 2, 3	all	LBP & sick leave due to LBP; Physical RR: 1.97–8.19; Psychosocial RR: 1.56–1.59.
Bergqvist *et al.*(1995)	260	1	2	3	all	UE/LBP sympt./MD diag.; Physical OR: 3.1–7.4; Psychosocial OR: 2.1–7.4.
Kerr *et al.*(2000)	381	2	3	1	all	Reporting of LBP; Physical OR: 1.7–3.0; Psychosocial OR: 1.6–2.6.
Koehoorn *et al.*(1999)	4020	3	2	2	a, c	MSD symptoms & claims; Physical RR: 1.41–4.65; Psychosocial RR: 0.45–2.78.
Krause *et al.*(1996)	1449	3	1, 2	2	b, c	Spinal injury through WC; Physical OR: 3.04 (driving cable car); 0.37 (part-time driving: 20–30 hrs); Psychosocial OR: 1.50–1.56.
Latko *et al.*(1997, 1999)	352	1	2	1, 3	all	Symptoms, MD Dx of CTS; Physical OR (high repetition vs. low rep.): 2.32–3.23; Psychosocial OR: n.s.
Latza *et al.*(2000)	230	3	1	1	all	Self-reported LBP; Physical PR: 1.8–4.0; Psychosocial PR: n.s.
Leclerc *et al.*(1998)	1210	1	1	3	all	CTS by signs or NCV; Physical OR: 1.90–2.24; Psychosocial OR: 1.59–2.24.
Linton (1990)	22,180	3	1	1	all	Neck & LBP symptoms Univariate ORs; Physical: 0.86–2.95; Psychosocial: .15–2.60; Combined ORs: 2.42–3.65.
Ono *et al.*(1998)	575	1	1	3	all	Epicondylitis, MD Dx; Physical OR: 1.7; Psychosocial OR: 1.2.
Videman *et al.*(1989)	199	3	2	1	b, c	Incidence of back injury; Low skill OR: 37–156 (if also 3 hrs. strenuous working postures)
Bernard *et al.*(1992, 1994).	973	1	1, 2	1	all	UE symptoms; Physical OR: 1.4–2.5; Psychosocial OR: 1.4–1.7.
Faucett & Rempell (1994).	150	1	2	1	all	UE symptom severity, (effect measured by R^2 change): Physical: 0.11–0.15; Psychosocial: 0.03–.12.
Heliovaara (1987)	*592	3	1 (occ.)	3	none	Hospital Admission for disc herniation/sciatica; Occupational RR: 2.2–3.0; Psychic Distress: NR.
Josephson & Vangård, 1998	269	2	1	1	all	LBP medical visit; Physical OR: 2.3–8.7; Psychosocial OR: n.s.
Svensson & Andersson (1981).	940	**1	1	2	all	LBP sickness absence; Heavy Lifting (effect NR); Reduced overtime/monotonous work (effect NR).
Thorbjörnsson *et al.*(2000).	484	2	1	1	all	LBP med. visit or absence; Physical OR: 1.7–2.2; Psychosocial OR: n.s.; Interaction OR: 3.1–3.7.
Vingård *et al.*(2000)	2118	3	1	1	a, b	Care-seeking for LBP; Physical RR: 1.8–2.9; Psychosocial RR: 1.5–1.6.
Warren *et al.*(2000a)	845	2	1	1	all	NIOSH MSD case def.; Physical OR: 1.89–2.13; Psychosocial OR: 1.56–1.69.
Waters *et al.*(1999)	284	1	1, 2	1	all	Prevalence of LBP; Lifting Index OR: 1.04–2.20; Satisfaction OR: 4.57–7.65.
Burt *et al.*(1990)	834	1	1	1	all	UE Symptoms; Physical OR: 2.0–4.1; Dissatisfaction OR: 1.9–2.3.

TABLE V–14.—STUDIES ASSESSING BOTH BIOMECHANICAL AND PHYSICAL RISK FACTORS—Continued

Reference	Number of subjects	Study type	Exposure measure	Outcome measure	Study design	Results: outcome and effect
Lemasters *et al.*(1998)	522	1	1	3	c	Pain, all body parts, self-report and MD Dx; Physical OR: 2.3–3.5; Psychosocial OR: 1.6–2.9.
Scov *et al.*(1996)	1306	1	1	1	all	UE and low back symptoms; Physical OR: 1.64–2.80; Psychosocial OR: 1.43–2.04.
Warren *et al.*(2000b)	7712	1	1	1	all	MSD symptoms & pain; Physical β: 0.06–0.16; Psychosocial β: 0.04–0.12.
Hales *et al.*(1992, 1994)	533	1	1	1	a, b	UE MSD symptoms; Physical OR: 1.1–3.8; Psychosocial OR: 1.1–3.5.
Hoekstra *et al.*(1994)	108	1	1	1	a, b	MSD symptoms; Physical OR: 3.5–5.1; High Control: OR 0.6.
Houtman *et al.*(1994)	5865	1	1	1	b, c	Complaints: muscle/joint & back; chronic back problems; Physical OR: 1.36–1.62; Psychosocial OR: 1.20–1.35.
Association with Psychosocial Factors Stronger than with Biomechanical						
Viikari-Juntura & Riihimaki (2000).	5179	3	1	1	all	Radiating neck pain; Physical OR: 1.2–2.3; Psychosocial OR: 1.1–6.1.
Waters *et al.*(1999)	284	1	1, 2	1	all	Prevalence of LBP; Lifting Index OR: 1.04–2.20; Satisfaction OR: 4.57–7.65.
Elberg *et al.*(1995)	637	1	1	1	all	Neck & shoulder symptoms; Physical OR: 1.2; Psychosocial OR: 1.2–1.3.
Sauter (1984)	333	1	1	1	all	Somatic complaints; Physical β: 0.16–0.21; Psychosocial β: 0.19–0.26.
Warren *et al.*(submitted)	7712	1	1	1	all	LBP, absenteeism; Physical OR: 1.45–1.88; Psychosocial OR: 1.32–2.27.
Biomechanical Effect Not Significant						
Leino & Hänninen (1995).	902	3	1	1, 3	b, c	Back/limb symp. & MD Dx; Physical β: n.s.; Psychosocial β: .110–.146.
Bigos *et al.*(1991a)	3020	3	1, 2	2	none	Reporting back injury; Physical RR: n.s.; Psychosocial RR: 1.34–1.70.
Svensson & Andersson (1989).	1746	1	1	1	all	Low back pain; Physical n.s.; effect NR; Fatigue, dissatisfaction, worry; sig., but effect NR.

n.s.: not significant
NR: controlled for factor, but effect not reported
Table only notes statistically significant effects ($p<0.05$)
Key:
  Study Type:
    1—Cross sectional
    2—Case-control/Referent
    3—Cohort/Prospective
  Exposure Measure:
    1—Worker self-report
    2—Observation of job
    3—Instrumentation
  Outcome Measure:
    1—Worker self-report
    2—Observation/record
    3—Clinical findings
  Study Design
    a—Biomechanical and psychosocial factors studies with equal precision
    b—Biomechanical and psychosocial factors assessed at same individual or group level
    c—Adequate variance between groups in all measures
*case 2140 con.
** retro. outcome

Bergqvist, Wolgast, Nilsson, Voss 1995 (Ex. 26–1195). These investigators found a number of upper extremity diagnoses to be consistently associated with standard biomechanical risk factors (especially postural stressors, ORs 2.2–4.4, and lack of rest breaks, ORs 2.7–7.4); some personal factors (especially age and presence of children at home), task flexibility (OR 3.2) and quality of peer contacts (ORs 2.1–4.5) had independent associations. Although the study was cross-sectional, confidence in study findings is improved by the detailed physical examination used to determine outcome and the broad array of exposure measures (including individual factors, non-work risks, work organizational factors and biomechanical factors). Muscle problems in each body location showed a different pattern of personal, psychosocial and biomechanical stressor associations.

Faucett and Rempel 1994 (Ex. 38–67). This study of 150 newspaper editorial work found that upper extremity pain and numbness symptoms in VDT workers were related primarily to postural variables (R^2 changes 0.11–0.15), with smaller additions to model R^2s from psychological demands, decision latitude, and employee relationship with the supervisor (R^2 changes 0.03–0.12). The effects of postural variables on upper torso pain and stiffness were greater than those for pain and numbness (R^2 changes 0.19–0.32), while psychosocial effects were reduced (R^2 changes 0.01–0.08). Interaction terms between keyboard height and psychosocial variables added to the model R^2s (R^2 changes 0.04–0.15), suggesting that the effect of biomechanical variables can be modified by psychosocial variables. In this study, biomechanical stressors were clearly the dominant factor, but the size of the effect for interaction terms may have meaning for the mechanism of psychosocial action as being an effect modifier.

NIOSH Health Hazard Evaluations (Exs. 26–439, 26–842, 26–725). Three cross-sectional NIOSH studies, at the L.A. Times (Bernard, Sauter, Petersen, Fine, & Hales, 1992, Ex. 500–165–20, 1994, Ex. 26–439), Newsday (Burt, *et al.*, 1990, Ex. 26–842) and two Social Security Administration teleservice centers (Hoekstra *et al.*, 1994, Ex. 26–725) found associations of biomechanical risk factors (in particular, duration of VDU work) with MSD symptoms, while also finding independent associations of these symptoms with several psychosocial factors. Another NIOSH HHE at U.S. West Communications (Hales *et al.* 1992 (Ex. 26–727), 1994 (Ex. 26–131) did not find associations between symptoms and physical workplace characteristics other than use of bifocal glasses (OR 3.8), because the standardized workstations presented virtually no variance in biomechanical measures. Thus, psychosocial factors were dominant in the models, although work pressure (OR 1.1–1.2), workload surges (OR 1.2) and information processing demands (OR 1.2) probably represent a combination of physical and psychosocial exposures. See Table V–14. for strength of association estimated by multivariate logistic regression models in all these studies.

Kerr, *et al.*2000 (Ex. 38–82). Researchers at the Institute of Work and Health (IWH) have carried out several well-designed studies measuring both biomechanical and psychosocial stressor levels in detail. These studies demonstrate the independent contributions of biomechanical, psychosocial and organizational factors to models explaining back injury and accidents (Shannon *et al.*, 1996, 1997, Exs. 26–1368, 26–1369). The most recent IWH study (Kerr, *et al.*, 2000, Ex. 38–82), performed in concert with the Ontario Universities Back Pain Study (OUBPS) group, is a case-control study reviewed in detail by John Frank (Ex. 37–27). Subjects reported levels of physical demands (including perceived exertion) as well as psychosocial factors. In addition, videotape analysis and biomechanical modeling provided quantifiable estimates of actual spinal loading. These biomechanical measures acted independently to substantially increase risk of workers reporting new cases of LBP, after controlling for individual and psychosocial factors. In final models, the biomechanical risk factors demonstrated ORs of 1.7–3.0, while psychosocial risks were associated with ORs of 1.6–2.6. This study improved on earlier study designs by directly measuring forces on back during job performance. The case-control study also matched controls by actual job, allowing analysis of the degree to which job exposures influenced self-reported LBP. Compression, peak shear force, peak hand force were associated with doubled risk of LBP reporting. These findings are consistent with much of the other epidemiological data reviewed in this section. Thus this study strengthens confidence in the results of other studies that rely on less detailed exposure assessment and/or self-reported exposures and outcomes.

Krause *et al.*1997 (Ex. 38–267), 1997 (Ex. 38–266), 1998 (Ex. 500–87–2). Niklas Krause and colleagues, studying a cohort of San Francisco drivers, examined relationships between biomechanical and psychosocial exposures and neck and shoulder outcomes. The cross-sectional analyses (Krause *et al.*, 1997a, Ex. 38–267, 1997b Ex. 38–266) determined that both biomechanical and psychosocial job factors were separately and simultaneously associated with non-disabling neck and back pain. The 5-year longitudinal follow-up of this cohort (Krause *et al.*, 1998, Ex. 500–87–2) found that workers' compensation cases of spinal injury were predicted by a combination of biomechanical (measured by hours driving) and psychosocial risk factors at baseline. (See Krause testimony, Ex. 37–15). The physical risk factors addressed by this measure of hours spent driving included prolonged sitting, twisting/bending, vibration, and use of foot pedal (Krause testimony, Tr. 1376, Ex. 37–15). Although all measures were gathered at the same (individual) level, the surrogate measure for biomechanical exposure (hours spent driving) was a more generalized measure than the psychosocial data and thus subject to greater non-differential misclassification and consequent dilution of effect in statistical modeling. Psychosocial stressors demonstrated, on average, higher ORs than the surrogate physical measure of hours spent driving. This is an example of the fourth study design criterion discussed above: the factor measured in greater detail has a greater likelihood of showing stronger associations in the modeling. The fact that a biomechanical effect still emerged in the modeling strongly suggests that if physical exposures were measured in the same detail as psychosocial exposures, they would have demonstrated a larger effect in modeling; however, it cannot be known whether the resulting size of the effect for biomechanical factors would have surpassed that for psychosocial factors. For cable car operators, biomechanical factors were more strongly associated with back cases than were psychosocial factors.

In his written comments, Dr. Nortin Hadler (Ex. 32–241–3–8) demonstrated a basic misunderstanding of the research by taking the Krause studies to task for showing a biomechanical effect only for cable car drivers. The data did show that only cable car drivers' injury rate was significantly elevated when *compared* to diesel bus drivers. However, the pooled data for *all* drivers showed a highly significant increase (2.7 times) in injury rate between drivers who worked 20–30 hrs per week compared to those who worked 31–40, suggesting a significant effect related to biomechanical factors. Hours-per-week-driven was the study's surrogate measure for exposure to physical risk factors.

Latko *et al.*1997 (Ex. 38–122), 1999 (Ex. 38–123). These researchers performed a cross-sectional study with some of the most detailed exposure assessments to be found in the literature. The study, described elsewhere in the testimony (Franzblau, Ex. 37–3, Armstrong, Ex. 37–21) measured a wide variety of demographic, personal, and exposure variables, including 13 psychosocial parameters. It is distinguished by precise measurement of exposure variables and several levels of outcome measurement objectivity, ranging from symptom reports, through physical findings, to nerve conduction velocity (NCV) results. The contribution of the psychosocial variables did not reach significance in the final modeling, strongly implying that the effect of biomechanical factors predominates in these 3 manufacturing plants (testimony by Armstrong, Ex. 37–3, Franzblau, Ex. 37–21).

Nortin Hadler (post hearing comments, Ex. 500–118–1, p 7) cited this study as evidence for a lack of a significant association between repetitive motion and decrements in median NCV. These results were, in fact, marginally significant. Moreover, if a more conservative definition of CTS was used, (*i.e.*, 0.8ms threshold plus positive hand diagram report), the association was significant (Franzblau testimony, Ex. 37–21). In addition, Dr. Hadler failed to note either the wide range of significant associations found for repetition, symptom reports and tendinitis as indicated by physical exam findings, and that these associations did demonstrate a positive exposure-response relationship.

Warren 1997 (Ex. 38–72), Warren *et al.*2000 (Ex. 38–73). Nicholas Warren and colleagues at the University of Massachusettes at Lowell and at TNO, the Netherlands, performed analyses on the Dutch Monitor data set, collected from a broad sample of companies and industry sectors in 1993—a cross-sectional study. The data set contained completed questionnaires from 7,717 Workers in 528 companies that assessed in detail both workplace exposure to biomechanical and psychosocial risk factors and a variety of musculoskeletal and stress outcomes, as well as reports of extended sick leave. Controlling for gender, education and tenure on the job, the multivariate linear analyses found roughly equal contributions of both stressor classes to the pain and MSD symptom reports, with physical factors having a somewhat larger magnitude of effect (standardized regression coefficients of 0.06–0.16) than psychosocial (0.04–0.12). Logistic modeling of low back pain and absenteeism outcomes found similar results, with biomechanical ORs of 1.35–1.88 and psychosocial ORs of 1.32–1.64, excluding social support. However, low social support did demonstrate the highest OR (2.27) in the model explaining low back pain. The study was cross-sectional and thus could not definitively evaluate temporal associations. However its large size and wide range of companies and sectors allowed precise separation of biomechanical and psychosocial exposure-outcome associations, without collinearity problems.

Dr. Alf Nachemson criticized this study (post-hearing comments, Ex. 500–118–1), confusing it with a completely different study of a different database submitted to *Spine*. The results of this study are reported in a doctoral thesis (Warren, 1997, Ex. 38–72) and an article submitted to the Scandinavian Journal of Work Environment and Health (Warren *et al.*, 2000b, 38-73). Contrary to Dr. Nachemson's mischaracterization, the express purpose of this study was to simultaneously measure biomechanical and psychosocial MSD risk factors at the same level and degree of detail.

Warren *et al.*2000 (Ex. 38–75). Warren and colleagues from the University of Connecticut Health Center carried out a separate study of the Connecticut working population, using a random-digit-dialing study design. This cross-sectional study is one of the few to randomly sample workers with unreported cases of MSD (using the NHIS definition; Tanaka *et al.*1995 (Ex. 26-59)). Psychosocial and biomechanical variables were assessed at equal levels of detail. Logistic regression analysis found case status to be associated with a broad mix of psychosocial and biomechanical stressors, with biomechanical exposures showing somewhat higher odds ratios. Significant psychosocial ORs ranged from 1.56–1.69, while biomechanical ORs were between 1.89 and 2.13. Stressors were measured at equivalent levels of detail and demonstrated independent effects for psychosocial and biomechanical exposures.

Koehoorn, 1999 (Ex. 500–40). This doctoral thesis used a retrospective cohort design to follow 4020 health care workers from an acute-care hospital over a 4-year follow-up period, assessing outcomes of musculoskeletal symptoms and claims. Results varied by body location. In multivariate models explaining upper body symptoms, a biomechanical index showed risk ratios of 1.41–1.84, while psychosocial variables showed RRs ranging from 0.45–2.78. For lower-body symptoms, RRs for biomechanical risk factors ranged from 2.12–4.65; psychosocial variables generally did not reach statistical significance. Outcomes of compensation claims related to these two body areas showed similar ranges of effect. In subcohorts analyzed for departmental sicktime and overtime, increased sick time was associated with symptoms and claims, but increased overtime was not. The study design assessed detailed biomechanical factors by observation, but only by occupational title, while psychosocial factors were assessed by individual questionnaire. Thus, the relative strength of association may have been underestimated for biomechanical stressors. This large, carefully designed cohort study provides evidence for a multifactoral model of MSD causation, with physical factors being more strongly associated with MSD incidence.

Waters et al.1999 (Ex. 500–41–54). This study was designed to provide epidemiologic data linking the NIOSH lifting index (LI, a quantitative measure of manual lifting stress calculated with the revised NIOSH lifting equation) to prevalence of low back pain. Measurements used to calculate the LI were collected on a sample of workers over a 2–4 day period by trained observers. Workers also completed a self-administered questionnaire that included psychosocial items. In multivariate modeling, increasing values of the LI were associated with increases in period prevalence of LBP over the last 12 months, with an exposure-response relationship that reversed at the highest LI (>3). The authors noted that this drop in negative outcomes in the highest exposure category is seen in other studies and seems to indicate a "healthy worker" or survivor effect (representing the departure of workers with pain or high risk of back injury from highly stressful jobs). Psychosocial factors of demands, control and social support did not enter significantly into these models, perhaps because they were entered as continuous, not categorized, variables. However, a four-category measure of decreasing work satisfaction showed a significant exposure-response relationship with LBP. This high-quality study, which relied on independent measurement of physical job characteristics, demonstrated the combined contribution of physical and some psychosocial stressors to prevalence of LBP, with physical effects predominating in multivariate modeling.

Leclerc et al. 1998 (Ex. 500–41–85). This cross-sectional study of 1210 workers in 3 industry sectors incorporated a sophisticated mixture of individual measurement of both physical and psychosocial factors, combined with group-level assessment of cycle time and autonomy. Given the study design principles outlined above, the effects of these group-level factors may thus be underestimated. With this caveat, the research still demonstrated a combined contribution to physician-diagnosed CTS for cycle times less than 10 seconds (OR 1.90) and psychological "problems" (OR 1.41). Other physical and psychosocial factors dropped out of this model. In a final model incorporating the presence of just-in-time production organization at the plant, this factor replaced cycle time, with an OR of 2.24. Other physical and psychosocial risk factors were associated with marginal significance.

The work organization variable of just-in-time production is probably a surrogate for a combination of increased biomechanical and psychosocial risk. This study thus demonstrates the combined contribution of both types of risk. This study also found that industry sector did not enter significantly into the model when both physical and psychosocial risk factors were more precisely measured at the individual level.

Latza *et al.*2000 (Ex. 38–424). This prospective study of construction workers in Hamburg took detailed observational measurements of biomechanical stressors associated with a wide variety of construction tasks. Of the 571 workers who filled out baseline questionnaires, 285 individuals free of LBP were selected; 230 were followed up after 3 years. The physical stressors at baseline predicted subsequent 1-year prevalence of LBP (PRs: 1.8–4.0), while psychosocial stressors did not enter significantly into the models. This is somewhat surprising since, although the physical stressors were evaluated in detail, they were measured at the job level, while psychosocial factors were measured at the individual level. As noted above, this usually results in an underestimate of the physical stressor contribution relative to psychosocial factors.

Vingård *et al.*2000, MUSIC study (Ex. 500–41–51). The Swedish MUSIC project has consistently demonstrated combined associations of biomechanical and psychosocial stressors with back, neck and shoulder, and other disorders. This study assessed prospectively the individual and combined effects of physical and psychosocial exposures on subjects' seeking care for LBP over a 5-year period. Gender stratification reduced significance levels but demonstrated somewhat different exposure-outcome associations for males and females. For men, forward bending and manual material handling time, when compared to levels 5 and 10 years ago, were significantly predictive (RR 1.8 and 2.0 respectively) with a combined exposure having a RR of 2.8. This combined exposure was also significant for females (RR of 2.3). For both genders, a combination of physical stressors including metabolic stress was also a risk factor. Although included in these multivariate models, most psychosocial stressors did not enter significantly (exceptions were low work satisfaction and low skill use for males, RRs of 1.6 and 1.5, respectively). A subset of the study sample reflecting a combination of high physical load and high psychosocial load showed much higher RRs, but the sample size was small. Overall, the MUSIC study provides well-designed and detailed evidence that physical and psychosocial exposure combine in the etiology of LBP, with the physical stressors demonstrating stronger effects.

Houtman *et al.*1994 (Ex. 26–1230). This paper reported a cross-sectional analysis of pooled 1977–1986 results from the National Work and Living Condition Survey in the Netherlands. The study asked one question on work pace, four on intellectual discretion, and one on physical load. The items were all assessed at the same level of precision (dichotomous, yes/no) and at the same analytical level, but the greater detail in intellectual discretion assessment may have biased the estimated effects of that particular construct upwards. Multivariate logistic regression models were constructed to explain variance in 3 musculoskeletal outcomes: back complaints, muscle/joint complaints, and chronic back problems. Work pace was consistently associated with these outcomes (ORs 1.21–1.29) as was heavy physical load (ORs 1.36–1.62). Of the intellectual discretion items, only one, monotonous work, was consistently associated with musculoskeletal symptoms (ORs 1.29–1.35), but when all four items were combined, the scale demonstrated the strongest association of the study with chronic back pain (OR 2.10). Thus, in addition to providing more evidence for independent association of physical and psychosocial stressors with musculoskeletal outcomes, the study supports the hypothesis that psychosocial stressors have their strongest effect with duration of pain, not its inception.

Videman *et al.*1989 (Ex. 26–1155). This study is difficult to interpret, but is included because of its relevance to interventions. The researchers dichotomized graduating nursing students by skill level. Half the students had received traditional lifting training; half had received advanced, biomechanically-oriented training. Skill assessment was performed through video analysis of standardized tasks, not by simple assignment to trained or untrained groups. Nurses were also dichotomized by hours/day in strenuous postures (<3 hrs/day, >=3 hrs/day). In addition, the study collected extensive anthropometric, strength and psychological measures. Incidence of back injury was assessed at a 1-year follow-up. The results seem to confuse training level and activity level, but a combination of >3 hours/day of strenuous activity and low skill level significantly predicted self-reported incidence of back injury (ORs of 37 or 156, further stratified by high and low abdominal strength, respectively). The authors emphasized that ergonomic interventions must be coupled with training and describe the training as resulting in biomechanically less stressful lifting choices by nurses. They concluded that training is an effective intervention and "the biomechanical and ergonomic components of training in patient-handling appear to be inescapable" (Ex. 26–1155).

Thorbjörnsson *et al.* 2000 (Ex. 500–71–49). This retrospective nested case control study examined a cohort of 484 subjects from the general population, examined first in 1969 and again, 24 years later, in 1993. Exposure information was collected retrospectively for the 24-year period and the 12 months previous to the 1993 interview. Outcomes measured were LBP that resulted either in a medical visit or sick leave more than 7 days. The study identified a small number of physical factors (heavy physical work, sedentary work) and psychosocial factors (poor social relations and overtime work) associated with LBP, as well as high load outside of work. Most importantly, the research demonstrated significant ORs for a wide variety of interaction terms between workplace biomechanical and psychosocial risk factors (ORs: 2.2–3.5). In final modeling incorporating the interaction terms, individual psychosocial effects became non-significant, but an interaction between poor social relations and overtime work showed an OR of 3.1–3.7 for men, depending on LBP onset time. The finding of significant interactions between biomechanical and psychosocial factors suggests that control of biomechanical risk factors in the workplace should reduce not only the effects associated with biomechanical risk factors, but the effects of their interaction with psychosocial exposures.

Boeing Study. (Bigos et al.1991 (Ex. 26–1241), 1991 (Ex. 26–1242), 1992 (Ex. 26–1393)).

These studies were discussed earlier in the Health Effects section. In addition, several witnesses who appeared at the public hearings (Frank, Krause, others, *e.g.* Exs. 37–27, 37–15) have explored the methodological problems with this study, which explain its finding that the only significant predictor of back pain reporting found was job dissatisfaction. In sum, the study assessed physical factors at the group level (although the articles never make clear the exact methodology), while assessing psychosocial and psychological variables at the individual level. Assessed at the group level, the variance in predictive physical factors was drastically reduced. For instance, Dr. Bigos stated (Bigos *et al.,* 1991b, Ex. 26–1242, testimony, Tr. 6908) that no-one was required to lift over 20 lbs., and no-one actually lifted more than 50. However, the analysis had no way to assign actual lifting frequency or compressive forces at the individual level. It is difficult to determine whether even the poor characterization of physical load approached statistical significance because the authors elected simply not to report results that were not significantly associated with outcomes (testimony, Tr. 6786). In addition to this measurement problem, psychosocial and psychological factors were measured with much greater precision. As noted above, these assessment differences virtually ensure the primacy of the better-measured factors, in this case the psychosocial factors, in statistical modeling.

In addition, the factors entered in the Boeing study models explained only an extremely small percentage of variance in the outcome; job satisfaction explained 2.2 percent and psychological variables explained 1.9 percent. All of the psychological, physical exam and medical history variables assessed in the study combine to explain only 8.6 percent of the variance (Bigos *et al.*, 1992, Ex. 26–1393). Thus, 91.4 percent of the variance in reporting of back pain is not explained by the combination of poorly measured physical risk factors and the more detailed psycho-emotional factors. This suggests relatively poor characterization of overall exposure.

The flaws noted above also pertain to the psychological factor assessment in this study. Psychological factors were measured at a much finer level of detail than physical factors, which were measured at the group level. Overall explanatory power of any of these measures was poor. As a minor point, specific to the psychological assessment, the study used non-standard and out-of-date instruments (Cherniack testimony, Tr. 1150).

Svensson and Andersson 1989 (Ex. 26–732). This study evaluated the association of a number of physical and psychosocial and psychological variables with incidence (retrospective) and prevalence of LBP in women. Both physical and psychosocial/psychological variables showed univariate associations with the outcome, but multivariate analysis found associations only with 3 "psychological" variables: dissatisfaction with the work environment, worry/tension at the end of the day, and fatigue. The analysis is not helpful to the separation of physical and psychosocial effects for three reasons. First, the study only reports the p-value range of the significant associations and does not report effect size, thus making it impossible to tell if physical exposures were of near significance and to compare relative strength of association. Second, it is not at all clear whether variables of dissatisfaction and worry/tension represent a psychological exposure or an *outcome*, resulting from an underlying combination of physical and psychosocial/psychological workplace factors, or from underlying symptoms (see, Linton, 2000, Ex. 26–642). Most importantly, it is clearly a mistake to label "fatigue" a psychosocial variable. In fact, fatigue represents an integrated measure of all stressors, physical and psychosocial, encountered by the worker and may well be weighted towards the obvious biomechanical stressors. As such, it is not surprising that this measure might capture variance from the individual physical exposures tested in the study. (Recall how the combined index of psychosocial exposures in the Houtman *et al.*study, (1994, Ex. 26–1230) had the highest ORs in the study, while the individual items composing the index had much lower ORs.) As confirmation, it is interesting to note that these authors' earlier research (1983, Ex. 26-1158), which assessed a similar set of exposures but did not include the fatigue item, did demonstrate a contribution from a physical stressor (high degree of lifting). Thus, this research appears to be unable to accurately separate the contribution of physical and psychosocial/psychological factors to LBP.

Leino and Hänninen 1995 (Ex. 38–76). This paper reported the results of a prospective study begun in 1973, in 2653 industrial workers, including managerial and office positions. Nine hundred two of these participants were reexamined after 10 years. Outcomes were self-reported musculoskeletal symptoms and evaluations by physiotherapists. At follow-up, both self-reported symptoms and medical findings were predicted by one psychosocial scale (social relations, OR 2.63–3.41) and occupational class (OR 2.67–3.73). The only factor that partly captures physical load in this model is occupational class. A single, 4-level measure of physical load was also entered into the equation. However, this measure is much less precise than the 6-question scale (each item with 5 levels) assessing social relations. This unequal precision would bias the results towards the exposures measured with greater precision, the psychosocial factors.

The authors noted that their physical load measure did enter into the cross-sectional models at baseline, along with more psychosocial exposures (work content, overstrain) and occupation. It was surprising to find that physical load (a slightly more precise measure of biomechanical exposures than exposure) dropped out of final models while occupation class remained. Both physical load and occupation in this study represent biomechanical exposures assessed at a much less precise level than the psychosocial measures. This study, though provocative, cannot provide useful information about the relative strength of effect.

Summary of Literature Reviews

Several reviews have been published that have evaluated the literature dealing with work-related MSDs; many of these reviews included evaluations of studies that concurrently examined the effects from exposure to both biomechanical risk factors and psychosocial risk factors. In this section, OSHA summarizes the reviews contained in the rulemaking docket.

Burdorf & Sorock 1997 (Ex. 502–232). These authors reviewed 35 studies that collected quantitative information on exposures and back disorder outcomes. Eight of these studies assessed psychosocial and biomechanical risk factors simultaneously. Of these, six found positive associations of back disorders with a combination of physical and psychosocial exposures and two identified several of the physical factors to be significantly associated, while the psychosocial factor measured (job dissatisfaction) did not show a significant association.

The analysis identified lifting or carrying loads, whole-body vibration, and frequent bending and twisting to be the biomechanical risk factors having consistent associations with work-related back disorders. Unlike some other studies (*e.g.,* Leino & Hänninen, 1995, Ex 38–76), height and weight (as well as gender, exercise and marital status) were consistently not associated with back disorders in these studies. The review identified low job decision latitude and job dissatisfaction as possibly important predictors of MSDs, but the evidence was not consistent across studies with different designs. Although the majority of these eight studies acknowledged the importance of psychosocial factors, the generalization that emerges from them is that biomechanical factors were more

consistently associated with back disorders.

Punnett and Bergqvist 1997 (Ex. 38–13). This review of a large international body of literature linking biomechanical and psychosocial factors to upper extremity symptoms and findings in computer users (classified by neck/shoulder, arm/elbow, and hand/wrist). The authors found strong, consistent evidence linking MSD development with biomechanical factors (hours/day and cumulative years of exposure, intensive or repetitive data entry, and non-neutral postures due to poor workstation design), while controlling for work organizational and psychosocial factors in 7 of the 72 papers included in the analysis. The work organizational factors included in 3 papers (repetitive work, work pressure and insufficient rest breaks represent a combination of physical and psychosocial risks. In 4 papers, this review found suggestive but inconsistent associations (making generalization impossible) between MSD symptoms and the psychosocial factors of low decision latitude, low social support, job insecurity and job dissatisfaction (Bergqvist *et al.,* 1995, Ex. 26–1195, Faucett & Rempell, 1994, Ex. 38–67, Kamwendo *et al.,* 1991, Ex. 26–1384, Hoekstra *et al.,* 1994, Ex. 26–725). The authors also noted the difficulty of using job dissatisfaction as a predictor for MSDs since it could easily be either a cause or consequence of an MSD.

Lagerström et al. 1998 (Ex. 38–102). In this review of studies relating to low back problems in nursing, 42 articles passed the inclusion criteria: 21 cross-sectional, 10 prospective, and 11 intervention (also prospective). One of the reviewers' quality criteria was that the studies include both physical and psychosocial exposure information. The authors noted that a problem in many of the studies was the assessment of physical stressor information at an aggregate or group level, while psychosocial exposures were assessed at the individual level. As noted above, this non-comparability would tend to underestimate biomechanical effect in relationship to psychosocial effect. Still, the authors conclude from their review that biomechanical and psychosocial exposures generally combine in their associations with or (in prospective studies) effects on back disorder outcomes. Looking at well-designed studies with dual exposure measurement, the authors report that "[t]o our knowledge there are no studies that show that work organizational or psychosocial factors, as such, cause low-back problems." They do acknowledge the importance of these factors in the "consequence and maintenance" of low-back related disorders, through differences in pain perception and reporting behavior.

Bongers et al. 1993 (Ex. 26–1292). This article was one of the earliest reviews of the evidence for an association between psychosocial factors and MSD outcomes. The authors looked at 29 cross-sectional and 3 longitudinal studies addressing work-related psychosocial factors. Of these, 22 measured physical load, and the authors of this review did not think that the physical load assessment was of a high enough quality to specifically assign relative association effects to physical and psychosocial factors. Thus, this review is included to demonstrate how far the field has moved since 1993. Subsequent reviews and studies addressed in this section show that research in the intervening 7 years has moved towards more accurate characterization of biomechanical and psychosocial loads and defining their associations with MSD outcomes.

National Academy of Sciences, 1999 (Ex. 26–37). The NAS study (cited by Armstrong, Exs. 37–21, 37–1, 37–9 and others, Ex. 37–15, testimony) was discussed in OSHA's preamble to the proposed rule and is described in part B of this Health Effects section. It reviewed a number of studies that found strong evidence for biomechanical contribution to MSD etiology, controlling for psychosocial factors.

Linton, 2000 (Ex. 26–642). This paper is a careful literature review of studies addressing the association between psychological factors and back and neck pain. The author concentrated on individual psychological measures (*i.e.,* internal psychological factors) but also included some external psychosocial factors. Since many of the studies also assessed outcomes of disability and time to return-to-work (RTW), the author was able to provide evidence for his suggestion that psychological factors may play a greater role in these long-term outcomes.

The findings of this review are strengthened by its assessment of only prospective studies. This might allow an interpretation that the positive relationship found between various psychological factors and the outcomes of pain, disability, RTW time, etc. might represent a causal connection. However, there are two important caveats. Dr. Linton noted that longitudinal relationships of this sort may still mask reverse causal connections. The studies generally cannot determine whether some psychological "predictor" variables and the outcome variables are not both the result of initial or underlying pain. Secondly, he noted that the psychological variables identified in the 37 reviewed studies explain only part of the variance in outcome. Thus, the review's results are consistent with the multifactoral model of MSD etiology (including biomechanical, psychosocial, psychological and personal variables).

Despite the care with which the studies were selected and analyzed, however, the review did not identify the type of biomechanical exposures assessed in the studies or the level at which they were studied. Instead, it simply noted that 18 studies controlled for miscellaneous confounding factors, one of which was "workplace factors". No indication was given as to the nature of these factors and which of these 18 studies addressed "workplace factors". Given the age of some of the papers, controlling for other factors (instead of simultaneously assessing their effect) is understandable, but it renders the review useless in contributing to the central debate concerning relative contribution of biomechanical and psychosocial factors (*i.e.,* both external psychological and social workplace factors and internal psychological factors). To further compromise the utility of this review, the studies evaluated in this review included several that measured physical exposure at the wrong analytical level (*e.g.,* Bigos *et al.,* 1991, Exs. 26–1241, 26–1242) or at a reduced level of detail (*e.g.,* Leino & Hänninen, 1995, Ex. 38–76, Viikari-Juntura *et al.,* 1991, Ex. 26–1219), compared to the psychological factors. This review, although a significant contribution to the literature overall, provides no useful information concerning relative contribution of physical and psychological factors to MSDs.

Nachemson 1999 (Ex. 32–241–3–31). This article is a comprehensive review of the studies purporting to demonstrate that physical workplace factors are irrelevant to the development of back pain, injury and disability. Instead, the studies implicate personal biology and psychological factors, stress and psychosocial factors in the workplace, and the monetary incentives of the compensation system. Some of these studies have been addressed above (*e.g.,* Bigos, 1991b, Ex. 26–1242). In general, Dr. Nachemson's claim that these factors contribute to low back disorders is credible. Very few of the researchers cited above would deny their contribution. What is emphatically not credible is the claim that physical factors are thus not implicated.

There are 3 primary problems with this claim. First, many of the studies cited in the article have not assessed the role of physical factors at all or have assessed them at levels of analysis or detail that make examination of their contribution impossible. The results of these errors have been discussed above. These studies overestimate the role of non-physical risks and thus cannot address the question or relative effects of biomechanical and psychosocial exposures in the workplace.

Second, the basic conceptual gap in the Nachemson review is a failure to acknowledge and address the implications and mechanism of multifactoral causation. There is a broad literature of well-designed studies, both epidemiological and laboratory (reviewed above and in earlier parts of the Health Effects section) demonstrating that psychosocial and psychological factors can add to the effects of physical exposures or even potentiate them (interaction or effect modification) (see Linton, 1990, Ex. 26–977, for a clear example). Dr. Nachemson's reluctance to consider such effects is represented by his citation of the Välfors *et al.* (1985, Ex. 26–685) examination of LBP. This study reported that physical risk factors (poorly characterized by a physiotherapist and a physician) were similar in workplaces of controls and low back cases, while reporting case/control differences in psychosocial work environment (again, poorly characterized). Välfors thus attributed the back injuries in the case group to the psychosocial factors. The logical fallacy, of course, is to assume that this difference removes physical exposures from a causal role. The more logical explanation, especially in light of all the evidence for multifactoral etiology presented in this section, is that the *combination* of physical exposures and psychosocial exposures presented increased risk. A level of physical risk that is acceptable in a psychosocially benign work environment can combine with elevated levels of psychosocial risk to cause disorders.

Finally, many of the studies cited in this article confuse cause with effect. To continue with Dr. Nachemson's citation, Välfors concluded that the measured differences in work satisfaction were the cause of the low back pain episodes, when it is just as likely that the LBP itself affected patients assessment of their work satisfaction (see Linton, 2000, Ex. 26–642).

These three errors, together or individually, characterize many of the studies in the Nachemson article. In sum, this review, while useful in collecting a wide variety of studies addressing the complex issues of low back pain, disability, and management, does not demonstrate that physical workplace factors are not involved in the etiology of LBP. Nor does it demonstrate that workplace interventions directed towards reduction of biomechanical risk factors would be ineffective. His citation of the Daltroy (Daltroy *et al.*, 1997, Ex. 38–57) training intervention in the postal service, for example, is not a refutation of the central causal role of biomechanical exposures in the etiology of back injury. Rather, it is emblematic of the general failure of "back schools", when introduced in the *absence* of measures directed towards control of physical risk factors. Dr. Nachemson, himself, states in this review: "[I]t is obvious that certain types of lifts and working positions should be avoided and this in particular applies to twisted lifts." Ideally, this review will advance the development of more effective intervention techniques that address the combination of risk factors presented by Dr. Nachemson.

Waddell & Burton 2000 (Ex. DC–151–A). This thorough review of management protocols for LBP includes evaluation of epidemiological and clinical studies addressing etiology of LBP. Because the review and recommendations focus primarily on medical management issues, it is not surprising that it concentrates on the psychosocial factors involved in pain perception, sickness absence, disability and return-to work. Most of the studies addressed above acknowledge the importance of psychosocial factors in medical management issues, not only for LBP but also for other musculoskeletal disorders. The evidence reviewed above corresponds with these authors' conclusions that low job satisfaction, "unsatisfactory psychosocial aspects of work" and individual psychosocial findings are risk factors for onset of LBP, health care use and work loss, but the size of that association is small to modest (strong evidence). The authors also noted that physical demands of work (manual materials handling, lifting, bending, twisting, and whole body vibration) can be associated with onset of LBP, increased LBP reports, symptom aggravation, and back "injury" (authors" quotes). However, they find that the association "appears to be" weaker than those of individual, non-occupational and unidentified factors (strong evidence).

The authors make an elementary error in ascribing potential LBP causation only to dynamic back activities. Their noting the high prevalence of LBP in non-dynamic jobs, and even in the unemployed, is, of course, related to the well-established research findings that sedentary and constrained postures are also physical risk factors for back disorders (Putz-Anderson, 1991, Ex. 26–1255, Hoogendoorn *et al.*, 1999, Ex. 38–81, Burdorf & Sorock, 1997 Ex. 502–232).

More importantly, the studies used to provide "strong evidence" for various conclusions are sometimes categorized as being of high quality when, in fact, they violate some of the important epidemiological design criteria cited above. In particular, in making a case for primarily psychosocial causation, the authors used studies that measured biomechanical exposures inadequately (*e.g.*, Bigos *et al.*, 1991b, Ex. 26–1242, and others reviewed above) or studies that did not include both biomechanical and psychosocial factors in statistical modeling (Macfarlane *et al.*, 1997, Ex. 500–41–91, Papageorgiou *et al.*, 1997, Ex. 32–241–3–41). Several reviews are cited that, on closer examination, are only modest in their assessment of both psychosocial and biomechanical risk contribution, noting the problems with study design and, especially, the relatively few studies that assessed both exposures adequately and at equal levels of precision (Burdorf & Sorock, 1997, Ex. 500–232, Bongers *et al.*, 1993, Ex. 26–1292, Davis & Heaney, 2000).

Conclusions

Based on the rulemaking testimony, scientific studies, and literature reviews considered in this section, OSHA concludes that the evidence contained in the record supports a combined contribution of biomechanical and psychosocial risk factors to the onset, development and prolongation of MSDs. Biomechanical contributions to the etiology of work-related MSDs have been demonstrated to be more consistent than psychosocial factors across different study populations, and most well-designed studies reported stronger associations between exposure to biomechanical risk factors and an increased MSD prevalence or incidence than has been observed for psychosocial factors. However, it is not possible to determine the relative strength of association between biomechanical and psychosocial factors with any precision because of differences in measurement techniques used in the various studies to assess biomechanical and psychosocial factors, and because of the different ways in which psychosocial factors are defined by various investigators. Most importantly is the finding by several investigators that biomechanical and psychosocial factors influence MSD risk in independent fashon, which suggests that reductions in biomechanical exposures absent any change in psychosocial influences should reduce the risk of work-related MSDs.

Findings from published literature reviews of studies that conform to the epidemiologic design principles discussed above are consistent with the Agency's conclusions. Four reviews (Burdorf, Ex. 502–232, Punnett, 38–13, Lagerstrom, Ex. 38–102, NAS, Ex. 26–37) reported that biomechanical risk factors generally showed stronger and/or more consistent associations with elevated MSD prevalence or incidence than did psychosocial factors.

Three reviews reached an opposite conclusion (Linton, Ex. 26–642, Nachemson, Ex. 32–241–3–31, Waddell, DC–151–A); however, these reviews relied more heavily on studies where biomechanical factors were not evaluated at all, were evaluated in jobs having little variance in physical load, or were evaluated at different analytical levels or with less precision, or than psychosocial factors. All of these design flaws bias results towards increased psychosocial effects in modeling. It is on the basis of these reviews and the underlying studies that the Chamber of Commerce, Gibson, Dunn & Crutcher, and several of their scientific witnesses base their conclusion that psychosocial factors outweigh the importance of biomechanical factors in the etiology of MSDs. Accordingly, OSHA is not persuaded by these arguments, and finds the preponderance of evidence supports a multifactorial model of MSD causation involving both biomechanical and psychosocial factors acting independently on risk.

Moreover, testimony and evidence presented above suggests that biomechanical and psychosocial risk factors are, to a degree, inextricable (Punnett, testimony, Tr. 868, Kerr *et al.*, 2000, Ex. 38–82). The degree of influence each exerts on MSD risk is in large part determined by company characteristics and work organization, and their very separation is somewhat artificial. The final rule's focus on reducing exposures to biomechanical risk factors reflects the intervention strategy that has been emphasized in the literature and implemented by many sophisticated companies. Simply less is known about how to intervene effectively on psychosocial factors. However, this does not mean that biomechanical intervention will have no effect on psychosocial factors in the wortkplace. Because of the correlation and interactions between biomechanical and psychosocial factors in their associations with MSD outcomes, interventions focused towards biomechanical stressor reduction are likely to have a positive effect on levels of psychosocial stress. The arguments of Bellamy and Vendor, above (testimony) are addressed by the reality of this close correlation between stressor types.

The intervention literature demonstrates that the very fact of a company's undertaking even a limited program to control biomechanical exposures is, *de facto*, also a psychosocial intervention. If workers report MSD symptoms and the company responds with workplace alterations, medical intervention, training, and the other program elements in the final rule, this response often represents a reduction in excessive psychological demands, an increased sense of control, and an improvement in the social support structure of the workplace. In Sweden, Kvarnstrom (1992, Ex. 38–69) found that changes in the physical work characteristics, combined with changes in the psychosocial work environment (increased variety, decision-making latitude, and individual control over the work situation) in a small department of a large, multi-national company greatly reduced the high rate of absenteeism and turnover due to musculoskeletal disease. In the United States, Smith and Zehel (1992, Ex. 38–70) reported that employee focus groups identified the need for physically-oriented engineering changes as well as psychosocial changes in a meat-processing plant; the combined intervention resulted in decreased physical symptoms for part of the work force. Worker participation in problem identification and solution development is a central feature of many successful approaches to work environment change and is at the core of the proposed rule. For example, Pasmore & Friedlander (1982, Ex. 38–71), addressing an outbreak of upper extremity disorders in a United States electronic assembly facility, designed an intervention in which the employees determined the data to be collected and solutions based on these data. While this level of employee involvement focused on reducing biomechanical risk factors, it also increased employee participation and task control and altered role relationships within the organization.

A number of witnesses testified at the hearing that ergonomic programs designed to address biomechanicla factors have positive effects on psychosocial factors that have been implicated in MSD etiology. Dr. Warren explained why this is the case:

> I think what happens hypothetically and in my experience is that when you control a biomechanical workpalce factor, you are de facto making a small psychosocial intervention in the workplace.
>
> When * * * somebody says ["]my back hurts["] and it's followed * * * immediately by ["]and nobody cares["], you know that there's a psychological problem in that workpalce. So I think that, yes, * * * a control of a biomechanical risk factor with no change in a psychosocial environment would reduce the chance of injury, but that it would probably also change the psychosocial environment to a small degree. [Tr. 1265]

Dr. Rosecrance (Tr. 2319–20) presented a specific example. He noted that the biomechanical intervention in his study of the Cedar Rapids Gazette resulted not only in reductions of MSDs, but also improvements in the company social structure.

Mr. Dave Alexander believed that the employee participation provision of the proposed standard would address psychosocial issues:

> * * * the opportunity for worker participation in the form of contributing information, suggesting solutions, having a mechanism to report problems would, in fact, tie in with the psychosocial issues that would be important in the workplace. [Tr. 2713–2714]

Similarly, Dr. Silverstein testified that providing workers with basic information on MSDs and employee involvement in the ergonomics program increases the decision latitude for workers [Tr. 17445].

These studies and testimony indicate that the basic precepts of management commitment and employee participation contained in the final rule, while forming the administrative infrastructure of an ergonomics program focused on physical risk abatement, has the potential to have positive effects on the psychosocial characteristics of the work environment.

6. Final Rule's Consistency With Medical Guidelines

Several commenters questioned whether the program elements of OSHA's final rule were consistent with existing medical practice guidelines, primarily with respect to diagnosing and treating low back pain, but also diagnosing and treating other MSDs. For example, when referring to the Agency for Health Care Policy and Research (AHCPR) low back pain guidelines, Gibson, Dunn and Crutcher stated that the review of evidence published with the guidelines

> contradicts OSHA's ergonomic hypothesis that work causes physical injury, contradicts OSHA's view that "ergonomic" interventions can alleviate workplace pain, and contradicts

> OSHA's prescription for rest as a response to back pain. [Ex. 500–118]

OSHA disagrees with these commenters. In reviewing the record, OSHA finds that the final rule is consistent with the medical literature, including the AHCPR guidelines, the American College of Occupational and Environmental Medicine (ACOEM) Occupational Medicine Practice Guidelines (Ex. 38–234), The Royal College of General Practitioners' Clinical Guidelines for the Management of Acute Low Back Pain (Royal College guidelines) (Waddell *et al.* 1999; Ex. 32-241–3–38), the Faculty of Occupational Medicine's Occupational Health Guidelines for the Management of Low Back Pain at Work (British guidelines) (Ex. 500–118–2), and other evidence-based medical practice.

The first assertion, that the AHCPR guidelines "contradict[ ] OSHA's ergonomic hypothesis that work causes physical injury" is incorrect for several reasons. The AHCPR guidelines acknowledge that

> * * * several studies have identified an increased incidence of low back problems among individuals whose work involves heavy or repetitive lifting, exposure to total body vibration (from vehicles or industrial machinery), asymmetric postures, and postures sustained for long periods of time. [Ex. 32–241–3–93]

The guidelines also recognize that

> Other biomechanical research suggests that certain postures and activities increase the mechanical stress on the spine. It is not clear whether these mechanical stresses are the cause of low back problems. However, once symptoms are present, mechanical stresses correlate with worsening of symptoms. Prolonged sitting and postures that involve bending and twisting have been shown to increase the mechanical stress on the spine according to pressure measurements in lumbar intervertebral discs. Heavy lifting also appears to increase mechanical stress on the spine, but this stress can be reduced if the lifted object is held close to the body rather than at arm's length. [Ex. 32–241–3–93]

These conclusions are clearly consistent with the conclusions of the Health Effects section of the final rule that biomechanical factors are associated with low back pain. It must be recalled that the AHCPR guidelines were

> * * * intended to provide primary care clinicians with information and recommended strategies for the assessment and treatment of acute low back problems in adults. [Ex. 32–241–3–93]

They were not intended to provide a comprehensive review of work-related low back pain, ergonomics or low back pain prevention. There are few references to ergonomics, and the guidelines promotes the utility of ergonomics in return to work decision making by stating that: "Several ergonomic guidelines on lifting and materials-handling tasks are available to help the clinician provide ranges of activity alterations at work." (Ex. 32–241–3–93)

Finally, the AHCPR guidelines (Ex. 32–241–3–93) do not suggest that patients with acute low back pain immediately return to work involving physical factors that may stress the spine. Rather they advise appropriate activity modification to assist in the recovery process. AHCPR guidelines Activity Recommendations panel findings and recommendations state: (1) "Patients with acute low back problems may be more comfortable if they temporarily limit or avoid specific activities known to increase mechanical stress on the spine, especially prolonged unsupported sitting, heavy lifting, and bending or twisting the back while lifting. (Strength of Evidence = D.);" and (2) "Activity recommendations for the employed patient with acute low back symptoms need to consider the patient's age and general health, and the physical demands of required job tasks. (Strength of Evidence = D.)" As to the duration of activity modification, the AHCPR guidelines demonstrate an understanding of the impact that the physical demands of work have on recovery and modified activity. The guidelines state that "The nature and duration of limitations will depend on the clinical status of the patient and the physical requirements of the job."

Several other components of the final rule are supported by AHCPR recommendations, including the use of job hazard analysis and medical management involving communication with the HCP. Pertinent AHCPR guidelines statements are as follows: (1) "In recommending activity modifications for patients who work, the clinician may find it helpful to obtain from the employer a description of the physical demands of required job tasks," and (2) "The panel recommends that clinicians help patients establish activity goals, in consultation with their employer when applicable."

As with the AHCPR guidelines (Ex. 32–241–3–93), the commenters cited above did not accurately represent the findings of the Royal College guidelines (Ex. 32–241–3–38) and British guidelines (Ex. 500–118–2) in criticizing OSHA's proposal. They also failed to acknowledge evidence and recommendations from these reports that are consistent with the final rule.

The Royal College guidelines (Ex. 32–241–3–38) were developed for the purpose of disseminating evidence-based recommendations on the management of acute low back pain to clinicians. The Royal College guidelines do not purport to relate to, nor were they focused on, the same purpose as OSHA's proposal, that is to reduce MSDs and control MSD hazards in the workplace. These guidelines do not contain information on evidence based conclusions on ergonomics or low back pain prevention. Several elements of the proposal are supported by the Royal College guidelines (Ex. 32–241–3–38). For example, under Initial Assessment Methods, they recommend: "The patient's age, the duration and description of symptoms, the impact of symptoms on activity and work, and the response to previous therapy are important in the care of back problems." Under Information to Patients, the guidelines state: "About 10% of patients will have some persisting symptoms a year later, but most of them can manage to continue with most normal activities. Patients who return to normal activities feel healthier, use less analgesics and are less distressed than those who limit their activities." The Royal College guidelines suggest that most workers can manage with most normal activities, but do not suggest that this includes extremely physical tasks that cause very significant mechanical loading to the lumbar spine and are associated with elevated risks of low back pain.

Similarly, the purpose and findings of the British occupational health low back pain guidelines (Ex. 500–118–2) have also been misrepresented (*e.g.*, Ex. 32–241–3–20). The British guidelines state: "These guidelines represent the main recommendations and evidence statements derived from a detailed Evidence Review and developed by a multidisciplinary group of practitioners. They concern the clinical management of workers affected by non-specific low back pain, including advice on placement, rehabilitation and measures for prevention." The British guidelines further clarify that they were not intended to disseminate information regarding workplace health and safety, job design, and ergonomics when they state: "They focus on actions to be taken to assist the individual and do not specifically cover legal issues, health and safety management, job design and ergonomics." Again, this is a different focus than the proposal, and conclusions should be interpreted in that light. Under evidence review methods, the British guidelines state:

> In view of the occupational health focus of the guidelines and the present review, the following areas were excluded from the review, except where they impact directly on the guideline recommendations: chronic intractable pain, long-term disability and pain management programmes; spinal surgery and post-operative states; primary ergonomic interventions. [Ex. 32–241–3–93]

The British guidelines (Ex. 500–118–2) acknowledge the role of work in contributing to low back pain in its own preface. In reviewing challenges for the review the authors state: "The need for everyone to recognize that work is only one contributor to back pain but that back pain whatever its cause can, if poorly managed, have a devastating effect on a person's ability to work." The review goes on to classify evidence based literature recommendations using the following classification scenarios:

****Strong evidence*—provided by generally consistent findings in multiple, high quality scientific studies.

***Moderate evidence*—provided by generally consistent findings in fewer, smaller or lower quality scientific studies.

**Limited or contradictory evidence*—provided by one scientific study or inconsistent findings in multiple scientific studies.

—*No scientific evidence*—based on clinical studies, theoretical considerations and/or clinical consensus.

Several British guidelines (Ex. 500–118–2) findings are consistent with the final rule. With respect to the relationship of physical work factors and work-related low back pain, the guidelines report the following evidence based findings: There is strong evidence that

> Physical demands of work (manual materials handling, lifting, bending, twisting, and whole body vibration) can be associated with increased reports of back symptoms, aggravation of symptoms and "injuries." [Ex. 500–118–2]

These guidelines therefore acknowledge potential for physical work factors to precipitate low back pain episodes, and recognize some evidence of a cumulative effect of spinal loading. In addition, management of work-related low back pain, as noted in the AHCPR low back pain guidelines, may reasonably include elements similar to those in the OSHA final rule, such as

> * * * temporarily limit[ing] or avoid[ing] specific activities known to increase mechanical stress on the spine, especially prolonged unsupported sitting, heavy lifting, and bending or twisting the back while lifting. [Ex. 32–241–3–93]

In summary, the British guidelines (Ex. 500–118–2) state that there is moderate evidence that "From an organisational perspective, the temporary provision of lighter or modified duties facilitates return to work and reduces time off work."

The British guidelines (Ex. 500–118–2) go on to cite other conclusions about work and low back pain using evidence based literature reviews (Evidence) and consensus opinion (Recommendation). In making recommendations on prevention and case management, the authors advise the "need to be directed at both physical and psychosocial factors." If physical work is not harmful and it does not contribute to low back pain, then why would the authors advise addressing the physical task factors of work in prevention efforts? Similarly, if physical characteristics of work are not significant issues for workers who return to work after developing a low back disorder, then why do the authors state the following?

> There is a pragmatic argument that individuals at highest risk of LBP should not be placed in jobs that impose the greatest physical demands. The basic concern is that workers with physically (or psychologically) demanding work report rather more low back symptoms, have more work-related back "injuries" and lose more time off work with LBP. Even if physical demands of work may be a relatively modest factor in the primary causation of LBP (see Background above), people who have LBP (for whatever cause) do have more difficulty managing physically demanding work (T3: (Muller *et al.*1999) T2: (Waddell 1998)). It may be argued, therefore, that avoiding putting people at highest risk of recurrent LBP and sickness absence into more physically demanding work would be in the interests of the individual worker, the employer and the total societal burden of LBP. [Ex. 500–118–2]

Similarly, the ACOEM guidelines (Ex. 38–234) agree with the observation that specific physical work factors are associated with certain work-related MSDs.

One of the criticisms raised by a commenter was the limited reference to the Cochrane Collaboration Back Review Group in low back sections of the Health Effects section of the preamble to the proposed rule. However, as a significant contributor to this effort, Dr. Nachemson clarified that neither work-related back pain nor ergonomics were the focus of these reviews (Tr. 6779).

Although Dr. Nachemson questioned OSHA's findings of the relationship of work to the development of work-related low back disorders, he contradicts this in the chapter he authored for the International Society for the Study of the Lumbar Spine, entitled "Future of Low Back Pain" (Wiesel *et al.* 1996, Ex. 26–1620). The chapter has a table compiled on the effects of external load on low back structures. The table lists extreme loading activity, several hours of hard training, extreme body position, as having negative influences on muscle, cartilage, and disc.

Dr. Stanley Bigos admitted that physical work factors could result in the development of low back pain in an exchange with one of the questioners.

> MS. GWYNN: Doctor, you believe, do you not, that lifting and bending while lifting and twisting while lifting can aggravate low back pain?
>
> DR. BIGOS: I believe that it can bring on symptoms in people who have had prior back problems. And perhaps, it could bring on symptoms of people who haven't, depending upon the condition they are in. [Tr. 6916]

Along other lines, some commenters raised issues with OSHA's inclusion of symptoms in the definition of an MSD. Gibson, Dunn and Crutcher stated that:

> These sensations that the agency treats as tantamount to musculoskeletal injury are ubiquitous in the general population and do not warrant interference by the agency. [Ex. 500–118]

OSHA does not agree with this argument. OSHA is not attempting to regulate common symptoms. Rather, OSHA has proposed strategies to modify physical workplace factors that are associated with the development of MSDs, when the physical factors at work are present in frequency, intensity, and/or duration likely to be responsible for causing observed MSDs. As required in the final rule, the employer's responsibility is that it must evaluate employee reports of MSD signs and symptoms to determine whether an MSD incident has occurred. The evaluation may include an evaluation by an HCP to determine the nature of the condition and assist the employer in evaluating the work-relatedness of the MSD. Many employers presently act in a very similar manner when an employee reports a potential problem. The employer may perform an accident or incident investigation, offer temporary modified duty, correct the problem, and/or refer the employee to a HCP for evaluation.

Gibson, Dunn, and Crutcher also suggested that paying attention to subjective complaints would lead to inaccurate diagnoses. They state that:

> One of the challenges presented by MSDs is that, in order to diagnose an affliction (in an effort to determine what response is required to comply with the proposed standard), an employer or the employer's physician must rely principally, if not solely, on subjective reports of pain from employees. [Ex. 500–118]

These assertions are incorrect, and are not consistent with medical literature and opinion. A worker's medical history, including subjective reports like pain, is a key element that has been utilized since the beginnings of medicine to help physicians diagnose medical conditions. The AHCPR guidelines emphasize the role of the medical history when they state:

> A few key questions on the medical history can help ensure that a serious underlying condition, such as cancer or spinal infection, will not be missed * * * Symptoms of sciatica (leg pain) or neurogenic claudication (walking limitations due to leg pain) suggest possible neurologic involvement. Pain radiating below the knee is more likely to indicate a true radiculopathy than pain radiating only to the posterior thigh. A history of persistent numbness or weakness in the leg(s) further increases the likelihood of neurologic involvement. The articles indicate that cauda equina syndrome can be ruled out with a medical history that ascertains the absence of bladder dysfunction (usually urinary retention or overflow incontinence), saddle anesthesia, and unilateral or bilateral leg pain and weakness. [Ex. 32–241–3–93]

The AHCPR guidelines go on to clarify that the examination is used to confirm clinical impressions derived from the medical history, including pain characteristics:

> The physical examination supplements the information obtained in the medical history in seeking an underlying serious condition or possible neurologic compromise. [Ex. 32–241–3–93]

The AHCPR low back pain guidelines also indicate that "The physical examination is less useful than the history in searching for underlying serious conditions." Thus OSHA's approach to the use of employee symptoms is similar to the AHCPR rigorous analysis of the literature on acute low back pain evaluation and treatment that concluded that symptoms and history give important information to diagnose and manage adults with acute low back pain.

Both the Royal College and British guidelines support the role of history, including symptoms, in the diagnosis and management of low back pain. The British guidelines state:

> The patient's age, the duration and description of symptoms, the impact of symptoms on activity and work, and the response to previous therapy are important in the care of back problems. (B: Moderate research based evidence). [Ex. 500–118–2]

The guidelines confirm AHCPR recommendations by indicating:

> The initial clinical history can identify 'red flags' of possible serious pathology. Such inquiries are especially important in patients over age 55. (B: Moderate research based evidence). [Ex. 500–118–2]

OSHA's approach, in particular the acknowledgment of worker symptoms, parallels this literature based analysis.

Further validation of the importance of symptom reporting for low back pain comes from the ACOEM guidelines (Harris *et al.* 1997; Ex. 502–240). The ACOEM guidelines included peer review by Dr. Stanley Bigos, expert witness for UPS and Anheuser-Busch and others. The following quotes are excerpted from the guidelines:

> A focused medical history, work history, and physical examination are generally sufficient to assess the worker with a complaint of an apparently job related disorder. [Ex. 502–240]

In this assessment, certain patient responses and findings raise the suspicion of serious underlying medical conditions.

> The patient's description of the mechanism of injury (so far as is known), his or her presenting symptoms, the duration of symptoms, exacerbating factors, and the history of previous episodes will help define the problem. [Ex. 502–240]

In Chapter 14, the ACOEM guidelines state:

> Thorough medical and work histories and a focused physical examination are sufficient for the initial assessment of the worker with a complaint of potentially work-related low back symptoms. [Ex. 502–240]

These statements from clinical medicine practice guidelines provide further support for the use of symptoms as a trigger in the final rule. The practice guidelines make use of the patient history and reports of symptoms and take a consistent approach to the physical examination referent to patients with low back pain.

This approach is consistent with the one medical text brought to OSHA's attention. The International Society for the Study of The Lumbar Spine publishes a text entitled "The Lumbar Spine" (Wiesel, *et al.* 1996; Ex. 26–1620). In Chapter 3 on clinical evaluation of low back pain by Jeremy Fairbank and Hamilton Hall (History taking and physical examination: Identification of syndromes of back pain), the authors state:

> Conventional western medical therapy is practiced on the basis of a diagnosis that is made from a synthesis of information acquired from the patient's history, physical examination, and special investigations. Back pain is a common presenting symptom, and its diagnosis should be approached in the same manner as that of any other symptom. [Ex. 26–1620]

They further state that

> A detailed history obtained from the patient is essential for making a diagnosis, assessing disability, and dictating management. Time spent listening to the patient is not wasted. Back pain has a wide variety of causes, and many of these can be revealed during history taking. [Ex. 26–1620]

providing support that

> Objective evidence obtained on physical examination should enhance and support the diagnostic hypotheses arising from the patient s history. [Ex. 26–1620]

The authors go on to propose a classification system for low back pain (Pynsent-Fairbank-Hall Classification of Extraspinal Pain), which is primarily based upon patient symptoms. The acknowledgment of the importance of symptoms in this text is of particular interest to OSHA due to the fact that two principal expert witnesses who testified on behalf of UPS and others that symptoms are not meaningful, Dr. Stanley Bigos and Dr. Alf Nachemson, are members of The International Society for the Study of The Lumbar Spine, the organization that published the above text.

The classification of low back pain primarily upon patient symptoms is similar to the approach used by the Quebec Task Force (1987; Ex. 26–494). Dr. Nachemson also served as a member of the task force for this publication. The Quebec classification included 11 categories, with 1–4, 8, 9 and 10 based upon symptoms.

The American Medical Association, in its Guides to the Evaluation of Permanent Impairment, 4th edition, (Ex. 38–246) also include symptoms in classifying impairment. In particular, Table 72 in that publication contains a Diagnosis Related Estimate for Lumbosacral Category II: Minor Impairment (5% whole person impairment). The guidance used by the AMA for this is "The clinical history and examination findings are compatible with a specific injury or illness. The findings include significant intermittent or continuous muscle guarding that has been observed and documented by a physician, nonuniform loss of range of motion, or nonverifiable radicular complaints. There is no objective sign of radiculopathy and no loss of structural integrity." There is similar guidance for the cervical spine.

Guidelines for diagnosis and treatment of low back pain that have been published in the United States include the AHCPR guidelines (Ex. 32–241–3–93) and the ACOEM guidelines (Ex. 38–234). These will be addressed in the discussion on rest and activity to follow in this section.

It must also be recognized that low back pain is not the only potentially covered MSD, and other potential MSDs may present as symptoms only. For example, it is clear that patients with CTS may have symptoms of numbness without any physical findings (Erdil and

Dickerson 1997, Ex. 502–18; Katz *et al.* 1991, Ex. 38–101; Moore 1992, Ex. 26–985). Of significance, commonly utilized physical signs to clinically diagnose carpal tunnel syndrome, such as the Tinel's test and Phalen's sign, do not have as high a sensitivity or specificity as the Hand Diagram (Katz and Stirrat 1990; Ex. 500–121–33), a symptom based tool. Clearly, utilizing symptoms to identify possible cases of carpal tunnel syndrome and other MSDs is consistent with the knowledge based upon reviewing the medical literature.

Dr. Malcolm Jayson argued that

> * * * if a person has pain in the knee, the most effective form of treatment is knee exercises. When we rehabilitate back problems we prescribe[] exercises with a progressive regime to increase physical capacity. There is now overwhelming evidence that exercise is good for back problems and damaged joints and rest is harmful. [Ex. 32–241–3–9]

However, nowhere does OSHA state that all exercise is harmful, nor does it support rest as the treatment for MSDs. With regard to work factors like repetition, it is important to recognize that biomechanical factors that are present in a sufficient intensity, duration, and/or frequency to cause or contribute to an MSD are addressed. In these circumstances, OSHA recommends modification of exposure to these factors. It is clear that, when excessive, repetition and other cited work factors can cause MSDs. Several studies were presented in the Health Effects Section of the final rule to demonstrate the pathogenic mechanisms through which physical work factors can be responsible for causing or contributing to certain MSDs identified in the epidemiologic review. Unfairly, this statement simplifies physical factors in work settings as solely characterized by repetition, without considering the frequency, duration, and periodicity of the repetitive activities. In addition, it ignores other factors that have potential to cause MSDs in the workplace, such as excessive force, awkward posture, contact stress, and vibration. Also neglected is the observation that combinations of factors like force, posture, etc. with repetition, may compound the effect of repetition on musculoskeletal tissues. Finally, the statement does not differentiate types of tissue affected and whether the tissue is healthy or damaged.

In the preface to The American Academy of Orthopedic Surgeons' book entitled "Repetitive Motion Disorders of the Upper Extremity" (Gordon *et al.* 1995; Ex. 26–1399), the editor states:

> There is overwhelming evidence that the number of reported cases of repetitive motion disorders is rapidly growing. These disorders have become an extremely costly public health issue. Although some individuals believe that the underlying issue may be improper reporting or false claims of a medical problem, the organizers and most of the participants believe that for the vast majority of cases, there is an underlying physiologic insult to one or more of the various tissues involved.

The text goes on to cover epidemiologic evidence; pathophysiology of biomechanical loads, connective tissue, muscle and nerve. Chapters on rehabilitation of the wrist, elbow and shoulder all indicate that time limited periods of rest may be indicated for acute MSDs. The book is the result of a workshop organized by the National Institute of Arthritis and Musculoskeletal and Skin Disease, NIH. Co-sponsors included NIOSH, CDC, Orthopedic Research and Education Foundation, the National Center for Medical Rehabilitation Research, and others. One expert witness Dr. Stanley Bigos, who testified on behalf of one industry group organized in opposition to OSHA's proposed standard in general, is a member of AAOS.

In June 1998, Clinical Orthopedics and Related Research (Exs. 26–1310, 26–1322, 26-1316) covered Cumulative Trauma Disorders of the Upper Extremity through a joint sponsorship of the Association of Bone and Joint Surgeons, the Academic Orthopedic Society, the Hip Society, the Musculoskeletal Tumor Society, and the Knee Society. This text again covered sections regarding the effects of physical work factors (*i.e.* repetition) on nerve, muscle, joints, and certain clinical conditions.

Similarly, the National Academy of Sciences, in 1999, (Ex. 26–37) published the results of a workshop they sponsored on work-related MSDs. While there was some variance in opinions about the contribution of physical work factors to MSDs, there was agreement among most that physical work factors contribute to MSDs. "MSDs are multifactorial, with work and biomechanical aspects of work being important contributors." The NAS reviewers also explained the concepts behind temporary rest or activity modification for injured tissues.

Contrary to the view of NAS, Dr. Stanley Bigos provided the following comment:

> Contrary to ergonomists' beliefs, usage is a prerequisite to health—using the body, even vigorously using the body, is not intrinsically harmful. That is why repetitive motion that fatigues musculoskeletal tissues is medically prescribed, to the point of being the preferred method of treatment even of tissues that have sustained traumatic injury or age-related degeneration. Properly conditioned; a traumatically injured joint may be restored to full function by the protection of muscles stronger than before the injury. [Ex. 32–241–3–4]

Dr. Bigos' statement that "repetitive motion that fatigues musculoskeletal tissues is medically prescribed, to the point of being the preferred method of treatment even of tissues that have sustained traumatic injury or age-related degeneration," while having elements of validity, again fails to look at the various work-related MSDs as well as the stage and severity of the condition. There is supporting literature and consensus, including clinical practice guidelines (*e.g.* ACOEM; Ex. 38–234) that recommend periods of splinting and rest for MSDs like acute tendonitis or stenosing tenosynovitis, DeQuervain's disease and carpal and cubital tunnel syndromes. A comparison could be made to a patient who experiences an acute myocardial infarction with muscle damage. In this scenario, rehabilitation often includes carefully controlled exercise appropriate to the stage of recovery and level of function of the remaining heart muscle. It would not be reasonable to presume that a patient one day after a significant myocardial would be improved if forced to run a marathon. Neither would a worker benefit from intensive and uncontrolled exercise after the onset of an acute MSD with significant inflammation, degeneration and loss of function.

The same commenters stated that OSHA's use of the term "rest" in the proposal implied that OSHA recommends or promotes bed rest for workers with MSDs. This statement is incorrect and fails to recognize the purpose and application of the standard. This standard is not intended as a guideline for the medical treatment of MSDs. Medical treatment is left to the licensed health care provider, utilizing sound medical judgement, and evidence based literature and clinical practice guidelines.

What OSHA did intend when it used the term "rest" was appropriate activity modification. The standard supports return to work where there are effective controls of biomechanical factors causing or contributing to the MSD. The preamble to the proposal stated:

> Although some covered MSDs are at such an advanced state that complete removal from the work environment is the appropriate treatment, it should usually be the recommendation of last resort. Where appropriate, work restrictions that allow the employee to continue working (*e.g.*, in an

> alternate job, or by modifying certain tasks in the employee's job to enable the employee to remain in that job) are preferable during the recovery period.

Dr. Stanley Bigos argued that the proposed ergonomics rule was at odds with the recommendations of the AHCPR guidelines, in that the proposed rule recommended rest, reduced work, and inactivity in response to pain, while the AHCPR guidelines recommend increased activity and conditioning (Ex. 32–241–4).

The AHCPR guidelines (Ex. 32–241–3–93) do recommend that adults with acute low back pain maintain activity. However, the guidelines do not suggest that patients with acute low back pain immediately return to work involving physical task factors that may stress the spine. Rather they advise appropriate activity modification to assist in the recovery process. AHCPR guidelines Activity Recommendations panel findings and recommendations state: "Patients with acute low back problems may be more comfortable if they temporarily limit or avoid specific activities known to increase mechanical stress on the spine, especially prolonged unsupported sitting, heavy lifting, and bending or twisting the back while lifting. (Strength of Evidence = D.);" and, "Activity recommendations for the employed patient with acute low back symptoms need to consider the patient's age and general health, and the physical demands of required job tasks. (Strength of Evidence=D.)"

The AHCPR guidelines acknowledge that

> several studies have identified an increased incidence of low back problems among individuals whose work involves heavy or repetitive lifting, exposure to total body vibration (from vehicles or industrial machinery), asymmetric postures, and postures sustained for long periods of time." [Ex. 32–241–3–93]

The guidelines also recognized that

> Other biomechanical research suggests that certain postures and activities increase the mechanical stress on the spine. It is not clear whether these mechanical stresses are the cause of low back problems. However, once symptoms are present, mechanical stresses correlate with worsening of symptoms. Prolonged sitting and postures that involve bending and twisting have been shown to increase the mechanical stress on the spine according to pressure measurements in lumbar intervertebral discs. Heavy lifting also appears to increase mechanical stress on the spine, but this stress can be reduced if the lifted object is held close to the body rather than at arm's length." [Ex. 32–241–3–93]

As to the duration of activity modification, the AHCPR guidelines (Ex. 32–241–3–93) demonstrate an understanding of the impact that the physical demands of work have on recovery and modified activity. They state that "The nature and duration of limitations will depend on the clinical status of the patient and the physical requirements of the job."

While the AHCPR guidelines (Ex. 32–241–3–93) did not find evidence that bed rest was beneficial for the majority of individuals with acute low back pain, the panel did acknowledge that, in some circumstances, bed rest may be required for select patients with acute low back pain ("The majority of low back patients will not require bed rest. Bed rest for 2 to 4 days may be an option for patients with severe initial symptoms of primarily leg pain.")

Program elements in OSHA's proposal are also consistent with the British guidelines, that state that there is moderate evidence that

> From an organisational perspective, the temporary provision of lighter or modified duties facilitates return to work and reduces time off work. [Ex. 500–118–2]

Some commenters appeared to confuse the concepts relevant to the practice of sports medicine with concepts relevant to the prevention of MSDS in workers. For example, Gibson, Dunn & Crutcher state

> Increase in physical activity (compared to past activity level) is a guiding principle in musculoskeletal rehabilitation, and has been the primary intervention and treatment in many musculoskeletal disorders. These treatment protocols include many of the physical stresses that OSHA recommends avoiding. [Ex. 500–118]

This again is an overly simplistic statement, since there are differences in the intensity, duration, and/or frequency of guided rehabilitation of an injury that is tailored to the individual's type of injury, severity of the condition, stage of rehabilitation and the individual's conditioning, as opposed to intensity, duration, and/or frequency of physical job factors that are based upon delivery of goods or services and have no bearing upon individual capabilities or injuries. Dr. Tapio Videman, another expert witness for the UPS attempted to explain the importance of physical activity as follows:

> Sports medicine—and much of modem mainstream medicine—views physical loading as a means of increasing fitness, strength, and function, and is part of most related intervention today. Why would physical loading be harmful in work but beneficial in leisure time? * * * Physical activity can promote physical adaptation to loading, and restore and maintain functional capacity. This may explain why there is some evidence of the benefits of exercise for spinal disorders. [32–241–30–20]

However, comparisons of workers with young and highly skilled athletes is not appropriate. This is pointed out by the ISSLS text on the Lumbar Spine (Wiesel *et al.*1996; Ex. 26–1620). The following quote is from the chapter on biomechanics:

> Comparison of athletic exercises with industrial labor is complicated because, in the athletic field, (1) one deals with young, healthy subjects; (2) there is a selection of individuals for the specific tasks; (3) the specific task is always accompanied by remedial exercises. In industrial labor, one is dealing with the average population. There is almost no selection of the individuals, and there are many monotonous tasks that are not interrupted by remedial exercise. [Ex. 26–1620]

Dr. Michael Vender explained his belief that soft tissue has almost limitless capacity to recover from injury.

> We cannot explain the natural process of aging and gradual deterioration of all body parts by the concept of cumulative trauma. The most basic flaw in this logic revolves around the comparison of the human body to a piece of metal [as reflected in the biomechanical model espoused by ergonomists). [Unlike metal], the body, when stressed or even injured, has the ability to heal and recover.—When one repeatedly bends a piece of plastic, it becomes permanently deformed. When one repeatedly exercises a muscle, it becomes stronger and more functional. [Ex. 32–241–3–19]

This belief is in contrast to the opinion of the NAS workshop (1999) (Ex. 26–37) noted above, and fails to recognize concepts of muscle disruption, tendon and ligament viscoelastic deformation and creep discussed in the Health Effects Preamble.

7. Additional Criticisms of Epidemiological Studies Raised by Commenters

Gibson, Dunn & Crutcher in their post-hearing comments (Ex. 500–118, Section B, pgs. 65–81) supply critiques of additional "studies on which OSHA relies or may rely in support of the proposed rule." (*id.*, pg. 65). OSHA's response to these critiques is given below.

Gibson Dunn & Crutcher criticize the study by Latza *et al.* (2000, Ex. 38–424) that examined occupational risk factors of low back pain among construction workers. Among their criticisms, Gibson Dunn & Crutcher argue that the authors drew causal inferences from a study that is only an exploratory analysis. Further, they claim that the researchers were vague in their methods and did not come up with a single promising association.

OSHA disagrees with these criticisms. First, the study as a whole cannot be

fairly characterized as an "exploratory analysis." This study is an adequately designed longitudinal epidemiological study where construction workers who reported no low back pain at baseline were followed for three years. The "exploratory approach" reported by the authors refers not to the study as a whole but rather to a detailed analysis of the data to identify potential risk factors that might be used to predict low back pain. The authors describe a detailed process for focusing on factors most likely to have caused the observed reports of low back pain. Second, OSHA disagrees that the authors were vague in their methods. Various aspects of the study, such as the selection of study subjects, data collection, and data analysis, were described in clear enough detail that would allow the reader to assess the results reported. Finally, the authors noted that causality cannot be established with this study. However, the purpose of the study was to identify possible risk factors for low back pain among these workers that might aid in the identification of hazardous components in the work that can guide effective primary intervention. In this regard, the authors report positive associations that show that certain occupational risk factors can be predictive of low back pain.

Gibson, Dunn & Crutcher criticize a study by Punnett *et al.* "A comparison of Approaches to Modeling the Relationship between Ergonomic Exposures and Upper Extremity Disorders" (2000, Ex. 500–71–43). This is a methodology study concerning approaches for combining independent and dependent variables for the purpose of exposure-response analysis. This study uses the information on upper extremity disorders in vehicle manufacturing found in an earlier Punnett *et al.* (1998, Ex. 26–38) study), which these same commenters criticized previously (Ex. 32–241–4, pg. 144). OSHA has responded to those criticisms elsewhere in this preamble.

Gibson, Dunn & Crutcher have two main criticisms of the Kurppa *et al.*, (1991, Ex. 26–53) study concerning the incidence of tenosynovitis or peritendinitis and epicondylitis in a meat-processing factory. The commenters claim that the diagnostic definition of the response tenosynovitis or peritendinitis (agreed to by the plant physician), "boils down to focal soreness/tenderness and nothing more specific or mysterious than that." (Ex. 500–118, pg. 71). In response, OSHA notes that, in order to be included as a response in the study, the condition needed to be severe enough in each case to qualify for sick leave (Ex. 26–53, pg. 33). As a result OSHA believes that the response is a meaningful health effect, *i.e.*, because it was serious enough to warrant time away from work for recuperation. Gibson, Dunn & Crutcher (Ex. 500–118 pg 71) also claim that, "By its very nature, a surveillance study perturbs the experience of discomfort." However, this type of physiological biasing factor would appear to have only a minimal or no effect on the end results since the rate of occurrence of tenosynovitis or peritendinitis and epicondylitis, for both men and women, was shown typically to be an order of magnitude higher for strenuous compared to non-strenuous meat processing jobs (Ex. 26–53, pg. 34).

Gibson Dunn & Crutcher correctly point out (Ex. 500–118, pg. 72–73) that the utility of participatory ergonomics was not evaluated in the Roquelaure *et al.* (1997, Ex. 38–96) study. However, OSHA used this study only to show an association between stress variables and carpal tunnel syndrome (CTS). The role of participatory ergonomics in reducing CTS was not alluded to by OSHA.

Gibson Dunn & Crutcher correctly point out (Ex. 500–118, pg. 73) that in the Viikari-Juntura *et al.* (1994, Ex. 26–873) study what is defined as severity of neck trouble is in fact the frequency of self-reported symptoms (pain, ache, stiffness or numbness). As a result, Gibson Dunn & Crutcher believe the possibility exists that the subject's statements concerning severe neck trouble could be misleading. OSHA used the Viikari-Juntura *et al.* study to only show an association between neck symptoms and stress factors. OSHA did not comment on the severity of the symptoms.

Gibson Dunn & Crutcher note (Ex. 500–118, pgs. 73–74) that the authors of the Kearns *et al.* (2000, Ex. 500–71–34) study did not intend that the results of the study on the prolongation of median motor and sensory nerve latency be generalized beyond the effects of work related to pork processing. OSHA agrees that the study supplies limited information about the relationship between workplace physical factors and CTS.

Stenlund et al.studies, Exs. 26–733 and 26–1479

Gibson Dunn & Crutcher (Ex. 500–118 pg. 70–71) have criticized the 1992 study by Stenlund *et al.* (Ex. 26–733) of osteoarthrosis and the 1993 Stenlund *et al.* (Ex. 26–1459) of shoulder tendinitis. First, the 1992 Stenlund *et al.* study is criticized for its conclusion that radiographic evidence of osteophytes (spurs) in the acromioclavicular joint is a predictor of osteoarthrosis causing cartilage loss and abnormal reparative processes. Gibson Dunn & Crutcher argue that in other joints, such as the knee, increased usage leads to osteophytosis (spurs) and increased preservation of cartilage, which is good. They question whether the Stenlund *et al.* (1992) paper is detecting a "bad" outcome. Gibson Dunn & Crutcher also criticize the 1993 Stenlund *et al.* paper for using shoulder tendinitis as an adverse effect measure, arguing that shoulder tendinitis is subject to overt reporting and recording bias. They conclude that these types of outcome measures are not appropriate to be used in epidemiological studies.

With regard to the 1992 Stenlund *et al.* study, the critics are comparing minimal changes commonly observed with habitual usage of a joint such as the knee (*e.g.*, increased preservation of cartilage) to severe osteoarthrosis, from heavy manual work and vibration, of a joint, in this case the shoulder. In the Stenlund study, radiographs were classified into 5 grades of osteoarthrosis (0 = normal; 1= minimal changes; 2 = moderate changes, more severe changes to cartilage and bone structure begins to be affected; 3 = severe osteoarthrosis, and 4 = totally destroyed joint). Those classifying the radiographs were blinded as to exposure. The authors did not find significant differences in lower grade changes. However, they did observe that among rock blasters and bricklayers who had exposure to heavy load and vibration compared to foremen who did not, there was a significant increase in grade 2 and 3 osteoarthrosis. Therefore, OSHA believes that Gibson Dunn & Crutcher are actually confusing two different health outcomes in their criticism. The study by Stenlund *et al.* (1992) would support the hypothesis that normal habitual use of the shoulder might cause increased preservation of the cartilage. However, shoulder joints exposed to heavy loads and vibrations such as those examined in the study show radiographic evidence of severe osteoarthrosis.

With regard to the 1993 Stenlund *et al.* study, the authors noted the potential for misclassification when using tendinitis as a measure of outcome. They agree that in some epidemiological studies, clinical diagnosis of tendinitis may not be an appropriate measure of prevalence in the population, since some individuals with tendinitis may not see a physician for their symptoms, thus creating a selection bias. However, the authors assert that this type of bias is overcome in their study by the use of a cross sectional study design. In order to further lessen the potential for misclassification, the authors also included symptoms of pain during the last year that could have originated from structures other than the tendons or muscle attachment inflamation in addition to using palpation and isometric contraction. They reasoned that persons experiencing pain in their shoulder in the last year and who on examination have pronounced pain reaction to palpation and contraction, have probably had a disorder in the muscle attachment or tendon, that in clinical practice would have been classified as tendinitis. OSHA believes that, with proper study design and control for misclassification, as was done in the Stenlund study, clinically diagnosed shoulder tendinitis is an adequate measure of effect. Thus, the Stenlund *et al.*, 1993 study can be used with other studies in the record to form a reliable weight of evidence on which to base the agency's health effects conclusions.

Gibson Dunn & Crutcher also criticized the 1990 study on degenerative disc disease among concrete workers and house painters by Riihimaki *et al.* (Ex. 502–455). They argue that the results of this study are "not compelling" because the authors found insignificant risk ratios and, thus, are very likely to be influenced by unmeasured variables. OSHA finds this argument unconvincing for the following reasons. Number one, the authors did, in fact, find a statistically significant risk of detectable degenerative changes in the lumbar spine among concrete workers (38%) compared to house painters (26%). (Relative Risk=1.4, (CI 1.1–1.8; p<0.01)) In this study, concrete reinforcement workers were compared to house painters. The authors noted that the load on the back is distinctly different among concrete workers compared to house painters. The authors also note that in Finland, persons in these trades have very similar socio-economic status and lifestyles, thus making it more likely that the detected difference between these groups is due to occupational exposures rather than other factors. Moreover, as a part of the study design the concrete reinforcement workers and house painters were matched by age, earlier back accidents, height, body mass index and smoking. These covariates were included in a mutivariate logistic regression to perform the statistical analysis to control for possible confounding factors likely to affect disc degeneration. After controlling for these factors, the authors still reported statistically significant effects. In addition, the authors noted that workers, to be included in the study, had to have at least 5 years seniority, thus creating the possibility for negative bias due to health-based self-selection of workers in the more physically demanding job (*i.e.* concrete workers). The effect of this negative bias, however, would underestimate the risk ratios. In an attempt to understand the underlying etiology of this disc degeneration, the authors did additional analyses looking at different segments of the lumbar region and different degenerative spinal changes (*e.g.* disc space narrowing, spondylophytes, and endplate sclerosis). In some of these sub-analyses for certain lumbar regions, there was no statistically significant effect. Overall, however, the authors found a significant association between work and disc degeneration while controlling for confounders. Therefore, OSHA does find these results compelling and generally supportive of its health effects assessment.

Gibson Dunn & Crutcher criticized the 1994 study of sciatic pain among men in machine operating, dynamic physical work and sedentary work by Riihimaki *et al.* (1994, Ex. 26–1188). They claim that the associations observed in this study are "barely significant" (Ex. 500–197, pg. 69) and are no more significant than the associations observed with physical exercise. In addition, they state that the observed increases are negatively influenced by workers' self reporting of tasks, "an inadequate definition of sciatica" and recall bias.

OSHA is unsure as to what these critics mean by "barely" significant. The authors reported a statistically significant increase in sciatic pain among machine operators and carpenters compared to office workers. For machine operators the relative risk =1.6 (95% CI 1.2–2.2) and for carpenters was 1.7 (95% CI 1.3–2.4). This statistical significance remained even after controlling for a variety of risk factors (*e.g.*, age, seniority, education, physical exercise, smoking, car driving, and prior back accidents). Adjusted relative risks were 1.4 and 1.5.

The authors do acknowledge that the reporting of symptoms of sciatica can be subjective, as can a worker's perception of physical task. In order to minimize this type of bias, they used explicit descriptions of symptoms and tasks to ensure uniform understanding of the concepts. The authors also recognize the potential of recall bias to negatively influence the results. However, they note that this misclassification also depends not only on the recall error but also the incidence rate of the symptoms. They conclude that the recall error bias in the observed risk ratios is small if "by the end of follow-up" the rate of reporting symptoms among the misclassified subjects does not deviate much from the overall incidence rate. Thus, while OSHA acknowledges the potential bias pointed out by the critics of this study, the agency believes that these sources of bias have been taken into consideration in this study to such an extent that the observed increased risk ratios can be accepted with some confidence. In addition, OSHA believes that these observed risk ratios are more than barely significant and, when viewed in the context of other positive epidemiological evidence, contribute to the weight of evidence and the strength of the agency's overall health effects assessment.

Gibson Dunn & Crutcher also criticize four other epidemiology studies OSHA relied on in contributing to the strength of the agency's overall health effects assessment: two studies by Silverstein *et al.* (Exs. 26–34 and 26–1404), a study by Venning *et al.* (Ex. 500–41–49), and a study by Punnett *et al.* (Ex. 26–39). OSHA responds to criticisms of these 4 studies in on Section G:3-Exposure-Response.

VI. Risk Assessment

A. Introduction

The United States Supreme Court, in the *Benzene* decision (*Industrial Union Department, AFL-CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980)), has ruled that the OSH Act requires, prior to the issuance of a new standard, that a determination be made that there exists a significant risk of material impairment and that issuance of the new standard will substantially reduce that risk. The Court stated that "before he can promulgate any permanent health or safety standard, the Secretary is required to make a threshold finding that a place of employment is unsafe in the sense that significant risks are present and can be eliminated or lessened by a change in practices" (448 U.S. 642). The Court also stated that "the Act does limit the Secretary's power to require the elimination of significant risks" (448 U.S. 644).

In the Cotton Dust case (*American Textile Manufacturers Institute* v. *Donovan*, 452 U.S. 490 (1981)), the Court reaffirmed the position it had previously taken in the *Benzene* decision that a risk assessment is not only appropriate but required to identify significant health risks in workers and to determine if a new standard will reduce those risks. Although the Court did not require OSHA to perform a quantitative risk assessment in every case, the Court implied, and OSHA as

a matter of policy agrees, that assessments should be put into quantitative terms to the extent possible.

The weight of evidence presented in the Health Effects section of this preamble (Section V) demonstrates a causal relationship between exposure to workplace risk factors and work-related musculoskeletal disorders. As discussed in that section, the major workplace risk factors include exposure to repetitive motion, force, awkward postures, contact stress, and segmental vibration. The Health Effects section also demonstrates that the risk associated with occupational exposure to these risk factors increases with frequent or prolonged exposure to these risk factors, and that the risk is increased when workers are exposed to more than one risk factor in a job.

OSHA has determined that there is substantial evidence that exposure to these biomechanical stressors at work can cause or contribute to the development of MSDs and that reductions in these stressors can reduce the number and severity of these work-related MSDs. The underlying evidence falls into three broad categories:

> Studies of groups of workers showing a relationship between exposure to biomechanical risk factors in the workplace and an increased incidence or prevalence of MSDs;
>
> Biomechanical studies that show that adverse tissue reactions and damage can occur when tissues are subjected to high forces and/or a high number of repetitive movements, which occur when workers are substantially exposed to biomechanical risk factors; and
>
> Scientific and case studies that demonstrate that workplace interventions designed to reduce exposures to biomechanical risk factors are effective in reducing the internal forces imposed upon tissues and the incidence and severity of MSDs.

In the Health Effects section of this preamble, OSHA summarizes data and findings from more than 170 epidemiological studies of the incidence or prevalence of MSDs in groups of workers who are exposed to physical risk factors in their jobs. In most of these studies, the MSD prevalence of a group of exposed workers is compared to that in another worker group that is not exposed to the risk factors of interest. If the exposed group shows a higher MSD prevalence than does the reference group, the study provides evidence of an association between exposure and an increased risk of developing MSDs, particularly if the study is of good quality and adequately controlled for potentially confounding factors (such as age and gender) and biases.

Many of these epidemiological studies were reviewed by the National Institute for Occupational Safety and Health (NIOSH) in 1997 (Ex. 26–1) to evaluate the strength of the evidence for a causal relationship between several types of MSDs and the workplace risk factors of force, repetitive motion, awkward posture, and vibration. More than 600 peer-reviewed studies were critically reviewed, making this one of the largest human data bases ever built to examine work-related adverse health outcomes. NIOSH found that for most combinations of MSDs and risk factors, the evidence in humans that a causal relationship existed between workplace exposure to risk factors and the development of MSDs was either "sufficient" or "strong." For a few MSD/risk factor combinations, there was insufficient evidence of a causal relationship, but in no case did NIOSH determine that there was evidence for the absence of a relationship between exposure to workplace risk factors and the development of MSDs. NIOSH concluded that " * * * a substantial body of credible epidemiologic research provides strong evidence of an association between MSDs and certain work-related physical factors when there are high levels of exposure and especially in combination with exposure to more than one physical factor * * *" (NIOSH 1997, ES p. xiv, Ex. 26-1).

A similar conclusion was reached by the experts participating in a workshop conducted by the National Academy of Sciences/National Research Council (NRC) (Ex. 26–37). For the NRC report, a panel of experts critically reviewed the methods used to select and evaluate the human studies relied on in the 1997 NIOSH study (Ex. 26–1). The 1999 NRC report concluded as follows:

> [the association between MSDs and exposure to risk factors at work that have been] identified by the NIOSH review * * * as having strong evidence are well supported by competent research on heavily exposed populations.
>
> There is a higher incidence of reported pain, injury, loss of work, and disability among individuals who are employed in occupations where there is a high level of exposure to physical loading than for those employed in occupations with lower levels of exposure. (Ex. 26–37)

In this context, NAS's use of the phrases "heavily exposed" and "high level of exposure" does not refer to any specific quantitatively defined level of exposure to biomechanical risk factors, but simply reflects that, in the epidemiological studies, groups of workers who were considered to be "exposed" to biomechanical risk factors experienced higher intensities and durations of exposure than did the comparison, or referent, groups of workers. In general, workers in the exposed groups were exposed to biomechanical risk factors on a nearly daily basis, and were usually exposed for most of each work shift. However, as shown by OSHA's summary of exposure-response data in the Health Effects section (Section V), many of these epidemiological studies placed workers in the exposed group even if they were exposed for only about one-quarter to one-half of the work shift. Later in this section, OSHA defines "higher-risk" workers as those who are exposed in excess of the final rule's job screening criteria, which generally reflects those workers as having two or more hours per shift of exposure to biomechanical risk factors.

Since the NIOSH and NAS reports, many additional epidemiological studies have been published and are contained in the rulemaking record. These studies have been reviewed by OSHA in detail in the Health Effects section, and their results add to the already substantial weight of evidence originally evaluated by NIOSH and NAS. OSHA is not alone in its determination that the epidemiological data base for ergonomics convincingly establishes a causal relationship between workplace exposure to risk factors and MSDs. Many experts who provided testimony in the record and appeared at OSHA's informal hearing agreed that sufficient epidemiological evidence exists to conclude that biomechanical factors at work cause or contribute to MSDs. These experts included researchers, medical professionals, and ergonomists (Exs. 37–1, 37–2, 37–9, 37–10, 37–13, 37–10, 37–15, 37–16, 37–17, 37–18, 37–21, 37–27; Tr. 843, Tr. 1048; Tr. 1112, Tr. 1103–1103, Tr. 1367, Tr. 9808–9809, Tr. 16802, Tr. 17566–17567, Tr. 8261, Tr. 2834, Tr. 9297, Tr. 16145, Tr. 1959–1960, Tr. 17358, Tr. 13330–13331, Tr. 3412).

That exposure to workplace risk factors can cause or contribute to MSDs is made more plausible by the growing body of studies of biomechanical effects, also summarized in the Health Effects section (Section V of this preamble), that are designed to explore how tissues react to mechanical stress and how those reactions are related to disease processes. OSHA presented detailed scientific information on the biomechanics and pathophysiology of MSDs in its Health Effects Appendicies, prepared at the time of the proposed rule (Ex. 27–1); the discussion below briefly summarizes the information reviewed in the Health Effects Appendicies and in the Health Effects section.

Although all soft musculoskeletal tissue can tolerate certain physical loads, these tissues will respond adversely if the load becomes excessive. Muscles, ligaments, tendons, and tendon sheaths can become inflamed with repetitive or prolonged loading, cartilage can deteriorate when subjected to abnormal loads, and nerves can exhibit dysfunction and eventually permanent damage if compressed or subjected to extended tension. Other studies have shown that the kinds of risk factors present in many industrial occupations can impose internal forces on soft musculoskeletal tissue sufficient to cause the kinds of physiologic responses described above. The relationships between external and internal loads have been demonstrated using both biomechanical models and direct measurement and observation in the workplace (see Section V, Health Effects).

Finally, evidence of the work-relatedness of MSDs comes from several studies and case reports that document the effectiveness of ergonomic interventions in reducing exposures to risk factors and the successes of individual companies' ergonomics programs in reducing the incidence or prevalence of MSDs and the severity of MSDs among their workers. After reviewing intervention studies, including both field and laboratory studies, the NRC (1998, Ex. 26–37) concluded that

> * * * specific interventions can reduce the reported rate of musculoskeletal disorders for workers who perform high-risk tasks. No known single intervention is universally effective. Successful interventions require attention to individual, organizational, and job characteristics, tailoring the corrective action to those characteristics.

The scientific evidence and case studies demonstrating that ergonomic interventions reduce excessive tissue loads and the associated tissue pathology, and reduce MSD incidence and severity, are summarized later in this section).

In addition to biomechanical risk factors present at work, the risk of developing an MSD is also influenced by individual, organizational, and social factors. Factors that affect individual susceptibility include age, general conditioning, and pre existing medical conditions. Although some of these individual factors have been identified in human studies as being statistically significant predictors of disease, they are generally much weaker predictors than are biomechanical factors of force, repetition, posture, and vibration (NRC 1998, Ex. 26–37). Organizational factors that have been linked to MSDs include poor job content (*e.g.*, lack of job variety) and job demands (*e.g.*, excessive or highly variable workload and time pressure). The importance of poor job content is difficult to evaluate, since this factor can coexist with biomechanical factors (for example, excessive workload can result in a worker needing to increase repetitive movement and/or force). Social factors refer to a lack of social support from management and supervisors, which can lead to psychological stress and dissatisfaction with work, both associated with an increased prevalence of MSDs. However, after evaluating the nature of psychosocial factors and their role in contributing to the risk of MSDs, OSHA has determined that, although psychosocial factors appear, at least in some studies, to have some relationship to the observed increases in the incidence of MSDs among workers exposed to risk factors, their effect is independent of that of biomechanical factors and is generally not as predictive of MSD risk as are biomechanical factors. The evidence reviewed by the Agency suggests that psychosocial factors may have a greater influence in determining the length of disability following development of an MSD than do biomechanical factors, but have shown weaker associations with the prevalence or incidence of MSDs than have biomechanical factors (see Section V.G.5 of the Health Effects Section for a discussion of the literature dealing with psychosocial effects). OSHA's finding is in accord with that of the NAS review (1999, Ex. 26–37).

OSHA believes that the human epidemiologic studies, the biomechanical and physiological studies, and the studies of the effectiveness of workplace ergonomic interventions together constitute a compelling body of evidence that demonstrates that exposure to risk factors at work is a major factor in the development of MSDs; and that reducing or eliminating exposures to these risk factors will reduce the number and severity of these MSDs.

The epidemiological data base that describes the associations between exposure to workplace risk factors and increased prevalence or incidence of MSDs is vast. The nature of the hazard and of the available data require OSHA to perform a different type of risk assessment than it performs to assess occupational risks from chemical exposures. There are many reasons for this, in particular the complex interactions among different kinds of exposures that lead to tissue injury and disorders and the difficulty of defining exposure metrics that reflect all of the various combinations of risk factors to which workers are exposed across industry. This is not to say that exposure-response relationships have not been observed or cannot be defined in specific circumstances; in fact, there are many cases in which the risk of MSDs has been quantitatively related to the degree and intensity of exposure. In the Health Effects section of this preamble (Section V), OSHA describes scientific studies that demonstrate a positive association between the magnitude and/or duration of exposure to workplace risk factors and the prevalence of MSDs, including upper extremity disorders and back injuries. OSHA concludes that these studies provide compelling evidence of the work-relatedness of MSDs, since a finding of positive exposure-response trends is one of the key findings necessary to establish a causal relationship between exposure and disease.

Using data on the incidence of work-related MSDs, risk can be quantified using a population-based approach similar to the one used by OSHA to quantify the risk of Hepatitis B among workers with frequent occupational exposure to blood and other potentially infectious material (56 FR 64004). For this final ergonomics program rule, OSHA uses a similar approach in its final risk assessment. In this assessment, OSHA relies on data from the Bureau of Labor Statistics (BLS) to estimate the annual incidence of work-related MSDs in different industry sectors and occupations, by type of injury and type of exposure. A description of these data and OSHA's analytical approach are described in part B below, and the results of this analysis appear in part C.

Having quantified the risk, it is important to determine the extent to which the standard is likely to reduce that risk. In the case of this ergonomics program standard there is abundant evidence of the effectiveness of ergonomic programs. This evidence comes from a variety of published studies, articles, and unpublished data that describe the reductions in risk ergonomics programs have actually achieved in the workplace. Most commonly, this evidence is expressed in terms of reductions in injury rates and decreases in the numbers of lost workdays caused by MSDs. OSHA's discussion of these data appears in part D, below. The Agency presents the results of its risk analysis in parts C and D; comments on the preliminary risk

assessment (64 FR 65926) follow these sections.

B. Data Sources and Analytical Approach

The annual Survey of Occupational Injuries and Illnesses conducted by the Bureau of Labor Statistics (BLS) is the principal data source for evaluating the risks to employees of developing a work-related musculoskeletal disorder. This survey is conducted under a joint federal/state program that collects workplace injury and illness data from about 165,000 private industry establishments. The survey requests information only on non-fatal injuries and illnesses, and excludes the self-employed, farms with fewer than 11 employees, private households, and employees in federal, state, and local government agencies.

For this survey, selected employers are required to provide statistics on the total number of injuries and illnesses recorded on the OSHA Form 200 (the "OSHA Log"), as well as information describing the nature and causes of their lost workday injuries and illnesses. Thus, according to the BLS, the data provided by employers "* * * reflect not only the year's injury and illness experience, but also the employer's understanding of which cases are work-related under current record keeping guidelines of the U.S. Department of Labor." Information from employers is provided in sufficient detail to permit the BLS to systematically code each reported case and develop estimates of the numbers and incidence of each specific type of LWD injury and illness for the United States as a whole, by industry sector and by occupation.

Although the BLS data are the best available data on the number and kinds of job-related injuries and illnesses occurring among U.S. workers in any given year, there is no single BLS-reported number that represents all employer-reported musculoskeletal injuries and illnesses occurring in that year. Instead, employer-reported injuries and illnesses are coded by the BLS according to a classification system that categorizes each incident by type of injury or illness and by nature of the exposure event leading to the injury or illness (Ex. 26–1372). The types of disorders that are addressed by the standard fall into several of these BLS injury and illness categories.

To use these data, OSHA identified the kinds of cause-specific injuries and illnesses, as coded by the BLS, that reflect MSDs of the kinds that will be covered by the ergonomics program standard. An OSHA panel, which included an occupational physician and two professional ergonomists, examined the BLS listing of occupational injury and exposure event codes and their definitions from the manual provided to state personnel who code the data from the BLS employer survey. The table contained in Appendix VI-A at the end of this Risk Assessment section provides the list of injury categories that were initially selected by this panel as being likely to include at least some work-related MSDs. From this initial list, the panel selected a subset of injury categories that predominately included work-related MSDs of the type that has been associated with exposure to the biomechanical risk factors addressed by the final rule; these categories appear in Table VI–1. Of the injury categories selected, OSHA chose to base its analysis exclusively on six injury categories that were deemed by these experts to be most relevant and most likely to represent a large proportion of lost workday MSDs; in other words, OSHA deliberately excluded several categories such as "traumatic injuries to bones, nerves, and spinal cord," "symptoms involving nervous and musculoskeletal systems, unspecified," and "disorders of the peripheral nervous system, unspecified." The injury categories included by OSHA for the risk assessment were:

Sprains, Strains, and Tears;
Back Pain, Hurt Back;
Soreness, Hurt, except back;
Carpal tunnel syndrome;
Hernia; and
Musculoskeletal and connective systems diseases and disorders.

Table VI-1. BLS Injury Categories Consisting Predominately of Employer-Reported Musculoskeletal Disorders (Continued)

BLS Code	Nature of Injury	Description
021	Sprains, strains, tears	This nature group classifies cases of sprains and strains of muscles, joints tendons, and ligaments. Diseases or disorders affecting the musculoskeletal system, including tendonitis and bursitis, which generally occur over time as a result of repetitive activity should be coded in Musculoskeletal system and connective tissue diseases and disorders, major group 17. Includes avulsion, hemarthrosis, rupture, strain, sprain, or tear of joint capsule, ligament, muscle, or tendon. Excludes hernia (153), lacerations of tendons in open wounds (034), torn cartilage (011).
0972 0973	Back pain, hurt back Soreness, pain, hurt, except the back	Subcategories under nature group 097, Nonspecified injuries and disorders, which includes traumatic injuries and disorders where some description of the manifestation of the trauma is provided and generally where the part of body has been identified. Subcategory 0972 includes hurt back, backache, low back pain.
1241	Carpal tunnel syndrome	Subcategory under nature group 124, Disorders of the peripheral nervous system, which includes the nerves and ganglia located outside the brain and spinal cord.
153	Hernia	This nature group classifies hernias of the abdominal cavity. Includes: femoral (1539), esophageal (1539), hiatal (1532), inguinal (1531), paraesophageal (1539), scrotal (1531), umbilical (1539), and ventral (1533) hernias. Excludes: herniated disc (011), herniated brain (1231), and strangulations (091).
17	Musculoskeletal system and connective tissue diseases and disorders.	This major group classifies diseases of the musculoskeletal system and connective tissue.
170	Musculoskeletal system and connective tissue diseases and disorders, unspecified	
171	Arthropathies and related disorders (arthritis)	This nature group classifies joint diseases and related disorders with or without association with infections. Includes: ankylosis of the joint, arthritis, arthropathy, and polyarthritis. Excludes: disorders of the spine (172), gouty arthropathy (1919), rheumatic fever with heart involvement(131).

Table VI-1. BLS Injury Categories Consisting Predominately of Employer-Reported Musculoskeletal Disorders (Continued)

BLS Code	Nature of Injury	Description
172	Dorsopathies	This nature group classifies conditions affecting the back and spine. Includes: spondylitis and spondylosis of the spine (1729); intevertebral disc disorders, except dislocation (1723); sciatica (1721); lumbago (1722); and other nontraumatic backaches (1729). Excludes: dislocated disc (011), curvature of the spine (1741), fractured spine (012), herniated disc (011), ruptured disc (011), traumatic sprains and strains involving the back (021), and other traumatic injuries to muscles, tendons, ligaments, or joints of the back (02), and traumatic back pain or backache (0972).
173	Rheumatism, except the back	This nature group classifies disorders marked by inflammation, degeneration, or metabolic derangement of the connective tissue structure of the body, especially the joints and related structures of muscles, bursae, tendons and fibrous tissue. Generally, these codes should be used when the condition occurred over time as a result of repetitive activity. Includes: rotator cuff syndrome (1739), rupture of synovium (1739), and trigger finger (1739). Excludes: rheumatism affecting the back is included in code (172), traumatic injuries and disorders affecting the muscles, tendons, ligaments and joints (02).
174	Osteopathies, chondropathies, acquired deformities	This group is comprised of diseases of bones, diseases of cartilage, and acquired musculoskeletal deformities. Includes: osteomyelitis, periostitis and other infections involving bone; and acquired curvature of the spine.
179	Musculoskeletal system and connective tissue diseases and disorders, n.e.c.	This nature group classifies musculoskeletal system and connective tissue diseases and disorders that are not classified elsewhere.

Source: Occupational Injury and Illness Classification Manual, Bureau of Labor Statistics, December 1992 (Ex. 26-1372)

For this analysis, OSHA is interested in capturing only those injuries and illnesses that are associated with exposure to the risk factors addressed in the final rule. These risk factors are repetitive motion, excessive force, awkward postures, contact stress, and segmental vibration. The annual BLS survey does not break out the causes of injuries and illnesses captured by the survey in a manner that precisely matches the kinds of risk factor exposures covered by the rule. However, the OSHA panel did identify the three exposure event categories defined by the BLS that are the most closely related to these risk factors. These are:

- "Repetitive motion," which reflects the risk factors of repetitive motion, sometimes combined with force and/or awkward posture, and contact stress, which is a combination of repetitive motion and force;
- "Overexertion," which includes activities such as lifting/lowering, pushing/pulling, holding/carrying, and throwing, and thus reflects the risk factor of force, sometimes combined with repetitive motion and/or awkward posture; and
- A subcategory of "bodily reaction" that includes "bending, climbing, crawling, reaching, twisting," which reflects the risk factor of awkward posture.

The BLS definitions for these exposure event categories appear in Table VI–2. Note that musculoskeletal injuries and illnesses caused by acute events such as slips, trips, falls, being struck by objects, or by motor vehicle accidents are *excluded* from the data relied on in OSHA's risk analysis (because they are not included in the coverage of the final rule (see paragraph (a) of the regulatory text)). The process used by OSHA to identify those injury and exposure event categories from which to select the BLS data represents the closest approximation possible from the data available to OSHA of the MSDs that the final rule will actually cover.

The BLS injury and illness coding system also includes two exposure event categories that reflect exposure to vibration involving damage to the nerves or circulatory system (Ex. 26–1372). They include:

- Event code 05, rubbed or abraded by friction or pressure; this code includes injuries caused by rubbing or abrasion by "objects being handled," and includes "superficial injuries such as blisters, scratches, or abrasions," as well as those involving nerve or circulatory damage, and
- Event code 06, rubbed, abraded, or jarred by vibration, which includes injuries caused by vibration of mobile equipment or vehicles, as well as other machines or equipment.

Table VI-2. Description of BLS Exposure Event Categories Corresponding to Workplace Risk Factors Associated with Work-Related Musculoskeletal Disorders

BLS Code	Nature of Exposure Event	Description
21	Bodily reaction [a]	Codes in this major group apply to injuries or illnesses resulting from a single incident of free bodily motion which imposed stress or strain upon some part of the body. Generally, codes in this major group apply to the occurrence of strains, sprains, ruptures, nerve damage or other internal injuries or illnesses resulting from the assumption of an unnatural position or from voluntary or involuntary motions induced by sudden noise, fright, or efforts to recover from slips or loss of balance (not resulting in falls). This major group includes cases involving musculoskeletal or internal injury or illness resulting from the execution of personal movements such as walking, climbing, bending, etc. when such movement in itself was the source of injury or illness. Group does not include falls.
210	Bodily reaction, unspecified	
211	Bending, climbing, crawling, reaching, twisting	
212	Sudden reaction when surprised, frightened, startled	
213	Running--without other incident	
214	Sitting	
215	Slip, trip, loss of balance--without fall	
216	Standing	
217	Walking--without other incident	
	Bodily reaction, n.e.c.	

Table VI-2. Description of BLS Exposure Event Categories Corresponding to Workplace Risk Factors Associated with Work-Related Musculoskeletal Disorders (Continued)

BLS Code	Nature of Exposure Event	Description
22	Overexertion	Overexertion applies to cases, usually non-impact, in which the injury or illness resulted from excessive physical effort directed at an outside source of injury or illness. The physical effort may involve lifting, pulling, pushing, turning, wielding, holding, carrying, or throwing the source of injury/illness. Free bodily motions that do not involve an outside source of injury or illness are classified either in major group 21, Bodily reaction, or in major group 23, Repetitive motion.
220	Overexertion, unspecified	
221	Overexertion in lifting	
222	Overexertion in pulling or pushing objects	
223	Overexertion in holding, carrying, turning, or wielding objects	
224	Overexertion in throwing objects	
229	Overexertion, n.e.c.	
23	Repetitive motion	Repetitive motion applies when an injury or illness resulted from bodily motion which imposed stress or strain upon some part of the body due to a task's repetitive nature. Instances of carpal tunnel syndrome (CTS) from typing or any type of keyentry, including the use of calculators or nonscanning cash registers are coded 231. CTS resulting from cutting with a knife, repeated use of a power tool should be coded Repetitive use of tool (232). If an injury or illness resulted from prolonged vibration in long distance driving, the event should be coded in event group 061, Rubbed, abraded, or jarred by vehicle or mobile equipment vibration.
230	Repetitive motion, unspecified	
231	Typing or key entry	
232	Repetitive use of tools	
233	Repetitive placing, grasping, or moving objects, except tools	
239	Repetitive motion, n.e.c.	

[a] The subcategory of "Bending, climbing, crawling, reaching, twisting " is the only subcategory from the Bodily Reaction category used by OSHA to define MSDs.

Source: Occupational Injury and Illness Classification Manual, Bureau of Labor Statistics, December 1992 (Ex. 26-1372)

MSDs caused by segmental vibration are thus included with those caused by whole-body vibration in both event categories, which makes it difficult to separate out those vibration-induced injuries and illnesses related only to segmental vibration, one of the risk factors covered by the standard. The BLS estimated that a total of 5,465 injuries related to exposure events classified under these two categories (excluding injuries involving the eyes) had occurred in 1996 (see BLS Table R32 for 1996, available at http://www.bls.gov/oshc_d96.htm). Because it is not possible to identify the number of injuries associated with segmental vibration, OSHA has included in its analysis only those MSDs related to the three event codes of overexertion, repetitive motion, and the subcategory of bodily reaction described above. The injury/illness and event codes used by OSHA in the Risk Assessment and Significance of Risk sections for the final rule are the same as those used to support these analyses of the proposed rule. OSHA's decision not to include vibration-induced injuries and illnesses in the universe of MSDs means that the risks estimated in the final Risk Assessment section, and the estimates in the Significance of Risk section, are understated.

OSHA received numerous comments on its selection of injury/illness and exposure event codes from those used in the BLS classification system. In particular, several commenters objected to OSHA's inclusion of injuries categorized as "strains, sprains, and tears," because, in their view, such injuries reflect acute injury events, while OSHA's ergonomics program standard was intended to address injuries that arise from cumulative damage through long-term exposure to risk factors. These commenters include, among others, the Chamber of Commerce (Ex. 30–1722), the American Iron and Steel Institute (Exs. 30–3951, 32–206), Gibson, Dunn, & Crutcher on behalf of numerous clients (Exs. 500–197, 32–241), the National Coalition on Ergonomics (Ex. 32–368), the American Forest & Paper Association (Ex. 30–3865), the AEI-Brookings Joint Center (Ex. 30–3911), Edison Electric Institute (Ex. 32–300–1), the Center for Office Technology (Ex. 30–2208), Integrated Waste Services Association (Ex. 30–3853), Organization Resources Counselors (Ex. 30–3813), the American Meat Institute (Ex. 30–3677), Guilford Mills (Tr. pp. 11519–11520, 11566–11567), the Puerto Rico Manufacturers Association (Ex. 30–3348), and the National Paint and Coatings Association (Ex. 30–4340). In support of their views, these commenters point to the BLS's definition of "strains, sprains, and tears," which appeared on Table VI–1 of the preamble to the proposal (64 FR 65928—65929) and reads as follows:

> This nature group classifies cases of sprains and strains of muscles, joints, tendons, and ligaments. Diseases or disorders affecting the musculoskeletal system, including tendinitis and bursitis, which generally occur over time as a result of repetitive activity should be coded in Musculoskeletal System and Connective Tissue Diseases and Disorders, major group 17. (Ex. 26–1372)

Based on this definition, Gibson, Dunn, & Crutcher conclude that cases classified as sprains, strains, and tears represent single-incident traumatic injuries and "are not MSDs" (Ex. 500–197, p. I–166).

To further support their view that strains, sprains, and tears reflect acute injury events and not cumulative trauma, Gibson, Dunn, & Crutcher note that most of the strain, sprain, and tear injuries described in OSHA's preliminary risk assessment were associated with overexertion, which is defined by the BLS as follows:

> Overexertion applies to cases, usually non-impact, in which the injury or illness resulted from excessive physical effort directed at an outside source of injury or illness * * * Free bodily motions that do not involve an outside source of injury or illness are classified either in major group 21, Bodily Reaction, or in major group 23, Repetitive Motion. (Ex. 26–1372)

Thus, Gibson, Dunn, and Crutcher argue that

> Clearly, nothing in this definition suggests that overexertion injuries develop gradually over time. To the contrary, this definition expressly excludes injuries that result from repetitive motion. There is simply no evidence that sprains, strains, and tears associated with overexertion meet the definition of an MSD. (Ex. 500–197, p. I–167)

Similarly, the Chamber of Commerce stated: "It is not difficult to imagine that many, if not most of these injuries * * * may well have occurred as the result of a single instantaneous event." (Ex. 30–1722)

Gibson, Dunn & Crutcher (Ex. 500–197), AISI (Exs. 32–206, 30–3951), the American Forest & Paper Association (Ex. 30–3865), the American Meat Institute (Ex. 30–3677), and the Hon. David M. McIntosh of the U.S. House of Representatives (Ex. 30–542) all objected to the inclusion of cases from BLS category 0972 (back pain, hurt back) in the universe of MSDs on the grounds that these are traumatic injuries as well. To support this position, Gibson, Dunn, & Crutcher pointed to OSHA's *Record Keeping Guidelines for Occupational Illnesses and Injuries*, commonly known as the "Blue Book." These guidelines instruct employers how to record occupational injuries and illnesses on their OSHA 200 logs. Gibson, Dunn & Crutcher argued that, in the Blue Book, OSHA "concedes" that back cases should be categorized as injuries rather than illnesses. According to Gibson, Dunn and Crutcher (Ex. 500–197):

> OSHA states that back cases are "injuries" that are "usually triggered by an instantaneous event" for purposes of OSHA 200 recording, [but] converts them into "illnesses" that develop "gradually over time" for purposes of its MSD statistics * * * The bottom line is that OSHA has no reliable data regarding the causes of back pain and back injuries. OSHA allows employers to "generalize" about back pain for purposes of OSHA 200 recording precisely because its causes are often indeterminate.

OSHA has carefully considered these comments and finds them unpersuasive. It is necessary and appropriate to include these BLS categories to arrive at an accurate estimate of the risk posed by the biomechanical risk factors addressed in this standard.

First and foremost, OSHA is issuing its final ergonomics program standard because of substantial evidence that workers who are regularly exposed to biomechanical risk factors are at an increased risk of MSDs and the pain and disabilities associated with them. Whether these injuries and illnesses come about because of an acute event or because of pathology that develops over a longer term is not germane to the issue of whether workers who are regularly exposed need protection. The sole consideration is that increased exposure to biomechanical risk factors increases the risk to the worker. For example, a worker whose job involves heavy lifting on a regular basis is at an elevated risk of suffering a low back disorder. Such a disorder may arise either because repeated lifting is causing cumulative wear resulting in degenerative changes to the disc, or because the stress imposed on the spine during lifting can overcome the capacity of the disc to withstand compression, resulting in acute structural failure (see Section V.E on the health evidence for low-back disorders). Although a worker who lifts heavy loads infrequently may be at risk from acute failure, the worker who lifts frequently as part of their regular job is at greater risk via either mechanism.

Furthermore, there is substantial evidence in the record that many of the injuries coded as strains, sprains, and tears in fact develop gradually over time. Several commenters believed that it was appropriate for OSHA to include statistics on strains, sprains, and tears in its assessment of MSD risks. For example, the AFL-CIO, in their post-hearing brief, stated that

> The industry is just plain wrong on this point [that back injuries are traumatic injuries]. The BLS survey is based on employer reports of injuries. To simplify recording, OSHA recording criteria specifically specify that back injuries, one major source of MSDs, should be recorded as injuries, even if they result from chronic exposure conditions. Disorders related to repeated trauma, including carpal tunnel syndrome are to be recorded as illnesses. * * * Thus, it is OSHA's recording criteria and BLSs coding rules and definitions that result in many MSDs, particularly back injuries, being classified as sprains, strains, and tears. This category includes injuries that may result from a single exposure and those that result from repeated activities. OSHA has limited the types of strains, sprains, and tears that are covered [in its risk assessment] to those * * * associated with] exposures that are covered by the rule (*e.g.*, overexertion, repetition). (Ex. 500–218, p. 13–14)

Testimony from Dr. Frank Mirer of the United Auto Workers, who is also a member of the BLS Labor Research Advisory Committee, explained why MSDs of the back are frequently recorded as sprains and strains:

> You have to understand the reality of this BLS database, which is derived from [the] OSHA 101 form submitted by management medical departments to OSHA or to the BLS. Now when a worker goes up to the medical department * * * all they know is they hurt. And most of them see a nurse and their disorder is just thrown into a bin. Back conditions are all injuries. They come as strain and sprain * * *. [W]e have acute flare ups, just as a back injury is a chronic condition and has an acute flare up. So standard practice in the industry * * * is [that] cases [considered to be] of ergo interest * * * [include] sprain and strain injuries that are not accompanied by a fall or some other traumatic [event] * * *. (Tr. 5896–5897)

When asked whether strains and sprains due to overexertion or repetition were likely to be related to the risk factors covered by the standard, both Dr. Rosecrance and Mr. Alexander agreed. Dr. Rosecrance testified that injuries classified as sprains or strains are appropriately considered MSDs, depending on the events leading to the injury:

> * * * I look at an MSD * * * as a disorder affecting muscles, tendons, ligaments, bone, connective tissue. And certainly in my definition of MSD, a sprain would meet that because a sprain is a tear to a ligament * * * [It] perhaps [might] be a traumatic one or from an acute injury like a slip or a trip * * *. When we review, let's say, the OSHA 200 Log and there is a strain or sprain on there, I will ask * * * what was the cause of that sprain or strain? Was the strain from repetitive use or was it a strain from an acute type of injury?

Some rulemaking participants provided evidence to the record documenting that back disorders were frequently recorded as strains and sprains without regard to the nature of the exposure or events associated with each case. For example, the post-hearing submission of the United Food and Commercial Workers Union (UFCW) (Ex. 500–133), which contained copies of OSHA–200 logs (Ex. 500–133–2), reported finding MSDs categorized as strains and sprains, back pain, hurt back, carpal tunnel syndrome, hernia, and disorders associated with repeated trauma. According to the UFCW, retail stores primarily categorized such MSDs as sprains and strains, back pain and hurt backs, and injuries, and seldom classified MSDs as illnesses. In contrast, the UFCW stated that meatpacking industry logs more often accurately record MSDs as illness, reflecting the greater experience this industry has in dealing with ergonomic issues. A review of OSHA 200 logs submitted by the Teamsters (Ex. 500–146) also shows that disorders that are clearly recognized as MSDs, such as carpal tunnel syndrome and tendinitis, are nevertheless often recorded by employers as injuries, which in turn would be described in the BLS statistics as strains and sprains.

Other rulemaking participants described the use of sprain and strain injury categories for ergonomic injuries in other injury classification systems. In describing the province of Victoria's (Australia) 1999 ergonomics regulation, which combined Victoria's earlier manual handling and occupational overuse syndrome (OOS) regulations, Mr. David C. Caple, Director, David Caple & Associates Pty Ltd., testified that both repetitive injuries and back injuries were combined under one generic sprain and strain category by that regulation (Tr. 2723–2724). The Ford Motor Company's injury classification system also combines strain and sprain injuries with cumulative trauma disorders and other disorders of interest to the company's ergonomics committee (Tr. 5826). When asked whether sprains and strains are included within the category of repetitive motion disorders under Oregon's workers' compensation law, Mr. Goodman replied that they are often classified in that category, depending on the events leading to the injury. He explained that Oregon's law defines an injury as "sudden and unexpected in onset'; thus, strains and sprains would be considered repetitive motion disorders if the onset was slow and insidious rather than sudden (Tr. 13694).

As described by the AFL–CIO submission and Dr. Frank Mirer's testimony, all back disorders are classified as injuries rather than illnesses, under OSHA's recordkeeping rules; as a result, back disorders are commonly classified as strains and sprains, regardless of whether the disorder arose from an acute, traumatic event or from cumulative damage caused by prolonged exposure to risk factors. Evidence in the record indicates that most cases of back pain arising from exposure to risk factors of the type covered by the final rule do not develop suddenly but are instead cases involving gradual onset, which makes it difficult to identify or relate the back pain to a single precipitating event. OSHA's witness, Dr. Stover Snook, testified that

> I am of the view and most scientists are of the view that that is not typically how low back pain develops through traumatic things like playing football on a weekend. It usually develops gradually and insidiously, most of it, not all of it, but most of it does. (Tr. 884)

In a study of back braces, Walsh and Schwartz (Ex. 30–3857–7) also characterized the nature of work-related back disorders as being of gradual onset:

> Most back injuries are not the result of a single traumatic incident but rather a compilation of minor traumatic events occurring during normal working conditions for reasons that are seldom obvious to the individual worker. Successive injuries result in more severe impairment and increase the probability of long-term disability * * *. In fact, improper body mechanics and unhealthy work habits may take their toll on a daily basis. In recent years, there has evolved a body of evidence that suggests that the etiology of most but not all back pain is due to insidious and chronic deterioration of the intervertebral disc, facet joints, and ligaments in the back caused by biomechanical wear and tear. (Ex. 30–3857–7, p. 245)

OSHA's analysis of the biomechanical and pathological literature dealing with work-related back pain leads to conclusions that are consistent with these characterizations (see Section V, Health Effects).

Because back disorders are recorded as injuries, notwithstanding the mechanistic evidence described above that characterizes most back disorders as being of chronic onset, practicing ergonomists believe that it is important to investigate the underlying events associated with recorded cases of strain or sprain to determine whether the injury is related to excessive exposure to ergonomic risk factors. This practice was described in the testimony of Dr. John Rosecrance, Assistant Professor, University of Iowa and Mr. David Alexander, President of Auburn

Engineers, Inc. and reflects an understanding that the classification of back disorders as strains and sprains often does not mirror the true nature of these disorders.

OSHA's final risk assessment (like its proposed assessment) relies on statistics for strains and sprains that are associated only with overexertion (*i.e.*, lifting/lowering, pushing/pulling, holding/carrying), repetitive motion, and bodily reaction (*i.e.*, awkward postures). Thus, OSHA's treatment of the BLS data exclude strains and sprains that were determined by ergonomists or health care professionals to arise from accidents, such as slips or falls. Based on the evidence and testimony reviewed above, strains and sprain injuries captured by the BLS system and classified under these three exposure event codes properly reflect musculoskeletal disorders that arise as a result of exposure to the risk factors covered in the final rule. Further, as described below in part C of the risk assessment, OSHA has refined its analysis, based on data in the record, to estimate the number and incidence of MSDs occurring among those workers who are exposed to risk factors at levels that meet the final rule's screen; OSHA believes that this refinement will ensure that the Agency is accurately stating the risks posed to employees covered by the final rule.

The United Auto Workers (Ex. 32–185), argued that OSHA was underinclusive, not overinclusive, in its choice of the BLS categories that represent MSDs. In addition to the six categories chosen by OSHA, the UAW argued that OSHA should have included a substantial fraction of the injuries and illnesses categorized as "other" and "multiple injuries" as well. OSHA agrees that these injury categories contain MSDs that are relevant to OSHA's risk analysis. However, since data are not available to describe the proportion of the injuries classified under these categories that are, in fact, MSDs, the Agency has not included them in its revised risk assessment. This decision also means that the risks presented by OSHA in its Risk Assessment section and estimated in the Significance of Risk section are understated.

As explained by OSHA in its preliminary risk assessment for the proposed rule, risk estimates based on the BLS data understate the true risk of incurring a work-related MSD posed to employees who are exposed to workplace risk factors that are associated with the development of MSDs, for several reasons. First, the BLS data include only those lost workday (LWD) cases that resulted in at least 1 day spent away from work, and thus do not capture either non-lost workday MSD cases nor MSD cases that resulted in the employee being temporarily reassigned to another job. Second, some LWD MSDs reported to the BLS by employers are likely to have been coded in BLS injury categories that are excluded from OSHA's categories of overexertion, repetition, and bodily reaction (bending, climbing, crawling, reaching, twisting); for example, injuries due to segmental vibration are included in BLS event categories other than those included by OSHA in its analysis, and, as pointed out by the UAW (Ex. 32–185), the non-specific BLS injury categories of "other" and "multiple injuries" are also likely to contain MSDs.

Finally, the incidence of MSDs reported by the BLS is the reported incidence of MSDs occurring among *all* workers in the industries surveyed (on a full-time-equivalent basis); that is, the incidence for each industry sector is calculated by BLS as the number of MSD cases reported in 1996 divided by the total number of full-time equivalent employees in that industry sector in 1996. Expressing the incidence in this way has the effect of diluting the estimated incidence of disorders that are actually occurring among exposed employees, *i.e.*, those who routinely are exposed to workplace risk factors that have been associated with the development of work-related MSDs. The risk to exposed employees is substantially higher than the risk reflected by the BLS estimates of MSD incidence, because most of the injuries reported to the BLS will in fact have occurred among that subset of workers whose jobs expose them to these risk factors (that is, if the incidence were calculated using the much smaller denominator that reflects the number of exposed employees, the resulting incidence estimate would be higher). Evidence that workers exposed to workplace risk factors are at substantially higher risk than other workers in their industry comes from the large data base of formal scientific studies of exposed worker populations that have demonstrated a positive relationship between exposure to workplace risk factors and the relative risk of developing an MSD (see the Health Effects section of this preamble). These studies show that the prevalence of MSDs among exposed employees is often 2- or 3-fold higher, and can be as much as 10 to 20 times higher, as the prevalence among workers who are not so exposed.

In the next part of the Final Risk Assessment, OSHA presents two alternative approaches to quantifying risks posed to workers who are exposed to biomechanical risk factors on the job. The first approach is the same as that used in the Preliminary Risk Assessment presented in with the proposed rule. In that approach, OSHA's estimates of the risk are based on the numbers and incidence of MSDs reported by BLS (based on OSHA's definition of MSDs) by industry sector and by occupation. OSHA's second approach responds to a number of comments made in the record that the Agency's Preliminary Risk Assessment did not (1) properly subtract out MSD cases that occurred among employees who were not heavily exposed to physical risk factors, and (2) did not properly account for background risk (*i.e.*, that part of the risk that could not be attributed to workplace exposure or that occurs among the general population). To address these comments, the Agency was able to use data that became available in the record to more precisely characterize the MSD risk in the subset of employees who are the most heavily exposed to risk factors covered in the final rule, and to account for background risk. OSHA's underlying rationale is explained fully in part C below.

C. Results

Table VI–3 provides the BLS estimates of the number of injuries and illnesses reported nationwide by employers for 1996, by nature of injury and type of workplace exposure, for all injury and exposure event categories determined by OSHA to represent the MSDs covered by the standard. Overall, OSHA estimates that there were a total of 647,344 lost workday MSDs that occurred in 1996, as derived from employer reports of thoseTable VI–3 here illnesses and injuries. These disorders represent about 34.4 percent of the 1.88 million LWD injuries and illnesses reported by employers in 1996 (BLS press release 97–453, 12/17/97).

TABLE VI–3.—ESTIMATES OF THE NUMBER OF LOST WORKDAY MUSCULOSKELETAL DISORDERS (MSDS) IN 1996, BY NATURE OF INJURY AND TYPE OF WORKPLACE EXPOSURE

Nature of injury	BLS Code	Type of workplace exposure					
		Total for all exposures	Overexertion	Repetition	Subtotal (O and R)	Bodily Reaction [a]	Subtotal
Total for all lost workday injuries			526,594	73,796	600,390	79,475	679,865
Musculoskeletal Disorders:							
Sprains, Strains, Tears	021	819,658	424,290	12,872	437,162	66,068	503,230
Back Pain, Hurt Back	0972	52,046	28,046	861	28,907	4,646	33,553
Soreness, Hurt, except back	0973	73,542	17,984	5,811	23,795	2,896	26,691
Carpal tunnel syndrome	1241	29,937		29,809	29,809		29,809
Hernia	153	29,624	25,819	322	26,141	670	26,811
Musculoskeletal and connective system diseases and disorders	17	35,238	7,761	18,278	26,039	1,211	27,250
Total Number of MSDs		1,040,045	503,900	67,953	571,853	75,491	647,344

[a] Data from BLS included only those injuries reporeted to have been associated with "Bending, climbing, crawling, reaching, twisting." Source: BLS-reported estimates for BLS nature-of-injury codes 021, 0972, 0973, 1241, 153, and 17, and for BLS exposure events of overexertion, repetition, and bodily reaction (1996).

For 1998, the BLS estimated that there were 592,500 MSDs that occurred throughout U.S. industry, representing an 8.5-percent decline from 1996 ("Lost-Worktime Injuries and Illnesses: Characteristics and Resulting Time Away From Work, 1998," U.S. Bureau of Labor Statistics, available at http://www.bls.gov/news.release/osh2.nr0.htm). This decline is consistent with the pattern seen from 1992–1996, when both MSD and overall injury rates declined. For the final risk assessment, OSHA has continued to use 1996 BLS data in order to be consistent with the economic analysis, which uses 1996 as a base year throughout. For example, 1996 is the base year from which data are used to estimate numbers of establishments and employees, revenues, profits, and costs associated with the final rule.

About 66 percent of the estimated number of MSDs reported to the BLS in 1996 were categorized by BLS coders as "sprains, strains, and tears" due to overexertion. As discussed in part B above, OSHA received many comments on the use of BLS data on injuries classified by the BLS as sprains, strains, and tears; these commenters objected to including these injuries in the risk assessment on the grounds that injuries classified as strains, sprains, and tears reflect acute injuries that cannot be considered MSDs. Based on the evidence and testimony presented in part B above, however, OSHA has determined that it is appropriate to include strains, sprains, and tears that are associated with the exposure events of overexertion, repetitive motion, and bodily reaction in the universe of relevant MSDs because these injuries arise from exposure to relevant risk factors. Furthermore, OSHA believes that, when MSDs result from exposure to the biomechanical risk factors covered in the final rule, it is not important to make any distinction between whether those injuries arose from acute or chronic events. The purpose of the standard is to reduce the risk of MSDs resulting from exposure to risk factors, regardless of the duration of the exposure preceding to those injuries and illnesses.

As further evidence of the appropriateness of including strain, sprain, and tear injuries in the risk assessment, OSHA presented BLS data in the preliminary risk assessment that provides additional information on the nature of the injuries and the exposure events associated with those injuries [64 FR 65931]; these data are reproduced in Table VI–4. For this analysis, OSHA obtained from the BLS a breakout of the estimated number of injuries, by body part and by type of overexertion event. This breakout appears in Table VI–4 and shows that about 89 percent of these sprain, strain, and tear injuries (379,615) are comprised of injuries due to lifting /lowering, pushing/pulling, holding/carrying, or throwing, all of which are activities involving force. For the remaining 11 percent of the BLS-coded sprain, strain, and tear injuries, the exact nature of the overexertion exposure was either not reported by the employer or did not fall into any other exposure classification under the BLS system. Of the 379,615 injuries for which the nature of the overexertion exposure was reported, the majority (88 percent) affected body parts that are consistent with the kinds of injuries addressed by the final standard, such as the upper extremities, neck and shoulder, lower extremities, and back. Fifty-two percent of these injuries represent back injuries due to lifting or lowering. Only a small proportion (12 percent) of sprain, strain, and tear injuries reported by the BLS in 1996 affected body parts that are not relevant to MSDs. Therefore, OSHA is confident that the vast majority of BLS-coded sprain, strain, and tear injuries are appropriately included in the estimated number of MSDs for 1996, and that the judgment of the OSHA expert panel in selecting appropriate BLS injury and event categories for Table VI–4 here the risk analysis is confirmed by this additional breakout and review of the BLS data.

Table VI-4. Number and Percentage of All BLS-Reported Sprain, Strain, and Tear Injuries That are Work-Related Musculoskeletal Disorders (i.e., Caused by Overexertion), by Body Part and Nature of Exposure, 1996

Body Part Affected	Type of Overexertion Exposure						
	Lifting/ Lowering	Pushing/ Pulling	Holding/ Carrying	Throwing	Unspecified	Not Elsewhere Classified (NEC)	Total excluding NEC and Unspecified
Shoulder	20,728	8,639	6,895	395	2,277	2,177	36,657
Back	174,107	33,805	35,358	888	15,625	9,811	244,158
Neck	4,844	1,984	1,812	–	810	720	8,640
Arm	7,012	2,717	2,451	66	751	807	12,246
Wrist	6,567	2,608	2,787	–	712	866	11,962
Hand	1,417	443	403	–	210	87	2,263
Finger, fingernails	849	496	319	–	133	205	1,664
Upper extremities, nec	–	59	–	–	–	–	59
Upper extremities, unspecified	–	–	–	–	–	–	0
Multiple upper extremities	1,085	308	342	–	326	142	1,735
Legs	6,074	4,195	2,426	–	743	969	12,695
Ankles	829	717	320	–	126	460	1,866
Foot	236	382	36		65	48	654
Toes	–	16	–	–	–	–	16
Lower extremities, unspecified	–	–	–	–	–	–	0
Lower extremities, nec	37	–	–	–	–	–	37
Multiple lower extremities	218	61	–		–	–	279
Total all Work-Related MSDs	224,003	56,430	53,149	1,349	21,778	16,292	334,931
Total for Other Body Parts	29,698	8,030	6,843	113	3,304	2,749	44,684
Total Sprains, Strains, Tears	253,701	64,460	59,992	1,462	25,082	19,041	379,615
Percent of Injuries Representing Work-Related MSDs	88	88	89	92	87	86	88

The data summarized above have been broken out by the BLS both by industry sector and by occupation code. In addition, the BLS provided OSHA with estimates of the incidence of MSDs, as defined above by injury type and cause, for each 2-digit SIC. As explained above, the BLS-calculated incidence estimates are based on the incidence among all employees (full-time equivalents) in each industry sector, and therefore understate the true incidence of work-related MSDs occurring among workers who are highly exposed to workplace risk factors, *i.e.*, exposed in jobs that meet the standard's action trigger. Nevertheless, OSHA believes that these incidence estimates are useful for characterizing industry-specific MSD risks and for comparing the extent of the problem between industry sectors covered by the ergonomics program standard. Table VI–5 provides estimates of the number and incidence of LWD MSDs in each general industry 2-digit SIC group for which the BLS provided data. Industries having the highest incidence of MSDs include the following:

Air transportation (36.6 cases/1,000 workers);
Local and suburban transit (14.7 cases/1,000);
Motor freight transportation and warehousing (14.4 cases/1,000);
Health services (13.8 cases/1,000);
Transportation equipment (13.4 cases/1,000); and
Food and kindred products (12.2 cases/1,000).

Table VI–6 provides estimates of the number and incidence of LWD MSDs by occupation for the 75 occupations having the highest estimated annual incidence of employer-reported MSDs. Because the BLS does not provide incidence estimates by occupation, OSHA calculated the incidence using employment estimates from the Bureau of the Census Employment and Earnings (1996). Occupations having the highest incidence include:

Driver—sales workers (42.4 cases/1,000 workers);
Machine feeders and offbearers (34.6 cases/1,000);
Public transportation attendants (32.1 cases/1,000);
Nursing aides, orderlies, and attendants (31.6 cases/1,000);
Punching and stamping machine operators (30.4 cases/1,000 workers);
Laborers, except construction (29.1 cases/1,000);
Sawing machine operators (18.9 cases/1,000);
Furnace, kiln, and oven operators, except food (18.0 cases/1,000);
Grinding, abrading, polishing machine operators (17.9 cases/1,000);
Health aides, except nurses (16.9 cases/1,000); and
Licensed practical nurses (16.5 cases/1,000).

Table VI-5. Estimated Number of Lost Workday MSDs in 1996 and Annual Incidence per 1,000 Workers, by 2-Digit SIC

Two Digit SIC	Industry Sector	Estimated Number of LWD MSDs	Incidence per 1,000 Workers
45	Transportation by air	34,150.0	36.580
41	Local and suburban transit and interurban highway passinger transportation	4,617.3	14.671
42	Motor freight transportation and warehousing	23,800.1	14.438
80	Health services	103,478.7	13.847
37	Transportation equipment	24,524.0	13.420
20	Food and kindred products	20,540.1	12.242
24	Lumber and wood products, exc. furniture	9,228.5	12.166
34	Fabricated metal, exc. machinery & transportation equipment	17,751.1	12.121
33	Primary metals	8,940.0	12.099
30	Rubber and misc. plastics	11,982.7	12.069
25	Furniture and fixtures	5,892.1	11.741
32	Stone, clay, glass, concrete products	8,316.4	11.444
53	General merchandise stores	22,395.6	11.152
52	Building materials, hardware, garden supply, mobile home dealers	8,621.9	10.699
54	Food stores	25,268.9	10.191
44	Water transportation	1,537.1	9.959
51	Wholesale trade-nondurable goods	24,768.4	9.792
31	Leather and leather products	856.4	9.226
39	Misc. manufacturing industries	3,375.8	8.997
21	Tobacco products	322.9	8.308
70	Hotels, rooming houses, camps, other lodging	11,241.0	8.216
35	Industrial and commercial machinery & computer equipment	17,124.5	7.946
23	Apparel and other finished products made from fabric	6,379.6	7.869
83	Social services	13,755.1	7.483
50	Wholesale trade - durable goods	26,782.1	7.235
57	Home Furniture, Furnishings, And Equipment Stores	6,016.1	7.136
26	Paper and allied products	4,865.2	6.921
07	Agricultural Services	5,187.8	6.851
27	Printing, publishing, and allied industries	9,195.3	6.547
36	Electronic and other electrical, exc. computer equipment	10,782.5	6.506
76	Miscellaneous Repair Services	2,274.4	6.506
49	Electric, Gas, And Sanitary Services	5,712.1	6.478
79	Amusement And Recreation Services	5,805.4	5.857
22	Textile mill products	3,483.4	5.626
59	Miscellaneous Retail	10,043.2	4.857
65	Real Estate	5,882.8	5.113
09	Fishing, Hunting, and Trapping	49.5	4.951
55	Automotive dealers and gasoline service stations	10,347.3	4.847
38	Measuring, analyzing, and controlling instruments; photo, medical, optical; watches, clocks	4,036.9	4.785
75	Automotive Repair, Services, And Parking	4,347.9	4.422
48	Communications	5,708.2	4.398
72	Personal Services	3,527.2	3.865
73	Business services	16,706.8	3.564
28	Chemicals and allied products	3,641.2	3.507
47	Transportation Services	1,263.1	3.262
13	Oil and Gas Extraction	1,075.7	3.170
56	Apparel And Accessory Stores	2,439.1	3.132
29	Petroleum refining and related industries	432.1	2.956
58	Eating and drinking places	14,457.5	2.830
86	Membership Organizations	1,838.5	2.745
82	Educational Services	2,926.6	2.681
87	Engineering, Accounting, Research, Management, And Related Services	5,653.6	2.114
63	Insurance Carriers	2,659.1	2.058
67	Holding And Other Investment Offices	297.6	1.579
81	Legal Services	1,264.4	1.524
60	Depository Institutions	2,487.7	1.355
61	Non-depository Credit Institutions	399.3	0.810
64	Insurance Agents, Brokers, And Service	472.2	0.733
62	Security And Commodity Brokers, Dealers, Exchanges, And Services	276.7	0.533

Source: Estimates provided by BLS (Ex. 26-1413) for disorders classified by injury types and exposure events shown in Table VI-3.

Table VI-6. Estimated Number of Lost Workday MSDs in 1996 and Annual Incidence per 1,000 Workers, by Occupation Code, Ranked by Incidence

Occupation		Estimated Number of LWD MSDs	Median Number of Days Away From Work	Number of Employees in 1996 (000)	Incidence per 1,000 Workers
806	Driver-sales workers (8218)	6,614.0	7	156	42.4
878	Machine feeders and offbearers (8725)	2,420.3	10	70	34.6
463	Public transportation attendants (5257)	3,050.0	9	95	32.1
447	Nursing aides, orderlies, and attendants (5236)	58,421.6	5	1,850	31.6
706	Punching and stamping press machine operators (7314, 7317, 7514, 7517)	2,702.8	6	89	30.4
889	Laborers, except construction (8769)	38,873.3	6	1,334	29.1
727	Sawing machine operators (7433, 7633)	1,470.4	5	78	18.9
766	Furnace, kiln, and oven operators, except food (7675)	1,171.1	7	65	18.0
709	Grinding, abrading, buffing, and polishing machine operators (7322, 7324, 7522)	2,241.8	7	125	17.9
446	Health aides, except nursing (5233)	5,683.3	4	336	16.9
207	Licensed practical nurses (366)	6,514.1	5	395	16.5
785	Assemblers (772, 774)	20,578.8	9	1,271	16.2
804	Truck drivers (8212-8214)	48,334.2	8	3,019	16.0
719	Molding and casting machine operators (7315, 7342, 7515, 7542)	1,757.8	7	110	16.0
869	Construction laborers (871)	12,369.2	7	809	15.3
364	Traffic, shipping, and receiving clerks (4753)	9,244.0	6	616	15.0
368	Weighers, measurers, checkers, and samplers (4756, 4757)	820.4	8	55	14.9
756	Mixing and blending machine operators (7664)	1,585.7	5	108	14.7
449	Maids and housemen (5242, 5249)	9,754.8	6	683	14.3
888	Hand packers and packagers (8761)	3,824.0	10	279	13.7
783	Welders and cutters (7332, 7532, 7714)	7,997.2	6	605	13.2
754	Packaging and filling machine operators (7462, 7662)	5,145.1	8	393	13.1
686	Butchers and meat cutters (6871)	3,120.0	8	242	12.9
206	Radiologic technicians (365)	1,732.4	3	135	12.8
757	Separating, filtering, and clarifying machine operators(7476, 7666, 7676)	725.7	8	57	12.7
877	Stock handlers and baggers (8724)	13,447.8	5	1,106	12.2
544	Millwrights (6178)	1,005.9	15	89	11.3
799	Graders and sorters, except agricultural (785)	1,883.8	8	169	11.1
529	Telephone installers and repairers (6158)	1,952.5	9	176	11.1
769	Slicing and cutting machine operators (7478, 7678)	1,972.6	5	179	11.0
365	Stock and inventory clerks (4754)	5,443.4	8	497	11.0
748	Laundering and dry cleaning machine operators (6855, 7658)	2,207.2	5	202	10.9
507	Bus, truck, and stationary engine mechanics (6112)	3,618.0	5	336	10.8
593	Insulation workers (6465)	567.1	12	54	10.5
683	Electrical and electronic equipment assemblers (6867)	3,368.2	7	325	10.4
444	Miscellaneous food preparation occupations (5219)	6,815.0	11	664	10.3
523	Electronic repairers, communications and industrial equipment (6151, 6153, 615	1,600.1	8	166	9.6

Table VI-6. Estimated Number of Lost Workday MSDs in 1996 and Annual Incidence per 1,000 Workers, by Occupation Code, Ranked by Incidence (continued)

Occupation		Estimated Number of LWD MSDs	Median Number of Days Away From Work	Number of Employees in 1996 (000)	Incidence per 1,000 Workers
759	Painting and paint spraying machine operators (7669)	1,901.2	5	200	9.5
563	Brickmasons and stonemasons (part 6412, part 6413)	1,539.8	10	162	9.5
318	Transportation ticket and reservation agents (4644)	2,869.8	7	304	9.4
516	Heavy equipment mechanics (6117)	1,433.5	14	156	9.2
566	Carpet installers (part 6462)	923.9	12	103	9.0
885	Garage and service station related occupations (873)	1,510.0	9	169	8.9
577	Electrical power installers and repairers (6433)	1,102.3	9	126	8.7
668	Upholsterers (6853)	511.8	7	59	8.7
585	Plumbers, pipefitters, and steamfitters (part 645)	4,742.4	11	555	8.5
439	Kitchen workers, food preparation (5217)	2,063.2	6	257	8.0
573	Drywall installers (6424)	1,317.0	6	168	7.8
567	Carpenters (part 6422)	8,872.2	7	1,220	7.3
268	Sales workers, hardware and building supplies (4353)	1,814.6	6	254	7.1
689	Inspectors, testers, and graders (6881, 828)	925.2	7	131	7.1
595	Roofers (6468)	1,389.2	7	197	7.1
856	Industrial truck and tractor equipment operators (8318)	3,580.6	7	512	7.0
865	Helpers, mechanics, and repairers (863)	801.2	5	115	7.0
453	Janitors and cleaners (5244)	15,278.0	6	2,205	6.9
95	Registered nurses (29)	13,595.2	4	1,986	6.8
344	Billing, posting, and calculating machine operators (4718)	710.1	10	104	6.8
588	Concrete and terrazzo finishers (6463)	543.1	10	80	6.8
653	Sheet metal workers (part 6824)	844.0	5	126	6.7
797	Production testers (783)	380.9	25	57	6.7
744	Textile sewing machine operators (7655)	3,971.1	9	595	6.7
637	Machinists (part 6813)	3,193.3	10	491	6.5
103	Physical therapists (3033)	766.4	5	118	6.5
356	Mail clerks, except postal service (4744)	1,198.4	6	188	6.4
796	Production inspectors, checkers, and examiners (782, 787)	3,404.[illegible]	6	538	6.3
518	Industrial machinery repairers (613)	3,407.5	8	540	6.3
738	Winding and twisting machine operators (7451, 7651)	351.3	9	56	6.3
508	Aircraft engine mechanics (6113)	835.4	8	137	6.1
734	Printing press operators (7443, 7643)	1,908.2	9	315	6.1
488	Graders and sorters, agricultural products (5625)	379.1	6	63	6.0
448	Supervisors, cleaning and building service workers (5241)	992.9	5	166	6.0
657	Cabinet makers and bench carpenters (6832)	460.8	9	79	5.8
274	Sales workers, other commodities (4345, 4347, 4354, 4356, 4359, 4362, 4369)	8,616.0	7	1,499	5.7
486	Groundskeepers and gardeners, except farm (5622)	4,981.4	5	875	5.7

Source: Estimates of number of work-related disorders provided by BLS (Ex. 26-1413) for disorders classified by injury types and exposure events shown in Table VII-3. Annual Incidence calculated by OSHA based on 1996 employment data from Emplyment and Earnings (U.S. Bureau of Census, 1996).

Of the Census Employment and Earnings (1996). Occupations having the highest incidence include:

Driver—sales workers (42.2 cases/1,000 workers);

Machine feeders and offbearers (34.6 cases/1,000);

Public transportation attendants (32.1 cases/1,000);

Nursing aides, orderlies, and attendants (31.6 cases/1,000);

Punching and stamping machine operators (30.4 cases/1,000 workers);

Laborers, except construction (29.1 cases/1,000);

Sawing machine operators (18.9 cases/1,000);

Furnace, kiln, and oven operators, except food (18.0 cases/1,000);

Grinding, abrading, polishing machine operators (17.9 cases/1,000);

Health aides, except nurses (16.9 cases/1,000; and

Licensed practical nurses (16.5 cases/1,000).

Of the 225 occupations for which BLS provided estimates of the numbers of employer-reported MSDs and total employment, the annual incidence of MSDs was 1 LWD case or more per 1,000 workers per year for 178 (79 percent) of the occupations. The data described above reflect the annual incidence of MSDs estimated to have occurred in 1996 within general industry sectors and within occupations within this sector.

Past risk assessments conducted by OSHA in other health standards rulemakings have typically estimated the lifetime risk to workers based on the assumption that they are exposed to the hazard in question for a full 45-year working lifetime. These past risk assessments dealt primarily with chronic, fatal diseases such as cancer. Unlike the impairments of health caused by many other OSHA-regulated hazards, however, MSDs are not fatal, although they are often debilitating. Moreover, a worker can experience more than one work-related MSD over a working lifetime. As a result, the lifetime risk associated with exposure to risk factors on the job can be expressed in a number of ways. One way of doing this is to define lifetime risk as the probability that a worker will experience at least one work-related musculoskeletal disorder during his or her working lifetime (45 years). This probability is calculated as 1–(p),^{45} where p is the probability that a worker will not experience a work-related MSD in any given year (*i.e.*, p is one minus the estimated MSD incidence for 1996 in the industry sector of interest).[1] For example, the estimated incidence of MSDs in 1996 for SIC 80, Health Services, is 13.847 lost workday cases per 1,000 workers. The probability that a worker in SIC 80 will not experience an MSD in any given year is calculated as 1-.013847, or 0.9862 (almost 99 percent). Over 45 years, the probability that a worker will never experience a work-related MSD is (.9862)^{45}, or 0.534 (*i.e.*, 53 percent). Therefore, the probability that a worker in SIC 80 will experience at least one work-related MSD is 1–0.534, or 0.466 (*i.e*:, 466 per 1,000 workers).

Alternatively, lifetime risk could be defined as the expected number of work-related MSDs an employee entering an industry will experience over a working lifetime in that industry. Unlike a probability, the expected value in such cases can exceed 1. (That is why, in the table below, one industry is identified in which an individual who works for 45 years can expect to experience, on average, more than one work-related MSD during that time.) The expected value represents the experience of the "average" individual, a measure that reflects the aggregate experience of many individuals.

Both approaches [1] taken by OSHA to estimate lifetime risk assume that the risk to a worker is independent from one year to the next, *i.e.*, that a worker's injury experience in any one year does not modify his or her risk in any subsequent year. Although this is a reasonable assumption for the purpose of estimating an average lifetime risk, it is likely to be the case that the risk will be higher for workers who have had an MSD and continue to be exposed since musculoskeletal tissue has already been damaged. Among workers who have not experienced symptoms of an MSD, the risk to any individual worker in subsequent years depends on the amount of tissue damage sustained from exposure to risk factors and that worker's individual ability to repair or resist continued injury to the point of experiencing an MSD. In addition, OSHA's approach also assumes that each worker within a given industry sector (defined by 2-digit SIC) has the same risk. For the same reasons as discussed above, a relatively small number of workers will, in fact, experience injury rates far in excess of the average, while a comparatively large number will experience injury rates below the average. At this time, data are not available that would allow OSHA to determine the lifetime MSD risks for subpopulations of workers within each industry sector, *i.e.*, those subpopulations with higher than average or lower than average risks, respectively.

Another meaning or interpretation of expected value may be more intuitive: The expected value is the total number of MSDs that may be expected to occur in a cohort of 1000 workers all of whom enter an industry sector at the same time and all of whom work for 45 years in the industry. The expected value of the number of MSDs occurring among these 1,000 workers over 45 years of employment is calculated as the annual MSD incidence multiplied by 45. For example, the estimated incidence of work-related MSDs in 1996 for SIC 80 (Health Services) is 13.847 cases per 1,000 workers, or a frequency of 0.01387. The expected value of the number of work-related MSDs predicted to occur among those 1,000 workers over 45 years is estimated to be (0.01387*45), or 0.623 (623 per 1,000 workers).

Table VI–7 presents OSHA's estimates of the lifetime risk of experiencing work-related MSDs, by industry sector. Based on the probability approach, the estimated probability of experiencing at least one work-related MSD during a working lifetime ranges from 24 per 1,000 to 813 per 1,000, depending on the industry sector. Based on the expected value approach, the expected number of work-related MSDs that will occur in a cohort of workers all entering an industry at the same time ranges from 24 per 1,000 to 1646 per 1,000, since this approach recognizes that it is possible for a worker to experience more than one work-related MSD in a working lifetime.

Several rulemaking participants criticized OSHA's preliminary risk assessment on the grounds that the Agency's risk estimates made no allowance or correction for background risk. These participants (see, for example, Exs. 32–206, 500–223, Tr. pp.10248–9, Exs. 30–3865, 30–3356, 32–368, 30–4185, 30–3813, 30–1722, 500–221) argued that MSD risks for specific industries and occupations based on

BLS data should be compared to the background rate of MSD risk in the general population to calculate the excess risk associated with work. Some of these stakeholders asserted that, because OSHA has not done so, the Agency's estimates here represent only the average MSD risk posed to a worker in a particular industry or occupation by exposure to "all of life's activities." OSHA does not agree; the BLS data reflect only cases that employers have deemed to be work-related. It would be inappropriate to adjust the MSD rates estimated on the basis of the BLS data by subtracting from these rates the MSD rates that have been reported in the general population. When excess risk is calculated by comparing a population of concern (in this case the employed population) to a reference population (*e.g.*, the general population), the proper approach is to compare the *total* incidence in the population of concern to the *total* incidence in the reference population (see Rothman and Greenland, Ex. 38–240). That is, to estimate the excess risk of MSDs among workers using the approach suggested by these commenters, one must have data that describes the incidence of all MSDs, both work-and non-work-related, in the working population. Assuming that the MSD rate for the general population is the non-work-related rate, and then subtracting this rate from the BLS-based rate, would yield estimates of the work-related, or excess, risk to workers only if the BLS data truly represented all MSDs occurring among workers (both on the job and off the job). This is clearly not the case, since the BLS data are designed only to capture those injuries that are work-related; the BLS system does not capture those MSDs that occur among workers that are unrelated to work. Therefore, adjusting the BLS data by subtracting out MSD rates for the general population would not yield meaningful estimates of the excess MSD risk to workers.

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[1] OSHA used two simplifying assumptions when calculating the probability of experiencing no work-related MSDs in a working lifetime: (1) Employment in an industry was used as a surrogate for exposure to ergonomic hazards in that industry. (2) The probability of experiencing a work-related MSD in any given industry was treated as if it were identical for workers in that industry who had never previously experienced a work-related MSD and those who had previously experienced a work-related MSD.

[1] In written comments (Ex.32–185–3), the UAW expressed a strong preference for estimating the lifetime risk as the probability that a worker will experience at least one MSD in a working lifetime rather than as an estimate of the lifetime risk expressed as the expected number of MSDs a worker will experience in a working lifetime.

Table VI-7. Estimated Risk of Developing a Work-Related MSDs Over a 45-Year Working Lifetime, by 2-Digit SIC

Two Digit SIC	Industry Sector	Estimated Incidence per 1,000 Workers	Expected Number of MSDs per 1,000 Workers During a Working Lifetime	Number of Workers per 1,000 Estimated to Have at Least One MSD During a Working Lifetime
45	Transportation by air	36.580	1,646	813
41	Local and suburban transit and interurban highway passinger transportation	14.671	660	486
42	Motor freight transportation and warehousing	14.438	650	480
80	Health services	13.847	623	466
37	Transportation equipment	13.420	604	456
20	Food and kindred products	12.242	551	426
24	Lumber and wood products, exc. furniture	12.166	547	424
34	Fabricated metal, exc. machinery & transportation equipment	12.121	545	422
33	Primary metals	12.099	544	422
30	Rubber and misc. plastics	12.069	543	421
25	Furniture and fixtures	11.741	528	412
32	Stone, clay, glass, concrete products	11.444	515	404
53	General merchandise stores	11.152	502	396
52	Building materials, hardware, garden supply, mobile home dealers	10.699	481	384
54	Food stores	10.191	459	369
44	Water transportation	9.959	448	363
51	Wholesale trade-nondurable goods	9.792	441	358
31	Leather and leather products	9.226	415	341
39	Misc. manufacturing industries	8.997	405	334
21	Tobacco products	8.308	374	313
70	Hotels, rooming houses, camps, other lodging	8.216	370	310
35	Industrial and commercial machinery & computer equipment	7.946	358	302
23	Apparel and other finished products made from fabric	7.869	354	299
83	Social services	7.483	337	287
50	Wholesale trade - durable goods	7.235	326	279
57	Home Furniture, Furnishings, And Equipment Stores	7.136	321	275
26	Paper and allied products	6.921	311	268
07	Agricultural Services	6.861	309	266
27	Printing, publishing, and allied industries	6.547	295	256
36	Electronic and other electrical, exc. computer equipment	6.506	293	255
76	Miscellaneous Repair Services	6.506	293	255
49	Electric, Gas, And Sanitary Services	6.478	292	254
79	Amusement And Recreation Services	5.857	264	232
22	Textile mill products	5.626	253	224
59	Miscellaneous Retail	4.857	219	197
65	Real Estate	5.113	230	20[illegible]
09	Fishing, Hunting, and Trapping	4.951	223	200
55	Automotive dealers and gasoline service stations	4.847	218	196
38	Measuring, analyzing, and controlling instruments; photo, medical, optical; watches, clocks	4.785	215	194
75	Automotive Repair, Services, And Parking	4.422	199	181
48	Communications	4.398	198	180
72	Personal Services	3.865	174	160
73	Business services	3.564	160	148
28	Chemicals and allied products	3.507	158	146
47	Transportation Services	3.262	147	137
13	Oil and Gas Extraction	3.170	143	133
56	Apparel And Accessory Stores	3.132	141	132
29	Petroleum refining and related industries	2.956	133	125
58	Eating and drinking places	2.830	127	120
86	Membership Organizations	2.745	124	116
82	Educational Services	2.681	121	114
87	Engineering, Accounting, Research, Management, And Related Services	2.114	95	91
63	Insurance Carriers	2.066	93	89
67	Holding And Other Investment Offices	1.579	71	69
81	Legal Services	1.524	69	66
60	Depository Institutions	1.355	61	59
61	Non-depository Credit Institutions	0.810	36	36
64	Insurance Agents, Brokers, And Service	0.733	33	32
62	Security And Commodity Brokers, Dealers, Exchanges, And Services	0.533	24	24

Source: Estimated Incidence of MSDs provided by BLS for disorders classified by injury and exposure events shown in Table VI-5.
Lifetime risk estimates calculated by OSHA using methods described in the text.

Some commenters (see, *e.g.*, Ex. 30–3813, Tr. 4102–4108, Exs. 30–3356, 30–46–28, 30–4564, 30–3865, 30–4185, 30–3368, 30–1897) argued that, despite screening out some of the background risk, the BLS data are still overinclusive.

They pointed out that under the applicable OSHA and BLS guidelines, a case is considered "work-related" if an event or exposure in the workplace made *any* contribution to the injury or illness, regardless of the extent of that contribution. For example, Frank White of ORC testified that

> ORC [and others] question OSHA's ability to make quantitative determinations of workplace risks based on data that do not allow OSHA to differentiate between the respective contributions of workplace and non-workplace factors. In the face of OSHA's own acknowledgment of the special difficulties associated with establishing MSD causation compared "to more traditional workplace exposures and disorders," the use of data that inherently include conditions caused by both work and non-work exposures to determine workplace risk is unacceptable. The result, once again, is an overreaching by OSHA—this time in its estimation of the true workplace risk—that has the effect of permeating, and effectively invalidating, the entire proposal. (Tr. 4102)

OSHA interprets Mr. White's comment as saying that, although strictly non-work-related MSDs are not captured by the BLS system, some proportion of cases in the system nevertheless represent MSDs that occur among workers who are not regularly exposed to risk factors, or whose exposures arise from tasks that are not "core elements" of the job (using the language contained in the proposed rule). In other words, although there may be some contribution from work to these cases, exposure to risk factors on the job are no greater that those encountered during non-work activities.

In this risk assessment for the final ergonomics program standard, OSHA has relied on BLS injury and illness data in much the same way it does when evaluating the risks associated with safety hazards. Because the statistics relied upon by OSHA reflect work-related injuries and illnesses reported by employers and determined by OSHA to have been associated with exposure to the risk factors addressed by the final rule, there is no "background" number of injuries and illnesses in the OSHA data in the sense that BLS data are capturing non-work related injuries. In other words, the total number of MSDs that occur in the workforce are either work-related or non-work-related; BLS counts the first and the second represents background. Thus, OSHA does not agree with these commenters that it is necessary to adjust the BLS data *per se* to account for such background risk.

However, OSHA does recognize that some fraction of the number of MSDs estimated from the BLS data represents injuries and illnesses occurring among employees in jobs that would not be covered by the OSHA standard. That is, some of the MSDs being captured by the BLS's annual survey reflect injuries to workers who are not in jobs that meet the action trigger, *e.g.*, those who may be exposed to risk factors only infrequently or those whose exposures were not of sufficient duration. OSHA does not intend the final ergonomics program standard to apply to these kinds of jobs. Instead, OSHA intends the standard to apply to those jobs where MSDs have occurred and the employee's exposure to risk factors was of sufficient duration, magnitude, and frequency to have contributed to the injury. This concept is reflected in the final rule in the form of the Basic Screening Tool, which explicitly identifies those exposure conditions that must be present on the job, along with an employee's report of an MSD incident, before the employer is obligated to implement the program. Employers have no obligation to establish an ergonomics program under the final rule if employees are not exposed to risk factors at least at the level(s) reflected in the Basic Screening Tool. Thus, OSHA adjusted, as an alternate analysis, its estimates of risk based on the BLS data to include only that portion of the risk that will be addressed by an ergonomics program developed under the final rule, *i.e.*, that portion of the risk that is occurring among employees who are exposed to risk factors at least to the extent reflected in the final rule's screening tool. OSHA is thus estimating the risk of MSDs occurring among employees who would be covered in an ergonomics program, *i.e.*, those who are more highly exposed to biomechanical risk factors.

As explained by OSHA above, the BLS-reported incidence of MSDs reflects the number of MSDs reported per 1,000 full-time equivalent workers employed in industry. This incidence figure distributes the MSDs evenly across all workers in an industry sector or occupation. However, as demonstrated by the scientific evidence presented in the Health Effects section (Section V), OSHA has determined that the work-related risk of MSDs increases with the intensity and/or duration of exposure. Because of this, MSDs are not, in fact, evenly distributed across all workers, but are concentrated among the proportion of workers who are the more highly exposed to biomechanical risk factors. Thus, the incidence of MSDs among the more highly exposed workers is greater than that among the lesser-exposed workers; this has been shown in the almost 200 epidemiological studies reviewed in the Health Effects section. It is for this reason that OSHA believes that the risk estimates presented in the first analysis above, which relied on the BLS-reported incidence estimates by industry and occupation, understate the true risk among the workers who are more highly exposed to physical risk factors (while overstating it for workers who are not highly exposed to risk factors).

OSHA's second approach to estimating work-related MSD risks takes account of this risk differential between more highly exposed (*i.e.*, higher-risk) workers and lesser-exposed (*i.e.*, lesser-risk) workers to estimate more precisely the risk among those workers who would most benefit from an ergonomics program. In addition, the risk among the higher-risk workers is estimated in two forms. One assumes that all of the risk among the higher-risk workers can be attributed to their exposure to biomechanical risk factors, *i.e.*, all of the risk is work-related. OSHA believes this is reasonable because the data used to make these estimates are the BLS data, which represents MSDs reported by employers to be work-related. The second form assumes that, despite the fact that the data derive from reports of work-related injuries, only part of the risk can be attributed to workplace exposure to physical risk factors because of the presence of some "background" risk among the higher-risk workers. This background risk represents MSDs that are not work-related and are attributed to some unknown non-work exposure to risk factors. OSHA believes that making such an adjustment to the estimated risk among higher-risk workers leads to an overly conservative estimate of risk among workers whose jobs will be screened in under the final rule; however, the Agency is nevertheless making this adjustment in response to addresses the concerns of those commenters who argued that OSHA should take account of the "background" incidence of MSDs.

The first step in OSHA's second approach to estimating work-related MSD risks is to estimate the incidence of MSDs for higher-risk and for lesser-risk workers. OSHA considers the higher-risk workers to be those workers who are exposed to risk factors at levels that meet the final rule's basic screening tool; all other workers are considered lower-risk in the sense that they are exposed to risk factors at levels below the final rule's screen.

To accomplish this analysis, OSHA relied on data contained in the record from Washington State's industry-wide survey of workplace exposure to physical risk factors (Ex. 500–41–118); details of this survey are presented in Chapter 3 (Benefits Assessment) of the Final Economic Analysis. Data from this survey were used to estimate the percentage of employees in each major industry group who are exposed to risk factors that at least meet the level of a "caution zone" job under Washington State's ergonomics standard. The kinds and durations of risk factor exposures contained in Washington State's definition of a "caution zone" job are similar to those contained in OSHA's Basic Screening Tool, *e.g.*, generally 2 or more hours per shift of exposure to repetitive motions, awkward postures, contact stress, or segmental vibration, or 4 or more hours per shift of keyboarding activity. Both tools also use the same lifting weight and frequency-of-lift criteria to screen jobs for force associated with manual handling. Because of the similarities between OSHA's screening tool and the Washington State criteria, OSHA believes it reasonable that use of the Washington State survey data on workplace exposures to biomechanical risk factors will yield reasonable estimates of the numbers of workers who are exposed to risk factors at the levels that meet the action trigger of the final rule. OSHA has used these data, along with data derived from the epidemiology studies reviewed in the Health Effects section (Section V of the final rule's preamble), to estimate the number and incidence of MSDs occurring annually among employees who are exposed to risk factors at levels meeting the action trigger in the final rule. OSHA's Final Economic Analysis contains a detailed description of the Washington State survey data and OSHA's use of these data to estimate the percentage of workers in each covered industry sector who are exposed to risk factors at levels that meet the final rule's action trigger.

OSHA's approach to estimating the excess risk of MSDs among exposed workers is summarized in Table VI–8. From the Washington State survey data, OSHA estimated the percentage of employees who are exposed to risk factors that meet the final rule's screen criteria (Column D of Table VI–8) in each 2-digit industry sector, as well as the number of higher-risk workers (Column E).

To estimate the incidence of MSDs separately for higher-risk as compared with lower-risk workers, OSHA assumes that the annual incidence of MSDs among the higher-risk workers is three times that of low-risk workers. The justification for this assumption can be found in the many epidemiology studies reviewed in the Health Effects section of this preamble (Section V). These studies compared the prevalence or incidence of MSDs among workers who are regularly exposed to the risk factors addressed by the final rule with the prevalence or incidence among the referent (or less-exposed) worker populations. Typically, these epidemiological studies report observed differences in these rates as ratios (such as odds ratios, incidence ratios, prevalence ratios, or other relative risk measures). A compilation of the risk measures identified in these studies appears in the form of estimated median and mean risk ratios in Table VI–9, separated by part of body. As the table shows, median risk ratios for back disorders, neck and shoulder disorders, and upper extremity disorders are 1.85, 2.7 to 3.3, and 2.8 to 6.6, respectively. Mean values for back disorders, neck and shoulder disorders, and upper extremity disorders are 2.4, 4.5 to 5.2, and 4.4 to 12.6, respectively. Based on these values, OSHA finds that, in general, employees who are regularly exposed to the risk factors covered by the final rule are at three times higher risk or, put another way, will experience a 3-fold higher incidence of MSDs than is the case for workers who are not so exposed.

Table VI-8 Approach for Estimating Excess Risk of MSDs Among Workers Exposed to Risk Factors That Meet the Final Rule's Screen

	A	B	C	D	E	F	G	H	I
SIC	Total No. LWD MSDs[a]	Incidence per 1,000 Workers[b]	Estimated No. Full-Time-Equivalent Workers in SIC[c]	Percent of Workers in Jobs > Screen[d]	Estimated No. of Higher-Risk Workers[e]	Incidence Among Higher-Risk Workers (Pd)[f]	Incidence Among Non-Lower-Risk Workers (Po)[g]	Potentially Preventable Risk Among Higher-Risk Workers (per 1,000) (High Estimate)[h]	Potentially Preventable Risk Among Higher-Risk Workers (per 1,000) (Low Estimate)[i]
07[d]	3,890.0	6.906	563,279	43.20%	243,337	0.01111	0.00370	11.115	7.437
08[d]	144.0	6.738	21,372	43.20%	9,233	0.01084	0.00361	10.844	7.256
09	49.5	4.951	9,998	43.20%	4,319	0.00797	0.00266	7.968	5.326
13	1,075.7	3.170	339,338	43.20%	146,594	0.00510	0.00170	5.102	3.407
20	20,540.1	12.242	1,677,839	43.00%	721,471	0.01975	0.00658	19.745	13.251
21	322.9	8.308	38,866	43.00%	16,712	0.01340	0.00447	13.400	8.973
22	3,483.4	5.626	619,161	43.00%	266,239	0.00907	0.00302	9.074	6.068
23	6,379.6	7.869	810,726	43.00%	348,612	0.01269	0.00423	12.692	8.497
24	9,228.5	12.166	758,548	43.00%	326,176	0.01962	0.00654	19.623	13.168
25	5,8[illegible]2.1	11.741	501,840	43.00%	215,791	0.01894	0.00631	18.937	12.705
26	4,865.2	6.921	702,962	43.00%	302,274	0.01116	0.00372	11.163	7.470
27	9,195.3	6.547	1,404,506	43.00%	603,938	0.01056	0.00352	10.560	7.065
28	3,641.2	3.507	1,038,266	43.00%	446,455	0.00566	0.00189	5.656	3.778
29	432.1	2.956	146,177	43.00%	62,856	0.00477	0.00159	4.768	3.184
30	11,982.7	12.069	992,849	43.00%	426,925	0.01947	0.00649	19.466	13.062
31	856.4	9.226	92,825	43.00%	39,915	0.01488	0.00496	14.881	9.970
32	6,316.4	11.444	551,940	43.00%	237,334	0.01846	0.00615	18.458	12.382
33	8,940.0	12.099	738,904	43.00%	317,729	0.01951	0.00650	19.515	13.095
34	17,751.1	12.121	1,464,491	43.00%	629,731	0.01955	0.00652	19.550	13.119
35	17,124.5	7.946	2,155,109	43.00%	926,697	0.01282	0.00427	12.816	8.581
36	10,782.5	6.506	1,657,316	43.00%	712,646	0.01049	0.00350	10.494	7.020
37[d]	22,581.0	15.866	1,423,274	43.00%	612,008	0.02559	0.00853	25.590	17.206
38	4,036.9	4.785	843,657	43.00%	362,773	0.00772	0.00257	7.718	5.158
39	3,375.8	8.997	375,214	43.00%	161,3[illegible]	0.01451	0.00484	14.511	9.721
41	4,61[illegible]	14.671	314,723	47.60%	149,8[illegible]	0.02255	0.00752	22.548	15.146
42	23,800[illegible]	14.438	1,648,435	47.60%	784,655	0.02219	0.00740	22.190	14.903
44	1,537.1	9.959	154,343	47.60%	73,467	0.01531	0.00510	15.306	10.256
45	34,150.0	36.580	933,570	47.60%	444,379	0.05622	0.01874	56.219	38.195
46[d]	194.0	12.878	15,065	47.60%	7,171	0.01979	0.00660	19.791	13.282
47	1,263.1	3.262	387,216	47.60%	184,315	0.00501	0.00167	5.013	3.348
48	5,708.2	4.398	1,297,908	47.60%	617,804	0.00676	0.00225	6.759	4.516
49	5,712.1	6.478	881,769	47.60%	419,722	0.00996	0.00332	9.956	6.659

Table VI-8 Approach for Estimating Excess Risk of MSDs Among Workers Exposed to Risk Factors That Meet the Final Rule's Screen (Continued)

	A	B	C	D	E	F	G	H	I
SIC	Total No. LWD MSDs[a]	Incidence per 1,000 Workers[b]	Estimated No. Full-Time-Equivalent Workers in SIC[c]	Percent of Workers in Jobs > Screen[d]	Estimated No. of Higher-Risk Workers[e]	Incidence Among Higher-Risk Workers (Pd)[f]	Incidence Among Non-Lower-Risk Workers (Po)[g]	Potentially Preventable Risk Among Higher-Risk Workers (per 1,000) (High Estimate)[h]	Potentially Preventable Risk Among Higher-Risk Workers (per 1,000) (Low Estimate)[i]
50	26,782.1	7.235	3,701,742	42.70%	1,580,644	0.01171	0.00390	11.707	7.835
51	24,768.4	9.792	2,529,453	42.70%	1,080,076	0.01584	0.00528	15.845	10.619
52	8,621.9	10.699	805,860	35.10%	282,857	0.01886	0.00629	18.858	12.652
53	22,395.6	11.152	2,008,214	35.10%	704,883	0.01966	0.00655	19.657	13.191
54	25,268.9	10.191	2,479,531	35.10%	870,315	0.01796	0.00599	17.963	12.047
55	10,347.3	4.847	2,134,784	35.10%	749,309	0.00854	0.00285	8.543	5.712
56	2,439.1	3.132	778,768	35.10%	273,347	0.00552	0.00184	5.521	3.687
57	6,016.1	7.136	843,063	35.10%	295,915	0.01258	0.00419	12.578	8.421
58	14,457.5	2.830	5,108,657	35.10%	1,793,139	0.00499	0.00166	4.988	3.331
59	10,043.2	4.857	2,067,778	35.10%	725,790	0.00856	0.00285	8.561	5.724
60	2,487.7	1.355	1,835,941	21.00%	385,548	0.00286	0.00095	2.863	1.910
61	399.3	0.810	492,963	21.00%	103,522	0.00171	0.00057	1.711	1.141
62	276.7	0.533	519,137	21.00%	109,019	0.00113	0.00038	1.126	0.751
63	2,659.1	2.068	1,285,832	21.00%	270,025	0.00437	0.00146	4.369	2.917
64	472.2	0.733	644,202	21.00%	135,282	0.00155	0.00052	1.549	1.033
65	5,882.8	5.113	1,150,557	21.00%	241,617	0.01080	0.00360	10.802	7.227
67	297.6	1.579	188,474	21.00%	39,579	0.00334	0.00111	3.336	2.226
70	11,241.0	8.216	1,368,184	36.60%	500,755	0.01423	0.00474	14.231	9.533
72	3,527.2	3.865	912,600	36.60%	334,012	0.00669	0.00223	6.695	4.473
73	16,706.8	3.564	4,687,654	36.60%	1,715,681	0.00617	0.00206	6.173	4.124
75	4,347.9	4.422	983,243	36.60%	359,867	0.00766	0.00255	7.659	5.119
76	2,274.4	6.506	349,585	36.60%	127,948	0.01127	0.00376	11.269	7.541
78[j]	3,614.0	7.072	511,031	36.60%	187,037	0.01225	0.00408	12.249	8.200
79	5,805.4	5.857	991,190	36.60%	362,776	0.01014	0.00338	10.145	6.786
80	103,478.7	13.847	7,473,005	36.60%	2,735,120	0.02398	0.00799	23.984	16.118
81	1,264.4	1.524	829,659	36.60%	303,655	0.00264	0.00088	2.640	1.761
82	2,926.6	2.681	1,091,608	36.60%	399,528	0.00464	0.00155	4.644	3.101
83	13,755.1	7.483	1,838,180	36.60%	672,774	0.01296	0.00432	12.961	8.678
84[j]	319.0	3.994	79,862	36.60%	29,229	0.00692	0.00231	6.919	4.623
86	1,838.5	2.745	669,763	36.60%	245,133	0.00475	0.00158	4.755	3.175
87	5,653.6	2.114	2,674,361	36.60%	978,816	0.00366	0.00122	3.662	2.444
89[j]	761.0	7.193	105,803	36.60%	38,724	0.01246	0.00415	12.458	8.340
TOTAL	590,998		77,702,172		29,454,352				

[a, b] OSHA estimates based on 1996 BLS data (Ex. 26-1413).

[c] (Col A/Col B) * 1000

[d] Data from Washington State Industry Survey, see Chapter 4 of Final Economic Analysis.

[e] Col C * Col D

[f] (Col B)/[Col D + ((1-Col D)/3)], see Chapter 4 of Final Economic Analysis for derivation.

[g] [Col A - (Col E * Col F)]/(Col C - Col E)

[h] Col F * 1000

[i] (Col F - Col G)/(1 - Col G)

[j] Estimated number of MSDs represents the sum of estimates for industry sectors at the 3-digit SIC level to exclude industry sectors not covered in the final rule and to include include data for industry sectors for which BLS did not provide an estimate at the 2-digit SIC level. Estimates of the numbers of MSDs and employees are taken from Chapter 2 (Industry Profile) of the Final Economic Analysis

Assuming that there is a three-fold higher risk of MSDs among higher-risk workers compared with lower-risk workers, the incidence of MSDs among higher-risk employees is estimated for each industry sector by the following formula:

$$\frac{MSDInc_{tot}}{Pct_E - \left[(1 - Pct_E)/RR\right]}$$

where:

$MSDInc_{tot}$ is the MSD incidence among all workers in the industry sector;

Pct_E is the percentage of workers in the industry sector who are considered to be regularly exposed to risk factors at levels that meet the final rule's screen; and

RR is the risk ratio of 3.

The derivation of this formula appears in Chapter 3 (Benefits) of OSHA's Final Economic Analysis.

TABLE VI–9.—SUMMARY OF RISK RATIOS IN THE EPIDEMIOLOGICAL LITERATURE FOR MSDS REVIEWED BY OSHA, AND ESTIMATED FRACTION OF MSDS ATTRIBUTABLE TO WORKPLACE EXPOSURE

	Body part affected/disorder							
	Neck or neck/ shoulder	Only shoulder	Elbow	Carpal tunnel syndrome	Hand/wrist tendinitis	Hand/arm vibration	Back	Lower extremity
Number of Studies included ..	42	32	18	30	10	12	44	9
Risk Ratios[a]								
Median	2.7	3.3	2.8	3.2	3.7	6.6	1.85	2.2
Average	4.5	5.2	5.5	4.4	6.5	12.6	2.66	2.4
Estimated Percent of MSDs Attributable to Exposure to Risk Factors[b]								
Median	63.0	69.5	63.6	68.5	72.6	84.8	45.9	53.5
Average	77.6	80.6	81.9	77.5	84.6	92.1	62.4	58.9

[a] Risk ratios include odds ratios, prevalence rate ratios, and incidence ratios.

[b] Proportion of disorders among exposed workers that is attributable to their exposure at work; calculated as (RR–1)/RR, where RR is the median or average risk ratio derived from each group of epidemiological studies.

Source: Data presented in Tables V–1 through V–6 of the Health Effects section (Section V).

The MSD incidence among lower-risk employees in each industry sector is estimated as the ratio of the number of MSDs that occurred in 1996 among lower-risk employees to the estimated number of lower-risk employees in each industry sector (see formula in Table VI–8).

The portion of the risk for higher-risk employees that can be attributed directly to workplace exposure to risk factors (*i.e.*, that portion of the risk that is potentially preventable) lies between two extremes, the upper and the lower bound of the range of estimated risks. OSHA estimated the upper bound of the range to be equal to the MSD incidence among higher-risk employees; this bound assumes that the BLS data includes no cases reflecting background risk, since all of the MSD cases in the BLS data are work-related. The lower bound, on the other hand, assumes that the MSD incidence among lower-risk employees is entirely attributable to background, *i.e.*, that work did not contribute in any of the MSD cases reported among lower-risk workers. To estimate the lower bound, OSHA estimated the excess risk among higher-risk workers from the general formula that the Agency has used in previous risk assessments to estimate excess risk. The general formula for estimating excess risk is

$$\frac{P_d - P_0}{1 - P_0}$$

where P_d is the probability of injury or illness among workers exposed to a hazard and P_0 is the background risk that occurs among persons who are not exposed to the hazard. In this case, P_0 represents the estimated MSD incidence among workers who are either not exposed to risk factors at work or who are exposed to risk factors below the level meeting the final rule's screen.

As with the first risk assessment approach discussed above, OSHA also estimated the lifetime risk of experiencing a LWD MSD to workers who work in jobs that meet the final rule's basic screening tool. Estimates representing the risk of experiencing at least one MSD and the average number of MSDs per worker (*i.e.*, the expected value) were calculated assuming a 45-year working life. Table VI–10 presents OSHA's estimates of the lifetime risk of experiencing work-related MSDs, by industry sector; lifetime risks were calculated based on both the upper- and lower-bound estimates of the MSD incidence among higher-risk employees (*i.e.*, those exposed to risk factors at levels meeting the final rule's screen). Based on the probability approach, the estimated probability that a higher-risk worker will experience at least one work-related MSD during a working lifetime ranges from 33 per 1,000 workers to 926 per 1,000 workers, depending on the industry sector. Based on the expected value approach, the expected number of work-related MSDs that will occur in a cohort of higher-risk workers all entering an industry at the same time ranges from 34 per 1,000 workers to 2,530 per 1,000 workers, since this approach recognizes that it is possible for a worker to experience more than one work-related MSD in a working lifetime.

Table VI-10. Estimated Excess Risk of Developing a Work-Related MSDs Over a 45-Year Working Lifetime Among Employees Exposed to Risk Factors in Excess of the Final Rule's Screen (Adjusted for Background)

Two Digit SIC	Industry Sector	Estimated Number of LWD MSDs Among High-Risk Workers	Estimated Excess Risk per 1,000 Workers		Expected Number of MSDs per 1,000 Workers During a Working Lifetime		Number of Workers per 1,000 to have at Least One MSD During a Working Lifetime	
			High Estimate	Low Estimate	High Estimate	Low Estimate	High Estimate	Low Estimate
45	Transportation By Air	24,982.7	56.219	38.195	2,530	1,719	926	827
37	Transportation Equipment	15,661.0	25.59	17.206	1,152	774	689	542
80	Health Services	65,600.2	23.984	16.118	1,079	725	665	519
41	Local and Suburban Transit and Interurban Highway Passinger Transportation	3,377.8	22.548	15.146	1,015	682	642	497
42	Motor freight Transportation and Warehousing	17,411.1	22.19	14.903	999	671	636	491
46	Pipelines, Except Natural Gas	141.9	19.791	13.282	891	598	593	452
20	Food and Kindred Products	14,245.6	19.745	13.251	889	596	592	451
53	General Merchandise Stores	13,855.8	19.657	13.191	885	594	591	450
24	Lumber and Wood Products, Exc. Furniture	6,400.4	19.623	13.168	883	593	590	449
34	Fabricated Metal, Exc. Machinery & Transportation Equipment	12,311.2	19.55	13.119	880	590	589	448
33	Primary Metals	6,200.3	19.515	13.095	878	589	588	447
30	Rubber and Misc Plastics	8,3[illegible].6	19.466	13.062	876	588	587	447
25	Furniture and Fixtures	4,086.5	18.937	12.705	852	572	577	438
52	Building Materials, Hardware, Garden Supply, Mobile Home Dealers	5,334.2	18.858	12.652	849	569	575	436
32	Stone, Clay, Glass, Concrete Products	4,380.7	18.458	12.382	831	557	568	429
54	Food Stores	15,633.5	17.963	12.047	808	542	558	420
51	Wholesale Trade-Nondurable Goods	17,113.4	15.845	10.619	713	478	513	381
44	Water Transportation	1,124.5	15.306	10.256	689	462	500	371
31	Leather and Leather Products	594.0	14.881	9.970	670	449	491	363
39	Misc. Manufacturing Industries	2,341.3	14.511	9.721	653	437	482	356
70	Hotels, Rooming Houses, Camps, Other Lodging	7,126.2	14.231	9.533	640	429	475	350
21	Tobacco Products	223.9	13.4	8.973	603	404	455	333
83	Social Services	8,720.0	12.961	8.678	583	391	444	324
35	Industrial and Commercial Machinery & Computer Equipment	11,876.7	12.816	8.581	577	386	440	321
23	Apparel and Other Finished Products Made From Fabric	4,424.6	12.692	8.497	571	382	437	319
57	Home Furniture, Furnishings, And Equipment Stores	3,722.1	12.578	8.421	566	379	434	317
89	Services, Not Elsewhere Classified	482.4	12.458	8.340	561	375	431	314
78	Motion Pictures	2,291.1	12.249	8.200	551	369	426	310
50	Wholesale Trade - Durable Goods	18,504.8	11.707	7.835	527	353	411	298
76	Miscellaneous Repair Services	1,441.9	11.269	7.541	507	339	399	289
26	Paper and Allied Products	3,374.3	11.163	7.470	502	336	397	286
7	Agricultural Services	2,704.6	11.115	7.437	500	335	395	285
8	Forestry	100.1	10.844	7.256	844	327	388	279
65	Real Estate	2,610.0	10.802	7.227	486	325	387	278
27	Printing, Publishing, and Allied Industries	6,277.4	10.56	7.065	475	318	380	273

Table VI-10. Estimated Excess Risk of Developing a Work-Related MSDs Over a 45-Year Working Lifetime Among Employees Exposed to Risk Factors in Excess of the Final Rule's Screen (Adjusted for Background)

Two Digit SIC	Industry Sector	Estimated Number of LWD MSDs Among High-Risk Workers	Estimated Excess Risk per 1,000 Workers		Expected Number of MSDs per 1,000 Workers During a Working Lifetime		Number of Workers per 1,000 to have at Least One MSD During a Working Lifetime	
			High Estimate	Low Estimate	High Estimate	Low Estimate	High Estimate	Low Estimate
36	Electronic and Other Electrical, Exc. Computer Equipment	7,478.2	10.494	7.020	472	316	378	272
79	Amusement and Recreation Services	3,680.3	10.145	6.786	475	305	368	264
49	Electric, Gas, and Sanitary Services	4,178.7	9.956	6.659	448	300	363	260
22	Textile Mill Products	2,415.9	9.074	6.068	408	273	336	240
59	Miscellaneous Retail	6,213.6	8.561	5.724	385	258	320	227
55	Automotive Dealers and Gasoline Service Stations	6,401.7	8.543	5.712	384	257	320	227
9	Fishing, Hunting, and Trapping	34.4	7.968	5.326	359	240	302	214
38	Measuring, Analyzing, and Controlling Instruments; Photo, Medical, Optical; Watches, Clocks	2,799.8	7.718	5.158	347	232	394	206
75	Automotive Repair, Services, and Parking	2,756.3	7.659	5.119	345	230	292	206
84	Museums, Art Galleries, and Botanical and Zoological Gardens	202.2	6.919	4.623	311	208	268	188
48	Communications	4,175.9	6.759	4.516	304	203	263	184
72	Personal Services	2,236.1	6.695	4.473	301	201	261	183
73	Business Services	10,591.3	6.173	4.124	278	186	243	170
28	Chemicals and Allied Products	2,525.3	5.656	3.778	255	170	225	157
56	Apparel and Accessory Stores	1,509.0	5.521	3.687	248	166	221	153
13	Oil and Gas Extraction	747.9	5.102	3.407	230	153	206	142
47	Transportation Services	924.0	5.013	3.348	226	151	202	140
58	Eating and Drinking Places	8,944.6	4.988	3.331	224	150	202	139
29	Petroleum Refining and Related Industries	299.7	4.768	3.184	215	143	194	134
86	Membership Organizations	1,165.5	4.755	3.175	214	143	193	133
82	Educational Services	1,856.3	4.644	3.101	209	140	189	130
63.	Insurance Carriers	1,179.7	4.369	2.917	197	131	179	123
87	Engineering, Accounting, Research, Management, And Related Services	3,584.1	3.662	2.444	165	110	152	104
67	Holding And Other Investment Offices	132.0	3.336	2.226	150	100	140	95
60	Depository Institutions	1,103.7	2.863	1.910	129	86	121	82
81	Legal Services	801.6	2.64	1.761	119	79	112	76
61	Non-depository Credit Institutions	177.2	1.711	1.141	77	51	74	50
64	Insurance Agents, Brokers, And Service	209.5	1.549	1.033	70	46	67	45
62	Security And Commodity Brokers, Dealers, Exchanges, And Services	122.6	1.126	0.751	51	34	49	33
	TOTAL	389,118						

Source: Estimated Incidence of MSDs provided by BLS for disorders classified by injury and exposure events shown in Table VI-3.
Lifetime risk estimates calculated by OSHA using methods described in the text.

Several rulemaking participants commented on the results of OSHA's preliminary risk assessment and the approaches taken by the Agency to estimate the magnitude of MSD risks to employees.

In their post-hearing submissions (Exs. 500–221, 500–223), Keller & Heckman presented an alternative risk analysis that they believe could be used to compare work-related risks to the background risk of MSDs. Citing the work of Maizlish *et al.* (Ex. 26–1186), they stated that the background risk of carpal tunnel syndrome (CTS) is 1.05 cases per 1,000 person-years; this estimate is based on an analysis of medical records in Rochester, Minnesota, between 1961 and 1980 (Stevens *et al.*, Ex. 26–1009). Using OSHA's estimates from the preliminary risk assessment of the total number of MSDs in U.S. industry for each of the six injury categories selected by OSHA, Keller & Heckman estimated a background incidence for each of the six injury types based on the ratio of the number of LWD cases for each injury type to the number of LWD CTS cases. For example, since OSHA's estimates of the number of LWD strains, sprains, and tears is 16.88 times higher than the number of LWD CTS cases, Keller & Heckman estimated that the background rate of LWD strain, sprain, and tear injuries in the U.S. population is 17.72 cases per 1,000 people per year (*i.e.*, 16.88 × 1.05). Across all six injury types, Keller & Heckman estimated the background rate for all LWD MSDs to be 22.83 cases per 1,000 persons per year for the U.S. population. They also estimated the MSD rate across the U.S. workforce to be 6.55 LWD MSD cases per person-year, by dividing the total estimated number of MSDs in 1996 (647,344) by private industry employment for 1996 (98,772,900 workers). From this analysis, Keller & Heckman concluded that there is no significant excess risk of MSDs in private industry, since the estimated background rate of MSDs in the *general* population is about 3.5 times higher than the rate that they estimated for the U.S. workforce. They presented similar estimates of MSD rates for selected industry sectors at the 3-digit SIC level and concluded that (1) only 10 of the hundreds of industry sectors covered by the ergonomics program rule have an MSD incidence that exceeds their estimated background rate of MSDs, and (2) that there is no excess risk of work-related MSDs in either SIC 204 (Grain Mill Products), SIC 206 (Sugar and Confectionary Products), or SIC 331 (Steel Works, Blast Furnaces, and Rolling Mills).

OSHA believes that the analysis conducted by Keller & Heckman is seriously flawed in a number of respects. First, Keller & Heckman make an improper comparison between estimated MSD rates in the working population, based on the BLS data, and estimated MSD rates in the *general* population, based on community medical records for the rate of CTS in Rochester, Minnesota. As explained in part B above, the BLS injury and illness survey is not designed to capture all injuries and illnesses that occur among workers; it is only designed to capture those that employers have determined to be work-related. In contrast, the Rochester study on which Keller & Heckman's analysis rests involved *all* cases of CTS that occurred in the community, regardless of whether those cases were work-related or not. These two statistics are not comparable in any meaningful way. To make a meaningful comparison, one would need to have data that permit estimates to be made of the *total* MSD rate in the U.S. workforce, not just the work-related component.

Second, Keller & Heckman assume that the ratio between the number of one type of MSD to that of another will mirror the ratio of the incidence rates for the two types of MSDs in the general population. However, the ratio between the number of cases of two medical conditions can be equal to the ratio of the incidences of those conditions *only* if the cases of both medical conditions are drawn from the *same* population. Clearly, the population from which the BLS data are drawn differs from the general U.S. population in many ways. Consequently, OSHA believes that it is not possible to reliably estimate the background rate of any type of MSD in the general population from the ratio between two MSD types seen in the working population, and therefore the assumption made by Keller & Heckman in conducting their analysis is not supportable.

Third, Keller & Heckman's analysis interprets the rate of CTS in the Rochester, Minnesota, population as the "background" rate of CTS. However, the study by Stevens *et al.* (Ex. 26–1009) made no effort to evaluate the work-relatedness of the CTS cases identified from the medical records, nor was there any mention of the investigators collecting work histories or assessing the work status of the cases identified. The Maizlish study (Ex. 26–1186) cited by Keller & Heckman was a study of a California surveillance system for work-related CTS, in which the Rochester CTS rate was used as a reference point for the purpose of identifying "epidemic clusters" of CTS (defined as a rate twice that of the Rochester CTS rate). Although the authors of this study refer to the Rochester CTS rate as a "background" rate, their rate is clearly not a background rate as that term is used in occupational epidemiology. It cannot represent the rate of CTS among persons without workplace exposure because the CTS cases in the Maizlish study were drawn from the entire Rochester population, which included both workers and non-workers.

For these reasons, OSHA finds the analysis provided by Keller & Heckman both methodologically flawed and unconvincing. The Agency believes that its own risk analysis, which is based on estimates of the numbers of higher-risk and lower-risk workers and on the extensive epidemiological data presented in Section V of this preamble, appropriately takes account of that portion of the MSD rate among workers that is attributable to their workplace exposures.

Keller & Heckman (Exs. 500–221, 500–223) also claim that the "aggregate risk (workplace and non-workplace risk combined)" of a U.S. worker experiencing an LWD MSD due to anything that might be defined as a harmful physical agent would be no more than 0.7 per 1,000 workers per year. They arrive at this rate by dividing the 1996 number of BLS MSD cases caused by repetition by total private industry employment. This estimate ignores the LWD cases attributed in the BLS data to overexertion or to awkward postures (*i.e.*, "bending, climbing, crawling, reaching, twisting"), both of which are exposure event codes that OSHA has determined to be highly relevant for assessing MSD risks to workers. Second, Keller & Heckman characterize their aggregate risk rate as reflecting both workplace and non-workplace contributions to MSD risk. Since the rate Keller & Heckman use is derived from BLS data, which reflects work-related cases exclusively, OSHA does not agree with this characterization.

The National Coalition on Ergonomics (Ex. 32–368) and the American Iron and Steel Institute (Ex. 32–206) objected to the fact that OSHA did not modify its risk estimates from the BLS data by reducing them to account for MSDs that occurred in jobs that would not pass the screening criteria in § 1920.902 of the proposal. In the final ergonomics program rule, OSHA has modified its screening criteria from the performance-oriented language contained in the proposal to be more specific in terms of the kinds and durations of exposures to risk factors that warrant further hazard analysis by the employer. Employers are not expected to conduct job hazard analysis or provide medical management of MSDs for employees in jobs where the exposures to risk factors are below those in the final rule's action trigger. As described above, OSHA has now modified its risk assessment to estimate the number and incidence of MSDs that occur each year among workers who are in jobs in which exposures meet the action trigger. Thus, OSHA's final risk assessment reflects the excess MSD risks among the more highly exposed portion of the worker population covered by the standard.

The Center for Office Technology (COT) (Ex. 30–2208) and the Puerto Rico Manufacturing Association (Ex. 30–3348) took issue with OSHA's statements in the preliminary risk assessment and significance of risk analysis for the proposed rule that the BLS data understate risk. For example, COT commented that

> * * * BLS in their reports state that there is "95% confidence that the 'true' incidence rate falls within the confidence interval * * * and has an estimated relative standard error of about 0.9 percent." BLS does not state that their estimates of injury and illnesses reflect under reporting. Assistant Secretary Charles Jeffress is also on the record supporting the accuracy of the BLS data and is quoted * * * as saying "90% of employers keep accurate records 95% of the time, or better." (Ex. 2208, p. 19)

However, OSHA did not base its preliminary determination that work-related MSDs are seriously underreported on the precision (or lack thereof) of the BLS survey. The BLS statement referred to in COT's comment simply reflects the fact that the BLS estimates of work-related injuries and illnesses in the United States are based on a sampling of OSHA 200 logs, not the logs of all employers. Consequently, the estimates generated from the sample of logs have some uncertainty associated with them, which is characterized by a 95% confidence interval around the estimate. The stated precision of the survey data provided by the BLS does not address issues related to the accuracy of the logs that are sampled, just the precision of the *estimates* generated from the sampled logs. OSHA's determination that MSDs are seriously underreported on OSHA logs is based on the findings of several scientific studies and other data that compared MSD rates from logs to those from medical insurance records, records of sick leave, or other sources of data independent from the OSHA logs; these studies were reviewed in Table VII–2 of the preamble to OSHA's proposed rule (64 FR 65982), and in Table VII–1 and OSHA's discussion of the Significance of Risk (Section VII) in this preamble.

According to NIOSH (Ex. 32–450), OSHA's discussion of the limitations on the use of BLS data in the risk assessment section of the preamble is methodologically sound. These limitations include the following characteristics of reported cases:

- The cases reported are only those that employers have agreed are work-related,
- The cases reported are only those that were serious enough to involve at least one day away from work,
- The cases reported do not include other types of work-related MSD cases that rarely, if ever, come to the attention of the employer, and
- The cases reported do not account for the extended or permanent disability that results in employee termination.

In addition, NIOSH points out that some workers with MSD episodes that may represent lost workday cases are reassigned to minimal work activities in order to avoid recording the case as one involving lost workdays. For these reasons, NIOSH agrees that there is a substantial likelihood of under-reporting in the BLS system and that the BLS estimates represent a lower bound of the true risks of work-related MSDs. NIOSH agrees with OSHA that the true incidence of work-related MSDs is greater than indicated by the BLS estimates.

In its pre-hearing comments (Ex. 32–368), the National Coalition on Ergonomics objected to the use of BLS data in risk assessment on the grounds that the data reflect reports by workers to employers rather than medical diagnoses. The BLS data relied on by OSHA in this risk assessment is lost-work-day data, which employers provide to the BLS along with sufficient information about each injury or illness to permit detailed classification of each injury and illness. Thus, the data relied on by OSHA do not represent "reports by workers to employers" but cases that employers have determined to be work related and for which they provided detailed descriptions of the nature of the events associated with each case. Further, the Coalition's comment implies that MSD rates would be much lower if they were based on medical diagnoses rather than employer reports. However, evidence in the rulemaking record shows that the opposite result is more likely; several investigators have actually compared MSD rates from the OSHA logs with the rates reflected in other sources of data that report the results of medical evaluations of injuries and illnesses, such as medical insurance records, compensation claims, medical case records, and medical absence records (Exs. 26–28, 26–920, 26–1261, 26–1259, 26–1260). These studies, reviewed in the Significance of Risk section of the preamble (Section VII), have consistently found the MSD rates reported on OSHA logs to be several-fold lower than those derived from medical records data. Thus, OSHA believes that a risk analysis based on accurate reports of the medical diagnoses of work-related MSDs would result in higher risk estimates than those in OSHA's analysis.

The Edison Electric Institute (Ex. 32–300–1) and Southern California Edison (Ex. 30–3284) take OSHA's statement in the preliminary risk assessment that BLS data "are not easy to use for risk assessment purposes" to mean that these data are weak. This is not the case nor is it what OSHA meant by this statement. OSHA's statement that the BLS data are not easy to use for risk assessment referred to the fact that the BLS injury and illness classification system does not contain a single injury/illness category that contains data on all relevant MSDs. This fact required the Agency to select injury/illness categories and appropriate exposure event categories to represent the kinds of disorders addressed by the final rule. As discussed above, OSHA has determined both that the BLS data are the best available data for evaluating MSD risks to workers and that OSHA's reliance on these data is appropriate. In addition, these two stakeholders characterize the employment estimates from the U.S. Bureau of the Census as "another questionable data source" without providing any justification for this characterization. They also stated that combining these data to calculate MSD rates by occupation "compounds the flaw." In fact, both the BLS and Bureau of Census population data have been used by the Agency to analyze the impact of its rules for several years, are used extensively by other researchers both within and outside the federal government, and represent state-of-the-art programs for conducting and analyzing nationwide surveys of working populations. OSHA knows of no other data sources that could provide more reliable information on occupations and workplace injuries and illness in the United States.

Jesse McDaniel, a Certified Safety Professional from August Mack Inc. (Ex. 30–240), commented on OSHA's use of the BLS data and the preliminary risk assessment. First, Mr. McDaniel stated that injuries that do not involve lost workdays, restricted work, or medical treatment (or diagnosis in the case of an illness) are not recordable cases under OSHA's recordkeeping rules; he believes that OSHA was therefore incorrect in stating in the preliminary risk assessment that the BLS data understate the true MSD risk to workers because it excludes cases that do not involve days away from work. In other words, Mr. McDaniel appears to believe that cases not counted as LWD MSDs in the BLS system are not recordable, and that OSHA's claim that the data understate the true risk is not warranted. OSHA does not agree it was incorrect in making this statement. The data relied on by OSHA for both its preliminary and final risk assessment comes from the detailed employer survey data, which requires employers to provide descriptions of work-related injuries and illnesses only for those cases involving days away from work, *i.e.*, the employer is not required to provide detailed information on other kinds of recordable injuries and illness not involving days away from work. Therefore, OSHA's estimates of LWD MSD rates based on the BLS data do not include the other kinds of recordable MSDs referred to by Mr. McDaniel. He also believes that OSHA inflated its risk estimates by reporting MSD rates per 1,000 workers rather than on a per-100-worker basis, which is the convention used by BLS in reporting injury rates by industry sector and occupation. OSHA used the risk per 1,000 worker metric because OSHA's significant risk range is bounded by the Supreme Court's guidance in the *Benzene* decision, as explained in the preliminary risk assessment. Mr. McDaniel also provided examples that he believes suggest OSHA's estimated LWD MSD rates exceed the BLS-estimated total injury case rates for some industry sectors and occupations. However, since the BLS case rates are reported per 100 full-time-equivalent employees, and OSHA presents its risk estimates conventionally in terms of cases per 1,000 employees, OSHA's rates, as they appear in this risk assessment, must first be divided by 10 to be comparable to the BLS injury case rates. When this adjustment is made, the comparisons made by Mr. McDaniel show that OSHA's estimated MSD rates are *below* the BLS's total injury case rates.

D. Analysis of Ergonomic Program Effectiveness

In the preliminary risk assessment, OSHA evaluated information and data that described the effectiveness of ergonomic interventions and programs similar to those of the proposed ergonomics program standard [64 FR 65943–65975]. These data were drawn from three sources. First, OSHA searched for and evaluated studies that investigated the effect of ergonomic interventions on reducing exposures to workplace risk factors. These included both field and laboratory studies. Second, OSHA compiled a large database of published and unpublished data from case studies that describe the effect of implementing ergonomic programs on workplace MSD injury rates. Finally, OSHA used the findings from the epidemiological studies contained in the NIOSH (1997, Ex. 26–1) review to estimate the potential effectiveness of ergonomics programs. Since publication of the proposal, a substantial number of additional scientific and ergonomic case studies were entered into the record; OSHA has relied on these to revise its effectiveness analysis. The additional information and data entered into the record confirm OSHA's preliminary determination in the proposal that ergonomic programs and interventions are effective both in reducing those forces on the musculoskeletal tissue that have been associated with the development of tissue pathology, and in reducing the incidence of MSDs. In this section, OSHA summarizes these studies and evidence and analyzes the data from these studies to estimate the overall reduction in MSD rates that is likely to occur when employers implement ergonomic programs like the program required by this standard.

The record contains much testimony from scientific experts that ergonomic programs designed to reduce biomechanical load are effective in reducing MSD risk. In its pre-hearing testimony, NIOSH agreed with OSHA's preliminary conclusion that ergonomic programs are effective:

> * * * [T]here are numerous companies which have reported success in using ergonomic programs as a cost-effective way to prevent or reduce work-related MSDs, and reduce lost time by workers with MSDs. Some of these companies also report increases in productivity and workplace morale. The studies—in part summarized in OSHA's preamble, reviewed by the NAS panel—illustrate that interventions, including redesign of tools, machines, and work stations, can reduce workplace hazards and the resulting MSDs. * * *
>
> The effectiveness of ergonomics programs was a resounding message echoed by labor, industry, business, universities, health care, and professional societies at two conferences co-organized by NIOSH and OSHA to stimulate an exchange of information about preventing work-related MSDs. * * * The conferences, attended by over 1,700 people, featured workshops and presentations by industry, labor, and government representatives sharing their successful ergonomics programs and how they have reduced lost work time and cut costs due to injuries and illnesses in a variety of industries and workplaces. * * *
>
> NIOSH believes that the evidence in the scientific literature showing the success of an ergonomics program approach to workplace hazards is strong. Likewise, NIOSH's experience in evaluating the risks of MSDs in a variety of workplaces and our review of information from a variety of sizes of industries has generally shown that using ergonomic programs is an effective way to prevent or reduce work-related MSDs.
>
> (Ex. 32–450–1, pp. 8–10)

Many expert witnesses also testified that, from their experience, ergonomic programs are effective in reducing MSD risks. For example, Dr. Snook testified on the effectiveness of ergonomic programs for reducing the disability from back pain:

> Now, this is what we know about ergonomics and low back disorders. First of all, we know that in heavy manual handling jobs, there is an increased disability from low back pain, as measured in lost work days and restricted duty.
>
> The second thing that we know is that there have been several guidelines developed to help identify the high risk manual handling jobs.
>
> Third, that when these jobs are designed according to the guidelines, the disability from low back pain decreases.
>
> And finally, employers who have used ergonomics programs to identify and control high-risk jobs have found them to be cost effective.
>
> I also believe it is important to acknowledge what we do not know. We simply do not know the * * * [etiology] or the cause of most low back pain.
>
> Some have suggested that this lack of knowledge must constitute a stopping point. Others, however, have demonstrated that this is not a stopping point, that implementing ergonomic intervention[s] and programs to reduce physical loads does reduce the disability from low back pain.
>
> (Tr. 846–847)

Dr. Cherniak testified that the volume of published ergonomics literature itself is indicative of the success of ergonomics interventions:

> The extensive literature review included in this [OSHA's proposed] standard and explosion of the ergonomics literature in industrial countries are testaments to the seriousness of MSDs, but also to the effectiveness of responsive intervention. I would say that medical fields that lack components of prevention and therapeutics do not usually generate expanding literature. They generally lead to dead ends.
>
> (Tr. 1134–1135)

Many other rulemaking participants provided testimony that ergonomics programs reduce disease. Dr. Barbara Silverstein, Research Director for the Safety and Health Assessment and Research Team, Washington State Department of Labor and Industries, testified that "Reducing exposure to hazardous loads does reduce musculoskeletal disorder prevalence, incidence, and severity." (Tr. 17357) Both Drs. Bernacki and McCunney,

representing the American College of Occupational and Environmental Medicine, testified that ergonomics programs instituted at their respective universities were very effective in reducing MSD rates and severity. (Tr. 7690–7693) Sherri Gibson, representing the American Industrial Hygiene Association, testified that "We know the controls and ergonomic programs work, we've seen it time and time again." (Tr. 16466) Under questioning by OSHA, Mr. Fernandez, a practicing ergonomist, stated that, although some ergonomic interventions may require more than one attempt and some "tweaking," in his experience he has never seen a case in which an ergonomic intervention or program was ultimately unsuccessful. (Tr. 5427)

In the preliminary risk assessment that accompanied the proposed rule, OSHA relied, in part, on the large body of epidemiological data showing consistent associations between exposure to biomechanical factors at work and an increased prevalence or incidence of MSDs. Although these studies were not designed specifically to determine or measure the effectiveness of ergonomic interventions in working populations studied, OSHA finds that they nonetheless provide highly useful information on the potential for ergonomic interventions to reduce injuries and illnesses; these studies provide this information because they describe the relationship between exposure to the biomechanical risk factors addressed in this final ergonomics program rule and the risk to workers of developing MSDs. The Health Effects section (Section V of the preamble) summarizes the results of more than 170 epidemiological studies overall, more than 60 of which demonstrate that increased MSD risk is related to increased duration and/or magnitude of exposure to biomechanical risk factors. Other biomechanical and biological data reviewed in the Health Effects section provide evidence that excessive force imposed on musculoskeletal tissue, absent sufficient repair and recovery time, is associated with tissue damage that is consistent with the kinds of disorders seen in the working populations studied; thus, this supporting evidence is consistent with the general model that excessive biomechanical loading increases the risk of developing MSDs. At the public hearings, OSHA presented much expert scientific testimony that this general model is supported by high-quality scientific evidence. Although there is evidence that other factors, including individual and non-biomechanical workplace factors (*e.g.*, psychosocial factors), also influence risk, the evidence shows that work-related biomechanical factors act independently of these other factors in increasing MSD risk.

Because of the independent relationship between biomechanical and other risk factors in the etiology of MSDs, a change in worker exposure to biomechanical risk factors would be expected to lead to a corresponding change in worker risk of MSDs. One of the basic principles of public health is that reducing exposure to a substance, agent, or force that has been demonstrated to be harmful to health will reduce the risk of harm; this principle has been the scientific rationale behind all of OSHA's substance-specific health standards. Accordingly, OSHA finds that the strong evidence in the scientific literature relating exposure to biomechanical risk factors to an increased risk of MSDs is, by itself, sufficient evidence for Agency action that will reduce the exposure of workers to biomechanical factors in the workplace. OSHA's determination is supported by the testimony of its witnesses. In his written testimony, Dr. Wells stated that the epidemiological studies involving biomechanical risk factors have found strong and consistent relationships between those risk factors and MSDs, and therefore that reducing exposures to these risk factors is a reasonable strategy for preventing MSDs (Ex. 37–18). Similarly, Dr. Frank commented that the epidemiological evidence and the results of other investigations on the biology of low back pain strongly suggest that reductions in forces exerted on the spine will substantially reduce disability (Ex. 37–27). During questioning at the public hearing, Dr. Frank explained:

> * * * [A]cting on biomechanical risk factors will bring risk reductions according to our understanding of the multifactorial causal process even if we are unable, for example, at the present time to conclusively act to reduce psychosocial factors because we still understand them poorly.
>
> Q: So that given that as a conclusion, then in your opinion does that mean that an OSHA standard aimed at reducing exposure to biomechanical factors in the work place is likely to reduce lost time disability for low back pain?
>
> Dr. Frank: That is what every epidemiologist who understands these methods would say.

Dr. Punnett also explained the importance of findings that biomechanical risk factors act independently from other factors and the implication of those findings on intervention strategies:

> Q: What is so important about this finding that the physical job factors causing MSD are independent of any of these other factors?
>
> Dr. Punnett: Well, that I think leads us fairly directly to the inference that reducing physical work load all other things being equal will reduce the magnitude and/or severity of musculoskeletal disorders. * * * That is that the effect is not confounded by those other factors. And therefore, we can anticipate a benefit proportional to the increase that has been identified with current exposures.
>
> Q: Does this mean that an OSHA standard aimed at reducing exposure to MSD hazards [*i.e.*, biomechanical factors] is likely to prevent work-related MSDs?
>
> Dr. Punnett: I believe so, yes.

Table VI–8 presented summary statistics from the epidemiological studies that OSHA selected for the Health Effects section; these studies include those contained in the 1997 NIOSH review (Ex. 26–1) as well as additional studies in the record. The statistics presented in Table VI–8 include the range in risk ratios reported in these studies, grouped by type of disorder studied, as well as the median and mean of the distribution of these risk ratios. The risk measures in the epidemiological studies include odds ratios, prevalence rate ratios, and (for a few studies) incidence ratios, and approximate the relative risk of musculoskeletal disorders in an exposed worker population compared with that in a referent group. Although the risk ratios reported in epidemiological studies cannot be used directly to measure the effectiveness of ergonomics programs, they do provide information on that part of the MSD incidence seen in workers that can be attributed directly to their exposure to biomechanical risk factors; this portion of the MSD incidence is termed the attributable, or etiologic fraction, and is also the fraction of the MSD incidence seen in worker populations that is potentially preventable.

The concept of an attributable or etiologic fraction is standard in epidemiology, and the concept has been used previously to estimate the attributable fraction of several types of MSDs in working populations. Hagberg and Wegman (1987, Ex. 26–32) reviewed the epidemiological literature and selected 21 studies in which diagnoses of neck and shoulder disorders were made from physical or laboratory examinations. Odds ratio measures from studies describing similar disorders were pooled across studies for common occupations that involved exposures to workplace risk factors, and the authors computed the overall odds ratio for each type of occupation and disorder. In addition, the authors assessed the effect of the exposure to workplace risk factors on MSD risk by computing the etiological fraction in the exposed population; the etiologic fraction was computed only from those odds ratios that were statistically significantly higher than 1. Hagberg and Wegman (1987, Ex. 26–32) found that the etiological fraction ranged from 40 to 99 percent, depending on the specific type of upper extremity disorder. This study thus provides evidence that the potential for ergonomic interventions to reduce MSD incidence among workers is quite high, provided that such interventions reduce worker exposures to biomechanical risk factors.

OSHA's own summary of the risk ratios reported in the epidemiological database, both in the preliminary and final risk assessments, is consistent with the findings of Hagberg and Wegman (Ex. 26–32). The distribution of risk ratios reported in the epidemiology studies relied on by OSHA in the Health Effects section of the preamble indicate that, based on the median of the distribution, between 46 percent (back disorders) and 88 percent (hand-arm vibration syndrome (HAVS)) of the MSDs experienced by workers who have substantial exposure to biomechanical risk factors (*i.e.*, those workers who comprised the exposed cohorts in these studies) can be attributed to their exposure to risk factors, and are therefore potentially preventable by reducing exposure to the biomechanical risk factors that caused them. For upper extremity disorders (excluding HAVS), neck disorders, and shoulder disorders, the attributable fractions based on the median of the risk ratios is between 55 and 65 percent. The mean of the distribution suggests a somewhat higher attributable fraction: 58 percent for back disorders, 93 percent for HAVS, and between 70 and 80 percent for all others.

As discussed above, OSHA has determined that the strength of the epidemiological, biomechanical, and biological data reviewed in the Health Effects section is sufficient to justify the promulgation of an ergonomics program standard to reduce the significant risks of MSDs posed to workers who are exposed to biomechanical risk factors on the job. Nevertheless, the record contains a substantial body of scientific evidence and case reports that demonstrate directly that ergonomic programs designed to reduce exposures to biomechanical risk factors *do* reduce the incidence of MSDs in exposed workers. Some of this evidence was reviewed in the preliminary risk assessment for the proposed rule; however, since publication of the proposal, many additional studies and case reports have been made available in the record. The remainder of this part of OSHA's final risk assessment reviews these studies and reports.

Intervention studies that employ formal scientific methods are particularly compelling and merit special attention. Unfortunately, intervention studies for ergonomics programs are infrequently conducted because they are complex and scientifically challenging because of the lack of control that investigators generally have over workplace conditions. Thirty-four reports of ergonomic interventions in workplaces were identified in the rulemaking record and are summarized in Table VI–11. Each of these 34 reports was characterized by:

- A clearly described intervention,
- Measurable exposure or health effects endpoints
- Acceptable statistical methods, and
- Characterization of exposure or health outcomes both prior to and after intervention.

These 34 studies together represent the best available direct evidence that practical application of the principles and methods of ergonomics in the workplace results in reduced employee exposure to hazards and in a reduced incidence of work-related musculoskeletal disorders. These studies evaluated the effect of ergonomic interventions on risk factor exposure, health outcomes, or both. Of these studies, 22 reported that, after the ergonomic intervention, exposure was reduced, as measured by the magnitude of external stressors (*i.e.*, reductions in repetitions or improved postures) or reduced tissue loading; 12 of these studies also documented reduced MSD rates as measured by injury records or employee symptom reports. OSHA believes that the 12 studies that measured both exposure and outcome effects are particularly strong, and their findings particularly significant, because they provide direct evidence of a relationship between reductions in exposure to biomechanical risk factors and reductions in the incidence of MSD cases or symptoms, findings that are consistent with the model derived from the epidemiological data, which posits that biomechanical risk factors are associated with an increased MSD risk independent of other contributing factors. Ten of the intervention studies documented outcome measures alone and found that injury rates or symptom reports declined following ergonomic interventions. Two studies (Bernacki, 1999, Ex. 38–34; Bohr, 1997, Ex. 38–64) also reported improved recognition of potentially hazardous jobs among the participants in the ergonomics programs studied.

TABLE VI–11.—SUMMARY OF SCIENTIFIC STUDIES DESIGNED TO ASSESS THE EFFECTIVENESS OF ERGONOMIC INTERVENTIONS

Study	Population	Intervention	Analytic method	Exposure outcome	Health effects outcome
Aaras (1994) Ex. 502–252; Westgaard (1985) Ex. 26–787; Westgaard (1984) Ex. 26–1026.	420 female telecommunication assembly workers.	Reduce postural load: individual adjustment of workstation height and angle, increased legroom, suspending hand tools, arm supports, limit vertical dimensions; Design work to reduce postural fixity.	Longitudinal survival analysis (1967–1984). Exposure evaluated by trapezius static load via EMG, postural angles Outcome: signs & symptoms, sick leave due to load-related MSDs. Survival analysis.	Decreased postural load intensity and duration on trapezius, reduce load in hand, reduced shoulder angles.	Reduction in mean sick leave from 22 days to 1.8 days, Reduced turnover from 30.1% to 7.6%, Increased productivity.
Aaras (1997) Ex. 26–53.	20 VDU workers	Forearm support, screen sight angle change.	Laboratory study using open, randomized Graeco-Latin squared trial with five test conditions using keyboard and then using mouse, measurements included descending m. trapezius and erector spinae lumbalis at L3 EMG and inclinometer.	Trapezius load significantly lower with forearm support (both duration and intensity) with both sitting and standing. No significant differences with 15 versus 30 degrees sightline.	
Aaras (1998) Ex. 26–597.	Male VDU workers, 50 per group.	1 new lighting 2 new workplace design to support forearms. 3 optical exams and corrections.	Serial interventions in 2 intervention groups, 1 control group, Load measured via EMG and observation, controlled for psychosocial factors at work and home.	Reduced trapezius load in intervention groups after forearm support and optometric corrections, Reduced glare problems in intervention groups.	Reduced trapezius pain, in intervention groups, no change in forearm pain (appeared to be associated with increased mouse use, no change in back pain). Headaches reduced after lighting change, borderline improvement with optometry, Visual discomfort improved with both lighting and optometry
Bernacki (1999) (Ex. 38–34).	University employees, 1992–1998.	Implementation of a program with early diagnosis and treatment, ergonomic assessment and correction: wrist supports, document holders, foot rests, headsets, alternate keyboards, glare screens, chairs, etc.	Longitudinal follow-up of employees reporting to the medical department after policy to include medical workup and ergonomic assessments for UEMSDs starting in 1992. OSHA 200 logs.	Ergonomic assessments (2041), initially with those with UEMSDs for job modifications. By 1994, significantly more assessments on jobs believed to be risky prior to injury.	Incidence rate decreased 80% (6.5 in 1992 to 1.3/1000 in 1998), surgery trend also decreased.
Bohr (1997) Ex. 38–64	600 employees in three departments in a large metropolitan medical center.	Used participatory worker-management ergonomics teams to identify risks and control strategies.	One year longitudinal evaluation of the ability of ergonomic teams to identify problems and design solutions.	14 problems identified and potential solutions considered or identified.	not assessed.
Brission 1999 Ex. 38–92.	627 university employees working 5 or more hours per week with a video display unit.	Ergonomic training to identify postural stressors and make changes in equipment and work activities.	Six month longitudinal comparison of postural stressors and injury statistics in randomly assigned experimental (n=284) and control (n=343) groups.	Greater decreases in the prevalence of three postural stressors in the experimental group than the control group.	Greater decrease in the prevalence of musculoskelatal disorders by both questionnaire and physical exam in experimental group subjects under 40 years of age than in the control group.

TABLE VI–11.—SUMMARY OF SCIENTIFIC STUDIES DESIGNED TO ASSESS THE EFFECTIVENESS OF ERGONOMIC INTERVENTIONS—Continued

Study	Population	Intervention	Analytic method	Exposure outcome	Health effects outcome
Cook (1999) Ex. 38–205.	20 meatpackers	Clamp rather than hand to hold hog head while chiseling. Modified handle and tool balance for ham trimming, Air knife to cut casings rather than pulling casings by hand.	RMS EMG measurements if biceps, extrinsic finger and wrist flexor muscles after calibration. Workers randomized order of trials between old and new method by each worker for 30 minutes (multiple A–B–A–B research design).	Left wrist and finger flexor muscle effort was significantly reduced in chiseling operation (hand holding eliminated). Right wrist and finger flexor muscle effort significantly reduced in ham trimming. Casing pulling task showed no significant reduction in muscle effort.	
Drury & Wick (1984) Ex. 26–1244; Wick (1987) Ex. 26–1058.	Shoe manufacturing workers.	Ergonomics program including employee training and involvement in developing controls, systematic process of task analysis, design, testing, implementation and measurement. Tilted work surfaces, arm & foot rests, adjustable chair, pneumatic pedal, pallet leveller.	Pre-post study design. Observational analysis of posture, force, frequency every half hour for week pre and post intervention, postural discomfort survey, performance measures Data for 5 jobs presented.	Prototype implementation showed productivity increased or remained unchanged, awkward wrist motions decreased, postural stress ratings decreased.	Body area discomfort eliminated (except forearm). Two year follow-up of ornament job (Wick) showed no additional injuries reported.
Evanoff (1 99) Ex. 38–32.	100–110 orderlies in a 1,200 bed urban hospital.	Used a participatory worker-management ergonomics committee to design and implement changes in training and work practices for lifting.	Two year longitudinal evaluation of pre and post intervention injury rates and self reports of symptoms.	Not reported	Decreased OSHA recordable injury and lost workday rates (relative risk = 0.64 for all injuries and 0.4 for lost time injuries among orderlies, adjusted for rates among other hospital staff. Statistically significant reductions in reports of various systems.
Garg (1999)	Seven nursing homes and one hospital, employing 57–136 nursing personnel each.	Used Participatory employee-management advisory teams to implement "zero-lift programs".	One year longitudinal comparison of pre and post intervention injury statistics.	Not reported	For injuries from patient transfers: 62% decrease in the number of injuries, 86% decrease in lost workdays, 64% decrease in restricted workdays, 84% decrease in workers' compensation costs.

TABLE VI–11.—SUMMARY OF SCIENTIFIC STUDIES DESIGNED TO ASSESS THE EFFECTIVENESS OF ERGONOMIC INTERVENTIONS—Continued

Study	Population	Intervention	Analytic method	Exposure outcome	Health effects outcome
Garg & Owen (1992) Ex.–1093 (1994) Ex. 502–481; Owen & Garg (1994) Ex. 26–1415.	57 nursing assistants in 2 nursing home units.	Walking belts and mechanical hoists, shower chairs.	Pre-post study design: observed transfer techniques, rate of perceived exertion, OSHA 200 logs 4 years prior to intervention and 4 months post intervention.	Significant reduced perceived exertion with mechanical and belt transfers compared to manual transfers. Mechanical lifts with scales and shower chairs reduced the number of transfers required per patient.	Back injury incidence rate decreased from 83 to 42 per 100 FTEs, Severity rate decreased from 634 days to 0 days per 100 FTEs [Note: short follow-up time reduces strength of the study. There was an increased in injury/severity rate in the first phase of the intervention on one unit, but none of thee injuries were related to resident transfers]
Harms-Ringdahl Ex. 26–630.	71 Electronic circuit board assembly workers.	Suspended arms support to reduce neck and shoulder muscle static loading.	Pre-post intervention design. Symptoms (VAS) 12 months and one week prior to intervention, and 3 months (n=31) and monthly ratings for 1.5 years post intervention (n=71).	Not reported	31 subjects per-3 months post shoulder symptoms decreased from 62% to 45%, for neck decreased from 57% to 55%. Mean end of shift VAS in 1.5 year follow-up decreased from 46mm to 24mm, and for neck 41mm to 19mm. 93% of subjects using the balancers after 1.5 years. [Note: paired analysis was not used at 1.5 years].
Jones (1997) Ex. 32–339–1–29.	12,000 employees in 13 poultry processing plants.	Comprehensive corporate-wide ergonomics program, including management commitment, ergonomic committees, risk factor checklists, job analysis, medical management, education and training, and job modification.	Five year longitudinal evaluation of workers' compensation rates and costs and overall program assessment scores..	Not reported	46% and 20% decrease in UEMSD incidence rate and severity rate, respectively. 50% and 36% decrease in lifting claims incidence rate and severity rate respectively.
Kadefors (1996)	Auto assembly workers in the assembly versus parallel assembly.	Increase task variability, increase cycle time, increase standing upright.	Comparsion of factories with and without parallel assembly and tilting car capacity using observational analysis and EMG.	Reduced time in awkward postures in each assembly step when using tilting device, lower muscle load with tilt assembly, reduced discomfort.	Not described; small sample size in pre-full production phase limits conclusions.
Loisel, (1997) Ex. 38–28.	130 employees from various workplaces, absent from work for more than four weeks with back pain.	Either occupational (including ergonomic) or clinical intervention, separately and in combination.	Population based randomized clinical trail with three intervention groups and one control group.	Not reported	The occupational and the combined intervention groups returned to regular work 1.5 and 2.4 times faster than those in the usual care intervention group or the clinical intervention group.

TABLE VI–11.—SUMMARY OF SCIENTIFIC STUDIES DESIGNED TO ASSESS THE EFFECTIVENESS OF ERGONOMIC INTERVENTIONS—Continued

Study	Population	Intervention	Analytic method	Exposure outcome	Health effects outcome
Marklin & Wilzbacker (1999).	Electric utility warehouse workers.	(a) Raise location of heavy objects from below knee to thigh height. (b) Replace heavy oak gate with lighter pine gate. (c) Modify tool with extension and better drill bit. (d) Maintenance of pulling system. (e) Height adjustable lift table for handling meter readers. (f) Semiautomated pallet wrap machine. (g) Power tool for opening line clamps.	Pre-post intervention assessment of exposure in jobs with historically high injury rates using NIOSH lifting equation, 3D Static Strength Prediction Program, Lumbar Motion Monitor and Perceived Exertion.	Reduced lifting index (a&b), Increased percentage of population capable (c & d), Reduction in probability of back injury reduced (e & f), Reduction in perceived exertion (g).	Not reported.
McKenzie (1985)	6,600 Telecommunications manufacturing workers.	Ergonomics program with taskforce, training for engineers and supervisors, improved workstation and tools, medical management of restricted workers.	Pre-post program design using OSHA 200 logs for repetitive trauma disorder cases, lost and restricted days. Program was implemented in 1981.	Not reported	Dramatic decrease in number of cases, lost and restricted days. Authors attribute much of the improvement in lost and restricted days to better medical management.
Melhorn (1996) Ex. 38–19.	212 rivet gun employees.	Random assignment to various combinations of posture training, exercise training and rivet gun types.	Longitudinal evaluation of risk factors among eight exposure groups compared with controls.	Decreased risk associated with ergonomic posture training. Vibration dampening rivet guns associated with decreased risk among new hires and increased risk among previous hires.	Not assessed.
Melhorn (1999) Ex. 38–131.	3152 newly hired sheet metal mechanics.	Comprehensive program of education, job placement, modifications and medical management designed for employees based on individualized risk assessments.	Prospective cohort evaluation with pre and post intervention comparisons.	Not reported.	Increased recordable case incident rate and hours worked per employee. Decreased lost time case incident rate, lost time severity rate, and workers' compensation costs per employee. Benefit to cost ratio of 16.5.1.0.
Meyers *et al.*(1999)	194 Wine grape harvest workers in 3 vineyards.	Substitute smaller tubs to lower weight to below 50 pounds.	Participatory ergonomics intervention study addressing load weight and hand coupling. Used checklist to identify tasks and lumbar motion monitor and NIOSH Lifting Equation to assess physical load, symptoms questionnaires and OSHA logs to assess health.	Reduced tub weight from 57 to 47 pounds.	Results not reported.

TABLE VI–11.—SUMMARY OF SCIENTIFIC STUDIES DESIGNED TO ASSESS THE EFFECTIVENESS OF ERGONOMIC INTERVENTIONS—Continued

Study	Population	Intervention	Analytic method	Exposure outcome	Health effects outcome
Miller (1971) Ex. 26–1250.	Surgeons and scrub nurses.	Added larger surface area to handle of surgical forceps to increase stability and decrease load on fingers.	Pre-post testing of extensors and flexors with EMG over 35 procedures by six surgeons.	Reduced fatigue and required recovery time.	Not applicable.
Moore (1994) Ex. 38–339–1–35.	5 engine assembly workers.	Participatory ergonomics approach: eliminate carrying 11.6–14.7 kg parts, eliminate high impact use of brass head hammers.	Pre-post case study of one job. OSHA 200 log incidence data (39 months pre, 30 months post), Borg scale, satisfaction, psychological demands.	Carrying tasks not full eliminated, manual hammering eliminated Reduction in RPE.	UECTD Incidence rate decreased 78%, 82% decrease in restricted or lost day rates.
Moore & Garg, (1996) Ex. 38–24; Moore & Garg, (1997) Ex. 26–21.	930 pork slaughtering plant employees.	Two departmental ergonomics teams used to analyze jobs and develop ergonomics interventions.	Quasi-experimental design, using post intervention comparisons of non-equivalent groups.	Exertions per minute, hand/wrist posture and strain index scores improved for leaf lard pulling job. Biomechanical stresses to the low-back, shoulders and guts hand eliminated on gut snatch job. Percent exertion per cycle, exertions per minute, and hand/wrist postures improved on rib pull job.	Not assessed.
Parenmark (1993)	Tool and Equipment manufacturing.	Engineering and organizational improvements in design of new factory: adjustable work heights, work technique training, job enlargement, work pace decrease 25%, work organization, flexible work hours, wage system, rehabilitation.	Pre-post design. Follow-up 18 months after production started in new factory, emg biofeedback to keep load below 15–20% MVC. Sick leave and turnover rate were outcome measures.	Not reported.	Sick leave decreased 5%. Turnover decreased 25%.
Rooney *et al.*(1992) Ex. 26–1056.	400 shoe and canvas luggage manufacturing employees.	Total quality management program, using an ergonomics team "to closely follow the proposed OSHA ergonomics guidelines".	Pre and post intervention job analysis.	373 job modifications, 85 of which achieved more than 25% reduction in force, repetition or postural stress.	Annual lost time incident rate reduced from 14.9 to 3.3 per 200,000 hours during four-year study period. Not analyzed for specific associations with job modifications.
Rosecrance & Cook (2000) Ex. 38–253.	455 Newspaper employees.	Continuous improvement process, using an ergonomics committee to manage a five step problem solving method.	Pre and post intervention questionnaires and non-structured interviews.	At least one intervention completed in eleven of twelve office and production areas, including engineering and administrative changes to problem jobs with static postures, repetitive tasks and non-adjustable workstations.	Not assessed at 4–6 months post intervention.

TABLE VI–11.—SUMMARY OF SCIENTIFIC STUDIES DESIGNED TO ASSESS THE EFFECTIVENESS OF ERGONOMIC INTERVENTIONS—Continued

Study	Population	Intervention	Analytic method	Exposure outcome	Health effects outcome
St. Vincent (1998) Ex. 500–71–64.	2 electrical product manufacturing plants.	Participatory ergonomics process: 7 jobs with 50 solutions implemented: improving material feed, repositioning of materials, change in work station dimensions, change in product jigs, tool changes, job enlargement, handling aids.	Pre-post design. Video analysis of posture, force, duration, frequency, impacts.	78% of solutions reduced risk factors (postural load, forces applied), 14% had no observable effect, 8% could not be evaluated.	Not reported.
Shi (1993) Ex. 26–1099.	County government workers.	One year Back injury prevention program: Individual health risk assessment at year 1 and year 2 in intervention group (fitness, job demands, satisfaction, demographics), training, ergonomic improvements (lifting devices, gait belts, improved seating, minimizing transport).	Pre-post randomized intervention groups (n=4, 77% participation) and control groups (2) with similar demographics. Measures: Satisfaction, HRA scores, symptoms prevalence, workers compensation rates.	Not reported	Nonsignificant frequent back pain prevalence decreased in intervention groups whereas overall prevalence significantly decreased. Significant increase in job satisfaction. Significant decrease in HRA risk status (not recorded for control groups). WC costs per claim increased in control groups but decreased in all intervention groups. Return on investment =179%. Participants believed ergonomic interventions contributed the most. No attempt to separate effects of ergonomics improvements from individual health promotion behavior in design or analysis.

Three individual studies are particularly persuasive (Melhorn *et al.*1999, Loisel *et al.*1997, Brisson *et al.* 1999). Melhorn *et al.* (1999) reported the results of a 5-step MSD prevention program based on OSHA and NIOSH ergonomics guidelines and implemented in a large aircraft manufacturing facility. This comprehensive program included education, risk factor analysis, job placement (including transitional (or "restricted") work), job modifications and medical management designed for employees based on individualized risk assessments. The authors followed a group of 3,152 newly hired sheet metal mechanics, using a prospective cohort design with pre-and post-intervention comparisons. Potential confounders considered included hours worked per employee, average number of employees and new hires, and rates in otherwise comparable plants without programs. The authors compared outcome data for several years pre- and post-program implementation. Although the recordable case incidence rate and the hours worked per employee increased moderately in the period studied, there was a substantial decrease in the lost time case incident rate, lost time severity rate, and workers' compensation costs per employee. Workers' compensation costs did not decrease in comparison facilities during the study. The authors reported a benefit to cost ratio of 16.5/1.0 for this program.

Brisson *et al.* (1999) conducted a longitudinal comparison of postural stressors and injuries in randomly assigned experimental (n=284) and control (n=343) groups of university employees keying five or more hours per week at a video display unit. The experimental group received ergonomic training in the identification of postural stressors and in making changes in equipment and work activities. Measurements were taken two weeks prior and six months post intervention. Symptoms questionnaires and standardized physical examinations

were used to assess health effects, controlling for individual and lifestyle factors. Observational analysis was used to assess risk factor reductions. There were significantly greater decreases in the prevalence of three postural stressors (twisted neck, height of visual target, broken hand-wrist line) in the experimental group after the training than in the control group. There was also a greater decrease in the prevalence of musculoskeletal disorders as reported both in questionnaires and in physical examinations in the experimental group subjects under 40 years of age than in the control group. Symptom prevalence decreased from 29% to 13% in the experimental group for those less than 40 years of age. The prevalence of physical findings decreased from 18.8% to 2.9% for those under 40 in the experimental group compared to a decrease from 18.3 to 10.8% in the reference group. There were no significant differences between the experimental and control groups in hours of VDU use, psychosocial work factors, smoking, leisure time, or body mass index. The differences between the younger and older workers appeared to be related to the duration of symptoms with older workers having longer duration.

Loisel *et al.* (1997) used a population-based, randomized clinical trial design to evaluate 4 return-to work (RTW) approaches for workers with acute back problems who were absent from work for more than 4 weeks. These included occupational intervention (including ergonomics), clinical intervention, combined intervention or usual care. One hundred thirty employees from 40 different workplaces were followed for 1 year. Survival analysis was used to estimate return to work time. The occupational (ergonomics) intervention group and the combined intervention group returned to work 1.5 and 2.4 times faster, respectively, than the usual care group or the clinical intervention group.

OSHA finds that this additional body of scientific intervention studies, taken together with the other data presented in the preliminary-final risk assessments, provides strong evidence that ergonomics programs are effective in reducing MSD risks to workers. These studies have documented that reductions in exposure to biomechanical risk factors, as well as reductions in the rates of MSD cases and symptoms, follow implementation of ergonomic interventions. These findings are consistent with the epidemiological and biomechanical evidence presented in the Health Effects section that demonstrate the role of biomechanical risk factors in the development of MSDs.

OSHA also examined two recent reviews (Linton and Van Tulder, 2000, and Lincoln *et al.*, 2000) that concluded that the intervention literature provides little or no evidence of the effectiveness of ergonomics programs. OSHA finds these reviews unconvincing for the following reasons:

Linton and Van Tulder (2000, Attachment to Ex. 500–118) identified 900 articles about the prevention of musculoskeletal problems. They then restricted their evaluation to 20 studies of randomized controlled trial design and 8 studies of non-randomized trial design, each of which was designed to study ways of preventing long-term neck or back problems in subjects not seeking treatment; the methods used in these studies included back school training, exercise programs, etc. None of the studies involved workstation modification changes in controls or work practices, or administrative controls. Not surprisingly, the authors concluded that there is no evidence of good quality on the effectiveness of ergonomics interventions. OSHA gives this study little weight because the authors made an arbitrary decision that studies have no validity unless they are "controlled trials" (the authors do not define the term). The authors also exclude from consideration any studies of upper or lower extremity problems and any studies involving subjects who sought treatment. Their sweeping conclusion goes far beyond what is supportable, based on the very small group of 28 studies that meet their inclusion criteria.

Lincoln *et al.* 2000 [Ex. 500–118nn] assessed the intervention literature related to work-related carpal tunnel syndrome (CTS). Twenty-four studies met their inclusion criteria, which included having a comparison group; implementing engineering, administrative, personal or multiple component interventions; and describing outcome measures related to CTS or upper extremity MSDs. Although these authors found that multiple component programs were suggestive of positive effect, the authors concluded that lack of randomization and lack of control for confounding weakened the conclusions to be drawn from these studies. OSHA does not agree that this conclusion undermines the findings drawn from the many intervention studies reviewed by OSHA. As noted above, randomization of engineering controls in intervention studies is particularly problematic because very few employers are willing to permit investigators to dictate which employee groups receive different types of job interventions, or no intervention at all. Small sample sizes continue to limit research in this area as technology and markets change to more flexible niche market demands and as there is an increase in temporary workers limiting long-term follow-up of outcomes. This real-world phenomenon is not unique to the study of work-related musculoskeletal disorders. Frank *et al.*1996 [Ex. 38–207] pointed out that most of the study design factors that produce the most convincing evidence are outside the control of the researchers in occupational settings; such design factors include stable working populations and processes; randomization of intervention groups; and the need for long-term follow-up, which is made difficult during economic downturns, product or process changes, or during labor-management problems. In most cases, quasi-experimental designs, such as those reviewed by OSHA in Table VI–10, which use either concurrent comparison groups or historical control groups, present the best available evidence of the effectiveness of engineering or administrative controls in reducing occupational risks (Zwerling *et al.*, 1997, Ex. 500–71–65, Goldenhar & Shulte, 1994, Ex. 26–126). OSHA discusses the need for and use of randomized or controlled clinical trials in ergonomics research later in this section in response to comments that were made to the record.

In addition to the scientific studies, the record contains a large number of case reports documenting the experiences of employers and occupational health professionals who have implemented ergonomics programs. OSHA reviewed several of these in its preliminary risk assessment; however, since publication of the proposal, many additional case reports have become available. Generally, these reports, which are listed in Appendix VI–B, involve case studies of individual companies that have instituted programs that include some or all of the elements of the ergonomics program required by the standard; these reports describe the results of ergonomic interventions in a wide variety of industry sectors, including manufacturing establishments, service establishments, health care facilities, as well as in other workplaces where jobs routinely involve manual handling. Overall, OSHA identified over 300 case studies that quantified the reduction in MSD incidence following implementation of ergonomic programs and interventions; of these, 262 provided data on the reduction in MSD numbers or rates. From these studies, OSHA's measure of intervention effectiveness is based on 226 values for the reduction in total (*i.e.*, lost workday and non-lost workday) injuries and illnesses, and 81 values for lost workday injuries and illnesses. These case studies do not reflect a "quasi-experimental" study design because they do not use control groups and there is generally no evaluation of workplace exposures by an independent investigator; instead, a company's or establishment's MSD rate experience is evaluated before and after implementation of an ergonomics program or intervention. Thus, the outcome measure used in these studies reflects the measure that is probably most often used by employers who wish to evaluate whether their programs are effective. Documenting changes in MSD rates before and after implementation of an ergonomics program is, in fact, one of the methods listed in the final rule by which employers may evaluate the effectiveness of their ergonomics programs.

To characterize the experiences of employers and safety and health professionals in implementing these programs, OSHA determined the range, median, and mean reduction in MSD case rates for the overall data set, using the same approach as was used in the preliminary risk assessment. From each of these case studies, OSHA calculated the effectiveness of the standard (*e.g.*, employee involvement and training, implementation of engineering or work practice controls). These case studies of ergonomic interventions measure effectiveness as the percent reduction in either lost workday or total number of MSDs prior to and after implementation of the program. That is, effectiveness was calculated as the ratio

$$(N_B - N_A)/N_B$$

where N_B represents the number or incidence of MSD cases prior to implementation of the ergonomic intervention, and N_A represents the number or incidence after the intervention [1].

OSHA's estimate of the overall effectiveness of ergonomics programs is expressed as the median and mean reduction in MSD injury rates contained in this data set; Appendix VI–3 to this section tabulates OSHA's effectiveness measure for each of the case studies that provided quantitative data, and also shows the time interval over which the change in injury rate was measured. For all MSDs (*i.e.*, lost workday and non-lost workday MSDs), these case studies reported a median 67-percent reduction in injury rates (mean effectiveness was 64 percent). The median and mean reductions for lost workday MSDs only were somewhat higher, at 75 percent and 71 percent, respectively. Although the effectiveness of individual ergonomics programs varied widely among the establishments described in these case studies, most interventions (about 87 percent of the case studies) achieved at least a 30 percent reduction in MSD injury rates, 61 percent of the case studies reduced MSD rates by half or more, and several achieved the total elimination of lost workday MSDs (see Appendix VI–B).

E. OSHA's Response to Comments on the Program Effectiveness Evidence

Gibson, Dunn & Crutcher (Exs. 32–241–4, 500–197) raised several issues regarding OSHA's analysis in the proposed rule of the effectiveness of ergonomics programs. These issues were

- The lack of evidence that ergonomic interventions will reduce low back pain, as evidenced by a comprehensive literature evaluation conducted to develop the Agency for Health Care Policy and Research (AHCPR) medical guidelines for acute low back pain;
- The necessity of conducting randomized controlled trials to determine whether ergonomics programs will, in fact, be effective;
- OSHA's reliance on the epidemiological data in making inferences about the effectiveness of ergonomics programs; and
- Criticisms of individual case studies relied upon by OSHA to demonstrate program effectiveness.

In their post-hearing comments, from Gibson, Dunn & Crutcher (Ex. 500–118) stated that "After conducting an exhaustive study, Dr. Bigos' panel, under the auspices of the AHCPR, 'failed to find evidentiary support for the use of ergonomic interventions to treat back pain injury complaints.'" However, in the Executive Summary for the AHCPR low back pain guidelines, the purpose of the effort was clarified as follows: "The Agency for Health Care Policy and Research (AHCPR) convened a 23-member, multidisciplinary, private-sector panel to develop a guideline for the *evaluation* and *treatment* of acute low back problems in adults." (Emphasis added)

Under the section entitled Scope and Organization, the following statement occurs: "This Clinical Practice Guideline is intended to provide primary care clinicians with information and recommended strategies for the assessment and treatment of acute low back problems in adults." The word "ergonomic" appears four times. Twice, this term is used to describe back school programs included in the analysis. One citation simply points to a review of safe lifting. The final citation notes: "Several ergonomic guidelines on lifting and materials-handling tasks are available to help the clinician provide ranges of activity alterations at work." Thus even the AHCPR panel felt it beneficial to employ ergonomic guidelines on lifting and materials handling in establishing safe levels of work activity for patients with acute low back pain. The section on prevention consists of a total of two paragraphs and 195 words, including a just three citations, two of which are opinion papers rather than research studies. Therefore, the published AHCPR low back pain guidelines do not, and do not purport to, have a focus on non-acute low back pain, work-related low back pain, ergonomics or prevention of low back pain. Citing the AHCPR guidlines as evidence that ergonomics interventions are not effective in reducing the risk of low back disorders is inconsistent with the cited purpose and scope of the document itself. Therefore, OSHA is not persuaded by this argument that the guidelines "failed to find evidentiary support for the use of ergomonic intervention to treat back pain injury complaints;" indeed, they would hardly have done so because they did not look for such evidence.

Regarding the second issue, Gibson, Dunn & Crutcher (Exs. 32–241–4, 500–197) asserted that randomized controlled trials (RCT) and controlled clinical trials (CCT) are the only study designs that can demonstrate whether ergonomics interventions are effective. They stated that:

> The fact that there is no RCT supporting the proposed standard is a major weakness in OSHA's position * * *. [W]ithout RCT, OSHA cannot show that the alleged risks at issue will be alleviated by particular solutions contained in its proposed rule. [Ex. 500–197, pp. I–104 to I–105]

They also quote the statements of two of their witnesses, Dr. Bigos and Dr. Fisher. Dr. Stanley Bigos, Orthopedic Surgeon and Professor in the University of Washington Department of Orthopaedics, called prospective RCTs:

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[1] Note that, by this definition, the presence of background MSD cases (non-work-related cases) will decrease the apparent effectiveness of ergonomic interventions since the interventions would presumably not have any effect on the background rate of MSDs in the working population (*i.e.*, both N_B and N_A might contain background MSD cases).

> * * * the gold standard for evaluating the efficacy of interventions in medicine. * * * This is a widely accepted standard across medicine, and across science. * * * The strength of the RCT is that both known and unknown risk factors are balanced across treatment groups, so that any differences in outcomes are more likely to be attributable to specific interventions (Ex. 500–197, pg. I–104).

Dr. Lloyd Fisher, Professor Emeritus in the Department of Biostatistics, University of Washington, likewise claimed that because there have been no RCTs on interventions in ergonomics, "We have no evidence that these rules are going to work. They might work. They might be harmful." (Fisher Tr. 6740). A third witness, Dr. Shekelle, stated:

> To my knowledge there is not a single well conducted randomized clinical trial of any intervention designed to modify any of the ergonomic factors proposed in the OSHA document that has proven to have a beneficial effect on disability due to back pain. (Ex. 500–197, pg. I–104).

Controlled clinical trials are used principally in medicine to test the efficacy of alternative treatments on patients. In a typical design, one group of patients that has been diagnosed with a specific disease or disorder is given the usual medical care and one or more other groups of patients with the same disease or disorder are given alternative treatments. The response of the test group(s) to the new treatment is compared with the response in the control group to determine whether the new treatment(s) were more or less effective than the standard for treatment. In a randomized trial design, the patients are randomly assigned to the various test or control groups; in a controlled, non-randomized clinical trial, assignment of patients to the various groups is not made using a purely randomized procedure. The randomized trial is considered overall to be the superior design since it has the greatest likelihood of controlling for both known and unknown confounders, increasing the ability to attribute any observed differences in treatment responses between the groups to the treatments themselves.

OSHA has carefully considered these comments that RCT studies in ergonomics are necessary to determine the effectiveness of interventions in reducing risk (and the related argument that such a high standard of scientific evidence is necessary before prevention procedures should be required). Although the Agency agrees with Dr. Bigos that RCT and CCT are the appropriate statistical designs for trials on the safety and efficacy of pharmaceuticals, or for a comparison of the effectiveness of different treatments for diseases and medical conditions, the study of interventions in ergonomics covers many more and different factors. Thus, any ergonomics RCT or CCT would require far more complex statistical designsand require many more subjects. Another major difference is that intervention studies, unlike typical medical or pharmaceutical efficacy studies, would start with healthy groups and then test for differences in subsequent risk or incidence of MSD. A pharmaceutical study equivalent, for example, would be a trial to test a drug that would prevent a specific cancer or chronic disease, not just treat it. Such medical RCT prevention trials would require a less complex statistical design than a good ergonomic intervention, *i.e.*, prevention, study; yet even are such a trial would be prohibitively expensive when the disease incidence is fairly low, (because many subjects would be required), and this expense would increase as the required follow-up time and effort increased.

As an example of the expense of an RCT ergonomic study, Dr. Frank, considering a simpler prospective design than required would be required for an ergonomic intervention study, in his testimony related his attempt to study physical loads on the back as an independent risk factor for workplace lower back pain, controlling for several individual characteristics of the worker:

> And in a nutshell, we decided that the key thing was, and it is very expensive to do this, to actually measure the physical loads on the back. * * * It costs us about $2,000 U.S. dollars per subject. And we did well over 300 subjects to simply use a case-control design (emphasis added). * * * you cannot afford to do those measurements on the 5,000 workers, give or take a few thousand that you need to follow if you are going to use a cohort or prospective design to see who subsequently develops back pain (Tr. 1341).

In addition to the expense of RCT intervention studies, conducting such studies over a period of time sufficient to make valid conclusions, often means that unforeseen changes in conditions occur, invalidating the original study design. This is especially true when dealing which are often characterized by workplaces with changing conditions and workers who can self select on job or life style condition changes. For these reasons, and also because the number of industry sectors and variety of work conditions is so large, the results from the few carefully designed ergonomic RCTs that could be conducted over the next 5 to 10 years would be difficult to generalize to U.S industry as a whole.

For all of these reasons, OSHA believes that sufficient RCT intervention studies could not be practically conducted within a reasonable time frame to justify delaying regulatory action. Therefore, OSHA disagrees with the arguments of the Coalition and its witnesses that OSHA should wait to issue its final rule until RCT studies can be conducted.

In estimating risk and risk reduction in this section, OSHA, as it has in all of its past rulemaking efforts, relies on the well-founded public health concept that, if risk factors can be identified that contribute to the etiology of disease, it is reasonable to act to reduce exposure to those risk factors to reduce the risk of disease. OSHA's logic and rationale in this rulemaking are similar to the position taken by Dr. John Frank, Professor, Public Health Sciences, University of Toronto (Ex. 500–64). Under the heading "Standard Public Health Practice Regarding Hazard Control", Dr. Frank poisted three conditions as the basis for deciding whether to implement ergonomic abatement policies:

- "Is there 'reasonable cause' * * * to believe that exposure to the putative hazard truly does lead to measurable adverse health effects?";
- "Is there reasonable cause to believe that feasible hazard abatement/control intervention * * * *e.g.* ergonomic job modification/design * * * actually reduce exposure to the hazard?" and
- "Is there reasonable cause to believe that no significant harmful consequences of implementing such an intervention will occur * * *?" (Ex. 500–64)

Regarding the first question, whether the evidence supports causal association between exposure to the hazard and workplace MSDs, OSHA has concluded in its Health Effects section (Section V) that there is substantial evidence that exposure to biomechanical risk factors at work—repetitive motion, forceful exertion such as heavy lifting, non-neutral body postures, contact stress, and segmental vibration—all contribute to the risk of MSDs. OSHA has followed the weight-of-evidence approach for evaluating the best available body of scientific evidence on ergonomics, especially the large amount of epidemiologic data, and finds that the evidence, as judged by the (Sir Austin Bradford) Hill criteria, used by the scientific community for over forty years, is convincing. Like Dr. Frank, OSHA especially notes the consistency in findings across epidemiologic studies and the consistency between the epidemiological studies and the accumulated scientific knowledge on biomechanics and tissue pathology that provide mechanistic explanations of the etiology of work-related MSDs. This body of evidence is also coherent in terms respect to temporality, *i.e.*, to the cause and effect timing and to the populations in which the effects are most frequent or severe. The Health Effects section (Section V) also contains sufficient evidence on exposure-response to further confirm these findings.

Dr. Laura Punnett, an epidemiologist and ergonomist, and member of the panel that reviewed the epidemiologic evidence on work-related MSD for the National Academy of Sciences, agrees with OSHA's findings:

> In summary, the epidemiologic evidence that links physical and ergonomic exposures at work with the risk of MSD is extensive and includes a sufficient number of methodologically strong studies to [implement] primary prevention activities. In the light of the experimental literature, the epidemiology is certainly most plausibly interpreted [as] showing a causal effect of occupational physical stressors on MSD among people with exposures on the job (Punnett, Tr. 874).

Having found that MSDs are causally related to multiple biomechanical risk factors, OSHA rejects the arguments of the commenters that OSHA should conduct RCTs in order to determine whether or which specific interventions will reduce MSD risk. OSHA believes that other types of approaches can be used; in particular, OSHA believes that the analogy between ergonomice interventions to address the multifactoral nature of ergonomic risk factors and interventions for the multiple risk factors associated with the development of coronary heart disease (CHD, *e.g.*, blood pressure, weight, smoking, and cholesterol) is appropriate. For CHD, risks and risk reductions were estimated for these factors long before there were any results from controlled prospective trials (Frank, Tr. 1340). OSHA notes the post hearing comments of Anheuser-Busch Inc. and United Parcel Service Inc. comparison which included Dr. Michael Vender's and Dr. Arthur Barsky's objections to Dr. Frank's of CHD and back pain. Dr. Vender states that, unlike coronary heart disease, back pain is "a subjective experience and can originate from many sources that are not readily identified or measurable, including muscle, ligament, joint and disc." (Ex. 500–118, Tab Kn pg. 21). OSHA finds Dr. Vender's argument irrelevant, however, since the relevant connection in Dr. Frank's analogy is that in the case of CHD the medical and public health communities implemented interventions to lower CHD risk factors that had been identified through study designs that were not RCT, rather than waiting to intervene until RCT studies had been conducted.

OSHA next considers the second question posed by Dr. Frank, whether there is reasonable cause to believe that feasible hazard abatement and control interventions (*e.g.*, ergonomic job modification/design) will actually reduce exposure to the hazard. As with its other rules, OSHA finds that, having identified specific biomechanical risk factors that contribute to the etiology of MSDs, procedures to reduce exposure to those factors will reduce risks. This is the underlying principle that has goverened all of OSHA's prior health rulemakings, and it is also the principle providing the foundation for public health interventions. Moreover, as the discussion earlier in this part of the Risk Assessment demonstrates, OSHA has accumulated substantial evidence, both scientific in nature and less formal, reflecting employers experiences with ergonomic programs, and showing that ergonomic interventions do reduce exposures to biomechanical risk factors and do reduce the prevalence and incidence of MSDs.

With respect to the types of studies needed to estimate risk and risk reduction, OSHA notes that potential risk reduction is estimated in many of the Agency's past rules by extrapolation of study results using mathematical dose-response models. None of these risk and risk reduction estimations relied on RCT. Several of these estimates were derived from modeling studies with retrospective cohort designs. In these studies, it was common in the course of the cohort's time frame that "interventions" occurred, in the industrial hygiene sense, to reduce exposures to the putative chemical agent. However, in these studies information about the exact interventions or exactly which cohort members these interventions affected is usually very limited, and the studies could hardly be considered "controlled." Furthermore, all estimates for risk reduction required extrapolation beyond the range of observation, for which there were no "interventions." This methodology is based on the logical rationale that if causes or risk factors for adverse health effects are established, a reduction in exposures to these factors will lead to a reduction in the adverse effects.

With regard to Dr. Frank's third question, whether there is reasonable cause to believe that no significant harmful consequences of implementing such an intervention will occur, OSHA has found no evidence in the record that implementation of ergonomic programs will harm employees; several of the scientific witnesses testifying on behalf of the UPS and others raised this possibility (Exs. 32–241–3–4), claiming that ergonomic interventions will result in deconditioning of the workforce and a resulting increase in the risk of MSDs. OSHA discussed this issue in detail in the Health Effects section (Section V of the preamble) and rejected this argument. In brief, OSHA finds that its final ergonomics program standard is consistent with current medical practice and guidelines, will not encourage an unhealthy level of inactivity in lieu of returning to a safe level of work following an injury, and is therefore unlikely to harm workers by discouraging conditioning.

Finally, several commenters presented arguments that it would be unethical to withhold interventions. The ethical arguments was summarized by Dr. Frank:

> There is also the moral impropriety of randomizing [for RCT studies] a set of communities or set of workplaces to not have a putative hazard abated (Ex. 500–64).

Dr. Punnett also testified that controlled trials are inappropriate in the context of protecting the public from exposures to hazardous agents. When asked whether controlled trials are the only scientifically rigorous method for determining causal relationships between exposure to risk factors and the risk of MSDs, she replied:

> You know, I really find that quite an extraordinary concept. * * * I could hardly imagine that OSHA would have ever been held to putting subjects in an exposure chamber and exposing them to coke emissions or benzene vapors or cotton dust to see whether they developed cancer or lung disease. And the whole idea that this would be the kind of evidence that would need to be provided in order for OSHA to take preventive action, truly it is astounding to me. And there are lots of examples. I mean, I showed international criteria documents, the European Union taking action on physical ergonomic exposures without ever a mention of such a thing as a randomized clinical trial in this area. [Tr. 1001–1002]

OSHA considers this ethical argument to be valid in that the Agency does not desire to delay hazard abatement in order to conduct an RCT, the result of which may or may not be generalized to worker populations overall. This is especially the case because the Agency already has a sound methodology for measuring the extent of current risk and the potential that reduction in risk associated with implementation of the standard.

Gibson, Dunn & Crutcher in their post hearing comments criticized OSHA for using epidemiology studies to assess the work-relatedness of MSDs and as a source of information and data to estimate the effectiveness of ergonomics programs (Ex. 500–118, pp. II–25 to II–36). Part of Gibson, Dunn & Crutcher's criticism relates to their claim that "a statistical level of 'risk association' from an epidemiologic study cannot translate into a measure of effectiveness for OSHA's proposed program." (Ex. 500–118, p. II–27). They provided three reasons to support this claim. First, they claim, even assuming that OSHA's risk ratio estimates for the work-related MSDs are correct (which they do not concede), that by changing the job conditions:

> there will still be some level of force or repetition, some movement from completely neutral posture * * * that presumably could cause 'contact stress.' * * * In changing a job to address one 'risk factor,' moreover, an entirely different concern might be created. * * * Yet OSHA's approach would measure the effect as if it were the difference between the "risk" from the old job and *zero*. That assumption is simply wrong. (id. II–29).

Second, they claim that "'deconditioning' from a reduction in physical activity may play a very significant role in increasing the risk of MSDs. * * * An epidemiologic study that focuses solely on alleged 'risk factors' in the existing job, however, provides no mechanism for taking this into account, or any other change in the nature of a job as altered after an intervention." (Ex. 500–118, p. II–29). The third reason is that "the 'risk ratios' yielded by epidemiologic studies control only for factors that each author was able to identify and analyze. * * * In the real world, * * * [with many other factors to be considered] the 'risk ratios' attributable to job factors, after fully accounting for all these other variables, would be far lower than those reflected in the epidemiologic evidence." (Ex. 500–118, p. II–30). OSHA notes that all of the "real world" complications pointed to by these commenters are also pertinent to RCF.

OSHA disagrees with all three of Gibson, Crutcher & Dunn's arguments that ergonomic risk factor epidemiology studies may not be used for risk reduction estimates. Gibson, Crutcher & Dunn argue that reducing one stress factor will either lead to increased risk due to exposure to another stress factor (reason one), or, contradictorily, lead to increased risk because the body is "deconditioned" and, therefore, more susceptible to injury (reason two). OSHA's approach for estimating the potential effectiveness of ergonomics programs, in both the Preliminary and Final Risk Assessments, is to estimate the proportion of disease occurring among workers exposed to risk factors that can actually be attributed to their exposure. This approach does not reflect a risk of "zero," as Gibson, Dunn & Crutcher suggest. Instead, this approach explicitly recognizes that only *some* portion of the disease prevalence observed in a population of exposed workers will be affected by intervening to reduce the hazardous exposure. The risk ratios from epidemiological studies are precisely the kind of data that are used to estimate the attributable fraction of disease in an exposed population (*e.g.*, see Hagberg and Wegman Ex. 26–32). For example, if an epidemiological study reports that the rate of disease in an exposed population is twice as high as that seen in an unexposed population, (*e.g.*, an OR of 4), then the attributable fraction can be estimated to be 0.75, or 75 percent. This means that the rate of disease in the exposed population can be reduced by up to 75 percent in response to an intervention. The actual result achieved in an intervention may be less, depending on the effectiveness of the specific intervention employed. These commenters' third reason is that, because the epidemiology studies are limited and cannot control for enough risk factors, the risk ratio estimates from these studies overstate the risk due to the studied risk factor and cannot be generally applied to intervention risk reduction estimates. However, it is not always the case that study biases lead to an overestimate of the risk. Risk ratio estimates may overestimate or underestimate the true risk, depending on the study design, the interrelationship of the risk factors involved, and the comparison of the exposed and control groups. For example, errors in exposure assessment that arise because of the use of imprecise measures to characterize exposure (such as job title) leads to exposure misclassification, which usually results in an underestimate of risk, or even the observed absence of an association where one actually exists.

Gibson, Crutcher & Dunn further argue that, "even if the epidemiologic evidence has some application, OSHA's review of it for benefit purposes was fatally flawed." (*id.*, pg. II–31). They offer several reasons for this opinion; their primary reason is that OSHA took an unweighted median or mean risk of "every 'risk ratio' it could find in a NIOSH table, even in situations where the majority of study ratios—all but eight in one case—did not even satisfy measures of statistical significance."(Ex. 500–118, p. II–33). In short, according to Gibson, Dunn & Crutcher, OSHA agglomerated studies of all qualities and all significance levels, studies measuring different risk factors, using different levels of exposure, and different types of control groups. "The result, in the end, is a mathematically meaningless number whose content dependes primarily on happenstance." (Ex. 500–118, pg. II–33).

OSHA believes that there is a good rationale for applying this methodology to estimate median or mean risk ratios from the epidemiological data base by weighing each risk ratio equally (64 FR 65950–65951, see Table VI–9). OSHA believes that the use of epidemiological data and such unweighted median and mean risk ratio estimates, separately for each body part, using the epidemiological data is fair and appropriate, for several reasons. First, the epidemiological data, which is drawn largely from the 1997 NIOSH review (Ex. 26–1), is an unbiased screened review of the published literature, with the result that only higher quality studies are selected. Second, estimating risk ratios by body part agglomerates studies that reflect similar background rates; this should provide a more even distribution of risk ratio estimates than would be the case if all of the studies were grouped together.

Third, including all risk ratios by body part is reasonable, even though some studies estimated risks for more than one body part and may therefore be included in analyses of more than one body part. Often when more than one body part is included in the same study, the risk estimates are based on different subgroups of workers. In OSHA's final risk assessment any one study is included for each body part only once.

Finally, OSHA addresses the criticism of combining unweighted odds ratios from many different high-quality studies, even though NIOSH may have ranked studies according to their quality criteria. OSHA believes that, in this case, unweighted or equal-weighted means and unweighted medians are appropriate and fair. Most important, this methodology gives the same weight to high-quality studies that show no association as to those that do, instead of focusing on the highest risk estimate. OSHA believes this is fair because the large variety of study designs, work situations, and specific disorders addressed in these studies will be more representative of the varied nature of working conditions across the country. On the other hand, if OSHA were to weight risk ratios by some quality criteria, where the best designed studies are rated the highest, the resulting composite risk estimates would be more reflective of a small number of specific exposure conditions, and thus less representative of the broad mix of workplaces covered in the final rule. Consequently, given OSHA's objective to quantitatively characterize the work-related risk of MSDs and the potential effectiveness of ergonomic interventions, using the best available data, OSHA finds that its approach that makes use of all of the epidemiological data judged by the Agency to be of reasonable quality is preferable to relying only on a small subset of those data.

In both their pre- and post-hearing submissions (Exs. 32–241–4, 500–197), Gibson, Dunn & Crutcher raised several criticisms of some of the specific case studies relied on by OSHA in the preliminary risk assessment (these case studies were summarized in Appendix VI–B of the preamble to the proposed standard, 64 FR 65965–65975). In addressing each of these specific comments below, OSHA first identifies the case study or studies being addressed in the comment, quotes or summarizes the comment, and follows that with a response to the comment.

Group of 24 Case Studies From M. Oxenburgh, Increasing Productivity and Profit Through Health & Safety (Ex. 26–1041).

Comment: Methodology that Dr. Oxenburgh used is biased because he only obtained claims of reported success. "Oxenburgh confirmed that he was looking to write a book * * * to demonstrate 'the effectiveness * * * from an injury reduction perspective' of ergonomic interventions [citing Tr. 2646]. Having 'made known what [he] was looking for,' [citing Tr. 2647] he obtained only reports of success." (Ex. 500–197, p II–10) "* * * [T]reatise * * * unabashedly describes itself as an assemblage of ergonomic 'success stories' designed 'to make believers' out of management [citing p. 2 of Ex. 26–1041]." (Ex. 32–241–4, p. 215).

OSHA's Response: The introduction to Dr. Oxenburgh's book was written by Dr. Stover Snook, who used the quoted phrases "success stories" and "to make believers." Dr. Oxenburgh actually objected to terms such as "making believers" and "success stories," because, as he stated at the hearings, he compiled "a series of case studies which illustrate the concept of health and safety and productivity running together" (Tr. 2643, ln. 11–13). Gibson, Dunn & Crutcher criticize Dr. Oxenburgh's publication as part of their argument that the case studies relied on by OSHA (which included some of Dr. Oxenburgh's case studies) are not scientific studies (see Ex. 32–241–4, pp. 10–214). However, in its preamble to the proposed rule, OSHA did not claim that the case studies it relied on represented "scientific" studies, but instead simply characterized them as sources of "* * * data on the success of ergonomics programs and workplace interventions, * * * [which are in turn] supported by data from [other] scientific studies [*i.e.*, epidemiological studies and experimental laboratory studies in the record] indicating the potential for successful ergonomics programs" (Ex. 28–1, p. IV–4). The 24 case studies from Dr. Oxenburgh's book that OSHA used as a source of effectiveness data provide precisely this kind of information, and OSHA does not find that the absence of a formal study design diminishes the utility of these data in describing the beneficial effects that ergonomic interventions have had on MSD rates in actual workplaces. In fact, real-world effectiveness studies, almost by definition, describe what happens in a particular workplace environment when interventions of the kind required by the standard are put into effect. OSHA did not in the proposal and does not in the final rule claim that these studies do more than report what employers have done and the results they have.

Comment: In his testimony, Dr. Oxenburgh stated that he relied as little as possible on written data (citing Tr. 2648), and preferred to accept what he was told on site by the people involved in implementing and working with the intervention (Exs. 500–197, p. II–11, 32–241–4, p. 215). Dr. Oxenburgh did not use a methodology that involved to verification of his claims (Ex. 500–197, pp. II–11). Oxenburgh was willing to accept employer accounts without independent verification (Ex. 32–241–4, p. 231). Dr. Oxenburgh's sources were health and safety professionals who had much to gain and nothing to lose by making exaggerated claims of benefits (Exs. 32–241–4, p. 231; 500–197, p. II–12).

OSHA's Response: To obtain information from establishments, Dr. Oxenburgh visited facilities to conduct personal interviews and perform inspections of the interventions firsthand (Tr. 2648). Although Dr. Oxenburgh did inspect some documents on the site visits, he sometimes obtained written documentation after the visit "* * * by which time [plant contacts] would have looked up their information." (Tr. 2649) At the informal hearing, Dr. Oxenburgh testified that the information and data he received were reliable:

> I cannot see any reason why they should have told me any lies. They were very open with me. When I was going around a workplace, there were no restrictions placed on me to say, "Oh, don't talk to the workers," or anything like that * * * I have no reason to believe that people were not telling me just the facts that were there. [Tr. 2714–2715]

The approach taken by Dr. Oxenburgh is often relied on by regulatory agencies (*e.g.*, OSHA and the EPA), academic researchers, and other investigators; it involves having individuals with professional expertise (in Dr. Oxenburgh's case, in ergonomics and productivity measurement) talk to involved individuals, take notes, inspect equipment and facilities, and evaluate what has been observed. For example, in conducting research to obtain data for the economic and technological feasibility analyses to support its standards, OSHA conducts many site visits to gather data on control technologies and work practices, worker exposures, costs of exposure controls, and economic data. In more than 20 years of experience, the Agency has never had reason to conclude that the information collected in this way is not reliable. In fact, site visits and onsite interviews generally provide much more detailed and accurate information than can be obtained in written form alone. OSHA believes that this is why Dr. Oxenburgh "relied as little as possible on people's * * * written data" (Tr. 2648): he understands that the answers to specific questions and to follow-up questions are far more revealing than the information in paper records. OSHA finds that the information and data collected by Dr. Oxenburgh and contained in his book are fair and accurate reports on the effectiveness of ergonomic interventions, and the Agency does not agree with Gibson, Dunn & Crutcher's insinuation that the data are unreliable. Further, Gibson, Dunn & Crutcher provide no evidence that the information in Dr. Oxenburgh's book is exaggerated or was misrepresented by safety and health professionals intent on promoting their reputations and careers. OSHA therefore rejects this argument as specious.

Comment: Each case study in Dr. Oxenburgh's book describes "health, safety and productivity gains" in broad generalities and rarely provides any quantitative statistics (Ex. 32–241–4, p. 215)

OSHA's Response: OSHA relied only on the 24 case studies from Dr. Oxenburgh's book that did in fact report quantitative changes in the number or rate of MSDs; these quantitative data are reflected in Appendix VI–B in both the preliminary and final risk assessments.

Comment: "Oxenburgh holds a doctorate in biochemistry but, after 15 years in this field, saw a career opportunity during the early stages of the infamous Australian repetitive strain injury epidemic of the early 1980's and switched disciplines with no further academic training." (Ex. 32–241–4, p. 214) "Primarily * * * Oxenburgh described his expertise as being based on various consulting activities he undertook after becoming "interested in ergonomics" and "join[ing] the Ergonomics Society of Australia [citing Tr. 2700]." (Ex. 500–197, p. II–12)

OSHA's Response: Gibson, Dunn, & Crutcher impugn Dr. Oxenburgh's professional experience and training but fail to acknowledge that Dr. Oxenburgh has in fact worked in the field of occupational health and safety since 1976 (Tr. 2700) and has practiced in the field of ergonomics for 20 years, since he joined the Ergonomics Society of Australia and became a committee member of the New South Wales division (Ex. 37–24, Tr. 2700). Dr. Oxenburgh also served for several years as a founder and co-ordinator of the Economics and Ergonomics specialist group of the International Ergonomics Association. Over the past 12 years, Dr. Oxenburgh has been an expert witness in more than 700 common law injury claims, in which capacity he has appeared about half the time on behalf of the employer and half the time in support of the plaintiff. Dr. Oxenburgh has also been the principal author on a number of research studies, including several seminal works on the quantifiable effects of early reporting and medical management (see, for example, Exs. 38–188, 26–1405, Winkle and Oxenburgh (1990) cited in Ex. 37–24, Oxenburgh (1997) cited in Ex. 37–24, Oxenburgh (1994) cited in Ex. 37–24). OSHA made Dr. Oxenburgh available to testify at the informal public hearing because of the importance of his work on ergonomics and productivity, and finds Gibson, Dunn, & Crutcher's characterization of Dr. Oxenburgh's qualifications both inaccurate and unjustified.

Comment: Regarding the robot case study contained in Dr. Oxenburgh's book, Dr. Oxenburgh admitted that this is a very unusual case (Tr. 2655) and that the workers are no longer performing that job at all (Tr. 2653). Consequently, there is no "compelling justification for including it in a case study compilation to broadly represent ways in which employers purportedly can achieve '100%' effectiveness through ergonomic interventions." (Exs. 500–197, p. II–13, 32–241–4, p. 226).

OSHA's Response: Although the "robot" case study is an unusual case (because employers generally mechanize jobs but only rarely automate them), it is an example of an engineering approach that eliminated a job that had previously caused musculoskeletal injuries among an extraordinary high percentage of workers (60 to 80 percent of the workforce that performed these functions) (Tr. 2654). The engineering control (*i.e.*, the robot) was implemented after facility personnel determined that other options (*e.g.*, job rotation, increased rest breaks, and complete workstation redesign) would not prevent the injuries (Tr. 2654–2655, Ex. 26–1041, pp. 156–158). In his testimony, Mr. Caple also discussed situations in which robots are used in chocolate making and in the automotive industry (Tr. 2624–2625). However, both Dr. Oxenburgh's and Mr. Caple's testimony confirm that robotics are used rarely to control MSD risks. However, because of the unusual nature of the control approach in this case study (*i.e.*, robotics), OSHA has deleted it from the case study data set and is not relying on it in its effectiveness analysis.

Comment: "It is surely no coincidence that 9 of the 24 Oxenburgh case studies invoked by OSHA cite General Motors as the source of information. At the time * * * General Motors was facing a major 5(a)(1) ergonomics citation, backed up by considerable pressure from its union on the subject of ergonomics * * * [GM] had every incentive to look for outlets to publicize that it was committed to ergonomics and was achieving results." (Ex. 32–241–4, p. 231)

OSHA's Response: Gibson, Dunn & Crutcher imply that the information and data taken from these 9 case studies are unreliable because GM was willing to fabricate or distort information to promote its ergonomics activities. OSHA does not believe that General Motors operates in this way, and the Agency notes that Gibson, Dunn & Crutcher provide no evidence of any kind to support their allegations that these 9 case studies are anything other than factual accounts of ergonomic interventions. Accordingly, OSHA is not persuaded by this comment.

Harley-Davidson Case Study (McGlothlin and Baron, Ex. 26–1080)

Comment: The case study documents a general upward trend in MSDs during the study period. "The only way a decrease in injury rates could be claimed was to pick an aberrational year two to four years prior to program implementation and draw comparisons from that single statistical quirk" (Exs. 500–197, p. II–14, 32–241–4, p. 227).

OSHA's Response: NIOSH initiated this Health Hazard Evaluation in 1990 and followed up in 1993; the purpose of the evaluation was to identify jobs associated with upper-extremity and back MSDs in the flywheel milling department, and to make recommendations to reduce MSDs in that department. The MSD incidence rates per 100 workers for the study period, as presented in Table 6 of the report (Ex. 26–1080), were 27.6 (1989), 11.5 (1990), 18.7 (1991), 13.4 (1992), and 12.5 (1993) (Ex. 26–1080). These data do not appear to support Gibson, Dunn & Crutcher's claim of a "general upward trend in MSDs during the study period." Gibson, Dunn & Crutcher described the incidence rate of 27.6 for 1989 as a "statistical quirk" because it is substantially higher than the incidence rates for 1987 (11.8), 1988 (8.9), and 1990 (11.5) (Ex. 32–241–4, p. 227). The case study indicates, however, that this increased rate was associated with hiring a nurse between 1988 and 1989 who "brought new vigilance to the reporting of musculoskeletal disorders" (Ex. 26–1080, p. 12), suggesting that the lower rates reported for 1987 and 1988 reflect the underreporting, rather than low incidence, of MSDs. Further, the case study suggested that the MSD incidence for 1990, which was substantially lower than that for 1989 or 1991, may have decreased because of a sudden 20-percent increase in the department's workforce: new workers may have under-reported musculoskeletal problems, or it is possible that the disorders did not become symptomatic until the following year (Ex, 26–1080, pp. 12–13). For these reasons, OSHA does not agree that the MSD rate for 1989, which is taken as the base year for comparison with post-intervention years, is necessarily a statistical aberration, but rather that the lower MSD rates for the surrounding years may reflect underreporting of MSDs and abrupt increases in the workforce of the establishment. However, because of the concern raised about the representativeness of the injury rate for 1989, OSHA is basing its estimate of program effectiveness from this study on the injury rate for 1991, which represents the first year in which interventions were planned and implemented.

Telecommunications (Video Display Terminal (VDT) operator) Case Study (Tadano, Ex. 26–1337)

Comment: "OSHA attributed significance to a '40.8' percent reduction in 'Total MSDs' allegedly achieved by an ergonomics program * * * [T]his reduction took place after a very substantial increase in MSD reports during the preceding period. The article suggests that this claimed reduction may have arisen from 'a certain operator hysteria about * * * catching [repetitive motion sickness], * * * possibly connected to sentiments, fueled by union activities, that 'management was * * * not doing enough * * * to curb this epidemic"' (citing Ex. 30–1337, p. 69). The reported reduction, therefore, might have nothing to do with the effectiveness of the ergonomics program and more to do with the statistical effect of "regression to the mean" (Ex. 500–197, pp. II–17–18).

OSHA's Response: This case study describes an ergonomic intervention implemented by a telecommunications establishment to address an increase in the rate of upper-extremity MSDs among VDT operators. There is nothing in the case study that supports Gibson, Dunn & Crutcher's contention that the observed decline in the number of upper extremity MSD cases and their associated medical costs was due to "regression to the mean" following an unusual increase in MSD rates, nor is there any suggestion by the author that "operator hysteria" was solely or even primarily responsible for the increase in the MSD rate prior to instituting the intervention. When reports of MSDs began to increase, the article stated that the "* * * medical department staff was especially concerned, as they were aware that a similar department of a company branch in an adjacent state had been faced with [repetitive motion syndrome] in 'epidemic proportions'." (Ex. 26–1337, p. 69) The article also stated that "* * * the job was considered stressful and monotonous by many operators," and that "* * * [the] labor management relationship had previously been good." (Ex. 32–1337, p. 69) The author clearly attributed the decline in MSD cases following the ergonomic intervention to the intervention itself, and reported that "* * * these results indicate the value of a positive approach to prevention of this occupational group [of disorders]." (Ex. 26–1337, p. 70) Therefore, OSHA finds that it is appropriate to rely on this case study as part of its data set of ergonomic interventions.

Comment: "Tadano also explains at length that CTDs 'have a multifactorial etiology' and that it is often not possible to attribute trends to any single intervention. She concludes:

> In the current study, so many factors were changed * * * that success or improvement cannot be attributed to any single factor. Also the data were limited, in that the sample size was small and the duration of time measured was limited." [Citing Ex. 26–1377, p. 70]

Yet, OSHA does exactly what Tadano warns it no[t] to do "it attributes the entire * * * success or improvement * * * described in the article to the * * * single factor * * * of ergonomic interventions in the workplace" (Ex. 32–241–4, p. 218–219).

OSHA's Response: Gibson, Dunn & Crutcher omitted an important part of the excerpt they quote from the Tadano study. The excerpt should read that "* * * so many factors were changed (*i.e.*, worker methods, work-station design, addition of exercises, and mini-breaks) that success or improvement cannot be attributed to any single factor." The factors mentioned by Tadano all relate to the ergonomic interventions described in the study, and all would be considered appropriate engineering, administrative, and medical management interventions under the final rule. Thus, OSHA did not attribute the reduction in the MSD rate inappropriately, Gibson, Dunn & Crutcher imply; instead, OSHA, as well as the author of the study, attribute the post-intervention reduction in MSD rate to the collective effect of all of the components of the ergonomic intervention.

Leiyu Shi Study (Ex. 26–1099)

Comment: Although this study is a randomized study, there are serious flaws including small size and lack of sufficient study period to eliminate Hawthorne effect or other variables as potential explanations (Tr. 6823; Ex. 32–241–3–7, p.15). The author admits that "* * * his analysis 'contains a number of limitations,' including the need for further examination and empirical testing to establish 'the reliability and validity' of the methodology he used and the very real possibility of 'a Hawthorne effect among the participating units' because employees knowing they are being studied react unusually and their reported behavior change may be more a result of their enthusiasm rather than that of an injury prevention program." [citing Ex. 26–1099, p. 210] (Ex. 32–241–4, p. 219).

OSHA's Response: The Leigu Shi study is a randomized trial of a back injury prevention program implemented among county employees; the program consisted of a combination of education, training, physical fitness activities, and ergonomic improvements. The author acknowledged that it was not possible rule out a Hawthorne effect bias in the results. However, although the author was aware of the potential for some confounding, he made several observations about the effectiveness of the back injury intervention program studied:

> The results of the study lend support to the widely held belief that health promotion in the workplace can significantly reduce employee health risks. * * * [T]he study offers suggestive evidence for the initial benefits of a back injury prevention program. Whether such interventions will continue to reap benefits in future years depends, to a large extent, on a *favorable work environment* and the maintenance and continuation of positive behavioral changes (emphasis added) (Ex. 26–1099, pp. 209–210).

I response to general comments in the record that the case studies OSHA used to indicate program effectiveness are seriously biased, OSHA does not dispute that these case studies, like all such reports and investigations, may reflect some bias; no study can eliminate all biases or potential confounders. However, the large number of case studies accumulated by the Agency makes it highly unlikely that any single unaccounted for confounder, such as the Hawthorne effect, could explain the consistent results reported in these studies as well as the effect OSHA postulates: that ergonomic interventions work.

Malcolm Pope Case Study of Telecommunications Workers (Ex. 26–1073)

Comment: As an example of an "emphatic disclaimer" OSHA's critics claim the authors of the technical articles made and OSHA ignored Pope explains in his article [which was used by OSHA in its effectiveness analysis] that "there are other factors involved * * * [in low back pain] such as abnormal anatomy, the physical fitness of the individual, changes related to age and previous injury." (Ex. 32–241–4, p. 219, citing Ex. 26–1073, p. 450).

OSHA's Response: The Pope paper discusses the etiology of work-related low back pain and approaches for reducing back injury rates. Part of this report presents a case study of an ergonomic intervention in a telecommunications manufacturing facility. In discussing the etiology of low back pain, Pope stated, almost as an aside, that other factors may be involved; however, in discussing the etiology of low back pain, Pope

emphasizes the importance of repeated biomechanical load on tissues. For example, the article stated that "all connective and structural tissues [*i.e.*, even in those individuals who do not have abnormal anatomy, poor physical fitness, or advanced age] will fail if subjected to loads that are too high for too long a period of time without an opportunity for repair to occur" (Ex. 26–1073, p. 450). In addition, he notes that "[l]ow back pain has, in most cases [of over-exertion injuries reported], occurred due to a mechanical overload to one of the tissues of the back" (*i.e.*, lifting to much, too far, too long, etc.) (Ex. 26–1073, p. 450). Dr. Pope concluded the section of his paper on etiology by stating that "The key issue for those involved in the prevention of occupational injuries is to use epidemiologic information so that the relationships between load, repetition rate and exposure can be identified." (Ex. 26–1073, p. 450)

Dr. Pope then described the case study that exemplifies his approach (Ex. 26–1073, p. 453, abstract). The results of the case study showed that, within one year of implementing an ergonomics program that included engineering changes, the incidence rate of significant repetitive trauma disorders decreased from 1.1 cases per 100,000 working hours to 0.26 cases/100,000 working hours and lost work days decreased from 1,000 to 129 (*i.e.*, an almost eightfold decrease in lost work days). Dr. Pope concluded his paper as follows:

> An ergonomic approach, soundly based on biomechanical principles, will be effective in reducing such injuries if the correct management approach is taken. [Ex. 26–1073, p. 454]

Based on Dr. Pope's discussion of the etiology of low back pain and the conclusions that accompany the case study, OSHA does not agree that the reference to "other factors" cited by Gibson, Dunn & Crutcher represent an "emphatic disclaimer" of the case study's findings.

Westgaard and Aaras Study of a Telecommunications Manufacturer (Ex. 26–1026)

Comment: The authors note in this paper that "musculo-skeletal illness may also develop as a result of other factors than work load, for instance as a complication because of other illnesses, due to general defects of the musculo-skeletal system, due to muscle spasms as a consequence of problems of a psychological nature, or to strenuous leisure time activities [;t]hus, one should not conclude that the work station is the major causal factor for any individual case of musculo-skeletal disorders' (Ex. 32–241–4, p.219, citing Ex. 26–1026, pp. 173–174). This statement represents another "disclaimer" that weakens the case study.

OSHA's Response: This study was a formal investigation of sick leave and medical records to evaluate the effectiveness of ergonomic improvements made in 1975 in a telecommunications parts manufacturing plant. Although the authors stated that "* * * one should not conclude that the work station is the *major* causal factor for any *individual* case of [MSD]" (emphasis added), there is no question that the investigators believed that reducing exposures to biomechanical load was responsible for reducing the sick leave associated with MSDs:

> There is no doubt that there has been an unusually high rate of musculoskeletal illness among the workers * * * in general. * * * It is also clear that the work situations have been strenuous with the strain mainly affecting a limited number of muscles in the shoulder and neck region * * *. [I]t is very unlikely that those employed at the [work station] * * * have a sufficiently different life situation to other women of the same age to explain the group differences in sick leave due to musculo-skeletal disorders. The work load and, specifically, the strain on shoulder and neck muscles, *must* therefore be considered a *major* causal factor in the development of musculo-skeletal disorders among [the] workers [Emphasis added]. [Ex.26–1026, p. 174]

Thus, based on the specific conclusions reached by the authors of this study, OSHA finds that it appropriate to include this study among the data base of case studies that describe the effectiveness of ergonomics programs.

Meatpacking Case Study (Ex. 26–1043)

Comment: Group is too small to support statistically valid conclusions. Baseline of four reported injuries at meatpacking operation (Ex. 32–241–4, p. 220, see footnote 805).

OSHA's Response: This article describes the comprehensive ergonomics program implemented by a major meatpacking company. Although the program was implemented for "all plant locations" of the company, the article reports quantitative results only for the bacon department. Although the number of MSD cases is small, Gibson, Dunn & Crutcher fail to mention that the reduction experienced by the department was a decrease from four CTDs in *one month* to none in the *six months* following the implementation of the program (Ex. 26–1043, pp.138 & 140), a change that the author clearly attributed to the use of employee rotation in the department.

Ice Cream Manufacturer Case Study (Ex. 26–1100)

Comment: The group is too small to support statistically valid conclusions. Baseline of four compensation claims, not necessarily attributable to MSDs (Ex. 32–241–4, p. 220, see footnote 805).

OSHA's Response: This case study of a mid-sized ice cream manufacturer (230 workers in summer, 60 in winter) clearly identifies the four workers' compensation cases as involving "soft tissue" (Ex. 26–1100, p. 52). All of these claims occurred after the installation of six new workstations, whereas in the preceding seven years (before the workstations were installed) there had been no such claims. In addition to the decrease in the number of claims after the intervention, the implementation of ergonomic changes resulted in a decrease in absenteeism from ten to four percent, an increase in productivity of as much as 55 percent, and an overall increase in morale (Ex. 26–1100). Thus OSHA finds it appropriate to include this study in its database.

Cattle Feed Processing Case Study (Ex. 26–1046)

Comment: Group is too small to support statistically valid conclusions. Purportedly scientific article making claims based solely on the experience of two cattle feed processing employees without any attempt to explore the etiology of the reports (ex. 32–241–4, p. 220, see footnote 805).

OSHA's Response: This study describes a case in which a processing plant began producing experimental cattle feed in a manual operation. According to the article, the operation "was apparently initiated without either pre-run trials or consideration of occupational health and safety issues" (Ex. 26–1046, p. 27). The injuries sustained by the two employees were shown to have been a direct result of these specific workplace activities; between two and four weeks after beginning these specific workplace activities, both of the workers sustained irreversible back injuries. After engineering controls were implemented, there were no incidents of reported back pain during three subsequent trials of the redesigned process. The author reported that "* * * [h]ad such countermeasures been implemented immediately, the irreversible injury would have been prevented" (Ex. 26–1046, p. 28). Again, OHSA finds this study is appropriately included.

Hand Tool Operations Case Study (Ex. 26–1070)

Comment: Group is too small to support statistically valid conclusions: "the data are inadequate for rigorous statistical evaluation" (Ex. 32–241–4, p. 220, see footnote 805, citing Ex. 26–1070, p. 678).

OSHA's Response: This was a formal study of OSHA log and medical records at a telecommunications manufacturing facility during the implementation of a program to introduce redesigned hand tools and provide employee training on ergonomics; one of OSHA's expert witnesses, Dr. Thomas Armstrong, was a co-author of this study. The plant-wide incidence rate of OSHA reportable repetitive trauma disorders prior to the implementation of engineering and administrative ergonomic controls was 2.2 cases per 200,000 workhours and 1,000 lost workdays. In addition, incidence rates were as high as 4.6 percent in some areas of the facility and work restrictions were impeding the balance of production lines. Four departments accounted for 68 percent of all repetitive trauma injuries, and 48 percent of all repetitive trauma injuries occurred among assemblers (Ex. 26–1070, pp. 674, 676–677).

After the implementation of controls, repetitive trauma disorders decreased to 0.53 per 200,000 workhours and only 129 lost workdays. The authors stated that the contribution of the control program to the reduction in MSDs seen in the facility "cannot be statistically tested using the available medical data," but emphasized that they believe the control program was "an important factor in this reduction" (Ex. 26–1070, p. 677) and stated that the program "appears very promising" (Ex. 26–1070, p. 678). Based on the authors own conclusions, OSHA finds that the reported reduction in MSDs in this plant are apprpriately attributed to the ergonomic interventions described.

Material Handling at Grocery (OSHA Site Visit) (Ex. 26–1176)

Comment: Group is too small to support statistically valid conclusions. "From these data, it is not certain that costs associated with CTDs, the severity of CTDs (as represented by cost per claim), or the impact of CTDs on total medical claims have changed significantly for the long term" (Ex. 32–241–4, p. 220, see footnote 805, citing Ex. 26–1176).

OSHA's Response: This case study resulted from an OSHA-sponsored site visit to a retail grocery establishment. Although the site visit report acknowledges its limitations in predicting long-term effects from the employer's newly implemented ergonomics program, it also stated the following:

> [I]t appears that [worker CTD compensation] claims have declined somewhat, but the program has not really been in place long enough to be able to verify a trend * * * It does look promising, however, particularly in terms of the number of CTD claims, which have fallen even while total employment has risen, and perhaps the average cost per claim.
>
> On a division-wide basis, members of the company CTD committee think that, as a result of the CTD strategy implementation, the numbers of CTD-related injuries and illnesses have decreased, the associated costs of claims (workers' compensation and medical) have decreased, employee complaints have been reduced, and employee morale has improved (Ex. 26–1176, pp. 12–13).

Thus, it is clear that this employer representative attributed the observed decline in MSDs directly to implementation of the program, and OSHA therefore finds it appropriate to include it in the data set being relied on by the Agency to evaluate the effectiveness of ergonomic interventions.

Garg and Owen Study of Ergonomic Interventions in a Nursing Home (Ex. 26–1093)

Comment: Group is too small to support statistically valid conclusions. "[L]arge-scale studies in different nursing homes are necessary to confirm the * * * findings" in the article (Ex. 32–241–4, p. 220, see footnote 805, citing Ex. 26–1093).

OSHA's Response: The study was conducted in two units of a nursing home which employed 57 nursing assistants. As a result of the controls implemented, the incidence rate for back injury decreased from 83 per 2,000,000 work-hours to 47 per 2,000,000 work-hours. The authors concluded that "an appropriate ergonomic intervention program offers great promise in reducing physical stress and risk of low-back pain to nursing personnel." OSHA agrees that, as the authors stated in their article, the specific findings of this one study may not reflect the results achieved in other establishments that implement similar ergonomic measures. Garg and Owen explain that implementing such measures requires consideration of staffing levels, training, workload, and administrative support (Ex. 26–1093). However, the study by Garg and Owen is only one of several case studies used by OSHA to examine the effectiveness of ergonomics programs in nursing homes and other health care industry sectors (see Appendix VI–2 in this section of the preamble). These other studies also report reduced MSD rates that are attributed to ergonomic interventions, many of them similar to those investigated by Garg and Owen (*i.e.*, use of mechanical devices for patient lifting, modifying showers and toilets for easier access). Therefore, OSHA does not agree that it is inappropriate to include the Garg and Owen case study in the database, despite the authors' caution.

Couch, Summary of Six Case Studies (Ex. 26–1086)

Comment: The importance of non-work factors such as gender and age are mentioned as potential contributors. "The above examples of the cost benefits of ergonomics are quite positive and indicate that ergonomics does seem to reap monetary rewards as well as improve worker well being. However, there are many factors that have not been accounted for or controlled in these reports; these factors, such as changes in the economy that reduce job turnover or changes in production technology and product lines that may eliminate high risk jobs or leave only the survivors in remaining jobs, may also contribute to the apparent payback. Because ergonomic case studies such as these are done 'in the field,' it is very difficult to hold these independent or external variables constant" (Ex. 32–241–4, p. 220, see footnote 805, citing Ex. 26–1086).

OSHA's Response: OSHA recognizes that the case studies contained in Appendix VI–2 are, because of their real-world rather than laboratory nature, unable to control for a number of factors that could affect injury and illness outcomes; some of these factors are mentioned in the Couch article (Ex. 26–1086) and in Gibson, Dunn & Crutcher's comment. However, OSHA is not basing its finding that ergonomic interventions are effective on any single study or a few case studies. Instead, OSHA has identified more than 200 case studies from the record, all of which document reductions in MSD numbers or rates following implementation of ergonomic interventions. These case studies reflect a wide variety of industry sectors, workplace conditions, labor market conditions, and technologies. Nevertheless, despite the presence of confounding or modifying factors such as those mentioned in the Couch article, all of these studies attributed the observed reductions in MSD rates primarily to the ergonomic interventions described. Because such a large number of case studies yields such

consistent results, OSHA finds it unlikely that the kinds of factors identified by Couch, rather than ergonomic interventions, were primarily responsible for the reductions in MSD rates reported in this large group of studies.

Automobile Cable Manufacturer (OSHA Site Visit) (Ex. 26–1181)

Comment: OSHA's estimate of the reduction in the number of MSDs pre- and post-intervention are based on numbers of illness cases, lost workday cases, and lost work days in 1991 and 1993. However, the statistics for 1993 represent only the first 9 months of the year. Further, the establishment reported an increase in the total number of injuries, which must include some MSDs, from 46 in 1991 to 65 in the first 9 months of 1993. OSHA cannot base its effectiveness estimate solely on the reduction in illness cases reported (Ex. 32–241–4, p. 222).

OSHA's Response: The site visit report clearly states in a footnote to the "1993" column which of the data "covers [the] period from January to September 1993" (Ex. 26–1181, p. 10). If the statistics for 1993 are extrapolated to cover a full year, based on the experience of the first 9 months, declines in lost workday cases and illnesses are still apparent: lost workday cases decline from 48 (1991) to 36 (1993) (a 25-percent reduction); the number of lost workdays decline from 1,287 (1991) to 367 (1993); and the number of illnesses decline from 47 (1991) to 23 (1993) (a 51-percent reduction). Although the report clearly indicates that the number of total injuries increased from 1991 to 1993, the report also states that "[t]he facility believes that their ergonomics program has contributed to decreases in the following: number of overall illnesses, number and costs of worker's compensation claims, number of work days and lost workday cases, medical (*i.e.*, non-compensated disability) cost, and turnover" (Ex. 26–1181, p. 9). These claims are supported by the data presented in the report. No reason was given for the increase in the total number of injuries from 1991 to 1993, nor was there any evidence in the report to suggest that the rise in total number of injuries was attributed to an increase in the number of MSDs. It is apparent, however, from the report that the employer would have been likely to classify some MSDs as injuries rather than illnesses. Therefore, OSHA has revised its analysis for the final rule to reflect that lost workday cases declined by 25 percent, and is not relying on the illness statistics presented in the report for its effectiveness analysis.

Luopajarvi et al.Study of a Food Packing Establishment (Exs. 26–1042, 26–1090)

Comment: OSHA attributed to an ergonomics program the elimination of hand MSDs from a pre-intervention level of 51 MSDs in 1976. "The claim is false: the exhibit makes no reference to elimination of hand MSDs, and the underlying data tables confirm the existence of continuing injury reports. Moreover, ergonomic interventions were not even proposed at the plant until 1977, a year in which MSDs dropped to a level (20) more consistent with the lower rates existent prior to this year." (Ex. 32–241–4, p. 220).

OSHA's Response: Tables 3 and 4 of Ex. 26–1090 (p. 430) provide data on the numbers of hand MSDs from 1972 to 1984 in this food packaging facility. The incidence of hand MSDs increased steadily from 1972 to a high of 51 cases in 1976 and 20 in 1977; between 1979 and 1984, the table reported between 0 to 1 MSDs occurring annually, indicating that the problem had been virtually eliminated. OSHA has revised the entry for this case study in Appendix VI–2 to report the study's findings more precisely. With reference to the second part of Gibson, Dunn & Crutcher's comment, OSHA did not rely on the hand MSD statistics for its overall measure of program effectiveness, but on data presented in Table 5 of the article, which reported the number of MSDs of the neck and upper extremity in 1977 and 1981 and reflect an overall reduction in the number of MSD of 47 percent. Thus, OSHA is using 1977 as the baseline year, the year in which ergonomics interventions were being proposed.

Footwear Assembly Case Study (Ex. 26–1059)

Comment: OSHA attributes a 62-percent decline in MSDs over a 2-year period to an ergonomics training program. However, the article explains that ergonomic remedies were unsuccessful and the ergonomics training program "* * * was actually a 'behavioral management' program designed to improve worker attitudes and morale" (Ex. 32–241–4, p. 225). This case study is consistent with evidence that "reports of pain are rooted in psychosocial factors rather than workplace 'hazards,' [and that] the attitude adjustment strategy apparently achieved what ergonomics could not." [Ex. 32–224–4, pp. 225–226]

OSHA's Response: This article describes a training program implemented at a footwear manufacturing facility that had 700 workers, 84 percent of whom were involved in repetitive tasks. The company experienced a rise in serious and lost-time upper-extremity MSDs throughout the early 1980's. The article does not claim, as the comment contends, that "ergonomic remedies were unsuccessful." Instead, the article stated that several attempts were made to develop a "safety program" that was not further described (Ex. 26–1059, p. 52). If engineering solutions to address MSDs were implemented, they were not discussed in the article; instead, the article reported that "because of the expense of workstation redesign in this very old facility, almost all human-factors engineering measures were also deemed to be impractical" (Ex. 26–1059, p. 52). Therefore, no claim can be made as to the success of an ergonomic intervention based on engineering at this facility. The comment states that the program implemented was actually "'a behavioral management program' designed to improve worker attitudes and morale." Behavior management is defined in the article as "simply the management of people in the work place in such a way that they interact with the environment in the most safe and efficient manner" (Ex. 26–1059, pp. 51–52). The training "attempted to educate employees on the causes and effects of [cumulative trauma disorders] * * * and the state workers' compensation system." (Ex. 26–1059, p. 53) The final rule requires employers to provide similar information to all employees on the causes and characteristics of MSDs. The program at the facility also encouraged employee participation, another important component of the final rule. OSHA does not agree with the comment that the case study demonstrates that psychosocial factors are more important that biomechanical factors; OSHA's review of the scientific evidence on the role of psychosocial factors is presented in the Health Effects section (Section V of the preamble), where the Agency finds that, although psychosocial factors play a role in the etiology of work-related MSDs, they do not outweigh the significance of exposure to biomechanical factors in the workplace and are independent of biomechanical efferts.

Sewing and Cutting Operations Case Study (Ex. 26–1060)

Comment: This is an article written by an OSHA area office employee about an inspection of a sewing facility. "The article actually reports, however, that there was a steady decline in reported CTD rates beginning long before any ergonomic interventions: 26% in 1987, 18% in 1988, and 15% in 1989" [citing Ex. 26–1060, p. 1]. The article does not identify exactly when ergonomic controls were implemented, but it does state that rates continued to decline to 14.6% in 1990 and 6.8% in 1991, but increased to 11% in 1992. The article also noted that "there was an increase initially reported" after ergonomics controls were implemented, which could only refer to the jump from 6.8% to 11%. Since no statistics are given for years after 1992, these data would suggest, if anything, that ergonomic controls *reversed* a previous trend of declining injury reports at this plant, prompting a 62% *increase* from 6.8% to 11%." (emphasis in original) [Ex. 32–241–4, p. 223]

OSHA's Response: This article reports on an OSHA inspection conducted at a sewing facility in October of 1989. Since the inspection, at least through 1992, the company had been working under an abatement plan that required the facility to develop and implement a comprehensive ergonomics program "from the ground up" (Ex. 26–1060, p. 3). In 1992, the year in which the MSD rate increased over that of 1991, the report stated that there were "fewer incidents reported [overall]," which suggests that employment in the plant had fallen since 1991 (there had previously been about 100 workers at this plant). There were also no surgeries reported in 1992, compared to 13 reported between 1987 and 1989 (Ex. 26–1060, p. 2). The report concludes that the "lost workday injury rate has been effectively reduced," and noted that the number of employee complaints of MSD symptoms had fallen from 34 in 1991 to 14 in 1992 (Ex. 26–1060, p. 6). Therefore, OSHA does not agree with the analysis of this report by Gibson, Dunn & Crutcher, which suggests that the ergonomics program led to an increase in the rate of MSDs.

Poultry Processing Case Study (Ex. 26–1174)

Comment: "OSHA claims that 'ergonomic solutions' at a poultry plant decreased recordable injuries and illnesses * * * from 10–14/100 workers (1988–89) to 7/100 workers (1991). * * * [T]he only two notable dips in recordable injury rate—which includes *all* injuries and not just MSDs—occurred between 1987 and 1988, when the rate declined from 14.0 to 10.5, and between 1989 and 1990, when there was a further drop from 10.5 to 7.5. The first occurrence took place before ergonomics began, and the second occurrence took place before the majority of the program was rolled out." (Ex. 32–241–4, p. 224) OSHA's attribution of the reduction in MSDs to the ergonomics program, when the reduction occurred prior to program implementation, and its use of total injury rates as if they were MSDs are "blatant distortions of the truth." (Ex. 32–241–4, p. 224)

OSHA's Response: This case study is a site visit report of a poultry slaughtering and processing plant. The injury rate history of this plant was as follows: 14.0 in 1987, 10.5 in 1988, 10.5 in 1989, 7.5 in 1990, and 7.0 in 1991 (Ex. 26–1174, p. 17). The comment by Gibson, Dunn & Crutcher suggests that the reduction in injury rate that occurred in 1990 occurred prior to implemetation of most of the ergonomics program. However, the site visit report states clearly that $410,000 in capital cost was incurred for engineering controls in 1990, compared to $242,500 in 1991, indicating that most engineering improvements to address MSDs were made in 1990 (Ex. 26–1174, pp. 9–10). Therefore, OSHA does not agree that the 1990 injury rate reflects a time when most of the program had not yet been implemented. Further, the first drop in injury rate, which occurred in 1988, can be at least partly attributed to the large increase in employment in 1988 (from 950 workers in 1987 to 1,350 workers in 1988) (Ex. 26–1174, p. 17). Because of the change in employment in 1988, OSHA used the injury rates from both 1987 and 1988 as baseline years to calculate the percent reduction in injury rate pre- and post-implementation (*i.e.*, OSHA used an average baseline rate of 12 injuries per year). Additional evidence that the drop in injury rate in 1990–1991 can be attributed to the ergonomics program comes from other statistics provided by the facility that show drops in both worker absenteeism and turnover in 1990–1991 compared with earlier years; in contrast, there was no drop in absenteeism or turnover rates to accompany the drop in injury rate seen from 1987 to 1988 (Ex. 26–1174, p 17). Therefore, OSHA finds that the decline in injury rate seen in the 1990–1991 time period is most likely to have been the result of the ergonomic improvements made in 1990 and 1991 at this factility.

Packaging Sugar Cubes Case Study (Ex. 26–1041, Case 41)

Comment: OSHA attributes a 100-percent reduction of MSDs at a sugar cube packing operation, where the author of the study, Dr. Oxenburgh, stated that "the *risk* of serious strain injuries to the hands and upper limbs has been virtually eliminated" (citing Ex. 26–1041, p. 230, emphasis added). "The statement only reflects the subjective judgement of Dr. Oxenburgh about 'risk'; he provides no actual data concerning actual injury experience after the change." (Ex. 32–241–4, p. 225) Further, the numbers are too small for statistical analysis, and "Oxenburgh's unverified hunch about risk has no place in a statistical analysis." (Ex. 32–241–4, p. 225)

OSHA's Response: This case study describes a sugar cube packing operation in which 5 employees used a tool to pack cubes tightly into boxes. Because of the hand posture and pressure required to operate the tool, injuries to the hand and upper limbs occurred in about 1 out of 4 operators (*i.e.*, 25 percent of workers). After implementing an engineering and marketing solution that allowed the cubed sugar to be packed loosely into bags, productivity increased to the point where only 2 workers were required for the packing operation. The complete quote partially cited by Gibson, Dunn & Crutcher from the case study reads as follows: "The risk of serious strain injuries to the hands and upper limbs has virtually been eliminated and has led to considerable savings in sickness absence and workers compensation." Although no statistics are presented, this is significant because it demonstrates a clear benefit from the change to the process. Rather than representing an "unverifiable hunch," as Gibson, Dunn & Crutcher suggest, OSHA finds it logical to conclude from Dr. Oxenburgh's statement that no serious injuries occurred among the two remaining operators because the change eliminated the forceful repetitive motion (*i.e.*, pressing the sugar cubes together) responsible for the prior injuries.

Computer Manufacturer Case Study (Ex. 26–1068)

Comment: OSHA attributes a 41-percent reduction in upper-extremity disorders in 1994–1995 and a further 50-percent reduction in 1995–1996 to an ergonomics program. However, the program was implemented in 1991, after a year (1990) in which the company's upper-limb disorder rate was 0.5 per 100 workers. This rate increased to a high of 2.5 cases per 100 workers in 1994, after which they drop in 1995 and 1996. "Thus, the reported declines in 1995 and 1996 brought the company down to approximately a 0.7 rate—a 40-percent *increase* over the experience it had during the last year before ergonomic interventions were introduced." (Ex. 32–241–4, p. 226, emphasis in original)

OSHA's Response: Although this computer manufacturer did implement an ergonomics program in the early 1990s, according to the case study, the program began "with a reactive approach, addressing individuals." This isolated approach could be a reason why an immediate reduction in upper-limb disorders was not realized. In addition, "[p]art of the increase in the number of CDT cases per year [from 1990 through 1994] can be attributed to the company's rapid growth, which more than doubled during that period." The trend was not reversed until the company, beginning in 1993, "spent at least two days a week performing evaluations, held mandatory ergonomic training classes for high risk groups including technical publications, order[ed] administration and customer technical phone support, and created and distributed a 16-page ergonomics brochure." Additionally, with the growth in 1994 and 1995, the company purchased new furniture "allowing employees a greater range of postures and flexibility." It was this expanded and comprehensive approach that led to the 41 percent drop in reportable upper-limb disorders from 1994 to 1995 and the further decrease of 50 percent in reportable CDT cases from 1995 to 1996 (Ex. 1068, pp. 7–8). Therefore, OSHA finds that the decline experienced in MSD rates beginning in 1995 is consistent with the company's implementation of ergonomic improvements that consisted of appropriate education and training of its workers, as well as workstation modifications.

Medical Device Manufacturer Case Study (Ex. 26–1183)

Comment: OSHA apparently attributes a 29-percent reduction in MSD rates from 1990 (2.1 cases per 100 workers) to 1992 (1.5 cases per 100 workers) to an ergonomics program (Ex. 32–241–4, p.228, footnote 857). However, "the corporation did not begin to address ergonomic issues until 1991, did not formalize the program until 1993, and did not conduct training or implement the vast majority of its workplace modifications until 1992 or 1993. The result was a very substantial increase in 'ergonomics incidence rate' to 2.8 [per 100 workers] in the first three months of 1993 from * * * pre-intervention levels." (Ex. 32–241–4, p. 228)

OSHA's Response: This case study is a site visit report to a manufacturer that produced suction canisters used to collect blood during surgical procedures. The company began to address ergonomic issues in 1989 (a year in which their MSD rate was 5.2 cases per 100 workers), and first began to implement controls in 1991 (Ex. 26–1183, p. 2). OSHA used 1990, the first year prior to implementation of ergonomic controls, as the base year in its effectiveness analysis. The company continued to implement controls in 1992 and 1993. Since injury statistics were only available for the first 3 months of 1993, OSHA believed that a reliable injury rate could not be determined for that year. OSHA does not agree that the statistics available for the first quarter of 1993 show that the MSD rate was increasing because it reflected too short a period. Consequently, there are no data available in the report to permit an assessment of the effect of ergonomic interventions implemented in 1992 or 1993 at this facility. OSHA attributed the decline in MSD rates from 1990 to 1992 to the improvements made in 1991, based on the report's finding that "[t]he facility believes that their ergonomics program has contributed to a general decrease in the plant's annual incidence rate for ergonomic-related injuries and illnesses." OSHA believes that this is an appropriate interpretation of this study. (Ex. 26–1183, p. 10)

Vehicle Seat Assembly Case Study (Ex. 26–1076)

Comment: This case study reported that the number of tendinitis and carpal tunnel syndrome cases had dropped 93 and 96 percent, respectively, but OSHA ignored information that the broader category of "strains and sprains" increased over the same period.

OSHA's Response: This is a case study of an automobile seat manufacturer that began experiencing problems with MSDs shortly after beginning full production. The "slight" increase in sprains and strains reported by the case study occurred during a time when the numbers of tendinitis and carpal tunnel syndrome cases dropped dramatically. According to the manufacturing manager, the increase in strains and sprains "reflected the employees reporting the discomfort and pain [of MSDs] earlier." (Ex. 26–1076, p. 66) Because the increase in strain and sprain reports was described as "slight" by the manufacturing manager (Ex. 26–1076, p. 66), OSHA finds that the much larger decreases in the numbers of tendinitis and CTS cases fairly reflect the results achieved by the company's ergonomics program.

Aircraft Parts Manufacturer Case Study (Ex. 26–1179)

Comment: OSHA attributes a reduction of 96.2 percent in total MSD cases at an aircraft parts manufacturer "based solely on data referring to specific diagnosis of CTS, ignoring information * * * clearly stating that the total 'number of reportable ergonomic injuries and illnesses [not just CTS] has actually increased since the ergonomics program began.'" (Ex. 32–241–4, p. 232, citing Ex. 26–1179, p. 15, emphasis in original)

OSHA's Response: This case study is a report of a site visit conducted at an aircraft parts manufacturing facility. A formal ergonomics program was initiated in 1988, but did not have "solid commitment from upper management and * * * [was] not readily accepted by the workforce." (Ex. 26–1179, p. 1) In 1991, the facility implemented a redesigned program following an OSHA citation, "which [the program] proved to be very successful since it had the support of upper management and relied on hourly employees working together to identify and implement solutions to ergonomic problems." (Ex. 26–1179, p. 1) The facility reported that the *percentage of total recordable* injuries represented by ergonomics cases rose from 13.5 percent in 1991 to 20 percent in 1992 (*i.e.*, MSDs represented a larger proportion of all injuries and illnesses in 1992 than in 1991). This does not necessarily mean that the number or rate of MSDs increased during this period, as Gibson, Dunn & Crutcher claim. In fact, facility representatives stated that "the actual number of [MSD] cases is at least holding steady." (Ex. 26–1179, p. 15) However, because the site visit report makes clear that there were MSD cases that occurred in the facility in addition to the CTS cases used by OSHA to calculate program effectivness, and because the report provides no statistics or other details on the number or rate of these cases, OSHA is no longer relying on this case study in its effectiveness analysis for the final rule.

Office Furniture Manufacturing Case Study (Ex. 26–1102)

Comment: OSHA claimed a 67-percent reduction in MSD rate, apparently from a "passing reference to a claimed reduction in "incidence rate'* * * ("incidence of what is not specificed)" (Ex. 32–241–4, p. 232). However, the information presented in OSHA's Appendix VI–2 shows a reduction only from 21 per 100 workers in 1989 to 19 per 100 workers in 1991–1992, a change of only 9 percent "that is of dubious statistical significance" (Ex. 32–241–4, p. 232).

OSHA's Response: In OSHA's final analysis of the effectiveness of ergonomics programs, OSHA is basing its measure of effectiveness for this case study on the reported 9-percent decline in MSD rate. Regarding the comment on statistical significance, it was not OSHA's intent to limit its analysis of case studies only to those studies where the reported change in MSD rate could be shown to be statistically significant, primarily because most of the case studies lacked information to perform tests of statistical significance. OSHA believes it important to base its analysis on all of the experiences reported in the set of case studies, however large or small the result attributed to ergonomics interventions, and not to limit its analysis to the small group of case studies for which tests of significance could be performed.

Freight Truck Terminal Operations Case Study (Ex. 26–1177)

Comment: OSHA assumes a 46-percent decline based on a table that shows 13 MSDs occurred in 1989 and 7 in 1991, "but it overlooks further information in adjacent sections of the report indicating that there have been "no changes" in overall * * * [MSD] incidence" and that there has been no decrease in MSD-related disabilities (Ex. 32–241–4, p. 233)

OSHA's Response: This case study is a site visit report for a truck terminal operation. The site visit report was prepared in July, 1992 and contained a table that reported numbers of MSDs occurring in 1989 through 1991. OSHA's analysis of ergonomics intervention effectiveness was based on these numbers. Although the report stated that no decline in MSD-related disabilities had been seen, it also stated that the program had been recently implemented (in 1990) and "its effectiveness may not yet be apparent" (Ex. 26–1177). A follow-up telephone interview was conducted in January, 1994, at which time the employer indicated subjectively that there were no changes in MSD incidence. However, the employer also reported that the company "had no hard data to back that up," and that no information was available to track changes in workers' compensation claims related to the ergonomics program (Ex. 26–1177, pp. 5–7 & 5–8). Therefore, it is clear that the employer had not been evaluating the performance of their program after 1991, and therefore no conclusions can be reached regarding the effectiveness of the program after 1991, the last year in which OSHA was able to obtain data on MSD injuries. OSHA finds that the quotes cited by Gibson, Dunn & Crutcher are not convincing in establishing that the ergonomics program was ineffective in the 1989–1991 period.

Materials Handling, Electrical Utility (Ex. 26–1085)

Comment: OSHA attributes 100-percent effectiveness to an ergonomics program based on a "passing reference" in the case study to eliminating 9 injuries just by getting in and out of vehicles. The article explains elsewhere that the total program is in its 'infancy stage' and the overall asserted effect so far has been to reduce lost-time injuries from more than one per 100 employees to 0.42, only part of which is allegedly attributable to ergonomics." (Ex. 32–241–4, pp. 233–234)

OSHA's Response: This case study is a published article describing the ergonomics program at a major utility company. OSHA based its measure of intervention effectiveness on the results of two specific interventions discussed in the article. These are not "passing references" but are examples of the earliest interventions implemented by the company:

> "Downsizing water and ice kegs from 10 to five gallons and lowering their placement on trucks is one way we profited from ergonomic thinking right away * * * Since making the change, we've had no injuries associated with lifting water kegs' (Ex. 26–1085, p. 25).
>
> "[t]hrough the use of ergonomics, 'we have reduced sprain injuries in several of our operations areas.['] For example, he says, 'we went from nine injuries last year from just getting in and out of trucks and vehicles, to zero this year" (Ex. 26–1085, p. 25)

The article also makes clear that the ergonomics program is in its 'infancy stage' on the *corporate-wide* level, *i.e.*, that not all problems have been addressed at the time the article was published. For example, the article makes reference to workers who work at bill processing machines for extended periods of time and are at risk of developing carpal tunnel syndrome. Because the program had not yet been fully implemented, OSHA did not base its effectiveness measure on corporate-wide injury statistics (the company reported that total lost-time injuries declined from more than 1 per 100 workers to 0.42 per 100 workers) (Ex. 26–1085, p. 27), but instead based it on the proven effectiveness of the specific interventions discussed in the case study. After considering this comment and reviewing the case study, OSHA finds that this is still a reasonable approach and therefore has continued to include this study in its database.

Auto Air Conditioner Manufacturer Case Study (Ex. 26–1078)

Comment: "[OSHA] * * * recites two examples from self-interested company officials claiming '50%' and '100%' reductions in 'total MSDs', while ignoring a lengthy description in the same article of scientifically documented experience at a different company showing that 'job improvements' cannot be expected to translate to any reduction in 'the number of back injury claims filed'." (Ex. 32–241–4, p. 234, citing Ex. 26–1078, p. 30)

OSHA's Response: The "scientifically documented experience" referred to by Gibson, Dunn & Crutcher is a short article by Dr. Stanley Bigos, University of Washington Department of Orthopaedics, describing his results from the Boeing study and the role of psychosocial factors in low back disability. OSHA discusses both the Boeing study and psychosocial factors at length in the Health Effects section (Section V) of this preamble.

UPS Case Study (Ex. 26–1084)

Comment: Steven Thompson, who co-authored a UPS report, "does not believe that it would be legitimate to cite the article as evidence that ergonomic interventions pursuant to OSHA's proposal would have the effect that OSHA claims" because, among other things, the article did not attempt to link the observed reduction in reported MSD cases to any particular cause or to account for the Hawthorne effect (Ex. 32–241–4, p. 217).

OSHA's Response: This case study is a published report of the results of an ergonomics program that provided adjustable sit-stand workstations to UPS employees using computer stations to perform a variety of tasks. Benchmark data collected prior to introducing the sit-stand workstations included production levels, absenteeism, survey results on operator comfort, and injury and illness rates. The study reported that injury and illness rates declined by more than 50 percent in the year after introducing the new workstations, and that there were no costs associated with the remaining injuries. In addition, the study reported an average reduction of 62 percent in symptoms of discomfort. There was no change in production level or absenteeism, which the authors believed may be partly explained by poor weather at the beginning [winter] of the follow-up year. In an attachment to Gibson, Dunn & Crutcher's submission, Mr. Thompson of the UPS, one of the co-authors of the study, stated that the article in question "did not engage in the type of individual cause-and-effect analysis that would be necessary to link the observed reduction in reported MSD cases to the sit-stand workstation as opposed to other non-ergonomic factors." Mr. Thompson identifies several factors relating to the moving of the office location to a new building from an "old crowded building." "The new building had better lighting, ventilation, temperature control, windows, modular doors, and an overall open environment." According to Mr. Thompson's statement, the authors of the report "did not account for the Hawthorne effect in light of these factors" and other factors, some of which are often, in fact, considered engineering and administrative ergonomic changes.

In the original article, published as part of the *Proceedings of the Human Factors and Ergonomics Society 38th Annual Meeting,* the authors, Nerhood and Thompson, do discuss moving employees to a new building to provide a better working environment and providing adjustable sit-stand workstations for those employees "with the heaviest risk of discomfort" (Ex. 26–1084, p. 668). The authors also acknowledge the possibility of a Hawthorne effect being a "contributing factor to any *production* changes" (Ex. 26–1084, p. 671, emphasis added) because "the study cycle was too short to hypothesize long term results [on production]" (Ex. 26–1084, p. 668); however, nowhere in the article do the authors indicate that the Hawthorne effect was or could have been responsible for the observed drop in injury rate or operator discomfort. Despite the non-ergonomic changes in the work environment associated with the new building, the authors concluded that "[t]he commitment from all groups involved was the key to the successful implementation of the *ergonomics* program and installation of the new adjustable sit-stand workstations" (Ex. 26–1084, p. 671, emphasis added). Thus, in the original study, the authors attribute the reduction in operator discomfort and injury rate to the ergonomic intervention. Because of the strong conclusion made in the original study, OSHA finds it appropriate to retain this study in its data set.

In their post-hearing brief, Gibson, Dunn & Crutcher describe the testimony of several witnesses as examples of ergonomic interventions that failed (Ex. 500–197, pp. II–20 to II–23). The following summarizes these examples and OSHA's response to Gibson, Dunn & Crutcher's interpretation of the testimony.

Carl Zipfel, Seton Company

Comment: "Carl Zipfel, Director of Environmental Compliance and Safety for Seton Company, a supplier of automotive interior leather, testified about his company's efforts to help employees who were stretching leather hides over a table and began to complain about shoulder problems. Seton Company tried every measure that OSHA could expect. * * * After all of these efforts no improvements were observed." (Ex. 500–197, p. II–20)

OSHA's Response: In his testimony at the informal hearing, Mr. Zipfel provided the following information, which explains why no improvements were observed:

- Under questioning, Mr. Zipfel agreed that Seton had no ergonomics program that would either meet the definition of an existing program under the grandfather clause or that would meet the requirements for an ergonomics program in the standard as proposed (Tr. 3051–3052).
- Although Seton has investigated incidents of MSD symptoms, the company has no one trained to do a job hazard analysis (Tr. 3066).
- Mr. Zipfel stated that Liberty Mutual and Penn State analyzed jobs and prepared reports for Seton regarding the leather stretching problem, but he never discussed what remedies were recommended in those reports or whether Seton tried to implement any of the suggested remedies (Tr. 3059).

There is no evidence in Mr. Zipfel's testimony that indicates that Seton had implemented engineering or administrative controls to address the problem at the leather stretching station; thus, OSHA does not agree that Seton "tried every measure that OSHA could expect," and finds Mr. Zipfel's testimony unpersuasive evidence for the failure of ergonomics interventions.

Robert Willoughby, Boral Bricks

Comment: After implementing Boral's insurance company's suggestion of automating certain jobs in some of his facilities, the "injury rates are not significantly better than [at] the plants that [have] more manual [jobs]" (Ex. 500–197, pp. II–20 to II–21, citing Tr. 7776).

OSHA's Response: Mr. Willoughby stated that Boral's insurance company recommended the automation of two jobs: setting green, unfired brick on kiln cars and hand packaging the finished product (Tr. 7745–7746). It is clear from Mr. Willoughby's description that the automated equipment has contributed significantly to reduction in exposure to risk factors. For example, one automated piece of equipment that removes brick from the kiln required employees to stand on top of the cars and bend below knee level to lift bricks and place them into trays. Employees suggested and implemented an approach that prevented the need to bend below knee level but still required workers to lift bricks at waist height using an extended reach (Tr. 7787–7788). In this example, Mr. Willoughby commented without providing evidence, that "what we have accomplished [from eliminating the deep bend] is going to be offset by the fact of extending the arms" (Tr. 7788). On the other hand, Mr. Willoughby provided two examples of job fixes that he believed were worthwhile: one involved using pallets to package brick in smaller increments for easier handling, and the other used metal strapping bands and magnetic lifts to reduce the need for manual handling (Tr. 7790–7791). Regarding Boral's overall ergonomics program, Mr. Willoughby testified that he developed a written program a few years ago, but it has not been fully implemented; as part of their overall safety and health program, Boral currently provides information on MSDs, trains employees in recognizing potential hazards, and has safety and health committees at its facilities, some of which actively inspect the workplace and propose improvements (Tr. 7785–7786). Because of the continued exposure of employees to risk factors in jobs that had been automated, and Mr. Willoughby's testimony about the value of some of the interventions implemented by Boral, OSHA does not agree that the experience of Boral Bricks represents a failed ergonomics effort.

Mary Banks, Social Security Administration

Comment: Ms. Banks, a key operator who was diagnosed with DeQuervain's syndrome in 1998, testified that her symptoms have not improved at all and have gotten progressively worse in the year since she was provided with a new workstation. (Ex. 500–197, pp. II–21 citing Tr. 10664).

OSHA's Response: Ms. Banks described the new furniture as "too little, too late" for her (Tr. 10690). Her testimony indicated that her condition was quite severe:

> This impairment is devastating at times. I feel pain most of the time. It is difficult for me to pick up anything that weighs more than three pounds. It is hard to reach in back of me, to clap my hands even in church. It is difficult to open an envelope. I cannot pick up my grandbaby without fear of dropping him. (Tr. 10666–10667)

In addition, Ms. Banks was also diagnosed with tendinitis (Tr. 10667), and used only able to use her right hand to key at the time of the hearing (Tr. 10695). She concluded her testimony by stating that, if the ergonomics program had been in place, she would not have developed her condition (Tr. 10667). OSHA does not find that the lack of improvement in Ms. Banks serious upper-extremity disorder after she was issued a new workstation (details of which were not described during her testimony) constitutes adequate evidence that properly designed computer and VDT workstations are ineffective in reducing the risk of developing MSDs among healthy workers.

Dr. Charles Roadman for American Health Care Association

Comment: "Dr. Roadman testified, however, that 'everything that we have tried has not decreased the incidents of [carpal tunnel syndrome]'" (Ex. 500–197, p. II–21 citing Tr. 4448).

OSHA's Response: Dr. Roadman was not discussing programs that members of the American Health Care Association (AHCA) had instituted to handle carpal tunnel syndrome, but was referring to an Air Force program he had instituted years before when he had been Surgeon General of the Air Force (Tr. at 4448). Although he felt that the interventions he had seen tried with computer users did not seem qualitatively to reduce the incidence of CTS, he also stated that "that doesn't mean we should not keep trying to do that" (Tr. 4448). In general, Dr. Roadman has positive things to say about ergonomic programs. He discusses favorably programs that the AHCA created with the assistance of OSHA (Tr. 4355–6). He also stated that ergonomic programs "can be very positive if all the factors are in place and you have good cooperation * * * between labor and management and the assessment process. Yes, they can be very successful" (Tr. 4436).

From the examples above, OSHA is not convinced that the testimony cited by Gibson, Dunn & Crutcher demonstrate that ergonomic interventions are ineffective, as a general matter.

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Appendix VI-A. BLS Injury Categories Likely To Include Employer-Reported Musculoskeletal Disorders

BLS Code	Nature of Injury	Description
00	Traumatic injuries and disorders, unspecified	This major group classifies traumatic injuries and disorders when the only information available describes the incident as traumatic. For example, employee was hurt in car accident.
01	Traumatic injuries to bones, nerves, spinal cord	This major group classifies traumatic injuries to the bones, nerves, or spinal cord which include breaking and dislocating bones and cartilage and traumatic injury to the brain, spinal cord, and nerves.
011	Dislocations	subluxations; slipped, ruptured, or herniated disc; partial displacement; and fractured or broken cartilage
012	Fractures	closed fractures for which no open wound exists; open fractures for which there is an accompanying open wound; comminuted, compound, depressed, elevated, fissured, greenstick, impacted, linear, march, simple, and spiral fracture; and slipped epiphysis
013	Traumatic injuries to spinal cord	severed spinal cord, nonfatal severed spinal cord resulting from a gunshot wound, traumatic transient paralysis, anterior cord syndrome, lesion of spinal cord, and central cord syndrome
014	Traumatic injuries to nerves, except the spinal cord	This nature group classifies traumatic injuries to nerves other than the spinal cord. Cranial nerves, peripheral nerve of the shoulder or pelvic girdle, and nerves of the limb are possible locations for injuries in this nature group. Diseases or disorders of the nervous system that occur over time as a result of repetitive activity, such as carpal tunnel syndrome, are classified in major group 12. Includes division of nerve, lesion in continuity, traumatic neuroma.
018	Multiple traumatic injuries to bones, nerves, spinal cord	This nature group classifies multiple injuries and disorders of equal severity within Traumatic injuries to bones, nerves, spinal cord, major group 01.

Appendix VI-A. BLS Injury Categories Likely to Include Employer-Reported Musculoskeletal Disorders (continued)

BLS Code	Nature of Injury	Description
019	Traumatic injuries to bones, nerves, spinal cord, n.e.c.	
020	Traumatic injuries to muscles, tendons, ligaments, joints, etc., unspecified	Traumatic injuries that affect the muscles, tendons, ligaments or joints; exact nature of disorder not specified in employer's report.
021**	Sprains, strains, tears	This nature group classifies cases of sprains and strains of muscles, joints tendons, and ligaments. Diseases or disorders affecting the musculoskeletal system, including tendonitis and bursitis, which generally occur over time as a result of repetitive activity should be coded in Musculoskeletal system and connective tissue diseases and disorders, major group 17. Includes avulsion, hemarthrosis,, rupture, strain, sprain, or tear of joint capsule, ligament, muscle, or tendon. Excludes hernia (153), lacerations of tendons in open wounds(034), torn cartilage (011).
029	Injuries to muscles, tendons, ligaments, joints, etc., n.e.c.	This nature group classifies injuries to muscles, tendons, ligaments, etc. that are not classified elsewhere in this major group.
0972** 0973** 0978 0979	Back pain, hurt back Soreness, pain, hurt, except the back Multiple nonspecified injuries and disorders Nonspecified injuries and disorders, n.e.c.	Subcategories under nature group 097, Nonspecified injuries and disorders, which includes traumatic injuries and disorders where some description of the manifestation of the trauma is provided and generally where the part of body has been identified. Subcategory 0972 includes hurt back, backache, low back pain.
099	Other traumatic injuries and disorders, n.e.c.	
1240 1241** 1249	Disorders of the peripheral nervous system, unspecified Carpal tunnel syndrome Other disorders of the peripheral nervous system, n.e.c.	Subcategories under nature group 124, Disorders of the peripheral nervous system, which includes the nerves and ganglia located outside the brain and spinal cord. Subcategory 1249 includes Bell's palsy, tarsal tunnel syndrome, other mononeuritis of the extremities, nontraumatic lesion of the median, ulnar and radial nerves, muscular dystrophies.
1371	Raynaud's syndrome or phenomenon	Subcategory under nature group 137, Diseases of arteries, arterioles, capillaries.

Appendix VI-A. BLS Injury Categories Likely to Include Employer-Reported Musculoskeletal Disorders (continued)

BLS Code	Nature of Injury	Description
153**	Hernia	This nature group classifies hernias of the abdominal cavity. Includes: femoral (1539), esophageal (1539), hiatal (1532), inguinal (1531), paraesophageal (1539) scrotal (1531), umbilical (1539), and ventral (1533) hernias. Excludes: herniated disc (011), herniated brain (1231), and strangulations (091).
17**	Musculoskeletal system and connective tissue diseases and disorders.	This major group classifies diseases of the musculoskeletal system and connective tissue.
170	Musculoskeletal system and connective tissue diseases and disorders, unspecified	
171	Arthropathies and related disorders (arthritis)	This nature group classifies joint diseases and related disorders with or without association with infections. Includes: ankylosis of the joint, arthritis, arthropathy, and polyarthritis. Excludes: disorders of the spine (172), gouty arthropathy (1919), rheumatic fever with heart involvement(131).
172	Dorsopathies	This nature group classifies conditions affecting the back and spine. Includes: spondylitis and spondylosis of the spine (1729); intevertebral disc disorders, except dislocation (1723); sciatica (1721); lumbago (1722); and other nontraumatic backaches (1729). Excludes: dislocated disc (011), curvature of the spine (1741), fractured spine (012), herniated disc (011), ruptured disc (011), traumatic sprains and strains involving the back (021), and other traumatic injuries to muscles, tendons, ligaments, or joints of the back (02), and traumatic back pain or backache (0972).
173	Rheumatism, except the back	This nature group classifies disorders marked by inflammation, degeneration, or metabolic derangement of the connective tissue structure of the body, especially the joints and related structures of muscles, bursae, tendons and fibrous tissue. Generally, these codes should be used when the condition occurred over time as a result of repetitive activity. Includes: rotator cuff syndrome (1739), rupture of synovium (1739), and trigger finger (1739). Excludes: rheumatism affecting the back is included in code (172), traumatic injuries and disorders affecting the muscles,

Appendix VI-A. BLS Injury Categories Likely to Include Employer-Reported Musculoskeletal Disorders (continued)

BLS Code	Nature of Injury	Description
		tendons, ligaments and joints (02).
174	Osteopathies, chondropathies, acquired deformities	This group is comprised of diseases of bones, diseases of cartilage, and acquired musculoskeletal deformities. Includes: osteomyelitis, periostitis and other infections involving bone; and acquired curvature of the spine.
179	Musculoskeletal system and connective tissue diseases and disorders, n.e.c.	This nature group classifies musculoskeletal system and connective tissue diseases and disorders that are not classified elsewhere.
4120	Symptoms involving nervous and musculoskeletal systems, unspecified	Subcategories under nature group 412, Symptoms involving nervous and musculoskeletal systems, which includes symptoms specific to either the nervous or musculoskeletal systems. Subcategory 4129 includes abnormality of gait, lack of coordination, tetany, and meningismus.
4128	Multiple symptoms involving nervous and musculoskeletal systems	
4129	Symptoms involving nervous and musculoskeletal systems, n.e.c.	
414	Symptoms involving head and neck	This nature group classifies symptoms which are specific to either the head or neck. Includes: throat pain (4149), aphasia (4149), and epistaxis/nosebleed (4149).

** Categories included in OSHA's preliminary risk assessment.

Source: Occupational Injury and Illness Classification Manual, Bureau of Labor Statistics, December 1992 (Ex. 26-1272)

Appendix VI-A. BLS Injury Categories Likely To Include Employer-Reported Musculoskeletal Disorders

BLS Code	Nature of Injury	Description
00	Traumatic injuries and disorders, unspecified	This major group classifies traumatic injuries and disorders when the only information available describes the incident as traumatic. For example, employee was hurt in car accident.
01	Traumatic injuries to bones, nerves, spinal cord	This major group classifies traumatic injuries to the bones, nerves, or spinal cord which include breaking and dislocating bones and cartilage and traumatic injury to the brain, spinal cord, and nerves.
011	Dislocations	subluxations; slipped, ruptured, or herniated disc; partial displacement; and fractured or broken cartilage
012	Fractures	closed fractures for which no open wound exists; open fractures for which there is an accompanying open wound; comminuted, compound, depressed, elevated, fissured, greenstick, impacted, linear, march, simple, and spiral fracture; and slipped epiphysis
013	Traumatic injuries to spinal cord	severed spinal cord, nonfatal severed spinal cord resulting from a gunshot wound, traumatic transient paralysis, anterior cord syndrome, lesion of spinal cord, and central cord syndrome
014	Traumatic injuries to nerves, except the spinal cord	This nature group classifies traumatic injuries to nerves other than the spinal cord. Cranial nerves, peripheral nerve of the shoulder or pelvic girdle, and nerves of the limb are possible locations for injuries in this nature group. Diseases or disorders of the nervous system that occur over time as a result of repetitive activity, such as carpal tunnel syndrome, are classified in major group 12. Includes division of nerve, lesion in continuity, traumatic neuroma.
018	Multiple traumatic injuries to bones, nerves, spinal cord	This nature group classifies multiple injuries and disorders of equal severity within Traumatic injuries to bones, nerves, spinal cord, major group 01.

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
1	Food Packing	20	Implemented full program in 1976 on packing line, including job task analysis, employee involvement in identifying problems and solutions, worker training, and medical management. Job analysis resulted in 56 proposals for changes in equipment and work environment, half of which were implemented in six months.	Not Reported	In 1976, prior to implementing the program, there were 51 hand MSDs identified among 200 packing workers. Hand MSDs were eliminated by 1980. four years after program implementation. Other upper extremity illnesses declined by about 47% in this same time period.	Luopajarvi et al. (1982) (Ex. 26-1042); Luopajarvi et al. (Undated) (Ex. 26-1090)
308	Meat Industry	201	Fleshing machine was modified so workers no longer have to lift and rotate beef to remove the hide.	Lost days were reduced from 126 to 0, saving $9,765 in additional labor and $35,700 in medical and workers' compensation.	CTD incidence rates fell from 7 to 2 cases (71%) and worker comfort increased 30%.	(Ex. 500-114)
197	Meatpacking	2011	The company's ergonomics program addressed small and large problems. A recent big project involved a reconfiguration of the front half of the loin-boning line. This involved changing the direction of the loins coming down the line, from cross ways to length ways. This reduced reach to almost zero for those persons on that end of the line, which had several very ergonomically challenging jobs due to work loads at extended reach creating severe ulnar deviation problems. The company uses safety and ergonomics committees as well as a business improvement team that has been trained in ergonomics.	In 1996,the first year of their re-emphasized ergonomics program they reduced their lost work-day injuries by 81 (compared to 1995), and saved $70,000 in worker's compensation costs. Lost work day injury incidence rates have continued to decline from 1996 to 1998 (33.1 to 28.7).	Not Reported	OSHA case files (Ex: 502-22)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
198	Meatpacking	2011	This company has developed and implemented a comprehensive ergonomics program as one key ingredient of an overall safety and health program. Employee input is also an important aspect in the company's safety and health program. Ergonomics training was provided to managers, supervisors, lead people, trainers, and production workers. Ergonomic job analyses were completed resulting in the identification of 20 jobs having risk factors associated with upper extremity musculoskeletal disorders. Risk factors were measured and abatement actions were undertaken to reduce these risk factors.	In the first year of their cooperative effort, they reduced their days away from work by 71%, their lost work-day injuries by 19%. This record was achieved despite a 12% increase in hours worked	In the first year of their cooperative effort, they reduced their overall injuries by 40%, sprains and strains by 52%, lacerations by 30%, and cumulative disorders by 32%. This record was achieved despite a 12% increase in hours worked.	OSHA case files (Ex: 502-22)
185	Meat Processing	2011	The company set up an ergonomics committee including management, engineering and production personnel to manage the ergonomics program. An ergonomics checklist was developed for all workstations. The company identified jobs with multiple risk factors and eliminated the risks. The company found ninety-five percent of the work site improvements easy to do. A few, such as installation of an automated deboning machine, required a greater financial investment.	Not Reported	Ergonomic and safety improvements reduced the incidence of OSHA recordable injuries by 17% in one year (1991 to 1992). Medical costs declined 15%.	Putting it on the table," *The National Provisioner*,(October 1992). (Ex: 502-22)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
128	Meatpacking	2011	In 1984, the company developed its ergonomics program which includes: *Employee technique *Equipment and workstation design *Administrative controls, such as job rotation *Job analysis. They videotape each worker performing his/her job and then play the tape in slow motion to pinpoint risk factors. These tapes are also used to compile "physical demands assessments" (PDAs). The PDAs essentially quantify a job's requirements, i.e., how much lifting, stretching and reaching will be necessary to perform the tasks involved. PDSs are primarily used to determine whether an injured worker can return to work. *Training. The training, known as the Industrial Athlete Program, includes a two-hour seminar, videotapes and workbook. *Employee suggestions.	Not Reported	CTDs have decreased by 60%, even though the work force has increased by 27%.	James M. Burcke, "Tackling Cumulative Trauma Disorders," *Business Insurance,* (4/18/94). (Ex: 502-22)
5	Meat Preparation	2011	Introduction of engineering controls: redesigned workstation by sloping the work surface toward the meatcutter; introduced rotary cutter and single hooks.	Not Reported	80% reduction in musculoskeletal injuries in the first year.	Oxenburgh (1994) (Ex. 26-1041), Case 45

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
230	Meat Processing	2011	To reduce work-related musculoskeletal disorders in its meat process facility, this company introduced ergonomic hand tools and power tools and mechanized lifting equipment. The company also reviewed and modified production rates and staffing levels.	Not Reported	This company reduced work-related musculoskeletal disorder injury rates from 13.64 per 100 employees in 1989 to 4.37 per 100 employees in 1993.	Corporate settlement agreement report to OSHA (Ex: 502-22)
329	Meatpacking	2011	Implemented a comprehensive ergonomics program. Consist of Labor-management committee, ergonomic monitors, jobs are videotaped for study, workstations are improved where possible, administrative controls were not possible, training of workers' and supervisors.	Worker compensation costs declined by more than 50% between 1988 and 1993.	Diagnosed RSI cases have been reduced by 50%. RSI related surgeries have decreased by 40%.	(Ex: 32-339-1-1)
2	Meatpacker	2011	Training efforts included awareness training of corporate and plant managers and technical training of safety and medical personnel. Ergonomic task forces were established at individual plants to identify problem jobs and implement exposure controls. Controls included use of anti-fatigue mats and manual handling assists such as conveyors and trucks. Job rotation and cross-training of rotated workers were also employed.	Not Reported	Cumulative trauma injuries reduced from four in one month to none reported during a 6-month period.	McCasland (1992) (Ex. 26-1043)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
220	Meatpacking	2011	In compliance with their settlement agreement, this company established a comprehensive ergonomics program with elements that included: training, recordkeeping, job analyses, and medical management. NIOSH and OSHA made several site visits to assist with program implementation.	Not Reported	After establishing a comprehensive ergonomic program, ergonomic injuries declined by more than 85 percent. These declined as follows: 1988–364; 1990–189; 1993–89.	OSHA case file documentation (Ex: 502-22)
4	Meatpacker	2011	Implementation of an ergonomics program, including engineering controls, work hardening program, training, and medical management.	Not Reported	CTDs decreased from 47.8 per 100 workers (1987) to 17.2/100 workers (1990) and 17.7/100 workers (1991).	OSHA Site Visit Case Study No. 2 (26-1175)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
235	Turkey Processing	2015	Each employee is involved in applying ergonomic principles with those designated as Employee Ergonomic Specialists receiving training. Company is providing support for the program in the form of capital, time, human resources, and technical support. Job duties are ranked on an ongoing basis by the Specialists. Each year one high-stress task is targeted for modification in one or more of the following: reduction or elimination of the manual task through automation, obtain additional material handling equipment, modify the work station, and increase staff while other options are being implemented. It is the company's policy to use rotation on a limited basis and instead opt for reducing or eliminating the ergonomic hazard. Supervisors and managers have the authority to make immediate decisions for the removal or correction of ergonomic hazards.	From 1995 to 1997, this large processor cut their ergonomic-related lost-work-day injury rate by 50% and their total lost-work-day injury rate by more than 40%.	Not Reported	OSHA case files (Ex: 502-22)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
256	Poultry Processor	2015	Initiated a corporate-wide ergonomics program in 1990 consisting of a comprehensive set of core program elements, including management commitment; employee involvement on joint labor-management ergonomics committees; training of employees and supervisors; evaluation of problem jobs by the ergonomics committee followed by implementation of control measures (some "quick fix"); identification of problem jobs using OSHA recordable MSDs and responding to employee reports of symptoms associated with musculoskeletal disorders; seeking worker input on the nature of problems with their jobs and possible interventions; medical management for employees with musculoskeletal disorders; and an annual evaluation of the entire ergonomics program.	Five years after initiation of the program, the incidence of workers' compensation claims for upper extremity MSDs fell by 46% and severity of the claims (cost of claim per 200,000 work hours) fell by 20%.	All repeated trauma cases, recordable on OSHA 200 logs, dropped from 5.55 in 1991 to 3.77 per 100 employees while the incidence of repeated trauma cases with days away from work fell from 0.73 per 100 workers in 1991 to 0.51 in 1994.	Appendix C "Summaries of Studies on Effective Ergonomics Programs and Interventions" (Jones 1997). (Ex:32-339-1)
291	Poultry	2015	Instituted a corporate ergonomics program which utilizes ergonomic committees. Key elements included training, work site analysis and task design, and a medical management process.	Not Reported	46% decrease in upper extremity MSD rates over a five-year period.	Testimony of Bradley Evanoff, MD, MPH. (Ex. 37-1)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
372	Poultry Slaughtering Employees	2015	Established a comprehensive ergonomics program which consisted of; awareness and training, medical management and early intervention, employee involvement, identification of high risk jobs, engineering and administrative controls, and job conditioning.	In three years from the time the ergonomics program was initiated, workers compensation costs were reduced by two-thirds. Total lost workdays were practically eliminated.	In three years from the time the ergonomics program was initiated, workplace injuries due to cumulative trauma disorders were reduced by two thirds.	(Ex. 502-404)
310	Poultry Processing Plant.	2015	A back-injury reduction program was initiated. This is an ongoing continuous improvement effort in ergonomics.	Not Reported	An 80% reduction in back injuries was achieved over a 4-year period.	(Ex. 500-114)
6	Poultry Processing	2015	Implementation of an ergonomics program, including redesign of processing lines, use of rubber-matted stools and platforms of varying heights to eliminate awkward reaches, worker training, and job reassignment for injured workers.	Not Reported	Decline in upper- extremity and neck/shoulder injuries from about 32 per month to 0.	Farr (1991) (Ex. 26-1044)
135	Poultry Processing	2015	In 1989, the company established a comprehensive ergonomics program at their mill. That program was later strengthened and its major program elements were: ergonomics training and education; medical management, including an emphasis on early reporting; employee involvement and identification of high risk jobs, hazard analyses of them, and implementation of engineering and/or administrative controls for them.	Within three years of initiating their comprehensive ergonomics program, not only were ergonomic related injuries down, but the productivity of their employees was up, the quality of their products had improved, their employee turnover rate had been cut in half, and their comprehensive health care costs had decreased 280%.	Not Reported	*Broiler Industry*, (February, 1992). (Ex: 502-22)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
202	Poultry Slaughtering	2015	In 1990 the company established a comprehensive ergonomics program at one of their plants. The major elements of their program were: *Ergonomic awareness training/education *Medical management/early intervention *Employee involvement/Ergonomic Committee & Task Forces *Identifying high risk jobs *Implementing engineering and/or administrative controls *Job conditioning	In three years from the time the ergonomics program was initiated, workers' compensation costs and workplace injuries due to cumulative trauma disorders were reduced by two thirds. Lost workdays were practically eliminated.	Not Reported	Correspondence, Perdue Director of Safety,(Nov. 17, 1994). (Ex: 502-22)
8	Poultry Processing	2015	Introduction of engineering controls: tool/handle redesign; work practice controls; administrative controls.	Not Reported	Recordable injuries and illnesses decreased from 10-14/100 workers (1988-89) to 7/100 workers (1991).	OSHA Site Visit Case Study No. 1 (Ex. 26-1174)
7	Poultry Processing	2015	Introduction of workstation analysis and redesign, including altering heights of products, providing workstands, and installing tank tilters to reduce manual handling. Program also included worker training and development of an integrated medical management/surveillance-analysis system.	Not Reported	Carpal tunnel incidence rates decreased from 7.8 per 200,000 hours to between 2.4 and 3.7 per 200,000 hours. Back injury rates declined from 4.4 per 200,000 hours to 3.0 per 200,000 hours.	Stuart-Buttle (1994) (Ex. 26-1045)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
193	Poultry Slaughterhouse	2015	A program following OSHA's red-meatpacking guidelines was initiated in 1992. An ergonomic committee was established in each department and meets monthly. Line supervisors were trained as trainers and trained their employees. A comprehensive medical management program with regular exams and modified work programs based on them was introduced.	Workers' compensation costs went from $.40 per work hour before 1992 to $.07 per hour now.	Carpal tunnel injuries, which averaged between 20 to 30 a year prior to 1992, have averaged less than 2 a year since then.	Douglas Rapp, Complex Safety Director, Tyson Foods of Monett, Phone Conversation:(7/13/99), (417) 235-9351. (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
191	Poultry Slaughtering	2015	The company brought in a professional ergonomics consultant to give them guidance on setting up a comprehensive program and to do a job-by-job ergonomic safety analysis of the facility. The consultant returns annually for a day-long program review. The training program is for new employees and is repeated once a year for all employees. It is a general overview that stresses the importance of early reporting. They established a medical management program and rely on two ergonomically-trained EMTs. They use job rotations at the first sign of symptoms. Job rotation is used routinely for some high stressor jobs such as deboning but due to employee resistance it is not widely used. They have a plant ergonomic committee to do ongoing job analysis.	Their ergonomic-related lost workday rate has gone from 86.9 in 1993 to 1.0 in 1998.	Their total recordable injury and illness rate has decreased 75% between 1993 and 1998. Their ergonomic-related incidence rate has fallen over 80%.	Spencer Cheak, Director of Human Resources and Safety, Marshall Durbin Food Corp., Hattiesburg, MS, phone conversation, (7/23/99), (205) 956-3505. (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
9	Ice Cream Manufacture, Various Jobs	2024	Performed job hazard analysis, implemented several controls including use of non-skid elevating platforms for shorter workers; modified workspace layout to permit workers to move without being hindered; replaced sharp edges of equipment with sloping angles or padding; replace hygienic thin-filmed gloves with warm, flexible gloves; modified way employees performed lifting and carrying tasks.	In 1985, before implementing the program, there were 4 compensation claims and absenteeism equaled 10 % of shifts worked. In 1987, there were no compensation claims and absenteeism was reduced to 4% of shifts worked.	Not Reported	Elie (OH&S Canada, Vol. 4, No. 7) (Ex. 26-1100)
10	Cattle Feed Processing Operation	2048	Provided a forklift and a bobcat to eliminate manual lifting and relocated the feed mixer in order to install chutes and augers to permit mechanical loading of feed. Installed bulk storage containers so that additives could be gravity-fed to the mixer. Constructed a platform under the auger equal in height to the truck platform, which allowed feed bags to be filled without manual lifting. Program also included providing lifting and handling training to workers.	Not Reported	The company eliminated manual handling injuries.	Teleki (1995) (Ex. 26-1046)
11	Bakery	205	Engineering controls: workstation redesign, tool modifications; improved work practices; formation of labor-management CTD committee.	Absenteeism related to carpal tunnel syndrome decreased from 731 lost work days (1987) to 8 lost work days (Jan.-Aug., 1991).	Carpal tunnel cases decreased from 34 (1987) to 13 (1990).	Robinson (1993) (Ex. 26-1102) (Ex. 38-65) (Ex. 32-339-1-1)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
162	Bakery	2051	They decided to use a homespun approach to implement a preventive ergonomics program. They brought in a hand surgeon to evaluate their procedures. They formed a joint labor management cumulative trauma disorder committee. Their assembly lines and the way the employees worked were changed. Conveyor belts were moved close to workers; pallets were also moved closer. Tables were raised and lowered; stools were added for employees who used to stoop; mats and foot rests were added. Preventive medical screening for early carpal tunnel syndrome was initiated.	Lost workdays almost eliminated. The company estimated they saved $750,000 annually on workers' compensation costs.	In three years after initiating the ergonomics program, carpal tunnel cases have been cut by 60%.	*Wall St. Journal,* (10/07/92) (Ex: 502-22)
12	Packaging Sugar Cubes	206	Cubes were packed tightly using a hand tool that required worker to exert considerable pressure on a sharp corner edge. Company changed marketing strategy that permitted cubes to be packed loosely, avoiding use of excessive hand force.	Considerable reduction in sickness absence and workers' compensation claims.	Serious strain injuries to hands were "virtually" eliminated.	Oxenburgh (1994) (Ex. 26-1041), Case 41
376	Chocolate Manufacturer	2064	The company determined that it needed to purchase eight diffefent styles of scissors to eliminate employee pain.	Reduced workers' compensation costs by 90%.	Reduced its incidence rate of accidents by 55%.	(Ex. 502-404)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
240	Soft Drink Bottling	2086	For the last two years this small soft drink bottler has participated in OSHA's Consultation Program. This has given the company a background in occupational injury prevention through training. They began two years ago to track their occupational injuries by both type and department to help them identify their workplace risks.	Since 1996, they have reduced the number of lost work-days associated with them by 60%.	As a result of implementing some parts of an ergonomics program, since 1996 they have cut their rate of ergonomics related injuries by 40%.	OSHA case file (Ex: 502-22)
190	Catfish Processing	2092	To reduce MSD injuries, this company purchased ergonomic tools/knives, mechanical conveyors and lifts and automated stressor processes. The company also began rotating and enlarging jobs.	The work-related musculoskeletal disorder lost workday injury incident rate was reduced from 136.9 in 1990 to 4.3 in 1994.		Delta Pride corporate settlement agreement report to OSHA. (Ex: 502-22)
144	Snack Chip Manufacturing	2096	The company implemented a comprehensive ergonomics approach which included the elements of a good program.	From 1996 to 1997 the ergonomics program implemented by this employer reduced the lost work-days associated with back injuries by two thirds, and the rate of upper extremity musculoskeletal disorders and the number of lost work-days associated with them by more than 50%. In 1998 these rates are continuing to decline.	This resulted in a dramatic reduction in musculoskeletal injuries and illnesses.	OSHA case files (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
148	Tortilla Production	2099	Ergonomists from their insurer and from OSHA helped the company set up an ergonomics program and evaluate their workplace. Engineering changes were made. Foot rests were used. Table heights were altered. Stools were provided. Employees were rotated to different work stations. Light duty tasks were made available to get injured workers back to work. Communication between management and employees was improved. An ergonomic training program was provided and a medical management program established.	Within two years the company's total losses plunged over 200 percent. Their loss ratio went from 217% to 9.2%.	Not Reported	Idaho State Insurance Fund Newsletter (Ex: 502-22)
221	Textile Manufacturing	22	The company replaced wooden chairs with adjustable padded swivel chairs. The company also adopted a medical program focused on prevention, early intervention, treatment and rehabilitation of MSDs.	Not Reported	The ergonomics program led to a drop in the MSD incidence rate from 12% in 1984 to less than 1%. Workplace changes also resulted in significant reductions in tendinitis.	Diverse Work Force Posing New Challenges in Designing Ergonomic Workplaces, Group Told," *Occupational Safety & Health Reporter* - Special Report, (November 7, 1990). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
330	Textiles	22	Hired an ergonomics professional and a physician practice. Ongoing training, workplace surveys and employee interviews to identify problem jobs, all complaints investigated, problem jobs are targeted for ergonomic improvement and redesign.	The lost workday injury rate was reduced from 14.6 in 1990 to 11 in 1992 (25% reduction).	Employee complaints concerning hand pain decreased from 34 in 1991 to 14 in 1992 (59% reduction).	(Ex: 32-339-1-1)
140	Textile Manufacturing	22	The company formed joint management-labor safety and health committees that identified and eliminated safety and health hazards. The joint committees developed solutions such as springs for the material-handling boxes so yarn remained at a comfortable level, eliminating the need for workers to bend down and lift up material. Workers designed and management implemented a new improved bagging system. The company also purchased adjustable chairs.	Not Reported	There were 121 work-related musculoskeletal disorders and 19 back injuries in 1993. After three years of the ergonomics program, there were only 21 work-related musculoskeletal disorders and one back injury.	Workshop on corporate-wide settlement agreements, (March 24, 1999), Washington, D.C. (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
222	Knitwear Manufacturing	225	The company launched its ergonomics program in 1991 by focusing on educating all employees on ergonomics risks. In some plants, The company installed new equipment, such as vacuum waste-removal attachments and fully adjustable chairs. The company spent $2 million to automate one assembly process by developing an automated chain-stitch machine. Less costly changes included repositioning label holders by 15 degrees to match an operator's hand movements.	The company's ergonomic changes have resulted in a 40% reduction of injury claims costs since 1991.	Not Reported	John W. DeWitt, "Ergonomics: Bigger is Better," Apparel Industry Magazine, (5/1/1995). (Ex: 502-22)
142	Weaving of Carpet Backing	2273	The company used OSHA's draft ergonomics program guide as the basis to improve the ergonomics program they had established in 1994. They have a yearly ergonomic training program and strongly emphasize early reporting. Ergonomic job analyses are triggered by workplace incidents and pro-active reviews.	Not Reported	They have achieved more than a 50% decrease in ergonomic-related injuries and illnesses.	James Pair, plant manager, Amoco Fabrics and Fibers Phone call: (912) 375-6520; (7/14/99) (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
336	Manufacturing	23	They use a quick-response team charged with performing: • correct work station adjustments, • follow up to assure actions are effective, • obtain medical care to treat objective or subjective symptoms, • make improvements in current tools and equipment, • instruct in proper work techniques for affected individuals.	For the time period of 1998 to 1999, the total number of illness cases increased by 15% while the number of lost-time-days dropped by 47%, and the number of restricted days dropped by 23%.	Not Reported	(Ex. 32-198-4-28)
43	T-Shirt Mfg.	23	Analysis by professional ergonomists and safety and health engineers identified that strain injuries (mostly cumulative trauma disorders of the hand, wrist, arm and back) accounted for 68% of the claim injuries and 88% of the claim dollars. They identified their three primary issues as: ergonomics, injury management, and safety training. They trained their supervisors and employees to observe people as they were working and to observe their posture. They showed their employees how to adjust the height of their chairs, the height of their work tables, and the height of their sewing machine motors. They trained them on the importance of maintaining proper ergonomic body postures.	The company achieved an 85% reduction in workers' compensation costs seven months after establishing a comprehensive safety and health program that stressed ergonomics.	Not Reported	*Occupational Safety and Health*, (October, 1995) (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
141	Manufacturing Baby Products	23	The company's ergonomics program includes a committee that tries to assess the "operator-friendliness" of each process in assembly, and then implements the most ergonomic way of doing each task. The committee also trains operators to perform lifts and other risky operations. Workstations are continuously evaluated, and new types of adjustable, tilt-forward chairs have been purchased.	Not Reported	From 1993-1995, injury rates dropped from 11% to 7%, along with significant improvements in productivity and quality.	John W. DeWitt, "Ergonomics: Bigger is Better," *Apparel Industry Magazine,* 5/1/95 (Ex: 502-22)
347	Athletic Apparel Manufacturer	23	Implemented measures such as a 75% reduction in piecework compensation to reduce potential for MSDs through over-use, cross-training to reduce repetitive motions, ergonomic chairs to fit the workstation, and a contractual agreement with health care provider.	In the last 6 months, production has slowed considerably as a direct result of cross-training and almost eliminating piece-rate practice. Went from 54 pieces per day to 45 (17% reduction). Had to hire more staff to meet demand, resulting in increased costs.	Not Reported	(Ex. 30-1861)
388	Sewing Machine Operators	23	Incorporated adjustable table and chairs, increased size of work tables and lowered sewing machines.	Increased sick leave.	Did not see any reduction in MSD's.	Westgaurd et. al. (1986) (Ex: 38-68)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
164	Apparel Mfg.	23	The company hired outside consultants and developed an in-house database to isolate problems and devise specific solutions, including new equipment. The company also implemented formal ergonomics committees, typically comprised of the plant engineer and five to ten associates. Committee membership rotates periodically to get more staff involved.	In 1995, the company's lost time days dropped by 53%, and workers' compensation costs dropped 55%.	Not Reported	John W. DeWitt, "Ergonomics: Bigger is Better," *Apparel Industry Magazine,* (5/1/95). (Ex: 502-22)
174	Apparel Mfg.	23	The company used OSHA 200 logs, workers' compensation data and videotapes of jobs to analyze ergonomic problems. Once the issues were identified, the company used an ergonomics design team, consisting of an ergonomics specialist, a standards analyst/engineer, an occupational health nurse and a member of the maintenance department to create solutions. The team redesigned several aspects of the company's workstations, concentrating on excess force, angle problems, repetitions, and awkward unsupported postures.	The company reduced lost-time incidents due to MSDs by 79%.	Not Reported	Rooney, E.F. & Morency, R.R., A Practical Evaluation Method for Quantifying Ergonomic Changes at L.L. Bean, Advances in Industrial Ergonomics and Safety, IV, S. Kumar, Taylor and Francis, (1992). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
231	Clothing Manufacturer	23	This company created a task force to identify and address the ergonomics problems. As a result, the company invested in new equipment including padded and adjustable chairs. The safety team was authorized to purchase new chairs for each person on the production line. The company engineers developed air-driven tools to eliminate forceful exertions. The company installed mechanical feeds at some workstations to reduce the amount of force required to push material through the machine. The company trained its staff in ergonomics and encouraged employees to report injuries. The task force established job rotations that allowed employees to vary their work throughout the day.	In 1993, workers' compensation costs declined to $2.7 million, a 33% reduction.	Not Reported	Taking Control of Your Workers' Comp Costs," *Fortune,* (October 1994). (Ex: 502-22)
264	Window Manufacturer	2431	The company's program consisted of job-site assessments to identify hazards, training, modifying work areas or tasks to reduce repetitive body motions using ergonomic aids such as wrist supports, and early intervention by reacting aggressively to the first symptoms of repetitive strain injuries or carpal tunnel syndrome.	The employer received a $250,000 rebate on their workers' compensation premium, and saved as much as 75% in medical costs by intervening early using physical therapy rather than surgery.	The company was having an average of 22 carpal tunnel syndrome surgery cases every year. Following implementation of the program, carpal tunnel syndrome surgeries averaged one case per year.	Appendix C "Summaries of Studies on Effective Ergonomics Programs and Interventions" (Strakal, 1994). (Ex:32-339-1)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
192	Bath Vanity Furniture Maker	2511	The company adopted ergonomic changes to decrease injuries. These included dropping the conveyor belt so workers had easier access to the tops of cabinets, installing conveyors to minimize manual lifting, purchasing angled tables to reduce bending and reaching and rotating jobs every two to four hours. The company also included training videos and safety training in its ergonomics program.	Ergonomic changes resulted in a decrease of almost 40% in workers' compensation costs, with workers' compensation costs declining from $103,824 to $61,000.	In 1996, there were only four recordable injuries.	Ergonomics: Effective Workplace and Best Practices Conference, Chicago (1997), NIOSH Proceedings (Ex: 502-22)
15	Mattress Manufacturer, Warehousing	2515	Added conveyor, increased fork truck use, reduced stacking heights, and revised handling procedures. Production process changed to eliminate material handling and loading onto truck.	Not Reported	Decreased injuries from 9 to 1 in one year.	Marcotte (undated) (Ex. 26-1048)
13	Mattress Manufacturer, Material Handling	2515	Introduction of hand trucks and lift systems to aid in manual handling. Job hazard analysis involving the employees in identification of problem areas and solutions to problems. Job hazard analysis of all job functions to resolve ergonomic problems. Modified workstations, tools, and manufacturing procedures.	53.5% reduction in workers' compensation reports in one year (1991).Lost time reduced 1/4 to 1/3 in 3 years.	Not Reported	Bedtimes (1992) (Ex. 26-1047)
17	Office Furniture Manufacturing, Various Jobs	252	Installed scissor lifts to aid in packaging file cabinets of different sizes. Small-assembly workstations were altered to eliminate twisting and bending during lifting.	Not Reported	Back injuries have been cut by 50 percent.	LaBar (1991) (Ex. 26-1078)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
16	Office Furniture Manufacturing, Various Jobs	252	Introduction of a plant ergonomics program employing engineering controls, work practice controls, administrative controls, medical management, and education and training.	Restricted workdays decreased from 301/100 employees to 221/100 employees.	Decreased rate of MSDs from 21/100 employees (1989) to 19/100 employees (1991-1992).	Robinson (1993) (Ex. 26-1102)
182	Office Furniture Manufacturing	2522	The focus of this company's ergonomics program has been on fixing jobs so work does not have to result in pain. They target avoiding stretching and reaching stresses by arranging assembly areas so parts are readily accessible. Their medical management program includes having a mini-hospital at the company for immediate medical attention.	The company's Grand Rapids plant has achieved a very low lost-time injury rate of 0.8 per 100 workers because of their focused ergonomics program.	Not Reported	Safety and Health, (November, 1990). (Ex: 502-22)
168	Pulp and Paper Manufacturing	26	This employer chose to focus their ergonomics program on training and the physical aspects of their workplace and work processes.	Three years after being invited to join the Maine 200 Pilot program this mid-sized pulp and paper mill's ergonomics program had cut their lost work-day injury incidence rate by over 50%.	Not Reported	OSHA case files (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
18	Pulp and Paper Mill Workers	2621	Conducted training sessions covering CTD issues and hazardous postures at the workplace. Job analysis included interviews of employees. Program included strengthening exercises and fitness initiatives. The following engineering controls were implemented: • reduced the number of wires per bale to reduce weight, • use of padded bolt cutter handles, • provided better lifting devices.	Not Reported	In a six-month follow-up to the interventions, the CTD rate had been diminished to zero and there were no wrist and elbow problems.	"Avenor's fitness a warm-up to ergonomics." CTD News (1996) (Ex. 26-1050)
356	Paper Mill	2621	In 1990, the company established a comprehensive ergonomics program. In particular, they installed mechanical handling and lift equipment; added ergonomic tools, chairs and inspection stations; automated and redesigned production process; and instituted job-sharing and mandatory breaks.	Not Reported	Within three years of starting their ergonomics program, their musculoskeletal disorder injury incidence rate was cut almost in half, going from 9.12 in 1990 to 5.15 in 1993.	(Ex. 502-404)
312	Manufacturing	2670	Most successful elements of their program: * Management participation in identifying and prioritizing issues, * Procedures were developed to identify hazards and make an assessment, * Team of managers, employees, technicians, etc.. who understand MSDs, * Appropriate medical information and treatment made available.	From 1993 thru 1997, they experienced a 70% reduction in ergonomic - related lost time OSHA recordables.	They realized that approximately 50% of all their OSHA recordables were WMSDs. From 1993 thru 1997, they experienced a 50% reduction in ergonomic-related OSHA recordable's.	(Ex. 30-3185)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
133	Personal Hygiene Products	2676	The company implemented a medical management program using a medical management team. The team handled worker training and education, hazard prevention and control and worksite analysis.	Early reporting led to an initial increase of 5% in MSD cases at one plant from 1992-1994. However, early identification, treatment, and control for problem jobs reduced workers' compensation costs by 35%. Average costs per case also fell to $1,400 from $8,000.	Not Reported	"Employers Report Reduced Cost Due to Workers' Compensation Initiatives," *Employee Benefit Plan Review*, (March 1998). (Ex: 502-22)
20	Printing, Glue Machine Operators	27	Installed partial mechanical aid for off loading of cartons.	Not Reported	No injuries reported in 2 yrs since changes.	Shinnick (1985) (Ex. 26-1049)
367	Newspaper	2711	Implemented an ergonomics program that included work site and work process evaluations, workplace redesign and renovation, training, on-site medical management, ergonomic equipment, a computerized tracking system and an in-house telephone hot line.	Over a four-year period (1992-1996), the company's efforts resulted in an 84% drop in the number of MSD workers' compensation cases, a 75% drop in lost-time cases and a 91% decrease in total days lost.	Not Reported	(Ex. 502-404)
120	Newspaper Publishing	2711	Company purchased adjustable workstations for their staff. They trained their employees on how to prevent injuries, encouraged early reporting of injuries and discomfort, and required keyboarders to take mini breaks. They also formed a labor-management task force to recommend changes in workstation design. They appointed a VDT safety coordinator to address concerns they may have about repetitive motion injuries and write an ergonomics column for their monthly in-house newsletter.	Of the 24 carpal tunnel cases in the year before program implementation, 12 involved lost workdays, and workers' compensation costs exceeded $250,000. Three years later there were no lost workdays, and workers' compensation costs were only $6,000.	The year before they started their office ergonomics program, they recorded 24 carpal tunnel cases – five required surgery. Three years later they had 13 cases, none involving surgery.	*Business and Health*, (May 1995). (Ex: 502-22)

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				Lost Workday MSDs	Total MSDs	
326	Newspaper Industry (Three-establishments)	2711	Program developed over 3 phases. Phase 1, the detection phase consisted of determining the prevalence and extent of work related MSDs. Phase 2, the intervention phase consisted of implementation and evaluation of participatory ergonomics program. Phase 3 the information dissemination phase involved the development of training materials.	Not Reported	The incidence rate of cases on the OSHA 200-log associated with MSDs of the upper extremity, neck, and low back decreased approximately 40% in the first two years of implementation.	Testimony of Rosecrance (Ex: 37-26)
232	Book Assembly	2732	The company installed 33 automatic, air-operated pallet positioners with rotating tops, activated by a simple charge.	Not Reported	After installation of the pallet positions, recorded back injuries dropped from 37 to 12.	Tom Feare, "Better Ergonomics: It's the Law," Modern Materials Handling, (6/1/94). (Ex: 502-22)
233	Commercial Printing and Lithography	2752	The company decided to implement a comprehensive ergonomics program. They started with ergonomics training focusing on how musculoskeletal injuries occur in the workplace, how to identify the risk factors, how to recognize the early signs and symptoms, workplace biochemechanics and the importance of early reporting. They formed employee management teams in their high risk areas and charged them with identifying ergonomic stressors and potential controls.	Four years after this commercial printer had initiated a comprehensive ergonomics program, their lost workdays were reduced by 60 percent and their associated workers' compensation costs by 10 percent.	Not Reported	Correspondence with OSHA. (October 16, 1998). (Ex: 502-22)

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				Lost Workday MSDs	Total MSDs	
21	Book Binding Operator	278	Introduced industrial load leveler (a spring loaded table) for loading/unloading pockets, binders, stitchers, and off-line mailers.	Lost workdays fell from 413 to 112.	Not Reported	Ferris (1992) (Ex: 26-1051)
132	Petroleum, Chemicals, and Pharmaceuticals	28	The company decided to strengthen their comprehensive ergonomics program and begin compiling separate injury and illness statistics for their ergonomics-related cases. Their program uses ergonomics teams to encourage employee participation. They focus on incremental workplace improvements as well as major process changes. Early reporting of symptoms or pain is an important part of their medical management program. Employee involvement on teams analyzing ergonomically stressful jobs is utilized.	Since 1993 when they began tracking injury and illness statistics for ergonomics-related injuries separately, their ergonomics program has produced significant declines in both ergonomics-related injuries and lost work time.	Not Reported	Safety and Health, (February, 1996). (Ex: 502-22)
252	Chemical Manufacturing	28	Targeted several divisions with the highest rates and conducted ergonomic evaluations for jobs in those divisions. In the acetate fiber division, several solutions were developed to reduce forceful exertions and repetitive motions. Those solutions were successful and enabled the ergonomic program to expand to other areas.	Over 5-year period, reduced the number of MSD-related workers' compensation cases by 58%.	Over 5-year period, reduced the number of OSHA recordable MSD's by 82%.	CTD News, Volume 7, No. 1, 1998. (Ex: 502-22)

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				Lost Workday MSDs	Total MSDs	
22	Organic Chemical Manufacture, Manual Handling	283	Analysis of injury data, observation of material handling tasks. Installed materials handling equipment, automated container-packaging and inspection equipment. Reduced weight of bags and drums. Worker training program.	Severe back injuries resulting in lost workdays were eliminated (1979-1989).	62% reduction in the incidence of total overexertion back injuries.	Ridyard (1990) (Ex. 26-1052)
368	Pharmaceutical/medical Plastics Manufacturing	283	Installed an overhead crane system with two bridges and an air-powered balancing hoist suspended from each bridge. The crane now lifts the rolls of web film.	Not Reported	No workers have experienced back injuries on this operation in the two years since the crane has been in use. Lifting injuries still occur, but the numbers are down dramatically and none are attributable to loading rolls of film into the packaging machinery. Productivity has increased and morale has improved.	(Ex. 502-404)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
155	Pharmaceutical Manufacturer	283	In 1993,the company worked with its office furniture vendors to develop a two-week training program to educate 1,000 of its office workers about the safest way to do their jobs. Approximately 30 employees received 8 additional hours of training to become ergonomics coordinators. In addition, nonadjustable steel seats with steel back rests were replaced with cushioned, adjustable chairs, and a conveyor belt was redesigned to automatically feed bags into a heat sealer.	By 1995, two cases of repetitive motion illness resulted in only 34 lost workdays.	Cases of back disorders had dropped by 87%.	Meg Fletcher, "At Baxter, Furniture Helped Sell Workers on Ergonomics," *Business Insurance*, (4/22/96, p. 141); Sarah Wortham, "Let Your Workers Lead the Way," *Safety and Health*, (7/98, p.66); Sally Turner, "Ergonomics Teams: Help Workers Help Themselves," *Safety and Health*, (2/96, p. 54). (Ex: 502-22)
153	Pharmaceutical Preparation	2834	Using information from employee surveys and computer analyses, the company redesigned the work process to reduce lifting from floor level by 80%. The company installed power straddle lifts and power-flex conveyor systems. It replaced metal filter press plates weighing over 60 pounds with plastic frames that weigh15 pounds.	With the change in work processes, by 1994, lost time accidents had decreased from 66 to 4 and workers' compensation losses decreased ten-fold.	Total recordable injuries decreased from 156 to 60.	Company's correspondence to OSHA (November 10, 1994). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
219	Pharmaceutical Preparations	2834	Created the Ergonomics Task Force in the fall of 1994, consisting of nine members--an ergonomist, engineers, and specialists in logistics and occupational nursing. The Task Force's goal was to establish trained ergonomics teams in each of the firm's 132 U.S. facilities; to conduct training courses for a core group of designers, project engineers and principal engineers; and to address the ergonomic needs of workers using VDTs, plant maintenance workers and employees in the custodial and kitchen staffs. On site, teams analyze jobs, identify hazards, suggest corrective actions, and define ergonomic characteristics of individual jobs to appropriately place workers with medical restrictions. Teams are provided with basic skills for evaluating and setting hazard priorities, and making job site assignments.	Not Reported	Divisions have eliminated cumulative trauma disorders or reduced them by as much as 75%. Savings in the six digits due to productivity improvements, labor savings, and reductions in workers' compensation costs are also commonly reported outcomes.	Ergonomics News, (October, 1995). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
23	Paint Manufacturing	2851	Top management actively supported safety and health programs and communicated this commitment to all employees. The company considered ergonomics issues when it investigated accidents and redesigned work processes to eliminate hazards. Safety and health programs became an integral part of the engineering and manufacturing departments. The company relied on medical management to identify ailments before they became serious and to pinpoint job tasks with ergonomic risks.	From 1990 to 1993 Akzo Coatings lost work time rate decreased approximately 63%; its workers' compensation costs declined by 50%.	OSHA recordable injury/illness dropped by 40%.	(Ex. 502-22) (Ex. 26-1054)
25	Oil Refinery, Handling Hoses and Valves, Manual Handling	2911	Added platforms that make valve access easier, added extensions to valve stems to eliminate bending to turn valves, installed hoists over work tables to eliminate lifting and bending, purchased adjustable height carts, upgraded lighting, and conducted back injury training.	Not Reported	Injury rates dropped by 90%.	Bone (1993) (Ex. 26-1055)
272	Rubber and Plastics Part Manufacturer	30	Ergonomics training and intervention program introduced. Added material handling equipment, workstation modifications to eliminate postural stresses.	Total lost time at two plants reduced from 4.9 and 9.7/200,000 hours to 0.9 and 2.6 over a four year period.	Not Reported	"Summary of Studies on the Effectiveness of Ergonomic Interventions" (June 1995). (Ex. 38-65)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
352	Hardware Manufacturing	30	The company decided to completely eliminate manual lifting at its worksite. Each worker was provided a lift-table/transporter to lift and move materials.	The company was paying $88,400 in back injury claims. Injury costs have declined to $8,700, about 10 percent of the previous cost. The lifts increased productivity, because they enabled employees to work more quickly and efficiently.	Injuries have been reduced by 90%.	(Ex. 502-404)
362	Tire Manufacturer	3011	Developed an ergonomics program which includes the following elements: a written program, collection and evaluation of illness and injury data; job hazard analyses; engineering and work practice controls; new equipment review; employee training; and medical monitoring.	After implementing an ergonomics program in 1997, this mid-sized manufacturer saw their total lost-time injury rate fall by 40% in 1998. Their lost-time back injury rate and upper-extremity musculoskeletal disorders declined by 66% in the same period, and the work days lost associated with each by 80%.	Not Reported	(Ex. 502-404)
26	Rubber Hose Manufacturing	3052	A new hand tool was designed (an air gun) that is counterbalanced to reduce the amount of weight supported. This tool also has better handles.	No lost time incidents from repetitive trauma since the new tool was introduced.	Not Reported	Oxenburgh (1994) (Ex. 26-1041), Case 7

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
147	Plastic Parts Manufacturing	308	In order to address the shoulder, arm and wrist injuries that were occurring due to hammering on molds containing plastic parts, MA purchased new molds that have made part removal easier. They also instituted a rotation policy for those departments with high levels of repetitive motion stresses.	In 1997, by adopting some straightforward ergonomic controls this mid-sized manufacturer reduced their work related lost time injury rate by 40%, compared to 1996 levels. The number of associated lost work-days was also cut from 259 to 61. As of October 1998, the department with the worst ergonomics related injury experience in the previous year had yet to record a single incident.	Not Reported	OSHA case files (Ex: 502-22)
263	Foam Products Manufacturer	3086	In response to the cumulative trauma injuries, the employer instituted an ergonomics program that included management commitment, medical management, training creation of an ergonomics committee, identification of hazards, job analysis, and implementation of control measures.	Lost workday cases fell from 35 to 1; and cumulative trauma cases decreased from 34 to 6 from 1990 to 1993.	During the four-year period following the initiation of the ergonomics program, covering 1990 to 1993, all recordable injuries dropped from 128 to 18.	Appendix C "Summaries of Studies on Effective Ergonomics Programs and Interventions" (Whaley). (Ex:32-339-1)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
27	Shoe/luggage Manufacturing; Various Jobs	31	Instituted a comprehensive ergonomics program as part of a total quality management initiative. Program included elements of worker participation, medical management, job analysis and control of exposures to risk factors, and employee education and training. Exposure controls included installation of adjustable workstations; new jig fixtures to hold work pieces at proper angles; partial automation of processes; and use of anti-skid surfaces on tools, fixtures, and handles.	Reduced lost time upper extremity and back disorders by 79%.	Not Reported	Rooney and Morency (1992) (Ex. 26-1056)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
29	Shoe Manufacturer, Various Jobs	314	Several programs implemented that included exercise and conditioning, stretching, and ergonomics awareness training. Conducted special training on ergonomics for industrial engineers and maintenance workers. Continuous flow manufacturing, including group working, cross training, and job rotation, was instituted. Engineering controls implemented included: • Purchase of new adjustable chairs; • Use of anti-fatigue mats for all employees whose jobs involved prolonged standing; • The cast iron base on heavy equipment was cut off and refitted with an adjustable base; • Electric or pneumatic foot pedals were used instead of non-adjustable mechanical ones; • Prepackaged shoe laces were purchased to eliminate hand-tying repetition; and • Sewing machines were tilted toward the worker to eliminate awkward posture.	Not Reported	Repetitive motion injuries in two problem areas were reduced from 70 percent to between 25 and 30 percent of the total OSHA recordable incidents in three years.	"Red Wing Shoes' early warning system." CTD News (1995) (Ex. 26-1057)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
30	Shoe Manufacture, Pneumatic Press Operator	314	Workstation design improvements included use of adjustable chairs and footrests, providing armrests, changing angle of the presses, providing parts bins to reduce extreme wrist flexion, and redesigning shoe ornaments so prongs were angled for easier insertion and pressing.	Not Reported	No injuries reported for 2 years since changes were implemented.	Wick (1987) (Ex. 26-1058)
31	Footwear Assembly and Fabrication	3149	Extensive ergonomic training program.	Lost-time injuries dropped 67% in 2 years.	Total number of CTDs dropped by 62% in 2 years.	Holland (1991) (Ex. 26-1059)
323	Luggage Manufacturer	3161	Ergonomics program consisted of: management leadership, employee participation, medical management, training, job-hazard analysis, problem-solving and intervention, cost-benefit analysis, solutions, specific interventions, and program/process evaluation.	A 73% reduction in combined total of lost and restricted work days due jo MSDs from 1994 thru 1996. Went from a rate of 5.5 per 100 workers to 1.5 per 100 workers	In four years there was a 87% reduction in incident rates of MSDs reported on the OSHA 200 log from 40 in 1993 to 5 in 1997.	Testimony of Rosecrance (Ex. 37-26)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
127	Luggage Manufacturer	3161	The company has a total of 2,500 operations. The company prioritized problem jobs based upon lost time and the citation associated with the fine. Samsonite identified 450 jobs to fix. The company began analyzing jobs and working with its medical staff to treat workers earlier and get injured workers back to work more quickly. Many controls proved to be inexpensive fixtures costing less than $45.	Not Reported	When OSHA cited the company, its injury rate for work-related musculoskeletal disorders was about 40 injuries per 100 workers. By 1997, the rate had dropped to 6.5 injuries per 100 workers.	Presentation at the Ergonomics Symposium: Effective Workplace and Best Practices Conference, Chicago (1997), NIOSH proceedings. (Ex: 502-22)
32	Sewing and Cutting Operations	3199	Introduction of ergonomics program, including medical program to detect and treat CTDs early. Workplace modifications included use of adjustable workstations, footrests, and anti-fatigue mats; installing larger handles on hot irons to improve grip; installing proximity switches on presses; adjusting glue stations to prevent awkward upper-extremity postures; and automating some processes.	Not Reported	CTD incidence fell from 14.6% in 1990 to 11% in 1992	Nickasch (1994) (Ex. 26-1060)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
33	Encapsulating Automotive Glass Windows	3229	Ergonomics program and control measures, including installation of adjustable workstations, job rotation, and anti-fatigue matting; medical management program and an employee training program.	Incidence of lost-work-day injuries declined from 8.6% to 0.2% in 2 years. Rate of lost workdays declined from 1,615/100 workers (1990) to 0.9/100 workers (1992).	Not Reported	OSHA Site Visit Case Study No. 12 (Ex. 26-1182)
34	Packager	3231	Workplace improvements included: Reduced all material handling to less than 50 pounds; Purchased different sizes of gloves, cuffs, and sleeves to reduce additional stress and energy expenditure; Designed a device that allows employees to roll the glass onto the line instead of lifting it; Raised the racks to knuckle height to avoid bending while lifting the windshields; and Altered the racks to allow workers to step into them and load them from back to front in order to eliminate stressful forward reaches.	Not Reported	Injury incidence rate dropped from 14 per 100 workers in 1987 to 3.3 in 1996. Reduced severity and frequency of injuries.	"PPG learned to overcome ergo innocence." CTD News (1996) (Ex. 26-1061)
35	Ceramic Tile Manufacturing, Various Jobs	3253	Implementation of an ergonomics program including engineering controls (workstation redesign), job rotation, changes in work practices, and an ergonomic training program for employees.	Lost-time injury rate for repetitive motion injuries decreased from 1.6 in 1988/1989 to 0 in 1993.	Not Reported	Stuart-Buttle (1994) (Ex. 26-1045)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
241	Ceramic Fixture Manufacturing	326	This company has implemented the following controls: The work heights of some processes have been redesigned to reduce stresses associated with vertical lifts. Mechanical lift assists have been added to the casting department and training on safe lifting techniques has been provided by their workers' compensation insurance carrier.	This small manufacturer has reduced the number of lost/restricted work-days associated with ergonomics related injuries in their workplace by 60% for 1997/1998 (combined).	Not Reported	OSHA case files (Ex: 502-22)
36	Fiber-cement Board Manufacture, Manual Handling	3272	Installed on-loader at front of conveyor to permit workers to load boards at their own pace. Automate process for separating boards and transferring them to the on-loader. Automate stacking of final product.	Eliminated lost-time MSDs in 2 years after improvements were made.	Not Reported	Oxenburgh (1994) (Ex. 26-1041), Case 11
37	Metal Castings, Unpacking Operation	33	Frequent, excessive reach was required to unpack 15- to 18-pound castings from crates. Crates were modified by adding drop gates at each end of the crates and installing a scissors lift to lift crates. In addition, changes were made in the way the castings were stacked in the crates to permit the workers' arms to remain close to the body while unpacking.	Not Reported	Eliminated back injuries associated with this operation.	Oxenburgh (1994) (Ex. 26-1041), Case 34
38	Palletizing Operation	33	Scissors lift tables with turntable tops were installed alongside each packing station.	Not Reported	Five out of six back injuries were eliminated.	Benson (1987) (Ex. 26-1062)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
306	Metal Manufacturer	33	Started by implementing a short-term ergonomics plan. Implemented a adjustable lift-table and mechanical handling equipment as well as improvements to a punch press.	Over a 2-year period, they had 2 serious back injuries with direct costs of $30,000. New equipment cost $5,000, and since installed there here been no injuries.	Not Reported	(Ex. 500-114)
112	Gray and Ductile Iron Foundry	3321	In 1997, the company performed a survey to identify problem areas. They instituted an ergonomic awareness program and conducted safe back training. The company also purchased anti-vibration gloves.	The severity rate of injuries, as reflected in the associated lost work-day experience, was also dramatically reduced.	From 1996 to 1998 this employer cut their overall work related injury and illness incidence rate by 60% and their ergonomic related injuries even more.	OSHA case files (Ex: 502-22)
348	Aluminum Smelter	3341	Reduced the exposure time for carbonsetters by half for a number of risk factors such as handling heavy loads, pinching, and awkward postures of the wrist, forearm and shoulder. There was a 1/3 reduction in the duration that workers were exposed to awkward trunk postures.	Not Reported	They achieved a 50% reduction in prevalence of shoulder, elbow, and back disorders for carbonsetters. Hand and wrist disorders were reduced by 1/3.	(Ex. 500-41-3)
39	Aluminum Manufacturer, Materials Handling	3350	Establishment of an ergonomics program, including introduction of lift tables, cranes, and mechanical assists in overhead lifting, rearrangement of work to allow use of cranes in lifting.	Not Reported	Reduced overexertion injuries of the back by 40 to 60%.	Mandelker (1993) (Ex. 26-1063)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
261	Cable Manufacturer	3357	Ergonomics interventions were initiated in 1975.	A statistically significant decrease in average musculoskeletal sick leave, expressed as a percentage of total production time, dropped from 5.3% in the period of 1967 to 1974 to 3.1% in the years from 1975 to 1982. A statistically significant reduction in labor turnover also occurred in the period 1967 to 1974 compared to 1975 to 1982, attributable to the impact that ergonomic interventions had on improved health and job satisfaction among employees.	Not Reported	Appendix C "Summaries of Studies on Effective Ergonomics Programs and Interventions" (Westgaard. 1985). (Ex:32-339-1)
40	De-burring and Finishing Cast Metal Parts	34	Parts were held still by hand during finishing operations. Work bench was replaced by a potter's wheel to hold the part and rotate it as necessary. Finishing tools were redesigned.	Not Reported	Upper-extremity disorders were eliminated.	Oxenburgh (1994) (Ex. 26-1041), Case 43
41	Welding	34	Manual welding of a 5-meter weld required welder to work in a prolonged static posture. This process was replaced by a semi-automatic powder welding process, permitting welder to work from a standing position.	Not Reported	All knee, neck, and shoulder injuries from this operation have been eliminated.	Oxenburgh (1994) (Ex. 26-1041), Case 33

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
42	Materials Handling, Hardware Manufacture	3411	Use of adjustable lift tables/ transporters completely eliminated manual lifting from the job.	Not Reported	Back injuries reduced by 90%.	"Put ergonomics to practical use." Material Handling Engineering (1988) (Ex. 26-1064)
205	Manufacturing-steel Fabrication	344	The company's approach included conditioning for employees returning to work following an injury, job sharing, and transitional job assignments. With the help of elected team leaders, everyone leaving and returning to work after injury or illness receives support and encouragement. Job modifications included ergonomic redesign to accommodate individuals with limitations.	Workers' compensation costs dropped from $200,000 in 1985 to just $9,000 in 1990. During the same five-year period, sick-day usage fell by half.	Not Reported	*Automation*, Volume 36, Number 4 (Ex: 502-22)
43	Packager	3452	Packaging area was redesigned; raised the level at which boxes are lifted, installed semi-automatic sealing machines and adjustable chairs, and eliminated loading of pallets; training introduced.	Nearly a five-fold decrease in musculoskeletal injuries based on days lost (equivalent to 5% of the department's total wage costs).	Not Reported	Oxenburgh (1994) (Ex. 26-1041), Case 10
44	Manufacturing Automotive Cables	3496	Introduction of ergonomics program utilizing engineering controls, work practice training, and medical management.	Lost workday cases decreased from 48 (1991) to 27 (1993). Number of lost workdays decreased from 1,287 days (1991) to 275 days (1993).	Decreased illnesses from 47 (1991) to 17 (1993)	OSHA Site Visit Case Study No. 11 (Ex. 26-1181)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
45	Steel Furniture Manufacturing, Various Jobs	3499	Employee involvement in identifying hazards and developing interventions. Engineering approaches included the following: • An enclosed shotblaster machine to automate polishing of the steel. • An automatic washing system. • Lighting placement and brightness improved to reduce the awkward posture required to inspect and brush the products. • Many of the jigs were improved to be adjustable.	Lost days from carpal tunnel syndrome, back strain and other CTDs dropped to zero in 1996, down from 176 lost workdays in 1991.	Not Reported	"Charleston Forge welds homemade approach." CTD News (1996) (Ex. 26-1065) Appendix C "Summaries of Studies on Effective Ergonomics Programs and Interventions" Ex:32-339-1 Success with Ergonomics (Ex. 26-1065)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
151	Equipment Manufacturing	35	The company decided it was time to hire an experienced health and safety manager who set up a comprehensive program emphasizing ergonomics. Ergonomic hazard assessments were performed of high risk departments. As a result many changes were made. Workers were provided larger knives and more adjustable work stations. Hourly job rotation was initiated. A medical management program was implemented to assure proper job fit for employees as well as to emphasize appropriate medical treatment and prompt return to work.	Workers' compensation insurance costs, which had exceeded $100,000 in 1993, fell to below $4,000 in 1997. In 1997, the company's lost-work day injury incidence rate fell to zero.	Not Reported	Business Insurance, June 22, 1998 (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
152	Machinery Equipment Manufacturer	35	The company introduced a major back injury prevention training program for employees and implemented many improvements suggested during the training. Minor changes to equipment and work stations reduced physical stress for employees and resulted in improved morale. Adjusting the heights of work tables, chairs and fixtures eliminated excessive employee bending and twisting. Workers developed new tool designs and introduced material handling equipment to reduce other lifting and repetitive motion hazards.	Not Reported	In 1990 the back injuries decreased by 27 percent.	*Welding Journal*, (September 1992). (Ex: 502-22)
171	Turbine Generator Manufacturer	3511	Both of these facilities chose to implement their ergonomics programs as part of comprehensive safety and health programs. Their programs stressed worker involvement. They added power lifting equipment and changed workstation designs to reduce strains to the arms that their employees were experiencing.	By implementing comprehensive safety and health programs strongly emphasizing ergonomic concerns, both of these facilities cut their rate of lost time injuries by more than 70% between 1992 and 1996.	Not Reported	OSHA case files (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
47	Farm Equipment Manufacture, Assembly and Materials Handling	3523	Initiated an eight-hour engineer ergonomics training program. Appointed ergonomics coordinators in all U.S. and Canadian factories, foundries and distribution centers chosen from the industrial engineering and safety departments. Conducted training through attending professional courses and conferences, memberships in professional organizations, subscriptions to ergonomics publications and tracking the latest ergonomics research. Conducted ergonomic review of new office furniture purchases. Conducted VDT ergonomics awareness training for video display operators. Engineering controls included: • Limiting manual lifting to 40 pounds or less; • Redesigning the assembling operations so that assemblers worked in an upright position; • Altering hand tools for better fit; and • Installing hoists and lift tables.	83 percent reduction of back injuries that resulted in lost time.	Not Reported	"An ergo process that runs like a Deere." CTD News (1995) (Ex. 26-1101)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
48	Welding, Vehicle Manufacture	3531	Ergonomic training program implemented, seat height adjustments installed, and work station height adjusted.	Not Reported	Back injury rate went down by 27%.	"Caterpilar, Inc." Welding Journal (1992) (Ex. 26-1066)
49	Chain Saw Assembly	3546	Introduction of new tools and modified production methods, and employee training.	Total sick leave rate dropped from 17 to 13.7 days annually, labor turnover dropped from 35 to 10%, assembly errors reduced by 3 to 6%, total production costs reduced by 10%, and productivity not impacted.	Not Reported	Parenmark et al. (1993) (Ex. 26-1067)
245	Electronics	357	This company determined that much of its injury experience was related to repetitive motion stressors and decided to implement a comprehensive ergonomics program. Their program relied heavily on employee involvement in both analyzing their workstations as well as recommending improvements.	The ergonomics program established by This company in early 1990, not only significantly improved their related injury experience but reduced their workers' compensation costs from $2.6 million in 1991 to $224,000 in 1996.	Not Reported	Business Journal, (September, 1997). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
124	Computers and Computer Chips	357	A cross-functional team was assembled to benchmark other ergonomic programs both within and outside the semiconductor manufacturing industry. A cross-site team was then assembled to develop a program guideline to provide minimum requirements for the company's site specific ergonomic programs across the country. At each Intel site, local ergonomists have developed written programs that meet these requirements but are tailored to fit their site needs. Implementation is accomplished through the involvement of site safety and ergonomics teams. Standardized training packages have been developed for both office and manufacturing environments and are taught corporate-wide. Internal ergonomic design guidelines have been developed to provide guidance for engineering, facilities and design personnel when designing, installing or evaluating workstations, tools and equipment.	Days away from work for lost workday cases have decreased 72%. Proliferation of the safety culture, which includes the ergonomics program, has resulted in the avoidance of about 20,000 days away from work due to injury during the past four years, and more than $10 million in cost avoidance.	OSHA recordable sprain/strain and cumulative trauma disorder (CTD) rates have decreased an average of 37% for each of the last four years, and are now among the best in the semiconductor industry.	Employee Benefit News, (9/1/99). (Ex: 502-22)
370	Electronic Card Assembly	357	Added new-employee training on lifting postures and changed work practices to require two workers to move a box over 25 pounds. Now every box must have two handles. IBM also redesigned workstations to reduce awkward hand and back movements.	Not Reported	MSDs declined from 32 a year to 17 in 1995. With an average cost of thousands of dollars per MSD case, eliminating 15 per year represents a significant cost saving for IBM.	(Ex. 502-404)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
52	Computer Mainframe Assembly	3571	Training had been provided in proper lifting techniques, general safety and use of special tools. Extensive office workstation ergonomics training was provided. Engineering controls included: • Providing new workbenches to accommodate workers' shorter reaches; • Adding roller-ball conveyor belts and lifting devices to raise the units onto the conveyor belt; • Replacing pneumatic drivers with lighter electric units which had much less vibration and weighed about one pound; • Installing lift platforms that would raise the cabinets 3 feet off the floor; • Providing seated and standing workstations so one employee could build the entire cabinet instead of working on an assembly line in order to reduce the static fatigue; and • Modifying scissor lifts to rise up to 4 feet off the floor.	There are no lost days due to CTDs in the office workplace.	CTD related injuries were eliminated in production.	"AT&T uses cost-conscious program to fight CTDs." CTD News (1995) (Ex. 26-1069)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
50	Computer Manufacturer	3571	The company engaged in several training and education initiatives, including: • Mandated ergonomics training classes for high risk groups; • Created and distributed a 16-page ergonomics brochure; and • Created an "ERGO Hotline" to schedule ergonomics evaluations, report problems, and seek information. Exposure control approaches included: • Limiting manual lifting to 40 pounds or less; educating the employees via a brief program on the basic ergonomics fundamentals; • Purchasing new office sit-stand workstations; • Adjusting the workstation surface height to accommodate each worker; and • Attaching a wider, adjustable keyboard and mouse platform to the standard desk.	Not Reported	• 41 percent drop in reportable upper limb disorders from 1994 to 1995 which addressed about 70 percent of the company's upper-limb reportable injuries. • Further 50 percent decrease in reportable CTD cases from 1995 to 1996. • Reportable cases of CTDs decreased to 25 through November of 1996 compared to 70 cases in 1994.	"Silicon Graphics melds high- and low-tech." CTD News (1997) (Ex. 26-1068)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
123	Computer Manufacturing	3575	An ergonomics program for both the 800 desks and computer-bound office staff and 200 main frame assemblies was introduced. Employees were trained in proper lifting techniques, and special tools like nut drivers were introduced. Pneumatic drivers were replaced by lighter electric units that vibrated less. An awkward conveyor system was replaced by individual scissors-lift platforms. Lifting manipulators were purchased. Office ergonomics training was instituted and ergonomic adjustable office workstations employed. Early reporting to allow improved medical management was encouraged.	Workers' compensation costs, which had been $400,000 in 1990, fell to $8,600 in 1994.	Not Reported	*CTD News* (Ex: 502-22)
53	Copying Machine Control System Assembly	3579	Assembly of the systems was performed on a workbench and required frequent lifting and turning of the part. The bench was replaced by an adjustable stand designed to take the weight of the part being assembled.	Not Reported	MSD rate declined by 50% in the first year. In the second year, the MSD rate declined to one-third.	Oxenburgh (1994) (Ex. 26-1041), Case 37

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
234	Air-conditioning Equipment Manufacturing	3585	The company decided to implement a focused loss-prevention program with a strong emphasis on workplace ergonomics. They analyzed their records to determine where there important risks were. They trained extensively on their new company safety policies and management, safe work practices, accident and injury reporting and unsafe conditions. Since they found that one of the most frequent and expensive shop floor injuries were those caused by highly repetitive motion, they performed a thorough inspection of every aspect of production including each workstation. This revealed that inadequately designed equipment could cause a multitude of cumulative stress injuries. Extensive workstation redesign followed. They also hired a full-time ergonomics professional and provided training on ergonomics to their employees and management.	Two years after starting a focused loss prevention/ergonomics program, this company had reduced their lost workdays by 40 percent and their workers' compensation costs by 43 percent.	Not Reported	Best' Review/Property-Casualty Insurance Edition, (June 1, 1996, p. 70). (Ex: 502-22)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
361	Air Compressor Manufacturer	3585	Established teams to address potential ergonomic concerns. Concerns are investigated. Unassisted lifting was limited to a maximum of 20 pounds.	In the 18 months following program inception in June of 1995, lost days by 85%, restricted cases by 50% and first-aid cases by 45%. Union safety grievances which had averaged one every three weeks were completely eliminated.	In the 18 months following program inception in June of 1995, ergonomic-related injuries were reduced by 90%.	(Ex. 502-404)
55	Electronics Manufacture	36	Controls: workstation redesign and job rotation.	Not Reported	CTDs reduced by 46% in one year.	Robinson (1993) (Ex. 26-1102)
157	Electronic Mfg.	36	The ergonomics committee searched for a chair that not only provided comfort but reduced the repetitive motion injuries occurring in manufacturing assembly operations. They purchased seating that provided chair height adjustments, swivel, padding, and waterfall seat design to improve leg circulation.	Not Reported	Recordable injuries declined 28% in the year following purchase of the new chairs.	*Assembly*, (7/1/95). (Ex: 502-22)
54	Hand Tool Operation, Tele-communications Manufacturing	36	Safety and health committee implemented program that included creation of task force, worker training, improvements in workstation design and tooling, and medical management of workers on restricted duty.	Not Reported	Plant-wide incidence of repetitive trauma disorders was 2.2 cases per 200,000 work hours, reduced to 0.53 cases per 200,000 work hours in 1 year after program implementation.	McKenzie et al. (1985) (Ex. 26-1070)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
56	Electrical Equipment Manufacture, Press Operator	36	Automated handling and grinding of resistance elements. Eliminated possibility for hazardous exposures.	Not Reported	Eliminated MSDs	Oxenburgh (1994) (Ex. 26-1041), Case 16
57	Press Operator, Small Electronic Parts Manufacture	36	Press operation caused excessive wrist flexion and palm compression. The press was modified by adding switches that either eliminated hand contact or only involved contact with parts of the hand that do not have nerves close to the skin surface.	Not Reported	29% reduction in musculoskeletal injury incidence.	Oxenburgh (1994) (Ex. 26-1041), Case 42
183	Electronics Design	36	The decision was made to initiate an office ergonomics program. Ergonomically designed chairs were provided to their staff and ergonomic evaluations performed on every workstation of those workers with symptoms. Back cushions, lumbar supports, keyboard/mouse rests and document holders were provided. Frequent short exercise breaks were encouraged. Proper vision correction was investigated. A new-hire office ergonomics training program was brought on line. And regular training in correct posture, exercises, workstation adjustment and back safety is provided.	Not Reported	In 1991, 43% of the company's 250 home office workforce were complaining of pain in their shoulders, back, elbows and fingers. in the past two years they have not had any CTD related complaints. They estimate they are saving 20,000 hours per year in time previously lost to pain, doctors visits and time off. They consider ergonomics to be "proven science."	CTD News, January, 1997 (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
58	Lamp Manufacturing, Materials Handling	3641	Added a vacuum hoist, reduced equipment height, reduced box size and weight, and introduced a back awareness program for employees.	Not Reported	Eliminated back and upper extremity disorders in the last four years.	Carreau and Bessett (1991) (Ex. 26-1071)
289	Telecommunication Equipment Manufacturer	366	Workstations were redesigned to reduce postural stress on workers.	Time loss was reduced over 40% and employee turnover reduced by 75%. A cost benefit analysis showed a return of 9 to 1.	Not Reported	Testimony of Bradley Evanoff, MD, MPH. (Ex. 37-1)
61	Tele-communications Equipment Assembly	3661	Workstation redesign (adjustable tables, illumination), ergonomically designed chairs, and tool redesign.	Musculoskeletal injury sick leave in 1978=5.0, in 1982=2.9.	Not Reported	Westgaard and Aaras (1984) (Ex. 26-1026)
60	Tele-communications Equipment Assembly	3661	Introduced a training program, job hazard analysis, and an engineering program to abate ergonomic hazards. Medical management of injured employees on restricted jobs.	Not Reported	Rate of repetitive trauma disorders dropped from 1.1 per 100,000 hours to 0.26 per 100,000 hours in 1 year.	Pope (1987) (Ex. 26-1073)
59	Telephone Systems Assembly	3661	Implemented an ergonomics program for the assembly line. Elements included an employee awareness program, disorder treatment protocols, job task analyses, job redesign, and cost savings analysis.	Lost-time repetitive strain injuries dropped from 20 to 4 over 1.5 years.	Not Reported	Darcangelo (1989) (Ex. 26-1072)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
118	Electronics Manufacturing	367	Developed a comprehensive ergonomics strategy. Each business unit has a safety committee. The committee conducts hazard assessments by reviewing employee repetitive stress injuries from the past 5 years. The committee then determines which departments have the highest injuries and risks, and are in need of corrective action. Corrective action consists of an initial one hour training session discussing injury types, risk factors, and means of prevention. The training session is followed by the "intervention" process, which identifies alternative means of performing the tasks with the highest injuries. A second method of intervention involves developing an ergonomics specialist team. The team receives additional training including anatomy and pathophysiology. The most frequent interventions/changes have involved keyboard and mouse placement, forearm support and chair use. Exercise may also play a role.	Not Reported	Although increased awareness initially contributed to a rise in reports of repetitive stress injuries, the company's ergonomics program eventually resulted in a significant reduction in the severity of injuries, from the 90th percentile to the 50th percentile.	Richard Cohen, "Ergonomics Program Development: Prevention in the Workplace," *American Industrial Hygiene Association Journal*, 2/97, p. 145. (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
62	Electronics Assembly	367	Job rotation, new assembly line procedures, and ergonomic line balancing.	Not Reported	No new cases of cumulative trauma were reported.	Townes and Imrhan (1991) (Ex. 26-1074)
378	Electronic Circuit Board Assembly Workers	367	Suspended arm support to reduce neck and shoulder muscle static loading.	Not Reported	31 subjects pre-3 months post-shoulder symptoms decreased from 62% to 45%, for neck decreased from 57% to 55%.	(Ex. 26-630)
257	Electronics Manufacturer	367	Implemented an ergonomics program which includes an ergonomics team that determined the objectives; chose hazard-reduction methods and oversaw implementation of the program; reviewed all injuries for those that may be repetitive-strain injuries; inspected the work site to assess job tasks for ergonomic risk factors; completed a worker survey to identify hazards and symptoms that may be related to MSDs and, following collection of this information, prioritized tasks for initiating hazard-control measures. Extensive training was also provided.	While the number of total recordable repetitive strain injuries increased over a 10 year period from 1985 to 1995 (probably due to increased awareness by employees of the work-relatedness of upper extremity pain and encouragement to report injuries), the percentage of repetitive strain injuries with lost workdays dropped from 80-90% to approximately 50%, indicating a reduction in severity of the injury .	Not Reported	Appendix C "Summaries of Studies on Effective Ergonomics Programs and Interventions" (Cohen, 1997). (Ex:32-339-1)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
199	Electronic Card Assembly	3672	The company expanded its safety program to include ergonomics. It added new employee training on lifting postures and changed work practices to require two workers to move a box over 25 pounds. Now every box must have two handles. The company also redesigned workstations to reduce awkward hand and back movements.	Not Reported	MSDs declined from 32 a year to 17 in 1995. With an average cost of thousands of dollars per MSD case, eliminating 15 per year represents a significant cost saving for IBM.	IBM Spells Safety; I-S-O," *Occupational Hazards*, December (1995). (Ex: 502-22)
63	Electronics Manufacturing, Various Jobs	3674	Redesigned workstations; introduced powered-screwdrivers; job rotation.	Not Reported	Reduced injuries (not quantified).	Burri and Helander (undated) (Ex. 26-1075)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
213	Electronic Connectors Manufacturing	3678	This facility developed a team of 12 employees from different departments to identify and prioritize problem jobs. The team videotaped the re-reeling jobs and collected information from employees to develop and implement controls. Changes included adding a mechanical arm to maintain the reeling tension; adopting a smaller, lighter reel with slots cut into it for easier handling (or loading older reels only half-way); developing a prototype paper cutoff device to tear the paper; and providing more comfortable chairs and surrounding flat surfaces to encourage better posture and less reaching. Additionally, the facility rotates workers in this department every two hours so they are not reeling the same product all day.	This facility has reduced workers' compensation costs for MSDs from about $73,000 in 1993 to about $28,000 in 1996. During this same time period, the average cost for each MSD claim declined from $6,601 to $2,512.	The site's rate for injuries and illnesses dropped from 12.8 per 100 employees in 1993 to 7.1 in 1996.	Private Sector Ergonomics Programs Yield Positive Results, General Accounting Office, (August 1997), GAO/HEHS-97-163. (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
66	Motor Vehicle Assembly, Various Jobs	371	Introduction of an ergonomics program, including engineering controls, work practice controls, job rotation/job enlargement, medical management, education, and training. Controls implemented included counterbalanced tools, lift tables, and workstation redesign to prevent awkward postures and excessive reaches.	Lost-time workday rate decreased 65%, and the lost-time case rate decreased 48%.	Over a 3 year period, the injury and illness rate decreased 11% and the severity rate decreased 39%.	OSHA Site Visit Case Study No. 10 (Ex. 26-1180)
65	Unpacking Auto Parts	371	A plywood sheet end board had to be removed to unpack crates, requiring excessive force and awkward postures. Plywood sheets were modified to reduce their weight and permit them to slide more easily in the grooves.	Not Reported	Back and shoulder injuries associated with this operation were eliminated.	Oxenburgh (1994) (Ex. 26-1041), Case 38
64	Vehicle Seat Assembly	371	Ergonomics training was provided. Engineering controls included: • Redesigning seat covers to decrease the number of fasteners by more than 50 percent; • Providing a compression tool to clamp the foam padding to the seat; • Installing adjustable workstations; • Providing electric torque guns. In addition, a program of job rotation was introduced.	Not Reported	Tendinitis cases fell by 93% and carpal tunnel cases fell by 96% in the year following program implementation.	"Problem-solving by committee at General Seating." CTD News (1995) (Ex. 26-1076) (Ex. 32-339-1)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
318	Automotive Manufacturing	3711	Identified jobs with high-risk factors through medical records, plant surveys and employee complaints. Management and union safety people were trained, employee training developed, ergonomic committees were developed and an ergonomic analysts was put in each plant.	Not Reported	They had a high of 430 CTDs in 1990 which was reduced to 120 CTDs in 1999. A reduction of 72%.	Testimony of William Martin. UAW (TR: 7863-7867)
337	Automotive Assembly	3711	Ergonomics committee came up with a new design for installing a part. New equipment built to raise worker into position instead of worker bending over.	Not Reported	No injuries since the new equipment installed. By 2000, incident rates, were reduced by 50%.	(Ex. 500-12-1)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
156	Automobile Manufacture	3711	Associates attend a two-hour ergonomics training where they learn how to solve ergonomics problems in their groups. The course explains what causes CTD injuries and what you can do to prevent them. Additionally, in the company's group program, employees nominate a representative who compiles the results of questionnaires about employee comfort and meets with the branch manager, staff engineer, union and safety representatives to discuss ergonomic concerns. This program is activated every time there is an increase in ergonomic concerns.	Not Reported	The first year after training, the company realized a 20% drop in CTDs, followed by an additional 25% drop during the next year.	Kathryn Tyler, "Sit Up Straight," *HR Magazine*, (9/1/98). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
178	Auto Manufacturing	3711	The company designed a plant with assembly lines that would tilt so that employees could work underneath cars without having to bend. It installed an overhead conveyor line designed to move at different heights along the assembly line to provide better access to the part of the car being worked on. In addition, the company instituted a comprehensive ergonomics and medical management program at the plant. Supervisors and employees received training in ergonomics. The company also took the lessons learned from production back to the design groups to incorporate into new models.	Overall, workers' compensation costs have declined and production levels have increased.	Even though ergonomics was considered in the initial design, the process of continuous improvement led to a 40% reduction in work-related musculoskeletal disorders in the trim department.	Ergonomics: The Mazda Way," *Occupational Hazards*, (April 1990). (Ex: 502-22)
154	Auto Assembly	3711	The company designed a special manipulator arm that was suspended from an overhead crane track to install the heavy instrument panels. This design eliminated many of the manual handling activities, repetitive motions and awkward postures. It also improved product quality and increased productivity.	Over a three-year period during which one million instrument panels were installed, the company had no workers' compensation claims reported. Installation of the panels can now be performed by two employees compared with five to six employees using the old method.	Not Reported	*Modern Materials Handling*, (December 1997). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
270	Automobile Manufacturer	3711	Redesigned tools, fixtures, and work organization in assembly operations.	Reduced long-term upper extremity and back disabilities; CTS surgeries reduced by 50%.	Not Reported	"Summary of Studies on the Effectiveness of Ergonomic Interventions" (June 1995). (Ex. 38-65)
324	Motor Vehicle Assembly	3711	UAW negotiated ergonomics provisions in their national agreement in 1987. Early phases of ergonomic programs identified additional cases of MSDs by encouraging reporting and symptom surveys.	Not Reported	Incidents of CTDs declined from 4% from 1997 and 26% in the last five years.	(Ex: 32-185-3)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
180	Automotive Assembly	3711	The most significant change from the old facility was the design of the assembly line. The line varies in height from one work station to another, preventing excessive reaching, bending and twisting. In addition, the plant installed hundreds of lift devices to aide in the installation of the instrument panel, roof, battery, steering pump, radiator, trailer tow package and spare tire. the plant also uses tilted part bins, shock-absorbing tooling, and a wheeled scooter allowing low tasks to be done while sitting instead of stooping. Finally, the plant employs a 15 member ergonomics committee, and virtually all employees have been through a 1 hour training course on ergonomic risks.	Not Reported	The plant has the lowest cumulative trauma disorder rate of any of the company's assembly plants, 3.03 per 100 workers. The plant also has one of the lowest overall incident rates in the automobile industry, even though the average age of its workforce is 49 years of age.	Gregg LaBar, "Chrysler is Sold on Ergonomics," *Occupational Hazards*, (10/94, p. 209). (Ex: 502-22)
70	Auto Body Assembly, Fixing Side Molding to Body	3711	Replaced pneumatic nut runner with a lighter model. Used a stepped ramp that allowed workers to select an appropriate position relative to the work piece.	Not Reported	Upper-body MSDs were eliminated.	Oxenburgh (1994) (Ex. 26-1041), Case 50
72	Spray Painting Auto Bodies	3711	Lengthened spray gun trigger to increase gun's grip diameter and allow the trigger to be operated with three fingers.	Not Reported	Cases of hand tendinitis were eliminated.	Oxenburgh (1994) (Ex. 26-1041), Case 52

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
68	Auto Assembly	3711	Introduced variable height car conveyer belt, articulating arms to move large parts, like dashboards, into place. Also redesigned tools.	Not Reported	50% decline in ergonomic related injuries in the first year. 35% decline in second and third years.	LaBar (1992) (Ex. 26-1053)
67	Truck Manufacturing, Various Jobs	3711	Introduction of company ergonomics program in 1990. Engineering controls: substituted machine riveting for manual riveting, introduced raised work heights, and installed lifting devices. Introduction of job rotation for 85% of the workforce.	Lost-time injuries fell from 80 to 28 in 2 years. Lost workdays fell from 1,402 to 193.	CTD cases fell from 105 to 54 in 2 years.	Mandelker (1993) (Ex. 26-1063)
69	Auto Assembly Line Worker	3711	28 projects were redesigned to change specific jobs, making them ergonomically less troublesome.	Reduced from 3,134 lost days per year to 1,355 lost days per year after project completion.	Not Reported	Brandon (1992)
71	Spot Welding onto Auto Frame	3711	Fixed a large-diameter circular handle to the welding frame, which allowed the frame to be moved into any position while keeping the wrist in a straight posture.	Not Reported	Wrist injuries were eliminated.	Oxenburgh (1994) (Ex. 26-1041), Case 51

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
206	Truck and Bus Assembly Plant	3713	The company established an ergonomics program using a comprehensive team-oriented approach. To fix problem jobs, the company installed hoists, changed job procedures and modified lifting requirements. Most changes cost nothing. In fact, the company incurred costs for only 10% of the problem jobs it fixed.	The costs associated with work-related musculoskeletal disorders (MSDs) have dropped 14% each year in the three years since the program was implemented. Workers' compensation costs dropped from $1.4 million before the program to $544,000 three years later.	Not Reported	*Business Insurance*, (October 27, 1997). (Ex: 502-22)
73	Auto Instrument Panel Assembly, Manual Handling	3714	Installed a hoist system to remove panels from conveyor and transport them to shipping containers.	Lost-time back injuries associated with this operation were eliminated.	Not reported	Oxenburgh (1994) (Ex. 26-1041), Case 40
77	Automotive Engine Assembly	3714	A hoist was replaced by a conveyer belt set at waist height and part of the assembly process was automated.	70 days lost time and over 1,000 days on restricted duty were reduced to no lost days and no personnel on restricted duties.	Not Reported	Oxenburgh (1994) (Ex. 26-1041), Case 2
80	Auto Instrument Panel Sub-Assembly	3714	Spring clips were pushed into position using a hand tool that required excessive force to operate. New tool was designed to reduce force and awkward positioning of the hand and wrist.	Not Reported	Wrist and hand injuries were eliminated.	Oxenburgh (1994) (Ex. 26-1041), Case 49
81	Trimming Molding with Hand Cutter	3714	Hand cutters were replaced with automated or air-powered cutters.	Not Reported	Hand and wrist injuries associated with this operation were eliminated.	Oxenburgh (1994) (Ex. 26-1041), Case 54

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
74	Pneumatic Screw Feeder Operation, Auto Instrument Panel Assembly	3714	Installed a counter-balanced articulated arm to reduce the weight of the tool.	Not Reported	Upper-body MSDs were eliminated.	Oxenburgh (1994) (Ex. 26-1041), Case 46
76	Manufacturing of Electronic Components, Various Jobs	3714	Introduction of an in-plant ergonomics program, engineering controls including hand tool and workstation redesign, and lift devices. Job rotation and other administrative controls, work practice controls, medical management, and training also implemented.	Decrease of 50% from 116 lost-time days/100 workers (1990) to 58/100 workers (1991) for MSDs. Additional 50% decrease in 1992 to 29 lost-time days/100 workers.	The incidence rate of ergonomic disorders decreased by 67% from 37/100 workers (1990) to 12/100 workers (1992).	OSHA Site Visit Case Study No. 8 (Ex. 26-1178)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
75	Computer Operator	3714	The company instituted a biannual training program to emphasize good lifting and pushing techniques as well as good posture. Also instituted a stretching exercise program and encouraged the CAD operators to take frequent short breaks. Engineering controls included: • Purchasing 27 back cushions, 71 lumbar supports in three different sizes, 24 keyboard/mouse rests, and 12 document holders in the past five years; • Providing adjustable chairs; and • Providing foot rests for shorter workers.	Saved 20,000 hours lost time per year since eliminating CTD-related complaints.	Not Reported	"Communication drives process at Siemens." CTD News, (1997) (Ex. 26-1077)
78	Small Parts Assembly Machine Operation	3714	Jammed machine required operator to climb a bar ladder while carrying a heavy load. A correctly designed ladder and catwalk were installed along with a chute to dispose of damaged parts without the need for carrying them.	Not Reported.	Foot and ankle MSDs associated with the operation were eliminated.	Oxenburgh (1994) (Ex. 26-1041), Case 47

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
262	Engine and Transmission Assembler	3714	An ergonomic intervention approach was applied to the manual truing of flywheels. Incorporating worker participation, the truing task was chosen for evaluation and intervention based upon the number and severity of injuries associated with this task. Recommendations to modify the task were agreed upon and workers were videotaped while performing the truing.	An 82% reduction in restricted or lost work time.	A 29% decrease in the incidence of total musculoskeletal disorders, an 82% decrease in the severity rate, and a drop of 78% in the incidence of upper extremity disorders.	Appendix C "Summaries of Studies on Effective Ergonomics Programs and Interventions" (Moore, 1994). (Ex:32-339-1)
79	Automotive Air Conditioner Manufacture, Material Handling	3714	Installed overhead conveyor belt that moves the condenser cores through the various procedures, minimizing manual handling. Also installed box tilers to assist in packaging and scissors lift for stacking.	Prior to program, plant averaged 50 lost-time injuries per year, many of those back injuries. After program implementation, 2 back injuries were recorded over a 4-year period.	Not Reported	LaBar (1991) (Ex. 26-1078)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
184	Automotive Trim Mfg.	3714	The company decided to implement a corporate ergonomics program. Each of their facilities sent one engineer and one safety and health staffer to a three-day applied ergonomics class. Then all employees were given one hour of training in the ergonomics of how to work safely. Their design engineers were given four hours of training in how to design jobs with good ergonomics built in. Many practical workplace changes were made including: using tilt tables; changing to user-friendly tools; using proper lifting techniques; changing to adjustable workstations; optimizing the location of parts bins; using rotating carriers; using assistive lifting devices; and new-hire ergonomics orientation.	Not Reported	By 1998, the company cut their ergonomic-related injuries by 70%.	*C.D.T. News*, (April 1999). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
181	Automotive Piston Mfg.	3714	The company committed to establishing a comprehensive ergonomics program. They started an ergonomics training and education program for their employees and as part of it, stressed the importance of early reporting of pains and symptoms to allow improved early medical management. They analyzed the workstations in their plant and where possible introduced redesigns allowing a greater degree of adjustment. Where redesign was not feasible, they instituted job rotation.	The ergonomics program established by this mid-sized manufacturer in the early 1990's not only improved their related occupational injury experience, but cut their workers' compensation costs by 47% and improved employee morale noticeably.	Not Reported	Human Resource Magazine, (October, 1995). (Ex: 502-22)
325	Motor Vehicle Parts Automotive Stamping	3714	UAW negotiated ergonomics provisions in their national agreement in 1987. Early phases of ergonomic programs identified additional cases of MSDs by encouraging reporting and symptom surveys.	Not Reported	Incidents of CTDs declined from 13% from 1997 and 24% over five years.	(Ex: 32-185-3)
284	Automotive Equipment Manufacturer	3714	An ergonomics program was put in place.	In 6 months, workers' compensation costs went down 87%.	In 6 months, recordable injuries dropped 53%.	Testimony of David C. Alexander. (Ex. 37-7)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
113	Auto Parts Manufacturing	3714	In 1996/1997 the company began implementation of their ergonomics program. Injury and illness data were used to identify incidents and areas where ergonomics related concerns were present. In response to analysis of these incidents, equipment modification has begun, including relocating two hand press controls and adding hoists and other mechanical lifting equipment. A medical management program has been started to identify musculoskeletal disorders before they become severe and provide better treatment for those that do occur.	Since beginning implementation of their ergonomics program in 1996/1997 this mid-sized manufacturer has reduced their lost work-day injuries and illnesses by 50%. The severity of those incidents that are occurring has also been reduced.	Not Reported	OSHA case files (Ex: 502-22)
313	Automotive Products Manufacturer	3714	A participatory ergonomics program with multi-disciplinary representation was implemented.	From 1993 thru 1997, an overall reduction of 42% was achieved in workers' compensation.	From 1993 thru 1997, MSD claims were reduced by 85%.	(Ex. 500-71-57)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
158	RV/MH Door, Window Mfg.	3716	With the aid of a physical therapist, the human resource manager assessed jobs on the production lines and eliminated excessive hand/wrist twists and pinching motions. Tools, originally designed for men, were replaced with smaller ones that better fit the smaller hands of the predominantly female workforce. Management officials introduced safety committees, job rotation and awards programs. They also added employee education and training and a new reporting system to detect work-related musculoskeletal disorders (WMSDs) in the early stages.	Not Reported	In 1994, work-related repetitive motion injuries had dropped by 20 percent, and the company was able to self-insure.	Preventing Repetitive Motion Injuries," *HR Magazine*, (Oct. 1995). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
82	Manufacture of Jet Aircraft Engine Parts, Various Jobs	372	Implementation of ergonomics program, including engineering control measures, work practice controls, medical management, education, and training. Controls implemented included redesigning workstations to provide employees with more room to perform tasks, adding anti-fatigue mats and adjustable footrests, removing or padding tables and shelves to reduce contact stress, and installing vibration-absorbing pads onto grinding wheels.	Not Reported	Decrease in carpal tunnel syndrome cases from 26 in 1988, 11 of which required surgery, to 1 case in 1992 which did not require surgery.	OSHA Site Visit Case Study No. 9 (Ex. 26-1179)
332	Helicopter Assembly	3721	Three labor management teams formed in areas with highest injuries to determine causes. Teams received training and bring problems to the attention of management. Management must respond in 2 weeks. Budget in place for recommended engineering changes.	Lost work day and severity rates have dropped 75%. Worker compensation costs have dramatically improved. Production time decreased by 33% in areas where changes implemented.	The total OSHA recordable incidence rate dropped by 25% in one year alone.	(Ex: 32-339-1-1)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
224	Aircraft Manufacturing	3721	Starting in 1993, The company started a major effort to educate, train and encourage their workforce to "move smart." They made the design of manufacturing tools and related manufacturing processes a top concern. Their approach to education and prevention has been multi-pronged. They have a goal of training a member of each organizational unit in ergonomic evaluation and problem-solving. This enables routine ergonomic evaluations to be performed locally and complex problems to be referred to their professional ergonomic staff.	Not Reported	Since 1993 ergonomic-related injuries have dropped by a third.	The Everett Washington Herald (7/12/99). (Ex: 502-22)
379	Sheet Metal Mechanics	3721	Comprehensive program of education, job placement, job modifications and medical management designed for employees based on individualized risk assessments.	Increased total recordable case incident rate and hours worked per employee. Decreased total lost-time case incident rate, lost-time severity rate, and workers' compensation costs per employee. Benefits to cost ratio of 16.5/1.0.	Not Reported	(Ex. 38-131)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
328	Avionics and Commercial Aircraft Manufacturer	3721	Program consisted of management commitment and employee involvement. Program elements such as work-site analysis, hazard prevention and control, medical management and training and education.	Normalizing the lost-work-days per average headcount shows a decrease from 6.28 lost workdays per person in 1992 to 1.59 in 1995 (25.3%).	Musculoskeletal and cumulative trauma disorders dropped from 79% of reported cases in 1989 to 44% in 1995.	(Ex: 32-339-1-76)
170	Aircraft Engine Component Manufacturer	3724	This employer implemented their ergonomics program by emphasizing their employee training program and implementing a program of process improvement to remove or reduce stresses responsible for soft tissue injuries from their assembly lines.	Within three years of joining the Maine 200 Pilot program and strengthening ergonomic training and process improvement efforts, this employer had by 1996 reduced their lost time injuries from a previous high of 112 to 10, and their workers' compensation from a high of $280,00 to $54,000.	Not Reported	OSHA case files (Ex: 502-22)
249	Aircraft Parts Manufacturing	3728	Boeing founded its ergonomics program on OSHA's "Ergonomics Program Management Guidelines for Meatpacking Plants." Over the course of two years, Boeing spent approximately $800,000 towards improving the condition of furniture, lighting and tooling.	In 1995, lost workdays dropped to 1,651. By 1996, the number dropped to 600 days.	By 1995, the injury rate had dropped to 3.8 per 200,000 man hours. Finally, MSDs accounted for only 44% of recorded injuries in 1995.	Lance S. Perry, "Step-by-Step Planning: The Ergonomics Lessons Learned at Boeing Offer Insight for Assemblers Putting Together Their Own Programs," *Assembly*, (3/1/97). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
83	Shipbuilder	3731	Initiated training classes covering the nature of CTDs, anthropometry, work physiology, back and wrist anatomy and proper work techniques. In-depth training course covered tool selection, work habits, alternating trigger fingers and hands. Workers participated in evaluating and developing interventions for the welding department, and selecting pistol grip and in-line based tools so as to keep the wrists in a neutral posture. Installed scaffolding at the right height and distance from the work, and used ladders or installed scaffolding to higher positions for the work above shoulder height.	Decreased to only 6 lost-time ergonomics wrist injuries through November 1996, since training completed in June 1995. Eliminated lost time back injuries since July 1995.	Eliminated wrist injury in the welding department until March 1996. Reduced ergonomics case rates about 30 percent during 1996.	Training a 'limbsaver' at Newport News." CTD News (1997) (Ex. 26-1079)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
223	Shipbuilding	3731	The company decided to establish a formal ergonomics program. Injury and illness records were analyzed to identify high risk departments for priority intervention. These jobs were evaluated and interventions identified. In-depth employee training on tool selection, work habits and mechanical equipment utilization was begun. Ergonomically stressful welding operations were replaced by improved processes. Material handling and scaffolding use were analyzed, improved techniques identified and introduced with additional training.	Two years after establishing a broad based ergonomics program the company's lost-time ergonomic case rate fell 55% and they realized savings of $1.4 million in workers' compensation costs.	In two years following the establishment o. their ergonomic program their ergonomic case rate fell 30%.	CTD News,(January, 1997). (Ex: 502-22)
84	Motorcycle Manufacturing, Flywheel Milling Operations	3751	Introduction of lighter flywheel castings and an overhead lift; introduction of a customized deburring machine eliminating vibration exposures; introduction of a customized 40-ton press eliminating the use of the brass hammer.	MSDs involving lost or restricted workdays dropped from 27.6 per 100 workers in 1989 to 12.5 per 100 workers in 1993. The severity rate of MSDs dropped from 610 lost or restricted workdays per 100 workers in 1989 to 190 days per 100 workers in 1993.	Not Reported	McGlothlin and Baron (1991) (Ex. 26-1080)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
85	Assembly of Pressure-sensing Instruments	3823	Forceful turning actions were required to fit an O-ring in place. Cordless screwdrivers were used with a custom attachment to bring wrists into stronger position and allow hand to employ a power grip.	Not Reported	Wrist and arm MSDs were eliminated.	Oxenburgh (1994) (Ex. 26-1041), Case 44
179	Medical Equipment	384	The company hired an industrial ergonomist and simultaneously began a formal safety program. Ergonomic awareness became a visible part of the company's daily decision making process. 3M redesigned workstations, adding adjustable chairs, repositioned computer keyboards and relocated video terminals.	Not Reported	One of the company's departments experienced a 64% drop in its injury and illness rate following adoption of the company's ergonomics program. Injuries and illnesses declined from 5.4 to 1.61 incidents per 200,000 hours worked. Ergonomic changes played a significant role in the improvement.	3M pilots ergonomic program to reduce OSHA recordables," *CTD News*(1995). (Ex: 502-22)
277	Medical Device Assembly Plant	380	Redesigned workstations to reduce reach distances, provided adjustable chairs and foot rests, provided fixtures and pneumatic gripper to eliminate pinch grips.	Plant-wide severity rate reduced from 154.9 to 67.8 lost time days per 200,000 worker hours.	Plant wide CTD incidence rate reduced from 13.7 to 11.3 per 200,000 worker hours after intervention.	"Summary of Studies on the Effectiveness of Ergonomic Interventions" (June 1995). (Ex. 38-65)
309	Medical Device Production	384	Ergonomic interventions included new work stations, assembly fixtures, and ergonomic training of employees to improve manual assembly methods.	There were 321 lost work days and since new program there has been no additional lost-work-days.	Since the program there have been no new CTD's. They were reduced from 14 to 0.	(Ex. 500-114)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
86	Medical Needle Manufacture, Inspection Station	384	Used task forces to identify jobs involving worker exposures to risk factors. Identified problems on quality control line and implemented design changes to the workstations.	Not Reported	Achieved 75% reduction in upper extremity MSD cases	Benden (1994) (Ex. 26-1081)
87	Manufacture of Suction Canisters Used in Surgical Procedures	3841	Introduction of an ergonomics program utilizing a medical management program, employee training program, job rotation, and engineering controls. Controls implemented include replacing old wooden supply stations with ergonomically designed stations, and automating various processes.	Not Reported	Decrease in the ergonomic injury rate from 5.2/100 workers (1989) to 2.8/100 workers (1993).	OSHA Site Visit No. 16 (Ex. 26-1183)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
130	Manufacturing Kidney Dialysis Machines	3845	The company organized an ergonomic task force consisting of employees from its engineering and manufacturing departments. The task force determined that three areas needed attention: workstations, tools and training. They selected new workstations to alleviate problems associated with reaching and bending. The new workstation allows parts to be placed in bins on articulating arms that workers can pull toward them as needed, also eliminating unnecessary reaching. They replaced all hand tools and conducted extensive training on the proper ways to use the new equipment.	A videotape analysis revealed that the new workstations required 61% fewer reaches than the old models. Since installing new workstations, the company has recorded a 85% reduction in lost workdays from 1990 to 1993. Because the new workstations reduce the number of movements and amount of time needed to assemble the machines, productivity has also increased.	Not Reported	"Ergonomic Initiative Reduces Worker Claims," *Assembly,* (9/1/94). (Ex: 502-22)
88	Manual Handling of Bulk Paper	386	Two operators manually lifted large wads of paper from a trolley. Manual lifting was eliminated by installing a scissors lift. In addition, the trolley's runners were replaced by roller bearings that enabled the paper to be loaded onto the scissors lift without manual lifting.	Not Reported	There were 18 back injuries in one year prior to implementing changes. There have been no back injuries in the 3 years since modifications were made.	Oxenburgh (1994) (Ex. 26-1041), Case 36

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
357	Flatware and Hollow-ware Silver Manufacturer	3914	Reduced manual handling and awkward postures present in affected jobs. Purchased lifts to eliminate manual handling, installed a chute to eliminate the need for employees to carry heavy bags, and designed an inclined adjustable support to reduce awkward neck and shoulder postures.	Total lost workdays have dropped from more than 300 in 1992 to 72. Total workers' compensation dollars for the company dropped from $192,500 in 1992 to $27,100.	Back injuries declined from 7 to 2 (71%).	(Ex. 502-404)
89	Manufacturing Board Games, Inspection and Packing	3944	Job analysis and problem solving involving employees to redesign packing workstations. Design changes included raising the height of conveyors, slowing conveyor speed (no effect on throughput), placing roller conveyors on an incline to facilitate carton removal, and changes in work procedures.	Not Reported	Eliminated all cumulative trauma injuries associated with job.	Cook and Marcotte (1990) (Ex. 26-1082)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
111	Fitness Equipment Manufacturer	3949	The company formed a committee to brainstorm on ways to reduce work-related musculoskeletal disorders (MSDs). The company purchased adjustable workstations and began rotating jobs. They adopted a new clamp that reduced both the number of times that the clamp was opened and closed and the force needed to operate it. The company provided time during the day for stretching and flexibility exercises.	Not Reported	In the three years since the program was implemented, there has been only one case of carpal tunnel syndrome in the racket stringing department. The case was detected early through medical management and was treated without surgery. The ergonomics program also increased employee morale.	*Professional Safety,* May 1987 (Ex: 502-22)
251	Feather Duster Manufacturing	3991	In 1998, the company established an ergonomics program. Winding machines, used to rotate duster handles while lambs wool or feathers were attached, were redesigned to remove an upper extremity stressor. Employees were trained on wrist relaxation exercises and encouraged to take frequent exercise breaks.	Since 1998, they have cut lost work days by more than 95%.	By instituting an ergonomics program in 1998, this small feather duster manufacturer was able to cut their rate of ergonomic-related injuries by 80%.	OSHA case files (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
90	Railroad Repairmen	40	Introduced storage of tools and materials off the ground between knee and shoulder height; devised winches to lift and handle heavy equipment; and redesigned work tables, dollies, and carts to more easily handle train car parts.	Lost-work days reduced to zero for back injuries.	Low-back injuries reduced to zero.	McMahan (1991) (Ex. 26-1083)
246	Railroad Car Maintenance and Repair	4011	This railroad asked the Safety Research Division of the Association of American Railroads to train its safety professionals to conduct ergonomic evaluations for manual material handling. To analyze tasks in the repair shop, the railroad involved its safety professionals, line managers and employees. Then, jobs were redesigned to reduce the risk of back injuries. Today tools and materials are stored off the ground between knee and shoulder height. Employees now use winches and carts or dollies to lift heavy equipment.	The company estimated a benefit/cost ratio of 10 to one for the changes. Productivity increased by more than 67% with no change in staff size. Low-back injuries and the associated lost workdays were eliminated, and absenteeism dropped to 1%.	Not Reported	Fitting work to workers," Railway Age, (August 1991). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
335	School Bus Drivers	4151	They identified flaws in bus designs and came up with 9 specific areas needing improvement. New buses have ergonomic seats with many adjustments and support areas, power assisted doors and tilt steering wheels.	Worker compensation claims in the last five years have dropped by a third.	Not Reported	(Ex: 500-10-1)
91	VDT Operator, Package Delivery Service	42	Introduced sit-stand workstations that permit workers to adjust workstation to meet specific needs.	Not Reported	Reduced MSD cases by half in 12 months.	Nerhood and Thompson (1994) (Ex. 26-1084)
92	Freight Truck Terminal Operations	4213	Established ergonomics program in response to rising number of back injuries. Program elements include analysis of injury records to identify hazardous operations, extensive use of lifting and carrying devices, providing extra personnel to handle heavy or awkward freight, employee training, and medical management of injured workers.	There were 7 lost-time injuries in 1989, followed by 4 in 1990 and 5 in 1991.	Total number of MSD cases declined from 13 in 1989 to 7 in 1990.	OSHA Site Visit No. 5 (Ex. 26-1177)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
239	Telephone Utility	481	Since 1995 this facility has completed several weeks of training seminars aimed at office ergonomics. They have also performed ergonomic workstation evaluations to identify repetitive motion stressors that are present in their workplaces. Some upgrading of workstations has occurred, such as the installation of larger monitors. More upgrading remains to be done, including making their workstations more adjustable.	In the two years since starting their program in 1996, the number of associated lost work-days has been cut by 75%.	In the two years since starting their program in 1996, their rate of ergonomics-related cumulative trauma injuries has been cut by a third.	OSHA case files (Ex: 502-22)
93	VDT Operation, Tele-communications Establishment	481	Retrospective study of the impacts of an ergonomics program on 500 VDT operators. Program included job task analyses, workstation redesign, and worker education and training.	Not Reported	Number of upper extremity disorders over the 6 months prior to implementation of the program was 49; this was reduced to 24 for the 6 months following intervention.	Tadano (1990) (Ex. 26-1337
122	Telecommunica-tions	481	This company developed an $18 million ergonomics program, providing education, training, brochures, and interfocal eyeglasses for video terminal operators.	Workers' compensation claims were reduced by 33%.	Not Reported	Joanne Wojcik, "Ergonomics Proves Worth," *Business Insurance,*(11/1/93) (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
258	Nuclear Power Plant	4911	Initiated an ergonomics program in 1995 in response to a growing number of repetitive motion injuries among computer users found on their OSHA 200 log. Interventions, in the form of ergonomically designed furniture, were installed and then evaluated for effectiveness in follow-up visits. Education and training were also provided.	Not Reported	Within weeks, 9 of 27 employees in the pilot program had their symptoms disappear altogether, while 6 additional employees said they experienced significant improvement. Following the success of the pilot program, the employer implemented the program for the entire workforce. Of 81 cases with medical symptoms, 97% of all employees had their symptoms disappear, improve significantly, or show some improvement following the introduction of ergonomic furniture. In 1996, the employer had no recorded OSHA 200 log work-related injuries for the first time in their history.	Appendix C "Summaries of Studies on Effective Ergonomics Programs and Interventions" (Fernberg, 1997). (Ex:32-339-1)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
94	Materials Handling, Electrical Utility	4911	Redesigned equipment: • Weight of the water coolers reduced from 10 lbs to 5 lbs. • Rotating platform for transformers. • Step and grab handles added to trucks. • New shovel handle and new pry bars. • Position of the kegs on trucks was lowered to minimize twisting of the back.	Lost time injuries reduced to 0.42 per 100 employees in 1989.	Injuries due to getting in and out of trucks reduced from 9 to 0 in year following redesign. No injuries from lifting the water kegs since the changes.	"Foiling field injuries with ergonomics." Electrical World (1990) (Ex. 26-1085)
387	Electric Utility's Warehouse System	4911	Four methods were used to evaluate the risk of exposure to injury before or after ergonomics intervention: the 1991 NIOSH lifting equation, the Static Strength Prediction Program, the Lumbar Motion Monitor, and the Borg psychophysical assessment of effort.		Results from applying the four methods to the re-engineered tasks showed that the probability of low-back disorder factors was reduced by as much as 29%, the percentage of people capable of performing tasks was increased by as much as 90%, the NIOSH Lifting Index was reduced from above 2.0 to less than 2.0, and the psychophysical assessment of effort was consistently reduced from the "heavy or strong" to the "light or moderate" range.	(Ex. 500-41-93)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
354	Electric Utility	4911	This company establish an ergonomics program focusing on the prevention of back injuries. They established a training program including such basics as how to ensure you get into the best possible position and how to carry, set up and take down a ladder safely. Back biomechanics proper lifting techniques are also covered and are reemphasized repeatedly.	Not Reported	Since starting their ergonomics program, focused on back injury reduction and using a back-to-basics approach, the company has reduced their incidence rate by 25%.	(Ex. 502-404)
95	Data Entry Operator, Gas and Electric Utility	4932	• Engineering controls: workstation design. • Administrative controls implemented.	Lost time due to work-related injuries decreased from 1,008 hours/month to 584 hours one year later.	Not Reported	Couch (1990) (Ex. 26-1086)
282	Waste Management	495	Program includes analysis of occupational accidents, revision of the safety procedures manual, participatory training classes, improving and evaluating working procedures and personal protective equipment, etc.	Not Reported	The number of compensated low-back pain cases has been reduced from 330 in 1986 to 87 in 1994, a 73% reduction.	"A Follow-Up Study of Preventive Effects on Low Back Pain at Work sites by Providing a Participatory Occupational Safety and Health Program". (Ex. 500-71-60)
96	Sewing Machine Operator	5137	Installed padded, swivel chairs with adjustable backs and improved materials handling methods. Also instituted an exercise program.	Not Reported	Incidence rate of tendinitis decreased from 12% to less than 1% in some plants.	Hammond-Smith (1990) (Ex. 26-1087)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
97	Material Handling, Grocery Distribution Center	514	Implemented comprehensive program that included hazard identification and job hazard analysis, medical management and reassignment of injured employees, worker training, and implementation of engineering and work practice controls. Controls included making minor modifications to some forklift equipment, replacing other equipment, and providing ergonomically designed workstations for data entry personnel.	Not Reported	Number of MSD workers' compensation claims declined from 14 in 1989 to 8 in 1991.	OSHA Site Visit No. 4 (Ex. 26-1176)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
248	Food Service Distributor	514	The company formalized its ergonomics program under the leadership of its occupational health nurse. The company started by instituting an early return to work plan. Workers were encouraged to report any symptoms. The company re-racked its warehouse and put brakes on the hand trucks. The company assessed its customers' locations for hazards during delivery and worked with its customers on improvements. The company also worked with its suppliers to get smaller bags, handles on packages, sturdier cardboard and lighter boxes.	Just one year after implementing its ergonomics program, and the cost of workers' compensation cases was down by more than 45 percent. For the first eight months of the company's fiscal year 1999, total costs were down to about a quarter of the 1996 total.	Just one year after implementing its ergonomics program, the company's injuries and illnesses had dropped 25 percent. For the first eight months of the company's fiscal year 1999, major back injuries have dropped from 76 to 21.	Presentation at the Applied Ergonomics Conference, Houston, (March 1999). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
380	Large Commercial Nurseries	5193	The team selected for intervention specific high risk jobs involving the manual handling of plants in 1 and 5 gallon plastic containers. A set of handles for carrying and moving plants was developed. In focusing on manual materials handling, they looked for opportunities to do things which would have a positive effect on risk factors for WRMSDs and the modifiers used to calculate the revised NIOSH lifting equation. These were: 1. improve coupling (grip), changing it from a pinch to a power grip if possible. 2. reduce moments by getting the load closer when lifting and carrying. 3. improve trunk and upper extremity posture. 4. Reduce the speed &/or acceleration of lifting movements 5. reduce the amount of force require	Not Reported	All measures indicate large-magnitude reductions in targeted risk factor exposures, including extreme stooped postures, repetitive finger pinch grip, and repetitive lifting and lowering of containers.	(Ex. 500-26)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
207	Lumberyard	5211	The site began to formalize and improve their overall safety program by documenting their program's operation and policy in a manual. Their ergonomics program was separated out and strengthened in 1995. They invited an ergonomist from Ohio State Workers' Compensation program to survey their site and used his recommendations to improve their program. They use ergonomic checklists to have each of their employees evaluate the ergonomic appropriateness of their personal protective equipment, mechanical equipment and workplace. They completely redesigned their office workstations in 1994.	In early 1997 they were awarded OSHA's VPP STAR status. They have not had any lost time injuries since starting their VPP application process.	Not Reported	Linda Hill, Weyerhaeuser Customer Service Center, Safety Program Administrator, phone call (7/15/99). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
131	Retail Sales	53	The company established ergonomics as part of their overall health and safety program. An active case management program was established to aggressively manage existing claims. Detailed workplace risk assessments were performed, focusing on material handling and repetitive motion risk factors. Job redesign and rotation were introduced as well as on-the-job exercises. Additional mechanical handling equipment was purchased. Training sessions on proper ergonomic lifting techniques were conducted.	Not Reported	From 1992 to 1997, ARC recorded a 60% drop in CTD-related claims, an 86% drop in total incurred losses from all injury cases and a 79% drop in the average cost per claim.	*CTD News*,(January, 1998) (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
247	Catalog Distribution Center	5311	The company implemented an ergonomics program. The program included four basic elements: ergonomics training, work-site analysis, medical management and a formal communication process. The company identified 22 activities associated with MSDs, which affected about 75 percent of the workforce. The company developed an alternate duty plan to get injured workers back to their jobs more quickly and installed an ergonomics hotline to enable employees to make suggestions immediately.	Not Reported	The company injury and illness incidence rate dropped from 12 in 1992 to 6 in 1995–a 50% reduction. The company completely recouped the cost of the ergonomics program in three years and is now saving about $500,000 per year as a result of the program.	Presentation at the Ergonomics: Effective Workplace and Best Practices Conference, Chicago (1997), NIOSH proceedings. (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
351	Retail Grocery	5411	An ergonomics committee was formed to address MSD problems. They purchased adjustable work tables, semi-automatic wrapping machines, and a re-designed meat cutting knife. Purchased vertical scanners for the checkout counters and trained employees.	Not Reported	They had reduced MSD claims from 47 in 1991 to 26 in 1992.	(Ex. 502-404)
225	Grocery Stores	5411	The company implemented an ergonomic program in 1987. The company analyzed and modified the check stands. For about $500 per stand, the company raised work heights, purchased checker fatigue mats, lowered produce scales, raised keyboards and placed them on adjustable pedestals, and made the grocery bag wells adjustable to accommodate varying checker heights. An ergonomist met with employees several times to train them on ergonomics and demonstrate how to adjust the new equipment.	Not Reported	In eight years following implementation of the ergonomics program, only two workers have developed confirmed cases of MSDs. Since 1990, the company has reduced its experience rating (a Washington State Dept. of Labor & Industries formula involving incidence rate, medical claims, and time loss claims) by almost 43%.	Food retailer rewrites user, safety manuals for safer workplace," *CTD News*, (1995). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
364	Retail Grocery	5411	Modified its checkout stations and scanners to reduce lifting and twisting motions. Medical management program ensured immediate care and treatment. Training on causes and symptoms of work related MSDs and on good work practices.	Not Reported	Over a 4-year period, workers' compensation claims for MSDs dropped from 21 to 5.	(Ex. 502-404)
98	Restaurant Worker	5812	Reduced the amount of food served by the workers, and heavy porcelain crockery replaced with plastic.	Not Reported	Reported injuries decreased 40%.	Oxenburgh (1994) (Ex. 26-1041), Case 17
99	Clothing Store	59[illegible]2	Staples were reduced to one per tag and job rotation was introduced so that no one person stapled for more than 45 minutes at a time.	Not Reported	In 1994-1995, 23% of pricers had CTDs; 2 had bilateral carpal tunnel releases and were unable to return to work. In 1996-1997, 10% of pricers were affected, but all have returned to their jobs without surgery or impairment.	"ARC takes thrifty approach to ergonomics." CTD News (1998) (Ex. 26-1089)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
177	Banking	60	The facility initiated their ergonomics program by evaluating their injury and illness experience to identify when, where and how incidents were occurring. They also surveyed their employees to identify what they did and did not like about their current workstations. Using these results workstations were redesigned to reduce the stressors associated with data entry. Their process relied heavily on worker involvement and management responsiveness to focus their efforts on reducing workplace injuries.	An ergonomics program focused on office soft tissue injuries enabled this Maine 200 Pilot program participant to cut both their ergonomic related injuries and workers' compensation costs by 50% in three years.	Not Reported	OSHA case files (Ex: 502-22)
100	Data Entry	6021	Adjusted workstations and lighting.	Not Reported	Reduced neck tension syndrome from 54% to 16%.	Luopajarvi et al. (Undated) (Ex. 26-1090)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
250	Insurance and Financial Services	63	The company began developing its own ergonomics program in the early 1990s. As part of the program, the company implemented "software usability labs" that "engineer out" any key combinations that put the hands in an awkward position. The company also designed its own work tools when it found no commercial products were adequate. For example, the company designed a large-handled staple puller when it found that standard pitch-type removers were causing discomfort, the company also designed a special workstation for a woman with painful back pain and carpal tunnel syndrome. The workstation included a desk that can be used while sitting or standing and a redesigned keyboard. Additionally, the company has conducted over 7,200 one-on-one ergonomics consultations with workers, trained most of its 20,000 workers, and made over 38,000 adjustments to workstations.	After an expected initial increase in reported injuries, the company saw a sharp decline in cumulative trauma disorders. Ergonomics injuries made up 66% of workers' compensation claims in 1992, but only 48% of all of compensation claims in 1997.	Not Reported	Michael Bradford, "This company was Honored for Excellence in Ergonomics: Program Prevents Injuries, Decreases Workers' Comp Costs, Improves Morale," *Business Insurance*, (10/26/98). (Ex: 502-22)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
355	Insurance Carrier	63	Established a three-pronged intervention process: 1) Created a corporate infrastructure with the expertise to respond to ergonomic success in workstation design and technologies. 2) Departmental evaluations. 3) Post-injury management process.	In the first year of their program the costs-per-claim of computer-related disorders fell 30%. In the first year of their program surgery rates for computer-related injuries fell 90%.	Not Reported	(Ex. 502-404)
350	Insurance and Financial Services	63	In 1986, the company revitalized its two main headquarters facilities to accommodate ergonomic concerns. The company redesigned workstations. Workers now have indirect, overhead lighting and glare-filtering window shades, adjustable ergonomic chairs, acoustical panels and increased space.	The company's productivity increased 64%. Absenteeism decreased 14%, and the company's worker turnover rate decreased 86%.	Not Reported	(Ex. 502-404)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
163	Insurance	63	Since 1989, the company has implemented the following changes: *Purchasing 900 "ergonomically correct" chairs at the end of 1990 in an attempt to ease low back pain and carpal tunnel syndrome. *Using "lower cost" accessories, such as glare screens, articulating keyboards, and document holders. *Initiating educational programs and training for supervisors and management. *Since 1993, providing ergonomically-designed workstations and indirect lighting in the company's new buildings. *Remodeling older buildings with ergonomically correct office equipment. *Hiring two full-time corporate nurses. In 1993, the nurses helped create an on-site electronic job-site questionnaire requesting information on employee comfort.	The company realized an 80% drop in CTD-related compensation costs from 1992 to 1995. Specifically, CTD-related claims and costs have fallen from 103 and $526,000 in 1991 to 21 and $25,000 in 1995, respectively.	Not Reported	*CTD News*, (4/96, p. 7). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
173	Disability and Life Insurance	6311	They established a comprehensive program addressing office ergonomic concerns. Their first emphasis is engineering the problem out of the workplace. They apply ergonomic principles at the time of purchase to all office upgrades and additions. They are aggressive in individualizing workstations to each employee. Employees are measured anthropometrically to maximize the fit and trained at the time of hire and yearly thereafter. Workplace employee safety and health teams are used.	Their lost workday case rate is 0.3 per 100 employees compared to an insurance industry average of 0.8. Their average lost time claim cost (ergonomic) is under $1,000 compared to an industry average of $19,000.	Not Reported	Lynn Pontius-Gaudette, Head of Safety, UNUM Provident (Ex: 502-22).

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
226	Indoor Arena	7349.	The arena hired a team of ergonomists, who observed, filmed and analyzed the changeover process. Eventually, existing equipment was used in a different way, and forklifts, floor jacks and stacking dollies eliminated heavy lifting. The ergonomists developed a "drill" for moving the basketball floor using two different forklifts and two different crews on one section of floor. Previously, the process involved simply hoisting each section onto a forklift. The new method eliminated 90 % of heavy-lifting tasks. In order to refine the process even further, one employee invented a new tool (the Harvey bar), which allowed the changeover to be performed not only more safely, but also more quickly.	•$399,825 saved in workers' compensation funds •458 fewer workdays lost •$200,000 improvement in net profit (revenue of arena's operations) •Lowered absenteeism •Injured worker recovery	•39 fewer injuries (claims filed) •50-60 % improvement in worker performance •50-55 % improvement in productivity •100 % improvement in morale	Ian Chong, "An Ergonomics Boost for the Tacoma Dome," *Occupational Safety & Health*, (2/97, p. 56). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
203	Computer/data Systems	737	The company commissioned an ergonomic study to evaluate the work environment in the data-entry department. Based on the results of that study, the company modified existing workstations to reduce the risk of injury. The company installed adjustable equipment and accessories to accommodate the company's multiple users and the various work shifts.	Over a two-year period, the company decreased the amount of their workers' compensation costs from $854 per employee to $17 per worker in data entry.	Not Reported	*Continental Airline Magazine*, March 1999 (Ex: 502-22)
353	Health Care	80	Purchased mechanical lifts and other assistive devices including gait belts. Employees required to use devices and attend training sessions on body mechanics.	Lost workday injuries dropped from 4 per month to only 4 per year in the first unit to use the devices. Throughout the hospital, lost workdays resulting from patient transfer injuries dropped from 15.9 to 13.1 days in 6 months.	Not Reported	(Ex. 502-404)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
218	Nursing Care	805	Starting in 1997 this facility initiated an ergonomics program addressing the hazards associated with the transfers of residents. This program included the formation of a safety committee, the purchase of improved mechanical lifting equipment, training on safe bio-mechanical lifting techniques as applied to patient transfers, the re-emphasis of teamwork between management and staff, and a strengthened program of workplace oversight to ensure good implementation of these changes.	The rate of lost work-days associated with injuries has been reduced by more than half.	Since 1996 their practical ergonomics program addressing resident lifting hazards has cut their rate of related injuries by two thirds.	OSHA case files (Ex: 502-22)
216	Nursing Care	805	This facility has addressed their industry's recognized ergonomics concerns by establishing and enforcing a mandatory no single person lift policy. They have supported this program by purchasing and requiring the use of mechanical lift assists on all resident transfers.	From 1996 to 1998 the applied ergonomics program in place at this small employers establishment cut the number of ergonomic-related injuries and the lost workdays associated with them by 80%.	From 1996 to 1998 the applied ergonomics program in place at this small employers establishment cut the number of ergonomic-related injuries and the lost workdays associated with them by 80%.	OSHA case files (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
176	Medical and Nursing Home Care	805	This facility brought several lifts into the facility for a trial period, encouraging employees to test them and provide feedback on the lifts they preferred. The company selected two types of lifts–one to bring residents from a sitting position to a standing position; and one to help residents who are unable to sit up by themselves. The facility purchased 15 lifts–one for every department and a spare to help ensure availability. The facility offers all CNAs training in ergonomics and in how to use the lift assists.	The facility reduced its workers' compensation costs for work-related musculoskeletal disorders by about 30% between 1994 and 1996. Costs dropped from $100,000 to about $70,000.	Incidence rate fell from 14.7 in 1993 to 12.3 in 1996. Employees are pleased with the new lifting equipment that the company is now buying additional lift assists for use in other areas.	Private Sector Ergonomics Programs Yield Positive Results, General Accounting Office, August, GAO/HEHS-97-163 (Ex: 502-22)
217	Nursing Care	805	The ergonomics program being implemented by this facility addresses safe lifting techniques as applied to transfers involving residents.	Not Reported	In the two years since establishing their practical ergonomics program (1996) which stresses safe bio-mechanical lifting techniques for resident transfers, this facility has cut their rate of related injuries in half and the severity of these injuries (as measured by lost workdays) by 40%.	OSHA case studies (Ex: 502-22)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
209	Nursing Care	805	A management change at this center was followed by renewed emphasis on the ergonomic hazards associated with assisting patients with restricted mobility. This included training in proper lifting techniques, and use of mechanical lift assists both to improve patient security during these lifts as well as to reduce ergonomic stresses experienced by the staff certified nursing aides. An adequate number of lifting assist devices were obtained for the facility's staff and residents.	The lost work day injury rate at the center, which had averaged 8.3% from 1996 through 1998, fell to 2.4% after these changes were made.	Upper extremity musculoskeletal disorders, which had averaged 7.1% over this same time, fell to less than 1% in 1999.	OSHA case files (Ex: 502-22)
283	Nursing Home	805	The program included an ergonomic evaluation of patient handling, pilot testing and purchase of new equipment, a train-the-trainer program, and training of 347 nurses and other patient handling staff.	Not Reported	Over the course of the program (one year), the number of back injuries was 30% below the average of the prior three years, with the number of reported injuries in the final quarter approximately 1/7 of that for the three prior quarters.	"Short-Term Efficacy of Back Injury Intervention Project for Patient Care Providers at One Hospital". (Ex. 500-71-61)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
295	Health Care Facility	805	Introduce new lifting devices.	Not Reported	During 1991 and first 9 months of 1992, experienced 8 workers' compensation cases related to strains or sprains. Since new lifts (6 months) only 2 new cases reported, neither of which involved lost time or workers' compensation.	Testimony of Guy Fragala, PhD., PE, CSP. (Ex. 37-4)
175	Nursing Home	805	At the request of management a committee of nurses aides was formed to determine the cause and identify a solution for this concern. The solution that was decided on was to institute an ergonomics lifting program aimed at patient transfers. Mechanical lifting devices were investigated, tried, selected and put into use. Training on the proper use of the new lifts and on proper lifting bio-mechanics was provided. A policy of limiting unassisted lifts to 50 pounds was established.	Two years after starting their program, lost workday cases due to back injuries had been reduced by 80% and associated lost workdays by more than 90%.	Not Reported	Wall Street Journal, (March 20, 1995). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
166	Nursing Care	805	The company established an ergonomics program addressing the lifting hazards associated with patient transfers. They established two safety committees, one to address changes in the physical plant and the other to focus on reducing injuries and illnesses. They changed their adjustable beds from mechanical hand crank units to electric powered ones to reduce ergonomic stresses affecting their staff's backs. They added powered lifts to their facilities to ease the stresses associated with patient transfers.	Not Reported	Three years after being invited to join the Maine 200 Pilot Program this nursing care employer's ergonomics and safe lifting program had reduced their total occupational injuries and illnesses by 40%.	OSHA case files (Ex: 502-22)
215	Nursing Care	805	This nursing center has established a practical ergonomics program stressing the safe bio-mechanical lifting of residents. This is presented to their staff through lectures, videos, handouts and demonstrations. It is repeated on a semi-annual basis. Mechanical lifting assists have been made available throughout the establishment.	Reduced the number of associated lost work-days by over 85%.	In 1997 and 1998 the practical ergonomics program stressing safe bio-mechanical lifting techniques at this small nursing care facility, cut the rate of related workplace injuries by almost 75% from what they were in 1996.	OSHA case files (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
294	Health Care Facility	805	Introduced mechanical lifts in four high risk units.	Not Reported	Average reduction in injuries over the 4 units was 73.75%. A similar facility in Wyoming also reduced injuries by 60% after mechanical lifts were introduced..	Testimony of Guy Fragala, PhD., PE, CSP. (Ex. 37-4)
300	Health Science Center	805	Ergonomics program included interventions such as worker assisting devices, equipment to help employees move patients. Training was also incorporated.	Lost time hours were reduced by 43% and in one selected nursing unit, it was reduced by 83%.	Back injury incidence rates fell 23%. In one selected nursing unit, there was a drop off of 39% in back injuries.	Testimony of Guy Fragala, PhD., PE, CSP. (Ex. 37-4)
214	Nursing Care	805	An ergonomics program stressing biomechanical safe lifting was begun in 1997. The program is administered and reviewed by an in-house ergonomics committee. It is audited by their corporate office on an annual basis.	Lost work-days associated with injuries have been reduced by more than 80%.	In the last two years this small nursing care facility's practical ergonomic program of bio-mechanics has cut their rate of ergonomics-related injuries by more than half.	OSHA case files (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
150	Nursing Care	805	The company contracted with a manufacturer of lift assist devices to assess their need for lifts, train their employees initially on the use of the lifts, and then follow up with additional training and other support. The employer purchased 7 lifts. Some were whole body lifts, and others were stand assist lifts. They then implemented a policy to require the use of the lifts for all resident transfers for residents that were less than 50% ambulatory. Employees who violated this policy were disciplined. This program had the full support and backing of management. The program was fully implemented in February of 1998.	The LWDII rate for the facility in the first 6 months of the program dropped to 3.9.	Not Reported	OSHA case files. (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
211	Health Care Facility	805	In 1993, the hospital formed a Back Injury Prevention Task Force to identify and tackle back injuries. The team created department-specific recommendations for the work process through a multi-disciplinary approach. For instance, in the nursing department, which accounted for half of all back injuries, nurses began to use mechanical lifting equipment, slide boards and patient transfer belts. Further, a trained colleague taught nurses how to lift patients properly.	Lost time injuries were cut to 49 (down 35%) with 426 lost days (a 57% decrease) and 1,851 restricted days (a 54% decrease). Total workers' compensation costs related to back injuries in 1994 were estimated at $187,595, a 43% decrease from 1993.	In 1994, total back injuries had decreased to 85 (a 43% decrease from 1993), with 38 occurring in nursing (a 50% decrease).	Back program cuts comp costs, injuries, lost days," *Hospital Employee Health*, (July 1995). (Ex: 502-22)
305	Residential Institute	805	Program includes management support, employee participation, job-site analysis, purchase of equipment, workplace modifications, training, rehabilitation, and fitness programs.	Workers' compensation claims reduced by $150,000 (13%) in one year. Cost related to back injuries were reduced by 32%.	Carpal tunnel syndrome claims were down 50%.	Testimony of Bernice D Owen, PhD, RN (Ex. 37-5)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
196	Nursing Care	805	In 1996 this nursing care facility strengthened its ergonomics program directed at the risks associated with the lifting of patients. They brought new mechanical lifting equipment into use in the facility and began an intense training program covering the use of both the equipment and proper procedures for making safe lifts. They also implemented a progressive disciplinary program to ensure the new policies were observed.	Cut the number of lost work-days injuries from 473 to 16.	By strengthening their ergonomics program in 1996, this nursing care facility reduced their rate of related occupational injuries from 1995 to 1997 by more than 75%.	OSHA case files (Ex: 502-22)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
146	Health Care	805	In June of 1997 the company established a no-lift policy. The program is called Get A Lift Workplace Program by Prevent, Inc. In the program each resident is assessed for the need for mechanical lift assistance and for the type of lift indicated (MAXI or SARA). The facility has two MAXI lifts and two SARA lifts. Color coded stickers are used to denote the type of lift to be used. The stickers are applied to the resident name plates outside the room. The staff is trained on both types of lifts. Use of lifts is strictly enforced. Management had initial problems with staff acceptance, but is pleased with their buy-in now.	Although it was already half way through 1997 when the company strengthened their ergonomics program, their rate of lost time injuries and the number of associated lost work-days were both still down by 50% for the year, compared to 1996 levels.	Not Reported	OSHA case files (Ex: 502-22)
145	Health Care	805	The company significantly strengthened their ergonomics program in 1997. They instituted a no-lift policy (exceptions are made for some patients due to their families' objections) and added mechanical lift assists to their facility. Training was provided to their staff on the use of the new equipment and safe lifting techniques.	Not Reported	After implementing an ergonomics program in 1997, this small health care facility achieved a 50% reduction in their related injury experience.	OSHA case files (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
227	Nursing Care	805	In 1996 this facility implemented an ergonomics program. Mechanical lift assist devices were purchased and put into use. The staff received training on the new equipment and the procedures for performing lifts safely. A medical management program stressing early reporting of pains and symptoms was instituted.	In the first year following the implementation of an ergonomics program in 1996, this facility reduced their ergonomics-related lost-time injuries by two thirds, and the lost days associated with them from 748 to 111.	Not Reported	OSHA case files (Ex: 502-22)
101	Nursing Assistants, Nursing Home	805	Implemented program to determine patient lifting tasks that were the most stressful; evaluated alternative devices for acceptability among assistants; trained assistants in use of devices; and modified shower rooms and patient care techniques to facilitate patient handling. Used walking belts and mechanical hoists for lifting aids.	Decrease from 634 lost workdays/100 FTEs before intervention to 317 lost workdays/100 FTEs post intervention.	Incidence for back injuries decreased from 83 to 47 per 200,000 work-hours.	Garg and Owen (undated) (Ex. 26-1093) (Ex. 37-5)
102	Nursing Aides, Nursing Home	805	Committee of employees determined the types of mechanical devices that were needed, installed in 1993. Implemented employee training and modified duty programs.	Decrease in lost work days from 38 in 1991 to 4 in 1994 (as of Nov), largely attributed to the implementation of a no-lifting greater than 50 pounds policy.	Not Reported	Comments to OSHA from Kennebec, (undated) (Ex. 26-1094)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
243	Nursing Care	805	This facility decided to start an ergonomics program, including an ergonomics training program that emphasizes proper lifting and transfer techniques. Powered lift assists have been purchased and put into use. Two part time physical therapists provide ergonomic support to the nursing staff. Review of ergonomics related incidents and refresher training have been added to their program.	In the first year (1998) following initiation of their ergonomics program, this small nursing care facility cut their occupational injury rate by a third and their lost/restricted work-days by over 50%.	Not Reported	OSHA case files (Ex: 502-22)
194	Nursing Home	805	In 1996 they established an ergonomic component of their overall safety program aimed at primarily the handling of residents and office ergonomics. They focused on an employee-driven program with a strong training emphasis. They added electronic patient lifts to their stock of hydraulic lifts.	They have had a dramatic reduction (over 50%) in their lost-time ergonomic injury incidence and severity rates. They have saved over $100,000 in direct injury costs in the last four years. They have improved their continuity of resident care and the morale and pride of their employees.	Not Reported	Sherry Welch, Citizens Memorial, Bolivar, MO Phone call 7/13/99 (Ex: 502-22)
138	Nursing Care	805	The facility purchased a new Hoyer Lift and established a safety initiative program.	Compared with 1997 rates, the facility in 1998 cut their incidence of total lost time injuries and back injuries by over 50%. The severity of those injuries was also greatly reduced.	Not Reported	OSHA case files (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
236	Nursing Care	805	In 1997, this facility established an ergonomics program. They abolished the practice of single person lifts and instituted the use of gait belts. Their physical therapy department evaluated the handling requirements for each resident and provided this information to the nursing staff.	By instituting an ergonomics program in 1997, this small nursing-care facility was able to cut their rate of ergonomics related injuries in half in each of the succeeding two years and cut the associated lost work days by more than 90%.	Not Reported	OSHA case files (Ex: 502-22)
316	200- Bed Acute Care Facility	805	Use a specialized "Lift Team" for lifting of patients which is specially trained for this task. Also, use of mechanical equipment.	In 1996 & 1997, had 11 and 9 reported lost time injuries, 23 and 31 lost days, with a cost of $20,632.00 and $63,796.00 respectively. In 1999, the year of implementation, had only 2 reported injuries with no lost days and 2 restricted days with a cost of $336.00	Not Reported	(Ex: 32-311-1-8)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
136	Health Care	805	In 1997 the company began an aggressive ergonomics training/in-service program. They provide gait belts for each nursing employee. There are three mechanical lift devices located throughout the facility and the lifting techniques and proper lifting training given during orientation and frequent in-service training are administered by the physical therapy and rehabilitation staff. This training includes critiques of staff actually performing transfers from wheelchairs and floor situations.	The severity of injuries that did occur after program implementation, as reflected in the number of lost working days associated with them, was down significantly.	After aggressively training their staff in the ergonomics of proper lifting techniques in 1997, this employer's incidence of related back injuries and upper extremity musculoskeletal disorders in 1998 was reduced by 80% from their 1996 experience.	OSHA case files (Ex: 502-22)
117	Nursing Home	805	The nursing home implemented a federally-funded injury-prevention project with UCLA's Occupational Safety and Health Program. Vale Health Center established a labor-management committee to review injury problems. It purchased old patient-lifting equipment with easier-to-use electrically powered lifts. Nursing aides also attended injury-prevention training sessions.	Not Reported	The company reduced back injuries from 10 per year to only one during the first six months after implementation of the ergonomics program.	*Los Angeles Times*, (July 25, 1997) (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
296	Health Care Facility	805	Hospital-wide quality management initiative that included an ergonomics -based back injury prevention program involving mechanical lifting devices.	Workers' compensation costs for back injuries were reduced from $174,412 to $4,500. Lost work days were reduced from 1025 to 81.	They achieved a 74% reduction in back injuries over a 3-year period.	Testimony of Guy Fragala, PhD., PE, CSP. (Ex. 37-4)
237	Nursing Care	805	At the start of 1997 this facility established an ergonomics program. Their physical therapy group was assigned responsibility for analyzing the handling requirements for each resident and providing this information and training to their nursing staff in the biomechanics of proper lifting and newly established policy on resident lifts. Single person lifts were prohibited and mechanical lift assists made available.	Since instituting their ergonomics program early in 1997, this small nursing-care facility reduced the number of lost workdays by over 85% over the next two years.	Since instituting their ergonomics program early in 1997, this small nursing care facility over the next two years cut their number of ergonomics related injuries by two thirds.	OSHA case files (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
129	Health Care	805	The facility asked Colorado Compensation Insurance (CCIA) to evaluate the worksites for affected employees. CCIA compiled data on injuries that met six criteria: •The injury occurred at the facility •The injury occurred in 1995 •The injured worker was in a clerical, administrative function •The injury was caused by a cumulative trauma to the hand, wrist, arm or neck •The injured person received physical therapy •The injury did not become a lost time case within 30 days from the date of the injury report (a lost time case is defined as one resulting in 3 or more days away from work).	Of the cases receiving interventions, only 5 resulted in lost-time cases; the remaining 67 were non-lost time cases. Of these 72 cases, the average cost per case was approximately $2,959. The cases that did not receive interventions cost approximately $4,652 per case.	Not Reported	Patricia Fernberg, "Health Returns from Ergonomics," *Occupational Hazards*, (10/1/98). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
322	Three Nursing Homes	805	Implemented a zero-lift policy.	Achieved an: 80% reduction in lost or restricted workday injuries from patient transfers; 62% reduction in all lost or restricted workday injuries; and, 80.6% reduction in worker compensation cost from nursing departments and a total reduction of 75% per hospital. The number of lost or restricted workdays per year decreased 84.6%.	Not Reported	(Ex: 30-4779-1)
126	Nursing Care	805	Beginning in 1996, this employer implemented a good ergonomics program. They began a "no unassisted lift" policy. A body mechanics and lifting training program was added. All staff were provided with gait belts and training on their use. Mechanical lift assists were also purchased for each nursing wing and the bathing facility and put into mandatory use.	The company's LWDII rate fell from 35.8 in 1996 to 16.2 in 1997.	The facility implemented an ergonomics program in1996 and was able in the first year to achieve a 50% reduction in their rate of associated workplace injuries. The severity of the injuries that are occurring is also decreasing.	OSHA case files (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
125	Nursing Care	805	In 1996 when new management took over this nursing care facility a decision was made to strengthen the ergonomics program, especially as it related to back injury prevention. Training in safe lifting techniques and back biomechanics was provided. An additional mechanical lift for resident transfers was purchased and put into use.	By strengthening their ergonomics program in 1996, this employer cut their rate of related lost-time injuries in half in 1997.	Not Reported	OSHA case files (Ex: 502-22)
195	Nursing Care	805	This facility began to implement an ergonomics program in 1995. An ergonomics consultant from Healthline assisted with pre-assignment job screening and defining the management and staff responsibilities for implementation of the new program activities. The administrator reviews all accident investigations to ensure causal factors and corrective actions are identified and implemented. There is a modified/restricted duty program in place. There are mechanical lifts available in all three divisions. A training program has been established covering the proper use of lifting equipment and lifting techniques. Unassisted lifts are prohibited.	Not Reported	From 1995 to 1997, the ongoing implementation of this nursing care facility's ergonomics program resulted in a 50% reduction in both the rate of back injuries incurred by its staff nurse aides and the lost work-day rate associated with those injuries.	OSHA case files (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
359	Nursing Care	805	They purchased various new lifting devices and made their use mandatory. Extensive training on proper use of equipment and patient handling.	Reduced the overall total lost time injury and illness rate by 75% between 1996 and 1998.	Lost-time back injuries and upper extremity MSDs declined from 9 to 2 cases between 1996 and 1998. The lost-work-day injury incidence rate for certified nurses aides declined from 20.3 in 1996 to 5.9 in 1998.	(Ex. 502-404)
363	Nursing Care	805	They purchased and put into use mechanical patient lift assists. Training on lifting is mandatory.	Reduced the total lost-time injuries and illnesses by approximately 50%.	Reduced the number of back injuries and upper-extremity MSDs by approximately by 50% between 1996 and 1998.	(Ex. 502-404)
365	Nursing Care	805	Implemented an ergonomics program that included thorough job safety hazard analysis, extensive employee training, and a strong back to work rehabilitation policy.	After implementing an ergonomics program in 1996 they had a 95% decrease in lost work days associated with ergonomic-related injuries.	As of May 1998, they have had only one recordable back injury with one lost work day.	(Ex. 502-404)
375	Nursing Home	805	They established a no-lift policy and purchased the mechanical lift equipment and established an ergonomics training program to support proper implementation and use of the new equipment.	In the second year after establishing a new comprehensive program, they achieved a 75% reduction in lost work-days.	In the second year after establishing a new comprehensive program, they achieved a 68% reduction in workplace injuries.	(Ex. 502-404)
360	Nursing Care	805	They made lifting equipment available on all resident floors and prohibited the use of single-person lifts. Also yearly in service training about patient handling and body mechanics.	Reduced the number of lost work-days from 170 in 1996 to 124 in 1997 and 44 in 1998.	Reduced the number of total lost-time-back injuries and upper extremity disorders from 7 in 1996 to 2 in 1997 & 1998.	(Ex. 502-404)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
338	Long Term Care Facility	805	Ergonomics-based back-injury prevention program, including lifting devices.	Over 3-year period lost-work-days reduced from 1025 to 81. Workers' compensation costs reduced to $4,500 from $174,412.	A 74% reduction in back injuries over 3 year period.	(Ex. 500-47-10)
374	Nursing Home	805	A "no-lift policy was established that required nursing personnel to use new mechanical lifts for lifting all residents. Training was provided on the ergonomics of lifting as well as on the new lifts.	In the first year following the implementation of their program, their total workers' compensation costs reduced from $19,000 to $118.	In the first year following the implementation of their program, their back injury claims related to sprains and strains were reduced from twelve to one.	(Ex. 502-404)
366	Nursing Care	805	The program addresses training, personal protective equipment, engineering control methods and medical monitoring.	The ergonomics program at this mid-sized nursing care facility reduced the rate of total lost time injuries and illnesses by 40% between 1996 and 1998.	The ergonomics program at this mid-sized nursing care facility reduced the number of back injuries and upper extremity MSDs by 40% between 1996 and 1998.	(Ex. 502-404)
344	Nursing Home	805	Instituted a joint labor-management back-injury prevention program. Consists of 10 members covering different shifts, and is co-chaired by the staff developer and shop steward. Additional equipment became available. Awareness training for LVNs was conducted.	Not Reported	Incidence rates remained relatively unchanged between 1996 and 1997 however, severity rates went from 143 in 1996 to 64 in 1997 per 100 worker-years. The severity rate for all musculoskeletal strain/sprain type injuries went from 196 to 89/100 worker years.	(Ex. 500-20-5)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
315	10 Hospital Study	806	A special "Lift Team" was developed utilizing specially trained and skilled people for lifting only. Trained for 2 days (16 hours) in latest techniques and equipment. Also included use of new mechanical lifts.	All 10 facilities showed a mean reduction in lost-work-days of 90%.	All 10 facilities showed a mean reduction in: back injuries of 69%, and incidence rates of 62.5%.	(Ex: 32-311-1-3) (Ex: 38-119)
298	Hospital	806	High risk processes were identified and priorities set for ergonomics interventions. Two high-risk units were identified and new lifting devices were instituted.	• Lost work days for one unit were reduced from 69 to 0 and restricted work days from 122 to 2. • Lost work days for the other unit were reduced from 48 to 0 and restricted days from 11 to 4.	• One unit achieved an 83% reduction in the number of occupational injuries. • The other unit achieved a 75% reduction in the number of injuries.	Testimony of Guy Fragala, PhD., PE, CSP. (Ex. 37-4)
292	Hospital	806	Implemented training and work practices, which included standardization of lifting procedures, an apprenticeship program for new workers, and use of mechanical lifting and transfer aids.	In 2 years, achieved a 74% decrease in lost time injury. Total lost days decreased from 136.2 to 23 per 100 FTE. Compensation costs decreased from $ 237/FTE to $139/FTE.	In 2 years, there was a 50% decrease in total OSHA recordable's.	Testimony of Bradley Evanoff, MD, MPH. (Ex. 37-1)
340	Hospital	806	Implemented lifting aids on two high risk units.	Lost-work-days were reduced from 69 to 0, and restricted days reduced from 133 to 6.	Occupational injuries improved approximately 80%.	(Ex. 500-47-10)
341	Hospital	806	Instituted a no-lift policy.	Not Reported	Reduced injuries by 95%.	(Ex. 500-47-10)
299	Hospital	806	Ergonomics program included the development of a no-manual-lifting policy with standardized lift and transfer procedures for patients.	Not Reported	Injuries were reduced by 95%.	Testimony of Guy Fragala, PhD., PE, CSP. (Ex. 37-4)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
304	Hospital	806	A comprehensive ergonomics system was implemented which included items such as patient assessments, purchase of assistive devices, education and training, new management policies for workers to follow, monitoring of the program, and management support.	Initially, there were 64 lost work days and 15 transitional or restricted days. 18 months later there were 3 lost work-days and 12 transitional days. 5 years later, there were no lost work-days.	Initially, there were 20 back or shoulder injuries, 18 months later that was reduced to 12 (40%).	Testimony of Bernice D Owen, PhD, RN (Ex. 37-5)
301	Hospital	806	Ceiling-mounted lifts were installed in a 200-bed facility.	Hospital was experiencing 26 lost-time injuries per year, based on 4 years of data, with an average of 938 lost days per year. In 2 years since new lifts were introduced, injuries dropped to 6.5 per year and lost days to 67 per year.	Not Reported	Testimony of Guy Fragala, PhD., PE, CSP (Ex. 37-4) (Ex. 500-47-10)
302	Hospital	806	Ergonomics management program and engineering control intervention were implemented. Mechanical lifting devices were installed.	In 1990, they experienced 1,097 lost-work-days. By 1995 they had reduced lost-work-days to 48.	Not Reported	Testimony of Guy Fragala, PhD., PE, CSP (Ex. 37-4)
297	Hospital	806	Quality improvement team determined that effective patient handling devices were needed as part of their intervention strategy. Started using lifting equipment.	Annual direct costs associated with back injuries resulting from patient handling based on an average of 3 years was $111,159. One year after new mechanical devices were introduced this was reduced to $743.	Not Reported	Testimony of Guy Fragala, PhD., PE, CSP. (Ex. 37-4)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
293	Hospital	806	Changes were made to billing office persons' workstations such as adjustments to computer keyboards and monitor setups and adjustments in seats and desks layouts.	Annual total days declined from a rate of 51 days per 100 FTE to 25 per 100 FTE. Compensation costs decreased from a high of $578 per FTE to a low of $120 per FTE.	Not Reported	Testimony of Bradley Evanoff, MD, MPH. (Ex. 37-1)
288	Hospital Employees	806	Implemented a comprehensive intervention that included case management, treatment by physicians experienced with work injuries, and use of ergonomic work.	A decrease in time lost from 10.4 to 6.6 days, and a 18% reduction in total case cost.	A decrease in musculoskeltetal injuries. Further, the program resulted in a pronounced decrease in the number of work-related upper extremity MSDs and a virtual elimination of cases which required surgery.	Testimony of Bradley Evanoff, MD, MPH. (Ex. 37-1)
317	Hospital/nursing	806	Use a specialized "Lift Team" for lifting of patients which is specially trained for this task. Also use of mechanical equipment.	They went from 39 cases per 1000 year observation to 2.4 cases per 1000 year observation. A 95% reduction in lost time injuries.	Not Reported	(Ex. 38-42)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
382	750-Bed Medical Center	806	In 1993, a comprehensive ergonomics program using the 5 step approach was implemented. One component of their program was the implementation of an ergonomics team with representation from each of the major departments.	These efforts were a part of the reason for the reduction in lost-work-day incident rate from 5.9 to 4.0 for calender year 1993 to 1994. Their lost-work-day incident rate continue to improve, reaching 3.3 in 1997. This compares to an industry average for hospitals in 1997 of 4.1. They went from significantly worse than industry average to significantly better.	Not Reported	(Ex. 500-50-1)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
255	Hospital	806	Initiated a comprehensive ergonomics program in 1992. The program consisted of early diagnosis and treatment of upper-extremity MSDs along with identification and correction of problem jobs. The program emphasized early detection of problems by providing that any worker with a complaint that could "possibly" be related with an upper-extremity MSD was medically evaluated and an ergonomic survey/job analysis of the employee's workplace was conducted to determine the work-relatedness of a potential worker's compensation claim and to initiate corrective action.	Not Reported	In the seven- year period following the 1992 initiation of this ergonomics program, the rate of upper- extremity work-related MSDs decreased significantly by 80 % from 6.5 per 1,000 in 1992 to 1.3 per 1,000 in 1998.	Appendix C "Summaries of Studies on Effective Ergonomics Programs and Interventions" (Bernacki et al., 1999) (Ex:32-339-1)
103	Nurse, Hospital	8062	Professional lifting team of 2 performs 95% of all patient lifts; nurses freed to do more nursing activities.	Not Reported	Back injuries reduced 94% first year after teams were implemented	Charney et al. (1991) (Ex. 26-1091)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
104	Nursing and Laundry Workers, Hospital	8062	Worker education and training were provided. Employees were encouraged to take breaks. A regular maintenance program for equipment was initiated. New hand tools and lifting equipment were provided. Handles were installed on tool carts. X-Ray cassettes were reorganized to avoid repetitive bending and back problems.	Lost-time hours in nursing ward fell 83 percent in 4 years. Lost-time hours among laundry workers fell 83 percent in 2 years.	Back injury rates in nursing wards fell 39 percent in 4 years. Back injury rates among laundry workers fell 71 percent in 2 years.	"Giving health-care workers a helping, mechanical hand." CTD News (1995) (Ex. 26-1092)
385	Hospital	8062	Steps involved in the process: 1. Define the exposures; 2. Identify the location and severity of negative results; 3. Identify existing and previously reviewed equipment to address exposure; 4. Determine new equipment and work practice needs	One facility's results: -reduced-lost-time cases from 43 to 7 over a two-year period. -productivity went up -reduced workers' compensation from $80,000 to $15,000	Not Reported	(Ex. 500-50-1)
384	450-Bed Hospital	8062	Applied the five-step approach and recognized that patient transfer was the primary loss-producing source that needed to be addressed.	These efforts resulted in a reduction in lost-work-days per 100FTE from 43.7 in policy year 92/93 to 20.5 in policy year 94/95.	Not Reported	(Ex. 500-50-1)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
106	Prescription Filling Using a Syringe, Hospital	8062	A manual assist for syringe actuation was developed to reduce the thumb and pinch grasp forces required while using a standard syringe. The system, about the size of a hot dog bun, accommodates standard syringe sizes from 10cc to 60cc.	Not Reported	Upper extremity CTD cases were reduced from six to one.	"Case study 60: Hospital pharmacy liquid IV prescription filling using a syringe." ErgoWeb Inc., 1998 (Ex. 26-1096)
107	Hospital Workers	8062	Patient Air Lift Systems introduced.	Not Reported	Reduced injuries at second hospital by 94%.	Brigham (1994) (Ex. 26-1097)
108	Nursing, Hospital	8062	Redesigned work process: Mechanical lifting equipment, slide boards, and patient transfer belts.	Lost-time injuries reduced to 49 (down 35%), with 426 lost days (a 57% decrease), and 1,851 restricted days (a 54% decrease).	In 1994 total back injuries decreased to 85 (a 43% reduction)	Hospital Employee Health (1995) (Ex. 26-1098)
383	230-Bed Hospital	8062	Implementation of an ergonomic program including the purchase of 13 Air-supplied mattress (i.e., transfer technology) devices.	The total cost for the devices was $22,000. The cost for patient transfer related incidents the two years prior to introduction was $272,380. The cost for the two years immediately following intervention was $73,117, a reduction of almost $200,000.	Not Reported	(Ex. 500-50-1)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
105	Nursing, Hospital	8062	Ergonomic assessment of 14-room surgical suite, implemented changes in procedures for moving patients, maneuvering carts and equipment, using gall bladder boards, walking on wet floors, and accessing power outlets. Workers are periodically retrained in procedures to maintain awareness.	Not Reported	Back injury rates reduced by 25% in 18 months since program was implemented.	Garg and Dockery (1995) (Ex. 26-1095)
345	Medical Center	8062	Interdisciplinary team established to prevent injuries and reduce workers compensation costs. Ergonomics team divided into three components, 1) Basic Ergonomics, 2) Medical Ergonomics, 3) Human Factor Engineering.	Workers' compensation claims were reduced from 10.49 per 100 FTEs in 1995 to 7.26 in 1999.	Not Reported	(Ex. 30-4139)
346	Hospital Billing Department	8062	Ergonomics program was conducted. Jobs selected that needed attention, employees were trained, and job modifications and equipment changes made (i.e. desk and chair heights, back support, foot and wrist rests, etc..).	Annual workers' compensation cost were reduced from $578/FTE to $120/FTE. Lost work-day injury/Illness rate dropped from 63.2/100 FTE to 6.4/100 FTE. Annual lost work-days was reduced from 51/100 FTE to 25/100FTE.	The number of work compensation injuries was reduced from 12/100 FTE to 5.4/100 FTE.	(Ex. 30-4139)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
172	Home Health Care	8082	The ergonomics program established by this employer relied heavily on training. This included training on back biomechanics and safe lifting techniques. They constructed a mock home health care setting at their training facility to allow hands-on practice.	Cut their workers' compensation costs by 50%.	Not Reported	OSHA case files (Ex: 502-22)
167	Educational Institution	82	They established an ergonomics assessment and implementation team to analyze their injury and illness data and identify when, where, and how their injuries were occurring. The ergonomic concerns they identified were addressed with job redesigns, equipment changes, training, and warm-up exercise programs. They stressed employee involvement in all phases of their program.	Three years after being invited to join the Maine 200 Pilot program this institution's ergonomics program had reduced their lost work-day injury rate and total lost work-days by over 95%. Their workers' compensation insurance costs had decreased by over $100,000 per year.	Not Reported	OSHA case files (Ex: 502-22)
342	Health Science Center	8733	Ergonomics program, lifting aid devices, staff training on device use.	Lost time hours have dropped 43%.	Back injury incidence rates have fallen 23%.	(Ex. 500-47-10)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
119	Municipality	91	Under one of San Jose's ergonomics programs, a job is analyzed over a number of days to identify high-risk activities. A training session was created to show workers how to work differently to reduce the risk of injuries. Aside from the specific instructions, the six-hour course also provides more general information on body mechanics, posture and breathing. Another program teaches employees proper typing techniques designed to reduce repetitive stress injuries. Finally, San Jose has made several improvements to employee workstations, including split keyboards and track balls instead of mouse.	The ergonomics program has helped save the city $5.7 million in workers' compensation costs since 1995.	In Fiscal Years 1996-1997, back injuries among city workers fell by 57.3%, while wrist injuries fell by 25.9%.	Michael Bradford, "Ergonomic Changes Comfort San Jose: Efforts to Reduce Workplace Injuries Save Millions and Help Workers Stay on the Job," *Business Insurance*, 10/26/98. (Ex: 502-22) (Ex. 32-339-1-66)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
229	Government	91	The State recognized the need for a statewide comprehensive ergonomics program with management commitment and employee involvement. Employees on the assessment teams recommended changes to the workstations such as adjustable chairs, document holders, wrist and mouse rests, footrests and adjustable height keyboard holders. For some workstations, no equipment was needed, but the assessment team recommended short breaks from keying. Another important component of the ergonomics program was training. Training on ergonomics was provided for employees and supervisors.	In the first two years, the ergonomics program decreased the cost associated with MSDs by 51%, and the cost has continued to fall. In 1998, Wisconsin had a 75% decrease from levels at the start of the program.	Not Reported	*Occupational Safety and Health*, (August 1998). (Ex: 502-22)
109	Government Employees	91	Introduction of program of ergonomic improvements, education, training, and physical fitness activities.	Not Reported	1-year prevalence of back pain fell from 65 to 53 percent.	Shi (1993) (Ex. 26-1099)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
349	VDT Operators		A committee was formed to identify alternative work patterns to increase work variability, reduce the amount of keying to no more than 5 hours per day, and evaluate new chairs. New chairs installed in February, 1991.	Not Reported	CTDs for Nov. 90 Feb. 93 Neck 22.2% 0.0% Shoulder 13.9% 14.7% Elbow/ Forearm 8.3% 5.9% Hand/ Wrist 36.1% 20.6% Low Back 8.3% 0.0	(Ex: 500-41-115)
274	Household Products Manufacturer		Introduced adjustable workstations, improved the grips on hand tools, improved parts organization and work flow.	Not Reported	Reduced all injuries (particularly back) by 50%.	"Summary of Studies on the Effectiveness of Ergonomic Interventions" (June 1995). (Ex. 38-65)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
204	Military		Identified a comprehensive program to address ergonomics base-wide. They established an ergonomics committee to identify workplace ergonomic stresses from their injury logs and to evaluate those high risk areas to prevent future injuries. Powered ergonomic tools were substituted for mechanical models. Task lighting was improved. Storage spaces were rearranged to eliminate bending and lifting. Electric lift tables and hoists were added. An ergonomics training program was put into place to help workers identify and minimize ergonomically stressful activities. The base's occupational medicine program was strengthened in its approach to workplace ergonomics.	Not Reported	Four years after establishing a comprehensive, practical and modestly funded ergonomics program, a high rate of ergonomic injuries were eliminated.	CTD News,(January, 1996). (Ex: 502-22)
373	Manufacturing-raw Material Processing		During 1989 thru 1991,the company purchased 27 electronic lift assists that it permanently mounted on its lift trucks.	Not Reported	Reduced the number of back injuries from 13 to 4 over a two-year period while improving product quality.	(Ex. 502-404)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
188	Manufacturing		The company developed a comprehensive ergonomics program, including the following: •An education program, including videotapes, seminars and instruction on proper posture, designed to teach computer users how to reduce exposure to ergonomic injuries. •A site on 3M's company intranet with information designed to help employees evaluate their workstations. •The development of new products, including a gel -illed wrist rest for computer users. •Using forklifts and "tote tanks" instead of manually maneuvering 55-gallon drums.	At one plant, lowered incidence of lost workdays from more than 50 days per 100 workers in 1991, to less than 20 days per 100 workers in 1994.	A study of 1,000 company employees over a 30-month period revealed that less than 11% still reported pain or discomfort after implementing all or part of the recommended ergonomics changes.	Profiting From Loss Control: 3M's Own Ergonomics Research Leads to New Products,"*Business Insurance*, 4/27/98; "Ergonomics Teams: Help Workers Help Themselves" *Safety & Health*, (2/96, pp. 55-56). (Ex: 502-22)
212	Manufacturing - Materials		The company established a very aggressive safety program and an ergonomics program. The company installed a lift to move 600-pound drums and purchased an auto-pallet loader to further minimize lifting and moving.	In 1996, the company had reduced its workers' compensation claims to 1,000 from 2,500 in 1987.	Not Reported	Company report to OSHA (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
333	Military		Implemented abatement program focused on tasks requiring excessive lifting, bending and repetitive arm motions centered around a joint labor management team for identifying hazards. Workers are trained and a medical monitoring program was developed.	Not Reported	RSI exposures at the plant have dropped dramatically. RSI injures in the parachute shop have essentially been eliminated. In four-year period prior to the program, 15 of 25 employees in the shop had been diagnosed with RSIs.	(Ex: 32-339-1-1)
311	Manufacturing		Redesigned totes for carrying of large and small parts to reduce cumulative wrist trauma disorders from repetitive lifting and maneuvering.	Not Reported	3 serious wrist cumulative-trauma disorders had occurred in the 4 years since the introduction of the new totes, they have not had one wrist cumulative-trauma disorder.	(Ex. 500-114)
268	Cable Forms Production		Introduced adjustable workstations and fixtures, counterbalanced tools.	Reduced musculoskeletal sick leave by 67% over an 8-year period, productivity increased.	Not Reported	"Summary of Studies on the Effectiveness of Ergonomic Interventions" June 1995 Ex. 38-65

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
115	Administrative Services		Work areas were evaluated for potential ergonomic risk factors and recommendations for engineering controls were made and implemented. In addition, a medical management program and an office ergonomics training program were established.	The number of hours lost due to occupational injury was reduced by 75%.	No new injuries were reported in the first year following full implementation of their program.	CTD News, (January 1998) (Ex: 502-22)
254	Gov't. Employees		Workers are trained in ergonomic practices and tracked to determine whether the program has been successful in reducing work related MSDs. The department incorporated hand-powered, portable lifting devices, tire-dunker machine, automated lubrication systems, etc.	During two-year period, reduced the number of lost work days from 225 to 68 (70% reduction).	During two- year period, reduced the number of MSDs from 86 to 39 (55% reduction).	"Ergonomics at the DoN" (Ex. 192)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
259	Computer Manufacturer		In 1991, this company initiated an ergonomics program incorporating a number of core elements, including management commitment, training, medical management, identification of high risk employees, hazard analysis and control.	During the period 1994 through 1998, OSHA recordable cumulative trauma disorder rates decreased in each of the four years, days away from work per lost day case declined from 14.67 in 1994 to 4.1 in 1998, a 72% decrease in the time away from work for each lost day case, and an avoidance of approximately 20,000 days away from work over the four-year period, accounting for more than $10 million in direct and indirect savings.	Not Reported	Appendix C "Summaries of Studies on Effective Ergonomics Programs and Interventions" (Ex:32-339-1)
381	16 Separate Companies and Consisted of a Wide Range of Materials Handling Jobs.		Intervention types included: 1. Lift tables 2. Lift aid 3. Redesign 4. Equipment	Not Reported	Ergonomic interventions consistently reduced the jobs' mean low back incidence rates.	(Ex. 500-87-1)
273	Office		Provided training, redesigned workstations, and incorporated additional breaks and exercise into the work schedule.	Average of all sick leave decreased from 20 days/year to 10 days/year in two years.	Not Reported	"Summary of Studies on the Effectiveness of Ergonomic Interventions" (June 1995). (Ex. 38-65)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
260	Office Setting		Initiated an ergonomics program in the late 1980's focused on an office environment. Their program incorporated a number of the core elements of a programmatic approach, including training, management commitment, job hazard evaluation and control, medical management, hazard identification and a pro-active element (engineering out hazards before equipment is put in place).	Total MSD claims severity (monies paid for MSDs) dropped despite an estimated 15% per year increase in medical costs. In addition, MSD claims payouts as a percent of total workers' compensation payouts declined from 66% of total dollars paid in 1992 to 48% of dollars paid (projected) in 1997.	Not Reported	Appendix C "Summaries of Studies on Effective Ergonomics Programs and Interventions" (United Services Automobile Association). (Ex:32-339-1)
267	Various (Insurance Co. Survey)		Program included training in lifting techniques, design of lifting tasks to fit worker capabilities.	Not Reported	Matching job demand to worker capabilities reduced injuries by 67%. There was a decrease of 33% in back injuries.	"Summary of Studies on the Effectiveness of Ergonomic Interventions" (June 1995). (Ex. 38-65)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
159	Television Assembly		The company initiated a four-step plan to eliminate WMSDs: Identify high risk tasks; educate managers and workers on proper ergonomic methods; adopt modified tools and redesign workstations; and institute mandatory job rotation. Mandatory job rotation proved to be the most effective method for preventing WMSDs.	Not Reported	The company experienced a 46% reduction in WMSDs during the first nine months following partial implementation of job rotation. Another study showed workers on mandatory job rotation lines suffered nine WMSDs during a four-month period compared to 42 for workers on lines where rotation was optional.	Job Rotation Cuts Cumulative Trauma Cases," *Personnel Journal*, (February 1992). (Ex: 502-22)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
386	State Employees		Relocation of 1452 workers from various buildings to a single new building.	Not Reported	In matched multivariate analyses, the reduction in hand/arm symptoms from 1992 to 1993 was associated with improved satisfaction with the physical workstation; the reduction in neck/shoulder/back symptoms was associated with improved chair comfort, fewer housekeeping responsibilities, female gender and low pay range. Longitudinal results suggested that changes in workstations resulted in decreased symptoms.	(Ex. 500-41-100)

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#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates		Sources
				Lost Workday MSDs	Total MSDs	
161	Data Processing Division		In the fall of 1992, the company devised an "action plan," which included hiring a safety and health specialist, allocating funds for the purchase of ergonomically sound furniture, and developing an ergonomics program. The five-step program includes: •A safety council comprised of both managers and employees. •Training classes for supervisors and employees. Supervisors are also required to conduct a workstation check every quarter. •Medical-case management requiring the nurse and safety coordinator to evaluate work-related injuries. •Frequent evaluation of new ergonomically safe equipment and technology. •Employee motivation, including monthly ergo activities like videos and exercises.	Workers' compensation decreased 51% between 1992 and 1994. The division of the company's customer service center responsible for processing credit cards and motor club accounts did not record any lost workdays due to CTDs during the first half of 1994.		*CTD News*, (5/94, p.3). (Ex: 502-22)

Appendix VI-B. Summary of Case Studies of Ergonomic Programs/Interventions

#	Job Title or Activity	SIC Code	Ergonomic Program/Interventions	Reported Reduction in Injury Rates: Lost Workday MSDs	Reported Reduction in Injury Rates: Total MSDs	Sources
121	Data Entry		To address the potentially serious ergonomic stresses in their workplaces, the company implements an informal, yet effective, employee-driven ergonomics program. Although there is an incentive pay system in use, employees are encouraged to pace themselves. There is a formal, written procedure in place encouraging employee input. Ergonomic guidance is prominently displayed in the workplace and accessories such as document holders, adjustable chairs and anti-glare screens are provided and encouraged.	A review of their workers' compensation data for the last four years showed an ergonomic-related claims rate of less than 0.1 per 100 employees.	Not Reported	"Office Ergonomic Solutions: Six Case Studies," Center for Office Technology, (1994, p. 39-41). (Ex: 502-22)
389	Assembly Workers		Incorporated parallel production, team building, multiple skills, and work place redesigns.		No change in task distribution and mechanical exposure variables.	BAO. et al. (1996) (Ex: 38-68)
390	Assembly Workers		Incorporated parallel production, team building and, multiple skills training.	Less satisfaction with psycho social environment.	Diverse physical exposure effects. No effect on MS health.	Johansson et. al. (1993) (Ex: 38-68)

Appendix VI-C. Summary of Effectiveness Measures Derived From Case Studies

Reference No. From Appendix VI-B	SIC	Percent Reduction in Lost Workday Cases	Percent Reduction in Total Cases	Time Period Covered (yrs)
1	20		47.0%	4
308	201	100.0%	71.4%	
197	2011	13.3%		2
198	2011		52.0%	
198	2011	19.0%	32.0%	1
185	2011		17.0%	1
128	2011		60.0%	
5	2011		80.0%	1
230	2011		68.0%	4
329	2011		50.0%	5
2	2011		100.0%	0.5
220	2011		85.0%	5
4	2011		63.0%	4
235	2015	50.0%		2
256	2015	30.1%	32.1%	3
291	2015		46.0%	5
372	2015		67.0%	3
310	2015		80.0%	4
6	2015		100.0%	
8	2015		41.7%	2
7	2015		60.9%	
7	2015		31.8%	
193	2015		92.0%	7
191	2015		80.0%	5
9	2024		100.0%	2
10	2048		100.0%	
11	205		61.8%	3
162	2051		60.0%	3
12	206		100.0%	
240	2086		40.0%	2
190	2092	96.9%		4
221	22		91.7%	7
330	22	24.7%	58.8%	1
140	22		82.6%	3
140	22		94.7%	3
142	2273		50.0%	4
336	23	-15.0%		1
141	23		36.4%	2
388	23		0.0%	
174	23	79.0%		
264	2431		95.5%	
15	2515		88.9%	1
17	252		50.0%	

Appendix VI-C. Summary of Effectiveness Measures Derived From Case Studies (Continued)

Reference No. From Appendix VI-B	SIC	Percent Reduction in Lost Workday Cases	Percent Reduction in Total Cases	Time Period Covered (yrs)
16	252		9.5%	1
168	26	50.0%		3
18	2621		100.0%	0.5
356	2621		43.5%	3
312	2670	70.0%	50.0%	4
20	27		100.0%	2
367	2711	75.0%	84.0%	4
120	2711	100.0%	45.8%	3
326	2711		40.0%	2
232	2732		67.6%	
252	28		82.0%	5
22	283	100.0%	62.0%	10
368	283		100.0%	2
155	283		87.0%	2
153	2834		61.5%	
219	2834		75.0%	1
23	2851	63.0%	40.0%	3
25	2911		90.0%	
352	30		90.0%	
362	3011	66.0%		1
26	3052	100.0%		
147	308	40.0%		1
263	3086	82.4%	85.9%	3
27	31	79.0%		
29	314		57.1%	3
30	314		100.0%	2
31	3149	67.0%	62.0%	2
323	3161	72.7%	87.5%	2
127	3161		83.8%	
32	3199		24.7%	2
33	3229	97.7%		2
34	3231		76.4%	9
35	3253	100.0%		4
241	326	60.0%		
36	3272	100.0%		2
37	33		100.0%	
38	33		83.3%	
306	33	100.0%		
112	3321		60.0%	2

Appendix VI-C. Summary of Effectiveness Measures Derived From Case Studies (Continued)

Reference No. From Appendix VI-B	SIC	Percent Reduction in Lost Workday Cases	Percent Reduction in Total Cases	Time Period Covered (yrs)
348	3341		50.0%	
348	3341		33.0%	
39	3350		50.0%	
40	34		100.0%	
41	34		100.0%	
42	3411		90.0%	
43	3452	80.0%		
44	3496	25.0%		2
45	3499	100.0%		5
151	35	100.0%		4
152	35		27.0%	
171	3511	70.0%		4
47	3523	83.0%		
48	3531		27.0%	
124	357		79.8%	4
370	357		46.9%	
52	3571	100.0%	100.0%	
50	3571		64.3%	2
53	3579		67.0%	2
361	3585	50.0%	90.0%	1.5
55	36		46.0%	1
157	36		28.0%	1
54	36		75.9%	1
56	36		100.0%	
57	36		29.0%	
183	36		100.0%	2
58	3641		100.0%	4
60	3661		76.4%	1
59	3661	80.0%		1.5
62	367		100.0%	
199	3672		46.9%	
213	3678		44.5%	3
66	371	48.0%	11.0%	3
65	371		100.0%	
64	371		93.0%	1
64	371		96.0%	
318	3711		72.1%	9
337	3711		100.0%	
156	3711		40.0%	2
178	3711		40.0%	

Appendix VI-C. Summary of Effectiveness Measures Derived From Case Studies (Continued)

Reference No. From Appendix VI-B	SIC	Percent Reduction in Lost Workday Cases	Percent Reduction in Total Cases	Time Period Covered (yrs)
154	3711		100.0%	3
270	3711	50.0%		
324	3711		26.0%	5
70	3711		100.0%	
72	3711		100.0%	
68	3711		67.5%	3
67	3711	65.0%	48.6%	2
71	3711		100.0%	
73	3714	100.0%		
77	3714	100.0%		
80	3714		100.0%	
81	3714		100.0%	
74	3714		100.0%	
76	3714		67.6%	2
75	3714	100.0%		
78	3714		100.0%	
262	3714		29.0%	
262	3714		78.0%	
79	3714	99.0%		4
184	3714		70.0%	
325	3714		24.0%	5
284	3714		53.0%	0.5
113	3714		50.0%	
313	3714		85.0%	4
158	3716		20.0%	
82	372		96.2%	4
332	3721		25.0%	1
224	3721		33.0%	6
328	3721		44.3%	6
170	3724	91.1%		3
83	3731	100.0%	30.0%	
223	3731	55.0%	30.0%	2
84	3751	33.2%		4
85	3823		100.0%	
179	384		70.2%	
277	380		17.5%	
309	384	100.0%	100.0%	
86	384		75.0%	
87	3841		46.2%	4
88	386		100.0%	3
357	3914		71.4%	
89	3944		100.0%	

Appendix VI-C. Summary of Effectiveness Measures Derived From Case Studies (Continued)

Reference No. From Appendix VI-B	SIC	Percent Reduction in Lost Workday Cases	Percent Reduction in Total Cases	Time Period Covered (yrs)
251	3991		80.0%	1
90	40	100.0%	100.0%	
246	4011	100.0%		
335	4151		33.0%	5
91	42		50.0%	1
92	4213	28.6%	46.2%	2
239	481		33.0%	2
93	481		51.0%	0.5
122	481		33.0%	
258	4911		100.0%	1
94	4911		100.0%	
387	4911		29.0%	
354	4911		25.0%	
282	495		73.6%	7
96	5137		91.7%	
97	514		42.9%	2
248	514		72.4%	0.75
207	5211	100.0%		2
131	53		60.0%	5
247	5311		50.0%	3
351	5411		44.7%	1
364	5411		76.2%	4
98	5812		40.0%	
99	5932		56.5%	2
177	60	50.0%		3
100	6021		70.4%	
355	63		90.0%	1
353	80	91.7%		
218	805		67.0%	
216	805	80.0%		2
176	805		16.3%	3
217	805		50.0%	2
209	805	71.1%	85.9%	3
295	805		75.0%	0.5
175	805	80.0%		2
166	805		40.0%	3
215	805		75.0%	2
294	805		73.8%	
294	805		60.0%	
300	805		23.0%	
214	805		50.0%	2

Appendix VI-C. Summary of Effectiveness Measures Derived From Case Studies (Continued)

Reference No. From Appendix VI-B	SIC	Percent Reduction in Lost Workday Cases	Percent Reduction in Total Cases	Time Period Covered (yrs)
211	805	35.0%	43.0%	1
305	805		50.0%	
196	805	96.6%	75.0%	2
146	805	50.0%		1
145	805		50.0%	
227	805	67.0%		1
101	805		43.4%	
243	805	33.0%		1
194	805	50.0%		3
138	805	50.0%		1
236	805	75.0%		2
316	805	100.0%		1
136	805		80.0%	2
117	805		90.0%	0.5
296	805		74.0%	3
237	805		67.0%	2
129	805	80.0%		
126	805	54.0%	50.0%	1
125	805	50.0%		1
195	805		50.0%	2
359	805	75.0%	77.8%	2
363	805	50.0%	50.0%	2
375	805		68.0%	2
360	805		71.4%	2
338	805		74.0%	3
343	805	75.0%		
374	805		91.7%	1
366	805	40.0%	40.0%	2
344	805		0.0%	1
315	806		62.5%	
298	806		83.0%	
298	806		75.0%	
292	806	74.0%	50.0%	2
340	806		80.0%	
341	806		95.0%	
304	806		40.0%	1.5
317	806	93.8%		
382	806	44.1%		4
255	806		80.0%	6
103	8062		94.0%	1

Appendix VI-C. Summary of Effectiveness Measures Derived From Case Studies (Continued)

Reference No. From Appendix VI-B	SIC	Percent Reduction in Lost Workday Cases	Percent Reduction in Total Cases	Time Period Covered (yrs)
104	8062		39.0%	4
104	8062		71.0%	2
385	8062	83.7%		2
106	8062		83.3%	
107	8062		94.0%	
108	8062	35.0%	43.0%	
105	8062		25.0%	1.5
346	8062	89.9%	55.0%	
167	82	95.0%		3
342	8733		23.0%	
119	91		57.3%	1
119	91		25.9%	1
109	91		18.5%	1
349			100.0%	2.5
349			-5.8%	2.5
349			28.9%	2.5
349			42.9%	2.5
349			100.0%	2.5
274			50.0%	
204			100.0%	4
373			69.2%	2
311			100.0%	4
212			60.0%	9
115			100.0%	1
254			54.7%	2
267			33.0%	
159			46.0%	0.75
159			78.6%	0.75
161		100.0%		0.5
389			0.0%	
390			0.0%	

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VII. Significance of Risk

In this section of the preamble, OSHA conducts several analyses and presents data and information to demonstrate, first, that musculoskeletal disorders (MSDs) constitute material harm under the Occupational Safety and Health Act (OSH Act or Act). This discussion demonstrates that MSDs are painful, often disabling injuries and illnesses that cause lost work time, require medical treatment, involve restricted work, and, all too often, result in surgical interventions.

The Agency then demonstrates the significance of the risk of incurring this material harm in the industries and occupations covered by the scope of the ergonomics standard. As OSHA's analysis shows, over a working lifetime, workers in jobs that meet the final rule's exposure screen face risks ranging roughly from 33 cases per 1,000 workers to 926 cases per 1,000 workers, risks that are clearly significant by any reasonable measure. Even on an annual rather than lifetime basis, many of the workers who would be covered by the standard are at great risk: nursing aides and truck drivers, for example, can expect to suffer between 32 and 42 lost-workday musculoskeletal disorders for every 1,000 workers in every year that they work. Again, that risks of this magnitude are significant within the meaning of the Act is not disputable.

Parts A and B below thus demonstrate unequivocally that the first two tests OSHA must meet before it can regulate—that the hazard regulated by the standard constitutes material harm and that the risk posed to workers covered by the standard is significant, as that term has been defined in OSHA case law—have been met. OSHA's response to comments received on its significance of risk analysis in the proposed rule appear in Part C.

A. Material Harm

The OSH Act requires OSHA to make a threshold finding that a significant risk of material harm exists in the workplace before issuing an occupational safety or health standard. *See Benzene,* 448 U.S. 607, 642; 58 FR 16612, 16614 (Mar. 30, 1993). What constitutes "material harm" in any particular case is, at bottom, a policy determination, for "OSHA is not required to state with scientific certainty or precision the exact point at which each type of [harm] becomes [material]." *See AFL–CIO* v. *OSHA (PELs),* 965 F.2d 962 (11th Cir. 1992). As long as its determination is reasonable, OSHA is entitled to deference; however, OSHA must be cognizant of all forms and degrees of material harm—not just death or serious physical harm—and may act with a "pronounced bias towards worker safety." *Building & Constr. Trades Dep't., AFL–CIO* v. *Brock,* 838 F.2d 1258, 1266 (D.C. Cir. 1988).

Injuries or illnesses that affect a worker's job performance, result in lost workdays or restricted work, and/or result in medical treatment beyond first aid constitute material harm under the OSH Act. See PELs, 965 F.2d at 974–75. This was confirmed by the 11th Circuit Court of Appeals in its review of OSHA's Air Contaminants Standard. In the Air Contaminants standard, OSHA set permissible exposure limits for over 400 substances to prevent the onset of certain health effects, including sensory irritation (*i.e.,* stinging, itching, and burning of the eyes, tearing (or lacrimation), a burning sensation in the nasal passages, rhinitis (nasal inflammation), cough, sputum production, chest pain, wheezing, and dyspnea). *Id.* OSHA found that in certain circumstances these effects were fleeting; however, substantial evidence in the rulemaking record suggested that these effects could be quite serious at times and could affect a person's ability to perform at work:

> "OSHA concludes that exposure limits are needed for those substances for which PELs are being established in this rulemaking to protect against sensory irritant effects that result in objective signs of irritation, such as coughing, wheezing, conjunctivitis, and tearing. Such levels of mucous membrane irritation may require medical treatment, adversely affect the well-being of employees, and place the affected individuals at risk from increased absorption of the substance and decreased resistance to infection. Exposing workers repeatedly to irritants at levels that cause subjective irritant effects may cause workers to become inured to the irritant warning properties of these substances and thus increase the risk of overexposure." 54 FR 2444–45 (Jan. 19, 1989).

Industry representatives challenged OSHA's determination that these health effects constituted "material impairment" within the meaning of section 6(b)(5) of the OSH Act. *Id.* While OSHA conceded that minor irritation would not, by itself, constitute "material impairment," it concluded that sensory irritation that resulted in medical treatment or affected job performance would constitute such impairment. PELs, 965 F.2d at 974. The court agreed with this finding:

> "We interpret this explanation as indicating that OSHA finds that although minor irritation may not be a material impairment, there is a level at which such irritation becomes so severe that *employee health and job performance* are seriously threatened, even though those effects may be transitory. * * * Overall, we find that OSHA's determinations of what constitute 'material impairments' are adequately explained and supported in the record." *Id.* at 975 (emphasis added).

The OSH Act also permits OSHA to regulate a hazard to prevent the signs or symptoms of an injury or illness from becoming more severe and disabling. See Lead, 647 F.2d at 1252 ("We conclude that if OSHA could find on the basis of substantial evidence that preventing subclinical effects of lead disease would help prevent the true clinical phase of lead disease, the statute empowered it to set a blood-lead level goal to prevent these effects."). The OSH Act does not require OSHA to wait until an injury or illness becomes so severe that employees become disabled before it has authority to regulate. Such an approach would turn the OSH Act from a statute designed to prevent injuries and illnesses from occurring to one that reacts to injuries and illnesses that have already occurred. This was not Congress' intent when it tasked OSHA with "assuring as far as possible every working man and woman in the Nation safe and healthful working conditions." 29 U.S.C. 651(2)(b).

Based on the evidence discussed in this and other sections of the preamble, as well as all other evidence gathered by OSHA and placed in the public docket of this rulemaking, OSHA has concluded that MSDs as defined by this standard constitute material harm under the OSH Act. OSHA recognizes that these disorders are not life-threatening and that some of these disorders may be reversible, particularly if early intervention is provided. Nonetheless, evidence in the record shows that these disorders are debilitating (Brisson *et al.* 1989, Ex. 26–47; Vingård *et al.* 1991, Ex. 26–44; Berg *et al.* 1988, Ex. 26–46; Liss *et al.* 1992, Ex. 26–55; Webster and Snook 1994, Ex. 26–33; Binder and Hazleman 1983, Ex. 26–45; Boshuizen *et al.* 1990, Ex. 26–40; Blanc *et al.* 1996, Ex. 26–42; Liberty Mutual Research Center for Safety and Health, 1998, Ex. 26–54). These disorders cause persistent and severe pain, lost worktime, reduction or loss of the worker's normal functional capacity both in work tasks and in other of life's major activities, loss of productivity, and significant medical expenses. Where preventive action or early medical intervention is not provided, these disorders can result in permanent damage to musculoskeletal tissues, causing such disabilities as the inability to use one's hands to perform even the minimal

tasks of daily life (*e.g.,* lifting a child), permanent scarring, and arthritis.

Furthermore, OSHA is triggering obligations on employers to respond to reports of MSDs only when such reports reach the level of severity sanctioned by the OSHA Act. Contrary to the allegations of some commenters, see *e.g.,* Ex. 30–3865; 500–187, this standard does not trigger employer obligations based solely upon employee reports of "aches and pains." An employer is only required to respond to an employee report of an MSD when it: (1) Results in one or more lost workdays, one or more days of restricted work, medical treatment beyond first aid, or (2) includes signs or symptoms of an MSD that persist for 7 or more consecutive days, and (3) the employer is exposed to risk factors at the levels described in the Basic Screening Tool, which are associated with increased risk. MSDs that result in days away from work, restricted duty, or medical treatment beyond first aid clearly constitute material harm under the OSH Act, as described above. See PELs, 965 F.2d at 974–75. Moreover, it is clear that OSHA may trigger employer action upon employee reports of signs or symptoms of MSDs that persist for seven or more consecutive days. There is substantial evidence in the rulemaking record that persistent signs or symptoms of MSDs will progress and become more severe and disabling if they are not treated and the employee remains in the job unabated. See (Tr. 7660, 7884, see also (Ex. 32–450–1). OSHA need not wait for signs and symptoms of MSDs to become disabling to act; rather, OSHA may "act to 'reduce the risk' of serious material impairment [at some point in the future]." See Lead, 647 F.2d at 1253.

The pain associated with these workers is not the normal muscle soreness associated with job break-in or conditioning, or temporary muscle strain due to doing new or unusual tasks. Instead, the pain is severe and persistent. Many employees must be placed on medication to alleviate or at least reduce the intensity of their pain. The pain of MSDs may also continue or may even manifest after the employee is removed from exposure at the end of the workshift (Ex. 26-1263). In addition, the pain usually increases if exposure to the ergonomic risk factors continues (Ex. 26–1263). OSHA believes that this type of severe and persistent pain, and the tissue damage underlying this pain, clearly constitutes material harm under the OSH Act.

The Chamber of Commerce argued that OSHA should not rely on the testimony of injured workers to demonstrate that exposure to the risk factors at issue causes a significant risk of material harm because this testimony: (1) Includes MSDs that are not included in the rule; (2) contradicts trained physicians' findings; and (3) gives no consideration to potentially confounding factors. Ex. 500–188. But OSHA is not relying on this testimony to demonstrate that work causes MSDs or that this particular standard will reduce the incidence of MSDs, as the Chamber incorrectly suggested. Other evidence and data (described above) in the rulemaking record demonstrates this. The testimony of injured workers, however, is particularly probative in demonstrating how MSDs significantly affect peoples' lives. For this, statistics, epidemiological data, and other evidence are not alone sufficient. The testimony of these workers puts a human face on the pain and suffering experienced everyday by workers who suffer from these injuries. It also convincingly demonstrates that MSDs are not everyday "aches and pains" experienced by all, but serious, disabling conditions.

MSDs of most kinds are also recognized as compensable under virtually all State workers' compensation plans, and these disorders imposed nearly $20 billion in medical costs and industry payments on the U.S. economy in 1994 (see the Economic Analysis section of this preamble). Under workers' compensation, however, employees are reimbursed only where their work-related injury or disorder requires medical treatment and/or results in lost workdays. Moreover, payments for lost wages are not provided unless the employee's injury or disorder results in a certain number of lost workdays (the number varies across the States and ranges from one to seven days). According to evidence presented in the Economic Analysis, a significant number of musculoskeletal disorder workers' compensation claims result in lost workdays. For example, according to a study by Webster and Snook (1994, Ex. 26–33) based on workers' compensation data from Liberty Mutual Insurance Company, the largest underwriter of workers' compensation insurance in the country, more than 45 percent of all low back pain cases involved indemnity payments for lost workdays. This study also indicated that, on average, more than 65 percent of the workers' compensation costs for musculoskeletal disorders represented indemnity payments for lost workdays. Overall, work-related low back pain accounts for 15 percent of all Liberty Mutual workers' compensation claims and 23 percent of their costs (Liberty Mutual Research Center for Safety and Health, 1998, Ex. 26–54).

Further evidence of the disabling nature of MSDs comes from the Bureau of Labor Statistics (BLS) data for 1996, which show that the median number of lost workdays (LWD) per recordable lost-time MSD is higher than the median across all lost workday injuries (see Figure VII–1). For example, the median number of lost workdays for cases classified by BLS as carpal tunnel syndrome, tendinitis or tenosynovitis, or musculoskeletal and connective tissue disorders, is 25, 9, and 10 days, respectively. More than one-half of all carpal tunnel LWD cases and one-third of musculoskeletal and connective tissue disorder LWD cases result in more than 20 lost workdays, compared to less than one-fourth of all LWD injuries. Among workers who received compensation awards in 1994 for upper-extremity disorders, the average length of disability was 87 days, with 6.8 percent of the claims covering one-year or more of disability (Liberty Mutual Research Center for Safety and Health, 1998, Ex. 26–54).

Finally, several individual studies provide additional evidence demonstrating the disabling nature of MSDs. A study of female sewing machine operators showed an increased prevalence of disability among both retired and active workers compared to national rates of disability (Brisson *et al.,* 1989, Ex. 26–47). Operators who had left their jobs had a greater rate of severe disability when compared to workers who had left other types of employment. Vingard *et al.*(1991, Ex. 26-44) found an increased risk of early retirement among workers exposed to heavy or medium work loads due to disorders of the lower back, neck/shoulder, hip, or knee. An elevated incidence of long-term absenteeism and disability due to intervertebral disc disorders was found among tractor drivers, with the incidence appearing to increase with whole-body vibration dose and duration (Boshuizen *et al.*1990, Ex. 26–40). An analysis of data from the National Health Interview Survey showed that repetitive bending of the hand or wrist on the job was significantly associated with the frequency of self-reported carpal tunnel syndrome (CTS), and that work-related disability was common among the 544 subjects reporting CTS. The persistence of symptoms associated with MSDs is illustrated by two other studies. Berg *et al.*(1988, Ex. 26–46) studied the prevalence of MSD symptoms among 327 retired shipyard workers who had been engaged in heavy physical work and found that the prevalence of symptoms remained unchanged over a three-year period. In another study, Binder and Hazleman (1983, Ex. 26–45) followed the health status of 125 patients with lateral epicondylitis over a 1- to 5-year period after initial presentation of the disorder. Over the follow-up period, 40 percent of the patients continued to have discomfort that affected some daily activities.

OSHA has promulgated standards where the adverse health effects associated with exposure to substances or conditions are serious but not necessarily life-threatening, such as health effects that interfere with normal daily life or job performance, or that require substantial medical intervention. See Cotton Dust (29 CFR 1910.1046), Occupational Noise Exposure (29 CFR 1910.95), Occupational Exposure to Lead (29 CFR 1910.1025), Occupational Exposure to Formaldehyde (29 CFR 1910.1048). For example, in promulgating the Hearing Conservation Amendment, OSHA determined that "* * * material impairment of hearing is directly related to people's ability to understand speech as it is spoken in everyday social conditions * * *." (46 FR 46236), including being able to understand speech in noisy environments. In the Formaldehyde standard, OSHA based its permissible exposure limit (PEL) and ancillary provisions, in part, on evidence that employees were at significant risk of developing sensory irritation (*e.g.*, burning and tearing of the eyes, severe irritation of the nose and throat) and skin diseases at the existing PEL, and that these effects were sufficiently severe to interfere with the employee's ability to perform job functions (52 FR 46168, 46234–37).

This standard is similar to these other OSHA standards in this respect. MSDs also result in material harm by causing temporary or permanent physical damage to the body. Such damage can include severe inflammation of joints and tissues; reduced conduction velocity in peripheral nerves; partial or total loss of strength in an extremity; tearing of muscles and tendons; numbness; decreased range of motion; arthritis; and pain. When this damage occurs, employees are unable to perform their jobs at all or at normal performance levels without experiencing pain or causing further damage. Accordingly, OSHA concludes that MSDs as defined by this standard constitute material harm under the OSH Act.

B. Significant Risk

As stated above, a plurality of the Supreme Court in Benzene held that the OSH Act requires a threshold finding that a significant risk of material harm exists and that the standard being promulgated will substantially reduce that risk. See Benzene, 448 U.S. 607, 642; see also 58 FR 16612, 16614 (Mar. 30, 1993). In so holding, the plurality noted that "precise quantification of risks is * * * impossible" given the imperfect state of scientific knowledge. Benzene, 448 U.S. at 652. Thus, while "it is OSHA's responsibility to determine, in the first instance, what it considers to be a "significant" risk, * * * the requirement that a "significant" risk be identified is not a mathematical straitjacket * * * [and] the Agency has no duty to calculate the exact probability of harm." *Id.* at 655. Indeed, "there are a number of ways in which the Agency can make a rational judgment about the relative significance of the risks associated with exposure * * *.," *id.* at 656–57, and "so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data * * *, risking error on the side of overprotection rather than underprotection." Id. at 656.

Since Benzene, OSHA has adopted a variety of methods for determining what constitutes a significant risk. See e.g., *Asarco, Inc.* v. *OSHA*, 746 F.2d 483, 490–95 (9th Cir. 1984); *Public Citizen Health Research Group* v. *Tyson*, 796 F.2d 1479 (D.C. Cir. 1986). With respect to section 6(b)(5) standards, OSHA has often utilized scientifically-based mathematical modeling techniques to determine risk at certain levels of exposure. This modeling permits OSHA to "extrapolate [risk] * * * into areas where experimental [or observational] data do not exist." Public Citizen, 796 F.2d at 1496. With respect to non-section 6(b)(5) standards, however, OSHA has not needed to engage in quantitative modeling techniques to determine significant risk because it typically has observational data that quantifies the risk faced by workers to particular hazards. In the Electric Power Generation rulemaking, for example, OSHA found that the generation, transmission, and distribution of electric power and the non-use or misuse of appropriate electrical protective equipment resulted in 86 fatalities and 12,977 injuries annually and that the standard would prevent 61 fatalities and 1,634 injuries annually. Thus, the OSH Act does not require OSHA to construct dose-response relationships or other models for every hazard before it can regulate. OSHA has considerable leeway to choose a form of analysis appropriate to the available evidence and need not attempt to fit the evidence to a preselected analytical method.

There is no need, in the case of musculoskeletal disorders, for OSHA to engage in risk modeling, low-dose extrapolation, or other techniques of projecting theoretical risk to identify the magnitude of the risk confronting workers exposed to ergonomic risk factors. The evidence of significant risk is apparent in the annual toll reported by the Bureau of Labor Statistics, the vast amount of medical and indemnity payments being made to injured workers and others every year (nearly $20 billion in direct costs and as much as $60 billion more in indirect costs), and the lost production to the U.S. economy imposed by these disorders. Similarly, there is no need for OSHA to turn to complex theoretical projections of reductions in risk to demonstrate that the standard will substantially reduce this significant risk. Ergonomics programs work in practice. The evidence is there in the form of hundreds of epidemiological analyses, meta-analyses, and case studies reporting the effectiveness of ergonomic programs in reducing risk. The following discussion, and the analyses presented below, demonstrate the significance of the risk confronting workers in the industries and occupations targeted in the standard and make the case for the standard's effectiveness.

In this rulemaking there are, as mentioned above, extensive data on the adverse effects on the human musculoskeletal system of exposure to workplace risk factors such as repetitive motions; awkward postures; and the use of excessive force. As described in the Health Effects and Quantitative Risk Assessment sections of this preamble, studies and national statistics are available to demonstrate the high incidence and prevalence of work-related musculoskeletal disorders occurring or existing among workers exposed to ergonomic risk factors. Estimates of the risk of harm confronting exposed workers can be based directly on the rates of work-related musculoskeletal disorders currently being reported, and BLS survey data can be used to demonstrate the degree to which work-related musculoskeletal disorders have occurred across nearly all major industrial sectors and in numerous occupations.

The data discussed in the Quantitative Risk Assessment and

Health Effects sections of the preamble demonstrate that the risk of work-related musculoskeletal disorders constitutes a significant risk under the OSH Act. For example, OSHA estimates, based on the 1996 BLS data, that more than 590,998 lost-workday (LWD) musculoskeletal disorders occurred among workers in industries that are within the scope of the final rule, and that were recorded and reported by employers in 1996 (see Table VI–8 of the Risk Assessment). The estimated annual incidence of employer-reported MSDs (both upper-and lower-bound estimates), defined as the number of MSDs occurring in a given year per 1,000 workers employed in jobs that meet the final rule's exposure screen in each industry sector exceeded 1 LWD case per 1,000 workers for all but 3 of the 2-digit SIC general industry groups in 1996; the incidence exceeded 10 LWD cases per 1,000 workers in 15 of these industry sectors (see Table VI–5 in the Quantitative Risk Assessment section of the preamble). Further, OSHA estimates that the annual incidence of employer-reported LWD MSDs reached 1 case or more per 1,000 workers for 79 percent of all of the occupational groups for which BLS estimated the numbers of MSDs and employees. For 36 of these occupations, the estimated annual incidence of LWD MSDs exceeded 10 cases per 1,000 workers (Table VI–6 in the final Risk Assessment). For some high risk occupations, such as practical nurses, nursing aides and attendants, laborers, public transportation attendants, and truck drivers, annual incidence rates are on the order of 32 to 42 LWD MSD cases per 1,000 workers per year. These extremely high incidence rates, however, are underestimates of the true incidence of MSDs, because they are based only on lost workday cases. OSHA estimates that the number of MSDs that do not result in lost workdays is about twice that of LWD MSDs.

In the final Risk Assessment, OSHA also estimated the probability that an employee will suffer at least one musculoskeletal disorder due to workplace risk factors over a 45-year working lifetime as both an upper-and lower-bound estimate. The upper-bound estimate represents the lifetime risk to an employee who works in job that meets the final rule's exposure screen, and assumes that all of the risk is attributable to his or her workplace exposure to physical risk factors. The lower-bound estimate represents the lifetime risk to an employee in a job that meets the screen, but assumes that only part of that risk is attributable to exposure (*i.e.*, the rest of the risk is background). The results are presented by 2-digit SIC industry group in Table VI–9 of the Risk Assessment. The probability of experiencing at least one LWD MSD during a working lifetime ranges from 33 per 1,000 workers (lower-bound estimate in SIC 62, Security and Commodity Brokers, Dealers, Exchanges, and Services) to 926 per 1,000 workers (upper-bound estimate in SIC 45, Air Transportation). The expected number of MSDs that will occur in a cohort of workers all entering an industry at the same time and working for 45 years ranges from 34 per 1,000 workers to 2,530 per 1,000, depending on the industry sector, since it is possible for a worker to experience more than one MSD in a working lifetime.

The estimates of lifetime risk presented above are based on an assumption that workers in jobs that meet the final rule's screen are at three-fold higher risk than are workers in jobs that do not meet the screen. As explained in the final Risk Assessment, this assumption is well-supported by the data base of almost 200 epidemiological studies reviewed by the Agency and found to be of acceptable quality (see Section V, Health Effects). However, this assumption is not critical to the Agency's determination that the risks to workers exposed to biomechanical risk factors at the level of the final rule's screen are highly significant. In its final risk assessment, OSHA presented another analysis that is identical to that presented as part of the proposed rule. That analysis relies on BLS-provided estimates of the incidence of MSDs that is calculated across the entire working population; that is, the BLS-provided incidence figures do not recognize any difference in incidence of MSDs that occur between higher-risk and lower-risk workers. Even under that assumption, which minimizes the estimate of the risk to highly exposed workers, OSHA's estimates of lifetime risk are unambiguously significant. Estimates of the probability of experiencing at least one MSD over 45 years range from 24 to 813 per 1,000 workers, and the average number of MSDs predicted to occur over 45 years ranges from 24 to 1,646 per 1,000 workers (see Table VI–7 in the final Risk Assessment).

Although these data indicate that the risk of experiencing an MSD is clearly significant, OSHA believes that these data seriously understate the true risk. First, the BLS data capture only those MSD injuries reported by employers as lost workday injuries. MSDs that force an employee to be temporarily assigned to alternate duty, as well as those work-related MSDs not reported to employers by employees or not recorded by employers, are not included in these risk estimates.

Evidence of Underreporting

There is also evidence that the actual risks attributable to occupational exposure to ergonomic risk factors may be much higher than is indicated by the BLS statistics. Many peer-reviewed studies have been published in the scientific literature in the last 18 years that document the underreporting of MSDs on OSHA Logs (McCurdy *et al.*, 1999, Ex. 2–2; Silverstein *et al.*, 1997, Ex. 26–28 ; Pransky *et al.*, 1999, Ex. 26–922; Park *et al.*, 1992, Ex. 26–1259; Park *et al.*, 1996, Ex. 26–1261; Nelson *et al.*, 1992, Ex. 26–1260). Table VII–1 summarizes these studies. These studies document extensive and widespread underreporting on the OSHA Log of occupational injuries and illnesses in general (McCurdy *et al.*, 1999, Ex. 2–2) and of MSDs in particular (Silverstein *et al.*, 1997, Ex. 26–28; Fine *et al.*, 1986, Ex. 26–920; Pransky *et al.*, 1999, Ex. 26–922; Park *et al.*, 1992, Ex. 26–1259; Park *et al.*, 1996, Ex. 26–1261; Nelson *et al.*, 1992, Ex. 26–1260). Underreporting on the Log is directly related to OSHA's significant risk finding, because incidents that are not reported on the Log but should have been would downwardly bias the BLS annual survey numbers on which OSHA's risk estimates depend.

Since OSHA published the proposed rule, several commenters have provided additional information and comment, either through the submission of written comments and additional studies on underreporting to the docket, or through testimony at the hearing. NIOSH provided seven health hazard evaluations (HETAs), as described in the NIOSH pre-hearing comments (Ex. 32–450–1), that document extensive and widespread underreporting on the OSHA Log of occupational injuries and illnesses (NIOSH HETA# 88–344–2092, 1991 (Ex. 32–450–1); NIOSH HETA# 90–273–2130, 1991 (Ex. 32–450–1–13); NIOSH HETA# 92–331, 1993 (Ex. 32–450–1); NIOSH HETA# 95–0294–2594, 1996 (Ex. 32–450–1–22); NIOSH HETA# 97–0276–2724, 1999 (Ex. 32–450–1–2); NIOSH HETA# 96–0101–2476, 1997 (Ex. 32–450–1–26); NIOSH HETA# 98–0085–2715, 1998 (Ex. 32–450–1–10). These new studies have been incorporated into Table VII–1.

TABLE VII–I.—SUMMARY OF UNDERREPORTING STUDIES

Study	Measure of underreporting	Extent of underreporting observed	Additional detail
McCurdy, Schenker, and Samuels, *Am. J. Public Health.* 81:85 (1991) Ex. 2–2.	Percentage of cases meeting OSHA reporting criteria not recorded on OSHA Log.	40% of all reportable cases not recorded; for illnesses, 56% not recorded.	10 manufacturing facilities in 6 states from semiconductor industry with approx. 50,000 employees; 24% cases met OSHA recording criteria.
NIOSH. Health Hazard Evaluation Report, HETA 93–0233–2496, (1995) Ex. 26–1255.	Failure to report lost workdays and restricted work on OSHA 200 Log.	Not quantified; "several" employees had surgeries for WMSDs in 5-year period and ⅓ of employee were on restricted work, but no LWDIs reported on Log over 5-year period.	Winding and taping department of an instrument transformer manufacturer; 27 employees in department.
NIOSH. Health Hazard Evaluation Report, HETA 93–0860–2438, (1994) Ex. 26–1256.	Percent of medically confirmed WMSD cases not recorded on OSHA Log or not reported to employer.	5 employees reported to NIOSH that they had been diagnoses with carpal tunnel syndrome (CTS); of these, 2 did not report their illness to the employer. 1 of the 5 reported cases were not reported on log.	News department of large metropolitan TV-news station; video tape editor and other employees.
Silverstein, Stetson, Keyserling, and Fine *Am. J. Ind. Med.* 31:600 (1997) Ex. 26–28.	Incidence (per 100 workers years) of work-related MSDs, reported on OSHA 200 logs compared with cases that received medical treatment, as identified by self-administered questionnaire.	Plant/year; OSHA 200 Log; Self-report: Plant 1: 1986: 1.0; 30.9 1987; 2.7; 1988; 6.9; Plant 2: 1986: 0.9; 40.9 1987; 11.9 1988; 21.4. Plant 3: 1986: 20.3; 47.8 1987; 14.6 1988; 19.43. Plant 4: 1986: 0.7; 24.5 1987; 2.1 1988; 9.9..	Four automobile manufacturing plants. 713 out of 948 workers selected for the study completed the questionnaire.
Fine, Silverstein, Armstrong, Anderson, and Sugano, *JOM.* 28:674 (1986) Ex. 26–920.	Incidence (per 100 worker-years) of upper-extremity MSDs reported on OSHA 200 logs compared with workers' compensation (WC), medical absence records (MAR) and medical case records (MCR).	Plant; 200; OSHA WC, MAR, MCR: B; 0.03; 0.29; 3.04; 2.03 C: 0.15; 0.45; 1.85; 13.98	Data from two large automobile manufacturing plants (total employment not reported).
Pransky, Snyder, Dembe, and Himmelstein, *Ergonomics.* 42.171 (1999) Ex. 26–922.	Percent of workers reporting musculoskeletal symptoms caused or aggravated by work, compared to OSHA Log entries.	Work-related Symptom; % reporting; % on Log:. Hand/Wrist; 86%; 6% Arm; 33%; 1% Neck; 21%; 0 Back/legs; 28%; 2% 9% of workers reported that symptoms resulted in lost work days over the past year. 6% reported they were formally assigned light-duty work by plant nurse. 15% reported symptoms resulted in information light-duty work arranged by co-workers..	Questionnaire administered to 110 packers, of whom 98 responded. Plant produces variety of childrens' products.
Park, Krebs, and Mirer *JOEM.* 38:1111 (1996) Ex. 26–1261.	Number of claims made in a sickness and accident (S&A) disability (sick leave) system compared to lost-work-day (LWD) injuries and illnesses recorded in OSHA log.	Only 7 of an estimated 47 (15%) S&A upper extremity LWD cases in 1992 were recorded on the OSHA Log. For LWD back injuries, 27 of an estimated 36 (75%) S&A cases were recorded.	Study of an automotive assembly and stamping complex employing 10,000 workers.
Park, Nelson, Silverstein, and Mirer, *JOM.* 34:731. (1992) Ex. 26–1259.	Medical insurance claims linked to work histories compared to OSHA logs.	From 1984 to 1987, OSHA logs failed to record between 20 and 80 percent of occupational MSDs..	Conclusion based on authors' own unpublished data from insurance records of five automotive manufacturing plants. These records identified 11,577 MSD health claims made by 3,204 workers.
Nelson, Park, Silverstein, and Mirer, *Am. J. Public Health.* 82:1550 (1992) Ex. 26–1260.	Medical insurance claims linked to work histories compared to OSHA logs..	From 1985 through 1986, OSHA logs identified 59 hand/wrist MSD cases compared to 150 cases identified in health insurance records. For all MSDs from 1984 through 1987, only 9% of cases identified through insurance claims were recorded on OSHA logs (the authors cite data from Parks *et al.*(1992) indicating that about half of the upper extremity MSD cases from insurance claims are attributable to work.	
NIOSH Health Hazard Evaluation Report, HETA 88–344–2092 (1991) Ex. 32–450–1.	Percentage of workers with work-related (W–R) upper extremity (UE) MSDs not seeking medical care. W–R UE MSD cases defined by NIOSH standardized symptom questionnaires and positive physical findings from physician-conducted physical examinations.	40% of supermarket checkers with WR UE MSD did not seek medical care.	W–R MSD's not brought to the attention of a health care professional (HSP) will not be recorded on the OSHA 200 logs.
NIOSH Health Hazard Evaluation Report, HETA 90–273–2130 (1991) Ex. 32–450–1–13.	Percentage of workers with W–R UE MSD not seeking medical care and whether they were recorded on the OSHA 200 logs. W–R UE MSD defined by NIOSH standardized symptom questionnaires.	85% of employees with W–R UE MSD symptoms were not evaluated by a HSP. A small fraction of those with W–R UE MSD were recorded on the OSHA logs.	Jewelry manufacturing employees exposed to repetitive, forceful, and awkward postures during job tasks (MSD hazards).
NIOSH Health Hazard Evaluation Report, HETA 92–331 (close-out letter) (1993) Ex. 32–450–1.	Evaluation to determine compliance with OSHA corporate settlement agreement. Review of plant's health clinic algorithm to evaluate and treat symptomatic workers.	Large numbers of symptomatic workers evaluated by HAPS and prescribed a temporary job transfer. HSP deemed these as "preventive" job transfers and did not record these on the OSHA 200 logs.	Red meatpacking plant employees exposed to MSD hazards. BLS requires cases involving employees with W–R symptoms assigned a job transfer to be record onto the logs.
NIOSH Health Hazard Evaluation Report, HETA 95–0294–2594 (1996) Ex. 32–450–1–22.	Percentage of workers with W–R UE MSD not seeking medical care and whether they wer recorded on the OSHA 200 logs. W–R UE MSD defined by NIOSH standardized symptom questionnaires.	75% of employees with W–R UE MSD did not seek medical care. A small fraction of those with W–R UE MSD were recorded onto the OSHA 200 logs.	Research technicians conducting pipetting operations with MSD hazards.
NIOSH Health Hazard Evaluation Report, HETA 96–0101–2476 (1997) Ex. 32–450–1–26.	Employee health records and employee interviews compared with the plant's OSHA 200 logs.	23% of employees with W–R UE MSD not recorded onto the OSHA 200 logs.	Truck frame assumably employees exposed to MSD hazards.
	Same method used to determined the accuracy of the number of lost and restricted workdays recorded.	The number of actual lost or restricted work days significantly under-reported.	Under-reporting the lost or restricted workdays gives the impression of a less serious disorder.
NIOSH Health Hazard Evaluation Report, HETA 97–0276–2724 (1999) Ex. 32–450–1–2.	Clinic employee report of injury illness forms compared with the plant's OSHA 200 logs. Employee health records compared with the plant's OSHA 200 logs..	Many entries listed on the Clinic Employee Report of Injury/Illness forms and many cases from individual employee health records were not recorded on the OSHA 200 logs.	Fiberglass manufacturing plant employees exposed to MSD hazards.
NIOSH Health Hazard Evaluation Report, HETA 98–0085–2715 (1998) Ex. 32–450–1–10.	Comparison of workers reporting MS symptoms on a body map diagram with the OSHA 200 logs.	Several discrepancies between these two lists. Employees probably not reporting all W–R symptoms to employer.	Casket manufacturing employees exposed to MSD hazards.

As stated by NIOSH (Ex. 32–450–1), these HETAs compared the OSHA 200 Logs with work-related MSDs ascertained via the following mechanisms: (1) Confidential medical interviews; (2) review of employee medical records of private health care providers; (3) health surveys utilizing standardized MSD symptom questionnaires; and (4) health surveys defining cases as those with work-related symptoms and positive physical findings conducted by physicians performing physical examinations targeted to the musculoskeletal systems. In one HETA, NIOSH estimated the extent of the underreporting of recordable cases of MSDs on OSHA Logs as 23 percent of cases among a group of truck frame workers (Ex. 32–450–1–26). In other studies, NIOSH quantatively characterized the extent of the underreporting in these HETAs as ranging from "a small fraction" for jewelry workers and research technicians to "many not reported" for fiberglass manufacturers to "large numbers not reported" for red meatpacking plants; for a group of supermarket checkers, NIOSH quantitatively estimated that the underreporting amounted to 40% of all cases. NIOSH states that there is no reason to believe that these HHEs are not representative of the widespread underreporting believed to be associated with work-related MSDs. NIOSH suggested that OSHA include these HETAs in the final standard, to strengthen the evidence of MSD underreporting.

The rulemaking record thus contains convincing evidence that MSDs are often underreported; this evidence includes the new peer-reviewed studies submitted by several rulemaking participants. OSHA finds this evidence persuasive and has incorporated this information into this final standard, as appropriate.

Some commenters agreed that OSHA was correct in its assumptions about underreporting (see, *e.g.*, Exs. 32–339–1–34, –36 and –43, Tr. 3588, Tr. 4306–07, 4308, 6336, 7362, 7522, as reported in AFL–CIO, Ex. 500–218). Other commenters, however, questioned the accuracy of OSHA's estimates of the extent of MSD underreporting (see, *e.g.*, Exs. 500–197, 30–3845, 30–3813).

For example, Organizational Resources Counselors, Inc. (Ex. 30–3813) disagreed with OSHA's preliminary finding that MSDs are underreported on the grounds that: (1) The studies comparing workers' compensation data with OSHA Logs are more than a decade old; (2) OSHA's own audits (done in connection with OSHA's Data Initiative) of employer injury and illness records indicates a "satisfactory" level of reporting; and (3) factors such as aging and off-the-job risks affect the onset of MSDs and complicate the accurate reporting of work-related MSDs. In response, OSHA notes that many of the reports and studies it is relying on as evidence of underreporting are recent (late 80's and 90's) and that in this section of the preamble (Significance of Risk), OSHA is relying only on those studies that report underreporting on the Log (and thus may affect the BLS survey results). OSHA believes that ORC's argument that establishing the work-relatedness of MSDs may make them difficult for employees to report accurately only reinforces OSHA's point: that they are underreported on the Log. Finally, although OSHA agrees that OSHA's Data Initiative audits show a relatively accurate level of Log reporting, it is important to note that they do show that lost-time injuries are underreported by close to 15%.

In response to OSHA's request in the proposal for specific information on the underreporting or overreporting of MSDs, the AFL–CIO submitted additional studies to the docket supporting the underreporting of work-related MSDs (Ex. 500–218). Representatives from the AFL–CIO support OSHA's statements in the proposed rule to the effect that the BLS survey understates the true magnitude of the MSD problem by a factor of two (64 FR 65981). The AFL–CIO states that the record demonstrates that MSDs are indeed significantly underreported, thus supporting OSHA's determination on this point (see Ex. 32–339–1 at pp. 3–4). Further, at the hearings several physicians and researchers confirmed that there is significant underreporting. (See, *e.g.*, Dr. Armstrong, Tr. 839–40; Dr. Punnett, Tr. 1021; Dr. Erdil, Tr. 1115; Dr. Owen, Tr. 1886–87; Dr. Boden, Tr. 2399–2401.) Similarly, numerous workers explained that workplace injuries often go unreported to employers (Tr. 3588, 3602, 3612–13, 4510–11, 4587–89, 4595–97, 5601, 5820, 5861, 6068–69, 6381, 7546–7550, 7377–78, 7382–83, 7384–88, 7510–12, 7704). The AFL–CIO submitted testimony from Nancy Foley, a journalist from Massachusetts, concerning her fears and how that led her not to report her injury, as follows:

> "In 1993, I began having pain in my neck and weakness in my hands. I did not seek medical attention until 1995 when the pain had spread into my left shoulder and left arm making it difficult for me to sit through the work day. Fear prevented me from seeking medical attention sooner. I was a part-time reporter. And I was afraid I would never be made full-time if my employer knew the job was injuring me (Tr. 7318–9)."

NIOSH also agrees that the BLS data underestimate the true magnitude of the occupational injury and illness problem for two reasons: (1) Approximately one-third of industries are not included in the BLS annual survey, and (2) underreporting of the true number of work-related health problems on the OSHA 200 Logs occurs. NIOSH stated that while it is widely accepted that occupational disease is underestimated in the U.S., the OSHA 200 Logs are the major data source used by BLS to determine the extent of occupational disease in the United States. OSHA is persuaded by the evidence in the record that work-related MSDs are currently being substantially underreported on OSHA Logs. OSHA believes that the number of lost-time, work-related MSDs quantified in the Agency's risk assessment on the basis of the BLS data is understated by at least a factor of two.

Other Evidence Risks are Significant

In addition to the BLS data, epidemiologic studies comparing the prevalence or incidence of MSDs in exposed populations with the prevalence or incidence in referent groups with lesser or no such exposure also document the elevated risk confronting employees exposed to workplace risk factors. These studies also identify the types of workplace risk factors associated with the development of work-related musculoskeletal disorders, as well as the duration of exposures found to be associated with these disorders. This information further supports the occupational origin of the reported disorders.

For example, the odds of having an upper extremity disorder like carpal tunnel syndrome or tendinitis/peritendinitis of the shoulder or wrist are 5–30 times greater among workers exposed to combinations of risk factors such as high force, repetition and awkward postures (*e.g.*, overhead work) then among either unexposed workers or workers who are exposed to a single risk factor (*e.g.*, Luopajarvi *et al.*, 1979, Ex. 26–56; Armstrong *et al.*,1987, Ex. 26–48; Silverstein *et al.*, 1987, Ex. 26–34; deKrom *et al.*, 1990, Ex. 26–41; Herberts *et al.*, 1984, Ex. 26–51). The odds of experiencing a low back disorder increased 3–8 fold among those workers exposed to frequent or forceful manual handling, awkward trunk postures (such as severe forward flexion), or to whole body vibration (Liles *et al.*, 1984, Ex. 26–33; Kelsey *et al.*, 1990, Ex. 26–52; Punnett *et al.*, 1991, Ex. 26–39; Wikstrom *et al.*, 1994,

Ex. 26–61; Tanaka *et al.*, 1995, Ex. 26–59). Hip and knee disorders are associated with heavy physical work and awkward postures, such as kneeling and squatting, or using the knee as a kicker. Thun *et al.* (1987, Ex. 26–60) reported an increased risk of bursitis in carpet-layers that was 5 times higher than that of the unexposed workers. In a review of 4 studies, Hagberg and Wegman (1987, Ex. 26–32) estimated the work-attributable fraction of shoulder tendinitis in the exposed population to be 90%. In a review of 15 cross-sectional and 6 case control studies of carpal tunnel syndrome, Hagberg *et al.*(1992, Ex. 26–50) estimated the work-attributable fraction in the population exposed to high force, high repetition, vibration or awkward wrist/hand postures to be 50–90%. Olsen *et al.*(1994, Ex. 26–57) estimated that 40% of the cases of coxarthrosis (osteoarthrosis of the hip) seen in the exposed working population was due to heavy physical workload. Thus, in general, strong and consistent associations have been identified in the epidemiologic literature, primarily in cross-sectional and case control studies, but also in prospective studies (*e.g.*, Kurppa *et al.*, 1991, Ex. 26–53; Riihimaki *et al.*, 1994 Ex. 26–58; Felson *et al.*, 1991, Ex. 26–49). Exposure-response relationships have been identified in a number of studies, although precise quantitative modeling is not yet available.

Based on the various data and studies discussed in the Quantitative Risk Assessment and Health Effects sections of the preamble, OSHA finds that workers exposed to workplace risk factors are at significant risk of developing work-related musculoskeletal disorders, which are harmful and often disabling conditions. This is particularly true for workers who are exposed to a combination of risk factors over most of the workshift.

The data indicate that this rule would, if promulgated, cause employers to implement, for their problem jobs, interventions that would reduce the exposure of at-risk workers to workplace risk factors, and thus would substantially reduce significant risk. Specifically, the requirements to conduct job analyses and implement controls where exposure to risk factors is high (*i.e.*, for jobs meeting the Action Trigger and/or identified as having MSD hazards) would help to ensure that employees are exposed to fewer risk factors over time, or to a combination of risk factors for a lesser amount of time, than is now the case. A large body of data demonstrates that workplace interventions, such as job analysis to identify risk factors and implementation of controls to reduce exposures to these risk factors, can be very effective in reducing those forces responsible for musculoskeletal disease and injury; this has been shown in studies that have quantitatively examined the impact of ergonomic interventions on exposures to risk factors, as well as studies and reports that have documented actual reductions in injury prevalence following the implementation of ergonomics programs. Several of the standard's provisions, such as MSD management and training, will provide additional protection against the significant risk that will remain after controls are implemented in problem jobs.

C. OSHA's Response to Additional Comments

Several commenters argued that OSHA must quantify separately the risk posed by each hazard it is regulating (*i.e.*, force, awkward posture, vibration, repetition, and contact stress), and must do so in every industry below the two-digit SIC code level, in every occupational category, and in every job covered by the standard. See *e.g.*, Ex. 30–4499; Ex. 500–197; Ex. 500–187; 500–223.

In the Risk Assessment and Health Effects sections of this preamble, OSHA explained in detail its reasons for addressing these risk factors together in one standard. Substantial evidence in the rulemaking record demonstrates that these factors work together to pose a significant risk of material harm to employees. In most of the cohorts studied in the epidemiological literature examining these risk factors, the employees studied were exposed to combinations of the risk factors regulated; rarely would one of the risk factors be studied in isolation. In addition, substantial evidence in the rulemaking record indicates that ergonomic interventions are most effective when they examine an employee's exposure to all of the risk factors at issue at one time. The tools used to assess exposure to ergonomic risk factors are designed to account for interactions between risk factors. For example, the NIOSH lifting equation considers how forces applied by the worker (weight), the workers' posture, and lift frequency all interact to increase risk. Indeed, it would be inappropriate for OSHA to quantify the risk posed by each risk factor alone. Such an approach would not provide an accurate representation of the MSD hazard a particular employee faces when doing a certain job; indeed, such an approach would provide an inaccurate picture of the MSD hazards present. The OSH Act's requirement are met if OSHA determines that employees are being subjected to a significant risk of material impairment of health or functional capacity by the risk factors being targeted and that the standard being promulgated will reduce that risk substantially. OSHA has done that here.

Using the best available evidence, OSHA has found that employees are currently exposed to a significant risk of material harm from the risk factors of force, repetition, awkward posture, contact stress, and vibration. The BLS data used by OSHA to calculate significant risk included Nature of Exposure Event Codes corresponding to these risk factors:

- Repetitive motion: This category reflects the risk factor of repetition; however, such exposure is often combined with force and/or posture.
- Overexertion: This category reflects the risk factor of force; however, such exposure is often combined with repetition and/or posture.
- Bodily reaction: This category reflects the risk factor of posture; however, such exposure is often combined with force or repetition.

While the BLS data did not directly include numbers reflecting exposures to the risk factors of vibration and contact stress, OSHA believes that some of the MSDs included in the data may also have involved exposure to these hazards. Other evidence in the rulemaking record also convincingly shows that employees exposed to these two risk factors experience a significant risk of material harm. A number of epidemiological studies in the rulemaking record demonstrate that exposure to vibration at even low levels causes a number of serious conditions, including hand-arm vibration syndrome. See the discussion of vibration in the Health Effects section; see also Ex. 26–392. Indeed, NIOSH specifically found this in its 1997 review of the epidemiological literature. See Ex. 26–1. There is also substantial evidence in the rulemaking record that contact stress as defined by this standard can cause a significant risk of material harm. As discussed fully in the Health Effects section, the scientific literature strongly shows that contact stress causes such conditions as hypoththermal hammer syndrome and carpet layers' knee. Thus, there is no question that workers are currently exposed to a significant risk of material harm from the risk factors of force, repetition, vibration, awkward posture, and contact stress.

OSHA is also not required to conduct its significant risk analysis at a detailed industry level, or by occupational category or job. Where a standard requires employers to act only when the hazards being regulated are present in their workplace, OSHA has no duty to disaggregate risk in this manner. See *International Union, United Auto Workers* v. *OSHA* (LO/TO II), 37 F.3d 665, 670 (D.C. Cir. 1994). This was recently confirmed by the D.C. Circuit in its review of OSHA's Lockout/Tagout standard. In the Lockout/Tagout rulemaking, OSHA found that workers performing certain operations across general industry were exposed to a significant risk of material harm from the hazard of energy unexpectedly being released from certain powered industrial equipment. *Id*. at 667. Certain industry challengers argued that OSHA was under a duty to disaggregate the risk faced by workers by SIC code, particularly since, they contended, there was zero risk in certain SIC codes. The court held that the OSH Act placed no such duty on OSHA: "If, as OSHA asserts * * * the regulation applies simply to *machines* that pose a significant risk and to workers subjected to that risk, we see no reason why OSHA should be concerned with industry classifications that appear essentially irrelevant to its task." *LO/TO II*, 37 F.3d at 670 (emphasis added). *See also Associated Builders and Contractors, Inc.* v. *OSHA*, 862 F.2d 63, 68 (3d Cir. 1988) ("A requirement that the Secretary assess risk to workers and need for disclosure with respect to each substance in each industry would effectively cripple OSHA's performance of the duty imposed on it * * *"); *American Dental Ass'n* v. *Martin*, 984 F.2d 823, 827 (7th Cir. 1993) ("[T]he agency [is not] required to proceed workplace by workplace, which in the case of bloodborne pathogens would require it to promulgate hundreds of thousands of separate rules.").

Like OSHA's Lockout/Tagout rule, this standard is not "industry-based." An employer is required to respond to an employee report of signs or symptoms of an MSD only when the employer determines that an "MSD incident" has occurred and the employee's job is one that contains risk factors that exceed the standard's screen. OSHA is not triggering industry wide obligations; rather, it is triggering obligations on employers where there are ergonomic hazards present at certain levels in jobs in their workplace. Under these circumstances OSHA is not required to disaggregate risk by three or four digit SIC code, or by occupational category, or by jobs potentially covered by the standard.

Several commenters argued that because MSDs are not fatal, OSHA should deviate from its past practice of considering as "significant" a "one in a thousand" risk that a worker will develop an MSD over a working lifetime. See *e.g.*, Ex. 500–223.

As noted above, a plurality of the Supreme Court in Benzene held that, although "it is OSHA's responsibility to determine, in the first instance, what it considers to be a "significant" risk, * * * the requirement that a "significant" risk be identified is not a mathematical straitjacket * * * [and] the Agency has no duty to calculate the exact probability of harm." *Id*. at 655. While the Court noted OSHA's broad discretion to formulate what level of risk it considers to be significant, the Court also provided guidance to OSHA as to what a reasonable person might consider a significant risk of material harm:

> "Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2 percent benzene will be fatal, a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it." *Id*. at 655.

In past standards, OSHA has applied that guidance, noting that a risk of one in a thousand of dying from an occupational exposure is significant. However, OSHA has never quantified the lowest level of risk of death that it considers significant, beyond acknowledging that the level must be higher than one in a billion. Thus it is not true that OSHA takes the position that a risk of dying is necessarily insignificant if it is less than one in a thousand.

OSHA has only infrequently quantified the risks of nonlethal harm from workplace exposures. It recognizes, however, that a reasonable person might well be willing to accept a greater risk of injury than of death, and that there may be cases where even a risk of one in a thousand of some types of injuries occurring is insignificant. OSHA need not determine whether this is such a case, however, because, throughout general industry, the working lifetime risk of developing an MSD is extraordinarily high. OSHA has found working lifetime risks to be as high as 835 per thousand (Transportation by air), 486 per thousand (Local and suburban transit and interurban highway passenger transportation), and 206 per thousand (Real estate). Even in SIC code 62 (Security and Commodity Brokers, Dealers, Exchanges, and Services), the SIC code with the lowest risk, 24 out of 1,000 workers are likely to suffer at least one MSD during a working lifetime. These risk levels are extremely high by any measure or formulation and are clearly "significant" under the OSH Act. Further, the serious and often disabling nature of these disorders is attested to by the fact that their severity (measured by median number of days away) is greater than median for all other injuries and illnesses combined.

Some commenters argued that the standard is improperly structured to reduce all risk, even insignificant risk. See Exs. 30–4185; 30–3951. OSHA agrees that this standard will substantially reduce the significant risk of material harm faced by workers from exposure to ergonomic risk factors. OSHA estimates that the standard will reduce the number of lost workday MSDs currently reported to the BLS by approximately 50%. This amounts to approximately 300,000 MSDs a year and constitutes a substantial reduction in the number of MSDs experienced by workers every year across general industry. This standard is not designed to reduce "insignificant" risk, however. OSHA has made some changes to the standard (from the proposed rule) to ensure that employers are not required to act when the risk posed to their employees from the risk factors at issue is below certain levels.

First, OSHA has included a screen in the standard that will ensure that employers are not required to act in the absence of "significant risk." OSHA established the screen based on substantial evidence in the rulemaking record showing substantial excess risk of developing MSDs above the hazard levels in the screen. If employees are exposed to the risk factors at issue below the levels indicated by the screen, employers have no obligations to analyze their jobs, implement controls, or train their workers.

Second, OSHA has not included the proposed incremental abatement process in the final standard. As explained more thoroughly in section IV, above, the incremental abatement process would have allowed employers to incrementally implement controls to certain jobs to materially reduce MSD hazards. If continued exposure to certain hazards in the job prevented an injured employee from recovering, the employer was required to implement additional feasible controls. Although this approach mirrored what many employers were currently doing in their ergonomics programs, it was highly

criticized during the rulemaking process. One criticism was that it effectively required employers to continue to implement controls when the risk posed by a certain job was no longer "significant." Although OSHA does not agree that the process placed requirements on employers to act where there was no significant risk, OSHA has nonetheless eliminated the requirement from the final standard in order to, among other tings, avoid any implication that employers must abate hazards that are not significant.

Some commenters argued that OSHA improperly relied on the BLS data for its significant risk analysis because the data include injuries and illnesses that are only 1% caused by work. See Ex. 3[illegible]–78. These commenters miss the point about OSHA's significant risk analysis. The appropriate question to be asked is whether the BLS data accurately reflect the risk faced by workers exposed to the risk factors being regulated and whether the standard will substantially reduce that risk. As explained above, the BLS data represent the best available evidence on the magnitude of the MSD problem in the United States today, and thus on the significant risk faced by workers from exposure to the ergonomic risk factors at issue. The BLS survey is a comprehensive one; it collects workplace injury and illness data from about 165,000 private industry establishments. For the survey, selected employers are required to provide statistics on the total number of injuries and illnesses recorded on the OSHA Form 200, as well as information describing the nature and causes of their lost workday injuries and illnesses. The information is provided in sufficient detail to permit BLS to systematically code each reported case and develop estimates of the numbers and incidence of each specific type of LWD injury and illness for the United States as a whole, by industry sector and by occupation. The data provided reflect the employer's understanding of which cases are work-related under current U.S. Department of Labor recordkeeping guidelines. OSHA is thus confident that the reported cases of MSDs included in the significant risk analysis accurately reflect injuries caused by work.

OSHA has also taken a number of additional steps to ensure that the risk assessment and the significant risk analysis have a tight nexus with the risk factors being regulated and the structure of the standard. As stated, OSHA only included Nature of Exposure Event categories in its risk assessment that corresponded to the risk factors targeted by the standard. Thus, the MSDs experienced by workers as a result of exposure to risks not covered by this standard are not included in the Risk Assessment. In addition, for the final standard OSHA has conducted a second, alternative analysis that eliminated from the risk assessment MSDs caused by exposure to risk factors at levels below the screen. See Risk Assessment discussion. This additional analysis confirms OSHA's conclusions as to the risk faced by workers exposed to the risk factors at issue and demonstrates that the risk of developing MSDs for workers exposed to risk factors at levels meeting the screen is alarmingly high and, without question, significant.

One commenter argued that OSHA has improperly considered "significant" risks that represent incident rates much lower than those being targeted in the Agency's new enforcement plan. Tr. 10439 (NCR Corporation). The OSH Act and past OSHA practice provide the framework within which OSHA must make its significant risk finding. Acting within this framework and on the best available evidence, OSHA has found that a significant risk of material harm currently exists for workers exposed to the hazards regulated and that the standard will substantially reduce that risk. OSHA's enforcement strategy, on the other hand, is based on entirely different principles. Because OSHA has a limited enforcement budget, OSHA targets its enforcement activities to industries where the risk of harm is particularly severe. OSHA engages in comprehensive data collection in order to determine where certain industries fall within this prioritization scheme. OSHA's most recent enforcement initiative focuses on relatively large workplaces whose past experience shows that hazards are likely to be present. The principles used to support OSHA's enforcement efforts are very different from the principles OSHA must abide by in setting occupational safety and health standards. For this reason, it is entirely appropriate for OSHA to apply different standards for determining significant risk and targeting its enforcement activities.

D. Conclusions

OSHA concludes, based on the evidence discussed above and elsewhere in the record, that the scientific data are sufficient to demonstrate that exposure to work-related risk factors is associated with the development of musculoskeletal disorders of the upper extremities, back, and lower extremities. Risk factors identified from this body of literature include repetitive motions; use of excessive force; segmental vibration; maintaining awkward postures of the neck, wrists, arms, trunk, and lower-extremities; and lifting, lowering, pushing, carrying, and pulling loads of excessive weight. Depending on the specific combinations of risk factors encountered in the workplace, musculoskeletal disorders identified as being work-related include carpal tunnel syndrome (hand, wrist), trigger finger (hand), De Quervains' disease (wrist), tendinitis (hand, wrist, shoulder, ankle), epicondylitis (elbow), rotator cuff tendinitis (shoulder and neck), sciatica (lower back), osteoarthritis (hip, knee), bursitis (knee), and tarsal tunnel syndrome (foot).

The evidentiary base on which OSHA relies in making these conclusions is described fully in the Health Effects section of the preamble. This evidence is comprised of several hundred cross-sectional, case-control, prospective, and case series reports of working populations in a variety of industrial settings. Supplementing these reports is a large body of scientific literature that provides data on the mechanisms by which exposure to these risk factors causes musculoskeletal disorders; these data demonstrate the biological plausibility of the relationship between exposure to workplace risk factors and an elevated risk of MSD injury and illness.

MSDs have been recognized as compensable under virtually all State workers' compensation plans, demonstrating that exposure to work-related risk factors is already widely recognized as a cause of musculoskeletal disorders. Taken together, OSHA believes that the scientific and other evidence described in the preamble to this rule constitute an evidentiary base of unusual depth and quality.

Accordingly, OSHA concludes that musculoskeletal disorders associated with workplace exposure to workplace risk factors constitute material harm under the OSH Act. Further, as demonstrated by the evidence discussed in Section B above, the data available to the Agency demonstrate clearly that workers in the occupations and industries covered by the ergonomics program standard are at significant risk of experiencing a work-related MSD over their working lifetime; for many occupations and industries, they are at significant risk of experiencing a work-related MSD even in a single year of work in their job.

VIII. Summary of the Final Economic Analysis and Regulatory Flexibility Analysis

A. Introduction

OSHA's Final Economic and Regulatory Flexibility Analysis (Ex. 900) addresses issues related to the costs, benefits, technological and economic feasibility, and economic impacts (including small business impacts) of the Agency's ergonomics program rule. The analysis also evaluates regulatory and non-regulatory alternatives to this rule.

This rule is a significant rule under Executive Order 12866 and has been reviewed by the Office of Information and Regulatory Affairs in the Office of Management and Budget, as required by the executive order. In addition, this economic analysis meets the requirements of both Executive Order 12866 and the Regulatory Flexibility Act (as amended in 1996). The complete Final Economic and Regulatory Flexibility Analysis has been entered into the rulemaking docket as Ex. 900. This Final Economic and Regulatory Flexibility Analysis presents OSHA's full economic analysis and methodology, as well as responses to comments in the record on the Preliminary Economic and Regulatory Flexibility Analysis. The remainder of this section of the Preamble summarizes the results of that analysis.

The purpose of this Final Economic and Regulatory Flexibility Analysis is to:

- Identify the establishments and industries potentially affected by the rule;
- Estimate the benefits of the rule in terms of the reduction in musculoskeletal disorders (MSDs) employers will achieve by coming into compliance with the ergonomics program standard and some of the direct cost savings associated with those reductions;
- Evaluate the costs, economic impacts and small business impacts establishments in the regulated community will incur to establish ergonomics programs to achieve compliance with the standard;
- Assess the economic feasibility of the rule for affected industries;
- Evaluate the principal regulatory and non-regulatory alternatives to the final rule that OSHA has considered;
- Present the Final Regulatory Flexibility analysis for the ergonomics program rule; and
- Respond to the findings and recommendations made to OSHA by the Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel convened for this standard.

The Final Economic Analysis contains the following chapters:

Chapter I, Introduction
Chapter II, Industrial Profile
Chapter III, Technological Feasibility
Chapter IV, Benefits
Chapter V, Costs of Compliance
Chapter VI, Economic Feasibility
Chapter VII, Economic Impacts and
  Final Regulatory Flexibility Analysis
Chapter VIII, Assessment of Non-
  Regulatory Alternatives.

B. Introduction and Industrial Profile (Chapters I and II)

Data from the Bureau of Labor Statistics (BLS) *Annual Survey of Occupational Injuries and Illnesses* for 1996 shows that 626,000 U.S. workers across all industries experienced musculoskeletal disorders serious enough to require time away from work for recuperation in that year (Ex. 26–1413). In addition to these lost workday MSDs, OSHA estimates that, on average across all of general industry, about two times as many non-lost workday cases involving work-related MSDs occur every year in U.S. workplaces.

In some general industry sectors, lost workday MSD rates reached 37 cases per 1,000 full-time equivalent (FTE) workers in 1996, and in many others, annual incidence rates were greater than 10 per 1,000 FTE (Ex. 26–1413). If these annual risks are converted into working lifetime risks (assuming a 45-year working lifetime), the risks of experiencing a lost workday MSD faced by general industry employees over the course of their working life, based on OSHA's most conservative estimates, range from 24 to 813 per 1,000 workers, depending on the particular industry in which the worker is employed (see the Significance of Risk section of this preamble). By any reasonable definition, these risks of material impairment are significant. Another indicator of the significance of work-related MSDs to the economy is the fact that employers annually pay out, in direct workers' compensation costs, between $15–$18 billion, or about 1 dollar of every 3 workers' compensation dollars, for MSD-related claims.

The extensive evidence available clearly demonstrates that ergonomic risk factors—such as repetitive motion, force, awkward posture, and vibration—are present in all types of general industry workplaces, including small, medium, and large workplaces. In today's workplace, the pace of work, the specialization of work, and continued reliance on unassisted manual handling require many workers to apply excessive force, perform too many lifts and carries, and repeat similar motions too often. Many studies cited in the Health Effects section of the preamble (Section V) to the final standard demonstrate the presence of these risk factors in the workplace, and many biomechanical studies show the effects on the soft tissues of the body of these external forces: tissue damage, pathophysiology, and outright disease.

Market mechanisms have been inadequate to address these risks (see the discussion in Chapter VIII of this economic analysis). Although many firms, and particularly larger firms, have addressed ergonomic risk factors and substantially reduced their MSD rates, many firms have not. Approximately 60 percent of all general industry employees continue to work in establishments that have not yet addressed ergonomic risk factors, despite the widespread presence of MSD hazards.

Because these characteristics of work are not unique to the United States, countries of every size and on every continent are also experiencing significant numbers of musculoskeletal disorders among their workforces. Many of these countries—ranging from the United Kingdom and Sweden to Pakistan, Ecuador, and South Africa—have already established regulatory requirements designed to address some or all of the workplace risk factors giving rise to these disorders. A table summarizing the ergonomics rules and guidelines issued by other countries and organizations can be found in Chapter I of this Final Economic Analysis.

The standard OSHA is issuing today applies to general industry employers and will also affect state and local government entities or agencies in OSHA's State-plan States, except that the following industries are exempt from the scope of the final standard: agriculture; maritime; and construction. In addition, the standard does not apply to railroad operations.

The final ergonomics rule is a program standard, *i.e.*, one that requires employers whose employees experience MSDs in jobs determined to be higher risk jobs to implement a program that includes the elements of any sound safety and health (ergonomics) program. These include management leadership and employee participation, job hazard analysis to identify musculoskeletal hazards, the implementation of controls to reduce the hazards identified, training for employees and their supervisors or team leaders in jobs that have MSD hazards, management of musculoskeletal disorders when they occur, and regular evaluation of the

program to ensure that it is functioning as intended.

The final rule contains many features that act to target the standard to the most hazardous jobs; to limit the compliance obligations of employers as much as possible, consistent with employee protection; and to permit employers to adapt the required program and its elements to the conditions and circumstances of their particular workplaces. Among the standard's flexible provisions are the following:

- The programmatic design of the standard itself, which requires employers to establish a basic framework with widely agreed-upon elements but leaves employers free to provide many of the establishment-specific details;
- A two-step action trigger, which requires the employer to take action only if an employee has experienced an MSD incident (one involving medical treatment beyond first aid, days away from work or on restricted work, or signs or symptoms lasting 7 days or longer) and that employee's job is determined to involve heightened exposure to ergonomic risk factors;
- A Quick Fix provision, which allows employers whose employees have experienced only a few MSDs to fix the problem job without having to implement the entire program;
- Provisions that specify that the employer is only required to implement a program for those jobs meet the action trigger, and then only to implement the program in that establishment;
- A provision permitting employers to use a variety of methods to conduct job hazard analysis;
- A provision permitting employers to demonstrate that they have met their hazard control obligations in any one of a variety of ways;
- A "grandfather" clause that permits employers with effective existing programs that contain the basic elements of ergonomics programs and that have been evaluated and shown to be effective before the standard's effective date to continue to implement their programs rather than the program required by the standard;
- Provisions stating that an employer's obligation to maintain its ergonomics program ceases for employees and jobs once the job has been controlled to levels below the screen.

OSHA believes that the flexibility afforded by the final rule will facilitate compliance by employers of all sizes and provide their employees with the protections they need against the ergonomic hazards that are so prevalent in general industry workplaces today.

The standard being issued today depends heavily on employee reporting for its effectiveness. This is the case because a report of an MSD or MSD signs and symptoms is the trigger to further action by the employer. Once an employee has reported an MSD, or its signs or symptoms, to the employer, the employer must determine whether the MSD (or signs or symptoms) meet the standard's definition of an MSD incident. An MSD incident is defined by the standard as a work-related MSD or MSD sign or symptom that involves persistent signs or symptoms (those lasting for 7 or more consecutive days since the time they were reported to the employer), or that requires medical treatment beyond first aid, one or more days of restricted work, or one or more days away from work. If the employee's report of an MSD is determined by the employer to be an MSD incident, the employer must then move to the second prong of the standard's action trigger: a review of the employee's job to determine whether it involves ergonomic risk factors (repetition, force, vibration, awkward postures, or contact stress) for durations that meet those specified by the Basic Screening Tool in Table 1 of the standard for that risk factor. If the relevant risk factors in the employee's job do not meet the screen in Table 1, the employer is not required to take further action. In other words, unless both parts of the action trigger are met (the occurrence of an MSD incident *and* the presence, in that employee's job, of risk factor(s) meeting the screen), *no* ergonomics program is triggered.

OSHA believes that the action trigger in the final rule is a highly effective targeting device because OSHA's data show that only about 37 percent of all general industry jobs will meet the screen, but that about two-thirds of all lost workday MSDs reported to the BLS annually occur in those jobs. Put another way, the risk that an employee will incur an MSD is about three times greater in a job with risk factors that meet the screen than in jobs that do not have such risk factors.

The standard requires employers who have jobs that meet the action trigger to implement an ergonomics program for that job and for all employees in the same job within the establishment.[1] The program consists of the following elements: management leadership, employee participation, job hazard analysis, employee training, MSD management (called medical management by many employers) and if a hazard is found—hazard control and program evaluation.

The final rule provides employers with several different hazard identification tools that they may use to determine whether a job that meets the screen does in fact pose an MSD hazard to employees in that job. These tools appear in two appendices (Appendices D–1 and D–2) to the standard. OSHA believes that a number of jobs that meet the screen will subsequently be shown, by a job hazard analysis, not to present a hazard to employees. For example, some jobs will have an ergonomic risk factor, or a combination of risk factors, at levels that meet the screen; however, use of one of the hazard identification tools in Appendix D, such as the Rapid Upper Limb Assessment (RULA), may show that the risk factors present in the job are within the "acceptable" zone on that tool.

The final rule permits employers to use a variety of hazard identification tools, which are included in appendices to the standard. Employers may also choose to rely for hazard identification on the services of a safety and health professional trained and experienced in ergonomics; in addition, they may choose to use any other reasonable method that is appropriate to the job and addresses the relevant risk factors. If the job hazard analysis identifies MSD hazards in the injured employee's job, the employer must then identify and implement controls to reduce these hazards.

The standard also permits employers great flexibility in meeting their obligations to control MSD hazards in jobs that have been identified as posing MSD hazards to employees. Employers may fulfill their obligations by:

- Controlling MSD hazards (defined as reducing the hazards to the extent they are no longer reasonably likely to cause MSDs that result in work restrictions, or medical treatment beyond first aid); or
- Reducing MSD hazards in accordance with or to the levels indicated by one of the hazard identification tools used by the employer in the job hazard analysis; or
- Reducing MSD hazards to the extent feasible.

Employers who control their problem jobs to one of these "endpoints" will be considered to be in compliance with the standard's hazard control requirements. OSHA believes that the range of control obligation endpoints permitted by the standard will ensure that employers will be able to control all of their problem jobs.

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[1] Employers qualifying for and choosing to use the Quick Fix provision of the standard do not have to implement a program but may instead implement controls and follow other procedures to address the risk factors in that job alone.

Employers are also permitted by the standard to use any combination of engineering, work practice, and administrative controls to meet their control obligations, although personal protective equipment may only be used alone when other kinds of controls are not feasible.

The standard's requirements for MSD management mandate that employers provide employees who have experienced an MSD incident in a job meeting the action trigger with: access to a health care professional; any work restriction or removal from work deemed to be necessary to allow the injured body part to recover; and the evaluation, management, and follow-up of the MSD needed to facilitate the employee's recovery. In addition, employers are required to maintain 100 percent of the wages, benefits, and employment rights of employees placed on restricted work to recover from an MSD, and they must maintain 90% of the wages, and all benefits and employment rights, of employees removed from work to recover. These protections, termed "work restriction protections" (WRP) by the standard, must be maintained until the *first* of the following occurs:

- An HCP determines that the employee can never return to the former job;
- The employee is able to return to the former job without endangering his or her recovery; or
- Ninety calendar days have passed.

As discussed at length in the summary and explanation for paragraph (r), OSHA has concluded that work restriction protections are required to encourage employees to come forward to report their signs and symptoms and to participate in the employer's MSD management program.

The standard also requires employees in problem jobs to be trained, initially and periodically, in the employer's ergonomics program and their role in it; the MSD hazards present in their jobs; the employer's plan for controlling these hazards; the use of these controls; and ways of evaluating the effectiveness of the controls selected. The training must be provided in language that the employee understands.

Employers must also evaluate their ergonomics programs, or the relevant part of their program, when they believe that the program or one of its elements is not functioning properly or that operations in the workplace have changed in a way that may increase employee exposure to ergonomic risk factors. In addition, program evaluations must be conducted every three years, at a minimum.

The standard requires employers with 11 or more employees to maintain records of: Employee reports of MSDs and MSD hazards (including employer's response to such reports), Job hazard analyses, Controls implemented, Quick fixes, Program evaluations, and Work restrictions and HCP written opinions. Required records must be accessible to employees and their designated representatives.

The standard provides a series of extended compliance phase-in dates for the various provisions of the standard. These range from 9 months to 4 years, depending on the particular provision.

Table VIII–1, based on data from *County Business Patterns* for 1996, shows the three-digit industries covered by the standard and the number of employees and establishments in each covered industry within the general industry sector (Ex. 28–2). Table VIII–1 also shows the estimated annual incidence rates for all MSDs (lost workday, restricted work, and non-lost workday) for each industry. These estimates do not include the number of MSDs currently underreported that OSHA believes will be reported once the standard is in effect or the number of reports of MSD signs and symptoms that will qualify under the final rule as MSD incidents. Together, these two kinds of MSDs increase the number of MSDs shown on Table VIII–1 by 50 percent. These rates differ from those shown in the risk assessment section of the Preamble because they include an estimate of all MSDs, rather than lost workday MSDs only, and because they use *County Business Patterns* estimates of industry employment in computing MSD rates. Table VIII–1 shows that the total MSD incidence rates in general industry range as high as 1,448 per 10,000 workers (in Public building and related furniture (SIC 253)). A total of about 6.1 million establishments and 102 million employees are present in general industry including state and local government.

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Table VIII-1: Estimated Number of Establishments and Employees and Estimated Annual Incidence of All MSDs, by 3-Digit SIC

SIC	Industry	Total Number of Establishments	Total Number of Employees in all Establishments	Total MSD Incidences Rate* (per 10,000 workers)
074	Veterinary services	22,807	174,576	112
075	Animal serv., excpt vet.	10,369	42,832	71
078	Lndscape & hort. services	68,157	345,871	268
081	Timber tracts	862	7,025	202
083	Forest products	137	2,082	234
085	Forestry services	1,568	12,265	135
091	Commerical fishing	1,947	8,850	167
092	Fish hatcheries	95	1,465	167
097	Hunting & trapping	339	1,650	172
131	Crude petrol. & nat. gas	7,758	83,909	74
132	Natural gas liquids	560	12,814	110
138	Oil & gas field services	8,764	159,639	152
201	Meat products	3,080	458,861	761
202	Dairy products	1,881	134,051	496
203	Presrvd fruits & vegetables	2,016	183,797	410
204	Grain mill products	2,603	109,406	520
205	Bakery products	3,523	230,724	402
206	Sugar and confect. prods	1,098	86,710	357
207	Fats and oils	507	26,512	311
208	Beverages	2,286	144,328	703
209	Misc. food products	4,007	165,889	453
211	Cigarettes	15	20,498	319
212	Cigars	47	2,737	119
213	Chewing & smoking tobacco	26	2,479	288
214	Tobacco stemm. & redrying	32	5,055	331
221	Brdwven fab. mills, cotton	412	50,459	844
222	Broadwoven fabric mills	458	79,013	257
223	Brdwvn fab. mills, wool	99	13,628	224
224	Narrow fabric mills	277	17,608	558
225	Knitting mills	1,945	177,354	355
226	Tex. finishing, excpt wool	852	53,437	372
227	Carpets and rugs	484	52,137	246
228	Yarn and thread mills	588	82,102	322
229	Misc. textile goods	1,010	54,492	329
231	Men's & boys' suits & coats	293	30,229	338
232	Men's & boys' furnishings	2,112	211,208	455
233	Wm's & misses' outerwear	8,954	249,317	206
234	Wm's & chldrn's undergarmnts	372	35,283	365
235	Hats, caps, & millinery	381	18,675	273
236	Girls' & chldrn's outerwear	585	36,315	233
237	Fur goods	133	550	273
238	Misc. apparel & accessories	933	30,771	317
239	Misc. fab. textile prods	8,797	220,100	310
241	Logging	14,273	86,675	67
242	Sawmills & planing mills	6,103	167,103	401
243	Millwork & plywood	9,548	254,660	553
244	Wood containers	2,830	48,027	401
245	Wood bldings & mobile homes	1,044	82,857	678
249	Misc. wood products	3,536	91,967	367
251	Household furniture	5,500	263,791	460
252	Office furniture	1,033	70,867	509

Table VIII-1: Estimated Number of Establishments and Employees and Estimated Annual Incidence of All MSDs, by 3-Digit SIC

SIC	Industry	Total Number of Establishments	Total Number of Employees in all Establishments	Total MSD Incidence Rate* (per 10,000 workers)
253	Pub blding & related furn.	449	34,886	1448
254	Partitions and fixtures	2,996	80,751	507
259	Misc furniture and fixtures	1,412	45,588	319
261	Pulp mills	62	15,349	138
262	Paper mills	344	121,373	360
263	Paperboard mills	228	54,165	155
265	Paperbrd containers & boxes	2,809	206,643	327
267	Misc. cnvrtd paper products	3,033	227,539	303
271	Newspapers	8,878	395,716	196
272	Periodicals	5,781	117,880	117
273	Books	3,559	135,942	206
274	Miscellaneous publishing	3,259	61,716	122
275	Commercial printing	34,435	587,534	226
276	Manifold business forms	911	45,341	359
277	Greeting cards	143	19,958	434
278	Blankbooks & bookbinding	1,583	63,356	317
279	Printing trade services	3,436	56,387	113
281	Indust. inorganic chemicals	1,390	85,705	163
282	Plastics mat. & synthetics	876	117,868	163
283	Drugs	1,637	207,295	193
284	Soap, clnrs, & toilet goods	2,434	120,815	237
285	Paints & allied products	1,479	52,183	264
286	Indust. organic chemicals	946	121,918	120
287	Agricultural chemicals	938	40,431	152
289	Misc. chemical products	2,566	86,431	263
291	Petroleum refining	275	70,045	107
295	Asphlt pavng & roofing mat.	1,368	24,390	294
299	Misc. pet. & coal prods	466	13,874	101
301	Tires and inner tubes	171	65,902	686
302	Rubber & plastics footwear	61	8,895	724
305	Hose, bltng, and gaskets	826	59,475	578
306	Fab. rubber prod., n.e.c.	1,767	111,074	574
308	Misc plastics, n.e.c.	13,648	751,503	420
311	Leather tan. & finishing	343	14,843	552
313	Footwear cut stock	70	2,103	347
314	Footwear, except rubber	378	38,768	480
315	Leather gloves & mittens	69	2,349	753
316	Luggage	261	10,231	229
317	Hndbags & prsnal leathr gds.	343	9,382	385
319	Leather goods, n.e.c.	418	8,414	580
321	Flat glass	81	13,203	749
322	Glass, pressed or blown	589	61,911	562
323	Prod. of purchased glass	1,640	61,300	507
324	Cement, hydraulic	231	16,283	311
325	Structural clay products	593	29,093	532
326	Pottery & related prods	1,200	39,441	625
327	Concrete & plast. prdcts	9,498	190,188	360
328	Cut stone & stone prods	1,071	13,867	397
329	Misc. nonmet. mineral prods.	1,599	69,785	411
331	Basic steel products	1,284	225,373	438
332	Iron and steel foundries	1,160	133,111	794

Table VIII-1: Estimated Number of Establishments and Employees and Estimated Annual Incidence of All MSDs, by 3-Digit SIC

SIC	Industry	Total Number of Establishments	Total Number of Employees in all Establishments	Total MSD Incidence Rate* (per 10,000 workers)
333	Primary nonfer. metals	201	34,534	444
334	Secondary nonfer. metals	299	15,013	543
335	Nonfer. rolling & drawing	1,105	153,482	503
336	Nonfer. foundries (cstngs)	1,662	89,402	629
339	Misc. primary metal prdcts	947	31,444	231
341	Met. cans & ship. containers	435	35,214	431
342	Cutlery, hndtls, & hardware	2,446	133,392	476
343	Plumbing & heating fixtures	688	46,295	920
344	Fab. struct. metal prdcts	13,334	428,117	450
345	Screw machine products	2,602	99,345	491
346	Met. forgings & stampings	3,694	258,010	704
347	Metal services, n.e.c.	5,529	124,099	383
348	Ordnance and access., n.e.c.	438	39,859	339
349	Misc. fab. metal products	7,266	296,592	452
351	Engines and turbines	371	75,184	561
352	Farm & garden machinery	1,761	98,072	501
353	Construct. & related mach.	3,324	195,304	508
354	Metalworking machinery	11,811	295,152	376
355	Special industry mach.	4,790	190,365	348
356	General indust. mach.	4,378	260,600	413
357	Computer & office equip.	2,112	227,720	213
358	Refrig. & serv. indust mach.	2,246	199,595	566
359	Industrial mach., n.e.c.	25,875	377,370	304
361	Elect. dist. equipment	875	68,623	369
362	Elect. indust. apparatus	2,260	162,510	440
363	Household appliances	474	106,685	677
364	Elct. lghtng & wire equip.	2,117	154,[illegible]73	474
365	Household audio & vid. equip.	815	50,938	408
366	Communications equipment	2,110	254,639	170
367	Electrnic compnnts & access.	6,570	594,638	196
369	Misc. elect. equipment	1,788	152,482	499
371	Motor vehicles & equipt.	5,049	785,168	1221
372	Aircraft and parts	1,693	400,899	358
373	Ship, boat blding and repair	2,676	52,904	630
374	Railroad equipment	213	35,344	630
375	Motorcycles & bicycles	370	16,400	615
376	Guided missiles	105	78,710	141
379	Misc. transportation equip.	1,135	53,849	569
381	Srch & navigation equipment	696	184,871	124
382	Meas. & contrlling devices	4,755	265,806	257
384	Medical instrmnts & supplies	4,471	267,624	221
385	Ophthalmic goods	587	26,417	312
386	Photo. equip. & supplies	721	62,716	377
387	Watches, clocks, & parts	141	5,765	144
391	Jwlry, slvrwre, and plate	2,813	45,819	236
393	Musical instruments	550	13,562	549
394	Toys and sporting goods	3,515	106,609	534
395	Office and art supplies	1,038	28,540	233
396	Costume jewelry & notions	1,092	22,970	189
399	Misc. manufactures	8,803	171,667	338
411	Local & suburban trans.	9,536	194,756	419

Table VIII-1: Estimated Number of Establishments and Employees and Estimated Annual Incidence of All MSDs, by 3-Digit SIC

SIC	Industry	Total Number of Establishments	Total Number of Employees in all Establishments	Total MSD Incidence Rate* (per 10,000 workers)
412	Taxicabs	3,304	27,944	67
413	Intercty & rural bus trans.	481	20,621	292
414	Bus charter service	1,432	29,190	97
415	School buses	4,248	143,919	81
417	Bus terminals	57	477	509
421	Trking & Courier Service	116,861	1,725,748	257
422	Pub. warehousing & storage	11,856	121,344	441
423	Trucking terminal fac.	80	766	501
430	United States Postal Service	33,316	904,636	325
451	Air trans., scheduled	6,608	621,649	1171
452	Air trans., nonsched.	1,831	28,845	175
458	Airports and services	4,014	104,581	322
461	Pipelines, excpt natural gas	963	15,065	446
472	Pass. trans. arrangements	33,106	223,624	27
473	Freight trans. arrangements	14,771	137,522	148
474	Rental of railroad cars	116	2,326	113
478	Misc. trans. services	2,681	42,104	269
481	Telephone communication	27,277	927,967	101
482	Telegrph & other comm.	466	5,782	75
483	Radio & TV broadcasting	8,833	238,078	36
484	Cable & othr pay TV services	4,786	170,300	172
489	Communication serv., n.e.c.	1,488	22,405	45
491	Electric services	6,278	382,861	187
492	Gas product. & distribution	3,941	135,670	219
493	Comb. utility services	1,871	199,685	125
494	Water supply	3,701	26,045	227
495	Sanitary services	6,491	130,347	532
496	Steam & air-cond. supplies	69	1,400	225
497	Irrigation systems	366	1,785	225
501	Motor vehicles	45,779	520,711	218
502	Furn. & homefurnishings	16,693	169,720	249
503	Lumber & construct. mat.	23,678	264,739	411
504	Prof. & commercial equip.	51,941	725,137	139
505	Met. & minerals, excpt pet.	11,416	154,821	296
506	Electrical goods	41,707	508,202	156
507	Hardware supplies	26,119	269,607	303
508	Mach., equipt, & supplies	76,249	762,397	223
509	Misc. durable goods	40,029	354,068	190
511	Paper and paper products	18,712	291,514	129
512	Drugs, propriet., & sundries	7,316	173,960	147
513	Apparel and notions	21,766	209,032	145
514	Groceries & related products	43,314	846,803	387
515	Farm-prod. raw materials	10,680	98,112	82
516	Chemicals & allied prods	15,171	163,603	152
517	Petrol. & petrol. prods	13,177	153,471	161
518	Beer, wine, & dist. bev.	5,055	148,567	553
519	Misc. nondurable goods	54,335	505,832	208
521	Paint, glass, wallpaper strs	24,266	475,454	401
523	Hardware stores	9,777	49,415	315
525	Retail nurseries and gardens	14,282	124,402	215
526	Mobile home dealers	11,258	80,822	254

Table VIII-1: Estimated Number of Establishments and Employees and Estimated Annual Incidence of All MSDs, by 3-Digit SIC

SIC	Industry	Total Number of Establishments	Total Number of Employees in all Establishments	Total MSD Incidence Rate* (per 10,000 workers)
527	Department stores	4,780	36,746	371
531	Variety stores	10,824	1,850,213	378
533	Misc. gen. merchandise strs.	10,848	92,765	513
539	Grocery stores	14,797	316,419	139
541	Meat and fish markets	129,150	2,980,869	254
542	Fruit & vegetable markets	7,868	45,979	183
543	Candy, nut, & confctnry strs	3,342	19,178	106
544	Dairy products stores	4,742	27,794	91
545	Retail bakeries	2,550	14,746	68
546	Retail bakeries	20,156	148,069	120
549	Misc. food stores	9,904	55,450	89
551	New and used car dealers	24,639	1,014,799	200
552	Used car dealers	21,951	85,892	28
553	Auto & home supply stores	43,806	345,849	212
554	Gas service stations	96,236	713,280	110
555	Boat dealers	5,068	33,121	220
556	Rec. vehicle dealers	2,995	28,499	300
557	Motorcycle dealers	3,785	29,387	20
559	Auto dealers, n.e.c.	1,234	5,654	28
561	Men's & boys' clothing strs	13,844	92,334	67
562	Women's clothing stores	40,559	327,351	40
563	Wm's access.& specialty strs	8,647	50,147	41
564	Chldrn's & infants' wear strs	5,186	45,078	53
565	Family clothing stores	19,583	329,123	165
566	Shoe stores	31,737	180,967	67
569	Misc. apparel stores	10,161	53,173	31
571	Furnitre & homefurnishng strs	66,004	475,508	260
572	Household appliance strs	10,045	63,989	239
573	Radio, TV, & comptr strs	39,074	336,182	105
581	Eating & drinking places	466,386	7,416,595	79
591	Drug stores	43,221	588,160	75
592	Liquor stores	28,812	128,995	32
593	Used merchandise stores	23,524	117,116	127
594	Misc. shopping goods strs.	129,136	850,337	107
596	Nonstore retailers	29,947	372,947	257
598	Fuel dealers	11,317	95,385	155
599	Retail stores, n.e.c.	95,174	468,433	83
601	Central res. depository	102	25,274	191
602	Commercial banks	67,422	1,507,165	40
603	Savings institutions	16,131	262,936	34
606	Credit unions	14,921	163,027	65
608	Foreign banking	656	33,830	47
609	Banking-related functions	5,820	68,711	85
611	Federal credit agencies	1,333	22,884	15
614	Personal cred. institutions	18,996	183,249	11
615	Business cred. institutions	5,3 8	104,991	42
616	Mortgage bankers & brokers	21,897	226,475	34
621	Security brokers & dealers	25,523	411,411	19
622	Commodity contracts brokers	1,623	13,185	18
623	Security & commod. exchanges	117	7,650	62
628	Security & commod. services	18,123	135,349	12

Table VIII-1: Estimated Number of Establishments and Employees and Estimated Annual Incidence of All MSDs, by 3-Digit SIC

Table VIII-1: Estimated Number of Establishments and Employees and Estimated Annual Incidence of All MSDs, by 3-Digit SIC

SIC	Industry	Total Number of Establishments	Total Number of Employees in all Establishments	Total MSD Incidence Rate* (per 10,000 workers)
631	Life insurance	11,754	547,789	32
632	Medical & health insur.	3,337	306,420	114
633	Fire, marine, & caslty ins.	20,361	594,733	83
635	Surety insurance	579	10,255	48
636	Title insurance	2,546	39,886	97
637	Pension and health funds	2,747	33,107	42
639	Ins. carriers, n.e.c.	292	4,018	72
641	Insurance agents	127,278	695,139	28
651	Real estate operators	100,612	499,293	174
653	RE agents and managers	124,530	756,905	73
654	Title abstract offices	5,195	35,417	102
655	Subdividers & developrs	18,561	115,746	201
671	Holding offices	9,575	161,371	57
672	Investment offices	920	24,933	32
673	Trusts	8,841	57,282	56
679	Miscellaneous investing	8,419	56,460	43
701	Hotels and motels	45,252	1,539,037	241
702	Rooming & boarding houses	1,624	9,302	285
703	Camps and rec. vehicle parks	7,435	35,478	21
704	Membership-basis org. hotels	2,410	12,891	21
721	Laundry & garment srvices	56,704	443,179	200
722	Photo studios, portrait	13,168	70,481	74
723	Beauty shops	81,872	390,177	31
724	Barber shops	4,499	14,506	134
725	Shoe repair	2,216	5,807	34
726	Fun. service and crematories	15,784	99,027	65
729	Misc personal services.	30,697	254,674	9
731	Advertising	19,664	242,468	124
732	Credit report.& collection	6,914	109,523	52
733	Mailing, reprod, steno., serv	35,058	285,511	118
734	Services to buildings	65,559	916,370	165
735	Misc. equipt. rental	24,814	229,196	142
736	Pers. supply services	37,374	2,778,419	48
737	Comptr & data proc. services	88,911	1,266,890	33
738	Misc. business services	85,634	1,366,526	70
751	Auto rentals, no drivers	10,643	149,154	93
752	Automobile parking	8,892	65,390	57
753	Automotive repair shops	139,184	608,702	108
754	Automotive serv., exc repair	26,948	211,838	153
762	Electrical repair shops	19,328	144,758	133
763	Watch and jewelry repair	1,805	5,705	133
764	Reupholstery & furn. repair	6,842	22,674	96
769	Misc. repair shops	39,008	262,495	160
781	Motion picture production	14,680	240,953	249
782	Motion picture dist.	1,456	21,899	575
783	Motion picture theaters	6,572	118,921	324
784	Video tape rental	20,816	129,258	312
791	Dance studios & schools	5,719	27,063	203
792	Prducrs, orch., entertainers	16,839	161,158	94
793	Bowling centers	5,735	90,614	50
794	Commercial sports	4,763	101,728	218
799	Misc. recreation services	61,841	991,444	181
801	Offices of medical doctors	186,994	1,688,823	78
802	Dentists offices and clinics	113,054	634,709	50
803	Osteopathic physicians	9,105	53,700	28
804	Other health practitioners	84,667	353,204	166
805	Nursing & personal care fac.	24,009	1,806,086	706
806	Hospitals	7,282	5,067,349	327
807	Med. & dental labs	15,243	190,629	84
808	Home hlth care services	16,106	779,365	285
809	Hlth & allied serv., n.e.c.	20,849	387,020	121
811	Legal services	168,276	959,809	39
821	Elem. & secondary schools	18,017	609,190	45
822	Colleges & universities	3,663	1,258,979	46
823	Libraries	2,252	22,343	22
824	Vocational schools	6,816	79,561	23
829	Schools, n.e.c.	15,395	124,076	22
832	Individual & fam. services	43,047	596,191	190
833	Job train. & related serv.	9,114	325,655	107
835	Child day care services	53,592	553,897	80
836	Residential care	28,762	550,745	353
839	Social services, n.e.c.	15,702	216,649	87
841	Museums & art galleries	4,520	63,818	129
842	Bot. & zoolog. gardens	585	16,044	172
861	Business associations	15,767	111,371	30
862	Prof. organizations	7,033	63,638	24
863	Labor organizations	19,536	169,366	16
864	Civic & social assoc.	36,944	369,808	70
865	Political organizations	2,579	10,719	95
866	Religious organizations	158,299	1,380,975	8
869	Membership orgs., n.e.c.	9,072	106,606	81
871	Eng. and arch. services	78,815	910,439	38
872	Accntng, auditng, & bkeeping	84,175	639,896	59
873	Research & testing services	19,471	458,980	113
874	Management & pub. relations	95,033	985,335	69
899	Services, n.e.c.	17,221	105,803	249
	Subtotal	**5,932,581**	**93,677,856**	**220**
	State and local governments	180,201	9,184,961	203
	Total	**6,112,782**	**102,782,817**	**218**

Sources: Office of Regulatory Analysis, OSHA. The numbers of establishments are taken from County Business Patterns, U.S. Bureau of the Census (1996)(Ex. 28-2). The number of MSDs are based on special data runs done by the BLS, based on lost workday cases (with days away from work) from the Annual Survey, 1996 (Ex. 26-1413). MSD rates are calculated by multiplying, for each industry, the number of lost workday (with days away from work) MSDs reported by employers to the BLS by the ratio of all lost workday (with days away from work) injuries and illnesses for that industry to all workday injuries and illnesses for that industry. OSHA used this approach because the BLS only reports the number of lost workday (with days away from work) MSDs by industry.

*Adding the number of currently unreported MSDs that OSHA believes will reported once the standard is in effect and the increase in MSD incidents OSHA believes will occur because persistent signs and symptoms will be reported increases these totals by 50%. (See the benefits chapter for further explanation).

BILLING CODE 4510-26-C

C. Technological Feasibility (Chapter III)

Chapter 3 of the economic analysis for the final ergonomics rule illustrates the technological feasibility of controlling MSD hazards in problem jobs in accordance with the rule. The analysis presented in this chapter demonstrates that controlling MSD hazards is feasible in the industry sectors included in the scope of the rule.

OSHA has approached the analysis of technological feasibility for the final rule from four perspectives. The four analyses for technological feasibility are:

- Risk factor analysis—This analysis demonstrates the variety of methods available for controlling the five risk factors covered by the rule. Information drawn from the rulemaking record demonstrates how risk factors can be controlled and how these controls can achieve compliance with one or more of the final rule's compliance endpoints.
- Ergonomic program analysis—This analysis demonstrates the feasibility of implementing effective ergonomics programs by identifying cases in the rulemaking record where effective programs, that have program elements similar to or the same as those required by the final rule, have already been implemented.
- Model job analysis—This analysis demonstrates how the risk factors inherent in model jobs that represent the highest rates of lost workday MSDs according to BLS data can be controlled in accordance with the final rule's compliance endpoints. This analysis also presents a model job analysis for video display terminal (VDT) workstations.
- Industry-by-industry analysis—This analysis demonstrates the broad applicability of the available control methods to virtually all of the covered industries, as described by 3-digit SIC codes.

Each of these analyses was performed based on information contained in the rulemaking record. These analyses demonstrate that compliance with the final rule including paragraphs (k)(1)(i) and (k)(1)(ii) is technologically feasible for most processes in most workplaces most of the time.

Finally, controlling MSD hazards in accordance with the final rule can be accomplished (that is, is feasible) because paragraph (k)(1)(iii) of the rule states that employer is only required to reduce hazards to the extent feasible. OSHA expects that employers will implement feasible controls in the context of their own individual workplace. This provision recognizes that, while controlling MSD hazards to one of the levels specified in paragraph (k)(1)(i) or (k)(1)(ii) is feasible in the majority of workplaces, hazard reduction to those levels may not be feasible under certain workplace conditions at certain times.

D. Benefits Analysis (Chapter IV)

In its analysis of both the benefits and costs of the final standard, OSHA has estimated MSD rates based on BLS data. However, as discussed in Chapter IV of the Final Economic Analysis, there is extensive evidence that MSDs are underreported to the BLS. OSHA estimates that there is at least one unreported MSD for every MSD reported to BLS on OSHA logs. However, the final standard creates incentives for employees to report MSDs by providing work restriction protection to employees. The final standard can also be triggered by reports of persistent symptoms. To account for these differences, OSHA estimates that MSD incidents will be reported at a rate 50 percent higher than current MSD rates based on BLS data.

Most of the benefits of the final standard will be generated when employers fix their problem jobs and thus reduce the number of covered MSDs these jobs cause. Hazard information, MSD management and work restriction protection will also generate benefits because they will ensure that MSDs are identified and treated early in their development, thus preventing progression of the MSD to a serious long-term disability. However, OSHA has not found ways to calculate the benefits of early detection, although the Agency is aware that early reporting and medical management have substantial benefits that are similar to those associated with preventive medicine in general. For example, Oxenburgh *et al.* (1985) compared two groups of VDU operators (Ex. 26–1041). In Group A, which did not report early or receive medical management early, 22% of cases were at the second or third stage by the time they sought medical attention, compared with 8% at these stages in Group B, which had been made aware of the need to report early and the value of prompt medical management. The mean period of absence for Group A workers was 33.9 days; only 25% of this group continued to work (*i.e.*, at alternate duty) throughout the period of recuperation. In Group B, however, the mean period of absence from work was only 3.4 days, and fully 80% of this group remained in alternate duty throughout. The mean number of alternate duty days was 91 days for Group A workers and 31.5 days for those in Group B. The total amount of time the average worker in Group A lost, either to days away or alternate duty, was 124.9 days; in Group B, this figure decreased by 72%, to 34.9 days.

The final standard (and therefore this economic analysis) is structured in such a way that the number of jobs fixed in any given year depends on the number of MSD incidents reported that involve workers in jobs that need to be controlled, and the number of workers OSHA estimates hold jobs that involve the same physical work activities as the job giving rise to the reported MSD. For purposes of estimating the number of jobs that will require control under the final standard, OSHA used answers to a Washington state survey indicative of how many workers would be above the compliance endpoint given in Appendix D–1 (Ex. 500–41–3). This survey showed that 37 percent of all workers will be exposed at levels that meet the screen, and thus that their jobs will require job hazard analysis, medical management and work restriction protection. The survey also showed that 33 percent of workers will be above the levels indicated by the hazard identification tools in Appendix D–1, and thus will require hazard controls.

Combining this data allowed OSHA to estimate the number of jobs that would be controlled and the resulting reduction in the number of MSDs projected as a result of the standard. OSHA estimates that employers will be required to fix almost 7 million jobs in the first year the standard is in place, and a diminishing number every year thereafter. Over ten years, approximately 18 million jobs will be fixed. OSHA estimates that fixing these jobs will reduce the number of MSD incidents caused by these jobs by 50 percent per year (based on the effectiveness rate reported in the Risk Assessment section of this preamble) for the next ten years (the time horizon of this analysis). In the first 10 years, the final standard is therefore projected to avert approximately 2.3 million currently reported MSDs and an additional 2.3 million MSDs not currently reported, for a total of 4.6 million MSDs averted. These estimates reflect changes from the estimates in the Preliminary Economic Analysis, which are mainly the result of the inclusion of the screen and clearly defined compliance endpoints in the standard, but are also the result of including unreported MSDs in the analysis of benefits. These changes to the standard make the rule substantially more cost effective then the proposal would have been, because they reduce the number of jobs to be fixed by 40 percent.

OSHA estimates that the direct cost savings associated with each currently reported MSD, including the savings in lost productivity, lost tax payments, and administrative costs for workers' compensation claims, are $27,700 and $7,000 per MSD not currently reported (1996 dollars). (The difference in the dollar values assigned to these two categories of MSDs is attributable to the fact that OSHA assumes that the currently unreported MSDs are much less severe than those being reported.) These direct cost savings do not attribute a value or assign a monetary cost to the pain and suffering of injured or ill workers, losses to their families, or losses of the worker's ability to contribute at home, and are thus conservative estimates of these savings. Based on this estimate of the direct cost savings associated with each reported MSD avoided, the annualized benefits (using a discount rate of 7%) accruing in the first ten years the standard is in effect are estimated to be $9.1 billion per year.

E. Costs of Compliance (Chapter V)

This chapter presents OSHA's estimates of the costs employers would incur to comply with the ergonomics program rule. The costs reported are annualized costs measured in real 1996 dollars over the first 10 years the rule is in effect. To calculate annualized costs, non-recurring costs have been annualized using a discount rate of 7 percent for an estimated life of 10 years. The cost analysis does not account for any changes in the economy over time, or for possible adjustments in the demand and supply of goods, changes in production methods, investment effects, or macroeconomic effects of the standard. Taking account of all of these effects could increase or decrease the cost or benefit estimates presented here, although the macroeconomic effects of any rule whose costs are less than 0.05 percent of GNP are likely to be minimal. OSHA believes that its approach, *i.e.*, of determining the benefits and costs of the standard for industry as it is today, is the least speculative and least controversial way of presenting the benefits and costs of the final standard.

OSHA relied on responses to a 1993 ergonomics survey (see Chapter V of the Final Economic Analysis) of thousands of general industry employers to estimate the extent to which establishments within the scope of the standard already have implemented ergonomics programs involving the control of jobs. This current industry baseline was taken into account in calculating industry-by-industry and size-of-establishment cost estimates, *i.e.*, any costs employers have already incurred, and any benefits they have already accrued, to voluntarily implement such programs have not been attributed to the final rule.

Costs were calculated separately at the three-digit SIC code level for all industries. These industry-by-industry cost estimates account for differences among industries in terms of wage rates, turnover, baseline rates of compliance, and the MSD rate for the industry. To facilitate analysis of the impacts of the final rule on small businesses, costs were calculated separately for each of three size classes of establishments. The Final Regulatory Flexibility Analysis (Section VIII. H. of this Preamble) provides a detailed summary of OSHA's unit cost estimates for each element of the standard.

OSHA estimates that the annualized costs to society of the final standard will be $3.9 billion per year. (All costs are expressed as 1996 dollars and annualized using a 7 percent discount rate and a 10-year annualization period.) Table VIII–2 shows the costs of the final ergonomics standard, by major provision of the standard. Costs are considered in two parts: costs to society and costs to employers. This distinction is necessary because the costs associated with the standard's work restriction protection provisions represent a cost to employers, but not to society as a whole. Table VIII–2 shows that the total estimated costs to society for the private sector are $3.4 billion per year, while estimated costs for all affected parties, including state and local governments, are $3.9 billion per year. Estimated costs to employers in the private sector as a whole are $4 billion per year, and to all affected sectors are $4.5 billion per year.

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TABLE VIII-2

Total Cost of Compliance, by Provision of the Final Rule and 3-Digit SIC

SIC	Industry	Determination of Coverage by the Standard and Grandfather Status	Initial Employer Actions	Programmatic Elements	Job Fixes	SUBTOTAL (cost to society)	Work Restriction Protection	TOTAL (cost to employers)
074	Veterinary services	$55,969	$588,438	$2,605,047	$2,242,914	$5,492,368	$1,133,706	$6,626,074
075	Animal serv., excpt vet.	$24,625	$203,956	$477,975	$516,754	$1,223,311	$183,151	$1,406,462
078	Lndscape & hort. services	$188,840	$1,795,148	$8,386,809	$12,248,790	$22,619,588	$3,399,614	$26,019,201
081	Timber tracts	$3,953	$39,766	$165,169	$262,425	$471,313	$53,076	$524,389
083	Forest products	$626	$8,906	$42,185	$83,419	$135,135	$16,561	$151,696
085	Forestry services	$7,187	$66,225	$263,273	$293,718	$630,402	$85,683	$716,085
091	Commerical fishing	$8,926	$70,655	$182,972	$317,470	$580,023	$51,737	$631,759
092	Fish hatcheries	$437	$5,454	$28,537	$50,883	$85,311	$8,660	$93,972
097	Hunting & trapping	$1,555	$12,568	$38,248	$45,082	$97,454	$11,998	$109,451
131	Crude petrol. & nat. gas	$55,733	$552,918	$2,055,016	$1,284,113	$3,947,780	$299,514	$4,247,294
132	Natural gas liquids	$2,567	$35,852	$120,313	$31,634	$190,365	$15,681	$206,046
138	Oil & gas field services	$39,198	$580,050	$3,088,385	$4,190,723	$7,898,356	$923,046	$8,821,401
201	Meat products	$13,593	$2,588,299	$6,600,906	$4,101,152	$13,303,950	$3,032,298	$16,336,248
202	Dairy products	$8,339	$628,553	$3,039,164	$1,890,319	$5,566,375	$1,614,800	$7,181,176
203	Presrvd fruits & vegetables	$10,054	$785,708	$2,727,120	$1,470,897	$4,993,780	$720,509	$5,714,289
204	Grain mill products	$11,931	$586,118	$2,838,747	$1,420,415	$4,857,211	$1,399,678	$6,256,889
205	Bakery products	$17,221	$1,005,032	$4,828,285	$3,214,927	$9,065,466	$2,161,726	$11,227,192
206	Sugar and confect. prods	$6,671	$399,503	$1,961,285	$1,237,414	$3,604,873	$750,688	$4,355,561
207	Fats and oils	$2,649	$107,061	$635,679	$293,416	$1,038,806	$256,745	$1,295,550
208	Beverages	$10,478	$938,667	$3,815,157	$2,155,793	$6,920,096	$2,232,947	$9,153,043
209	Misc. food products	$20,618	$809,121	$3,723,359	$2,375,465	$6,928,564	$1,883,266	$8,811,830
211	Cigarettes	$69	$97,937	$531,148	$147,240	$776,393	$135,586	$911,979
212	Cigars	$215	$9,118	$60,925	$29,143	$99,402	$10,610	$110,012
213	Chewing & smoking tobacco	$119	$16,313	$74,240	$12,207	$102,880	$38,593	$141,473
214	Tobacco stemm. & redrying	$147	$22,104	$127,651	$69,323	$219,225	$41,418	$260,642
221	Brdwven fab. mills, cotton	$1,851	$128,589	$741,588	$706,102	$1,578,130	$151,747	$1,729,877
222	Broadwoven fabric mills	$2,130	$208,724	$1,250,564	$1,054,106	$2,515,525	$256,984	$2,772,508
223	Brdwvn fab. mills, wool	$431	$31,714	$198,060	$154,933	$385,137	$38,112	$423,249
224	Narrow fabric mills	$1,316	$82,035	$380,830	$206,446	$670,627	$122,973	$793,599
225	Knitting mills	$8,083	$524,251	$2,777,945	$2,484,621	$5,794,900	$762,174	$6,557,074
226	Tex. finishing, except wool	$3,507	$173,626	$927,163	$725,422	$1,829,719	$249,130	$2,078,849
227	Carpets and rugs	$2,002	$125,134	$760,187	$795,415	$1,682,738	$162,841	$1,845,579
228	Yarn and thread mills	$2,211	$210,688	$1,278,852	$1,096,440	$2,588,191	$351,597	$2,939,788
229	Misc. textile goods	$4,437	$182,041	$1,172,927	$801,729	$2,161,135	$250,326	$2,411,461
231	Men's & boys' suits & coats	$1,073	$89,146	$387,719	$142,439	$620,376	$197,924	$818,300
232	Men's & boys' furnishings	$9,488	$825,825	$3,188,101	$1,106,771	$5,130,185	$1,828,868	$6,959,053
233	Wm's & misses' outerwear	$36,327	$742,250	$3,244,855	$1,117,179	$5,140,611	$1,283,083	$6,423,694
234	Wm's & chldrn's undergarmnts	$1,310	$103,386	$446,978	$243,098	$794,772	$255,395	$1,050,167
235	Hats, caps, & millinery	$1,681	$70,760	$284,804	$77,772	$435,018	$141,430	$576,448
236	Girls' & chldrn's outerwear	$1,424	$71,072	$357,755	$186,262	$616,513	$198,933	$815,446
237	Fur goods	$610	$5,489	$13,943	$378	$20,419	$6,004	$26,422
238	Misc. apparel & accessories	$4,044	$109,750	$463,615	$199,686	$777,095	$221,162	$998,257
239	Misc. fab. textile prods	$37,083	$874,699	$3,489,164	$1,670,026	$6,070,972	$1,455,258	$7,526,231
241	Logging	$65,420	$529,416	$1,321,210	$204,115	$2,120,161	$255,264	$2,375,425
242	Sawmills & planing mills	$24,881	$686,429	$3,874,027	$1,580,688	$6,166,026	$2,228,080	$8,394,106
243	Millwork & plywood	$40,059	$1,297,153	$7,029,948	$3,479,519	$11,846,680	$3,521,207	$15,367,887
244	Wood containers	$6,721	$142,124	$999,479	$431,153	$1,579,477	$608,432	$2,187,909
245	Wood bldings & mobile homes	$4,814	$459,960	$2,234,692	$1,390,848	$4,090,315	$1,297,456	$5,387,771
249	Misc. wood products	$14,556	$365,479	$2,229,773	$1,005,085	$3,614,893	$972,867	$4,587,760
251	Household furniture	$21,334	$1,010,631	$5,741,490	$3,850,344	$10,623,799	$2,940,095	$13,563,894
252	Office furniture	$5,602	$369,083	$1,707,485	$970,195	$3,052,363	$817,340	$3,869,704
253	Pub blding & related furn.	$1,919	$335,117	$1,070,938	$518,092	$1,926,066	$1,035,766	$2,961,832
254	Partitions and fixtures	$10,791	$355,056	$2,179,260	$1,116,663	$3,661,776	$1,109,529	$4,771,304
259	Misc furniture and fixtures	$6,874	$182,081	$993,025	$484,807	$1,666,786	$412,696	$2,079,483
261	Pulp mills	$324	$46,687	$298,324	$229,097	$574,432	$82,907	$657,339
262	Paper mills	$1,981	$649,102	$3,460,912	$2,198,668	$6,310,663	$1,382,580	$7,693,243
263	Paperboard mills	$1,318	$207,462	$1,304,949	$832,613	$2,346,342	$328,005	$2,674,347
265	Paperbrd containers & boxes	$14,732	$896,278	$5,332,799	$2,946,155	$9,189,964	$2,737,192	$11,927,157
267	Misc. cnvrtd paper products	$19,268	$1,075,669	$6,055,066	$3,471,157	$10,621,160	$2,599,663	$13,220,823
271	Newspapers	$48,845	$1,511,961	$8,613,891	$5,733,496	$15,908,193	$2,857,965	$18,766,157
272	Periodicals	$23,797	$437,055	$2,124,578	$781,682	$3,367,112	$628,385	$3,995,497
273	Books	$17,468	$502,646	$2,768,353	$1,500,855	$4,789,322	$1,043,296	$5,832,617
274	Miscellaneous publishing	$18,253	$264,573	$1,188,860	$420,429	$1,892,115	$363,052	$2,255,167

TABLE VIII-2

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SIC	Industry	Determination of Coverage by the Standard and Grandfather Status	Initial Employer Actions	Programmatic Elements	Job Fixes	SUBTOTAL (cost to society)	Work Restriction Protection	TOTAL (cost to employers)
275	Commercial printing	$162,875	$2,818,804	$14,432,151	$4,633,999	$22,047,829	$5,834,443	$27,882,271
276	Manifold business forms	$4,057	$202,624	$1,218,787	$390,588	$1,816,055	$666,313	$2,482,368
277	Greeting cards	$787	$100,929	$498,029	$412,292	$1,012,036	$260,697	$1,272,733
278	Blankbooks & bookbinding	$7,237	$247,600	$1,417,307	$855,181	$2,527 325	$787,274	$3,314,599
279	Printing trade services	$20,536	$291,497	$1,240,279	$133,605	$1,685,917	$332,569	$2,018,486
281	Indust. inorganic chemicals	$8,693	$306,622	$2,099,035	$750,038	$3,164,388	$344,332	$3,508,720
282	Plastics mat. & synthetics	$5,357	$367,011	$2,693,915	$835,017	$3,901,299	$487,000	$4,388,299
283	Drugs	$10,983	$712,341	$4,881,682	$1,700,749	$7,305,755	$939,846	$8,245,601
284	Soap, clnrs, & toilet goods	$14,836	$457,693	$2,648,592	$1,132,387	$4,253,509	$719,658	$4,973,167
285	Paints & allied products	$6,849	$189,627	$1,125,886	$365,304	$1,687,666	$397,561	$2,085,227
286	Indust. organic chemicals	$7,882	$423,075	$3,297,923	$840,591	$4,569,471	$396,770	$4,966,241
287	Agricultural chemicals	$5,235	$135,812	$893,979	$295,265	$1,330,290	$176,220	$1,506,510
289	Misc. chemical products	$14,016	$364,598	$2,107,295	$632,028	$3,117,937	$636,257	$3,754,194
291	Petroleum refining	$2,324	$247,569	$2,111,894	$1,165,413	$3,527,201	$296,883	$3,824,084
295	Asphlt pavng & roofng mat.	$6,714	$123,234	$760,392	$534,403	$1,424,742	$317,260	$1,742,001
299	Misc. pet. & coal prods	$1,964	$44,975	$289,144	$182,889	$518,972	$76,690	$595,662
301	Tires and inner tubes	$795	$398,043	$1,816,635	$533,999	$2,749,473	$951,404	$3,700,877
302	Rubber & plastics footwear	$280	$25,885	$147,182	$79,900	$253,247	$67,969	$321,216
305	Hose, bltng, and gaskets	$3,711	$287,274	$1,301,329	$556,788	$2,149,101	$776,244	$2,925,345
306	Fab. rubber prod., n.e.c.	$8,078	$538,299	$2,419,814	$1,030,324	$3,996,514	$1,480,995	$5,477,509
308	Misc plastics, n.e.c.	$61,313	$2,943,333	$15,241,306	$6,318,264	$24,564,216	$7,959,889	$32,524,105
311	Leather tan. & finishing	$1,572	$73,473	$389,623	$303,266	$767,935	$115,175	$883,110
313	Footwear cut stock	$321	$7,756	$47,843	$32,420	$88,340	$12,652	$100,992
314	Footwear, except rubber	$1,668	$143,027	$754,727	$845,138	$1,744,560	$257,376	$2,001,936
315	Leather gloves & mittens	$316	$14,056	$70,948	$21,608	$106,928	$26,772	$133,700
316	Luggage	$945	$24,258	$167,941	$123,403	$316,548	$39,749	$356,297
317	Hndbags & prsnal leathr gds.	$828	$22,755	$145,147	$179,221	$347,951	$53,898	$401,849
319	Leather goods, n.e.c.	$1,299	$33,883	$193,758	$138,565	$367,504	$73,029	$440,533
321	Flat glass	$385	$96,829	$423,991	$167,108	$688,313	$290,691	$979,004
322	Glass, pressed or blown	$4,488	$481,782	$1,962,157	$700,054	$3,148,482	$1,028,009	$4,176,490
323	Prod. of purchased glass	$8,990	$362,565	$1,556,345	$762,019	$2,689,919	$961,169	$3,651,089
324	Cement, hydraulic	$1,202	$76,968	$456,106	$165,754	$700,031	$203,517	$903,547
325	Structural clay products	$3,133	$166,865	$768,296	$324,595	$1,262,890	$542,964	$1,805,854
326	Pottery & related prods	$5,795	$244,496	$991,631	$466,752	$1,708,674	$747,750	$2,456,424
327	Concrete & plast. prdcts	$43,797	$971,492	$5,077,569	$2,030,043	$8,122,900	$2,883,383	$11,006,283
328	Cut stone & stone prods	$4,909	$85,304	$398,444	$143,405	$632,062	$216,118	$848,181
329	Misc. nonmet. mineral prods.	$7,373	$336,233	$1,717,979	$796,369	$2,857,954	$928,504	$3,786,458
331	Basic steel products	$7,318	$1,240,400	$6,532,050	$2,799,954	$10,579,722	$1,811,465	$12,391,187
332	Iron and steel foundries	$5,005	$840,061	$3,451,950	$1,485,615	$5,782,630	$1,944,419	$7,727,050
333	Primary nonfer. metals	$963	$166,492	$880,140	$386,435	$1,434,030	$284,749	$1,718,779
334	Secondary nonfer. metals	$1,290	$80,063	$404,165	$182,397	$667,915	$170,715	$838,630
335	Nonfer. rolling & drawing	$6,276	$853,464	$3,999,413	$1,713,911	$6,573,065	$1,445,074	$8,018,138
336	Nonfer. foundries (cstngs)	$7,565	$500,196	$2,184,084	$937,174	$3,629,019	$1,084,850	$4,713,869
339	Misc. primary metal prdcts	$4,198	$120,627	$733,440	$285,218	$1,143,483	$187,995	$1,331,479
341	Met. cans & ship. containers	$2,178	$160,446	$954,624	$381,749	$1,498,998	$386,555	$1,885,553
342	Cutlery, hndtls, & hardware	$12,150	$621 430	$3,115,548	$1,682,397	$5,431,524	$1,393,666	$6,825,191
343	Plumbing & heating fixtures	$3,091	$312,675	$1,193,346	$633,839	$2,142,951	$854,040	$2,996,991
344	Fab. struct. metal prdcts	$56,999	$1,837,200	$10,212,496	$5,052,945	$17,159,640	$4,845,115	$22,004,754
345	Screw machine products	$11,483	$454,082	$2,534,878	$919,574	$3,920,018	$1,226,009	$5,146,027
346	Met. forgings & stampings	$17,399	$1,557,380	$7,024,442	$3,414,725	$12,013,946	$3,655,488	$15,669,434
347	Metal services, n.e.c.	$23,744	$515,811	$2,937,435	$982,639	$4,459,629	$1,367,553	$5,827,182
348	Ordnance and access., n.e.c.	$2,540	$164,854	$913,961	$453,697	$1,535,051	$279,189	$1,814,240
349	Misc. fab. metal products	$31,923	$1,255,921	$6,822,257	$3,288,392	$11,398,493	$3,226,235	$14,624,727
351	Engines and turbines	$2,085	$427,395	$2,021,296	$841,208	$3,291,985	$822,415	$4,114,400
352	Farm & garden machinery	$10,664	$559,351	$2,578,271	$1,395,958	$4,544,244	$1,002,812	$5,547,056
353	Construct. & related mach.	$15,722	$923,123	$4,625,925	$2,587,324	$8,152,095	$2,104,568	$10,256,663
354	Metalworking machinery	$54,696	$1,358,566	$7,667,849	$3,004,592	$12,085,703	$2,824,220	$14,909,924
355	Special industry mach.	$23,604	$791,696	$4,540,533	$2,003,262	$7,359,095	$1,603,010	$8,962,105
356	General indust. mach.	$21,227	$1,100,776	$6,093,125	$2,911,717	$10,126,846	$2,508,981	$12,635,827
357	Computer & office equip.	$13,751	$749,585	$4,876,439	$2,239,656	$7,879,432	$1,009,045	$8,888,477
358	Refrig. & serv. indust mach.	$11,601	$1,033,526	$4,685,495	$2,738,590	$8,469,212	$2,261,972	$10,731,185
359	Industrial mach., n.e.c.	$122,899	$1,859,043	$9,613,509	$2,686,355	$14,281,806	$3,299,837	$17,581,643
361	Elect. dist. equipment	$4,693	$256,976	$1,344,960	$477,969	$2,084,598	$406,340	$2,490,937

TABLE VIII-2

Total Cost of Compliance, by Provision of the Final Rule and 3-Digit SIC

SIC	Industry	Determination of Coverage by the Standard and Grandfather Status	Initial Employer Actions	Programmatic Elements	Job Fixes	SUBTOTAL (cost to society)	Work Restriction Protection	TOTAL (cost to employers)
362	Elect. indust. apparatus	$13,552	$754,618	$3,418,998	$1,090,690	$5,277,858	$1,084,770	$6,362,629
363	Household appliances	$2,645	$621,484	$2,350,652	$915,422	$3,890,204	$957,481	$4,847,685
364	Elct. lghtng & wire equip.	$10,767	$670,421	$3,168,847	$1,111,947	$4,961,983	$1,099,752	$6,061,735
365	Household audio & vid. equip.	$4,452	$207,201	$953,892	$344,385	$1,509,930	$307,849	$1,817,780
366	Communications equipment	$13,530	$647,168	$4,627,855	$1,578,921	$6,867,474	$680,777	$7,548,252
367	Electrnic compnnts & access.	$35,756	$1,492,089	$10,097,206	$3,434,881	$15,059,932	$1,889,014	$16,948,945
369	Misc. elect. equipment	$8,917	$683,419	$3,235,519	$1,100,278	$5,028,133	$1,101,842	$6,129,975
371	Motor vehicles & equipt.	$31,675	$8,467,592	$28,373,297	$3,172,775	$40,045,340	$7,514,490	$47,559,830
372	Aircraft and parts	$12,833	$1,664,662	$12,039,124	$1,321,782	$15,038,401	$1,133,605	$16,172,006
373	Ship, boat blding and repair	$14,670	$950,348	$2,205,130	$218,915	$3,389,062	$936,226	$4,325,288
374	Railroad equipment	$965	$154,492	$913,690	$153,685	$1,222,831	$178,975	$1,401,806
375	Motorcycles & bicycles	$2,131	$96,177	$483,804	$63,834	$645,947	$82,347	$728,294
376	Guided missiles	$634	$124,006	$1,969,104	$190,859	$2,284,603	$91,839	$2,376,442
379	Misc. transportation equip.	$5,481	$239,854	$1,181,693	$235,047	$1,662,075	$265,396	$1,927,471
381	Srch & navigation equipment	$4,408	$452,314	$3,290,313	$1,199,299	$4,946,334	$384,489	$5,330,824
382	Meas. & contrlling devices	$27,290	$940,171	$4,835,510	$2,075,917	$7,878,889	$1,233,858	$9,112,747
384	Medical instrmnts & supplies	$26,280	$854,710	$4,510,790	$2,399,357	$7,791,136	$1,101,303	$8,892,440
385	Ophthalmic goods	$3,055	$93,564	$426,381	$216,660	$739,660	$143,080	$882,740
386	Photo. equip. & supplies	$3,425	$246,659	$1,262,406	$565,678	$2,078,167	$354,552	$2,432,719
387	Watches, clocks, & parts	$646	$13,803	$73,993	$52,079	$140,522	$20,118	$160,640
391	Jwlry, slvrwre, and plate	$12,693	$177,563	$742,080	$393,136	$1,325,472	$219,739	$1,545,211
393	Musical instruments	$2,351	$66,870	$263,887	$142,370	$475,478	$128,325	$603,803
394	Toys and sporting goods	$17,530	$553,613	$2,072,474	$1,070,936	$3,714,552	$937,139	$4,651,691
395	Office and art supplies	$5,957	$108,795	$499,598	$247,340	$861,691	$136,709	$998,400
396	Costume jewelry & notions	$4,560	$66,823	$318,357	$179,385	$569,124	$102,987	$672,112
399	Misc. manufactures	$35,192	$658,528	$3,156,931	$1,561,055	$5,411,707	$1,275,903	$6,687,609
411	Local & suburban trans.	$31,705	$879,339	$5,498,267	$9,357,380	$15,766,692	$2,758,501	$18,525,193
412	Taxicabs	$9,024	$104,907	$386,764	$1,040,205	$1,540,900	$91,676	$1,632,576
413	Intercty & rural bus trans.	$2,205	$88,396	$549,307	$1,173,800	$1,813,708	$187,589	$2,001,297
414	Bus charter service	$4,506	$84,789	$452,518	$789,102	$1,330,914	$154,912	$1,485,827
415	School buses	$10,004	$323,422	$1,819,403	$5,115,900	$7,268,729	$587,532	$7,856,261
417	Bus terminals	$261	$3,357	$19,729	$10,012	$33,359	$7,297	$40,656
421	Trking & Courier Service	$474,111	$8,569,105	$48,168,979	$92,020,966	$149,233,161	$14,075,047	$163,308,208
422	Pub. warehousing & storage	$54,342	$836,068	$5,016,103	$4,699,375	$10,605,888	$2,053,386	$12,659,274
423	Trucking terminal fac.	$367	$5,982	$35,924	$36,294	$78,566	$15,037	$93,603
431	Postal Service	$154,767	$4,837,885	$25,246,411	$20,826,211	$51,065,275	$8,149,885	$59,215,160
451	Air trans., scheduled	$35,179	$7,051,190	$23,793,281	$24,716,741	$55,596,390	$22,843,978	$78,440,368
452	Air trans., nonsched.	$6,595	$140,463	$608,002	$607,370	$1,362,430	$246,330	$1,608,760
458	Airports and services	$14,855	$536,617	$2,733,673	$3,538,770	$6,823,916	$1,363,095	$8,187,010
461	Pipelines, excpt natural gas	$5,679	$119,733	$756,192	$408,326	$1,289,930	$283,775	$1,573,705
472	Pass. trans. arrangements	$106,795	$1,084,760	$1,765,395	$1,387,235	$4,344,185	$368,516	$4,712,700
473	Freight trans. arrangements	$60,804	$744,112	$3,663,401	$3,566,503	$8,034,819	$1,036,172	$9,070,991
474	Rental of railroad cars	$532	$8,785	$47,357	$34,380	$91,054	$8,063	$99,116
478	Misc. trans. services	$11,991	$218,055	$1,410,478	$1,410,264	$3,050,789	$492,979	$3,543,768
481	Telephone communication	$165,186	$2,540,678	$9,641,669	$8,223,518	$20,571,051	$4,726,001	$25,297,052
482	Telegrph & other comm.	$2,136	$20,286	$46,871	$29,169	$98,462	$27,206	$125,668
483	Radio & TV broadcasting	$42,304	$506,201	$1,452,059	$432,651	$2,433,216	$559,575	$2,992,791
484	Cable & othr pay TV services	$21,122	$410,533	$1,644,018	$1,482,638	$3,558,311	$1,421,791	$4,980,102
489	Communication serv., n.e.c.	$4,564	$50,317	$122,310	$68,144	$245,335	$65,679	$311,015
491	Electric services	$38,267	$1,195,172	$4,952,071	$3,462,565	$9,648,075	$2,986,488	$12,634,563
492	Gas product. & distribution	$24,958	$523,602	$1,936,255	$1,294,042	$3,778,856	$1,326,840	$5,105,696
493	Comb. utility services	$9,442	$456,548	$2,209,017	$1,856,878	$4,531,885	$1,039,235	$5,571,120
494	Water supply	$16,700	$161,319	$401,591	$168,571	$748,180	$315,372	$1,063,552
495	Sanitary services	$34,556	$784,892	$2,200,598	$1,607,906	$4,627,952	$2,623,475	$7,251,426
496	Steam & air-cond. supplies	$316	$4,302	$15,117	$5,679	$25,415	$10,406	$35,821
497	Irrigation systems	$1,678	$13,132	$19,939	$7,010	$41,758	$12,912	$54,670
501	Motor vehicles	$199,317	$2,736,078	$14,149,232	$9,682,724	$26,767,352	$5,987,351	$32,754,703
502	Furn. & homefurnishings	$81,600	$1,050,723	$5,189,736	$2,967,076	$9,289,135	$2,212,121	$11,501,256
503	Lumber & construct. mat.	$100,280	$1,678,744	$9,645,199	$5,895,138	$17,319,362	$5,326,062	$22,645,424
504	Prof. & commercial equip.	$253,900	$3,881,705	$19,189,460	$11,549,192	$34,874,258	$5,326,062	$40,224,535
505	Met. & minerals, except pet.	$52,415	$887,029	$4,984,758	$3,197,406	$9,121,609	$2,277,944	$11,399,553
506	Electrical goods	$151,874	$2,361,944	$12,006,584	$7,227,119	$21,747,520	$4,371,686	$26,119,207
507	Hardware supplies	$118,372	$1,694,420	$9,189,629	$4,802,046	$15,804,467	$4,223,748	$20,028,215

TABLE VIII-2

Total Cost of Compliance, by Provision of the Final Rule and 3-Digit SIC

SIC	Industry	Determination of Coverage by the Standard and Grandfather Status	Initial Employer Actions	Programmatic Elements	Job Fixes	SUBTOTAL (cost to society)	Work Restriction Protection	TOTAL (cost to employers)
508	Mach., equipt, & supplies	$368,197	$4,779,641	$23,884,205	$12,382,614	$41,414,657	$9,352,640	$50,767,296
509	Misc. durable goods	$183,472	$2,042,870	$8,892,024	$5,951,886	$17,070,251	$3,626,502	$20,696,753
511	Paper and paper products	$80,730	$1,220,386	$6,366,147	$5,819,268	$13,486,531	$1,796,301	$15,282,832
512	Drugs, propriet., & sundries	$47,345	$893,149	$4,996,415	$3,468,063	$9,404,972	$1,177,883	$10,582,855
513	Apparel and notions	$118,459	$1,282,074	$5,227,549	$2,828,796	$9,456,877	$1,677,778	$11,134,655
514	Groceries & related products	$204,015	$4,794,617	$26,365,537	$21,322,708	$52,686,876	$13,653,303	$66,340,179
515	Farm-prod. raw materials	$37,622	$393,071	$1,346,666	$729,898	$2,507,258	$534,182	$3,041,440
516	Chemicals & allied prods	$80,164	$978,067	$4,446,009	$2,602,540	$8,106,780	$1,387,745	$9,494,525
517	Petrol. & petrol. prods	$58,936	$752,204	$3,657,551	$2,607,967	$7,076,658	$1,410,542	$8,487,200
518	Beer, wine, & dist. bev.	$24,810	$982,828	$5,367,795	$3,985,910	$10,361,342	$3,301,879	$13,663,221
519	Misc. nondurable goods	$255,925	$2,915,918	$11,508,351	$9,825,998	$24,506,193	$4,364,463	$28,870,656
521	Lumber & other blding mat.	$96,047	$2,318,542	$13,414,817	$11,382,823	$27,212,229	$7,755,463	$34,967,693
523	Paint, glass, wallpaper strs	$23,993	$275,025	$1,398,035	$836,156	$2,533,209	$764,321	$3,297,530
525	Hardware stores	$42,397	$516,825	$2,543,280	$1,579,168	$4,681,670	$1,308,045	$5,989,715
526	Retail nurseries and gardens	$37,431	$421,793	$2,004,890	$1,796,097	$4,260,211	$987,917	$5,248,128
527	Mobile home dealers	$23,271	$291,429	$1,582,135	$930,618	$2,827,454	$663,488	$3,490,941
531	Department stores	$26,134	$4,758,318	$27,485,467	$30,203,589	$62,473,509	$26,625,089	$89,098,598
533	Variety stores	$32,847	$492,101	$3,004,259	$979,567	$4,508,774	$1,967,347	$6,476,122
539	Misc. gen. merchandise strs.	$57,689	$951,668	$4,942,827	$4,034,638	$9,986,823	$2,165,910	$12,152,733
541	Grocery stores	$513,744	$10,906,931	$57,931,536	$43,984,501	$113,336,712	$21,441,547	$134,778,259
542	Meat and fish markets	$36,063	$325,618	$1,048,864	$659,674	$2,070,219	$279,086	$2,349,305
543	Fruit & vegetable markets	$15,318	$128,681	$311,558	$137,018	$592,576	$80,225	$672,801
544	Candy, nut, & confctnry strs	$21,735	$181,309	$425,977	$140,738	$769,760	$104,329	$874,089
545	Dairy products stores	$11,688	$95,140	$191,282	$67,119	$365,230	$42,855	$408,085
546	Retail bakeries	$92,386	$829,425	$2,499,612	$927,185	$4,348,608	$698,732	$5,047,340
549	Misc. food stores	$45,396	$373,044	$828,107	$278,429	$1,524,975	$202,248	$1,727,223
551	New and used car dealers	$102,887	$3,973,879	$23,828,713	$24,194,669	$52,100,148	$8,877,486	$60,977,634
552	Used car dealers	$100,614	$767,479	$578,664	$287,086	$1,733,843	$157,960	$1,891,804
553	Auto & home supply stores	$148,247	$1,716,003	$8,082,708	$7,365,986	$17,312,944	$3,686,269	$20,999,213
554	Gas service stations	$312,347	$3,017,423	$9,817,686	$6,806,970	$19,954,426	$4,440,062	$24,394,488
555	Boat dealers	$23,229	$240,654	$1,013,088	$647,812	$1,924,783	$367,148	$2,291,931
556	Rec. vehicle dealers	$13,728	$183,300	$968,055	$666,521	$1,831,603	$385,491	$2,217,094
557	Motorcycle dealers	$17,349	$158,[illegible]2	$153,829	$97,087	$426,846	$37,524	$464,370
559	Auto dealers, n.e.c.	$5,656	$45,444	$39,719	$25,522	$116,341	$10,337	$126,679
561	Men's & boys' clothing strs	$38,083	$387,387	$881,897	$458,056	$1,765,423	$371,112	$2,136,535
562	Women's clothing stores	$179,801	$1,547,208	$2,567,004	$1,081,052	$5,375,065	$817,737	$6,192,802
563	Wm's access.& specialty strs	$39,634	$311,721	$405,770	$140,895	$898,020	$129,618	$1,027,638
564	Chldrn's & infants' wear strs	$23,770	$212,347	$457,426	$314,995	$1,008,539	$145,279	$1,153,818
565	Family clothing stores	$82,550	$1,190,304	$6,372,761	$4,098,718	$11,744,333	$2,459,472	$14,203,805
566	Shoe stores	$171,469	$1,331,150	$2,427,966	$867,596	$4,798,180	$739,159	$5,537,339
569	Misc. apparel stores	$43,235	$334,044	$332,132	$119,978	$829,388	$105,855	$935,244
571	Furnitre & homefurnishng strs	$259,944	$2,969,361	$13,896,392	$9,666,207	$26,791,904	$5,863,770	$32,655,674
572	Household appliance strs	$56,657	$556,743	$2,245,505	$1,553,847	$4,412,751	$673,118	$5,085,868
573	Radio, TV, & comptr strs	$172,444	$1,838,319	$5,947,343	$4,045,186	$12,003,294	$1,914,867	$13,918,160
581	Eating & drinking places	$2,095,210	$22,504,303	$86,715,409	$35,641,406	$146,956,328	$22,837,677	$169,794,005
591	Drug stores	$190,746	$2,267,973	$7,985,455	$5,683,952	$16,128,126	$2,520,539	$18,648,665
592	Liquor stores	$78,688	$666,783	$655,707	$187,680	$1,588,858	$262,411	$1,851,269
593	Used merchandise stores	$105,215	$853,025	$2,192,949	$1,279,547	$4,430,735	$825,297	$5,256,032
594	Misc. shopping goods strs.	$544,356	$4,846,691	$13,806,775	$8,051,847	$27,249,668	$5,065,009	$32,314,677
596	Nonstore retailers	$149,352	$2,067,192	$10,324,897	$9,270,898	$21,812,338	$3,595,431	$25,407,770
598	Fuel dealers	$36,059	$461,740	$1,930,478	$2,052,933	$4,481,211	$777,947	$5,259,158
599	Retail stores, n.e.c.	$384,242	$3,176,539	$4,775,100	$4,041,095	$12,376,976	$1,456,614	$13,833,591
601	Central res. depository	$517	$73,561	$319,896	$80,473	$474,447	$57,127	$531,574
602	Commercial banks	$342,919	$4,660,906	$15,908,940	$3,759,259	$24,672,024	$1,107,229	$25,779,253
603	Savings institutions	$84,279	$970,187	$2,691,145	$397,188	$4,142,800	$188,748	$4,331,547
606	Credit unions	$59,059	$657,419	$1,781,402	$292,134	$2,790,014	$212,667	$3,002,681
608	Foreign banking	$5,154	$83,205	$263,402	$3,306	$355,067	$919	$355,986
609	Banking-related functions	$30,177	$325,592	$886,816	$197,889	$1,440,474	$88,070	$1,528,544
611	Federal credit agencies	$6,727	$88,272	$246,743	$27,659	$369,402	$7,111	$376,512
614	Personal cred. institutions	$101,880	$932,402	$1,704,470	$160,249	$2,899,000	$43,012	$2,942,012
615	Business cred. institutions	$32,447	$438,821	$1,446,035	$267,294	$2,184,597	$76,526	$2,261,122
616	Mortgage bankers & brokers	$116,138	$1,202,703	$2,809,569	$348,486	$4,476,897	$158,378	$4,635,274
621	Security brokers & dealers	$116,984	$1,903,107	$5,767,549	$773,864	$8,561,504	$158,272	$8,719,776

TABLE VIII-2

Total Cost of Compliance, by Provision of the Final Rule and 3-Digit SIC

SIC	Industry	Determination of Coverage by the Standard and Grandfather Status	Initial Employer Actions	Programmatic Elements	Job Fixes	SUBTOTAL (cost to society)	Work Restriction Protection	TOTAL (cost to employers)
622	Commodity contracts brokers	$6,039	$73,199	$144,925	$0	$224,162	$0	$224,162
623	Security & commod. exchanges	$536	$27,654	$125,764	$25,663	$180,618	$7,244	$187,861
628	Security & commod. services	$111,903	$1,064,686	$1,920,203	$178,167	$3,274,960	$37,005	$3,311,965
631	Life insurance	$76,996	$1,845,142	$8,161,573	$1,983,456	$12,067,167	$288,300	$12,355,467
632	Medical & health insur.	$18,029	$1,036,549	$4,808,503	$1,616,296	$7,479,377	$442,124	$7,921,501
633	Fire, marine, & caslty ins.	$124,916	$2,683,416	$10,636,225	$1,856,866	$15,301,422	$680,040	$15,981,462
635	Surety insurance	$3,552	$49,363	$159,132	$27,381	$239,428	$8,508	$247,936
636	Title insurance	$10,984	$181,641	$644,715	$117,528	$954,868	$64,360	$1,019,228
637	Pension and health funds	$15,059	$178,251	$477,404	$61,045	$731,759	$25,787	$757,546
639	Ins. carriers, n.e.c.	$1,338	$19,258	$61,550	$9,811	$91,957	$5,364	$97,321
641	Insurance agents	$647,355	$5,667,437	$9,170,808	$763,023	$16,248,624	$436,502	$16,685,126
651	Real estate operators	$376,329	$3,889,293	$9,806,761	$3,135,865	$17,208,248	$1,484,820	$18,693,068
653	RE agents and managers	$547,121	$5,406,985	$11,967,801	$3,446,138	$21,368,045	$1,051,004	$22,419,049
654	Title abstract offices	$20,768	$214,891	$437,999	$25,513	$699,171	$26,201	$725,371
655	Subdividers & developrs	$69,426	$810,581	$2,291,421	$999,106	$4,170,534	$369,463	$4,539,996
671	Holding offices	$57,038	$797,037	$2,602,016	$730,448	$4,186,539	$155,625	$4,342,164
672	Investment offices	$4,217	$89,445	$351,813	$151,246	$596,721	$11,791	$608,512
673	Trusts	$42,342	$410,614	$867,929	$174,395	$1,495,281	$63,585	$1,558,865
679	Miscellaneous investing	$40,988	$395,538	$948,082	$209,780	$1,594,389	$80,080	$1,674,469
701	Hotels and motels	$165,678	$4,578,542	$27,058,668	$19,917,858	$51,720,746	$9,954,201	$61,674,948
702	Rooming & boarding houses	$7,444	$56,604	$55,320	$12,354	$131,722	$8,021	$139,743
703	Camps and rec. vehicle parks	$15,009	$133,584	$154,919	$86,649	$390,160	$30,446	$420,606
704	Membership-basis org. hotels	$11,046	$82,827	$78,882	$19,084	$191,839	$11,022	$202,861
721	Laundry & garment srvices	$195,263	$2,035,420	$9,127,876	$4,801,815	$16,160,374	$4,440,040	$20,600,413
722	Photo studios, portrait	$36,224	$320,556	$833,701	$677,906	$1,868,387	$181,148	$2,049,535
723	Beauty shops	$191,194	$1,682,771	$2,357,653	$829,755	$5,061,373	$566,039	$5,627,412
724	Barber shops	$20,621	$152,738	$306,468	$90,745	$570,572	$84,274	$654,847
725	Shoe repair	$10,157	$72,556	$122,831	$60,316	$265,860	$34,408	$300,268
726	Fun. service and crematories	$64,349	$538,340	$1,175,493	$603,434	$2,381,616	$284,746	$2,666,361
729	Misc personal services.	$127,577	$1,082,588	$1,167,796	$598,649	$2,976,610	$114,649	$3,091,259
731	Advertising	$90,129	$1,229,047	$4,407,958	$1,607,005	$7,334,140	$346,006	$7,680,146
732	Credit report.& collection	$39,407	$468,453	$1,686,618	$358,665	$2,553,144	$173,623	$2,726,767
733	Mailing, reprod, steno., serv	$145,007	$1,550,343	$5,198,639	$2,484,705	$9,378,694	$900,986	$10,279,680
734	Services to buildings	$206,294	$2,945,347	$12,847,705	$2,472,147	$18,471,493	$3,347,075	$21,818,569
735	Misc. equipt. rental	$91,341	$1,116,432	$4,366,235	$3,079,884	$8,653,891	$892,842	$9,546,733
736	Pers. supply services	$137,575	$6,306,756	$37,298,132	$35,295,716	$79,038.179	$3,431,713	$82,469,891
737	Comptr & data proc. services	$469,811	$6,794,327	$23,909,335	$6,545,429	$37,718,903	$1,267,004	$38,985,907
738	Misc. business services	$277,937	$4,088,846	$17,217,271	$9,519,201	$31,103,255	$2,536,666	$33,639,921
751	Auto rentals, no drivers	$58,976	$662,777	$2,655,497	$2,659,082	$6,036,333	$509,081	$6,545,414
752	Automobile parking	$29,212	$260,778	$600,376	$718,520	$1,608,886	$164,198	$1,773,084
753	Automotive repair shops	$600,485	$4,982,777	$11,845,914	$7,933,858	$25,363,033	$2,814,592	$28,177,625
754	Automotive serv., exc repair	$86,397	$942,031	$4,223,375	$3,359,926	$8,611,728	$1,591,359	$10,203,088
762	Electrical repair shops	$78,797	$830,539	$2,955,619	$2,677,290	$6,542,245	$745,888	$7,288,133
763	Watch and jewelry repair	$8,273	$64,212	$134,971	$66,847	$274,303	$32,534	$306,837
764	Reupholstery & furn. repair	$31,361	$238,519	$418,835	$217,220	$905,934	$131,110	$1,037,044
769	Misc. repair shops	$152,081	$1,590,294	$5,966,360	$5,208,233	$12,916,969	$1,531,232	$14,448,201
781	Motion picture production	$73,503	$1,534,398	$8,091,912	$3,789,060	$13,488,873	$1,500,575	$14,989,448
782	Motion picture dist.	$6,166	$125,308	$663,561	$279,892	$1,074,927	$208,586	$1,283,513
783	Motion picture theaters	$15,217	$456,773	$2,961,215	$914,394	$4,347,599	$1,235,374	$5,582,973
784	Video tape rental	$81,980	$807,713	$3,651,598	$323,192	$4,864,483	$1,354,524	$6,219,007
791	Dance studios & schools	$26,213	$194,685	$167,461	$34,384	$422,744	$23,748	$446,492
792	Prducrs, orch., entertainers	$62,318	$653,097	$2,228,300	$2,068,684	$5,012,399	$568,798	$5,581,198
793	Bowling centers	$26,287	$276,069	$897,600	$420,128	$1,620,084	$204,510	$1,824,594
794	Commercial sports	$26,488	$447,160	$2,257,642	$1,633,293	$4,364,582	$621,889	$4,986,471
799	Misc. recreation services	$220,295	$3,347,796	$17,111,737	$16,460,615	$37,140,443	$5,140,130	$42,280,573
801	Offices of medical doctors	$795,650	$9,257,956	$38,345,670	$18,055,369	$66,454,646	$4,696,759	$71,151,405
802	Dentists offices and clinics	$662,268	$5,591,068	$12,773,339	$1,724,053	$20,750,727	$1,380,162	$22,130,890
803	Osteopathic physicians	$29,011	$296,513	$746,415	$114,295	$1,186,233	$66,915	$1,253,148
804	Other health practitioners	$306,635	$2,833,281	$9,332,064	$3,264,101	$15,736,081	$2,174,376	$17,910,457
805	Nursing & personal care fac.	$82,676	$7,669,934	$47,772,674	$20,940,175	$76,465,458	$18,724,302	$95,189,760
806	Hospitals	$34,732	$17,089,022	$162,738,633	$61,252,553	$241,114,940	$23,055,478	$264,170,417
807	Med. & dental labs	$75,417	$968,029	$4,658,002	$2,441,206	$8,142,653	$526,241	$8,668,894
808	Home hlth care services	$61,518	$2,958,485	$20,377,584	$13,837,536	$37,235,124	$5,503,950	$42,739,074
809	Hlth & allied serv., n.e.c.	$89,537	$1,639,130	$9,661,488	$5,018,567	$16,408,721	$1,495,420	$17,904,141
811	Legal services	$865,868	$7,500,019	$17,799,819	$3,180,297	$29,346,004	$1,489,038	$30,835,042
821	Elem. & secondary schools	$96,629	$2,075,207	$12,120,163	$5,030,195	$19,322,194	$978,016	$20,300,210
822	Colleges & universities	$17,833	$3,173,736	$28,871,072	$14,204,017	$46,266,659	$1,400,722	$47,667,382
823	Libraries	$10,322	$112,564	$346,834	$49,032	$518,752	$19,773	$538,525
824	Vocational schools	$30,216	$361,855	$1,218,638	$245,080	$1,855,789	$74,914	$1,930,703
829	Schools, n.e.c.	$69,161	$695,829	$1,895,912	$325,725	$2,986,627	$111,586	$3,098,213
832	Individual & fam. services	$154,198	$2,154,127	$10,986,627	$7,634,074	$20,929,025	$3,130,158	$24,059,183
833	Job train. & related serv.	$29,400	$670,342	$4,432,233	$4,437,946	$9,569,922	$975,169	$10,545,092
835	Child day care services	$163,334	$1,677,069	$6,415,389	$2,415,378	$10,671,170	$1,725,903	$12,397,073
836	Residential care	$94,489	$2,025,851	$11,249,253	$8,010,052	$21,379,646	$4,888,065	$26,267,710
839	Social services, n.e.c.	$55,314	$705,695	$3,366,520	$2,231,129	$6,358,657	$596,245	$6,954,902
841	Museums & art galleries	$18,517	$239,409	$1,183,086	$433,212	$1,874,224	$213,889	$2,088,113
842	Bot. & zoolog. gardens	$2,339	$49,664	$300,060	$252,528	$604,590	$68,789	$673,379
861	Business associations	$82,066	$752,951	$1,998,739	$360,668	$3,194,425	$129,757	$3,324,182
862	Prof. organizations	$33,822	$346,623	$975,849	$154,935	$1,511,229	$51,718	$1,562,948
863	Labor organizations	$58,381	$720,579	$2,122,658	$258,261	$3,159,879	$97,014	$3,256,892
864	Civic & social assoc.	$109,671	$1,554,594	$6,898,349	$2,327,095	$10,889,709	$926,225	$11,815,935
865	Political organizations	$11,821	$99,819	$251,084	$42,249	$404,974	$35,547	$440,520
866	Religious organizations	$661,023	$6,971,356	$17,662,862	$2,235,046	$27,530,288	$483,101	$28,013,389
869	Membership orgs., n.e.c.	$28,367	$435,535	$2,186,591	$1,294,857	$3,945,350	$257,326	$4,202,676
871	Eng. and arch. services	$436,740	$4,977,286	$19,558,333	$6,085,276	$31,057,635	$1,172,366	$32,230,001
872	Accntng, auditng, & bkeeping	$479,769	$4,330,483	$14,187,721	$4,852,167	$23,850,139	$1,078,937	$24,929,076
873	Research & testing services	$99,803	$1,974,139	$12,323,854	$5,138,989	$19,536,785	$1,271,837	$20,808,622
874	Management & pub. relations	$438,214	$4,985,011	$21,062,857	$11,488,746	$37,974,829	$1,900,903	$39,875.732
899	Services, n.e.c.	$80,432	$868,169	$3,130,239	$1,197,299	$5,276,139	$669,566	$5,945,705
	Subtotal	$25,614,221	$417,663,629	$1,882,097,229	$1,089,989,195	$3,415,364,275	$564,442,929	$3,979,807,204
	State & Local Government	$829,715	$36,920,178	$299,429,246	$159,093,322	$496,272,461	$62,264,526	$558,536,987
	TOTAL (inluding government)	$26,443,937	$454,583,807	$2,181,526,475	$1,249,082,518	$3,911,636,736	$626,707,455	$4,538,344,191

Source: OSHA Office of Regulatory Analysis, U.S. Department of Labor

The programmatic elements of the standard have annualized costs of $2.2 billion. In addition, the provision requiring employers to control jobs that have been found to have MSD hazards, has costs of $1.3 billion per year. Four of the industries covered by the standard have costs of more than $100 million per year: hospitals (SIC 806); eating and drinking places (SIC 581); trucking and courier services (SIC 421) and grocery stores (SIC 541).

Estimates of the costs of job controls are presented as net costs, because OSHA has taken the benefits employers often accrue from productivity improvements associated with job controls as offsets to the costs of job control. OSHA estimates that the labor savings (productivity improvements) provided by the job controls the standard will require will amount to approximately $700 million per year in annualized savings.[2] OSHA believes that many ergonomic interventions improve productivity, either because they reduce employee fatigue and relieve muscle pain (which means that the employee will do more work in less time), or because they involve automating portions of jobs in ways that can be expected to improve productivity. In addition to such direct effects on productivity, ergonomic interventions frequently offset the employers' cost for controls by :

- Reducing absenteeism because a worker is less likely to take time off to recover from muscle soreness, fatigue, etc.;
- Reducing turnover, particularly since new hires are more likely to find an ergonomically designed job within their physical capacity;
- Improving product quality because fewer errors are made when processes are more mechanized and demand less physical effort.

These positive productivity impacts are attested to by the experience of many employers (see the productivity tables in Chapter V of the Final Economic Analysis). OSHA's 1993 ergonomics survey of general industry employers found that 30 percent of those employers who had implemented ergonomics controls reported that their ergonomics programs had had measurable positive impacts on productivity. On average, these employers (including the few employers who reported that their controls had negative impacts on productivity) reported a weighted average productivity improvement of 7 percent per ergonomic intervention. The cost estimates presented in this Final Economic Analysis differ appreciably from those presented in the Preliminary Economic Analysis. These changes are described in greater detail in Chapter V of this final analysis, but the most important changes and the reasons for them are the following:

- The inclusion of a clearly defined action trigger in the final standard has served to significantly reduce the costs of the standard. In the preliminary economic analysis, OSHA assumed that all MSDs in jobs that had not yet been fixed would require job controls and other actions as appropriate. Under the final rule (and thus in this final analysis), many reports of MSDs will not trigger further action because they would not meet the standard's screen. Thus the screen serves to significantly reduce the costs of the standard.
- In order to ensure that the economic analysis reflects the costs associated with implementing ergonomics programs in practice, the costs for most program elements have been revised upward to account for the extensive comments in the record on the experience of firms that have implemented ergonomics programs. On the other hand, the estimated costs to general industry employers in establishments that do not have MSDs have been reduced, since the final standard, unlike the proposal, no longer has a requirement for all establishments with manufacturing or manual handling jobs to have a basic program.
- Work restriction protection (WRP) costs are substantially reduced overall, although the per-case costs have been increased. The overall decrease in WRP costs is a result of the reduced length of WRP coverage (from 6 to 3 months) and the effects of the screen; WRP will only be paid under the final rule to workers in jobs that meet the action trigger. In addition, OSHA agrees with comments in the record pointing out that OSHA's preliminary WRP cost estimates did not accurately reflect the full costs to the employer of WRP wage replacement, and the final WRP costs have been adjusted accordingly.
- OSHA's cost estimates in the final rule also take account of the increase in the number of MSDs the Agency believes will be reported to employers as a result of the encouragement to report provided by WRP and the inclusion of persistent signs and symptoms in the standard's definition of an MSD incident.

OSHA has not significantly changed its estimates of the unit costs of job controls since the proposal. OSHA believes, after a review of the comments and cost estimates in the record and an analysis of the controls needed to achieve the final rule's endpoint, that its initial costs-of-control estimates are reasonable.

F. Economic Feasibility (Chapter VI)

The OSH Act requires the Agency to set standards that are feasible, both technologically and economically. To demonstrate that a standard is feasible, the courts have held that OSHA must "construct a reasonable estimate of compliance costs and demonstrate a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry" [*United Steelworkers of America, AFL–CIO–CLC* v. *Marshall* (the "Lead" decision)], 647 F2d 1189 (DC Cir. 1980).

OSHA's analysis of economic feasibility was conducted on an establishment basis. For each affected industry, estimates of per-establishment annualized compliance costs were compared with per-establishment estimates of revenues and per-establishment estimates of profits, using two worst-case assumptions about the ability of employers to pass the costs of compliance through to their customers: The no cost passthrough assumption and the full cost passthrough assumption. Based on the results of these comparisons, which define the universe of potential impacts of the ergonomics program standard, OSHA then assessed the final standard's economic feasibility for establishments in all covered industries.

OSHA assumed that the establishments falling within the scope of the final standard had the same average sales and profits as other establishments in their industries. This assumption is reasonable because there is no evidence suggesting that the financial characteristics of those firms whose employees experience MSD incidents are different from firms that do not have such incidents among their workforce. Absent such evidence, OSHA relied on the best available financial data (those from the Bureau of the Census (Ex. 26–6) and Robert Morris Associates (Ex. 502–69)), used commonly accepted methodology to calculate industry averages, and based its analysis of the significance of the projected economic impacts and the feasibility of compliance on these data. For this Final Economic Analysis, OSHA averaged profit data for the four years 1995 to 1998 rather than using a single year's data. Because industry profit can show major year-to-year variance, this modification assures that the results of the analysis will not depend on a single unusually bad or good year for an industry,

The analysis of the potential impacts of the ergonomics program standard on before-tax profits and sales shown in Table VIII–3 is called a screening analysis because it simply measures costs as a percentage of pre-tax profits and sales under the worst-case assumptions discussed above, but does not predict impacts on these before-tax profits or sales. The screening analysis is used to determine whether the compliance costs potentially associated with the final standard could lead to significant impacts on all establishments. The actual impact of the final standard on the profit and sales of establishments in a given industry will depend on the price elasticity of demand for the products or services of establishments in that industry.

Table VIII–3 shows that the potential impacts of the final standard on average industry profits are small, even under the worst-case scenario of no cost passthrough. For all industries as a whole, annualized compliance costs are 0.5 percent of profits. Compliance costs do not exceed 5 percent of profits in any industry.

Based on the data for establishments in all industries shown in Table VIII–3, OSHA concludes that the ergonomics program standard is economically feasible for the establishments covered by the standard. OSHA reaches this conclusion based on the fact that, even under the worst case scenario of full cost passthrough, impacts on average industry revenues are only 0.02 percent and under the worst case scenario of no cost passthrough, impacts on average profits are only 0.5 percent, with no industry having impacts on profit of greater than 5 percent.

OSHA's Final Economic Analysis also examined impacts for those establishments most likely to be affected by the standard as a result of having MSD hazards, and found the standard was feasible for these establishments as well. (See Chapter VI of the Final Economic Analysis)

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[2] OSHA estimated productivity impacts by determining the average percentage reduction from gross costs caused by productivity in a set of examples of ergonomic interventions. Please see the Final Economic Analysis, particularly Tables V–17 through V–19, for details.

Table VIII-3 Screening Analysis of the Potential Impacts of the Ergonomics Program Standard on All Industries Under Worst-Case Assumptions

SIC	Industry	Annualized Compliance Costs for all Establishments	Revenues for all Establishments ($1,000s)	Profits as a Percentage of Revenues	Profits ($1,000s)	For All Establishments		
						Annualized Compliance Costs as a Percentage of Revenues	Annualized Compliance Costs as a Percentage of Profits	Annualized Compliance Cost per Establishment
074	Veterinary services	$6,636,074	$7,693,839	6.1%	$472,228	0.09%	1.4%	$291
075	Animal serv., except vet.	$1,496,462	$1,821,371	6.0% [d]	$109,619	0.08%	1.3%	$134
078	Landscape & hort. services	$26,019,201	$19,309,342	5.9%	$1,136,422	0.13%	2.3%	$302
081	Timber tracts	$524,309	$851,843	10.3% [d]	$87,740	0.06%	0.6%	$466
083	Forest products	$151,696	$247,111	10.3% [d]	$25,452	0.06%	0.6%	$1,111
085	Forestry services	$716,005	$1,069,094	10.3% [d]	$110,117	0.07%	0.7%	$457
091	Commercial fishing	$631,739	$1,343,345	5.7% [d]	$77,142	0.05%	0.8%	$314
092	Fish hatcheries	$95,972	$63,473	6.1% [d]	$3,833	0.15%	2.5%	$985
097	Hunting & trapping	$109,451	$167,605	6.1% [d]	$10,283	0.07%	1.1%	$323
131	Crude petrol. & nat. gas	$4,247,294	$59,652,592	8.7%	$5,159,949	0.01%	0.1%	$547
132	Natural gas liquids	$306,866	$41,021,720	8.7% [d]	$3,548,379	0.00%	0.0%	$368
138	Oil & gas field services	$8,821,401	$9,630,581	8.7%	$833,045	0.09%	1.1%	$1,087
201	Meat products	$16,336,346	$117,204,952	2.6%	$2,992,729	0.01%	0.5%	$2,504
202	Dairy products	$7,181,176	$59,676,113	3.4%	$3,051,157	0.01%	0.4%	$2,818
203	Preservd fruits & vegetables	$5,714,289	$47,486,800	4.0%	$1,893,073	0.01%	0.3%	$2,834
204	Grain mill products	$6,256,889	$55,960,495	3.3%	$1,847,864	0.01%	0.3%	$2,404
205	Bakery products	$11,227,192	$31,963,420	3.7%	$1,173,991	0.04%	1.0%	$3,187
206	Sugar and confect. prods	$4,355,561	$22,593,884	3.6%	$821,090	0.02%	0.5%	$3,967
207	Fats and oils	$1,295,558	$21,732,140	3.5% [d]	$752,684	0.01%	0.2%	$2,555
208	Beverages	$9,153,043	$64,480,420	4.7% [e]	$3,035,948	0.01%	0.3%	$4,004
209	Misc. food products	$8,811,830	$37,357,910	3.1% [e]	$1,160,055	0.02%	0.7%	$2,199
211	Cigarettes	$911,579	$25,895,548	4.0% [d]	$1,032,237	0.00%	0.1%	$88,799
212	Cigars	$110,812	$315,743	4.0% [d]	$12,604	0.03%	0.9%	$2,341
213	Chewing & smoking tobacco	$161,473	$1,544,972	4.0% [d]	$62,064	0.01%	0.2%	$5,441
214	Tobacco stemm. & redrying	$269,642	$3,104,375	4.0% [d]	$124,700	0.01%	0.2%	$8,145
221	Brdwvn fab. mills, cotton	$1,729,877	$6,018,257	4.0%	$237,725	0.03%	0.7%	$4,199
222	Broadwoven fabric mills	$2,772,508	$9,703,013	2.8% [e]	$268,592	0.03%	1.0%	$6,054
223	Brdwvn fab. mills, wool	$423,349	$1,720,895	2.8% [e]	$47,631	0.02%	0.9%	$4,275
224	Narrow fabric mills	$793,599	$1,485,068	3.2%	$47,151	0.05%	1.7%	$2,065
225	Knitting mills	$6,557,074	$17,214,105	2.9%	$494,169	0.04%	1.3%	$3,371
226	Tex. finishing, except wool	$2,078,849	$7,490,188	2.8%	$210,330	0.03%	1.0%	$2,440
227	Carpets and rugs	$1,845,579	$12,446,310	2.8%	$345,365	0.01%	0.5%	$3,813
228	Yarn and thread mills	$2,959,788	$12,173,797	2.0%	$239,351	0.02%	1.2%	$5,000
229	Misc. textile goods	$2,411,461	$8,817,910	2.8% [e]	$248,393	0.03%	1.0%	$2,588
231	Men's & boys' suits & coats	$818,300	$1,966,167	0.9% [e]	$17,632	0.04%	4.6%	$2,793
232	Men's & boys' furnishings	$6,959,053	$15,125,809	2.7%	$410,792	0.05%	1.7%	$3,295
233	Wm's & misses' outerwear	$6,423,694	$19,500,842	2.6%	$505,021	0.03%	1.2%	$717
234	Wm's & children's undergarments	$1,090,167	$2,918,268	2.4% [e]	$70,461	0.04%	1.0%	$2,823
235	Hats, caps, & millinery	$576,448	$1,090,786	3.9%	$43,127	0.05%	1.3%	$1,513
236	Girls' & children's outerwear	$815,446	$2,280,806	2.0%	$44,601	0.04%	1.8%	$1,394
237	Fur goods	$26,422	$142,828	2.6%	$3,656	0.02%	0.7%	$199
238	Misc. apparel & accessories	$998,257	$2,344,834	2.4% [e]	$57,685	0.04%	1.7%	$1,070
239	Misc. fab. textile prods	$7,526,331	$33,070,600	2.6%	$876,032	0.03%	1.3%	$856
241	Logging	$2,375,425	$15,530,413	3.9% [f]	$605,840	0.01%	0.4%	$166
242	Sawmills & planing mills	$8,394,186	$25,776,309	4.3%	$1,107,058	0.03%	0.8%	$1,373
243	Millwork & plywood	$15,567,887	$31,414,582	3.6%	$1,131,630	0.05%	1.4%	$1,610
244	Wood containers	$2,187,909	$4,000,433	3.7%	$146,701	0.05%	1.5%	$773
245	Wood bldings & mobile homes	$5,387,771	$12,663,722	3.8%	$475,646	0.04%	1.1%	$5,161
249	Misc. wood products	$4,587,760	$13,133,205	3.9% [e]	$503,993	0.03%	0.9%	$1,297
251	Household furniture	$13,563,894	$24,242,412	3.2%	$775,685	0.06%	1.7%	$2,466
252	Office furniture	$3,869,704	$9,836,788	3.8%	$377,327	0.04%	1.0%	$3,746
253	Pub bldng & related furn.	$2,961,832	$6,139,347	4.1%	$250,174	0.05%	1.2%	$6,597
254	Partitions and fixtures	$4,771,304	$8,109,037	3.7%	$301,302	0.06%	1.6%	$1,993
259	Misc furniture and fixtures	$2,079,483	$4,857,816	3.2%	$152,079	0.04%	1.4%	$1,473
261	Pulp mills	$657,339	$5,810,924	4.5%	$261,545	0.01%	0.3%	$10,602
262	Paper mills	$7,693,243	$35,582,333	4.8% [e]	$1,690,141	0.02%	0.5%	$21,344
263	Paperboard mills	$2,674,347	$19,899,897	4.5% [d]	$895,679	0.01%	0.3%	$11,750
265	Paperbrd containers & boxes	$11,927,157	$40,019,006	4.6%	$1,829,835	0.03%	0.7%	$4,246
267	Misc. cnvrtd paper products	$13,220,823	$49,954,537	4.3%	$2,150,381	0.03%	0.6%	$4,329
271	Newspapers	$18,766,157	$37,006,756	3.8% [d]	$1,406,082	0.05%	1.3%	$2,114
272	Periodicals	$3,995,497	$26,525,283	3.8%	$1,007,961	0.02%	0.4%	$691
273	Books	$5,832,617	$26,774,751	4.5% [e]	$1,199,979	0.02%	0.5%	$1,629
274	Miscellaneous publishing	$2,358,167	$10,624,468	4.5%	$475,445	0.02%	0.5%	$692
275	Commercial printing	$27,882,371	$66,006,851	3.4%	$2,272,349	0.04%	1.2%	$810
276	Manifold business forms	$2,482,368	$7,941,415	3.4%	$266,818	0.03%	0.9%	$2,725
277	Greeting cards	$1,272,733	$4,434,535	3.8% [d]	$168,491	0.03%	0.8%	$2,900
278	Blankbooks & bookbinding	$3,314,599	$5,322,155	3.9%	$205,657	0.06%	1.6%	$2,094
279	Printing trade services	$2,018,486	$4,984,730	3.6% [e]	$178,485	0.04%	1.1%	$587
281	Indust. inorganic chemicals	$3,508,730	$30,002,400	4.5% [e]	$1,345,616	0.01%	0.3%	$2,534
282	Plastics mat. & synthetics	$4,368,299	$57,333,871	4.5%	$2,577,543	0.01%	0.2%	$5,009
283	Drugs	$8,245,691	$98,347,315	4.8%	$4,707,605	0.01%	0.2%	$5,037
284	Soap, clnrs, & toilet goods	$4,973,167	$48,294,828	4.4%	$2,125,571	0.01%	0.2%	$2,043
285	Paints & allied products	$2,085,227	$17,587,225	3.8%	$659,531	0.01%	0.3%	$1,418
286	Indust. organic chemicals	$4,966,241	$79,254,515	4.5%	$3,556,542	0.01%	0.1%	$8,258
287	Agricultural chemicals	$1,596,510	$22,589,700	3.8%	$851,285	0.01%	0.2%	$1,606
289	Misc. chemical products	$3,754,194	$27,864,574	4.8% [e]	$1,325,418	0.01%	0.3%	$1,463
291	Petroleum refining	$3,824,004	$145,898,878	2.9%	$4,155,553	0.00%	0.1%	$13,966
295	Asphlt paving & roofing mat.	$1,742,001	$9,765,870	3.9%	$382,554	0.02%	0.5%	$1,273

Table VIII-3 Screening Analysis of the Potential Impacts of the Ergonomics Program Standard on All Industries Under Worst-Case Assumptions

SIC	Industry	Annualized Compliance Costs for all Establishments	Revenues for all Establishments ($1,000s)	Profits as a Percentage of Revenues	Profits ($1,000s)	For All Establishments		
						Annualized Compliance Costs as a Percentage of Revenues	Annualized Compliance Costs as a Percentage of Profits	Annualized Compliance Cost per Establishment
299	Misc. pet. & coal prods	$395,642	$4,590,448	4.7%	$216,979	0.01%	0.2%	$2,278
301	Tires and inner tubes	$3,700,877	$12,649,425	4.0% [d]	$509,114	0.03%	0.7%	$21,643
302	Rubber & plastics footwear	$331,216	$605,379	4.9% [d]	$27,736	0.05%	1.2%	$5,266
305	Hose, bltng, and gaskets	$2,915,345	$8,084,156	4.0%	$319,914	0.04%	0.9%	$3,542
306	Fab. rubber prod., n.e.c.	$5,477,509	$13,765,833	4.0%	$554,915	0.04%	1.0%	$3,100
308	Misc plastics, n.e.c.	$32,524,105	$106,997,057	4.0%	$4,305,060	0.03%	0.8%	$2,383
311	Leather tan. & finishing	$663,118	$2,730,836	1.7%	$47,251	0.02%	1.9%	$2,575
313	Footwear cut stock	$109,992	$213,544	2.2% [d]	$4,700	0.05%	2.1%	$1,443
314	Footwear, except rubber	$2,091,936	$3,634,490	2.3%	$85,181	0.06%	2.4%	$8,296
315	Leather gloves & mittens	$153,700	$149,789	2.2% [d]	$3,290	0.09%	4.1%	$1,938
316	Luggage	$356,297	$1,007,574	2.9%	$29,400	0.04%	1.2%	$1,368
317	Hndbags & prsnl lethr gds.	$401,349	$840,276	2.2% [d]	$18,636	0.05%	2.2%	$1,172
319	Leather goods, n.e.c.	$440,533	$651,426	2.3% [f]	$14,310	0.07%	3.1%	$1,054
321	Flat glass	$979,664	$2,709,601	4.9% [d]	$132,660	0.04%	0.7%	$12,066
322	Glass, pressed or blown	$4,176,499	$9,344,687	4.9% [f]	$456,456	0.05%	0.9%	$7,091
323	Prod. of purchased glass	$3,651,089	$9,199,494	5.1%	$460,029	0.04%	0.8%	$2,226
324	Cement, hydraulic	$963,547	$4,720,190	4.9% [d]	$232,549	0.02%	0.4%	$3,911
325	Structural clay products	$1,805,854	$3,232,723	5.4%	$174,863	0.06%	1.0%	$3,046
326	Pottery & related prods	$2,456,424	$3,370,197	4.9% [d]	$166,039	0.07%	1.5%	$2,047
327	Concrete & plast. prdcts	$11,006,283	$39,948,845	4.8%	$1,846,856	0.04%	0.8%	$1,189
328	Cut stone & stone prods	$846,181	$1,238,900	5.0%	$61,254	0.07%	1.4%	$792
329	Misc. nonmet. mineral prods.	$2,706,458	$12,831,147	5.0% [e]	$626,443	0.03%	0.6%	$2,368
331	Basic steel products	$12,391,187	$99,010,476	4.3%	$3,971,254	0.02%	0.4%	$9,650
332	Iron and steel foundries	$7,727,030	$15,484,686	4.6%	$705,495	0.05%	1.1%	$6,661
333	Primary nonfer. metals	$1,718,779	$17,465,720	4.5% [d]	$789,648	0.01%	0.2%	$8,931
334	Secondary nonfer. metals	$838,630	$7,333,366	3.9%	$291,453	0.01%	0.3%	$2,006
335	Nonfer. rolling & drawing	$8,818,130	$45,476,504	4.9%	$2,311,228	0.02%	0.4%	$7,296
336	Nonfer. foundries (cstngs)	$4,713,869	$9,611,868	4.5%	$432,461	0.05%	1.1%	$2,836
339	Misc. primary metal prdcts	$1,331,479	$4,160,537	4.8%	$201,967	0.03%	0.7%	$1,406
341	Met. cans & ship. containers	$1,885,559	$13,004,893	4.1%	$527,097	0.01%	0.4%	$4,336
342	Cutlery, hndtls, & hardware	$6,825,191	$17,122,380	4.6% [e]	$789,478	0.04%	0.9%	$2,790
343	Plumbing & heating fixtures	$2,996,991	$7,375,857	4.8%	$351,921	0.04%	0.9%	$4,356
344	Fab. struct. metal prdcts	$22,804,754	$56,040,749	4.3%	$3,434,329	0.04%	0.9%	$1,690
345	Screw machine products	$5,146,077	$11,596,795	4.4%	$512,005	0.04%	1.0%	$1,978
346	Met. forgings & stampings	$15,607,434	$40,752,728	4.6%	$1,848,834	0.04%	0.8%	$4,242
347	Metal services, n.e.c.	$5,827,182	$12,900,758	5.0%	$638,668	0.05%	0.9%	$1,054
348	Ordnance and accss., n.e.c.	$1,814,348	$4,806,212	4.5% [d]	$213,041	0.04%	0.9%	$4,142
349	Misc. fab. metal products	$14,424,737	$28,754,346	4.9%	$1,896,544	0.04%	0.8%	$2,013
351	Engines and turbines	$4,114,400	$16,985,636	4.9% [d]	$687,199	0.02%	0.6%	$11,090
352	Farm & garden machinery	$3,547,056	$17,877,144	4.7%	$835,521	0.03%	0.7%	$3,190
353	Construct. & related mach.	$10,256,683	$33,057,157	4.3%	$1,464,223	0.03%	0.7%	$3,006
354	Metalworking machinery	$14,909,324	$34,063,234	4.6%	$1,600,454	0.04%	0.9%	$1,262
355	Special industry mach.	$8,962,105	$29,950,693	4.1%	$1,215,606	0.03%	0.7%	$1,871
356	General indust. mach.	$12,635,827	$38,809,135	4.3%	$1,600,021	0.03%	0.7%	$2,006
357	Computer & office equip.	$8,888,477	$72,679,343	3.3%	$2,392,918	0.01%	0.4%	$4,209
358	Refrig. & serv. indust mach.	$10,731,185	$36,000,548	3.6%	$1,318,603	0.03%	0.8%	$4,778
359	Industrial mach., n.e.c.	$17,581,643	$35,100,649	5.1% [e]	$1,775,325	0.05%	1.0%	$679
361	Elect. dist. equipment	$2,490,937	$11,273,986	5.2%	$583,150	0.02%	0.4%	$2,847
362	Elect. indust. apparatus	$6,362,429	$21,854,697	5.1%	$1,123,278	0.03%	0.6%	$2,815
363	Household appliances	$4,847,685	$21,390,973	5.6% [d]	$1,191,009	0.01%	0.4%	$10,227
364	Elct. lghtng & wire equip.	$6,061,725	$23,289,566	5.7%	$1,334,823	0.03%	0.5%	$2,063
365	Household audio & vid. equip.	$1,817,780	$13,716,113	5.0%	$689,969	0.01%	0.3%	$2,230
366	Communications equipment	$7,540,252	$87,075,800	5.8% [e]	$5,019,137	0.01%	0.2%	$3,577
367	Electronic compnnts & accss.	$16,948,945	$103,870,202	5.6%	$5,795,165	0.02%	0.3%	$2,500
369	Misc. elect. equipment	$6,129,575	$26,674,704	5.9% [e]	$1,571,264	0.02%	0.4%	$3,428
371	Motor vehicles & equipt.	$47,559,830	$339,576,992	3.0%	$11,090,177	0.01%	0.4%	$9,420
372	Aircraft and parts	$16,172,006	$93,016,909	4.7% [e]	$4,339,753	0.02%	0.4%	$9,552
[a] 373	Ship, boat bldng and repair	$4,325,288	$6,028,640	3.6%	$219,574	0.07%	2.0%	$1,616
374	Railroad equipment	$1,401,806	$6,654,526	3.7%	$244,934	0.02%	0.6%	$6,581
375	Motorcycles & bicycles	$728,294	$3,336,172	3.7%	$124,877	0.02%	0.6%	$1,968
376	Guided missiles	$2,376,443	$18,052,173	3.7%	$675,714	0.01%	0.4%	$22,633
379	Misc. transportation equip.	$1,927,471	$8,420,403	3.7% [e]	$307,940	0.02%	0.6%	$1,698
381	Srch & navigation equipment	$5,330,834	$30,132,141	4.7% [e]	$1,416,212	0.02%	0.4%	$7,659
382	Meas. & controlling devices	$9,112,747	$39,728,944	5.6%	$2,230,765	0.02%	0.4%	$1,916
384	Medical instruments & supplies	$9,892,440	$45,607,297	5.3% [e]	$2,435,490	0.02%	0.3%	$1,980
385	Ophthalmic goods	$882,740	$2,858,367	3.7%	$104,747	0.03%	0.8%	$1,504
386	Photo. equip. & supplies	$2,432,719	$19,183,716	4.0%	$764,149	0.01%	0.3%	$3,374
387	Watches, clocks, & parts	$160,644	$740,323	5.1% [d]	$38,079	0.02%	0.4%	$1,139
391	Jwlry, slvrwre, and plate	$1,545,311	$6,261,331	3.3%	$208,466	0.02%	0.7%	$549
393	Musical instruments	$403,803	$1,313,940	3.8% [d]	$49,506	0.05%	1.2%	$1,098
394	Toys and sporting goods	$4,651,691	$14,433,948	3.7%	$537,830	0.03%	0.9%	$1,323
395	Office and art supplies	$898,400	$3,683,197	3.8% [d]	$140,117	0.03%	0.7%	$962
396	Costume jewelry & notions	$672,112	$2,344,891	3.8% [d]	$85,477	0.03%	0.8%	$615
399	Misc. manufactures	$6,607,609	$19,088,990	4.1%	$773,665	0.04%	0.9%	$760
411	Local & suburban trans.	$10,525,133	$8,742,145	4.4%	$384,559	0.21%	4.8%	$1,943
412	Taxicabs	$1,832,376	$1,286,889	4.5% [d]	$58,011	0.13%	3.1%	$494
413	Intercty & rural bus trans.	$2,891,297	$1,610,791	5.4%	$86,575	0.12%	3.3%	$4,161
414	Bus charter service	$1,403,827	$1,653,193	4.6%	$75,976	0.09%	2.0%	$1,030

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SIC	Industry	Annualized Compliance Costs for all Establishments	Revenues for all Establishments ($1,000s)	Profits as a Percentage of Revenues	Profits ($1,000s)	For All Establishments		
						Annualized Compliance Costs as a Percentage of Revenues	Annualized Compliance Costs as a Percentage of Profits	Annualized Compliance Cost per Establishment
413	School buses	$7,856,261	$4,192,484	4.6%	$190,758	0.19%	4.1%	$1,549
417	Bus terminals	$47,656	$44,464	4.5% [d]	$2,004	0.09%	2.4%	$713
421	Trking & Courier Service	$163,300,208	$169,408,487	3.4%	$5,525,289	0.10%	2.8%	$1,397
422	Pub. warehousing & storage	$12,459,274	$11,496,021	10.7%	$1,246,482	0.11%	1.0%	$1,042
423	Trucking terminal fac.	$93,603	na*	3.9% [d]	na	na	na	$1,170
430	U.S. Postal Service	$59,315,160	$56,600,000	na	na	0.10%	na	$1,777
451	Air trans., scheduled	$78,440,368	$139,896,879	3.6% x	$4,977,185	0.06%	1.6%	$11,871
452	Air trans., nonsched.	$1,660,760	$4,594,451	5.3%	$243,412	0.04%	0.7%	$879
458	Airports and services	$8,187,010	$9,429,735	3.8%	$360,687	0.09%	2.3%	$2,040
461	Pipelines, except natural gas	$1,573,705	$8,949,097	6.5% [d]	$585,965	0.02%	0.3%	$1,434
472	Pass. trans. arrangements	$4,713,708	$14,855,776	2.4%	$360,483	0.03%	1.3%	$142
473	Freight trans. arrangements	$9,070,991	$13,557,555	3.9%	$521,564	0.07%	1.7%	$614
474	Rental of railroad cars	$99,116	$2,475,148	3.4% [d]	$85,933	0.00%	0.1%	$854
478	Misc. trans. services	$3,543,768	$3,112,064	5.4%	$168,489	0.11%	2.1%	$1,322
481	Telephone communication	$25,297,052	$208,432,617	5.9%	$12,368,634	0.01%	0.2%	$927
482	Telegrph & other comm.	$125,668	$1,436,925	5.6% [f]	$80,168	0.01%	0.2%	$270
483	Radio & TV broadcasting	$2,992,791	$35,250,634	6.6%	$2,327,550	0.01%	0.1%	$339
484	Cable & othr pay TV services	$4,300,102	$43,809,901	2.7%	$1,193,821	0.01%	0.4%	$1,041
489	Communication serv., n.e.c.	$311,015	$8,631,490	6.1%	$343,521	0.01%	0.1%	$209
491	Electric services	$12,634,563	$162,448,596	12.5%	$20,251,925	0.01%	0.1%	$2,013
492	Gas product. & distribution	$5,105,696	$89,533,533	7.9%	$7,055,407	0.01%	0.1%	$1,296
493	Comb. utility services	$5,371,120	$71,543,818	10.4% [d]	$7,422,386	0.01%	0.1%	$2,978
494	Water supply	$1,043,552	$4,130,449	12.2%	$504,974	0.03%	0.2%	$287
495	Sanitary services	$7,251,426	$24,857,018	6.1%	$1,503,468	0.03%	0.5%	$1,117
496	Steam & air-cond. supplies	$35,421	$434,948	10.4% [d]	$45,125	0.01%	0.1%	$519
497	Irrigation systems	$54,670	$167,025	10.4% [d]	$17,328	0.03%	0.3%	$149
501	Motor vehicles	$32,754,703	$510,238,863	2.2%	$11,173,893	0.01%	0.3%	$715
502	Furn. & homefurnishings	$11,501,256	$68,862,490	2.3%	$1,572,923	0.02%	0.7%	$609
503	Lumber & construct. mat.	$22,645,424	$117,979,341	2.3%	$2,715,347	0.02%	0.8%	$956
504	Prof. & commercial equip.	$40,224,535	$329,207,483	2.7%	$8,987,745	0.01%	0.4%	$774
505	Met. & minerals, excpt pet.	$11,299,552	$151,787,987	2.6%	$3,921,078	0.01%	0.3%	$999
506	Electrical goods	$26,119,287	$337,183,776	2.5%	$8,455,255	0.01%	0.3%	$626
507	Hardware supplies	$20,028,215	$95,859,741	2.5%	$2,410,903	0.02%	0.8%	$767
508	Mach., equipt, & supplies	$50,767,296	$293,593,950	2.9%	$8,449,609	0.02%	0.6%	$666
509	Misc. durable goods	$20,696,753	$183,194,981	3.0% [e]	$5,446,333	0.01%	0.4%	$517
511	Paper and paper products	$15,282,832	$133,104,428	1.9%	$2,551,991	0.01%	0.6%	$817
512	Drugs, propriet., & sundries	$10,583,853	$194,538,527	3.6% [e]	$6,954,752	0.01%	0.2%	$1,447
513	Apparel and notions	$11,134,455	$125,178,134	2.5%	$3,102,437	0.01%	0.4%	$512
514	Groceries & related products	$66,340,179	$587,575,642	1.8%	$10,587,601	0.01%	0.6%	$1,531
515	Farm-prod. raw materials	$3,041,440	$141,454,588	28.3%	$40,069,404	0.00%	0.0%	$285
516	Chemicals & allied prods	$9,494,525	$170,707,220	3.1%	$5,263,714	0.01%	0.2%	$626
517	Petrol. & petrol. prods	$8,487,200	$315,300,716	1.3%	$4,022,765	0.00%	0.2%	$644
518	Beer, wine, & dist. bev.	$13,663,221	$70,906,318	3.5%	$2,493,147	0.02%	0.5%	$2,785
519	Misc. nondurable goods	$28,870,656	$218,436,994	2.3%	$5,051,977	0.01%	0.6%	$531
521	Lumber & other blding mat.	$34,967,693	$94,082,400	2.3%	$2,182,295	0.04%	1.6%	$1,441
523	Paint, glass, wallpaper strs	$3,397,530	$7,137,472	2.3%	$160,598	0.05%	2.1%	$337
525	Hardware stores	$5,989,715	$11,768,982	2.2%	$253,033	0.05%	2.4%	$419
526	Retail nurseries and gardens	$5,348,128	$8,366,165	2.5% [e]	$202,031	0.06%	2.6%	$466
527	Mobile home dealers	$3,490,941	$12,128,180	3.2%	$391,134	0.03%	0.9%	$728
531	Department stores	$89,098,598	$212,302,049	2.8%	$5,941,657	0.04%	1.5%	$8,232
533	Variety stores	$6,476,122	$7,801,344	3.1%	$241,842	0.08%	2.7%	$597
539	Misc. gen. merchandise strs.	$12,151,733	$73,078,703	2.2%	$1,607,731	0.02%	0.8%	$821
541	Grocery stores	$134,778,259	$413,038,161	1.4%	$5,576,015	0.03%	2.4%	$1,044
542	Meat and fish markets	$2,349,305	$5,620,494	2.5%	$140,512	0.04%	1.7%	$299
543	Fruit & vegetable markets	$672,881	$2,467,300	1.4% [d]	$34,309	0.03%	1.9%	$201
544	Candy, nut, & confectnry strs	$874,889	$1,500,892	4.1%	$61,458	0.06%	1.4%	$184
545	Dairy products stores	$408,865	$746,406	1.4% [d]	$10,530	0.05%	3.9%	$160
546	Retail bakeries	$5,047,340	$5,837,642	3.2%	$184,805	0.09%	2.7%	$250
549	Misc. food stores	$1,727,223	$4,903,987	2.4%	$116,470	0.04%	1.5%	$174
551	New and used car dealers	$60,977,424	$473,713,203	1.2% [e]	$5,803,987	0.01%	1.1%	$2,475
552	Used car dealers	$1,891,804	$26,046,818	2.5%	$638,127	0.01%	0.3%	$86
553	Auto & home supply stores	$20,999,213	$41,415,750	2.3%	$942,268	0.05%	2.2%	$479
554	Gas service stations	$24,394,488	$154,591,563	1.6%	$2,473,400	0.02%	1.0%	$253
555	Boat dealers	$2,291,931	$7,697,895	2.0%	$150,093	0.03%	1.5%	$452
556	Rec. vehicle dealers	$2,217,094	$9,355,689	2.1%	$191,792	0.02%	1.2%	$740
557	Motorcycle dealers	$464,376	$6,487,093	2.8%	$181,639	0.01%	0.3%	$133
559	Auto dealers, n.e.c.	$126,679	$1,296,175	2.6% [e]	$33,545	0.01%	0.4%	$103
561	Men's & boys' clothing strs	$2,136,535	$9,905,492	1.4%	$137,303	0.02%	1.6%	$154
562	Women's clothing stores	$6,192,802	$29,323,315	1.1%	$322,556	0.02%	1.9%	$153
563	Wm's access.& specialty strs	$1,027,638	$4,417,849	1.8% [d]	$81,500	0.02%	1.3%	$119
564	Chldrn's & infants' wear strs	$1,153,818	$4,349,583	1.8% [d]	$78,477	0.03%	1.5%	$222
565	Family clothing stores	$14,203,805	$40,135,206	2.2%	$882,907	0.04%	1.6%	$725
566	Shoe stores	$5,537,339	$18,686,566	2.4%	$453,149	0.03%	1.2%	$174
569	Misc. apparel stores	$935,244	$4,848,422	2.0%	$96,968	0.02%	1.0%	$92
571	Furniture & homefurnishing strs	$32,655,676	$62,978,206	2.4%	$1,564,569	0.05%	2.1%	$495
572	Household appliance strs	$5,095,862	$10,491,658	2.2%	$233,439	0.05%	2.2%	$586
573	Radio, TV, & computr strs	$13,918,160	$59,843,357	2.1%	$1,268,471	0.02%	1.1%	$356
581	Eating & drinking places	$169,794,005	$253,760,234	3.0%	$7,608,776	0.07%	2.2%	$344

Table VIII-3 Screening Analysis of the Potential Impacts of the Ergonomics Program Standard on All Industries Under Worst-Case Assumptions

SIC	Industry	Annualized Compliance Costs for all Establishments	Revenues for all Establishments ($1,000s)	Profits as a Percentage of Revenues	Profits ($1,000s)	For All Establishments		
						Annualized Compliance Costs as a Percentage of Revenues	Annualized Compliance Costs as a Percentage of Profits	Annualized Compliance Cost per Establishment
591	Drug stores	$18,648,665	$91,701,331	2.2%	$1,994,584	0.02%	0.9%	$431
592	Liquor stores	$1,881,349	$21,457,283	1.6%	$287,256	0.01%	0.5%	$64
593	Used merchandise stores	$5,256,032	$7,882,561	4.8%	$379,417	0.07%	1.4%	$223
594	Misc. shopping goods strs.	$32,314,677	$88,940,718	2.6%	$2,205,237	0.04%	1.4%	$200
596	Nonstore retailers	$25,407,770	$71,726,409	2.5%	$1,784,349	0.04%	1.4%	[illegible]
598	Fuel dealers	$5,290,150	$17,013,085	1.8%	$312,347	0.03%	1.7%	$445
599	Retail stores, n.e.c.	$13,833,291	$39,348,851	3.2%	$1,268,083	0.04%	1.1%	$145
601	Central res. depository	$531,574	$34,398,950	10.8% [d]	$3,716,887	0.00%	0.0%	$5,212
602	Commercial banks	$25,779,253	$242,240,859	10.8% [d]	$29,122,012	0.01%	0.1%	[illegible]
603	Savings institutions	$4,331,347	$86,699,788	10.8% [d]	$9,256,777	0.01%	0.0%	[illegible]
606	Credit unions	$2,002,481	$26,305,945	10.8% [d]	$3,005,790	0.01%	0.1%	$201
608	Foreign banking	$335,986	$88,523,610	10.8% [d]	$9,226,599	0.00%	0.0%	[illegible]
609	Banking-related functions	$1,528,344	$17,208,075	10.8% [d]	$1,864,952	0.01%	0.1%	[illegible]
611	Federal credit agencies	$376,512	$27,976,840	10.8%	$3,021,499	0.00%	0.0%	[illegible]
614	Personal cred. institutions	$2,942,812	$69,321,834	15.5% [d]	$10,721,777	0.00%	0.0%	[illegible]
615	Business cred. institutions	$2,241,122	$54,425,294	17.1% [d]	$9,285,417	0.00%	0.0%	$422
616	Mortgage bankers & brokers	$4,635,274	$28,664,554	11.7%	$3,346,589	0.01%	0.1%	$212
621	Security brokers & dealers	$8,719,776	$136,415,141	12.8%	$17,415,000	0.01%	0.1%	$242
622	Commodity contracts brokers	$234,162	$2,982,031	13.3%	$396,418	0.01%	0.1%	$126
623	Security & commod. exchanges	$187,861	$1,424,696	13.3%	$189,499	0.01%	0.1%	[illegible]
628	Security & commod. services	$3,311,965	$30,339,542	15.3% [d]	$4,647,281	0.01%	0.1%	$183
631	Life insurance	$12,285,467	$402,471,192	6.9% [d]	$27,442,882	0.00%	0.0%	[illegible]
632	Medical & health insur.	$7,921,301	$225,300,321	3.6%	$8,144,742	0.00%	0.1%	$2,374
633	Fire, marine, & casity ins.	$15,981,442	$284,568,000	5.1% [d]	$27,599,482	0.01%	0.1%	$798
635	Surety insurance	$247,936	$5,184,734	6.8%	$353,773	0.00%	0.1%	[illegible]
636	Title insurance	$1,019,220	$5,300,442	4.6%	$243,501	0.02%	0.4%	[illegible]
637	Pension and health funds	$787,546	$1,884,430	6.8% [f]	$128,582	0.04%	0.6%	$376
639	Ins. carriers, n.e.c.	$97,321	$810,377	6.8%	$55,205	0.01%	0.2%	$333
641	Insurance agents	$16,685,126	$67,001,357	6.8% [d]	$4,573,843	0.02%	0.4%	$191
651	Real estate operators	$18,685,040	$89,626,697	14.1% [d]	$12,527,641	0.02%	0.1%	[illegible]
653	RE agents and managers	$23,419,049	$73,706,929	13.2%	$9,626,071	0.03%	0.2%	$109
654	Title abstract offices	$725,371	$2,702,383	13.3% [e]	$359,689	0.03%	0.2%	$140
655	Subdividers & developers	$4,539,996	$17,073,034	10.6%	$1,811,322	0.03%	0.3%	$248
671	Holding offices	$4,242,164	$49,468,778	25.4%	$12,557,289	0.01%	0.0%	$453
672	Investment offices	$648,512	$12,829,710	20.4%	$2,620,926	0.00%	0.0%	$661
673	Trusts	$1,558,865	$12,102,680	24.3%	$2,940,648	0.01%	0.1%	$176
679	Miscellaneous investing	$1,674,449	$23,364,830	21.9%	[illegible]	0.01%	0.0%	$139
701	Hotels and motels	$61,674,948	$95,827,743	7.0%	$5,945,828	0.07%	1.0%	$1,343
702	Rooming & boarding houses	$139,743	$427,876	7.0%	$29,727	0.03%	0.5%	$86
703	Camps and rec. vehicle parks	$430,406	[illegible]	7.3%	$206,569	0.01%	0.2%	$87
704	Membership-basis org. hotels	$202,861	$762,683	7.0% [d]	$53,087	0.03%	0.4%	$84
721	Laundry & garment srvices	$20,600,413	$19,965,307	5.9%	$1,184,348	0.10%	1.7%	$368
722	Photo studios, portrait	$2,040,538	$4,380,041	4.8% [d]	$190,230	0.05%	1.0%	$156
723	Beauty shops	$8,627,412	$11,597,694	4.4%	$510,239	0.07%	1.1%	[illegible]
724	Barber shops	$654,547	$486,787	5.9%	$28,619	0.13%	2.3%	$146
725	Shoe repair	$300,248	$280,038	5.9%	$16,396	0.11%	1.8%	[illegible]
726	Fun. service and crematories	$2,444,361	$8,817,787	7.6% [d]	$665,737	0.03%	0.4%	[illegible]
729	Misc personal services.	$3,091,239	$6,349,595	4.6% [d]	$449,621	0.05%	0.7%	[illegible]
731	Advertising	$7,620,146	$22,132,776	3.9%	$1,898,879	0.03%	0.7%	[illegible]
732	Credit report.& collection	$2,724,767	$8,373,157	5.4%	$454,864	0.03%	0.6%	$294
733	Mailing, reprod, steno., serv	$10,279,620	$26,231,613	4.7%	$1,237,656	0.04%	0.8%	[illegible]
734	Services to buildings	$21,818,569	$24,230,046	3.5%	$852,530	0.09%	2.6%	$332
735	Misc. equipt. rental	$9,546,735	$30,349,885	8.8%	$2,486,891	0.03%	0.4%	[illegible]
736	Pers. supply services	$82,469,891	$71,832,848	3.3%	$2,343,402	0.11%	3.5%	$2,207
737	Computr & data proc. services	$38,985,907	$181,597,260	4.9%	$8,989,589	0.02%	0.4%	$438
738	Misc. business services	$33,620,921	$71,061,254	5.1%	$3,604,501	0.05%	0.9%	[illegible]
751	Auto rentals, no drivers	$6,545,414	$28,625,943	5.6%	$1,559,917	0.02%	0.4%	$615
752	Automobile parking	$1,773,004	$4,810,800	4.4%	$211,333	0.04%	0.8%	$199
753	Automotive repair shops	$28,177,625	$82,456,640	3.9%	$3,034,838	0.03%	1.4%	$202
754	Automotive serv., exc repair	$10,303,088	$9,160,104	4.4% [d]	$406,480	0.11%	2.5%	$379
762	Electrical repair shops	$7,258,123	$12,355,727	4.6%	$572,512	0.06%	1.3%	$377
763	Watch and jewelry repair	$306,027	$274,160	5.4%	$30,339	0.08%	1.5%	$170
764	Reupholstery & furn. repair	$1,037,044	$1,276,653	5.4%	$69,306	0.08%	1.5%	$152
769	Misc. repair shops	$14,448,201	$24,393,605	5.9% [d]	$1,428,768	0.06%	1.0%	$370
781	Motion picture production	$14,989,448	$28,310,206	4.7% [d]	$1,333,418	0.05%	1.1%	$1,021
782	Motion picture dist.	$1,283,513	$18,051,588	5.1%	$937,457	0.01%	0.1%	$882
783	Motion picture theaters	$5,582,973	$7,023,730	6.3%	$420,613	0.08%	1.3%	$850
784	Video tape rental	$4,219,007	$6,659,177	5.9% [d]	$379,477	0.10%	1.6%	$239
791	Dance studios & schools	$446,692	$863,722	4.3%	$36,968	0.05%	1.2%	$78
792	Prdcrs, orch., entertainers	$5,581,198	$16,444,890	4.6%	$758,789	0.03%	0.7%	$331
793	Bowling centers	$1,824,594	$2,944,692	3.8% [d]	$110,436	0.06%	1.7%	$318
794	Commercial sports	$4,984,471	$12,089,744	3.5%	$417,806	0.04%	1.2%	$1,847
799	Misc. recreation services	$42,380,573	$85,776,035	4.4%	$2,400,533	0.05%	1.7%	$604
801	Offices of medical doctors	$71,151,405	$186,590,897	6.4%	$11,895,629	0.04%	0.6%	$381
802	Dentists offices and clinics	$23,130,890	$46,131,244	10.5%	$4,820,715	0.05%	0.5%	$196
803	Osteopathic physicians	$1,253,148	$4,882,835	13.4% [e]	$612,954	0.03%	0.2%	$108
804	Other health practitioners	$17,910,457	$25,053,745	7.4%	$1,848,469	0.07%	1.0%	$211
805	Nursing & personal care fac.	$95,189,768	$83,425,322	4.7%	$3,814,392	0.11%	3.2%	$3,964

Table VIII-3 Screening Analysis of the Potential Impacts of the Ergonomics Program Standard on All Industries Under Worst-Case Assumptions

SIC	Industry	Annualized Compliance Costs for all Establishments	Revenues for all Establishments ($1,000s)	Profits as a Percentage of Revenues	Profits ($1,000s)	For All Establishments: Annualized Compliance Costs as a Percentage of Revenues	For All Establishments: Annualized Compliance Costs as a Percentage of Profits	For All Establishments: Annualized Compliance Cost per Establishment
806	Hospitals	$264,179,417	$343,314,599	5.5%	$18,867,797	0.08%	1.4%	$36,277
807	Med. & dental labs	$8,668,094	$16,543,625	7.2%	$1,188,833	0.05%	0.7%	$569
808	Home hlth care services	$42,739,874	$27,090,537	3.2%	$879,175	0.15%	4.9%	$2,654
809	Hlth & allied serv., n.e.c.	$17,904,141	$36,836,633	4.7%	$1,745,383	0.07%	1.0%	$859
811	Legal services	$58,835,842	$116,382,132	17.5%	$20,336,371	0.03%	0.3%	$183
821	Elem. & secondary schools	$20,300,210	$20,967,943	5.9% [e]	$1,819,367	0.07%	1.1%	$1,127
822	Colleges & universities	$47,667,382	$73,194,339	9.1%	$6,688,549	0.07%	0.7%	$13,013
823	Libraries	$538,525	$846,367	8.1%	$68,900	0.06%	0.8%	$239
824	Vocational schools	$1,930,703	$6,322,931	6.3%	$399,121	0.03%	0.5%	$203
829	Schools, n.e.c.	$3,099,313	$7,437,108	5.5% [d]	$405,322	0.04%	0.8%	$201
832	Individual & fam. services	$24,009,183	$25,264,263	4.5%	$1,130,665	0.10%	2.1%	$859
833	Job trng. & related serv.	$10,545,892	$8,830,464	3.4%	$300,236	0.12%	3.5%	$1,157
835	Child day care services	$12,397,873	$12,459,867	4.7%	$579,346	0.10%	2.1%	$231
836	Residential care	$28,267,710	$20,174,955	3.4%	$690,992	0.13%	3.8%	$913
839	Social services, n.e.c.	$6,954,902	$22,170,593	5.3%	$1,172,041	0.03%	0.6%	$443
841	Museums & art galleries	$2,088,113	$3,660,267	21.5%	$785,137	0.06%	0.3%	$462
842	Bot. & zoolog. gardens	$673,379	$906,476	21.5%	$194,439	0.07%	0.3%	$1,151
861	Business associations	$3,324,183	$14,342,520	3.9%	$560,206	0.02%	0.6%	$211
862	Prof. organizations	$1,583,948	$7,845,620	4.9% [d]	$384,435	0.02%	0.4%	$222
863	Labor organizations	$3,256,893	$11,731,332	8.6%	$1,008,895	0.03%	0.3%	$167
864	Civic & social assoc.	$11,815,935	$15,341,892	4.3%	$847,788	0.08%	1.8%	$320
865	Political organizations	$440,530	$1,093,341	7.1%	$78,046	0.04%	0.6%	$171
866	Religious organizations	$28,013,289	$57,709,225	8.9%	$5,121,695	0.05%	0.5%	$177
869	Membership orgs., n.e.c.	$4,282,676	$8,263,479	8.5% [d]	$702,311	0.05%	0.6%	$463
871	Eng. and arch. services	$32,250,001	$98,926,133	4.6%	$4,565,342	0.03%	0.7%	$409
872	Accntng, auditing, & bkeeping	$24,929,876	$49,834,103	12.0%	$5,985,175	0.05%	0.4%	$296
873	Research & testing services	$20,008,622	$47,185,549	4.9%	$2,331,878	0.04%	0.9%	$1,069
874	Management & pub. relations	$39,875,732	$96,714,846	6.3%	$6,051,135	0.04%	0.7%	$420
899	Services, n.e.c.	$5,945,706	$13,388,909	6.8%	$910,651	0.04%	0.7%	$345
	Subtotal	$3,979,807,204	$15,852,563,369		$788,983,644			
	Average (weighted)	$40,446,172	$110,726,844	5.8%	$5,329,943	0.05%	1.1%	$671
900	State and local governments	$558,536,987	$816,963,289	na	na	0.07%	na	$5,943
	Total	$4,538,344,191	$16,669,526,658		$788,983,644			

Source: Office of Regulatory Analysis.

Revenue data are from U.S. Dept. of Commerce, Bureau of Census. Compliance costs are from Chapter V of this Final Economic Analysis. Profit data are derived from Robert Morris Associates, RMA Annual Statement Studies 1995-1998 (RMA) and U.S. Department of the Treasury, 1995-1997 (IRS). Average profit rates for the period 1995 through 1998 were calculated from a weighted average of profit rates over this period for all 4-digit industries associated with each 3-digit SIC classification. Revenues were used as weights in this calculation.

*Total revenues from SIC 423 are suppressed by the Census Bureau.

[a] Excludes SIC 5731.

[b] Profit rates, except where noted, are derived from Robert Morris Associates' "RMA Studies."

[c] Profit data not available for all 4-digit industries in this classification; profit rates interpolated from a combination of RMA and IRS profit data.

[d] Based on a combination of RMA and IRS profit data.

[e] Based on IRS profit data.

G. Economic Impacts

To identify possible economic impacts, OSHA compared annualized costs to revenues and profits for all covered establishments, for small entities defined as small using Small Business Administration (SBA) size criteria, and for all small entities with 1–19 employees (Ex. 28–3). Costs were annualized over ten years, including the costs of controlling all of the MSDs projected to occur in the facility over that time period.

OSHA analyzed the impacts of the final standard's annualized compliance costs on small entities in each 3-digit SIC industry. The results of this analysis are shown in Tables VIII–4 and VIII–5. OSHA's procedures call for the agency to conduct a Final Regulatory Flexibility Analysis if, in any affected sector, the impact of the annualized compliance costs exceeds 1 percent of revenues or 5 percent of profits for a substantial number of small entities. As Table VIII–4 shows, in no 3-digit industry do the expected costs of compliance exceed 1 percent of revenues. However, the impact of the compliance costs exceeds 5 percent of profits for 1 industry, SIC 315, leather gloves and mittens.

Focusing on very small establishments, Table VIII–5 shows that no 3-digit industry has estimated costs that exceed one percent of average revenues. The table also shows that in no industry do impacts on profits exceed 5 percent.

However, OSHA analysis in Chapter VII of the Final Economic Analysis shows that some small entities and very small entities in the most affected class, those finding MSD hazards, would have compliance costs exceeding 5 percent of profits.

OSHA prepared an Initial Regulatory Flexibility Analysis as a follow up to convening a Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel (the report of the Panel is in the docket of this rulemaking as Ex. 23). Based on the finding that in some industries the most affected small entities would have compliance costs exceeding 5 percent of profits, OSHA prepared a Final Regulatory Flexibility Analysis, a summary of which is presented in the next section.

Table VIII-4 Estimated Economic Impact Under Worst-Case Scenarios, of the Ergonomics Program Standard on Firms Meeting SBA Size Criteria

									For all small firms	
SIC	Industry	SBA size (Number of Employees)[a]	Annualized Compliance Costs for SBA Establishments	Revenues for SBA Firms ($1,000s)	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [c]	Profits for SBA Firms ($1,000s)	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues—SBA (percent)	Annualized Compliance Costs as a Percentage of Profits—SBA (percent)
074	Veterinary services	100	$6,497,378	$7,309,664	$323,809	6.1%	$448,648	$19,875	$286	0.09%	1.4%
075	Animal serv., except vet.	100	$909,475	$1,345,447	$130,385	6.0% [d]	$80,976	$7,847	$88	0.07%	1.1%
078	Ladscape & hort. services	500	$13,575,734	$15,120,877	$224,169	5.9%	$886,244	$13,139	$199	0.09%	1.5%
081	Timber tracts	100	$162,811	$402,898	$655,119	10.3% [d]	$41,498	$67,477	$192	0.03%	0.3%
083	Forest products	1000	$68,842	$247,111	$2,399,136	10.3% [d]	$25,452	$247,111	$690	0.03%	0.3%
085	Forestry services	500	$439,295	$742,159	$651,017	10.3% [d]	$76,442	$67,055	$285	0.04%	0.4%
091	Commercial fishing	100	$187,907	$684,364	$467,143	5.7% [d]	$39,303	$26,828	$97	0.02%	0.4%
092	Fish hatcheries	100	$25,248	$17,947	$263,926	6.1% [d]	$1,101	$16,191	$294	0.11%	1.8%
097	Hunting & trapping	100	$52,814	$55,959	$221,182	6.1% [d]	$3,433	$13,569	$160	0.07%	1.2%
131	Crude petrol. & nat. gas	500	$2,225,613	$27,927,970	$3,965,915	8.7%	$2,415,769	$343,052	$302	0.01%	0.1%
132	Natural gas liquids	500	$145,718	$2,888,360	$48,139,333	8.7% [d]	$249,843	$4,164,052	$339	0.00%	0.0%
138	Oil & gas field services	500	$3,052,903	$4,998,908	$626,980	8.7%	$432,406	$54,234	$362	0.06%	0.7%
201	Meat products	500	$2,483,498	$21,871,360	$8,956,331	2.6%	$558,467	$228,692	$915	0.01%	0.4%
202	Dairy products	500	$3,358,216	$19,094,397	$15,094,385	3.4%	$656,303	$518,817	$1,918	0.01%	0.4%
203	Preserved fruits & vegetables	500	$2,057,534	$13,298,874	$9,121,313	4.0%	$530,163	$363,623	$1,117	0.01%	0.3%
204	Grain mill products	500	$2,850,176	$15,246,146	$9,680,093	3.3%	$503,441	$319,645	$1,231	0.01%	0.4%
205	Bakery products	500	$3,671,005	$6,776,815	$2,270,290	3.7%	$248,907	$83,386	$1,080	0.05%	1.3%
206	Sugar and confect. prods	500	$1,507,294	$5,665,724	$6,274,334	3.6%	$205,900	$228,017	$1,456	0.02%	0.6%
207	Fats and oils	500	$857,689	$4,164,853	$17,798,517	3.5% [d]	$144,248	$616,445	$1,916	0.01%	0.3%
208	Beverages	500	$3,427,274	$18,683,495	$10,514,066	4.7% [e]	$885,475	$498,298	$1,573	0.01%	0.3%
209	Misc. food products	500	$3,924,958	$15,725,677	$4,590,098	3.1% [e]	$492,202	$143,667	$1,032	0.02%	0.7%
211	Cigarettes	1000	$552,493	$25,695,548	$2,569,554,800	4.0% [d]	$1,032,237	$103,223,683	$55,249	0.00%	0.1%
212	Cigars	500	$53,913	$76,374	$1,909,350	4.0% [d]	$3,068	$76,702	$1,172	0.06%	1.5%
213	Chewing & smoking tobacco	500	$90,246	$391,541	$21,752,278	4.0% [d]	$15,729	$873,829	$3,471	0.02%	0.4%
214	Tobacco stemm. & redrying	500	$94,976	$537,288	$29,848,222	4.0% [d]	$21,583	$1,199,057	$3,275	0.01%	0.3%
221	Brdwven fab. mills, cotton	1000	$1,041,062	$6,018,357	$15,713,726	4.0%	$237,725	$620,692	$2,850	0.02%	0.5%
222	Broadwoven fabric mills	500	$825,069	$1,615,840	$5,404,147	2.8% [e]	$44,729	$149,594	$2,028	0.04%	1.4%
223	Brdwvn fab. mills, wool	500	$86,335	$462,121	$5,776,513	2.8% [e]	$12,792	$159,901	$1,007	0.02%	0.6%
224	Narrow fabric mills	500	$479,645	$800,096	$3,448,690	3.2%	$25,403	$109,496	$1,849	0.05%	1.7%
225	Knitting mills	500	$2,199,261	$6,047,280	$3,597,430	2.9%	$173,600	$103,272	$1,214	0.03%	1.2%
226	Tex. finishing, except wool	500	$912,515	$3,223,076	$4,235,317	2.8%	$90,367	$118,748	$1,110	0.03%	0.9%
227	Carpets and rugs	500	$473,767	$2,065,927	$5,177,762	2.8%	$57,329	$143,683	$1,082	0.02%	0.8%
228	Yarn and thread mills	500	$1,541,008	$2,447,819	$8,354,331	2.0%	$48,127	$164,256	$2,926	0.04%	1.8%
229	Misc. textile goods	500	$1,294,370	$3,747,540	$4,445,480	2.8% [e]	$105,565	$125,225	$1,358	0.03%	1.1%
231	Men's & boys' suits & coats	500	$285,711	$705,937	$2,881,376	0.9% [e]	$6,530	$26,653	$1,070	0.04%	4.0%
232	Men's & boys' furnishings	500	$2,769,842	$5,102,159	$3,171,012	2.7%	$138,566	$86,120	$1,446	0.05%	1.7%
233	Wm's & misses' outerwear	500	$3,544,053	$14,309,804	$1,569,746	2.6%	$369,119	$40,491	$401	0.03%	1.0%
234	Wm's & chldrn's undergarments	500	$410,244	$1,109,998	$3,775,503	2.4% [e]	$26,800	$91,158	$1,233	0.03%	1.4%
235	Hats, caps, & millinery	500	$255,378	$615,079	$1,649,005	3.9%	$24,142	$64,723	$694	0.04%	1.1%
236	Girls' & chldrn's outerwear	500	$407,657	$1,382,929	$2,669,747	2.0%	$27,306	$52,715	$733	0.03%	1.4%
237	Fur goods	500	$23,958	$142,828	$1,027,540	2.6%	$3,654	$26,286	$180	0.02%	0.7%
238	Misc. apparel & accessories	500	$538,584	$1,480,734	$1,580,292	2.6% [e]	$38,050	$40,608	$591	0.04%	1.5%
239	Misc. fab. textile prods	500	$3,534,665	$11,758,209	$1,304,873	2.6%	$306,884	$34,057	$409	0.03%	1.2%
241	Logging	500	$1,931,225	$13,244,206	$929,614	3.9% [f]	$516,390	$36,246	$136	0.01%	0.4%
242	Sawmills & planing mills	500	$5,204,162	$15,942,346	$2,910,249	4.3%	$684,700	$124,991	$887	0.03%	0.7%
243	Millwork & plywood	500	$7,638,094	$16,491,731	$1,826,529	3.6%	$594,072	$65,796	$814	0.04%	1.2%
244	Wood containers	500	$1,826,524	$3,748,376	$1,369,020	3.7%	$137,252	$50,129	$666	0.05%	1.3%
245	Wood bldings & mobile homes	500	$2,492,973	$3,871,282	$4,950,488	3.8%	$145,465	$186,017	$2,519	0.05%	1.4%
249	Misc. wood products	500	$2,644,679	$6,955,302	$2,178,297	3.9% [e]	$269,561	$84,423	$776	0.04%	0.9%
251	Household furniture	500	$4,830,833	$10,807,198	$2,073,124	3.2%	$345,797	$66,334	$911	0.04%	1.4%

Table VIII-4 Estimated Economic Impact Under Worst-Case Scenarios, of the Ergonomics Program Standard on Firms Meeting SBA Size Criteria

									For all small firms	
SIC	Industry	SBA size (Number of Employees)[a]	Annualized Compliance Costs for SBA Establishments	Revenues for SBA Firms ($1,000s)	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [c]	Profits for SBA Firms ($1,000s)	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues—SBA (percent)	Annualized Compliance Costs as a Percentage of Profits—SBA (percent)
252	Office furniture	500	$1,291,889	$2,732,201	$3,012,350	3.8%	$104,776	$115,519	$1,309	0.04%	1.1%
253	Pub bldng & related furn.	500	$1,008,885	$2,252,316	$5,819,938	4.1%	$91,782	$237,162	$2,344	0.04%	1.0%
254	Partitions and fixtures	500	$2,754,129	$6,322,138	$2,089,272	3.7%	$234,829	$77,604	$933	0.04%	1.2%
259	Misc furniture and fixtures	500	$1,042,016	$2,843,495	$2,117,271	3.2%	$89,618	$66,730	$754	0.04%	1.1%
261	Pulp mills	750	$451,825	$5,790,710	$134,667,674	4.5%	$260,635	$6,061,288	$10,508	0.01%	0.2%
262	Paper mills	750	$4,711,179	$35,582,333	$191,302,866	4.8% [e]	$1,690,161	$9,086,886	$25,329	0.01%	0.3%
263	Paperboard mills	750	$1,700,828	$19,869,962	$196,732,297	4.5% [d]	$894,332	$8,854,769	$16,840	0.01%	0.2%
265	Paperbrd containers & boxes	500	$6,614,525	$14,020,165	$8,670,479	4.6%	$640,780	$396,277	$2,598	0.03%	0.7%
267	Misc. cnvrtd paper products	500	$5,690,027	$15,570,727	$6,820,292	4.3%	$670,269	$293,591	$2,021	0.03%	0.7%
271	Newspapers	500	$6,097,033	$7,829,630	$1,125,756	3.8% [d]	$297,489	$42,773	$750	0.07%	1.8%
272	Periodicals	500	$1,858,408	$11,989,180	$2,200,657	3.8%	$455,589	$83,625	$327	0.01%	0.4%
273	Books	500	$1,881,460	$8,172,158	$2,457,053	4.5% [e]	$366,256	$110,119	$543	0.02%	0.5%
274	Miscellaneous publishing	500	$1,271,575	$5,302,578	$1,795,050	4.5%	$237,290	$80,328	$401	0.02%	0.5%
275	Commercial printing	500	$15,843,451	$44,739,282	$1,315,823	3.4%	$1,540,599	$45,310	$468	0.04%	1.0%
276	Manifold business forms	500	$1,504,029	$3,614,775	$5,561,192	3.4%	$121,095	$186,300	$1,903	0.03%	1.0%
277	Greeting cards	500	$199,647	$856,946	$6,967,041	3.8% [d]	$32,560	$264,715	$1,490	0.02%	0.6%
278	Blankbooks & bookbinding	500	$1,558,022	$2,534,882	[illegible]	3.9%	$99,828	$68,894	$1,006	0.06%	1.5%
279	Printing trade services	500	$1,521,084	$3,736,702	[illegible]	3.6% [e]	$133,797	$40,264	$451	0.04%	1.1%
281	Indust. inorganic chemicals	1000	$2,210,991	$30,002,480	$50,087,613	4.5% [e]	$1,348,616	$2,251,445	$3,707	0.01%	0.2%
282	Plastics mat. & synthetics	750	$2,930,842	$57,333,971	$100,234,215	4.5%	$2,577,543	$4,506,194	$5,200	0.01%	0.1%
283	Drugs	500	$2,026,527	$14,377,569	$11,576,143	4.8%	$688,184	$554,093	$1,362	0.01%	0.2%
284	Soap, clnrs, & toilet goods	500	$1,937,045	$13,947,232	$6,619,474	4.4%	$613,851	$291,339	$835	0.01%	0.3%
285	Paints & allied products	500	$1,130,554	$6,934,916	$6,147,975	3.8%	$260,059	$230,549	$821	0.01%	0.4%
286	Indust. organic chemicals	500	$1,790,244	$8,875,050	$18,842,994	4.5%	$398,267	$845,578	$2,248	0.01%	0.3%
287	Agricultural chemicals	500	$652,941	$5,064,778	$7,976,028	3.8%	$191,034	$300,840	$761	0.01%	0.3%
289	Misc. chemical products	500	$1,972,137	$11,248,653	$6,784,471	4.8% [e]	$535,062	$322,715	$868	0.01%	0.3%
291	Petroleum refining	1500	$2,633,929	$145,808,878	$837,982,057	2.9%	$4,155,553	$23,882,489	$15,193	0.00%	0.1%
295	Asphlt pavng & roofing mat.	500	$1,078,661	$4,484,234	$7,498,719	3.9%	$175,673	$293,768	$1,077	0.01%	0.4%
299	Misc. pet. & coal prods	500	$389,654	$3,602,880	$11,017,982	4.7%	$170,723	$522,088	$926	0.01%	0.2%
301	Tires and inner tubes	1000	$2,023,808	$12,649,425	$110,959,868	4.0% [d]	$509,114	$4,465,916	$17,753	0.02%	0.4%
302	Rubber & plastics footwear	1000	$196,589	$688,879	$14,058,755	4.0% [d]	$27,726	$565,837	$4,078	0.03%	0.7%
305	Hose, bltng, and gaskets	500	$1,017,513	$2,376,018	$3,876,049	4.0%	$94,966	$154,919	$1,340	0.03%	0.9%
306	Fab. rubber prod., n.e.c.	500	$2,189,498	$5,779,201	$4,274,557	4.0%	$232,601	$172,042	$1,352	0.03%	0.8%
308	Misc plastics, n.e.c.	500	$15,360,776	$50,183,465	$4,687,853	4.0%	$2,020,849	$188,776	$1,210	0.03%	0.6%
311	Leather tan. & finishing	500	$414,762	$964,049	$3,171,214	1.7%	$16,630	$54,703	$1,244	0.04%	2.3%
313	Footwear cut stock	500	$69,963	na	na [b]	2.2% [d]	na	na	$1,030	na	na
314	Footwear, except rubber	500	$712,528	$998,863	$3,351,889	2.3%	$23,410	$78,557	$1,995	0.06%	2.5%
315	Leather gloves & mittens	500	$104,912	$65,592	$1,261,385 [b]	2.2% [d]	$1,441	$27,710	$1,842	0.15%	6.6%
316	Luggage	500	$188,039	$650,092	$2,600,368	2.9%	$19,015	$76,061	$738	0.03%	1.0%
317	Hndbags & prsnl lethr gds.	500	$156,358	$521,156	$1,514,988 [b]	2.2% [d]	$11,449	$33,281	$465	0.03%	1.4%
319	Leather goods, n.e.c.	500	$252,722	$555,521	$1,368,278	2.2% [f]	$12,203	$30,058	$628	0.05%	2.1%
321	Flat glass	1000	$524,469	$2,709,081	$44,411,164	4.9% [d]	$133,468	$2,187,995	$8,704	0.02%	0.4%
322	Glass, pressed or blown	750	$2,308,237	$9,244,687	$18,905,290	4.9% [f]	$455,456	$931,403	$4,720	0.02%	0.5%
323	Prod. of purchased glass	500	$1,423,171	$2,883,972	$1,988,946	5.1%	$145,641	$100,442	$990	0.04%	0.9%
324	Cement, hydraulic	750	$727,441	$4,720,190	$32,779,097	4.9% [d]	$232,549	$1,614,921	$5,117	0.02%	0.3%
325	Structural clay products	500	$1,151,767	$1,261,365	$3,234,269	5.4%	$67,909	$174,125	$2,130	0.07%	1.2%
326	Pottery & related prods	500	$900,355	$1,218,562	$1,082,204	4.9% [d]	$60,035	$53,317	$767	0.07%	1.4%
327	Concrete & plast. prdcts	500	$8,138,716	$19,732,738	$3,222,724	4.8%	$952,760	$155,603	$1,080	0.03%	0.7%
328	Cut stone & stone prods	500	$535,838	$1,016,183	$965,036	5.0%	$51,063	$48,493	$307	0.05%	1.0%
329	Misc. nonmet. mineral prods.	500	$1,686,396	$4,522,900	$3,852,558	5.0% [e]	$223,990	$190,792	$1,143	0.03%	0.6%

Table VIII-4 Estimated Economic Impact Under Worst-Case Scenarios, of the Ergonomics Program Standard on Firms Meeting SBA Size Criteria

SIC	Industry	SBA size (Number of Employees)*	Annualized Compliance Costs for SBA Establishments	Revenues for SBA Firms ($1,000s)	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [c]	Profits for SBA Firms ($1,000s)	Average Profit per Firm (SBA) ($)	For all small firms Average Cost per Firm (SBA) ($)	For all small firms Annualized Compliance Costs as a Percentage of Revenues—SBA (percent)	For all small firms Annualized Compliance Costs as a Percentage of Profits—SBA (percent)
331	Basic steel products	750	$6,902,635	$69,010,676	$71,587,838	4.3%	$2,971,554	$3,082,524	$7,199	0.01%	0.2%
332	Iron and steel foundries	500	$2,188,182	$4,870,320	$5,316,943	4.6%	$221,896	$242,244	$2,064	0.04%	0.9%
333	Primary nonfer. metals	750	$1,072,534	$17,465,720	$104,585,150	4.5% [d]	$789,048	$4,724,837	$6,422	0.01%	0.1%
334	Secondary nonfer. metals	500	$480,535	$4,175,342	$19,152,945	3.9%	$161,795	$742,177	$1,768	0.01%	0.2%
335	Nonfer. rolling & drawing	750	$4,642,135	$45,476,554	$58,983,857	4.9%	$2,211,228	$2,868,000	$6,070	0.01%	0.2%
336	Nonfer. foundries (cstngs)	500	$2,106,085	$5,180,943	$3,491,201	4.5%	$232,907	$156,945	$1,313	0.04%	0.8%
339	Misc. primary metal prdcts	750	$850,154	$4,169,927	$5,066,740	4.8%	$201,967	$245,403	$1,036	0.02%	0.4%
341	Met. cans & ship. containers	500	$1,340,069	$1,621,160	$8,487,749	4.1%	$65,707	$344,014	$3,363	0.04%	1.0%
342	Cutlery, handtls, & hardware	500	$2,591,818	$6,691,129	$3,168,148	4.6% [e]	$308,517	$146,078	$1,120	0.04%	0.8%
343	Plumbing & heating fixtures	500	$1,115,960	$3,157,332	$5,500,578	4.8%	$150,644	$262,446	$1,701	0.03%	0.6%
344	Fab. struct. metal prdcts	500	$12,175,304	$37,977,730	$3,142,031	4.3%	$1,626,612	$134,575	$942	0.03%	0.7%
345	Screw machine products	500	$3,124,799	$8,090,741	$3,399,471	4.4%	$357,767	$150,322	$1,245	0.04%	0.8%
346	Met. forgings & stampings	500	$5,798,684	$18,722,856	$5,900,679	4.6%	$854,915	$269,434	$1,660	0.03%	0.6%
347	Metal services, n.e.c.	500	$4,180,962	$9,995,919	$1,930,459	5.0%	$494,858	$95,569	$782	0.04%	0.8%
348	Ordnance and access., n.e.c.	500	$384,830	$733,846	$1,916,047	4.5% [d]	$33,362	$87,106	$932	0.05%	1.1%
349	Misc. fab. metal products	500	$7,451,850	$20,152,405	$3,139,004	4.9%	$986,213	$153,616	$1,062	0.03%	0.7%
351	Engines and turbines	1000	$2,290,030	$16,985,636	$56,430,654	4.0% [d]	$687,199	$2,283,054	$7,629	0.01%	0.3%
352	Farm & garden machinery	500	$1,583,707	$4,821,398	$3,024,716	4.7%	$227,886	$142,965	$940	0.03%	0.7%
353	Construct. & related mach.	500	$3,643,013	$12,575,744	$4,366,578	4.3%	$543,864	$188,842	$1,148	0.03%	0.6%
354	Metalworking machinery	500	$7,880,566	$21,483,547	$1,923,153	4.6%	$986,237	$88,286	$680	0.04%	0.8%
355	Special industry mach.	500	$4,186,825	$15,982,001	$3,696,115	4.1%	$648,701	$150,023	$904	0.02%	0.6%
356	General indust. mach.	500	$5,661,332	$15,116,697	$4,271,460	4.3%	$656,138	$185,402	$1,362	0.03%	0.7%
357	Computer & office equip.	500	$1,791,829	$12,243,311	$6,625,168	3.3%	$403,103	$218,129	$899	0.01%	0.4%
358	Refrig. & serv. indust mach.	500	$2,854,849	$8,739,705	$4,721,613	3.6%	$314,109	$169,697	$1,346	0.03%	0.8%
359	Industrial mach., n.e.c.	500	$11,136,527	$27,692,881	$1,086,294	5.1% [e]	$1,400,654	$54,943	$434	0.04%	0.8%
361	Elect. dist. equipment	750	$1,615,579	$11,273,986	$14,873,332	5.2%	$583,158	$769,337	$2,158	0.01%	0.3%
362	Elect. indust. apparatus	500	$2,461,026	$6,300,493	$3,392,834	5.1%	$323,830	$174,383	$1,144	0.03%	0.7%
363	Household appliances	500	$645,445	$1,916,838	$5,756,270	5.6% [d]	$107,177	$321,852	$1,568	0.03%	0.5%
364	Elct. lghtng & wire equip.	500	$2,335,322	$7,587,353	$4,355,541	5.7%	$434,863	$249,634	$1,162	0.03%	0.5%
365	Household audio & vid. equip.	750	$1,121,446	$13,716,113	$17,721,076	5.0%	$689,969	$891,433	$1,460	0.01%	0.2%
366	Communications equipment	750	$4,824,912	$57,675,808	$30,039,483	5.8% [e]	$3,319,137	$1,728,717	$2,532	0.01%	0.1%
367	Electronic compnnts & access.	500	$5,499,452	$23,959,350	$4,279,984	5.6%	$1,336,749	$238,790	$889	0.02%	0.4%
369	Misc. elect. equipment	500	$2,024,078	$6,460,095	$4,403,609	5.9% [e]	$380,534	$259,396	$1,213	0.03%	0.5%
371	Motor vehicles & equipt.	500	$8,943,314	$22,926,322	$5,821,819	3.5%	$802,758	$203,849	$1,931	0.03%	0.9%
372	Aircraft and parts	1000	$10,748,768	$93,016,989	$64,238,252	4.7% [e]	$4,339,753	$2,997,067	$7,436	0.01%	0.2%
373	Ship, boat blding and repair [s]	500	$2,267,952	$3,523,310	$1,358,254	3.6%	$128,325	$49,470	$899	0.06%	1.7%
374	Railroad equipment	1000	$869,095	$6,654,526	$43,779,776	3.7%	$244,554	$1,608,907	$5,771	0.01%	0.4%
375	Motorcycles & bicycles	500	$223,223	$883,486	$2,531,479	3.7%	$33,070	$94,756	$615	0.02%	0.6%
376	Guided missiles	1000	$1,721,893	$18,052,173	$231,438,115	3.7%	$675,714	$8,663,001	$22,286	0.01%	0.3%
379	Misc. transportation equip.	500	$835,625	$3,155,211	$3,063,312	3.7% [e]	$115,388	$112,027	$761	0.02%	0.7%
381	Srch & navigation equipment	750	$3,473,317	$30,132,161	$51,158,168	4.7% [e]	$1,416,212	$2,404,434	$5,905	0.01%	0.2%
382	Meas. & contrlling devices	500	$3,484,911	$14,397,362	$3,508,984	5.6%	$808,467	$197,043	$763	0.02%	0.4%
384	Medical instrmnts & supplies	500	$3,097,673	$14,243,807	$3,717,069	5.3% [e]	$756,732	$197,477	$730	0.02%	0.4%
385	Ophthalmic goods	500	$289,433	$775,726	$1,524,020	3.7%	$28,508	$56,008	$511	0.03%	0.9%
386	Photo. equip. & supplies	500	$484,318	$2,498,427	$3,934,531	4.0%	$99,937	$157,381	$693	0.02%	0.4%
387	Watches, clocks, & parts	500	$56,467	$282,180	$2,121,654	5.1% [d]	$14,281	$107,376	$409	0.02%	0.4%
391	Jwlry, slvrwre, and plate	500	$718,697	$4,852,914	$1,704,571	3.3%	$161,574	$56,752	$257	0.02%	0.5%
393	Musical instruments	500	$319,673	$766,619	$1,432,933	3.8% [d]	$29,164	$54,512	$586	0.04%	1.1%
394	Toys and sporting goods	500	$1,760,361	$7,306,766	$2,141,491	3.7%	$267,402	$78,371	$512	0.02%	0.7%
395	Office and art supplies	500	$447,103	$1,893,745	$1,910,943	3.8% [d]	$72,042	$72,697	$448	0.02%	0.6%

Table VIII-4 Estimated Economic Impact Under Worst-Case Scenarios, of the Ergonomics Program Standard on Firms Meeting SBA Size Criteria

SIC	Industry	SBA size (Number of Employees)*	Annualized Compliance Costs for SBA Establishments	Revenues for SBA Firms ($1,000s)	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [c]	Profits for SBA Firms ($1,000s)	Average Profit per Firm (SBA) ($)	For all small firms Average Cost per Firm (SBA) ($)	For all small firms Annualized Compliance Costs as a Percentage of Revenues—SBA (percent)	For all small firms Annualized Compliance Costs as a Percentage of Profits—SBA (percent)
396	Costume jewelry & notions	500	$299,582	$1,300,768	$1,192,271	3.8% [d]	$49,484	$45,357	$278	0.02%	0.6%
399	Misc. manufactures	500	$3,324,791	$12,545,710	$1,443,695	4.1%	$510,610	$58,758	$383	0.03%	0.7%
411	Local & suburban trans.	500	$8,173,462	$5,876,806	$693,674	4.4%	$258,515	$30,514	$916	0.13%	3.0%
412	Taxicabs	500	$634,660	$1,105,735	$334,160	4.5% [d]	$49,844	$15,063	$193	0.06%	1.3%
413	Intercty & rural bus trans.	500	$467,639	$585,677	$2,047,822	5.4%	$31,480	$110,070	$1,213	0.06%	1.1%
414	Bus charter service	500	$1,139,408	$1,457,057	$1,112,257	4.6%	$66,962	$51,116	$853	0.08%	1.7%
415	School buses	500	$3,945,981	$2,135,801	$655,154	4.6%	$97,179	$29,809	$982	0.15%	3.3%
417	Bus terminals	100	$22,362	$9,269	$178,250	4.5% [d]	$418	$8,035	$399	0.22%	5.0%
421	Trking & Courier Service	100	$37,789,609	$70,008,631	$682,252	3.4%	$2,407,318	$23,460	$334	0.05%	1.4%
422	Pub. warehousing & storage	1000	$8,804,368	$5,737,546	$645,103	10.7%	$611,567	$68,762	$1,003	0.16%	1.5%
423	Trucking terminal fac.	500	$69,378	$38,066	$528,972 [b]	3.9% [d]	$1,491	$20,705	$867	0.16%	4.2%
430	U.S. Postal Service	na	na	na	na	na	na	na	na	na	na
451	Air trans., scheduled	1500	$24,340,198	$139,896,879	$84,888,883	3.6% x	$4,977,185	$3,020,136	$14,848	0.02%	0.5%
452	Air trans., nonsched.	1500	$780,090	$4,596,451	$2,785,728	3.3%	$243,612	$147,644	$479	0.02%	0.3%
458	Airports and services	100	$1,553,070	$2,548,936	$815,921	3.8%	$97,497	$31,200	$416	0.05%	1.3%
461	Pipelines, except natural gas	1500	$1,033,860	$8,949,097	$88,604,921	6.5% [d]	$585,965	$5,801,632	$10,289	0.01%	0.2%
472	Pass. trans. arrangements	100	$2,638,317	$7,842,150	$291,573	2.4%	$190,399	$7,079	$85	0.03%	1.2%
473	Freight trans. arrangements	1000	$6,786,441	$13,557,555	$1,127,447	3.9%	$521,966	$43,407	$577	0.05%	1.3%
474	Rental of railroad cars	20	$13,504	$227,179	$3,112,041	3.4% [d]	$7,704	$105,530	$136	0.00%	0.1%
478	Misc. trans. services	100	$1,727,132	$1,199,860	$397,838	5.4%	$64,961	$32,367	$695	0.12%	2.1%
481	Telephone communication	1500	$14,854,888	$308,432,617	$30,966,070	3.9%	$12,368,636	$1,837,563	$2,242	0.01%	0.1%
482	Telegrph & other comm.	100	$50,194	$639,961	$1,587,993	5.6% [f]	$35,704	$88,596	$114	0.01%	0.1%
483	Radio & TV broadcasting	100	$1,169,877	$5,760,487	$828,013	6.6%	$380,357	$54,673	$151	0.02%	0.3%
484	Cable & othr pay TV services	100	$975,082	$4,447,226	$2,309,048	2.7%	$121,187	$62,922	$245	0.01%	0.4%
489	Communication serv., n.e.c.	100	$102,117	$2,012,842	$1,476,773	6.1%	$122,783	$90,083	$72	0.00%	0.1%
491	Electric services	100	$1,984,774	$12,729,512	$10,459,747	12.5%	$1,586,946	$1,303,982	$483	0.00%	0.0%
492	Gas product. & distribution	10	$219,701	$2,605,588	$5,639,801	7.9%	$205,348	$444,476	$119	0.00%	0.0%
493	Comb. utility services	20	$106,180	$306,134	$1,749,337	10.4% [d]	$31,761	$181,480	$122	0.01%	0.1%
494	Water supply	100	$455,092	$1,422,434	$417,626	12.2%	$173,893	$51,065	$126	0.03%	0.2%
495	Sanitary services	100	$1,768,449	$5,967,715	$1,250,560	6.2%	$372,958	$78,156	$293	0.02%	0.4%
496	Steam & air-cond. supplies	100	$16,197	$50,218	$1,091,696	10.4% [d]	$5,210	$113,261	$258	0.02%	0.2%
497	Irrigation systems	100	$30,402	$71,818	$203,450	10.4% [d]	$7,451	$21,107	$84	0.04%	0.4%
501	Motor vehicles	100	$17,794,990	$243,498,263	$7,338,706	2.2%	$5,332,451	$160,713	$437	0.01%	0.3%
502	Furn. & homefurnishings	100	$6,371,880	$45,558,231	$3,107,868	2.3%	$1,040,619	$70,988	$406	0.01%	0.6%
503	Lumber & construct. mat.	100	$14,581,037	$71,149,013	$3,956,240	2.3%	$1,637,651	$91,062	$662	0.02%	0.7%
504	Prof. & commercial equip.	100	$16,865,174	$117,949,440	$2,865,424	2.7%	$3,220,156	$78,229	$347	0.01%	0.4%
505	Met. & minerals, except pet.	100	$6,104,097	$88,083,233	$10,345,693	2.6%	$2,275,420	$267,256	$577	0.01%	0.2%
506	Electrical goods	100	$13,183,348	$152,717,682	$5,334,184	2.5%	$3,829,564	$133,761	$349	0.01%	0.3%
507	Hardware supplies	100	$12,831,802	$59,471,522	$3,243,940	2.5%	$1,495,727	$81,587	$555	0.02%	0.7%
508	Mach., equipt, & supplies	100	$32,266,054	$185,868,942	$3,120,491	2.9%	$5,361,954	$90,020	$464	0.01%	0.5%
509	Misc. durable goods	100	$10,408,783	$114,520,585	$3,072,234	3.0% [e]	$3,404,665	$91,337	$269	0.01%	0.3%
511	Paper and paper products	100	$5,842,403	$54,840,021	$4,200,691	1.9%	$1,059,399	$81,149	$333	0.01%	0.4%
512	Drugs, propriet., & sundries	100	$2,858,374	$37,353,268	$6,828,751	3.6% [e]	$1,335,379	$244,128	$417	0.01%	0.2%
513	Apparel and notions	100	$5,356,497	$77,016,584	$3,898,982	2.5%	$1,908,792	$96,633	$254	0.01%	0.3%
514	Groceries & related products	100	$21,297,198	$218,814,846	$6,267,970	1.8%	$3,868,372	$110,810	$325	0.01%	0.3%
515	Farm-prod. raw materials	100	$2,399,331	$95,011,629	$13,088,804	28.3%	$26,913,704	$3,707,633	$268	0.00%	0.0%
516	Chemicals & allied prods	100	$5,212,117	$70,151,235	$6,688,714	3.1%	$2,163,086	$206,245	$369	0.01%	0.2%
517	Petrol. & petrol. prods	100	$4,993,965	$159,830,273	$18,899,169	1.3%	$2,039,195	$241,125	$436	0.00%	0.2%
518	Beer, wine, & dist. bev.	100	$4,589,822	$28,349,716	$7,805,539	3.5%	$996,800	$274,452	$1,048	0.01%	0.4%
519	Misc. nondurable goods	100	$13,263,715	$107,195,186	$2,420,357	2.3%	$2,476,906	$55,927	$299	0.01%	0.5%

Table VIII-4 Estimated Economic Impact Under Worst-Case Scenarios, of the Ergonomics Program Standard on Firms Meeting SBA Size Criteria

									For all small firms		
SIC	Industry	SBA size (Number of Employees)[a]	Annualized Compliance Costs for SBA Establishments	Revenues for SBA Firms ($1,000s)	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [c]	Profits for SBA Firms ($1,000s)	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues—SBA (percent)	Annualized Compliance Costs as a Percentage of Profits—SBA (percent)
521	Lumber & other bldng mat.	100	$15,104,187	$34,646,566	$2,041,155	2.3%	$796,871	$46,947	$711	0.03%	1.5%
523	Paint, glass, wallpaper strs	100	$2,952,482	$4,198,092	$746,327	2.3%	$94,457	$16,792	$333	0.04%	2.0%
525	Hardware stores	100	$4,522,768	$9,295,593	$747,354	2.2%	$199,855	$16,068	$332	0.04%	2.1%
526	Retail nurseries and gardens	100	$3,926,459	$6,916,627	$685,629	2.5% [e]	$169,457	$16,798	$359	0.05%	2.1%
527	Mobile home dealers	100	$2,754,481	$9,308,186	$2,506,918	3.2%	$300,189	$80,848	$635	0.03%	0.8%
531	Department stores	500	$107,125,395	$14,920,000	$90,424,242	2.8%	$417,760	$2,531,879	$10,568	0.01%	0.4%
533	Variety stores	500	$5,246,950	$2,014,120	$518,168	3.1%	$62,438	$16,063	$546	0.11%	3.4%
539	Misc. gen. merchandise strs.	100	$4,662,095	$6,172,672	$867,314	2.2%	$135,799	$19,081	$349	0.04%	1.8%
541	Grocery stores	500	$88,221,377	$118,331,661	$1,354,669	1.4%	$1,597,477	$18,288	$761	0.06%	4.2%
542	Meat and fish markets	500	$1,668,617	$5,312,763	$698,037	2.5%	$132,819	$17,451	$220	0.03%	1.3%
543	Fruit & vegetable markets	500	$556,557	$2,156,122	$670,436	1.4% [d]	$30,418	$9,458	$173	0.03%	1.8%
544	Candy, nut, & confctnry strs	500	$804,252	$1,075,952	$356,630	4.1%	$43,845	$14,533	$203	0.06%	1.4%
545	Dairy products stores	500	$375,186	$555,577	$357,975	1.4% [d]	$7,838	$5,050	$155	0.04%	3.1%
546	Retail bakeries	500	$4,696,328	$5,263,348	$310,632	3.2%	$168,427	$9,940	$255	0.08%	2.6%
549	Misc. food stores	100	$1,497,845	$3,638,480	$485,584	2.4%	$86,414	$11,533	$157	0.03%	1.4%
551	New and used car dealers	100	$27,553,404	$292,038,764	$14,022,797	1.2% [e]	$3,577,475	$171,779	$1,240	0.01%	0.7%
552	Used car dealers	1000	$1,643,727	$26,046,018	$1,204,329	2.5%	$638,127	$29,506	$76	0.01%	0.3%
553	Auto & home supply stores	100	$16,983,595	$19,937,515	$734,699	2.3%	$453,578	$16,714	$419	0.06%	2.5%
554	Gas service stations	100	$20,398,832	$92,849,080	$1,661,818	1.6%	$1,485,585	$26,589	$245	0.01%	0.9%
555	Boat dealers	100	$1,855,789	$6,941,415	$1,497,285	2.0%	$135,358	$29,197	$378	0.03%	1.3%
556	Rec. vehicle dealers	20	$960,565	$3,776,117	$1,564,906	2.1%	$77,410	$32,081	$375	0.02%	1.2%
557	Motorcycle dealers	100	$400,981	$6,364,205	$1,722,849	2.8%	$178,198	$48,240	$108	0.01%	0.2%
559	Auto dealers, n.e.c.	500	$105,020	$1,290,175	$1,054,926	2.6% [e]	$33,545	$27,428	$86	0.01%	0.3%
561	Men's & boys' clothing strs	100	$1,735,648	$4,530,201	$734,468	1.4%	$62,290	$10,099	$142	0.02%	1.4%
562	Women's clothing stores	100	$5,068,226	$8,659,216	$521,388	1.1%	$95,251	$5,735	$139	0.03%	2.4%
563	Wm's access.& specialty strs	100	$912,098	$1,692,509	$424,294	1.8% [d]	$31,255	$7,835	$115	0.03%	1.5%
564	Childrn's & infants' wear strs	100	$893,447	$1,349,923	$442,743	1.8% [d]	$24,929	$8,176	$181	0.04%	2.2%
565	Family clothing stores	100	$7,587,500	$5,923,495	$811,771	2.2%	$127,355	$17,453	$436	0.05%	2.5%
566	Shoe stores	100	$4,865,601	$5,381,323	$720,198	2.4%	$130,497	$17,465	$190	0.03%	1.1%
569	Misc. apparel stores	500	$820,287	$3,709,783	$486,401	2.0%	$74,196	$9,728	$90	0.02%	0.9%
571	Furniture & homefurnishing strs	100	$23,391,313	$42,126,313	$837,185	2.4%	$1,030,187	$20,473	$385	0.05%	1.9%
572	Household appliance strs	100	$3,014,842	$7,560,615	$851,037	2.2%	$168,224	$18,936	$323	0.04%	1.7%
573	Radio, TV, & comptr strs	100	$8,489,629	$25,990,643	$1,073,328	2.1%	$550,911	$22,751	$233	0.02%	1.0%
581	Eating & drinking places	500	$139,237,475	$168,250,630	$469,053	3.0%	$5,044,847	$14,064	$325	0.07%	2.3%
591	Drug stores	100	$13,932,223	$30,098,137	$1,276,589	2.2%	$654,634	$27,766	$347	0.03%	1.3%
592	Liquor stores	1000	$1,667,710	$21,457,553	$803,413	1.6%	$337,956	$12,654	$68	0.01%	0.5%
593	Used merchandise stores	500	$4,154,670	$6,333,307	$327,184	4.8%	$305,582	$15,787	$195	0.06%	1.2%
594	Misc. shopping goods strs.	100	$23,314,245	$46,836,435	$506,822	2.6%	$1,236,483	$13,380	$195	0.04%	1.5%
596	Nonstore retailers	100	$8,364,985	$21,621,142	$831,934	2.5%	$537,863	$20,696	$291	0.03%	1.4%
598	Fuel dealers	100	$3,969,173	$11,265,014	$1,502,002	1.8%	$206,800	$27,573	$380	0.03%	1.4%
599	Retail stores, n.e.c.	100	$10,948,496	$30,053,132	$392,251	3.2%	$969,091	$12,649	$123	0.03%	1.0%
601	Central res. depository	10	$1,382	$126,998	$25,399,600	10.8% [d]	$13,716	$2,743,157	$115	0.00%	0.0%
602	Commercial banks	10	$3,375,263	$1,624,224	$1,727,898	10.8% [d]	$175,416	$186,613	$103	0.01%	0.1%
603	Savings institutions	10	$903,024	$608,115	$1,974,399	10.8% [d]	$65,676	$213,235	$106	0.01%	0.0%
606	Credit unions	10	$773,380	$3,506,092	$494,582	10.8% [d]	$378,658	$53,415	$74	0.01%	0.1%
608	Foreign banking	10	$16,908	$343,106	$6,126,893	10.8% [d]	$37,055	$661,704	$92	0.00%	0.0%
609	Banking-related functions	100	$666,547	$2,929,885	$918,459	10.8% [d]	$316,428	$99,194	$142	0.02%	0.1%
611	Federal credit agencies	20	$107,461	$127,485	$1,722,770	10.8%	$13,768	$186,059	$96	0.01%	0.1%
614	Personal cred. institutions	20	$1,412,949	$3,486,159	$856,550	15.5% [d]	$539,193	$132,480	$82	0.01%	0.1%
615	Business cred. institutions	20	$450,801	$4,947,066	$1,814,771	17.1% [d]	$844,648	$309,849	$99	0.01%	0.0%

Table VIII-4 Estimated Economic Impact Under Worst-Case Scenarios, of the Ergonomics Program Standard on Firms Meeting SBA Size Criteria

									For all small firms		
SIC	Industry	SBA size (Number of Employees)[a]	Annualized Compliance Costs for SBA Establishments	Revenues for SBA Firms ($1,000s)	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [c]	Profits for SBA Firms ($1,000s)	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues—SBA (percent)	Annualized Compliance Costs as a Percentage of Profits—SBA (percent)
616	Mortgage bankers & brokers	100	$2,755,682	$9,629,490	$695,722	11.7%	$1,122,225	$81,080	$134	0.02%	0.2%
621	Security brokers & dealers	20	$1,957,465	$6,612,505	$842,572	12.8%	$844,196	$107,568	$93	0.01%	0.1%
622	Commodity contracts brokers	100	[illegible]	$1,550,654	$1,061,365	13.3%	$206,476	$141,325	$92	0.01%	0.1%
623	Security & commod. exchanges	100	$21,567	$110,466	$1,600,957	13.3%	$14,709	$213,174	$211	0.01%	0.1%
628	Security & commod. services	100	$1,824,210	$12,130,210	$731,044	15.3% [d]	$1,858,605	$112,011	$103	0.01%	0.1%
631	Life insurance	100	$3,311,304	$7,677,233	$7,739,146	6.8% [d]	$523,844	$528,069	$326	0.00%	0.1%
632	Medical & health insur.	20	$283,761	$2,824,245	$4,637,512	3.6%	$101,867	$167,270	$139	0.00%	0.1%
633	Fire, marine, & casity ins.	1500	$12,674,215	$304,968,860	$140,086,752	9.1% [d]	$27,599,682	$12,677,851	$5,830	0.00%	0.0%
635	Surety insurance	20	$53,081	$425,650	$2,086,520	6.8%	$29,044	$142,370	$110	0.01%	0.1%
636	Title insurance	100	$576,728	$379,969	$628,048	4.6%	$17,289	$28,576	$243	0.04%	0.9%
637	Pension and health funds	1000	$607,997	$1,884,439	$758,021	6.8% [f]	$128,582	$51,722	$240	0.03%	0.5%
639	Ins. carriers, n.e.c.	100	$59,485	$435,319	$1,836,789	6.8%	$29,703	$125,331	$213	0.01%	0.2%
641	Insurance agents	100	$11,945,677	$43,627,225	$376,269	6.8% [d]	$2,977,558	$25,680	$98	0.03%	0.4%
651	Real estate operators	100	$12,232,921	$68,368,940	$723,466	14.1% [d]	$9,619,754	$101,794	$126	0.02%	0.1%
653	RE agents and managers	100	$13,395,872	$50,958,708	$452,717	13.2%	$6,739,289	$59,872	$112	0.02%	0.2%
654	Title abstract offices	100	$590,586	$1,983,347	$450,454	13.3% [e]	$263,972	$59,953	$124	0.03%	0.2%
655	Subdividers & developers	100	$2,691,622	[illegible]	$686,118	10.6%	$1,256,055	$72,789	$147	0.02%	0.2%
671	Holding offices	100	$1,602,500	[illegible]	$1,458,012	25.4%	$2,363,917	$370,114	$175	0.01%	0.0%
672	Investment offices	20	$65,503	$1,718,384	$2,504,933	20.4%	$351,041	$511,722	$78	0.00%	0.0%
673	Trusts	100	$956,791	$8,081,507	$964,611	24.3%	$1,963,604	$234,376	[illegible]	0.01%	0.0%
679	Miscellaneous investing	20	$667,358	$9,524,886	$1,309,443	21.5%	$2,051,829	$282,077	$85	0.01%	0.0%
701	Hotels and motels	100	$15,659,677	$20,248,760	$562,982	7.0%	$1,407,280	[illegible]	$379	0.07%	1.0%
702	Rooming & boarding houses	1000	$126,188	$427,076	$274,294	7.0%	$29,727	$19,092	$81	0.03%	0.4%
703	Camps and rec. vehicle parks	1000	$356,537	$2,820,658	$403,297	7.3%	$206,909	$29,584	$51	0.01%	0.2%
704	Membership-basis org. hotels	100	$158,700	$498,571	$216,959	7.0% [d]	$34,703	$15,101	$66	0.03%	0.4%
721	Laundry & garment srvices	100	$15,357,312	$12,383,614	$247,311	5.9%	$734,487	$14,668	$293	0.12%	2.0%
722	Photo studios, portrait	500	$1,123,994	$2,406,763	$278,014	4.5% [d]	$108,304	$12,511	$90	0.03%	0.7%
723	Beauty shops	500	$5,279,870	$10,443,876	$142,666	4.4%	$459,531	$6,277	$69	0.05%	1.1%
724	Barber shops	100	$589,116	$350,653	$82,197	5.9%	$20,531	$4,813	$134	0.16%	2.8%
725	Shoe repair	100	$254,036	$209,963	$101,726	5.9%	$12,293	$5,956	$123	0.12%	2.1%
726	Fun. service and crematories	100	$2,406,472	$7,073,950	$590,431	7.6% [d]	$534,083	$44,578	$176	0.03%	0.4%
729	Misc personal services.	500	$2,469,966	$5,563,729	$212,827	6.6% [d]	$363,214	$13,970	$88	0.04%	0.6%
731	Advertising	100	$3,327,317	$13,539,451	$765,849	3.9%	$528,472	$29,893	$176	0.02%	0.6%
732	Credit report.& collection	100	$1,486,449	$3,895,290	$674,626	5.4%	$211,608	$36,648	$230	0.03%	0.6%
733	Mailing, reprod, steno., serv	100	$5,253,896	$16,758,103	$500,227	4.7%	$790,686	$23,602	$153	0.03%	0.6%
734	Services to buildings	500	$12,320,964	$16,369,158	$258,731	3.5%	$576,621	$9,114	$192	0.07%	2.1%
735	Misc. equipt. rental	100	$5,598,634	$16,405,858	$985,199	8.8%	$1,451,030	$87,133	$254	0.03%	0.3%
736	Pers. supply services	500	$31,666,138	$27,321,192	$1,103,842	3.3%	$891,299	$36,011	$923	0.08%	2.6%
737	Comptr & data proc. services	500	$23,326,437	$84,991,310	$1,097,682	4.9%	$4,198,029	$54,218	$274	0.02%	0.5%
738	Misc. business services	500	$18,083,738	$43,556,800	$557,848	5.1%	$2,209,360	$28,296	$219	0.04%	0.8%
751	Auto rentals, no drivers	100	$2,702,854	$6,258,032	$1,154,193	5.4%	$340,984	$62,889	$282	0.02%	0.4%
752	Automobile parking	100	$1,249,889	$1,382,755	$682,842	4.4%	$60,743	$29,996	$194	0.03%	0.6%
753	Automotive repair shops	500	$26,239,345	$49,806,400	$374,580	3.9%	$1,922,538	$14,459	$194	0.05%	1.3%
754	Automotive serv., exc repair	500	$8,761,572	$8,124,818	$349,680	4.4% [d]	$360,539	$15,517	$355	0.10%	2.3%
762	Electrical repair shops	100	$4,811,085	$6,556,781	$384,314	4.6%	$303,972	$17,817	$258	0.07%	1.4%
763	Watch and jewelry repair	100	$272,152	$253,189	$156,483	5.4%	$13,763	$8,506	$155	0.10%	1.8%
764	Reupholstery & furn. repair	100	$839,530	$1,047,917	$149,960	5.4%	$56,963	$8,151	$123	0.08%	1.5%
769	Misc. repair shops	100	$9,861,707	$17,143,114	$456,359	5.9% [d]	$1,004,096	$26,730	$257	0.06%	1.0%
781	Motion picture production	500	$4,557,763	$14,127,803	$990,868	4.7% [d]	$665,423	$46,670	$316	0.03%	0.7%
782	Motion picture dist.	20	$287,154	$1,362,938	$1,444,490	5.1%	$80,301	$74,216	$237	0.02%	0.3%

Table VIII-4 Estimated Economic Impact Under Worst-Case Scenarios, of the Ergonomics Program Standard on Firms Meeting SBA Size Criteria

SIC	Industry	SBA size (Number of Employees)*	Annualized Compliance Costs for SBA Establishments	Revenues for SBA Firms ($1,000s)	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [c]	Profits for SBA Firms ($1,000s)	Average Profit per Firm (SBA) ($)	For all small firms: Average Cost per Firm (SBA) ($)	For all small firms: Annualized Compliance Costs as a Percentage of Revenues–SBA (percent)	For all small firms: Annualized Compliance Costs as a Percentage of Profits–SBA (percent)
783	Motion picture theaters	100	$5,380,995	$1,627,994	$652,241	6.3%	$101,872	$40,814	$953	0.15%	2.3%
784	Video tape rental	500	$5,724,517	$4,284,059	$297,050	5.9% [d]	$251,688	$17,452	$320	0.11%	1.8%
791	Dance studios & schools	100	$409,328	$845,705	$147,902	4.3%	$36,197	$6,330	$73	0.05%	1.1%
792	Prducrs, orch., entertainers	100	$2,311,655	$11,792,304	$713,474	4.6%	$544,113	$32,921	$141	0.02%	0.4%
793	Bowling centers	500	$1,841,053	$2,462,213	$480,995	3.8% [d]	$92,333	$18,037	$335	0.07%	1.9%
794	Commercial sports	100	$1,184,286	$4,728,679	$1,064,778	3.5%	$163,139	$36,735	$265	0.02%	0.7%
799	Misc. recreation services	500	$19,801,515	$35,023,969	$602,501	4.4%	$1,557,624	$26,795	$330	0.05%	1.2%
801	Offices of medical doctors	100	$36,638,497	$131,952,442	$775,789	6.4%	$8,411,968	$49,457	$205	0.03%	0.4%
802	Dentists offices and clinics	500	$19,070,551	$45,912,607	$413,582	10.5%	$4,797,867	$43,219	$173	0.04%	0.4%
803	Osteopathic physicians	500	$1,004,631	$4,430,862	$501,172	13.4% [e]	$592,628	$67,032	$113	0.02%	0.2%
804	Other health practitioners	500	$13,362,402	$23,599,395	$289,816	7.4%	$1,741,167	$21,383	$164	0.06%	0.8%
805	Nursing & personal care fac.	500	$70,773,606	$32,982,123	$2,533,384	4.7%	$1,562,701	$120,032	$3,639	0.14%	3.0%
806	Hospitals	100	$2,026,070	$2,302,427	$2,933,028	5.5%	$126,536	$161,193	$1,570	0.05%	1.0%
807	Med. & dental labs	100	$3,318,284	$7,006,641	$567,385	7.2%	$503,162	$40,745	$227	0.04%	0.6%
808	Home hlth care services	500	$21,052,841	$12,958,725	$1,352,121	3.2%	$411,440	$42,930	$1,451	0.11%	3.4%
809	Hlth & allied serv., n.e.c.	500	$10,860,311	$15,621,054	$1,242,429	6.7%	$1,047,168	$83,287	$678	0.05%	0.8%
811	Legal services	100	$19,269,826	$81,107,226	$499,601	17.5%	$14,193,765	$87,430	$117	0.02%	0.1%
821	Elem. & secondary schools	100	$8,616,052	$16,867,241	$1,176,073	5.9% [e]	$990,950	$69,094	$526	0.04%	0.8%
822	Colleges & universities	100	$1,391,127	$2,098,528	$1,325,665	9.1%	$191,765	$121,140	$620	0.05%	0.5%
823	Libraries	1000	$416,234	$846,367	$390,031	8.1%	$68,908	$31,755	$208	0.05%	0.7%
824	Vocational schools	100	$1,085,300	$3,323,253	$557,312	6.3%	$209,773	$35,179	$169	0.03%	0.5%
829	Schools, n.e.c.	1000	$2,333,497	$7,437,108	$500,377	5.5% [d]	$405,322	$27,271	$163	0.03%	0.6%
832	Individual & fam. services	500	$13,588,716	$20,916,304	$609,148	4.5%	$936,005	$27,259	$392	0.06%	1.4%
833	Job train. & related serv.	500	$5,298,093	$6,547,702	$1,095,666	3.4%	$222,622	$37,253	$792	0.07%	2.1%
835	Child day care services	1000	$9,313,638	$12,459,047	$266,652	4.7%	$579,346	$12,399	$210	0.08%	1.7%
836	Residential care	500	$14,968,870	$15,907,526	$860,750	3.4%	$544,833	$29,481	$742	0.09%	2.5%
839	Social services, n.e.c.	100	$2,754,187	$11,627,201	$982,940	5.3%	$616,242	$52,096	$196	0.02%	0.4%
841	Museums & art galleries	100	$810,393	$1,709,385	$413,094	21.5%	$366,663	$88,609	$189	0.05%	0.2%
842	Bot. & zoology gardens	100	$142,698	$287,990	$580,625	21.5%	$61,774	$124,544	$267	0.05%	0.2%
861	Business associations	100	$2,025,380	$9,917,916	$658,954	3.9%	$390,105	$25,919	$133	0.02%	0.5%
862	Prof. organizations	100	$872,860	$4,918,054	$732,835	4.9% [d]	$240,985	$35,909	$128	0.02%	0.4%
863	Labor organizations	100	$2,112,425	$8,070,501	$432,735	8.6%	$694,063	$37,215	$111	0.03%	0.3%
864	Civic & social assoc	500	$8,047,968	$13,342,095	$382,131	4.3%	$567,039	$16,241	$227	0.06%	1.4%
865	Political organizations	100	$272,990	$927,341	$362,243	7.2%	$66,875	$26,123	$107	0.03%	0.4%
866	Religious organizations	500	$20,541,633	$51,886,479	$328,231	8.9%	$4,604,925	$29,131	$130	0.04%	0.4%
869	Membership orgs., n.e.c.	100	$1,689,900	$3,563,108	$482,414	8.5% [d]	$302,864	$41,005	$195	0.04%	0.5%
871	Eng. and arch. services	100	$15,340,961	$45,567,185	$647,979	4.6%	$2,102,880	$29,904	$203	0.03%	0.7%
872	Accntng, auditing, & bkeeping	100	$11,863,028	$26,143,611	$324,342	12.0%	$3,124,162	$38,759	$144	0.04%	0.4%
873	Research & testing services	100	$6,452,524	$14,718,882	$976,053	4.9%	$724,281	$48,029	$361	0.04%	0.8%
874	Management & pub. relations	100	$13,995,542	$47,280,827	$540,229	6.3%	$2,958,208	$33,800	$152	0.03%	0.4%
899	Services, n.e.c.	100	$3,076,066	$7,439,380	$470,966	6.8%	$505,878	$32,026	$184	0.04%	0.6%
	Subtotal		$1,932,484,250	$6,991,600,900			$6,752,017,933				
	Average (weighted)		$25,822,860	$88,383,316	$1,470,510	5.8%	$2,978,220	$70,328	$331	0.04%	1.0%
	State & Local Government		$145,562,362	$101,000,000	$5,841,865	na	na	na	$6,473	0.12%	na
	Total		$2,078,046,613	$7,092,600,900							

Table VIII-4 Estimated Economic Impact Under Worst-Case Scenarios, of the Ergonomics Program Standard on Firms Meeting SBA Size Criteria

SIC	Industry	SBA size (Number of Employees)*	Annualized Compliance Costs for SBA Establishments	Revenues for SBA Firms ($1,000s)	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [c]	Profits for SBA Firms ($1,000s)	Average Profit per Firm (SBA) ($)	For all small firms: Average Cost per Firm (SBA) ($)	For all small firms: Annualized Compliance Costs as a Percentage of Revenues–SBA (percent)	For all small firms: Annualized Compliance Costs as a Percentage of Profits–SBA (percent)

Source: Office of Regulatory Analysis.
Revenue data are from U.S. Dept. of Commerce, Bureau of Census. Compliance costs are from Chapter V of
this Final Economic Analysis. Profit data are derived from Robert Morris Associates, RMA Annual Statement Studies 1995-1998 (RMA) and U.S. Department of the
Treasury, 1995-1997 (IRS). Average profit rates for the period 1995 through 1998 were calculated from a weighted average of profit rates over this period for all 4-digit
industries associated with each 3-digit SIC classification. Revenues were used as weights in this calculation.

* Approximated, to make use of available firm revenue data.
[a] Excludes SIC 3731
[b] Revenue data was wholely or partially suppressed by the Census Bureau for the SBA small entity size category. Any projected economic impacts are therefore overestimated for these industries. Where estimated costs as a percent of profits would be in excess of 20 percent, revenues and profits are reported as "na", because the high impact is at least partially the direct result of revenue data supression.
[c] Profit rates, except where noted, are derived from Robert Morris Associates ' "RMA Studies."
[d] Profit data not available for all 4-digit industries in this classification; profit rates interpolated from a combination of RMA and IRS profit data.
[e] Based on a combination of RMA and IRS profit data.
[f] Based on IRS profit data.

Table VIII-5 Estimated Economic Impact of the Ergonomics Program Standard on All Very Small Firms *

SIC	Industry	Annualized Compliance Costs for All Very Small Establishments	Revenues for Very Small Firms ($1,000s)	Average Revenues for Very Small Firms ($)	Profits as a Percentage of Revenues [c]	Profits ($1,000s)	Average Profits per firm ($)	For all very small firms		
								Annualized Costs per Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
074	Veterinary services	$5,151,445	$5,804,263	$272,770	6.1%	$356,250	$16,742	$240	0.09%	1.4%
075	Animal serv., excpt vet.	$789,694	$1,003,467	$99,383	6.0% [d]	$60,394	$5,981	$78	0.08%	1.3%
078	Ldscape & hort. services	$9,039,804	$9,790,176	$150,990	5.9%	$573,809	$8,850	$139	0.09%	1.6%
081	Timber tracts	$118,388	$248,523	$430,716	10.3% [d]	$25,598	$44,364	$147	0.03%	0.3%
083	Forest products	$18,386	$55,299	$650,576	10.3% [d]	$5,696	$67,009	$155	0.02%	0.2%
085	Forestry services	$228,614	$320,917	$316,174	10.3% [d]	$33,054	$32,566	$161	0.05%	0.5%
091	Commerical fishing	$157,232	$437,580	$307,722	5.7% [d]	$25,130	$17,672	$83	0.03%	0.5%
092	Fish hatcheries	$11,056	$17,947	$309,431	6.1% [d]	$1,101	$18,983	$147	0.05%	0.8%
097	Hunting & trapping	$38,532	$55,959	$233,163	6.1% [d]	$3,433	$14,304	$122	0.05%	0.9%
131	Crude petrol. & nat. gas	$1,054,800	$10,314,646	$1,572,834	8.7%	$892,217	$136,050	$151	0.01%	0.1%
132	Natural gas liquids	$38,456	$425,191	$11,189,237	8.7% [d]	$36,779	$967,869	$111	0.00%	0.0%
138	Oil & gas field services	$1,079,535	$2,650,444	$380,756	8.7%	$229,263	$32,935	$147	0.04%	0.4%
201	Meat products	$271,939	$1,877,869	$1,144,344	2.6%	$47,950	$29,220	$163	0.01%	0.6%
202	Dairy products	$212,096	$1,265,505	$1,656,420	3.4%	$43,497	$56,934	$262	0.02%	0.5%
203	Presrvd fruits & vegetables	$161,062	$1,152,014	$1,252,189	4.0%	$45,925	$49,919	$162	0.01%	0.3%
204	Grain mill products	$470,039	$2,614,381	$2,389,745	3.3%	$86,329	$78,911	$322	0.01%	0.4%
205	Bakery products	$466,574	$933,319	$443,171	3.7%	$34,280	$16,277	$221	0.05%	1.4%
206	Sugar and confect. prods	$147,308	$523,156	$894,284	3.6%	$19,012	$32,499	$248	0.03%	0.8%
207	Fats and oils	$59,784	$513,533	$3,721,254	3.5% [d]	$17,786	$128,884	$325	0.01%	0.3%
208	Beverages	$336,064	$3,572,609	$2,952,569	4.7% [e]	$169,318	$139,932	$264	0.01%	0.2%
209	Misc. food products	$600,563	$2,193,235	$918,440	3.1% [e]	$68,647	$28,747	$235	0.03%	0.8%
211	Cigarettes	$1,247	na	na [b]	4.0% [d]	na	na	$312	na	na
212	Cigars	$3,217	na	na [b]	4.0% [d]	na	na	$111	na	na
213	Chewing & smoking tobacco	$1,775	$12,757	$1,063,083 [b]	4.0% [d]	$512	$42,706	$197	0.02%	0.5%
214	Tobacco stemm. & redrying	$596	na	na [b]	4.0% [d]	na	na	$119	na	na
221	Brdwven fab. mills, cotton	$39,174	$142,493	$489,667	4.0%	$5,628	$19,342	$143	0.03%	0.7%
222	Broadwoven fabric mills	$31,755	$73,125	$358,456	2.8% [e]	$2,024	$9,923	$160	0.04%	1.6%
223	Brdwvn fab. mills, wool	$6,706	$35,441	$770,457	2.8% [e]	$981	$21,327	$156	0.02%	0.7%
224	Narrow fabric mills	$40,063	$86,915	$643,815	3.2%	$2,760	$20,441	$306	0.05%	1.5%
225	Knitting mills	$181,845	$685,286	$728,253	2.9%	$19,673	$20,906	$199	0.03%	1.0%
226	Tex. finishing, excpt wool	$83,791	$332,025	$639,740	2.8%	$9,309	$17,937	$162	0.03%	0.9%
227	Carpets and rugs	$46,514	$243,800	$820,875	2.8%	$6,765	$22,779	$162	0.02%	0.7%

Table VIII-5 Estimated Economic Impact of the Ergonomics Program Standard on All Very Small Firms *

SIC	Industry	Annualized Compliance Costs for All Very Small Establishments	Revenues for Very Small Firms ($1,000s)	Average Revenues for Very Small Firms ($)	Profits as a Percentage of Revenues [c]	Profits ($1,000s)	Average Profits per firm ($)	For all very small firms		
								Annualized Costs per Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
228	Yarn and thread mills	$31,426	$128,733	$825,212	2.0%	$2,531	$16,225	$203	0.02%	1.2%
229	Misc. textile goods	$137,316	$419,588	$817,910	2.8% [e]	$11,819	$23,040	$266	0.03%	1.2%
231	Men's & boys' suits & coats	$20,839	$108,397	$747,566	0.9% [e]	$1,003	$6,915	$150	0.02%	2.2%
232	Men's & boys' furnishings	$128,664	$461,072	$571,341	2.7%	$12,522	$15,517	$173	0.03%	1.1%
233	Wm's & misses' outerwear	$822,777	$2,792,289	$440,841	2.6%	$72,027	$11,371	$138	0.03%	1.2%
234	Wm's & chldrn's undergarmn	$23,362	$160,401	$1,055,270	2.4% [e]	$3,873	$25,479	$158	0.01%	0.6%
235	Hats, caps, & millinery	$29,693	$67,989	$298,197	3.9%	$2,669	$11,704	$147	0.05%	1.3%
236	Girls' & chldrn's outerwear	$28,852	$207,601	$766,055	2.0%	$4,099	$15,126	$111	0.01%	0.7%
237	Fur goods	$18,676	$112,866	$842,284	2.6%	$2,887	$21,547	$146	0.02%	0.7%
238	Misc. apparel & accessories	$97,561	$245,271	$376,760	2.6% [e]	$6,303	$9,681	$160	0.04%	1.7%
239	Misc. fab. textile prods	$1,000,283	$2,731,530	$373,211	2.6%	$71,292	$9,741	$147	0.04%	1.5%
241	Logging	$1,472,488	$8,572,706	$631,460	3.9% [f]	$334,249	$24,621	$108	0.02%	0.4%
242	Sawmills & planing mills	$1,123,461	$2,523,245	$632,392	4.3%	$108,370	$27,160	$274	0.04%	1.0%
243	Millwork & plywood	$2,094,230	$3,501,543	$493,106	3.6%	$126,134	$17,763	$292	0.06%	1.6%
244	Wood containers	$589,916	$1,047,315	$513,390	3.7%	$38,349	$18,798	$284	0.06%	1.5%
245	Wood bldings & mobile hom	$157,439	$366,648	$733,296	3.8%	$13,777	$27,554	$296	0.04%	1.1%
249	Misc. wood products	$668,565	$1,467,850	$592,114	3.9% [e]	$56,888	$22,948	$260	0.04%	1.1%
251	Household furniture	$836,201	$1,575,196	$400,304	3.2%	$50,401	$12,809	$221	0.06%	1.7%
252	Office furniture	$163,358	$304,623	$503,509	3.8%	$11,682	$19,309	$274	0.05%	1.4%
253	Pub blding & related furn.	$92,516	$145,783	$659,652	4.1%	$5,941	$26,881	$424	0.06%	1.6%
254	Partitions and fixtures	$652,165	$1,146,102	$526,943	3.7%	$42,571	$19,573	$314	0.06%	1.6%
259	Misc furniture and fixtures	$220,968	$552,452	$562,578	3.2%	$17,412	$17,731	$226	0.04%	1.3%
261	Pulp mills	$2,411	$25,433	$1,816,643	4.5%	$1,145	$81,766	$151	0.01%	0.2%
262	Paper mills	$14,733	$38,880	$777,600	4.8% [e]	$1,847	$36,936	$268	0.03%	0.7%
263	Paperboard mills	$6,569	$29,935	$1,496,750	4.5% [d]	$1,347	$67,368	$299	0.02%	0.4%
265	Paperbrd containers & boxes	$319,902	$807,982	$1,241,140	4.6%	$36,928	$56,725	$438	0.04%	0.8%
267	Misc. cnvrtd paper products	$483,400	$1,336,339	$1,113,616	4.3%	$57,525	$47,938	$376	0.03%	0.8%
271	Newspapers	$1,471,842	$1,714,050	$304,179	3.8% [d]	$65,126	$11,557	$236	0.08%	2.0%
272	Periodicals	$658,040	$3,103,426	$660,163	3.8%	$117,930	$25,086	$137	0.02%	0.5%
273	Books	$450,631	$1,681,873	$614,944	4.5% [e]	$75,377	$27,560	$165	0.03%	0.6%
274	Miscellaneous publishing	$416,297	$1,526,840	$609,274	4.5%	$68,326	$27,265	$158	0.03%	0.6%
275	Commercial printing	$6,673,174	$12,327,939	$425,718	3.4%	$424,513	$14,660	$233	0.05%	1.6%

Table VIII-5 Estimated Economic Impact of the Ergonomics Program Standard on All Very Small Firms *

SIC	Industry	Annualized Compliance Costs for All Very Small Establishments	Revenues for Very Small Firms ($1,000s)	Average Revenues for Very Small Firms ($)	Profits as a Percentage of Revenues [c]	Profits ($1,000s)	Average Profits per firm ($)	For all very small firms: Annualized Costs per Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
276	Manifold business forms	$141,644	$292,443	$790,386	3.4%	$9,797	$26,478	$348	0.04%	1.3%
277	Greeting cards	$20,939	$53,804	$632,988	3.8% [d]	$2,044	$24,051	$249	0.04%	1.0%
278	Blankbooks & bookbinding	$266,869	$329,528	$344,334	3.9%	$12,977	$13,560	$285	0.08%	2.1%
279	Printing trade services	$531,405	$995,290	$366,995	3.6% [e]	$35,638	$13,141	$197	0.05%	1.5%
281	Indust. inorganic chemicals	$177,758	$594,096	$2,007,081	4.5% [e]	$26,705	$90,219	$208	0.01%	0.2%
282	Plastics mat. & synthetics	$64,940	$609,615	$2,018,593	4.5%	$27,406	$90,749	$188	0.01%	0.2%
283	Drugs	$180,906	$1,440,652	$1,844,625	4.8%	$68,957	$88,293	$215	0.01%	0.2%
284	Soap, clnrs, & toilet goods	$326,449	$2,323,726	$1,490,523	4.4%	$102,273	$65,602	$200	0.01%	0.3%
285	Paints & allied products	$183,004	$1,196,898	$1,492,392	3.8%	$44,884	$55,965	$201	0.01%	0.4%
286	Indust. organic chemicals	$89,175	$738,264	$2,828,598	4.5%	$33,130	$126,933	$254	0.01%	0.2%
287	Agricultural chemicals	$125,165	$1,087,188	$2,363,452	3.8%	$41,007	$89,145	$205	0.01%	0.2%
289	Misc. chemical products	$400,674	$2,355,395	$2,101,155	4.8% [e]	$112,039	$99,945	$259	0.01%	0.3%
291	Petroleum refining	$22,693	$349,271	$5,213,000	2.9%	$9,954	$148,571	$265	0.01%	0.2%
295	Asphlt pavng & roofng mat.	$338,763	$1,324,706	$3,561,038	3.9%	$51,896	$139,506	$318	0.01%	0.2%
299	Misc. pet. & coal prods	$62,694	$532,622	$2,477,312	4.7%	$25,238	$117,388	$227	0.01%	0.2%
301	Tires and inner tubes	$22,891	$59,384	$899,758	4.0% [d]	$2,390	$36,213	$297	0.03%	0.8%
302	Rubber & plastics footwear	$2,944	$11,055	$502,500	4.0% [d]	$445	$20,225	$134	0.03%	0.7%
305	Hose, bltng, and gaskets	$105,698	$372,073	$1,045,149	4.0%	$14,871	$41,773	$266	0.03%	0.6%
306	Fab. rubber prod., n.e.c.	$211,917	$542,778	$708,587	4.0%	$21,846	$28,519	$248	0.04%	0.9%
308	Misc plastics, n.e.c.	$1,486,130	$5,293,162	$865,178	4.0%	$213,152	$34,840	$226	0.03%	0.6%
311	Leather tan. & finishing	$65,806	$141,491	$643,141	1.7%	$2,441	$11,094	$294	0.05%	2.6%
313	Footwear cut stock	$13,506	na	na [b]	2.2% [d]	na	na	$300	na	na
314	Footwear, except rubber	$43,109	$109,113	$574,279	2.3%	$2,557	$13,459	$232	0.04%	1.7%
315	Leather gloves & mittens	$13,339	na	na [b]	2.2% [d]	$0	$0	$394	na	na
316	Luggage	$25,164	$49,333	$310,270 [b]	2.9%	$1,443	$9,075	$162	0.05%	1.8%
317	Hndbags & prsnal leathr gds.	$36,710	$72,877	$269,915 [b]	2.2% [d]	$1,601	$5,929	$139	0.05%	2.3%
319	Leather goods, n.e.c.	$76,094	$105,290	$326,988	2.2% [f]	$2,313	$7,183	$234	0.07%	3.3%
321	Flat glass	$9,736	$12,089	$318,132	4.9% [d]	$596	$15,673	$256	0.08%	1.6%
322	Glass, pressed or blown	$114,780	$185,728	$470,197	4.9% [f]	$9,150	$23,165	$287	0.06%	1.2%
323	Prod. of purchased glass	$261,092	$488,592	$426,346	5.1%	$24,674	$21,530	$224	0.05%	1.0%
324	Cement, hydraulic	$31,472	$125,857	$1,498,298	4.9% [d]	$6,201	$73,816	$306	0.02%	0.4%
325	Structural clay products	$79,648	$130,451	$550,426	5.4%	$7,023	$29,634	$293	0.05%	1.0%

Table VIII-5 Estimated Economic Impact of the Ergonomics Program Standard on All Very Small Firms *

SIC	Industry	Annualized Compliance Costs for All Very Small Establishments	Revenues for Very Small Firms ($1,000s)	Average Revenues for Very Small Firms ($)	Profits as a Percentage of Revenues [c]	Profits ($1,000s)	Average Profits per firm ($)	For all very small firms: Annualized Costs per Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
326	Pottery & related prods	$179,618	$198,286	$219,343	4.9% [d]	$9,769	$10,806	$199	0.09%	1.8%
327	Concrete & plast. prdcts	$2,438,900	$4,341,440	$1,046,130	4.8%	$209,619	$50,511	$371	0.04%	0.7%
328	Cut stone & stone prods	$255,532	$426,840	$488,375	5.0%	$21,449	$24,541	$287	0.06%	1.2%
329	Misc. nonmet. mineral prods.	$263,699	$648,078	$859,520	5.0% [e]	$32,095	$42,566	$280	0.03%	0.7%
331	Basic steel products	$140,857	$636,677	$1,329,180	4.3%	$27,415	$57,234	$260	0.02%	0.5%
332	Iron and steel foundries	$110,493	$275,374	$697,149	4.6%	$12,546	$31,763	$266	0.04%	0.8%
333	Primary nonfer. metals	$21,091	$155,290	$1,617,604	4.5% [d]	$7,016	$73,078	$215	0.01%	0.3%
334	Secondary nonfer. metals	$40,691	$272,687	$2,310,907	3.9%	$10,567	$89,548	$302	0.01%	0.3%
335	Nonfer. rolling & drawing	$89,176	$369,944	$1,254,047	4.9%	$17,988	$60,976	$265	0.02%	0.4%
336	Nonfer. foundries (cstngs)	$250,287	$545,378	$637,869	4.5%	$24,517	$28,675	$284	0.04%	1.0%
339	Misc. primary metal prdcts	$130,568	$345,464	$818,635	4.8%	$16,732	$39,650	$266	0.03%	0.7%
341	Met. cans & ship. containers	$47,709	$148,512	$1,207,415	4.1%	$6,019	$48,937	$322	0.03%	0.7%
342	Cutlery, hndtls, & hardware	$389,610	$866,269	$612,204	4.6% [e]	$39,942	$28,228	$263	0.04%	0.9%
343	Plumbing & heating fixtures	$117,467	$276,437	$733,255	4.8%	$13,190	$34,985	$298	0.04%	0.9%
344	Fab. struct. metal prdcts	$2,361,727	$6,222,867	$789,403	4.3%	$266,530	$33,811	$286	0.04%	0.8%
345	Screw machine products	$514,824	$957,063	$689,527	4.4%	$42,321	$30,490	$358	0.05%	1.2%
346	Met. forgings & stampings	$588,066	$1,402,160	$866,601	4.6%	$64,025	$39,570	$346	0.04%	0.9%
347	Metal services, n.e.c.	$1,080,599	$1,953,183	$540,898	5.0%	$96,694	$26,778	$289	0.05%	1.1%
348	Ordnance and access., n.e.c.	$66,988	$118,616	$396,709	4.5% [d]	$5,392	$18,035	$223	0.06%	1.2%
349	Misc. fab. metal products	$1,212,012	$3,119,176	$713,770	4.9%	$152,645	$34,930	$267	0.04%	0.8%
351	Engines and turbines	$51,477	$136,227	$846,130	4.0% [d]	$5,511	$34,232	$298	0.04%	0.9%
352	Farm & garden machinery	$338,138	$753,582	$671,642	4.7%	$35,619	$31,746	$292	0.04%	0.9%
353	Construct. & related mach.	$504,736	$1,531,656	$863,878	4.3%	$66,240	$37,360	$270	0.03%	0.7%
354	Metalworking machinery	$2,336,714	$4,596,589	$552,940	4.6%	$211,014	$25,384	$274	0.05%	1.1%
355	Special industry mach.	$744,270	$2,252,354	$781,254	4.1%	$91,422	$31,711	$248	0.03%	0.8%
356	General indust. mach.	$644,474	$1,816,610	$835,223	4.3%	$78,850	$36,253	$275	0.03%	0.8%
357	Computer & office equip.	$268,787	$1,479,035	$1,146,539	3.3%	$48,696	$37,749	$201	0.02%	0.5%
358	Refrig. & serv. indust mach.	$325,100	$961,953	$825,003	3.6%	$34,573	$29,651	$268	0.03%	0.9%
359	Industrial mach., n.e.c.	$4,939,738	$8,880,402	$421,311	5.1% [e]	$449,154	$21,309	$232	0.06%	1.1%
361	Elect. dist. equipment	$99,387	$377,070	$828,725	5.2%	$19,504	$42,867	$209	0.03%	0.5%
362	Elect. indust. apparatus	$276,486	$955,829	$757,993	5.1%	$49,127	$38,959	$211	0.03%	0.5%
363	Household appliances	$46,400	$189,966	$829,546	5.6% [d]	$10,622	$46,383	$198	0.02%	0.4%

Table VIII-5 Estimated Economic Impact of the Ergonomics Program Standard on All Very Small Firms *

								For all very small firms		
SIC	Industry	Annualized Compliance Costs for All Very Small Establishments	Revenues for Very Small Firms ($1,000s)	Average Revenues for Very Small Firms ($)	Profits as a Percentage of Revenues [c]	Profits ($1,000s)	Average Profits per firm ($)	Annualized Costs per Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
364	Elct. lghtng & wire equip.	$235,582	$824,155	$737,829	5.7%	$47,236	$42,288	$205	0.03%	0.5%
365	Household audio & vid. equi	$91,003	$573,801	$1,048,996	5.0%	$28,864	$52,768	$164	0.02%	0.3%
366	Communications equipment	$194,392	$1,074,776	$961,338	5.8% [e]	$61,851	$55,323	$168	0.02%	0.3%
367	Electrnic compnnts & access.	$540,756	$2,445,955	$739,183	5.6%	$136,466	$41,241	$160	0.02%	0.4%
369	Misc. elect. equipment	$188,235	$659,045	$745,526	5.9% [e]	$38,821	$43,915	$203	0.03%	0.5%
371	Motor vehicles & equipt.	$773,827	$2,145,214	$820,036	3.5%	$75,114	$28,713	$283	0.03%	1.0%
372	Aircraft and parts	$223,070	$629,436	$715,268	4.7% [e]	$29,367	$33,371	$244	0.03%	0.7%
[a] 373	Ship, boat blding and repair[	$575,944	$983,829	$377,960	3.6%	$35,833	$13,766	$255	0.07%	1.9%
374	Railroad equipment	$16,444	$62,657	$1,010,597	3.7%	$2,303	$37,139	$211	0.02%	0.6%
375	Motorcycles & bicycles	$57,195	$208,190	$746,201	3.7%	$7,793	$27,931	$204	0.03%	0.7%
376	Guided missiles	$8,831	$19,397	$570,490	3.7%	na	na	$245	0.04%	na
379	Misc. transportation equip.	$133,629	$514,035	$712,947	3.7% [e]	$18,799	$26,073	$181	0.03%	0.7%
381	Srch & navigation equipment	$56,912	$183,208	$555,176	4.7% [e]	$8,611	$26,093	$164	0.03%	0.6%
382	Meas. & contrlling devices	$538,189	$2,196,915	$789,689	5.6%	$123,365	$44,344	$186	0.02%	0.4%
384	Medical instrmnts & supplies	$457,710	$2,382,591	$861,697	5.3% [e]	$126,580	$45,779	$159	0.02%	0.3%
385	Ophthalmic goods	$64,238	$178,836	$451,606	3.7%	$6,572	$16,597	$153	0.03%	0.9%
386	Photo. equip. & supplies	$82,559	$407,370	$864,904	4.0%	$16,295	$34,596	$169	0.02%	0.5%
387	Watches, clocks, & parts	$10,190	$33,895	$356,789	5.1% [d]	$1,715	$18,057	$102	0.03%	0.6%
391	Jwlry, slvrwre, and plate	$290,301	$1,468,531	$597,693	3.3%	$48,894	$19,900	$121	0.02%	0.6%
393	Musical instruments	$67,895	$134,020	$293,260	3.8% [d]	$5,098	$11,156	$153	0.05%	1.4%
394	Toys and sporting goods	$452,655	$1,300,869	$480,380	3.7%	$47,607	$17,580	$169	0.04%	1.0%
395	Office and art supplies	$126,919	$358,110	$456,773	3.8% [d]	$13,623	$17,377	$160	0.04%	0.9%
396	Costume jewelry & notions	$94,481	$379,044	$418,833	3.8% [d]	$14,420	$15,933	$108	0.03%	0.7%
399	Misc. manufactures	$1,109,935	$3,120,612	$438,288	4.1%	$127,009	$17,838	$157	0.04%	0.9%
411	Local & suburban trans.	$2,426,421	$1,468,804	$221,372	4.4%	$64,611	$9,738	$335	0.15%	3.4%
412	Taxicabs	$323,349	$504,966	$167,651	4.5% [d]	$22,763	$7,557	$108	0.06%	1.4%
413	Intercty & rural bus trans.	$94,298	$74,381	$371,905	5.4%	$3,998	$19,990	$309	0.08%	1.5%
414	Bus charter service	$244,373	$323,685	$348,048	4.6%	$14,876	$15,995	$246	0.07%	1.5%
415	School buses	$479,939	$363,700	$155,627	4.6%	$16,548	$7,081	$187	0.12%	2.6%
417	Bus terminals	$17,483	$9,269	$193,104	4.5% [d]	$418	$8,705	$336	0.17%	3.9%
421	Trking & Courier Service	$20,687,131	$37,505,480	$401,463	3.4%	$1,289,664	$13,805	$205	0.05%	1.5%
422	Pub. warehousing & storage	$3,678,086	$3,179,502	$414,754	10.7%	$338,904	$44,209	$359	0.09%	0.8%

Table VIII-5 Estimated Economic Impact of the Ergonomics Program Standard on All Very Small Firms *

								For all very small firms		
SIC	Industry	Annualized Compliance Costs for All Very Small Establishments	Revenues for Very Small Firms ($1,000s)	Average Revenues for Very Small Firms ($)	Profits as a Percentage of Revenues [c]	Profits ($1,000s)	Average Profits per firm ($)	Annualized Costs per Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
423	Trucking terminal fac.	$23,495	$10,378	$172,967 [b]	3.9% [d]	$406	$6,769	$331	0.19%	4.9%
430	U.S. Postal Service	na	na	na	na	na	na	na	na	na
451	Air trans., scheduled	$2,442,252	$1,380,678	$1,100,142	3.6%	$49,121	$39,140	$606	0.06%	1.5%
452	Air trans., nonsched.	$239,708	$957,365	$725,277	5.3%	$50,740	$38,440	$155	0.02%	0.4%
458	Airports and services	$709,169	$1,185,610	$428,482	3.8%	$45,350	$16,389	$225	0.05%	1.4%
461	Pipelines, excpt natural gas	$411,829	$291,113	$8,821,606	6.5% [d]	$19,061	$577,617	$531	0.01%	0.1%
472	Pass. trans. arrangements	$2,159,216	$5,196,650	$202,173	2.4%	$126,169	$4,909	$70	0.03%	1.4%
473	Freight trans. arrangements	$3,426,174	$4,928,082	$455,124	3.9%	$189,731	$17,522	$265	0.06%	1.5%
474	Rental of railroad cars	$14,353	$227,179	$3,112,041	3.4% [d]	$7,704	$105,530	$145	0.00%	0.1%
478	Misc. trans. services	$735,923	$531,429	$299,228	5.4%	$28,772	$16,200	$347	0.12%	2.1%
481	Telephone communication	$2,028,328	$4,811,628	$857,841	5.9%	$285,528	$50,905	$102	0.01%	0.2%
482	Telegrph & other comm.	$28,505	$341,300	$937,637	5.6% [f]	$19,042	$52,312	$72	0.01%	0.1%
483	Radio & TV broadcasting	$466,711	$1,840,020	$338,053	6.6%	$121,494	$22,321	$80	0.02%	0.4%
484	Cable & othr pay TV service	$367,547	$2,117,829	$1,249,457	2.7%	$57,711	$34,048	$118	0.01%	0.3%
489	Communication serv., n.e.c.	$55,553	$948,974	$781,049	6.1%	$57,887	$47,644	$44	0.01%	0.1%
491	Electric services	$528,214	$1,430,379	$2,639,076	12.5%	$178,321	$329,005	$163	0.01%	0.0%
492	Gas product. & distribution	$484,595	$3,377,499	$6,313,082	7.9%	$266,183	$497,538	$185	0.00%	0.0%
493	Comb. utility services	$110,701	$306,134	$1,749,337	10.4% [d]	$31,761	$181,489	$127	0.01%	0.1%
494	Water supply	$374,055	$1,039,660	$313,245	12.2%	$127,098	$38,294	$107	0.03%	0.3%
495	Sanitary services	$839,808	$2,451,869	$582,253	6.2%	$153,232	$36,389	$167	0.03%	0.5%
496	Steam & air-cond. supplies	$6,120	$50,218	$1,394,944	10.4% [d]	$5,210	$144,722	$125	0.01%	0.1%
497	Irrigation systems	$26,389	$71,818	$207,566	10.4% [d]	$7,451	$21,534	$74	0.04%	0.3%
501	Motor vehicles	$11,025,830	$57,725,483	$1,992,802	2.2%	$1,264,150	$43,641	$284	0.01%	0.7%
502	Furn. & homefurnishings	$3,688,917	$25,565,841	$1,970,696	2.3%	$583,962	$45,014	$257	0.01%	0.6%
503	Lumber & construct. mat.	$8,018,718	$36,044,519	$2,340,857	2.3%	$829,644	$53,880	$405	0.02%	0.8%
504	Prof. & commercial equip.	$9,245,141	$58,977,265	$1,604,780	2.7%	$1,610,147	$43,812	$212	0.01%	0.5%
505	Met. & minerals, excpt pet.	$2,948,811	$49,134,340	$6,790,263	2.6%	$1,269,268	$175,410	$321	0.00%	0.2%
506	Electrical goods	$7,589,494	$88,314,579	$3,500,935	2.5%	$2,214,586	$87,790	$219	0.01%	0.2%
507	Hardware supplies	$8,197,408	$32,741,423	$2,052,239	2.5%	$823,457	$51,614	$366	0.02%	0.7%
508	Mach., equipt, & supplies	$20,206,586	$101,937,718	$1,946,454	2.9%	$2,940,703	$56,151	$309	0.02%	0.5%
509	Misc. durable goods	$6,717,152	$64,760,858	$1,894,867	3.0% [e]	$1,925,322	$56,334	$187	0.01%	0.3%
511	Paper and paper products	$2,572,080	$32,127,109	$2,773,883	1.9%	$620,631	$53,586	$176	0.01%	0.3%

Table VIII-5 Estimated Economic Impact of the Ergonomics Program Standard on All Very Small Firms *

								For all very small firms		
SIC	Industry	Annualized Compliance Costs for All Very Small Establishments	Revenues for Very Small Firms ($1,000s)	Average Revenues for Very Small Firms ($)	Profits as a Percentage of Revenues [c]	Profits ($1,000s)	Average Profits per firm ($)	Annualized Costs per Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
512	Drugs, propriet., & sundries	$1,342,622	$11,908,099	$2,473,125	3.6% [e]	$425,715	$88,414	$231	0.01%	0.3%
513	Apparel and notions	$3,399,139	$44,192,876	$2,456,798	2.5%	$1,095,284	$60,890	$176	0.01%	0.3%
514	Groceries & related products	$10,050,562	$106,043,754	$3,526,680	1.8%	$1,874,721	$62,347	$296	0.01%	0.5%
515	Farm-prod. raw materials	$1,474,524	$41,823,552	$6,961,310	28.3%	$11,847,252	$1,971,913	$166	0.00%	0.0%
516	Chemicals & allied prods	$3,114,523	$37,105,160	$3,958,306	3.1%	$1,144,128	$122,053	$240	0.01%	0.2%
517	Petrol. & petrol. prods	$2,978,006	$65,994,760	$10,268,362	1.3%	$841,994	$131,009	$275	0.00%	0.2%
518	Beer, wine, & dist. bev.	$1,430,477	$8,974,820	$3,642,378	3.5%	$315,565	$128,070	$464	0.01%	0.4%
519	Misc. nondurable goods	$9,161,482	$60,033,260	$1,484,686	2.3%	$1,387,176	$34,306	$188	0.01%	0.5%
521	Lumber & other blding mat.	$7,775,768	$15,866,247	$1,091,965	2.3%	$364,924	$25,115	$419	0.04%	1.7%
523	Paint, glass, wallpaper strs	$2,732,262	$3,282,009	$610,493	2.3%	$73,845	$13,736	$295	0.05%	2.2%
525	Hardware stores	$3,167,507	$5,911,976	$523,415	2.2%	$127,107	$11,253	$249	0.05%	2.2%
526	Retail nurseries and gardens	$2,876,208	$4,981,655	$528,614	2.5% [e]	$122,051	$12,951	$279	0.05%	2.2%
527	Mobile home dealers	$2,106,161	$5,612,243	$1,694,518	3.2%	$180,995	$54,648	$492	0.03%	0.9%
531	Department stores	$17,504	$140,547	$1,171,225	2.8%	$3,935	$32,794	$52	0.00%	0.2%
533	Variety stores	$3,699,518	$1,203,688	$330,502	3.1%	$37,314	$10,246	$386	0.12%	3.8%
539	Misc. gen. merchandise strs.	$2,060,676	$3,202,753	$486,889	2.2%	$70,461	$10,712	$186	0.04%	1.7%
541	Grocery stores	$19,891,309	$43,671,398	$571,428	1.4%	$589,564	$7,714	$203	0.04%	2.6%
542	Meat and fish markets	$1,348,495	$3,818,531	$540,486	2.5%	$95,463	$13,512	$183	0.03%	1.4%
543	Fruit & vegetable markets	$358,992	$1,414,504	$472,288	1.4% [d]	$19,955	$6,663	$116	0.02%	1.7%
544	Candy, nut, & confctnry strs	$698,582	$672,831	$241,504	4.1%	$27,418	$9,841	$159	0.07%	1.6%
545	Dairy products stores	$321,747	$430,018	$290,749	1.4% [d]	$6,067	$4,102	$133	0.05%	3.2%
546	Retail bakeries	$3,337,520	$3,235,280	$212,903	3.2%	$103,529	$6,813	$183	0.09%	2.7%
549	Misc. food stores	$1,200,980	$2,613,544	$370,138	2.4%	$62,072	$8,791	$129	0.03%	1.5%
551	New and used car dealers	$3,430,605	$29,272,772	$3,563,332	1.2% [e]	$358,591	$43,651	$393	0.01%	0.9%
552	Used car dealers	$1,456,428	$19,626,194	$936,141	2.5%	$480,842	$22,935	$68	0.01%	0.3%
553	Auto & home supply stores	$13,501,547	$14,670,042	$570,286	2.3%	$333,743	$12,974	$340	0.06%	2.6%
554	Gas service stations	$17,552,017	$65,121,661	$1,271,312	1.6%	$1,041,947	$20,341	$198	0.02%	1.0%
555	Boat dealers	$1,485,453	$4,874,107	$1,125,660	2.0%	$95,045	$21,950	$315	0.03%	1.4%
556	Rec. vehicle dealers	$1,009,049	$3,776,117	$1,564,906	2.1%	$77,410	$32,081	$394	0.03%	1.2%
557	Motorcycle dealers	$313,036	$4,274,776	$1,271,498	2.8%	$119,694	$35,602	$91	0.01%	0.3%
559	Auto dealers, n.e.c.	$88,967	$917,486	$786,192	2.6% [e]	$23,855	$20,441	$75	0.01%	0.4%
561	Men's & boys' clothing strs	$1,500,392	$3,208,794	$552,003	1.4%	$44,121	$7,590	$120	0.02%	1.6%

Table VIII-5 Estimated Economic Impact of the Ergonomics Program Standard on All Very Small Firms *

								For all very small firms		
SIC	Industry	Annualized Compliance Costs for All Very Small Establishments	Revenues for Very Small Firms ($1,000s)	Average Revenues for Very Small Firms ($)	Profits as a Percentage of Revenues [c]	Profits ($1,000s)	Average Profits per firm ($)	Annualized Costs per Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
562	Women's clothing stores	$4,326,533	$5,967,076	$375,642	1.1%	$65,638	$4,132	$119	0.03%	2.9%
563	Wm's access.& specialty strs	$835,970	$1,265,901	$327,784	1.8% [d]	$23,377	$6,053	$104	0.03%	1.7%
564	Chldrn's & infants' wear strs	$569,139	$893,055	$303,244	1.8% [d]	$16,492	$5,600	$129	0.04%	2.3%
565	Family clothing stores	$3,263,269	$3,250,394	$483,690	2.2%	$69,883	$10,399	$231	0.05%	2.2%
566	Shoe stores	$4,593,305	$3,657,301	$519,872	2.4%	$88,690	$12,607	$165	0.03%	1.3%
569	Misc. apparel stores	$705,055	$2,400,039	$332,139	2.0%	$48,001	$6,643	$75	0.02%	1.1%
571	Furnitre & homefurnishng str	$18,078,465	$28,487,276	$601,937	2.4%	$696,648	$14,720	$303	0.05%	2.1%
572	Household appliance strs	$2,556,580	$5,306,112	$625,647	2.2%	$118,061	$13,921	$278	0.04%	2.0%
573	Radio, TV, & comptr strs	$6,065,913	$16,573,752	$720,128	2.1%	$351,306	$15,264	$172	0.02%	1.1%
581	Eating & drinking places	$46,841,266	$62,342,602	$213,216	3.0%	$1,869,288	$6,393	$138	0.06%	2.2%
591	Drug stores	$7,198,992	$20,363,293	$945,196	2.2%	$442,902	$20,558	$222	0.02%	1.1%
592	Liquor stores	$1,530,053	$14,915,701	$599,337	1.6%	$234,922	$9,440	$55	0.01%	0.6%
593	Used merchandise stores	$3,247,956	$4,225,407	$228,524	4.8%	$203,876	$11,026	$145	0.06%	1.3%
594	Misc. shopping goods strs.	$18,553,068	$32,665,888	$370,009	2.6%	$862,380	$9,768	$156	0.04%	1.6%
596	Nonstore retailers	$5,519,292	$12,225,645	$506,805	2.5%	$304,134	$12,608	$207	0.04%	1.6%
598	Fuel dealers	$3,034,140	$6,904,540	$1,030,682	1.8%	$126,751	$18,921	$295	0.03%	1.6%
599	Retail stores, n.e.c.	$9,772,210	$23,268,601	$314,785	3.2%	$750,317	$10,151	$109	0.03%	1.1%
601	Central res. depository	$7,237	$126,998	$10,583,167	10.8% [d]	$13,716	$1,142,982	$233	0.00%	0.0%
602	Commercial banks	$7,249,911	$6,215,272	$2,296,000	10.8% [d]	$671,249	$247,968	$153	0.01%	0.1%
603	Savings institutions	$1,698,251	$2,075,332	$3,336,547	10.8% [d]	$224,136	$360,347	$156	0.00%	0.0%
606	Credit unions	$1,290,647	$6,290,272	$755,044	10.8% [d]	$679,349	$81,545	$105	0.01%	0.1%
608	Foreign banking	$39,639	$1,241,706	$12,173,588	10.8% [d]	$134,104	$1,314,748	$127	0.00%	0.0%
609	Banking-related functions	$513,323	$1,368,201	$459,282	10.8% [d]	$147,766	$49,602	$101	0.02%	0.2%
611	Federal credit agencies	$108,937	$127,485	$1,722,770	10.8%	$13,768	$186,059	$97	0.01%	0.1%
614	Personal cred. institutions	$1,428,038	$3,486,159	$856,550	15.5% [d]	$539,193	$132,480	$83	0.01%	0.1%
615	Business cred. institutions	$460,695	$4,947,066	$1,814,771	17.1% [d]	$844,648	$309,849	$101	0.01%	0.0%
616	Mortgage bankers & brokers	$1,886,455	$5,061,228	$397,146	11.7%	$589,838	$46,284	$96	0.02%	0.2%
621	Security brokers & dealers	$1,987,067	$6,612,505	$842,572	12.8%	$844,196	$107,568	$95	0.01%	0.1%
622	Commodity contracts brokers	$91,769	$881,352	$640,983	13.3%	$117,356	$85,350	$62	0.01%	0.1%
623	Security & commod. exchan	$8,867	$32,734	$545,567	13.3%	$4,359	$72,645	$100	0.02%	0.1%
628	Security & commod. services	$1,380,144	$7,492,941	$466,966	15.3% [d]	$1,148,077	$71,549	$81	0.02%	0.1%
631	Life insurance	$1,184,923	$2,777,904	$3,346,872	6.8% [d]	$189,546	$228,369	$156	0.00%	0.1%

Table VIII-5 Estimated Economic Impact of the Ergonomics Program Standard on All Very Small Firms *

SIC	Industry	Annualized Compliance Costs for All Very Small Establishments	Revenues for Very Small Firms ($1,000s)	Average Revenues for Very Small Firms ($)	Profits as a Percentage of Revenues [c]	Profits ($1,000s)	Average Profits per firm ($)	For all very small firms: Annualized Costs per Firm	For all very small firms: Annualized Costs as a Percent of Revenues	For all very small firms: Annualized Costs as a Percent of Profits
632	Medical & health insur.	$290,570	$2,824,245	$4,637,512	3.6%	$101,867	$167,270	$142	0.00%	0.1%
633	Fire, marine, & casity ins,	$1,746,618	$2,862,923	$1,879,792	9.1% [d]	$259,095	$170,121	$104	0.01%	0.1%
635	Surety insurance	$54,423	$425,650	$2,086,520	6.8%	$29,044	$142,370	$113	0.01%	0.1%
636	Title insurance	$275,458	$212,137	$380,856	4.6%	$9,652	$17,329	$134	0.04%	0.8%
637	Pension and health funds	$238,320	$849,385	$391,602	6.8% [f]	$57,956	$26,720	$101	0.03%	0.4%
639	Ins. carriers, n.e.c.	$26,373	$175,292	$872,100	6.8%	$11,961	$59,506	$112	0.01%	0.2%
641	Insurance agents	$9,653,557	$31,072,071	$276,764	6.8% [d]	$2,120,669	$18,889	$80	0.03%	0.4%
651	Real estate operators	$9,851,875	$51,322,198	$563,015	14.1% [d]	$7,221,217	$79,218	$103	0.02%	0.1%
653	RE agents and managers	$10,082,095	$37,861,382	$351,790	13.2%	$5,007,168	$46,524	$86	0.02%	0.2%
654	Title abstract offices	$435,298	$1,252,913	$306,711	13.3% [e]	$166,756	$40,821	$92	0.03%	0.2%
655	Subdividers & developrs	$1,783,492	$7,676,583	$465,756	10.6%	$814,400	$49,411	$103	0.02%	0.2%
671	Holding offices	$848,720	$5,148,112	$983,215	25.4%	$1,306,839	$249,587	$103	0.01%	0.0%
672	Investment offices	$66,206	$1,718,384	$2,504,933	20.4%	$351,041	$511,722	$79	0.00%	0.0%
673	Trusts	$690,137	$5,079,834	$640,746	24.3%	$1,234,273	$155,685	$84	0.01%	0.1%
679	Miscellaneous investing	$682,275	$9,524,886	$1,309,443	21.5%	$2,051,829	$282,077	$87	0.01%	0.0%
701	Hotels and motels	$6,349,696	$8,638,183	$294,537	7.0%	$600,354	$20,470	$196	0.07%	1.0%
702	Rooming & boarding houses	$93,722	$259,463	$176,505	7.0%	$18,060	$12,286	$61	0.03%	0.5%
703	Camps and rec. vehicle parks	$245,366	$1,690,717	$263,845	7.3%	$124,022	$19,354	$35	0.01%	0.2%
704	Membership-basis org. hotels	$140,908	$435,978	$193,338	7.0% [d]	$30,346	$13,457	$60	0.03%	0.4%
721	Laundry & garment srvices	$10,379,942	$7,783,309	$166,584	5.9%	$461,638	$9,880	$203	0.12%	2.1%
722	Photo studios, portrait	$944,924	$1,699,071	$202,656	4.5% [d]	$76,458	$9,120	$74	0.04%	0.8%
723	Beauty shops	$4,574,096	$7,617,832	$107,510	4.4%	$335,185	$4,730	$58	0.05%	1.2%
724	Barber shops	$544,847	$350,653	$83,509	5.9%	$20,531	$4,889	$124	0.15%	2.5%
725	Shoe repair	$231,171	$209,963	$102,873	5.9%	$12,293	$6,023	$110	0.11%	1.8%
726	Fun. service and crematories	$2,043,782	$5,734,274	$501,686	7.6% [d]	$432,938	$37,877	$149	0.03%	0.4%
729	Misc personal services.	$1,514,670	$3,452,437	$139,088	6.6% [d]	$226,625	$9,130	$53	0.04%	0.6%
731	Advertising	$1,997,716	$8,139,343	$498,612	3.9%	$317,695	$19,462	$115	0.02%	0.6%
732	Credit report.& collection	$739,933	$1,765,296	$358,290	5.4%	$95,898	$19,464	$133	0.04%	0.7%
733	Mailing, reprod, steno., serv	$3,471,741	$10,979,283	$348,261	4.7%	$518,035	$16,432	$109	0.03%	0.7%
734	Services to buildings	$5,573,882	$8,217,682	$143,440	3.5%	$289,477	$5,053	$96	0.07%	1.9%
735	Misc. equipt. rental	$3,752,236	$8,260,418	$557,534	8.8%	$730,600	$49,312	$174	0.03%	0.4%
736	Pers. supply services	$1,952,808	$6,448,228	$373,810	3.3%	$210,360	$12,195	$96	0.03%	0.8%

Table VIII-5 Estimated Economic Impact of the Ergonomics Program Standard on All Very Small Firms *

SIC	Industry	Annualized Compliance Costs for All Very Small Establishments	Revenues for Very Small Firms ($1,000s)	Average Revenues for Very Small Firms ($)	Profits as a Percentage of Revenues [c]	Profits ($1,000s)	Average Profits per firm ($)	For all very small firms: Annualized Costs per Firm	For all very small firms: Annualized Costs as a Percent of Revenues	For all very small firms: Annualized Costs as a Percent of Profits
737	Comptr & data proc. services	$7,872,892	$28,733,221	$406,336	4.9%	$1,419,238	$20,070	$102	0.02%	0.5%
738	Misc. business services	$5,854,472	$21,125,209	$299,780	5.1%	$1,071,552	$15,206	$79	0.03%	0.5%
751	Auto rentals, no drivers	$1,643,649	$3,370,860	$689,902	5.4%	$183,669	$37,591	$181	0.03%	0.5%
752	Automobile parking	$814,540	$743,553	$415,393	4.4%	$32,663	$18,248	$115	0.03%	0.6%
753	Automotive repair shops	$23,317,965	$39,577,660	$305,907	3.9%	$1,527,706	$11,808	$172	0.06%	1.5%
754	Automotive serv., exc repair	$5,311,540	$4,591,217	$221,295	4.4% [d]	$203,735	$9,820	$222	0.10%	2.3%
762	Electrical repair shops	$3,197,976	$4,493,450	$275,689	4.6%	$208,316	$12,781	$181	0.07%	1.4%
763	Watch and jewelry repair	$245,584	$253,189	$158,739	5.4%	$13,763	$8,629	$141	0.09%	1.6%
764	Reupholstery & furn. repair	$791,667	$1,047,917	$152,026	5.4%	$56,963	$8,264	$117	0.08%	1.4%
769	Misc. repair shops	$7,060,400	$11,475,584	$322,574	5.9% [d]	$672,141	$18,894	$194	0.06%	1.0%
781	Motion picture production	$2,358,579	$7,573,063	$563,766	4.7% [d]	$356,693	$26,554	$173	0.03%	0.7%
782	Motion picture dist.	$300,860	$1,562,938	$1,444,490	5.1%	$80,301	$74,216	$248	0.02%	0.3%
783	Motion picture theaters	$1,814,001	$766,131	$363,958	6.3%	$47,941	$22,775	$446	0.12%	2.0%
784	Video tape rental	$5,151,272	$2,635,735	$194,347	5.9% [d]	$154,849	$11,418	$267	0.14%	2.3%
791	Dance studios & schools	$370,510	$690,662	$124,064	4.3%	$29,561	$5,310	$67	0.05%	1.3%
792	Prducers, orch., entertainers	$1,442,180	$8,565,302	$554,963	4.6%	$395,214	$25,607	$94	0.02%	0.4%
793	Bowling centers	$678,524	$968,675	$256,399	3.8% [d]	$36,325	$9,615	$173	0.07%	1.8%
794	Commercial sports	$686,037	$2,164,149	$531,863	3.5%	$74,663	$18,349	$168	0.03%	0.9%
799	Misc. recreation services	$7,054,099	$13,195,422	$267,960	4.4%	$586,841	$11,917	$139	0.05%	1.2%
801	Offices of medical doctors	$25,687,876	$87,978,993	$555,426	6.4%	$5,608,661	$35,408	$152	0.03%	0.4%
802	Dentists offices and clinics	$17,853,940	$41,066,668	$377,305	10.5%	$4,291,467	$39,428	$163	0.04%	0.4%
803	Osteopathic physicians	$841,355	$3,467,034	$409,041	13.4% [e]	$463,716	$54,709	$97	0.02%	0.2%
804	Other health practitioners	$11,304,197	$19,394,348	$243,651	7.4%	$1,430,918	$17,977	$139	0.06%	0.8%
805	Nursing & personal care fac.	$2,209,335	$1,432,002	$306,376	4.7%	$67,849	$14,516	$282	0.09%	1.9%
806	Hospitals	$96,197	$504,465	$2,084,566	5.5%	$27,724	$114,563	$227	0.01%	0.2%
807	Med. & dental labs	$1,994,137	$3,958,716	$345,046	7.2%	$284,284	$24,779	$148	0.04%	0.6%
808	Home hlth care services	$1,886,069	$1,879,363	$328,675	3.2%	$59,670	$10,435	$229	0.07%	2.2%
809	Hlth & allied serv., n.e.c.	$3,348,743	$3,836,596	$401,402	6.7%	$257,189	$26,908	$211	0.05%	0.8%
811	Legal services	$14,936,859	$52,803,005	$338,722	17.5%	$9,240,526	$59,276	$94	0.03%	0.2%
821	Elem. & secondary schools	$1,836,323	$2,453,454	$335,676	5.9% [e]	$144,140	$19,721	$197	0.06%	1.0%
822	Colleges & universities	$240,626	$427,806	$422,316	9.1%	$39,093	$38,592	$176	0.04%	0.5%
823	Libraries	$197,636	$234,869	$124,138	8.1%	$19,122	$10,107	$100	0.08%	1.0%

Table VIII-5 Estimated Economic Impact of the Ergonomics Program Standard on All Very Small Firms *

								For all very small firms		
SIC	Industry	Annualized Compliance Costs for All Very Small Establishments	Revenues for Very Small Firms ($1,000s)	Average Revenues for Very Small Firms ($)	Profits as a Percentage of Revenues [c]	Profits ($1,000s)	Average Profits per firm ($)	Annualized Costs per Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
824	Vocational schools	$566,465	$1,465,565	$274,348	6.3%	$92,511	$17,318	$98	0.04%	0.6%
829	Schools, n.e.c.	$1,280,060	$3,234,624	$240,887	5.5% [d]	$176,287	$13,128	$92	0.04%	0.7%
832	Individual & fam. services	$5,237,355	$5,119,204	$183,873	4.5%	$229,084	$8,228	$147	0.08%	1.8%
833	Job train. & related serv.	$756,472	$915,449	$272,050	3.4%	$31,125	$9,250	$131	0.05%	1.4%
835	Child day care services	$5,381,390	$4,474,833	$112,016	4.7%	$208,080	$5,209	$119	0.11%	2.3%
836	Residential care	$4,793,905	$2,154,658	$169,618	3.4%	$73,797	$5,809	$218	0.13%	3.8%
839	Social services, n.e.c.	$1,419,875	$4,717,297	$468,265	5.3%	$250,017	$24,818	$108	0.02%	0.4%
841	Museums & art galleries	$441,602	$721,567	$197,203	21.5%	$154,776	$42,300	$114	0.06%	0.3%
842	Bot. & zoolog. gardens	$60,366	$108,760	$268,543	21.5%	$23,329	$57,603	$13[illegible]	0.05%	0.2%
861	Business associations	$1,470,347	$5,475,973	$386,667	3.9%	$215,388	$15,209	$1[illegible]0	0.03%	0.7%
862	Prof. organizations	$570,382	$2,590,876	$415,871	4.9% [d]	$126,953	$20,378	$89	0.02%	0.4%
863	Labor organizations	$1,483,375	$5,137,494	$297,412	8.6%	$441,824	$25,577	$83	0.03%	0.3%
864	Civic & social assoc.	$3,593,256	$6,936,547	$218,860	4.3%	$294,803	$9,302	$109	0.05%	1.2%
865	Political organizations	$220,666	$697,077	$280,740	7.2%	$50,270	$20,246	$89	0.03%	0.4%
866	Religious organizations	$11,957,336	$26,408,707	$183,752	8.9%	$2,343,773	$16,308	$83	0.05%	0.5%
869	Membership orgs., n.e.c.	$941,229	$1,856,411	$276,540	8.5% [d]	$157,795	$23,506	$119	0.04%	0.5%
871	Eng. and arch. services	$8,996,897	$24,141,771	$372,754	4.6%	$1,114,119	$17,202	$130	0.03%	0.8%
872	Accntng, auditng, & bkeepin	$9,226,542	$18,007,357	$231,427	12.0%	$2,151,879	$27,656	$116	0.05%	0.4%
873	Research & testing services	$2,719,289	$6,238,312	$485,207	4.9%	$306,972	$23,876	$177	0.04%	0.7%
874	Management & pub. relation	$8,615,971	$29,651,372	$360,411	6.3%	$1,855,190	$22,550	$99	0.03%	0.4%
899	Services, n.e.c.	$2,179,090	$4,867,692	$322,791	6.8%	$331,003	$21,950	$136	0.04%	0.6%
Total		$790,733,223	$2,493,192,901			$127,230,790				
Average (weighted)		$11,989,094	$30,050,583	$588,144	5.9%	1,784,293	30,014	155	0.04%	1.0%

Source: Office of Regulatory Analysis.
Revenue data are from U.S. Dept. of Commerce, Bureau of Census. Compliance costs are from Chapter V of this Final Economic Analysis. Profit data are derived from Robert Morris Associates, RMA Annual Statement Studies 1995-1998 (RMA) and U.S. Department of the Treasury, 1995-1997 (IRS). Average profit rates for the period 1995 through 1998 were calculated from a weighted average of profit rates over this period for all 4-digit industries associated with each 3-digit SIC classification. Revenues were used as weights in this calculation.

Table VIII-5 Estimated Economic Impact of the Ergonomics Program Standard on All Very Small Firms *

								For all very small firms		
SIC	Industry	Annualized Compliance Costs for All Very Small Establishments	Revenues for Very Small Firms ($1,000s)	Average Revenues for Very Small Firms ($)	Profits as a Percentage of Revenues [c]	Profits ($1,000s)	Average Profits per firm ($)	Annualized Costs per Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits

* "Very small firm" refers to firms with 1-19 employees.

[a] Excludes SIC 3731 (not in the scope of proposed standard)

[b] Revenue data was wholely or partially suppressed by the Census Bureau for the 1-19 employee entity size category. Any projected economic impacts are therefore overestimated for these industries. Where estimated costs as a percent of profits would be in excess of 20 percent, revenues and profits are reported as "na", because the high impact is at least partially the direct result of revenue data supr

[c] Profit rates, except where noted, are derived from Robert Morris Associates ' "RMA Studies."

[d] Profit data not available for all 4-digit industries in this classification; profit rates interpolated from a combination of RMA and IRS profit data.

[e] Based on a combination of RMA and IRS profit data.

[f] Based on IRS profit data.

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H. Summary of the Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act, as amended in 1996, requires that a Final Regulatory Flexibility Analysis (FRFA) contain the following elements:[3]

(1) a succinct statement of the need for, and objectives of, the rule;

(2) a summary of significant issues raised by public comments on the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the Agency of the issues, and a statement of any changes made in the proposal as a result of the comments;

(3) a description and estimate of the number of small entities affected by the final standard, where possible;

(4) a description of the reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirements, and the type of professional skills necessary for the preparation of the report or record; and

(5) a description of the steps the Agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of the applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the Agency which affect the impact of the small entities was rejected.

In addition, a Final Regulatory Flexibility Analysis must contain a description of any significant alternatives to the proposed rule that accomplish the stated objectives of the applicable statute (in this case the OSH Act) and that minimize any significant economic impact of the proposed rule on small entities. This section summarizes OSHA's Final Regulatory Flexibility Analysis. The full analysis, including responses to comments on the IRFA and a discussion of alternatives, is provided as part of the Final Economic and Regulatory Flexibility Analysis, which is Ex. 900 in the Docket.

1. Description of the Reasons for Agency Action. OSHA is issuing a final Ergonomics Program Standard to address the significant risk of employee exposure to ergonomic risk factors in general industry workplaces. Exposure to ergonomic risk factors on the job leads to MSDs of the upper extremities, back, and lower extremities. Every year, nearly 600,000 MSDs that are serious enough to cause time off work are reported to the Bureau of Labor Statistics by employers, and evidence suggests that an even larger number of non-lost worktime MSDs occur every year. The purpose of this standard is to reduce the number and severity of MSDs caused by exposure to risk factors in the workplace.

2. Significant issues raised by public comments on the Initial Regulatory Flexibility Analysis (IRFA), an assessment of the issues, and changes made in the proposal as a result of the comments. Relatively few commenters provided comment on the Initial Regulatory Flexibility Analysis. However commenters did raise many issues relevant to the regulatory flexibility analysis. Some of the principal issues raised by public comments that have special relevance to regulatory flexibility analysis, and OSHA's responses to them, are summarized in the remainder of this section.

Many commenters referred to an estimate attributed to SBA that the costs of complying with the proposal would be 2.5 to 15 times higher than the Agency's estimate (see, *e.g.*, Tr. pp. 7767–7768, pp. 5730–5731, pp. 16005–16006, p. 9975, pp. 15668–15669, 30–2047. 30–3811, 30–2056, 30–238, 31–326, 31–326, 30–2058). While OSHA does not agree with that estimate, OSHA has revised the rule in a variety of ways to make it less costly to small businesses. The introduction of a two part action trigger will have the effect of significantly decreasing the number of jobs small businesses will need to address through a full ergonomics program or a quick fix. OSHA has also increased its estimates of many of the unit costs for activities required in response to comments from businesses of all sizes and SBA.

Many small businesses were concerned about would be the necessity of hiring consultants or ergonomic experts (which the standard does not require) (see, *e.g.*, Exs. 30–2993, Tr. p. 15586, Exs. 30–3849, 30–3166, 30–4334, 30–3167, 30–2993, Tr. pp. 14934, 30–3231, Tr. pp. 16935–16936). OSHA has increased its estimate of the time that managers will need to understand how to implement ergonomics programs, but continues to believe that, with adequate training, ergonomic consultants will be needed for only 15 percent of all problem jobs.

Some commenters were concerned about the differing impact of the final standard on large and small employers: "Smaller businesses unlike large corporations do not maintain positions for health and safety officers * * * many small businesses will be forced to obtain consultations and assistance from an outside firm" (Tr. pp. 9195–9196). Or that small businesses "do not have means to hire" experts such as ergonomists, engineers, and doctors (Tr. pp. 9258–9259), a statement that was repeated by many commenters from small businesses. Many small businesses also stated that the complexity of the standard and specialized skills necessary for job hazard analysis or job controls would make compliance difficult. "The vast majority of small businesses * * * lack the safety and health expertise necessary to interpret the complex standard" (Ex. 30–4843). Other commenters found the standard and ergonomics too technical, too complex, or beyond their abilities (*e.g.*, Exs. 30–4334, 30–1545, Tr. pp. 12770–12771, 15564–15566). OSHA agrees that the standard may have greater impacts on small businesses than on large businesses. However, as Chapter VII of the final economic analysis demonstrates, the standard is economically feasible even for very small businesses and will reduce significant risk to small entity employees. Furthermore, in the long run, the standard will lead to significant reductions in the costs of workers' compensation and other injury related costs for many small employers.

In terms of the regulatory approach of the proposal, some small business commenters urged the Agency to provide a specification type of standard. "Small businesses * * * often cannot deal with that type of flexibility [referring to controlling hazards] and so prefer certainty" (Tr. pp. 6202–6206). "What OSHA failed to do in the proposed standard is give the specific steps that a small business owner must take to prevent MSDs. The proposed standard only gives small businesses a process for how they should develop their own solutions to the MSD problem" (Ex. 30–1897). "Small businesses prefer certainty which rule [sic] unfortunately does not provide" (Tr. pp. 6202–6206). In developing the final rule, OSHA has tried to retain the flexibility that will reduce costs to many small employers, while adding clarity to many provisions. Particularly the use of the screen as part of the action trigger and the optional safe harbors for determining compliance should significantly simplify compliance for the small employer.

3. An estimate of the number of small entities affected by the final standard. OSHA estimates that there are 4.75 million small establishments in general industry affected by the rule. The final standard covers an estimated 4.2 million very small entities (*i.e.*, those employing fewer than 20 employees).

4. Reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for the preparation of the report or record. Table VII–6 summarizes the compliance requirements of the rule, which types of small entities they apply to, the expected burden requirements, and the types of professional skills needed.

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[3] The Regulatory Flexibility Act states that a Regulatory Flexibility Analysis need not contain all of the above elements *in toto* if these elements are presented elsewhere in the documentation and analysis of the rule. The Regulatory Flexibility Analysis should, however, summarize where these elements can be found elsewhere in the rulemaking record.

Table VIII-6. Estimates of Mangers' and Employees' Time To Comply with Various Provisions of the Final Rule and Comparisons with the Estimates of Time Needed for these Activities for the Proposed Rule

Provision		When Required		Hours or Costs Involved		Level of Staff or Expertise Required (Both proposed and final rules)
Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	
Costs to determine if establishment is within the scope of the standard, and if so, whether it can qualify for grandfather status	Costs to determine if establishment is within the scope of the standard, and if so, whether it can qualify for grandfather status	Initially for all establishments in general industry		2 hours	1 hour	Manager
Cost to familiarize employer with the standard's initial requirements, determine hazard awareness information needed, set up reporting system, post information, and set up report response system	Cost to implement proposed hazard information and reporting requirement (designating responsible persons, providing resources, etc.)	All establishments in general industry*	All general industry establishments with basic programs (i.e all with manual handling or manufacturing jobs); otherwise, only if MSD occurs*	4 hours	3 hours	Manager

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Table VIII-6. Estimates of Mangers' and Employees' Time To Comply with Various Provisions of the Final Rule and Comparisons with the Estimates of Time Needed for these Activities for the Proposed Rule

Provision		When Required		Hours or Costs Involved		Level of Staff or Expertise Required (Both proposed and final rules)
Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	
Cost to provide employee information (initial requirement)		All establishments in general industry*	Establishments with basic programs (i.e., all with manual handling or manufacturing jobs); otherwise, only if MSD occurs	1 hour per employee plus 1 hour managerial time	0.5 hour per employee plus 0.5 hour managerial time	Manager

Table VIII-6. Estimates of Mangers' and Employees' Time To Comply with Various Provisions of the Final Rule and Comparisons with the Estimates of Time Needed for these Activities for the Proposed Rule

Provision		When Required		Hours or Costs Involved		Level of Staff or Expertise Required (Both proposed and final rules)
Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	
Cost to investigate whether an MSD or persistent signs or symptoms are covered by the standard and determine whether MSD incidents occurred in job that meets the screen	Cost to investigate whether an MSD or persistent symptoms are covered by the standard for all establishments with manual handling and manufacturing jobs; cost to investigate whether an MSD is covered by the standard for all general industry establishments)	All establishments in general industry where there is a report of an MSD or persistent signs and symptoms	All establishments where persistent symptoms or an MSD occurs in manufacturing or manual handling establishments; otherwise, only where an MSD occurs	0.25 hour of managerial time and 0.25 hour of employee time to process each MSD report; 1.75 hours of managerial time to analyze whether MSD is an MSD incident and apply the screen to the job	0.25 hour of managerial time and 0.25 hour of employee time to process each MSD report	Manager

Table VIII-6. Estimates of Mangers' and Employees' Time To Comply with Various Provisions of the Final Rule and Comparisons with the Estimates of Time Needed for these Activities for the Proposed Rule

Provision		When Required		Hours or Costs Involved		Level of Staff or Expertise Required (Both proposed and final rules)
Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	
Cost to designate responsible manager, review reporting polices, provide managerial training and information in establishments with full program or using quick fix (standard does not require managerial training for quick fix, but analysis assumes this activity necessary for costing purposes)		All establishments with jobs meeting two-part action trigger *	If persistent symptoms or an MSD occurs in manufacturing or manual handling establishments; otherwise, only where an MSD occurs*	24 hours of managerial time	16 hours of managerial time	Manager
Cost to train employees in establishments with full programs		All employees in jobs that have met the two-part action trigger*	All employees in problem jobs in establishments*	3 hours of employee time per affected employee, 3 hours of managerial time per problem job to provide training; 25 percent of employers able to use quick fix option and these do not need to conduct employee training.	1 hour of employee time per affected employee, 2 hours of managerial time per problem job to provide training; 25 percent of employers able to use quick fix option and these do not need to conduct employee training.	Manager with training required for the full program

Table VIII-6. Estimates of Mangers' and Employees' Time To Comply with Various Provisions of the Final Rule and Comparisons with the Estimates of Time Needed for these Activities for the Proposed Rule

Provision		When Required		Hours or Costs Involved		Level of Staff or Expertise Required (Both proposed and final rules)
Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	
Cost of job hazard analysis (standard does not require job hazard analysis for quick fix, but analysis assumes job hazard analysis necessary for costing purposes)		All establishments with jobs that have met the two part action trigger*	All establishments with problem jobs*	1 hour of managerial time plus 1 hour employee time per problem job		Manager with full program training
Cost to evaluate and implement job controls (standard does not require full evaluation of job controls for quick fix, but analysis assumes evaluation necessary for costing purposes)		All establishments with jobs that have met the screen and been determined to have MSD hazards*	All establishments with problem jobs*	2-16 hours of employee and 2-32 hours of managerial time, depending on problem job; in 15 percent of cases, $2,000 for consulting ergonomist's time is assumed to be required		In 85 percent of cases, manager with full program training; in 15 percent of cases, consultant ergonomist.

Table VIII-6. Estimates of Mangers' and Employees' Time To Comply with Various Provisions of the Final Rule and Comparisons with the Estimates of Time Needed for these Activities for the Proposed Rule

Provision		When Required		Hours or Costs Involved		Level of Staff or Expertise Required (Both proposed and final rules)
Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	
Cost to administer MSD management (without WRP costs)		All establishments with jobs that have met the action trigger*	All establishments with problem jobs*	1 hour of managerial time; 2 hr worker's time; $130 for HCP's time for the 15.5% of MSDs where no HCP is currently provided; 20% of all cases involving a second opinion; 5% of all cases involving a third opinion	1 hour of managerial time; 2 hr worker's time per MSD	Manager with full program training, health care professional, or safety and health professional
Cost to do recordkeeping		All establishments with 11 or more employees must keep records if there is an employee report of an MSD or MSD signs and symptoms*	All establishments with 10 or more employees must keep records if there is an employee report of an MSD or MSD signs and symptoms*	0.5 hour of supervisory time per MSD	0.25 hour of supervisory time per MSD	Supervisor

Table VIII-6. Estimates of Mangers' and Employees' Time To Comply with Various Provisions of the Final Rule and Comparisons with the Estimates of Time Needed for these Activities for the Proposed Rule

Provision		When Required		Hours or Costs Involved		Level of Staff or Expertise Required (Both proposed and final rules)
Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	
Cost to conduct program evaluation		All establishments with full programs*		4 hours of managerial time in the three years following discover of job meeting two part action trigger. For 25 percent of problem jobs able to use quick fix option, no program evaluation is conducted.		Manager with full program training
Cost to implement job controls--engineering, work practice, or administrative controls		All establishments with jobs that meet the action trigger and are determined to have MSD hazards*	All establishments with problem jobs*	Costs per job intervention per affected employee vary by industry and occupational group and are presented in detail in Chapter V of Final Economic Analysis (affected employees include the employee incurring the MSD incident in a job meeting the screen and found to have MSD hazards and all other employees in the establishment with the same job)	Costs per job intervention per affected employee vary by industry and occupational groups and are presented in detail in Tables V-9 to V-13 of Preliminary Economic Analysis (affected employees include the employee incurring the MSD and all other employees in the establishment with the same job)	Covered under costs calculated for evaluating and implementing controls (above)

Table VIII-6. Estimates of Mangers' and Employees' Time To Comply with Various Provisions of the Final Rule and Comparisons with the Estimates of Time Needed for these Activities for the Proposed Rule

Provision		When Required		Hours or Costs Involved		Level of Staff or Expertise Required (Both proposed and final rules)
Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	Final Rule	Corresponding Proposed Provision	
Cost to provide work restriction protection		All establishments with jobs meeting the two-part action trigger (but MSD management costs only for incurred injured employees)*	All establishments with problem jobs*	$944 per MSD for work restriction protection, plus $104 per case (11%) for administrative costs to employer	$923 per MSD	Manager
Employee involvement, in addition to employee involvement as part of training, job hazard analysis, and implementing job controls		All establishments with jobs that meet the action trigger, where quick fix option is not used *	Establishments with basic programs: i.e. all with manual handling or manufacturing jobs; otherwise, only if MSD occurs*	4 hours initially when full program begins, 2 hours annually, 2 hours for program evaluation	Not costed	Nonsupervisory employee(s)

*Except for costs to review the standard to determine whether an existing program qualifies for grandfather status, OSHA's analysis assumes that programs are grandfathered in will not incur costs to implement an ergonomics program (since they already have programs), except costs for work restriction protection and multiple HCP review.

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5. Steps the Agency has taken to minimize the significant economic impact on small entities. The final standard contains many elements that will reduce burden on small entities as compared with the proposal. The scope of the standard is simplified. All employers must provide basic information to employees, and there are no special obligations for employers with employees engaged in manufacturing or manual handling operations. Employers will need less time and effort to determine how they are affected by the scope of the rule. In the appendices to the standard, OSHA has provided material that employers can use to meet this requirement, further reducing the burden of the rule. The Agency has also kept an MSD trigger mechanism, and has added a screen. Employers do not need to do anything beyond provide information to employees unless an MSD incident in a job that meets the screen. The addition of the screen serves both to simplify decisionmaking for small employers and to target the rule toward high risk jobs. For employees in jobs meeting the action trigger, employers must provide a quick fix or initiate an ergonomics program. In addition, the employer need not control the job unless MSD hazards are found during the job hazard analysis. Employers may meet their job hazard analysis and control obligations in any one of a variety of ways. The addition of clearer compliance endpoints will reduce employer uncertainty about whether they are in compliance with the rule. Finally, an employer can cease having a program at any time the risks in the job are lowered so that the job no longer meets the screen.

Establishments with fewer than 11 employees do not have to keep records. Where a job hazard analysis or job controls are necessary, employers do not have to hire a professional ergonomic consultant. The Agency will also supply compliance guides for small businesses and a Web-based expert system to guide employers through the applicability of the final standard. The Agency has provided flexibility in choosing controls to reduce MSD hazards, including administrative controls along with engineering and work-practice controls. Finally, the Agency is permitting existing ergonomic programs to be grandfathered and considered in compliance with the standard as long as the existing program meets the requirements in paragraph (c).

The principal reasons that the Agency has made its revisions for the final standard are to make the final standard less costly, more cost-effective, and still achieve the goal of employee protection. These revisions will help all employers, including small employers.

Alternatives to the Proposed Standard

In the Final Regulatory Flexibility Analysis, OSHA considered alternatives with respect to voluntary action, alternative scope provisions, alternative trigger provisions, alternative work restriction protection provisions and other approaches to the rule making such as exempting small or low hazard employers. SBA's Office of Advocacy (Ex. 601–X–1) urged OSHA to consider exempting low hazard industries, and exempting small firms from WRP. OSHA believes that the new two part action trigger is a superior means of focusing the rule's obligation on high hazard work situations, while maintaining employee protection. The action trigger serves to assure that employers do not need to try to fix low hazard jobs. Further, this approach does this in a way that assures that even small firms in high hazard industries will not need to fix their low hazard jobs, while workers in the occasional high hazard job in a low hazard industry receive the protection they need. Exempting small businesses from WRP would remove needed protections for employees in small businesses. The Agency's analysis found that those alternatives that significantly alleviated the impact on small businesses more than OSHA's final standard did not provide adequate protection to worker health and safety. Many of the alternatives to specific provisions, such as WRP, are also discussed in the Preamble in the sections describing these provisions.

IX. Unfunded Mandates

OSHA reviewed the final ergonomics program standard in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 et seq.). As discussed above in the Summary of the Final Economic Analysis (Section VIII of the preamble), OSHA estimates that compliance with the final ergonomics program standard will require the expenditure of approximately $4.0 billion each year by employers in the private sector. Therefore, the final ergonomics program standard establishes a federal private sector mandate and is a significant regulatory action, within the meaning of Section 202 of UMRA (2 U.S.C. 1532). OSHA has included this statement to address the anticipated effects of the final ergonomics program standard pursuant to Section 202.

OSHA standards do not apply to state and local governments, except in states that have voluntarily elected to adopt an OSHA State Plan. Consequently, the final standard does not meet the definition of a "Federal intergovernmental mandate" (Section 421(5) of UMRA (2 U.S.C. 658(5)).

This final rule was proposed under Section 6(b) of the OSH Act. The final ergonomic program standard will prevent 4.6 million MSDs over the next 10 years. The final ergonomics program standard will lead to $558 million per year in costs on state, local or tribal governments. OSHA pays 50 percent of State plan costs but does not provide funding for state, local or tribal governments to comply with its rules.

OSHA does not anticipate any disproportionate budgetary effects upon any particular region of the nation or particular state, local, or tribal governments, or urban or rural or other types of communities. Chapters V and VI of the economic analysis provide detailed analyses of the costs and impacts of the final rule on particular segments of the private sector. OSHA has analyzed the economic impacts of the rule on the affected industries and found that compliance costs are, on average, only 0.05 percent of sales, and that few, if any, facility closures or job losses are anticipated in the affected industries. As a result, impacts on the national economy would be too small to be measurable by economic models.

The anticipated benefits and costs of this final standard are addressed in the Summary of the Final Economic Analysis (Section VIII of this preamble), above, and in the Final Economic Analysis (Ex. 900). In addition, pursuant to Section 205 of the UMRA (2 U.S.C. 1535), having considered a reasonable number of alternatives as outlined in this preamble and in the economic analysis (Ex. 900), the Agency has concluded that the final standard is the most cost-effective alternative for implementation of OSHA's statutory objective of substantially reducing or eliminating a significant risk of material impairment. This is discussed at length in the economic analysis (Ex. 900) and in the Summary and Explanation (Section IV of this preamble) for the various provisions of the final ergonomics program standard.

X. Environmental Impact Statement

Pursuant to the National Environmental Policy Act, the Department of Labor has issued regulations to determine when an environmental impact statement is required in a rulemaking proceeding. Section 29 CFR § 11.10(a)(3) states:

> Preparation of an environmental impact statement will always be required for proposals for promulgation, modification or revocation of health standards which will significantly affect air, water, soil quality, plant or animal life, the use of land and other aspects of the human environment.

In the preamble to the proposed rule, the Agency stated that no environmental impact statement would be required for this rule because it does not meet the criteria set forth in 29 CFR § 11.10(a)(3), as stated above. OSHA received one comment disagreeing with this determination. The commenter (Ex. 500–221) suggested that employer compliance activities associated with the proposed Ergonomics Program Standard would have the potential to cause enormous environmental impacts. The commenter also suggested that the proposed standard would increase the demand for electricity by encouraging workplace automation; increase the consumption of natural resources by encouraging employers to use greater numbers of smaller product containers; and impair air quality by encouraging delivery vehicles to remain at idle while employees manually move smaller loads per trip. Finally, the commenter asserted that the proposed standard would encourage automation of trash collection and waste disposal operations, and would discourage recycling.

OSHA notes that the final standard requires employers to control problem jobs by modifying the conditions under which the work is performed, including such changes as workstation modification, redesign of tools, and job rotation. The final standard also requires employers to develop ergonomic programs that involve such elements as assessment of problem jobs, modification of jobs to reduce MSD hazards, employee training, and MSD management.

Ergonomics-related job modifications typically result in greater production efficiencies without the need for additional natural resources or the increased discharge of pollutants. As several ergonomists testified at the hearings (David Alexander, Tr. Pp 2142–53, 2369–72 and Dennis Mitchell, Tr. Pp 2366–68) ergonomic modifications typically involve mechanization (*e.g.* the use of carts, shelves, adjustable workstations, etc.) and only rarely involve automation (the replacement of people by machines.) Automation is a rarely-used approach unless the employer considers that process efficiency will be improved. The likelihood is that updated, more energy-efficient production equipment will actually lead to a decrease, not an increase, in energy consumption. In the trash collection and recycling industries, automation and mechanization are increasing because of factors that long predate issuance of this final rule. Mechanization and automation in those industries are likely to produce greater efficiencies and lower costs as well as reducing the risks and costs of employee injuries. OSHA disagrees with the commenter's assertion that recycling would be abandoned on a large scale as a result of OSHA's standard on ergonomics programs; by necessity or law, most local jurisdictions in the U.S. have now committed themselves to recycling.

OSHA believes the claims of adverse environmental effects asserted by the commenter are highly speculative, and fail to make a plausible case that the final Ergonomics Program Standard will significantly affect the human environment. Moreover, none of the impacts predicted by the commenter takes into account any of the environmental benefits that might result from ergonomics-related job modifications, such as productivity increases and waste reduction. Accordingly, OSHA concludes that the final rule will not result in significant environmental impacts and, therefore, an environmental impact statement is not required.

XI. Additional Statutory Issues

1. Fair Notice

Numerous commenters contend that various terms used in the proposed standard are unduly vague and fail to provide fair notice of what the standard requires. For example, the American Iron & Steel Institute asserts that the proposal "is not written in language that can reasonably be understood by those who must comply with it." Ex. 32–206–1. Morgan, Lewis & Bockius believes that several provisions of the proposal "are unworkably vague in their current state." Ex. 30–4467 at p. 6. Organization Resources Counselors, Inc. (ORC) states that the proposal contains an "excess of complex terms and definitions." Ex. 32–78–1 at p. 5. Similar objections were raised by the Edison Electric Institute (Ex. 32–300–1 at p. 6); the Integrated Waste Service Association (Ex. 22–337–1 at p. 8); the National Coalition on Ergonomics (Ex. 32–368–1 at pp. 126–29); the Chamber of Commerce (Ex. 30–1722 at pp. 24–25 & Ex. 500–188 at pp. 66–69); the Forum for a Responsible Ergonomics Standard (Ex. 30–3845 at pp. 26–29); and numerous others. Among the phrases in the proposal the commenters assert were overly vague are "eliminate or materially reduce the MSD hazards;" "significant amount of the employee's worktime;" "repeated exposure;" "core element;" "no cost to employee;" "employer commitment;" "employee participation;" "ergonomic hazard;" "persistent MSD symptoms;" "forceful lifting/lowering;" "problem job;" "common sense determination;" "ergonomic risk factors;" "OSHA recordable MSD;" "reasonably likely to cause or contribute to the type of MSD reported;" "cold temperatures;" "dynamic motion;" "awkward posture;" "static posture;" and "reduce to the extent feasible." E.g., Ex. 32–368–1 at p. 126 & Ex. 500–197 at pp. III–3–18 (NCE); Ex. 32–206–1 at pp. 13–14 (American Iron & Steel Institute); Ex. 32–241–4 at pp. 166–80 (Anheuser-Busch and United Parcel Service).

Some of the same commenters, as well as others, object to what they characterize as the proposal's "one size fits all" approach. *E.g.*, Ex. 30–3845 at p. 37 (Forum for a Responsible Ergonomics Standard); Ex. 32–368–1 at p. 72 (NCE); Ex. 30–3077 at p. 1 (National Tooling and Machining Association); Ex. 30–2993 at p. 2 (Small Business Legislative Council). They believe it is inadvisable for OSHA to issue a standard that applies to a wide variety of different industries because conditions pertinent to ergonomics vary widely among industries.

The reason OSHA included general language, such as the phrases the commenters contend are too vague, in the proposed standard was to avoid the very "one size fits all" approach to which some of the same commenters and many others object. Because of the numerous variables that can result in work-related MSDs, OSHA drafted the proposed rule in flexible, performance-oriented language to enable employers to develop ergonomics programs tailored to their workplaces, rather than attempting to prescribe, for example, the specific manner in which employers should control an MSD hazard. As a result, the proposal used a number of general phrases to allow employers the maximum amount of flexibility consistent with the standard's goal of reducing MSDs.

In response to the numerous comments that criticized the proposed standard as being unduly vague, OSHA has made a number of changes to the final standard that are designed to give additional guidance as to what the standard requires of employers. Some of the complaints most frequently voiced in the comments—that employer obligations are not defined with sufficient clarity—are addressed by (1) changing the scope of the standard to no longer require employers to determine whether their employees are engaged in "manual handling" or manufacturing;

(2) including an objective Action Trigger for determining whether an employer must fix a job in which an employee has reported a MSD incident; and (3) establishing compliance endpoints that will enable employers to tell with certainty whether they have taken sufficient steps to fix a problem job. As a result of these changes, certain phrases that commenters claimed were too vague, such as "significant amount of the employee's worktime," "core element of the job," and "forceful lifting/lowering" are no longer used. The changes to the final rule, and the reasons for them, are discussed in the Summary and Explanation section of this preamble. Although the final rule contains greater specificity than the proposal, OSHA believes that the final rule still gives employers sufficient flexibility to develop ergonomics programs that are suited to the particular characteristics of their workplaces.

OSHA believes that this final rule provides fair notice to employers of their obligations. On its face, it provides persons of ordinary intelligence a reasonable opportunity to understand the conduct it prohibits or requires. See *Hill* v. *Colorado*, 120 S.Ct 2480, 2498 (2000). Moreover, in addition to the language of the standard and the further guidance provided by this preamble, other sources will be available to help employers determine their compliance obligations. OSHA intends to make compliance assistance conveniently available to the public, both through its website (*www.osha.gov*) and through printed publications. Among the compliance assistance materials will be a small entity compliance guide, as required by the Small Business Regulatory Enforcement Fairness Act of 1996, specifically designed to inform small businesses of their obligations under the rule in language that is readily understandable. Employers and employees will also be able to look to guidelines that have proven successful in averting MSDs in specific industries, such as the red meat guidelines. Ex. 2–13. OSHA-funded consultation services through state agencies will be available to qualifying employers who request it. And personnel in OSHA's national and field offices will be available to answer questions about the standard. OSHA also encourages trade associations and other business organizations to disseminate information, such as case studies of successful ergonomic interventions by employers in their industries, that will help facilitate compliance with the standard by their members.

2. OSHA's Past Enforcement Efforts

In the NPRM, OSHA noted that it had gained experience over the years in addressing ergonomic issues through a variety of means, including enforcement, consultation, training and education, compliance assistance, the Voluntary Protection Programs, and issuance of voluntary guidelines. 64 FR at 65774. In the area of enforcement, the agency had successfully issued over 550 ergonomics citations under the OSH Act's General Duty Clause, section 5(a)(1). *Id.* Almost all of these citations, the agency observed, had led to the implementation of ergonomics programs by the cited employers, included some corporate-wide programs developed pursuant to settlement agreements. *Id.*

The Chamber of Commerce criticizes OSHA for not mentioning cases where, in the Chamber's words, OSHA's enforcement efforts "abjectly failed." Ex. 30–1722 at p. 7. The Chamber states that OSHA lost the "only three enforcement actions that were actually tried to completion," citing Pepperidge Farm, 17 O.S.H. Cas. (BNA) 1993 (Rev. Comm'n, 1997); Dayton Tire, Division of Bridgestone/Firestone, Inc., 1998 WL 99288 (ALJ, 1998); and Beverly Enters., 1994 WL 693958 (ALJ, 1995), review directed (Nov. 9, 1995), decided by the Commission (Oct. 27, 2000). Ex. 30–1722 at pp. 7–8. See also Ex. 500–197 at Ex. III–C, E. Scalia, OSHA's Ergonomics Litigation Record Three Strikes and It's Out, cato inst. No. 391. These cases, the Chamber contends, "demonstrate the futility of promulgating a mandatory ergonomics program standard, and underscore OSHA's failure to understand the state of the scientific evidence and its legal authority." Ex. 30–1722 at p. 10. Similarly, the NCE asserts that litigation of ergonomics citations under the general duty clause demonstrates OSHA's inability to garner sufficient scientific evidence to support an ergonomics rule. Ex. 32–368–1 at p. 14.

Contrary to the Chamber's contentions, OSHA has not "lost" the only three ergonomics cases tried to completion. In the case of Beverly Enters., the "loss" to which the Chamber refers was an adverse administrative law judge's decision that was under review by the Commission when the Chamber submitted its comments. The Commission has since, in a decision issued on October 27, 2000, reversed the administrative law judge's decision and held that the company's practices for lifting patients in its nursing homes exposed its nursing assistants to a serious recognized hazard. The Commission decision in Pepperidge Farm held that the company's employees were exposed to recognized lifting and repetitive motion hazards. In Dayton Tire, OSHA received an adverse decision from the administrative law judge and decided the case did not present a proper vehicle for appeal. The final order in Dayton Tire is therefore an unreviewed administrative law judge's decision and lacks precedential value. United States v. Sturm, Ruger & Co., 84 F.3d 1, 5 n. 4 (1st Cir.1996); Matter of Establishment Inspection of Cerro Copper Prods. Co., 752 F.2d 280, 284 (7th Cir. 1985); Leone Constr., 3 O.S.H. Cas. (BNA) 1979, 1981 (Rev. Comm'n 1976).

The Chamber contends that the "unfavorable" decisions in these three cases undermine the scientific basis for ergonomics regulation and hence for this rule. To the contrary, OSHA believes that the decisions in Beverly and Pepperidge Farm support both the need for and the scientific basis of this rule. They demonstrate that, even under the heavy burden of proof OSHA bears in general duty clause litigation, the preponderance of the credible evidence shows that workplace exposures cause MSDs, that employers recognize this, and that serious injuries result from these exposures.

The Chamber also cites testimony of OSHA witnesses in these cases, along with deposition testimony from Hudson Foods, a case that was ultimately settled, to attempt to show that experts engaged by OSHA cannot state with certainty the degree of risk caused by exposure to different levels of ergonomic stressors (Ex. 30–1722 at pp. 26–27, 47); that OSHA compliance officers are unqualified to evaluate the health risk from ergonomic stressors (Ex. 30–1722 at pp. 28, 64); that experts are unable to define with precision terms such as "awkward posture," "high force," and "long periods of standing" (Ex. 30–1722 at pp. 64–69); that two OSHA expert witnesses in Dayton Tire did not offer consistent definitions of the stressors in certain jobs (Ex. 30–1722 at p. 69); and that OSHA experts were unable to testify to the effectiveness of abatement measures (Ex. 30–1722 at pp. 72–73).

The Chamber's reliance on selected testimony in these cases does not undermine the scientific basis for this final rule. First, as the Commission decisions in Beverly and Pepperidge Farm show, the evidence in those cases supports OSHA's decision to address ergonomic hazards in this final rule. Second, even if reasonable experts differ over the nature of ergonomic risks or cannot precisely quantify those risks, OSHA is not precluded from issuing a rule. "OSHA is not required to support its finding that a significant risk exists with anything approaching scientific certainty." Benzene, 448 U.S. at 656. As long as its findings are supported by a body of reputable scientific thought, OSHA may use conservative assumptions in interpreting the evidence and risk error on the side of overprotection rather than underprotection. Id. See also *American Dental Ass'n* v. *Martin*, 984 F.2d 823, 827 (7th Cir.), cert. denied, 510 U.S. 859 (1993) ("OSHA was required neither to quantify the risk to workers health nor to establish the existence of significant risk to a scientific certainty."). Certainly, the record of this rulemaking contains conflicting evidence on the issues the Chamber raises, such as the relationship between ergonomic stressors and MSDs. However, given the high number of MSDs workers have been suffering and continue to suffer, OSHA does not believe that the lack of a consensus among knowledgeable experts justifies further delay in the issuance of a rule that is needed to protect workers against such ailments. In addition, there is a substantial body of scientific evidence to support the promulgation of an ergonomics standard.

Because the Chamber and other rulemaking participants have argued that Pepperidge Farm and Beverly undermine the basis for this rule, a brief discussion of those cases is appropriate.

Pepperidge Farm

In Pepperidge Farm, the Commission held that the employer willfully violated the OSH Act in requiring its employees to perform hazardous lifts, which caused them to suffer high rates of serious MSDs. The administrative law judge found that the employer's manual lifting tasks, which required the lifting of objects weighing up to 165 pounds, were hazardous, that the company recognized the hazard, and that feasible means of abating the hazard existed. 17 O.S.H. Cas. (BNA) at 2003. The employer did not dispute before the Commission the ALJ's findings that the lifting tasks were hazardous and that abatement was feasible, but argued that it did not recognize the hazard. The Commission rejected the argument, finding that Pepperidge Farm recognized the hazard based on recommendations by its worker's compensation carrier and its own corporate ergonomist. *Id.* at 2003–07. Thus, Pepperidge Farm illustrates, as OSHA has found in this rulemaking, that repetitive lifting of heavy objects is hazardous and that feasible means that will prevent or materially reduce the hazard are available.

The Commission also agreed with OSHA that repetitive motion assembly line tasks posed a recognized hazard. 17 O.S.H. Cas. (BNA) at 2010. Over a three-year period, 28 employees engaged in repetitive motion tasks had undergone 42 separate surgical procedures, including 32 carpal tunnel releases. Id. at 2015. Based on this evidence and on testimony about the rate of carpal tunnel syndrome in the general population, the Commission found that the incidence of carpal tunnel injury caused by repetitive motions performed at the plant was "substantially in excess of that found in other populations, including other populations of workers." *Id.* at 2029. The Commission relied on expert testimony, evidence of biological plausibility, and epidemiological studies, to find that the high rate of MSDs suffered by the employees was caused by their work on the assembly line. *Id.* at 2028–29. The Commission also held that the employer recognized the hazard posed by the repetitive motions because the company's own medical staff attributed the cause of employee disorders to the tasks performed at the facility. *Id.* at 2030. And, the Commission held that the upper extremity musculoskeletal disorders resulting in surgery, disability, and restricted work suffered by employees from their assembly line tasks "clearly involved serious physical harm." *Id.* at 2032. The actual hazard posed to employees from the highly repetitive work, as opposed to a potential hazard, was thus not "benign," as claimed by one writer. Ex. 500–197 at p.12.

Finally, the Commission accepted OSHA's position that Pepperidge Farm was required to follow a process of abatement to eliminate or materially reduce the hazard. 17 O.S.H. Cas. (BNA) at 2034–35. The Commission agreed with OSHA on the core components of such a process—"accurate record keeping, medical treatment for injured employees, workplace analysis to assess the potential hazard and steps to abate it, education and training of workers and management, and further actions, to the extent feasible, to materially reduce the hazard." *Id.* at 2034. Under this process, the employer would determine "precisely what particular mix of engineering and administrative controls most efficiently reduces the [hazard]." *Id.* at 2033. The Commission found that Pepperidge Farm had in fact followed such a process by implementing a number of engineering and administrative controls and taking the other process steps recommended by OSHA. *Id.* at 2034–38. The Commission concluded that the evidence did not show that the steps taken by the company were inadequate and therefore held that Pepperidge Farm had fulfilled its duty under the general duty clause with respect to the repetitive motion hazards. *Id.* at 2040–41.

Beverly Enterprises

In Beverly Enterprises, OSHRC No. 91–3344 *et al.*, (Rev. Comm'n, Oct. 27, 2000), the nursing assistants (NA's) the company employed in its nursing homes were required to lift patients manually and, in many cases, without assistance. Those employees suffered a disproportionate number of cases of lower back pain (LBP), which was often so severe that the employee would be off work for long periods of time, in some cases six months to over a year. Slip. op. at 16. The administrative law judge concluded that OSHA had not proven that the cases of LBP were caused by Beverly's lifting practices. The ALJ therefore vacated the citation for lack of proof of a hazard.

The Commission reversed the ALJ's decision. The Commission extensively examined the evidence showing that the nurses aides were exposed to the risk of contracting LBP from their lifting activities. The evidence included: (1) The high rate of lost-time cases of LBP suffered by Beverly's NA's; (2) evidence of biomechanical modeling, which evaluated the compressive force imposed by lifts of various weights and body positions on the lower back and calculated the percentage of the working population that could safely perform such lifts; (3) the NIOSH lifting equation, a formula developed for NIOSH for determining a safe level of lift based on data compiled by various researchers on the biomechanical, epidemiological, psychophysical, and physiological bases for LBP; and (4) epidemiological studies showing a correlation between patient lifting and LBP in populations of health care workers. The Commission concluded:

> We find on the scientific evidence presented that manual lifting of residents is a known and recognized risk factor for LBP. Considering also the evidence showing that the frequency and manner in which Beverly's NA's performed their assigned tasks exposed them to compressive forces in excess of limits well-established and accepted in the scientific community, and that Beverly's working conditions resulted in numerous lost-time incidents and prevented Beverly's NA's from performing their usual daily activities, we conclude that the manual lifting of residents was shown on this record to be a hazardous work practice and that Beverly controls the methods used to perform the lifting.

Slip op. at 52.

The Commission further found that Beverly recognized the hazard. Among other evidence, the Commission noted that Beverly had adopted a "Lift with Care" program, which referred to the NIOSH limits for safe lifting and taught its NA's how to lift patients in a way that would reduce the likelihood both of injury to the resident and back injury to the NA. *Id.* at 53, 59–60. In addition, Beverly knew its NA's were suffering high rates of LBP from its workers' compensation claims; that failure to use correct lifting techniques is one cause of back injury; and that its nursing homes did not have enough mechanical hoists to ensure that such equipment was available when necessary. Id. at 54–55. Finally, the Commission relied on testimony showing that experts familiar with the nursing home industry perceive lifts such as those performed by Beverly to be hazardous. *Id.* at 62.

The Commission found that the hazard was likely to cause serious physical harm. "LBP has a substantial and significant effect on the affected employees" ability to perform their normal activities and effectively disables employees for periods of time which are extensive in some instances. We conclude that in view of the debilitating effect on employees and the potential duration of the disability, LBP is properly considered serious physical harm." *Id.* at 68.

The parties disputed before the Commission whether OSHA had proven the feasibility and likely utility of abatement measures. Since the administrative law judge had not made factual findings on that issue, the Commission remanded the case for such findings. *Id.* at 72–73.

Settlements of General Duty Clause Citations

The Chamber of Commerce takes issue with OSHA's claim in the NPRM (64 Fed. Reg. at 65774) that the settlement agreements that resolved most of the contested General Duty Clause citations showed the success of OSHA's enforcement efforts and the efficacy of ergonomics programs. Ex. 30–1722 at pp. 10–12. The Chamber says that employers settle ergonomic citations to avoid the prospect of expensive litigation, and that OSHA therefore cannot conclude that "those employers ergonomics programs will in fact reduce injury in the workplace, and that, in the absence of OSHA's interventions, the employees in question would have been without protection." *Id.* at 10–11. OSHA continues to believe, contrary to the Chamber's assertion, that the settlement agreements are highly significant. While avoidance of the time and expense of litigation undoubtedly entered into those employers' decisions to settle, they nevertheless agreed to put forth substantial efforts to reduce or eliminate the hazards for which they had been cited. For many, the agreements went far beyond the cited locations to other corporate facilities not visited by OSHA and, therefore, far beyond any abatement orders OSHA might have obtained in litigation.

Those agreements and resulting efforts were clearly successful. As noted in the proposed rule preamble, OSHA held a workshop in March 1999, in which ten companies described their experience under their settlement agreement and with their ergonomics programs. All the companies that reported results to OSHA showed a substantially lower severity rate for MSD's since implementing the programs defined in their agreements. Ex. 26–1420. Most companies reported lower workers' compensation costs, as well as higher productivity and product quality. *Id.* Only five of the 13 companies involved in these agreements consistently reported the number of MSD cases or MSD case rates, and all five showed a significant decline in the number of lost workdays. None of the companies that reported severity statistics showed an increase in lost workdays as a result of the ergonomics program.

The success of OSHA enforcement coupled with settlements requiring comprehensive ergonomics programs was confirmed by the United Food and Commercial Workers International Union. The union recognized that "[t]he majority of our successful programs in the meatpacking and poultry industries were propelled by OSHA enforcement. Ergonomic settlement agreement and corporate-wide settlement agreements (CWSAs) * * * demonstrate industry recognition of the existence of MSD hazards and the elements of a program to prevent worker injuries arising from exposure to these hazards." Ex. 32–210–2, p. 5. The UFCW gave a number of examples illustrating the efficacy of these agreements and resulting programs. One was that of IBP's Dakota City meatpacking plant, which implemented a comprehensive program as a result of citations and subsequent settlement agreement. Cost savings attributed to the program "* * * were realized in the following areas: [employee] turnover was down significantly . * * *; [MSD] incidence dropped dramatically; surgeries fell; [and] worker's compensation costs were reduced significantly." *Id.* at 9.

The Chamber of Commerce asserts that a settlement agreement with Hudson Foods is an example of a case that the employer settled despite palpable weaknesses in OSHA's evidence. Ex. 30–1722 at pp. 11–12. The Chamber suggests that OSHA settled for little to get out of litigation that was not going well. In fact, OSHA had developed strong evidence to support the citations and was fully prepared to go to trial if necessary. See generally OSHA's Reply to Hudson Foods. Inc.'s Motion to Exclude Expert Testimony, Secretary v. Hudson Foods, Inc., dated April 30, 1999 (OSHRC Docket No. 98–0079)(Ex. 502–26). However, OSHA was willing to settle because the settlement secured all of its objectives. Hudson, which was purchased by Tyson Foods, Inc. after OSHA's inspection, but before the settlement, withdrew its notice of contest to the ergonomic allegations contained in the citations, paid a total penalty of $200,000 for all citations, and, most importantly, agreed to implement the comprehensive, existing Tyson Foods ergonomics program that the parties anticipated would abate the violations. Ex. 502–42, pp. 3–5, Exhibits "A" and B". With this hazard recognition and gain in employee safety and health, continued litigation over a larger penalty was pointless. The exculpatory language cited by the Chamber was acceptable in light of the intervening purchase of Hudson by Tyson Foods, which had not caused the cited conditions and had displayed good faith through its own implementation of a comprehensive ergonomics program. Ex. 30–4137, p. 1.

OSHA's Red Meat Guidelines

In addition to OSHA's enforcement efforts, many knowledgeable witnesses agreed that the agency's Ergonomics Program Management Guidelines for Meatpacking Plants ("Red Meat Guidelines") (Ex. 2–13) have resulted in implementation of successful workplace programs addressing ergonomic hazards. For example, in contrasting OSHA's proposal to the Red Meat Guidelines, IBP Inc."s Bob Wing acknowledged that the Guidelines had been successful. Ex. 30–4046, p. 1. Similarly, the American Meat Institute ("AMI"), the main representative for the U.S. Meat Industry, including 276 meat packers and processors, operating 559 facilities, acknowledged that the industry worked with OSHA on the Red Meat Guidelines and has been using them for nearly ten years. Ex. 30–3677, p. 1. The AMI notes that the Red Meat Guidelines work and that the industry has made substantial progress in addressing ergonomic issues since development of the Guidelines. *Id.* at 1–4. The AMI recommends that the Guidelines be extended throughout general industry. *Id.* at 4. The utility of OSHA's Red Meat Guidelines was also hailed by the United Food and Commercial Workers Union, which noted that upon publication of the Guidelines, industry began to respond both from the standpoint of technology, as well as ergonomic programs. Ex. 32–210–2, pp. 25–26. The success of the Guidelines led to use and acceptance in other industries. The poultry industry appears to have secured substantial reductions in chronic MSD's from adherence to the principles in the document (Ex. 30–3375, p. 1).

Enforcement Actions and Compliance Costs

Some commenters (*e.g.*, Anheuser-Busch and United Parcel Service, Ex. 32–241–4 at pp. 259–266 and the National Coalition on Ergonomics *et al.*, Ex. 500–197 at pp. II–79–84) contend that OSHA's compliance cost estimates ignore the way the agency has enforced ergonomic requirements under section 5(a)(1). The commenters assert that OSHA's estimated costs of compliance with the ergonomics standard are far lower than the costs of the controls OSHA has "demanded" in 5(a)(1) enforcement actions.

This argument lacks a factual foundation because it is unsupported by any evidence of the abatement costs associated with the section 5(a)(1) ergonomics citations. In any event, OSHA does not believe those costs are extravagant. In many cases, the abatement measures sought by OSHA were already being used by similarly-situated employers. In Hudson Foods, as discussed above, the settlement agreement simply required Hudson to adopt the ergonomics program of its new owner, Tyson Foods. In Pepperidge Farm, abatement of the lifting violations found by the Commission required the company to do no more than its own corporate ergonomist had recommended. 17 O.S.H. Cas. (BNA) at 2004–06. Similarly, the process for abating the repetitive motion hazards that Pepperidge Farm had already been following was found by the Commission to meet its duty to implement a feasible means of abatement. *Id.* at 2039–41. Thus, the citations in Pepperidge Farm did not require the employer to take additional steps beyond those it was already taking.

Moreover, these arguments reflect a fundamental misunderstanding of the significance of abatement requirements in 5(a)(1) citations and on a mistaken belief that employers who received section 5(a)(1) citations are typical of the employers who will have duties under this standard. Section 5(a)(1) comes into play when there is a serious recognized hazard in an employer's workplace that need not be abated under a specific standard. In order to prove an employer violated section 5(a)(1), OSHA must prove that a recognized hazard that is likely to cause death or serious physical harm exists in the employer's workplace. *Nelson Tree Srvs* v. *OSHRC*, 60 F.3d 1207, 1209 (6th Cir. 1995). OSHA must also specify a means by which the employer can eliminate or materially reduce the hazard and demonstrate the feasibility and likely utility of those means. Id. OSHA can not, however, "demand" that an employer abate a 5(a)(1) violation in any particular way. The employer is not limited to using the means listed in the citation to eliminate or materially reduce the hazard but is free to use any means that accomplishes that goal. See OSHA Field Inspection Reference Manual, Ch. A.4.f(2) ("the employer is not limited to the abatement methods suggested by OSHA."); *Marshall* v. *B.W. Harrison Lumber Co.*, 569 F.2d 1303, 1308 (5th Cir. 1978). An employer will generally have more detailed knowledge of its operations and processes than OSHA will gain during a relatively brief inspection of the workplace and may therefore be able to devise methods of eliminating ergonomics hazards that are more cost effective than those proposed by OSHA. As a result, the costs associated with the means of abatement listed in a citation, even if those costs were quantified in this record, may well be higher than those the employer will actually incur.

For additional reasons as well, the costs associated with section 5(a)(1) citations cannot be used to calculate the costs of this standard. The employers who have been cited for 5(a)(1) ergonomics violations are not representative of the universe of employers who will have compliance duties under the standard. As noted above, to sustain a 5(a)(1) citation, OSHA must be able to prove not only that a hazard is present but that the hazard is one that is recognized by the employer or its industry and is likely to cause death or serious physical harm. Because of this heavy burden of proof, OSHA has only issued 5(a)(1) citations for ergonomic violations to a relatively small number of employers, and those employers have been cited because their employees had been suffering unusually high rates of work-related MSDs. And because the employers cited under 5(a)(1) had particularly severe ergonomics problems, their compliance costs would not be representative of the costs the average employer will incur in complying with the standard.

Moreover, the existence of an ergonomics standard will help reduce compliance costs compared to enforcement of ergonomics protection under section 5(a)(1). It has frequently been observed that reliance on standards is preferable to enforcement under section 5(a)(1) because standards spell out employer duties more specifically than does section 5(a)(1). *E.g.*, *St. Joe Minerals Corp.* v. *OSHRC*, 647 F.2d 840, 846 n.13 (8th Cir. 1981); *B & B Insulation, Inc.* v. *OSHRC*, 583 F.2d 1364, 1371 & n.12 (5th Cir. 1978). That is true of this final rule. For example, unlike section 5(a)(1), this rule establishes safe harbors that will enable employers to know with a high degree of certainty when they have fulfilled their compliance obligations. By providing better notice of employer duties than does section 5(a)(1), the standard will promote the efficient use of employer resources and thereby help minimize costs.

3. Cost-effectiveness.

All OSH Act standards must be cost effective. Cotton Dust, 453 U.S. at 514 n. 32. A standard is cost-effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. *Id.*; Lockout/Tagout II, 37 F.3d at 668.

OSHA has taken a number of steps to ensure that this final rule is cost-effective. First, the rule allows employers with problem jobs to use any combination of engineering, administrative, and work practice controls to control the MSD hazards. Therefore, from the entire range of controls that would be potentially effective in an employer's workplace, the employer is able to select those that are the least costly.

The standard also ensures the cost-effective use of employer resources by focusing employers' compliance resources where they will do the most good: on those jobs that are demonstrably causing MSDs. It requires all covered employers to provide basic information about MSDs to its employees, but only those employers whose employees experience MSD incidents in jobs that meet the standard's Action Trigger have additional duties. In this regard, the final standard is more cost-effective than the proposal, which would have required all employers engaged in manufacturing and manual handling to implement ergonomics programs.

The Quick Fix option in the final rule also adds to the rule's cost-effectiveness by allowing employers to fix problem jobs without incurring the additional costs of setting up an entire ergonomics program. The Quick Fix option is available for those jobs that can be fixed quickly and completely once the job is identified as a problem job.

The extended compliance dates in the standard will also help minimize employers' compliance costs. Employers are given 11 months from the date of the standard's publication to provide their employees with the basic information the standard requires. Employers will thereby have sufficient time to first become familiar with the standard themselves and then have time to provide the required information to their employees.

Employers are given up to four years from the standard's effective date to complete the implementation of permanent controls for problem jobs. This extended time frame will promote cost-effectiveness in several ways. First, it will give employers sufficient time to learn about the range of available controls, both from the compliance assistance OSHA plans to make available and from other sources. Many employers will thereby be able to implement "off-the-shelf" controls, which will be less costly than if the employer needs to develop controls on its own or hire an outside expert to recommend controls. Second, the extended compliance period will enable an employer to adopt an incremental abatement approach that may, in turn, result in less expensive controls than if the employer had to commit itself to a control strategy immediately. For example, an employer can first try a low-cost control and, if it works, would not need to consider higher-cost controls. Third, the extended time frame will enable employers who have more than one problem job to control the highest risk jobs first while still giving them sufficient time to control their other problem jobs. This will enable such an employer to avert more MSDs at an earlier time and thereby minimize its costs for MSD management and worker removal protection.

Finally, OSHA is permitting those employers who already have implemented ergonomics programs meeting certain criteria to continue those programs rather than establish new programs under this final rule. Those employers whose current programs qualify for "grandfathering" will therefore not incur any new costs as a result of this final rule.

4. Alleged Conflict With Other Federal Statutes

A number of commenters contend that portions of the standard conflict with other federal laws, in particular the National Labor Relations Act (NLRA), 29 U.S.C. 141 *et seq.*, the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, the Family and Medical Leave Act (FMLA), 29 U.S.C. 2601 *et seq.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. s 2000e *et seq.*, and the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 *et seq.* The preamble to the proposed standard discussed in some detail the standard's consistency with the NLRA and the ADA, see 64 FR at 65,794–65,795 (NLRA), 66,058–66,059 (ADA), and, as discussed below, the comments do not alter OSHA's conclusion that there is no conflict with those statutes. The proposed preamble did not address the FMLA, Title VII, or the ADEA, but there too we conclude there is no conflict, as discussed below.

a. National Labor Relations Act—NLRA's prohibition on employer-dominated labor organizations in nonunion workplaces. Various provisions of the standard require employers to convey information to their employees and obtain information from their employees. Paragraph (i), governing employee participation, requires that employees: (1) Have ways to promptly report MSDs, their signs and symptoms, and MSD hazards in the workplace; (2) receive prompt responses to their reports of MSD signs and symptoms and MSD hazards; (3) have ready access to the standard and to information about MSDs, MSD signs and symptoms, and the employer's ergonomics program; and (4) have ways to be involved in developing, implementing and evaluating the ergonomics program. Paragraph (j) requires an employer analyzing a problem job to talk with affected employees and their representatives about the tasks they perform that relate to MSDs. Paragraph (m) provides that an employer required to control a problem job must ask employees and their representatives for recommendations about reducing the MSD hazards and consult with employees and their representatives about the effectiveness of the controls the employer implements. Paragraph (o) provides that an employer who chooses the Quick Fix option must ask employees and their representatives for recommendations about reducing the MSD hazards. Paragraph (t) requires the employer to train employees in the aspects of the ergonomics program that affect them and to give the employees the opportunity to ask questions about the ergonomics program. Paragraph (u) requires employers to consult with employees and their representatives about the effectiveness of the program and any problems with it.

Some commenters contend that the requirement for employee participation in an ergonomics program, to the extent it applies in nonunion workplaces, would conflict with section 8(a)(2) of the NLRA, which prohibits employers from dominating or interfering with a labor organization. Ex. 32–368–1 at pp. 124–26 (National Coalition on Ergonomics); Ex. 32–234–2 at pp. 29–30 (National Solid Waste Management Association); Ex. 30–3845 at p. 36 (Forum for a Responsible Ergonomics Standard). The National Coalition on Ergonomics (NCE) states that because the standard requires that employers provide ways for employees to be involved in developing, implementing, and evaluating ergonomics programs, the standard is an "open invitation" to violate Section 8(a)(2). Ex. 32–368–1 at p 126. NCE also asserts that requiring employers to respond to employee reports of MSD symptoms would require conduct violating Section 8(a)(2). Id.

These arguments are without merit. Nothing in the standard requires creation of any sort of employee organization or committee, let alone one that violates the NLRA. Section 8(a)(2) of the NLRA does not restrict the ability of nonunion employers to deal with employees as individuals, and such employers can comply fully with the standard's employee participation provisions by doing so. Contrary to NCE's contention, the requirement that employers respond to employee reports of MSD symptoms does not violate the NLRA. Even before the passage of the OSH Act, it was common for employees to report injuries to employers, and for responsible employers to respond to those reports by correcting workplace hazards. See Taft Broadcasting Co., Kings Island Div., 13 O.S.H. Cas. (BNA) 1137, 1140 (Rev. Comm'n 1987), aff'd, 849 F.2d 990 (6th Cir. 1988). It has never been suggested that such actions violate the NLRA, and they clearly do not.

Moreover, nonunion employers can use a variety of other means to comply with the employee participation provisions of the standard without running afoul of section 8(a)(2)'s proscription against dominating or interfering with the formation or administration of any labor organization. A "labor organization" under the NLRA is "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 29 U.S.C. § 152(5). A critical component of this definition is that the organization or committee "deal[] with" an employer. Such "dealing" occurs if there is a "bilateral process" that entails a pattern or practice by which a group of employees makes proposals to management and management responds to those proposals by acceptance or rejection by word or deed. EFCO Corp., 327 N.L.R.B. No. 71 (Dec. 31, 1998), aff'd, *EFCO Corp.* v. *NLRB,* 2000 WL 623436 (4th Cir. 2000) (unpublished); Electromation, Inc., 309 N.L.R.B. 990 (1992). However, if there are only isolated instances in which a group makes ad hoc proposals to management, the element of dealing is lacking. E.I. du Pont de Nemours & Co., 311 N.L.R.B. 893, 894 (1993).

In its preamble to the proposed rule, OSHA carefully explained that the requirement that employees have ways of being involved in the ergonomics program can be satisfied by measures that fall short of the employer-dominated committees and other employee organizations that violate Section 8(a)(2). In general, the agency emphasized that the "nature, form, and extent of how employers must provide employees with opportunities to participate will vary among workplaces," depending upon a variety of factors, including "[t]he presence or absence of a union." 64 FR at 65,800. In particular, it explained that OSHA has been careful to structure the "employee participation requirements so that they are entirely consonant with the case law based on the NLRA." 64 FR at 65,795. Thus, the agency explained that the proposed rule does not "mandate any particular method " such as employee committees " for ensuring employee participation," and that this "leaves employers free to involve employees in the program in ways that do not violate the NLRA but will further meaningful employee participation." *Id.*

Moreover, OSHA has already explained that there are various permissible ways to meet the requirement that employees be involved in developing, implementing, and evaluating ergonomics programs. The preamble to the proposed standard pointed to certain methods of obtaining employee input through employee group activity—a brainstorming group, an information-gathering committee, or a safety conference—that is structured so as not to "deal with" the employer, within the meaning of Section 8(a)(2). See 64 FR at 65,795 (discussing Ex. 26–29: May 13, 1999 testimony of Henry L. Solano, Solicitor of Labor, to the Subcommittee on Workforce Protections, Committee on Education and the Workforce in the House of Representatives). In addition, the preamble noted that employers can provide mechanisms for individual employees to report problems and make recommendations, or can assign safety responsibilities to employees as part of their job descriptions, without implicating Section 8(a)(2). *Id.*

The NCE questions whether "brainstorming" groups or "information-gathering" committees would actually fall outside the scope of Sections 2(5) and 8(a)(2). Ex. 32–368–1 at p. 126. These types of entities are specifically mentioned in NLRA case law as ones that would pass muster. See E.I. du Pont, 311 N.L.R.B. at 894, cited in Ex. 26–23, pp. 11–12; see also EFCO Corp., 327 N.L.R.B. No. 71, slip op. 5 ("[a] significant portion of the purposes and functions of the Safety Committee, such as the reporting and correction of safety problems, would not contribute to a finding that it is a labor organization"); *id.* (employee suggestion screening committee did not "deal with" employer because it merely reviewed and forwarded suggestions without formulating proposals or presenting them to management). Nor does the fact that the proposed preamble elsewhere refers to an "ergonomics committee" or a "labor-management CTD committee" as effective components of an ergonomics program suggest that the agency is being "disingenuous," as NCE charges. Ex. 32–368–1 at p. 125 n. 228. The general reference to an "ergonomics committee" does not suggest that OSHA, contrary to its express statements, requires employers to institute employee committees that violate Section 8(a)(2), and the reference to a joint-labor management committee is consistent with OSHA's statement that a permissible mechanism for employee participation in unionized workplaces, consistent with the proposed standard and the NLRA, is a "joint labor-management committee established in compliance with the NLRA by bargaining between the employer and the union representing the employees." 64 FR at 65,795.

Impact on collective bargaining agreements in unionized workplaces. As to unionized settings, the Chamber of Commerce contends that the proposed rule would force employers to run afoul of the NLRA and the Railway Labor Act because it would require employers to make unilateral changes in mandatory subjects of bargaining, thereby subjecting them to unfair labor practice charges under section 8(a)(5) of the NLRA, labor unrest, and possible criminal penalties. Ex. 30–1722 at p. 82. The NCE and others say that unionized employers would be forced into direct dealing with represented employees and will thereby violate section 8(a)(5). Ex. 500–197 at pp. III–53–61. Similarly, the Edison Electric Institute (EEI) reads the proposed standard as requiring employers to deal with individual employees regarding their working conditions and contends that this requirement "creates the seeds of conflict with the exclusive bargaining authority of recognized unions under Section 9(a) of the [NLRA]." Ex. 32–300–1 at p. 9. The Integrated Waste Services Association (ISWA) makes a similar argument. Ex. 22–7–1 at pp. 16–17. EEI and ISWA urge OSHA to make clear in the final rule that where employees are represented by a certified bargaining representative, employers will satisfy the employee involvement provisions of the standard by dealing in good faith with the union. Ex. 32–300–1 at p. 11 (EEI); Ex. 22–337–1 at p.17 (ISWA).

As discussed elsewhere in this preamble, employee participation in an ergonomics program is a vital component of an effective program. OSHA further believes that unions, where they exist, must be involved in the program and has therefore provided that "representatives" of employees be afforded the opportunity to participate in job hazard analyses, recommendations for controls, and program evaluation. Cf. OSHA Field Inspection Reference Manual, Ch. II, Sec. A.3.f (where employees are represented by a recognized union, the highest ranking on-site union official or union employee representative designates who will represent employees during a walkaround inspection); OSHA Instruction CPL 2–2.45A (Sept. 13, 1994), Process Safety Management of Highly Hazardous Chemicals—Compliance Guidelines and Enforcement Procedures, Appendix B ("employee representative" under employee participation provision of process safety management standard, 29 C.F.R. 1910.119(c), refers to recognized union). Thus, rather than bypassing unions, the standard provides that they play an important role.

For example, the employer must, under paragraph (m), ask the "employees and their representatives" for recommendations about how to best eliminate or control MSD hazards. The requirement that employers ask "employees and their representatives" for such recommendations does not mean that a unionized employer must deal separately with its represented employees and their union. That language is intended to encompass the entire range of workplaces, including nonunion workplaces, unionized workplaces in which all of the employees in problem jobs are represented by the union, and workplaces in which some of the employees in problem jobs are represented by the union and some are not. In workplaces in which all employees in a problem job are within the bargaining unit, employers may, as EEI and ISWA suggest, fulfill their obligations under the provisions that require the involvement of "employees and their representatives" by dealing in good faith with the union. The employer and union may agree on any mechanism for employee participation that is consistent with the standard.

Some commenters note that ergonomic provisions have been incorporated into collective bargaining agreements and assert that employers may be forced to violate these agreements to comply with the rule. Ex. 30–1722 at p. 82 (Chamber of Commerce); Ex. 500–197 at p. III–62 (National Coalition on Ergonomics and others). The duty to bargain with recognized unions over safety and health matters does not excuse employers from complying with OSH Act standards. Employers and unions cannot bargain away an obligation under the Act. See *Trans World Airlines* v. *Hardison*, 432 U.S. 63, 79 (1977) ("neither a collective-bargaining contract nor a seniority system may be employed to violate the statute."); *Alexander* v. *Gardner Denver Co.*, 415 U.S. 36, 51 (1974) (notwithstanding contrary provision of collective bargaining agreement, employee has right to court hearing on race discrimination claim under Title VII). See generally *United Steelworkers* v. *Marshall*, 647 F.2d 1189, 1236 (D.C. Cir. 1980), cert. denied, 453 U.S. 913 (1981) ("[i]n passing a massive worker health and safety statute, Congress certainly knew it was laying a basis for agency regulations that would replace or obviate worker safety provisions of many collective bargaining agreements"), cert. denied, 453 U.S. 913 (1981); see also Murphy Oil USA, Inc., 286 NLRB 1039, 1042 (1987) (employer can unilaterally adopt work rule required by OSHA standard without bargaining with union); *Louisiana Chem. Ass'n* v. *Bingham*, 550 F. Supp. 1136, 1144 (W.D. La. 1982), aff'd, 731 F.2d 280 (5th Cir. 1984). Thus, if there is an irreconcilable conflict between the standard and a collective bargaining agreement, the standard would prevail.

The possibility that existing collective bargaining agreements address ergonomics does not, as the Chamber of Commerce suggests, place employers in an untenable position. If such collectively bargained programs meet the standard as adopted or qualify under the standard's grandfather clause, they will not need to be altered. If they conflict with the standard, the employer's statutory obligation to comply with the standard takes priority over the agreement. Murphy Oil, 286 NLRB at 1042 (employer "was not only within its rights, but also legally bound to adopt a rule that complied with Federal law."); Standard Candy Co., 147 NLRB 1070, 1073 (1964) (employer was legally obligated to raise wages to new federally-mandated minimum wage without bargaining with union).

To the extent the employer has discretion in the means by which it achieves compliance, and the means involve a mandatory subject of bargaining, the employer would be required to bargain with the union regarding the means of compliance. United Steelworkers, 647 F.2d at 1236 ("[w]hen an issue related to earnings protection not wholly covered by OSHA regulation arises between labor and management, it will remain a mandatory subject of collective bargaining"); see Watsonville Newspapers, LLC, 327 N.L.R.B. No. 160, slip op. 2–3 (Mar. 24, 1999); Dickerson-Chapman, Inc., 313 N.L.R.B. 907, 942 (1994) (although employer must comply with OSH Act standard requiring daily inspections of open excavations by a "competent person," employer must bargain with union about who would be so designated); Hanes Corp., 260 N.L.R.B. 557, 561–562 & n.12 (1982) (where OSHA standard required use of respirators but gave employer discretion with respect to choice of respirator, employer could require use of respirator without bargaining, but could not unilaterally determine which approved respirator would be used). Nothing in the ergonomics program standard forecloses employers from bargaining with unions about discretionary aspects of the standard that are mandatory subjects of bargaining under the NLRA. To the contrary, OSHA has repeatedly emphasized the importance of involving employee representatives in all aspects of the ergonomics program. As the AFL–CIO points out:

> The reality is that since the OSHAct's passage, employers and unions have been able to meet both their responsibilities under OSHA's standards and their duty to bargain under the NLRA. Unions have a strong interest in dealing with employers over safety and health matters, and will eagerly deal with employers over ergonomics. The record reflects extensive union-management efforts to tackle ergonomic hazards. Thus, the notion that the employer's bargaining obligation stands in the way of OSHA compliance does not reflect reality. Ex. 500–218 at p. 162.

The National Coalition on Ergonomics argues that imposition of some of the controls suggested by OSHA could violate seniority and line of progression provisions in collective bargaining agreements. Ex. 32–368–1 at p. 81. The NCE is apparently referring to the standard's inclusion of employee rotation in the definition of "administrative controls." The NCE also claims that employees being rotated into other jobs may not be qualified to perform those jobs and that job rotation can create a greater hazard by subjecting employees to the risk of new MSD risk factors they were not exposed to in their prior jobs. Id.

These objections are unpersuasive. First, many workplaces are not covered by collective bargaining agreements that contain seniority or line of progression limitations. In those workplaces, the concerns raised by NCE are totally absent. Second, the standard does not require any employer to use job rotation. To the contrary, it specifically states that engineering controls, where feasible, are to be preferred over administrative controls, including job rotation. However, to give employers maximum flexibility, the standard gives employers the option of using administrative controls. As a result, those employers who can use job rotation safely and effectively are free to do so, while those who believe job rotation would lead to contractual or safety problems can address ergonomic hazards in other ways.

b. Americans with Disabilities Act. The ADA is an anti-discrimination statute that prohibits discrimination by covered employers against "qualified individual[s] with a disability," that is, persons "with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. 12111(8), 12112(a). Under the ADA, employers must reasonably accommodate disabled workers. However, if there is no reasonable accommodation that would permit a disabled employee to work for the employer, the employer is free to discharge the employee under the ADA.

Commenters argue that the proposed standard improperly requires employers to take steps beyond those required by the ADA in that the standard's requirement that employers control ergonomics hazards requires steps beyond ADA's requirement for reasonable accommodation. Ex. 32–368–1 at p. 118 (NCE); Ex. 30–1722 at p. 81 (Chamber of Commerce). These comments are fundamentally misguided.

In the preamble to the proposed rule OSHA explained its authority under the OSH Act for promulgating this standard. In order to achieve the Act's purpose of assuring "safe and healthful" workplaces, 29 U.S.C. 651(b), the Secretary of Labor is authorized to promulgate health and safety standards, *id.* § 655(b), which may require "conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment." *Id.* § 652(8). Pursuant to this authority, see 64 FR at 65,774–65,775, OSHA has determined, based on the best available evidence, that the various components of the ergonomics standard are reasonably necessary and appropriate to provide adequate protection from hazards that are reasonably likely to cause or contribute to work-related MSDs. It is on the basis of this authority that OSHA is requiring employers to take such actions as analyzing jobs to identify MSD hazards, implementing measures to control such hazards, and removing a disincentive to reporting MSDs by providing economic protection for workers who are placed on temporary work restrictions or removed from work because of MSDs related to their jobs. See generally 64 FR at 65,838–65,861. Nothing in the ADA limits OSHA's authority under the OSH Act to issue standards that are reasonably necessary and appropriate to protect worker health and safety.

The ADA's definition of disability is not keyed to impairments that are occupational in origin, but more generally encompasses impairments (whatever their origin) that substantially limit (or are regarded as limiting) an individual's major life activities. 42 U.S.C. §§ 12111(10), 12112(b)(5)(A). Reasonable accommodations to such impairments may include "job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices" and other similar accommodations. *Id.* § 12111(9)(B). Employers are not required, however, to provide accommodations that would pose undue business hardship, which is defined as "an action requiring significant difficulty or expense, when considered in light of" certain statutory factors. *Id.* §§ 12111(10), 12112(b)(5)(A).

As OSHA explained in the preamble to the proposed standard, the ergonomics standard and the ADA are complementary in purpose. 64 FR at 66,058–66,059. The standard implements measures in problem jobs that would reduce the likelihood of those jobs causing or aggravating MSDs (a category that includes impairments that may be disabilities under the ADA, although it also includes impairments that do not rise to the level of an ADA-covered disability). These measures will not only prevent MSDs within the meaning of the ergonomics standard, but also make it easier for persons with existing impairments (including ADA-covered disabilities) to work in those jobs. Accordingly, the standard comports well with the ADA's goal of reducing barriers to the employment of individuals with disabilities.

Notwithstanding this complementary purpose, the NCE and the Chamber of Commerce argue that the standard impermissibly conflicts with the ADA because it may require employers to make changes to jobs it is not required to make under the ADA. Ex. 32–368–1 at p. 118 (NCE); Ex. 30–1722 at p. 81 (Chamber). This contention is meritless. As noted, the ergonomics standard is squarely based on OSHA's authority to promulgate health and safety standards. Moreover, although the NCE and the Chamber suggest that the ADA prohibits OSHA from requiring changes to jobs beyond the reasonable accommodations required under the ADA, nothing in the ADA even remotely supports this proposition. 29 C.F.R. pt. 1630 app. at 354 ("nothing in [EEOC ADA regulations] prohibits employers * * * from providing accommodations beyond those required by th[e]" regulations).

Similarly, nothing in the ergonomics standard conflicts with the ADA. The standard does not purport to authorize discrimination that is prohibited by the ADA; nor does it purport to eliminate any defenses that an employer may have to an ADA action. NCE's charge that OSHA is attempting to eliminate defenses under the ADA is based on a misunderstanding of the thrust of the pertinent agency statements in the preamble to the proposed standard. Ex. 32–368–1 at p. 121; see 64 FR at 66,059–66,060. OSHA explained that the ergonomics standard, by requiring employers to control problem jobs, ultimately should make it easier for employers to hire persons with MSD-related disabilities and should lessen the incidence of MSDs. The standard should therefore lessen the number of occasions on which employers would need to raise defenses under the ADA, such as that the accommodation involves an undue hardship or that the disabled person is a direct threat, see 42 U.S.C. 12113(b), to the health or safety of others that cannot be eliminated by the reasonable accommodation. 64 FR at 66,060. This salutary effect does not establish a conflict with the ADA and provides no ADA-based reason for not implementing the standard.

NCE argues that a provision in the proposal (proposed section 1910.132(a)(2)) conflicts with the ADA by requiring employers to keep confidential certain information pertaining to an employee's medical condition that the employer could, under limited circumstances, release under the ADA. Ex. 32–368–1 at pp.119–20. The proposed provision would have required confidentiality "to the extent permitted and required by law," avoiding any possible conflict with another statute's disclosure requirement. The provision has been deleted from the final standard because, as NCE notes, it is superfluous. Ex. 32–368–1 at p.120.

NCE also objects to a provision in the proposed standard providing that the employer instruct the health care provider (HCP) that diagnoses unrelated to workplace exposure to MSD must remain confidential and must not be included in the opinion communicated to the employer. Ex. 32–368–1 at p.119. This provision has been carried over into the final standard (with the addition of an exception as discussed below). Although NCE appears to contend that this provision also conflicts with the ADA's confidentiality exceptions, it offers no cogent reason why this is so. OSHA continues to believe, as it explained in the preamble to the proposed standard, that a provision protecting the confidentiality of medical conditions that are not workplace-related is needed to protect employees' privacy and, for that reason, has been a routine feature of OSHA health standards for many years. 64 FR at 65,844. Such a confidentiality provision is reasonably necessary to encourage employee reporting of MSD hazards because employees could be deterred from such reporting if they knew information about their medical condition would be improperly disclosed. Thus, the agency clearly has the authority to adopt such a provision. Moreover, OSHA has added language to the provision clarifying that it is subject to an exception: the information may be communicated where authorized by federal or state law.

Finally, the NCE contends that compliance with the proposed standard could subject employers to discrimination claims under the ADA. NCE argues that because the ergonomics standard may require employers to alter jobs to a greater extent than does the ADA's reasonable accommodation requirement, persons with non-MSD disabilities may claim that the employer has engaged in disparate treatment by providing more extensive accommodations for MSD disabilities than non-MSD disabilities. Ex. 32–368–1 at p. 119. Even assuming that allegations of differing degrees of accommodation for different disabilities states a viable claim of disparate treatment under the ADA, the employer would have a defense to such a claim. EEOC regulation, 29 CFR 1630.15(e), recognizes that "[i]t may be a defense to a charge of discrimination under this part that a challenged action is required or necessitated by another Federal law or regulation." The employer's obligation to comply with the ergonomics standard would constitute a legitimate, nondiscriminatory reason explaining the difference between its treatment of disabilities also covered under the ergonomics standard and its treatment of other disabilities. See generally id. pt. 1630, app. at 369 (necessity of compliance with federal law or regulation a defense, where not a pretext for discrimination).

OSHA emphasizes that this final standard does not limit an employer's obligation to comply with the ADA. If an HCP advises the employer, pursuant to paragraph (r)(2)(ii) of the standard, that an employee with a MSD can never resume his or her former work activities, any obligations the employer has toward that employee under the ADA would remain in effect.

c. Family and Medical Leave Act. Under the FMLA, an "eligible employee" is entitled to take up to a total of 12 work weeks of unpaid leave for the birth of a child and to care for such child, for the placement of a child for adoption or foster care, to care for a spouse or an immediate family member with a serious health condition, or when he or she is unable to work because of a serious health condition. See 29 U.S.C. 2612(a)(1). In response to the proposed standard, the Chamber of Commerce and the NCE pointed out that, while the FMLA only requires employers to provide 12 weeks of unpaid leave to employees with serious health conditions, the proposed standard's provisions for work restriction protection provided that an employee unable to continue in his or her current job due to a work-related MSD may be placed on leave for up to 6 months [90 days in the final rule] with 90% of pay. The Chamber states that the agency has not explained how "it acquired the authority to enact a regulation that would make Congressional policies embodied in the FMLA irrelevant for OSHA's preferred class of employees," Ex. 30–1722 at p. 82. The NCE similarly contends that "OSHA cannot supersede the requirements of another federal statute without express statutory authority," Ex. 32–368–1 at p. 124. Similar arguments are made by the National Solid Wastes Management Association (Ex. 32–234–2 at p. 28); and Paul, Hastings, Janofsky & Walker LLP (Ex. 32–211–1 at pp. 10–11);

As with the ADA, there is nothing in the FMLA or its implementing regulations that suggests any restriction on OSHA's authority to regulate workplace safety and health. Nor is there anything in the ergonomics standard that would cause an employer to violate the FMLA. There is thus no FMLA-based obstacle to adoption of the standard. Moreover, the FMLA requires employers to accommodate employees' need for time off to care for their own or their family's health. The ergonomics rule will prevent many incipient MSDs from progressing to the type of serious health conditions that might justify leave under the FMLA and will thereby reduce the need for employees to invoke the FMLA's protections. Thus, as with the ADA, the ergonomics standard works in concert with, not against, the purposes of the FMLA.

The NCE raises some questions about the interplay between the FMLA and the standard's work restriction protection (WRP) provisions. Ex. 32–368–1 at p. 123. NCE asks, for example, whether an employee could receive six months of WRP payments while removed from work and then obtain an additional 12 weeks of unpaid leave under the FMLA. FMLA regulations provide that an employer may in specified circumstances designate paid leave as FMLA leave. 29 CFR 825.208. Nothing in the ergonomics standard precludes an employer from designating WRP-leave as FMLA leave if the limited circumstances under which paid leave may be designated as FMLA leave are met.

NCE also contends that the ergonomic standard's provisions regarding opinions of health care providers (HCPs) conflict with FMLA regulations regarding medical certifications for the existence of a serious health condition. Ex. 32–368–1 at p. 123; citing 29 U.S.C. 2613. See also 29 CFR 825.305–825.308. The ergonomics standard does not preclude employers from making use of the FMLA medical certification provisions when questions arise as to the application of the FMLA to an employee with an MSD-based condition. We note, however, that in the scenario with which NCE seems most concerned—the employee who is on paid WRP-leave—it is highly unlikely that there will be a bona fide dispute about whether the employee has a serious health condition that has rendered him or her unable to perform the functions of the job. See 29 CFR 825.114(a)(2) (serious health condition includes condition that causes more than three consecutive calendar days of incapacity and involves either two visits to a HCP or one visit followed by a regimen of continuing treatment under the HCP's supervision), 825.115. In other words, it is implausible that an employee on paid WRP-leave would resist the employer's designation of the leave as FMLA-leave on the ground that he or she does not have a serious health condition.

NCE also contends that compliance with the proposed standard could subject employers to discrimination claims under the FMLA because workers covered by the standard may receive WRP consisting of paid leave, while other workers with serious health conditions who are unable to perform their job are entitled only to unpaid leave under the FMLA. NCE 123–124. The FMLA's anti-discrimination provision, however, does not sweep so broadly. It prohibits interference with the exercise of rights under that statute, 29 U.S.C. 2615(a)(1), and proscribes discrimination against an individual for having engaged in activity such as opposing unlawful practices under the statute, filing charges, or giving information or testifying in connection with FMLA proceedings or inquiries. 29 U.S.C. 2615(a)(2), (b). An employer who has placed employees on paid WRP-leave under the ergonomics standard has not, by that action, interfered with other employees' FMLA rights. Nor would its reason for not giving similar paid leave to those other employees—that the employees were outside the scope of the WRP provisions of the ergonomics standard—constitute a basis of prohibited discrimination under the FMLA (such as retaliation for protected activities).

d. Title VII of the Civil Rights Act of 1964 and the ADEA. Title VII prohibits employment practices and devices that discriminate on the basis of race, color, religion, sex, or national origin. The ADEA prohibits employment discrimination on the basis of age. The

Forum for a Responsible Ergonomics Standard contends that women and older workers are more susceptible to MSDs than younger persons and that the ergonomics standard will therefore encourage employers to violate these statutes by hiring a young, male-dominated workforce. Ex. 30–3845 at pp. 36–37.

These anti-discrimination statutes were adopted to combat the attitudes prevalent among many employers that older workers, or female workers, or minority workers, were not as qualified to do a job as well as young, white males. Through their enactment, Congress prohibited employers from relying on such outdated stereotypes rather than making hiring decisions on the basis of a worker's individual capabilities. See *Hazen Paper Co.* v. *Biggins*, 507 U.S. 604, 610 (1993) ("Congress promulgation of the ADEA was prompted by its concern that older workers were being deprived of employment on the basis of inaccurate and stigmatizing stereotypes."); *Los Angeles Dept. of Water & Power* v. *Manhart*, 435 U.S. 702, 707 n. 13 (1978) ("In forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.").

In particular, these statutes preclude discriminatory hiring decisions based on perceived gender or age-based susceptibility to a safety or health risk inherent in the job. In *UAW* v. *Johnson Controls, Inc.*, 499 U.S. 187 (1991), the Supreme Court held that an employer's "fetal protection policy" violated Title VII. Under that policy, the employer refused to assign women to jobs involving lead exposure unless the women could show they were unable to become pregnant. The employer claimed that this policy was justified because lead in a pregnant woman's bloodstream could potentially harm the fetus. The Supreme Court held that the employer's concern that women who were or might become pregnant would be particularly susceptible to a health risk from lead exposure was not a valid reason to allow them to exclude such women from jobs for which they were qualified.

The rulemaking record shows that workers of both sexes and all ages suffer MSDs when exposed to high levels of the risk factors addressed by this standard. OSHA therefore does not believe that the rulemaking record supports the commenters' claim that this standard will provide any incentive to employers to violate Title VII and the ADEA. However, even if some employers believe they can gain some benefit by hiring only young, male workers, Title VII and the ADEA prohibit them from doing so on the basis that it will make compliance with the standard easier.

XII. Procedural Issues

I. Introduction

OSHA began seeking public participation in this rulemaking when it published an Advance Notice of Proposed Rulemaking (ANPR) in August 1992. The Agency received more than 250 comments in direct response to that notice. See Comments in Ex. 3. The next year OSHA conducted an extensive survey of employers to obtain information on the extent of existing ergonomics programs and practices in general industry. In 1994–1995, and again in 1998 and 1999, OSHA held a series of "stakeholder meetings" across the country where interested members of the public discussed with representatives of OSHA their experiences and opinions relating to ergonomics and ergonomic programs. See Ex. 26–1370. In some cases, OSHA even shared early drafts of regulatory text under consideration with participants in these meetings.

In developing the proposed standard, OSHA took account of all the information it had obtained during this period: the ANPR comments; the survey responses; and the stakeholders' views and experience, as well as its own enforcement experience and information gleaned from a comprehensive review of the relevant literature. In response to this input, OSHA revised its regulatory approach substantially from that reflected in its early drafts of a standard. In February 1999, as part of the review process required by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. § 601 *et seq.*, OSHA released to the public a draft proposed Ergonomics Program standard (SBREFA draft) that reflected much of the regulatory approach of the proposal. The SBREFA draft was also made available on OSHA's website. OSHA received a large amount of feedback on this draft from the small entity representatives participating in the SBREFA process, and OSHA made a number of alterations to the draft based on that feedback. See Ex. 23.

As described in detail below, OSHA's official Notice of Proposed Rulemaking provided the public with additional opportunities to participate in the rulemaking. Specifically, OSHA established a 70 day pre-hearing comment period (later extended to 100 days), during which the public could comment and submit evidence on all aspects of the proposed standard. OSHA also scheduled a nine week informal public hearing, for interested parties to testify on the proposed standard. Finally, OSHA established a 90 day post-hearing comment period. The post-hearing comment period gave hearing participants 45 additional days to submit data and evidence, and 90 additional days to submit comments for consideration by OSHA. In sum, those individuals who participated in the informal public hearing had 216 days (more than seven months) after publication of the proposed rule to submit data and evidence to the rulemaking record for OSHA's consideration, and 261 days (nearly nine months) after publication of the proposed rule to submit briefs and arguments to the rulemaking record.

Although these procedures exceed the legal requirements for OSHA rulemaking and are consistent with the procedures used in past Agency rulemakings, a number of participants, primarily employer groups, have attacked them as inadequate. A major theme of these attacks is that the issues in this rulemaking are unprecedentedly complex, and that OSHA therefore should have provided extraordinary comment periods and other opportunities to challenge its preliminary conclusions. OSHA recognizes that the size of the record on some issues could have posed challenges, although by no means insurmountable ones, to rulemaking participants. OSHA responded to these challenges by making adjustments to the rulemaking schedule and to the procedures used in earlier rulemakings in order to provide interested parties with easier access to rulemaking materials (including extending Docket Office hours), and to ensure that the rulemaking proceeded in a fair and orderly manner.

II. The Adequacy of the Rulemaking Process

A. Length of the Pre-Hearing Comment Period

OSHA published its proposed Ergonomics Program standard on November 23, 1999. 64 FR 65768 (Nov. 23, 1999); see also 64 FR 73448 (Dec. 30, 1999) publication of corrections notice). In the **Federal Register** notice, OSHA established a 70 day pre-hearing comment period to submit written comments and evidence on the proposed standard. *Id.* These materials were required to be postmarked by February 1, 2000. *Id.*

OSHA received a number of requests to extend the pre-hearing comment period and delay the informal public hearing. See *e.g.*, Letters in Ex. 33. In response to these requests, OSHA extended the pre-hearing comment period an additional 30 days, until March 2, 2000, and delayed the start of the informal public hearing by 20 days, until March 13, 2000. 65 FR 4795 (Feb. 1, 2000). This schedule gave interested parties a total of 100 days to submit pre-hearing comments on the proposed standard. OSHA also notified participants of a number of innovations in its filing and docket access procedures, so that parties would have as little difficulty as possible in reviewing the record and filing comments in the time allowed. See Ex. DC–423. For example, OSHA placed copies of the proposed rule, the full Health Effects section, and the full Preliminary Economic Analysis on its webpage and on CD–ROM. OSHA mailed a CD–ROM free of charge to all individuals who had participated in earlier stakeholder meetings and to any other interested party upon request.

The 100-day pre-hearing comment period was more than three times as long as that required by the OSH Act. The OSH Act only requires OSHA to give interested parties 30 days to comment on a proposed standard. 29 U.S.C. 655(2). OSHA's procedural regulations also state that a proposed rule must provide interested persons with 30 days in which to submit "written data, views, and arguments, which shall be available for public inspection and copying." 29 CFR 1911.11(b)(3). See also Executive Order 12866, 58 FR 51735 (Sept. 30, 1993) (encouraging administrative agencies to provide a minimum 60 day pre-hearing comment period). The 100 day pre-hearing comment period provided here was more than adequate to meet all of these requirements.

This comment period is also consistent with past OSHA practice in rulemakings of this magnitude. In the Air Contaminants Rulemaking, OSHA proposed to lower the permissible exposure limits for over 400 hazardous substances, 54 FR 2332 (Jan. 19, 1989), an enormous undertaking by any measure. The Eleventh Circuit subsequently rejected a challenge to the 47 day pre-hearing comment period OSHA afforded in that rulemaking. *AFL–CIO* v. *OSHA*, 965 F.2d 962, 969 n.8 (11th Cir. 1992) (Air Contaminants) ("[W]e are unpersuaded that the time period allowed in this rulemaking was so insufficient as to prevent interested parties from commenting on the proposed rule.").

Numerous other OSHA rulemakings have also included pre-hearing comment periods of similar length. For example:

- Tuberculosis—123 day pre-hearing comment period. 63 FR 5905 (Feb. 5, 1998).
- Butadiene—91 day pre-hearing comment period. 55 FR 42406 (Oct. 19, 1990).
- Bloodborne Pathogens—76 day pre-hearing comment period. 54 FR 23042 (May 30, 1989).
- Hazard Communication—60 day pre-hearing comment period. 48 FR 53280 (Nov. 25, 1983).

Most significantly, it is clear that the 100 day comment period provided the public with an adequate opportunity to comment on the proposed rule. The comprehensive and detailed nature of many of the pre-hearing comments OSHA received is itself compelling evidence of this fact. For example:

- The National Coalition on Ergonomics (NCE) submitted a 156 page comment, as well as attachments of 321 pages. Ex. 30–3956.
- The U.S. Chamber of Commerce (Chamber) submitted a 95 page comment, as well as attachments of 524 pages. Ex. 30–1722.
- Anheuser-Busch, Inc. and United Parcel Service, Inc. (UPS) submitted a 299 page comment, as well as attachments of 2007 pages. These attachments consisted of additional comment and evidence prepared by 23 expert witnesses. Ex. 32–241.
- The Union of Needletrades and Industrial Textile Employees (UNITE) submitted a 70 page comment, as well as attachments of 1078 pages. Ex. 32–198–4.
- The United Food and Commercial Workers Union (UFCW) submitted a 179 page comment, as well as attachments of 2218 pages. Ex. 32–210–2.

Although some of these submissions came from parties complaining that the comment period was inadequate, the comments listed above, as well as many others, demonstrated a thorough mastery of the proposal and preamble, as well as extensive familiarity with OSHA's Preliminary Economic Analysis, its Health Effects discussion, and much of the material in the record. See *e.g.*, Exs. 30–1722; 30–3956; 32–241. And a number of comments were submitted early, including the Chamber's 619 page comment, which was submitted on February 16, 2000, a full two weeks before the due date. See Ex. 30–1722.

Moreover, the pre-hearing comment period represented only one aspect of the public participation opportunities in this rulemaking. OSHA also scheduled nine weeks of informal public hearings and a 90 day post-hearing comment period on the proposed rule. Thus, those parties who filed Notices of Intent to Appear at the hearing had a total of 261 days (nearly nine months) from the date the proposal was issued to the end of the post-hearing comment period to comment on the proposed rule. OSHA believes that this period of time was more than adequate to allow interested parties an opportunity to review the record and submit meaningful comments.

In addition, OSHA's procedures typically provide that only parties who participated in an OSHA rulemaking hearing may file post-hearing submissions. But in this rule OSHA permitted trade associations or other groups who were eligible to file such comments to attach to their own submissions comments from their members who were not eligible to file on their own. Many interested parties (*e.g.*, members of the National Association of Manufacturers) who did not file a Notice of Intent to Appear, therefore, were able to submit post-hearing submissions through their trade association or other group. See *e.g.*, Letters in Ex. 500–1.

Moreover, many interested parties were familiar with the overall structure of the proposed rule before it was published on November 23, 1999. OSHA posted the SBREFA draft, which was similar to the proposed rule in many respects, on its website in February, 1999. Many interested parties, including small business owners, commented on the draft rule. See Ex. 23. In addition, OSHA had engaged interested parties in discussions on ergonomics issues for quite some time before publication of the proposed rule. See Discussion in Part II above. Many parties who commented on the proposed rule and participated in the informal public hearing were very familiar with the issues relevant to the rulemaking long before the pre-hearing comment period began.

For these reasons, OSHA does not agree with those commenters who complained that 100 days was an inadequate amount of time to analyze the rulemaking record fully and to submit meaningful comments on the proposal. A couple of commenters went so far as to claim that the 100 day pre-hearing comment period violated parties' due process rights. Ex. 30–3956, p. 141; 30–3865, pp. 33–4. The American Iron and Steel Institute (AISI) suggested that the OSH Act required OSHA to give a 30 day pre-hearing comment period for each hazard at issue in the rulemaking (*i.e.*, force, repetition,

awkward posture, static posture, contact stress, cold temperatures, and vibration); thus, AISI argued that OSHA was obligated to set a 210 day pre-hearing comment period. Ex. 500–223, p. 94. Many commenters noted as well that a number of holidays occurred during the pre-hearing comment period, and that these, as well as Year 2000 computer issues, made review and preparation of comments particularly difficult. See *e.g.*, Ex. 30–3865, p. 34; Letters in Exhibit 33. Finally, a number of commenters stated that OSHA's grant of a 30 day extension of time from 70 days to 100 days was not meaningful because it was not granted until January 27, 2000, a few days before pre-hearing comments were originally scheduled to be filed. See *e.g.*, Exs. 500–188, p. 6 n.3; 500–109; 30–3956, p. 142.

No party's due process rights were violated by the 100 day pre-hearing comment period. As shown above, the comment period was more than adequate for interested parties to review the record and submit pre-hearing comments. Nor does the OSH Act require OSHA to provide a 30 day pre-hearing comment period for each risk factor at issue. As explained above, the OSH Act provides for a minimum 30 day comment period for each "proposed *rule* promulgating * * * an occupational safety or health standard." 29 U.S.C. 655(b)(2) (emphasis added). The OSH Act does not place a requirement upon OSHA to provide additional time for comment depending upon the number or types of hazards being regulated. See Air Contaminants, 965 F.2d at 969 n.8.

Furthermore, the occurrence of holidays during the pre-hearing comment period did not substantially affect the ability of parties to review the record and comment on the proposed rule. In fact, holidays accounted for only five days of the pre-hearing comment period. Similarly, OSHA does not believe that Year 2000 computer conversion issues substantially affected stakeholders' ability to comment on the proposed standard. Employers and other parties always devote resources to different areas of their enterprises at different times of the year. For example, when industry and labor are engaged in collective bargaining negotiations, employers and labor unions (including safety and health representatives) must devote additional resources (including time and money) to the negotiations. The time and resources devoted to these negotiations certainly "conflict" with other priorities of both parties. Yet both parties to the negotiations are able to continue to function during this period and to carry out their other responsibilities. These types of conflicts do not prevent interested parties from submitting meaningful comments on any particular proposed rule.

Finally, the extension of the pre-hearing comment period was not granted too late. OSHA originally believed that the 70 day pre-hearing comment period established in the proposal was sufficient to allow interested parties to comment meaningfully on the proposed standard. (The 70 day period was more than twice as long as that required by the OSH Act, and longer than the 60 day minimum period recommended by Executive Order 12866). OSHA seriously considered the requests it received to extend the initial 70 day pre-hearing comment period, however, and ultimately decided to grant the 30 day extension.

OSHA granted the extension on January 27, 2000, a few days before written comments were originally scheduled to be filed. In addition to publishing notice of the extension in the **Federal Register** on February 1, 2000, 65 FR 4795 (Feb. 1, 2000), OSHA issued a press release to inform the public that the comment period had been extended and placed the press release on its web-page. See *http://www.osha.gov/media/oshnews/jan00/national-20000127.html*. Some commenters thanked OSHA for granting the extension. See Exs. 32–21–1, p.9; 500–1–26; 30–4496, p. 1. The 30 day extension was useful in allowing interested parties additional time to review the record and comment on the proposed rule.

In fact, OSHA often grants extensions of comment periods near the end of the original period. For example, in the Butadiene rulemaking, OSHA granted an extension on the final day of the original pre-hearing comment period. 55 FR 42406 (Oct. 19, 1990). Similarly, in the tuberculosis rulemaking, OSHA granted an extension a mere 12 days before the close of the original pre-hearing comment period. 63 FR 5905 (Feb. 5, 1998). Indeed, often it is only toward the end of any filing period that a need to extend becomes clear. It would hardly be logical to permit Agencies to respond to this need only if they did so several weeks before the close of the original comment period.

B. There Was Adequate Opportunity for Participants To Prepare for and Participate in the Informal Public Hearing

1. The Hearing Procedures and the Hearing Schedule

In the November 23, 1999 **Federal Register** notice, OSHA also scheduled an informal public hearing to provide interested parties another opportunity to comment on the proposed standard. 64 FR 65768 (Nov. 23, 1999). Participants in the hearing could present testimony and ask questions of OSHA and other public witnesses. OSHA scheduled the informal public hearing for three cities: Washington, DC; Portland, OR; and Chicago, IL. Id. at 65769. The hearing was originally scheduled to begin on February 22, 2000, and OSHA required participants to file Notices of Intent to Appear by January 24, 2000. *Id.* at 65768. When OSHA extended the pre-hearing comment period, it also delayed the start of the hearing until March 13, 2000, 11 days after the close of the pre-hearing written comment period. 65 FR 4795 (Feb. 1, 2000). In addition, because it received more than 400 Notices of Intent to Appear at the hearing, OSHA added an additional 7 days to the hearing in Washington, DC and Portland, OR, in order to accommodate all members of the public who sought to testify. See 65 FR 11948 (Mar. 7, 2000); 65 FR 19702 (Apr. 12, 2000).

On February 25, 2000, the Assistant Secretary issued special hearing procedures to ensure that the hearing proceeded in a fair, orderly, and timely manner. 65 FR 11946 (Mar. 7, 2000). In doing so, the Assistant Secretary acted pursuant to Section 1911.4 of OSHA's procedural regulations governing informal public hearings, which allows the Assistant Secretary, upon reasonable notice, to specify additional or alternative hearing procedures for good cause. 29 CFR 1911.4. OSHA published the Hearing Procedures in the **Federal Register**, mailed them to every hearing participant, and placed them on its web-page. The Assistant Secretary and the Chief Administrative Law Judge also met with interested members of the public to describe and answer questions about the conduct of the hearing. Representatives of the U.S. Chamber of Commerce, United Parcel Service, Inc., the National Coalition on Ergonomics, and the AFL–CIO attended this meeting.

The Hearing Procedures described the nature of the informal public hearing, as well as the procedural rules governing the hearing. *Id.* The Hearing Procedures gave the locations and scheduled times for the different hearing sites; they also permitted the presiding Administrative Law Judge to extend the hearing past the scheduled closing time for any particular day "to assure orderly development of the record." *Id.*

The Hearing Procedures emphasized that the hearing was a legislative-type hearing, not an adjudicative one. *Id.* Thus, neither the rules of evidence nor other procedural rules governing adjudications applied. *Id.* The hearing was intended to provide an opportunity for persons who filed a Notice of Intent to Appear to testify and question witnesses. *Id.* Such participation, however, was designed to "facilitate the development of a clear, accurate and complete record, while assuring fairness and due process." *Id.* "The intent is to provide an opportunity for effective oral presentation by interested persons, and to avoid procedures which might unduly impede or protract the rulemaking process * * *" *Id.* at 11947–48.

The Procedures also described the conduct of the rulemaking hearing. First, a panel of OSHA representatives would be available to answer questions on the proposed standard for two full days, on March 13 and 14, 2000. *Id.* at 11948. The Hearing Procedures explained the process for handling the questioning of the OSHA panel, to assure that the questioning time was distributed in a fair and equitable manner. *Id.* They also prescribed the manner of questioning of OSHA's expert witnesses and a panel of witnesses from the National Institute of Occupational Safety and Health (NIOSH). *Id.*

The Hearing Procedures directed public participants to use their oral presentations to summarize and clarify their written submissions rather than to read those submissions into the record. *Id.* The Procedures provided that the Administrative Law Judge should allocate time for questioning of public witnesses as appropriate; however, the procedures required that the "testimony and questioning of all witnesses scheduled for each day [be] completed that day." *Id.* The Procedures further encouraged participants having similar interests to "designate one representative [to] conduct the questioning on their behalf." *Id.*

Finally, the Hearing Procedures established a 45 day post-hearing period in which participants could submit additional information and data to the record, and a 90-day post-hearing period in which they could submit briefs and arguments on the proposed standard. *Id.*

Along with the Hearing Procedures, OSHA distributed a schedule for witness testimony at the informal public hearing. *See* Ex. 502–476. OSHA sent the initial schedule for the Washington, DC and Chicago, IL locations to hearing participants on February 26, 2000 (with the Hearing Procedures), and posted it on the OSHA web page. OSHA sent the schedule for the Portland, OR location to the Portland participants on March 8, 2000, and also posted it on the OSHA web page. The schedules listed the dates and times for the testimony of the expert witnesses who were to testify on behalf of OSHA, the panel of experts from NIOSH, and each public witness who had filed a Notice of Intent to Appear. *Id.*

The schedule organized the public witnesses into panels, and allotted each witness an amount of time to testify based upon the time the witness had requested. *Id.* The Hearing Procedures established the following format for questioning of the public witnesses: each public witness on a panel would present testimony; after all of the witnesses on the panel presented, the panel as a group would answer questions from members of the public and OSHA. 65 FR 11948–49 (Mar. 7, 2000). The Hearing Procedures, however, also gave the presiding Administrative Law Judge authority to allocate the time for questioning of witnesses in a different manner, as he deemed appropriate. *Id.* at 11949. This provided a fair and orderly process for questioning the public witnesses while allowing flexibility to accommodate participants' desire for more or less questioning of certain witnesses. *See e.g.,* Tr. pp. 9043; 9378–79; 13345.

After OSHA published the initial schedule, a substantial number of participants requested that OSHA alter the hearing schedule. OSHA accommodated these individuals to the extent possible. Some examples of the accommodations made for various hearing participants included:

- American College of Occupational and Environmental Medicine —Rescheduled from 4/13/2000 to 5/11/2000.
- American Iron and Steel Institute—Rescheduled from 4/07/2000 to 4/18/2000.
- American Society of Safety Engineers—Rescheduled from 5/09/2000 to 4/21/2000.
- International Order of the Golden Rule—Rescheduled from 4/07/2000 to 4/12/2000.
- Levi-Strauss—Rescheduled from 4/18/2000 to 5/04/2000.
- National Automobile Dealers Association—Rescheduled from 4/13/2000 to 4/14/2000.
- Association for Suppliers of Printing, Publishing, and Converting Technologies—Rescheduled from 3/31/2000 to 5/09/2000.
- Screenprinting and Graphic Imaging Association International—Rescheduled from 3/22/2000 to 4/12/2000.
- UniSea Inc.—Rescheduled from 4/27/2000 to 5/02/2000.
- Three UPS expert witnesses—Rescheduled from 4/2000 to 5/10/2000.

See Ex. 502–476. Throughout the informal public hearing, OSHA continued to work with hearing participants to try to accommodate their schedules. As OSHA made changes to the hearing schedule, OSHA posted the changes on its web page and often announced them at the beginning or end of a hearing day. *See e.g.,* Tr. pp. 7161; 7567; 13121; 13531.

The informal public hearing began on March 13, 2000 in Washington, DC and ended on May 15, 2000. OSHA's Director of the Safety Standards Program Directorate (Director) made a short statement at the beginning of the hearing. For the rest of the first two days of the hearing, a panel of representatives from OSHA and the Solicitor of Labor (OSHA panel), headed by the Director, answered questions on ergonomics generally and on the proposed standard specifically. In total, the OSHA panel answered questions for approximately 16 hours. *See* Tr. pp. 1–5–819.

As established in the Hearing Procedures, OSHA allowed each member of the public who filed a Notice of Intent to Appear to question the OSHA panel. In order to accommodate the large number of individuals who wished to question the OSHA panel, the Hearing Procedures provided that the questioning occur in "rounds." In total, there were four rounds of questioning of the OSHA panel; thus, questioners were able to question at four different times over the two days. The amount of time allotted for questioners in each round was the following:

- Round 1— Ten minutes per questioner. Tr. p. 1–27.
- Round 2— 20 minutes per questioner. Tr. p. 1–244.
- Round 3— 20 minutes per questioner. Tr. p. 615.
- Round 4— 15 minutes per questioner. Tr. p. 771.

Thus, each member of the public had up to one hour and five minutes to question the OSHA panel.

After the first two days of the hearing, 28 OSHA expert witnesses testified about various aspects of ergonomics, MSDs, and other issues raised by the proposed rule. Ex. 502–476. A panel of representatives from NIOSH also testified about the causes and prevention of ergonomic injuries. *Id.*

The OSHA expert witnesses were grouped into subject-matter panels. Generally, each expert provided affirmative testimony for about 15 minutes (45 minutes per panel), and the panel answered questions for about two hours. In some instances, panels answered questions for approximately three hours. *See e.g.,* Ex. 502–476,

Testimony of Wednesday, March 15, 2000; March 20, 2000; March 21, 2000.

During the first two days of testimony by OSHA's experts, the questioning followed the same format as the questioning of the OSHA panel. After the first two days of testimony, however, the Administrative Law Judge altered the allocation of time so that employer representatives collectively, and labor representatives collectively, were each given approximately 40% of the time to ask questions, and OSHA was assigned approximately the remaining 20%. Questioners who did not represent either employers or labor were allotted proportional amounts of time from industry and labor's time. Tr. pp. 1774–75; 1780–1790.

OSHA's expert witnesses testified from Wednesday, March 15, 2000, through Tuesday morning, March 21, 2000. *See* Ex. 502–476. In order to maximize the public's time to question these experts, OSHA encouraged the witnesses to shorten their affirmative presentations, and ceded some of its own time for questioning to industry and labor. *See* Tr. pp. 1791; 1816; 2087; 2496; 2287–88.

A panel of NIOSH experts also testified during the first week of the hearing, on Friday, March 17, 2000. *See* Ex. 502–476. NIOSH was scheduled to appear for 4½ hours, and the public questioners, including both labor and industry representatives, had been allocated 3½ hours for questioning. *See* Ex. 502–476. However, the questioners used only 2 hours and forty-five minutes of this time. *See* Tr. p. 2125.

Public witnesses testified during the remainder of the nine weeks of the informal public hearing. After a panel of public witnesses presented testimony, the witnesses were available for questioning by members of the public and OSHA. *See* Ex. 502–476. The Administrative Law Judge presiding over the hearing on any particular day exercised discretion in terms of how the testimony and questioning of the public witnesses would proceed. On a few occasions the presiding Administrative Law Judge admitted into the rulemaking record evidence and testimony that were not submitted in accordance with the hearing procedures. *See* Tr. pp. 1095–97; 7168–73. Such allowances by the Presiding Officer were appropriate under the hearing procedures in order to ensure a clear, complete, and accurate rulemaking record. With respect to the allocation of time for questioning of the public witnesses, in the vast majority of instances the questioning proceeded in a similar format to that established during the questioning of OSHA's expert witnesses (*i.e.,* dividing the allotted time among industry, labor, and OSHA).

OSHA scheduled appearance times for all of the more than 400 parties who filed Notices of Intent to Appear at the hearing. *Id.* More than 100 of these parties, however, canceled their scheduled testimony. Many of these parties did not notify OSHA of their cancellations, or did so at the last minute, so that OSHA was often not able to adjust the schedule to allow more time for other witnesses. See *e.g.,* Tr. pp. 3138; 9379; 12036–12041.

2. Adequacy of the Procedures

A number of participants complained that the 11 days between the end of the comment period and the beginning of the hearing was too short to allow them to participate meaningfully in the rulemaking. *See* Exs. 500–188, p. 6; 500–197, p. IV–5; 30–3956, p. 142. OSHA disagrees. There is no statutory requirement that OSHA allow any particular amount of time between the close of the comment period and the public hearing. OSHA's own procedural regulations, however, require a 10 day period between the close of the pre-hearing comment period and the hearing. 29 CFR 1911.11(b)(4). The 11-day period OSHA provided in this rulemaking was consistent with those regulations.

During this period, OSHA made unprecedented efforts to assist participants in preparing for the hearing. OSHA extended its Docket Office hours and established a separate ergonomics reading room. See Ex. DC–423. It also made Docket Office staff available to help individuals locate materials quickly and efficiently. Interested parties were able to review the materials submitted to the rulemaking record as soon as they were received by OSHA.

After the schedule for the Washington, DC and Chicago, IL hearing locations was issued on February 26, hearing participants could use it to utilize their own preparation period most effectively. And hearing participants had no need to read each others' comments to prepare for their own questioning of the OSHA panel. Parties had more than 100 days to prepare for this process. In addition, many hearing participants were already familiar with the NIOSH and OSHA expert witnesses and with the substance of their testimony. One of the participants who complained repeatedly that there was inadequate time to prepare for the public hearing had, in fact, cross-examined some of the expert witnesses on similar issues in earlier OSHA enforcement litigation. See Attachments to Ex. 30–1722. OSHA therefore disagrees with those commenters who stated that 11 days was insufficient to review the comments and testimony submitted, or to prepare for questioning of all of the witnesses who were scheduled to appear over the nine weeks of hearings. See Exs. 500–188, p. 6; 500–197, p. IV–5; 30–3956, p. 142.

The conduct of the hearing was also consistent with the OSH Act and OSHA's procedural regulations. Although this legislative type hearing is informal, OSHA's procedural regulations provide for more than the bare essentials of informal rulemaking and include: (1) An ALJ to preside at the hearing; (2) "an *opportunity* for cross-examination on *crucial issues,*" and (3) a verbatim transcript of the hearing. 29 CFR 1911.15(b) (emphasis added). Indeed, OSHA rulemakings differ from the rulemakings of other federal agencies in that members of the public can question OSHA's expert witnesses and each other. The procedural regulations also permit the Assistant Secretary for OSHA, upon reasonable notice, to "prescribe additional or alternative procedural requirements:

- In order to expedite the conduct of the proceeding;
- In order to provide greater protection to interested persons whenever it is found necessary or appropriate to do so; or
- For any other good cause which may be consistent with the applicable laws."

See 29 CFR 1911.4.

Here, as it frequently does, OSHA scheduled the informal public hearing when it published the proposed rule on November 23, 1999. The informal public hearing complied with OSHA's procedural regulations: (1) An Administrative Law Judge presided over it; (2) interested parties were given an opportunity to cross-examine witnesses on crucial issues; (3) OSHA provided transcripts of the proceedings; and (4) OSHA designed procedures that effectuated the stated intent of OSHA informal hearings, *i.e.,* "to provide an opportunity for effective oral presentation by interested persons which can be carried out with expedition. * * *" 29 CFR 1911.15(a)(3).

Due to the large number of individuals who filed Notices of Intent to Appear, the Assistant Secretary also had "good cause" to issue special hearing procedures to ensure that the hearing proceeded in a fair and orderly manner. The Assistant Secretary issued the Hearing Procedures on February 25, 2000, giving hearing participants reasonable notice. OSHA mailed the Hearing Procedures the very next day to all individuals who had filed Notices of. Intent to Appear, published them in the **Federal Register**, and posted them on the OSHA web page. In addition, the Assistant Secretary and the Chief Administrative Law Judge held a meeting with interested parties on March 7, 2000, in order to discuss the procedures and answer any questions from the participants.

The conduct of the informal hearing was also consistent with that of other OSHA rulemakings. For example, in the Tuberculosis rulemaking, the Prehearing Guidelines signed by the Administrative Law Judge laid out the following similar parameters:

- The purpose of the hearing was for information gathering and clarification; the hearing was not an adjudicative one but rather an informal administrative proceeding.
- Each hearing day would end when the scheduled testimony and questions for the day had been completed.
- Because written submissions were made a part of the rulemaking record, public witnesses "should" use their oral testimony to summarize and clarify their written submissions.
- Questioning of public witnesses should be limited to 15 minutes, but the presiding Administrative Law Judge could alter the schedule as appropriate to allow more time for questioning of a particular witness.
- If the hearing were to fall significantly behind schedule, the presiding Administrative Law Judge could further restrict the questioning or order further consolidation of the questioning.
- Participants having similar interests should, if possible, designate one representative to conduct the questioning on their behalf.
- If an organization were represented by more than one questioner, only one person should question a witness on a particular topic area.
- Questions should be brief and should be designed to clarify a presentation or elicit information within the competence or expertise of the witness.
- A tentative 120 day post-hearing comment period was established.

Docket H–371, Ex. 24; *See also* Prehearing Guidelines for Hearing on Employer Payment for Personal Protective Equipment, Docket S–042, Ex. 17 (including same); Mintz, *OSHA: History, Law, and Policy* 66–7 (BNA 1984). As is clear from the above, OSHA did not deviate meaningfully in the ergonomics rulemaking hearing from the hearing procedures used in past OSHA rulemakings.

For these reasons, OSHA does not agree with those commenters who stated that the informal public hearing was not adequate to provide interested parties an opportunity to present additional evidence, and to cross-examine public witnesses and OSHA on crucial issues. *See* Exs. 500–188, pp. 6–10; 500–197, pp. IV–11–14. On the contrary, OSHA believes that the process struck an appropriate balance: it gave interested parties the opportunity to present testimony, to question OSHA, and to question other members of the public, while ensuring that the proceedings would proceed in an orderly manner.

Specific objections included the complaints of some participants that they did not have enough time to question the OSHA panel and that OSHA did not disclose who would be representing it on the panel until the day the informal public hearing began. *See e.g.*, Tr. pp. 1–42–43. A few of these commenters, United Parcel Service, Inc., the National Coalition on Ergonomics, and the U.S. Chamber of Commerce, requested that the OSHA panel return for additional questioning at the end of the informal public hearing. Ex. DC–424. Before the Assistant Secretary could respond to that request, however, it was modified (and presumably withdrawn) on April 11, 2000. *Id.; see also* Tr. pp. 17956–58.

In any event, OSHA believes that the hearing participants had more than an adequate opportunity to question the OSHA panel on the proposed rule. The OSHA panel answered questions for approximately 16 hours; those participants who questioned the panel for each round had over one hour to question the panel.

Like other administrative agencies, OSHA explains its reasons for issuing a proposed rule in the preamble to the proposal and other supporting documentation. OSHA is not required by any law or regulation to explain its rationale further at the informal public hearing. OSHA, however, generally spends some time at the beginning of rulemaking hearings answering a few questions from participants. In the past, OSHA usually made a panel available for a few hours at the beginning of the hearing. For example, in both the Tuberculosis and Access to Employee Exposure to Medical Records hearings, the OSHA panel answered questions for a couple of hours at the beginning of the hearings. *See* Docket H–022B, Ex. 171A; Docket H–371, Ex. 25A. Recognizing that there were a number of parties who wished to question the Agency more extensively in this case, however, OSHA deviated from its past practice and set aside two full days for the panel to answer questions on the proposal. *See* Ex. 502–476.

Furthermore, in order to ensure that the questioning was evenly distributed among the participants, OSHA set up a format for the questioning. OSHA established several "rounds" of questioning. Although there were a large number of individuals who wished to question OSHA during the first two rounds, only a few had remaining questions in rounds three and four. In fact, by the final round of questioning only three questioners (representing Boral Bricks, NCE, and the Chamber) asked questions of OSHA. Tr. pp. 771–819. Those parties who utilized their full time in every round had over one hour total to question OSHA. OSHA believes that this schedule provided adequate time for interested parties to question the Agency, while not unduly protracting the rulemaking process.

Finally, OSHA did not prejudice any member of the public by waiting until the day of the hearing to disclose the members of the OSHA panel. The purpose of the first two days of the informal public hearing was to allow interested parties an opportunity to question OSHA about its proposed rule; the purpose was not to provide an opportunity to question individuals about their views of the proposed rule. The panel members were made available to answer questions about the proposed rule on behalf of OSHA. They did not appear to express personal opinions about ergonomics or the proposed standard. Thus, there is no validity to the implication that questioners should have had additional time to prepare for the kind of credibility-based cross examination that would be appropriate in adversarial litigation. *See e.g.*, Tr. pp. 539–41.

Some participants also objected during the hearing that there was not enough time to question the government's expert witnesses. Tr. pp. 936–941; 1438–1444. The Chamber, for example, complained that OSHA only gave "industry as a whole under two hours of cross-examination" to question the NIOSH panel. Ex. 500–188, p. 7 (emphasis in original).

Once again, OSHA believes that the amount of time allotted for questioning its expert witnesses was reasonable and provided interested parties adequate time to ask questions, clarify presentations, and elicit new information, while not unduly protracting the rulemaking process. Each panel was available for questioning for over two hours (and on many occasions for over three hours).

See Ex. 502–476. This amount of time was longer than that provided for questioning of most other members of the public, and OSHA believes it was sufficient to allow members of the public to question the experts on "crucial issues."

OSHA also encouraged its expert witnesses to provide only brief oral presentations. Some of them gave only short opening statements. *See e.g.*, Tr. pp. 2361–65, 2366–69, 2369–72; *see also* Tr. pp. 1816 (Industry questioner thanking panel of OSHA expert witnesses for abbreviating testimony). On other occasions, OSHA ceded the Agency's time to the public for questioning. *See e.g.*, Tr. pp. 2087; 2496; 2287–88. Contrary to the arguments of UPS and NCE that the procedures were somehow designed to "minimize time available for industry questioning," Ex. 500–197. p. IV–13, OSHA's efforts in fact *increased* the amount of time for public questioning of the expert witnesses.

Third, the Administrative Law Judge changed the questioning format after the second day of testimony by the government experts in order to allow questioning to proceed more efficiently. To ensure an even distribution of questioning, the Administrative Law Judge divided the time available for questioning among the three broad categories of questioners—labor, industry, and OSHA. The Hearing Procedures issued by the Assistant Secretary gave the Administrative Law Judge this authority; in fact, the Procedures envisioned the exercise of this authority in just such a situation. See 65 FR 11948 (Mar. 7, 2000). OSHA believes that this revision in format allowed all interested participants an even greater opportunity to question OSHA's expert witnesses.

Finally, OSHA finds completely unfounded the allegation made repeatedly by some commenters (including the Chamber) that there was insufficient time to question the NIOSH panel. *See e.g.*, Ex. 500–188, p. 7. OSHA allotted an entire afternoon, 3½ hours, for questioning of the NIOSH panel. (In total, OSHA scheduled NIOSH for a 4½ hour block of time to present its testimony and respond to questions.) In fact, the hearing was recessed early on that day because there were no questions left for the NIOSH panel to answer. *See* Tr. p. 2125. The time allotted for questioning of the NIOSH panel was more than adequate; if anything, OSHA scheduled too much time for the questioning of this panel.

OSHA also believes that all interested parties had an adequate opportunity to present their affirmative testimony. *See e.g.*, Tr. pp. 16851–52. First, as OSHA stated in its Hearing Procedures, public witnesses were asked to summarize their written submissions. See 65 FR 11948–49 (Mar. 7, 2000). Because written submissions were already part of the rulemaking record and available for all to review beforehand, there was no reason for participants also to read those submissions into the record.

Second, OSHA established the amount of time for public testimony based on the amount of time witnesses requested in their Notices of Intent to Appear. Witnesses who requested only 10 minutes to testify were typically scheduled for the entire amount of time they requested in their Notice. If individuals requested 15 minutes, OSHA typically scheduled them for 10 minutes of affirmative testimony. If they requested 20 minutes, OSHA typically scheduled them for 15 minutes. For witnesses who requested longer periods of time, OSHA scheduled time for affirmative testimony based upon the number of topics to be addressed by a hearing participant. Thus, UPS filed Notices of Intent to Appear for over 20 individuals and requested varying amounts of time to cover a wide range of subject areas. Ex. 32–241–1. OSHA allotted these witnesses 2½ days (22 hours and forty-five minutes), a significant amount of time by any measure, to present their testimony and respond to questions. Ex. 502–476. OSHA believes that the amount of time given the public witnesses to testify met the goal of allowing interested parties to summarize their main points, while not "unduly protracting" the rulemaking process.

Nonetheless, some participants objected throughout the hearing that there was not enough time to question public witnesses. *See* Tr. pp. 8265; 3500; 6062. NCE *et al.*, for example, stated that OSHA improperly "suspended the rules that allow for [cross-examination]" and asked leading questions of certain witnesses in a manner that did not develop the rulemaking record. Ex. 500–197, p. IV–11, 15–16.

OSHA did not suspend any rules allowing for cross-examination. In fact, as described in detail above, the hearing procedures expressly provided for cross-examination. The hearing was not a trial, however, and no OSHA procedural regulation gives the public unlimited time to question witnesses. The public's desire to question witnesses must be balanced against the primary function of the hearing: to assist OSHA in gathering evidence that will help the Agency determine whether and how to regulate. Those parties who complained that their ability to "cross-examine" certain witnesses was improperly curtailed misunderstood the nature and purpose of OSHA's informal rulemaking hearings.

It is clear that the public witnesses had adequate time to question each other. The schedule typically allowed a panel of witnesses to be questioned for one hour. In other words, for every hour of testimony, OSHA allowed an hour of questioning. Consistent with its decision to allow much more time for questioning of the government expert witnesses, OSHA also allowed for greater questioning of public witnesses who were particularly well-known in the field of ergonomics.

- Dr. Don Chaffin, a Professor of Industrial Engineering at the University of Michigan, former Director of its Center for Ergonomic Studies, and author of numerous articles on ergonomics (*See* Ex. 500–5), appeared on a panel by himself and had only a short affirmative presentation; OSHA ceded its own questioning time to allow for more questions from the public. Tr. p. 8264.
- Dr. Gary Franklin, a physician who treats patients with MSDs and has written extensively on ergonomics and MSDs, appeared on a panel by himself and only gave a short affirmative presentation; the amount of time available for questioning by industry representative was significantly increased by the presiding Administrative Law Judge. *See* Tr. pp. 13340–13415.
- Dr. Barbara Silverstein, Director of the Safety and Health Assessment and Research Program in Washington State and author of numerous articles on ergonomics and MSDs, appeared on a panel with one other individual and had only a short affirmative presentation; members of the public had one hour to question the two witnesses. *See* Ex. 502–476.

Second, OSHA repeatedly ceded to the public its own questioning time to allow for more questioning by public participants. *See e.g.*, Tr. pp. 8264; 10546; 17602–03. The Administrative Law Judges also often adjusted the schedule to allow more time for questioning of witnesses when interested members of the public had remaining questions. *See e.g.*, Tr. pp. 8263–66; 13345; 13366; 13380; 13415.

The time available for questioning could have been substantially increased had more scheduled witnesses notified OSHA in advance of their intent not to appear. As stated above, over 100 witnesses canceled their appearances (amounting to approximately one week of scheduled hearing time), often with no advance notice. This included many of the same parties who objected most vigorously to the length of the questioning time and would have been expected to be most anxious to assist OSHA in increasing that time. *See e.g.*, Tr. pp. 3138; 12036–12041. For example, UPS and its expert witnesses requested over 20 hours to present affirmative testimony. OSHA scheduled almost 23 hours for UPS testimony and questioning. UPS, however, canceled all but six of those witnesses. OSHA was unable to fill that time; this resulted in approximately two days during the hearing where no testimony or questioning occurred. *See* Ex. 502–476. Similarly:

- Keller & Heckman LLP requested 40 minutes to testify and canceled its appearance. *See* Exs. 32–215; 32–215–1.
- Fed Ex Corporation and its subsidiaries requested 100 minutes to testify and canceled their appearances. *See* Exs. 32–203; 32–205; 32–208; 32–209; 32–208–2.
- NCE's economic task force requested 130 minutes to testify and canceled its appearance. *See* Ex. 32–375; Tr. pp. 12036–41.
- The Rubber Manufacturers Association requested 45 minutes to testify and canceled its appearance. *See* Ex. 32–242; Tr. p. 3138.

All of these entities, or representatives of these entities, objected to the amount of time allotted for cross-examination of witnesses. See Ex. 500–197 section IV; Tr. p. 2303.

NCE *et al.*contended that OSHA further reduced the time for the public questioning of witnesses by using its own questioning time ineffectively. Ex. 500–197, IV–14–15. But many participants in the hearing complained that others asked irrelevant questions, wasted time, and otherwise failed to develop the record efficiently. The AFL–CIO pointed to an exchange in which a UPS lawyer spent several transcript pages attempting, unsuccessfully, to elicit a particular response from an AFL–CIO witness. Ex. 500–218, pp. 168–170. But this merely highlights that one participant in a rulemaking may believe that certain questions are of relevance, while another participant may think precisely the opposite. OSHA designed the informal public hearing to give both itself and the hearing participants the opportunity to question members of the public in a manner each believed would best develop the rulemaking record. OSHA believes that it did this effectively throughout the informal hearing.

The same participants also complained that "OSHA withheld the hearing transcript from the rulemaking's participants" and that the "transcripts were not provided until the hearings were ended." Ex. 500–197, p. IV–17; see also Ex. 500–109. However, OSHA did not withhold the transcripts from the hearing participants; nor did OSHA wait until the end of the proceedings to make the transcripts available. First, during the initial week of the hearing, OSHA informed participants that they could contact the reporter directly to receive copies of the hearing transcripts. Tr. p. 936. Second, on May 3, 2000, OSHA placed on its web page unofficial copies of the hearing transcripts. Third, on May 30, 2000, OSHA made the official transcripts available on its web-page. OSHA placed paper copies of the official transcripts in the Docket Office a few days later.

There is no statutory, regulatory, or other authority requiring that OSHA go to such lengths to provide copies of the transcripts to the public. OSHA's procedural regulations state only that transcripts "shall be available to any interested person upon such terms as the presiding officer may provide." *See* 29 CFR 1911.15(b)(3). OSHA's efforts to make the transcripts available certainly exceeded what is required by its procedural regulations and was more than adequate to allow parties to review transcripts of the proceedings promptly and in a meaningful way.

C. Availability of Record Material in the Docket

When it issued the proposal, OSHA placed in the rulemaking docket a large amount of material and evidence. Throughout the rulemaking, OSHA received additional evidence, both from rulemaking participants and through its own efforts. This entire body of evidence forms the basis for the issuance of this final standard, and OSHA took unprecedented steps to ensure that all of it was available for public inspection.

The OSHA Docket Office (Docket Office) provides a number of ways to review and access materials submitted. First and foremost, the Docket Office maintains hard copies of all documents submitted to the rulemaking record and places them on a central shelf in the Docket Office reading room. Any interested party can view and copy these documents, consistent with applicable copyright laws. Docket Office staff are always available to help interested parties find and obtain rulemaking materials. Until recently, this method was the only way to access an OSHA rulemaking docket.

Recently, however, OSHA has been exploring methods of using technology to make access to its dockets even more convenient. For example, OSHA began a process of scanning all materials into an electronic database. This permits interested parties to view documents in the database, search for documents submitted, and print copies of the documents. OSHA intends this system to provide an easier means to view materials submitted to its rulemaking records.

Because OSHA anticipated that there would be a large amount of material submitted to the docket during this rulemaking, the Agency implemented special procedures to ensure timely and convenient access to the docket. For example, OSHA made the proposed rule and preamble, the Preliminary Economic Analysis, and the full Health Effects sections available on its web page and on CD–ROM. In fact, OSHA mailed a CD–ROM containing this information free of charge to all parties who participated in the stakeholder meetings OSHA held before issuance of the proposed rule and to any other interested party upon request.

OSHA also extended its Docket Office hours by 3 hours a day, and designated an area in the Docket Office as an "ergonomics reading room," where parties could review docket submissions as soon as they were received by the Agency. Ex. DC–423. In addition, OSHA moved people from other positions in the Agency to process public comments and scan the material into the computer database as quickly as possible. These steps, which exceeded any legal obligations and went far beyond OSHA's own past practice, were more than adequate to ensure interested parties a meaningful opportunity to comment on the proposed rule.

Although an administrative agency engaged in rulemaking must make "critical factual material * * * used to support the agency's position" available to the public for review in a rulemaking proceeding, *Air Transport Ass'n.* v. *FAA*, 169 F.3d 1, 7 (D.C. Cir. 1999), agencies generally are not required to make the material "available" in any particular format, so long as the public has an opportunity to review the material during the rulemaking.

There can be no question that OSHA made the material "available" here within the meaning of this requirement. With only a few exceptions, OSHA placed all documents cited in the preamble to the Proposal in the Docket Office by November 23, 1999—the date the proposal was published. OSHA also scanned the documents into a computer database to allow interested parties to view, search, and print copies of the documents more efficiently. Docket Office staff were available to help interested parties in searching the computer database and locating particular documents. See Ex. 30–3956, p. 133 ("[T]he Docket Office staff were extraordinarily helpful in attempting to

assist us in gaining access to OSHA's data, even to the extent of allowing us a dedicated work station in the docket office (subject, of course, to use by OSHA staff in carrying out their projects)."). But OSHA did not design the database to serve as the primary mechanism for reviewing the rulemaking record; it is an additional convenience for the public.

In fact the computer database for viewing, searching, and printing the record is relatively new technology in the context of OSHA's rulemakings. Similarly, OSHA has not previously made documents available on CD–ROM and the web page. Extending the hours the Docket Office was open to allow the public greater access to the rulemaking record was also not commonplace in earlier rulemakings; the Agency also does not typically dedicate a special area of the Docket Office to serve as a reading room. Thus, in numerous earlier rulemakings, interested parties reviewed and copied (as necessary) the paper copies of documents submitted to the record of a particular rulemaking. The extraordinary efforts made in this case not only exceeded any applicable legal requirements, they were an appropriate response to the comments of some parties that the number of issues involved in the rulemaking required additional accommodations. *See e.g.*, Ex. 500–223, p. 94.

For these reasons, OSHA does not agree with those commenters who contended that underlying record material was not available to interested parties for their review. NCE, for example, alleged that "numerous documents were missing or unavailable because they had been sent out for photocopying, including the 1100 page Preliminary Economic and Regulatory Flexibility analysis and approximately 500 pages of associated materials offered in support of the Agency's conclusions," Ex. 30–3956, p. 133, and that Exhibits 28–3, 28–4, 28–5, and 28–6 were not available for review on November 23, 1999. Ex. 30–3956, Appendix IV. NCE also made a number of other attacks on the integrity of the record and on OSHA's provision of access to it:

- OSHA generally relied upon additional underlying data that it did not make available to the public.
- There was only one high speed printer for use in the OSHA docket office, and that printer takes approximately two hours to print 800 pages.
- The Docket Office only stays open for 6 hours a day.
- The computer systems and printers were not operating perfectly—there were occasional computer and printer failures.
- OSHA rejected a request for electronic copies of the entire docket on disk or zip drive, even though the docket was available to OSHA staff through its intranet.
- The copying fee of 15 cents a page was excessive.
- OSHA relied on a NIOSH review of 2000 studies in supporting the proposed rule; "the 2000 studies were not" in the docket.
- One economic document appeared to be named differently in the Preliminary Economic Analysis than in the preamble.
- The Docket Index was incomplete at certain times during the pre-hearing comment period.
- Only the cover pages of some documents were in the docket, as compared to the entire document.

Ex. 30–3956, pp. 134–37.

Many of these allegations are not accurate, and those that are represent the minor and harmless complications of managing any large record. It is not true that "numerous" documents, including the Preliminary Economic Analysis, were not available for public inspection by November 23, 1999. The Preliminary Economic Analysis was stamped as received in the Docket Office at 9:55 a.m. on November 23, 1999. As such, it was available for inspection and copying at that time. To the extent interested parties had difficulty locating or obtaining the Preliminary Economic Analysis, Docket Office staff were available to assist them.

OSHA also disputes the allegation that Exhibits 28–3, 28–4, and 28–5 were missing on November 23, 1999. In fact, the record indicates that Exhibits 28–3 and 28–4 were entered into the computer database on November 23, 1999 and thus were certainly available for viewing at that time. Exhibit 28–5 is a number without an exhibit; there is no such document and "Exhibit 28–5" was not cited or relied upon by OSHA in the preamble to the proposed rule, or in the Preliminary Economic Analysis.

OSHA does not know which other documents NCE and other commenters, *see* 30–3815, p. 4; 30–3956, pp. 133, 135; 30–3819, p. 3, claim were "unavailable." After the proposed rule was published, however, OSHA discovered that a few documents cited in the proposed rule had been inadvertently omitted from the material placed in the docket by November 23, 1999. These documents included the following:

- *Firm Size Data Provided by the Bureau of the Census (Exhibit 28–6)*—These data provide estimates of the number of firms, number of establishments, employment, annual payroll and estimated receipts for employment size of firm categories by SIC code. It is available to the public from the Small Business Administration web page. OSHA used this information to estimate the economic impact of the proposed rule on various industries, as well as small businesses. When OSHA recognized that these data had inadvertently not been placed in the docket, it immediately placed in the docket a hard copy of the web page where interested parties could access the material (on December 23, 1999). On February 1, 2000, OSHA placed hard copies of the data (127 pages) in the docket. *See* Ex. 28–6–1.
- *RMA data*—These data provide net return on sales information by industry SIC code and are available in many public libraries. OSHA used this information to estimate the economic impact of the proposed rule on various industries. Due to copyright concerns, OSHA originally did not place this information in the docket. OSHA later obtained permission to include these data in the docket; once it obtained this permission, OSHA placed the information in the docket (on February 18, 2000). *See* Ex. 28–10.
- *IRS data*—These data also provide net return on sales information by industry and are available on the IRS web page. OSHA only used these data for a handful of industry sectors for which the RMA data were not available. When OSHA recognized that these data had inadvertently not been placed in the docket, it immediately placed the material in the docket (on January 31, 2000). See Ex. 28–9.

OSHA also did not rely upon data that it did not place in the rulemaking record. The commenters who raised this issue did not identify precisely what data they were referring to, *see* Exs. 30–3716, p.5; 30–3736, p. 10, but it may have been the same material that was requested in a number of Freedom of Information Act (FOIA) requests filed by some hearing participants. *See e.g.*, Ex. 503. Some of these requests were for information that was in the rulemaking docket, and others were for information that was not part of the rulemaking record, because OSHA had not relied on it in the proposed rule.

OSHA responded to the requests for information in a timely manner. *See* Ex. 500–23–1, p. 8. To the extent the information was available, OSHA provided it to the requesters, and, as appropriate, placed the FOIA requests and responses in the docket. *See* Ex. 503. OSHA is not, however, aware of any information it relied upon that it did not place in the docket. To be sure, OSHA receives data and information from a number of different sources when preparing a proposed rule. But all data that were relevant to the promulgation of the proposed rule and were relied upon by OSHA in the rulemaking were placed in the record.

The allegation that "2000 studies" relied upon by NIOSH in its literature review were not in the docket on November 23, 1999 is also factually inaccurate and of questionable relevance. NIOSH did not rely on 2000 studies in its literature review. As described more fully in Section V above, NIOSH originally examined 2000 studies in preparing its literature review but chose to use only about one-third of them, based on certain methodological criteria NIOSH established for the study. Ultimately, NIOSH included about 600 studies in its literature review. Many of these studies were in the rulemaking docket. For example, a quick check by OSHA located the following studies in the rulemaking record:

- Aaras A. [1994]. Relationship between trapezius load and the incidence of musculoskeletal illness in the neck and shoulder. Int. J. Ind. Ergonomics 14(4):341–348. Ex. 26–892.
- Armstrong T. *et al.* [1987a]. Ergonomic considerations in hand and wrist tendinitis. J. Hand. Sur. 12A(5):830–837. Ex. 26–48.
- Bigos S. *et al.* [1986b]. Back injuries in industry: a retrospective study. III. Employee-related factors. Spine 11:252–256. Ex. 26–871.
- Dehlin O. [1977]. Back symptoms and psychological perception of work: a study among nursing aides in a geriatric hospital. Scand. J. Rehabil. Med. 9:61–65. Ex. 26–820.

Even though a few of the studies examined by NIOSH may not have been in the docket, however, the public would not have been deprived of an adequate opportunity to review the information OSHA relied upon in the proposed rule, because OSHA relied upon the NIOSH literature review in discussing the epidemiological evidence supporting the proposed standard. The NIOSH literature review was in the docket and available for review by November 23, 1999. Ex. 26–1. OSHA's use of, and reliance upon, its research arm in this manner was expressly contemplated by Congress when it created NIOSH in the OSH Act. *See* 29 U.S.C. § 671. Furthermore, OSHA is not obligated to place in the docket every underlying study used by any researcher in reviewing the scientific literature about any particular subject. *Cf. Cable & Wireless P.L.C.* v. *FCC*, 166 F.3d 1224, 1234 (D.C. Cir. 1999) (FCC did not unreasonably rely upon published study even though underlying data for the study was not available to the FCC or the public).

It is also not true that printer failures and other computer problems prevented interested parties from reviewing and commenting meaningfully on any material in the docket. As stated earlier, OSHA is required to make critical material available for public inspection during the rulemaking proceeding. OSHA is generally not required to make such material available in any particular form or manner. In this case, OSHA made the relevant material available in hard copy format for review and copying (as appropriate) in the Docket Office reading room. OSHA is aware of no commenter who has suggested that any of the material in the docket was not available in hard copy form or that any of the copying machines were not functioning during the comment period. Indeed, one commenter expressly noted that there were "no particular difficulties" in requesting, reviewing, and copying documents in the rulemaking record. Ex. 500–218, p. 165.

And as explained, OSHA never intended its computer database to serve as the sole method for interested parties to use to review the record. OSHA intended the database to be an additional tool to facilitate this review, for those participants who prefer electronic access. OSHA does not believe that the occasional technical failure of this additional tool deprived any party of an opportunity to review relevant material.

Similarly, interested parties were not denied meaningful review because OSHA did not produce the entire docket electronically or on a zip file. First, as described above, OSHA provided a number of documents to interested parties on its web page and on CD–ROM, including the full Health Effects section as well as the entire Preliminary Economic Analysis. Second, OSHA made the information in the docket available electronically on its computer database. Providing the entire docket on a zip file would have been administratively difficult, expensive, and time consuming, particularly since the docket was constantly growing, with new submissions being received by Docket Office staff daily.

Third, providing the record in such a way would raise copyright issues for some of the material in the record. Finally, and as mentioned previously, OSHA is not required to provide the material in the record as an electronic or zip file. OSHA is, of course, continually investigating new ways to provide interested members of the public with access to the rulemaking record. However, there is surely no due process requirement that OSHA provide access to the document in any particular form, and OSHA's decision not to provide an additional form of electronic access did not violate due process or impede participants' ability to view the material in the rulemaking.

The fact that the Docket Office was open for 6 hours a day during the prehearing comment period also did not deny any party an adequate opportunity to review the record. Particularly with the technological assistance described above, OSHA believes that interested parties could adequately review the record and comment on the proposed rule in the time allotted. And as also discussed above, the quality and comprehensiveness of the pre-hearing submissions, including NCE's own 156 page submission, belie any suggestion that the parties were impeded in their ability to comment. Even so, when the hearing began OSHA extended the Docket Office hours to allow the public even more time to review the comments and evidence received into the rulemaking record. Docket Office hours were extended on March 13, 2000; the Docket Office continued these extended hours until September 1, 2000, well after the rulemaking record closed.

Certainly, the $0.15 a page fee the Docket Office charges for copying and printing did not deny interested parties an opportunity to review the record. OSHA is authorized to charge this nominal fee in order to recoup some of the costs of paper and toner, etc. *See* 29 CFR 70.40(d)(2). But OSHA does not charge any fee for interested parties to enter the Docket Office and review documents submitted to the record, so the fee did not prevent any interested party from viewing any document.

The fact that one particular economic document was improperly named in the Preliminary Economic Analysis also did not deprive parties of an adequate review of the record. Certainly, OSHA took pains to ensure that all documents were accurately cited in the preamble to the proposed rule, as well as in the computer database. It is precisely because human error may occur from time to time, however, that Docket Office staff are available to answer questions from interested parties, as well as to make inquiries of OSHA if parties are having difficulty locating certain documents. The specific document referred to by NCE, *Exhibit 28–7—Tabulations from OSHA's 1993 Ergonomics Survey*, was inadvertently titled *Description of Cost Estimates of Ergonomic Controls Under Draft OSHA Ergonomics Standard* in both the Preliminary Economic Analysis and the Summary of the Preliminary Economic Analysis (Summary) in the Preamble. OSHA corrected the error in the Summary in a corrections notice published December 30, 1999. See 64 FR 73448–58 (Dec. 30, 1999). OSHA,

however, did not place any new material—material that would have required additional analysis—into Exhibit 28–7 after correcting the title to the document. OSHA thus does not believe that this inaccurate citation deprived the public of an opportunity to review and comment upon the material in the Exhibit.

OSHA also believes that the Docket Index was never "incomplete." By its very nature, the Docket Index is an unfinished and ever-growing document. Interested parties are continually sending documents to OSHA to place in the record. When the Docket Office receives a document, it is processed and placed into the record. Part of the processing involves entering the document into the computer database and generating the Docket Index. Thus, the Docket Index is constantly growing as new information is submitted to the record. This does not mean, however, that the Docket Index is "incomplete" at any particular time.

Docket Office staff processed rulemaking documents as soon as possible upon receipt. Indeed, OSHA moved people from other positions within the agency to expedite this process. OSHA does not believe that its processing of documents into the record and onto a Docket Index deprived any interested party an adequate opportunity to review the record or to comment meaningfully on the proposed standard.

Finally, in a few cases, due to copyright concerns, OSHA placed only the cover pages and tables of contents of published documents into the docket. These documents were generally available to interested parties upon request; they were also often publicly available. *See e.g.*, Tr. p. 2640 (Hearing participant complaining that only cover page of book in the record, but admitting he was able to obtain copy of the book). Once again, Docket Office staff were available to answer any questions from interested parties and to help locate materials that might otherwise be difficult to find. OSHA does not believe that this practice deprived interested parties of their right to review the record.

As the above discussion demonstrates, OSHA undertook extraordinary measures to provide interested members of the public access to the rulemaking record. These efforts ensured that all participants had an opportunity to examine the underlying information and comment meaningfully on the proposed rule.

D. OSHA's Use of Expert Witnesses

Consistent with its past practice, *see* Mintz, *OSHA: History, Law, and Policy* 64–5 (BNA 1984), OSHA contracted with a number of experts to testify at the hearing and to provide other assistance in the rulemaking process. Twenty-eight experts prepared pre-hearing comments, testified during the informal public hearing, answered questions at the hearing, and submitted post-hearing comments and data. These experts testified on a wide range of issues including the work-relatedness of MSDs, the diagnosis of MSDs, the implementation of engineering controls in workplaces, and the costs of ergonomic programs. *See* Testimony in Ex. 37. OSHA's use of expert witnesses in this way is expressly authorized by the OSH Act, is consistent with past practice, and is consistent with the practice of other administrative agencies.

Section 7(c)(2) of the OSH Act states: "In carrying out his responsibilities under this Act, the Secretary [of Labor] is authorized to * * * (2) employ experts and consultants or organizations thereof as authorized by Section 3109 of Title 5." 29 U.S.C. § 656(2). The OSH Act does not limit the purposes for which OSHA may obtain expert assistance, and assuring that it has appropriate expertise during rulemaking proceedings falls squarely within this authorization. In *United Steelworkers of America* v. *Marshall (Lead)*, 647 F.2d 1189 (D.C. Cir. 1980), the U.S. Court of Appeals for the District of Columbia Circuit upheld OSHA's authority under the OSH Act to employ experts to prepare written comments, submit relevant data, and present testimony during rulemaking proceedings. The court stated: "The OSH[] Act empowers the agency to employ expert consultants * * * and OSHA might have possessed that power even without express statutory authority * * * ." *Id.* at 1217. The court also noted that it would be absurd to require OSHA and other agencies to "hire enormous regular staffs versed in all conceivable technological issues, rather than use their appropriations to hire specific consultants for specific problems." *Id.*

OSHA has historically used experts to testify at public hearings about parts of proposed rules that fall within their areas of expertise. Some earlier OSHA rulemakings that involved OSHA expert witnesses included: the Lead rulemaking (1980); the Hazard Communication rulemaking (1983); the Ethylene Oxide rulemaking (1984); the Benzene rulemaking (1987); and the Methylene Chloride rulemaking (1997). Other federal agencies also use expert witnesses in ways similar to OSHA's. The Environmental Protection Agency, the Food and Drug Administration, and the Department of Transportation, for example, make extensive use of consultants in their rulemaking activities. See e.g., *BASF Wyandotte Corp.* v. *Costle*, 598 F.2d 637, 640–41 (1st Cir. 1979) (EPA retained outside consultants to analyze pesticide industry in preparation of regulation); *cf. National Small Shipments Traffic Conf., Inc.* v. *I.C.C.*, 725 F.2d 1442, 1449 (D.C. Cir. 1984) (ICC retained consultant to evaluate various methodological criticisms of rulemaking record). As explained in *A Guide to Federal Agency Rulemaking* published by the ABA:

> Agencies sometimes use the services of outside consultants in developing rules or supporting analyses, particularly in rulemakings involving questions of science or technology as to which the agency needs added expertise. The tasks consultants are asked to perform vary, but they include testifying as witnesses, conducting research, summarizing and evaluating data in the record, and helping draft portions of the final rule and its rationale. Lubbers, *A Guide to Federal Agency Rulemaking* 243 (ABA 1998).

Clearly, therefore, those commenters who claimed that it was improper, per se, for OSHA to contract with expert witnesses to participate in the rulemaking process were wrong. *See e.g.*, Exs. 500–43, pp. 1–2; 500–201, p. 2. OSHA has also considered the more specific objections that: (1) OSHA did not disclose to the public that it had contracted with the expert witnesses to participate in the rulemaking proceedings; (2) the expert witnesses had a financial interest in the rulemaking and therefore their testimony was tainted; (3) OSHA coached the witnesses; (4) the expert witnesses provided additional detailed critiques of other public commenters that were not placed in the rulemaking record; and (5) OSHA improperly used the expert witnesses to review and analyze the public comments and hearing testimony. *See* Exs. 500–188, pp. 7–10; 500–197, pp. IV–1925.

First, the rulemaking record is replete with evidence that OSHA's use of expert witnesses and consultants was disclosed to the public and was clearly known to the parties who cross-examined OSHA's experts at the public hearings. OSHA notified interested members of the public of its expert witnesses in several ways: (1) OSHA clearly listed its expert witnesses as "OSHA Witnesses" on the hearing schedule that was sent to hearing participants and placed on the OSHA webpage, *see* Ex. 502–476; (2) OSHA placed the witnesses' testimony under a separate Exhibit number in the Docket Office labeled "OSHA Expert Witnesses", *see* Ex. 37; and (3) OSHA referred to its expert witnesses when responding to questions from members of the public during the first two days of the hearing. *See* Tr. pp. 1–142; 1–189; 1–205; 1–206; 1–229; 1–230; 719. Indeed, it was clear to the parties who cross-examined OSHA's experts that OSHA's experts were paid witnesses. For example, when an attorney representing UPS questioned OSHA witness Maurice Oxenburgh, he referenced the "Expert Witness Cont[r]act for Dr. Maurice Oxenburgh." Tr. pp. 2637; *see* also Tr. p. 1440.

Second, OSHA's expert witnesses had no financial interest, and therefore no conflict of interest, in the outcome of the ergonomics rulemaking. The basis for this objection, raised by NCE *et al.*, appears to be that, because many of the expert witnesses were well-known ergonomics experts, they would benefit financially from an ergonomics standard, presumably because they would be hired more often to address ergonomic issues. According to this theory, the witnesses testified that there was a need for a standard on ergonomics in order to receive this future, speculative economic benefit. *See e.g.*, Ex. 500–197, p. IV–19.

In fact, however, OSHA hired these witnesses precisely because their experience with ergonomics provided them with relevant expertise. And their testimony shows clearly why most of them supported promulgation of this standard: they have participated in the implementation of ergonomics programs similar to those required by this standard, and have observed the success of those programs in reducing MSD rates, increasing productivity and efficiency, and decreasing workers' compensation costs. In other words, they believe that a program standard is necessary because they have seen programs work to reduce injuries among workers and save money for their employers. *See e.g.*, Exs. 37–7; 37–25; 37–20.

Third, there is no basis for the claim that OSHA improperly "coached" the expert witnesses. One of the witnesses" functions was to help the public understand the scientific and technical research on which OSHA based its proposal. OSHA worked with its experts to be sure that they were prepared to explain clearly and succinctly, the reasoning and assumptions on which OSHA relied in developing the proposed standard. Indeed, OSHA believes that it had a responsibility to prepare its expert witnesses to present the scientific and technical assumptions that underlay the proposal. This preparation, however, does not represent improper "coaching" the witnesses. *See Lead*, 647 F.2d at 1211–16. None of the expert witnesses testified to anything they did not believe; in fact, some criticized aspects of the proposed rule with which they disagreed. *See e.g.*, Testimony of Les Boden, Tr. pp. 1683–34 ("Even though I happen to be here at the request of OSHA, I think it's clear that OSHA should reword the language that describes WRP so that people like myself, when they first read it, won't think that it means that the worker is supposed to be paid 90 percent of their after tax earnings * * *."); Testimony of Laura Punnett, Tr. p. 1011 ("I would prefer to see a standard which is based on exposure levels * * * and which does not require the occurrence of disorders before a program goes into place.").

Fourth, OSHA's expert witnesses did not prepare any detailed written critiques of public witnesses during the rulemaking process that OSHA could have, but did not place in the rulemaking record. The commenter who made this allegation, the Chamber, gave no support for it, but rather summarily stated: "the Chamber *understands* that many of these supposed experts have *apparently* prepared detailed critiques of the public comments the Agency received, which have never been released to the public, much less subjected to rebuttal or cross-examination." Ex. 500–188, p. 8 (emphasis added). This allegation is not true. As detailed above, OSHA placed in the docket all of the information it relied upon in promulgating the standard.

Fifth and finally, OSHA did not improperly involve expert witnesses in the preparation of the proposed and final rule, and in the review and analysis of the public comments and hearing transcripts. It is true that OSHA hired some experts to help in preparing the proposed and final rule and in evaluating the rulemaking record; however, such use of experts is not improper. As described above, it is expressly authorized by the OSH Act and has been upheld by the D.C. Circuit Court of Appeals. *Lead*, 647 F.2d at 1216 (OSHA properly hired experts "to summarize and evaluate data in the record, prepare record data for computer processing, and help draft portions of the Preamble and the final standard."). In the end, OSHA must weigh the evidence and determine whether a standard is appropriate and how that standard should be designed to substantially reduce a significant risk of material harm. After examining all of the evidence in the rulemaking record—evidence that was subject to notice and comment—OSHA has made the determination that this standard is reasonably necessary and appropriate to reduce the significant risk of MSDs. OSHA's use of experts in helping to make that determination was not improper or inappropriate.

E. Supplemental Hearing on the Economic Impact of the Proposed Standard on the United States Postal Service, State and Local Governments, and Railroads

After OSHA published the proposed standard on November 23, 1999, it realized that it had failed to include in its Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis an assessment of the economic impact of the proposed standard on the United States Postal Service, State and local governments, and railroads. Once OSHA recognized the omission, it conducted a supplemental analysis of the economic impact of the proposed standard on these groups (supplemental analysis) and published the analysis in the **Federal Register**. See 65 FR 33263 (May 23, 2000).

In order to allow interested parties an opportunity to comment on the supplemental analysis, which consisted only of 2 **Federal Register** pages (with a 10 page Technical Appendix), OSHA established a 30 day pre-hearing comment period, scheduled an informal public hearing on the supplemental analysis, and established a 34 day post-hearing comment period. 65 FR 33263 (May 23, 2000). The post-hearing comment period for the supplemental analysis closed the same day as the post-hearing comment period for the rest of the proposed standard. Id.

The hearing took place on July 7, 2000 in Atlanta, GA, and 8 parties filed Notices of Intent to Appear. See Exs. 701; 702. The hearing was scheduled to begin at 9:00 a.m. and conclude by the end of the day. 65 FR 37322, 37323 (June 14, 2000). An OSHA panel was available for questioning on the supplemental analysis from 9:15 a.m. until 12:00 p.m. A representative of UPS questioned the panel for more than two hours, and the presiding Administrative Law Judge permitted one person who had not filed a Notice of Intent to Appear to question OSHA for about 10 minutes. *See* Tr. pp. 18153–55; 18218. A representative of the railroad industry was the only party to present testimony at the afternoon session—the others having canceled their appearances—and the hearing concluded early. See Tr. pp. 18217–81.

OSHA's issuance of the supplemental analysis and procedures for comment on the analysis were consistent with applicable law. As described in detail above, the OSH Act and OSHA's procedural regulations require that OSHA provide at least 30 days for interested parties to comment on a proposed rule. 29 U.S.C. 655(2); 29 CFR 1911.11(b)(3). OSHA gave interested parties such an amount of time to submit pre-hearing comments on the supplemental analysis.

OSHA's procedures for seeking comment were also adequate to allow interested parties an opportunity to meaningfully comment on the supplemental analysis. The supplemental analysis was based in large measure on the original Preliminary Economic Analysis published on November 23, 1999. Id. at 33264. Interested parties, therefore, were familiar with the methodology employed by OSHA in the supplemental analysis before it was published on May 23, 2000. Indeed, virtually all of the parties who filed a Notice of Intent to Appear at the informal public hearing on the supplemental analysis (or who submitted written comments on the supplemental analysis) also filed written comments on the November 23, 1999 proposal. *See e.g.*, Comments of the United States Postal Service, Ex. 35–106; Comments of the Association of American Railroads, Ex. 30–3750; Comments of UPS, Ex. 32–241–4.

Because it was based on the earlier Preliminary Economic Analysis, the supplemental analysis was not a large, complicated document. *See e.g.*, Ex. 28–15 (Technical Appendix). Interested parties did not need to review numerous additional documents to prepare written comments. In addition, the industries analyzed in the supplemental analysis represented only a small fraction of the total industries affected by the proposed rule.

OSHA therefore disagrees with those commenters who contended that, by setting a 30 day pre-hearing comment period and by failing to provide a bifurcated post-hearing comment period (*i.e.*, the first part of the period for submission of additional data and evidence and the second part for post-hearing briefs and argument), OSHA did not provide for adequate comment on the supplemental analysis. OSHA gave interested parties more than 60 days to comment on the supplemental analysis (including the pre-hearing and post-hearing comment period); OSHA believes this period of time was more than adequate to allow interested parties to review the relevant record material, submit written comments and data, and prepare for the informal public hearing. In fact, the information supplied by the railroad industry was largely responsible for OSHA's decision to reserve for possible future rulemaking the issue of the applicability of the final rule to the railroad industry. See Discussion in Part IV, Paragraph (b) above.

F. The Post-Hearing Comment Period

As stated above, the Hearing Procedures established a 90 day post-hearing comment period for the rulemaking. 65 FR 11948, 11949 (Mar. 7, 2000). During the first 45 days of the period (until June 26, 2000), hearing participants could submit additional data and evidence to the rulemaking record. *Id.* Hearing participants had until August 10, 2000 to submit post-hearing briefs and arguments. Furthermore, trade associations or other groups who filed Notices of Intent to Appear were permitted to attach to their post-hearing submissions comments from their members who had not participated in the informal public hearing. *See e.g.*, Ex. 500–1. Numerous hearing participants availed themselves of the post-hearing comment period. For example:

- NCE *et al.* submitted 906 pages of new information and data and submitted a 565 page brief. See Exs. 500–118; 500–197.
- The Chamber submitted 22 pages of new information and data and submitted a 107 page brief. See Exs. 500–109; 500–188.
- The AFL–CIO submitted 2072 pages of new information and data and submitted a 178 page brief. See Exs. 500–71; 500–97; 500–218.
- The American Iron and Steel Institute submitted 186 pages of new information and data and submitted a 129 page brief. See Exs. 500–168; 500–223.

OSHA and its expert witnesses also participated in the post-hearing comment period. OSHA submitted new evidence and data it had obtained since publication of the proposal to the docket by June 26, 2000. See Ex. 502. Some of OSHA's expert witnesses also submitted new data, information, and argument at this time. *See e.g.*, 500–38; 500–134; 500–84. A few expert witnesses also submitted argument after June 26, 2000. *See e.g.*, 500–167. These arguments were postmarked on or before August 10, 2000, in accordance with the Hearing Procedures. 65 FR 11948, 11949 (Mar. 7, 2000).

The 90 day post-hearing comment period and OSHA's participation in it were consistent with Agency practice in past OSHA rulemakings, and did not deprive any member of the public the opportunity to comment on relevant evidence. Past OSHA rulemakings have included post-hearing comment periods of similar length. For example:

- Powered Industrial Trucks—90 day post-hearing comment period. 63 FR 66237 (Dec. 1, 1998).
- Cadmium—90 day post-hearing comment period. 57 FR 42101 (Sept. 14, 1992).
- Process Safety Management—90 day post-hearing comment period. 57 FR 6356 (Feb. 24, 1992).
- Hazard Communication—93 day post-hearing comment period. 48 FR 53280 (Nov. 25, 1983).

Indeed, in the Air Contaminants rulemaking the Secretary of Labor established a 77 day post-hearing comment period, a shorter period than that provided here. 53 FR 34708 (Sept. 7, 1988). As described in more detail above, the time allotted for comment in that rulemaking was challenged in the 11th Circuit Court of Appeals, which held that those comment periods did not deprive individuals of the opportunity to comment meaningfully. Air Contaminants, 965 F.2d at 969 n.8.

Here, too, OSHA believes that the 90 day post-hearing comment period was more than adequate to allow interested parties an opportunity to submit additional data and argument on the proposed rule. As stated above, parties who participated in the informal public hearing had 216 days, including the 90 day post-hearing comment period, from the date OSHA published the proposed rule to submit data and evidence to the rulemaking record for OSHA's consideration. They had 261 days from the date OSHA published the proposed rule to submit briefs and arguments to the rulemaking record. OSHA believes that this gave interested parties more than enough time to review the record, comment on the evidence submitted, and comment on the proposed rule.

In addition, the participation of OSHA and its expert witnesses in the post-hearing comment period was not improper. *See* Ex. 803–2. First, the Hearing Procedures did not preclude OSHA and its expert witnesses from participating in the post-hearing comment period. See 803–2. In past rulemakings, OSHA and its expert witnesses have participated fully in post-hearing comment periods by submitting data, evidence, and argument. *See e.g.*, Docket S775 (Steel Erection); Docket H225 (Formaldehyde); Docket S048 (Logging); Docket H049 (Respiratory Protection). For OSHA and its expert witnesses not to submit additional data and information it becomes aware of in the post-hearing comment period would be negligent, given OSHA's mandate to consider the "best available evidence" in promulgating a standard. It would also give rise to the charge that OSHA was relying in the final standard on non-record evidence.

Second, in accordance with the Hearing Procedures, OSHA and its expert witnesses submitted all new data and evidence by June 26, 2000. Although some of the material was not scanned into the computer database until later, all of the information was available after June 26, 2000, in hard copy form in the Docket Office. OSHA even prepared a finding aid to help interested members of the public locate and review the information submitted. Thus, interested members of the public had an opportunity to review and comment on all new data and evidence submitted by OSHA and its expert witnesses. OSHA admits that a handful of its expert witnesses, like many other Hearing Participants, submitted post-hearing argument on August 10, 2000. *See e.g.*, Exs. 500–167; 500–187; 500–173. As explained above, this was permitted under the Hearing Procedures. 65 FR 11948, 11949 (Mar. 7, 2000). OSHA does not believe that these submissions constituted new information or data, as some commenters suggested. See 803–2. Rather, these submissions interpreted and analyzed evidence and data that were already a part of the rulemaking record. In any events, OSHA has not relied in the final standard on comments from its expert witnesses submitted after June 26, 2000.

OSHA acknowledges that NIOSH submitted a handful of new studies to the rulemaking record after the June 26, 2000 deadline. Because of this, OSHA has not relied upon these studies in promulgating this final rule; OSHA has also not relied upon the conclusions NIOSH reached in its post-hearing brief as evidence in the final standard, even though OSHA believes that NIOSH's post-hearing brief represents argument, not new data and evidence. OSHA has considered, however, the numerous studies NIOSH submitted in accordance with the Hearing Procedures on June 26, 2000. *See* Ex. 500–121. In short, OSHA is not relying in this standard on any information that interested parties did not have an opportunity to comment upon.

Finally, OSHA notes that some Hearing Participants submitted new evidence and data to the rulemaking record on August 10, 2000. *See e.g.*, Ex. 500–219. This new data and evidence was not submitted in accordance with the Hearing Procedures and other hearing participants did not have an opportunity to comment upon it during the post-hearing comment period. *See* 65 FR 11948, 11949 (Mar. 7, 2000). OSHA is thus under no obligation to consider it in promulgating the final rule. Even so, OSHA has examined the information and data carefully and given it appropriate consideration (consistent with the fact that it has not been subject to rebuttal by other hearing participants).

For these reasons, OSHA does not agree with those commenters who have implied that the post-hearing comment period was too brief or that OSHA and its expert witnesses improperly participated in the post-hearing comment period. *See e.g.*, Exs. 803–2; 500–197, p. IV–9.

XIII. Federalism

OSHA has reviewed the final ergonomics program rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999). This Order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with States prior to taking any actions that would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' clear intent to preempt State laws with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such State Plan States must, among other things, be at least as effective as the Federal standards in providing safe and healthful employment and places of employment.

Since many work-related MSDs are reported every year in every State and since MSD hazards are present in workplaces in every state of the Union, the risk of work-related MSD disorders is clearly a national problem. The Federal final ergonomics program standard is written so that employees in every State would be protected by the standard. To the extent that there are any State or regional peculiarities, States with occupational safety and health plans approved under Section 18 of the OSH Act would be able to develop their own comparable State standards to deal with any special problems.

In short, there is a clear national problem related to occupational safety and health for employees exposed to MSD hazards in the workplace. Any rule pertaining to ergonomics developed by States that have elected to participate under Section 18 of the OSH Act would not be preempted by this final rule if the State rule is determined by Federal OSHA to be "at least as effective" as the Federal rule. California has already promulgated a final ergonomics standard, and so has Washington. The State of North Carolina has proposed one. Because the ergonomics program standard may preempt State rules that are not "at least as effective" as the Federal rule, OSHA has determined that it has "federalism implications" as defined in Executive Order 13132. The order requires consultation with State and local governments for regulations that have federalism implications.

In the course of OSHA's development of this final standard for ergonomics, OSHA solicited and received a great deal of participation from representatives of state, county and municipal governments. Some representatives participated by attending one or more stakeholder meetings held by OSHA in the early stages of the rulemaking effort. Others participated by submitting written comment or testifying at the public hearing. Below is a listing of those who participated in the rulemaking process.

Representatives of the following state, county, and municipal entities attended one or more of the OSHA-sponsored stakeholder meetings addressing the Ergonomic Program Standard:

The City of Greensboro, N.C.; the Virginia State Department of Labor and Industry; the State of Hawaii Department of Labor; the Washington State Department of Labor and Industries; Iowa OSHA; the Maryland Occupational Safety and Health Administration; the New York State Department of Labor; the North Carolina Safety and Health Program, and Utah OSHA.

Representatives of the following state, county, and municipal entities were invited to attend one or more of the OSHA-sponsored stakeholder meetings addressing the Ergonomic Program Standard, but elected not to send a representative:

Cal/OSHA Consultation Services; California OSHA; the City of Casper, Wyoming; The City of Mt. Airy, North Carolina; the City of Portland, Oregon, Bureau of Risk Management; the North Carolina Department of Labor; the North

Carolina League of Municipalities; the Ohio Bureau of Workers' Compensation; Oregon OSHA; the State of Kansas Consultation Program, and the Texas Workers Compensation Insurance Fund.

Representatives of the following state, county, and municipal entities provided comments to the public rulemaking docket for the proposed Ergonomic Program Standard (Docket S–777):

Butler Rural Elec Cooperative Inc. (Exs. 30–182 and 30–239); North Park Public Water District (Ex. 30–212); City of Garner (Ex. 30–219); Colchester Public Works (Ex. 30–247); Appomattox River Water Authority (Ex. 30–248); South Island Public Services District (Exs. 30–252; 30–281; and 30–3[illegible]4); Des Moines Water Works (Exs. 30–254 and 30–279); Mishawaka Utilities (Exs. 30–255 and 30–278); Public Works Department (Ex. 30–257); Saginaw Midland Municipal Water Supply Corp (Ex. 30–258); Board of Public Utilities (Ex. 30–261); City of Nashville (Ex. 30–270); Stroudsburg Municipal Authority (Ex. 30–271); City of Laurel (Ex. 30–272); City of Drain (Ex. 30–273); McCormick Comm of Public Works (Ex. 30–274); Ilion Water Comm Municipal Building (Ex. 30–275); Rural Lorain County Water Authority (Ex. 30–285); Winchester Municipal Utilities (Ex. 30–286); Ohio Rural Elec Cooperatives Inc. (Ex. 30–297); St. Louis County Water Co (Ex. 30–302); City of East Jordan (Ex. 30–304); Clarksdale Public Utilities (Ex. 30–305); Westmont Water Department (Ex. 30–342); Bucks County Water and Sewer Authority (Ex. 30–343); Town of Hillsborough (Ex. 30–347); Department of Water Supply (Ex. 30–356); the City of Portsmouth (Ex. 30–357); Cedar Rapids Water Department (Ex. 30–366); State of Maine Comm on Labor (Ex. 30–376); City of Elko (Ex. 30–377); Arizona School Alliance (Ex. 30–382); New Jersey AM Water Co (Ex. 30–402); Fayette County Hospital (Ex. 30–420); Mohave Union High School District Number 30 (Ex. 30–433); Cartwright School District Number 83 (Ex. 30–439); City of Murfreesboro (Ex. 30–440); Gurnee Public Works (Ex. 30–450); City of David City (Ex. 30–482); Cartwright School District Number 83 (Ex. 30–492); Tualatin Valley Water District (Ex. 30–495); United Water Conservation District (Ex. 30–500); Shoshone Municipal Pipeline (Ex. 30–501); South Fulton (Ex. 30–504); City of Hood River (Ex. 30–505); Municipal Authority of the Township of Robinson (Ex. 30–507); City of Petersburg (Ex. 30–508); Town of Greensboro (Ex. 30–510); Thermalito Irrigation District (Ex. 30–512); McCloud Comm Services District (Ex. 30–513); State of Kansas Department of Human Resources (Ex. 30–522); Salt River Project (Ex. 30–526); HI Desert District Water (Ex. 30–549); Clear Creek Comm Services District (Ex. 30–553); Cucamonga County Water District (Ex. 30–558); Ramona Municipal Water District (Ex. 30–578); Clackamas River Water (Ex. 30–579); State University of New York (Ex. 30–584); Kyrene School District (Ex. 30–590); Arizona School Alliance (Ex. 30–591); Pennsylvania State Representative (Ex. 30–599); The Arlington Chamber (Ex. 30–600); Anchorage Water and Wastewater Utility (Ex. 30–622); Multnomah County Oregon (Exs. 30–637 and 500–1[illegible]); Gilbert Public Schools (Ex. 30–691); Elsinore Valley Municipal Water District (Ex. 30–693); District of Columbia Water and Sewer Authority (Ex. 30–702); Bullhead City Schools (Ex. 30–704); Mukilteo Water District (Exs. 30–714 and 30–982); City of Tampa Water Department (Ex. 30–869); the Industrial Commission of Arizona (Ex. 30–877); Valley County Water District (Ex. 30–880); Plainview Water District (Ex. 30–900); Lake Hemet Municipal Water District (Ex. 30–902); Jordan Valley Water Conservancy District (Ex. 30–916); City of David City and David City Utilities (Ex. 30–1002); Bellevue Department of Public Works (Ex. 30–1003); City of Nooksack (Ex. 30–1009); Multnomah County Department of Support Services (Ex. 30–1018); Kentucky Labor Cabinet (Ex. 30–1024); Olivehain Municipal Water District (Ex. 30–1039); Oregon Department of Consumer and Business Services (Ex. 30–1110); North Park Public Water District (Ex. 30–1114); Board of Public Utilities (Ex. 30–1116); Village of Morrisville Water and Light Department (Ex. 30–1118); Pennsylvania Farm Bur (Exs. 30–1121; 30–1202; and 30–1204); Owatonna Public Utilities (Ex. 30–1124); City of Monona (Ex. 30–1125); Consumers Pennsylvania Water Co (Ex. 30–1127); Rock Rapids Utilities (Ex. 30–1128); Warminster Municipal Authority (Ex. 30–1130); June Lake Public Utility District (Ex. 30–1140); City Hall, City of Canyonville (Ex. 30–1206); Central New York Water Authority (Ex. 30–1212); Sanitary District No. 4 Town of Brookfield (Ex. 30–1247); Nevada Irrigation District (Ex. 30–1262); City of Boerne (Ex. 30–1265); Blacksburg Christainsburg VPI Water Authority (Ex. 30–1272); Casitas Municipal Water District (Ex. 30–1275); Jennings North West Regional Utilities (Ex. 30–1310); Ypsilanti Comm Utilities Authority (Ex. 30–1329); Mammoth Comm Water District (Ex. 30–1376); City of Elko City Hall (Ex. 30–1413); Charter Township of Independence (Ex. 30–1415); Town of Oyster Bay, N.Y. (Ex. 30–1447); Clear Creek Community Services District (Ex. 30–1471); Washington Suburban Sanitary Commission (Ex. 30–1508); Contra Costa Water District (Ex. 30–1526); Bona Vista Water Improvement District (Ex. 30–1527); Stanislaus County (Ex. 30–1531); Alaska Municipal League (Ex. 30–1536); Long Beach Public Transportation Co. (Ex. 30–1539); Municipal Association of South Carolina (Ex. 30–1583); Salem County Utilities Authority (Ex. 30–1714); Texas Department of Criminal Justice (Ex. 30–1847); Western Governors Association (Ex. 30–2036); State of Kansas Department of Human Resources (Ex. 30–2041); Public Hospital District No. 1 of Pend Oreille County (Exs. 30–2731 and 30–4103); Oregon Department of Consumer and Business Services (Ex. 30–3022); Point Lookout Village (Ex. 30–3073); Oswego County Ambulance (Ex. 30–3186); Louisville Water Company (Ex. 30–3187); Richmond Ambulance Authority (Ex. 30–3311); New York Department of Labor (Ex. 30–3731); Elizabethtown Water Company (Ex. 30–3739); PIMA County Risk Management Department (Ex. 30–3968); New York State Thruway Authority (Ex. 30–4057); Montana State Fund (Ex. 30–4847); Commonwealth of Pennsylvania Department of Labor and Industry (Ex. L–30–4932); Attorney General of Missouri (Ex. L–30–5216); Nevada City School District (Ex. 31–23); City of Ridgecrest (Ex. 31–135); City of De Pere (Ex. 31–137); Sonoma County Water Agency (Ex. 31–146); Denver Public Schools (Ex. 31–180); Porter Hills Presbyterian Village (Exs. 31–209 and 30–2[illegible]); Stark County Department of Human Services (Ex. 31–213); San Diego City Schools (Ex. 31–234); Fairfax County Government Risk Management Division (Ex. 31–306); Lewis County Public Health (Ex. 31–308); Washington State Farm Bureau (Ex. 31–312); Indiana Association of Cities and Towns, for Richmond Indiana (Ex. 31–328); State of New Mexico Workers Compensation Admin (Exs. 500–13–1 thru 500–13–5); Washington Department of Labor and Industry (Exs. 500–20–1 thru 500–20–8); Oregon Department of Consumer and Business Services (Ex. 500–28–1); Washington State Department of Labor and Industry (Exs. 500–41–1 thru 500–41–120); State of Oregon Department of Consumer and Business Services (Ex. 500–71–22); Washington State Department of Labor and Industry (Ex. 500–86); Oregon Department of Insurance and Finance (Ex. 500–141–1); Oregon Workers Compensation Department (Ex. 500–141–2); Oregon Department of Insurance and Finance (Ex. 500–141–3); New Mexico Workers Compensation Administration (Ex. 500–184–1); City of Portland Environmental Services (Ex. 501–4); Washington State (Ex. 502–67); Alaska Department of Labor (Ex. 502–98); California Department of Labor (Ex. 502–104); California Office of Occupational Safety and Health (Ex. 502–106); California Department of Industrial Relations (Ex. 502–220); Pittsburgh County Memorial Hospital (Ex. 502–285); Allouez Water Department (Ex. 600–X–15); Goshen Water and Sewer Plant (Ex. 600–X–16); Stevens Point Water and Sewage Treatment Department (Ex. 600–X–18); City of George West (Ex. 600–X–19); Pennsylvania AM Water Company (Ex. 600–X–20); City of Cuyahoga Falls (Ex. 600–X–21); Water and Light Department (Ex. 600–X–22); Ma[illegible] Hill Utility District (Ex. 600–X–23); Marshall County Board of Public Utilities (Ex. 600–X–24); The City of North Myrtle Beach (Ex. 600–X–25); Niagara County Water District (Ex. 600–X–26); Old Hickory Utility District of Davidson County (Ex. 600–X–27); Bella Vista Water District (Ex. 600–X–28); Columbus Water Works (Ex. 600–X–29); Dept of Engineering and Public Works (Exs. 600–X–31 and 600–X–67); North Carolina General Assembly (Ex. 601–X–391); New Jersey State League of Municipalities (Ex. 601–X–444); the Commonwealth of Massachusetts (Ex. 601–X–630); Florida House of Representatives (Exs. 601–X–712 and 601–X–838); Texas House of Representatives (Ex. 601–X–946); State of Tennessee (Ex. 601–X–980); Utah State Senate (Ex. 601–X–1013); West Virginia Municipal League (Ex. 601–X–1125); Rhode Island League of Cities and Towns (Ex. 601–X–1133); New Jersey State League of Municipalities (Ex. 601–X–1134); and the City of Portland Oregon (Ex. 601–X–1494).

In addition, representatives of the following state, county, and municipal entities gave oral testimony at the informal public hearings on the proposed Ergonomic Program Standard:

The New York State Attorney General; the National League of Cities; the Montgomery County (Ohio) Administration; the State of New Mexico Worker's Compensation Administration; the State of California Department of Health and Human Services; the City of Portland, Oregon; the Multnomah County, Oregon Government; the Oregon Workers' Compensation Division and the State of Washington Department of Labor and Industries.

Representatives of the following state, county, and municipal entities provided written comments at the informal public hearing on the proposed Ergonomic Program Standard:

The Wisconsin Department of Industry and Labor (Ex. DC–78); the New Jersey Department of Health and Senior Services (Ex. DC–109A); Montgomery County, Ohio (Ex. Il–169); the New Mexico Workers' Compensation Administration (Ex. Il–222); the City of Portland, Oregon (Ex. Or–324); the Oregon Department of Consumer and Business Services (Ex. Or–350–1); the State of Oregon Board of Dentistry (Ex OR–351–9); the National League of Cities (Ex. DC–371) and the Washington State Department of Labor and Industry (Exs. DC 417, 417–1 and 417–2).

OSHA's ergonomics rulemaking process has thus involved hundreds of representatives from every level of government. Many State governments (*e.g.*, Maine, Washington, Oregon, Kansas, Arizona. Kentucky, Pennsylvania, New York, Nevada, Texas, Montana, Missouri, New Mexico, Alaska, California, Indiana, North Caroline, Massachusetts, Florida, Tennessee, Utah and local and municipal governments (*e.g.*, Nashville, TN; Portsmouth, VA; Petersburg, AK; Greensboro, NC; Multnomah County, OR; District of Columbia, Blackburn-Christainsburg, VA; Ypsilanti, MI; Long Beach, CA; Denver, CO; Richmond, IN; Montgomery County, OH) participated either by appearing in person at the hearings or submitting written comments. Municipal and State entities represented included, water districts, school districts, electrical utilities, public works departments, municipal authorities, hospitals and long-term care facilities, labor commissions, human resource departments, universities, legislative bodies, industrial commissions, workers' compensation administrations, public transportation systems, emergency medical services, public highway authorities, emergency medical services, public highway authorities, state insurance funds, public health departments, and environmental services.

Representation by governmental entities has been greater for this rule than for any other OSHA rule. OSHA has benefitted from the information and data provided by these representatives at stakeholder meetings held during the years the standard was under development, and the Agency has carefully reviewed and considered the oral testimony and written submissions of the participants. Many of their comments are addressed throughout the preamble to the final rule, others are discussed below.

An examination of the comments revealed that many commenters shared similar concerns and views on how to remedy those concerns. OSHA received hundreds of comments, for example, expressing concern that the proposed standard lacked clarity. Over 80 of these comments were identical, raising concerns about coverage, costs and how to comply. For example, many commenters said:

> * * * The lack of specificity throws OSHA's estimates of range of impact and cost to employers into serious question. It also leaves employers attempting to comply in good faith at risk of non-compliance. Based on these concerns, I therefore, request that OSHA review its proposed ergonomics standard and provide clarification about both what kind of work and what types of workers are covered by it.

Commenters asked that OSHA clarify its exemption of construction work. OSHA has responded in depth to these concerns in the summary and explanation of the rule (see the discussion for paragraph (b), Does this standard apply to me?) Other commenters asked for clarification as to the application of the rule to the agricultural industry, inmates in penal institutions, the manufacturing industry, the ambulance industry, and the solid waste management industry. These issues are also addressed in the summary and explanation for paragraph (b). Some of the specific comments are discussed in greater detail below.

Some commenters complained the proposal was too long; the comment period too short and then questioned the science used by OSHA, suggesting that OSHA table its work until the National Academy of Sciences completes its second literature review. (Exs.30–1018; 30–1536; and 30–1847). Comments addressing procedural issues are discussed in the Procedural Issues section of the preamble; those on the science supporting this rule are reviewed in the Health Effects section (Section V).

The Des Moines Water Works, the Oregon Department of Consumer and Business Services, the Alaska Municipal League, and the Long Beach Public Transportation Company (*See, e.g.*, Exs. 30–254; 30–1110; 30–1536; 30–1539;), among many others, expressed concerns regarding the effect of the rule on Workers' Compensation Systems and suggested that workers' comp is an area best left to the states to address. Some commenters questioned whether OSHA had the authority to address issues related to workers' compensation systems and questioned whether OSHA's cost estimates included the cost to be expended by "every company in the nation in renegotiate their workers compensation premium costs with insurance companies for these WRP payments?" (Ex. 30–254). Issues raised by commenters about workers' compensation and its relation, or lack of it, to OSHA's work restriction protections, are responded to in the summary and explanation for paragraph (r).

The Pennsylvania Farm Bureau (Ex. 30–1121) said the proposal raised concerns for farm employers even though OSHA did not propose to apply the rule to agriculture. One concern cited by this commenter was that farmers would be affected by higher costs passed on to them by suppliers and others directly impacted by the rule. Another concern expressed by the Bureau was the extent to which agricultural operations were exempt from the rule. The Bureau cited various OSHA interpretations and language used to clarify when general industry and agricultural standards applied as the reason for their concern. The Pennsylvania Farm Bureau stated that OSHA should exclude agriculture from the coverage of the proposed standard. Similar concerns on this issue were raised by the Pennsylvania Farm Bureau, the New York Farm Bureau, the North Carolina Farm Bureau Federation, and others (*See e.g.*, Ex. 30–1201; 30–1418; 30–1421) as well as individual farmers (*See e.g.*, Ex. 30–1202 and 30–1204). OSHA notes that the final Ergonomic Program Standard does not apply to agricultural operations. A full and complete discussion of this issue can be found in the summary and explanation for paragraph (b), Does this standard apply to me?

Some commenters (Exs. 30–1536 and 30–1583) who are members of the National League of Cities (NLC) noted that the NLC does not support the application of the federal ergonomics standards to municipal governments. They cited their inability to obtain funding and their lack of technical resources to put an ergonomic program together as reasons for the objection. OSHA will provide considerable

compliance assistance to the regulated community that may help NLC members reduce expenditures and develop solutions. These materials will be listed on OSHA's website at *www.osha.gov.*

The Salem County Utilities Authority (Ex. 30–1714) registered their support for the position of the National Solid Wastes Management Association's (NSWMA) request that the solid waste management industry be exempt from the ergonomic program standard. This commenter listed a number of reasons similar to those set out by OSHA in the proposed rule as the basis for the exemption of the construction, maritime and agricultural industries. OSHA's response to NSWMA's concerns are addressed in connection with paragraph (b) of the summary and explanation.

The Texas Department of Criminal Justice (TDCJ) (Ex. 30–1847) requested an exemption for correctional worker positions and asked for clarification of the applicability of the rule to prisoners assigned to manufacturing positions. Like other commenters, TDCJ expressed concern about the number of new staff that would be needed, in their view, to comply with the ergonomics program standard.

The Butler Rural Electric Cooperative, Inc. (Ex. 30–182) acknowledged the importance of an ergonomics program and provided details on the work already done by Butler; however, they believe that the OSHA ergonomics program standard is not necessary because OSHA could continue to rely on the General Duty Clause to do the job. In addition, Butler raised some concerns about the Work Restriction Protection provisions of the proposal, which they believe will encourage fraud. Again, these are areas of concern that have been raised by other commenters and are discussed at length in the summary and explanation section for paragraph (r).

The Stanislaus County (CA) Risk Management Division (Ex. 30–1531) suggested that more specific guidance was needed to help employers comply with the standard. They supported the grandfather clause, stating that "Stanislaus County has saved millions of dollars over the last six years with the implementation of our injury and loss prevention program. One of these programs includes ergonomics." They support the grandfather clause because they believe "There should be some incentive for those employers who are already making a good faith effort, with programs in place, to be rewarded, and we would encourage you to keep the grandfather clause." In response, OSHA notes that the final rule contains a grandfather clause (see paragraph (c)).

The Long Beach Public Transportation Company (Ex. 30–1539) stated their agreement with the fundamental concepts proposed by OSHA, but expressed some opposition regarding the classification of MSDs and the standard's potential impact on workers compensation laws. Long Beach Transportation encouraged OSHA "to provide education to promote even more voluntary employer ergonomic programs to address the issues of MSDs." The concluding comment of this entity was that "The Standard, as proposed, however would place an economic and regulatory burden on employers, would treat injured employees inequitably and would jeopardize voluntary systems already in place to address this issue." This view was also expressed by many commenters from state, county and municipal governments. In response, OSHA notes that employers and entities covered by the rule can anticipate to reap substantial benefits from their programs (see the discussion of the results achieved by others in the final economic analysis).

The Richmond Ambulance Authority (RAA) (Ex. 30–3311) stated that they "applaud and support OSHA's effort to address ergonomic concerns in the workplace." This commenter then listed a few areas of concern and noted that the exemption criteria for industries with special compliance issues clearly apply to the ambulance industry. The RAA said that "compliance efforts by members of the ambulance industry would be extremely costly" and urged OSHA to exclude back pain from the kinds of MSDs covered.

OSHA is grateful to the many state, local, municipal, other government entities who have participated actively in this rulemaking. All the concerns raised by these commenters have been considered, and many changes to the rule have been made based on the comments and suggestions provided by these participants.

XIV. State Plans States

The 23 states and 2 territories which operate their own Federally-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of a final standard. These States include: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a state or territorial standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

XV. OMB Review Under the Paperwork Reduction Act of 1995

This final ergonomics program standard contains collections of information (paperwork) that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA'95), 44 U.S.C. 3501 *et seq.* and its regulation at 5 CFR § 1320. PRA'95 defines collection of information to mean, "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format." [44 U.S.C. § 3502(3)(A)]. OSHA submitted an Information Collection Request (ICR) for OMB approval when the proposed rule for the ergonomic program standard was published on November 23, 1999. OMB did not approve the ergonomic program's information collection provisions at that time, but instructed the Agency that future ICR submissions should use the OMB control number 1218–0245. OSHA has submitted a final ICR estimating the paperwork burden hours and costs, to OMB as required by 5 CFR § 1320.11(h) for approval. Public comments regarding paperwork issues are addressed in the Summary and Explanation, and Cost and Benefit chapters of the final standard.

The following section provides information on the collections of information contained in the final ergonomics program standard, as required by 5 CFR § 1320.5(a)(1)(iv) and § 1320.8(d)(2) . It describes the collections of information, the need for and proposed use of the information, and the covered employers who will be required to collect and maintain information under the standard. The section also discusses the required time periods for collecting and maintaining this information, and provides an estimate of the annual cost and reporting burden. (Reporting burden includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.)

Title: The ergonomics program standard, 29 CFR § 1910.900.

Description: The final ergonomics program standard addresses the significant risk of work-related MSDs confronting employees in various jobs in general industry workplaces. The standard's information collection requirements are essential components that will help employers and employees to recognize work-related MSDs and to determine what must be done to address these MSDs and MSD hazards in the workplace. OSHA compliance officers will use some of the information in their enforcement of the standard.

Summary of the Collections of Information: The final ergonomics standard requires employers to do the following: familiarize themselves with the final standard; provide basic ergonomic information to their employees; receive employees' reports of musculoskeletal disorders (MSDs) or MSD signs or symptoms; and determine if a reported MSD is work-related and if the employee's job meets the standard's Action Trigger. If an employee's job meets the standard's Action Trigger, the employer will incur additional paperwork requirements in complying with the ergonomics program requirement or the quick fix option.

MSD management is triggered when the employee experiences a work-related MSD that meets the Action Trigger and requires medical treatment beyond first aid, or involves MSD signs or MSD symptoms that last for 7 or more consecutive days after the employee first reports them to the employer. The employer must provide that employee with access to a health care professional (HCP). When the employee consults with an HCP, the employer must obtain a written opinion from the HCP and provide a copy of that opinion to the employee. The employer must provide the HCP with a description of the employee's job and information about the physical work activities, risk factors, and MSD hazards in the job; a copy of this standard; and a list of items that the HCP's written opinion must contain, including temporary work restrictions, if necessary.

Paperwork requirements for employers to develop and implement the ergonomic program include: management leadership, employee participation in the employer's ergonomic program, job hazard analysis, hazard control measures, and evaluation of the ergonomic program.

Employers with 10 or more employees, including part-time employees, must keep written or electronic records of the following: (i) Employee reports of MSDs, their signs and symptoms and MSD hazards, (ii) Employer's response to employee reports; (iii) Job Hazard Analysis; (iv) Hazard control measures, (v) Quick fix process, (vi) Ergonomics program evaluations, and (vii) Records of work restrictions and the HCP written opinions. Employers must keep all records, except the HCP written opinion, for 3 years or until replaced by updated records, whichever comes first. The HCP written opinion must be kept for the duration of the employee's employment plus 3 years.

Employers must provide employees, their representatives, OSHA, and NIOSH access to the above records, except the HCP opinions, for examination and copying in accordance with the procedures and time periods provided in 29 CFR 1910.1020(e)(1), (e)(2)(ii), (e)(3) and (f). Employers must provide the HCP opinion to employees, to anyone having the specific written consent of the employee, to OSHA, and to NIOSH upon request for examination and copying in accordance with the procedures and time periods provided in 29 CFR 1910.1020(e)(1), (e)(2)(ii), (e)(3) and (f).

Respondents: Employers in general industry. The standard does not apply to employment covered by the following OSHA standards, or to employment such as office management and support services directly related to that employment: (i) OSHA construction standards in Part 1926; (ii) OSHA's maritime standards in Part 1915, 1917, or 1918; or OSHA's agriculture standards in Part 1928. The standard also does not apply to railroad operations or to employment such as office management and support services directly related to the operation of a railroad.

Frequency of Response: All employers must provide basic ergonomic information to current and new employees. The frequency of other paperwork requirements is determined by whether the employer has an employee who has experienced an MSD incident, and whether the employee's job meets the standard's Action Trigger.

Average Time Per Response: Time per response varies, from minimal recordkeeping requirements for a quick fix situation, to establishing and implementing a complete ergonomics program.

Total Burden Hours: Approximately 36.5 million hours.

Estimated Costs (Operating and Maintenance): $61 million (purchasing services).

XVI. Authority and Signature

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

This final standard is issued pursuant to sections 4, 6, and 8 Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657, Secretary of Labor's Order No. 3–2000 (65 FR 50017) and 29 CFR Part 1911.

List of Subjects in 29 CFR Part 1910

Ergonomics program, Health, Musculoskeletal disorders, Occupational safety and health, reporting and recordkeeping requirements.

Signed at Washington, DC, this 6th day of November 2000.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

XVII. The Standard

The Occupational Safety and Health Administration is amending Part 1910 of title 29 of the Code of Federal Regulations as follows:

PART 1910—[AMENDED]

New Subpart W of 29 CFR Part 1910 is added to read as follows:

Subpart W—Program Standards

Sec.
1910.900 Ergonomics program standard.

Subpart W—Program Standards

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657, Secretary of Labor's Order No. 3–2000 (65 FR 50017); and 29 CFR Part 1911.

§ 1910.900 Ergonomics Program Standard.

(a) *What is the purpose of this standard?* The purpose of this standard is to reduce the number and severity of musculoskeletal disorders (MSDs) caused by exposure to risk factors in the workplace. This standard does not address injuries caused by slips, trips, falls, vehicle accidents, or similar accidents.

Note to paragraph (a): Definitions of terms used in this standard are in paragraph (z) of this section.

(b) *Does this standard apply to all employers?* This standard covers all employers covered by the Act with the following exceptions:

This standard does not apply to employment covered by the following OSHA standards, or to employment such as office management and support services directly related to that employment:

(i) OSHA's construction standards in Part 1926 of this chapter;

(ii) OSHA's maritime standards in Part 1915, 1917, or 1918 of this chapter; or

(iii) OSHA's agriculture standards in Part 1928 of this chapter.

(2) This standard does not apply to railroad operations or to employment such as office management and support services directly related to the operation of a railroad.

(c) *How does this standard apply if I already have an ergonomics program in place when the OSHA ergonomics program standard becomes effective?*

(1) You may continue to implement your program instead of complying with paragraphs (d) through (y) of this section, provided that your program is written, complies with the requirements of paragraph (c) of this section, has been implemented before November 14, 2000, and contains the following program elements:

(i) Management leadership, as demonstrated by an effective MSD reporting system and prompt responses to reports, clear program responsibilities, and regular communication with employees about the program;

(ii) Employee participation, as demonstrated by the early reporting of MSDs and active involvement by employees and their representatives in the implementation, evaluation, and future development of your program;

(iii) Job hazard analysis and control, as demonstrated by a process that identifies, analyzes, and uses feasible engineering, work practice, and administrative controls to control MSD hazards or to reduce MSD hazards to the levels below those in the hazard identification tools in Appendix D to this section or to the extent feasible, and evaluates controls to assure that they are effective;

Note to paragraph (c)(1)(iii): Personal protective equipment (PPE) may be used to supplement engineering, work practice, and administrative controls, but you may only use PPE alone where other controls are not feasible. Where PPE is used, you must provide it at no cost to employees.

(iv) Training of managers, supervisors, and employees (at no cost to these employees) in your ergonomics program and their role in it; the recognition of MSD signs and symptoms; the importance of early reporting; the identification of MSD hazards in jobs in your workplace; and the methods you are taking to control them; and

(v) Program evaluation, as demonstrated by regular reviews of the elements of the program and of the effectiveness of the program as a whole, using such measures as reductions in the number and severity of MSDs, increases in the number of jobs in which MSD hazards have been controlled, or reductions in the number of jobs posing MSD hazards to employees; and the correction of identified deficiencies in the program. At least one review of the elements and effectiveness of the program must have taken place prior to January 16, 2001.

(2) By January 16, 2002, you must have implemented a policy that provides MSD management as specified in paragraphs (p), (q), (r), and (s) of this section.

(3) An employer who has policies or procedures that discourage employees from participating in the program or reporting the signs or symptoms of MSDs or the presence of MSD hazards in the workplace does not qualify for grandfather status under paragraph (c) of this section.

(d) *If the standard applies to me, what initial action must I take?*

(1) You must provide each current and each new employee basic information about:

(i) Common musculoskeletal disorders (MSDs) and their signs and symptoms;

(ii) The importance of reporting MSDs and their signs and symptoms early and the consequences of failing to report them early;

(iii) How to report MSDs and their signs and symptoms in your workplace;

(iv) The kinds of risk factors, jobs and work activities associated with MSD hazards; and

(v) A short description of the requirements of OSHA's ergonomics program standard.

(2) You must make available to the employee a summary of the requirements of this standard.

(3) You must provide the information in written form or, if all employees have access, in electronic form. You must provide the information to new employees within 14 days of hiring. You must post the information in a conspicuous place in the workplace (*e.g.*, employee bulletin board or, if all employees have access, electronic posting).

Note to paragraph (d): You may use the information sheet in non-mandatory Appendix A to this section to comply with paragraphs (d)(1) of this section and the summary sheet in non-mandatory Appendix B to this section to comply with paragraph (d)(2) of this section.

(e) *What must I do when an employee reports an MSD or the signs or symptoms of an MSD?*

(1) You must promptly determine whether the reported MSD or MSD signs or symptoms qualify as an MSD incident. You may request the assistance of a Health Care Professional (HCP) in making this determination. A report is considered to be an MSD incident in the following two cases:

(i) The MSD is work-related and requires days away from work, restricted work, or medical treatment beyond first aid; or

(ii) The MSD signs or symptoms are work-related and last for 7 consecutive days after the employee reports them to you.

(2) If the employee has experienced an MSD incident, you must determine whether the job meets the standard's Action Trigger. See paragraph (f) of this section.

(3) If the employee has not experienced an MSD incident, you do not need to take further action.

(f) *How do I determine whether the employee's job meets the Action Trigger?*

(1) A job meets the Action Trigger if:

(i) An MSD incident has occurred in that job; and

(ii) The employee's job routinely involves, on one or more days a week, exposure to one or more relevant risk factors at the levels described in the Basic Screening Tool in Table W–1.

(2) If the employee's job does not meet the Action Trigger, you do not need to take further action.

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Table W-1 - Basic Screening Tool

You need only review risk factors for those areas of the body affected by the MSD incident.

		Body Part Associated With MSD Incident			
Risk Factors This Standard Covers	**Performing job or tasks that involve:**	**Neck/ Shoulder**	**Hand/ Wrist/ Arm**	**Back/ Trunk/ Hip**	**Leg/ knee/ Ankle**
Repetition	(1) Repeating the same motions every few seconds or repeating a cycle of motions involving the affected body part more than twice per minute for more than 2 consecutive hours in a workday.	√	√	√	√
	(2) Using an input device, such as a keyboard and/or mouse, in a steady manner for more than 4 hours total in a workday.	√	√		
Force	(3) Lifting more than 75 pounds at any one time; more than 55 pounds more than 10 times per day; or more than 25 pounds below the knees, above the shoulders, or at arms' length more than 25 times per day;	√	√	√	√
	(4) Pushing/pulling with more than 20 pounds of initial force (e.g., equivalent to pushing a 65 pound box across a tile floor or pushing a shopping cart with five 40 pound bags of dog food) for more than 2 hours total per day;	√	√	√	√
	(5) Pinching an unsupported object weighing 2 or more pounds per hand, or use of an equivalent pinching force (e.g., holding a small binder clip open) for more than 2 hours total per day;		√		
	(6) Gripping an unsupported object weighing 10 pounds or more per hand, or use of an equivalent gripping force (e.g., crushing the sides of an aluminum soda can with one hand), for more than 2 hours total per day.		√		

Table W-1 - Basic Screening Tool - continued

You need only review risk factors for those areas of the body affected by the MSD incident.

		Body Part Associated With MSD Incident			
Risk Factors This Standard Covers	**Performing job or tasks that involve:**	**Neck/ Shoulder**	**Hand/ Wrist/ Arm**	**Back/ Trunk/ Hip**	**Leg/ knee/ Ankle**
Awkward Postures	(7) Repeatedly raising or working with the hand(s) above the head or the elbow(s) above the shoulder(s) for more than 2 hours total per day;	√	√	√	
	(8) Kneeling or squatting for more than 2 hours total per day;			√	√
	(9) Working with the back, neck or wrists bent or twisted for more than 2 hours total per day (see figures:) 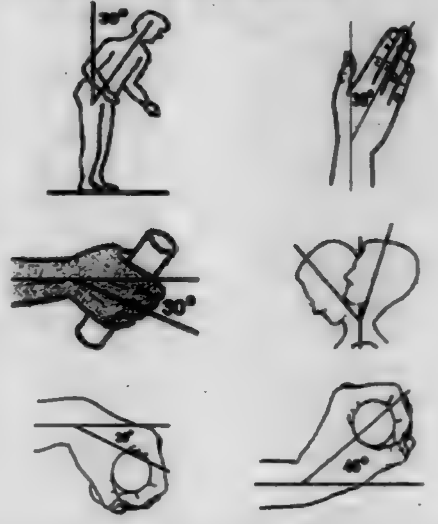	√	√	√	
Contact Stress	(10) Using the hand or knee as a hammer more than 10 times per hour for more than 2 hours total per day;		√		√
Vibration	(11) Using vibrating tools or equipment that typically have high vibration levels (such as chainsaws, jack hammers, percussive tools, riveting or chipping hammers) for more than 30 minutes total per day;	√	√	√	
	(12) Using tools or equipment that typically have moderate vibration levels (such as jig saws, grinders, or sanders) for more than 2 hours total per day.	√	√		

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(g) *What actions must I take if the employee's job meets the Action Trigger?* For the employee's job and all jobs in the establishment that are the same as that job, you must either:

(1) Comply with the Quick Fix option in paragraph (o) of this section, or

(2) Develop and implement an ergonomics program that includes the following elements:

(i) Management leadership as specified in paragraph (h) of this section;

(ii) Employee participation as specified in paragraph (i) of this section;

(iii) MSD management as specified by paragraphs (p), (q), (r), and (s) of this section;

(iv) Job hazard analysis as specified by paragraph (j) of this section;

(v) Hazard reduction and control measures as specified in paragraphs (k), (l), and (m) of this section, and evaluations as specified in paragraph (u) of this section, if the job hazard analysis determines that the job presents an MSD hazard;

(vi) Training as specified in paragraph (t) of this section.

(h) *What must I do to demonstrate management leadership?* You must:

(1) Assign and communicate responsibilities for setting up and managing the ergonomics program;

(2) Provide designated persons with the authority, resources, and information necessary to meet their responsibilities;

(3) Ensure that your policies and practices encourage and do not discourage:

(i) The early reporting of MSDs, their signs and symptoms, and MSD hazards; and

(ii) Employee participation in the ergonomics program;

(4) Communicate periodically with employees about the ergonomics program and their concerns about MSDs.

(i) *What must I do to ensure employee participation in my program?* You must ensure that employees and their representatives:

(1) Have ways to promptly report MSDs, MSD signs and symptoms, and MSD hazards in your workplace;

(2) Receive prompt responses to their reports of MSDs, MSD signs and symptoms, and MSD hazards;

(3) Are provided with a summary of the requirements of this standard, as specified in paragraph (d)(2) of this section, and have ready access to a copy of this standard and to information about MSDs, MSD signs and symptoms, MSD hazards, and your ergonomics program; and

(4) Have ways to be involved in the development, implementation, and evaluation of your ergonomics program.

(j) *What must I do to determine whether a job that meets the Action Trigger poses an MSD hazard to employees in that job?*

(1) You must conduct a job hazard analysis for that job. You may rely on an analysis previously conducted in accordance with this section to the extent it is still relevant.

(2) Your job hazard analysis must include all employees who perform the same job, or a sample of employees in that job who have the greatest exposure to the relevant risk factors, and include the following steps:

(i) Talk with those employees and their representatives about the tasks the employees perform that may relate to MSDs; and

(ii) Observe the employees performing the job to identify the risk factors in the job and to evaluate the magnitude, frequency, and duration of exposure to those risk factors.

(3) You must use one or more of the following methods or tools to conduct this analysis:

(i) One or more of the hazard identification tools listed in Appendix D–1 to this section, if the tools are relevant to the risk factors being addressed;

(ii) The occupation-specific hazard identification tool in Appendix D–2 to this section;

(iii) A job hazard analysis conducted by a professional trained in ergonomics; or

(iv) Any other reasonable method that is appropriate to the job and relevant to the risk factors being addressed.

(4) If you determine that there is an MSD hazard in the job, the job will be termed a "problem job."

Note to paragraph (j): If you determine that the MSD hazards pose a risk only to the employee who reported the MSD, you may limit your job controls, training and evaluation to that individual employee's job.

(k) *What is my obligation to reduce MSD hazards in a problem job?*

(1) You must:

(i) Control MSD hazards; or

(ii) Reduce MSD hazards in accordance with or to levels below those in the hazard identification tools in Appendix D to this section; or

(iii) If you cannot reduce MSD hazards in accordance with paragraphs (k)(1)(i) or (k)(1)(ii) of this section, you must do the following:

(A) Reduce MSD hazards to the extent feasible;

(B) At least every 3 years, assess the job and determine whether there are additional feasible controls that would control or reduce MSD hazards; and

(C) If such controls exist, implement them until you have reduced the MSD hazards in accordance with paragraphs (k)(1)(i) or (k)(1)(ii) of this section.

(2) If a work-related MSD occurs in a job whose hazard(s) you have reduced to the levels specified in paragraph (k)(1) of this section, you must:

(i) Ensure that appropriate controls are still in place, are functioning, and are being used properly, and

(ii) Determine whether new MSD hazards exist and, if so, take steps to reduce the hazards as specified in paragraph (m) of this section.

Note to paragraph (k): The occurrence of an MSD in a problem job is not in itself a violation of this standard.

(l) *What kinds of controls must I use to reduce MSD hazards?*

(1) For each problem job, you must use feasible engineering, work practice or administrative controls, or any combination of them, to reduce MSD hazards in the job. Where feasible, engineering controls are the preferred method of control.

(2) You may use personal protective equipment (PPE) to supplement engineering, work practice or administrative controls, but you may use PPE alone only where other controls are not feasible. Where you use PPE, you must provide it at no cost to employees.

(m) *What steps must I take to reduce MSD hazards?* You must:

(1) Ask employees in the problem job and their representatives to recommend measures to reduce MSD hazards;

(2) Identify and implement initial controls within 90 days after you determine that the job meets the Action Trigger. Initial controls mean controls that substantially reduce the exposures even if they do not reach the levels specified in paragraph (k)(1) of this section.

(3) Identify and implement permanent controls that meet the levels specified in paragraph (k)(1) of this section within 2 years after you determine that a job meets the Action Trigger, except that initial compliance can take up to January 18, 2005 whichever is later.

(4) Track your progress and ensure that your controls are working as intended and have not created new MSD hazards. This includes consulting with employees in problem jobs and their representatives. If the controls are not effective or have created new MSD hazards, you must use the process in paragraphs (m)(1) and (m)(2) of this section to identify additional control measures that are appropriate and implement any such measures identified.

(n) [Reserved].

(o) *May I use a Quick Fix instead of setting up a full ergonomics program?*

(1) You may use a Quick Fix for a job if your employees have experienced no more than one MSD incident in that job, and there have been no more than two MSD incidents in your establishment, in the preceding 18 months.

(2) To use a Quick Fix, you must:

(i) Provide the MSD management required by paragraphs (p), (q), (r), and (s) of this section, as appropriate, to the employee promptly after you determine that the employee's job meets the Action Trigger;

(ii) Talk with employees in the job and their representatives about the tasks the employees perform that may relate to the MSD incident; and

(iii) Observe employees performing the job to identify which risk factors are likely to have caused the MSD incident;

(iv) Ask the employee(s) performing the job and their representatives to recommend measures to reduce exposure to the MSD hazards identified;

(v) Within 90 days of your determination that the job meets the Action Trigger in paragraph (e) of this section, implement controls in the job in accordance with paragraph (l) of this section that control the MSD hazards or reduce MSD hazards in accordance with or to levels below those in the hazard identification tools in Appendix D to this section, and train the employee(s) in the use of these controls;

(vi) Within 30 days after you implement the controls, review the job to determine whether you have reduced the MSD hazards to the levels specified in paragraph (o)(2)(v) of this section; and

(vii) Keep a record of the Quick Fix process for each job to which it is applied. You must keep the record for 3 years.

(3) If you determine that you have reduced the MSD hazards to the levels specified in paragraph (o)(2)(v) of this section, you need take no further action except to maintain controls, the training related to those controls, and recordkeeping.

(4) If you have not reduced MSD hazards to the levels specified in paragraph (o)(2)(v) of this section, you must implement an ergonomics program, as specified in paragraph (g) of this section.

(p) *What MSD management process must I implement for an employee who experiences an MSD incident in a job that meets the Action Trigger?*

(1) You must provide the employee with prompt and effective MSD management at no cost to the employee. MSD management must include:

(i) Access to a Health Care Professional (HCP);

(ii) Any necessary work restrictions, including time off work to recover;

(iii) Work restriction protection; and

(iv) Evaluation and follow-up of the MSD incident.

(2) You must obtain a written opinion from the HCP for each evaluation conducted under this standard, and provide a copy to the employee. You must instruct the HCP that the opinion may not include any findings or information that is not related to workplace exposure to risk factors, and that the HCP may not communicate such information to the employer, except when authorized to do so by State or Federal law.

(3) Whenever an employee consults an HCP for MSD management, you must provide the HCP with the following:

(i) A description of the employee's job and information about the physical work activities, risk factors and MSD hazards in the job;

(ii) A copy of this standard; and

(iii) A list of information that the HCP's opinion must contain.

Note to paragraph (p): MSD management under this standard does not include medical treatment, emergency or post-treatment procedures.

(q) *What information must the HCP's opinion contain?* The HCP's opinion must contain:

(1) The HCP's assessment of the employee's medical condition as related to the physical work activities, risk factors and MSD hazards in the employee's job;

(2) Any recommended work restrictions, including, if necessary, time off work to recover, and any follow-up needed;

(3) A statement that the HCP has informed the employee of the results of the evaluation, the process to be followed to effect recovery, and any medical conditions associated with exposure to physical work activities, risk factors and MSD hazards in the employee's job; and

(4) A statement that the HCP has informed the employee about work-related or other activities that could impede recovery from the injury.

(r) *What must I do if temporary work restrictions are needed?*

(1) If an employee experiences an MSD incident in a job that meets the Action Trigger, you must provide the employee with any temporary work restrictions or time off work that the HCP determines to be necessary, or if no HCP was consulted, that you determine to be necessary.

(2) Whenever you place limitations on the work activities of the employee in his or her current job or transfer the employee to a temporary alternative duty job in accordance with paragraph (r)(1) of this section, you must provide that employee with Work Restriction Protection, which maintains the employee's employment rights and benefits, and 100% of his or her earnings, until the earliest of the following three events occurs:

(i) The employee is able to resume the former work activities without endangering his or her recovery; or

(ii) An HCP determines, subject to the determination review provisions in paragraph (s) of this section, that the employee can never resume his or her former work activities; or

(iii) 90 calendar days have passed.

(3) Whenever an employee must take time off from work in accordance with paragraph (r)(1) of this section, you must provide that employee with Work Restriction Protection, which maintains the employee's employment rights and benefits and at least 90% of his or her earnings until the earliest of the following three events occurs:

(i) The employee is able to return to the former job without endangering his or her recovery;

(ii) An HCP determines, subject to the determination review provisions in paragraph (s) of this section, that the employee can never return to the former job; or

(iii) 90 calendar days have passed.

(4) You may condition the provision of WRP on the employee's participation in the MSD management that this standard requires.

(5) Your obligation to provide WRP benefits to a temporarily restricted or removed employee is reduced to the extent that the employee receives compensation for earnings lost during the work restriction period from either a publicly or an employer-funded compensation or insurance program, or receives income from employment made possible by virtue of the employee's work restriction.

Note to paragraph (r): The employer may fulfill the obligation to provide work restriction protection benefits for employees temporarily removed from work by allowing the employees to take sick leave or other similar paid leave (*e.g.*, short-term disability leave), provided that such leave maintains the worker's benefits and employment rights and provides at least 90% of the employee's earnings.

(s) *What must I do if the employee consults his or her own HCP?*

(1) If you select an HCP to make a determination about temporary work restrictions or work removal, the

employee may select a second HCP to review the first HCP's finding at no cost to the employee. If the employee has previously seen an HCP on his or her own, at his or her own expense, and received a different recommendation, he or she may rely upon that as the second opinion;

(2) If your HCP and the employee's HCP disagree, you must, within 5 business days after receipt of the second HCP's opinion, take reasonable steps to arrange for the two HCPs to discuss and resolve their disagreement;

(3) If the two HCPs are unable to resolve their disagreement quickly, you and the employee, through your respective HCPs, must, within 5 business days after receipt of the second HCP's opinion, designate a third HCP to review the determinations of the two HCPs, at no cost to the employee;

(4) You must act consistently with the determination of the third HCP, unless you and the employee reach an agreement that is consistent with the determination of at least one of the HCPs;

(5) You and the employee or the employee's representative may agree on the use of any expeditious alternative dispute resolution mechanism that is at least as protective of the employee as the review procedures in paragraph (s) of this section.

(t) *What training must I provide to employees in my establishment?*

(1) You must provide initial training, and follow-up training every 3 years, for:

(i) Each employee in a job that meets the Action Trigger;

(ii) Each of their supervisors or team leaders; and

(iii) Other employees involved in setting up and managing your ergonomics program.

(2) The training required for each employee and each of their supervisors or team leaders must address the following topics, as appropriate:

(i) The requirements of the standard;

(ii) Your ergonomics program and the employee's role in it;

(iii) The signs and symptoms of MSDs and ways of reporting them;

(iv) The risk factors and any MSD hazards in the employee's job, as identified by the Basic Screening Tool in Table W–1 and the job hazard analysis;

(v) Your plan and timetable for addressing the MSD hazards identified;

(vi) The controls used to address MSD hazards; and

(vii) Their role in evaluating the effectiveness of controls .

(3) The training for each employee involved in setting up and managing the ergonomics program must address the following:

(i) Relevant topics in paragraph (t)(2) of this section;

(ii) How to set up, manage, and evaluate an ergonomics program;

(iii) How to identify and analyze MSD hazards and select and evaluate measures to reduce the hazards.

(4) You must provide initial training to:

(i) Each employee involved in setting up and managing your ergonomics program within 45 days after you have determined that the employee's job meets the Action Trigger;

(ii) Each current employee, supervisor and team leader within 90 days after you determine that the employee's job meets the Action Trigger;

(iii) Each new employee or current employee prior to starting a job that you have already determined meets the Action Trigger;

(5) You do not have to provide initial training in a topic that this standard requires to an employee who has received training in that topic within the previous 3 years.

(6) You must provide the training required by paragraph (t) of this section in language that the employee understands. You must also give the employee an opportunity to ask questions about your ergonomics program and the content of the training and receive answers to those questions.

(u) *What must I do to make sure my ergonomics program is effective?*

(1) You must evaluate your ergonomics program at least every 3 years as follows:

(i) Consult with your employees in the program, or a sample of those employees, and their representatives about the effectiveness of the program and any problems with the program;

(ii) Review the elements of the program to ensure they are functioning effectively;

(iii) Determine whether MSD hazards are being identified and addressed; and

(iv) Determine whether the program is achieving positive results, as demonstrated by such indicators as reductions in the number and severity of MSDs, increases in the number of problem jobs in which MSD hazards have been controlled, reductions in the number of jobs posing MSD hazards to employees, or any other measure that demonstrates program effectiveness.

(2) You must also evaluate your program, or a relevant part of it, when you have reason to believe that the program is not functioning properly.

(3) If your evaluation reveals deficiencies in your program, you must promptly correct the deficiencies.

Note to paragraph (u): The occurrence of an MSD incident in a problem job does not in itself mean that the program is ineffective.

(v) *What is my recordkeeping obligation?*

(1) If you have 11 or more employees, including part-time or temporary employees, you must keep written or electronic records of the following:

(i) Employee reports of MSDs, MSD signs and symptoms, and MSD hazards,

(ii) Your response to such reports,

(iii) Job hazard analyses,

(iv) Hazard control measures,

(v) Quick fix process,

(vi) Ergonomics program evaluations, and

(vii) Work restrictions, time off of work, and HCP opinions.

(2) You must provide all records required by this standard, other than the HCP opinions, upon request, for examination and copying, to employees, their representatives, the Assistant Secretary and the Director in accordance with the procedures and time periods provided in § 1910.1020(e)(1), (e)(2)(i), (e)(3), and (f).

(3) You must provide the HCP opinion required by this standard, upon request, for examination and copying, to the employee who is the subject of the opinion, to anyone having the specific written consent of the employee, and to the Assistant Secretary and the Director in accordance with the procedures and time periods provided in § 1910.1020(e)(1), (e)(2)(ii), (e)(3), and (f).

(4) You must keep all records for 3 years or until replaced by updated records, whichever comes first, except the HCP's opinion, which you must keep for the duration of the employee's employment plus 3 years.

(5) You do not have to retain the HCP opinion beyond the term of an employee's employment if the employee has worked for less than one year and if you provide the employee with the records at the end of his or her employment.

(w) *When does this standard become effective?* This standard becomes effective January 16, 2001.

(x) *When must I comply with the provisions of the standard?*

(1) You must provide the information in paragraph (d) of this section to your employees by October 15, 2001. After that date you must respond to employee reports of MSDs and signs and symptoms of MSDs.

(2) You must meet the time frames shown in Table W–2 for the other requirements of this section, when you have determined that an employee has experienced an MSD incident, in accordance with paragraph (e) of this section.

TABLE W–2.—COMPLIANCE TIME FRAMES

Requirements and related recordkeeping	Time frames
Paragraph (e), (f): Determination of Action Trigger	Within 7 calendar days after you determine that the employee has experienced an MSD incident.
Paragraphs (p), (q), (r), (s): MSD Management	Initiate within 7 calendar days after you determine that a job meets the Action Trigger.
Paragraphs (h) & (i): Management Leadership and Employee Participation.	Initiate within 30 calendar days after you determine that a job meets the Action Trigger.
Paragraph (t)(4)(i): Train Employees involved in setting up and managing your ergonomics program.	Within 45 calendar days after you determine that a job meets the Action Trigger.
Paragraph (j): Job Hazard Analysis	Initiate within 60 calendar days after you determine that a job meets the Action Trigger.
Paragraph (m)(2): Implement Initial Controls	Within 90 calendar days after you determine that a job meets the Action Trigger
Paragraph (t)(5)(ii): Train current employees, supervisors or team leaders.	Within 90 calendar days after you determine that the employee's job meets the Action Trigger.
Paragraph (m)(3): Implement Permanent Controls	Within 2 years after you determine that a job meets the Action Trigger, except that initial compliance can take up to January 18, 2005 whichever is later.
Paragraph (u): Program Evaluation	Within 3 years after you determine that a job meets the Action Trigger.

Note to paragraph (x): Refer to paragraph (o) of this section for Quick Fix timeframes.

(y) *When may I discontinue my ergonomics program for a job?* You may discontinue your ergonomics program for a job, except for maintaining controls and training related to those controls, if you have reduced exposure to the risk factors in that job to levels below those described in the Basic Screening Tool in Table W–1.

(z) *Definitions.* The following definitions apply to this standard:

Administrative controls are changes in the way that work in a job is assigned or scheduled that reduce the magnitude, frequency or duration of exposure to ergonomic risk factors. Examples of administrative controls for MSD hazards include:

(1) Employee rotation;

(2) Job task enlargement;

(3) Alternative tasks;

(4) Employer-authorized changes in work pace.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, or designated representative.

Control MSD Hazards: means to reduce MSD hazards to the extent that they are no longer reasonably likely to cause MSDs that result in work restrictions or medical treatment beyond first aid.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designated representative.

Employee representative means, where appropriate, a recognized or certified collective bargaining agent.

Engineering controls are physical changes to a job that reduce MSD hazards. Examples of engineering controls include changing or redesigning workstations, tools, facilities, equipment, materials, or processes.

Follow-up means the process or protocol an employer or HCP uses to check on the condition of an employee after a work restriction is imposed on that employee.

Health care professionals (HCPs) are physicians or other licensed health care professionals whose legally permitted scope of practice (*e.g.*, license, registration or certification) allows them to provide independently or to be delegated the responsibility to carry out some or all of the MSD management requirements of this standard.

Job means the physical work activities or tasks that an employee performs. This standard considers jobs to be the same if they involve the same physical work activities or tasks, even if the jobs have different titles or classifications.

Musculoskeletal disorder (MSD) is a disorder of the muscles, nerves, tendons, ligaments, joints, cartilage, blood vessels, or spinal discs. For purposes of this standard, this definition only includes MSDs in the following areas of the body that have been associated with exposure to risk factors: neck, shoulder, elbow, forearm, wrist, hand, abdomen (hernia only), back, knee, ankle, and foot. MSDs may include muscle strains and tears, ligament sprains, joint and tendon inflammation, pinched nerves, and spinal disc degeneration. MSDs include such medical conditions as: low back pain, tension neck syndrome, carpal tunnel syndrome, rotator cuff syndrome, DeQuervain's syndrome, trigger finger, tarsal tunnel syndrome, sciatica, epicondylitis, tendinitis, Raynaud's phenomenon, hand-arm vibration syndrome (HAVS), carpet layer's knee, and herniated spinal disc. Injuries arising from slips, trips, falls, motor vehicle accidents, or similar accidents are not considered MSDs for the purposes of this standard.

MSD hazard means the presence of risk factors in the job that occur at a magnitude, duration, or frequency that is reasonably likely to cause MSDs that result in work restrictions or medical treatment beyond first aid.

MSD incident means an MSD that is work-related, and requires medical treatment beyond first aid, or MSD signs or MSD symptoms that last for 7 or more consecutive days after the employee reports them to you.

MSD signs are objective physical findings that an employee may be developing an MSD. Examples of MSD signs are:

(1) Decreased range of motion;

(2) Deformity;

(3) Decreased grip strength; and
(4) Loss of muscle function.

MSD symptoms are physical indications that an employee may be developing an MSD. For purposes of this Standard, MSD symptoms do not include discomfort. Examples of MSD symptoms are:
(1) Pain;
(2) Numbness;
(3) Tingling;
(4) Burning;
(5) Cramping; and
(6) Stiffness.

Personal protective equipment (PPE) is equipment employees wear that provides a protective barrier between the employee and an MSD hazard. Examples of PPE are vibration-reduction gloves and carpet layer's knee pads.

Problem job means a job that the employer has determined poses an MSD hazard to employees in that job.

Risk factor means, for the purpose of this standard: force, awkward posture, repetition, vibration, and contact stress.

Work practice controls are changes in the way an employee performs the physical work activities of a job that reduce or control exposure to MSD hazards. Work practice controls involve procedures and methods for safe work. Examples of work practice controls for MSD hazards include:
(1) Use of neutral postures to perform tasks (straight wrists, lifting close to the body);
(2) Use of two-person lift teams;
(3) Observance of micro-breaks.

Work-related means that an exposure in the workplace caused or contributed to an MSD or significantly aggravated a pre-existing MSD.

Work restriction protection (WRP) means the maintenance of the earnings and other employment rights and benefits of employees who are on temporary work restrictions. Benefits include seniority and participation in insurance programs, retirement benefits and savings plans.

Work restrictions are limitations, during the recovery period, on an employee's exposure to MSD hazards. Work restrictions may involve limitations on the work activities of the employee's current job (light duty), transfer to temporary alternative duty jobs, or temporary removal from the workplace to recover. For the purposes of this standard, temporarily reducing an employee's work requirements in a new job in order to reduce muscle soreness resulting from the use of muscles in an unfamiliar way is not a work restriction. The day an employee first reports an MSD is not considered a day away from work, or a day of work restriction, even if the employee is removed from his or her regular duties for part of the day.

You means the employer as defined by the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*)

Appendices to § 1910.900

Non-Mandatory Appendix A to § 1910.900: What You Need To Know About Musculoskeletal Disorders (MSDs)
Non-Mandatory Appendix B to § 1910.900: Summary of the OSHA Ergonomics Program Standard
Appendix C to § 1910.900 [Reserved]
Appendix D to § 1910.900: Hazard Identification Tools
Appendix D–1 to § 1910.900: Ergonomics Job Hazard Analysis Tools (Mandatory)
Appendix D–2 to § 1910.900: VDT Workstation Checklist
Appendix E: Ergonomics Rule Flow Chart

Non-Mandatory Appendix A to §1910.900: What You Need To Know About Musculoskeletal Disorders (MSDs)

Ergonomics is the science of fitting jobs to the people who work in them. The goal of an ergonomics program is to reduce work-related musculoskeletal disorders (MSDs) developed by workers when a major part of their jobs involve reaching, bending over, lifting heavy objects, using continuous force, working with vibrating equipment and doing repetitive motions.

What are signs and symptoms of MSDs that you should watch out for?
Workers suffering from MSDs may experience less strength for gripping, less range of motion, loss of muscle function and inability to do everyday tasks. Common symptoms include:

Painful joints
Pain, tingling or numbness in hands or feet
Shooting or stabbing pains in arms or legs
Swelling or inflammation
Burning sensation
Pain in wrists, shoulders, forearms, knees
Fingers or toes turning white
Back or neck pain
Stiffness

What are MSDs?
MSDs are injuries and illnesses that affect muscles, nerves, tendons, ligaments, joints or spinal discs. Your doctor might tell you that you have one of the following common MSDs.

Carpal tunnel syndrome
Trigger finger
Tendinitis
Herniated spinal disc
Tension neck syndrome
Rotator cuff syndrome
Sciatica
Raynaud's phenomenon
Low back pain
De Quervain's disease
Epicondylitis
Carpet layers' knee
Hand-arm Vibration Syndrome

If you have signs or symptoms of MSDs....

[illegible] it is important that you report M[illegible] right [illegible] avoid long-lasting problems. You[illegible] respond promptly to these reports. Contact the [illegible] to report MSDs, MSD signs or symptoms or MSD haza[illegible]

Name [illegible]

What causes MSDs?
Workplace MSDs are caused by exposure to the following risk factors:

Repetition. Doing the same motions over and over again places stress on the muscles and tendons. The severity of risk depends on how often the action is repeated, the speed of the movement, the number of muscles involved and the required force.

Forceful Exertions. Force is the amount of physical effort required to perform a task (such as heavy lifting) or to maintain control of equipment or tools. The amount of force depends on the type of grip, the weight of an object, body posture, the type of activity and the duration of the task.

Awkward Postures. Posture is the position your body is in and affects muscle groups that are involved in physical activity. Awkward postures include repeated or prolonged reaching, twisting, bending, kneeling, squatting, working overhead with your hands or arms, or holding fixed positions.

Contact Stress. Pressing the body against a hard or sharp edge can result in placing too much pressure on nerves, tendons and blood vessels. For example, using the palm of your hand as a hammer can increase your risk of suffering an MSD.

Vibration. Operating vibrating tools such as sanders, grinders, chippers, routers, drills and other saws can lead to nerve damage.

What is the OSHA Ergonomics Standard?

OSHA's standard requires employers to respond to employee reports of work-related MSDs or signs and symptoms of MSDs that last seven days after you report them. If your employer determines that your MSD, or MSD signs or symptoms, can be connected to your job, your employer must provide you with an opportunity to contact a health care professional and receive work restrictions, if necessary. Your wages and benefits must be protected for a period of time while on light duty or temporarily off work to recover. Your employer must analyze the job and if MSD hazards are found, must take steps to reduce those hazards.

Your employer is required to make available a summary of the OSHA ergonomics standard. The full standard can be found at http://www.osha.gov.

- **Talk to your supervisor or other responsible persons about your suggestions on how to fix the problem.**
- **Your employer may not discriminate against you for reporting MSDs, MSD signs or symptoms or MSD hazards. Your employer may not have policies that discourage such reporting.**

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Non-Mandatory Appendix B to § 1910.900: Summary of the OSHA Ergonomics Program Standard

1. Why did OSHA issue an Ergonomics Program Standard?

OSHA has issued an ergonomics standard to reduce musculoskeletal disorders (MSDs) developed by workers whose jobs involve repetitive motions, force, awkward postures, contact stress and vibration. The principle behind ergonomics is that by fitting the job to the worker through adjusting a workstation, rotating between jobs or using mechanical assists, MSDs can be reduced and ultimately eliminated.

2. Who is covered by the standard?

All general industry employers are required to abide by the rule. The standard does not apply to employers whose primary operations are covered by OSHA's construction, maritime or agricultural standards, or employers who operate a railroad.

3. What does the rule require employers to do?

The rule requires employers to inform workers about common MSDs, MSD signs and symptoms and the importance of early reporting. When a worker reports signs or symptoms of an MSD, the employer must determine whether the injury meets the definition of an MSD incident—a work-related MSD that requires medical treatment beyond first aid, assignment to a light duty job or temporary removal from work to recover, or work-related MSD signs or MSD symptoms that last for seven or more consecutive days.

If it is an MSD Incident, the employer must check the job, using a Basic Screening Tool to determine whether the job exposes the worker to risk factors that could trigger MSD problems. The rule provides a Basic Screening Tool that identifies risk factors that could lead to MSD hazards. If the risk factors on the job meet the levels of exposure in the Basic Screening Tool, then the job will have met the standard's Action Trigger.

4. What happens when the worker's job meets the standard's Action Trigger?

If the job meets the Action Trigger, the employer must implement the following program elements:

A. Management Leadership and Employee Participation: The employer must set up an MSD reporting and response system and an ergonomics program and provide supervisors with the responsibility and resources to run the program. The employer must also assure that policies encourage and do not discourage employee participation in the program, or the reporting of MSDs, MSD signs and symptoms, and MSD hazards.

Employees and their representatives must have ways to report MSDs, MSD signs and symptoms and MSD hazards in the workplace, and receive prompt responses to those reports. Employees must also be given the opportunity to participate in the development, implementation, and evaluation of the ergonomics program.

B. Job Hazard Analysis and Control: If a job meets the Action Trigger, the employer must conduct a job hazard analysis to determine whether MSD hazards exist in the job. If hazards are found, the employer must implement control measures to reduce the hazards. Employees must be involved in the identification and control of hazards.

C. Training: The employer must provide training to employees in jobs that meet the Action Trigger, their supervisors or team leaders and other employees involved in setting up and managing your ergonomics program.

D. MSD Management: Employees must be provided, at no cost, with prompt access to a Health Care Professional (HCP), evaluation and follow-up of an MSD incident, and any temporary work restrictions that the employer or the HCP determine to be necessary. Temporary work restrictions include limitations on the work activities of the employee in his or her current job, transfer of the employee to a temporary alternative duty job, or temporary removal from work.

E. Work Restriction Protection: Employers must provide Work Restriction Protection (WRP) to employees who receive temporary work restrictions. This means maintaining 100% of earnings and full benefits for employees who receive limitations on the work activities in their current job or transfer to a temporary alternative duty job, and 90% of earnings and full benefits to employees who are removed from work. WRP is good for 90 days, or until the employee is able to safely return to the job, or until an HCP determines that the employee is too disabled to ever return to the job, whichever comes first.

F. Second Opinion: The standard also contains a process permitting the employee to use his or her own HCP as well as the employer's HCP to determine whether work restrictions are required. A third HCP may be chosen by the employee and the employer if the first two disagree.

G. Program Evaluation: The employer must evaluate the ergonomics program to make sure it is effective. The employer must ask employees what they think of it, check to see if hazards are being addressed, and make any necessary changes.

H. Recordkeeping: Employers with 11 or more employees, including part-time employees, must keep written or electronic records of employee reports of MSDs, MSD signs and symptoms and MSD hazards, responses to such reports, job hazard analyses, hazard control measures, ergonomics program evaluations, and records of work restrictions and the HCP's written opinions. Employees and their representatives must be provided access to these records.

I. Dates: Employers must begin to distribute information, and receive and respond to employee reports by October 15, 2001. Employers must implement permanent controls by November 14, 2004 or two years following determination that a job meets the Action Trigger, whichever comes later. Initial controls must be implemented within 90 days after the employer determines that the job meets the Action Trigger. Other obligations are triggered by the employer's determination that the job has met the Action Trigger.

5. Flexibility features of the Ergonomics Program Standard:

A. Employers whose workers have experienced a few isolated MSDs may be able to use the "Quick Fix" option to reduce hazards and avoid implementing many parts of the program.

B. Employers who already have ergonomics programs may be able to "grandfather" existing programs.

C. The employer may discontinue parts of the program under certain conditions.

The full OSHA Ergonomics Standard can be found at *http://www.osha.gov.*

Appendix C to § 1910.900 [Reserved]

Appendix D to § 1910.900: Hazard Identification Tools

Appendix D to § 1910.900 contains hazard identification tools. This appendix consists of Appendix D–1, Ergonomics Job Hazard Analysis Tools, and Appendix D–2, VDT Workstation Checklist.

Appendix D–1 to § 1910.900: Ergonomics Job Hazard Analysis Tools (Mandatory)

Paragraph (j)(3)(i) of the OSHA Ergonomics Program Standard allows employers to use any of the job hazard analysis tools in this appendix, where appropriate to the risk factors in the job, to fulfill their obligations to conduct a job hazard analysis (paragraph (j)(3)) and reduce MSD hazards (paragraphs (k) and (m)). This mandatory appendix contains important information about these tools. A description of each of these tools is also contained in the Summary and Explanation of paragraph (j) in the preamble to this standard.

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JOB HAZARD ANALYSIS TOOLS

JOB HAZARD ANALYSIS TOOLS	SOURCE *	RISK FACTORS EVALUATED	AREAS OF BODY ADDRESSED	EXAMPLES OF JOBS TOOL APPLIES TO
Job Strain Index	"The Strain Index: A Proposed Method to Analyze Jobs For Risk of Distal Upper Extremity Disorders." Moore, J.S., and Garg, A, 1995; *AIHA Journal*, 56(5): 443–458. You may obtain a copy from: American Industrial Hygienists Association. 2700 Prosperity Ave Suite 250 Fairfax, VA 22031. Phone: (703) 849-8888 Web site: http://www.aiha.org/ See also: http://sg-www.satx.disa.mil/hscoemo/tools/strain.htm for a Web-based version of this tool.	• Repetition • Force • Awkward postures	• Hands • Wrists	• Small parts assembly • Inspecting • Meatpacking • Sewing • Packaging • Keyboarding • Data Processing • Jobs involving highly repetitive hand motions

JOB HAZARD ANALYSIS TOOLS

Revised NIOSH Lifting Equation	*Applications Manual for the Revised NIOSH Lifting Equation*, Waters, T.R., Putz-Anderson, V., Garg, A., National Institute for Occupational Safety and Health, January 1994 (DHHS, NIOSH Publication No. 94-110). You may obtain a copy from: U.S. Department of Commerce Technology Administration National Technical Information Service (NTIS) 5285 Port Royal Road Springfield, VA 22161 (NTIS Publication No. PB94-176930) Phone: (703) 487-4650 Web site: http://www.cdc.gov/niosh/ See also: http://www.industrialhygiene.com/calc/lift.html for a Web-based version of this tool.	• Repetition • Force • Awkward postures	• Lower back	• Package sorting, handling • Package delivery • Beverage delivery • Assembly work • Manual handling involving lifting weights >10 Lbs. • Production jobs involving forceful exertions • Stationary lifting

JOB HAZARD ANALYSIS TOOLS

Snook Push/Pull Hazard Tables	"The Design of Manual Handling Tasks: Revised Tables of Maximum Acceptable Weights and Forces," Snook, S.H. and Ciriello, V.M., *Ergonomics*, 1991, 34(9): 1197-1213. You may obtain a copy from: Taylor & Francis Inc. 325 Chestnut Street Suite 800 Philadelphia, PA 19106, USA Phone: (800) 354-1420 Web site: http://www.tandf.co.uk/journals/	• Repetition • Force • Awkward postures	• Back • Trunk • Shoulders • Legs	• Food service • Laundry • Housekeeping • Janitorial • Package delivery • Garbage collection • Nursing homes • EMT, ambulance • Jobs involving pushing/pulling carts • Jobs involving carrying objects
Rapid Upper Limb Assessment (RULA)	"RULA: A Survey Method for the Investigation of Work-Related Upper Limb Disorders," McAtamney, L. and Corlett, E.N., *Applied Ergonomics*, 1993, 24(2): 91-99. You may obtain a copy from: Elsevier Science Regional Sales Office Customer Support Department P.O. Box 945 New York, N.Y. 10159 Phone: (212) 633-3730 Web site: http://www.elsevier.com/	• Repetition • Force • Awkward postures	• Wrists • Forearms • Elbows • Shoulders • Neck • Trunk	• Assembly work • Production work • Sewing • Janitorial • Maintenance • Meatpacking • Grocery cashier • Telephone operator • Ultrasound technicians • Dentists • Dental technicians

JOB HAZARD ANALYSIS TOOLS

Rapid Entire Body Assessment (REBA)	"Rapid Entire Body Assessment (REBA)," Hignett, S. and McAtamney, L., *Applied Ergonomics*, 2000, 31: 201-205. You may obtain a copy from: Elsevier Science Regional Sales Office Customer Support Department P.O. Box 945 New York, N.Y. 10159 Phone: (212) 633-3730 Web site: http://www.elsevier.com/	• Repetition • Force • Awkward postures	• Wrists • Forearms • Elbows • Shoulders • Neck • Trunk • Back • Legs • Knees	• Patient lifting, transfer • Nurses • Nurses aides • Orderlies • Janitors • Housekeeping • Grocery warehouse • Grocery cashier • Telephone operator • Ultrasound technicians • Dentists • Dental technicians • Veterinarian

JOB HAZARD ANALYSIS TOOLS

ACGIH Hand/Arm (Segmental) Vibration TLV	1998 Threshold Limit Values for Physical Agents in the Work Environment, *1998 TLVs® and BEIs® Threshold Limit Values for Chemical Substances and Physical Agents Biological Exposure Indices*, pp. 109-131, American Conference of Governmental Industrial Hygienists. You may obtain a copy from: American Conference of Governmental Industrial Hygienists, Inc. 1330 Kemper Meadow Dr. Suite 600 Cincinnati, OH 45240 Phone: (513) 742-2020 Web site: http://www.acgih.org/	• Vibration	• Hands • Arms • Shoulders	• Grinding • Sanding • Chipping • Drilling • Sawing • Jigsawing • Chainsawing • Production work using vibrating or power hand tools • Regular use of vibrating hand tools
GM-UAW Risk Factor Checklist	"UAW-GM Ergonomics Risk Factor Checklist RFC2," United Auto Workers-General Motors Center for Human Resources, Health and Safety Center, 1998. You may obtain a copy from: UAW-GM Center for Human Resources Health and Safety Center 1030 Doris Road Auburn Hills, MI 48326	• Repetition • Force • Awkward postures • Contact stress • Vibration	• Hands • Wrists • Forearms • Elbows • Shoulders • Neck • Trunk • Back • Legs • Knees	• Assembly work • Production work • Small parts assembly

JOB HAZARD ANALYSIS TOOLS

Washington State Appendix B	WAC 296-62-05174, "Appendix B: Criteria for analyzing and reducing WMSD hazards for employers who choose the Specific Performance Approach," Washington State Department of Labor and Industries, May 2000. You may obtain a copy from: Washington Department of Labor and Industries PO Box 44001 Olympia, Washington 98504 Phone: (360) 902-4200 Web site: http://www.lni.wa.gov/wisha/	• Repetition • Force • Awkward postures • Contact stress • Vibration	• Hands • Wrists • Forearms • Elbows • Shoulders • Neck • Trunk • Back • Legs • Knees	• Assembly work • Production work • Sewing • Meatpacking • Keyboarding • Data processing • Small parts assembly • Maintenance • Patient lifting • Package delivery • Package sorting • Garbage collection • Food service • Regular use of vibrating hand tools

Appendix D-1 to §1910.900 incorporates the documents in this column by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy of any of these documents at the Occupational Safety and Health Administration, Technical Data Center, Room N2625, 200 Constitution Ave., N.W., Washington, DC, 20210, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Appendix D-2 to §1910.900: VDT Workstation Checklist

Using this checklist is one, but not the only, way an employer can comply with the requirement to identify, analyze and control MSD hazards in VDT tasks. This checklist does not require that employees assume specific working postures in order for the employer to be in compliance. Rather, employers will be judged to be in compliance with paragraph (k) and (m) of OSHA's standard if they provide the employee with a VDT workstation is arranged or designed in a way that would pass this checklist.

If employee exposure does not meet the levels indicated by the Basic Screening Tool, you may STOP HERE.

WORKING CONDITIONS **The workstation is designed or arranged for doing VDT tasks so it allows the employee's . . .**	**Y**	**N**
A. Head and **neck** to be about upright (not bent down/back).		
B. Head, neck and **trunk** to face forward (not twisted).		
C. Trunk to be about perpendicular to floor (not leaning forward/backward).		
D. Shoulders and **upper arms** to be about perpendicular to floor (not stretched forward) and relaxed (not elevated).		
E. Upper arms and elbows to be close to body (not extended outward).		
F. Forearms, wrists, and **hands** to be straight and parallel to floor (not pointing up/down).		
G. Wrists and **hands** to be straight (not bent up/down or sideways toward little finger).		
H. Thighs to be about parallel to floor and **lower legs** to be about perpendicular to floor.		
I. Feet to rest flat on floor or be supported by a stable footrest.		
J. VDT tasks to be organized in a way that allows employee to vary VDT tasks with other work activities, or to take micro-breaks or recovery pauses while at the VDT workstation.		
SEATING **The chair . . .**	**Y**	**N**
1. Backrest provides support for employee's lower back (lumbar area).		
2. Seat width and **depth** accommodate specific employee (seatpan not too big/small).		
3. Seat front does not press against the back of employee's knees and lower legs (seatpan not too long).		
4. Seat has cushioning and is rounded/ has "waterfall" front (no sharp edge).		
5. Armrests support both forearms while employee performs VDT tasks and do not interfere with movement.		

KEYBOARD/INPUT DEVICE **The keyboard/input device is designed or arranged for doing VDT tasks so that . . .**	Y	N
6. **Keyboard/input device platform(s)** is stable and large enough to hold keyboard and input device.		
7. **Input device** (mouse or trackball) is located right next to keyboard so it can be operated without reaching.		
8. **Input device** is easy to activate and shape/size fits hand of specific employee (not too big/small).		
9. **Wrists** and **hands** do not rest on sharp or hard edge.		

MONITOR **The monitor is designed or arranged for VDT tasks so that . . .**	Y	N
10 .**Top line** of screen is at or below eye level so employee is able to read it without bending head or neck down/back. (For employees with bifocals/trifocals, see next item.)		
11. **Employee with bifocals/trifocals** is able to read screen without bending head or neck backward.		
12. **Monitor distance** allows employee to read screen without leaning head, neck or trunk forward/backward.		
13. **Monitor position** is directly in front of employee so employee does not have to twist head or neck.		
14. **No glare** (e.g., from windows, lights) is present on the screen which might cause employee to assume an awkward posture to read screen.		

WORK AREA **The work area is designed or arranged for doing VDT tasks so that . . .**	Y	N
15. **Thighs** have clearance space between chair and VDT table/keyboard platform (thighs not trapped).		
16. **Legs** and **feet** have clearance space under VDT table so employee is able to get close enough to keyboard/input device.		

ACCESSORIES	Y	N
17. **Document holder**, if provided, is stable and large enough to hold documents that are used.		
18. **Document holder**, if provided, is placed at about the same height and distance as monitor screen so there is little head movement when employee looks from document to screen.		
19. **Wrist rest**, if provided, is padded and free of sharp and square edges.		
20. **Wrist rest**, if provided, allows employee to keep forearms, wrists and hands straight and parallel to ground when using keyboard/input device.		
21. **Telephone** can be used with head upright (not bent) and shoulders relaxed (not elevated) if employee does VDT tasks at the same time.		

GENERAL	Y	N
22. Workstation and equipment have sufficient adjustability so that the employee is able to be in a safe working posture and to make occasional changes in posture while performing VDT tasks.		
23. VDT Workstation, equipment and accessories are maintained in serviceable condition and function properly.		
PASSING SCORE = "YES" answer on all "working postures" items (A-J) and no more than two "NO" answers on remainder of checklist (1-23).		

APPENDIX E

ERGONOMICS RULE FLOW CHART*

(RELEVANT PARAGRAPH SHOWN IN PARENTHESES)

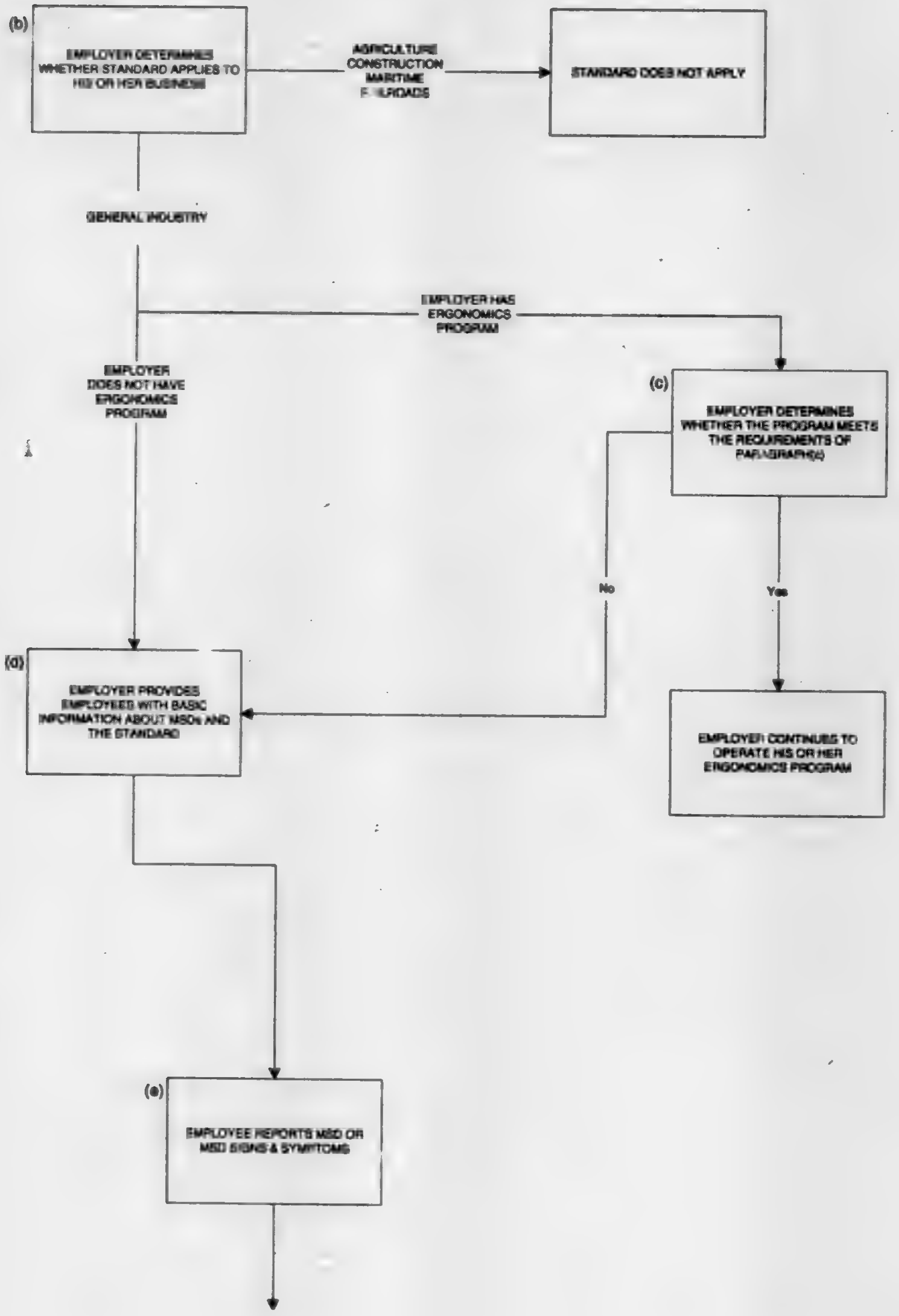
(b)
EMPLOYER DETERMINES WHETHER STANDARD APPLIES TO HIS OR HER BUSINESS
AGRICULTURE CONSTRUCTION MARITIME RAILROADS
STANDARD DOES NOT APPLY
GENERAL INDUSTRY
EMPLOYER HAS ERGONOMICS PROGRAM
EMPLOYER DOES NOT HAVE ERGONOMICS PROGRAM
(c)
EMPLOYER DETERMINES WHETHER THE PROGRAM MEETS THE REQUIREMENTS OF PARAGRAPH(c)
No
Yes
(d)
EMPLOYER PROVIDES EMPLOYEES WITH BASIC INFORMATION ABOUT MSDs AND THE STANDARD
EMPLOYER CONTINUES TO OPERATE HIS OR HER ERGONOMICS PROGRAM
(e)
EMPLOYEE REPORTS MSD OR MSD SIGNS & SYMPTOMS

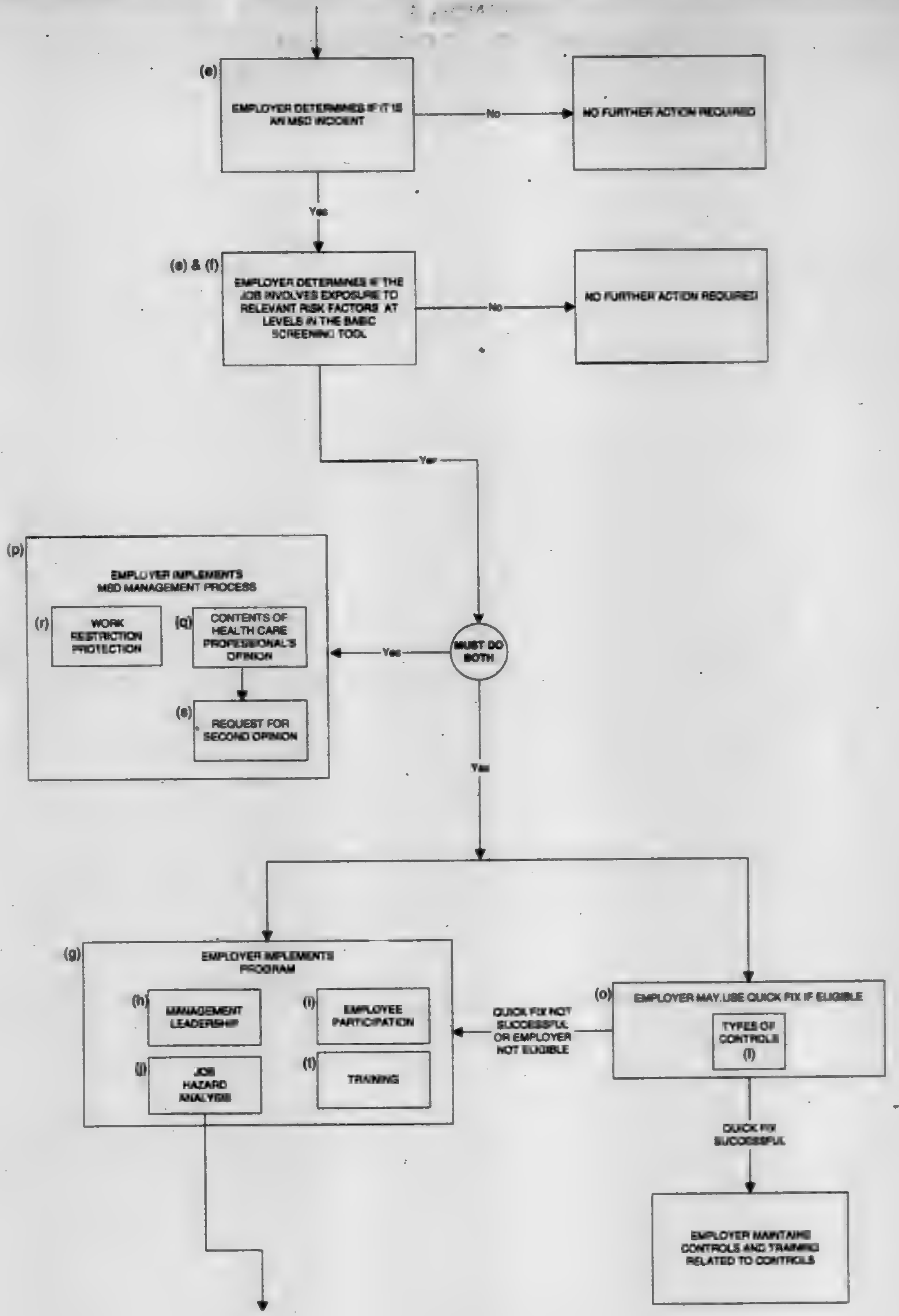
(e)
EMPLOYER DETERMINES IF IT IS AN MSD INCIDENT
No
NO FURTHER ACTION REQUIRED
Yes
(e) & (f)
EMPLOYER DETERMINES IF THE JOB INVOLVES EXPOSURE TO RELEVANT RISK FACTORS AT LEVELS IN THE BASIC SCREENING TOOL
No
NO FURTHER ACTION REQUIRED
Yes
(p)
EMPLOYER IMPLEMENTS MSD MANAGEMENT PROCESS
(r)
WORK RESTRICTION PROTECTION
(q)
CONTENTS OF HEALTH CARE PROFESSIONAL'S OPINION
(s)
REQUEST FOR SECOND OPINION
Yes
MUST DO BOTH
Yes
(g)
EMPLOYER IMPLEMENTS PROGRAM
(h)
MANAGEMENT LEADERSHIP
(i)
EMPLOYEE PARTICIPATION
(j)
JOB HAZARD ANALYSIS
(t)
TRAINING
QUICK FIX NOT SUCCESSFUL OR EMPLOYER NOT ELIGIBLE
(o)
EMPLOYER MAY USE QUICK FIX IF ELIGIBLE
TYPES OF CONTROLS
(l)
QUICK FIX SUCCESSFUL
EMPLOYER MAINTAINS CONTROLS AND TRAINING RELATED TO CONTROLS

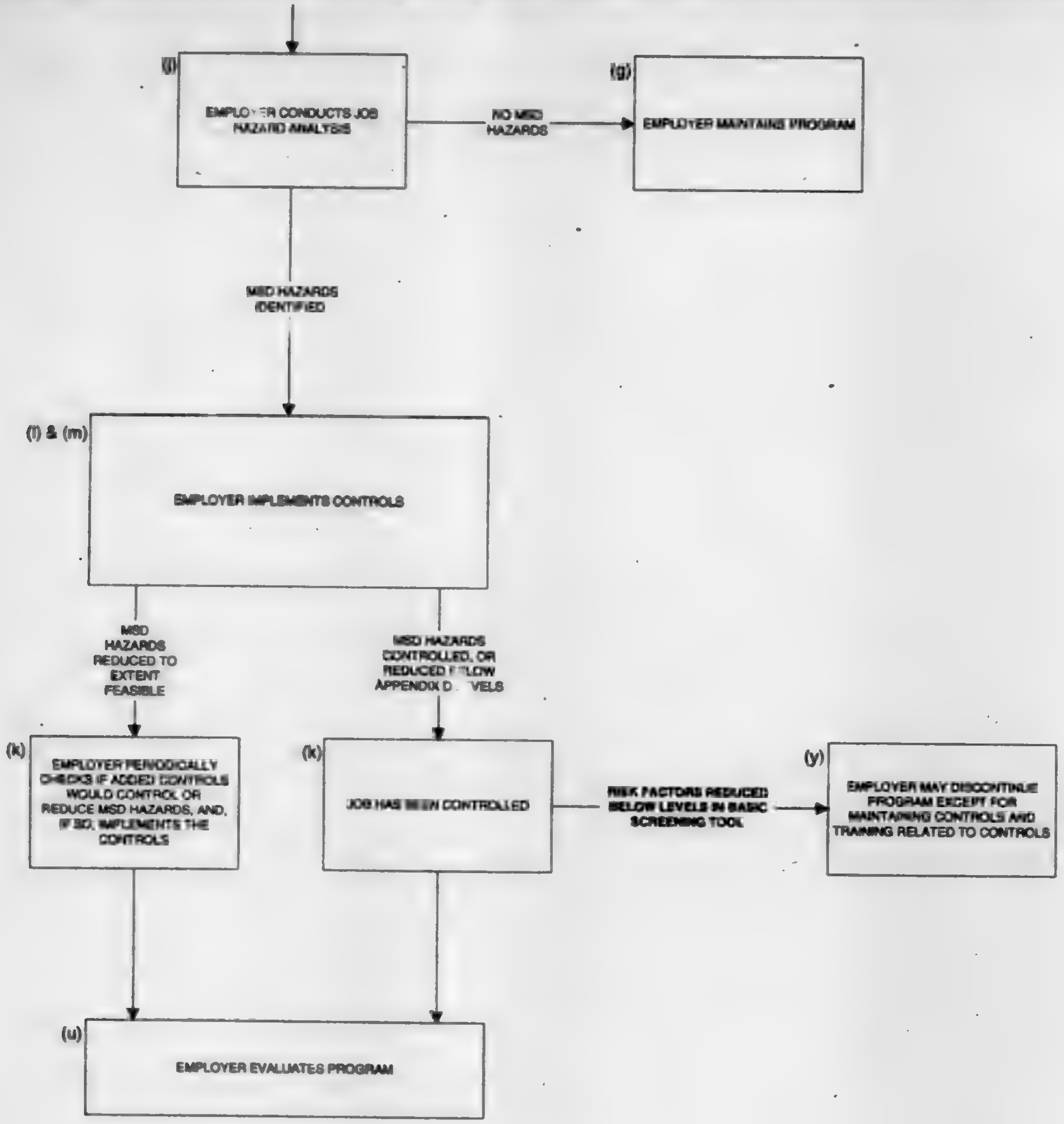
(j)
EMPLOYER CONDUCTS JOB HAZARD ANALYSIS
NO MSD HAZARDS
(g)
EMPLOYER MAINTAINS PROGRAM
MSD HAZARDS IDENTIFIED
(l) & (m)
EMPLOYER IMPLEMENTS CONTROLS
MSD HAZARDS REDUCED TO EXTENT FEASIBLE
MSD HAZARDS CONTROLLED, OR REDUCED BELOW APPENDIX D LEVELS
(k)
EMPLOYER PERIODICALLY CHECKS IF ADDED CONTROLS WOULD CONTROL OR REDUCE MSD HAZARDS, AND, IF SO, IMPLEMENTS THE CONTROLS
(k)
JOB HAS BEEN CONTROLLED
RISK FACTORS REDUCED BELOW LEVELS IN BASIC SCREENING TOOL
(y)
EMPLOYER MAY DISCONTINUE PROGRAM EXCEPT FOR MAINTAINING CONTROLS AND TRAINING RELATED TO CONTROLS
(u)
EMPLOYER EVALUATES PROGRAM

* Employers with 11 or more employees must keep records as specified in paragraph (v).

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RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

Proclamation 7372 of November 8, 2000

National American Indian Heritage Month, 2000

By the President of the United States of America

A Proclamation

American Indians, Alaska Natives, and Native Hawaiians are a special part of the tapestry of our Nation's history. As keepers of a rich and ancient cultural heritage, Native Americans share with all of us the beauty of their art, the power of their songs, and the grace of their people. As individuals, they have distinguished themselves in virtually every field, from the arts to the sciences, from the world of sports to the world of commerce.

This month, we celebrate the culture and contributions of the first Americans. We also remember with sorrow the suffering they endured because of past Federal actions and policies that had long-term and often devastating consequences for Native Americans and their culture. But, as the new millennium dawns, there is reason for optimism. During my 1999 New Markets tour of the Pine Ridge reservation in South Dakota and my visit to the Navajo Nation in New Mexico in April of this year, I saw firsthand a strength of spirit and hope sweeping through Indian Country. The Vice President and I have worked with tribes to foster this hope—through economic development initiatives and improved education and health care.

We still have much to accomplish, however. While my Administration has worked hard to bridge the digital divide and bring the Information Superhighway to Indian Country, some areas still do not have telephone and power lines. We continue striving to provide American Indians with the tools they need to strengthen family and community life by fighting poverty, crime, alcohol and drug abuse, and domestic violence, and we are working with tribes to improve academic achievement and strengthen tribal colleges.

We are also seeking to ensure that tribal leaders have a voice equal to that of Federal and State officials in addressing issues of concern to all our citizens. I reaffirmed that commitment to tribal sovereignty and self-determination by issuing this month a revised Executive Order on Consultation and Coordination with Indian Tribal Governments. This order builds on prior actions and strengthens our government-to-government relationship with Indian tribes by ensuring that all Executive departments and agencies consult with Indian tribes and respect tribal sovereignty as the agencies consider policy initiatives that affect Indian communities.

This year, my Administration proposed the largest budget increase ever for a comprehensive Native American initiative for health care, education, infrastructure, and economic development. Just last month, as part of the Department of the Interior appropriations legislation, I signed into law one segment of this budget initiative that includes significant investments for school construction in Indian Country and the largest funding increase ever for the Indian Health Service. These are the kinds of investments that will empower tribal communities to address an array of needs and, ultimately, to achieve a better standard of living.

Back in 1994, when I first met with the tribal leaders of more than 500 Indian nations at the White House, I saw the strength and determination that have enabled Native Americans to overcome extraordinary barriers and protect their hard-won civil and political rights. Since then, by working together, we have established a new standard for Federal Indian policy—one that promotes an effective government-to-government relationship between the Federal Government and the tribes, and that seeks to ensure greater prosperity, self-reliance, and hope for all Native Americans. While we cannot erase the tragedies of the past, we can create a future where all of our country's people share in America's great promise.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2000 as National American Indian Heritage Month. I urge all Americans, as well as their elected representatives at the Federal, State, local, and tribal levels, to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of November, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–29297
Filed 11–13–00; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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Wednesday, November 15, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–36–AD; Amendment 39–11984; AD 2000–18–52]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc.—Manufactured Model OH–13E, OH–13H, and OH–13S Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2000–18–52 which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. (BHTI)-manufactured Model OH–13E, OH–13H, and OH–13S helicopters by individual letters. This AD requires a liquid penetrant or eddy current inspection of the threads on each main rotor blade grip (grip) for a crack. The inspections must be accomplished within 100 hours time-in-service (TIS) since initial installation on any helicopter or within 10 hours TIS for grips with 100 or more hours TIS and thereafter at intervals not to exceed 200 hours TIS. This AD also establishes a retirement life of 1200 hours TIS for affected grips. This amendment is prompted by the results of an investigation of an August 1998 accident in which a grip failed on a BHTI Model 47G–2 helicopter due to a fatigue crack. The OH–13E, OH–13H, and OH–13S helicopters use the same grips as the Model 47G–2 helicopters. The actions specified by this AD are intended to prevent failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective November 30, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–18–52, issued on September 1, 2000, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 16, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–36–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

FOR FURTHER INFORMATION CONTACT: Marc Belhumeur, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5177, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: On May 12, 1987, the FAA issued AD 86–06–08R1, Docket No. 86–ASW–10 (52 FR 24135, June 29, 1987), which amended AD 86–06–08 (51 FR 11300, April 2, 1986). Those AD's required an initial and repetitive fluorescent dye penetrant inspection of each grip on BHTI Model 47 helicopters and on BHTI-manufactured Model OH–13E, OH–13H, and OH–13S helicopters. On August 31, 2000, the FAA issued AD 2000–58–51, Docket No. 2000–SW–35–AD, that superseded those previous AD's, changed the compliance time, and established a retirement life for the grips on the BHTI Model 47 series helicopters. To address the same unsafe condition as is addressed for the Model 47 series helicopters in AD 2000–58–51, the FAA issued Emergency AD 2000–18–52 on September 1, 2000 for BHTI-manufactured Model OH–13E, OH–13H, and OH–13S helicopters. The emergency AD requires a liquid penetrant or eddy current inspection of the threads on each grip for a crack. The inspections must be accomplished within 100 hours TIS since initial installation on any helicopter or within 10 hours TIS for grips with 100 or more hours TIS, and thereafter at intervals not to exceed 200 hours TIS. That emergency AD also establishes a retirement life of 1200 hours TIS for affected grips. That action was prompted by the results of an investigation of an August 1998 accident in which a grip failed on a BHTI Model 47G–2 helicopter due to a fatigue crack. An analysis of Australian field service data revealed fatigue cracks in the majority of the grips inspected. Since issuance of Emergency AD 2000–18–52, other cracked grips with less than 1200 hours TIS have been discovered. The OH–13E, OH–13H, and OH–13S helicopters use the same grips as the Model 47G–2 helicopters. This condition, if not corrected, could result in failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other BHTI-manufactured Model OH–13E, OH–13H, and OH–13S helicopters of the same type design, the FAA issued Emergency AD 2000–18–52 to prevent failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter. The AD requires the following:

- Within the first 100 hours TIS since initial installation on any helicopter or within the next 10 hours TIS if 100 hours TIS has been exceeded, conduct a liquid penetrant or eddy current inspection of the grip threads for a crack.
- Thereafter, conduct the liquid penetrant or eddy current inspection at intervals not to exceed 200 hours TIS.
- If a crack is detected, before further flight, replace the cracked grip with an airworthy grip.
- Establish a retirement life of 1200 hours TIS.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, the above actions are required at the specified time intervals, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on September 1, 2000 to all known U.S. owners and operators of BHTI-manufactured Model OH–13E, OH–13H, and OH–13S helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 300 helicopters of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per helicopter to accomplish either inspection, and that the average labor rate is $60 per work hour. Required parts, if a grip needs to be replaced, will cost approximately $4,000 per grip (there are two grips on each helicopter). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,580,000, assuming one inspection per helicopter and replacement of both grips on each helicopter.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–36–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2000–18–52 Gifton McCreay (Formerly Aerodyne Systems Engineering, LTD., Formerly Texas Helicopter Corp.), Continental Copters, Inc., Teryjon Aviation Inc., Hawkeye Rotor and Wing Flight School: Amendment 39–11984. Docket No. 2000–SW–36–AD.

Applicability: Bell Helicopter Textron, Inc. (BHTI)-manufactured Model OH–13E, OH–13H, and OH–13S helicopters, with main rotor blade grips, part number (P/N) 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, 47–120–252–11, 74–120–252–11, and 74–120–135–5, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a main rotor blade grip (grip), separation of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 100 hours time-in-service (TIS) since initial installation on any helicopter or within 10 hours TIS for grips with 100 or more hours TIS, conduct a liquid penetrant or eddy current inspection of the grip threads for a crack. Thereafter, conduct the liquid penetrant or eddy current inspection at intervals not to exceed 200 hours TIS. If a crack is detected, before further flight, replace the cracked grip with an airworthy grip.

(b) On or before 1200 hours TIS, replace each grip with an airworthy grip. This AD establishes a retirement life of 1200 hours TIS for grips, P/N 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, 47–120–252–11, 74–120–252–11, and 74–120–135–5.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on November 30, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–18–52, issued September 1, 2000, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on November 2, 2000.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–29050 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–03–AD; Amendment 39–11981; AD 2000–23–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Spey 555–15, –15H, –15N, and –15P Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Rolls-Royce (RR) plc. Spey 555–15, –15H, –15N, and –15P turbofan engines, that requires modification of the low pressure (LP) turbine stage 2 nozzle guide vane (NGV) support ring seal assembly. This amendment is prompted by two instances of disk drive arm damage. In both cases, heavy damage to the stage 1 LP turbine-to-stage 2 LP turbine disk drive arm occurred as a result of an out-of-balance condition following the failure of a stage 2 LP turbine blade. The actions specified by this AD are intended to prevent damage to the disk drive arm which could result in loss of stage 1 LP turbine-to-stage 2 LP turbine disk drive, a turbine overspeed condition, and possible uncontained disk failure and damage to the airplane.

DATES: Effective date December 20, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 20, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone No. 011–44–1332–242–424; FAX No. 011–44–1332–245–418. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone No. 781–238–7176; fax No. 781–238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Rolls-Royce (RR) plc. Spey 555–15, –15H, –15N, and –15P turbofan engines was published in the **Federal Register** on July 7, 2000 (65 FR 41884). That action proposed to require modification of the low pressure (LP) turbine stage 2 nozzle guide vane (NGV) support ring seal assembly in accordance with Service Bulletin (SB) No. Sp 72–1063, dated May 1999.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Impact

There are approximately 310 engines of the affected design in the worldwide fleet. The FAA estimates that 60 engines installed on aircraft of U.S. registry would be affected by this AD. It will take approximately 2.0 work hours per engine to accomplish the proposed actions. The average labor rate is $60 per work hour. Since this action is a rework of existing parts, there is no required parts cost. Based on these figures, the FAA estimates the total cost impact of the proposed AD on U.S. operators to be $7,200.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order No. 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Code of Federal Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–11 Rolls-Royce: Amendment 39–11981. Docket 2000–NE–03–AD.

Applicability: Rolls-Royce (RR) plc. Spey 555–15, –15H, –15N, and –15P turbofan engines. These engines are installed on but not limited to Fokker F.28 Mark series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the disk drive arm which could result in loss of stage 1 LP turbine-to-stage 2 LP turbine disk drive, a turbine overspeed condition and possible uncontained disk failure, and damage to the airplane, do the following:

Rework Instructions

(a) Within three years after the effective date of this AD, rework the low pressure (LP) turbine stage 2 nozzle guide vane (NGV) support ring seal assembly in accordance with paragraphs 2.A. through 2.C. of the Accomplishment Instructions of RR service bulletin (SB) No. Sp 72–1063, dated May 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The rework shall be done in accordance with the following Rolls-Royce service bulletin: (SB) No. Sp 72–1063, dated May 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone No. 011–44–1332–242–424; fax No. 011–44–1332–245–418. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date of This AD

(e) This amendment becomes effective on December 20, 2000.

Issued in Burlington, Massachusetts, on November 6, 2000.

Donald Plouffe,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–28960 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–104–AD; Amendment 39–11977; AD 2000–23–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300 and all Model A300–600 and A310 series airplanes, that currently requires performing a pitch trim system test to detect any continuity defect in the autotrim function, and follow-on corrective actions, if necessary. This amendment requires repetitive inspections of the autotrim function to detect such defects, and corrective actions, if necessary. This amendment also expands the applicability to include additional airplanes. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent a sudden change in pitch due to an out-of-trim condition combined with an autopilot disconnect, which could result in reduced controllability of the airplane.

DATES: Effective December 20, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 20, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–02–04, amendment 39–11522 (65 FR 3799, January 25, 2000), which is applicable to certain Airbus Model A300 and all Model A300–600 and A310 series airplanes, was published in the **Federal Register** on June 12, 2000 (65 FR 36801). The action proposed to supersede AD 2000–02–04 to continue to require performing a pitch trim system test to detect any continuity defect in the autotrim function, and follow-on corrective actions, if necessary. The action also proposed to require repetitive inspections of the autotrim function to detect such defects, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Revise Applicability

The manufacturer, Airbus, requests that the applicability of the proposed AD be revised to exclude Model A300–600 series airplanes on which Airbus Modification 12277 has been accomplished during production. In addition, since the issuance of the proposed AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, issued French airworthiness directive 2000–115–304(B) R2, dated July 12, 2000, as revised by Erratum, dated August 9, 2000, to exclude those airplanes from the applicability. The FAA concurs with the commenter's request, and has revised the applicability of this final rule accordingly.

Request To Revise Reporting Requirement

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the reporting requirement specified in the proposed AD be revised to require that inspection findings be reported to Airbus on a monthly basis, rather than 10 days following each inspection. The commenter states that since any necessary corrective actions would occur immediately as a result of the inspection findings, monthly reporting would not affect the safe operation of the airplane. For certain airlines, monthly reporting would greatly simplify the administrative tasks associated with ongoing reporting.

The FAA concurs partially. The FAA agrees that corrective actions, if necessary, would be required prior to further flight; therefore, extension of the compliance time in question will not affect the safe operation of the airplane. However, the FAA considers that requiring report submittals on a monthly basis could lead to possible misinterpretation as to the specific deadline for submission of each report.

In light of this, the FAA has revised the final rule to require submission of each report within 30 days after accomplishing each inspection (for inspections accomplished after the effective date of this AD), or within 30 days after the effective date of the AD (for inspections accomplished prior to the effective date of this AD). Operators are provided with additional time to

submit each report, and may choose to combine submittals of all reports for the past 30 days, which would reduce the administrative burden. Paragraph (b) of this AD has been revised accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action for Model A300–600 and A310 series airplanes. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking for these airplanes.

Cost Impact

There are approximately 120 airplanes of U.S. registry that will be affected by this AD. The inspection that is required by this AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required action on U.S. operators is estimated to be $7,200, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11522 (65 FR 3799, January 25, 2000), and by adding a new airworthiness directive (AD), amendment 39–11977, to read as follows:

2000–23–07 Airbus Industrie: Amendment 39–11977. Docket 2000–NM–104–AD. Supersedes AD 2000–02–04, Amendment 39–11522.

Applicability: This AD applies to the airplanes listed in Table 1. of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

Airbus model	Description
A300 B2–203 airplanes and A300–B4–203 airplanes	In a forward facing cockpit version, as listed in Airbus Service Bulletin A300–22A0115, Revision 02, dated March 7, 2000.
A310 series airplanes	All.
A300–600 series airplanes	On which Airbus Modification 12277 has not been accomplished during production.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a sudden change in pitch due to an out-of-trim condition combined with an autopilot disconnect, which could result in reduced controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD: Perform an inspection of the autotrim function by testing the flight control computer (FCC)/flight augmentation computer (FAC) integrity in logic activation of the autotrim, in accordance with Airbus Service Bulletin A300–22A6042, Revision 01 (for Model A300–600 series airplanes); A300–22A0115, Revision 02 (for Model A300 series airplanes); or A310–22A2053, Revision 01 (for Model A310 series airplanes); all dated March 7, 2000; as applicable. If any discrepancy is found, prior to further flight, perform all applicable corrective actions (including trouble-shooting, replacing the FCC and/or FAC, retesting, checking the wires between certain FCC and FAC pins, and repairing damaged wires) in accordance with the applicable service bulletin. Repeat the inspection thereafter at intervals not to exceed 500 flight hours.

(1) For airplanes on which the pitch trim system test has been performed in accordance with the requirements of AD 2000–02–04, amendment 39–11522: Inspect within 500 flight hours after accomplishment of the test required by that AD, or within 20 days after the effective date of this AD, whichever occurs later.

(2) For all other airplanes: Inspect within 20 days after the effective date of this AD.

Reporting Requirement

(b) For all inspections required by paragraph (a) of this AD: At the applicable time specified by paragraph (b)(1) or (b)(2) of this AD, submit a report of the inspection results (both positive and negative findings) to AI/SE–D32 Technical Data and

Documentation Services, Airbus Industrie Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; fax (+33) 5 61 93 28 06.

(1) For inspections accomplished after the effective date of this AD: Submit the report within 30 days after performing the inspection.

(2) For inspections accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A300–22A6042, Revision 01, including Appendix 01, dated March 7, 2000; Airbus Service Bulletin A300–22A0115, Revision 02, including Appendix 01, dated March 7, 2000; or Airbus Service Bulletin A310–22A2053, Revision 01, including Appendix 01, dated March 7, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–115–304(B) R2, dated July 12, 2000, as revised by Erratum, dated August 9, 2000.

(f) This amendment becomes effective on December 20, 2000.

Issued in Renton, Washington, on November 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28967 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–114–AD; Amendment 39–11978; AD 2000–23–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that requires replacement of the flight control computers (FCC) with new, improved FCC's having updated software installed. This amendment also requires, for some airplanes, modification of the wiring of the FCC's. The actions specified by this AD are intended to prevent autopilot reversions in certain flight conditions, which could result in misunderstanding by the flight crew and consequent reduced ability to take appropriate action. This action is intended to address the identified unsafe condition.

DATES: Effective December 20, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 20, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes was published in the **Federal Register** on August 25, 2000 (65 FR 51775). That action proposed to require replacement of the flight control computers (FCC) with new, improved FCC's having updated software installed. That action also proposed to require, for some airplanes, modification of the wiring of the FCC's.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 116 airplanes of U.S. registry will be affected by this proposed AD.

It will take as much as 17 work hours per airplane to accomplish the required replacements, at an average labor rate of $60 per work hour. Required parts will cost as much as $5,064 per airplane. Based on these figures, the cost impact of the required replacements on U.S. operators is estimated to be as much as $705,744, or $6,084 per airplane.

It will take approximately 1 work hour per airplane to accomplish the required modification of the wiring, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required modification on U.S. operators is estimated to be $6,960, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–08 Airbus Industrie: Amendment 39–11978. Docket 2000–NM–114–AD.

Applicability: Model A310 series airplanes equipped with flight control computers (FCC) having part number (P/N) B350AAM4 or B470ABM2, and Model A300–600 series airplanes equipped with FCC's having P/N B470AAM2; certificated in any category; except those airplanes on which Airbus Modification 11899 or 11900 (Airbus Service Bulletin A310–22–2048 or A310–22–2049 or A300–22–6038) has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent autopilot reversions in certain flight conditions, which could result in misunderstanding by the flight crew and consequent reduced ability to take appropriate action, accomplish the following:

Replacement of FCC's and Modification of Wiring

(a) Within 26 months after the effective date of this AD, replace the FCC's with new, improved FCC's having updated software installed; and modify the wiring, as applicable; in accordance with paragraph (a)(1), (a)(2), or (a)(3), as applicable.

(1) For Airbus Model A310 series airplanes equipped with FCC's having P/N B350AAM4: Replace the FCC's in accordance with Airbus Service Bulletin A310–22–2048, Revision 01, dated March 6, 2000.

(2) For Airbus Model A310 series airplanes equipped with FCC's having P/N B470ABM2: Replace the FCC's in accordance with Airbus Service Bulletin A310–22–2049, Revision 02, dated March 6, 2000. Prior to or concurrent with the replacement, modify the wiring in accordance with Airbus Service Bulletin A310–22–2051, Revision 02, dated March 8, 2000.

(3) For Airbus Model A300–600 series airplanes equipped with FCC's having P/N B470AAM2: Replace the FCC's in accordance with Airbus Service Bulletin A300–22–6038, dated August 24, 1999. Prior to or concurrent with the replacement, modify the wiring in accordance with Airbus Service Bulletin A300–22–6040, Revision 02, dated March 6, 2000.

Note 2: Accomplishment of the actions required by paragraph (a) of this AD prior to the effective date of this AD in accordance with Airbus Service Bulletin A310–22–2048, dated December 13, 1999; A310–22–2049, dated August 24, 1999, or Revision 01, dated December 13, 1999; A310–22–2051, dated August 26, 1999, or Revision 01, dated December 13, 1999; or A300–22–6040, dated August 26, 1999, or Revision 01, dated December 13, 1999; is acceptable for compliance with the applicable actions specified in that paragraph.

Note 3: The Airbus service bulletins reference SEXTANT Service Bulletins B350AAM–22–008, B470AAM–22–013, and B470ABM–22–012, each dated September 29, 1999, as additional sources of service information for accomplishing the replacement required by this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin A310–22–2048, Revision 01, dated March 6, 2000; Airbus Service Bulletin A310–22–2049, Revision 02, dated March 6, 2000; Airbus Service Bulletin A310–22–2051, Revision 02, dated March 8, 2000; Airbus Service Bulletin A300–22–6038, dated August 24, 1999; and Airbus Service Bulletin A300–22–6040, Revision 02, dated March 6, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton; Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 2000–137–305(B), dated August 21, 2000.

Effective Date

(e) This amendment becomes effective on December 20, 2000.

Issued in Renton, Washington, on November 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28966 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–129–AD; Amendment 39–11976; AD 2000–23–06]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes, that requires replacement of defective hydraulic tubing in the left and right wings with new hydraulic tubing. This amendment

is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the loss of hydraulic pressure which could result in reduced controllability of the airplane.

DATES: Effective December 20, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 20, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–145 series airplanes was published in the **Federal Register** on August 15, 2000 (65 FR 49775). That action proposed to require replacement of defective hydraulic tubing in the left and right wings with new hydraulic tubing.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD. The estimated number of work hours required to accomplish the required replacement depends on the serial number of the airplane and ranges from 6 to 28 work hours. The average labor rate is estimated to be $60 per work hour, and the materials required will be available at no charge from EMBRAER.

Based on the information available, the cost of the AD on U.S. operators is estimated to range from $360 to $1,680 per airplane. The maximum total cost for airplanes registered in the U.S., therefore, will be $5,040.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–06 Empresa Brasileira de Aeronautica S.A (EMBRAER): Amendment 39–11976. Docket 2000–NM–129–AD.

Applicability: Model EMB–145 series airplanes; serial numbers 145010, 145011, and 145013 through 145016 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of hydraulic pressure due to failed hydraulic tubing and the consequent reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 800 flight hours after the effective date of this AD, replace hydraulic tubing in the left and right wings with new tubing, in accordance with EMBRAER Service Bulletin 145–29–0003, dated November 13, 1997.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement shall be done in accordance with EMBRAER Service Bulletin 145–29–0003, dated November 13, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 98–01–03, dated January 15, 1998.

Effective Date

(e) This amendment becomes effective on December 20, 2000.

Issued in Renton, Washington, on November 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28965 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–133–AD; Amendment 39–11979; AD 2000–23–09]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires a one-time inspection to detect wear of the hydraulic pump hoses, and corrective action, if necessary. This AD also requires relocation of the clip that secures the left forward hold-open rod of both nacelles. The actions specified by this AD are intended to prevent chafing and consequent rupture of the hydraulic line and loss of hydraulic pressure, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 20, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 20, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes was published in the **Federal Register** on July 26, 2000 (65 FR 45934). That action proposed to require a one-time inspection to detect wear of the hydraulic pump hoses, and corrective action, if necessary. That action also proposed to require relocation of the clip that secures the left forward hold-open rod of both nacelles.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request for Inclusion of Alternative Methods of Compliance

The commenter requests that the proposed rule be revised to include alternative methods of accomplishing the actions other than those specified in the service bulletin referenced in the proposed rule. The commenter explains that it has accomplished both actions required by the proposed rule using other methods of accomplishment.

The FAA does not concur with the commenter's request to include alternative methods of compliance in the final rule. However, the FAA would consider a request for an approval of an alternative method of compliance in accordance with the provision of paragraph (c) of this AD, provided that appropriate justification accompanies the request.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 200 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to inspect the hydraulic hoses, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $12,000, or $60 per airplane.

It will take approximately 1 work hour per airplane to relocate the clip, at an average labor rate of $60 per work hour. Required parts will cost approximately $15 per airplane. Based on these figures, the cost impact of the clip relocation on U.S. operators is estimated to be $15,000, or $75 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–09 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–11979. Docket 2000–NM–133–AD.

Applicability: Model EMB–120 series airplanes, certificated in any category, having serial numbers listed in EMBRAER Service Bulletin 120–29–0047, Change 01, dated October 22, 1996.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the hydraulic line and loss of hydraulic pressure due to chafing, which could result in reduced controllability of the airplane, accomplish the following:

Inspection and Corrective Actions

(a) Within 75 flight hours after the effective date of this AD, perform a general visual inspection to detect discrepancies (wear, chafing, or scores) of all hydraulic pump hoses installed in both nacelles, in accordance with Part I of EMBRAER Service Bulletin 120–29–0047, Change 01, dated October 22, 1996. Prior to further flight, perform all applicable corrective actions in accordance with the service bulletin.

Note 2: Accomplishment, prior to the effective date of this AD, of the inspection in accordance with Part I of EMBRAER Service Bulletin 120–29–0047, dated August 22, 1996, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Clip Relocation

(b) Within 75 flight hours after the effective date of this AD, relocate the clip that secures the left forward hold-open rod of both nacelles in accordance with Part II of EMBRAER Service Bulletin 120–29–0047, Change 01, dated October 22, 1996.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with EMBRAER Service Bulletin 120–29–0047, Change 01, dated October 22, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Brazilian airworthiness directive 96–12–01, dated December 13, 1996.

(f) This amendment becomes effective on December 20, 2000.

Issued in Renton, Washington, on November 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28964 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–293–AD; Amendment 39–11973; AD 2000–23–03]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, that requires a one-time general visual inspection for proper rigging of the liftdumper micro switches installed in the left- and right-hand sides of the pedestal; a functional check of the micro switches; and re-rigging the cam, if necessary. The actions specified by this AD are intended to detect and correct improper rigging of the liftdumper micro switches, which could result in inadvertent extension of the liftdumpers during takeoff roll. This action is intended to address the identified unsafe condition.

DATES: Effective December 20, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 20, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes was published in the **Federal Register** on September 19, 2000 (65 FR 56509). That action proposed to require a one-time general visual inspection for proper rigging of the liftdumper micro switches installed in the left- and right-hand sides of the pedestal; a functional check of the micro switches; and re-rigging the cam, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 23 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,520, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–03 Fokker Services B.V.: Amendment 39–11973. Docket 2000–NM–293–AD.

Applicability: All Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct improper rigging of the liftdumper micro switches, which could result in inadvertent extension of the liftdumpers during takeoff roll, accomplish the following:

Inspection and Functional Check

(a) Within 2 months after the effective date of this AD: Perform a one-time general visual inspection for proper rigging of the liftdumper micro switches installed in the left- and right-hand sides of the pedestal; and a functional check of the micro switches; as specified in Fokker Service Bulletin F28/27–186, including Manual Change Notification MCNM F28–020, dated May 8, 2000. Perform the inspection and the check in accordance with the Accomplishment Instructions of the service bulletin. If the micro switches are not rigged within the specifications provided in the service bulletin, prior to further flight, re-rig the cam in accordance with the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Fokker Service Bulletin F28/27–186, including Manual Change Notification MCNM F28–020, dated May 8, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 2000–073, dated May 31, 2000.

Effective Date

(e) This amendment becomes effective on December 20, 2000.

Issued in Renton, Washington, on November 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28962 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–35–AD; Amendment 39–11983; AD 2000–18–51]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting superseding Airworthiness Directive (AD) 2000–18–51 which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. (BHTI) Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters by individual letters. This AD requires recurring liquid penetrant or eddy current inspections of the main rotor blade grip (grip) threads for a crack. If a crack is detected, this AD requires, before further flight, replacing the cracked grip with an airworthy grip. This AD also establishes a retirement life of 1,200 hours time-in-service (TIS) for each grip. This amendment is prompted by the results of an investigation of an August 1998 accident in which a grip failed on a BHTI Model 47G–2 helicopter due to a fatigue crack. An analysis of the field service data revealed fatigue cracks in 70 percent of the grips inspected. The actions specified by this AD are intended to prevent failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective November 30, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–18–51, issued on August 31, 2000, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 16, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–35–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9–asw–adcomments@faa.gov.

FOR FURTHER INFORMATION CONTACT: Marc Belhumeur, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5177, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: The FAA issued AD 86–06–08R1 on May 12, 1987 (52 FR 24135, June 29, 1987), which amended AD 86–06–08 (51 FR 11300, April 2, 1986). Those AD's required an initial and repetitive fluorescent dye penetrant inspection of each grip. On August 31, 2000, the FAA issued Emergency AD 2000–18–51, for BHTI Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters. That emergency AD supersedes AD 86–06–08 and AD 86–06–08R1 and requires recurring liquid penetrant or eddy current inspections of the grip threads for a crack. If a crack is detected, the AD requires, before further flight, replacing the cracked grip with an airworthy grip. The AD also establishes a retirement life of 1,200 hours TIS for each grip. That action was prompted by the results of an investigation of an August 1998 accident in which a grip failed on a BHTI Model 47G–2 helicopter due to a fatigue crack. An analysis of Australian field service data revealed fatigue cracks in the majority of the grips inspected. Since issuance of Emergency AD 2000–18–51, other cracked grips with less than 1200 hours TIS have been discovered. This condition, if not corrected, could result in failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other BHTI Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters of the same type designs, the FAA issued Emergency AD 2000–18–51 to prevent failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter. The AD requires the following for grips, part number (P/N) 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, and 47–120–252–11, and for grips manufactured under Parts Manufacturer Approval, P/N 74–120–252–11 and 74–120–135–5:

- Within 100 hours TIS since initial installation on any helicopter or within 10 hours TIS for grips with 100 or more hours TIS, conduct a liquid penetrant or eddy current inspection of the grip threads for a crack.
- Thereafter, conduct the liquid penetrant or eddy current inspection of the grip threads at intervals not to exceed 200 hours TIS.
- If a crack is detected, before further flight, replace the cracked grip with an airworthy grip.
- Establish a retirement life of 1200 hours time-in-service (TIS) for each grip.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, the above actions are required at the specified time intervals, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on 2000–18–51 to all known U.S. owners and operators of BHTI Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 1000 helicopters of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per helicopter to accomplish either inspection, and that the average labor rate is $60 per work hour. Required parts, if a grip needs to be replaced, will cost approximately $4,000 per grip (there are two grips on each helicopter). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,600,000, assuming one inspection per helicopter and replacement of both grips on each helicopter.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–35–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–5260 (51 FR 11300, April 2, 1986) and Amendment 39–5626 (52 FR 24135, June 29, 1987) and by adding a new airworthiness directive to read as follows:

2000–18–51 Bell Helicopter Textron, Inc.: Amendment 39–11983. Docket No. 2000–SW–35–AD. Supersedes AD 86–06–08, Amendment 39–5260, and AD 86–06–08 R1, Amendment 39–5626, Docket No. 86–ASW–10.

Applicability: Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters, with main rotor blade grips, part number (P/N) 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, 47–120–252–11, 74–120–252–11 and 74–120–135–5, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a main rotor blade grip (grip), separation of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 100 hours time-in-service (TIS) since initial installation on any helicopter or within 10 hours TIS for grips with 100 or more hours TIS, conduct a liquid penetrant or eddy current inspection of the grip threads for a crack. Thereafter, conduct the liquid penetrant or eddy current inspection at intervals not to exceed 200 hours TIS. If a crack is detected, before further flight, replace the cracked grip with an airworthy grip.

(b) On or before 1200 hours TIS, replace each grip with an airworthy grip. This AD establishes a retirement life of 1200 hours TIS for grips, P/N 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, 47–120–252–11, 74–120–252–11, and 74–120–135–5.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on November 30, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–18–51, issued August 31, 2000, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on November 2, 2000.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–29049 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 10, 11, 12, 18, 19, 24, 54, 101, 102, 111, 114, 123, 128, 132, 134, 141, 145, 146, 148, 151, 152, 177, 181, and 191

[T.D. 00–81]

Technical Amendments to the Customs Regulations

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by making certain technical corrections to various authority citations to reflect amendments to the Harmonized Tariff Schedule of the United States made by the President's Proclamation of October 2, 2000, to implement the United States-Caribbean Basin Trade Partnership Act.

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings, (202) 927–1415.

SUPPLEMENTARY INFORMATION:

Background

In Chapter I of the Customs Regulations (19 CFR chapter I) there are many general and specific authority citations and some sections that reference certain General Note provisions of the Harmonized Tariff Schedule of the United States (HTSUS). *See*, T.D. 95–29. Due to recent amendments to the HTSUS, many of the General Notes provisions have been renumbered. Thus, those general and specific authority citations and sections in the Customs Regulations that reference certain General Note provisions are no longer accurate.

On May 18, 2000, the United States-Caribbean Basin Trade Partnership Act was enacted. To implement certain provisions of this Act, on October 2, 2000, the President issued Proclamation 7351 (65 FR 59329), the Annex of which modified the HTSUS by, among other things, redesignating certain of the General Notes of the HTSUS. Specifically, HTSUS General Notes 16–21 were redesignated as HTSUS General Notes 18–23, respectively. Some of the former General Notes are referenced in the general or specific authority citations for 24 parts and in 3 sections of the Customs Regulations (19 CFR parts 7, 10, 11, 12, 18, 19, 24, 54, 101, 102, 111, 114, 123, 128, 132, 134, 141, 145, 146, 148, 151, 152, 177, 181, and 191, and §§ 24.23, 141.4, and 152.13).

This document corrects those HTSUS General Note references in the Customs Regulations.

Inapplicability of Public Notice and Comment Requirement and Delayed Effective Date Requirement

Because these amendments merely correct certain authority citation referencing errors in the Customs Regulations, pursuant to 5 U.S.C. 553(b)(B), Customs finds that good cause exists for dispensing with notice and public procedure as unnecessary. For these same reasons, pursuant to 5 U.S.C. 553(d)(3), Customs finds that good cause exists for dispensing with the requirement for a delayed effective date.

The Regulatory Flexibility Act

Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. *et seq.*).

Executive Order 12866

These amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings.

Amendments to the Regulations

Chapter I of the Customs Regulations (19 CFR chapter I) is amended as set forth below:

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The authority citation for part 7 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

2. The general authority citation for part 10 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

PART 11—PACKING AND STAMPING; MARKING

3. The authority citation for part 11 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Notes 22 and 23, Harmonized Tariff Schedule of the United States), 1624.

PART 12—SPECIAL CLASSES OF MERCHANDISE

4. The general authority citation for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

5. The general authority citation for part 18 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624.

* * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

6. The general authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

7. The general authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

§ 24.23 [Removed and added]

8. In § 24.23:

a. The parenthetical reference in paragraph (c)(1)(iii) to "(General Note 3(c)(v), HTSUS)" is removed and added, in its place, is the reference "(General Note 7, HTSUS)";

b. The parenthetical reference in paragraph (c)(1)(iv) to "(General Note 20(c)(ii)(B), HTSUS)" is removed and added, in its place, is the reference "(General Note 4(b)(i), HTSUS)"; and

c. The reference in paragraph (c)(1)(v) to "General Note 16, HTSUS" is removed and added, in its place, is the reference "General Note 18, HTSUS".

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

9. The authority citation for part 54 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22; Section XV, Note 5, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 101—GENERAL PROVISIONS

10. The general authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

PART 102—RULES OF ORIGIN

11. The authority citation for part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

PART 111—CUSTOMS BROKERS

12. The general authority citation for part 111 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

PART 114—CARNETS

13. The authority citation for part 114 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

14. The general authority citation for part 123 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

PART 128—EXPRESS CONSIGNMENTS

15. The authority citation for part 128 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

PART 132—QUOTAS

16. The general authority citation for part 132 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

* * * * *

PART 134—COUNTRY OF ORIGIN MARKING

17. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1304, 1624.

PART 141—ENTRY OF MERCHANDISE

18. The general authority citation for part 141 continues, and the specific authority for § 141.4 is revised, to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.4 also issued under 19 U.S.C. 1202 (General Note 18; Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Note 4, Harmonized Tariff Schedule of the United States), 1498;

* * * * *

§ 141.4 [Removed and added]

19. In § 141.4:

a. The reference in paragraph (b)(1) to "General Note 16" is removed and added, in its place, is the reference "General Note 18"; and

b. The reference in the introductory text of paragraph (c) to "General Note 16(e)" is removed and added, in its place, is the reference "General Note 18(e)".

PART 145—MAIL IMPORTATIONS

20. The general authority citation for part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

PART 146—FOREIGN TRADE ZONES

21. The authority citation for part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

22. The general authority citation for part 148 is revised to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 22, Harmonized Tariff Schedule of the United States);

* * * * *

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

23. The general authority citation for part 151 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 22 and 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

24. The general authority citation for part 152 continues, and the specific authority for § 152.13 is revised, to read as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624.

* * * * *

Section 152.13 also issued under 19 U.S.C. 1202 (General Note 19, Harmonized Tariff Schedule of the United States (HTSUS)).

§ 152.13 [Removed and added]

25. In § 152.13:

a. The reference in both paragraphs (b)(1) and (b)(2) to "General Note 17" is removed and added, in its place, is the reference "General Note 19";

b. The reference in the introductory text of paragraph (c) and in paragraphs (c)(1), (c)(2), and (c)(3) to "General Note 17" is removed and added, in its place, is the reference "General Note 19"; and

c. The references in paragraph (d) to "General Note 17" are removed and added, in their place, are the references "General Note 19".

PART 177—ADMINISTRATIVE RULINGS

26. The general authority citation for part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

27. The authority citation for part 181 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624, 3314.

PART 191—DRAWBACK

28. The general authority citation for part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

Dated: November 8, 2000.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 00–29091 Filed 11–14–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 93F–0319]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of hydrogenated butadiene/acrylonitrile copolymers, intended for contact with food in repeated use applications. This action is in response to a petition filed by Zeon Chemicals, Inc.

DATES: This rule is effective November 15, 2000. Submit written objections and requests for a hearing by December 15, 2000. The Director of the Office of the Federal Register approves the incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR 51 of certain publications in § 177.2600(c)(4)(i) (21 CFR 177.2600(c)(4)(i)), as of November 15, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of October 4, 1993 (58 FR 51632), FDA announced that a food additive petition (FAP 3B4377) had been filed by Zeon Chemicals, Inc., Three Continental Towers, suite 1012, 1701 Golf Rd., Rolling Meadows, IL 60008 (now 4111 Bells Lane, Louisville, KY 40211). The petition proposed to amend the food additive regulations to provide for the safe use of acrylonitrile-butadiene copolymer, hydrogenated, intended for contact with food in repeated use applications. (The additive is currently listed in the regulation under the nomenclature hydrogenated butadiene/acrylonitrile copolymers, and this nomenclature will be retained.)

In FDA's evaluation of the safety of this food additive, the agency reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain residual amounts of acrylonitrile and butadiene as impurities resulting from its manufacture. These chemicals have been shown to cause cancer in test animals. Residual amounts of impurities are commonly found as constituents of chemical products, including food additives.

II. Determination of Safety

Under the general safety standard of section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive. (Scott *v.* FDA, 728 F.2d 322 (6th Cir. 1984.))

In evaluating the safety of a food additive, FDA customarily reviews the available data on each relevant chemical impurity to determine whether the chemical induces tumors in animals or humans. If FDA concludes that the chemical impurity causes cancer in animals or humans, the agency calculates the unit cancer risk for the chemical and the upper bound limit of lifetime human cancer risk from the chemical's presence in the additive (Ref. 1).

In some instances, the available data and information may not allow the agency to determine whether a particular chemical impurity is a carcinogen. However, the available data may suggest, but not establish definitively, that the impurity poses a human cancer risk. In such circumstances, the agency may perform a risk assessment based upon the assumption that the impurity is carcinogenic. This approach permits the agency to determine whether there is a reasonable certainty that no harm will result from the petitioned use of the additive, even though the carcinogenic status of the impurity is not clearly established.

FDA followed this approach to determine whether there is a reasonable certainty that no harm will result from the use of hydrogenated butadiene/acrylonitrile copolymers; in so doing, FDA assumed that butadiene, an impurity in the additive, is a human carcinogen. In inhalation studies, butadiene has been reported to induce, in mice and rats, tumors at the site of exposure (lungs) as well as a variety of tumors at numerous other sites (Refs. 2 to 4). However, FDA does not believe that these inhalation studies are necessarily determinative of the carcinogenic potential of butadiene when administered orally, the most likely route of human exposure to food additives. Because no long-term studies are available in which butadiene was administered orally, the agency performed a risk assessment for butadiene based on a twofold assumption: That butadiene would induce tumors in animals and humans if administered orally and that its potency by the oral route of exposure would be no greater than its potency by the inhalation route of exposure. In FDA's view, this is a conservative assumption (Ref. 5). Using this procedure, FDA estimated the upper bound limit of lifetime human cancer risk from butadiene under the proposed conditions of use of hydrogenated butadiene/acrylonitrile copolymers.

III. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, hydrogenated butadiene/acrylonitrile copolymers, will

result in exposure to no greater than 5 parts per trillion of the additive in the daily diet (3 kilograms (kg)) or an estimated daily intake of 15 nanograms per person per day (ng/p/d) (Ref. 6).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 7), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and, as noted above, using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by acrylonitrile and butadiene, the carcinogenic chemicals that may be present as impurities in the additive. The risk evaluation of acrylonitrile and butadiene has two aspects: (1) Assessment of exposure to the impurities from the petitioned use of the additive, and (2) extrapolation of the risk observed in animal bioassays to the conditions of exposure to humans.

A. Acrylonitrile

FDA has estimated the exposure to acrylonitrile from the petitioned use of the additive as a component of repeated use food-contact articles to be no more than 0.095 parts per trillion in the daily diet (3 kg), or 0.29 ng/p/d (Ref. 6). The agency used data from a long-term rodent bioassay on acrylonitrile conducted by Quast et al. (Ref. 8) to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused astrocytomas of the nervous system, papillomas and carcinomas of the tongue, papillomas and carcinomas of the stomach, and Zymbal's gland carcinomas in male and female rats. The authors also reported carcinomas of the small intestine and the mammary gland in female rats.

Based on the agency's estimate that exposure to acrylonitrile will not exceed 0.29 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 5.45×10^{-10}, or 0.5 in a billion (Ref. 9). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to acrylonitrile is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to acrylonitrile would result from the petitioned use of the additive.

B. Butadiene

The scientific literature contains a variety of information regarding the carcinogenic potential of butadiene. As noted, in a long-term inhalation study butadiene has been reported to induce a variety of tumors including in the hematopoietic system, heart, lung, forestomach, liver, Harderian gland, brain, and kidney in male and female mice and tumors of the ovaries and mammary gland in female mice (Ref. 2). Butadiene also has been reported to induce tumors of the pancreas and testis in male rats and tumors of the uterus, mammary gland, and thyroid in female rats in a long-term inhalation study (Refs. 3 and 4).

No long-term studies are available in which butadiene was administered to test animals orally. Generally, FDA does not rely on inhalation studies to assess the potential carcinogenicity and cancer potency of substances in food, for which the most likely route of human exposure is oral. However, in order to determine whether there is a reasonable certainty that no harm would result from the presence of butadiene as an impurity in the subject additive, the agency has assumed that butadiene is an oral carcinogen and has performed a worst-case risk assessment of the carcinogenic potential of butadiene using data from the inhalation study on female mice. FDA has relied on this study because it is the sex, species, and study that demonstrated the highest unit cancer risk for butadiene.

FDA has estimated the exposure to butadiene from the petitioned use of the subject additive would not exceed 0.0016 part per trillion in the daily diet (3 kg), or 4.8 picogram per person per day (pg/p/d) (Ref. 6). Based on this estimate and the assumption that butadiene would induce tumors with the same potency in an oral study as it did in the mice inhalation study, FDA estimates that the upper-bound limit of lifetime human risk from butadiene exposure as a result of the petitioned use of the subject additive would be 1.12×10^{-10}, or 0.1 in a billion (Refs. 5 and 10). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to butadiene is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to butadiene would result from the petitioned use of the additive.

C. Need for Specifications

The agency also has considered whether specifications are necessary to control the amount of acrylonitrile and butadiene as impurities in the food additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which acrylonitrile and butadiene may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely low levels; and (2) the upper-bound limits of lifetime human risk from exposure to acrylonitrile and butadiene are very low, 0.5 in a billion and 0.1 in a billion, respectively.

IV. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive in repeated use food-contact articles is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 177.2600 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by December 15, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Lorentzen, R., "FDA Procedures for Carcinogenic Risk Assessment," *Food Technology*, vol. 38, pp. 108–111, 1984.

2. "Toxicology and Carcinogenesis Studies of 1,3-Butadiene (CAS No. 106–99–0) in B6C3F1 Mice (Inhalation Studies)," National Toxicology Program, Technical Report Series, No. 434.

3. Owen, P. E. et al., "Inhalation Toxicity Studies with 1,3-Butadiene. Two Year Toxicity/Carcinogenicity Study in Rats," *American Industrial Hygiene Association Journal*, 48:407–413, 1987.

4. Owen, P. E. et al., "Inhalation Toxicity and Carcinogenicity Study of 1,3-Butadiene in Sprague-Dawley Rats," *Environmental Health Perspectives*, 86:19–25, 1990.

5. Memorandum dated March 3, 2000, from the Division of Health Effects Evaluation to the Chairman of the CFSAN Cancer Assessment Committee and Quantitative Risk Assessment Committee, "A worst-case estimate of human cancer risk from exposure to 1,3-butadiene as an impurity in all approved and petitioned uses of 1,3-butadiene-based polymers in food-contact applications, and in several petitioned food additives and pre-market notifications."

6. Memorandum dated March 25, 1994, from Chemistry Review Branch to Indirect Additives Branch, "FAP 3B4377 (MATS# 711, M2.1)—Zeon Chemicals, Inc. Submission dated 4–21–93. Hydrogenated acrylonitrile butadiene elastomers (HNBR) as components of repeat-use articles."

7. Kokoski, C. J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, and J. K. Marquis, New York, NY, pp. 24–33, 1985.

8. Quast, J. F., C. E. Wade, C. G. Humiston, R. M. Carreon, E. A. Hermann, C. N. Park, and B. A. Schwetz, "A Two Year Toxicity and Oncogenicity Study With Acrylonitrile Incorporated in the Drinking Water of Rats," Toxicology Research Laboratory, Health and Environmental Sciences, Dow Chemical USA, Midland, MI 48640, final report dated January 22, 1980, corrections dated November 17, 1980.

9. Memorandum dated July 10, 2000, from the Division of Health Effects Evaluation to the Division of Petition Control, "FAP 3B4377: Worst-Case Cancer Risk Assessment for Acrylonitrile."

10. Memorandum dated April 3, 2000, from the Division of Petition Control to the Quantitative Risk Assessment Committee, "Estimation of the Upper-Bound Lifetime Risk for Butadiene—FAP 3B4377."

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.2600 is amended in paragraph (c)(4)(i) by revising the entry for "Hydrogenated butadiene/acrylonitrile copolymers" to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(i) * * *

* * * * *

Hydrogenated butadiene/acrylonitrile copolymers (CAS Reg. No. 88254–10–8) produced when acrylonitrile/butadiene copolymers are modified by hydrogenation of the olefinic unsaturation to leave either: (1) Not more than 10 percent *trans* olefinic unsaturation and no α, β-olefinic unsaturation as determined by a method entitled "Determination of Residual α, β-Olefinic and Trans Olefinic Unsaturation Levels in HNBR," developed October 1, 1991, by Polysar Rubber Corp., 1256 South Vidal St., Sarnia, Ontario, Canada N7T 7MI; or (2) 0.4 percent to 20 percent olefinic unsaturation and Mooney viscosities greater than 45 (ML 1 + 4 @ 100 °C), as determined by ASTM Standard Method D1646–92, "Standard Test Method for Rubber—Viscosity and Vulcanization Characteristics (Mooney Viscometer)," which are both incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these methods may be obtained from the Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. A copy of ASTM Standard Method D1646–92 may also be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959.

* * * * *

Dated: November 6, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–29164 Filed 11–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 883

[Docket No. FR–4532–C–02]

RIN 2502–AH46

Increased Distributions to Owners of Certain HUD-Assisted Multifamily Rental Projects; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; technical correction.

SUMMARY: This document makes a technical amendment to the final rule that was published October 13, 2000 (65 FR 61072), which adds an exception to current limits on distributions to owners for HUD-assisted multifamily rental projects.

EFFECTIVE DATE: November 13, 2000.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grants Administration, Department of Housing and Urban Development, 451 7th St. SW., Washington DC 20410, 202–708–2866. (This not a toll-free number.) For hearing- and speech-impaired persons, these numbers may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On October 13, 2000 (65 FR 61072), HUD published a final rule adding an exception to current limits on distributions to owners for HUD-assisted multifamily rental projects. Two errors in part 883 of the final rule need correction.

Accordingly, FR Doc. 00–26247, Increased Distributions to Owners of Certain HUD-Assisted Multifamily Rental Projects, published in the **Federal Register** on October 13, 2000 (65 FR 61072), is corrected as follows:

1. On page 61075, first column, in instruction 11, correct part "881" to read "883".

2. On page 61075, first column, correct the heading for "§ 883.205" to read "§ 883.306."

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 00–29098 Filed 11–14–00; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[A.G. Order No. 2333–2000]

RIN 1105–AA76

Access to Documents by Former Employees of the Department

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures under which former employees of the Department of Justice may request access to documents that they originated, reviewed, or signed while employees of the Department, for the purpose of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority. The rule designates component heads and the Assistant Attorney General for Administration as the deciding officials.

DATES: This rule is effective November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Stuart Frisch, General Counsel, or Evelyn Tang, Attorney-Advisor, Office of the General Counsel, Justice Management Division, U.S. Department of Justice, 1331 Pennsylvania Avenue NW., Suite 520N, (202) 514–3452.

SUPPLEMENTARY INFORMATION:

A. Background

Whom Does This Rule Affect?

This rule applies to former employees of the Department who, after they leave the Department, have a need for access to Department documents that they originated, reviewed, or signed while employed by the Department, for the purpose of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority.

What Does This Rule Do?

A legitimate concern has been raised by current and former Department employees, that after they leave the Department, they may still be called upon to respond to official inquiries into their handling of matters at the Department. This is especially likely in the case of high-level employees. Without access to relevant documents to refresh their memories, it may be difficult to respond to such inquiries. To address this concern, this regulation establishes a procedure for former employees to request access to documents that they originated, reviewed, or signed while at the Department. As a general rule, former employees will be provided access to the documents if they are responding to an official inquiry by a federal, state, or local government entity or professional licensing authority—for example, responding to a Congressional committee request, an investigation by an Inspector General, an investigation by a state or local law enforcement agency, or a disciplinary action by a bar association. The Department may deny or limit access where providing the requested access would be unduly burdensome. This rule does not create a right enforceable at law by a party against the United States.

What Type of Documents Does the Rule Cover?

The rule covers only documents that a former employee originated, reviewed, or signed while employed by the Department. Documents include memoranda, drafts, reports, notes, written communications, and documents stored electronically that are in the possession of the Department.

B. Administrative Procedure Act

This rule is a rule of agency organization, procedure, and practice; it is therefore exempt from the notice requirement of 5 U.S.C. 553(b) and is made effective upon issuance.

C. Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This rule merely establishes procedures under which former employees of the Department of Justice may, for the purpose of responding to an official inquiry, request access to documents they originated, reviewed, or signed while employed by the Department.

D. Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866. The Department has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

E. Unfunded Mandates Reform Act of 1995

This rule will not, in the aggregate, result in this expenditure by state, local, and tribal governments, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Small Business Regulatory Enforcement Fairness Act of 1996

The Department has determined that this action pertains to agency management and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804). Therefore, the reports to Congress and the General Accounting Office specified by the SBREFA are not required.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, Sunshine Act.

For the reasons stated in the preamble, Title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

2. Add Subpart G to Part 16 to read as follows:

Subpart G—Access to Documents by Former Employees of the Department

Sec. 16.300 Access to documents for the purpose of responding to an official inquiry.

16.301 Limitations.

Subpart G—Access to Documents by Former Employees of the Department

§ 16.300 Access to documents for the purpose of responding to an official inquiry.

(a) To the extent permitted by law, former employees of the Department shall be given access to documents that they originated, reviewed, or signed while employees of the Department, for the purpose of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority. Documents include memoranda, drafts, reports, notes, written communications, and documents stored electronically that are in the possession of the Department. Access ordinarily will be provided on government premises.

(b) Requests for access to documents under this section must be submitted in writing to the head of the component where the employee worked when originating, reviewing, or signing the documents. If the employee requesting access was the Attorney General, Deputy Attorney General, or Associate Attorney General, the request may be granted by the Assistant Attorney General for Administration. This authority may not be delegated below the level of principal deputy component head.

(c) The written request should describe with specificity the documents to which access is sought (including time periods wherever possible), the reason for which access is sought (including the timing of the official inquiry involved), and any intended disclosure of any of the information contained in the documents.

(d) The requester must agree in writing to safeguard the information from unauthorized disclosure and not to further disclose the information, by any means of communication, or to make copies, without the permission of the Department. Determinations regarding any further disclosure of information or removal of copies shall be made in accordance with applicable standards and procedures.

§ 16.301 Limitations.

(a) The Department may deny or limit access under this subpart where providing the requested access would be unduly burdensome.

(b) Access under this subpart to classified information is governed by Executive Order 12958 and 28 CFR 17.46. Requests for access to classified information must be submitted to (or will be referred to) the Department Security Officer and may be granted by the Department Security Officer in consultation with the appropriate component head.

(c) Nothing in this subpart shall be construed to supplant the operation of other applicable prohibitions against disclosure.

(d) This subpart is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforcecable at law by a party against the United States.

Dated: November 7, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–29208 Filed 11–14–00; 8:45 am]

BILLING CODE 4410–CS–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in December 2000. Interest assumptions are also published on the PBGC's web site (www.pbgc.gov).

EFFECTIVE DATE: December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022). (See the PBGC's two final rules published March 17, 2000, in the **Federal Register** (at 65 FR 14752 and 14753). Effective May 1, 2000, these rules changed how the interest

assumptions are used and where they are set forth in the PBGC's regulations.)

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during December 2000, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during December 2000, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during December 2000.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 7.00 percent for the first 25 years following the valuation date and 6.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for November 2000) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 5.25 percent for the period during which a benefit is in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for November 2000.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during December 2000, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1 The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 86, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*		
86	12–1–00	1–1–01	5.25	4.50	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 86, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*		
86	12–1–00	1–1–01	5.25	4.50	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
December 2000	.0700	1–25	.0625	>25	N/A	N/A

Issued in Washington, DC, on this 8th day of November 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–29231 Filed 11–14–00; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–111]

Drawbridge Operation Regulations: Siesta Key Bridge (SR 758), Sarasota, Sarasota County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Siesta Key Drawbridge (SR 758) across the Gulf Intracoastal Waterway, mile 71.6, Sarasota, Sarasota County, Florida. This deviation allows the drawbridge owner to provide single leaf openings for vessel traffic. This temporary deviation is required November 22, 2000 from 8 a.m. until 4 p.m., to allow the bridge owner to safely complete maintenance to the drawbridge.

DATES: This deviation is effective on November 22, 2000, from 8 a.m. until 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Siesta Key Drawbridge (SR 758) across the Gulf Intracoastal Waterway at Sarasota, FL has a vertical clearance of 21 feet above mean high water (MHW) measured at the center in the closed position. On October 30, 2000 the owner, requested a deviation from the current operating regulation in 33 CFR 117.35 which requires the drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary maintenance to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR

117.35 for the purpose of maintenance of the drawbridge. Under this deviation, the Siesta Key Drawbridge (SR 758) need only provide single leaf openings. The deviation is effective on November 22, 2000 from 8 a.m. until 4 p.m.

Dated: November 7, 2000.

G.E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 00–29101 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–112]

Drawbridge Operation Regulations: Stickney Point Bridge (SR 72), Sarasota, Sarasota County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Stickney Point Drawbridge (SR 72) across the Gulf Intracoastal Waterway, mile 68.6, Sarasota, Sarasota County, Florida. This deviation allows the drawbridge owner to provide single leaf openings for vessel traffic. This temporary deviation is required November 20, 2000 from 8 a.m. until 4 p.m., to allow the bridge owner to safely complete maintenance to the drawbridge.

DATES: This deviation is effective on November 20, 2000 from 8 a.m. until 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Stickney Point Drawbridge (SR 72) across the Gulf Intracoastal Waterway at Sarasota, FL has a vertical clearance of 18 feet above mean high water (MHW) measured at the center in the closed position. On October 30, 2000 the owner, requested a deviation from the current operating regulation in 33 CFR 117.35 which requires the drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary maintenance to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of maintenance of the drawbridge. Under this deviation, the Stickney Point Drawbridge (SR 72) need only provide single leaf openings. The deviation is effective on November 20, 2000 from 8 a.m. until 4 p.m.

Dated: November 7, 2000.

G.E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 00–29102 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–110]

Drawbridge Operation Regulations: Cortez Bridge (SR 64), Bradenton, Manatee County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Cortez Drawbridge (SR 64) across the Gulf Intracoastal Waterway, mile 87.4, Bradenton, Manatee County, Florida. This deviation allows the drawbridge owner to provide single leaf openings for vessel traffic. This temporary deviation is required November 27, 2000 from 8 a.m. until 4 p.m., to allow the bridge owner to safely complete maintenance to the drawbridge.

DATES: This deviation is effective on November 27, 2000 from 8 a.m. until 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Cortez Drawbridge (SR 64) across the Gulf Intracoastal Waterway at Sarasota, FL has a vertical clearance of 25 feet above mean high water (MHW) measured at the center in the closed position. On October 30, 2000 the owner, requested a deviation from the current operating regulation in 33 CFR 117.35 which requires the drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary maintenance to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of maintenance of the drawbridge. Under this deviation, the Cortez Drawbridge (SR 64) need only provide single leaf openings. The deviation is effective on November 27, 2000 from 8 a.m. until 4 p.m.

Dated: November 7, 2000.

G.E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 00–29103 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–109]

Drawbridge Operation Regulations; Boynton Beach Boulevard Bridge, Atlantic Intracoastal Waterway, Boynton Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Boynton Beach Boulevard Drawbridge (S.R. 804) across the Atlantic Intracoastal Waterway, mile 1035.0, Boynton Beach, Palm Beach County, Florida. This deviation allows the drawbridge owner or operator to open only a single leaf for vessel traffic. A four hour advanced notice is required for a double leaf opening. This temporary deviation is required from November 14, 2000 until December 31, 2000 to allow the bridge owner to safely complete repairs to the drawbridge.

DATES: This deviation is effective on November 14, 2000, until December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Boynton Beach Boulevard Drawbridge (S.R. 804) across the Atlantic Intracoastal Waterway at Boynton Beach, FL has a vertical clearance of 21 feet above mean high water (MHW) measured at the fenders in the closed position and a horizontal clearance of 125 between fenders. On October 30, 2000 Archer Western Contractors, representatives of the owner, requested a deviation from the current operating regulation in 33 CFR 117.35 which requires the drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary repairs to the drawbridge.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of safely completing repairs. Under this deviation, the Boynton Beach Boulevard Drawbridge (S.R. 804) need only open a single leaf, with a four hour advanced notice for a double leaf opening. The deviation is effective from November 14, 2000 until December 31, 2000.

Dated: November 7, 2000.

G.E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 00–29104 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–25–7197a; A–1–FRL–6882–7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Rate-of-Progress Emission Reduction Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. The revision establishes 15 percent and post-1996 rate-of-progress (ROP) plans for the Springfield Massachusetts serious ozone nonattainment area. The intended effect of this action is to approve this SIP revision as meeting the requirements of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on December 15, 2000.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, (617) 918–1046.

SUPPLEMENTARY INFORMATION:

This **SUPPLEMENTARY INFORMATION** section is organized as follows:

A. What action is EPA taking today?
B. Are the 1990 emission estimates used in the ROP calculations consistent with those approved in the base year inventory?
C. What are the Springfield area's 1999 emission target levels?
D. What is the status of the Commonwealth's I/M program?
E. When is the Commonwealth expected to meet its 1999 emission target levels?
F. Has Massachusetts revised its Stage II regulation?
G. Has the Commonwealth submitted a contingency plan?
H. What are the current conformity budgets for the Springfield area?

A. What Action Is EPA Taking Today?

EPA is approving 15 percent and post-96 ROP plans submitted by the Commonwealth of Massachusetts for the Springfield serious ozone nonattainment area. On September 27, 1999 (64 FR 51944), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of these ROP plans. A supplementary proposed rule was published on November 30, 1999 (64 FR 66829) that provided additional information on the automobile inspection and maintenance (I/M) program to be used in Massachusetts and the timing of 15% and 9% ROP plan reductions. The formal SIP revision was submitted by Massachusetts on April 1, 1999, and amended on June 25, 1999, and September 9, 1999.

B. Are the 1990 Emission Estimates Used in the ROP Calculations Consistent With Those Approved in the Base Year Inventory?

The 1990 base year inventory found in the ROP plans for the Western Massachusetts area matches the base year inventory for this area EPA approved in the July 14, 1997 **Federal Register** (62 FR 37510), with one exception. The NO_X emission estimate for non-road engines approved in the July 14, 1997 **Federal Register** document was 19.9 tons per summer day (tpsd); this value was lowered to 17 tpsd in the inventory used in the Springfield area's ROP target emission level calculations. EPA's discussions with Massachusetts indicate that the 17 tpsd estimate used in the ROP plans is incorrect. On September 15, 2000 Massachusetts submitted a letter to EPA confirming that 19.9 tpsd is the correct NO_X non-road base year emission estimate for the Springfield area, and submitted a revised target level calculation utilizing the correct value, 19.9 tpsd.

C. What Are the Springfield Area's 1999 Emission Target Levels?

The 1999 emission target levels for the Springfield area are 115 tpsd for VOC, and 100 tpsd for NO_X. The States' projected, controlled emissions for 1999 are both expected to equal the 1999 emission target levels for VOC and NO_X.

D. What Is the Status of the Commonwealth's I/M Program?

The Commonwealth began its automobile I/M program on October 1, 1999, but experienced routine start-up difficulties which required that full enforcement of the program be delayed for two and one half months. The Commonwealth began fully enforcing the I/M program on December 15, 1999.

In a separate action in the rules section of today's **Federal Register**, EPA is publishing a limited approval for the Commonwealth's I/M program. EPA has considered whether the ROP plans should also receive limited approval and determined that full approval of the ROP plans is more appropriate. Essentially, the issues that cause EPA to limit its approval of the I/M program have no impact on achieving the reductions necessary to support these ROP plans. The Commonwealth began fully enforcing its motor vehicle emissions testing program on December 15, 1999, and has continued to operate the program since that time without encountering major difficulties. It is the testing of motor vehicles and subsequent requirement that high polluting vehicles be repaired to emit less pollution that achieves the emission reductions attributable to automobile I/M programs. The reason EPA is not granting full approval of the Commonwealth's I/M program pertain to requirements that Massachusetts fully document that the I/M program complies with the provisions of section 182(c)(3) of the CAA. Achievement of these conditions, although necessary for full approval of the I/M program, are not prerequisite to achieving the relatively low level of emission reductions from the program on which these ROP plans rely. The I/M program as currently implemented, and which is fully enforceable in the SIP pursuant to our limited approval, is accomplishing the minimal emission reductions needed to support the ROP plans, and therefore full approval of the ROP plans is appropriate.

E. When Is the Commonwealth Expected To Meet Its 1999 Emission Target Levels?

EPA believes that it is unlikely the Commonwealth met its emission target levels by November 15, 1999, but that it now meets these emission levels.

The EPA's September 27, 1999 proposed approval of the Commonwealth's ROP plans noted that these plans relied, to a small degree, on the emission reductions from the I/M program scheduled to begin on October 1, 1999. However, the delayed enforcement of this program described above, and more conservative assumptions of the amount of credit derived from the program that Massachusetts is implementing as noted in the November 30, 1999 supplementary proposed rule, delayed the achievement of the emission reductions expected from this program. Based on the amount of vehicles subject to emission testing each month once the Commonwealth began enforcing this program on December 15, 1999, EPA believes the estimated reductions from I/M needed for the 15 percent and post-96 ROP plans were achieved and surpassed by the end of April, 2000, prior to the beginning of the ozone season. EPA believes that these reductions were achieved as expeditiously as practicable and that no other reasonable emissions control strategy would have allowed the Commonwealth or EPA to achieve these reductions sooner.

F. Has Massachusetts Revised Its Stage II Regulation?

EPA's September 27 , 1999 proposed approval of the Commonwealth's ROP plans noted compliance issues associated with this rule. Massachusetts committed, in its one hour ozone attainment demonstration submittal, to address these issues by modifying its Stage II regulation to enhance the compliance assurance mechanisms designed into the rule. Massachusetts held a public hearing on its proposed revisions to its Stage II, gasoline vapor recovery regulation on January 20, 2000. The Commonwealth submitted the revised Stage II rule to EPA for parallel processing on August 9, 2000, and EPA proposed approval of this rule on August 21, 2000 (65 FR 50669). When EPA acts on the attainment demonstration, we will evaluate whether Massachusetts has adequately addressed the compliance issues associated with this rule. Enforcement of the Stage II rule currently approved in the SIP supports these ROP plans.

G. Has the Commonwealth Submitted a Contingency Plan?

Massachusetts has not submitted a contingency plan. Sections 172(c)(9) and 182(c)(9) of the federal Clean Air Act (CAA) require that contingency measures be implemented if an area misses an ozone SIP milestone, or does not attain the NAAQS by the applicable date. Massachusetts has not met its obligation to submit a contingency plan for the Springfield serious nonattainment area.

H. What Are the Current Conformity Budgets for the Springfield Area?

The Commonwealth's revised ROP plans contain motor vehicle emission budgets for the year 1999. However, the Massachusetts DEP submitted an ozone attainment demonstration plan to EPA in 1998 that contains mobile source emission budgets for Western Massachusetts for 2003. Since the year 2003 budgets are more restrictive, cover a time frame later than the ROP plans (which include the current transportation analyses milestone years), and are based on the attainment plan, these 2003 VOC and NO_X budgets take precedence over motor vehicle emission budgets for earlier years. The specific 2003 budgets for the Springfield area are 23.770 tpsd for VOC, and 49.110 tpsd for NO_X.

Other specific requirements of the ROP plans and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving rate-of-progress emission reduction plans for the Springfield, Massachusetts ozone nonattainment area as a revision to the Massachusetts SIP. These plans meet the requirements of sections 182(b)(1) and 182(c)(2) of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements..

Dated: September 20, 2000.

Mindy S. Lubber,

Regional Administrator, EPA—New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart W—Massachusetts

2. Section 52.1129 is added to subpart W to read as follows:

§ 52.1129 Control strategy: Ozone.

Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on April 1, 1999, and supplemented on June 25, 1999 and September 9, 1999. The revisions are for the purpose of satisfying the rate of progress requirements of sections 182(b)(1) and 182(c)(2)(B) of the Clean Air Act for the Springfield, Massachusetts serious ozone nonattainment area.

[FR Doc. 00–29066 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–014–7195D; A–1–FRL–6882–5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires an enhanced inspection and maintenance program in Massachusetts. The intended effect of this action is to provide limited approval of the inspection and maintenance program which has been operating in Massachusetts since October 1, 1999. This action is being taken in accordance with the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on December 15, 2000.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), SW., Washington, DC; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Peter X. Hagerty, (617) 918–1049.

SUPPLEMENTARY INFORMATION: On September 27, 1999 (64 FR 51937), and on November 30, 1999 (64 FR 66829), EPA published Notices of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPRs proposed approval of an enhanced inspection and maintenance (I/M) program once the Massachusetts Department of Environmental Protection (DEP) submitted supplemental documentation. Massachusetts submitted the formal SIP revision on May 14, 1999.

The September 27, 1999, proposed rulemaking notice stated that prior to final action, Massachusetts must submit certain items which had not yet been supplied by the program contractor. These items included requirements specified in the following sections of the EPA I/M Rule: Network Type and Program Evaluation—40 CFR 51.353, Test Procedures and Standards—40 CFR 51.357, Test Equipment—40 CFR 51.358, Quality Control—40 CFR 51.359, Quality Assurance—40 CFR 51.363, and On-road Testing—40 CFR 51.371. The November 30, 1999 supplemental notice indicated that Massachusetts could not claim full I/M 240 credit for the Massachusetts I/M program, but EPA believed the program would achieve at least low enhanced program credit, therefore proposed approval was still appropriate.

In response to the September 27, 1999, **Federal Register** document, Massachusetts made the following submissions: Test Procedures and Equipment Specifications on February 1, 2000, and Acceptance Test Protocol on March 15, 2000. These submittals were designed to better define the information required in Test Procedures and Standards—40 CFR 51.357, and Test Equipment—40 CFR 51.358. With these two submissions the Massachusetts I/M SIP now meets the requirements of these two sections of the EPA rule. On March 15. 2000 Massachusetts also submitted Overt Audit Software Specifications which addresses part of the requirements for Quality Assurance, 40 CFR 51.363. On July 14, 2000, Massachusetts submitted a Draft Quality Assurance and Quality Control Plan. In a letter dated August 8, 2000 EPA provided minor comments on this plan.

The following sections still require additional information to meet the requirements of the I/M rule: Network Type and Program Evaluation—40 CFR 51.353, Quality Control—40 CFR Part 51.359, Quality Assurance—40 CFR 51.363 and On-road Testing—40 CFR 51.371. These requirements were explained in the NPR and will not be restated here. In response to the Supplementary Proposed Rule

published in the **Federal Register** on November 30, 1999, EPA and the DEP have had extensive discussions concerning a comparison testing program between EPA's IM240 test and the Massachusetts I/M test. A testing program has been designed and will soon be started. DEP will provide EPA with copies of the work orders to initiate this program once they have been issued. The results of this program will enable EPA to assign appropriate emission reduction credit for the Massachusetts I/M program.

Massachusetts has been successfully operating a transient testing program with a 31 second test and NYTEST equipment, which is expected to provide high emitter identification rates which are close to the rates provided by IM240 testing. This expectation is based on testing of the NYTEST equipment by New York and the 31 second test by Oregon. Although we cannot at this time assign appropriate program credit, this will be done once the comparison testing is completed.

Interim Credit—There is no data available at this time to assign appropriate emission reduction credit for the combination of test type and equipment that the Commonwealth is implementing. Nevertheless, even if one makes extremely conservative assumptions about the efficacy of the Massachusetts test, EPA's mobile modeling shows that the I/M program demonstrates at least compliance with low enhanced I/M program performance standard, and it therefore meets the requirement for this aspect of the program. Moreover, this conservative estimate of the performance standard still provides sufficient emission reduction credits to support the 15% and 9% rate of progress plans EPA is approving elsewhere in today's **Federal Register**. EPA's analysis of these conservative assumptions is available in a technical support document in the docket for the November 30, 1999 **Federal Register** Notice.

Other specific requirements of the I/M rule and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is providing limited approval of the Massachusetts inspection and maintenance program as a revision designed to strengthen the Massachusetts SIP.

This action will make the I/M program an enforceable part of the Massachusetts SIP, but DEP must still supplement the program to get full approval and meet the I/M requirements of the Act. Edward Kunce, acting Commissioner of DEP submitted this plan revision on May 14, 1999 with subsequent submissions on February 1, 2000, and March 15, 2000, as a revision to the SIP. The Commonwealth must submit to EPA additional information on Network Type and Program Evaluation—40 CFR 51.353, On-road Testing—40 CFR 51.371 and a final QA/QC plan to meet the requirements of Quality Control—40 CFR 51.359, and Quality Assurance—40 CFR 51.363, prior to EPA giving full approval to the Massachusetts I/M SIP. EPA will then publish a subsequent final rulemaking notice in the **Federal Register**, when the State submits the needed information. This approval action will remain a part of the SIP until EPA takes final action fully approving or disapproving the revised I/M SIP submittal.

Massachusetts DEP Regulation 310 CMR 60.02 "Regulations for the Enhanced Motor Vehicle Inspection and Maintenance Program" replaces completely the existing regulation 310 CMR 7.20 "Motor Vehicle Inspection and Maintenance Emission Analyzer Approval Process and Inspection Requirements and Procedures." Regulation 310 CMR 7.20 will be removed from both the table identifying the SIP in the Code of Federal Regulations (CFR) and from the files where EPA incorporates by reference Massachusetts rules into the SIP.

Massachusetts Registry of Motor Vehicles Regulation 540 CMR 4.00 entitled "Periodic Annual Staggered Safety and Combined Safety and Emissions Inspection of All Motor Vehicles, Trailers, Semi-trailers and Converter Dollies" although part of the previous I/M program was not incorporated by reference and was not listed in Table 52.1167. This regulation which was revised for the enhanced I/M program and effective October 1, 1999 will be incorporated by reference and added to table 52.1167.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 20, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(122) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(122) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on May 14, 1999, February 1, 2000 and March 15, 2000.

(i) Incorporation by reference.

(A) Regulation 310 CMR 60.02 entitled "Regulations for the Enhanced Motor Vehicle Inspection and Maintenance Program" which became effective on October 1, 1999, and a September 17, 1999, Notice of Correction submitted by the Secretary of State indicating the effective date of the regulations.

(B) Sections 4.01, 4.02, 4.03, 4.04(1), (2), (3), (5), (15) 4.05(1), (2), (12)(d), (12)(e), (12)(o) 4.07, 4.08, and 4.09 of Regulation 540 CMR 4.00 entitled "Periodic Annual Staggered Safety and Combined Safety and Emissions Inspection of All Motor Vehicles, Trailers, Semi-trailers and Converter Dollies' which became effective on May 28, 1999."

(ii) Additional materials.

(A) Letters from the Massachusetts Department of Environmental Protection dated May 14, 1999, February 1, 2000, and March 15, 2000, submitting a revision to the Massachusetts State Implementation Plan.

(B) Test Procedures and Equipment Specifications submitted on February 1, 2000.

(C) Acceptance Test Protocol submitted on March 15, 2000.

§ 52.1167 [Amended]

3. Table 52.1167 is amended by removing Regulation 310 CMR 7.20 "Motor Vehicle Inspection and Maintenance Emission Analyzer Approval Process and Inspection Requirements and Procedures."

4. In § 52.1167 the Table 52.1167 is amended by adding new entries in numerical order for "310 CMR 60.02" and 540 CMR 4.00" to read as follows,

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 60.02	Regulations for the enhanced Motor Vehicle Inspection and Maintenance Program	5/14/99	11/15/00	65 FR 68900	122	Replaces requirements for I/M tests with enhanced I/M test requirements.
540 CMR 4.00	Periodic Annual Staggered Safety and Emissions Inspection of Motor Vehicles	5/13/99	11/15/00	65 FR 68900	122	Revises Requirements for Inspections and Enforcement of I/M Program

[FR Doc. 00–29067 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WI96–01–7327a; FRL–6901–3]

Approval and Promulgation of Implementation Plans; Wisconsin Designation of Areas for Air Quality Planning Purposes; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On November 5, 1999, the Wisconsin Department of Natural Resources (WDNR) submitted a request to the Environmental Protection Agency (EPA) to redesignate a portion of the City of Rhinelander (Oneida County) Wisconsin from a primary sulfur dioxide (SO_2) nonattainment area to attainment. In this action EPA is approving the State's request, because it meets all of the Clean Air Act (Act) requirements for redesignation.

If EPA receives adverse comments on this action, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

DATES: This "direct final" rule is effective January 16, 2001, unless EPA receives adverse or critical comments by December 15, 2000. If the rule is withdrawn, EPA will publish timely notice in the **Federal Register**.

ADDRESSES: Send written comments to Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Madeline Rucker at (312) 886–0661, before visiting the Region 5 Office.)

A copy of this redesignation is available for inspection at this Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION:

I. Background

This Supplementary Information section is organized as follows:

A. What action is EPA taking?
B. Why was this SIP revision submitted?
C. Why can we approve this request?
D. What requirements must be met for approval of a redesignation, and how did the state meet them?

A. What Action Is EPA Taking?

We are approving the State of Wisconsin's request to redesignate a portion of the City of Rhinelander (Oneida County) from a primary SO_2 nonattainment area to attainment of the SO_2 NAAQS. We are also approving the maintenance plan for this area into the Wisconsin SO_2 SIP.

B. Why Was This SIP Revision Submitted?

WDNR believes that the City of Rhinelander is now eligible for redesignation because EPA approved Wisconsin's SO_2 SIP in 1995 and SO_2 monitors in Rhinelander have not recorded exceedances of either the primary or secondary SO_2 air quality standards since 1986.

C. Why Can We Approve This Request?

Consistent with the Act's requirements, EPA developed procedures for redesignation of nonattainment areas that are in a September 4, 1992, memorandum from John Calcagni, EPA, titled, *Procedures for Processing Requests to Redesignate Areas to Attainment*. This EPA guidance document contains a number of conditions that a State must meet before it can request a change in designation for a federally designated nonattainment area. That memorandum and EPA's Technical Support Document set forth the rationale in support of the redesignation of Rhinelander's SO_2 nonattainment area to an attainment status.

D. What Requirements Must the State Meet for Approval of a Redesignation and How Did the State Meet Them?

1. The State Must Show That the Area Is Attaining the Applicable NAAQS

There are two components involved in making this demonstration:

a. Ambient air quality monitoring representative of the area of highest concentration must show no more than one exceedance annually; and

b. EPA approved air quality modeling must show that the area in question meets the applicable standard.

The first component relies on ambient air quality data representative of the area of highest concentration. The primary 24-hour concentration limit of the SO_2 NAAQS is 365 micrograms per cubic meter (µg/m³). The primary annual concentration limit is 80 µg/m³. According to 40 CFR 50.4, an area must show no more than one exceedance annually. WDNR's monitoring data satisfies the first component, indicating that there has been no exceedance of the 24-hour concentration limit since 1986. Monitoring data for the annual concentration limit goes back to 1994 and indicates no exceedance of the annual limit since that time.

The second component relies on supplemental EPA approved air quality modeling. Air quality modeling, however, could not be used in this case because the modeling under-predicted actual ambient air concentrations due to the unique topography of the area. Under EPA modeling guidelines, ambient data (*i.e.*, a rollback analysis) may be used to determine appropriate emission limits. A rollback analysis takes a monitored ambient exceedance recorded during a specific set of facility operating conditions and determines the amount of the exceedance due to each of the source's SO_2-emitting operations in use at that time. These estimates are then linearly "rolled back" to acceptable SO_2 emission limits that provide for attainment of the NAAQS under that set of operating conditions. The State submitted emission limits determined by using the rollback analysis in an October 21, 1994 SIP revision. EPA approved these limits into the Wisconsin SO_2 SIP by EPA on December 7, 1994 at 59 FR 63046.

Therefore, WDNR satisfied the second component by supplying monitoring information as a substitute for the modeling demonstration requirement, showing that the area has been in attainment of the SO_2 NAAQS since 1987.

2. The SIP for the Area Must Be Fully Approved Under Section 110(k) of the Act and Must Satisfy all Requirements That Apply to the Area

WDNR submitted the Rhinelander SO_2 SIP revision to EPA on October 21, 1994 to fulfill the requirements of section 110 and part D of the Act. The state's submittal consisted primarily of an August 22, 1994 Consent Order (AM–94–38) between the state and the Rhinelander Paper Company (RPC). EPA approved the permanent requirements of the consent order for RPC into the federally enforceable SO_2 SIP on December 7, 1994 at 59 FR 63046.

3. EPA Has Determined That the Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions

Pursuant to the August 22, 1994 Consent Order, RPC must meet certain emissions limits. EPA approved these permanent requirements into the federally enforceable SIP on December 7, 1994. In addition, if RPC exceeds the emission limits contained in the order, WDNR can enforce those conditions under Chapter NR 494, Wisconsin Administrative Code, and section 144.423 (now 285.83) and 144.426 (now 285.87), Wis. Stats.

4. The State Has Met All Applicable Requirements Under Section 110 and Part D of the Act That Were Applicable Prior to Submittal of the Complete Redesignation Request

Section 110(a)(2) of the Act contains the general requirements for nonattainment plans. Part D contains the general requirements applicable to all areas that are designated nonattainment based on a violation of the NAAQS. These requirements are satisfied by EPA's December 7, 1994 approval of the nonattainment plan that Wisconsin submitted on October 21, 1994 for the control of SO_2 emissions in the Rhinelander area.

A PSD program will replace the requirements of the part D new source review program after redesignation of the area. To ensure that the PSD program will become fully effective immediately upon redesignation, either EPA must delegate the Federal PSD program to the State or the State must make any needed modifications to its rules to have the approved PSD program apply to the affected area upon redesignation. EPA fully approved Wisconsin's PSD program, effective June 28, 1999.

5. EPA Has Fully Approved a Maintenance Plan, Including a Contingency Plan, for the Area Under Section 175A of the Act

Section 107(d)(3)(E) of the Act states that, for an area to be redesignated, EPA must fully approve a maintenance plan that meets the requirements of section 175A. Section 175A of the Act requires states to submit a SIP revision that provides for the maintenance of the NAAQS in the area for at least 10 years after approval of the redesignation. The basic components needed to ensure proper maintenance of the NAAQS are: attainment inventory, maintenance demonstration, verification of continued attainment, ambient air monitoring network, and a contingency plan. EPA is approving the maintenance plan in today's action as discussed below.

a. *Attainment Inventory.* RPC is the only significant source of SO_2 emissions in the area.

b. *Maintenance Demonstration and Verification of Continued Attainment.* As discussed earlier, air quality modeling is not applicable in this case because the model under-predicted the SO_2 impacts for Rhinelander. The SIP approved by EPA on December 7, 1994 contained Consent Order AM–94–38. Conditions cited in this consent order do not expire and therefore provide for maintenance of the SO_2 NAAQS for at least 10 years.

WDNR will monitor growth in the area through the annual submittal of RPC's air emission inventory. The plant wide emissions cap established in the consent order limits future SO_2 emissions at RPC. Further, WDNR staff believe the area will remain in attainment of the SO_2 NAAQS as long as the company does not expand and emit SO_2 above the consent order limits.

c. *Monitoring Network.* The WDNR has committed to operating an SO_2 monitor in the Rhinelander area until EPA and the WDNR both agree that the monitor is no longer necessary.

d. *Contingency Plan.* Section 175A of the Act requires that the maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area. Upon verification of two exceedances (a violation) of either the 24-hour or 3-hour SO_2 NAAQS, WDNR will investigate the causes of the violation. If the analysis of the violation identifies RPC as responsible for the violation, WDNR will work with the company to ensure that the violation will not occur again. WDNR will involve EPA, Region 5, in the discussions with the company. Once WDNR identifies the problem and sets a strategy to fix the problem, it will either (1) take an enforcement action against the company, (2) revise Consent Order AM–94–38 for greater stringency, or (3) write rules to control the emissions of SO_2 at the company. WDNR has committed to the following schedule: (1) To identify the responsible source within 30 days after a monitored violation; (2) to take action against the responsible source within 90 days of the violation; and, if EPA determines it necessary, (3) to submit a SIP revision to EPA with 360 days after the violation.

II. Final Action

We have evaluated the state's submittal and have determined that it meets the applicable requirements of the Act, EPA regulations, and EPA policy. Therefore, we are approving the State of Wisconsin's request to redesignate a portion of the City of Rhinelander (Oneida County) from a primary SO_2 nonattainment area to attainment of the SO_2 NAAQS. We are also approving the maintenance plan for this area into the Wisconsin SO_2 SIP.

EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan should relevant adverse comments be filed.

This action will be effective January 16, 2001 without further notice unless relevant adverse comments are received by December 15, 2000. If EPA receives such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We will then address all public comments received in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive such comments, this action will be effective January 16, 2001.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. We will consider each request for revision to the SIP separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and

explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 16, 2001 unless EPA receives adverse written comments by December 15, 2000.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See § 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovermental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 27, 2000.

Gary Guleziah,

Acting Regional Administrator, Region 5.

Title 40, Chapter I of the Code of Federal Regulations, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2575 is amended by adding paragraph (b)(3) to read as follows:

§ 52.2575 Control strategy: Sulfur dioxide.

* * * * *

(b) * * *

(3) An SO_2 maintenance plan was submitted by the State of Wisconsin on November 5, 1999, for the City of Rhinelander, Oneida County.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.350 is amended by revising the entry for Oneida County in the table entitled "Wisconsin-SO_2" to read as follows:

§ 81.350 Wisconsin.

WISCONSIN—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* *	*	*	*	*
Oneida County				X
* *	*	*	*	*

* * * * *

[FR Doc. 00–29221 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MO 117–1117a; FRL–6900–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Landfill Emissions From Municipal Solid Waste Landfills; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the state of Missouri's section 111(d) plan for controlling emissions from existing municipal solid waste (MSW) landfills. The plan adopts the revisions to the Federal Emission Guidelines published June 16, 1998, and February 24, 1999. Approval of the revised plan will ensure that the state plan contains the most current Federal requirements.

DATES: This rule is effective on January 16, 2001 without further notice, unless EPA receives adverse comment by December 15, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments must be submitted to Wayne Kaiser, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we, us, or our" is used, we mean EPA.

Background

Standards and guidelines for new and existing MSW landfills were promulgated under the authority of sections 111 and 129 of the CAA. These standards are 40 CFR part 60, subpart WWW, new source performance standards (NSPS) for new MSW landfills, and subpart Cc, emission guidelines (EG) for existing MSW landfills. The final NSPS and EG were published in the **Federal Register** on March 12, 1996.

EPA subsequently revised these landfill rules twice, on June 16, 1998, and February 24, 1999. These actions amend, correct errors, and clarify regulatory text of the March 12, 1996 rule.

We first approved Missouri's 111(d) plan for MSW landfills on April 24 1998 (63 FR 20320.) The state's plan consists primarily of two state rules which adopt the Federal landfill requirements

promulgated on March 12, 1996. One state rule is applicable to the St. Louis area, 10 CSR 10–5.490, and the other is applicable to the remainder of the state, 10 CSR 10–6.310.

The Missouri Department of Natural Resources (MDNR) recently revised these two rules to incorporate the EPA revisions. The state rules became effective on July 30, 2000. The state has incorporated these revised rules into its revised 111(d) plan and submitted the plan and rules to us for approval pursuant to 111(d).

We have evaluated the state plan revision against criteria in the EG and against the plan approval criteria at 40 CFR 60.23 through 60.26, subpart B, "Adoption and Submittal of State Plans for Designated Facilities."

The state plan meets all of the applicable requirements of 40 CFR part 60, subpart B and subpart Cc.

Final Action

We are approving a revision to the Missouri 111(d) plan for MSW landfills which incorporates the most recent EPA requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state plan submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS) we have no authority to disapprove a state plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan, to use VCS in place of a state plan that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 25, 2000.

Dennis Grams,

Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart AA—Missouri

2. Section 62.6357 is amended by adding paragraph (d) to read as follows:

§ 62.6357 Identification of plan.

* * * * *

(d) Amended plan for the control of air emissions from Municipal Solid Waste Landfills submitted by the Missouri Department of Natural Resources on September 8, 2000. The effective date of the amended plan is January 16, 2001.

[FR Doc. 00–29058 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FL–86–200028(a); FRL–6902–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Florida

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the section 111(d) Plan submitted by the Florida

Department of Environmental Protection (DEP) for the State of Florida on September 16, 1999, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units.

DATES: This direct final rule is effective on January 16, 2001, without further notice, unless EPA receives adverse comment by December 15, 2000. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Joey LeVasseur, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; and at the Florida Department of Environmental Protection, Air Resources Management Division, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at (404) 562–9035 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION:

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I. What Action Is Being Taken by EPA Today?

We are approving the Florida State Plan, as submitted on September 16, 1999, for the control of air emissions from HMIWIs, except for those HMIWIs located in Indian Country. When EPA developed our New Source Performance Standard (NSPS) for HMIWIs, we also developed EG to control air emissions from older HMIWIs. (See 62 FR 48348–48391, September 15, 1997, 40 CFR part 60, subpart Ce [Emission Guidelines and Compliance Times for HMIWIs] and subpart Ec [Standards of Performance for HMIWIs for Which Construction is Commenced After June 20, 1996]). The Florida DEP developed a State Plan, as required by sections 111(d) and 129 of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective January 16, 2001, unless by December 15, 2000, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective January 16, 2001.

II. The HMIWI State Plan Requirement

What Is a HMIWI State Plan?

A HMIWI State Plan is a plan to control air pollutant emissions from existing incinerators which burn hospital waste or medical/infectious waste. The plan also includes source and emission inventories of these incinerators in the State.

Why Are We Requiring Florida To Submit a HMIWI State Plan?

States are required under sections 111(d) and 129 of the Act to submit State Plans to control emissions from existing HMIWIs in the State. The State Plan requirement was triggered when EPA published the EG for HMIWIs under 40 CFR part 60, subpart Ce (see 62 FR 48348, September 15, 1997).

Under section 129, EPA is required to promulgate EG for several types of existing solid waste incinerators. These EG establish the Maximum Achievable Control Technology (MACT) standards that States must adopt to comply with the Act. The HMIWI EG also establishes requirements for monitoring, operator training, permits, and a waste management plan that must be included in State Plans.

The intent of the State Plan requirement is to reduce several types of air pollutants associated with waste incineration.

Why Do We Need To Regulate Air Emissions From HMIWIs?

The State Plan establishes control requirements which reduce the following emissions from HMIWIs: particulate matter; sulfur dioxide; hydrogen chloride; nitrogen oxides; carbon monoxide; lead; cadmium; mercury; and dioxin/furans. These pollutants can cause adverse effects to the public health and the environment. Dioxin, lead, and mercury bioaccumulate through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Exposure to dioxin and furans can cause skin disorders, cancer, and reproductive effects such as endometriosis. Dioxin and furans can also affect the immune system. Acid gases affect the respiratory tract, as well as contribute to the acid rain that damages lakes and harms forests and buildings. Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Nitrogen oxide emissions contribute to the formation of ground level ozone, which is associated with a number of adverse health and environmental effects.

What Criteria Must a HMIWI State Plan Meet To Be Approved?

The criteria for approving a HMIWI State Plan include requirements from sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B. Under the requirements of sections 111(d) and 129 of the Act, a State Plan must be at least as protective as the EG regarding applicability, emission limits, compliance schedules, performance testing, monitoring and inspections, operator training and certification, waste management plans, and recordkeeping and reporting. Under section 129(e), State Plans must ensure that affected HMIWI facilities submit Title V permit applications to the State by September 15, 2000. Under the requirements of 40 CFR part 60, subpart B, the criteria for an approvable section 111(d) plan include demonstration of legal authority, enforceable mechanisms, public participation documentation, source and emission inventories, and a State progress report commitment.

III. What Does the Florida State Plan Contain?

The Florida DEP adopted the Federal NSPS and EG by reference into the Florida Administrative Code, Rules 62–204.800(7)(b) and 62–204.800(8)(d). The State rules were effective on September 1, 1999. The Florida State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;
2. State rule, Rule 62–204.800(8)(d), as the enforceable mechanism;
3. An inventory of approximately 32 known designated facilities, along with estimates of their potential air emissions;
4. Emission limits that are as protective as the EG;
5. A compliance date of one year from the effective date of this State Plan approval;
6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;
7. Records from the public hearing on the State Plan; and,
8. Provisions for progress reports to EPA.

IV. Is My HMIWI Subject to These Regulations?

The EG for existing HMIWIs affect any HMIWI built on or before June 20, 1996. If your facility meets this criterion, you are subject to these regulations.

V. What Steps Do I Need To Take?

You must meet the requirements listed in the Florida Administrative Code, Rule 62–204.800(8)(d), summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity.
2. Each size category of HMIWI has certain emission limits established which your incinerator must meet. See Table 1 of 40 CFR part 60, subpart Ce, to determine the specific emission limits which apply to you. The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events. (40 CFR 60.33e, as listed at 62 FR 48382, September 15, 1997).
3. There are provisions to address small rural incinerators (40 CFR 60.33e(b), 60.36e, 60.37e(c)(d), and 60.38e(b), as listed at 62 FR 48380, September 15, 1997).
4. You must meet a 10% opacity limit on your discharge, averaged over a six-minute block. (40 CFR 60.33e(c), as listed at 62 FR 48380, September 15, 1997).
5. You must have a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR part 60.53c(c). (40 CFR 60.34e, as listed at 62 FR 48380).
6. Your operator must be certified, as discussed in 5 above, no later than one year after EPA approval of this Florida State Plan. (40 CFR 60.39e(e), as listed at 62 FR 48382).
7. You must develop and submit to Florida DEP a waste management plan. This plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993, and must be submitted to Florida DEP no later than 60 days following the initial performance test for the affected unit. (40 CFR 60.35e, as listed at 62 FR 48380).
8. You must conduct an initial performance test to determine your incinerators compliance with these emission limits. This performance test must be completed as required under 40 CFR 60.8.
9. You must install and maintain devices to monitor the parameters listed under Table 3 to Subpart Ec (40 CFR 60.37e(c), as listed at 62 FR 48381).
10. You must document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years. (40 CFR 60.38e, as listed at 62 FR 48381).
11. You must submit an annual report to Florida DEM containing records of annual equipment inspections, any required maintenance, and unscheduled repairs. This annual report must be signed by the facilities manager. (40 CFR 60.38e, as listed at 62 FR 48381).

VI. Why Is the Florida HMIWI State Plan Approvable?

EPA compared the Florida rules (Florida Administrative Code, Rule 62–204.800(8)(d) against our HMIWI EG. EPA finds the Florida rules to be at least as protective as the EG. The Florida State Plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* and, 40 CFR 60, 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators*. The Florida State Plan satisfies the requirements for an approvable section 111(d) plan under subparts B and Ce of 40 CFR part 60. For these reasons, we are approving the Florida HMIWI State Plan.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR

8659, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 25, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart K—Florida

2. Section 62.2350 is amended by adding paragraphs (b)(7) and (c)(5) to read as follows:

§ 62.2350 Identification of plan.

* * * * *

(b) * * *

(7) State of Florida Department of Environmental Protection Section 111(d) State Plan for Hospital/Medical/Infectious Waste Incinerators, submitted on September 16, 1999, by the Florida Department of Environmental Protection.

(c) * * *

(5) Existing hospital/medical/infectious waste incinerators.

3. Subpart K is amended by adding a new § 62.2370 and a new undesignated center heading to read as follows:

Air Emissions From Hospital/Medical/Infectious Waste Incinerators

§ 62.2370 Identification of sources.

The plan applies to existing hospital/medical/infectious waste incinerators for which construction, reconstruction, or modification was commenced before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

[FR Doc. 00–29217 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301060; FRL–6747–3]

RIN 2070–AB78

Copper Sulfate Pentahydrate; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of copper sulfate pentahydrate when applied as a fungicide to raw agricultural commodities after harvest. Magna Bon Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of copper sulfate pentahydrate. In this final rule, the Agency is also reordering the structure of 40 CFR 180.1001(b)(1) and 180.1021 to group most of the copper exemptions together. The reordering does not change the regulatory status of these chemicals.

DATES: This regulation is effective November 15, 2000. Objections and requests for hearings, identified by docket control number OPP–301060 must be received by EPA on or before January 16, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301060 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; and e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301060. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 14, 1999 (64 FR 37972) (FRL –6085–5), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (EFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 8F4982) by Magna Bon Corporation, 3213 Ocean Drive, Vero Beach, Florida 32963. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing. Various copper containing substances have been exempted from tolerance requirements for numerous uses. 40 CFR 180.1001 (b)(1) exempts the listed copper compounds when applied to growing crops. However, these substances are not exempted from the requirement of a tolerance when applied to a crop at the time of or after harvest. Other exempted uses of copper include harvested fish and shellfish, meat, milk, poultry, eggs, and irrigated crops as specified in 40 CFR 180.1021. The petition requested that copper sulfate pentahydrate be exempted from the requirement of a tolerance when applied to raw agricultural commodities at 0.050 ppm. The Agency does not generally grant an exemption from the requirement of tolerance with a numerical limitation.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by copper sulfate pentahydrate are discussed in this unit.

There is adequate information available to characterize the toxicity of the copper ion. Copper is ubiquitous in nature and is a necessary nutritional element for both animals (including humans), and plants. Copper is found naturally in the food we eat, in the water we drink, in the air we breathe and in our bodies themselves. Some of the environmental copper is due to direct modification of the environment by man such as mining and smelting of the natural ore. It is one of 26 elements found essential to life. The copper ion is present in the adult human body at levels of 80–150 mg.

Oral ingestion of excessive amounts of the copper ion from pesticidal uses is unlikely. Copper compounds are irritating to the gastric mucosa. Ingestion of large amounts of copper results in prompt emesis. This protective reflex reduces the amount of copper ion available for absorption into the human body. Additionally, at high levels humans are also sensitive to the taste of copper. Because of this organoleptic property, oral ingestion would also serve to limit high doses.

Only a small percentage of ingested copper is absorbed, and most of the absorbed copper is excreted. The copper ion occurs naturally in many foods and the metabolism of copper is well understood. The Agency published a registration standard for copper sulfate in 1985. As indicated in the registration standard, there are several factors unique to copper which indicate that specific studies to fulfill the usual data requirements are not necessary to regulate copper sulfate as a pesticide. One of the foremost of these is the fact that copper is a required nutritional element for both plants and animals. It appears that more evidence is available to define the adverse effects of a deficiency in the diet than to show the toxic effects of an excess intake; in fact, no account has been found in the literature reviewed which describes a toxic effect to normal humans from ingestion of common foodstuffs containing copper. Because copper toxicity to man through the diet has not been shown in normal persons, little is known about the minimum levels of dietary copper necessary to cause evidence of adverse effects. This situation is likely due, to an effective homeostatic mechanism that is involved in the dietary intake of copper and that protects man from excess body copper. This complex mechanism integrates absorption, retention, and excretion to stabilize the copper body burden. Given that copper is ubiquitous and is routinely consumed as part of the daily diet, it is unlikely that with current exposure patterns there would be any long term adverse effects.

Sulfate has little toxic effect and is routinely used in medicine as a cathartic when combined with magnesium or sodium, the only adverse manifestation from this use being dehydration if water intake is concurrently limited.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other nonoccupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide chemicals, the Agency considers the toxicity of the chemical in conjunction with possible exposure to residues of the chemical through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure, an exemption from the requirement of a tolerance may be established.

A. Dietary Exposure

Copper is ubiquitous in nature and is a necessary nutritional element for both animals (including humans) and plants. It is one of 26 elements found essential to life. The human body must have copper to stay healthy. In fact, for a variety of biochemical processes in the body to operate normally, copper must be part of our diet. Copper is needed for certain critical enzymes to function in the body. Too little copper in the body can actually lead to disease.

1. *Food*. The main source of copper for infants, children, and adults, regardless of age, is the diet. Copper is typically present in mineral rich foods like vegetables (potato, legumes (beans and peas), nuts (peanuts and pecans), grains (wheat and rye), fruits (peach and raisins), and chocolate in levels ranging from 0.3 to 3.9 ppm. A single day's diet may contain 10 mg or more of copper. The daily recommended allowance of copper for adults nutritional needs is 2 mg. It is not likely that the approval of this petition would significantly increase exposure over that of the existing levels of copper.

2. *Drinking water exposure*. Copper is a natural element found in the earth's crust. As a result, most of the world's surface water and ground water that is used for drinking purposes contains copper. The actual amount varies from region to region, depending on how much is present in the earth, but in almost all cases the amount of copper in water is extremely low. Naturally occurring copper in drinking water is safe for human consumption, even in rare instances where it is at levels high enough to impart a metallic taste to the water. The Agency has set a maximum contaminant level for copper at 1.3 ppm because the Agency believes that this level of protection would not cause any potential health problems, i.e. stomach and intestinal distress, liver and kidney damage, and anemia. It is not likely that the approval of this petition would significantly increase exposure over that of the existing levels of copper.

B. Other Non–Occupational Exposure

Copper compounds have many uses on crops (food as well as non food) and ornamentals as a fungicide.

1. *Dermal exposure*. Given the prevalence of copper in the environment, no significant increase above current levels would be expected from the dermal non–occupational use of copper sulfate pentahydrate,

2. *Inhalation exposure*. Air concentrations of copper are relatively low. A study based on several thousand samples assembled by EPA's Environmental Monitoring Systems Laboratory showed copper levels ranging from 0.003 to 7.32 micrograms per cubic meter. Other studies indicate that air levels of copper are much lower. The Agency does not expect the air concentration of copper to be significantly affected by the use of copper sulfate pentahydrate.

V. Cumulative Effects

The Agency believes that copper has no significant toxicity to humans and that no cumulative adverse effects are expected from long–term exposure to copper salts including copper sulfate pentahydrate. EPA does not have, at this time, available data to determine whether copper compounds have a common mechanism of toxicity with other substances or how to include this inert ingredient in a cumulative risk assessment. For the purposes of this tolerance action, EPA has not assumed that copper compounds have a common mechanism of toxicity with other substances.

VI. Determination of Safety for U.S. Population, Infants and Children

Copper sulfate pentahydrate is considered as Generally Recognized as Safe (GRAS) by the Food and Drug Administration. EPA has exempted various copper compounds from the requirement of a tolerance when used as aquatic herbicides (40 CFR 180.1021). Copper compounds are also exempt from the requirements of a tolerance when applied to growing crops when used as a plant fungicide in accordance with good agricultural practices (40 CFR 180.1001 (b)(1)).

1. *U.S. population*. Copper is a component of the human diet and an essential element. Use of copper sulfate pentahydrate is not expected to increase the amount of copper in the diet as a result of its use on growing crops and post harvest use.

2. *Infants and children*. Copper is also a component of the diet of infants and children and also an essential element of their diet. Because of copper's low toxicity, EPA has not used a safety factor approach to analyze the safety of copper sulfate pentahydrate used in growing crops as well as post harvest. For similar reasons, an additional ten–fold margin of safety is not necessary for the protection of infants and children.

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm to the general population, including infants and children, from aggregate exposure to copper sulfate pentahydrate residues.

VII. Other Considerations

A. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. Existing Tolerance Exemptions

Copper sulfate pentahydrate has been exempted from the requirement of a tolerance under 40 CFR 180.1001(b)(1) when applied to growing crops.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for copper sulfate pentahydrate nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

VIII. Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of copper sulfate pentahydrate. Accordingly, EPA finds that exempting post harvest uses of copper sulfate pentahydrate from the requirement of a tolerance will be safe. Although the petitioner requested an exemption with a maximum residue limit, the Agency does not generally grant an exemption from the requirement of a tolerance with a numerical limitation. Given the lack of toxicity of this compound, EPA is following its general practice of not establishing a numerical limitation with this exemption.

In examining the existing tolerance exemptions for copper compounds, it was observed that the exemptions from the requirement of a tolerance are in two places in the Code of Federal Regulations, 40 CFR 180.1001 (b)(1) and 40 CFR 180.1021. For ease of use, all of these exemptions from the requirement of a tolerance are being placed in 180.1021. While reordering of the structure of the CFR is occurring, there have not been any changes with respect to the exemptions from the requirement of a tolerance of these copper compounds. However, copper sulfate pentahydrate is now exempt from the requirement of a tolerance when applied as a fungicide to growing crops or to raw agricultural commodities after harvest.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301060 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 16, 2001.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by email at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301060, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork

Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104 –113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure " meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated:October 31, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.1001 [Amended]

2. Section 180.1001 is amended by removing and reserving the text of paragraph (b)(1).

3. Section 180.1021 is revised to read as follows:

§ 180.1021 Copper; exemption from the requirement of a tolerance.

(a) Copper is exempted from the requirement of a tolerance in meat, milk, poultry, eggs, fish, shellfish, and irrigated crops when it results from the use of:

(1) Copper sulfate as an algicide or herbicide in irrigation conveyance systems and lakes, ponds, reservoirs, or bodies of water in which fish or shellfish are cultivated.

(2) Basic copper carbonate (malachite) as an algicide or herbicide in impounded and stagnant bodies of water

(3) Copper triethanolamine and copper monoethanolamine as an algicide or herbicide in fish hatcheries, lakes, ponds, and reservoirs

(4) Cuprous oxide bearing antifouling coatings for control of algae or other coatings for control of algae or other organisms on submerged concrete or other (irrigation) structures.

(b) The following copper compounds are exempt from the requirement of a tolerance when applied (primarily) as a fungicide to growing crops using good agricultural practices: Bordeaux mixture, basic copper carbonate (malachite) (CAS Reg. No. 1184–64–1), copper ethylenediamine complex, copper hydroxide (CAS Reg. No. 20427–59–2), copper lime mixtures, copper linoleate (CAS Reg. No. 7721–15–5), copper octanoate (CAS Reg. No. 20543–04–8), copper oleate (CAS Reg. No. 10402–16–1), copper oxychloride (CAS Reg. No. 1332–40–7), copper sulfate basic (CAS Reg. No. 1344–73–6), cupric oxide (CAS Reg. No. 1317–38–0), and cuprous oxide (CAS Reg. No. 1317–19–1).

(c) Copper sulfate pentahydrate (CAS Reg. No. 7758–99–8) is exempt from the requirement of a tolerance when applied as a fungicide to growing crops or to raw agricultural commodities after harvest.

[FR Doc. 00–28715 Filed 11–14–00; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301077; FRL–6753–3]

RIN 2070–AB78

Pyriproxyfen; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes a time-limited tolerance for residues of the insecticide Pyriproxyfen and its metabolites in or on stone fruits (Crop Group 12) at 0.1 part per million (ppm) for approximately an additional 2–year period. This tolerance will expire and is revoked on December 31, 2002. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on stone fruits. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective November 15, 2000. Objections and requests for hearings, identified by docket control number OPP–301077, must be received by EPA on or before January 16, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301077 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9356; and e-mail address: beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301077. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of March 3, 1999 (64 FR 10227) (FRL–6062–4), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of Pyriproxyfen and its metabolites in or on stone fruits at 0.1 ppm, with an expiration date of 8/31/00. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of Pyriproxyfen on stone fruits for this year's growing season due to the situation remaining an emergency. In California, San Jose Scale populations have developed resistance to the traditionally used pesticides, and no alternative modes of action have become available. This pest is expected to lead to significant yield losses, and losses of entire orchards, without adequate control. Pyriproxyfen has a different mode of action, which has proven effective at controlling San Jose Scale. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of Pyriproxyfen on stone fruits for control of San Jose Scale in California.

EPA assessed the potential risks presented by residues of Pyriproxyfen in or on stone fruits. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of 3/03/99 (64 FR 10227) (FRL–6062– 4). Based on that data and information considered, the Agency reaffirms that re-establishing the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is re-established for approximately an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on stone fruits after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301077 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 16, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the HearingClerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301077, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined

that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 27, 2000.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.510 Pyriproxyfen; tolerances for residues.

2. In § 180.510, amend the table in paragraph (b) by revising the Expiration/revocation date "8/31/00" to read "12/31/02" for the commodity "Stone Fruits (Crop Group 12)."

[FR Doc. 00–28811 Filed 11–14–00; 8:45 am]

BILLING CODE [illegible]-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6900–5]

Massachusetts: Interim Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Commonwealth of Massachusetts has applied to EPA for authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for interim authorization, and is authorizing the State's changes through this immediate final action. The interim authorization is for Massachusetts to assume the responsibility under the Toxicity Characteristics Rule ("TC Rule") for regulating Cathode Ray Tubes ("CRTs"). Massachusetts already has been granted final authorization to regulate all other hazardous wastes under the TC Rule. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to grant interim authorization to Massachusetts for changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and the separate document in the proposed rules section of this **Federal Register** will serve as the proposal to authorize the changes.

DATES: This interim authorization will become effective on January 16, 2001 and remain in effect until January 1, 2003 unless EPA receives adverse written comment by December 15, 2000. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take immediate effect.

ADDRESSES: Send any written comments to Robin Biscaia, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; telephone: (617) 918–1642. Copies of the Commonwealth of Massachusetts' revision application and the materials which EPA used in evaluating the revision (the "Administrative Record") are available for inspection and copying during normal business hours at the following locations: Massachusetts Department of Environmental Protection Library, One Winter Street—2nd Floor, Boston, MA 02108, business hours: 9 a.m. to 5 p.m., telephone: (617) 292–5802; or EPA New England Library, One Congress Street—11th Floor, Boston, MA 02114–2023, business hours: 9 a.m. to 4 p.m., telephone: (617) 918–1990.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Program Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone: (617) 918–1642.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have been authorized to administer the Federal hazardous waste program under RCRA section 3006(b), 42 U.S.C. 6926(b), have a continuing obligation to update their programs to meet revised Federal requirements. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279. For example, States must revise their programs to regulate the additional wastes determined to be hazardous as a result of using the Toxicity Characteristics Leaching Procedure ("TCLP") test adopted by the EPA on March 29, 1990, in the TC Rule. 55 FR 11798. The EPA may grant final authorization to a State revision if it is equivalent to, consistent with, and no less stringent than Federal RCRA requirements.

In the alternative, as provided by RCRA section 3006(g), 42 U.S.C. 6926(g), for updated Federal requirements promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA), such as the TC Rule, the EPA still may grant interim (*i.e.*, temporary) authorization to a State revision so long as it is *substantially* equivalent to Federal RCRA requirements. This interim authorization may run until no later than January 1, 2003. 40 CFR 271.24.

B. What Decisions Have We Made in This Rule?

1. Background

The TC Rule grants authority over wastes which first became classified as hazardous as a result of using the "TCLP" test, such as many CRTs. *See* 55 FR 11798, 11847–11849 (March 29, 1990). CRTs are the glass picture tubes found inside television and computer monitors. Because of their high lead content, CRTs generally fail the TCLP test. Thus, under the EPA's regulations, CRTs generally become hazardous wastes when they are discarded (*e.g.*, when sent for disposal or reclamation rather than being reused).

In order to encourage recycling, the EPA allows States to reduce RCRA regulatory requirements for certain widely-generated hazardous wastes under the Universal Waste Rule. 60 FR 25492 (May 11, 1995). In August 1998, however, the Massachusetts Department of Environmental Protection ("DEP") instead amended its regulations to completely exempt intact CRTs from all hazardous waste requirements. At the time, the DEP had pending before the EPA an application for final authorization of the TC Rule. Because the DEP's exemption of intact CRTs resulted in a State program that was not equivalent to or as stringent as Federal RCRA requirements, the EPA proposed to limit its approval of the Massachusetts TC Rule to all wastes other than CRTs. 64 FR 9110 (February 24, 1999). EPA granted final authorization to Massachusetts to administer the TC Rule for all wastes other than CRTs on October 12, 1999. 64 FR 55153.

2. Recent State Action

On August 4, 2000, Massachusetts adopted regulations which revised its regulatory program as it relates to CRTs. The State replaced its exemption of intact CRTs with a three-part approach: (1) Intact CRTs being disposed will be subject to full hazardous waste requirements (along with crushed or ground up CRTs); (2) intact CRTs that may still be reused (without reclamation) generally will be exempt from hazardous waste requirements; and, finally, (3) intact CRTs which will not be reused, but which instead will be crushed and recycled (*i.e.*, as spent materials being reclaimed), will be subject to reduced requirements which substantially track the EPA's universal waste requirements.

Documentation relating to the State's new approach may be found in EPA's Administrative Record. The documents include Massachusetts' revised Hazardous Waste Regulations and Solid Waste Regulations, as adopted on August 4, 2000, a Q & A Guidance document (which will serve as the Program Description as required by 40 CFR 271.24 and 271.21 for revisions to State programs), and an Attorney General's Statement.

3. The Decision

As further explained in a legal memorandum contained in the Administrative Record, dated January 21, 2000 entitled "Massachusetts" Regulation of CRTs," the EPA believes that the State program is "substantially equivalent" to Federal RCRA requirements. Therefore, we are granting Massachusetts interim authorization to regulate CRTs under the TC Rule as described in the authorization application. Pursuant to 40 CFR 271.24, this interim authorization will expire on January 1, 2003, at which time the authority to regulate the CRTs will revert to the EPA unless final authorization for this waste has been granted or unless EPA's regulations are amended to extend the January 1, 2003 deadline for interim authorization (in which case today's interim authorization may be extended).

Massachusetts has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Massachusetts, including issuing permits, until the State is granted authorization to do so.

The State's new three-part approach regarding CRTs is substantially equivalent to Federal requirements. With respect to intact CRTs being disposed, as well as crushed and ground-up CRTs, the State is now tracking the full Federal hazardous waste requirements. With respect to intact CRTs that may still be reused, the State has formulated an exemption which makes sense for this unusual waste stream. As explained in the EPA's January 21 legal memorandum, the State's exemption is at least substantially equivalent to Federal exemptions for products and materials used or reused as effective substitutes for products.

With respect to intact CRTs heading to reclamation, the State's program differs from the Universal Waste Rule in that these CRTs will be regulated as non-hazardous solid wastes under State law rather than as universal wastes. In addition, the State's regulations will not be as detailed or comprehensive as the universal waste requirements. While the State's differing approach would be problematic if the State was now seeking final authorization, the EPA believes that the State program nevertheless is "substantially equivalent" to Federal hazardous waste requirements. The State regulations track key provisions of the universal waste regulations. In addition, the DEP has submitted these regulations to be authorized as part of the Federally enforceable hazardous waste program. Thus, at the Federal level, these regulations will be fully enforceable as part of the hazardous waste program. These regulations also will be fully enforceable under State law, utilizing enforcement authority covering the State's solid waste programs.

The DEP's classification of intact CRTs heading for reclamation as solid waste will not change their status when sent to foreign countries since the DEP's proposed solid waste regulations specify that hazardous waste requirements must then be followed. *See* 310 CMR 16.05(3)(f)(3). The DEP's classification will not bind other States, since when there is interstate transportation, the requirements of States to and through which the wastes are shipped will apply. *See* Program Description, item 14; *See also* 64 FR 36466, 36482–36483 (July 6, 1999).

CRTs are different from most hazardous wastes. For example, a large percentage of them come from households. Effective management of CRTs involves encouraging charitable organizations, households and small businesses to participate in the collection, reuse and recycling effort.

The DEP has put together a program to encourage CRT recycling, which includes banning the disposal of even household CRTs in Massachusetts solid waste facilities. All of this counsels in favor of flexibly applying RCRA by approving the State's program on an interim basis. Interim approval will enable the State to start-up its program without needing to address the additional requirements applicable to final authorization. However, acceptance of the DEP's unusual approach for CRTs, on an interim basis, should not be regarded as a precedent for other types of situations or wastes.

It also should be emphasized that the DEP's proposed reduced regulations will apply only to *intact* CRTs. While the DEP plans to allow incidental numbers of unintentionally broken CRTs to be handled under the reduced regulations, intentionally broken CRTs or multiple CRTs broken due to poor housekeeping will be subject to full hazardous waste requirements. Also, full hazardous waste requirements will apply to disposal of CRTs, whether intact or broken, thus prohibiting such things as abandoning CRTs in warehouses or "midnight dumping."

4. Prior Comments Received Regarding EPA's Proposed Rule To Authorize Massachusetts for the UWR and TC Rule Except for CRTs

The EPA has received various comments to its proposed rule of February 24, 1999 (64 FR 9110) regarding whether or not Massachusetts should have been granted final authorization to regulate CRTs notwithstanding the DEP's prior exemption of intact CRTs from all hazardous waste requirements. The EPA does not plan to respond to these comments because the EPA and DEP have instead agreed upon the new approach described above. The issue now before the EPA is whether to grant an interim authorization for the regulation of CRTs in light of the State's new approach.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that for CRTs regulated under the TC Rule, a facility in Massachusetts subject to RCRA will have to comply with the newly authorized State requirements instead of the Federal requirements in order to comply with RCRA. The Commonwealth of Massachusetts has enforcement responsibilities under its State hazardous and solid waste programs for violations of such programs, but EPA also retains its full authority under RCRA sections 3007, 3008, 3013, and 7003.

This action does not impose additional requirements on the regulated community because the state regulations for which interim authorization to Massachusetts is being granted by today's action are already in effect under state law, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

F. What Has Massachusetts Previously Been Authorized for?

Massachusetts initially received Final Authorization on January 24, 1985, effective February 7, 1985 (50 FR 3344) to implement its base hazardous waste management program. We granted authorization for changes to their program on September 30, 1998, effective November 30, 1998 (63 FR 52180) and October 12, 1999, effective that date (64 FR 55153).

G. What Changes Are We Authorizing in Today's Action

On October 11, 2000 Massachusetts submitted a complete program revision application seeking authorization of their changes in accordance with 40 CFR 271.24. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Massachusetts' hazardous waste program revision satisfies all of the requirements necessary to qualify for interim authorization.

The specific RCRA program revisions for which the EPA grants interim authorization to Massachusetts are listed in the table below. The Federal requirements in the table are identified by their checklist numbers and rule descriptions. The following abbreviations are used in defining substantially equivalent state authority: MGL = Massachusetts General Laws; CMR = Code of Massachusetts Regulations.

Description of Federal requirement and checklist reference No.	Analogous state authority[1]
Consolidated Checklist for the Toxicity Characteristic Revisions as of June 30, 1994.	
(74) Toxicity Characteristic Revisions: 55 FR 11798, 3/29/90 as amended on 6/29/90, 55 FR 26986; (80) Hydrocarbon Recovery Operations: 55 FR 40834, 10/5/90 as amended on 2/1/91, 56 FR 3978 as amended on 4/2/91, 56 FR 13406, optional rule (MA is not seeking authorization for this provision): (84) Chlorofluoro Refrigerants: 56 FR 5910, 2/13/91, optional rule, (MA is not seeking authorization for this provision); (108) Toxicity Characteristics Revision; Technical Correction: 57 FR 30657, 7/10/92; (117B) Toxicity Characteristic Revision: 57 FR 23062, 6/1/92, (correction not applicable; MA is not seeking authorization for this provision); (119) Toxicity Characteristic Revision, TCLP: 57 FR 55114, 11/24/92, optional rule (MA is not seeking authorization for this provision)..	MGL c 21C §§4 and 6, enacted 11/9/79; 310 CMR 30.099(25) adopted 11/9/90, 30.104(13) adopted 10/17/97, 30.105 adopted 11/17/95, 30.125B adopted 11/9/90, 30.130 adopted 11/9/90 and 30.155B adopted 11/9/90 and amended 10/17/97. 310 CFR 30.010 (definitions of "CRT" and "Non-commodity CRT") and 310 CMR 30.104(21), as amended through 8/4/000. 310 CMR 16.02, 16.05(2)(e), 16.05(3)(f), 16.05(5)(f) and 16.05(11), as amended through 8/4/00. 310 CMR 19.017(3)(a), (c) and Table 310 CMR 19.017(3) (as to non-household CRTs), and 19.043(5)(k), as amended through 8/4/00. 310 CMR 11.03, as amended through 8/4/00. MGL c. 21A, §13 and MGL c. 111, §150A, as amended through 8/4/00. (The Massachusetts regulatory citations above are approved as they relate to CRTs.)

[1] The Commonwealth of Massachusetts' provisions are from the Code of Massachusetts Regulations, 310 CMR 11.00, 16.00 and 310 CMR 19.00, Solid Waste Regulations as adopted through August 4, 2000 and 310 CMR 30.000, Hazardous Waste Regulations as adopted through August 4, 2000.

H. Where Are the Revised State Rules Different From the Federal Rules?

The differences between the State and Federal regulations with respect to CRTs are discussed in section B above. Notwithstanding these differences, the EPA believes that the State regulations are substantially equivalent to the Federal regulations and, thus, the State qualifies to receive interim authorization. During the interim authorization period, for CRTs regulated under the TC Rule, these state regulations will operate in lieu of the Federal hazardous waste regulations.

The State hazardous and solid waste regulations listed in the chart above in section E will be enforceable under both Federal and state law. The one exception is that the State's ban on the disposal of even household CRTs at Massachusetts solid waste facilities goes beyond the scope of the Federal hazardous waste program and will be enforceable only under State law.

I. Who Handles Permits After This Authorization Takes Effect?

Massachusetts will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Massachusetts is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Massachusetts?

Massachusetts is not authorized to carry out its hazardous waste program in Indian country within the State. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. What Is Codification and Is EPA Codifying Massachusetts' Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We are today authorizing, but not codifying the enumerated revisions to the Massachusetts program. We reserve the amendment of 40 CFR part 272, subpart W for the codification of Massachusetts' program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, this action is not subject to review by OMB. This action authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action, nevertheless, will be effective 60 (sixty) days after publication pursuant to the procedures governing immediate final rules.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 2, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

[FR Doc. 00–29059 Filed 11–14–00; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–B–7328]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arizona:					
Maricopa	City of Avondale	March 24, 2000, March 31, 2000, *The Arizona Republic.*	The Honorable Thomas F. Morales, Jr., Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	February 23, 2000	040038
	City of Avondale	May 17, 2000, May 24, 2000, *The Arizona Republic.*	The Honorable Ron Drake, Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	April 20, 2000	040038
	Town of Buckeye.	May 17, 2000, May 24, 2000, *The Arizona Republic.*	The Honorable Dusty Hull, Mayor, Town of Buckeye, 100 North Apache Road, Suite A, Buckeye, Arizona 85326.	April 20, 2000	040039
	City of Goodyear.	May 17, 2000, May 24, 2000, *The Arizona Republic.*	The Honorable William O. Arnold, Mayor, City of Goodyear, 119 North Litchfield Road, Goodyear, Arizona 85338.	April 20, 2000	040046
	City of Mesa	May 17, 2000, May 24, 2000, *The Arizona Republic.*	The Honorable Wayne Brown, Mayor, City of Mesa, P.O. Box 1466, Mesa, Arizona 85211.	April 20, 2000	040048
	City of Phoenix	March 24, 2000, March 31, 2000, *The Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington, 11th Floor, Phoenix, Arizona 85003.	February 23, 2000	040051
	City of Phoenix	May 17, 2000, May 24, 2000, *The Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington, 11th Floor, Phoenix, Arizona 85003.	April 20, 2000	040051
	City of Tempe	May 17, 2000, May 24, 2000, *The Arizona Republic.*	The Honorable Neil G. Giuliano, Mayor, City of Tempe, Tempe City Hall, P.O. Box 5002, Tempe, Arizona 85281.	April 20, 2000	040054
	City of Tolleson	March 24, 2000, March 31, 2000, *The Arizona Republic.*	The Honorable Adolfo Gamez, Mayor, City of Tolleson, 9555 West Van Buren, Tolleson, Arizona 85353.	February 23, 2000	040055
	Unincorporated Areas.	March 24, 2000, March 31, 2000, *The Arizona Republic.*	The Honorable Andrew Kunasek, Chairperson, Maricopa County, Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	February 23, 2000	040037
	Unincorporated Areas.	May 17, 2000, May 24, 2000, *The Arizona Republic.*	The Honorable Andrew Kunasek, Chairperson, Maricopa County, Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	April 20, 2000	040037
	Unincorporated Areas.	May 17, 2000, May 24, 2000, *Holbrook Tribune News.*	The Honorable Tommy Thompson, Chairperson, Navajo County, Board of Supervisors, P.O. Box 668, Holbrook, Arizona 86025.	April 20, 2000	040066
California:					
Los Angeles	City of Carson	March 16, 2000, March 23, 2000, *Daily Breeze.*	The Honorable Peter Fajardo, Mayor, City of Carson, 701 East Carson Street, Carson, California 90749.	February 25, 2000	060107
	City of Compton	March 15, 2000, March 22, 2000, *Compton Bulletin.*	The Honorable Omar Bradley, Mayor, City of Compton, 205 South Willowbrook Avenue, Compton, California 90220.	February 25, 2000	060111

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
	City of Gardena	March 16, 2000, March 23, 2000, *Gardena Valley News.*	The Honorable Donald L. Dear, Mayor, City of Gardena, P.O. Box 47003, Gardena, California 90247–6803.	February 25, 2000	060119
	City of Lakewood.	March 16, 2000, March 23, 2000, *Press-Telegram.*	The Honorable Joseph Esquivel, Mayor, City of Lakewood, 5050 Clark Avenue, Lakewood, California 90712.	February 25, 2000	060130
	City of Long Beach.	March 16, 2000, March 23, 2000, *Press-Telegram.*	The Honorable Beverly O'Neill, Mayor, City of Long Beach, 333 West Ocean Boulevard, Long Beach, California 90802.	February 25, 2000	060136
	City of Los Angeles.	March 16, 2000, March 23, 2000, *Los Angeles Times.*	The Honorable Richard Riordan, Mayor, City of Los Angeles, 200 North Main Street, Los Angeles, California 90012.	February 25, 2000	060137
	City of Santa Clarita.	June 5, 2000, June 12, 2000, *The Signal.*	The Honorable Jo Anne Darcy, Mayor, City of Santa Clarita, 23920 Valencia Boulevard, Suite 300, Santa Clarita, California 91355.	May 15, 2000	060729
Riverside	City of Hemet ...	March 24, 2000, March 31, 2000, *The Hemet News.*	The Honorable Lori VanArsdale, Mayor, City of Hemet, 450 East Latham Avenue, Hemet, California 92543.	February 18, 2000	060253
	Unincorporated Areas.	March 24, 2000, March 31, 2000, *The Hemet News.*	The Honorable Tom Mullen, Chairperson, Riverside County Board of Supervisors, 4080 Lemon Street, 14th Floor, Riverside, California 92501.	February 18, 2000	060245
Sacramento	City of Folsom ..	June 28, 2000, July 5, 2000, *The Folsom Telegraph.*	The Honorable Stephen Miklos, Mayor, City of Folsom, 50 Natoma Street, Folsom, California 95630.	June 8, 2000	060263
San Diego ..	City of Chula Vista.	March 18, 2000, March 25, 2000, *Star News.*	The Honorable Shirley Horton, Mayor, City of Chula Vista, City Hall, 276 Fourth Avenue, Chula Vista, California 91910.	February 15, 2000	065021
	City of Escondido.	March 10, 2000, March 17, 2000, *North County Times.*	The Honorable Lori Pfeiler, Mayor, City of Escondido, 201 North Broadway, Escondido, California 92025.	January 31, 2000	060290
	City of Lemon Grove.	May 3, 2000, May 10, 2000, *Lemon Grove Review.*	The Honorable Mary Sessom, Mayor, City of Lemon Grove, 3232 Main Street, Lemon Grove, California 91945.	March 27, 2000	060723
	City of San Diego.	March 10, 2000, March 17, 2000, *San Diego Daily Transcript.*	The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	January 31, 2000	060295
	Unincorporated Areas.	May 9, 2000, May 16, 2000, *San Diego Union Tribune.*	The Honorable Dianne Jacob, Chairperson, San Diego County, Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	April 3, 2000	060284
San Joaquin	City of Stockton	May 266, 2000, June 2, 2000, *The Record.*	The Honorable Gary Podesto, Mayor, City of Stockton, 425 North El Dorado Street, Stockton, California 95202.	May 10, 2000	060302
Colorado:					
Adams	City of Federal Heights.	June 5, 2000, June 12, 2000, *Denver Rocky Mountain News.*	The Honorable Phil Stewart, Mayor, City of Federal Heights, 2380 West 90th Avenue, Federal Heights, Colorado 80221.	September 11, 2000 ..	080240
	City of Westminster.	March 10, 2000, March 17, 2000, *Denver Post.*	The Honorable Nancy M. Heil, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80030.	February 1, 2000	080008

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arapahoe ...	City of Englewood.	March 24, 2000, March 31, 2000, *The Englewood Herald.*	The Honorable Tom Burns, Mayor, City of Englewood, 3400 South Elati Street, Englewood, Colorado 80110.	June 29, 2000	085074
	City of Greenwood Village.	March 23, 2000, March 30, 2000, *The Villager.*	The Honorable David Phifer, Mayor, City of Greenwood Village, 6060 South Quebec Street, Greenwood Village, Colorado 80111.	June 29, 2000	080195
	Unincorporated Areas.	March 23, 2000, March 30, 2000, *The Villager.*	The Honorable Steve Ward, Chairperson, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166.	June 29, 2000	080011
Douglas	City of Littleton	March 23, 2000, March 30, 2000, *The Littleton Independent.*	The Honorable Susan Thornton, Mayor, City of Littleton, 2255 West Berry Avenue, Littleton, Colorado 80165.	June 29, 2000	080017
	Unincorporated Areas.	March 22, 2000, March 29, 2000, *Douglas County News Press.*	The Honorable James Sullivan, Chairperson, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104.	June 29, 2000	080049
Jefferson	Unincorporated Areas.	March 1, 2000, March 8, 2000, *Columbine Community Courier.*	The Honorable Richard Sheehan, Chairperson, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, Colorado 80419.	January 31, 2000	080087
Iowa:					
Black Hawk	City of Waterloo	March 29, 2000, April 5, 2000, *Waterloo Courier.*	The Honorable John R. Rooff, Mayor, City of Waterloo, City Hall, 715 Mulberry Street, Waterloo, Iowa 50703.	February 22, 2000	190025
Kansas:					
Johnson	City of DeSoto ..	May 4, 2000, May 11, 2000, *DeSoto Explorer.*	The Honorable Steven Pruden, Mayor, City of DeSoto, P.O. Box C, DeSoto, Kansas 66018.	August 10, 2000	200161
	Unincorporated Areas.	May 5, 2000, May 12, 2000, *The Johnson County Sun.*	The Honorable Michael B. Press, Interim County Administrator, Johnson County, 111 South Cherry, Suite 3300, Olathe, Kansas 66061–3441.	August 10, 2000	200159
Sedgwick ...	City of Wichita ..	April 6, 2000, April 13, 2000, *Wichita Eagle.*	The Honorable Bob Knight, Mayor, City of Wichita, City Hall, First Floor, 455 North Main Street, Wichita, Kansas 67202.	July 12, 2000	200328
	Unincorporated Areas.	April 18, 2000, April 25, 2000, *Wichita Eagle.*	The Honorable William Hancock, Chairperson, Sedgwick County Board of Commissioners, 1144 South Seneca, Wichita, Kansas 67213.	July 24, 2000	200321
Louisiana:					
Lafayette Parish.	Unincorporated Areas.	April 21, 2000, April 28, 2000, *The Advertiser.*	The Honorable Walter S. Comeaux, Lafayette Parish President, P.O. Box 4017–C, Lafayette, Louisiana 70501–0417.	March 9, 2000	220101
Nevada:					
Clark	City of Henderson.	April 19, 2000, April 26, 2000, *Las Vegas Review-Journal.*	The Honorable James Gibson, Mayor, City of Henderson, 240 South Water Street, Henderson, Nevada 89015.	March 21, 2000	320015
	Unincorporated Areas.	April 29, 2000, April 26, 2000, *Las Vegas Review-Journal.*	The Honorable Bruce Woodbury, Chairperson, Clark County Board of Commissioners, 500 Grand Central Parkway, Las Vegas, Nevada 89155.	March 21, 2000	320003

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Washoe	City of Sparks ...	March 21, 2000, March 28, 2000, *Reno Gazette-Journal.*	The Honorable Tony Armstrong, Mayor, City of Sparks, P.O. Box 857, Sparks, Nevada 89432–0857.	February 10, 2000	320021
New Mexico:					
Bernalillo	City of Albuquerque.	May 5, 2000, May 12, 2000, *Albuquerque Journal.*	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	March 21, 2000	350002
Texas:					
Bexar	Unincorporated Areas.	March 21, 2000, March 28, 2000, *San Antonio Express-News.*	The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Courthouse, 100 Dolorosa, Suite 100, San Antonio, Texas 78205-3036.	February 11, 2000	480035
Burleson	City of Somerville.	March 2, 2000, March 9, 2000, *Burleson County Citizen-Tribune.*	The Honorable Don Strickland, Mayor, City of Somerville, P.O. Box 159, Somerville, Texas 77879–0159.	February 2, 2000	480091
Collin	City of Frisco	June 16, 2000, June 23, 2000, *Frisco Enterprise.*	The Honorable Kathy Seei, Mayor, City of Frisco, P.O. Box 1100, Frisco, Texas 75034.	May 24, 2000	480134
Dallas	City of Irving	March 9, 2000, March 16, 2000, *The Irving News.*	The Honorable Joe H. Putnam, Mayor, City of Irving, P.O. Box 152288, Irving, Texas 75015–2288.	February 2, 2000	480180
	City of Dallas	April 21, 2000, April 28, 2000, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Dallas, Texas 75201.	March 22, 2000	480171
	City of Dallas ...	May 16, 2000, May 23, 2000, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Marilla Street, Dallas, Texas 75201.	August 21, 2000	480171
	City of Garland	May 25, 2000, June 1, 2000, *The Garland News.*	The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	April 21, 2000	485471
Denton	City of Lewisville	May 26, 2000, June 2, 2000, *Lewisville News.*	The Honorable Clarence R. Myers, Mayor, City of Lewisville, 1197 West Main Street, Lewisville, Texas 75029–9002.	May 2, 2000	480195
	Unincorporated Areas.	May 10, 2000, May 17, 2000 *Lewisville News.*	The Honorable Kirk Wilson, Judge, Denton County, Courthouse-on-the-Square, 110 West Hickory Street, Second Floor, Denton, Texas 76201.	March 31, 2000	480774
	Unincorporated Areas.	March 14, 2000, March 21, 2000, *Denton Record Chronicle.*	The Honorable Kirk Wilson, Judge, Denton County, Courthouse-on-the-Square, 110 West Hickory Street, Second Floor, Denton, Texas 76201.	February 2, 2000	480774
Fort Bend ...	West Keegans Bayou Improvement District.	March 21, 2000, March 26, 2000, *Houston Chronicle.*	Ms. Sandra Weider, President, West Keegans Bayou Improvement District, 15014 Tranmore Drive, Houston, Texas 77083.	February 10, 2000	481602
Harris	City of Houston	March 3, 2000, March 10, 2000, *Houston Chronicle.*	The Honorable Lee Brown, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251–1562.	January 31, 2000	480296
Johnson	City of Burleson	May 31, 2000, June 7, 2000, *Burleson Star.*	The Honorable Rich Roper, Mayor, City of Burleson, City Hall, 141 West Renfro, Burleson, Texas 76028.	September 5, 2000 ...	485459
	Unincorporated Areas.	May 31, 2000, June 7, 2000, *Cleburne Times Review.*	The Honorable Roger Harmon, Johnson County Judge, Johnson County Courthouse, 2 North Main Street, Cleburne, Texas 76031.	September 5, 2000 ...	480879

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Tarrant	City of Saginaw	April 27, 2000, May 4, 2000, *The Times Record.*	The Honorable Monte Nichols, Mayor, City of Saginaw, P.O. Box 79070, Saginaw, Texas 76179.	March 24, 2000	480610
Travis	Unincorporated Areas.	May 2, 2000, May 9, 2000, *Austin American Statesman.*	The Honorable Samuel T. Biscoe, Travis County Judge, P.O. Box 1748, Austin, Texas 78767–1748.	August 7, 2000	481026
Wichita	City of Wichita Falls.	March 17, 2000, March 24, 2000, *Wichita Falls Times Record News.*	The Honorable Kay Yeager, Mayor, City of Wichita Falls, 1300 Seventh Street, Wichita Falls, Texas 76301.	February 11, 2000	480662
Williamson	City of Round Rock.	March 23, 2000, March 30, 2000, *Round Rock Leader.*	The Honorable Charles Culpepper, Mayor, City of Round Rock, City Hall, 221 East Main Street, Round Rock, Texas 78664.	February 8, 2000	481048
Utah:					
Utah	City of Provo	March 17, 2000, March 24, 2000, *The Daily Herald.*	The Honorable Lewis Billings, Mayor, City of Provo, 351 West Center, Provo, Utah 84604.	June 22, 2000	490159
Washington:					
Chelan	Unincorporated Areas.	March 24, 2000, March 31, 2000, *Wenatchee World.*	The Honorable John Hunter, Chairperson, Chelan County Board of Commissioners, 350 Orando Avenue, Wenatchee, Washington 98801.	February 11, 2000	530015
Douglas	City of East Wenatchee.	May 11, 2000, May 18, 2000, *Wenatchee World.*	The Honorable Steve Lacy, Mayor, City of East Wenatchee, 215 Ninth Street Northeast, East Wenatchee, Washington 98802.	April 14, 2000	530038

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 5, 2000.

Margaret E. Lawless,

Deputy Associate Director for Mitigation.

[FR Doc. 00–29128 Filed 11–14–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 97–82; FCC 00–274]

Competitive Bidding Procedures; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** of Tuesday, August 29, 2000, (65 FR 52323). The regulations related to the competitive bidding rules for all, auctionable services in section 1.2110 of the Commission's rules.

DATES: Effective November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Leora Hochstein, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 29, 2000 (65 FR 52323), the Commission published a summary of its Order on Reconsideration of the Third Report and Order, Fifth Report and Order *(Order on Reconsideration, Fifth Report and Order)* in WT Docket No. 97–82. That document clarified and amended the Commission's competitive bidding rules in an ongoing effort to establish a uniform and streamlined set of general competitive bidding rules for all auctionable services and to reduce the burden on both the Commission and the public of conducting service-specific auction rule makings.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements.

Accordingly, 47 CFR part 1 is corrected by making the following correcting amendments:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. In § 1.2110 revise paragraph (c) to read as follows:

§ 1.2110 Designated entities.

(c) Definitions.—(1) *Small businesses.* The Commission will establish the definition of a small business on a service-specific basis, taking into consideration the characteristics and capital requirements of the particular service.

(2) *Controlling interests.* (i) For purposes of this section, controlling interest includes individuals or entities with either *de jure* or *de facto* control of the applicant. *De jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(A) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(B) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(C) The entity plays an integral role in management decisions.

(ii) *Calculation of certain interests.*

(A) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(B) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified.

(C) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(D) Non-voting stock shall be attributed as an interest in the issuing entity.

(E) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(F) Officers and directors of an entity shall be considered to have a controlling interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have a controlling interest in the licensee or applicant.

(G) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(H) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have a controlling interest in such applicant or licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(*1*) The nature or types of services offered by such an applicant or licensee;

(*2*) The terms upon which such services are offered; or

(*3*) The prices charged for such services.

(I) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have a controlling interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(*1*) The nature or types of services offered by such an applicant or licensee;

(*2*) The terms upon which such services are offered; or

(*3*) The prices charged for such services.

(3) *Businesses owned by members of minority groups and/or women.* Unless otherwise provided in rules governing specific services, a business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens control the applicant, have at least greater than 50 percent equity ownership and, in the case of a corporate applicant, have a greater than 50 percent voting interest. For applicants that are partnerships, every general partner must be either a minority and/or woman (or minorities and/or women) who are U.S. citizens and who individually or together own at least 50 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis. The term minority includes individuals of Black or African American, Hispanic or Latino, American Indian or Alaskan Native, Asian, and Native Hawaiian or Pacific Islander extraction.

(4) *Rural telephone companies.* A rural telephone company is any local exchange carrier operating entity to the extent that such entity—

(i) Provides common carrier service to any local exchange carrier study area that does not include either:

(A) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census, or

(B) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(ii) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(iii) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(iv) Has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

(5) *Affiliate.* (i) An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant if such individual or entity—

(A) Directly or indirectly controls or has the power to control the applicant, or

(B) Is directly or indirectly controlled by the applicant, or

(C) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(D) Has an "identity of interest" with the applicant.

(ii) Nature of control in determining affiliation.

(A) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example. An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power to control.

(B) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(C) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example. In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(iii) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or has the power to control a concern, persons with an identity of interest will be treated as though they were one person.

Example. Two shareholders in Corporation Y each have attributable interests in the same PCS application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity in interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

(A) *Spousal affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States. In calculating their net worth, investors who are legally separated must include their share of interests in property held jointly with a spouse.

(B) *Kinship affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half brother or sister. This presumption may be rebutted by showing that the family members are estranged, the family ties are remote, or the family members are not closely involved with each other in business matters.

Example. A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in a PCS application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation Y is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(iv) *Affiliation through stock ownership.* (A) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(B) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(C) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(v) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1. If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in a PCS application, the situation is treated as though company B had exercised its rights and had come owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2. If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in a PCS application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its option to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3. If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(vi) *Affiliation under voting trusts.* (A) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(B) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(C) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(vii) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(viii) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(ix) *Affiliation through contractual relationships.* Affiliation generally

arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(x) *Affiliation under joint venture arrangements.* (A) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(B) The parties to a joint venture are considered to be affiliated with each other. Nothing in this subsection shall be construed to define a small business consortium, for purposes of determining status as a designated entity, as a joint venture under attribution standards provided in this section.

(xi) *Exclusion from affiliation coverage.* For purposes of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of this section, except that gross revenues derived from gaming activities conducted by affiliate entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–29094 Filed 11–14–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[PP Docket No. 93–253; FCC 00–299]

Broadband Personal Communications Services (PCS) Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies various petitioners' requests to alter the Commission's C and F block competitive bidding rules. It does not change the rules except to reinstate provisions that had been inadvertently eliminated from the rules in a previous order. The Commission's determination with respect to these requests promotes the goals of the Communications Act.

DATES: Effective November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin, Attorney, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of an *Order on Reconsideration* in the Amendment of the Commission's Rules Regarding Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap. The complete text of the *Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov/wtb/auctions.*

I. Introduction

1. In this *Order on Reconsideration,* we first address three petitions for reconsideration of the Commission's Fifth Memorandum Opinion and Order in PP Docket No. 93–253 ("*Competitive Bidding Fifth Memorandum Opinion and Order*") in which the Commission resolved petitions for reconsideration or clarification of its rules governing competitive bidding for "entrepreneurs' block" (C and F block) Personal Communications Services licenses in the 2 GHz band ("broadband PCS"), *See* 59 FR 63210 (December 7, 1994). We next address nine petitions for reconsideration of the Commission's Report and Order in WT Docket No. 96–59 and GN Docket No. 90–314 ("*DEF Report and Order*") in which the Commission modified its competitive bidding and ownership rules for broadband PCS. *See* 61 FR 33859 (July 1, 1996). Finally, we reinstate provisions which, in the *Competitive Bidding Sixth Report and Order,* were inadvertently eliminated from one of the Commisson's competitive bidding rules. *See* 60 FR 37786 (July 21, 1995).

II. Background

2. Consistent with Congress' mandate to promote the participation of small businesses, rural telephone companies, and businesses owned by members of minority groups and women (collectively, "designated entities") in the provision of spectrum-based services, the Commission originally limited eligibility for C and F block PCS licenses to "entrepreneurs" and adopted special provisions for those blocks to assist small and women- and minority-owned businesses. The Commission considers entrepreneurs, with regard to the C and F blocks, to be those entities that can meet the auction and licensing eligibility requirements of § 24.709 of the Commission's rules. The principal requirement is set forth in § 24.709(a)(1), as follows:

> No application is acceptable for filing and no license shall be granted for frequency block C or frequency block F, unless the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, have gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million at the time the applicant's short-form application (Form 175) is filed.

Under § 24.709, C and F block licensees are required to maintain their eligibility until at least five years from the date of the initial license grant. Licensees, however, are permitted to grow beyond the gross revenue and total assets caps through equity investment by non-attributable investors, debt financing, revenue from operations, business development, or expanded service.

3. The Commission has held four entrepreneurs' block PCS auctions to date, Auction No. 5, the first auction of C block spectrum, ended on May 6, 1996 and was followed quickly by Auction No. 10, another C block auction, which concluded on July 16, 1996. Auction No. 11, the first F block auction, ended on January 14, 1997, and also included D and E block spectrum. The fourth auction, Auction No. 22, made available additional C and F block, as well as E block, spectrum and concluded on April 15, 1999.

III. Reconsideration of the Competitive Bidding Fifth Memorandum Opinion and Order

A. Background

4. In the *Competitive Bidding Fifth Memorandum Opinion and Order*, the Commission, responding to petitions for reconsideration or clarification of the *Competitive Bidding Fifth Report and Order*, 59 FR 37566 (July 22, 1994), and the *Competitive Bidding Order on Reconsideration*, 59 FR 43062 (August 22, 1994), clarified and modified its rules in order to allow better participation in broadband PCS by entrepreneurs and designated entities.

B. Control Group Equity Exceptions

5. *Background.* To be eligible to participate in entrepreneurs' (C or F) block auctions, an applicant (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) must have had gross revenues of less than $125 million in each of the last two years and must have total assets of less than $500 million. We recently adopted as our general attribution rule a "controlling interest" standard and decided that this standard would govern attribution for purposes of determining entrepreneur and small business eligibility for future auctions of C and F block licenses. However, in each of the past four C and F block auctions, we applied an attribution rule that provided for two "control group" equity exceptions—the "25 percent equity exception" and the "49.9 percent equity exception"—under which auction applicants could exclude from their gross revenue and asset totals the gross revenues and total assets of passive investors. Both exceptions required the applicant to form a "control group" within which "qualifying investors" owned at least 50.1 percent of the applicant's voting interests. Under the 25 percent equity exception, the applicant's control group was required to own at least 25 percent of the applicant's total equity; and, within the control group, qualifying investors were required to hold at least 15 percent of the applicant's total equity. Under the 49.9 percent equity exception, the applicant's control group was required to own at least 50.1 percent of the applicant's total equity; and, within the control group, qualifying investors were required to hold at least 30 percent of the applicant's total equity. If these and certain other requirements were met, the gross revenues and total assets of non-controlling investors were not attributed to the applicant.

6. For publicly-traded corporations with widely dispersed voting stock ownership, the Commission in the *Competitive Bidding Fifth Memorandum Opinion and Order* created an additional exception. Under the "publicly-traded corporations exception," applicable to the four C and F block auctions conducted to date, no person could own more than 15 percent of the applicant's equity or be able to control the election of more than 15 percent of the applicant's board of directors. Moreover, no person, other than the applicant's management or members of its board of directors, in their capacities as such, could have *de facto* control of the applicant. If these and certain other requirements were met, the gross revenues and total assets of persons holding an interest in the applicant were not attributed to the applicant.

7. *Discussion.* One commenter objects that under the control group exceptions, small, widely held, publicly-traded companies "cannot serve at the 'control group' level of the PCS applicant and are thereby effectively precluded from raising equity capital through the pursuit of joint ventures with non-controlling strategic investors." The commenter petitions the Commission either to allow publicly-traded companies to serve as control groups or to "extend the public company exemption to the control group level." While there was nothing in the control group rules explicitly preventing a publicly-traded company from using one of the control group equity exceptions or even from serving as the control group of an applicant, as a practical matter, these options were unlikely to be available to corporations that were publicly-traded. Nevertheless, we believe that the Commission provided such corporations with ample opportunity to obtain financing and to form strategic relationships with other entities. Such corporations were able, under the publicly-traded corporations exception, to sell classes of stock to strategic investors in amounts up to 15 percent of the corporation's equity. They were also permitted to obtain unlimited amounts of debt financing from, or enter into management agreements with, other entities, provided that such arrangements did not constitute a transfer of *de jure* or *de facto* control of the applicant or licensee. Given our recent determination that the controlling interest standard would apply to all future C and F block auctions, we dismiss as moot the commenter's request as to such auctions. Moreover, we believe that to relax the entrepreneurs' block exceptions in the manner the commenter's requests for existing C and F block licensees would seriously undermine the effectiveness of the financial caps and, for this reason, deny the commenter's petition with regard to such licensees.

IV. Reconsideration of the DEF Report and Order

A. Background

8. In the *DEF Report and Order*, the Commission, responding to the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Peña* ("*Adarand*"), modified its F block rules to make them race- and gender-neutral, as it previously had done for the C block.

B. Auction Timing

9. Two commenters ask that the Commission delay the start date of Auction No. 11. As stated, Auction No. 11, which began on August 26, 1996, concluded on January 14, 1997. Accordingly, the petitions of these commenters' are dismissed as moot.

C. Changes Resulting From Adarand

10. *Background.* In the *DEF Report and Order*, the Commission examined the F block auction rules in light of the Supreme Court's decision in *Adarand* that all racial classifications must be analyzed by a reviewing court under strict scrutiny. The Commission decided that it did not have sufficient evidence to support its F block race- and gender-based provisions and concluded that the F block rules should be race and gender neutral. Accordingly, the Commission modified the F block rules regarding control group equity structures, affiliation, installment payment plans, and bidding credits. The changes to the F block rules followed analogous modifications to the C block rules by the Commission in the *Competitive Bidding Sixth Report and Order*, which was upheld by the D.C. Circuit Court of Appeals in *Omnipoint* v. *FCC*. Two days after release of the *DEF Report and Order*, the Supreme Court clarified that under "intermediate scrutiny," the standard of review for gender classifications, the government must demonstrate an "exceedingly persuasive justification" in order to defend gender-based government action, emphasizing that such action is constitutional only if it serves an important governmental objective and is substantially related to the achievement of that objective.

11. In the *Second Further Notice*, 63 FR 770 (January 7, 1998), we sought comment on whether there is a compelling governmental interest that would justify the use of preferences for minority-owned businesses or an exceedingly persuasive justification to support gender-based preferences for women-owned businesses. In addition, we asked commenters to provide evidence in support of their positions and to indicate what measures, if any, could be narrowly tailored to withstand judicial review. We sought comment on what specifically tailored tools, such as bidding credits, might be appropriate or whether preferences should be given to minority-owned or women-owned businesses that also qualify as small businesses. In our recent *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), we noted that we did not receive any comments on these issues and concluded that because the record was sparse we did not believe that it was appropriate to adopt special provisions for minority- and women-owned businesses at that time.

12. *Discussion.* One commenter asks the Commission to reconsider its decision to eliminate race and gender preferences. It argues that the Commission is subject to fewer time pressures for the F block auction than it was for the initial C block auction and that the Commission has had the time to make, and should make, the factual showing necessary to justify reimplementing its race and gender F block provisions. This commenter's request is moot with regard to the two F block auctions already completed.

13. With regard to future F block auctions, we do not have a sufficient record to justify the reimplementation of race- and gender-based auction rules. As stated, we received no comments on these issues in response to the *Second Further Notice*. We note that our Office of Communications Business Opportunities has initiated several studies to examine ownership of telecommunications facilities by minority- and women-owned entities. Further, we have recently commenced several new studies to explore additional entry barriers and to seek further evidence of racial and gender discrimination against potential licensees. In addition, we will continue to track the rate of participation in our auctions by minority- and women-owned firms and evaluate this information with other data gathered to determine whether provisions to promote participation by minorities and women can satisfy judicial scrutiny. If a sufficient record can be adduced, we will consider race- and gender-based provisions for future auctions. We, therefore, deny the commenter's petition. We discuss other petitions addressing specific rule changes resulting directly or indirectly from the *Adarand* decision.

i. Control Group Equity Exception and Affiliation Exception

14. *Background. Control Group Equity Exception.* As explained earlier, the Commission's rules applicable to the four past C and F block auctions provided for two control group equity exceptions to the entrepreneurs' block financial caps. Under these exceptions, the gross revenues and total assets of certain persons or entities holding interests in an applicant were not considered for purposes of determining eligibility to participate in a C or F block auction. As originally adopted, the 49.9 percent equity exception was available only to women- and minority-owned businesses. In the *DEF Report and Order*, the Commission made the 49.9 percent equity exception available to all small businesses and entrepreneurs.

15. *Affiliation Exception.* In the *Competitive Bidding Sixth Report and Order*, the Commission modified an exception to the C and F block affiliation rules under which the gross revenues and assets of affiliates controlled by minority investors that were members of a C or F block applicant's control group were not attributed to the applicant. The exception as modified allowed every small business C block applicant to exclude the gross revenues and assets of any affiliates that did not exceed the entrepreneurs' block caps, provided that the gross revenues and total assets of all such affiliates of the small business applicant, when aggregated, did not exceed those caps. The modified exception was limited to C block applicants; language making the exception applicable to F block applicants was inadvertently eliminated. Subsequently, in the *DEF Report and Order*, instead of extending the exception to F block applicants, the Commission removed the exception entirely, expressing skepticism that the exception was still needed and acknowledging the argument that the exception might allow too many larger entities to qualify as small businesses. The Commission stated that it would consider waiver requests to allow participation in the first F block auction by parties that had participated in the first C block auction and had relied on the affiliation exception in structuring themselves.

16. *Discussion.* One commenter contends that elimination of the affiliation exception for the F block is unfair to F block bidders that participated in the original C block auction, because such bidders designed business plans that anticipated bidding in both blocks under the same bidding credit structure. We find this petition unpersuasive. As stated, the Commission offered Auction No. 11 applicants that had participated in the first C block auction the opportunity to request a waiver in order to be able to participate in Auction No. 11; however, the Commission received no such requests. Another commenter argues that the Commission should adopt the affiliation exception for the F block and eliminate the 49.9 percent equity exception or, alternatively, eliminate or retain both the affiliation and the 49.9 percent equity exceptions. As we noted, the Commission eliminated the affiliation exception for the C block as well as the F block; and we continue to believe that the exception may lead to abuses. Accordingly, we deny the requests of the two commenters' with regard to existing licensees. With regard to past auctions, we dismiss as moot the two commenters' petitions. Additionally, in light of our recent determination that the controlling interest standard will apply to all future C and F block auctions, we dismiss as moot the two commenters' petitions with regard to future auctions.

ii. C Block Licenses as Assets

17. *Background.* In the *DEF Report and Order*, the Commission decided not to treat C block licenses as assets for purposes of determining an applicant's eligibility for the then-upcoming F block auction, fearing that including such licenses might preclude C block winners from F block eligibility. The Commission stated that, because of the Commission's previous indications that the C and F blocks are linked, it would be unfair to disqualify C block winners from participation in the F block auction on the basis of their success in acquiring capital for the C block auction. Specifically, the Commission had earlier noted that the two blocks are contiguous and lend themselves to aggregation and that together they are subject to a cap on the number of licenses that may be won at auction. The Commission expressed concern that treating C block licenses as assets for purposes of eligibility for the initial F block auction could frustrate business plans and auction strategies made in reliance on the Commission's earlier statements. The Commission also noted that it was uncertain whether C block licenses that had already been won would be issued before the F block auction. Finally, the Commission decided that licenses other than C block licenses would be included in the total

asset calculations of applicants for the F block auction.

18. *Discussion*. Commenter asserts that it is inconsistent for the Commission not to require the inclusion of C block licenses in applicants' total asset valuations when the Commission requires A and B block broadband PCS licenses to be included in such valuations. Commenter argues further that Commission's decision will diminish opportunities for small businesses in the F block auction. The commenter also suggests that the issuance of C block licenses after Auction No. 11 to winners of F block licenses in Auction No. 11 could interfere with the ability of such license holders to maintain their eligibility as entrepreneurs. One commenter counters that another commenter has misconstrued the Commission's rules for maintaining entrepreneur eligibility and that, under the rules, entrepreneur eligibility is not lost simply because a license acquires additional licenses.

19. Because Auction No. 11 has already occurred, the commenter's petition is now moot as to that auction. We believe, however, that the Commission's decision was correct. In reaching this decision, the Commission determined that to prevent F block auction participation by C block winners on the basis of their earlier ability to raise capital within the limitations of our rules would be unfair. To further the Congressional objective that PCS licenses be disseminated among a wide variety of applicants, we encourage the success of C and F block licensees and recognize that such success is generally accompanied by asset growth. For this reason, we will not require applicants for participation in future auctions to treat either C or F block licenses as assets for purposes of determining applicants' C or F block entrepreneur eligibility. We will, however, continue to require that all other Commission licenses be included in the total asset calculations on the short-form applications for C and F block auctions. We also clarify that the acquisition by C or F block licenses of other Commission licenses, entrepreneurs' block or otherwise, will not of itself prevent licensees' continued eligibility to hold entrepreneurs' block licenses.

iii. Bidding Credits

20. *Background*. Under the originally adopted F block bidding credit rule, a small business was granted a 10 percent bidding credit; a business owned by members of minority groups or women was granted a 15 percent bidding credit; and a small business owned by members of minority groups or women was allowed to aggregate these bidding credits for a 25 percent bidding credit. In the *DEF Report and Order*, the Commission eliminated the race- and gender-based aspects of its bidding credit provisions and, instead, adopted a two-tiered approach. Under the modified rule, small businesses receive a 15 percent bidding credit and very small businesses receive a 25 percent bidding credit. In the *C Block Fourth Report and Order*, 63 FR 50791 (September 23, 1998), the Commission changed the C block bidding credit rule to adopt, for Auction No. 22 and subsequent C block auctions, the same two tiers that it had the F block.

21. *Discussion*. Commenter objects to the fact that the Commission did not adopt the same bidding credit for the F block that it had for the initial C block auction, a 25 percent bidding credit for all small businesses. Commenter argues that minority-owned bidders had an "understanding that, at a minimum, the Commission would preserve for them the rules as they existed in the C block auction." The Commission considered and rejected similar arguments in the *DEF Report and Order*. The Commission disagreed that entities interested in bidding in Auction No. 11 had the same expectations as C block applicants in structuring their businesses or formulating strategies in reliance on the tiered bidding credits originally adopted. The Commission explained, moreover, that the timing of the F block modification allowed the Commission to take a different approach than it had for the C block. The Commission also indicated that a two-tiered approach would ensure that the smallest businesses receive the greatest benefit. Commenter has not provided any new rationale to justify our deviating from this reasoning here, and its petition is therefore denied. We note, as mentioned, that under current rules, bidding credits are the same for C and F block licenses.

iv. Installment Financing

22. *Background*. The originally adopted F block rules provided for five different installment payment plans. One of these plans was available only to entities owned by members of minority groups or women, while another plan was restricted to small businesses owned by members of minority groups or women. To satisfy the requirements of *Adarand*, the Commission, in the *DEF Report and Order*, eliminated these two plans. Of the three remaining plans, one was available only to small businesses. With the elimination of the two plans restricted to minority groups or women, the small business plan became the likely choice for minority- and women-owned small businesses. The Commission modified this plan in the *DEF Report and Order*. As modified, the plan offers small businesses or small business consortia a two-year interest-only period with an interest rate equal to the ten-year U.S. Treasury rate and principal amortized over the remaining eight years of the license term. This plan has the same interest rate as, but a shorter interest-only period than, the two eliminated plans and also the plan available to small businesses in the first two C block auctions. The Commission concluded that the availability of the small business plan would provide minority- and women-owned businesses an opportunity to participate in the provision of spectrum-based services. The Commission explained that the build-out requirement for F block licenses is less stringent than it is for C block licenses and that a two-year interest only period would provide F block licensees a substantial period in which to construct their systems, while also encouraging them to provide service to the public quickly. It explained further that restricting the interest-only period to two years would deter speculation and insincere bidding. Finally, the Commission discussed how the revised small business installment payment plan was still extremely attractive in comparison to other financing options likely to be available to small businesses.

23. In the *Part 1 Third Report and Order*, 63 FR 2315 (January 15, 1998), we suspended the installment payment program. Accordingly, we decided in the *C Block Fourth Report and Order* not to offer installment payments for Auction No. 22. Most recently, in the *Part 1 Fifth Report and Order*, we decided to adhere to our previous decision to suspend the installment payment program.

24. *Discussion*. We received petitions from several commenters opposing the alterations in the *DEF Report and Order* to the F block installment financing plans and, in particular, objecting to the reduction of the interest-only payment period under the small business plan. Given our current suspension of installment payment financing, these petitions are, as a practical matter, moot with regard to future F block auctions. Furthermore, we believe that, even with the two-year interest-only period, the plan available to small business winners in Auction No. 11 provided them with sufficient assistance to build out their systems and provide timely service. For this reason, we decline to alter the terms of existing, F block installment loans.

D. Upfront Payment and Down Payment

25. *Background*. Under the originally adopted rules, participants in an F block auction were required to submit an upfront payment of $0.015 per MHz per pop (or bidding unit) for the maximum number of licenses on which they intended to bid in any one round. Winning bidders were required to supplement their upfront payment with a down payment sufficient to bring their total deposits up to 10 percent of their winning bid(s). Based upon its experience in the first C block auction, the Commission changed the rules in the *DEF Report and Order* to require an upfront payment of $0.06 per MHz per pop and a down payment that, including the upfront payment amount, would total 20 percent of a participant's winning bid(s).

26. In the *Part 1 Third Report and Order*, we affirmed the Commission's decision in the *Competitive Bidding Second Report and Order*, 59 FR 22980 (May 4, 1994), that the upfront payment amount and terms should be determined on an auction-by-auction basis. We also concluded that a standard down payment of 20 percent is appropriate for all auctionable services; however, we reserved the right, in the event of unusual circumstances affecting a particular service, to adopt a different down payment amount by rule in that service. Accordingly, in the *C Block Fourth Report and Order*, we modified our part 24 rules for the C and F blocks to reflect that upront payments would be established on an auction-by-auction basis and that winning C and F block bidders would be subject to the 20 percent down payment requirement of part 1 of the Commission's rule.

27. *Discussion*. These commenters all protest the changes in the *DEF Report and Order* to the F block upfront and/or down payment rules. With regard to past auctions, these petitions are moot. With regard to future auctions, we continue to adhere to the wisdom of tailoring the specific amount and terms of the upfront payment to each specific auction. We also maintain our conviction, expressed in the *Part 1 Third Report and Order*, that a 20 percent down payment is an appropriate amount to provide the Commission with sufficient assurance that a winning bidder will be able to pay the full amount of its winning bid and that it possesses the financial strength to attract the capital necessary to deploy and operate its system. In addition, we continue to believe that a 20 percent down payment facilitates our discovery early in the licensing process that an applicant might be unable to finance its winning bid.

E. Administrative Procedure

i. Contract With America Advancement Act

28. *Background*. Shortly before release of the *DEF Report and Order*, Congress enacted the Contract with America Advancement Act of 1996 (CWAAA), which, *inter alia*, requires generally that a "major rule" cannot take effect until 60 days after the later of the rule's publication in the Federal Register or submission by the Federal agency of a required report to Congress. Under CWAAA, a major rule is one—

> that the Administrator of the Office of Information and Regulatory Affairs [OIRA] of the Office of Management and Budget finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, [or] innovation * * *.

The Commission determined, and OIRA concurred, that the rule changes made in the *DEF Report and Order* were not major. Accordingly, the Commission made the rules effective 30 days after their July 1, 1996 Federal Register publication.

29. *Discussion*. Commenter contends that the Commission violated CWAAA by failing to determine that the rule changes resulting from the *DEF Report and Order* were major and delaying their effectiveness for at least 60 days after their Federal Register publication. By terms of the statutory language, OIRA's finding that the rule changes were not major is dispositive. Commenter's argument is therefore rejected.

ii. Regulatory Flexibility Act

30. Commenter also claims that the Commission failed to describe significant alternatives to the rules designed to minimize any significant economic impact on small entities as required by the Regulatory Flexibility Act (RFA). We disagree. The portion of the *DEF Report and Order*—the Final Regulatory Flexibility Analysis (FRFA)—addressing this RFA requirement refers to the substantive part of the Order, which discusses in great depth the impact of the rules on small businesses, alternatives considered, and why each alternative was rejected or adopted. Consolidation of the discussion of the impact on small businesses from the item into the FRFA would have been repetitive in this instance, where analyses of alternatives related to small businesses infuse the decision. Indeed, the commenter identifies no specific instances where the Commission omitted consideration of such alternatives. Accordingly, the commenter's petitions are denied.

V. Ordering Clauses

31. Authority for issuance of the *Order on Reconsideration* is contained in sections 4(i), 5(b), 5(c)(1), 309(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 155(b), 156(c)(1), 303(r), and 309(j). Accordingly, it is ordered that part 24 of the Commission's rules is amended as specified and becomes effective November 15, 2000.

List of Subjects in 47 CFR Part 24

Personal communications services.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 24 as follows:

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

2. Section 24.709 is amended by revising paragraphs (b)(5)(i)(D) and (b)(5)(ii) to read as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(D) Following termination of the three-year period specified in paragraph (b)(5)(i) of this section, qualifying investors must continue to own at least 10 percent of the applicant's (or licensee's) total equity unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(5)(i)(A) of this section. The restrictions specified in paragraph (b)(5)(i)(C)(1) through (b)(5)(i)(C)(4) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) whose control group's sole member is a preexisting entity, the 25 percent minimum equity requirements set forth in paragraph (b)(5)(i) of this section shall apply, except that only 10 percent of the applicant's (or licensee's) total equity must be held in qualifying investors, and that the remaining 15 percent of the applicant's (or licensee's) total equity may be held by qualifying investors, or noncontrolling existing investors in such control group member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 15 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(5)(i) of this section.

* * * * *

[FR Doc. 00–29323 Filed 11–14–00; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 927 and 970

RIN: 1991–AB55

Acquisition Regulations: Revision of Patent Regulations Relating to DOE Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Interim final rule and opportunity for public comment.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to improve the patent coverage relating to management and operating contracts. The clauses contained herein generally reflect the clauses used in such DOE contracts over the last five years. The changes made pursuant to this rule adapt patent related clauses to subcontracting under management and operating contracts, will result in clauses stated in "plain language," and will provide a complete set of patent clauses for all varieties of management and operating contract.

DATES: This rule is effective December 15, 2000. Comments on the interim final rule should be submitted by January 16, 2001.

ADDRESSES: Comments (3 copies) should be addressed to: Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Robert M. Webb at (202) 586–8264.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Explanation of Changes in the Patent Rights Clauses.
III. Procedural Requirements.
  A. Review Under Executive Order 12866.
  B. Review Under Executive Order 12988.
  C. Review Under the Regulatory Flexibility Act.
  D. Review Under the Paperwork Reduction Act.
  E. Review Under the National Environmental Policy Act.
  F. Review Under Executive Order 13132.
  G. Review Under the Unfunded Mandates Reform Act of 1995.
  H. Review Under the Treasury and General Government Appropriations Act, 1999.
  I. Congressional Review.

I. Background

The Department of Energy (DOE or Department) last revised its patent regulations covering management and operating contracts on March 2, 1995 at 60 FR 11824. That rule created two patent rights clauses, one for nonprofit contractors and a second for profit-making contractors. The former adapted the Bayh-Dole clause, granting title to inventions first conceived or reduced to practice under the contract to the contractor, for use in management and operating (M&O) contracts. The second clause retained title to those inventions in the United States. In the interim it has become apparent that the clauses could be designed to more effectively deal with the realities of performance under DOE management and operating contracts. There is a need to modify the specified clauses to reflect additional statutory requirements and the special treatment of exceptional circumstances in defense related activities. This interim final rule fulfills those needs.

This rulemaking establishes three clauses, one for nonprofit contractors, one for profit-making contractors where their contracts do not provide for technology transfer responsibilities, and a third for large profit-making contractors where their contracts do provide for technology transfer activities. The terms of the third clause reflect DOE's probable issuance of an advance waiver under which large profit-making management and operating contractors with a technology transfer mission will receive title to inventions. The individual class waiver that is likely to be granted may cause the actual terms of the patent clause used to vary from the model published here.

This interim final rule also adapts customary ancillary patent clauses to the special circumstances of DOE's management and operating contracts. The clause normally used to authorize and give consent to a contractor to use or manufacture an invention has been modified to allow a contractor to request and DOE to authorize copying copyrighted work. It also reflects that if a subcontractor is employed under a management and operating contract to perform research and development, the clause flowed down should use paragraph (a) as in the Federal Acquisition Regulation (FAR) Alternate 1, as opposed to the basic clause as is called for under paragraph (b) of the FAR clause.

The interim final rule limits the notice and assistance clause to subcontracts valued at $25,000 or more. The FAR clause limit for flowdown is the simplified acquisition threshold of $100,000.

The interim final rule establishes a flowdown for patent indemnity. In the area of royalties, the interim final rule provides for the contractor to provide to DOE information bearing on any royalty proposed to be paid after contract award. The relevant FAR provision does not foresee long term contracting with the variety of royalty activities that the Department is currently experiencing under its management and operating contracts.

This interim final rule also makes small changes to clauses for notice of right to request patent waiver and rights to proposal data, resulting from their being drafted in "plain language." Additionally, a change has been made to DEAR Part 927 to assure that the facilities license contained in the three M&O patent clauses is used in appropriate contracts not subject to Part 970.

II. Explanation of Changes in the Patent Rights Clauses

A. Plain Language

All clauses in this interim final rule, except the nonprofit clause at 970.5204–101, were rewritten from former clauses to incorporate suggested language and sentence structure for clarifying and simplifying contract provisions. For example, the clause language is written in the present tense and exceptions are generally stated at the beginning of regulatory provisions. Italicized headings were added to all subparagraphs. At such time as the FAR is revised to reflect "plain language," particularly with regard to the Bayh-Dole clause at FAR 52.227–11 (the core of the clause at 970.5204–101), which is overseen by the Department of Commerce, these regulations will be reviewed and revised as appropriate.

B. Organization of Clause Provisions

Modest changes were made to the organization of each of the patent rights clauses, so that like topics and provisions appear in a similar order in all of the clauses, as shown by the index. Also, if the same provision appeared in more than one clause, an effort was made to maintain similar paragraph lettering and text.

C. Allocation of Principal Rights: Exceptional Circumstance Subject Inventions, Inventions Related to National Security, and Treaties and International Agreements

The Allocation of Principal Rights paragraph (b) in each of the patent rights clauses is drafted according to the statutory disposition of rights in inventions depending on contractor type. In addition, paragraph (b) of clauses at 970.5204–101 and –103 include new subparagraphs addressing exceptional circumstance subject inventions and the disposition of rights controlled by treaties and international agreements (see 970.5204–101–(b)(3)&(4); –103–(b)(5)&(6)). Alternate 1 also provides for the allocation of rights in subject inventions related to weapons and national security, respectively, to be inserted under paragraph (b). These new provisions are located under allocation of principal rights because they affect the contractor's ability to take title.

D. Allocation of Principal Rights: Requests for Greater Rights by the Contractor and Contractor Employee-inventors, and the Assignment of Government Rights of Government Employee-inventors

The Allocation of Principal Rights paragraph (b) in each of the patent rights clauses includes provisions for the contractor and contractor employee-inventor to request greater rights in inventions, and for the Government to assign to the contractor the rights acquired from a Government employee-inventor (see 970.5204–101(b)(4)(5)&(6); –102(b)(2); –103(b)(7)(8)&(9)).

E. Subject Invention Disclosures

All of the patent rights clauses include a modified list of information required in a subject invention disclosure. The list provides DOE with sufficient information to oversee invention reporting.

F. Efficient Administration of Subject Inventions

Provisions appear in one or more of the patent rights clauses and address procedures for ensuring that all subject inventions are promptly reported by inventors to the contractor and by the contractor to DOE.

G. DOE Decisions Concerning Federally Funded Inventions

The clauses at 970.5204–101 and –103 that provide the contractor with the right to retain title to subject inventions, either by statute or under an advance class waiver, include a new provision which confirms that it is at DOE's sole discretion to accept or refuse the return of rights to a subject invention that had been previously elected by the contractor (see 970.5204–101(d)(4); –103(d)(1)).

The patent rights clause at 970.5204–102 does not contemplate the contractor's retention of rights in inventions, and, therefore, if such a restriction on the return of title should apply to a large business contractor whose contract has no technology transfer mission, it must be included in the terms and conditions of the instrument granting rights in the invention, *e.g.*, identified waiver. In addition, DOE's discretion to grant or refuse requests by the contractor for greater rights or for a contractor license is more clearly stated in all of the patent rights clauses, such that there is no confusion that a contractor does not automatically receive such rights simply by requesting them, but rather DOE may grant or refuse to grant such rights, ensuring Government missions and objectives are considered (see patent rights clauses 970.5204–101(b)(5)(6)&(7) and (e)(1); 970.5204–102(b)(2) and (d)(1)(i)); and 970.5204–103(b)(7)(8)&(9) and (e)(1)).

H. Withholding of Payment

The provision entitled *Withholding of payment* from former clause 48 CFR 970.5204–72 has been deleted from the for-profit clauses (970.5204–102 and –103). While the provision is applicable to prime contractors generally, such withholding is not a practice employed by the Contracting Officer with respect to M&O contracts.

I. Royalty Sharing and Balance of Royalties Provisions in the For-Profit, Advance Class Waiver Clause

The former nonprofit clause, 48 CFR 970.5204–71, includes royalty sharing and balance of royalties provisions under paragraph (k) entitled *Special provisions for contracts with nonprofit organizations*. Since this subject matter is addressed in the accompanying Technology Transfer Mission clause, these provisions clauses have been deleted from the nonprofit clause (970.5204–101), and omitted from the for-profit, advance class waiver clause (970.5204–103).

J. Rights Governed by Other Agreements

A provision specifying that rights to inventions made under certain third party agreements are governed by DOE approved provisions is omitted from the for-profit, advance waiver clause because it is covered in the Technology Transfer Mission clause, paragraph (n)(4), which must accompany the for-profit, advance waiver clause (970.5204–103) in an M&O contract.

K. Reports

The interim and final reports required by various provisions are collectively organized under a single paragraph, Reports, for each of the patent clauses (see 970.5204–101(m); 970.5204–102(k); 970.5204–103(m)).

L. Classified Inventions

The Classified Inventions provision from 10 CFR 600.27 has been modified and included in all of the clauses (see 970.5204–101(q); –102(m); –103(p)). The provision was included and not presented as an alternate because almost all of the DOE laboratories have the potential for engaging in research involving classified subject matter. The provision may be deleted if this is absolutely not the case, by approval of DOE patent counsel at the time of contracting.

M. Patent Functions

This new provision, already in most management and operating contracts, is included in each all the clauses (see 970.5204–101(r); –102(n); –103(r)). It requires the contractor to assist patent counsel with patent related functions.

N. Educational Awards Subject to 35 U.S.C. 212

This new provision, also already in most management and operating contracts, is included in two of the clauses (see 970.5204–101(s); –103(s)). It protects Government rights in research related to excepted areas of technology from possible allocation to students under 35 U.S.C. 212.

O. Annual Appraisal by Patent Counsel

This new provision, also already in most management and operating contracts, is included in all of the clauses (see 970.5204–101(t); –102(p); –103(t)). It allows, but does not require, DOE patent counsel to conduct annual appraisals to evaluate the contractor's effectiveness in identifying and protecting inventions.

P. Weapons Related Subject Inventions

Alternate 1 entitled *Weapons Related Subject Inventions* is available for the nonprofit clause and the for-profit, advance class waiver clause.

Q. Transfer of a Contractor License

DOE must approve the transfer of a contractor license in a subject invention. The former clause 48 CFR 970.5204–71(e)(1) (last sentence) provided for an exception: "except when transferred to the successor of that part of the Contractor's business to which the invention pertains."

R. Two Year Election Period for For-Profit Contractors Retaining Title Under an Advance Class Waiver

A two (2) year period for election to retain title has been included in subparagraph (c)(3) of the for-profit, advance class waiver, patent rights clause at 970.5204–103.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this interim final rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this interim final regulation meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. There is no legal requirement to propose today's rule for public comment, and, therefore, the Regulatory Flexiblility Act does not apply to this rulemaking proceeding.

D. Review Under the Paperwork Reduction Act.

This interim final rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et. seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this interim final rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, subpart D) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Specifically, this interim rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this interim final rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then Executive Order 13132 requires agencies to engage in intergovernmental consultation and take other steps before promulgating such a regulation or rule. This interim final rule merely provides for the Department a single set of clauses to govern patent rights in its contracts for the management and operation of major DOE sites and facilities. The action does not involve any substantial direct effects on States or other considerations stated in Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This interim final rulemaking would only affect private sector entities, and the impact is less than $100 million.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This interim final rule would not affect the family.

I. Congressional Notification

Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Secs. 801, 804), DOE will submit to Congress a report regarding the issuance of today's interim final rule prior to the effective date set forth at the outset of this notice. The report will note the Office of Management and Budget's determination that this rule does not constitute a "major rule" under that Act.

List of Subjects in 48 CFR Parts 927 and 970

Government procurement.

Issued in Washington, D.C. on October 6, 2000.

T.J. Glauthier,

Deputy Secretary, Department of Energy.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 927—PATENTS, DATA, AND COPYRIGHTS

1. The authority citation for Part 927 is revised to read as follows:

Authority: Atomic Energy Act of 1954, as amended (42 U.S.C. 2168, 2182, 2201); Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 (42 U.S.C. 7261a.); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); National Nuclear Security Administration Act (50 U.S.C. 4201 *et seq.*)

2. Section 927.303(c) is added to read as follows:

927.303 Contract clauses.

* * * * *

(c) Any contract that has as a purpose the design, construction, operation, or management integration of a collection of contracts for the same purpose, of a Government-owned research, development, demonstration or production facility must accord the Government certain rights with respect to further use of the facility by or on behalf of the Government upon termination of the contract. The patent rights clause in such contracts must include the following facilities license paragraph:

[Insert appropriate paragraph no.] *Facilities License*. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, title to, any rights or patents herein licensed.

(End of paragraph)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

3. The authority citation for Part 970 continues to read as follows:

Authority: Atomic Energy Act of 1954 (42 U.S.C. 2201); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); National Nuclear Security Administration Act (50 U.S.C. 2401 *et seq.*).

4. Sections 970.2701 through 970.2704 are revised and 970.2702–1 through 970.2702–6 are added to read as follows:

970.2701 General.

This subpart applies to negotiation of patent rights, rights in technical data provisions and other related provisions for the Department of Energy contracts for the management and operation of DOE's major sites or facilities, including the conduct of research and development and nuclear weapons production, and contracts which involve major, long-term or continuing activities conducted at a DOE site.

970.2702 Patent related clauses.

970.2702–1 Authorization and consent.

Contracting officers must use the clause at 970.5204–94, Authorization and Consent, instead of the clause at 48 CFR 52.227–2.

970.2702–2 Notice and assistance regarding patent and copyright infringement.

Contracting officers must use the clause at 970.5204–95, Notice and Assistance Regarding Patent and Copyright Infringement, instead of the clause at 48 CFR 52.227–2.

970.2702–3 Patent indemnity.

(a) Contracting officers must use the clause at 970.5204–96, Patent Indemnity-Subcontracts to assure that subcontracts appropriately address patent indemnity.

(b) Normally, the clause at 48 CFR 52.227–3 would not be appropriate for an M&O contract; however, if there is a question, such as when the mission of the contractor involves production, the contracting officer must consult with local patent counsel and use the clause where appropriate.

970.2702–4 Royalties.

Contracting officers must use the solicitation provision at 970.5204–97, Royalty Information, and the clause at 970.5204–98, Refund of Royalties instead of the provision at 48 CFR 52.227–8 and the clause at 48 CFR 52.227–9, respectively.

970.2702–5 Rights to proposal data.

Contracting officers must include the clause at 48 CFR 52.227–23, Rights to Proposal Data, in all solicitations and contracts for the management and operation of DOE sites and facilities.

970.2702–6 Notice of right to request patent waiver.

Contracting officers must include the provision at 970.5204–100 in all solicitations for contracts for the management and operation of DOE sites or facilities.

970.2703 Purposes of patent rights clauses.

(a) DOE sites and facilities are managed and operated on behalf of the Department of Energy by a contractor, pursuant to management and operating contracts that are generally awarded for a five (5) year term, with the possibility for renewal. Special provisions relating to patent rights are appropriately incorporated into an M&O contract because of the unique circumstances and responsibilities of managing and operating a Government-owned facility, as compared to other federally funded research and development contracts.

(b)(1) *Technology transfer mission clause.* In accordance with Public Law 101–189, section 3133(d), DOE may grant technology transfer authority to M&O contractors operating a DOE facility. Generally, M&O contractors have the right to elect to retain title to inventions made under the contract, whether a nonprofit or educational organizations, as a result of 35 U.S.C. 200 *et seq.* (Bayh-Dole Act), or a large business, as a result of a class patent waiver issued pursuant to 10 CFR part 784. Under such contracts, the M&O contractor assumes responsibilities for commercializing retained inventions, in accordance with the Technology Transfer Mission clause provided at 970.5204–40. That clause also governs such activities as the distribution of royalties earned from inventions made under the contract and the transfer of patent rights in inventions made under the contract to successor contractors.

(2) If the M&O contractor is a nonprofit organization or small business firm having technology transfer authority, the following clauses are inserted into the M&O contract: 970.5204–40 and 970.5204–101.

(3) If the M&O contract has technology transfer as mission and is to be performed by a for-profit, large business firm that has been granted an advance class waiver, the following clauses are inserted into the M&O contract: 970.5204–40 and 970.5204–103. The terms of the clause at 970.5204–103 are subject to modification to conform to the terms of the class waiver.

(4) If the M&O contract does not have a technology transfer mission and is to be performed by a for-profit, large business firm and does not have advance class waiver under 10 CFR part 784, the patent rights clause at 970.5204–102 is inserted into the M&O contract, and the Technology Transfer Mission clause is inapplicable.

(5) If the contractor is an educational institution, a non-profit organization or a small business firm and is conducting privately funded technology transfer activities, involving the use of private funds to conduct licensing and marketing activities related to inventions made under the contract in accordance with the Bayh-Dole Act, DOE may modify the patent rights clause (970.5204–101) to address issues such as the disposition of royalties

earned under the privately funded technology transfer program, the transfer of patent rights to a successor contractor, allowable cost restrictions concerning privately funded technology transfer activities, and the Government's freedom from any liability related to licensing under the contractor's privately funded technology transfer program.

(c) Contracting officers must consult with DOE patent counsel assisting the contracting activity or the Assistant General Counsel for Technology Transfer and Intellectual Property for assistance in selecting for use in the solicitation, negotiating, or approving appropriate patent rights clauses for a M&O contract. It may be appropriate to include more than one patent rights clause in a solicitation if the successful contractor could, for instance, be either an educational or a large business. If a large business may be selected for performance of a contract that will include a technology transfer clause, the solicitation must include the clause at 970.5204–103 to reflect the waiver that will likely be granted. If the solicitation includes more than one patent clause, it must include an explanation of the circumstances under which the appropriate clause will be used. The final award must contain only one patent rights clause.

970.2704 Patent rights clause provisions for management and operating contractors.

(a) *Allocation of principal rights: Bayh-Dole provisions.* If the management and operating contractor is an educational institution or nonprofit organization, the patent rights clause provided at 970.5204–101 must be inserted into the M&O contract. Such entities are beneficiaries of Bayh-Dole Act, including the paramount right of the contractor to elect to retain title to inventions conceived or first actually reduced to practice in performance of work under the contract, except in DOE-exempted areas of technology or in operation of DOE facilities primarily dedicated to naval nuclear propulsion or weapons related programs.

(b) *Allocation of principal rights: Government title.* (1) The patent rights clause provided at 970.5204–102 must be incorporated into the M&O contract if the contractor is a for-profit, large business firm and the contract does not have a technology transfer mission or if, without regard to the type of contractor, the contract is for the operation of a DOE facility primarily dedicated to naval nuclear propulsion or weapons related programs. That clause provides for DOE's statutory obligation to take title to inventions conceived or first actually reduced to practice in the course of or under an M&O contract, and does not contemplate an advance class waiver of Government rights in inventions, or participation by the contractor in technology transfer activities.

(2) While only in rare circumstances does a for-profit large business contractor whose contract contains no technology transfer mission receive rights in or title to inventions made under the contract, the contractor does have the right to request a license or foreign patent rights in inventions made under the contract, and may petition for a waiver of Government rights in identified inventions. The patent rights clause 970.5204–102 does not include many of the provisions of patent rights clauses 970.5204–101 and 970.5204–103, related to the filing of patent applications by the contractor, the granting of rights in inventions by the contractor to third parties (preference for United States industry), and conditions allowing the Government to grant licenses to third parties in inventions retained by the contractor (march-in rights). Any instrument granting rights in inventions made under a contract governed by patent rights clause 970.5204–102 must include these additional provisions within its terms and conditions.

(c) *Allocation of principal rights: Contractor right to elect title under an advance class waiver.* If the M&O contractor is a for-profit, large business firm and the Government has granted an advance class waiver of Government rights in inventions made in the course of or under the M&O contract, under the authority of the Atomic Energy Act of 1954 (42 U.S.C. 2182) and the Federal Nonnuclear Energy Act of 1974 (42 U.S.C. 5908(c)), the patent rights clause provided at 970.5204–103 must be inserted into the M&O contract, unless the terms and conditions of such an approved waiver alter or replace the patent rights clause provisions pursuant to 10 CFR part 784.

(d) *Extensions of time—DOE discretion.* The patent rights clauses for M&O contracts require the contractor to take certain actions within prescribed time periods to comply with the contract and preserve its rights in inventions. The M&O contractor may request extensions of time in which to take such actions by submitting written justification to DOE, and DOE may grant the contractor's requests, on a case-by-case basis. If the time period expired due to negligence by the contractor, DOE may grant a request for an extension of time upon a showing by the contractor that corrective procedures are in place to avoid such negligence in the future. If a contractor is requesting an extension of time in which to elect to retain title to an invention, DOE may grant the request if the extension allows the contractor to conduct further experimentation, market research, or other analysis helpful to determine contractor interest in electing title to the invention, among other considerations. Generally, the extensions of time are for periods of between six (6) months to one (1) year.

(e) *Facilities license.* These include the rights to make, use, transfer, or otherwise dispose of all articles, materials, products, or processes embodying inventions or discoveries used or embodied in the facility regardless of whether or not conceived or first actually reduced to practice under or in the course of such a contract. The patent rights clauses, 970.5204–101, 970.5204–102, and 970.5204–103, each contain a provision granting the Government this facilities license.

(f) *Deletion of classified inventions provision.* If DOE determines that the research, development, demonstration or production work to be performed during the course of a management and operating contract most probably will not involve classified subject matter or result in any inventions that require security classification, DOE patent counsel may advise the contracting officer to delete the patent rights clause provision entitled, "Classified Inventions" from the M&O contract.

(g) *Alternate 1—Weapons related research or production.* If DOE grants technology transfer authority to a DOE facility, pursuant to Public Law 101–189 section 3133(d), and the DOE owned facility is involved in weapons related research and development, or production, then Alternate 1 of the patent rights clauses must be inserted into the M&O contract. Alternate 1 defines weapons related subject inventions and restricts the contractor's rights with respect to such inventions.

970.5204–71 and 970.5204–72 [Removed]

5. Sections 970.5204–71 and 970.5204–72 are removed and reserved.

6. Sections 970.5204–94 through 970.5204–98 and 970.5204–100 through 970.5204–103 are added to read as follows:

970.5204–94 Authorization and consent.

Insert the following clause in solicitations and contracts in accordance with 970.2702–1:

Authorization and Consent (Nov. 2000)

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the contracting officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.

(c) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227–1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed $25,000).

(d) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities. Omission of an authorization and consent clause from any subcontract, including those valued less than $25,000 does not affect this authorization and consent.

(End of clause)

970.5204–95 Notice and assistance regarding patent and copyright infringement.

Insert the following clause in solicitations and contracts in accordance with 970.2702–2:

Notice and Assistance Regarding Patent and Copyright Infringement (Nov. 2000)

(a) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed $25,000.

(End of clause)

970.5204–96 Patent indemnity—subcontracts.

Insert the following clause in solicitations and contracts in accordance with 970.2702–3:

Patent Indemnity—Subcontracts (Nov. 2000)

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractors for any contract work subcontracted in accordance with FAR 48 CFR 52.227–3.

(End of clause)

970.5204–97 Royalty information.

Insert the following provision in solicitations in accordance with 970.2702–4:

Royalty Information (Nov. 2000)

(a) *Cost or charges for royalties.* If the response to this solicitation contains costs or charges for royalties totaling more than $250, the following information shall be included in the response relating to each separate item of royalty or license fee:

(1) Name and address of licensor;

(2) Date of license agreement;

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;

(5) Percentage or dollar rate of royalty per unit;

(6) Unit price of contract item;

(7) Number of units; and

(8) Total dollar amount of royalties.

(b) *Copies of current licenses.* In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents or other basis upon which the royalty may be payable.

(End of provision)

970.5204–98 Refund of royalties.

Insert the following clause in solicitations and contracts in accordance with 970.2702–4:

Refund of Royalties (Nov 2000)

(a) The contract price includes certain amounts for royalties, payable by the Contractor or subcontractors or both, reported to the Contracting Officer in accordance with the Royalty Information provision of the solicitation.

(b) During performance of this contract, if any additional royalty payments are proposed to be charged to the Government as cost under the contract that were not included in the original contract price, the Contractor agrees to submit for approval of the Contracting Officer prior to the execution of any licensing agreement the following information relating to each separate item of royalty or license fee:

(1) Name and address of licensor;

(2) Date of license agreement;

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;

(5) Percentage or dollar rate of royalty per unit;

(6) Unit price of contract item;

(7) Number of units; and

(8) Total dollar amount of royalties.

(9) In addition, if specifically requested by the Contracting Officer, the contractor shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

(c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or subcontracts, or the copying of such data or data that is copyrighted.

(d) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder.

(e) The Contractor is compensated for any royalties reported under paragraph (b) of this clause only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract.

(f) The Contracting Officer shall reduce the contract price to the extent any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract. The Contractor agrees to repay or credit the Government accordingly, as the Contracting Officer directs. Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to, a patent or the proprietary nature of data pursuant to which DOE makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (f) of this clause, the Contractor shall promptly notify the Contracting Office of that fact and shall promptly reimburse the Government in a corresponding amount.

(h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

(End of clause)

970.5204–100 Notice of right to request patent waiver.

Insert the following provision in solicitations in accordance with 970.2704–6:

Notice of Right To Request Patent Waiver (Nov. 2000)

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract, in advance of or within 30 days after the effective date of contracting. If such advance waiver is not requested or the request is denied, the Contractor has a continuing right under the contract to request a waiver of the rights of the Government in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Contractors that are domestic small businesses and domestic nonprofit organizations may not need a waiver and will have included in their contracts a patent clause reflecting their right to elect title to subject inventions pursuant to the Bayh-Dole Act (35 U.S.C. 200 *et seq.*).

(End of provision)

970.5204–101 Patent rights—management and operating contracts, nonprofit organization or small business firm contractor.

As prescribed in 970.2703(c), insert the following clause:

Patent Rights—Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor (Nov. 2000)

(a) Definitions.

(1) *DOE licensing regulations* means the Department of Energy patent licensing regulations at 10 CFR part 781.

(2) *Exceptional circumstance subject invention* means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii) and in accordance with 37 CFR 401.3(e).

(3) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Nonprofit organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(6) *Patent Counsel* means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity.

(7) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(8) *Small business firm* means a small business concern as defined at section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, are used.

(9) *Subject invention* means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) *Allocation of principal rights.* (1) *Retention of title by the Contractor.* Except for exceptional circumstance subject inventions, the contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) *Exceptional circumstance subject inventions.* Except to the extent that rights are retained by the Contractor in a determination of exceptional circumstances or granted to a contractor through a determination of greater rights in accordance with subparagraph (b)(4) of this clause, the Contractor does not have a right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:

(A) Uranium enrichment technology;

(B) Storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) National security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).

(ii) Inventions made under any agreement, contract or subcontract related to the following are exceptional circumstance subject inventions:

(A) DOE Steel Initiative and Metals Initiative;

(B) U.S. Advanced Battery Consortium; and

(C) Any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI).

(iii) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, tasks, or other classifications for the purpose of determining DOE exceptional circumstance subject inventions.

(3) *Treaties and international agreements.* Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at Appendix [*Insert Reference*] to this contract. DOE reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(4) *Contractor request for greater rights in exceptional circumstance subject inventions.* The Contractor may request rights greater than allowed by the exceptional circumstance determination in an exceptional circumstance subject invention by submitting such a request in writing to Patent Counsel at the time the exceptional circumstance subject invention is disclosed to DOE or within eight (8) months after conception or first actual reduction to practice of the exceptional circumstance subject invention, whichever occurs first, unless a longer period is authorized in writing by the Patent Counsel for good cause shown in writing by the Contractor. DOE may, in its discretion, grant or refuse to grant such a request by the Contractor.

(5) *Contractor employee-inventor rights.* If the Contractor does not elect to retain title to a subject invention or does not request greater rights in an exceptional circumstance subject invention, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may, in its discretion, grant or refuse to grant such a request by the Contractor employee-inventor.

(6) *Government assignment of rights in Government employees' subject inventions.* If a Government employee is a joint inventor of a subject invention or of an exceptional circumstance subject invention to which the Contractor has rights, the Government may assign or refuse to assign to the Contractor any rights in the subject invention or exceptional circumstance subject invention acquired by the Government from the Government employee, in accordance with 48 CFR 27.304–1(d). The rights assigned to the Contractor are subject to any provision of this clause that is applicable to subject inventions in which the Contractor retains title, including reservation by the Government of a nonexclusive, nontransferable, irrevocable, paid-up license, except that the Contractor shall file its initial patent application claiming the subject invention or exceptional circumstance invention within one (1) year after the assignment of such rights. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the Government employee, as DOE deems appropriate.

(c) *Subject invention disclosure, election of title and filing of patent application by contractor.* (1) *Subject invention disclosure.* The contractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s) and all sources of funding by B&R code for the invention. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. The disclosure shall include a written statement as to whether the invention falls within an exceptional circumstance field. DOE will make a determination and advise the Contractor within 30 days of receipt of an invention disclosure as to whether the invention is an exceptional circumstance subject invention. In addition, after disclosure to the Patent Counsel, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning any nonelectable subject invention such as an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(2) *Election by the Contractor.* Except as provided in paragraph (b)(2) of this clause, the Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) *Filing of patent applications by the Contractor.* The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, or prior to the end of any 1-year statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) *Contractor's request for an extension of time.* Requests for an extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2) and (3) may, at the discretion of Patent Counsel, be granted.

(5) *Publication approval.* During the course of the work under this contract, the Contractor or its employees may desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interest of DOE or the Contractor, approval for release or publication shall be secured from the Contractor personnel responsible for patent matters prior to any such release or publication. Where DOE's approval of publication is requested, DOE's response to such requests for approval shall normally be provided within 90 days except in circumstances in which a domestic patent application must be filed in order to protect foreign rights. In the case involving foreign patent rights, DOE shall be granted an additional 180 days with which to respond to the request for approval, unless extended by mutual agreement.

(d) *Conditions when the Government may obtain title.* The Contractor will convey to the DOE, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within sixty (60) days after learning of the failure of the Contractor to disclose or to elect within the specified times .

(2) In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c) above; provided, however, that if the Contractor has filed a patent application in a country after the times specified in subparagraph (c) above, but prior to its receipt of the written request of the DOE, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on; a patent on a subject invention.

(4) If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention to which the Contractor had initially retained title or rights, or in an exceptional circumstance subject invention to which the Contractor was granted greater rights, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(e) *Minimum rights of the Contractor and Protection of the Contractor's right to file.* (1) *Request for a Contractor license.* The Contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. DOE may grant or refuse to grant such a request by the Contractor. When DOE approves such reservation, the Contractor's license will normally extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) *Revocation or modification of a Contractor license.* The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781. This license will not be revoked in the field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application of the subject invention in that foreign country.

(3) *Notice of revocation of modification of a Contractor license.* Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781 concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor action to protect the Government's interest.*

(1) *Execution of delivery of title or license instruments.* The Contractor agrees to execute or to have executed, and promptly deliver to the Patent Counsel all instruments necessary to accomplish the following actions:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and

(ii) Convey title to DOE when requested under subparagraphs (b) or paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) *Contractor employee agreements.* The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) *Notification of discontinuation of patent protection.* The contractor will notify the Patent Counsel of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) *Notification of Government rights.* The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

(5) *Invention identification procedures.* The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a written description of such procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

(6) *Invention filing documentation.* If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel, upon request, the following information and documents:

(i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);

(ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and

(iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(7) *Duplication and disclosure of documents.* The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to the confidentiality provision at 35 U.S.C. 205 and 37 CFR part 40.

(g) *Subcontracts.* (1) *Subcontractor subject inventions.* The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) *Inclusion of patent rights clause—non-profit organization or small business firm subcontractors.* Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227–11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(2) of this clause. The subcontractor retains all rights provided for the contractor in the patent rights clause at 48 CFR 952.227–11.

(3) *Inclusion of patent rights clause—subcontractors other than non-profit organizations and small business firms.* Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227–13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work. For subcontracts subject to exceptional circumstances, the contractor must consult with DOE patent counsel with respect to the appropriate patent clause.

(4) *DOE and subcontractor contract.* With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) *Subcontractor refusal to accept terms of patent clause.* If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) *Notification of award of subcontract.* Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) *Identification of subcontractor subject inventions.* If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit to DOE on request, periodic reports, no more frequently than annually, on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any DOE supplemental regulations to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.*

If the Contractor is a nonprofit organization, it agrees that—

(1) *DOE approval of assignment of rights.* Rights to a subject invention in the United States may not be assigned by the Contractor without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions of this clause as the Contractor.

(2) *Small business firm licensees.* It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(2).

(3) *Contractor licensing of subject inventions.* To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(l) *Communications.* The Contractor shall direct any notification, disclosure or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity.

(m) *Reports.* (1) *Interim reports.* Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period.

(2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(n) *Examination of Records Relating to Subject Inventions.* (1) *Contractor compliance.* Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor compliance with any requirement of this clause.

(2) *Unreported inventions.* If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, including exceptional circumstance subject inventions, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) *Confidentiality.* Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) *Power of inspection.* With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(o) *Facilities License.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or product manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(p) *Atomic Energy.* (1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) *Patent agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (p)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(q) *Classified Inventions.* (1) *Approval for filing a foreign patent application.* The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) *Transmission of classified subject matter.* If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) *Inclusion of clause in subcontracts.* The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(r) *Patent Functions.* Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(s) *Educational Awards Subject to 35 U.S.C. 212.* The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) which is subject to treaties or international agreements as set forth in paragraph (b)(3) of this clause or agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(t) *Annual Appraisal by Patent Counsel.* Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(End of clause)

Alternate 1: Weapons Related Subject Inventions.

As prescribed at 970.2704–(k), insert the following as subparagraphs (a)(10) and (b)(7), respectively:

(a) *Definitions.*

(10) *Weapons related subject invention* means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy.

(b) *Allocation of Principal Rights.*

(7) *Weapons related subject inventions.* Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have the right to retain title to any weapons related subject inventions.

(End of Alternate)

970.5204–102 Patent rights—management and operating contracts, for-profit contractor, non-technology transfer.

Insert the following clause in solicitations and contracts in accordance with 970.2703(c):

Patent Rights—Management and Operating Contracts, For-Profit Contractor, Non-Technology Transfer (Nov 2000)

(a) *Definitions.* (1) *DOE licensing regulations* means the Department of Energy patent licensing regulations at 10 CFR part 781.

(2) *DOE patent waiver regulations* means the Department of Energy patent waiver regulations at 10 CFR part 784.

(3) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Patent Counsel* means DOE Patent Counsel assisting the contracting activity.

(6) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(7) *Subject Invention* means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) *Allocation of Principal Rights.* (1) *Assignment to the Government.* Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(2) of this clause or by a request for foreign patent rights in accordance with subparagraph (d)(2) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

(2) *Greater rights determinations.* The Contractor, or an Contractor employee-inventor after consultation with the Contractor and with the written authorization of the Contractor in accordance with DOE patent waiver regulations, may request greater rights, including title, in an identified subject invention than the nonexclusive license and the foreign patent rights provided for in paragraph (d) of this clause, in accordance with the DOE patent waiver regulations. Such a request shall be submitted in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE in accordance with subparagraph (c)(2) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor or Contractor employee-inventor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor pursuant to a determination of greater rights are subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency), and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(c) *Subject Invention Disclosures.* (1) *Contractor procedures for reporting subject inventions to Contractor personnel.* Subject inventions shall be reported to Contractor personnel responsible for patent matters within six (6) months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. Accordingly, the Contractor shall establish and maintain effective procedures for ensuring such prompt identification and timely disclosure of subject inventions to Contractor personnel responsible for patent matters, and the procedures shall include the maintenance of laboratory notebooks, or equivalent records, and other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and the maintenance of records demonstrating compliance with such procedures. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.

(2) *Subject invention disclosure.* The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after the subject invention is reported to Contractor personnel responsible for patent matters, in accordance with subparagraph (c)(1) of this clause, or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:

(i) The contract number under which the subject invention was made;

(ii) The inventor(s) of the subject invention;

(iii) A description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;

(iv) The date and identification of any publication, on sale or public use of the invention;

(v) The date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;

(vi) A statement indicating whether the subject invention concerns exceptional circumstances pursuant to 35 U.S.C. 202(ii), related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;

(vii) All sources of funding by Budget and Resources (B&R) code; and

(viii) The identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

(3) *Publication after disclosure.* After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor.

(4) *Contractor employee agreements.* The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(2) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(5) *Contractor procedures for reporting subject inventions to DOE.* The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.

(6) *Duplication and disclosure of documents.* The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR 401.13.

(d) Minimum rights of the Contractor. (1) Contractor License.

(i) *Request for a Contractor license.* Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(2) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

(ii) *Transfer of a Contractor license.* DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine the Contractor's license is non-transferrable, on a case-by-case basis.

(iii) *Revocation or modification of a Contractor license.* DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensee, or its domestic subsidiaries or affiliates achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.

(iv) *Notice of revocation or modification of a Contractor license.* Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations.

(2) *Contractor's right to request foreign patent rights.* If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention in the foreign country, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee. Such a request shall be submitted in writing to the Patent Counsel as part of the disclosure required by subparagraph (c)(2) of this clause, with a copy to the DOE Contracting Officer, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request, and may consider whether granting the Contractor's request best serves the interests of the United States.

(e) *Examination of records relating to inventions.* (1) *Contractor compliance.* Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.

(2) *Unreported inventions.* If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) *Confidentiality.* Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(f) *Subcontracts.* (1) *Subcontractor subject inventions.* The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) *Inclusion of patent rights clause—non-profit organization or small business firm subcontractors.* Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227–11, suitably modified to identify the parties in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202(a)(ii).

(3) *Inclusion of patent rights clause—subcontractors other than non-profit organizations and small business firms.* Except for the subcontracts described in subparagraph (f)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227–13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work.

(4) *DOE and subcontractor contract.* With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(5) *Subcontractor refusal to accept terms of patent rights clause.* If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) *Notification of award of subcontract.* Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) *Identification of subcontractor subject inventions.* If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.

(g) *Atomic Energy.* (1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) *Patent agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (g)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(h) *Publication.* The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent interests of DOE or the Contractor.

(i) *Communications.* The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(j) *Reports.* (1) *Interim reports.* Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (c)(1) and (c)(5) of this clause.

(2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(k) *Facilities license.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(l) *Classified inventions.* (1) *Approval for filing a foreign patent application.* The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) *Transmission of classified subject matter.* If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) *Inclusion of clause in subcontracts.* The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(m) *Patent functions.* Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(n) *Annual appraisal by Patent Counsel.* Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

970.5204–103 Patent rights—management and operating contracts, for-profit contractor, advance class waiver.

Insert the following clause in solicitations and contracts in accordance with 970.2703(c):

Patent Rights-Management and Operating Contracts, For-Profit Contractor, Advance Class Waiver (Nov. 2000)

(a) *Definitions.* (1) *DOE licensing regulations* means the Department of Energy patent licensing regulations at 10 CFR part 781.

(2) *DOE patent waiver regulations* means the Department of Energy patent waiver regulations at 10 CFR part 784.

(3) *Exceptional Circumstance Subject Invention* means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 CFR 401.3(e).

(4) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(5) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(6) *Patent Counsel* means DOE Patent Counsel assisting the contracting activity.

(7) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(8) *Subject Invention* means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) *Allocation of Principal Rights.* (1) *Assignment to the Government.* Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

(2) *Advance class waiver of Government rights to the Contractor.* DOE may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(3) *Government license.* With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to subparagraph (b)(2) or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Government has a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(4) *Foreign patent rights.* If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(5) *Exceptional circumstance subject inventions.* Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(7) of this clause, the Contractor does not have the right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and

interest, throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:

(A) Uranium enrichment technology;

(B) Storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) National security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).

(ii) Inventions made under any agreement, contract or subcontract related to the following initiatives or programs are exceptional circumstance subject inventions:

(A) DOE Steel Initiative and Metals Initiative;

(B) U.S. Advanced Battery Consortium; and

(C) Any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI).

(iii) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of defining DOE exceptional circumstance subject inventions.

(6) *Treaties and international agreements.* Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at Appendix [*Insert Reference*], to this contract. DOE reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(7) *Contractor request for greater rights.* The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE patent waiver regulations, by submitting a such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE pursuant to subparagraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(8) *Contractor employee-inventor rights.* If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may grant or refuse to grant such a request by the Contractor employee-inventor.

(9) *Government assignment of rights in Government employees' subject inventions.* If a DOE employee is a joint inventor of a subject invention to which the Contractor has rights, DOE may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE employee to the Contractor, consistent with 48 CFR 27.304–1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license provided for in subparagraph (b)(3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE employee, as DOE deems appropriate.

(c) *Subject invention disclosure, election of title, and filing of patent application by contractor.* (1) *Subject invention disclosure.* The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:

(i) The contract number under which the subject invention was made;

(ii) The inventor(s) of the subject invention;

(iii) A description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;

(iv) The date and identification of any publication, on sale or public use of the invention;

(v) The date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;

(vi) A statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;

(vii) All sources of funding by Budget and Resources (B&R) code; and

(viii) The identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

(2) *Publication after disclosure.* After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(3) *Election by the Contractor under an advance class waiver.* If the Contractor has the right to elect to retain title to subject inventions under an advance class waiver granted in accordance with subparagraph (b)(2) of this clause, and unless otherwise provided for by the terms of the advance class waiver, the Contractor shall elect in writing whether or not to retain title to any subject invention by notifying DOE within two (2) years of the date of the disclosure of the subject invention to DOE, in accordance with subparagraph (c)(1) of this clause. The notification shall identify the advance class waiver, state the countries, including the United States, in which rights are retained, and certify that the subject invention is not an exceptional circumstance subject invention or subject to a treaty or international agreement. If a publication, on sale or public use of the subject invention has initiated the 1-year statutory period under 35 U.S.C. 102(b), the period for election may be shortened by DOE to a date that is no more than sixty (60) days prior to the end of the 1-year statutory period.

(4) *Filing of patent applications by the Contractor under an advance class waiver.* If the Contractor has the right to retain title to a subject invention in accordance with an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, and unless otherwise provided for by the terms of the advance class waiver or greater rights determination, the Contractor shall file an initial patent application claiming the subject invention to which it retains title either within one (1) year after the Contractor's election to retain or grant of title to the subject invention or prior to the end of any 1-year statutory period under 35 U.S.C. 102(b), whichever occurs first. Any patent applications filed by the Contractor in foreign

countries or international patent offices shall be filed within either ten (10) months of the corresponding initial patent application or, if such filing has been prohibited by a Secrecy Order, within six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications.

(5) *Submission of patent information and documents.* If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel the following information and documents:

(i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);

(ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and

(iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(6) *Contractor's request for an extension of time.* Requests for an extension of the time to disclose a subject invention, to elect to retain title to a subject invention, or to file a patent application under subparagraphs (c)(1), (3), and (4) of this clause may be granted at the discretion of Patent Counsel or DOE.

(7) *Duplication and disclosure of documents.* The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR part 40.

(d) *Conditions when the Government may obtain title notwithstanding an advance class waiver.* (1) *Return of title to a subject invention.* If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention, including an exceptional circumstance subject invention, to which the Contractor retained title or rights under subparagraph (b)(2) or subparagraph (b)(7) of this clause, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(2) *Failure to disclose or elect to retain title.* Title vests in DOE and DOE may request, in writing, a formal assignment of title to a subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE, if the Contractor elects not to retain title to the subject invention under an advance class waiver, or the Contractor fails to disclose or fails to elect to retain title to the subject invention within the times specified in subparagraphs (c)(1) and (c)(3) of this clause.

(3) *Failure to file domestic or foreign patent applications.* In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c)(4) of this clause, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE; provided, however, that if the Contractor has filed a patent application in any country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE's written request for title, the Contractor continues to retain title in that country.

(4) *Discontinuation of patent protection by the Contractor.* If the Contractor decides to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE.

(5) *Termination of advance class waiver.* DOE may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (u) of this clause.

(e) *Minimum rights of the Contractor.* (1) *Request for a Contractor license.* Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

(2) *Transfer of a Contractor license.* DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine that the Contractor's license is non-transferrable, on a case-by-case basis.

(3) *Revocation or modification of a Contractor license.* DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.

(4) *Notice of revocation or modification of a Contractor license.* Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations.

(f) *Contractor action to protect the Government's interest.* (1) *Execution and delivery of title or license instruments.* The Contractor agrees to execute or have executed, and to deliver promptly to DOE all instruments necessary to accomplish the following actions:

(i) Establish or confirm the Government's rights throughout the world in subject inventions to which the Contractor elects to retain title;

(ii) Convey title in a subject invention to DOE pursuant to subparagraph (b)(5) and paragraph (d) of this clause; or

(iii) Enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.

(2) *Contractor employee agreements.* The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) *Contractor procedures for reporting subject inventions to DOE.* The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.

(4) *Notification of discontinuation of patent protection.* With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of a subject invention in a reexamination or opposition proceeding, in any country, not less than thirty (30) days before the expiration of the response period for any action required by the corresponding patent office.

(5) *Notification of Government rights.* With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any United States patent application and within any patent issuing thereon claiming a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(6) *Avoidance of royalty charges.* If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government and to provide for such refund in any instrument transferring rights in the subject invention to any party.

(7) *DOE approval of assignment of rights.* Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE.

(8) *Small business firm licensees.* The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.

(9) *Contractor licensing of subject inventions.* To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(g) *Subcontracts.* (1) *Subcontractor subject inventions.* The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) *Inclusion of patent rights clause—non-profit organization or small business firm subcontractors.* Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227–11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(5) of this clause.

(3) *Inclusion of patent rights clause—subcontractors other than non-profit organizations or small business firms.* Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227–13, suitably modified to identify the parties and any applicable exceptional circumstance, in any contract for experimental, developmental, demonstration or research work.

(4) *DOE and subcontractor contract.* With respect to subcontracts at any tier, DOE, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) *Subcontractor refusal to accept terms of patent rights clause.* If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such refusal and including relevant information for expediting disposition of the matter; and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) *Notification of award of subcontract.* Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) *Identification of subcontractor subject inventions.* If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.

(h) *Reporting on utilization of subject inventions.* Upon request by DOE, the Contractor agrees to submit periodic reports, no more frequently than annually, describing the utilization of a subject invention or efforts made by the Contractor or its licensees or assignees to obtain utilization of the subject invention. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information reasonably specified by DOE. Upon request by DOE, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE, in accordance with paragraph (j) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information privileged or confidential, DOE agrees not to disclose such information to persons outside the Government, to the extent permitted by law.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, DOE may waive the requirement for such an agreement upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE may, in accordance with the procedures in the DOE patent waiver regulations, require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by government regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement to substantially manufacture in the United States and required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Communications.* The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract .

(l) *Reports.* (1) *Interim reports.* Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.

(2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(m) *Facilities license.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(n) *Atomic energy.* (1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) *Patent agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (o)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(o) *Classified inventions.* (1) *Approval for filing a foreign patent application.* The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) *Transmission of classified subject matter.* If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) *Inclusion of clause in subcontracts.* The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(p) *Examination of records relating to inventions.* (1) *Contractor compliance.* Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.

(2) *Unreported inventions.* If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) *Confidentiality.* Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) *Power of inspection.* With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(q) *Patent functions.* Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(r) *Educational awards subject to 35 U.S.C. 212.* The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) any person who is subject to treaties or international agreements as set forth in paragraph (b)(6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(s) *Annual appraisal by Patent Counsel.* Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(t) *Publication.* The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent rights of DOE or the Contractor.

(u) *Termination of Contractor's advance class waiver.* If a request by the Contractor for an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (c) of this clause contains false material statements or fails to disclose material facts, and DOE relies on the false statements or omissions in granting the Contractor's request, the waiver or grant of any Government rights (in whole or in part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

(End of Clause)

Alternate 1—Weapons Related Subject Inventions

As prescribed at 970.2704–(k), insert the following as subparagraphs (a)(10) and (b)(8), respectively:

(a) *Definitions.*

(10) Weapons Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs , including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy.

(b) *Allocation of Principal Rights.*

(10) *Weapons related subject inventions.* Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.

(End of Alternate)

[FR Doc. 00–28629 Filed 11–14–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket OST–2000–7640]

RIN 2105–AC69

Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs; Threshold Requirements and Other Technical Revisions

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule revises the Department's regulations for its Disadvantaged Business Enterprise (DBE) program. This document changes threshold requirements for Federal Transit Administration recipients and Federal Aviation Administration recipients to establish DBE programs and submit overall goals. In addition, this document corrects and clarifies misleading language in the DBE final rule. This correction document adds examples of ways to collect information required for bidders lists. This document adds language clarifying that in order to verify whether a DBE firm actually performed the work they were committed, both commitments and attainments must be tracked and reported. Finally, this document corrects potentially misleading language regarding evidence that must be considered when setting overall goals.

EFFECTIVE DATE: This interim final rule is effective November 15, 2000. Comments concerning this document are due no later than January 2, 2001.

ADDRESSES: Interested persons should send comments to Docket Clerk, Docket No. OST–2000–7640, Department of Transportation, 400 7th Street, SW, Room PL–401, Washington, DC 20590. We request that, in order to minimize burdens on the docket clerk's staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/* at any time. Commenters who wish to file comments electronically should follow the instructions on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Laura Aguilar, Attorney, Office of General Counsel for Environmental, Civil Rights, and General Law, Department of Transportation, 400 Seventh Street, SW, Room 10102, Washington, DC 20590; Telephone: (202) 366–0365.

SUPPLEMENTARY INFORMATION:

1. Substantive Changes

DBE Programs

In Section 26.21(a)(2) of the rule, the Department states that Federal Transit Administration (FTA) recipients who receive $250,000 in a fiscal year in various forms of FTA assistance must have a DBE program. Similarly, subsection (a)(3) requires Federal Aviation Administration (FAA) recipients who receive grants of $250,000 or more in a fiscal year for airport planning and development to have a DBE program. The Department is changing the threshold to $250,000 in contracting opportunities. The change requires FTA recipients who project awarding more than $250,000 in prime contracts in a Federal fiscal year from FTA assistance to have a DBE program. Similarly, FAA recipients who project awarding more than $250,000 in prime contracts in a fiscal year from grants for airport planning and development are required to submit a plan. Prime contracts include goods as well as contracts for services.

The Department is making these changes to decrease the administrative burden on small airport and transit authorities. Many of these transit authorities and small airports receive more than $250,000 in FTA or FAA funds but only have a small amount of funding for actual contracting opportunities. For example, FAA grants funds for land acquisition projects. While many of these grants exceed $250,000, the value of contracting opportunities covered by the DBE program (*e.g.*, real estate appraisal and survey) is frequently well below $250,000. The major portion of the grant funds is generally for the land purchase itself, which is not a "DOT-assisted contract" under the definition of section 26.5.

Therefore, FTA and FAA recipients who reasonably anticipate awarding $250,000 or less in prime contracts in a fiscal year are not required to submit a DBE plan. This change affects new recipients or recipients who do not have a DBE program. The rule would also reduce burdens on recipients who already have DBE programs. If such a recipient anticipates awarding $250,000 or less in prime contracts it would not have to submit a DBE overall goal for that year.

Goal Setting

Section 26.45 requires recipients to submit new goals on August 1 of each year. Section 26.45 is being revised to exempt FTA or FAA recipients with existing DBE programs from setting updated overall goals when they do not project awarding prime contracts exceeding $250,000 (excluding vehicle transit purchases).

If a recipient is administering a DBE program, but is a FAA or FTA recipient who anticipates awarding $250,000 or less in prime contracts in a Federal fiscal year, the recipient is not required to develop overall goals for that fiscal year. However, the recipient's existing DBE program must remain in effect. For example, the recipient would still perform certification functions such as processing applications and obtaining no-change affidavits. If the recipient expects to award prime contracts exceeding $250,000 in the following fiscal year, it would be required to timely publish the proposed goal and submit the goal to the applicable DOT Operating Administration by August 1. Although not required, a FAA or FTA recipient who anticipates awarding $250,000 or less in prime contracts may submit a goal for that fiscal year. However, if a recipient chooses to submit a goal, it must meet all the requirements set forth in § 26.45. Of course, recipients must still seek to meet the objectives of § 26.1 of this part.

Many recipients may have already submitted their fiscal year 2001 goal to the applicable Operating Administration. If you are a recipient who submitted your goal, but under the revisions to this part are not required to submit a goal, your Operating Administration will contact you to ask whether you wish to have your goal in effect.

2. Technical Changes

Clarification Concerning Bidders Lists

Section 26.11(c) requires recipients to create and maintain a bidders list containing information about DBE and non-DBE contractors and subcontractors who seek work on a recipient's Federally-assisted contracts. The Department has received a number of questions regarding the appropriate method to collect the required information. Recipients have also expressed concern with collecting the annual gross receipts of firms, saying that firms have sometimes been reluctant to share this information.

In discussing this requirement in the DBE final rule, the Department recognized the difficulty in identifying subcontractors, particularly non-DBEs and all subcontractors that were unsuccessful in their attempts to obtain contracts. Consequently, the Department did not impose any procedural requirements for how the data is collected. The Department still believes that a recipient's data collection process should remain flexible. However, we are amending § 26.11(c) to emphasize the purpose of the bidders list and by providing examples of ways in which recipients may choose to collect the required data.

The Department is amending § 26.11(c)(1) to state that the purpose of maintaining a bidders list is to provide the most accurate data possible about the universe of DBE and non-DBE contractors and subcontractors who seek to perform work under a recipient's Federally-assisted contracts, for use in setting overall goals. We are also adding language stating that a recipient may collect the required data from all bidders, before or after the bid due date. They may also choose to conduct a survey that will result in a statistically sound estimate of the universe of DBE contractors and non-DBE contractors and subcontractors who seek to perform work under the recipient's Federally-assisted contracts. Additionally, we are clarifying that the data need not come from the same source. For example, a recipient may collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information. The Department believes that the approach should remain flexible so that recipients can choose the least burdensome and intrusive method.

With regard to a firm's annual gross receipts, we are amending the language in § 26.11(c) to clarify that recipients are not required to collect the exact dollar figure from the bidders. Recipients may ask a firm to indicate into what gross receipts bracket they fit (*e.g.*, less than $500,000; $500,000–$1 million; $1–2 million; $2–5 million; *etc.*) rather than requesting an exact figure from the firms. We note that this information on the size of a firm, as well as information collected about the firm's age, should be helpful to recipients in formulating narrowly tailored overall goals.

Clarification Concerning Monitoring and Counting DBE Participation

Section 26.37(b) requires recipients to have a mechanism to verify that the work committed to DBEs at contract award is actually performed by the DBEs. The language in the final rule states that recipients must provide for a running tally of actual DBE attainments. The preamble to the rule states, "Under the final rule, recipients would keep a running tally of the extent to which, on each contract, performance had matched promises." Verifying whether a DBE actually performed the work to which they were committed, necessarily requires the recipient to track both commitments and attainments.

We are rewording the language in § 26.37(b) to state that a recipient's DBE program must include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. In addition, we are adding a new paragraph (c) to clarify that a recipient's mechanism for providing a running tally of actual DBE attainments must include a means of comparing the attainments to commitments. We are also clarifying that both awards or commitments and attainments must be contained in a recipient's reports of DBE participation to the Department. In the forthcoming DOT uniform reporting form, we will provide a format for these reports.

Section 26.37(b) requires the mechanism providing for a running tally of actual DBE attainments to include a provision ensuring that the DBE participation is credited toward overall or contract goals only when payments are actually made to DBE firms. Since this requirement is already stated in § 26.55(h), we are removing it from § 26.37(b). Furthermore, we believe the wording of § 26.55(h) is confusing and we are, therefore, revising it. The point of the revised language is to emphasize that actual payment of committed funds to DBEs is a key element in determining whether a prime contractor has met its contract obligations.

Clarification Concerning Goal Setting

In setting overall goals, step 2 requires that recipients examine all evidence available in the jurisdiction to determine what adjustment, if any, is needed to the base figure. Sec. 26.45(d)(1) specifies information that must be considered when adjusting the base figure. Sec. 26.45(d)(2) lists additional information to be considered, but uses the language "you may also consider." The permissive language may be misleading. A narrowly tailored program requires that all relevant information be considered. We are merely clarifying that if the information is available, then it must be considered. Therefore, to avoid misleading language, we are changing the wording in § 26.45(d)(2) to say, "if available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete."

3. Interim Final Rule

This rule is being published as an interim final rule, without prior notice and opportunity to comment. The Department believes there is good cause for finding that providing prior notice and comment in connection with this rulemaking action is impracticable, unnecessary and contrary to the public interest since it concerns actions required to be taken on or around August 1, 2000. See 5 U.S.C. 553(b)(B).

The Department believes it is important to expedite these revisions in order to benefit DOT recipients this year. Under the DBE regulations, recipients who set their goals on a fiscal year basis are required to submit their goals on or around August 1 each year. In order to reduce administrative burdens on FTA and FAA entities receiving $250,000 or less in contracting opportunities, the rule must be effective as soon as possible, since August 1 has passed and recipients are still in the process of formulating goals and programs. Therefore, the Department finds good cause that compliance with notice and comment procedures in adoption of this interim final rule would be impractical, unnecessary and contrary to the public interest. See 5 U.S.C. 553(b)(B). For the same reasons, pursuant to 5 U.S.C. 553(d), it is determined that there is good cause for the interim final rule to become effective immediately upon publication. In addition, this interim final rule relieves a restriction.

All comments received will be filed in the docket. The docket is available for public inspection before and after the comment closing date. All comments received on or before the comment closing date will be considered before taking final action on this rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The provisions of this interim final rule may be changed in light of comments received.

Regulatory Analyses and Notices

These revisions to part 26 are not a significant rule under Executive Order 12866 or the Department's regulatory policies and procedures. While the Regulatory Flexibility Act does not, as such, apply to rules that do not involve a notice of proposed rulemaking, the Department has determined that the revisions will not have significant economic impacts on a substantial number of small entities. In fact, these revisions decrease costs to some small

entities. Further, these revisions do not have Federalism impacts sufficient to warrant the preparation of a Federalism impact statement.

List of Subjects in 49 CFR Part 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant—programs—transportation, Mass transportation, and Minority businesses.

Issued this 6th Day of November, 2000, at Washington, DC.

Rodney E. Slater,
Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 49 CFR part 26 as follows:

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for 49 CFR part 26 continues to read as follows:

Authority: 23 U.S.C. 324; 41 U.S.C. 2000d, *et seq.*; 49 U.S.C. 1615, 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105–178, 112 Stat. 107, 113.

2. In § 26.11, revise paragraph (c) to read as follows:

§ 26.11 What records do recipients keep and report?

* * * * *

(c) You must create and maintain a bidders list.

(1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.

(2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:

(i) Firm name;

(ii) Firm address;

(iii) Firm's status as a DBE or non-DBE;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (*e.g.*, less than $500,000; $500,000–$1 million; $1–2 million; $2–5 million; *etc.*) rather than requesting an exact figure from the firm.

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (*e.g.*, collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

3. In § 26.21, revise paragraphs (a)(2) and (a)(3) to read as follows:

§ 26.21 Who must have a DBE program?

(a) * * *

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding $250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding $250,000 in FAA funds in a Federal fiscal year.

* * * * *

4. In § 26.37, revise paragraph (b), and add paragraph (c) to read as follows:

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

* * * * *

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

(c) This mechanism must provide for a running tally of actual DBE attainments (*e.g.*, payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

5. Amend § 26.45 as follows:

a. Revise paragraph (a); and

b. In paragraph (d) (2) at the beginning of the sentence, remove "You may also consider available" and substitute "If available, you must consider" in its place. The revised text reads as follows:

§ 26.45 How do recipients set overall goals?

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) $250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in § 26.1.

* * * * *

6. In § 26.55, revise paragraph (h) to read as follows:

§ 26.55 How is DBE participation counted toward goals?

* * * * *

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

§ 26.89 [Amended]

7. In § 26.89(a)(3), remove "Room 2401" and add "Room 5414" in its place.

[FR Doc. 00–29100 Filed 11–14–00; 8:45 am]
BILLING CODE 4910-62-U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 991008273–0070–02; I.D. 110900A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit in the fishery for king mackerel in the northern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, November 12, 2000, through June 30, 2001, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone 727–570–5305, fax 727–570–5583, e-mail: Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on February 19, 1998 (63 FR 8353), NMFS implemented a commercial quota of 2.34 million lb (1.06 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. On April 27, 2000, NMFS' implemented final rule (65 FR 16336, March 28, 2000) divided the Florida west coast subzone of the eastern zone into northern and southern subzones and established a separate quota for the northern Florida west coast subzone of 175,500 lb (79,606 kg)(50 CFR 622.42(c)(1)(i)(A)(*2*)(*ii*)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B), from the date that 75 percent of the northern Florida west coast subzone's quota has been harvested until a closure of the subzone's fishery has been effected or until the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel from the northern Florida west coast subzone has been reached. Accordingly, a 500-lb (227 kg) trip limit applies to vessels in the commercial fishery for king mackerel in or from the EEZ in the northern Florida west coast subzone effective 12:01 a.m., local time, November 12, 2000, through June 30, 2001.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat. (a line directly east from the Miami-Dade County, FL, Boundary). The Florida west coast subzone is further divided into northern and southern subzones. The northern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL boundary) and 87°31'06' W. long. (a line directly south from the Alabama/Florida boundary).

Classification

This action responds to the best available information recently obtained from the fishery. The reduced trip limit must be implemented immediately because 75 percent of the quota has been harvested. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds, for good cause, that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 9, 2000.

Bruce C. Morehead

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–29271 Filed 11–9–00; 4:18 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 221
Wednesday, November 15, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–60–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Bell Helicopter Textron, Inc. (BHTI) Model 412 helicopters. The AD would require, within 25 hours time-in-service (TIS), reviewing the aircraft maintenance records and determining the number of landings for the high landing gear aft crosstube assembly (crosstube assembly); inspecting the crosstube assembly for damage; and replacing any unairworthy crosstube assembly. Additionally, the AD would require creating a component history card or equivalent record, and establishing a retirement life for each crosstube assembly. This AD would also require vibro-etching a part number (P/N) and serial number (S/N) on certain cross tube assemblies. This proposal is prompted by reported field failures of crosstube assemblies. The actions specified by the proposed AD are intended to detect damage that could lead to a fatigue crack in the crosstube assembly, failure of the crosstube assembly, and subsequent loss of control of the helicopter during landing.

DATES: Comments must be received on or before January 16, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–60–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–60–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–60–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes adopting a new AD for BHTI Model 412 helicopters. This proposal would require the following within 25 hours TIS:

- Reviewing the aircraft maintenance records and determining the number of landings for the crosstube assembly;
- Inspecting the crosstube assembly for damage and replacing any unairworthy crosstube assembly;
- Vibro-etching a P/N on certain crosstube assemblies;
- Vibro-etching a S/N on the crosstube assemblies;
- Creating a component history card or equivalent record for the crosstube assembly; and
- Revising the Airworthiness Limitations section of the maintenance manual by establishing a retirement life of 10,000 landings for crosstube assemblies, P/N 412–050–010–101 and 412–050–011–107 FM, and a retirement life of 20,000 landings for crosstube assemblies, P/N 412–050–045–107.

This proposal is prompted by reports of field failures of crosstube assemblies. Analysis of the failures indicates that a landing life limit must be assigned to the crosstube assembly. The actions specified by the proposed AD are intended to detect damage that could lead to a fatigue crack in the crosstube assembly, failure of the crosstube assembly, and subsequent loss of control of the helicopter during landing.

The FAA has reviewed BHTI Service Bulletin No. 412–99–97, dated January 8, 1999 (ASB), which describes procedures for verifying that the affected crosstube assemblies meet inspection criteria, assigning a retirement life on the affected crosstube assemblies; vibro-etching a P/N on those crosstube assemblies not displaying a visible P/N; vibro-etching a S/N on the affected crosstube assemblies, and providing information for calculating the number of landings.

We have identified an unsafe condition that is likely to exist or develop on other BHTI Model 412 helicopters of the same type design. The proposed AD would require, within 25 hours TIS, for affected crosstube assemblies, reviewing the aircraft maintenance records and determining the number of landings for the crosstube assembly; inspecting the crosstube assembly; replacing any unairworthy crosstube assembly with an airworthy crosstube assembly; vibro-etching the S/N on the crosstube assembly; creating a component history card or equivalent record; and establishing a retirement life. The AD would also require, on certain crosstube assemblies, vibro-etching a P/N.

The FAA estimates that 138 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,044 for crosstube assembly, P/N 412–050–010–101, and $11,415 for crosstube assembly, P/N 412–050–045–107. BHTI states in the ASB that customers with affected crosstube assemblies are eligible for a special rebate credit ranging from 25 percent of the replacement cost to 100 percent depending on the age of the crosstube assembly. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $875,472 to replace all crosstube assemblies with crosstube assembly, P/N 412–050–010–101, or $1,616,670 to replace all crosstube assemblies with crosstube assembly, P/N 412–050–045–107. The total costs would be $41,400 for labor if all of the crosstube assemblies were replaced with 100 percent parts credit.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

BELL HELICOPTER TEXTRON, INC.: Docket No. 2000–SW–60–AD.

Applicability: Model 412 helicopters with high landing gear aft crosstube assembly (crosstube assembly), part number (P/N) 412–050–010–101, 412–050–011–107 FM, or 412–050–045–107, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Bell Helicopter Textron, Inc. Alert Service Bulletin 412–99–97, dated January 8, 1999, pertains to the subject of this AD.

To prevent a fatigue crack in the crosstube assembly, failure of the crosstube assembly, and subsequent loss of control of the helicopter during landing, accomplish the following:

(a) Within 25 hours time-in-service (TIS) and thereafter before installing a replacement crosstube assembly:

(1) Review the aircraft maintenance records and determine the number of landings for the crosstube assembly. Operators who do not have landing records may determine the number of landings by multiplying the hours TIS of the crosstube assembly by a factor of 4. If the number of hours TIS of the crosstube assembly is unknown, within 30 days, remove the crosstube assembly from service and replace it with an airworthy crosstube assembly.

(2) Inspect the crosstube assembly for damage. If damage exceeds the maximum allowable damage limits and repair criteria, as specified in the applicable maintenance manual, before further flight, replace it with an airworthy crosstube assembly.

(3) Vibro-etch the P/N on the crosstube assembly adjacent to the skid tube saddle in accordance with Figure 1 for any crosstube assembly not displaying a visible P/N. Identify the crosstube assembly as P/N 412–050–011–107 FM.

(4) Vibro-etch a serial number (S/N) on the crosstube assembly below the P/N in accordance with Figure 1. The S/N must be unique for each crosstube assembly.

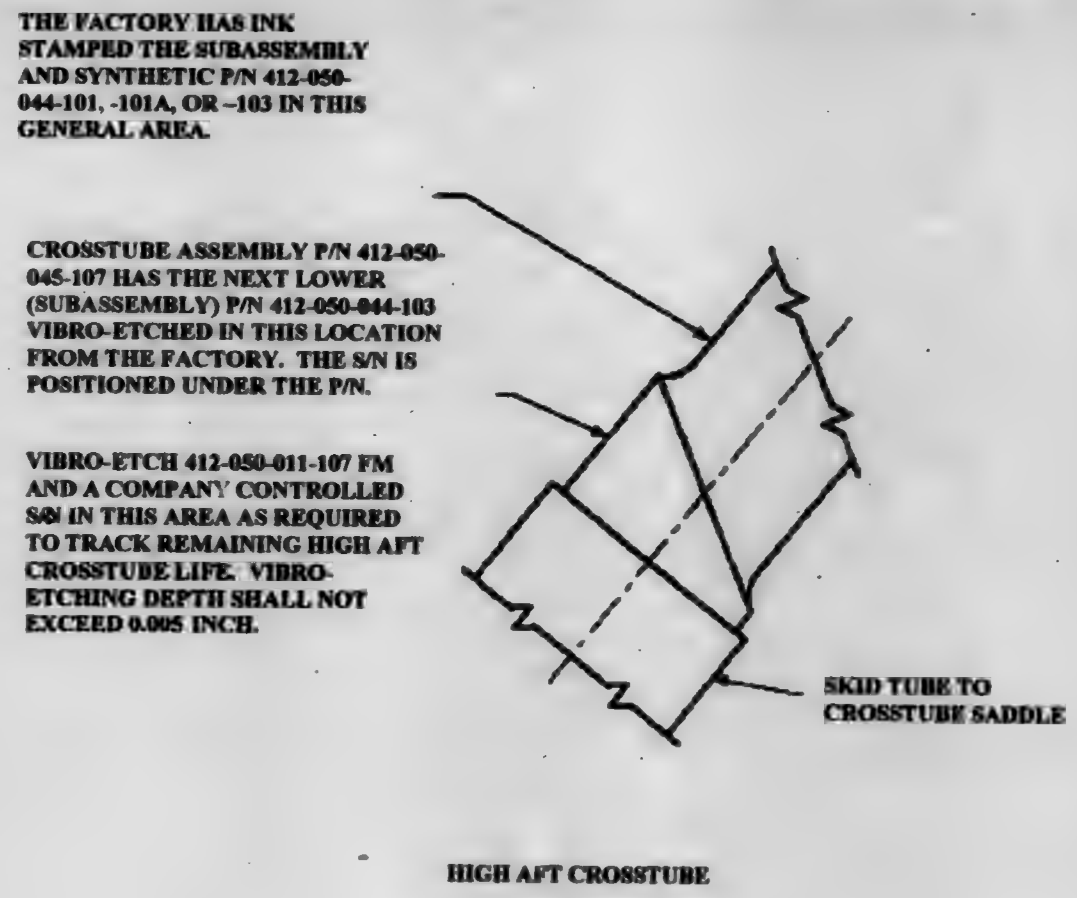
THE FACTORY HAS INK STAMPED THE SUBASSEMBLY AND SYNTHETIC P/N 412-050-044-101, -101A, OR –103 IN THIS GENERAL AREA.
CROSSTUBE ASSEMBLY P/N 412-050-045-107 HAS THE NEXT LOWER (SUBASSEMBLY) P/N 412-050-044-103 VIBRO-ETCHED IN THIS LOCATION FROM THE FACTORY. THE S/N IS POSITIONED UNDER THE P/N.
VIBRO-ETCH 412-050-011-107 FM AND A COMPANY CONTROLLED S/N IN THIS AREA AS REQUIRED TO TRACK REMAINING HIGH AFT CROSSTUBE LIFE. VIBRO-ETCHING DEPTH SHALL NOT EXCEED 0.005 INCH.
SKID TUBE TO CROSSTUBE SADDLE
HIGH AFT CROSSTUBE

FIGURE 1

(5) Create a component history card or equivalent record for each crosstube assembly and enter the P/N, S/N, and the accumulated number of landings derived in accordance with paragraph (1).

(6) Begin tracking the number of landings for each crosstube assembly on the component history card or equivalent record.

(b) For a crosstube assembly, P/N 412–050–010–101 or 412–050–011–107 FM, on or before accumulating 10,000 landings or within 25 hours TIS after the effective date of this AD, whichever occurs later, replace the crosstube assembly with an airworthy crosstube assembly.

(c) For a crosstube assembly, P/N 412–050–045–107, on or before accumulating 20,000 landings or within 25 hours TIS after the effective date of this AD, whichever occurs later, replace the crosstube assembly with an airworthy crosstube assembly.

(d) This AD revises the Airworthiness Limitations section of the Maintenance Manual by establishing a life limit of 10,000 landings for the crosstube assembly, P/N 412–050–010–101 and 412–050–011–107 FM, and 20,000 landings for the crosstube assembly, P/N 412–050–045–107.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on November 8, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–29211 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–285–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This proposal would require replacement of nuts on the clevis assemblies that support the auxiliary tracks of the inboard leading edge slats. This action is necessary to prevent loose or missing nuts on the clevis assemblies,

which could cause the inboard leading edge slats to be loose or in an incorrect position and result in partial or total failure or loss of the slats. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–285–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–285–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–285–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–285–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that the airplane manufacturer found discrepancies in two production lots of nuts used on the clevis assemblies that support the auxiliary tracks of the inboard leading edge slats on Boeing Model 777 series airplanes. The nuts had inadequate self-locking capability. In service, this condition could result in loose or missing nuts, which could cause the inboard leading edge slats to be loose or in an incorrect position. This condition, if not corrected, could result in partial or total failure or loss of the slats.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 777–57–0038, dated February 24, 2000, which describes procedures for replacement of nuts on the clevis assemblies that support the auxiliary tracks of the inboard leading edge slats with new nuts. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

The compliance time for the proposed actions in paragraph (a) of this AD is 18 months after the effective date of this AD. For these actions, the service bulletin recommends a compliance time of 1,500 days after delivery of the airplane or 18 months after receipt of the service bulletin, whichever occurs later. The FAA finds that, by the time the proposed rule becomes effective, more than 1,500 days after the date of delivery will have passed for all airplanes subject to the proposed rule. Therefore, for simplicity and clarity, this proposed rule only includes the 18-month compliance time.

Cost Impact

There are approximately 121 airplanes of the affected design in the worldwide fleet. The FAA estimates that 34 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,080, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–285–AD.

Applicability: Model 777 series airplanes, line numbers 1 through 155 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent loose or missing nuts on the clevis assemblies that support the auxiliary tracks of the inboard leading edge slats, which could cause the slats to be loose or in an incorrect position and result in partial or total failure or loss of the slats, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, replace nuts having part number NAS1805–5L on the clevis assemblies that support the auxiliary tracks (outboard, center, and inboard) of the inboard leading edge slats with new nuts purchased from the airplane manufacturer after October 31, 1999, in accordance with Boeing Special Attention Service Bulletin 777–57–0038, dated February 24, 2000.

Spares

(b) As of the effective date of this AD, no person shall install any nut having part number NAS1805–5L on any airplane unless it was purchased from the airplane manufacturer after October 31, 1999.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 8, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29214 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Service (CHAMPUS): Enuretic Devices, Breast Reconstructive Surgery, PFPWD Valid Authorization Period, Early Intervention Services

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends CHAMPUS to remove the exclusion of enuresis alarms, to correct contradictory language as it relates to breast reconstructive surgery, to change the valid period of an authorization for services and items under the Program for Persons with Disabilities (PFPWD), to establish the CHAMPUS payment relationship for IDEA Part C services and items, and to provide for early intervention services.

DATES: Written comments will be accepted until January 16, 2001.

ADDRESSES: Forward comments to the Office of CHAMPUS Management Activity, 16401 East Centretech Parkway, Aurora, CO. 80011–9043.

FOR FURTHER INFORMATION CONTACT: Margaret Brown and Michael Kottyan, Office of Medical Benefits and Reimbursement Systems, telephone (303) 676–3581 and (303) 676–3520 respectively.

SUPPLEMENTARY INFORMATION: The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) supplements the availability of health care in military hospitals and clinics. This proposed rule removes the exclusion of enuresis alarms, corrects contradictory language as it relates to breast reconstructive surgery, changes the valid period of an authorization for services and items under the Program for Persons with Disabilities (PFPWD), and establishes the CHAMPUS payment relationship for IDEA Part C services and items, and revises a statement to the paragraph at 32 CFR 199.4(g)(15)(i)(D).

Enuretic Device

The CHAMPUS Management Activity received a request from the medical community that we re-evaluate our policy regarding enuretic devices, which currently are excluded from cost sharing under the CHAMPUS Basic Program. Recent literature review indicates that the medical community considers enuresis alarms the most effective method for treating enuresis. Having found no contradictory evidence, we agree that enuretic devices should be removed from the exclusions in the regulation. The removal of this exclusion will allow physicians to select rational treatment options and insure that CHAMPUS pays only for the most appropriate and highest quality medical care possible.

Enuretic conditioning programs are also specifically excluded from CHAMPUS cost sharing. Enuretic conditioning programs will continue to be excluded. The basis for excluding enuretic conditioning programs is to restrict the payment for professional guidance on the use of these devices to an attending physician.

Breast Reconstructive Surgery

Benefits under the basic program are not available for cosmetic, reconstructive, or plastic surgery. However, the regulation provides exceptions for procedures that are essentially cosmetic when performed in response to a congenital anomaly, post mastectomy breast reconstruction for malignancy, fibrocystic disease, or other covered mastectomies, an accidental injury or disfiguring scars resulting from neoplastic surgery.

The regulation currently contains contradictory provisions relating to post mastectomy breast reconstruction. 32 CFR 199.4(e)(8)(i)(D) specifically authorizes post mastectomy breast reconstruction. However, 32 CFR 199.4(e)(8)(ii)(D) excludes breast augmentation mammoplasty even when performed as a part of post mastectomy breast reconstruction procedure. Because an augmentation mammoplasty is an integral part of most post mastectomy breast reconstruction procedures, it is inconsistent to exclude it as a part of that procedure.

Further, in the context of post mastectomy breast reconstruction, reduction mammoplasty may be performed to achieve symmetry of the collateral breast. This too is an integral part of the post mastectomy breast reconstruction process and should not be excluded from cost sharing by CHAMPUS. We are adding language to clarify the rule that reduction mammoplasty on the collateral breast is an authorized part of the post mastectomy breast reconstruction procedure. Cosmetic, reconstructive or plastic surgery that is performed to reshape normal structures of the body in order to improve the patient's appearance and self-esteem remains an exclusion.

PFPWD Valid Authorization Period

The regulation currently provides that a valid authorization for receipt of services and items under the Program for Persons with Disabilities (PFPWD) shall not exceed six consecutive months. For services that are required for more than six months, and for durable equipment and durable medical equipment that are prorated for more than six months, this requirement places unnecessary hardship on the family of an individual with a disability and additional administrative workload on the managed care support contractors. Changing the valid period of a PFPWD authorization to a maximum of twelve months enhances the PFPWD without compromising its accountability.

Early Intervention Services

Part C of the Individuals with Disabilities Education Act (IDEA) Amendments of 1997, Public Law 105–17, enacted June 4, 1997, provides financial assistance to States to, among other provisions, facilitate the coordination of payment for early intervention services from Federal, State, local, and private sectors (including public and private insurance coverage). Early intervention services are developmental services provided to individuals under age three (3) who have a developmental delay or who would be at risk of experiencing a substantial developmental delay if those services were not provided.

Part C, Section 640, Payer of Last Resort, establishes that funds provided in accordance with the Act may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense. This language establishes CHAMPUS as first payer for medical services and items provided as early intervention services in accordance with Part C and that are otherwise allowable under the CHAMPUS Basic Program or the Program for Persons with Disabilities.

Statement at the Paragraph 32 CFR 199.4(g)(15)(i)(D)

The revised statement clarifies that the consensus among experts must be based on reliable evidence.

Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million, or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare and make available for public comment, a regulatory flexibility analysis when the agency issues a Regulation which would have a significant impact on a substantial number of small entities.

This is neither a significant regulatory action under Executive Order 12886, nor would it have a significant impact on small entities. The changes set forth in the proposed rule are minor revisions to the existing regulation. In addition, this proposed rule does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

Paperwork Reduction Act

The changes set forth in this proposed rule are minor revisions to the existing regulation. This rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995. It will be seen as an enhancement of military benefits. It will provide greater parallel between CHAMPUS benefits and the standards of care now offered in the health care community. If however, any program implemented under this rule causes such a burden to be imposed, approval therefore will be sought of the Office of Management and Budget in accordance with the Act, before implementation. All public comments are invited.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

Civilian Health and Medical Program of the Uniformed Service (CHAMPUS)

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2 is proposed to be amended by adding at the end of the definition for *Double coverage plan* a new paragraph (v) to read as follows:

§ 199.2 Definitions.

* * * * *

Double coverage plan. * * *

(v) Part C of the Individuals with Disabilities Education Act for medical services and items provided in accordance with the Individualized Family Service Plan and that are otherwise allowable under the CHAMPUS Basic Program or the Program for Persons with Disabilities.

3. Section 199.4 is proposed to be amended by removing paragraph (e)(8)(ii)(D); amending paragraph (g)(15)(i)(D) by adding "the reliable evidence shows that the" after the word "If"; and by revising paragraphs (e)(8)(iv)(C), (e)(8)(iv)(E), and (g)(58) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(8) * * *

(iv) * * *

(C) *Augmentation mammoplasties.* Augmentation mammoplasties, except for breast reconstruction following a covered mastectomy and those specifically authorized in paragraph (e)(8)(i) of this section.

* * * * *

(E) *Reduction mammoplasties.* Reduction mammoplasties unless there is medical documentation of intractable pain, not amenable to other forms of treatment) resulting from large, pendulous breasts) or unless performed as an integral part of an authorized breast reconstruction procedure under paragraph (e)(8)(i)(C) of this section, including reduction of the collateral breast for purposes of ensuring breast symmetry.

* * * * *

(g) * * *

(58) *Enuretic.* Enuretic conditioning programs, but enuretic alarms may be cost-shared when determined to be medically necessary in the treatment of enuresis.

* * * * *

4. Section 199.5 is proposed to be amended by revising paragraph (a)(4)(iii) and adding a new paragraph (a)(5)(v) to read as follows:

§ 199.5 Program for Persons with Disabilities (PFPWD).

(a) * * *

(4) * * *

(iii) *Valid period.* An authorization for a PFPWD service or item shall not exceed twelve consecutive months.

(5) * * *

(v) The requirements of paragraph (a)(5) of this section notwithstanding, no Public Facility Use Certification is required for medical services and items that are provided under Part C of the Individuals with Disabilities Education Act in accordance with the Individualized Family Service Plan and that are otherwise allowable under the CHAMPUS Basic Program or the PFPWD.

* * * * *

5. Section 199.8 is proposed to be amended by adding paragraph (d)(5) to read as follows:

§ 199.8 Double coverage.

* * * * *

(d) * * *

(5) The requirements of paragraph (d)(4) of this section notwithstanding, CHAMPUS is a primary payer for medical services and items that are provided under Part C of the Individuals with Disabilities Education Act in accordance with the Individualized Family Service Plan and that are otherwise allowable under the CHAMPUS Basic Program or the Program for Persons with Disabilities.

* * * * *

Dated: November 7, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–29013 Filed 11–14–00; 8:45 am]

BILLING CODE 5001–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WI96–01–7327b; FRL–6901–4]

Approval and Promulgation of State Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: We are approving a request from the Wisconsin Department of Natural Resources (WDNR) submitted to the Environmental Protection Agency (EPA) on November 5, 1999 to redesignate a portion of the City of Rhinelander (Oneida County) Wisconsin from a primary sulfur dioxide (SO_2) nonattainment area to attainment. EPA designated a portion of the City of Rhinelander as a primary SO_2 nonattainment area on October 12, 1984. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rules based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received by December 15, 2000.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulations Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section (AR–18J), Air Programs Branch, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 27, 2000.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. 00–29222 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FL–86–200028(b); FRL–6902–3]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Section 111(d) Plan for the State of Florida submitted by the Florida Department of Environmental Protection (DEP) on September 16, 1999, for implementing and enforcing the Emissions Guidelines applicable to existing Hospital/Medical/Infectious Waste Incinerators. The Plan was submitted by the Florida DEP to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, EPA is approving the Florida State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule published in this **Federal Register**. If no significant, material, and adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments must be received in writing by December 15, 2000.

ADDRESSES: Written comments should be addressed to Joey Levasseur at the

EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3014. Joey Levasseur, (404) 562–9035.

Florida Department of Environmental Protection, Air Resources Management Division, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey Levasseur at (404) 562–9035 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register** and incorporated by reference herein.

Dated: October 25, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–29218 Filed 11–14–00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MO 117–1117; FRL–6900–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Landfill Emissions From Municipal Solid Waste Landfills; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the state of Missouri's section 111(d) plan for controlling emissions from existing municipal solid waste (MSW) landfills. The plan was submitted to fulfill the requirements of sections 111 and 129 of the Clean Air Act. The revised state plan incorporates revisions to the Emissions Guideline for MSW landfills promulgated by EPA in 1998 and 1999.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by December 15, 2000.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: October 25, 2000

Dennis Grams,

Regional Administrator, Region 7.

[FR Doc. 00–29057 Filed 11–14–00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6900–6]

Massachusetts: Interim Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant interim authorization to The Commonwealth of Massachusetts for certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by December 15, 2000.

ADDRESSES: Send written comments to Robin Biscaia, Hazardous Waste Program Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; Telephone: (617) 918–1642. Copies of the Commonwealth of Massachusetts' revision application and the materials which EPA used in evaluating the revision (the "Administrative Record") are available for inspection and copying during normal business hours at the following locations: Massachusetts Department of Environmental Protection Library, One Winter Street—2nd Floor, Boston, MA 02108, business hours: 9 a.m. to 5 p.m., telephone: (617) 292–5802; or EPA New England Library, One Congress Street—11th Floor, Boston, MA 02114–2023, business hours: 9 to 4, telephone: (617) 918–1990.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Program Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone: (617) 918–1642.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: November 2, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

[FR Doc. 00–29060 Filed 11–14–00; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7404]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order [illegible]866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arizona	Yavapai County and Incorporated Areas.	Blue Tank Wash	Just upstream of Yavapai-Maricopa County Boundary.	None	*2,176
			Approximately 200 feet upstream of Yavapai-Maricopa County Boundary.	None	*2,179
		Powerhouse Wash Tributary 1.	Just upstream of Yavapai-Maricopa County Boundary.	None	*2,262
			Approximately 800 feet upstream of Yavapai-Marciopa County Boundary.	None	*2,297
		Powerhouse Wash Tributary 2.	Just upstream of Yavapai-Maricopa County Boundary.	None	*2,280
			Approximately 300 feet upstream of Yavapai-Maricopa County Boundary.	None	*2,286
		Sols Wash	Just downstream of Atchison, Topeka and Santa Fe Railway.	None	*2,364
			Approximately 1,500 feet upstream of Atchison, Topeka and Santa Fe Railway.	None	*2,401
		Wash P	Just upstream of Yavapai-Maricopa County Boundary.	None	*2,131
			Approximately 600 feet upstream of Yavapai-Maricopa County Boundary.	None	*2,147

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Verde River	Just downstream of North 5th Street	*3,297	*3,297
			Approximately 800 feet north of Yavapai Street.	*3,302	*3,303

Maps for Yavapai County are available for inspection at 500 Marina Street, Prescott, Arizona 86301.
Send comments to The Honorable Chip Davis, Chairman, Yavapai County, 1015 Fair Street, Room 310, Prescott, Arizona 86301.

Maps for the Town of Cottonwood are available for inspection at the Public Works Office, 1490 West Mingus Avenue, Cottonwood, Arizona.
Send comments to The Honorable Ruben Jauregi, Mayor, City of Cottonwood, 827 North Main Street, Cottonwood, Arizona 86326.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Mountain Home (City). Barton County	Hicks Creek	Approximately 3,000 feet upstream of Hicks Road.	*682	*682
			Just upstream of Arkansas Highway 201	*835	*833
		Indian Creek	At confluence with Hicks Creek	*752	*753
			At Bradley Street	*819	*819

Maps are available at 720 South Hickory, Mountain Home, Arkansas.
Send comments to the Honorable Joe Dillard, Mayor, City of Mountain Home, 720 South Hickory, Mountain Home, Arkansas 72653.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Texarkana (City) Miller County.	Lost Creek	Approximately 1,400 feet downstream of Oats Street.	None	+313
			Approximately 1,000 feet upstream of Old Post Road.	None	+353
		Love Creek	Approximately 2,700 feet downstream of East Broad Street.	*301	+301
			Just upstream of Missouri Pacific Railroad.	None	+313
			Approximately 600 feet upstream of Meadows Road.	None	+378
		Love Creek Tributary	Approximately 1,200 feet downstream of Magee Drive.	None	+357
			Approximately 250 feet upstream of Meadows Road.	None	+377
		McKinney Bayou Tributary	Approximately 5,000 feet downstream of Sugar Hill Road.	None	+271
			Approximately 2,800 feet upstream of State Highway 245.	None	+312
		McKinney Bayou Tributary 2A.	Approximately 5,500 feet downstream of Sugar Hill Road (State Route 296).	None	+266
			Just upstream of Sugar Hill Road (State Route 296).	None	+306
			Approximately 3,300 feet upstream of Sugar Hill Road (State Route 296).	None	+324
		McKinney Bayou Tributary 2B.	At confluence with McKinney Bayou Tributary 2A.	None	+306
			Approximately 2,000 feet upstream of Confluence with McKinney Bayou Tributary 2A.	None	+318
		McKinney Bayou Tributary 3.	Approximately 3,200 feet downstream of Sugar Hill Road.	None	+271
			Approximately 650 feet upstream of Interstate 30.	None	+315
		McKinney Bayou Tributary 4.	Approximately 650 feet downstream of Sugar Hill Road.	None	+280
			Approximately 5,500 feet upstream of Sugar Hill Road.	None	+315

*Elevation in feet (NGVD of 1929) (To convert to NAVD, subtract 0.04 feet from NGVD elevation)
+Elevation in feet (NAVD of 1988)

Maps are available for inspection at 216 Walnut Street, Texarkana, Arkansas.
Send comments to The Honorable Danny Gray, Mayor, City of Texarkana, P.O. Box 2711, Texarkana, Arkansas 71854.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Fresno County (Unincorporated Areas).	San Joaquin River	Just upstream of Southern Pacific Railroad.	*170	*168
			Approximately 1.10 miles upstream of State Highway 41.	*272	*280
			Just downstream of Friant Dam	*314	*329

Maps are available for inspection at the Fresno County Library, 2420 Mariposa Street, Fresno, California 93721.
Send comments to The Honorable Judy Case, Chairperson, Fresno County, 2281 Tulare Street, Room 301, Fresno California

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Fresno (City) Fresno County.	San Joaquin River	Just upstream of State Highway 99	None	*245

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1.10 miles upstream of State Highway 41.	*272	*280

Maps are available for inspection at 2600 Fresno Street, Fresno, California.
Send comments to The Honorable Jim Patterson, Mayor, City of Fresno, City Hall, 2600 Fresno Street, Fresno, California, 93721.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Madera County (Unincorporated Areas).	San Joaquin River	Just upstream of State Highway 99	None	*245
			Just downstream of Friant Dam	*314	*329

Maps are available for inspection at 209 West Yosemite Avenue, Madera, California.
Send comments to The Honorable John Z, Silva, Chairman, Madera County Board of Supervisors, 209 West Yosemite Avenue, Madera, California, 93637.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Colorado	Silver Plume (Town) Clear Creek County.	Clear Creek	Approximately 800 feet downstream of Interstate 70.	*9,000	*9,002
			Approximately 300 feet upstream of Burleigh Street Extended.	*9,143	*9,142

Maps are available for inspection at Town Hall, 487 Main Street, Silver Plume, Colorado.
Send comments to The Honorable Gregory Heine, Mayor, Town of Silver Plume, P.O. Box 457, Silver Plume, Colorado 80476.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Colorado	Silverthorne (Town) Summit County.	Blue River	Approximately 3,400 feet downstream of Hamilton Circle Road.	None	+8,619
			Approximately 1,150 feet upstream of U.S. Route 70.	*8,771	+8,773
		Willow Creek	Approximately 700 feet downstream of Legend Lake Circle.	*8,698	+8,865
			Approximately 550 feet upstream of Ranch Road.	None	+8,869
		Straight Creek	Just downstream of River Road	*8,768	+8,772
			Approximately 750 feet upstream of Route 9.	*8,847	*8,841

*Elevation in feet (NGVD) (To convert to NAVD, add 5.28 feet to NGVD elevation)
+Elevation in feet (NAVD of 1988)

Maps are available for inspection at 601 Center Circle, Silverthorne, Colorado.
Send comments to The Honorable Lou Del Piccolo, Mayor, Town of Silverthorne, P.O. Box 1309, Silverthorne, Colorado 80498.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Colorado	Summit County (Unincorporated Areas).	Willow Creek	At confluence with Blue River	*8,674	*8,674
			Approximately 400 feet upstream of Ranch Road.	None	*8,864
		Blue River	Approximately 3,400 feet downstream of Winegard Road.	*8,565	*8,565
			Approximately 2,400 feet upstream of Interstate 70.	None	*8,777

Maps are available for inspection at 0037 Summit County Road, #1005, Town of Frisco, Colorado.
Send comments to The Honorable Gary Lindstrom, Chairperson, Summit County Board of Supervisors, P.O. Box 68, Breckenridge, Colorado 80498.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Idaho	Ada County and Incorporated Areas.	Boise River	Approximately 5,800 feet downstream of Star Road.	*2,451	+2,458
			Approximately 50 feet upstream of Eagle Road.	*2,555	+2,559
			Approximately 3,150 feet upstream of South Eckert Road.	*2,762	+2,764
		Loggers Creek (Side Channel).	Approximately 925 feet upstream of Broadway Avenue (at downstream confluence with Boise River.	*2,699	+2,703
		Overflow Channel Boise River.	At confluence with Boise River	None	+2,576
			At confluence with South Channel Boise River Eagle Island.	None	+2,585
	Ada County and Incorporated Areas (cont'd).	South Channel Boise River.	Approximately 4,675 feet downstream of Linder Road (at downstream confluence with Boise River).	*2,507	+2,510
			At upstream confluence with Boise River	*2,590	+2,593

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

*Elevation in feet (NGVD) (to convert to NAVD, add 3.1 feet to NGVD elevation)
+Elevation in feet (NAVD of 1988)

Maps for Ada County are available for inspection at the County Engineer's Office, 650 Main Street, Second Floor, Boise, Idaho.
Send comments to The Honorable Roger Simmons, Chairman, Ada County Board of Commissioners, 650 Main Street, Boise, Idaho 83702.

Maps for the City of Boise are available for inspection at the Community Planning and Development Office, 150 North Capitol Boulevard, Second Floor, Boise, Idaho.

Send comments to The Honorable H. Brent Coles, Mayor, City of Boise, 150 North Capitol Boulevard, Boise, Idaho 83701–0500.

Maps for the City of Eagle are available for inspection at 310 East State Street, Eagle, Idaho.
Send comments to The Honorable Rick Yzaguirre, Mayor, City of Eagle, 310 East State Street, Eagle, Idaho 83616.

Maps for Garden City are available for inspection at City Hall, 201 East 50th Street, Garden City, Idaho.
Send comments to the Honorable Ted Ellis, Mayor, City of Garden City, 201 East 50th Street, Garden City, Idaho 83714.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Idaho	Moscow (City) Latham County.	Paradise Creek	Approximately 1,700 feet downstream of Burlington Northern Railroad.	*2,529	*2,530
			Approximately 350 feet upstream of park footbridge.	*2,613	*2,613
		Paradise Creek (University Overflow).	Approximately 1,200 feet downstream of Rayburn Street.	*2,552	*2,552
			Approximately 1,500 feet upstream of Third Street.	*2,560	*2,561
		Paradise Creek (Mountain View Road Overflow).	Approximately 2,000 feet downstream of Harold Avenue.	None	*2,584
			Just downstream of Mountain View Road	None	*2,594

Maps are available for inspection at 122 East 4th Street, Moscow, Idaho.
Send comments to The Honorable Marshall H. Comstock, Mayor, City of Moscow, 206 East 3rd Street, Moscow, Idaho 83843.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Idaho	Latah County (Unincorporated Areas).	Paradise Creek	Approximately 1,200 feet downstream of Joseph Street.	*2,587	*2,586
			Approximately 1,600 feet downstream of Darby Road.	*2,614	*2,614

Maps are available for inspection at 522 South Adams, Moscow, Idaho.
Send comments to The Honorable Loreca Stauber, Latah County Board of Commissioners, 522 South Adams, Moscow, Idaho 83843.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Iowa	Akron (City) Plymouth County.	Big Sioux River	Approximately 400 feet west of the intersection of South Street and Route 12.	None	*1,136
			Just upstream of Route 48	None	*1,144

Maps are available for inspection at the Akron City Hall, 220 Reed Street, Akron, Iowa 51001.
Send comments to The Honorable Harold Higman, Mayor, City of Akron, P.O. Box 318, 220 Reed Street, Akron, Iowa 51001.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Iowa	Plymouth County (Unincorporated Areas).	Big Sioux River	Just upstream of the Plymouth and Woodbury County boundary.	None	*1,111
			Approximately 1,000 feet downstream of Route 48.	None	*1,142

Maps are available for inspection at the Plymouth County Courthouse, 215—4th Avenue, Southeast, LeMars, Iowa 51031.
Send comments to The Honorable Paul Sitzmann, Mayor, 214—3rd Avenue, Southeast, LeMars, Iowa 51031.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Iowa	Shell Rock (City) Butler County.	Shell Rock River	Approximately 4,900 feet downstream of Cherry Street.	None	*900
			Approximately 5,000 feet upstream of Cherry Street.	None	*909
		Shell Rock River Overflow Channel.	At confluence with Shell Rock River	None	*900
			Immediately downstream of Lake Street	None	*902

Maps are available for inspection at 303 South Cherry Street, Shell Rock, Iowa.
Send comments to The Honorable Richard Greenlee, Mayor, City of Shell Rock, P.O. Box 522, Shell Rock, Iowa 50670.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Iowa	Sioux City (City) Woodbury County.	Big Sioux River	Approximately 3,000 feet downstream of intersection of Riverside Boulevard and Interstate 29.	*1,090	*1,090
			Just upriver of Military Road	*1,103	*1,103
			Just downriver of Interstate 29	*1,094	*1,094
			Just downstream of the Plymouth and Woodbury County boundary.	*1,111	*1,110

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified

Maps are available for inspection at the City of Sioux City City Hall, 520 Pierce Street, Sioux City, Iowa 51107.
Send comments to The Honorable Marty Dougherty, Mayor, City of Sioux City, 520 Pierce Street, Sioux City, Iowa 51107.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Iowa	Westfield (City) Plymouth County.	Big Sioux River	Approximately 300 feet downstream of the confluence of Westfield Creek.	None	*1,123
			Approximately 4,500 feet upstream of the confluence of Westfield Creek.	None	*1,124

Maps are available for inspection at 233 Union Street, Westfield, Iowa 51062.
Send comments to The Honorable Paul Bringman, Mayor, City of Westfield, 233 Union Street, Westfield, Iowa 51062.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Louisiana	Livingston Parish and Incorporated Areas.	Amite River	Approximately 1,200 feet downstream of U.S. Highway 190.	*42	*44
			At the intersection of Cockerham Extended and North Range Avenue.	*46	*50
		Killian Bayou	At confluence with Tickfaw River-Lower Reach.	None	*8
			Approximately 3,300 feet upstream of Louisiana Highway 22.	None	*10
		Tickfaw River Lower Reach.	Approximately 1,400 feet downstream of Cypress Drive Extended.	None	*7
			Approximately 5,400 feet upstream from confluence of Butler Bayou.	None	*9
		Amite River	Approximately 1,300 feet downstream of Goodtime Road Extended.	*8	*8
			Just downstream of Illinois Central Gulf Railroad.	*45	**47
			Approximately 2,000 feet northwest of the intersection of Route 16 and Route 63.	None	*86
		Beaver Creek	At confluence with Amite River	*51	*52
			Just downstream of Fore Road	*72	*72
			Just upstream of Fore Road	*73	None
		West Fork of Beaver Creek.	At confluence with Beaver Creek	None	*62
			Just upstream of Bob West Road	*70	None
		Clinton Allen Lateral	At confluence with Beaver Creek	None	*53
			Just downstream of Louisiana Highway 1024.	None	*66
		West Colyell Creek	Just upstream of Cave Market Road	*68	*68
			Just upstream of Sims Road	None	*86
		Dumplin Creek	Approximately 1,500 feet downstream of Aydell Lane.	*40	*41
			Just upstream of U.S. Highway 190	*44	*43
			Approximately 500 feet downstream of Whit Holden Road.	*49	*49
			Approximately 500 feet downstream of Whit Holden Road.	None	*49
			Approximately 200 feet upstream of Westcoll Road.	None	*51
		East Fork Dumplin Creek	Approximately 1,000 feet downstream of Meadow Crossing Drive.	None	*48
			Approximately 100 feet downstream of Louisiana Highway 1029.	None	*49
		Tickfaw River	Just upstream of Interstate 12	None	*37
			Just upstream of Horseshoe Road West Extended.	None	*76
		Tickfaw River Lower Reach.	Approximately 1,400 feet downstream of Cypress Drive Extended.	None	*7
			Approximately 5,400 feet upstream from confluence of Butler Bayou.	None	*9
		Amite River	Southwest of Legion Road near Colyell Bay.	*12	*13
			At Willis Bayou and Route 16	*16	*16
		Amite River	At Route 16 and Plantation Road	None	*8
			Just south of Route 16/42 at Colyell Bay	None	*13
		East Fork Dumplin Creek	At confluence with Dumplin Creek	*44	*43
			Approximately 1,000 feet downstream of Meadow Crossing Drive.	*49	*48

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified

Maps for the City of Denham Springs are available for inspection at 941 Government Street, Denham Springs, Louisiana.
Send comments to The Honorable James E. DeLaune, Mayor, City of Denham Springs, P.O. Box 1629, Denham Springs, Louisiana 70727.

Maps for the Village of Killian are available for inspection at 20161 Iowa Street, Livingston, Louisiana.
Send comments to The Honorable Gillis Windham, Mayor, Village of Killian, P.O. Box 546, Springfield, Louisiana 70462.

Maps for Livingston Parish are available for inspection at 20161 Iowa Street, Livingston, Louisiana.
Send comments to The Honorable Dewey Ratcliff, President, Livingston Parish, P.O. Box 427, Livingston, Louisiana 70754.

Maps for the Village of Port Vincent are available for inspection at 20161 Iowa Street, Livingston, Louisiana.
Send comments to The Honorable Peggy Savoy, Mayor, Village of Port Vincent, 18235 Highway 16, Port Vincent, Louisiana 70726.

Maps for the Village of French Settlement are available for inspection at 16015 Highway 16, French Settlement, Louisiana.
Send comments to The Honorable Douglas W. Watts, Mayor, Village of French Settlement, P.O. Box 3, French Settlement, Louisiana 70733.

Maps for the Town of Walker are available for inspection at 10136 Florida Boulevard, Walker, Louisiana.
Send comments to The Honorable Mike Grimmer, Mayor, Town of Walker, P.O. Box 217, Walker, Louisiana 70785.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Missouri	Waynesville (City) Pulaski County.	Roubidoux Creek	Approximately 5,600 feet downstream of Historical Route 66.	*774	*773
			Approximately 2,600 feet upstream of Historical Route 66.	*781	*784
			Just downstream of Interstate Highway 44.	*782	*786
		Mitchell Creek	At confluence with Roubidoux Creek	*779	*782
			At northern side of Interstate Highway 44	None	*850
		Pearson Hollow	At confluence with Mitchell Creek	*828	*827
			Approximately 700 feet upstream of New Road.	*892	*901

Maps are available for inspection at 201 North Street, Waynesville, Missouri.
Send comments to The Honorable Lorel Rigsby, Mayor, City of Waynesville, 201 North Street, Waynesville, Missouri 65583.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Nebraska	Lancaster County and Incorporated Areas.	Middle Creek	Approximately 1,400 feet downstream of Holdrege Street.	*1,204	None
			Approximately 200 feet downstream of Holdrege Street.	*1,205	None
		Salt Creek	Approximately 350 feet upstream of North 112th Street.	None	*1,120
			Approximately 5,800 feet upstream of Rokeby Road.	None	*1,192
			At Satillo Road	None	*1,196
		Stevens Creek	Approximately 1,000 feet downstream of Van Dorn Street.	*1,203	*1,206

Maps for Lancaster County are available for inspection at 555 South 10th Street, Lincoln, Nebraska 68508.
Send comments to The Honorable Kathy Campbell, Chairperson, Lancaster County Board of Commissioners, 555 South 10th Street, Lincoln, Nebraska 68508.

Maps for the City of Lincoln are available for inspections at 555 South 10th Street, Lincoln, Nebraska 68508.
Send comments to The Honorable Don Wesley, Mayor, City of Lincoln, 555 South 10th Street, Lincoln, Nebraska 68508.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
New Mexico	Portales (City) Roosevelt County.	Globe Ditch	Approximately 400 feet downstream of confluence of 17th and 18th Streets shallow flooding.	*3,995	+3,998
			At confluence of 17th and 18th Streets shallow flooding.	*3,995	+3,999
		17th and 18th Streets Shallow Flooding.	Area bounded by South Main Avenue, West 17th Street, South Avenue A, and West 18th Street.	*3,996	+4,000
			Area bounded by South Avenue F, West 17th Street, South Avenue G, and West 18th Street.	*4,000	+4,004
		Flooding throughout University and Downtown Areas.	Area bounded by South Main Avenue, West 10th Street, South Avenue A, and West 11th Street.	#1	+4,002
			Area bounded by South Avenue B, West Commercial Street, South Avenue C, and West First Street.	#1	+4,009
		Ponding Area	Upstream of Burlington Northern Santa Fe Railroad from Boulder Avenue to southwest of University Avenue.	*4,009	+4,011
		Ponding Area	At the intersection of Industrial Drive and West 18th Street.	None	+4,004
			Approximately 700 feet west of the intersection of the Burlington Northern Santa Fe Railroad and West 18th Street.	None	+4,004
		Ponding Area	Approximately 4,000 feet northwest of the intersection of Industrial Drive and West 18th Street.	None	+4,010

*Elevation in feet (NGVD) (To convert to NAVD, add 1.74 feet to NGVD elevation)
+Elevation in feet (NAVD)
#Depth in feet above ground

Maps are available for inspection at City Hall, 100 West First Street, Portales, New Mexico
Send comments to The Honorable Don Davis, Mayor, City of Portales, 101 South Main Street, Portales, New Mexico 88130

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Oklahoma	Oklahoma County and Incorporated Areas.	Biddy Creek	Approximately 3,200 feet upstream of confluence with Deer Creek.	None	*1,054
			At Oklahoma-Canadian County Boundary	None	*1,103
		Bloody Rush Creek	Just upstream of Portland Avenue	None	*1,014
			Just upstream of Rockwell Avenue	None	*1,096
		Chisholm Creek	At Oklahoma-Logan County Boundary	*1,013	*1,016
			At West Coffee Creek Road	*1,030	*1,035
			Approximately 150 feet upstream of West Coffee Creek Road.	*1,037	*1,037
			At Hefner Road	*1,168	*1,167
			At Northwest Britton Road	None	*1,192
		Coon Creek	Approximately 50 feet upstream of Northeast 192nd Street.	None	*919
			Approximately 1,500 feet upstream of Triple XXX Road.	None	*922
			Just downstream of Northeast 206th Street.	None	*929
			Just upstream of Northeast 206th Street	None	*932
			At confluence with Coon Creek	None	*965
			Just downstream of Waterloo Road	None	*970
		Coon Creek Tributary	Approximately 70 feet upstream of Choctaw Road.	None	*1,007
		Crutcho Creek	Approximately 2,000 feet upstream of North Midwest Boulevard.	*1,149	*1,149
			Approximately 700 feet downstream of Northeast 36th Street.	*1,155	*1,158
		Crutcho Creek Tributary C	Just downstream of Sooner Road	*1,218	*1,217
			Approximately 450 feet upstream of Epperly Drive.	*1,247	*1,246
		Crutcho Creek Tributary C–1.	Approximately 400 feet upstream of confluence with Crutcho Creek C.	*1,227	*1,226
			Just downstream of Southeast 59th Street.	None	*1,233
		Deep Fork	Just upstream of Northeast 192nd Street	*901	*902
			Approximately 1,800 feet upstream of Northeast 192nd Street.	*902	*903
		Deep Fork Tributary 11	Approximately 1,300 feet downstream of Northeast 50th Street.	None	*1,089
			Just upstream of Northeast 50th Street	None	*1,104
		Deer Creek	At Waterloo Road	*1,006	*1,009
			Approximately 600 feet downstream of Northwest 164th Street.	*1,071	*1,072
		Dorf Creek	Approximately 4,900 feet upstream of Meridian Avenue.	None	*1,040
			Approximately 1,000 feet upstream of Coffee Creek Road.	None	*1,095
		North Canadian River	At intersection of North Sooner Road and Northeast 23rd Street.	None	*1,157
		North Canadian Tributary 1.	Approximately 1,750 feet downstream of Northeast 10th Street.	*1,089	*1,090
			Just downstream of Reno Avenue	None	*1,110
			Approximately 150 feet upstream of Reno Avenue.	None	1,114
			Approximately 200 feet downstream of Triple XXX Road.	None	*1,167

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		North Canadian Tributary 2 of Tributary 1.	Approximately 1,050 feet downstream of Reno Avenue.	None	*1,104
			Just upstream of Reno Road	None	*1,110
		North Canadian Tributary 2 of Tributary 2.	Approximately 250 feet downstream of Southeast 15th Street.	None	*1,132
		North Canadian Tributary 3 of Tributary 1.	At confluence with North Canadian Tributary 1.	None	*1,118
			Approximately 3,700 feet upstream of Peebley Road.	None	*1,141
		Pond Creek (previously known as Chisholm Creek Tributary 3).	Approximately 4,000 feet downstream of Danforth Avenue.	*1,045	None
			Just downstream of Danforth Avenue	*1,067	None
		Soldier Creek Tributary to Deer Creek.	At confluence with Dear Creek	*1,055	*1,056
			At County Line Road	*1,074	*1,074
		Walnut Creek	At confluence with Deer Creek	*1,039	*1,042
			Approximately 150 feet downstream of Northwest 164th Street.	*1,067	*1,068
			Just upstream of Northwest 164th Street	*1,068	*1,072
		Walnut Creek Tributary 1	Approximately 3,400 feet upstream of Confluence with Walnut Creek.	None	*1,049
			At Northwest 164th Street	None	*1,086
			Just upstream of Northwest 164th Street	None	*1,092
		West Captain Creek Tributary.	At Oklahoma-Lincoln County Boundary	None	*950
			Approximately 2,500 feet upstream of Northeast 93rd Street.	None	*1,051
		West Captain Creek Tributary 2.	At confluence with West Captain Creek Tributary.	None	*956
			Approximately 3,000 feet upstream of Northeast 93rd Street.	None	*1,010
		West Captain Creek Tributary 3.	At confluence with West Captain Creek Tributary.	None	*989
			Approximately 2,000 feet upstream of Northeast 93rd Street.	None	*1,021
		Whistler Creek	Approximately 2,900 feet upstream of confluence with Deer Creek.	None	*1,029
			Approximately 2,800 feet downstream of MacArthur Boulevard.	None	*1,069

Maps for Oklahoma County are available for inspection at the Oklahoma County Engineer Office, 320 Robert A. Kerr Avenue. Suite 101, Oklahoma City, Oklahoma.
Send comments to The Honorable Stuart Earnest, Chairman, Oklahoma County Board of Commissioners, 320 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102.

Maps for the City of Edmond are available for inspection at 100 East First Street, Edmond, Oklahoma.
Send comments to the Honorable Robert Rudkin, Mayor, City of Edmond, P.O. Box 2970 Edmond, Oklahoma 73073–2970.

Maps for the City of Harrah area available for inspection at 1900 Church Avenue, Harrah, Oklahoma.
Send comments to the Honorable Glenn West, Mayor, City of Harrah, 1900 Church Avenue, Harrah, Oklahoma 73045–0636.

Maps for the Town of Lake Aluma are available for inspection at 104 Lake Aluma Drive, Lake Aluma, Oklahoma.
Send comments to the Honorable Gary Johnston, Mayor, Town of Lake Aluma, 144 Lake Aluma Drive, Lake Aluma, Oklahoma 73121–3042.

Maps of the Town of Luther are available for inspection at 119 South Main Street, Luther, Oklahoma.
Send comments to the Honorable Don Woods, Mayor, Town of Luther, P.O. Box 56, Luther, Oklahoma 73084.

Maps for the City of Midwest City are available for inspection at 100 North Midwest Boulevard, Midwest City, Oklahoma.
Send comments to the Honorable Eddie Reed, Mayor, City of Midwest City, P.O. Box 10570, Midwest City, Oklahoma 73140.

Maps for the City of Oklahoma City are available for inspection at 420 West Main Street, Oklahoma City, Oklahoma.
Send Comments to the Honorable Kirk Humphreys; Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.

Maps for the City of Spencer are available for inspection at 8200 Northeast 36th Street, Spencer, Oklahoma.
Send comments to the Honorable Marsha Jefferson, Mayor, City of Spencer, P.O. Box 660, Spencer, Oklahoma 73084.

Maps for the City of The Village are available for inspection at 2304 Manchester Drive, The Village, Oklahoma.
Send comments to the Honorable Stanley Alexander, Mayor, City of The Village, 2304 Manchester Drive, The Village, Oklahoma, 73120.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Utah	Murray (City) Salt Lake County.	Big Cottonwood Creek	At confluence with Jordan River	*4,243	*4,243
			Just upstream of 4500 South Street	*4,269	*4,265
			At 900 West Street	*4,291	*4,291
		Little Cottonwood Creek	Approximately 200 feet upstream of confluence with Jordan River.	None	*4,249

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 100 feet downstream of 5900 South Street.	*4,351	*4,347

Maps are available for inspection at the Office of the City Engineer, 4646 South 500 West, Murray, Utah.
Send comments to The Honorable Dan Snarr, Mayor, City of Murray, 5025 South State Street, Murray, Utah 84157–0000.

State	City/town/county	Source of flooding	Location	Existing	Modified
Utah	South Salt Lake (City).	Mill Creek	At confluence with Jordan River	*4,233	*4,233
			Just downstream of State Street	*4,252	*4,251
			Approximately 300 feet downstream of 3300 South Street.	*4,263	*4,263

Maps are available for inspection at 220 East Morris Avenue, South Salt Lake, Utah 85115.
Send comments to The Honorable Randy Fitts, Mayor, City of South Salt Lake, 220 East Morris Avenue, South Salt Lake, Utah 85115.

State	City/town/county	Source of flooding	Location	Existing	Modified
Washington	College Place (City) Walla Walla County.	Garrison Creek	Approximately 3,300 feet upstream of Mission Road.	None	*703
			Approximately 6,400 feet upstream of Mission Road.	None	*723

Maps are available for inspection at City Hall, South College Avenue, College Place, Washington.
Send comments to The Honorable Thor Bakland, Mayor, City of College Place, 625 South College Avenue, College Place, Washington 99324.

State	City/town/county	Source of flooding	Location	Existing	Modified
Washington	Washtucna (Town) Adams County.	Washtucna Coulee	Approximately 2,700 feet downstream of Cooper Street.	None	+1,002
			Just downstream of Canal Street	None	+1,023
			At confluence with Staley Coulee	None	+1,023
			Approximately 800 feet upstream of the confluence with Staley Coulee.	None	+1,025
		Staley Coulee	Just upstream of Canal Street	None	+1,023
			Approximately 800 feet upstream of North Street.	None	+1,023

Maps are available for inspection at the Washtucna Town Hall, 165 Southeast Main Street, Washtucna, Washington.
Send comments to The Honorable Neil G. Todd, Mayor, Town of Washtucna, 165 Southeast Main Street, Washtucna, Washington 99371.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 8, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–29127 Filed 11–14–00; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 74 and 92

Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations; and Certain Grants and Agreements With States, Local Governments and Indian Tribal Governments and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department of Health and Human Services proposes to revise its grants management regulations in order to bring the entitlement grant programs it administers under the same regulations that already apply to non-entitlement programs for grants and cooperative agreements to State, local, and tribal governments.

DATES: Comments must be submitted by January 16, 2001.

ADDRESSES: Comments must be in writing and should be mailed or faxed to Charles Gale, Director, Office of Grants Management, HHS, Room 517–D, 200 Independence Avenue SW, Washington, D.C. 20201; Fax (202) 690–6902. Written comments may be inspected at the identified address during agency business hours from 9:30 am to 5:30 p.m., Monday through Friday, Federal Holidays excepted.

FOR FURTHER INFORMATION CONTACT: Charles Gale, Director, Office of Grants Management at the above address; (202) 690–6377. For the hearing impaired only: TDD (202) 690–6415. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On March 11, 1988, HHS joined other Federal agencies in publishing a final grants management "common rule" which provides a uniform system for the administration of grants and cooperative agreements, and by subawards thereunder, to State, local, and tribal governments. Prior to that date, administrative requirements for awards and subawards under all HHS programs were codified under 45 CFR Part 74. HHS implemented the Common Rule at 45 CFR Part 92. At the time, entitlement grant programs of the Social Security Act (the Act) administered by HHS and the Department of Agriculture were excepted from the common rule, because it was believed that the States operated entitlement programs differently than non-entitlement programs. Therefore, Subpart E was reserved in the rule to subsequently address provisions specific to entitlement programs. Pending the publication of Subpart E to Part 92, the HHS entitlement programs have remained under Part 74. As cited in 45 CFR 92.4, these programs included:

(1) Aid to Needy Families with Dependent Children (Title IV–A of the

Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G));

(2) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(3) Foster Care and Adoption Assistance (Title IV–E of the Act);

(4) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI–AABD of the Act);

(5) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B); and

(6) Certain grant funds awarded under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980.

Experimental, pilot, or demonstrations involving the above programs also remained under Part 74.

Although it was initially believed that States operated entitlement programs differently than non-entitlement programs, over the years we have found that belief to be untrue. Based upon our experience, we believe that States operate entitlement grant programs like non-entitlement programs. Furthermore, HHS and USDA consulted with State officials and their staffs and found that they applied the same fundamental administrative rules to both entitlement and non-entitlement programs. Since the States are currently applying the substance of the common rule requirements to their entitlement programs, HHS and USDA plan to synchronize the administrative requirements for all entitlement grant programs by bringing them under the common rule. USDA issued a final rule which applies its Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments to its entitlement grant programs. 65 Fed. Reg. 49474 (August 14, 2000). By way of this proposed rule, HHS is likewise proceeding with application of the common rule to its entitlement grant programs.

This proposed rule would expand the scope of 45 CFR Part 92 to include the entitlement grant programs cited above and remove such programs from the scope of Part 74. Therefore, both entitlement and non-entitlement awards to State, local, and tribal governments will be under the same administrative rules. This will enable State, local, and tribal grantees and other affected parties, such as auditors, to use the same administrative rules for the vast majority of their Federal programs. This action will also reduce unnecessary confusion and inefficiency in program administration.

There are technical distinctions between Part 74 and Part 92, *e.g.*, wording and format. Also, while the substance of the cost principles and audit requirements remains the same, there are differences in wording and organization. While the wording and organization are different, we believe there are no significant differences in the meaning of these standard administrative provisions. With respect to program income, for example, while Part 92 provides more specific information and Part 74 is different with respect to research grants, there is no practical difference in the way States will treat program income earned under the entitlement programs. That is, unless instructed otherwise by the HHS awarding agency or superseded by other legislative requirements, States will use the deduction alternative. Similarly, with respect to termination for convenience, while Part 92 covers the subject as a separate section, the requirements in Part 74 provide for essentially the same treatment in such cases. That is, termination for convenience may occur upon mutual consent between the HHS awarding agency and the grantee or upon written notification on the part of the grantee under certain conditions. We invite comment on the effect of these examples and any other differences detected. Additionally, HHS has decided to apply the rule prospectively to grants awarded after the effective date of the rule. We welcome questions regarding the application of the rule to specific types of entitlement grant programs.

In publishing this proposed rule, HHS solicits comments on applying the provisions of Part 92 to HHS entitlement program awards and subawards to State, local, and tribal governmental organizations. This proposed rule will not affect HHS non-entitlement grant programs. As noted above, Part 92 has covered grants and subgrants to State, local, and tribal governments relating to non-entitlement grant programs since its publication. HHS also solicits comments regarding whether certain provisions of the common rule should not be applied to entitlement grant programs but whether, instead, certain provisions of 45 CFR Part 74 should remain applicable.

Regulatory Impact Analysis

Executive Order 12866

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this rule because it is not a significant regulatory action as defined in Executive Order 12866.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary has reviewed this proposed rule before publication and, by approving it, certifies that it will not have a significant impact on a substantial number of small entities. The proposed rule does not affect the amount of funds provided in the covered programs but, instead, modifies and updates the administrative and procedural requirements.

Unfunded Mandates Reform Act

The Department has determined that this proposed rule is not a significant regulatory action within the meaning of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, *et seq.*, because it will not result in State, local, or tribal government expenditures of $100 million or more.

Paperwork Reduction Act of 1995

The reporting and recordkeeping requirements of this rule are the same as those required by OMB Circulars A–102 and A–110 and have already been cleared by OMB. Therefore, HHS believes this rule will not impose additional information collection requirements on grantees and subgrantees.

List of Subjects

45 CFR Part 74

Accounting, Administrative practice and procedure, Colleges and universities, Grant programs, Hospitals, Indians, Intergovernmental relations, Nonprofit organizations, and Reporting and recordkeeping requirements.

45 CFR Part 92

Accounting, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance number does not apply.)

Dated: November 2, 2000.

Donna E. Shalala,

Secretary.

Accordingly, for the reasons set forth above it is proposed that Title 45 of the Code of Federal Regulations be amended as follows:

PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS

1. The heading of part 74 is revised to read as set forth above.

2. The authority citation for Part 74 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A–110 (58 FR 62992, November 29, 1993), as amended (64 FR 54926, October 8, 1999).

3. In 74.1 remove paragraph (a)(3).

PART 92—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL, AND TRIBAL GOVERNMENTS

1. The authority citation for part 92 would continue to read as follows:

Authority: 5 U.S.C. 301.

2. In 92.4 remove paragraphs (a)(3), (7) and (8) and redesignate paragraphs (a)(4) through (10) as (a)(3) through (7) and remove and reserve paragraph (b).

3. Remove Subpart E, Entitlement.

[FR Doc. 00–29111 Filed 11–14–00; 8:45 am]

BILLING CODE 4150-04-U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 110300B]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting/public hearing.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 107th meeting November 28 through December 1, 2000, in Honolulu, HI. A public hearing will be held on a framework amendment to add new entry criteria for the Mau Zone limited entry bottomfish fishery in the Northwestern Hawaiian Islands (NWHI).

DATES: The Council's Standing Committees will meet on November 28, 2000, from 7:30 a.m. to 5:30 p.m. The full Council meeting will be held on November 29, 2000, from 9 a.m. to 5 p.m. and November 30 to December 1, 2000, from 8:30 a.m. to 5 p.m. A public hearing will be held on November 29, 2000 at 3 p.m. on a framework amendment to add new entry criteria for the Mau zone limited entry bottomfish fishery in the NWHI. See **SUPPLEMENTARY INFORMATION** for specific dates and times for these meetings and the hearings.

ADDRESSES: The Council meeting, Standing Committee meetings, and public hearing will be held at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI; telephone: 808–955–4811. Copies of the framework document proposing new entry criteria for the Mau Zone are available from and written comments can be sent to the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION:

Dates and Times of Committee Meetings

The following Standing Committees of the Council will meet on November 28, 2000. Enforcement/Vessel Monitoring System from 7:30 a.m. to 9:30 a.m.; International Fisheries/Pelagics from 9:30 a.m. to 11:30 a.m.; Executive/Budget and Program from 11:30 a.m. to 1:30 p.m.; Precious Corals from 1:30 p.m. to 3 p.m.; Crustaceans from 1:30 p.m. to 3 p.m.; Bottomfish from 3 p.m. to 4:30 p.m; Ecosystem and Habitat from 3 p.m. to 4:30 p.m.; and Fishery Rights of Indigenous People from 4:30 p.m. to 5:30 p.m.

Public Hearings

A public hearing on new entry criteria for the Mau Zone bottomfish fishery will be held on Wednesday, November 29, 2000, at 3 p.m.

In addition, the Council will hear recommendations from its advisory panels, plan teams, scientific and statistical committee, and other ad hoc groups. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

Agenda

1. Introductions

2. Approval of Agenda

3. Approval of 105th and 106th Meeting Minutes

4. Island Reports

A. American Samoa

B. Guam

C. Hawaii

D. Commonwealth of the Northern Mariana Islands (CNMI)

5. Federal Agency and Organization Reports

A. Department of Commerce
  (1) NMFS
  (a) Southwest Region, Pacific Island Area Office
  (b) Southwest Fisheries Science Center, La Jolla and Honolulu Laboratories
  (2) NOAA General Counsel, Southwest Region

B. Department of the Interior
  (1) U.S. Fish and Wildlife Service

C. U.S. State Department

6. Enforcement

A. U.S. Coast Guard activities

B. NMFS activities

C. Commonwealth, Territories, and State activities

D. Cooperative agreements for Guam/CNMI

E. Status of violations

7. Vessel Monitoring System (VMS)

A. Hawaii VMS report

B. Report on national VMS efforts

8. Presentation on Transition Zone Chlorophyll Front

9. Precious Corals

A. Status of framework amendment regarding new harvesting requirements

B. Status of framework adjustment regarding Hawaiian Islands exploratory area quota increase

C. New bed definition and associated permitting

D. Precious Coral draft environmental impact statement

10. Bottomfish Fisheries

A. Update on State of Hawaii area closures

B. Mau Zone framework amendment

C. Status of litigation

D. Status of section 7 consultation

E. Draft Bottomfish EIS

F. Observer program

G. Public hearing on new entry criteria for the Mau Zone bottomfish fishery

The Council has developed a framework amendment to the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region. The amendment will establish criteria for new entry into the limited access Mau Zone bottomfish fishery around the NWHI. In developing the framework document, the Council considered a range of alternatives and impacts on NWHI bottomfish fishery. Currently, there are no Federal regulations that specify how new permits are to be issued for the Mau Zone fishery once the number of vessels in the Zone falls below the target number of 10 permits. The Council is soliciting public comment and input on options for eligibility criteria including but not limited to the following: weighted point system based on past participation in the bottomfish fisheries off the main Hawaiian islands and NWHI, free and limited transferability of permits, and a lottery system.

11. Crustacean Fisheries

A. Status of litigation

B. Status of research and stock assessment activities and plans

C. NWHI management program 5-year review including overcapitalization of the NWHI fishery

D. Draft Crustacean EIS

12. Non-Governmental Organization Round-up Including Ocean Wildlife Campaign "Just Ask" Program.

13. Pelagic Fisheries

A. 2nd quarter 2000 Hawaii and American Samoa longline fishery report

B. Recreational fisheries
(1) Island reports
(a) Hawaii
(b) American Samoa
(c) Guam
(d) CNMI
(2) NMFS plans and programs to manage recreational fishery resources
(3) Marine license and Dingell-Johnson funding
(4) Recreational Fisheries Data Task Force
(5) Marine Recreational Fishing Statistical Survey
(6) Pelagic sportfishing tournament data collection
(7) RecFish 2000

C. National Academy of Sciences report on fishery data

D. American Samoa framework measure

The entry of large boats into the pelagics fishery in the exclusive economic zone (EEZ) around American Samoa could cause local overfishing in a portion of the EEZ, create gear conflictsparticularly in areas of concentrated fishing, and reduce the opportunities for profitable fishing operations. This management measure addresses these concerns by allocating fishing privileges to small-boat fishermen harvesting pelagic management unit species (PMUS) in the EEZ surrounding American Samoa. Specifically, the measure prohibits the taking of PMUS by domestic fishing vessels larger than 50 ft (15.24 m) (length overall) from waters within an area that is approximately 50 nm from the baselines of Tutuila Island, Rose Atoll, and the Manu'a Islands and Swain's Island. An owner of a vessel greater than 50 ft (15.24 m) in length who held a NMFS Longline General Permit on or prior to November 13, 1997, and made a landing of PMUS in American Samoa on or prior to that date is exempt from the prohibition to take PMUS within the closed area.

E. Pelagic research, ECOSIM (ecosystem simulation model), etc.

F. Shark management
(1) Blue shark stock assessment and maximum sustainable yield
(2) Status of Amendment 9 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (shark management)
(3) National plan of action on sharks

G. Turtle management
(1) Status of turtle populations and recovery plan
(2) Status of litigation
(3) Draft Pelagic EIS
(4) Mitigation research
(a) Working group
(b) NMFS research
(5) Observer program

G. Seabirds
(1) Status of mitigation regulatory amendment
(2) Shorttail albatross biological opinion
(3) Seabird national plan of action
(4) Report on New Zealand International Fisher's Forum on seabird bycatch

H. International
(1) Outcome of the 7th Multilateral High-level Conference
(2) South Pacific Community Standing Committee Meeting

I. Pelagic FMP 5-year review

14. Ecosystems and Habitat

A. Draft Coral Reef Ecosystems FMP/Draft EIS

B. Coordinated NWHI coral reef management

C. Results of reef surveys in Line/Phoenix Islands and preliminary results of NWHI cruises

D. Center for Marine Protected Areas (MPA) and MPA Advisory Committee

E. Overview of Pacific Scientific Review Group

F. Overview of Monk Seal Recovery Team

G. Carbon-dioxide ocean sequestration experiment

15. Fishery Rights of Indigenous People

A. Status of Marine Conservation Plans

B. Status of Community Development Program/Demonstration Projects, including eligibility criteria

C. Local observer program

D. Hawaiian green sea turtle cultural and religious uses

16. Program Planning

A. Status of draft amendment to include CNMI and Pacific Remote Island Areas in the bottomfish, precious corals and crustaceans FMPs

B. Status of Congressional legislation relating to ocean and fisheries including coral reefs, shark finning and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) reauthorization

C. Report on marine debris conference

D. Palmyra Atoll proposed longline closure

E. Fishing activities and support operations in national wildlife refuges

F. Midway Operations-Midway Phoenix Corporation

G. Report on program planning activities

H. Western Pacific Fisheries Information Network/Fisheries Data Coordinating Committee

I. Status of bioprospecting operations

17. Administrative Matters

A. Administrative reports

B. Advisory Panel appointments

C. Standard Operating Policies and Procedures modifications

D. Upcoming meetings and workshops including the 108th Council meeting

18. Other Business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Authority: 1801*et seq.*

Dated: November 8, 2000.

Bruce C. Morehead,

Acting Director,Office of Sustainable Fisheries,National Marine Fisheries Service.

[FR Doc. 00–29270 Filed 11–14–00; 8:45 am]

BILLING CODE: 3510-22 –S

Notices

Federal Register
Vol. 65, No. 221
Wednesday, November 15, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Gardin-Taco Ecosystem Restoration Projects, Colville National Forest, Pend Oreille and Stevens Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent.

SUMMARY: December 24, 1998 the Forest Service published a Notice of Intent to prepare an environmental impact statement (EIS) for the Gardin–Taco Ecosystem Restoration Projects in the **Federal Register** (63 FR 71264). The Forest Service is revising the proposed action, the preliminary issues, the dates the EIS is expected to be available for public review and comment, and the release of the final EIS.

The allotment management plan and decision for the Cusick-Gardiner Livestock Allotment has been completed. This range allotment management planning is no longer part of the decision to be made for these projects. The preliminary issues are roads and road management, vegetation management tools, noxious weeds and recreation use. The draft EIS should be available in June 2001, and the final EIS should be available in September 2001.

The Responsible Official is Nora B. Rasure, Forest Supervisor, 765 North Main, Colville, WA 99114, phone: 509 684–7000, fax: 509 684–7280.

DATES: Comments concerning the scope of this revised analysis should be received no later than January 9, 2001.

ADDRESSES: Send written comments to Nora B. Rasure, Forest Supervisor, 765 North Main, Colville, WA 99114, phone: 509 684–7000, fax: 509 684–7280; or Dan Dallas, Newport District Ranger, 315 North Warren, Newport, WA 99156, phone: 509–447–7300, fax: 509 447–7301, TTY: 509 447–7302; email: ddallas@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Amy Dillon, Interdisciplinary Team Leader, 315 North Warren, Newport, WA 99156, phone: 509 446–7560, fax: 509 446–7580; TDY: 509 446–7516, email: adillon@fs.fed.us.

Dated: October 31, 2000.

Nora B. Rasure,

Forest Supervisor.

[FR Doc. 00–29125 Filed 11–14–00; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension of a currently approved information collection in support of the program for 7 CFR part 4284, subpart G.

DATES: Comments on this notice must be received by January 16, 2001 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250, Telephone: (202) 720–6819.

SUPPLEMENTARY INFORMATION:

Title: Rural Business Opportunity Grants.

OMB Number: 0570–0024.

Expiration Date of Approval: March 31, 2001.

Type of Request: Extension of a currently approved information collection.

Abstract: The objective of the Rural Business Opportunity Grant (RBOG) program is to promote sustainable economic development in rural areas. This purpose is achieved through grants made by the Rural Business-Cooperative Service (RBS) to public and private non-profit organizations and cooperatives to pay costs of economic development planning and technical assistance for rural businesses. The regulations contain various requirements for information from the grant applicants and recipients. The information requested is necessary for RBS to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to ensure that funds obtained from the Government are used appropriately. Objectives include gathering information to identify the applicant, describe the applicant's experience and expertise, describe the project and how the applicant will operate it, and other material necessary for prudent Agency decisions and reasonable program monitoring.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5.71 hours per response.

Respondents: Non-profit corporations, public agencies, and cooperatives.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 8.66.

Estimated Number of Responses: 866.

Estimated Total Annual Burden on Respondents: 8,044 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Business-Cooperative Service, including whether the information will have practical utility; (b) the accuracy of the Rural Business-Cooperative Service's estimate of the burden on the public of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 31, 2000.

Judith A. Canales,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 00–29115 Filed 11–14–00; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–803, C–307–804]

Antidumping and Countervailing Duties; Gray Portland Cement and Cement Clinker From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of five-year ("sunset") review, termination of the suspended antidumping duty and countervailing duty investigations on gray portland cement and cement clinker from Venezuela.

SUMMARY: On February 27, 2000, and March 3, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that termination of the suspended antidumping duty and countervailing duty investigations on gray portland cement and cement clinker from Venezuela would be likely to lead to continuation or recurrence of dumping. *See Gray Portland Cement and Cement Clinker From Venezuela; Final Results of Sunset Review of Suspended Antidumping Duty Investigation*, 65 FR 41050 (July 3, 2000), and *Gray Portland Cement and Cement Clinker From Venezuela, Final Results of Expedited Sunset Review of Suspended Countervailing Duty Investigation*, 65 FR 11554 (March 3, 2000).

On November 1, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that termination of the suspended antidumping duty and countervailing duty investigations on gray portland cement and cement clinker from Venezuela would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Gray Portland Cement and Cement Clinker from Japan, Mexico, and Venezuela*, 65 FR 65327 (November 1, 2000). Therefore, pursuant to 19 CFR 351.222(i)(1), the Department is publishing this notice of termination of the suspended antidumping duty and countervailing duty investigations on gray portland cement and cement clinker from Venezuela.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1999, the Department initiated, and the Commission instituted, sunset reviews of the suspended antidumping duty and countervailing duty investigations on gray portland cement and cement clinker from Venezuela. *See* 64 FR 41915, 41958, respectively. As a result of its reviews, the Department found that termination of the suspended antidumping duty and countervailing duty investigations would likely lead to continuation or recurrence of dumping, and notified the Commission of the magnitude of the margins likely to prevail were the suspended investigations revoked.

On November 1, 2000, the Commission determined, pursuant to section 751(c) of the Act, that termination of the suspended antidumping duty and countervailing duty investigations covering cement and cement clinker from Venezuela would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Gray Portland Cement and Cement Clinker from Japan, Mexico, and Venezuela*, 65 FR 65327 (November 1, 2000), and USITC Publication 3361, Investigation Nos. 303–TA–21 (Review) and 731–TA–451, 461, and 519 (Review) (October 2000).

Scope of the Suspended Investigations

The products covered by these investigations are gray portland cement and cement clinker ("portland cement") from Venezuela. Gray portland cement is a hydraulic cement and the primary component of concrete. Cement clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Oil well cement is also included within the scope. Microfine cement was specifically excluded from the scope. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule ("HTS") item number 2523.29, and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under item number 2523.90 as other hydraulic cements. The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive as to the scope of the product coverage.

Determination

As a result of the determination by the Commission that termination of the suspended antidumping duty and countervailing duty investigations would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the termination of the suspended antidumping duty and countervailing duty investigations on gray portland cement and cement clinker from Venezuela.

Effective Date of Termination

The termination of the suspended investigations is effective as to all entries, or withdrawals from warehouse, of the subject merchandise on or after January 1, 2000.

Dated: November 8, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–29253 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A–401–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final results of administrative reviews.

SUMMARY: The United States Court of International Trade and the United States Court of Appeals for the Federal Circuit have affirmed the Department of Commerce's final remand results affecting final assessment rates for the administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The period of review is May 1, 1993, through April 30, 1994. As there are now final and conclusive court decisions in these actions, we are amending our final results of reviews and we will subsequently instruct the U.S. Customs Service to liquidate entries subject to these reviews.

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR Part 353 (1995).

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1996, the Department published its final results of administrative reviews of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof, from Thailand, covering the period May 1, 1993, through April 30, 1994 (61 FR 33711), and on December 17, 1996, the Department published its final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof, from France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom, covering the period May 1, 1993, through April 30, 1994 (61 FR 66471) (collectively, *AFBs 5*). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). Subsequently, one domestic producer, the Torrington Company, and a number of other interested parties filed lawsuits with the U.S. Court of International Trade (CIT) challenging the final results. These lawsuits were litigated at the CIT and the United States Court of Appeals for the Federal Circuit (CAFC). In the course of this litigation, the CIT issued a number of orders and opinions, of which the following have resulted in changes to the antidumping margins calculated in AFBs 5:

The Torrington Co. v. *United States*, Slip Op. 97–105 (July 28, 1997), with respect to Thailand;

FAG U.K. Ltd., The Barden Corporation (U.K.) Ltd., FAG Bearings Corporation, RHP Bearings Ltd., NSK Bearings Europe Ltd. and NSK Corporation v. *United States*, Slip Op. 98–133 (September 16, 1998), with respect to the United Kingdom;

SKF USA Inc. v. *United States*, Slip Op. 99–43 (May 13, 1999), with respect to Italy;

SKF USA Inc. v. *United States*, Slip Op. 99–56 (June 29, 1999), with respect to France;

NTN Bearing Corp. of America, et al. v. *United States*, Slip Op. 99–71 (July 29, 1999), with respect to Japan;

SKF USA Inc. v. *United States*, Slip Op. 99–127 (December 2, 1999), with respect to Germany;

SKF USA Inc. v. *United States*, Slip Op. 00–2 (January 5, 2000), with respect to Sweden.

In the context of the above-cited litigation, the CIT ordered the Department to make methodological changes and to recalculate the antidumping margins for certain firms under review. Specifically, the CIT ordered the Department to make the following changes on a company-specific basis:

NMB Thailand—determine a proper methodology for calculating profit for constructed value;

FAG UK—(1) recalculate FAG U.K.'s dumping margin, treating it as a distinct entity from Barden, and (2) correct a clerical error;

Barden—(1) recalculate Barden's dumping margin, treating it as a distinct entity from FAG U.K., (2) recalculate the dumping margin without regard to the results of the test for below-cost sales, and (3) correct a clerical error;

NSK-RHP—(1) exclude transactions not supported by consideration from the U.S. sales database, (2) exclude sample transfers which lacked consideration from the home-market sales database for the purpose of calculating profit for constructed value, (3) recalculate constructed value by applying the arm's-length and profit-variance tests to related-party transactions involving consideration and using sales of such or similar merchandise for any remaining unrelated-party sales, and (4) reduce the cost of manufacture and constructed value by post-sale domestic inland-freight costs;

SKF Italy—exclude sample transactions not supported by consideration from the U.S. sales database;

SKF France—exclude sample transactions not supported by consideration from the U.S. sales database;

NTN Japan—exclude sample transactions not supported by consideration from the U.S. sales database;

Koyo Seiko—determine whether it is possible to isolate and remove the portions of Koyo's home-market warranty expenses which relate to non-scope merchandise from the adjustment to foreign market value or to deny the adjustment if such an apportionment cannot be made;

SKF Germany—(1) exclude sample transactions not supported by consideration from the U.S. sales database, and (2) remove rebates paid on sales of non-scope merchandise from any adjustments made to SKF's foreign market value or, if there is no viable method to do so, deny the adjustment;

FAG Germany—apply the profit-variance test to each customer which failed the arm's-length test before calculating the profit element of constructed value;

SKF Sweden—(1) exclude sample transactions not supported by consideration from the U.S. sales database, (2) convert the difference-in-merchandise variable using the appropriate exchange rate, (3) convert the value for home-market variable cost of manufacturing from Swedish krona to U.S. dollars, (4) convert certain variables to reflect that they were reported in hundreds of Italian lira, and (5) correct the programming language that calculates home-market indirect selling expenses.

The CAFC affirmed the Department's final remand results affecting final assessment rates for all the above cases. As there are now final and conclusive court decisions in these actions, we are amending our final results of review in these matters, and we will subsequently instruct the U.S. Customs Service to liquidate entries subject to these reviews.

Amendment to Final Results

Pursuant to section 516A(e) of the Tariff Act, we are now amending the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom for the period May 1, 1993, through April 30, 1994. The revised weighted-average margins are as follows:

Company	BBs	CRBs	SPBs
France: SKF	3.73	(1)	[3] 18.80
Germany:			
FAG	12.93	13.57	[3] 2.00
SKF	3.04	9.45	14.36
Italy: SKF	3.21	(2)	
Japan:			
Koyo Seiko	[3] 14.90	[3] 6.53	(1)
NTN	14.33	[3] 11.05	[3] 32.33
Sweden: SKF	1.93	[3] 0.00	
Thailand: NMB/Pelmec	0.23		
United Kingdom:			
Barden	1.06	(1)	
FAG	3.31	(1)	
NSK/RHP	7.14	7.12	

(1) No shipments or sales subject to this review.
(2) Not subject to review.
(3) No change to the margin as a result of litigation.

Accordingly, the Department will determine and the U.S. Customs Service will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by these reviews. Individual differences between United States price and foreign market value may vary from the percentages listed above. For companies covered by these amended results, the Department will issue appraisement instructions to the U.S. Customs Service after publication of these amended final results of reviews.

This notice is published pursuant to section 751(a) of the Tariff Act.

Dated: November 3, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–29257 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 6, 2000, the Department of Commerce (the "Department") published the preliminary results of administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above ("DRAMs") from the Republic of Korea. The merchandise covered by this order are DRAMs from the Republic of Korea. The review covers two manufacturers, Hyundai Electronics Industries Co., Ltd. and Hyundai Electronics America (collectively "Hyundai"), and LG Semicon Co., Ltd. and LG Semicon America (collectively "LG"), and four exporters, G5 Corporation ("G5"), Kim's Marketing, Jewon Trading ("Jewon"), and Wooyang Industry Co., Ltd. ("Wooyang"). The period of review ("POR") is May 1, 1998, through April 30, 1999.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled *"Final Results of the Review."*

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: John Conniff or Alexander Amdur, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone: (202) 482–1009 or 482–5346, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the "Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On June 6, 2000, the Department published the preliminary results of administrative review of the antidumping duty order on DRAMs from Korea. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order in Part*, 65 FR 35886 (June 6, 2000). We invited parties to comment on our preliminary results of review. On September 5, 2000, we received case briefs from Micron Technology, Inc. ("Micron"), the petitioner, Hyundai, and LG. On September 12, 2000, we received rebuttal briefs from Micron, Hyundai, and LG. The petitioner requested a public hearing on June 12, 2000, and a public hearing was held on September 20, 2000. The Department has conducted this administrative review in accordance with section 751 of the Act.

Effective January 1, 2000, the Department revoked the antidumping duty order on dynamic random access memory semiconductors of one megabit and above ("DRAMs") from the Republic of Korea, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1). *See DRAMs from the Republic of Korea; Final Results of Full Sunset Review and Revocation of Order*, 65 FR 5939 (October 5, 2000). Therefore, we will not issue cash deposit instructions to the U.S. Customs Service ("Customs") based on the results of this review. We are conducting a truncated administrative review for the May 1, 1999, through December 30, 1999 period. Since the revocation is currently in effect, current and future imports of DRAMs from Korea will be entered into the United States without regard to antidumping duties. We have instructed Customs to liquidate all entries as of January 1, 2000 without regard to antidumping duties.

Scope of Review

Imports covered by the review are shipments of DRAMs from Korea. Included in the scope are assembled and unassembled DRAMs. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers produced in Korea, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules ("SIPs"), single in-line memory modules ("SIMMs"), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter ("VGA") boards and cards, are not included in the scope. The scope of this review also includes video random access memory semiconductors ("VRAMS"), as well as any future packaging and assembling of DRAMs; and, removable memory modules placed on motherboards, with or without a central processing unit ("CPU"), unless the importer of motherboards certifies with the Customs Service that neither it nor a party related to it or under contract to it will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMS and modules subject to this review are currently classifiable under subheadings 8471.50.0085, 8471.91.8085, 8542.11.0024, 8542.11.8026, 8542.13.8034, 8471.50.4000, 8473.30.1000, 8542.11.0026, 8542.11.8034, 8471.50.8095, 8473.30.4000, 8542.11.0034, 8542.13.8005, 8471.91.0090, 8473.30.8000, 8542.11.8001, 8542.13.8024, 8471.91.4000, 8542.11.0001, 8542.11.8024 and 8542.13.8026 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this review remains dispositive.

Facts Available ("FA")

In accordance with section 776(a) of the Act, we have determined that the use of adverse FA is warranted for G5, Kim's Marketing, Jewon, and Wooyang for these final results of review.

1. Application of FA

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. In this review, as described in detail below, the above-referenced companies failed to provide the necessary information in the form and manner requested, and, in some instances, the submitted information could not be verified. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is "deficient" under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

The Department has concluded that, because G5, Kim's Marketing, Jewon, and Wooyang failed to respond to the Department's questionnaire, a determination based on a total FA is warranted for these companies. *See* the *Preliminary Results* for a detailed discussion of this analysis.

2. Selection of FA

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). In the *Preliminary Results*, the Department determined that by not responding to the Department's questionnaire, each of these four companies did not act to the best of its respective abilities, and therefore an adverse inference is warranted in applying facts available for these companies.

For the final results, no interested party comments were submitted regarding this issue and we continue to find that the failure of G5, Kim's Marketing, Jewon, and Wooyang to respond to the Department's questionnaire in this review demonstrates that these entities failed to cooperate by not acting to the best of their ability. Thus, consistent with the Department's practice in cases where a respondent fails to respond to the Department's questionnaire, in selecting FA for G5, Kim's Marketing, Jewon, and Wooyang in this review, an adverse inference is warranted. Therefore, we are assigning G5, Kim's Marketing, Jewon, and Wooyang an adverse FA rate of 10.44 percent, the rate calculated for Hyundai in a previous review and the highest margin from any segment of the proceeding related to DRAMS from Korea.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("Decision Memorandum") from Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Assistant Secretary for Import Administration, dated November 3, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/summary/list.htm.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the "Decision Memorandum."

Final Results of Review

We determine that the following percentage weighted-average margins exist for the period April 1, 1998 through, May 30, 1999:

Manufacturer/exporter	Margin (percent)
LG	1.18
Hyundai	2.30
G5	10.44
Wooyang	10.44
Jewon	10.44
Kim's Marketing	10.44

Assessment

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise.

These final results of review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review. For duty-assessment purposes, we calculated importer-specific assessment rates by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total estimated entered value reported for those sales. Hyundai and LG, in accordance with the Department's questionnaire, estimated the entered value of their respective sales by calculating the average of the entered value of each control number for the POR. For all other respondents, we based assessment rate on the facts available margin percentage.

Notification

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 3, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comments and Responses

1. Currency Conversions
2. Calculation of Foreign Currency Transaction Gains
3. Offset to Foreign Currency Translation Losses
4. Calculation of Foreign Currency Translation Gains
5. Allocation of Foreign Currency Translation Gains and Losses
6. Foreign Exchange Translation Losses in Construction in Progress ("CIP") Account
7. Offset for Long-Term Interest Income
8. Unspecified Foreign Exchange Gains and Losses
9. Research and Development ("R&D")
10. Cross-Fertilization of R&D
11. Use of Cost of Goods Sold ("COGS") to Calculate R&D Ratio
12. Calculation of LG's R&D Ratio
13. Calculation of LG's G&A Ratio
14. Increase in Useful Lives
15. Adjustment to Depreciation
16. Programming Error in LG's Depreciation Adjustment
17. Adjustment for Special Depreciation for LG
18. Level of Trade ("LOT")/Constructed Export Price ("CEP") Offset
19. LG's Interest Expense
20. Calculation of CEP Profit for LG
21. Correction of LG's Concordance Program
22. Overstatement of LG's Duty Assessment Rate

[FR Doc. 00–29256 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

(A–484–801)

Electrolytic Manganese Dioxide From Greece: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 15, 2000, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on electrolytic manganese dioxide from Greece. The review covers one producer/exporter, Tosoh Hellas, during the period of review April 1, 1998, through March 31, 1999.

We gave interested parties an opportunity to comment on the preliminary results. We have made one change in our calculations. The review indicates the existence of no dumping margins for Tosoh Hellas during this period.

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Richard Rimlinger, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230;

telephone: (202) 482–3477 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act, by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

Background

On May 8, 2000, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on electrolytic manganese dioxide (EMD) from Greece. See *Preliminary Results of Antidumping Duty Administrative Review: Electrolytic Manganese Dioxide from Greece,* 65 FR 26570 (May 8, 2000) (Preliminary Results). Kerr-McGee Chemical LLC and Chemetals, Inc. (collectively "the petitioners"), submitted their case briefs on June 7, 2000. Tosoh Hellas (Tosoh), the sole respondent in this review, submitted its case brief on June 7, 2000. Tosoh submitted its rebuttal brief on June 12, 2000. The petitioners did not submit a rebuttal brief. We held a hearing on June 29, 2000. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of EMD from Greece. EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms (powder, chip, or plate) and two grades (alkaline and zinc chloride). EMD in all three forms and both grades is included in the scope of the order. This merchandise is currently classifiable under item number 2820.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number is provided for convenience and customs purposes. It is not determinative of the products subject to the order. The written product description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by the petitioners and Tosoh are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, to Troy H. Cribb, Acting Assistant Secretary, dated November 6, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an appendix. This Decision Memo, which is a public document, is on file in the Central Records Unit, Main Commerce Building, Room B–099, and is accessible on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memo are identical in content.

Sunset Revocation

On April 20, 2000, the International Trade Commission (ITC), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on EMD from Greece would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. Therefore, because the order was revoked on May 31, 2000, as a result of the ITC's determination with an effective date of January 1, 2000, no deposit requirements will be effective for shipments entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review.

Changes From the Preliminary Results

We made one change in our calculations for these final results. We used Tosoh's revised U.S. variable cost-of-manufacturing figure in our margin calculation (see Decision Memorandum, Comment 2).

Final Results of Review

We have determined that a weighted-average margin of zero percent exists for Tosoh for the period April 1, 1998, through March 31, 1999. The Department will issue appraisement instructions directly to the Customs Service.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 3, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix

Comments and Responses

1. Facts Available
2. Foreign Like Product
3. Home Market Viability/Particular Market Situation
4. Date of Sale
5. Credit Expense

[FR Doc. 00–29258 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–815; A–201–802]

Continuation of Antidumping Duty Orders: Gray Portland Cement and Cement Clinker from Japan and Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty rrders: Gray portland cement and cement clinker from Japan and Mexico.

SUMMARY: On March 3, 2000, and July 3, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico would be likely to lead to continuation or recurrence of dumping. See Gray Portland Cement and Cement Clinker From Japan; Final Results of Antidumping Duty Expedited Sunset Review, 65 FR 11549 (March 3, 2000), and Gray Portland Cement and Cement Clinker From Mexico; Final Results of Full Sunset Review, 65 FR 41049 (July 3, 2000).

On November 1, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Gray Portland Cement and Cement Clinker

from Japan, Mexico, and Venezuela, 65 FR 65327 (November 1, 2000). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing this notice of continuation of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico.

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 41915 and 64 FR 41958) of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico, pursuant to section 751(c) of the Act. As a result of its reviews, the Department found, on March 3, 2000, and July 3, 2000, that revocation of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders revoked. *See* 65 FR 11549 (March 3, 2000 and 65 FR 41049 (July 3, 2000), respectively.

On November 1, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Gray Portland Cement and Cement Clinker From Japan, Mexico, and Venezuela,* 65 FR 65327 (November 1, 2000) and USTIC Publication 3361, Investigation Nos. 303–TA–21 (Review) and 731–TA–451, 461, and 519 (Review)(October 2000).

Scope of the Orders

See Appendix

Determination

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico. The Department will instruct the Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than October 2005.

Dated: November 8, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

Japan

The products covered by this order are gray portland cement and cement clinker ("portland cement") from Japan. Gray portland cement is a hydraulic cement and the primary component of concrete. Cement clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Microfine cement was specifically excluded from the antidumping duty order. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule ("HTS") item number 2523.29, and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under item number 2523.90 as "other hydraulic cements." The Department made two scope rulings regarding the subject merchandise. *See* Scope Rulings, 57 FR 19602 (May 7, 1992), classes G and H of oil well cement are within the scope of the order; and Scope Rulings, 58 FR 27542 (May 10, 1993), nittetsu super fine cements are not within the scope of the order.

The HST item numbers are provided for convenience and customs purposes. The written product description remains dispositive as to the scope of the product coverage.

Mexico

The products covered by this order include gray portland cement and clinker ("portland cement") from Mexico. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule ("HTS") item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements". In its only scope ruling, the Department determined that masonry cement is not within the scope of the order. *See* Scope Ruling 61 FR 18381 (April 25, 1996).

The HTS subheadings are provided for convenience and customs purposes only. The written product description remains dispositive as to the scope of the product coverage.

[FR Doc. 00–29252 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Central Institute for the Deaf; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–030. *Applicant:* Central Institute for the Deaf, St. Louis, MO 63110. *Instrument:* Electron Microscope, Model H–7500. *Manufacturer:* Hitachi, Japan. *Intended Use:* See notice at 65 FR 59175, October 4, 2000. *Order Date:* March 3, 2000.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 00–29254 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–035. *Applicant:* Washington University School of Medicine, Department of Anesthesiology Research Unit, 660 South Euclid, Campus Box 8054, St. Louis, MO 63110. *Instrument:* Motorized Manipulator. *Manufacturer:* Luigs and Neumann, Germany. *Intended Use:* The instrument will be used to move the microelectrode for patch clamping the synaptic terminal during studies of synaptic connections between neurons to determine the electrical properties of a synapse in the auditory system in the rat. *Application accepted by Commissioner of Customs:* October 20, 2000.

Docket Number: 00–036. *Applicant:* University of Wisconsin-Madison, Electrical and Computer Engineering, 1415 Engineering Drive, Madison, WI 53706. *Instrument:* Telecommunications Instrumentation Modeling System, Model TIMS–301. *Manufacturer:* Emona Instruments Pty Ltd., Australia. *Intended Use:* The instrument will be used in the creation of an undergraduate communication laboratory as companion courses to the undergraduate communications systems sequence, ECE436 and ECE437. Such laboratories are essential to prepare students for the communications industry. Students in these courses will use the system to simulate different modulations and demodulation techniques by constructing modems. The planned experiments will reinforce the theory presented in the classroom and provide students with hands-on-experience. *Application accepted by Commissioner of Customs:* October 20, 2000.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 00–29255 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 95–3A006."

The Water and Wastewater Equipment Manufacturers Association's ("WWEMA") original Certificate was issued on June 21, 1996 (61 FR 36708, July 12, 1996) and previously amended on May 20, 1997 (62 FR 29104, May 29, 1997) and February 23, 1998 (63 FR 10003, February 27, 1998). A summary of the application for an amendment follows.

Summary of the Application:

Applicant: The Water and Wastewater Equipment Manufacturers Association, 101 E. Holly Avenue, Suite 3, Sterling, Virginia 20164.

Contact: Randolph J. Stayin, Counsel, Telephone: (202) 289–1313.

Application No.: 95–3A006.

Date Deemed Submitted: November 2, 2000.

Proposed Amendment: WWEMA seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Aqua-Aerobic Systems, Inc., Rockford, Illinois; Pentair Pump Group, Inc., North Aurora, Illinois; and Sanitaire Corporation, Brown Deer, Wisconsin;

2. Delete the following companies as "Members" of the Certificate: Aero-Mod, Incorporated, Manhattan, Kansas; Elsag Bailey Process Automation N.V. for the activities of its unit Bailey-Fischer & Porter Company, Warminster, Pennsylvania; CBI Walker, Inc., Aurora, Illinois; Dorr-Oliver Incorporated, Milford, Connecticut; Enviroquip, Inc., Austin, Texas; General Signal Corporation for the activities of its unit General Signal Pump Group, North Aurora, Illinois; Great Lakes Environmental, Inc., Addison, Illinois; Hycor Corporation, Lake Bluff, Illinois; I. Kruger, Inc., Cary, North Carolina; Jeffrey Chain Corporation, Morristown, Tennessee; Mass Transfer Systems, Inc., Fall River, Massachusetts; Patterson Pump Co., Taccoa, Georgia; SanTech,

Inc. dba Sanborn Technologies, Medway, Massachusetts; Wallace & Tiernan, Inc., Belleville, New Jersey; Water Equipment Technologies, Inc., West Palm Beach, Florida; Water Pollution Control Corp, Brown Deer, Wisconsin; Waterlink, Inc., Canton, Ohio; and Waterlink Operational Services, Inc. dba Blue Water Services, Manhattan, Kansas;

3. Change the listing of the company name for the current Member A.O. Smith Harvestore Products, Inc. to the new listing A.O. Smith Engineered Storage Products Company; and

4. Remove from the current Certificate, the restriction found under Export Trade Activities and Methods of Operation Paragraph F (1–3) placed on Restricted Members Conservatek Industries, Inc. and Temcor regarding the Restricted Product Aluminum Covers:

1. Participation in any price discussion is limited to instances in which the prices are discussed and determined solely in the following manner: a Neutral Third Party, as hereinafter defined, acting independently, will obtain price information concerning each Restricted Product for which the Restricted Members listed in conjunction therewith intend to participate as part of a joint bid or other sales arrangement, and will incorporate such price information into the bid or other arrangement.

(i) For purposes of this paragraph, "acting independently" means that the Neutral Third Party who obtains the price information from the Restricted Members, and who negotiates offer prices on behalf of the Restricted Members, will not disclose the price information of one Restricted Member to another Restricted Member intending to participate in a joint bid or other sales arrangement as a Supplier of the Restricted Products.

(ii) For purposes of this paragraph, "Neutral Third Party" means an individual, partnership, corporation (profit or non-profit), or any representative thereof which is not engaged in the manufacture, distribution, or sale of any Restricted Product. Any Member may be a Neutral Third Party as long as it meets the requirements set out above.

2. The limitation set forth in paragraph F.1 above also shall apply to instances where more than one Restricted Member intends to participate in the joint bid or other sales arrangement but the participation of one is solely as an Export Intermediary for the Export Trade Activity or Method of Operation.

3. Neither WWEMA nor any Member participating in the Export Trade Activity or Method of Operation shall disclose the price information of one Restricted Member to another Restricted Member with respect to the relevant Restricted Product.

Dated: November 8, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–29092 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 96–049US.

Title: Power Sensor.

Abstract: A method for forming a single cavity in a substrate, which may extend approximately the length of a device located on top of the substrate, and device produced thereby. The device has a length and a width, and may extend approximately the length of the substrate. After locating the device on the surface of the substrate, a first etchant is applied through openings on the surface of the substrate. Subsequently, a second etchant is applied through the same openings on the surface of the substrate. As a result, a single cavity is formed beneath the surface of the device, suspending the device and minimizing electrical coupling. This invention is jointly owned by the Government and another party. The Government's interest is available for licensing.

NIST Docket Number: 99–007PCT.

Title: Polymer Layered Inorganic Nanocomposites.

Abstract: Polymer layered silicate nanocomposites are novel materials that have improved stiffness, barrier properties, and flammability properties. Although melt intercalation has been shown for some systems this approach has limitations and may not produce the same type of nanocomposites as the in situ polymerization approach. Several examples have shown that the driving force of a polymerization reaction is required to obtain complete dispersion of the silicate in the polymer. This in situ polymerization method has been proven for polyamides, polyesters and epoxies; however, new methods of preparation are needed, especially for non-polar polymers. This demonstrates that novel exfoliated polymer layered silicate nanocomposites can be prepared using metal catalysts, which have been intercalated into layered silicates. This process we define as "in situ transition-metal mediated polymerization." This invention is available only for non-exclusive licensing.

Dated: November 8, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–29161 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, December 5, 2000 from 8:15 a.m. to 5:15 p.m. and Wednesday, December 6, 2000 from 8 a.m. to 12:45 p.m. The Visiting Committee on

Advanced Technology is composed of fourteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST programs; a presentation by one of the Visiting Committee members entitled, "The Chemical Industry—Fossil or Phoenix?"; an indepth review of the Physics Laboratory; a cross-cut review of Patent Policy; a cross-cut review of Microelectronics; and a laboratory tour. Discussions scheduled to begin at 4 p.m. and end at 5:15 p.m. on December 5, 2000 and to being at 8 a.m. and to end at 12:45 p.m. on December 6, 2000, on staffing of management positions at NIST, the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership, and feedback sessions will be closed.

DATES: The meeting will convene December 5, 2000 at 8:15 a.m. and will adjourn at 12:45 p.m. on December 6, 2000.

ADDRESSES: The meeting will be held in the Employees' Lounge (seating capacity 80, includes 38 participants), Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Janet R. Russell, Administrative Coordinator, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–2107.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on July 12, 2000, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(β), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussions of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: November 8, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–29162 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103000B]

Marine Mammals; File No. 87-1593

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of supplemental application.

SUMMARY: Notice is hereby given that Dr. Daniel P. Costa, Professor of Biology, Institute of Marine Sciences, University of California, Santa Cruz, CA 95064, has submitted supplemental information to scientific research permit application No. 87-1593.

DATES: Written or telefaxed comments must be received on or before December 15, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213 (562/980-4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Simona Roberts, 301/713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to capture, measure, immobilize, tag, sample and release up to 25 Crabeater seals (*Lobodon carcinophagus*) annually, and up to 10 each: Leopard seals (*Hydrurga leptonyx*), Weddell seals (*Leptonychotes weddellii*) and Ross seals (*Ommatophoca rossii*) in Antarctica. This project will determine the distribution and foraging behavior of adult Crabeater seals, and simultaneously assess the impact that oceanographic features and prey aggregations have on the foraging strategies employed.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 7, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–29269 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 16, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 8, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: National Assessment of Adult Literacy.

Frequency: One time.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden: Responses: 956; Burden Hours: 703.

Abstract: The 2002 National Adult Assessment of Literacy (NAAL) will assess the current status of the English language skills of adults in the United States, as well as indicate how literacy proficiencies have changed since the 1992 National Adult Literacy Survey (NALS). The sample consists of adults 16 years of age and older who reside in private households at the time of the assessment.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address *Kathy_Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–29166 Filed 11–14–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 15, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren__Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 8, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: New.

Title: OSFA Customer Satisfaction Survey Master Plan.

Frequency: As needed.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 15,000; Burden Hours: 100,000.

Abstract: The Higher Education Amendments of 1998 established the Office of Student Financial Assistance (SFA) as the Government's first Performance-Based Organization (PBO). That legislation specifies that one purpose of the PBO is to improve program services and processes for students and other participants in the student financial assistance programs. This requirement establishes an ongoing need for SFA to be engaged in an interactive process of collecting information and using it to improve the delivery of student financial aid. As such, SFA is seeking OMB approval of a clearance process for customer satisfaction surveys and focus groups for years 2001–2003.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC

20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–29167 Filed 11–14–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 15, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren__Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 8, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Study to Assess the Quality of Vocational Education in the United States.

Frequency: One-time.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden: Responses: 3,000; Burden Hours: 1,500.

Abstract: As part of the National Assessment of Vocational Education, the study to assess the quality of vocational education proposes to conduct a nationally representative survey of high school teachers. The 30-minute survey will examine the prevalence of promising instructional practices recommended in the 1998 Perkins Act. It will assess differences in practice between academic and vocational teachers and comprehensive and vocational high schools. Findings from the survey will be incorporated into a report on secondary school vocational education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–29168 Filed 11–14–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3751–000]

ANP Funding I, L.L.C.; Notice of Issuance of Order

November 7, 2000.

ANP Funding I, L.L.C. (ANP) submitted for filing a rate schedule under which ANP will engage in wholesale electric power and energy transactions at market-based rates. ANP also requested waiver of various Commission regulations. In particular, ANP requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by ANP.

On October 31, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ANP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, ANP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ANP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 27, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NW., Washington, DC 20426. The Order may also be viewed on the Internet at *http:/*

/www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–29171 Filed 11–14–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3583–000]

Arizona Independent Scheduling Administrator Association; Notice of Filings

November 8, 2000.

On October 5, 2000, by delegated authority, a deficiency letter in the instant proceeding determined that Arizona Independent Scheduling Administrator Association's filing in the instant proceeding was deficient, pending submission by Arizona Public Service (APS) and Tucson Electric Power Company (Tucson) of modifications in their own open access transmission tariffs. APS made such a filing, in Docket No. ER01–173–000, on October 20, 2000. Tucson filed modifications to its tariff, as revised, in Docket No. ER01–208–000, on October 25, 2000. As a consequence, the date for the submission of comments, protests, and interventions in Docket No. ER00–3583–000 will be November 15, 2000. The comment dates for Docket Nos. ER01–173–000 and ER01–208–000 remain November 8, 2000 and November 15, 2000, respectively.

Any person desiring to be heard or to protest such filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the above-mentioned dates. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. These filings may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29207 Filed 11–14–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2814–002]

Commonwealth Edison Company, Notice of Filing

November 7, 2000.

Take notice that on October 25, 2000, Commonwealth Edison Company (ComEd), tendered for filing an executed Dynamic Scheduling Agreement (DSA) with Commonwealth Edison Company in its Wholesale Merchant Function (WEG).

ComEd requests the same effective date of January 1, 2000 for the DSA that ComEd requested and was granted in docket No. ER00–940–000, in which ComEd submitted an unexecuted DSA between ComEd and WEG.

ComEd has served a copy of this filing on WEG and on the parties listed on the official service list in this proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 15, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29174 Filed 11–14–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3454–000, ER00–3454–001]

Duke Power, a Division of Duke Energy Corporation; Notice of Issuance of Order

November 7, 2000.

Duke Power, a Division of Duke Energy Corporation (Duke Power) submitted for filing a rate schedule under which Duke Power will engage in wholesale electric power and energy transactions at market-based rates. Duke Power also requested waiver of various Commission regulations. In particular, Duke Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Duke Power

On October 24, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Duke Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 24, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may

also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–29173 Filed 11–14–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3696–000]

Griffith Energy, LLC Notice of Issuance of Order

November 7, 2000.

Griffith Energy, LLC (Griffith Energy) submitted for filing a rate schedule under which Griffith Energy will engage in wholesale electric power and energy transactions at market-based rates. Griffith Energy also requested waiver of various Commission regulations. In particular, Griffith Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Griffith Energy.

On October 25, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Griffith Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Griffith Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Griffith Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 27, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–29175 Filed 11–14–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3734–000]

KPIC North America Corporation; Notice of Issuance of Order

November 7, 2000.

KPIC North America Corporation (KPIC) submitted for filing a rate schedule under which KPIC will engage in wholesale electric power and energy transactions at market-based rates. KPIC also requested waiver of various Commission regulations. In particular, KPIC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by KPIC.

On October 24, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by KPIC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, KPIC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of KPIC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 24, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–29172 Filed 11–14–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–75–000]

Mississippi River Transmission Corporation; Notice of Tariff Filing

November 8, 2000.

Take notice that on November 1, 2000, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed below to be effective December 1, 2000.

Thirty Seventh Revised Sheet No. 5
Thirty Seventh Revised Sheet No. 6
Thirty Fourth Revised Sheet No. 7

MRT states that the purpose of this filing is to remove the Gas Price Differential Gas Supply Realignment Costs (GSRC) surcharge from MRT's FT, SCT and IT rates.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29199 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010]

New York Power Authority; Notice of Meeting to Discuss Preliminary Terms and Conditions for Relicensing of the St. Lawrence-FDR Power Project

NOVEMBER 8, 2000. The establishment of the Cooperative Consultation Process (CCP) Team and the Scoping Process for relicensing of the St. Lawrence-FDR Power Project was identified in the Notice of Memorandum of Understanding, Formation of Cooperative Consultation Process Team, and Initiation of Scoping Process Associated With Relicensing the St. Lawrence-FDR Power Project issued May 2, 1996, and found in the **Federal Register** dated May 8, 1996, Volume 61, No. 90, on page 20813.

The CCP Team will meet on November 21, 2000, to discuss the preliminary terms and conditions filed with the Federal Energy Regulatory Commission (Commission) per the Notice issued on August 11, 2000, and the Notice extending the comment period to September 29, 2000. The meeting will be conducted at the New York Power Authority's (NYPA) Robert Moses Powerhouse, at 10:00 a.m., located in Massena, New York.

If you would like more information about the CCP Team and the relicensing process, please contact any one of the following individuals:

Mr. Thomas R. Tatham, New York Power Authority, (212) 468–6747, (212) 468–6141 (fax), e-mail: *Tatham.T@NYPA.Gov*

Mr. Bill Little, Esq., New York State Dept. of Environmental Conservation, (518) 457–0986, (518) 457–3978 (fax), e-mail:*WGLittle@GW.DEC.State.NY.US*

Dr. Jennifer Hill, Federal Energy Regulatory Commission, (202) 219–2797, (202) 219–2152 (fax), e-mail:*Jennifer.Hill@FERC.FED.US*

Further information about NYPA and the St. Lawrence-FDR Power Project can be obtained through the Internet at *http://www.ferc.fed.us.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29204 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–22–000; CP01–23–000; CP01–24–000; and CP01–25–000]

North Baja Pipeline LLC; Notice of Applications

November 8, 2000.

Take notice that on November 1, 2000, North Baja Pipeline LLC ("NBP"), 1400 SW Fifth Avenue, Suite 900, Portland, Oregon 97201, filed applications in Docket Nos. CP01–22–000 and CP01–23–000 pursuant to Sections 7(c) and 3 of the Natural Gas Act, respectively. In these applications, NBP seeks a certificate of public convenience and necessity to construct, install, own, operate and maintain a new interstate natural gas pipeline and ancillary facilities as well as authorization and a Presidential Permit to construct, operate and maintain pipeline facilities at the international border. Further, NBP seeks in Docket No. CP01–24–000 a blanket certificate pursuant to Subpart G of Part 284 of the Commission's regulations to provide open-access transportation of natural gas for others. Moreover, in Docket No. CP01–25–000, NBP requests a blanket certificate pursuant to Subpart F of Part 157 of the Commission's regulations to perform certain routine activities and operations.[1] NBP also seeks approval of its initial rates and pro forma tariff provisions included in Docket No. CP01–22–000, *et al.* The applications may be viewed on the Commission's web site at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

NBP submits that it is a limited liability company formed under the laws of the State of Delaware, with its principal place of business in Portland, Oregon. NBP further states that it is owned by PG&E Gas Transmission Holdings Corporation.

NBP states that within three days of issuance of this notice, it will provide notice to directly affected and adjacent landowners notifying them that NBP's request to construct facilities has been filed. NBP states that this notification will include the information required by the Commission regulations.

NBP proposes to construct and operate a pipeline system, which would carry 500,000 Mcf per day of natural gas from an interconnection point with El Paso Natural Gas Company ("El Paso") near Ehrenberg, Arizona. At this proposed interconnect, NBP proposes to construct the Ehrenberg Compressor Station that would consist of three 6,270 horsepower (hp), gas fired centrifugal compressor units (with one additional 6,270 hp spare unit). The proposed system would extend approximately 79.8 miles through southeast California, to a point on the International border between Yuma, Arizona and Mexicali, North Baja California, Mexico. NBP's mainline facilities would consist of approximately 11.5 miles of 36-inch from the Ehrenberg Compressor Station and 68.3 miles of 30-inch pipe to the international border. At the international border, NBP indicates that it would interconnect with a similarly sized pipeline, Gasoducto Bajanorte, to be constructed by Sempra Energy Mexico ("Sempra"). Gasoducto Bajanorte would then transport gas west through Mexicali and on to Tijuana, Mexico, where it would interconnect with an existing pipeline, Transportadora de Gas Natural de Baja California ("TGN"). It is stated that TGN runs from Rosarito, Mexico, to an interconnection with the facilities of San Diego Gas and Electric Company at the San Diego/Tijuana border.

NBP asserts that its filings meet the requirements of the Commission's regulations regarding certificate applications and the standards set forth in the Commission's Statement of Policy issued in Docket No. PL 99–3–000. Specifically, NBP states that, as a new pipeline, its project passes the Commission's "no subsidies" test, and further, its project was developed to eliminate or minimize impacts on the potentially affected interests of existing customers, captive shippers of existing pipelines, and landowners and the environment.

NBP states that it held an open season in which it made capacity on its system available to interested shippers on a not unduly discriminatory basis. As a result, NBP indicates that it has executed precedent agreements with four shippers for more than 300 MDth of long-term firm transportation service, representing approximately 60 percent of its total proposed capacity. NBP asserts that the executed precedent agreements demonstrate that there is market demand for natural gas transportation service on NBP. NBP further asserts that the market study included in Exhibit I in Docket No. CP00–22–000 *et al.*, demonstrates that projected growth in gas demand in Northern Mexico and Southern California markets supports its project.

NBP proposes to provide open-access firm transportation service under Rate Schedule FTS–1 and interruptible transportation service under Rate Schedule ITS–1, under rates, terms and conditions set forth in its pro forma tariff submitted with Docket No. CP00–22–000, *et al.* NBP proposes to offer both negotiated and recourse rates. NBP's submits that its proposed recourse rates are cost-of-service rates, designed under the straight-fixed variable method. NBP states that during its open season process it offered firm shippers the choice of negotiated or recourse rates and each shipper who executed a precedent agreement elected negotiated rates.

NBP estimates that the total capital cost of constructing the pipeline and appurtenant facilities will be approximately $146 million (inclusive of AFUDC). Of the total estimated capital construction cost, NBP states that $110 million relates to pipeline and ancillary facilities, and $36 million relates to a compressor station. NBP anticipates that the initial capital structure on the in-service date will be 70 percent debt and 30 percent equity, with an 8.5 percent cost of debt. It proposes a 14 percent return on equity. NBP further requests that the Commission grant any waivers of its regulations that the Commission may deem necessary to grant the relief requested in its applications.

NBP proposes an in-service date by September 1, 2002. NBP requests that the Commission issue a Preliminary Determination with respect to nonenvironmental issues by June 15, 2001, and a final certificate by January 9, 2002, so that NBP can meet its proposed in-service date.

Any questions regarding the applications should be directed to John A. Roscher, Director, Rates and Regulatory Affairs, North Baja Pipeline LLC, 1400 SW Fifth Avenue, Suite 900, Portland, Oregon 97201, phone: (503) 833–4254.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 29, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NBP to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29206 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

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[1] NBP submitted Docket Nos. CP01–22–000, CP01–24–000, and CP01–25–000 (Docket No. CP01–22–000, *et al.*) as one filing and separately filed its request for a Presidential Permit in Docket No. CP01–23–000.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–76–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 8, 2000.

Take notice that no November 1, 2000, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective December 1, 2000:

53 Revised Sheet No. 50
53 Revised Sheet No. 51
21 Revised Sheet No. 52
50 Revised Sheet No. 53
17 Revised Sheet No. 59
1 Revised Sheet No. 59A
20 Revised Sheet No. 60
1 Revised Sheet No. 60A

Northern states that this filing is to revise Northern's rates, effective December 1, 2000, to reflect an adjustment for the return and tax components associated with the System Levelized Account (SLA) balance as of March 31, 2000.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29200 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–141–001]

Potomac Electric Power Co., et al.; Notice of Filing

November 8, 2000.

Take notice that, on November 3, 2000, Southern Energy Mid-Atlantic, L.L.C. (SE Mid-Atlantic) and Potomac Electric Power Company (Pepco) tendered for filing pursuant to Section 203 of the Federal Power Act a Supplement to the Joint Application filed in the above-captioned docket on September 20, 2000, by Pepco and SE Mid-Atlantic (Supplement). The Supplement, for which confidential treatment is requested, is intended to provide additional information concerning the proposed long-term leverage lease financing arrangements described in the Joint Application.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 16, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29192 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–3232–001; ER01–296–000]

Southern Company Services, Inc.; Notice of Filing

November 8, 2000.

Take notice that on October 30, 2000, Southern Company Services, Inc. (SCS) on behalf of Alabama Power, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies), made a compliance filing pursuant to a Letter Order issued September 13, 2000 in Docket No. ER00–3232 by filing rate schedule designations as required by Order No. 614. As part of this filing, SCS also tendered for filing a Notice of Cancellation of the following rate schedules:

1. The Interchange Service Contract dated February 9, 1996 by and between Western Gas Resources Power Marketing, Inc., Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 88).
2. The Interchange Service Contract dated November 3, 1995 by and between Koch Power Services, Inc., Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 82).
3. The Interchange Service Contract dated February 9, 1996 by and between Intercoast Power Marketing Company, Southern companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 90).

These service schedules set forth the general terms and conditions governing transactions for the sale capacity and/or energy by Southern Companies. These rate schedules have been canceled because the parties to each referenced contract have agreed that Southern Companies will no longer provide capacity and/or energy pursuant to such contracts.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 20, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29201 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP88–67–074 and RP98–198–002]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 8, 2000.

Take notice that on October 31, 2000, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed on Appendix A to the filing, to become effective December 1, 2000.

Texas Eastern asserts that the purpose of this filing is to comply with the Stipulation and Agreement filed by Texas Eastern on December 17, 1991 in Docket Nos. RP88–67, *et al.* (Phase II/PCBs) and approved by the Commission on March 18, 1992 (Settlement), and with Section 26 of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern states that such tariff sheets reflect a decrease in the PCB-Related Cost component of Texas Eastern's currently effective rates. For example, the decrease in the 100% load factor average cost of long-haul service under Rate Schedule FT–1 from Access Area Zone ELA to Market Zone 3 is $0.0053 per dekatherm.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions. Texas Eastern states that copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88–67, *et al.* Phase II/PCBs).

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29193 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–249–001]

Viking Gas Transmission Company; Notice of Negotiated Rate

November 8, 2000.

Take notice that on October 31, 2000, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective November 1, 2000:

Third Revised Sheet No. 7
Third Revised Sheet No. 8
Third Revised Sheet No. 9

Viking states that these tariff sheets reflect the implementation of a new negotiated rate contact between Viking and Wisconsin Public Service. Viking requests an effective date of November 1, 2000 and accordingly requests waiver of the Commission's notice requirements.

Viking states that copies of this filing have been served on Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29194 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–14–000, et al.]

Ameren Energy Generating Company, et al.; Electric Rate and Corporate Regulation Filings

November 3, 2000.

Take notice that the following filings have been made with the Commission:

1. Ameren Energy Generating Company

[Docket No. EG01–14–000]

Take notice that on October 31, 2000, Ameren Energy Generating Company (AEG), One Ameren Plaza, 1901 Chouteau Plaza, P.O. Box 66149, St. Louis, Missouri, 63166–6149, filed with the Federal Energy Regulatory Commission an application for determination of continuing exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

AEG states that it owns and operates a 168 MW natural gas fired combustion turbine (CT) generating facility located in Pinckneyville, Illinois, and a 230 MW dual fuel CT (oil and natural gas) generating facility located in Gibson City, Illinois. AEG also owns a 186 MW natural gas fired CT facility located in Joppa, Illinois. AEG states that all of the electric energy from these facilities is and will be sold at wholesale.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Ameren Energy Development Company

[Docket No. EG01–15–000]

Take notice that on October 31, 2000, Ameren Energy Development Company (AED), One Ameren Plaza, 1901 Chouteau Plaza, P.O. Box 66149, St. Louis, Missouri, 63166–6149, filed with the Federal Energy Regulatory Commission an application for determination of continuing exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

AED states that it either directly or indirectly through an affiliate, owns and operates a 168 MW natural gas fired combustion turbine (CT) generating facility located in Pinckneyville, Illinois, and a 230 MW dual fuel CT (oil and natural gas generating facility located in Gibson City, Illinois. AED also leases a 186 MW natural gas fired CT facility located in Joppa, Illinois, and owns the facility indirectly through an affiliate. AED states that all of the electric energy from these facilities is and will be sold at wholesale.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. High Desert Power Project, LLC

[Docket No. EG01–16–000]

Take notice that on October 31, 2000, High Desert Power Project, LLC (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Big Sandy Peaker Plant, LLC

[Docket No. EG01–17–000]

Take notice that on October 31, 2000, Big Sandy Peaker Plant, LLC (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–29177 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–18–000, et al.]

Handsome Lake Energy, LLC, et al.; Electric Rate and Corporate Regulation Filings

November 7, 2000.

Take notice that the following filings have been made with the Commission:

1. Handsome Lake Energy, LLC

[Docket No. EG01–18–000]

Take notice that on October 31, 2000, Handsome Lake Energy, LLC (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Electrica Pullinque S.A.

[Docket No. EG01–19–000]

Take notice that on November 1, 2000, Electrica Pullinque S.A., a corporation (sociedad anónima) organized under the laws of the Republic of Chile (Applicant) with its principal place of business at Las Bellotas No. 199, Oficina No. 104, Providencia, Santiago, Chile, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Cottonwood Energy Company, Limited Partnership

[Docket No. EG01–23–000]

Take notice that On November 3, 2000, Cottonwood Energy Company LP (Cottonwood), a limited partnership with its principal place of business at 909 Fannin, Suite 2222, Houston, Texas 77010, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Cottonwood states that it will be engaged directly and exclusively in the business of owning a 1200 MW natural gas fired, combined cycle electric generating facility and related assets to be located on an approximately 250 acre site located near the town of Hartburg, Texas. Cottonwood will sell its capacity exclusively at wholesale.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Calpine Construction Finance Company, L.P.

[Docket No. EG01–24–000]

Take notice that on November 3, 2000, Calpine Construction Finance Company, L.P. (CCFC) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

CCFC, a Delaware limited partnership, proposes to own and operate several electric generating facilities and sell the output at wholesale to electric utilities, an affiliated power marketer and other purchasers. The initial facilities consist of natural gas-fired, combined cycle generating facilities under development or construction in Westbrook, Maine; Edinburg, Texas; Mojave County, Arizona; Yuba City, California; Ontelaunee, Pennsylvania; Talapoosa County, Alabama; Lowndes County, Mississippi; Auburndale, Florida; and Bastrop County, Texas.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Entergy Services, Inc.

[Docket Nos. EL99–6–002, ER99–231–002, ER99–232–002 and ER99–487–002]

Take notice that on November 2, 2000, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing an amended refund report in accordance with the Commission orders issued in Docket No. ER99–232–000.

Comment date: December 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Citizens Communications Company

[Docket No. ES01–8–000]

Take notice that on October 27, 2000, Citizens Communications Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue the following securities, subject to an overall limitation of $3.65 billion:

(1) $3.65 billion principal amount of short-term unsecured promissory notes outstanding at any one time;

(2) $3.65 billion principal amount of long-term debt securities, with a final maturity of not less than 9 months nor more than 50 years;

(3) issuance of common stock, including shares issued upon conversion of convertible securities, the proceeds of which shall not be more than $1 billion and preferred securities having a liquidation value of not more than $1 billion, subject to an aggregate limitation of $1 billion; and

(4) assumption of $3.65 billion of obligations and liabilities as guarantor of obligations and liabilities of its subsidiaries.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Old Dominion Electric Cooperative

[Docket No. ER01–338–000]

Take notice that on November 1, 2000, Old Dominion Electric Cooperative (Applicant), tendered for filing a Report on Action Taken to Support Reliability and Application Submitting Addendum to Agreement, Amending Filed Rate Schedule that included an Addendum to the Amended and Restated Agreement Between Old Dominion Electric Cooperative and Bear Island Paper Company, LLC. This filing was submitted pursuant to the Commission's Notice of Interim Procedures to Support Industry Reliability Efforts and Request for Comments and relates to special, mutually-beneficial demand-side management arrangements made with a customer.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Wheelabrator Shasta Energy Company, Inc.

[Docket No. ER01–323–000]

Take notice that on November 1, 2000, Wheelabrator Shasta Energy Company, Inc. (Shasta Energy), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a Notification of Change in Status and code of conduct as Supplement No. 1 to FERC Electric Tariff, Original Volume No. 1. This filing reflects the proposed acquisition of the stock of Shasta Energy by BTA Holdings, Inc., which is indirectly 50% owned by each of Duke Energy Corporation and an individual.

Shasta Energy requests that the Commission permit Supplement No. 1 to become effective on the date on which the Commission takes action on Shasta Energy's application for approval of a change in its upstream ownership pursuant to Section 203 of the Federal Power Act, filed simultaneously with this filing.

Copies of the filing were served on Pacific Gas and Electric Company and the California Public Utilities Commission.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. San Diego Gas & Electric Company

[Docket No. ER01–322–000]

Take notice that on November 1, 2000, San Diego Gas & Electric Company (SDG&E), tendered for filing certain revised Transmission Owner (TO) Tariff sheets to supersede First Revised Original Sheet Nos. i, ii, 26, 67, 68, and 71 through 77. SDG&E also tendered a new wholesale RMR rate, Original Sheet No. 78. SDG&E requests an effective date of January 1, 2001. SDG&E states the instant filing is submitted to revise the Reliability Must-Run (RMR) Revenue Requirement and RMR Charges set forth in its TO Tariff, and to implement the settlement in Docket No. ER00–860–000.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator and interested parties.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER01–321–000]

Take notice that on November 1, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) tendered for filing Schedule 12, Retail Transmission Service—Ohio to its Pro Forma Open Access Transmission Tariff (OATT). Changes to Schedules 10 and 11, updated customer lists, and miscellaneous changes to the OATT were also filed.

Allegheny Power has requested an effective date for Schedule 12 and the other changes proposed in the filing of January 1, 2001.

Copies of the filing have been provided to Allegheny Power's jurisdictional customers, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission and the West Virginia Public Service Commission.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Powerex Corp.

[Docket No. ER01–48–001]

Take notice that on November 1, 2000, Powerex Corp., tendered for filing an amendment to its October 4, 2000, Notice of Succession pursuant to 18 CFR 35.16 and 131.51 of the Commission's Regulations. Powerex Corp., is succeeding to: (i) Rate Schedule FERC No. 1, Market-Based Rate Schedule filed by British Columbia Power Exchange Corporation in Docket No. EP97–4024–000, effective August 1, 1997; and (ii) Rate Schedule No. 2, Mutual Netting/Settlement Agreement with PacifiCorp, filed by PacifiCorp in Docket No. ER99–282–000, effective September 23, 1998.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. WPS Resources Operating Companies

[Docket No. ER01–320–000]

Take notice that on November 1, 2000, WPS Resources Operating Companies (WPS), tendered for filing modifications to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1. The purpose of this filing is to add charges for Schedule 2—Reactive Supply and Voltage Control from Generation Sources Service (Schedule 2 Service) for one of the operating companies of WPS, Wisconsin Public Service Corporation (WPSC).

WPS requests that the Commission accept the revised tariff for filing and make it effective on January 1, 2001.

Copies of the filing were served upon WPS's OATT customers, the American Transmission Company LLC, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Energy Company

[Docket No. ER01–318–000]

Take notice that on November 1, 2000, Consumers Energy Company (Consumers) tendered for filing Attachment J (Procedures for Generator Interconnection) to be added to its Open Access Transmission Tariff (OATT), Consumers FERC Electric Tariff No. 6. Attachment J includes a pro forma Generator Interconnection and Operating Agreement.

Copies of the filing were filed on all customers under Consumers' OATT and upon the Michigan Public Service Commission. Consumers requests a November 1, 2000 effective date.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. The Dayton Power and Light Company

[Docket No. ER01–317–000]

Take notice that on November 1, 2000, The Dayton Power and Light Company (DP&L), tendered for filing amendments to DP&L's Open Access

Transmission Tariff (OATT) to accommodate retail access mandated by Ohio Restructuring Law.

DP&L requests an effective date of January 1, 2001 for the above-described amendments. Copies of this filing were served upon DP&L's jurisdictional customers and the Public Utilities Commission of Ohio.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Southern California Edison Company

[Docket No. ER01–315–000]

Take notice that on November 1, 2000, Southern California Edison Company (SCE), tendered for filing a revision to its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Original Volume No. 6. The proposed revision modifies SCE's TO Tariff to establish a rate schedule for the recovery of Reliability Services costs billed directly to SCE as a Participating Transmission Owner (PTO) by the California Independent System Operation (ISO).

Copies of this filing were served upon the Public Utilities Commission of the State of California and mailed to the California ISO, Pacific Gas and Electric Company, San Diego Gas & Electric Company, the California ISO-registered Scheduling Coordinators, and the wholesale customers with loads in SCE's historic control area.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. PJM Interconnection, L.L.C.

[Docket No. ER01–244–000]

Take notice that on October 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the PJM Open Access Transmission Tariff (PJM Tariff) to include in the PJM Tariff the Small Resource Interconnection Procedure Manual which contains expedited procedures pursuant to Section 36.12 of the PJM Tariff for the interconnection of generation resources less than 10 megawatts, and requested cancellation of pages to the PJM Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., setting forth the Customer Load Reduction Pilot Program that terminated pursuant to PJM Interconnection, Inc., 92 FERC ¶ 61,059 (2000) on September 30, 2000.

PJM requests an effective date of December 27, 2000, for the Small Resource Interconnection Procedure Manual amendments to the PJM Tariff. Consistent with PJM Interconnection, L.L.C., 92 FERC ¶ 61,059, PJM requests an effective date of October 1, 2000 for the cancellation of PJM Tariff and Operating Agreement pages setting forth the Customer Load Reduction Pilot Program.

Copies of this filing were served upon all members of PJM and each state electric utility regulatory commission in the PJM control area.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. The Connecticut Light and Power Company

[Docket No. ER01–293–000]

Take notice that on October 31, 2000, The Connecticut Light and Power Company (CL&P), tendered for filing a Notice of Termination of a Bulk Power Supply Service Agreement and supplements thereto with Bozrah Light and Power Company and Connecticut Municipal Electric Energy Cooperative.

CL&P requests an effective date of November 1, 2000.

CL&P states that a copy of this filing was mailed to Bozrah Light and Power Company, Connecticut Municipal Electric Energy Cooperative, and the Connecticut Department of Public Utility Control.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Xcel Energy Operating Companies Northern States Power Company (Minnesota)

[Docket No. ER01–278–000]

Take notice that on October 31, 2000, Northern States Power Company, a wholly-owned utility operating company subsidiary of Xcel Energy Inc., tendered for filing Connection Agreement Number 61 for the Pleasant Valley Generation Plant Point of Connection (Agreement) between NSP and Great River Energy. NSP proposes the Agreement be included in the Xcel Energy Operating Companies new FERC Joint Open Access Transmission Tariff, Original Volume No. 3, as Agreement No. 535–NSP, all pursuant to Order No. 614.

NSP requests the Commission accept the Agreement effective October 1, 2000, or alternatively on November 1, 2000, the date the connection facilities are to be placed in service. NSP requests waiver of the Commission's notice requirements in order if necessary for the Agreement to be accepted for filing on the date requested.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Xcel Energy Operating Companies Northern States Power Company (Minnesota)

[Docket No. ER01–277–000]

Take notice that on October 31, 2000, Northern States Power Company and Northern States Power Company (Wisconsin) (jointly NSP), wholly-owned utility operating company subsidiaries of Xcel Energy Inc., tendered for filing a Firm Point-to-Point Transmission Service Agreement between NSP and Madison Gas & Electric Company. NSP proposes the Agreement be included in the Xcel Energy Operating Companies new FERC Joint Open Access Transmission Tariff, Original Volume No. 2, as Service Agreement 138-NSP, all pursuant to Order No. 614.

NSP requests that the Commission accept the agreement effective October 1, 2000, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Central Maine Power Company

[Docket Nos. ER97–1326–003 ER99–238–003 ER99–4534–003 ER00–982–004]

Take notice that on October 30, 2000, Central Maine Power Company (CMP), tendered for filing in compliance with FERC's Order issued on July 28, 2000, in the above-referenced dockets, 92 FERC ¶ 61,272 (2000), and the terms of the Uncontested Settlement Agreement approved by FERC in those dockets, an open access transmission tariff (OATT) revised to conform with the formatting requirements of Order No. 614, and an informational filing comprised of several worksheets describing the rates charged for services under the OATT based on the 1998 and 1999 test years.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–29176 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1981–010–Wisconsin]

Oconto Electric Cooperative; Notice of Availability of Draft Environmental Assessment

November 8, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the existing Stiles Hydroelectric Project, located on the Oconto River, in the township of Stiles, Oconto County, Wisconsin, and has prepared a draft Environmental Assessment (EA) for the project. In the draft EA, the Commission staff has analyzed the potential environmental effects of the project and has concluded that the approval of the project, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the draft EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426. The draft EA may also be viewed on the internet at *http://www.ferc.fed.us/online/rims.htm.* Please call (202) 208–2222 for assistance.

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix "Stiles Hydroelectric Project, FERC Project No. 1981–010" to all comments. For further information, please contact Patti Leppert at (202) 219–2767. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29205 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1984–056 Wisconsin; Project No. 11162–002 Wisconsin]

Wisconsin River Power Company, Wisconsin Power and Light Company; Notice of Availability of Final Environmental Assessment

November 8, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for new major license for the Petenwell and Castle Rock Hydroelectric Project located on the Wisconsin River in Wood, Juneau, and Adams Counties near Necedah, Wisconsin, and the application for original major license for the Prairie du Sac Hydroelectric Project located on the Wisconsin River in Sauk and Columbia Counties near Prairie du Sac, Wisconsin.

On June 23, 1998, the Commission staff issued a Draft Environmental Assessment (DEA) for the proposed licensing actions and requested that comments be filed with the Commission within 45 days. Comments on the DEA were filed and are addressed in the Final Environmental Assessment (FEA) for the proposed licensing actions.

The FEA contains the staff's analysis of the potential environmental impacts of the proposed licenses, and concludes that the approval of the proposed licenses, with appropriate environmental protective measures, would not constitute major federal actions that would significantly affected the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. These filings may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29202 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission and Soliciting Additional Study Requests

November 8, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: New Minor License.

b. *Project No.*: P–2835–005.

c. *Date Filed*: October 27, 2000.

d. *Applicant*: New York State Electric & Gas Corporation.

e. *Name of Project*: Rainbow Falls Hydroelectric Project.

f. *Location*: On the Ausable River, in the townships of Ausable and Chesterfield, Clinton and Essex counties, New York. The project would not use federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Carol Howland, New York State Electric & Gas Corporation, Corporate Drive—Kirkwood Industrial Park, P.O. Box 5224, Binghamton, NY 13902–5224; (607) 762–8881.

i. *FERC Contact*: Jarrad Kosa, (202) 219–2831.

j. *Deadline for filing additional study requests pursuant to 18 CFR 4.32(b)(7) of the Commission's regulations*: December 26, 2000.

All documents (original and eight copies) should be field with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The application is not ready for environmental analysis at this time.

l. *The Rainbow Falls Hydroelectric Project consists of:* (1) An existing 345-foot-long and 16-foot-high dam; (2) an existing 17-acre reservoir having a storage capacity of 180-acre-feet at an elevation of 307.0 feet above mean sea level; (3) a powerhouse containing two generating units for a total installed capacity of 2,640 kilowatts; and (4) existing transmission and appurtenant facilities. The project is estimated to generate an average of 14 million kilowatt hours annually. The dam and project facilities are owned by the applicant.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2–A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the *New York State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 00–29195 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 8, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11858–000.

c. *Date filed:* September 15, 2000.

d. *Applicant:* Elsinore Valley Municipal Water District.

e. *Name of Project:* Lake Elsinore Project.

f. *Location:* On Lake Elsinore, Lion Springs, and San Juan Creek, in Riverside County, California. The project would utilize federal lands within Cleveland National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Rob Bakondy, Lake Elsinore Advanced Pumped Storage, L.L.C., Enron North America Corp., 101 California Street, Suite 1950, San Francisco, CA 94111, (415) 782–7806.

i. *FERC Contact:* Robert Bell, (202) 219–2806

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed pumped storage project would have two upper reservoirs (one in Morrell Canyon the other in Decker Canyon) and would use the natural Lake Elsinore as the lower reservoir. The project would consist of: (1) A proposed 550-foot-long, 220-foot-high concrete-face rockfill Morrell Canyon Dam; (2) a proposed 575-foot-long, 100-foot-high impervious core rock fill downstream Morrell Canyon Dam; (3) a proposed impoundment having a surface area of 142 acres, with a storage capacity of 7,400 acre-feet, and normal maximum water surface elevation of 2,860 feet msl; (3) a proposed 1,800-foot-long, 220-foot high impervious core rock filled Decker Canyon Dam; (4) a proposed impoundment having a surface area of 95 acres, with a storage capacity of 5,000 acre-feet, and normal maximum water surface elevation of 2,740 feet msl; (5) the existing Lake Elsinore impoundment having a water surface elevation of 3,412 acres, with a storage capacity of 68,006 acre-feet, and a normal maximum water surface elevation of 1,249 feel msl; (6) two proposed excavated canals designed to pass flows in both the generating and pumping directions; (7) a proposed powerhouse containing three pumping/generating units with a total installed capacity of 330 MW; (8) a proposed 5.9-miles-long, 115 kV transmission line; and (9) appurtenant facilities.

The project would have an annual generation of 1.848 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29197 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests and Comments

November 8, 2000.

Take notice that the following hydroelectric application has been filed with the commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11859–000.

c. *Date Filed:* September 19, 2000.

d. *Applicant:* Arizona Independent Power, Inc.

e. *Name of Project:* Azipco Pumped Storage Project.

f. *Location:* Beardsley Canal, in Maricopa County, Arizona. The proposed project would utilize Bureau of Land Management lands in the White Tank Mountain Regional Park.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Frank L. Mazzone, President, Arizona Independent Power, Inc., 746 Fifth Street East, Sonoma, CA 95476, (707) 996–2573.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Bell, telephone 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's rules of practice and procedure require all interveners filing documents with the commission to serve a copy of that document on each person whose name appears on the official service list for the project. further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency

k. *Description of Project:* The proposed project would consist of: (1) a proposed 350-foot high, 1700-foot-long earth and rockfill upper dam; (2) a proposed reservoir having a surface area of 180 acres and a storage capacity of 13,000 acre-feet with a normal water surface elevation of 3,000 feet msl; (3) a proposed 200 foot-high, 2600 foot-long earth and rockfill lower dam; (4) a proposed reservoir having a surface area of 150 acres and a storage capacity of 14,000 acre-feet with a normal water surface elevation of 1,800 feet msl; (5) two proposed 25 foot-diameter, 11,200 foot-long penstocks; (6) a proposed powerhouse containing five generating units having a total installed capacity of 1,250 MW; (7) a proposed 40-mile-long, 500 kV transmission line; and (8) appurtenant facilities.

The project would have an annual generation of 1,682 GWh and would be sold to a local utility.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit.—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29198 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amended Land Use and Shoreline Management Plan and Soliciting Comments, Motions To Intervene, and Protests

November 8, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amended Land Use and Shoreline Management Plan.

b. *Project No.:* 1894–193.

c. *Date Filed:* August 30, 1999.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Parr Hydroelectric Project.

f. *Location:* The project is located on the Broad River in Fairfield and Newberry Counties, South Carolina. The project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Thomas G. Eppink, Senior Attorney, South Carolina Electric & Gas Company, Legal Department—130, Columbia, South Carolina 29218.

i. *FERC Contact:* Steve Naugle, *steven.naugle@ferc.fed.us*, 202–219–2805.

j. *Deadline for filing comments and or motions:* December 15, 2000.

All documents (original and eight copies) should be filed with Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*. Please reference the following number, P–1894–193, on any comments or motions filed.

k. *Description of the Application:* The application is an amended version of the applicant's originally proposed Land Use and Shoreline Management Plan, filed September 4, 1991. The amended plan reflects the results of the applicant's efforts to reach settlement among various stakeholders, including resource agencies and adjoining property owners, on certain unresolved issues regarding permissible and prohibited activities along the shorelines of the project's reservoirs.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling 202–208–1371. The application may be viewed on-line at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888

First Street, NE., Washington, DC 20426. A copy of the motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29203 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6902–1]

National Drinking Water Advisory Council Research Working Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Drinking Water Research Working Group of the National Drinking Water Advisory Council (NDWAC) established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on November 28–29, 2000. On November 28 the meeting will be held from 8:30 am–5 pm ET (approximately), at RESOLVE, 1255 23rd Street, NW., Suite 275, Washington, DC 20037. On November 29 the meeting will be held, from 8:30 an–3:30 pm ET (approximately), at the Environmental Protection Agency's Washington Information Center (WIC), 401 M Street, SW., Conference Room #3 North Washington, DC 20460. The meeting will be open to the public to observe and statements will be taken from the public as time allows. Seating is limited.

This is the first meeting of the Drinking Water Research Working Group. The Environmental Protection Agency (EPA) anticipates 3–4 meetings of this working group over the course of the next year. The purpose of this working group will be to provide advice to NDWAC as it develops recommendations for EPA on a Comprehensive Drinking Water Research Strategy (as required under the Safe Drinking Water Act) that will consider a broad range of research needs to support the Agency's drinking water regulatory activities. The research strategy will include an assessment of research needs for microbes and disinfection by-products (M/DBPs), arsenic, contaminants on the Contaminant Candidate List (CCL), and other critical research issues. This first meeting will focus on the proposed approach for developing the Comprehensive Drinking Water Research Strategy. Specifically, the working group will discuss the outline of the strategy, the scientific framework upon which it is organized, and the list of topics to be included.

For more information please contact Paula Mason, Designated Federal Officer, U.S. EPA (4607), Office of Ground Water and Drinking Water, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The telephone number is 202–260–1893, fax 202–401–6135, and e-mail *mason.paula@epa.gov*.

Dated: November 7, 2000.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 00–29227 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6901–8]

Notice of Availability of Annex to the Report of the Grand Canyon Visibility Transport Commission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The purpose of this notice is to inform the public that the Western Regional Air Partnership (WRAP) has submitted an Annex to the 1996 report of the Grand Canyon Visibility Transport Commission (GCVTC) to EPA on September 29, 2000. This submittal was required under 40 CFR 51.309 of the regional haze rule in order for nine Western States to have the option of submitting State plans implementing the GCVTC recommendations by December 31, 2003. The Annex contains a number of recommendations addressing sulfur dioxide emissions (a key precursor to the formation of fine particles and regional haze) in the region, including a set of emissions milestones for the 2003–2018 period across the 9-State region. In the coming months, we will review the Annex to determine whether it meets the requirements of the regional haze rule and applicable requirements under the Clean Air Act (CAA). At the end of this review, we will propose changes to the regional haze rule to incorporate recommendations from the Annex if we find, after a formal 60-day public notice and comment period, that the Annex meets the requirements of the regional haze rule and the CAA.

Regarding today's notice of availability, we are not having a formal comment period on the Annex at this time. However, should members of the general public wish to provide any informal comments to us on the documents making up the Annex, we will consider these comments during the upcoming review of the Annex. We request that these informal comments be submitted to docket number A–2000–51 within 30 days of the date of publication of this notice.

ADDRESSES: *Comments.* We are not actively soliciting comments at this time, given that we will hold a formal comment period on any future regulatory proposal related to the Annex. We will, however, consider any written comments that you may wish to provide as we review the Annex. We request that any such written comments be submitted within 30 days of the date of publication of this notice.

Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–2000–51, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. We request that you also send a separate copy to the contact persons listed below (see **FOR FURTHER INFORMATION CONTACT**).

Comments may also be submitted to the EPA docket by electronic mail at *A-and-R-Docket@epamail.epa.gov*, or by fax at (202) 260–4400. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on computer disk in WordPerfect 5.1 (or higher) format, or in ASCII file format.

All comments and data provided in electronic form or by fax must be identified by the docket number A–2000–51. Electronic comments on this notice also may be filed online at many Federal Depository Libraries.

Docket. Docket No. A–2000–51 contains information related to this notice of availability, including the Annex documents received by EPA from the WRAP. Information at the Air and

Radiation Docket Office may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays, at the following address: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500, Waterside Mall (ground floor). You may contact the docket office by phone at (202) 260–7548. A reasonable fee may be charged for copying.

World Wide Web. The Annex documents may also be retrieved from EPA's website at: *http://www.epa.gov/ttn/oarpg/gener.html.*

FOR FURTHER INFORMATION CONTACT: Tim Smith (telephone (919) 541–4718; smith.tim@epa.gov) or Rich Damberg (telephone (919) 541–5592; damberg.rich@epa.gov), Mail Drop 15, EPA, Air Quality Strategies and Standards Division, Research Triangle Park, North Carolina, 27711.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public that the WRAP has submitted an Annex to the 1996 report of the GCVTC to EPA on September 29, 2000. We have published the Annex on our website at the following address: *http://www.epa.gov/ttn/oarpg/gener.html.* The EPA is not providing a formal public comment period on the Annex, but should members of the general public wish to provide EPA any comments on the WRAP's Annex documents, EPA will consider these comments during its upcoming review of the Annex. The EPA would like to receive these informal comments in docket number A–2000–51 within 30 days of the date of publication of this notice.

On July 1, 1999, EPA published regulations in 40 CFR 51.300–309 to address regional haze in mandatory Federal Class I areas (156 national parks and wilderness areas) (64 FR 35714; July 1, 1999). Regional haze is a type of visibility impairment that is caused by the emissions of air pollutants from numerous sources across a broad region.

In the final regional haze rule, we included optional provisions that allow nine Western States to implement the specific recommendations of the GCVTC for improving visibility across the Colorado Plateau within the framework of the national regional haze program. These optional provisions are contained in section 40 CFR 51.309 of the regional haze rule. When EPA published the final regional haze rule, we recognized that the optional approach would be contingent on the submittal of an Annex to the GCVTC report by October 1, 2000 that contains acceptable stationary source sulfur dioxide emissions milestones for the nine-State region for the 2003–2018 period, as well as a backstop market trading program that would be implemented if any interim milestone is not achieved.

Specifically, section 51.309(f) of the regional haze rule required that the GCVTC (or a regional planning body formed to implement the Commission recommendations) submit to EPA an Annex to the GCVTC report no later than October 1, 2000 that provides for stationary source sulfur dioxide emissions milestones for the years 2003, 2008, 2013, and 2018. These milestones must provide for steady and continuing emissions reductions for the 2003–2018 time period consistent with the GCVTC's definition of reasonable progress, its goal of 50 to 70 percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040, the applicable requirements under the CAA, and the timing of implementation plan assessments of progress and identification of deficiencies which will be due in the years 2008, 2013, and 2018. The emission reduction milestones must be shown to provide for greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to section 51.308(e)(2) of the regional haze rule.

In addition to the emission milestones, the Annex was required by section 51.309 to contain documentation of a market trading program or other programs that would be implemented if current programs and voluntary measures fail to meet the emission milestones. This documentation must include model rules, memoranda of understanding, and other provisions describing in detail how emission reduction progress will be monitored, what conditions will require the market trading program to be activated, how allocations will be made, and how the program will operate.

This notice fulfills EPA's commitment under section 51.309(f)(3) of the regional haze rule to publish the Annex upon receipt. It does not contain EPA comments on the Annex or constitute any formal action on the Annex package at this time. The EPA stated in the regional haze rule that if we find, after public notice and opportunity for comment, that the Annex meets the requirements of the regional haze rule and applicable requirements under the CAA, EPA would incorporate recommendations from the Annex into the regional haze rule. The EPA would then review State implementation plans (SIPs) submitted in 2003 to determine whether they meet all of the requirements in the revised section 309 and provide for "reasonable progress" under the regional haze rule. However, if we find that the Annex does not meet the requirements in section 309(f), then each of the affected Western States must meet the requirements of section 51.308, the same regional haze requirements that apply to other States.

Based on discussions with WRAP participants, EPA anticipates that the WRAP will submit supplemental information to clarify certain issues discussed in the Annex. For example, the WRAP has committed to providing a protocol as part of the Annex that accounts for possible changes in emissions monitoring techniques at certain facilities that use continuous emissions monitors. The EPA will also provide a notice of availability indicating the receipt of any supplemental information related to the Annex and make it available on the EPA website.

In the coming months, the EPA will consider any supplemental information and any public comments received in its review of the Annex for consistency with the regional haze rule and the CAA. If EPA finds that the Annex meets the requirements in the regional haze rule and CAA, EPA will propose appropriate revisions to the regional haze rule.

Dated: November 6, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–29226 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6902–2]

Final NPDES General Permits for Water Treatment Facility Discharges in the States of Massachusetts and New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final NPDES General Permits—MAG640000 and NHG640000.

SUMMARY: The Director of the Office of Ecosystem Protection, EPA-New England, is issuing Notice of Final National Pollutant Discharge Elimination System (NPDES) general permits for water treatment facility discharges to certain waters of the States of Massachusetts and New Hampshire for the purpose of reissuing the current permit which expired on January 9, 2000. These general NPDES permits establish notice of intent (NOI) requirements, effluent limitations, standards, prohibitions and management practices for the water treatment facility discharges. Owners and/or operators of facilities discharging effluent from water treatment facilities including those currently authorized to discharge under the expired general permit will be required to submit to EPA-New England, a notice of intent to be covered by the appropriate general permit and will receive a written notification from EPA of permit coverage and authorization to discharge under one of the general permits. *The eligibility requirements are discussed in detail under section D.2.b and the reader is strongly urged to go to that section before reading further.* This general permit does not cover new sources as defined under 40 CFR 122.2.

DATES: The general permit shall be effective on the date specified in the final general permit published in the **Federal Register** and will expire five years from the final publication date of the **Federal Register**.

ADDRESSES: Notices of intent to be authorized to discharge under these permits should be sent to: Environmental Protection Agency, Office of Ecosystem Protection (CPE), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023.

The submittal of other information required under these permits or individual permit applications should also be sent to the above address.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final permit may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday excluding holidays from: Suprokash Sarker, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, telephone: 617–918–1693.

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Changes From the Previous Permit

- General Permits for each of the states of MA and NH are presented separately.
- State of NH—limits of pH flexibility is added.
- All States—commingling of effluent from water treatment facility is allowed so long as the effluent can be monitored before it mixes with other streams of wastewater.
- Notification by Permittees, Geographic Area and Administrative Aspects (request to be covered and eligibility to apply) are transferred from Fact Sheet and Supplemental Information to part I, Permit section I.C.

Fact Sheet and Supplemental Information

I. Introduction

The Director of the Office of Ecosystem Protection, EPA-New England, is issuing final general permits for water treatment facility discharges to certain waters of the States of Massachusetts and New Hampshire. This document contains part I of the final general NPDES permits and part II, Standard Conditions.

II. Coverage of General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the Act. Although such permits are generally issued to individual discharges, EPA's regulations authorize the issuance of "general permits" to categories of discharges (see 40 CFR 122.28). EPA may issue a single, general permit to a category of point sources located within the same geographic area whose discharges warrant similar pollution control measures.

A. The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

B. The similarity of the discharges prompted EPA to issue the December 9, 1994 general permit. When reissued, this permit will enable facilities currently covered under the expired general permit to maintain compliance with the Act and will extend environmental and regulatory controls to new dischargers and avoid a backlog of individual permit applications. Violations of a condition of a general permit constitute a violation of the Clean Water Act and subjects the discharger to the penalties in section 309 of the Act.

III. Exclusions

EPA has determined that this general permit will not be available to "New Source" dischargers as defined in 40 CFR 122.2 due to the site specific nature of the environmental review required by the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* for those facilities. "New Sources" must comply with New Source Performance Standards (NSPS) and are subject to the NEPA process in 40 CFR 6.600. Consequently EPA has determined that it would be more appropriate to address "New Sources" through the individual permit process.

EPA has determined that this general permit will not be available for discharge(s) into the impaired water on the Federal Clean Water Act 303(d) list which are not attaining state water quality standards.

Any owner or operator authorized by a general permit may request to be excluded from coverage of a general permit by applying for an individual permit. This request may be made by submitting a NPDES permit application together with reasons supporting the request. The Director may also require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person may petition the Director to take this action. However, individual permits will not be issued for sources covered by these general permits unless it can be clearly demonstrated that inclusion under the general permit is inappropriate. The Director may consider the issuance of individual permits when:

A. The discharger is not in compliance with the terms and conditions of the general permit;

B. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

C. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general NPDES permit;

D. A Water Quality Management plan or Total Maximum Daily Load (TMDL) containing requirements applicable to such point sources is approved;

E. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary; or,

F. The discharge(s) is a significant contributor of pollution or in violation of State Water Quality Standards for the receiving water.

In accordance with 40 CFR 122.28(b)(3)(iv), the applicability of the general permit is automatically terminated on the effective date of the individual permit.

IV. Permit Basis and Other Conditions of the General NPDES Permit

A. Types of Discharge

Under this general permit, owners and operators of potable water treatment plants in Massachusetts and New Hampshire may be granted authorization to discharge process generated wastewaters into waters of the respective states as follows:

a. Treated presedimentation underflow;

b. Treated underflow from the coagulation/settling processes using aluminium compounds or polymers as coagulants; and

c. Treated filter backwash water from filters.

This general permit shall apply specifically to operators that have a discharge from a point source such as a sludge settling lagoon or other device whereby comparable control of suspended solids is possible.

B. Effluent Limitations

1. Statutory Requirements

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States without a permit. Section 402 of the Act, 33 U.S.C. 1342, authorizes EPA to issue NPDES permits allowing discharges that will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314, and 1341). Those statutory provisions state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) Meet standards reflecting specified levels of technology-based treatment requirements; (2) comply with State Water Quality Standards; and (3) comply with other state requirements adopted under authority retained by states under CWA section 510, 33 U.S.C. 1370.

EPA is required to consider technology and water quality requirements when developing permit limits. 40 CFR part 125, subpart A sets the criteria and standards that EPA must use to determine which technology-based requirements, requirements under section 301(b) of the Act and/or requirements established on a case-by-case basis under section 402(a)(1) of the Act, should be included in the permit.

The Clean Water Act requires that all discharges, at a minimum, must meet effluent limitations based on the technology-based treatment requirements for dischargers to control pollutants in their discharge. Section 301(b)(1)(A) of the Act requires the application of Best Practicable Control Technology Currently Available (BPT) with the statutory deadline for compliance being July 1, 1977, unless otherwise authorized by the Act. Section 301(b)(2) of the Act requires the application of Best Conventional Control Technology (BCT) for conventional pollutants, and Best Available Technology Economically Achievable (BAT) for non-conventional and toxic pollutants. The compliance deadline for BCT and BAT is as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989.

2. Technology-Based Effluent Limitations

EPA has not promulgated National Effluent Guidelines for water treatment facility discharges. EPA also believes that the limits established to meet the Water Quality Standards discussed below are sufficient to satisfy BAT/BCT described in section 304(b) of the Act.

3. Water Quality Based Effluent Limitations

Under section 301(b)(1)(C) of the Act, discharges are subject to effluent limitations based on water quality standards. Receiving stream requirements are established according to numerical and narrative standards adopted under state and/or federal law for each stream use classification. Section 401 of the CWA requires that EPA obtain State certification which ensures that all water quality standards and other appropriate requirements of state law will be satisfied. Regulations governing State certification are set forth in 40 CFR 124.53 and 124.55.

The States of Massachusetts and New Hampshire have narrative criteria in their water quality regulations. See Massachusetts 314 CMR 4.05(5)(e) and New Hampshire Part Env-Ws 1703.21 that prohibits toxic discharges in toxic amounts. The permit does not allow for the addition of materials or chemicals in amounts which would produce a toxic effect to any aquatic life.

Water quality standards applicable to water treatment facility discharges covered by this general permit include TSS and pH for all states. The limitations for TSS and pH are based upon limitations in the existing permit in accordance with the anti-backsliding requirements found in 40 CFR 122.44(1). A summary of the limits and testing requirements for each state is described below:

Massachusetts and New Hampshire: Limits of monthly average and maximum daily TSS and pH. Testing requirements for Chlorine, Aluminum, LC50 and C–NOEC.

The state of New Hampshire may consider a change in pH under certain conditions. The following language reveals when pH can be changed for the state of New Hampshire:

The pH limits in the draft permit remain unchanged from the existing permit, however, language has been added to this draft permit allowing for a change in pH limit(s) under certain conditions as per State Permit Conditions (part I.B.2.a.). A change would be considered if the applicant can demonstrate to the satisfaction of NHDES–WD that the in-stream pH standard will be protected when the discharge is outside the permitted range, then the applicant or NHDES–WD may request (in writing) that the permit limits be modified by EPA to incorporate the results of the demonstration.

Anticipating the situation where NHDES–WD grants a formal approval changing the pH limit(s) to outside the

6.5 to 8.0 Standard Units (S.U.), EPA has added a provision to this draft permit (see New Hampshire part I.B.1.g.). That provision will allow EPA to modify the pH limit(s) using a certified letter approach. This change will be allowed as long as it can be demonstrated that the revised pH limit range does not alter the naturally occurring receiving water pH. Reference part I.B.2.a. STATE PERMIT CONDITIONS in that permit. However, the pH limit range cannot be less restrictive than found in the applicable National Effluent Limitation Guideline for the facility or to a default range of 6.0 to 9.0 S.U. in the situation of no applicable guideline, whichever is more stringent.

If the State approves results from a pH demonstration study, this permit's pH limit range can be relaxed in accordance with 40 CFR 122.44(l)(2)(i)(B) because it will be based on new information not available at the time of this permit's issuance. This new information includes results from the pH demonstration study that justifies the application of a less stringent effluent limitation. EPA anticipates that the limit determined from the demonstration study as approved by the NHDES–WD will satisfy all effluent requirements for this discharge category and will comply with New Hampshire's Surface Water Quality Regulations amended on December 10, 1999.

C. Antidegradation Provisions

The conditions of the permit reflect the goal of the CWA and EPA to achieve and maintain water quality standards. The environmental regulations pertaining to the State Antidegradation Policies which protect the State's surface waters from degradation of water quality are found in the following provisions: Massachusetts Water Quality Standards 314 CMR 4.04 *Antidegradation Provisions*; and New Hampshire RSA 485–A:8, VI Part Env-Ws 1708.

This general permit does not apply to any new or increased discharge to any outstanding national resource water or the territorial seas. It also does not apply to any new or increased discharge to other waters unless the discharge is shown to be consistent with the state's antidegradation policies. This determination shall be made in accordance with the appropriate State Antidegradation implementation procedures. EPA will not authorize these discharges under the general permit until it receives a favorable antidegradation review and certification from the States.

D. Monitoring and Reporting Requirements

Effluent limitations and monitoring requirements which are included in the general permit describe the requirements to be imposed on the facilities to be covered.

Facilities covered by the final general permits will be required to submit to EPA, New England Region and the appropriate State authority, a Discharge Monitoring Report (DMR) containing effluent data. The frequency of reporting is determined in accordance with each State's provisions (see the individual State permits).

The monitoring requirements have been established to yield data representative of the discharge under authority of section 308(a) of the Act and 40 CFR 122.41(j), 122.44(i) and 122.48, and as certified by the State.

E. Endangered Species

The limits are sufficiently stringent to assure water quality standards, both for aquatic life protection and human health protection, will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of the final permits is unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA has consulted with the United States Fish and Wildlife Service and National Marine Fisheries Service on this determination and has received concurrences from them.

F. Standard Permit Condition

40 CFR 122.41 and 122.42 must be complied with. Specific language will be provided to permittees in part II of the permit.

G. State (401) Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The section 401 certification process is complete and EPA has received 401 certifications from all States. In addition, EPA and the Commonwealth of Massachusetts jointly issue the final permit.

H. The Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.*, and its implementing regulations (15 CFR part 930) require that any federally licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) be determined to be consistent with the CZMP. In the case of general permits, EPA has the responsibility for making the consistency certification and submitting it to the state for concurrence. EPA has requested the Executive Office of Environmental Affairs, MACZM, 100 Cambridge Street, Boston, MA 02202; and the Office of State Planning, New Hampshire Coastal Program, 2½ Beacon Street, Concord, NH 03301, to provide a consistency concurrence that the proposed general permit is consistent with the MA and NH Coastal Zone Management Program respectively and EPA has received consistency concurrences from all states.

I. Environmental Impact Statement Requirements

The general permits do not authorize discharges from any new sources as defined under 40 CFR 122.2. Therefore, the National Environmental Policy Act, 33 U.S.C. 4321 *et seq.*, does not apply to the issuance of these general NPDES permits.

J. National Historic Preservation Act of 1966, 16 U.S.C. SS470 et seq.

Facilities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the National Historic Preservation Act of 1996, 16 U.S.C. SS470 *et seq.* are not authorized to discharge under this permit.

K. Essential Fish Habitat

Under the 1996 Amendments (Public Law 104–267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.* (1998)), EPA is required to consult with NMFS if EPA's action or proposed actions that it funds, permits or undertakes, "may adversely impact any essential fish habitat." 16 U.S.C. 1855(b). The Amendments broadly define "essential fish habitat" (EFH) as "waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." 16 U.S.C. 1802(10). Adverse impact means any impact which reduces the quality and/or quantity of EFH 50 CFR 600.910(a). Adverse effects may include direct (*e.g.*, contamination or physical disruption), indirect (*e.g.*, loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative or synergistic consequences of actions.

Essential Fish Habitat is only designated for fish species for which federal Fisheries Management Plans exist. 16 U.S.C. 1855(b)(1)(A). EFH designations for New England were approved by the U.S. Department of Commerce on March 3, 1999.

The limits for this general permit are sufficiently stringent to assure that state water quality standards will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of the proposed permits is unlikely to adversely affect any fish or shellfish currently listed with a Fisheries Management Plan or its critical habitat. EPA sought written concurrence from the National Marine Fisheries Service on this determination and incorporated their comments in section III (Exclusions), 2nd paragraph of the Fact Sheet and part I.E.2.(8) of the permit.

V. Other Legal Requirements

A. Executive Order 12866

EPA has determined that this general permit is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2040–0086 (NPDES permit application) and 2040–0004 (Discharge Monitoring Reports).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permit issued today, however, is not a "rule" subject to the requirements of 5 U.S.C. 553(b) and is therefore not subject to the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" (defined to be the same as "rules" subject to the RFA) on tribal, state and local governments and the private sector. The permit issued today, however, is not a "rule" subject to the RFA and is therefore not subject to the requirements of UMRA.

Dated: November 3, 2000.

Mindy Lubber,

Regional Administrator, EPA, New England.

Part I—Draft General Permits Under the National Pollutant Discharge Elimination System (NPDES)

Note: The following two draft general permits have been combined for purposes of this **Federal Register**. Part I A and Part I B contain general permits for the states of MA (including both Commonwealth and Indian Country Lands) and NH respectively. Part I.C. is common to all three permits.

A. Massachusetts General Permit

[*Permit No. MAG640000*]

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.;* the "CWA"), and the Massachusetts Clean Waters Act, as amended, (M.G.L. Chap. 21, sections 26–53), operators of facilities located in Massachusetts, which discharge effluent from water treatment facilities to the classes of waters as designated in the Massachusetts Water Quality Standards, 314 CMR 4.00 *et seq.*, are authorized to discharge to all waters, unless otherwise restricted, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

The permit allows effluent from water facility discharges to be commingled with other discharges as long as the effluent from the water treatment facility can be monitored separately for compliance. This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication and supersedes the permit issued on December 9, 1994.

The permit allows effluent from water facility discharges to be commingled with other discharges as long as the effluent from the water treatment facility can be monitored separately for compliance. This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication and supersedes the permit issued on December 9, 1994.

Signed this 2nd day of November, 2000

Linda M. Murphy,

Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Boston, MA 02114

Glenn Haas,

Acting Assistant Commissioner, Bureau of Resource Protection, Massachusetts Department of Environmental Protection, Boston, MA.

Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge effluent from its water treatment facility.

a. Each outfall discharging effluent from its water treatment facility shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristic	Discharges limitations Other units (specify)		Monitoring requirements	
	Avg. monthly	Max. daily	measurement[1] frequency	Sample type
Flow, (mgd)		1.0	1/week	Total daily.
TSS, (mg/l)	30	50	1/week	4 grabs.
pH, (s.u.)	(see part I.B.1.e or f)		1/week	4 grabs.
Total Residual Chlorine (mg/l)[2].	Report	Report	1/week	4 grabs.
Aluminum, Tot. Rec. (mg/l)		Report	1/month	4 grabs.
LC–50 and C–NOEC, (%)[3]	(see part I.B.1.g)			24-hr. comp.

[1] Samples shall be taken only when discharging.

[2] Test and report only if chlorination is used in the process.

[3] LC–50 is the concentration of effluent in a sample that causes mortality to 50% of the test population at a specific time of observation. C–NOEC, No Observed Chronic Effect Concentration, is the highest concentration of effluent to which organisms are exposed in a life-cycle or partial life-cycle test which cause no adverse effect on growth, survival and reproduction.

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b. The discharge shall not cause a violation of the water quality standards.

c. There shall be no discharge of floating solids or visible foam in other than trace amounts.

d. Samples taken in compliance with the monitoring requirements specified above shall be taken at a location that provides a representative analysis of the effluent just prior to discharge to the receiving water or if the effluent is commingled with another discharge, prior to such commingling.

e. The pH of the effluent for discharges to Class A and Class B waters shall be in the range of 6.5–8.3 standard units and not more than 0.5 units outside of the background range. There shall be no change from background conditions that would impair any uses assigned to the receiving water Class.

f. The pH of the effluent for discharges to Class SA and Class SB waters shall be in the range of 6.5–8.5 standard units and not more than 0.2 units outside of the normally occurring range. There shall be no change from background conditions that would impair any uses assigned to the receiving water Class.

g. Chronic (and modified acute) toxicity test(s) shall be performed on the water treatment facility discharge by the permittee upon request by EPA and/or MADEP. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be performed on a 24-hour composite sample to be taken during normal facility operation. The results of the test (C–NOEC and LC_{50}) shall be forwarded to State and EPA within 30 days after completion.

State Permit Conditions

1. This Discharge Permit is issued jointly by the U.S. Environmental Protection Agency (EPA) and the Department of Environmental Protection under Federal and State law, respectively. As such, all the terms and conditions of this permit are hereby incorporated into and constitute a discharge permit issued by the Director of the Massachusetts Division of Watershed Management pursuant to M.G.L. Chap. 21, section 43.

2. Each Agency shall have the independent right to enforce the terms and conditions of this Permit. Any modification, suspension or revocation of this Permit shall be effective only with respect to the Agency taking such action, and shall not affect the validity or status of this Permit as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this Permit is declared, invalid, illegal or otherwise issued in violation of State law such permit shall remain in full force and effect under Federal law as an NPDES Permit issued by the U.S. Environmental Protection Agency. In the event this Permit is declared invalid, illegal or otherwise issued in violation of Federal law, this Permit shall remain in full force and effect under State law as a Permit issued by the Commonwealth of Massachusetts.

B. New Hampshire General Permit

[Permit No. NHG640000]

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the "CWA"), operators of facilities discharging effluent from water treatment facility located in New Hampshire are authorized to discharge to all waters, unless otherwise restricted by State Water Quality Standards, New Hampshire RSA 485-A:8, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. The permit allows effluent from water treatment facility to be commingled with other discharges as long as the effluent from water treatment facility can be monitored separately for compliance.

This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication and supersedes the permit issued on December 9, 1994.

Signed this 2nd day of November, 2000.

Linda M. Murphy,

Director, Office of Ecosystem Protection, Environmental Protection Agency, Boston, MA 02114.

Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge effluent from its water treatment facility.

a. Each outfall discharging effluent from water treatment facilities shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristic	Discharges limitations Other units (specify)		Monitoring requirements	
	Avg. monthly	Max. daily	Measurement[1] frequency	Sample type
Flow, (mgd)		1.0	1/week	Total daily.
TSS, (mg/l)	30	50	1/week	Grab.
pH, (s.u.) (see part I.C.1.e)	For limits see part I.C.2.a		1/week	Grab.
Total Residual Chlorine, (mg/1)[2].	Report	Report	1/week	Grab.
Aluminum, Tot. Rec., (mg/1)		Report	1/month	Grab.
LC–50 and C–NOEC, (%)[3]	see part I.C.1.f)			24-hour comp.

[1] Samples shall be taken only when discharging.

[2] Test and report only if chlorination is used in the process.

[3] LC–50 is the concentration of effluent in a sample that causes mortality to 50% of the test population at a specific time of observation. C–NOEC, No Observed Chronic Effect Concentration, is the highest concentration of effluent to which organisms are exposed in a life-cycle or partial life-cycle test which cause no adverse effect on growth, survival and reproduction at a specific time of observation as determined from hypothesis testing where the test results (growth, survival and/or reproduction) exhibit a linear dose-response relationship. However, where the test results do not exhibit a linear dose-response relationship, report the lowest concentration where there is no observable effect.

b. The discharge shall not cause a violation of the water quality standards of the receiving water.

c. The discharge shall be adequately treated to insure that the surface water remains free from pollutants in concentrations or combinations that settle to form harmful deposits, float as foam, debris, scum or other visible pollutants. It shall be adequately treated to insure that the surface waters remain free from pollutants which odor, color, taste or turbidity in the receiving water which is not naturally occurring and would render it unsuitable for its designated uses.

d. Samples taken in compliance with the monitoring requirements specified above shall be taken at a location that provides a representative analysis of the effluent just prior to discharge to the receiving water or, if the effluent is commingled with another permitted discharge, prior to such commingling.

e. The permittee may submit a written request to the EPA requesting a change in the permitted pH limit range to be not less restrictive than any applicable federal effluent guideline for the facility or to a default range of 6.0 to 9.0 S.U. in the situation of no applicable guideline, whichever is more stringent. The permittee's written request must include the State's letter containing an original signature (no copies). The State's letter shall state that the permittee has demonstrated to the State's satisfaction that as long as discharges to the receiving water from a specific outfall are within a specific numeric pH range the naturally occurring receiving water pH will be unaltered. That letter must specify for each outfall the associated numeric pH limit range. Until written notice is received by certified mail from the EPA indicating the pH limit range has been changed, the permittee is required to meet the permitted pH limit range in the respective permit.

f. One chronic (and modified acute) toxicity test shall be performed on the water treatment facility's discharge by the permittee upon request by EPA and/or the NHDES. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be performed on a 24-hour composite sample to be taken during normal facility operation. The results of the test (C–NOEC and LC_{50}) shall be forwarded to the State and EPA within 30 days after completion.

2. State Permit Conditions

a. The permittee shall comply with the following conditions which are included as State Certification requirements.

(1) The pH range for class B waters shall be 6.5–8.0 S.U. or as naturally occurs in the receiving water. The 6.5–8.0 S.U. range must be achieved in the final effluent unless the permittee can demonstrate to Division that: (1) The range should be widened due to naturally occurring conditions in the receiving water or (2) the naturally occurring source water pH is unaltered by the permittees operation. The scope of any demonstration project must receive prior approval from the Division.

b. This NPDES Discharge Permit is issued by the U.S. Environmental Protection Agency under Federal and State law. Upon final issuance by the EPA, the New Hampshire Department of Environmental Services, Water Division, may adopt this Permit, including all terms and conditions, as a state permit pursuant to RSA 485–A:13.

C. Common Elements for All Permits:

1. Conditions of the General NPDES Permit

a. *Geographic Areas.*

- *Massachusetts* (Permit No. MAG640000). All of the discharges to be authorized by the general NPDES permit for dischargers in the Commonwealth of Massachusetts are into all waters of the Commonwealth unless otherwise restricted by the Massachusetts Surface Water Quality Standards, 314 CMR 4.00 (or as revised), including 314 CMR 4.04(3) *Protection of Outstanding Resource Waters.*
- *New Hampshire.* (Permit No. NHG640000). All of the discharges to be authorized by the general NPDES permit for dischargers in the State of New Hampshire are into all waters of the State of New Hampshire unless otherwise restricted by the State Water Quality Standards, New Hampshire RSA 485–A:8 (or as revised).

b. *Notification by Permittees.* Operators of facilities whose discharge, or discharges, are effluent from water treatment facilities and whose facilities are located in the geographic areas described in part I.C.1.a above, may submit to the Regional Administrator, EPA—New England, a notice of intent to be covered by the appropriate general permit. Notifications must be submitted by permittees who are seeking coverage under this permit for the first time and by those permittees who received coverage under the expired permit. This written notification must include for each individual facility, the owner's and/or operator's legal name, address and telephone number; the facility name, address, contact name and telephone number; the number and type of facilities (SIC code) to be covered; the facility location(s); a topographic map (or other map if a topographic map is not available) indicating the facility location(s)and discharge point(s); latitude and longitude of outfall(s); the name(s) of the receiving waters into which discharge will occur; the source of water *i.e.,* river intake, private well etc. to be treated; an antidegradation review where necessary see section IV. C of the Fact Sheet; new and increased discharges from water treatment facility that may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat are not authorized under this general permit (see section IV.E of the Fact Sheet); and a list of water treatment chemicals used by the facility. The notice must be signed in accordance with the signatory requirements of 40 CFR 122.22.

Each facility must certify that the discharge for which it is seeking coverage under this general permit consists solely of effluent from discharges from the water treatment facilities. If the discharge of the water treatment facility subsequently mixes with other wastewater (e.g. stormwater) prior to discharging to a receiving water, the permittee must certify that the monitoring it will provide under this general permit will be only for water treatment facility. An authorization to discharge under this general permit, where the water treatment facility discharges to a municipal or private storm drain owned by another party, does not convey any rights or authorization to connect to that drain.

Each facility must also submit a copy of the notice of intent to each State authority as appropriate (see individual state permits for appropriate authority and address).

The facilities authorized to discharge under the final general permit will receive written notification from EPA, New England Region, with State concurrence. Failure to submit to EPA, New England Region, a notice of intent to be covered and/or failure to receive from EPA written notification of permit coverage means that the facility is not authorized to discharge under this general permit.

2. Administrative Aspects

a. *Request to be covered.* A facility is not covered by any of these general permits until it meets the following requirements. First, it must send a notice of intent to EPA and the appropriate State indicating it meets the requirements of the permit and wants to be covered. And second, it must be notified in writing by EPA that it is covered by this general permit.

b. *Eligibility to Apply.* Any facility operating under an effective (unexpired) individual NPDES permit may request that the individual permit be revoked and that coverage under the general permit be granted, as outlined in 40 CFR 122.28(b)(3)(v). If EPA revokes the individual permit, the general permit would apply to the discharge.

Facilities with expired individual permits that have been administratively continued in accordance with 40 CFR 122.6 may apply for coverage under this general permit. When coverage is granted the expired individual permit automatically will cease being in effect. Proposed new dischargers may apply for coverage under this general permit and must submit the NOI 90 days prior to the discharge.

Facilities with coverage under the current general permit issued on December 9, 1994, effective on January 9, 1995 and expired on January 9, 2000 need to apply for coverage under this general permit within 60 days from the effective date of the permit. Failure to submit a Notice of Intent within 60 days for continuation of the discharge will be considered discharging without a permit as of the expiration date of the expired permit (January 9, 2000) for enforcement purposes. A Notice of Intent is not required if the permittee submits a Notice of Termination (see part I.E.1) of discharge before the sixty days expires.

c. *Continuation of this General Permit After Expiration.* If this permit is not reissued prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and in effect as to any particular permittee as long as the permittee submits a new Notice of Intent two (2) months prior to the expiration date in the permit. However, once this permit expires EPA cannot provide written notification of coverage under this general permit to any permittee who submits Notice of Intent to EPA after the permit's expiration date. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

(1) Reissuance of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

(2) The permittee's submittal of a Notice of Termination; or

(3) Issuance of an individual permit for the permittee's discharges; or

(4) A formal permit decision by the Director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

D. Monitoring and Reporting

Massachusetts: Monitoring results obtained during the previous 3 months shall be summarized for each quarter and reported on separate Discharge Monitoring Report Form(s) postmarked no later than the 15th day of the month following the completed reporting period. The reports are due on the 15th day of January, April, July and October. The first report may include less than 3 months information.

New Hampshire: Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report Form(s) postmarked no later than the 15th day of the month following the completed reporting period. The reports are due on the 15th day of the month following the reporting period.

The reports as stated above should be sent to EPA and the States at the following addresses:

1. *EPA:* Submit original signed and dated DMRs and all other reports required herein at the following addressee: U.S. Environmental Protection Agency, Water Technical Unit (SEW), Post Office Box 8127, Boston, MA 02114.

2. *Massachusetts Department of Environmental Protection:* a. The Regional Offices wherein the discharge occurs, shall receive a copy of the DMRs required herein:

Massachusetts Department of
Environmental Protection, Western
Regional Office, 436 Dwight Street,
Springfield, MA 01103
Massachusetts Department of
Environmental Protection,
Southeastern Regional Office, 20
Riverside Drive, Lakeville, MA 02347
Massachusetts Department of
Environmental Protection,
Northeastern Regional Office, 205A
Lowell Street, Wilmington, MA 01887
Massachusetts Department of
Environmental Protection, Central
Regional Office, 627 Main Street,
Worcester, Massachusetts 01608

b. Copies of DMRs, toxicity test reports and all other notifications required by this permit shall also be submitted to the State at:

Massachusetts Department of
Environmental Protection, Division of
Watershed Management, 627 Main
Street, Worcester, MA 01608.

c. Copies of the State Application Form BRP WM 13, Appendix C—Request for General Permit coverage for Surface Water Discharge from a Water Treatment Facility , and the Transmittal Form for Permit Application and Payment may be obtained at the DEP website at *(www.state.ma.us/dep)* by clicking on "Permit Applications" and "Watershed Management"; by telephoning the DEP Info Service Center (Permitting) at (617) 338–2255 or 1–800–462–0444 in 508, 413, 978 and 781 area codes; or from any DEP Regional Service Center located in each Regional Office.

Three copies of the transmittal form are needed. Copy 1 (the original) of the transmittal form and Appendix C form should be sent to Massachusetts Department of Environmental Protection, 627 Main Street, Worcester, MA 01608. Copy 2 of the transmittal form and the $500 fee should be sent to DEP, P.O. Box 4062, Boston, MA 02111. Municipalities are fee-exempt, but should send a copy of the transmittal form to that address. Keep Copy 3 of the transmittal form and a copy of the application for your records.

3. *New Hampshire Department of Environmental Services:* Signed copies of all reports required by this permit shall be sent to the State at: New Hampshire Department of Environmental Services, Water Division, P.O. Box 95, 6 Hazen Drive, Concord, New Hampshire 03302–0095.

E. Additional General Permit Conditions

1. Termination of Operations

Operators of facilities and/or operations authorized under this permit shall notify the Director upon the termination of discharges. The notice must contain the name, mailing address, and location of the facility for which the notification is submitted, the NPDES permit number for the water treatment facility discharge identified by the notice, and an indication of whether the water treatment facility discharge has been eliminated or the operator of the discharge has changed. The notice must be signed in accordance with the signatory requirements of 40 CFR 122.22.

2. When the Director May Require Application for an Individual NPDES Permit

a. The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take such action. Instances where an individual permit may be required include the following:

(1) The discharge(s) is a significant contributor of pollution;

(2) The discharger is not in compliance with the conditions of this permit;

(3) A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point source;

(4) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(5) A Water Quality Management Plan or Total Maximum Daily Load

containing requirements applicable to such point source is approved;

(6) Discharge to the territorial sea

(7) Discharge to outstanding natural resource water.

(8) Discharge into waters that are not attaining state water quality standards.

(9) The point source(s) covered by this permit no longer:

(a) Involves the same or substantially similar types of operations;

(b) Discharges the same types of wastes;

(c) Requires the same effluent limitations or operating conditions;

(d) Requires the same or similar monitoring; and

(e) In the opinion of the Director, is more appropriately controlled under a general permit than under an individual NPDES permit.

b. The Director may require an individual permit only if the permittee authorized by the general permit has been notified in writing that an individual permit is required, and has been given a brief explanation of the reasons for this decision.

3. When an Individual NPDES Permit May Be Requested.

a. Any operator may request to be excluded from the coverage of this general permit by applying for an individual permit.

b. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to that owner or operator is automatically terminated on the effective date of the individual permit.

F. Summary of Responses to Public Comments

On June 30, 2000, EPA released in the **Federal Register** for public notice and comment a draft NPDES general permit for effluent from water treatment facility discharges in the states of ME, MA. and NH. The public comment period for this draft general permit expired on July 30, 2000.

1. The US Fish and Wildlife Service, in a letter dated August 1, 2000, concurred with EPA's opinion that the reissuance of the NPDES general permits will not jeopardize the continued existence of Atlantic salmon in Maine.

2. The National Marine Fisheries Service in a letter dated July 31, 2000 has commented that the discharge into waters that are not attaining state water quality standards should be excluded from this permit . EPA concurs with NMFS. Accordingly section III (Exclusions), 2nd paragraph of the Fact Sheet and part I.F.2.(8) of the permit are added. Otherwise, NMFS has concluded that reissuance of the general permits for the water treatment facility discharge(s) in the states of Massachusetts and New Hampshire will not likely adversely affect any endangered or threatened species including essential fish habitat under NMFS jurisdiction.

3. The State of Maine, in a letter dated August 29, 2000 has requested EPA to be excluded from this general permit. EPA agrees and the permit for the State of Maine (MEG640000) is taken out from this general permit.

4. Based on comments from MA DEP some address corrections are made in the draft permit.

Part II, Standard Conditions

Section A—General Requirements

1. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

a. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under section 405 (d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

b. The CWA provides that any person who violates sections 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any of such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the CWA is subject to a civil penalty not to exceed $25,000 per day for each violation. Any person who *negligently* violates such requirements is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both. Any person who *knowingly* violates such requirements is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both. Note: See 40 CFR 122.41(a)(2) for additional enforcement criteria.

c. Any person may be assessed an administrative penalty by the Administrator for violating sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the CWA. Administrative penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.

2. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

3. Duty To Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator, upon request, copies of records required to be kept by this permit.

4. Reopener Clause

The Regional Administrator reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the CWA in order to bring all discharges into compliance with the CWA.

5. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA, or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

6. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges.

7. Confidentiality of Information

a. In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, *EPA may make the information available to the public without further notice*. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).

b. Claims of confidentiality for the following information *will* be denied:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and effluent data as defined in 40 CFR 2.302(a)(2).

c. Information required by NPDES application forms provided by the Regional Administrator under section 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

8. Duty To Reapply

If the permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain a new permit. The permittee shall submit a new notice of intent at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Regional Administrator. (The Regional Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

9. State Authorities

Nothing in part 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

10. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, nor does it relieve the permittee of its obligation to comply with any other applicable Federal, State, and local laws and regulations.

Section B—Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass

a. *Definitions.* (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs B.4.c and 4.d of this section.

c. *Notice.* (1) *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e (24-hour notice).

d. *Prohibition of bypass.* (1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless: (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c)(i) The permittee submitted notices as required under paragraph 4.c of this section;

(ii) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in paragraph 4.d of this section.

5. Upset

a. *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph B.5.c of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in paragraphs D.1.a and 1.e (24-hour notice); and

(4) The permittee complied with any remedial measures required under B.3. above.

d. *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

Section C—Monitoring and Records

1. Monitoring and Records

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application *except for the information concerning storm water discharges which must be retained for a total of 6 years*. This retention period may be extended by request of the Regional Administrator at any time.

c. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

d. Monitoring results must be conducted according to test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, unless other test procedures have been specified in the permit.

e. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The permittee shall allow the Regional Administrator, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Section D—Reporting Requirements

1. Reporting Requirements

a. Planned changes. The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject to the effluent limitations in the permit, not to the notification requirements under 40 CFR 122.42(a)(1).

(3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition or change may justify the application of permit conditions different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

b. *Anticipated noncompliance.* The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. *Transfers.* This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See section 122.61; in some cases, modification or revocation and reissuance is mandatory.)

d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Regional Administrator for reporting results of monitoring of sludge use or disposal practices.

(2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Administrator.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

e. *Twenty-four hour reporting.*

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances.

A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period

of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See section 122.41(g))

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in the permit to be reported within 24 hours. (See section 122.44(g))

(3) The Regional Administrator may waive the written report on a case-by-case basis for reports under paragraph D.1.e if the oral report has been received within 24 hours.

f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

g. *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs D.1.d, D.1.e and D.1.f of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph D.1.e of this section.

h. *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

2. Signatory Requirement

a. All applications, reports, or information submitted to the Regional Administrator shall be signed and certified. (See section 122.22)

b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Availability of Reports

Except for data determined to be confidential under paragraph A.8. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Regional Administrator. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in section 309 of the CWA.

Section E—Other Conditions

1. *Definitions* for purposes of this permit are as follows:

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity is subject to, including water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions.

Average means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For total and/or fecal coliforms, the average shall be the geometric mean.

Average monthly discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average weekly discharge limitation means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Best Professional Judgement (BPJ) means a case-by-case determination of Best Practicable Treatment (BPT), Best Available Treatment (BAT) or other appropriate standard based on an evaluation of the available technology to achieve a particular pollutant reduction.

Composite Sample—A sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (or lesser period as specified in the section on Monitoring and Reporting) and combined proportional to flow, or a sample continuously collected proportionally to flow over that same time period.

Continuous Discharge means a "discharge" which occurs without interruption throughout the operating hours of the facility except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA or "The Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92–500, as amended by Public Law 95–217, Public Law 95–576, Public Law 96–483 and Public Law 97–117; 33 U.S.C. 1251 *et seq.*

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the daily discharge is calculated as the average measurement of the pollutant over the day.

Director means the person authorized to sign NPDES permits by EPA and/or the State.

Discharge Monitoring Report Form (DMR) means the EPA standard national form, including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

Discharge of a pollutant means:

(a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or

(b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

This term does not include an addition of pollutants by any "indirect discharger."

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise "effluent limitations."

EPA means the United States "Environmental Protection Agency."

Grab Sample—An individual sample collected in a period of less than 15 minutes.

Hazardous Substance means any substance designated under 40 CFR part 116 pursuant to section 311 of CWA.

Maximum daily discharge limitation means the highest allowable "daily discharge."

Municipality means a city, town, borough, county, parish, district, association, or other public body created by of under State law and having jurisdiction over disposal or sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management agency under section 208 of CWA.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

New discharger means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants";

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source"; and

(d) Which has never received a finally effective NPDES permit for discharges at that "site".

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122.(a)(1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such.

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

NPDES means "National Pollutant Discharge Elimination System."

Non-Contact Cooling Water is water used to reduce temperature which does not come in direct contact with any raw material, intermediate product, a waste product or finished product.

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State."

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al.* v. *Train*, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in appendix A of 40 CFR part 122.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands.

Secondary Industry Category means any industry category which is not a "primary industry category."

Toxic pollutant means any pollutant listed as toxic in appendix D of 40 CFR part 122, under section 307(a)(1) of CWA.

Uncontaminated storm water is precipitation to which no pollutants have been added and has not come into direct contact with any raw material, intermediate product, waste product or finished product.

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands."

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(l) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) (d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)–(f) of this definition.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

2. Abbreviations when used in this permit are defined below:

cu. M/day or M3/day—cubic meters per day
mg/l—milligrams per liter
ug/l—micrograms per liter
lbs/day—pounds per day
kg/day—kilograms per day
Temp. °C—temperature in degrees Centigrade
Temp. °F—temperature in degrees Fahrenheit
Turb.—turbidity measured by the Nephelometric Method (NTU)
pH—a measure of the hydrogen ionconcentration
CFS—cubic feet per second
MGD—million gallons per day
Oil & Grease—Freon extractable material
ml/l—milliliter(s) per liter
Cl_2—total residual chlorine

[FR Doc. 00–29225 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 6, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 15, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0855.

Title: Telecommunications Reporting Worksheet and Associated Requirements, CC Docket No. 96–45.

Form Numbers: FCC Forms 499–A and 499–S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 5,000.

Estimate Time Per Response: 5.5 to 8.0 hours.

Frequency of Response: Recordkeeping; Monthly, quarterly, semi-annual, and annual reporting requirements; Third party disclosure.

Total Annual Burden: 171,000 hours.

Total Annual Costs: None.

Needs and Uses: Pursuant to the Communications Act of 1934, as amended, telecommunications carriers (and certain other providers of telecommunications services) must contribute to the support and cost recovery mechanisms for telecommunications relay services, numbering administration, number portability, and universal service. The FCC is currently seeking comment on proposals to modify the Commission's rules relating to contributions to the federal universal service support mechanisms. If adopted, the proposals on which the Commission seeks consent in the Further Notice may entail altering the current revenue reporting requirements to which interstate telecommunications carriers are subject under sections 47 CFR Sections 54.709 and 54.711 of the Commission's Rules.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–29189 Filed 11–14–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council Nominations

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: This notice requests nominations for membership in the Federal Communications Commission's Technological Advisory Council ("Council"), which has been renewed for a second two-year term beginning December 11, 2000.

DATES: Nominations will be accepted until November 22, 2000.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room 7–B452, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Kent Nilsson at knilsson@fcc.gov or 202–418–0845.

SUPPLEMENTARY INFORMATION: Increasing innovation and rapid advances in technology have accelerated changes in the ways that telecommunications services are provided to, and accessed by, users of communications services. The FCC must stay abreast of future developments in communications and related technologies to fulfill its responsibilities under the Communications Act. The Technological Advisory Council, which held its first meeting on April 7, 1999, was designed to provide a mechanism by which a diverse array of distinguished technologists can meet and provide "cutting edge" advice to the FCC on technological innovations that are likely to affect electronic, optical, and radio communications and related industries.

Nominees and applicants for membership on the Council should have national, or international, reputations as leading technologists in their areas of expertise. In the case of nominees or applicants who are affiliated with private sector companies, nominees will frequently hold the title of Chief Scientist, or Chief Technology Officer; and in the case of academic and other research organizations, applicants and nominees will frequently hold an endowed professorship, or fellowship, or senior management or technical position within that research or development organization. Individuals may apply for, or nominate another individual for, membership on the Council. Each nomination or application must include:

(1) The name and title of the applicant or nominee and a description of the area, or areas, of expertise possessed by the applicant or nominee;

(2) The applicant's or nominee's mail address, e-mail address (where available), telephone number, and facsimile number;

(3) Reasons why the applicant or nominee should be appointed to the Council; and

(4) The basis for concluding that the applicant or nominee has achieved peer recognition as a technical expert.

The Technological Advisory Council has been organized as a Federal Advisory Committee under the Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, as amended Public Law 94–409, section 5(c), Sept. 13, 1976, 90 Stat. 1247; 1977 Reorg. Plan No. 1, section 5F, 42 FR 56101, 91 Stat. 1634; Public Law 96–523, section 2, Dec. 12, 1980, 94 Stat. 3040; Public Law 97–375, title II, section 201(c), Dec. 21, 1982, 96 Stat. 1822. The Council, which was initially chartered on December 11, 1998, has been rechartered for an additional period that will expire on December 11, 2002. The Council will meet quarterly at the FCC which will provide facilities for those meetings. Members of the Council serve without Federal government compensation, and are not entitled to travel expenses, per diem or subsistence allowances. Nominations, and applications, for membership on the Council will be accepted through November 22, 2000.

Nominations and applications should be sent to Kent Nilsson, Network Technology Division, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–29190 Filed 11–14–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2450]

Petitions for Reconsideration of Action in Rulemaking Proceedings

November 7, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by November 30, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: Revision of the Commission's Rules to Ensure Compatibility with enhanced 911 Emergency Calling Systems (CC Docket No. 94–102).

Number of Petitions Filed: 2.

Subject: Amendment of Parts 1, 2 and 101 of the Commission's rules to License Fixed Services at 24 GHz (WT Docket No. 99–327).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–29188 Filed 11–14–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 002758–018.

Title: Oakland—APL Preferential Assignment Agreement.

Parties:

City of Oakland
American President Lines, Ltd.

Synopsis: The proposed amendment adjusts the compensation and rental amounts under the agreement. The term of the agreement continues to run through June 30, 2001.

Agreement No.: 011732.

Title: Evergreen/Lloyd Triestino Pacific Slot Charter Agreement.

Parties:

Evergreen Marine Corp. (Taiwan) Ltd. ("EMC")
Lloyd Triestino Di Navigazione S.p.A.("L.T.").

Synopsis: The proposed agreement would authorize EMC to charter space to L.T. on its vessels that operate in the trade between United States West Coast ports and ports in the Far East. The parties may interchange equipment, enter into cooperative working arrangements, and jointly contract for shoreside services. They may also discuss and agree on rates and terms and conditions of service relative to the carriage of cargo in the trade, including cargo carried under the parties' individual service contracts.

Agreement No.: 011733.

Title: Common Ocean Carrier Platform Agreement.

Parties:

A.P. Møller-Maersk Sealand, CMA CGM, S.A.
Hamburg Süd
Mediterranean Shipping Company, S.A.
P&O Nedlloyd Limited.

Synopsis: The proposed agreement authorizes the parties to establish and operate a common ocean carrier platform on the Internet that will serve as a means by which they and other providers of transportation services interact with their customers through a common set of transactions.

Agreement No.: 201108.

Title: Lease between the Port of New Orleans and Empire Stevedoring.

Parties:

Port of New Orleans
Empire Stevedoring (LA), Inc.

Synopsis: The agreement provides for the lease of certain areas of the First Street Wharf. The agreement runs through November 2, 2001 and can be extended for two additional 1-year periods.

Agreement No.: 201109.

Title: Lease Agreement between Broward County and H.T. Shipping, Inc.

Parties:

Broward County
H.T. Shipping, Inc.

Synopsis: The agreement provides for the lease of certain areas in Port Everglades. The agreement runs through January 31, 2005.

Agreement No.: 201110.

Title: Oakland—Hanjin Preferential Assignment Agreement.

Parties:

City of Oakland
Hanjin Shipping Company, Ltd.

Synopsis: The agreement provides for the use of certain facilities at Oakland's Inner Harbor Area.

Dated: November 9, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–29264 Filed 11–14–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

TAT International, Inc., 41–79 Main Street, Flushing, NY 11355.
Officers: Audie Wang, Treasurer/ Secretary, (Qualifying Individual), Timothy C. O'Nell, President.

Dated: November 9, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–29265 Filed 11–14–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

License number: 4219.

Name: Atlantic Pacific International, Inc.

Address: 3049 Ualena Street, #715, Honolulu, HI 96819.

Date revoked: October 8, 2000.

Reason: Failed to maintain a valid bond.

License number: 14808N.

Name: Korea Marine Transportation, Inc.

Address: 2500 83rd Street, Bldg. 1–W, North Bergen, NJ 07047.

Date revoked: October 26, 2000.

Reason: Failed to maintain a valid bond.

License number: 1048F.

Name: Mark F. Samuels & Co.

Address: 11222 S. La Cienega Blvd., Suite 560, Inglewood, CA 90304.

Date revoked: October 20 2000.

Reason: Failed to maintain a valid bond.

License number: 14781N.

Name: Samshin, Inc. d/b/a Korea Cargo Express.

Address: 8750 N.W. 36th Street, #260, Miami, FL 33178.

Date revoked: October 26, 2000.

Reason: Failed to maintain a valid bond.

License number: 4526F.

Name: Trafik Services, Inc.

Address: 300 Wampanoag Trail, East Providence, RI 02915.

Date revoked: October 25, 2000.

Reason: Failed to maintain a valid bond.

License number: 10339N.

Name: Unitrans Shipping Corp.

Address: 180–02 Eastgate Plaza, Jamaica, NY 11434.

Date revoked: November 2, 2000.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 00–29267 Filed 11–14–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by OSRA 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
2363F	Cargoza Forwarding Corporation, 2801 NW. 74th Avenue, Suite 202, Miami, FL 33166.	Sept. 13, 2000.
4168F	Continental Express International, Inc., 7506 SW. 26th Court, Davie, FL 33314.	Sept. 17, 2000.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 00–29266 Filed 11–14–00; 8:45 am]

BILLING CODE 6730–01–PM

FEDERAL MEDIATION AND CONCILIATION SERVICE

Federal Mediation and Conciliation Service Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Draft Fiscal Year 2001 Program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the draft Fiscal Year 2001 Program Guidelines/Application Solicitation for the Labor-Management Cooperation program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. This Solicitation contains changes in the length of time for the grant budget period.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202–606–8181.

A. Introduction

The following is the draft solicitation for the Fiscal Year (FY) 2001 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the forementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (company), area, industry, or public sector levels. A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon a particular city, county, contiguous multicounty, or statewide jurisdiction. An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists either of government employees and managers in one or more units of a local or state government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 2001, competition will be open to company/plant, area, private industry, and public sector committees. Public Sector committees will be divided into two sub-categories for scoring purposes. One sub-category will consist of committees representing state/local units of government and public institutions of higher education. The second sub-category will consist of public elementary and secondary schools.

Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (*e.g.*, job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Problem Statement*—The application should have numbered pages and discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses why the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail what the labor-management committee will accomplish during the life of the grant. Applications that promise to provide

objectives after a grant is awarded will receive little or no credit in this area. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in specific and measurable terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing committees should focus on expansion efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

3. *Approach*—This section of the application specifies how the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (*e.g.*, members represent 70% of the area or company/plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees, a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for when they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using September 17, 2001, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from all proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the applicant.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities that can document that a major purpose or function of their organization is the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant with be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or other third-parties failing to meet the above criteria.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to grantees who seek funds on behalf of an entirely difference committee whose efforts are totally outside of the scope of the original grant:

D. Allocations

The FY 2001 appropriation for this program is expected to be $1.5 million, of which at least $1,000,000 will be available competitively for new applicants. Specific funding levels will not be established for each type of committee. The review process will be conducted in such a manner that at least two awards will be made in each category (company/plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its nonreserved appropriation to be awarded on an non-competitive basis. These funds will be used only to support applications that have been solicited by the Director of the Service and are not subject to the dollar range noted in Section E.

FMCS reserves the right to retain up to five percent of the FY2001 appropriation to contract for program support purposes (such as evaluation) other than administration.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to expand existing or establish new labor-management committees will be for a period of 18 months. If successful progress is made during this initial budget period and all grant funds are not obligated within 18 months, these grants may be extended for up to six months. No continuation awards will be made.

The dollar range of awards is as follows:

- Up to $65,000 over 18 months for company/plant committees or single department public sector applicants;
- Up to $125,000 per 18-month period for area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit.

F. Cash Match Requirements and Cost Allowability

All applicants must provide at least 10 percent of the total allowable project costs. Matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for committee purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for time spent at committee meetings or time spent in committee training sessions. Applicants generally will not be allowed to claim all or a portion of existing full-time staff as an expense or match contribution. For a more complete discussion of cost allowability, applicants are encouraged to consult the FY2001 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications must be signed by both a labor and management representative and be postmarked or electronically transmitted no later than May 19, 2001. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus three copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW, Washington, D.C. 20427. FMC will not consider videotaped submissions or video attachments to submissions. Those wishing to send their application by e-mail should consult the FMCS web site (www.fmcs.gov) to determine how and if to proceed.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more Grant Review Boards. The Board(s) will recommend selected applications for rejection or further funding consideration. The Director, Program Services, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY2001 grant applicants will be notified of results and all grants awards will be made before September 15, 2001. Applications submitted after the May 19 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Program Services.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. Please consult the FMCS web site (www.fmcs.gov) to determine when/if the application can be submitted electronically.

These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427; or by calling 202–606–8181.

C. Richard Barnes,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 00–29026 Filed 11–14–00; 8:45 am]

BILLING CODE 6732–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 11, 2000.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer), 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. FleetBoston Financial Corporation, Boston, Massachusetts; to merge with and acquire 100 percent of the voting shares of Summit Bancorp, Princeton, New Jersey, and thereby indirectly acquire Summit Bank, Hackensack, New Jersey; Summit Bank, Bethlehem, Pennsylvania; and Summit Bank, Norwalk, Connecticut.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Sooner Southwest Bankshares, Inc., Tulsa, Oklahoma; to acquire 100 percent of the voting shares of The First National Bancorporation of Heavener, Inc., Heavener, Oklahoma, and thereby indirectly acquire First National Bank, Heavener, Oklahoma.

2. Heritage Group, Inc., Aurora, Nebraska; to acquire 100 percent of the voting shares of Heritage Bank, N.A., Doniphan, Nebraska, a *de novo* bank.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Mason National Bancshares, Inc., Mason, Texas, and Mason National Bancshares of Nevada, Inc., Carson City, Nevada; to become bank holding companies by acquiring Mason National Bank, Mason, Texas.

2. Shelby Bancshares, Inc., Center, Texas, and Shelby Bancshares of Nevada, Inc., Carson City, Nevada; to become bank holding companies by acquiring Shelby Savings Bank, SSB, Center, Texas.

Board of Governors of the Federal Reserve System, November 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–29169 Filed 11–14–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, November 20, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Future capital framework.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

Contact Person for More Information: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 9, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–29301 Filed 11–9–00; 4:58 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will discuss its draft report *Ethical and Policy Issues in International Research*. Most Commission members will participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on November 22 from 1:00–1:30 pm.

Dates/Times/Location

November 22, 2000, 10:00 am–5:00 pm, National Institutes of Health, 45 Center Drive, Building 45 (Natcher Conference Center), Conference Rooms E1 and E2, Bethesda, Maryland.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1999 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Jody Crank by telephone, fax machine, or mail as shown below as soon as possible, at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received.

Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Crank, National Bioethics Advisory Commission, 6705 Rockledge Drive, Suite 700, Bethesda, Maryland 20892–7979, telephone (301) 402–4242, fax number (301) 480–6900.

Dated: November 7, 2000.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 00–29163 Filed 11–14–00; 8:45 am]

BILLING CODE 4157–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. 30DAY–02–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

The National Health and Nutrition Examination Survey (NHANES) OMB No. 0920–0237—Revision—The National Health and Nutrition Examination Survey (NHANES) has been conducted in several cycles since 1970 by the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The current cycle of NHANES began in February 1999. The survey will now be conducted on a continuous, rather than episodic, basis. About 6,700 individuals receive a health interview in their homes annually; of these, 5,000 persons complete a physical examination. Participation in the survey is voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutritional status of the U.S. population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States civilian, noninstitutionalized population. NHANES monitors the prevalence of chronic conditions and risk factors such as coronary heart disease, arthritis, osteoporosis, pulmonary and infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, environmental exposures, and diet. NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from NHANES can be compared to those from previous surveys to monitor changes in the health of the U.S. population. NHANES will also establish a national probability sample of genetic material for future genetic research for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and evaluate long-term national health objectives, food fortification policies, programs to limit environmental exposures, immunization guidelines and health education and disease prevention programs.

The annualized burden for this collection is 51,741 hours.

Respondent	Number of responses	Responses/ respondent	Hours/ response
Screener (Scrn) Interview only	13,750	1	10/60
Scrn Household (HH) Interview only	750	1	26/60
Scrn HH Sample Person (SP) Interview only	1,050	1	1 6/60
Scrn/HH/SP & Primary Medical Exam (Prim MEC) only	5,250	1	6 40/60
Scrn/HH/SP, Prim MEC & full MEC replicate exam	255	1	11 40/60
Scrn/HH/SP MEC & dietary replicate interview only	1,050	1	9 1/60
Home Exam	70	1	2 36/60
Optional Studies	1,180	1	15/60
Hepatitis C follow-up	100	1	30/60

Dated: November 8, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–29209 Filed 11–14–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–04–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Information Collection Procedures for Evaluating Toxicological Profiles (0923–0020)—Extension—Agency for Toxic Substance and Disease Registry (ATSDR). The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability

Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prepare toxicological profiles in accordance with guidelines developed by ATSDR and EPA. Each profile is revised and republished as necessary, but no less often than every three years. The principal audiences for the toxicological profiles are health professionals at the federal, state, and local levels, interested private sector organizations and groups, and members of the public.

This is a request for a three-year extension of a previously approved data collection to collect information pertaining to: (a) Affiliation of users of the profiles, (b) clarity of discussion in the profiles, (c) consistency of information in the profiles, (d) completeness of information in the profile, and (e) utility of information in the profile.

The information will be used to maintain customer satisfaction concerning use of the profiles by these multi-disciplinary users. This will also ensure that we continue to provide a client-oriented product. This effort will be accomplished through enhancement of the system used for updating existing toxicological profiles and improving the utility of newly developed profiles by use of these user surveys. There is no cost to respondents. The estimated burden hours to respondents are 250.

Respondents	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Individuals completing questionnaires	1000	1	15/60	250

Dated: November 8, 2000.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–29210 Filed 11–14–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–03–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

A Research Program to Develop Optimal NIOSH Alerts for Occupational Safety and Health—New—The mission of the National Institute of Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. The Alert is one of the primary publications by which NIOSH communicates health and safety recommendations to at-risk workers. The Alert is mailed to workers affected by a particular health or safety hazard and contains information about the nature of the hazard, as well as recommendations for avoiding or controlling it. Despite the important role of the Alert in conveying health and safety information to workers, these publications have not been routinely pretested and evaluated for effectiveness. Therefore, the degree to which the NIOSH Alerts actually produce risk awareness, as well as comprehension, acceptance and use of the recommended health and safety measures, is unknown.

NIOSH proposes to apply recent theoretical advances in communication research to the development of NIOSH Alerts in order to ensure maximal effectiveness in conveying health and safety information to workers. The Elaboration Likelihood Model (ELM) is a communication theory that has received much empirical support. During the past year, an initial test (still in progress) was conducted to compare a standard Alert to an Alert with revised content and format based on the postulates of the ELM. Although this initial study will be informative, much additional research of this nature is necessary to gain an understanding of the communication variables that contribute to high levels of worker awareness, comprehension, acceptance, and use of safety recommendations.

According to the ELM, the greatest impact on long-term health/safety attitudes and behaviors should occur when workers are motivated and able to elaborate upon a message, and when a message contains strong arguments. Therefore, the current investigation aims to (1) examine variables that will increase level of message-related elaboration and (2) create messages that contain strong arguments. The effectiveness of the standard version of the Alert for Preventing Injuries and Deaths from Skid-Steer Loaders will be compared with revised versions of this Alert that incorporate variables known to increase message elaboration and strong arguments selected through pretesting. Specifically, the revised Alerts will use high imagery language to increase message elaboration. After the initial messages are developed, they will be pretested using a sample of 60 farmers and 60 West Virginia University Agricultural Sciences students. Following this pretesting phase, data will be gathered from (1) 300 volunteer farmers who attend an on-site testing and (2) a national random sample of 300 farmers, and (3) 600 West Virginia University Agricultural Science students. In each of these cases, participants will be randomly assigned to receive either a standard or revised version of the Alert, and the effect of the different Alert formats on safety attitudes and behaviors will be assessed.

Data collected in this investigation should further our understanding of the variables that increase effectiveness in communicating health and safety information to workers. By continuing to systematically apply postulates of the ELM to the design of the Alerts, it should become possible to develop a standard communication template to use in future NIOSH publications. The total estimated annualized burden is 660 hours.

Type of respondent	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs.)
Farmers (pretesting)	60	1	.5
Student (pretesting)	60	1	.5
Farmers	300	1	.333
Farmers	300	2	.333
Students	600	1	.5

Dated: November 8, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–29259 Filed 11–14–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–05–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

NIOSH Training Grants, 42 CFR Part 86, Application and Regulations (OMB No. 9020–0261)—Extension—National Institute for Occupational Safety and Health (NIOSH). Public law 91–596 requires CDC/NIOSH to provide an adequate supply of professionals to carry out the purposes of the Act to assure a safe and healthful work environment. NIOSH supports educational programs through training grant awards to academic institutions for the training of industrial hygienists, occupational physicians, occupational health nurses and safety professionals. Grants are provided to 15 Education and Research Centers (ERCs) which provide multi-disciplinary graduate academic and research training for professionals, continuing education for practicing professionals and outreach programs in the Region. There are also currently 41 Training Project Grants (TPGs) which provide single discipline academic and technical training throughout the country. 42 CFR Part 86, Grants for Education Programs in Occupational Safety and Health, Subpart B—Occupational Safety and Health Training, provides guidelines for implementing Public Law 91–596.

The training grant application form (CDC2.145.A) is used by the National Institute of Occupational Safety and Health to collect information from new grant applicants submitting competing applications, and from existing applicants for competing renewal grants. The information is used to determine the eligibility of applicants for grant review and by peer reviewers during the peer review process to evaluate the merit of the proposed training project. CDC Form 2.145B is used for non-competing awards to evaluate the annual progress of the applicant during the approved project period.

Extramural training grant awards are made annually following an extramural review process of the training grant applications, review by an internal Training Grants Council and an internal review of non-competing applicants. The estimated annualized burden is 6,161 hours.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden per response (in hrs)
Universities	61	1	101

Dated: November 8, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–29260 Filed 11–14–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0530]

FDA Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 004

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA will recognize for use in premarket reviews (FDA Recognized Consensus Standards). This publication entitled "Modifications to the List of Recognized Standards, Recognition List Number: 004" (Recognition List Number: 004) will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Written comments concerning this document may be submitted at any time. See section VI of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies on a 3.5′ diskette of "Modifications to the List of Recognized Standards, Recognition List Number: 004," to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. Written comments concerning this document must be submitted to the contact person (address below). Comments should be identified with the docket number found in brackets in the heading of this document. This document may also be accessed on FDA's Internet site at http://www.fda.gov/cdrh/fedregin.html. See section V of this document for electronic access to the searchable data base for the current list of "FDA Recognized Consensus Standards," including Recognition List Number: 004 modifications, and other standards related information.

FOR FURTHER INFORMATION CONTACT: To comment on this document and/or to recommend additional standards for recognition: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 12725 Twinbrook Pkwy., Rockville, MD 20852, 301–827–4777.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards, developed by international and national organizations, for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled "Recognition and Use of Consensus Standards." This notice described how FDA will implement its standards program recognizing the use of certain standards and provided the initial list of recognized standards.

In **Federal Register** notices published on October 16, 1998 (63 FR 55617) and July 12, 1999 (64 FR 37546), FDA modified its initial list of recognized standards. These notices described the addition, withdrawal, and revision of certain standards recognized by FDA. When these notices were published, the agency maintained "html" and "pdf" versions of the list of "FDA Recognized Consensus Standards." Both versions were publicly accessible at the agency's Internet site. The agency maintains the current list in a searchable data base accessible to the public. See section V of this document for electronic access information.

II. Discussion of Modifications to the List of Recognized Standards, Recognition List Number: 004

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews for devices. FDA will incorporate these modifications in the list of "FDA Recognized Consensus Standards" in the agency's searchable data base. FDA will use the term "Recognition List Number: 004" to identify supplementary information sheets for standards added to the list for the first time, standards added to replace withdrawn standards, and still recognized standards for which minor revisions are made to clarify the application of the standards.

At the end of this notice, FDA lists modifications the agency is making that involve: (1) The initial addition of standards not previously recognized by FDA and (2) the addition of standards in conjunction with the withdrawal of other standards that are replaced by these later, or amended, or different standards.

Under headings "A" through "L" below, FDA describes modifications that involve: (1) The withdrawal of standards and their replacement by others ("replacement" standards are included in the list at the end of this notice, but not "withdrawn" standards); (2) the correction of errors made in previously recognized standards, e.g., the name of the standard; (3) the withdrawal of standards not replaced; and (4) the minor revision of supplementary information sheets for standards that FDA still recognizes, e.g., to clarify the extent of recognition, or applicable devices.

Item numbers discussed below identify entries in the searchable data base list of "FDA Recognized Consensus Standards." "Previous item" refers to entries in the list after modification on July 12, 1999 (64 FR 37546). "Current item" refers to entries in the list after Recognition List Number: 004 modifications are included. Within each category of standards, entries begin (or began) with item 1. Item numbers are not repeated if an entry is withdrawn, replaced, or added.

A. Biocompatibility

1. ASTM E1397–91 is withdrawn under previous item 5. ASTM E1397–91 (1998) is added under current item 37.
2. ASTM E1398–91 is withdrawn under previous item 6. ASTM E1398–91 (1998) is added under current item 38.
3. ASTM F763–87 (1993) is withdrawn under previous item 35. ASTM F763–99 is added under current item 40.
4. ASTM F981–93 is withdrawn under previous item 14. ASTM F981–99 is added under current item 41.
5. USP 23, "Biological Reactivity Tests, In Vitro-Direct Contact Test (87)," is withdrawn under previous item 23. The USP 24 version, Biological Tests <87>, is added under current item 46.
6. USP 23, "Biological Reactivity Tests, In Vitro-Elution Test (87)," is withdrawn under previous item 24. The USP 24 version, Biological Tests <87> is added under current item 47.
7. USP 23 (1988), "Biological Reactivity Tests, In Vivo, Classification of Plastics Sample Preparation," is withdrawn under previous item 31. The USP 24 version, Biological Tests <88>, is added under current item 48.
8. USP 23, "Biological Reactivity Test, In Vivo, Classification of Plastics-Intracutaneous Test (88)," is withdrawn under previous item 25. The USP 24 version, Biological Tests <88>, is added under current item 49.
9. USP 23, "Biological Reactivity Tests, In Vivo-Systemic Injection Test (88)," is withdrawn under previous item 27. The USP 24 version, Biological Tests <88>, is added under current item 50.

B. Cardiovascular/Neurology

1. ASTM F1058–91 is withdrawn under previous item 13. ASTM F1058–97 is added under current item 28.
2. IEC 60601–2–30 (1995–03) is withdrawn, under previous item 19. IEC 60601–2–30: 1999–12 is added under current item 29.
3. IEC 60601–2–25 (1993–03) is withdrawn under previous item 17. IEC 60601–2–25 Amendment 1 (1999) is added under current item 30.

C. Dental/ENT

1. ANSI/ADA Specification No.15a (1992) is withdrawn under previous item 47. ANSI/ADA Specification No. 15: 1999 is added under current item 85.
2. ANSI/ADA Specification No. 38 (1991) is withdrawn under previous item 54. ANSI/ADA Specification No. 38: 2000 is added under current item 86.
3. ANSI/ADA Specification No. 69 (1991) is withdrawn under previous item 57. ANSI/ADA Specification No. 69: 1999 is added under current item 87.

4. ANSI/ADA Specification No. 78 (1994) is withdrawn under previous item 58. ANSI/ADA Specification No. 78: 2000 is added under current item 88.

D. General (General Applicability)

1. ANSI/AAMI/ISO 10993–1 (1997) is withdrawn under previous item 13. ANSI/AAMI/ISO 10993–1 (1997) is added back to the list as current item 51 under the Biocompatibility category of standards.

E. General Plastic Surgery/General Hospital

1. ASTM D6124–97 is withdrawn under previous item 45. ASTM D6124–00 is added under current item 51.

2. ASTM D5250 (1992) is withdrawn under previous item 35. ASTM D5250–00 is added under current item 52.

3. ASTM D5151 (1992) is withdrawn under previous item 34. ASTM D5151–99 is added under current item 53.

4. ASTM D3578 (1995) is withdrawn under previous item 31. ASTM D3578–00 is added under current item 54.

5. ASTM D3577 (1998) is withdrawn under previous item 30. ASTM D3577–00 is added under current item 55.

6. USP 23 <11>, "Sterile Sodium Chloride for Injection," is withdrawn. The USP 24 <11> version of this standard is added under current item 56.

7. USP 23 <11>, "Sterile Water for Injection," is withdrawn under previous item 28. The USP 24 <11> version of this standard is added under current item 57.

8. USP 23, "Absorbable Surgical Sutures," is withdrawn under previous item 40. The USP 24 version of this standard is added under current item 58.

9. USP 23, "Tensile Strength," is withdrawn under previous item 44. The USP 24 version of this standard is added under current item 59.

10. USP 23, "Sutures-Diameter <861>," is withdrawn under previous item 42. The USP 24 <861> version of this standard is added under current item 60.

11. USP 23, "Suture Needle Attachment <871>," is withdrawn under previous item 43. The USP 24 <871> version of this standard is added, under current item 61.

F. In Vitro Devices

1. NCCLS standard M11–A3 (1993) is withdrawn under previous item 9. FDA intended to replace this standard with NCCLS standard M11–A4 (1997), which it added to the list on July 12, 1999 (64 FR 37546) and which remains as current item 45.

G. OB GYN/Gastroenterology

1. In the supplementary information sheet(s) for IEC 60601–2–18: 1996, which was identified under previous item 5, minor revisions are made to the devices affected, related Code of Federal Regulations (CFR) citation(s) and procode(s), and relevant guidance. This standard remains recognized and identified under current item 5.

H. Ophthalmic

1. ISO 9394: 1994 is withdrawn under previous item 6, from the list of recognized consensus standards. ISO 9394: 1998 is added under current item 15.

I. Orthopaedics

1. ASTM F75–92 is withdrawn under previous item 2. ASTM F75–98 is added under current item 86.

2. ASTM F90–96 is withdrawn under previous item 4. ASTM F90–97 is added under current item 87.

3. ASTM F136–96 is withdrawn under previous item 5. ASTM F136–98 is added under current item 88.

4. ASTM F138–92 is withdrawn under previous item 6. ASTM F138–97 is added under current item 89.

5. ASTM F560–92 is withdrawn under previous item 9. ASTM F560–98 is added under current item 90.

6. ASTM F561–87 is withdrawn under previous item 10. ASTM F561–97 is added under current item 91.

7. ASTM F565–85 (R1996) is withdrawn under previous item 12. ASTM F565–85 (1996)(e1) is added under current item 92.

8. ASTM F601–86 (1992) is withdrawn under previous item 13. ASTM F601–98 is added under current item 93.

9. ASTM F603–83 is withdrawn under previous item 14. ASTM F603–83 (1995) is added under current item 94.

10. ASTM F620–96 is withdrawn under previous item 16. ASTM F620–97 is added under current item 96.

11. ASTM F621–92 is withdrawn under previous item 17. ASTM F621–97 is added under current item 97.

12. ASTM F629–86 is withdrawn under previous item 18. ASTM F629–97 is added under current item 98.

13. ASTM F648–84 is withdrawn under previous item 19. ASTM F648–98 is added under current item 99, with changes to the extent of recognition made in the supplementary information sheet(s).

14. ASTM F746–87 is withdrawn under previous item 22. ASTM F746–87 (1994) is added under current item 100.

15. ASTM F786–82 is withdrawn under previous item 23. It is not replaced.

16. ASTM F787–82, is withdrawn under previous item 24. It is not replaced.

17. ASTM F897–84 (R1993) is withdrawn under previous item 26. ASTM F897–84 (1997) is added under current item 101.

18. The title of ASTM F961–96, identified under previous item 28, is corrected to read "Standard Specification for Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy Forgings for Surgical Implants (R30035)." It remains identified as current item 28.

19. ASTM F983–86 is withdrawn under previous item 29. ASTM F983–86 (1996) is added under current item 102.

20. ASTM F1089–87 is withdrawn under previous item 32. ASTM F1089–87 (1994) is added, under current item 104.

21. ASTM F1091–91 (R1996) is withdrawn under previous item 33. ASTM F1091–91 (1996) E01 is added under current item 105.

22. ASTM F1147–95 is withdrawn under previous item 35. ASTM F1147–99 is added under current item 107.

23. ASTM F1160–91 is withdrawn under previous item 36. ASTM F1160–98 is added under current item 108.

24. ASTM F1185–88 (1993) is withdrawn under previous item 37. ASTM F1185–88 (1993) E01 is added under current item 109.

25. ASTM F1264–96a is withdrawn under previous item 38. ASTM F1264–99 is added under current item 110.

26. ASTM F1350–96 is withdrawn under previous item 42. ASTM F1350–91 (1996) E01 is added under current item 112.

27. ASTM F1377–92 is withdrawn under previous item 43. ASTM F1377–98a is added under current item 113.

28. In the supplementary information sheet(s) for ASTM F1672–95, identified under previous item 55, minor changes are made to the extent of recognition, devices affected, and related CFR citation(s) and procode(s). This standard remains recognized and identified under current item 55.

29. ASTM F1798 is withdrawn under previous item 59. ASTM F1798–97 is added under current item 114.

30. ASTM F1800 is withdrawn under previous item 60. ASTM F1800–97 is added under current item 115.

31. ASTM F1801 is withdrawn under previous item 61. ASTM F1801–97 is added under current item 116.

32. ISO 5832–2: 1993 is withdrawn under previous item 63. ISO 5832–2:1999 is added under current item 117.

33. ISO 5832–9: 1992 is withdrawn under previous item 68. ISO 5832–9:1995 is added under current item 118.

34. ISO 5832–10: 1996 is withdrawn under previous item 69. It is not replaced.

35. ISO 5834–2: 1985 is withdrawn under previous item 72. ISO 5834–2: 1998 is added under current item 119.

36. In the supplementary information sheets for ISO 7206–4: 1989 and ISO 7206–8: 1995, which were identified under previous items 78 and 79, respectively, minor changes are made to the devices affected, processes impacted, type of standards, and related CFR citations and procodes. They remain recognized and identified under current items 78 and 79.

J. Radiology

1. UL–122 is withdrawn under previous item 30. UL–122 (Fourth Edition) is added under current item 50.

2. UL–187 is withdrawn under previous item 31. UL–187 (Seventh Edition) is added under current item 51.

3. UL–544 (Third Edition) is withdrawn under previous item 32. UL–544 (Fourth Edition) is added under current item 52.

4. IEC 60601–2–8 (1987–04) is withdrawn under previous item 35. IEC 60601–2–8 (1999–04) is added under current item 54.

5. IEC 60601–2–29 (1993–04) is withdrawn under previous item 41. IEC 60601 2–9 (1999–01) is added under current item 55.

K. Software

1. In the supplementary information sheets for ISO/IEC 12207 and IEEE/EIA 12207.0–1996, which were identified under previous items 1 and 3, respectively, minor changes are made to the identities of organizations associated with the standards and the extent of recognition. These standards remain recognized and identified under current items 1 and 3.

L. Sterility

1. ANSI/AAMI ST24: 1992 is withdrawn under previous item 13. ANSI/AAMI ST24: 1999 is added under current item 38.

2. USP 23: 1995, is withdrawn under previous item 29. USP 24: 2000 is added under current item 39.

3. USP 23: 1995, "Biological Indicator for Dry-Heat Sterilization, Paper Strip," is withdrawn under previous item 30. The USP 24: 2000 version of this standard is added under current item 40.

4. USP 23: 1995, "Biological Indicator for Ethylene Oxide Sterilization, Paper Strip," is withdrawn under previous item 31. The USP 24: 2000 version of this standard is added under current item 41.

5. USP 23: 1995, "Microbial Limits Test <61>," is withdrawn under previous item 32. The USP 24: 2000 <61> version of this standard is added under current item 42.

6. USP 23: 1995, "Microbiological Tests, Sterility Tests <71>," is withdrawn under previous item 33. The USP 24: 2000 <71> version of this standard is added under current item 43.

7. USP 23: 1995, "Biological Tests and Assays, Bacterial Endotoxin Test (LAL) <85>," is withdrawn under previous item 34. The USP 24: 2000 <85> version of this standard is added under current item 44.

8. USP 23: 1995, "Pyrogen Test (USP Rabbit Test) <151>," is withdrawn under previous item 35. The USP 24: 2000 <151> version of this standard is added under current item 45.

9. USP 23: 1995, "Sterilization and Sterility Assurance of Compendial Articles <1211>," is withdrawn under previous item 36. The USP 24: 2000 <1211> version of this standard is added under current item 46.

III. List of Recognized Standards

FDA maintains the agency's current list of "FDA Recognized Consensus Standards" in a searchable data base that may be accessed directly at FDA's Intranet site at http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm. The modifications and minor revisions described in this notice will be incorporated into the data base and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective.

Additional modifications and minor revisions as needed, to the list of recognized consensus standards, will be announced in the **Federal Register** once a year, or more often, if necessary.

IV. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (address above). To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

V. Electronic Access

In order to receive "Guidance on the Recognition and Use of Consensus Standards" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number 321 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of "Guidance on the Recognition and Use of Consensus Standards" may also do so by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes this guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this notice announcing "Modifications to the List of Recognized Standards, Recognition List Number: 004" will be available on the CDRH home page.

The CDRH home page may be accessed at http://www.fda.gov/cdrh. The "Guidance on the Recognition and Use of Consensus Standards," and the searchable data base for "FDA Recognized Consensus Standards," may be accessed through hyper links at http://www.fda.gov/cdrh/stdsprog.html. This **Federal Register** notice of modifications in FDA's recognition of consensus standards will be available, upon publication, at http://www.fda.gov/cdrh/fedregin.html.

VI. Submission of Comments and Effective Date

Interested persons may, at any time, submit to the contact person (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments will be considered in determining whether to amend the current listing of "Modifications to the List of Recognized Standards, Recognition list: 004."

The recognition of standards announced in this notice of modifications will become effective on [*insert date of publication in the* **Federal Register**].

VII. Listing of New Entries

The list of new entries and consensus standards added as "Modifications to the List of Recognized Standards," under Recognition List Number: 004, is as follows:

Item Number	Title of Standard	Reference Number and Date
	Biocompatibility	
37	Standard Practice for the In Vitro Rat Hepatocyte DNA Repair Assay	ASTM E1397–91 (1998)
38	Standard Practice for the In Vivo Rat Hepatocyte DNA Repair Assay	ASTM E1398–91 (1998)
39	Standard Practice for Selecting Generic Biological Test Methods for Materials and Devices	ASTM F748–98
40	Standard Practice for Short-Term Screening of Implant Materials	ASTM F763–99
41	Standard Practice for Assessment of Compatibility of Biomaterials for Surgical Implants with Respect to Effect of Materials on Muscle and Bone	ASTM F981–99
42	Standard Practice for Testing for Whole Complement Activation in Serum by Solid Materials	ASTM F1984–99
43	Standard Practice for Testing for Biological Responses to Particles In Vitro	ASTM F1903–98
44	Standard Practice for Testing for Biological Responses to Particles In Vivo	ASTM F1904–98
45	Standard Practice for Assessment of Compatibility of Absorbable/Resorbable Biomaterials for Implant Applications	ASTM F1983–99
46	Biological Reactivity Test, In Vitro—Direct Contact Test	USP 24 Biological Tests <87>
47	Biological Reactivity Test, In Vitro—Elution Test	USP 24 Biological Tests <87>
48	Biological Reactivity Test, In Vivo—Procedure—Preparation of Sample	USP 24 Biological Test <88>
49	Biological Reactivity Test, In Vivo—Intracutaneous Test	USP 24 Biological Tests <88>
50	Biological Reactivity Tests, In Vivo—Systemic Injection Test	USP 24 Biological Test <88>
51	Biological Evaluation of Medical Devices—Part 1: Evaluation and Testing	ANSI/AAMI/ISO 10993–1 (1997)
	Cardiovascular/ Neurology	
25	Cardiac Defibrillators—Connector Assembly for Implantable Defibrillators-Dimensional and Test Requirements	ISO 11318–93/Amendment 1:1996 (E)
26	Medical Electrical Equipment, Part 2: Particular Requirements for the Safety of Transcutaneous Partial Pressure Monitoring Equipment	IEC 60601–2–23: 1993
27	Medical Electrical Equipment, Part 2: Particular Requirements for the Safety of Direct Blood Pressure Monitoring Equipment	IEC 60601–2–34 (1994–12)
28	Standard Specification for Wrought Cobalt-Chromium-Nickel-Molybdenum-Iron Alloys for Surgical Implant Applications (UNS R30003 and UNS R30008)	ASTM F1058–97
29	Medical Electrical Equipment, Part 2: Particular Requirements for the Safety, Including Essential Performance, of Automatic Cycling Non-Invasive Blood Pressure Monitoring Equipment	IEC 60601–2–30: 1999–12
30	Medical Electrical Equipment, Part 2: Particular Requirements for the Safety of Electrocardiographs	IEC 60601–2–25 Amendment 1 (1999)
	Dental/ ENT	
85	Synthetic Resin Teeth	ANSI/ADA Specification No. 15: 1999
86	Metal-Ceramic Systems	ANSI/ADA Specification No. 38: 2000
87	Dental Ceramic	ANSI/ADA Specification No. 69: 1999
88	Endodontic Obturating Points	ANSI/ADA Specification No. 78: 2000
89	Polymer-Based Crown and Bridge Resins	ANSI/ADA Specification No. 53: 1999
90	Specifications for Instruments to Measure Aural Acoustic Impedance and Admittance (Aural Acoustic Immittance)	ANSI/ASA S3.39: 1996
	General (Generally Applicable)	
22	General Tolerances—Part 1: Tolerances for Linear and Angular Dimensions Without Individual Tolerance Indications	ISO 2768–1 (1989)
23	General Tolerances—Part 2: Geometrical Tolerances for Features Without Individual Tolerance Indications	ISO 2768–2 (1989)
24	Analysis Techniques for System Reliability—Procedure for Failure Modes and Effects Analysis (FMEA)	IEC 60812 (1985)

Item Number	Title of Standard	Reference Number and Date
	General Plastic Surgery/ General Hospital	
46	Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of High Frequency Surgical Equipment	IEC 60601–2–2: Third Edition 1998–09
47	Standard Test Method for Analysis of Protein in Natural Rubber and its Products Using the Modified Lowry Method	ASTM D5712–99
48	Standard Test Method for the Immunological Measurement of Antigenic Protein in Natural Rubber and its Products	ASTM D6499–00
49	Standard Test Method for Human Repeat Insult Patch Testing or Medical Gloves	ASTM D6355–98
50	Standard Specification for Nitrile Examination Gloves for Medical Application	ASTM D6319–00
51	Standard Test Method for Residual Powder on Medical Gloves	ASTM D6124–00
52	Standard Specification for Poly (Vinyl Chloride) Gloves for Medical Application	ASTM D5250–00
53	Standard Test Method for Detection of Holes in Medical Gloves	ASTM D5151–99
54	Standard Specification for Rubber Examination Gloves	ASTM D3578–00
55	Standard Specification for Rubber Surgical Gloves	ASTM D3577–00
56	Sterile Sodium Chloride For Irrigation	USP 24 <11>
57	Sterile Water for Injection	USP 24 <11>
58	Absorbable Surgical Sutures	USP 24
59	Tensile Strength	USP 24
60	Sutures—Diameters	USP 24 <861>
61	Sutures Needle Attachment	USP 24 <871>
	OB GYN/ Gastroenterology	
19	Optical and Optical Instruments—Medical Endoscopes and Endoscopic Accessories—Part 1: General Requirements	ISO 8600–1: 1997
20	Optical and Optical Instruments—Medical Endoscopes and Endoscopic Accessories—Part 3: Determination of Field of View and Direction of View of Endoscopes with Optics	ISO 8600–3: 1997
21	Optical and Optical Instruments—Medical Endoscopes and Certain Accessories—Part 4: Determination of Maximum Width of Insertion Portion	ISO 8600–4: 1997
22	Standard Practice for Cleaning and Disinfecting of Flexible Fiberoptic and Video Endoscopes Used in the Examination of Hollow Viscera	ASTM F1518–94
	Ophthalmic	
15	Optics and Optical Instruments—Determination of Biological Compatibility of Contact Lens Material—Testing of the Contact Lens System by Ocular Study with Rabbit Eyes	ISO 9394–1998
16	Optics and Optical Instruments—Contact Lenses—Part 2: Determination of Oxygen Permeability and Transmissibility by the Coulometeric Method	ISO 9913–2: 2000
17	Optics and Optical Instruments—Ophthalmic Instruments—Slit-Lamp Microscopes	ISO 10939: 1998
18	Optics and Optical Instruments—Ophthalmic Instruments—Indirect Ophthalmoscopes	ISO 10943: 1999
19	Ophthalmic Optics—Contact Lenses—Classification of Contact Lenses and Contact Lens Materials	ISO 11539: 1999
20	Ophthalmic Implants—Intraocular Lenses—Part 1: Vocabulary	ISO 11979–1: 1999
21	Ophthalmic Implants—Intraocular Lenses—Part 2: Optical Properties and Tests Methods	ISO 11979–2: 2000
22	Ophthalmic Implants—Intraocular Lenses—Part 3: Mechanical Properties and Test Methods	ISO 11979–3: 1999
23	Ophthalmic Optics—Contact Lenses and Contact Lens Care Products—Determination of Physical Compatibility of Contact Lens Care Products with Contact Lenses	ISO 11981–1999
24	Ophthalmic Optics—Contact Lenses and Contact Lens Care Products—Guidelines for Determination of Preservative Uptake and Release	ISO 11986: 1999
25	Optics and Optical Instruments—Ophthalmic Instruments—Retinoscopes	ISO 12865: 1998
26	Ophthalmic Optics—Contact Lens Care Products—Guidelines for Determination of Shelf-Life	ISO 13212: 1999

Item Number	Title of Standard	Reference Number and Date
	Orthopaedics	
86	Standard Specification for Cobalt-28 Chromium-6 Molybdenum Casting Alloy and Cast Products for Surgical Implants (UNS R30075)	ASTM F75–98
87	Standard Specification for Wrought Cobalt-20 Chromium-15 Tungsten-10 Nickel Alloy for Surgical Implant Applications (UNS R30605)	ASTM F90–97
88	Standard Specification for Wrought Titanium-6 Aluminum-4 Vanadium ELI (Extra Low Interstitial) Alloy (R56401) for Surgical Implant Applications	ASTM F136–98
89	Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Bar and Wire For Surgical Implants (UNS S31673)	ASTM F138–97
90	Standard Specification for Unalloyed Tantalum for Surgical Implant Applications (UNS R 05200, UNS R05400)	ASTM F560–98
91	Recommended Practice for Retrieval and Analysis of Implanted Medical Devices, and Associated Tissues	ASTM F561–97
92	Standard Practice for Care and Handling of Orthopedic Implants and Instruments	ASTM F 565–85 (1996) (e1)
93	Standard Practice for Fluorescent Penetrant Inspection of Metallic Surgical Implants	ASTM F601–98
94	Standard Specification for High-Purity Dense Aluminum Oxide for Surgical Implant Application	ASTM F603–83 (1995)
95	Standard Test Method for Constant Amplitude Bending Fatigue Tests of Metallic Bone Staples	ASTM F1539–95
96	Standard Specification for Titanium-6 Aluminum-4 Vanadium ELI Alloy Forgings for Surgical Implants (UNS R56401)	ASTM F620–97
97	Standard Specification for Stainless Steel Forgings for Surgical Implants	ASTM F621–97
98	Standard Practice for Radiography of Cast Metallic Surgical Implants	ASTM F629–97
99	Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants	ASTM F648–98
100	Standard Test Method for Pitting or Crevice Corrosion of Metallic Surgical Implant Materials	ASTM F746–87 (1994)
101	Standard Test Method for Measuring Fretting Corrosion of Osteosynthesis Plates and Screws	ASTM F897–84 (1997)
102	Standard Practice for Permanent Marking of Orthopaedic Implant Components	ASTM F983–86 (1996)
103	Standard Test Method for Pull-Out Fixation Strength of Metallic Bone Staples	ASTM F1540–95
104	Standard Test Method for Corrosion of Surgical Instruments	ASTM F1089–87 (1994)
105	Standard Specification for Wrought Cobalt-Chromium Alloy Surgical Fixation Wire	ASTM F1091–91 (1996) E01
106	Standard Test Method for Determining Axial Pull-Out Strength of Medical Bone Screws	ASTM F1691–96
107	Standard Test Method for Tension Testing of Calcium Phosphate and Metallic Coatings	ASTM F1147–99
108	Standard Test Method for Shear and Bending Fatigue Testing of Calcium Phosphate and Metallic Medical Coatings	ASTM F1160–98
109	Standard Specification for Composition of Ceramic Hydroxylapatite for Surgical Implants	ASTM F1185–88 (1993) E01
110	Standard Specification and Test Methods for Intramedullary Fixation Devices	ASTM F1264–99
111	Standard Guide for Evaluating Modular Hip and Knee Joint Components	ASTM F1814–97a
112	Standard Specification for Stainless Steel Surgical Fixation Wire	ASTM F1350–91 (1996) E01
113	Standard Specification for Cobalt-28 Chromium-6 Molybdenum Powder for Coating of Orthopedic Implants (UNS R30075)	ASTM F1377–98a
114	Standard Guide for Evaluating the Static and Fatigue Properties of Interconnection Mechanisms and Subassemblies Used in Spinal Arthrodesis Implants	ASTM F1798–97
115	Standard Test Method for Cyclic Fatigue Testing of Metal Tibial Tray Components of Total Knee Joint Replacements	ASTM F1800–97
116	Standard Practice for Corrosion Fatigue Testing of Metallic Implant Materials	ASTM F1801–97
117	Implants for Surgery—Metallic Materials—Part 2: Unalloyed Titanium	ISO 5832–2:1999
118	Implants for Surgery—Metallic Materials—Part 9: Wrought High Nitrogen Stainless Steel	ISO 5832–9: 1995
119	Implants for Surgery—Ultra-high-Molecular-Weight Polyethylene—Part 2: Moulded Forms	ISO 5834–2: 1998
120	Standard Specification and Test Method for Metallic Bone Plates	ASTM F0382–99
121	Implants for Surgery—Femoral and Tibial Components for Partial and Total Knee Joint Prosthesis—Part 1: Classification, Definitions and Designation of Dimensions—Second Edition	ISO 7207–1: 1994
122	Implants for Surgery—Components for Partial and Total Knee Joint Prosthesis—Part 2: Articulating Surfaces Made of Metal, Ceramic and Plastics Materials	ISO 7207–2: 1994
	Radiology	
50	Standard for Safety of Photographic Equipment—Fourth Edition	UL–122
51	Standard for Safety: X-ray Equipment—Seventh Edition	UL–187
52	Standard for Safety: Medical and Dental Equipment—Fourth Edition	UL–544
53	Radiation Protection—Sealed Radioactive Sources—General Requirements and Classification	ISO 2919 (1999)
54	Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Therapeutic X-ray Equipment Operating in the Range 10kV to 1MV	IEC 60601–2–8 (1999–04)
55	Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Radiotherapy Simulators	IEC 60601–2–29 (1999–01)
56	Medical Electrical Equipment—Dosimeters with Ionization Chambers and/or Semi-Conductor Detectors as used in X-ray Diagnostic Imaging	IEC 61674–1997
57	Medical Electrical Equipment—Dosimeters with Ionization Chambers as used in Radiotherapy	IEC 60731–1997
58	Classification of Sealed Radioactive Sources	ANSI/HPS N43.6–1997
59	Radiotherapy Simulators—Functional Performance Characteristics—First Edition	IEC 61168: 1993
60	Radiotherapy Equipment—Coordinates, Movements, and Scales	IEC 1217–1996
	Software	
4	Software in Programmable Components	ANSI/UL 1998
5	Standard for Developing Software Life Cycle Processes	IEEE 1074: 1997
6	Standard for Software Verification and Validation	IEEE 1012: 1998
	Sterility	
38	Automatic General Purpose Ethylene Oxide Sterilizers and Ethylene Oxide Sterilant Sources Intended for Use in Health Care Facilities, Third Edition	ANSI/AAMI ST 24: 1999
39	Biological Indicator for Dry-Heat Sterilization, Paper Strip	USP 24: 2000
40	Biological Indicator for Ethylene Oxide Sterilization, Paper Strip	USP 24: 2000
41	Biological Indicator for Steam Sterilization, Paper Strip	USP 24: 2000
42	Microbial Limits Test <61>	USP 24: 2000
43	Microbiological Tests, Sterility Tests <71>	USP 24: 2000
44	Biological Tests and Assays, Bacterial Endotoxin Test (LAL) <85>	USP 24: 2000
45	Pyrogen Test (USP Rabbit Test) <151>	USP 24: 2000
46	Sterilization and Sterility Assurance of Compendial Articles <1211>	USP 24: 2000
47	Flash Sterilization: Steam Sterilization of Patient Care Items for Immediate Use	ANSI/AAMI ST37: 1996
48	Table-Top Dry Heat (Heated Air) Sterilization and Sterility Assurance in Dental and Medical Facilities	ANSI/AAMI ST40: 1992/(R) 1998
49	Ethylene Oxide Sterilization in Health Care Facilities: Safety and Effectiveness	ANSI/AAMI ST41: 1999
50	Steam Sterilization and Sterility Assurance Using Table-Top Sterilizers in Office-Based, Ambulatory-Care Medical, Surgical, and Dental Facilities	ANSI/AAMI ST42: 1998
51	Safe Use and Handling of Glutaraldehyde-Based Products in Health Care Facilities	ANSI/AAMI ST58: 1996
52	Biological Indicators Part 1: General Requirements Sterilization of Health Care Products	ANSI/AAMI ST59: 1999

Item Number	Title of Standard	Reference Number and Date
53	Sterilization of Health Care Products—Chemical Indicators—Part 2: Class 2 Indicators for Air Removal Test Sheets and Packs	ANSI/AAMI ST66: 1999
54	Sterilization of Medical Devices—Microbiological Methods—Part 2: Tests of Sterility Performed in the Validation of a Sterilization Process	ANSI/AAMI/ISO 11737–2: 1998
55	Sterilization of Single-Use Medical Devices Incorporating Materials of Animal Origin—Validation and Routine Control of Sterilization by Liquid Chemical Sterilants	ANSI/AAMI/ISO 14160: 1998
56	Standard Test Method for Determination of Leaks in Flexible Packaging by Bubble Emission	ASTM D3078: 1994
57	Standard Practice for Performance Testing of Shipping Containers and Systems	ASTM D4169: 1999
58	Standard Test Method for Seal Strength of Flexible Barrier Materials	ASTM F88: 1999
59	Standard Test Methods for Failure Resistance of Unrestrained and Nonrigid Packages for Medical Applications	ASTM F1140: 1996
60	Standard Terminology Relating to Barrier Materials for Medical Packaging	ASTM F1327: 1998
61	Standard Guide for Integrity Testing of Porous Barrier Medical Packages	ASTM F1585: 1995
62	Standard Test Method for Microbial Ranking of Porous Packaging Materials (Exposure Chamber Method)	ASTM F1608: 1995
63	Standard Test Method for Determining Integrity of Seals for Medical Packaging by Visual Inspection	ASTM F1886: 1998
64	Standard Test Method for Detecting Seal Leaks in Porous Medical Packaging by Dye Penetration	ASTM F1929: 1998
65	Standard Guide for Accelerated Aging of Sterile Medical Device Packages	ASTM F1980: 1999
66	Transfusion and Infusion Assemblies and Similar Medical Devices <161>	USP 24: 2000

Dated: October 31, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–29165 Filed 11–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Scholarship Program for Students of Exceptional Financial Need (EFN) and Program of Financial Assistance for Disadvantaged Health Professions Students (FADHPS): Regulatory Requirements (OMB No. 0915–0028)—Reinstatement, with change.

The EFN Scholarship Program, authorized by section 736 of the Public Health Service (PHS) Act, and the FADHPS Program, authorized by section 740(a)(2)(F) of the PHS Act, provides financial assistance to schools of allopathic and osteopathic medicine and dentistry for awarding tuition scholarships to health professions students who are of exceptional financial need. To be eligible for support under the FADHPS Program, a student must also be from a disadvantaged background. In return for this support, students of allopathic and osteopathic medicine must agree to complete residency training in primary care in 4 years, and practice in primary care for 5 years after completing residency training.

The program regulations contain recordkeeping requirements designed to ensure that schools maintain adequate records for the Government to monitor program activity and that funds are spent as intended.

The estimate of burden for the regulatory requirements of this clearance are as follows:

Form	Number of respondents	Responses per respondents	Total responses	Minutes per response	Total burden (in hours)
EFN/FADHPS	80	1	80	10	13

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 7, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–29108 Filed 11–14–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Social Support for Homeless Mothers: Implications for Best Practices and Program Design—New

The Health Care for the Homeless Clinicians' Network (HCHCN) of the National Health Care for the Homeless Council, Inc., through a cooperative agreement with the Bureau of Primary Health Care, Health Resources and Services Administration, proposes to conduct a study on the social support available to homeless mothers, most of whom are parenting children alone. The study will be of adult homeless women and will be conducted by convening focus groups and administering a questionnaire to focus group members. The study is designed to look at clients' life events, histories of violence, medical and physical illness, social support, children's needs, and services use. The results will help to define best practices as they relate to social support processes and enable HCH programs to offer the appropriate mix of supports necessary to help mothers transition into permanent housing. The participants will be recruited from ten sites of the national Health Care for the Homeless program.

The estimated response burden is as follows:

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Focus Group (including survey)	100	1	1.5	150

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 7, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–29107 Filed 11–14–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Proposed Collection; Comment Request, The Jackson Heart Study, Annual Follow-Up Component—Phase III

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* The Jackson Heart Study, Annual Follow-Up Component—Phase III. *Type of Information Collection Request:* Revision (OMB 0925–0464; expiration 04/30/2002). *Need and use of Information Collection:* The Jackson Heart Study (JHS) Clinical Component will involve 6,500 African-American men and women aged 35–84, representative of African-American residents of Jackson, Mississippi. Family members are to be included in order to permit future studies of familial and genetic contributions to cardiovascular disease (CVD). The examination includes a series of questionnaires, physical assessments and laboratory measurements. Data collected in this study includes both conventional risk factors and new or emerging factors that may be related to CVD. Some of the newer areas of focus include early indicators of disease, genetics, sociocultural influences such as socioeconomic status and discrimination, and physiological relations between common disorders such as high blood pressure, obesity and diabetes and their influence on CVD and will take three years to complete. The JHS Clinical Component has received Clinical Exemption (CE–99–11–09) from the NIH Clinical Exemption Review

Committee. However, collection of follow information also involves third party individuals (next-of-kin decedents and physicians). This information is necessary for the interpretation and analysis of clinical findings and outcomes to ascertain the relationship between mortality and morbidity in the clinical study cohort. The information collected will be used by the public and private sector for public health planning, medical education, other epidemiologic studies, and biomedical research. *Frequency of Response:* One-Time. *Affected Public:* Individuals or families; Businesses or other for profit; not-for-profit institutions. *Type of Respondents:* third party respondents (next-of-kin decedents and physicians). The annual reporting burden is as follows: *Estimated Number of Respondents:* 480. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours Per Response* are shown in the table below; and *Estimated Total Annual Burden Hours Requested:* 160. The annualized cost to respondents is estimated at: $3,600.

Estimates of the annual reporting burden to respondents.

Type of respondents	Estimated number of respondents	×	Estimated number of responses per respondent	×	Average burden hours per response	=	Estimated total annual burden hours requested
Morbidity and Mortality AFU 3rd party next-of-kin decedents ..	240		1		0.33		80
Morbidity and Mortality AFU 3rd party Physicians	240		1		0.33		80
Total	480		....		....		160

Note.—There are no Capital Costs, Operating Costs or Maintenance Cost for this study.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Cheryl Nelson, Jackson Heart Study Project Officer, 6701 Rockledge Drive, Room 8152, MSC 7934, Rockville, MD 20892–7934, or call non-toll-free number (301) 435–0451 or E-mail your request, including your address to: cn80n@.nih.gov

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before January 16, 2001.

Dated: October 20, 2000.

Peter Savage,

Acting Director, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute.

[FR Doc. 00–29132 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Development of Novel Imaging Technologies.

Date: December 6–7, 2000.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29138 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Iniltial Review Group, Subcommittee A—Cancer Centers.

Date: December 7–8, 2000.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: David E. Maslow, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8054, Bethesda, MD 20892–7405, 301/496–2330.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29139 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee D—Clinical Studies.

Date: December 5, 2000.

Time: 7:30 am to 6 pm.

Agenda: to review and evaluate grant applications.

Place: The Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.

Contact Person: Martin H. Goldrosen, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8050, Rockville, MD 20852–7408, (301) 496–7930.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29141 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: November 13, 2000.

Open: 8:30 am to 2 pm.

Agenda: The agenda includes the Director's Report, a presentation on Proposed Program Initiatives, Public Comments, and other business of the Council.

Closed: 2 pm to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: NIH Neuroscience Office Building, 6001 Executive Blvd., Rockville, MD 20892.

Contact Person: Richard Nahin, Ph.D., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 106, Bethesda, MD 20892, 301/496–4792.

The public comments session is scheduled from 1:30–2 pm. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Richard Nahin, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 106, Bethesda, Maryland, 20892, 301–496–4792, Fax: 301–480–3621. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 pm on November 8, 2000. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Nahin at the address listed above up to ten calendar days (November 23, 2000) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by Dr. Richard Nahin, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 106, Bethesda, Maryland 20892, (301) 496–4792, Fax 301–480–3621.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Dated: November 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 00–29131 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Comparative Medicine.

Date: November 27, 2000.

Time: 11 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John D. Harding, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0810.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29135 Filed 11–14–00; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Eye Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Eye Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Eye Institute.

Date: December 4–5.

Open: December 4, 2000, 9 am to 10 am.

Agenda: Opening remarks by the Director, Intramural Research Program, on matters concerning the intramural program of the NEI.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 10B16, Bethesda, MD 20892.

Closed: December 4, 2000, 10 am to 5 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 10B16, Bethesda, MD 20892.

Closed: December 5, 2000, 9 am to 5 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 10B16, Bethesda, MD 20892.

Contact Person: Robert B. Nussenblatt, MD, Director, Intramural Research Program, National Eye Institute, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, 301–496–3123.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29143 Filed 11–14–00; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Program Project Review Committee.

Date: November 30, 2000.

Time: 8:30 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815.

Contact Person: Jeffrey H. Hurst, PhD, Scientific Review Administrator, Review Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892. 301/435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29142 Filed 11–14–00; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Ethical, Legal, Social Implications Review Committee.

Date: December 5, 2000.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, Building 31, Room B2B32, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated; November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29140 Filed 11–14–00; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 28, 2000.

Time: 8:3 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Sheraton Premiere at Tyson's Corner, 8661 Leesburg Pike, Vienna, VA 22182.

Contact Person: Susan M. Matthews, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6134, MSC 9607, Bethesda, MD 20892–9607, 301–443–5047.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29130 Filed 11–14–00; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 4, 2000.

Time: 8:30 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29133 Filed 11–14–00; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, December 4, 2000, 8:30 am to December 4, 2000, 5:00 pm, Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on October 25, 2000, 65 FR 63878.

The meeting time has been changed to 10:30 am to 6:00 pm on the same day at the same hotel. The meeting is closed to the public.

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29134 Filed 11–14–00; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 1, 2000.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Natcher Bldg, Rm 5As.25u, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tracy A Shahan, PhD, Scientific Review Administrator, National Institutes of Health/NIAMS, Natcher Bldg., Room 5AS25H, Bethesda, MD 20892, (301) 594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 8, 2000.

Time: 8:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Richard J Bartlett PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, Room 5As37B, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29136 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: November 17, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Richard J Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, Room 5As37B, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Pane.

Date: November 20, 2000.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Natcher Bldg., Rm 5As.25u, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29137 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: January 30, 2001.

Time: 8:30 am to 5 pm.

Agenda: The Committee will provide advice of scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7601, 301–435–3732.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29148 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncological Sciences Integrated Review Group, Metabolic Pathology Study Section.

Date: November 1–3, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 2, 2000.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gillian Einstein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20892, 301–435–4433, einsteig@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 9, 2000.

Time: 2 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, 301–435–1043.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 14, 2000.

Time: 8 am to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVB 02.

Date: November 14, 2000.

Time: 10 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1169, dowellr@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 14, 2000.

Time: 1:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Debora L. Hamernik, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, Bethesda, MD 20892, (301) 435–4511, hamernid@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 14, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Rona L. Hirschberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 14, 2000.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lawrence N. Yager, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, 301–435–0903, yagerl@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 14, 2000.

Time: 3:30 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 14, 2000.

Time: 4 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 2000.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Donald Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15–16, 2000.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's Inn, 1615 Rhode Island Ave., NW., Washington, DC 20036.

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15–17, 2000.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jumer's Castle Lodge, 209 South Broadway, Urbana, IL 61801.

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 2000.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levin@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 2000.

Time: 5 pm to 7 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15–16, 2000.

Time: 6 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, sipej@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Geriatrics and Rehabilitation Medicine.

Date: November 16–17, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16–17, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Sharon K. Pulfer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 6.

Date: November 16–17, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sami A. Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16–17, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave., NW., Washington, DC 20007.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16–17, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Bethesda, 8400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Ronald Dubois, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16, 2000.

Time: 10 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW., Washington, DC 20037.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16, 2000.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Debora L. Hamernik, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, Bethesda, MD 20892, (301) 435–4511, hamernid@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 8:30 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, laingc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 8:30 am to 9:30 am.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, sipej@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Integrated Review Group, Biological Sciences Subcommittee 1.

Date: November 17, 2000.

Time: 8:30 am to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, N.W., Washington, DC 20037.

Contact Person: Nancy Pearson, PhD, Chief, Genetic Sciences Integrated Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1047.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 9:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St. NW, Washington, DC 20037.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, sipej@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVB 01.

Date: November 17, 2000.

Time: 2 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1169, dowellr@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 2 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, corsaroc@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN1–04.

Date: November 17, 2000.

Time: 2 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681, schwarte@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 3:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St. NW, Washington, DC 20007.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306, 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29129 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 3, 2000, 12:30 pm to November 3, 2000, 2:00 pm, NIH, Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on October 31, 2000, 65 FR 64977–64979.

The meeting will be held November 8, 2000, 4:00 pm to 5:30 pm. The location remains the same. The meeting is closed to the public.

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29144 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 12, 2000, 8 am to November 12, 2000, 6 pm, Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on November 2, 2000, 65 FR 65870–65872.

The meeting will be November 12, 2000, 7 pm to November 13, 2000, 3:30

pm. The location remains the same. The meeting is closed to the public.

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29145 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 13, 2000, 2:00 pm to November 13, 2000, 4:00 pm, Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on November 2, 2000, 65 FR 65870–65872.

The meeting times have been changed to 4:00 pm–6:00 pm. The date and location remain the same. The meeting is closed to the public.

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29146 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 8, 2000, 7:30 AM to November 10, 2000, 4:00 pm, Georgetown Suites, 1111 30th Street, NW., Washington, DC, 20007 which was published in the **Federal Register** on November 2, 2000, 65 FR 65870–65872.

The starting time of the meeting has been changed to 7:30 pm on November 8, 2000. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29147 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 8, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Larry Pinkus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 2000.

Time: 7 pm to 8 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Luigi Giacometti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 20, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Marjam G. Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 20, 2000.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, (ZRG1 HEM–2 (01)M.

Date: November 20, 2000.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 21, 2000.

Time: 1:35 pm to 2:50 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 5.

Date: November 21–22, 2000.

Time: 6 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Range Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.893, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29149 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Survey of Persons Requesting "Hablemos en Confianza" and "Activity Book" Substance Abuse Prevention Materials—New—In the United States, Hispanic/Latinos present a disproportionately higher prevalence of alcohol, tobacco, cocaine, and marijuana use than other ethnic groups. In the Spring of 1995, the Secretary of the U.S. Department of Health and Human Services authorized the establishment of the Departmental Working Group on Hispanic Issues. Part of the Hispanic Agenda for Action calls for an increase in the Department's capacity to reach out and communicate with Hispanic/Latino populations using culturally and language appropriate techniques. In-depth literature review documented a lack of materials focusing on substance abuse prevention targeting Hispanic/Latino populations. Based on formative research, the "Hablemos en Confianza" kit (HEC) and the "Activity Book" were designed specifically to respond to this need for culturally and language appropriate materials.

The HEC kit consists of five booklets addressing various aspects of communication between parents/caregivers with children, three *fotonovelas* with open-ended stories of Hispanic/Latino families who are learning to discuss and resolve the issue of alcohol and drug use by their children, and a poster for youth 13–17 years old; the "Activity Book" has games and coloring sections for children 4–6 years of age and introduces topics of healthy behavior to prompt family members to talk to each other about physican and emotional issues. The dissemination of the materials was initiated in October, 1999 through the National Clearinghouse for Alcohol, and Drug Information (NCADI). The information resulting from the proposed survey will be employed by SAMHSA's Center for Substance Abuse Prevention (CSAP) to assess the quality of the materials regarding cultural adequacy and clarity, as well as the short term impact of the messages. This information will be instrumental in highlighting areas that should be addressed in future CSAP prevention/education materials targeting Hispanic/Latino audiences.

The adequacy of the prevention messages will be assessed by conducting a survey to collect data on five major areas: (1) Assess the degree to which the materials raise awareness in parents/caregivers about the potential communication problems with their children regarding substance use/abuse matters; (2) assess the degree to which the materials prompt parents/caregivers to generate intent or to pursue actions toward improving communication with their children; (3) assess the degree to which the materials are perceived as providing and/or increasing adults' capacity to communicate with youth; (4) assess the quality of the materials (clarity of the messages, cultural adequacy, and attractiveness of the materials); and (5) determine whether there are aspects to be modified and/or enhanced in the development of future materials focusing substance use/abuse targeted to Hispanic/Latino audiences. The study population is composed of parents or care givers (person responsible for the care of the children) who have requested the materials from NCADI and those who order small multiples (50 copies or fewer) that are small organizations that have a working knowledge of the materials they distribute.

The following table presents the response burden for this project.

No. of respondents	Responses/ respondent	Hours/response	Total burden
1,000	1	.25	250

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 7, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–29123 Filed 11–14–00; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–28]

Notice of Proposed Information Collection: Comment Request; Description of Materials

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 16, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and

Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clearity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Description of Materials.

OMB Control Number, if applicable: 2502–0192.

Description of the need for the information and proposed use: This request for OMB review involves an extension of an approved information collection using Form HUD–92005, Description of Materials. Form HUD–92005 is the document HUD uses as an official record of the construction materials proposed for single family dwellings. Form HUD–92005 reflects the requirements of 24 CFR 200.929d and is universally accepted throughout the single family home construction industry. Without Form HUD–92005 or a similar record, it would be extremely difficuilt for HUD to determine if the proposed construction met regulatory requirements.

Agency form numbers, if applicable: HUD–92005.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 2,500 which will generate 50,000 responses, frequency of response is on occasion, the estimated time per response is ½ hour, and the total annual burden requested is 25,000 hours.

Status of the proposed information collection: Extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 3, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–29096 Filed 11–14–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–29]

Notice of Proposed Information Collection: Comment Request; Adjustable Rate Mortgages (ARMS)

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 16, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Adjustable Rate Mortgages (ARMS).

OMB Control Number, if applicable: 2502–0322.

Description of the need for the information and proposed use: This request for OMB review involves an extension of an approved information collection for Adjustable Rate Mortgages or ARMS (OMB control number 2502–0322). The National Housing and Urban-Rural Recovery Act of 1983 (HURRA) requires that lenders, at the time of loan approval, provide the borrower with a written explanation of the ARM's features. Additionally, HURRA requires that the lender provide an annual notification of the adjustment in the interest rate. These disclosures are meant to ensure borrowers are fully and timely notified of their financial obligations under the terms of the mortgage.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 20,000 which will generate 100,000 responses, frequency of response is on occasion, the estimated time per response is .07 hour, and the total annual burden requested is 7,000 hours.

Status of the proposed information collection: Extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 7, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 00–29097 Filed 11–14–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–836521

Applicant: Dan Holland, Fallbrook, California.

The permittee requests an amendment to take (capture, handle, mark, and release) the southwestern arroyo toad (*Bufo microscaphus californicus*) and take (capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys and scientific research throughout each species' range in California for the purpose of enhancing their survival.

Permit No. TE–034293

Applicant: Bureau of Reclamation, Klamath Falls, Oregon.

The applicant requests a permit to take (capture, handle, tag, and release; sacrifice) the shortnose sucker (*Chasmistes brevirostris*) and the Lost River sucker (*Deltistes luxatus*) throughout each species' range in conjunction with scientific research for the purpose of enhancing their survival. These activities were previously authorized under subpermit BUETM–3.

Permit No. TE–035528

Applicant: Bureau of Land Management, Hines, Oregon.

The applicant requests a permit to take (remove and reduce to possession) Malheur wirelettuce (*Stephanomeria malheurensis*) throughout the species' range in conjunction with scientific research for the purpose of enhancing its survival. This activity was previously authorized under subpermit FRANW–7.

Permit No. TE–034989

Applicant: California Department of Transportation, Fresno, California.

The applicant requests a permit to take (capture) the giant kangaroo rat (*Dipodomys ingens*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), riparian brush rabbit (*Sylvilagus bachmani riparius*), riparian woodrat (*Neotoma fuscipes riparia*), and the blunt-nosed leopard lizard (*Gambelia sila*) in conjunction with surveys in Fresno, Madera Tulare, Kings, Kern, San Joaquin, Amador, Calaveras, Tuolumne, Mariposa, Merced, Stanislaus, Alpine, Mono, Inyo, Santa Cruz, San Benito, Monterey, San Luis Obispo, and Santa Barbara Counties, California for the purpose of enhancing their survival.

Permit No. TE–035336

Applicant: John Everett Vollmar, Davis, California.

The applicant requests a permit to take (harass by survey, collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys throughout each species' range in California, and also requests authorization to display voucher specimens for educational purposes, for the purpose of enhancing their survival.

Permit No. TE–837448

Applicant: Douglas Allen, San Diego, California.

The permittee requests a permit amendment to take the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys throughout each species' range in California for the purpose of enhancing their survival.

Permit No.'s TE–014444 and TE–014496

Applicants: California Army National Guard, Camp Roberts, California and California Polytechnic State University, San Luis Obispo, California.

The permittees are requesting a permit amendment to take (capture and replace radio-collars) the San Joaquin kit fox (*Vulpes macrotis mutica*) throughout the species' range in California in conjunction with research to monitor dispersal from Camp Roberts, California for the purpose of enhancing its survival.

Permit No. TE–035619

Applicant: Brad R. Blood, Downey, California.

The applicant requests a permit to take (survey by pursuit) the El Segundo blue butterfly (*Euphilotes battoides allyni*) throughout the species' range in California in conjunction with surveys for the purpose of enhancing its survival.

Permit No. TE–019947

Applicant: Scott Crawford, Tustin, California.

The permittee requests a permit amendment to take (survey by pursuit) the El Segundo blue butterfly, (*Euphilotes battoides allyni*) throughout the species' range in California in conjunction with surveys for the purpose of enhancing its survival.

Permit No. TE–035655

Applicant: Dr. Fred Andoli, San Luis Obispo, California.

The applicant requests a permit to take (capture and handle; collect tissue samples) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence or absence surveys and genetic research in Santa Barbara County, California for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received on or before December 15, 2000.

ADDRESSES: Written data or comments should be submitted to the Chief—Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: November 6, 2000.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–29118 Filed 11–14–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Regional Director's Permit Amendment (TE–676811–1).

SUMMARY: The Regional Director, Region 2, U.S. Fish and Wildlife Service, Albuquerque, New Mexico (Applicant), requests authorization to amend U.S. Fish and Wildlife Service Endangered Species Permit TE–676811, from September 1, 2000 through December 31, 2003. This amendment updates the Regional Director's permit to include species that have recently been listed. The permit allows "take" of species listed as threatened or endangered under the Endangered Species Act for scientific research and recovery purposes or the enhancement of propagation or survival for approved recovery activities. This notice is provided pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written comments on this permit amendment must be received on or before December 15, 2000.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the permit number for this application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service (see address above). Please refer to the permit number for this amendment when requesting copies of documents. Documents and other associated information are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Bryan Arroyo,

Assistant Regional Director, Ecological Services, Region 2, Fish and Wildlife Service.

[FR Doc. 00–29126 Filed 11–14–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of the Menominee Tribe of Wisconsin Settlement Funds—Termination Act Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the plan for the use and distribution of the Menominee Indian Tribe of Wisconsin settlement fund is effective as of September 20, 2000. The settlement fund was created under section 3 the Act of August 17, 1999, Public Law 106–54, 113 Stat. 398.

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS–4631–MIB, 1849 C Street, NW, Washington, DC 20240. Telephone number: (202) 208–2475.

SUPPLEMENTARY INFORMATION: Subsection 3(c)(1) of the Act of August 17, 1999, *supra,* and section 3(b) of the Indian Tribal Judgment Funds Act, 25 U.S.C. 1403(b), requires that a plan be prepared and submitted to Congress for the use and distribution of the Menominee settlement funds. The plan for the use and distribution of the funds was submitted to Congress on May 22, 2000, by letters dated May 19, 2000. The receipt of the letters was recorded in the Congressional Record published on May 24, 2000. The plan became effective on September 20, 2000, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

For the Use and Distribution of the Menominee Indian Tribe of Wisconsin Judgment Funds

The funds appropriated on September 27, 1999, in satisfaction of an award granted to the Menominee Indian Tribe of Wisconsin (Tribe) pursuant to the Act of August 17, 1999, Pub. L. 106–54, 113 Stat. 398, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be distributed as herein provided.

A. Per Capita Distribution

Approximately $16,026,000 (58.8 percent of the judgment funds remaining after payment of litigation expenses) shall be made available for a $2,000 per capita payment to all duly enrolled tribal members that filed enrollment applications with the Tribe on or before October 15, 1999. Judgment fund per capita shares shall also be set aside for the estates of tribal members that were living on August 17, 1999, but deceased prior to the per capita distribution, provided, that enrollment applications were filed with the Tribe prior to the application deadline date.

If the estimated amount is not sufficient to cover the per capita portion of the distribution, funding adjustments can be made from the *Alternative and Additional Projects* account.

The per capita shares of living competent adults shall be paid directly to them. The per capita shares of incarcerated members who are eligible for the per capita payment shall be placed in Individual Indian Money (IIM) accounts, provided that the Tribe provides a certified list of those individuals to the Bureau of Indian Affairs along with the written requests from those individuals requesting that their per capita funds be placed in a non-supervised IIM account. The per capita shares of deceased individual beneficiaries shall be determined in accordance with 43 CFR, Subpart D. Per capita shares of legal incompetents and minors shall be placed in IIM accounts and shall not be available for disbursement until a payment plan is developed by the Tribe for the disbursement of funds from the supervised IIM accounts as required under 25 U.S.C. 1403(b)(3). The payment plan for the shares belonging to legal incompetents and minors must be approved by the Secretary. The Tribe may make the per capita distribution as authorized under 25 U.S.C. 117(b).

B. Programming

The programming funds shall be allocated by the Tribe for the following projects. The programming funds are authorized for expenditure in accordance with the revised tribal plan approved by the Menominee Tribal Legislature under Resolution No. 00–14, on March 23, 2000.

Renovation and Expansion of the Tribal Courthouse—Principal and investment income earned after the account is established by the Tribe will be available for the renovation and expansion project	$1,500,000
Education Endowment—Perpetual investment of principal funds, expenditures from interest income earned after the endowment fund is established	4,000,000
Burial Fund Endowment—Perpetual investment of principal funds, expenditures from interest income earned after the endowment fund is established	2,000,000
Health Care Endowment—Perpetual investment of principal funds, expenditures from interest income earned after the endowment fund is established	2,000,000
Utilities Capital Improvement Fund—Principal and investment income earned after the account is established by the Tribe will be available for water and sewer projects and for use as matching grant funds for such projects	1,500,000
Alternative and Additional Projects—Principal and investment income earned after the accounts are established by the Tribe will be available for alternative and additional projects. Any funds remaining after completing the per capita distribution and the renovation and expansion of the tribal courthouse shall also be available for the following alternative and additional projects:	218,665
a. Telecommunications/Emergency Government Improvements (est. $125,000)	
b. Animal Shelter (est. $50,000)	
c. Recreation Supplement (est. $50,000)	
d. Eagles' Nest Operations Funding Supplement (est. $50,000)	
Use of Interest Funds—All interest earned on the judgment funds from the date of appropriation (September 27, 1999) until the date the funds are transferred to the Tribe in accordance with this plan, shall be added to the Tribe's FY 2000 Tribal budget (revenue side) to reduce the reliance on transfers from reserve by the like amount (Estimated to be $1,500,000)..	

C. Feasibility of Participation by Tribal Members Not on or Near the Reservation

The vast majority of the proposed uses of the judgment funds will be available to all tribal members. A share in the per capita distribution, eligibility for burial assistance, and access to both the health and education benefits provided through the establishment of these endowments means that 85 percent of the available settlement funds will be available to all tribal members regardless of residence.

D. General Provisions

The programming portion of the judgment fund shall be disbursed to the Tribe as soon as practical. If the tribal payment roll is certified by the Bureau of Indian Affairs Director, Midwest Region prior to the effective date of the plan, the program portion of the funds shall be disbursed to the Tribe within 30 days of the effective date of the plan. Otherwise, the program funds shall be disbursed to the Tribe within 30 days of the certification of the Tribal payment roll. Once the program funds are disbursed to the Tribe, the United States Government shall no longer have any trust responsibility for the investment, supervision, administration, or expenditure of the program portion of the judgment funds.

None of the funds distributed per capita, including the investment income earned thereon while held in trust, or made available under this plan for programming shall be subject to Federal or State income taxes. Nor can any of these funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act, or except for per capita shares in excess of $2,000, any federal or federally assisted program.

This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Dated: November 2, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–29150 Filed 11–14–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–01–1020–AE–24–1A]

Utah Resource Advisory Council Meeting Postponed

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management's Utah Statewide Resource Advisory Council meeting scheduled for November 8–9, 2000, in Bluff, Utah, will now be postponed until after the first of next year.

FOR FURTHER INFORMATION: Sherry Foot, Special Programs, Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, 84111; phone (801) 539–4195.

Dated: November 7, 2000.

Robert A. Bennett,

Associate State Director.

[FR Doc. 00–29121 Filed 11–14–00; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 3, 2000. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by November 30, 2000.

Carol D. Shull,

Keeper of the National Register.

CONNECTICUT

New Haven County
  New England Cement Company Kiln and Quarry, Address Restricted, Woodbridge, 00001454

GEORGIA

Echols County
  Corbett Farm, Rte 2, Lake Park, 00001455

ILLINOIS

Vermilion County
  Temple Building, 102–106 N. Vermilion St., Danville, 00001457

IOWA

Marion County
  East Amsterman School, 1010 198th Place, Pella, 00001471
Polk County
  Hallett Flat—Rawson & Co. Apartment Building, 1301–1307 Locust St., Des Moines, 00001456

MARYLAND

Baltimore Independent City
  Standard Oil Building, 501 St. Paul St., Baltimore (Independent City), 00001461
Washington County
  Hills, Dales, and the Vineyard, 16 Dogstreet Rd., Keedysville, 00001460

MASSACHUSETTS

Berkshire County
  Jacob's Pillow Dance Festival, George Carter Rd., Becket, 00001458

MISSISSIPPI

Hinds County
  Evers, Medgar, House, 2332 Margaret Walker Alexander Dr., Jackson, 00001459
  Hinds County Armory, 1012 Mississippi St., Jackson, 00001462

NEW HAMPSHIRE

Coos County
  Weeks, William Dennis, Memorial Library, 128 Main St., Lancaster, 00001464
Merrimack County
  Durgin, Gershom, House, 391 Franklin Hwy.,
Rockingham County
  Danville Town House, 210 Main St., NH 111A, Danville, 00001465

NEW JERSEY

Somerset County
  Relief Home Company No. 2 Engine House, 16 Anderson St., Raritan Borough, 00001466

NEW YORK

Niagara County
  District #10 Schoolhouse, (Cobblestone Architecture of New York State MPS) 9713 Seaman Rd., Hartland, 00001467
Oswego County
  Oswego West Pierhead Lighthouse, Lake Ontario, 0.5 mi. N of Oswego R., Oswego, 00001468

WASHINGTON

Whatcom County
  Nuxwt'iqw'em, Address Restricted, Upper Middle Fork, 00001472

WISCONSIN

Vernon County
  Masonic Temple Building, 116 S. Main St., Viroquoa, 00001469

WYOMING

Converse County
  North Douglas Historic District, Roughly bounded by Second St., Clay St., Sixth St., and Center St., Douglas, 00001470

A Request for a MOVE has been made for the following resource:

CONNECTICUT

Litchfield County
  Sloan-Raymond-Fitch House, 249 Danbury Rd., Wilton, 82004344

[FR Doc. 00–29120 Filed 11–14–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OJP (BJS)–1307]

Hate Crime Statistics Data Collection in Selected Police and Sheriffs' Departments

AGENCY: Office of Justice Programs, Bureau of Justice Statistics, Justice.

ACTION: Notice of solicitation for award of cooperative agreement.

SUMMARY: The purpose of this notice is to announce a public solicitation for services related to understanding why police and sheriff's departments do not report hate crimes to the FBI that are known to officers in their jurisdiction.

DATES: Proposals must arrive at the Bureau of Justice Statistics (BJS) on or before 5 p.m. ET, Sunday, December 31, 2000, or be postmarked on or before December 31, 2000.

ADDRESSES: Proposals should be mailed to: Application Coordinator, Bureau of Justice Statistics, 810 Seventh St. NW., Washington, DC 20531; (202) 616–3497.

FOR FURTHER INFORMATION CONTACT: Charles R. Kindermann, Ph.D., Senior Statistician, Bureau of Justice Statistics, (202) 616–3489 or Carol Kaplan, Chief, National Criminal History Improvement Program (202) 307–0759.

SUPPLEMENTARY INFORMATION:

Background

The Hate Crime Statistics Act, reauthorized in June 1996, mandates that the Attorney General collect statistics and publish an annual report on hate crimes. During hearing testimony and in subsequent letters, members of Congress expressed an interest in a study that will facilitate better participation by police agencies. BJS, consistent with its role as the statistical arm of the Justice Department and its longstanding interest in hate crime statistics, developed this solicitation to learn more about the impediments to local jurisdictions' participation in the collection of hate crime statistics and transmission of the statistics to the FBI for compilation at the national level.

BJS funded a project that resulted in the report *Improving the Quality and Accuracy of Bias Crime Statistics Nationally: An Assessment of the First Ten Years of Bias Crime Data Collection*. The project included a review of national hate crime trends, a summary of results from a national law enforcement survey regarding officer attitudes about hate crime, and several other sources. The compilation of these data sources gives key insight into how hate crime reporting can be improved and how hate crime data should be interpreted. Electronic copies of the full report and an executive summary can be found at <*www.dac.neu.edu/cj/*>.

A survey of 2,657 law enforcement agencies was conducted to document impressions from law enforcement departments about the factors which impede or encourage accurate hate crime reporting. The findings from the report are as follows:

- There are serious disparities between what officers believed about the prevalence of bias crime and their agencies' official hate crime statistics.
- One of the major reasons cited for the disparity involves the break down in the two-step process of a local agency reporting to a state agency, which then compiles the hate crime reports. Many respondents felt that the indication of bias was occasionally lost within the departmental bureaucracy or process of transmitting data.
- Although it has been recommended by the International Association of Chiefs of Police, as well as advocacy groups, that police agencies develop and approve a formal policy for dealing with hate crime incidents, still only a minority of police agencies from across the country state that they had an official policy regarding hate crime.

The impetus for this solicitation is the report's recommendation that "the data indicate that in some number of cases an *information disconnect* occurs between the investigating officer and UCR reporting. Many officers stated that they knew of hate crimes that occurred in their jurisdiction but were not reflected in the official report. It is possible that officers note bias motivation in incident report narratives, but the information from such narrative is never documented into the UCR records. A more detailed analysis of the breakdown between hate crimes that are investigated locally and those that are reported nationally should be undertaken."

There are a number of possible explanations why an agency's numbers reported to the FBI might not reflect hate crimes that are known to officers on the street. Among the possibilities are these:

- The definition of hate crime provided by the FBI may be inconsistent with the State's definition (or local definition), and officers follow their state law in classifying events as incidents of hate crime. If this hypothesis is true, it is particularly troublesome in states that do not have any hate crime statute.
- The incident forms used by some departments contain so many information elements (checks/boxes/narrative) that a specific item indicating bias is not checked off although other information on the form clearly indicates that the offense was bias motivated.
- During the review process (post-incident report), a decision is made that the incident was bias motivated. Yet the crime report as sent to the FBI is not categorized as a hate crime. For example, the original officer doesn't put an indication of hate crime, the responding detective identifies it as a hate crime, but the crime report as entered into UCR data remains the same as the first officer noted.
- There may be very little revising of the data sent to the FBI regardless of changes in determination and circumstance. The reversal of a decision that an incident is a hate crime (*e.g.*, by a community review group) may also not be reflected in the database.
- Because the vast majority of the crime report forms do not have the "bias motivated" box checked off, it is a natural instinct to skip it.
- The transfer of information and data forms from local, state, and federal agencies creates additional "slippage" points where the "bias crime" indicator may be omitted in the data files.

The work to be carried out under this solicitation will be closely coordinated with the FBI, which assembles information provided by state and local agencies and publishes national hate crime statistics.

Objectives

This solicitation is being issued to address the following recommendation: "The study identified several problem areas in the reporting process where bias crime information may be overlooked or misclassified. Further research should look in more depth at the areas of disconnect to better improve the quality of the data."

Up to $150,000 will be made available for this project.

The organization that is awarded the grant will select specific law enforcement agencies as hosts for the study, and must include both agencies believed to have "good" hate crime reporting, and agencies that have not reported hate crime statistics at all to the FBI or are believed to report only a small fraction of the hate crimes that do occur. The purpose of selecting host agencies will be to assist them in improving their hate crime reporting and also to develop recommendations for improving hate crime reporting by law enforcement agencies nationwide. The law enforcement agencies must agree in writing to participate in the study and will become partners with the FBI and BJS to address and recommend solutions to the impediments to accurate hate crime reporting. A steering committee will be appointed that will direct the introduction of new procedures and practices to improve the reporting of hate crimes in law enforcement agencies that agree to participate in the study.

Funding provided under this solicitation will support a data collection program which will follow the sequence of events from a crime report which is known or presumed to be a hate crime by the officer completing the report through the crime reporting procedures to ascertain whether the crimes were reported to the FBI as hate crimes, and if not, whether the failure to report accurately reflects the nature of the event or is the result of gaps in the transmission of information to the FBI's UCR data files. The project, in addition to helping the participating departments improve their practices, will result in recommendations for other agencies' practices and a more detailed statistical analysis of hate crimes that are investigated locally as compared to those that are reported nationally to the FBI.

Type of Assistance

Assistance will be made available under a cooperative agreement

Statutory Authority

The cooperative agreement to be awarded pursuant to this solicitation will be funded by the Bureau of Justice Statistics consistent with its mandate as set forth in 42 U.S.C. 3732.

Eligibility Requirements

Both profit making and nonprofit organizations may apply for funds. Consistent with OJP fiscal requirements, however, no fees may be charged against the project by profit-making organizations.

Scope of Work

The recipient of funds will perform the following tasks in pursuit of the objectives stated above:

1. Develop a detailed timetable for each task involved in the project. After the BJS grant monitor has agreed to the timetable, all work must be completed as scheduled.
2. Collect data about hate crime incidents in the participating agencies' jurisdictions and prepare a statistical summary showing the status of "bias crime indicators" in each of the stages through which the data are transmitted until included or not included in the FBI's hate crimes report.
3. Develop recommendations for improving hate crime reporting by law enforcement agencies, both those with "good" hate crime reporting practices and those who have not reported hate crime statistics to the FBI, to develop recommendations for improving hate crime reporting by police departments.
4. Prepare a final report summarizing the results in a way that will help BJS, the FBI, and law enforcement agencies improve hate crime reporting.
5. Archive the data that are collected in the study.

Award Procedures

Proposals should describe in appropriate detail the procedures to be undertaken in furtherance of each of the activities described under Scope of Work. Information on staffing levels and qualifications should be included for each task and descriptions of experience relevant to the project should be included. Resumes of the proposed project director and key staff should be enclosed with the proposal.

Applications will be reviewed competitively by a panel comprised of members selected by BJS. The panel will make recommendations to the Director, BJS. Final authority to enter into a cooperative agreement is reserved for the Director, BJS, or his designee.

Applications will be evaluated on the overall extent to which they respond to the priorities and technical complexities of the scope of work, conform to standards of high data collection quality, and appear to be fiscally feasible and efficient. Applicants will be evaluated on the basis of:

1. Familiarity with both the full report and executive summary of the report, *Improving the Quality and Accuracy of Bias Crime Statistics Nationally: An Assessment of the First Ten Years of Bias Crime Data Collection*.
2. Familiarity with FBI annual reports, *Crime in the United States* and *Hate Crime Statistics*.
3. Knowledge of issues related to hate crime data collection.
4. Knowledge of issues related to the Uniform Crime Reports (UCR) and the

National Incident Based Reporting System (NIBRS).

5. Experience in organizing meetings of Federal, state, or local professionals related to criminal justice issues.

6. Research expertise and experience in data gathering and report writing.

7. Availability of qualified professional and support staff and suitable equipment for project activities.

8. Demonstrated fiscal, management and organizational capability and experience suitable for providing sound data within budget and time constraints.

9. Reasonableness of estimated costs for the total project and for individual cost categories.

Application and Awards Process

An original and five (5) copies of a full proposal must be submitted with SF 424 (Rev. 1988), Application for Federal Assistance, as the cover sheet. Proposals must be accompanied by OJP Form 7150/1, Budget Detail Worksheet; OJP Form 4000/3 (Rev. 1–93), Assurances; OJP Form 4061/6, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; and OJP Form 7120–1 (Rev. 1–93), Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not previously received Federal funds from the Office of Justice Programs). If appropriate, applicants must complete and submit Standard Form LLL, Disclosure of Lobbying Activities. All applicants must sign Certified Assurances that they are in compliance with the Federal laws and regulations which prohibit discrimination in any program or activity that receives Federal funds. To obtain appropriate forms, contact Joyce Stanford, BJS Administrative Assistant, at (202) 616–3497 or go to the BJS web site at <http://www.ojp.usdoj.gov/bjs/apply.htm>.

The application should cover a 1-year period with information provided for completion of the entire project. Proposals must include a program narrative, detailed budget, and budget narrative. The program narrative shall describe activities as stated in the scope of work and address the evaluation criteria. The detailed budget must provide costs including salaries of staff involved in the project and portion of those salaries to be paid from the award; fringe benefits paid to each staff person; travel costs, and supplies required to complete the project. The budget narrative closely follows the content of the detailed budget. The narrative should relate the items budgeted to the project activities and should provide a justification and explanation for the budgeted items. Refer to the aforementioned timetable when developing the program narrative and budget information. This award will not be used to procure equipment for the conduct of the study.

Dated: November 8, 2000.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 00–29090 Filed 11–14–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,600 and NAFTA 3998]

Trinity Industries, Incorporated, Mt. Orab, OH; Notice of Negative Determination on Reconsideration

On October 4, 2000, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on October 18, 2000 (65 FR 62369).

The Department initially denied TAA to workers of Trinity Industries, Incorporated because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The Department denied NAFTA–TAA because the "contributed importantly" group eligibility requirement of section 250 was not met and because there was no shift in production to either Mexico or Canada. The workers at the subject firm were engaged in employment related to the production of aluminum rail cars.

The petitioner asserted that imports of rail cars contributed importantly to the worker separations and provided additional information which should have been considered by the Department in its survey of customers.

On reconsideration, the Department surveyed additional customers of the subject firm. The survey revealed that no customers were purchasing imported aluminum rail cars.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance and NAFTA–TAA for workers and former workers of Trinity Industries, Incorporated, Mt. Orab, Ohio.

Signed at Washington, D.C., this 1st day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29158 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,906]

Automation Technology Corp., Santa Cruz, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 24, 2000, in response to a petition filed by a company official on behalf of workers at Automation Technology Corp., Santa Cruz, California.

The company official who filed the original petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 31th day of October 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29157 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,434]

Baker Atlas, A/K/A Western Atlas, Inc., A/K/A Wedge Dia-Log, Inc., Houston, TX; Amended Notice of Revised Determination on Remand

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determination on Remand on January 4, 2000, applicable to workers of Baker Atlas, Houston, Texas. The notice was published in the **Federal Register** on January 14, 2000 (65 FR 2434).

At the request of the State agency, the Department reviewed the determination for workers of the subject firm. The workers are engaged in the exploration and drilling of crude oil. Information shows that in August 1998, Baker Atlas merged with Western Atlas, Inc. which owned Wedge Dia-Log, Inc. Information

also shows that some of the workers separated from employment at the subject firm had their wages reported to two separated Unemployment Insurance tax accounts; Western Atlas, Inc. and Wedge Dia-Log, Inc. Accordingly, the Department is amending the determination to properly reflect this matter.

The intent of the Department's certification is to include all workers of Baker Atlas adversely affected by increased imports.

The amended notice applicable to TA–W–35,434 is hereby issued as follows:

> All workers of Baker Atlas, also known as Western Atlas, Inc. and also known as Wedge Dia-Log, Inc., Houston, Texas who became totally or partially separated from employment on or after November 30, 1997 through January 4, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 2nd day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29154 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,823; TA–W–37,823A]

Carleton Woolen Mills, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 18, 2000, applicable to workers of Carleton Woolen Mills, Inc., Winthrop, Maine. The notice was published in the **Federal Register** on September 12, 2000 (65 FR 55050).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of woolen fabric. New information shows that worker separations occurred at the New York, New York location of Carleton Woolen Mills, Inc. The New York, New York location provided administration, sales, styling, design and support function services for the subject firm's production facility in Winthrop, Maine. All operations at Carleton Woolen Mills, Inc. ceased on April 21 2000.

Accordingly, the Department is amending the certification to cover workers of Carleton Woolen Mills, Inc., New York, New York.

The intent of the Department's certification is to include all workers of Carleton Woolen Mills, Inc. adversely affected by increased imports of woolen fabric.

The amended notice applicable to TA–W–37,823 is hereby issued as follows:

> All workers of Carleton Woolen Mills, Inc., Winthrop, Maine (TA–W–37,823) and New York, New York (TA–W–37,823A) who became totally or partially separated from employment on or after July 23, 2000 through August 18, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 31st day of October, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29159 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 27, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 27, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of October, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 10/30/2000

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,248	Facemate PL	Somerworth, NH	10/20/2000	Finished textile.
38,249	Harriet and Henderson (Co.)	Somerville, GA	10/09/2000	Cotton and synthetic yarn.
38,350	Designer Hearths, Inc (Wkrs)	Missoula, MT	10/17/2000	Stone and tile hearth pads.
38,251	Technical Rubber (IUE)	Clifton, NY	10/10/2000	Rubber gaskets and rings.
38,252	A.O. Smith EPC (Co.)	Paoli, IN	10/19/2000	C frame electric motors.
38,253	Intercontinental Branded (UNITE)	Buffalo, NY	10/17/2000	Men's suits.

PETITIONS INSTITUTED ON 10/30/2000—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,254	Craftwood Designs (Co.)	Haleyville, AL	10/19/2000	Solid wooden chairs, cabinets, tables.
38,255	Still Man Heating Product (Co.)	Cookeville, TN	10/18/2000	Tubular electrical heating elements.
38,256	Wundies Santtony Wear (Wkrs)	Rockingham, NC	10/17/2000	Ladies' undergarment.
38,257	Pine State Kintwear (Wkrs)	Statesville, NC	10/13/2000	Sweaters.
38,258	U.S. Label Artistic (Co.)	Clinton, NC	10/12/2000	Printed labels for textile garments.
38,259	Precision Interconnect (Wkrs)	Waupun, WI	10/17/2000	Cables for medical equipment.
38,260	Austin Apparel, Inc. (Co.)	Lancaster, KY	10/18/2000	Blue jeans.
38,261	McNeil and NRM (Wkrs)	Akron, OH	10/05/2000	Tire presses.
38,262	Paramount Headwear, Inc. (Co.)	Mountain Grove, MO	09/28/2000	Headwear.
38,263	Columbia Footwear (Co.)	Hazelton, PA	10/21/2000	Shoes.
38,264	Chase Manhattan Bank (Co.)	Midland, TX	10/19/2000	Oil.
38,265	Hi Line Storage System (Wkrs)	Perkasie, PA	10/13/2000	Storage systems.
38,266	Jones and Vining (Wkrs)	Lewiston, ME	10/18/2000	Soles for footwear.
38,267	A and B Component (Wkrs)	Shubuta, MS	10/11/2000	Rotor cells for truck engines.
38,268	Ride Snowboard Mfg. (Co.)	Corona, CA	10/18/2000	Snowboards.
38,269	Hamilton Beach (Co.)	Mount Airy, NC	10/18/2000	Toasters, toaster ovens and parts.
38,270	General Electric Blooming (IBEW)	Bloomington, IN	10/10/2000	Side-By-Side refrigerator units.
38,271	Shipley Ronal (Wkrs)	Long Island, NY	08/21/2000	Chemicals.
38,272	Renfro Corporation (Wkrs)	Pulaski, VA	10/13/2000	Socks.
38,273	McNairy Shirtworks (Wkrs)	Adamsville, IN	10/17/2000	Ladies' turtle neck tops.
38,274	Tingley Rubber (USWA)	So. Plainfield, NJ	10/16/2000	Rubberized clothing.

[FR Doc. 00–29160 Filed 11–14–00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,884]

Rycraft Incorporated, Corvallis, OR; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of September 18, 2000 the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance (TA–W–37,884). The denial notice was signed on August 25, 2000 and published in the **Federal Register** on September 12, 2000 (65 FR 55049).

The company provided additional information about customers which should have been considered by the Department in its survey of customers.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Dated: Signed at Washington, D.C. this 2nd day of November 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29156 Filed 11–14–00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,914 and NAFTA–4042]

Joseph Timber Company, Joseph, OR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Joseph Timber Company, Joseph, Oregon. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,914 & NAFTA–4042; Joseph Timber Company, Joseph, Oregon (November 2, 2000)

Signed at Washington, D.C. this 7th day of November, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–29155 Filed 11–14–00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04080]

Louisiana Pacific Corporation, Western Division, Hayden Lake, Idaho; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on August 7, 2000 in response to a petition filed on behalf of workers at Louisiana Pacific Corporation, Western Division, Hayden Lake, Idaho.

The petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve

no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 1st day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29153 Filed 11–14–00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04180]

Plum Creek Timber, Pablo, MT; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 26, 2000 in response to a petition filed on behalf of workers at Plum Creek Timber, Pablo, Montana.

The petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 2nd day of November 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29152 Filed 11–14–00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health: Notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH), established to advise the Secretary of Labor on issues relating to occupational safety and health programs, policies, and standards in the maritime industries in the United States will meet December 6 and 7, 2000 in Baltimore, Maryland.

DATES: MACOSH will meet:

On December 6, 2000, from 8:30 a.m. until approximately 5:00 p.m.; and

On December 7, 2000, from 8:30 a.m. until approximately 4:00 p.m.

ADDRESSES: The Committee will meet at the Hyatt Regency Baltimore on the Inner Harbor, 300 Light Street, Baltimore, MD 21202; telephone: (410) 528–1234. Mail comments, views, or statements in response to this notice to Chappell Pierce, Acting Director, Office of Maritime Standards, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–2086; FAX: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: Chappell Pierce, Acting Director, Office of Maritime Standards, OSHA; Telephone (202) 693–2086.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the meeting. Individuals with disabilities wishing to attend should contact Theda Kenney at (202) 693–2222 no later than December 1, 2000, to obtain appropriate accommodations.

Background

MACOSH was established pursuant to the authority in section 7 of the Occupational Safety and Health Act of 1970 to advise the Assistant Secretary of Labor for Occupational Safety and Health on issues relating to occupational safety and health for workers involved in shipbuilding, shipbreaking, ship repair, and longshoring in the maritime industries. Since its establishment in 1995, the Committee, has provided invaluable assistance and advice to the Assistant Secretary on maritime matters. MACOSH is chartered for two-year periods. The first meeting of the recently rechartered committee was held on July 19 and 20, 2000, at Kings Point, New York.

Meeting Agenda

This meeting will include discussion of the following subjects: MACHOSH goals and objectives for the next two years, vertical tandem lifts in the longshoring industry, the maritime ergonomics project, an update on the NIOSH diesel exhaust epidemiology study, joint efforts with the OSHA Advisory Committee on Construction Safety and Health, an update on OSHA projects and priorities, and MACOSH workgroup reports.

Public Participation

Written data, views, or comments for consideration by MACOSH on the various agenda items listed above may be submitted, preferably with four copies, to Chappell Pierce. Submissions received by November 20, 2000, will be provided to the members of the Committee prior to the meeting. Requests to make an oral presentation to the Committee may be granted if time permits. Persons wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Chappell Pierce by November 28, 2000. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: This notice is issued under the authority of section 6(b)(1) and 7(b) of the Occupational Safety and Health act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2) and 29 CFR 1912.

Signed at Washington, D.C. this 8th day of November 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–29262 Filed 11–14–00; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: December 4, 2000, from 10:00 a.m. to 11:30 a.m.

ADDRESSES: United States Capitol Building, Room S–211.

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Third Report to Congress

Capitol Visitors Center

Other current issues and new business

The meeting is open to the public.

Dated: November 8, 2000.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 00–29106 Filed 11–14–00; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL SCIENCE FOUNDATION

Notice of Meeting; Seminar: Research to Develop an Artificial Retina

November 22, 2000.

Name: Seminar: "RESEARCH TO DEVELOP AN ARTIFICIAL RETINA".

Date and Time: November 22, 2000; 8:30 am–12 noon.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 110, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Gilbert Devey, Program Director, biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 2223, Telephone: (703) 292–8320.

Purpose of Meeting: The broad purpose of the meeting is to brief NSF management and program officers on federal agency research project support, other worldwide R&D directed to the development of a chronic retinal prosthesis, and to indicate the context in which NSF provides support for the research.

AGENDA

8:30 a.m.—Registration
9:00 a.m.—Welcome
9:15 a.m.—Presentation
10:15 a.m.—Break
10:30 a.m.—Discussion
11:30 a.m.—Open Discussion
11:45 a.m.—Wrap-Up

Dated: November 8, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–29170 Filed 11–14–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373, 50–374]

In the Matter of Commonwealth Edison Company (LaSalle County Station, Units 1 and 2); Exemption

I.

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating Licenses Nos. NPF–11 and NPF–18 for operation of LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois. The licenses state, among other things, that the facility is subject to all of the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II.

Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G states, "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR Part 50 specifies that the P–T limits must meet the safety margin requirements specified in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G. ASME Code specifies use of K_{1A} fracture toughness curve.

To address provisions of the proposed amendments to the technical specification (TS) P–T limits, in its submittal of February 29, 2000, the licensee requested that the staff exempt LaSalle from application of specific requirements of 10 CFR 50.60(a) and Appendix G, and substitute use of ASME Code Case N–640.

Code Case N–640 permits the use of an alternate reference fracture toughness (K_{1c} fracture toughness curve instead of K_{1a} fracture toughness curve) for reactor vessel materials in determining the P–T limits. Since the K_{1c} fracture toughness curve shown in ASME Code, Section XI, Appendix A, Figure A–2200–1 provides greater allowable fracture toughness than the corresponding K_{1a} fracture toughness curve of ASME Code, Section XI, Appendix G, Figure G–2210–1 (the K_{1a} fracture toughness curve), using Code Case N–640 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would be required.

Code Case N–640 (formerly Code Case N–626)

The licensee has proposed an exemption to allow the use of ASME Code Case N–640 in conjunction with ASME Code, Section XI; 10 CFR 50.60(a); and 10 CFR Part 50, Appendix G, to determine P–T limits.

The proposed amendments to revise the P–T limits for LaSalle rely in part on the requested exemption. These revised P–T limits have been developed using the K_{1c} fracture toughness curve, in lieu of the K_{1a} fracture toughness curve, as the lower bound for fracture toughness.

Use of the K_{1c} curve in determining the lower bound fracture toughness in the development of P–T operating limits curve is more technically correct than use of the K_{1a} curve since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{1c} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The staff has required use of the initial conservatism of the K_{1a} curve since 1974 when the curve was codified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{1a} curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, P–T curves based on the K_{1c} curve would enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations.

Since the reactor coolant system (RCS) P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G, continued operation of LaSalle with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily require that the RPV maintain a temperature exceeding 212 degrees Fahrenheit in a limited operating window during pressure tests. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in primary containment. Implementation of the proposed P–T curves, as allowed by ASME Code Case N–640, does not significantly reduce the margin of safety and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted at lower coolant temperature. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served.

In summary, the ASME Code, Section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Code, Section XI, Appendix G, requirements by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

III.

Pursuant to 10 CFR 50.12(a), the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. . . ."

The underlying purpose of the requirement to use the K_{1a} curve to develop P–T limits is to provide an adequate margin of safety against brittle failure of the RPV. Code Case N–640 permits application of the lower bound static initiation fracture toughness value (K_{1a}) equation as the basis for establishing the curves in lieu of using the lower bound crack arrest fracture toughness value equation (*i.e.*, the K_{1a} equation, which is based on conditions needed to arrest a dynamically propagating crack, and which is the method invoked by Appendix G to Section XI of the ASME Code). Use of the K_{1c} equation in determining the lower bound fracture toughness in the development of the P–T operating limits curve is more technically correct than the use of the K_{1a} equation since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{1c} equation appropriately implements the use of the static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. Therefore, use of the K_{1c} curve in developing P–T limits provides an adequate margin against brittle failure of the RPV. As a result, the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

Therefore, the staff concludes that requesting an exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Case N–640 may be used to revise the P–T limits for LaSalle County Station, Units 1 and 2.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest, and that special circumstances are present. Therefore, the Commission hereby grants Commonwealth Edison Company an exemption from the requirements of 10 CFR 50.60(a) and 10 CFR Part 50, Appendix G, for LaSalle County Station, Units 1 and 2.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (65 FR 60986). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 8th day of November 2000.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–29249 Filed 11–14–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–00–039]

In the Matter of Mr. David D. Klepadlo; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. David D. Klepadlo (Mr. Klepadlo) is currently the President of David D. Klepadlo & Associates (K & A). K & A was the holder of Materials License No. 37–30236–01 issued by the Nuclear Regulatory Commission (NRC) on September 11, 1995, pursuant to 10 CFR Part 30, until such License was revoked on August 9, 1999, for non-payment of fees. The license authorized possession and use of two Troxler Electronics Laboratories (Troxler) portable nuclear density gauges (gauges).

II

On July 9, 1999, an Order Revoking License was issued to K & A for non-payment of fees, and on August 9, 1999, the license was revoked. Following the revocation of K & A's license, Mr. Oberg, an NRC inspector, contacted Mr. Klepadlo by telephone on August 12, 1999. Mr. Klepadlo told Mr. Oberg that he no longer possessed the two Troxler gauges, having returned them to Troxler, and further stated that he would look for the documentation showing the gauges were returned to Troxler and would contact the NRC. In a letter to the NRC dated September 3, 1999, Mr. Klepadlo stated, "These test gauges were returned to Troxler in North Carolina in the Fall of 1997 and have not been in our possession since that time." However, Mr. Klepadlo did not provide any documentation supporting that the gauges were returned to Troxler.

On October 25, 1999, the NRC sent a letter to K & A indicating that the NRC had not yet received any documentation from K & A that the gauges had been returned to Troxler, and that Troxler had no record of receipt of the gauges. This letter also requested that K & A verify the final disposition of the gauges. Since repeated attempts by the NRC failed to ascertain the disposition of the gauges, an NRC inspection was conducted at the K & A facility on February 22, 2000, during which both Troxler gauges were found to be stored at the facility.

III

The NRC requirement of 10 CFR 30.10(a)(1) prohibits deliberate misconduct that causes a licensee to be in violation of any license issued by the NRC. Also, the NRC requirement of 10 CFR 30.10(a)(2) prohibits an individual from deliberately submitting to the NRC information that the individual knows to be incomplete or inaccurate in some respect material to the NRC.

The NRC has concluded that Mr. Klepadlo violated 10 CFR 30.10(a)(1) and (a)(2). Specifically, after the NRC revoked K & A's Materials License No. 37–30236–01 on August 9, 1999, Mr. Klepadlo violated 10 CFR 30.10(a)(1) and (a)(2) when he knowingly and deliberately provided false information to the NRC, which caused K & A to violate 10 CFR 30.9. The violation occurred when Mr. Klepadlo: (1) told an NRC inspector during a telephone conversation on August 12, 1999, that he no longer possessed the gauges, having returned them to Troxler; and (2) signed and submitted a letter to the NRC on September 3, 1999, that the gauges were returned to Troxler in North

Carolina in the Fall of 1997 and have not been in K & A's possession since that time. This was false information because the gauges were at the K & A facility at the time of Mr. Klepadlo's August 12, 1999, statement and September 3, 1999, letter.

Before the NRC made this final enforcement decision, a letter from the NRC dated September 18, 2000, afforded Mr. Klepadlo an opportunity to request a predecisional enforcement conference or respond in writing to the apparent violation. Mr. Klepadlo responded to the apparent violation in a letter dated October 17, 2000, stating that the NRC's conclusion that he made false statements to the NRC concerning the location of the gauges was incorrect. Mr. Klepadlo stated that as President of K & A, he cannot personally know the location of every piece of equipment owned by the company, and therefore, was not aware of the specific location of the gauges at each and every moment.

Notwithstanding Mr. Klepadlo's contention, the NRC maintains that the violation was deliberate. In making this conclusion, the NRC considered that: (1) the Radiation Safety Officer (RSO) at K & A, who cared for the gauges, was laid off in January 1998; (2) Mr. Klepadlo, during a transcribed interview with an NRC investigator on June 13, 2000, stated under oath, that once the RSO had left employment at K & A, Mr. Klepadlo's "only objective in life" was to get rid of the gauges, and that's what he tried to do, spending a lot of time contacting everyone he knew; and (3) the gauges were found at the K & A facility during an NRC inspection on February 22, 2000. Mr. Klepadlo, having been unsuccessful in his attempts to get rid of the gauges and having stated that his only objective after the RSO left was to get rid of the gauges, must have known the gauges were at K & A at the time of his August 12, 1999, oral statement to Mr. Oberg, and in his September 3, 1999, letter to the NRC. Therefore, the NRC concludes that his false statements were also deliberate.

IV

The NRC must be able to rely on the integrity of Licensee employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Klepadlo's actions in deliberately violating Commission regulations, and deliberately and knowingly providing false information to the NRC calls into question his trustworthiness and reliability, and raises serious questions as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that any future licensed activities could be conducted in compliance with the Commission's requirements, and that the health and safety of the public would be protected, if Mr. Klepadlo were permitted to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that David D. Klepadlo be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Mr. Klepadlo is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance and willfulness of Mr. Klepadlo's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 30, and 10 CFR 150.20, *It Is Hereby Ordered, Effective Immediately, That:*

(1) David D. Klepadlo is prohibited from engaging in NRC-licensed activities for three years from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including but not limited to those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

(2) If Mr. Klepadlo is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

(3) For a period of one year after the three year period of prohibition has expired, Mr. Klepadlo shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph V.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification Mr. Klepadlo shall include a statement of his commitment to comply with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Klepadlo of good cause.

VI

In accordance with 10 CFR 2.202, David D. Klepadlo must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Klepadlo or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Klepadlo if the answer or hearing request is by a person other than Mr. Klepadlo. If a person other than Mr. Klepadlo requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Klepadlo or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Klepadlo may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 3rd day of November 2000.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

[FR Doc. 00–29248 Filed 11–14–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–784]

The Office of Nuclear Material Safety and Safeguards Environmental Assessment, and Finding of No Significant Impact Related to the Approval of the Remediation (Decommissioning) Plan for the Formerly Licensed Union Carbide Corporation Facility (UCC), Lawrenceburg, Tennessee, License Nos. SNM–720 and SNM–724 (Terminated)

The U.S. Nuclear Regulatory Commission (hereafter referred to as NRC staff) is considering approval of the remediation (decommissioning) plan (DP) for the formerly licensed Union Carbide Corporation facility (UCC), Lawrenceburg, Tennessee (UCAR, 1998). This DP was submitted by UCAR Carbon Company, Inc. (UCAR) to NRC on August 19, 1998. UCAR is obligated to remediate the UCC site to meet the release criteria established in the Action Plan to Ensure Timely Remediation of Sites Listed in the Site Decommissioning Management Plan (hereafter known as the SDMP Action Plan) (NRC, 1992), and 10 CFR part 20 subpart E.

Introduction

On August 26, 1963, UCC was issued Special Nuclear Materials License No. SNM–724 (SNM–724), for testing equipment and nuclear fuels development. License No. SMB–720 (SNM–720), which authorized the possession of source material, was also held by the site. SNM–724 was terminated on June 4, 1974, and the U.S. Atomic Energy Commission (AEC) released the site for unrestricted use. SMB–720 was superceded by the State of Tennessee License No. S–5002–H8 and was terminated on August 28, 1975.

SNM–724 authorized possession of up to 500 grams (g) of fully-enriched (<94 percent) uranium for testing of equipment and processes in the Lawrenceburg Fuel Development Facility located at Highway 43 South, Lawrenceburg, Tennessee. On May 22, 1964, the license was amended to authorize possession of 150 kilograms (kg) of U^{235} to make graphite-coated uranium-thorium carbide particles and graphite-matrix fuel elements. The possession limit was increased to 475 kg on June 12, 1964.

By letter dated February 4, 1974, the UCC submitted "closeout" survey information and requested that SNM–724 be terminated and the facility be released for unrestricted use. On April 5, 1974, Region II performed a closeout inspection which was documented in their Inspection Report 70–784/74–1. Region II recommended that the license be terminated, and the facility be released for unrestricted use. By AEC letter dated June 4, 1974, SNM–724 was terminated and the UCAR facility released for unrestricted use.

In 1991, Oak Ridge National Laboratory (ORNL) was contracted by NRC, to review and evaluate all nuclear material licenses terminated by NRC or its predecessor agencies, since inception of material regulation in the late 1940s. One of the objectives of this review was to identify sites with potential for residual contamination, based on information in the license documentation. NRC evaluated the available survey data to determine if the information was sufficient to conclude that the site meets the existing guidelines for unrestricted use.

Radiological assessments performed at the UCAR facility and immediate vicinity have identified the presence of enriched and depleted uranium in soil excess of current radiological release criteria. Sampling identified soil/sediments contamination in small areas around the processing buildings.

Volumetric contaminations were found to be above the release criteria in four areas around Building 10: (1) Soil surrounding the incinerator pad; (2) sediment in the manholes and cooling water tanks; (3) laundry sump tank; and (4) the surface layer of concrete flooring. A number of core samples as well as near surface samples were taken near the incinerator pad and the range for total uranium concentration was 1.33 to 3,655 pCi/g. The estimated average depth of the soil contamination is one foot resulting in a contaminated soil volume estimate of 500 cubic feet. Volumetric contamination above the release critieria was found in three areas in and around Building 5: (1) Sink trap; (2) concrete flooring; and (3) asphalt outside exit.

There was no indication of radioactive material above the release criteria beyond the former restricted area boundary in the ground water, settling basins, or former sanitary sewer system.

UCAR will be conducting remediation activities without a license, because its license was terminated in 1974. However, remediation will be performed in accordance with current regulations and release limits (UCAR, 1998).

Planned Decommissioning Action

Decommissioning of the UCAR facility shall comply with 10 CFR part 20 subpart E for unrestricted use (NRC 1997) criteria. The conduct of decommissioning and decontamination in compliance with these criteria provides adequate protection of the public health and safety and of the environment. In implementing the decommissioning plan, UCAR shall reduce residual contamination in soil to be below the NRC's unrestricted release criteria identified in 10 CFR part 20, subpart E (NRC, July, 1997). Soils which exceed the derived concentration guideline level (DCGL) will be removed and disposed of as low level radioactive waste.

General exposure rate levels will be reduced to levels below 5 microroentgen per hour (microR/hr) above background, measured at 1 meter (m) above the surface.

UCAR is proposing to conduct a final survey to demonstrate: (1) That uranium and thorium contamination levels in the soil are below the [25 millirem per year (mRem/yr)] DCGL's and (2) that exposure rate measurements are less than 5 microR/hr measured 1 meter above the surface. UCAR has committed to conducting the final survey in accordance with NRC approved site survey plan, as well as any applicable regulatory requirements.

The Need for Planned Action

The former UCAR facility is currently being used to manufacture non-radiological carbon products. The planned action is necessary to reduce residual contamination at the site to meet NRC's unrestricted release criteria.

Alternative to the Planned Action

The alternative to the proposed action is to take no action. A no-action alternative would mean the site would not be remediated now. Although there is no immediate threat to the public health and safety from this site, not undertaking remediation, at this time, does not solve the regulatory and potential long-term health and safety problems associated with having residual contamination on site. In addition, pursuing no action would delay remediation until some time in the future, when remediation costs could be much higher than they are today. Therefore, the no-action alternative is not acceptable.

Environmental Impacts of the Planned Action

Radiological impacts that could result from the remediation of the former UCC site are direct exposure, inhalation, and ingestion hazards to workers. These hazards could occur during decontamination of building surfaces and excavation and packaging of contaminated soil.

The radioactive material of concern at this site is enriched uranium. Gamma exposure rate measurements taken at locations throughout the site do not exceed background levels, with the exception of five locations near the incinerator pad. The highest radiation exposure rate detected near the incinerator pad is 26 microR/hr above background. Because the gamma exposure rate measurements are low, direct exposure to workers is not a significant radiological hazard.

UCC will implement an occupational exposure monitoring program to ensure that internal and external exposures are well below the regulatory limits, and to ensure that no individual exceeds a regulatory limit. Respiratory protection will be required for workers when airborne radioactivity could result in exposures above the administrative action levels set in the health and safety plan.

Although the potential for external exposure is low, UCAR will survey work areas for direct radiation whenever remediation is being performed. If dose rates exceed 5 mrem/hr, or if the RSO determines that worker exposure could exceed 10 percent of the regulatory limits found in 10 CFR part 20, subpart C "Occupational Dose Limits," worker exposure will be monitored with thermoluminescent dosimeters.

UCAR has committed to implement a contamination monitoring and control program to detect and minimize the spread of contamination. Contamination monitoring will be accomplished by: (1) Conducting routine surveys; (2) use of access controls to prevent inadvertent personnel access to contaminated areas; (3) use of radiation work permits in areas where there is potential for workers to exceed 10 percent of the regulatory limits; (4) use of personal protection; and (5) employee training.

UCAR has committed to implementing a contaminant monitoring and control program to detect and minimize off-site effluent releases (UCAR, in its DP Section 3.3.4, 1998). The primary pathway for off-site release of radioactive material is airborne effluent. Inhalation and ingestion impacts will be minimized to the workers and public by controlling airborne material levels. Routine and special environmental monitoring will be conducted to detect, assess, and limit potential airborne releases. Air monitoring will be performed in work areas using Breathing Zone Air (BZA) samplers or high-volume air samplers. Administrative action levels at 10 percent of the regulatory limits for airborne effluents have been established. Investigations will be performed if administrative action levels are exceeded. No liquid wastes have been identified and none are expected.

Radioactive waste will be segregated from non-radioactive waste and stored in a controlled, fenced area. Radioactive waste will be stored inside, if possible. Otherwise, it will be stored outside and covered to protect against the weather. Radioactive waste will be packaged, labeled, manifested, and shipped in accordance with NRC and U.S. Department of Transportation requirements.

This site is being remediated to the criteria listed in 10 CFR part 20, subpart E for unrestricted use (NRC, 1997).

Agencies and Individuals Consulted

This environmental (EA) assessment was prepared by NRC staff. No other sources were used beyond those referenced in this EA. NRC staff provided a draft of the EA to Tennessee Department of Environment and Conservation, Division of Radiological Health for review. By e-mail dated May 1, 2000, the Tennessee Department of Environment and Conservation Division of Radiological Health agreed with NRC's conclusion that the proposed action will not have any significant effect on the quality of the human environment.

NRC contacted the U.S. Fish and Wildlife Service (FWS) to determine the potential impacts of the proposed action on threatened and endangered species near the UCAR facility. By letter dated September 10, 1999, the FWS informed NRC that the proposed action would have no impact on threatened and endangered species.

NRC staff provided a draft of the EA to U.S. Environmental Protection Agency (EPA) Region IV for review. By e-mail dated June 27, 2000, EPA did not have any comments on the proposed action. However, the EPA has noted the disagreement between the EPA and the NRC about the appropriate dose criteria to be used in decommissioning.

NRC also contacted the Tennessee State Historical Preservation Office to determine if any historical properties would be impacted by the proposed action. The Tennessee State Historical Preservation office informed the NRC, by letter dated May 2, 2000, that there are no National Register of Historic Places listed or eligible properties affected by the project.

Conclusion

During the decommissioning operation, radiological exposure to workers and annual average concentrations of radioactive material released off-site will be in accordance with Part 20 limits. UCAR has committed to perform remediation in accordance with an acceptable Health and Safety Plan. The Health and Safety Plan shall provide adequate controls to keep potential doses to workers and the public from direct exposure, airborne material, and released effluents as low as reasonably achievable.

NRC also believes that the remediation of the facility in accordance with 10 CFR part 20, subpart E for unrestricted use, adequately protects workers, members of the public, and the environment. The potential environmental impacts from the proposed action are not significant.

References

1. NRC, "Action Plan to Ensure Timely Remediation of Sites Listed in the Site Decommissioning Management Plan," 57 FR 13389, April 16, 1992.

2. NRC, "Radiological Criteria for License Termination," 10 CFR Part 20, Subpart E, 62 **Federal Register** 139, July 21, 1997.

3. NRC, "Multi-Agency Radiation Survey and Site Investigation Manual, (MARSSIM)," NUREG–1575, December 1997.

4. NRC, "Draft Manual for Conducting Radiological Surveys in Support of License Termination," NUREG/CR–5849, June 1992.

5. Union Carbide Company Inc., "Remediation (Decommissioning) Plan for the Formerly Licensed Union Carbide Corporation Facility (UCC), Lawrenceburg, TN," August 19, 1998.

Finding of No Significant Impact

NRC has prepared an EA related to the approval of UCAR's Remediation (Decommissioning) Plan, Terminated License No. SNM–724 and SMB–720. On the basis of this EA, NRC has concluded that the environmental impacts that would be created by the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined the Finding of No Significant Impact is Appropriate.

The EA and the document related to this proposed action are available for public inspection and copying at NRC's Electronic Reading Room at http://www.nrc.gov/NRC/ADAMS/index.html.

FOR FURTHER INFORMATION CONTACT: Rebecca Tadesse, Project Manager, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards. Telephone: (301) 415–6221.

Dated at Rockville, Maryland, this 9th day of November 2000.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–29251 Filed 11–14–00; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Meeting of the Subcommittee on Plant Operations; Notice of Meeting

The ACRS Subcommittee on Plant Operations will hold a meeting on December 6, 2000, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 6, 2000–8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss changes to the Revised Reactor Oversight Process since implementation of the pilot program. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman and written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Ms. Maggalean W. Weston (telephone 301/415–3151) between 8 a.m. and 5:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: November 7, 2000.

James E. Lyons,

Associate Director for Technical Support.

[FR Doc. 00–29247 Filed 11–14–00; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission

DATES: Weeks of November 13, 20, 27, December 4, 11, and 18, 2000.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 13

Wednesday, November 15, 2000.

10 a.m.—Briefing by the Executive Branch (Closed—Ex. 1)

Friday, November 17, 2000

9:25 a.m.—Affirmation Session (Public Meeting), (If needed)
9:30 a.m.—Briefing on Risk-Informed Regulation Implementation Plan, (Public Meeting) (Contact: Tom King, 301–415–5790)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of November 20—Tentative

There are no meetings scheduled for the Week of November 20.

Week of November 27—Tentative

Monday, November 27, 2000

9 a.m.—Briefing by DOE on Plutonium Disposition Program and MOX Fuel Fabrication Facility Licensing (Public Meeting), (Contact: Drew Persinko, 301–415–6522)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 4—Tentative

Monday, December 4, 2000

1:55 p.m.–Affirmation Session (Public Meeting) (If needed)
2 p.m.—Briefing on License Renewal Generic Aging Lessons Learned (GALL) Report, Standard Review Plan (SRP), and Regulatory Guide (Public Meeting) (Contact: Chris Grimes, 301–415–1183)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 11—Tentative

There are no meetings scheduled for the Week of December 11.

Week of December 18—Tentative

Wednesday, December 20, 2000

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)
9:30 a.m.—Briefing on the Status of the Fuel Cycle Facility Oversight Program Revision (Public Meeting)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Note: The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/SECY/smj/schedule.htm.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmn@nrc.gov or dkw@nrc.gov.

Dated: November 9, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–29354 Filed 11–13–00; 2:18 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 23, 2000, through November 3, 2000. The last biweekly notice was published on November 1, 2000.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 15, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first Floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 22, 1999, as supplemented on September 11, 2000.

Description of amendment request: The proposed amendment would revise Technical Specification Sections 4.5.D, "Containment Air Filtration System (CAFS)," 4.5.E, "Control Room Air Filtration System (CRAFS)," 4.5.F, "Fuel Storage Building Air Filtration System (FSBAFS)," and 4.5.G, "Post-accident Containment Venting System (PACVS)," to address the testing requirements in Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> (1) Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?
>
> No. The proposed change would revise Section 4.5 to incorporate current NRC [Nuclear Regulatory Commission] testing requirements which affect how the charcoal would be tested in the laboratory. These changes would not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety System Settings and Safety Limits specified in the current Technical Specifications would remain unchanged. Therefore, the proposed changes would not involve a significant increase in the probability or in the consequences of an accident previously evaluated.
>
> (2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?
>
> No. The proposed changes would implement testing methodology for ventilation system charcoal in accordance with Generic Letter 99–02, but would not alter equipment performance criteria or standards. The safety analysis of the facility would remain complete and accurate, and would not be affected by the new charcoal testing requirements. There would be no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated would still be valid. The operating procedures and emergency procedures would be unaffected. Consequently no new failure modes would be introduced as a result of the proposed change. Therefore, the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.
>
> (3) Does the proposed amendment involve a significant reduction in a margin of safety?
>
> No. Since there would be no changes to the operation of the facility, to its physical design, or to the performance characteristics of any safety-related equipment, neither the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, nor Technical Specification bases would be affected. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Section Chief: Marsha Gamberoni.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: September 5, 2000.

Description of amendment request: The amendment revises Technical Specification 3.3.5.1, 3.3.6.1 and 3.3.6.2. The proposed changes would add notes to tables listing instrument channels that are common to, or support the operability of interrelated systems as governed by these technical specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change has no impact on previously analyzed accidents or transients and has no affect on design, operation, capacity, or surveillance requirements of the affected instrumentation channels. The change provides branching notes to the Loss of Coolant Accident (LOCA) Time Delay Relay (TDR) Functions of LCO [limiting condition of operation] 3.3.5.1 from instrument channels of the primary and secondary containment isolation channels of LCO 3.3.6.1 and LCO 3.3.6.2 and the associated support features for the LOCA TDR function. Since these instruments affect multiple LCOs, this change will assure that operators implement the most restrictive Action and Completion Time when a channel becomes inoperable or is placed in the tripped condition. Providing this branching to the more restrictive Actions makes explicit what is currently required for Operability and has no impact on any previously evaluated accident.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not impact any operational or physical aspect of WNP–2. The change only makes explicit the LCOs affected by the primary and secondary containment isolation instruments and the associated supported features for the LOCA TDR function.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change provides branching notes to the LOCA TDR channels of LCO 3.3.5.1 from instrument channels of the primary and secondary containment isolation channels of LCO 3.3.6.1 and LCO 3.3.6.2 and provides notes for identifying associated support features for the LOCA TDR function. This change only makes explicit what is currently required for LCO 3.3.5.1 Functions 1c, 1d, 2c and 2d instrument channel Operability. This change will make explicit the most restrictive Action when an instrument sensor or channel becomes inoperable or is placed in the tripped condition, thereby, maintaining the margin of safety in accordance with the Technical Specifications.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

NRC Section Chief: Stephen Dembek.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: October 3, 2000.

Description of amendment request: The proposed amendment would revise the Crystal River Unit 3 (CR–3) Improved Technical Specifications (ITS) 3.7.12, "Control Room Emergency Ventilation System (CREVS)," ITS 5.6.2.12, "Ventilation Filter Testing Program (VFTP)," ITS 3.3.16, "Control Room Isolation—High Radiation," and ITS 3.7.18, "Control Complex Cooling System." The proposed ITS changes are based on the results of revised public and control room dose calculations for CR–3 design basis radiological accidents using an alternative source term (AST).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously analyzed. The CR–3 Control Room Emergency Ventilation System (CREVS) and the Control Complex Habitability Envelope (CCHE) only function following the initiation of a design basis radiological accident. Therefore, the changes to the CREVS specification, the CREVS filter testing criteria, and the deletion of the requirement for control room isolation on high radiation proposed by this amendment will not increase the probability of any previously analyzed accident. The Control Complex Cooling System and Auxiliary Building Ventilation System are not initiators of any design basis accident. Therefore, the changes to the Control Complex Cooling System specification and the changes to the testing guidelines for the Auxiliary Building Ventilation System exhaust filters proposed by this amendment will not increase the probability of occurrence of any previously analyzed accident.

- Revised dose calculations, which take into account the changes proposed by this amendment and the use of an AST, have been performed for the CR–3 design basis radiological accidents. The results of these revised calculations indicate that public and control room doses will not exceed the limits specified by 10 CFR 50.67 and Regulatory Guide 1.183. In addition, a comparison between results of the current public dose calculations and the revised public dose calculations indicate that the proposed changes will not result in a significant increase in predicted dose consequences for any of the analyzed accidents. Therefore, the proposed changes do not involve a significant increase in the consequences of any previously analyzed accident.

2. Does not create the possibility of a new or different kind of accident from any accident previously analyzed.

Limiting the requirements for the Control Complex Cooling System and CREVS to be operable to Modes 1, 2, 3, and 4, and changing the Auxiliary Building Ventilation System exhaust filter testing guidelines do not result in changes to the design or operation of these systems. Although the other changes proposed by this amendment could affect the operation of the CREVS and CCHE following a design basis radiological accident, none of these changes can initiate a new or different kind of accident since they are only related to system capabilities that provide protection from accidents that have already occurred. Therefore the proposed changes do not create the possibility of a new or different kind of accident from those previously analyzed.

3. Does not involve a significant reduction in the margin of safety.

The proposed changes to the control complex cooling specification do not affect the ability of the system to maintain control complex temperatures within safety-related equipment operability limits when the equipment is required. The results of revised control room dose calculations indicate that the proposed changes to the CREVS specification, the CREVS filter testing criteria, and removal of the CREVS actuation signal on high radiation will not affect the ability of the CREVS and CCHE to maintain control room doses less than required limits during design basis radiological accidents. The revised dose calculations also indicate that the Auxiliary Building Ventilation System exhaust filters are not required in order to maintain public or control room doses less than required limits; therefore the proposed changes to the testing requirements for these filters cannot adversely affect public or control room doses.

Based on the above, the revised technical specifications meet the same intent as the currently approved specifications. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Richard P. Correia.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 7, 1999, as supplemented February 4, 2000.

Description of amendment request: The proposed amendment requests the staff to evaluate the integrity of the Kewaunee Reactor Pressure Vessel (RPV) circumferential beltline weld using a Master Curve-based methodology.

The licensee submitted a request for exemptions to 10 CFR 50.61, 10 CFR 50 Appendix G, and 10 CFR 50, Appendix H, to allow the use of the Master Curve-based methodology for calculating the RPV Reference Temperature for Pressurized Thermal Shock (RT_{PTS}) based on the fracture toughness data from irradiated pre-cracked Charpy V-notch specimen testing of Kewaunee and Maine Yankee surveillance welds. The Master Curve methodology is based on American Society for Mechanical Engineers (ASME) Code Case N–629 and American Society for Testing and Materials Standard (ASTM) E–1921. In its submittals, the licensee also requested a revision of the facility's Pressure-Temperature (P/T) limit curves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Failure of a reactor vessel is not an accident that has been previously evaluated. Design provisions ensure that this is not a credible event. Since the potential consequences of a reactor vessel failure are so severe, industry and governmental agencies have worked together to ensure that failure will not occur. Compliance with 10 CFR 50.61, 10 CFR 50 Appendix G and H, and application of ASME Code Case N–514, ASME Code Case N–588, and the exemption requested in Attachment 1 ensures that failure of a reactor vessel will not occur. The proposed changes do not impact the capability of the reactor coolant pressure boundary piping (i.e., no change in operating pressure, materials, seismic loading, etc.) and therefore do not increase the potential for the occurrence of a LOCA.

The LTOP setpoint, LTOP system enabling temperature, and revised P/T limits reflected in proposed Figures TS 3.1–1 and TS 3.1–2 ensure that the Appendix G pressure/temperature limits are not exceeded, and therefore, ensure that RCS integrity is maintained. The changes do not modify the reactor coolant system pressure boundary, nor make any physical changes to the facility design, material, construction standards, or setpoints. The reactor coolant system full power operating pressure (2235 psig) is not being changed by this proposed amendment. The LTOP valve setpoint remains at ≤500 psig. The LTOP enabling temperature based on Figure TS 3.1–2 is 200°F and is consistent with ASME Code Case N–514 guidance of $RT_{NDT} + 50°F$. The LTOP enabling temperature is not changed by this amendment. The allowable combination of Appendix G pressure and temperature for the cooldown limits is marginally greater than the current limits. The combination of slightly greater allowable Appendix G pressure and temperature limits and low enabling temperature produces an adequate operating window. An adequate operating window reduces the likelihood of inadvertently lifting the LTOP relief valve while maneuvering the plant through the knee of the P–T curve during startup and shutdown. The probability of an LTOP event occurring is independent of the pressure-temperature limits for the RCS pressure boundary and enabling temperature. Therefore, the probability of a LTOP event is not increased.

The revised heatup and cooldown limit curves and corresponding LTOP enabling temperature were developed using test results from unirradiated and/or irradiated specimens that represent the KNPP reactor vessel beltline circumferential weld, closure head flange, and intermediate forging. The circumferential beltline weld and intermediate forging are the most limiting materials in the reactor coolant pressure boundary. These materials are limiting due to the effects of neutron irradiation which cause the flow properties to increase and the toughness to decrease. The circumferential beltline weld is the controlling material for evaluation of pressurized thermal shock. With NRC approval to use Code Case N–588 and the exemption requested in Attachment 1, the reactor vessel intermediate forging and head flange become the limiting and controlling materials for development of the Appendix G limit curves and corresponding LTOP system enabling temperature. 10 CFR 50, Appendix G states that the metal temperature of the closure flange regions must exceed the material unirradiated RT_{NDT} by at least 120°F for normal operation and 90°F for hydrostatic pressure tests and leak tests when the pressure exceeds 20 percent of the preservice hydrostatic test pressure. Fracture toughness, drop weight, and Charpy V-notch testing of the 1P3571 weld metal and drop weight, and Charpy V-notch testing of the intermediate forging material has been performed. The results of those tests have been used for derivation of the revised PTS assessment, the proposed Appendix G heatup and cooldown limit curves, and the corresponding LTOP system enabling temperature. The revised limit curves and corresponding LTOP enabling temperature have been developed using accepted engineering practices. The evaluations were performed in accordance with methods derived from the ASME Boiler and Pressure Vessel Code, criteria set forth in NRC Regulatory Standard Review Plan 5.3.2, and 10 CFR 50.61. The revised heatup and cooldown limit curves and corresponding LTOP enabling temperature ensures adequate fracture toughness for ferritic materials of the pressure-retaining components of the reactor coolant pressure boundary. These limit curves provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, and low temperature overpressure protection [corresponding to isothermal events during low temperature operations (i.e., ≤200°F)], thus ensuring the integrity of the reactor coolant pressure boundary.

The changes do not adversely affect the integrity of the RCS such that its function in the control of radiological consequences is affected. Radiological off-site exposures from normal operation and operational transients, and faults of moderate frequency do not exceed the guidelines of 10 CFR 100. In addition, the changes do not affect any fission product barrier. The changes do not degrade or prevent the response of the LTOP relief valve or other safety-related systems to previously evaluated accidents. In addition, the changes do not alter any assumption previously made in the radiological consequence evaluations nor affect the mitigation of the radiological consequences of an accident previously evaluated. Therefore, the consequences of an accident previously evaluated will not be increased.

Thus, operation of KNPP in accordance with the PA [proposed amendment] does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the potential consequences of a reactor vessel failure are so severe, industry and governmental agencies have worked together to ensure that failure will not occur. Application of ASME Code Case N–514, ASME Code Case N–588, and the exemption requested in Attachment 1 ensures that failure of a reactor vessel will not occur. Therefore, a failure of the reactor vessel can still be considered incredible.

The proposed heatup and cooldown limit curves have been constructed by combining the most conservative pressure-temperature limits derived by using material properties of the intermediate forging, closure head flange, and beltline circumferential weld to form a single set of composite curves. Use of the proposed curves, does not modify the reactor coolant system pressure boundary, nor make any physical changes to the LTOP setpoint or design. Proposed Figures TS 3.1–1 and TS 3.1–2 were prepared in accordance with regulatory and code requirements and were derived using conservative material property basis and neutron exposure projections thru 33 EFPY. Therefore, the proposed heatup and cooldown curves and LTOP limits will continue to protect the reactor vessel from failure.

The LTOP system enabling temperature and the proposed Appendix G pressure temperature limitations were prepared using methods derived from the ASME Boiler and Pressure Vessel Code and the criteria set forth in NRC Regulatory Standard Review Plan 5.3.2. The changes do not cause the initiation of any accident nor create any new credible limiting failure for safety-related systems and components. The changes do not result in any event previously deemed incredible being made credible. As such, it does not create the possibility of an accident different than previously evaluated. The changes do not have any adverse effect on the ability of the safety-related systems to perform their intended safety functions.

The proposed changes do not make physical changes to the plant or create new failure modes. Thus, the PA [proposed amendment] does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed Appendix G pressure temperature limitations and corresponding LTOP enabling temperature were prepared using methods derived from the ASME Boiler and Pressure Vessel Code, including ASME Code Cases N–514 , N–588, and N–629.

Inherent conservatism in the P/T limits resulting from these documents is described in the Safety Evaluation.

Alternative methodologies to the safety margins required by Appendix G to 10 CFR Part 50 have been developed by the ASME Working Group on Operating Plant Criteria. Three of these methodologies are contained in ASME Code Cases N–514, N–588, and N–629.

Code Case N–514 provides criteria to determine pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of the relief valve used for LTOP. Specifically, the ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G; and redefines the enabling temperature at a coolant temperature less than 200 °F or a reactor vessel metal temperature less than RT_{NDT} + 50 °F, whichever is greater. Code Case N–514, "Low Temperature Overpressure Protection," has been approved by the ASME Code Committee but not yet approved for use in Regulatory Guides 1.147, 1.85, or 1.84. The content of this Code Case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. It is expected that the next revision of 10 CFR 50.55a will endorse the 1993 Addenda and Appendix G of Section XI. Code Case N–514 is not in conflict with 10 CFR 50.61 and therefore has been used to establish the LTOP system enabling temperature; the provision for exceeding 110% of the Appendix G limits has not been incorporated in PA [proposed amendment] 160. The NRC previously approved use of Code Case N–514 for determination of the LTOP enabling temperature in Reference 6.

Code Case N–588 provides benefits in terms of calculating pressure-temperature limits by revising the Section XI, Appendix G reference flaw orientation for circumferential welds in reactor vessels. The NRC previously approved use of Code Case N–588 for use at KNPP in references 4 and 5.

In support of this PA [proposed amendment], WPSC used fracture toughness results representing the beltline weld metal that were irradiated to EOL and in excess of EOLE fluence. The fracture toughness results were analyzed as described under Case #6 in WCAP–15075 and ASME Code Case N–629 for determining the EOL and EOLE indexing reference temperature values. Attachment 1 to this letter provides information to support NRC approval to use the weld metal fracture toughness results along with the methodology presented in WCAP–15075 for the KNPP PTS evaluation. The KNPP application of the methodology presented in WCAP–15075, identified as Case #6, incorporates the following additional margins beyond that recommended in ASTM E1921–97:

(a) A delta value of 17 °F is added to T_0 to ensure that the margin in the KNPP application is at least as conservative as the margin associated with the most limiting HSST–02 plate material.

(b) An additional margin of 18 °F has been added to the above 17 °F to be consistent with the ASME Code Case N–629, and align the KNPP lead plant application with current consensus of the technical community regarding the best use of fracture toughness based indexing reference temperature data.

(c) A 2σ value of 16 °F and 24 °F is added to account for RT_{T_0} measurement uncertainty for EOL and EOLE, respectively.

(d) A value of (+)35 °F and (−)32 °F accounts for heat uncertainty between the KNPP and Maine Yankee surveillance capsule specimens for EOL and EOLE, respectively.

Fracture toughness testing of irradiated 1P3571 weld metal, performed in accordance with ASTM E1921–97 and application of ASME Code Case N–629 along with the methods in WCAP–15075, indicate that the end of life indexing reference temperature is 234 °F. This fracture toughness generated EOL indexing reference temperature value includes a margin of 34 °F (18 °F + 16 °F). The fracture toughness generated indexing reference temperature value (234 °F) is lower than the ART value (277 °F) predicted by the Charpy V-notch and Drop Weight methodology. Both methodologies predict end of life indexing reference temperature values that are below the pressurized thermal shock screening criteria (300 °F).

Use of the methodology set forth in the ASME Boiler and Pressure Vessel Code, NRC Regulatory Standard Review Plan 5.3.2., WCAP–15075, 10 CFR 50.61, and 10 CFR 50 Appendices G and H ensures that proper limits and safety factors are maintained. Thus, the PA [proposed amendment] does not involve a significant reduction in the margin of safety.

The revised heatup and cooldown limit curves and corresponding LTOP system enabling temperature were prepared using fracture toughness, drop weight and Charpy V-notch data for the beltline weld material; drop weight and Charpy V-notch data for the closure head flange and intermediated forging material; along with practices described herein and methods derived from the ASME Boiler and Pressure Vessel Code and 10 CFR 50.61. The safety factors and margins used in the development of the limit curves and LTOP system enabling temperature meet the criteria set forth by these documents. Application of low leakage core designs decreases the rate of shift in transition temperature from ductile to nonductile behavior. The revised limit curves and corresponding LTOP enabling temperature provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, and low temperature overpressure protection [corresponding to isothermal events during low temperature operations (i.e., ≤200 °F)]. With the preparation of the revised limit curves in accordance with the latest criteria and guidance, this proposed amendment ensures that proper limits and safety factors are maintained.

Thus, the proposed amendment does not involve a significant reduction in a margin of safety. Therefore, the proposed amendment does not represent a significant decrease in the margin of safety. As shown in Attachment 1 [in the proposed amendment], a loss of reactor vessel integrity is still incredible. Furthermore, the LTOP setpoint and enabling temperature will continue to protect the reactor coolant system during low temperature operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: Claudia M. Craig.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: September 7, 2000.

Description of amendment request: The proposed amendment to the Indian Point Nuclear Generating Unit No. 3 (IP3) Technical Specifications (TSs) would reflect a modification planned for refueling outage (RO) 11, scheduled to begin in May of 2001. The modification will automatically close, on a safety injection signal, the existing main feedwater inlet isolation valves (MFIIVs) and the main feedwater low flow bypass inlet isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the Indian Point 3 plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92 since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change reflects a planned modification to automatically isolate main feedwater on a safety injection signal using the motor operated Main Feedwater Inlet Isolation Valves (MFIIVs) and MF [main feedwater] low flow bypass inlet isolation valves. These non-safety valves will be incorporated into the IST [inservice testing] program as augmented components and included in the Generic Letter 89–10 program for motor operated valves. The modification will not relocate the safety injection signal from the Main Boiler Feedpump Discharge Valves (MBFPDVs) but closure will no longer be assumed in analyses. The modification is based on current design function for the feedwater isolation following a main steam line break inside containment accomplished by MBFPDVs. The TS changes add a limiting condition for operation, required action statements with completion times and surveillance requirements that are the same as those previously approved for Westinghouse plants in the Standard Technical Specifications found in NUREG–1432. The plant core reload analysis will assume that the modification is complete (this eliminates the continued addition of the feedwater between the MFIIVS and associated bypass valves and the MBFPDVs) and demonstrate that a shutdown margin of 1.3% is acceptable and that no boron concentration needs to be assumed in the safety injection lines. The proposed changes cannot affect the probability of an accident occurring since they reflect a change in plant design consistent with current design which is not an accident initiator. The proposed changes cannot increase the consequences of postulated accidents since they reflect a change in plant design that will mitigate the effects of feedwater to a faulted steam generator for a main steam line break inside containment and restore past analytical assumptions regarding a 1.3% shutdown margin and no boron in the safety injection lines.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change reflects a planned modification to automatically isolate main feedwater on a safety injection signal using the motor operated Main Feedwater Inlet Isolation Valves (MFIIVs) and MF low flow bypass inlet isolation valves. These non-safety valves will be incorporated into the IST program as augmented components and included in the Generic Letter 89–10 program for motor operated valves. The modification will not relocate the safety injection signal from the Main Boiler Feedpump Discharge Valves (MBFPDVs) but closure will no longer be assumed in analyses. The modification is based on current design function for the feedwater isolation following a main steam line break inside containment accomplished by MBFPDVs. The TS changes add a limiting condition for operation, required action statements with completion times and surveillance requirements that are the same as those previously approved for Westinghouse plants in the Standard Technical Specifications found in NUREG–1432. The proposed TS changes do not create the possibility of a new or different type of accident from those previously evaluated since they reflect a design change that will accomplish the same feedwater isolation function as previously done by the MBFPDVs with no change to the manner in which the feedwater system operates.

3. Involve a significant reduction in a margin of safety.

The proposed TS change reflects a planned modification to automatically isolate main feedwater on a safety injection signal using the motor operated Main Feedwater Inlet Isolation Valves (MFIIVs) and MF low flow bypass inlet isolation valves. These non-safety valves will be incorporated into the IST program as augmented components and included in the Generic Letter 89–10 program for motor operated valves. The modification will not relocate the safety injection signal from the Main Boiler Feedpump Discharge Valves (MBFPDVs) but closure will no longer be assumed in analyses. The modification is based on current design function for the feedwater isolation following a main steam line break inside containment accomplished by MBFPDVs. The TS changes add a limiting condition for operation, required action statements with completion times and surveillance requirements that are the same as those previously approved for Westinghouse plants in the Standard Technical Specifications found in NUREG–1432. The plant core reload analysis will assume that the modification is complete (this eliminates the continued addition of the feedwater between the MFIIVS and associated bypass valves and the MBFPDVs) and demonstrate that a shutdown margin of 1.3% is acceptable and that no boron concentration needs to be assumed in the safety injection lines. The proposed TS change cannot involve a significant reduction in the margin of safety since it is based upon a modification that will restore the margin of safety with respect to feedwater addition, shutdown margin and core boration for a main steam line break inside containment to the previously analyzed condition. This assumes that loading of the valves on the emergency diesel generators will not affect the emergency diesel generators margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: September 7, 2000.

Description of amendment request: The proposed amendment to the Indian Point Nuclear Generating Unit No. 3 (IP3) Technical Specifications (TSs) would extend allowed outage times (AOTs) on a one-time basis, before May 31, 2002, to allow for replacement of the 31 and 32 station batteries while the plant is on line. The proposed amendment also removes an expired footnote regarding repairs to the 32 diesel fuel oil tank.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed License amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed AOT extension does not involve a significant increase in the probability or consequences of an accident previously evaluated. During the replacement of the existing station batteries, a temporary battery will provide the same function as the Exide batteries being removed. Even though this temporary battery will not meet seismic, seismic interaction or security requirements, due to its location on the 53-ft elevation of the Turbine Building, it is qualified as safety related in all other respects. The 125 VDC EDS [electrical distribution system] is normally supplied by the associated 480 VAC bus through a Battery Charger. The essential function of 31, 32 and 33 station battery is to supply DC control power necessary to start and load the associated EDG [emergency diesel generator]. Once the EDGs are on line, the 125 VDC EDS will be supplied via the battery charger. However, the station batteries have been sized to carry shutdown loads for a period of two hours without battery terminal voltage falling below its minimum required voltage following a plant trip that includes a loss of all AC power. This provides additional assurance that the critical DC loads are available in the event of a loss of the battery charger. During the 10-day AOT, when the temporary battery and the associated battery charger are supporting the 125 VDC bus, the ability of that ESF [engineered safety feature] DC power panel to mitigate an event/accident remains unchanged except for its ability to cope with a seismic, seismic interaction or security event. However, the probability of these types of events concurrent with the 10-day AOT is very small. During these types of events, one ESF DC power panel may be compromised, however IP3 has adequate 125 VDC power available in the form of two other ESF train DC power panels to mitigate all DBAs. The postulated loss of one ESF DC power panel is bounded by the loss of an entire ESF electrical train, a condition which the plant is currently evaluated to withstand. Based upon the above, the overall design, function and operation of the 125 VDC EDS and equipment has not been significantly modified by the proposed changes. The proposed changes do not affect accident initiators or precursors, nor do they alter the design assumptions for the systems or components used to mitigate the consequences of an accident as analyzed in Chapter 14 of the IP3 USFAR [UFSAR] [updated final safety analysis report], except for one of the three trains of DC power. The remaining DC power trains can mitigate a DBA [design-basis accident]. Therefore, the proposed one-time AOT extension TS amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed License Amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. During the replacement of the existing station batteries, a temporary battery will provide the same function as the batteries being removed. Even though this temporary battery does not meet all design requirements of a seismic, seismic interaction or security event it possesses adequate capacity to fulfill the safety related requirements of supplying necessary power to the associated 125 VDC bus under most conditions. Because the temporary battery will perform like the station battery that is currently installed, and will be connected and used in the same way as a backup power supply to the DC bus, no new electrical or functional failure modes are created. The temporary battery will be located in the turbine building, which is non-seismic and a non-vital area. The temporary battery will not be placed into seismically mounted racks. Thus, a seismic failure of this temporary battery is possible. Since the temporary battery is located in the turbine building the potential for battery failure to initiate an accident is not present. The failure of the temporary battery cannot create a different response from any previously postulated accident. Due to the location of the main turbine-generator in relationship to the temporary battery, it is not likely that a turbine missile would strike the battery. Likewise, an unmitigated Steam Line Break accident outside the VC would be interrupted by successful closure of all MSIVs [main steam isolation valves] thereby leaving the battery and the associated DC bus intact and available. This MSIV closure would occur before any potential steam line break impacting the battery on the Turbine deck ensuring necessary DC power to the MSIVs when needed. Also, any affects of postulated severe weather on the turbine building have been evaluated and do not impede the ability of the remaining DC subsystems to perform their intended safety function. The remaining 125 VDC EDS and its equipment will continue to perform the same function and be operated in the same fashion. The proposed changes do not introduce any new accident initiators or precursors, or any new design assumptions for those systems or components used to mitigate the consequences of an accident. Therefore, the possibility of a new or different kind of accident from any previously evaluated has not been created. Thus, the proposed one-time AOT extension TS amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed License Amendment involve a significant reduction in a margin of safety?

No. During the replacement of the existing station batteries, a temporary safety related battery will perform the same function as the battery being removed. Even though this battery is not seismically mounted, not in a seismically qualified building, nor in a vital area of the plant it is qualified as a safety related battery in all other respects.

This battery is virtually identical to the safety related station battery that is already installed. It possesses adequate capacity to fulfill the requirements of the associated 125 VDC bus. The proposed replacement activity will not prevent the plant from mitigating a DBA during events that result in the loss of the temporary battery. In these cases, the remaining DC power supporting the design mitigation capability will be maintained. Due to the limited duration of the activity, the very low probability of a seismic or other seismic interaction event over this limited AOT period and the planned implementing contingency actions, a significant reduction in the margin of safety will not result. The associated DC bus will always be supplied with both a temporary battery and a battery charger at all times. The inherent design conservatism of the 125 VDC system and its equipment has not been significantly altered; only the degree of redundancy is not fully qualified. The 125 VDC EDS and its equipment will continue to be operated with the same degree of conservatism. Accordingly, there is no significant reduction in the margin of safety.

Therefore, based upon the above evaluation, the Authority has concluded that these changes involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: September 7, 2000.

Description of amendment request: The proposed amendment to the Indian Point Nuclear Generating Unit No. 3 Technical Specifications would extend the surveillance frequency from 720 hours to 1440 hours for the Fuel Storage Building Emergency Ventilation system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Extending the surveillance frequency from 720 hours to 1440 hours for the Fuel Storage Building Emergency Ventilation (FSBEV) System charcoal and HEPA [High Efficiency Particulate Adsorbers] adsorbers does not involve any modifications to the plant, will not require changes to how the plant is operated not will it affect the operation of the plant. Filter systems are not initiators of accidents, and therefore extending the filter surveillance frequency will not increase the probability of an accident. The way the filters perform will not be changed by extending the surveillance frequency. In addition, it is reasonable to expect satisfactory filter performance at this extended frequency based on past surveillance results. Hence, there is no change in the assumptions of an accident. Therefore, this change will not increase the consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Extending the surveillance frequency from 720 hours to 1440 hours for the FSBEV charcoal and HEPA adsorbers does not involve any modifications to the plant, will not require changes to how the plant is operated nor will it affect the operation of the plant. Therefore, extending the surveillance frequency will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed license amendment involve a significant reduction in a margin of safety?

Response: The proposed license amendment does not involve a significant reduction in a margin of safety. Extending the surveillance

frequency from 720 hours to 1440 hours for the FSBEV charcoal and HEPA adsorbers does not change the TS required methyl iodine efficiency removal requirement of >90% that ensures a safety factor of at least 2. This change is acceptable because it is reasonable to expect satisfactory filter performance at this extended frequency based on past surveillance results, hence it is reasonable to expect that the additional 720 hours before testing will not result in the safety factor being diminished. Thus, the proposed change would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 26, 2000, as supplemented on October 6, 2000.

Description of amendment request: The proposed change would amend the Salem Nuclear Generating Station (Salem) Unit Nos. 1 and 2 Technical Specifications (TSs) to increase the as-found set point tolerance for the Pressurizer Safety Valves (PSV) from ±1% to ±3%; increase the as-found set point tolerance for the Main Steam Safety Valves (MSSV) from ±1% to ±3%; change the required action for inoperable MSSVs to require a reduction in power based upon the number of inoperable MSSVs, as opposed to the current requirement to reduce the Power Range Neutron Flux High trip setpoint; and remove specifications and references related to plant operation with three Reactor Coolant System loops. The associated TS Bases sections will also be amended to reflect the TS changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Changing the pressurizer and main steam safety relief valve lift setpoint tolerance from ±1% to ±3% does not significantly increase the probability of any accident previously evaluated. The only events initiated by the opening of these safety valves are the accidental depressurization of the Reactor Coolant System and accidental depressurization of the Main Steam System. These events are a result of an inadvertent lifting of these valves and do not depend on the safety valve lift setpoint or tolerance. Therefore, the likelihood that either of these events will occur has not been increased.

[Analyses associated with the limiting overpressurization transients (Loss of External Electrical Load and/or Turbine Trip, and Single Reactor Coolant Pump Locked Rotor) have been performed that demonstrate that increasing the Pressurizer Safety Valve and Main Steam Safety valve lift setpoint tolerance to ±3% would result in primary and secondary side pressure responses less than the acceptance criteria of 110% of the design pressure. Therefore, since the proposed setpoint tolerance increase would not adversely impact current accident analysis assumptions, the proposed change would not result in an increase in consequences of an accident previously evaluated.]

For operation with inoperable main steam safety valves, changing the required action from a reduction of the power range high neutron flux trip setpoint to a reduction of the allowable reactor power level will not increase the consequences of any accident. With inoperable Main Steam Safety Valves, the Loss of External Electrical Load and/or Turbine Trip event becomes limiting in terms of secondary side pressurization. The high flux trip does not provide any mitigation for this event. Other events limiting at power, that require the power range trip for mitigation, assume a safety analysis trip setpoint of 118% (based on a nominal trip setpoint of 109%) regardless of the initial power level. Therefore, the proposed change does not impact any of the accident analysis assumptions.

The current Salem licensing basis for the Spurious Activation of the Safety Injection System credits operator action to unblock a pressurizer Power Operated Relief Valve prior to the water solid pressurizer reaching the safety valve lift setpoint. The analyses that determined the time at which the safety valve would reach its pressure setpoint covered the −3% tolerance. Since this would conservatively result in the earliest opening time, there was no need to consider the positive side of the tolerance. The results of the analyses indicate that the allowable operator action time is sufficient, such that water relief occurs through the Power Operated Relief Valves and not through the Pressurizer Safety Valves. As such the consequences of this event have not changed as a result of the proposed change.

Increasing the Main Steam Safety Valve lift setting tolerance may result in increased secondary side backpressure for the Auxiliary Feedwater Pumps. However, analyses have demonstrated that with the elevated backpressures that could result from increasing the Main Steam Safety Valve setpoint upper tolerance to +3%, the Auxiliary Feedwater Pumps would still provide [greater than the minimum] flow required to mitigate events in which normal feedwater is not available, a Loss of Normal Feedwater and a Loss of Offsite Power to Station Auxiliaries.

In terms of radiological consequences, the current design and licensing basis analyses that include steaming through the Main Steam Safety Valves bound the proposed lift setpoint tolerance change.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposal will result in a change in the allowed Pressurizer Safety Valve and Main Steam Safety Valve lift setpoint tolerance range. No physical changes to these valves or to their nominal lift setpoint is required. These valves are assumed to malfunction only as the initiator for the accidental depressurization of the Reactor Coolant System or Main Steam System. An increased lift setpoint tolerance range does not change the assumption of these depressurization events nor create a new type of event.

Requiring a reduction in reactor thermal power in the event of inoperable Main Steam Safety Valves is consistent with the analysis methodology. Initiation of any Salem UFSAR [Updated Final Safety Analysis Report] analyzed event at a power level less than full power is bounded by those events analyzed at full power, or specifically analyzed at the limiting power level, and does not constitute a new or different kind of accident. Also, no changes are being made to the power range high flux trip setpoint that will make it inconsistent with any analytical assumption.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

Analyses performed demonstrate that the proposed increase in the Pressurizer Safety Valve and Main Steam Safety Valve lift pressure setpoint tolerance from ±1% to ±3% will provide acceptable primary and secondary side pressure responses to the anticipated operational occurrences and design basis accidents. The limiting overpressurization transients, Loss of External Electrical Load and/or Turbine Trip, and Single Reactor Coolant Pump Locked Rotor, stay well within the acceptance criteria of 110% of the design pressure.

For operation with inoperable Main Steam Safety Valves, requiring a reduction in reactor thermal power is consistent with the accident analysis. The current requirement to reduce the power range high neutron flux trip setpoint [does not reduce the] margin of safety since this trip does not provide any mitigation for the limiting secondary system pressurization event, Loss of External Electrical Load and/or Turbine Trip with inoperable Main Steam Safety Valves.

The current licensing basis for the Spurious Activation of the Safety Injection System credits operator action to unblock a pressurizer Power Operated Relief Valve prior to the water solid pressurizer reaching the Pressurizer Safety Valve lift setpoint. As the Pressurizer Safety Valves are not designed for water relief, failure to unblock a Power Operated Relief Valve before reaching the Pressurizer Safety Valve lift setpoint would result in water relief and likely failure of the Pressurizer Safety Valve to reseat. This condition would escalate the Spurious Activation of the Safety Injection System (Condition II event) into a small break Loss Of Coolant Accident (Condition III event). The analyses that determined the time at which primary system pressure would reach the Pressurizer Safety Valve setpoint bound the −3% tolerance. The results of the analyses indicate that the allowable operator action time is sufficient, such that water relief occurs through the Power Operated Relief Valves and not through the Pressurizer Safety Valves. Since the Pressurizer Safety Valve would not fail due to water relief, there is no reduction in the margin of safety for this event.

Increasing the Main Steam Safety Valve lift setting tolerance may result in increased secondary side backpressure for the Auxiliary Feedwater System. However, analyses have demonstrated that under degraded Auxiliary Feedwater Pump performance, and with secondary side backpressure corresponding to 103% of the lowest Main Steam Safety Valve setpoint, the Auxiliary Feedwater System can provide [greater than the minimum] flow required to mitigate those events where normal feedwater is not available, a Loss of Normal Feedwater and a Loss of Offsite Power to Station Auxiliaries.

Therefore the proposed changes to the Technical Specifications do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: October 6, 2000 (PCN–518).

Description of amendment requests: The amendment application proposes to revise the San Onofre Nuclear Generating Station, Units 2 and 3, Technical Specification (TS) 3.7.11, "Control Room Emergency Air Cleanup System (CREACUS)" consistent with generic industry changes recently approved by the U.S. Nuclear Regulatory Commission (NRC) document Technical Specification Task Force (TSTF)–287. The proposed amendments would allow up to 24 hours to restore the Control Room Pressure Boundary (CRPB) to operable status when two CREACUS trains are inoperable due to an inoperable CRPB in MODE 1, 2, 3, or 4. In addition, a Limiting Condition for Operation note would be added to allow intermittent opening of the CRPB under administrative controls without entering the Actions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the facility in accordance with the proposed amendments does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Control Room Area Ventilation System and Control Room boundary are not assumed to be an initiator of any analyzed accident; they are provided to minimize doses to the control room operators during an accident. Therefore, these proposed changes have no impact on the probability of occurrence of any previously analyzed accident.

The proposed changes also have no impact on offsite dose consequences. The control room ventilation system and control room boundary provide protection for control room personnel and do not mitigate radiological effluents released offsite. With the control room boundary inoperable and not pressurized, the accident analyses assume unfiltered air would enter the control room and operator doses would be significantly increased. Conservative accident analysis assumptions do not take credit for available compensatory measures to mitigate operator dose. Compensatory measures include the supply of protective clothing, and self contained breathing apparatus adequate for at least nine persons within the control room envelope.

Additionally, for cases where the control room boundary is opened under administrative control, appropriate administrative measures ensure the boundary can be rapidly restored. Based on the compensatory measures available to the control room operator to minimize dose (to be consistent with the intent of General Design Criterion 19), the administrative controls required to rapidly restore an opened boundary, and considering the low probability of an event occurring in this short time period, the consequences are not considered to be significantly increased. Operators maintain the ability to mitigate a design basis event.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No changes are being made to actual plant hardware which will result in any new accident causal mechanisms. Therefore, no new accident causal mechanisms will be generated.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these barriers will not be degraded by the proposed changes. The Control Room Ventilation System and control room boundary provide a protected environment for the control room operators during analyzed events. The proposed change would allow the boundary to be degraded for a limited period of time. However, administrative controls would be in place to rapidly restore an opened boundary and existing compensatory measures (e.g., protective clothing and self contained breathing apparatus) would be implemented to minimize operator dose. Therefore, it is expected that operators would maintain the ability to mitigate design basis events and none of the fission product barriers would be affected by this change.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: October 6, 2000.

Description of amendment request: The proposed amendment would amend each of the three units' Technical Specifications (TS) to adopt Technical Specifications Task Force (TSTF) change No. 318, Revision 0 (TSTF–318). TSTF–318 provides a 7-day action period and completion time in the event of inoperability of one of the two low pressure coolant injection (LPCI) pumps in each of the two emergency core cooling system (ECCS) divisions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed new Condition of one LPCI pump in each LPCI injection subsystem being inoperable is more reliable than the current Limiting Condition for Operation which allows 2 LPCI pumps in one ECCS subsystem to be inoperable for 7 days. Also, the LPCI mode of the Residual Heat Removal system is not assumed to be initiator of any analyzed event. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant, add any new equipment or require any existing equipment to be operated in a manner different from the present design. The proposed change will not impose any new or eliminate any existing requirements. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no effect on any safety analyses assumptions. The proposed new Condition for one LPCI pump in each LPCI injection subsystem represents a more reliable configuration than the existing LCO which allows two LPCI pumps in one ECCS subsystem to be inoperable for 7 days. For these reasons, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET I0H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: June 16, 2000, as supplemented by letter dated September 27, 2000.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.7 and TS Tables 3.7–1, 3.7–2, 3.7–3, and 4.1–1. The proposed changes would: (a) revise the surveillance frequency for Reactor Protection System and Engineered Safety Features Actuation System analog channels from monthly to quarterly; (b) decrease the frequency for most permissives to a refueling interval; (c) increase the time allowed to perform maintenance on an inoperable instrument channel; and (d) revise associated action statements consistent with NUREG–1431.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Virginia Electric and Power Company has reviewed the requirements of 10 CFR 50.92 as they relate to the proposed Reactor Protection System (RPS) and Engineered Safety Features Actuation System (ESFAS) Technical Specification changes for the Surry Units 1 and 2 and determined that a significant hazards consideration is not involved. In support of this conclusion, the following evaluation is provided.

Criterion 1—Operation of Surry Units 1 and 2 in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The determination that the results of the proposed changes remain within acceptable criteria was established in the SER(s) [Safety Evaluation Report(s)] prepared for WCAP–10271, WCAP–10271 Supplement 1, WCAP–10271 Supplement 2, WCAP–10271 Supplement 2, Revision 1 and WCAP–14333 issued by letters dated February 21, 1985, February 22, 1989, April 30, 1998, and July 15, 1998.

Implementation of the proposed changes is expected to result in an increase in total RPS and ESFAS yearly unavailability. The proposed changes have been shown to result in a small increase in the core damage frequency (CDF) due to the combined effects of increased RPS and ESFAS unavailability and reduced inadvertent reactor trips.

The values determined by the WOG [Westinghouse Owners Group] and presented in the WCAP for the increase in CDF were verified by Brookhaven National Laboratory (BNL) as part of an audit and sensitivity analyses for the NRC Staff. Based on the small value of the increase compared to the range of uncertainty in the CDF, the increase is considered acceptable. The analysis performed by the WOG and presented in the WCAP included changes to the surveillance frequencies for the automatic actuation logic and actuation relays and the reactor trip and bypass breakers. The overall increase in the CDF, including the changes to the surveillance frequencies for the automatic actuation logic and actuation relays and the reactor trip and bypass breakers, was approximately 6 percent. However, even with this increase, the overall CDF remains lower than the NRC safety goal of 10 E–4/reactor year.

Changes to surveillance test frequencies for the RPS and ESFAS interlocks do not represent a significant reduction in testing. The currently specified test interval for interlock channels allows the surveillance requirement to be satisfied by verifying that the permissive logic is in its required state using the annunciator status light. The surveillance as currently required only verifies the status of the permissive logic and does not address verification of channel setpoint or operability. The setpoint verification and channel operability is verified after a refueling shutdown. The definition of the channel check includes comparison of the channel status with other channels for the same parameter. The requirement to routinely verify permissive status is a different consideration than the availability of trip or actuation channels which are required to change state on the occurrence of an event and for which the function availability is more dependent on the surveillance interval. Therefore, the change in the interlock surveillance requirement to at least once every 18 months does not represent a significant change in channel surveillance and does not involve a significant increase in unavailability of the RPS and ESFAS.

For the additional relaxations in WCAP–14333, the WOG evaluated the impact of the additional relaxation of allowed outage times and completion times, and action statements on core damage frequency. The change in core damage frequency is 3.1 percent for those plants with two out of three logic schemes that have not implemented the proposed surveillance test interval, allowed outage times, and completion times evaluated in WCAP–10271 and its supplements. This analysis calculates a significantly lower increase in core damage frequency than the WCAP–10271 analysis calculated. This can be attributed to more realistic maintenance intervals used in the current analysis and crediting the AMSAC [ATWS (anticipated transient without scram) mitigating system actuation circuitry] system as an alternative method of initiating the auxiliary feedwater pumps. Therefore, the overall increase in CDF is estimated to be 3.1% for the proposed changes per the generic Westinghouse analysis.

The NRC performed an independent evaluation of the impact on core damage frequency (CDF) and large early release fraction (LERF). The results of the staff's review indicate that the increase in core damage frequency is small (approximately 3.2%) and the large early release fraction would increase by only 4 percent for 2 out of 3 logic schemes that have not implemented the proposed surveillance test interval, allowed outage times, and completion times evaluated in WCAP–10271 and its supplements. Further, the absolute values for CDF still remain within NRC safety goals:

Therefore, the proposed changes do not result in a significant increase in the severity or consequences of an accident previously evaluated. Implementation of the proposed changes affects the probability of failure of the RPS and ESFAS but does not alter the manner in which protection is afforded or the manner in which limiting criteria are established.

Criterion 2—The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change in the manner in which the RPS or ESFAS provide plant protection. No change is being made which alters the functioning of the RPS or ESFAS (other than in a test mode). Rather the likelihood or probability of the RPS or ESFAS functioning properly is affected as described above. Therefore, the proposed changes do not create the possibility of a new or different kind of accident as defined in the Safety Analysis Report.

The proposed changes do not involve hardware changes. Some existing instrumentation is designed to be tested in bypass and current Technical Specifications allow testing in bypass. Testing in bypass is also recognized by IEEE [Institute of Electrical and Electronics Engineers] Standards. Therefore, testing in bypass has been previously approved and implementation of the proposed changes for testing in bypass does not create the possibility of a new or different kind of accident from any previously evaluated. Furthermore, since the other proposed changes do not alter the physical operation or functioning of the RPS or ESFAS, the possibility of a new or different kind of accident from any previously evaluated has not been created.

Criterion 3—The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the safety limits, limiting safety system setpoints or limiting conditions for operation. The RPS and ESFAS analog instrumentation remain operable to mitigate as assumed in the accident analysis. The impact of reduced testing other than as addressed above is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act.

Implementation of the proposed changes is expected to result in an overall improvement in safety by less frequent testing of the RPS and ESFAS analog instruments and will result in less inadvertent reactor trips and actuation of Engineered Safety Features components.

This analysis demonstrates that the proposed amendment to the Surry Units 1 and 2 Technical Specifications does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: August 25, 2000, as supplemented September 21, October 14, and October 25, 2000.

Brief description of amendment: The amendment revises the reactor vessel pressure-temperature limits.

Date of issuance: October 31, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 134.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* September 19, 2000 (65 FR 56598).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 2000.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: July 27, 2000, as supplemented October 5, 2000.

Brief description of amendment: The amendment revises the Safety Limit Minimum Critical Power Ratio.

Date of issuance: November 3, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 135.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* August 23, 2000 (65 FR 51348).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 2000.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: March 7, as supplemented on April 21, June 14, and September 15, 2000.

Brief description of amendment: The proposed amendment revised the Technical Specifications to revise the surveillance requirements from once per refueling interval for each excess flow check valve (EFCV) to testing a representative sample of EFCVs once per 24 months.

Date of Issuance: October 25, 2000.

Effective date: October 25, 2000 and shall be implemented within 30 days of issuance.

Amendment No.: 216.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* August 23, 2000 (65 FR 51354).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 25, 2000.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: April 7, 2000, as supplemented June 14 and September 11, 2000.

Brief description of amendment: This amendment revises Technical Specification (TS) 3/4.7.6, "Control Room Emergency Filtration System," TS 3/4.7.7, "Reactor Auxiliary Building Emergency Exhaust System," and TS 3/4.9.12, "Fuel Handling Building Emergency Exhaust System." Specifically, these TS have been revised to provide an action when the Control Room Emergency Filtration System or Reactor Auxiliary Building Emergency Exhaust System ventilation boundary is inoperable, and a note that allows an applicable ventilation boundary to be open intermittently under administrative controls. The associated TS Bases are also being changed in accordance with the amendment. In addition, TS 3/4.3.3.1, "Radiation Monitoring for Plant Operations," has been modified to provide consistency between the applicability of the Control Room Emergency Filtration System and the radiation monitors that initiate a control room isolation signal.

Date of issuance: October 30, 2000.

Effective date: October 30, 2000.

Amendment No.: 102.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

*Date of initial notice in **Federal Register**:* May 3, 2000 (65 FR 25762). The supplemental letters dated June 14 and September 11, 2000, contained clarifying information only, did not expand the application beyond the scope of the initial notice, and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: February 21, 2000.

Brief description of amendments: The amendments revised the condensate storage tank (CST) low-level setpoint to prevent entrainment of air in the high pressure coolant injection (HPCI) pump suction line when taking suction from the CST. The amendments also revised the surveillance requirements for the CST level instruments.

Date of issuance: October 31, 2000.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 182 and 177.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* March 22, 2000 (65 FR 15376).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 31, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: November 23, 1999, as supplemented by letter dated September 6, 2000.

Brief description of amendments: The amendments revised the Technical Specifications 5.5.11—Ventilation Filter Testing Program, which provides the test requirements for charcoal filters, to assure compliance with the requirements of American Society for Testing and Materials D3803–1989.

Date of issuance: November 2, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 196/177.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* March 22, 2000 (65 FR 15377).

The supplement dated September 6, 2000, provided clarifying information that did not change the scope of the November 23, 1999, application and initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 2, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: August 10, 2000.

Brief description of amendment: The amendment revised the Technical Specifications to allow an alternate storage configuration of fuel assemblies adjacent to the walls within Region I of the spent fuel pool.

Date of issuance: October 24, 2000.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 224.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* September 6, 2000 (65 FR 54086).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of application for amendments: July 7, 2000, as supplemented October 2 and 4, 2000.

Brief description of amendments: The pressure-temperature limits specified in Technical Specification (TS) 3.4.9.1 and Figures 3.4–2, 3.4–3 have been modified, Figure 3.4–4 deleted, and the Cold Overpressure Mitigation System (COMS) requirements have been changed. The COMS is the Westinghouse version of the Low Temperature Overpressure Protection System.

Date of issuance: October 30, 2000.

Effective date: October 30, 2000.

Amendment Nos.: 208 and 202.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 2000 (65 FR 48751). The supplemental information provided on October 2 and 4, 2000, provided clarifying information only and did not affect the proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: September 1, 2000.

Brief description of amendments: The amendments clarify Technical Specification 3/4.4.4, "Pressurizer," to reflect the current power supply to the pressurizer heaters and require two operable trains of pressurizer heaters during Modes 1, 2, and 3. In addition, the amendments revise the Bases for Technical Specification 3/4.4.4 to reflect these changes and clarify the purpose of the pressurizer heaters.

Date of issuance: October 20, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 246 and 227.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 20, 2000 (65 FR 56952).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: April 19, 2000, as supplemented on August 31, 2000.

Description of amendment request: The amendment implements a performance-based Containment Leakage Testing Program in accordance with 10 CFR Part 50, Appendix J, Option B as a substitute for the requirements of 10 CFR Part 50, Appendix J, Option A. The use of this option requires the implementation of a program based on Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program," and modification of the Technical Specifications to reflect this program.

Date of issuance: November 2, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 186.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 23, 2000 (65 FR 51359).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 2000.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket No. 50–275, Diablo Canyon Nuclear Power Plant, Unit No. 1, San Luis Obispo County, California

Date of application for amendment: December 31, 1999, as supplemented by letters dated January 18, July 7, September 22, and 29, and October 12, 2000.

Brief description of amendment: The amendment revises Section 2.C.(1) of Facility Operating License No. DPR–80 to authorize operation of Unit 1 at reactor core power levels not in excess of 3411 megawatts thermal (100 percent rated power). Unit 2 is already authorized to operate at that power level. This amendment also revises several sections within the Improved TS to reflect the increase in reactor power level.

Date of issuance: October 26, 2000.

Effective date: October 26, 2000.

Amendment No.: Unit 1—143.

Facility Operating License No. DPR–80: The amendments revised the Technical Specifications and operating license.

Date of initial notice in ***Federal Register***: April 19, 2000 (65 FR 21037).

The January 18, July 7, September 22, and 29, and October 12, 2000, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 26, 2000.

No significant hazards consideration comments received: No.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 27, 2000, as supplemented August 16, 2000, and September 29, 2000.

Brief description of amendment: The amendment provides for the applicability of the current safety limit minimum critical power ratio (SLMCPR), TS Section 1.1.A, to cycles beyond Cycle 14. The change also updates the approved version of the topical report in TS Section 6.9.A.4.b.1.

Date of issuance: October 30, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 266.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: August 23, 2000 (65 FR 51362).

The August 16 and September 29, 2000, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 2000.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket No. 50–364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

Date of amendment request: September 8, 2000, as supplemented on October 2, 2000.

Brief Description of amendment: The amendment revises surveillance requirements 3.4.11.1 and 3.4.11.4 to eliminate the requirement to cycle the Unit 2 pressurizer power-operated relief valve block valves during the remainder of operating cycle 14.

Date of issuance: October 25, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: Unit 2—139.

Facility Operating License No. NPF–8: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 10, 2000 (65 FR 60223).

Public comments requested as to proposed no significant hazards consideration: Yes.

The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by November 9, 2000, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated October 25, 2000.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: November 24, 1999 (TS 99–16).

Brief description of amendments: These amendments revised the Technical Specifications (TSs) to update the industry standard that is used to test the charcoal adsorber efficiency in safety-related ventilation systems.

Date of issuance: November 2, 2000.

Effective date: November 2, 2000.

Amendment Nos.: 263 and 254.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** January 12, 2000 (65 FR 1929). The September 21, 2000, supplement provided clarifying information that did not change the scope of the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 2000.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: September 14, 2000, as supplemented on September 22, 2000.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) to clarify the valve isolation signal information in the TS Table 4.7.2 and make an administrative change to the Table main steam isolation valves component identification.

Date of Issuance: October 31, 2000.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 194.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 27, 2000 (65 FR 58111).

The September 22, 2000, supplemental letter was within the scope of the original application and did not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 31, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 8th day of November 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–29250 Filed 11–14–00; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in November 2000. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in December 2000.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in November 2000 is 4.93 percent (*i.e.*, 85 percent of the 5.80 percent yield figure for October 2000).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between December 1999 and November 2000.

For premium payment years beginning in:	The assumed interest rate is:
December 1999	5.23
January 2000	5.40
February 2000	5.64
March 2000	5.30
April 2000	5.14
May 2000	4.97
June 2000	5.23
July 2000	5.04
August 2000	4.97
September 2000	4.86
October 2000	4.96
November 2000	4.93

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in December 2000 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of November 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–29230 Filed 11–14–00; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Notification of Meeting

The Railroad Retirement Board hereby gives notice that the Board will meet at 11:00 a.m., November 15, 2000, in the Board Room on the 8th floor of the agency's headquarters building located at 844 N. Rush Street, Chicago, Illinois. The Board, by recorded vote, has determined that agency business requires the scheduling of this meeting with less than one week notice. The subjects to be addressed at this meeting are the Hearings Officer Vacancy and Director of Administration/Chief Enterprise Architect position.

The entire meeting will be closed to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, phone No. 312–751–4920.

Dated: November 9, 2000.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–29310 Filed 11–13–00; 10:28 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27270]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 7, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulated uner the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 4, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or laws that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 4, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

System Energy Resources, Inc. 70–9753

Entergy Corporation ("Entergy"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, Entergy's electric generating subsidiary company, System Energy Resources, Inc. ("System Energy"), 1340 Echelon Parkway, Jackson, Mississippi 39213, and Entergy's operating subsidiary companies, Entergy Arkansas, Inc., 425 West Capitol, Little Rock, Arkansas 72201, Entergy Louisiana, Inc., 4809 Jefferson Highway, Jefferson, Louisiana 70121, Entergy Missippi, Inc., 308 East Pearl Street, Jackson, Mississippi 39201, Entergy New Orleans, Inc., 1600, Perdido Building, New Orleans, LA 70112, have filed an application-declaration under sections (6(a), 7, 9(a), 10, 12(b) and (12(d) of the Public Utility Holding Company Act of 1935 ("Act"), as amended, and rules 44, 45 and 54 under the Act. An initial notice of the filing of the application-declaration was issued on October 4, 2000 (HCAR No. 27240) ("Initial Notice").

The Initial Notice described System Energy's Proposal to engage in certain financing transactions from time to time through December 31, 2005. Among other things, System Energy proposed: (1) To issue and sell one or more series of its first mortgage bonds ("Bonds"), and/or one or more series of its Debentures ("Debentures") in a combined aggregate principal amount of Bonds and Debentures not to exceed $350 million; (2) to provide an insurance policy for the payment of the principal of and/or interest and/or premium on one or more series of Bonds or Debentures; (3) to enter into arrangements for the issuance and sale of tax-exempt revenue bonds in an aggregate principal amount not to exceed $500 million ("Tax-Exempt Bonds"); (4) to provide for a more favorable rating, on the Tax-Exempt Bonds by arranging for letters of credit, an insurance policy, or additional first mortgage bonds up to an aggregate amount not to exceed $565 million; and (5) to enter into arrangements for the issuance of municipal securities in an aggregate principal amount not to exceed $100 million ("Municipal Securities") to be issued in one or more series through a state or local municipal entity on behalf of System Energy.

Applicants now want to provide terms and conditions for the Municipal Securities. Each series of Municipal Securities will be sold at such price, will bear interest at such rate, either fixed or adjustable, and will mature on such date (not earlier than one year nor more than fifty years from the first day of the month of issuance) as will be determined at the time of sale. No series of Municipal Securities will be sold if the fixed interest rate or initial adjustable interest rate thereon would exceed 15% per annum. One or more series of Municipal Securities may include provisions for redemption or retirement prior to maturity, including restrictions on optional redemption for a given number of years.

In order to obtain a more favorable rating and thereby improve the marketability of the Municipal Securities, System Energy may (1) arrange for one or more letters of credit from one or more banks up to an aggregate amount of $115 million, (2) provide an insurance policy for the payment of the principal, premium, if any, interest and purchase obligations in connection with one or more series of Municipal Securities, or (3) issue one or more series of new collateral bonds up to an aggregate amount of $115 million. In addition, System Energy may grant a lien, subordinate to the lien of the Mortgage on certain assets of System Energy.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29113 Filed 11–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Yellowave Corporation, Common Stock, $.03 Par Value) File No. 1–16021

November 7, 2000.

Yellowave Corporation, which is organized under the laws of Nevada ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant

to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.03 par value ("Security"), from listing and registration on the American Stock Exchange ("Amex").

As reported by the Company, the Amex halted trading in the Security on August 23, 2000, pending a review of the facts underlying, and the litigation arising from, a Share Purchase Agreement dated July 5, 2000, between the Company and Newtech Broadwidth Ltd., et al. The Company believed it was acquiring under this Share Purchase Agreement a company that owned valuable high technology which was supported by established licensing agreements. On the basis of this acquisition, the Company applied for, and received, a listing for its Security on the Amex.

The Company subsequently determined, however, that the technology and licensing agreements described above did not exist. As mentioned above, the Company has entered into litigation with various parties for, among other things, their failure to meet certain conditions of the Share Purchase Agreement. A description of these proceedings may be found in the Company's current Report on Form 8–K filed with the Commission on September 26, 2000. Pending the outcome of such litigation, and in the light of the Company's diminished eligibility for listing on the Amex as a result of the Share Purchase Agreement's conditions not having been met, the Company has determined to withdraw its Security voluntarily from listing and registration on the Amex and to use best efforts to arrange for its quotation in the unlisted over-the-counter market.

The Company has stated in its application that it has complied with the rules of the Amex governing the withdrawal of its Security and that its application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Company's continued obligation to file reports with the Commission pursuant to sections 12(g) and 13 of the Act.[3]

Any interested person may, on or before November 30, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–29114 Filed 11–4–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24733; File No. 812–12104]

New England Life Insurance Company, et al.; Notice of Application

November 8, 2000.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving a substitution of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from section 17(a) of the 1940 Act

Applicants: New England Life Insurance Company ("NELICO"), New England Variable Annuity Separate Account ("Separate Account 1"), New England Variable Life Separate Account ("Separate Account 2"), Metropolitan Life Insurance Company ("MetLife"), The New England Variable Account ("Separate Account 3," and collectively with Separate Account 1 and Separate Account 2, the "Separate Accounts"), the Metropolitan Series Fund, Inc. (the "Metropolitan Series"), and the New England Zenith Fund (the "Zenith Fund"). (NELICO, MetLife and the Separate Accounts are collectively referred to herein as the "Section 26 Applicants." The Section 26 Applicants, the Metropolitan Series, and the Zenith Fund are collectively referred to herein as the "Section 17(b) Applicants.")

SUMMARY OF APPLICATION: The Section 26 Applicants request an order pursuant to section 26(b) of the 1940 Act to permit certain registered unit investment trusts to substitute shares of the Putnam International Stock Portfolio (the "Replacement Portfolio") of the Metropolitan Series for shares of the Morgan Stanley International Magnum Equity Series (the "Substituted Portfolio") of the Zenith Fund currently held by those unit investment trusts. The Section 17(b) Applicants request an order pursuant to section 17(b) of the 1940 Act to permit certain in-kind redemptions and purchases in connection with the substitution.

Filing Date: The application was filed on May 17, 2000, and amended and restated on November 8, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and Serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 30, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Thomas Lenz, Esq. and Marie C. Swift, Esq., New England Life Insurance Company, 501 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Keith A. O'Connell, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. NELICO is a life insurance company that is domiciled in Massachusetts. Its operations include both life insurance and annuity products as well as financial and retirement services. As of December 31, 1999, NELICO had assets of approximately $7.1 billion. NELICO is authorized to operate as a life insurance company in all states, the District of Columbia, and Puerto Rico. NELICO was originally organized as New England Variable Life Insurance

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(G) and 15 U.S.C. 78M.

[4] 17 CFR 200.30–3(a)(1).

Company, a stock life insurance company, in Delaware in 1980, and was a wholly owned subsidiary of New England Mutual Life Insurance Company. On August 30, 1996, New England Mutual Life Insurance Company merged with and into MetLife. MetLife became the parent of New England Variable Life Insurance Company, which changed its name to "New England Life Insurance Company," and changed its domicile from the State of Delaware to the Commonwealth of Massachusetts. NELICO is the depositor and sponsor of Separate Account 1 and Separate Account 2.

2. Separate Account 1 is a separate investment account of NELICO and is registered under the 1940 Act as a unit investment trust. Separate Account 1 serves as funding vehicle for certain variable annuity contracts issued by NELICO (collectively, "NELICO VA Contracts"). Separate Account 1 is a separate account as that term is defined in Section 2(a)(37) of the 1940 Act.

3. Separate Account 2 is a separate investment account of NELICO and is registered under the 1940 Act as a unit investment trust. Separate Account 2 services as a funding vehicle for certain variable life insurance contracts issued by NELICO (collectively, "NELICO Life Contracts"). Separate Account 2 is a separate account as that term is defined in Section 2(a)(37) of the 1940 Act.

4. MetLife is a life insurance company that is domiciled in New York, and is a wholly owned subsidiary of MetLife, Inc., a publicly traded company. MetLife is the depositor and sponsor of Separate Account 3.

5. Separate Account 3 is a separate investment account of MetLife and is registered under the 1940 Act as a unit investment trust. Separate Account 3 serves as a funding vehicle for certain variable annuity contracts originally issued by New England Mutual Life Insurance Company, and subsequent to its merger with an into MetLife, by MetLife ("MetLife VA Contracts") (collectively with the NELICO VA Contracts and the NELICO Life Contracts, the "Variable Contracts"). Separate Account 3 is a separate account as that term is defined in Section 2(a)(37) of the 1940 Act.

6. New England Securities Corporation ("NES") serves as principal underwriter and distributor for the Variable Contracts. NES is an indirect wholly owned subsidiary of NELICO. NES is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. NES may enter into selling agreements with other broker-dealers registered under the Securities Exchange Act of 1934 whose representatives are authorized by applicable law to sell the Variable Contracts.

7. NELICO and MetLife propose to substitute shares of the Replacement Portfolio for shares of the Substituted Portfolio in the Separate Accounts (the "Substitution"). NELICO and MetLife have expressly reserved the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. The prospectus for each contract discloses this reservation.

8. The terms of the NELICO VA Contracts, NELICO Life Contracts, and MetLife VA Contracts funded by Separate Account 1, 2 and 3, respectively, permit owners of a contract to transfer contract value under the contracts among the subaccounts during the accumulation period. Separate Accounts 1 and 3 permit owners of a contract to exchange annuity units in any subaccount to any other subaccount during the annuity period. NELICO and MetLife have reserved the right to limit transfers or to impose a charge in connection with a transfer during the accumulation period. For Separate Account 1, NELICO has not yet imposed any such limit or charge. Exchanges of annuity units in any subaccount to any other subaccount after annuitization are limited to one per contract year. For Separate Account 2, on all but one of the NELICO Life Contracts, NELICO does not currently limit or impose a charge on transfers. On one NELICO Life Contract, NELICO currently imposes a charge on transfers in excess of 12 in a policy year. For Separate Account 3, MetLife currently allows 12 free transfers per year during the accumulation period. Additional transfers are subject to a $10 charge per transfer. Exchanges of annuity units in any subaccount to any other subaccount after annuitization are limited to one per contract year.

9. The Zenith Fund is registered as an open-end management investment company under the 1940 Act (File No. 811–3728) and currently offers sixteen separate investment portfolios, one of which is the Substituted Portfolio. The Zenith Fund issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the Securities Act of 1933 ("1933 Act") on Form N–1A (File No. 2–83538). New England Investment Management, Inc. ("NEIM") serves as the investment manager to each portfolio except the Capital Growth Series, which is managed by Capital Growth Management. NEIM is an indirect wholly owned subsidiary of NELICO. NEIM receives an investment advisory fee from each portfolio it manages. NEIM has contracted with subadvisers to make the day-to-day investment decision for all portfolios it manages. Subadvisers are compensated by NEIM, and not by the Zenith Fund. NEIM derives the amounts that it pays the subadvisers from its own investment advisory fees. Morgan Stanley Asset Management ("MSAM") is the subadviser to the Substituted Portfolio.

10. The Metropolitan Series is registered as an open-end management investment company under the 1940 Act (File No. 811–3618) and currently offers 18 separate investment portfolios, one of which is the Replacement Portfolio. The Metropolitan Series issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A (File No. 2–80751). The Replacement Portfolio became available for investment under the Contracts on May 1, 2000. MetLife serves as the investment manager to each portfolio, for which it receives investment advisory fees. MetLife has contracted with subadvisers to make the date-to-day investment decisions for certain portfolios it manages, including the Replacement Portfolio. Subadvisers are compensated by MetLife, and not by the Metropolitan Series. MetLife derives the amounts that it pays the subadvisers from its one investment advisory fees.

11. Putnam Investment Management, Inc. ("Putnam") currently serves as the subadviser for the Replacement Portfolio. All of the outstanding voting and nonvoting securities of Putnam are held of record by Putnam Investments, Inc., which is, in turn, except for a minority interest owned by employees, owned by Marsh & McLennan Companies, Inc., a New York Stock Exchange listed public company whose business is insurance brokerage, investment management, and consulting. From November 9, 1998 until January 24, 2000, Santander Global Advisors, Inc. ("Santander") was the subadviser for the Replacement Portfolio (then known as the Santander International Stock Portfolio). On November 29, 1999, Santander notified the Replacement Portfolio that is was resigning as subadviser as of January 28, 2000, and was being closed by its ultimate majority shareholder. On January 11, 2000, the Board of Directors of the Metropolitan Series (the "Met Series Board") voted to terminate the sub-investment management agreement with Santander relating to the Replacement Portfolios effective January 24, 2000. The Met Series Board also voted to retain Putnam as the new subadviser for the Replacement Portfolio effective the same date. The shareholders of the Replacement Portfolio approved Putnam as the new subadviser at a special meeting of shareholders on March 31, 2000.

12. The following chart sets out the investment objectives and certain policies of the Substituted Portfolio and the Replacement Portfolios, as stated in their respective prospectuses and statements of additional information.

Substituted portfolio	Replacement portfolios
Morgan Stanley International Magnum Equity Series of Zenith Fund Investment Objective: Long-term capital appreciation through investment primarily in international equity securities. Investment Policies: MSAM invests the Series' assets in a diversified portfolio of equity securities of foreign issuers domiciled in EAFE countries. MSAM may also invest up to 5% of the Series' total assets in non-EAFE countries, including emerging markets. MSAM seeks to achieve superior long-term returns by creating a diversified portfolio of stock that MSAM believes are undervalued. To achieve this goal, MSAM implements a combination of strategic geographic assets allocation and fundamental, value-oriented stock selection implemented by regional experts around the globe.	Putnam International Stock Portfolio of Metropolitan Series Investment Objective: Long-term growth of capital. Investment Policies: The Portfolio normally invests mostly in the common stocks of companies outside the United States. Putnam selects countries and industries it believes are attractive. Putnam then seeks stocks offering opportunity for gain. These may include both growth and value stocks. The Portfolio invests mainly in mid-sized and large companies, although the Portfolio can invest in companies of any size. The Portfolio will usually be invested in issuers located in at least three countries, not including the U.S. Under normal conditions, the Portfolio will not invest more than 15% of its net assets in the equity securities of companies domiciled in "emerging countries," as defined by Morgan Stanley Capital International.

13. The following chart compares the fees payable for advisory and subadvisory services, expressed as an annual percentage of average daily net assets, by the Substituted Portfolio and the Replacement Portfolio.

Substituted portfolio		Replacement portfolio	
Morgan Stanley International Magnum Equity Series		Putnam International Stock Portfolio	
Annual advisory fees	Annual subadvisory fees	Annual advisory fees	Annual subadvisory fees
0.90%	0.75% of the first $30 million 0.60% of the next $40 million 0.45% of the next $30 million 0.40% over $100 million	0.90% of the first $500 million 0.85% of the next $500 million 0.80% over $1 billion	0.65% of the first $150 million 0.55% of the next $150 million 0.45% over $300 million.

14. The following chart compares the total operating expenses (before and after any waivers and reimbursements) for the year ended December 31, 1999, expressed as an annual percentage of average daily net assets, of the Substituted Portfolio and the Replacement Portfolio. Neither Portfolio has adopted any plan pursuant to Rule 12b–1 under the 1940 Act.

	Substituted portfolio	Replacement portfolio
	Morgan Stanley International Magnum Equity Series (in percent)	Putnam International Stock Portfolio (in percent)
Management Fees	0.90	0.90
Other Expenses	0.40	0.22
Total Operating Expenses	1.30	1.12
Less Expense Waivers and Reimbursements	[1]	[1]
Net Operating Expenses	1.30	1.12

[1] N/A.

Total operating expenses for the Replacement Portfolio have been adjusted to reflect a higher management fee that shareholders of the Replacement Portfolio approved on March 31, 2000. NEIM has voluntarily agreed to reduce its fees or to bear the operating expenses (other than brokerage costs, interest, taxes, or extraordinary expenses) of the Substituted Portfolio in excess of an annual expense limit of 1.30% of the Series' average daily net assets. This reduction is subject to the obligation of the Series to repay NEIM such expenses in future years, if any, when the Series' total operating expenses fall below this stated expense limit. Such deferred expenses may be charged to the Series in a subsequent year to the extent the charge does not cause the Series' total operating expenses in such subsequent year to exceed the 1.30% expense limit. The Series, however, is not obligated to repay any expense paid by NEIM more than two years after the end of the fiscal year in which such expense was incurred. NEIM may discontinue this expense limitation arrangement at any time.

15. The following table compares the respective asset levels of the two portfolios as of December 31, 1999, and compares performance data as of June 30, 2000.

Portfolio	Fund Subadviser	Asset levels (as of 12/31/99)	Performance (as of June 30, 2000)
Morgan Stanley International Magnum Equity Series (substituted portfolio).	Morgan Stanley Asset Management	$99,851,167	1 YEAR: 15.5% 3 YEAR: 3.2% 5 YEAR: 7.8% (Nov. 1, 1994)
Putman International Stock Portfolio (replacement portfolio).	Putnam Investment Management, Inc.	$317,831,000	1 YEAR: 11.4% 3 YEAR: 7.1% 5 YEAR: 7.3% (May 1, 1991)

16. Following the Substitution, the Separate Accounts will each have two subaccounts holding shares of the Replacement Portfolio. The Separate Accounts will each combine the two subaccounts holding shares of the Replacement Portfolio by transferring shares on the same date from one of the subaccounts holding shares of the Replacement Portfolio to the other subaccount holding shares of the Replacement Portfolio. The net effect will be to eliminate one of the subaccounts in each Separate Account. The Replacement Portfolio would receive monies or inkind securities from the Substituted Portfolio as a result of the Substitution.

17. NELICO and MetLife will effect the Substitution on or about December 1, 2000 following the issuance of the requested order as follows. As of the effective date of the Substitution ("Effective Date"), shares of the Substituted Portfolio will be redeemed in cash or in-kind by NELCO and MetLife. The proceeds of such redemptions will than be used to purchase shares of the Replacement Portfolio either by cash purchases or in-kind purchases, with each subaccount of the Separate Accounts investing the proceeds of its redemption from the Substituted Portfolio in the Replacement Portfolio.

18. Applicants represent that the in-kind redemptions and purchases will be transacted in a manner consistent with the policies of both the Substituted Portfolio and the Replacement Portfolio, as recited in their registration statements. Putnam will review the securities holdings of the Substituted Portfolio and determine which portfolio holdings of the Substituted Portfolio would be suitable investments for the Replacement Portfolio in the overall context of such Portfolio's investment objectives and policies and consistent with the management of the Replacement Portfolio.

19. Applicants represent that all redemptions of shares of the Substituted Portfolio and purchases of shares of the Replacement Portfolio will be effected in accordance with Rule 22c–1 of the 1940 Act. The Substitution will take place at relative net asset value with no change in the amount of any Variable Contract owner's contract value or death benefit or in the dollar value of his or her investments in any of the subaccounts. Applicants represent that Variable Contract owners will not incur any additional fees or charges as a result of the Substitution, nor will their rights or NELICO's and MetLife's obligations under the Variable Contracts be altered in any way. All expenses incurred in connection with the Substitution, including legal, accounting, transactional, and other fees and expenses, including brokerage commissions, will be paid by NELICO and MetLife. In addition, Applicants represent that the Substitution will not impose any tax liability on Variable Contract owners. The Substitution will not cause the Variable Contract fees and charges currently paid by existing Variable Contract owners to be greater after the Substitution than before the Substitution. Neither NELICO nor MetLife will exercise any right it may have under the Variable Contracts to impose restrictions on transfers under the Variable Contracts for a period of at least thirty days following the Substitution.

20. The Section 26 Applicants represent that the procedures to be implemented are sufficient to assure that each Variable Contract owner's cash values immediately after the Substitution shall be equal to the cash value immediately before the Substitution, and that the Substitution will not affect the value of the interests of those owners of other NELICO and MetLife variable contracts (other than the Variable Contracts) who currently have contract value allocated to any of the portfolios of the Zenith Fund or Metropolitan Series.

21. For each period (not to exceed a fiscal quarter) during the 24 months following the date of the Substitution, NELICO and MetLife will reimburse (on the last business day of any such period) any subaccount available through a Variable Contract and investing in the Replacement Portfolio such that the sum of the Replacement Portfolio operating expenses (taking into account expense waivers and reimbursements) together with subaccount expenses for such period on an annualized basis will not exceed the following limits (which equal, for each Variable Contract, the Substituted Portfolio operating expenses, 1.30%, together with any subaccount expenses for the fiscal year prior to the Substitution) for those Variable Contract owners who were Variable Contract owners on the date of the Substitution.[1]

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[1] Subaccount expenses refer to those asset-based expenses that are deducted on a daily basis from subaccount assets, and either reflected in the calculation of the subaccount unit values (for "unitized" Variable Contracts) or deducted as a percentage of a Variable Contract's share of subaccount assets (for "non-unitized" Variable Contracts). Examples of subaccount expenses may include the morality and expense risk charge or administrative charge.

Variable contract	Expense cap (in percent)
NELICO American Growth Series—Version I	2.65
NELICO American Growth Series—Version II	2.70
NELICO American Forerunner Series	2.30
NELICO Zenith Life One	1.75
NELICO Zenith Flexible Life	1.90
NELICO Zenith Variable Whole Life	1.90
NELICO Zenith Survivorship Life	2.05
NELICO Zenith Survivorship Life Plus	1.30
NELICO Zenith Gateway Series	1.30
NELICO Zenith Life	1.65
NELICO Zenith Life Plus	1.90
NELICO Zenith Life Executive 65	1.90
NELICO Zenith Executive Advantage Plus	1.30
NELICO Zenith Executive Advantage 2000	1.30
NELICO Zenith Life Plus II	1.90
MetLife Zenith Accumulator	2.65

In addition, for those Variable Contract owners who owned a Variable Contract for which morality and expense risk charges are not subaccount expenses (*i.e.*, NELICO Zenith Survivorship Life Plus, NELICO American Gateway Series, NELICO Zenith Executive Advantage Plus, or NELICO Zenith Executive Advantage 2000) on the date of the Substitution, NELICO will not increase current mortality and expense risk charges for a period of 24 months following the date of Substitution.

22. Applicants represent that from the date the application is filed with the Commission to the date 30 days after the Effective Date, Variable Contract owners will have the right to make one transfer of contract value from the subaccounts invested in the Substituted Portfolio (before the Substitution) or the Replacement Portfolio (after the Substitution) to any other subaccount without charge and without that transfer counting toward the number permitted under the Variable Contract (regardless of whether during the accumulation period or the annuity period). Each Variable Contract owner has received a prospectus supplement and will, prior to the Effective Date, have received a prospectus for the Replacement Portfolio and a Pre-Substitution Notice (in the form of an additional prospectus supplement) regarding the Substitution.

23. Variable Contract owners were notified of the initial application by means of a supplement to the prospectus for each of the Variable Contracts dated March 17, 2000 that disclosed that the Section 26 Applicants intended to file the application and seek approval for the Substitution.

24. Following the date on which this notice for the order requested by the Section 26 Applicants is published, but before the Effective Date, a notice ("Pre-Substitution Notice"), in the form of an additional supplement to the prospectuses for the Variable Contracts, will be mailed to Variable Contract owners setting forth the scheduled Effective Date and advising Variable Contract owners that contract values attributable to investments in the Substituted Portfolio will be transferred to the Replacement Portfolio, without charge and, when relevant, without counting toward the number of transfers permitted without charge, on the Effective Date. The Pre-Substitution Notice will state that, from the date the application was filed with the Commission through the date 30 days after the substitution, Variable Contract owners may make one transfer of contract value from the subaccount corresponding to the Substituted Portfolio (before the Substitution) or the Replacement Portfolio (after the Substitution) to any other subaccount without charge and without that transfer counting toward the number permitted without charge under the Variable Contract. In addition, within five days after the Substitution, any Variable Contract owners who were affected by the Substitution will sent a written notice informing them that the Substitution was carried out and advising them of their transfer rights ("Post-Substitution Notice").

Applicant's Legal Analysis

1. Section 26(b) of the 1940 Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(b) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the 1940 Act.

2. Section 26(b) was intended to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substitute security to redeem their shares, thereby possibly incurring a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both. The section was designed to forestall the ability of a depositor to present holders of interest in a unit investment trust with situations in which a holder's only choice would be to continue an investment in an unsuitable underlying security, or to elect a costly and, in effect, forced redemption. The Section 26 Applicants assert that the Substitution meets the standards set forth in section 26(b) and that, if implemented, the Substitution would not raise any of the aforementioned concerns that Congress intended to address when the 1940 Act was amended to include this provision.

3. Applicants assert that the replacement of the Substituted Portfolio with the Replacement Portfolio is consistent with the protection of Variable Contract owners and the purposes fairly intended by the policy and provisions of the 1940 Act and, thus, meets the standards necessary to support an order pursuant to section 26(b) of the 1940 Act. Applicants also assert that the investment objectives and policies of the Replacement Portfolio are sufficiently similar to those of the Substituted Portfolio so that Variable Contract owners will have reasonable continuity in investment and risk expectations. In addition, Applicants assert that the types of investment advisory and administrative services provided to the Replacement Portfolio are comparable to the types of investment advisory and administrative services provided to the Substituted Portfolio.

4. Applicants state that the Substitution is part of efforts by NELICO

and MetLife to make their Variable Contracts more efficient to administer and oversee and, thus, more cost-efficient and attractive to customers. The Applicants assert that replacing the Substituted Portfolio with the Replacement Portfolio (in essence, combining Variable Contract owner assets attributable to an international investment option into one mutual fund) is appropriate and in the best interests of Variable Contract owners. Applicants assert that the proposed Substitution will provide Variable Contract owners with (i) an underlying portfolio having lower expense ratios with the expectation that, after the Substitution, the ratios will remain lower, (ii) a portfolio subadvised by Putnam, which has achieved competitive historical portfolio performance in other international funds and is experienced in managing international funds, and (iii) a portfolio with good prospects for growth.

5. Section 17(a)(1) and (a)(2) of the 1940 Act generally prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, from selling any security or other property to such registered investment company and from purchasing any security or other property from such registered investment company. NELICO and MetLife anticipate that, to the extent Putnam determines at that time that portfolio holdings of the Substituted Portfolio would be suitable investments for the Replacement Portfolio in the overall context of such portfolios's investment objectives and policies and consistent with its management of the Replacement Portfolio, the Substitution will be done by redeeming shares of the Substituted Portfolio in-kind rather than in cash and then using those assets to purchase shares of the Replacement Portfolio. Redemptions and purchases in-kind involve the purchase of property from a registered investment company and the sale of property to a registered investment company and the sale of property to a registered investment company by NELICO and MetLife, each an affiliated person of those investment companies. The Substitution, therefore, may be deemed to involve one or more purchases or sales of securities or property between affiliates. The Section 17(b) Applicants request that the Commission issue an order pursuant to section 17(b) of the 1940 Act exempting the Substitution from the provisions of section 17(a) to the extent necessary to permit the Substitution effected, in part, by means of in-kind redemptions and purchases of shares, and also by means of in-kind transactions.

6. Section 17(b) of the Act authorizes the Commission may, upon application, exempt a proposed transaction from the prohibitions of Section 17(a) if the evidence establishes that:

(i) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(ii) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the 1940 Act; and

(iii) The proposed transaction is consistent with the general purposes of the 1940 Act.

7. NELICO and MetLife assert that the terms under which the in-kind redemptions and purchases will be affected are reasonable and fair and do not involve overreaching on the part of any person. Applicants state that the use of in-kind redemptions of such subaccounts is intended to reduce costs and thereby benefit Variable Contract owners. The transactions will not cause Variable Contract owner interests to be diluted. The proposed transactions will take place at relative net asset value in conformity with the requirements of Section 22(c) of the 1940 Act and Rule 22c–1 thereunder with no change in the amount of any Variable Contract owner's contract value or death benefit or in the dollar value of his or her investment in any of the Separate Accounts.

8. Applicants represent that the in-kind redemptions and purchases will be transacted in a manner consistent with the policies of both the Substituted Portfolio and the Replacement Portfolio, as recited in their registration statements. Putnam will review the securities holdings of the Substituted Portfolio and determine which portfolio holdings of the Substituted Portfolio would be suitable investments for the Replacement Portfolio in the overall context of such Portfolio's investment objectives and policies and consistent with the management of the Replacement Portfolio.

9. Applicants assert that the Substitution, as described herein, is consistent with the general purposes of the 1940 Act. The proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent. Securities to be paid out as redemption proceeds and subsequently contributed to the Replacement Portfolio to effect the contemplated in-kind purchases of shares will be valued based on the normal valuation procedures of the redeeming Substituted Portfolio and purchasing Replacement Portfolio.

Applicants' Conditions

For purposes of the approval sought pursuant to Section 26(b) of the 1940 Act, the Substitution described in this amendment and restated application will not be completed, unless all of the following conditions are met.

1. The Commission shall have issued an order (i) approving the Substitution under Section 26(b) of the 1940 Act, and (ii) exempting any in-kind redemptions and purchases from the provisions of section 17(a) of the 1940 Act as necessary to carry out the transactions described in this amended and restated application.

2. Each Variable Contract owner will have been sent (i) a copy of the effective prospectus relating to the Replacement Portfolio and any necessary amendments to the prospectuses relating to the Variable Contracts, (ii) as soon as reasonably possible after the notice for the order has been published and prior to the Effective Date, a Pre-Substitution Notice describing the terms of the Substitution and the rights of the Variable Contract owners in connection with the Substitution, and (iii) if affected by the Substitution, a Post-Substitution Notice within five days after the Substitution informing them that the Substitution was carried out and advising them of their transfer rights.

3. NELICO and MetLife shall have satisfied themselves that (i) the Variable Contracts allow the substitution of portfolios in the manner contemplated by the Substitution and related transactions described in the application, (ii) the transactions can be consummated as described in the amended and restated application under applicable insurance laws, and (iii) that any applicable regulatory requirements in each jurisdiction where the Variable Contracts are qualified for sale, have been complied with to the extent necessary to complete the transaction.

Conclusion

Applicants assert that, for the reasons stated above, the requested order approving the Substitution and exempting in-kind redemptions should be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29178 Filed 11–19–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43516; File No. SR–Amex–95–45]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange LLC Relating to the Maximum Size of Option Orders That May Be Executed Automatically

November 3, 2000.

I. Introduction

On October 25, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change amending its rules regarding the automatic execution of options orders to increase the maximum number of contracts that may be designated for automatic execution from fifty contracts to seventy-five contracts. Notice of the proposal was published in the **Federal Register** on June 21, 2000.[3] The Commission received no comments on the proposal. On November 1, 2000, the Exchange submitted Amendment No. 1 to the proposal.[4] On November 3, 2000, the Exchange submitted Amendment No. 2 to the proposal.[5] This order approves the proposal and grants accelerated approval of Amendment Nos. 1 and 2.

II. Description of the Proposal

The Exchange's AUTO–EX system automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the order is entered into the Amex Order File ("AOF"). Generally, public customer market and marketable limit orders for up to fifty options contracts may be automatically executed through the Exchange's AUTO–EX system.[6] Recently, AOF, which handles limit orders routed to the specialist's book as well as those orders routed to AUTO–EX, was increased to allow for the entry of orders of up to 250 option contracts.[7] Because AUTO–EX is only allowed to execute equity option orders and index orders of up to fifty contracts, any market and marketable limit orders for between fifty and 250 option contracts are generally routed by the AOF to the specialist's book.

The Exchange proposes to increase the maximum AUTO–EX order size eligibility for equity and index option contracts orders from fifty contracts to seventy-five contracts.[8] The proposed increase in permissible order size will be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate.

The Exchange represents that it has sufficient systems capacity to accommodate implementation of the proposed increase in permissible order size and that AUTO–EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other non-emergency situations for certain options classes. The Exchange believes that automatic executions of orders for up to seventy-five contracts will enhance its overall operational efficiency and give the Exchange better means of competing with other options exchanges for order flow.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act.[9] Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national securities system; and protect investors and the public interest.[10]

While increasing the maximum order size limit from fifty contracts to seventy-five contracts for AUTO–EX eligibility by itself does not raise concerns under the Act,[11] the Commission believes that this increase raises collateral issues that the Amex will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for the Exchange's automatic execution system. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed onto the AUTO–EX system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through AUTO–EX, the greater the risk market makers must be willing to accept. The Commission does not believe that, because Amex governors and senior floor officials determine to approve orders as large as seventy-five contracts as eligible for AUTO–EX, those officials or any other Amex officials or Amex committee should disengage AUTO–EX more frequently by, for example, declaring a "fast" market. Disengaging AUTO–EX can negatively affect investors by making it slower and less efficient to execute their option orders. It is the Commission's view that the Exchange, when increasing the maximum size orders that can be sent through AUTO–EX, should not disadvantage all customers—the vast majority of which enter orders for less than seventy-five contracts—by making the AUTO–EX system less reliable.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42931 (June 13, 2000), 65 FR 38615 (June 21, 2000).

[4] *See* letter from Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission dated October 31, 2000 ("Amendment No. 1"). In Amendment No. 1, the Amex proposes to codify its rules regarding the AUTO–EX parameters for option contracts under Amex Rule 933, Commentary .02.

[5] *See* letter from Scott Van Hatten, Legal Counsel, Derivative Securities, Amex to Nancy Sanow, Assistant Director, Division of Market Regulation Commission dated November 2, 2000 ("Amendment No. 2"). In Amendment No. 2, the Amex corrects the language in Amex Rule 933, Commentary .02 to state that the eligible orders for options on the Institutional, Japan and S&P MidCap 400 Indices must be for "fewer than 100 contracts" for series subject to AUTO–EX.

[6] *See* Securities Exchange Act Release No. 42094 (November 3, 1999), 64 FR 61675 (November 12, 1999). Although the maximum permissible number of cotracts in an option order executable through AUTO–EX is generally fifty contracts, there are three exceptions that allow ninety-nine contract orders; the Institutional, Japan and S&P MidCap 400 Indexes.

[7] *See* Securities Exchange Act Release No. 42128 (November 10, 1999), 64 FR 63836 (November 22, 1999).

[8] The Exchange is codifying its rules, under Amex Rule 933, Commentary .02, regarding the maximum option order size eligibility for its AUTO–EX system. *See* Amendment No. 1, *supra* note 4. Order size maximum levels for the Institutional, Japan, and S&P MidCap 400 Indexes would remain at ninety-nine contracts under this proposal. *See* Amendment No. 2, *supra* note 5.

[9] The Commission has considered the proposed rule's impact of efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] The Commission notes that it is concurrently approving similar proposals filed by the Chicago Board Options Exchange, Inc. ("CBOE"), the Pacific Stock Exchange, Inc. ("PCX") and the Philadelphia Stock Exchange, Inc. ("Phlx"). *See* Securities Exchange Act Release No. 43517 (November 3, 2000) (SR–CBOE–99–51); Securities Exchange Act Release No. 43518 (November 3, 2000) (SR–PCX–00–32); and Securities Exchange Act Release No. 41515 (November 3, 2000) (SR–Phlx–99–32).

Finally, the Commission finds good cause for approving Amendment Nos. 1 and 2 prior to the 30th day after notice of the Amendment is published in the **Federal Register** pursuant to section 19(b)(2) of the Act.[12] Amendment No. 1 codifies the proposed increase in the AUTO–EX parameters from fifty contracts to seventy-five option contracts. Amendment No. 2 corrects the rule language in Amex Rule 933, Commentary .02. The Commission finds that accelerated approval of Amendment Nos. 1 and 2 is appropriate in order to allow the Amex to increase its AUTO–EX eligibility limits so that it may better compete with the other option exchanges.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether they are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–99–45 and should be submitted by December 6, 2000.

Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5).[13]

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–99–45) is approved, and Amendment Nos. 1 and 2 are approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00–29184 Filed 11–14–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43525 File No. SR–BSE–98–11]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to an Amendment to the Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Competing Specialist Initiative

November 7, 2000.

I. Introduction

On November 23, 1998, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the procedures by which a regular specialist may object to competition in a stock.

The proposed rule change was published for comment in the **Federal Register** on January 12, 1999.[3] The Commission received no comments on the proposal. The Exchange filed amendments on March 26, 1999[4] and April 13, 2000.[5] The Exchange filed a third amendment to the proposed rule change on August 25, 2000, which superseded the earlier amendments.[6] This order approves the proposed rule change, and grants accelerated approval to the third amendment to the proposed rule change.

II. Description

The Exchange's Competing Specialist Initiative permits multiple specialists to make a market in individual securities traded on the BSE. The Exchange has proposed a rule change to modify the process that governs objections to competition in a security.

The Procedures for Competing Specialists, which are set forth in chapter XV, section 18 of the Exchange's Rules, currently provide that a regular specialist in a security may object to any application by another specialist to act as a competing specialist in that security. The Exchange's Market Performance Committee will consider the regular specialist's objections as one factor in reviewing applications to act as a competing specialist in a security. The Market Performance Committee may not deny applications based solely on such an objection, but only in circumstances wherein the stock at issue requires special treatment such that an entering competitor could jeopardize the fair and orderly market maintained by the regular specialist.[7]

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[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40883 (January 5, 1999), 64 FR 1839 (January 12, 1999).

[4] *See* Letter from Karen Aluise, Vice President, BSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 25, 1999, with attachments ("Amendment No. 1"). Amendment No. 1 proposed to eliminate the right to appeal rulings by the Market Performance Committee regarding applications to serve as a competing specialist.

[5] *See* Letter from William Cummings, Manager of Legal and Regulatory Affairs, BSE, to Nancy Sanow, Senior Special Counsel, Division, Commission, dated April 12, 2000, with attachments ("Amendment No. 2"). Amendment No. 2 superseded Amendment No. 1. Amendment No. 2 generally sought to revert the proposed rule change back to a form that was similar to the version that the BSE originally proposed, but which differed from the BSE's original proposal in a few ways: by clarifying that an applicant competing specialist could appear before the Market Performance Committee to respond to issues raised by the regular specialist regarding competition, by omitting language which provided that competition could begin during an appeal of a Market Performance Committee ruling in favor of competition, and by making other changes regarding the appeal process.

[6] *See* Letter from John Boese, Assistant Vice President, BSE, to Nancy Sanow, Assistant Director, Division, Commission dated August 24, 2000, with attachments ("Amendment No. 3"). Amendment No. 3, which superseded Amendment No. 2, clarified that competition could begin pending the outcome of an appeal of a pro-competition ruling by the Market Performance Committee, which is consistent with the rule change as it was originally proposed by the BSE.

[7] *See* Securities Exchange Act Release No. 37045 (March 29, 1996), 61 FR 15318 (April 5, 1996) (order permanently approving Competing Specialist Initiative).

As presently written, section 18(2) requires the regular specialist to object in writing within 48 hours of notice of another specialist's application to compete in a stock. This section also states that the Market Performance Committee's decision may be appealed to the Executive Committee of the Exchange. Moreover, decisions of the Executive Committee may be appealed to the Board of Governors of the Exchange.[8] Competition may not begin during the appeal process.[9]

The Exchange is proposing to amend its existing rules that govern a regular specialist's ability to object to another specialist's application to serve as a competing specialist in a security. As amended, the proposal would divide section 18(2) into four parts (a to d). Proposed section 18(2)(a) would continue to require that a regular specialist file its objection within 48 hours after receiving notice of the request to compete, and would now require that the specialist submit the objection on a form designated by the Exchange.

Proposed section 18(2)(b) would require that when a specialist objects to competition, the specialist set forth the reasons in writing and deliver them to the Exchange within 24 hours of the filing of the objection.

Proposed section 18(2)(c) would provide that a Market Performance Committee meeting will be scheduled to review the reasons for objection and to determine whether competition could jeopardize the regular specialist's ability to maintain a fair and orderly market in the issue. That section adds that the regular specialist would be permitted to appear before that committee to discuss the reasons for objection, and that the applicant competing specialist would also be permitted to appear before that committee to respond to any issues raised. That section further states that after the committee renders its decision, either party may appeal the decision to the Exchange's Executive Committee, and, if necessary, to the Exchange's Board of Governors. A footnote to proposed section 18(2)(c) further would provide that the appeal must be submitted to the Exchange within 10 days notice of the Market Performance Committee's or the Executive Committee's final decision.

Proposed section 18(2)(d) would provide that if the Market Performance Committee rules in favor of competition, competition will commence pending the outcome of any appeal process.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission believes that the proposal is consistent with the section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is appropriate because it permits the Exchange to evaluate applications to serve as a competing specialist in a security more efficiently. In particular, the Commission believes that proposed chapter XV, sections 18(2)(a), (b) and (c)—which would require the regular specialist to submit objections using an Exchange-designated form and set forth the reasons for objection in writing within 24 hours of the objection, and which would permit the regular specialist and applicant competing specialist to discuss those reasons at a Market Performance Committee meeting scheduled to review the reasons for the objection—would streamline the process for evaluating a regular specialist's objections while paying due regard to the interests of the regular specialist and applicant competing specialist. The Commission also believes that proposed Section 18(2)(d), which would provide that competition will commence during the appeal process, provides a reasonable means of reconciling the interests of the Exchange, the regular specialist, and the applicant competing specialist.

The Commission finds good cause for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 3, which supplanted two earlier proposed amendments, most significantly modified the Exchange's original language by clarifying that an applicant competing specialist has the right to appear before the Market Performance Committee to respond to issues raised by the regular specialist. The Commission finds that clarifying this right will better enable the committee to make fully informed decisions and will promote the adequate representation of applicant competing specialists. Amendment No. 3 also modified the rule change as it was originally proposed by specifying that appeals of decisions by the Market Performance Committee would go first to the Executive Committee and then, if necessary, to the Board of Governors (in contrast to the original version of the proposed rule change, which would have provided that appeals go directly to the Board of Governors), and by making technical changes to the structure and language of the proposed rule change. The Commission finds that modifying the appeal process is consistent with the Exchange's right to set forth rules governing its own administration, and that the technical changes to the rule language do not change the substance of the proposed rule change. Based on the above, the Commission believes that good cause exists, consistent with sections 6(b)(5) and 19(b)(2)[12] of the Act, to accelerate approval of Amendment No. 3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–98–11 and should be submitted by December 6, 2000.

V. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–BSE–98–11, including Amendment No. 3, in approved.

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[8] *See* BSE Constitution, Art. II, Section 6, which provides that certain persons affected by a decision of a committee acting under powers delegated by the Board of Governors may require that the Board review the decision.

[9] The Exchange's existing procedures for handling objections to competition were clarified during a conversation between Karen Aluise, Vice President, BSE, and Joshua Kans, Attorney, Division, Commission, December 2, 1998.

[10] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29180 Filed 11–14–00; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43517; File No. SR–CBOE–99–51]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to the Maximum Size of Option Orders Eligible for Automatic Execution

November 3, 2000.

I. Introduction

On September 1, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change amending its rules regarding the automatic execution of options orders to increase the maximum number of contracts eligible to be executed on the Exchange's Retail Automatic Execution System ("RAES") from fifty contracts to seventy-five contracts. Notice of the proposal was published in the **Federal Register** on June 21, 2000.[3] The Commission received no comments on the proposal. On October 3, 2000, the Exchange submitted Amendment No. 1 to the proposal.[4] This order approves the proposal and grants accelerated approval of Amendment No. 1.

II. Description of the Proposal

RAES automatically executes public customer market and marketable limit orders that fall within designated order size parameters. Generally, the maximum size of public customer market and marketable limit orders eligible for automatic execution through the RAES is fifty contracts.[5] The Exchange proposes to increase from fifty contracts to seventy-five contracts the maximum size of orders for equity options and certain classes of index options that are eligible to be executed through RAES.[6] In addition, the Exchange seeks to make certain complementary changes to the Exchange's firm quote rule and Interpretation .03 thereunder.[7]

The Exchange notes that increasing the maximum size of orders eligible for execution through RAES to seventy-five contracts will not permit orders up to this size to be entered into RAES unless, for a particular options class, the appropriate Floor Procedure Committee ("FPC") of the Exchange has determined, in its discretion, not to restrict the size of eligible orders in that options class.[8] In addition, the Exchange represents that increasing automatic execution levels should provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchange represents that RAES affords prompt and efficient executions at the CBOE displayed price or, in most cases, at the National Best Bid or Offer ("NBBO") if the NBBO is better than the CBOE's displayed bid or offer.[9]

The Exchange notes that its rules contain several safeguards to ensure the proper handling of RAES orders, even as the maximum order size is increased. First, the Commission has approved the implementation of variable RAES on the CBOE.[10] Variable RAES allows market makers to specify the maximum size of orders that they are willing to trade at any one time on RAES; however, this determination is subject to a minimum size that may be established by the appropriate FPC. Variable RAES was proposed to ensure that market makers are willing to continue participating on RAES even as the maximum contract size is increased. The Exchange represents that the appropriate FPC will likely implement Variable RAES in any options class that has a contract limit of seventy-five contracts to ensure that there is adequate market-maker participation in that class.

Second, the Exchange requires Designated Primary Market-Makers ("DPMs") to participate in any automated execution system which may be open in appointed option classes.[11] Further, Interpretation .07 to CBOE Rule 8.7 states that market makers are expected to participate in and support Exchange-sponsored automated programs, including but not limited to, RAES. The Exchange is in the process of assigning a large percentage of its option classes that were formerly traded in market-maker crowds to DPMs.[12]

Third, the Exchange's rules allow for RAES to be suspended when a fast market has been declared in order to maintain a fair and orderly market.[13] CBOE Rule 6.6(b)(vi) provides the Exchange with the flexibility to intervene if it determines that there is inadequate market maker participation or capital requirements. In addition, CBOE Rule 8.16(b) requires a market maker who has logged onto RAES at any time during an expiration month to log onto RAES in that option class whenever he is present in the trading crowd until the next expiration. Further, CBOE Rule 8.16(c) provides that Floor Officials of the appropriate Market Performance Committee may require market makers who are members of the trading crowd to log on to RAES absent reasonable justification or excuse for nonparticipation if there is inadequate participation on RAES. Alternatively, the Floor Officials may allow market makers in other classes of options to log on to RAES in such classes.

Finally, the Exchange notes that its rules provide a minimum net capital requirement regarding DPMs, which is currently set forth in CBOE Rule 8.86. Further, the clearing firms for market makers and DPMs perform risk management functions to ensure that the market makers have sufficient financial resources to cover their positions throughout the day.

In addition to increasing the maximum size for RAES-eligible orders in certain classes of options, the Exchange proposes to amend its firm quote rule, CBOE Rule 8.51. Currently, the firm quote requirement may not be less than the RAES contract limit applicable to that class of options. The Exchange proposes to amend CBOE Rule 8.51(a) to provide that if the RAES contract limit is established at a level of higher than fifty contracts, then the firm quote requirement will remain at fifty contracts. The Exchange believes that because, for the most part, the RAES contract limit and the firm quote limit are of comparable levels on the CBOE, a firm representing a customer will always receive firm quote protection to the extent of fifty contracts.[14]

The Exchange also proposes to change Interpretation .03 to CBOE Rule 8.51. Interpretation .03 to CBOE Rule 8.51 currently provides that orders for accounts exempted from the firm quote requirement should not be reflected in the displayed quote when those orders are for less than the firm quote requirement applicable for that class of options and are represented in the crowd by a Floor Broker or DPM.[15] With respect to broad-based index option classes, the Exchange proposes to change this requirement such that orders represented in the crowd by a Floor Broker or DPM for less than the firm quote requirement need not be reflected in the displayed market quote.[16] In addition, with respect to classes other than broad-based index options, orders for less than ten contracts need not be reflected in the displayed quote.[17] Thus, the DPM or another member of the trading crowd may determine to reflect the price of a market-maker or proprietary broker-dealer order in the displayed market quote even if that order is for less than the firm quote requirement for broad-based index options, or if the order is for less than ten contracts for all other options classes.[18] Once the price of such an order is reflected in the displayed market quote, the trading crowd would be subject to the firm quote obligations of CBOE 8.52(a)(2) even though the firm quote limit may be greater than the size of the displayed market-maker or proprietary broker-dealer order. By reflecting the price of that order in the quote, the trading crowd will be obligated to sell (buy) at least the established firm quote limit for that option class at the approved offer (bid) which the crowd determined to display when a buy (sell) order reaches the trading station where the particular option class is located for trading (as long as the improved bid or offer remains displayed), even though the firm quote limit will be greater than the size of the market-maker order or other proprietary broker-dealer order.[19] Furthermore, any RAES order that is entered while that improved price is displayed will be executed at that improved price even if that order is for more contracts than was the size of the displayed market-maker or proprietary broker-dealer order.[20] The CBOE represents that this change should ensure that any broker-dealer order represented in the crowd will be represented in the Exchange's quote and thus may become the basis for a quote at which an order may be executed. The Exchange represents that it will conduct further review to determine whether to include broad-based index option classes under the proposed change in the future.

The Exchange represents that its systems capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from the implementation of this proposal. The Exchange believes that automatic execution of orders for up to seventy-five contracts will provide customers with quicker executions for a larger number of orders, by providing automatic rather than manual executions, thereby reducing the amount of orders subject to manual processing.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act.[21] Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national securities system; and protect investors and the public interest.[22]

While increasing the maximum order size limit from fifty contracts to seventy-five contracts for RAES eligibility by itself does not raise concerns under the Act,[23] the Commission believes that this increase raises collateral issues that the CBOE will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for the Exchange's automatic execution system. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed onto the RAES system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through RAES, the greater the risk market makers must be willing to accept. The Commission does not believe that, because the Exchange's appropriate FPC determines to approve orders as large as seventy-five contracts as eligible for RAES, the FPC or any other CBOE committee or officials should disengage RAES more frequently by, for example, declaring a "fast" market. Disengaging RAES can negatively affect investors by making it slower and less efficient to execute their option orders. It is the Commission's view that the Exchange, when increasing the maximum size of orders that can be sent through RAES, should not disadvantage all customers—

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 42930 (June 13, 2000), 65 FR 38618 (June 21, 2000).

[4] *See* letter from Timothy Thompson, Assistant General Counsel, Legal Department, CBOE, to Gordon Fuller, Special Counsel, Division of Market Regulation, Commission, dated September 29, 2000. ("Amendment No. 1").

[5] Options subject to the fifty contract maximum include all classes of equity options, all classes of sector index options and all other classes of index options, except options on the S&P 500 Index, options on the Nasdaq 100 Index, options on the Dow Jones Industrial Average ("DJIA"), options on the High Yield Select Ten, and interest rate options. The RAES eligibility maximum is currently 100 contracts for options on the S&P 500 Index, the Nasdaq 100 Index, the DJIA, the High Yield Select Ten, and interest rate options. *See* Securities Exchange Act Release No. 4[illegible]821 (September 1, 19999), 64 FR 50313 (September 16, 1999).

[6] The proposed increase to seventy-five contracts will not apply to those classes of index options cited in footnote 5 above.

[7] *See* CBOE Rule 8.51.

[8] *See* CBOE Rule 6.8(e).

[7] *See* CBOE Rule 6.8, Interpretation .02.

[10] *See supra* note 5 (citing to the order implementing Variable RAES on the CBOE).

[11] *See* CBOE Rule 8.85(a)(9).

[12] All equity options have now been assigned to DPMs. Telephone conversation between Timothy Thompson, Director-Regulatory Affairs, CBOE, and Gordon Fuller, Special Counsel, Commission, on March 9, 2000.

[13] *See* CBOE Rule 6.6(b)(vi).

[14] For the remainder of the order in excess of fifty contracts, the trading crowd will attempt to fill the order at the same price as the first fifty contracts. Telephone conversation between Timothy Thompson, Assistant General Counsel, Legal Department, CBOE, and Gordon Fuller, Special Counsel, Division of Market Regulation, Commission, on October 30, 2000. An order entered into RAES can trade directly with an order on the Exchange's customer limit order book in those cases where the prevailing market bid or offer is equal to the best bid or offer on the Exchange's book. *See* Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999).

[15] In Amendment No. 1, the Exchange made technical changes to the proposed rule text to conform with recent amendments to Interpretation .03. *See* Securities Exchange Act Release No. 42558 (March 22, 2000), 65 FR 16676 (March 29, 2000).

[16] *See* Amendment No. 1, *supra* note 4.

[17] *Id.*

[18] *Id.*

[19] *See* CBOE Rule 8.51(a)(2).

[20] *See* CBOE Rule 6.8(a)(ii). Of course, pursuant to the terms of Interpretation .02 to Exchange Rule 6.8, the RAES order may instead be filled at the NBBO if the NBBO is no more than the designated number of ticks better than the CBOE best bid or offer, or the order may be rejected for manual handling if the NBBO is more than the designated number of ticks better than the CBOE best bid or offer. The appropriate FPC has determined that the designated number of ticks shall be one tick.

[21] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

[23] The Commission notes that it is concurrently approving similar proposals filed by the American Stock Exchange, LLP ("Amex"), the Pacific Stock Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx"). *See* Securities Exchange Act Release Nos. 43516 (November 3, 2000) (SR–Amex–99–45); 43518 (November 3, 2000) (SR–PCX–00–32); and 43515 (November 3, 2000) (SR–Phlx–99–32).

the vast majority of which enter orders for less than seventy-five contracts—by making the RAES system less reliable.

Finally, the Commission finds good cause for approving Amendment No. 1 prior to the 30th day after notice of the Amendment is published in the **Federal Register** pursuant to section 19(b)(2) of the Act.[24] Amendment No. 1 makes technical changes to the proposed rule text to reflect changes to Interpretation .03 to Rule 8.51 made in the filing of the proposed change. In addition, Amendment No. 1 clarifies that the DPM or another member of the trading crowd may determine to reflect the price of a market maker or other proprietary broker-dealer order in the displayed quote, even if that order is for less than the firm quote requirement (in the case of broad-based index options) or if the order is for less than ten contracts (in the case of all other option contracts.)[25] The Commission believes that the proposal may increase price transparency at the Exchange by expanding the kinds of orders eligible to be reflected in the Exchange's displayed quote. The Commission finds that accelerated approval of Amendment No. 1 is appropriate in order to permit the opportunity for increased transparency for market-maker orders or other proprietary broker-dealer orders.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–51 and should be submitted by December 6, 2000.

Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5).[26]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CBOE–51) is approved, and Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29187 Filed 11–14–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43514; No. SR–NASD–99–53]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 8 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of Nasdaq Order Display Facility and to Modifications of the Nasdaq Trading Platform

November 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19(b)(4) thereunder,[2] notice is hereby given that on October 23, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 8 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[3] The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on December 6, 1999.[4] On March 16, 2000, the NASD filed Amendment No. 3 to the proposal.[5] On March 30, 2000, Amendment No. 4 was published for comment in the **Federal Register**.[6] On May 16, 2000, the NASD filed Amendment No. 5 to the proposal.[7] On July 6, 2000, the NASD filed Amendment No. 6 to the proposal.[8] On August 7, 2000, the NASD filed Amendment No. 7 to the proposal.[9] On August 15, 2000 Amendment Nos. 5, 6, and 7 were published for comment in the **Federal Register**.[10] The Commission is publishing this notice to solicit comments on Amendment No. 8 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD, through its subsidiary Nasdaq, is filing substantive and technical amendments to File No. SR–NASD–99–53, which proposes to establish the Nasdaq Order Display Facility ("NODF") and make changes to the Nasdaq National Market System ("NNMS")[11] Because the NASD is proposing alternative approaches to preferenced orders, there are two versions of the proposed rule text reflecting Alternative A and Alternative B. Except for the provisions relating to

preferenced orders, Alternative A and Alternative B are identical.

A. *Proposed Rule Language for File No. NASD–99–53 containing Alternative A.* Proposed additions are *italicized* and proposed deletions are placed in [brackets].

4720. SelectNet Service—Deleted

* * * * *

4611. Registration as a Nasdaq Market Maker

(a)–(e) No Change.

(f) Unless otherwise specified by the Association, each Nasdaq market maker that is registered as a market maker in a Nasdaq[National Market security]-*listed security* shall also at all times be registered as a market maker in the Nasdaq National Market Execution System (NNMS) with respect to that security and be subject to the NNMS Rules as set forth in the Rule 4700 Series. [Participation in the Small Order Execution System (SOES) shall be voluntary for any Nasdaq market maker registered to make a market in a Nasdaq SmallCap security.]

(g) No Change.

* * * * *

4613. Character of Quotations

(a) Two-Sided Quotations

(1) For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain a two-sided quotation[s] *("Principal Quote"), which is attributed to the market maker by a special maker participant identifier ("MMID") and is displayed in the Nasdaq Quotation Montage* [in The Nasdaq Stock Market] *at all times,* subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) A registered market maker in a *Nasdaq-listed* security [listed on The Nasdaq Stock Market] must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation. *Unless otherwise designated, a "normal unit of trading" shall be 100 shares.*

(b) Agency Quote—Amendments Pending Pursuant to SR–NASD–99–09.

(c)–(e) No Change.

IM–4613. Autoquote Policy—No Change

4618. Clearance and Settlement

(a)–(b) No Changes.

(c) All transactions through the *facilities of the* Nasdaq National Market Execution System[, SOES, and SelectNet services] shall be cleared and settled through a registered clearing agency using a continuous net settlement system.

* * * * *

4619. Withdrawal of Quotations and Passive Market Making

(a)–(b) No Change.

(c) Excused withdrawal status may be granted to a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction service, thereby terminating its registration as a market maker in Nasdaq issues. Provided however, that if the Association finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620[, the Rules for the Small Order Execution System, as set forth in the Rule 4750 Series,] and the Rule 4700 Series governing the Nasdaq['s] National Market Execution System.

(d) No Change.

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4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its *Principal* [quotations] *Quote* from The Nasdaq Stock Market. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from participation as a market maker in a Nasdaq [National Market]-*listed* security in the Nasdaq National Market Execution System shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in Nasdaq-*listed* [National Market and SmallCap] issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements contained in Rule 6100.

* * * * *

4632. Transaction Reporting

(a)–(d) No Change.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) Transactions executed through the Computer Assisted Execution System (CAES), *or* the *facilities of the* Nasdaq National Market Execution System ("NNMS")[, or the SelectNet service];

(2)–(6) No Change.

(f) No Change.

4642. Transaction Reporting

(a)–(d) No Change.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) Transactions executed through the Computer Assisted Execution System (CAES)[; the Small Order Execution System (SOES) or the SelectNet service] *or facilities of the Nasdaq National Market Execution System ("NNMS").*

(2)–(5) No Change.

(f) No Change.

* * * * *

4700. NASDAQ NATIONAL MARKET EXECUTION SYSTEM (NNMS)

4701. Definitions—*Unless stated otherwise, the terms described below shall have the following meaning:*

[(d)] *(a)* The term "active NNMS securities" shall mean those NNMS eligible securities in which at least one NNMS Market Maker is currently active in NNMS.

[(i)] *(b)* The term "Agency Quote" shall mean the quotation that a registered NNMS Market Maker is permitted to display pursuant to the requirements of NASD Rule 4613(b).

(c) The term "Attributable Quote/Order" shall have the following meaning:

(1) For NNMS Market Makers and NNMS ECNs, a bid or offer Quote/Order that is designated for display (price and size) next to the participant's MMID in the Nasdaq Quotation Montage once such Quote/Order becomes the participant's best attributable bid or offer.

(2) For UTP Exchanges, the best bid and best offer quotation with price and size that is transmitted to Nasdaq by the UTP Exchange, which is displayed next to the UTP Exchange's MMID in the Nasdaq Quotation Montage.

[(h)] *(d)* The term "Automated Confirmation Transaction" service or "ACT" shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which compares trade information entered by ACT Participants and submits "locked-in" trades to clearing.

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[24] 15 U.S.C. 78s(b)(2).

[25] *See* Amendment No. 1, *supra* note 4.

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exhibit 3 to Amendment No. 8 contains a summary of how the NASD intends that the SuperMontage will operate. The summary incorporates and reconciles the original rule proposal and the subsequent proposed amendments, including Amendment No. 8. Exhibit 3 is available for public inspection in the Commission's Public Reference Room.

[4] *See* Securities Exchange Act Release No. 42166 (Nov. 22, 1999), 64 FR 69125.

[5] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division of Market Regulation ("Division"), Commission (March 15, 2000) ("Amendment No. 3"). In Amendment No. 3, the NASD responded to comment letters and submitted substantive, clarifying, and technical amendments to the proposal.

[6] *See* Securities Exchange Act Release No. 42573 (March 23, 2000), 65 FR 16981 ("Amendment No. 4").

[7] *See* Letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division, Commission (May 16, 2000) ("Amendment No. 5").

[8] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division, Commission (July 6, 2000) ("Amendment No. 6").

[9] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division, Commission (August 7, 2000) ("Amendment No. 7").

[10] *See* Securities Exchange Act Release No. 43133 (August 10, 2000), 65 FR 149842 ("August 15, 2000 Notice").

[11] The amended rule language contained in this notice reflects the Commission's approval of SR–NASD–99–11, regarding the estabishment of the Nasdaq National Market System ("NNMS"). See Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) (Order for File No. SR–NASD–99–11 functionally integrating the Small Order Execution System ("SOES") and SelectNet system to become the foundation of the NNMS). In addition, the amended rule language replaces, in the entirety, the rule language contained in the original filing, as well as Amendment Nos. 1 through 7.

[(g)] *(e)* The term "automatic refresh size" shall mean the default size to which an NNMS Market Maker's quote will be refreshed pursuant to NASD Rule 4710(b)(2), if the market maker *elects to utilize the Quote Refresh Functionality and* does not designate to Nasdaq an alternative refresh size, *which must be at least one normal unit of trading.* The [maximum order] automatic refresh size default [size] *amount* shall be 1,000 shares.

(f) The term "Directed Order" shall mean an order that is entered into the system by an NNMS participant that is directed to a particular Quoting Market Participant at any price, through the Directed Order process described in Rule 4710(c). This term shall not include the "Preferenced Order" described in subparagraph (aa) of this rule.

(g) The term "Displayed Quote/Order" shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted to Nasdaq by Quoting Market Participants.

(h) The term "Firm Quote Rule" shall mean SEC Rule 11Ac1–1.

(i) The term "Immediate or Cancel" shall mean, for limit orders so designated, that if after entry into the NNMS a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant.

(j) The term "Liability Order" shall mean an order that when delivered to a Quoting Market Participant imposes an obligation to respond to such order in a manner consistent with the Firm Quote Rule.

(k) The term "limit order" shall mean an order to buy or sell a stock at a specified price or better.

(l) The term "market order" shall mean an unpriced order to buy or sell a stock at the market's current best price.

(m) The term "marketable limit order" shall mean a limit order to buy that, at the time it is entered into the NNMS, is priced at the current inside offer or higher, or a limit order to sell that, at the time it is entered into the NNMS, is priced at the inside bid or lower.

(n) The term "mixed lot" shall mean an order that is for more than a normal unit of trading but not a multiple thereof.

(o) The term "Non-Attributable Quote/Order" shall mean a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility.

(p) The term "Non-Directed Order" shall mean an order that is entered into the system by an NNMS Participant and is not directed to any particular Quoting Market Participant, and shall also include Preferenced Orders as described in subparagraph (aa) of this rule.

(q) The term "Non-Liability Order" shall mean an order that when delivered to a Quoting Market Participant imposes no obligation to respond to such order under the Firm Quote Rule.

[(a)] *(r)* The term "Nasdaq National Market Execution System," [or] "NNMS," *or "system"* shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which enables NNMS Participants to execute transactions in active NNMS authorized securities; to have reports of the transactions automatically forwarded to the National Market Trade Reporting System, if required, for dissemination to the public and the industry, and to "lock in" these trades by sending both sides to the applicable clearing corporation(s) designated by the NNMS Participant(s) for clearance and settlement; and to provide NNMS Participants with sufficient monitoring and updating capability to participate in an automated execution environment.

[(c)] *(s)* The term "NNMS eligible securities" shall mean designated Nasdaq-*listed* [National Market (NNM)] equity securities.

(t) The term "NNMS ECN" shall mean a member of the Association that meets all of the requirements of NASD Rule 4623, and that participates in the NNMS with respect to one or more NNMS eligible securities.

(1) The term "NNMS Auto-Ex ECN" shall mean an NNMS ECN that participates in the automatic-execution functionality of the NNMS system, and accordingly executes Non-Directed Orders via automatic execution for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or offer price.

(2) The term "NNMS Order-Delivery ECN" shall mean an NNMS ECN that participates in the order-delivery functionality of the NNMS system, accepts delivery of Non-Directed Orders that are Liability Orders, and provides an automated execution of Non-Directed Orders (or an automated rejection of such orders if the price is no longer available) for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or offer price.

[(e)] *(u)* The term "NNMS Market Maker" shall mean a member of the Association that is registered as a Nasdaq Market Maker and as a Market Maker for purposes of participation in NNMS with respect to one or more NNMS eligible securities, and is currently active in NNMS and obligated to execute *orders through the automatic-execution functionality of the NNMS system* for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or [ask] *offer* price.

[(b)] *(v)* The term "NNMS Participant" shall mean [either] an NNMS Market Maker, *NNMS ECN, UTP Exchange,* or NNMS Order Entry Firm registered as such with the Association for participation in NNMS.

[(f)] *(w)* The term "NNMS Order Entry Firm" shall mean a member of the Association who is registered as an Order Entry Firm for purposes of participation in NNMS which permits the firm to enter orders [of limited size] for execution against NNMS Market Makers.

(x) The term "Nasdaq Quotation Montage" shall mean the portion of the Nasdaq WorkStation presentation that displays for a particular stock two columns (one for bid, one for offer), under which is listed in price/time priority the MMIDs for each NNMS Market Maker, NNMS ECN, and UTP Exchange registered in the stock and the corresponding quote (price and size) next to the related MMID.

(y) The term "Nasdaq Quoting Market Participant" shall include only the following: (1) NNMS Market Makers; or (2) NNMS ECNs.

(z) The term "odd-lot order" shall mean an order that is for less than a normal unit of trading.

(aa) The term "Preferenced Order" shall mean an order that is entered into the Non-Directed Order Process and is designated to be delivered to or executed against a particular Quoting Market Participant's Attributable Quote/Order when such Preferenced Order is the next in line to be executed or delivered. Preferenced Orders shall be executed subject to the conditions set out in Rule 4710(b).

(bb) The term "Quote/Order" shall mean a single quotation or shall mean an order or multiple orders at the same price submitted to Nasdaq by a Nasdaq Quoting Market Participant that is displayed in the form of a single quotation. Unless specifically referring to a UTP Exchange's Agency Quote/Order (as set out in Rule 4710(f)(2)(b)), when this term is used in connection with a UTP Exchange, it shall mean the best bid and/or the best offer quotation transmitted to Nasdaq by the UTP Exchange.

(cc) The term "Quoting Market Participant" shall include any of the following: (1) NNMS Market Makers; (2) NNMS ECNs; and (3) UTP Exchange Specialists.

(dd) The term "Reserve Size" shall mean the system-provided functionality that permits a Nasdaq Quoting Market Participant to display in its Displayed Quote/Order part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part after the displayed part is executed.

(ee) The term "Nasdaq Order Display Facility" shall mean the portion of the Nasdaq WorkStation presentation that displays, without attribution to a particular Quoting Market Participant's MMID, the three best price levels in Nasdaq on both the bid and offer side of the market and the aggregate size of Attributable and Non-Attributable Quotes/Orders at each price level.

(ff) The term "UTP Exchange" shall mean any registered national securities exchange that elects to participate in the NNMS and that has unlisted trading privileges in Nasdaq National Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").

4705. NNMS Participant Registration

(a) Participation in NNMS as an NNMS Market Maker requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Market Maker's initial and continuing compliance with the following requirements:

(1) execution of an NNMS Participant application agreement with the Association;

(2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;

(3) registration as a market maker in The Nasdaq Stock Market pursuant to the Rule 4600 Series and compliance with all applicable rules and operating procedures of the Association and the Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Market Maker to prevent the *improper use or access to Nasdaq systems, including* unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(b) Pursuant to Rule 4611(f), participation as an NNMS Market Maker is required for any Nasdaq market maker registered to make a market in an NNMS security.

(c) Participation in NNMS as an NNMS Order Entry Firm requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Order Entry Firm's initial and continuing compliance with the following requirements:

(1) execution of an NNMS Participant application agreement with the Association;

(2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;

(3) compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Order Entry Firm to prevent the *improper use or access to Nasdaq systems, including* unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Order Entry Firm or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(d) Participation in NNMS as an NNMS ECN requires current registration as an NASD member and shall be conditioned upon the following:

(1) the execution of an NNMS Participant application agreement with the Association;

(2) compliance with all requirements in NASD Rule 4623 and all other applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(3) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS-compared trades may be settled;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS ECN to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each trade that is executed through the facilities of the NNMS, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

[(d)]*(e)* The registration required hereunder will apply solely to the qualification of an NNMS Participant to participate in NNMS. Such registration shall not be conditioned upon registration in any particular eligible or active NNMS securities.

[(e)]*(f)* Each NNMS Participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

(g) The Association and its subsidiaries shall not be liable for any losses, damages, or other claims arising out of the NNMS or its use. Any losses, damages, or other claims, related to a failure of the NNMS to deliver, display, transmit, execute, compare, submit for clearance and settlement, or otherwise process an order, Quote/Order, message, or other data entered into, or created by, the NNMS shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the NNMS.

4706. Order Entry Parameters

(a) Non-Directed Orders —

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) An NNMS Participant may enter a Non-Directed Order into the NNMS in order to access the best bid/best offer as displayed in Nasdaq; provided however, that an NNMS Participant may enter a Preferenced Order through the Non-Directed Order process to access a particular Quoting Market Participant without regard to the best bid/best offer as displayed in Nasdaq.

(B) A Non-Directed Order must be a market or marketable limit order, must be a round lot or a mixed lot, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and if entered by a Quoting Market Participant

may be designated as Immediate or Cancel.

(C) The system will not process a Non-Directed Order to sell short if the execution of such order would violate NASD Rule 3350.

(D) Non-Directed Orders will be processed as described in Rule 4710.

(E) The NNMS shall not accept Non-Directed Orders that are All-or-None, or have a minimum size of execution.

(2) Entry of Non-Directed Orders by NNMS Order Entry Firms—In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by NNMS Order-Entry Firms:

(A) All Non-Directed orders shall be designated as Immediate or Cancel. As such, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) A Non-Directed Order that is a limit order may be entered prior to the market's open. Such orders will be held in queue, and if not marketable on the market's open, will be returned to the entering participant.

(b) Directed Orders—A participant may enter a Directed Order into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) Unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders, a Directed Order must be a Non-Liability Order, and as such, at the time of entry must be designated as:

(A) an "All-or-None" order ("AON") that is at least one normal unit of trading (e.g. 100 shares) in excess of the Attributable Quote/Order of the Quoting Market Participant to which the order is directed; or

(B) a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of Attributable Quote/Order of the Quoting Market Participant to which the order is directed. Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(2) A Directed Order may have a time in force of 1 to 99 minutes.

(3) Directed Orders shall be processed pursuant to Rule 4710(c).

(c) Entry of Agency and Principal Orders—NNMS Participants are permitted to enter into the NNMS both agency and principal orders for delivery and execution processing.

(d) Order Size—Any round or mixed lot order up to 999,999 shares may be entered into the NNMS for normal execution processing. Odd-lot orders, and the odd-lot portion of a mixed lot, are subject to a separate execution process, as described in Rule 4710(e).

(e) Open Quotes—The NNMS will only deliver an order or an execution to a Quoting Market Participant if that participant has an open quote.

(f) Odd-Lot Orders—The system will accept odd-lot orders for processing through a separate facility. Odd-lot orders must be Non-Directed Orders, and may be market, marketable limit or limit orders. The system shall accept odd-lot orders at a rate no faster than one order per/second from any single participant. Odd-lot orders, and the odd-lot portion of a mixed lot order, shall be processed as described in Rule 4710(e).

4707. Entry and Display of Quotes/Orders

(a) Entry of Quotes/Orders—Nasdaq Quoting Market Participants may enter Quotes/Orders into the NNMS subject to the following requirements and conditions:

(1) Nasdaq Quoting Market Participants shall be permitted to transmit to the NNMS multiple Principal and Agency Quotes/Orders at a single as well as multiple price levels. Such Quote/Order shall indicate whether it is an "Attributable Quote/Order" or "Non-Attributable Quote/Order," and the amount of Reserve Size (if applicable).

(2) Upon entry of a Quote/Order into the system, the NNMS shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rule 4710(b). For each subsequent size increase received for an existing quote at a given price, the system will maintain the original time-stamp for the original quantity of the quote and assign a separate time-stamp to that size increase.

(3) Consistent with Rule 4613, an NNMS Market Maker is obligated to maintain a two-sided Attributable Quote/Order (other than an Agency Quote) at all times, for at least one normal unit of trading.

(4) Nasdaq Quoting Market Participants may continue to transmit to the NNMS only their best bid and best offer Attributable Quotes/Orders. Notwithstanding NASD Rule 4613 and subparagraph (a)(1) of this rule, nothing in these rules shall require a Nasdaq Quoting Market Participant to transmit to the NNMS multiple Quotes/Orders.

(b) Display of Quotes/Orders in Nasdaq—The NNMS will display a Nasdaq Quoting Market Participant's Quotes/Orders as follows:

(1) Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's best priced Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID, and also will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Attributable Quote/Order falls within the best three price levels in Nasdaq on either side of the market. Upon execution or cancellation of the Nasdaq Quoting Market Participant's best-priced Attributable Quote/Order on a particular side of the market, the NNMS will automatically display the participant's next best Attributable Quote/Order on that side of the market.

(2) Non-Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's Non-Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Non-Attributable Quote/Order falls within the best three price levels in Nasdaq on either side of the market. A Non-Attributable Order will not be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID. Non-Attributable Quotes/Orders that are the best priced Non-Attributable bids or offers in the system will be displayed in the Nasdaq Quotation Montage under an anonymous MMID, which shall represent and reflect the aggregate size of all Non-Attributable Quotes/Orders in Nasdaq at that price level. Upon execution or cancellation of a Nasdaq Quoting Market Participant's Non-Attributable Quote/Order, the NNMS will automatically display a Non-Attributable Quote/Order in the Nasdaq Order Display Facility (consistent with the parameters described above) if it falls within the best three price levels in Nasdaq on either side of the market.

(c) Reserve Size—Reserve Size shall not be displayed in Nasdaq, but shall be electronically accessible as described in Rule 4710(b).

(d) Summary Scan—The "Summary Scan" functionality, which is a query-only non-dynamic functionality, displays without attribution to Quoting Market Participants' MMIDs the

aggregate size of Attributable and Non-Attributable Quotes/Orders for all levels (on both the bid and offer side of the market) below the three price levels displayed in the Nasdaq Order Display Facility.

(e) NQDS Prime—"NQDS Prime" is a separate data feed that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to Quoting Market Participants' MMIDs all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are disseminated in the Nasdaq Order Display Facility.

4710. Participant Obligations in NNMS

(a) Registration—Upon the effectiveness of registration as a NNMS Market Maker, NNMS ECN, or NNMS Order Entry Firm, the NNMS Participant may commence activity within NNMS for exposure to orders or entry of orders, as applicable. The operating hours of NNMS may be established as appropriate by the Association. The extent of participation in Nasdaq by an NNMS Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(b) [Market Makers] *Non-Directed Orders*

(1) [An NNMS Market Maker] *General Provisions—A Quoting Market Participant* in an NNMS Security shall be subject to the following requirements *for Non-Directed Orders:*

(A) *Obligations* For each NNMS security in which it is registered [as an NNMS Market Maker, the market maker], *a Quoting Market Participant* must *accept and* execute individual *Non-Directed* Orders against its quotation including its Agency Quote (if applicable), in an amount equal to or smaller than the combination of the Displayed [quotation] *Quote/Order* and Reserve Size *(if applicable)* of such [quotation(s)] *Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq.* [For purposes of this rule, the term "reserved size" shall mean that a NNMS Market Maker or a customer thereof wishes to display publicly part of the full size of its order or interest with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed. To utilize the reserve size function, a minimum of 1,000 shares must initially be displayed in the market maker's quote (including the Agency Quote), and the quotation must be refreshed to 1,000 shares consistent with subparagraph (b)(2)(A) of this rule.] *Quoting Market Participants shall participate in the NNMS as follows:*

(i) NNMS Market Makers and NNMS Auto-Ex ECNs shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute such order in a manner consistent with the Firm Quote Rule.

(iii) UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)–(iii) of this rule), and shall deliver an execution to Quoting Market Participants that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system; provided however, that the system always shall deliver an order (in lieu of an execution) to the Quoting Market Participant next in queue when the participant that entered the Non-Directed Order into the system is a UTP Exchange that does not provide automatic execution against its Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. Non-Directed Orders entered into the NNMS system shall be *delivered to or* automatically executed against *Quoting Market Participants'* Displayed [quotations] *Quotes/Orders* and Reserve Size, including Agency Quotes (if applicable), in *strict* price/time priority, *as described in the algorithm contained in subparagraph (b)(B)(i) of this rule* [For quotes at the same price, the system will yield priority to all displayed quotations over reserve size, so that the system will execute against Displayed quotations in time priority and then against reserve size in time priority]. *Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule.*

(i) Default Execution Algorithm—Price/Time—The system will default to a strict price/time priority within Nasdaq, and will attempt to access interest in the system in the following priority and order:

(a) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs, and Non-Attributable Agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in time priority between such participants' Quotes/Orders.

(b) Reserve Size of Nasdaq Quoting Market Participants, in time priority between such participants' Quotes/Orders; and

(c) Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

(ii) Price/Time Priority Considering Quote-Access Fees—If this options is chosen, the system will attempt to access interest in the system in the following priority and order:

(a) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, and Non-Attributable Agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), as well as Quotes/Orders from NNMS ECNs that charges a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order indicates that the price improvement offered by the specific Quote/Order is equal to or exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quotes/Orders;

(b) Displayed Quotes/Orders of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such participants' Quotes/Orders;

(c) Reserve Size of NNMS Market Makers and NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, as well as Reserve Size of Quotes/Orders from NNMS ECNs that charges a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order has indicated that the price improvement offered by the specific Quote/Order is equal to or exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quotes/Orders;

(d) Reserve Size of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority

between such participants' Quotes/Orders; and

(e) Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

(iii) Price/Size Priority—If this option is chosen, Non-Directed Orders shall be execute in price/size/time priority against:

(a) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs, and Non-Attributable Agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in price/size/time priority between such participants' Quotes/Orders:

(b) the Reserve Size of Nasdaq Quoting Market Participants, in price/size/time priority between such participants' Quotes/Orders, which size priority shall be based on the size of the Displayed Quote/Order, and not on the amount held in Reserve Size; and

(c) Principal Quotes/Orders of UTP Exchanges, in price/size/time priority between such participants' Quotes/Orders.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq.

(b) If an NNMS Market Participant enters a Preferenced Order, the order shall be executed against (or delivered in an amount equal to) both the Displayed Quote/Order and Reserve Size at the displayed price of the Quoting Market Participant to which the order is being directed, without regard to whether the Quoting Market Participant is at the best bid/best offer, with any unexecuted portion being returned to the entering NNMS Market Participant.

(C) *Decrementation Procedures*—The size of a [displayed quotation] *Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage* will be decremented upon the *delivery of a Liability Order or the delivery of an* execution of a[n NNMS] *Non-Directed* [o]Order or Preferenced Order in an amount equal to [or greater than one normal unit of trading] *the system-delivered order or execution;* provided, however, that [the execution of] *if* an NNMS order that is a mixed lot, *the system will only deliver a Liability Order or an execution for the number of round lots contained in the mixed lot order, and* will only decrement [a displayed quotation's] *the* size of a *Displayed Quote/Order* by the number of shares represented by the number of round lots contained in the mixed lot order. *The odd-lot portion of the mixed lot will be executed at the same price against the NNMS Market Maker next in the odd lot rotation, as described in subparagraph (e) of this rule.*

(i) If an NNMS Auto-Ex ECN has its bid or offer Attributable Quote/Order and Reserve Size decremented to zero without transmission of another Attributable Quote/Order to Nasdaq, the system will zero out the side of the quote that is exhausted. If both the bid and offer are decremented to zero without transmission of a revised Attributable Quote/Order, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within 30 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue. The system then will zero out the ECN's Quote/Orders at that price level on that side of the market, and the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(iii) If an NNMS ECN's Quote/Order has been zeroed out or if the ECN has been placed into excused withdrawal as described in subparagraphs (b)(1)(C)(i) and (ii) of this rule, the system will continue to access the ECN's Non-Attributable Quotes/Orders that are in the NNMS, as described in Rule 4707 and subparagraph (b) of this rule.

(iv) If an NNMS ECN regularly fails to meet a 5-second response time (as measured by the ECN's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ECN's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the NNMS ECN certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market.

(D) *Interval Delay*—After the NNMS system has executed *all Displayed Quotes/Orders and Reserve Size interest at a price level* [an order against a market maker's displayed quote and reserve size (if applicable), that market maker shall not be required to execute another order at its bid or offer in the same security until a predetermined time period has elapsed from the time the order was executed, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be modified upon Commission approval and appropriate notification to NNMS participants.], *the following will occur:*

(i) If the NNMS system cannot execute in full all shares of a Non-Directed Order against the Displayed Quotes/Orders and Reserve Size interest at the initial price level and at price two minimum trading increments away, the system will pause for 5 seconds before accessing the interest at the next price level in the system; provided, however, that once the Non-Directed Order can be filled in full within two price levels, there will be no interval delay between price levels and the system will execute the remainder of order in full; or

(ii) If the Non-Directed Orders is specially designated by the entering market participant as a "sweep order," the system will execute against all Displayed Quotes/Orders and Reserve Size at the initial price level and the two price levels being displayed in the Nasdaq Order Display Facility without pausing between the displayed price levels. Thereafter, the system will pause 5 seconds before moving to the next price level, until the Non-Directed Order is executed in full.

(iii) The interval delay described in this subparagraph may be modified upon Commission approval and appropriate notification to NNMS Participants.

(E) All entries in NNMS shall be made in accordance with the requirements set forth in the NNMS User Guide, as published from time to time by Nasdaq.

(2) Refresh Functionality

(A) Reserve Size Refresh—Once *a Nasdaq Quoting Market Participant's* [an NNMS Market Maker's displayed quotation] *Displayed Quote/Order* size on either side of the market in the security has been decremented to zero due to NNMS [executions] *processing* Nasdaq will refresh the [market maker's] displayed size out of Reserve Size to a size-level designated by the *Nasdaq Quoting Market Participant* [NNMS

Market Maker] or in the absence of such size-level designation, to the automatic refresh size. [If the market maker is using the reserve size function for its proprietary quote or Agency Quote the NNMS Market Maker must refresh to a minimum of 1,000 shares, consistent with subparagraph (b)(1)(A) of this rule]. *To utilize the Reserve Size functionality, a minimum of 1,000 shares must initially be displayed in the Nasdaq Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 1,000 shares. This functionality will not be available for use by UTP Exchanges.*

(B) [Auto q]Quote Refresh *("QR")*—Once an NNMS Market Maker's Displayed *Quote/Order* [quotation] size and Reserve Size on either side of the market in the security has been decremented to zero due to NNMS executions, the NNMS Market Maker may elect to have The Nasdaq Stock Market refresh the market maker's quotation as follows:

(i) Nasdaq will refresh the market maker's quotation price on the bid or offer side of the market, whichever is decremented to zero, by a[n] *price* interval designated by the NNMS Market Maker; and

(ii) Nasdaq will refresh the market maker's displayed size to a level designated by the NNMS Market Maker, or in the absence of such size level designation, to the automatic refresh size. [A Market Maker's Agency Quotation shall not be subject to the functionality described in this subparagraph.]

(iii) This functionality shall produce an Attributable Quote/Order. In addition, if an NNMS Market Maker is utilizing the QR functionality but has an Attributable Quote/Order in the system that is priced at or better than the quote that would be created by the QR, the NNMS will display the Attributable Quote/Order, not the QR-produced quote.

(iv) An NNMS Market Maker's Agency Quote shall not be subject to the functionality described in this subparagraph, nor shall this functionality be available to Quoting Market Participants other than NNMS Market Makers.

(3) *Entry of Locking/Crossing Quotes/Orders* [Except as otherwise provided in subparagraph (b)(10) of this rule, at any time a locked or crossed market, as defined in Rule 4613(e), exists for an NNMS security, a market maker with a quotation for that security (including an Agency Quote) that is causing the locked or crossed market may have orders representing shares equal to the size of the bid or offer that is locked or crossed executed by the NNMS system against the market maker's quote (including an Agency Quote) at the quoted price if that price is the best price. During locked or crossed markets, the NNMS system will execute orders against those market makers that are locked or crossed in predetermined time intervals. This period of time initially shall be established as five (5) seconds, but may be modified upon approval by the Commission and appropriate notification to NNMS participants.] *The system shall process locking/crossing Quotes/Orders as follows:*

(A) Locked/Crossed Quotes/Orders During Market Hours—If during market hours, a Quoting Market Participant enters into the NNMS a Quote/Order that will lock/cross the market (as defined in NASD Rule 4613(e)), the system will not display the Quote/Order as a quote in Nasdaq; instead the system will treat the Quote/Order as a marketable limit order and enter it into the system as a Non-Directed Order for processing (consistent with subparagraph (b) of this rule) as follows:

(i) For locked-market situations, the order will be routed to the Quoting Market Participant next in queue who would be locked, and the order will be executed (or delivered for execution) at the lock price;

(ii) For crossed-market situations, the order will be entered into the system and routed to the next Quoting Market Participants in queue who would be crossed, and the order will be executed (or delivered for execution) at the price of the Displayed Quote/Order that would have been crossed.

Once the lock/cross is cleared, if the participant's order is not completely filled, the system will reformat the order and display it in Nasdaq (consistent with the parameters of the Quote/Order) as a Quote/Order on behalf of the entering Quoting Market Participant.

(B) Locked/Crossed Quotes/Orders at the Open—If the market is locked or crossed at 9:30 a.m., Eastern Time, the NNMS will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the oldest bid(offer) against the oldest offer(bid) against which it is marketable at the price of the oldest Quote/Order. Nasdaq then will begin processing Non-Directed Orders as described in subparagraph (b) of this rule.

[(4) For each NNM security in which a market maker is registered, the market maker may enter orders into the NNMS for its proprietary account as well as on an agency or riskless principal basis.]

[(5)] *(4)* An NNMS Market Maker may terminate its obligation by keyboard withdrawal (or its equivalent) from NNMS at any time. However, the market maker has the specific obligation to monitor its status in NNMS to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the market maker.

[(6)] *(5)* [An NNMS Market Maker will be suspended from NNMS if its bid or offer has been decremented to zero due to NNMS executions and will be permitted a standard grace period, the duration of which will be established and published by the Association, within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. An NNMS Market Maker that fails to reenter a two-sided quotation within the allotted time will be deemed to have withdrawn as a market maker ("Timed Out of the Box"). Except as provided below in this subparagraph and in subparagraph (b)(7) of this rule, an NNMS Market Maker that withdraws in an NNM security may not re-register as a market maker in that security for twenty (20) business days.] *If an NNMS Market Maker's Attributable Quote/Order is reduced to zero on one side of the market due to NNMS executions, the NNMS will close the Market Maker's quote in the NNMS with respect to both sides of its market, and the NNMS Market Maker will be permitted a grace period of three minutes within which to take action to restore its Attributable Quote/Order, if the market maker has not authorized use of the QR functionality or does not otherwise have an Attributable Quote/Order on both sides of the market in the system. An NNMS Market Maker that fails to transmit an Attributable Quote/Order in a security within the allotted time will have its quotation restored by the system at the lowest bid price and the highest offer price in that security. Except as provided in subparagraph (b)(6) of this rule, an NNMS Market Maker that withdraws from a security may not re-register in the system as a market maker in that security for twenty (20) business days. The requirements of this subparagraph shall not apply to a market maker's Agency Quote.*

[(A) Notwithstanding the above, a market maker can be reinstated if:

(i) the market maker makes a request for reinstatement to Nasdaq Market Operations as soon as practicable under the circumstances, but within at least one hour of having been Timed Out of the Box, and immediately thereafter provides written notification of the reinstatement request;

(ii) it was a Primary Market Maker at the time it was Timed Out of the Box;

(iii) the market maker's firm would not exceed the following reinstatement limitations:

a. for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than four (4) reinstatements per year;

b. for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year;

c. for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than twelve (12) reinstatements per year; and

(iv) the designated Nasdaq officer makes a determination that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market. In making this determination, the designated Nasdaq officer will consider, among other things:

a. whether the market conditions in the issue included unusual volatility or other unusual activity, and/or the market conditions in other issues in which the market maker made a market at the time the firm was Timed Out of the Box;

b. the frequency with which the firm has been Timed Out of the Box in the past;

c. procedures the firm has adopted to avoid being inadvertently Timed Out of the Box; and

d. the length of time before the market maker sought reinstatement.

(B) If a market maker has exhausted the reinstatement limitations in subparagraph (b)(6)(A)(iii) above, the designated Nasdaq officer may grant a reinstatement request if he or she finds that such reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determines that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where:

(i) a member firm experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system) or involving an automated system operated by Nasdaq;

(ii) the market maker is a manager or co-manager of a secondary offering from the time the secondary offering is announced until ten days after the offering is complete; or

(iii) absent the reinstatement, the number of market makers in a particular issue is equal to two (2) or less or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter, except that if a market maker has a regular pattern of being frequently Timed Out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.]

[(7)] *(6)* Notwithstanding the provisions of subparagraph [(6)] *(5)* above:

(A) an NNMS Market Maker that obtains an excused withdrawal pursuant to Rule 4619 prior to withdrawing from NNMS may reenter NNMS according to the conditions of its withdrawal; and

(B) a NNMS Market Maker that fails to maintain a clearing arrangement with a registered cleering agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and NNMS for NNMS securities, may reenter NNMS after a clearing arrangement has been reestablished and the market maker has compiled with ACT participant requirements. Provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

[(8)] *(7)* The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their removal from NNMS pursuant to subparagraph[s] (b)*(5)*[(6) or (b)(7)] of this rule.

[(9)] *(8)* In the event that a malfunction in the [NNMS Market Maker's] *Quoting Market Participant's* equipment occurs, rendering [on-line] communications with NNMS inoperable, the [NNMS Market Maker] *Quoting Market Participant* is obligated to immediately contact Nasdaq Market Operations by telephone to request withdrawal from NNMS *and a closed-quote status*, and *if the Quoting Market Participants is an NNMS Market Maker* an excused withdrawal from Nasdaq[. Such request must be made] pursuant to Rule 4619. If withdrawal is granted, Nasdaq Market Operations personnel will enter the withdrawal notification into NNMS from a supervisory terminal *and shall close the quote*. Such manual intervention, however, will take a certain period of time for completion and, *unless otherwise permitted by the Association pursuant to its authority under Rule 11890*, the [NNMS Market Maker] *Quoting Market Participants* will continue to be obligated for any transaction executed prior to the effectiveness of [his] *the* withdrawal *and closed-quote status.*

[(10) In the event that there are no NNMS Market Makers at the best bid (offer) disseminated by Nasdaq, market orders to sell (buy) entered into NNMS will be held in queue until executable, or until 90 seconds has elapsed, after which such orders will be rejected and returned to their respective order entry firms.]

(c) Directed Order Processing—A participant may enter a Directed Order into the NNMS to access a specific Quote/Order in the Nasdaq Quotation Montage and to begin the negotiation process with a particular Quoting Market Participant. The system will deliver an order (not an execution) to the Quoting Market Participant designated as the recipient of the order. Upon delivery, the Quoting Market Participant shall owe no liability under the Firm Quote Rule to that order, unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders (as described in Rule 4706(b)). Additionally, upon delivery, the system will not decrement the receiving Quoting Market Participant's Quote/Order. This provision shall not apply to Preferenced Orders.

[(c)] *(d)* NNMS Order Entry Firms

All entries in NNMS shall be made in accordance with the procedures and requirements set forth in the NNMS User Guide. Orders may be entered in NNMS by the NNMS Order Entry Firm through either its Nasdaq terminal or computer interface. The system will transmit to the firm on the terminal screen and printer, if requested, or through the computer interface, as applicable, an execution report generated immediately following the execution.

[(d) Order Entry Parameters

(1) NNMS will only accept market and marketable limit orders for execution and will not accept market or marketable limit orders designated as All-or-None ("AON") orders; provided, however, that NNMS will not accept any limit orders, marketable or unmarketable, prior to 9:30 a.m., Eastern Time. For purposes of this subparagraph, an AON order is an order for an amount of securities equal to the size of the order and no less.

(2) Additionally, the NNMS will only accept orders that are unpreferenced, thereby resulting in execution in rotation against NNMS Market Makers, and will not accept preferenced orders.

(3) NNMS will not accept orders that exceed 9,900 shares, and no participant in the NNMS system shall enter an order into the system that exceeds 9,900.]

[(e) Electronic Communication Networks

An Electronic Communications Networks, as defined in SEC Rule 11Ac1–1(a)(8), may participate in the NNMS System if it complies with NASD Rule 4623 and executes with the Association a Nasdaq Workstation Subscriber Agreement, as amended, for ECNs.]

(e) Odd-Lot Processing

(1) Participation in Odd-Lot Process—All NNMS Market Makers may participate in the Odd-Lot Process for each security in which the market maker is registered.

(2) Execution Process

(A) Odd-lot orders will be executed against an NNMS Market Maker only if it has an odd-lot exposure limit in an amount that would fill the odd-lot order. A NNMS Market Maker may, on a security-by-security basis, set an odd lot exposure limit from 0 to 999,999 shares.

(B) An odd-lot order shall be executed automatically against the next available NNMS Market Maker when the odd-lot order becomes executable (i.e., when the best price in Nasdaq moves to the price of the odd-lot limit order). Such odd-lot orders will execute at the best price available in the market, in rotation against NNMS Market Makers who have an exposure limit that would fill the odd-lot order.

(C) For odd lots that are part of a mixed lot, once the round-lot portion is executed, the odd-lot portion will be executed at the round-lot price against the next NNMS Market Maker in rotation (as described in subparagraph (e)(2)(b) of this rule) even if the round-lot price is no longer the best price in Nasdaq.

(D) Odd-lot executions will decrement the odd-lot exposure limit of an NNMS Market Maker but will not decrement the size of NNMS Market Maker's Displayed Quote/Order.

(E) After the NNMS system has executed an odd lot against an NNMS Market Maker, the system will not deliver another odd-lot order against the same market maker until a predetermined time period has elapsed from the time the last execution was delivered, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be increased upon Commission approval and appropriate notification to NNMS Participants or may be decreased to an amount less than five seconds by the NNMS Market Maker.

(f) UTP Exchanges

Participation in the NNMS by UTP Exchanges is voluntary. If a UTP Exchange elects to participate in the system, Nasdaq shall endeavor to provide fair and equivalent access to the Nasdaq market for UTP Exchanges, as a UTP Exchange provides to its market for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. The following provisions shall apply to UTP Exchanges that choose to participate in the NNMS:

(1) Order Entry—UTP Exchanges that elect to participate in the system shall be permitted to enter Directed and Non-Directed Orders into the system subject to the conditions and requirements of Rules 4706. Directed and Non-Directed Orders entered by UTP Exchanges shall be processed (unless otherwise specified) as described in subparagraphs (b) and (c) of this rule.

(2) Display of UTP Exchange Quotes/Orders in Nasdaq

(A) UTP Exchange Principal Orders/Quotes—UTP Exchanges that elect to participate in the system shall be permitted to transmit to the NNMS a single bid Quote/Order and a single offer Quote/Order. Upon transmission of the Quote/Order to Nasdaq, the system shall time stamp the Quote/Order, which time stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders. The NNMS shall display the best bid and best offer Quote/Order transmitted to Nasdaq by a UTP Exchange in the Nasdaq Quotation Montage under the MMID for the UTP Exchange, and shall also display such Quote/Order in the Nasdaq Order Display Facility as part of the aggregate trading interest when the UTP Exchange's best bid/best offer Quote/Order falls within the best three price levels in Nasdaq on either side of the market.

(B) UTP Exchange Agency Quotes/Orders

(i) A UTP Exchange that elect to participate in the system may transmit to the NNMS Quotes/Orders at a single as well as multiple price levels that meet the following requirements: are not for the benefit of a broker and/or dealer that is with respect to the UTP Exchange a registered or designated market maker, dealer or specialist in the security at issue; and are designated as Non-Attributable Quotes/Orders ("UTP Agency Order/Quote").

(ii) Upon transmission of a UTP Agency Quote/Order to Nasdaq, the system shall time stamp the order, which time stamp shall determine the ranking of these Quote/Order for purposes of processing Non-Directed Orders, as described in subparagraph (b) of this rule. A UTP Agency Quote/Order shall not be displayed in the Nasdaq Quotation Montage under the MMID for the UTP Exchange. Rather, UTP Agency Quotes/Orders shall be reflected in the Nasdaq Order Display Facility and Nasdaq Quotation Montage in the same manner in which Non-Attributable Quotes/Orders from Nasdaq Quoting Market Participants are reflected in Nasdaq, as described in Rule 4707(b)(2).

(3) Non-Directed Order Processing

(a) UTP Exchanges that elect to participate in the system and that agree to provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept an execution of an order up to the size of the UTP Exchange's displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule.

(b) UTP Exchanges that elect to participate in the system but that do not provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept the delivery of an order up to the size of the UTP Exchange's Displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule. If such a UTP Exchange declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Quote/Order that is at a price inferior to the previous price, or if such a UTP Exchange fails to respond in any manner within 30 seconds of order delivery, the NNMS will send the order (or remaining portion thereof) back into the system for delivery to the next Quoting Market Participant in queue. The system will then move the side of such UTP Exchange's Quote/Order to which the declined or partially-filled order was delivered, to the lowest bid or highest offer price in Nasdaq, at a size of 100 shares.

(4) Directed Order Processing—UTP Exchanges that elect to participate in the system shall participate in the Directed Order processing as described in subparagraph (c) of this rule.

(5) Decrementation—UTP Exchanges shall be subject to the decrementation procedures described in subparagraph (b) of this rule.

(6) Scope of Rules " Nothing in these rules shall apply to UTP Exchanges that elect not to participate in the system.

4711–4714—No Change

4718. Termination of System Service

The Association or its subsidiaries may, upon notice, terminate system service to a participant in the event that a participant fails to abide by any of the rules or operating procedures of the System or any other relevant rule or requirement, or fails to pay promptly for services rendered.

* * * * *

4750. SMALLCAP SMALL ORDER EXECUTION SYSTEM (SOES)

4751–4757—Deleted

B. *Proposed Rule Language for File No. NASD–99–53 containing Alternative B* Proposed additions are in *italics* and proposed deletions are placed in [brackets].

4720. SelectNet Service—Deleted

* * * * *

4611. Registration as a Nasdaq Market Maker

(a)–(e) No Change.

(f) Unless otherwise specified by the Association, each Nasdaq market maker that is registered as a market maker in a Nasdaq[National Market security]-*listed security* shall also at all times be registered as a market maker in the Nasdaq National Market Execution System (NNMS) with respect to that security and be subject to the NNMS Rules as set forth in the Rule 4700 Series. [Participation in the Small Order Execution System (SOES) shall be voluntary for any Nasdaq market maker registered to make a market in a Nasdaq SmallCap security.]

* * * * *

(g) No Change.

4613. Character of Quotations

(a) Two-Sided Quotations

(1) For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain *a* two-sided quotation[s] *("Principal Quote"), which is attributed to the market maker by a special maker participant identifier ("MMID") and is displayed in the Nasdaq Quotation Montage* [in The Nasdaq Stock Market] *at all times,* subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) A registered market maker in a *Nasdaq-listed* security [listed on The Nasdaq Stock Market] must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation. *Unless otherwise designated, a "normal unit of trading" shall be 100 shares.*

(b) Agency Quote—Amendments Pending Pursuant to SR–NASD–99–09.

(c)–(e) No Change.

IM–4613. Autoquote Policy—No Change

4618. Clearance and Settlement

(a)–(b) No Changes.

(c) All transactions through the *facilities of the* Nasdaq National Market Execution System[, SOES, and SelectNet services] shall be cleared and settled through a registered clearing agency using a continuous net settlement system.

* * * * *

4619. Withdrawal of Quotations and Passive Market Making

(a)–(b) No Change.

(c) Excused withdrawal status may be granted to a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction service, thereby terminating its registration as a market maker in Nasdaq issues. Provided however, that if the Association finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620[, the Rules for the Small Order Execution System, as set forth in the Rule 4750 Series,] and the Rule 4700 Series governing the Nasdaq['s] National Market Execution System.

(d) No Change.

* * * * *

4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its *Principal* [quotations] *Quote* from The Nasdaq Stock Market. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from participation as a market maker in a Nasdaq [National Market]-*listed* security in the Nasdaq National Market Execution System shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in Nasdaq-*listed* [National Market and SmallCap] issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements contained in Rule 6100.

* * * * *

4632. Transaction Reporting

(a)–(d) No Change.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) Transactions executed through the Computer Assisted Execution System (CAES), *or* the *facilities of the* Nasdaq National Market Execution System ("NNMS")[, or the SelectNet service];

(2)–(6) No Change.

(f) No Change.

4642. Transaction Reporting

(a)–(d) No Change.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) Transactions executed through the Computer Assisted Execution System (CAES)[; the Small Order Execution System (SOES) or the SelectNet service] *or facilities of the Nasdaq National Market Execution System ("NNMS").*

(2)–(5) No Change.

(f) No Change.

* * * * *

4700. NASDAQ NATIONAL MARKET EXECUTION SYSTEM (NNMS)

4701. Definitions—*Unless stated otherwise, the terms described below shall have the following meaning:*

[(d)] *(a)* The term "active NNMS securities" shall mean those NNMS eligible securities in which at least one NNMS Market Maker is currently active in NNMS.

[(i)] *(b)* The term "Agency Quote" shall mean the quotation that a registered NNMS Market Maker is permitted to display pursuant to the requirements of NASD Rule 4613(b).

(c) The term "Attributable Quote/Order" shall have the following meaning:

(1) For NNMS Market Makers and NNMS ECNs, a bid or offer Quote/Order that is designated for display (price and size) next to the participant's MMID in the Nasdaq Quotation Montage once such Quote/Order becomes the participant's best attributable bid or offer.

(2) For UTP Exchanges, the best bid and best offer quotation with price and size that is transmitted to Nasdaq by the UTP Exchange, which is displayed next to the UTP Exchange's MMID in the Nasdaq Quotation Montage.

[(h)] (*d*) The term "Automated Confirmation Transaction" service or "ACT" shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which compares trade information entered by ACT Participants and submits "locked-in" trades to clearing.

[(g)] (*e*) The term "automatic refresh size" shall mean the default size to which an NNMS Market Maker's quote will be refreshed pursuant to NASD Rule 4710(b)(2), if the market maker *elects to utilize the Quote Refresh Functionality and* does not designate to Nasdaq an alternative refresh size, *which must be at least one normal unit of trading*. The [maximum order] automatic refresh size default [size] *amount* shall be 1,000 shares.

(f) The term "Directed Order" shall mean an order that is entered into the system by an NNMS participant that is directed to a particular Quoting Market Participant at any price, through the Directed Order process described in Rule 4710(c). This term shall not include the "Preferenced Order" described in subparagraph (aa) of this rule.

(g) The term "Displayed Quote/Order" shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted to Nasdaq by Quoting Market Participants.

(h) The term "Firm Quote Rule" shall mean SEC Rule 11Ac1–1.

(i) The term "Immediate or Cancel" shall mean, for limit orders so designated, that if after entry into the NNMS a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant.

(j) The term "Liability Order" shall mean an order that when delivered to a Quoting Market Participant imposes an obligation to respond to such order in a manner consistent with the Firm Quote Rule.

(k) The term "limit order" shall mean an order to buy or sell a stock at a specified price or better.

(l) The term "market order" shall mean an unpriced order to buy or sell a stock at the market's current best price.

(m) The term "marketable limit order" shall mean a limit order to buy that, at the time it is entered into the NNMS, is priced at the current inside offer or higher, or a limit order to sell that, at the time it is entered into the NNMS, is priced at the inside bid or lower.

(n) The term "mixed lot" shall mean an order that is for more than a normal unit of trading but not a multiple thereof.

(o) The term "Non-Attributable Quote/Order" shall mean a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility.

(p) The term "Non-Directed Order" shall mean an order that is entered into the system by an NNMS Participant and is not directed to any particular Quoting Market Participant, and shall also include Preferenced Orders as described in subparagraph (aa) of this rule.

(q) The term "Non-Liability Order" shall mean an order that when delivered to a Quoting Market Participant imposes no obligation to respond to such order under the Firm Quote Rule.

[(a)] *(r)* The term "Nasdaq National Market Execution System," [or] "NNMS," *or "system"* shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which enables NNMS Participants to execute transactions in active NNMS authorized securities; to have reports of the transactions automatically forwarded to the National Market Trade Reporting System, if required, for dissemination to the public and the industry, and to "lock in" these trades by sending both sides to the applicable clearing corporation(s) designated by the NNMS Participant(s) for clearance and settlement; and to provide NNMS Participants with sufficient monitoring and updating capability to participate in an automated execution environment.

[(c)] *(s)* The term "NNMS eligible securities" shall mean designated Nasdaq-*listed* [National Market (NNM)] equity securities.

(t) The term "NNMS ECN" shall mean a member of the Association that meets all of the requirements of NASD Rule 4623, and that participates in the NNMS with respect to one or more NNMS eligible securities.

(1) The term "NNMS Auto-Ex ECN" shall mean an NNMS ECN that participates in the automatic-execution functionality of the NNMS system, and accordingly executes Non-Directed Orders via automatic execution for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or offer price.

(2) The term "NNMS Order-Delivery ECN" shall mean an NNMS ECN that participates in the order-delivery functionality of the NNMS system, accepts delivery of Non-Directed Orders that are Liability Orders, and provides an automated execution of Non-Directed Orders (or an automated rejection of such orders if the price is no longer available) for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or offer price.

[(e)] *(u)* The term "NNMS Market Maker" shall mean a member of the Association that is registered as a Nasdaq Market Maker and as a Market Maker for purposes of participation in NNMS with respect to one or more NNMS eligible securities, and is currently active in NNMS and obligated to execute orders *through the automatic-execution functionality of the NNMS system* for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or [ask] *offer* price.

[(b)] *(v)* The term "NNMS Participant" shall mean [either] an NNMS Market Maker, *NNMS ECN, UTP Exchange*, or NNMS Order Entry Firm registered as such with the Association for participation in NNMS.

[(f)] *(w)* The term "NNMS Order Entry Firm" shall mean a member of the Association who is registered as an Order Entry Firm for purposes of participation in NNMS which permits the firm to enter orders [of limited size] for execution against NNMS Market Makers.

(x) The term "Nasdaq Quotation Montage" shall mean the portion of the Nasdaq WorkStation presentation that displays for a particular stock two columns (one for bid, one for offer), under which is listed in price/time priority the MMIDs for each NNMS Market Maker, NNMS ECN, and UTP Exchange registered in the stock and the corresponding quote (price and size) next to the related MMID.

(y) The term "Nasdaq Quoting Market Participant" shall include only the following: (1) NNMS Market Makers; or (2) NNMS ECNs.

(z) The term "odd-lot order" shall mean an order that is for less than a normal unit of trading.

(aa) The term "Preferenced Order" shall mean an order that is entered into the Non-Directed Order Process and is designated to be delivered to or executed against a particular Quoting Market Participant's Attributable Quote/Order if the Quoting Market Participant is at the best bid/best offer when the

Preferenced Order is the next in line to be executed or delivered. Preferenced Orders shall be executed subject to the conditions set out in Rule 4710(b).

(bb) The term "Quote/Order" shall mean a single quotation or shall mean an order or multiple orders at the same price submitted to Nasdaq by a Nasdaq Quoting Market Participant that is displayed in the form of a single quotation. Unless specifically referring to a UTP Exchange's Agency Quote/Order (as set out in Rule 4710(f)(2)(b)), when this term is used in connection with a UTP Exchange, it shall mean the best bid and/or the best offer quotation transmitted to Nasdaq by the UTP Exchange.

(cc) The term "Quoting Market Participant" shall include any of the following: (1) NNMS Market Makers; (2) NNMS ECNs; and (3) UTP Exchange Specialists.

(dd) The term "Reserve Size" shall mean the system-provided functionality that permits a Nasdaq Quoting Market Participant to display in its Displayed Quote/Order part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part after the displayed part is executed.

(ee) The term "Nasdaq Order Display Facility" shall mean the portion of the Nasdaq WorkStation presentation that displays, without attribution to a particular Quoting Market Participant's MMID, the three best price levels in Nasdaq on both the bid and offer side of the market and the aggregate size of Attributable and Non-Attributable Quotes/Orders at each price level.

(ff) The term "UTP Exchange" shall mean any registered national securities exchange that elects to participate in the NNMS and that has unlisted trading privileges in Nasdaq National Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").

4705. NNMS Participant Registration

(a) Participation in NNMS as an NNMS Market Maker requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Market Maker's initial and continuing compliance with the following requirements:

(1) execution of an NNMS Participant application agreement with the Association;

(2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;

(3) registration as a market maker in The Nasdaq Stock Market pursuant to the Rule 4600 Series and compliance with all applicable rules and operating procedures of the Association and the Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Market Maker to prevent the *improper use or access to Nasdaq systems*, including unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(b) Pursuant to Rule 4611(f), participation as an NNMS Market Maker is required for any Nasdaq market maker registered to make a market in an NNMS security.

(c) Participation in NNMS as an NNMS Order Entry Firm requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Order Entry Firm's initial and continuing compliance with the following requirements:

(1) execution of an NNMS Participant application agreement with the Association;

(2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;

(3) compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Order Entry Firm to prevent the *improper use or access to Nasdaq systems, including* unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Order Entry Firm or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(d) Participation in NNMS as an NNMS ECN requires current registration as an NASD member and shall be conditioned upon the following:

(1) the execution of an NNMS Participant application agreement with the Association;

(2) compliance with all requirements in NASD Rule 4623 and all other applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(3) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS-compared trades may be settled;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS ECN to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each trade that is executed through the facilities of the NNMS, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

[(d)] *(e)* The registration required hereunder will apply solely to the qualification of an NNMS Participant to participate in NNMS. Such registration shall not be conditioned upon registration in any particular eligible or active NNMS securities.

[(e)] *(f)* Each NNMS Participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

(g) The Association and its subsidiaries shall not be liable for any losses, damages, or other claims arising out of the NNMS or its use. Any losses, damages, or other claims, related to a failure of the NNMS to deliver, display, transmit, execute, compare, submit for clearance and settlement, or otherwise process an order, Quote/Order, message, or other data entered into, or created by, the NNMS shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the NNMS.

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) An NNMS Participant may enter into the NNMS a Non-Directed Order in order to access the best bid/best offer as displayed in Nasdaq.

(B) A Non-Directed Order must be a market or marketable limit order, must be a round lot or a mixed lot, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and if entered by a Quoting Market Participant may be designated as Immediate or Cancel.

(C) The system will not process a Non-Directed Order to sell short if the execution of such order would violate NASD Rule 3350.

(D) Non-Directed Orders will be processed as described in Rule 4710.

(E) The NNMS shall not accept Non-Directed Orders that are All-or-None, or have a minimum size of execution.

(2) Entry of Non-Directed Orders by NNMS Order Entry Firms " In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by NNMS Order-Entry Firms:

(A) All Non-Directed orders shall be designated as Immediate or Cancel. As such, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) A Non-Directed Order that is a limit order may be entered prior to the market's open. Such orders will be held in queue, and if not marketable on the market's open, will be returned to the entering participant.

(b) Directed Orders A participant may enter a Directed Order into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) Unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders, a Directed Order must be a Non-Liability Order, and as such, at the time of entry must be designated as:

(A) an "All-or-None" order ("AON") that is at least one normal unit of trading (e.g. 100 shares) in excess of the Attributable Quote/Order of the Quoting Market Participant to which the order is directed; or

(B) a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of Attributable Quote/Order of the Quoting Market Participant to which the order is directed. Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(2) A Directed Order may have a time in force of 1 to 99 minutes.

(3) Directed Orders shall be processed pursuant to Rule 4710(c).

(c) Entry of Agency and Principal Orders—NNMS Participants are permitted to enter into the NNMS both agency and principal orders for delivery and execution processing.

(d) Order Size—Any round or mixed lot order up to 999,999 shares may be entered into the NNMS for normal execution processing. Odd-lot orders, and the odd-lot portion of a mixed lot, are subject to a separate execution process, as described in Rule 4710(e).

(e) Open Quotes—The NNMS will only deliver an order or an execution to a Quoting Market Participant if that participant has an open quote.

(f) Odd-Lot Orders—The system will accept odd-lot orders for processing through a separate facility. Odd-lot orders must be Non-Directed Orders, and may be market, marketable limit or limit orders. The system shall accept odd-lot orders at a rate no faster than one order per/second from any single participant. Odd-lot orders, and the odd-lot portion of a mixed lot order, shall be processed as described in Rule 4710(e).

4707. Entry and Display of Quotes/Orders

(a) Entry of Quotes/Orders—Nasdaq Quoting Market Participants may enter Quotes/Orders into the NNMS subject to the following requirements and conditions:

(1) Nasdaq Quoting Market Participants shall be permitted to transmit to the NNMS multiple Principal and Agency Quotes/Orders at a single as well as multiple price levels. Such Quote/Order shall indicate whether it is an "Attributable Quote/Order" or "Non-Attributable Quote/Order," and the amount of Reserve Size (if applicable).

(2) Upon entry of a Quote/Order into the system, the NNMS shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rule 4710(b). For each subsequent size increase received for an existing quote at a given price, the system will maintain the original time-stamp for the original quantity of the quote and assign a separate time-stamp to that size increase.

(3) Consistent with Rule 4613, an NNMS Market Maker is obligated to maintain a two-sided Attributable Quote/Order (other that an Agency Quote) at all times, for at least one normal unit of trading.

(4) Nasdaq Quoting Market Participants may continue to transmit to the NNMS only their best bid and best offer Attributable Quotes/Orders. Notwithstanding NASD Rule 4613 and subparagraph (a)(1) of this rule, nothing in these rules shall require a Nasdaq Quoting Market Participant to transmit to the NNMS multiple Quotes/Orders.

(b) Display of Quotes/Orders in Nasdaq—The NNMS will display a Nasdaq Quoting Market Participant's Quotes/Orders as follows:

(1) Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's best priced Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID, and also will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Attributable Quote/Order falls within the best three price levels in Nasdaq on either side of the market. Upon execution or cancellation of the Nasdaq Quoting Market Participant's best-priced Attributable Quote/Order on a particular side of the market, the NNMS will automatically display the participant's next best Attributable Quote/Order on that side of the market.

(2) Non-Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's Non-Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Non-Attributable Quote/Order falls within the best three price levels in Nasdaq on either side of the market. A Non-Attributable Order will not be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID. Non-Attributable Quotes/Orders that are the best priced Non-Attributable bids or offers in the system will be displayed in the Nasdaq Quotation Montage under an anonymous MMID, which shall represent and reflect the aggregate size of all Non-Attributable Quotes/Orders in Nasdaq at that price level. Upon execution or cancellation of a Nasdaq Quoting Market Participant's Non-Attributable Quote/Order, the NNMS will automatically display a Non-Attributable Quote/Order in the Nasdaq Order Display Facility (consistent with the parameters described above) if it falls within the best three price levels in Nasdaq on either side of the market.

(c) Reserve Size—Reserve Size shall not be displayed in Nasdaq, but shall be electronically accessible as described in Rule 4710(b).

(d) Summary Scan—The "Summary Scan" functionality, which is a query-only non-dynamic functionality, displays without attribution to Quoting Market Participants' MMIDs the aggregate size of Attributable and Non-Attributable Quotes/Orders for all levels (on both the bid and offer side of the market) below the three price levels displayed in the Nasdaq Order Display Facility.

(e) NQDS Prime—"NQDS Prime" is a separate data feed that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to Quoting Market Participants' MMIDs all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are disseminated in the Nasdaq Order Display Facility.

4710. Participant Obligations in NNMS

(a) Registration—Upon the effectiveness of registration as a NNMS Market Maker, NNMS ECN, or NNMS Order Entry Firm, the NNMS Participant may commence activity within NNMS for exposure to orders or entry of orders, as applicable. The operating hours of NNMS may be established as appropriate by the Association. The extent of participation in Nasdaq by an NNMS Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(b) [Market Makers] *Non-Directed Orders*

(1) [An NNMS Market Maker] *General Provisions—A Quoting Market Participant* in an NNMS Security shall be subject to the following requirements *for Non-Directed Orders:*

(A) *Obligations*—For each NNMS security in which it is registered [as an NNMS Market Maker, the market maker], *a Quoting Market Participant* must *accept and* execute individual *Non-Directed* Orders against its quotation including its Agency Quote (if applicable), in an amount equal to or smaller than the combination of the Displayed [quotation] *Quote/Order* and Reserve Size *(if applicable)* of such [quotation(s)] *Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq*. [For purposes of this rule, the term "reserved size" shall mean that a NNMS Market Maker or a customer thereof wishes to display publicly part of the full size of its order or interest with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed. To utilize the reserve size function, a minimum of 1,000 shares must initially be displayed in the market maker's quote (including the Agency Quote), and the quotation must be refreshed to 1,000 shares consistent with subparagraph (b)(2)(A) of this rule.] *Quoting Market Participants shall participate in the NNMS as follows:*

(i) NNMS Market Makers and NNMS Auto-Ex ECNs shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute such order in a manner consistent with the Firm Quote Rule.

(iii) UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B) (i)–(iii) of this rule), and shall deliver an execution to Quoting Market Participants that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system; provided however, that the system always shall deliver an order (in lieu of an execution) to the Quoting Market Participant next in queue when the participant that entered the Non-Directed Order into the system is a UTP Exchange that does not provide automatic execution against its Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. Non-Directed Orders entered into the NNMS system shall be *delivered to* or automatically executed against *Quoting Market Participants'* Displayed [quotations] *Quotes/Orders* and Reserve Size, including Agency Quotes (if applicable), in *strict* price/time priority, *as described in the algorithm contained in subparagraph (b)(B)(i) of this rule* [For quotes at the same price, the system will yield priority to all displayed quotations over reserve size, so that the system will execute against Displayed quotations in time priority and then against reserve size in time priority]. *Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule.*

(i) Default Execution Algorithm—Price/Time—The system will default to a strict price/time priority within Nasdaq, and will attempt to access interest in the system in the following priority and order:

(a) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs, and Non-Attributable Agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in time priority between such participants' Quotes/Orders.

(b) Reserve Size of Nasdaq Quoting Market Participants, in time priority between such participants' Quotes/Orders; and

(c) Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

(ii) Price/Time Priority Considering Quote-Access Fees—If this options is chosen, the system will attempt to access interest in the system in the following priority and order:

(a) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, and Non-Attributable Agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), as well as Quotes/Orders from NNMS ECNs that charges a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order indicates that the price improvement offered by the specific Quote/Order is equal to or exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quotes/Orders;

(b) Displayed Quotes/Orders of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such participants' Quotes/Orders;

(c) Reserve Size of NNMS Market Makers and NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, as well as Reserve Size of Quotes/Orders from NNMS ECNs that charges a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order has indicated that the price improvement offered by the

specific Quote/Order is equal to or exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quotes/Orders;

(d) Reserve Size of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such participants' Quotes/Orders; and

(e) Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

(iii) Price/Size Priority—If this option is chosen, Non-Directed Orders shall be executed in price/size/time priority against:

(a) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs, and Non-Attributable Agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in price/size/time priority between such participants' Quotes/Orders:

(b) the Reserve Size of Nasdaq Quoting Market Participants, in price/size/time priority between such participants' Quotes/Orders, which size priority shall be based on the size of the Displayed Quote/Order, and not on the amount held in Reserve Size; and

(c) Principal Quotes/Orders of UTP Exchanges, in price/size/time priority between such participants' Quotes/Orders.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq.

(b) If an NNMS Market Participant enters a Preferenced Order, the order shall be executed against (or delivered in an amount equal to) both the Displayed Quote/Order and Reserve Size of the Quoting Market Participant to which the order is being directed, if that Quoting Market Participant is at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed). Any unexecuted portion of a Preferenced Order shall be returned to the entering NNMS Market Participant. If the Quoting Market Participant is not at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed), the Preferenced Order shall be returned to the entering NNMS Market Participant.

(C) *Decrementation Procedures*—The size of a [displayed quotation] *Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage* will be decremented upon the *delivery of a Liability Order or the delivery of an* execution of a[n NNMS] *Non-Directed* [o]Order or Preferenced Order in an amount equal to [or greater than one normal unit of trading] *the system-delivered order or execution;* provided, however, that [the execution of] *if* an NNMS order that is a mixed lot, *the system will only deliver a Liability Order or an execution for the number of round lots contained in the mixed lot order, and* will only decrement [a displayed quotation's] *the* size of a *Displayed Quote/Order* by the number of shares represented by the number of round lots contained in the mixed lot order. *The odd-lot portion of the mixed lot will be executed at the same price against the NNMS Market Maker next in the odd lot rotation, as described in subparagraph (e) of this rule.*

(i) If an NNMS Auto-Ex ECN has its bid or offer Attributable Quote/Order and Reserve Size decremented to zero without transmission of another Attributable Quote/Order to Nasdaq, the system will zero out the side of the quote that is exhausted. If both the bid and offer are decremented to zero without transmission of a revised Attributable Quote/Order, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within 30 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue. The system then will zero out the ECN's Quote/Orders at that price level on that side of the market, and the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(iii) If an NNMS ECN's Quote/Order has been zeroed out or if the ECN has been placed into excused withdrawal as described in subparagraphs (b)(1)(C)(i) and (ii) of this rule, the system will continue to access the ECN's Non-Attributable Quotes/Orders that are in the NNMS, as described in Rule 4707 and subparagraph (b) of this rule.

(iv) If an NNMS ECN regularly fails to meet a 5-second response time (as measured by the ECN's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ECN's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the NNMS ECN certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market.

(D) *Interval Delay*—After the NNMS system has executed *all Displayed Quotes/Orders and Reserve Size interest at a price level* [an order against a market maker's displayed quote and reserve size (if applicable), that market maker shall not be required to execute another order at its bid or offer in the same security until a predetermined time period has elapsed from the time the order was executed, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be modified upon Commission approval and appropriate notification to NNMS participants.], *the following will occur:*

(i) If the NNMS system cannot execute in full all shares of a Non-Directed Order against the Displayed Quotes/Orders and Reserve Size interest at the initial price level and at price two minimum trading increments away, the system will pause for 5 seconds before accessing the interest at the next price level in the system; provided, however, that once the Non-Directed Order can be filled in full within two price levels, there will be no interval delay between price levels and the system will execute the remainder of order in full; or

(ii) If the Non-Directed Orders is specially designated by the entering market participant as a "sweep order," the system will execute against all Displayed Quotes/Orders and Reserve Size at the initial price level and the two price levels being displayed in the Nasdaq Order Display Facility without pausing between the displayed price levels. Thereafter, the system will pause 5 seconds before moving to the next price level, until the Non-Directed Order is executed in full.

(iii) The interval delay described in this subparagraph may be modified upon Commission approval and appropriate notification to NNMS Participants.

(E) All entries in NNMS shall be made in accordance with the requirements set forth in the NNMS User Guide, as published from time to time by Nasdaq.

(2) Refresh Functionality

(A) Reserve Size Refresh—Once *a Nasdaq Quoting Market Participant's* [an NNMS Market Maker's displayed quotation] *Displayed Quote/Order* size on either side of the market in the security has been decremented to zero due to NNMS [executions] *processing* Nasdaq will refresh the [market maker's] displayed size out of Reserve Size to a size-level designated by the *Nasdaq Quoting Market Participant* [NNMS Market Maker], or in the absence of such size-level designation, to the automatic refresh size. [If the market maker is using the reserve size function for its proprietary quote or Agency Quote the NNMS Market Maker must refresh to a minimum of 1,000 shares, consistent with subparagraph (b)(1)(A) of this rule]. *To utilize the Reserve Size functionality, a minimum of 1,000 shares must initially be displayed in the Nasdaq Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 1,000 shares. This functionality will not be available for use by UTP Exchanges.*

(B) [Auto q]*Quote* Refresh (*"QR"*)—Once an NNMS Market Maker's Displayed *Quote/Order* [quotation] size and Reserve Size on either side of the market in the security has been decremented to zero due to NNMS executions, the NNMS Market Maker may elect to have The Nasdaq Stock Market refresh the market maker's quotation as follows:

(i) Nasdaq will refresh the market maker's quotation price on the bid or offer side of the market, whichever is decremented to zero, by a[n] *price* interval designated by the NNMS Market Maker; and

(ii) Nasdaq will refresh the market maker's displayed size to a level designated by the NNMS Market Maker, or in the absence of such size level designation, to the automatic refresh size. [A Market Maker's Agency Quotation shall not be subject to the functionality described in this subparagraph.]

(iii) This functionality shall produce an Attributable Quote/Order. In addition, if an NNMS Market Maker is utilizing the QR functionality but has an Attributable Quote/Order in the system that is priced at or better than the quote that would be created by the QR, the NNMS will display the Attributable Quote/Order, not the QR-produced quote.

(iv) An NNMS Market Maker's Agency Quote shall not be subject to the functionality described in this subparagraph, nor shall this functionality be available to Quoting Market Participants other than NNMS Market Makers.

(3) *Entry of Locking/Crossing Quotes/Orders* [Except as otherwise provided in subparagraph (b)(10) of this rule, at any time a locked or crossed market, as defined in Rule 4613(e), exists for an NNMS security, a market maker with a quotation for that security (including an Agency Quote) that is causing the locked or crossed market may have orders representing shares equal to the size of the bid or offer that is locked or crossed executed by the NNMS system against the market maker's quote (including an Agency Quote) at the quoted price if that price is the best price. During locked or crossed markets, the NNMS system will execute orders against those market makers that are locked or crossed in predetermined time intervals. This period of time initially shall be established as five (5) seconds, but may be modified upon approval by the Commission and appropriate notification to NNMS participants.] *The system shall process locking/crossing Quotes/Orders as follows:*

(A) Locked/Crossed Quotes/Orders During Market Hours—If during market hours, a Quoting Market Participant enters into the NNMS a Quote/Order that will lock/cross the market (as defined in NASD Rule 4613(e)), the system will not display the Quote/Order as a quote in Nasdaq; instead the system will treat the Quote/Order as a marketable limit order and enter it into the system as a Non-Directed Order for processing (consistent with subparagraph (b) of this rule) as follows:

(i) For locked-market situations, the order will be routed to the Quoting Market Participant next in queue who would be locked, and the order will be executed (or delivered for execution) at the lock price;

(ii) For crossed-market situations, the order will be entered into the system and routed to the next Quoting Market Participants in queue who would be crossed, and the order will be executed (or delivered for execution) at the price of the Displayed Quote/Order that would have been crossed.

Once the lock/cross is cleared, if the participant's order is not completely filled, the system will reformat the order and display it in Nasdaq (consistent with the parameters of the Quote/Order) as a Quote/Order on behalf of the entering Quoting Market Participant.

(B) Locked/Crossed Quotes/Orders at the Open—If the market is locked or crossed at 9:30 a.m., Eastern Time, the NNMS will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the oldest bid(offer) against the oldest offer(bid) against which it is marketable at the price of the oldest Quote/Order. Nasdaq then will begin processing Non-Directed Orders as described in subparagraph (b) of this rule.

[(4) For each NNM security in which a market maker is registered, the market maker may enter orders into the NNMS for its proprietary account as well as on an agency or riskless principal basis.]

[(5)] *(4)* An NNMS Market Maker may terminate its obligation by keyboard withdrawal (or its equivalent) from NNMS at any time. However, the market maker has the specific obligation to monitor its status in NNMS to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the market maker.

[(6)] *(5)* [An NNMS Market Maker will be suspended from NNMS if its bid or offer has been decremented to zero due to NNMS executions and will be permitted a standard grace period, the duration of which will be established and published by the Association, within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. An NNMS Market Maker that fails to reenter a two-sided quotation within the allotted time will be deemed to have withdrawn as a market maker ("Timed Out of the Box"). Except as provided below in this subparagraph and in subparagraph (b)(7) of this rule, an NNMS Market Maker that withdraws in an NNM security may not re-register as a market maker in that security for twenty (20) business days.] *If an NNMS Market Maker's Attributable Quote/Order is reduced to zero on one side of the market due to NNMS executions, the NNMS will close the Market Maker's quote in the NNMS with respect to both sides of its market, and the NNMS Market Maker will be permitted a grace period of three minutes within which to take action to restore its Attributable Quote/Order, if the market maker has not authorized use of the QR functionality or does not otherwise have an Attributable Quote/Order on both sides of the market in the system. An NNMS Market Maker that fails to transmit an Attributable Quote/Order in a security within the allotted time will have its quotation restored by the system at the lowest bid price and the highest offer price in that security. Except as provided in subparagraph (b)(6) of this rule, an NNMS Market Maker that withdraws from a security may not re-register in the system as a market maker in that security for twenty (20) business days. The requirements of this subparagraph shall not apply to a market maker's Agency Quote.*

[(A) Notwithstanding the above, a market maker can be reinstated if:

(i) the market maker makes a request for reinstatement to Nasdaq Market Operations as soon as practicable under the circumstances, but within at least one hour of having been Timed Out of the Box, and immediately thereafter provides written notification of the reinstatement request;

(ii) it was a Primary Market Maker at the time it was Timed Out of the Box;

(iii) the market maker's firm would not exceed the following reinstatement limitations:

a. for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than four (4) reinstatements per year;

b. for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year;

c. for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than twelve (12) reinstatements per year; and

(iv) the designated Nasdaq officer makes a determination that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market. In making this determination, the designated Nasdaq officer will consider, among other things:

a. whether the market conditions in the issue included unusual volatility or other unusual activity, and/or the market conditions in other issues in which the market maker made a market at the time the firm was Timed Out of the Box;

b. the frequency with which the firm has been Timed Out of the Box in the past;

c. procedures the firm has adopted to avoid being inadvertently Timed Out of the Box; and

d. the length of time before the market maker sought reinstatement.

(B) If a market maker has exhausted the reinstatement limitations in subparagraph (b)(6)(A)(iii) above, the designated Nasdaq officer may grant a reinstatement request if he or she finds that such reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determines that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where:

(i) a member firm experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system) or involving an automated system operated by Nasdaq;

(ii) the market maker is a manager or co-manager of a secondary offering from the time the secondary offering is announced until ten days after the offering is complete; or

(iii) absent the reinstatement, the number of market makers in a particular issue is equal to two (2) or less or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter, except that if a market maker has a regular pattern of being frequently Timed Out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.]

[(7)] *(6)* Notwithstanding the provisions of subparagraph [(6)] *(5)* above:

(A) an NNMS Market Maker that obtains an excused withdrawal pursuant to Rule 4619 prior to withdrawing from NNMS may reenter NNMS according to the conditions of its withdrawal; and

(B) a NNMS Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and NNMS for NNMS securities, may reenter NNMS after a clearing arrangement has been reestablished and the market maker has compiled with ACT participant requirements. Provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

[(8)] *(7)* The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their removal from NNMS pursuant to subparagraph[s] (b)*(5)*[(6) or (b)(7)] of this rule.

[(9)] *(8)* In the event that a malfunction in the [NNMS Market Maker's] *Quoting Market Participant's* equipment occurs, rendering [on-line] communications with NNMS inoperable, the [NNMS Market Maker] *Quoting Market Participant* is obligated to immediately contact Nasdaq Market Operations by telephone to request withdrawal from NNMS *and a closed-quote status*, and *if the Quoting Market Participants is an NNMS Market Maker* an excused withdrawal from Nasdaq[. Such request must be made] pursuant to Rule 4619. If withdrawal is granted, Nasdaq Market Operations personnel will enter the withdrawal notification into NNMS from a supervisory terminal and shall close the quote. Such manual intervention, however, will take a certain period of time for completion and, *unless otherwise permitted by the Association pursuant to its authority under Rule 11890*, the [NNMS Market Maker] *Quoting Market Participants* will continue to be obligated for any transaction executed prior to the effectiveness of [his] *the* withdrawal and *closed-quote status.*

[(10) In the event that there are no NNMS Market Makers at the best bid (offer) disseminated by Nasdaq, market orders to sell (buy) entered into NNMS will be held in queue until executable, or until 90 seconds has elapsed, after which such orders will be rejected and returned to their respective order entry firms.]

(c) Directed Order Processing—A participant may enter a Directed Order into the NNMS to access a specific Quote/Order in the Nasdaq Quotation Montage and to begin the negotiation process with a particular Quoting Market Participant. The system will deliver an order (not an execution) to the Quoting Market Participant designated as the recipient of the order. Upon delivery, the Quoting Market Participant shall owe no liability under the Firm Quote Rule to that order, unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders (as described in Rule 4706(b)). Additionally, upon delivery, the system will not decrement the receiving Quoting Market Participant's Quote/Order. This provision shall not apply to Preferenced Orders.

[(c)] *(d)* NNMS Order Entry Firms

All entries in NNMS shall be made in accordance with the procedures and requirements set forth in the NNMS User Guide. Orders may be entered in NNMS by the NNMS Order Entry Firm through either its Nasdaq terminal or computer interface. The system will transmit to the firm on the terminal screen and printer, if requested, or through the computer interface, as applicable, an execution report generated immediately following the execution.

[(d) Order Entry Parameters

(1) NNMS will only accept market and marketable limit orders for execution and will not accept market or

marketable limit orders designated as All-or-None ("AON") orders; provided, however, that NNMS will not accept any limit orders, marketable or unmarketable, prior to 9:30 a.m., Eastern Time. For purposes of this subparagraph, an AON order is an order for an amount of securities equal to the size of the order and no less.

(2) Additionally, the NNMS will only accept orders that are unpreferenced, thereby resulting in execution in rotation against NNMS Market Makers, and will not accept preferenced orders.

(3) NNMS will not accept orders that exceed 9,900 shares, and no participant in the NNMS system shall enter an order into the system that exceeds 9,900.]

[(e) Electronic Communication Networks

An Electronic Communications Networks, as defined in SEC Rule 11Ac1–1(a)(8), may participate in the NNMS System if it complies with NASD Rule 4623 and executes with the Association a Nasdaq Workstation Subscriber Agreement, as amended, for ECNs.]

(e) Odd-Lot Processing

(1) Participation in Odd-Lot Process—All NNMS Market Makers may participate in the Odd-Lot Process for each security in which the market maker is registered.

(2) Execution Process

(A) Odd-lot orders will be executed against an NNMS Market Maker only if it has an odd-lot exposure limit in an amount that would fill the odd-lot order. A NNMS Market Maker may, on a security-by-security basis, set an odd-lot exposure limit from 0 to 999,999 shares.

(B) An odd-lot order shall be executed automatically against the next available NNMS Market Maker when the odd-lot order becomes executable (i.e., when the best price in Nasdaq moves to the price of the odd-lot limit order). Such odd-lot orders will execute at the best price available in the market, in rotation against NNMS Market Makers who have an exposure limit that would fill the odd-lot order.

(C) For odd lots that are part of a mixed lot, once the round-lot portion is executed, the odd-lot portion will be executed at the round-lot price against the next NNMS Market Maker in rotation (as described in subparagraph (e)(2)(b) of this rule) even if the round-lot price is no longer the best price in Nasdaq.

(D) Odd-lot executions will decrement the odd-lot exposure limit of an NNMS Market Maker but will not decrement the size of NNMS Market Maker's Displayed Quote/Order.

(E) After the NNMS system has executed an odd lot against an NNMS Market Maker, the system will not deliver another odd-lot order against the same market maker until a predetermined time period has elapsed from the time the last execution was delivered, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be increased upon Commission approval and appropriate notification to NNMS Participants or may be decreased to an amount less than five seconds by the NNMS Market Maker.

(f) UTP Exchanges

Participation in the NNMS by UTP Exchanges is voluntary. If a UTP Exchange elects to participate in the system, Nasdaq shall endeavor to provide fair and equivalent access to the Nasdaq market for UTP Exchanges, as a UTP Exchange provides to its market for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. The following provisions shall apply to UTP Exchanges that choose to participate in the NNMS:

(1) Order Entry—UTP Exchanges that elect to participate in the system shall be permitted to enter Directed and Non-Directed Orders into the system subject to the conditions and requirements of Rules 4706. Directed and Non-Directed Orders entered by UTP Exchanges shall be processed (unless otherwise specified) as described subparagraphs (b) and (c) of this rule.

(2) Display of UTP Exchange Quotes/Orders in Nasdaq

(A) UTP Exchange Principal Orders/Quotes—UTP Exchanges that elect to participate in the system shall be permitted to transmit to the NNMS a single bid Quote/Order and a single offer Quote/Order. Upon transmission of the Quote/Order to Nasdaq, the system shall time stamp the Quote/Order, which time stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders. The NNMS shall display the best bid and best offer Quote/Order transmitted to Nasdaq by a UTP Exchange in the Nasdaq Quotation Montage under the MMID for the UTP Exchange, and shall also display such Quote/Order in the Nasdaq Order Display Facility as part of the aggregate trading interest when the UTP Exchange's best bid/best offer Quote/Order falls within the best three price levels in Nasdaq on either side of the market.

(B) UTP Exchange Agency Quotes/Orders

(i) A UTP Exchange that elect to participate in the system may transmit to the NNMS Quotes/Orders at a single as well as multiple price levels that meet the following requirements: are not for the benefit of a broker and/or dealer that is with respect to the UTP Exchange a registered or designated market maker, dealer or specialist in the security at issue; and are designated as Non-Attributable Quotes/Orders ("UTP Agency Order/Quote").

(ii) Upon transmission of a UTP Agency Quote/Order to Nasdaq, the system shall time stamp the order, which time stamp shall determine the ranking of these Quote/Order for purposes of processing Non-Directed Orders, as described in subparagraph (b) of this rule. A UTP Agency Quote/Order shall not be displayed in the Nasdaq Quotation Montage under the MMID for the UTP Exchange. Rather, UTP Agency Quotes/Orders shall be reflected in the Nasdaq Order Display Facility and Nasdaq Quotation Montage in the same manner in which Non-Attributable Quotes/Orders from Nasdaq Quoting Market Participants are reflected in Nasdaq, as described in Rule 4707(b)(2).

(3) Non-Directed Order Processing

(a) UTP Exchanges that elect to participate in the system and that agree to provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept an execution of an order up to the size of the UTP Exchange's displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule.

(b) UTP Exchanges that elect to participate in the system but that do not provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept the delivery of an order up to the size of the UTP Exchange's Displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule. If such a UTP Exchange declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Quote/Order that is at a price inferior to the previous price, or if such a UTP Exchange fails to respond in any manner within 30 seconds of order delivery, the NNMS will send the order (or remaining portion thereof) back into the system for delivery to the next Quoting Market Participant in queue. The system will then move the side of such UTP Exchange's Quote/Order to which the declined or partially-filled order was delivered, to the lowest bid or highest offer price in Nasdaq, at a size of 100 shares.

(4) Directed Order Processing—UTP Exchanges that elect to participate in the system shall participate in the Directed Order processing as described in subparagraph (c) of this rule.

(5) Decrementation—UTP Exchanges shall be subject to the decrementation procedures described in subparagraph (b) of this rule.

(6) Scope of Rules—Nothing in these rules shall apply to UTP Exchanges that elect not to participate in the system.

4711–4714—No Change.

4718. Termination of System Service

The Association or its subsidiaries may, upon notice, terminate system service to a participant in the event that a participant fails to abide by any of the rules or operating procedures of the System or any other relevant rule or requirement, or fails to pay promptly for services rendered.

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4750. SMALLCAP SMALL ORDER EXECUTION SYSTEM (SOES)

4751–4757—Deleted.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As stated in the original filing, some of the primary goals of the Nasdaq Order Display Facility (also known as the "SuperMontage") are to expand the amount of market information available to the investing public, and to make that trading interest more accessible. The SuperMontage seeks to reduce market fragmentation and address the informational and competitive disparities that exist in the NASD's current market structure. As an open and competitive market, the NASD is committed to creating a trading environment where diverse pools of liquidity can be viewed and accessed on fair and equal terms.[12] To achieve this goal, Nasdaq has crafted a system that fairly balances the needs and business models of all market participants. In response to comments received on Amendment No. 7, the NASD proposes the following changes and modifications to the SuperMontage. The NASD believes that the proposed amendments will further enhance the information available to market participants, and provide greater choice for market participants.

a. Non-Directed Order Processing. 1. *History.* As originally proposed, the SuperMontage would execute non-directed orders in general price/time priority.[13] In response to concerns raised by SEC staff relating to best execution, the NASD proposed to change the Order Execution Algorithm to account for ECNs fees in Amendment No. 4.[14] Specifically, in Amendment No. 4, The NASD proposed that within a price level, a non-directed order would be executed against ECNs, market makers, UTP Exchange agency interest, in strict time priority, unless an ECN charged separate quote-access fee ("charging ECNs"). Pursuant to Amendment No.4, charging-ECNs would be executed after market makers, ECNs that do not charge a quote-access fee ("non-charging ECNs"), and agency interest of UTP Exchanges. The logic behind Amendment No. 4 was that an ECN's fee represents an increase in trading costs and thus the quote of the access-fee charging ECN represents an inferior price when compared to same-priced quotes of market participants that do not charge a fee.

In response to Amendment No. 4, some commenters claimed that charging ECNs should not be prioritized in the aforementioned manner because this was generally unfair. In response to these comments, the Commission suggested that ECNs could address the quote-access fee issue by reflecting the access fee in their public quote. As a result, in Amendment No. 6, the NASD proposed to give ECNs that include the separate quote-access fee in their quote equal priority to same-priced orders representing market makers, non-charging ECNs, and the agency interest of UTP Exchanges assuming the related legal, technology, and policy issues were resolved. In response to Amendment No. 6, however, some ECNs claimed that including the fee in the quote would not completely resolve their concerns, in part, because ECNs may offer price improvement above the quote as a result of rounding. Accordingly, in Amendment No. 7, the NASD proposed to give charging ECNs the ability to indicate on an order-by-order basis whether the price improvement offered by the order exceeded the quote-access fee charged. Pursuant to Amendment No. 7, if the price improvement exceeded the quote-access fee, Nasdaq would rank that order, for execution purposes, with the same-priced orders of market makers, non-charging ECNs, and non-attributable agency interest of UTP Exchanges. In Amendment No. 8, the NASD clarifies that if the price improvement is equal to or exceeds the separate quote-access fee, Nasdaq would rank that quote/order with equally priced quotes/orders from Nasdaq Quoting Market Participants that do not charge a separate quote access fee. Some commenters to Amendment Nos. 6 and 7 still were not satisfied with the proposed two solutions regarding ECN quote-access fees.

2. *Proposed Changes to Non-Directed Order Process.* The NASD understands that factors other than cost or quote-access fees may be important to a market participant in making investment decisions. Further, the NASD believes that market participants should be given a choice in determining how to best execute their customer or proprietary orders. With this in mind, and in response to the comments to Amendment No. 7, the NASD proposes to amend the Order Execution Algorithm for non-directed orders. The NASD proposes a more flexible approach—one that should empower market participants to make an informed choice about how best to interact with the market. The goal of this aspect of Amendment No. 8 is to give market participants more choice and flexibility as to how their customer and proprietary orders should be processed. While best execution concerns drove the changes to the Order Execution Algorithm in previous amendments, the NASD realizes that a "one-size-fits-all" approach may not meet every market participant's needs in all situations. While some commenters continue to advocate a single Order Execution Algorithm where strict price/

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[12] For example, Nasdaq is committed to the creation of SuperMontage fee structure that does not discriminate between Nasdaq market participants that interact with the system on an order-delivery versus an automatic execution basis. Nasdaq shall also endeavor to avoid systemic biases, including biases that result from differential fees or incentives between quotes and orders, whether they are directed, non-directed, or preferenced.

[13] Generally, a non-direct order is an order that is not designated to be sent to a particular market or ECN.

[14] We note that Commission staff and at least one commentator raised concerns about ECN fees and best execution. *See e.g.*, ITG Letter.

time priority is the rule, the NASD is initially concerned that this type of algorithm might impose a needlessly rigid structure similar to a central limit order book ("CLOB"). To be sure, the SuperMontage is not a CLOB. Additionally, a strict price/time priority (without choice) would force the public investor to pay ECN quote-access fees, thus squashing the voice of the investor and competition. The NASD believes that market participants and investors would be best served, and in fact empowered, by a market model that gives participants a choice of how their orders are to be processed. The NASD believes that choice is key.

To be more specific, the NASD proposes to give the SuperMontage participants that enter non-directed orders three options as to how their order would interact with the quotes/orders in Nasdaq. Specifically, orders could be executed on: (1) Strict price/time priority; (2) price/size/time priority; and (3) price/time priority that accounts for ECN quote-access fees. Pursuant to Amendment No. 8, the SuperMontage would be programmed to a default Order Execution Algorithm based on strict price/time priority within Nasdaq. Thus, unless a market participant overrode the default algorithm by selecting one of the alternative algorithms (with specific instructions), non-directed orders would be executed as follows: (1) Displayed quotes/order of market makers, ECNs, and non-attributable agency interest of UTP Exchanges, in time priority between such interest; (2) reserve size of market makers and ECNs in time priority between such interest; and (3) principal quotes of UTP Exchanges, in time priority between such interest.

As a second option, a market participant would be able to indicate that their orders be executed on a price/size/time basis. Under the second option, non-directed orders at a particular price level would execute against displayed quotes and then reserve size based on the size of the displayed quote, and then time if there is a tie in size. Reserve size would be executed based on the size of the related displayed quote, not the total amount held in reserve. Under this option, orders would be processed as followed: (1) Displayed quotes/orders of market makers, ECNs, and agency interest of UTP Exchanges in price/size/time priority between such interest; (2) reserve size of market makers and ECNs, in price/size/time priority of such interest, with size priority based on the size of the related displayed quote/order; and (3) principal quotes of UTP Exchanges, in price/size/time priority between such interest.

As a third choice, a market participant would be able to indicate that their order should be executed in a manner that accounts for an ECN's separate quote-access fee. This algorithm is similar to the algorithm proposed in Amendment No. 7. If a market participant selects this option, non-directed orders would be executed as follows: (1) Displayed quotes/orders of market makers, ECNs that do not charge a separate quote-access fee, and non-attributable agency interest of UTP Exchanges, as well as quotes/orders of ECNs that charges a separate quote-access fee where the ECN indicates that the price improvement offered by the quote/order *is equal to or exceeds* the quote-access fee, in time priority between such interest; (2) displayed quotes/orders of ECNs that charge a separate quote-access fee to non-subscribers; (3) reserve size of market makers and ECNs that do not charge a separate quote-access fee to non-subscribers, as well as reserve size of quotes/orders from ECNs that charge a separate quote-access fee to non-subscribers where the ECN entering such quote/order has indicated that the price improvement offered is equal to or exceeds the quote-access fee, in time priority between such interest; (4) reserve size of ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such interest; and (5) principal interest of UTP Exchanges, in time priority between such interest.

With all three algorithms, the system would make an exception for non-directed orders entered by a market maker or an ECN ("Nasdaq Quoting Market Participant") when that Nasdaq Quoting Market Participant is also at the inside market. In that case, the system will match off the non-directed order to buy/sell against a Nasdaq Quoting Market Participant's inside quote/order to sell/buy, in lieu of sending it to the participant next in the queue. Additionally, there would be an exception for "Preferenced Orders" described below.

b. *Directed Orders*. The NASD intends to retain the changes to the directed order process that were proposed in Amendment No. 7. By way of review, some commenters to the original proposal claimed that the directed order[15] process was an ineffective way to access liquidity held in a specific market maker or ECN. This was because, as originally proposed, all directed orders were required to be designated as non-liability or negotiation orders. Originally, the purpose of this requirement was to limit the potential for dual liability that results from having two (non-linked) points for delivering Liability Orders against the same market maker quote.[16] In Amendment No. 7, the NASD proposes to change the directed order process, so that ECNs and market makers can elect to receive Liability Orders against their quote through the directed order process.[17] As proposed in Amendment No. 7, a market maker or ECN could choose to receive against its quote a directed order that is also a Liability Order, or could also choose to accept only non-Liability directed orders. If a Nasdaq Quoting Market Participant or a UTP Exchange chooses to accept Liability Orders, the NASD will append an indicator to the MMID, showing that the Nasdaq Quoting Market Participant or UTP Exchange is available to receive directed Liability Orders.

c. *Preferenced Orders*. The NASD proposes to create a new class of order called a "preferenced order." The NASD is proposing two possible approaches to preferenced orders: Alternative A—Preferenced Orders with No Price Restrictions ("Alternative A"); and Alternative B—Preferenced Orders with Price Restrictions ("Alternative B"). The NASD requests that commenters express their views as to which approach they believe is most appropriate. Commenters should note that the NASD is not proposing that the SuperMontage include both Alternative A and Alternative B approaches to preference orders. Rather, the NASD proposes that the system, include one of the alternatives—either Alternative A *or* Alternative B.

1. *General Processing of Preferenced Orders Under Both Alternatives.*

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[15] Directed orders are orders that are delivered to a single market participant that is designated by the sender of the order. Directed orders are always delivered for response (accept or decline), as opposed to an automatic execution *via* Nasdaq system against the receiving market participant's quote. Directed orders are processed independent of the non-directed order queue.

[16] As stated previously, the original purpose of requiring directed orders to be non-liability orders was to eliminate the dual liability that currently exists in Nasdaq. As previously proposed, a directed order was required to be designated as: (1) All-or-None and be at least 100 shares greater than the size of the displayed quote/order of the market participant to which the order is directed; or (2) a Minimum Acceptable Quantity order ("MAQ") with an MAQ value of at least 100 shares greater than the displayed amount of the quote/order of the participant to which the order is directed. Because of these conditions, when presented to a market participant's quote a directed order would impose no obligation under the SEC and NASD's firm quote rules.

[17] Both ECNs and market makers would continue to receive liability orders *via* the non-directed order process.

Preferenced orders would be processed as follows for both Alternative A and Alternative B.

A preferenced order would be entered into the non-directed order process, and would be considered a liability order. Preferenced orders would be processed in the same "queue" as non-directed orders. Additionally, like non-directed orders, a preferenced order would be delivered as an order to a market participant that does not participate in the automatic execution functionality of the system, or as an execution against market participants that choose to accept automatic executions. The market participant entering the preferenced order must designate by a market participant identification symbol ("MMID") the quoting market participant against which the order is to be executed or delivered. When a preferenced order is next to be executed within the non-directed order queue, the SuperMontage would execute against (or deliver an order in an amount up to or equal to) both the displayed quote/order and reserve size of the quoting market participant to which the order is being preferenced ("preferenced quoting market participant"). Any unexecuted portion could be returned to the entering market participant.

2. *Alternative A—Preferenced Orders With No Price Restrictions.* Under Alternative A, there would be no price restriction for preferenced orders. That is, when a preferenced order is next to be executed within the non-directed order queue, the preferenced order would execute (or deliver for execution) at the preferenced quoting market participant's price, regardless of whether the quoting market participant is at the best bid/best offer ("BBO"). The execution would occur at the preferenced quoting market participant's quoted price. Thus, under Alternative A, preferenced orders could be executed at the BBO or outside the BBO.

The purpose of the Alternative A-type preferenced order is to maintain a function within the SuperMontage similar to that which currently exists in Nasdaq. That is, today market participants often use the SelectNet service (*i.e.*, order delivery) to preference orders to market makers or ECNs who are quoting at the BBO or away from the BBO. Market participants sometime preference away from the BBO in an attempt to "sweep the street" or access liquidity at or near the inside market. A market maker that is "working" an institutional order may also send a preferenced SelectNet message to a market maker or ECN who is quoting away from the inside. This may occur if the market maker believes the "preferenced" market participant has greater size to offer, and thus will result in a more efficient execution for the institutional customer. The NASD wishes to emphasize, however, that even if the SuperMontage ultimately provides the Alternative A type of preference order, as is the case today, market participants would be required to comply with their duty of best execution. Such a function would in no way obviate a market participant's best execution obligations.

3. *Alternative B—Preferenced orders with price restrictions.* Under Alternative B, there would be price restrictions for preferenced orders. That is, if a preferenced order was next to be executed within the non-directed order queue, the preferenced order would be executed (or delivered for execution) against the preferenced quoting market participant to which the order is being directed *only if the quoting market participant is at the BBO (up to the displayed and reserve size).* If the quoting market participant to which the order is being directed is not at the BBO when the preferenced order is next to be delivered or executed, the preferenced order will be returned to the entering participant. Thus, under this approach, preferenced orders only would be executed at the BBO, and only if the preferenced quoting market participant is quoting at the BBO at the time of order delivery (or execution).

Once again, recognizing that there may be differing views as to whether market participants should be permitted to have preferenced orders executed away from the BBO or only at the BBO price, the NASD specifically requests that commenter submit their views on the alternative approaches described above.

4. *Comparison of directed orders and preferenced orders.* The directed order and preferenced order features provide different options for order processing. The directed order process will operate much like SelectNet operates in the current environment. Directed orders will be delivered to a single market participant that is designated by MMID by the sender of the order. Directed orders are always delivered for response (*e.g.*, accept or decline), as opposed to an automatic execution *via* the Nasdaq system against the receiving market participant's quote. Directed orders will not decrement a quote. As noted above, preferenced orders would function almost exactly like non-directed orders, in that they would be processed in time sequence, would be delivered to a quote/order or would automatically execute against a quote/order of a market participant, and would decrement the size of a quote/order. Unlike "regular-way" non-directed orders, however, preferenced orders would not be processed pursuant to one of the three Order Execution Algorithms described above.

d. *Increased Dissemination of Quotation Information.* In order to bring more transparency to the market and give market participants greater information in making order-routing decisions, the NASD has determined to expand its dissemination of quotation information to the investing public. To accomplish this goal, the NASD would create and make available a new vendor data feed called "NQDS Prime." NQDS Prime would provide, on a real-time basis, all individual attributable quote/order information at the three best price levels displayed in the SuperMontage (*i.e.*, Order Display Facility). By using NQDS Prime, vendors will be able to integrate this expanded quote and order information with SuperMontage data and distribute it in a consolidated format that would eliminate any purported informational advantage accruing to the SuperMontage system from the retention of this information.[18] In the future, should the NASD determine to display more than three dynamically displayed price levels in the SuperMontage, an equal expansion of price level information through NQDS Prime would be provided. With this additional information, market participants would have the choice of using Nasdaq's facility to access liquidity or would be able to use non-Nasdaq systems (such as proprietary links) to access liquidity where it resides. Again, the goal is to give market participants and investors choice and the tools to make efficient and informed trading decisions.

The NASD proposes to make this information available through a dedicated data feed. To recoup the technology costs associated with the provision of expanded individual attributable quote and order information, the NASD would assess a separate, additional vendor data fee for quote and order information away from the inside. (The fee for NQDS Prime data feed would be filed separately with the Commission for public comment.) On an ongoing basis, the NASD would evaluate the demand for away-from-the-inside market data and reserve the right (after consultation with the Commission) to cease the distribution of such information if such distribution does not generate sufficient revenue to cover the cost of assembling and distributing the NQDS Prime product. If the costs of NQDS Prime are covered, the NASD commits to continue to provide the product regardless of the total number of subscribers.

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[18] Nasdaq has determined to take a similar approach to SuperMontage reserve size. SuperMontage's rules regarding reserve size apply equally to market makers and ECNs and the system will execute reserve share amounts based on these objective rules. Nasdaq will not use information about the source and scope of a reserve size quote to influence reserve size execution priority within SuperMontage system, or provide optimized reserve size executions based on information residing solely in SuperMontage.

e. *Identity of Parties Entering Orders.* The NASD is committed to assisting market participants in their efforts to manage operational and credit risk that they perceive as potentially arising from their participation in the SuperMontage. In that vein, the NASD wishes to clarify that the SuperMontage would preserve the ability of recipients of orders to determine the identity of the sender of such orders. The NASD would affix the MMID of the sender, to all delivered directed orders (both liability and non-liability), non-directed orders, and preferenced orders. Identification of these orders would allow market participants to decline to trade with participants that are genuinely perceived to pose general credit risks (consistent with SEC guidance and interpretation of its firm quote rule and this issue).

As with Nasdaq's current automatic execution system (SOES), the SuperMontage would generate an immediate execution report, for preferenced or non-directed Orders, that identifies the parties to the trade. Such a report would be generated if a non-directed order was executed against an attributable order or a non-attributable order (*i.e.*, orders that are aggregated under the SIZE MMID).

f. *Preservation of Time Priority for Size Increases to Quotes/Orders.* The NASD also proposes to modify the SuperMontage to protect the time priority of a market participant that changes its displayed trading interest by increasing its displayed size. As currently proposed, if a market participant chooses to give Nasdaq a quote instead of order detail, the market participant would lose time priority (*i.e.*, a new time stamp would be established) when the market participant adds size to its quote. (A decrease in size would not result in change in time priority.) For example, assume a Nasdaq Quoting Market Participant is displaying 5,000 shares at the best price and is first in time as between two other market participants at the same price. If the Nasdaq Quoting Market Participant subsequently receives a second customer limit order for an additional 2,000 shares, and updates its quote to reflect the additional shares, the participant would lose its original time priority. Such an outcome has the unintended consequence of disadvantaging market participants that update their quotes to display additional size to the market. This outcome is inconsistent with one of the important goals of the SuperMontage—encouraging market participants to display greater sized quotes.

The NASD proposes to amend the SuperMontage to ensure that a market participant will not lose time priority if it updates its displayed trading interest to show greater size. This change in priority rules would apply equally to market makers and ECNs. As proposed, quote entries would receive a time stamp from the system which would be used in determining their ranking in the execution algorithm relative to other quotes/orders at that price level. If a size increment is received for an existing quote at a given price, the system will maintain the original time stamp for the original quantity and separately assign a separate timestamp for the augmentation, thus protecting the time priority of the originally-entered quantity. Additional size increments will be treated similarly. Thus a single quote at a single price level could be tracked in individually-prioritized components corresponding to the original quantity entered at that price plus size increments sent separately. Subsequent decreases in size will be deducted from individually-stamped components in reverse time priority (*i.e.*, the last entered size component will be exhausted first). Once a market participant's displayed size is diminished to zero, however, the market participant no longer retains time priority, even though it may be using the Quote Refresh function to automatically refresh its displayed size.

g. *Order Delivery and Responsiveness Time Frames.* Some market participants have objected to the proposal to retrieve a delivered non-directed order and zero out an ECN's quote if an ECN does not respond (in any manner) within 7 seconds to orders delivered to them by the system. Some commenters asserted that this standard was too short. They also claimed that this approach did not distinguish between system performances of Nasdaq versus an ECN's internal systems, and thus could result in an ECN's quote being improperly zeroed out for system issues outside of the ECN's control.

In response to these concerns, the NASD proposes to alter its approach to monitoring ECN responsiveness. First, the NASD will amend its SuperMontage rules to establish a 30 second (as opposed to seven seconds) maximum time period for an ECN to respond to any given order. That is, if an ECN fails to respond within 30 seconds of the time a particular order is dispatched from the Nasdaq system to the ECN, Nasdaq will "zero out" the affected side of the unresponsive ECN's quote until the ECN transmits a revised attributable quote/order.

Second, the NASD proposes to establish a shorter uniform turn-around time for a maximum of five seconds. The purpose of this change is to establish a general standard (as opposed to an order-by-order standard) that measures whether an ECN is providing an automated response in a time period that ensures market quality. Thus, the NASD proposes to monitor an ECN's order turnaround time based on information received from the ECN's Nasdaq Service Delivery Platform ("SDP"). (Each subscriber to the Nasdaq Workstation II has an SDP that connects to the Nasdaq Enterprise Wide Network II via a T1 line. SDPs exist at the very outer edge of Nasdaq's network and link directly to the systems of ECNs and other market participants. Orders cannot reach the SDP until they have traveled the full length of Nasdaq's network and are also the point at which an ECN's order response first returns to the Nasdaq system.) Nasdaq will use SDPs linked to ECNs to assign a time-stamp for when an order is delivered to the ECN. Nasdaq will also capture the time-stamp via the SDP of when the ECN sends a response (*e.g.*, accept, decline, or partially execute) to the delivered order. Nasdaq will then calculate and monitor, on a real-time basis, the difference between the two time-stamps and determine whether the ECN is meeting the 5-second maximum order-response standard. On an ongoing basis, Nasdaq will monitor ECN response times and provide individual ECNs their own order responsiveness time statistics. (This information will not be made public.)

In the event that an ECN regularly fails to meet the five-second response time over a period of orders, Nasdaq will place that ECN's quote in a closed-quote state. The NASD believes that this measure is necessary in order to maintain a fair and orderly market and to ensure prompt, reliable, and non-discriminatory access to the best prices in its market. The closed-quote state will be lifted when the ECN can certify that it can meet the five-second response time requirement.

By measuring SDP time, this approach measures an ECN's responsiveness based on the performance of systems it controls, and in effect factors out Nasdaq system time. The NASD believes that this new approach to measuring and evaluating ECN performance responds to ECN desires that their systems be judged individually and that their quotes not be inappropriately or prematurely precluded from receiving orders through the SuperMontage. At the same time, the proposal provides Nasdaq with a uniform, electronic method to ensure that investor orders are not repeatedly sent to market participants that cannot timely process them.

h. *Unexecuted Marketable Limit Order Processing.* Under the current SuperMontage Proposal, marketable limit orders entered into the system that become unmarketable prior to execution are held in queue within the SuperMontage for a period of 90 seconds. The purpose of this feature of the proposal was to provide an additional opportunity for an execution to take place should another market participant subsequently enter a quote that would allow the limit order to execute. In response to concerns about the uncertainty that the retention of such orders may engender, the NASD proposes to modify the SuperMontage so that all marketable limit orders entered by order-entry firms shall be designated as "immediate or cancel" orders. Accordingly, if a marketable limit order becomes non-marketable after entry into the system, Nasdaq will return the order (or the unexecuted portion thereof) to the entering party.

i. *UTP Exchanges.* The NASD also proposes certain clarifying amendments to the proposal regarding UTP Exchanges. At the outset, the rules specifically state that participation in the SuperMontage is completely voluntary. The proposed rules relating to UTP Exchanges would only apply if the UTP Exchange agrees to participate in the system. In addition, the NASD has amended the definition of agency orders. As proposed in Amendment No. 4, a UTP Exchange that chooses to participate in the system could provide Nasdaq with agency orders at multiple price levels. Such orders would receive equal priority in our price/time execution algorithms with orders of market makers and ECNs that do not charge a quote access fee. In Amendment No. 4, the NASD defined "agency order" as an order that is for the benefit of the account of a natural person and that is not for the benefit of a broker and/or dealer. The intent of the latter provision was to distinguish orders that are for the account of a broker/dealer that is registered with or designated by their UTP Exchange as a specialist, market maker or dealer in the underlying security. The NASD understands that certain market centers receive orders that are for the account of institutions or broker/dealers that are not registered with the UTP Exchange as a specialist, market maker, or dealer in the security. The NASD believes these orders should also be included within the meaning of agency orders, for purposes of the SuperMontage rules. Accordingly, the NASD proposes to define an agency order as "an order that is not for the benefit of a broker/dealer that is, with respect to the UTP Exchange, a registered market maker, dealer or specialist in the security at issue."

2. Statutory Basis

The NASD believes that the proposed amendments are consistent with the provisions of sections 15A(b)(6) of the Act,[19] as well as sections 11A(a)(1)(C) and 11A(a)(1)(D) of the Act.[20] Section 15A(b)(6) of the Act[21] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1)(C) of the Act states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and order markets to assure (1) economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.[22] Section 11A(a)(1)(D) states that Congress finds that the linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.[23]

The NASD believes that the proposed rule changes to the Order Execution Algorithm, the addition of new order types (*i.e.*, preferenced orders and directed orders that impose firm-quote liability), and the NQDS Prime feed are consistent with section 15A(b)(6),[24] as they promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. These added features would give market participants greater flexibility in determining how their orders will be executed. The additional information provided by NQDS Prime would give market participants greater information about where liquidity is concentrated, and thus is consistent with section 11A,[25] as well as section 15A(b)(6).[26] NQDS Prime, combined with the changes to the order execution algorithm and the expansion of order types and preferencing capabilities, will give market participants greater flexibility in making order-routing decisions. In turn, market participants should be better able to manage their customer and proprietary orders, which is consistent with sections 11A(a)(1)(C) and 11A(a)(1)(D).[27]

The NASD also believes that the changes regarding order-delivery response times for ECNs, and unexecuted marketable limit orders, and the identity of sent (executed) orders, promote just and equitable principles of trade, facilitate transactions in securities, perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Thus, the NASD believes these parts of the proposal are consistent with section 15(b)(6) of the Act.[28]

The NASD believes that the proposed amendments represent a pro-competitive development that offers increased price competition, flexibility, and choice to investors and to market participants that will spur further competition and innovation among market centers and market participants. The NASD believes that the SuperMontage enhances competition by creating a central forum in which buying and selling interest from a broad array of market centers and market participants will be given the opportunity to interact. The resulting enhancement in price discovery and competition, together with the increase in transparency, are competitive goals espoused by section 11A(a)(1)(C) of the Act.[29] In addition, by bringing together quotes and orders from diverse sources, the SuperMontage furthers the development of the national market system and is consistent with section 11A(a)(1)(D) of the Act.[30]

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[19] 15 U.S.C. 78*o*–3(b)(6).

[20] 15 U.S.C. 78k–1(a)(1)(C), (a)(1)(D).

[21] 15 U.S.C. 78*o*–3(b)(6).

[22] 15 U.S.C. 78k–1(a)(1)(C).

[23] 15 U.S.C. 78k–1(a)(1)(D).

[24] 15 U.S.C. 78*o*–3(b)(6).

[25] 15 U.S.C. 78k–1.

[26] 15 U.S.C. 78*o*–3(b)(6).

[27] 15 U.S.C. 78k–1(a)(1)(C) and (a)(1)(D).

[28] 15 U.S.C. 78*o*–3(b)(6).

The NASD also believes that the SuperMontage should promote competition by increasing the investor's choices on how to interact with the market. These choices occur at several levels: from whether to submit preferenced, directed, or non-directed orders, to choosing any of three algorithms for the execution of non-directed orders. The ability to choose between the alternative algorithms for automatic execution of non-directed orders should allow investors and market participants to elect how to interact with Nasdaq and participating market centers based on criteria that is important to the system's order-entry participant. Giving the investor the choice of selecting his or her criteria for interaction with the market represents not only a significant means of investor protection, but also is consistent with the goal of section 11A(a)(1)(C)(ii) of the Act to ensure fair competition.[31]

Choice and flexibility in the SuperMontage also characterize Nasdaq's interaction with market participants. Although participation in the SuperMontage should benefit a market participant in various ways such as enabling market participants to satisfy their obligations under Exchange Act Rules 11Ac1–1 and 11Ac1–4[32] ("Order Handling Rules") in a simple and efficient manner, participation in the SuperMontage is entirely voluntary. A market participant such as an ECN may elect not to participate at all, and could choose to satisfy its obligations under the Order Handling Rules through a number of other means, including by sending its best bid and offer to other market centers, such as the Chicago Stock Exchange or the Cincinnati Stock Exchange, and in the future, the Pacific Exchange as well as others. Indeed, it is completely voluntary as to whether a UTP Exchange wishes to participate in the SuperMontage.

If a market maker or ECN elects to participate in the SuperMontage, it will continue to have the option of limiting its participation to only satisfy its duties under the Order Handling Rules. Thus, for example, an ECN or market maker may elect only to send its best bid and offer to the SuperMontage, and withhold the remainder of its order book from display on the SuperMontage.

The NASD believes that the voluntariness of participation in the SuperMontage means that competing market centers and market participants will retain the ability to develop alternative means of establishing links between market centers. Thus, the market for creating a "market for market centers," like the SuperMontage, remains fully contestable. Consequently, the SuperMontage not only preserves, but furthers the incentives for Nasdaq's competitors to undertake technological and structural innovation.

Some commenters have argued that the SuperMontage discriminates unfairly against UTP Exchanges because the algorithms governing the execution of non-directed orders place principal quotes from UTP Exchanges at the end of the execution priority even if they enjoy time priority compared to similarly priced quotes from market makers and ECNs. The NASD believes that this ordering is consistent with the requirements of the Act and with the Commission's past approach to this issue. First, the non-attributable agency interest of UTP Exchanges receives the same priority enjoyed in all three algorithms by similarly priced quotes from market makers and ECNs. Thus, only principal quotes from UTP Exchanges are placed at the end of the execution queue.

Second, the NASD believes that the SuperMontage's treatment of principal interest from UTP Exchanges is consistent with the fair competition requirement of Section 11A(1)(a)(C)(ii) of the Act.[33] In this regard, the NASD believes that it would be inappropriate and inconsistent with the fair competition mandate of the Act for Nasdaq to provide UTP Exchange specialists with the ability to enjoy parity with Nasdaq Quoting Market Participants in the SuperMontage when UTP Exchanges generally require a sweep of their own floor before orders may access the quotes of a competing market center. Even so, the NASD has stated that it is willing to provide automated executions against its market (*i.e.*, access that is equivalent to that which is offered to NASD members) if the relevant exchange is willing to provide automated execution against its quotes. In the same vein, if an exchange is willing to provide order delivery to its quotes, the NASD will provide order delivery against Nasdaq quotes The NASD believes its willingness to provide such equivalent and reciprocal access is unprecedented, and should foster competition and greater market efficiency, in furtherance of the goals of the Act.

Some commenters have also questioned the SuperMontage's pro-competitiveness by suggesting that its Order Execution Algorithm for non-directed orders discriminates against ECNs that charge non-subscribers fees for accessing their quotes. The NASD maintains that the previously proposed algorithm was not unfairly discriminatory. Nevertheless, as stated above, consistent with the NASD's philosophy of, and commitment to, maintaining and promoting a fair and open structure for all market participants, and consistent with the NASD's efforts to increase investor choice, the proposed amendments offer the pro-competitive solution of offering several different algorithms for the investor to choose from. As described above, one of these algorithms places quotes from access fee-charging ECNs on time priority with quotes from market participants, non-fee-charging ECNs, and the non-attributable interest of UTP Exchanges. Thus, investors now have the opportunity to interact with the SuperMontage based on whether ECN access fees are significant to them. The NASD believes that the availability of order execution alternatives is an important means of furthering both the Act's mandate of investor protection, fair competition, and enabling the achievement of best execution, and of its requirement of assuring fair competition.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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[29] 15 U.S.C. 78k–1(a)(1)(C).

[30] 15 U.S.C. 78k–1(a)(1)(D).

[31] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[32] *See* 17 CFR 240.11Ac1–1 and 240.11Ac1–4.

[33] 15 U.S.C. 78k–1(a)(1)(C)(ii).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Commission Discussion

The Commission notes that, by separate letter, the NASD has agreed to provide an alternative quotation and transaction reporting facility for NASD members that effect transactions in the over-the-counter market but that choose not to participate in the SuperMontage.[34] Specifically, the NASD has committed to provide a quotation reporting facility that meets the Association's statutory obligations under the Act, and to operate a transaction reporting facility pursuant to an effective transaction reporting plan filed in accordance with the Exchange Act Rule 11Aa3–1.[35] The facility would be designed to allow NASD members to meet their obligations under the SEC's Order Handling Rules and Regulation ATS as well as any transaction reporting obligations imposed by the NASD rules. This facility would provide an electronic linkage to the Nasdaq marketplace and would be operational contemporaneously with SuperMontage.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 8, including whether Amendment No. 8 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to Amendment No. 8 to File No. NASD–99–53 and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29020 Filed 11–14–00; 8:45 am]

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[34] Letter from Frank G. Zarb, Chairman and Chief Executive Officer, NASD to Arthur Levitt, Chairman, Commission, dated October 30, 2000.

[35] 17 CFR 11Aa3–1.

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43526 File No. SR–PCX–00–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to Equity Housekeeping Amendments

November 7, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 24, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange"), on behalf of its wholly-owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On November 2, 2000, the PCX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make various housekeeping and technical changes to certain previously approved PCX rules by making minor conforming changes to the existing language in order to incorporate those changes into the PCXE rules. The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make the following changes below to incorporate previously approved changes to the rules of the PCX into the PCXE rules.[4] Specifically, the Exchange is proposing to apply the PCX rule language to ETP Holders, Equity ASAP Holders, and ETP Firms by incorporating such rule language into the PCXE rules.[5]

a. *PCXE Rule 2—Equity Trading Permits. Mandatory Decimal Price Testing*—The Exchange proposes to add PCXE Rule 2.25, based upon PCX Rule 1.15(b).[6] Minor conforming changes have been made to existing language of the PCX Rule in order to incorporate it into the PCXE rules.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 1, 2000 ("Amendment No. 1"). In Amendment No. 1, the PCX made a correction to Rule 6.3 by adding the word "must" which had inadvertently been left out. The PCX also clarified that the removal of the phrase "or other appropriately designated forms" from Rule 6.3 was not approved by Securities Exchange Act Release No. 41083 (February 22, 1999), 64 FR 10052 (March 1, 1999) (SR–PCX–98–52). The phrase is being removed because Equity Trading Permit ("ETP") Holders, Equity ASAP Holders, and ETF Firms are only required to submit SEC Form X–17A–5.

[4] The rules of the PCX that governed the equities trading business of the Exchange were amended and renumbered when the PCXE was created. *See* Securities Exchange Act Release No. 42759 (May 5, 2000), 65 FR 30654 (May 12, 2000). Thus, the PCX rules that govern the equities business are now referred to as PCXE rules.

[5] Language was changed mainly to refer to "ETP Holders, Equity ASAP Holders, and ETP Firms" (in the PCXE rules) instead of "members or member organizations" (in the PCX rules), and to refer to the "Corporation" (in the PCXE rules) instead of "Exchange" (in the PCX rules).

[6] *See* Securities Exchange Act Release No. 42998 (June 30, 2000), 65 FR 42412 (July 10, 2000).

b. *PCXE Rule 7—Equities Trading—Off-Board Trading Restrictions. Cabinet Dealings*—The Exchange proposes to amend PCXE Rule 7.20(a), formerly PCX Rule 5.5(b), to eliminate the sentence "Securities placed in the CABINET System, until removed, may be traded off the Corporation without compliance with Rule 7.49(b)." The SEC previously approved the removal of this sentence from PCX Rule 5.5(b).[7] The Exchange proposes to eliminate the sentence in order reflect this change in PCXE Rule 7.20(a). *Over the Counter Execution of Equity Securities Transactions*—The Exchange proposes to eliminate PCXE Rule 7.49(a)–(e), formerly PCX Rules 5.43, 5.44, 5.46, 5.48, and 5.49.[8]

c. *PCXE Rule 7—Equity Trading—Trading Differentials. Trading Differentials*—The Exchange proposes to amend PCXE Rule 7.10(a), formerly PCX Rule 5.3(b), by adding Commentary .04.[9] The Exchange also proposes to add the words "Nasdaq-100 Shares" to Commentary .03.[10]

PCX Equities, Inc. Application of the OptiMark System—The Exchange proposes to amend PCXE Rule 7.71(a), formerly PCX Rule 15.1, by adding the phrase "provided, however, that Orders may be generated from central processing of the profiles designated for the midpoint pricing service by the OptiMark System in conformance with the trading differential in Rule 7.10(a), Commentary .04."[11]

d. *PCXE Rule 9—Conducting Business with the Public. Advertisements, Market Letters and Sales Literature Relating to Options*—The Exchange proposes to amend the language in paragraphs (E)–(G) of Commentary .03 to PCXE Rule 9.28(e), adapted from PCX Rule 9.28.[12]

3. *PCXE Rule 5—Listings. Financial Reports and Related Notices (EDGAR Rule Filing)*—The Exchange proposes to amend PCXE Rule 5.3(i)(1)(i), formerly PCX Rule 3.3(t)(1)(i), by adding Commentary .04.[13]

f. *PCXE Rule 7—Equity Trading—Intermarket Trading System Plan. Definitions*—The Exchange proposes to amend PCXE Rule 7.66, formerly PCX Rule 5.20, by adding a provision that seeks to define the term "PCX Coordinating Specialist," and by adding Commentary .04.[14]

g. *PCXE Rule 8—Trading of Certain Equity Derivatives. Nasdaq-100 Index*—The Exchange proposes to add PCXE Rule 8.100(g) and Commentary .03, formerly PCX Rule 8.300(g) and Commentary .03, relating to the trading of Nasdaq-100 Index shares.[15]

h. *Equity Floor Procedure Advice 2–C. Reporting of Transactions*—The Exchange proposes to amend Equity Floor Procedure Advice 2–C by removing one of the exceptions provided for reporting of transactions from PCXE Rule 7.37(a).[16]

i. *PCXE Rule 6—Business Conduct. Prevention of the Misuse of Material, Nonpublic Information*—The Exchange proposes to amend PCXE Rule 6.3, adapted from PCX Rule 2.6(e), to add the phrase "for whom the Corporation is the Designated Examining Authority ("DEA")," to add Commentary .02, and to eliminate Commentary .04.[17] The Exchange also proposes to remove certain unnecessary language.[18]

j. *PCXE Rule 5—Listing. General Provisions and Definitions*—The Exchange proposes to add PCXE Rule 5.1(b)(15), formerly PCX Rule 3.1(b)(15).[19]

Investment Company Units—The Exchange is proposing to add PCXE Rule 5.2(j)(3), formerly PCX Rule 3.2(k). The Exchange is also proposing to add PCXE Rules 5.5(g)(1) and (2), formerly Rules 3.5(g) and (h). Finally, the Exchange proposes to add Commentaries .02 and .03 to PCXE Rule 7.28(a)(1), formerly PCX Rule 5.33(a).[20]

k. *PCXE Rule 6—Business Conduct. Communications to and on the Trading Facilities*—The Exchange proposes to add PCXE Rule 6.17, adapted from PCX Rule 4.23.[21]

l. *PCXE Rule 4—Capital Requirements and Financial Reports, Margins. Exceptions to Margins*—The Exchange proposes to amend PCXE Rule 4.15(c)(5), adapted from PCX Rule 2.15–2.16, by replacing the phrase "margin required by the other provisions of this Rule" with the phrase "haircut requirements of SEC Rule 15c3–1." Also the Exchange proposes to add Rule 4.15(c)(6).[22]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b)[23] of the Act, in general, and section 6(b)(5),[24] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)[25] of the Act and subparagraph (f)(3) of Rule 19b–4[26] thereunder because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–35 and should be submitted by December 6, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

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[7] *See* Securities Exchange Act Release No. 42890 (June 1, 2000), 65 FR 36877 (June 12, 2000).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 42822 (May 24, 2000), 65 FR 35150 (June 1, 2000).

[10] *See* Securities Exchange Act Release No. 41712 (August 5, 1999), 64 FR 44072 (August 12, 1999).

[11] *See supra* note 6.

[12] *See* Securities Exchange Act Release No. 42577 (March 27, 2000), 65 FR 17329 (March 31, 2000).

[13] *See* Securities Exchange Act Release No. 42431 (February 16, 2000), 65 FR 9026 (February 23, 2000).

[14] *See* Securities Exchange Act Release No. 42708 (April 20, 2000), 65 FR 25780 (May 3, 2000).

[15] *See supra* note 7.

[16] *See* Securities Exchange Act Release No. 41083 (February 22, 1999), 64 FR 10052 (March 1, 1999).

[17] *See* Securities Exchange Act Release No. 40863 (December 30, 1998), 64 FR 1057 (January 7, 1999).

[18] *See* Amendment No. 1, *supra* note 3.

[19] *See* Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999).

[20] *See id.*

[21] *See* Securities Exchange Act Release No. 40852 (December 28, 1998), 64 FR 1058 (January 7, 1999).

[22] *See* Securities Exchange Act Release No. 42453 (February 24, 2000), 65 FR 11620 (March 3, 2000).

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(3).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43518; File No. SR–PCX–00–32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Pacific Exchange, Inc. To Increase the Maximum Size of Orders Eligible for Automatic Execution

November 3, 2000.

Pursuant to Section 19(b)(1) of he Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to increase the maximum size of equity and index option contracts that may be designated for automatic execution to seventy-five contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Automatic Execution System ("Auto-Ex") automatically executes public customer market and marketable limit orders within certain size parameters. PCX Rule 6.87(b) currently provides that the Options Floor Trading Committee ("OFTC") shall determine the size of orders that are eligible to be executed through Auto-Ex. The rule further provides that although the OFTC may change the order size parameter on an issue-by-issue basis, the maximum order size for execution through Auto-Ex is fifty contracts for both equity and index options.[3] The Exchange is now proposing to increase the maximum size of option orders that are eligible for automatic execution, subject to designation by the OFTC on an issue-by-issue basis, to seventy-five contracts.[4]

The Exchange believes that these changes will help it to meet the changing needs of customers in the marketplace and give the Exchange better means of competing with other options exchanges for order flow, particularly in multiply traded issues. The Exchange also believes that increasing to seventy-five the number of option contracts executable through Auto-Ex will enable the Exchange to more effectively and efficiently manage increased order flow in actively traded option issues consistent with its obligations under the Act. In addition, the Exchange indicates that this increase should bring the speed and efficiency of automated execution to a greater number of retail orders. The PCX further believes that it should have flexibility to complete for order flow with other exchanges without being limited to responding to increases in automatic execution eligibility levels initiated by those other exchanges.[5]

The Exchange represents that it believes that the increase will not expose Auto-Ex to risk of failure or operational capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from implementation of this proposal.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[6] of the Act, in general, and furthers the objectives of section 6(b)(5),[7] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

The PCX requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2)[8] of the Act.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41823 (September 1, 1999), 64 FR 49265 (September 10, 1999) (approving PCX proposal to increase the maximum size of index and equity option orders that may be automatically executed, from twenty to fifty contracts).

[4] The Exchange notes that, pursuant to PCX Rule 6.86(g), if the OFTC determines, pursuant to PCX Rule 6.87(b), that the size of orders in an issue that are eligible to be executed on Auto-Ex will be greater than twenty contracts, then the trading crowd will be required to provide a market depth for manual (non-electronic) orders in that greater amount, as provided in PCX Rule 6.86(a).

[5] *See* PCX Rule 6.87(c) (permitting the PCX to match the maximum size of orders eligible for automatic execution that are permitted on another options exchange in multiply traded issues).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–32 and should be submitted December 6, 2000.

V. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act.[9] Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national securities system; and protect investors and the public interest.[10]

Pursuant to section 19(b)(2)[11] of the Act, the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register.**[12] The Commission believes that granting accelerated approval will provide the PCX with flexibility to compete for order flow with other exchanges without being limited to responding to increases in automatic execution eligibility levels initiated by those other exchanges.[13]

While increasing the maximum order size limit from fifty contracts to seventy-five contracts for Auto-Ex eligibility by itself does not raise concerns under the Act, the Commission believes that this increase raises collateral issues that the PCX will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for the Exchange's automatic execution system. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed onto the Auto-Ex system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly,it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through Auto-Ex, the greater the risk market makers must be willing to accept. The Commission does not believe that, because the Exchange's OFTC determines to approve orders as large as seventy-five contracts as eligible for Auto-Ex, the OFTC or any other PCX committee or officials should disengage Auto-Ex more frequently by, for example, declaring a "fast" market. Disengaging Auto-Ex can negatively affect investors by making it slower and less efficient to executive their option orders. It is the Commission's view that the Exchange, when increasing the maximum size of orders that can be sent through Auto-Ex, should not disadvantage all customers—the vast majority of which enter orders for less than seventy-five contracts—by making the Auto-Ex system less reliable.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed change, as amended, (SR–PCX–00–32) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29183 Filed 11–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43519; File No. SR–PCX–00–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. To Increase the Maximum Auto-Ex Order Size to 100 Contracts

November 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to increase the maximum size of equity and index option contracts that may be designated for automatic execution to 100 contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B,

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[8] 15 U.S.C. 78(b)(2).

[9] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] The Commission notes that it is concurrently approving similar proposals filed by the American Stock Exchange, LLP ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), and the Philadelphia Stock Exchange, Inc. ("Phlx"). *See* Securities Exchange Act Release Nos. 43516 (November 3, 2000) (SR–Amex–99–45); 43517 (November 3, 2000) (SR–CBOE–99–51); and 41515 (November 3, 2000) (SR–Phlx–99–32).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's automatic execution system ("Auto-Ex") automatically executes public customer market and marketable limit orders within certain size parameters. PCX Rule 6.87(b) currently provides that the Options Floor Trading Committee ("OFTC") shall determine the size of orders that are eligible to be executed through Auto-Ex. The rule further provides that although the OFTC may change the order size parameter on an issue-by-issue basis, the maximum order size for execution through Auto-Ex is fifty contracts for both equity and index options.[3] The Exchange is now proposing to increase the maximum size of option orders that are eligible for automatic execution, subject to designation by the OFTC on an issue-by-issue basis, to 100 contracts.[4]

The Exchange believes that these changes will help it to meet the changing needs of customers in the marketplace and give the Exchange better means of competing with other options exchanges for order flow, particularly in multiply traded issues. The Exchange also believes that increasing to 100 the number of option contracts executable through the Exchange's Auto-Ex order execution system will enable the Exchange to more effectively and efficiently manage increased order flow in actively traded option issues consistent with its obligations under the Act. In addition, this increase should bring the speed and efficiency of automated execution to a greater number of retail orders. The PCX further believes that it should have flexibility to compete for order flow with other exchanges without being limited to responding to increases in automatic execution eligibility levels initiated by those other exchanges.[5]

The Exchange represents that it believes that the increase will not expose the Exchange's Auto-Ex system to risk of failure or operational breakdown. The Exchange represents that it further believes that its systems capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from implementation of this proposal

2. Statutory Basis

The Exchange believes that this proposal is consistent with section 6(b)[6] of the Act, in general, and furthers the objectives of section 6(b)(5),[7] in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX does not believe that the proposed rule change will impose any burden on Competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–18 and should be submitted by December 6, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29185 Filed 11–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43524; File No. SR–Phlx–00–74]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Regarding Exchange Liability in Connection with the Administration of its Proprietary Indices

November 6, 2000.

I. Introduction

On August 4, 2000, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to amend Phlx Rule 1102A, Limitation of Exchange Liability, to add to the limitation of the Exchange's liability, in connection with its administration of Phlx proprietary indices, negligent acts or omission. Notice of the proposed rule change appeared in the **Federal Register** on September 22, 2000.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

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[3] *See* Securities Exchange Act Release No. 41823 (September 1, 1999), 64 FR 49265 (September 10, 1999) (approving PCX proposal to increse the maximum size of index and equity option orders that may be automatically executed, from twenty to fifty contracts). Concurrent with its issuance of this notice, the Commission approved, on an accelerated basis, a PCX proposal to increase the maximum order size for Auto-Ex eligibility from fifty contracts to seventy-five contracts. *See* Securities Exchange Act Release No. 43518 (November 3, 2000).

[4] The Exchange notes that, pursuant to PCX Rule 6.86(g), if the OFTC determines, pursuant to PCX Rule 6.87(b), that the size of orders in an issue that are eligible to be executed on Auto-Ex will be greater than twenty contracts, then the trading crowd will be required to provide a market depth for manual (non-electronic) orders in that greater amount, as provided in PCX Rule 6.86(a).

[5] *See* PCX Rule 6.87(c) (permitting the PCX to match the maximum size of orders eligible for automatic execution that are permitted on another options exchange in multiply traded issues).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-1.

II. Description of the Proposal

The Phlx currently lists and trades options on several proprietary indices.[4] Phlx Rule 1102A limits the Exchange's liability in connection with the administration of its proprietary indices. The Exchange proposes to amend Phlx Rule 1102A to disclaim liability for negligent conduct. The Exchange represents that there is a great deal work involved in the daily calculation and dissemination of these indices. In addition, the Exchange represents that although much of such work is automated, manual input is still required and the potential for human error exists which exposes the Exchange to a risk of liability. Potential human errors include inputting a symbol or index value incorrectly or missing a corporate action that has an effect on the index.

Phlx Rule 1102A disclaims Exchange liability for damages caused by errors, omissions or delays in the calculation or dissemination of any index value resulting from any conduct beyond the reasonable control of the Exchange, including an act of God, a power failure, or any error, omission or delay in the reported price of the underlying security. The Exchange believes that these disclaimer provisions are arguably ambigous with respect to whether the Exchange remains potentially liable for damages caused by any human error or omission by an Exchange employee in connection with the performance of the Exchange's index responsibilities. The Exchange believes, however, that the proposed amendment to Phlox Rule 1102 would make clear that the Exchange disclaims liability for negligent conduct, in addition to conduct beyond the Exchange's reasonable control, currently covered by Phlx Rule 1102A. The Exchange represents that other exchanges, including the American Stock Exchange "(Amex"),[5] disclaim liability for negligent conduct in connection with their index operations. Finally, the Exchange acknowledges that Phlx Rule 1102A cannot be relied upon by the Exchange to limit liability to non-members or for any intentional or negligent violation of federal securities laws.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act[6] that rules of an exchange be designed to facilitate transactions in securities.[7]

The Commission notes that the proposed rule change is to the Amex's rule.[8] Further, the Commission notes that the proposed change cannot be used to limit the Phlx's liability to non-members for any intentional or negligent violations of the federal securities laws. The Commission believes that the prosed change should serve to facilitate transactions in securities. In this regard, the Commission believes that the proposal will encourage the Exchange continue to make options in its proprietary indices available to investors.

IV. Conclusion

It is therefore ordered, pursuant to section 19(2) of the Act,[9] that the proposed rule change (SR–Phlx–00–74) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29182 Filed 11–14–00; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 43292 (September 14, 2000), 64 FR 54719.

[4] Examples of the Exchange's proprietary indices Computer Box Maker Index (BMX), Phlx Oil Service Index (OSX), Gold-Sliver Index (XAU), National Over-the-Counter Index (XOC), Phlx Forest and Paper Products Sector Index (FPP), Over-the-Counter Prime Index (OTX), Utility Index (UTY), Semiconductor Index (SOX), TheStreet.com Internet Sector Index (DOT) and Wireless Telecom Sector Index (YLS).

[5] *See* Amex Rule 902C.

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] *See supra* note 5.

[9] 15 U.S.C. 78s(b)2.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43515; File No. SR–Phlx–99–32]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Maximum Size of Option Orders That May Be Executed Automatically

November 3, 2000.

I. Introduction

On August 23, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending its rules regarding the automatic execution of options orders to increase the maximum number of contracts eligible to be executed on the Exchange's automatic execution system ("AUTO–X") from fifty contracts to seventy-five contracts. On September 27, 1999 and January 23, 2000, respectively, the Phlx submitted Amendments Nos. 1 and 2 to the proposed rule change.[3] Notice of the proposal was published in the **Federal Register** on June 21, 2000.[4] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The AUTO–X feature of the Exchange's Automated Options Market System ("AUTOM") automatically executes public customer market and marketable limit orders in options at the Exchange's displayed bid or offer. Generally, public customer market and marketable limit orders of up to fifty contacts may be automatically executed through AUTO–X.[5] Orders are routed through AUTOM from member firms directly to the appropriate specialist on the trading floor. Orders routed through AUTOM that are eligible for AUTO–X are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.[6]

The Exchange proposes to amend Phlx Rule 1080(c) to increase the maximum order size eligibility for automatic execution through AUTO–X from fifty contracts to seventy-five contracts. The Exchange represents that AUTO–X affords prompt and efficient automatic executions at the displayed price and therefore believes that increasing automatic execution levels will provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchange notes that this increase from fifty contracts to seventy-five contracts is in line with prior changes to AUTO–X levels.[7]

The Exchange represents that its rules contain several safeguards to ensure the proper handling of AUTO–X orders. First, Phlx Rule 1080(f)(iii) states that a specialist is responsible for the remainder of an AUTOM order where a partial execution has occurred. Phlx Rule 1015 governs quotation guarantees and requires the trading crowd to ensure that public customer orders are filled at the best market for a minimum of ten contracts ("ten-contract guarantee"). Further, Options Floor Procedure Advice F–7 provides that the volume guarantees (including AUTO–X levels) are deemed to be the stated size in any bid or offer voiced or displayed on the Options Floor. Therefore, quoted markets are guaranteed up to that size. The Exchange represents that violations of any of these provisions could be referred to the Business Conduct Committee for disciplinary action.

Second, the Exchange represents that Registered Options Traders ("ROTs") have discretion to participate on the Wheel that allocates AUTO–X trades.[8] Consequently, an increase in the maximum AUTO–X order size does not prevent an ROT from declining to participate on the Wheel. The Exchange represents that the Wheel operates by rotating in two-lot to ten-lot increments depending upon the size of the order, and thus no single ROT will be allocated the entire seventy-five contracts.

Third, the Exchange represents that its procedures allow a specialist to disengage AUTO–X in extraordinary circumstances,[9] and that AUTOM users will be notified of such situations. For example, in extraordinary (fast market) conditions, quotations are disseminated with an "F" and the ten-contract guarantee on the screen markets is suspended pursuant to Options Floor Procedure Advice F–10.[10]

Finally, the Exchange notes that its rules provide a minimum net capital requirement for ROTs.[11] In addition, a ROTs clearing firm performs risk management functions to ensure that the ROT has sufficient financial resources to cover positions throughout the day. In this regard, the function includes real-time monitoring of positions. Further, the Exchange represents that it believes that clearing firm procedures address concerns regarding whether an ROT has the financial capability to support trading of options orders a large as seventy-five contracts.

The Exchange represents that it believes that automatic execution of orders for up to seventy-five contracts will provide customers with quicker, more efficient executions for a larger number of orders, by providing automatic rather than manual executions, thereby reducing the number of orders subject to manual processing. Further, the Exchange represents that increasing the AUTO–X maximum order size should not impose a significant burden on operation or capacity of the AUTOM System and will give the Exchange better means of competing with other options exchanges for order flow.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[12] Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national securities system; and protect investors and the public interest.[13]

While increasing the maximum order size limit from fifty contracts to seventy-five contracts for AUTO–X eligibility by itself does not raise concerns under the Act,[14] the Commission believes that this increase raises collateral issues that the Phlx will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for the Exchange's automatic execution system. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed onto the AUTO–X system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through AUTO–X, the greater the risk market makers must be willing to accept. The Commission does not believe that, because the Exchange's Options Committee determines to approve orders as large as seventy-five contracts as eligible for AUTO–X, the Options Committee or any other Phlx committee or officials should disengage AUTO–X more frequently by, for example, declaring a "fast" market. Disengaging AUTO–X can negatively affect investors by making it slower and less efficient to execute their option orders. It is the Commission's view that the Exchange, when increasing the maximum size of orders that can be sent through AUTO–X, should not disadvantage all customers—the vast majority of which enter orders for less than seventy-five contracts—by making the AUTO–X sytstem less reliable.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange designated the proposal as filed pursuant to Section 19(b)(2) of the Act. The Exchange originally filed the proposal pursuant to Section 19(b)(3)(A). *See* Letter from Edith Hallahan, Deputy General Counsel, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated September 23, 1999 ("Amendment No. 1"). In Amendment No. 2, the Exchange deleted a provision in the original proposal that restricted the increase in maximum order size eligibility to 100 options. *See* Letter from Nandita Yagnik, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated January 20, 2000 ("Amendment No. 2").

[4] *See* Securities Exchange Act Release No. 42932 (June 13, 2000), 65 FR 38621 (June 21, 2000).

[5] *See* Securities Exchange Act Release No. 36601 (December 18, 1995), 60 FR 66817 (December 26, 1995) (approving proposal to increase order size eligibility limits for AUTO–X from twenty-five to fifty contracts).

[6] *See* Phlx Rule 1080(c).

[7] *See supra* note 5; Securities Exchange Act Release Nos. 32906 (September 15, 1993), 58 FR 49345 (September 22, 1999) (approving proposal to increase order size eligibility limits for AUTO–X from twenty to twenty-five contracts); and 29837 (October 18, 1991), 56 FR 55146 (October 24, 1991) (approving proposal to increase order size eligibility limits for AUTO–X from ten to twenty contracts).

[8] Unlike ROTs, specialists are required to participate on the Wheel. *See* Phlx Rule 1080(g).

[9] *See* Phlx Rule 1080(e) and Options Floor Procedure Advice A–13.

[10] Options Floor Procedure Advice F–10 states, in relevant part, that "[d]uring the period for which a fast market is in effect, displayed quotes for the respective options are not firm and volume guarantees of Option Advice A–11 are not applicable. * * *" Options Floor Procedure Advice A–11 provides that "public customer market or marketable limit orders in any options series on the Exchange are to be filled at the best market to a minimum of ten contracts by floor traders in the crowd. * * *"

[11] *See* Phlx Rule 703.

[12] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] The Commission notes that it is concurrently approving similar proposals filed by the American Stock Exchange, LLP ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), and the Pacific Stock Exchange, Inc. ("PCX"). *See* Securities Exchange Act Release No. 43516 (November 3, 2000) (SR–Amex–99–45); 43517 (November 3, 2000) (SR–CBOE–99–51); and Securities Exchange Act Release No. 43518 (November 3, 2000) (SR–PCX–00–32).

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5).[15]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Phlx–99–32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29186 Filed 11–14–00; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 00-5 (6)]

Salamalekis v. Apfel; Entitlement to Trial Work Period Before Approval of an Award of Benefits and Before 12 Months Have Elapsed Since the Alleged Onset of Disability—Titles II and XVI of the Social Security Act.

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 00-5(6).

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Cassia W. Parson, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-0446.

SUPPLEMENTARY INFORMATION: We are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative review within the Sixth Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after November 15, 2000. If we made a determination or decision on your application for benefits between July 20, 2000, the date of the Court of Appeals' decision, and November 15, 2000, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to the prior determination or decision. You must demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Ruling could change our prior determination or decision in your case.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify those claims that were pending before us within the circuit that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified which may be affected by this Social Security Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior determination or decision on his or her claim as provided in 20 CFR 404.985(b)(2) or 416.1485(b)(2), discussed above.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: October 19, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 00–5 (6)

Salamalekis v. *Apfel*, 221 F.3d 828 (6th Cir. 2000)—Entitlement to Trial Work Period Before Approval of an Award of Benefits and Before 12 Months Have Elapsed Since the Alleged Onset of Disability—Titles II and XVI of the Social Security Act.

Issue: Whether a claimant's return to substantial gainful activity (SGA) within 12 months of the alleged onset date of his or her disability, and prior to an award of benefits, precludes an award of benefits and entitlement to a trial work period.

Statute/Regulation/Ruling Citation: Sections 222(c), 223, 1614(a)(3) and (4) and 1619 of the Social Security Act (42 U.S.C. 422(c), 423, 1382c(a)(3) and (4) and 1382h); 20 CFR 404.1505, 404.1520, 404.1592, 416.905, 416.906, 416.920; Social Security Ruling (SSR) 82-52.

Circuit: Sixth (Kentucky, Michigan, Ohio, Tennessee).

Salamalekis v. *Apfel*, 221 F.3d 828 (6th Cir. 2000).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council).

Description of Case: Manuel G. Salamalekis applied for Social Security disability insurance benefits on October 1, 1991, alleging disability since April 24, 1991, due to a heart condition and Parkinson's Disease. On March 2, 1992, less than a year after the alleged onset of disability, Mr. Salamalekis returned to work and promptly notified the Agency of his return. On the same day that Mr. Salamalekis returned to work, we "determined he was entitled to receive disability insurance benefits" and an award notice was sent to Mr. Salamalekis on March 8, 1992. It was not disputed that we were unaware that Mr. Salamalekis had returned to work when we determined his eligibility for benefits. We subsequently learned of his return to work. In May of 1992, we notified Mr. Salamalekis that his claim would be reviewed when his "9th month of trial work" ended. He continued to work and received benefits for approximately the next 2 years.

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[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

On March 25, 1994, we notified Mr. Salamalekis that we intended to revise our initial award determination finding him disabled to a determination that he was never disabled because he returned to work on March 2, 1992, prior to the Agency's award of benefits and less than 12 months after the onset of his impairment. We revised our initial award determination, ceased payment of Mr. Salamalekis' benefits and assessed him with a $30,080.20 overpayment. An ALJ affirmed the revised determination and the Appeals Council denied review. Mr. Salamalekis sought judicial review in the Federal district court where a United States Magistrate Judge affirmed SSA's final decision.

On his appeal to the United States Court of Appeals for the Sixth Circuit, Mr. Salamalekis argued that he was disabled and was entitled to a 9-month trial work period beginning with his return to work in March 1992, plus a 3-month reentitlement period. For this reason, Mr. Salamalekis contended that the Agency should not have considered his work during this period as evidence of substantial gainful activity demonstrating that he was not disabled.

Holding: The Sixth Circuit held that Mr. Salamalekis was entitled to a trial work period regardless of whether he returned to work before or after SSA's award of benefits. Consequently, it reversed and remanded the case to the district court with instructions to return the case to SSA for a recalculation of the overpayments owed by Mr. Salamalekis. The court found that according to the plain language of the Social Security Act (the Act), an individual may take advantage of a trial work period once he becomes entitled to disability insurance benefits.

According to the court, Mr. Salamalekis had satisfied all five prerequisites for entitlement to benefits under section 223(a) of the Act when he returned to his job. He was insured for disability insurance benefits; he was below retirement age; he filed an application for benefits; the 5-month waiting period had expired; and he was under a disability. The court rejected the Agency's argument that it should apply SSR 82-52 and find that Mr. Salamalekis was never disabled in view of his return to work within 12 months of his alleged disability onset date. In so doing, the court noted that at the time Mr. Salamalekis returned to work his impairment was ongoing and was expected to last for 12 months.

The court found that the relevant language from SSR 82-52 was inconsistent with the plain language of the Act. In addition, the court noted "the Seventh, Eighth and Tenth Circuits have also held that a claimant is entitled to a trial work period if the waiting period has expired and the claimant's impairment is expected to last for 12 months, regardless of whether the Agency has made an award determination and regardless of whether the impairment has actually lasted 12 months."[1]

Statement as to How Salamalekis Differs From SSA's Interpretation of the Social Security Act

Under the Act, an individual who is entitled to disability insurance benefits is generally entitled to a trial work period. The individual can test his or her ability to work for up to 9 months without that work activity affecting his or her entitlement to benefits. However, to be entitled to a trial work period, the individual must be entitled to disability insurance benefits. In order to be entitled to disability insurance benefits, the individual must be disabled, i.e., he or she must have an impairment that has prevented, or can be expected to prevent him or her from performing substantial gainful activityfor at least 12 months. *See* Sections 223(a)(1)(D) and (d)(1)(A) of the Act.

SSR 82-52 contains a clear statement of SSA policy on this issue[2] as follows:

> When the [individual's] return to work demonstrating ability to engage in SGA occurs before approval of the award and prior to the lapse of the 12-month period after onset, the claim must be denied.

The Sixth Circuit held, however, that SSR 82-52 is inconsistent with the plain language of section 222(c) of the Act.[3] The holding in *Salamalekis* is inconsistent with our policy because it permits a claimant to be found to be under a disability, and entitled to benefits and a trial work period even if he or she engages in work activity demonstrating the ability to engage in substantial gainful activity before the lapse of the 12-month period after the alleged disability onset date and before a decision by SSA to award benefits.[4] Our interpretation is that a claimant cannot be found to have been under a disability if, at the time we are adjudicating the claim, the evidence shows that his or her impairment no longer prevents the performance of substantial gainful activity and that it had not done so for at least 12 continuous months. In the preamble to our August 10, 2000, final rules, we explain why we believe that this interpretation is consistent with the relevant statutory language and with the legislative history of the 12-month duration requirement. That legislative history indicates that Congress intended that the disability program not "result in the payment of disability benefits in cases of short-term, temporary disability."[5]

Explanation of How SSA Will Apply The Salamalekis Decision Within the Circuit

This Ruling applies only to cases in which the claimant resides or resided in Kentucky, Michigan, Ohio or Tennessee at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, ALJ hearing or Appeals Council review.

This Ruling applies to claims for title II benefits based on disability. It also applies to claims for title XVI benefits based on disability as explained below.

A claim for title II disability insurance benefits, widow(er)'s insurance benefits based on disability or child's insurance benefits based on disability in which the claimant returns to work within 12 months of the established onset date of an impairment which could otherwise be the basis for a finding of disability should be allowed and the claimant granted a trial work period if the following conditions are met:

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[1] The courts in *Newton* v. *Chater*, 92 Cir. 1996); *Walker* v. *Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991); *McDonald* v. *Bowen*, 818 F.2d 559 (7th Cir. 1986) found that the pertinent provision of SSR 82-52 was inconsistent with the Social Security Act.

[2] SSR 91-7c superseded SSR 82-52, but only to the extent that SSR 82-52 discussed former procedures used to determine disability in children. The issue in this AR does not relate to those former procedures and the cited policy statement in SSR 82-52 remains in effect.

[3] Section 222(c)(2) of the Act provides that "any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether disability has ceased in a month during such period." Section 222(c)(3) of the Act provides, in pertinent part, that "[a] period of trial work for any individual shall begin with the month in which he becomes entitled to disability insurance benefits * * *" Under section 222(c)(4) of the Act, a trial work period ends with the ninth month, in any period of 60 consecutive months, in which the individual renders services (whether or not the 9 months are consecutive), or, if earlier, with the month in which disability ceases.

[4] While the court in *Salamalekis* addressed SSR 82-52 in its opinion issued July 20, 2000, it should be noted that final rules that reflect, clarify, and provide a more detailed explanation and justification for the SSR 82-52 policy at issue were published in the **Federal Register** on July 11, 2000 (65 FR 42772) with an effective date of August 10. The court in *Salamalekis*, apparently unaware of the July 11th publication, simply noted that the proposed rules to incorporate SSA's position in SSR 82-52 had been published, but had not been finalized; the court did not discuss the more detailed explanation and justification for our policy provided in the preamble to the final rules.

[5] That legislative history is found at S. Rep. No. 404, 89th Cong. 1st Sess. 98-99, *reprinted* in 1965 U.S. Code Cong. & Ad. News, 1943, 2038-39.

(1) the claimant establishes that, at the time he or she returned to work and thereafter, the impairment was still expected to last for at least 12 consecutive months from the date of onset;

(2) the claimant returns to work after the waiting period (if a waiting period is applicable) but within the 12-month period following the established onset date; and

(3) the return to work demonstrating an ability to engage in substantial gainful activity occurs either before or after approval of the award.

A claim for title XVI benefits based on disability in which the claimant returns to work within 12 months of the established onset date of an impairment which could otherwise be the basis for a finding of disability should be allowed and the claimant granted section 1619 status[6] if the following conditions are met:

(1) The claimant establishes that, at the time he or she returned to work and thereafter, the impairment was still expected to last for at least 12 consecutive months from the date of onset;

(2) The claimant returns to work in a month subsequent to the month of established onset but within the 12-month period following the established onset date;

(3) The claimant is eligible to receive "regular" SSI benefits under section 1611 of the Act (or a federally administered State supplementary payment) based on the impairment (disregarding the effect the claimant's return to work within 12 months after the date of onset would otherwise have on eligibility for such benefits or payment) for at least 1 month in the period preceding the month in which he or she returns to work;

(4) The claimant meets all other nondisability requirements for section 1619 status; and

(5) The return to work demonstrating an ability to engage in substantial gainful activity occurs either before or after approval of the award.

[FR Doc. 00-29191 Filed 11-14-00; 8:45 am]

BILLING CODE 4190-29

DEPARTMENT OF STATE

[Public Notice No. 3466]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9 a.m. on Monday, December 11, 2000, in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This meeting will discuss the upcoming 44th Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on September 17–21, 2001, at the IMO Headquarters in London, England.

Items of discussion will include the following:

a. Review of results from the previous Session (SLF 43),

b. Harmonization of damage stability provisions in the IMO instruments,

c. Revision of technical regulations of the 1966 International Load Line Convention,

d. Revisions to the Fishing Vessel Safety Code and Voluntary Guidelines.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G–MSE–2), Room 1308, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: November 8, 2000.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 00–29244 Filed 11–14–00; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice No. 3467]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Thursday, December 14, 2000, in Room 6103 of the U.S. Coast Guard Headquarters, 2100 2nd Street SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 32nd Session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping, which is scheduled for January 22 to 26, 2001, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

— Training and certification of maritime pilots
— Unlawful practices associated with certificates of competency (*i.e.*, forged certificates)
— Standard Marine Communication Phrases
— Training in the use of Electronic Chart Display and Information Systems
— Guidance for training in ballast water management
— Guidance for ships operating in ice-covered waters
— Validation of an IMO model course on assessment of competence
— Guidance associated with the International Convention on Standards of Training,

Certification and Watchkeeping for Fishing Vessel Personnel Convention, as adopted by the 1995 conference; not yet ratified or in force.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: LCDR Luke Harden, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, Room 1210, 2100 2nd Street SW., Washington, DC 20593–0001 or by calling (202) 267–0229.

Dated: November 8, 2000.

Stephen Miller,

Executive Secretary Shipping Coordinating Committee.

[FR Doc. 00–29245 Filed 11–14–00; 8:45 am]

BILLING CODE 4210–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–58]

WTO Dispute Settlement Proceeding Regarding Section 609 of Public Law 101–162 Relating to the Protection of Sea Turtles in Shrimp Trawl Fishing Operations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the government of Malaysia has requested the establishment of a dispute a settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO) to examine whether the United States has implemented the recommendations and rulings of the WTO Dispute Settlement Body (DSB) in a dispute involving import restrictions under section 609 of Public Law 101–162 (Section 609). Section 609 is intended to promote the conservation of endangered sea turtle species by restricting the importation of shrimp and shrimp products harvested by methods harmful to sea turtles. Interested persons are invited to submit written comments concerning the issues raised in the dispute.

DATES: Although USTR will accept any submissions received during the course of the dispute settlement proceedings, comments should be submitted on or before November 30, 2000 to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, , Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: Dispute Regarding U.S. Sea Turtle Conservation Law. Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: Kira Alvarez, Director for Marine Resources and Regional Affairs, (202) 395–7320, or William Busis, Associate General Counsel, (202) 395–3150. For questions concerning the operation of U.S. import restrictions under Section 609, please contact David Hogan, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington DC, telephone number (202) 647–2335.

SUPPLEMENTARY INFORMATION:

Prior WTO Proceedings

On November 6, 1998, the WTO DSB adopted the reports of a dispute settlement panel and the WTO Appellate Body in a case brought by India, Malaysia, Pakistan and Thailand challenging U.S. restrictions on shrimp imports under section 609. The Appellate Body report found that section 609 itself was not inconsistent with U.S. obligations under the WTO Agreement and was, in fact, covered by the WTO provision relating to the conservation of exhaustible natural resources. At the same time, however, the Appellate Body report found that certain aspects of the manner in which section 609 was being implemented, in their cumulative effect, were inconsistent with U.S. obligations under the WTO Agreement. The Appellate Body report recommended that the United States revise its implementation of section 609 accordingly.

At the time the dispute settlement panel was established, USTR published a notice inviting public comments on the issues in the dispute. See 62 FR 13,934 (March 24, 1997). The dispute settlement panel and Appellate Body reports are publicly available in the USTR reading room and on the WTO web site (www.wto.org).

U.S. Implementation

In November 1998, and after consultations with Congress and other stakeholders, the United States notified the DSB that the United States intended to implement the recommendations and rulings of the DSB in a manner which is consistent not only with U.S. WTO obligations, but also with the firm commitment of the United States to the protection of endangered sea turtles.

The United States and the other parties to the dispute reached agreement on 13 months as a reasonable period for implementation. The 13-month period ended in December 1999.

In March 1999, the Department of State, which administers section 609, published a notice summarizing steps being taken to implement the DSB recommendations and rulings, and requesting comments on proposed revisions to the guidelines used for making certifications under section 609. See 64 FR 14,481 (March 25, 1999). In July 1999, the Department of State published a notice reviewing and responding to the comments received on its March 1999 notice, and setting forth revised section 609 guidelines. See 64 FR 36,946 (July 8, 1999).

In January 2000, the United States informed the DSB that the United States had implemented the recommendations and rulings of the DSB during the 13-month implementation period. The United States explained that the implementation steps had both responded to the issues raised by the Appellate Body report, and—with the cooperation of the countries in the Indian Ocean region—had advanced efforts to conserve endangered sea turtles. Those implementation steps included the revisions to the Department of State guidelines, efforts to negotiate an agreement with the governments of the Indian Ocean region on the protection of sea turtles, and renewed offers of technical training in sea turtle conservation measures.

Article 21.5 Proceeding

On October 23, 2000, the Government of Malaysia—one of the four complaining parties in the prior WTO proceeding—requested that the DSB establish a panel under Article 21.5 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) to examine whether the United States had implemented the recommendations and rulings of the DSB. Malaysia is claiming that implementation of the DSB recommendations and rulings required the U.S. to remove the import restrictions imposed under section 609.

The DSB has established a dispute settlement panel to consider Malaysia's claim. As provided under the DSU, the panel is composed of the same members as in the prior proceeding. The panel is scheduled to issue its report in mid-March, 2001. Pursuant to an understanding between the United States and Malaysia, either party may request that the WTO Appellate Body review the report of the dispute settlement panel.

The European Communities and the governments of Japan, Ecuador, Australia, India, Thailand, Canada, Mexico, Pakistan, and Hong Kong, China have indicated their interest to participate in the dispute as third parties.

Invitation for Comments

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

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[6] Pursuant to statutory amendments made by Public Law 99-643, effective July 1, 1987, the trial work period provisions no longer apply to title XVI disability claims. Beginning July 1, 1987, a disabled individual, who was eligible to receive "regular" SSI benefits under section 1611 of the Act (or a federally administered State supplementary payment) for a month and subsequently has earnings ordinarily considered to represent substantial gainful activity, will move directly to section 1619 status rather than be accorded a trial work period. This Ruling extends to such individuals, i.e., a claim for title XVI benefits based on disability should be allowed and the claimant granted section 1619 status if the claimant would otherwise be eligible for section 1619 status and the same conditions set out above for title II claims based on disability are met.

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR maintains a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file includes a listing of any comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute; as well as the reports of the panel and the Appellate Body. An appointment to review the public file (Docket WTO/DS–58, U.S. Sea Turtle Conservation Law) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–29241 Filed 11–14–00; 8:45 am]

BILLING CODE 3190-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending October 20, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–8113.

Date Filed: October 17, 2000.

Parties: Members of the International Air Transport Association.

Subject: CTC COMP 0314 dated 13 October 2000, Resolution 033f—Local Currency Rate Changes—Pakistan, Intended effective date: 16 October 2000.

Docket Number: OST–2000–8120.

Date Filed: October 18, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 0695 (Re-issue) dated 6 October 2000, Mail Vote 088—Resolution 010j, Special Passenger Amending Resolution to/from Cyprus, Intended effective date: 1 January 2001.

Docket Number: OST–2000–8130.

Date Filed: October 18, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 0706 dated 17 October 2000, Mail Vote 091—Resolution 024d (Amending), Currency Names, Codes, Rounding Units and Acceptability of Currencies, Intended effective date: 1 December 2000.

Docket Number: OST–2000–8166.

Date Filed: October 20, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR–JK 0059 dated 3 October 2000, Europe-Japan/Korea Resolutions r1–r–48, Technical Correction PTC23 EUR–JK 0060 dated 10 October 2000, Minutes—PTC23 EUR–JK 0061 dated 13 October 2000, Tables—PTC23 EUR–JK FARES 0023 dated 6 October 2000, Intended effective date: 1 April 2001.

Docket Number: OST–2000–8167.

Date Filed: October 20, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR–SWP 0048 dated 13 October 2000, Europe-South West Pacific Resolutions r1–r23, Minutes—PTC23 EUR–SWP 0045 dated 3 October 2000, Tables—PTC23 EUR–SWP FARES 0019 dated 17 October 2000, Intended effective date: 1 April 2001.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–29234 Filed 11–14–00; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending October 27, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–8204.

Date Filed: October 27, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC23 AFR–TC3 0108 dated 10 October 2000, TC23/TC123 Africa–TC3 Resolutions r1–r43, PTC23 AFR–TC3 0110 dated 20 October 2000, Technical Correction, Minutes—PTC23 AFR–TC3 0109 dated 20 October 2000, Tables—PTC23 AFR–TC3 FARES 0048 dated 20 October 2000, Intended effective date: 1 April 2001.

Docket Number: OST–2000–8205.

Date Filed: October 27, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC23 ME–TC3 0104 dated 3 October 2000, TC23/TC123 Middle East–TC3 Resolutions r1–r52, Minutes—PTC23 ME–TC3 0105 dated 27 October 2000, Tables—PTC23 ME–TC3 FARES 0045 dated 10 October 2000, Intended effective date: 1 April 2001.

Docket Number: OST–2000–8208.

Date Filed: October 27, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC1 0166 dated 27 October 2000, Mail Vote 092—Resolution 010k, TC1 Caribbean Special Passenger Amending Resolution, Intended effective date: 15 November 2000.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–29236 Filed 11–14–00; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 3, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–8213.

Date Filed: October 31, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC123 0116 dated 27 October 2000 (r—1–6), PTC123 0117 dated 27 October 2000 (r—7–9), TC123 North Atlantic Expedited Resolutions, Intended effective dates: 1 December 2000/1 January 2001.

Docket Number: OST–2000–8214.

Date Filed: October 31, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC123 0118/0119/0120/0121 dated 27 October 2000, TC123 Mid/South Atlantic Resolutions, Intended effective dates: 1 December 2000/1 January 2001.

Docket Number: OST–2000–8244.

Date Filed: November 3, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 0718 dated 3 November 2000, Mail Vote 093—Resolution 010h, Special Passenger Currency Conversion Resolution—euro, Intended effective date: 1 January 2001.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–29237 Filed 11–14–00; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 20, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–8155.

Date Filed: October 19, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope November 9, 2000.

Description: Application of Britannia Airways AB ("Applicant") pursuant to 49 U.S.C. Sections 41301 *et seq.* and Subpart Q, applies for a foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons and their accompanying baggage, and property: (1) Between a point or point in Sweden, Denmark and Norway and a point or points in the United States; (2) between a point or points in the United States and any point or points in a third country provided that such service constitutes point of a continuous operation that includes service to Sweden, Denmark and/or Norway for the purpose of carrying local traffic between Sweden, Denmark and Norway and the United States; and also authorizing Applicant to engage in other charter trips in foreign air transportation subject to the terms, conditions, and limitations of the Department's regulations governing charters.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–29235 Filed 11–14–00; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 3, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–8212.

Date Filed: October 30, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 20, 2000.

Description: Application of Venture Travel, LLC d/b/a Taquan Air (Venture) and Taquan Air Service, Inc. (TAS, Inc.), applies for a disclaimer of jurisdiction and transfer of the certificate of public convenience and necessity currently held by TAS, Inc.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–29238 Filed 11–14–00; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 6, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–8059.

Date Filed: October 4, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 25, 2000.

Description: Application of Mountain Bird Inc. d/b/a Salmon Air pursuant to 49 U.S.C. Section 41738 and Subpart Q, requests authority to operate scheduled passenger service as a commuter air carrier.

Docket Number: OST–2000–8074.

Date Filed: October 5, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 26, 2000.

Description: Application of Euroatlantic Airways-Transportes Aereos, S.A. ("Euroatlantic") pursuant to 49 U.S.C. Section 41301 and Subpart Q, requests a foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons, property and mail between points in Portugal and points in the United States and between points in the United States and points in third countries.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–29239 Filed 11–14–00; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

[Docket OST–2000–7800]

RIN: 2105–AC94

Interim Statement of Policy on Alternative Dispute Resolution

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of interim statement of policy; request for comments.

SUMMARY: The Department of Transportation publishes this Interim Statement of Policy to further its commitment to using alternative dispute resolution (ADR) to advance our mission by preventing, minimizing escalation of, and resolving disputes among our employees and with external parties, at the earliest stage possible, in a cost-effective manner. This notice is intended to provide information about ADR, introduce new ADR initiatives, and promote the use of ADR. We request comments on our interim policy statement, on how to incorporate ADR into our processes, and how to encourage its use in appropriate circumstances.

DATES: Comments must be received by January 16, 2001.

ADDRESSES: Submit written comments to the Dockets Management System, U.S. Department of Transportation, PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should refer to Docket Number OST–2000–7800 and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on "Help & Information" to obtain instructions for filing the comment electronically. In every case, the comment should refer to the Docket number. The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at "http://dms.dot.gov/."

FOR FURTHER INFORMATION CONTACT: Judith S. Kaleta, Senior Counsel for Dispute Resolution and Dispute Resolution Specialist, 202–493–0992.

SUPPLEMENTARY INFORMATION:

Interim Statement of Policy on Alternative Dispute Resolution (ADR)

ADR is a collaborative, consensual dispute resolution approach. It describes a variety of problem-solving processes that are used in lieu of litigation or other adversarial proceedings to resolve disagreements. ADR encompasses mediation, facilitation, conciliation, factfinding, mini-trials, negotiation, negotiated rulemaking, neutral evaluation, policy dialogues, use of ombuds, arbitration, and other processes that usually involve a neutral third party who assists the parties in preventing, minimizing the escalation of, and resolving disputes. The efficient and effective use of ADR will help us resolve disputes at an early stage, in an expeditious, cost-effective, and mutually acceptable manner.

The Department of Transportation is committed to using ADR to advance our mission. We will consider using ADR in all areas including workplace issues, formal and informal adjudication, issuance of regulations, enforcement and compliance, issuing and revoking licenses and permits, contract and grant award and administration, litigation brought by or against the Department, and other interactions with the public and the regulated community.

We will provide learning and development opportunities for our employees so that they will be able to use conflict resolution skills, understand the theory and practice of ADR, and apply ADR appropriately.

We will use a variety of evaluation and assessment strategies to measure and improve our processes and our use of ADR.

We will allocate resources to support the use of ADR.

We will provide confidentiality consistent with the provisions of the Administrative Dispute Resolution Act and other applicable Federal laws.

The Department will attempt to incorporate ADR in its dispute resolution, or as appropriate, rulemaking processes. In addition, either on our own initiative or in response to a request, the Department will examine the appropriateness of using ADR on a case-by-case basis. The decision-making on when to use ADR should reflect sound judgment that ADR offers the best opportunity to resolve the dispute. In appropriate disputes, the Department will use ADR in a good-faith effort to achieve consensual resolution. However, if necessary, we will litigate or participate in some other process to resolve a dispute.

We will work together to further ADR use across the Department. However, decision-making on incorporating ADR into dispute resolution processes, using ADR to resolve a particular dispute, and allocating resources rests with the Department's operating administrations, secretarial offices, or Office of the Inspector General.

All employees and persons who interact with the Department are encouraged to identify opportunities for collaborative, consensual approaches to dispute resolution or rulemaking.

Background

The Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571–583, authorizes and encourages Federal agencies to use consensual means of dispute resolution as alternatives to traditional dispute resolution processes. The Act defines alternative means of dispute resolution as "any procedure that is used to resolve issues in controversy * * *" It defines "issue in controversy" as "an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement * * *" The Act requires that each Federal agency adopt a policy that addresses the use of ADR and appoint a Dispute Resolution Specialist. Congress enacted the Administrative Dispute Resolution Act to reduce the time, cost, inefficiencies, and contentiousness that too often are associated with litigation and other adversarial dispute resolution mechanisms.

The Negotiated Rulemaking Act of 1996, 5 U.S.C. 561–570, establishes a framework for use of negotiated rulemaking. Congress enacted the Negotiated Rulemaking Act to increase the acceptability and improve the substance of rules, making it less likely that the affected parties will challenge the rules or resist enforcement.

On May 1, 1998, President Clinton issued a memorandum for heads of executive departments and agencies encouraging the use of ADR and negotiated rulemaking. In his memorandum, the President stated that each Federal agency must take steps to promote greater use of mediation, facilitation, arbitration, early neutral evaluation, ombuds, negotiated rulemaking, and other dispute resolution techniques.

For purposes of this ADR initiative, "the Department" or "we" refers to the Office of the Secretary, the operating administrations (the United States Coast Guard, the Federal Aviation Administration, the Federal Highway Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, the National Highway Traffic Safety Administration, the Federal Transit Administration, the Maritime Administration, the Saint Lawrence Seaway Development Corporation, the Research and Special Programs Administration, the Bureau of Transportation Statistics, and the Transportation Administrative Services Center (TASC)), and the Office of Inspector General. The Department's ADR initiative is a ONEDOT effort, where we are working better together to create and communicate our ADR goals. As we strive to meet our national transportation goals, we recognize the need to collaborate and form partnerships, internally and externally.

Experience at the Department of Transportation and other Federal agencies shows that ADR can achieve mutually acceptable solutions more effectively than traditional, non-collaborative processes.

Promoting ADR

The Department has taken several affirmative steps to promote the use of ADR.

Dispute Resolution Specialist

As required by the Administrative Dispute Resolution Act, the Secretary appointed a Dispute Resolution Specialist. The Dispute Resolution Specialist is authorized to: (1) Implement the Administrative Dispute Resolution Act of 1996 and coordinate with the Assistant General Counsel for Regulation and Enforcement with regard to ADR policy as it relates to rulemaking under the Negotiated Rulemaking Act of 1996; (2) develop dispute resolution policy and procedures; (3) monitor and evaluate dispute resolution program execution and results; (4) identify barriers to the use of ADR and work for their removal; (5) require reports from Departmental organizations and report to the Secretary annually on the Department's ADR efforts; (6) determine appropriate training to educate employees and external parties about ADR and conflict management options and processes; (7) provide advice and assistance in obtaining neutrals; and (8) represent the Department on ADR matters.

Notwithstanding this focal point for ADR activity, decision-making on whether to incorporate ADR into dispute resolution processes or to use ADR to resolve a particular dispute rests with the Department's operating administrations, secretarial offices, and the Office of Inspector General. Furthermore, the participation in a particular ADR process is by mutual consent of the parties.

Dispute Resolution Council

The Secretary established a Dispute Resolution Council as part of the Department's ONEDOT management strategy to work better together and to further use of ADR across the Department. The Council, chaired by the Department's Dispute Resolution Specialist, is comprised of representatives appointed by heads of modal administrations and secretarial officers and the Inspector General, who serve as Deputy Dispute Resolution Specialists to promote and coordinate the use of ADR within their organizations and coordinate with their Regulation or Liaison Officer with regard to ADR policy as it relates to rulemaking under the Negotiated Rulemaking Act of 1996. The Dispute Resolution Council worked together to develop the Department's interim policy statement. The Dispute Resolution Council supports the Dispute Resolution Specialist and works together to (1) facilitate the sharing of ADR information; (2) examine how the Department is currently using ADR, in headquarters and the regions, and make recommendations for improvements; (3) explore the use of ADR techniques in connection with a variety of areas; and (4) assist in identifying future ADR uses and coordinating the development of ADR programs.

Web Site

The Dispute Resolution Council has established a web site to provide information about the Department's use of ADR. The site provides links to a variety of other ADR sites, including the Interagency ADR Working Group, the Federal Procurement ADR Electronic Guide, and the Office of Personnel Management ADR Resource Guide. The site will be regularly updated to provide information about our ADR efforts. The web address is www.dot.gov/adr.

Training

The Department is committed to educating its personnel about the potential benefits and appropriate use of ADR, as well as to obtain ADR guidance and assistance. The Department has provided training about ADR, effective communication, and conflict management. Employees who serve as neutrals to resolve disputes using ADR techniques have received core training and will receive additional training annually. The Department intends to work in partnership with other Federal agencies, through the Interagency ADR Working Group, and in other ways to meet our training needs.

Evaluation

The Department will use a variety of evaluation and assessment strategies to provide valid and reliable information for measuring and improving performance. Depending on the ADR program, we may look at the number of attempts to use ADR , the number of resolutions, customer satisfaction with the process, the neutral, and/or the resolutions, or estimated cost- and/or time-savings.

Resources

As noted in Appendix II, the Department is using ADR for a variety of activities and has provided resources to support ADR use. However, lack of resources is often identified as a barrier to ADR use. To avoid this potential barrier, the Department will continue to allocate resources to support ADR initiatives. This may include collateral duty or detail assignments, permanent ADR positions, contract dollars, or other funding alternatives. Decision-making on allocating resources rests with the Department's operating administrations and secretarial offices.

Confidentiality

In some instances, many of the benefits of ADR can be realized only through confidential proceedings. Confidentiality ensures that the parties may speak freely with a neutral who will not disclose their confidences to other parties or to the outside world. Without that assurance, the parties may be unwilling to freely discuss their interests and possible settlements with the neutral. Confidentiality also allows the parties to raise sensitive issues and discuss creative ideas and solutions that they would be unwilling to discuss publicly.

Although negotiated rulemaking is a process conducted under the Federal Advisory Committee Act at public meetings that have been announced in the **Federal Register**, confidentiality may also be a consideration for the participants. For example, a convenor who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate may agree not to disclose the identity of a party who raises a particular concern about an agency. Information shared in caucuses may also be confidential.

The Administrative Dispute Resolution Act generally provides that communications (including a neutral's notes and documents prepared for the proceedings) between a neutral and the parties must be kept confidential by the neutral and the parties, unless certain specific exceptions exist. A court may require disclosure of such information if it is necessary to prevent a manifest injustice, help establish a violation of law, or prevent harm to the public health or safety. The injustice, violation, or harm must be of a sufficient magnitude in the particular case to outweigh the integrity of the dispute resolution proceedings. In addition, other Federal laws may impact the confidentiality of information in specific cases.

ADR Considerations

A decision to use ADR may be made before or after a dispute arises. Several factors should be considered in making that decision. Some factors may favor the use of ADR while others may weigh against it. Although not intended as an exhaustive list of factors, the Department has determined that ADR may be helpful in resolving a particular dispute where one or more of the following factors is present:

1. *Identifiable Parties*. There is an identifiable group of constituents with interests (the parties) so that all reasonably foreseeable interests can be represented.

2. *Good Faith*. The parties are willing to participate in good faith.

3. *Communication*. The parties are interested in seeking agreement, but poor communication or personality conflicts between the parties adversely affect negotiations.

4. *Continuing Relationship.* A continuing relationship between the parties is important and desirable.

5. *Issues.* There are issues that are agreed to be ripe for a negotiated solution.

6. *Unrealistic View of the Issues.* The parties' demands or views of the issues are unrealistic. A discussion of the situation with a neutral may increase the parties' understanding and result in more realistic alternatives and options.

7. *Sufficient Areas of Compromise.* There are sufficient areas of compromise to make ADR worthwhile.

8. *Expectation of Agreement.* The parties expect to agree eventually, most likely before reaching the court room or engaging in other adversarial processes.

9. *Timing.* There is sufficient time to negotiate and ADR will not unreasonably delay the outcome of the matter in dispute. There is a likelihood that the parties will be able to reach agreement within a fixed time. There are no statutory or judicial deadlines that are adversely affected by the process. ADR may result in an earlier resolution of the dispute.

10. *Resources.* The parties have adequate resources (budget and people) and are willing to commit them to the process.

While many of these factors may apply to agency rulemaking, there may be some variation in the consideration. For example, with regard to "Expectation of Agreement," the consideration may be that all affected interests recognize that there is a problem that must be solved and that Federal regulation is the appropriate response. Furthermore, under the Negotiated Rulemaking Act, the head of the agency would determine whether negotiated rulemaking is in the public interest and would consider several factors concerning the parties, the timing, the costs, and the issues. *See* 5 U.S.C. 561.

There are also factors that suggest that ADR should not be used. The Administrative Dispute Resolution Act of 1996 provides factors that suggest that ADR is inappropriate or may not be productive in a particular dispute resolution proceeding. *See* 5 U.S.C. 572.

Relationship to Other Dispute Resolution Procedures

This interim policy statement replaces DOT Order 2101.1. It does not supersede collective bargaining agreements or other statutory, regulatory, or contractual dispute resolution procedures, or military disciplinary processes. ADR is intended to supplement, not replace, existing procedures.

No Creation of Rights

The choice of when and how to use ADR is within the discretion of the Department's operating administrations and secretarial offices. This interim statement of policy does not create any right to judicial review involving the compliance or noncompliance with the statement. In addition, the statement does not obligate the Department to offer funds to settle any case, to accept a particular settlement or resolution of a dispute, or to alter any existing delegation of settlement or litigation authority.

Request for Public Comment

The Department invites comment on the interim policy statement. In addition, the Department welcomes input on areas of agency activity that would benefit from a dispute resolution process that incorporates ADR techniques including workplace issues, formal and informal adjudication, issuance of regulations, enforcement and compliance, issuing and revoking licenses and permits, contract and grant award and administration, litigation brought by or against the Department, and other interactions with the public and the regulated community. Appendix II includes examples of ADR initiatives currently in use and under consideration.

Issued in Washington, DC on October 23, 2000.

Rodney E. Slater,

Secretary of Transportation.

Appendix I—Glossary of ADR Terms

The following terms are commonly associated with ADR. They are provided for your convenience and have been adapted from the Administrative Dispute Resolution Act and other sources.

Arbitration: Arbitration is a process in which a neutral decision-maker oversees the exchange of information, presides over a mini-hearing, and decides the matter. Arbitration may be binding or non-binding.

Conciliation: Conciliation is a process in which a neutral independently communicates with the parties either to improve relations, resolve a dispute, or pave the way for some other ADR process, such as mediation. Conciliation is intended to help establish trust and openness between parties to a dispute.

Convening: Convening is a process used to identify issues, interests, and parties to a dispute or potential dispute. The goal of convening is to assess the potential for use of other ADR processes to resolve a problem and to recommend a process or combination of processes.

Early Neutral Evaluation: Early neutral evaluation is a process in which the parties provide the highlights of their positions to an expert neutral fact-finder who evaluates the merits. The neutral provides a non-binding, objective evaluation of the strength of each party's position. This assists in future negotiations between the parties.

Facilitation: Facilitation is a process in which a neutral works with all parties in group sessions, helping the group to effectively move through the problem-solving steps of the meeting to reach the agreed upon goal.

Mediation: Mediation is a process in which a neutral, a mediator, assists open discussion between parties in dispute and helps them come to a mutually agreeable solution. A mediator has no authority to impose a decision on the parties.

Mini-trial: A mini-trial is a process in which a neutral presides over the presentation of highlights of the parties' cases by the parties' attorneys to the parties' principals and may include witness testimony. The neutral engages the parties in litigation risk analysis and facilitates settlement discussions.

Negotiated rulemaking: Negotiated rulemaking is a process in which representatives of those interests that would be affected by a rule convene to consider and discuss issues for the purpose of reaching consensus in the development of a rule.

Negotiation: Negotiation is a bargaining relationship between two or more parties. The parties join in a temporary relationship to educate each other about their needs and interests and then exchange specific resources or promises that will resolve one or more issues. Almost all of the ADR procedures in which the parties maintain control over the outcome of the conflict are variations of negotiation.

Neutral: A neutral is an individual who functions specifically to aid the parties in resolving a dispute. The neutral may be a Federal employee or any private individual who is acceptable to the parties. A neutral may not have financial, official, or personal conflict of interest with respect to the dispute, unless the interest is disclosed in writing to the parties and all parties agree that the neutral may serve.

Ombuds: An ombuds receives complaints and questions from individuals concerning the functioning of an entity, works for the resolution of particular issues, and where necessary, makes recommendations for the improvement of the general administration of the entity.

Policy Dialogue: A policy dialogue is a process designed to facilitate voluntary, interactive exchanges of views and information among interested groups and individuals working towards consensus solutions to policy issues. A policy dialogue is a flexible tool to enable all parties to participate in a non-adversarial setting to define and resolve issues. The product of a policy dialogue can be a report, a set of recommendations, agreements in principle, exchanges of information, or other ways of addressing the issues involved.

Roster: A roster is a list of persons qualified to provide services as neutrals and may indicate the person's area of ADR expertise.

Settlement Judge: A settlement judge is an administrative law judge, a Board of Contract Appeals judge, or Dispute Resolution Officer trained in alternative dispute resolution techniques who consults with the parties and assists them in resolving a dispute instead of using a formal administrative hearing.

Appendix II—Examples of ADR Initiatives

ADR is working to bring parties together and to resolve disputes, resulting in less adversarial relationships and a better work environment. Employees who have been made aware of ADR techniques are routinely beginning to see them as desirable alternatives to traditional, more adversarial approaches. The Department has used ADR in various administrative and programmatic areas. Some examples of ADR initiatives that reflect the Department's commitment to collaborative decision-making include the following:

Civil Enforcement

Administrative Law Judges at the U.S. Coast Guard will continue to use ADR as appropriate. The ADR techniques may include early neutral evaluation, mediation, and settlement judges.

Contract and Procurement

Currently, the Department is reviewing its Transportation Acquisition Regulations and its Transportation Acquisition Manual and may incorporate an "ADR first" approach for agency protests, GAO protests, and appeals from contracting officers' final decisions. The Department encourages parties to call upon the Department's Board of Contract Appeals to provide early neutral evaluation and other ADR assistance on all acquisition controversies including bid protests and performance disputes.

In FY 1999, the Department's Board of Contract Appeals used alternative means of dispute resolution, including mini-trials and appointment of an independent neutral, in seven cases. Settlement was reached in six of the cases. The Board also provided early neutral evaluation on contract dispute matters.

The Federal Aviation Administration (FAA) issued a final rule on the procedural requirements of the Office of Dispute Resolution for Acquisition (ODRA) for the resolution of both bid protests and contract disputes. This dispute resolution process emphasizes the use of ADR as the primary means to resolve disputes. ODRA makes its Dispute Resolution Officers available as ADR neutrals with the concurrence of the parties. In addition, ODRA has established a web site, (*www.faa.gov/agc/*) which includes a guide to the conduct of protests and contract disputes and information about specific cases. In 1999, ODRA employed ADR techniques in 42 cases (bid protests and contract disputes) helping the parties to reach settlements in 95% of the contract disputes and 53% of bid protests.

The U.S. Coast Guard has established a Solicitation Ombuds and is completing development of an agency protest procedure. Contracting professionals consider ADR in resolution of pre- and post-award procurement disputes, and innovative processes, including contractor partnering, as appropriate. To enhance employee awareness, the Coast Guard provided ADR training to the chiefs of its contracting offices and its procurement attorneys.

Environmental

In response to Section 1309 of the Transportation Efficiency Act for the 21st Century, the Federal Highway Administration has requested that the U.S. Institute for Environmental Conflict Resolution provide assistance in developing a national policy and set of procedures that define a project level ADR system. This system will be applied during the National Environmental Policy Act (NEPA) evaluation process to specific transportation projects. The ADR system will be used to help stakeholders identify, avoid, and resolve potential problems and issues related to specific projects that would, if not addressed, cause delays during the NEPA process, fragment agency reviews, and make project sponsors and the lead agencies vulnerable to legal liability.

The Maritime Administration (MARAD) is using ADR to resolve environmental litigation. In two cases filed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, MARAD successfully engaged in mediation to resolve the cases. In both instances, external mediators were used and mediation lasted for 3 days. All parties saved on the costs of litigation by using mediation. Savings to the government included: expedited discovery; reduced travel expenses; elimination of court costs; elimination of trial preparation costs; reduced witness costs; and elimination of protracted procedural costs. Moreover, the United States was successful in greatly reducing the assessment against the government by convincing the parties in both cases that the government's defenses to higher allocation were credible.

Evaluation

As the Department links the budget process to results by using performance measures to make resource decisions, the validity, reliability, timeliness, and comparability over time of performance data will be a challenge to ADR programs. The Bureau of Transportation Statistics will assist in evaluation efforts. For example, the Bureau has provided statistical support to the ONEDOT Sharing Neutrals Program, assisting in defining what data to collect and designing a data collection and evaluation system.

Labor-Management Partnership

The Transportation Partnership Council (TPC), under Executive Order 12871, provides a mechanism for the representation of over 30,000 bargaining unit employees and both career mid-level managers and top DOT and operating administration executives to fully discuss issues of importance. TPC objectives include facilitating the formation and operation of partnerships in the Operating Administrations. TPC has fostered informal dispute resolution and resolution and interest-based bargaining throughout DOT. For example, FAA-National Air Traffic Controller Association used interest-based bargaining in term negotiations, Research and Special Programs Administration's Volpe National Transportation Systems Center and National Association of Government Employees used a collaborative approach on term negotiations, FRA-Association of Federal Government Employees used interest-based bargaining and partnerships with industry labor-management teams, and the U.S. Coast Guard and International Metal Trades-Aerospace Workers completed negotiations using an interest-based process.

Negotiated Rulemaking

The Department was the first Federal agency to use negotiated rulemaking back in 1983, and has a long, successful experience with the process. In the early 1980s, we advised employees throughout the Department of the process and factors to consider in deciding whether to use it. This led to the first use of the process for an FAA rulemaking on flight and duty time rules. Building on this success, we continued to provide information about and encourage the use of negotiated rulemaking. For example, in 1991, we circulated a memorandum providing more detail on the factors to consider in determining whether a particular rulemaking was an appropriate candidate for a regulatory negotiation in light of our experience and, in 1996, we circulated a memorandum that made a number of suggestions for cutting the costs of conducting negotiated rulemakings. Furthermore, senior political leadership has been briefed on the process and two DOT attorney have taught a negotiated rulemaking course attended by many DOT attorneys at the Department of Justice's National Advocacy Center.

Many of the Department's operating administrations have used negotiated rulemaking. The Federal Highway Administration conducted a regulatory negotiation on incorporation of physical fitness determinations into the commercial drivers license process for state enforcement of medical certification. The National Highway Traffic Safety Administration conducted negotiations on standards for headlight aimability, specifically for altering lower beam pattern, and reached consensus that led to a final rule. The Research and Special Programs Administration (RSPA) conducted negotiations and reached consensus on a recommended rule on the qualifications for personnel performing certain safety related functions for pipelines. In addition, RSPA successfully conducted a regulatory negotiation to develop recommendations for alternative safety standards for preventing and mitigating unintentional releases during the unloading of cargo tank motor vehicles in liquefied compressed gas service, such as propane and anhydrous ammonia. The U.S. Coast Guard used negotiated rulemaking to develop a rule on the operating schedule for a series of drawbridges over the Chicago River to balance the recreational boaters' need for lake access with the need to reduce the adverse impact of bridge openings on downtown motor vehicle traffic. Although unsuccessful in achieving consensus, the process did aid in developing the rule. Finally, the FAA and the Federal Railroad Administration have established standing advisory committees that they use to negotiate rules.

Process Design

In 1998, the FAA established the Office of Administrative Dispute Resolution under the Associate Chief Counsel for ADR, within the FAA Chief Counsel's Office. This Office is responsible for implementing provisions of the Administrative Dispute Resolution Act within the FAA. This Office provides leadership and support for new and existing ADR programs within FAA headquarters and the regions. It provides ADR briefings and orientation, assistance with system design, and instruction in conflict management, mediation, and advocacy in the ADR process. The Office has also worked with the FAA's Center for Management to develop training in mediation techniques for supervisors and managers.

The U.S. Coast Guard is establishing an information cross-flow ADR awareness program which will align with the Department's policy, with integrated training components to continue and expand current Coast Guard ADR uses. In furtherance of this, a core group has met and will continue to meet on a quarterly basis pending full stand-up of Dispute Resolution Council activities. The U.S. Coast Guard anticipates that the program will ultimately provide and continually invigorate awareness across directorate and operational lines, and enhance coordination with other modes to optimize program effectiveness and share and exchange information and implementations.

Workplace

The Department, under its ONE DOT initiative, has been developing a DOT-wide mediation program to help resolve Equal Employment Opportunity complaints. The department has trained employees to serve as neutral mediators to assist in the consensual resolution of those complaints and has established a pilot DOT-wide Sharing Neutrals Program for the mediation of discrimination complaints in the Washington, DC area. The U.S. Coast Guard, FAA, and Federal Railroad Administration also established mediation programs for discrimination complaints. In 1999, FAA mediated 123 complaints of discrimination. Mediation resolved 71 (58%) of the disputes. This resolution rate is up from 43% in 1998. With regard to other workplace issues, one office within the FAA has established an Early Resolution System and successfully resolved 16 out of 18 cases.

The FAA also established two new programs at its William J. Hughes Technical Center in Atlantic City, N.J., under which employees and management mediate workplace disputes. One program includes the bargaining unit employees of the American Federation of Government Employees, Local 200. The other involves the non-bargaining unit employees.

The FAA and the National Air Traffic Controllers Association (NATCA) established an ADR Working Group in accordance with their collective bargaining agreement. NATCA represents approximately 25,000 air traffic employees. The ADR Working Group has produced three Memoranda of Agreement designed to encourage joint problem solving, and to assist in the resolution of current disputes and the avoidance of future disputes between the FAA, NATCA, and NATCA members. The first program is designed to eliminate the backlog of current grievances through an upper level joint review process. The second program is a Neutral Evaluation pilot being conducted in two FAA regions. This program uses a neutral evaluator, generally an arbitrator with labor law expertise, to give the parties a realistic assessment of the respective merits of the grievance cases that would normally proceed to arbitration. The goal is to enhance opportunities for settlement, and the neutral is available to move the process into mediation should the parties so desire. The third program consists of a grievance mediation process and a facility-to-facility review process. Both processes are designed to resolve disputes early, so as to reduce the negative consequences of conflict.

[FR Doc. 00–29099 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2000–8278]

High Density Airports; Notice of Lottery of Slot Exemptions at LaGuardia Airport

AGENCY: Federal Aviation Administration.

ACTION: Notice of intent to conduct a lottery of takeoff and landing times at LaGuardia Airport.

SUMMARY: This notice announces the Federal Aviation Administration's (FAA) intention to hold a lottery, with the Port Authority of New York and New Jersey, in late November or early December to reallocate exemption slots at LaGuardia Airport as authorized under the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century. The FAA finds that this action is necessary to address the level of delays that are currently experienced as a result of the significant increase in operations authorized by that legislation, and to prevent an increase in delays from additional flights scheduled to begin in the near future.

DATES: Comments must be received on or before November 20, 2000.

ADDRESSES: Comments on this notice should be mailed or delivered in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–2000–8278, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: DMS.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3053.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this process by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions. Communications should identify the docket number and be submitted in triplicate to the above specified address. All communications and a report summarizing any substantive public contact with FAA personnel on this notice will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider all comments made on or before the closing date for comments and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The post card should be marked "Comments to Docket No. FAA–2000-8278." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Authority

The FAA has broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of the navigable airspace of the United States. Under 49 U.S.C. 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

The High Density Traffic Airports Rule, or "High Density Rule," 14 CFR part 93, subpart K, was promulgated in

1968 to reduce delays at five congested airports: JFK International Airport, LaGuardia Airport, O'Hare International Airport, Ronald Reagan National Airport and Newark International Airport (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, by hour or half hour, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a "slot" for each IFR landing takeoff during a specific 30- or 60-minute period. The restrictions were lifted at Newark in the early 1970s.

"AIR–21"

On April 5, 2000, the "Wendell H. Ford Aviation Investment and Reform Act of the 21st Century" ("AIR–21") was enacted. Section 231 of AIR–21 significantly amended 49 U.S.C. 41714 and included new provisions codified at 49 U.S.C. 41716, 41717, and 41718. These provisions enable air carriers meeting specified criteria to obtain new slot exemptions at New York's LaGuardia Airport (LaGuardia) and John F. Kennedy International Airport (JFK), Chicago's O'Hare International Airport (O'Hare) and Washington DC's Ronald Reagan Washington National Airport (National). As a result of this legislation, the Department of Transportation (Department) issued eight orders establishing procedures for the processing of various applications.

Specifically, Order 2000–4–11 implements 49 U.S.C. 41716(a), which provides in pertinent part that an exemption must be granted to any airline using Stage 3 aircraft with less than 71 seats that proposes to provide nonstop service between LaGuardia and an airport that was designated as a small hub or nonhub in 1997, under certain conditions. The exemption must be granted if: (1) The airline was not providing such nonstop service between the small hub or nonhub and LaGuardia Airport during the week of November 1, 1999; or (2) the proposed service between the small hub or nonhub and LaGuardia, exceeds the number of flights provided between such airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet as replacement of turboprop service that was being provided during the week of November 1, 1999.

According to AIR–21 and the Department's Orders, air carriers meeting the statutory tests delineated above automatically receive blanket approval for slot exemptions, provided that they certify in accordance with 14 CFR 302.4(b) that they meet each and every one of the statutory criteria. The certification should state the communities and airport to be served; that the community was designated a small hub or nonhub as of 1997, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the planned effective dates. Carriers must also certify that the proposed service represents new service, additional frequencies, or regional jet service that has been upgraded from turboprop service when compared to service of the week of November 1, 1999. In addition, carriers must state the number of slot exemptions and the times needed to provide the service.

Order 2000–4–10 implements the provisions of 49 U.S.C. 41716(b), which states in pertinent part, that exemptions must be granted to any new entrant or limited incumbent airline using Stage 3 aircraft that proposes "* * * to provide air transportation to or from LaGuardia or John F. Kennedy International Airport if the number of slot exemptions granted under this subsection to such air carrier with respect to such airport when added to the slots and slot exemptions held by such air carrier with respect to such airport does not exceed 20." Applications submitted under this provision must identify the airports to be served and the time requested.

Section 231 of AIR–21, 49 U.S.C. 41715(b)(1) expressly provides that the provisions for slot exemptions are not to affect the FAA's authority for safety and the movement of air traffic. The actions proposed in this notice are taken under that FAA authority, and do not rescind the exemptions issued by the Department of Transportation under Orders 2000–4–10 and 2000–4–11. As provided in those orders, carriers that have filed the exemption certifications also need to obtain slot exemption times from the FAA. This notice proposes to limit and allocate those times, in recognition that it is not possible to add an unlimited number of new operations at LaGuardia Airport even if those operations would otherwise qualify for exemptions under AIR–21.

Lastly, § 93.225 of Title 14 of the Code of Federal Regulations sets forth the process for slot lotteries under the High Density Rule. The process described in the regulations is similar to the process described herein and allows for special conditions to be included when circumstances warrant special consideration.

Actions of the Port Authority of New York and New Jersey

In response to a significant increase in exemption operations under AIR–21 beginning in late summer (from 53 operations in August 2000 to 192 operations at the end of September), the Port Authority of New York and New Jersey (Port Authority) issued a letter on August 2 to all carriers filing for AIR–21 exemptions requiring 45 days advance notice of new operations at the airport under AIR–21. On August 21, the Port Authority issued a second letter to carriers planning to initiate service under AIR–21 exemptions requesting that the carriers schedule their flights outside of the most congested hours in order to mitigate the delays generated by additional flights. On September 19, the Port Authority announced a temporary moratorium on new flights. In that letter, the Port Authority stated its intent to replace this moratorium as soon as possible with a measure that will prevent an unlimited increase in operations at LaGuardia, and at the same time fairly accommodate Federal interests in competition and in service to small hub or nonhub airports as provided in AIR–21. To that end, the Port Authority has proposed to the FAA the imposition of a limit on the number of AIR–21 exemption flights at LaGuardia, and the allocation of those flights to eligible carriers through a lottery procedure to address, in the short-term, the current situation at the airport.

The following factors describe the current operating conditions experienced at LaGuardia:

- There were more than 9,000 flight delays at LaGuardia in September 2000, up from 3,108 in September 1999. In September 2000, 25% of the flight delays in the U.S. were at LaGuardia. In September 1999, the figure was 12%.
- Average delays for many afternoon flights at LaGuardia in September 2000 exceeded 48 minutes. The average delay for all flights that month was 43 minutes.
- LaGuardia has recently experienced as many as 600 delayed flights on a day when there is good weather and no other significant problems in the air traffic control system.
- Some flights at LaGuardia have experienced average ground delay time that exceeds scheduled flight time.
- Air carriers routinely cancel scheduled flights, especially in afternoon and evening hours, due to aircraft positioning and other operational issues related to excessive delays.

Since AIR–21 was enacted on April 5, 2000:

- Carriers have filed exemption requests for more than 600 new flights a day at LaGuardia.
- As of November 1, almost 300 new flights are operating under AIR–21 exemptions.
- Carriers have published schedules for 28 new flights in December and 23 more new flights in January 2001.
- In April 2000, the number of scheduled operations at LaGuardia was 1064. As of November 1, that number is 1344.
- If the flights published for December and January began operation, there would be approximately 1395 scheduled operations each day at the airport, an increase of 30% in less than a year at an airport that was already one of the top two delay airports in the U.S.

There is no question that the exemption provisions of AIR–21 have significant benefits for competition, by providing new entrant carriers access to slot-controlled airports, and permitting new service to small hub and non-hub airports. The FAA fully supports these goals, and intends to accommodate those goals to the maximum extent practical in measures to manage congestion and delay at LaGuardia Airport.

At the same time, the FAA understands that the capacity of the airport to accommodate additional flights is not unlimited. At some point, the increase in operations at the airport will result in hundreds of operating delays each day, with increasing average delay times for each flight. Market forces alone have not limited the scheduling of additional operations or the scheduling of these operations in peak hours at the airport. This increasing level of congestion and delay makes carrier schedules impossible to meet, frustrates passenger travel plans, and places an unnecessary strain on carrier ground operations and on air traffic control services. The goals of the AIR–21 exemptions are not served by an unlimited increase in operations, because the flights operating under those exemptions experience the same disruption and delay as existing flights. Ultimately, unlimited growth is not just a service issue; increasing ground congestion increases the possibility of aircraft collisions during taxi and ramp operations, and could increase the possibility of a runway incursion at the airport.

The agency does believe that some action is appropriate and necessary to prevent the scheduling of more flights at LaGuardia than can possibly be operated on any published schedule, and to address the substantial delays experienced even in ideal conditions. After consideration of a number of options for short-term management of congestion, the Port Authority presented a preferred option to the FAA on November 2, which included: (1) The establishment of a certain number of total daily operations at the airport (the Port Authority proposed a limit of 75 total scheduled operations per hour); (2) the total would include a fixed number of AIR–21 exemption operations, determined by the difference between 75 and existing HDR and exemption slots that preceded the AIR–21 exemptions; and (3) allocation by lottery of slot exemptions to conduct that number of AIR–21 operations. (A copy of the Port Authority's letter is placed in the docket.) On November 8, 2000, the Port Authority and the FAA convened a meeting and invited all affected carriers to discuss the situation at LaGuardia and presented the lottery concept. This notice supplements and clarifies the information made available by the FAA at that meeting. (A copy of the agency's November 7 letter to the Port Authority is located on the FAA's website *FAA.gov*. and has been placed in the docket.)

In consideration of the urgency of the delay situation at LaGuardia, described above, and the fact that even more flights are planned and will commence operations if some action is not taken, the number of AIR–21 slot exemption flights should be limited to recognize practical constraints of the airport environment and provisions of air traffic services. Since other categories of flights at LaGuardia are already limited, a limit on AIR–21 exemption flights serves to achieve a general limit on airport operations that will prevent increasingly disruptive congestion and longer delays in the future. The limit would not be permanent and would remain in effect until September 15, 2000, when a permanent demand management policy for the airport would be developed with the participation of all interested parties.

The FAA's Air Traffic Service has independently reviewed the Port Authority's proposal for scheduled operations. The limit of 75 scheduled operations per hour would limit daily and hourly demand on airport facilities and the air traffic control system to a number of flights that can be accommodated, at least in good weather conditions and, at the same time, provides access for AIR–21 exemption flights. The number does not include extra sections of scheduled air carrier flights or the 6 slots per hour reserved for "Other" nonscheduled operations including general aviation, charters and military flights.

Reallocation of Slot Exemptions at LaGuardia Airport by Lottery

The FAA intends to proceed with the development of new department policy on measures available to airport operators for management of congestion, with participation by all interested parties. The goal is to have that policy in final form in time to permit the Port Authority to adopt measures to replace the allocation of exemption slots under the lottery described in this notice. . However, in the short-term, the FAA believes that the number of AIR–21 exemption operations at LaGuardia should be limited and that an allocation of those flights by lottery to eligible carriers is preferable. The FAA believes that a reallocation of AIR–21 exemption flights at LaGuardia in accordance with the following conditions would meet the goals and requirements of AIR–21, and also would be consistent with the FAA's responsibility for the efficient use of the navigable airspace, under 49 U.S.C. 40103(b).

On January 1, 2001, the number of scheduled operations at LaGuardia would be limited to approximately 75 per hour. As a result, the number of AIR–21 slot exemptions at LaGuardia would be limited to approximately 150 a day between the hours of 7:00 a.m. and 9:59 p.m. Also on January 1, 2001, the FAA would reissue AIR–21 slot exemptions to eligible carriers in accordance with the results of a lottery. The FAA seeks comments as to whether the January 1, 2001, date is feasible or whether alternative dates are suggested.

In late November or early December, the FAA proposes, in conjunction with the Port Authority, to conduct a lottery at the Port Authority's facilities in New York. Details regarding this lottery would be provided under separate notice in the near future, following consideration of the comments received in response to this notice. The preliminary number of AIR–21 slot exemptions that would be issued in each hour, consistent with an hourly total of 75 scheduled operations is as follows (allocations will be made by 30 minute time periods):

Hourly period	Number of exemptions
0700	18
0800	11
0900	9
1000	8
1100	8
1200	13
1300	15
1400	8
1500	13
1600	7
1700	2
1800	7
1900	8
2000	6
2100	26

The FAA proposes that carriers eligible for participation in the lottery would be those carriers that have applications on file with the Department, have fulfilled the certification requirements articulated in OST Orders 2000–4–10 and 2000–4–11 as of the date of this notice, and will have commenced operations by January 1, 2001. Definitions for the terms "carrier," "new entrant," and "limited incumbent" for purposes of participation in the lottery, are proposed as set forth in 14 CFR 93.123, and amended by section 231 of AIR–21. The Port Authority proposed to consider all carriers operating under a single designator code to be considered a single carrier for the purposes of the lottery. We note that the language in AIR–21 addressing affiliated carriers applies only in determining new entrant status and does not include the provision addressing service for small hub or nonhub airports. Upon reconsideration, the FAA is proposing for comment that independently owned carriers that had obtained AIR–21 certification in their own name could participate in the lottery separately, regardless of code-share arrangements. The list of eligible carriers below is based on this reconsideration. However, comments are specifically requested on this distinction.

The FAA further proposes that no carrier may select more exemption times than it operated between 0700–2159 on January 1, 2001. The slot exemptions reallocated by lottery would remain in effect until September 15, 2001. The FAA seeks comment as to whether another date in September is more feasible for carriers to make general schedule changes. Carriers that are reallocated exemption slots by lottery should re-certify to the Department of Transportation in accordance with the procedures articulated in OST Orders 2000–4–10 and 2000–4–11, and provide the Department and the FAA with the markets to be served, the number of exemption slots and the time of operation. While this temporary re-allocation process will be conducted jointly with the Port Authority, the FAA wants to make clear that this measure is taken in response to a serious and currently unique situation at LaGuardia Airport under the FAA's authority for the efficient management of the navigable airspace and provided for in AIR–21.

Reallocation of Slot Exemption at LaGuardia by Lottery

In late November or early December 2000, the FAA intends to hold a lottery with the Port Authority to allocate approximately 150 slot exemptions authorized under AIR–21. The FAA proposes the following lottery procedure for allocation of the AIR–21 slot exemptions at LaGuardia:

1. All AIR–21 slot exemptions will be allocated in this lottery, and all carriers currently operating under AIR–21 exemption authority will be required to conform their schedules to the slots received in the lottery, effective on the effective date of the allocation (in January 2001).

2. To be eligible to participate in this lottery, a carrier must have applied to the Department of Transportation under Orders OST 2000–4–10 or 2000–4–11, received allocations by the FAA as of the date of this notice, and commenced operation by January 1, 2001. Carriers that meet this criteria under Order 2000–4–10 and would be eligible for a lottery of times between 0700–2159 are: Air Tran (11 operations), American Trans Air (8 operations), Legend, (7 operations), Midway (9 operations), Midwest Express (8 operations), Spirit Airlines (14 operations), Shuttle America (14 operations), Southeast Airlines (4) and Vanguard (4 operations). Carriers that meet the criteria of Order 2000–4–11 for service for small hub and nonhub airports and would be eligible for a lottery are: American Eagle (26 operations), Atlantic Coast Jet (44 operations), Chautauqua Airlines (12 operations), Colgan Air (20 operations), Commutair (10 operations), Continental Express (22 operations), Delta Connection (37 operations) and US Airways Express (50 operations).

3. The slot exemption lottery will be conducted in accordance with the following procedures:

a. Carriers will participate in a random drawing for selection order. Carriers will select in that order in each round.

b. No carrier may select more exemption times than it operated between 0700–2159 on January 1, 2001.

c. In the first round, only new entrants and limited incumbent carriers may participate. Each new entrant and limited incumbent carrier may select up to 4 slot exemption times, 2 arrivals and 2 departures. No more than one slot exemption time may be selected in any hour. In this round each carrier may select one slot exemption time in each of 4 hours without regard to whether a slot is available in that hour.

d. In the second and third rounds, only carriers providing service to small hub and nonhub airports may participate. Each carrier may select up to 2 slot exemption times, one arrival and one departure in each round.

e. Beginning with the fourth round, all eligible carriers may participate. Each carrier may select up to 2 of the remaining slot exemption times, one arrival and one departure, in each round, until a total of 150 slot exemption times have been selected.

f. If the last remaining slot exemption times available do not permit a reasonable arrival-departure turnaround, the FAA will take requests for trades among AIR–21 operators, or will make an adjustment to one of the times to assure that all slot exemption time pairs selected provide for a viable operation by the selecting carrier.

g. The Chief Counsel will be the final decisionmaker concerning eligibility of carriers to participate in the lottery.

Issued on November 9, 2000 in Washington, DC.

James [illegible]. Whitlow,

Deputy Chief Counsel.

[FR Doc. 00–29356 Filed 11–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Tuesday, December 5, 2000. The following designations are made for each item: (A) is an "action" item; (I) is an "information item"; and (D) is a "discussion" item. The agenda includes the following: (1) Housekeeping Items, i.e. Introductions, Statements of Antitrust Compliance and Conflict of Interest, and Previous Minutes (I); (2) Federal Report (I&D); (3) President's Report (I); (4) Council Membership Issues Discussion (I/D/A); (5) Adoption of ITS America Privacy Principles (D/A); (6) Break (20 minutes) (A); (7) Progress Report: Joint Task Force on ITS Deployment Strategy (I/D); (8) Approval of IVI Advice letter to USDOT (D/A); (9) Progress Report: 10-Year Program Plan & Research Agenda (I/D); (10) Closing Housekeeping—Next meeting: TBD.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on Tuesday, December 5, 2001 from 8 a.m.–Noon (Eastern Standard time).

ADDRESSES: Wyndham Miami Beach Resort, 4833 Collins Ave., Miami Beach, Florida, 33140. Phone: (305) 532–3600 and Fax: (305) 538–2807.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons needing further information or to request to speak at this meeting should contact Carren Kaston at ITS AMERICA by telephone at (202) 484–4669, or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–0722. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: November 9, 2000.

Whitey Metheny,

ITS Joint Program Office.

[FR Doc. 00–29268 Filed 11–14–00; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–7354; Notice 2]

Honda Motor Co., Ltd.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

We are granting the application by Honda Motor Co. Ltd. ("Honda"), a Japanese corporation, through American Honda Motor Co., Inc., of Torrance, California, for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*. The basis of the request was that "compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles," 49 U.S.C. 30113(b)(3)(B)(iv).

On May 18, 2000, we published a notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and asked for comments (65 FR 31629). We received many comments in support, as discussed below.

Honda applied on behalf of its NSS250 motor scooters. The scooters are defined as "motorcycles" for purposes of compliance with the Federal motor vehicle safety standards. If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control (the left handlebar is permissible only for a motor driven cycle (Item 11, Table 1), *i.e.*, a motorcycle with a motor that produces 5 brake horsepower or less).

Honda asked that it be allowed to use the left handlebar as the control for the rear brakes of its NSS250, which is a motorcycle and not a motor driven cycle. The model features an automatic transmission that eliminates the left-hand clutch lever as well as any left-foot gearshift lever. This leaves the left hand of the rider free to operate a brake lever. In Honda's opinion, "removal of the left-handlebar clutch lever, left-foot-controlled gearshift lever and right-foot-controlled rear brake pedal result in simpler operation." Honda pointed out that NHTSA exempted three other motorcycle manufacturers from this requirement of S5.2.1. in 1999 (Aprilia, 64 FR 44262; Vectrix, 64 FR 45585; and Italjet, 64 FR 58127).

Honda argued that the overall level of safety of the scooters equals or exceeds that of a motorcycle that complies with the brake control location requirement of Standard No. 123. Unlike the other exempted motorcycles, the NSS250 is equipped with a "combined brake system" which "provides single-point, front- and rear-wheel braking action." The vehicle meets the braking performance requirements "of both FMVSS 122 and ECE78." The company submitted test results demonstrating that the braking performance of the NSS250 with its combined brake system is better than that of a scooter without the combined brake system. For the second effectiveness test, for example, the NSS250 stopped in shorter distances than a Honda model equipped with a foot brake, that is to say, from a maximum speed of 65.4 mph in 165 feet (compared with 178 feet), and, from 30 mph, in 38 feet (compared with 40 feet).

Honda has developed the NSS250 for the world market. In Europe, Japan, and other Asian countries, scooters are equipped with handlebar-mounted front and rear brakes. Absent an exemption, then, Honda said that it will be unable to sell the NSS250 in the United States. The cost to conform the NSS250 to comply with Standard No. 123 "would add considerable cost to the product" and result in a motorcycle that would not be competitive.

Honda will not sell more than 2,500 scooters a year while an exemption is in effect. It argued that an exemption would be in the public interest and consistent with the objectives of traffic safety because "the level of safety is equal to similar vehicles certified under FMVSS No. 123."

We received approximately 40 comments, all of which urged us to grant the application. Typical of the comments are those from Richard A. Smith of Orem, Utah, Brian Hotaling of Austin, Texas, and Deb Lee of Carriere, Mississippi. Mr. Hotaling adduces that Honda's tests show that its "simple yet innovative combined braking system is better" than that of a scooter without it, and that "the NSS250 stopped in shorter distances than a Honda model equipped with a foot brake by a remarkable amount." Mr. Smith recommended that "this exemption should be allowed on a permanent basis," and that "given the recent prices of gasoline in our country and the environmental concerns over air pollution in our cities * * * Honda should be allowed to import more than 2500 of these vehicles." Ms. Lee recommends an amendment to Standard No. 123, and comments that the Honda product "could be used by many senior citizens and Americans with disabilities."

As Honda noted in its petition, we have exempted three other motorcycle manufacturers from S5.2.1 (Aprilia, 64 FR 44262, re-issued at 65 FR 1225; Vectrix, 64 FR 45585; and Italjet, 64 FR 58127). We have reviewed Honda's brake test results demonstrating the superiority of the NSS250 with its combined brake system over that of a scooter without such a system. Our concerns about a lack of standardization of the rear brake control for scooter-type vehicles was addressed by Aprilia in its petition which included a report on "Motorscooter Braking Control Study" which is available for examination in Docket No. NHTSA–99–4357. This report indicated that test subjects' brake reaction times using a vehicle much like Honda's were approximately 20% quicker than their reaction times on the conventional motorcycle. We interpreted the report as indicating that a rider's braking response is not likely to be degraded by the different

placement of brake controls, and cited it in granting the similar petition by Vectrix. In the present case, the number of favorable comments appear to sustain our previous conclusions.

With respect to the public interest and the objectives of motor vehicle safety, the overall level of safety, as Honda argues, appears at least equal to that of vehicles certified to comply with Standard No. 123. The numerous comments make convincing arguments that an exemption would be in the public interest by making available a compact, fuel-efficient vehicle that would not otherwise be available without an exemption.

In consideration of the foregoing, we hereby find that Honda has met its burden of persuasion that, to require compliance with Standard No. 123 would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, Honda Motor Co. Ltd. is hereby granted NHTSA Temporary Exemption No. EX2000–2 from the requirements of item 11, Column 2, Table 1 of 49 CFR 571.123 Standard No. 123 Motorcycle Controls and Displays, that the rear wheel brakes be operable through the right foot control. This exemption applies only to the NSS250, and will expire on November 1, 2002.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50)

Issued on November 8, 2000.

Sue Bailey,

Administrator.

[FR Doc. 00–29240 Filed 11–14–00; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33959]

Ballard Terminal Railroad Company, L.L.C. d/b/a Meeker Southern Railroad—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Ballard Terminal Railroad Company, L.L.C. (BTRC), a limited liability company doing business as Meeker Southern Railroad,[1] has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from The Burlington Northern and Santa Fe Railway Company (BNSF) and operate BNSF's Meeker-McMillin Rail Line located between Meeker, milepost 32.82, and McMillin, milepost 28.34, in Pierce County, WA, a distance of approximately 4.5 miles (line).

The parties report that they intend to close the transaction on or after the later of November 13, 2000, or seven days from date of filing of this notice with the Board. The earliest the transaction can be consummated is November 10, 2000, the effective date of the exemption (7 days after the exemption was filed).[2]

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33959, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Stephen L. Day, Esq., Betts, Patterson & Mines, P.S., 1215 4th Avenue, Suite 800, Seattle, WA 98161–1090.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: November 7, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–29077 Filed 11–14–00; 8:45 am]

BILLING CODE 4915-00-P

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[1] BTRC is an existing carrier currently operating in Seattle, WA. *See Ballard Terminal Railroad Company, L.L.C.—Modified Rail Certificate*, STB Finance Docket No. 33594 (STB served Feb. 26, 1999).

[2] After consummation of the transaction in STB Finance Docket No. 33959, the line will be referred to as the Meeker Southern Railroad line.

Corrections

Federal Register
Vol. 65, No. 221
Wednesday, November 15, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Financial Management Service

31 CFR Part 205

Public Meetings on Proposed Revisions to the Regulations Implementing the Cash Management Improvement Act

Correction

In proposed rule document 00–28579 beginning on page 66671 in the issue of Tuesday, November 7, 2000 make the following corrections:

1. On page 66671, in the first column, under the heading **ADDRESSES** in the fifth line, "A 7 B" should read "A & B".

2. On the same page, in the third column, in the second paragraph, in the third line "allowed" should read "disallowed".

3. On the same page, in the same column, in the same paragraph, in the fourth line "by" should read "be".

4. On the same page, in the same column, in the sixth paragraph, in the third line "Plan" should read "Plain".

5. On page 66672, in the first column, in the first paragraph, in the fourth line "http://www.fms.treas.giv/policymia" should read "http://www.fms.treas.gov/policycmia".

[FR Doc. C0–28579 Filed 11–14–00; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Wednesday,
November 15, 2000

Part II

Environmental Protection Agency

Forty-Fourth Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–41052; FRL–6087–8]

Forty-Fourth Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its Forty-Fourth Report to the Administrator of the EPA on May 27, 1999. In the 44th Report, which is included with this notice, the ITC initiated a process to identify chemicals with production volumes greater than 10,000 pounds per year that are predicted to bioconcentrate, persist, and cause ecological or human health effects. To date the process has identified more than 400 chemicals.

At this time, the ITC is implementing the process and has no revisions to its TSCA section 4(e) *Priority Testing List*. EPA invites interested persons to submit written comments on the Report.

DATES: Comments, identified by docket control number OPPTS–41052, must be received on or before December 15, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–41052 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: John D. Walker, ITC Executive Director (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1825; fax: (202) 260–7895; e-mail address: *walker.johnd@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested , the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

You may also access additional information about the ITC and the TSCA testing program through the web site for the Office of Pollution Prevention and Toxics (OPPT) at *http://www.epa.gov/opptintr/*, or go directly to the ITC home page at *http://www.epa.gov/opptintr/itc/*

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–41052. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–41052 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: *oppt.ncic@epa.gov*, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–41052. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views and comments on the ITC 44th Report. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. Make sure to submit your comments by the deadline in this notice.
6. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) authorizes the Administrator of the EPA to promulgate regulations under section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of the EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

A. The ITC's 44th Report

The 44th Report was received by the EPA Administrator on May 27, 1999, and is included in this notice. In the 44th Report, the ITC stated that it had initiated a process to identify chemicals with production/importation volumes greater than 10,000 pounds per year that are predicted to bioconcentrate, persist, and cause ecological or human health effects. According to the ITC report, more than 400 chemicals have been identified.

B. Status of the Priority Testing List

At this time, the ITC is implementing the process and has no revisions to its TSCA section 4(e) *Priority Testing List*. The current TSCA section 4(e) *Priority Testing List* as of May 1999 can be found in Table 1 of the 44th ITC Report which is included in this notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: November 6, 2000.

Wardner G. Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Forty-Fourth Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

This is the 44th Report of the TSCA Interagency Testing Committee (ITC) to the Administrator of the U.S. Environmental Protection Agency (EPA) The ITC was established by section 4(e) of the Toxic Substances Control Act (TSCA) "to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a).... At least every six months..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions" (Public Law 94–469, 90 Stat. 2003 *et seq.* (15 U.S.C. 2601 *et seq.*)). Since its creation in 1976, the ITC has submitted 43 semi-annual (May and November) Reports to the EPA Administrator transmitting the *Priority Testing List* and its revisions. In 1989, the ITC began recommending chemical substances for information reporting, screening, and testing to meet the data needs of its member U.S. Government organizations. ITC Reports are available from *http://www.epa.gov/opptintr/itc* within a few days of submission to the Administrator and from *http://www.epa.gov/fedrgstr* after publication in the **Federal Register**. The ITC meets monthly and produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC staff and contract support provided by EPA. ITC members and staff are listed at the end of this Report.

During this reporting period (November 1998 to May 1999), the ITC began developing a process to identify chemicals with production or importation volumes >10,000 lb/year that are predicted to bioconcentrate, persist, and cause ecological or human health effects. To date, the process has been used to identify more than 400 chemicals with production or importation volumes >10,000 lb/year with log octanol-water partition coefficients and aerobic biodegradation removal rates that suggest bioconcentration and persistence potential. In addition, the process is being used to:

1. Organize chemicals into structurally related chemical classes for the purpose of developing structure activity relationships (SARs).
2. Characterize the type, quantity, and quality of ecological or human health effects data associated with each chemical.
3. Determine uses.
4. Estimate potential environmental releases and human exposures.
5. Evaluate existing regulations.
6. Identify U.S. Government data needs.

This process supports EPA's current High Production Volume (HPV) Chemical Challenge program (*http://www.epa.gov/opptintr/chemrtk/volchall.htm*) and Persistent Bioaccumulative Toxics (PBT) project (*http://www.epa.gov/opptintr/chemrtk/persbioq.htm*). At this time, the ITC is implementing this process and has no revisions to its TSCA section 4(e) *Priority Testing List* which follows as Table 1.

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST(MAY 1999)[1]

Report	Date	Chemical/group	Action
26	May 1990	8 Isocyanates	Recommended with intent-to-designate
27	November 1990	62 Aldehydes	Recommended with intent-to-designate
28	May 1991	Chemicals with low confidence reference dose (RfD) Acetone Thiophenol	Designated
30	May 1992	5 Siloxanes	Recommended
31	January 1993	24 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	32 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	24 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	16 Alkylphenols and 3 alkylphenol polyethoxylates[2]	Recommended
39	November 1996	15 Nonylphenol ethoxylates and 8 alkylphenol polyethoxylates[2]	Recommended

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST(MAY 1999)[1]—Continued

Report	Date	Chemical/group	Action
41	November 1997	18 Alkylphenols, 5 polyalkyphenols, and 6 alkylphenol polyethoxylates[2]	Recommended
42	May 1998	3-Amino-5-mercapto-1,2,4-triazole[2]	Recommended
42	May 1998	Glycoluril[2]	Recommended
42	May 1998	Methylal[2]	Recommended
42	May 1998	Ethyl silicate[2]	Recommended

1 The *Priority Testing List* is available from the ITC's web site (*http://www.epa.gov/opptintr/itc*).

2 Data requested through the ITC's Voluntary Information Submissions Innovative Online Network (VISION) (see *http://www.epa.gov/opptintr/itc/vision.htm*).

TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

Council on Environmental Quality
Brad Campbell, Member
Department of Commerce
National Institute of Standards and Technology
Malcolm W. Chase, Member
Barbara C. Levin, Alternate
National Oceanographic and Atmospheric Administration
Nancy Foster, Member
Teri Rowles, Alternate
Richard S. Artz, Alternate
Environmental Protection Agency
Paul Campanella, Member
David R. Williams, Alternate
National Cancer Institute
Victor Fung, Member
Harry Seifried, Alternate
National Institute of Environmental Health Sciences
William Eastin, Member, Chair
H.B. Matthews, Alternate
National Institute for Occupational Safety and Health
Albert E. Munson, Member
Christine Sofge, Alternate
National Science Foundation
A. Frederick Thompson, Member
Occupational Safety and Health Administration
Lyn Penniman, Member
Val H. Schaeffer, Alternate

Liaison Organizations and Their Representatives

Agency for Toxic Substances and Disease Registry
William Cibulas, Member
Consumer Product Safety Commission
Jacqueline Ferrante, Member, Vice Chair
Department of Agriculture
Clifford P. Rice, Member
Department of Defense
Rick Drawbaugh, Member
Janet Whaley, Alternate
Jose Centeno, Alternate
Department of the Interior
Barnett A. Rattner, Member
Food and Drug Administration
Raju Kammula, Member
National Library of Medicine
Vera W. Hudson, Member
National Toxicology Program
NIEHS, FDA, and NIOSH Members
Counsel
Scott Sherlock, Office of Pollution Prevention and Toxics, EPA
Technical Support Contractor
Syracuse Research Corporation
ITC Staff
John D. Walker, Executive Director
Norma S. L. Williams, Executive Assistant

TSCA Interagency Testing Committee, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1825; fax number: (202) 260–7895; e-mail address: *williams.norma@epa.gov*; *url: http://www.epa.gov/opptintr/itc.*

[FR Doc. 00–29051 Filed 11–15–00; 8:45 am]

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Wednesday,
November 15, 2000

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Stock Transfer Rules: Carryover of Earnings and Taxes; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116050–99]

RIN 1545–AX65

Stock Transfer Rules: Carryover of Earnings and Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations addressing transactions described in section 367(b) of the Internal Revenue Code (section 367(b) transactions). A section 367(b) transaction includes a corporate reorganization, liquidation, or division involving one or more foreign corporations. The proposed regulations address the carryover of certain tax attributes, such as earnings and profits and foreign income tax accounts, when two corporations combine in a section 367(b) transaction. The proposed regulations also address the allocation of certain tax attributes when a corporation distributes stock of another corporation in a section 367(b) transaction. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for March 13, 2001 must be received by February 20, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–116050–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–116050–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. The public hearing will be held in room 7218, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Anne O'Connell Devereaux, at (202) 622–3850; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by January 16, 2001. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information (see below);
- How the quality, utility, and clarity of the information to be collected may be enhanced;
- How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.367(b)–1. This collection of information is required by the IRS to verify compliance with the regulations under section 367(b) relating to exchanges described therein. The likely respondents are corporations that are affected by such exchanges.

Estimated total annual reporting burden: 1,800 hours.

The estimated annual burden per respondent: 3 hours.

Estimated number of respondents: 600.

Estimated annual frequency of responses: One.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 27, 1977, the IRS and Treasury issued proposed and temporary regulations under section 367(b) of the Code. Subsequent guidance updated and amended the 1977 temporary regulations several times over the next 14 years. On August 26, 1991, the IRS and Treasury issued proposed regulations §§ 1.367(b)–1 through 1.367(b)–6 (the 1991 proposed regulations). Final regulations under section 367(b) of the Internal Revenue Code (Code) were issued in June 1998 and January 2000 and the 1977 temporary regulations and the 1991 proposed regulations were generally removed. The preamble to the January 2000 final regulations refers to proposed regulations that would be issued at a later date to address the carryover of certain corporate tax attributes in transactions involving one or more foreign corporations. Those proposed regulations are set forth in this document.

Overview

A. General Policies of Section 367(b)

In general, section 367 governs corporate restructurings under sections 332, 351, 354, 355, 356, and 361 (Subchapter C nonrecognition transactions) in which the status of a foreign corporation as a "corporation" is necessary for the application of the relevant nonrecognition provisions. Other provisions in Subchapter C (Subchapter C carryover provisions) apply to such transactions in conjunction with the enumerated provisions and detail additional consequences that occur in connection with the transactions. For example, sections 362 and 381 govern the carryover of basis and earnings and profits from the transferor corporation to the transferee corporation in applicable transactions and section 312 governs the allocation of earnings and profits from a distributing corporation in a transaction described in section 355.

The Subchapter C carryover provisions generally have been drafted to apply to domestic corporations and U.S. shareholders, and thus do not fully take into account the cross-border aspects of U.S. taxation. For example, sections 381 and 312 do not take into account source and foreign tax credit issues that arise when earnings and profits move from one corporation to another.

Congress enacted section 367(b) to ensure that international tax considerations in the Code are adequately addressed when the Subchapter C provisions apply to an exchange involving a foreign corporation in order to prevent the avoidance of U.S. taxation. Because determining the proper interaction of the Code's international and Subchapter C provisions is "necessarily highly technical," Congress granted the Secretary broad regulatory authority to provide the "necessary or appropriate" rules rather than enacting a complex statutory regime. H.R. Rep. No. 658, 94th Cong., 1st Sess. 241 (1975). Thus, section 367(b)(2) provides in part that the regulations "shall include (but shall not be limited to) regulations * * * providing * * * the extent to which adjustments shall be made to earnings and profits, basis of stock or securities, and basis of assets."

The proposed regulations provide rules regarding the movement of certain corporate tax attributes between corporations in a Subchapter C nonrecognition transaction involving one or more foreign corporations. Generally, the regulations continue to apply the principles of the Subchapter C carryover provisions with modifications as necessary or appropriate to preserve international tax policies of the Code and to prevent material distortions of income.

The remainder of this Overview section is divided by specific categories of section 367(b) transactions and describes the relevant Subchapter C and international policies and provisions. The "Details of Provisions" portion of this preamble describes the proposed regulations' principal operative rules that implement the policies and reconcile the provisions described in the Overview portion of this preamble. The IRS and Treasury welcome comments regarding both the general approach and the specific provisions of the proposed regulations.

B. Specific Policies Related to Inbound Nonrecognition Transactions (Prop. Reg. § 1.367(b)–3)

Proposed § 1.367(b)–3 addresses acquisitions by a domestic corporation (domestic acquiring corporation) of the assets of a foreign corporation (foreign acquired corporation) in a section 332 liquidation or an asset acquisition described in section 368(a)(1), such as a C, D, or F reorganization (inbound nonrecognition transaction).

The preamble to the January 2000 final regulations generally describes international policy issues that can arise in an inbound nonrecognition transaction. The preamble states that the "principal policy consideration of section 367(b) with respect to inbound nonrecognition transactions is the appropriate carryover of attributes from foreign to domestic corporations. This consideration has interrelated shareholder-level and corporate-level components." The final regulations address the carryover of certain attributes, such as the carryover of foreign taxes, earnings and profits, and basis. However, the carryover of earnings and profits and basis are addressed only to the extent attributable to earnings and profits accumulated during a U.S. shareholder's holding period, *i.e.*, "the all earnings and profits amount," as defined in § 1.367(b)–2(d).

The preamble to the final regulations also notes that it would be consistent with the policy considerations of section 367(b) for future regulations to provide further rules with respect to the extent to which attributes carry over from a foreign corporation to a U.S. corporation. The proposed regulations do not comprehensively address this issue. Compare Modify Treatment of Built-In Losses and Other Attribute Trafficking, General Explanations of the Administration's Fiscal Year 2001 Revenue Proposals at 205. However, the proposed regulations do provide additional rules concerning several attributes, specifically net operating loss and capital loss carryovers, and earnings and profits that are not included in income as an all earnings and profits amount (or a deficit in earnings and profits). The proposed regulations generally provide that these tax attributes carry over from a foreign acquired corporation to a domestic acquiring corporation only to the extent that they are effectively connected to a U.S. trade or business (or attributable to a permanent establishment, in the case of an applicable U.S. income tax treaty).

C. Specific Policies Related to Foreign 381 Transactions (Prop. Reg. § 1.367(b)–7)

Proposed regulation § 1.367(b)–7 applies to an acquisition by a foreign corporation (foreign acquiring corporation) of the assets of another foreign corporation (foreign target corporation) in a transaction described in section 381 (foreign 381 transaction) and addresses the manner in which earnings and profits and foreign income taxes of the foreign acquiring corporation and foreign target corporation carry over to the surviving foreign corporation (foreign surviving corporation). This would include, for example, a C, D, or F reorganization or a section 332 liquidation between two foreign corporations.

The international provisions of the Code distinguish between categories of foreign corporations. A foreign acquiring, target, or surviving corporation can be a controlled foreign corporation as defined in section 957 (CFC), a noncontrolled section 902 corporation as defined in section 904(d)(2)(E) after 2003, the effective date of section 1105(b) of Public Law 105–34 (111 Stat. 788) (the 1997 Act) (look-through 10/50 corporation and, together with CFCs, look-through corporations), a noncontrolled section 902 corporation before 2003 (non-look-through 10/50 corporation and, together with look-through 10/50 corporations, 10/50 corporations), or a foreign corporation that is neither a CFC nor a 10/50 corporation (less-than-10%-U.S.-owned foreign corporation).

The principal Code sections implicated by the carryover of earnings and profits and foreign income taxes in a foreign 381 transaction are sections 381, 902, 904, and 959. Section 381 generally permits earnings and profits (or deficit in earnings and profits) to carry over to a surviving corporation, thus enabling "the successor corporation to step into the 'tax shoes' of its predecessor. * * * [and] represents the economic integration of two or more separate businesses into a unified business enterprise." H. Rep. No. 1337, 83rd Cong., 2nd Sess. 41 (1954). However, a deficit in earnings and profits of either the transferee or transferor corporation can only be used to offset earnings and profits accumulated after the date of transfer (hovering deficit rule). Section 381(c)(2)(B). The hovering deficit rule is a legislative mechanism designed to deter the trafficking in favorable tax attributes that the IRS and courts had repeatedly encountered. See, *e.g.*, *Commissioner* v. *Phipps*, 336 U.S. 410 (1949). The proposed regulations adopt the principles of section 381 but adapt its operation in consideration of the international provisions that address foreign corporations' earnings and profits and their related foreign income taxes, such as sections 902, 904, and 959.

Section 902 generally provides that a deemed paid foreign tax credit is available to a domestic corporation that receives a dividend from a foreign corporation in which it owns 10 percent or more of the voting stock (*i.e.*, a look-through corporation or non-look-through 10/50 corporation). The Code modifies the general last-in, first-out (LIFO) rule of section 316 and provides that look-through corporations and non-look-through 10/50 corporations pay dividends out of multi-year pools of earnings and profits and foreign income taxes for earnings and profits accumulated (and related foreign income taxes paid or deemed paid) in taxable years beginning after December 31, 1986, or the first day after which a domestic corporation owns 10 percent or more of the voting stock of a foreign corporation, whichever is later. Section 902(c). (The Code and regulations refer to pooled earnings and profits and foreign income taxes as post-1986 undistributed earnings and post-1986 foreign income taxes even though a particular corporation may begin to pool after 1986. Sections 902(c)(1) and (2), § 1.902–1(a)(8) and (9).)

Congress enacted the pooling rules because it believed that averaging of foreign income taxes was fairer than distributions out of annual layers. Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986 (Public Law 99–514) (1986 Bluebook) at 870. Averaging prevents taxpayers from inflating their foreign income tax rate for a particular year in order to obtain artificially enhanced foreign tax credits. *Id.* Averaging also prevents the trapping of foreign income taxes in years in which a taxpayer may have no earnings and profits. *Id.*

However, Congress enacted pooling on a limited basis. Earnings and profits accumulated (and related foreign income taxes paid or deemed paid) while a foreign corporation is a less-than-10%-U.S.-owned foreign corporation and pre-1987 earnings and profits accumulated (and related foreign income taxes paid or deemed paid) by a look-through corporation or non-look-through 10/50 corporation are not pooled. Rather, such earnings and profits (and related foreign income taxes) are maintained in separate annual layers. Section 902(c)(6). (The Code and regulations refer to earnings and profits and foreign income taxes in annual layers as pre-1987 accumulated profits and pre-1987 foreign income taxes even though a particular corporation may have annual layers for years after 1986. Section 902(c)(6); § 1.902–1(a)(10).)

A distribution of earnings and profits is first out of pooled earnings and profits and then, only after all pooled earnings and profits have been distributed, out of annual layers of earnings and profits on a LIFO basis. Section 902(a) and (c) The retention of annual layers beneath pooled earnings and profits limits the need to recreate tax histories, an administrative burden that is more significant for periods during which a corporation had limited nexus to the U.S. taxing jurisdiction and for pre-1987 earnings and profits when pooling was not required.

The section 904 foreign tax credit limitation ensures that taxpayers can use foreign tax credits only to offset U.S. tax on foreign source income. The limitation is computed separately with respect to different categories of income (baskets). The purpose of the baskets is to limit taxpayers' ability to cross-credit taxes from different categories of foreign source income. Congress was concerned that, without separate limitations, cross-crediting opportunities would distort economic incentives to invest in the United States versus abroad. 1986 Bluebook at 862.

A dividend received by a U.S. shareholder that owns less than 10 percent of the stock of a foreign corporation is categorized as passive income because such a dividend is in the nature of a portfolio investment. 1986 Bluebook at 866.

A dividend received by a U.S. shareholder that owns 10 percent or more of a foreign corporation is subject to other limitations. Dividends paid by a non-look-through 10/50 corporation to a 10 percent or greater U.S. corporate shareholder are currently subject to a separate basket limitation on a corporation-by-corporation basis. Congress initially separately basketed dividends from each 10/50 corporation because it believed a minority investment in a foreign corporation did not create sufficient identity of interest to justify look-through treatment and that cross-crediting of taxes among investments in 10/50 corporations was inappropriate because the foreign companies were not parts of a single economic unit. 1986 Bluebook at 868. In addition, Congress was concerned about the administrability of applying the look-through rules to 10/50 corporations. 1986 Bluebook at 868.

In 1997, Congress amended the Code's treatment of dividends from 10/50 corporations to provide that dividends paid after taxable years beginning after December 31, 2002 by a look-through 10/50 corporation out of earnings and profits accumulated before 2003 are subject to a single separate basket limitation for all 10/50 corporations, while dividends paid out of earnings and profits accumulated after 2003 are treated as income in a basket based on the ratio of the earnings and profits attributable to income in such basket to the foreign corporation's total earnings and profits (the so-called "look-through" approach). Earnings and profits accumulated after 2003 by a look-through 10/50 corporation are distributed before earnings and profits accumulated by that same foreign corporation before 2003. Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 1997 (1997 Bluebook) at 303.

The legislative history indicates that Congress changed its view with respect to 10/50 corporations because the separate basket limitation for dividends from each 10/50 corporation imposed a substantial recordkeeping burden and discouraged minority investments in foreign joint ventures. 1997 Bluebook at 302. However, as described above, the 1997 Act enacted look-through treatment for 10/50 corporation dividends only on a limited basis. Furthermore, Congress provided regulatory authority regarding the treatment of distributions out of earnings and profits for periods prior to a taxpayer's acquisition of stock in a look-through 10/50 corporation because of concerns that look-through treatment could provide inappropriate opportunities to traffic in foreign tax credits.

Dividends paid by a CFC out of earnings and profits accumulated while the corporation was not a CFC are treated as a distribution from a 10/50 corporation while dividends paid out of earnings and profits accumulated while the corporation was a CFC are eligible for look-through treatment. Section 904(d)(2)(E)(i) and (d)(3). As in the case of a look-through 10/50 corporation, pooled earnings and profits of a CFC that are eligible for look-through treatment are distributed before other pooled earnings and profits. Prop. Reg. § 1.904–4(g)(3)(iii). Congress provided look-through treatment for dividends paid by CFCs in order to provide greater parity between the treatment of income earned through a branch and a subsidiary. 1986 Bluebook at 866.

Before 1997, except as otherwise provided in regulations, dividend distributions to a 10 percent U.S. shareholder of a CFC did not obtain look-through treatment unless the distributed earnings and profits accrued while the shareholder was a 10 percent U.S. shareholder and the corporation was a CFC. Section 904(d)(2)(E)(i), as in effect before the 1997 Act. This rule was intended to prevent trafficking in foreign income taxes related to preacquisition earnings and profits. However, because of the administrative issues presented by maintaining shareholder-level earnings and profits accounts, Congress modified the rule in 1997 to provide that look-through treatment applies with respect to CFC earnings and profits without regard to whether a 10 percent U.S. shareholder was a shareholder at the time accumulated. However, pre-CFC earnings and profits continue to be treated as earnings and profits of a 10/50 corporation because of foreign tax credit trafficking concerns.

The section 904 basketing rules reflect Congress' concern with respect to cross-crediting opportunities and its intent to limit the benefit of look-through treatment to appropriate circumstances. Where Congress determined that look-through is inappropriate, a dividend is treated as passive income or is subject to a separate limitation for 10/50 corporations (whether separately or collectively). Regulations have not yet been issued with respect to preacquisition earnings and profits of a look-through 10/50 corporation and the effect, if any, on the treatment of pre-CFC earnings and profits described in section 904(d)(2)(E)(i). The IRS and Treasury solicit comments as to the appropriate treatment of such earnings and profits after 2003 in light of Congress' anti-trafficking concerns, as well as the impact that such rules should have on the section 367(b) regulations.

Another international provision implicated by the movement of earnings and profits in foreign 381 transactions is section 959. Section 959 governs the distribution of earnings and profits that have been previously taxed to U.S. shareholders under section 951(a) (PTI). After studying the interaction of section 367(b) and the PTI rules, the IRS and Treasury determined that more guidance under section 959 would be useful before issuing regulations to address PTI issues that arise under section 367(b). Accordingly, the IRS and Treasury have opened a separate regulations project under section 959 and expect to issue regulations that address PTI issues under section 959 as well as section 367(b) in the future. The fundamental issue under consideration in that project is whether earnings and profits that are treated as PTI should be distributable to another shareholder, as well as the various implications that result from that determination. The IRS and Treasury invite comments with respect to these issues. Accordingly the proposed regulations reserve on section 367(b) issues related to PTI.

Other sections may have also applied to characterize pre-transaction earnings of a foreign acquiring corporation or a foreign target corporation for certain purposes of the Code. For example, certain earnings may have been subject to characterization as U.S. source earnings under section 904(g), effectively connected earnings and profits under section 884, or post-1986 undistributed U.S. earnings under section 245. The characterization of such earnings carry over to the foreign surviving corporation for purposes of applying the relevant Code sections. See *Georday Enterprises* v. *Commissioner*, 126 F.2d 384 (4th Cir. 1942).

D. Specific Policies Related to Foreign Divisive Transactions (Prop. Reg. § 1.367(b)–8)

Proposed regulation § 1.367(b)–8 addresses the allocation of earnings and profits and foreign income taxes in a transaction described in section 312(h) (that is, a section 355 distribution whether or not in connection with a section 368(a)(1)(D) reorganization) in which either or both the distributing or the controlled corporation is a foreign corporation (foreign divisive transaction). The scope of proposed § 1.367(b)–8 thus encompasses three situations: a domestic distributing corporation that distributes stock of a foreign controlled corporation, a foreign distributing corporation that distributes stock of a domestic controlled corporation, and a foreign distributing corporation that distributes stock of a foreign controlled corporation. The proposed regulations generally adopt the principles embodied in the regulations under section 312(h) but modify their application in consideration of the international provisions such as the source and foreign tax credit rules.

Regulations under section 312(h) reflect the principle that a pro rata portion of a distributing corporation's earnings and profits should be reduced to account for the distribution of a portion of its assets. § 1.312–10. Furthermore, the earnings and profits of a controlled corporation should include the portion of the distributing corporation's earnings and profits allocable to any assets transferred to the controlled corporation in connection with a section 368(a)(1)(D) reorganization (D reorganization) that immediately precedes the section 355 distribution (together with a D reorganization, a D/355 distribution). § 1.312–10(a). If a section 355 distribution is not preceded by a D reorganization, the earnings and profits of the controlled corporation are at least equal to the amount of the reduction in the distributing corporation's earnings and profits. § 1.312–10(b). It is likely that this rule was included to prevent taxpayers from using a section 355 distribution as a device to facilitate a bailout of earnings and profits through the controlled corporation. (The § 1.312–10 rules are derived from the Senate's directions to the IRS and Treasury in implementing the regulatory authority in section 312(h); the Senate Report does not, however, explain its reasons for these rules. Senate Finance Committee, Report on H.R. 8300 (1954), at 249.)

The application of the § 1.312–10 rules to foreign divisive transactions implicates the Code's international provisions because earnings and profits are moving in the cross-border context and because the earnings and profits of controlled foreign corporations are being adjusted. In transactions involving a domestic distributing corporation and a foreign controlled corporation, the foreign controlled corporation may succeed to earnings and profits of the domestic distributing corporation. A post-transaction distribution by the foreign controlled corporation out of earnings and profits it receives from the domestic distributing corporation is generally eligible for the dividends received deduction and treated as U.S. source income under sections 243(e) and 861(a)(2)(C). This treatment is appropriate because the earnings and profits have already been subject to U.S. corporate taxation and should not be subject to a second level of U.S. corporate tax upon repatriation if the earnings and profits would have qualified for the dividends received deduction if distributed before the section 355 distribution. H.R. Rep. No. 2101, at 3 (1960). In addition, such earnings and profits should not increase a domestic distributee's foreign tax credit limitation under section 904.

In circumstances where the foreign controlled corporation makes a post-transaction distribution to foreign shareholders, the foreign divisive transaction should not alter the character of earnings and profits allocated from the domestic distributing corporation. Otherwise, the section 355 distribution may serve as a vehicle to avoid U.S. tax, including U.S. withholding tax. Accordingly, the proposed regulations provide that a post-transaction distribution out of earnings and profits of a distributing corporation that carry over to a foreign controlled corporation is generally treated as a U.S. source dividend for purposes of Chapter 3 of subtitle A of the Code. See *Georday Enterprises* v. *Commissioner*, 126 F.2d 384 (4th Cir. 1942).

Foreign divisive transactions involving a foreign distributing corporation and a domestic controlled corporation are similar to inbound nonrecognition transactions to the extent the domestic controlled corporation receives assets of a foreign corporation. Current regulations under § 1.367(b)–3 require direct and indirect U.S. shareholders in an inbound asset reorganization to include an all earnings and profits amount in income in order to ensure, in part, that the bases of assets repatriated to the United States reflect an after-tax amount. Section 1.367(b)–3(d) and proposed § 1.367(b)–3(f) provide further rules regarding the carryover of earnings and profits and foreign income taxes from a foreign corporation to a domestic corporation. Those rules should also apply to a section 355 distribution involving a foreign distributing corporation and a domestic controlled corporation. These transactions also implicate the current rules under § 1.367(b)–5, because a reduction in a foreign distributing corporation's earnings and profits can directly affect the post-transaction application of section 1248 with respect to U.S. shareholders of the distributing corporation.

Foreign divisive transactions involving a foreign distributing corporation and a foreign controlled corporation raise issues similar to those raised in the context of a foreign 381 transaction described in § 1.367(b)–7, to the extent the controlled corporation succeeds to earnings and profits (and related foreign income taxes) of the distributing corporation. Accordingly, the proposed regulations adopt the principles of § 1.367(b)–7 to determine the manner in which the foreign controlled corporation succeeds to the earnings and profits (and related foreign income taxes) of a foreign distributing corporation. These transactions also implicate the § 1.367(b)–5 rules concerning diminutions in U.S. shareholders' section 1248 amounts.

The proposed regulations under § 1.367(b)–8 balance the § 1.312–10 rules and policies with the interests and concerns of the relevant international provisions of the Code. However, the IRS and Treasury recognize that the mechanics of § 1.312–10 as applied in the international context can be cumbersome and complex. The IRS and Treasury solicit comments as to whether the mechanical difficulties of applying the section 312 rules in the cross-border context outweigh the benefits and, if so, whether there are simpler alternative regimes that would address the international policy concerns without compromising the Subchapter C policies embodied in § 1.312–10.

Details of Provisions

A. Prop. Reg. § 1.367(b)–1

The proposed regulations supplement the current § 1.367(b)–1 notice requirements in consideration of the transactions addressed by proposed §§ 1.367(b)–7 and 1.367(b)–8. Accordingly, foreign surviving corporations described in proposed § 1.367(b)–7 and distributing and controlled corporations involved in transactions described in proposed § 1.367(b)–8 are included within the scope of the § 1.367(b)–1 notice requirement.

B. Prop. Reg. § 1.367(b)–3

The proposed regulations address the carryover of net operating loss and capital loss carryovers, and earnings and profits that are not included in income as an all earnings and profits amount (or a deficit in earnings and profits). The proposed regulations generally provide that these tax attributes do not carry over from a foreign acquired corporation to a domestic acquiring corporation unless they are effectively connected to a U.S. trade or business (or attributable to a permanent establishment, in the context of a relevant U.S. income tax treaty).

The limitations on the carryover of these attributes prevent inappropriate or anomalous results. For example, net operating loss and capital loss carryovers are eligible to carry over from a foreign acquired corporation to a domestic acquiring corporation only to the extent the underlying deductions or losses were allowable under Chapter 1 of subtitle A of the Code. Thus, only a net operating loss or capital loss carryover that is effectively connected to a U.S. trade or business (or attributable to a permanent establishment) may carry over. Inappropriate or anomalous results are thus avoided because losses incurred by a foreign acquired corporation outside the U.S. taxing jurisdiction should not be available to offset the future U.S. tax liability of a domestic acquiring corporation. Otherwise, a taxpayer would have an incentive to import losses into the United States in order to shelter future income from U.S. tax.

The carryover of earnings and profits (or a deficit in earnings and profits) of the foreign acquired corporation can create similarly inappropriate results. For example, the policies underlying the section 243(a) dividends received deduction are not present with respect to a subsequent distribution by the domestic acquiring corporation out of earnings and profits accumulated by the foreign acquired corporation because those earnings and profits are not generally subject to a U.S. corporate level of tax. On the other hand, if the foreign acquired corporation has PTI, those earnings should not be taxed again when distributed to U.S. shareholders to whom the PTI is attributable regardless of whether or not the U.S. shareholder is eligible for the dividends received deduction. A deficit in earnings and profits can also be used to avoid tax, such as in the case of a foreign shareholder of a domestic acquiring corporation that imports a deficit and therefore is not subject to U.S. withholding tax on subsequent corporate distributions.

As a result of the issues raised by a carryover of earnings and profits and given that § 1.367(b)–3 already requires U.S. shareholders to include in income as a deemed dividend the all earnings and profits amount, the proposed regulations provide that earnings and profits (or deficit in earnings and profits) of the foreign acquired corporation do not carry over to the domestic acquiring corporation except to the extent effectively connected to a U.S. trade or business (or attributable to a permanent establishment, in the context of a relevant U.S. income tax treaty),

C. Prop. Reg. § 1.367(b)–7

Proposed § 1.367(b)–7 provides the manner in which a foreign surviving corporation succeeds to and takes into account the earnings and profits and foreign income taxes of a foreign acquiring corporation and a foreign target corporation. The proposed regulation attempts to preserve the character of earnings and profits and foreign income taxes to the extent possible in light of the applicable statutory limitations, as well as the relevant policy and administrative concerns. Compare § 1.381(c)(2)–1(a)(3) (ensuring that earnings and profits accumulated before March 1, 1913 retain their character as pre-1913 earnings and profits after a section 381 transaction). Accordingly, the proposed rules provide that, to the extent possible, pooled earnings and profits (and foreign income taxes) remain pooled, earnings and profits (and foreign income taxes) in annual layers remain in annual layers, foreign income taxes trapped before the transaction remain trapped after the transaction, and earnings and profits (and foreign income taxes) remain in the same basket before and after the transaction.

The proposed regulation also respects the section 902 preference for distributing pooled earnings and profits before earnings and profits in annual

layers. Accordingly, proposed § 1.367(b)–7 provides that a foreign surviving corporation's pooled earnings and profits are distributed first (even though earnings and profits in the annual layers may have been accumulated after earnings and profits in the pool) and annual layers are distributed on a LIFO basis. Similarly, the proposed regulation also incorporates the section 904 preference for distributing pooled earnings and profits eligible for look-through before other pooled earnings and profits.

However, in certain cases, an overriding statutory policy requires that the proposed regulation modify the character of earnings and profits (and related foreign income taxes). For example, if a CFC combines with a non-look-through 10/50 corporation in a foreign 381 transaction and the foreign surviving corporation is a non-look-through 10/50 corporation, dividends paid by the surviving non-look-through 10/50 corporation are required to be separately basketed and do not obtain the benefit of look-through. Thus, earnings and profits of a CFC that would have obtained the benefit of look-through if distributed before the foreign 381 transaction are not eligible for look-through after the transaction. (The loss of look-through in connection with this type of foreign 381 transaction is somewhat ameliorated by a U.S. shareholder's section 1248 amount inclusion under § 1.367(b)–4 with respect to earnings and profits that accrued during its holding period.)

Proposed regulation § 1.367(b)–7 also provides rules regarding the carryover of deficits in earnings and profits from one foreign corporation to another. The purpose of the hovering deficit rule in the domestic context is to prevent the trafficking of deficits in earnings and profits. Otherwise, a corporation with positive earnings and profits may acquire or be acquired by another corporation with a deficit in earnings and profits and make distributions out of capital rather than earnings and profits.

In transactions involving foreign corporations, similar concerns exist regarding the trafficking of deficits in earnings and profits. The ability to benefit from combining positive and deficit earnings and profits among foreign corporations is different than in the domestic context, however, because of the nature of the foreign tax credit rules. In a reorganization involving two domestic corporations, the hovering deficit rule applies to a corporation with a net accumulated deficit in earnings and profits because the relevant statutory rules do not distinguish among classes of earnings and profits. In contrast, the foreign tax credit rules require further subcategorization of earnings and profits according to the pooling and basketing rules. Because of these distinctions taxpayers may inappropriately benefit by trafficking in an earnings and profits deficit in a basket, pool, or particular annual layer, even though a corporation may have net positive earnings and profits. Accordingly, the proposed regulations apply the hovering deficit principle to the relevant subcategories of earnings and profits and provide that foreign income taxes related to the deficit are not added to the foreign surviving corporation's foreign income tax accounts until all of the deficit has been offset with post-transaction earnings. (Under proposed § 1.367(b)–9 (which is described below), these hovering deficit rules do not apply to F reorganizations and foreign 381 transactions in which either the foreign target corporation or the foreign acquiring corporation is newly created.)

Because the treatment of distributions by a foreign surviving corporation depends on whether it is a look-through corporation, a non-look-through 10/50 corporation, or a less-than-10%-U.S.-owned foreign corporation, proposed § 1.367(b)–7 is divided according to these categories. The proposed regulation uses the term surviving corporation in order to prevent confusion between the acquiring corporation and the foreign surviving entity. In addition, the term highlights the proposed regulation's general approach that provides the same results regardless of whether a corporation is the ostensible acquiring or target corporation.

1. Look-Through Surviving Corporation

Where the foreign surviving corporation is a look-through corporation, the proposed regulation generally preserves the character of earnings and profits and foreign income taxes. For example, if a CFC (CFC1) acquires the assets of another CFC (CFC2) in a foreign 381 transaction and the surviving corporation is a CFC, then the corporations' positive amounts of earnings and profits and foreign income taxes would carry over in a manner that combines the look-through earnings and profits pools (and related foreign income taxes) of each corporation on a basket-by-basket basis. Thus, for example, CFC1's passive basket would be combined with CFC2's passive basket, CFC1's general basket would be combined with CFC2's general basket, and so forth.

If CFC1 or CFC2 has pooled earnings and profits or foreign income taxes that do not qualify for look-through treatment (non-look-through pool) (for example, earnings and profits accumulated during a period when the corporation was not a CFC and that are subject to a separate 10/50 limitation), such earnings and profits and foreign income taxes would be distributed only after all of the look-through earnings and profits pool has been distributed. This rule is consistent with the ordering rule in Prop. Reg. § 1.904–4(g)(3)(iii), which provides that when a 10/50 corporation becomes a CFC, pooled earnings and profits accumulated and foreign income taxes paid or accrued while the corporation is a CFC are distributed before pooled earnings and profits accumulated and foreign income taxes paid or accrued while the corporation was a 10/50 corporation. (If the foreign surviving corporation is instead a look-through 10/50 corporation, this rule is also consistent with the earnings and profits in the look-through pool being distributed before earnings and profits in the non-look-through pool.)

When earnings and profits from the non-look-through pool are distributed, the earnings and profits will be distributed pro rata out of the non-look-through pools of CFC1 and CFC2 (if any) and placed in two separate baskets under section 904(d)(1)(E). This preserves the character of the earnings and profits and related foreign income taxes and is consistent with the policy of section 904(d)(1)(E) to maintain separate baskets for each 10/50 corporation. After 2003, these earnings and profits will continue to be distributed pro rata from separate non-look-through pools but will be combined into a single 10/50 basket in the hands of the distributee. Maintaining separate pools prevents the refreshing of foreign income taxes that would have been trapped had the foreign 381 transaction not occurred. (The same rules apply in the case of a foreign surviving corporation that is a look-through 10/50 corporation.)

If CFC1 or CFC2 has pre-1987 accumulated profits (*i.e.,* annual layers of earnings and profits) or foreign income taxes, then those earnings and profits are distributed only after the distribution of all pooled earnings and profits and taxes, regardless of whether those earnings and profits may have been accumulated after the pooled earnings and profits of the other corporation. Such earnings and profits are distributed on a LIFO basis and pro rata out of the respective corporation's annual layers if both companies have earnings and profits in the same year that are treated as pre-1987 accumulated profits and foreign income taxes. This rule respects two international policies. First, pooled earnings and profits are distributed before earnings and profits in annual layers. Second, earnings and profits in annual layers should not be pooled unless they are distributed to an upper-tier entity. Compare § 1.902–1(a)(8)(ii) (providing that distributions out of pre-1987 earnings and profits by a lower-tier corporation are included in the post-1986 earnings and profits of an upper-tier corporation). This rule is also consistent with the section 902 rule that traps foreign income taxes in annual layers in which there are no earnings and profits.

These results preserve the character of earnings and profits and taxes because pooled earnings and profits and taxes remain pooled, earnings and profits and taxes retain the same character under the look-through provisions, and foreign income taxes that were trapped before the foreign 381 transaction remain trapped. The rules are also consistent with concerns about limiting the administrative burden of requiring taxpayers to recreate tax histories.

Because of the foreign tax credit considerations presented by foreign 381 transactions, § 1.367(b)–7 applies the hovering deficit rule to subcategories of earnings and profits. Thus, deficits in the look-through pool, non-look-through pool, and net deficits in annual layers can offset only future earnings and profits of the foreign surviving corporation. In addition, a hovering deficit cannot be used to reduce current earnings and profits of the foreign surviving corporation and, as a result, does not reduce subpart F income. Foreign income taxes related to a hovering deficit do not enter the foreign income tax accounts of the surviving corporation until the entire hovering deficit offsets post-transaction earnings and profits. However, foreign income taxes related to the post-transaction earnings that are offset by the hovering deficit immediately enter the foreign income tax accounts of the foreign surviving corporation.

2. Non-Look-Through 10/50 Surviving Corporation

The proposed regulation's rules with respect to a non-look-through 10/50 corporation apply if the foreign surviving corporation is a 10/50 corporation before 2003. The principal statutory limitation of a non-look-through 10/50 corporation is that a dividend distribution is not eligible for look-through treatment and is instead separately basketed for each 10/50 corporation. As a result, earnings and profits of an acquiring or target corporation that would have been eligible for look-through (assuming the corporation qualified under the look-through rule) if distributed before the foreign 381 transaction lose their look-through character after the transaction.

For example, suppose a CFC combines with a non-look-through 10/50 corporation in a foreign 381 transaction in 2001 and the surviving entity is a non-look-through 10/50 corporation. Prior to the transaction, the CFC maintained earnings and profits and foreign income tax accounts expecting that the look-through rules would apply on a distribution of earnings and profits to U.S. shareholders. However, after the foreign 381 transaction, section 904(d)(1)(E) requires that a distribution from the surviving 10/50 corporation will be deemed to be paid out of a single pool of earnings and profits that will be separately basketed. In order to address the carryover of attributes to a non-look-through 10/50 corporation in a manner consistent with section 904(d)(1)(E), the proposed regulations combine the net positive earnings and profits and foreign income taxes in the respective pools of the acquiring and target corporations. (Thus, the separate baskets of pooled earnings and profits and foreign income taxes of the CFC would be netted into a single pool along with the non-look-through 10/50 corporation's pooled earnings and profits and foreign income taxes.)

Annual layers of the acquiring and target corporations are carried over to the foreign surviving corporation under the same rules as described above with respect to look-through corporations. Hovering deficit rules similar to those described with respect to a look-through corporation's non-look-through pool and annual layers also apply to surviving non-look through 10/50 corporations.

Look-through treatment of earnings and profits and foreign income taxes does not re-emerge if the corporation later becomes a look-through corporation. For example, if the surviving non-look-through 10/50 corporation becomes a CFC, all of the earnings and profits and foreign income taxes of the surviving non-look-through 10/50 corporation remain as earnings and profits to which the look-through rules do not apply. Look-through only applies to earnings and profits accumulated after the corporation becomes a CFC. The IRS and Treasury believe that this rule is appropriate because of the administrative difficulties posed by recreating tax histories. In addition, earnings and profits and foreign income taxes of a CFC accumulated during a U S. shareholder's holding period are generally deemed distributed (and the look-through rules apply) if a U.S. shareholder includes a section 1248 amount in income under § 1.367(b)–4 in connection with the foreign 381 transaction.

3. Less-than-10%-U.S.-owned Foreign Surviving Corporation

Proposed § 1.367(b)–7 also determines the manner in which earnings and profits and foreign income taxes of the acquiring and target corporation are combined if the foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation. Generally, rules similar to the rules provided for annual layers of look-through corporations and non-look-through 10/50 corporations apply with respect to the annual layers of the acquiring and target corporation, but the rules take into account the possibility that one of the corporations may have been a CFC or 10/50 corporation immediately prior to the foreign 381 transaction.

If either the acquiring or target corporation is a CFC or a 10/50 corporation, its pooled earnings and profits and foreign income taxes are treated as earnings and profits and foreign income taxes accumulated in the annual layer of the applicable corporation immediately before the foreign 381 transaction. For example, suppose a less-than-10%-U.S.-owned foreign corporation combines with a 10/50 corporation and the foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation. The foreign surviving corporation is an entity that has never been required to pool earnings and profits and foreign income taxes under section 902(c)(3). Accordingly, distributions from the foreign surviving corporation are out of annual layers on a LIFO basis. Rather than recreating the tax history of the acquired 10/50 corporation for each year, the proposed regulation places all pooled earnings and profits and foreign income taxes of the 10/50 corporation into a single annual layer that closes immediately before the foreign 381 transaction. This rule is intended to ameliorate administrative burdens while respecting the policy that earnings and profits and foreign income taxes are distributed from annual layers for a less-than-10%-U.S.-owned foreign corporation. Because of concerns about neutrality, the same result applies regardless of whether the 10/50 corporation is the ostensible acquiring or target corporation.

If the surviving less-than-10%-U.S.-owned foreign corporation later becomes a non-look-through 10/50 corporation or a look-through corporation, earnings and profits and foreign income taxes that were pooled or obtained the benefit of look through prior to the foreign 381 transaction are not recreated. Instead, those earnings and profits and foreign income taxes remain as earnings and profits accumulated and foreign income taxes paid or deemed paid while the corporation was a less-than-10%-U.S.-owned foreign corporation. As in the case of a surviving non-look-through 10/50 corporation that later becomes a look-through corporation, this rule is provided because of administrative issues associated with recreating tax histories. In addition, earnings and profits and foreign income taxes of a CFC accumulated during a shareholder's holding period generally would have been deemed distributed (and the look-through rules would have applied) if the shareholder was required to include a section 1248 amount in income under § 1.367(b)–4 in connection with the foreign 381 transaction.

D. Prop. Reg. § 1.367(b)–8

Section 1.367(b)–8 provides rules applicable to foreign divisive transactions. The regulation is divided into four sections. Section 1.367(b)–8(b) provides rules that are generally applicable to foreign divisive transactions. The other three sections describe the application of the general rules to specific situations. Section 1.367(b)–8(c) applies to a distribution by a domestic distributing corporation of the stock of a foreign controlled corporation, § 1.367(b)–8(d) applies to a distribution by a foreign distributing corporation of the stock of a domestic controlled corporation, and § 1.367(b)–8(e) applies to a distribution by a foreign distributing corporation of the stock of a foreign controlled corporation.

1. General Rules Applicable to Foreign Divisive Transactions

Section 1.367(b)–8(b) provides that the rules of § 1.312–10 generally apply to determine the allocation of earnings and profits between a distributing and a controlled corporation, as well as to determine the reduction in the earnings and profits of a distributing corporation. The rules of § 1.312–10 are, however, subject to certain modifications.

In a D/355 distribution involving a controlled corporation that is newly created as part of the transaction, § 1.312–10(a) allocates the pre-transaction earnings and profits of the distributing corporation between the distributing and controlled corporations based upon a comparison of the fair market values of the assets received by the controlled corporation and the assets retained by the distributing corporation after the D reorganization. Section 1.312–10(a) provides that, "in a proper case," this allocation should be based on the relative net bases of the assets transferred and retained by the distributing corporation, or based on another "appropriate" method.

The proposed regulations generally adopt the rule of § 1.312–10(a), except that the allocation is based upon relative net adjusted bases of assets transferred and retained in all cases. This rule reflects the view that net basis is the most accurate measure of the appropriate amount of earnings and profits that should be allocated to the assets transferred by a distributing corporation in the D reorganization. For example, in cases where the controlled corporation recognizes gain on a later sale or distribution of appreciated property that it receives from the distributing corporation an allocation based upon relative bases prevents a misallocation of earnings and profits to the controlled corporation.

In a section 355 distribution that is not preceded by a D reorganization, § 1.312–10(b) provides that the earnings and profits of the distributing corporation are decreased by an amount equal to the lesser of (i) the amount by which the earnings and profits of the distributing corporation would have been decreased if it had transferred the stock of the controlled corporation to a new corporation in a D/355 distribution, and (ii) the net worth of the controlled corporation. For this purpose, net worth is defined as "the sum of the bases of all of the properties plus cash minus all liabilities." If "the earnings and profits of the controlled corporation immediately before the transaction are less than the amount of the decrease in earnings and profits of the distributing corporation . . . the earnings and profits of the controlled corporation, immediately after the transaction, shall be equal to the amount of such decrease. If the earnings and profits of the controlled corporation immediately before the transaction are more than the amount of the decrease in the earnings and profits of the distributing corporation, they shall remain the same."

Section 1.312–10(b) reflects the principle that a pro rata portion of a distributing corporation's earnings and profits should be reduced to account for the distribution of the controlled corporation. In addition, the requirement that the earnings and profits of the controlled corporation at least equal the reduction in the distributing corporation's earnings and profits appears intended to prevent a bailout of earnings and profits through the controlled corporation, while preventing the potential double counting of earnings and profits in situations where the distributing corporation did not organize the controlled corporation.

In consideration of the complexities raised by the cross-border application of the § 1.312–10(b) adjustment to the controlled corporation's earnings and profits, taken together with the current rules that prevent the potential bailout of earnings and profits in the international context (such as the § 1.367(b)–5 requirement that a shareholder include in income a reduction in its section 1248 amount), the IRS and Treasury have concluded that the § 1.312–10(b) rules should be modified when applied to section 367(b) transactions. Accordingly, the proposed regulations provide that the earnings and profits of the distributing corporation are decreased in an amount equal to the amount by which the earnings and profits of the distributing corporation would have been decreased if it had transferred the stock of the controlled corporation to a new corporation in a D/355 distribution. However, the earnings and profits of the controlled corporation are not increased or replaced. The reduction in earnings and profits (and related foreign income taxes) of the distributing corporation disappears unless otherwise included in income, such as under § 1.367(b)–5.

Section 1.312–10 does not specifically address the allocation and reduction of earnings and profits in connection with a D/355 distribution that involves a preexisting controlled corporation. The proposed regulations provide that, in such a case, the distributing corporation's earnings and profits are reduced in a manner that incorporates both the rules applicable to a D/355 distribution with a newly created controlled corporation and a section 355 distribution that is not preceded by a D reorganization. The rule thus accounts for a decrease in earnings and profits attributable to assets transferred to the controlled corporation as part of the D reorganization as well as a decrease in earnings and profits attributable to the distribution of stock of a preexisting controlled corporation (without regard to the D reorganization). The controlled corporation succeeds only to those earnings and profits allocable to the property it receives in the D reorganization.

In consideration of the international provisions' distinctions among classes and categories of earnings and profits, proposed § 1.367(b)–8(b) specifically addresses the determination of which earnings and profits of the distributing corporation are affected by a foreign divisive transaction. The proposed regulation provides that an allocation or reduction in earnings and profits shall generally be pro rata out of a cross-section of the distributing corporation's tax history (except to the extent it is included in income as a deemed dividend such as under § 1.367(b)–3 or § 1.367(b)–5). This rule determines the earnings and profits (and related foreign income taxes, where applicable) that remain in the distributing corporation after the transaction as well as any earnings and profits (and related foreign income taxes, where applicable) to which the controlled corporation succeeds in a D reorganization.

The proposed § 1 367(b)–8(b) cross-section rule decreases the earnings and profits of a distributing corporation without regard to the type of income generated by the assets of the controlled corporation. This is consistent with the general assumption in § 1.312–10 and the proposed regulations that the earnings and profits of the distributing corporation should be decreased proportionately to reflect the transfer or distribution of assets, rather than by some other measure, such as by determining the earnings and profits attributable to the income generated by assets transferred or distributed (a tracing model) or by decreasing most recently accumulated earnings and profits to the extent of assets transferred or distributed (a dividend model).

2. Branch Profits Tax Considerations

Notwithstanding the above-described rules, the proposed regulations provide that an allocation or reduction in a distributing corporation's earnings and profits shall not reduce the distributing corporation's effectively connected earnings and profits or non-previously taxed accumulated effectively connected earnings and profits, as defined in the branch profits rule in section 884 (branch earnings). Both a domestic or foreign distributing corporation can potentially have branch earnings that are subject to the branch profits tax.

In the case of a foreign divisive transaction that does not include a D reorganization, a U.S. branch of a foreign distributing corporation would be retained by the foreign distributing corporation. Accordingly, § 1.367(b)–8 should not reduce the foreign distributing corporation's branch earnings because such a reduction would improperly decrease the earnings subject to the branch profits tax upon the section 355 distribution (which would trigger the branch profits tax under section 884). The same issues arise in the case of a D/355 distribution in which a foreign distributing corporation transfers the assets that are not part of a U.S. branch to a controlled corporation. The IRS and Treasury do not believe that it is appropriate to reduce the earnings that could give rise to a subsequent branch profits tax under these circumstances.

Different issues arise in a foreign divisive transaction in which a foreign distributing corporation transfers the assets of a U.S. branch to a controlled corporation as part of a D/355 distribution. While the branch profits rules permit a deferral of the branch profits tax in certain instances (by allowing branch earnings to be allocated to the domestic transferee in proportion to the assets transferred when a branch is incorporated in a section 351 exchange in a domestic corporation (see § 1.884–2T(d)(1)), the branch profits tax is triggered in any event if stock of the incorporated branch is later distributed to its shareholders. See § 1.884–2T(d)(5). Accordingly, because foreign divisive transactions include a section 355 distribution immediately following the D reorganization, it would be unnecessary and inappropriate to attribute branch earnings to a domestic controlled corporation under proposed § 1.367(b)–8.

Similar branch profits issues can arise with respect to a domestic distributing corporation. While branch earnings are accumulated by a foreign corporation, such earnings may have been carried over to a domestic corporation in a prior section 351 or 381 transaction. See § 1.884–2T(c)(4). Accordingly, the proposed regulations treat domestic distributing corporations in the same manner as foreign distributing corporations with respect to branch earnings.

3. Domestic Corporation Distributes Stock of a Foreign Corporation

In foreign divisive transactions involving a domestic distributing corporation and a foreign controlled corporation, the foreign controlled corporation may succeed to earnings and profits of the domestic distributing corporation. The regulations provide that sections 243(e) and 861(a)(2)(C) apply to earnings and profits allocated to the foreign controlled corporation that were accumulated by a domestic corporation. In addition, a post-transaction distribution out of earnings and profits allocated to the foreign controlled corporation is generally treated as a U.S. source dividend under section 904(g) and for purposes of Chapter 3 of subtitle A of the Code. See *Georday Enterprises* v. *Commissioner*, 126 F.2d 384 (4th Cir. 1942).

4. Foreign Corporation Distributes Stock of a Domestic Corporation

In foreign divisive transactions involving a foreign distributing corporation and a domestic controlled corporation, two issues arise in determining the appropriate reduction in the foreign distributing corporation's earnings and profits and its effects on the earnings and profits of the domestic controlled corporation. First, it should be determined whether it is appropriate to reduce PTI of the foreign distributing corporation and, if so, in what manner (*e.g.*, if the foreign distributing corporation has earnings and profits that are PTI and not PTI, should the reduction in earnings and profits be out of PTI first, last, pro rata, or depending on the identity of the controlled corporation's shareholders). As in the case of § 1.367(b)–7, § 1.367(b)–8 reserves on PTI issues, and the IRS and Treasury solicit comments with respect to the appropriate treatment of these amounts.

Second, a domestic corporation succeeds to the earnings and profits of a foreign corporation if the section 355 distribution is preceded by a D reorganization. Because earnings and profits are allocable from foreign corporate solution to U.S. corporate solution, U.S. shareholders are required to include in income the all earnings and profits amount attributable to earnings and profits that carry over to the controlled corporation. The proposed regulations provide rules that coordinate the proposed § 1.367(b)–8 and the current § 1.367(b)–3 regimes. The regulations, however, reserve with respect to the treatment of U.S. persons that own foreign distributing corporation stock after a non pro rata distribution. The IRS and Treasury invite comments as to whether U.S. shareholders should have an all earnings and profits amount inclusion in connection with a non pro rata foreign divisive transaction in which they do not receive stock of the domestic controlled corporation.

5. Foreign Corporation Distributes Stock of a Foreign Corporation

In foreign divisive transactions involving a foreign distributing corporation and a foreign controlled corporation, the foreign controlled corporation may succeed to earnings

and profits of the foreign distributing corporation. Because such earnings and profits are allocated from one foreign corporation to another foreign corporation, the transaction raises issues similar to those in a foreign 381 transaction. Accordingly, the proposed regulations adopt and apply the principles in proposed regulation § 1.367(b)–7 to these transactions.

E. Prop. Reg. § 1.367(b)–9

Proposed § 1.367(b)–9 provides special rules applicable to foreign-to-foreign F reorganizations and foreign 381 transactions in which either the foreign target corporation or the foreign acquiring corporation is newly created. Proposed § 1.367(b)–9 also applies to foreign divisive transactions that involve a foreign distributing and a foreign controlled corporation, either of which is newly created.

Under proposed § 1.367(b)–9, a foreign surviving corporation succeeds to earnings and profits, deficits in earnings and profits, and foreign income taxes without regard to the proposed § 1.367(b)–7 hovering deficit rules. See section 1.381(b)–1(a)(2) (providing an analogous rule with respect to domestic F reorganizations).

This rule prevents inappropriate tax consequences. For example, under the generally applicable hovering deficit rules, a foreign corporation with significant deficits in earnings and profits could combine with a newly created foreign corporation and thereafter distribute dividends (along with deemed paid foreign income taxes under section 902), despite the presence of a significant deficit that would have precluded a dividend distribution before the transaction. Proposed § 1.367(b)–7 provides the Commissioner discretion to apply the principles of proposed § 1.367(b)–9 to circumstances where a principal purpose of the foreign 381 transaction is to affirmatively use the hovering deficit rule in order to gain a tax benefit.

Proposed Effective Dates

These regulations are proposed to apply to section 367(b) exchanges that occur on or after 30 days after these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 13, 2001, beginning at 10 a.m., in room 7218 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by February 20, 2001. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Anne O'Connell Devereaux, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entries for sections 1.367(b)–7, 1.367(b)–8, and 1.367(b)–9 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.367(b)–7 also issued under 26 U.S.C. 367(a) and (b), 26 U.S.C. 902, and 26 U.S.C. 904.

Section 1.367(b)–8 also issued under 26 U.S.C. 367(a) and (b), 26 U.S.C. 902, and 26 U.S.C. 904.

Section 1.367(b)–9 also issued under 26 U.S.C. 367(a) and (b), 26 U.S.C. 902, and 26 U.S.C. 904. * * *

Par. 2. Section 1.312–10 is amended by adding paragraph (d) to read as follows:

§ 1.312–10 Allocation of earnings in certain corporate separations.

* * * * *

(d) For additional rules involving foreign corporations, see § 1.367(b)–8.

Par. 3. Section 1.367(b)–0 is amended by:

1. Revising the introductory text.
2. Revising the entry for § 1.367(b)–2(j)(3) and adding entries for § 1.367(b)–2(j)(4), (j)(5), and (l).
3. Adding entries for § 1.367(b)–3(e) and (f).
4. Adding entries for § 1.367(b)–5(c)(2)(i), (c)(2)(ii), and (e)(3).
5. Adding entries for §§ 1.367(b)-7 through 1.367(b)-9.

The revisions and additions read as follows:

§ 1.367(b)–0 Table of contents.

This section lists the paragraphs contained in §§ 1.367(b)–1 through 1.367(b)–9.

* * * * *

§ 1.367(b)–2 Definitions and special rules.

* * * * *

(j) * * *

(3) Dividend described in section 243(e).

(4) Coordination with § 1.367(b)–8(c)(2).

(5) Other rules.

* * * * *

(l) Additional definitions.

(1) Foreign income taxes.

(2) Post-1986 undistributed earnings.

(3) Post-1986 foreign income taxes.

(4) Pre-1987 accumulated profits.

(5) Pre-1987 foreign income taxes.

(6) Pre-1987 section 960 earnings and profits.

(7) Pre-1987 section 960 foreign income taxes.

(8) Earnings and profits.

(9) Look-through corporation.

(10) Non-look-through 10/50 corporation.
(11) Less-than-10%-U.S.-owned foreign corporation.
(12) Separate category.
(13) Statutory grouping of earnings and profits.

§ 1.367(b)– Repatriation of foreign corporate assets in certain nonrecognition transactions.

* * * * *

(e) Net operating loss and capital loss carryovers.
(f) Carryover of earnings and profits.

* * * * *

§ 1.367(b)–5 Distributions of stock described in section 355.

* * * * *

(c) * * *
(2) * * *
(i) In general.
(ii) Exception.

* * * * *

(e) * * *
(3) Divisive D reorganization with a preexisting controlled corporation.

* * * * *

§ 1.367(b)–7 Carryover of earnings and profits and foreign income taxes in certain foreign-to-foreign nonrecognition transactions.

(a) Scope.
(b) General rules.
(1) Non-previously taxed earnings and profits and related taxes.
(2) Previously taxed earnings and profits. [Reserved]
(c) Ordering rule for post-transaction distributions.
(1) If foreign surviving corporation is a look-through corporation.
(2) If foreign surviving corporation is a non-look-through 10/50 corporation.
(3) If foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation.
(d) Look-through pool.
(1) In general.
(i) Qualifying earnings and taxes.
(ii) Carryover rule.
(2) Hovering deficit.
(i) Offset Rule.
(ii) Related taxes.
(3) Examples.
(e) Non-look-through pool.
(1) If foreign surviving corporation is a look-through corporation.
(i) Qualifying earnings and taxes.
(iii) Hovering deficit.
(A) Offset rule.
(B) Related taxes.
(iv) Examples.
(2) If foreign surviving corporation is a non-look-through 10/50 corporation.
(i) Qualifying earnings and taxes.
(ii) Carryover rule.
(iii) Hovering deficit.
(A) Offset rule.
(B) Related taxes.
(iv Examples.
(f) Pre-pooling annual layers.
(1) If foreign surviving corporation is a look-through corporation or a non-look-through 10/50 corporation.
(i) Qualifying earnings and taxes.
(ii) Carryover rule.
(iii) Deficits.
(A) Aggregate positive earnings and profits.
(B) Aggregate deficit in earnings and profits.
(iv) Pre-1987 section 960 earnings and profits and foreign income taxes.
(v) Examples.
(2) If foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation.
(i) Qualifying earnings and taxes.
(ii) Carryover rule.
(iii) Deficits.
(A) Aggregate positive earnings and profits.
(B) Aggregate deficit in earnings and profits.
(iv) Pre-1987 section 960 earnings and profits and foreign income taxes.
(v) Examples.
(g) Special rules.
(1) Treatment of deficit.
(2) Reconciling taxable years.
(3) Post-transaction change of status.
(4) Ordering rule for offsetting multiple hovering deficits.
(i) Rule.
(ii) Example.
(5) Pro rata rule for earnings during transaction year.
(6) Nonapplicability of hovering deficit rules to certain transactions.
(i) Rule.
(ii) Example.
(h) Effective date.

§ 1.367(b)–8 Allocation of earnings and profits and foreign income taxes in certain foreign corporate separations.

(a) Scope.
(b) General rules.
(1) Application of § 1.312–10.
(i) In general.
(ii) Special rules for application of § 1.312–10(b).
(A) Distributing corporation.
(B) Controlled corporation.
(iii) Net deficit in pre-transaction earnings.
(iv) Use of net bases.
(v) Gain recognized by distributing corporation.
(vi) Coordination with branch profits tax.
(2) Cross-section of earnings and profits.
(3) Foreign income taxes.
(4) Divisive D reorganization with a preexisting controlled corporation.
(i) Calculation of earnings and profits of distributing corporation.
(ii) Calculation of earnings and profits of controlled corporation.
(c) Foreign divisive transactions involving a domestic distributing corporation and a foreign controlled corporation.
(1) Scope.
(2) Earnings and profits allocated to a foreign controlled corporation.
(3) Examples.
(d) Foreign divisive transactions involving a foreign distributing corporation and a domestic controlled corporation.
(1) Scope.
(2) Coordination with § 1.367(b)–3.
(i) In general.
(ii) Determination of all earnings and profits amount.
(iii) Interaction with section 358 and § 1.367(b)–2(e)(3)(ii).
(iv) Coordination with § 1.367(b)–3(c).
(v) Special rule for U.S. persons that own foreign distributing corporation stock after a non pro rata distribution. [Reserved]
(3) Foreign income taxes.
(4) Previously taxed earnings and profits. [Reserved]
(5) Coordination with § 1.367(b)–5.
(6) Examples.
(e) Foreign divisive transactions involving a foreign distributing corporation and a foreign controlled corporation.
(1) Scope.
(2) Earnings and profits of foreign controlled corporation.
(i) In general.
(ii) Special rule for pre-transaction earnings allocated to a newly created controlled corporation.
(3) Foreign income taxes.
(4) Previously taxed earnings and profits. [Reserved]
(5) Coordination with § 1.367(b)–5.
(6) Examples.
(f) Effective date.

§ 1.367(b)–9 Special rule for F reorganizations and similar transactions.

(a) Scope.
(b) Hovering deficit rules inapplicable.
(c) Example.
(d) Effective date.

Par. 4. Section 1.367(b)–1 is amended by:

1. Removing the language "and" at the end of paragraph (c)(2)(iii).

2. Removing the period at the end of paragraph (c)(2)(iv)(B) and adding ";" in its place.

3. Adding paragraphs (c)(2)(v), (c)(2)(vi), and (c)(2)(vii).

4. Revising paragraphs (c)(3)(ii)(A), (c)(4)(iv), and (c)(4)(v).

The additions and revisions read as follows:

§ 1.367(b)–1 Other transfers.

* * * * *

(c) * * *

(2) * * *

(v) A foreign surviving corporation described in § 1.367(b)–7(a);

(vi) A distributing corporation that is subject to the rules of § 1.367(b)–8; and

(vii) A controlled corporation that is subject to the rules of § 1.367(b)–8.

(3) * * *

(ii) * * *

(A) United States shareholders (as defined in § 1.367(b)–3(b)(2)) of foreign corporations described in paragraph (c)(2)(i), (v), (vi), or (vii) of this section; and

* * * * *

(4) * * *

(iv) A statement that describes any amount (or amounts) required, under the section 367(b) regulations, to be taken into account as income or loss or as an adjustment (including an adjustment under § 1.367(b)–7, 1.367(b)–8, or 1.367(b)–9) to basis, earnings and profits, or other tax attributes as a result of the exchange;

(v) Any information that is or would be required to be furnished with a Federal income tax return pursuant to regulations under section 332, 351, 354, 355, 356, 361, 368, or 381 (whether or not a Federal income tax return is required to be filed), if such information has not otherwise been provided by the person filing the section 367(b) notice;

* * * * *

Par. 5. Section 1.367(b)–2 is amended by:

1. Revising paragraph (j)(1)(i).

2. Redesignating paragraph (j)(3) as paragraph (j)(5).

3. Adding new paragraphs (j)(3) and (j)(4).

4. Adding paragraph (l).

The revision and addition read as follows:

§ 1.367(b)–2 Definitions and special rules.

* * * * *

(j) *Sections 985 through 989*—(1) *Change in functional currency of a qualified business unit*—(i) *Rule*. If, as a result of a section 367(b) exchange described in section 381(a) or 312(h), a qualified business unit (as defined in section 989(a)) (QBU) has a different functional currency determined under the rules of section 985(b) than it used prior to the transaction, then the QBU shall be deemed to have automatically changed its functional currency immediately prior to the transaction. A QBU that is deemed to change its functional currency pursuant to this paragraph (j) must make the adjustments described in § 1.985–5.

* * * * *

(3) *Dividend described in section 243(e).* Dividend distributions by a foreign corporation out of earnings and profits accumulated by a domestic corporation that are eligible for the dividends received deduction under section 243(e) shall not exceed an amount equal to the U.S. dollar value of the earnings and profits at the time the earnings and profits were accumulated by such domestic corporation. See § 1.367(b)–8(c)(3), *Example 1* and *Example 3*.

(4) *Coordination with § 1.367(b)–8(c)(2).* Solely for purposes of Chapter 3 of subtitle A of the Internal Revenue Code, dividend distributions by a foreign corporation that are treated under § 1.367(b)—8(c)(2) as U.S. source shall not exceed an amount equal to the U.S. dollar value of the earnings and profits at the time allocated to the foreign corporation. See § 1.367(b)–8(c)(3), *Example 1*.

* * * * *

(l) *Additional definitions*—(1) *Foreign income taxes*. The term *foreign income taxes* has the meaning set forth in § 1.902–1(a)(7).

(2) *Post-1986 undistributed earnings*. The term *post-1986 undistributed earnings* has the meaning set forth in § 1.902–1(a)(9).

(3) *Post-1986 foreign income taxes*. The term *post-1986 foreign income taxes* has the meaning set forth in § 1.902–1(a)(8).

(4) *Pre-1987 accumulated profits*. The term *pre-1987 accumulated profits* means the earnings and profits described in § 1.902–1(a)(10)(i), computed in accordance with the rules of § 1.902–1(a)(10)(ii).

(5) *Pre-1987 foreign income taxes*. The term *pre-1987 foreign income taxes* has the meaning set forth in § 1.902-1(a)(10)(iii).

(6) *Pre-1987 section 960 earnings and profits*. The term *pre-1987 section 960 earnings and profits* means the earnings and profits of a foreign corporation accumulated in taxable years beginning before January 1, 1987, computed under § 1.964–1(a) through (e), and translated into the functional currency (as determined under section 985) of the foreign corporation at the spot rate on the first day of the foreign corporation's taxable year beginning after December 31, 1986. For further guidance, see Notice 88–70 (1988–2 C.B. 369, 370) (see also § 601.60 (d)(2) of this chapter). The term pre-1987 section 960 earnings and profits does not include earnings and profits that represent previously taxed earnings and profits for purposes of section 959.

(7) *Pre-1987 section 960 foreign income taxes*. The term *pre-1987 section 960 foreign income taxes* means the foreign income taxes related to pre-1987 section 960 earnings and profits, determined in accordance with the rules of § 1.902–1(a)(10)(iii), except that the U.S. dollar amounts of pre-1987 section 960 foreign income taxes are determined by reference to the exchange rates in effect when the taxes were paid or accrued.

(8) *Earnings and profits*. The term *earnings and profits* means post-1986 undistributed earnings, pre-1987 accumulated profits, and pre-1987 section 960 earnings and profits.

(9) *Look-through corporation*. The term *look-through corporation* means a foreign corporation that is subject to the look-through rules of section 904(d)(3) or section 904(d)(4) (as in effect for taxable years beginning after December 31, 2002 (the day before the effective date of section 1105(b) of Public Law 105–34 (111 Stat. 788)) and regulations thereunder.

(10) *Non-look-through 10/50 corporation*. The term *non-look-through 10/50 corporation* means a noncontrolled section 902 corporation as defined in section 904(d)(2)(E) that is not a look-through corporation.

(11) *Less-than-10%-U.S.-owned foreign corporation*. The term *less-than-10%-U.S.-owned foreign corporation* means a foreign corporation that is neither a look-through corporation nor a non-look-through 10/50 corporation.

(12) *Separate category*. The term *separate category* has the meaning set forth in section 904(d)(1), and shall also include any other category of income to which section 904(a), (b), and (c) are applied separately under any other provision of the Internal Revenue Code (*e.g.*, sections 56(g)(4)(C)(iii)(IV), 245(a)(10), 865(h), 901(j), and 904(g)(10)).

(13) *Statutory grouping of earnings and profits*. The term *statutory grouping of earnings and profits* means the earnings and profits from a specific source or activity that must be determined for purposes of applying a provision of the Internal Revenue Code. Compare § 1.861–8(a)(4) (providing an analogous definition for statutory grouping of gross income).

Par. 6. Section 1.367(b)–3 is amended by adding paragraphs (e) and (f) to read as follows:

§ 1.367(b)–3 Repatriation of foreign corporate assets in certain nonrecognition transactions.

* * * * *

(e) *Net operating loss and capital loss carryovers*. A net operating loss or capital loss carryover of the foreign acquired corporation is described in section 381(c)(1) and (c)(3) and thus is eligible to carry over from the foreign acquired corporation to the domestic acquiring corporation only to the extent the underlying deductions or losses were allowable under chapter 1 of subtitle A of the Internal Revenue Code. Thus, only a net operating loss or capital loss carryover that is effectively connected with the conduct of a trade or business within the United States (or that is attributable to a permanent establishment, in the context of an applicable United States income tax treaty) is eligible to be carried over under section 381. For further guidance, see Rev. Rul. 72–421 (1972–2 C.B. 166) (see also § 601.601(d)(2) of this chapter).

(f) *Carryover of earnings and profits*. Except to the extent otherwise specifically provided (see, *e.g.*, 89–79

(1989–2 C.B. 392) (see also § 601.601(d)(2) of this chapter)), earnings and profits of the foreign acquired corporation that are not included in income as a deemed dividend under the section 367(b) regulations (or deficit in earnings and profits) are eligible to carry over from the foreign acquired corporation to the domestic acquiring corporation under section 381(c)(2) or § 1.367(b)–8(b)(1)(i) only to the extent such earnings and profits (or deficit in earnings and profits) are effectively connected with the conduct of a trade or business within the United States (or are attributable to a permanent establishment, in the context of an applicable United States income tax treaty). All other earnings and profits (or deficit in earnings and profits) of the foreign acquired corporation shall not carry over to the domestic acquiring corporation and, as a result, shall be eliminated.

Par. 7. Section 1.367(b)–5 is amended by:

1. Revising paragraphs (b)(1)(ii) and (c)(2).
2. Adding paragraph (e)(3).

The revisions and addition read as follows:

§ 1.367(b)–5 Distributions of stock described in section 355.

* * * * *

(b) * * *

(1) * * *

(ii) If the distributee is an individual or a tax-exempt entity as described in § 1.337(d)–4(c)(2) then, solely for purposes of determining the gain recognized by the distributing corporation, the controlled corporation shall not be considered to be a corporation, and the distributing corporation shall recognize any gain (but not loss) realized on the distribution.

* * * * *

(c) * * *

(2) *Adjustment to basis in stock and income inclusion*—(i) *In general.* If the distributee's postdistribution amount (as defined in paragraph (e)(2) of this section) with respect to the distributing or controlled corporation is less than the distributee's predistribution amount (as defined in paragraph (e)(1) of this section) with respect to such corporation, then the distributee's basis in such stock immediately after the distribution (determined under the normal principles of section 358) shall be reduced by the amount of the difference. However, the distributee's basis in such stock shall not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, the distributee shall instead include such amount in income as a deemed dividend from such corporation. See, *e.g.*, paragraph (g) *Example 1* of this section.

(ii) *Exception.* The basis reduction rule of paragraph (c)(2)(i) of this section shall apply only to the extent such reduction increases the distributee's section 1248 amount (as defined in § 1.367(b)–2(c)(1)) with respect to the distributing or controlled corporation; otherwise such basis reduction shall be replaced by the income inclusion rule of paragraph (c)(2)(i) of this section. See, *e.g.*, § 1.367(b)–8(d)(6) *Example 2.*

* * * * *

(e) * * *

(3) *Divisive D reorganization with a preexisting controlled corporation.* In the case of a transaction described in § 1.367(b)–8(b)(4), the predistribution amount with respect to a distributing or controlled corporation shall be computed after the allocation of the distributing corporation's earnings and profits described in § 1.367(b)–8(b)(4)(i)(A) and (b)(4)(ii)(A) (without regard to the parenthetical phrase in § 1.367(b)–8(b)(4)(ii)(A)), but before the reduction in the distributing corporation's earnings and profits described in § 1.367(b)–8(b)(4)(i)(B). See, *e.g.*, § 1.367(b)–8(d)(6) *Example 3* and § 1.367(b)–8(e)(7) *Example 3.*

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Par. 8. In § 1.367(b)–6, paragraph (a)(1) is revised to read as follows:

§ 1.367(b)–6 Effective dates and coordination rules.

(a) *Effective date*—(1) *In general.* Sections 1.367(b)–1 through 1.367(b)–5, and this section, apply to section 367(b) exchanges that occur on or after the date that is 30 days after the date these regulations are published as final regulations in the **Federal Register**. For guidance with respect to section 367(b) exchanges that occur prior to the date 30 days after these regulations are published as final regulations in the **Federal Register**, see §§ 1.367(b)–1 through 1.367(b)–6 in effect prior to the date 30 days after these regulations are published in the **Federal Register** (see 26 CFR part 1 revised as of April 1, 2000).

Par. 9. Section 1.367(b)–7 is added to read as follows:

§ 1.367(b)–7 Carryover of earnings and profits and foreign income taxes in certain foreign-to-foreign nonrecognition transactions.

(a) *Scope.* This section applies to an acquisition by a foreign corporation (foreign acquiring corporation) of the assets of another foreign corporation (foreign target corporation) in a transaction described in section 381 (foreign 381 transaction). This section describes the manner and extent to which earnings and profits and foreign income taxes of the foreign acquiring corporation and the foreign target corporation carry over to the surviving foreign corporation (foreign surviving corporation). See § 1.367(b)–9 for special rules governing reorganizations described in section 368(a)(1)(F) and foreign 381 transactions in which either the foreign target corporation or the foreign acquiring corporation is newly created.

(b) *General rules*—(1) *Non-previously taxed earnings and profits and related taxes.* Earnings and profits and related foreign income taxes of the foreign acquiring corporation and the foreign target corporation (pre-transaction earnings and pre-transaction taxes, respectively) shall carry over to the foreign surviving corporation in the manner described in paragraphs (d), (e), (f), and (g) of this section. Dividend distributions by the foreign surviving corporation (post-transaction distributions) shall be out of earnings and profits and shall reduce related foreign income taxes in the manner described in paragraph (c) of this section.

(2) *Previously taxed earnings and profits.* [Reserved]

(c) *Ordering rule for post-transaction distributions.* Dividend distributions out of a foreign surviving corporation's earnings and profits shall be ordered in accordance with the rules of paragraph (c)(1), (2), or (3) of this section, depending on whether the foreign surviving corporation is a look-through corporation, a non-look-through 10/50 corporation, or a less-than-10%-U.S.-owned foreign corporation.

(1) *If foreign surviving corporation is a look-through corporation.* In the case of a foreign surviving corporation that is a look-through corporation, post-transaction distributions shall be first out of the look-through pool (as described in paragraph (d) of this section), second out of the non-look-through pool (as described in paragraph (e)(1) of this section), and third out of the pre-pooling annual layers (as described in paragraph (f)(1) of this section) under an annual last-in, first-out (LIFO) method.

(2) *If foreign surviving corporation is a non-look-through 10/50 corporation.* In the case of a foreign surviving corporation that is a non-look-through 10/50 corporation, post-transaction distributions shall be first out of the non-look-through pool (as described in paragraph (e)(2) of this section), and

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second out of the pre-pooling annual layers (as described in paragraph (f)(1) of this section) under the LIFO method.

(3) *If foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation.* In the case of a foreign surviving corporation that is a less-than-10%-U.S.-owned corporation, post-transaction distributions shall be out of the pre-pooling annual layers (as described in paragraph (f)(2) of this section) under the LIFO method.

(d) *Look-through pool.* If the foreign surviving corporation is a look-through corporation, then the look-through pool shall be determined under the rules of this paragraph (d).

(1) *In general*—(i) *Qualifying earnings and taxes.* The look-through pool shall consist of the post-1986 undistributed earnings and related post-1986 foreign income taxes of the foreign acquiring corporation and the foreign target corporation that were subject to the look-through provisions of section 904(d)(3) or section 904(d)(4) (as in effect for taxable years beginning after December 31, 2002 (the day before the effective date of section 1105(b) of Public Law 105–34 (111 Stat. 788)) and regulations thereunder.

(ii) *Carryover rule.* Subject to paragraph (d)(2) of this section, the amounts described in paragraph (d)(1)(i) of this section attributable to the foreign acquiring corporation and the foreign target corporation shall carry over to the foreign surviving corporation and shall be combined on a separate category-by-separate category basis.

(2) *Hovering deficit.* The rules of this paragraph (d)(2) apply when the foreign acquiring corporation or the foreign target corporation has a deficit in one or more separate categories of post-1986 undistributed earnings described in paragraph (d)(1)(i) of this section immediately prior to the foreign 381 transaction. In the event both the foreign acquiring corporation and the foreign target corporation have a deficit in the same separate category of earnings and profits, such deficits and their related foreign income taxes shall be combined for purposes of applying this paragraph (d)(2). See also paragraphs (g)(1) and (4) of this section (describing other rules applicable to a deficit described in this paragraph (d)(2)).

(i) *Offset rule.* A deficit in a separate category of earnings and profits described in this paragraph (d)(2) shall offset only earnings and profits accumulated by the foreign surviving corporation after the foreign 381 transaction (post-transaction earnings) in the same separate category of earnings and profits.

(ii) *Related taxes.* Foreign income taxes that are related to a deficit in a separate category of earnings and profits described in this paragraph (d)(2) shall be added to the foreign surviving corporation's post-1986 foreign income taxes related to that separate category of earnings and profits only after post-transaction earnings in the same separate category have been offset by and exceed the entire amount of the deficit.

(3) *Examples.* The following examples illustrate the rules of this paragraph (d). The examples presume the following facts: Foreign corporations A and B were both incorporated after December 31, 1986, always have been controlled foreign corporations, and always have had calendar taxable years. None of the shareholders of foreign corporations A and B are required to include any amount in income under § 1.367(b)–4 as a result of the foreign 381 transaction. Foreign corporations A and B (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency. Finally, unless otherwise stated, any earnings and profits described in section 904(d)(1)(D) and 904(d)(1)(E) (shipping income and 10/50 dividends, respectively) qualified for the high tax exception from subpart F income under section 954(b)(4), and all United States shareholders elected to exclude such earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). The examples are as follows:

Example 1—(i) *Facts.* (A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E & P	Foreign taxes
Foreign Corporation A:		
Separate Category:		
10/50 dividends from FC1, a noncontrolled section 902 corporation	100u	$40
General	300u	60
	400u	100
Foreign Corporation B:		
Separate Category:		
Shipping	200u	40
10/50 dividends from FC2, a noncontrolled section 902 corporation	50u	20
General	300u	70
	550u	130

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a controlled foreign corporation (CFC).

(ii) *Result.* Under the rules described in paragraph (d)(1) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

Separate category	E&P	Foreign taxes
Shipping	200u	$40
General	600u	130
10/50 dividends from FC1	100u	40
10/50 dividends from FC2	50u	20
	950u	230

(iii) *Post-transaction distribution.* (A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 475u to its shareholders. Under the rules described in § 1.902–1(d)(1) and paragraph (c)(1) of this section, the distribution is out of separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
Shipping	100u	$20
General	300u	65
10/50 dividends from FC1	50u	20
10/50 dividends from FC2	25u	10
	475u	115

(B) The foreign income taxes available to foreign surviving corporation shareholders upon the distribution are subject to the generally applicable rules and limitations, such as those of sections 902 and 904(d).

(C) Immediately after the distribution, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

Separate category	E&P	Foreign taxes
Shipping	100u	$20
General	300u	65
10/50 dividends from FC1	50u	20
10/50 dividends from FC2	25u	10
	475u	115

Example 2—(i) *Facts.* (A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
Separate Category:		
Shipping	(100u)	$5
10/50 dividends	400u	160
General	(200u)	25
	100u	190
Foreign Corporation B:		
Separate Category:		
Shipping	100u	20
General	300u	60
	400u	80

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a CFC.

(ii) *Result.* Under the rules described in paragraphs (d)(1) and (2) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

Separate category	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Shipping	100u	(100u)	$20	$5
10/50 dividends	400u	0u	160	0
General	300u	(200u)	60	25
	800u	(300u)	240	30

(iii) *Post-transaction distribution.* (A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 400u to its shareholders. Under the rules described in section 904(d)(3) and paragraph (c)(1) of this section, the distribution is out of separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
Shipping	50u	$10
10/50 dividends	200u	80
General	150u	30
	400u	120

(B) The foreign income taxes available to foreign surviving corporation shareholders upon the distribution are subject to the generally applicable rules and limitations, such as those of sections 902 and 904(d).

(C) Immediately after the distribution, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

Separate category	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Shipping	50u	(100u)	$10	$5
10/50 dividends	200u	0u	80	0
General	150u	(200u)	30	25
	400u	(300u)	120	30

(iv) *Post-transaction earnings.* (A) In its taxable year ending on December 31, 2003, foreign surviving corporation accumulates earnings and profits and pays related foreign income taxes as follows:

Separate category	E&P	Foreign taxes
Shipping	105u	$20
General	100u	20
	205u	40

(B) None of foreign surviving corporation's earnings and profits for its 2003 taxable year qualify as subpart F income as defined in section 952(a). Under the rules described in paragraphs (d)(2)(i) and (ii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts on December 31, 2003:

Separate category	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Shipping	55u	0u	$35	$0
10/50 dividends	200u	0u	80	0
General	150u	(100u)	50	25
	405u	(100u)	165	25

Example 3—(i) *Facts.* The facts are the same as *Example 2* (i), (ii), (iii), and (iv)(A), except that the 105u in the section 904(d)(1)(D) shipping separate category accumulated by foreign surviving corporation during 2003 qualify as subpart F income, all of which is included in income under section 951(a) by United States shareholders (as defined in section 951(b)).

(ii) *Result.* (A) Under the rule described in paragraph (g)(1) of this section, the 100u hovering deficit in the shipping separate category does not reduce foreign surviving corporation's current earnings and profits for purposes of determining subpart F income. Thus, foreign surviving corporation's United States shareholders include their pro rata shares of the 105u in taxable income for the year and are eligible for a deemed paid foreign tax credit under section 960, computed by reference to their pro rata shares of $20.32 (105u subpart F inclusion ÷ (105u + 50u accumulated earnings and profits in the shipping category = 155u) = 0.68%, × $30 foreign income taxes in the shipping category = $20.32).

(B) Immediately after the subpart F inclusion and section 960 deemed paid taxes (and taking into account the taxable year 2003 earnings and profits and related taxes in the general category), foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

Separate category	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Shipping	50u	(100u)	$9.68	$5
10/50 dividends	200u	0u	80.00	0
General	150u	(100u)	50.00	25
	400u	(200u)	139.68	30

(C) The 105u included as subpart F income constitutes previously taxed earnings and profits under section 959.

(e) *Non-look-through pool*—(1) *If foreign surviving corporation is a look-through corporation.* If the foreign surviving corporation is a look-through corporation, then the non-look-through pool shall be determined under the rules of this paragraph (e)(1).

(i) *Qualifying earnings and taxes.* The non-look-through pool shall consist of the post-1986 undistributed earnings and related post-1986 foreign income taxes that were accumulated (or treated as accumulated) by the foreign target corporation or the foreign acquiring corporation while it was a non-look-through 10/50 corporation.

(ii) *Carryover rule.* Subject to paragraph (e)(1)(iii) of this section, the amounts described in pararaph (e)(1)(i) of this section attributable to the foreign acquiring corporation and the foreign target corporation shall carry over to the foreign surviving corporation but shall not be combined. Thus, post-transaction distributions by the foreign surviving corporation out of the non-look-through pool shall be made from the separate amounts attributable to the foreign acquiring corporation and the foreign target corporation on a pro rata basis, and shall reduce a pro rata portion of any related foreign income taxes.

(iii) *Hovering deficit.* The rules of this paragraph (e)(1)(iii) apply when the foreign acquiring corporation or the foreign target corporation (or both) has a deficit in the post-1986 undistributed earnings described in paragraph (e)(1)(i) of this section immediately prior to the foreign 381 transaction. In the event that this paragraph (e)(1)(iii) applies to a deficit of both the foreign acquiring corporation and the foreign target corporation, the deficits shall not be combined and the rules of this paragraph (e)(1)(iii) shall be applied separately to each of such deficits on a pro rata basis. See also paragraphs (g)(1) and (g)(4) of this section (describing other rules applicable to a deficit described in this paragraph (e)(1)(iii)).

(A) *Offset rule.* A deficit described in this paragraph (e)(i)(iii) shall offset only post-transaction earnings. The deficit shall offset a pro rata portion of post-transaction earnings accumulated in each separate category of earnings and profits by the foreign surviving corporation.

(B) *Related taxes.* Foreign income taxes that are related to a deficit described in this paragraph (e)(1)(iii) shall be added to the foreign surviving corporation's post-1986 foreign income taxes (in the applicable segregated portion of the non-look-through pool) only after post-transaction earnings have been offset by and exceed the entire amount of the deficit.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (e)(1). The examples presume the following facts: Foreign corporation A was a non-look-through 10/50 corporation from its incorporation on January 1, 1995 until December 31, 1997; foreign corporation A became a CFC on January 1, 1998 and has been a CFC since that time. Foreign corporation B has been a non-look-through 10/50 corporation since its incorporation on January 1, 1993. Both foreign corporation A and foreign corporation B always have had calendar taxable years. None of the shareholders of foreign corporation A are required to include any amount in income under § 1.367(b)–4 as a result of the foreign 381 transaction. Foreign corporations A and B (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency. Finally, any earnings and profits described in section 904(d)(1)(E) (10/50 dividends) qualified for the high tax exception from subpart F income under section 954(b)(4), and all United States shareholders elected to exclude such earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). The examples are as follows:

Example 1—(i) *Facts.* (A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
Separate Category:		
10/50 dividends	100u	$40
General	300u	60
E&P Accumulated as Non-Look-Through 10/50 Corporation	400u	100
	800u	200
Foreign Corporation B:		
E&P Accumulated as Non-Look-Through 10/50 Corporation	200u	$40

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a CFC.

(ii) *Result.* Under the rules described in paragraphs (d)(1), (e)(1)(i), and (e)(1)(ii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Look-Through Pool Separate Category:		
10/50 dividends	100u	$40
General	300u	60
Two Side-by-Side Non-Look-Through Pool Amounts:		
Non-look-through pool amount #1 (from Corp A)	400u	100
Non-look-through pool amount #2 (from Corp B)	200u	40
	1,000u	240

(iii) *Post-transaction distribution.*—(A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 700u to its shareholders. Under the rules described in paragraphs (c)(1) and (e)(1)(ii) of this section, the distribution is first out of the look-through pool, then out of the non-look-through pool, as follows:

	E&P	Foreign taxes
Look-Through Pool Separate Category:		
10/50 dividends	100u	$40
General	300u	60
Non-Look-Through Pool Amounts:		
Non-look-through pool amount #1	200u	50
Non-look-through pool amount #2	100u	20
	700u	170

(B) The foreign income taxes available to foreign surviving corporation shareholders upon the distribution are subject to the generally applicable rules and limitations, such as those of sections 902 and 904(d).

(C) Immediately after the distribution, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Two Side-by-Side Non-Look-Through Pool Amounts:		
Non-look-through pool amount #1	200u	$50
Non-look-through pool amount #2	100u	20
	300u	70

Example 2—(i) *Facts.*—(A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
Look-through Pool Separate Category:		
10/50 dividends	100u	$40
General	300u	60
E&P Accumulated as Non-Look-Through 10/50 Corporation	400u	100
	800u	200
Foreign Corporation B:		
E&P Accumulated as Non-Look-Through 10/50 Corporation	(200u)	5

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a CFC.

(ii) *Result.* Under the rules described in paragraphs (d)(1), (e)(1)(i), (e)(1)(ii), and (e)(1)(iii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings & profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Look-through Pool Separate Category:				
10/50 dividends	100u	....	$40	....
General	300u	....	60	....

	Earnings & profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Two Side-by-Side Non-Look-Through Pool Amounts:				
Non-look-through pool amount #1	400u		100	
Non-look-through pool amount #2		(200u)		$5
	800u	(200u)	200	5

(iii) *Post-transaction distribution.*—(A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 600u to its shareholders. Under the rules described in paragraphs (c)(1) and (e)(1)(ii) of this section, the distribution is first out of the look-through pool, then out of the non-look-through pool, as follows:

	E&P	Foreign taxes
Look-Through Pool Separate Category:		
10/50 dividends	100u	$40
General	300u	60
Non-Look-Through Pool Amount:		
Non-look-through pool amount #1	200u	50
	600u	150

(B) The foreign income taxes available to foreign surviving corporation shareholders upon the distribution are subject to the generally applicable rules and limitations, such as those of sections 902 and 904(d).

(C) Immediately after the distribution, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings & profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Two Side-by-Side Non-Look-Through Pool Amounts:				
Non-look-through pool amount #1	200u		$50	
Non-look-through pool amount #2		(200u)		$5
	200u	(200u)	50	5

(iv) *Post-transaction earnings.*—(A) In the taxable year ending on December 31, 2003, foreign surviving corporation accumulates earnings and profits and pays related foreign income taxes as follows:

	E&P	Foreign taxes
Separate Category:		
10/50 dividends	150u	$60
General	300u	60
	450u	120

(B) None of the earnings and profits qualify as subpart F income as defined in section 952(a). Under the rules described in paragraph (e)(1)(iii)(A) of this section, the 200u deficit in non-look-through pool amount #2 offsets a pro rata portion of the foreign surviving corporation's post-transaction earnings in each separate category. Thus, the 200u deficit offsets 66.66u of section 904(d)(1)(E) 10/50 dividends separate category earnings (33.33% of 200u) and offsets 133.34u of section 904(d)(1)(I) general separate category earnings (66.67% of 200u). Accordingly, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts as of December 31, 2002:

	E&P	Foreign taxes
Look-Through Pool Separate Category:		
10/50 dividends	83.34u	$60
General	166.66u	60
Two Side-by-Side Non-Look-Through Pool Amounts:		
Non-look-through pool amount #1	200u	50
Non-look-through pool amount #2		5
	450u	175

(C) Under paragraph (e)(1)(iii)(B) of this section, the $5 of foreign income taxes associated with the non-look-through pool amount #2 hovering deficit are added to foreign surviving corporation's available foreign income taxes because post-transaction earnings have been offset by and exceed the deficit in the non-look-through pool. However, the $5 of foreign income taxes generally will not be reduced or deemed paid unless a foreign tax refund restores a positive balance to the associated earnings pursuant to section 905(c), and thus will be trapped.

(2) *If foreign surviving corporation is a non-look-through 10/50 corporation.* If the foreign surviving corporation is a non-look-through 10/50 corporation, then the non-look-through pool shall be determined under the rules of this paragraph (e)(2).

(i) *Qualifying earnings and taxes.* The non-look-through pool shall consist of the post-1986 undistributed earnings and related post-1986 foreign income taxes of the foreign acquiring corporation and the foreign target corporation.

(ii) *Carryover rule.* Subject to paragraph (e)(2)(iii) of this section, the amounts described in paragraph (e)(2)(i) of this section attributable to the foreign acquiring corporation and the foreign target corporation shall carry over to the foreign surviving corporation and shall be combined as a single separate category of earnings and profits under section 904(d)(1)(E).

(iii) *Hovering deficit.* The rules of this paragraph (e)(2)(iii) apply when the foreign acquiring corporation or the foreign target corporation (or both) has an aggregate deficit in its post-1986 undistributed earnings described in paragraph (e)(2)(i) of this section immediately prior to the foreign 381 transaction. In the event that both the foreign acquiring corporation and the foreign target corporation have an aggregate deficit in post-1986 undistributed earnings, such deficits and their related foreign income taxes shall be combined for purposes of applying this paragraph (e)(2)(iii). See also paragraphs (g)(1) and (4) of this section (describing other rules applicable to a deficit described in this paragraph (e)(2)(iii)).

(A) *Offset rule.* A deficit described in this paragraph (e)(2)(iii) shall offset only post-transaction earnings accumulated by the foreign surviving corporation.

(B) *Related taxes.* Foreign income taxes that are related to a deficit described in this paragraph (e)(2)(iii) shall be added to the foreign surviving corporation's post-1986 foreign income taxes only after post-transaction earnings have been offset by and exceed the entire amount of the deficit.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (e)(2). The examples presume the following facts: Both foreign corporation A and foreign corporation B always have had calendar taxable years. Foreign corporations A and B (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency. Finally, any earnings and profits described in section 904(d)(1)(E) (10/50 dividends) qualified for the high tax exception from subpart F income under section 954(b)(4), and all United States shareholders elected to exclude such earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). The examples are as follows:

Example 1— (i) *Facts.* (A) Foreign corporations A and B are and always have been non-look-through 10/50 corporations since they were incorporated in 1995. On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A: E&P accumulated as non-look-through 10/50 corporation	400u	$100
Foreign Corporation B: E&P accumulated as non-look-through 10/50 corporation	200u	40

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a non-look-through 10/50 corporation.

(ii) *Result.* Under the rules described in paragraphs (e)(2)(i) and (ii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Non-Look-Through Pool	600u	$140

Example 2—(i) *Facts.* (A) Foreign corporation A is and always has been a CFC since it was incorporated in 1995. Foreign corporation B is and always has been a non-look-through 10/50 corporation since it was incorporated in 1995. Immediately before the foreign 381 transaction (but after application of the rules of § 1.367(b)–4 to foreign corporation A and its shareholders), foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
Separate Category:		
Passive	(200u)	$10
10/50 dividends	100u	40

	E&P	Foreign taxes
General	300u	60
	(200u)	$110
Foreign Corporation B:		
E&P accumulated as non-look-through 10/50 corporation	200u	$30

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a non-look-through 10/50 corporation.

(ii) *Result*. Because neither foreign corporation A nor foreign corporation B has an aggregate deficit in post-1986 undistributed earnings, the rules described in paragraphs (e)(2)(i) and (ii) of this section apply, but the rules described in paragraph (e)(2)(iii) do not. Accordingly, foreign corporation A's net positive earnings and profits of 200u (300u + 100u + (200u)) and its aggregate foreign income taxes of $110 ($10 + $40 + $60) are combined with the earnings and profits and foreign income taxes of foreign corporation B, so that foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Non-Look-Through Pool	400u	$140

Example 3—(i) *Facts*. (A) Foreign corporation A is and always has been a CFC since it was incorporated in 1995. Foreign corporation B is and always has been a non-look-through 10/50 corporation since it was incorporated in 1995. On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
Separate Category:		
Passive	(200u)	$10
10/50 dividends	100u	40
General	(300u)	60
	(400u)	$110
Foreign Corporation B:		
E&P accumulated as non-look-through 10/50 corporation	200u	$30

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a non-look-through 10/50 corporation. (Assume that none of the shareholders of foreign corporation A are required to include an amount in income under § 1.367(b)–4 with regard to this transaction.)

(ii) *Result*. Because foreign corporation A has an aggregate deficit in post-1986 undistributed earnings, the rules of paragraph (e)(2)(iii) of this section apply. Accordingly, foreign corporation A's 400u aggregate deficit in earnings and profits ((200u) + 100u + (300u)) carries over as a hovering deficit to foreign surviving corporation, so that foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Non-Look-Through Pool	200u	(400u)	$30	$110

(iii) *Post-transaction earnings*. (A) In the taxable year ending on December 31, 2002, foreign surviving corporation accumulates earnings and profits and pays related foreign income taxes as follows:

	E&P	Foreign taxes
E&P accumulated as non-look-through 10/50 corporation	500u	$100

(B) Under the rule described in paragraph (e)(2)(iii)(A) of this section, the hovering deficit of 400u in the non-look-through pool offsets 400u of post-transaction earnings. Under the rules of paragraph (e)(2)(iii)(B) of this section, the foreign income taxes related to the hovering deficit are added to foreign surviving corporation's available foreign income taxes because post-transaction earnings have been offset by and exceed the deficit in the non-look-through pool. Accordingly, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts as of December 31, 2002:

	E&P	Foreign taxes
Non-Look-Through Pool	300u	$240

(f) *Pre-pooling annual layers*—(1) *If foreign surviving corporation is a look-through corporation or a non-look-through 10/50 corporation*. If the foreign surviving corporation is a look-through corporation or a non-look-through 10/50 corporation, the pre-pooling annual layers shall be determined under the rules of this paragraph (f)(1).

(i) *Qualifying earnings and taxes*. The pre-pooling annual layers shall consist of the pre-1987 accumulated profits and the pre-1987 foreign income taxes of the foreign acquiring corporation and the foreign target corporation.

(ii) *Carryover rule*. Subject to paragraph (f)(1)(iii) of this section, the amounts described in paragraph (f)(1)(i) of this section attributable to the foreign acquiring corporation and the foreign target corporation shall carry over to the foreign surviving corporation but shall not be combined. Thus, when the foreign acquiring corporation and the foreign target corporation have pre-1987 accumulated profits in the same year and a distribution is made therefrom, the rules of § 1.902–1(b)(2)(ii) and (b)(3) shall apply separately to reduce pre-1987 accumulated profits and pre-1987 foreign income taxes of the foreign acquiring corporation and the foreign target corporation on a pro rata basis. For further guidance, see Rev. Rul. 68–351 (1968–2 C.B. 307); Rev. Rul. 70–373 (1970–2 C.B. 152) (see also § 601.601(d)(2) of this chapter); see also paragraph (g)(2) of this section (governing the reconciliation of taxable years).

(iii) *Deficits*. The rules of this paragraph (f)(1)(iii) apply when the foreign acquiring corporation or the foreign target corporation (or both) has a deficit in one or more years that comprise its pre-1987 accumulated profits immediately prior to the foreign 381 transaction (see also paragraphs (g)(1) and (g)(4) of this section, describing other rules applicable to a deficit described in this paragraph (f)(1)(iii)).

(A) *Aggregate positive earnings and profits*. If the foreign acquiring corporation or the foreign target corporation (or both) has an aggregate positive (or zero) amount of pre-1987 accumulated profits, but a deficit in one or more individual years, then the rules otherwise applicable to such deficits shall apply separately to the pre-1987 accumulated profits and related foreign income taxes of such corporation. For further guidance, see Rev. Rul. 74–550 (1974–2 C.B. 209) (see also § 601.601(d)(2) of this chapter); *Champion Int'l Corp.* v. *Commissioner*, 81 T.C. 424 (1983), acq. in result, 1987–2 C.B. 1; Rev. Rul. 87–72 (1987–2 C.B. 170) (see also § 601.601(d)(2) of this chapter). As a result, no amount in excess of the aggregate positive amount of pre-1987 accumulated profits shall be distributed from the pre-transaction earnings of the foreign acquiring corporation or the foreign target corporation.

(B) *Aggregate deficit in earnings and profits*. If the foreign acquiring corporation or the foreign target corporation (or both) has an aggregate deficit in pre-1987 accumulated profits, then the rules under § 1.902–2(b) shall apply to such deficit (and related foreign income taxes) immediately prior to the transaction, except that the aggregate deficit that is carried forward into the look-through pool (in the case of a foreign surviving corporation that is a look-through corporation) or non-look-through pool (in the case of a foreign surviving corporation that is a non-look-through 10/50 corporation) shall be available to offset only post-transaction earnings accumulated by the foreign surviving corporation.

(iv) *Pre-1987 section 960 earnings and profits and foreign income taxes*. The pre-1987 section 960 earnings and profits and pre-1987 section 960 foreign income taxes attributable to the foreign acquiring corporation and the foreign target corporation shall carry over to the foreign surviving corporation but shall not be combined. The rules otherwise applicable to such amounts shall apply separately to the pre-1987 section 960 earnings and profits and pre-1987 section 960 foreign income taxes of the foreign acquiring corporation and the foreign target corporation on a pro rata basis. For further guidance, see Notice 88–70 (1988–2 C.B. 369) (see also § 601.601(d)(2) of this chapter).

(v) *Examples*. The following examples illustrate the rules of this paragraph (f)(1). The examples presume the following facts: foreign corporation A was incorporated in 1998 and as a less-than-10%-U.S.-owned foreign corporation through December 31, 1999. Foreign corporation A became a non-look-through 10/50 corporation on January 1, 2000 and, as a result, began to maintain a pool of post-1986 undistributed earnings on that date.

Foreign corporation B was incorporated in 1998 and always has been owned by foreign shareholders (and thus never has met the requirements of section 902(c)(3)(B)). Both foreign corporation A and foreign corporation B always have had calendar taxable years. Foreign corporations A and B (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency. The examples are as follows:

Example 1—(i) *Facts*. (A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
E&P accumulated as non-look-through 10/50 corporation	1,000u	$350
1999	400u	160u
1998	100u	5u
	1,500u	
Foreign Corporation B:		
2001	100u	20u
2000	150u	30u
1999	0u	50u
1998	50u	5u
	300u	105u

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a non-look-through 10/50 corporation.

(ii) *Result.* Under the rules described in paragraphs (e)(2)(i), (e)(2)(ii), (f)(1)(i), and (f)(1)(ii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Non-look-through pool	1,000u	$350
2001	100u	20u
2000	150u	30u
Two Side-by-Side Layers of 1999 E&P:		
1999 layer #1 (from Corp A)	400u	160u
1999 layer #2 (from Corp B)	0u	50u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1 (from Corp A)	100u	5u
1998 layer #2 (from Corp B)	50u	5u
	1,800u	

(iii) *Post-transaction distribution.* (A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 1,700u to its shareholders. Under the rules of paragraph (c)(2) of this section, the distribution is first out of the non-look-through pool, and then out of the pre-pooling annual layers under the LIFO method, as follows:

Distribution	E&P	Foreign taxes
Non-look-through pool	1,000u	$350
2001	100u	20u
2000	150u	30u
Two Side-by-Side Layers of 1999 E&P:		
1999 layer #1	400u	160u
1999 layer #2	0u	0u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1 (100u in layer ÷ 150u aggregate 1997 earnings = 66.67% × 50u distribution)	33.33u	1.67u
1998 layer #2 (50u in layer ÷ 150u aggregate 1997 earnings = 33.33% × 50u distribution)	16.67u	1.67u
	1,700u	

(B) The foreign income taxes available to foreign surviving corporation shareholders upon the distribution are subject to the generally applicable rules and limitations, such as those of sections 902 and 904(d).

(C) Immediately after the distribution, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
1999 layer #2	0.00u	50.00u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1	66.67u	3.33u
1998 layer #2	33.33u	3.33u
	100.00u	56.66u

(iv) *Post-transaction earnings.* For the taxable year ending on December 31, 2003, foreign surviving corporation accumulates 500u of current earnings and profits and pays $70 in foreign income taxes. As of the close of the 2003 taxable year, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	*Foreign taxes*
E&P accumulated as non-look-through 10/50 corporation	500.00u	$70.00
1999	0.00u	50.00u
Two Side-by-Side Layers of 1998 E&P:.		
1998 layer #1	66.67u	3.33u
1998 layer #2	33.33u	3.33u
	600u	

Example 2—(i) *Facts.* (A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
E&P accumulated as non-look-though 10/50 corporation	1,000u	$350
1999	100u	20u
1998	(50u)	5u
	1,050u	
Foreign Corporation B:		
E&P Foreign Taxes.		
2001	100u	20u
2000	(50u)	5u
1999	0u	50u
1998	100u	10u
	150u	85u

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a non-look-through 10/50 corporation.

(ii) *Result.* Because foreign corporations A and B have aggregate positive amounts of pre-1987 accumulated profits with a deficit in one or more individual years, the rules of paragraph (f)(1)(iii)(A) of this section apply. Accordingly, after the foreign 381 transaction, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings and profits		Foreign taxes	
	Positive E&P	Deficit E&P	Foreign taxes available	Foreign taxes associated with deficit E&P
Non-Look-Through 10/50 Pool	1,000u		$350	
2001	100u		20u	
2000		(50u)		5u
Two Side-by-Side Layers of 1999 E&P:				
1999 layer #1 (from foreign corporation A)	100u		20u	
1999 layer #2 (from foreign corporation B)	0u		50u	
Two Side-by-Side Layers of 1998 E&P:				
1998 layer #1 (from foreign corporation A)		(50u)		5u
1998 layer #2 (from foreign corporation B)	100u		10u	
	1,300u	(100u)		10u

(iii) *Post-transaction distribution.* (A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 1,175u to its shareholders. Under the rules described in paragraphs (c)(2) and (f)(1)(iii)(A) of this section, the distribution is first out of the non-look-through pool, and then out of the pre-pooling annual layers, as follows:

Distribution	E&P	Foreign taxes
Non-Look-Through 10/50 Amount	1,000u	$350
2001	100u	20u
2000	0u	0u
Two Side-by-Side Layers of 1999 E&P:		
1999 layer #1	50u	20u
1999 layer #2	0u	0u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1	0u	0u
1998 layer #2	25u	5u
	1,175u	

(B) Under the rules described in paragraph (f)(1)(iii)(A) of this section, the rules otherwise applicable when a foreign corporation has an aggregate positive (or zero) amount of pre-1987 accumulated profits, but a deficit in one or more individual years, apply separately to the pre-1987 accumulated profits and related foreign income taxes of foreign corporation A and foreign corporation B. As a result, distributions out of the pre-pooling annual layers of foreign corporation A and foreign corporation B can not exceed the aggregate positive amount of pre-1987 accumulated profits of each corporation. Accordingly, only 50u can be distributed from foreign corporation A's pre-pooling annual layers and is out of its 1999 layer #1. Under *Champion Int'l Corp.* v. *Commissioner*, 81 T.C. 424 (1983), the full 20u of taxes related to 1999 layer #1 is reduced or deemed paid ($20 × (50 ÷ 50)). Under Rev. Rul. 74–550 (1974–2 C.B. 209) (see also § 601.601(d)(2) of this chapter), 100u is distributed from foreign corporation B's 2001 annual layer. Foreign corporation B's deficit in 2000 is then rolled back to offset its 1998 annual layer to reduce earnings in that layer to 50u, 25u of which is distributed (and reduces one-half of that year's foreign income taxes).

(C) The foreign income taxes available to foreign surviving corporation shareholders upon the distribution are subject to the generally applicable rules and limitations, such as those of sections 902 and 904(d).

(D) Immediately after the distribution foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
2000	0u	5u
1999 layer #2	0u	50u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1	0u	5u
1998 layer #2	25u	5u
	25u	65u

(E) Under the rules described in paragraph (f)(1)(iii)(A) of this section, the 5u, 50u, and 5u of foreign income taxes related to foreign surviving corporation's 2000 layer, 1999 layer #2, and 1998 layer #1, respectively, remain in those layers. These foreign income taxes generally will not be reduced or deemed paid unless a foreign tax refund restores a positive balance to the associated earnings pursuant to section 905(c), and thus will be trapped.

Example 3—(i) *Facts.* (A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
E&P accumulated as non-look-through 10/50 corporation	1,000u	$350
1999	150u	20u
1998	100u	5u
	1,250u	
Foreign Corporation B:		
2001	100u	20u
2000	(250u)	5u
1999	0u	50u
1998	100u	10u
	(50u)	85u

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a non-look-through 10/50 corporation.

(ii) *Result.* (A) Because foreign corporation B has an aggregate deficit in pre-1987 accumulated profits, the rules of paragraph (f)(1)(iii)(B) of this section apply. Accordingly, § 1.902–2(b) applies immediately prior to the foreign 381 transaction, except that foreign corporation B's aggregate deficit in pre-1987 accumulated profits is carried forward into the post-1986 undistributed earnings pool and is available to offset only post-transaction earnings accumulated by foreign surviving corporation. Accordingly, after the foreign 381 transaction, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Non-Look-Through 10/50 Pool	1,000u	(50u)	$350	$0
2001	0u		20u	
2000	0u		5u	
Two Side-by-Side Layers of 1999 E&P:				
1999 layer #1 (from Corp A)	150u		20u	
1999 layer #2 (from Corp B)	0u		50u	
Two Side-by-Side Layers of 1998 E&P:				
1998 layer #1 (from Corp A)	100u		5u	
1998 layer #2 (from Corp B)	0u		10u	
	1,250u	(50u)		0

(B) Under paragraph (f)(1)(iii)(B) of this section, the 20u, 5u, 50u, and 10u of foreign income taxes associated with foreign corporation B's earnings and profits for 2001, 2000, 1999 layer #2, and 1998 layer #2, respectively, remain in those layers. These foreign income taxes generally will not be reduced or deemed paid unless a foreign tax refund restores a positive balance to the associated earnings pursuant to section 905(c), and thus will be trapped.

(2) *If foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation.* If the foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation, then the pre-pooling annual layers shall be determined under the rules of this paragraph (f)(2).

(i) *Qualifying earnings and taxes.* The pre-pooling annual layers shall consist of the pre-1987 accumulated profits and the pre-1987 foreign income taxes of the foreign acquiring corporation and the foreign target corporation. If the foreign acquiring corporation or the foreign target corporation (or both) has post-1986 undistributed earnings or a deficit in post-1986 undistributed earnings, then those earnings or deficits and any related post-1986 foreign income taxes shall be recharacterized as pre-1987 accumulated profits or deficits and pre-1987 foreign income taxes of the foreign acquiring corporation or the foreign target corporation accumulated immediately prior to the foreign 381 transaction.

(ii) *Carryover rule.* Subject to paragraph (f)(2)(iii) of this section, the amounts described in paragraph (f)(2)(i) of this section attributable to the foreign acquiring corporation and the foreign target corporation shall carry over to the foreign surviving corporation but shall not be combined. Thus, when the foreign acquiring corporation and the foreign target corporation have pre-1987 accumulated profits in the same year and a distribution is made therefrom, the principles of § 1.902–1(b)(2)(ii) and (3) shall apply separately to reduce pre-1987 accumulated profits and pre-1987 foreign income taxes of the foreign acquiring corporation and the foreign target corporation on a pro rata basis. For further guidance, see Rev. Rul. 68–351 (1968–2 C.B. 307); Rev. Rul. 70–373 (1970–2 C.B. 152) (see also § 601.601(d)(2) of this chapter); see also paragraph (g)(2) of this section (governing the reconciliation of taxable years).

(iii) *Deficits.* The rules of this paragraph (f)(2)(iii) apply when the foreign acquiring corporation or the foreign target corporation (or both) has a deficit in one or more years that comprise its pre-1987 accumulated profits immediately prior to the foreign 381 transaction (and after application of the last sentence of paragraph (f)(2)(i) of this section). See also paragraphs (g)(1) and (4) of this section (describing other rules applicable to a deficit described in this paragraph (f)(2)(iii)).

(A) *Aggregate positive earnings and profits.* If the foreign acquiring corporation or the foreign target corporation (or both) has an aggregate positive (or zero) amount of pre-1987 accumulated profits, but a deficit in one or more individual years, then the rules otherwise applicable to such deficits shall apply separately to the pre-1987 accumulated profits and related foreign income taxes of such corporation. For further guidance, see Rev. Rul. 74–550 (1974–2 C.B. 209) (see also § 601.601(d)(2) of this chapter); *Champion Int'l Corp.* v. *Commissioner*, 81 T.C. 424 (1983), acq. in result, 1987–2 C.B. 1; Rev. Rul. 87–72 (1987–2 C.B. 170) (see also § 601.601(d)(2) of this chapter). As a result, no amount in excess of the aggregate positive amount of pre-1987 accumulated profits shall be distributed from the pre-transaction earnings of the foreign acquiring corporation or the foreign target corporation.

(B) *Aggregate deficit in earnings and profits.* If the foreign acquiring corporation or the foreign target corporation (or both) has an aggregate deficit in pre-1987 accumulated profits, then the rules otherwise applicable to such deficits shall apply separately to the pre-transaction earnings and profits and related taxes of the applicable corporation. See, *e.g.*, sections 316(a) and 381(c)(2)(B). Thus, any aggregate net deficit shall be available to offset only post-transaction earnings accumulated by the foreign surviving corporation.

(iv) *Pre-1987 section 960 earnings and profits and foreign income taxes.* The pre-1987 section 960 earnings and profits and pre-1987 section 960 foreign income taxes attributable to the foreign acquiring corporation and the foreign target corporation shall carry over to the foreign surviving corporation but shall not be combined. The rules otherwise applicable to such amounts shall apply separately to the pre-1987 section 960 earnings and profits and pre-1987 section 960 foreign income taxes of the foreign acquiring corporation and the foreign target corporation on a pro rata basis. For further guidance, see Notice 88–70 (1988–2 C.B. 369) (see also § 601.601(d)(2) of this chapter).

(v) *Examples.* The following examples illustrate the rules of this paragraph (f)(2). The examples presume the following facts: Both foreign corporation A and foreign corporation B always have had calendar taxable years. Foreign corporations A and B (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency. The examples are as follows:

Example 1—(i) *Facts.* (A) Foreign corporations A and B both were incorporated in 1998. Nine percent of the voting stock of foreign corporation A is owned by domestic corporate shareholder C. Nine percent of the voting stock of foreign corporation B is owned by domestic corporate shareholder D. Shareholders C and D are unrelated. The remaining 91% of the voting stock of each foreign corporation is owned by unrelated foreign shareholders. Thus, neither corporation meets the requirements of section 902(c)(3)(B). On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
2001	500u	350u
2000	400u	300u
1999	400u	160u
1998	100u	5u
	1,400u	815u
Foreign Corporation B:		
2001	100u	20u
2000	300u	60u
1999	0u	50u
1998	50u	5u
	450u	135u

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation that does not meet the requirements of section 902(c)(3)(B).

(ii) *Result.* Under the rules described in paragraphs (f)(2)(i) and (ii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Two Side-by-Side Layers of 2001 E&P:		
2001 layer #1 (from Corp A)	500u	350u
2001 layer #2 (from Corp B)	100u	20u
Two Side-by-Side Layers of 2000 E&P:		
2000 layer #1 (from Corp A)	400u	300u
2000 layer #2 (from Corp B)	300u	60u
Two Side-by-Side Layers of 1999 E&P:		
1999 layer #1 (from Corp A)	400u	160u
1999 layer #2 (from Corp B)	0u	50u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1 (from Corp A)	100u	5u
1998 layer #2 (from Corp B)	50u	5u
	1,850u	950u

(iii) *Post-transaction distribution.* (A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 600u to its shareholders. Under the rules of paragraph (c)(3) of this section, the distribution is out of pre-pooling annual layers under the LIFO method as follows:

	E&P	Foreign taxes
Two Side-by-Side Layers of 2001 E&P:		
2001 layer #1 (from Corp A)	500u	350u
2001 layer #2 (from Corp B)	100u	20u
	600u	370u

(B) Foreign surviving corporation's foreign income tax accounts are reduced to reflect the distribution of earnings and profits, see § 1.902–1(a)(10)(iii), notwithstanding that no shareholders are eligible to claim deemed paid foreign income taxes under section 902.

(C) Immediately after the distribution, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Two Side-by-Side Layers of 2000 E&P:		
2000 layer #1 (from Corp A)	400u	300u
2000 layer #2 (from Corp B)	300u	60u
Two Side-by-Side Layers of 1999 E&P:		
1999 layer #1 (from Corp A)	400u	160u
1999 layer #2 (from Corp B)	0u	50u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1 (from Corp A)	100u	5u
1998 layer #2 (from Corp B)	50u	5u
	1,250u	580u

Example 2—(i) *Facts.* (A) The facts are the same as in *Example 1* (i)(A), except that foreign corporation A met the requirements of section 902(c)(3)(B) on January 1, 2000, when U.S. corporate shareholder C acquired an additional 1% of voting stock for a total ownership interest of 10%; foreign corporation A thereby became a non-look-through 10/50 corporation. On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
E&P Accumulated as Non-Look-Through 10/50 Corporation	900u	$650
1999	400u	160u
1998	100u	5u
	1,400u	
Foreign Corporation B:		
2001	100u	20u
2000	300u	60u
1999	0u	50u
1998	50u	5u
	450u	135u

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation that does not meet the requirements of section 902(c)(3)(B).

(ii) *Result* Under the rules described in paragraphs (f)(2)(i) and (ii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Two Side-by-Side Layers of 2001 E&P:		
2001 layer #1 (from Corp A's pool)	900u	$650
2001 layer #2 (from Corp B's layer)	100u	20u
2000 (from Corp B):	300u	60u
Two Side-by-Side Layers of 1999 E&P:		
1999 layer #1 (from Corp A)	400u	160u
1999 layer #2 (from Corp B)	0u	50u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1 (from Corp A)	100u	5u
1998 layer #2 (from Corp B)	50u	5u
	1,850u	

(iii) *Subsequent ownership change.* On January 1, 2007, USS (a domestic corporation) acquires 100% of the stock of foreign surviving corporation. Under the rules of paragraph (g)(3) of this section, foreign surviving corporation begins to pool its earnings and profits under section 902(c)(3) as of January 1, 2007. Foreign surviving corporation's earnings and profits and foreign income taxes accrued before January 1, 2007 retain their character as pre-1987 accumulated profits and pre-1987 foreign income taxes.

Example 3—(i) *Facts.* (A) The facts are the same as in *Example 2* (i)(A), except that on December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
E&P Accumulated as Non-Look-Through 10/50 Corporation:	1,000u	$500
1999	(200u)	10u
1998	400u	5u
	1,200u	
Foreign Corporation B:		
2001	300u	20u
2000	(100u)	60u
1999	0u	50u
1998	50u	5u
	250u	135u

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation that does not meet the requirements of section 902(c)(3)(B).

(ii) *Result.* Because foreign corporations A and B have aggregate positive amounts of pre-1987 earnings and profits with a deficit in one or more individuals years, the rules of paragraphs (f)(2)(iii)(A) of this section apply. Accordingly, after the foreign 381 transaction, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings and profits		Foreign taxes	
	Positive E&P	Deficit E&P	Foreign taxes available	Foreign taxes associated with deficit E&P
Two Side-by-Side Layers of 2001 E&P:				
2001 layer #1 (from Corp A's non-look-through 10/50 pool)	1,000u		$500	
2001 layer #2 (from Corp B's layer)	300u		20u	
2000 (from Corp B)		(100u)		60u

	Earnings and profits		Foreign taxes	
	Positive E&P	Deficit E&P	Foreign taxes available	Foreign taxes associated with deficit E&P
Two Side-by-Side Layers of 1999 E&P:				
1999 layer #1 (from Corp A)	....	(200u)	....	10u
1999 layer #2 (from Corp B)	0u	....	50u	....
Two Side-by-Side Layers of 1998 E&P:				
1998 layer #1 (from Corp A)	400u	....	5u	....
1998 layer #2 (from Corp B)	50u	....	5u	....
	1,750u	(300u)	....	70u

(iii) *Post-transaction distribution.*—(A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 1,300u to its shareholders. Under the rules described in paragraphs (c)(3) and (f)(2)(iii)(A) of this section, the distribution is out of the pre-pooling annual layers, as follows:

	E&P	Foreign taxes paid
Two Side-by-Side Layers of 2001 E&P:		
2001 layer #1	1,000u	$500
2001 layer #2	250u	20u
1998 E&P:		
1998 layer #1	50u	*1.25u
	1,300u	

*25% of 5u taxes.

(B) Under the rules described in paragraph (f)(2)(iii)(A) of this section, the rules otherwise applicable when a foreign corporation has an aggregate positive (or zero) amount of pre-1987 accumulated profits, but a deficit in one or more individual years, apply separately to the pre-1987 accumulated profits and related foreign income taxes of foreign corporation A and foreign corporation B. As a result, distributions out of the pre-pooling annual layers of foreign corporation A and foreign corporation B cannot exceed the aggregate positive amount of pre-1987 accumulated profits of each corporation. Accordingly, only 1,200u and 250u can be distributed out of foreign corporation A's and foreign corporation B's pre-pooling annual layers, respectively. Thus, 1,250u of the distribution is out of 1,000u of foreign corporation A's 2001 layer #1 and 250u of foreign corporation B's 2001 layer #2. Under the principles of § 1.902–1(b)(3) and *Champion Int'l Corp.* v. *Commissioner*, 81 T.C. 424 (1983), all of the taxes in each of those respective layers are reduced. Applying Rev. Rul. 74–550 (1974–2 C.B. 209) (see also § 601.601(d)(2) of this chapter), the remaining 50u is distributed from foreign corporation A's 1998 layer #1 (after rolling back the 200u deficit in 1999 layer #1 to reduce earnings in 1998 layer #1 to 200u (400u–200u)). Thus, after the distribution, 150u remains in the 1998 layer #1 along with 3.75u of foreign income taxes (5u × (150u ÷ 200u)).

(C) Foreign surviving corporation's foreign income tax accounts are reduced to reflect the distribution of earnings and profits, see § 1.902–1(a)(10)(iii), notwithstanding that no shareholders are eligible to claim a credit for deemed paid foreign income taxes under section 902.

(D) Immediately after the distribution foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
2000	0u	60u
Two Side-by-Side Layers of 1999 E&P:		
1999 layer #1	0u	10u
1999 layer #2	0u	50u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1	150u	3.75u
1998 layer #2	0u	5u
	150u	128.75u

(E) Under the rules described in paragraph (f)(2)(iii)(A) of this section, the 60u, 10u, 50u, and 5u of foreign income taxes related to foreign surviving corporation's 2000 layer, 1999 layer #1, 1999 layer #2, and 1998 layer #2, respectively, remain in those layers. These foreign income taxes generally will not be reduced or deemed paid unless a foreign tax refund restores a positive balance to the associated earnings pursuant to section 905(c), and thus will be trapped.

Example 4—(i) *Facts.* (A) The facts are the same as in *Example 2* (i)(A), except that on December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
E&P Accumulated as Non-Look-Through 10/50 Corporation:	(1,000u)	$20
1999	(200u)	10u
1998	400u	5u
	(800u)	
Foreign Corporation B:		
2001	100u	20u
2000	300u	60u
1999	0u	50u
1998	50u	5u
	450u	135u

(B) On January 1, 2002, foreign corporation A acquires the assets of foreign corporation B in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation.

(ii) *Result.* Because foreign corporation A has an aggregate deficit in pre-1987 earnings and profits, the rules of paragraph (f)(2)(iii)(B) of this section apply and the rules otherwise applicable apply separately to the pre-1987 accumulated profits that carry over to foreign surviving corporation from foreign corporation A. Accordingly, after the foreign 381 transaction, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings & profits		Foreign taxes	
	Positive E&P	Deficit E&P	Foreign taxes available	Foreign taxes associated with deficit E&P
Two Side-by-Side Layers of 2001 E&P:				
2001 layer #1 (from Corp A)		(1,000u)		$20
2001 layer #2 (from Corp B)	100u		20u	
2000	300u		60u	
Two Side-by-Side Layers of 1999 E&P:				
1999 layer #1 (from Corp A)		(200u)		10u
1999 layer #2 (from Corp B)	0u		50u	
Two Side-by-Side Layers of 1998 E&P:				
1998 layer #1 (from Corp A)	400u		5u	
1998 layer #2 (from Corp B)	50u		5u	
	850u	(1,200u)	140u	

(iii) *Post-transaction distribution.* (A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 200u to its shareholders. Under the rules described in paragraph (f)(2)(iii)(B) of this section, no distribution can be made out of the pre-1987 accumulated profits of foreign corporation A (and the 800u aggregate deficit is available to offset only post-transaction earnings accumulated by foreign surviving corporation). Thus, the distribution is out of pre-pooling annual layers as follows:

	E&P	Foreign taxes paid
2001 layer #2	100u	20u
2000	100u	20u
	200u	40u

(B) Foreign surviving corporation's foreign income tax accounts are reduced to reflect the distribution of earnings and profits, see § 1.902–1(a)(10)(iii), notwithstanding that no shareholders are eligible to claim deemed paid foreign income taxes under section 902.

(g) *Special rules*—(1) *Treatment of deficit.* Any deficit described in paragraph (d)(2), (e)(1)(iii), (e)(2)(iii), (f)(1)(iii), or (f)(2)(iii) of this section shall not be taken into account in determining current or accumulated earnings and profits of a foreign surviving corporation, including for purposes of calculating—

(A) The earnings and profits limitation of section 952(c)(1)(A) and (c)(1)(C); and

(B) the amount of the foreign surviving corporation's subpart F income as defined in section 952(a).

(2) *Reconciling taxable years.* If a foreign acquiring corporation and a foreign target corporation had taxable years ending on different dates, then the pro rata distribution rules of paragraphs (f)(1)(ii) and (f)(2)(ii) of this section shall apply with respect to the taxable years that end within the same calendar year.

(3) *Post-transaction change of status.* If a foreign surviving corporation that is subject to the rules of paragraph (c)(2) of this section subsequently becomes a look-through corporation, or if a foreign surviving corporation that is subject to the rules of paragraph (c)(3) of this

section subsequently becomes a non-look-through 10/50 corporation or a look-through corporation, by reason, for example, of a reorganization, liquidation, or change of ownership, then post-1986 undistributed earnings and post-1986 foreign income taxes that have lost their look-through or pooling character by reason of this section shall not have such look-through or pooling character restored. See, *e.g.*, paragraph (f)(2)(v) *Example 2* of this section.

(4) *Ordering rule for offsetting multiple hovering deficits*—(i) *Rule*. A foreign surviving corporation shall apply the deficit rules of paragraphs (d)(2), (e)(1)(iii), (e)(2)(iii), (f)(1)(iii), and (f)(2)(iii) of this section in that order (in the event that more than one of such rules applies to the foreign surviving corporation).

(ii) *Example*. The following example illustrates the rules of this paragraph (g)(4). The examples presume the following facts: Foreign corporation A was a non-look-through 10/50 corporation from its incorporation on January 1, 1995 until December 31, 1997; foreign corporation A became a CFC on January 1, 1998 and has been a CFC since that time. Foreign corporation B has been a non-look-through 10/50 corporation since its incorporation on January 1, 1993. Foreign corporations A and B always have had calendar taxable years. Foreign corporations A and B (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency. Finally, any earnings and profits described in section 904(d)(1)(E) (10/50 dividends) qualified for the high tax exception from subpart F income under section 954(b)(4), and all shareholders elected to exclude such earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). The example is as follows:

Example—(i) *Facts*. (A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
Separate Category:		
10/50 dividends from FC1, a noncontrolled section 902 corporation	100u	$60
General	(300u)	25
E&P Accumulated as Non-Look-Through 10/50 Corporation	300u	100
	100u	185
Foreign Corporation B:		
E&P Accumulated as Non-Look-Through 10/50 Corporation	(200u)	50

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a CFC.

(ii) *Result*. Under the rules described in paragraphs (d)(1), (d)(2), (e)(1)(i), (e)(1)(ii), and (e)(1)(iii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Look-Through Pool:				
10/50 dividends	100u		$60	
General		(300u)		$25
Two Side-by-Side Non-Look-Through Pool Amounts:				
Non-look-through pool amount #1 (from Corp A)	300u		100	
Non-look-through pool amount #2 (from Corp B)		(200u)		50
	400u	(500u)	160	75

(iii) *Post-transaction earnings*. (A) In the taxable year ending on December 31, 2002, foreign surviving corporation accumulates earnings and profits and pays related foreign income taxes as follows:

Separate category	E&P	Foreign taxes
10/50 dividends from FC1	150u	$40
General	400u	60
	550u	100

(B) None of the earnings and profits qualify as subpart F income as defined in section 952(a). Under the rules of paragraph (g)(4)(i) of this section, the rules of paragraph (d)(2) of this section apply before the rules of paragraph (e)(1)(iii) of this section. Accordingly, post-transaction earnings in a separate category are first offset by a hovering deficit in the same separate category in the look-through pool. Thus, foreign surviving corporation's 300u deficit in the section 904(d)(1)(I) general separate category offsets 300u of post-transaction general separate category earnings. After application of paragraph (d)(2) ofthis section, foreign surviving corporation has the following post-transaction earnings available for further offset by a hovering deficit: 150u in the section 904(d)(1)(E) 10/50 dividends separate category and 100u in the general separate category. Under paragraph (e)(1)(iii) of this section, a deficit in the non-look-through pool offsets a pro rata portion of post-transaction earnings in each separate category. Thus, foreign surviving corporation's 200u deficit in non-look-through pool amount #2 offsets the remaining post-transaction earnings on a pro rata basis (200u × (150u ÷ 250u) = 120u against 10/50 dividends separate category earnings and 200u × (100u ÷ 250u) = 80u against general separate category earnings). Accordingly, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts at the end of 2002:

	E&P	Foreign taxes
Look-Through Pool Separate Category:		
10/50 dividends	130u	$100
General	20u	85
Two Side-by-Side Non-Look-Through Pool Amounts:		
Non-look-through pool amount #1	300u	100
Non-look-through pool amount #2	0u	50
	450u	335

(C) Under paragraph (d)(2)(ii) of this section, the $25 of foreign income taxes related to the 300u hovering deficit in the section 904(d)(1)(I) general separate category is added to foreign surviving corporation's post-1986 foreign income taxes in that separate category (because post-transaction earnings in the general separate category have been offset by and exceed the deficit in that category). Under paragraph (e)(1)(iii)(B) of this section, the $50 of foreign income taxes related to the 200u hovering deficit in non-look-through pool amount #2 is added to foreign surviving corporation's post-1986 foreign income taxes for non-look-through pool amount #2 (because post-transaction earnings have been offset by and exceed the deficit in the non-look-through pool). However, the $50 of foreign income taxes generally will not be reduced or deemed paid unless a foreign tax refund restores a positive balance to the associated earnings pursuant to section 905(c), and thus will be trapped.

(5) *Pro rata rule for earnings during transaction year*. For purposes of offsetting post-transaction earnings of a foreign surviving corporation under the rules described in paragraphs (d)(2), (e)(1)(iii), (e)(2)(iii), (f)(1)(iii), and (f)(2)(iii), the earnings and profits for the taxable year of the foreign surviving corporation in which the transaction occurs shall be deemed to have been accumulated after such transaction in an amount which bears the same ratio to the undistributed earnings and profits of the foreign surviving corporation for such taxable year (computed without regard to any earnings and profits carried over) as the number of days in the taxable year after the date of transaction bears to the total number of days in the taxable year. See, e.g., § 1.381(c)(2)–1(a)(7) *Example 2* (illustrating application of this rule with respect to domestic corporations).

(6) *Nonapplicability of hovering deficit rules to certain transactions*—(i) *Rule*. If a principal purpose of a foreign 381 transaction is to gain a tax benefit from affirmative use of the hovering deficit rule described in paragraph (d)(2), (e)(1)(iii), (e)(2)(iii), (f)(1)(iii), or (f)(2)(iii) of this section, then the Commissioner may exercise discretion to apply the principles of § 1.367(b)–9 to such transaction.

(ii) *Example*. The following example illustrates the rules of this paragraph (h)(6). The example is as follows:

Example—(i) *Facts*.—(A) Foreign corporations A and B are and always have been wholly owned subsidiaries of USP, a domestic corporation. Both foreign corporations A and B were incorporated in 1990, and both always have been CFCs using a calendar taxable year. Both foreign corporations A and B (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency and 1u = US$1 at all times. Any earnings and profits described in section 904(d)(1)(E) (10/50 dividends) qualified for the high tax exception from subpart F income under section 954(b)(4), and USP elected to exclude such earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). On December 31, 2001, foreign corporation A and foreign corporation B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
Separate Category:		
Passive	(1,000u)	$5
General	200u	200
	(800u)	205
Foreign Corporation B:		
Separate Category:		
10/50 dividends	5u	3

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). A principal purpose of the foreign 381 transaction is to gain a tax benefit from affirmative use of the hovering deficit rule described in paragraph (d)(2) of this section. Immediately following the foreign 381 transaction, foreign surviving corporation is a CFC.

(ii) *Result under general rules*. (A) If the rules of paragraphs (d) (1) and (2) of this section were to apply, foreign surviving corporation would have the following earnings and profits and foreign income taxes accounts immediately after the foreign 381 transaction:

	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Passive	....	(1,000u)	....	$5
10/50 dividends	5u	....	$3	
General	200u	....	200	....
	205u	(1,000u)	203	5

(B) Accordingly, if the hovering deficit rules of paragraph (d)(2) of this section were to apply, foreign surviving corporation would be able to pay to USP a dividend of $205 that would carry deemed paid foreign income taxes of $203 under section 902.

(iii) *Result under this paragraph (g)(6).* Because a principal purpose of the foreign 381 transaction was to gain a tax benefit from affirmative use of the hovering deficit rule described in paragraph (d)(2) of this section, the Commissioner may exercise discretion to apply the principles of § 1.367(b)–9 to the transaction. Under the principles of § 1.367(b)–9, the earnings and profits and foreign income taxes accounts of foreign corporation A and foreign corporation B are combined under paragraph (d)(1) of this section without reference to the hovering deficit rule of paragraph (d)(2) of this section. Accordingly, foreign surviving corporation would have the following earnings and profits and foreign income taxes accounts immediately after the transaction:

Separate category	E&P	Foreign taxes
Passive	(1,000u)	$ 5
10/50 dividends	5u	3
General	200u	200
	(795u)	208

(h) *Effective date.* This section shall apply to section 367(b) exchanges that occur on or after the date 30 days after these regulations are published as final regulations in the **Federal Register**.

Par. 10. Section 1.367(b)–8 is added to read as follows:

§ 1.367(b)–8 Allocation of earnings and profits and foreign income taxes in certain foreign corporate separations.

(a) *Scope.* This section applies to distributions to which section 355 (or so much of section 356 as relates to section 355) applies, whether or not in connection with a section 368(a)(1)(D) reorganization (D reorganization), in which the distributing corporation or the controlled corporation (or both) is a foreign corporation (foreign divisive transaction). For purposes of this section, the terms distributing corporation and controlled corporation have the same meaning as used in section 355 and the regulations thereunder. Paragraph (b) of this section provides general rules governing the allocation and reduction of a distributing corporation's earnings and profits and foreign income taxes (pre-transaction earnings and pre-transaction taxes, respectively) in foreign divisive transactions. Paragraphs (c), (d), and (e) of this section describe special rules for the application of paragraph (b) of this section to specific situations, depending upon whether the distributing corporation or the controlled corporation (or both the distributing and the controlled corporation) is a foreign corporation.

(b) *General rules*—(1) *Application of § 1.312–10*—(i) *In general.* Pre-transaction earnings of a distributing corporation shall be allocated between the distributing corporation and the controlled corporation in accordance with the rules of § 1.312–10(a) and shall be reduced in accordance with the rules of § 1.312–10(b), except to the extent otherwise provided in this section.

(ii) *Special rules for application of § 1.312–10(b)*—(A) *Distributing corporation.* The pre-transaction earnings of a distributing corporation shall be reduced without taking into account § 1.312–10(b)(2).

(B) *Controlled corporation.* Section 1.312–10(b) shall not apply to increase or replace the earnings and profits of a controlled corporation by the amount of any decrease in the pre-transaction earnings of a distributing corporation.

(iii) *Net deficit in pre-transaction earnings.* Nothing in this section shall permit any portion of the pre-transaction earnings of a distributing corporation that has a net deficit in pre-transaction earnings to be allocated or reduced under paragraph (b)(1)(i) of this section. See § 1.312–10(c). Compare paragraph (b)(2) of this section (requiring an allocation or reduction of a pro rata portion of deficits in statutory groupings of earnings and profits when a distributing corporation has a net positive amount of pre-transaction earnings).

(iv) *Use of net bases.* All allocations and reductions described in paragraph (b)(1)(i) of this section shall be determined in accordance with the net bases in assets. Net basis shall have the same meaning as under § 1.312–10(a).

(v) *Gain recognized by distributing corporation.* The pre-transaction earnings that are subject to allocation or reduction under paragraph (b)(1)(i) of this section shall include any increase in earnings and profits from gain recognized or income included by the distributing corporation as a result of the foreign divisive transaction. See, for example, section 367 (a) and (e), section 1248(f), and § 1.367(b)–5(b).

(vi) *Coordination with branch profits tax.* An allocation or reduction in a distributing corporation's pre-transaction earnings under paragraph (b)(1)(i) of this section shall not be out of or reduce effectively connected earnings and profits or non-previously taxed accumulated effectively connected earnings and profits, as defined in section 884. See also § 1.884–2T(d)(5)(iii) (providing that such earnings and profits are not subject to reduction under § 1.312–10(b)).

(2) *Cross-section of earnings and profits.* Except to the extent provided in paragraphs (b)(1)(iii), (b)(1)(vi), (d)(2)(ii), (d)(4), and (e)(4) of this section and other than any portion attributable to an inclusion under § 1.367(b)–5 or

paragraph (d)(2)(i) of this section, an allocation or reduction of pre-transaction earnings described in paragraph (b)(1)(i) of this section shall decrease, on a pro rata basis, the statutory groupings of earnings and profits (or deficits in statutory groupings of earnings and profits) of the distributing corporation. Thus, for example, a pro rata portion of a foreign distributing corporation's separate categories, post-1986 undistributed earnings, and annual layers of pre-1987 accumulated profits and pre-1987 section 960 earnings and profits shall be allocated or reduced.

(3) *Foreign income taxes.* Pre-transaction taxes of a distributing corporation shall be ratably allocated or reduced only to the extent described in paragraphs (d)(3) and (e)(3) of this section. Thus, a distributing corporation's excess foreign taxes described in section 904(c) shall not be allocated or reduced under this section.

(4) *Divisive D reorganization with a preexisting controlled corporation.* In the case of a foreign divisive transaction that includes a D reorganization with a controlled corporation that is not newly created (a preexisting controlled corporation), paragraph (b)(1)(i) of this section shall apply in the following manner:

(i) *Calculation of earnings and profits of distributing corporation.* The pre-transaction earnings of a distributing corporation shall be reduced by the sum of—

(A) The amount of the reduction in the pre-transaction earnings of the distributing corporation as described in § 1.312–10(a) (as determined under this section); and

(B) The amount of the reduction in the pre-transaction earnings of the distributing corporation as described in § 1.312–10(b) (as determined under this section).

(ii) *Calculation of earnings and profits of controlled corporation.* The amount of earnings and profits of the controlled corporation immediately after the foreign divisive transaction shall equal the sum of—

(A) The amount described in paragraph (b)(4)(i)(A) of this section (except to the extent such amounts are included in income as a deemed dividend pursuant to the foreign divisive transaction or are subject to the rule of § 1.367(b)–3(f)); and

(B) The amount of earnings and profits of the controlled corporation immediately before the foreign divisive transaction.

(c) *Foreign divisive transactions involving a domestic distributing corporation and a foreign controlled corporation*—(1) *Scope.* The rules of this paragraph (c) apply to a foreign divisive transaction involving a domestic distributing corporation and a foreign controlled corporation.

(2) *Earnings and profits allocated to a foreign controlled corporation.* Pre-transaction earnings of a domestic distributing corporation that are allocated to a foreign controlled corporation under the rules described in paragraph (b)(1)(i) of this section shall not be included in the foreign controlled corporation's post-1986 undistributed earnings, pre-1987 accumulated profits, or pre-1987 section 960 earnings and profits. In addition, if a distribution by the domestic distributing corporation out of pre-transaction earnings immediately before the foreign divisive transaction would have been treated as a U.S. source dividend under section 861(a)(2)(A) that would not be exempt from tax under section 871(i)(2)(B) or 881(d), a distribution out of such earnings and profits by the foreign controlled corporation shall be treated as a U.S. source dividend under section 904(g) and for purposes of Chapter 3 of subtitle A of the Internal Revenue Code. See *Georday Enterprises* v. *Commissioner,* 126 F.2d 384 (4th Cir. 1942). See also sections 243(e) and 861(a)(2)(C) and § 1.367(b)–2(j) for other rules that may apply.

(3) *Examples.* The following examples illustrate the application of the rules of this section to transactions described in paragraph (c)(1) of this section. The examples presume the following facts: USD is a domestic corporation engaged in manufacturing and shipping activities through Business A and Business B, respectively. FC is a foreign corporation that is wholly owned by USD. USD and FC use calendar taxable years. FC (and all of its qualified business units as defined in section 989) maintains a "u" functional currency and, except as otherwise specified, 1u = US$1 at all times. The examples are as follows:

Example 1—(i) *Facts.* The stock of USD is owned in equal parts by three shareholders, USP (a domestic corporation), USI (a United States citizen), and FP (a foreign corporation). USD owns assets with total net bases of $260 (including $100 attributable to the Business B shipping assets, which have a $160 fair market value). USD has $500 of earnings and profits (that it accumulated). The entire $500 would have been treated as a U.S. source dividend under section 861(a)(2)(A) that would not be exempt from tax under sections 871(i)(2)(B) or 881(d) if distributed by USD immediately before the foreign divisive transaction. On January 1, 2002, USD incorporates FC and transfers to FC the Business B shipping assets. USD then distributes the FC stock pro rata to USP, USI, and FP. The transaction meets the requirements of sections 368(a)(1)(D) and 355.

(ii) *Result*—(A) *Gain Recognition.* Under section 367(a)(5), USD recognizes gain equal to the difference between the fair market value and USD's adjusted basis in the Business B shipping assets ($160 − $100 = $60).

(B) *Calculation of USD's earnings and profits.* Under paragraph (b)(1)(v) of this section, USD's pre-transaction earnings include any gain recognized or income included as a result of the foreign divisive transaction. As described in this *Example 1* (ii)(A), USD recognizes $60 of gain as a result of the foreign divisive transaction. Accordingly, USD has $560 of pre-transaction earnings ($500 + $60). Under paragraph (b)(1)(i) of this section, USD's pre-transaction earnings are reduced by an amount equal to its pre-transaction earnings times the net bases of the assets transferred to FC divided by the net bases of the assets held by USD immediately before the foreign divisive transaction ($560 × ($160 ÷ $320) = $280). Following this reduction, USD has $280 of earnings and profits ($560 − $280).

(C) *Calculation of FC's earnings and profits.* Under paragraph (b)(1)(i) of this section, the $280 reduction in USD's pre-transaction earnings is allocated to FC. Under § 1.367(b)–2(j)(1), the $280 is translated into "u" at the spot rate on January 1, 2002, to 280u. Under paragraph (c)(2) of this section, the 280u is not included as part of FC's post-1986 undistributed earnings, pre-1987 accumulated profits, or section 960 earnings and profits.

(iii) *Post-transaction distribution.* During 2002, FC does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, at a time when US$1 = 0.5u, FC distributes 180u (or $360) to its shareholders. Thus, FP, USP, and USI each receive a $120 dividend. See section 989(b)(1). Under paragraph (c)(2) of this section and § 1.367(b)–2(j)(4), $93.33 of the distribution to FP is subject to withholding under Chapter 3 of subtitle A of the Internal Revenue Code ($280 ÷ 3 = $93.33). Under section 243(e) and § 1.367(b)–2(j)(3), $93.33 of the distribution to USP is eligible for the dividends received deduction. See also section 861(a)(2)(C). Under paragraph (c)(2) of this section, the remaining $26.67 distribution to USP is treated as U.S. source under section 904(g) (and is not eligible for the dividends received deduction under section 243(e)). Under paragraph (c)(2) of this section, the $120 dividend distribution to USI is treated as U.S. source under section 904(g).

Example 2—(i) *Facts.* The stock of USD is owned by the following unrelated persons: 20 percent by USP (a domestic corporation), 20 percent by USI (a United States citizen), and 60 percent by FP (a foreign corporation). FC is a preexisting controlled corporation that was incorporated in 1995 and USD always has owned all of the FC stock. USD owns assets with total net bases of $320 (including $160 attributable to the FC stock), and USD has $500 of earnings and profits. FC has 150u of earnings and profits in the section 904(d)(1)(D) shipping separate category and has $60 of related foreign income taxes. FC's earnings and profits qualified for the high tax exception from subpart F income under section 954(b)(4), and USD elected to exclude the earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). On January 1, 2002, USD distributes the stock of FC to its shareholders in a transaction that meets the requirements of section 355. FC is not a controlled foreign corporation after the foreign divisive transaction. On the date of the foreign divisive transaction, the FC stock has a $460 fair market value.

(ii) *Result*—(A) *Gain Recognition*. Under § 1.367(b)–5(b)(1)(ii), USD recognizes gain equal to the difference between the fair market value and USD's adjusted basis in the FC stock distributed to USI. Under § 1.367(e)–1(b)(1), USD recognizes gain equal to the difference between the fair market value and USD's adjusted basis in the FC stock distributed to FP. As a result of the transfers to USI and FP, USD recognizes gain of $240 (⅘ × ($460 − $160)), $120 of which is included in USD's income as a dividend under section 1248(a) and (f)(1) (⅘ × 150u, translated at the spot rate under section 989(b)(2)). Under section 1248(a) and (f)(1), USD includes as a dividend the difference between the fair market value and its adjusted basis in the FC stock distributed to USP to the extent of FC's earnings and profits attributable to the distributed stock. For further guidance, see also Notice 87–64 (1987–2 C.B. 375) (see also § 601.601(d)(2) of this chapter). As a result of this transfer, USD includes a $30 dividend under section 1248(a) and (f)(1) (⅕ × 150u). USD qualifies for a section 902 deemed paid foreign tax credit with respect to its $150 of section 1248 dividends.

(B) *Calculation of USD's earnings and profits*. Under paragraph (b)(1)(v) of this section, USD's pre-transaction earnings include any gain recognized or income included as a result of the foreign divisive transaction. As described in this *Example 2* (ii)(A), USD recognizes and includes a total of $270 of gain and dividend income as a result of the foreign divisive transaction. Accordingly, USD has $770 of pre-transaction earnings ($500 + $270). Under paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, USD's pre-transaction earnings are reduced by the amount of the reduction that would have been required if USD had transferred the stock of FC to a new corporation in a D reorganization. Thus, USD's pre-transaction earnings are reduced by an amount equal to its pre-transaction earnings times its net basis in the FC stock divided by the net bases of the assets held by USD immediately before the foreign divisive transaction ($770 × ($430 ÷ $590) = $561.19). Following this reduction, USD has $208.81 of earnings and profits ($770 − $561.19).

(C) *Calculation of FC's earnings and profits*. Under paragraph (b)(1)(ii)(B) of this section, FC's earnings and profits are not increased (or replaced) as a result of the foreign divisive transaction.

Example 3—(i) *Facts*. USP, a domestic corporation, owns all of the stock of USD. FC is a preexisting controlled corporation and USD has owned all of the FC stock since FC was incorporated in 1995. USD owns assets with total net bases of $320 (including $100 attributable to the FC stock and $160 attributable to the Business B shipping assets). USD has $500 of pre-transaction earnings. FC has 150u of earnings and profits in the section 904(d)(1)(D) shipping separate category and has $60 of related foreign income taxes. FC's earnings and profits qualified for the high tax exception from subpart F income under section 954(b)(4), and USD elected to exclude the earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). On January 1, 2002, USD transfers to FC the Business B shipping assets. USD then distributes the FC stock to USP. The transaction meets the requirements of sections 368(a)(1)(D) and 355. USD's transfer of the Business B shipping assets to FC falls within the active trade or business exception to section 367(a)(1) described in § 1.367(a)–2T. Immediately after the foreign divisive transaction, the FC stock has a $460 fair market value. USP and USD meet and comply with the requirements of section 367(a)(5) and 1248(f)(2) (and any regulations thereunder). (Sections 1.367(b)–5(b)(1)(ii) and 1.367(e)–1(b)(1) do not apply with respect to the foreign divisive transaction because the distributee, USP, is a domestic corporation.)

(ii) *Result*—(A) *Calculation of USD's earnings and profits*. Under paragraph (b)(4)(i) of this section, USD's pre-transaction earnings are reduced by the sum of the amounts described in paragraphs (b)(4)(i)(A) and (b)(4)(i)(B) of this section. Under paragraph (b)(4)(i)(A) of this section, USD's pre-transaction earnings are reduced by an amount equal to USD's pre-transaction earnings times the net bases of the assets transferred to FC divided by the total net bases of the assets held by USD immediately before the foreign divisive transaction ($500 × ($160 ÷ $320) = $250). Under paragraph (b)(4)(i)(B) of this section, USD's pre-transaction earnings are reduced by an amount equal to USD's pre-transaction earnings times USD's net basis in the stock of FC (immediately before USD's transfer of the shipping assets) divided by the total net bases of the assets held by USD immediately before the foreign divisive transaction ($500 × ($100 ÷ $320) = $156.25). The sum of the amounts described in paragraphs (b)(4)(i) (A) and (B) of this section is $406.25 ($250 + $156.25). Following the reduction described in paragraph (b)(4)(i) of this section, USD has $93.75 of earnings and profits ($500 − $406.25).

(B) *Calculation of FC's earnings and profits*. Under paragraphs (b)(4)(ii) of this section, the earnings and profits of FC immediately after the foreign divisive transaction are increased by the amount of the reduction in USD's pre-transaction earnings described in paragraph (b)(4)(i)(A) of this section ($250). Under § 1.367(b)–2(j)(1), this $250 is translated into "u" at the spot rate on January 1, 2002, to 250u. Under paragraph (c)(2) of this section, the 250u is not included as part of FC's post-1986 undistributed earnings. FC has 400u in earnings and profits (250u + 150u) immediately after the foreign divisive transaction.

(iii) *Post-transaction distribution*. FC does not accumulate any earnings and profits or pay or accrue any foreign income taxes during 2002. On December 31, 2002, FC distributes 100u as a dividend to USP, which has remained its sole shareholder. Under section 989(b)(1), the 100u distribution is translated into US$ at the spot rate on December 31, 2002, to $100. Proportionate parts of the $100 dividend are attributable to the pre-transaction earnings of FC ($37.50 = $100 × (150 ÷ 400)) and USD ($62.50 = $100 × (250 ÷ 400)). See sections 243(e) and 245. Thus, under sections 243(e) and § 1.367(b)–2(j)(3), $62.50 of the distribution is eligible for the dividends received deduction. See also section 861(a)(2)(C). The remaining $37.50 of the distribution (and $15 of related foreign income taxes) is subject to the generally applicable rules concerning dividends paid by foreign corporations.

(d) *Foreign divisive transactions involving a foreign distributing corporation and a domestic controlled corporation*—(1) *Scope*. The rules of this paragraph (d) apply to a foreign divisive transaction involving a foreign distributing corporation and a domestic controlled corporation.

(2) *Coordination with § 1.367(b)–3*—(i) *In general*. In the case of a foreign divisive transaction that includes a D reorganization, the rules of § 1.367(b)–3 are applicable with respect to the pre-transaction earnings of a foreign distributing corporation that are allocable to a domestic controlled corporation under paragraph (b)(1)(i) of this section.

(ii) *Determination of all earnings and profits amount*. An all earnings and profits amount inclusion under paragraph (d)(2)(i) of this section shall be computed with respect to the pre-transaction earnings that are allocable to the domestic controlled corporation, without regard to the parenthetical phrase in paragraph (b)(4)(ii)(A) of this section.

(iii) *Interaction with section 358 and § 1.367(b)–2(e)(3)(ii)*. The basis increase provided in § 1.367(b)–2(e)(3)(ii) shall apply to an all earnings and profits amount inclusion under paragraph (d)(2)(i) of this section, subject to the following rules—

(A) Section 358 shall apply to determine the distributee's basis in the foreign distributing and domestic controlled corporation without regard to the all earnings and profits amount inclusion;

(B) After application of the rule in paragraph (d)(2)(iii)(A) of this section, the basis increase provided in § 1.367(b)–2(e)(3)(ii) shall be applied in a manner that attributes such basis increase solely to the exchanging

shareholder's stock in the domestic controlled corporation; and

(C) the rule of paragraph (d)(2)(iii)(B) of this section shall apply prior to § 1.367(b)–5(c)(4) and (d)(4).

(iv) *Coordination with § 1.367(b)–3(c)*. In applying the rule of § 1.367(b)–3(c)(2), an exchanging shareholder described in § 1.367(b)–3(c)(1) shall recognize gain with respect to the stock of the domestic controlled corporation after the foreign divisive transaction.

(v) *Special rule for U.S. persons that own foreign distributing corporation stock after a non pro rata distribution*. [Reserved]

(3) *Foreign income taxes*. Pre-transaction taxes related to a foreign distributing corporation's pre-transaction earnings that are allocable or are reduced under the rules described in paragraph (b)(1)(i) of this section shall be ratably reduced. Pre-transaction taxes related to a foreign distributing corporation's pre-transaction earnings that are allocable to a domestic controlled corporation under the rules described in paragraph (b)(1)(i) of this section shall not carry over to the domestic controlled corporation. Nothing in this paragraph (d)(3) shall affect the deemed paid taxes that otherwise would accompany an inclusion under § 1.367(b)–5 or paragraph (d)(2)(i) of this section.

(4) *Previously taxed earnings and profits*. [Reserved]

(5) *Coordination with § 1.367(b)–5*. See also § 1.367(b)–5(c) and (d) for other rules that may apply to a foreign divisive transaction described in paragraph (d)(1) of this section.

(6) *Examples*. The following examples illustrate the application of the rules of this section to transactions described in paragraph (d)(1) of this section. The examples presume the following facts: FD is a foreign corporation engaged in manufacturing and shipping activities through Business A and Business B, respectively. Any earnings and profits of FD described in section 904(d)(1)(D) (shipping income) qualified for the high tax exception from subpart F income under section 954(b)(4), and FD's United States shareholders elected to exclude the earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). USC is a domestic corporation that is wholly owned by FD. FD and USC use calendar taxable years. FD (and all of its qualified business units as defined in section 989) maintains a "u" functional currency, and 1u = US$1 at all times. The examples are as follows:

Example 1—(i) *Facts*. (A) USP, a domestic corporation, has owned all of the stock of FD since FD's incorporation in 1995. USP's adjusted basis in the FD stock is $100, and the FD stock has a fair market value of $800. FD owns assets with total net bases of 320u (including 160u attributable to the Business B shipping assets), and has the following pre-transaction earnings and pre-transaction taxes accounts:

Separate category	E&P	Foreign taxes
General	300u	$60
Shipping	200u	80
	500u	140

(B) On January 1, 2002, FD incorporates USC and transfers to USC the Business B shipping assets. FD then distributes the USC stock to USP. The transaction meets the requirements of sections 368(a)(1)(D) and 355. Immediately after the foreign divisive transaction, the FD stock and the USC stock each have a fair market value of $400.

(ii) *Results*—(A) *Calculation of FD's earnings and profits*. Under paragraph (b)(1)(i) of this section, FD's pre-transaction earnings are reduced by an amount equal to its pre-transaction earnings times the net bases of the assets transferred to USC divided by the net bases of the assets held by FD immediately before the foreign divisive transaction (500u × (160u ÷ 320u) = 250u). Following this reduction, FD has 250u of earnings and profits (500u—250u).

(B) *All earnings and profits amount inclusion*. Under § 1.367(b)–3 and paragraph (d)(2)(i) of this section, USP includes in income as an all earnings and profits amount the pre-transaction earnings of FD that are allocable to USC under paragraph (b)(1)(i) of this section. Thus, USP's all earnings and profits amount inclusion is $250. See also section 989(b)(1) and paragraph (d)(2)(ii) of this section. Under § 1.367(b)–3(b)(3)(i) and § 1.367(b)–2(e), USP includes the all earnings and profits amount as a deemed dividend received from FD immediately before the foreign divisive transaction. Because the requirements of section 902 are met, USP qualifies for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FD. Under § 1.902–1(d)(1), the $250 deemed dividend is out of FD's separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
General	150u	$30
Shipping	100u	40
	250u	70

(C) *Calculation of USP's basis in USC and USC's earnings and profits*. Under paragraph (d)(2)(iii) of this section, the § 1.367(b)–2(e)(3)(ii) basis increase applies with respect to USP's all earnings and profits amount inclusion from FD and is attributed solely to USP's basis in USC (after application of section 358). Accordingly, USP has a $300 basis in the USC stock ($50 section 358 basis, determined by reference to the relative values of USP's FD and USC stock: $100 pre-transaction basis × ($400 ÷ $800) + $250 § 1.367(b)–2(e)(3)(ii) basis increase = $300). Because USP included in income as a deemed dividend under § 1.367(b)–3 and paragraph (d)(2) of this section the pre-transaction earnings of FD that are allocable to USC under paragraph (b)(1)(i) of this section, such earnings and profits are not available to increase USC's earnings and profits. As a result, USC has zero earnings and profits immediately after the foreign divisive transaction.

(D) *Application of § 1.367(b)–5(c)*. The basis adjustment and income inclusion rules of § 1.367(b)–5(c)(2) apply if USP's postdistribution amount with respect to FD stock is less than its predistribution amount with respect to FD stock. Under § 1.367(b)–5(e)(1), USP's predistribution amount with respect to FD stock is USP's section 1248 amount attributable to such stock computed immediately before the distribution but after taking into account the allocation of earnings and profits as a result of the D reorganization. Thus, USP's predistribution amount with respect to FD stock is $250 (500u–250u). See also section 989(b)(2). Under section 358, USP allocates its $100 basis in FD stock between FD stock and USC stock according to the stock blocks' relative values, yielding a $50 ($100 x ($400 ÷ $800)) basis in FD stock. See also paragraph (d)(2)(iii) of this section. Under § 1.367(b)–5(e)(2), USP's postdistribution amount with respect to FD stock is USP's section 1248 amount with respect to such stock, computed immediately after the distribution. Accordingly, USP's postdistribution amount with respect to FD stock is $250. Because USP's postdistribution amount with respect to FD stock is not less than its predistribution amount, USP is not required to make any basis adjustment or include any income under § 1.367(b)–5(c).

(E) *FD's earnings and profits after the foreign divisive transaction.* Following the reduction described in this *Example 1* (ii)(A) and (B), FD has the following earnings and profits and foreign income taxes accounts:

Separate category	E&P	Foreign taxes
General	150u	$30
Shipping	100u	40
	250u	70

Example 2—(i) *Facts.* (A) USP, a domestic corporation, has owned all of the stock of FD since FD's incorporation in 1995. USP's adjusted basis in the FD stock is $400 and the FD stock has a fair market value of $800. USC is a preexisting controlled corporation. FD owns assets with net total bases of 320u (including 160u attributable to the USC stock), and has the following pre-transaction earnings and pre-transaction taxes accounts:

Separate category	E&P	Foreign taxes
General	300u	$60
Shipping	200u	80
	500u	140

(B) On January 1, 2002, FD distributes the USC stock to USP in a transaction that meets the requirements of section 355. Immediately after the foreign divisive transaction, the FD stock and the USC stock each have a $400 fair market value.

(ii) *Results*—(A) *Calculation of FD's earnings and profits.* Under paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, FD's pre-transaction earnings are reduced by the amount of the reduction that would have been required if FD had transferred the stock of USC to a new corporation in a D reorganization. Thus, FD's pre-transaction earnings are reduced by an amount equal to its pre-transaction earnings times its net basis in the USC stock divided by the net bases of the assets held by FD immediately before the foreign divisive transaction (500u×(160u÷320u)=250u). Following this reduction, FD has 250u of earnings and profits (500u − 250u).

(B) *Calculation of USC's earnings and profits.* Under paragraph (b)(1)(ii)(B) of this section, USC's earnings and profits are not increased (or replaced) as a result of the foreign divisive transaction. As a result, USP is not required to include an amount in income under paragraph (d)(2)(i) of this section.

(C) *Application of § 1.367(b)–5(c).* The basis adjustment and income inclusion rules of § 1.367(b)–5(c)(2) apply if USP's postdistribution amount with respect to FD stock is less than its predistribution amount with respect to FD stock. Under § 1.367(b)–5(e)(1), USP's predistribution amount with respect to FD stock is USP's section 1248 amount attributable to such stock computed immediately before the distribution. Thus, USP's predistribution amount with respect to FD stock is $400 (the predistribution amount is limited to USP's built-in gain in FD stock immediately before the distribution ($800 − $400)). See also section 989(b)(2). Under section 358, USP allocates its $400 basis in FD stock between FD stock and USC stock according to the stock blocks' relative values, yielding a $200 ($400×($400÷$800)) basis in each block. Under § 1.367(b)–5(e)(2), USP's postdistribution amount with respect to FD stock is USP's section 1248 amount with respect to such stock, computed immediately after the distribution. Accordingly, USP's postdistribution amount with respect to FD stock is $200 (the postdistribution amount is limited to USP's built-in gain in FD stock immediately after the distribution ($400 − $200)). Because USP's postdistribution amount with respect to FD stock is $200 less than its predistribution amount with respect to such stock ($400 − $200), § 1.367(b)–5(c)(2)(i) and (ii) require USP to reduce its basis in FD stock by the $200 difference, but only to the extent such reduction increases USP's section 1248 amount with respect to the FD stock. As a result, USP reduces its basis in the FD stock from $200 to $150 and includes $150 in income as a deemed dividend from FD. Because the requirements of section 902 are met, USP qualifies for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FD. Under § 1.902–1(d)(1), the $150 deemed dividend is out of FD's separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
General	90u	$18
Shipping	60u	24
	150u	42

(D) Basis adjustment. Under § 1.367(b)–5(c)(3), USP does not increase its basis in FD stock as a result of USP's $150 deemed dividend from FD. Under § 1.367(b)–5(c)(4), USP increases its basis in the USC stock by the amount by which it decreased its basis in the FD stock, as well as by the amount of its deemed dividend inclusion. The § 1.367(b)–5(c)(4) basis increase applies in full because USP's basis in the USC stock is not increased above the fair market value of such stock. Thus, USP increases its basis in USC stock to $400 ($200+$50+$150).

(E) *Reduction in FD's statutory groupings of earnings and profits.* Under paragraph (b)(2) of this section, the reduction in FD's pre-transaction earnings that is not attributable to USP's inclusion under § 1.367(b)–5 decreases FD's statutory groupings of earnings and profits on a pro rata basis. Under paragraph (d)(3) of this section, FD's pre-transaction taxes also are ratably reduced. As described in this *Example 2* (ii)(A), the reduction in FD's pre-transaction earnings is 250u. As described in this *Example 2* (ii)(C), 150u of the 250u reduction is attributable to an inclusion under § 1.367(b)–5. As a result, under paragraphs (b)(2) and (d)(3) of this section the remaining 100u reduction in FD's pre-transaction earnings is out of the following separate categories of earnings and profits and foreign income taxes:

Separate category	E&P	Foreign taxes
General	60u	$12
Shipping	40u	16
	100u	28

(F) *FD's earnings and profits after the foreign divisive transaction.* After the reductions described in this *Example 2* (ii)(C) and (E), FD has the following earnings and profits and foreign income taxes accounts:

Separate category	E&P	Foreign taxes
General	150u	$30
Shipping	100u	40
	250u	70

Example 3—(i) *Facts.* (A) USP, a domestic corporation, has owned all of the stock of FD since FD's incorporation in 1995. USP's adjusted basis in the FD stock is $400 and the FD stock has a fair market value of $800. USC is a preexisting controlled corporation. FD owns assets with total net bases of 320u (including 160u attributable to the USC stock and 80u attributable to the Business B shipping assets), and has the following pre-transaction earnings and pre-transaction taxes accounts:

Separate category	E&P	Foreign taxes
General	300u	$ 60
Shipping	200u	80
	500u	140

(B) On January 1, 2002, FD transfers to USC the Business B shipping assets. FD then distributes the USC stock to USP. The transaction meets the requirements of sections 368(a)(1)(D) and 355. Immediately after the foreign divisive transaction, the FD stock has a $200 fair market value and the USC stock has a $600 fair market value.

(ii) *Results*—(A) *Calculation of FD's earnings and profits.* Under paragraph (b)(4)(i) of this section, FD's pre-transaction earnings are reduced by the sum of the amounts described in paragraphs (b)(4)(i)(A) and (B) of this section. Under paragraph (b)(4)(i)(A) of this section, FD's pre-transaction earnings are reduced by an amount equal to FD's pre-transaction earnings times the net bases of the Business B shipping assets transferred to USC divided by the total net bases of the assets held by FD immediately before the foreign divisive transaction (500u × (80u ÷ 320u) = 125u). Under paragraph (b)(4)(i)(B) of this section, FD's pre-transaction earnings are reduced by an amount equal to FD's pre-transaction earnings times FD's net basis in the stock of USC divided by the total net bases of the assets held by FD immediately before the foreign divisive transaction (500u × (160u ÷ 320u) = 250u). The sum of the amounts described in paragraphs (b)(4)(i)(A) and (B) of this section is 375u (125u + 250u).

(B) *All earnings and profits amount inclusion.* Under § 1.367(b)–3 and paragraph (d)(2)(i) of this section, USP is required to include in income as an all earnings and profits amount the pre-transaction earnings of FD that are allocable to USC under paragraph (b)(1)(i) of this section. Under paragraph (b)(4)(ii)(A) of this section, the 125u of pre-transaction earnings described in paragraph (b)(4)(i)(A) are allocable to USC. Thus, the all earnings and profits amount is $125. See also section 989(b)(1) and paragraph (d)(2)(ii) of this section. Under §§ 1.367(b)–3(b)(3)(i) and 1.367(b)–2(e), USP includes the all earnings and profits amount as a deemed dividend received from FD immediately before the foreign divisive transaction. Because the requirements of section 902 are met, USP qualifies for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FD. Under § 1.902–1(d)(1), the $125 deemed dividend is out of FD's separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
General	75u	$15
Shipping	50u	20
	125u	35

(C) *Calculation of USP's basis in USC and USC's earnings and profits.* Under paragraph (d)(2)(iii) of this section, the § 1.367(b)–2(e)(3)(ii) basis increase applies with respect to USP's all earnings and profits amount inclusion and is attributed solely to USP's basis in USC (after application of section 358). Accordingly, USP has a $425 basis in the USC stock ($300 section 358 basis, determined by reference to the relative values of USP's FD and USC stock: $400 pre-transaction basis × ($600 ÷ $800) + $125 § 1.367(b)–2(e)(3)(ii) basis increase = $425). Because USP included in income as a deemed dividend under § 1.367(b)–3 and paragraph (d)(2) of this section the pre-transaction earnings of FD that are allocable to USC under paragraph (b)(1)(i) of this section, such earnings and profits are not available to increase USC's earnings and profits. As a result, USC's earnings and profits are not increased as a result of the foreign divisive transaction.

(D) *Application of § 1.367(b)–5(c).* The basis adjustment and income inclusion rules of § 1.367(b)–5(c)(2) apply if USP's postdistribution amount with respect to FD stock is less than its predistribution amount with respect to FD stock. Under § 1.367(b)–5(e)(1) and (3), USP's predistribution amount with respect to FD stock is USP's section 1248 amount attributable to such stock computed immediately before the distribution, after the allocation of FD's pre-transaction earnings described in paragraphs (b)(4)(i)(A) and (ii)(A) of this section, but without regard to the reduction in FD's pre-transaction earnings described in paragraph (b)(4)(i)(B) of this section. Thus, USP's predistribution amount with respect to FD stock is $375 ($500—$125). See also section 989(b)(2). Under section 358, USP allocates its $400 basis in FD stock between FD stock and USC stock according to the stock blocks' relative values, yielding a $100 ($400 × ($200

+ $800)) basis in FD stock. See also paragraph (d)(2)(iii) of this section. Under § 1.367(b)–5(e)(2), USP's postdistribution amount with respect to FD stock is USP's section 1248 amount with respect to such stock, computed immediately after the distribution. Accordingly, USP's postdistribution amount with respect to FD stock is $100. (While FD has earnings and profits of 125u immediately after the foreign divisive transaction, USP's postdistribution amount is limited to its built-in gain in FD stock immediately after the distribution ($200—$100).) Because USP's postdistribution amount with respect to FD stock is $275 less than its predistribution amount with respect to such stock ($375—$100), § 1.367(b)–5(c)(2)(i) and (ii) require USP to reduce its basis in FD stock, but only to the extent such reduction increases USP's section 1248 amount with respect to the FD stock. As a result, USP reduces its basis in the FD stock from $100 to $75 and includes $250 in income as a deemed dividend from FD. Because the requirements of section 902 are met, USP qualifies for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FD. Under § 1.902–1(d)(1), the $250 deemed dividend is out of FD's separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
General	150u	$30
Shipping	100u	20
	250u	50

(E) *Basis adjustment.* Under § 1.367(b)–5(c)(3), USP does not increase its basis in FD stock as a result of USP's $250 deemed dividend from FD. Under § 1.367(b)–5(c)(4), USP increases its basis in the USC stock by the amount by which it decreased its basis in the FD stock, as well as by the amount of its deemed dividend inclusion, but only up to the fair market value of USP's USC stock. As described in this *Example 3* (ii)(C), USP has already increased its basis in the USC stock to $525. Because the fair market value of FD's USC stock is $600, USP's basis increase under § 1.367(b)–5(c)(4) is limited to $75. See also paragraph (d)(2)(iii)(C) of this section. Thus, USP has a $600 basis in the USC stock immediately after the foreign divisive transaction.

(F) *Reduction in FD's statutory groupings of earnings and profits.* Under paragraph (b)(2) of this section, the reduction in FD's pre-transaction earnings that is not attributable to USP's inclusion under paragraph (d)(2)(i) of this section or § 1.367(b)–5 decrease FD's statutory groupings of earnings and profits on a pro rata basis. Under paragraph (d)(3) of this section, FD's pre-transaction taxes are also ratably reduced. As described in this *Example 3* (ii)(A), the reduction in FD's pre-transaction earnings is 375u. As described in this *Example 3* (ii)(B) and (D), the entire 375u reduction was subject to inclusion as a deemed dividend by USP under paragraph (d)(2)(i) of this section or § 1.367(b)–5. Thus, none of FD's pre-transaction earnings remain to be reduced under paragraph (b)(2) of this section.

(G) *FD's earnings and profits after the foreign divisive transaction.* After the reductions described in this *Example 3* (ii)(B) and (D), FD has the following earnings and profits and foreign income taxes accounts:

Separate category	E&P	Foreign taxes
General	75u	$15
Shipping	50u	20
	125u	35

(e) *Foreign divisive transactions involving a foreign distributing corporation and a foreign controlled corporation*—

(1) *Scope.* The rules of this paragraph (e) apply to a foreign divisive transaction involving a foreign distributing corporation and a foreign controlled corporation.

(2) *Earnings and profits of foreign controlled corporation*—(i) *In general.* Except to the extent specified in paragraph (e)(2)(ii) of this section, pre-transaction earnings of a foreign distributing corporation that are allocated to a foreign controlled corporation under the rules described in paragraphs (b)(1)(i) and (4) of this section shall carry over to the foreign controlled corporation in accordance with the rules described in § 1.367(b)–7.

(ii) *Special rule for pre-transaction earnings allocated to a newly created controlled corporation.* Section 1.367(b)–9 shall apply to pre-transaction earnings that are allocated from a foreign distributing corporation to a newly created foreign controlled corporation under the rules described in paragraph (b)(1)(i) of this section.

(3) *Foreign income taxes.* Pre-transaction taxes related to a foreign distributing corporation's pre-transaction earnings that are allocated or reduced under the rules described in paragraph (b)(1)(i) of this section shall be ratably reduced. Pre-transaction taxes related to a foreign distributing corporation's pre-transaction earnings that are allocated to a foreign controlled corporation under the rules described in paragraph (b)(1)(i) of this section shall carry over to the foreign controlled corporation in accordance with the rules of § 1.367(b)–7. Section 1.367(b)–9 shall apply to pre-transaction taxes that are allocated from a foreign distributing corporation to a newly created foreign controlled corporation under the rules described in paragraph (b)(1)(i) of this section.

(4) *Previously taxed earnings and profits.* [Reserved]

(5) *Coordination with § 1.367(b)–5.* See also § 1.367(b)–5(c) and (d) for other rules that may apply to a foreign divisive transaction described in paragraph (e)(1) of this section.

(6) *Examples.* The following examples illustrate the application of the rules of this section to transactions described in paragraph (e)(1) of this section. The examples presume the following facts: FD is a foreign corporation engaged in manufacturing and shipping activities through Business A and Business B, respectively. FC is a foreign corporation that is wholly owned by FD. Any earnings and profits of FD or FC described in section 904(d)(1)(D) (shipping income) qualified for the high tax exception from subpart F income under section 954(b)(4), and FD's and FC's United States shareholders elected to exclude the earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(1). FD and FC have calendar taxable years. FD and FC (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency, and 1u = US$1 at all times. The examples are as follows:

Example 1—(i) *Facts.* (A) USP, a domestic corporation, has owned all of the stock of FD since FD's incorporation in 1995. USP's adjusted basis in the FD stock is $400 and the FD stock has a fair market value of $800. FD owns assets with total net bases of 320u (including 160u attributable to the Business B shipping assets), and has the following pre-transaction earnings and pre-transaction taxes accounts:

Separate category	E&P	Foreign taxes
General	300u	$60
Shipping	200u	80
	500u	140

(B) On January 1, 2002, FD incorporates FC and transfers to FC the Business B shipping assets. FD then distributes the FC stock to USP. The transaction meets the requirements of sections 368(a)(1)(D) and 355. Immediately after the foreign divisive transaction, the FD stock and the FC stock each have a $400 fair market value.

(ii) *Result*—(A) *Calculation of FD's earnings and profits.* Under paragraph (b)(1)(i) of this section, FD's pre-transaction earnings are reduced by an amount equal to its pre-transaction earnings times the net bases of the assets transferred to FC divided by the net bases of the assets held by FD immediately before the foreign divisive transaction (500u × (160u + 320u) = 250u). Following this reduction, FD has 250u of earnings and profits (500u–250u).

(B) *Application of § 1.367(b)–5(c).* The basis adjustment and income inclusion rules of § 1.367(b)–5(c)(2) apply if USP's postdistribution amount with respect to FD or FC stock is less than its predistribution amount with respect to such stock. Under § 1.367(b)–5(e)(1), USP's predistribution amount with respect to FD or FC stock is USP's section 1248 amount attributable to such stock computed immediately before the distribution but after taking into account the allocation of earnings and profits as a result of the D reorganization. Thus, USP's predistribution amounts with respect to FD and FC stock are both $200. See also section 989(b)(2) and § 1.1248–1(d)(3). Under section 358, USP allocates its $400 basis in FD stock between FD stock and FC stock according to the stock blocks' relative values, yielding a $200 ($400 × ($400 + $800)) basis in each block. Under § 1.367(b)–5(e)(2), USP's postdistribution amount with respect to FD or FC stock is USP's section 1248 amount with respect to such stock, computed immediately after the distribution. Accordingly, USP's postdistribution amounts with respect to FD and FC stock are both $200. Because USP's postdistribution amounts with respect to FD and FC stock are not less than USP's respective predistribution amounts, USP is not required to make any basis adjustment or include any income under § 1.367(b)–5(c).

(C) *Reduction in FD's statutory groupings of earnings and profits.* Under paragraph (b)(2) of this section, the 250u reduction in FD's pre-transaction earnings decreases FD's statutory groupings of earnings and profits on a pro rata basis. Under paragraph (e)(3) of this section, FD's pre-transaction taxes also are ratably reduced. Accordingly, FD's pre-transaction earnings and pre-transaction taxes are reduced by the following amounts:

Separate category	E&P	Foreign taxes
General	150u	$30
Shipping	100u	40
	250u	70

(D) *Calculation of FC's earnings and profits.* Under paragraph (e)(2) of this section, the pre-transaction earnings of FD that are allocated to FC under paragraph (b)(1)(i) of this section carry over to FC in accordance with the rules of § 1.367(b)–7, subject to the rule of § 1.367(b)–9. Under paragraph (e)(3) of this section, FD's pre-transaction taxes related to the pre-transaction earnings that are allocated to FC similarly carry over to FC in accordance with the rules of § 1.367(b)–7, subject to the rule of § 1.367(b)–9. As a result, under § 1.367(b)–7(d), FC has the following earnings and profits and foreign income taxes accounts immediately after the foreign divisive transaction:

Separate category	E&P	Foreign taxes
General	150u	$30
Shipping	100u	40
	250u	70

Example 2—(i) *Facts.* (A) USP, a domestic corporation, has owned all of the stock of FD since FD's incorporation in 1995. USP's adjusted basis in the FD stock is $300 and the FD stock has a fair market value of $1,500. FC is a preexisting controlled corporation and FD has always owned all of the FC stock. FD owns assets with total net bases of 320u (including 160u attributable to the FC stock). FD and FC have the following earnings and profits and foreign income taxes accounts:

FD	E&P	Foreign taxes
Separate Category:		
General	400u	$ 50
Passive	(100u)	6
Shipping	200u	80
	500u	136

FC	E&P	Foreign taxes
Separate Category:		
General	600u	$100
Passive	(50u)	6
Shipping	100u	40
	650u	146

(B) On January 1, 2002, FD distributes the FC stock to USP in a transaction that meets the requirements of section 355. Immediately after the foreign divisive transaction, the FD stock and the FC stock each have a $750 fair market value.

(ii) *Result*—(A) *Calculation of FD's earnings and profits.* Under paragraph (b)(1)(i) and (ii)(A) of this section, FD's pre-transaction earnings are reduced by the amount of the reduction that would have been required if FD had transferred the stock of FC to a new corporation in a D reorganization. Thus, FD's pre-transaction earnings are reduced by an amount equal to its pre-transaction earnings times its net basis in the FC stock divided by the net bases of the assets held by FD immediately before the foreign divisive transaction (500u × (160u ÷ 320u) = 250u). Following this reduction, FD has 250u of earnings and profits (500u–250u).

(B) *Application of § 1.367(b)–5(c).* The basis adjustment and income inclusion rules of § 1.367(b)–5(c) apply if USP's postdistribution amount with respect to FD or FC stock is less than its predistribution amount with respect to such stock. Under § 1.367(b)–5(e)(1), USP's predistribution amount with respect to FD or FC stock is USP's section 1248 amount attributable to such stock computed immediately before the distribution. Thus, USP's predistribution amounts with respect to FD and FC stock are $500 and $650, respectively. See also section 989(b)(2). Under section 358, USP allocates its $300 basis in FD stock between FD stock and FC stock according to the stock blocks' relative values, yielding a $150 ($300 × ($750 ÷ $1,500)) basis in each block. Under § 1.367(b)–5(e)(2), USP's postdistribution amount with respect to FD or FC stock is USP's section 1248 amount with respect to such stock, computed immediately after the distribution. Accordingly, USP's postdistribution amount with respect to FD stock is $250 (500u –250u), and its postdistribution amount with respect to FC stock is $600 (while FC has 650u of earnings and profits immediately after the foreign divisive transaction, USP's postdistribution amount is limited to its built-in gain in FC stock immediately after the distribution ($750–$150)). USP's postdistribution amount with respect to both the FD and FC stock is less than its predistribution amount with respect to such stock. This difference is $50 with respect to FC ($650–$600), and $250 with respect to FD ($500–$250). Under § 1.367(b)–5(c)(2)(i) and (ii), USP is required to reduce its basis in the FD and FC stock, but only to the extent such reductions increase USP's section 1248 amount with respect to the stock. Accordingly, USP reduces its basis in the FC stock by $50, and thereafter USP has a $100 basis in such stock ($150–$100). Because a reduction in USP's basis in FD stock would not increase any of USP's section 1248 amount with respect to such stock, USP includes the entire $250 difference between its predistribution and postdistribution amounts with respect to the FD stock as a deemed dividend from FD. Because the requirements of section 902 are met, USP qualifies for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FD. Under § 1.960–1(i)(4), the 100u deficit in the section 904(d)(1)(A) passive separate category is allocated proportionately against the other separate categories for purposes of computing the deemed paid credit on the distribution. Thus, there are 333.33u (400u–(100u × (400u ÷ 600u))) of available earnings in the section 904(d)(1)(I) general separate category (along with $50 of foreign income taxes) and 166.67u (200u–(100u × (200u ÷ 600u))) of available earnings in the section 904(d)(1)(D) shipping separate category (along with $50 of foreign income taxes) and 166.67u (200u—(100u × (200u ÷ 600u))) of available earnings in the section 904(d)(1)(D) shipping separate category (along with $80 of foreign income taxes). Under § 1.902–1(d)(1), the $250 deemed dividend is out of FD's separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
General	166.67u	$25
Passive	0u	0
Shipping	83.33u	40
	250u	65

(C) *Basis adjustments.* Under § 1.367(b)–5(c)(3), USP does not increase its basis in FD stock as a result of USP's $250 deemed dividend from FD. Under § 1.367(b)–5(c)(4), USP increases its basis in the FD and FC stock by the amount of its basis decrease or deemed dividend inclusion with respect to the other corporation, but only to the extent such basis increase does not diminish USP's postdistribution amount with respect to that other corporation and only to the extent of the other corporation's fair market value. Under these rules, USP increases its basis in the FD stock by the full amount by which it decreased its basis in FC ($150 + $50 = $200). USP does not increase its basis in the FC stock as a result of its deemed dividend from FD because any increase in the FC stock basis would diminish USP's postdistribution amount with respect to such stock.

(D) *FD's earnings and profits after the foreign divisive transaction.* Because the entire $250 reduction in FD's pre-transaction earnings was subject to inclusion under § 1.367(b)–5 (as described in this *Example 2* (ii)(B)), paragraph (b)(2) of this section does not apply. FD has the following earnings and profits and foreign income taxes accounts immediately after the foreign divisive transaction (see § 1.960–1(i)(4)):

Separate category	E&P	Foreign taxes
General	233.33u	$25
Passive	(100u)	6
Shipping	116.67u	40
	250u	71

(E) *Calculation of FC's earnings and profits.* Under paragraph (b)(1)(ii)(B) of this section, FC's earnings and profits are not increased (or replaced) as a result of the foreign divisive transaction. FC's earnings and profits also are not reduced because USP was not required to include a deemed dividend out of FC under § 1.367(b)–5.

Example 3—(i) *Facts.*—(A) USP, a domestic corporation, has owned all of the stock of FD since FD's incorporation in 1995. USP's adjusted basis in the FD stock is $100 and the FD stock has a fair market value of $2,000. FC is a preexisting controlled corporation and FD has always owned all of the FC stock. FD owns assets with total net bases of 320u (including 100u attributable to the FC stock and 160u attributable to the Business B shipping assets). FD and FC have the following earnings and profits and foreign income taxes accounts:

FD	E&P	Foreign taxes
Separate Category:		
General	300u	$50
10/50 dividends from FC1, a noncontrolled section 902 corporation	100u	6
Shipping	200u	80
	600u	136

FC	E&P	Foreign taxes
Separate Category:		
General	100u	$10
Passive	(50u)	6
Shipping	100u	40
	150u	56

(B) On January 1, 2002, FD transfers to FC the Business B shipping assets. FD then distributes the FC stock to USP. The transaction meets the requirements of sections 368(a)(1)(D) and 355. Immediately after the foreign divisive transaction, the FD stock and the FC stock each have a $1,000 fair market value.

(ii) *Result*—(A) *Calculation of FD's earnings and profits.* Under paragraph (b)(4)(i) of this section, FD's pre-transaction earnings are reduced by the sum of the amounts described in paragraphs (b)(4)(i)(A) and (B) of this section. Under paragraph (b)(4)(i)(A) of this section, FD's pre-transaction earnings are reduced by an amount equal to FD's pre-transaction earnings times the net bases of the Business B shipping assets transferred to FC divided by the total net bases in the assets held by FD immediately before the foreign divisive transaction (600u × (160u ÷ 320u) = 300u). Under paragraph (b)(4)(i)(B) of this section, FD's pre-transaction earnings are reduced by an amount equal to FD's pre-transaction earnings times FD's net bases in the stock of FC divided by the total net bases of the assets held by FD immediately before the foreign divisive transaction (600u × (100u ÷ 320u) = 187.50u). The sum of the amounts described in paragraphs (b)(4)(i)(A) and (B) of this section is 487.50u.

(B) *Application of § 1.367(b)–5(c).* The basis adjustment and income inclusion rules of § 1.367(b)–5(c)(2) apply if USP's postdistribution amount with respect to FD or FC stock is less than its predistribution amount with respect to such stock. Under § 1.367(b) –5(e)(1) and (3), USP's predistribution amount with respect to FD or FC stock is USP's section 1248 amount attributable to such stock computed immediately before the distribution, after the allocation of FD's pre-transaction earnings described in paragraphs (b)(4)(i)(A) and (ii)(A) of this section, but before the reduction in FD's pre-transaction earnings described in paragraph (b)(4)(i)(B) of this section. Thus, USP's predistribution amounts with respect to FD and FC stock are $300 (600u–300u) and $450 (150u + 300u), respectively. See also section 989(b)(2). Under section 358, USP allocates its $100 basis in FD stock between FD stock and FC stock according to the stock blocks' relative values, yielding a $50 ($100 × ($1,000 ÷ $2,000)) basis in each block. Under § 1.367(b)–5(e)(2), USP's postdistribution amount with respect to FD or FC stock is USP's section 1248 amount with respect to such stock, computed immediately after the distribution. Accordingly, USP's postdistribution amount with respect to FD stock is $112.50 (600u–300u—187.50u), and its postdistribution amount with respect to FC stock is $450 (150u + 300u). Because USP's postdistribution amount with respect to FC stock is not less than its predistribution amount with respect to such stock, the § 1.367(b)–5(c)(2) basis adjustment and income inclusion rules do not apply with respect to the FC stock. Because USP's postdistribution amount with respect to FD stock is $187.50 less than its predistribution amount with respect to such stock ($300 – $112.50), § 1.367(b)–5(c)(2)(i) and (ii) require USP to reduce its basis in FD stock, but only to the extent such reduction increases USP's section 1248 amount with respect to the FD stock. Because a reduction in USP's basis in the FD stock would not increase any of USP's section 1248 amount with respect to such stock, USP includes the entire $187.50 difference between its predistribution and postdistribution amounts with respect to the FD stock as a deemed dividend from FD. Because the requirements of section 902 are met, USP qualifies for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FD. Under § 1.902–1(d)(1), the $187.50 deemed dividend is out of FD's separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
General	93.75u	15.63
10/50 dividends from FC1	31.25u	1.88
Shipping	62.50u	25
	187.50u	42.51

(C) *Basis adjustment.* Under § 1.367(b)–5(c)(3), the basis increase provided in § 1.367(b)–2(e)(3)(ii) does not apply with respect to USP's $187.50 deemed dividend from FD. Under § 1.367(b)–5(c)(4), USP increases its basis in the FC stock by the amount of its deemed dividend inclusion from FD, but only to the extent such basis increase does not diminish USP's postdistribution amount with respect to FC stock and only up to the fair market value of the FC stock. Under these rules, USP increases its basis in the FC stock by the full amount of its deemed dividend from FD ($50 + $187.50 = $237.50).

(D) *Reduction in FD's statutory groupings of earnings and profits.* Under paragraph (b)(2) of this section, the reduction in FD's pre-transaction earnings that is not attributable to USP's inclusion under § 1.367(b)–5 decreases FD's statutory groupings of earnings and profits on a pro rata basis. Under paragraph (e)(3) of this section, FD's pre-transaction taxes are also ratably reduced. As described in this *Example 3* (ii)(A), the reduction in FD's pre-transaction earnings is 487.50u. As described in this *Example 3* (ii)(B), 187.50u of the 487.50u reduction is attributable to a deemed dividend inclusion by USP under § 1.367(b)–5. Thus, under paragraphs (b)(2) and (e)(3) of this section, the remaining 300u reduction in FD's pre-transaction earnings and related pre-transaction taxes is out of FD's separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
General	150u	$25
10/50 dividends from FC1	50u	3
Shipping	100u	40
	300u	68

(E) *Calculation of FC's earnings and profits.* Under paragraph (b)(4)(ii) of this section, FC's earnings and profits immediately after the foreign divisive transaction equal the sum of FC's earnings and profits immediately before the foreign divisive transaction, plus the amount of the reduction in FD's earnings and profits described in paragraph (b)(4)(i)(A) of this section, except to the extent such amount was included in income as a deemed dividend pursuant to the foreign divisive transaction. The reduction in FD's earnings and profits described in paragraph (b)(4)(i)(A) of this section is 300u, none of which was included in income by USP as a deemed dividend pursuant to the foreign divisive transaction. Under paragraphs (e)(2) and (3) of this section, the 300u of pre-transaction earnings and related pre-transaction taxes carry over to FC and combine with FC's earnings and profits and foreign income taxes accounts in accordance with the rules described in § 1.367(b)–7. Under § 1.367(b)–7(d), FC has the following earnings and profits and foreign income taxes accounts immediately after the foreign divisive transactions

Separate category	E&P	Hovering deficit	Taxes	Taxes associated w/hovering deficit
General	250u		$35	
10/50 dividends from FC1	50u		3	
Passive		(50u)		$6
Shipping	200u		$60	
	500u	(50u)	118	6

(F) *FD's earnings and profits after the foreign divisive transaction.* Following the reductions described in this *Example 3* (ii)(B) and (D), FD has the following earnings and profits and foreign income taxes accounts:

Separate category	E&P	Foreign taxes
General	56.25u	$9.37
10/50 dividends from FC1	18.75u	1.12
Shipping	37.50u	15
	112.50u	25.49

(f) *Effective date.* This section shall apply to section 367(b) exchanges that occur on or after the date 30 days after these regulations are published as final regulations in the **Federal Register**.

Par. 11. Section 1.367(b)–9 is added to read as follows:

§ 1.367(b)–9 Special rule for F reorganizations and similar transactions.

(a) *Scope.* This section applies to any foreign 381 transaction (as described in § 1.367(b)–7(a)) described in section 368(a)(1)(F) or in which either the foreign target corporation or the foreign acquiring corporation is newly created. This section also applies to any foreign divisive transaction (as described in § 1.367(b)–8(a)) that is described in § 1.367(b)–8(e)(1) and that involves a newly created foreign distributing or foreign controlled corporation.

(b) *Hovering deficit rules inapplicable.* If a transaction is described in paragraph (a) of this section, a foreign surviving corporation or a newly created controlled corporation shall succeed to earnings and profits, deficits in earnings and profits, and foreign income taxes without regard to the hovering deficit rules of § 1.367(b)–7(d)(2), (e)(1)(iii), (e)(2)(iii), (f)(1)(iii), and (f)(2)(iii). In the case of a foreign divisive transaction, nothing in this section shall affect the application of § 1.367(b)–8(b)(iii).

(c) *Example.* The following example illustrates the rules of this section:

Example—(i) *Facts.* (A) Foreign corporation A is and always has been a wholly owned subsidiary of USP, a domestic corporation. Foreign corporation A was incorporated in 1990, and always has been a controlled foreign corporation using a calendar taxable year. Foreign corporation A (and all of its respective qualified business units as defined in section 989) maintains a "u" functional currency, and 1u = US$1 at all times. On December 31, 2001, foreign corporation A has the following earnings and profits and foreign income taxes accounts:

Separate category	E&P	Foreign taxes
Passive	(1,000u)	$5
General	200u	200
	(800u)	205

(B) On January 1, 2002, foreign corporation A moves its place of incorporation from Country 1 to Country 2 in a reorganization described in section 368(a)(1)(F).

(ii) *Result.* Under § 1.367(b)–7(d), as modified by paragraph (b) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts immediately after the foreign 381 transaction:

Separate category	E&P	Foreign taxes
Passive	(1,000u)	$ 5
General	200u	200
	(800u)	205

(d) *Effective date.* This section shall apply to section 367(b) exchanges that occur on or after the date 30 days after these regulations are published as final regulations in the **Federal Register**.

Par. 12. In § 1.367(e)–1, paragraph (a) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 1.367(e)–1 Distributions described in section 367(e)(1).

(a) * * * See § 1.367(b)–8(c)(3) for an example illustrating the interaction of § 1.367(e)–1 with other sections of the Internal Revenue Code (such as sections 367(b) and 1248).

* * * * *

Par. 13. In § 1.381(a)–1, paragraph (c) is revised to read as follows:

§ 1.381(a)–1 General rule relating to carryovers in certain corporate acquisitions.

* * * * *

(c) *Foreign corporations.* For additional rules involving foreign corporations see §§ 1.367(b)–7 and 1.367(b)–9.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

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Part IV

Department of Labor

Office of the Secretary

Delegation of Authority and Assignment of Equal Opportunity Responsibility for Department of Labor External Programs and Conducted Programs; Notice

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 4–2000]

Delegation of Authority and Assignment of Equal Opportunity Responsibility for Department of Labor External Programs and Conducted Programs

1. *Purpose*. To (1) assign responsibility for the enforcement of equal opportunity and nondiscrimination laws, executive orders and statutes relating to programs or activities financially assisted or conducted by the Department of Labor (DOL); (2) delegate responsibility assigned to the Department of Labor by the Department of Justice to implement subpart F of Title 28 CFR part 35;[1] and (3) provide notification that the Directorate of Civil Rights within OASAM is now the Civil Rights Center (CRC).

2. *Directives Affected*. Secretary's Order 2–81 is canceled. The provisions of section 5(a) of this Order supersede sections 4(a)(7), (15), (17), and (30) of Secretary's Order 4–75 and section 4(a)(7) of Secretary's Order 2–85. This directive does not affect Secretary's Order 3–96.

3. *Policy*. It is the policy of DOL to promote equal opportunity in programs or activities it financially assists or conducts, and to ensure full compliance with all constitutional, statutory, and regulatory equal opportunity and nondiscrimination provisions in all such programs or activities. Additionally, it is the policy of DOL to ensure full compliance with the statutory provisions of the Americans with Disabilities Act of 1990, as amended, and its implementing regulations among the public entities assigned to DOL by the Department of Justice.

4. *Background*. Secretary's Order 8–80, issued on October 28, 1980, established the Office of Civil Rights (OCR) within the Office of the Secretary, and gave that office responsibility for enforcing Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972, as amended; and the Age Discrimination Act of 1975, as amended, in programs or activities financially assisted by DOL. Secretary's Order 2–81, issued on June 1, 1981, canceled Secretary's Order 8–80, and transferred OCR to the Office of the Assistant Secretary for Administration and Management. On June 18, 1985, Secretary's Order 2–85 assigned to the Assistant Secretary, OASAM, working through OCR, responsibility for the enforcement of Section 167 of the Job Training Partnership Act. Effective October 14, 1986, OCR underwent an organizational change, and its name changed to the Directorate of Civil Rights. On December 10, 1995, the name of the Directorate of Civil Rights became the Civil Rights Center (CRC).

5. *Delegation of Authority and Assignment of Responsibilities*

a. Through the Assistant Secretary (OASAM), the Director (CRC) is delegated authority and assigned responsibility for:

(1) Developing, implementing, and monitoring DOL's civil rights enforcement program under all equal opportunity and nondiscrimination requirements applicable to programs or activities financially assisted or conducted by DOL, including:

(a) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d *et seq.*);

(b) Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. 794);

(c) Section 508(f) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d);

(d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*);

(e) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 *et seq.*);

(f) Section 167 of the Job Training Partnership Act, as amended (29 U.S.C. 1577)[2];

(g) Section 188 of the Workforce Investment Act of 1998 (29 U.S.C. 2938);

(h) Executive Order 13160 (65 Fed. Reg. 39,773 (June 23, 2000))[3];

(i) Executive Order 13166 (65 Fed. Reg. 50,121 (August 11, 2000))[4]; and,

(j) other similarly related laws, executive orders and statutes.

(2) Implementing subpart F of Title 28 CFR part 35, which describes the compliance procedures that apply to public entities subject to Title IIA of the Americans with Disabilities Act of 1990 for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in all programs, services, and regulatory activities relating to labor and the workforce.

(3) Establishing and formulating all policies, standards, and procedures for, as well as issuing rules and regulations governing, the civil rights enforcement programs under the laws, executive orders and statutes referred to in 5.a (1) (a) through (j).

(4) Achieving compliance through pre-approval and post-approval reviews, complaint investigations and other compliance monitoring techniques, negotiations, mediations, and other alternative dispute resolution techniques, conciliation proceedings, and the application of appropriate sanctions and remedies.

(5) Cooperating and coordinating with DOL Agencies, the Office of the Inspector General, the Department of Justice, the Department of Health and Human Services, the Equal Employment Opportunity Commission, and other agencies in connection with the administration of nondiscrimination and equal opportunity laws.

(6) Developing and conducting training and providing technical assistance for CRC staff, as well as for DOL Agency program staffs, recipients of Federal financial assistance from DOL, and beneficiaries of that assistance, programs or activities conducted by DOL.

(7) Developing, implementing, and maintaining a management information and case tracking system that can be used to assess the effectiveness of the DOL Civil Rights program.

(8) Issuing subpoenas for the purpose of any investigation or hearing conducted under section 188 of WIA, as authorized by section 183(c) of WIA, and pursuant to the provisions of section 9 of the Federal Trade Commission Act (15 U.S.C. 49).

b. *The Assistant Secretary for Administration and Management and the Director, Civil Rights Center (CRC),* are delegated authority and assigned responsibility for:

(1) Invoking all appropriate claims of privilege, arising from the functions of the Office of the Assistant Secretary for Administration and Management or the Civil Rights Center, following his/her personal consideration of the matter and in accordance with the following guidelines:

(i) *Informant's Privilege* (to protect from disclosure the identity of any person who has provided information to OASAM in cases arising under authority delegated or assigned to OASAM or CRC in subparagraph 5(b) of this Order): A claim of privilege may be asserted where the Assistant Secretary, OASAM or the Director, CRC has determined that disclosure of the privileged matter may: Interfere with an investigation or enforcement action taken by OASAM under authority delegated or assigned to OASAM in subparagraph 5(a) of this Order; adversely affect persons who have provided information to OASAM; or deter other persons from reporting violations of the statute or other authority.

(ii) *Deliberative Process Privilege* (to withhold information which may disclose predecisional intra-agency or inter-agency deliberations, including: the analysis and evaluation of facts; written summaries of factual evidence; and recommendations, opinions or advice on legal or policy matters; in cases arising under authority delegated or assigned to OASAM in section 5(a) of this Order): A claim of privilege may be asserted where the Assistant Secretary, OASAM or the Director, CRC has determined that disclosure of the privileged matter would have an inhibiting effect on the agency's decision-making processes.

(iii) *Privilege for Investigative Files* compiled for law enforcement purposes (to withhold information which may reveal OASAM's confidential investigative techniques and procedures): The investigative files privilege may be asserted where the Assistant Secretary, OASAM or the Director, CRC has determined that disclosure of the privileged matter may have an adverse impact upon OASAM's enforcement of an authority delegated or assigned to OASAM in subparagraph 5(a) of this Order, by: Disclosing investigative techniques and methodologies; deterring persons from providing information to OASAM; prematurely revealing the facts of OASAM's case; or disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(iv) Prior to filing a formal claim of privilege, the Assistant Secretary, OASAM or the Director, CRC shall personally review: All the documents sought to be withheld (or, in cases where the volume is so large that all of the documents cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents); and a description or summary of the litigation in which the disclosure is sought.

(v) In asserting a claim of governmental privilege, the Assistant Secretary, OASAM or the Director, CRC shall ask the Solicitor of Labor or the Solicitor's representative to file any necessary legal papers or documents.

c. *Agency heads* are delegated authority and assigned responsibility for:

(1) Promoting and instituting measures to assure that equality of opportunity is a reality in all programs or activities financially assisted or conducted by their Agencies;

(2) Assuring that equal opportunity and nondiscrimination requirements are incorporated into all regulations, procedures, and other guidelines and references covering programs or activities financially assisted or conducted by their Agencies; and

(3) Maintaining close liaison with, and cooperating with, the Assistant Secretary, OASAM, and the Director, CRC, in all civil rights and equal opportunity matters affecting programs or activities financially assisted or conducted by their Agencies.

d. *The Solicitor of Labor* shall have the responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor. The authorities established in Secretary's Order 2–90 concerning the Office of Inspector General and the representation of the Inspector General are not affected by this paragraph.

6. *Redelegation and Reassignment*. The responsibility herein assigned through the Assistant Secretary, OASAM, to the Director, CRC by section 5(a) of this Order may be further redelegated and reassigned, to the extent permitted by applicable regulations.

7. *Effective Date*. This delegation of authority and assignment of responsibility shall be effective immediately.

Dated: November 7, 2000.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 00–29095 Filed 11–14–00; 8:45 am]

BILLING CODE 4510-23-P

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[1] Title 28 CFR part 35 effectuates Title IIA of the Americans with Disabilities Act of 1990.

[2] Title 29 CFR part 34, which implements the nondiscrimination and equal opportunity provisions of the JTPA, refers to the Civil Rights Center by its previous name, the Directorate of Civil Rights (DCR).

[3] Executive Order 13160 forbids discrimination in Federally conducted education and training programs and activities on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent.

[4] The purpose of Executive Order 13166 is to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP).

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Wednesday,
November 15, 2000

Part V

Department of Labor

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice of Annual List of Labor Surplus Areas for All States Except Michigan; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice of the Annual List of Labor Surplus Areas for All States Except Michigan

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATES: The annual list of labor surplus areas is effective October 1, 2000 for all States except Michigan. In Michigan Fiscal Year 2000 classifications, effective October 1, 1999, remain in effect temporarily pending receipt of revised data.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas for Fiscal Year 2001.

FOR FURTHER INFORMATION CONTACT: Steven Aaronson, Leader, ES Operations Team Office of Workforce Security, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4518, Washington, DC 20210. Telephone: 202–219–9092, ext. 151.

SUPPLEMENTARY INFORMATION: The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor is hereby publishing the annual list of labor surplus areas.

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas listed below have been classified by the Assistant Secretary as labor surplus areas pursuant to 20 CFR 654.5(b)(48 FR 15615 April 12, 1983) effective October 1, 2000, except for Michigan where Fiscal Year 2001 classifications will be issued at a later date.

Signed at Washington, DC, on October 24, 2000.

Raymond L. Bramucci,

Assistant Secretary.

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001

Eligible labor surplus areas	Civil jurisdictions included
ALABAMA	
ANNISTON CITY	ANNISTON CITY IN CALHOUN COUNTY
BIBB COUNTY	BIBB COUNTY
BULLOCK COUNTY	BULLOCK COUNTY
BUTLER COUNTY	BUTLER COUNTY
CHOCTAW COUNTY	CHOCTAW COUNTY
CLARKE COUNTY	CLARKE COUNTY
COLBERT COUNTY	COLBERT COUNTY
CONECUH COUNTY	CONECUH COUNTY
COVINGTON COUNTY	COVINGTON COUNTY
CRENSHAW COUNTY	CRENSHAW COUNTY
DALLAS COUNTY	DALLAS COUNTY
ESCAMBIA COUNTY	ESCAMBIA COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
FLORENCE CITY	FLORENCE CITY IN LAUDERDALE COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
GADSDEN CITY	GADSDEN CITY IN ETOWAH COUNTY
GENEVA COUNTY	GENEVA COUNTY
GREENE COUNTY	GREENE COUNTY
HALE COUNTY	HALE COUNTY
JACKSON COUNTY	JACKSON COUNTY
LAMAR COUNTY	LAMAR COUNTY
LOWNDES COUNTY	LOWNDES COUNTY
MACON COUNTY	MACON COUNTY
MARENGO COUNTY	MARENGO COUNTY
MARION COUNTY	MARION COUNTY
MARSHALL COUNTY	MARSHALL COUNTY
MONROE COUNTY	MONROE COUNTY
PERRY COUNTY	PERRY COUNTY
PICKENS COUNTY	PICKENS COUNTY
PRICHARD CITY	PRICHARD CITY IN MOBILE COUNTY
SUMTER COUNTY	SUMTER COUNTY
WALKER COUNTY	WALKER COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WILCOX COUNTY	WILCOX COUNTY
ALASKA	
ALEUTIAN ISLAND WEST CENSUS AREA	ALEUTIAN ISLAND WEST CENSUS AREA
BETHEL CENSUS AREA	BETHEL CENSUS AREA
BRISTOL BAY BOROUGH DIV	BRISTOL BAY BOROUGH DIV
DENALI BOROUGH	DENALI BOROUGH
DILLINGHAM CENSUS AREA	DILLINGHAM CENSUS AREA
FAIRBANKS CITY	FAIRBANKS CITY IN FAIRBANKS NORTH STAR BOROUGH
HAINES BOROUGH	HAINES BOROUGH
KENAI PENINSULA BOROUGH	KENAI PENINSULA BOROUGH
KETCHIKAN GATEWAY BOROUGH	KETCHIKAN GATEWAY BOROUGH
KODIAK ISLAND BOROUGH	KODIAK ISLAND BOROUGH
LAKE AND PENINSULA BOROUGH	LAKE AND PENINSULA BOROUGH
MATANUSKA-SUSITNA BOROUGH	MATANUSKA-SUSITNA BOROUGH
NOME CENSUS AREA	NOME CENSUS AREA
NORTH SLOPE BOROUGH	NORTH SLOPE BOROUGH
NORTHWEST ARCTIC BOROUGH	NORTHWEST ARCTIC BOROUGH
PRINCE OF WALES OUTER KETCHIKAN	PRINCE OF WALES OUTER KETCHIKAN
SKAGWAY-HOONAH-ANGOON CEN AREA	SKAGWAY-HOONAH-ANGOON CEN AREA
SOUTHEAST FAIRBANKS CENSUS AREA	SOUTHEAST FAIRBANKS CENSUS AREA
VALDEZ CORDOVA CENSUS AREA	VALDEZ CORDOVA CENSUS AREA
WADE HAMPTON CENSUS AREA	WADE HAMPTON CENSUS AREA
WRANGELL-PETERSBURG CENSUS AREA	WRANGELL-PETERSBURG CENSUS AREA
YAKUTAT BOROUGH	YAKUTAT BOROUGH
YUKON-KOYUKUK CENSUS AREA	YUKON-KOYUKUK CENSUS AREA
ARIZONA	
APACHE COUNTY	APACHE COUNTY
BALANCE OF COCHISE COUNTY	COCHISE COUNTY LESS SIERRA VISTA CITY
BALANCE OF COCONINO COUNTY	COCONINO COUNTY LESS FLAGSTAFF CITY
GILA COUNTY	GILA COUNTY
GRAHAM COUNTY	GRAHAM COUNTY
GREENLEE COUNTY	GREENLEE COUNTY
LA PAZ COUNTY	LA PAZ COUNTY
NAVAJO COUNTY	NAVAJO COUNTY
SANTA CRUZ COUNTY	SANTA CRUZ COUNTY
YUMA CITY	YUMA CITY IN YUMA COUNTY
BALANCE OF YUMA COUNTY	YUMA COUNTY LESS YUMA CITY
ARKANSAS	
ASHLEY COUNTY	ASHLEY COUNTY
BOONE COUNTY	BOONE COUNTY
BRADLEY COUNTY	BRADLEY COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CHICOT COUNTY	CHICOT COUNTY
CLAY COUNTY	CLAY COUNTY
CLEVELAND COUNTY	CLEVELAND COUNTY
COLUMBIA COUNTY	COLUMBIA COUNTY
CONWAY COUNTY	CONWAY COUNTY
CROSS COUNTY	CROSS COUNTY
DALLAS COUNTY	DALLAS COUNTY
DESHA COUNTY	DESHA COUNTY
DREW COUNTY	DREW COUNTY
HEMPSTEAD COUNTY	HEMPSTEAD COUNTY
JACKSON COUNTY	JACKSON COUNTY
BALANCE OF JEFFERSON COUNTY	JEFFERSON COUNTY LESS PINE BLUFF CITY
LAFAYETTE COUNTY	LAFAYETTE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEE COUNTY	LEE COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
LITTLE RIVER COUNTY	LITTLE RIVER COUNTY
MISSISSIPPI COUNTY	MISSISSIPPI COUNTY
MONROE COUNTY	MONROE COUNTY
NEVADA COUNTY	NEVADA COUNTY
NEWTON COUNTY	NEWTON COUNTY
OUACHITA COUNTY	OUACHITA COUNTY
PERRY COUNTY	PERRY COUNTY
PHILLIPS COUNTY	PHILLIPS COUNTY
PINE BLUFF CITY	PINE BLUFF CITY IN JEFFERSON COUNTY
POINSETT COUNTY	POINSETT COUNTY
PRAIRIE COUNTY	PRAIRIE COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
SEARCY COUNTY	SEARCY COUNTY
ST. FRANCIS COUNTY	ST. FRANCIS COUNTY
UNION COUNTY	UNION COUNTY
VAN BUREN COUNTY	VAN BUREN COUNTY
WOODRUFF COUNTY	WOODRUFF COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
CALIFORNIA	
ALPINE COUNTY	ALPINE COUNTY
AZUSA CITY	AZUSA CITY IN LOS ANGELES COUNTY
BAKERSFIELD CITY	BAKERSFIELD CITY IN KERN COUNTY
BALDWIN PARK CITY	BALDWIN PARK CITY IN LOS ANGELES COUNTY
BANNING CITY	BANNING CITY IN RIVERSIDE COUNTY
BELL CITY	BELL CITY IN LOS ANGELES COUNTY
BELL GARDENS CITY	BELL GARDENS CITY IN LOS ANGELES COUNTY
BALANCE OF BUTTE COUNTY	BUTTE COUNTY LESS CHICO CITY; PARADISE CITY
CALAVERAS COUNTY	CALAVERAS COUNTY
CALEXICO CITY	CALEXICO CITY IN IMPERIAL COUNTY
CARSON CITY	CARSON CITY IN LOS ANGELES COUNTY
CERES CITY	CERES CITY IN STANISLAUS COUNTY
CHICO CITY	CHICO CITY IN BUTTE COUNTY
CLOVIS CITY	CLOVIS CITY IN FRESNO COUNTY
COLTON CITY	COLTON CITY IN SAN BERNARDINO COUNTY
COLUSA COUNTY	COLUSA COUNTY
COMPTON CITY	COMPTON CITY IN LOS ANGELES COUNTY
DEL NORTE COUNTY	DEL NORTE COUNTY
DELANO CITY	DELANO CITY IN KERN COUNTY
EL CENTRO CITY	EL CENTRO CITY IN IMPERIAL COUNTY
EL MONTE CITY	EL MONTE CITY IN LOS ANGELES COUNTY
EUREKA CITY	EUREKA CITY IN HUMBOLDT COUNTY
FRESNO CITY	FRESNO CITY IN FRESNO COUNTY
BALANCE OF FRESNO COUNTY	FRESNO COUNTY LESS CLOVIS CITY, FRESNO CITY
GLENN COUNTY	GLENN COUNTY
HANFORD CITY	HANFORD CITY IN KINGS COUNTY
HEMET CITY	HEMET CITY IN RIVERSIDE COUNTY
HESPERIA CITY	HESPERIA CITY IN SAN BERNARDINO COUNTY
HIGHLAND CITY	HIGHLAND CITY IN SAN BERNARDINO COUNTY
HOLISTER CITY	HOLISTER CITY IN SAN BENITO COUNTY
BALANCE OF HUMBOLDT COUNTY	HUMBOLDT COUNTY LESS EUREKA CITY
HUNTINGTON PARK CITY	HUNTINGTON PARK CITY IN LOS ANGELES COUNTY
BALANCE OF IMPERIAL COUNTY	IMPERIAL COUNTY LESS CALEXICO CITY, EL CENTRO CITY
INDIO CITY	INDIO CITY IN RIVERSIDE COUNTY
INGLEWOOD CITY	INGLEWOOD CITY IN LOS ANGELES COUNTY
INYO COUNTY	INYO COUNTY
BALANCE OF KERN COUNTY	KERN COUNTY LESS BAKERSFIELD CITY, DELANO CITY, RIDGECREST CITY
BALANCE OF KINGS COUNTY	KINGS COUNTY LESS HANFORD CITY
LA PUENTE CITY	LA PUENTE CITY IN LOS ANGELES COUNTY
LAKE COUNTY	LAKE COUNTY
LAKE ELSINORE CITY	LAKE ELSINORE CITY IN RIVERSIDE COUNTY
LASSEN COUNTY	LASSEN COUNTY
LAWNDALE CITY	LAWNDALE CITY IN LOS ANGELES COUNTY
LODI CITY	LODI CITY IN SAN JOAQUIN COUNTY
LOS ANGELES CITY	LOS ANGELES CITY IN LOS ANGELES COUNTY
BALANCE OF LOS ANGELES COUNTY	LOS ANGELES COUNTY LESS AGOURA HILLS CITY, ALHAMBRA CITY, ARCADIA CITY, AZUSA CITY, BALDWIN PARK CITY, BELL CITY, BELL GARDENS CITY, BELLFLOWER CITY, BEVERLY HILLS CITY, BURBANK CITY, CARSON CITY, CERRITOS CITY, CLAREMONT CITY, COMPTON CITY, COVINA CITY, CULVER CITY, DIAMOND BAR CITY, DOWNEY CITY, EL MONTE CITY, GARDENA CITY, GLENDALE CITY, GLENDORA CITY, HAWTHORNE CITY, HUNTINGTON PARK CITY, INGLEWOOD CITY, LA MIRADA CITY, LA PUENTE CITY, LA VERNE CITY, LAKEWOOD CITY, LANCASTER CITY, LAWNDALE CITY, LONG BEACH CITY, LOS ANGELES CITY, LYNWOOD CITY, MANHATTAN BEACH CITY, MAYWOOD CITY, MONROVIA CITY, MONTEBELLO CITY, MONTEREY PARK CITY, NORWALK CITY, PALMDALE CITY, PARAMOUNT CITY, PASADENA CITY, PICO RIVERA CITY, POMONA CITY, RANCHO PALOS VERDES CITY, REDONDO BEACH CITY, ROSEMEAD CITY, SAN DIMAS CITY, SAN GABRIEL CITY, SANTA CLARITA CITY, SANTA MONICA CITY, SOUTH GATE CITY, TEMPLE CITY, TORRANCE CITY, WALNUT CITY, WEST COVINA CITY, WEST HOLLYWOOD CITY, WHITTIER CITY
LYNWOOD CITY	LYNWOOD CITY IN LOS ANGELES COUNTY
MADERA CITY	MADERA CITY IN MADERA COUNTY
BALANCE OF MADERA COUNTY	MADERA COUNTY LESS MADERA CITY
MANTECA CITY	MANTECA CITY IN SAN JOAQUIN COUNTY
MARINA CITY	MARINA CITY IN MONTEREY COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
MARIPOSA COUNTY	MARIPOSA COUNTY
MAYWOOD CITY	MAYWOOD CITY IN LOS ANGELES COUNTY
MENDOCINO COUNTY	MENDOCINO COUNTY
MERCED CITY	MERCED CITY IN MERCED COUNTY
BALANCE OF MERCED COUNTY	MERCED COUNTY LESS MERCED CITY
MODESTO CITY	MODESTO CITY IN STANISLAUS COUNTY
MODOC COUNTY	MODOC COUNTY
MONO COUNTY	MONO COUNTY
BALANCE OF MONTEREY COUNTY	MONTEREY COUNTY LESS MARINA CITY, MONTEREY CITY, SALINAS CITY, SEASIDE CITY
MORENO VALLEY CITY	MORENO VALLEY CITY IN RIVERSIDE COUNTY
NATIONAL CITY	NATIONAL CITY IN SAN DIEGO COUNTY
OAKLAND CITY	OAKLAND CITY IN ALAMEDA COUNTY
OXNARD CITY	OXNARD CITY IN VENTURA COUNTY
PARAMOUNT CITY	PARAMOUNT CITY IN LOS ANGELES COUNTY
PERRIS CITY	PERRIS CITY IN RIVERSIDE COUNTY
PICO RIVERA CITY	PICO RIVERA CITY IN LOS ANGELES COUNTY
PLUMAS COUNTY	PLUMAS COUNTY
POMONA CITY	POMONA CITY IN LOS ANGELES COUNTY
PORTERVILLE CITY	PORTERVILLE CITY IN TULARE COUNTY
REDDING CITY	REDDING CITY IN SHASTA COUNTY
RICHMOND CITY	RICHMOND CITY IN CONTRA COSTA COUNTY
RIDGECREST CITY	RIDGECREST CITY IN KERN COUNTY
RIVERSIDE CITY	RIVERSIDE CITY IN RIVERSIDE COUNTY
BALANCE OF RIVERSIDE COUNTY	RIVERSIDE COUNTY LESS BANNING CITY, CATHEDRAL CITY, CORONA CITY, HEMET CITY, INDIO CITY, LAKE ELSINORE CITY, MORENO VALLEY CITY, MURRIETA CITY, NORCO CITY, PALM DESERT CITY, PALM SPRINGS CITY, PERRIS CITY, RIVERSIDE CITY, TEMECULA CITY
ROSEMEAD CITY	ROSEMEAD CITY IN LOS ANGELES COUNTY
SALINAS CITY	SALINAS CITY IN MONTEREY COUNTY
BALANCE OF SAN BENITO COUNTY	SAN BENITO COUNTY LESS HOLISTER CITY
SAN BERNARDINO CITY	SAN BERNARDINO CITY IN SAN BERNARDINO COUNTY
BALANCE OF SAN JOAQUIN COUNTY	SAN JOAQUIN COUNTY LESS LODI CITY, MANTECA CITY, STOCKTON CITY, TRACEY CITY
SAN PABLO CITY	SAN PABLO CITY IN CONTRA COSTA COUNTY
SANTA CRUZ CITY	SANTA CRUZ CITY IN SANTA CRUZ COUNTY
SANTA MARIA CITY	SANTA MARIA CITY IN SANTA BARBARA COUNTY
SANTA PAULA CITY	SANTA PAULA CITY IN VENTURA COUNTY
SEASIDE CITY	SEASIDE CITY IN MONTEREY COUNTY
BALANCE OF SHASTA COUNTY	SHASTA COUNTY LESS REDDING CITY
SIERRA COUNTY	SIERRA COUNTY
SISKIYOU COUNTY	SISKIYOU COUNTY
SOUTH GATE CITY	SOUTH GATE CITY IN LOS ANGELES COUNTY
BALANCE OF STANISLAUS COUNTY	STANISLAUS COUNTY LESS CERES CITY, MODESTO CITY, TURLOCK CITY
STOCKTON CITY	STOCKTON CITY IN SAN JOAQUIN COUNTY
SUISON CITY	SUISON CITY IN SOLANO COUNTY
BALANCE OF SUTTER COUNTY	SUTTER COUNTY LESS YUBA CITY
TEHAMA COUNTY	TEHAMA COUNTY
TRACEY CITY	TRACEY CITY IN SAN JOAQUIN COUNTY
TRINITY COUNTY	TRINITY COUNTY
TULARE CITY	TULARE CITY IN TULARE COUNTY
BALANCE OF TULARE COUNTY	TULARE COUNTY LESS PORTERVILLE CITY, TULARE CITY, VISALIA CITY
TUOLUMNE COUNTY	TUOLUMNE COUNTY
TURLOCK CITY	TURLOCK CITY IN STANISLAUS COUNTY
VICTORVILLE CITY	VICTORVILLE CITY IN SAN BERNARDINO COUNTY
VISALIA CITY	VISALIA CITY IN TULARE COUNTY
WATSONVILLE CITY	WATSONVILLE CITY IN SANTA CRUZ COUNTY
WEST SACRAMENTO CITY	WEST SACRAMENTO CITY IN YOLO COUNTY
YUBA CITY	YUBA CITY IN SUTTER COUNTY
YUBA COUNTY	YUBA COUNTY
COLORADO	
ALAMOSA COUNTY	ALAMOSA COUNTY
CONEJOS COUNTY	CONEJOS COUNTY
COSTILLA COUNTY	COSTILLA COUNTY
DOLORES COUNTY	DOLORES COUNTY
HUERFANO COUNTY	HUERFANO COUNTY
PUEBLO CITY	PUEBLO CITY IN PUEBLO COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
RIO GRANDE COUNTY	RIO GRANDE COUNTY
SAGUACHE COUNTY	SAGUACHE COUNTY
SAN JUAN COUNTY	SAN JUAN COUNTY
CONNECTICUT	
BRIDGEPORT CITY	BRIDGEPORT CITY
HARTFORD CITY	HARTFORD CITY
KILLINGLY TOWN	KILLINGLY TOWN
VOLUNTOWN TOWN	VOLUNTOWN TOWN
DISTRICT OF COLUMBIA	
WASHINGTON DC CITY	WASHINGTON DC CITY IN DISTRICT OF COLUMBIA
FLORIDA	
CALHOUN COUNTY	CALHOUN COUNTY
DE SOTO COUNTY	DE SOTO COUNTY
DELRAY BEACH CITY	DELRAY BEACH CITY IN PALM BEACH COUNTY
FORT PIERCE CITY	FORT PIERCE CITY IN ST. LUCIE COUNTY
GLADES COUNTY	GLADES COUNTY
GULF COUNTY	GULF COUNTY
HAMILTON COUNTY	HAMILTON COUNTY
HARDEE COUNTY	HARDEE COUNTY
HENDRY COUNTY	HENDRY COUNTY
HIALEAH CITY	HIALEAH CITY IN MIAMI-DADE COUNTY
HIGHLANDS COUNTY	HIGHLANDS COUNTY
INDIAN RIVER COUNTY	INDIAN RIVER COUNTY
LAUDERDALE LAKES CITY	LAUDERDALE LAKES CITY IN BROWARD COUNTY
MIAMI BEACH CITY	MIAMI BEACH CITY IN MIAMI-DADE COUNTY
MIAMI CITY	MIAMI CITY IN MIAMI-DADE COUNTY
NORTH MIAMI CITY	NORTH MIAMI CITY IN MIAMI-DADE COUNTY
OKEECHOBEE COUNTY	OKEECHOBEE COUNTY
PANAMA CITY	PANAMA CITY IN BAY COUNTY
PORT ST. LUCIE CITY	PORT ST. LUCIE CITY IN ST. LUCIE COUNTY
RIVIERA BEACH CITY	RIVIERA BEACH CITY IN PALM BEACH COUNTY
BALANCE OF ST. LUCIE COUNTY	ST. LUCIE COUNTY LESS FORT PIERCE CITY, PORT ST. LUCIE CITY
TAYLOR COUNTY	TAYLOR COUNTY
WEST PALM BEACH CITY	WEST PALM BEACH CITY IN PALM BEACH COUNTY
GEORGIA	
ALBANY CITY	ALBANY CITY IN DOUGHERTY COUNTY
APPLING COUNTY	APPLING COUNTY
ATKINSON COUNTY	ATKINSON COUNTY
AUGUSTA CITY	AUGUSTA CITY IN RICHMOND COUNTY
BACON COUNTY	BACON COUNTY
BAKER COUNTY	BAKER COUNTY
BEN HILL COUNTY	BEN HILL COUNTY
BRANTLEY COUNTY	BRANTLEY COUNTY
BURKE COUNTY	BURKE COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CHATTAHOOCHEE COUNTY	CHATTAHOOCHEE COUNTY
CLAY COUNTY	CLAY COUNTY
CRISP COUNTY	CRISP COUNTY
DOOLY COUNTY	DOOLY COUNTY
EARLY COUNTY	EARLY COUNTY
ELBERT COUNTY	ELBERT COUNTY
EMANUEL COUNTY	EMANUEL COUNTY
GLASCOCK COUNTY	GLASCOCK COUNTY
GRADY COUNTY	GRADY COUNTY
GREENE COUNTY	GREENE COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
HINESVILLE CITY	HINESVILLE CITY IN LIBERTY COUNTY
JEFF DAVIS COUNTY	JEFF DAVIS COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
LA GRANGE CITY	LA GRANGE CITY IN TROUP COUNTY
LAURENS COUNTY	LAURENS COUNTY
BALANCE OF LIBERTY COUNTY	LIBERTY COUNTY LESS HINESVILLE CITY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
LINCOLN COUNTY	LINCOLN COUNTY
MACON CITY	MACON CITY IN BIBB COUNTY JONES COUNTY
MACON COUNTY	MACON COUNTY
MC DUFFIE COUNTY	MC DUFFIE COUNTY
MITCHELL COUNTY	MITCHELL COUNTY
MONROE COUNTY	MONROE COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
PEACH COUNTY	PEACH COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
ROME CITY	ROME CITY IN FLOYD COUNTY
SCREVEN COUNTY	SCREVEN COUNTY
STEWART COUNTY	STEWART COUNTY
SUMTER COUNTY	SUMTER COUNTY
TALIAFERRO COUNTY	TALIAFERRO COUNTY
TAYLOR COUNTY	TAYLOR COUNTY
TELFAIR COUNTY	TELFAIR COUNTY
TERRELL COUNTY	TERRELL COUNTY
TOOMBS COUNTY	TOOMBS COUNTY
TREUTLEN COUNTY	TREUTLEN COUNTY
TURNER COUNTY	TURNER COUNTY
TWIGGS COUNTY	TWIGGS COUNTY
WARREN COUNTY	WARREN COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WAYNE COUNTY	WAYNE COUNTY
WHEELER COUNTY	WHEELER COUNTY
WILKES COUNTY	WILKES COUNTY
WILKINSON COUNTY	WILKINSON COUNTY
WORTH COUNTY	WORTH COUNTY
HAWAII	
HAWAII COUNTY	HAWAII COUNTY
KAUAI COUNTY	KAUAI COUNTY
MAUI COUNTY	MAUI COUNTY
IDAHO	
ADAMS COUNTY	ADAMS COUNTY
BENEWAH COUNTY	BENEWAH COUNTY
BOISE COUNTY	BOISE COUNTY
BONNER COUNTY	BONNER COUNTY
BOUNDARY COUNTY	BOUNDARY COUNTY
CARIBOU COUNTY	CARIBOU COUNTY
CASSIA COUNTY	CASSIA COUNTY
CLEARWATER COUNTY	CLEARWATER COUNTY
COEUR D ALENE CITY	COEUR D ALENE CITY
CUSTER COUNTY	CUSTER COUNTY
ELMORE COUNTY	ELMORE COUNTY
FREMONT COUNTY	FREMONT COUNTY
GEM COUNTY	GEM COUNTY
IDAHO COUNTY	IDAHO COUNTY
BALANCE OF KOOTENAI COUNTY	KOOTENAI COUNTY LESS COEUR D ALENE CITY
LEMHI COUNTY	LEMHI COUNTY
LEWIS COUNTY	LEWIS COUNTY
MINIDOKA COUNTY	MINIDOKA COUNTY
BALANCE OF NEZ PERCE COUNTY	NEZ PERCE COUNTY LESS LEWISTON CITY
PAYETTE COUNTY	PAYETTE COUNTY
POWER COUNTY	POWER COUNTY
SHOSHONE COUNTY	SHOSHONE COUNTY
VALLEY COUNTY	VALLEY COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
ILLINOIS	
ALEXANDER COUNTY	ALEXANDER COUNTY
ALTON CITY	ALTON CITY IN MADISON COUNTY
BELLEVILLE CITY	BELLEVILLE CITY IN ST. CLAIR COUNTY
CARPENTERSVILLE CITY	CARPENTERSVILLE CITY IN KANE COUNTY
CHICAGO HEIGHTS CITY	CHICAGO HEIGHTS CITY IN COOK COUNTY
CICERO CITY	CICERO CITY IN COOK COUNTY
CLAY COUNTY	CLAY COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
CRAWFORD COUNTY	CRAWFORD COUNTY
DANVILLE CITY	DANVILLE CITY IN VERMILION COUNTY
DECATUR CITY	DECATUR CITY IN MACON COUNTY
DOLTON VILLAGE	DOLTON VILLAGE IN COOK COUNTY
EAST ST. LOUIS CITY	EAST ST. LOUIS CITY IN ST. CLAIR COUNTY
EDWARDS COUNTY	EDWARDS COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
FREEPORT CITY	FREEPORT CITY IN STEPHENSON COUNTY
FULTON COUNTY	FULTON COUNTY
GALLATIN COUNTY	GALLATIN COUNTY
GRANITE CITY	GRANITE CITY IN MADISON COUNTY
GRUNDY COUNTY	GRUNDY COUNTY
HAMILTON COUNTY	HAMILTON COUNTY
HARDIN COUNTY	HARDIN COUNTY
HARVEY CITY	HARVEY CITY IN COOK COUNTY
JASPER COUNTY	JASPER COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
JOLIET CITY	JOLIET CITY IN WILL COUNTY
KANKAKEE CITY	KANKAKEE CITY IN KANKAKEE COUNTY
LA SALLE COUNTY	LA SALLE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
MARION COUNTY	MARION COUNTY
MASON COUNTY	MASON COUNTY
MAYWOOD VILLAGE	MAYWOOD VILLAGE IN COOK COUNTY
MERCER COUNTY	MERCER COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
NORTH CHICAGO CITY	NORTH CHICAGO CITY IN LAKE COUNTY
PERRY COUNTY	PERRY COUNTY
POPE COUNTY	POPE COUNTY
PULASKI COUNTY	PULASKI COUNTY
RICHLAND COUNTY	RICHLAND COUNTY
ROCKFORD CITY	ROCKFORD CITY IN WINNEBAGO COUNTY
SALINE COUNTY	SALINE COUNTY
UNION COUNTY	UNION COUNTY
WABASH COUNTY	WABASH COUNTY
WAUKEGAN CITY	WAUKEGAN CITY IN LAKE COUNTY
WAYNE COUNTY	WAYNE COUNTY
WHITE COUNTY	WHITE COUNTY
WILLIAMSON COUNTY	WILLIAMSON COUNTY

INDIANA

Eligible labor surplus areas	Civil jurisdictions included
EAST CHICAGO CITY	EAST CHICAGO CITY IN LAKE COUNTY
GARY CITY	GARY CITY IN LAKE COUNTY
GREENE COUNTY	GREENE COUNTY
ORANGE COUNTY	ORANGE COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY

KANSAS

Eligible labor surplus areas	Civil jurisdictions included
GEARY COUNTY	GEARY COUNTY
KANSAS CITY KN	KANSAS CITY KN IN WYANDOTTE COUNTY
LINN COUNTY	LINN COUNTY

KENTUCKY

Eligible labor surplus areas	Civil jurisdictions included
ADAIR COUNTY	ADAIR COUNTY
BOYD COUNTY	BOYD COUNTY
BREATHITT COUNTY	BREATHITT COUNTY
CARTER COUNTY	CARTER COUNTY
CASEY COUNTY	CASEY COUNTY
CLAY COUNTY	CLAY COUNTY
CRITTENDEN COUNTY	CRITTENDEN COUNTY
CUMBERLAND COUNTY	CUMBERLAND COUNTY
EDMONSON COUNTY	EDMONSON COUNTY
ELLIOTT COUNTY	ELLIOTT COUNTY
FLOYD COUNTY	FLOYD COUNTY
FULTON COUNTY	FULTON COUNTY
GRAYSON COUNTY	GRAYSON COUNTY
GREEN COUNTY	GREEN COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
GREENUP COUNTY	GREENUP COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
HARLAN COUNTY	HARLAN COUNTY
HENDERSON CITY	HENDERSON CITY IN HENDERSON COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
KNOTT COUNTY	KNOTT COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LETCHER COUNTY	LETCHER COUNTY
LEWIS COUNTY	LEWIS COUNTY
MAGOFFIN COUNTY	MAGOFFIN COUNTY
MARTIN COUNTY	MARTIN COUNTY
MC CREARY COUNTY	MC CREARY COUNTY
MC LEAN COUNTY	MC LEAN COUNTY
MENIFEE COUNTY	MENIFEE COUNTY
MONROE COUNTY	MONROE COUNTY
MORGAN COUNTY	MORGAN COUNTY
MUHLENBERG COUNTY	MUHLENBERG COUNTY
OHIO COUNTY	OHIO COUNTY
PERRY COUNTY	PERRY COUNTY
PIKE COUNTY	PIKE COUNTY
RUSSELL COUNTY	RUSSELL COUNTY
TAYLOR COUNTY	TAYLOR COUNTY
UNION COUNTY	UNION COUNTY
WAYNE COUNTY	WAYNE COUNTY
WEBSTER COUNTY	WEBSTER COUNTY

LOUISIANA

Eligible labor surplus areas	Civil jurisdictions included
ACADIA PARISH	ACADIA PARISH
ALEXANDRIA CITY	ALEXANDRIA CITY IN RAPIDES PARISH
ALLEN PARISH	ALLEN PARISH
ASSUMPTION PARISH	ASSUMPTION PARISH
AVOYELLES PARISH	AVOYELLES PARISH
BEAUREGARD PARISH	BEAUREGARD PARISH
BIENVILLE PARISH	BIENVILLE PARISH
CALDWELL PARISH	CALDWELL PARISH
CATAHOULA PARISH	CATAHOULA PARISH
CLAIBORNE PARISH	CLAIBORNE PARISH
CONCORDIA PARISH	CONCORDIA PARISH
DE SOTO PARISH	DE SOTO PARISH
EAST CARROLL PARISH	EAST CARROLL PARISH
FRANKLIN PARISH	FRANKLIN PARISH
GRANT PARISH	GRANT PARISH
BALANCE OF IBERIA PARISH	IBERIA PARISH LESS NEW IBERIA CITY
IBERVILLE PARISH	IBERVILLE PARISH
JACKSON PARISH	JACKSON PARISH
JEFFERSON DAVIS PARISH	JEFFERSON DAVIS PARISH
LA SALLE PARISH	LA SALLE PARISH
LAKE CHARLES CITY	LAKE CHARLES CITY IN CALCASIEU PARISH
MADISON PARISH	MADISON PARISH
MONROE CITY	MONROE CITY IN OUACHITA PARISH
MOREHOUSE PARISH	MOREHOUSE PARISH
NEW IBERIA CITY	NEW IBERIA CITY IN IBERIA PARISH
POINTE COUPEE PARISH	POINTE COUPEE PARISH
RED RIVER PARISH	RED RIVER PARISH
RICHLAND PARISH	RICHLAND PARISH
SABINE PARISH	SABINE PARISH
ST. JAMES PARISH	ST. JAMES PARISH
ST. JOHN BAPTIST PARISH	ST. JOHN BAPTIST PARISH
ST. LANDRY PARISH	ST. LANDRY PARISH
ST. MARTIN PARISH	ST. MARTIN PARISH
ST. MARY PARISH	ST. MARY PARISH
TANGIPAHOA PARISH	TANGIPAHOA PARISH
TENSAS PARISH	TENSAS PARISH
VERMILION PARISH	VERMILION PARISH
VERNON PARISH	VERNON PARISH
WASHINGTON PARISH	WASHINGTON PARISH
WEBSTER PARISH	WEBSTER PARISH
WEST CARROLL PARISH	WEST CARROLL PARISH
WINN PARISH	WINN PARISH

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
MAINE	
AROOSTOOK COUNTY	AROOSTOOK COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
OXFORD COUNTY	OXFORD COUNTY
PISCATAQUIS COUNTY	PISCATAQUIS COUNTY
SOMERSET COUNTY	SOMERSET COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
MARYLAND	
ALLEGANY COUNTY	ALLEGANY COUNTY
BALTIMORE CITY	BALTIMORE CITY
DORCHESTER COUNTY	DORCHESTER COUNTY
GARRETT COUNTY	GARRETT COUNTY
SOMERSET COUNTY	SOMERSET COUNTY
WORCESTER COUNTY	WORCESTER COUNTY
MASSACHUSETTS	
FALL RIVER CITY	FALL RIVER CITY IN BRISTOL COUNTY
GAY HEAD TOWN	GAY HEAD TOWN IN DUKES COUNTY
HINSDALE TOWN	HINSDALE TOWN IN BERKSHIRE COUNTY
LAWRENCE CITY	LAWRENCE CITY IN ESSEX COUNTY
NEW BEDFORD CITY	NEW BEDFORD CITY IN BRISTOL COUNTY
PROVINCETOWN TOWN	PROVINCETOWN TOWN IN BARNSTABLE COUNTY
TRURO TOWN	TRURO TOWN IN BARNSTABLE COUNTY
WELLFLEET TOWN	WELLFLEET TOWN IN BARNSTABLE COUNTY
MICHIGAN	
ALCONA COUNTY	ALCONA COUNTY
ALGER COUNTY	ALGER COUNTY
ALPENA COUNTY	ALPENA COUNTY
ANTRIM COUNTY	ANTRIM COUNTY
ARENAC COUNTY	ARENAC COUNTY
BARAGA COUNTY	BARAGA COUNTY
BAY CITY	BAY CITY IN BAY COUNTY
BENZIE COUNTY	BENZIE COUNTY
BURTON CITY	BURTON CITY IN GENESEE COUNTY
CHEBOYGAN COUNTY	CHEBOYGAN COUNTY
CHIPPEWA COUNTY	CHIPPEWA COUNTY
CLARE COUNTY	CLARE COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
DELTA COUNTY	DELTA COUNTY
DETROIT CITY	DETROIT CITY IN WAYNE COUNTY
EMMET COUNTY	EMMET COUNTY
FLINT CITY	FLINT CITY IN GENESEE COUNTY
GLADWIN COUNTY	GLADWIN COUNTY
GOGEBIC COUNTY	GOGEBIC COUNTY
HIGHLAND PARK CITY	HIGHLAND PARK CITY IN WAYNE COUNTY
IOSCO COUNTY	IOSCO COUNTY
IRON COUNTY	IRON COUNTY
JACKSON CITY	JACKSON CITY IN JACKSON COUNTY
KALKASKA COUNTY	KALKASKA COUNTY
KEWEENAW COUNTY	KEWEENAW COUNTY
LAKE COUNTY	LAKE COUNTY
LUCE COUNTY	LUCE COUNTY
MACKINAC COUNTY	MACKINAC COUNTY
MANISTEE COUNTY	MANISTEE COUNTY
MASON COUNTY	MASON COUNTY
MENOMINEE COUNTY	MENOMINEE COUNTY
MISSAUKEE COUNTY	MISSAUKEE COUNTY
MONTCALM COUNTY	MONTCALM COUNTY
MONTMORENCY COUNTY	MONTMORENCY COUNTY
MOUNT MORRIS TOWNSHIP	MOUNT MORRIS TOWNSHIP IN GENESEE COUNTY
MUSKEGON CITY	MUSKEGON CITY IN MUSKEGON COUNTY
NEWAYGO COUNTY	NEWAYGO COUNTY
OCEANA COUNTY	OCEANA COUNTY
OGEMAW COUNTY	OGEMAW COUNTY
ONTONAGON COUNTY	ONTONAGON COUNTY
OSCEOLA COUNTY	OSCEOLA COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
OSCODA COUNTY	OSCODA COUNTY
PONTIAC CITY	PONTIAC CITY IN OAKLAND COUNTY
PORT HURON CITY	PORT HURON CITY IN ST. CLAIR COUNTY
PRESQUE ISLE COUNTY	PRESQUE ISLE COUNTY
ROSCOMMON COUNTY	ROSCOMMON COUNTY
SAGINAW CITY	SAGINAW CITY IN SAGINAW COUNTY
SCHOOLCRAFT COUNTY	SCHOOLCRAFT COUNTY
WEXFORD COUNTY	WEXFORD COUNTY
MINNESOTA	
AITKIN COUNTY	AITKIN COUNTY
CLEARWATER COUNTY	CLEARWATER COUNTY
ITASCA COUNTY	ITASCA COUNTY
KANABEC COUNTY	KANABEC COUNTY
KOOCHICHING COUNTY	KOOCHICHING COUNTY
MAHNOMEN COUNTY	MAHNOMEN COUNTY
MARSHALL COUNTY	MARSHALL COUNTY
MILLE LACS COUNTY	MILLE LACS COUNTY
PINE COUNTY	PINE COUNTY
RED LAKE COUNTY	RED LAKE COUNTY
MISSISSIPPI	
ADAMS COUNTY	ADAMS COUNTY
ALCORN COUNTY	ALCORN COUNTY
ATTALA COUNTY	ATTALA COUNTY
BENTON COUNTY	BENTON COUNTY
BOLIVAR COUNTY	BOLIVAR COUNTY
CHICKASAW COUNTY	CHICKASAW COUNTY
CHOCTAW COUNTY	CHOCTAW COUNTY
CLAIBORNE COUNTY	CLAIBORNE COUNTY
CLARKE COUNTY	CLARKE COUNTY
CLAY COUNTY	CLAY COUNTY
COAHOMA COUNTY	COAHOMA COUNTY
COLUMBUS CITY	COLUMBUS CITY IN LOWNDES COUNTY
COPIAH COUNTY	COPIAH COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
GEORGE COUNTY	GEORGE COUNTY
GREENE COUNTY	GREENE COUNTY
GREENVILLE CITY	GREENVILLE CITY IN WASHINGTON COUNTY
HOLMES COUNTY	HOLMES COUNTY
HUMPHREYS COUNTY	HUMPHREYS COUNTY
ISSAQUENA COUNTY	ISSAQUENA COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JEFFERSON DAVIS COUNTY	JEFFERSON DAVIS COUNTY
KEMPER COUNTY	KEMPER COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEFLORE COUNTY	LEFLORE COUNTY
MARION COUNTY	MARION COUNTY
MERIDIAN CITY	MERIDIAN CITY IN LAUDERDALE COUNTY
MONROE COUNTY	MONROE COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
NEWTON COUNTY	NEWTON COUNTY
NOXUBEE COUNTY	NOXUBEE COUNTY
PANOLA COUNTY	PANOLA COUNTY
PERRY COUNTY	PERRY COUNTY
PRENTISS COUNTY	PRENTISS COUNTY
QUITMAN COUNTY	QUITMAN COUNTY
SHARKEY COUNTY	SHARKEY COUNTY
SIMPSON COUNTY	SIMPSON COUNTY
SUNFLOWER COUNTY	SUNFLOWER COUNTY
TALLAHATCHIE COUNTY	TALLAHATCHIE COUNTY
TISHOMINGO COUNTY	TISHOMINGO COUNTY
TUNICA COUNTY	TUNICA COUNTY
BALANCE OF WASHINGTON COUNTY	WASHINGTON COUNTY LESS GREENVILLE CITY
WAYNE COUNTY	WAYNE COUNTY
WILKINSON COUNTY	WILKINSON COUNTY
WINSTON COUNTY	WINSTON COUNTY
YALOBUSHA COUNTY	YALOBUSHA COUNTY
YAZOO COUNTY	YAZOO COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
MISSOURI	
BENTON COUNTY	BENTON COUNTY
CALDWELL COUNTY	CALDWELL COUNTY
DENT COUNTY	DENT COUNTY
DOUGLAS COUNTY	DOUGLAS COUNTY
HICKORY COUNTY	HICKORY COUNTY
IRON COUNTY	IRON COUNTY
LINN COUNTY	LINN COUNTY
MADISON COUNTY	MADISON COUNTY
MISSISSIPPI COUNTY	MISSISSIPPI COUNTY
NEW MADRID COUNTY	NEW MADRID COUNTY
PEMISCOT COUNTY	PEMISCOT COUNTY
PULASKI COUNTY	PULASKI COUNTY
ST LOUIS CITY	ST LOUIS CITY
ST. FRANCOIS COUNTY	ST. FRANCOIS COUNTY
STODDARD COUNTY	STODDARD COUNTY
STONE COUNTY	STONE COUNTY
TANEY COUNTY	TANEY COUNTY
TEXAS COUNTY	TEXAS COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WAYNE COUNTY	WAYNE COUNTY
WRIGHT COUNTY	WRIGHT COUNTY
MONTANA	
ANACONDA-DEER LODGE COUNTY	ANACONDA-DEER LODGE COUNTY
BIG HORN COUNTY	BIG HORN COUNTY
BLAINE COUNTY	BLAINE COUNTY
FLATHEAD COUNTY	FLATHEAD COUNTY
GLACIER COUNTY	GLACIER COUNTY
GOLDEN VALLEY COUNTY	GOLDEN VALLEY COUNTY
GRANITE COUNTY	GRANITE COUNTY
LAKE COUNTY	LAKE COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
MINERAL COUNTY	MINERAL COUNTY
MUSSELSHELL COUNTY	MUSSELSHELL COUNTY
PHILLIPS COUNTY	PHILLIPS COUNTY
RAVALLI COUNTY	RAVALLI COUNTY
RICHLAND COUNTY	RICHLAND COUNTY
ROOSEVELT COUNTY	ROOSEVELT COUNTY
ROSEBUD COUNTY	ROSEBUD COUNTY
SANDERS COUNTY	SANDERS COUNTY
WHEATLAND COUNTY	WHEATLAND COUNTY
NEBRASKA	
THURSTON COUNTY	THURSTON COUNTY
NEVADA	
CHURCHILL COUNTY	CHURCHILL COUNTY
ESMERALDA COUNTY	ESMERALDA COUNTY
HUMBOLDT COUNTY	HUMBOLDT COUNTY
LANDER COUNTY	LANDER COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
LYON COUNTY	LYON COUNTY
MINERAL COUNTY	MINERAL COUNTY
NORTH LAS VEGAS CITY	NORTH LAS VEGAS CITY IN CLARK COUNTY
NEW JERSEY	
ATLANTIC CITY	ATLANTIC CITY IN ATLANTIC COUNTY
BALANCE OF ATLANTIC COUNTY	ATLANTIC COUNTY LESS ATLANTIC CITY, EGG HARBOR TOWNSHIP, GALLOWAY TOWNSHIP
CAMDEN CITY	CAMDEN CITY IN CAMDEN COUNTY
CAPE MAY COUNTY	CAPE MAY COUNTY
CITY OF ORANGE TOWNSHIP	CITY OF ORANGE TOWNSHIP IN ESSEX COUNTY
BALANCE OF CUMBERLAND COUNTY	CUMBERLAND COUNTY LESS MILLVILLE CITY, VINELAND CITY
EAST ORANGE CITY	EAST ORANGE CITY IN ESSEX COUNTY
EGG HARBOR TOWNSHIP	EGG HARBOR TOWNSHIP IN ATLANTIC COUNTY
ELIZABETH CITY	ELIZABETH CITY IN UNION COUNTY
IRVINGTON TOWNSHIP	IRVINGTON TOWNSHIP IN ESSEX COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
JERSEY CITY	JERSEY CITY IN HUDSON COUNTY
LONG BRANCH CITY	LONG BRANCH CITY IN MONMOUTH COUNTY
MILLVILLE CITY	MILLVILLE CITY IN CUMBERLAND COUNTY
NEW BRUNSWICK CITY	NEW BRUNSWICK CITY IN MIDDLESEX COUNTY
NEWARK CITY	NEWARK CITY IN ESSEX COUNTY
NORTH BERGEN TOWNSHIP	NORTH BERGEN TOWNSHIP IN HUDSON COUNTY
PASSAIC CITY	PASSAIC CITY IN PASSAIC COUNTY
PATERSON CITY	PATERSON CITY IN PASSAIC COUNTY
PERTH AMBOY CITY	PERTH AMBOY CITY IN MIDDLESEX COUNTY
PLAINFIELD CITY	PLAINFIELD CITY IN UNION COUNTY
TRENTON CITY	TRENTON CITY IN MERCER COUNTY
UNION CITY	UNION CITY IN HUDSON COUNTY
VINELAND CITY	VINELAND CITY IN CUMBERLAND COUNTY
WEST NEW YORK TOWN	WEST NEW YORK TOWN IN HUDSON COUNTY
NEW MEXICO	
CARLSBAD CITY	CARLSBAD CITY IN EDDY COUNTY
CATRON COUNTY	CATRON COUNTY
BALANCE OF CHAVES COUNTY	CHAVES COUNTY LESS ROSWELL CITY
CIBOLA COUNTY	CIBOLA COUNTY
COLFAX COUNTY	COLFAX COUNTY
BALANCE OF DONA ANA COUNTY	DONA ANA COUNTY LESS LAS CRUCES CITY
BALANCE OF EDDY COUNTY	EDDY COUNTY LESS CARLSBAD CITY
GRANT COUNTY	GRANT COUNTY
GUADALUPE COUNTY	GUADALUPE COUNTY
HIDALGO COUNTY	HIDALGO COUNTY
HOBBS CITY	HOBBS CITY IN LEA COUNTY
LAS CRUCES CITY	LAS CRUCES CITY IN DONA ANA COUNTY
BALANCE OF LEA COUNTY	LEA COUNTY LESS HOBBS CITY
LUNA COUNTY	LUNA COUNTY
MC KINLEY COUNTY	MC KINLEY COUNTY
MORA COUNTY	MORA COUNTY
BALANCE OF OTERO COUNTY	OTERO COUNTY LESS ALAMOGORDO CITY
RIO ARRIBA COUNTY	RIO ARRIBA COUNTY
ROSWELL CITY	ROSWELL CITY IN CHAVES COUNTY
BALANCE OF SAN JUAN COUNTY	SAN JUAN COUNTY LESS FARMINGTON CITY
SAN MIGUEL COUNTY	SAN MIGUEL COUNTY
BALANCE OF SANDOVAL COUNTY	SANDOVAL COUNTY LESS RIO RANCHO CITY
TAOS COUNTY	TAOS COUNTY
NEW YORK	
ALLEGANY COUNTY	ALLEGANY COUNTY
AUBURN CITY	AUBURN CITY IN CAYUGA COUNTY
BRONX COUNTY	BRONX COUNTY
BUFFALO CITY	BUFFALO CITY IN ERIE COUNTY
CATTARAUGUS COUNTY	CATTARAUGUS COUNTY
CLINTON COUNTY	CLINTON COUNTY
CORTLAND COUNTY	CORTLAND COUNTY
ELMIRA CITY	ELMIRA CITY IN CHEMUNG COUNTY
ESSEX COUNTY	ESSEX COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
FULTON COUNTY	FULTON COUNTY
HAMILTON COUNTY	HAMILTON COUNTY
BALANCE OF JEFFERSON COUNTY	JEFFERSON COUNTY LESS WATERTOWN CITY
KINGS COUNTY	KINGS COUNTY
LEWIS COUNTY	LEWIS COUNTY
LOCKPORT CITY	LOCKPORT CITY IN NIAGARA COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
NEW YORK COUNTY	NEW YORK COUNTY
NEWBURGH CITY	NEWBURGH CITY IN ORANGE COUNTY
NIAGARA FALLS CITY	NIAGARA FALLS CITY IN NIAGARA COUNTY
OSWEGO COUNTY	OSWEGO COUNTY
QUEENS COUNTY	QUEENS COUNTY
RICHMOND COUNTY	RICHMOND COUNTY
ROCHESTER CITY	ROCHESTER CITY IN MONROE COUNTY
ST. LAWRENCE COUNTY	ST. LAWRENCE COUNTY
SULLIVAN COUNTY	SULLIVAN COUNTY
BALANCE OF WARREN COUNTY	WARREN COUNTY LESS QUEENSBURY TOWN
WATERTOWN CITY	WATERTOWN CITY IN JEFFERSON COUNTY
WYOMING COUNTY	WYOMING COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
NORTH CAROLINA	
ANSON COUNTY	ANSON COUNTY
ASHE COUNTY	ASHE COUNTY
BEAUFORT COUNTY	BEAUFORT COUNTY
CHEROKEE COUNTY	CHEROKEE COUNTY
COLUMBUS COUNTY	COLUMBUS COUNTY
DUPLIN COUNTY	DUPLIN COUNTY
BALANCE OF EDGECOMBE COUNTY	EDGECOMBE COUNTY LESS ROCKY MOUNT CITY
GRAHAM COUNTY	GRAHAM COUNTY
HALIFAX COUNTY	HALIFAX COUNTY
HOKE COUNTY	HOKE COUNTY
HYDE COUNTY	HYDE COUNTY
KINSTON CITY	KINSTON CITY IN LENOIR COUNTY
MARTIN COUNTY	MARTIN COUNTY
MITCHELL COUNTY	MITCHELL COUNTY
NORTHAMPTON COUNTY	NORTHAMPTON COUNTY
RICHMOND COUNTY	RICHMOND COUNTY
ROBESON COUNTY	ROBESON COUNTY
ROCKY MOUNT CITY	ROCKY MOUNT CITY IN EDGECOMBE COUNTY NASH COUNTY
SCOTLAND COUNTY	SCOTLAND COUNTY
SWAIN COUNTY	SWAIN COUNTY
TYRRELL COUNTY	TYRRELL COUNTY
VANCE COUNTY	VANCE COUNTY
WARREN COUNTY	WARREN COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WILSON CITY	WILSON CITY IN WILSON COUNTY
NORTH DAKOTA	
BENSON COUNTY	BENSON COUNTY
MC LEAN COUNTY	MC LEAN COUNTY
MERCER COUNTY	MERCER COUNTY
MOUNTRAIL COUNTY	MOUNTRAIL COUNTY
PEMBINA COUNTY	PEMBINA COUNTY
ROLETTE COUNTY	ROLETTE COUNTY
SHERIDAN COUNTY	SHERIDAN COUNTY
SIOUX COUNTY	SIOUX COUNTY
OHIO	
ADAMS COUNTY	ADAMS COUNTY
ASHTABULA COUNTY	ASHTABULA COUNTY
CANTON CITY	CANTON CITY IN STARK COUNTY
CLEVELAND CITY	CLEVELAND CITY IN CUYAHOGA COUNTY
DAYTON CITY	DAYTON CITY IN MONTGOMERY COUNTY
EAST CLEVELAND CITY	EAST CLEVELAND CITY IN CUYAHOGA COUNTY
GALLIA COUNTY	GALLIA COUNTY
GUERNSEY COUNTY	GUERNSEY COUNTY
HARRISON COUNTY	HARRISON COUNTY
HOCKING COUNTY	HOCKING COUNTY
HURON COUNTY	HURON COUNTY
JACKSON COUNTY	JACKSON COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LIMA CITY	LIMA CITY IN ALLEN COUNTY
LORAIN CITY	LORAIN CITY IN LORAIN COUNTY
MANSFIELD CITY	MANSFIELD CITY IN RICHLAND COUNTY
MEIGS COUNTY	MEIGS COUNTY
MERCER COUNTY	MERCER COUNTY
MONROE COUNTY	MONROE COUNTY
MORGAN COUNTY	MORGAN COUNTY
NOBLE COUNTY	NOBLE COUNTY
OTTAWA COUNTY	OTTAWA COUNTY
PERRY COUNTY	PERRY COUNTY
PIKE COUNTY	PIKE COUNTY
SANDUSKY CITY	SANDUSKY CITY IN ERIE COUNTY
SCIOTO COUNTY	SCIOTO COUNTY
TOLEDO CITY	TOLEDO CITY IN LUCAS COUNTY
VINTON COUNTY	VINTON COUNTY
WARREN CITY	WARREN CITY IN TRUMBULL COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
YOUNGSTOWN CITY	YOUNGSTOWN CITY IN MAHONING COUNTY
ZANESVILLE CITY	ZANESVILLE CITY IN MUSKINGUM COUNTY
OKLAHOMA	
ADAIR COUNTY	ADAIR COUNTY
CHOCTAW COUNTY	CHOCTAW COUNTY
COAL COUNTY	COAL COUNTY
GARVIN COUNTY	GARVIN COUNTY
HASKELL COUNTY	HASKELL COUNTY
HUGHES COUNTY	HUGHES COUNTY
BALANCE OF KAY COUNTY	KAY COUNTY LESS PONCA CITY
LATIMER COUNTY	LATIMER COUNTY
LE FLORE COUNTY	LE FLORE COUNTY
MC CURTAIN COUNTY	MC CURTAIN COUNTY
MC INTOSH COUNTY	MC INTOSH COUNTY
MURRAY COUNTY	MURRAY COUNTY
BALANCE OF MUSKOGEE COUNTY	MUSKOGEE COUNTY LESS MUSKOGEE CITY
OKFUSKEE COUNTY	OKFUSKEE COUNTY
OKMULGEE COUNTY	OKMULGEE COUNTY
OTTAWA COUNTY	OTTAWA COUNTY
PITTSBURG COUNTY	PITTSBURG COUNTY
PONCA CITY	PONCA CITY IN KAY COUNTY
PUSHMATAHA COUNTY	PUSHMATAHA COUNTY
SEMINOLE COUNTY	SEMINOLE COUNTY
SEQUOYAH COUNTY	SEQUOYAH COUNTY
STEPHENS COUNTY	STEPHENS COUNTY
OREGON	
ALBANY CITY	ALBANY CITY IN LINN COUNTY
BAKER COUNTY	BAKER COUNTY
COLUMBIA COUNTY	COLUMBIA COUNTY
COOS COUNTY	COOS COUNTY
CROOK COUNTY	CROOK COUNTY
CURRY COUNTY	CURRY COUNTY
BALANCE OF DESCHUTES COUNTY	DESCHUTES COUNTY LESS BEND CITY
DOUGLAS COUNTY	DOUGLAS COUNTY
GRANT COUNTY	GRANT COUNTY
HARNEY COUNTY	HARNEY COUNTY
HOOD RIVER COUNTY	HOOD RIVER COUNTY
BALANCE OF JACKSON COUNTY	JACKSON COUNTY LESS MEDFORD CITY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOSEPHINE COUNTY	JOSEPHINE COUNTY
KLAMATH COUNTY	KLAMATH COUNTY
LAKE COUNTY	LAKE COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
BALANCE OF LINN COUNTY	LINN COUNTY LESS ALBANY CITY
MALHEUR COUNTY	MALHEUR COUNTY
MEDFORD CITY	MEDFORD CITY IN JACKSON COUNTY
MORROW COUNTY	MORROW COUNTY
SALEM CITY	SALEM CITY IN MARION COUNTY, POLK COUNTY
SPRINGFIELD CITY	SPRINGFIELD CITY IN LANE COUNTY
UMATILLA COUNTY	UMATILLA COUNTY
UNION COUNTY	UNION COUNTY
WALLOWA COUNTY	WALLOWA COUNTY
WASCO COUNTY	WASCO COUNTY
WHEELER COUNTY	WHEELER COUNTY
PENNSYLVANIA	
ARMSTRONG COUNTY	ARMSTRONG COUNTY
BEDFORD COUNTY	BEDFORD COUNTY
BALANCE OF CAMBRIA COUNTY	CAMBRIA COUNTY LESS JOHNSTOWN CITY
CAMERON COUNTY	CAMERON COUNTY
CARBON COUNTY	CARBON COUNTY
CHESTER CITY	CHESTER CITY IN DELAWARE COUNTY
CLEARFIELD COUNTY	CLEARFIELD COUNTY
CLINTON COUNTY	CLINTON COUNTY
ELK COUNTY	ELK COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
FOREST COUNTY	FOREST COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
GREENE COUNTY	GREENE COUNTY
HAZLETON CITY	HAZLETON CITY IN LUZERNE COUNTY
HUNTINGDON COUNTY	HUNTINGDON COUNTY
INDIANA COUNTY	INDIANA COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOHNSTOWN CITY	JOHNSTOWN CITY IN CAMBRIA COUNTY
JUNIATA COUNTY	JUNIATA COUNTY
BALANCE OF LUZERNE COUNTY	LUZERNE COUNTY LESS HAZLETON CITY, WILKES-BARRE CITY
MCKEESPORT CITY	MCKEESPORT CITY IN ALLEGHENY COUNTY
MIFFLIN COUNTY	MIFFLIN COUNTY
MONROE COUNTY	MONROE COUNTY
NEW CASTLE CITY	NEW CASTLE CITY IN LAWRENCE COUNTY
PHILADELPHIA CITY	PHILADELPHIA CITY IN PHILADELPHIA COUNTY
POTTER COUNTY	POTTER COUNTY
SCHUYLKILL COUNTY	SCHUYLKILL COUNTY
SOMERSET COUNTY	SOMERSET COUNTY
SULLIVAN COUNTY	SULLIVAN COUNTY
WAYNE COUNTY	WAYNE COUNTY
WILKES-BARRE CITY	WILKES-BARRE CITY IN LUZERNE COUNTY
WILLIAMSPORT CITY	WILLIAMSPORT CITY IN LYCOMING COUNTY
WYOMING COUNTY	WYOMING COUNTY
PUERTO RICO	
ADJUNTAS MUNICIPIO	ADJUNTAS MUNICIPIO
AGUADA MUNICIPIO	AGUADA MUNICIPIO
AGUADILLA MUNICIPIO	AGUADILLA MUNICIPIO
AGUAS BUENAS MUNICIPIO	AGUAS BUENAS MUNICIPIO
AIBONITO MUNICIPIO	AIBONITO MUNICIPIO
ANASCO MUNICIPIO	ANASCO MUNICIPIO
ARECIBO MUNICIPIO	ARECIBO MUNICIPIO
ARROYO MUNICIPIO	ARROYO MUNICIPIO
BARCELONETA MUNICIPIO	BARCELONETA MUNICIPIO
BARRANQUITAS MUNICIPIO	BARRANQUITAS MUNICIPIO
BAYAMON MUNICIPIO	BAYAMON MUNICIPIO
CABO ROJO MUNICIPIO	CABO ROJO MUNICIPIO
CAGUAS MUNICIPIO	CAGUAS MUNICIPIO
CAMUY MUNICIPIO	CAMUY MUNICIPIO
CANOVANAS MUNICIPIO	CANOVANAS MUNICIPIO
CAROLINA MUNICIPIO	CAROLINA MUNICIPIO
CATANO MUNICIPIO	CATANO MUNICIPIO
CAYEY MUNICIPIO	CAYEY MUNICIPIO
CEIBA MUNICIPIO	CEIBA MUNICIPIO
CIALES MUNICIPIO	CIALES MUNICIPIO
CIDRA MUNICIPIO	CIDRA MUNICIPIO
COAMO MUNICIPIO	COAMO MUNICIPIO
COMERIO MUNICIPIO	COMERIO MUNICIPIO
COROZAL MUNICIPIO	COROZAL MUNICIPIO
DORADO MUNICIPIO	DORADO MUNICIPIO
FAJARDO MUNICIPIO	FAJARDO MUNICIPIO
FLORIDA MUNICIPIO	FLORIDA MUNICIPIO
GUANICA MUNICIPIO	GUANICA MUNICIPIO
GUAYAMA MUNICIPIO	GUAYAMA MUNICIPIO
GUAYANILLA MUNICIPIO	GUAYANILLA MUNICIPIO
GURABO MUNICIPIO	GURABO MUNICIPIO
HATILLO MUNICIPIO	HATILLO MUNICIPIO
HORMIGUEROS MUNICIPIO	HORMIGUEROS MUNICIPIO
HUMACAO MUNICIPIO	HUMACAO MUNICIPIO
ISABELA MUNICIPIO	ISABELA MUNICIPIO
JAYUYA MUNICIPIO	JAYUYA MUNICIPIO
JUANA DIAZ MUNICIPIO	JUANA DIAZ MUNICIPIO
JUNCOS MUNICIPIO	JUNCOS MUNICIPIO
LAJAS MUNICIPIO	LAJAS MUNICIPIO
LARES MUNICIPIO	LARES MUNICIPIO
LAS MARIAS MUNICIPIO	LAS MARIAS MUNICIPIO
LAS PIEDRAS MUNICIPIO	LAS PIEDRAS MUNICIPIO
LOIZA MUNICIPIO	LOIZA MUNICIPIO
LUQUILLO MUNICIPIO	LUQUILLO MUNICIPIO
MANATI MUNICIPIO	MANATI MUNICIPIO
MARICAO MUNICIPIO	MARICAO MUNICIPIO
MAUNABO MUNICIPIO	MAUNABO MUNICIPIO
MAYAGUEZ MUNICIPIO	MAYAGUEZ MUNICIPIO

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
MOCA MUNICIPIO	MOCA MUNICIPIO
MOROVIS MUNICIPIO	MOROVIS MUNICIPIO
NAGUABO MUNICIPIO	NAGUABO MUNICIPIO
NARANJITO MUNICIPIO	NARANJITO MUNICIPIO
OROCOVIS MUNICIPIO	OROCOVIS MUNICIPIO
PATILLAS MUNICIPIO	PATILLAS MUNICIPIO
PENUELAS MUNICIPIO	PENUELAS MUNICIPIO
PONCE MUNICIPIO	PONCE MUNICIPIO
QUEBRADILLAS MUNICIPIO	QUEBRADILLAS MUNICIPIO
RINCON MUNICIPIO	RINCON MUNICIPIO
RIO GRANDE MUNICIPIO	RIO GRANDE MUNICIPIO
SABANA GRANDE MUNICIPIO	SABANA GRANDE MUNICIPIO
SALINAS MUNICIPIO	SALINAS MUNICIPIO
SAN GERMAN MUNICIPIO	DAN GERMAN MUNICIPIO
SAN JUAN MUNICIPIO	SAN JUAN MUNICIPIO
SAN LORENZO MUNICIPIO	SAN LORENZO MUNICIPIO
SAN SEBASTIAN MUNICIPIO	SAN SEBASTIAN MUNICIPIO
SANTA ISABEL MUNICIPIO	SANTA ISABEL MUNICIPIO
TOA ALTA MUNICIPIO	TOA ALTA MUNICIPIO
TOA BAJA MUNICIPIO	TOA BAJA MUNICIPIO
TRUJILLO ALTO MUNICIPIO	TRUJILLO ALTO MUNICIPIO
UTUADO MUNICIPIO	UTUADO MUNICIPIO
VEGA ALTA MUNICIPIO	VEGA ALTA MUNICIPIO
VEGA BAJA MUNICIPIO	VEGA BAJA MUNICIPIO
VIEQUES MUNICIPIO	VIEQUES MUNICIPIO
VILLALBA MUNICIPIO	VILLALBA MUNICIPIO
YABUCOA MUNICIPIO	YABUCOA MUNICIPIO
YAUCO MUNICIPIO	YAUCO MUNICIPIO
RHODE ISLAND	
CENTRAL FALLS CITY	CENTRAL FALLS CITY
NEW SHOREHAM TOWN	NEW SHOREHAM TOWN
SOUTH CAROLINA	
ALLENDALE COUNTY	ALLENDALE COUNTY
BAMBERG COUNTY	BAMBERG COUNTY
BARNWELL COUNTY	BARNWELL COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CHESTER COUNTY	CHESTER COUNTY
CHESTERFIELD COUNTY	CHESTERFIELD COUNTY
CLARENDON COUNTY	CLARENDON COUNTY
DARLINGTON COUNTY	DARLINGTON COUNTY
DILLON COUNTY	DILLON COUNTY
FAIRFIELD COUNTY	FAIRFIELD COUNTY
GEORGETOWN COUNTY	GEORGETOWN COUNTY
GREENWOOD COUNTY	GREENWOOD COUNTY
LEE COUNTY	LEE COUNTY
MARION COUNTY	MARION COUNTY
MARLBORO COUNTY	MARLBORO COUNTY
MC CORMICK COUNTY	MC CORMICK COUNTY
ORANGEBURG COUNTY	ORANGEBURG COUNTY
UNION COUNTY	UNION COUNTY
WILLIAMSBURG COUNTY	WILLIAMSBURG COUNTY
SOUTH DAKOTA	
BUFFALO COUNTY	BUFFALO COUNTY
CORSON COUNTY	CORSON COUNTY
DAY COUNTY	DAY COUNTY
DEWEY COUNTY	DEWEY COUNTY
MELLETTE COUNTY	MELLETTE COUNTY
SHANNON COUNTY	SHANNON COUNTY
TODD COUNTY	TODD COUNTY
ZIEBACH COUNTY	ZIEBACH COUNTY
TENNESSEE	
BENTON COUNTY	BENTON COUNTY
CAMPBELL COUNTY	CAMPBELL COUNTY
CARROLL COUNTY	CARROLL COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
CLAY COUNTY	CLAY COUNTY
COCKE COUNTY	COCKE COUNTY
DE KALB COUNTY	DE KALB COUNTY
DECATUR COUNTY	DECATUR COUNTY
FENTRESS COUNTY	FENTRESS COUNTY
GIBSON COUNTY	GIBSON COUNTY
GREENE COUNTY	GREENE COUNTY
GRUNDY COUNTY	GRUNDY COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
HARDEMAN COUNTY	HARDEMAN COUNTY
HARDIN COUNTY	HARDIN COUNTY
HAYWOOD COUNTY	HAYWOOD COUNTY
HENDERSON COUNTY	HENDERSON COUNTY
HENRY COUNTY	HENRY COUNTY
HICKMAN COUNTY	HICKMAN COUNTY
HOUSTON COUNTY	HOUSTON COUNTY
HUMPHREYS COUNTY	HUMPHREYS COUNTY
JACKSON COUNTY	JACKSON COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
LAKE COUNTY	LAKE COUNTY
LAUDERDALE COUNTY	LAUDERDALE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEWIS COUNTY	LEWIS COUNTY
MC MINN COUNTY	MC MINN COUNTY
MEIGS COUNTY	MEIGS COUNTY
MORGAN COUNTY	MORGAN COUNTY
OVERTON COUNTY	OVERTON COUNTY
PERRY COUNTY	PERRY COUNTY
PICKETT COUNTY	PICKETT COUNTY
RHEA COUNTY	RHEA COUNTY
SCOTT COUNTY	SCOTT COUNTY
SEVIER COUNTY	SEVIER COUNTY
STEWART COUNTY	STEWART COUNTY
TROUSDALE COUNTY	TROUSDALE COUNTY
VAN BUREN COUNTY	VAN BUREN COUNTY
WAYNE COUNTY	WAYNE COUNTY
TEXAS	
ANDREWS COUNTY	ANDREWS COUNTY
BALANCE OF ANGELINA COUNTY	ANGELINA COUNTY LESS LUFKIN CITY
BEAUMONT CITY	BEAUMONT CITY IN JEFFERSON COUNTY
BALANCE OF BOWIE COUNTY	BOWIE COUNTY LESS TEXARKANA CITY TEX
BALANCE OF BRAZORIA COUNTY	BRAZORIA COUNTY LESS LAKE JACKSON CITY, PEARLAND CITY
BROOKS COUNTY	BROOKS COUNTY
BROWNSVILLE CITY	BROWNSVILLE CITY IN CAMERON COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
BALANCE OF CAMERON COUNTY	CAMERON COUNTY LESS BROWNSVILLE CITY, HARLINGEN CITY
CAMP COUNTY	CAMP COUNTY
CASS COUNTY	CASS COUNTY
COLEMAN COUNTY	COLEMAN COUNTY
CORPUS CHRISTI CITY	CORPUS CHRISTI CITY IN, NUECES COUNTY
CRANE COUNTY	CRANE COUNTY
CROCKETT COUNTY	CROCKETT COUNTY
CROSBY COUNTY	CROSBY COUNTY
CULBERSON COUNTY	CULBERSON COUNTY
DAWSON COUNTY	DAWSON COUNTY
DEAF SMITH COUNTY	DEAF SMITH COUNTY
DEL RIO CITY	DEL RIO CITY IN VAL VERDE COUNTY
DIMMIT COUNTY	DIMMIT COUNTY
DUVAL COUNTY	DUVAL COUNTY
EAGLE PASS CITY	EAGLE PASS CITY IN MAVERICK COUNTY
BALANCE OF ECTOR COUNTY	ECTOR COUNTY LESS ODESSA CITY
EDINBURG CITY	EDINBURG CITY IN HIDALGO COUNTY
EDWARDS COUNTY	EDWARDS COUNTY
EL PASO CITY	EL PASO CITY IN EL PASO COUNTY CITY, SOCORRO CITY
BALANCE OF EL PASO COUNTY	EL PASO COUNTY LESS EL PASO CITY
FLOYD COUNTY	FLOYD COUNTY
FRIO COUNTY	FRIO COUNTY
GALVESTON CITY	GALVESTON CITY IN GALVESTON COUNTY
BALANCE OF GALVESTON COUNTY	GALVESTON COUNTY LESS, FRIENDSWOOD CITY, GALVESTON CITY, LEAGUE CITY, TEXAS CITY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
GARZA COUNTY	GARZA COUNTY
BALANCE OF GREGG COUNTY	GREGG COUNTY LESS LONGVIEW CITY
GRIMES COUNTY	GRIMES COUNTY
HALL COUNTY	HALL COUNTY
HARDIN COUNTY	HARDIN COUNTY
HARLINGEN CITY	HARLINGEN CITY IN CAMERON COUNTY
BALANCE OF HARRISON COUNTY	HARRISON COUNTY LESS LONGVIEW CITY
BALANCE OF HIDALGO COUNTY	HIDALGO COUNTY LESS EDINBURG CITY, MC ALLEN CITY, MISSION CITY, PHARR CITY, WESLACO CITY
HOCKLEY COUNTY	HOCKLEY COUNTY
HUTCHINSON COUNTY	HUTCHINSON COUNTY
JASPER COUNTY	JASPER COUNTY
JIM HOGG COUNTY	JIM HOGG COUNTY
JIM WELLS COUNTY	JIM WELLS COUNTY
KILLEEN CITY	KILLEEN CITY IN BELL COUNTY
KINGSVILLE CITY	KINGSVILLE CITY IN KLEBERG COUNTY
KINNEY COUNTY	KINNEY COUNTY
BALANCE OF KLEBERG COUNTY	KLEBERG COUNTY LESS KINGSVILLE CITY
LA SALLE COUNTY	LA SALLE COUNTY
LAMB COUNTY	LAMB COUNTY
LAREDO CITY	LAREDO CITY IN WEBB COUNTY
LEON COUNTY	LEON COUNTY
LIBERTY COUNTY	LIBERTY COUNTY
LONGVIEW CITY	LONGVIEW CITY IN GREGG COUNTY, HARRISON COUNTY
LOVING COUNTY	LOVING COUNTY
MARION COUNTY	MARION COUNTY
MATAGORDA COUNTY	MATAGORDA COUNTY
BALANCE OF MAVERICK COUNTY	MAVERICK COUNTY LESS EAGLE PASS CITY
MC ALLEN CITY	MC ALLEN CITY IN HIDALGO COUNTY
MISSION CITY	MISSION CITY IN HIDALGO COUNTY
MITCHELL COUNTY	MITCHELL COUNTY
MORRIS COUNTY	MORRIS COUNTY
NEWTON COUNTY	NEWTON COUNTY
NOLAN COUNTY	NOLAN COUNTY
BALANCE OF NUECES COUNTY	NUECES COUNTY LESS CORPUS CHRISTI CITY
ODESSA CITY	ODESSA CITY IN ECTOR COUNTY
ORANGE COUNTY	ORANGE COUNTY
PANOLA COUNTY	PANOLA COUNTY
PARIS CITY	PARIS CITY IN LAMAR COUNTY
PECOS COUNTY	PECOS COUNTY
PHARR CITY	PHARR CITY IN HIDALGO COUNTY
PORT ARTHUR CITY	PORT ARTHUR CITY IN JEFFERSON COUNTY
PRESIDIO COUNTY	PRESIDIO COUNTY
REAGAN COUNTY	REAGAN COUNTY
REEVES COUNTY	REEVES COUNTY
SABINE COUNTY	SABINE COUNTY
SAN AUGUSTINE COUNTY	SAN AUGUSTINE COUNTY
SAN PATRICIO COUNTY	SAN PATRICIO COUNTY
SCURRY COUNTY	SCURRY COUNTY
SHELBY COUNTY	SHELBY COUNTY
SOCORRO CITY	SOCORRO CITY IN EL PASO COUNTY
SOMERVELL COUNTY	SOMERVELL COUNTY
STARR COUNTY	STARR COUNTY
TERRY COUNTY	TERRY COUNTY
TEXARKANA CITY TEX	TEXARKANA CITY TEX IN BOWIE COUNTY
TEXAS CITY	TEXAS CITY IN GALVESTON COUNTY
TITUS COUNTY	TITUS COUNTY
TYLER COUNTY	TYLER COUNTY
UPSHUR COUNTY	UPSHUR COUNTY
UPTON COUNTY	UPTON COUNTY
UVALDE COUNTY	UVALDE COUNTY
BALANCE OF VAL VERDE COUNTY	VAL VERDE COUNTY LESS DEL RIO CITY
WARD COUNTY	WARD COUNTY
BALANCE OF WEBB COUNTY	WEBB COUNTY LESS LAREDO CITY
WESLACO CITY	WESLACO CITY IN HIDALGO COUNTY
WILLACY COUNTY	WILLACY COUNTY
WINKLER COUNTY	WINKLER COUNTY
YOAKUM COUNTY	YOAKUM COUNTY
ZAPATA COUNTY	ZAPATA COUNTY
ZAVALA COUNTY	ZAVALA COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
UTAH	
CARBON COUNTY	CARBON COUNTY
DUCHESNE COUNTY	DUCHESNE COUNTY
EMERY COUNTY	EMERY COUNTY
GARFIELD COUNTY	GARFIELD COUNTY
GRAND COUNTY	GRAND COUNTY
OGDEN CITY	OGDEN CITY IN WEBER COUNTY
SAN JUAN COUNTY	SAN JUAN COUNTY
UINTAH COUNTY	UINTAH COUNTY
WAYNE COUNTY	WAYNE COUNTY
VERMONT	
ESSEX COUNTY	ESSEX COUNTY
ORLEANS COUNTY	ORLEANS COUNTY
VIRGINIA	
ACCOMACK COUNTY	ACCOMACK COUNTY
BUCHANAN COUNTY	BUCHANAN COUNTY
CARROLL COUNTY	CARROLL COUNTY
COVINGTON CITY	COVINGTON CITY
DANVILLE CITY	DANVILLE CITY
DICKENSON COUNTY	DICKENSON COUNTY
GILES COUNTY	GILES COUNTY
HALIFAX COUNTY	HALIFAX COUNTY
LANCASTER COUNTY	LANCASTER COUNTY
LEE COUNTY	LEE COUNTY
MARTINSVILLE CITY	MARTINSVILLE CITY
NORTHUMBERLAND COUNTY	NORTHUMBERLAND COUNTY
NORTON CITY	NORTON CITY
RUSSELL COUNTY	RUSSELL COUNTY
SCOTT COUNTY	SCOTT COUNTY
SURRY COUNTY	SURRY COUNTY
TAZEWELL COUNTY	TAZEWELL COUNTY
WISE COUNTY	WISE COUNTY
WASHINGTON	
ADAMS COUNTY	ADAMS COUNTY
BALANCE OF BENTON COUNTY	BENTON COUNTY LESS KENNEWICK CITY RICHLAND CITY
BREMERTON CITY	BREMERTON CITY IN KITSAP COUNTY
CHELAN COUNTY	CHELAN COUNTY
CLALLAM COUNTY	CLALLAM COUNTY
COLUMBIA COUNTY	COLUMBIA COUNTY
BALANCE OF COWLITZ COUNTY	COWLITZ COUNTY LESS LONGVIEW CITY
DOUGLAS COUNTY	DOUGLAS COUNTY
FERRY COUNTY	FERRY COUNTY
GRANT COUNTY	GRANT COUNTY
GRAYS HARBOR COUNTY	GRAYS HARBOR COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
KENNEWICK CITY	KENNEWICK CITY IN BENTON COUNTY
KLICKITAT COUNTY	KLICKITAT COUNTY
LAKEWOOD CITY	LAKEWOOD CITY IN PIERCE COUNTY
LEWIS COUNTY	LEWIS COUNTY
LONGVIEW CITY	LONGVIEW CITY IN COWLITZ COUNTY
MASON COUNTY	MASON COUNTY
OKANOGAN COUNTY	OKANOGAN COUNTY
PACIFIC COUNTY	PACIFIC COUNTY
PASCO CITY	PASCO CITY IN FRANKLIN COUNTY
PEND OREILLE COUNTY	PEND OREILLE COUNTY
SKAGIT COUNTY	SKAGIT COUNTY
SKAMANIA COUNTY	SKAMANIA COUNTY
STEVENS COUNTY	STEVENS COUNTY
WAHKIAKUM COUNTY	WAHKIAKUM COUNTY
WALLA WALLA CITY	WALLA WALLA CITY IN WALLA WALLA COUNTY
YAKIMA CITY	YAKIMA CITY IN YAKIMA COUNTY
BALANCE OF YAKIMA COUNTY	YAKIMA COUNTY LESS YAKIMA CITY
WEST VIRGINIA	
BARBOUR COUNTY	BARBOUR COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
BOONE COUNTY	BOONE COUNTY
BRAXTON COUNTY	BRAXTON COUNTY
BROOKE COUNTY	BROOKE COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CLAY COUNTY	CLAY COUNTY
DODDRIDGE COUNTY	DODDRIDGE COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
GILMER COUNTY	GILMER COUNTY
GRANT COUNTY	GRANT COUNTY
GREENBRIER COUNTY	GREENBRIER COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
HARRISON COUNTY	HARRISON COUNTY
HUNTINGTON CITY	HUNTINGTON CITY IN CABELL COUNTY, WAYNE COUNTY
JACKSON COUNTY	JACKSON COUNTY
LEWIS COUNTY	LEWIS COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
LOGAN COUNTY	LOGAN COUNTY
MARION COUNTY	MARION COUNTY
BALANCE OF MARSHALL COUNTY	MARSHALL COUNTY LESS WHEELING CITY
MASON COUNTY	MASON COUNTY
MC DOWELL COUNTY	MC DOWELL COUNTY
MINERAL COUNTY	MINERAL COUNTY
MINGO COUNTY	MINGO COUNTY
NICHOLAS COUNTY	NICHOLAS COUNTY
PARKERSBURG CITY	PARKERSBURG CITY IN WOOD COUNTY
PLEASANTS COUNTY	PLEASANTS COUNTY
POCAHONTAS COUNTY	POCAHONTAS COUNTY
PRESTON COUNTY	PRESTON COUNTY
RALEIGH COUNTY	RALEIGH COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
RITCHIE COUNTY	RITCHIE COUNTY
ROANE COUNTY	ROANE COUNTY
SUMMERS COUNTY	SUMMERS COUNTY
TAYLOR COUNTY	TAYLOR COUNTY
TUCKER COUNTY	TUCKER COUNTY
TYLER COUNTY	TYLER COUNTY
UPSHUR COUNTY	UPSHUR COUNTY
BALANCE OF WAYNE COUNTY	WAYNE COUNTY LESS HUNTINGTON CITY
WEBSTER COUNTY	WEBSTER COUNTY
WETZEL COUNTY	WETZEL COUNTY
WIRT COUNTY	WIRT COUNTY
WYOMING COUNTY	WYOMING COUNTY
WISCONSIN	
ASHLAND COUNTY	ASHLAND COUNTY
BAYFIELD COUNTY	BAYFIELD COUNTY
FLORENCE COUNTY	FLORENCE COUNTY
FOREST COUNTY	FOREST COUNTY
IRON COUNTY	IRON COUNTY
JUNEAU COUNTY	JUNEAU COUNTY
MENOMINEE COUNTY	MENOMINEE COUNTY
PRICE COUNTY	PRICE COUNTY
RACINE CITY	RACINE CITY IN RACINE COUNTY
WYOMING	
BIG HORN COUNTY	BIG HORN COUNTY
FREMONT COUNTY	FREMONT COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
BALANCE OF NATRONA COUNTY	NATRONA COUNTY LESS CASPER CITY
UINTA COUNTY	UINTA COUNTY
WASHAKIE COUNTY	WASHAKIE COUNTY

[FR Doc. 00–28838 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–30–P

Federal Register

Wednesday,
November 15, 2000

Part VI

Environmental Protection Agency

40 CFR Part 763
Asbestos Worker Protection; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPPTS–62125B; FRL–6751–3]

RIN 2070–AC66

Asbestos Worker Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this Final Rule, EPA is amending both the Asbestos Worker Protection Rule (WPR) and the Asbestos-in-Schools Rule. The WPR amendment protects State and local government employees from the health risks of exposure to asbestos to the same extent as private sector workers by adopting for these employees the Asbestos Standards of the Occupational Safety and Health Administration (OSHA). The WPR's coverage is extended to State and local government employees who are performing construction work, custodial work, and automotive brake and clutch repair work. This final rule cross-references the OSHA Asbestos Standards for Construction and for General Industry, so that future amendments to these OSHA standards are directly and equally effective for employees covered by the WPR. EPA also amends the Asbestos-in-Schools Rule to provide coverage under the WPR for employees of public local education agencies who perform operations, maintenance, and repair activities. EPA is issuing this final rule under section 6 of the Toxic Substances Control Act (TSCA).

DATES: This final rule is effective December 15, 2000.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Cindy Fraleigh, Attorney-Advisor, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1537; fax number: (202) 260–1724; e-mail address: fraleigh.cindy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a State or local government entity whose employees work with or near asbestos-containing material. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Educational services	61	Public educational institutions, including school districts, not subject to an OSHA-approved State asbestos plan or a State asbestos worker protection plan that EPA has determined is exempt from the requirements of the WPR.
Public administration	92	State or local government employers not subject to an OSHA-approved State asbestos plan or a State asbestos worker protection plan that EPA has determined is exempt from the requirements of the WPR.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR 763.121. If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about asbestos, go directly to the Asbestos Home Page for the Office of Pollution Prevention and Toxics at http://www.epa.gov/asbestos/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–62125B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The record also contains any experience, as reflected in this preamble and the preamble to the proposed rule, that the Agency has gained over the years in implementing the WPR and the Asbestos-in-Schools Rule. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Background

A. What is the Agency's Authority for Taking this Action?

Under TSCA section 6(a), if EPA finds that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture, or any combination of these activities, presents, or will present, an unreasonable risk of injury to health or the environment, EPA shall by rule apply requirements to the substance or

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mixture to the extent necessary to protect adequately against the risk. Asbestos is a chemical substance or mixture that falls within the scope of this authority. In deciding whether to promulgate this rule under TSCA section 6(a), EPA considered the health effects of asbestos; the magnitude of human exposure to asbestos; the environmental effects of asbestos and the magnitude of the exposure of the environment to asbestos; the benefits of asbestos for various uses and the availability of substitutes for those uses; the reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health; and the social impacts of the rule. See 15 U.S.C. 2601(c) and 2605(c)(1). EPA did not change its consideration of any of these factors based upon comments received on the proposed rule. The following is a summary of EPA's evaluation, and the Economic Analysis contains additional information on many of these factors (Ref. 5).

1. *Health effects of asbestos*. The primary route of human exposure is through the respiratory system, where asbestos fibers may cause carcinoma of the lung, malignant mesothelioma of the pleura and peritoneum, asbestosis, and other illnesses.

2. *Human exposure to asbestos*. Asbestos is found in building products such as insulation, ceiling and floor tiles, spackling tape for drywall, and roofing products. In general, asbestos-containing materials in good condition do not pose a risk of exposure, but, if the matrix of asbestos fibers is disturbed or deteriorates, fibers may be released into the air. Workers may be exposed to asbestos during new construction, asbestos abatement, renovation, building maintenance, custodial activities, and brake and clutch repair work. Building occupants, including school children, may be exposed to asbestos fibers as a result of activity taking place in their building. As a result of this regulation, EPA estimates that worker exposures during these activities will decrease by at least one order of magnitude, while building occupant exposures will decrease by 50%.

3. *Environmental effects of asbestos*. This rule is directed at risks posed by asbestos in the workplace, not in the ambient environment. EPA therefore did not consider the environmental effects of asbestos.

4. *The benefits of asbestos for various uses and the availability of substitutes for those uses*. This rule does not require asbestos-containing building material to be removed and replaced with non-asbestos substitutes. Since this rule only applies once a decision has been made to disturb asbestos-containing material, EPA did not consider the benefits of asbestos for various uses and the availability of substitutes for those uses.

5. *Economic consequences of this rule*. The Economic Analysis for this final rule provides a detailed analysis of the economic benefits of the reduced incidence of cancer and other diseases among workers and building occupants attributable to this rule. EPA estimates that sixty-five years of exposure reduction under this rule will reduce the number of lung cancer and mesothelioma cases among exposed workers and building occupants by 71.58 cases. According to EPA's analysis, this rule will also result in approximately 65.65 avoided cases of cancer among individuals exposed as school children. EPA also found that this rule is likely to result in other benefits, such as asbestosis cases avoided among workers, avoided medical costs associated with non-fatal diseases, and reduced exposures to worker families from asbestos fibers brought home on clothing, but EPA was unable to reliably quantify these benefits.

The Economic Analysis also evaluates the incremental costs to State and local governments of complying with this rule. EPA estimates that this rule will impose first-year compliance costs of $63.34 million. Over the 65-year time frame of exposure reduction, the present value of compliance costs is estimated to be $1.12 billion.

6. *Other effects*. TSCA section 6(c)(1)(D) also requires EPA, when considering the economic consequences of the rule, to take other factors into account, including the effects on the national economy, small business, technological innovation, the environment, and public health. EPA has already summarized its evaluation of the effects on public health and the environment above. EPA's consideration of the effects on the national economy, small government entities, and technological innovation are discussed in Unit IV.

7. *Social and other qualitative effects*. TSCA section 2 requires EPA, when taking any action under TSCA, to consider the social as well as environmental and economic impacts of the action. One important social consequence of this rule is the elimination of inequitable legal protection for classes of persons based solely upon the identity and location of their employers. This rule, by ensuring that all public and private sector workers are entitled to the same level of protection from asbestos exposures, serves important equity and environmental justice concerns. In addition, having a uniform set of standards for construction and brake and clutch repair employees will also ease implementation burdens, by allowing employers to use the excellent guidance materials developed by OSHA and reducing confusion and mistakes caused by two different standards.

Having considered these factors, EPA finds under TSCA section 6 that the current exposure to asbestos among unprotected State and local government employees during use or disposal in construction work, custodial work, and brake and clutch repair work presents an unreasonable risk of injury to human health, and that this rule is necessary to provide adequate protection against that risk.

B. What Action is the Agency Taking?

In 1985, EPA first determined that exposure to asbestos poses an unreasonable risk of harm to unprotected State and local government employees who conduct asbestos abatement projects. EPA's 1987 Asbestos Worker Protection Rule (WPR) requires certain work practices, personal protective equipment, and training for State and local government employees who perform asbestos abatement projects and who are not covered by a State Plan approved by the Occupational Safety and Health Administration (OSHA) (40 CFR part 763, subpart G). There are 27 States that do not have approved OSHA State Plans. On April 27, 2000, EPA published a proposal to amend the WPR to provide the same level of protection to State and local government employees not covered by an OSHA-approved State plan as non-government employees and State and local government employees covered by an OSHA-approved State plan. EPA proposed to provide this protection by incorporating OSHA's Asbestos Standards for Construction and for General Industry set out at 29 CFR 1926.1101 and 29 CFR 1910.1001 respectively in the WPR (Ref. 1, p. 24806).

By actually cross-referencing the OSHA Asbestos Standards in the WPR, future amendments to the OSHA General Industry or Construction Standard would also effect a change in the requirements under the WPR (Ref. 1, pp. 24808, 24822). EPA also proposed to expand the scope of the WPR from asbestos abatement projects to all construction, custodial, and automotive brake and clutch repair work. Finally, EPA proposed to amend the Asbestos-in-Schools Rule, 40 CFR part 763, subpart E, to reflect the fact that public school employees performing operations and maintenance activities would now be covered by the WPR by modifying 40 CFR 763.91(b) and removing appendix B to subpart E (Ref. 1, p. 24814).

1. *What comments did EPA receive on the proposed rule*? EPA received comments on its proposal from the American Federation of State, County and Municipal Employees; the American Industrial Hygiene Association; the Laborers' International Union of North America; the Texas A & M University System; the Safe Buildings Alliance; the Asbestos Information Association; the Board of Certified Safety Professionals; the Resilient Floor Covering Institute; the Service Employees International Union; the American Society of Safety Engineers; and the International Brotherhood of Teamsters. With the exception of Texas A & M, all of the commenters generally supported the proposal and encouraged EPA to be as consistent as possible with the OSHA Asbestos Standards. The following discussion addresses all material issues raised by the commenters, EPA's response to those comments, and how these comments affected the outcome of this final rule. Comments raising each issue are identified in parentheses by docket control number.

Texas A & M expressed concern with the proposed extension of WPR coverage to building custodians (Docket #62125A, C-004). The University believes that it might have to survey all of its buildings for asbestos in order to comply with the requirements to determine the presence, location, and quantity of asbestos-containing material (ACM) and presumed asbestos-containing material (PACM) in custodial work sites, post signs at the entrances to mechanical rooms containing asbestos, and provide information and training to custodians who work in areas that contain asbestos. EPA recommends that employers conduct full building inspections, using accredited inspectors, to determine the presence, location, and quantity of asbestos in their buildings. However, as discussed in the preamble to the proposed amendments, State and local government employers may comply with these requirements merely by identifying three types of building materials (thermal system insulation, surfacing material, and resilient floor covering) and assuming that these materials contain asbestos, so long as there is no specific reason to suspect that other materials in the work site or mechanical room contain asbestos (Ref. 1, p. 24810).

Texas A & M also believes that annual training for custodians, and the associated recordkeeping, is "excessive" and "cumbersome " for employers with large numbers of custodial employees. However, EPA believes that the annual educational requirements for custodians are minimal, consisting of at least 2 hours of awareness training on topics such as the health effects of asbestos, how to work around asbestos-containing materials safely, and where asbestos-containing materials are located in the building (Ref. 1, pp. 24813–24814). Texas A & M did not dispute EPA's incremental cost estimate of $49.79 per full-time equivalent employee per year for custodial training, including the associated recordkeeping costs (Ref. 5, pp. 4–29). EPA continues to believe that the benefits of protecting custodians under this regulation, including the 58 estimated cancer cases avoided and consistency with OSHA, outweigh the expense.

Finally, Texas A & M does not believe that custodians should be considered "asbestos workers." EPA is unsure as to what Texas A & M intended by this comment, because the only place that EPA uses a similar term ("asbestos abatement workers") is in Unit I.B.1. of the Asbestos Model Accreditation Plan (MAP), 40 CFR part 763, subpart E, appendix C. The proposed amendments to the WPR did not suggest that custodians be required to complete the 4-day training course for workers under Unit I.B.1. of the MAP (Ref. 1, pp. 248137–24814). As discussed in this unit, this rule requires, at a minimum, 2 hours of awareness training for custodians.

The comments from the American Industrial Hygiene Association (AIHA) expressed strong support for consistency between EPA and OSHA rules and standards, and reminded EPA that OSHA permits Certified Industrial Hygienists to perform certain functions required by the regulations (Docket #62125A, C-002). AIHA indicated that OSHA permits CIHs to collect samples to rebut the presumption that surfacing materials and thermal system insulation contain asbestos. AIHA also indicated that OSHA permits CIHs to serve as competent persons under certain circumstances. EPA intends to be as consistent with the OSHA asbestos regulations as possible. However, for projects in schools or in public or commercial buildings, EPA's MAP requires persons who collect samples to be accredited as inspectors and persons who supervise asbestos response actions to be accredited as supervisors. (TSCA section 206(a), Units I.A. and I.B. of the MAP). Thus, CIHs collecting samples in schools or in public or commercial buildings would also have to be MAP accredited inspectors, and CIHs supervising asbestos response actions in such buildings would have to be MAP accredited supervisors. Changes to the MAP are outside the scope of this rulemaking, but EPA will consider the issues raised by AIHA in any future actions to amend the MAP.

AIHA also noted in its comments that OSHA is more inclusive than EPA with respect to laboratory accreditation programs. OSHA requires laboratories that analyze bulk samples of presumed asbestos-containing material (surfacing materials and thermal system insulation) to participate in a nationally recognized testing program (Ref. 4, pp. 41062, 41141). The AIHA industrial hygiene laboratory accreditation program is one of the programs specifically mentioned by OSHA. EPA will also recognize AIHA laboratory accreditation for laboratories that analyze bulk samples under the WPR, unless those samples are collected in a school building that is regulated under the Asbestos Hazard Emergency Response Act (AHERA), Title II of TSCA, 15 U.S.C. 2641 *et seq*. (Ref. 1, p. 24810). TSCA section 206(d), within AHERA, requires laboratories that analyze samples collected from school buildings under the authority of a local education agency to be accredited by the National Institute of Standards and Technology (NIST). Therefore, EPA may not accept AIHA accreditation for laboratories that analyze samples collected from school buildings.

The American Society of Safety Engineers (ASSE) strongly endorsed EPA's proposal to protect State and local government employees from the health risks of exposure to asbestos to the same extent as private sector employees. ASSE and the Board of Certified Safety Professionals (BCSP), however, both commented that Certified Safety Professionals (CSPs), by virtue of their extensive training, should be permitted to perform the same tasks as CIHs (Docket #62125A, C-010 and C-007, respectively). Specifically, these commenters stated that the preamble to the proposal should have recognized CSPs as qualified to collect bulk samples of surfacing materials and thermal system insulation (Ref. 1, p. 24809) and to determine, in certain circumstances, when alternate control methods for Class I projects are adequate (Ref. 1, p. 24811). As indicated by ASSE, CSPs are recognized in OSHA Directive CPL 2-2.63 (Ref. 2), which contains guidance for OSHA compliance inspectors on the asbestos standards. Appendix C, "Questions and Answers on the Occupational Exposure to Asbestos Standard," to CPL 2-2.63 says that an employer should not be cited for a violation of the asbestos standards if a CSP was used to evaluate alternate control methods for Class I work, so long as a review of the particular CSP's past work history and training indicates that the CSP possessed the skills, professional judgment, and background to perform the evaluation.

EPA intends to follow OSHA's lead in the interpretation and application of the WPR, so EPA will likewise allow properly qualified CSPs to evaluate alternate control methods for Class I projects. However, OSHA does not permit CSPs to collect bulk samples of thermal system insulation or surfacing material for the purpose of rebutting the presumption that these materials contain asbestos (Ref. 6). EPA will defer to OSHA's expertise in this matter, and maintain consistency by requiring samples to be taken by either a MAP-accredited inspector or a CIH.

The comments from the Resilient Floor Covering Institute (RFCI) expressed concern that, because EPA had not expressly adopted OSHA's interpretations of the Asbestos Standards as set out in OSHA Instruction CPL 2-2.63, EPA would not apply the WPR consistent with the OSHA asbestos standards, particularly with regard to removal and/or replacement of resilient floor covering materials (Docket #62125A, C-008). Specifically, RFCI pointed out that Appendix D to OSHA's CPL 2-2.63 includes the terms of a Settlement Agreement between the flooring industry and OSHA on the application of the OSHA asbestos standards to resilient floor covering. Although RFCI recommended that EPA specifically cite OSHA Instruction CPL 2-2.63 in the text of the WPR, EPA does not believe that this is appropriate, particularly since CPL 2-2.63 is not cited in the text of the OSHA asbestos standards. However, EPA will follow CPL 2-2.63, including all of the appendices and any possible future changes, in implementing the WPR, so long as the Directive is not contrary to other EPA statutes and regulations, such as TSCA, AHERA, the Asbestos-in-Schools Rule, and the MAP.

Finally, comments from the Asbestos Information Association (AIA) supported consistency between the OSHA and EPA asbestos regulations, but objected to the characterization of the risk to State and local government employees as "unreasonable" (Docket #62125A, C-006). In support of this comment, AIA implied that workers would be exposed only to chrysotile asbestos and stated that EPA's (and OSHA's) asbestos risk assessments were outdated, and that the latest scientific findings indicate that the risk from products made with chrysotile asbestos is actually much lower than predicted by current EPA and OSHA risk assessments. However, AIA did not submit any additional information to support this claim. The issue of the risk from chrysotile asbestos has been raised and considered in previous EPA and OSHA rulemakings, and both Agencies have declined to distinguish between asbestos fiber types in performing risk assessments for regulatory purposes. See, for example, the discussion in the preamble to EPA's 1989 final Asbestos Ban and Phaseout Rule (Ref. 3, pp. 29470–29471) and the discussion in the preamble to the 1994 final OSHA Asbestos Standards (Ref. 4, pp. 40978, 40979). Furthermore, EPA reviewed the literature available in 1999 on asbestos hazards in order to assist in the preparation of the United States third-party submissions to a dispute resolution panel of the World Trade Organization regarding the French asbestos ban (Refs. 7-8). EPA found nothing during this literature review that persuasively contradicted the risk assessment approach followed by EPA and OSHA.

The balance of the comments expressed only support for the proposal and contained no substantive comments. These comments were received from the Laborers' International Union of North America, the International Brotherhood of Teamsters, the Safe Buildings Alliance, the Service Employees International Union, and the American Federation of State, County, and Municipal Employees.

No commenter requested an informal public hearing on the proposed rule.

2. *What does this final rule require*? This final rule makes the WPR consistent with the OSHA Asbestos Construction Standard, 29 CFR 1926.1101, including all revisions to that standard from 1994 through the present, and all future amendments. If you are a State or local government employer whose employees perform asbestos abatement activities, you must now comply with the OSHA Asbestos Construction Standard. This rule will effectively lower the permissible exposure limit (PEL) for these employees to 0.1 fibers per cubic centimeter (f/cc) and incorporate additional hazard communication and respiratory protection program requirements.

In addition, this rule extends the requirements of the OSHA Asbestos Construction Standard to State and local government employees who perform any construction activities identified in 29 CFR 1926.1101(a), including demolition, alteration, repair, maintenance, renovation, installation of asbestos-containing products, and housekeeping. For general custodial activities not associated with construction projects, this rule requires State and local government employers to comply with the Asbestos General Industry Standard in 29 CFR 1910.1001.

This rule also applies the current requirements of the OSHA General Industry Standard, 29 CFR 1910.1001, to State and local government employers of employees engaged in automotive brake and clutch repair work. If your employees repair, clean, or replace asbestos-containing clutch plates and brake pads, shoes, and linings, or remove asbestos-containing residue from brake drums or clutch housings, you must comply with the OSHA standards in 29 CFR 1910.1001.

This rule amends the Asbestos-in-Schools Rule, 40 CFR part 763, subpart E, to remove the provisions in 40 CFR 763.91(b) that extend WPR protections to employees of public school systems when they are performing operations, maintenance and repair (O&M) activities. This rule also deletes appendix B to subpart E and the reference to appendix B in 40 CFR 763.92(a)(2)(iii). If you are a public local education agency employer in a State without an OSHA-approved State plan, and your employees perform O&M activities, you will need to follow the requirements of the WPR.

III. References

1. U.S. Environmental Protection Agency (USEPA), Office of Pollution Prevention and Toxics (OPPT). Asbestos Worker Protection; Proposed Rule. **Federal Register** (65 FR 24806, April 27, 2000) (FRL–6493–5).

2. U.S. Department of Labor (USDOL), Occupational Safety and Health Administration (OSHA). Instruction CPL 2-2.63 (November 3, 1995), revised and renamed Directive CPL 2-2.63 (January 9, 1996).

3. USEPA, OPPT. Asbestos Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions; Final Rule. **Federal Register** (54 FR 29460, July 12, 1989).

4. USDOL, OSHA. Occupational Exposure to Asbestos; Final Rule. **Federal Register** (59 FR 40964, August 10, 1994).

5. USEPA, OPPT. Final Asbestos Worker Protection Rule Economic Analysis (September 25, 2000).

6. USDOL, OSHA. Letter to Richard L. Barcum re: procedures for demonstrating that presumed asbestos-containing material does not contain more than 1 percent asbestos (July 1, 1998).

7. U.S. Department of Commerce (USDOC), U.S. Trade Representative (USTR). Third Party Written Submission of the United States, European Communities— Measures Affecting Asbestos and Products Containing Asbestos (May 28, 1999).

8. USDOC, USTR. United States Responses to Questions Posed by the European Communities, European Communities—Measures Affecting Asbestos and Products Containing Asbestos (June 21, 1999).

9. USDOL, OSHA. Letter to the Honorable Jay Johnson re: Occupational Safety and Health Act applicability to tribal land workplaces and employers (March 12, 1998).

IV. Regulatory Assessment Requirements

A. Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB), because this action is not likely to result in a rule that meets any of the criteria for a "significant regulatory action" provided in section 3(f) of the Executive Order.

EPA has prepared an analysis of the potential impact of this action, which is estimated to cost $63.34 million in the first year of the rule and then decline annually thereafter. The analysis is contained in a document entitled "Final Asbestos Worker Protection Rule Economic Analysis" (Ref. 5). This document is available as a part of the public version of the official record for this action (instructions for accessing this document are contained in Unit I.B.).

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, EPA hereby certifies that this final action will not have a significant economic impact on a substantial number of small entities. The factual basis for EPA's determination is presented in the small entity impact analysis prepared as part of the Economic Analysis for the rule (Ref. 5), and is briefly summarized here. For purposes of analyzing potential impact on small entities, EPA used the definition for small entities in RFA section 601. Under RFA section 601, "small entity" is defined as:

1. A small business that meets Small Business Administration size standards codified at 13 CFR 121.201.
2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.
3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Of the three categories of small entities, only small governmental jurisdictions are affected by this final rule. As such, EPA's analysis of potential small entity impacts assesses the potential impacts on small governmental jurisdictions.

Based on the definition of "small governmental jurisdiction," no State-level government covered by the asbestos WPR can be considered small. Therefore, the small government entities potentially impacted by the asbestos WPR are local governments (e.g., county, municipal, or towns) and school districts.

The amendments to the asbestos WPR may impact local governments in the 27 States without approved OSHA State plans by imposing incremental compliance costs for asbestos-related maintenance, renovation, and brake and clutch repair. There are 24,495 small governmental jurisdictions that are potentially impacted by the asbestos WPR. However, the estimated amounts of the impact are all extremely low. In each of the States, the impact for all small local governments is estimated to be less than 0.1% of revenues available for compliance. EPA estimated that the largest impact would occur for small local governments in Arkansas, Delaware, and West Virginia, where the upper bound estimate of compliance costs as a percent of available revenues is estimated to be 0.051%. For small local governments as a whole, compliance costs associated with the asbestos WPR are estimated to represent 0.023% of available revenues. Therefore, the Agency has concluded that the asbestos WPR will not have a significant impact on small government entities.

Small school districts are defined as school districts serving a resident population of less than 50,000. In the 27 covered States, there are 17,846 small school districts that are potentially impacted by the asbestos WPR. The estimated impact of compliance costs on all small school districts is estimated to be less than 0.01% of available revenues. The largest impact is estimated for Mississippi where compliance costs as a percent of available revenues are estimated to equal 0.013%. The Agency has therefore concluded that the asbestos WPR will not have a significant effect on the revenues of small school districts.

Additional details regarding EPA's basis for this certification are presented in the Final Economic Analysis (Ref. 5), which is included in the public version of the official record for this action. This information will also be provided to the Small Business Administration (SBA) Chief Counsel for Advocacy upon request.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to OMB for review and approval pursuant to the PRA and OMB implementing regulations at 5 CFR part 1320. The burden and costs related to the information collection requirements contained in this rule are described in an Information Collection Request (ICR). This ICR proposes to amend the existing ICR for the current WPR which is approved through September 30, 2001, under OMB No. 2070–0072 (EPA ICR No. 1246.06). A copy of this ICR, which is identified as EPA ICR No. 1246.08, is available electronically at http://www.epa.gov/opperid1/icr.htm, or by e-mailing a request to farmer.sandy@epa.gov. You may also request a copy by mail from Sandy Farmer, Collection Strategies Division, Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 260–2740. The information requirements are not enforceable until OMB approves them.

This amendment to the WPR requires employers to collect, disseminate, and maintain information relating to employee asbestos exposures, respiratory protection, medical surveillance, and training. The records maintained as a result of this information collection will provide EPA with the data necessary for effective enforcement of the WPR.

The public reporting burden for this collection of information is estimated to average, on an annual basis, 17.24 hours per respondent, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. EPA estimates that 25,312 respondents would incur these

burdens, for a total annual respondent burden of 436,289 hours.

As defined by the PRA and 5 CFR 1230.3(b), "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB control number(s) for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, (UMRA), Public Law 104–4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. As discussed in the Final Economic Analysis (Ref. 5), the rule will result in estimated expenditures of at most $63.34 million in any 1 year. In addition, EPA has determined that this rule will not significantly or uniquely affect small governments. For small local governments as a whole, compliance costs associated with the WPR represent 0.023% of revenues assumed to be available for compliance. Moreover, the impact of compliance costs on small school districts as a whole would be less than 0.01% of available revenues. Thus, this final rule is not subject to the requirements of UMRA sections 202, 203, 204, and 205.

E. Federalism

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local government officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local government officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local government officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing State and local government officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local government officials regarding the conflict between State law and federally protected interests within the agency's area of regulatory responsibility.

This final rule does not have federalism implications. This rule amends the existing WPR to cover additional asbestos-related activities and to conform the WPR to the OSHA Asbestos Standards. The changes do not result in a significant intergovernmental mandate under the UMRA, and thus, EPA concludes that the rule does not impose substantial direct compliance costs. Nor does the rule substantially affect the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Those relationships have already been established under the existing WPR, and these amendments do not alter them. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

This rule preempts State and local law in accordance with TSCA section 18(a)(2)(B). By publishing and inviting comment on the proposed rule, EPA provided State and local government officials notice and an opportunity for appropriate participation. Thus, EPA complied with the requirements of section 4 of the Executive Order.

F. Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on such communities. Since the OSHA Asbestos Standards cover tribal governments and tribal employees, the WPR does not apply to these groups (Ref. 9). Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Environmental Justice

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency considered environmental justice-related issues with regard to the potential impacts of this action on the environmental and health conditions in minority and low-income populations. Many of the employees who will benefit from the protections of this rule are members of minority and low-income populations. By providing protection for currently unprotected State and local government building maintenance and custodial employees and their families, this rule addresses the lesser levels of protection in the workplace provided under federal regulations to minority and low-income populations among State and local government employees. In other words, the rule does not impose disproportionately high- and adverse-human health or environmental effects on minority or low-income populations, but actually decreases such effects.

As described in the proposal (Ref. 1, p. 24829), public participation is an important environmental justice concern. EPA received comments on the proposed rule from organizations representing State and local government employees, but no requests for an informal public hearing on the proposed rule. (See Unit II.A.1).

H. Children's Health

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this final rule because it is not "economically significant" as defined under Executive Order 12866. However, it is EPA's policy to consistently and explicitly consider risks to infants and children in all risk assessments generated during its decision making process, including the setting of standards to protect public health and the environment.

EPA has determined that children are physiologically more vulnerable to asbestos exposures than adults, and that this rule will prevent approximately 65.65 cancer cases among persons with childhood exposures to asbestos from school buildings. EPA also expects this rule to result in other benefits associated with lower asbestos exposures, such as a reduced incidence of non-cancerous health effects such as asbestosis, pleural plaques, and pleural effusion. EPA expects the rule to substantially benefit children by reducing the incidental exposures children face while attending affected schools and when at home from workers' clothing. By reducing ambient asbestos concentrations in school buildings, this rule will help protect children from the disproportionate asbestos exposure risk they face.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA described the applicability of the NTTAA to this rule in the proposal (Ref. 1, pp. 24829–24830). The Agency received no comments or suggestions regarding alternative approaches to technical standards. One of EPA's primary goals in finalizing these amendments to the WPR is to achieve consistency with the OSHA Asbestos Standards. EPA has determined that having different standards for public and private sector workers is inefficient and unfair, and that EPA should generally defer to OSHA's expertise in the matter of worker protection. Therefore, EPA finds that any voluntary consensus standard which is inconsistent with the applicable OSHA Standards is impractical under NTTAA section 12(d)(3).

J. Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

K. Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Schools, Hazardous substances, Reporting and recordkeeping requirements, Worker protection.

Dated: November 3, 2000.

Carol M. Browner,

Administrator.

Therefore, 40 CFR chapter I, subchapter R, is amended as follows:

PART 763—[AMENDED]

1. The authority citation for part 763 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607(c), 2643, and 2646.

2. By revising § 763.91(b) to read as follows:

§ 763.91 Operations and maintenance.

* * * * *

(b) *Worker protection.* Local education agencies must comply with either the OSHA Asbestos Construction Standard at 29 CFR 1926.1101, or the Asbestos Worker Protection Rule at 40 CFR 763.120, whichever is applicable.

* * * * *

§ 763.92 [Amended]

3. By revising § 763.92(a)(2)(iii) to remove the phrase "Appendices A, B, C, D of this subpart E of this part" and add in its place the phrase "Appendices A, C, and D of this subpart E of this part."

Appendix B to Subpart E [Removed and reserved]

4. By removing and reserving Appendix B to subpart E.

5. By revising subpart G to read as follows:

Subpart G—Asbestos Worker Protection

Sec.
763.120 What is the purpose of this subpart?
763.121 Does this subpart apply to me?
763.122 What does this subpart require me to do?
763.123 May a State implement its own asbestos worker protection plan?

Subpart G—Asbestos Worker Protection

§ 763.120 What is the purpose of this subpart?

This subpart protects certain State and local government employees who are not protected by the Asbestos Standards of the Occupational Safety and Health Administration (OSHA). This subpart applies the OSHA Asbestos Standards in 29 CFR 1910.1001 and 29 CFR 1926.1101 to these employees.

§ 763.121 Does this subpart apply to me?

If you are a State or local government employer and you are not subject to a State asbestos standard that OSHA has approved under section 18 of the Occupational Safety and Health Act or a State asbestos plan that EPA has exempted from the requirements of this subpart under § 763.123, you must follow the requirements of this subpart to protect your employees from occupational exposure to asbestos.

§ 763.122 What does this subpart require me to do?

If you are a State or local government employer whose employees perform:

(a) Construction activities identified in 29 CFR 1926.1101(a), you must:

(1) Comply with the OSHA standards in 29 CFR 1926.1101.

(2) Submit notifications required for alternative control methods to the Director, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(b) Custodial activities not associated with the construction activities identified in 29 CFR 1926.1101(a), you must comply with the OSHA standards in 29 CFR 1910.1001.

(c) Repair, cleaning, or replacement of asbestos-containing clutch plates and brake pads, shoes, and linings, or removal of asbestos-containing residue from brake drums or clutch housings, you must comply with the OSHA standards in 29 CFR 1910.1001.

§ 763.123 May a State implement its own asbestos worker protection plan?

This section describes the process under which a State may be exempted from the requirements of this subpart.

(a) *States seeking an exemption.* If your State wishes to implement its own asbestos worker protection plan, rather than complying with the requirements of this subpart, your State must apply for and receive an exemption from EPA.

(1) *What must my State do to apply for an exemption?* To apply for an exemption from the requirements of this subpart, your State must send to the Director of EPA's Office of Pollution Prevention and Toxics (OPPT) a copy of its asbestos worker protection regulations and a detailed explanation of how your State's asbestos worker protection plan meets the requirements of TSCA section 18 (15 U.S.C. 2617).

(2) *What action will EPA take on my State's application for an exemption?* EPA will review your State's application and make a preliminary determination whether your State's asbestos worker protection plan meets the requirements of TSCA section 18.

(i) If EPA's preliminary determination is that your State's plan does meet the requirements of TSCA section 18, EPA will initiate a rulemaking, including an opportunity for public comment, to exempt your State from the requirements of this subpart. After considering any comments, EPA will issue a final rule granting or denying the exemption.

(ii) If EPA's preliminary determination is that the State plan does not meet the requirements of TSCA section 18, EPA will notify your State in writing and will give your State a reasonable opportunity to respond to that determination.

(iii) If EPA does not grant your State an exemption, then the State and local government employers in your State are subject to the requirements of this subpart.

(b) *States that have been granted an exemption.* If EPA has exempted your State from the requirements of this subpart, your State must update its asbestos worker protection regulations as necessary to implement changes to meet the requirements of this subpart, and must apply to EPA for an amendment to its exemption.

(1) *What must my State do to apply for an amendment to its exemption?* To apply for an amendment to its exemption, your State must send to the Director of OPPT a copy of its updated asbestos worker protection regulations and a detailed explanation of how your State's updated asbestos worker protection plan meets the requirements of TSCA section 18. Your State must submit its application for an amendment within 6 months of the effective date of any changes to the requirements of this subpart, or within a reasonable time agreed upon by your State and OPPT.

(2) *What action will EPA take on my State's application for an amendment?* EPA will review your State's application for an amendment and make a preliminary determination whether your State's updated asbestos worker protection plan meets the requirements of TSCA section 18.

(i) If EPA determines that the updated State plan does meet the requirements of TSCA section 18, EPA will issue your State an amended exemption.

(ii) If EPA determines that the updated State plan does not meet the requirements of TSCA section 18, EPA will notify your State in writing and will give your State a reasonable opportunity to respond to that determination.

(iii) If EPA does not grant your State an amended exemption, or if your State does not submit a timely request for amended exemption, then the State and local government employers in your State are subject to the requirements of this subpart.

[FR Doc. 00–29232 Filed 11–14–00; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Wednesday,
November 15, 2000

Part VII

The President

Proclamation 7373—Boundary Enlargement of the Craters of the Moon National Monument

Proclamation 7374—Vermilion Cliffs National Monument

Proclamation 7375—Veterans Day, 2000

Federal Register
Vol. 65, No. 221
Wednesday, November 15, 2000

Presidential Documents

Title 3—

The President

Proclamation 7373 of November 9, 2000

Boundary Enlargement of the Craters of the Moon National Monument

By the President of the United States of America

A Proclamation

The Craters of the Moon National Monument was established on May 2, 1924 (Presidential Proclamation 1694), for the purpose of protecting the unusual landscape of the Craters of the Moon lava field. This "lunar" landscape was thought to resemble that of the Moon and was described in the Proclamation as "weird and scenic landscape peculiar to itself." The unusual scientific value of the expanded monument is the great diversity of exquisitely preserved volcanic features within a relatively small area. The expanded monument includes almost all the features of basaltic volcanism, including the craters, cones, lava flows, caves, and fissures of the 65-mile-long Great Rift, a geological feature that is comparable to the great rift zones of Iceland and Hawaii. It comprises the most diverse and geologically recent part of the lava terrain that covers the southern Snake River Plain, a broad lava plain made up of innumerable basalt lava flows that erupted during the past 5 million years.

Since 1924, the monument has been expanded and boundary adjustments made through four presidential proclamations issued pursuant to the Antiquities Act (34 Stat. 225, 16 U.S.C. 431). Presidential Proclamation 1843 of July 23, 1928, expanded the monument to include certain springs for water supply and additional features of scientific interest. Presidential Proclamation 1916 of July 9, 1930, Presidential Proclamation 2499 of July 18, 1941, and Presidential Proclamation 3506 of November 19, 1962, made further adjustments to the boundaries. In 1996, a minor boundary adjustment was made by section 205 of the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104–333, 110 Stat. 4093, 4106).

This Proclamation enlarges the boundary to assure protection of the entire Great Rift volcanic zone and associated lava features, all objects of scientific interest. The Craters of the Moon, Open Crack, Kings Bowl, and Wapi crack sets and the associated Craters of the Moon, Kings Bowl, and Wapi lava fields constitute this volcanic rift zone system. Craters of the Moon is the largest basaltic volcanic field of dominantly Holocene age (less than 10,000 years old) in the conterminous United States. Each of the past eruptive episodes lasted up to several hundred years in duration and was separated from other eruptive episodes by quiet periods of several hundred years to about 3,000 years. The first eruptive episode began about 15,000 years ago and the latest ended about 2,100 years ago.

Craters of the Moon holds the most diverse and youngest part of the lava terrain that covers the southern Snake River Plain of Idaho, a broad plain made up of innumerable basalt lava flows during the past 5 million years. The most recent eruptions at the Craters of the Moon took place about 2,100 years ago and were likely witnessed by the Shoshone people, whose legend speaks of a serpent on a mountain who, angered by lightening, coiled around and squeezed the mountain until the rocks crumbled and melted, fire shot from cracks, and liquid rock flowed from the fissures as the mountain exploded. The volcanic field now lies dormant, in the latest of a series of quiet periods that separate the eight eruptive episodes during which the 60 lava flows and 25 cinder cones of this composite volcanic field were formed. Some of the lava flows traveled distances of as much as 43 miles from their vents, and some flows diverged around areas of higher ground and rejoined downstream to form isolated islands of older terrain surrounded by new lava. These areas are called "kipukas."

The kipukas provide a window on vegetative communities of the past that have been erased from most of the Snake River Plain. In many instances, the expanse of rugged lava surrounding the small pocket of soils has protected the kipukas from people, animals, and even exotic plants. As a result, these kipukas represent some of the last nearly pristine and undisturbed vegetation in the Snake River Plain, including 700-year-old juniper trees and relict stands of sagebrush that are essential habitat for sensitive sage grouse populations. These tracts of relict vegetation are remarkable benchmarks that aid in the scientific study of changes to vegetative communities from recent human activity as well as the role of natural fire in the sagebrush steppe ecosystem.

The Kings Bowl lava field and the Wapi lava field are included in the enlarged monument. The Kings Bowl field erupted during a single fissure eruption on the southern part of the Great Rift about 2,250 years ago. This eruption probably lasted only a few hours to a few days. The field preserves explosion pits, lava lakes, squeeze-ups, basalt mounds, and an ash blanket. The Wapi field probably formed from a fissure eruption simultaneously with the eruption of the Kings Bowl field. With more prolonged activity over a period of months to a few years, the Wapi field formed a low shield volcano. The Bear Trap lava tube, located between the Craters of the Moon and the Wapi lava fields, is a cave system more than 15 miles long. The lava tube is remarkable for its length and for the number of well preserved lava-cave features, such as lava stalactites and curbs, the latter marking high stands of the flowing lava forever frozen on the lava tube walls. The lava tubes and pit craters of the monument are known for their unusual preservation of winter ice and snow into the hot summer months, due to shielding from the sun and the insulating properties of the basalt.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as an addition to the Craters of the Moon National Monument:

NOW, THEREFORE, I, William J. Clinton, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as an addition to the Craters of the Moon National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled "Craters of the Moon National Monument Boundary Enlargement" attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 661,287 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. For the purpose of protecting the objects identified above, the Secretary shall prohibit all motorized and mechanized vehicle use off road, except for emergency or authorized administrative purposes.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The Secretary of the Interior shall prepare a transportation plan that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.

The Secretary of the Interior shall manage the area being added to the monument through the Bureau of Land Management and the National Park Service, pursuant to legal authorities, to implement the purposes of this proclamation. The National Park Service and the Bureau of Land Management shall manage the monument cooperatively and shall prepare an agreement to share, consistent with applicable laws, whatever resources are necessary to manage properly the monument; however, the National Park Service shall have primary management authority over the portion of the monument that includes the exposed lava flows, and shall manage the area under the same laws and regulations that apply to the current monument. The Bureau of Land Management shall have primary management authority over the remaining portion of the monument, as indicated on the map entitled, "Craters of the Moon National Monument Boundary Enlargement."

Wilderness Study Areas included in the monument will continue to be managed under section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701–1782).

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Idaho with respect to fish and wildlife management.

This proclamation does not reserve water as a matter of Federal law. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation. The Secretary shall work with appropriate State authorities to ensure that water resources needed for monument purposes are available.

Nothing in this proclamation shall be deemed to enlarge or diminish the rights of any Indian tribe.

Laws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument administered by the Bureau of Land Management.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

Billing code 3195–01–P

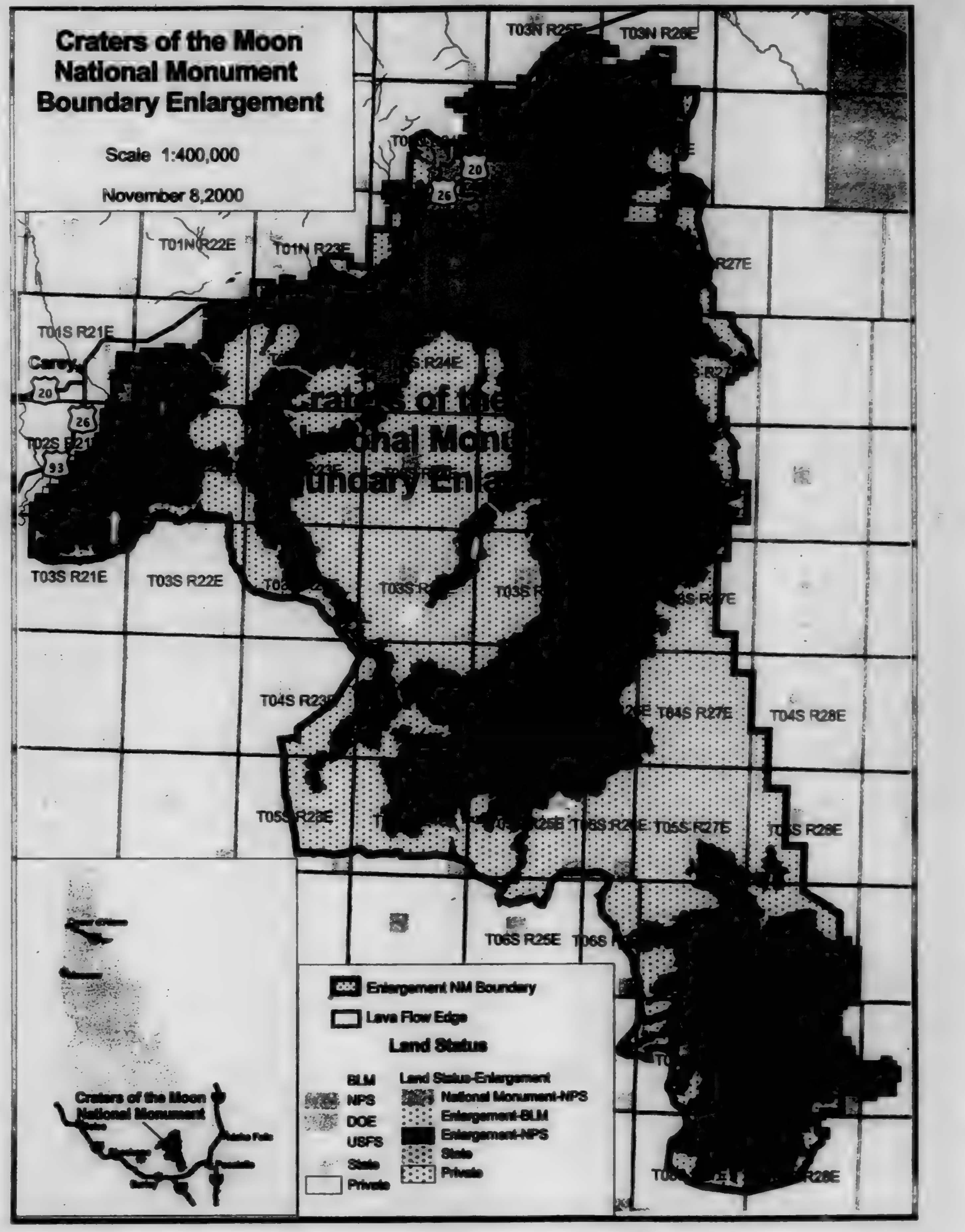
Craters of the Moon National Monument Boundary Enlargement
Scale 1:400,000
November 8,2000
T03N R25E
T03N R26E
T01N R22E
T01N R23E
R27E
T01S R21E
Carey
20
26
93
T02S R21E
T03S R21E
T03S R22E
T04S R23E
T04S R27E
T04S R28E
T05S R23E
T05S R26E
T05S R27E
T05S R28E
T06S R25E
T06S
Enlargement NM Boundary
Lava Flow Edge
Land Status
BLM
NPS
DOE
USFS
State
Private
Land Status-Enlargement
National Monument-NPS
Enlargement-BLM
Enlargement-NPS
State
Private
Craters of the Moon National Monument

[FR Doc. 00–29452
Filed 11–14–00; 8:46 am]
Billing code 3195–01–C

Presidential Documents

Proclamation 7374 of November 9, 2000

Vermilion Cliffs National Monument

By the President of the United States of America

A Proclamation

Amid the sandstone slickrock, brilliant cliffs, and rolling sandy plateaus of the Vermilion Cliffs National Monument lie outstanding objects of scientific and historic interest. Despite its arid climate and rugged isolation, the monument contains a wide variety of biological objects and has a long and rich human history. Full of natural splendor and a sense of solitude, this area remains remote and unspoiled, qualities that are essential to the protection of the scientific and historic objects it contains.

The monument is a geological treasure. Its centerpiece is the majestic Paria Plateau, a grand terrace lying between two great geologic structures, the East Kaibab and the Echo Cliffs monoclines. The Vermilion Cliffs, which lie along the southern edge of the Paria Plateau, rise 3,000 feet in a spectacular escarpment capped with sandstone underlain by multicolored, actively eroding, dissected layers of shale and sandstone. The stunning Paria River Canyon winds along the east side of the plateau to the Colorado River. Erosion of the sedimentary rocks in this 2,500 foot deep canyon has produced a variety of geologic objects and associated landscape features such as amphitheaters, arches, and massive sandstone walls.

In the northwest portion of the monument lies Coyote Buttes, a geologically spectacular area where crossbeds of the Navajo Sandstone exhibit colorful banding in surreal hues of yellow, orange, pink, and red caused by the precipitation of manganese, iron, and other oxides. Thin veins or fins of calcite cut across the sandstone, adding another dimension to the landscape. Humans have explored and lived on the plateau and surrounding canyons for thousands of years, since the earliest known hunters and gatherers crossed the area 12,000 or more years ago. Some of the earliest rock art in the Southwest can be found in the monument. High densities of Ancestral Puebloan sites can also be found, including remnants of large and small villages, some with intact standing walls, fieldhouses, trails, granaries, burials, and camps.

The monument was a crossroad for many historic expeditions. In 1776, the Dominguez-Escalante expedition of Spanish explorers traversed the monument in search of a safe crossing of the Colorado River. After a first attempt at crossing the Colorado near the mouth of the Paria River failed, the explorers traveled up the Paria Canyon in the monument until finding a steep hillside they could negotiate with horses. This took them out of the Paria Canyon to the east and up into the Ferry Swale area, after which they achieved their goal at the Crossing of the Fathers east of the monument. Antonio Armijo's 1829 Mexican trading expedition followed the Dominguez route on the way from Santa Fe to Los Angeles.

Later, Mormon exploring parties led by Jacob Hamblin crossed south of the Vermilion Cliffs on missionary expeditions to the Hopi villages. Mormon pioneer John D. Lee established Lee's Ferry on the Colorado River just south of the monument in 1871. This paved the way for homesteads in the monument, still visible in remnants of historic ranch structures and associated objects that tell the stories of early settlement. The route taken by the Mormon explorers along the base of the Paria Plateau would later become known as the Old Arizona Road or Honeymoon Trail. After the temple in St. George, Utah was completed in 1877, the Honeymoon Trail was used by Mormon couples who had already been married by civil authorities in the Arizona settlements, but also made the arduous trip to St. George to have their marriages solemnized in the temple. The settlement of the monument area by Mormon pioneers overlapped with another historic exploration by John Wesley Powell, who passed through the monument during his scientific surveys of 1871.

The monument contains outstanding biological objects that have been preserved by remoteness and limited travel corridors. The monument's vegetation is a unique combination of cold desert flora and warm desert grassland, and includes one threatened species, Welsh's milkweed. This unusual plant, known only in Utah and Arizona, colonizes and stabilizes shifting sand dunes, but is crowded out once other vegetation encroaches.

Despite sporadic rainfall and widely scattered ephemeral water sources, the monument supports a variety of wildlife species. At least twenty species of raptors have been documented in the monument, as well as a variety of reptiles and amphibians. California condors have been reintroduced into the monument in an effort to establish another wild population of this highly endangered species. Desert bighorn sheep, pronghorn antelope, mountain lion, and other mammals roam the canyons and plateaus. The Paria River supports sensitive native fish, including the flannelmouth sucker and the speckled dace.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Vermilion Cliffs National Monument:

NOW, THEREFORE, I, William J. Clinton, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Vermilion Cliffs National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled "Vermilion Cliffs National Monument" attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 293,000 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. For the purpose of protecting the objects identified above, the Secretary shall prohibit all motorized and mechanized vehicle use off road, except for emergency or authorized administrative purposes.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities, to implement the purposes of this proclamation.

The Secretary of the Interior shall prepare a transportation plan that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Arizona with respect to fish and wildlife management.

This proclamation does not reserve water as a matter of Federal law. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation. The Secretary shall work with appropriate State authorities to ensure that any water resources needed for monument purposes are available.

Laws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation. Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

Billing code 3195–01–P

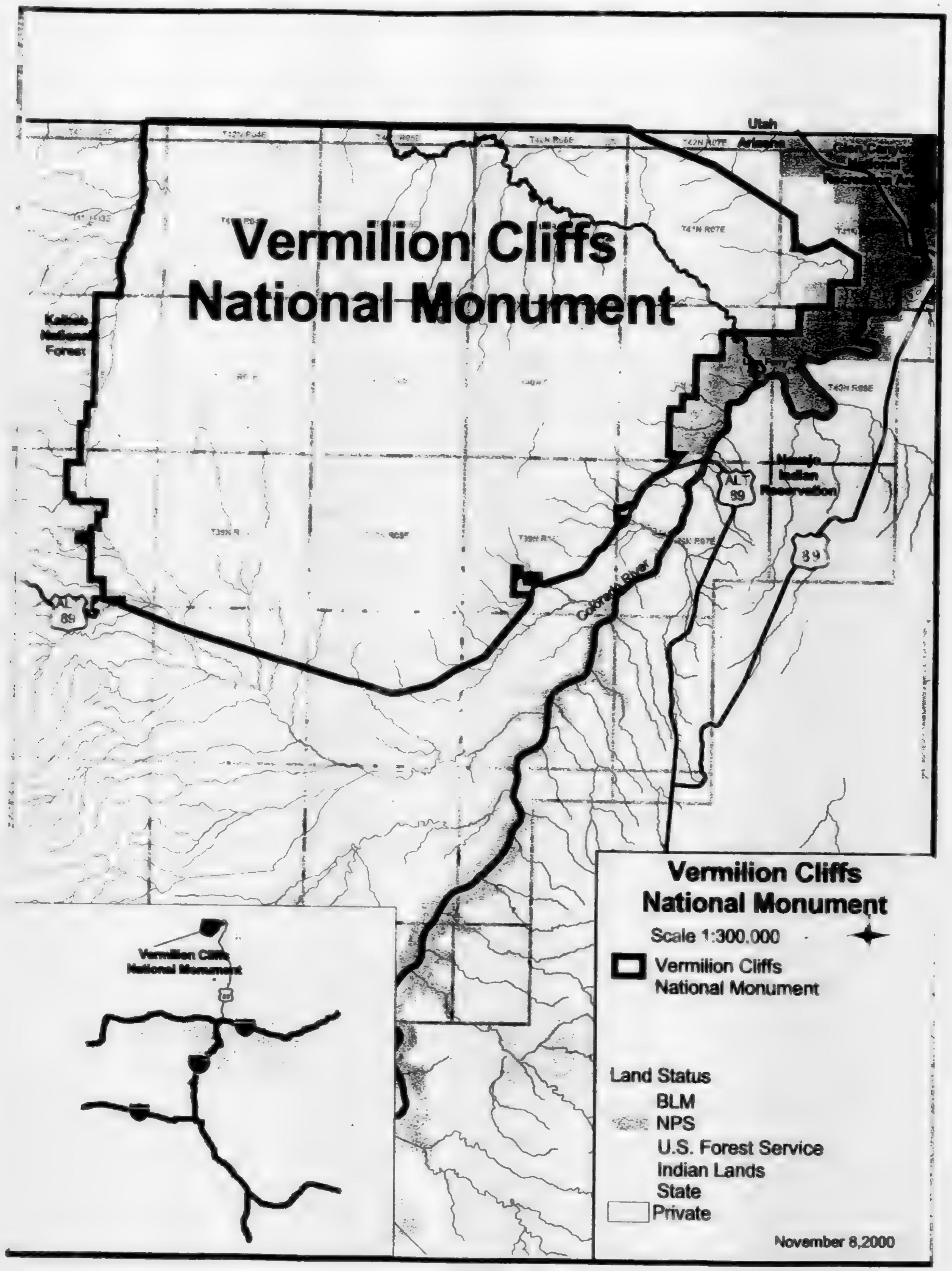
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Utah
Arizona
Glen Canyon National Recreation Area
Kaibab National Forest
Navajo Indian Reservation
Colorado River
ALT 89
89
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Vermilion Cliffs National Monument
Scale 1:300,000
Vermilion Cliffs National Monument
Land Status
BLM
NPS
U.S. Forest Service
Indian Lands
State
Private
November 8,2000

[FR Doc. 00–29453
Filed 11–14–00; 8:46 am]
Billing code 3195–01–C

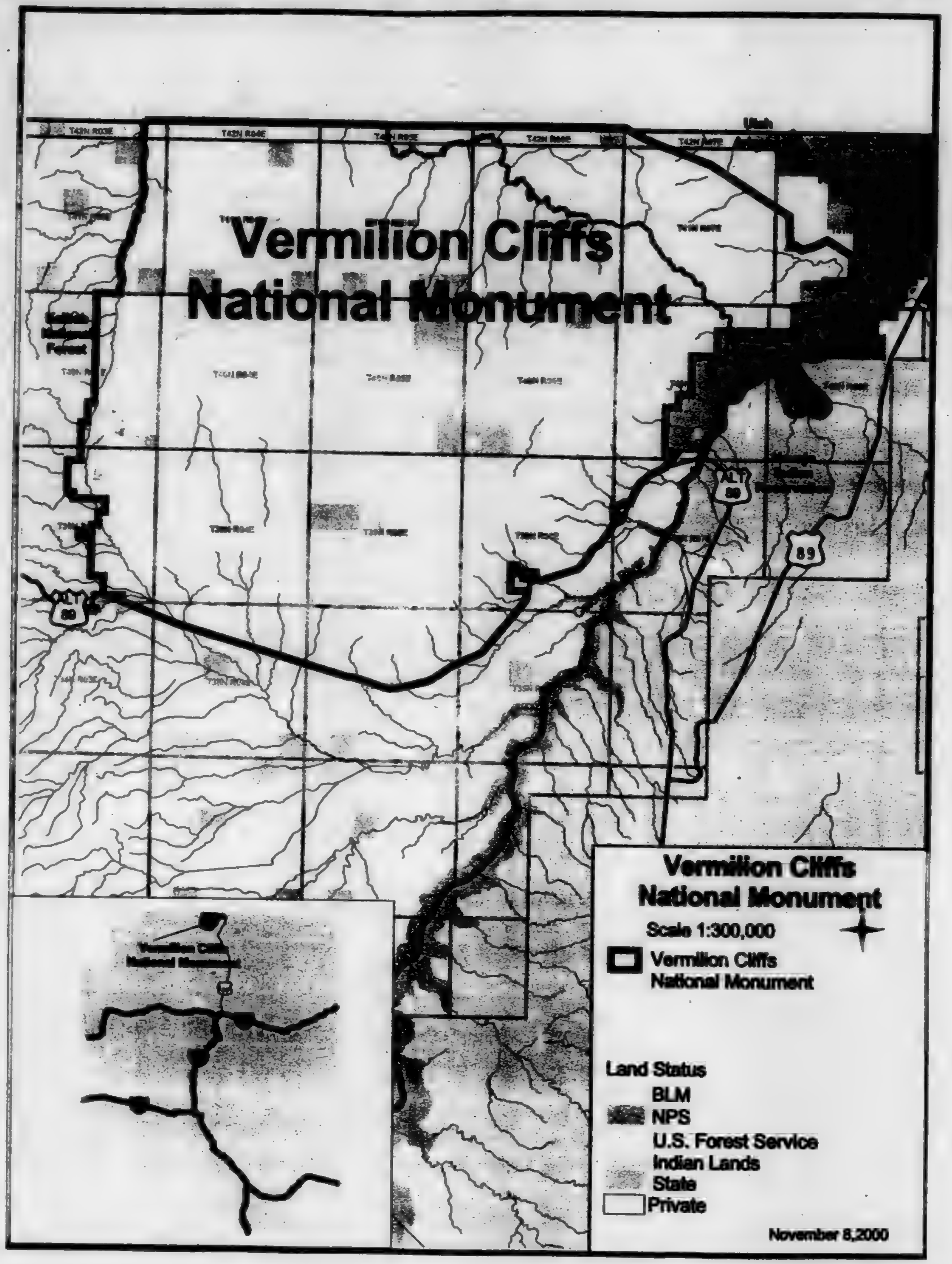

[FR Doc. 00–29453
Filed 11–14–00; 8:46 am]
Billing code 3195–01–C

Presidential Documents

Proclamation 7375 of November 10, 2000

Veterans Day, 2000

By the President of the United States of America

A Proclamation

On this day, in ceremonies across our Nation and around the world, Americans gather to pay tribute to our veterans. In community centers and church halls, at VFW posts and U.S. embassies, in quiet cemeteries and on battlefields fallen silent, we pause to honor the brave men and women of our Armed Forces whose devotion to duty and willingness to serve have sustained our country for more than two centuries.

Over the course of our history, some 41 million Americans have served—and more than a million have died—so that we might live in freedom. We are the beneficiaries of their courage, their sacrifice, and their vigilance; and so are countless freedom-loving people around the world.

In the past century alone, through two world wars and the long, tense struggle of the Cold War; on the front lines in Korea, Vietnam, Beirut, Grenada, Panama, Somalia, Haiti, the Persian Gulf, and the Balkans, our brave men and women in uniform have risked their lives to protect U.S. interests, assist our allies, promote peace, and advance our ideals. Thanks to their extraordinary record of service, more people now live under democratic rule than at any other time in history. And today, America is a stronger Nation in a more secure world because of our veterans.

President Kennedy once said, "Democracy is never a final achievement. It is a call to untiring effort, to continual sacrifice and to the willingness, if necessary, to die in its defense." Today we give thanks to the veterans of our Armed Forces for showing that willingness. Whether serving on bases and in ports at home or deployed across the globe, they have endured hardship and danger to protect our Nation and assist our allies. The story of America has been written, in large part, by the deeds of our veterans—deeds that bind us to our past, inspire us in the present, and strengthen us to meet the challenges of the future.

In honor of those who have served in our Armed Forces, the Congress has provided (5 U.S.C. 6103 (a)) that November 11 of each year shall be set aside as a legal public holiday to honor America's veterans. On Veterans Day, we pay tribute to all those who have served in our Armed Forces, and we remember with deep respect those who paid the ultimate price for our freedom. America's veterans have answered the highest calling of citizenship, and they continue to inspire us with the depth of their patriotism and the generosity of their service.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Saturday, November 11, 2000, as Veterans Day. I urge all Americans to acknowledge the courage and sacrifice of our veterans through appropriate public ceremonies and private prayers. I call upon Federal, State, and local officials to display the flag of the United States and to encourage and participate in patriotic activities in their communities. I invite civic and fraternal organizations, places of worship, schools, businesses, unions, and the media to support this national observance with suitable commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of November, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00-29454
Filed 11-14-00; 8:46 am]
Billing code 3195-01-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Wednesday,
November 15, 2000

Part VIII

The President

Proclamation 7376—International Education Week, 2000

Federal Register
Vol. 65, No. 221
Wednesday, November 15, 2000

Presidential Documents

Title 3—

The President

Proclamation 7376 of November 13, 2000

International Education Week, 2000

By the President of the United States of America

A Proclamation

Today we live in a global community, where all countries must work as partners to promote peace and prosperity and to resolve international problems. One of the surest ways to develop and strengthen such partnerships is through international education programs.

These programs enable students to learn other languages, experience other cultures, develop a broader understanding of global issues, and make lasting friendships with their peers in other countries who will one day guide the political, cultural, and economic development of their nations. Some of America's staunchest friends abroad are those who have experienced our country firsthand as exchange students or who have been exposed to American values through contact with American students and scholars studying overseas.

Since World War II, the Federal Government has worked in partnership with colleges, universities, and other educational organizations to sponsor programs that help our citizens gain the international experience and skills needed to meet the challenges of an increasingly interdependent world. At the same time, American educational institutions have developed study programs that attract students from all over the world to further their education in the United States.

One of the largest and most renowned of these international education initiatives is the Fulbright Program, which was founded by Senator J. William Fulbright more than half a century ago. Since its inception, the program has provided nearly a quarter of a million participants from the United States and 140 other nations—participants chosen for their academic and professional qualifications and leadership potential—with the opportunity to study and teach abroad and to gain knowledge of global political, economic, and cultural institutions. As Senator Fulbright envisioned, this program has proved to be a vital and positive force for peace and understanding around the world.

To build on this tradition of excellence in international education, I signed a memorandum in April of this year directing the heads of Executive departments and agencies to work with educational institutions, State and local governments, private organizations, and the business community to develop a coordinated national policy on international education. We must reaffirm our national commitment to encouraging students from other countries to study in the United States, promote study abroad by U.S. students, and support the exchange of teachers, scholars, and citizens at all levels of society. By doing so, we can expand our citizens' intellectual and cultural horizons, strengthen America's economic competitiveness, increase understanding between nations and peoples, and, as Senator Fulbright so eloquently stated, direct "the enormous power of human knowledge to the enrichment of our own lives and to the shaping of a rational and civilized world order."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 13 through November 17, 2000, as International Education Week. I urge all Americans to observe this week with events and programs that celebrate the benefits of international education to our citizens, our economy, and the world.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of November, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–29462
Filed 11–14–00; 10:59 am]
Billing code 3195–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Fishery conservation and management:
  - Caribbean, Gulf, and South Atlantic fisheries—
    - South Atlantic snapper-grouper; published 10-16-00

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Arkansas; published 10-16-00
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Copper sulfate pentahydrate; published 11-15-00
  - Pyriproxyfen; published 11-15-00

FEDERAL COMMUNICATIONS COMMISSION

- Common carrier services:
  - Broadband personal communications services; competitive bidding procedures; published 11-15-00
  - Competitive bidding procedures for all auctionable services
    - Correction; published 11-15-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Food additives:
  - Polymers—
    - Hydrogenated butadiene/acrylonitrile copolymers; published 11-15-00

JUSTICE DEPARTMENT

- Freedom of Information Act; implementation:
  - Access to documents by former Department employees; published 11-15-00

OVERSEAS PRIVATE INVESTMENT CORPORATION

- Freedom of Information Act; implementation; published 10-27-00

TRANSPORTATION DEPARTMENT

- Disadvantaged business enterprises participation in DOT financial assistance programs; threshold requirements and other technical revisions; published 11-15-00
- Federal claims collection:
  - Civil monetary penalties; inflation adjustment; published 10-16-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Airworthiness directives:
  - Airbus; published 10-11-00

TREASURY DEPARTMENT

Customs Service

- Technical amendments; published 11-15-00

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- Blueberries, cultivated; promotion, research, and information order; name change from blueberry promotion, research, and information order; comments due by 11-20-00; published 9-21-00
- Pork Promotion, Research, and Consumer Information:
  - Program referendum; conduct procedures; comments due by 11-20-00; published 10-19-00
- Walnuts grown in—
  - California; comments due by 11-22-00; published 10-23-00

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- Exportation and importation of animals and animal products:
  - Hog cholera; disease status change—
    - East Anglia; comments due by 11-20-00; published 9-20-00
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  - Equine viral arteritis regulatory program for horses; comments due by 11-20-00; published 9-20-00
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- Plant-related quarantine, foreign:
  - Artificially dwarfed plants in growing media from China; comments due by 11-20-00; published 9-20-00

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

- Crop insurance regulations:
  - Rice crop; comments due by 11-20-00; published 9-20-00

AGRICULTURE DEPARTMENT

Food and Nutrition Service

- Child nutrition programs:
  - Special milk, summer food service, and child and adult care food programs, and free and reduced price meals and free milk in schools—
    - Children's eligibility information; disclosure; comments due by 11-22-00; published 7-25-00

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

- Meat and poultry inspection:
  - Recall information; sharing with State and other Federal agencies; comments due by 11-20-00; published 9-19-00

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  - BE-11; annual survey of U.S. direct investment abroad; comments due by 11-20-00; published 9-21-00
  - BE-577; direct transactions of U.S. reporter with foreign affiliate; comments due by 11-20-00; published 9-21-00
  - BE-82; annual survey of financial services transactions between U.S. financial services providers and unaffiliated foreign persons; comments due by 11-20-00; published 9-21-00
  - BE-93; annual survey of royalties, license fees, and other receipts and payments for intangible rights between U.S. and unaffiliated foreign persons; comments due by 11-20-00; published 9-21-00

COMMERCE DEPARTMENT

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- Fishery conservation and management:
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    - North Pacific Groundfish Observer Program; extension; comments due by 11-20-00; published 11-3-00
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    - Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 11-24-00; published 10-25-00
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DEFENSE DEPARTMENT

- Acquisition regulations:
  - Overseas use of purchase card in contingency, humanitarian, or peacekeeping operations; comments due by 11-20-00; published 9-20-00

ENERGY DEPARTMENT

- Acquisition regulations:
  - Contractor legal management requirements; comments due by 11-24-00; published 10-25-00

ENVIRONMENTAL PROTECTION AGENCY

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  - Connecticut; comments due by 11-20-00; published 10-19-00
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    - South Dakota; sludge management (biosolids) program modification application; comments due by 11-20-00; published 10-5-00
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  - National primary drinking water regulations—
    - Arsenic; maximum contaminant level; comments due by 11-20-00; published 10-20-00
    - Arsenic; maximum contaminant level; correction; comments due by 11-20-00; published 10-27-00

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  - Wireless telecommunications services—
    - 911 Act implementation; N11 codes and other abbreviated dialing arrangements use; compatibility with 911 emergency calling systems; comments due by 11-20-00; published 9-19-00
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  - South Dakota and Wyoming; comments due by 11-20-00; published 10-12-00

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- Federal home loan bank system:
  - Capital structure requirements; comments due by 11-20-00; published 9-26-00

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National Institutes of Health

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    - Mexican spotted owl; comments due by 11-20-00; published 10-20-00
    - Peninsular bighorn sheep; comments due by 11-20-00; published 10-19-00
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- Migratory bird hunting:
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INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

- Permanent program and abandoned mine land reclamation plan submissions:
  - New Mexico; comments due by 11-22-00; published 10-23-00

JUSTICE DEPARTMENT

Drug Enforcement Administration

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  - Red phosphorus, white phosphorus, and hypophosphorous acid (and its salts); comments due by 11-24-00; published 9-25-00

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- Inmate control, custody, care, etc.:
  - Drug abuse treatment programs; participation requirements; comments due by 11-20-00; published 9-20-00
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- Acquisition regulations:
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NUCLEAR REGULATORY COMMISSION

- Radiation protection standards:
  - New dosimetry technology; licensee use of personnel dosimeters requiring processing by accredited processors; comments due by 11-24-00; published 10-24-00

TENNESSEE VALLEY AUTHORITY

- Tennessee River system; construction approval and regulation of structures:
  - Residential related use on TVA-controlled residential access shoreline and TVA flowage easement shoreline; comments due by 11-20-00; published 9-20-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

- Airworthiness directives:
  - Agusta S.p.A.; comments due by 11-21-00; published 9-22-00
  - Airbus; comments due by 11-24-00; published 10-25-00
  - Boeing; comments due by 11-20-00; published 10-5-00
  - British Aerospace; comments due by 11-20-00; published 10-20-00
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  - Canadair Model CL-600-2B19 series airplanes; comments due by 11-22-00; published 10-23-00

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TREASURY DEPARTMENT

Comptroller of the Currency

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TREASURY DEPARTMENT

Privacy Act; implementation; comments due by 11-24-00; published 10-25-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1651/P.L. 106–450

To amend the Fishermen's Protective Act of 1967 to extend the period during which reimbursement may be provided to owners of United States fishing vessels for costs incurred when such a vessel is seized and detained by a foreign country, and for other purposes. (Nov. 7, 2000; 114 Stat. 1941)

H.R. 2442/P.L. 106–451

Wartime Violation of Italian American Civil Liberties Act (Nov. 7, 2000; 114 Stat. 1947)

H.R. 4831/P.L. 106–452

To redesignate the facility of the United States Postal Service located at 2339 North California Avenue in Chicago, Illinois, as the "Roberto Clemente Post Office". (Nov. 7, 2000; 114 Stat. 1950)

H.R. 4853/P.L. 106–453

To redesignate the facility of the United States Postal Service located at 1568 South Green Road in South Euclid, Ohio, as the "Arnold C. D'Amico Station". (Nov. 7, 2000; 114 Stat. 1951)

H.R. 5229/P.L. 106–454

To designate the facility of the United States Postal Service located at 219 South Church Street in Odum, Georgia, as the "Ruth Harris Coleman Post Office Building". (Nov. 7, 2000; 114 Stat. 1952)

S. 501/P.L. 106–455

Glacier Bay National Park Resource Management Act of 2000 (Nov. 7, 2000; 114 Stat. 1953)

S. 503/P.L. 106–456

Spanish Peaks Wilderness Act of 2000 (Nov. 7, 2000; 114 Stat. 1955)

S. 835/P.L. 106–457

Estuaries and Clean Waters Act of 2000 (Nov. 7, 2000; 114 Stat. 1957)

S. 1088/P.L. 106–458

Arizona National Forest Improvement Act of 2000 (Nov. 7, 2000; 114 Stat. 1983)

S. 1211/P.L. 106–459

To amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner. (Nov. 7, 2000; 114 Stat. 1987)

S. 1218/P.L. 106–460

To direct the Secretary of the Interior to issue to the Landusky School District, without consideration, a patent for the surface and mineral estates of certain lots, and for other purposes. (Nov. 7, 2000; 114 Stat. 1988)

S. 1275/P.L. 106–461

Hoover Dam Miscellaneous Sales Act (Nov. 7, 2000; 114 Stat. 1989)

S. 1586/P.L. 106–462

Indian Land Consolidation Act Amendments of 2000 (Nov. 7, 2000; 114 Stat. 1991)

S. 2300/P.L. 106–463

Coal Market Competition Act of 2000 (Nov. 7, 2000; 114 Stat. 2010)

S. 2719/P.L. 106–464

Native American Business Development, Trade Promotion, and Tourism Act of 2000 (Nov. 7, 2000; 114 Stat. 2012)

S. 2950/P.L. 106–465

Sand Creek Massacre National Historic Site Establishment Act of 2000 (Nov. 7, 2000; 114 Stat. 2019)

S. 3022/P.L. 106–466

Nampa and Meridian Conveyance Act (Nov. 7, 2000; 114 Stat. 2024)

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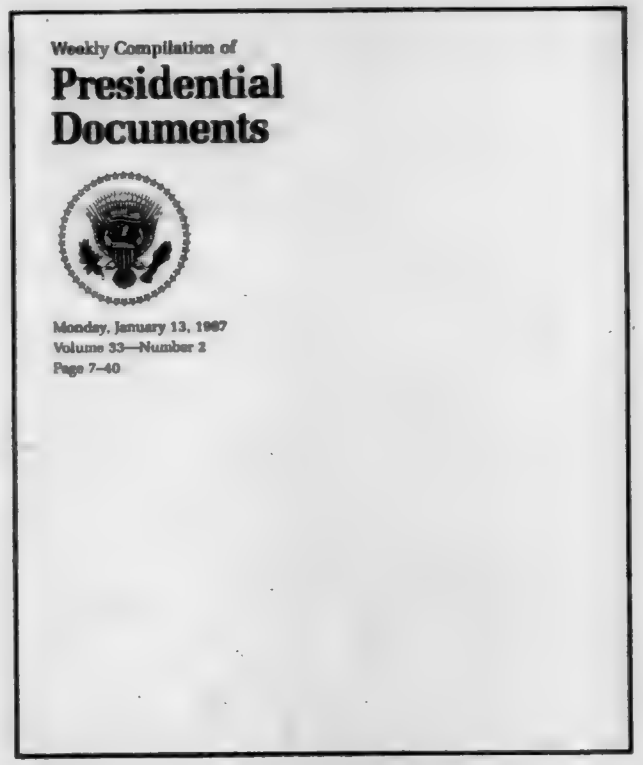

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–109–1]

Spanish Pure Breed Horses from Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations for the importation of Spanish Pure Breed horses from Spain by removing the requirement that the health certificate accompanying imported Spanish Pure Breed horses from Spain specify that the horses, since reaching breeding age, have not been on breeding premises. In place of that requirement, we will require that the health certificate accompanying Spanish Pure Breed horses certify, among other things, that, since reaching breeding age, the horses have not been on a farm that is exclusively a breeding premises; have not been bred; have not attempted to breed; and have not been commingled and left unattended with adult horses of the opposite sex. We are also correcting the name of the horse breed association of Spain. We believe that this action will relieve unnecessary restrictions on the importation of Spanish Pure Breed horses from Spain while continuing to protect against the introduction and dissemination of contagious equine metritis into the United States.

DATES: This interim rule is effective November 16, 2000. We invite you to comment on this docket. We will consider all comments that we receive by January 16, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–109–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–109–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Karen A. James, Assistant Director, Technical Trade Services Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart C—Horses, § § 93.300 through 92.326 of the regulations, pertains to the importation of horses into the United States. Section 93.301 of the regulations contains specific provisions for the quarantine and testing of horses from regions affected with contagious equine metritis (CEM), a highly contagious bacterial venereal disease that affects breeding and fertility. Section 93.301 also identifies regions where CEM exists and regions that trade horses freely with regions where CEM exists without testing for CEM. Section 93.301 prohibits, with certain exceptions, the importation of horses into the United States from those areas. The European Union—of which Spain is a Member State—is listed in § 93.301 as a region where CEM exists or may exist.

On August 1, 2000, we published in the **Federal Register** a final rule (65 FR 46859–46861, Docket No. 99–054–2) that amended the regulations in § 93.301 to allow Spanish Pure Breed stallions and mares that are more than 731 days old that have tested negative for CEM in the country of origin and have undergone Federal quarantine upon arrival in the United States to be imported into the United States without being subject to additional quarantine, testing, and treatment. Essentially, the final rule allowed Spanish Pure Breed Horses from Spain to be imported into the United States under the same preexport testing and quarantine conditions that previously applied only to thoroughbred horses from France, Germany, Ireland, and the United Kingdom.

Under the regulations in § 93.301(d), as amended by our August 1, 2000, final rule, thoroughbred horses from France, Germany, Ireland, and the United Kingdom and Spanish Pure Breed horses from Spain may be imported into the United States under certain conditions. Those conditions include, among other things, a requirement that thoroughbred horses from France, Germany, Ireland, and the United Kingdom and Spanish Pure Breed horses from Spain that are presented for permanent entry into the United States be accompanied by a health certificate.

Under § 93.301(d)(1)(ii), the health certificate accompanying such horses must certify, among other things, that since reaching 731 days of age, the horses have not been on breeding premises in the exporting region. This requirement is intended to protect against the introduction of CEM into the United States by ensuring that only virgin thoroughbred and Spanish Pure Breed horses from countries where CEM exists or may exist are eligible for importation into the United States under the requirements in § 93.301(d). Since CEM is a venereal disease that is spread primarily by sexual contact between horses, we believe that allowing only virgin thoroughbred and Spanish Pure Breed horses to enter the United States greatly reduces the risk that thoroughbred horses from France, Germany, Ireland, and the United Kingdom and Spanish Pure Breed horses from Spain could introduce CEM into the United States.

This requirement has not proven to be burdensome to exporters of thoroughbred horses because thoroughbreds are not, by standard practice, kept on breeding premises. However, we have been informed that Spanish Pure Breed horses in Spain are typically kept on premises where some breeding may occur. Because of this, horses from such premises cannot be certified as not having been on a breeding premises since reaching 731 days of age. The Government of Spain has requested that we amend the regulations in § 93.301(d)(1)(ii) to provide an alternative set of requirements that take into account this standard industry practice in Spain.

After considering the Spanish Government's request, we are removing the requirement that the health certificate accompanying Spanish Pure Breed horses must certify, among other things, that since reaching 731 days of age, the horses have not been on breeding premises in the exporting region. Rather, we will require that the health certificate accompanying Spanish Pure Breed horses specify that, since reaching 731 days of age:

- Each horse has never been on a farm that is exclusively a breeding premises,
- Each horse has never been bred,
- Breeding of each horse has never been attempted, and
- Each horse has never been commingled and left unattended with adult horses of the opposite sex.

We believe that these four requirements are adequate and necessary to ensure that any Spanish Pure Breed horses from Spain that are imported into the United States are virgin horses that present a minimal risk of introducing or disseminating CEM into the United States. Thus, from a disease exclusion and risk reduction standpoint, this change accomplishes what we intended in the August 1, 2000, final rule while making compliance with the regulations easier for persons exporting Spanish Pure Breed horses from Spain to the United States.

This rule will have no effect on the existing requirements for thoroughbred horses imported from France, Germany, Ireland, and the United Kingdom.

In this document, we are also correcting the name of the breed association in Spain that is specifically approved by the U.S. Department of Agriculture to provide factual, current information regarding the activities of Spanish Pure Breed horses for the purposes of § 93.301(d). In the final rule mentioned above, we identified the breed association in Spain as "Servicio de Cria Caballar y Remonta." The correct name of the Spanish breed association is "Jefatura de Cria Caballar Registro Matricula."

Immediate Action

Immediate action is necessary to relieve restrictions on the importation of Spanish Pure Breed horses into the United States. When we established the existing requirements for the importation of Spanish Pure Breed horses from Spain, we did not anticipate that compliance with the requirements would be problematic for exporters of those horses. We believe that the changes reflected in this document will relieve unnecessary restrictions while continuing to protect against the introduction of CEM into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

On August 1, 2000, we published in the **Federal Register** (65 FR 46859–46861, Docket No. 99–054–2) a final rule that amended the animal importation regulations by allowing Spanish Pure Breed horses to be imported from Spain into the United States under the same conditions that had previously applied only to thoroughbred horses from France, Germany, Ireland, and the United Kingdom. At that time, we conducted a regulatory flexibility analysis for the rule that determined that the rule would not have a significant economic impact on a substantial number of small entities. This rule has the same intended effect as the August 1, 2000, final rule, and simply amends the certification requirements for Spanish Pure Breed horses from Spain by providing a different means of certifying that those horses offered for entry into the United States have not been bred. Therefore, this rule will not result in any economic impacts other than those identified in the August 1, 2000, final rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 93.301, paragraph (d)(1)(ii) is amended as follows:

a. In paragraph (d)(1)(ii), in the introductory text, second sentence, by removing the word "shall" and adding the word "must" in its place.

b. By revising paragraph (d)(1)(ii)(B) to read as follows:

§ 93.301 General Prohibitions; exceptions.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) He or she has examined the records of the horse's activities maintained by a breed association

specifically approved by the Department[6] and certified by the breed association to be current, true, and factual for the following information:

(*1*) Identification of the horse by name, sex, age, breed, and all identifying marks;

(*2*) Identification of all premises where the horse has been since reaching 731 days of age and the dates that the horse was at such premises;

(*3*) For thoroughbred horses, that none of the premises where the horse has been since reaching 731 days of age are breeding premises; and

(*4*) For Spanish Pure Breed horses from Spain, that since reaching 731 days of age:

(*i*) The horse has never been on a premises that is exclusively a breeding premises;

(*ii*) The horse has never been bred;

(*iii*) Breeding of the horse has never been attempted; and

(*iv*) The horse has never been commingled and left unattended with adult horses of the opposite sex;

* * * * *

Done in Washington, DC, this 9th day of November 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–29365 Filed 11–15–00; 8:45 am]

BILLING CODE 3410–34–U

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[6] The following breed associations and their record systems have been approved by the Department: Jefatura de Cria Caballar Registro Matricula for Spain; Weatherby's Ltd. for the United Kingdom and Ireland; Haras du Pain for France; and Direktorium fur Vollblutzucht und Rennen e.v. for Germany.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–325–AD; Amendment 39–11948; AD 2000–22–02 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to all Boeing Model 737 series airplanes. That AD supersedes AD 99–05–15, amendment 39–11063, to require revising the FAA-approved Airplane Flight Manual (AFM) procedure in the existing AD to simplify the instructions for correcting a jammed or restricted flight control condition. This document corrects the format for certain AFM material described in that AD. This correction is necessary to ensure that the flightcrew is aware of certain critical recall items in the AFM procedure that are necessary to address a condition involving a jammed or restricted rudder.

DATES: Effective November 13, 2000.

FOR FURTHER INFORMATION CONTACT: Steve O'Neal, Aerospace Engineer, Flight Test Branch, ANM–160S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2699; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On October 20, 2000, the Federal Aviation Administration (FAA) issued AD 2000–22–02, amendment 39–11948 (65 FR 64134, October 26, 2000), which applies to all Boeing Model 737 series airplanes. That AD supersedes AD 96–26–07, amendment 39–9871 (62 FR 15, January 2, 1997), to require revising the FAA-approved Airplane Flight Manual (AFM) procedure in the existing AD to simplify the instructions for correcting a jammed or restricted flight control condition. That AD was prompted by an FAA determination that the procedure currently inserted in the AFM by the existing AD is not defined adequately. The actions required by that AD are intended to ensure that the flight crew is advised of the procedures necessary to address a condition involving a jammed or restricted rudder.

Need for the Correction

Information obtained recently by the FAA indicates that certain AFM material described in AD 2000–22–02 was incorrectly formatted.

The FAA has determined that a correction to the published format of the AFM procedure specified in paragraph (b) of that AD is necessary. The procedure contains critical recall (memory) items. The first two procedural steps, which call for disengagement of the autopilot and autothrottle, and their associated text, are recall items. In standard operational materials, recall items are indicated to the flight crew by specifying the information in a text box. Any duplication of this procedure in operational documentation must reflect the recall nature of these items. Therefore, paragraph (b) of this AD has been revised to reference Figure 1 of this AD, which contains the correct format in order to emphasize these recall items. The correction will ensure that the flightcrew is aware of the critical recall items in the AFM procedure described in that AD that are necessary to address a condition involving a jammed or restricted rudder.

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains November 13, 2000.

Since this action only corrects a formatting error, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2000–22–02 R1 Boeing: Amendment 39–11948. Docket 2000–NM–325–AD.

Applicability: All Model 737 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is advised of the procedures necessary to address a condition involving a jammed or restricted rudder, accomplish the following:

Restatement of Certain Requirements of AD 96–26–07

(a) Within 30 days after January 17, 1997 (the effective date of AD 96–26–07, amendment 39–9871): Revise the Emergency Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following recall item, which will enable the flight crew to take appropriate action to maintain control of the airplane during an uncommanded yaw or roll condition. This may be accomplished by inserting a copy of this AD in the AFM.

"UNCOMMANDED YAW OR ROLL RECALL

Maintain control of the airplane with all available flight controls. If roll is uncontrollable, immediately reduce angle of attack and increase airspeed. Do not attempt to maintain altitude until control is recovered. If engaged, disconnect autopilot and autothrottle."

New Requirements of This AD

(b) Within 30 days after the effective date of this AD: Revise the Normal Procedures Section of the FAA-approved AFM for Model 737–100 and –200 series airplanes or the Non-Normal Procedures Section of the FAA-approved AFM for Model 737–300, –400, –500, –600, –700, and –800 series airplanes, as applicable, to include the procedure specified in Figure 1 of this AD. This may be accomplished by inserting a copy of this AD in the AFM and removing the existing copy (inserted as required by AD 96–26–07), entitled "Jammed Flight Controls."

"UNCOMMANDED RUDDER

Condition: Uncommanded rudder pedal displacement or pedal kicks.

AUTOPILOT (if engaged)............................. DISENGAGE
Maintain control of the airplane with all available flight controls. If roll is uncontrollable, immediately reduce pitch/angle of attack and increase airspeed. Do not attempt to maintain altitude until control is recovered.

AUTOTHROTTLE (if engaged)........................ DISENGAGE
Verify thrust is symmetrical.

YAW DAMPER SWITCH...................................OFF

RUDDER TRIM.......................................CENTER

RUDDER PEDALS...............................FREE & CENTER
Use maximum force including a combined effort of both pilots, if required to free and center the rudder pedals.

If rudder pedal position or movement is not normal and the condition is not the result of rudder trim:

SYSTEM B FLIGHT
CONTROL SWITCH...............................STBY RUD

A slight rudder deflection may remain, but continued rudder pedal pressure may help maintain an in-trim condition.

Sufficient directional control is available on landing using differential braking and nose wheel steering.

Crosswind capability may be reduced.

Do not use autobrakes.

Consider checking rudder freedom of movement at a safe altitude using slow rudder inputs while in the landing configuration and at approach speed.

If condition was the result of rudder trim or environmental factors:

YAW DAMPER SWITCH..................................ON

Accomplish the normal DESCENT – APPROACH and LANDING checklists."

FIGURE 1

(c) It is acceptable to modify the format of the above procedure to reflect the format used by individual carriers. However, the procedural sequence, memory items, and/or associated text may not be modified, except by submitting a request for an alternative method of compliance (AMOC) as specified in paragraph (d) of this AD.

Alternative Methods of Compliance

(d) An AMOC or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(f) The effective date of this amendment remains November 13, 2000.

Issued in Renton, Washington, on November 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29403 Filed 11–15–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30214; Amdt. No. 2021]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The National Flight Procedures Office (NFPO) at the Mike Monroney Aeronautical Center in Oklahoma City, OK, which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Form is identified as FAA Form 8260–3. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various types of navigational equipment. The techniques used to code these SIAP's into the equipment data base impacts the usability of the procedure when activated. This amendment provides for the revision of the name/title of existing RNAV procedures to ensure coding techniques make the procedure fully available to the user. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "RNAV (GPS)" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a

"significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on November 9, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 9723, 97.27, 97.33, 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

* * * *Effective January 25, 2001*

Adak Island, AK, Adak NAF, RNAV RWY 23, Orig, CANCELLED
Adak Island, AK, Adak NAF, RNAV (GPS) RWY 23, Orig
Ambler, AK, Ambler, RNAV RWY 36, Orig, CANCELLED
Ambler, AK, Ambler, RNAV (GPS) RWY 36, Orig
Gulkana, AK, Gulkana, RNAV RWY 14, Orig, CANCELLED
Gulkana, AK, Gulkana, RNAV (GPS) RWY 14, Orig
Gulkana, AK, Gulkana, RNAV RWY 32, Orig, CANCELLED
Gulkana, AK, Gulkana, RNAV (GPS) RWY 32, Orig
Albertville, AL, The Albertville Muni-Thomas J. Brumlik Field, RNAV RWY 5, Orig, CANCELLED
Albertville, AL, The Albertville Muni-Thomas J. Brumlik Field, RNAV (GPS) RWY 5, Orig
Albertville, AL, The Albertville Muni-Thomas J. Brumlik Field, RNAV RWY 23, Orig, CANCELLED
Albertville, AL, The Albertville Muni-Thomas J. Brumlik Field, RNAV (GPS) RWY 23, Orig
Decatur, AL, Pryor Field Regional, RNAV RWY 36, Orig, CANCELLED
Decatur, AL, Pryor Field Regional, RNAV (GPS) RWY 36, Orig
Gulf Shores, AL, Jack Edwards, RNAV RWY 9, Orig, CANCELLED
Gulf Shores, AL, Jack Edwards, RNAV (GPS) RWY 9, Orig
Prattville, AL, Autauga County, RNAV RWY 9, Orig, CANCELLED
Prattville, AL, Autauga County, RNAV (GPS) RWY 9, Orig
Glendale, AZ, Glendale Muni, RNAV RWY 19, Orig, CANCELLED
Glendale, AZ, Glendale Muni, RNAV (GPS) RWY 19, Orig
Phoenix, AZ, Phoenix Sky Harbor Intl, RNAV RWY 7L, Orig, CANCELLED
Phoenix, AZ, Phoenix Sky Harbor Intl, RNAV (GPS) RWY 7L, Orig
Phoenix, AZ, Phoenix Sky Harbor Intl, RNAV RWY 8, Orig, CANCELLED
Phoenix, AZ, Phoenix Sky Harbor Intl, RNAV (GPS) RWY 8, Orig
Phoenix, AZ, Phoenix Sky Harbor Intl, RNAV RWY 26, Orig, CANCELLED
Phoenix, AZ, Phoenix Sky Harbor Intl, RNAV (GPS) RWY 26, Orig
Phoenix, AZ, Phoenix Sky Harbor Intl, RNAV RWY 25R, Orig, CANCELLED
Phoenix, AZ, Phoenix Sky Harbor Intl, RNAV (GPS) RWY 25R, Orig
Phoenix, AZ, Williams Gateway, RNAV RWY 12C, Orig, CANCELLED
Phoenix, AZ, Williams Gateway, RNAV (GPS) RWY 12C, Orig
Phoenix, AZ, Williams Gateway, RNAV RWY 12R, Orig, CANCELLED
Phoenix, AZ, Williams Gateway, RNAV (GPS) RWY 12R, Orig
Phoenix, AZ, Williams Gateway, RNAV RWY 30L, Orig, CANCELLED
Phoenix, AZ, Williams Gateway, RNAV (GPS) RWY 30L, Orig
Georgetown, DE, Sussex County, RNAV RWY 4, Orig, CANCELLED
Georgetown, DE, Sussex County, RNAV (GPS) RWY 4, Orig
Georgetown, DE, Sussex County, RNAV RWY 22, Orig, CANCELLED
Georgetown, DE, Sussex County, RNAV (GPS) RWY 22, Orig
Apalachicola, FL, Apalachicola Muni, RNAV RWY 13, Orig, CANCELLED
Apalachicola, FL, Apalachicola Muni, RNAV (GPS) RWY 13, Orig
Apalachicola, FL, Apalachicola Muni, RNAV RWY 31, Orig, CANCELLED
Apalachicola, FL, Apalachicola Muni, RNAV (GPS) RWY 31, Orig
Clearwater, FL, Clearwater Air Park, RNAV RWY 16, Orig, CANCELLED
Clearwater, FL, Clearwater Air Park, RNAV (GPS) RWY 16, Orig
Destin, FL, Destin-Fort Walton Beach, RNAV RWY 14, Orig, CANCELLED
Destin, FL, Destin-Fort Walton Beach, RNAV (GPS) RWY 14, Orig
Destin, FL, Destin-Fort Walton Beach, RNAV RWY 32, Orig, CANCELLED
Destin, FL, Destin-Fort Walton Beach, RNAV (GPS) RWY 32, Orig
Jacksonville, FL, Jacksonville Intl, RNAV RWY 7, Orig, CANCELLED
Jacksonville, FL, Jacksonville Intl, RNAV (GPS) RWY 7, Orig
Jacksonville, FL, Jacksonville Intl, RNAV RWY 13, Orig, CANCELLED
Jacksonville, FL, Jacksonville Intl, RNAV (GPS) RWY 13, Orig
Jacksonville, FL, Jacksonville Intl, RNAV RWY 25, Orig, CANCELLED
Jacksonville, FL, Jacksonville Intl, RNAV (GPS) RWY 25, Orig
Lake City, FL, Lake City Muni, RNAV RWY 10, Orig, CANCELLED
Lake City, FL, Lake City Muni, RNAV (GPS) RWY 10, Orig
Lake City, FL, Lake City Muni, RNAV RWY 28, Orig, CANCELLED
Lake City, FL, Lake City Muni, RNAV (GPS) RWY 28, Orig
Merritt Island, FL, Merritt Island, RNAV RWY 11, Orig, CANCELLED
Merritt Island, FL, Merritt Island, RNAV (GPS) RWY 11, Orig
Naples, FL, Naples Muni, RNAV RWY 5, Orig, CANCELLED
Naples, FL, Naples Muni, RNAV (GPS) RWY 5, Orig
Naples, FL, Naples Muni, RNAV RWY 23, Orig, CANCELLED
Naples, FL, Naples Muni, RNAV (GPS) RWY 23, Orig
Ocala, FL, Ocala Regional/Jim Taylor Field, RNAV RWY 18, Orig, CANCELLED
Ocala, FL, Ocala Regional/Jim Taylor Field, RNAV (GPS) RWY 18, Orig
Ocala, FL, Ocala Regional/Jim Taylor Field, RNAV RWY 36, Orig, CANCELLED
Ocala, FL, Ocala Regional/Jim Taylor Field, RNAV (GPS) RWY 36, Orig
Orlando, FL, Orlando Sanford, RNAV RWY 9L, Orig, CANCELLED
Orlando, FL, Orlando Sanford, RNAV (GPS) RWY 9L, Orig
Orlando, FL, Orlando Sanford, RNAV RWY 27R, Orig, CANCELLED
Orlando, FL, Orlando Sanford, RNAV (GPS) RWY 27R, Orig
Tampa, FL, Tampa Intl, RNAV RWY 9, Orig, CANCELLED
Tampa, FL, Tampa Intl, RNAV (GPS) RWY 9, Orig
Tampa, FL, Tampa Intl, RNAV RWY 27, Orig, CANCELLED
Tampa, FL, Tampa Intl, RNAV (GPS) RWY 27, Orig
Tampa, FL, Tampa Intl, RNAV RWY 36R, Orig, CANCELLED
Tampa, FL, Tampa Intl, RNAV (GPS) RWY 36R, Orig
Vero Beach, FL, Vero Beach Muni, RNAV RWY 11R, Orig, CANCELLED
Vero Beach, FL, Vero Beach Muni, RNAV (GPS) RWY 11R, Orig
Vero Beach, FL, Vero Beach Muni, RNAV RWY 29L, Orig, CANCELLED
Vero Beach, FL, Vero Beach Muni, RNAV (GPS) RWY 29L, Orig
Blakely, GA, Early County, RNAV RWY 5, Orig, CANCELLED
Blakely, GA, Early County, RNAV (GPS) RWY 5, Orig
Blakely, GA, Early County, RNAV RWY 23, Orig, CANCELLED
Blakely, GA, Early County, RNAV (GPS) RWY 23, Orig
Marietta, GA, Cobb County-McCollum Field, RNAV RWY 9, Orig, CANCELLED

Marietta, GA, Cobb County-McCollum Field, RNAV (GPS) RWY 9, Orig
Marietta, GA, Cobb County-McCollum Field, RNAV RWY 27, Orig, CANCELLED
Marietta, GA, Cobb County-McCollum Field, RNAV (GPS) RWY 27, Orig
Ames, IA, Ames Muni, RNAV RWY 1, Orig, CANCELLED
Ames, IA, Ames Muni, RNAV (GPS) RWY 1, Orig
Burlington, IA, Burlington Regional, RNAV RWY 36, Orig, CANCELLED
Burlington, IA, Burlington Regional, RNAV (GPS) RWY 36, Orig
Estherville, IA, Estherville Muni, RNAV RWY 16, Orig, CANCELLED
Estherville, IA, Estherville Muni, RNAV (GPS) RWY 16, Orig
Estherville, IA, Estherville Muni, RNAV RWY 34, Orig, CANCELLED
Estherville, IA, Estherville Muni, RNAV (GPS) RWY 34, Orig
Hampton, IA, Hampton Muni, RNAV RWY 17, Orig, CANCELLED
Hampton, IA, Hampton Muni, RNAV (GPS) RWY 17, Orig
Hampton, IA, Hampton Muni, RNAV RWY 35, Orig, CANCELLED
Hampton, IA, Hampton Muni, RNAV (GPS) RWY 35, Orig
Mason City, IA, Mason City Muni, RNAV RWY 30, Orig, CANCELLED
Mason City, IA, Mason City Muni, RNAV (GPS) RWY 30, Orig
Hailey, ID, Friedman Memorial, RNAV RWY 31, Orig, CANCELLED
Hailey, ID, Friedman Memorial, RNAV (GPS) RWY 31, Orig
Belleville, IL, Scott AFB/Midamerica, RNAV RWY 14R, Orig, CANCELLED
Belleville, IL, Scott AFB/Midamerica, RNAV (GPS) RWY 14R, Orig
Belleville, IL, Scott AFB/Midamerica, RNAV RWY 32L, Orig. CANCELLED
Belleville, IL, Scott AFB/Midamerica, RNAV (GPS) RWY 32L, Orig
Chicago, IL, Chicago O'Hare Intl, RNAV RWY 9r, Orig, CANCELLED
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) RWY 9R, Orig
Chicago, IL, Chicago O'Hare Intl, RNAV RWY 14L, Orig, CANCELLED
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) RWY 14L, Orig
Chicago, IL, Chicago O'Hare Intl, RNAV RWY 14R, Orig, CANCELLED
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) RWY 14R, Orig
Chicago/Aurora, IL, Aurora Muni, RNAV RWY 15, Orig, CANCELLED
Chicago/Aurora, IL, Aurora Muni, RNAV (GPS) RWY 15, Orig
Chicago/Aurora, IL, Aurora Muni, RNAV RWY 33, Orig, CANCELLED
Chicago/Aurora, IL, Aurora Muni, RNAV (GPS) RWY 33, Orig
Chicago/Lake In The Hills, IL, Lake In The Hills, RNAV RWY 8, Orig, CANCELLED
Chicago/Lake In The Hills, IL, Lake In The Hills, RNAV (GPS) RWY 8, Orig
Chicago/Lake In The Hills, IL, Lake In The Hills, RNAV RWY 26, Orig, CANCELLED
Chicago/Lake In The Hills, IL, Lake In The Hills, RNAV (GPS) RWY 26, Orig
Grayslake, IL, Campbell, RNAV–B, Orig, CANCELLED
Grayslake, IL, Campbell, RNAV–B (GPS), Orig
Greenwood/Wonder Lake, IL, Galt Field, RNAV–B, Orig, CANCELLED
Greenwood/Wonder Lake, IL, Galt Field, RNAV–B (GPS), Orig
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV RWY 9, Orig, CANCELLED
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV (GPS) RWY 9, Orig
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV RWY 18, Orig, CANCELLED
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV (GPS) RWY 18, Orig
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV RWY 27, Orig, CANCELLED
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV (RPS) RWY 27, Orig
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV RWY 36, Orig, CANCELLED
Lawrenceville, IL, Lawrenceville-Vincennes Intl, RNAV (GPS) RWY 36, Orig
Connersville, IN, Mettel Field, RNAV RWY 18, Orig, CANCELLED
Connersville, IN, Mettel Field, RNAV (GPS) RWY 18, Orig
Connersville, IN, Mettel Field, RNAV RWY 36, Orig, CANCELLED
Connersville, IN, Mettel Field, RNAV (GPS) RWY 36, Orig
Lafayette, IN, Purdue University, RNAV RWY 10, Orig, CANCELLED
Lafayette, IN, Purdue University, RNAV (GPS) RWY 10, Orig
Lafayette, IN, Purdue University, RNAV RWY 28, Orig, CANCELLED
Lafayette, IN, Purdue University, RNAV (GPS) RWY 28, Orig
Winamac, IN, Arens Field RNAV RWY 9, Orig, CANCELLED
Winamac, IN, Arens Field RNAV (GPS) RWY 9, Orig
Winamac, IN, Arens Field RNAV RWY 27, Orig, CANCELLED
Winamac, IN, Arens Field RNAV (GPS) RWY 27, Orig
Hays, KS, Hays Regional, RNAV RWY 34, Orig, CANCELLED
Hays, KS, Hays Regional, RNAV (GPS) RWY 34, Orig
Olathe, KS, New Century Aircenter, RNAV RWY 17, Orig, CANCELLED
Olathe, KS, New Century Aircenter, RNAV (GPS) RWY 17, Orig
Olathe, KS, New Century Aircenter, RNAV RWY 35, Orig, CANCELLED
Olathe, KS, New Century Aircenter, RNAV (GPS) RWY 35, Orig
Georgetown, KY, Georgetown Scott County-Marshall Field, RNAV RWY 3, Orig, CANCELLED
Georgetown, KY, Georgetown Scott County-Marshall Field, RNAV (GPS) RWY 3, Orig
Georgetown, KY, Georgetown Scott County-Marshall Field, RNAV RWY 21, Orig, CANCELLED
Georgetown, KY, Georgetown Scott County-Marshall Field, RNAV (GPS) RWY 21, Orig
Pikeville, KY, Pike County-Hatcher Field, RNAV RWY 9, Orig, CANCELLED
Pikeville, KY, Pike County-Hatcher Field, RNAV (GPS) RWY 9, Orig
Pikeville, KY, Pike County-Hatcher Field, RNAV RWY 27, Orig, CANCELLED
Pikeville, KY, Pike County-Hatcher Field, RNAV (GPS) RWY 27, Orig
Alexandria, LA, Alexandria Intl, RNAV RWY 14, Orig, CANCELLED
Alexandria, LA, Alexandria Intl, RNAV (GPS) RWY 14, Orig
Tallulah/Vicksburg, LA, Vicksburg Tallulah Regional, RNAV RWY 18, Orig, CANCELLED
Tallulah/Vicksburg, LA, Vicksburg Tallulah Regional, RNAV (GPS) RWY 18, Orig
Tallulah/Vicksburg, LA, Vicksburg Tallulah Regional, RNAV RWY 36, Orig, CANCELLED
Tallulah/Vicksburg, LA, Vicksburg Tallulah Regional, RNAV (GPS) RWY 36, Orig
Boston, MA, General Edward Lawrence Logan Intl, RNAV RWY 4R, Orig, CANCELLED
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 4R, Orig
Hyannis, MA, Barnstable Muni-Boardman/Polando Field, RNAV RWY 24, Orig, CANCELLED
Hyannis, MA, Barnstable Muni-Boardman/Polando Field, RNAV (GPS) RWY 24, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 4, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV (GPS) RWY 4, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 10, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV (GPS) RWY 10, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 15L, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV (GPS) RWY 15L, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV Y RWY 15R, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV (GPS) Y RWY 15R, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV Z RWY 15R, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV (GPS) Z RWY 15R, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 22, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV (GPS) RWY 22, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV Y RWY 28, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV (GPS) Y RWY 28, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV Z RWY 28, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV (GPS) Z RWY 28, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 33L, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV (GPS) RWY 33L, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 33R, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV (GPS) RWY 33R, Orig
Baltimore, MD, Martin State, RNAV RWY 15, Orig, CANCELLED
Baltimore, MD, Martin State, RNAV (GPS) RWY 15, Orig
Baltimore, MD, Martin State, RNAV RWY 33, Orig, CANCELLED
Baltimore, MD, Martin State, RNAV (GPS) RWY 33, Orig
College Park, MD, College Park, RNAV RWY 15, Orig, CANCELLED
College Park, MD, College Park, RNAV (GPS) RWY 15, Orig

Cumberland, MD, Greater Cumberland Regional, RNAV RWY 5, Orig, CANCELLED
Cumberland, MD, Greater Cumberland Regional, RNAV (GPS) RWY 5, Orig
Gaithersburg, MD, Montgomery County Airpark, RNAV RWY 14, Orig, CANCELLED
Gaithersburg, MD, Montgomery County Airpark, RNAV (GPS) RWY 14, Orig
Ocean City, MD, Ocean City Muni, RNAV RWY 14, Orig, CANCELLED
Ocean City, MD, Ocean City Muni, RNAV (GPS) RWY 14, Orig
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, RNAV RWY 5, Orig, CANCELLED
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, RNAV (GPS) RWY 5, Orig
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, RNAV RWY 14, Orig, CANCELLED
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, RNAV (GPS) RWY 14, Orig
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, RNAV RWY 23, Orig, CANCELLED
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, RNAV (GPS) RWY 23, Orig
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, RNAV RWY 32, Orig, CANCELLED
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, RNAV (GPS) RWY 32, Orig
Stevensville, MD, Bay Bridge, RNAV RWY 11, Orig, CANCELLED
Stevensville, MD, Bay Bridge, RNAV (GPS) RWY 11, Orig
Stevensville, MD, Bay Bridge, RNAV RWY 29, Orig, CANCELLED
Stevensville, MD, Bay Bridge, RNAV (GPS) RWY 29, Orig
Westminster, MD, Carroll County Reg/Jack B. Poage Field, RNAV RWY 16, Orig, CANCELLED
Westminster, MD, Carroll County Reg/Jack B. Poage Field, RNAV (GPS) RWY 16, Orig
Westminster, MD, Carroll County Reg/Jack B. Poage Field, RNAV RWY 34, Orig, CANCELLED
Westminster, MD, Carroll County Reg/Jack B. Poage Field, RNAV (GPS) RWY 34, Orig
Westminster, MD, Clearview Airpark, RNAV RWY 14, Orig, CANCELLED
Westminster, MD, Clearview Airpark, RNAV (GPS) RWY 14, Orig
Frenchville, ME, Northern Aroostook Regional, RNAV RWY 14, Orig, CANCELLED
Frenchville, ME, Northern Aroostook Regional, RNAV (GPS) RWY 14, Orig
Frenchville, ME, Northern Aroostook Regional, RNAV RWY 32, Orig, CANCELLED
Frenchville, ME, Northern Aroostook Regional, RNAV (GPS) RWY 32, Orig
Princeton, ME, Princeton Muni, RNAV RWY 15, Orig, CANCELLED
Princeton, ME, Princeton Muni, RNAV (GPS) RWY 15, Orig
Coldwater, MI, Branch County Memorial, RNAV RWY 6, Orig, CANCELLED
Coldwater, MI, Branch County Memorial, RNAV (GPS) RWY 6, Orig
Detroit/Grosse Ile, MI, Grosse Ile Muni, RNAV RWY 22, Orig, CANCELLED
Detroit/Grosse Ile, MI, Grosse Ile Muni, RNAV (GPS) RWY 22, Orig
Frankfort, MI, Frankfort Dow Memorial Field, RNAV RWY 15, Orig, CANCELLED
Frankfort, MI, Frankfort Dow Memorial Field, RNAV (GPS) RWY 15, Orig
Frankfort, MI, Frankfort Dow Memorial Field, RNAV RWY 33, Orig, CANCELLED
Frankfort, MI, Frankfort Dow Memorial Field, RNAV (GPS) RWY 33, Orig
Harbor Springs, MI, Harbor Springs, RNAV RWY 10, Orig, CANCELLED
Harbor Springs, MI, Harbor Springs, RNAV (GPS) RWY 10, Orig
Harbor Springs, MI, Harbor Springs, RNAV RWY 28, Orig, CANCELLED
Harbor Springs, MI, Harbor Springs, RNAV (GPS) RWY 28, Orig
Ionia, MI, Ionia County, RNAV RWY 27, Orig, CANCELLED
Ionia, MI, Ionia County, RNAV (GPS) RWY 27, Orig
Marlette, MI, Marlette, RNAV RWY 9, Orig, CANCELLED
Marlette, MI, Marlette, RNAV (GPS) RWY 9, Orig
Marlette, MI, Marlette, RNAV RWY 27, Orig, CANCELLED
Marlette, MI, Marlette, RNAV (GPS) RWY 27, Orig
Marquette, MI, Sawyer Intl, RNAV RWY 19, Orig, CANCELLED
Marquette, MI, Sawyer Intl, RNAV (GPS) RWY 19, Orig
Saginaw, MI, Saginaw County H. W. Browne, RNAV RWY 27, Orig, CANCELLED
Saginaw, MI, Saginaw County H. W. Browne, RNAV (GPS) RWY 27, Orig
Three Rivers, MI, Three Rivers Muni Dr Haines, RNAV RWY 27, Orig, CANCELLED
Three Rivers, MI, Three Rivers Muni Dr Haines, RNAV (GPS) RWY 27, Orig
Troy, MI, Oakland/Troy, RNAV RWY 9, Orig, CANCELLED
Troy, MI, Oakland/Troy, RNAV (GPS) RWY 9, Orig
Bemidji, MN, Bemidji-Beltrami County, RNAV RWY 31, Orig, CANCELLED
Bemidji, MN, Bemidji-Beltrami County, RNAV (GPS) RWY 31, Orig
Minneapolis, MN, Flying Cloud, RNAV RWY 36, Orig, CANCELLED
Minneapolis, MN, Flying Cloud, RNAV RWY (GPS) 36, Orig
Olivia, MN, Olivia Regional, RNAV RWY 29, Orig, CANCELLED
Olivia, MN, Olivia Regional, RNAV (GPS) RWY 29, Orig
Owatonna, MN, Owatonna Degner Regional, RNAV RWY 12, Orig, CANCELLED
Owatonna, MN, Owatonna Degner Regional, RNAV (GPS) RWY 12, Orig
Pine River, MN, Pine River Regional, RNAV RWY 34, Orig, CANCELLED
Pine River, MN, Pine River Regional, RNAV (GPS) RWY 34, Orig
Cameron, MO, Cameron Memorial, RNAV RWY 17, Orig, CANCELLED
Cameron, MO, Cameron Memorial, RNAV (GPS) RWY 17, Orig
Cameron, MO, Cameron Memorial, RNAV RWY 35, Orig, CANCELLED
Cameron, MO, Cameron Memorial, RNAV (GPS) RWY 35, Orig
Fredericktown, MO, Fredericktown Regional, RNAV RWY 1, Orig, CANCELLED
Fredericktown, MO, Fredericktown Regional, RNAV (GPS) RWY 1, Orig
Fredericktown, MO, Fredericktown Regional, RNAV RWY 19, Orig, CANCELLED
Fredericktown, MO, Fredericktown Regional, RNAV (GPS) RWY 19, Orig
Marshall, MO, Marshall Meml Muni, RNAV RWY 18, Orig, CANCELLED
Marshall, MO, Marshall Meml Muni, RNAV (GPS) RWY 18, Orig
Marshall, MO, Marshall Meml Muni, RNAV RWY 36, Orig, CANCELLED
Marshall, MO, Marshall Meml Muni, RNAV (GPS) RWY 36, Orig
Picayune, MS, Picayune Muni, RNAV RWY 18, Orig, CANCELLED
Picayune, MS, Picayune Muni, RNAV (GPS) RWY 18, Orig
Picayune, MS, Picayune Muni, RNAV RWY 36, Orig, CANCELLED
Picayune, MS, Picayune Muni, RNAV (GPS) RWY 36, Orig
Poplar, MT, Poplar, RNAV RWY 9, Orig, CANCELLED
Poplar, MT, Poplar, RNAV (GPS) RWY 9, Orig
Poplar, MT, Poplar, RNAV RWY 27, Orig, CANCELLED
Poplar, MT, Poplar, RNAV (GPS) RWY 27, Orig
Edenton, NC, Northeastern Regional, RNAV RWY 1, Orig, CANCELLED
Edenton, NC, Northeastern Regional, RNAV (GPS) RWY 1, Orig
Edenton, NC, Northeastern Regional, RNAV RWY 5, Orig, CANCELLED
Edenton, NC, Northeastern Regional, RNAV RWY 5, Orig
Edenton, NC, Northeastern Regional, RNAV RWY 19, Orig, CANCELLED
Edenton, NC, Northeastern Regional, RNAV (GPS) RWY 19, Orig
Gastonia, NC, Gastonia Muni, RNAV RWY 3, Orig, CANCELLED
Gastonia, NC, Gastonia Muni, RNAV (GPS) RWY 3, Orig
Kinston, NC, Kinston Regional Jetport at Stallings Fld, RNAV RWY 5, Orig, CANCELLED
Kinston, NC, Kinston Regional Jetport at Stallings Fld, RNAV (GPS) RWY 5, Orig
Silver City, NC, Silver City Municipal, RNAV RWY 22, Orig, CANCELLED
Silver City, NC, Silver City Municipal, RNAV (GPS) RWY 22, Orig
Bismarck, ND, Bismarck Muni, RNAV RWY 3, Orig, CANCELLED
Bismarck, ND, Bismarck Muni, RNAV (GPS) RWY 3, Orig
Bismarck, ND, Bismarck Muni, RNAV RWY 21, Orig, CANCELLED
Bismarck, ND, Bismarck Muni, RNAV (GPS) RWY 21, Orig
Dickinson, ND, Dickinson Muni, RNAV RWY 14, Orig, CANCELLED
Dickinson, ND, Dickinson Muni, RNAV (GPS) RWY 14, Orig
Dickinson, ND, Dickinson Muni, RNAV RWY 32, Orig, CANCELLED
Dickinson, ND, Dickinson Muni, RNAV (GPS) RWY 32, Orig
Fargo, ND, Hector Intl, RNAV RWY 8, Orig, CANCELLED

Fargo, ND, Hector Intl, RNAV (GPS) RWY 8, Orig

Fargo, ND, Hector Intl, RNAV RWY 26, Orig, CANCELLED

Fargo, ND, Hector Intl, RNAV (GPS) RWY 26, Orig

Mohall, ND, Mohall Muni, RNAV RWY 31, Orig, CANCELLED

Mohall, ND, Mohall Muni, RNAV (GPS) RWY 31, Orig

Albion, NE, Albion Muni, RNAV RWY 15, Orig. CANCELLED

Albion, NE, Albion Muni, RNAV (GPS) RWY 15, Orig

Albion, NE, Albion Muni, RNAV RWY 33, Orig, CANCELLED

Albion, NE, Albion Muni, RNAV (GPS) RWY 33, Orig

Grand Island, NE, Central Nebraska Regional, RNAV RWY 13, Orig, CANCELLED

Grand Island, NE, Central Nebraska Regional, RNAV (GPS) RWY 13, Orig

Grand Island, NE, Central Nebraska Regional, RNAV RWY 17, Orig, CANCELLED

Grand Island, NE, Central Nebraska Regional, RNAV (GPS) RWY 17, Orig

Grand Island, NE, Central Nebraska Regional, RNAV RWY, Orig, CANCELLED

Grand Island, NE, Central Nebraska Regional, RNAV (GPS) RWY 31, Orig

Grand Island, NE, Central Nebraska Regional, RNAV RWY 35, Orig, CANCELLED

Grand Island, NE, Central Nebraska Regional, RNAV (GPS) RWY 35, Orig,

McCook, NE, McCook Muni, RNAV RWY 21, Orig. CANCELLED

McCook, NE, McCook Muni, RNAV (GPS) RWY 21, Orig

Norfolk, NE, Karl Stefan Memorial, RNAV RWY 1, Orig, CANCELLED

Norfolk, NE, Karl Stefan Memorial, RNAV (GPS) RWY 1, Orig,

Norfolk, NE, Karl Stefan Memorial, RNAV RWY 19, Orig, CANCELLED

Norfolk, NE, Karl Stefan Memorial, RNAV (GPS) RWY 19, Orig

Norfolk, NE, Karl Stefan Memorial, RNAV RWY 13, Orig, CANCELLED

Norfolk, NE, Karl Stefan Memorial, RNAV (GPS) RWY 13, Orig

Norfolk, NE, Karl Stefan Memorial, RNAV RWY 31, Orig, CANCELLED

Norfolk, NE, Karl Stefan Memorial, RNAV (GPS) RWY 31, Orig

O'Neill, NE, The O'Neill Muni-John L. Baker Field, RNAV RWY 13, Orig, CANCELLED

O'Neill, NE, The O'Neill Muni-John L. Baker Field, RNAV (GPS) RWY 13, Orig

O'Neill, NE, The O'Neill Muni-John L. Baker Field, RNAV (GPS) RWY 31, Orig, CANCELLED

O'Neill, NE, The O'Neill Muni-John L. Baker Field, RNAV (GPS) RWY 31, Orig

Valentine, NE, Miller Field, RNAV RWY 32, Orig, CANCELLED

Valentine, NE, Miller Field, RNAV (GPS) RWY 32, Orig

Wayne, NE, Wayne Muni, RNAV RWY 17, Orig, CANCELLED

Wayne, NE, Wayne Muni, RNAV (GPS) RWY 17, Orig

Wayne, NE, Wayne Muni, RNAV RWY 35, Orig, CANCELLED

Wayne, NE, Wayne Muni, RNAV (GPS) RWY 35, Orig

Atlantic City, NJ, Atlantic City Intl, RNAV RWY 13, Orig, CANCELLED

Atlantic City, NJ, Atlantic City Intl, RNAV (GPS) RWY 13, Orig

Atlantic City, NJ, Atlantic City Intl, RNAV RWY 22, Orig, CANCELLED

Atlantic City, NJ, Atlantic City Intl, RNAV (GPS) RWY 22, Orig

Newark, NJ, Newark Intl, RNAV RWY 22L, Orig, CANCELLED

Newark, NJ, Newark Intl, RNAV (GPS) RWY 22L, Orig

Montgomery, NY Orange County, RNAV RWY 3, Orig, CANCELLED

Montgomery, NY Orange County, RNAV (GPS) RWY 3, Orig

Montgomery, NY Orange County, RNAV RWY 8, Orig, CANCELLED

Montgomery, NY Orange County, RNAV (GPS) RWY 8, Orig

Montgomery, NY Orange County, RNAV RWY 21, Orig, CANCELLED

Montgomery, NY Orange County, RNAV (GPS) RWY 21, Orig

Montgomery, NY Orange County, RNAV RWY 26, Orig, CANCELLED

Montgomery, NY Orange County, RNAV (GPS) RWY 26, Orig

Monticello, NY, Sullivan County Intl, RNAV RWY 33, Orig, CANCELLED

Monticello, NY, Sullivan County Intl, RNAV (GPS) RWY 33, Orig

New York, NY, La Guardia, Copter RNAV 250, Orig, CANCELLED

New York, NY, La Guardia, Copter RNAV (GPS) 250, Orig

Niagara Falls, NY, Niagara Falls Intl, RNAV RWY 10L, Orig, CANCELLED

Niagara Falls, NY, Niagara Falls Intl, RNAV (GPS) RWY 10L, Orig

Sidney, NY, Sidney Muni, RNAV RWY 25, Orig, CANCELLED

Sidney, NY, Sidney Muni, RNAV (GPS) RWY 25, Orig

Lebanon, OH, Lebanon-Warren County, RNAV RWY 1, Orig, CANCELLED

Lebanon, OH, Lebanon-Warren County, RNAV (GPS) RWY 1, Orig

Lebanon, OH, Lebanon-Warren County, RNAV RWY 19, Orig, CANCELLED

Lebanon, OH, Lebanon-Warren County, RNAV RWY 19, Orig

Ardmore, OK, Ardmore Muni, RNAV RWY 31, Orig, CANCELLED

Ardmore, OK, Ardmore Muni, RNAV (GPS) RWY 31, Orig

Oklahoma City, OK, Sundance Airpark, RNAV RWY 17, Orig, CANCELLED

Oklahoma City, OK, Sundance Airpark, RNAV (GPS) RWY 17, Orig

Oklahoma City, OK, Sundance Airpark, RNAV RWY 35, Orig, CANCELLED

Oklahoma City, OK, Sundance Airpark, RNAV (GPS) RWY 35, Orig

Tillamook, OR, Tillamook, RNAV RWY 13, Orig, CANCELLED

Tillamook, OR, Tillamook, RNAV (GPS) RWY 13, Orig

Pittsburgh, PA, Allegheny County, RNAV RWY 5, Orig, CANCELLED

Pittsburgh, PA, Allegheny County, RNAV RWY 5, Orig

Pittsburgh, PA, Allegheny County, RNAV RWY 10, Orig, CANCELLED

Pittsburgh, PA, Allegheny County, RNAV RWY 10, Orig

Pittsburgh, PA, Allegheny County, RNAV RWY 28, Orig, CANCELLED

Pittsburgh, PA, Allegheny County, RNAV RWY 28, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 10R, Orig, CANCELLED

Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 10R, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 10L, Orig, CANCELLED

Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 10L, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 10C, Orig, CANCELLED

Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 10C, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 14, Orig, CANCELLED

Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 14, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 28R, Orig, CANCELLED

Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 28R, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 28L, Orig, CANCELLED

Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 28L, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 28C, Orig, CANCELLED

Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 28C, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 32, Orig, CANCELLED

Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) RWY 32, Orig

Pottsville, PA, Schuylkill County/Joe Zerbey, RNAV RWY 11, Orig, CANCELLED

Pottsville, PA, Schuylkill County/Joe Zerbey, RNAV (GPS) RWY 11, Orig

Pottsville, PA, Schuylkill County/Joe Zerbey, RNAV RWY 29, Orig, CANCELLED

Pottsville, PA, Schuylkill County/Joe Zerbey, RNAV (GPS) RWY 29, Orig, CANCELLED

Pottsville, PA, Schuylkill County/Joe Zerbey, RNAV (GPS) RWY 29, Orig

San Juan, PR Luis Munoz Marin Intl, RNAV RWY 8, Orig, CANCELLED

San Juan, PR Luis Munoz Marin Intl, RNAV (GPS) RWY 8, Orig

San Juan, PR Luis Munoz Marin Intl, RNAV RWY 10, Orig, CANCELLED

San Juan, PR Luis Munoz Marin Intl, RNAV RWY 10, Orig

Anderson, SC, Anderson Regional, RNAV RWY 5, Orig, CANCELLED

Anderson, SC, Anderson Regional, RNAV (GPS) RWY 5, Orig

Myrtle Beach, SC, Myrtle Beach Intl, RNAV RWY 35, Orig, CANCELLED

Myrtle Beach, SC, Myrtle Beach Intl, RNAV (GPS) RWY 35, Orig

Myrtle Beach, SC, Myrtle Beach Intl, RNAV RWY 17, Orig, CANCELLED

Myrtle Beach, SC, Myrtle Beach Intl, RNAV (GPS) RWY 17, Orig

Rapid City, SD, Rapid City Regional, RNAV RWY 32, Orig, CANCELLED

Rapid City, SD, Rapid City Regional, RNAV (GPSA) RWY 32, Orig

Murfreesboro, TN, Murfreesboro Muni, RNAV RWY 18, Orig, CANCELLED

Murfreesboro, TN, Murfreesboro Muni, RNAV (GPS) RWY 18, Orig

Murfreesboro, TN, Murfreesboro Muni, RNAV RWY 36, Orig, CANCELLED

Murfreesboro, TN, Murfreesboro Muni, RNAV (GPS) RWY 36, Orig

Smithville, TN, Smithville Muni, RNAV RWY 24, Orig, CANCELLED

Smithville, TN, Smithville Muni, RNAV (GPS) RWY 24, Orig

Somerville, TN, Fayette County, RNAV RWY 19, Orig, CANCELLED

Somerville, TN, Fayette County, RNAV (GPS) RWY 19, Orig

Anahuac, TX, Chambers County, RNAV RWY 12, Orig, CANCELLED

Anahuac, TX, Chambers County, RNAV (GPS) RWY 12, Orig

Baytown, TX, RWJ Airpark, RNAV RWY 26, Orig. CANCELLED

Baytown, TX, RWJ Airpark, RNAV (GPS) RWY 26, Orig

Bonham, TX, Jones Field, RNAV RWY 17, Orig, CANCELLED

Bonham, TX, Jones Field, RNAV (GPS) RWY 17, Orig

Brownwood, TX, Brownwood Regional, RNAV RWY 17, Orig, CANCELLED

Brownwood, TX, Brownwood Regional, RNAV (GPS) RWY 17, Orig

Brownwood, TX, Brownwood Regional, RNAV RWY 35, Orig, CANCELLED

Brownwood, TX, Brownwood Regional, RNAV (GPS) RWY 35, Orig

Corsicana, TX, C. David Campbell Field-Corsicana Muni, RNAV RWY 14, Orig, CANCELLED

Corsicana, TX, C. David Campbell Field-Corsicana Muni, RNAV (GPS) RWY 14, Orig

Corsicana, TX, C. David Campbell Field-Corsicana Muni, RNAV RWY 32, Orig, CANCELLED

Corsicana, TX, C. David Campbell Field-Corsicana Muni, RNAV (GPS) RWY 32, Orig

Eastland, TX, Eastland Muni, RNAV RWY 35, Orig, CANCELLED

Eastland, TX, Eastland Muni, RNAV (GPS) RWY 35, Orig

Fort Stockton, TX, Fort Stockton-Pecos County, RNAV RWY 12, Orig, CANCELLED

Fort Stockton, TX, Fort Stockton-Pecos County, RNAV (GPS) RWY 12, Orig

Fort Stockton, TX, Fort Stockton-Pecos County, RNAV RWY 30, Orig, CANCELLED

Fort Stockton, TX, Fort Stockton-Pecos County, RNAV (GPS) RWY 30, Orig

Fort Worth, TX, Fort Worth Alliance, RNAV RWY 16L, Orig, CANCELLED

Fort Worth, TX, Fort Worth Alliance, RNAV (GPS) RWY 16L, Orig

Fort Worth, TX, Fort Worth Alliance, RNAV RWY 34R, Orig, CANCELLED

Fort Worth, TX, Fort Worth Alliance, RNAV (GPS) RWY 34R, Orig

La Grange, TX, Fayette Regional Air Center, RNAV RWY 16, Orig, CANCELLED

La Grange, TX, Fayette Regional Air Center, RNAV (GPS) RWY 16, Orig

La Grange, TX, Fayette Regional Air Center, RNAV RWY 34, Orig, CANCELLED

La Grange, TX, Fayette Regional Air Center, RNAV (GPS) RWY 34, Orig

Liberty, TX, Liberty Muni, RNAV RWY 16, Orig, CANCELLED

Liberty, TX, Liberty Muni, RNAV (GPS) RWY 16, Orig

Livingston, TX, Livingston Muni, RNAV RWY 30, Orig, CANCELLED

Livingston, TX, Livingston Muni, RNAV (GPS) RWY 30, Orig

Lufkin, TX, Angelina County, RNAV RWY 25, Orig, CANCELLED

Lufkin, TX, Angelina County, RNAV (GPS) RWY 25, Orig

Lufkin, TX, Angelina County, RNAV RWY 33, Orig, CANCELLED

Lufkin, TX, Angelina County, RNAV (GPS) RWY 33, Orig

Nacogdoches, TX, A L Mangham Jr Regional, RNAV RWY 15, Orig, CANCELLED

Nacogdoches, TX, A L Mangham Jr Regional, RNAV (GPS) RWY 15, Orig

Nacogdoches, TX, A L Mangham Jr Regional, RNAV RWY 18, Orig, CANCELLED

Nacogdoches, TX, A L Mangham Jr Regional, RNAV (GPS) RWY 18, Orig

Palestine, TX, Palestine Muni, RNAV RWY 35, Orig, CANCELLED

Palestine, TX, Palestine Muni, RNAV (GPS) RWY 35, Orig

Port Lavaca, TX, Calhoun County, RNAV RWY 14, Orig, CANCELLED

Port Lavaca, TX, Calhoun County, RNAV (GPS) RWY 14, Orig

Rockport, TX, Aransas Co, RNAV RWY 14, Orig, CANCELLED

Rockport, TX, Aransas Co, RNAV (GPS) RWY 14, Orig

Seminole, TX, Gaines County, RNAV (GPS) RWY 35, Orig, CANCELLED

Seminole, TX, Gaines County, RNAV (GPS) RWY 35, Orig

Uvalde, TX, Garner Field, RNAV RWY 33, Orig, CANCELLED

Uvalde, TX, Garner Field, RNAV (GPS) RWY 33, Orig

Wendover, UT, Wendover, RNAV RWY-A, Orig, CANCELLED

Wendover, UT, Wendover, RNAV (GPS)-A, Orig

Wendover, UT, Wendover, RNAV RWY 26, Orig, CANCELLED

Wendover, UT, Wendover, RNAV (GPS) RWY 26, Orig

Charlottesviklle, VA, Charlottesville-Albermarle, RNAV RWY 3, Orig, CANCELLED

Charlottesviklle, VA, Charlottesville-Albermarle, RNAV (GPS) RWY 3, Orig

Norfolk, VA, Norfolk Intl, RNAV RWY 23, Orig, CANCELLED

Norfolk, VA, Norfolk Intl, RNAV (GPS) RWY 23, Orig

Charlotte Amalie, VI, Cyril E King, RNAV RWY 10, Orig, CANCELLED

Charlotte Amalie, VI, Cyril E King, RNAV (GPS) RWY 10, Orig

Christiansted, VI, Henry E. Rohlsen, RNAV RWY 9, Orig, CANCELLED

Christiansted, VI, Henry E. Rohlsen, RNAV (GPS) RWY 9, Orig

Black River Falls, WI, Black River Falls Area, RNAV RWY 8, Orig, CANCELLED

Black River Falls, WI, Black River Falls Area, RNAV (GPS) RWY 8, Orig

Green Bay, WI, Austin Straubel Intl, RNAV RWY 6, Orig, CANCELLED

Green Bay, WI, Austin Straubel Intl, RNAV (GPS) RWY 6, Orig

Green Bay, WI, Austin Straubel Intl, RNAV RWY 36, Orig, CANCELLED

Green Bay, WI, Austin Straubel Intl, RNAV (GPS) RWY 36, Orig

Morgantown, WV, Morgantpwn Muni-WAalter L. Bill Hart Field, RNAV RWY 18, Orig, CANCELLED

Morgantown, WV, Morgantpwn Muni-WAalter L. Bill Hart Field, RNAV (GPS) RWY 18, Orig

[FR Doc. 00–29321 Filed 11–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30213; Amdt. No. 2020]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impractical and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on November 9, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPS; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
09/21/00	AZ	Kingman	Kingman	FDC 0/1580	VOR/DME Rwy 21 Amdt 6A... This corrects FDC 0/1580 IN TL 00–22.
10/11/00	WI	Mosinee	Central Wisconsin	FDC 0/2658	ILS RWY 8, Amdt 1A...
10/17/00	VA	Suffolk	Suffolk Muni	FDC 0/2868	GPS RWY 7 Orig–A...
10/17/00	WI	Ladysmith	Rusk County	FDC 0/2839	NDB or GPS Rwy 32, Amdt 2A...
10/20/00	VA	Richmond/Ashland	Hanover County Muni	FDC 0/2998	VOR Rwy 16 Orig–D...
10/25/00	WI	Eau Claire	Chippewa Valley Regional	FDC 0/3230	LOC/DME BC Rwy 4, Amdt 8...
10/26/00	IA	Boone	Boone Muni	FDC 0/3295	GPS Rwy 32, Orig...
10/26/00	IA	Boone	Boone Muni	FDC 0/3296	GPS Rwy 14, Amdt 1...
10/26/00	NM	Santa Fe	Sante Fe Muni	FDC 0/3274	VOR/DMR or GPS–A, Amdt 1...
10/26/00	NM	Socorro	Socorro Muni	FDC 0/3273	GPS Rwy 33, Orig–A...
10/26/00	NM	Truth or Consequences	Truth or Consequences Muni	FDC 0/3275	VOR or GPS–A, Amdt 9A...
10/26/00	NV	Las Vegas	McCarran Intl	FDC 0/3308	GPS Rwy 1R Orig–A...
10/27/00	AK	Fort Yukon	Fort Yukon	FDC 0/3362	VOR/DME or TACAN Rwy 21, Amdt 1B... Replaces 0/2899
10/27/00	AZ	Prescott	Ernest A. Love Field	FDC 0/3372	VOR/DME RNAV Rwy 21L Amdt 3...
10/27/00	AZ	Prescott	Ernest A. Love Field	FDC 0/3375	VOR Rwy 12 Amdt 2...
10/27/00	ND	Grand Forks	Grand Forks Intl	FDC 0/3367	ILS Rwy 35L, Amdt 11A... Replaces 0/3225
10/27/00	TX	Conroe	Conroe/Montgomery County	FDC 0/3345	GPS Rwy 32, Orig–B...
10/27/00	TX	Conroe	Conroe/Montgomery County	FDC 0/3346	VOR/DME RNAV Rwy 32, Amdt 1B...
10/27/00	TX	Conroe	Conroe/Montgomery County	FDC 0/3347	NDB Rwy 14, Amdt 1B...
10/27/00	TX	Greenville	Majors	FDC 0/3387	ILS 2 Rwy 17, Amdt 4...
10/27/00	TX	Greenville	Majors	FDC 0/3391	ILS Rwy 17, Amdt 5...
10/27/00	TX	Greenville	Majors	FDC 0/3398	VOR/DME Rwy 17, Orig–A...
10/27/00	VA	Leesburg	Leesburg Executive	FDC 0/3339	GPS Rwy 17 Amdt 1 ..
10/27/00	VA	Leesburg	Leesburg Executive	FDC 0/3342	LOC Rwy 17 Amdt 2...
10/27/00	VA	Leesburg	Leesburg Executive	FDC 0/3343	VOR or GPS–A Amdt 1...
10/27/00	WI	Mosinee	Central Wisconsin	FDC 0/3330	ILS/DME Rwy 35, Orig...
10/30/00	GA	Valdosta	Valdosta Regional	FDC 0/3471	ILS Rwy 35, Amdt 5B...
10/30/00	IL	Chicago/Aurora	Aurora Muni	FDC 0/3465	ILS Rwy 9, Amdt 1B...
10/30/00	NE	Albion	Albion Muni	FDC 0/3484	RNAV Rwy 33, Orig...
10/30/00	NE	Albion	Albion Muni	FDC 0/3485	RNAV Rwy 15, Orig...
10/30/00	TX	Conroe	Conroe/Montgomery County	FDC 0/3470	ILS Rwy 14, Amdt 1C...
10/30/00	TX	Greenville	Majors	FDC 0/3445	NDB or GPS Rwy 35, Amdt 1A...
10/30/00	TX	Sherman/Denison	Grayson County	FDC 0/3441	NDB or GPS Rwy 17L, Amdt 9...
10/31/00	IL	Chicago/Aurora	Aurora Muni	FDC 0/3520	VOR/DME RNAV or GPS Rwy 27, Orig–A...
10/31/00	MO	St Louis	Lambert-St Louis Intl	FDC 0/3540	ILS Rwy 30L, Amdt 11...
10/31/00	SD	Rapid City	Rapid City Regional	FDC 0/3523	RNAV Rwy 32, Orig...
10/31/00	TX	Greenville	Majors	FDC 0/3515	NDB or GPS Rwy 17, Amdt 5A...
10/31/00	WI	Richland Center	Richland	FDC 0/3546	VOR or GPS–A, Amdt 4...
11/2/00	NC	Monroe	Monroe	FDC 0/3665	ILS Rwy 5 Orig–C...
11/2/00	NC	Monroe	Monroe	FDC 0/3666	VOR/DME or GPS–B Amdt 6B...
11/2/00	NC	Monroe	Monroe	FDC 0/3667	VOR or GPS–A Amdt 11B...
11/2/00	NC	Monroe	Monroe	FDC 0/3669	NDB or GPS Rwy 5, Amdt 2B...
11/01/00	AZ	Prescott	Ernest A. Love Field	FDC 0/3570	ILS/DME Rwy 21L Amdt 3...
11/02/00	AR	Ash Flat	Sharp County Regional	FDC 0/3634	NDB Rwy 3, Amdt 1B...
11/02/00	AR	Camden	Harrell Field	FDC 0/3619	VOR/DME or GPS Rwy 36, Amdt 8A...
11/02/00	MO	Kansas City	Kansas City Downtown	FDC 0/3685	ILS Rwy 3, Amdt 1D...
11/02/00	MO	Kansas City	Kansas City Intl	FDC 0/3684	ILS Rwy 9, Amdt 11B...
11/02/00	TX	Kerrville	Kerrville Muni/Louis Scheriner Field	FDC 0/3663	VOR/DME RNAV or GPS Rwy 12, Amdt 2A...
11/02/00	TX	Wichita Falls	Wichita Valley	FDC 0/3638	VOR–B, Amdt 5...
11/02/00	TX	Wichita Falls	Wichita Valley	FDC 0/3639	VOR/DME–C, Amdt 1...
11/03/00	FL	Fort Myers	Southwest Florida Intl	FDC 0/3749	VOR/DME or TACAN Rwy 24, Amdt 1...
11/03/00	LA	New Iberia	Acadiana Regional	FDC 0/3744	VOR or TACAN or GPS Rwy 16, Orig–A...
11/03/00	OH	Tiffin	Seneca County	FDC 0/3752	NDB Rwy 24, Amdt 7...
11/03/00	OR	Medford	Rouge Valley Intl-Medford	FDC 0/3741	ILS Rwy 14, Orig...
11/03/00	TX	Dalhart	Dalhart Muni	FDC 0/3718	VOR Rwy 17, Amdt 12B...
11/06/00	NV	Las Vegas	North Las Vegas	FDC 0/3819	GPS Rwy 12 Orig...
11/07/00	AK	Anchorage	Anchorage Intl	FDC 0/3850	VOR Rwy 6R, Amdt 12B...
11/07/00	AR	Lake Village	Lake Village Muni	FDC 0/3860	GPS Rwy 1, Orig...
11/07/00	FL	Fort Myers	Southwest Florida Intl	FDC 0/3864	RADAR–1 Amdt 5...
11/07/00	TX	Houston	Ellington Field	FDC 0/3834	ILS Rwy 17R, Amdt 4A...
11/07/00	TX	Houston	Ellington Field	FDC 0/3835	GPS Rwy 17R, Orig...

[FR Doc. 00–29320 Filed 11–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30212; Amdt. No. 2019]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on November 9, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective November 30, 2000*

Philadelphia, PA, Philadelphia Intl, ILS RWY 26, Amdt 1
Philadelphia, PA, Philadelphia Intl, ILS PRM, RWY 26, Orig (Simultaneous Close Parallel)
Philadelphia, PA, Philadelphia Intl, ILS RWY 27L, Amdt 11
Philadelphia, PA, Philadelphia Intl, ILS PRM, RWY 27L, Orig (Simultaneous Close Parallel)
Memphis, TN, Memphis Intl, ILS RWY 36C, Amdt 1

* * * *Effective December 28, 2000*

Talladega, AL, Talladega Muni, VOR/DME–B, Orig
Palmer, MA, Metropolitan, NDB RWY 4, Orig, CANCELLED

* * * *Effective January 25, 2001*

Destin, FL, Destin-Fort Walton Beach, RADAR–1, Amdt 8
Perry, FL, Perry-Foley, NDB RWY 36, Amdt 4
Perry, FL, Perry-Foley, RNAV (GPS) RWY 18, Orig
Perry, FL, Perry-Foley, RNAV (GPS) RWY 36, Orig
Perry, FL, Perry-Foley, VOR/DME RNAV OR GPS RWY 18, Amdt 1, CANCELLED
Atlanta, GA, The William B. Hartsfield Atlanta Intl, ILS RWY 27L, Amdt 14
Winamac, IN, Arens Field, NDB OR GPS RWY 9, Amdt 1, CANCELLED
Lexington, KY, Blue Grass, NDB RWY 4, Amdt 21
Lexington, KY, Blue Grass, ILS RWY 22, Amdt 18
Owatonna, MN, Owatonna Degner Regional, ILS RWY 30, Amdt 1
Atlantic City, NJ, Atlantic City Muni/Bader Field, VOR OR GPS–B, Amdt 1A, CANCELLED
Atlantic City, NJ, Ocean City Muni, VOR RWY 6, Amdt 1, CANCELLED
Erwin, NC, Harnett County, VOR/DME RWY 5, Amdt 2
Erwin, NC, HARNETT County, NDB RWY 23, Amdt 1
Erwin, NC, Harnett County, GPS RWY 5, Orig-B, CANCELLED
Erwin, NC, Harnett County, RNAV (GPS) RWY 5, Orig
Erwin, NC, Harnett County, RNAV (GPS) RWY 23, Orig
Saranac Lake, NY, Adirondack Regional, VOR/DME RWY 5, Amdt 3
Saranac Lake, NY, Adirondack Regional, VOR OR GPS RWY 9, Amdt 1
Saranac Lake, NY, Adirondack Regional, RNAV (GPS) RWY 5, Orig
Selinsgrove, PA, Penn Valley, VOR–A, Amdt 6
Selinsgrove, PA, Penn Valley, RNAV (GPS) RWY 17, Orig
Richmond/Ashland, VA, Hanover County Muni, VOR RWY 16, Amdt 1
Richmond/Ashland, VA, Hanover County Muni, LOC RWY 16, Amdt 2
Clarksburg, WV, Benedum, ILS RWY 21, Amdt 1

The FAA published an Amendment in Docket 30210, Amdt No. 2017 to Part 97 Of the Federal Aviation Regulations, Volume 65 FR No. 213, Pages 65733 dated Thursday, November 2, 2000 under section 97.29 effective January 25, 2001 which is hereby rescinded:

Jackson, WY; Jackson Hole, ILS RWY 18, Amdt 7

[FR Doc. 00–29319 Filed 11–15–00; 8:45 am]

BILLING CODE 4910–[illegible]–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 125, 225, and 356

[Docket No. RM99–8–001; Order No. 617–A]

Preservation of Records of Public Utilities and Licensees, Natural Gas Companies, and Oil Pipeline Companies; Order Denying Rehearing

Issued November 9, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE

ACTION: Order denying rehearing.

SUMMARY: Edison Electric Institute (EEI) filed a request for rehearing seeking revision of the Commission's Final Rule in Order No. 617, *Preservation of Records of Public Utilities and Licensees, Natural Gas Companies, and Oil Pipeline Companies*. The Commission denies rehearing.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Mary C. Lauermann (Technical Information), Office of the Executive Director, 888 First Street, NE., Washington, D.C. 20426, (202) 208–0087
Julia A. Lake (Legal Information), Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 208–2019.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this order, the Commission addresses a request for rehearing of Order No. 617, the final rule on the preservation of records of public utilities and licensees, natural gas companies, and oil pipeline companies.[1] In Order No. 617, the Commission amended Parts 125, 225, and 356[2] of its regulations in order to update, reduce, and clarify records retention requirements for jurisdictional public utilities and licensees, natural gas companies and oil pipeline companies. Order No. 617 is part of the Commission's ongoing program to update and eliminate burdensome and unnecessary requirements. These changes significantly reduce the burden of maintaining records for regulated companies.

For the reasons stated below, the Commission denies rehearing.

II. Background

On July 27, 2000, the Commission issued Order No. 617, revising the Commission's records retention regulations, which included revising the general instructions, revising the records retention periods, and removing all but two retention reserve items. Order No. 617, effective January 1, 2001, is part of the Commission's ongoing program to update and eliminate burdensome and unnecessary requirements.

A timely request for rehearing was filed by Edison Electric Institute (EEI) requesting: (1) Reduction of one retention period, and (2) revision of one section of regulatory text. These issues are addressed separately below.

III. Discussion

1. Reduction of Retention Period

Under the final rule, utilities and licensees must maintain plant records for as long as the plant is included in the company's accounting records.[3] EEI argues that the new record retention period for schedule item 8(b)(1) of 25 years represents an increase in the retention period. EEI requests the Commission to reduce the record retention period for schedule item 8(b)(1) back to 6 years, as required under the prior regulations.

The Commission has not increased the record retention period for schedule item 8(b)(1). The record retention period has always been a minimum of 25 years.[4] The revised schedule item 8(b)(1) clarifies this 25-year retention period. The Commission recognized, however, that many plant items have a useful life longer than 25 years, and that other plant items are sold or retired in less than 25 years. The Commission is requiring companies to keep plant records until the facilities are permanently removed from service and retired from the accounting records. This revision recognizes that it is possible for companies to maintain plant records for shorter or longer periods than 25 years. The Commission, therefore, denies EEI's request for a reduction of the retention period for schedule item 8(b)(1).

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[1] 65 FR 48148 (Aug. 7, 2000); III FERC Stats. & Regs. ¶ 31,105 (Jul. 21, 2000). The Commission issued a correction notice on August 15, 2000. *See* 65 FR 50638 (Aug. 21, 2000).

[2] 18 CFR Parts 125, 225, and 356.

[3] 18 CFR 125.2(g) and 18 CFR 125.3 item 8(b)(1).

[4] *See* former 17 CFR 125.2(j) ("* * * records related to plant shall be retained a minimum of 25 years.").

2. Revision of New § 125.2(i)

Section 125.2(i) of the final rule requires public utilities and licensees to assure that supporting cost information is available for services performed by or for associated or affiliated companies, including detailed information regarding the nature of the transaction, the amounts involved, and the accounts used to record the transaction. EEI continues to be concerned that the language in this section could be interpreted to expand the Commission's authority to records of utility affiliates in general, instead of just to records that relate to utility-affiliate transactions. EEI stated that the Commission's clarification provided in the preamble of the final rule was "very useful and informative," and that the "clarification is valuable because it reduces .* * * ambiguity" and "reflects the 'utility-affiliate' focus of the records to be maintained." However, EEI's concern is that the clarification provided in the preamble should be incorporated into the regulatory text at § 125.2(i), and requests that the text be amended to include the clarification. EEI proposed the following revision to § 125.2(i):

> Public utilities and licensees must assure the availability of records, *to be retained by the originating entity,* of services performed by *a utility or licensee* for associated or affiliated companies *and vice versa,* with supporting cost information for the periods indicated in section 125.3 as necessary, *as they pertain to the cost of the services performed.*

The Commission believes that EEI's suggested revision to the regulatory language in § 125.2(i) is unnecessary. We find that EEI's suggested revision, in fact, deletes clarifying language identifying the kind of information public utilities and licensees must retain. The regulatory text in the final rule clearly states the Commission's needs related to records retention for transactions between utilities and affiliates. The Commission, therefore, denies the request for this revision.

IV. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 A.M. to 5:00 P.M. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission's Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (e-mail to *Webmaster@ferc.fed.us)* or the Public Reference Room at (202) 208–1371 (e-mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29330 Filed 11–15–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 9, 24, 70 and 275

[T.D. ATF–432]

RIN 1512–AC25

Technical Amendments

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule: Treasury decision.

SUMMARY: This Treasury decision makes technical amendments and corrects typographical errors in various regulations of the ATF. All changes are to provide clarity and uniformity throughout the regulations.

DATES: Effective November 16, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Kern, Regulations Division, (202) 927–8210, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) administers regulations published in title 27, Code of Federal Regulations. These regulations are updated April 1 of each year to incorporate new or revised regulations that were published by ATF in the **Federal Register** during the preceding year. ATF identified several amendments that are needed to provide clarity and uniformity to the regulations in 27 CFR.

These amendments do not make any substantive changes and are only intended to improve the clarity of title 27.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR 1320, do not apply to this final rule because there are no recordkeeping or reporting requirements.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply to this rule because no notice of proposed rulemaking is necessary.

Executive Order 12866

This final rule is not subject to the requirements of Executive Order 12866 because the regulations make nonsubstantive technical corrections to previously published regulations.

Administrative Procedure Act

Because this final rule merely makes technical corrections to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Drafting Information

The author of this document in Nancy Kern, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and Containers.

27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas. Wine.

27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Bankruptcy, Claims, Disaster assistance, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Customs duties and inspections, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

Authority and Issuance

Accordingly, for the reason set out in the preamble, Title 27, Code of Federal Regulations is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 17 U.S.C. 205

Par. 2. In § 4.21, revise the cross reference at the end of the section to read as follows:

§ 4.21 The standards of identity.

* * * * *

Cross Reference: For regulations relating to the use of spirits in wine, see part 24 of this chapter.

Par. 3. Section 4.25a(e)(2) is revised to read as follows:

§ 4.25a Appellations of origin.

* * * * *

(e) * * *

(2) *Establishment of American viticultural areas.* Petitions for establishment of American viticultural areas may be made to the Director by any interested party, pursuant to the provisions of § 70.701(c) of this title. The petition may be in the form of a letter, and should contain the following information referred to in § 9.3(b) of this title.

* * * * *

PART 9—AMERICAN VITICULTURAL AREAS

Par. 4. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 5. In § 9.3, revise the section heading and paragraphs (a) and (b)(3) to read as follows:

§ 9.3 Relation to parts 4 and 70 of this chapter.

(a) Procedure. In accordance with §§ 4.25a(e)(2) and 70.701(c) of this chapter, the Director shall receive petitions to establish American viticultural areas and shall use the informal rulemaking process, under 5 U.S.C. 553, in establishing viticultural areas in this part.

(b) * * *

(3) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

* * * * *

PART 24—WINE

Par. 6. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 7. In § 24.265, remove the word "bail" and add the wrod "bailee" in place thereof.

PART 70—PROCEDURE AND ADMINISTRATION

Par. 8. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622. 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

Par. 9. In § 70.411, revise paragraph (c)(2) to read as follows:

§ 70.411 Imposition of taxes, qualification requirements, and regulations.

* * * * *

(c) * * *

(2) *Miscellaneous liquor transactions.* Part 170 of 27 CFR contains miscellaneous regulations relative to the manufacture, removal, and use of stills and condensers, and to the notice, registration, and recordkeeping requirements therefor.

* * * * *

Par. 10. Remove the reference "§ 71.26(h)" each place it appears and add, in its place, the reference "§ 70.802(g)" in the following places;

(a) § 70.701(a)(3)(iv); and

(b) § 70.701(b).

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 10a. The authority citation for part 275 continues to read as follows:

Authority: 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721, 5722, 5723, 5741, 5754, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 11. In § 275.105, revise the first sentence to read as follows:

§ 275.105 Prepayment of tax.

To prepay, in Puerto Rico, the internal revenue tax imposed by 26 U.S.C.

7652(a), on tobacco products and cigarette paper and tubes of Puerto Rican manufacture which are to be shipped to the United States, the shipper shall file, or cause to be filed, with the Chief, Puerto Rico Operations, a tax return, ATF Form 5000.25, in duplicate, with full remittance of tax which will become due on such tobacco products and cigarette papers and tubes.* * *

Signed: October 16, 2000.

Bradley A. Buckles,

Director.

Approved: October 25, 2000.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 00–29409 Filed 11–15–00; 8:45 am]

BILLING CODE 4810–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–061–7211a; A–1–FRL–6897–4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are converting our limited approval under the Clean Air Act of the Commonwealth of Massachusetts State Implementation Plan (SIP) revision for an enhanced vehicle inspection and maintenance program to a full approval. In our limited approval, we said Massachusetts needed to submit revisions to its SIP to address four sections of EPA's enhanced I/M regulation for full approval. We have determined that on October 20, 2000 Massachusetts submitted revisions that meet all of the conditions for full approval. Additionally, we are also approving an interim level of emission reduction credit for the inspection and maintenance program that can be utilized by Massachusetts in attainment planning. The intent of this action is to convert our limited approval of Massachusetts' enhanced vehicle I/M program SIP to a full approval and to approve an interim level of emission reduction credit for attainment planning purposes.

DATES: This direct final rule is effective on January 16, 2001 without further notice, unless EPA receives relevant adverse comment by December 18, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning , Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), SW., Washington, DC; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Peter Hagerty, (617) 918–1049.

SUPPLEMENTARY INFORMATION:

This Supplementary Information section is organized as follows:

I. What action is EPA taking today?
II. What Massachusetts SIP revision is the topic of this action?
III. What were the requirements for full approval of the Massachusetts inspection and maintenance program?
IV. How did Massachusetts fulfill these requirements for full approval?
V. What action did EPA take to defer sanctions in Massachusetts?
VI. What credit may Massachusetts assume in the interim until the correlation study is complete?
VII. EPA Action
VIII. Administrative Requirements

I. What Action Is EPA Taking Today?

In this action, we are converting our limited approval of Massachusetts' enhanced motor vehicle inspection and maintenance (I/M) SIP to a full approval.

We are also approving Massachusetts to use ASM credits for future planning purposes until the correlation study to compare IM240 with the Massachusetts 31 second test (MA31 test) is completed. Note: The full approval of the Massachusetts I/M program is based on the ability of the program to achieve the low-enhanced performance standard, and EPA has already determined that the program meets the low-enhanced standard in its limited approval of the program.

II. What Massachusetts SIP Revision Is the Topic of This Action?

This notice deals with a revision to the State of Massachusetts' Clean Air Act SIP submitted by Massachusetts on October 20, 2000 for certain program elements necessary to complete the I/M program. Today we are acting only upon this October 20, 1999 submittal to determine that Massachusetts submitted revisions meeting all of the conditions necessary to convert the limited approval of the enhanced I/M plan to a full approval. In so doing we are not reopening our final rulemaking granting limited approval of the Massachusetts enhanced I/M SIP submitted on May 14, 1999 and approved at 40 CFR 52.1120(c)(122).

III. What Were the Requirements for Full Approval of the Massachusetts Inspection and Maintenance Program?

Approval of Massachusetts' I/M program SIP required submission of information to meet the requirements of the following sections of EPA's I/M regulations: Network type and program evaluation—40 CFR 51.353; Quality control—40 CFR 51.359; Quality assurance—40 CFR 51.363; and On-road testing—40 CFR 51.371.

IV. How Did Massachusetts Fulfill These Requirements for Full Approval?

On October 20, 2000, Massachusetts submitted revisions to its enhanced I/M SIP to EPA in order to meet the conditions for full approval. The following is a description of the measures which Massachusetts has submitted to meet each of the deficient areas described in the limited approval approved at 40 CFR 52.1120(c)(122).

1. *Network type and program evaluation—40 CFR 51.353*—As part of its October 20, 2000 submittal, Massachusetts submitted a document entitled "Program Evaluation Plans For the Enhanced Inspection and Maintenance Program," dated October 2000. The Program Evaluation Plans contained a final "MA31-to-IM240 Correlation Study." The protocol for the correlation study was developed with EPA input and is acceptable to establish final emission reduction credit for the Massachusetts I/M program. A task assignment has been signed by Massachusetts to gather data to conduct the study described in the protocol. A copy of that task assignment was included in the October 20, 2000 submittal.

The Program Evaluation Plans, dated October 2000, also contained a "Phase 2 Program Evaluation Plan for the Massachusetts I&M Program." The phase 2 program evaluation will begin after the MA31-to-IM240 correlation study is complete. The phase 2 program will evaluate the Massachusetts I/M program using a modified method of the EPA/Sierra Research Method. On January 9, 1998 (63 FR 1362), EPA finalized revisions to its program evaluation requirements allowing this methodology to be utilized. This section of the SIP now meets the requirements of EPA's I/M rule.

2. *Quality control—40 CFR 51.359*—As part of its October 20, 2000 submittal, Massachusetts submitted a document entitled "Quality Assurance and Quality Control Plan For the Massachusetts Enhanced Emissions and Safety Inspection Program," dated October 16, 2000. This plan contains the needed quality control procedures. This section of the SIP now meets the requirements of EPA's I/M rule.

3. *Quality assurance—40 CFR 51.363*—As part of its October 20, 2000 submittal, Massachusetts submitted a document entitled "Quality Assurance and Quality Control Plan For the Massachusetts Enhanced Emissions and Safety Inspection Program," dated October 16, 2000. This plan contains the needed quality assurance measures and provisions. This section of the SIP now meets the requirements of EPA's I/M rule.

4. *On-road testing—40 CFR 51.371*—In the October 20, 2000 submittal letter, Massachusetts has committed to conducting on-road testing with remote sensing and has shown that resources are available to do the testing. Data will be analyzed and a report submitted to EPA. This section of the SIP now meets the requirements of EPA's I/M rule.

V. What Action Did EPA Take To Defer Sanctions in Massachusetts?

Due to the disapproval of an earlier I/M SIP submitted by the Commonwealth of Massachusetts, the Clean Air Act's offset sanction was applicable in Massachusetts beginning May 15, 1999 and the Clean Air Act's highway sanction was applicable beginning November 15, 1999. On November 30, 1999 (64 FR 66775), EPA published an interim final rule in the **Federal Register** which deferred the application of those sanctions beginning on December 15, 1999. Our interim final rule was based on a finding that Massachusetts had more likely than not implemented an approvable enhanced I/M program that was to take effect on December 15, 1999. In that action EPA said that the implementation of sanctions will be deferred until EPA takes final action on the I/M SIP.

Today EPA is taking final, full approval of Massachusetts' submitted enhanced I/M program SIP revision. Accordingly, all sanctions and FIP clocks related to approval of Massachusetts' I/M program are terminated upon the effective date of today's action.

VI. What Credit May Massachusetts Assume in the Interim Until the Correlation Study Is Complete?

In EPA's supplementary proposed rule on the Massachusetts I/M SIP published on November 30, 1999 (64 FR 66829), EPA stated that there was no data available at the time to assign the exact emission reduction credit for the combination of test type and equipment that the Commonwealth was implementing (*i.e.*, a 31 second transient test utilizing the BAR 31 trace and NYTEST equipment). We did state that, even if one makes extremely conservative assumptions about the efficacy of the Massachusetts test, EPA's mobile modeling shows that the I/M program demonstrates compliance with EPA's performance standard for a low enhanced program. We also acknowledged that Massachusetts will conduct necessary comparison testing to determine the appropriate emission reduction for SIP credit using the combination of the BAR 31 transient trace with NYTEST equipment and stated that this would be important for purposes of approving the ozone attainment demonstration for the one-hour ozone standard submitted by the Commonwealth on July 27, 1998.

On December 16, 1999 (64 FR 70319), EPA proposed approval of the Massachusetts attainment demonstration for the Springfield (Western Massachusetts) ozone nonattainment area. EPA stated that unless Massachusetts submitted a demonstration which would substantiate the level of credit claimed for their I/M program, EPA would disapprove the attainment demonstration. *Id.* at 70329–30. In the meantime, while Massachusetts has pursued such a test program and has in fact signed a work order to execute this program, additional information has become available which allows the Agency to exercise engineering judgement in estimating the credit level of the MA31 test program. The MA 31 test program combines use of the NYTEST equipment used in New York with the BAR 31 test cycle used in Oregon.

The additional information EPA has received is a test program which resulted in an evaluation of the difference in effectiveness between EPA's IM240 equipment and NYTEST equipment which is utilized by Massachusetts. This test program quantified the effectiveness of NYTEST and granted it 95% of the IM240 hydrocarbon (HC) reduction credit and 99% of the IM240 reduction credit for both carbon-monoxide (CO) and nitrogen oxides (NO_X).

In November 25, 1996, EPA had quantified the BAR31 cycle currently run in Oregon (OR31) as receiving 90% of the IM240 HC credit and 95% of the IM240 CO and NO_X credit. Although the OR31 uses the same cycle as the MA31 test, the OR31 employs IM240 equipment, which is more accurate than the BAR97 equipment specified in the MA31 test. Therefore, the credit afforded the MA31 at this time has been slightly reduced to reflect this equipment discrepancy. The NYTEST equipment analysis taken in concert with the earlier information defining the relationship between OR31 and IM240 cycles results in the Agency agreeing, based on our best engineering judgment, that the level of credit Massachusetts needs to support their attainment demonstration for their currently operating I/M program is acceptable. Massachusetts needs a level of credit equivalent to ASM2 at final cut points. The level of credit granted the MA31 as compared to the IM240 is 85% for HC, 87% for CO and 85% for NO_X.

At this time, EPA believes Massachusetts will continue work on two related but distinct efforts. The first is to obtain and analyze MA31/IM240 correlation data, and the second is that Massachusetts will also perform a program evaluation to quantify the emissions benefits achieved by the program. EPA will review the correlation data as well as the program evaluation data, and take notice and comment as appropriate on whether the data bears out our current determination with regard to the level of credit granted to the program. If it does not, we will take appropriate action to correct any SIP shortfall.

VII. EPA Action

EPA is converting its limited approval of Massachusetts' enhanced I/M program to a full approval. Accordingly, all sanctions and FIP clocks related to approval of Massachusetts' I/M program are terminated upon the effective date of today's action. An extensive discussion of Massachusetts' enhanced I/M program and our rationale for our limited approval action was provided in the previous final rule for the Massachusetts enhanced I/M program approved at 40 CFR 52.1120(c)(122).

Additionally, we are also approving an interim level of emission reduction credit for the inspection and maintenance program that can be utilized by Massachusetts in attainment planning.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective January 16, 2001 without further notice unless the Agency receives relevant adverse comments by December 18, 2000.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 16, 2001 and no further action will be taken on the proposed rule.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VIII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 2001. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 27, 2000.

Mindy S. Lubber,

Regional Administrator, EPA—New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart W—Massachusetts

2. Section 52.1159 is added to read as follows:

§ 52.1159 Enhanced Motor Vehicle Inspection and Maintenance.

(a) Revisions submitted by the Massachusetts Department of Environmental Protection on October 20, 2000, to the motor vehicle inspection and maintenance program are approved:

(1) Letter from the Massachusetts Department of Environmental Protection dated October 20, 2000 submitting a revision to the Massachusetts State Implementation Plan.

(2) Document entitled "Quality Assurance and Quality Control Plan For the Massachusetts Enhanced Emissions and Safety Inspection Program," dated October 16, 2000.

(3) Document entitled "Program Evaluation Plans For the Enhanced Inspection and Maintenance Program," dated October 2000, and supporting contracts.

[FR Doc. 00–29220 Filed 11–15–00; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 65, No. 222
Thursday, November 16, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–24–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada (P&WC) Model PW305 and PW305A Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney Canada (P&WC) Model PW305 and PW305A turbofan engines. This proposal would require removing stage 4 low pressure turbine (LPT) disks from service before exceeding new, lower cyclic life limits. This proposal is prompted by the results of a spin pit test analysis which indicate that the stage 4 LPT disk does not have full published life. The actions specified by the proposed AD are intended to prevent LPT disk failure resulting from premature cracking of the LPT disks, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 18, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–24–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7152; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–24–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–24–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on P&WC model PW305 and PW305A turbofan engines. P&WC ran a spin test and found earlier than expected indications of crack initiation. As a result of this test, Transport Canada advises that there is a possibility of premature failure of the stage 4 LPT disks, part numbers (P/N's) 30A1457 and 30A1499. This condition, if not corrected, could cause a failure of the stage 4 LPT disk, that could result in an uncontained engine failure and damage to the airplane. To prevent a premature failure of the stage 4 LPT disk, this proposal would decrease the current life limit of these disks from 5,000 to 4,000 cycles-in-service (CIS).

Bilateral Airworthiness Agreement

This engine model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. To prevent premature failure of the stage 4 LPT disk used in the model PW305 and PW305A engines, Transport Canada issued airworthiness directive (AD) CF–99–28 in order to ensure the airworthiness of these P&WC engines in Canada.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removing certain stage 4 LPT disk P/N's 30A1457 and 30A1499 from service, before exceeding new lower cyclic life limit of 4000 CIS, and replacing them with serviceable parts. The new life limits are based on spin test analysis results that indicate that the LPT disks do not have full published lives.

Economic Analysis

There are currently 358 engines in the domestic fleet containing the affected stage 4 LPT disks, P/N's 30A1457 and 30A1499, and a total of 484 engines in the worldwide fleet. The total cost to the domestic fleet to remove and replace these disks at the new life limit of 4000 CIS, rather than the former life limit of 5000 CIS, is estimated to be $6,331,015.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney Canada: Docket No. 2000–NE–24–AD.

Applicability: Pratt & Whitney Canada (P&WC) Model PW305 and PW305A turbofan engines, with stage 4 low pressure turbine (LPT) disks, part numbers (P/N's) 30A1457 and 30A1499. These engines are installed on but not limited to British Aerospace BAe. 125 1000A, BAe. 125 1000B, Hawker 1000 and Learjet 60 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent premature LPT disk failure due to cracking of the LPT disks, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

New Stage 4 LPT Life Limit

(a) Remove stage 4 LPT disks, P/N's 30A1457 and 30A1499, prior to exceeding the new life limit of 4000 cycles-in-service (CIS).

(b) Except for the provisions of paragraph (c) of this AD, no parts, identified by P/N in paragraph (a) of this AD, that exceed the new life limit of 4000 CIS, may be installed.

Alternative Method of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, MA, on November 9, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–29379 Filed 11–15–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 203

RIN 1010–AC71

Relief or Reduction in Royalty Rates—Deep Water Royalty Relief for OCS Oil and Gas Leases Issued After 2000

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises regulations on royalty relief for oil and gas producers on the Outer Continental Shelf (OCS). It provides for suspension or reduction of royalty on a case-by-case basis for certain additional categories of OCS leases. Also, it identifies circumstances when we may consider special royalty relief outside our established end-of-life and deep water royalty relief (DWRR) programs.

DATES: We will consider all comments we receive by December 18, 2000. We will begin reviewing comments then and may not fully consider comments we receive after December 18, 2000.

ADDRESSES: If you wish to comment, you may mail or hand-carry comments to the Department of the Interior, Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team (RPT). The RPT's e-mail address is: *rules.comments@MMS.gov.*

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Economics Division, at (703) 787–1536.

SUPPLEMENTARY INFORMATION: The OCS Lands Act (43 U.S.C. 1337 *et seq.*) is the basis for our regulations on suspending or lowering royalties on OCS leases. This rule describes how certain new deep water leases may qualify for royalty suspensions and what circumstances might cause us to grant royalty relief outside normal procedures.

Background

The regulations at 30 CFR part 203 implement the Secretary of the Interior's (Secretary) authority to grant royalty relief to OCS leases. Section 302 of the Outer Continental Shelf Deep Water Royalty Relief Act of 1995 (Pub. L. 104–58) (the Act), gave us the authority to promote development and production of marginal resources in certain areas by suspending royalties. Existing regulations describe our programs in three discretionary relief situations—leases nearing the end of their life, new developments in water 200 meters or deeper (deep water) in the Gulf of Mexico (GOM), or deep water expansion projects in the GOM. Our programs balance the effectiveness of royalty relief to encourage production that otherwise would not occur with receipt of fair market value for public resources in the specific circumstances of the individual leases.

Discretionary Relief To Promote Future Deep Water Development

Promotion of development with discretionary royalty relief serves several public purposes. In marginal circumstances, royalty suspension can encourage development of resources that otherwise might be bypassed. Royalty suspension can also lead to new production that uses existing infrastructure. Further, making relief discretionary avoids the need to offer blanket relief to whole categories of leases, many of which do not need it to attract exploration or development interest.

The Act contained the following provisions relating to DWRR:

- It authorized granting royalty relief both to nonproducing leases and to expansion projects on producing leases issued before adoption of royalty suspension in lease terms (pre-Act leases).
- It directed that we implement this authority in deep water (200 meters and greater water depth) because of the greater costs and economic risks involved in operating at those depths than in shallower water.
- It set out a qualification test intended to grant relief only when development otherwise would not make economic sense.

Based on the Act, our current regulations governing pre-Act leases oblige us to consider each field in its entirety. That approach commits us to evaluating all the resources that the field may contain. To improve the assumptions that we have to make, we propose to add language to invite applicants to share information they may have on other leases that may eventually become part of the field. (See clarifications we propose in § 203.63) Also, we propose to add language to clarify the reservoir and well data we are looking for in the geological and geophysical (G&G) report part of the application. (See changes proposed to § 203.86) Both of these proposed changes reflect additional information we have requested from previous applicants.

After November 2000, we will issue new deep water leases. Some will be like pre-Act leases in that we will issue them with no royalty suspension (RS) volume. Others, which we call RS leases, will have a royalty suspension included in the lease terms. In some circumstances, the size of the royalty suspension in the lease may be inadequate to induce development. For instance, stand-alone development of a marginal prospect may require more relief than a royalty suspension designed for a tie-back development. Because may of the special risks associated with deep water development remain, we propose to offer all leases issued in sales after November 2000 (post-2000 deep water leases) the opportunity to qualify for enough royalty suspension to make a development project or an expansion project economic. Deep water leases issued after the date of enactment of the Act and prior to November 28, 2000 (eligible leases), may not apply for royalty relief beyond the eligible amount specified in the lease.

Since the minimum suspension volumes set in the Act do not apply to leases issued in sales held after November 28, 2000, we propose to offer royalty suspension volumes on a project rather than a field-basis for post-2000 deep water leases. Specifically, any future deep water lease that lies west of 87 degrees, 30 minutes west longitude in the GOM may apply for royalty suspension on a development project if it had not produced, or on an expansion project if it has produced. Hereinafter, unless otherwise specified, reference to a "project" includes either a development of an expansion project. (See the new applicant category we add in proposed changes to § 203.60.)

The Act established a deadline by which we must evaluate a DWRR application for a pre-Act lease. The deadline helps development planning by giving applicants certainty about how long they can expect to wait for our relief determination. When companies have other investment opportunities, that planning certainty may be an important factor for keeping a marginal project alive. We plan to retain this deadline as a commitment for applications for post-2000 deep water leases. The Act also sets a default royalty suspension in the event we fail to act in time on an application. We propose to adopt a default royalty suspension amount that reflects the length of the delay, rather than the fixed default amount set by the DWRR Act for pre-Act leases. Specifically, if we fail to render a DWRR determination within 180 days (plus authorized extensions), a project on a post-2000 deep water lease will produce royalty-free for the number of months we delay a decision, plus the entire volume which our belated decision grants. (See the proposed new category we add to the table in § 203.66.)

Adjustments to Our DWRR Program

We have considered six DWRR applications over 4 years under the existing rules in 30 CFR part 203. During those evaluations, we identified some program elements that may produce results contrary to our intentions. We will therefore adjust provisions on minimum suspension volumes, sunk costs, discount rates, performance conditions, and allowable price increases while we modify these rules to authorize applications for royalty suspension by leases issued in OCS sales after November 2000.

Adjustments to Minimum Suspension Volumes and Relief Shares

Except for an application involving a pre-Act lease on a field that did not produce before the Act, we propose to reduce the minimum suspension volumes for DWRR we grant to nonproducing leases. The field-sized minimums established in the Act will continue to apply to qualifying applications that involve pre-Act leases. Congress based those original minimums on cost and producibility estimates from the early 1990's for field development. Since then, improved knowledge of deep water resources, technical progress, and new infrastructure have significantly reduced the size necessary for an economic prospect. As early as February 1996, the "Oil and Gas Journal" reported that industry experts believe the economic threshold for developing deep water projects had dropped from the 150 million barrels of oil equivalent (MMBOE) range to the 30 to 35 MMBOE range because deep water fields were proving more prolific and less troublesome than fields on the near-shore shelf. The fact that the Act's minimum suspension volumes exceed the expected resource sizes (in some cases by a large margin) in all but one of the deep water field applications we have reviewed, reflects the change in economic threshold.

We propose to offer more appropriate minimum royalty suspension volumes for development projects and for expansion projects that qualify for relief. For a development project on a pre-production RS lease, the minimum will equal the royalty suspension volume with which we issued the lease, plus an increment explained in the following section on sunk cost. As explained in our companion proposed rule modifying 30 CFR part 260, published on

September 14, 2000 (65 FR 55476), we plan to update the royalty suspension volumes with which we issue RS leases over time as needed. We also propose to offer a minimum suspension volume to expansion projects and to development projects on leases issued with no royalty suspension volume in sales after November 2000. The minimum for these projects will equal the increment explained in the next section on sunk cost.

When multiple nonproducing RS leases participate, the minimum volume suspension for the project equals the sum of the royalty suspension volumes applicable to the participating leases plus the increment explained in the next section. As with an expansion project, the applicant defines the scope of the development project, and relief applies only to wells included in the application. We reserve the right, as we do under the current program, to remove nonprospective wells or leases from the evaluation. (See the proposed new paragraph and conforming changes in § 203.69.)

With one exception, all leases participating in a successful application for DWRR share the single relief volume we approve. If the application involves a pre-Act lease, the single volume must at least equal the field-sized minimum set in the Act and applies to all production from the field. In these cases, we evaluate field rather than project economics, and all lessees share the volume we grant to the field.

If the application involves only post-2000 deep water leases, the single relief volume equals the amount we judge necessary to make the project economic. In this case, the royalty suspension replaces any suspension volume in the lease instruments and only applies to the reservoirs identified in the application. Thus, should a qualifying project fail to produce the full royalty suspension volume we grant in response to an application, the leases that participated in the application may not apply the unused volume suspension to other production. To do otherwise encourages understatement of a lease's potential in the application we review. If no production has occurred from the participating leases, the royalty suspension volume is subject to the minimum applicable for the development or expansion project.

The one exception to sharing a single volume occurs when an eligible lease is part of the field, In that instance, the eligible lease may produce royalty-free up to its field-sized suspension volume, regardless of the volume we set for the project proposed by the other leases. However, production from a development project on the same field counts against the field-sized volume available to the eligible lease.

We reflect these principles by adding the new applicant category in the proposed changes to § 203.71.

Adjustments to the Evaluation Elements

Except for cases that involve fields with a pre-Act lease, we propose to change the way we count sunk costs in the determination of whether an application qualifies for royalty relief. To comply with the Act's instruction to consider historic costs for pre-Act leases, we originally included the costs of and after the discovery well when calculating whether a field appeared economic, but only on fields where no production had yet occurred. We now propose to allow the documented costs of the discovery well, both for development projects on post-2000 deep water leases and for expansion projects on pre-Act or on post-2000 deep water leases. The discovery well is the one that penetrates the first reservoir targeted by the project and that meets the well producibility requirements of 30 CFR part 250. We expect that allowing sunk costs for this broader scope of prospects will help promote exploration in deep water and greater use of the opportunity to obtain supplementary royalty suspension volumes. Allowing some sunk costs to more applicants permits more leases to quality for royalty relief and thus encourages more exploration.

Unlike the treatment of sunk costs on pre-Act leases, we do not intend to count pre-application costs subsequent to the discovery well. This more limited treatment reflects a balanced approach to competing considerations. On the one hand, overcoming the unusual risks of deep water development may depend on Government sharing some of the uncertainty burden, even on expansion projects. Also, our regulations require only a discovery well before we will consider an application. Further, the uneconomic level for development projects will be lower because determination of whether the project qualifies for a supplemental volume suspension includes the value of any volume suspension with which we issued the participating leases. On the other hand, only future costs, not historic costs, influence decisions on whether to proceed on a specific project. Further, activities and costs other than the discovery well, such as acquiring seismic data, completing engineering studies, or drilling additional wells, are conducted at the applicant's discretion before filing an application for royalty relief. Additionally, costs associated with these other activities are more likely than a discovery well to benefit other prospects for help attract other partners or successor owners to this prospect. Counting only the cost of the discovery well balances sharing the exploration risk with the responsibility to include only relevant costs. (See the new category of sunk cost treatment proposed in the table in § 203.66.)

We do not propose to change the exclusion of sunk cost from the determination of how much relief a project needs to become economic (volume test). To do otherwise risks adding relief well beyond that necessary to make development economic. Also, it directs more relief to just the wrong projects, specifically those that are more likely to continue anyway because they have relatively smaller costs left to incur and that must be covered by future production. However, we will ensure that inclusion of sunk cost in the qualification determination gives the applicant an unambiguous benefit. We propose to do that by adding an increment of royalty-free production to any royalty suspension volume with which a qualifying project starts the application process. Our qualification test does factor in the volume suspensions with which we issued leases participating in the application, but not this increment.

We propose to set this increment at 10 percent of the most likely resource size we agree is appropriate for the project. For instance, consider a development project that MMS agrees has a most likely resource size of 60 MMBOE. If it qualifies for relief and is located on RS leases that we issued with a combined royalty suspension volume of 20 MMBOE, it will get a royalty suspension of at least 26 MMBOE. An expansion project in this situation would get at least 6 MMBOE.

This form of increment improves on a universal fixed increment or one tied to water depth because it is project-specific. Further, its relatively small size ensures that it neither provides too much or too little relief to encourage individual project development and program-wide exploration. It is preferable to a time-based increment, such as an extra year of royalty-free production, because it does not risk damaging ultimate recovery by creating an incentive to accelerate production to avoid royalties. A sub-marginal project may need royalty suspension for anywhere from a small fraction of its reserves to virtually all of them to be worth developing. If something less than royalty-free production of 50 percent of reserves on average justifies development on a look-forward basis (excluding sunk costs), a fraction of that could be safely provided to induce exploration. The 10-percent share represents a considered amount designed to encourage exploration on future projects deemed marginally or sub-marginally profitable. This policy leaves up to 90 percent of the project's production still subject to royalties.

Thus, the project-specific increment serves as a uniform replacement for sunk cost in the volume determination test. This increment assures any project that qualifies for supplemental relief because of sunk cost will have an additional volume suspension on top of what it has already. A development or an expansion project, therefore, may get a somewhat larger volume suspension than it needs to be economic on a look-forward basis. Alternatively, the project would get a larger volume than the minimum volume suspension if our evaluation indicates it needs more relief than the minimum to be economic on a look-forward basis. (See changes in § 203.69.)

To help us evaluate the effects of revising our treatment of sunk cost, we would like your comments on the following questions.

- How does a credit for sunk costs change your incentive to explore a risky prospect and to apply for royalty relief?
- What other treatments of sunk costs promote exploration without resulting in excessive volume suspension for many projects?

Also, we propose to lower the viability standard we set as a prerequisite to evaluating a field's or a project's need for relief. Our current evaluation procedure requires that the application meet two economic criteria. First, the application must show that a field or project is viable, i.e., would be economic assuming it paid no royalties and no sunk costs. Second, qualification for relief requires that the application show a nonproducing field would not be profitable assuming it paid certain sunk costs and full royalties, or that an expansion project would not be profitable paying full royalties. We have revised § 203.67 to clarify the dual criteria for qualification.

Until now, we insisted that the same discount rate be used for both the viability and the profitability estimates. While ensuring that the application does not give an overly pessimistic portrayal of the field or expansion project, this equivalence of discount rates may be too restrictive. Development without royalty or sunk costs should be less risky than if these costs have to be covered. Thus, the cost of capital under the viability circumstances should be lower than when full royalties and sunk costs must be paid. To acknowledge this potential difference, we propose to accept applications that demonstrate fields or projects have a positive value at a 10-percent real rate of discount. Applicants retain the right to set the discount rate we use for the profitability test at any value between 10 and 15 percent. (See changes to the guidelines that accompany § 203.67.) The MMS website, *www.gomr.mms.gov/homepg/offshore/royrelef.html*, provides the most current version of these guidelines, including the parameters we prescribe for discount rates and prices.

This change in our discount rate procedure offsets one effect of changing the way we treat sunk costs, for leases other than pre-Act leases, in our qualification determination. A 10-percent discount rate has the effect of raising the estimated present value of the field or project in the absence of royalties. Past applicants always chose a 15-percent discount rate. We anticipate that future applicants will continue to choose the maximum allowed discount rate for the full royalty profitability analysis. Thus, while limiting sunk costs generally reduces the difference between the viability and profitability estimate, a lower discount rate for the viability estimate than for the profitability estimate will increase this difference. The larger difference allows a wider range of circumstances to qualify as marginal fields or projects in need of royalty relief. More generally, limiting sunk costs for post-2000 deep water leases and acknowledging that development risks may be different with and without royalties makes our evaluation of economic need more realistic.

Finally, we are proposing to add language that clarifies what we seek in the administrative and design parts of an application. As with the G&G report, these changes reflect additional information we have requested from previous applicants. (See changes proposed to §§ 203.83 and 203.87.)

Adjustments to Post-Evaluation Elements

We propose adjustments in several of the conditions successful applicants must meet to realize a royalty suspension or to re-apply for relief. We propose adjustments in the deadline to start fabrication of the development system, in correcting for overestimating costs in the application, and in what constitutes an appropriate reason for us to reconsider the need for relief. These three proposed adjustments apply to all fields or projects seeking a volume suspension after the effective date of these revisions. Also, we propose to specify in the leasing documents the price thresholds (which we identify at the time of lease sale) above which we will suspend any remaining royalty relief for post-2000 deep water leases.

Current regulations require applicants to give evidence of a timely commitment to development by starting fabrication of their production facility within 1 year after we approve their application. We established this deadline to avoid premature applications. Requiring that projects or developments be ready to commence soon after approval means we make the relief decision close to the same point and with about the same quality of information as the applicant uses to make the commitment decision. While the fact that the ability to get into production quicker than expected partially accounts for the improvement in deep water economics, the 1-year-to-fabrication deadline we set needs lengthening. Shortages of drilling, design, and fabrication capacity for deep water development may make meeting the currently required schedule difficult. Also, we don't want to encourage token actions that don't really signal the start of development. Thus, we propose to lengthen the period when fabrication must start to 18 months after relief approval. Added to the 6-month period we use for evaluation, that gives a full 2 year lead-time between application and commitment to development. With our authority to extend that period for up to 6 months for events beyond the applicant's control, we feel this change should provide ample time to make the necessary arrangements to start development on projects or fields that receive royalty relief. (See change to deadlines proposed in § 203.70.)

Along with this deadline change, we propose to clarify that the meaning of "starting fabrication" requires continuous fabrication. Starting and then suspending fabrication of the production facility does not fulfill this performance condition. (See the addition we propose in § 203.76(b)).

Another performance condition we use to help ensure we deal with a realistic application has to do with estimated costs. We require actual expenditures to equal at least 80 percent of the costs that the applicant estimates spending. Both estimated and actual figures cover the period between the application and first production. The current correction for overestimating actual costs by too much is retention of only half of the volume suspension we originally granted. This correction has no real effect when the minimum

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suspension volume prescribed by the Act more than doubles the field's expected production. Thus, we propose to adjust the correction volume to retention of the smaller of one-half of the granted suspension volume or one-half of the most likely production specified in the application. (See changes to a deadline and the relief correction amount proposed in § 203.76.)

In conjunction with this change, we also propose to broaden what constitutes a development system. For instance, we will no longer consider Spars and mini-tension-leg platforms different development systems. Both are essentially floaters with export pipelines and little if any storage capacity. With this change, we intend to maximize the flexibility applicants have to entertain bids for competing versions of the same basic development system.

We also propose to expand the situations in which fields or projects may seek a redetermination of our initial relief decision. We provide more flexibility for allowing redeterminations when relief is withdrawn or relinquished. Also, we add another condition in which we permit a redetermination if we deny your application or you seek to increase an approved volume suspension. In these instances, in addition to substantial increases in estimated costs, reductions in expected prices, or new geologic information on the field, we propose to allow a re-application for a change of development system under certain conditions. It must be clear that the original application did not consider or deem the new development system infeasible. This situation might arise because new technology becomes available or a new owner with a different perspective takes over field development after the initial application. In either case, the new application needs to demonstrate that the new approach more efficiently develops the resource than what we originally evaluated. By more efficient, we mean either clearly lower costs or clearly larger recovery, so that estimated profit would increase under the circumstances we previously evaluated. (See the new fourth condition and the removal of the restriction on the price condition in the changes we propose to § 203.74.)

More realistic performance conditions may add value to the successful applicant's explicit right to renounce relief. Several successful past applicants have lost relief because they violated a withdrawal condition. Rather than wait until we formally withdraw relief, they could have renounced relief as soon as they realized they needed to change the proposed development system or significantly revise cost estimates. By renouncing, they could accelerate the start of a redetermination, thereby converting after-tax, sunk costs on authorized fields to before-tax, post-application costs for purposes of the next application. We propose to simplify § 203.77 to avoid confusion about this right.

Further, we propose to review the level we set and to which prices must rise before the need for royalty relief, granted under an earlier expectation of lower prices, disappears. By 1999, the Act's escalation procedure meant that oil prices must exceed $30/bbl or natural gas prices must exceed $3.80/MMBtu for an entire calendar year before pre-Act leases with a remaining volume suspension owe royalty. For comparison, royalties reduce realized price by slightly less than the royalty percentage, e.g., 12.5 percent for deep water tracts in greater than 400 meters (m) of water. When market prices rise above levels that prompted development by more than that percentage for at least a year, the need for the royalty suspension incentive disappears, at least for these projects or fields. Therefore, we propose to suspend royalty relief for projects when prices rise and remain substantially above levels prevalent when we approved relief. To reflect evolving market conditions, we will set these threshold levels in the Notice of Sale and lease documents associated with each future lease. (See the proposed changes that add the new relief recipient category to § 203.78.)

Finally, we propose to make clear in the regulations that we want a Certified Public Account (CPA) not affiliated with the applicant to vouch for the historic data in the application and post-production report. Thus, we have added the word "independent" before CPA in changes proposed to §§ 203.81 and 203.91.

The following table summarizes the elements of the current DWRR program that we propose to modify with this rule.

PROPOSED MODIFICATIONS TO DWRR APPLICATIONS

Element	Current and continuing program Applies to pre-Act leases	Proposed changes Applies to post-2000 deep water leases
Eligibility (Central, Western, and western part of Eastern Gulf of Mexico).	Leases in 200m or more water depth issued before 1996.	Leases in 200m or more water depth issued after 2000.
Royalty-free production can come from	Any production from the field until cumulative recovery volume equals the suspension volume.	Only production from resources identified in the application until cumulative recovery equals the suspension volume
Minimum suspension volume for non-producing leases.	For fields that did not produce before the Act, matches eligible lease suspension volumes (17.5, 52.5, 87.5 MMBOE) in equivalent water depths.	For development projects, matches volumes designated in sale and lease documents for various water depths of 200m or greater plus 10 percent of reserves.
Credit for sunk costs in application	For fields with pre-Act leases that did not produce before the application, after-tax costs of and after discovery well used in qualification.	For development projects, after-tax cost of only the discovery well, except when the application involves a pre-Act lease.
Threshold oil and gas price levels for lifting relief.	Statute sets threshold price for light sweet crude oil and natural gas.	Lease terms set threshold price for light sweet crude oil and natural gas.

PROPOSED MODIFICATIONS TO DWRR APPLICATIONS

Element	Current and discontinuing program Applies to pre-Act leases	Proposed changes Applies to pre-Act and post-2000 deep water leases
Discount rate used in evaluation	Same rate used on viability and profitability tests, applicant chooses between 10% and 15%.	Use 10% on viability test, applicant chooses rate between 10% and 15% for profitability test.
Redetermination of field qualification or volume by MMS.	Available for new well or seismic data, 25% lower prices, or 20% higher cost.	Available anytime after relief relinquished or withdrawn. Otherwise, for new well or seismic data, 25% lower prices, 20% higher cost, or more efficient development system.
Deadline for starting fabrication	Within 1 year of approval, extendable for up to 1 year.	Within 18 months of approval, extendable for up to 6 months.
Correction for overestimating cost by 20% or more.	Retain only half of suspension volume granted	Retain only half or smaller of granted suspension volume or most likely resource size.
Minimum suspension volume for expansion project.	None	10 percent reserves.
Credit for sunk costs in application for expansion project.	None	After-tax cost of the discovery well.

Royalty Relief in Special Circumstances

Certain circumstances can make leases ineligible for one of our established royalty relief programs. Yet, royalty relief may benefit both the lessee and the Federal Government. For example, a recent, significant renovation of operations prevents a lessee from seeking end-of-life royalty relief, at least temporarily. Or, the operator of a marginal expansion project in less than 200m of water cannot apply for a royalty suspension, even if it is located in the central and western GOM. When combined with other circumstances, such as a sudden drop in prices or unusually high original royalty rates, this ineligibility could cause substantial resources to be left unproduced. Some form of royalty relief in these unusual situations can serve the statutory purpose of increasing production or promoting development outside our established programs. Because of the rarity of situations that meet these unusual conditions, we will not establish another formal royalty relief program. But, we leave open the opportunity for an operator to request relief in special circumstances. Before evaluating a special relief application, we require that applicants establish eligibility. An applicant does this by gaining our approval that their situation meets several of the tests listed in the new § 203.80. Once that is done, we will establish case-by-case qualification conditions and relief format appropriate to the special circumstances.

Can you suggest forms of royalty reduction that we are not now using that might encourage increased production in the special circumstances we propose in § 203.80?

Procedural Matters

Public Comment Procedure

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider any anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order 12866)

The proposed rule is a significant regulatory action under Executive Order 12866, and is subject to review by the Office of Management and Budget (OMB).

a. This proposed rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This action describes how certain new deep water leases may quality for royalty suspensions and the circumstances under which we might grant royalty relief. Historically, we have received only a limited number of applications for royalty relief. Based upon our experience, only a small number of leases will quality for royalty relief in any one year, and the annual value of the relief will be less than $100 million. The only field that has gone into production after approval may, depending on prices, avoid slightly over $7 million in royalty payments in is first year of production. The royalty suspension options in this proposal will encourage new production from a few marginal leases. Because royalty suspension volumes are an incentive to production, they likely will have a beneficial effect on the offshore oil industry, domestic oil and gas supplies, and jobs. In fact, this program should increase aggregate OCS production by making production from marginal fields more economically feasible.

b. This proposed rule does not create inconsistencies with other agencies' actions because it preserves the concepts and requirements from the existing rule.

c. This proposed rule is an administrative change that will not affect entitlements, grants, user fees, loan programs, or their recipients. This proposed rule has no effect on these programs or rights of the programs' recipients.

d. This proposed rule does not raise any novel legal issues, but does raise policy issues. The proposed rule extends and supplements the existing DWRR rule. It describes conditions under which lessees have the opportunity to apply for and acquire royalty relief on post-2000 deep water leases. Also, it modifies some conditions under which lessees of pre-Act leases obtain royalty relief. In addition, the proposed action describes special circumstances under which lessees may apply for royalty relief that were not specified in our previous regulations. All of these changes are consistent with the basic philosophy in

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the current rule of granting relief only when applicants show it is economically necessary for development.

Regulatory Flexibility (RF) Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The provisions of this proposed rule will not have a significant adverse economic effect on offshore lessees and operators, including those that are classified as small businesses. The proposed rule extends the benefit of discretionary royalty relief to certain OCS leases issued after November 2000 that qualify as marginally uneconomic. In any one year, we are likely to receive only a small number of royalty relief applications, which limits the number of entities the proposed rule may affect. Based on past experience, we expect to receive between one and two applications a year for DWRR. Also, because firms initiate applications, they have the ability to avoid any adverse effects they foresee. As suggested below, the new provisions proposed should actually lower the cost to those who choose to take advantage of the benefit offered by this regulation. An RF analysis is not required. A Small Entity Compliance Guide is not required.

Companies that extract oil, gas, or natural gas liquids or are otherwise in oil and gas exploration and development activities acquire the vast majority of leases offered at OCS lease sales and will be most affected by this rule. The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Under the Standard Industrial Classification code 1381, Drilling Oil and Gas Wells, MMS estimates that a total of 1,380 firms drill oil and gas wells onshore and offshore. Of these, approximately 130 companies are offshore lessess/operators, based on current estimates. Publicly available data indicate that 39 companies qualify as large firms according to SBA criteria, leaving up to 91 companies that may qualify as small firms with fewer than 500 employees. However, because of the extremely high cost and technical complexity involved in exploration and development in deep water, the vast majority of lessees/operators that will be affected by this rule will be large companies. Of the 211 deep water leases that have a discovery or production by mid-2000, 19 large firms are the lessee/operator of 193, while 7 small firms are lessee/operator of the other 18. While that ratio suggests a 1-in-12 chance that a small operator may apply for relief, 2 of the 16 past applications we received have been from small operators. This rule proposes continuing the same basic application system we now use. Small operators do not appear to be at a disadvantage in our application process.

Provisions of the proposed rule, in comparison with existing rules for discretionary DWRR for pre-Act leases, may reduce applicant costs in three areas:

- First, new applications for DWRR will be on the basis of a fully identified project rather than a whole, often incompletely identified field. Consequently, applicants may need to provide less extensive G&G data. For instance, we will not require them to submit data they have access to on reservoirs that may be in the field but clearly are not part of the project. There is no sound basis for estimating the size of any savings associated with this reduced data burden because only some applications would involve potential extra reservoirs. For those that do, however, this change can reduce the amount of follow-up data we typically have to request from applicants and can expedite our evaluation.
- Second, applicants may no longer have to incur the cost of additional drilling or acquisition of new seismic data to request a determination. While significant new geologic information or price or cost changes still enable a redetermination, applicants may now seek a redetermination upon identification of a more efficient development system. That new reason could save drilling a new deep water well at a cost of $20 million or more or acquiring additional seismic data at a cost of about $100,000 per tract. We have received no redetermination requests. We attribute this to the fact that the DWRR program has not been active long enough to reach the redetermination stage for most of the applications we have already processed.
- Third, under the proposed rule, we give successful applicants more time to initiate development than under existing rules. This added time gives operators more time to arrange financing and to negotiate contracts with suppliers. Again, there is no sound basis for estimating the size of any savings associated with this greater applicant flexibility. It is clear, however, that this change, like the other two, cannot be considered to impose a significant adverse economic effect on a substantial number of small business entities. If anything, all four changes ameliorate the existing applicant cost burden.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more. This proposed rule modifies some procedures used under the current rule, specifies how certain new deep water leases may qualify for royalty suspensions in the future, and describes circumstances that may cause us to grant royalty relief that were not covered in the current regulations. In general, the effect of qualifying for a royalty suspension increases production from a few marginal fields but does not change royalty collections—since without relief, no production or royalty payments would occur or be expected, so suspending them forfeits little if any revenue. To the extent that royalty relief encourages new production, it benefits applicants, one-third of which in the past have been small business. But only one of the four fields for which we have approved relief has gone into production. We expect, however, that in any one year, this proposed rule will not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Oil prices are not based on the production from any one region, but are based on worldwide production and demand at any point in time. While natural gas prices are more localized, they correlate to oil prices. The proposed rule does not change any existing leasing policies, so it should not cause prices to increase.

c. Does not have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Leasing on the United States OCS is limited to residents of the United States or companies incorporated in the United States. This proposed rule does not change that requirement, so it does not change the ability of United States firms to compete in any way.

Unfunded Mandates Reform Act (UMRA)

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments. The proposed rule modifies some procedures in the existing regulation, describes how certain new leases may qualify for royalty suspensions, and specifies special circumstances that might cause us to grant royalty relief that were not considered previously. None of these changes involve State, local, or tribal mandates. A statement containing additional UMRA (2 U.S.C. 1531 *et. seq.*) information is not required.

Takings Implications Assessment (Executive Order 12630)

According to Executive Order 12630, the proposed rule does not have significant Takings implications. A Takings Implication Assessment is not required because the proposed rule would not take away or restrict a bidder's right to acquire or develop OCS leases.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State Governments. This rule affects the collection of royalty revenues from lessees in the deep water GOM, all of which is outside State jurisdiction. States have no role in this activity with or without this rule. This does not impose costs on States or localities. States and local governments play no part in the administration of the DWRR program.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (PRA) of 1995

The information collection requirements in the proposed rulemaking remain unchanged from those currently approved by OMB, and a new 83–I submission is not required.

The PRA provides that an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. In 1998, OMB approved the information collection requirements in the current regulations under OMB control number 1010–0071.

Based on experience to date, MMS subsequently determined that the application filing fee schedule should be revised. In addition, the need became apparent for establishing a new fee to cover applications for "special relief for marginal producing leases." Consequently, we initiated the process to obtain OMB approval of these changes to the information collection burden. We published the required 60-day **Federal Register** notice on May 11, 2000 (65 FR 30431). The comment period closed on July 11, 2000; we received no comments. We then submitted a request to OMB, and OMB approved the revised information collection burden with a current expiration date of September 30, 2003. The approved information collection burden is consistent with the proposed amendments to the regulations.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite your comments on any aspect of the reporting burden in part 203. MMS will address comments on the information collection burden in the final rule preamble. Refer to the **ADDRESSES** section for mailing instructions. We specifically solicit comments on the following questions:

(a) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

The title of the collection of information is "30 CFR Part 203, Relief or Reduction in Royalty Rates." Respondents include approximately 130 Federal OCS oil and gas lessees. The frequency of response is on occasion. Responses to this collection of information are required to obtain or retain a benefit. MMS will protect proprietary information under applicable law and 30 CFR 203.63(b) and 250.196.

The following chart provides our estimated "hour" burden for part 203 regulations and the application and audit fee "non-hour" cost burdens authorized under § 203.3

Reporting or recordkeeping requirement 30 CFR Part 203	Application/audit fees		
	Annual responses	Hours per response	Annual burden hours
OCS Lands Act Reporting			
Application—leases that generate earnings that can't sustain continued production (end-of-life lease).	2 Applications	100	200
	Application 2×$12,000=$24,000 [1] Audit 1×$10,000=$10,000		
Application—special relief for marginal producing lease (expect less than 1 per year—new category).	1 Application	250	250
	Application 1×$15,000=$15,000 [1] Audit 1×$10,000=$10,000		
§ 203.55 Renounce relief arrangement (seldom, if ever will be used; minimal burden to prepare letter).	1 Letter	1	1
§ 203.81, 203.83 through 203.89 required reports	Burden included with applications.		
OCS Lands Act Reporting Subtotal	4 responses	N/A	451
	Processing Fees=$59,000		
DWRAA Reporting			
Application—leases in designated areas of GOM deep water acquired in lease sale before 11/28/95 or after 11/28/00 and are producing (deep water expansion project).	1 Application	2,000	2,000
	Application 1×$39,000=$39,000 Audit		
Application—leases in designated areas of deep water GOM, acquired in lease sale before 11/28/95 or after 11/28/00, that have not produced (pre-Act or post-2000 deep water leases).	1 Application	2,000	2,000
	Application 1×$49,000=$49,000 Audit 1×$25,000=$25,000		
Application—short form to add or assign pre-Act lease	1 Application	40	40
	Application 1×$1,000=$1,000 No Audit		
Application—preview assessment (seldom if ever will be used as applicants opt for binding determination by MMS instead).	1 Application	900	900
	Application 1×$46,600=$46,600 No Audit		
Application—special relief for marginal expansion project or marginal non-producing lease (expect less than 1 per year—new category).	1 Application	1,000	1,000
	Application 1×$49,000=$49,000 Audit 1×$20,000=$20,000		
Redetermination	1 Redetermination	500	500
	Application 1×$32,000=$32,000 [1] Audit 1×$25,000=$25,000		
§ 203.70, 203.81, 203.90, 203.91 Submit fabricator's confirmation report [1]	2 Reports	20	40
§ 203.70, 203.81, 203.90, 203.92 Submit post-production development report.	2 Reports [1]	50	100
§ 203.77 Renounce relief arrangement (seldom, if ever will be used; minimal burden to prepare letter).	1 Letter	1	1
§ 203.79(a) Request reconsideration of MMS field designation	4 Requests	400	1,600
§ 203.79(c) Request extension of deadline to start construction	1 Request	2	2
§ 203.81, 203.83 through 230.89 Required reports.	Burden included with applications		0
DWRR Act Reporting Subtotal	16 Responses	N/A	8,183
	Processing Fees=$286,600		
RecordKeeping Burden			
§ 203.91 Retain supporting cost records for post-production development/fabrication reports (records retained as usual/customary business practice; minimal burden to make available at MMS request).	2 Record keepers	8	16
Total Annual Burden	22 Responses	N/A	8,650

Reporting or recordkeeping requirement 30 CFR Part 203	Application/audit fees		
	Annual responses	Hours per response	Annual burden hours
	Total Processing Fees=$345,600		

[1] In addition, under §203,81, a report prepared by an independent CPA must accompany the application and post-production report (except expansion project, short form, and preview assessment applications are excluded). The OCS Lands Act applications will require this report only once; the DWRR Act applications will require this report at two stages—with the application and post-production development report for successful applicants. We estimate an average cost for a report is $45,000 and that seven CPA certifications per year will be necessary if the applications are approved. The total estimated annual "non-hour" cost burden for this requirement is $315,000 ($45,000 per certification × 7 CPA certifications=$315,000).

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Government-to-Government Relationship with Tribes

According to the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have determined that there are no effects from this action on federally recognized Indian tribes.

Clarity of this Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments about how to make this proposed rule easier to understand, including answers to questions like the following:

(1) Are the criteria for obtaining royalty relief clearly specified?

(2) Are the procedures for obtaining royalty relief clearly described?

(3) Are the rules for determining royalty suspension volumes for the various categories of leases clearly stated?

(4) Are the conditions for obtaining royalty relief in special circumstances adequately specified?

(5) Does the proposed rule contain technical language or jargon that interferes with its clarity?

(6) Does the format of the proposed rule (grouping and ordering of sections, use of headings, etc.) increase or reduce its clarity?

(7) Would the proposed rule be easier to understand if it were divided into more, but shorter, sections?

(8) Is there anything else we can do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, N.W., Washington, D.C. 20240. You may also e-mail your comments to: Exsec@ios.doi.gov.

List of Subjects in 30 CFR Part 203

Continental shelf, Government contracts, Indians-lands, Minerals royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Sulphur.

Dated: October 30, 2000.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR part 203 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

1. The authority citation for part 203 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*;

2. Section 203.0 is amended by adding "Development project" and "Royalty suspension (RS) lease" and revising "Authorized field," "Eligible lease," "Expansion project," "Fabrication (or start of construction)," "New production," "Pre-Act lease," "Redetermination," and "Sunk costs" to read as follows:

§ 203.0 What definitions apply to this part?

Authorized field means a field:

(1) Located in a water depth of at least 200 meters and in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude;

(2) That includes one or more pre-Act leases; and

(3) From which no current pre-Act lease produced, other than test production, before November 28, 1995;

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Development project means a project that:

(1) You propose in a Development Operations Coordination Document (DOCD); and

(2) Is located on one or more contiguous leases that;

(i) Were issued in a sale held after November 28, 2000;

(ii) Are located in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude; and

(iii) Have had no production (other than test production) before the current application for royalty relief.

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Eligible lease means a lease that:

(1) Results from a sale held after November 28, 1995, and before November 28, 2000;

(2) Is located in the Gulf of Mexico in water depths of 200 meters or deeper;

(3) Lies wholly west of 87 degrees, 30 minutes West longitude; and

(4) Is offered subject to a royalty suspension volume.

Expansion project means a project you propose in a Development Operations Coordination Document (DOCD) or a Supplement approved by the Secretary of the Interior after November 28, 1995, that will significantly increase the ultimate recovery of resources from pre-Act lease or a lease issued in a sale held after November 28, 2000. For a pre-Act lease, it must also involve a substantial capital investment (e.g., fixed-leg platform, subsea template and manifold, tension-leg platform, multiple well project, etc.).

Fabrication (or start of construction) means evidence of irreversible commitment to a concept and scale of development, including copies of a binding contract between you (as applicant) and a fabrication yard, a letter from a fabricator certifying that continuous construction has begun, and a receipt for the customary down payment.

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New production means any production from a current pre-Act lease from which no royalties are due on production, other than test production, before November 28, 1995. Also, it means any production resulting from lease-development activities on a current pre-Act lease or a lease issued in a sale after November 28, 2000, under a Development Operations Coordination Document (DOCD) or a Supplement approved by the Secretary of the Interior after November, 28, 1995, that significantly expands production.

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Pre-Act lease means a lease that:

(1) Results from a sale held before November 28, 1995;

(2) Is located in the Gulf of Mexico in water depths of 200 meters or deeper; and

(3) Lies wholly west of 87 degrees, 30 minutes West longitude. (See this part.)

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Redetermination means your request for us to reconsider our determination on royalty relief because:

(1) We have rejected your application;

(2) We have granted relief but you want a larger suspension volume;

(3) We withdraw approval; or

(4) You renounce royalty relief.

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Royalty suspension (RS) lease means a lease that:

(1) Results from a lease sale held after November 28, 2000;

(2) Is in a location or planning area specified in the Notice of Sale offering that lease; and

(3) Is offered subject to a royalty suspension volume.

Sunk costs on an authorized field means the after-tax costs (as specified in § 203.89(a)) of exploration, development, and production that you incur after the date of first discovery on the field and before the date we receive your complete application for royalty relief. Sunk costs on an expansion project or development project means, and on an authorized field includes, the after-tax costs of the discovery well qualified as producible under 30 CFR part 250, subpart A. In no case does sunk cost include any pre-discovery activity costs or lease acquisition and holding costs such as cash bonus and rental payments. Discovery well costs include any tangible costs directly related to the well that you incurred prior to the discovery date. We count pre-application costs on an unescalated, after-tax basis.

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3. Section 203.2 is revised to read as follows:

§ 203.3 When can I get royalty relief?

We can reduce or suspend royalties for Outer Continental Shelf (OCS) leases or projects that meet the criteria in the following table.

If you have a lease—	And if you—	Then we may grant you—
(a) Whose earnings cannot sustain production (*End-of-life lease*).	Would abandon otherwise potentially recoverable resources but seek to increase production significantly by operating beyond the point at which the lease is economic under the existing royalty rate.	A reduced royalty rate on current monthly production and a higher royalty rate on additional monthly production. (See §§ 203.50 through 203.56.)
(b) Located in a designated Gulf of Mexico (GOM) deep water area, and acquired in a lease sale before November 38, 1995, or after November 28, 2000, and you propose in a DOCD or supplement to expand production significantly.	Are producing and seek to make a substantial investment (e.g., a platform or subsea template) to increase ultimate resource recovery from the field or lease (*Expansion project*).	A royalty suspension for additional production large enough to make the project economic. (See §§ 203.60 through 203.79.)
(c) Located in a designated GOM deep water area and acquired in a lease she held before November 28, 1995 (*Pre-Act lease*).	Are on a field from which no current pre-Act lease produced (other than test production) before November 28, 1995 (*Authorized field*).	A royalty suspension for a minimum production volume plus any additional volume needed to make the field economic. (See §§ 203.60 through 203.79.)
(d) Located in a designated GOM deep water area and acquired in a lease sale held after November 28, 2000.	Have not produced and can demonstrate that the suspension volume in your lease is not enough to make development economic (*Development project*).	A royalty suspension for a minimum production volume plus any additional volume needed to make your project economic. (See §§ 203.60 through 203.79.)
(e) Where royalty relief would increase production significantly or, in certain areas of the GOM, would enable development.	Are not eligible to apply for end-of-life or deep water royalty relief, but show us you meet certain eligibility conditions.	A royalty reduction in a size or duration that makes your lease or project economic. (See §§ 203.80.)

4. Section 203.4 is revised to read as follows:

§ 203.4 How to do the provisions in this part apply to different types of leases and projects?

The tables in this section summarize how similar provisions of this part apply in different situations.

(a) Information elements required for applications in §§ 203.51, 205.62, and 203.81 through 203.89.

Information elements	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Administrative information report	X	X	X	X
(2) Net revenue and relief justification report (prescribed format)	X			
(3) Economic viability and relief justification report (Royalty Suspension Viability Program (RSVP) model inputs justified with geological and geophysical (G&G), Engineering, Production, & Cost reports)		X	X	X
(4) G&G report		X	X	X
(5) Engineering report		X	X	X
(6) Production report		X	X	X
(7) Deep water cost report		X	X	X

(b) Confirmation elements required to retain royalty relief in §§ 203.70, 203.81 and 203.90 through 203.91.

Confirmation elements	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Fabricator's confirmation report		X	X	X
(2) Post-production development report approved by an independent certified public accountant (CPA)		X	X	X

(c) Prerequisites for approval of relief in §§ 203.50, 203.52, 203.60 and 203.67.

Approval conditions	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) At least 12 of the last 15 months have the required level of production	X			
(2) Already producing	X			
(3) Well can produce		X	X	X
(4) Royalties for qualifying months exceed 75% of net revenue (NR)	X			
(5) Substantial investment on a pre-Act lease (e.g., platform, subsea template)		X		
(6) Determined to be economic only with relief		X	X	X

(d) Prerequisites for a redetermination in §§ 203.52 and 203.74 through 203.75.

Redetermination conditions	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) After 12 months under current rate, criteria same as for approval	X			
(2) For material change in geologic data, prices, costs, or available technology		X	X	X

(e) Characteristics of relief in §§ 203.53 and 203.69.

Relief rate and volume	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) One-half pre-application effective lease rate on the qualifying amount, 1.5 times pre-application effective lease rate on additional production up to twice the qualifying amount, and the preapplication effective lease rate for any larger volumes	X			
(2) Qualifying amount is the average monthly production for 12 qualifying months	X			
(3) Zero royalty rate on the suspension volume and the original lease rate or higher on additional production		X	X	X
(4) Suspension volume is at least 17.5, 52.5 or 87.5 million barrels of oil equivalent (MMBOE)			X	
(5) Suspension volume is at least the minimum set in the lease				X
(6) Amount needed to become economic		X	X	X

(f) Provisions for discontinuing relief in §§ 203.54 and 203.78.

Full royalty resumes when	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Average NYMEX price for last 12 months is at least 25 percent above the average for the qualifying months.	X			
(2) Average NYMEX price for last calendar year exceeds $28/bbl or $3.50/mcf, escalated by the gross domestic product (GDP) deflator since 1994.		X	X	
(3) Average prices for designated periods exceed levels we specify in the lease document.		X		X

(g) Provisions for ending or reducing relief in §§ 203.55 and 203.76 through 203.77.

Relief Withdrawn or Reduced	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) If recipient requests.	X	X	X	X
(2) Royalty rate is at the effective rate for the most recent 12 of past 15 months with qualifying amounts of production.	X			
(3) Conditions that we may specify in the approval letter in individual cases that actually occur.	X			
(4) Recipient does not submit post-production report that compares expected to actual costs.		X	X	X
(5) Recipient changes development system.		X	X	X
(6) Recipient excessively delays starting fabrication		X	X	X
(7) Recipient spends less than 80 percent of proposed pre-production costs prior to start of production		X	X	X
(8) Amount of relief volume is produced		X	X	X

5. Section 203.60 is revised to read as follows:

§ 203.60 Who may apply for deep water royalty relief?

Under conditions in §§ 203.61(b) and 203.62, you may apply for royalty relief if:

(a) You are a lessee of a lease in water at least 200 meters deep in the GOM and lying wholly west of 87 degrees, 30 minutes West longitude;

(b) We have assigned your lease to a field (as defined in § 203.0); and

(c) You either:

(1) Hold a pre-act lease on an authorized field (as defined in § 203.0) or

(2) Propose an expansion project (as defined in § 203.0) or

(3) Propose a development project (as defined in § 203.0).

6. § 203.62, the introductory sentence and paragraph (c) are revised to read as follows:

§ 203.62 How do I apply for relief?

You must send a complete application and the required fee to the MMS Regional Director for the GOM.

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(c) Sections 203.81, 203.83, and 203.85 through 203.89 describe what these reports must include. The MMS regional office for the GOM will guide you on the format for the required reports.

7. In § 203.63, the following changes are made:

A. The introductory paragraph is redesignated (a) and is revised as set forth below.

B. Paragraphs (a), (b), and (c) following the introductory paragraph are redesignated paragraphs (1), (2), and (3).

C. A new paragraph (b) is added as set forth below.

§ 203.63 Does my application have to include all leases in the field?

(a) For authorized fields, we will accept only one joint application for all leases that are part of the designated field on the date of application, except as provided in paragraph (a)(3) of this section and § 203.64. However, we will evaluate all acreage that may eventually become part of the authorized field. Therefore, if you have any other leases that you believe may eventually be part of the authorized field, you may submit data for these leases according to § 203.81.

* * * * *

(b) No, if your application seeks only project relief.

8. In § 203.64, the section heading and the first sentence in the introductory paragraph are revised to read as follows:

§ 203.64 How many applications may I file on a field or a development project?

You may file one complete application for royalty relief during the life of the field or for a specific development project. * * *

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9. In § 203.65 paragraph (b) is revised to read as follows:

§ 203.65 How long will MMS take to evaluate my application?

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(b) We will evaluate your first application on a field or project within 180 days and evaluate a redetermination under § 203.75 within 120 days after we determine that is is complete.

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10. Section 203.66 is revised to read as follows:

§ 203.66 What happens if MMS does not act in the time allowed?

If we do not act within the timeframes established under § 203.65, the conditions in the following table aply.

If you apply for royalty relief for—	And we do not decide within the time specified—	As long as you—
(a) An authorized field	You get the minimum suspension volumes specified in § 203.69	Abide by §§ 203.70 and 203.76.
(b) An expansion project	You get a royalty suspension for the first year of production	Abide by §§ 203.70 and 203.76.
(c) A development project	You get a royalty suspension for production during the number of months that a decision is delayed beyond the stipulated timeframes set by § 203.65, plus all the royalty suspension volume for which you qualify.	Abide by §§ 203.70 and 203.76.

11. Section 203.67 is revised to read as follows:

§ 203.67 What economic criteria must I meet to get royalty relief on an authorized field or project?

We will not approve applications if we determine that royalty relief cannot make the field or project economically viable. Your field or proejct must be uneconomic while you are paying royalties and must become economic with royalty relief.

12. In § 203.68, paragraph (b) is revised to read as follows:

§ 203.68 What pre-application costs will MMS consider in determining economic viability?

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(b) We will consider sunk costs (allowable expenditures on and in some cases after the discovery well as specified in § 203.89(a)) according to the following table:

We will	When determining
(1) Include sunk costs	whether a field that includes a pre-Act lease which has not produced, other than test production, before the application or redetermination submission date needs relief to become economic.
(2) Not include sunk costs	whether an authorized field or project can become economic with any relief (see § 203.67).
(3) Not include sunk costs	how much suspension volume is necessary to make the field or project economic (see § 203.69(c)).
(4) Include sunk costs for the discovery well only.	whether a development project or an expansion project needs relief to become economic.

13. In § 203.69, the introductory paragraph and paragraphs (b) through (e) are revised and paragraph (f) is added to read as follows:

§ 203.69 If my application is approved, what royalty relief will I receive?

If we approve your application, we will not collect royalties on a specified suspension volume for your field. Suspension volumes include volumes allocated to a lease under an approved unit agreement, but exclude any volumes of production that are not normally royalty-bearing under the lease or the regulations of this chapter (e.g., fuel gas).

* * * * *

(b) For development projects, any relief we grant applies only to project wells and replaces the royalty suspension volume with which we issued your lease. If your project is economic given the royalty suspension volume with which we issued your lease, we will reject the application. Otherwise, the *minimum* royalty suspension volumes:

(1) For RS leases, is the sum of the volume suspensions with which we issued the RS leases participating in the application plus 10 percent of the most likely resource size we agree is reasonable for your project; and

(2) For other deep water leases issued in sales after November 28, 2000, is 10 percent of the most likely resource size we agree is reasonable for your project.

(c) If the application for the field includes pre-Act or eligible leases in different categories of water depth, we apply the minimum royalty suspension volume for the deepest such lease then assigned to the field. We base the water depth and makeup of a field on the water-depth delineations in the "Royalty Suspension Areas Map" and the "Field Names Master List" and updates in effect at the time your application is deemed complete. These publications are available from the MMS Regional Office for the GOM.

(d) You will get a royalty suspension volume above the minimum if we determine that you need more to make the field or development project economic.

(e) For expansion projects, the minimum suspension volumes equal 10 percent of the most likely resource size we agree is reasonable for your project plus any suspension volumes required according to § 203.66. If we determine that your expansion project may be economic only with more relief, we will determine and grant you the royalty suspension volume necessary to make the project economic.

(f) The royalty suspension volume applicable to specific leases will continue through the end of the month in which cumulative production reaches that volume. The cumulative production is from all the leases in the authorized field or project that are entitled to share the royalty suspension volume.

14. Section 203.70 is revised to read as follows:

§ 203.70 What information must I provide after MMS approves relief?

You must submit reports to us as indicated in the following table. Sections 203 81, 203,90, and 203.91 describe what these reports must include. The MMS regional office for the GOM will tell you the formats.

Required report	When due to MMS	Due date extensions
(a) Fabricator's confirmation report	Within 18 months after approval of relief	MMS Director may grant you an extension under § 203.79(c) for up to 6 months.
(b) Post-production report	Within 120 days after the start of production that is subject to the approved royalty suspension volume.	With acceptable justification from you, MMS Regional Director for the GOM may extend due date up to 30 days.

15. In § 203.71, the introductory paragraph and paragraphs (a) through (c) are revised to read as follows:

§ 203.71 How does MMS allocate a field's suspension volume between my lease and other leases on my field?

The allocation depends on when production occurs, when we issued the lease, when we assigned it to the field, and whether we award the volume suspension by an approved application or establish it in the lease terms as prescribed in this section.

(a) If your authorized field has an approved royalty suspension volume under §§ 203.67 and 203.69, we will suspend payment of royalties on production from all applying leases in the field until their cumulative production equals the approved volume.

The following conditions also apply:

If—	Then—	And—
(1) We assign an eligible lease to your field after we approve relief.	We will not change your field's royalty suspension volume.	The assigned lease(s) may share in any remaining royalty relief.
(2) We assign a pre-Act or post-2000 deep water lease to your field after we approve your application.	We will not change your field's royalty suspension volume.	The assigned lease(s) may share in any remaining royalty relief by filing the short-form application specified in § 203.83 and authorized in § 203.82. An assigned RS lease also gets any portion of its royalty suspension volume remaining even after the field has produced the approved relief volume.
(3) We assign another lease(s) that you operate to your field while we are evaluating your application, you agree to toll the evaluation clock until you modify your application to be consistent with the new field, and we have an additional 60 days to review the new information.	We will change your field's minimum suspension volume if the assigned lease is a pre-Act or eligible lease entitled to a larger minimum or automatic suspension volume.	The assigned lease(s) may share the royalty—suspension we grant to the new field. If you do not agree to toll, we will reject your application due to inadequate information. But, an eligible lease(s) we assign to the field keeps its automatic suspension volume.
(4) We assign another operator's lease to your field while we are evaluating your application, you both agree to toll the evaluation clock until both of you modify your application to be consistent with the new field, and we have an additional 60 days to review the new information.	We will change your field's minimum suspension volume provided the assigned lease joins the application and is entitled to a larger minimum suspension volume.	The assigned lease(s) may share the royalty suspension we grant to the new field. If you do not agree to toll, the other operator's lease retains any suspension volume it has or may share in any relief that we grant by filing the short form application specified in § 203.83 and authorized in § 203.82.
(5) We assign a lease to your field before you submitted the royalty relief application.	We will not change your field's royalty suspension volume.	The assigned lease will not share in the relief if it did not participate in the application.
(6) We reassign a well on a pre-Act, eligible, or post-2000 deep water lease to another field.	The past production from the well counts toward the royalty suspension volume of the field to which we assign the well.	The past production from that well will not count toward any royalty suspension volume granted to the field from which we reassigned it.

(b) If your authorized field has a royalty suspension volume established under § 260.111 of this chapter (i.e., a field with a pre-Act lease where an eligible lease starts production first), we will suspend payment of royalties on production from all eligible leases in the field until their cumulative production equals the established volume. The following conditions also apply:

If—	Then—	And—
(1) We assign another eligible lease to your field.	Your field's royalty suspension volume does not change.	The assigned lease may share in any remaining royalty relief.
(2) We assign and RS lease to your field	Your field's royalty suspension volume does not change.	The assigned lease gets only the volume suspension with which we issued it, and its production volume counts against the field's royalty suspension volume.
(3) We assign a pre-Act lease without royalty suspension to your field.	Your field's royalty suspension volume does not change.	The assigned lease shares none of the volume suspension, and its production does not count as part of the suspension volume.
(4) A pre-Act or post-2000 deep water lease applies (along with the other leases in the field) and qualifies (subject to any suspension volume in the lease) for royalty relief under §§ 203.67 and 203.69.	Your field's royalty suspension volume may increase or stay the same, but will not diminish.	All leases in the field share the royalty suspension volume if we approve the application; or the RS leases in the field keep their respective volumes if we reject the application.

(c) This paragraph applies to a project with more than one lease. The royalty suspension volume for each lease equals that lease's actual production from the project (or production allocated under an approved until agreement) until total production for all leases in the project equals the project's approved royalty suspension volume.

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16. In § 203.74, the introductory paragraph is revised, paragraph (b) and (c) are revised and redesignated paragraphs (c) and (d), and a new paragraph (b) is added to read as follows:

§ 203.70 When will MMS reconsider its determination?

You may request a redetermination after we withdraw approval or after you renounce royalty relief. Under certain conditions you may also request a redetermination if we deny your application or if you want your approved royalty suspension volume to change. In these instances, to be eligible for a redetermination, at least one of the following of our conditions must occur.

* * * * *

(b) You demonstrate in your new application that a technology not considered or deemed feasible in the original application most efficiently develops this field or lease.

(c) Your current reference price decreases by more than 25 percent from your base reference price as determined under this paragraph.

(1) Your current reference price is a weighted average of daily closing prices on the NYMEX for light sweet crude oil and natural gas over the most recent full 12 calendar months;

(2) Your base reference price is a weighted average of daily closing prices on the NYMEX for oil and gas for the most recent full 12 calendar months preceding the date of your most recently approved application for this royalty relief; and

(3) The weighting factors are the proportions of the total production

volume (in BOE) for oil and gas associated with the most likely scenario (identified in §§ 203.85 and 203.88) from your most recently approved application for his royalty relief.

(d) Before starting to build your development and production system, you have revised your estimated development costs, and they are more than 120 percent of the eligible development costs associated with the most likely scenario from you most recently approved application for this royalty relief.

17. In § 203.76, paragraphs (a), (b), and (c) are revised to read as follows:

§ 203.76 When might MMS withdraw or reduce the approved size of my relief?

* * * * *

(a) You change the type of development system proposed in your application (e.g., change from a fixed platform to floating production system, an independent development and production system to one with subsea wells tied back to a host production facility, etc.).

(b) You do not start building the proposed development and production system within 18 months of the date we approved your application, unless the MMS Director grants you an extension under § 203.79(c). If you start building the proposed system and then suspend its construction before completion, and you do not restart continuous building of the proposed system within 18 months of our approval, we will withdraw the relief we granted.

(c) Your actual development costs are less than 80 percent of the eligible development costs estimated in your application's most likely scenario, and you do not report that fact in your post-production development report (§ 203.70). Development costs are those expenditures defined in § 203.89(b) incurred between the application submission date and start of production. If you report this fact in the post-production development report, you may retain the lesser of 50 percent of the original royalty suspension volume or 50 percent of the most likely size of producible resources anticipated in your application.

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18. Section 203.77 is revised to read as follows:

§ 203.77 May I voluntarily give up relief if conditions change?

Yes, by sending a letter to this effect to the MMS Regional Director for the GOM.

19. In § 203.78, the introductory paragraph and paragraph (f) are revised to read as follows:

§ 203.78 Do I keep relief if prices rise significantly?

If prices rise above a base price for light sweet crude oil or natural gas, set by statute for pre-Act leases, or in your original lease agreement for post-2000 deep water leases, you must pay full royalties as prescribed in this section.

* * * * *

(f) We change the prices referred to in paragraphs (a), (b), and (d) of this section during each calendar year after 1994. For pre-Act leases, these prices change by the percentage that the implicit price deflator for the gross domestic product changed during the preceding calendar year. For post-2000 deep water leases, these prices change as specified in the leasing instrument and in the Notice of Sale under which we issued the lease.

20. Section 203.80 is added to read as follows:

§ 203.80 When can I get royalty relief if I am not eligible for end-of-life or deep water royalty relief?

We may grant special royalty relief when it serves the statutory purposes summarized in § 203.1, and our formal relief programs provide inadequate encouragement to increase production or development. Before you may apply for special royalty relief, we must agree that your lease or project has two or more of the following characteristics.

(a) The lease has produced for a substantial period and the lessee can recover significant additional resources.

(b) Valuable facilities (e.g., a platform or pipeline that would be removed upon lease relinquishment) exist on the lease that we do not expect a successor lessee to use.

(c) A substantial risk exists that no new lessee will recover the resources.

(d) The lessee made major efforts to reduce operating costs too recently to use the formal program for royalty relief (e.g., recent significant change in operations).

(e) Circumstances beyond the lessee's control, other than water depth, preclude reliance on one of the existing royalty relief programs.

21. In § 203.81, paragraphs (a) and (c) are revised to read as follows:

§ 203.81 What supplemental reports do royalty-relief applications require?

(a) You must send us the supplemental reports listed in the following table that apply to your field. §§ 203.83 through 203.91 describe these reports in detail.

Required reports	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Administrative information report	X	X	X	X
(2) Net revenue & relief justification report	X			
(3) Economic viability & relief justification report (RSVP model inputs justified by other required reports)		X	X	X
(4) G&G report		X	X	X
(5) Engineering report		X	X	X
(6) Production report		X	X	X
(7) Deep water cost report		X	X	X
(8) Fabricator's confirmation report		X	X	X
(9) Post-production development report		X	X	X

* * * * *

(c) With your application and post-production development report, you must submit an additional report prepared by an independent CPA that:

(1) Assesses the accuracy of the historical financial information in your report and

(2) Certifies that the content and presentation of the financial data and information conform to our most recent guidelines on royalty relief, with primary regard to including only eligible costs that are incurred during the qualification months and shown in the proper format.

* * * * *

22. In § 203.83, paragraph (c) is revised to read as follows:

§ 203.83 What is in an administrative information report?

* * * * *

(c) Lessee's well designation, the API number, and the location of each well that has been drilled on the field or lease or project (not required for non-oil and gas leases);

* * * * *

23. In § 203.86, the following changes are made:

A. The word "and" is removed at the end of paragraph (b)(6).

B. The "." is removed and "; and" is added at the end of paragraph (b)(7).

C. Paragraph (b)(8) is added.

D. Paragraph (c)(4) is revised.

E. The word "and" is removed at the end of paragraph (d)(6).

F. The "." is removed and "; and" is added at the end of paragraph (d)(7).

G. Paragraph (d)(8) is added.

The additions and revisions in changes C, D, and G read as follows:

§ 203.86 What is in G&G report?

* * * * *

(b) * * *

(8) A table listing the wells/completions and indicating which sands and fault blocks will be targeted for completion/recompletion.

(c) * * *

(4) an explanation for excluding the reservoirs you are not planning to develop.

(d) * * *

(8) Reserve/resource distribution by reservoir.

* * * * *

24. In § 203.87, paragraphs (a)(1) and (d) are revised to read as follows, and paragraphs (d)(1) and (d)(2) are removed.

§ 203.87 What is in an engineering report?

* * * * *

(a) * * *

(1) Its size along with basic design specifications and drawings and

* * * * *

(d) A discussion of any plans for multi-phase development which includes the conceptual basis for developing in phases and goals or milestones required for starting later phases.

* * * * *

25. In § 203.89, paragraph (a) is revised to read as follows:

§ 203.89 What is in an engineering report?

* * * * *

(a) On an authorized field, sunk costs which are all your eligible post-discovery exploration, development, and production expenses (no third party costs), and include the eligible costs of the discovery well on the field. On an expansion project or a development project, sunk costs are just the eligible costs of the discovery well for the project. Report them in nominal dollars and only if you have documentation. We count sunk costs in an evaluation (specified in § 203.68) as after-tax expenses, using nominal dollar amounts.

* * * * *

26. In § 203.91, a new last sentence is added to read as follows:

§ 203.91 What is in an engineering report?

* * * Also, you must have this report certified by an independent CPA according to § 203.81(c).

[FR Doc. 00–29372 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–081–7211b; A–1–FRL–6897–5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the implementation of an enhanced inspection and maintenance program. In the Final Rules Section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before December 18, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Peter Hagerty, (617) 918–1049.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: October 27, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

[FR Doc. 00–29219 Filed 11–15–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket WA–00–01; FRL–6902–6]

Clean Air Act Reclassification; Wallula, Washington Particulate Matter (PM_{10}) Nonattainment Area

AGENCY: EPA.

ACTION: Proposed rule.

SUMMARY: EPA proposes to determine that the Wallula nonattainment area has not attained the National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter of less than or equal to 10 microns (PM_{10}) by the attainment date of December 31, 1997, as required by the Clean Air Act. EPA's proposed finding is based on EPA's review of monitored air quality data reported for the years 1995 through 1999. If EPA takes final action on this proposal, the Wallula PM_{10}

nonattainment area will be reclassified by operation of law as a serious PM_{10} nonattainment area.

DATES: Comments on this proposal must be received in writing by December 1, 2000.

ADDRESSES: Submit written comments to Donna Deneen, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. You may view documents supporting this action during normal business hours at the following location: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, EPA Region 10, Office of Air Quality, at (206) 553–6706.

SUPPLEMENTARY INFORMATION: The supplementary information is organized as follows:

I. What action are we taking?
II. What is the background for this action?
III. How does EPA determine whether an area has attained the standard by the attainment date?
IV. What information supports EPA's finding that the Wallula area has not attained the PM_{10} standard by the attainment date?
V. Does the Wallula area qualify for a permanent waiver of the December 31, 1997 attainment date?
VI. What are the implications of this proposed finding?
VII. Administrative Requirements
A. Executive Order 12866
B. Executive Order 13045
C. Executive Order 13084
D. Regulatory Flexibility Act
E. Unfunded Mandates Reform Act
F. Executive Order 13132
G. National Technology Transfer and Advancement Act

I. What Action Are We Taking?

In this action, we are proposing to find that the Wallula nonattainment area has not attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to 10 microns (PM_{10}) by the attainment date of December 31, 1997, as required by the Clean Air Act.[1] This proposed finding is based on EPA's review of monitored PM_{10} air quality data reported for the years 1995 through 1999, inclusive. If EPA takes final action on this proposal, the Wallula PM_{10} nonattainment area will be reclassified by operation of law as a serious PM_{10} nonattainment area.

II. What is the Background for This Action?

The Wallula area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act upon enactment of the Clean Air Act Amendments of 1990 (Act or CAA).[2] See 40 CFR 81.348 (PM_{10} Initial Nonattainment Areas); see also 56 FR 56694 (November 6, 1991). Under subsections 188(a) and (c)(1) of the Act, all initial moderate PM_{10} nonattainment areas had the same applicable attainment date of December 31, 1994.

States containing initial moderate PM_{10} nonattainment areas were required to develop and submit to EPA by November 15, 1991, a state implementation plan (SIP) revision providing for, among other things, implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of attainment of the PM_{10} NAAQS by December 31, 1994. See section 189(a) of the CAA.[3] In response to this submission requirement, the Washington Department of Ecology (Ecology) submitted a SIP revision for Wallula on November 15, 1991. Subsequently, Ecology submitted additional information indicating that nonanthropogenic sources may be significant in the Wallula nonattainment area during windblown dust events. Based on our review of the State's submissions, we deferred action on several elements in the Wallula SIP, approved the control measures in the SIP as meeting RACM/RACT, and, under section 188(f) of the CAA, granted a temporary waiver to extend the attainment date for Wallula to December 31, 1997. See 60 FR 63109 (December 6, 1995)(proposed action); 62 FR 3800 (January 27, 1997) (final action). The temporary waiver was intended to provide Ecology time to evaluate further the Wallula nonattainment area and to determine the significance of the anthropogenic and nonanthropogenic sources impacting the area. Once these activities were complete or the temporary waiver expired, EPA was to make a decision on whether the area was eligible for a permanent waiver under section 188(f) of the CAA or whether the area had attained the standard by the extended attainment date. See 62 FR 3802. Based on all the information currently available to EPA, we do not believe that nonanthropogenic sources of PM_{10} contribute significantly to violations of the PM_{10} standards in the Wallula nonattainment area. We therefore do not believe that the State has demonstrated that the area qualifies for a permanent waiver of the attainment date. Accordingly, in this action, we are proposing to find that the Wallula area has not attained the PM_{10} standards by the applicable attainment date of December 31, 1997.

III. How does EPA Determine Whether an Area has Attained the Standard by the Attainment Date?

EPA has the responsibility, pursuant to sections 179(c)(1) and 188(b)(2) of the CAA, to determine within six months of the applicable attainment date, whether PM_{10} nonattainment areas attained the PM_{10} NAAQS by the attainment date. Determinations under section 179(c)(1) of the Act are to be based upon an area's "air quality as of the attainment date." Section 188(b)(2) is consistent with this requirement. Generally, EPA will determine whether an area's air quality is meeting the PM_{10} NAAQS for purposes of sections 179(c)(1) and 188(b)(2) based upon data gathered at monitoring sites in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined by EPA to meet federal monitoring requirements (see 40 CFR 50.6 and appendix J, 40 CFR part 53, 40 CFR part 58, appendices A and B). The data are reviewed in accordance with 40 CFR part 50, appendix K, to determine the area's air quality status.

Pursuant to appendix K, the annual PM_{10} standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter ($\mu g/m^3$). The 24-hour PM_{10} standard is attained when the expected number of days in a year with PM_{10} concentrations greater than 150 $\mu g/m^3$, averaged over a three year period, is less than or equal to one. To calculate "the expected number of days," we use the number of exceedances that are observed in a year, then adjust that number to account for the sampling schedule of the monitor and any

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[1] On July 18, 1997, EPA promulgated revised and new standards for PM_{10} and $PM_{2.5}$ (62 FR 38651). The U.S. Court of Appeals for the D.C. Circuit in *American Trucking Assoc., Inc., et al.* v. *USEPA*, 175 F.3d 1027 (D.C. Cir. 1999), issued an opinion that, among other things, vacated the new standards for PM_{10} that were published on July 18, 1997, and became effective September 16, 1997. However, the PM_{10} standards promulgated on July 1, 1987, were not an issue in this litigation, and the Court's decision does not affect the applicability of those standards in the Wallula area. Codification of those standards continue to be recorded at 40 CFR 50.6. Today's proposed action relates only to the CAA requirements concerning the PM_{10} standards as originally promulgated in 1987.

[2] The 1990 Amendments to the CAA made significant changes to the CAA. *See* Public Law No. 101–549, 104 Stat. 2399. References herein are to the CAA as amended in 1990. The Clean Air Act is codified, as amended, in the United States Code at 42 U.S.C. 7401, *et seq.*

[3] The moderate area SIP requirements are set forth in section 189(a) of the CAA.

missing data. A total of three consecutive years of non-violating air quality data is generally necessary to show attainment of the 24-hour and annual standard for PM_{10}. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

EPA is publishing this proposal pursuant to section 188(b)(2) of the Act. Under subpart (A) of that section, a moderate PM_{10} nonattainment area is reclassified as serious by operation of law if EPA finds that the area is not in attainment by the applicable attainment date. Pursuant to section 188(b)(2)(B) of the Act, EPA must publish a **Federal Register** document within six months after the applicable attainment date identifying those areas that have failed to attain the standard and that have been reclassified to serious by operation of law. See section 188(b)(2); see also section 179(c)(1).

IV. What Information Supports EPA's Finding That the Wallula Area has not Attained the PM_{10} Standard by the Attainment Date?

As explained above, attainment determinations are based upon an area's "air quality as of the attainment date." Since Wallula's attainment date was extended to December 31, 1997, we first looked at the PM_{10} air quality data for 1995, 1996, and 1997. These data show that, for this three year period, there were no violations of the annual PM_{10} standard. For the 24-hour standard, however, there were two measured exceedances: 160 $\mu g/m^3$ on June 21, 1997, and 210 $\mu g/m^3$ on July 3, 1997. After adjusting these two 24-hour exceedances to account for the sampling schedule[4] and missing data, the expected number of days with PM_{10} concentrations greater than 150 $\mu g/m^3$ was 4.1. Since this value is greater than one, these data show that Wallula was not in attainment of the 24-hour PM_{10} standard as of its December 31, 1997, attainment date.

In addition to the 1995 through 1997 data, we also looked at the most recent data for Wallula. In 1998 and 1999 there were no violations of the annual standard. However, since January 1, 1998, there have been two additional exceedances of the 24-hour standard: 215 $\mu g/m^3$ on July 10, 1998, and 297 $\mu g/m^3$ on June 23, 1999. Using these values, along with the 1997 exceedances of 160 $\mu g/m^3$ and 210 $\mu g/m^3$, we calculated the expected number of days with PM_{10} concentrations greater than 150 $\mu g/m^3$ for the 1997 through 1999 period (i.e., the most recent three-year period). Accounting for the sampling schedule and missing data, the expected number of days for this period was 8.4. Because this value is greater than one, these data show that Wallula is still not in attainment of the 24-hour PM_{10} standard.

In a May 30, 1996, Memorandum from EPA's Assistant Administrator for Air and Radiation to EPA Regional Air Directors entitled "Areas Affected by Natural Events" (EPA's Natural Events Policy), EPA has stated that in some circumstances it is appropriate to exclude PM_{10} air quality data that are attributable to uncontrollable natural events, such as unusually high winds, from decisions regarding an area's attainment status. Under the policy, where a State believes natural events have caused a violation of the NAAQS, the State enters the exceedance in the AIRS data base, flags the exceedance as being attributable to a natural event, documents a clear causal relationship between the measured exceedance and the natural event, and develops a natural events action plan (NEAP) to address future natural events. In the case of high-wind events where the sources of dust are anthropogenic, the State should also document that Best Available Control Measures (BACM) were required for those sources and the sources were in compliance with BACM at the time of the high-wind event. EPA's Natural Events Policy also contains guidance for notifying the public of the occurrence of natural events and the health effects of such events, as well as minimizing public exposure to high concentrations of PM_{10} due to natural events.

Ecology has flagged certain exceedances of the PM_{10} NAAQS in the Wallula area under EPA's Natural Events Policy and has also developed a Natural Events Action Plan for High Wind Events in the Columbia Plateau (March 1998), which includes the Wallula PM_{10} nonattainment area. Since January 1, 1995, the beginning of the time period for the data considered by EPA in this action, we are aware of one exceedance of the PM_{10} standard in the Wallula area—June 21, 1997— that Ecology has flagged as attributable to high winds under EPA's Natural Events Policy.[5] EPA has no information indicating Ecology has claimed any of the other exceedances of the 24-hour PM_{10} standard in the Wallula area since January 1, 1995, as attributable to natural events.[6] Even if the June 21, 1997, exceedance is excluded from the attainment determination, the expected number of days during the 1995–1997 time period with PM_{10} concentrations greater than 150 $\mu g/m^3$ is 2.0 and still demonstrates nonattainment of the 24-hour PM_{10} standard. Similarly, for the 1997–1999 time period, the expected number of days with PM_{10} concentrations greater than 150 $\mu g/m^3$ is 6.4 and demonstrates nonattainment of the 24-hour standard even if the June 21, 1997, exceedance is excluded.

V. Does the Wallula Area Qualify for a Permanent Waiver of the December 31, 1997, Attainment Date?

Section 188(f) of the Act provides that EPA may, on a case-by-case basis, waive a specific date for attainment of the PM_{10} standards where EPA determines that nonanthropogenic sources of PM_{10} contribute significantly to the violation of the PM_{10} standards in the nonattainment area. Based on the currently available information, we do not believe the Wallula area qualifies for a permanent waiver of the moderate area extended attainment date of December 31, 1997. EPA also has not received a request from Ecology for a permanent waiver of the attainment date under section 188(f). In addition, the information available to EPA does not establish that nonanthropogenic sources of PM_{10} contribute significantly to the violations of the PM_{10} standards in the Wallula PM_{10} nonattainment area. As discussed above, only one of the exceedances of the PM_{10} standards since January 1, 1995, has been claimed by Ecology as attributable to a natural event. EPA therefore believes that the other exceedances were due to anthropogenic sources of PM_{10}. Accordingly, in light of the data showing the Wallula area was in violation of the 24-hour PM_{10} standard as of the December 31, 1997, attainment date, as well as the data showing the area continues to violate the 24-hour PM_{10} standard, we are proposing to find, in accordance with section 188(b)(2) of the Act, that the Wallula PM_{10} nonattainment area did not attain the

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[4] Because the Wallula monitor is scheduled to sample once every six days, each measured exceedance is generally counted as six expected exceedances. If there is missing data, the measured exceedance may count for more than that.

[5] Ecology subsequently submitted documentation to EPA to support its claim that the June 21, 1997 exceedance was due to a "natural event," although it is unclear when EPA received this documentation. In addition, because the documentation from Ecology was marked "draft," it was not clear to EPA that this was intended to be treated as the State's final submission and EPA has therefore not confirmed this flag. EPA now understands from Ecology that Ecology intended the submission marked "draft" to serve as its final submission, and EPA will therefore proceed with reviewing the documentation submitted by the State.

[6] Indeed, the State has specifically confirmed that it does not consider the July 10, 1998, exceedance to be due to high winds.

PM_{10} NAAQS by the applicable attainment date of December 31, 1997.

VI. What are the implications of this proposed finding?

If EPA takes final action on this proposed finding, the Wallula PM_{10} nonattainment area will be reclassified by operation of law as a serious PM_{10} nonattainment area under section 188(b)(2)(A) of the Act. PM_{10} nonattainment areas reclassified as serious under section 188(b)(2) of the Act are required to submit, within 18 months of the area's reclassification, SIP provisions providing for, among other things, the adoption and implementation of best available control measures (BACM), including best available control technology (BACT), for PM_{10} no later than four years from the date of reclassification. The SIP also must contain, among other things, a demonstration that the implementation of BACM will provide for attainment of the PM_{10} NAAQS no later than December 31, 2001.[7] In addition, the terms "major source" or "major stationary source" include any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 70 tons per year of PM_{10}. See sections 188(c)(2) and 189(b). These requirements are in addition to the moderate PM_{10} nonattainment requirements of RACT/RACM, which, as discussed above, were approved for the Wallula nonattainment area on January 27, 1997. See 62 FR 3800.

VII. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities."

The Agency has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f). Under section 188(b)(2) of the CAA, findings of failure to attain are based upon air quality considerations and the resulting reclassifications must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local or tribal governments or communities.

B. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's proposed finding of failure to attain does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed finding of failure to attain.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Findings of failure to attain and the resulting reclassification of nonattainment areas by operation of law under section 188(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only proposes to make a factual determination, and does not propose to directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), I certify that today's proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be

significantly or uniquely impacted by the rule.

EPA believes, as discussed above, that the proposed finding of failure to attain is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

F. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism, and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This finding of failure to attain and reclassification of nonattainment area will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because these actions do not, in-and-of-themselves, impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to these actions.

G. National Technology Transfer and Advancement Act

Section 1 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are not relevant to this action because today's action does not involve the application of new technical standards.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: November 6, 2000.

Charles E. Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 00–29360 Filed 11–15–00; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 205

[Docket No. MARAD–2000–8284]

RIN 2133–AB42

Audit Appeals; Policy and Procedure

AGENCY: Maritime Administration, Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is proposing to update Part 205—Audit Appeals; Policy and Procedure. Part 205 establishes appeal procedures for parties who contract with the Maritime Subsidy Board or MARAD. We propose to: Update these audit procedures to reflect current MARAD practices; and rewrite the regulations in plain language. The intended effect of this rulemaking is to improve our audit appeals process by updating and clarifying part 205.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 16, 2001.

ADDRESSES: Your comments should refer to docket number [MARAD 2000–8284]. You may submit your comments in writing to: Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th St., SW, Washington, DC 20590. You may also submit them electronically via the internet at *http://dmses.dot.gov/submit/*. You may call Docket Management at (202) 366–9324 and visit the Docket Room from 10 a.m. to 5 p.m., EST., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Fred A. Slaugh, Office of Financial Approvals and Rates, (202) 366–5866. You may send mail to Mr. Slaugh at Maritime Administration, Office of Financial and Rate Approvals, Room 8117, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How Can I be Sure That my Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Docket Management will return the postcard by mail.

How do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT**. You should mark "CONFIDENTIAL" on each page of the original document that you would like to keep confidential. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send comments containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

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[7] If certain conditions are met, EPA may extend this attainment deadline to no later than December 31, 2006. CAA 188(e).

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket Room are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/). On that page, click on "search." On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. The docket number for this document is [xxxx]. After typing the docket number, click on "search." On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Background

Part 205—Audit Appeals; Policy and Procedure establishes the policy and procedure for parties to use when seeking redress and appeals of decisions involving contracts with the Maritime Subsidy Board or MARAD. Part 205 applies to all MARAD contracts including the Operating-Differential Subsidy, Construction-Differential Subsidy, Capital Construction Fund, Construction Reserve Fund, and Maritime Security Program.

According to the policy in part 205, any contractor who disagrees with audit findings or decisions of MARAD and who does not reach a negotiation with the appropriate Coast Director's office may appeal. Any contractor who appeals must do so in writing to the Maritime Administrator within six (6) months following the date of the document notifying the contractor of the audit findings. MARAD will then notify the appellant in writing if a hearing or additional facts are necessary. After the Maritime Administrator renders a decision, MARAD will notify the appellant in writing. When a contract contains a disputes article, the disputes article will govern the bases for dispute and any appeals.

We are proposing revisions to part 205 that reflect our current practices of making audit appeals decisions. Appellants no longer appeal to the appropriate Coast Director's office. In the past, auditors were assigned to regional offices. However, we no longer have these auditors. MARAD headquarters is responsible for overseeing audits as deemed appropriate. Such audits may be performed by the Office of Inspector General.

Plain Language

Executive Order 12866 and the President's memorandum on plain language in government writing of June 1, 1998, require each agency to write all rules in plain language. The Department of Transportation and MARAD are committed to plain language in government writing; therefore, we propose to revise part 205 using plain language to provide easier understanding. Our goal is to improve the clarity of the regulation. We invite your comments on how to make this proposed rule easier to understand.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have reviewed this notice of proposed rulemaking (NPRM) under Executive Order 12866 and have determined that this is not a significant regulatory action. Additionally, this NPRM is not likely to result in an annual effect on the economy of $100 million or more. The purpose of this NPRM is to propose updates to MARAD's audit procedures to reflect current MARAD practices and to rewrite the regulations in plain language.

This NPRM is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further analysis is necessary. Because the economic impact, if any, should be minimal, further regulatory evaluation is not necessary.

Regulatory Flexibility Act

This NPRM will not have a significant economic impact on a substantial number of small entities. This NPRM only updates procedures for appealing audit findings and decisions to the Maritime Administrator. Although the number of small entities who appeal audit findings may be substantial, the cost of filing an audit appeal with MARAD is minimal, if any. Therefore, I certify that this NPRM will not have a significant economic impact on a substantial number of small entities.

Federalism

We have analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Environmental Impact Statement

We have analyzed this NPRM for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order ("MAO") 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this NPRM is not required. This NPRM involves administrative and procedural regulations that have no environmental impact.

Executive Order 13084

MARAD does not believe that this NPRM will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Unfunded Mandates Reform Act of 1995

This NPRM does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This NPRM is the least burdensome alternative that achieves the objective of the rule.

Paperwork Reduction Act

This NPRM does not contain information collection requirements covered by 5 CFR Part 1320 (specifically 5 CFR 1320.3(c)) in that appellants choose the information to be provided in their appeal and may choose to interpret the collection of information differently.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number is contained in the heading of this document to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 205

Administrative practice and procedure, Government contracts.

Accordingly, 46 CFR part 205 is proposed to be revised to read as follows:

PART 205—AUDIT APPEALS; POLICY AND PROCEDURE

Sec.

205.1 Purpose.
205.2 Policy.
205.3 Procedure.
205.4 Finality of decisions.
205.5 Contracts containing disputes article.

Authority: Sec. 204, 49 Stat. 1987, 1998, 2004, 2011; 46 U.S.C. 1114, 1155, 1176, 1212.

§ 205.1 Purpose.

This part establishes the policy and procedure for parties to use when seeking redress and appeals of decisions involving contracts with the Maritime Subsidy Board or The Maritime Administration (MARAD, we, our, or us). A party to a contract (you or your) may appeal MARAD's findings, interpretations, or decisions of annual or special audits.

§ 205.2 Policy.

If you disagree with audit findings and fail to settle any differences with the appropriate Office Director, you may ask the appropriate office Associate Administrator to review the audit findings. If you disagree with the Associate Administrator, you may appeal to the Maritime Administrator (Administrator).

§ 205.3 Procedure.

(a) You must submit your appeal in writing to the Administrator within 6 months following the date of the document notifying you of the audit findings, interpretations, or decisions. However, the Administrator may, at his discretion, extend this time limitation in the case of extenuating circumstances.

(b) We will notify you, in writing, if you must submit additional facts for our consideration of the appeal. We will notify you, in writing, once the Maritime Administrator has made a decision regarding your appeal.

§ 205.4 Finality of decisions.

The Administrator's decision will be final on all questions of fact involved in the appeal, unless:

(a) Otherwise determined by the Secretary of Transportation pursuant to 49 CFR 1.43(a); or

(b) A court of competent jurisdiction determines the findings to have been fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.

§ 205.5 Contracts containing disputes article.

When a contract contains a disputes article, the disputes article will govern the bases for negotiating disputes regarding audit findings, interpretations, or decisions made by MARAD and any appeals.

By Order of the Maritime Administrator.

Dated: November 13, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–29386 Filed 11–15–00; 8:45 am]

BILLING CODE 4910-81-P

Notices

Federal Register
Vol. 65, No. 222
Thursday, November 16, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Service: Membership of Performance Review Board

ACTION: Notice.

SUMMARY: The Performance Review Board will initiate their labors on or about November 15, 2000. The following persons are members of the Performance Review Board for 2000.

Members:

Corbett Flannery, Chair
Robert Lester, SES Member
Elmer S. Owens, SES Member
Roxann A. Van Dusen, SES Member
Lois E. Hartman, Public Member

FOR FURTHER INFORMATION CONTACT: Mary Anne Conboy, 202–712–5438.

Dated: November 7, 2000.

Henry W. Reynolds,

Executive Secretary, Executive Resources Board.

[FR Doc. 00–29390 Filed 11–15–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Supplemental to Final Environmental Impact Statement for Uncompahgre National Forest Travel Plan; Grand Mesa, Uncompahgre and Gunnison National Forests; Montrose, Gunnison, Mesa, San Miguel, Ouray, Hinsdale, and San Juan Counties, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare a Supplement to the Final Environmental Impact Statement (EIS) in conjunction with an amendment of the land and resource management plan for the Grand Mesa, Uncompahgre and Gunnison National Forests.

SUMMARY: Over a six-year period the Forest Service, working with the public, developed the Uncompahgre National Forest Travel Plan and decision. The process included 38 open public meetings, a Draft Environmental Impact Statement, a Final Environmental Impact Statement and a Record of Decision finally published in April of 2000 (published notices 62 FR 25162–25163, 63 FR 49911, 65 FR 26198). The Uncompahgre Travel Plan Decision of April 2000 was reversed on appeal. The issue of Forest Plan compliance with the standard for Habitat Capability was raised in the appeal. In his reversal decision, Deputy Regional Forester Tom Thompson instructed the Forest Supervisor to "promptly begin a new decisionmaking process" incorporating a "procedural remedy of the NEPA/NFMA flaw" discovered through the appeal. NEPA is the National Environmental Policy Act, which requires Environmental Analyses of proposed Federal actions; NFMA is the National Forest Management Act, which establishes Forest Plans.

The Forest Service will prepare a supplement to the Final Environmental Impact Statement (FEIS) for the Uncompahgre National Forest Travel Plan. The supplement will examine a proposed amendment to the Land and Resource Management Plan for the Grand Mesa, Uncompahgre, Gunnison National Forests (GMUG) to accommodate departure from the Forest Plan standards for Habitat Capability for an Uncompahgre Travel Plan Decision. Alternatives will be considered, including the No Action Alternative.

Public Participation: Scoping is not a required part of the preparation of a Supplement to an EIS. However limited scoping was conducted, with a comment period from mid September through October 20, 2000. There was an open public meeting at the Montrose Pavilion on September 27, to discuss this proposal.

ADDRESSES: To be included on the mailing list to receive copies of the Draft Supplement to the FEIS please send your address to: Uncompahgre Travel Plan, GMUG National Forests, 2250 Highway 50, Delta, CO 81416.

Responsible Official: Robert L. Storch, Forest Supervisor of the Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, CO.

FOR FURTHER INFORMATION CONTACT: Jeff Burch, Project Leader, at (970) 874–6600.

SUPPLEMENTARY INFORMATION: We expect to file a draft supplement to the final environmental impact statement with the Environmental Protection Agency (EPA) and make it available for public comment on December 2000. At that time, the EPA will publish a notice of availability for the DSEIS in the **Federal Register**. The comment period on the DSEIS will be 60 days from the date the EPA publishes the notice of availability in the **Federal Register**. The agency expects to file a final SEIS in April 2001.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DSEIS must participate in the environmental review of the proposal in such a way that their participation is meaning full and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Corp.* v. *NRDC.* 435 U.S. 519, 553 (1978). Is very important that those interested in this proposed action participate by the close of the 60 day comment period that will be provided for public review of the Draft Supplement to the EIS, so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FSEIS.

To assist the Forest Service in identifying and considering issues and concerns relating to the proposed actions, comments on the DSEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DSEIS or the merits of the alternatives formulated and discussed in the statements. In addressing these points, reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

After the comment period on the DSEIS ends, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final Supplemental EIS. The FSEIS is scheduled to be completed in April 2001. The responsible official will consider the comments, responses, environmental consequences discussed in the FSEIS, and applicable laws, regulations, and policies in making decisions regarding these revisions. The responsible official will document the decisions and reasons for the decisions in a Record of Decision. The decision will be subject to appeal in accordance with 36 CFR 215.

Dated: October 30, 2000.

Robert L. Storch,

Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests, Rocky Mountain Region, USDA Forest Service.

[FR Doc. 00–29283 Filed 11–1 –00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Gold/Boulder/Sullivan, Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of revision of intent to prepare an environmental impact statement.

SUMMARY: The USDA—Forest Service is revising its notice of intent to prepare an Environmental Impact Statement for the Gold/Boulder/Sullivan Project, as described in the **Federal Register** dated March 24, 2000 (Vol. 65, No. 58, Pages 15892–15895), due to the following major changes:

1. The filing of the DEIS will be delayed more than six months, and
2. There will be changes to the Proposed Action

The delay and changes are attributable to wildfires that occurred in the Gold/Boulder/Sullivan Project Area during August 2000.

FOR FURTHER INFORMATION: Contact Ron Komac, Acting NEPA Coordinator, Rexford Ranger District, Phone (406) 296–7130.

Dated: November 7, 2000.

Bob Castaneda,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 00–29387 Filed 11–15–00; 8:4 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Grain Inspection Advisory Committee.

Dates: November 28–29, 2000.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia.

Time: 8 am–5 pm on November 28 and 8 am–11:30 am on November 29, 2000.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda includes a review and discussion of GIPSA's financial status, wheat dockage proposal, reauthorization, biotechnology, research initiatives, standardization and training services for the grain industry, certification of producers and grain elevators, and other related issues concerning the delivery of grain inspection and weighing services to American agriculture.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250–3601, telephone (202) 720–0219 or FAX (202) 205–9237.

The meeting will be open to the public. Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Marianne Plaus, telephone (202) 690–3460 or FAX (202) 205–9237.

Dated: November 9, 2000.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 00–29474 Filed 11–15–00; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–808; A–583–810]

Revocation of Antidumping Duty Orders: Chrome-Plated Lug Nuts From the People's Republic of China and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of revocation of antidumping duty orders: chrome-plated lug nuts from the People's Republic of China and Taiwan.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the United States International Trade Commission ("the Commission") determined that revocation of the antidumping duty orders on chrome-plated lug nuts from the People's Republic of China ("China") and Taiwan is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See 65 FR 66558 (November 6, 2000). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department of Commerce ("the Department") is revoking the antidumping duty orders on chrome-plated lug nuts from China and Taiwan. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2), the effective date of revocation is January 1, 2000.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

Background

On August 2, 1999, the Department initiated, and the Commission instituted, sunset reviews of the antidumping duty orders on chrome-plated lug nuts from China and Taiwan, pursuant to section 751(c) of the Act.[1] As a result of the reviews, the Department found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the antidumping orders revoked.[2]

On November 6, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on chrome-plated lug nuts from China and Taiwan would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Chrome-Plated Lug Nuts from China and Taiwan, 65 FR 66558 (November 6, 2000) and USITC

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[1] See Initiation of Five-Year ("Sunset") Reviews; 64 FR 41915 (August 2, 1999), and Chrome-Plated Lug Nuts from China and Taiwan, 64 FR 41949 (August 2, 1999).

[2] See Chrome-Plated Lug Nuts From the People's Republic of Chin and Taiwan; Final Results of Antidumping Duty Sunset Reviews: 65 FR 11762 (March 6, 2000).

Publication 3362, Investigations Nos. 731–TA–474 and 475 (Review) (October 2000).

Scope of the Orders

The products covered by these orders are one-piece and two-piece chrome-plated and nickel-plated lug nuts from China and Taiwan. The subject merchandise includes chrome-plated and nickel-plated lug nuts, finished or unfinished, which are more than $\frac{11}{16}$ inches (17.45 millimeters) in height and which have a hexagonal size of at least ¾ inches (19.05 millimeters) but not over one inch (25.4 millimeters), plus or minus $\frac{1}{16}$ of an inch (1.59 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Excluded from the orders are zinc-plated lug nuts, finished or unfinished, stainless steel capped lug nuts, and chrome-plated lock nuts. The merchandise covered by the orders currently classifiable under item 7318.16.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the subject merchandise remains dispositive.

The Department has made several scope rulings on the subject merchandise from China and Taiwan. The following products were determined to be within the scope of the order:

Product within scope	Importer	Citation
Certain hex size nuts	Consolidated International	59 FR 54888
Certain nickel-plated lug nuts	Consolidated International Automative, Inc	62 FR 9176
Imported zinc-plated lug nuts-chrome-plated in the United States.	Wheel Plus, Inc.	63 FR 59544

Determination

As a result of the determination by the Commission that revocation of these antidumping duty orders is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), is revoking the antidumping duty orders on chrome-plated lug nuts from China and Taiwan. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), this revocation is effective January 1, 2000.

The Department will instruct the Customs Service to discontinue the suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: November 9, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–29407 Filed 11–15–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–843]

Notice of Final Determination of Sales at Not Less Than Fair Value: Expandable Polystyrene Resins from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 16, 2000.

ACTION: Notice of final determination of sales at not less than fair value.

FOR FURTHER INFORMATION CONTACT: Valerie Ellis or David Layton, at (202) 482–2336 or (202) 482–0371, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to 19 CFR Part 351 (1999).

Final Determination

We determine that expandable polystyrene resin (EPS) from the Republic of Korea (Korea) is not being sold, nor is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at not LTFV are shown in the "Termination of Liquidation" section of this notice.

Case History

The preliminary determination in this investigation was issued on June 20, 2000. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Expandable Polystyrene Resins From the Republic of South Korea*, 65 FR 39351 (June 26, 2000). The investigation covers two manufacturers/exporters: Shinho Petrochemical Co., Ltd. (Shinho) and Cheil Industries Incorporated (Cheil). Both of these companies are located in Seoul, Korea.

The Department verified the responses of Cheil Industries Incorporated in Seoul, South Korea from August 21, 2000 to August 25, 2000; Shinho Petrochemical Co., Ltd. in Seoul, South Korea from August 28, 2000 to September 1, 2000; Samsung America Incorporated (SAI), Cheil's affiliated importer, at Ridgefield Park, New Jersey from September 27, 2000 to September 28, 2000; and Cheil's Los Angeles branch and the division of Samsung America, Incorporated located in the same building, in La Mirada City, California, on September 29, 2000.

Scope of Investigation

For purposes of this investigation, the products covered includes EPS in primary forms; namely, raw material or resin manufactured in the form of polystyrene beads, whether of regular (shape) type or modified (block) type, regardless of specification, having a weighted-average molecular weight of between 160,000 and 260,000, containing from 3 to 7 percent blowing agents, and having bead sizes ranging from 0.4 mm to 3 mm. Specifically excluded from the scope of this investigation are off-grade, off-specification expandable polystyrene resins. The covered merchandise is found in the Harmonized Tariff Schedule of the United States (HTSUS) subheading 3903.11.00.00. Although this HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation, as well as certain other findings by the Department which are listed in an appendix to this notice, are addressed in the "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Expandable Polystyrene Resins from South Korea" (Decision Memorandum), from Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Assistant Secretary for Import Administration, dated November 8, 2000, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building and on the Web at: *www.ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made changes in the margin calculations for both companies under review. These changes are discussed in the relevant sections of the Decision Memo.

Termination of Suspension of Liquidation

Pursuant to section 735(c)(2) of the Act, we are instructing Customs to terminate suspension of liquidation of all entries of EPS from South Korea that are entered, or withdrawn from warehouse, for consumption on or after June 26, 2000, the date of publication of the preliminary determination. The Customs Service shall refund any cash deposit and release any bond or other security previously posted in connection with this case.

We determine that the following *de minimis* weighted-average dumping margins exist for October 1, 1998, through September 30, 1999:

Manufacturer/Exporter	Weighted Average Margin (percent)
Cheil Industries Incorporated	0.82
Shinho Petrochemical Co.	0.83

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is negative, this proceeding is terminated and all securities posted will be refunded.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: November 8, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

Issues Covered in Decision Memorandum

I. General Issues

1. Allegations of Mexican Transshipments
2. Using Monthly Averaging Groups in Place of Annual Averages to Calculate Normal Value

II. Issues Specific to Cheil Industries, Inc. (Cheil)

3. Constructed Export Price Offset
4. Duty Drawback
5. Credit Expense—Home Market Interest Rate
6. Reclassification of Certain Sales from Constructed Export Price to Export Price
7. General & Administrative Expense
8. Inclusion of Import Duties in the Cost of Manufacture

III. Issues Specific to Shinho Petrochemical Co., Ltd (Shinho)

9. Credit Expense
10. Gain on Foreign Currency Translation

[FR Doc. 00–29405 Filed 11–15–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–810]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Expandable Polystyrene Resins From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 16, 2000.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or David Layton at (202) 482–0371, AD/CVD Enforcement, Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR Part 351 (2000).

Final Determination

We determine that certain expandable polystyrene resins from Indonesia are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on June 20, 2000. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Expandable Polystyrene Resins From Indonesia*, 65 FR 39349 (June 26, 2000) (*Preliminary Determination*). No briefs were filed in this investigation.

On August 3, 2000, the Department published a **Federal Register** notice postponing the deadline for the final determination until no later than November 8, 2000. *See Notice of Postponement of Final Antidumping*

Duty Determination: Certain Expandable Polystyrene Resins from Indonesia, 65 FR 47713 (August 3, 2000).

Scope of Investigation

The scope of this investigation includes certain expandable polystyrene resins in primary forms; namely, raw material or resin manufactured in the form of polystyrene beads, whether of regular (shape) type or modified (block) type, regardless of specification, having a weighted-average molecular weight of between 160,000 and 260,000, containing from 3 to 7 percent blowing agents, and having bead sizes ranging from 0.4 mm to 3 mm.

Specifically excluded from the scope of this investigation are off-grade, off-specification expandable polystyrene resins.

The covered merchandise is found in the Harmonized Tariff Schedule of the United States (HTSUS) subheading 3903.11.00.00. Although this HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Period of Investigation

The period of investigation is October 1, 1998, through September 30, 1999.

Facts Available

In the preliminary determination, the Department based the dumping margin for the mandatory respondent, PT Risjad Brasali Styrindo (Brasali), on facts otherwise available, pursuant to section 776(a)(2)(A) of the Act. The use of facts otherwise available was required because the record did not contain company-specific information, given the respondent's failure to respond to the Department's antidumping questionnaire. For purposes of the preliminary determination, the Department also found that Brasali failed to cooperate by not acting to the best of its ability to comply with the Department's request for information, pursuant to section 776(b), and determined to use an adverse inference in selecting from among the facts otherwise available. Specifically, the Department assigned to the mandatory respondent the highest margin alleged in the petition, which was corroborated as required by section 776(c) of the Act. *See Preliminary Determination*. Following the preliminary determination, interested parties did not file any comment and have not objected to the Department's decision to use adverse facts available for the mandatory respondent in this investigation, or to the Department's choice of facts available. Accordingly, for the reasons discussed in the *Preliminary Determination*, for this final determination the Department is continuing to use the highest margin alleged by the petitioners for the mandatory respondent in this proceeding. In addition, the Department has left unchanged from the preliminary determination the "All Others Rate" in this investigation, which is the average of all the rates provided in the petition.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend all entries of expandable polystyrene resins from Indonesia, that are entered, or withdrawn from warehouse, for consumption on or after June 26, 2000, the date of publication of our preliminary determination. The Customs Service shall require a cash deposit or bond equal to the dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice. The dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
PT Risjad Brasali Styrindo	96.65
All Others	95.79

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: November 8, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary, for Import Administration.

[FR Doc. 00–29406 Filed 11–15–00; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Ricardo Ramirez by an Objection by the Puerto Rico Planning Board

ACTION: Dismissal of appeal.

By letter dated April 6, 1999, Ricardo Ramirez (Appellant) filed with the Secretary of Commerce a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act. The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's consistency certification for an Army Corps of Engineers permit to reconstruct a stilt house of 47′ by 42′.

The CZMA provides that a timely objection by a state (including Puerto Rico) to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the project satisfies the requirements of 15 CFR 930.121 or 930.122. Generally, the Appellant has the burden of submitting evidence in support of his appeal and the burden of persuasion under both Grounds I and II.

The Federal regulations implementing the CZMA provide, in part, that the Secretary may dismiss an appeal for failure of the Appellant to base the appeal on Grounds I or II.

In light of Appellant's failure to describe the way in which the proposed activity is either (1) consistent with the objectives or purposes of the CZMA or (2) necessary in the interest of national security, the appeal has been dismissed. The Appellant is barred from filing another appeal from the Puerto Rico Planning Board's objection to his original consistency certification. This is a final agency action for purposes of judicial review.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Mary Gray Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, 301–713–2967.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: November 2, 2000.

Craig O'Connor,

Acting General Counsel.

[FR Doc. 00–29388 Filed 11–15–00; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091300A]

Small Takes of Marine Mammals Incidental to Specified Activities; Explosives Testing at Eglin Air Force Base, FL

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of withdrawal of a request for a small take exemption authorization.

SUMMARY: On October 26, 2000, NMFS was notified by the U.S. Air Force that it was withdrawing its request for an authorization under the Marine Mammal Protection Act (MMPA) to take small numbers of bottlenose and spotted dolphins, by harassment, incidental to explosive testing of obstacle and mine clearance systems at Eglin Air Force Base, FL (Eglin).

ADDRESSES: A copy of the application and/or letter of withdrawal may be obtained by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning the contact listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead 301-713-2055 ext. 128.

SUPPLEMENTARY INFORMATION: On August 6, 2000, NMFS received a small take application, under section 101(a)(5)(D) of the MMPA, from the U.S. Air Force at Eglin Air Force Base, FL. The Air Force, in cooperation with the Naval Surface Warfare Center-Coastal Systems Station, U.S. Navy, requested, on that date, an authorization to take, by harassment and non-serious injury, bottlenose dolphins (*Tursiops truncatus*), and spotted dolphins (*Stenella frontalis*), incidental to explosive testing of an obstacle clearance system at Eglin. Eglin is located in the Florida Panhandle approximately midway between the cities of Pensacola and Panama City, FL. The location of the proposed action is on the beach areas on Santa Rosa Island, approximately 27 kilometers (17 mi) west of Destin, FL.

A notice of receipt of the application and proposed incidental harassment authorization (IHA) under the MMPA was published on October 20, 2000 (65 FR 63059), and a 30-day public comment period was provided on the application and proposed authorization. Please refer to that document for additional information on the Air Force request.

On October 26, 2000, NMFS received a letter from the Air Force at Eglin noting that the U.S. Navy does not support the acoustic modeling that was performed for the Biological Assessment under section 7 of the Endangered Species Act or the application for an IHA; in particular, a marine mammal injury threshold criterion of 5 pounds/inch2-milliseconds. The Navy believes that the methodologies and criteria developed by acousticians, energetic scientists, and independent scientific review for the SEAWOLF ship shock trial (63 FR 66069, December 1, 1998), as updated in the shock trial of the USS WINSTON CHURCHILL (65 FR 11542, March 3, 2000), are the appropriate means to establish harassment to marine mammals. As a result, the Air Force has requested NMFS to withdraw the application. The Air Force will inform NMFS if the Navy requests to use Eglin to conduct this or other tests in the future.

Dated: November 6, 2000.

Phil Williams,

Acting Deputy Director, Office of protected Resourses, National marine Fisheries Service.

[FR Doc. 00–29413 Filed 11–15–00; 8:45 am]

BILLING CODE: 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110800D]

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Public Workshops

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of workshops.

SUMMARY: NMFS, Alaska Region, and the U.S. Coast Guard North Pacific Regional Fisheries Training Center will present workshops on the 2001 recordkeeping and reporting requirements for the Alaska groundfish fisheries.

DATES: See **SUPPLEMENTARY INFORMATION** under the heading, "Meeting Dates and Addresses," for dates the workshops will be held.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** under the heading, "Meeting Dates and Addresses," for meeting addresses.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7008.

SUPPLEMENTARY INFORMATION: The workshops will include discussion of proposed 2001 changes to the recordkeeping and reporting requirements for Alaska groundfish fisheries along with instructions for completion and submittal of the required forms and logsheets. Suggestions and feedback on existing procedures are welcome.

Meeting Dates and Addresses

1. November 17, 2000, 10 a.m. to 12 noon Pacific standard time—FISH EXPO, Washington State Trade and Convention Center, Room 310, Seattle, WA.
2. December 4, 2000, 9 a.m to 11 a.m. for vessels, 12:30 p.m. to 2:30 p.m. for shoreside processors, Alaska local time—Anchorage Federal Building, Room 154, 222 West Seventh Avenue, Anchorage, AK.
3. January 4, 2001, 9 a.m. to 11 a.m. for vessels, 12:30 p.m. to 2:30 p.m. for shoreside processors, Pacific standard time—NOAA Western Regional Center, 7600 Sandpoint Way, N.E., Building 9, Room A/B, Seattle, WA.
4. January 16, 2001, 9 a.m. to 11 a.m. for vessels, 12:30 p.m. to 2:30 p.m. for shoreside processors, Alaska local time—U.S. Coast Guard Base, North Pacific Regional Fisheries Training Center, Kodiak, AK.

5. January 18, 2001, 9 a.m. to 11 a.m. for vessels, Alaska local time—Unalaska City Hall, Council Chambers, Unalaska, AK.

6. January 19, 2001, 9 a.m. to 11 a.m. for shoreside processors, Alaska local time—Unalaska City Hall, Council Chambers, Unalaska, AK.

Special Accommodations

These workshops will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patsy Bearden (see **FOR FURTHER INFORMATION CONTACT**) at least 7 working days prior to the meeting date.

Dated: November 9, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–29414 Filed 11–15–00; 8:45 am]

BILLING CODE: 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

November 9, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 16, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70222, published on December 16, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 9, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the period which began on January 1, 2000 and extends through December 31, 2000.

Effective on November 16, 2000, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Levels in Group I	
336/836	94,038 dozen.
338	495,763 dozen.
339	2,056,211 dozen.
340	479,694 dozen.
341	308,432 dozen.
342	141,059 dozen.
345	86,254 dozen.
347/348/847	1,150,548 dozen.
350/850	98,199 dozen.
351/851	107,398 dozen.
359–C/659–C [2]	589,203 kilograms.
638/639/838	2,522,327 dozen.
642/842	186,270 dozen.
647/648	839,301 dozen.
Group II	
400–431, 433–438, 440–448, 459pt. [3], 464 and 469pt. [4], as a group.	1,717,544 square meters equivalent.
Sublevel in Group II	
445/446	94,293 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29363 Filed 11–15–00; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed New Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This proposed information collection is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning its request for information collection from schools, higher education institutions, and community-based organizations that have received grants through the federally-funded Learn & Serve America program. The information will be used to evaluate the effectiveness of the Learn & Serve America grants in promoting the institutionalization of service-learning activities in the funded institutions.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by January 16, 2001.

ADDRESSES: Send comments to the Corporation for National and Community Service, Attn: Mr. Charles Helfer, Office of Evaluation, 1201 New York Avenue, NW, Washington, DC, 20525.

FOR FURTHER INFORMATION CONTACT: Charles Helfer (202) 606–5000, ext. 248, or by e-mail at chelfer@cns.gov.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

The Learn and Serve America Program was established by the National and Community Service Trust Act of 1993 (Pub.L. 103–82) to support efforts in schools, higher education institutions and community-based organizations to involve young people in meaningful service to their communities while improving academic, civic, social and career-related skills. The Learn and Serve America program is administered by the Corporation and funded through grants to states, national organizations, and institutions of higher education, and through them to individual schools and school districts, community-based organizations, and colleges or universities. The first round of grants under the Learn and Serve America program were awarded in 1994. Approximately 3500 local schools, colleges, and community-based organizations receive Learn and Serve America funds each year.

One of the primary goals of the Learn and Serve America program is to promote the expansion of service-learning opportunities for school and college-aged youth through the establishment of programs that will persist beyond the life of the Learn and Serve America grant to the institution. To accomplish this, the Learn and Serve America program encourages the growth and expansion of service-learning within grant-recipient institutions through the awarding of time-limited (3 year) grants, use of matching fund requirements for the grants, and through technical assistance and training for local grantees.

The purpose of the proposed data collection is to evaluate the effectiveness of the Learn and Serve America grants in promoting the institutionalization of service-learning in the grantee institutions and the degree to which funded programs have been and are likely to be sustained after the completion of the grant period. The evaluation will examine the growth and current status of service-learning in a sample of grantees and subgrantees from two cohorts of grant recipients: those who were funded in 1994–95, the first year of Learn and Serve America funding, and those funded in a second major round of grant awards in 1997–98. The information will be used to determine whether changes need to be made in current Learn and Serve America grantmaking policies and procedures and will help the Corporation determine the need for additional strategies (such as provision of training and technical assistance) to support institutionalization among its grantees. Data collection will take place one time as part of the proposed evaluation.

Current Collection

The Corporation seeks approval of a single, multipart survey form that will be used in the evaluation of the impact of Learn and Serve America grants on the institutionalization and sustainability of service-learning in the grantee institutions.

The survey will be broken down into separate parts consisting of : Part I—Elementary and Secondary School-based Grantees; Part II—Higher Education Institutions, and Part III—Community-based Organizations. Each Part will include a Section A—short version, and a Section B—long version. The three major parts (A, B, and C) are similar in focus and content, with variations aimed at addressing specific characteristics and circumstances at each type of institution. Each part is designed to collect information on (a) the scope and purpose of the original Learn and Serve America grant; (b) growth and expansion of specific grant-related activities; (c) the current structure and scope of service-learning at the grantee institution; (d) current policies and practices supporting institutionalization of service-learning; and (e) factors that have supported or hindered the growth of service-learning at the institution, including (f) the specific role and contribution of the Learn and Serve America grant.

The survey will be administered to a random sample of approximately 540 grantee institutions that will include representation of all of the major funding streams and program types supported through Learn and Serve America. The survey will be administered through a telephone interview with a representative of each grantee institution. One half of the telephone interviews will use the short version of the survey instrument, aimed at collecting basic information on the growth and current status of service-learning activities and on current policies and practices supporting service-learning. The other half of the interviews will use the longer version of the survey with additional questions designed to elicit more detailed information on the factors that support or hinder growth of service-learning in the institution.

The paragraph below summarizes the characteristics of the proposed data collection:

Type of Review: New request.

Agency: Corporation for National and Community Service.

Title: Institutionalization of Learn and Serve America Programs.

OMB Number: None.

Agency Number: None.

Affected Public: Institutional recipients of Learn and Serve America grants: elementary and secondary schools, higher education institutions, and community-based organizations.

Total Respondents: Approximately 540.

Frequency: One time.

Average Time Per Response: 45 minutes.

Estimated Total Burden Hours: 405 hours.

Total Burden: (capital /startup): None.

Total Burden Cost: None.

Dated: November 13, 2000.

Lance Potter,

Director, Office of Evaluation.

[FR Doc. 00–29366 Filed 11–15–00; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent Licenses to BTG International, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of prospective licenses to BTG International Inc. to the Government-owned inventions described in:

U.S. Patent No. 5,932,006 entitled, "BaF_2/GaAs Electronic Components", date issued: August 3, 1999.

U.S. Patent Application Serial No. 09/197,440 entitled, "Gallium Arsenide Semiconductor Devices Fabricated with Insulator Layer", filing date: November 23, 1998, Navy Case No. 79412.

U.S. Patent Application Serial No. 09/563,740 entitled, "Electronic Devices With Diffusion Barrier and Process for Making Same", filing date: May 3, 2000, Navy Case No. 82111.

U.S. Patent Application Serial No. 09/631,121 entitled, "Gallium Arsenide Semiconductor Devices Fabricated With Insulator Layer"; filing date: August 2, 2000, Navy Case No. 82528.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than January 16, 2001.

ADDRESSES: Written objections are to be filed with the Office of Patent Counsel, Naval Surface Warfare Center, Dahlgren Laboratory, CD222, 17320 Dahlgren Road, VA 22448–5100, telephone (540) 653–8061.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: November 3, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–29389 Filed 11–15–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 16, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 9, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Independent Living Services for Older Individuals Who are Blind.

Frequency: Annually.

Affected Public: Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 55.

Burden Hours: 330.

Abstract: The new form will be used to evaluate and monitor Independent Living Services for Older Individuals who are blind related to: (a) the type of services provided and the number of persons receiving each type of service, (b) the amounts and percentage of funds reported on each type of service provided.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG—Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–29305 Filed 11–15–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 18, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren__Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 9, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: National Assessment of Educational Progress (NAEP) Technology Based Assessment Project, Pretest and Field Test.

Frequency: Pilot and field test.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 5,750.

Burden Hours: 1,438.

Abstract: The NAEP Technology Based Assessment Project (TBA) is meant to explore the feasibility and best methods for assessing mathematics and writing on line. It is also intended to explore students' abilities to solve problems in technology-rich environments. It is anticipated that in the future such technology-based assessments will reduce assessment burden by allowing, among other things, for online administration and scoring of assessment instruments. The pilot study uses background questions and items from suitable subject questionnaires, including questions about computer use that are currently cleared for other NAEP studies.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–29306 Filed 11–15–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.031M

Strengthening Institutions (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), Alaska Native and Native Hawaiian-Serving Institutions (ANNH) and Developing Hispanic-Serving Institutions (HSI) Programs; Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year (FY) 2001

Purpose of Programs: Under the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, and Alaska Native and Native Hawaiian-Serving Institutions Programs authorized under Part A of Title III of the Higher Education Act of 1965, as amended (HEA), institutions of higher education are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. Similarly, HSIs are eligible to apply for grants under the HSI Program, authorized under Title V of the HEA, if they meet specific statutory and regulatory requirements.

In addition, an institution that is designated as an eligible institution under those programs may also receive a waiver of certain non-Federal share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work Study (FWS), and Undergraduate International Studies and Foreign Language Programs (UISFLP). These first two programs are student financial assistance programs authorized under Title IV of the HEA; the third program is authorized under Title VI of the HEA. Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III Part A or Title V programs.

Special Note: To become eligible, your institution must satisfy a criterion related to needy student enrollment and one related to Educational and General (E&G) expenditures for a particular base year. Because we changed the collection processes for determining the thresholds for these criteria, we do not have base year data beyond 1997–98. In order to award FY 2001 grants in a timely manner, we will use threshold data from base year 1997–98 rather than a later base year. In completing your eligibility application, therefore, you are to use data from the base year 1997–98.

Eligible Applicants: To qualify as an eligible institution under any of the programs included in this notice, an accredited institution must, among other requirements, have a high enrollment of needy students, and its E&G expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. The complete eligibility requirements for the HSI Program are found in 34 CFR 606.2–606.5, which was published in the **Federal Register** of December 15, 1999 (64 FR 70146–70153). The complete eligibility requirements for the remaining programs are found in 34 CFR 607.2–607.5, a portion of which was also amended in the **Federal Register** of December 15, 1999 (64 FR 70146, 70153–70155). The regulations may also be accessed by visiting the following Department of Education web site on the World Wide Web:

http:/www.ed.gov/legislation/FedRegister/finrule/1999–4/121599a.html

Enrollment of Needy Students: Under 34 CFR 606.3(a) and 607.3(a), an institution is considered to have a high enrollment of needy students if—(1) at least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received

Federal Pell Grants at comparable institutions that offered similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 1997–1998 must be more than the median for its category of comparable institutions provided in the table in this notice.

Educational and General Expenditures Per Full-Time Equivalent Student: An institution should compare its 1997–1998 average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the table in this notice. If the applicant institution's E&G expenditures for the 1997–1998 base year are less than the average for its category of comparable institutions, it meets this eligibility requirement.

An institution's E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages and the relevant average E&G expenditures per FTE student for the base year, 1997–98, for the four categories of comparable institutions:

Type of institution	Median Pell Grant percentage	Average E&G FTE
2-year Public Institutions	18.0%	$7,092
2-year Non-Profit Private Institutions	29.9	20,392
4-year Public Institutions	24.8	17,715
4-year Non-Profit Private Institutions	24.5	23,162

Waiver Information: Institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditures requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 606.3(b), 606.4 (c) and (d), 607.3(b), and 607.4(c) and (d). *Institutions requesting a waiver of the needy student or the E&G expenditures requirement must include the detailed information as set forth in the instructions for completing the application.*

The needy student requirement waiver authority, provided in 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3), refers to "low-income" students and families. The regulations define "low-income" as an amount that does not exceed 150 percent of the amount equal to the poverty level in the 1997–1998 base year as established by the U.S. Bureau of the Census, 34 CFR 606.3(c) and 607.3(c). For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

ANNUAL LOW-INCOME LEVELS FOR 1997–98

Size of family unit	Contiguous 48 States, the District of Columbia and Outlying	Alaska	Hawaii
1	$11,835	$14,805	$13,605
2	15,915	19,905	18,300
3	19,995	25,005	22,995
4	24,075	30,105	27,690
5	28,155	35,205	32,385
6	32,235	40,305	37,080
7	36,315	45,405	41,775
8	40,395	50,505	46,470

For family units with more than eight members, add the following amount for each additional family member: $4,080 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $5,100 for Alaska; and $4,695 for Hawaii.

The figures shown as low-income levels represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The Census levels were published by the U.S. Department of Health and Human Services in the **Federal Register** on March 10, 1997 (62 FR 10856–10859).

In reference to the waiver option specified in 606.3(b)(4) and 607.3(b)(4) of the regulations, information about "metropolitan statistical areas" may be obtained by requesting the *Metropolitan Statistical Areas, 1999*, order number PB99–501538, from the National Technical Information Services, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number 1–800–553–6847. There is a charge for this publication.

Applications Available: November 30, 2000.

Deadline for Transmittal of Applications:

- February 2, 2001 for applicant institutions that wish to apply for fiscal year 2001 grants under the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, or the HSI Programs.
- May 25, 2001 for applicant institutions that wish to apply only for cost-sharing waivers under the FSEOG, FWS, or UISFLP Programs.
- February 2, 2001 for applicant institutions that wish to apply for both a grant and a waiver of the cost-sharing requirements.

Electronic Submission of Applications: For FY 2001, we are again offering applicant institutions the option of submitting their Designation of Eligibility application in hard copy or sending it electronically to our eligibility web site:

http://webprod.cbmiweb.com/title3and5/index.html

To enter the web site, you must use your institution's unique 8-digit identifier, i.e. your OPE ID number. Your business office or student financial aid office should have the OPE ID number. If your business office or student financial aid office does not have that OPE ID number, contact a Department of Education staff member using the e-mail address located at the end of the Web page or the contact persons' telephone numbers or e-mail addresses included in this notice.

You may find more detailed instructions for completing the form electronically under the "eligibility 2001" link at either of the following web sites:

http://www.ed.gov/offices/OPE/HEP/idues/title3a.html
http://www.ed.gov/hsi

We encourage applicants to complete their form electronically and to complete it as soon as possible. For institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement and wish to request a waiver of one or both of those requirements, you may complete your designation application form on-line, print the form, and attach your narrative waiver request(s) to the printed form and mail both to the address in the next paragraph.

Mail your Designation of Eligibility application request to: U.S. Department of Education, 1990 K Street, NW., Request for Eligibility Designation, Washington, DC 20006–8513.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 82, 85, 86, 97, 98 and 99 and (b) The regulations for the SIP in 34 CFR part 607, and the HSI Program in 34 CFR part 606.

For Applications and Further Information Contact: Thomas M. Keyes or Margaret A. Wheeler, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., Request for Eligibility Designation, Washington, DC 20006–8513. Mr. Keyes' telephone number is (202) 502–7577. Ms. Wheeler's telephone number is (202) 502–7583. Mr. Keyes and Ms. Wheeler may be reached by e-mail at:

thomas_keyes@ed.gov
margaret_wheeler@ed.gov

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting those persons. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 572–1530.

Note: The official version of this document is the document published in the **Federal Register** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index/html

Program Authority: 20 U.S.C. 1057, 1059c, and 1065a.

Dated: November 9, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–29302 Filed 11–15–00; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3774–000]

Adirondack Hydro Fourth Branch, LLC; Notice of Issuance of Order

November 9, 2000.

Adirondack Hydro Fourth Branch, LLC (Adirondack) submitted for filing a rate schedule under which Adirondack will engage in wholesale electric power and energy transactions at market-based rates. Adirondack also requested waiver of various Commission regulations. In particular, Adirondack requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Adirondack.

On November 1, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Adirondack should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Adirondack is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Adirondack's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 1, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29339 Filed 11–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–27–000]

Columbia Gas Transmission Corporation; Notice of Application

November 9, 2000.

On November 3, 2000, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed an application in Docket No. CP01–27–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) and Section 157.18 of the Commission's Regulations for permission and approval to abandon by sale to Viking Energy, Incorporated, a West Virginia corporation, certain natural gas storage facilities (known as the Grapevine B Storage field) located in Kanawha County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Columbia states that the Grapevine B Storage Field consists of one storage well, approximately 0.09 mile of 4-inch well pipeline, approximately 0.8 mile of 4-inch storage pipeline, one measuring and regulating station, appurtenances, and storage field reservoir of 177 acres. Columbia states that the facilities were constructed by United Fuel Gas Company, a predecessor of Columbia, and certificated in Docket No. G–1202.[1] The field was designated as Storage Field X–53 in that order. Columbia states that its authorization to own and operate the Grapevine B Storage Field was granted by the Commission in Docket No CP71–132.[2] Columbia states that historically gas has been injected into Grapevine B utilizing high pressure gas received from Line SM–80; and, withdrawal volumes have been delivered into a low pressure transmission line without compression. Columbia states that due to changes in Columbia's customer obligations, the storage field can no longer operate without compression. Due to the "de minimus" nature of the facilities on Columbia's storage system (Grapevine B has historically averaged a total withdrawal of 30 MMcf during the heating season), the changes in market requirements, and the sources of supply in the area of the facilities, Columbia has determined that its current and future obligation can be met without the Grapevine B Storage field. Columbia states that therefore the capital expenditure required to install the necessary compression is not warranted.

Columbia states that it does not propose the abandonment of service to any customer as a result of the proposed sale. Columbia states that there are no mainline tap consumers on the facilities to be sold nor are there any firm or non-firm contracts currently utilizing the facilities.

Questions regarding the details of this proposed abandonment should be directed to Victoria J. Hamilton, Certificate Coordinator, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273, call (304) 357–2297.

There are two ways to become involved in the Commission's review of this abandonment. First, any person wishing to obtain legal status by becoming a party to the proceedings for this abandonment should, on or before November 30, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this abandonment. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the abandonment provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this abandonment should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying abandonment will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29346 Filed 11–15–00; 8:45 am]

BILLING CODE 6717–01–M

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[1] *United Fuel Gas Co.*, 8 FPC¶ 945 (1949).

[2] *Columbia Gas Transmission Corp.*, 45FPC¶ 398 (1971).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–28–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

October 9, 2000.

Take notice that on November 3, 2000, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637. filed in Docket No. CP01–28–000 a request pursuant to Sections 157.205 and 157.208(b)(2), of the Commission's Regulations (18 CFR Sections 157.205 and 157.208) under the Natural Gas Act (NGA) for authorization to construct, own and operate a lateral line and related facilities to permit the delivery of natural gas to Entergy Mississippi, Inc. (EMI) and Warren Power, LLC (Warren) at EMI's existing Baxter Wilson, and to Warren's proposed Warren Power Plant, both in Warren County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/htm* (call 202–208–2222 for assistance).

Columbia Gulf request authorization to construct and operate a delivery lateral, referred to as the Vicksburg Lateral, consisting of approximately 37 miles of 20-inch pipeline that will extend from Columbia Gulf's mainline system in Richland Parish, Louisiana to interconnections with EMI's existing Baxter Wilson Plant and with Warren's proposed Warren Power Plant. It is

stated that the lateral will accommodate up to 285,000 dt per day, both in Warren County, Mississippi. Columbia Gulf estimates a construction cost of $20,148,000, which would be financed through internally-generated funds. It is stated that Columbia Gulf will construct and operate two new points of delivery under the automatic authorization provisions of its Part 157, Subpart F blanket certificate. Columbia Gulf indicates that it will provide the requested firm transportation services under its Rate Schedule FTS–1 under agreements with a primary term of ten years and at negotiated rates.

Any questions regarding the application may be directed to Jacquelyne M. Rocan, Senior Attorney at (713) 267–4100.

Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Commission's regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29347 Filed 11–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3251–000]

Exelon Generating Company, L.L.C.; Notice of Issuance of Order

November 9, 2000.

Exelon Generating Company, L.L.C. (Exelon) filed with the Commission a rate schedule under which Exelon will engage in wholesale electric power and energy transactions at market-based rates. In its filing, Exelon also requested certain waivers and authorizations. In particular, Exelon requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Exelon. On November 8, 2000, the Commission issued an Order Granting Market-Based Rate Authority, Accepting Tariffs, Service Agreement And Power Purchase Agreement, And Waiving Code of Conduct (Order), in the above-docketed proceeding.

The Commission's November 8, 2000 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Exelon should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Exelon is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Exelon, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Exelon's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 8, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29338 Filed 11–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–94–003]

Florida Gas Transmission Company; Notice of Application

November 9, 2000.

Take notice that on November 3, 2000, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP99–94–003, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, to amend its certificate issued in Docket Nos. CP99–94–000 and –001 on February 28, 2000, to modify certain facilities located in Hillsborough County, Florida, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

As part of the Phase IV Expansion FGT was authorized to construct the Tampa South Lateral Extension (5.62 miles of 4-inch line starting at the terminus of the existing Tampa South Lateral near mile post 16.5) and a measurement and regulation station, located at the end of the extension, to serve as a gas delivery point to National Gypsum Company (National Gypsum). By this amendment, FGT seeks authorization to: (1) Change the route of the Tampa South Lateral Extension by constructing approximately 6.18 miles of pipeline (starting at mile post 14.8 on the existing Tampa South Lateral); (2) change the pipe diameter by constructing the first 5.97 miles as 6-inch; and the last 0.21 miles as 8-inch pipeline; and (3) change the location of the regulation station to mile post 5.97 on the Tampa South Lateral Extension. The National Gypsum measurement station will not be relocated.

FGT explains that, as amended: (1) The new route for the Tampa South Lateral Extension will result in less of an impact to the environment; (2) the upsizing of the first 5.97 miles of pipeline to 6-inch diameter will accommodate future gas deliveries by FGT to Big Bend Transfer Company (Big Bend); and (3) relocating the construction of the regulation station to a site 0.21 miles upstream of the National Gypsum measurement station will, along with upsizing the last 0.21 miles of pipeline to 8-inch diameter, accomplish the reduction of delivery pressures to no higher than 25 psi, as requested by National Gypsum. FGT states that there will be no incremental construction costs passed on to FGT's customers because Big Bend and National Gypsum have agreed to reimburse FGT for all additional construction costs. FGT further states that the changes proposed will have no effect on the mainline capacity, the rates, or the market data as reflected in FGT's August 31, 1999, filing in its Phase IV certificate proceeding.

Questions regarding the details of this proposed project should be directed to Mr. Stephen T. Veatch, Director of Certificates and Regulatory Reporting, Suite 3997, 1400 Smith Street, Houston, Texas 77002 or call (713) 853–6549.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 30, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29345 Filed 11–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–77–000]

Midwestern Gas Transmission Company; Notice of Tariff Filing

November 9, 2000.

Take notice that on November 2, 2000, Midwestern Gas Transmission (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of December 1, 2000:

Second Revised Sheet No. 60
Sixth Revised Sheet No. 61

Midwestern states that the purpose of this filing is to revise its tariff in order to incorporate GISB Standards' language and terms. Further, Midwestern states the revisions will bring Midwestern's Tariff more in-line with standard practices across the interstate pipeline grid.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at @http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29333 Filed 11–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–80–000]

Majave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 9, 2000.

Take notice that on November 2, 2000, Mojave Pipeline Company (Mojave), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 236, with an effective date of December 3, 2000. Mojave also filed a revised Statement on Standards of Conduct.

Majave states that this filing updates Mojave's Standards of Conduct and related tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(ii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 00–29336 Filed 11–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–399–000]

National Fuel Gas Supply Corporation; Notice Rescheduling Technical Conference

November 9, 2000.

Take notice that the conference scheduled for Tuesday, November 14, 2000, at 10 a.m. has been rescheduled.

The conference will be held on Tuesday, December 5, 2000, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29332 Filed 11–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3767–000]

Praxair, Inc.; Notice of Issuance of Order

November 9, 2000.

Praxair, Inc. (Praxair) submitted for filing a rate schedule under which Praxair will engage in wholesale electric power and energy transactions at market-based rates. Praxair also requested waiver of various Commission regulations. In particular, Praxair requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Praixair.

On November 2, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Praxair should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Praxair's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 4, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29342 Filed 11–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–40–000]

Quinnipiac Energy, LLC; Notice of Issuance of Order

November 9, 2000.

Quinnipiac Energy, LLC (Quinnipiac) submitted for filing a rate schedule under which Quinnipiac will engage in wholesale electric power and energy transactions at market-based rates. Quinnipiac also requested waiver of various Commission regulations. In particular, Quinnipiac requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuance of securities and assumptions of liability by Quinnipiac.

On November 3, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Quinnipiac should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Quinnipiac is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Quinnipiac's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 4, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29340 Filed 11–15–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–63–000]

Seagull Marketing Services, Inc., Complainant, v. Columbia Gulf Transmission Company, Respondent; Notice of Complaint

November 9, 2000.

Take notice that on November 8, 2000, pursuant to Sections 5, 7, and 16 of the Natural Gas Act (NGA), 15 U.S.C. 717d, 717f, and 717o, and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, Seagull Marketing Services, Inc. (Seagull) tendered for filing a complaint against Columbia Gulf Transmission Company (Columbia Gulf). Seagull has requested Fast Track processing under 18 CFR 385.206(h).

Seagull alleges that Columbia Gulf has used an inappropriate cash-out price for imbalance volumes and improperly assessed imbalance penalties against Seagull that are in violation of Sections 5 and 7 of the NGA, Part 284 of the Commission's regulations, operative provisions of the currently effective Columbia Gulf Tariff (Tariff), and Commission policy and precedent.

Seagull requests Fast Track processing under 18 CFR 385.206(h) because of the threat of additional monthly imbalance penalties. To the extent that Fast Track procedures do not apply, Seagull asks the Commission to issue an immediate stay of any further assessment by Columbia Gulf of monthly imbalance penalties pending a disposition on the merits of this complaint.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before November 28, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before November 28, 2000.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29343 Filed 11–15–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–78–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

November 9, 2000.

Take notice that on November 2, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, with an effective date of December 1, 2000:

Fifth Revised Sheet No. 310
Second Revised Sheet No. 311
Sixth Revised Sheet No. 312

Tennessee states that the purpose of this filing is to revise its tariff in order to incorporate GISB Standards' language and terms, as well as provide more conciseness and clarity to this tariff provision. Further, Tennessee states the revisions will bring Tennessee's tariff more in-line with standard practices across the interstate pipeline grid.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance) Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(ii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,
Acting Secretary
[FR Doc. 00–29334 Filed 11–15–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–81–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 9, 2000.

Take notice that on November 3, 2000, Tennessee Gas Pipeline Company (Tennessee), as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, original and revised tariff sheets listed in Appendix A to the filing, with an effective date of December 14, 2000.

Tennessee states that the tariff sheets setting a new rate schedule Rate Schedule FT–H pursuant to which Tennessee will provide a firm hourly transportation service which would allow shippers to take delivery of their

scheduled quantity at an hourly rate that exceeds 1/24th of such scheduled quantity. FT–H service will be available on an open access, non-discriminatory basis to all shippers who meet the eligibility requirements for such service.

Tennessee states that under Rate Schedule FT–H, Tennessee will transport natural gas for a shipper up to a specified daily transportation quantity (TQ) and allow the shipper to take delivery of its scheduled quantity up to a specified maximum hourly delivery quantity (MHQ). Under Rate Schedule FT–H, the MHQ must be no less than 1/16th of the TQ and no greater than 1/4th of the TQ. Tennessee will provide the FT–H service only after it determines that it has sufficient uncommitted capacity to perform the service requested by a shipper. The FT–H service will not degrade the firm primary rights of any of Tennessee's existing firm shippers. Rate Schedule FT–H service will have the same scheduling and curtailment priority as Tennessee's other firm transportation services.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29337 Filed 11–15–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–015]

TransColorado Gas Transmission Company; Notice of Compliance Filing

November 9, 2000.

Take notice that on November 2, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing of its FERC Gas Tariff, Original Volume No. 1, Fifteenth Revised Sheet No. 21, and Eleventh Revised Sheet No. 22, with an effective date of November 1, 2000:

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets revised TransColorado's tariff to reflect the new negotiated-rate firm transportation service contracts with Barrett Resources Corporation and Retex, Inc.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations, Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood a. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29331 Filed 11–15–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–79–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

November 9, 2000.

Take notice that on November 3, 2000 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Thirtieth Revised Sheet No. 50, with an effective date of November 1, 2000.

Transco states that the purpose of the instant filing is to track fuel changes attributable to transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. This filing is being made pursuant to tracking provisions under Section 4 of the Transco's Rate Schedule FT-NT. Transco states that included in Appendix B attached to the filing is the explanation of the fuel changes and details regarding the computation of the revised FT–NT fuel percentages.

Transco states that copies of the filing are being mailed to each of its FT–NT customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.
Acting Secretary.
[FR Doc. 00–29335 Filed 11–15–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–36–00]

USPowerEnergy, LLC; Notice of Issuance of Order

November 9, 2000.

USPowerEnergy, LLC (USPowerEnergy) submitted for filing a rate schedule under which USPowerEnergy will engage in wholesale electric power and energy transactions at market-based rates. USPowerEnergy also requested waiver of various Commission regulations. In particular, USPowerEnergy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by USPowerEnergy.

On November 2, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by USPowerEnergy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, USPowerEnergy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuances or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of USPowerEnergy's issuance of securities of assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 4, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order many also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29341 Filed 11–15–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–388–000]

WFEC GENCO, L.L.C.; Notice of Filing

November 9, 2000.

Take notice that on November 7, 2000, WFEC GENCO, L.L.C., petitioned the Commission for acceptance of its Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain of the Commission's Regulations.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on November 20, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29344 Filed 11–15–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1759–036, 2074–007, 2072–008, 11830–000, 2073–008, 11831–000, 2131–020, and 1980–009—Michigan/Wisconsin]

Wisconsin Electric Power Company; Notice of Availability of Environmental Assessment

November 9, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for new and subsequent licenses for the existing Way Dam, Hemlock Falls, Lower Paint, Peavy Falls, Michigamme Falls, Twin Falls, Kingsford, and Big Quinnesec Falls Projects, collectively referred to as the Upper Menominee River Basin Projects, located on the Menominee River and its tributaries, the Paint and Michigamme Rivers, in Dickinson and Iron Counties, Michigan, and Florence and Marinette Counties, Wisconsin, and has prepared an Environmental Assessment (EA) for the projects. In the EA, the Commission staff has analyzed the potential environmental effects of the projects and has concluded that approval of the projects, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE, Washington, DC 20426. The EA may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm*. Please call (202) 208–2222 for assistance.

Any comments should be filed by December 1, 2000, and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project Nos. 1759–036, 2074–007, 2072–008, 11830–000, 2073–008, 11831–000, 2131–020, and 1980–009 to all comments. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

For further information, please contact Patti Leppert at (202) 219–2767.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29348 Filed 11–15–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2471–005—Michigan]

Wisconsin Electric Power Company; Notice of Availability of Environmental Assessment

November 9, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application to surrender license for the Sturgeon Plant Project located on the Sturgeon River, a tributary of the Menominee River, in Dickinson County, Michigan, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission staff has analyzed the potential environmental effects of the proposed action and has concluded that accepting surrender of the license, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE, Washington, DC 20426. The EA may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm*. Please call (202) 208–2222 for assistance.

Any comments should be filed by December 1, 2000, and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 2471–005 to all comments. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

For further information, please contact Patti Leppert at (202) 219–2767.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29349 Filed 11–15–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visits and Soliciting Scoping Comments

November 9, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* A New Major License.

b. *Project Nos.:* 2597–018 and 2576–023.

c. *Date filed:* August 31, 1999.

d. *Applicant:* Northeast Generation Company.

e. *Names of Projects:* Falls Village Project and Housatonic Project which are filed as a single application under the designation "The Housatonic River Project."

f. *Location:* On the Housatonic River, near the towns of Canaan, North Canaan, Salisbury, Bridgewater, Brookfield, Danbury, Kent, Monroe, Newtown, New Fairfield, New Milford, Oxford, Roxbury Sherman and Southbury, in Fairfield, New Haven and Litchfield counties, Connecticut. Approximately 74 acres of federal land are within project boundaries.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert A. Gates, Project Manager, Northeast Generating Services, 143 West Street, New Milford, Connecticut 06776 (860) 354–8840. Gatesr@nu.com

i. *FERC Contact:* James T. Griffin, (202) 219–2799.

j. *Deadline for filing scoping comments:* 60 days from the issuance of this Notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Agency Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the projects:*

The two projects represented in the Housatonic River Project Application comprise five developments: the Falls Village, Bulls Bridge, Shepaug, Rocky River and Stevenson developments are located on the Housatonic River, 76.2 miles, 52.9 miles, 44.1 miles, 30.0 and 19.3 miles respectively from its mouth.

1. *The Falls Village* development consists of the following existing facilities: (a) A 300-foot-long, 14-foot-high concrete gravity dam with two spillways having a combined overflow length of approximately 280 feet, and a crest elevation of 631.5 feet National Geodetic Vertical Distance (NGVD); (b) an impoundment 3.8 miles long containing 1,135 acre-feet when at elevation 633.2 feet NGVD; (c) a dam-integral powerhouse with a total installed capacity of 9.0 megawatts (MW) producing approximately 39,733,500 kilowatt-hours (kWh) annually; and (d) a switch yard connected to the project via a 69 kilovolt (kV) interconnected transmission line.

2. *The Bulls Bridge* development consists of: (a) A 203-foot-long, 24-foot-high stone and concrete gravity dam with a dam crest of 354 feet NGVD; (b) a two-mile-long power canal; (c) a 156-foot-long, 17-foot-high rock fill gravity weir dam; (d) a 2.25-mile-long reservoir with an 1,800 acre-feet storage capacity and a surface area of approximately 120 acres at normal elevation of 354 feet NGVD; (e) a powerhouse with a capacity of 7.2 MW, developing an average of 44,079,300 kWh annually; and (f) a 69 kV line which connects the development to the Rocky River development.

3. The *Rocky River Pumped Storage* development consists of: (a) A 952-foot-long earth-filled core wall dam, a 2,500-foot-long earthen canal dike that forms the north bank of the power canal to the intake structure, two earthen and one concrete Lanesville dike, Recreation Point and Danbury dikes, a dam crest elevation averaging 440.1 feet NGVD, and an intake canal 3,190 feet in length; (b) the seven mile-long Candlewood

Lake reservoir with a 5,610 acre impoundment at 428.1 feet NGVD; (c) a powerhouse with a rated capacity of 31,000 kW and averaging 14,238,100 kWh production per year; and (d) a development connection to the applicant's transmission system via the Rocky River-Carmel Hill 1813 line, the Rocky River-Bull Bridge 1555 line and the Rocky River-West Brookfield 1618 line.

4. The *Shepaug* development consists of: (a) A 1412-foot, bedrock-anchored, concrete gravity dam having a crest elevation of 205.3 feet NGVD; (b) an impoundment, at maximum operational elevation level of 198.3 feet NGVD, measuring 1,870 acres; (c) a powerhouse with a rated capacity of 37,200 kW, with an average annual production of 129,663,300 kWh and (d) a development connection to the applicant's transmission system via the Shepaug-Bates 1622 line and the Shepaug-Stony-Hill-West Brookfield 1887 line.

5. The *Stevenson* Development consists of: (a) A 1,250-foot, bedrock-anchored, concrete gravity dam with a crest elevation of 98.3 feet NGVD, 696 feet of spillway and an integral powerhouse; (b) an impoundment having a surface area measuring 1,063 acres at 101.3 feet NGVD, with a storage volume of 2,650 acre-feet; (c) a powerhouse with a rated capacity of 30,500 kW, with an average annual production of 92,970,270 kWh; and (d) a development connection to the applicant's transmission system via several 115-kV transmission lines.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20246, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) for the proposed relicensing of the Falls Village Project (FERC No. 2597–018) and Housatonic Project (FERC No. 2576–023), in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed actions.

Scoping Meetings

The Commission will hold three scoping meetings, one in the daytime and two in the evening, to help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meetings are primarily for public concerns. All interested individuals, organizations, and agencies are invited to attend either or both meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Evening Meetings

Monday, December 4, 2000, 7:00 to 9:00 p.m., Lee Kellogg Elementary School, Multipurpose Room, 47 Main Street, Falls Village, CT 06031

Wednesday, December 6, 2000, 7:00 to 9:00 p.m., Northville Elementary School Cafeteria, 22 Hipp Road, New Milford, CT 06776

Afternoon Meeting

Thursday, December 7, 2000, 1:00—3:00 p.m., First South Congregational Church, Stanley Room (Second Floor), 277 Main St., Hartford, CT 06106

To help focus discussions, we will distribute to parties on the Commission's mailing list a Scoping Document (SD1) outlining the subject areas to be addressed in the EA. Copies of the SD1 will also be available at the scoping meetings.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues that the Commission staff tentatively has identified for analysis in the EA; (2) take statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, those issues identified by the Commission staff; (3) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis; and (4) solicit all available information, especially quantifiable data, on the resources at issue;

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the project. Individuals presenting statements at the meeting will be asked to sign in before the meeting starts and to identify themselves clearly for the record.

Individuals, organizations, and agencies are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Site Visit

The applicant and the Commission staff will conduct a project site visit in two segments on December 5th and 6th, 2000. The first day we will meet at 8:30 a.m. the Northeast Generation Services—CT Hydro Office parking lot in New Milford and travel by bus to the facilities in the upper part of the study area, returning to New Milford at about 4:00 p.m. The second day we will meet at the same location and time but will proceed (again by bus) to the southern facilities, completing the visit in New Milford at about 4:00 p.m. If you would like to attend one or both days of the site visit, please call (Robert Gates of Northeast Generation Services), no later than December 1, 2000, at (860)354–8840 or at *gatesr @nu.com.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29350 Filed 11–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Extension of Time for Notice of Transfer of Licenses and Soliciting Comments, Motions To Intervene, and Protests

November 9, 2000.

In light of requests in recent filings for an extension of time to comment regarding the above-captioned proceeding, the Commission hereby extends the comment date 45 days.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Transfer of Licenses.

b. *Project Nos*: 2894–005, 9184–006, and 9185–005.

c. *Date Filed*: August 16, 2000.

d. *Applicants*: Northwestern Wisconsin Electric Company (transferor) and Flambeau Hydro, LLC (transferee).

e. *Name and Location of Projects*: The Black Brook Dam Project is on the Apple River in Polk County, Wisconsin. The Danbury Dam Project is on the Yellow River and the Clam River Dam Project is on the Clam River, both in Burnett County, Wisconsin. The projects do not occupy federal or tribal lands.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts*: Mr. Mark F. Dahlberg, Northwestern Wisconsin Electric Company, P.O. Box 9, Grantsburg, WI 54840–0009, (715) 463–5371 and Mr. Donald H. Clarke, Wilkinson Barker Knauer, LLP, 2300 N Street NW, No. 700, Washington, DC 20037, (202) 783–4141.

h. *FERC Contact*: Any questions on this notice should be addressed to James Hunter at (202) 219–2839.

i. *Deadline for filing comments and or motions*: November 27, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the noted project numbers on any comments or motions filed.

j. *Description of Proposal*: The applicants state that the transfer will assure the continued operation of these hydroelectric projects and will effect the desired change of ownership of the generating facilities consistent with the restructuring plans of these members of the electric industry.

k. *Locations of the application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE" as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29351 Filed 11–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

November 14, 2000.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: November 21, 2000, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda

NOTE: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400, For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

754th—Meeting November 21, 2000, Regular Meeting (10:00 a.m.)

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
  Docket# ER00–3771, 000, Firstenergy Operating Companies
CAE–2.
  Docket# ER00–3740, 000, New York Independent System Operator, Inc.
CAE–3.
  Docket# ER00–3785, 000, Virginia Electric & Power Company
CAE–4.
  Omitted
CAE–5.
  Docket# ER01–62, 000, Entergy Services, Inc.
  Other#s ER00–2621, 000, Entergy Services, Inc.
  ER00–3671, 000, Entergy Services, Inc.
CAE–6.
  Docket# ER01–66, 000, Pacific Gas and Electric Company
CAE–7.
  Docket# ER01–80, 000, California Power Exchange Corporation
  Other#s ER01–81, 000, California Power Exchange Corporation
CAE–8.
  Omitted
CAE–9.
  Docket# ER01–180, 000, New York Independent System Operator, Inc.
CAE–10.
  Docket# ER01–102, 000, Cinergy Services, Inc.
CAE–11.
  Docket# ER00–3577, 000, New England Power Pool
CAE–12.
  Docket# ER00–3691, 000, Sithe Edgar LLC, Sithe New Boston LLC, Sithe Framingham LLC, Sithe West Medway LLC, Sithe Wyman LLC, Sithe Mystic LLC, AE–Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P.,,Sterling Power Partners, L.P., Sithe Power Marketing, L.P. and Sithe Power Marketing, Inc.
CAE–13.
  Docket# ER01–53, 000, Confederated Tribes of the Warm Springs Reservation of Oregon, a Federally Recognized Indian Tribe, and Warm Springs Power Enterprises, a Chartered Enterprise of the Confederated Tribes of the Warm Springs Reservation of Oregon
CAE–14.
  Docket# ER00–188, 001, PSI Energy, Inc.
CAE–15.
  Docket# ER99–3531, 000, Southern Company Services, Inc.
  Other#s ER99–3531, 001, Southern Company, Services, Inc.
  ER99–4384, 000, Southern Company, Services, Inc.
  ER99–4384, 001, Southern Company, Services, Inc.
CAE–16.
  Docket# EC00–63, 000, Sierra Pacific Power Company, Nevada Power Company and Portland General Electric Company
  Other#s ER00–1801, 000, Sierra Pacific Power Company, Nevada Power

Company and Portland General Electric Company
CAE–17.
Docket# EC00–136, 000, Madison Gas & Electric Company, Wisconsin Public Service Corporation and American Transmission Company, LLC
CAE–18.
Docket# EC00–80, 000 Portland General Electric Company
CAE–19.
Docket# EC00–118, 000, Arizona Public Service Company, Pinnacle West Capital Corporation and Pinnacle West Energy Corporation
Other#s EC00–118, 001, Arizona Public Service Company, Pinnacle West Capital Corporation and Pinnacle West Energy Corporation
CAE–20.
Docket# EC00–106, 000, Entergy Power Marketing Corporation and Koch Energy Trading, Inc.
CAE–21.
Docket# ER90–54, 002, People's Electric Cooperative
Other#s ER91–221, 001, Peoples Electric Cooperative
EL91–20, 003, Peoples Electric Cooperative
CAE–22.
Docket# EC99–81, 002, Dominion Resources, Inc. and Consolidated Natural Gas Company
Other#s MG00–6, 001, Consolidated Natural Gas Company
CAE–23.
Docket# EL00–118, 000, Public Service Company of New Mexico
CAE–24.
Docket# EL00–114, 000, Dynegy Power Marketing, Inc. v. Ameren Services Company
CAE–25.
Docket# EL01–4, 000, Western Farmers Electric Cooperative
CAE–26.
Docket# ER01–94, 000, New York Independent System Operator, Inc.

Consent Agenda—Markets, Tariffs and Rates—Gas

CAG–1.
Docket# RP01–63, 000, Columbia Gas Transmission Corporation
CAG–2.
Docket# RP96–383, 012, Dominion Transmission, Inc.
CAG–3.
Docket# RP96–383, 013, Dominion Transmission, Inc.
CAG–4.
Docket# RP01–4, 001, Midcoast Interstate Transmission, Inc.
CAG–5.
Docket# RP01–5, 001, Mid Louisiana Gas Company
CAG–6.
Docket# RP98–54, 032, Colorado Interstate Gas Company
CAG–7.
Docket# RP01–64, 000, Southern Natural Gas Company
CAG–8.
Docket# RP00–374, 000, Columbia Gas Transmission Corporation
CAG–9.
Docket# RP95–364, 010, Williston Basin Interstate Pipeline Company
Other#s RP95–364, 000, Williston Basin Interstate Pipeline Company
RP95–364, 005, Williston Basin Interstate Pipeline Company
RP95–364, 007, Williston Basin Interstate Pipeline Company
RP95–364, 009, Williston Basin Interstate Pipeline Company
CAG–10.
Docket# GP91–8, 010, Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin Drilling Program: 72–73 v. Rocky Mountain Natural Gas Company, a Division of K N Energy Inc.
Other#s GP91–10, 010, Rocky Mountain Natural Gas Company, a Division of K N Energy Inc. v. Jack J. Grynberg, Individually and as General Partner for the greater Green River Basin Drilling Program: 72–73
CAG–11.
Docket# GP97–1, 003, Rocky Mountain Natural Gas Company
CAG–12.
Docket# TM00–1–25, 004, Mississippi River Transmission Corporation
CAG–13.
Docket# RP00–162, 006, Panhandle Eastern Pipe Line Company
Other#s RP00–162, 005, Panhandle Eastern Pipe Line Company
CAG–14.
Docket# RP00–354, 002, Columbia Gas Transmission Corporation
Other#s RP00–354, 001, Columbia Gas Transmission Corporation
CAG–15.
Docket# RM96–1, 015, Standards for Business Practices of Interstate Natural Gas Pipelines
CAG–16.
Docket# PR00–15, 000, Overland Trail Transmission Company
Other#s PR00–15, 001, Overland Trail Transmission Company
CAG–17.
Docket# GT01–3, 000, El Paso Natural Gas Company
CAG–18.
Docket# RP96–320, 033, Koch Gateway Pipeline Company
CAG–19.
Docket# RP01–76, 000, Northern Natural Gas Company
CAG–20.
Docket# RP00–257, 004, Ozark Gas Transmission, L.L.C.
CAG–21.
Docket# RP99–518, 018 PG&E Gas Transmission, Northwest Corporation
CAG–22.
Docket# RP01–73, 000, Southwest Gas Transmission Company
CAG–23.
Docket# RP01–56, 000, Transwestern Pipeline Company
CAG–24.
Docket# RP01–72, 000, Wyoming Interstate Company, Ltd.

Consent Agenda—Miscellaneous

CAM–1.
Docket# RM98–1, 001, Regulations Governing Off-the-Record Communications

Consent Agenda—Energy Projects—Hydro

CAH–1.
Omitted
CAH–2.
Docket# DI00–1, 001, City and County of San Francisco
CAH–3.
Docket# UL96–1, 003, Blackstone Mill Depot Street Trust
CAH–4.
Docket# P–2030, 031, Portland General Electric Company
Other#s P–2030, 032, Portland General Electric Company
P–11832, 000, Confederated Tribes of the Warm Springs Reservation of Oregon, a Federally Recognized Indian Tribe, and Warm Springs Power Enterprises, a Chartered Enterprise of the Confederated Tribes of the Warm Springs Reservation of Oregon

Consent Agenda—Energy Projects—Certificates

CAC–1.
Docket# CP00–140, 000, Black Marlin Pipeline Company, WBI Offshore Pipeline, Inc. and MCNIC Black Marlin Offshore Company
CAC–2.
Docket# CP00–456, 000, Montana Power Company and 3698157 Canada Ltd.
CAC–3.
Docket# CP00–457, 000, Canadian Montana Pipeline Corporation and 3698157 Canada Ltd.
CAC–4.
Docket# CP00–40, 000, Florida Gas Transmission Company
Other#s CP00–39, 000, Koch Gateway Pipeline Company
CP00–40, 001, Florida Gas Transmission Company
CP00–40, 002, Florida Gas Transmission Company
CAC–5.
Docket# CP97–119, 001, Dauphin Island Gathering System
Other#s CP97–300, 001, Dauphin Island Gathering Partners
CP97–301, 001, Dauphin Island Gathering Partners
CP97–302, 001, Dauphin Island Gathering Partners
RP97–371, 001, Dauphin Island Gathering Partners
CAC–6.
Docket# CP00–421, 001, Distrigas LLC

Energy Projects—Hydro Agenda

H–1.
Reserved

Energy Projects—Certificates Agenda

C–1.
Reserved

Markets, Tariffs and Rates—Electric Agenda

E–1.
Reserved

Markets, Tariffs and Rates—Gas Agenda

G–1.

Reserved

David P. Boergers,
Secretary.
[FR Doc. 00–29534 Filed 11–14–00; 4:12 pm]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6901–6]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104; Announcement of Proposal Deadline for the Competition for Fiscal Year 2001 Supplemental Assistance to the National Brownfields Assessment Demonstration Pilots

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposal deadline and guidelines.

SUMMARY: The United States Environmental Protection Agency (EPA) will begin to accept proposals for supplemental assistance for the National Brownfields Assessment Pilots on November 16, 2000. Assessment pilots awarded on or before September 30, 1999, may apply for up to $150,000 for continuance and expansion of their brownfields assessment efforts. This supplemental funding will be awarded on a competitive basis. Recipients of supplemental assessment pilot funding in FY2000 and Showcase Community funding in FY2001 are not eligible to apply.

In fiscal year 2001, an additional $50,000 may be awarded to an applicant to assess the contamination of a brownfields site(s) that is or will be used for greenspace purposes. Greenspace purposes may include, but are not limited to, parks, playgrounds, trails, gardens, habitat restoration, open space, and/or greenspace preservation.

EPA expects to select up to 10 National brownfields assessment pilots to receive supplemental assistance by April 2001. The deadline for proposals for the 2001 supplemental assistance is January 8, 2001. Proposals must be post-marked or sent to EPA via registered or tracked mail by the stated deadline.

The supplemental assistance for the National brownfields assessment pilots will be administered on a competitive basis. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff will assess how well the proposals meet the selection criteria outlined in the application booklet The Brownfields Economic Redevelopment Initiative: Proposal Guidelines for Supplemental Assistance for the Brownfields Assessment Demonstration Pilots (October 2000). Applicants are encouraged to contact and, if possible, meet with EPA Regional Brownfields Coordinators.

DATES: All proposals must be post-marked or sent to EPA via registered or tracked mail by January 8, 2001.

ADDRESSES: The proposal guidelines can be obtained by calling the Superfund Hotline at the following numbers: Washington, DC Metro Area at 703–412–9810, Outside Washington, DC Metro at 1–800–424–9346, TDD for the Hearing Impaired at 1–800–553–7672.

Copies of the guidelines are also available via the Internet:

http://www.epa.gov/brownfields/

FOR FURTHER INFORMATION CONTACT: The Superfund Hotline, 800–424–9346.

SUPPLEMENTARY INFORMATION: As a part of the Environmental Protection Agency's (EPA) Brownfields Economic Redevelopment Initiative, the Brownfields Assessment Demonstration Pilots are designed to empower States, communities, tribes, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, and safely cleanup brownfields to promote their sustainable reuse. EPA has awarded cooperative agreements to States, cities, towns, counties and Tribes for demonstration pilots that test brownfields assessment models and facilitate coordinated public and private efforts at the Federal, State, tribal and local levels. To date, the Agency has funded 362 Brownfields Assessment Pilots.

In fiscal year 2001, EPA has determined that brownfields assessment pilots awarded on or before September 30, 1999, may apply for up to $150,000 for continuance and expansion of their brownfields assessment efforts. Recipients of supplemental assessment pilot funding in FY2000 and Showcase Community funding in FY2001 are not eligible to apply. These pilots focus on EPA's primary mission—protecting human health and the environment. They are also an essential piece of the nation's overall community revitalization efforts. EPA works closely with other federal agencies through the Interagency Working Group on Brownfields, and builds relationships with other stakeholders on the national and local levels to develop coordinated approaches for community revitalization.

Supplemental funding for the brownfields assessment pilots is authorized under Section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA or Superfund), 42 U.S.C. 9604(d)(1). States (including U.S. Territories), political subdivisions (including cities, towns, counties), and federally recognized Indian Tribes which received a brownfields assessment pilot grant on or before September 30, 1999, are eligible to apply. EPA welcomes and encourages brownfields projects by coalitions of such entities, but only a single eligible entity may receive a cooperative agreement. Cooperative agreement funds will be awarded only to a state, a political subdivision of a state, or a federally recognized Indian tribe.

Through a brownfields cooperative agreement, EPA provides funds to an eligible state, political subdivision, or Indian Tribe to undertake activities authorized under CERCLA section 104. Use of these supplemental assistance pilot funds must be in accordance with CERCLA, and all CERCLA restrictions on use of funds also apply to the assessment pilots.

The evaluation panels will review the proposals carefully and assess each response based on how well it addresses the selection criteria, briefly outlined below:

Part I (Required)

1. Established Brownfields Program

2. Accomplishments under Existing Brownfields Assessment Pilot

3. Demonstrated Ability to Administer Existing Brownfields Assessment Demonstration Pilot

4. Work to be Performed

Part II (Optional)

5. Greenspace

—Authority and Context
—Community Involvement
—Site Identification, Site Assessment Plan, Flow of Ownership, and Reuse Planning

Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective on November 16, 2000.

Dated: November 2, 2000.

Approved:

Linda Garczynski,

Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.

[FR Doc. 00–29223 Filed 11–15–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6901–5]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104; Announcement of Proposal Deadline for the Competition for the 2001 National Brownfields Assessment Demonstration Pilots

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposal deadlines, revised guidelines.

SUMMARY: The United States Environmental Protection Agency (EPA) will begin to accept proposals for the National Brownfields Assessment Pilots on November 16, 2000. The brownfields assessment pilots (each funded up to $200,000 over two years) test assessment models, and facilitate coordinated assessment and cleanup efforts at the federal, state, and local levels.

In fiscal year 2001, an additional $50,000 may be awarded to an applicant to assess the contamination of a brownfields site(s) that is or will be used for greenspace purposes. Greenspace purposes may include, but are not limited to, parks, playgrounds, trails, gardens, habitat restoration, open space, and/or greenspace preservation.

EPA expects to select up to 35 additional National brownfields assessment pilots by April 2001. The deadline for new proposals for the 2001 assessment pilots is January 12, 2001. Proposals must be post-marked or sent to EPA via registered or tracked mail by the stated deadline. Previously unsuccessful applicants are advised that they must revise and resubmit their proposals to be considered for the 2001 National assessment pilot competition.

The National brownfields assessment pilots are administered on a competitive basis. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff and' other federal agency representatives will assess how well the proposals meet the selection criteria outlined in the newly revised application booklet The Brownfields Economic Redevelopment Initiative: Proposal Guidelines for Brownfields Assessment Demonstration Pilots (October 2000). Applicants are encouraged to contact and, if possible, meet with EPA Regional Brownfields Coordinators.

DATES: This action is effective as of November 16, 2000, and expires on January 12, 2001. All proposals must be post-marked or sent to EPA via registered or tracked mail by the expiration date cited above.

ADDRESSES: The proposal guidelines can be obtained by calling the Superfund Hotline at the following numbers: Washington, DC Metro Area at 703–412–9810, Outside Washington, DC Metro at 1–800–424–9346,TDD for the Hearing Impaired at 1–800–553–7672.

Copies of the guidelines are also available via the Internet:

http://www.epa.gov/brownfields/

FOR FURTHER INFORMATION CONTACT: The Superfund Hotline, 800–424–9346.

SUPPLEMENTARY INFORMATION: As a part of the Environmental Protection Agency's (EPA) Brownfields Economic Redevelopment Initiative, the Brownfields Assessment Demonstration Pilots are designed to empower States, communities, tribes, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, and safely cleanup brownfields to promote their sustainable reuse. EPA has awarded cooperative agreements to States, cities, towns, counties and Tribes for demonstration pilots that test brownfields assessment models and facilitate coordinated public and private efforts at the Federal, State, tribal and local levels. To date, the Agency has funded 362 Brownfields Assessment Pilots.

EPA's goal is to select a broad array of assessment pilots that will serve as models for other communities across the nation. EPA seeks to identify proposals that demonstrate the integration or linking of brownfields assessment pilots with other federal, state, tribal, and local sustainable development, community revitalization, and pollution prevention programs. Special consideration will be given to Federal Empowerment Zones and Enterprise Communities (EZ/ECs), communities with populations of under 100,000, and federally recognized Indian tribes. These pilots focus on EPA's primary mission—protecting human health and the environment. However, it is an essential piece of the nation's overall community revitalization efforts. EPA works closely with other federal agencies through the Interagency Working Group on Brownfields, and builds relationships with other stakeholders on the national and local levels to develop coordinated approaches for community revitalization.

Funding for the brownfields assessment pilots is authorized under Section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA or Superfund), 42 U.S.C. 9604(d)(1). States (including U.S. Territories), political subdivisions (including cities, towns, counties), and federally recognized Indian Tribes are eligible to apply. EPA welcomes and encourages brownfields projects by coalitions of such entities, but only a single eligible entity may receive a cooperative agreement. Cooperative agreement funds will be awarded only to a state, a political subdivision of a state, or a federally recognized Indian tribe.

Through a brownfields cooperative agreement, EPA provides funds to an eligible state, political subdivision, or Indian Tribe to undertake activities authorized under CERCLA section 104. Use of these assessment pilot funds must be in accordance with CERCLA, and all CERCLA restrictions on use of funds also apply to the assessment pilots.

The evaluation panels will review the proposals carefully and assess each response based on how well it addresses the selection criteria, briefly outlined below:

Part I (Required)

1. Problem Statement and Needs Assessment

—Effect of Brownfields on your Community or Communities
—Value Added by Federal Support

2. Community-Based Planning and Involvement

—Existing Local Commitment
—Community Involvement Plan
—Environmental Justice Plan

3. Implementation Planning

—Government Support
—Site Selection and Environmental Site Assessment Plan
—Reuse Planning and Proposed Cleanup Funding Mechanisms
—Flow of Ownership Plan

4. Long-Term Benefits and Sustainability

—Long-Term Benefits
—Sustainable Reuse
—Measures of Success

Part II (Optional)

5. Greenspace

—Authority and Context
—Community Involvement
—Site Identification, Site Assessment Plan, Flow of Ownership, and Reuse Planning

Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective on November 16, 2000.

Dated: November 2, 2000.

Linda Garczynski,

Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.

[FR Doc. 00–29224 Filed 11–15–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6902–5]

Second Consultation Meeting on a Longitudinal Cohort Study of Environmental Effects on Children

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting: consultation on the plans for a longitudinal cohort study of environmental effects on children.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a two-day meeting cosponsored by the Office of Behavioral and Social Science Research (OBSSR) of the National Institutes of Health (NIH); the National Institute of Child Health and Human Development (NICHD)/NIH, and the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC). The meeting is being convened to discuss the development of a longitudinal cohort study of environmental effects on the health and well-being of children. Content of the meeting will include the status of activities to date, outline of study rationale and plan, issues of longitudinal cohort design, ethical issues, and discussion groups for input and feedback.

DATES: The meeting dates are December 12, 2000, from 8:30 a.m. until 5:00 p.m., and December 13, 2000, from 8:30 a.m. until 12:30 p.m.

ADDRESSES: The meeting site is the Marriott at Metro Center, 775 12th Street, NW., Washington, DC. The workshop is open to the public, but seating is limited to a maximum of 400. Those planning to attend must register no later than November 29, 2000.

FOR FURTHER INFORMATION CONTACT: To register as an observer, contact Ms. Kim Brickhouse, TASCON, P.O. Box 30686, Bethesda, MD 20824–0686; telephone: 301–315–9000, ext. 516; facsimile: 301–738–9786; email: kbrickhouse@tascon.com. For further information, contact Dr. Peter Scheidt, National Institute of Child Health and Human Development, National Institutes of Health, U.S. Department of Health and Human Services, Room 7B05, 6100 Executive Boulevard, Bethesda, MD 20892; telephone: 301–496–5064; facsimile: 301–402–2084; e-mail: scheidtp@mail.nih.gov.

Dated: November 8, 2000.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 00–29359 Filed 11–15–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6902–8]

Proposed CERCLA Administrative Cost Recovery Settlement; FMC Dublin Road Superfund Site, Towns of Shelby and Ridgeway, Orleans County, New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and future response costs concerning the FMC Dublin Road Superfund Site ("Site") located in the Towns of Shelby and Ridgeway, Orleans County, New York with the settling party, FMC Corporation. The settlement requires the settling party to pay $200,000.00 to the Hazardous Substance Superfund in reimbursement of past response costs incurred with respect to the Site. The settling party will also pay the interest on that amount calculated from March 25, 2000 through the date of payment and has agreed to reimburse the U.S. Environmental Protection Agency ("EPA") for all future response costs not inconsistent with the National Contingency Plan, 40 CFR part 300, as amended ("NCP"), incurred by EPA in connection with the Site. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a) for past and future costs incurred at the Site by EPA.

For thirty (30) days following the date of publication of this document, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the EPA's regional office, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before December 18, 2000.

ADDRESSES: The proposed settlement is available for public inspection at EPA, 290 Broadway, New York, New York 10007–1866. A copy of the proposed settlement may be obtained from Marla Wieder, Assistant Regional Counsel, Office of Regional Counsel, EPA, 290 Broadway, 17th Floor, New York, New York 10007–1866. Comments should reference the FMC Dublin Road Superfund Site, EPA Index No. CERCLA–02–2000–2030, and should be addressed to Marla Wieder, Assistant Regional Counsel, EPA, 290 Broadway, 17th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Marla Wieder, Assistant Regional Counsel, Office of Regional Counsel, EPA, 290 Broadway, 17th Floor, New York, New York 10007–1866. Telephone: (212) 637–3184.

Dated: October 24, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 00–29361 Filed 11–15–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6902–9]

Operating Industries, Inc. Landfill Superfund Site; Notice of Proposed CERCLA Administrative De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), the Environmental Protection Agency ("EPA") is hereby providing notice of a proposed administrative *de minimis* settlement concerning the Operating Industries, Inc. Landfill Superfund site in Monterey Park, California (the "OII Site"). Section 122(g) of CERCLA, 42 U.S.C. 9622(g), provides EPA with the authority to enter into administrative de minimis settlements. This settlement is intended to resolve the liabilities of 22 settling parties, 18 of which have a limited ability to pay, for the OII Site under CERCLA and section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973. The settlement will also resolve OII Site-related claims by California Department of Toxic Substances Control against the settling parties. The settling parties will pay a total of $1,080,602 toward OII Site response costs.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area. EPA will consider all comments it receives during this period, and may modify or withdraw its consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before December 18, 2000.

ADDRESSES: Comments and requests for a public meeting should be addressed to the Regional Hearing Clerk, U.S. EPA Region IX (ORC–1), 75 Hawthorne Street, San Francisco, CA 94105, and should refer to: Operating Industries, Inc. Landfill Superfund Site, Monterey Park, CA, U.S. EPA Docket No. 00–09. The proposed settlement and additional background information relating to the settlement are available for inspection, and EPA's response to any comments received will be available for inspection, at the U.S. EPA Region IX Superfund Records Center, 95 Hawthorne Street, Suite 403 S, San Francisco, CA 94105; at the Bruggemeyer Memorial Library, 318 South Ramona Avenue, Monterey Park, CA 91754; the Montebello Regional Library, 1550 West Beverly Boulevard, Montebello, CA 90640; and the Chet Holifield Library, 1060 South Greenwood Avenue, Montebello, CA 90640. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above.

FOR FURTHER INFORMATION CONTACT: Arthur Haubenstock, Assistant Regional Counsel, U.S. EPA Region IX (ORC–3), 75 Hawthorne Street, San Francisco, CA 94105; E-Mail: haubenstock.arthur@epa.gov; Tel: (415) 744–1355.

Michael Feeley,

Acting Director, Superfund Division, Region IX.

[FR Doc. 00–29362 Filed 11–15–00; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

Date and Place: Friday, December 1, 2000, Washington, DC. This meeting will take place in the Truman Room (Third Floor) of the White House Conference Center, 726 Jackson Place, NW., Washington, DC.

Type of Meeting: Open.

Proposed Schedule and Agenda: The President's Committee of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on Friday, December 1, 2000, from approximately 1:00–4:00 p.m., to discuss (1) PCAST recommendations regarding the National Science and Technology Council, (2) lessons learned from the work of the President's Committee of Advisors on Science and Technology, (3) PCAST recommendations regarding science and technology capacity building abroad, (4) research misconduct, and (5) the Federal Government-University Research Partnership activities.

Public Comments: There will be a time allocated for the public to speak on any of the above agenda items. Please make your request for the opportunity to make a public comment five (5) days in advance of the meeting. Written comments are welcome any time prior to or following the meeting. Please notify Cynthia Chase, of the PCAST Executive Secretariat, at (202) 456–6100, or fax your requests/comments to (202) 456–6026.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place, and agenda, please call Cynthia Chase, of the PCAST Executive Secretariat, at (202) 456–6100, prior to 3:00 p.m. on Thursday, November 30, 2000. Information may also be available at the PCAST website at: http://www.ostp.gov/PCAST/pcast.html. Please note that public seating for this meeting is limited, and is available on a first-come first served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established by Executive Order 12882, as amended, on November 23, 1993, September 29, 1995, September 29, 1997, and September 30, 1999. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by the Assistant to the President for Science and Technology and, by John Young, former President and CEO of the Hewlett-Packard Company.

Barbara Ann Ferguson,

Assistant Director, Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 00–29329 Filed 11–15–00; 8:45 am]

BILLING CODE 3170–01–U

FEDERAL COMMUNICATIONS COMMISSION

Performance Review Board

As required by the Civil Service Reform Act of 1978 (Pub. L. 95–454), Chairman William E. Kennard appointed the following executives to the Performance Review Board: Richard Lee, Renee Licht, David Solomon, Thomas Tycz.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–29364 Filed 11–15–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 29, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Robert B. Mathieu, Delhi, Louisiana; to retain voting shares of Delhi Bancshares, Inc., Delhi, Louisiana, and thereby indirectly retain voting shares of Guaranty Bank and Trust Company of Delhi Louisiana, Delhi, Louisiana.

Board of Governors of the Federal Reserve System, November 9, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–29304 Filed 11–15–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 11, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Marquette Bancshares, Inc.*, Minneapolis, Minnesota; to acquire up to 64 percent of the voting shares of Commerce Bank of Santa Barbara, N.A., Santa Barbara, California (in organization).

Board of Governors of the Federal Reserve System, November 9, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–29303 Filed 11–15–00; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Women's Progress Commemoration Commission

AGENCY: General Services Administration.

ACTION: Meeting notice.

SUMMARY: Notice is hereby given that the Women's Progress Commemoration Commission will hold an open meeting from 9:00 a.m. to 4:00 p.m. on Tuesday, December 5, 2000, at the Hilton of Santa Fe, 100 Sandoval Street, Santa Fe, NM 97501, (505) 988–2811.

PURPOSE: The Commission will meet to discuss their role in identifying and commemorating Women's History sites.

FOR FURTHER INFORMATION CONTACT: Martha Davis (202) 501–0705, Assistant to the Associate Administrator for Communications, General Services Administration. Also, inquiries may be sent to *martha.davis@gsa.gov*.

Dated: November 11, 2000.

Beth Newburger,

Associate Administrator for Communications.

[FR Doc. 00–29373 Filed 11–15–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–163]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of one new final and six updated final toxicological profiles of priority hazardous substances comprising the twelfth set prepared by ATSDR.

FOR FURTHER INFORMATION CONTACT: Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1–(888) 422–8737 or (404) 639–6345.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act

(CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised list of the 275 most hazardous substances was announced in the **Federal Register** on October 21, 1999 (64 FR 56792). For prior versions of the list of substances see **Federal Register** notices dated November 17, 1997 (62 FR 61332); April 29, 1996 (61 FR 18744); April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); and February 28, 1994 (59 FR 9486).

Notices (63 FR 56191) and (62 FR 55818) announcing the availability of the draft toxicological profiles for public review and comment were published in the **Federal Register** on October 21, 1998 or October 28, 1997 with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments and other data submitted in response to the **Federal Register** notices bear the docket control numbers ATSDR–137 or ATSDR–127. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia, (not a mailing address) between 8:00 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of one new final and six updated final toxicological profiles comprising the twelfth set prepared by ATSDR. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

Toxicological profile	NTIS order No.	CAS No.
Twelfth Set:		
1. Arsenic	PB2000–108021	007440–38–2
2. Chromium	PB2000–108022	007440–47–3
3. Endosulfan	PB2000–108023	000115–29–7
Endosulfan, alpha		000959–98–8
Endosulfan, sulfate		001031–07–8
Endosulfan, beta		33213–65–9
4. Ethion	PB2000–108024	00563–12–2
5. Manganese	PB2000–108025	007439–96–5
Manganese chloride		007773–01–5
Manganese dioxide		001313–13–9
Maneb		012427–38–2
Methylcyclopentadienyl Manganese Tricarbony		012108–13–3
6. Methylene Chloride	PB2000–108026	000075–09–2
7. Toluene	PB2000–108028	000108–88–3

Dated: November 9, 2000.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 00–29311 Filed 11–15–00; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01011]

Improving Contact Investigations in Foreign-Born Populations; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of Fiscal Year 2001 funds for a cooperative agreement for improving contact investigations in foreign-born populations. This program addresses the "Healthy People 2010," focus areas of Immunization and Infectious Diseases.

For the conference copy of "Healthy People 2010," visit the internet site *http://www.health.gov/healthypeople.*

The purpose of this cooperative agreement is to (1) improve contact identification for foreign-born (FB) TB cases; (2) improve completeness and timeliness of screening for identified contacts to FB TB cases; (3) improve the interpretation of screening results for contacts to FB TB cases in [a] the context of screening results for U.S.-born contacts to the same cases and [b] using serum immunologic profile (IFN-gamma and TNF-alpha) and results of skin test screening with non-tuberculous mycobacterial antigens to aid interpretation of screening results for FB contacts; and (4) improve completion of treatment for latent TB

infection for foreign-born contacts to pulmonary TB cases. These funds will be used to provide information for public health officials and policy makers to better understand methods for conducting contact investigations in FB populations and will provide improved completeness and timeliness of screening, interpretation of screening results, and treatment for latent TB infection for FB contacts to pulmonary TB cases.

This cooperative agreement will provide funds to build capacity at state and local health departments to conduct and implement protocol-driven epidemiologic and operational research. Such actions are consistent with recommendations issued by the Advisory Council for the Elimination of Tuberculosis (ACET) calling for decisive actions to: (1) Better understand the changing epidemiology of TB to rebuild the public health infrastructure; (2) identify challenges and opportunities for TB control in an era of changes in health care organizations and delivery; (3) recognize the interdependence of global TB and TB in the United States; and (4) develop and evaluate new tools for TB diagnosis, treatment and prevention.

B. Eligible Applicants

Assistance will be provided only to official public health agencies of States and territories, or their bona-fide agents that are (1) current recipients of the Tuberculosis Cooperative Awards announced in PA 00001 and (2) reported 200 or more TB cases in 1999, of which at least 100 must be among foreign-born persons. Eligible applicants are the states of Arizona, California, Florida, Georgia, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Pennsylvania, Texas, Virginia, and Washington and the cities of Chicago, New York, Houston, Los Angeles, and San Francisco.

C. Availability of Funds

Approximately $625,000 is available in FY 2001 to fund up to 4 awards for the initial 12-month budget period within a project period of 2 years. It is expected that the average award would be $200,000 per year, ranging from $175,000 to $235,000. Funding estimates may change.

It is anticipated that awards will begin on or about February 15, 2001. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Direct Assistance

Applicants may request Federal personnel as direct assistance in lieu of a portion of financial assistance.

Use of Funds

Categorical funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to supplant state or local health department funds or for inpatient care or construction of facilities. Funds may not be used to purchase drugs for treatment. In addition, recipients must maintain clear accounting records to demonstrate that the funding awarded under this cooperative agreement is used toward the activities under this announcement and remains separate from any funding the recipient may be awarded under other mechanisms.

Funding Preference

Funding preference will be applied to ensure a balance of sites with exclusively urban populations, exclusively rural populations, and both urban and rural populations.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under 1. (Recipient Activities), and CDC will be responsible for conducting activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Access patients with tuberculosis, latent tuberculosis infection, or recent exposure to persons with active tuberculosis ("contacts") in the implementation of protocols for epidemiologic and operational research.

b. Conduct site-specific epidemiologic and operational research activities in TB which rely upon the implementation of common, agreed-upon study protocols.

c. Within 3 months of award, attend an investigator meeting at CDC with the CDC Project Officer to develop a study protocol, questionnaires, and data abstraction forms.

d. Promptly obtain all necessary human subjects protections assurances from the Office for Human Research Protections (OHRP). Submit protocol to local IRB and work with CDC to finalize protocol with appropriate approvals from the local IRB and CDC IRB. Ensure that the study is conducted according to the IRB-approved protocol, including that all policies to provide data security and protect confidentiality are implemented.

e. Complete retrospective review of contact investigations done in the 12 months before this project according to protocol. This will include reviews of existing health department records of TB cases, their contacts, and the contact investigations.

f. Complete survey of recent TB cases, their contacts, and community leaders to identify social networks and major contact sites, and to refine questions for the structured interview format to be used in case and contact interviews in the prospective phase of the study.

g. Attend an investigator meeting at CDC with the CDC Project Officer to develop a prospective study protocol. Input from an ethnographer, results of the retrospective foreign-born study, results of the social networking survey, and preliminary results from the prospective US-born contact investigation study already ongoing at CDC will be considered in developing this protocol.

h. Conduct prospective study of all foreign-born culture-positive pulmonary TB cases age >15 years of age reported during a specified 12-month period and all their contacts. TB cases within each project area will be selected according to the protocol and their medical records will be reviewed. Cases will be interviewed in a structured format according to the study protocol. It is anticipated that there may be multiple interviews of the source case to obtain detailed information. Patients whose HIV status is not known will be encouraged to undergo HIV testing as per CDC recommendations. An example of the anticipated protocol activities is summarized in Attachment 1.

i. Interview contacts. Review medical records of contacts using a standard data abstraction form. It is anticipated that multiple interviews with contacts may be needed to obtain detailed information. Contacts whose HIV status is unknown will be offered HIV testing. All contacts without evidence of prior *Mycobacterium tuberculosis* infection or disease will receive a tuberculin skin test when first identified as a contact and at 12 weeks after their last contact with the case while the case was infectious. Those with positive tuberculin skin tests will be evaluated for preventive or curative therapy as indicated.

j. Test contacts with a panel of non-tuberculous mycobacterial antigens to determine whether supplementing tuberculin skin test screening with these antigens results in improved identification of persons recently infected with *M. tuberculosis*.

k. Obtain serum from close contacts and test for a number of cytokines known to be associated with the immune response to *M. tuberculosis* infection. This information will be used to determine whether cytokine profiles are a useful supplement to tuberculin skin test screening for determining whether recent *M. tuberculosis* transmission has occurred.

l. Conduct targeted tuberculin skin test screening in locations where the TB case spent time according to procedures and criteria specified in the study protocol.

m. Monitor contacts with latent TB infection to determine rates of treatment for latent TB infection recommendation, initiation, and completion. Reason for not recommending, initiating, or completing therapy will be delineated.

n. If secondary cases are identified, send *M. tuberculosis* isolates from the cases and their source case to the designated regional laboratory for DNA fingerprints.

o. Ensure that all data collected are maintained in confidential and secured files.

p. Send questionnaires and data abstraction forms for study participants to the CDC in accordance with the frequency specified in the protocol.

2. CDC Activities

a. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. Assist in development of a study protocol for retrospective, social networking survey, and prospective portions of the study.

b. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. Organize and host a meeting at CDC with all the principal investigators within 3 months of awards being granted.

d. Assist in development of questionnaires and data abstraction forms for collecting and reporting results.

e. Collaborate as necessary in training the persons interviewing cases and contacts and doing the data abstraction from medical records.

f. Assist as needed and review the results of data analysis done locally.

g. Prepare study report and disseminate findings.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 15 double-spaced on 8½ by 11″ pages (excluding budget justification), printed on one side, with one inch margins, and unreduced font. Applications must be developed in accordance with CDC Form 0.1246(E). Pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and each copy of the application must be submitted unstapled and unbound. Materials which should be part of the basic plan should not be in the appendices. For the budget section, submit a Form 424A (included in the Application Package) and detailed line-item justification for this focus area project. Applicants should follow the outline below in preparing the narrative.

1. *Abstract* (not to exceed 1 page): Applicants should provide a summary of their proposal and rational plan to carry out the project activities.

2. *Understanding the Project:* Applicants should describe their knowledge of current research conducted in this area, past studies and existing literature. Applicants should state clear study objectives for the current proposed study. Applicants should describe experience with conducting thorough, timely, and comprehensive contact investigations for foreign-born TB cases and their contacts, and the related public health impact.

3. *Methodology and Approach:* Applicants should describe a rational plan to carry out the project activities, including timely methods for the identification of newly diagnosed TB cases and their contacts; methods for medical record review and source case and contact interviews; ability to integrate serologic and non-tuberculous antigen testing portions of the study into existing contact investigation procedures; and ability to conduct targeted location based screening in immigrant communities. Recognition of and plans for overcoming difficulties that may be encountered during the study should be described.

4. *Program Management and Staff experience:* Describe the personnel who will be involved in this project, including information about who will be responsible for general oversight and management of this project. Include descriptions of the experience required for each proposed staff member to conduct their assigned duties in the proposed project and the projected time commitment from each.

5. *Data Management:* Provide a brief outline of data flow for the proposed project. Provide a description how data abstraction forms will be handled and maintained. Provide a plan for updating data abstraction forms as additional information becomes available over time. Provide a plan for including quality assurance steps that will be used in managing the data.

6. *Budget:* Provide an itemized budget and supporting justification for the first 12 months of the anticipated 2-year project.

F. Submission and Deadline

Submit the original and 2 copies of the application including the CDC Form 0.1246(E). Forms are available at the following Internet address: http://www.cdc.gov/od/pgo/forminfo.htm or in the application kit. On or before January 5, 2001, submit your application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Your application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Understanding of the Project (20 Points)

The extent to which the applicant demonstrates a clear understanding of the public health impact of conducting thorough, timely, and comprehensive contact investigations for foreign-born TB cases and their contacts as demonstrated through experience, a knowledge of current research conducted in this area, past studies, existing literature, and the clarity of the proposed study objectives.

2. Methodology and Approach (45 Points)

a. The extent to which the applicant describes a rational plan to carry out the project activities, including timely methods for the identification of newly diagnosed TB cases and their contacts; methods for medical record review and source case and contact interviews; ability to integrate serologic and non-tuberculous antigen testing portions of the study into existing contact investigation procedures; and ability to conduct targeted location based screening in immigrant communities. Recognition of and plans for overcoming difficulties that may be encountered during the study are described.

b. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure the differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

(5) The proposed plan to address language needs during the course of the project.

(6) Delineate the countries of origin from the major foreign-born populations in the projected area.

(7) Describe the language capabilities of staff proposed for this study.

3. Program Management and Staff experience (20 Points)

The proposal clearly describes the (1) qualifications, commitment, and epidemiologic skills and experience of the project director and his/her ability to devote adequate time and effort to provide effective leadership; (2) qualifications and experience of other staff involved in the project to accomplish the proposed activity, and their commitment and time they will devote; (3) successful experience the project director and staff have in managing, coordinating and conducting similar or related projects; (4) a study coordinator with epidemiologic training and experience who is able to devote at least 50 percent of his or her time to this project; and (5) facilities, space, and equipment necessary for conducting the project.

4. Data Management (10 points)

The proposal clearly describes how data management and data validation will be done.

5. The extent to which the applicant demonstrates continued achievement of the following National TB Program Objectives (5 Points):

a. At least 90 percent of patients with newly diagnosed TB, for whom therapy for 1 year or less is indicated*, will complete therapy within 12 months (*please refer to the definitions in "Reported Tuberculosis in the United States, 1997" for more information). To obtain a copy of this report, you may order through the CDC Website http://www.cdc.gov/nchstp/tb/ and go to online ordering; or you may contact the Communication and Education Branch, Sherry Hussain, 404–639–8135.

b. At least 85 percent of infected contacts who are started on treatment for latent TB infection will complete therapy.

c. Completeness of RVCT reporting on HIV status for at least 75 percent of all newly reported TB cases age 25–44.

6. Other (Not Scored)

a. Budget

Extent to which the budget is reasonable, clearly justified, and consistent with the intended use of the funds.

b. Human Subjects

Does the application adequately address the requirements of 45 CFR 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Annual progress report, no more than 90 days after the end of the budget period;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this announcement.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–4 HIV/AIDS Confidentiality Provisions

AR–5 HIV Program Review Panel Requirements

AR–7 Executive Order 12372 Review

AR–9 Paperwork Reduction

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317E of the Public Health Service Act, 42 U.S.C. 247b–6, as amended. The Catalog of Federal Domestic Assistance number is 93.947.

J. Where To Obtain Additional Information

This and other CDC Announcements can be found on the CDC homepage Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

To obtain additional information, contact: Carrie Palumbo, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–2783. Telephone (770) 488–2783. Email address: zri4@cdc.gov.

For program technical assistance, contact: Your program consultant at (404) 639–8125 and from Mary Reichler, Project Officer, Division of Tuberculosis Elimination, Centers for Disease Control and Prevention, National Center for HIV, STD, and TB Prevention, Division of TB Elimination, 1600 Clifton Road, Mailstop E–10, Atlanta, Georgia 30333. Telephone: (404) 639–8116. E-Mail Address: mrr3@cdc.gov.

Dated: November 9, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–29312 Filed 11–15–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1604]

Agency Information Collection Activities; Proposed Collection; Comment Request; OTC Test Sample Collection Systems for Drugs of Abuse Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for over-the-counter (OTC) test sample collection systems for drugs of abuse testing.

DATES: Submit written or electronic comments on the collection of information by January 16, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All documents should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

OTC Test Sample Collection Systems for Drugs of Abuse Testing—21 CFR Part 809 (OMB Control Number 0910–0368)—Extension

FDA has reclassified OTC test sample collection systems for drugs of abuse testing from class III (premarket approval) into class I (general controls) subject to restrictions established in accordance with section 520(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j).

The labeling requirements for certain in vitro diagnostic products require that manufacturers of OTC test sample collection systems for drugs of abuse testing provide certain information to consumers for the proper use of the test sample collection system and for interpreting the results. The purpose of this regulation is to ensure that lay persons collecting samples for testing have adequate instructions for sample collection and handling and for receiving and understanding the test results reported by laboratories performing the analyses.

The most likely respondents to this information collection will be manufacturers of over-the-counter drugs of abuse test kits.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
809.10	20	1	20	100	2,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based upon submissions to the agency (premarket notifications, premarket approval applications, registration and listing), FDA estimates that there will be about 20 manufacturers of these devices.

FDA estimates, based upon discussions with manufacturers of similar devices required to comply with 21 CFR 809.10, that it will take approximately 40 hours to gather the information required by the rule, 40 hours to design and prepare the labeling, and an additional 20 hours per year to review and revise the labeling as necessary.

Dated: November 9, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–29326 Filed 11–15–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0393]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; MedWatch: The FDA Medical Products Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 18, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

MedWatch—The FDA Medical Products Reporting Program (Forms FDA 3500 and FDA 3500A) (OMB Control Number 0910–02910)—Extension

Under sections 505, 512, 513, 515, and 903 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355, 360b, 360c, 360e, and 393), and section 351 of the Public Health Service Act (42 U.S.C. 262), FDA has the responsibility to ensure the safety and effectiveness of drugs, biologics, and devices. Under section 502(a) of the act (21 U.S.C. 352(a)), a drug or device is misbranded if its labeling is false or misleading. Under section 502(f)(1) of the act it is misbranded if it fails to bear adequate warnings, and under section 502(j), it is misbranded if it is dangerous to health when used as directed in its labeling.

Under section 4 of the Dietary Supplement Health and Education Act of 1994 (the DSHEA) (21 U.S.C. 301), section 402 of the act (21 U.S.C. 342) is amended so that FDA must bear the burden of proof to show a dietary supplement is unsafe. Likewise for cosmetics, the act does not give FDA the authority to require manufacturers to register their cosmetic establishments, file data on ingredients, conduct safety testing, or report cosmetic-related injuries. Only postmarket surveillance allows FDA to assess cosmetic problems in the marketplace.

To carry out its responsibilities, the agency needs to be informed whenever an adverse event or product problem occurs. Only if FDA is provided with such information will the agency be able to evaluate the risk, if any, associated with the product, and take whatever action is necessary to reduce or eliminate the public's exposure to the risk through actions ranging from labeling changes to the rare product withdrawal. To ensure the marketing of safe and effective products, certain adverse events must be reported. Requirements regarding mandatory reporting of adverse events or product problems have been codified in parts 310, 314, 600, 606, and 803 (21 CFR parts 310, 314, 600, 606, and 803), specifically §§ 310.305, 314.80, 314.98, 600.14, 600.80, 606.170, 606.171, 803.30, 803.50, 803.53, and 803.56.

To implement these provisions for reporting of adverse events and product problems with human medications, devices, and biologics, as well as any other products that are regulated by FDA, two very similar forms are used (an exception is biologic product deviation reports). Form FDA 3500 is used for voluntary (i.e., not mandated by law or regulation) reporting of adverse events and product problems by health professionals and the public. Form FDA 3500A is used for mandatory reporting (i.e., required by law or regulation). New biologic regulations §§ 600.14 and 606.171 require that biologic product deviation reports, which are similar to drug product problem reports, be submitted to FDA via a different form. Reports of fatalities as a complication of blood collection or transfusion are reported as per § 606.170.

Respondents to this collection of information are health professionals, hospitals and other user-facilities (e.g., nursing homes, etc.), consumers, manufacturers of biologics, drugs and medical devices, and importers.

I. Use of the Voluntary Version (FDA Form 3500)

Individual health professionals are not required by law or regulation to submit adverse event or product problem reports to the agency or the manufacturer. There is one exception. The National Childhood Injury Act of 1986 mandates that certain adverse events following immunization be reported by health care providers to the joint FDA/Centers for Disease Control and Prevention Vaccine Adverse Event Reporting System (VAERS). Vaccine reporting should be submitted on Form VAERS–1 (FDA).

Hospitals are not required by Federal law or regulation to submit adverse event reports on medications. However, hospitals and other medical facilities are required by Federal law to report medical device-related deaths and serious injuries, biological product deviation reports, and reports of fatalities as a complication of blood collection or transfusion.

Manufacturers of dietary supplements do not have to prove safety or efficacy of their products prior to marketing, nor do they have mandatory requirements for reporting adverse reactions to FDA. However, the DSHEA puts the onus on FDA to prove that a particular product is unsafe. Likewise for cosmetics, the act does not give FDA the authority to require manufacturers to register their cosmetic establishments, file data on ingredients, conduct safety testing, or report cosmetic-related injuries. Only postmarket surveillance allows FDA to assess cosmetic problems in the marketplace. If a problem is detected, it is up to the agency to demonstrate that the product is harmful when used according to label directions or under customary conditions of use. Consequently, the agency is totally dependent on voluntary reporting by health professionals and consumers about problems with the use of dietary supplements and cosmetics.

The voluntary version of the form is used to submit all adverse event and product problem reports not mandated by Federal law or regulation.

II. Use of the Mandatory Version (FDA Form 3500A)

A. Drug and Biologic Products

In section 505(j) and 704 of the act (21 U.S.C. 374), Congress has required that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the act. These statutory requirements regarding mandatory reporting have been codified by FDA under parts 310 and 314 (drugs) and part 600 (biologics) of the Code of Federal Regulations. Parts 310, 314, and 600 mandate the use of the FDA Form 3500A for reporting to FDA on adverse events that occur with drugs and biologics. Blood-related fatalities are reported per § 606.170.

B. Medical Device Products

Section 519 of the act (21 U.S.C. 360i) requires manufacturers or importers of devices intended for human use to establish and maintain records, make reports, and provide information as the Secretary of Health and Human Services may by regulation reasonably require to ensure that such devices are not adulterated or misbranded and to otherwise ensure its safety and effectiveness. Furthermore, the Safe Medical Device Act of 1990, signed into law on November 28, 1990, amends section 519 of the act. The amendment requires that user facilities such as hospitals, nursing homes, ambulatory surgical facilities, and outpatient treatment facilities report deaths related to medical devices to FDA and to the manufacturer, if known. Serious illnesses and injuries are to be reported to the manufacturer or to FDA if the manufacturer is not known. FDA has codified these statutory requirements regarding mandatory reporting under part 803. Part 803 mandates the use of FDA Form 3500A for reporting to FDA on medical devices.

C. Other Products Used in Medical Therapy

There are no mandatory requirements for the reporting of adverse events or product problems with products such as dietary supplements. However, the DSHEA puts the onus on FDA to prove that a particular product is unsafe. Consequently, the agency is totally dependent on voluntary reporting by health professionals and consumers about problems with the use of dietary supplements. (Most pharmaceutical manufacturers already use a one-page modified version of the Form FDA 3500A where section G from the back is substituted for section D on the front of the form.)

D. Medical Device Baseline Information

The Medical Device Reporting form (Form FDA 3417) relates specifically to the individual device and must be submitted with the first adverse event on that device reported via Form FDA 3500A. The information collected includes the basis for marketing (510(k), PMA, etc.), product code for the device, common name, location where manufactured, and other identifying information. The Health Industry Manufacturers Association (HIMA) first commented in 1992 on the redundancy of information required for the Baseline form stating that the information is also collected by the agency though the device listing process (Form FDA 2892) and through Form FDA 3500A. In 1998, HIMA commented again and, at the request of OMB, FDA explored revising Form FDA 3500A to include the information required by the Baseline form that is not collected through the listing process.

In discussions with OMB it was decided that FDA would not attempt to revise Form FDA 3500A at this time, but would proceed with collecting the information required by the Baseline form as a separate part of the device listing process especially because some of the information required by the current Baseline form will be collected in that listing as a change in the listing regulations. Because the collection of registration and listing information will be through electronic means, the agency envisions a menu option on the Internet to facilitate the collection of the remainder of Baseline information.

FDA has held stakeholder meetings and discussed the new device registration and listing system and using the new device and listing system electronic process as the vehicle for the Baseline information collection at those meetings.

The agency requested comments on this proposed collection of information in the **Federal Register** of July 26, 2000 (65 FR 45988).

FDA received comments from four interested parties, but some comments raised multiple concerns.

While the comments on the proposed revisions to the form(s) were mainly favorable, the agency has decided to not revise either form at this time. This decision reflects several concerns. The financial burden that would be placed on sponsors and others required to report, and FDA if the forms underwent revision, and the availability of other avenues by which use of the voluntary and mandatory forms can be optimized, namely appropriate revision of documents related to their completion.

One comment suggested more detailed instructions for completing the MedWatch form. The instructions for the voluntary form 3500 were updated and posted on the Internet in April 2000 and the instructions for 3500A were extensively revised and posted May 2000 (http://www.fda.gov/medwatch/report/instruc.htm). Regarding voluntary reporting, updated instructions for completing the 3500 form were posted on the MedWatch homepage in December 1998 and April 2000. They are available by mail/fax upon request. The revisions of both the voluntary and mandatory instructions for use were based on questions/comments about adverse event/product problem reporting received by the agency over time. One main revision on both forms was to include information about reporting on reuse of medical devices labeled for single use.

One comment suggested revising the March 1992 guidelines to incorporate MedWatch form use. FDA published a revised guidance for industry entitled "Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products: Clarification of What to Report," in August 1997 (http://www.fda.gov/cder/guidance/1830fn1.pdf). In this guidance it states that the agency is still considering comments received in response to the proposed **Federal Register** of October 27, 1994, and recommendations recently developed by the International Conference on Harmonization and plans to propose additional amendments to its postmarketing safety reporting regulations. FDA also plans to prepare a single consolidated guidance document on this topic once the process is concluded.

One comment suggested a FDA industry-wide assessment of consistency of MedWatch field use for both devices and drugs. At this time a formal assessment of the completion of the forms is not planned. As stated above, questions/comments about use of the form and reporting have been incorporated into the revised instructions for use for both forms. This issue can also be addressed in any new proposed regulations or guidance documents.

One comment suggested expanding public education regarding postmarketing events. The MedWatch Office is in the process of developing educational materials, primarily for health professionals, to assist in the overall effort to improve the quality of MedWatch reports.

One comment was made about the estimate of the "hours per response." Because the 3500A is used for mandatory reporting subject to different regulations (i.e., 21 CFR 310.305, 312.32, 314.80, 600.80, and part 803), this estimate for reporting burden is limited to completing the form. Estimates of the burden placed on user-facilities, importers and manufacturers to investigate a report and compile the necessary information would be addressed in the final rules for those regulations.

One comment suggested further clarification of the August 1997 guidance for definitions of identifiable patient and reporter. This topic is currently being discussed in the World Health Organization's Council for International Organizations of Medical Sciences, Work Group 5.

One comment suggested focusing on new or unusual events and to allow reporting of known non-serious events via line listing. This same commenter suggested minimal data collection for known and well-characterized cases. These comments are addressed in the August 1997 guidance for industry entitled "Postmarketing Adverse

Experience Reporting for Human Drug and Licensed Biological Products: Clarification of What to Report."

One comment suggested adding a box to the 3500A form to require drug manufacturers to state the date the report was forwarded to FDA. This is currently required for medical device reporting, but not for drugs and biologics. However, all manufacturers must report the date received by the manufacturer on form 3500A, section G4. Many large manufacturers have data bases that contain the date the information was received and the date the report was sent to FDA. As a surrogate, these two dates can be compared to see if the company is fulfilling its requirements under the regulations. The agency can use its regulatory discretion in deciding whether or not action is warranted in the case of delayed reports. What is of greater concern is the failure to report and that cannot be detected by adding this information to the form. Given that the goal is for both pharmaceutical and medical device industries to submit the majority of mandatory reports electronically, it would present a financial burden to revamp systems to accommodate a paper form that will be virtually obsolete in the future.

One comment suggested a "tick box for a 30-day report," for form 3500A. At this time there is no requirement for a 30-day report.

As both the 3500 instructions and 3500A instructions can be updated periodically based on questions/comments from stakeholders and statutory/regulatory changes, changing the forms themselves is not seen as necessary at this point.

At such time it is decided to repropose revisions, FDA will consult all interested parties for input into the design.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA center(s) (21 CFR section)	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
CBER/CDER[2]					
Form 3500	16,198	1	16,198	0.5	8,099
Form 3500A (310.305, 314.80, 314.98, and 600.80)	600	455.2	273,109	1	273,109
CDRH[3]					
Form 3500	2,650	1	2,650	0.5	1,325
Form 3500A (part 803)	2,046	24	49,305	1	49,305
CFSAN[4]					
Form 3500	550	1	550	0.5	275
Form 3500A	0	0	0	1	0
No mandatory requirements					
Total Hours					332,113
Form 3500					9,699
Form 3500A					322,414

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Center for Biologics Evaluation and Research/Center for Drug Evaluation and Research.
[3] Center for Devices and Radiological Health.
[4] Center for Food Safety and Applied Nutrition.
FDA Form 3500 is for voluntary reporting. FDA Form 3500A is for mandatory reporting.
The figures shown in table 1 of this document are based on actual calendar year 1999 reports and respondents.

As more medical products are approved by the FDA and marketed, and as knowledge increases regarding the importance of notifying FDA when adverse events and product problems are observed, it is expected that more voluntary reports will be submitted. Conversely, with the current plans for increasing electronic submissions it is expected that the number of mandatory reports will decrease.

Dated: November 9, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–29324 Filed 11–15–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1435]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Substantial Evidence of Effectiveness of New Animal Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 18, 2000.

ADDRESSES: Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Substantial Evidence of Effectiveness of New Animal Drugs—21 CFR Part 514—(OMB Control No. 0910–0356)—Extension

Description: Congress enacted the Animal Drug Availability Act of 1996 (ADAA) (Public Law 104–250) on October 9, 1996. As directed by the ADAA, FDA published a final rule July 28, 1999 (64 FR 40746), amending part 514 (21 CFR part 514) to further define substantial evidence in a manner that encourages the submission of new animal drug applications (NADA's), supplemental NADA's and encourages dose range labeling. Substantial evidence is the standard that a sponsor must meet to demonstrate the effectiveness of a new animal drug for its intended uses under the conditions of use suggested in its proposed labeling. It is defined as evidence consisting of one or more adequate and well-controlled studies, such as a study in a target species, study in laboratory animals, field study, bioequivalence study, or an in vitro study, on the basis of which it could fairly and reasonably be concluded by qualified experts that the new animal drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof. The provisions of § 514.4(a) provide the agency with greater flexibility to make case-specific scientific determinations regarding the number and types of adequate and well-controlled studies that will provide, in an efficient manner, substantial evidence that a new animal drug is effective. The agency believes this regulation over time, will reduce the number of adequate and well-controlled studies necessary to demonstrate the effectiveness of certain combination new animal drugs, will eliminate the need for an adequate and well-controlled dose titration study, and may, in limited instances, reduce or eliminate the number of adequate and well-controlled field investigations necessary to demonstrate by substantial evidence the effectiveness of a new animal drug.

Description of Respondents: Respondents to this collection of information are persons and businesses, including small businesses. In the **Federal Register** of August 16, 2000 (65 FR 49989), the FDA published a 60-day notice concerning the proposed extension of this collection of information and requested comments. No comments were received on the estimated annual reporting burden. We therefore believe the total burden estimate of 544,036 hours for the annual reporting and recordkeeping burden should remain unchanged.

FDA estimates the burden of the collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
514.4(a)	190	4.5	860	632.6	544,036

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated annual reporting burden is based on consultation by the Center for Veterinary Medicine with several of the major research and development firms that conduct the majority of studies submitted to establish substantial evidence of effectiveness of new animal drugs and agency records.

Dated: November 9, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–29325 Filed 11–15–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Roundtable; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing the following meeting: Consumer roundtable to discuss consumer protection priorities for the agency. The roundtable will provide an opportunity for FDA to engage in an open dialogue with individual consumer stakeholders on a variety of regulatory and consumer-oriented issues. The roundtable is part of the agency's ongoing consultation with stakeholders.

Date and Time: The meeting will be held on December 13, 2000, 9 a.m. to 4 p.m.

Location: The meeting will be held at the Penthouse Conference Room, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Contact: Karen R. Mahoney, Office of Consumer Affairs (HFE–88), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4393, FAX 301–827–2866, e-mail: *kmahoney@oc.fda.gov.*

Registration: Preregistration is required as space is limited. Send registration information (including name, title, organization name, address, telephone, fax number, and e-mail) to the contact person by December 6, 2000.

If you need special accommodations due to a disability, please contact Karen R. Mahoney (address above) at least 7 days in advance.

Background information on this meeting will be available on the FDA Internet site at *http://www.fda.gov/opacom/hpmeetings.html.*

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: November 9, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–29424 Filed 10–15–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 13, 2000, 8:30 a.m. to 5:30 p.m. and December 14, 2000, 8 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: SomersK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 13, 2000, the committee will discuss: (1) New drug application (NDA)20–726/S–006, Femara® (letrozole) Tablets, 2.5 mg, Novartis Pharmaceuticals Corp., indicated as first-line therapy in postmenopausal women with advanced breast cancer; and (2) NDA 21–240, histamine hydrochloride injection (1 mg/ml), Maxim Pharmaceuticals, Inc., indicated for adjunctive use with interleukin-2 (aldesleukin) in the treatment of adult patients with advanced metastatic melanoma that has metastasized to the liver. On December 14, 2000, the committee will discuss: (1) Biologics license application (BLA) 99–0786, Campath®, (alemtuzumab), Millenium and Ilex Partners, LP., and Millenium Pharmaceuticals, indicated for the treatment of patients with chronic lymphocytic leukemia who have been treated with alkylating agents and who have failed fludarabine therapy; and (2) single patient exemptions to the use of nonapproved oncology drugs and biologics.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 6, 2000. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m., and 1:30 p.m. and 1:45 p.m. on December 13, 2000, and between approximately 8:15 a.m. and 8:45 a.m., and 1 p.m. and 1:15 p.m. on December 14, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 6, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by December 6, 2000, to address issues specific to the submission or topic before the committee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 8, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–29285 Filed 11–15–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of December 2000.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: December 6, 2000; 9:00 a.m.—5:00 p.m.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting is open to the public.

The full Commission will meet on Wednesday, December 6, from 9:00 a.m. to 5:00 p.m. Agenda items will include, but not be limited to: a presentation of the Petitioners Attorney Perspective, a summary of the National Vaccine Program Office (NVPO) Vaccine Risk Communication Workshop, a presentation on the Parent Understanding of Immunication Survey Results, and a FDA Workshop summary on Evaluation of New Vaccines. Updates from the Department of Justice and the National Vaccine Program Office, and routine program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on December 6, 2000. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in the Conference Room at the DoubleTree Hotel on December 6, 2000. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Lee, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593.

Agenda items are subject to change as priorities dictate.

Dated: November 13, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–29327 Filed 11–15–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of December 2000.

Name: Council on Graduate Medical Education (COGME).

Date and Time: December 13, 2000; 8:30 a.m.–4:30 p.m.; December 14, 2000; 8:30 a.m.–10:30 p.m.

Place: Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

The meeting is open to the public.

Agenda

The agenda will include: Welcome and opening comments from the Administrator, Health Resources and Services Administration; the Associate Administrator for Health Professions; and the Acting Executive Secretary of COGME. New COGME members will be introduced. The Council will be given an update on the COGME and the National Advisory Council on Nurse

Education and Practice (NACNEP) Report. There will be presentations on the Hispanic Physician Workforce and on Regional Trends in the Physician Workforce. The Council will hear reports from its work groups on GME Financing and Physician Workforce. There will be a discussion on future directions for the Council.

Anyone requiring information regarding the meeting should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Acting Executive Secretary, Council on Graduate Medical Education, Division of Medicine and Dentistry, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6326.

Agenda items are subject to change as priorities dictate.

Dated: November 9, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–29328 Filed 11–15–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

John H. Chafee Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 16, 2000.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. in the Capron Conference Room of the Quaker Inn & Conference Center the following reasons:

1. Approval of Minutes
2. Chairman's Report
3. Executive Director's Report
4. Planning Subcommitte Report
5. Public Input

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to:

Michael Creasey, Executive Director, John H. Chafee Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895; Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director BRVNHCC.

[FR Doc. 00–29391 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Invasive Species Council

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Comment Period Extension—Second Draft of the National Invasive Species Management Plan, "Meeting the Challenge."

SUMMARY: The National Invasive Species Council announced the availability of the draft National Management Plan on October 2, 2000, for a public review period of 45 days. Pursuant to Executive Order 13112, this Plan was due in August of this year. In response to a number of requests, the Council is extending the comment period for an additional 15 calendar days. The new deadline for submitting comments will now be 6:00 p.m. (eastern) on Friday, December 1, 2000.

Availability: Copies of the draft Plan can still be obtained via the Council's website: www.invasivespecies.gov; or by contacting the Council Staff at 202–208–6336 (phone); 202–208–1526 (Fax); or by e-mail at invasivespecies@ios.doi.gov.

Where to Send Comments: Comments can be submitted to the Council Staff via regular mail to the address below, via e-mail at invasivespecies@ios.doi.gov, or by fax to 202–208–1526.

ADDRESSES: National Invasive Species Council, 1951 Constitution Avenue, NW., Suite 320, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kelsey Passé, National Invasive Species Council Program Analyst; E-mail: Kelsey_Passe@ios.doi.gov; Phone: (202) 208–6336; Fax: (202) 208–1526.

Dated: November 13, 2000.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 00–29416 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act (PRA) for the Boating Infrastructure Grant Program; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; Correction.

SUMMARY: We published a notice on October 24, 2000 (65 FR 63606) with a date for the receipt of comments on or after December 26, 2000. The corrected date should be on or before December 26, 2000.

DATES: We will accept comments on this notice on or before December 26, 2000.

ADDRESSES: The public must make comments and suggestions directly to the Office of Management and Budget, Office of Regulatory Affairs, 725 17th Street NW, Washington, DC 20503; and Rebecca Mullin, U.S. Fish and Wildlife Service Information Collection Officer, 4401 North Fairfax Drive, Room 222, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Steve Farrell, (703) 358–2156, Division of Federal Aid, U.S. Fish and Wildlife Service.

SUPPLEMENTARY INFORMATION: On October 24, 2000, we published a notice requesting comments on Information Collection for approval under the Paperwork Reduction Act for the Boating Infrastructure Grant Survey Program. The DATES caption stated that comments should be submitted on or after December 26, 2000. The correct date for accepting comments from the public is on or before December 26, 2000.

Accordingly, in FR Doc. 00–27109 published at 65 FR 63606 on October 24, 2000, on page 63607, in column 1, correct the DATES caption to read as follows:

DATES: Interested parties must submit comments on or before December 26, 2000.

Dated: November 9, 2000.

Rebecca A. Mullin,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 00–29308 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Steven N. Mitchell, Douglas, GA, PRT–034848

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Academy of Natural Sciences, Philadelphia, PA, PRT–678963

The applicant requests renewal of their permit to export and re-import non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the permittee's collection for scientific research. This notification covers activities conducted by this applicant for a period of five years.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Michael Deschamps, Brooktondale, NY, PRT–035274

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The U.S. Fish and Wildlife has information collection approval from OMB through February 28, 2001. OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 9, 2000.

Lisa Lierheimer,

Acting Chief, Branch of Permits, Division of Management Authority.

[FR Doc. 00–29307 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see ADDRESSES). You may also comment via the internet to "victoria_davis@fws.gov". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see FURTHER INFORMATION). Finally, you may hand deliver comments to either Service office listed below (see ADDRESSES). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written data or comments on these applications must be received, at the address given below, by December 18, 2000.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION:

Applicant: Kevin J. Roe, University of Alabama, Tuscaloosa, Alabama TE035514–0.

The applicant requests authorization to take the Kentucky Cave shrimp, *Palaemonias ganteri* and the Alabama Cave shrimp, *Palaemonias alabamae*. *Palaemonias ganteri* will be obtained throughout the species range at Mammoth Cave National Park, Barren, Edmonson, and Hart Counties. *Palaemonias alabamae* will be obtained throughout the species range at the Glover-Brazelton Cave system and Bobcat Cave, Madison, County, Alabama. The purpose of the take to examine morphological and molecular characters of extant population to accurately determine their taxonomic and systematic status.

Dated: November 6, 2000.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 00–29313 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Understanding Visitor Uses, Motives and Benefits at Sherburne National Wildlife Refuge.

OMB approval number: New collection.

Abstract: Respondents supply information through a mailed survey and onsite interviews on (1) their motivations for visiting Sherburne National Wildlife Refuge; (2) desired experiences and benefits they receive from Sherburne National Wildlife Refuge; (3) attitudes and perceptions of various management issues on Sherburne National Wildlife Refuge, and (4) the management actions and objectives they prefer for Sherburne National Wildlife Refuge. This information will be used to help improve the management and operation of Sherburne National Wildlife Refuge.

Bureau form number: Various.

Frequency: One time (2001).

Description of respondents: Visitors to Sherburne National Wildlife Refuge in the state of Minnesota.

Estimated completion time: 0.33 hours (20 minutes).

Annual responses: 1000.

Annual burden hours: 330.

Bureau clearance officer: John Cordyack 703–648–7313.

Dated: November 8, 2000.

Susan Haseltine,

Chief Scientist for Biology.

[FR Doc. 00–29392 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–7Y–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–105–1990–HP; GP01–0029; OR 56024]

Closure of Public Lands: Douglas County, OR

AGENCY: Bureau of Land Management, Roseburg District Office, South River Field Office, Interior.

ACTION: Closure of public lands in Douglas County, Oregon.

SUMMARY: The following areas are closed to and restricted from public uses, including camping, hunting, mining, erecting structures and storing personal property, until further notice. The Oregon Department of Environmental Quality is conducting an interim removal action of acid mine drainage from the Formosa Abandoned Mine Land. This closure is to protect human health and to provide security for the facilities.

EFFECTIVE DATE: The closure will become effective immediately and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Eric Heenan, Mining Engineering Technician, South River Field Office, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470, (541) 440–4930.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to 43 CFR 8364.1 (Closure and Restriction Orders), which provides, in part, for the authorized officer to close or restrict use of designated public lands for the protection of persons, property, and public lands and resources, the following areas are closed to and restricted from public uses, including camping, hunting, mining, erecting structures and storing personal property, until further notice. Maps showing the described area are available at the BLM's Roseburg District Office. The public lands closed under this order will be posted with signs at points of access. This closure is consistent with the Roseburg District Record of Decision and Resource Management Plan, June 1995.

The public lands affected by this closure are located around Silver Butte and along Middle Creek and South Fork Middle Creek, approximately 6 miles south of Riddle, Oregon. Use of motorized vehicle on existing improved roads is allowed. The lands involved are more specifically described as:

Willamette Principal Meridian, Douglas County, Oregon

T. 31 S., R. 6 W.,
  Sec. 22, S½S½SE¼,
  Sec. 23, S½SW¼.

Containing approximately 120 acres.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau of Land Management employees; State of Oregon employees and subcontractors; state, local and federal law enforcement and fire protection personnel. Additional parties may be allowed, but must have advanced written approval from the Authorized Officer.

Any person who fails to comply with the provisions of this closure may be subject to, but not limited to, the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment of not to exceed 12 months, as well as the penalties provided under Oregon State law.

Dated: November 1, 2000.

E. Dwight Fielder,

Field Manager, South River Field Office.

[FR Doc. 00–29395 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–01–1990–00; CACA–35511]

Imperial Project Proposed Open Pit Gold Mine, Southeastern Imperial County, California; Notice of Availability of Final Environmental Impact Statement/Environmental Impact Report

AGENCY: Bureau of Land Management, Department of the Interior, El Centro Field Office, California Desert District.

ACTION: Correction of **Federal Register** Notice of 11/09/00, Vol. 65, No. 218.

SUMMARY: This notice corrects the ending date of acceptance of public comments on the Imperial Project FEIS/EIR from November 27, 2000, to the close of business on December 18, 2000.

The remainder of this notice, with the exception of the December 18, 2000 date, and a minor correction of the internet web page address from "imperial project" to "imperial_project" is identical to the November 9th notice.

In compliance with the National Environmental Policy Act (NEPA) of 1969 and 40 CFR 1503.4, this is notice that the Bureau of Land Management (BLM) and the County of Imperial have jointly published the Final Environmental Impact Statement/Environmental Impact Report (Final EIS/EIR) on the proposed Imperial Project. The Bureau of Land Management (BLM) has prepared a Final EIS/EIR for the Imperial Project, proposed by Glamis Imperial Corporation is an open-pit gold mine on about 1,500 acres of public land. The project is located on BLM-administered public lands in an unincorporated area of southeastern Imperial County, California. The Final EIS/EIR contains the BLM preferred alternative.

Interested citizens are invited to review a copy of the Final EIS. The entire document will be available on the internet at http://www.ca.blm.gov/elcentro/imperial_project. The document also is available by request to the BLM El Centro Field Office on CD-ROM. The CD-ROM is in Adobe Acrobat Reader format, and contains a free download of Acrobat Reader so it can be opened easily.

A limited number of paper copies of the Final EIS are available, and a copy may be obtained by telephoning or writing the contact person listed below. Public reading copies are available at the following public libraries:

List of Libraries to Which Copies of the Final EIS/EIR Have Been Sent

Arizona Western College Library, 9500 South Avenue 8 East, Yuma, AZ 85365
Holtville Library, 101 East Sixth Street, Holtville, CA 92250
BLM Library SC–322A, Bldg. 50, Denver Federal Center, Denver, CO 80225
Brawley Public Library, 400 Main Street, Brawley, CA 92227
Calexico City Library, 850 Encinas Avenue, Calexico, CA 92231
El Centro Public Library, 539 State Street, El Centro, CA 92243
Imperial County Library, 1647 West Main Street, El Centro, CA 92243
Imperial County Free Library, 939 West Main Street, El Centro, CA 92243
Imperial Valley College Library, 380 East Aten Road, Imperial, CA 92251
Imperial Public Library, 200 W. Ninth Street, Imperial, CA 92251
Meyer Memorial Library, 225 West Main Street, Calipatria, CA 92233
Palo Verde District Library, 125 W. Chanslor Way, Blythe, CA 92225
San Diego City Public Library—Clairemont, 2920 Burgener Boulevard, San Diego, CA 92110–1027
San Diego City Public Library—Logan Hills, 811 South 28th Street, San Diego, CA 92113–2498
San Diego City Pub. Library—Mission Hills, 925 West Washington Street, San Diego, CA 92103–1895
San Diego City Public Library—Oak Park, 2802 54th Street, San Diego, CA 92105–4941
San Diego City Public Library—Paradise Hills, 5922 Rancho Hills Drive, San Diego, CA 92139–3137
San Diego County Public Library, 2130 Arnold Way, Alpine, CA 91901–9499
San Diego County Public Library, 652 Palm Canyon Drive, Borrego Springs, CA 92004–0297
San Diego County Public Library, 1309 Camino del Mar, Del Mar, CA 92014–2693
San Diego County Public Library, 201 E. Douglas, El Cajon, CA 92020–4519
San Diego County Public Library, 8055 University Avenue, La Mesa, CA 91941–5097
San Diego County Public Library, 1406 Monicito Road, Ramona, CA 92065–2296
San Diego County Public Library, 700 Eucalyptus Avenue, Vista, CA 92084–6245
San Diego State University Library, 720 Heber Avenue, Calexico, CA 92231
Sierra Club, San Diego Chapter Office Library, 3820 Ray Street, San Diego, CA 92104–3623
Yuma County Library District, 350 South 3rd Avenue, Yuma, AZ 85364.

DATES: Public comments on the Final EIS/EIR will be accepted at the BLM El Centro Field Office until close of business on December 18, 2000. Unless specifically requested otherwise, names of commentators will be available to the public. BLM will be rendering a decision on the proposed Project no sooner than mid-December 2000.

FOR ADDITIONAL INFORMATION CONTACT: Comments on the Final EIS/EIR should be addressed to Mr. Glen R. Miller, BLM El Centro Field Office, 1661 S. 4th St., El Centro, CA 92[illegible]3. To obtain copies of the Final EIS/EIR, contact Mr. Miller at (760) 337–4473. Fax requests may be sent to the attention of Mr. Glen Miller at (760) 337–4490. Requests also may be placed through email at: gmiller@ca.blm.gov. Please specify either CD-ROM or the specific volume(s) desired (see Supplemental Information below). Include your name, complete mailing address (no P.O. Boxes), and phone number on all requests.

SUPPLEMENTARY INFORMATION:

A Draft EIS/EIR was published in November 1997, with a comment period closing on April 13, 1998.

A Recirculated Supplement to the Draft EIS/EIR (SDEIS/EIR) was released in March 1999.

The Final EIS/EIR incorporates changes based on public comments received on the Draft EIS/EIR. The Final EIS/EIR contains the BLM Preferred Alternative, along with responses to written comments received during the 135-day public comment period for the Draft EIS/EIR. Both the Solicitor's Opinion on regulation of hardrock mining in the California desert, and a report of the task force of the Advisory Council on Historic Preservation are included as appendices to Volume I. The Final EIS/EIR has 3 volumes:

- Volume I—Main Text—(incorporates changes to DEIS/EIR, text and appendices)
- Volume II—Technical Appendices—(this is identical to the DEIS/EIR Volume II)
- Volume III—Public Comments to the Draft EIS/EIR and Responses to Comments—Written Comment Letters from Individuals/Petitions/Form Letters

Dated: November 9, 2000.

Greg Thomsen,

Field Manager.

[FR Doc. 00–29401 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–14000–01–1610–DH]

Resource Management Plan Amendment

AGENCY: Bureau of Land Management, Glenwood Springs Field Office, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) to Amend the Glenwood Springs Field Office Resource Management Plan (RMP) and the White River Field Office RMP for the Roan Plateau Area.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976 and Bureau of Land Management (BLM) regulations in CFR 1610.2 and 1610.5–5. BLM intends to write an Environmental Impact Statement which will amend the RMP for the Glenwood Springs Field Office (GSFO) approved in January of 1984 and the White River Field Office RMP of 1997.

The planning area is northwest of the town of Rifle, Colorado. It generally includes all BLM managed public lands west of State Highway 13 and north of Interstate 70, east of Parachute Creek, and roughly south of the Garfield County Rio Blanco County line. The amendment will consider management changes to the on approximately 73,367 acres (68,447 surface and 4,455 sub-surface, including 4,455 surface/sub-surface acres within the White River Resource Area). Boundaries may be adjusted after the scoping phase of planning is completed.

The BLM proposes to develop a scientifically sound, community supported strategy for the management of the public lands in the Roan Plateau area. The EIS will be prepared using an inter-disciplinary approach to insure the integration of biological, social and environmental values. The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process. The analysis for the amendment will be embodied with the analysis for the EIS.

The amendment will focus on the major needed land use allocation decisions including; oil and gas management, wilderness suitability, special area designations (Area of Critical Environmental Concern, Wilderness Study Area, etc.) and travel management. The amendment will also review and analyze the multiple of public land uses and resource issues as identified by scoping and necessary to develop a proactive integrated management strategy.

DATES: The BLM can best utilize your input if you submit written comments pertaining to management concerns; important social, economic and environmental values; resource use; resource development and resource protection before January 31, 2001. A public scoping meeting will be held from 3:30 p.m. to 7:30 p.m. on December 13, 2000 at the Rifle Fire Department, 1850 Railroad Ave in Rifle, Colorado 81650.

ADDRESSES: Comments should be sent to the Field Manager, Glenwood Springs Field Office, Bureau of Land Management, 50629 Highway 6 & 24, P.O. Box 1009, Glenwood Springs, CO 81602

FOR FURTHER INFORMATION CONTACT: Requests to be placed on a mailing list should be mailed to the address above. You can also telephone Brian Hopkins at (970) 947–2840 or e-mail him at bhopkins@co.blm.gov. Documents and maps relevant to the planning process will be available for public review at the Glenwood Springs Field Office and, as feasible, available on the Glenwood Springs Field Office website http://www.co.blm.gov/gsra/roanplateau.htm.

SUPPLEMENTARY INFORMATION: In November, 1997 Public Law 105–85 directed the transfer of jurisdiction of the area formally known as the (NOSR) from the Department of Energy (DOE) to the BLM. The transfer directed that the lands be managed in accordance with laws applicable to public lands, including Federal Land Policy and Management Act (FLPMA.).

BLM has been providing custodial surface management for some activities on the Naval Oil Shale Reserve (NOSR) for many years under a Memorandum of Understanding (MOU) with the Department of Energy. The formal transfer of the lands to the BLM has broadened BLM's overall management responsibilities and created the need to amend the RMPs for the GSFO and the WRFO. From a planning and public involvement standpoint it is efficient to include the identified adjacent lands in the planning process.

The foremost goal of the planning process is to ensure opportunities for the public to participate in the planning process. Individuals will have the opportunity to attend public meetings and field trips, write letters, telephone and meet with directly with the planning staff.

Anne Huebner,

Glenwood Springs Field Manager.

[FR Doc. 00–29402 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CA–160–1220–00]

Meeting of the Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Meeting of the Central California Resource Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Resource Advisory Council for Central California will meet in Sacramento.

DATES: Thursday and Friday, November 30–December 1, 2000.

ADDRESSES: BLM-California State Office, 2135 Butano Drive, Sacramento, CA 95825.

SUPPLEMENTARY INFORMATION: The 12 member Central California Resource Advisory Council is appointed by the Secretary of the Interior to advise the Bureau of Land Management on public land issues. On Friday morning, the Council will hold a satellite teleconference with Secretary of the Interior Bruce Babbitt, and will meet with new BLM-California State Director Mike Pool. Other agenda items for the two meetings include a discussion of the BLM land exchange program, and a review of Council's proposed standards and guidelines for the recreation program. There will be a public comment period at 11:30 a.m. Thursday and at 1 p.m. on Friday at which time the Council will hear comments on any public land issue. Written comments will also be accepted, either at the meeting or at the address below.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 661–391–6010.

Dated: November 9, 2000.

Ron Fellows,

Field Manager.

[FR Doc. 00–29397 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–00–1220–00, C00–0927 WHA–ADR]

Imperial Sand Dunes Vehicular Use Closure

AGENCY: Bureau of Land Management, Department of the Interior, El Centro Field Office, California Desert District.

ACTION: Temporary closure of parts of the Imperial Sand Dunes Recreation Management Area to off-highway vehicle and other vehicular use in compliance with court-approved stipulations resulting from a lawsuit involving the Endangered Species Act.

SUMMARY: On March 16, 2000 a lawsuit was filed against the Bureau of Land Management by Center for Biological Diversity, Sierra Club and Public Employees for Environmental Responsibility. The basis of the lawsuit is that BLM has not yet consulted with the U.S. Fish and Wildlife Service, as required by the Endangered Species Act, on the effects of the California Desert Conservation Area Plan on species listed by the Service as threatened or

endangered. In compliance with stipulations agreed to by the plaintiffs and the BLM and approved by the U.S. District Court for the Northern Jurisdiction regarding Case No. C00–0927 WHA–ADR, the public land areas described below within the Imperial Sand Dunes Recreation Management Area are closed to off-highway vehicle and other vehicular use effective Nov 3, 2000.

This is a temporary closure until the Bureau of Land Management consults with and receives a Biological Opinion from the U. S. Fish and Wildlife Service on the impacts of vehicular use in the Imperial Sand Dunes Recreation Area on the Peirson's milk-vetch *(Astragalus magdalenae var. peirsonii)*, designated by Service in 1998 as a threatened species under the Endangered Species Act.

Affected Lands

Parcel 1, the northern closure area as stipulated in the above mentioned case, is bounded on the southeasterly side by the North Algodones Wilderness Area, on the northeasterly side by Niland-Glamis Road, on the north side by a latitudinal line, and on the southwesterly side by the New Coachella Canal Road. Said parcel contains 3,800 acres more or less, and is more particularly described as follows:

Beginning at the northwesterly corner of the North Algodones Wilderness Area; thence southwesterly on a prolongation of the northwesterly line of the above mentioned wilderness area, approximately 300 feet to a line parallel with and 15.00 feet northeast of the center line of the New Coachella Canal Road (approximate geographic position: longitude 115.26404 degrees, latitude 33.06407 degrees); thence northwesterly, parallel with and 15.00 feet northeast of the center line of the New Coachella Canal Road, to a point at latitude 33.1038 degrees (approximate geographic position: longitude 115.31038 degrees, latitude 33.1038 degrees); thence east to a line parallel with and 20.00 feet southwesterly of the center line of Niland-Glamis Road (approximate geographic position: longitude 115.23364 degrees, latitude 33.1038 degrees); thence southeasterly, parallel with and 20.00 feet southwesterly of the center line of Niland-Glamis Road, to a prolongation of the northwesterly line of the North Algodones Wilderness Area (approximate geographic position: 115.23123 degrees, latitude 33.10230 degrees); thence southwesterly along said line of prolongation 85.00 feet to point 1 of the North Algodones Wilderness Area; thence continuing southwesterly along the northwesterly line of the wilderness boundary to the point of beginning.

Parcel 2, the small central closure as stipulated in the above mentioned case, contains 2,000 acres more or less, and is more particularly described as follows:

Beginning at longitude 115.09392 degrees, latitude 32.92036 degrees; thence to longitude 115.10286 degrees, latitude 32.91969 degrees; thence to longitude 115.10916 degrees, latitude 32.92183 degrees; thence to longitude 115.11854 degrees, latitude 32.93341 degrees; thence to longitude 115.12616 degrees, latitude 32.93998 degrees; thence to longitude 115.11041 degrees, latitude 32.95332 degrees; thence to longitude 115.09628 degrees, latitude 32.95288 degrees; thence to longitude 115.09225 degrees, latitude 32.94338 degrees; thence to point of beginning.

Parcel 3, the large central closure area as stipulated in the above-mentioned case, is bounded on the northeasterly side by Wash Road, on the north side by a latitudinal line, on the southwesterly side by the Sand Highway, and on the southeasterly side by a line falling northerly of Patton Valley. Said parcel contains 43,035 acres more or less, and is more particularly described as follows:

Beginning at the point of intersection of a line parallel with and 20.00 feet northeasterly of the northeasterly edge of the Sand Highway and a line parallel with and 150.00 feet northwesterly of the center line of Patton Valley Road (approximate geographic position: longitude 114.96653 degrees, latitude 32.76586 degrees); thence northwesterly, parallel with and 20.00 feet northeasterly of the northeasterly edge of the Sand Highway, to a point at latitude 32.90653 degrees (approximate geographic position: longitude 115.11257 degrees, latitude 32.90653 degrees); thence east to a line parallel with and 20.00 feet southwesterly of the center line of Wash Road (approximate geographic position: longitude 114.95415 degrees, latitude 32.90653 degrees); thence southeasterly, parallel with and 20.00 feet southwesterly of the center line of Wash Road, to a point at latitude 32.83805 degrees (approximate geographic position: longitude 114.86802 degrees, latitude 32.83805 degrees); thence southwesterly to a line parallel with and 150.00 feet northwesterly of the center line of Patton Valley Road, at latitude 32.78236 degrees (approximate geographic position: longitude 114.95298 degrees, latitude 32.78236 degrees); thence southwesterly, parallel with and 150.00 feet northwesterly of the center line of Patton Valley Road, to the point of beginning.

Parcel 4, the south central closure as stipulated in the above mentioned case is bounded on the southwesterly side by the Sand Highway, on the northwesterly side by Patton Valley Road, with the remainder being defined by longitude and latitude. Said parcel contains 310 acres more or less, and is more particularly described as follows:

Beginning at the point of intersection of a line parallel with and 20.00 feet northeasterly of the northeasterly edge of the Sand Highway and a line parallel with and 150 feet southeasterly of the center line of Patton Valley Road; thence northeasterly, parallel with and 150.00 feet southeasterly of the center line of Patton Valley Road, to a point at latitude 32.77713 degrees (approximate geographic position: longitude 114.95341 degrees, latitude 32.77713 degrees); thence easterly, leaving said road, to longitude 114.94770 degrees, latitude 32.77746 degrees; thence to longitude 114.94433 degrees, latitude 32.77629 degrees; thence to longitude 114.94401 degrees, latitude 32.77449 degrees; thence to longitude 114.94708 degrees, latitude 32.77218 degrees; thence to longitude 114.95472 degrees, latitude 32.76916 degrees; thence southwesterly to a line parallel with and 20.00 feet northeasterly of the northeasterly edge of the Sand Highway, at latitude 32.76222 degrees (approximate geographic position: longitude 114.96253 degrees, latitude 32.76222 degrees); thence northwesterly, parallel with and 20.00 feet northeasterly of the northeasterly edge of the Sand Highway, to the point of beginning.

Parcel 5, the southern closure as stipulated in the above mentioned case, contains 160 acres more or less, and is more particularly defined as follows:

Beginning at longitude 114.91161 degrees, latitude 32.71803 degrees; thence to longitude 114.91115 degrees, latitude 32.72076 degrees; thence to longitude 114.90694 degrees, latitude 32.72732 degrees; thence to longitude 114.90049 degrees, latitude 32.72711 degrees; thence to longitude 114.90507 degrees, latitude 32.71860 degrees; thence to longitude 114.90873 degrees, 32.71786 degrees; thence to point of beginning.

In all five areas, the longitudes and latitudes are based upon the North American Datum of 1983, and were derived from the Bureau of Land Management's Base Cartographic Data as depicted in the exhibits for the above-mentioned case. Longitudinal and latitudinal coordinates are informative calls and shall yield to the physical features where cited. More accurate positions will be collected and recorded when the official survey is performed.

This legal land description will be finalized after formal Land Survey Plats are completed.

Official government vehicles conducting monitoring or other legitimate governmental activities shall be allowed inside the closed areas.

For Additional Information Contact: Roxie Trost, BLM, El Centro Field Office, 1661 S. 4th Street, El Centro , CA 92243, telephone (760) 337 4400.

Greg Thomsen,

Area Manager.

[FR Doc. 00–29314 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-010-2822JL]

Emergency Closure to Motorized Vehicle Use on Public Lands Administered by the Bureau of Land Management (BLM), Worland Field Office, Within the Enos Complex Fire area, Hot Springs and Park Counties, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure.

SUMMARY: The Bureau of Land Management (BLM), Worland Field Office, hereby gives notice that, effective immediately, all tracks and other areas disturbed by fire-fighting equipment in the Enos Complex Fire area are closed to motorized vehicle use. The purpose for this emergency closure is to facilitate reclamation of the public lands disturbed or damaged during suppression of the 13,664-acre Enos Complex Fire.

An Emergency Fire Rehabilitation Plan has been prepared and approved for this burned area. Some of the rehabilitation actions include reseeding areas with native vegetation and constructing water bars on fire lines. Areas disturbed by fire-fighting equipment will be signed as "Closed to Motor Vehicle Use." Motorized vehicle travel on these disturbed areas and other areas affected by the fire could increase soil erosion, impair wildlife habitat, damage cultural resources, and jeopardize the rehabilitation efforts.

This emergency closure includes some roads and trails which existed before the fire.

EFFECTIVE DATES: This closure to motorized vehicle use is effective immediately and will remain in effect until modified or rescinded by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Darrell Barnes, Field Manager, Worland Field Office, P.O. Box 119, 101 South 23th Street, Worland, Wyoming 82401-0119. Telephone (307)347-5100.

SUPPLEMENTARY INFORMATION: The Enos Creek Complex Fire began with lightning strikes on July 27, 2000. The fires encompassed 13,664 acres of federal, state, and private lands. The purpose of this emergency closure is to eliminate unnecessary vehicle use while providing a minimum amount of access into the area for recreation. This order will help facilitate the area's rehabilitation from the fire. Vehicles traveling off-road in a burned area may damage reemerging plants, increase erosion, and spread noxious weeds.

The management of off-road vehicles is addressed in the Grass Creek Resource Management Plan (BLM, Sept. 1998).

The Enos Creek area is an important wildlife habitat and hunting area. The recent fire burned more then 90 percent of the area, leaving very little in the way of security cover for wildlife. Keeping vehicle traffic away from some areas for one or two growing seasons will help in the rehabilitation. There is also a need to allow some vehicle access so hunters can harvest big game animals. The Worland Field Office specialists will analyze the effects of this closure in the summer of 2001 and extend, modify, or rescind this order as deemed necessary by the authorized officer.

The following described BLM-administered lands are included in this Emergency Road Closure.

6th Principal Meridian

T. 46 N., R. 99 W., sec. 15, 17, and 18;
T. 45 N., R. 100 W., sec. 1, 2, 3 ,4, 5, 6, and 21;
T. 46 N., R, 100 W., sec. 13 through 29, 33, 34, and 35;
T. 47 N., R. 100 W., sec. 27, 28, 33, 24, and 35.

Authority for Off-Road Vehicle Management, closure and restriction orders is provided under 43 CFR subpart 8341.2 (a and b), and 8364.1. Violations of this management plan are punishable by a fine not to exceed $1,000 and (or) imprisonment not to exceed 12 months.

Dated: October 13, 2000.

Darrell Barnes,

Worland Field Manager.

[FR Doc. 00-29396 Filed 11-15-00; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-180-1430-EU; CACA-42586]

Notice of Realty Action: Direct Sale of Public Sale, Mariposa County, CA

SUMMARY: The Bureau of Land Management (BLM) examined the following described federal lands and through the NEPA process determined them suitable for disposal by direct sale, including the mineral estate with no known value, pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713 and 1719), at no less than fair market value.

Federal lands determined suitable for direct sale are described as:

Mount Diablo Meridian, California

T. 3 S., R. 16 E.,
Sec. 11: portion of the SESW.
Containing approximately 3.31 acres.

The lands are not required for federal purposes, and it has been determined that disposal of these parcels would be in the public's interest. The land is being offered by direct sale to Dr. Raymond Bessemer. It has been determined that the subject parcels contain no known mineral values. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests having no known value. The applicant will be required to pay a $50.00 non-refundable filing fee for conveyance of the said mineral interests. The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karen Montgomery, Realty Specialist, Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, California 95630; (916) 985-4474.

SUPPLEMENTARY INFORMATION: The public lands being offered to Dr. Raymond Bessemer are currently encumbered by Dr. Bessemer's improvements. The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days from the date of publication of this notice, or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

A patent, when issued, will contain the following reservations to the United States: 1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

Application Comments: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance of the land to the Field Manager, Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, California 95630. Objections will be reviewed by the Field Manager who may sustain, vacate, or modify this realty action.

Dated: November 6, 2000.

D.K. Swickard,

Field Manager, Folsom Field Office.

[FR Doc. 00-29394 Filed 11-15-00; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-025-01-1430-EU: G-1-0037]

Realty Action: Sale of Public Land in Harney County, Oregon

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of realty action, sale of public land.

SUMMARY: The following described public land in Harney County, Oregon, has been examined and found suitable for sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719), at not less than the appraised market value. All parcels being offered are identified for disposal in the Three Rivers Resource Management Plan.

All of the land described is within the Willamette Meridian.

Parcel No.	Legal description	Acres	Minimum acceptable bid	Bidding procedures	Designated bidders
OR-53952	T.27S., R.33E., Sec. 1, SW¼NW¼, W½SW¼; Sec. 2, S½NE¼, SE¼	360	$36,000	Competitive	None.
OR-54925	T.21S., R.31E., Sec. 32, SW¼SW¼. T.22S., R.31E., Sec. 5, lot 4.	80.63	5,200	Competitive	None.
OR-55316	T.18S., R.33½E., Sec. 33, S½NW¼.	80	8,000	Competitive	None.
OR-55317	T.20S., R.30E., Sec. 22, NE¼SE¼.	40	3,600	Modified Competitive.	Clyde Cowing and Marcia L. Eggleston—Trustee.
OR-55318	T.20S., R.30E., Sec. 23, SE¼NE¼.	40	3,600	Modified Competitive.	Clyde Cowing, Ronald Whiting and Marcia L. Eggleston—Trustee.
OR-55319	T.20S., R.35E., Sec. 8, W½NE¼, E½NW¼, NE¼SW¼..	200	20,000	Competitive	None.
OR-55320	T.20S., R.35E., Sec. 4, S½SW¼; Sec. 9, N½NW¼, SE¼NW¼, NE¼SW¼, S½SW¼..	320	28,800	Modified Competitive.	Thomas M. and Barbara Jo Howard, Sitz Ranch Partnership, and Conly L. and Joanne Marshall.
OR-55321	T.20S., R.35E., Sec. 17, NE¼SE¼.	40	3,600	Competitive	None.
OR-55322	T.20S., R.35E., Sec. 25, S½SW¼.	80	8,000	Competitive	None.
OR-55323	T.25S., R.31E., Sec. 1, lots 1 and 2.	79.79	7,200	Modified Competitive.	Denny Land and Livestock.
OR-55324	T.25S., R.34E., Sec. 20, SW¼.	160	14,400	Modified Competitive.	Bell A Grazing Cooperative.
OR-55325	T.25S., R.34E., Sec. 28, SW¼NW¼, W½SW¼.	120	10,800	Modified Competitive.	Bell A Grazing Cooperative.
OR-55326	T.25S., R.34E., Sec. 28, NE¼NE¼.	40	3,600	Modified Competitive.	Bell A Grazing Cooperative.
OR-55327	T.27S., R.35E., Sec. 7, lots 3, 4, NE¼SW¼; Sec. 18, lots 1, 2.	161.12	16,100	Competitive	None.
OR-55328	T.27S., R.35E., Sec. 17, N½NE¼.	880	7,200	Modified Competitive.	Norma and Maurice Davies—Trustee c/o M. Martin and Andrea L. Davies.
OR-55329	T.27S., R.35E., Sec. 21, SE¼NE¼, NE¼SE¼.	80	8,000	Competitive	None.
OR-55330	T.27S., R.35E., Sec. 30, SE¼SW¼, SW¼SE¼.	80	7,200	Competitive	None.

The following rights, reservations, and conditions will be included on the patents conveying the land:

All Parcels—A reservation for a right-of-way for ditches and canals constructed thereon by the authority of United States.

OR-53952—Patent will be subject to a right-of-way for road purposes granted to Tom Davies and a right-of-way for power line purposes granted to Harney Electric Cooperative.

OR-55316—The patent will be subject to a right-of-way for power line purposes granted to Idaho Power Company; a right-of-way for a buried telephone line purposes granted to CenturyTel of Eastern Oregon; and a right-of-way for public road purposes granted to Harney County.

OR-55321—The patent will be subject to a right-of-way for power line purposes granted to Idaho Power Company.

OR-55330—A quitclaim deed will be issued for this parcel. The deed will be subject to a previous reservation to Harney County for county road rights-of-way.

Access will not be guaranteed to any of the parcels being offered for sale, nor any warranty made as to the use of the property in violation of applicable land use laws and regulations. Before submitting a bid, prospective purchasers should check with the appropriate city or county planning department to verify approved uses.

All persons, other than the successful bidders, claiming to own unauthorized improvements on the land are allowed 60 days from the date of sale to remove the improvements.

All land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

Bidding Procedures

Competitive Procedures

The Federal Land Policy and Management Act and its implementing regulations (43 CFR 2710) provide that competitive bidding will be the general method of selling land supported by factors such as competitive interest, accessibility, and usability of the parcel, regardless of adjacent ownership.

Under competitive procedures the land will be sold to any qualified bidder submitting the highest bid. Bidding will be by sealed bid followed by an oral auction to be held at 2:00 p.m. PST on Wednesday, January 31, 2001, at the Burns District Office, Bureau of Land Management, Hwy 20 West, Hines, Oregon.

To qualify for the oral auction bidders must submit a sealed bid meeting the requirements as stated below. The highest valid sealed bid will become the starting bid for the oral auction. Bidding in the oral auction will be in minimum increments of $100. The highest bidder from the oral auction will be declared the prospective purchaser.

If no valid bids are received, the parcel will be declared unsold and offered by unsold competitive procedures on a continuing basis until sold or withdrawn from sale.

Modified Competitive Procedures

Modified competitive procedures are allowed by the regulations (43 CFR 2710.0–6(c)(3)(ii)) to provide exceptions to competitive bidding to assure compatibility with existing and potential land uses.

Under modified competitive procedures the designated bidders identified in the table above will be given the opportunity to match or exceed the apparent high bid.

The apparent high bid will be established by the highest valid sealed bid received in an initial round of public bidding. If two or more valid sealed bids of the same amount are received for the same parcel, that amount shall be determined to be the apparent high bid. The designated bidders are required to submit a valid bid in the initial round of public bidding to maintain their preference consideration. The bid deposit for the apparent high bid(s) and the designated bidders will be retained and all others will be returned.

The designated bidders will be notified by certified mail of the apparent high bid. Where there are two or more designated bidders for a single parcel, they will be allowed 30 days to provide the authorized officer with an agreement as to the division of the property or, if agreement cannot be reached, sealed bids for not less than the apparent high bid. Failure to submit an agreement or a bid shall be considered a waiver of the option to divide the property equitably and forfeiture of the preference consideration. Failure to act by all of the designated bidders will result in the parcel being offered to the apparent high bidder or declared unsold, if no bids were received in the initial round of bidding.

Unsold Competitive Procedures

Unsold competitive procedures will be used after a parcel has been unsuccessfully offered for sale by competitive or modified competitive procedures.

Unsold parcels will be offered competitively on a continuous basis until sold. Under competitive procedures for unsold parcels the highest valid bid received during the preceding month will be declared the purchaser. Sealed bids will be accepted and held until the second Wednesday of each month at 2:00 p.m. PST when they will be opened. Openings will take place every month until the parcels are sold or withdrawn from sale.

All sealed bids must be submitted to the Burns District Office, no later than 2 p.m. PST on Wednesday, January 31, 2001, the time of the bid opening and oral auction. The outside of bid envelopes must be clearly marked with "BLM Land Sale," the parcel number and the bid opening date. Bids must be for not less than the appraised market value (minimum bid). Separate bids must be submitted for each parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior—BLM for not less than 20 percent of the amount bid. The bid envelope must also contain a statement showing the total amount bid and the name, mailing address, and phone number of the entity making the bid. A successful bidder for competitive parcels shall make an additional deposit at the close of the auction to bring the total bid deposit up to the required 20 percent of the high bid. Personal checks or cash will be acceptable for this additional deposit only.

Federal law requires that public land may be sold only to either: (1) Citizens of the United States 18 years of age or older; (2) corporations subject to the laws of any state or the United States; (3) other entities such as associations and partnerships capable of holding land or interests therein under the laws of the state within which the land is located; or (4) states, state instrumentalities or political subdivisions authorized to hold property. Certifications and evidence to this effect will be required of the purchaser prior to issuance of conveyance documents.

Prospective purchasers will be allowed 180 days to submit the balance of the purchase price. Failure to meet this timeframe shall cause the deposit to be forfeited to the BLM. The parcel will then be offered to the next lowest qualified bidder, or if no other bids were received, the parcel will be declared unsold.

A successful bill on a parcel constitutes an application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976. In addition to the full purchase price, a nonrefundable fee of $50 will be required from the prospective purchaser for purchase of the mineral interests to be conveyed simultaneously with the sale of the land.

DATES: On or before January 2, 2001, interested persons may submit comments regarding the proposed sale to the Three Rivers Resource Area Field Manager at the address described below. Comments or protests must reference a specific parcel and be identified with the appropriate serial number. In the absence of any objections, this proposal will become the determination of the Department of the Interior.

ADDRESSES: Comments, bids, and inquiries should be submitted to the Three Rivers Resource Area Field Manager, Bureau of Land Management, HC 74–12533, Hwy 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this public land sale is available on the internet at *http://www.or.blm.gov/Burns* or may be obtained from Craig M. Hansen, Field Manager; Rudy Hefter, Supervisory Natural Resource Specialist; or Holly LaChapelle, Resource Assistant, Three Rivers Resource Area at the above address, phone (541) 573–4400.

Dated: November 7, 2000.

Rudolph J. Hefter,

Supervisory Natural Resource Specialist.

[FR Doc. 00–29117 Filed 11–15–00; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1310–DB]

Draft Resource Management Plan Amendment (RMPA) and Environmental Impact Statement (EIS) for Federal Fluid Minerals Leasing and Development in Sierra and Otero Counties, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability and public hearings.

SUMMARY: Pursuant to 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, Council on Environmental Quality (CEQ) regulations (40 CFR 1500–1508), and the Federal Land Policy and Management Act (FLPMA) of 1976, the BLM Las Cruces Field Office (through Dames and Moore, Inc., a qualified consultant) has prepared a Draft RMPA/EIS. The RMPA/EIS addresses Federal fluid minerals (oil, gas, and geothermal) leasing and subsequent activities (*e.g.*, exploration, development, or production) in Sierra and Otero Counties, New Mexico.

DATES: Written comments on the Draft RMPA/EIS must be postmarked on or before February 20, 2001. Public hearings will be held at the times and places listed under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Written comments should be sent to: Tom Phillips, RMPA/EIS Team Leader, BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, NM 88005.

FOR FURTHER INFORMATION CONTACT: Tom Phillips, RMPA/EIS Team Leader, (505) 525–4377.

SUPPLEMENTARY INFORMATION: Public hearings will be held at the following times and locations.

Date	Time	City	Location
January 9, 2001	7:00 p.m.	Roswell, New Mexico	Sally Port Inn, 2000 N. Main St.
January 10, 2001	7:00 p.m.	Alamogordo, New Mexico.	County Commission Chambers, 1000 New York Ave.
January 11, 2001	7:00 p.m.	Truth or Consequences, New Mexico.	County Commission Chambers, 100 N. Date St.

Both oral and written comments may be given at the hearings. Written comments may also be submitted to the BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, NM 88005 on or before February 20, 2001.

A time limit for oral testimony at the hearings will be established by the presiding hearings officer, based on the number of people wishing to make comments at each hearing. Written text of prepared comments may be filed at the hearing whether or not the speaker has been able to complete the oral delivery in the allotted time.

All oral and written comments on the adequacy of the Draft RMPA/EIS will receive consideration in the Proposed RMPA/Final EIS.

Copies of the Draft RMPA/EIS have been distributed to a mailing list of identified interested parties. Single copies of the Draft RMPA/EIS may be obtained from the BLM Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico.

Public reading copies are available for review at public and university libraries in Las Cruces, Alamogordo, Truth or Consequences, Roswell, and Santa Fe, New Mexico and El Paso, Texas.

The RMPA amends the 1986 RMP for the White Sands Resource Area. The objective of the RMPA is to determine (1) which lands overlying Federal fluid minerals are suitable and available for leasing and subsequent development and (2) how those leased lands will be managed. The EIS identifies the potential impacts that alternative plans for fluid minerals leasing and subsequent activities could have on the environment and identifies appropriate measures to mitigate those impacts.

Dated: November 7, 2000.

Amy L. Lueders,

Field Manager, Las Cruces.

[FR Doc. 00–29315 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–942–5700–BJ–044B]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Lance J. Bishop, Chief, Branch of Geographic Services, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room W–1834, Sacramento, CA 95825; (916) 978–4310.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, California.

Humboldt Meridian, California

T. 5 N., R. 1 W.

Supplemental Plat of a portion of the south half of sections 31 and 32, accepted June 27, 2000, to meet certain administrative needs of the BLM, Arcata Field Office.

Ts. 4 and 5 N., R. 1 W.

Dependent resurvey, corrective resurvey, and survey Group 1313, accepted June 27, 2000, to meet certain administrative needs of the BLM, Arcata Field Office.

T. 3 S., R. 2 W.

Dependent resurvey and survey under Group 1302 accepted July 13, 2000, to meet certain administrative needs of the BLM, Arcata Field Office.

T.3 N., R.1 E.

Retracement, corrective dependent resurvey and survey, on two sheets, under Group 1300 accepted September 26, 2000, to meet certain administrative needs of the BLM, Arcata Field Office.

Mount Diablo Meridian, California

T. 27 S., R. 9 E.

Dependent resurvey, and subdivision of sections 1, 12, and 13, under Group 1220, accepted February 23, 2000, to meet certain administrative needs of the BLM, Bakersfield Field Office.

T. 26 S., R. 35 E.

Dependent resurvey and metes-and-bounds survey, on two sheets, under Group 1318, accepted March 3, 2000, to meet certain administrative needs of the BLM, Bakersfield Field Office.

T. 32 N., R. 5 W.

Supplemental plat of a portion of the northwest quarter of section 32, accepted March 21, 2000, to meet certain administrative needs of the BLM, Redding Field Office.

T 21. S., R. 5 E.

Metes-and-bounds survey of tract 38, (Group 1179) accepted March 27, 2000, to meet certain administrative needs of the USDA, Forest Service, Los Padres National Forest.

T. 22 S., R. 38 E.

Supplemental plat of the northwest quarter of section 31, accepted March 29, 2000, to meet certain administrative needs of the BLM, California Desert District, Ridgecrest Field Office.

T. 33 N., R. 9 W.

Supplemental plat of the southeast quarter of section 6, accepted April 4, 2000, to meet certain administrative needs of the BLM, Redding Field Office.

T. 16 N., R. 16 E.

Supplemental plat of the southeast quarter of the northeast quarter section 28 (Group 1314), accepted April 12, 2000, to meet certain administrative needs of the USDA, Forest Service, Tahoe National Forest.

T. 29 N., R. 3 W.

Dependent resurvey and the metes-and-bounds survey of tracts 38 and 39 (Group 1316), accepted April 13, 2000, to meet certain administrative needs of the BLM, Redding Field Office.

T. 14 S., R. 24 E.

Dependent resurvey and metes-and-bounds survey (Group 1341), accepted June 21, 2000, to meet certain administrative needs of the BLM; Bakersfield Field Office.

T 10 S., R. 23 E.,

Supplemental Plat of the northeast quarter of section 24, accepted July 19, 2000, to meet certain administrative needs of the USDA, Forest Service, Sierra National Forrest.

T. 18 S., R. 3 E.

Dependent resurvey and metes-and-bounds survey (Group 1335), accepted September 11, 2000, to meet certain administrative needs of the USDA, Forest Service, Los Padres National Forest.

T. 35 N., R. 1 W.

Dependent resurvey and subdivision of section 29 (Group 1268), accepted September 18, 2000, to meet certain administrative needs of the USDA, Forest Service, Shasta Trinity National Forest.

T. 1 S., R. 31 E.

Dependent resurvey, subdivision and metes-and-bounds survey, accepted September 18, 2000, to meet certain administrative needs of the BLM, Bishop Field Office.

T. 29 N., R. 3 W.

Supplemental Plat, accepted October 5, 2000, to meet certain administrative needs of the BLM, Redding Field Office.

San Bernardino Meridian, California

T. 9 N., R. 13 W.

Supplemental plat of the northeast of section 15, accepted February 11, 2000, to meet certain administrative needs of the BLM, California Desert District, Ridgecrest Field Office.

T. 15 S., R. 1 E.

Dependent resurvey and subdivision (Group 1291), accepted April 25, 2000, to meet certain administrative needs of the BLM, California Desert District, Palm Springs-South Coast Field Office.

Ts. 11 & 12 N., R. 15 W.

Dependent resurvey and metes-and-bounds survey, two plats (Group 1304), accepted July 13, 2000, to meet certain administrative needs of the BLM, Bakersfield Field Office.

T. 5 N., R. 24 E.

Supplemental plat of tract 38 and the protraction of unsurveyed sections, accepted September 6, 2000, to meet certain administrative needs of the BLM, Needles Field Office.

T. 1 N., R. 14 W.

Mete-and-bounds survey in fractional section 31, accepted September 6, 2000, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

T., 4 N., R. 14 W.

Amended plat of the dependent resurvey and subdivision (Group 1200), accepted September 6, 2000, to meet certain administrative needs of the USDA, Forest Service, Angeles National Forest.

T. 9 S., R. 22 E.

Dependent resurvey subdivision, meanders and metes-and-bounds survey (Group 1346), accepted September 29, 2000, to meet certain administrative needs of the BLM, El Centro Field Office.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: October 24, 2000.

Lance J. Bishop,

Chief, Branch of Geographic Services.

[FR Doc. 00–29393 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for its technical training program nomination form (OSM 105) and request for payment of travel and per diem form (OSM 140). The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by December 18, 2000, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to approve the collection of information for its technical training program nomination form (OSM 105) and request for payment of travel and per diem form

(OSM 140). OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information will be placed on the As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on August 22, 2000 (65 FR 51021). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Technical Training Program Non-Federal Nomination Form (OSM 105) and Request for Payment of Travel and Per Diem Form (OSM 140).

OMB Control Number: 1029–XXXX.

Summary: The information is used to identify and evaluate the training courses requested by students to enhance their job performance, to calculate the number of classes and instructors needed to complete OSM's technical training mission, and to estimate costs to the training program.

Bureau Form Numbers: OSM 105, OSM 140.

Frequency of Collection: Once.

Description of Respondents: State and Tribal regulatory and reclamation employees and industry personnel.

Total Annual Responses: 1,600.

Total Annual Burden Hours: 134 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov.*

Dated: November 8, 2000.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–29298 Filed 11–15–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Abandoned Mine Land Reclamation Program Guidelines

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) proposes to amend the Abandoned Mine Land (AML) Reclamation Program Guidelines published on December 30, 1996 (61 FR 68777). The proposed changes will make the guidelines easier to read and understand. The changes also incorporate new procedures found in the AML Enhancement Rule published February 12, 1999 (64 FR 7482). Comments are requested.

DATES: *Written comments:* We will accept written comments on the proposed changes until 5 p.m., Eastern time, January 16, 2001.

ADDRESSES: *Written comments:* You may submit your comments by mail, or hand-deliver comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue NW, Washington, DC 20240. You may also submit comments to OSM via the Internet at: *osmrules@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Gene Krueger, Chief, Division of Reclamation Support, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW, Washington, DC 20240; Telephone (202) 208–2937. E-mail: *gkrueger@osmre.gov.*

SUPPLEMENTARY INFORMATION: The AML Reclamation Program Guidelines give general guidance to States, Indian tribes, the U.S. Department of Agriculture, and OSM in the administration of reclamation activities. This includes activities carried out under programs authorized by Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These guidelines are considered to be statements of policy and do not set new legal requirements or obligations and could change at our discretion. Section B.5a–d of the guidelines has been revised to reflect the new procedures in the AML Enhancement Rule and the complete document is set forth below:

AML Reclamation Program Guidelines for Reclamation Programs and Projects

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A. Definitions

1. Abandoned Property

Real and personal property, associated with past mining activities, forsaken or deserted by an owner. This includes real estate, structures, and equipment.

a. *Abandoned Structures*—Abandoned permanent improvements or fixtures firmly attached to the land and considered as part of real property. Abandoned structures include but are not limited to coal tipples, coal washers, storage and grading facilities, loading docks, rail spurs, concrete foundations, dams, reservoirs, and bridges. Other items such as crushers, elevators, bins, loaders, conveyors and similar equipment are within this definition if firmly attached to the land.

b. *Abandoned Equipment*—Abandoned movable items not attached to the land. Such items are considered as personal property and include equipment and dismantled machinery not attached to the land and which could be moved. These items include but are not limited to shovels, scrapers, tires, machinery parts, trailers, trucks, electrical substations on skids, feeders, and loaders.

c. *Disposal*—The sale, federal use, demolition, removal, and the burning and burial of scrap or other debris resulting from abandoned structures and equipment.

2. Act

The Surface Mining Control and Reclamation Act of 1977 enacted as Public Law 95–87 (30 U.S.C. 1201 *et seq.*), as amended.

3. Administering Agency

The agency responsible for carrying out a reclamation program or project. This includes OSM for federal reclamation projects; United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) for the Rural Abandoned Mine Program; designated State reclamation agencies for projects carried out under an approved State Reclamation Plan; and Indian tribes for projects carried out under an approved Indian Reclamation Plan.

4. Eligible Lands

Land and water which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1997, and for which there is no continuing reclamation responsibility. Provided, however, that lands and water damaged by coal mining operations after that date and on or before November 5, 1990, may also be eligible for reclamation if they meet the requirements specified in 30 CFR 874.12(d) and (e). Eligible lands and water for noncoal reclamation purposes are those sites that meet the eligibility requirements specified in Section 409 of the Act or, following certification of the completion of all know coal problems, those in Section 411 of the Act of 30 CFR 875.14. For additional eligibility requirements for water projects, see 30 CFR 874.14, and for lands affected by remining operations, see Section 404 of the Act.

5. Emergency

A sudden dangerous condition or impairment that constitutes a situation with a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program procedures.

6. Hydrologic Balance

The relationship between the quality and quantity of water inflow to water outflow from an abandoned mine land site. The relations hip includes water storage and transfer within hydrologic units as they now exist or may have existed.

7. Toxic Materials

Earth materials or wastes resulting from mining operations which, if acted upon by air, water, or micro-biological processes are likely to produce chemical or physical conditions in soils or water that are harmful to the animal and plant lift or water use.

B. Program Considerations

1. Land, Water, or Mineral Rights Required for Reclamation

a. *Consent Requirements and Responsibility.* In addition to the rights of entry required by 30 CFR part 877, other consents required by the specific type of reclamation program should be secured. In water limited areas reclamation programs that propose to restore or alter water quality or quantity should not be undertaken until the appropriate water right authorizations are secured. If the mineral estate is severed from the surface estate, consents should be secured from both parties. All necessary consents should be secured for a time period sufficient to complete the reclamation activities. The administering agency has the responsibility to make certain that no reclamation work is carried out without such authorizations.

b. *Written Consent Versus Police Power.* Written consent from the owner of record and the tenant holding a lease or his authorized agent should be the preferred means for securing agreements to enter lands in order to carry out reclamation work. Entry by use of police power is restricted to those reclamation projects that will protect public health, safety, and general welfare as authorized under Sections 407(a), 409(c), and 410 of the Act. They should be undertaken only after all possibilities of securing written consents have been exhausted.

c. *Monitoring and Maintenance.* Written consent by the landowner should include considerations for monitoring and maintenance, including rights of entry as necessary.

d. *Property Acquisition.* Acquisition of property may be undertaken only under the conditions specified in Sections 407 and 409 of the Act.

2. Jurisdictional Responsibilities

a. *Reclamation Program Legal Requirements.* The administering agency should make certain of compliance with all applicable Federal, State, Tribal, and local laws and coordination with the appropriate agencies as necessary.

b. *Environmental Evaluation Requirements.* Compliance with the National Environmental Policy Act of 1969 (NEPA) is mandatory for every proposed AML reclamation project. Authorization by the Council on Environmental Quality (CEQ), at 40 CFR 1506.11, to abate emergency conditions without preparing an environmental

document does not relieve us or the States/Tribes of this responsibility.

(1) OSM and the States are authorized to act where emergency circumstances at the site require immediate abatement action if the environmental document cannot be completed prior to the initiation of action. The action taken must be limited to that necessary to control the immediate impacts of the emergency.

(2) Actions which remain to be taken at the site of an emergency after the abatement of the immediate impacts require the preparation of an environmental document.

c. *Interstate Coordination Requirements.* Where reclamation is proposed that may affect bordering States or other jurisdictional authorities, the administering agency should coordinate planning and implementation of these projects with those entities.

3. Selection Criteria (Non-Emergency)

a. *Reclamation Site Ranking.* Procedures for selecting non-emergency sites for reclamation should use weighing factors to rank the proposed sites in accordance with priorities set in Section 403 of the Act. Non-coal sites must comply with Section 409 or 411 as appropriate. Negative weights should be considered for negative impacts resulting from the proposed project. Generally, reclamation of lower priority projects should not begin until all known higher priority projects have been completed, are in the process of being reclaimed, or have been approved for funding by the Secretary. Lower priority projects, or contiguous work, may be undertaken in conjunction with high priority projects in accordance with these guidelines.

(1) The administering agency may give priority consideration to reclamation projects where:

(a) The landowner(s) consent to participate in post reclamation maintenance activities of the area;

(b) Reclamation provides many benefits to the landowner(s) and where those benefits have a greater cumulative value than other projects;

(c) Reclamation provides offsite public benefits; and/or,

(d) Acid Mine Drainage (AMD) is a major problem and/or the Appalachian Clean Streams Initiative (ACSI) can be used in restoration of streams polluted with AMD.

b. *Reclamation Considerations.* The following items should be considered in determining whether a non-emergency site should be reclaimed.

(1) The lands proposed for reclamation are eligible as defined by Section 404, 409, or 411 of the Act.

(2) Problems associated with the site can be abated by using current available technology or horizon technology with a high probability of success to prevent or minimize present or future negative effects. When necessary to determine which technology is best suited to a particular problem area, test plots and/or field trials are allowed. Such activities are appropriate and do not constitute "research" as prohibited by the Act.

(3) Reclamation can be carried out in a manner that minimizes maintenance to achieve a self-sustaining reclamation solution. Self-sustaining implies reclamation which is permanent and stable under the prevailing environmental and land-use conditions using current technology. Projects which require continuous maintenance and/or operating costs should be undertaken only if a commitment exists to bear these indefinite costs.

(4) Reclamation activities can be planned in a manner that is cost effective and agreeable with the proposed post reclamation land use as intended by the landowner(s).

(5) Reclamation activities and post reclamation land use is cost effective and agreeable with surrounding land uses, complies with local, State, Tribal, and Federal requirements, and is acceptable to the community involved.

(6) If the project area is to be remined or developed in the foreseeable future and these activities will eliminate the adverse effects of past mining, reclamation should only be undertaken where the offsite adverse impacts from the affected area are so severe as to cause significant danger to public health and safety or to the environment if not abated before the proposed remining or development takes place.

c. *Reclamation Extent.* The amount of reclamation performed on a site depends upon the priority, funding available, and technology available for reclaiming the site. When it is cost effective to do so, consideration should be given to lower priority problems in the reclamation plan when contracting for the elimination of a high priority problem. The original purpose of the reclamation should be to address the higher priority problems. Factors that should be considered in determining the amount of reclamation to be done at a site include the following:

(1) The total area of affected land and water;

(2) Uniformity/diversity of the problem(s) over the entire site;

(3) Minimum reclamation needed to restore the site and additional low priority work needed, if any;

(4) Availability of funds;

(5) Cost effectiveness of the proposed work;

(6) Proposed post reclamation land use;

(7) Onsite, offsite and multiple use benefits;

(8) Post reclamation maintenance required and landowner participation in that maintenance;

(9) Accommodating landowner(s) land use and treatment requests, if possible without incurring additional costs above that required for the minimum reclamation needed; and,

(10) The possibility of remining.

d. *Cooperative Efforts.* In addition to the landowner consent requirements described in Section B. Part 1 of these guidelines, a maintenance agreement between the administering agency and the landowner(s) may be included as part of the reclamation plan to make certain the continued success of the reclamation project. Estimated costs as well as financial and administrative responsibilities should be recognized in any agreement.

e. *Joint Projects.* Joint undertakings between the administering agency and the landowner(s) or other local, State, Tribal, or Federal agencies are supported and encouraged.

4. Emergency Projects

a. *Authority for Emergency Reclamation.* Authorities and requirements for rights of entry to carry out emergency reclamation projects are contained in Section 410 of the Act.

b. *Emergency Project Considerations.*

(1) Emergencies are unlike Priority 1 projects by interpretation of the phrases "sudden danger" and "high probability of substantial physical harm" in the definition of "emergency" contained in these guidelines.

(2) Justification for emergency action must be based on whether immediate action is crucial to remove the danger of harm to persons. The time element is referenced by the phrase "before the danger can be abated under normal program operation procedures." This means the danger is imminent and time is not available for normal project contractual procedures.

(3) A limited amount of non-emergency work may be conducted in conjunction with emergency abatement if such work is cost effective in reclaiming the entire project site.

c. *Emergency Project Examples.* The following list shows examples of sudden situations with a high probability of causing substantial physical harm to the health, safety, and general welfare of people.

(1) Subsidence suddenly occurring in or near populated areas or roadways.

(2) Mine water "blow-outs" in or near highly used public areas.

(3) Landslides caused by movement of spoil material or mass movement due to drainage or seepage from abandoned coal mines threatening to destroy homes and businesses or block roads and stream channels.

(4) Actual or potential failure of unstable coal refuse impoundments, processing waste banks, or abandoned sediment control structures caused by unusual precipitation events significantly risking downstream populated areas.

(5) Mine or coal refuse fires that harm the health or safety of residents in populated areas.

d. *Abatement Procedures.*

(1) Reclamation procedures are site specific and often cannot be determined until after onsite inspection and evaluation of the nature of the emergency, number of people affected, resources available, and existing time restrictions.

(2) Emergency reclamation need not resemble final restoration. The goal of emergency reclamation is to stabilize the problem and remove the danger to the public. Additional reclamation, to fully reclaim the area, may be carried out under regular reclamation programs at a later date. Limited reclamation may also be performed in connection with emergency work if cost effective as noted above at part 4.b.(3).

5. Incidental Recovery of Coal in Connection With Reclamation Activities

a. *Active Mining Permit Requirements.* Coal removed and sold must be "incidental" to the reclamation project, *i.e.*, physically necessary to remove in order to address the identified health, safety, or environmental problem of the approved AML construction project. This concept conforms to existing regulations at 30 CFR 707.5 Coal extracted beyond that which is determined to be incidental will be subject to Title V permitting provisions.

b. *Resource recovery potential.* AML construction is considered government financed construction in accordance with 30 CFR 707.5. Therefore, whenever coal is to be recovered incidental to reclamation, and the government contribution is less than 50 percent of the cost of reclamation, it may be sold and the proceeds kept by the contractor.

c. *Substantial deposits of incidental coal.* For sites with substantial deposits of incidental coal, we expect that AML contractors will reflect the anticipated sale of such coal through a lowered project bid price. The lowered project bid price would, in turn, reduce the government's share of the total cost of the project. As a result, less public funding will be required for these sites to accomplish the same level of AML reclamation. By reducing the government's share of the cost of reclamation, AML money becomes available for other AML reclamation projects that would otherwise not be funded. The contractor makes a profit, the government saves money—and most important of all—additional abandoned sites that we could not afford to reclaim in the past are reclaimed.

d. *Less than 50 percent financing.* Undertaking AML projects that use less than 50 percent government-financing will not be mandatory for States or Indian Tribes; they may choose not to participate in this aspect of AML reclamation. However, State and Tribal programs that do participate will be responsible to ensure that the provisions of this rule are applied appropriately and not abused.

6. Abandoned Structures and Equipment

a. *Investigation and Report.*

(1) The administering agency should perform an onsite investigation of abandoned structures or equipment and encourage the landowner(s) to recover any salvage value by disposal before the start of any reclamation project.

(2) Upon completion of the onsite investigation, a report must be prepared by the administering agency which addresses the following:

(a) The type, quantity, age, and apparent condition of all abandoned structures or equipment;

(b) The structural soundness, visual quality, historical significance, effect on proposed reclamation activities, and land uses in the area. The structural soundness of the structure should be evaluated in relation to public health, safety, general welfare, and the post reclamation;

(c) The disposal or retention of the structures or equipment in accordance with local, State, Tribal and Federal laws; and,

(d) The recommended methods to remove the safety hazards associated with structures or equipment that are retained on the reclaimed site.

b. *Ownership Rights.* Based on the investigation and report, the administering agency is responsible for determining the disposal of the abandoned structures or equipment and securing consent to dispose of or change such structures.

c. *Disposal Revenues or Benefits.* Any revenues or benefits received from the sale or use of abandoned structures or equipment should be used to offset the cost of reclamation or deposited to the Fund pursuant to Section 401(b)(4) of the Act.

7. Borrow and Disposal Areas

a. *Site Selection.* The borrow and disposal areas created by reclamation activities should be subject to and conducted in accordance with applicable local, State, Tribal, or Federal reclamation requirements. Borrow and disposal areas should be located on the site of the reclamation project, if possible. Offsite borrow and disposal areas should be used only when no onsite area is available and it is necessary to protect the health and safety of the public. In addition, offsite areas may be used if they provide an area more suitable for reclamation and less prone to constitute a hazard in itself, produce an improved land use, or protect the environment.

b. *Adverse Impacts.* Adverse impacts of the selected areas should be minimized by disturbing the smallest possible area; providing adequate drainage, dust, and erosion control measures; protecting historic and cultural values; protecting visual esthetics; protecting fish and wildlife values; protecting the health and the safety of the community and the public; and reclaiming the borrow and disposal area after termination of the project.

8. Program and Project Evaluation

a. *General Evaluation Considerations.* Reclamation activities are to be evaluated on a regular basis to determine the effectiveness of the program/project in reclaiming abandoned lands. The objective is to identify those abatement control methodologies that have been effective over time and those with demonstrated deficiencies that need to be improved or changed. Project evaluation measures the success or failure of the applied techniques while program evaluation determines the effectiveness of the overall program, including regulations and policies. Evaluation efforts include, but are not limited to, recording accomplishments, making onsite reviews before, during, and after reclamation, and analyzing fund management.

b. *Evaluation Report.* The administering agency will prepare a report on its findings and recommendations. Recommendations should be used to change program operations on future reclamation activities so that deficiencies will not

recur. If requested, the report should be made available to other agencies in order to share information and improve the AML program nationwide.

9. Maintenance of Reclamation Work

a. Reclamation should be done in a manner to minimize or eliminate continued maintenance and maintenance requirements. Long term maintenance requirements should be identified during the planning and design stages. These requirements must be technically and economically possible and should be developed in cooperation with the landowner(s) and/or appropriate agencies through formal agreement. Maintenance plans should include maintenance requirements, inspection schedules, technical assistance needed, and funding requirements.

10. Non-Coal Projects

a. *Guideline Applicability.* States and Indian tribes with approved reclamation plans may undertake non-coal reclamation projects under the specific provisions in Section 409 of the Act or after certification that all coal related problems have been reclaimed, as authorized in Section 411 of the Act.

b. *Priorities Under Section 409.* Non-coal projects to be reclaimed under Section 409 of the Act must be at the request of the Governor of the State or the governing body of an Indian tribe. They must comply with the priorities stated in Section 403(a)(1), except the term "coal" does not apply. The reclamation must be for the protection of public health, safety, general welfare, and property from extreme danger of negative mining practices.

c. *Priorities Under Section 411.* Noncoal projects to be reclaimed under Section 411 of the Act may not proceed until the State/Tribe has certified that all coal problems have been resolved. Planning and design work for reclamation of noncoal projects may commence prior to completion of all coal projects.

C. Site Considerations

1. Mine Drainage

a. *General Considerations.* The reclamation plan should attempt to minimize or control mine drainage and include procedures to treat impounded waters containing toxic materials before release. At-source control measures are preferred over long-term treatment methods to eliminate or minimize maintenance.

b. *At-Source Control Measures.* Controlling or minimizing mine drainage at its source can be accomplished by any or all of the following techniques:

(1) Mine-sealing techniques, including grout curtains and slurry trenching. Factors to be considered when planning to seal mines are the potential to develop hydrostatic heads, the accessibility of the area, and the integrity of the surrounding geologic formations;

(2) Infiltration control and water diversion. Factors to be considered include topography, control of surface water, effects on ground water, the control of water passage through openings, and the storm event design; and/or,

(3) Daylighting, the surface mining procedures and excavation processes used to expose underground mine works for partial or complete removal of the remaining mineral underlying the surface. Factors to be considered include the depth of overburden, marketability of the mineral, and safety measures.

c. *Treatment Measures.* Secondary treatment of mine drainage can be carried out by the addition of neutralizing agents. Permanent treatment facilities should be designed to minimize operation and maintenance costs and should only be considered if no other means exists to abate the problem. Written assurance, from the landowner or any other interested party, should be obtained to assure that the treatment facilities will be maintained after appropriations for the Abandoned Mine Land Program cease.

d. *Coal Refuse Piles and Coal Waste Embankments.* Methods of reclaiming land containing coal refuse, coal wastes, or abandoned workings include, but are not limited to:

(1) Removing the coal refuse or coal waste to an environmentally acceptable site, subject to all appropriate approvals;

(2) Burying the refuse or waste, diverting water away from or around the reclaimed area, whenever possible, or layering the refuse material with clay or other unpierceable material, when practical, to prevent water infiltration and contamination; and,

(3) Treating the refuse pile in place by:

(a) Diverting water around the coal refuse and/or waste;

(b) Collecting and conveying drainage from the refuse pile for safe disposition (an approved water pollution control facility should be used if needed to meet quality standards);

(c) Grading and contouring waste structures to drain water off the disposal site;

(d) Covering the refuse with a suitable thickness of nontoxic or nonacid-forming material or treating the refuse with lime or other material to prevent acid or other toxic drainage; or

(e) Any combination of the above treatments.

2. Active Slides and Slide-Prone Areas

a. *Site Evaluation Factors.* Factors that should be considered on a case-by-case basis in the evaluation of slides or slide-prone areas include the following:

(1) The topography of the ground surface as an indication of past landslide activity and potential instability. Topographic data collected should include contour maps at 2 to 5 foot intervals, surface drainage characteristics, locations of ponded surface water, and slope profiles;

(2) The geology of the subsurface. Rock formations and geologic structures including folds, faults, joints, and shear zones, should be identified whenever possible. This information may be useful in comparing the landslide potential of various areas;

(3) The soil or spoil material. Description of the slide-prone material should include its texture, permeability, and engineering properties as well as the related soil-rock ratios;

(4) Ground water sources. Springs and seeps, dump areas, adits, auger holes, drill holes, and coal seams should be identified;

(5) Vegetative cover. Vegetation will affect the stability of the slide or slide-prone area. Deep masses of roots may provide sufficient reinforcement to distort the geometry of the slide and trees with deep tap roots may curtail severe movement. Vegetative cover within a landslide area should be compared to that within the surrounding area and with that present at known landslide areas;

(6) Other physical factors. These include timber coverage or lack of it on slopes, parent material and volume of spoil, proximity to other slides, or other data specific to the slide area which may be helpful in designing the best structural specifications for stabilizing the area; and,

(7) U.S. Geological Survey slide-prone maps, U.S. Department of Agriculture soil maps, and other related data.

b. *Remedial Measures.* Reclamation and stabilization of slide areas may be achieved by one or more of the following methods:

(1) Removing unstable material or by terracing;

(2) Installing surface and/or subsurface drainage such as rip-rap channels, french drains, pumping wells, etc.;

(3) Installing support and reinforcement systems such as retaining walls, gabions, vertical pilings, etc.; and,

(4) Revegetation.

3. Erosion and Sedimentation

a. *Erosion and Sediment Control Considerations.* Erosion and sediment control measures should be designed in accordance with Federal, State and local laws and should do the following:

(1) Minimize erosion from the reclamation site and adjacent lands, minimize water pollution from sediment, acid drainage, and other toxic materials, and provide conditions suitable for the planned land use;

(2) Maintain the soil resource within acceptable soil loss limits. Allowable sheet and rill erosion rates should be equal with the soil resulting from reclamation. Information relative to allowable soil loss limits may be obtained from the local Natural Resource Conservation Service Office;

(3) Expose the least amount of land at any one time, with the more hazardous areas exposed for the shortest time and during the season when extreme rainfall is least likely to occur;

(4) Complete reclamation activities so revegetation can take place at the most advantageous time of year; and,

(5) Control foot and vehicular traffic and grazing until vegetation is established.

b. *Erosion Control Practices.* Well established vegetation is generally the most cost-effective means of erosion control. Other methods may include one or more of the following, in conjunction with vegetation, to achieve temporary and/or permanent erosion control.

(1) Mulches may be used for temporary erosion control and in some cases stabilizing agents such as gravel, stone, and concrete blocks may be used for permanent protection.

(2) Permanent structural measures may be used to turn runoff, reduce slope length, and provide for an effective runoff disposal system.

(3) Temporary vegetation and/or structural measures may be needed for erosion control during reclamation. Provisions should be made to remove the temporary control measures and stabilize the area when they are no longer needed.

c. *Sediment Trapping Practices.* When erosion controls are incapable of preventing excessive sediment buildup, either during reclamation or permanently, the excess sediment should be controlled to prevent offsite contamination.

(1) Temporary sediment control measures such as filter strips, sediment traps, and sediment basins, should be stabilized and maintained during their planned life.

(2) Permanent sediment basins should be maintained and the sediment removed when it accumulates to the design level. The use of permanent sediment basins should be minimized because of the continuing maintenance responsibility.

4. Vegetation

a. *Existing Vegetation Inventory and Evaluation.* The administering agency should complete an inventory and evaluation of existing vegetation and site conditions prior to developing the design and specifications for a project. The permanent vegetation selected to cover the reclaimed mine land should be compatible with the site characteristics and the intended land use of the reclaimed and surrounding land and provide adequate erosion control.

b. *Vegetative Requirements.* The vegetation portion of the project design and specifications should be developed considering the requirements itemized for each of the following cases.

(1) In areas where the present plant species are inadequate or undesirable and only a change in vegetation is needed.

(a) Necessary erosion an sediment control structures should be installed to protect the area from excessive erosion and sedimentation during the vegetation establishment period. Temporary vegetation may be used alone or in combination with a mulch or other stabilizing agent in accordance with the needs of the site.

(b) The newly planted area should be protected from excessive use, especially livestock grazing, during the establishment period.

(2) In areas where changes in topography and vegetation are needed.

(a) Changes in topography should be made to improve esthetic aspects of the site, permit establishment of desirable vegetative cover, and insure compatibility with the planned land use.

(b) Temporary vegetation should be used to protect stockpiles of soil materials for a short time or to provide temporary cover until the permanent vegetation is established.

(3) In areas where the present spoil material is unsuited for vegetation the spoil material should be covered or replaced with material that will support the desired vegetation. If covering or replacement costs are prohibitive, attempts should be made to create a suitable plant growth medium upon which vegetation may be established.

(4) In areas where alteration of the site to support vegetation is impractical, sediment should be confined to the immediate area, if feasible. Surface runoff should be treated to an acceptable level of quality before discharging offsite, if necessary.

5. Toxic Materials

a. *Sampling and Analysis Consideration.* The administering agency should sample sites suspected of containing toxic materials. Chemical and/or physical analyses may include, but are not limited to:

(1) pH (paste);

(2) SMP Buffer (tests pH of solution prior to weathering);

(3) Net acidity or alkalinity, or potential acidity;

(4) Total sulfur (sulfate and sulfide);

(5) Electrical conductivity (mmhos/cm);

(6) NKP and USDA texture class when material is to be used as post-reclamation plant growth medium;

(7) Organic matter (quantity and type); and,

(8) Visual and/or microscopic identification of potential toxic or acid forming minerals.

b. *Planning Considerations.* The administering agency should consider the following items in their planning efforts on projects containing toxic materials:

(1) Critical toxic limits;

(2) Containment or segregation of toxic materials using sealed pits or embankments and/or covering the toxic materials with compacted clay or some other suitable material;

(3) Site preparation, including grading, backfilling, scarification, and application of appropriate growing medium, chemical fertilizers, lime gypsum, mulches, or sludge;

(4) Water management control, including surface and subsurface drainage, sediment control, and soluble toxic elements; and,

(5) Necessary monitoring and required maintenance, if any.

c. *Sites Eligible Under CERCLA.* Abandoned mine land sites containing acid mine drainage or other toxic material may be eligible for clean-up under CERCLA, if included on the national priority list (NPL). Sites listed on the NPL are ineligible for AML funding.

6. Hydrologic Balance

a. *Planning Considerations.* After identification of areas needing restoration of the hydrologic balance, the administering agency should consider the following items in their planning.

(1) Evaluation of procedures needed to reduce or eliminate pollution to receiving surface and subsurface waters, including technical and economic constraints.

(2) Potential beneficial and/or negative effects of proposed restoration activities on offsite hydrologic systems.

(3) Post reclamation land use of the site and surrounding area.

b. *Surface-Water Considerations.* Restoration of surface drainage should minimize erosion and maximize ecological stability. Factors to be considered include, but are not limited to:

(1) Type of reconstruction materials to be used, stream gradient, fish and wildlife habitat, and compatibility with adjoining undisturbed surface drainage;

(2) Use of the reclaimed area as a source of ground-water recharge and the potential for downstream flooding;

(3) Feasibility of long-term, self-maintaining erosion control measures to enhance stream and flood plain stability; and,

(4) Construction of water impoundments which do not adversely affect the restoration of the hydrologic balance and are in accordance with applicable local, State, Tribal, or Federal requirements.

c. *Ground-Water Considerations.* Restoration of ground-water should be done in a manner that will not diminish or degrade water leaving the site. Factors to be considered include, but are not limited to:

(1) Evaluation of the re-established water table, relative to the reclaimed land surface;

(2) Evaluation of the ground-water recharge capacity, considering the underlying aquifers and backfill materials; and,

(3) Identification of toxic and/or acid forming materials and procedures to eliminate or minimize contamination of the water table.

7. Public Health and Safety

a. *Dump Sites.* Abandoned mine sites used as dumps are usually excellent breeding places for insect and vermin and could pose a hazard to public health. The presence of a dump in an abandoned mine site should not be considered the primary reason for reclamation, but may be considered in raising the site priority in the same objective category. Prior to any reclamation work on dumps, the local, State and/or Tribal agency should be encouraged to abate the problem under other existing authorities and consulted regarding proper disposal methods.

b. *Highwall Danger.* Highwalls may create a significant danger to public health or safety when there is public use of the area above or below the highwall and/or there is evidence of sloughing that may damage structures or block roads and stream channels. Reclamation techniques include, but are not limited to:

(1) Reducing the highwall height;

(2) Backfilling and grading the highwall to a stable slope; or

(3) Providing a physical barrier to limit accessibility and material movement.

c. *Mine Openings and Subsidence.*

(1) The administering agency should consider the following items when planning for subsidence control projects:

(a) Exploratory drilling to determine the locations, size, and condition of abandoned underground mine openings with the potential to subside (except in emergencies);

(b) Proximity to populated areas with high public use;

(c) Notification to all local, State, and Tribal land use planning agencies of potential subsidence areas; and,

(d) Restricting entry to mine openings by constructing physical barriers and/or fencing for emergency situations until the opening can be properly reclaimed.

d. *Radiation Emission.* Where radiation constitutes a potential public health or safety problem, the administering agency should coordinate with other pertinent agencies prior to reclamation activity. Normally, this coordination is done during the development of the State reclamation standards for radiation.

e. *Domestic Water Supplies.* Control measures designed to protect or restore domestic water supplies should consider the number of people affected, the type and concentration of pollutant(s), and the type and cost of control technology. Clean-up or restoration of domestic water supplies should be restricted to source control where possible.

f. *Surface and Underground Mine Fires.* Only fires associated with abandoned mines or in virgin seams associated with other abandoned mine reclamation problems are eligible for Title IV funding.

(1) Prior to initiating control or extinguishment efforts, geologic investigations should be carried out to determine the extent of the fire and the amount of remaining combustible material.

(2) Reclamation design and procedures should include methods to control or eliminate hazardous gases, fumes, and other types of air pollution associated with the fire.

g. *Hazardous/Explosive Gases.* Toxic gases, other than those associated with mine fires, may require site specific control or treatment procedures. For example, methane seeping into a residence must be vented and should be monitored for a reasonable amount of time to ensure the area is safe. Whenever possible gases should be vented or sealed off at their source.

8. Esthetics and Visual Values

Reclaimed lands should, to the extent that it is feasible, conform to the visual aspects of the surrounding landscape. The reclamation design and procedures should take into consideration the proximity to public high use areas and the visual impact within the context of the viewing distance.

a. *Visual Degraders.*

The administering agency determines what conditions are visually degrading and should be considered for visual improvement. Visual degraders may include, but are not limited to, highwalls, erosion, discolored water, haul roads, refuse piles, slurry ponds, spoil piles, abandoned mining equipment and structures, garbage and refuse dumps, open pits, and deforestation.

b. *Esthetics Problem Solutions.*

Solutions for esthetic problems may involve removal of offensive material or condition, strategic placement of screening materials, and/or the use of appropriate plant species. Guidelines and standards to evaluate visual resources developed by the U.S. Forest Service, Natural Resource Conservation Service, U.S. Bureau of Land Management, National Park Service, and other agencies should be adapted for use in evaluating and planning visual solutions.

9. Fish and Wildlife Values

a. *Project Identification Requirements.* The administering agency should periodically provide a list of proposed and on-going abandoned mine land activities to the conservation or land management agencies with responsibilities for fish and wildlife or their habitats and should request pertinent information and suggestions from these agencies.

b. *Determining Fish and Wildlife Values and Goals.* The administering agency should review information provided by the conservation and land management agencies with responsibilities for fish and wildlife or their habitats to determine the pre-reclamation fish and wildlife values of abandoned mine land sites. The administering agency should then determine the fish and wildlife goals for each project, in relation to that project's determined fish and wildlife values and the program priority objectives.

c. *Planning Considerations.* The administering agency should encourage the consideration of fish and wildlife values in all reclamation activities, including those whose primary purposes for reclamation are related to public health, safety, or general welfare. If fish and wildlife values are determined to be among the goals of the reclamation efforts, the administering agency should incorporate them into the reclamation plan.

d. *Installing and Maintaining Established Fish and Wildlife Habitat Values.* The administering agency should insure that all fish and wildlife measures contained in the selected plan are implemented and should encourage the landowner(s) to maintain them at or above the planned level.

10. Air Quality

a. *Air Quality Standards.* All reclamation activities should be conducted in accordance with applicable local, State, Tribal, or Federal air quality standards.

b. *Coordination Requirements.* Local, State, Tribal, or Federal air quality officials should be contacted prior to reclamation planning activities for requirements concerning air quality permit procedures, applicable standards, and possible control measures.

c. *Air Quality Degradation and Improvement.* Long-term air quality improvements which will result from reclamation should have priority over possible short-term air quality degradation caused by reclamation construction.

Dated: November 7, 2000.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 00–29299 Filed 11–15–00; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 27, 2000 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–894 (Preliminary) (Ammonium Nitrate from Ukraine)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on November 27, 2000; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on December 4, 2000.)
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: November 14 , 2000.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 00–29475 Filed 11–14–00; 1:50 pm]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant To the Comprehensive Environmental Response, Compensation, and Liability Act

Under Section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on October 10, 2000, a proposed Partial Consent Decree ("Decree") in two consolidated cases, *United States* v. *Allied Battery Co.*, Civil No. CV–98–N–0446–S, and *United States* v. *CSX Transportation, Inc.*, Civil No. CV–98–N–2561, was lodged with the United States District Court for the Northern District of Alabama. In this action, the United States seeks recovery of its response costs incurred by EPA in cleaning up contaminated soil at the Carlie Lee Superfund Site, a former battery cracking operation located in Tarrant City, Alabama, near Birmingham. Under this Decree, four settling defendants—Allied Battery Co., Econo Battery Services, Fairfield Iron & Metals, Inc. and Joseph J. McCleney, Jr.—have agreed to pay separate amounts, collectively totaling $36,000, in partial reimbursement of the United States' response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC, 20044–7611, and should refer to *United States* v. *Allied Battery Co.* D.J. Ref. 90–11–3–1758, and *United States* v. *CSX Transportation, Inc.*, D.J. Ref. 90–11–3–1758/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Alabama, 200 Robert Vance Federal Bldg., 1800 5th Ave. N., Birmingham, Alabama; and (2) the U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $6.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 00–29294 Filed 11–15–00; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Morton International, Inc.; Consent Judgment

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 26, 2000 a proposed Consent Decree in *United States and State of Mississippi* v. *Morton International, Inc.*, Civil Action No. 1:00CV501 (BrR) was lodged with the United States District Court for the Southern District of Mississippi, Biloxi Division.

In this action the United States and State of Mississippi allege that the Morton International, Inc. (hereafter Morton or defendant) is liable under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), the Safe Drinking Water Act (SDWA), the Clean Water Act (CWA), the Clean Air Act (CAA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Emergency Planning and Community Right-to-Know Act (EPCRA), and the Mississippi Solid Waste Disposal Law of 1974, the Mississippi Air and Water Pollution Control Law, and the organic act of the Commission and of the Mississippi Department of Environmental Quality (MDEQ) for penalties and injunctive relief in connection with the defendant's manufacturing facility

located in Moss Point, Jackson County, Mississippi.

This consent decree represents a settlement between the United States, State of Mississippi and Morton. The consent decree requires Morton to: (1) Pay a penalty of $20 million, with $10 million being paid to the United States and $10 million being paid to the State of Mississippi, (2) perform Supplemental Environmental Projects (SEPs) valued at $16 million, (3) conduct a comprehensive analysis of conditions at the Facility, and (4) perform, if necessary, corrective measures at the Facility. In addition, the consent decree provides for audits to be conducted by a third party or parties at Morton chemical plants acquired by Rohm & Haas in 1999.

The SEPs include a Plant SEP which requires Morton to reduce or eliminate pollutants and to strive to terminate injection into deep wells as a method of disposal, a community SEP which provides for the rehabilitation or replacement of lateral sewer lines in the City of Moss Point, Mississippi, and the funding of a "Green Chemistry" project at the University of Southern Mississippi's School of Polymer Science. The Green Chemistry project is intended to develop architectural coatings which contain plant oils rather than volatile organic compounds. The community lateral line project will address inflow and infiltration which contributes to sewage overflows that plague Moss Point.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Second Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and natural resources Division, U.S. Department of Justice, P.O. box 7611, Washington, D.C. 20044, and should refer to *United States and State of Mississippi* v. *Morton International, Inc.*, D.J. Ref. 90–7–1–06413. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973(d).

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Mississippi, 808 Vieux Marche, 2nd Floor, Biloxi, Mississippi 39501; and at Region 4, Office of the Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. box 7611, Washington, D.C. 20044. In requesting a copy, please enclose a check in the amount of $26.25 (without exhibits), $77.75 (with exhibits) (25 cents per page reproduction cost) payable to the Treasurer of the United States.

Walker Smith,

Deputy Chief, Environment and Natural Resources Division.

[FR Doc. 00–29291 Filed 11–15–00; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with 28 CFR 50.7, 38 FR 19029, notice is hereby given that on October 30, 2000, a proposed consent decree in *United States* v. *Puerto Rico Aqueduct and Sewer Authority*, Civil Action No. 00–1942 (PG), was lodged with the United States District Court for the District of Puerto Rico. The United States' complaint sought injunctive relief and civil penalties under the Clean Air Act ("CAA") against the Puerto Rico Aqueduct and Sewer Authority ("PRASA"), in regard to violations of the New Source Performance Standards for sewage treatment plants and the Puerto Rico State Implementation Plan, resulting from PRASA's operation of the multiple hearth furnace ("MHF") sludge incineration facility at its Puerto Nuevo wastewater treatment plant located in Puerto Nuevo, Puerto Rico.

The consent decree provides that PRASA shall pay a civil penalty of $80,000 and implement a supplemental environmental project, consisting of the installation of belt filter presses at its Bayamon wastewater treatment plant, estimated to cost about $692,000. The consent decree also requires PRASA to render its MHF units inoperable and enjoins PRASA from any future operation of those units.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20044, and should refer to *United States* v. *Puerto Rico Aqueduct and Sewer Authority*, D.J. Ref. 90–5–2–1–1874A.

The proposed consent decree may be examined at the office of the United States Attorney, Federal Office Building, Rm. 101, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918 and at the Region II office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $7.75 payable to the "Consent Decree Library."

Bruce S. Gelber,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 00–29295 Filed 11–15–00; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

Notice is hereby given that a proposed Consent Decree in the matter *The Surfrider Foundation* v. *John M. Bernal*, Case No. 99–CV–2441–BTM(JFS) (S.D. Cal.), was lodged with the United States District Court for the Southern District of California on October 16, 2000. The proposed Consent Decree concerns alleged violations of Section 402 of the Clean Water Act, 33 U.S.C. § 1342, at the South Bay International Wastewater Treatment Plant, located at 2415 Dairy Mart Road, San Diego County, San Diego, California.

The proposed Consent Decree would require (1) the performance of certain environmental studies and evaluations relating to discharge of wastewater from the Plant, and (2) the United States Section of the International Boundary and Water Commission to complete a secondary sewage treatment project for the Plant.

The United States Department of Justice will receive written comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to S. Randall Humm, Trial Attorney, United States Department of Justice, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, with copies provided to William A. Wilcox, Jr., International Boundary and Water Commission, Office of the Staff Counsel, 4171 No. Mesa Street; Suite C–310, El Paso, TX 79902, and Robert Moyer, Assistant Regional Counsel, United States Environmental Protection Agency—Region IX, U.S. EPA Border Office, 610 West Ash Street, Suite 703, San Diego, California, and should reference *The Surfrider Foundation* v. *John M. Bernal*, Case No. 99–CV–2441–BTM(JFS) (S.D. Cal.).

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Southern District of California, 4290 Edward J. Schwartz Federal Building, 880 Front Street, San Diego, California.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 00–29293 Filed 11–15–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Safe Drinking Water Act

Notice is hereby given that on October 30, 2000, a proposed consent decree in *United States and the Commonwealth of Pennsylvania* v. *Tafton Water Company, et al.*, Civil Action No. 33: CV 99–2[illegible]3, was lodged with the United States District Court for the Middle District of Pennsylvania.

In this action, the United States and Pennsylvania Department of Environmental Protection sought civil penalties, injunctive relief, and preliminary injunctive relief for violations of the Safe Drinking Water Act and Pennsylvania's Safe Drinking Water Act at the Tafton water system which serves the Wilson Hill development in Hawley, Pennsylvania. The proposed consent decree would resolve certain claims against Winton Consolidated Companies, Inc., Public Service Water Company, Tafton Water Company, ("Corporate Defendants") and Richard M.S. Freeman, (collectively, "the Defendants") by requiring the Corporate Defendants to pay $200,000 in civil penalties and the Defendants to pay $4,417.72 to the Wilson Hill Property Owners Association Water Company for reimbursement of expenses it incurred at the Tafton water system and the transfer of ownership of the Tafton water system to an unrelated entity. Additionally, Richard Freeman is required to pay $1,000 in stipulated penalties to the United States for his violation of a 1999 Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Tafton Water Company, et al.*, DOJ #90–5–1–1–06424.

The proposed consent decree may be examined at the offices of the United States Attorney, Middle District of Pennsylvania, Federal Building, 228 Walnut Street, Second Floor, P.O. Box 11754, Harrisburg, PA 17108. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–29290 Filed 11–15–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 to 9675

Notice is hereby given that two proposed consent decrees in *United States* v. *Weil-McLain Inc., et al.*, Civil Action No. 3:00CV0593RM, were lodged on September 25, 2000 with the United States District Court for the Northern District of Indiana, South Bend Division. Both consent decrees concern claims under the Comprehensive Environmental Compensation and Liability Act ("CERCLA") in connection with the Waste, Inc. Superfund Site located in Michigan City, Indiana (the "Site"). One proposed decree (the "Conversion Consent Decree") resolves the United States' claims for costs, civil penalties, and injunctive relief against nine settling defendants who failed to comply with a unilateral administrative order issued by the U.S. Environmental Protection Agency in December 1995. This decree also resolves claims for past costs incurred in connection with the Site against forty-three (43) other settling defendants and ensures the continued implementation of the remedial action at the Site that was begun under EPA's 1995 unilateral administrative order.

The second proposed consent decree (the "MWS Consent Decree") resolves the United States' claims against 18 other defendants for past costs incurred in responding to the disposal of municipal solid waste (MWS) at the Site. The settling defendants under consent decree sent only MSW to the Site, and they will pay $227,000 into a special account for use in remediation of the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, N.W., Washington, D.C. 20044–7611, and should refer to *United States* v. *Weil-McLain, Inc., et al.*, No. 3:00CV0593RM, D.J. Ref. 90–11–3–1376B.

The consent decrees may be examined at the Office of the United States Attorney, 204 South Main Street, South Bend, Indiana 46601–2191; and at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the consent decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. In requesting a copy of the Conversion Consent Decree with attachments, including the draft final MSW Consent Decree, please enclose a check in the amount of $36.00 ($.25 per page reproduction cost) payable to the Consent Decree Library. In requesting a copy of just the Conversion Consent Decree without attachments, please enclose a check for $21.00 payable to the Consent Decree Library. In requesting a copy of just the MSW Consent Decree, please enclose a check in the amount of $4.00 payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–29292 Filed 11–16–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 8, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact

Karin Kurz ((202) 693–4127 or by E-mail to *Kurz-Karin@dol.gov*). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to *King-Darrin@dol.gov*).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Recording and Reporting Occupational Injuries and Illnesses.

OMB Number: 1218–0176.

Affected Public: Business or other for-profit; Not-for-profit institutions; farms; State, Local, or Tribal Government.

Frequency: On occasion.

Number of Respondents: 1,395,516.

Number of Annual Responses: 5,067,726.

Estimated Time Per Response: 26 minutes.

Total Burden Hours: 2,229,349.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The OSHA No. 200, Log and Summary; the OSHA 101, Supplementary Record; and the recordkeeping guidelines provide employers with the means and specific instructions needed to maintain records of work-related injuries and illnesses. The data are needed by OSHA to carry out intervention and enforcement activities in order to guarantee workers safe and healthful workplaces. The data are also needed by the Bureau of Labor Statistics (BLS) to produce national statistics on occupational injuries and illnesses. Response to this collection of information is mandatory as specified in 29 CFR Part 1904.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: OSHA Data Collection System.

OMB Number: 1218–0209.

Affected Public: Business or other for-profit; farms; State, Local, or Tribal Government.

Frequency: Annually.

Number of Respondents: 81,425.

Number of Annual Responses: 81,425.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 39,113.

Total Annualized Capital/Startup Costs: $0.

Total Annual Cost (operating/maintaining systems or purchasing services): $0.

Description: The year 2001 OSHA Data Collection will request CY 2000 injury and illness data from 81,425 establishments throughout the Nation. The data are needed by OSHA to carry out intervention and enforcement activities in order to guarantee workers a safe and healthful workplace. The data will also be used for measurement purposes in compliance with the Government Performance and Results Act of 1995 and multiple research purposes. The data collected are already maintained by employers as required by 29 CFR Part 1904.

Type of Review: Reinstatement of a previously approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Modification of Aerial Lifts in Construction.

OMB Number: 1218–0216.

Affected Public: Business or other for-profit; Federal Government; State, Local, or Tribal Government.

Frequency: On occasion.

Number of Respondents: 60.

Number of Annual Responses: 60.

Estimated Time Per Response: 3 minutes.

Total Burden Hours: 3.

Total Annualized Capital/Startup Costs: $0.

Total Annual Cost (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR 1926.453 requires employers to obtain written certification of any field modifications made to aerial lifts. Such certification must be prepared in writing by either the manufacturer of the aerial lift or a nationally recognized testing laboratory. The certification is to attest to the safety of the lift after modification.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–29370 Filed 11–15–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of a Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to a three-year term on the Department's Performance Review Board: Leah Daughtry, Joseph Juarez, Carl Lowe, David Zeigler.

FOR FURTHER INFORMATION CONTACT: Ms. Tali R. Stepp, Director of Human Resources, Room C5526, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 219–9191.

Signed at Washington, D.C., this 9th day of November, 2000.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 00–29371 Filed 11–15–00; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision, thereof, have become totally or partially separated;

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely; and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-37,987; Hobman Corp., Jim Thorpe, PA
TA-W-37,835; Whitehall Leather Co., A Div. of Genesco, Inc., Whitehall, MI
TA-W-38,077; Paris Accessories, Inc., Belt Div., Allentown, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-37,990; Telxon Corp., National Service Center, Houston, TX
TA-W-38,188; Supply One, Klamath Falls, OR
TA-W-38,196; Gadsden Machine and Roll Co., Gadsden, AL

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-38,218; Swift Denim, Erwin, NC
TA-W-37,985; Lear Corp., Foam Line 1 and 2 of Dept 612, Detroit, MI
TA-W-38,219; C & M Corp., Wauregan, CT
TA-W-38,214; Fleetwood Homes of Georgia, Inc., Manufacturing Center #05, Douglas, GA
TA-W-38,001 & A; Warner's Distribution Center, Murfreesboro, TN & Warner's Cutting Center, Murfreesboro, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-38,121; Duke Energy Field Service, Ada, OK

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or an appropriate subdivision have not contributed importantly to the separations of threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA-W-38,078; Roanoke Electric Steel Corp., Melt Shop, Roanoke, VA: August 28, 1999.
TA-W-38,120; Bausch and Lomb, Contact Lens Div., Rochester, NY: September 6, 1999.
TA-W-38,171; Lear Corp., Lear Electronics and Electrical Div., Traverse City, MI: September 20, 1999.
TA-W-37,800; Mar-Kel Lighting, Inc., Paris, TN: June 9, 1999.
TA-W-38,154; Leather's Best, Johnstown, NY: September 19, 1999.
TA-W-38,118; Livingston Apparel, Inc., Livingston, AL: September 12, 1999.
TA-W-38,140; Esquire Novelty, Amsterdam, NY: September 15, 1999.
TA-W-38,063; International Lace and Emblem, Guttenberg, NJ: August 17, 1999.
TA-W-38,081; Bru-Mar Manufacturing Co., Inc., Allentown, PA: August 29, 1999.
TA-W-38,045; Corpus Tuscaloosa, Formerly Known as Tuscaloosa Steel, Tuscaloosa, AL: August 18, 1999.
TA-W-37,979; Newell Window Furnishing, Kirsch, Inc., Sturgis, MI: August 3, 1999.
TA-W-38,139; Ametek, U.S. Gauge Div., Sellersville, PA: September 22, 1999.
TA-W-38,148; Telex Communication, Newport, TN: September 15, 1999.
TA-W-37,986; Sumitok Magnetics Co., Bardstown, KY: August 8, 1999.
TA-W-38,095; Ungo Security, Hayward, CA: August 18, 1999.
TA-W-38,097; Toastmaster, Inc., Macon, MO: September 9, 1999.
TA-W-38,156; Matsushita Microwave Oven Co., Matsushita Home Applicance Co., Danville, KY: September 11, 1999.
TA-W-38,103; Lebanite Corp., Lebanon, OR: August 31, 1999.
TA-W-37,950; Sauer Danfoss, Inc., Formerly Danfoss Fluid Power, Inc., Racine, WI: August 7, 1999.
TA-W-38,012; Dunbrook Sportswear, Greenfield, MO: August 14, 1999.
TA-W-38,170; Advance Transformer Co., Monroe, WI: September 19, 1999.
TA-W-38,164; Nafta Textile Mills LLC, Manville, RI: September 20, 1999.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers; separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04139; Lear Corp., Foam Line 1 and 2 of Dept 612, Detroit, MI
NAFTA–TAA–04181; Ametek, US Gauge Div., Sellersvile, PA
NAFTA–TAA–03993, Whitehall Leather Co., A Div. of Genesco, Inc., Whitehall, MI

NAFTA–TAA–04121; Terex Corp., Unit Rig Div., Tulsa, OK
NAFTA–TAA–04182; Fleetwood Homes of Georgia, Inc., Manufacturing Center #05, Douglas, GA
NAFTA–TAA–04075; Hobman Corp., Jim Thorpe, PA
NAFTA–TAA–04190; Chilton Toys, Div. of Strombecker Corp., Seymour, WI
NAFTA–TAA–04046; Cross Huller North America, Div. of Thyssenkrupp, Fraser, MI
NAFTA–TAA–04222; Norton Co., Coated Abrasives Div., Watervliet, NY
NAFTA–TAA–04206; Williamette Industries, Customer Products Div., Albany, OR
NAFTA–TAA–04220; Royal Oak Enterprises, Inc., Paris, TN
NAFTA–TAA–04051; Boise Cascade Corp., Timber and Wood Products Div., Independence, OR
NAFTA–TAA–04043; Scott Logging, Inc., Bend, OR
NAFTA–TAA–04096; Roseburg Forest Products Co., Big Log Sawmill, Dillard, OR
NAFTA–TAA–04102; Corlair Corp., Piedmont, MO
NAFTA–TAA–04224 & A; Northside Manufacturing, Philipsburg, PA and Streamline Fashions Manufacturing Co., Philipsburg, PA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–04027; Guess?, Inc., San Diego, CA
NAFTA–TAA–04204; Supply One, Klamath Falls, OR
NAFTA–TAA–04085; GRT, Inc., Sun Valley, CA
NAFTA–TAA–04214; Gadsden Machine and Tool Co., Gadsden, AL
NAFTA–TAA–04071; Telxon Corp., National Service Center, Houston, TX

The investigation revealed that workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04124; Newell Window Furnishings, Kirsch, Inc., Sturgis, MI: August 3, 1999.
NAFTA–TAA–04196; Swift Denim, Erwin, NC: October 5, 1999.
NAFTA–TAA–04163; Lear Corp., Lear Electronics and Electrical Div., Traverse City, MI: September 26, 1999.
NAFTA–TAA–04183; Paper, Calmenson & Company, Blade Div., Bucyrus, OH: September 22, 1999.
NAFTA–TAA–04133; Marino Technologies, Opa-Locka, FL: August 21, 1999.
NAFTA–TAA–04141; Bru-Mar Manufacturing Co., Inc., Allentown, PA: August 29, 1999.
NAFTA–TAA–04207; United States Leather, Lackawanna Leather, Omaha, NE; September 7, 1999.
NAFTA–TAA–04208; Progress Lighting, Cowpens, SC: October 6, 1999.
NAFTA–TAA–04217; Leapwood Apparel, Adamsville, TN: October 11, 1999.
NAFTA–TAA–04236; John Crane, Inc., Morton Grove, IL: October 19, 1999.
NAFTA–TAA–04154; McDowell Manufacturing, DuBois, PA: September 11, 1999.
NAFTA–TAA–04098; Savane International Corp., El Paso, TX: July 5, 1999.
NAFTA–TAA–04171; Fruit of the Loom, Texas, Inc. Gitano Dept., Harlingen, TX: September 11, 1999.
NAFTA–TAA–04195; Avery Dennison, Writing Instruments Div., Crossville, TN: September 29, 1999.
NAFTA–TAA–04093; Central Point Lumber, a/k/a Tree Source, Central Point, OR: August 10, 1999.
NAFTA–TAA–04165; Sharp Manufacturing Co. of America, Memphis, TN: Septmeber 12, 1999.
NAFTA–TAA–04126; Acer America Corp., Manufacturing Div., San Jose, CA: August 28, 1999.
NAFTA–TAA–04134; Lebanite Corp., Lebanon, OR: August 31, 1999.
NAFTA–TAA–04225; Advance Transformer Co., Monroe, WI: September 19, 1999.

I hereby certify that the aforementioned determinations were issued during the month of November, 2000. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 9, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–29367 Filed 11–15–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,823A]

Carleton Woolen Mills, Inc., New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on October 31, 2000, applicable to workers of Carleton Woolen Mills, Inc., New York, New York. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers provided administration, sales, styling, design and support function services for the subject firm's production facility in Winthrop, Maine. Findings show that the Department incorrectly set the worker certification impact date at July 23, 2000. The impact date should be June 14, 1999, one year prior to the date of the petition. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–37,823A is hereby issued as follows:

> "All workers of Carleton Woolen Mills, Inc., New York, New York who became totally or partially separated from employment on or after June 14, 1999 through August 18, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 8th day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29369 Filed 10–15–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,453]

Diamond Offshore Drilling, Inc., Houston, Texas and Operating at Various Offshore Drilling Sites Located in American Waters; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 13, 1999, applicable to workers of Diamond Offshore Drilling, Inc., Houston, Texas. The notice was published in the **Federal Register** on August 11, 1999 (64 FR 43724).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations have occurred at Diamond Offshore Drilling operating at various offshore drilling sites located in American waters. The workers are engaged in activities related to the exploration and drilling of crude oil and natural gas.

Accordingly, the Department is amending the certification to include workers operating at various offshore drilling sites located in American waters.

The intent of the Department's certification is to include all workers of Diamond Offshore Drilling, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–36,453 is hereby issued as follows:

> All workers of Diamond Offshore Drilling, Inc., Houston, Texas and operating at various offshore drilling sites located in American waters who became totally or partially separated from employment on or after June 6, 1998 through July 13, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of November 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29368 Filed 11–15–00; 8:45 am]

BILLING CODE 4510–30–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Government Performance and Results Act of 1993

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of Request for Comments.

SUMMARY: The Federal Mine Safety and Health Review Commission is notifying interested parties that its draft strategic plan for the fiscal years 2000–2005, is available for public comment. The draft plan, prepared in accordance with the Government Performance and Results Act of 1993 ("GPRA"), defines the Commission's goals, specific objectives, time frames and methods for achieving goals at both the trial and appellate level.

In developing its goals and objectives under GPRA, the Commission solicits the views of those who practice before it and those who are affected by its case dispositions.

DATES: Comments should be received by December 18, 2000.

ADDRESSES: Comments should be sent to Richard L. Baker, Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, N.W., Suite 6000, Washington, D.C. 20006, fax: (202) 653–5030; E-mail: Info@FMSHRC.gov., phone: (202) 653–5625, or (202) 708–9300 for TDD Relay.

The draft plan is posted on the Commission's website, http://www.fmshrc.gov/ under "What's New." Printed copies can also be obtained from the above listed address.

SUPPLEMENTARY INFORMATION: GPRA charges federal agencies with formulating strategic plans, preparing annual plans setting performance goals, and reporting annually the actual agency performance compared to those goals. In considering how best to formulate its goals and objectives, the Commission has sought to develop measures that allow it to better evaluate its performance and ultimately accomplish is statutory mission under the Federal Mine Safety and Health Act of 1977.

The Commission requests that responses to this solicitation for comments be submitted by December 18, 2000.

Dated: October 31, 2000.

Mary Lu Jordan,

Chairman.

[FR Doc. 00–29289 Filed 11–15–00; 8:45 am]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–136)]

NASA Advisory Council (NAC), Earth Systems Science and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Earth Systems Science and Applications Advisory Committee.

DATES: Tuesday, December 5, 2000, 8:30 am to 5:30 pm; and Wednesday, December 6, 2000, 8:30 am to 5:30 pm.

ADDRESSES: NASA Headquarters, 300 E Street SW., Room 9H40, Program Review Center, Washington, DC, 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Schiffer, Code YS, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1876.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Assessment of the State-of-the-Enterprise
- Status Reports re: ESSAAC Subcommittees and ad hoc Panels
- Technology
- Data & Information Systems
- GPRA Performance Metrics
- ESE Budget Status
- Status of the ESE Science Implementation Plan
- Summary of First Day
- Applications Strategic and Implementation Planning
- Technology Strategy and Roadmap
- Strategic Planning Status Overview—ESE Vision
- Discussion Period
- Debriefing/Closing Remarks
- ESSAAC Deliberation Session
- Summary of Actions, Future Schedule

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 13, 2000.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–29438 Filed 11–15–00; 8:45 am]

BILLING CODE 7510–01–U

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting; Regular Meeting of the Board of Directors

TIME AND DATE: 2 p.m., Monday, November 20, 2000.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Board Room, Washington, DC 20005.

STATUS: Open/Closed.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary (202) 220–2372.

AGENDA:

I. Call to Order
II. Approval of Minutes: August 23, Regular Meeting
III. Treasurer's Report:
IV. Executive Director's Quarterly Management Report
V. Personnel Committee Report (CLOSED) November 7, 2000 Meeting
VI. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 00–29465 Filed 11–14–00; 11:21 am]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400–LA; ASLBP No. 99–762–02–LA; November 9, 2000]

Atomic Safety and Licensing Board; Notice (Schedule for Oral Argument)

Before Administrative Judges:
G. Paul Bollwerk, III, Chairman
Dr. Peter S. Lam
Thomas D. Murphy

In the Matter of Carolina Power & Light Company (Shearon Harris Nuclear Power Plant)

In accordance with the Licensing Board's memorandum and order of August 28, 2000, the Board will hold the 10 CFR 2.1113 argument regarding the parties' written summaries on intervenor Board of Commissioners of Orange County's (BCOC) contention EC–6, Environmental Impact Statement Required, on *Thursday, December 7, 2000, beginning at 9:30 a.m. EST, in the Jane S. McKimmon Conference Center, North Carolina State University, corner of Gorman Street and Western Avenue, Raleigh, North Carolina.* The procedures applicable to this oral argument will be the same as those used for the January 2000 oral argument. *See* Licensing Board Memorandum and Order (Subpart K Oral Argument Procedures) (Jan. 13, 2000) at 1–3 (unpublished).

At this juncture, it is the Board's intent that this oral argument will be open to the public. If, in submitting written summaries, any of the parties utilize proprietary or other nonpublic information, the parties should be prepared to advise the Board whether that information will be discussed during, or otherwise be a part of, the oral argument. *See id.* at 5.

Rockville, Maryland, November 9, 2000.

For the Atomic Safety and Licensing Board [*]

G. Paul Bollwerk, III,

Administrative Judge.

[FR Doc. 00–29381 Filed 11–15–00; 8:45 am]

BILLING CODE 7590–01–P

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[*] Copies of this notice were sent this date by Internet e-mail transmission to counsel for (1) applicant Caroline Power and Light Company; (2) intervenor BCOC; and (3) the NRC staff.

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–3]

Notice of Issuance of Amendment to Materials License No. SNM–2502, Carolina Power & Light Company; Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment No. 12 to Materials License SNM–2502 held by Carolina Power & Light Company (CP&L) for the receipt, possession, transfer, and storage of spent fuel at the H. B. Robinson Independent Spent Fuel Storage Installation (ISFSI), located on the H. B. Robinson Steam Electric Plant Unit 2 site, Darlington County, South Carolina. The amendment is effective as of the date of issuance.

By application dated August 28, 2000, CP&L requested an amendment to Materials License SNM–2502 for the H.B. Robinson ISFSI. CP&L is seeking Commission approval to amend the materials license safeguards license condition and the Technical Specifications to reflect that the Industrial Security Plan and Safeguards Contingency Plan are combined into the Physical Security and Safeguards Contingency Plan. The revision would also clarify the text to indicate that the Training and Qualification Plan no longer contains safeguards information. Such an action would only change the reference to and the location of the Industrial Security Plan and the Safeguards Contingency Plan. The requested change does not affect the design, operation, maintenance, or surveillance of the ISFSI.

This amendment complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that the issuance of the amendment meets the criteria for a categorical exclusion set forth in 10 CFR 51.22(c)(10) of the regulations. Therefore, an environmental assessment need not be prepared in connection with issuance of the amendment.

Documents related to this action are available for public inspection at the Commission's Public Document Room located at the One White Flint Building, 11555 Rockville Pike, Rockville, Maryland, or from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 6th day of November 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–29382 Filed 11–15–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Application for a License to Export Highly-Enriched Uranium

Pursuant to 10 CFR 110.70(b)(2) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link <*http://www.nrc.gov/*

NRC/ADAMS/index.html> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of the application for a license to export special nuclear material noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant Date of application Date received Application number	Description of Material			Country of destination
	Material type	Total qty.	End use	
Transnuclear, Inc. October 23, 2000 October 24, 2000 XSNM03171	Highly-Enriched Uranium (93.30%).	10.05 kg Uranium/9.377 kg Uranium-235.	Fabrication of target material for the production of medical isotopes at the Chalk River Laboratories.	Canada.

For the Nuclear Regulatory Commission.

Dated this 8th day of November 2000 at Rockville, Maryland.

Ronald D. Hauber,

Deputy Director, Office of International Programs.

[FR Doc. 00–29380 Filed 11–15–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company, et al., Haddam Neck Plant; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by petition dated September 26, 2000, the Citizens Awareness Network (petitioner) has requested that NRC take action with regard to Connecticut Yankee Atomic Power Company (CYAPCO). The petitioner requests that the United States Nuclear Regulatory Commission (NRC): (1) Conduct a full investigation of CYAPCO's garment laundering practices and specifically of the September 20, 2000, incident at a public laundry facility; (2) revoke CYAPCO's license, or suspend it until such time that an investigation is completed and any contamination found as a result of that investigation is remediated; (3) report any violations of regulations to the Department of Justice, and; (4) conduct an informal public hearing.

As the basis for this request the petitioner states that on September 20, 2000, CYAPCO laundered bright yellow coveralls at a public laundromat in East Hampton, CT. In addition, the petitioner states that rubber boots and gloves from the Haddam Neck Plant are also washed at the laundromat on occasion. The petitioner contends that although it is not clear whether or not the garments were radioactively contaminated that the "laundering of Haddam Neck's protective garments at a public facility constitutes a serious loss of radiological control, and blatant disregard for public and worker health and safety, the environment, and NRC rules and regulations." In support of the claim the petition cites a number of events that the petitioner believes collectively demonstrate an "inability on the licensee's part to follow NRC rules and regulations * * *."

Based on the findings of an inspection performed by the NRC staff as a result of the petition, the staff is confident that there is not an immediate safety issue associated with this petition. Therefore, the NRC does not intend to act immediately on the petitioners' second request (suspension or revocation of the Haddam Neck Plant operating license).

This request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time.

The petition (ADAMS Accession Number ML003755400) may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and is accessible electronically from the ADAMS Public Library component of the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 9th day of November 2000.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–29383 Filed 11–15–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

OMB Circular A–133 Information Collection Under OMB Review

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Submission for OMB Review, Comment Request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*), this notice announces that an information collection request was submitted to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs for processing under 5 CFR 1320.10. The first notice of this information collection request, as required by the Paperwork Reduction Act, was published in the **Federal Register** on July 11, 2000 (65 FR 42735). The information collection request involves two proposed information collections from two types of entities: (1) Reports from auditors to auditees concerning audit results, audit findings, and questioned costs; and, (2) reports from auditees to the Federal Government providing information about the auditees, the awards they administer, and the audit results. These collection efforts are required by the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 *et seq.*) and OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations." Circular A–133's information collection requirements apply to approximately 30,000 States, local governments, and non-profit organizations on an annual basis.

DATES: Submit comments on or before December 18, 2000. Late comments will be considered to the extent practicable.

ADDRESSES: Written comments should be sent to: Edward Springer, Office of Information and Regulatory Affairs, OMB, 725 17th Street NW., Room 10236, Washington, DC 20503. Electronic mail comments may be submitted via the Internet to espringer@omb.eop.gov. Please include the full body of the comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message as well as the name and phone number of a contact person.

FOR FURTHER INFORMATION CONTACT: For further information, contact Terrill W. Ramsey, Office of Federal Financial Management, OMB, 725 17th Street NW., Room 6025, Washington, DC 20503 (202–395–3993). The proposed data collection form and its instructions can be obtained by contacting the Office of Federal Financial Management, as indicated above or by download from the OMB Grants Management home page on the Internet at http://www.whitehouse.gov/OMB/grants.

SUPPLEMENTARY INFORMATION:

A. Background

Control No.: 0348–0057.

Title: Data Collection Form.

Form No: SF–SAC.

Type of Review: Revision of a currently approved collection.

Respondents: States, local governments, and non-profit organizations (Non-Federal entities).

Estimated Number of Respondents: 60,000.

Estimated Time per Respondent: 59 hours for each of 400 large respondents and 17 hours for each of 59,600 small respondents for estimated annual burden hours of 1,036,800.

Estimated Number of Responses per Respondent: 1.

Frequency of Response: Annually.

Needs and Uses: Reports from auditors to auditees and reports from auditees to the Federal government are used by non-Federal entities, pass-through entities, and Federal agencies to ensure that Federal awards are expended in accordance with applicable laws and regulations. The Federal Audit Clearinghouse (FAC) (maintained by the U.S. Bureau of the Census) uses the information on the SF–SAC to ensure proper distribution of audit reports to Federal agencies and identify non-Federal entities who have not filed the required reports. The FAC also uses the information on the SF–FAC to create a governmentwide database which contains information on audit results. This database is publicly accessible on the Internet at http://harvester.census.gov/sac/. It is used by Federal agencies, pass-through entities, non-Federal entities, auditors, the General Accounting Office, OMB, and the general public for management and information about Federal awards and the results of audits.

B. Public Comments and Responses

Pursuant to the July 11, 2000, **Federal Register** notice, OMB received 27 comment letters relating to the proposed revision to the information collection. Six of the letters had no suggested changes. General comments included that the changes seemed reasonable, would provide additional information at little additional costs, and the clarity of the instructions was improved. Letters came from Federal agencies (including Offices of Inspectors General), State governments (including State auditors), certified public accountants (CPAs), non-profit organizations (including colleges and universities), professional organizations, and others. The comments received relating to the information collection and OMB's responses are summarized below.

Reporting Burden

Comments: Two comments were received relating to the reporting burden. One State auditor commented that although more work will be required by non-Federal entities for the first year the amendments are in effect, they believed that in the long run the changes have the potential to lessen burdens on non-Federal entities. Another State auditor commented that the estimate to prepare the Data Collection Form seemed to be about right, maybe a little high.

Response: The Office of Management and Budget (OMB) in conjunction with the Federal awarding agencies, the National State Auditors Association (NSAA), the American Institute of Certified Public Accountants (AICPA), the General Accounting Office (GAO), and the Federal Audit Clearinghouse (FAC) assembled a task force to redesign the Data Collection Form. The primary goal of the task force was to make improvements to the form that would increase the Federal awarding agencies ability to monitor their grants, while minimizing the potential for increased reporting burden. Based on the comments received, it appears this goal was achieved.

Research and Development

Comment: The NSAA and a state auditor suggested only requiring entities to check the "Yes" box in Part III, Item 11b for Research and Development (R&D) programs rather than a positive answer of either "Yes" or "No."

Response: The requirement to check the "No" box in Part III, Item 11b for non-R&D programs was not changed. Respondents are required to provide an positive answer for every question on the Data Collection Form (with the exception of fax numbers and email addresses) for the purpose of maintaining database integrity. If Part III, Item 11b is left blank to mean "No," it would be unclear whether the form preparer may have overlooked the item or meant "No."

Multiple Employer Identification Numbers (EINs)

Comment: Three State auditors commented on the new requirement to capture the multiple Employer Identification Numbers (EINs) covered by the single report. All three comments recognized the additional effort the States will have to put forward the first year to capture this information, but none felt the new requirement placed an undue burden. The commenters also recognized the Federal agencies need this information to help ensure that all single audit reports were filed.

Response: No change was made. The multiple EINs covered by the single audit report will improve the ability to identify entities who did not file the audits required by Circular A–133.

Cognizant Agency Determination

Comment: Three State auditors, a Federal awarding agency representative, and two CPAs submitted comments questioning the instructions relating to the cognizant agency determination. The current Data Collection Form requires entities to identify if they have a cognizant or oversight agency for audit, and the name of Federal cognizant or oversight agency. Research has shown that responses to these questions have not been completely accurate, and the FAC believes that much of the misreporting has resulted from a lack of understanding by the non-Federal entity. To simplify reporting and improve the accuracy of responses, two actions were taken in the proposed revision. First the identification of Oversight agency will be performed by the FAC. This determination will be made after the Data Collection Form is entered into the FAC database and will be available on the FAC website. Second, the questions related to Cognizant agency have been reworded for clarity.

Response: Further clarification has been made to the instructions for determining the cognizant agency.

Comment: A Federal awarding agency representative asked whether the FAC could computer generate the cognizant agency for audit assignments the same as the oversight.

Response: § __.400(a) of the Circular provides the criteria used to make the cognizant agency determination. It explains that to provide for continuity of cognizance, the determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 1995, 2000, 2005, and every fifth year thereafter. Since the revised Data Collection Form will apply to entities with fiscal end dates on or after January 1, 2001, and since the current Data Collection Form does not distinguish between direct and indirect awards, it is not possible to use fiscal year 2000 data to computer generate the cognizant agency assignments.

Questioned Costs Detail

Comment: Two Federal awarding agency responses stated their objections to the elimination of questioned costs detail by program.

Response: Questioned costs detail by program will not be collected because of inconsistencies in the amounts identified by the auditor as questioned costs and Federal agencies need to consider questioned costs in the context of the complete audit finding. Normally auditors only report as questioned costs the exceptions specifically identified during testing (e.g., Circular A–133 does not require the auditor to provide a statistical projection of all questioned costs). Auditors application of judgment in determining the amounts to question varies significantly. The amounts sustained by Federal agencies as part of audit resolution varies significantly with the amounts questioned by the auditor and the amount of questioned costs is only meaningful when considered in the context of the complete audit finding. As proposed in the July 11 **Federal Register** Notice, the revised Data Collection Form will identify if the audit disclosed any questioned costs related to Federal awards. Federal awarding agencies receive a copy of the reporting package, including audit findings, which provides the more complete information needed in resolving audit findings with questioned costs.

Internal Control Detail

Comment: The NSAA and two State auditors questioned the proposed removal of collecting internal control detail by program.

Response: The current Data Collection Form captures internal control detail by program. FAC research has shown that reporting in this area is inconsistent. As proposed in the July 11 **Federal Register** Notice, the revised Data Collection Form will identify if the audit disclosed any reportable conditions and material weaknesses related to the Federal awards. Federal awarding agencies receive a copy of the reporting package, including audit findings, which provides the more complete information needed in resolving the audit finding concerning internal control.

Electronic Submission of the Data Collection Form

Comment: Two State auditors, the NSAA, the AGA, and two CPAs commented on the online Internet submission process for filing the Data Collection Form and the use of electronic signatures.

Response: The online Internet submission process does not capture electronic signatures. Currently, the Data Collection Form can be entered, edited, and submitted via the Internet. The respondents are required to print a copy of the edited form for signature by the auditor and auditee. The signed copy is then attached to the reporting package and mailed to the Federal Audit Clearinghouse. Since only the Data Collection Form can be filed electronically, and non-Federal entities are required to mail the reporting package, the capability to capture electronic signatures has not been built into the online Internet submission process. During the next year, the FAC, in conjunction with the Federal awarding agencies and other single audit stakeholders, will explore the possibility of electronic submission of the reporting package.

Type of Entity

Comment: One State government suggested capturing the type of entity (nonprofit, government, hospital, school, etc.) on the Data Collection Form.

Response: The revised Data Collection Form will not capture the type of entity. The FAC will review the Data Collection Form and identify the type of entity. This information will be accessible on the FAC website. The FAC was chosen to make this determination based on their experience classifying governmental entities. Also, the FAC will use a predetermined list which should provide for consistency within the classifications. The FAC website will clearly note that this determination was made by the FAC.

Joshua Gotbaum,

Executive Associate Director and Controller.

[FR Doc. 00–29296 Filed 11–15–00; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Ampal-American Israel Corporation, Class A Stock, $1.00 Par Value) File No. 1–08466

November 8, 2000.

Ampal-American Israel Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Class A Stock, $1,00 par value ("Security"), from listing and registration on the American Stock Exchange ("Amex").

On May 1, 2000, the Security became designated for quotation on the National Market of the Nasdaq Stock Market, Inc. ("Nasdaq National Market"), and trading was simultaneously suspended on the Amex. The Company hopes that quotation on the Nasdaq National Market will enhance the marketability of its Security by providing greater liquidity and visibility than it had found through its listing on the Amex.

The Company has stated that it has complied with the Rules of the Amex governing the withdrawal of its Security and that the Amex has indicated that it has no objection to such withdrawal.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon its continuing to be designated for quotation on the Nasdaq National Market and registered under Section 12(g) of the Act.[3]

Any interested person may, on or before December 1, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–29288 Filed 11–15–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24734; File No. 812–12228]

Summit Mutual Funds, Inc., et al., Notice of Application

November 9, 2000.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940, as amended (the "1940 Act") providing exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Applicants: Summit Mutual Funds, Inc. (the "Fund") and Summit Investment Partners, Inc. (the "Adviser").

Summary of Application: The Fund and the Adviser seek an order exempting them and certain life insurance companies ("Participating Insurance Companies") and their separate accounts from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder (including any comparable provisions of a permanent rule that replaces Ruled 6e–3(T) or Rule 6e–2, as subsequently amended) to the extent necessary to permit series of shares of any current or future investment portfolio of the Fund to be sold to and held by (a) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies, and (b) qualified pension and retirement plans, including, without limitation, those trusts, plans accounts, contracts or annuities described in sections 401(a), 403(a), 403(b), 408(a), 408(b), 414(d), 457(b), 408(k), or 501(c)(18) of the Internal Revenue Code of 1986, as amended (the "Code") and any other trust, plan, account, contract or annuity that is determined to be within the scope of Treasury Regulation 1.817.5(f)(3)(iii) outside of the separate account context ("Qualified Plans").

Filing Date: The application was filed on August 21, 2000; an amendment substantially conforming to this Notice will be filed during the pendency of the Notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 1, 2000, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; the Fund, P.O. Box 40409, Cincinnati, Ohio 45240–0409; and the Adviser, 312 Elm Street, Suite 2525, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. The Fund, formerly known as Carillon Fund, Inc., is a management investment company with 22 separate investment portfolios ("Portfolios"), each with its own investment objective. Nine of the Portfolios (the "Insurance Portfolio") currently serve as funding vehicles for registered variable annuity contracts and registered variable life insurance contracts issued by The Union Central Life Insurance Company ("Union Central"). The other 13 Portfolios (the "Public Portfolios") are offered directly to the public and also serve as funding vehicles for unregistered variable annuity contracts and variable life insurance policies of Union Central. The Public Portfolios are not used to fund registered variable annuity contracts. None of the relief requested here would apply to any current or future Public Portfolios. The Fund is registered under the Act (File No. 811–04000), and the offering of its shares is registered under the Securities Act of 1933 (File No. 2–90309). The Fund's shares are issuable into separate series, each series representing interests in a separate Portfolio. In addition to the nine current Insurance Portfolios, the Fund may create additional Insurance Portfolios in the future and Applicants seek relief that would encompass both existing Insurance Portfolios and new Insurance Portfolios created in the future. References herein to "Insurance Portfolios" encompasses both existing Insurance Portfolios and ones that may be created in the future.

2. The Adviser, formerly known as Carillon Advisers, Inc., was incorporated under the laws of Ohio on August 18, 1986, as successor to the advisory business of Carillon Investments, Inc., the investment adviser for the Fund since 1984. The Adviser is a wholly-owned subsidiary of Union Central, a mutual life insurance company organized in 1867 under the laws of Ohio. The Adviser is registered under the Investment Advisers Act of 1940 and serves as investment adviser to each of the Portfolios.

3. Participating Insurance Companies are the life insurance companies to which shares of the Insurance Portfolios will be offered. The Participating Insurance Companies will establish their own separate accounts and design their own variable annuity and variable life insurance contracts ("Contracts"). Each such Contract will undoubtedly have certain unique features and will probably differ from other Contracts supported by the Insurance Portfolios with respect to insurance guarantees, premium structure, charges, options, distribution method, marketing techniques, sales literature, etc.

4. Each Participating Insurance Company will be the legal obligation of satisfying all applicable requirements under state and federal law. It is anticipated that Participating Insurance Companies will rely on Rule 6e–2 or 6e–3(T) under the Act, although some may rely on individual exemptive orders as well, in connection with variable life insurance contracts. The role of the

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(g).

[4] 17 CFR 200.30–3(a)(1).

Fund, so far as the federal securities laws are applicable, will be limited to that of offering shares of the Insurance Portfolios to separate accounts of various insurance companies and to Qualified Plans and fulfilling any conditions the Commission may impose upon granting the order requested herein.

Applicants' Legal Analysis

5. Under current tax laws, the Insurance Portfolios are afforded an opportunity to increase their asset base through the sale of shares of the Insurance Portfolios to Qualified Plans. Section 817(h) of the Code, imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life policies held in the Insurance Portfolios.

6. Qualified Plans may choose any of the Insurance Portfolios as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice depending on the Plan itself. Shares of any of the Insurance Portfolios sold to certain Qualified Plans would be held by the trustee(s) of those Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act ("ERISA"). As described elsewhere herein, there will be no pass-through voting to the participants in such Qualified Plans. The Adviser will not act as investment adviser to any of the Qualified Plans that will purchase shares of any of the Insurance Portfolios.

7. The promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations, which made it possible for shares of an investment company to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable contracts. Thus, the sale of shares of the same investment company to Separate Accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

8. In connection with scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying investment company's shares. The exemptions granted to a separate account by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies that offer their shares "*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company" (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is commonly referred to, and is referred to herein, as "mixed funding."

9. In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated insurance companies. The use of a common investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is commonly referred to, and is referred to herein, as "shared funding."

10. The relief granted by Rule 6e–2(b)(15) is in no way affected by the purchase of shares of the Insurance Portfolios by Qualified Plans. However, because the relief under Rule 6e–2(b)(15) is available only where shares are offered *exclusively* to separate accounts, additional exemptive relief is necessary if the shares of the Insurance Portfolios are also to be sold to Plans.

11. Applicants request an order of the Commission exempting scheduled premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such a separate account) from Sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit shares of the Insurance Portfolios, which will also be sold directly to Qualified Plans, to be offered and sold in connection with both mixed funding and shared funding.

12. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying investment company's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies that offer their shares "*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." (emphasis added). Therefore, Rule 6e–3(T) permits mixed funding for flexible premium variable life insurance. However, Rule 6e–3(T) does not permit shared funding. The relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an investment company that also offers its shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies.

13. The relief granted by Rule 6e–3(T) also is in no way affected by the purchase of shares of the Insurance Portfolios by Qualified Plans. However, because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if the shares of the Insurance Portfolios are also to be sold to Plans.

14. Applicants request an order exempting flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such a separate account) from Sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rule 6e–3(T)(b)(15) (and any comparable permanent rule) thereunder, to the extent necessary to permit shares of the Insurance Portfolios, which will also be sold directly to Qualified Plans, to be offered and sold to separate accounts in connection with shared funding.

15. The Commission has granted numerous exemptions similar to those requested herein with respect to the mixed and shared funding component of this Application, including ones where the fund's shares also would be sold directly to Qualified Plans.

16. Section 6(c) authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants are not aware of any stated rationale for the exclusion of separate accounts and investment companies engaged in shared funding from the exemptive relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) or for the exclusion of separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Indeed, the Commission's proposed amendments to Rule 6e–2 would eliminate the exclusion of mixed funding from the relief provided under Rule 6e–2(b)(15) and, as noted above (*see supra* note 5), numerous exemptions permitting both mixed and shared funding have been granted since the adoption of Rules 6e–2 and 6e–3(T).

17. Similarly, Applicants are not aware of any stated rationale for excluding Participating Insurance Companies from the exemptive relief requested because the Insurance Portfolios may also sell their respective shares to Qualified Plans. If the Fund were to sell shares of the Insurance Portfolios only to Qualified Plans, no exemptive relief would be necessary. The relief provided under Rules 6e–2(b)(15) and 6e–2(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans. Exemptive relief is requested in the Application only because the separate accounts investing in the Insurance Portfolios are themselves investment companies that rely upon the relief under Rules 6e–2 and 6e–3(T) and do not wish to be denied such relief if the Insurance Portfolios sell shares to Qualified Plans.

18. Applicants believe that the same policies and considerations that led the Commission to grant such exemptions to other applicants are present here. Moreover, for the reasons stated below, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

19. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). However, Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the disqualification to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

20. The exemptions contained in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that it is unnecessary to apply Section 9(a) to the thousands of individuals who may be involved in a large insurance company but would have no connection with the investment company funding the separate accounts. Applicants believe that it is unnecessary to limit the applicability of the rules merely because shares of the Insurance Portfolios may be sold in connection with mixed and shared funding. The Participating Insurance Companies are not expected to play any role in the management of the Insurance Portfolios and would play only an indirect role in the administration of the Fund (*e.g.*, by performing certain shareholder servicing and recordkeeping functions for which they may be reimbursed by the Adviser). Therefore, applying the restrictions of Section 9(a) serves no regulatory purpose. Indeed, applying such restrictions would increase the monitoring costs incurred by the Participating Insurance Companies and, therefore, would reduce the net rates of return realized by Contract owners.

21. Moreover, the relief requested herein will in no way be affected by the proposed sale of shares of Insurance Portfolios to Qualified Plans. The insulation of the Fund from those individuals who are disqualified under the Act will remain intact even if shares of the Insurance Portfolios are sold to Qualified Plans. Since the Qualified Plans are not investment companies and will not be deemed to be affiliated persons of the Participating Insurance Companies solely by virtue of their shareholdings in the Insurance Portfolios, no additional relief is necessary.

22. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume that Contract owners are entitled to pass-through voting privileges with respect to investment company shares held by a related separate account. However, if the limitations on mixed and shared funding are satisfied, Rules 6e–2(b)(15(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirements in limited situations.

23. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying investment company or any contract between an investment company and its investment adviser, when an insurance regulatory authority so requires. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard contract owners' voting instructions with regard to changes initiated by the contract owners in the investment company's investment policies, principal underwriter or investment adviser.

24. Under the rules, voting instructions with respect to a change in investment policies may be disregarded only if the insurance company makes a good faith determination that the change would: (a) Violate state law; (b) result in investments that were not consistent with the investment objectives of the separate account; or (c) result in investments that would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Voting instructions with respect to a change in an investment adviser may be disregarded only if the insurance company makes a good faith determination that: (a) The adviser's fee would exceed the maximum rate that may be charged against the separate account's assets; (b) the proposed adviser may be expected to employ investment techniques that vary from the general techniques used by the current adviser; or (c) the proposed adviser may be expected to manage the investment company's investments in a manner that would be inconsistent with its investment objectives or in a manner that would result in investments that vary from certain standards.

25. Rule 6e–2 recognizes that variable life insurance contracts have important elements unique to insurance contracts and are subject to extensive state regulation of insurance. Thus, in adopting Rule 6e–2, the Commission expressly recognized that exemptions from pass-through voting requirements were necessary "to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." Flexible premium variable life insurance contracts and variable

annuity contracts are subject to substantially the same state insurance regulatory authority, and therefore, the corresponding provisions of Rule 6e–3(T) (which apply to flexible premium insurance contracts and which permit mixed funding) presumably were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2.

26. These considerations are no less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding. Such funding does not compromise the goals of the insurance regulatory authorities or of the Commission. While the Commission may have wished to reserve wide latitude wither respect to the once unfamiliar variable annuity product, that product is now familiar and there appears to be no reason for the maintenance of prohibitions against mixed and shared funding arrangements. Indeed, by permitting such arrangements, the Commission eliminates needless duplication of start-up and administrative expenses and potentially increases an investment company's assets, thereby making effective portfolio management strategies easier to implement and promoting other economies of scale.

27. In addition, the Insurance Portfolio's sale of shares to Qualified Plans will not have any impact on the relief requested in this regard. Shares of the Insurance Portfolios sold to certain Plans would be held by the Plans trustees, as mandated by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the plan with two exceptions: (a) When the plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper direction made in accordance with the terms of the plan and not contrary to ERISA, and (b) when the authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reversed to the trustees or the named fiduciary. In any event, there is no pass-through voting to the participants in such plans. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans.

28. Shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. For example, when different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. That possibility, however, is no different and no greater than exists when a single insurer and its affiliates offer their insurance products in several states, as currently is permitted.

29. Affiliations do not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below (which are adapted from the conditions included in Rule 6e-3(T)(b)(15) are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Insurance Portfolios.

30. Similarly, affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Contract owner voting instructions. The potential for disagreement is limited by the requirement that disregarding voting instructions be reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, that Participating Insurance Company may be required, at the election of the relevant Insurance Portfolio, to withdraw its separate account's investment in that fund and no charge or penalty will be imposed as a result of that withdrawal.

31. There is no reason why the investment policies of an Insurance Portfolio are mixed funding would or should be materially different from what they would or should be if that Portfolio funded only variable annuity contracts or only variable life insurance contracts. Hence, there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, the Insurance Portfolios will not be managed to favor or disfavor any particular insurer or type of Contract.

32. No one investment strategy can be identified as appropriate to a particular insurance product. Each pool of Contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. Those diversities are of greater significance than any differences in insurance products. An investment company supporting even one type of insurance product must accommodate those diverse factors.

33. Section 817(h) of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, qualified pension or retirement plans and separate accounts to share the same underlying investment company. Therefore, neither the Code, the Treasury Regulations nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life separate accounts all invest in the same management investment company.

34. While there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Qualified Plan cannot net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Fund at their net asset value. The Qualified Plan will than make distributions in accordance with the terms of the Plan and the life insurance company will make distributions in accordance with the terms of the variable contract.

35. With respect to voting rights, it is possible to provide an equitable means of giving such voting rights to separate account Contract owners and to the trustees of Qualified Plans. The transfer agent for the Fund will inform each Participating Insurance Company of its share ownership in each separate account, as well as inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

36. The ability of the Fund to sell shares of the Insurance Portfolios directly to Qualified Plans does not create a "senior security," as such term is defined under Section 18(g) of the Act, with respect to any Contract owner as opposed to a participant under a Qualified Plan. As noted above, regardless of the rights and benefits of participants under the Qualified Plans, or Contract owners under Contracts, the Qualified Plans and the separate accounts have rights only with respect to their respective shares of the Fund. They can only redeem such shares at their net asset value. No shareholder of any of the Insurance Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

37. There are no conflicts between the Contract owners of the separate accounts and the participants under the Qualified Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree that there are any inherent conflicts of interest among shareholders. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, trustees of Qualified Plans can made the decision quickly and implement the redemption of their shares from an Insurance Portfolio and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, even if there should arise issues where the interests of Contract owners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, on their own, redeem the shares out of the Fund.

38. Various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently do so. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of public name recognition as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable life insurance or variable annuity business on their own.

39. Use of the Insurance Portfolios as common investment media for Contracts would ameliorate these concerns. Participating Insurance Companies would benefit not only from the investment advisory and administrative expertise of the Adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Portfolios available for mixed and shared funding will encourage more insurance companies to offer Contracts. This should result in increased competition with respect to both Contract design and pricing, which can be expected to result in more product variation and lower charges. Contract owners would benefit because mixed and shared funding should eliminate a significant portion of the costs of establishing and administering separate funds.

40. Moreover, sale of the shares of Insurance Portfolios to Qualified Plans should result in an increased amount of assets available for investment by those Portfolios. This, in turn, should inure to the benefit of Contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new Insurance Portfolios to the Fund more feasible.

41. Applicants see no significant legal impediment to permitting mixed and shared funding. Indeed, as noted above, the Commission has issued several orders permitting mixed and shared funding with respect to both scheduled and flexible premium contracts. In addition, the Commission has broadened its grant of exemptive relief by issuing an order permitting mixed and shared funding while Fund shares are also sold directly to Qualified Plans. Therefore, as the Commission has tacitly acknowledged, granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of Section 9(a), 13(a), 15(a), or 15(b) of the Act or Rule 6e–2 or 6e–3(T) thereunder.

Applicants' Conditions

Applicants consent to the following conditions:

1. A majority of the Fund's board of directors (the "Board") will consist of persons who are not "interested persons" thereof, as defined by Section 2(a)(19) of the Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification of bona fide resignation of any director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Insurance Portfolios for the existence of any material irreconcilable conflict between and among the interests of the Contract owners of all separate accounts and participants of all Qualified Plans investing in the Insurance Portfolios. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Portfolios are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies, the Adviser and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Portfolio (collectively, "Participating Parties") will report any potential or existing conflicts of which they become aware to the Board. Participating Parties will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by a Participating Insurance Company to inform the Board whenever it has determined to disregard Contract owner voting instructions, and, if pass-through voting is applicable, an

obligation of each Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Parties under their agreements governing participation in the Insurance Portfolios, and their participation agreements with the Fund shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners and, if applicable, Qualified Plan participants.

4. If it is determined by a majority of the Board, or by a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant Participating Parties will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Insurance Portfolio(s) and reinvesting such assets in a different investment medium, which may include another Insurance Portfolio; (b) submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; (c) in the case of Qualified Plans, withdrawing the assets allocable to some or all of the Qualified Plans from the affected Insurance Portfolio and reinvesting those assets in a different investment medium, including another Insurance Portfolio; and (d) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard Contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Fund, to withdraw its separate account's investment in one or more Insurance Portfolios, and no charge or penalty will be imposed as a result of that withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the Fund, to withdraw its investment in an Insurance Portfolio and no charge or penalty will be imposed as a result of such withdrawal. The responsibility of taking remedial action in the event of a Board determination of an irreconcilable material conflict and bearing the cost of such remedial action will be a contractual obligation of all Participating Parties under their respective participation agreements and these responsibilities will be carried out with a view only to the interests of Contract owners and participants in Qualified Plans.

5. For purposes of condition 4, a majority of the disinterested directors of the Board will determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any Contract. No Participating Insurance company shall be required by this condition 4 to establish a new funding medium for any Contract if an offer to do so has been declined by vote of a majority of Contract owners materially and adversely affected by the irreconcilable material conflict. Further, no Qualified Plan will be required by this condition 4 to establish a new funding medium for the Plan if: (a) A majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline that offer; or (b) pursuant to documents governing the Qualified Plan, the Plan makes that decision without a Plan participant vote.

6. The Board's determination of the existence of an irreconcilable material conflict and its implications will be made known promptly in writing to all Participating Parties.

7. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission interprets the Act to require pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of an Insurance Portfolio held in their separate accounts in a manner consistent with voting instructions timely received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of their registered separate accounts calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other registered separate accounts investing in the Insurance Portfolios will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Portfolios. Each Participating Insurance Company will vote shares for which it has not received voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

8. The Fund will notify all Participating Insurance Companies that separate account prospectus disclosure, or Qualified Plan prospectus disclosure or other Qualified Plan document disclosure, regarding potential risks of mixed and shared funding may be appropriate. The Fund will disclose in its prospectus that: (a) Its shares are offered to Qualified Plans and to separate accounts that fund both annuity and life insurance contracts of affiliated and unaffiliated Participating Insurance Companies; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in an Insurance Portfolio and the interests of Qualified Plans investing in such Insurance Portfolio, if applicable, may conflict as a result of the mixed and shared funding arrangement; and (c) the Fund's Board will monitor for the existence of any material conflicts and determine what action, if any, should be taken.

9. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participating Insurance Companies and Qualified Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

10. If and to the extent that Rules 6e–2 and 6e–3(T) are emended (or if Rule 6e–3 under the Act is adopted) to provide exemptive relief from any provision of the Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Fund and/or the Participating Insurance Companies, as appropriate, shall take

such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent applicable.

11. The Fund will comply with all provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in shares of the Insurance Portfolios), and, in particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although the Fund is not an investment company of the type described in Section 16(c) of the Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

12. No less than annually, the Participating Insurance Companies and/or the Adviser shall submit to the Board such reports, materials, or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in these express conditions. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Parties to provide these reports, materials, and date to the Board shall be a contractual obligation of all Participating Parties under the agreements governing their participation in the Insurance Portfolios.

13. In the event that a Qualified Plan shareholder should ever become an owner of 10% or more of the assets of an Insurance Portfolio, that Qualified Plan shareholder will execute a fund participation agreement with the Fund including the conditions set forth herein to the extent applicable. A Qualified Plan shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Insurance Portfolio.

Conclusion

For the reasons and upon the facts stated above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission by the Division of Investment Management pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43530; File No. SR–CHX–00–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc., to Amend Its Rule Relating to Automatic Execution of Agency Limit Orders for Dual Trading System Issues

November 7, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 14, 2000, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rule relating to automatic execution of agency limit orders for Dual Trading System issues in the event of a trade-through. Specifically, the Exchange proposes to amend Article XX, Rule 37(b)(6). The text of the proposed rule change is below. Proposed additions are in italics. Proposed deletions are in brackets.

Guaranteed Execution System And Midwest Automated Execution System

Rule 37.

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(b) Automated Executions. The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule (Article XX, Rule 37(a)) and certain other orders. In the event that an order that is subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

* * * * *

(6) Execution of Dual Trading System Issues. In Dual Trading Systems issues there shall be a fifteen (15) second delay between the time a market order is entered into MAX and the time it is automatically executed. In the event that the spread between the ITS BEST Bid and ITS Best Offer in a stock eligible for automatic execution in MAX, is equal to the minimum variation at the time an order is entered into MAX, that order shall be executed immediately (*i.e.*, in 0 seconds without the 15 second delay). All agency market orders and all limit orders that are marketable when entered into the MAX System, that are of a size less than or equal to the auto-execution threshold and are eligible for execution under the BEST Rule will automatically be filled at the ITS Best Bid (for a sell order) or ITS Best Offer (for a buy order) or better. All other agency limit orders will be [automatically] filled at the limit price when there is a price penetration of *the* limit price in the primary market. *A specialist may elect automatic execution of such agency limit orders on an issue-by-issue basis.* [However, if the price differential between the trade-through price and the last sale is more than ¼ point or 1% of the value of the trade-through price, whichever is less, a second print at a trade-through price which is less than ¼ point (or 1%) away from the previous trade-through price is necessary before the MAX system will automatically execute the agency limit order.] For purposes of this Rule, "agency order" shall mean an order for the account for a customer but shall not include professional orders as defined in Article XXX, Rule 2, interpretation and policy .04.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article XX, Rule 37(b)(6) to allow a specialist to elect, on an issue by issue basis, to either manually or automatically execute limit orders when a trade-through occurs in the primary market. The current rule provides that agency limit orders (that are not marketable when entered into the Exchange's MAX automatic execution system) will automatically be filled at the limit price when there is a price penetration of the limit price in the primary market for the subject security. Under the proposed amended rule, automatic execution of such limit orders will no longer be mandated. A CHX specialist may elect to provide for automatic execution of agency limit orders at the limit price when there is a price penetration of the limit price in the primary market for the subject securit(ies). The obligation to fill the order at the limit price remains the same under either election. The Exchange believes that this proposed amendment reasonably anticipates the impact that the decimal pricing environment will have on the national market system, where the number of small orders executed at multiple price levels may increase the number of inadvertent trade throughs that could otherwise lead to unwarranted automated executions of large orders in a CHX specialist's limit order book, exposing the specialist to substantially increased liability in the decimal pricing environment.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. In particular, the Exchange believes the proposed rule is consistent with Section 6(b)(5) of the Act[3] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–00–28 and should be submitted by December 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29353 Filed 11–15–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43505; File No. SR–MBSCC–00–01]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change Relating to Letters of Credit

November 1, 2000.

On April 11, 2000, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MBSCC–00–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On June 13, 2000, MBSCC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on June 26, 2000.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Discussion

The rule change adds subsection (b) to Article IV, Rule 2, Section 9 of MBSCC's rules to prohibit MBSCC from accepting a letter of credit from a participant that is issued by that participant or by an affiliate of that participant.[3] This rule change codifies MBSCC's historical practice of requiring that a letter of credit deposited by a participant to the participants fund be issued by an approved letter of credit other than the participant or an affiliate of the participant.[4]

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. As set forth below, the Commission believes that MBSCC's rule change is consistent with this obligation.

Letters of credit are used at MBSCC and at other clearing agencies as collateral to meet clearing fund obligations. MBSCC's clearing fund is intended to provide liquidity and protection to MBSCC and its members in the event a MBSCC member defaults on its obligation. If a member were allowed to issue a letter of credit to itself (or an affiliate of the member to the member), the letter of credit would probably not be honored in a default situation.

Because the rule change will prohibit a participant from providing a letter of credit for itself or from an affiliated entity, the rule change helps ensure that MBSCC can draw upon a letter of credit used as clearing fund collateral if MBSCC ever had the need to do so. This should assist MBSCC in safeguarding securities and funds in its possession or control or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–00–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29286 Filed 11–15–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43533; File No. SR–NASD–00–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending NASD Rule 4611 Relating to Registration As a Nasdaq Market Maker in a Security

November 8, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary The Nasdaq Stock Market, Inc., ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 4611 to allow an application for registration as a market maker in a security to become effective on the same day the application is filed. Nasdaq is also proposing a corresponding technical change to Rule 4720 regarding SOES Participation Registration. Below is the text of the proposed rule change; proposed deletions are in brackets and proposed additions are underlined.

4611. Registration as a Nasdaq Market Maker

* * * * *

[(c) A Nasdaq market maker may become registered in a newly authorized issued by contacting Nasdaq Market Operations. If registration is requested within five (5) business days after the issue is authorized, registration shall become effective at the time the registration request is entered.]

[(d)] *(c)* A Nasdaq market maker may become registered in an issue [already included in Nasdaq] by entering a registration request via a Nasdaq terminal *or other Nasdaq approved electronic interface with Nasdaq's system or by contacting Nasdaq Market Operations.* If [registration is requested in an issue that has been included in Nasdaq for more than five (5) days, and] the requirements of paragraph (b) above are satisfied, registration shall become effective on the day [after] the registration request is entered. [Provided, however, that same day registration is permissible for:

(1) a Nasdaq market maker, registered in a security that is the subject of a publicly announced merger or acquisition offer with another Nasdaq issue, who seeks registration in the other merger or acquisition issue; and

(2) a manager or co-manger of an underwriting syndicate for a secondary offering of a security on the day of the secondary offering of that security.]

[(e)] *(d)* A Nasdaq market maker's registration in an issue shall be terminated by the Association if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective.

[(f)]*(e)* Unless otherwise specified by the Association, each Nasdaq market maker that is registered as a market maker in a Nasdaq National Market security shall also at all times be registered as a market maker in the Small Order Execution System (SOES) with respect to that security and be subject to the SOES Rules as set forth in the Rule 4700 Series.

[(g)]*(f)* In cases where a market making member has more than one trading location, a fifth character geographic indicator shall be appended to the market marker's identifier for that security to identify the branch location where the security is traded. The fifth-character branch indicators are established by the Association and published from time to time in the Nasdaq/CQS symbol directory.

4720. SOES Participant Registration

* * * * *

(b) Pursuant to Rule 4611[(f)], participation as a SOES Market Maker is required for any Nasdaq market maker registered to make a market in an NNM security.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

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[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 42961 (June 20, 2000), 65 FR 39456.

[3] Article IV, Rule 2, Section 9 of MBSCC's rules, which governs deposits of letters of credit by MBSCC's participants to the participants fund for margin purposes, provides, among other things, that MBSCC may approve as the issuer of a letter of credit any domestic or foreign bank or trust company meeting the requirements set forth in procedures adopted by MBSCC.

The rule change also amends Article I, Rule 1 of MBSCC's Rules to add a definition of "affiliate." Affiliate is defined as follows: "The term an 'Affiliate' of, or a person 'Affiliated' with, a specified person, means a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. For purposes of this definition, the term 'control' (including the terms 'controls,' 'controlled by,' and 'under common control with') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."

[4] The proposed rule change also makes a technical modification to Article III, Rule 5 of MBSCC's Rules to correct the reference contained within such rule from "Rule 4" to "Rule 5."

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Presently, NASD Rule 4611 states that a request to become registered as a market maker in a security that has been trading on Nasdaq for more than five (5) days is effective on the day following the request. If a security has been trading on Nasdaq for five days or less, the market maker's request becomes effective immediately. In contrast, market makers utilizing Electronic Communication Networks/Alternative Trading Systems ("ECNs/ATSs") may immediately upon request begin displaying quotes/orders for any security trading on Nasdaq, regardless of how long the security has been trading. To eliminate the disparate treatment of market makers, Nasdaq is proposing to allow market makers to begin trading in an issue on the same day they apply for registration.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[5] in that it is designed to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. In addition, the proposal is not designed to permit unfair discrimination between brokers and dealers, but instead is designed to eliminate the disparate treatment of market makers.

Nasdaq also believes the proposed rule change is consistent with Section 11A of the Act.[6] Section 11A set forth Congress's findings that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, fair competition among brokers and dealers. The proposal is consistent with this goal because it will allow market makers to begin quoting in a security in the same timeframe as that which is applicable to ECNs/ATSs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act,[7] and Rule 19b–4(f)(6)[8] thereunder because the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. The proposal is designed to eliminate the disparate treatment of market makers in that the proposal is designed to eliminate the disparate treatment of market makers and will permit both market makers and those utilizing ECNs/ATSs to begin trading in an issue on the same day they apply for registration.

In addition, Nasdaq provided the Commission with written notice of its intent to file this proposed rule change, and the written notice included a description of the proposal and the text of the proposed rule change. Nasdaq also requested that the Commission accelerate the operative date.[9] The Commission believes that the proposal is consistent with the protection of investors and the public interest and finds good cause to designate the proposal immediately operative upon filing. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act,[10] the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29287 Filed 11–15–00; 8:45 am]

BILLING CODE 8010–01–M

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[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78k–1.

[7] 5 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 204.19b–4(f)(6).

[9] For purposes only of accelerating the operative date of this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(3)(A).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA) Internal Revenue Service (IRS) Match Number 1016

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with IRS.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–2935 or writing to the Associate Commissioner, Office of

Program Support, 2–Q–16 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records.

It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: May 17, 2000.

Susan M. Daniels,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Internal Revenue Service (IRS) with the Social Security Administration (SSA).

A. Participating Agencies

SSA and IRS.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions under which IRS agrees to disclose to SSA certain return information for use in verifying eligibility for, and/or the correct amount of, benefits provided under Title XVI of the Social Security Act to qualified aged, blind and disabled individuals, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–96, 87 Stat. 152).

C. Categories of Records and Individuals Covered by the Matching Program

Section 1631(e)(1)(B) of the Social Security Act (42 U.S.C. 1383(e)(1)(B)) and section 6103(1)(7) of the Internal Revenue Code (26 U.S.C. 6103(1)(7)).

D. Inclusive Dates of the Match

The matching program shall become effective no sooner than 40 days after notice for the program is sent to Congress and OMB; or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 00–29281 Filed 11–15–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3474]

Privacy Act of 1974; Altered System of Records

Notice is hereby given that the Department of State proposes to alter an existing system of records, STATE–31, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 522a (r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on November 3, 2000.

It is proposed that the current system STATE–31 will be renamed "Human Resources Records," and due to the expanded scope of the current system, the altered system description will include revisions and/or additions to all other sections. Changes to the existing system description are proposed in order to reflect more accurately the Bureau of Human Resources' record-keeping systems and a reorganization of activities and operations. Also, certain relevant records will be removed from "Biographic Register Records, STATE–01," "Board of Foreign Service Records, STATE–03," and "Personnel Travel Records, STATE–32" and will become part of STATE–31. STATE–01, STATE–03 and STATE–32 will be deleted in the near future.

Any persons interested in commenting on the altered system of records may do so by submitting comments in writing to Margaret Peppe, Chief; Programs and Policies Division; Office of IRM Programs and Services; A/RPS/IPS/PP; U.S. Department of State, SA–2; Washington, DC 20522–6001. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The altered system description, "Human Resources Records, STATE–31" will read as set forth below.

Dated: November 3, 2000.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration, Department of State.

STATE–31

SYSTEM NAME:

Human Resources Records.

SECURITY CLASSIFICATION:

Classified and unclassified.

SYSTEM LOCATION:

Department of State, 2201 C Street, NW, Washington, DC 20520; State Annex 01, 2401 E Street, NW, Washington, DC 29937; overseas at U.S. embassies, U.S. consulates general, and U.S. consulates; U.S. missions; and the National Personnel Records Center, 111 Winnebago Street, St. Louis, MO 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants for employment with the Department of State (including unsuccessful applicants); all current and former Civil Service (CS) and Foreign Service (FS) employees of the Department of State including members of the Senior Executive Service, Presidential appointees, employees under full-time, part-time, intermittent, temporary, and limited appointments; anyone serving in an advisory capacity (compensated and uncompensated); other agency employees on detail to the Department; former Foreign Service Reserve Officers; student applicants for internships, Presidential Management Interns, Foreign Affairs Fellowship Program Fellows, student interns and other student summer hires, Stay-in-School student employees, and Cooperative Education Program participants; employees who report intent to marry or cohabitate with a foreign national; prospective alien spouses of Department employees;

employees who apply for their spouses or children to be expeditiously naturalized; employees detailed or seconded to international organizations; Foreign Service personnel separated for cause; current and former Foreign Service Generalists who were/are members of class action lawsuits; annuitants under the Foreign Service Retirement and Disability System and the Foreign Service Pension System as well as civil service annuitants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 2581 (General Authority of Secretary of State); 22 U.S.C. 2651a (Organization of the Department of State); 22 U.S.C. 3901 *et seq.* (Foreign Service Act of 1980); 22 U.S.C. 3921 (Management of the Foreign Service); 22 U.S.C. 4041 (Administration of the Foreign Service Retirement and Disability System); 5 U.S.C. 301–302 (Management of the Department of State); Executive Order 9397 (Numbering System for Federal Accounts Relating to Individual Persons); Executive Order 9830 (Amending the Civil Service Rules and Providing for Federal Personnel Administration); and Executive Order 12107 (Relating to the Civil Service Commission and Labor-Management in the Federal Service) and successor authorities.

PURPOSES:

The Official Personnel File and other general personnel records files are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with personnel actions effected during an employee's Federal service. The information and documents collected and maintained in this system are in keeping with the Bureau of Human Resources' mission to determine the size and configuration of the Department workforce in order to meet its goals of defending national security and promoting national interests; to document all processes associated with individual employment histories and career progression; to ensure that all employees and potential employees have equal opportunities and to make personnel management determinations about employees throughout their Federal careers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are kept in different offices within the Department according to the status of the employee and/or the action being taken. Most records are retained in the Bureau of Human Resources, however, some records are held by Bureaus with partial or fully delegated personnel authority for certain personnel functions. Eventually, the records may be merged, retired or disposed of. All categories of records may include identifying information, such as, but not limited to, name, date of birth, home address, mailing and e-mail address, social security number and home telephone number. The primary record files are the official personnel files; merit promotion files; recruitment and employment files; employee relations files; technician files; career development and counseling files; performance files; conduct, suitability, and discipline files; Foreign Service promotion files; and retirement and annuitant files; which may contain any of the following documents and various related documents not otherwise stated: applications for Federal employment; resumes; biographic information; college transcripts; crediting plans; panel rating and summary sheets; rank order list of candidates and Merit Promotion certificates of those eligible; fingerprint charts; security clearance forms and related correspondence; requests for personnel action and other related forms required for entry on duty such as health and life insurance and other benefits; questionnaires for National Security positions; correspondence documenting eligibility for priority consideration and/or placement and related documents; pre-appointment certification statements for Selective Service registration; appointment affidavits; Declarations of Appointee; Declarations of Federal Employment; Employment Eligibility Verifications; letters of appointment offer; employment confirmation letters; Statements of Understanding (employee-signed agreement to conditions of employment); official personnel actions, *e.g.*, assignment, pay, promotion, leave and/or travel; Foreign Service written and oral examination results; language proficiency ratings; reports of other processes that impact the status of an employee, *e.g.*, investigations of the Office of the Inspector General; documents related to issues raised in lawsuits; counseling messages; correspondence with parties to litigation including class actions, or their attorneys; documents regarding awarding of monetary, promotion, award or assignment relief under consent decrees, settlements, agreements, or court orders; Department letters regarding separation for cause and responses by individuals; transcripts of hearings; recommendations of hearing officers; documents related to potential and/or formal disciplinary actions such as reports of investigation from the Office of the Inspector General and/or the Bureau of Diplomatic Security, warning letters, reprimands, proposal letters, employee's written responses, summary of the employee's oral response, and decision letters imposing disciplinary action; performance evaluations and related correspondence; career development and counseling records including training and assignment records; bid lists; requests for and notifications of changes in tours of duty and home leave eligibility; grievance files; requests for medical clearance; medical clearance waivers and medical clearances; processing records and card files; promotion, upward mobility, and conversion files (Mustang and lateral entry programs); retirement applications; forms and documents related to benefits under the Federal Employees Compensation Act; documents pertaining to disabled employees; designated beneficiary information and estimated annuity calculations; records of health and life insurance enrollments for annuitants and current and former spouses; annuitant and external placement files; title and rank documents; Presidential Commission records; Foreign Service Residence and Dependency Reports; separate maintenance allowance forms; applications for marriage to foreign nationals and notices of intent of Foreign Service employees; service record cards; Personal Audit Reports and abstracts; and forms and correspondence relating to Foreign Service allowances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the Human Resources Records may be used:

- By Department personnel in the performance of their official duties including, but not limited to, recruitment, position classification, appointments, assignments, performance management/appraisal and compensation, evaluations and promotions, awards, training, staffing, counseling, disciplinary or adverse actions, grievances, litigation, travel orders and operations of the automated personnel/payroll and Foreign Service annuitant systems;
- To provide the names of those Foreign Service employees who are proposed for tenure, promotion or assignment requiring special action to the Bureau of Diplomatic Security, the Office of the Inspector General, and the Office of Employee Relations in the Bureau of Human Resources for review and eventual submission to the Director General of the Foreign Service;
- To track security clearances for applicants;
- To provide personnel trends and demographics for resource management and analysis;
- To administer the Department's disciplinary program for both Civil Service and Foreign Service employees as well as the programs for expeditious naturalization and marriage to and cohabitation with foreign nationals;
- To examine employee complaints regarding the validity of specific documents in their files;
- By consulting services who provide information about available aids, devices and methods of accommodating employees with disabilities;
- To exchange information with the Office of Personnel Management for its government-wide personnel management functions such as pay, benefits, and retirement deductions;
- To provide information to other Federal agencies, state governments, foreign governments and international organizations where employees are being considered for detail, assignment or secondment;
- To provide information to academic institutions to which Department employees may be assigned for long-term training;
- To disclose information to any member of an agency's Performance Review Board or other panel when the member is not an official of the employing agency; information would then be used for approving or recommending selection of candidates for executive development or SES candidate programs, issuing a performance rating of record, issuing performance awards, nominating for meritorious and distinguished executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance;
- By attorneys, union representatives or other persons designated by employees in writing to represent them in complaints, grievance, appeal, or litigation cases;
- To respond to requests in determining a former spouse's entitlement to benefits and other inquiries related to retirement benefits;
- By the President of the United States, the Executive Office of the President and legislative and appropriations committees of the U.S. Congress charged with consideration of legislation and appropriations for the Foreign Service, or representatives duly authorized by such committees;
- By labor organization officials when such information is relevant to personnel policies affecting employment conditions and necessary for exclusive representation by the labor organization;
- To disclose information to officials of foreign governments and other U.S. government agencies for clearance before a Federal employee is assigned to that country as well as for the procurement of necessary services for American personnel assigned overseas, such as permits of free entry and identity cards;
- To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Department of Defense, or any other Federal agencies that have special civilian employee retirement and disability programs; or to a national, state, county, municipal, or other publicly recognized charitable or income security, administration agency (e.g., State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment or health benefits programs of the Department or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid under such programs;
- To disclose to the Office of Federal Employees Group Life Insurance, information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage, or eligibility for payment of a claim for life insurance;
- To disclose, to health insurance carriers contracting with the Federal government to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts;
- When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled;
- To consider and select employees for incentive awards and other honors and to publicize those granted—this may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition;
- To disclose information to the Inspector General in conducting an official investigation of the Department or any of its personnel;
- By the subject of the record to review his/her career status and progress;
- To disclose information to the Department of Justice or in connection with proceedings before a court, adjudicative body, or other administrative body when:

(1) The agency, or any component thereof; or

(2) Any employee of the agency in his or her official capacity; or

(3) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(4) The United States, when the agency determines that litigation is likely to affect the agency or any of its components; is a party to litigation or has an interest in such litigation, and the Department of State determines that the use of such records is arguably relevant and necessary to the litigation;

- To implement court decisions and/or terms of settlement agreements reached by the parties;
- To prepare reports to the courts in compliance with monitoring requirements;
- In response to an order from a court or an administrative body (including, but not limited to the Equal Employment Opportunity Commission, the Foreign Service Grievance Board and the Merit Systems Protection Board) directing the production of personnel records;
- By other government agencies and private organizations, institutions or individuals to verify employment, to process security clearances and to request record or credit checks;
- To provide an official of another Federal agency information needed in the performance of official duties in support of the functions for which the records were collected and maintained;
- To disclose information to Equal Employment Opportunity (EEO) counselors and EEO investigators in connection with EEO complaints and to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission;
- By the Department of Labor's Office of Workers' Compensation programs relating to benefits under the Federal Employees Compensation Act; and

- To disclose information to the news media and the public when (1) a matter involving the Department of State has become public knowledge, (2) the Under Secretary for Management determines that in response to the matter in the public domain, disclosure is necessary to provide an accurate factual record on the matter, and (3) the Under Secretary determines that there exists a legitimate public interest in the information disclosed.

Also see the "Routine Uses" paragraph of the Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media and hard copy.

RETRIEVABILITY:

By individual name, social security number.

SAFEGUARDS:

All employees of the Department of State have undergone background investigations. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive at which time they will be retired or destroyed in accordance with published records schedules of the Department of State and as approved by the National Archives and Records Administration. More specified information may be obtained by writing to the Director, Office of IRM Programs and Services; A/RPS/IPS; U.S. Department of State, SA–2; Washington, DC 20522–6001.

SYSTEM MANAGER(S) AND ADDRESS:

The Director General of the Foreign Service and Director of Human Resources; Department of State; 2201 C Street, NW; Washington, DC 20520.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that the Bureau of Human Resources might have records pertaining to themselves should write to the Director, Office of IRM Programs and Services (address above). The individual must specify that he/she wishes the Human Resources Records to be checked. At a minimum, the individuals must include: name; date and place of birth; approximate dates of employment with the Department of State or when in process for a potential appointment; current mailing address and zip code; signature and preferably, his/her social security number.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of IRM Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained directly from the individual who is the subject of these records, previous employers, supervisors, Foreign Service inspectors, any/all offices within the Bureau of Human Resources (counselors, placement officers, and personnel technicians), other bureaus (administrative/executive officers, personnel and payroll offices, security, medical, and legal), reports of the Board of Examiners of the Foreign Service, Foreign Service Employee Evaluation Reports and Selection Board findings, the Foreign Service Institute, colleges, universities, Armed Forces academic institutions, contractors responsible for administration of the Foreign Service written examination, and other authorized agencies administering pre-employment tests, Office of Personnel Management and other federal agencies, prospective alien spouses of Foreign Service employees; grievance staff and appeals boards, affidavits and testimony of witnesses.

System exempted from certain provisions of the Privacy Act:

Pursuant to 5 U.S.C. 552a(k)(4), records contained within this system that are maintained solely for statistical purposes are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Pursuant to 5 U.S.C. 552a (k)(5) and (k)(7), certain records contained within this system contain confidential source information and are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Pursuant to 5 U.S.C. 552a (k)(6), records that contain testing or examination material the release of which may compromise testing or examination procedures are also exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). See Department of State Rules published in the **Federal Register**.

[FR Doc. 00–29246 Filed 11–15–00; 8:45 am]

BILLING CODE 4710-24-U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–120]

Initiation of Section 302 Investigation and Request for Public Comment: Wheat Trading Practices of the Canadian Wheat Board

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation and request for comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under Chapter 1 of Title III of the Trade Act of 1974 with respect to the wheat trading practices of the Canadian Wheat Board. The USTR invites written comments from the public on the matters being investigated, the methods to be used to conduct the investigation, and the determinations to be made pursuant to the investigation.

DATES: This investigation was initiated on October 23, 2000. Written comments from the public are due on or before noon on Wednesday, December 20, 2000.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Sharon Bomer Lauritsen, Director of Agricultural Affairs, (202) 395–6127, or William Busis, Associate General Counsel, (202) 395–3150. For information concerning procedures for submitting public comments, please contact Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395–3419.

SUPPLEMENTARY INFORMATION:

The Allegations in the Petition

On September 8, 2000, the North Dakota Wheat Commission filed a petition pursuant to section 302(a) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2412(a)), alleging that certain wheat trading practices of the Government of Canada and the Canadian Wheat Board (CWB) are unreasonable, and that such practices burden or restrict U.S. commerce. The petitioner filed additional explanatory materials on September 21, 2000, September 27, 2000, October 5, 2000, and October 10, 2000.

The petition alleges that the CWB is a state-trading enterprise with sole control over the purchase and export of western Canadian wheat for human consumption. Certain elements of the wheat trading system established by the Government of Canada allegedly provide the CWB with pricing flexibility not available to private wheat traders. According to the petition, those elements include: (1) CWB monopoly authority under Canadian federal law to purchase western Canadian wheat and to control the international marketing of western Canadian wheat; (ii) a purchasing system under which Canadian farmers are required to accept initial CWB payments based on only a portion of the price that the CWB anticipates it can obtain for the grain, with any subsequent payments to be received later in the marketing year; (iii) the provision by the Government of Canada of a full financial guarantee of the CWB's initial payments to Canadian farmers; (iv) special, preferential rail transportation arrangements which are made available to the CWB; and (v) a varietal control system which limits any foreign competition in the domestic Canadian wheat market. The petition claims that although the CWB operates in secrecy and information on the CWB's trading practices is difficult to obtain, available information indicates that the CWB exploits its pricing flexibility by engaging in certain allegedly unreasonable wheat trading practices. According to the petition, such practices include standing offers by the CWB to undersell U.S. wheat in certain third-country markets, and the targeting by the CWB of particular markets by consistently offering to sell wheat at less than the market value. The petition asserts that such practices have harmed U.S. wheat farmers by causing lost U.S. market share in the United States and particular third-country markets, by reducing the sales prices obtained by U.S. wheat farmers, and by causing a rise in unsold wheat stocks in the United States.

The petitioner does not allege that acts, policies, and practices of the Government of Canada or the Canadian Wheat Board are in violation of, or inconsistent with, the international legal rights of the United States.

Section 301

Section 302(a) of the Trade Act authorizes the USTR to initiate an investigation under chapter 1 of Title III of the Trade Act (commonly referred to as "section 301") in response to the filing of a petition pursuant to section 302(a)(1). Matters actionable under section 301 include, inter alia, acts, policies, and practices of a foreign country that are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce. An act, policy or practice is unjustifiable if it is in violation of, or inconsistent with the international legal rights of the United States. An act, policy or practice is unreasonable if the act, policy or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair or inequitable.

Initiation of Investigation and Consultations

On October 23, 2000, the USTR determined to initiate an investigation to determine whether certain acts, policies or practices of the Government of Canada and the Canadian Wheat Board with respect to wheat trading are unreasonable and burden or restrict U.S. commerce and are, therefore, actionable under section 301.

Pursuant to section 303(a) of the Trade Act, on October 23, 2000 USTR requested consultations with the Government of Canada concerning the issues under investigation. USTR will seek information and advice from the petitioner and appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the petition and any other submissions to USTR in this investigation. In particular, comments are invited regarding (i) the acts, policies and practices of the Government of Canada and the Canadian Wheat Board that are the subject of this investigation; (ii) the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices; (iii) the methods to be used to conduct the investigation; (iv) the determinations required under section 304 of the Trade Act; and (v) appropriate action under section 301 which could be taken in response.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and must be filed on or before noon on Wednesday, December 20, 2000. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 223, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508.

Comments will be placed in a file (Docket 301–120) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. Copies of the public version of the petition and other relevant documents are available for public inspection in the USTR Reading Room. An appointment to review the docket (Docket No. 301–120) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

William L. Busis,

Chairman, Section 301 Committee.

[FR Doc. 00–29399 Filed 11–15–00; 8:45 am]

BILLING CODE 3190-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Environmental Impact Statement and Notice of Public Hearing for the Chicago Terminal Airspace Project

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of Draft Environmental Impact Statement and conduct of a public hearing.

SUMMARY: The Federal Aviation Administration (FAA), Great Lakes Region, is issuing this notice to advise the public that it has prepared a Draft Environmental Impact Statement (DEIS) for the Chicago Terminal Airspace Project (CTAP) and that copies of the DEIS are available for public review.

A Public Hearing and informational workshop will be held Monday, December 18, 2000, from 5 p.m. to 8 p.m. in the Illinois, Minnesota and Michigan conference rooms at the Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, IL, 60018. The entrance is

on the northeast side of the building. All persons planning to attend should bring picture identification to allow issuance of a building security pass.

The purpose of this hearing is to consider the environmental effects of the proposed CTAP project and afford the public the opportunity to present oral and/or written comments. A transcript of the hearing will be made. Written comments will be accepted through close of business on January 12, 2001. The first half-hour of each hour of the Public Hearing will be allocated to pre-reserved testimony. Individuals may call Ms. Annette Davis at telephone (847) 294–8091 to receive a reserved time slot to testify at the Public Hearing. All individuals, organizations, agencies, and representatives will have 5 minutes to testify. Individuals, organizations, agencies, and representatives wishing to submit written comments may send them to: Ms. Annette Davis, AGL–520.E, Federal Aviation Administration, Great Lakes Region. 2300 East Devon Avenue, Des Plaines, IL, 60018.

FOR FURTHER INFORMATION CONTACT: Ms. Annette Davis Federal Aviation Administration, Great Lakes Region, Air Traffic Division, 2300 East Devon Avenue, Des Planes, Illinois, 60018, (847)–294–8091.

SUPPLEMENTARY INFORMATION: The proposed CTAP changes could affect flights to and from airports within the Chicago region, including Chicago O'Hare International Airport, Chicago Midway Airport, Milwaukee Mitchell International Airport, and general aviation reliever airports. Components of the proposal include:

- Establish a new high altitude O'Hare arrival route from the southwest, separated laterally and vertically from the existing route
- Modification of the existing high altitude routes at the southeast and northwest arrival cornerposts, separated laterally and vertically from the existing route
- Establishment of a new high altitude route to the northeast, separated vertically from the existing route
- Implementation of more efficient use of existing routes for O'Hare and Midway departures to the north, south, east, and west
- Establishment of a new high altitude route to Midway for aircraft from the northwest and northeast
- Establishment of a new high altitude arrival route for aircraft destined to Milwaukee from the south
- Transfer of portions of airspace from Chicago Center to Chicago Terminal Radar Approach Control (TRACON) and from Chicago TRACON to Rockford TRACON

The project is not associated with any airport development projects or construction of any physical facilities. The changes proposed by CTAP are designed to improve traffic flows and reduce airborne and ground delays. They would enhance safety and efficiency by maximizing controller flexibility and simplifying operations for pilots. CTAP has the potential to enhance air quality by reducing en route mileage. As disclosed in the DEIS, CTAP would not result in significant adverse impacts to any resource category.

Copies of the CTAP DEIS are available at the following locations:

State of Illinois

Bensenville Public Library, 200 S. Church Rd., Bensenville, IL 60106

Des Plaines Public Library, 841 Graceland Ave., Des Plaines, IL 60016

Eisenhower Public Library, 4652 N. Olcott Ave., Harwood Heights, IL 60656

Elk Grove Village Public Library, 1001 Wellington Ave., Elk Grove Village, IL 60007

Elmhurst Public Library, 211 Prospect Ave., Elmhurst, IL 60126

Franklin Park Public Library, 10311 Grand Ave., Franklin Park, IL 60131

Garfield Ridge Branch Library, 6348 South Archer Ave., Chicago, IL 60638

Harold Washington Library, 400 South State St., 5th Floor, Chicago, IL 60605

Mount Prospect Public Library, 10 S. Emerson St., Mount Prospect, IL 60056

Northlake Public Library, 231 N. Wolf Rd., Northlake, IL 60164

Oriole Park Branch Library, 5201 N. Oketo Ave., Chicago, IL 60656

Park Ridge Public Library, 20 S. Prospect Ave., Park Ridge, IL 60068

Schiller Park Public Library, 4200 Old River Rd., Schiller Park, IL 60176

State of Indiana

Lake County Public Library, 1919 W. 81st Ave., Merrillville, IN 46410–5382

State of Wisconsin

Milwaukee Central Public Library, 814 W. Wisconsin Ave., Milwaukee, WI 53233

Oak Creek Public Library, 8620 S. Howell Ave., Oak Creek, WI 53154

Information is also available on the Internet at the web site address http://www.faa.gov/ctap.html.

* * * * *

Issued in Des Plaines, Illinois, on November 7, 2000.

Bridgitt S. Galias,

Acting Manager, Airspace Branch, Air Traffic Division, Great Lakes Region.

[FR Doc. 00–29412 Filed 11–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–64]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 5, 2000.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the

Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91 of Part 11.

Issued in Washington, D.C., on November 9, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–7996.

Petitioner: Gortner Pilots Association.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353 and appendixes I and J to part 121

Description of Relief Sought/Disposition:

To permit GPA to conduct local sightseeing flights at Greater Gortner Airport, Garrett County, Maryland, for the one-day Greater Gortner Airport Fly-In/Open House in October 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/13/2000, Exemption No. 7369*

Docket No.: FAA–2000–8085.

Petitioner: Carolinas Historic Aviation Commission.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353 and appendixes I and J to part 121

Description of Relief Sought/Disposition:

To permit CHAC to conduct local sightseeing flights at Charlotte/Douglas International Airport, Charlotte, North Carolina, for a two-day charitable event in October 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/13/2000, Exemption No. 7368*

[FR Doc. 00–29322 Filed 11–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Illinois Central Railroad

[Docket Number FRA–2000–8089]

Canadian National Illinois Central Railroad (CN/IC) seeks a permanent waiver of compliance from certain provisions of the Railroad Safety Appliance Standards, 49 CFR Part 231, and the Railroad Power Brakes and Drawbars regulations, 49 CFR Part 232, concerning RoadRailer®" train operations over their system. Specifically, CN/IC requests relief from those sections of 49 CFR Part 231 which stipulates the number, location and dimensions for handholds, ladders, sill steps, uncoupling levers and handbrakes. CN/IC also seeks relief from 49 CFR Part 232.2 which sets the standard height for drawbars.

CN/IC states that this waiver is necessary to permit them to begin operation of RoadRailer equipment between Chicago, Illinois, and Port Huron, Michigan. CN/IC requests that this petition, if approved, be modeled on conditions contained in waiver FRA–1999–5895 which was granted to the Burlington Northern Santa Fe Railway in May 2000.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–8089) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http://dms.dot.gov.

Issued in Washington, D.C. on November 9, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–29317 Filed 11–15–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–00–8026 (PDA–26(R))]

Application by Boston & Maine Corporation for a Preemption Determination as to Massachusetts' Definitions of Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Interested parties are invited to submit comments on an application by Boston & Maine Corporation for an administrative determination whether Federal hazardous materials transportation law preempts the Commonwealth of Massachusetts' definitions of "hazardous materials" as applied to hazardous materials transportation.

DATES: Comments received on or before January 2, 2001, and rebuttal comments received on or before February 14, 2001, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at "http://dms.dot.gov."

Comments must refer to Docket No. RSPA–00–8026 and may be submitted to the docket either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at http://dms.dot.gov, and click on "Help & Information" to obtain instructions.

A copy of each comment must also be sent to: (1) Robert B. Culliford, Esq., Corporate Counsel, Boston & Maine Corporation, Iron Horse Park, North Billerica, MA 01862, and (2) Ginny Sinkel, Esq., Assistant Attorney General, Commonwealth of Massachusetts, Office of the Attorney General, One Ashburton Place, Boston, Massachusetts 02108–1698. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Mr. Culliford and Ms. Sinkel at the addresses specified in the **Federal Register**.")

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued, are available through the home page of RSPA's Office of the Chief Counsel, at "http://rspa-atty.dot.gov." A paper copy of this list and index will be provided at no cost upon request to Ms. Christian, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Karin V. Christian, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), Room 8407, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination:

The Boston & Maine Corporation (Boston & Maine) has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts the Massachusetts General Laws chapter 21K, section 1 and chapter 21E, section 2 definitions of hazardous materials. Boston & Maine asserts that the Massachusetts definition of hazardous materials is not "substantively the same" as the definitions of hazardous materials in the hazardous materials regulations (49 CFR Parts 171–180) issued under the Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.*

In addition, Boston & Maine requests a determination that the regulation of hazardous materials in transportation in commerce based on a definition of hazardous materials that is not substantively the same as the designation by the Secretary of Transportation is an obstacle to accomplishing and carrying out the Federal hazardous materials transportation law.

In an August 25, 2000 letter to RSPA's Office of the Chief Counsel, the Massachusetts Office of the Attorney General responded to Boston & Maine's application on behalf of the Massachusetts Department of Fire Services. The Office of the Attorney General informed RSPA that Boston & Maine had filed a complaint against the Massachusetts Department of Fire Services in the Massachusetts Superior Court raising the same issue as in its preemption determination application, *i.e.*, whether Massachusetts General Law chapters 21K and 21E are preempted by Federal law. Massachusetts requested that RSPA not act on Boston & Maine's application until the state judicial proceedings are resolved.

RSPA reviewed Massachusetts' request and Boston & Maine's response. On September 13, 2000, RSPA sent a letter to both parties stating that RSPA has decided to proceed with docketing and taking action on the application for preemption.

Boston & Maine Application

The text of Boston & Maine's application and a list of the attachments to the application are set forth in Appendix A to this notice. A paper copy of the attachments to Boston & Maine's application (which have been placed in the public docket) will be provided at no cost upon request to Ms. Christian, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** above.

In its application, Boston & Maine challenges the following:

(1) Massachusetts General Laws chapter 21K, § 1 that defines hazardous material as follows:

> "Hazardous material", material including, but not limited to, material, in whatever form which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with a substance, constitutes a present or potential threat to human health, safety or welfare or to the environment when improperly stored, treated, transported, disposed of, used or otherwise managed. Hazardous materials shall include, but not be limited to, oil and all substances which are included under 42 USC 9601(14).

(2) Massachusetts General Laws chapter 21E, § 2 that defines hazardous material as follows:

> "Hazardous material", material including but not limited to, any material, in whatever form, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. The term shall not include oil. The term shall also include all those substances which are included under 42 USC 9601(14), but it is not limited to those substances.

In its application, Boston & Maine asserts that the Massachusetts regulations greatly expand the Federal designation of hazardous materials to include substances that have not been designated as "hazardous" materials by the Secretary of Transportation. Boston & Maine states that Massachusetts' definitions do not conform in every significant respect to the Federal definition because the State law definitions would include materials not determined by the Secretary to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce.

Boston & Maine also asserts that Massachusetts' definitions of hazardous materials create an obstacle to the efficient and uniform application of the Federal hazardous materials transportation law. Boston & Maine states that when State regulations designate materials as "hazardous" that are not included as hazardous materials by the Secretary of Transportation, the discrepancy subjects interstate carriers to undue burdens and creates obstacles to uniform regulation of transportation of hazardous materials in interstate commerce. Boston & Maine argues that an overly broad State designation of "hazardous" materials potentially subjects common carriers to a multitude of different regulations because each State could have different standards requiring additional packaging requirements, labeling, storage, and documentation for substances based upon the designation of "hazardous" material adopted by each individual State.

With its August 25, 2000 letter to RSPA, Massachusetts attached a copy of Boston & Maine's January 20, 2000 First Amended Complaint (the Complaint) filed in Massachusetts Superior Court. In the Complaint, Boston & Maine described the action as one to correct errors of law in an administrative proceeding by the Department of Fire Services.

In the Complaint's factual background, Boston & Maine described a June 27, 1999 freight train derailment on Boston & Maine property. Boston & Maine stated that as a result of the derailment, approximately five cars leaked materials, including latex, terephthalic acid, polyethylene, polypropene, and "distillers" grain onto the ground and into the river adjacent to the railroad tracks. Boston & Maine stated that immediately after the derailment, it implemented an emergency response plan, including notification of a private contractor and licensed site professional to contain the release of materials from the five leaking rail cars. Boston & Maine stated that the private contractor was licensed to respond to all releases of material, whether the materials were considered "hazardous" or not.

The Complaint stated that shortly after the derailment, the Fire Department of the town of Charlemont, Massachusetts, responded to the scene and contacted the regional Massachusetts Hazardous Materials Response Team (Response Team) under the belief that hazardous materials were being released or threatened to be released.

Boston & Maine stated that the Response Team arrived at the scene and prevented Boston & Maine from properly containing the materials being released from the rail cars. Boston & Maine stated that the Response Team insisted that Boston & Maine produce documentation proving that the materials being released were not "hazardous materials." Boston & Maine stated that the demand for information regarding the leaking materials was made despite the fact that none of the leaking cars were placarded or were required to be accompanied by "shipping papers" because none of the materials were considered "hazardous." Boston & Maine stated that when it produced additional documentation to prove that no release or threat of release of "hazardous materials" existed, the Response Team released control of the scene to Boston & Maine.

The Complaint stated that Boston & Maine received an invoice from Massachusetts seeking to recover the costs incurred by the Response Team on June 27, 1999. On September 7, 1999, Boston & Maine filed a Petition for Review of the Statement of Costs. On November 19, 1999, Massachusetts denied Boston & Maine's Petition for Review.

In the Complaint, Boston & Maine asserts that the Massachusetts Department of Fire Services had no legal authority to respond to the June 27, 1999 derailment because the State law designations of "hazardous" materials are preempted by Federal law and therefore has no legal authority to recover its costs for the response to the derailment on June 27, 1999 pursuant to Massachusetts General Laws Chapter 21K, Section 5(b). Boston & Maine states there was no release or threat of release of a federally designated, described, or classified "hazardous material" pursuant to the regulations promulgated by the Secretary of Transportation. Boston & Maine argued that the fact that the train crew did have immediate possession of the proper "shipping papers" and placards for other materials in the train, but no "shipping papers" or placards for the materials in the cars that were leaking, was proof that the leaking materials did not meet the Federal definition of "hazardous materials."

The following materials have been placed in the public docket of this proceeding:

Boston & Maine's August 16, 2000 application for preemption determination and attachments.
Massachusetts August 25, 2000 letter with attachment, requesting that RSPA decline to take action on Boston & Maine's application until state judicial proceedings are resolved. The First Amended Complaint filed by Boston & Maine in Massachusetts' Superior Court is attached to this letter.
Boston & Maine's September 5, 2000 response to Massachusetts' request that RSPA decline to take action on its application.
RSPA's September 13, 2000 letter informing both parties that the Associate Administrator had decided to proceed to take action on Boston & Maine's application.

These documents may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW Washington, DC 20590–0001. These documents are also available on-line through the home page of DOT's Docket Management System, at "http://dms.dot.gov."

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are possibly relevant to Boston & Maine's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under section 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—

> (1) complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or
>
> (2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the "dual compliance" and "obstacle" criteria that RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93–633 section 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not "substantively the same as" a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

> (A) the designation, description, and classification of hazardous material.
>
> (B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.
>
> (C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.
>
> (D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.
>
> (E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be "substantively the same," the non-Federal requirement must "conform[] in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted." 49 CFR 107.202(d).

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 section 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA "without substantive change," at 49 U.S.C. Chapter 51. Public Law 103–272, 108 Stat. 745.)

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to make determinations of preemption that concern highway routing to FMCSA and those concerning all other hazardous materials transportation issues to RSPA. 49 CFR 1.53(b) and 1.73(d)(2) (as added October 9, 1999, 64 FR 56720, 56721 [Oct. 19, 1999], and revised January 1, 2000, 65 FR 220, 221 [Jan. 4, 2000]).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. *See* 49 C.F.R. 107.209(d), 397.211(d). A short period of time is allowed for filing of petitions for reconsideration. 49 C.F.R. 107.211, 397.223. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policies set forth in Executive Order No. 13132, entitled "Federalism" (64 FR 43255 (August 4, 1999)). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

IV. Public Comments

All comments should be limited to the issue of whether 49 U.S.C. 5125 preempts the Commonwealth of Massachusetts' definitions of hazardous materials challenged by Boston & Maine. Comments should specifically address the preemption criteria detailed in Part II, above, and should include the following:

(1) whether the term "hazardous material" in Massachusetts General Laws chapter 21K includes materials that are not defined as "hazardous materials" in the HMR, 49 CFR 171.8 (examples?);

(2) whether the term "hazardous material" in Massachusetts General Laws chapter 21K excludes materials that are defined as "hazardous materials" in the HMR, 49 CFR 171.8 (examples?);

(3) whether the term "hazardous material" in Massachusetts General Laws chapter 21E includes materials that are not defined as "hazardous materials" under the HMR, 49 CFR 171.8 (examples?);

(4) whether the term "hazardous material" in Massachusetts General Laws chapter 21E excludes materials that are defined as "hazardous materials" in the HMR, 49 CFR 171.8 (examples?); and

(5) whether and how the two cited Massachusetts definitions of "hazardous material" are applied and enforced by Massachusetts with respect to transportation.

Persons intending to comment should review the standards and procedures governing consideration of applications for preemption determinations set forth at 49 CFR 107.201–107.211, and 397.201–397.211.

Issued in Washington, DC on November 13, 2000.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

Boston & Maine Corporation

August 16, 2000.

Associate Administrator for Hazardous Materials Safety
Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001; Attention: Hazardous Materials Preemption Docket.

Re: APPLICATION FOR PREEMPTION DETERMINATION

Dear Sir/Madam: Please consider the attached Boston and Maine Railroad's Application for a Preemption Determination filed pursuant to 49 C.F.R. 107.203 for final determination by the Research and Special Programs Administration.

Boston and Maine Railroad (hereinafter "B&M") disputes the enforcement of "hazardous" materials designations by the Commonwealth of Massachusetts under M.G.L. c.21K, and c.21E. B&M contends the Commonwealth is preempted from enforcing the statute by the Hazardous Materials Transportation Act (hereinafter "HMTA") laws because the "hazardous" materials designation is not substantively the same as HMTA regulations.

The attached petition contains the following:

49 C.F.R. 107.203(b)(2): Text of the State Requirement;
49 C.F.R. 107.203(b)(3): Comparable Federal Hazardous Material Transportation Laws;
49 C.F.R. 107.203(b)(4): Explanation of Why the State Law Should Be Preempted;
49 C.F.R. 107.203(b)(5): Statement of How the State Regulations Affected Boston and Maine Railroad; and
49 C.F.R. 107.205(a): Certification of Notice Compliance.

A copy of this application will be forwarded to each party subject to this ruling. Should you have any questions, please contact me at (978) 663–1029. Thank you for your attention to this matter.

Sincerely,
Robert B. Culliford,
Corporate Counsel.
cc: Ginny Sinkel, Asst. Attorney General, Thomas Reilly, Attorney General.

49 C.F.R. 107.203(b)(2): Text of State Requirements

(Please see corresponding attached copies.)

1. MGL C. 21K, section 1, definition
2. MGL C. 21E, section 2, definition

49 C.F.R. 107.203(b)(3): Comparable Federal Hazardous Materials Transportation Laws

(Please see corresponding attached copies.)

Hazardous Materials Transportation Act (HMTA)

1. 49 C.F.R. 107.202(b)(2)
2. 49 C.F.R. 107.202(a)(1)
3. 49 C.F.R. 107.202(d)
4. 49 U.S.C. 5103(a)
5. 49 C.F.R. 171.8
6. 49 C.F.R. 172.101, App. A, List of Hazardous Substances and Reportable Quantities.

49 CFR 107.203(b)(4): Explanation of Why RSPA Should Issue Preemption Determination

Pursuant to 49 C.F.R. 107.203, the applicant respectfully submits this application for a determination by the Research and Special Programs Administration (hereinafter "RSPA") that Massachusetts General Laws c. 21K, section 1, section 21E, and section 2 [1] (see attached hereto), as these State laws apply to transportation in interstate commerce, are preempted by the Hazardous Materials Transportation Act, 49 U.S.C. 5101, *et. seq.* (hereinafter "HMTA"). The basis for this request is that these statutes designate "hazardous" materials in a manner that is not substantively the same as the designation of "hazardous" materials in a manner that is not substantively the same as the designation of "hazardous" materials promulgated by the Secretary of Transportation pursuant to his authority under the HMTA.[2] (see attached hereto). In addition, the B&M also requests a determination that the regulation of transportation in interstate commerce by means of a designation of "hazardous" materials that is not substantively the same as the designation promulgated by the Secretary is an obstacle to accomplishing and carrying out the Hazardous materials transportation law.

1. A Preemption Determination Should Be Issued in This Instance Because the Plain Language of the HMTA Expressly Preempts Any State Designation, Description and Classification of "Hazardous" Material That Is Not Substantively the Same as the Federal Designation Under the HMTA

The Associate Administrator should issue a determination that M.G.L.A. c. 21K, section 1 and 21E, section 2 are preempted because the plain language of the HMTA expressly preempts any State designation of "hazardous" material when the non-Federal designation is not substantively the same as the Federal designation, unless the non-Federal designation is authorized by Federal law. 49 C.F.R. 107.202(a)(1).[3] (see attached hereto). In this instance, 49 C.F.R. 107.202(d) defines "substantively the same" to mean "that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted."

The Massachusetts designations of "hazardous" material in M.G.L. c. 21K, section 1 and c.21E, section 2, include, "material, in whatever form which, . . . constitutes a present or potential threat to human health, safety, or welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed Hazardous materials shall include, *but not be limited to,* all substances which are included under 42 U.S.C. 9601(14)." Mass. Gen. Laws c. 21K section 1, Mass. Gen. Laws c. 21E, section 2 (emphasis added). The Massachusetts regulations greatly expand the Federal designation of "hazardous" materials to include substances that have not been designated as "hazardous" materials by the Secretary pursuant to 49 U.S.C. 5103(a) and 49 C.F.R. 171.8. As a result, the State law designation of "hazardous" materials does not conform in every significant respect to the Federal designation because these State law designations include materials not determined by the Secretary to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which have been so designated as "hazardous" materials by the Secretary. 49 C.F.R. 171.8. Accordingly, the Massachusetts designations are not substantively the same as the Federal designation of "hazardous" materials. 49 C.F.R. 107.202(d). Therefore, in light of the fact that the application of these State law designations to transportation in interstate commerce is not authorized by Federal law, it is clear that these State statutes, as they apply to transportation in interstate commerce, are preempted.

2. A Preemption Determination Should Be Issued in This Instance Pursuant to 49 C.F.R. 107.202(b)(2) Because the State Law Designations of "Hazardous" Materials as Applied and Enforced Creates an Obstacle to Carrying Out the HMTA

The Associate Administrator should also issue a determination that these State law designations are preempted pursuant to 49 C.F.R 107.202(b)(2)[4] (see attached hereto) because the designations contained therein create obstacles to the efficient and uniform application of the HMTA. The obstacle test as determined by the Supreme Court, examines whether the State law "stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress." *Colorado Public Utilities Commission* v. *Harmon*, 951 F.2d 1571, 1580 (10th Cir. 1991) (quoting *Hillsborough County* v. *Automated Medic. Labs*, 471 U.S. 707, 713, 105 S.Ct. 2371, 2375, 85 L.Ed. 2d 714(1985)). The original intent of Congress in enacting the HMTA stressed the importance of uniform safety requirements in interstate transport of hazardous materials and authorized the Department of Transportation to preclude State and local regulations from creating conflicts and variances from Federal regulations. *Colorado Public Utilities Comm.* v. *Harmon*, 951 F.2d at 1580 (analyzing Congressional intent through H.R. Rep No. 444 (Part 1), 101st Cong., 2d Ses., at 22 (1990), and S.Rep. No. 449, 101st Cong., 2d Sess., at 2 (1990)).

The regulations promulgated by the Secretary designating "hazardous" materials include extensive lists of substances and quantities that fall under HMTA regulation. See 49 C.F.R. 107.101, Appendix A (attached hereto). Likewise, Massachusetts has also promulgated statewide regulation of "hazardous" materials under the designations found in M.G.L.A. c. section 21K, section 1 and c. 21E, section 2.

The Secretary is authorized to designate certain materials as "hazardous" by 49 U.S.C. 5103(a). Pursuant to this authority, the Secretary has determined which materials are capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has promulgated regulations designating those materials as "hazardous". 49 C.F.R. 171.8.

Where State regulations designate materials as "hazardous" that are not included as materials designated "hazardous" by the Secretary, this discrepancy subjects interstate carriers to undue burdens and creates myriad obstacles to uniform regulation of transportation of those materials in interstate commerce. Here, the overly broad State designation of "hazardous" materials potentially subjects common carriers to a multitude of different regulations because each State could have different standards requiring additional packaging requirements, labeling, storage, and documentation for a host of substances based upon the designation of "hazardous" material adopted by each individual State.

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[1] MGL c. 21K, section 1, defines "Hazardous" Materials as follows: "Hazardous material", material including, but not limited to, material, in whatever form which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with a substance, constitutes a present or potential threat to human health, safety or welfare or to the environment when improperly stored, treated, transported, disposed of, used or otherwise managed. Hazardous materials shall include, but not be limited to, oil and all substances which are included under 42 U.S.C. Sec. 9601(14)

MGL c. 21E, section 2, defines "Hazardous" Materials as follows: "Hazardous material", material including but not limited to, any material, in whatever form, which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. The term shall not include oil. The term shall not include oil. The term shall also include all those substances which are included under 42 U.S.C. Sec. 9601(14), but it is not limited to those substances.

[2] 49 U.S.C. 5103(a) states: Designating material as hazardous—The Secretary of Transportation shall designate material (including an explosive, radioactive material, etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or corrosive material, and compressed gas) or a group or a class of material as hazardous when the Secretary decides that transporting the material in commerce in a particular amount and form may pose an unreasonable risk to health and safety of property.

49 C.F.R. 171.8 defines "Hazardous" Materials as follows: Hazardous material means a substance or material, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated. The term includes hazardous substances, hazardous wastes, marine pollutants, and elevated temperature materials as defined in this section, materials designated as hazardous under the provisions of § 172.101 of this subchapter, and materials that meet the defining criteria for hazard classes and divisions in part 173 of this subchapter.

[3] 49 C.F.R. 107.202(a)(1): Standards for determining preemption:

(a): Except as provided in § 107.221 and unless authorized by Federal law any requirement of a State, political subdivision thereof or Indian tribe, that concerns one of the following subjects and that is not substantively the same as any provision of the Hazardous materials transportation law, this subchapter or subchapter C that concerns that subject, is preempted:

(1) The designation, description, and classification of hazardous material.

[4] 49 C.F.R. 107.202(b)(2) states the following:

(b) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision or Indian tribe is preempted if—

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out the Federal hazardous materials transportation law or regulations issued thereunder.

Subjecting the railroad and other interstate carriers to different designations in each State disrupts the congressional purpose of promoting uniform regulation of the safe transportation of hazardous materials under HMTA. RSPA should therefore issue a determination preempting the enforcement of M.G.L.A. c. 21K, section 1, and c. section 21E, section 2, as they apply to transportation in interstate commerce, because the designations contained in these statutes are not authorized by Federal law, and create multiple obstacles to the uniform enforcement of HMTA and unduly burdens interstate transportation of hazardous materials.

49 CFR 107.203(b)(5): Statement of How the State Regulations Affect the Applicant

The designation of "hazardous" contained State laws such as Mass. Gen. Laws Ann. c. 21K, section 1 and c. 21E, section 2, subjects the applicant to overly broad and disjointed regulation of transportation in interstate commerce by potentially requiring the applicant to adhere to markedly different regulations in each State in which it operates. Accordingly, subjecting the applicant to the different "hazardous materials" regulations and requirements of each State in which it operates would unduly burden interstate transport of materials by railroad in interstate commerce.

Respectfully submitted,

Robert B. Culliford,

James J. Steinkrauss,

Boston and Maine Corporation, Iron Horse Park, North Billerica, MA 01862, (978) 663–1029.

[FR Doc. 00–29400 Filed 11–15–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the Survey for the 2001 Electronic Tax Administration Attitudinal Tracking Study

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Survey for the 2001 Electronic Tax Administration Attitudinal Tracking Study.

DATES: Written comments should be received on or before January 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the survey should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Survey for the 2001 Electronic Tax Administration Attitudinal Tracking Study.

OMB Number: 1545–1587.

Abstract: This is a survey for quantitative research to establish changes to baseline measures of public knowledge and acceptance of Electronic Tax Administration (ETA) programs. The data developed in this research will be used as a guide when making decisions on the development of future ETA products and effective marketing techniques. The survey will provide the level of detail needed to focus product development efforts and enhance current products. This information will be used to make quality improvements to products and services.

Current Actions: There are no changes being made to the survey at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 1,100.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 275. The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 31, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29272 Filed 11–15–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–112–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–112–88 (TD 8337), Allocation and Apportionment of Deduction for State Income Taxes (Section 1.861–8(e)(6)).

DATES: Written comments should be received on or before January 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Allocation and Apportionment of Deduction for State Income Taxes.

OMB Number: 1545–1224

Regulation Project Number: INTL–112–88

Abstract: This regulation provides guidance on when and how the deduction for state income taxes is to be allocated and apportioned between gross income from sources within and without the United States in order to determine the amount of taxable income from those sources. The reporting requirements in the regulation affect those taxpayers claiming foreign tax credits who elect to use an alternative method from that described in the regulation to allocate and apportion deductions for state income taxes.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 1, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29273 Filed 11–15–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–251698–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–251698–96 (TD 8869), Subchapter S Subsidiaries (§§ 1.1361–3, 1.1361–5, and 1.1362–8).

DATES: Written comments should be received on or before January 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Subchapter S Subsidiaries.

OMB Number: 1545–1590.

Regulation Project Number: REG–251698–96.

Abstract: This regulation relates to the treatment of corporate subsidiaries of S corporations and interprets the rules added to the Internal Revenue Code by section 1308 of the Small Business Job Protection Act of 1996. The collection of information required in the regulation is necessary for a taxpayer to obtain, retain, or terminate S corporation treatment.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents/Recordkeepers: 10,660.

Estimated Time per Respondent/Recordkeeper: 57 minutes.

Estimated Total Annual Reporting/Recordkeeping Burden Hours: 10,110.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 7, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29274 Filed 11–15–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–236–81]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)) Currently, the IRS is soliciting comments concerning an existing final regulation, LR–236–81 (TD 8251), Credit for Increasing Research Activity (Section 1.41–8(d)).

DATES: Written comments should be received on or before January 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Increasing Research Activity.

OMB Number: 1545–0732.

Regulation Project Number: LR–236–81.

Abstract: This regulation provides rules for the credit for increasing research activities. Internal Revenue Code section 41(f) provides that commonly controlled groups of taxpayers shall compute the credit as if they are a single taxpayer. The credit allowed to a member of the group is a portion of the group's credit. Section 1.41–8(d) of the regulation permits a corporation that is a member of more than one group to designate which controlled group they will be aggregated with for purposes of Code section 41(f).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 15 hr.

Estimated Total Annual Burden Hours: 63.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 1, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29275 Filed 11–15–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209835–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209835–86 (TD 8708), Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes (§ 1.902–1).

DATES: Written comments should be received on or before January 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes.

OMB Number: 1545–1458.

Regulation Project Number: Reg–209835–86 (formerly INTL–933–86).

Abstract: This regulation provides rules for computing foreign taxes deemed paid under Internal Revenue Code section 902. The regulation affects foreign corporations and their United States corporate shareholders that own directly at least 10% of the voting stock of the foreign corporation.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden for the collection of information is reflected in the burden for Form 1118, Foreign Tax Credit-Corporations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 2, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29276 Filed 11–15–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3520

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.

DATES: Written comments should be received on or before January 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.

OMB Number: 1545–0159.

Form Number: 3520.

Abstract: Form 3520 is filed by U.S. persons who create a foreign trust, transfer property to a foreign trust, receive a distribution from a foreign trust, or receive large gifts from a foreign source. IRS uses the form to identify U.S. persons who have transactions that may trigger a taxable event in the future.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 53 hours, 56 minutes.

Estimated Total Annual Burden Hours: 107,880.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 3, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29277 Filed 11–15–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4506

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4506 Request for Copy or Transcript of Tax Form.

DATES: Written comments should be received on or before January 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Copy or Transcript of Tax Form.

OMB Number: 1545–0429.

Form Number: Form 4506.

Abstract: Internal Revenue Code section 7513 allows taxpayers to request a copy of a tax return or related documents. Form 4506 is used for this purpose. The information provided will be used for research to locate the tax form and to ensure that the requestor is the taxpayer or someone authorized by the taxpayer to obtain the documents requested.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 914,540.

Estimated Time Per Respondent: 1 hr., 2 min.

Estimated Total Annual Burden Hours: 941,977.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 1, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29278 Filed 11–15–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1310

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1310, Statement of Person Claiming Refund Due a Deceased Taxpayer.

DATES: Written comments should be received on or before January 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Statement of Person Claiming Refund Due a Deceased Taxpayer.

OMB Number: 1545–0073.

Form Number: Form 1310.

Abstract: Form 1310 is used by a claimant to secure payment of a refund on behalf of a deceased taxpayer. The information requested on the form enables the IRS to send the refund to the correct person.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 7,500.

Estimated Time Per Respondent: 41 min.

Estimated Total Annual Burden Hours: 5,100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 1, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29279 Filed 11–15–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8275 and 8275–R

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8275, Disclosure Statement, and Form 8275–R, Regulation Disclosure Statement.

DATES: Written comments should be received on or before January 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Disclosure Statement (Form 8275) and Regulation Disclosure Statement (Form 8275–R).

OMB Number: 1545–0889.

Form Number: Forms 8275 and 8275–R.

Abstract: Internal Revenue Code section 6662 imposes accuracy-related penalties on taxpayers for substantial understatement of tax liability or negligence or disregard of rules and regulations. Code section 6694 imposes similar penalties on return preparers. Regulations sections 1.662–4(e) and (f) provide for reduction of these penalties if adequate disclosure of the tax treatment is made on Form 8275 or, if the position is contrary to a regulation, on Form 8275–R.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Responses: 1,000,000.

Estimated Time Per Response: 5 hr., 35 min.

Estimated Total Annual Burden Hours: 5,575,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 31, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29280 Filed 11–15–00; 8:45 am]

BILLING CODE 4830–01–U

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 991223347-9347; I.D. 102600C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Recreational Fishery Closure

Correction

In rule document 00–28534 beginning on page 66655 in the issue of Tuesday, November 7, 2000, make the following correction:

On page 66656, in the second column, in paragraph (1) (b), "[insert date of filing for public inspection with the Office of the Federal Register]" should read "November 2, 2000".

[FR Doc. C0–28534 Filed 11–15–00; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 252, and Appendices E and F to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

Correction

In rule document 00–27243 beginning on page 63804 in the issue of Wednesday, October 25, 2000 make the following correction:

252.247–7015 [Corrected]

On page 63805 in Table 2, under the heading "Address", in the fourth line, "CAO address otherwise specified in the contract" should read "CAO address unless otherwise specified in the contract".

[FR Doc. C0–27243 Filed 11–15–00; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Appendix F to Chapter 2

[DFARS Case 2000–D008]

Defense Federal Acquisition Regulation Supplement; Material Inspection and Receiving Report

Correction

In rule document 00–27246 beginning on page 63802 in the issue of Wednesday, October 25, 2000 make the following correction:

Chapter 2 to Appendix F–[Corrected]

On page 63803 in the third column, in paragraph (b)(1)(iii), in the fourth line "SP" should read "SF".

[FR Doc. C0–27246 Filed 11–15–00; 8:45 am]

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24645; 812-12242]

First American Investment Funds, Inc. and U.S. Bank National Association; Notice of Application

Correction

In notice document 00–24546 beginning on page 57631 in the issue of Monday, September 25, 2000, the docket number is corrected to read as set forth above.

[FR Doc. C0–24546 Filed 11–15–00; 8:45 am]

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24642; 812-11962]

Bill Gross' Idealab!; Notice of Application

Correction

In notice document 00–24270 beginning on page 57211 in the issue of Thursday, September 21, 2000, the docket number is corrected to read as set forth above.

[FR Doc. C0–24270 Filed 11–15–00; 8:45 am]

BILLING CODE 1505-01-D

Federal Register

Thursday,
November 16, 2000

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 606 and 610

Current Good Manufacturing Practice for Blood and Blood Components; Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk of Transmitting HCV Infection ("Lookback"); Proposed Rule

Health Care Financing Administration

42 CFR Part 482

Medicare and Medicaid Programs; Hospital Conditions of Participation: Laboratory Services; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606 and 610

[Docket No. 99N–2337]

RIN 0910–AB76

Current Good Manufacturing Practice for Blood and Blood Components; Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk of Transmitting HCV Infection ("Lookback")

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations to require that blood establishments (including plasma establishments) prepare and follow written procedures for appropriate action when it is determined that blood and blood components at increased risk of transmitting hepatitis C virus (HCV) infection have been collected from a donor who tested repeatedly reactive for evidence of HCV infection at a later date. This proposed rule would require blood establishments to quarantine prior collections from such a donor, perform further testing on the donor, and notify transfusion recipients, as appropriate, when such a donor is identified at the time of a repeat donation or after performing a review of historical testing records to identify donations at increased risk of transmitting HCV. In addition, FDA is proposing to extend the record retention period to 10 years to create opportunities for disease prevention many years after recipient exposure to such a donor. This action is taken as part of FDA's "Blood Initiative" to comprehensively review and, as necessary, revise its regulations, policies, guidances, and procedures related to the licensing and regulation of blood products. This proposed rule is intended to help ensure the continued safety of the blood supply and to help ensure that information is provided to consignees and to prior recipients of blood and blood components from a donor whose subsequent donation tests positive for antibody to HCV or otherwise is determined to have been at increased risk of transmitting HCV.

DATES: Submit written comments on the proposed rule by February 14, 2001. Submit written comments on the information collection provisions by December 18, 2000. See section VII of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

A. Blood Initiative

For a variety of reasons FDA has decided to comprehensively review and, as necessary, revise its regulations, policies, guidance, and procedures related to the licensing and regulation of blood products. In the **Federal Register** of June 3, 1994 (59 FR 28821 and 59 FR 28822, respectively), FDA issued two documents entitled "Review of General Biologics and Licensing Regulations" (Docket No. 94N–0066) and "Review of Regulations for Blood Establishments and Blood Products" (Docket No. 94N–0080). These two documents announced the agency's intent to review biologics regulations in 21 CFR parts 600, 601, 606, 607, 610, 640, and 660 (21 CFR 600, 601, 606, 607, 610, 640, and 660) and requested written comments from the public. Interested persons were given until August 17, 1994, to respond to the documents. In response to requests for additional time, FDA twice extended the comment period, as announced in the **Federal Register** of August 17, 1994 (59 FR 42193), and November 14, 1995 (59 FR 56448). In addition, FDA responded to requests for a public meeting to allow for the presentation of comments regarding the agency's intent to review the biologics regulations. On January 26, 1995, FDA held a public meeting to provide an opportunity for all interested individuals to present their comments and to assist the agency in determining whether the regulations should be revised, rescinded, or continued without change. Since the time of the regulation review, FDA has implemented a number of changes to its regulations and policies applicable to the general biologics and licensing regulations, some of which applied to blood products as well as other biological products. (See, *e.g.*, the final rules issued on May 14, 1996 (61 FR 24313); August 1, 1996 (61 FR 40153); November 6, 1996 (61 FR 57328); July 24, 1997 (62 FR 39890); and October 15, 1997 (62 FR 53536)).

Because of the importance of a safe national blood supply, the U.S. House of Representatives Committee on Government Reform and Oversight, Subcommittee on Human Resources and Intergovernmental Relations (the Subcommittee) and other groups such as the General Accounting Office (GAO), and the Institute of Medicine (IOM) have reviewed the agency's policies, practices, and regulations. Reports issued following the respective reviews made a number of recommendations as to how FDA might improve the biologics regulations, particularly as they apply to the continued safety of blood products. The relevant reports are: (1) "Protecting the Nation's Blood Supply From Infectious Agents: The Need for New Standards to Meet New Threats," by the Subcommittee (August 2, 1996); (2) "Blood Supply: FDA Oversight and Remaining Issues of Safety," by GAO (February 25, 1997); (3) "Blood Supply: Transfusion-Associated Risks," by GAO (February 25, 1997); and (4) "HIV and the Blood Supply: An Analysis of Crisis Decisionmaking," by IOM (July 13, 1995). These reports are on file with the Dockets Management Branch (address above) under the docket number given in the heading of this document.

FDA has reviewed these reports and agrees with the majority of the recommendations contained within them. However, rather than only responding specifically to the recommendations from the Subcommittee, GAO, IOM, and the public, FDA convened a number of internal task forces to review a variety of issues related to the regulation of blood and blood products, including how to most appropriately update the existing regulations applicable to blood and blood products. In the future, FDA intends to issue a number of blood-related rulemakings that various FDA task groups are currently preparing. FDA is not describing the specific recommendations it has received and the numerous objectives of the Blood Initiative in this document. Future rulemaking and other notices will describe and discuss specific recommendations and regulatory objectives.

B. Existing Donor Screening and Testing Requirements

FDA has developed five "layers of safety" to help ensure a safe blood supply: Donor screening, donor deferral registries, testing blood, blood quarantining, and monitoring and investigating problems. The five layers of safety are designed to overlap so that they will prevent the distribution of blood and blood products that are at increased risk of transmitting communicable disease agents such as human immunodeficiency virus (HIV) and hepatitis B virus (HBV). With regard to screening donors and testing blood, FDA has defined an extensive system of donor screening and testing procedures, two of the five layers of safety, performed by blood establishments. These procedures include the initial screening of individuals that volunteer to donate blood using a questionnaire, interview, and physical examination. This initial screening process is designed to protect the donor and to establish whether the donor is in good health, to rule out possible exposure to disease, such as through travel to an area endemic for malaria, or through close contact with an infected individual, and to identify whether the donor has engaged in behavior that would indicate increased risk of a communicable disease. Individuals who satisfactorily answer the questionnaire, pass the physical examination, and then donate blood are further screened by laboratory testing for evidence of infection due to communicable disease agents such as HIV and HBV. In the **Federal Register** of August 19, 1999 (64 FR 45340), FDA issued a proposed rule entitled "Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents" (hereinafter referred to as the testing proposed rule), to update, revise, and redesignate the testing requirements of § 610.45. The relevance of the testing proposed rule to this proposed rule is discussed in section III of this document.

As a result of the extensive screening and testing procedures and the other layers of safety, the risk of transmitting infection through blood transfusion is very low. Despite the best practices of blood establishments, however, a person may donate blood early in infection, during the period when the testable marker is not detectable by a screening test, but the infectious agent is present in the donor's blood (a "window" period). For example, if a donor donates blood on a number of occasions and each donation tests negative for antibody to HIV, but the donor returns and tests repeatedly reactive for antibody to HIV at a later date, prior collections from such a donor would be at increased risk of transmitting HIV. In addition, a recipient of a transfusion of blood or blood components collected during the "window" period would not know that he or she may have become infected with HIV through the transfusion unless notified.

Under such circumstances, FDA requires clarification of the donor's status and procedures to "lookback" at prior collections, as specified in §§ 610.46 and 610.47 (the HIV "lookback" regulations). (See the final rule issued in the **Federal Register** of September 9, 1996 (61 FR 47413).) The HIV "lookback" regulations require facilities involved in the collection, processing, and administration of blood to quarantine blood and blood components which were collected from a donor who tested negative at the time of previous donations but subsequently tests repeatedly reactive for antibody to HIV. The regulations require blood establishments to inform consignees (e.g., hospital transfusion services and manufacturers of plasma derivatives) of the collection and distribution of such previously donated blood and blood components, to perform further testing on the donor, and to notify transfusion recipients, as appropriate.

C. History of HCV Testing

HCV frequently causes a clinically inapparent, but chronic infection of the liver. Approximately 4 million individuals in the United States are believed to be chronically infected with HCV. Despite progression of disease, HCV infection is usually asymptomatic for about 20 years, but in many cases causes serious liver injury that is thought to be the leading cause of late stage cirrhosis and liver failure in the United States and to play a significant role in the development of liver cancer. Therapy with licensed interferon produces long-term benefit in only about 15 percent of cases, but a newly available therapeutic modality, combination therapy using interferon plus ribavirin, may improve this outcome.

The greatest risk for transmission of HCV is through direct percutaneous exposure to infectious blood, such as through transfusion of infectious blood or blood products, sharing of contaminated equipment among injection drug users, or transplantation of organs or tissues from infectious donors. Hemodialysis patients and health-care workers exposed to needle sticks in the occupational setting are also at risk for exposure to infectious blood. Direct percutaneous exposures to infectious blood, particularly in the setting of drug abuse, account for the majority of HCV infections acquired in the United States (Ref. 1). The incidence of transfusion transmitted HCV infection has decreased markedly since the implementation of donor screening for HCV and viral inactivation of clotting factors and intravenous immune globulins. However, approximately 7 percent of the 3.9 million Americans believed to be chronically infected with HCV were infected as a result of transfusion of blood components prior to the availability of donor screening tests or due to past use of nonviral-inactivated plasma derivative products (Ref. 2).

HCV was established as a causative agent of transfusion associated hepatitis only since its discovery in the late 1980's. In October 1989, FDA's Blood Products Advisory Committee (BPAC) first discussed "lookback" for HCV, prior to the availability of donor screening tests for HCV. BPAC advised that there was insufficient information available concerning HCV infection to propose either product quarantine or notification of recipients transfused with products prepared from prior collections from donors later determined to be at increased risk for transmitting HCV. Blood establishments implemented donor screening tests after a single antigen, enzyme linked immunosorbent assay (EIA) for antibody to HCV (HCV EIA 1.0 screening test) was licensed in May 1990. FDA issued a memorandum to all registered blood establishments in November 1990, entitled "Testing for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)," recommending use of approved donor screening tests for antibody to HCV. A "lookback" program was not recommended because: (1) Screening tests available at the time could not distinguish between ongoing infection and recovery, and thus, the meaning of a reactive test result for any one individual was not clear; (2) donor screening for antibody to HCV did not include confirmatory testing and most notifications would have been based on false-positive donor test results; (3) there was limited knowledge of routes of transmission for HCV other than parenteral; and (4) no potential long-term benefits of therapy were known.

A significantly more sensitive multiantigen screening test (HCV EIA 2.0 screening test) was licensed in March 1992. In June 1993, FDA licensed an HCV 2.0 strip immunoblot assay (HCV RIBA 2.0), a supplemental (additional, more specific) test for antibody to HCV. Supplemental tests for antibody to HCV are used to distinguish false positive from true positive repeatedly reactive screening test results. Except for tests available for investigational use, supplemental tests for antibody to HCV have only been available since the HCV RIBA 2.0 supplemental test was licensed in June 1993.

In an August 1993 memorandum to all registered blood establishments entitled "Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)," FDA did not recommend a "lookback" program pending the outcome of discussions on the issue at the December 1993 BPAC meeting. Following the discussions on HCV at the meeting in December 1993, BPAC unanimously recommended product quarantine of prior collections from a donor who later tests repeatedly reactive for antibody to HCV and tests positive or indeterminate on a supplemental test, but only marginally endorsed consignee notification for the purpose of transfusion recipient notification, and reiterated many of the reservations regarding the lack of an established public health benefit in performing this activity. FDA issued a memorandum to all registered blood establishments in July 1996 entitled "Recommendations for the Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis B Virus (HBV), Hepatitis C Virus (HCV), and Human T-Lymphotropic Virus Type I (HTLV–I)." The July 1996 memorandum recommended testing, consignee notification, and quarantine of affected products but did not provide recommendations for the notification of recipients of such donations because the public health benefit of such notification was not clear.

The Public Health Service Advisory Committee on Blood Safety and Availability (the PHS Advisory Committee) discussed improvements in the treatment and management of HCV infection and improvements in testing for antibody to HCV at public meetings held on April 24 and 25, 1997, and August 11 and 12, 1997. The PHS Advisory Committee also discussed the public health benefits of notification of transfusion recipients receiving prior collections from a donor who subsequently tests repeatedly reactive for evidence of HCV infection. Following acceptance by the Department of Health and Human Services (DHHS) of recommendations for HCV "lookback" made in August of 1997 by the PHS Advisory Committee, FDA issued a notice in the **Federal Register** of March 20, 1998 (63 FR 13675), announcing the availability of a document entitled "Guidance for Industry: Supplemental Testing and the Notification of Consignees of Donor Test Results for Antibody to Hepatitis C Virus (Anti-HCV)" (the March 1998 guidance) in which FDA recommended that blood establishments implement HCV "lookback" procedures. In the March 1998 guidance, FDA recommended that donors currently testing repeatedly reactive for antibody to HCV in a licensed test be further tested for antibody to HCV using a licensed, multiantigen supplemental test. Additionally, FDA recommended that consignees of certain blood and blood components collected since January 1, 1988, which were anti-HCV negative or untested, be notified when donors subsequently test repeatedly reactive for anti-HCV in a licensed multiantigen screening test and reactive in a licensed or investigational supplemental test. This notification would enable recipients to be informed that they had been transfused with units that may have contained HCV so that they may obtain further medical counseling. The March 1998 guidance provided FDA's recommendations for donor screening, a review of past testing records, further testing for antibody to HCV, notification of consignees, and transfusion recipient notification and counseling by physicians regarding transfusion with blood or blood components at increased risk of transmitting HCV. The March 1998 guidance was intended to supplement the July 1996 memorandum.

In response to comments received, the March 1998 guidance was withdrawn on September 8, 1998, and FDA issued a revised guidance on October 21, 1998 (63 FR 56198, October 23, 1998) entitled "Guidance For Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Antibody to HCV (Anti-HCV)," (the September 1998 guidance). The September 1998 guidance replaced the March 1998 guidance, and provided recommendations to enable quarantine and disposition of blood and blood components from prior collections from donors with repeatedly reactive screening test results. The September 1998 guidance was provided on the CBER Home Page for comment and implementation on September 23, 1999. Additionally, the guidance document was mailed to all blood establishments on November 20, 1998.

The September guidance addressed several significant comments and requests from industry: (1) FDA revised several time periods for "lookback" actions in response to concerns about impact on industry, the need for additional time for testing due to availability problems with certain test kits, and to allow time for the physician education to be completed (ensuring that counseling messages would be available for use in notification of recipients); (2) FDA clarified options for further testing with an HCV enzyme linked immunosorbent assay 3.0 (HCV EIA 3.0 screening test); (3) FDA made revisions to clarify recommendations on labeling of products released from quarantine and for consistency with existing regulations on product labeling; (4) FDA provided flow chart diagrams to assist industry in implementing procedures contained in the guidance; and (5) To permit easier, more rapid notification of the recipient, FDA recommended the option of transfusion services notifying the transfusion recipient directly as an alternative to notifying the transfusion recipient's physician of record.

At public meetings on November 24, 1998, and January 28, 1999, the PHS Advisory Committee reconsidered the issue of recipient notification related to repeatedly reactive results on the single antigen screening test. The PHS Advisory Committee recommended that targeted "lookback" should be initiated based on a repeatedly reactive HCV EIA 1.0 screening test result on a repeat donor unless a supplemental test was performed and the result did not indicate increased risk of HCV infection, or, in the absence of a supplemental test result, the signal to cut off (S/CO) value of the repeatedly reactive HCV EIA 1.0 screening test was less than 2.5, or follow-up testing of the donor was negative. FDA published a notice in the **Federal Register** of June 22, 1999 (64 FR 33309), announcing the availability of a draft guidance entitled, "Guidance For Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of Donor Test Results for Antibody to HCV (Anti-HCV)." Consistent with the

recommendations of the PHS Advisory Committee, this revised draft guidance addressed "lookback" actions related to donor screening by HCV EIA 1.0 and also recommended that the search of historical testing records of prior donations from donors with repeatedly reactive EIA 1.0, EIA 2.0, or EIA 3.0 screening tests for HCV should extend back indefinitely to the extent that electronic or other readily retrievable records exist. In addition, FDA revised the flow chart diagrams to reflect the changes to the guidance. FDA added specific recommendations for prior collections from a repeatedly reactive autologous donor and clarified recommendations on implementing "lookback" for repeatedly reactive plasma donations.

Based on comments submitted to the docket, FDA will revise the June 1999 draft guidance and issue a final guidance document for implementation. These comments and comments submitted on any additional guidance issued by the agency in the future will be considered in the preparation of the final rule for HVC "lookback."

In addition to these recommendations, FDA is proposing in § 610.40(c) of the testing proposed rule to require "Each donation found to be repeatedly reactive by a screening test shall be further tested whenever a supplemental (additional, more specific) test has been approved for such use by FDA."

II. Legal Authority

FDA is proposing to issue this new rule under the authority of sections 351 and 361 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262 and 264 *et seq.*) and the provisions of the Federal Food, Drug, and Cosmetic Act (the act) which apply to drugs (21 U.S.C. 201 *et seq.*). Under section 361 of the PHS Act, FDA may make and enforce regulations necessary to prevent the introduction, transmission, and spread of communicable disease between the States or from foreign countries into the States. (See Sec. I, 1966 Reorg. Plan No. 3 at 42 U.S.C. 202 for delegation of section 361 authority from the Surgeon General to the Secretary, Health and Human Services; see 21 CFR 510(a)(4) for delegation from the Secretary to the Food and Drug Administration.) Intrastate transactions may also be regulated under section 361. (See *Louisiana* v. *Mathew*, 427 F.Supp. 174, 176 (E.D.La. 1977).) A major purpose of the HCV "lookback" proposed rule is to prevent the introduction, transmission, and spread of HCV.

All blood and blood components introduced or delivered for introduction into interstate commerce also are subject to section 351 of the PHS Act (42 U.S.C. 262). Section 351(a) requires that manufacturers must have a license which has been issued upon a showing that the manufacturing establishment meets all applicable standards, prescribed in the biologics regulations, designed to insure the continued safety, purity, and potency of the blood and that the product is safe, pure, and potent.

FDA's license revocation regulations provide for the initiation of revocation proceedings, among other reasons, if the establishment or the product fails to conform to the standards in the license application or in the regulations designed to ensure the continued safety, purity, or potency of the product (§ 601.5). Section 351 of the PHS Act also provides for criminal penalties for violation of the laws governing biologics. Violations can be punishable by fines or imprisonment, or both.

The act also applies to biological products (42 U.S.C. 262(d), as amended). Blood and blood components are considered drugs, as that term is defined in section 201(g)(1) of the act (21 U.S.C. 321(g)(1)). (See *United States* v. *Calise*, 217 F.Supp. 705 (S.D.N.Y. 1962)). Because blood and blood components are drugs under the act, blood and plasma establishments must comply with the substantive provisions and related regulatory scheme of the act. Under section 501 of the act (21 U.S.C. 351), drugs are deemed "adulterated" if the methods used in their manufacturing, processing, packing or holding do not conform with current good manufacturing practices (CGMP's). Under the proposed HCV "lookback" rule, blood and plasma establishments would be required to develop standard operating procedures (SOP's) for HCV "lookback" quarantine of affected blood and blood components and consignee and transfusion recipient notification. A blood or plasma establishment that failed to comply with HCV "lookback" procedures would violate CGMP's and, therefore, would be subject to the act's enforcement provisions.

III. Highlights of the Proposed Rule

FDA and the Health Care Financing Administration (HCFA) are proposing steps designed to further protect the blood supply and to notify recipients of the possibility that they may have received blood or blood components contaminated with HCV. FDA's proposed rule, along with HCFA's companion proposed rule published elsewhere in this Federal Register, would require facilities involved in the collection, processing, and administration of blood to quarantine certain blood and blood components and to inform the consignee. The consignee, as appropriate, would inform the recipient's attending physician or the recipient, of the possibility that blood previously used for transfusion was obtained from a donor who subsequently tested repeatedly reactive for antibody to HCV. FDA believes that this proposed rule, in conjunction with HCFA's companion proposed rule will provide a more efficient means of notification.

As previously discussed in section I.C of this document, chronic hepatitis due to HCV is a major health problem in the United States because the infection is usually clinically silent, and infected people usually are unaware of their disease until serious damage has been caused to the liver. Although transfusion transmitted HCV infection accounts for only a small proportion of those infected with HCV, it is possible to identify and quarantine affected blood and blood components, perform further testing, and notify some transfusion recipients who have received blood from a donor later determined to be at increased risk of transmission of HCV. This process is commonly referred to as "lookback."

FDA is issuing this proposed rule for HCV "lookback" as a consequence of numerous public discussions, and extensive discussion within DHHS, of the benefits of notifying recipients of blood at increased risk of transmitting HCV. In parallel to this proposed rule, there will be a major PHS educational campaign on HCV aimed at both the medical community and the public. This proposed rule would establish requirements, similar to those now in effect for HIV "lookback," to identify and quarantine prior collections later suspected as possible window period donations because they were collected from a donor who returned to donate and tested repeatedly reactive for evidence of HCV infection, and to notify transfusion recipients based on further testing of such a donor, as appropriate. In addition to HCV "lookback" requirements based on current testing that are similar to those for HIV and that are triggered when a donor returns to donate and tests repeatedly reactive on a screening test, this proposed rule would require a review of historical testing records to identify prior collections from donors at increased risk of transmitting HCV.

The review of historical testing records would extend back indefinitely for computerized electronic records, and to January 1, 1998, for other readily retrievable records.

The requirements for "lookback" activity based on multiantigen screening test results are handled in separate sections from those based on single antigen screening test results because the proposed requirements differ. For the purpose of this proposed rule, any reference to "blood or blood components" will include Source Leukocytes and Source Plasma unless specifically addressed. The proposal would not require quarantine of products that have already been pooled for further processing because the process of fractionation inactivates or removes the HCV. For the purpose of this proposed rule, any reference to blood establishments will include plasma establishments.

FDA is also proposing conforming amendments to certain provisions of §§ 610.46 and 610.47, the HIV "lookback" regulations. The proposed revisions to §§ 610.46 and 610.47 are discussed under the corresponding sections of this proposal and are intended to clarify and provide consistency between the HIV and HCV "lookback" requirements.

The proposed HCV "lookback" regulations are particular to the testing methodologies currently used. As testing technology continues to develop, the "window" period might vary with the testing methodology and FDA may determine that it is necessary to amend the final rule that results from this proposal. In this section III, FDA discusses each of the proposed requirements, the redesignation of certain regulations and revisions to existing requirements.

A. Related Rulemaking

As previously stated, in the **Federal Register** of August 19, 1999 (64 FR 45340), FDA issued, as part of the Blood Initiative, a proposed rule entitled "Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents" (the testing proposed rule). In the testing proposed rule, FDA proposed to revise the general biological product standards by adding testing requirements for HCV, and by adding requirements for performing a licensed, supplemental test when a donation is found to be repeatedly reactive for any of the required screening tests for evidence of infection due to communicable disease agents. The testing proposed rule would delete § 610.45, "Human Immunodeficiency Virus (HIV) requirements," because its requirements would be included in the revision of proposed § 610.40. The use of the term "repeatedly reactive" in this rulemaking is consistent with the testing proposed rule, which states that "according to the manufacturer's instructions, initially reactive samples are to be tested again, generally in duplicate, and a sample that is found to be reactive on any single retest (i.e., on one or more of the duplicate retests), is considered to be repeatedly reactive." Refer to the testing proposed rule for additional discussion of repeatedly reactive test results in section D., Further Testing. In § 610.40(a) and (c) of the testing proposed rule, FDA would revise the requirements for performance of donor screening tests and for supplemental testing of a donor who tests repeatedly reactive for evidence of infection due to a communicable disease agent, including HCV. As discussed in section III.D, this rule proposes that § 610.40(g), include the proposed requirements to initiate HCV "lookback" and requirements to initiate HIV "lookback" (currently in § 610.45(d), which would be deleted as part of the testing proposed rule). Initiation of the "lookback" processes would be based on results of HIV and HCV testing proposed in § 610.40(a) and (c) of the testing proposed rule. (Refer to section III.D of this document for discussion of the proposed changes to § 610.45(d).)

B. Proposed Revisions to § 606.100(b)(19)

FDA is proposing to amend § 606.100(b)(19), which currently prescribes requirements for SOP's, in accordance with §§ 610.46 and 610.47, to look at in-date prior collections from a donor who later tests repeatedly reactive on a required test for HIV, or is otherwise determined to be unsuitable when tested for HIV, and to notify transfusion recipients. FDA is proposing to amend § 606.100(b)(19) to include requirements for blood establishments to have SOP's, in accordance with proposed §§ 610.48 and 610.49, for HCV "lookback," including procedures for quarantine and testing, and notification of transfusion recipients. The revised regulations would require SOP's to look at prior collections from a donor who has donated blood and later tests repeatedly reactive on a required test for HIV or HCV, or when the blood establishment has been made aware of other test results indicating evidence of HIV or HCV infection, and to notify transfusion recipients, if appropriate.

C. Proposed Revisions to § 606.160

FDA is proposing to amend § 606.160. Section 606.160(b)(1)(viii) currently prescribes requirements for maintaining records of quarantine, notification, testing, and disposition performed under §§ 610.46 and 610.47, whenever a donor subsequently tests repeatedly reactive for evidence of HIV infection. FDA is proposing to revise § 606.160(b)(1)(viii), to include requirements for maintaining records of quarantine, notification, testing, and disposition performed under proposed §§ 610.48 and 610.49, whenever a donor subsequently tests repeatedly reactive for evidence of HCV infection.

Section 606.160(d) currently prescribes that the retention period for required processing records shall be no less than 5 years after completion of the record or 6 months after the latest expiration date for the individual product, whichever is a later date. FDA is proposing to revise § 606.160(d) by increasing the required retention period to no less than 10 years after the records of processing have been completed, or 6 months after the latest expiration date for the individual product, whichever is a later date. FDA is proposing this change in the retention period because advances in medical diagnosis and therapy have created opportunities for disease prevention or treatment many years after recipient exposure to a donor later determined to be at increased risk of transfusion transmitted disease. Additionally, methods of recordkeeping have advanced, improving the ability of blood establishments to more easily maintain and retrieve records.

D. Proposed Revisions to § 610.45

As previously discussed, in the **Federal Register** of August 19, 1999 (64 FR 45340), FDA issued a proposed rule to revise § 610.40, and to delete § 610.45, "Human Immunodeficiency Virus (HIV) requirements," because, except as discussed below, the requirements of § 610.45 would be included in proposed § 610.40.

Section 610.45(d) currently requires blood establishments to comply with §§ 610.46 and 610.47, the HIV "lookback" requirements for quarantine, consignee notification, further testing and transfusion recipient notification, when applicable, whenever a donor's "test results for antibody to HIV are repeatedly reactive or otherwise determined to be unsuitable when tested in accordance with paragraph (a) of this section * * *." As previously discussed in section III.A of this document, the testing proposed rule would delete § 610.45. This proposed rule would include the requirements of current § 610.45(d) into proposed § 610.40(g). Proposed § 610.40(g) would require blood establishments to comply with §§ 610.46 and 610.47, and with proposed §§ 610.48 and 610.49, thereby requiring compliance with the HIV and

HCV "lookback" regulations, respectively.

E. Proposed Revisions to Headings of §§ 610.46 and 610.47

As a result of the addition of HCV "lookback" requirements, FDA is proposing to revise the headings of the sections applicable to the "lookback" requirements for HIV. FDA is proposing to revise the heading of § 610.46 to read "Human Immunodeficiency Virus (HIV) 'Lookback;' quarantine, consignee notification and further testing" to distinguish it from the new § 610.48, "Hepatitis C Virus (HCV) "'lookback;'" quarantine, consignee notification and further testing." Likewise, FDA is proposing to amend the heading of § 610.47, "Lookback" Notification requirements for transfusion services," to read "Human Immunodeficiency Virus (HIV) "Lookback;" notification of transfusion recipients" to distinguish it from the new § 610.49, "Hepatitis C Virus (HCV) "Lookback;" notification of transfusion recipients." As previously noted, FDA is proposing to amend § 610.46 for consistency with proposed § 610.48 of this proposed rule, and to amend § 610.47 for consistency with § 610.49 of this proposed rule. The corresponding revisions to § 610.46 and to § 610.47 are noted in the discussion of proposed § 610.48 and proposed § 610.49.

F. Proposed § 610.48(a), Quarantine and Consignee Notification

Proposed § 610.48(a) identifies the circumstances that would trigger the "lookback" process when a donor returns to donate and tests repeatedly reactive on a screening test, and states the requirements for quarantine of blood and blood components, notification of consignees, and quarantine of blood and blood components by consignees. Under proposed § 610.48(a)(1), blood establishments would be required to take appropriate action within 3-calendar days after the date on which a donor returns to donate blood or blood components and tests repeatedly reactive for evidence of HCV infection on a required test, performed in accordance with proposed § 610.40(a), or the date on which the blood establishment was made aware of other test results indicating evidence of HCV infection, provided the testing was performed by a laboratory certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), using a test approved by FDA. In the testing proposed rule (64 FR 45340, August 19, 1999) proposed § 610.40(a) requires tests for specified communicable disease agents, including for HCV, and requirements for further testing of repeatedly reactive samples. For example, a blood establishment completing a screening test on Tuesday afternoon with a repeatedly reactive test result would have until the end of the day on Friday to complete the requirements for quarantine and consignee notification.

FDA is specifically requesting comments on the appropriateness of 3 calendar days proposed for exemptions of the quarantine of prior collections and consignee notification under proposed §§ 10.48(a), (e), and (f) and the conforming amendment to 610.46(a). FDA is also proposing that the "lookback" measures specified in § 610.48(a) be initiated by a blood establishment upon receipt of information that a person who has been a donor at that establishment has other test results indicating evidence of HCV infection and that the test was performed by a CLIA-certified laboratory, using a test approved by FDA, regardless of the purpose of the testing. FDA recognizes that blood establishments do not routinely receive such information, but should a blood establishment become aware of such reliable test results, the proposal would require appropriate "lookback" measures. State laws and public health practices vary widely, making it impossible to specify all circumstances under which test results may be provided to the blood establishment. However, FDA believes that the blood establishment has the obligation, upon the receipt of such reliable test results, to initiate appropriate action to protect the blood and plasma supply. In addition, the reliability of test results may vary, depending on the quality of the test method used and on the qualifications of the testing facility to perform the test. Accordingly, FDA is proposing to require the initiation of "lookback" procedures when the test results originate from a laboratory certified under CLIA and when the laboratory has used FDA-approved tests.

Proposed § 610.48(a) would require blood establishments and their consignees to identify and quarantine all affected blood and blood components collected prior to the donor's repeatedly reactive screening test for HCV. Under proposed § 606.160(d), blood establishments would retain records for "* * * no less than 10 years * * *" or, for products that remain in inventory, for 6 months after the latest expiration date of the product, whichever is the later date, and under proposed § 610.48(a) blood establishments would quarantine any in-date prior collections that remain in inventory. If the blood establishment has information to assure that there are no in-date prior collections, there is no need to trace those products.

Proposed § 610.48(a)(1)(i) would require blood establishments to quarantine all in-date prior collections from a donor testing repeatedly reactive for evidence of HCV infection. Proposed § 610.48(a)(1)(ii) would require blood establishments to notify consignees of the repeatedly reactive HCV screening test result so that the consignee may quarantine all in-date prior collections of blood and blood components. Proposed § 610.48(a)(2) would require consignees to quarantine all in-date prior collections of blood and blood components that remain in inventory.

For consistency, FDA is also proposing conforming amendments to the corresponding HIV "lookback" requirements of § 610.46(a). FDA is proposing to amend § 610.46(a) by changing the title of the paragraph to "Quarantine and consignee notification" and to clarify that blood establishments would be required to complete the quarantine and consignee notification requirements within 3-calendar days after the date on which the donor tests repeatedly reactive for evidence of HIV infection. FDA is proposing to replace the phrase "or otherwise determined to be unsuitable when tested in accordance with § 610.45" with "or when the blood establishment has been made aware of other test results indicating evidence of HIV infection, provided the testing was performed by a laboratory certified under the Clinical Laboratory Improvement Amendments of 1988, using a test approved by FDA" to eliminate any confusion that might be caused by different wording. Likewise, for clarity and consistency, FDA is proposing to replace "For Whole Blood, blood components, Source Plasma and Source Leukocytes collected from that donor within the 5 years prior to the repeatedly reactive test, if intended for transfusion, or collected within the 6 months prior to the repeatedly reactive test, if intended for further manufacture into injectable products, * * *." with "For in-date blood and blood components collected from that donor at any time prior to the repeatedly reactive test, whenever records are available, if intended for transfusion or for further manufacture into injectable products, * * *." Also, FDA recognizes that it is not necessary for "lookback" requirements to distinguish collections intended for transfusion from those intended for further manufacturing. FDA is clarifying that "lookback" requirements should be followed for any prior collection that has not expired because records are held for 6 months after the latest expiration date of the individual product.

G. Proposed § 610.48(b), Further Testing and Consignee Notification of Results

Proposed § 610.48(b) would require further testing whenever a donor returns to donate and tests repeatedly reactive for evidence of HCV infection, as described in § 610.48(a), and notification of consignees of the results of the further testing. Proposed § 610.48(b) would require blood establishments to perform further testing, in accordance with proposed § 610.40(c) of the testing proposed rule (as previously discussed), after a donor with a record of prior collections tests repeatedly reactive for evidence of HCV infection when tested in accordance with proposed § 610.40(a) of the testing proposed rule. Blood establishments would be required to notify consignees of the results of the further testing within 45-calendar days after the day on which the donor tests repeatedly reactive on a screening test for evidence of HCV infection.

FDA is proposing a conforming amendment to § 610.46(b) for HIV "lookback" by changing the maximum time provided for a blood establishment to notify consignees of the results of the further testing from 30 to 45 days. This change is proposed for consistency between the HIV and HCV "lookback" regulations and in response to comments that although further testing for HIV and HCV can be completed within 30 days, additional time is needed to notify consignees following completion of the further testing.

H. Proposed § 610.48(c), Review of Historical Testing Records and Identification of Donors Tested Using a Multiantigen Screening Test Prior to the Effective Date of this Regulation

As discussed in section I.C of this document in this preamble, blood establishments routinely have been testing blood donations for antibody to HCV since 1990. In the guidance documents issued in March 1998, September 1998 and June 1999, FDA issued recommendations (draft guidance was issued in June 1999) for blood establishments to initiate "lookback" procedures consistent with those now being proposed, including when, through a review of historical testing records, previous instances are identified when a donor had tested repeatedly reactive on a multiantigen screening test for evidence of HCV infection. FDA believes that since 1990, many blood establishments have routinely initiated "lookback" procedures consistent with the regulations now being proposed, and with the issuance of the recommendations in 1998 and 1999, many additional establishments have undertaken the review of historical testing records and have initiated appropriate "lookback" procedures. However, because HCV is a chronic, often asymptomatic disease that may ultimately have serious consequences, FDA believes that it is imperative to identify and notify recipients who have been transfused with blood or blood components for which there is an increased risk of transmission of HCV as determined by subsequent donor testing. Such transfusion recipients should be made aware that they should seek further testing to see if they are infected and, if so, to receive appropriate counseling and medical care.

The requirements of proposed § 610.48(c) and (d) are based on the agency's understanding of current research in hepatitis testing. FDA specifically invites comments on these provisions and requests individuals to submit data in support of the comments. To the extent the data do not support these provisions, FDA would revise the rule accordingly. FDA recognizes that the review of historical testing records (performed in accordance with proposed § 610.48(c) and (d)) will identify tests performed using both licensed and unlicensed tests, HCV EIA 1.0, 2.0, and 3.0, as well as, HCV RIBA 2.0 and 3.0 supplemental tests. For that reason, the proposed requirements for testing performed prior to the effective date of any final rule resulting from this proposal (that is, test results identified in the review of historical testing records) would take into account the use of unlicensed tests, under specific circumstances. In addition, testing performed following the effective date of any final rule resulting from this proposal (such as further testing performed in accordance with proposed § 610.48(h) or (i)) would require use of a currently licensed test, as specified.

The purpose of § 610.48(c) is to identify, through a search of available historical testing records, those prior collections that might have been collected during the window period, that is, a donation that may have been made after the donor became infected with HCV but before it was possible for a screening test to detect antibody to HCV. The identification of prior collections would be based on the multiantigen screening test result and would be followed by appropriate steps to perform quarantine, further testing and notification of consignees and transfusion recipients, as discussed in detail in this and other sections of this proposed rule. Blood establishments would be required to perform a review of historical testing records to identify, within 1 year of the effective date of any final rule resulting from this proposal, prior collections at increased risk of transmitting HCV infection because they are from a donor who later tested repeatedly reactive for evidence of HCV infection on a multiantigen screening test and who either: (1) Has no record of further testing for HCV performed on the repeatedly reactive sample and no record of a negative licensed, multiantigen screening test performed at a later date (as specified in § 610.48(c)(4) and (c)(5); or (2) has a record of further testing (as specified in § 610.48(c)(1), (c)(2), and (c)(3)) that potentially indicates evidence of HCV infection, as discussed in detail later in this proposed rule. As discussed in the following paragraph, after the review of historical testing records, "lookback" actions would be triggered for certain prior collections. Blood establishments would be required to quarantine any in-date prior collections still in inventory where records show that they were collected from donors later found to have a repeatedly reactive multiantigen screening test for evidence of HCV infection (unless exempt from quarantine under § 610.48(g)(2)), and to notify consignees to quarantine such prior collections, as specified under proposed § 610.48(e)(2); to perform further testing, as specified in proposed § 610.48(h)(1), on donors identified in accordance with proposed § 610.48(c)(4) and (c)(5); or optionally to perform further testing in accordance with § 610.48(h)(2) on donors identified in accordance with § 610.48(c)(2) and (c)(3); and to notify consignees of the test result, in accordance with proposed § 610.48(h)(3), as described in the following paragraph. Transfusion services notified by blood establishments of prior receipt of blood or blood components at increased risk of transmitting HCV would either notify the transfusion recipients directly or notify the recipient's physician of record (i.e., physician of record or physician who ordered the blood or blood component), as specified in proposed § 610.49(b).

Under proposed § 610.48(c), the review would include records, if available, dating back indefinitely for computerized electronic records, and to January 1988 for other readily retrievable records, or 12 months prior to the donor's most recent negative

multiantigen screening test for antibody to HCV, whichever is the lesser period. This 12-month time period requirement is intended to identify any potential "window period" donation. Review of historical testing records dating back indefinitely would not be necessary for prior collections from many donors (i.e., prior collections from donors who have a record of a prior negative multiantigen screening test result because the prior collections would not be considered to be window period donations.) Examples are provided in the following paragraph. In addition, many donors who test repeatedly reactive for evidence of HCV infection are first-time donors with no previous history of donation. Thus, no "lookback" action is needed for such a first-time donor because "lookback" activity targets prior collections and no prior collections exist for a first time donor.

Proposed § 610.48(c) would limit the review of records to the identification of prior collections dating back to "the date 12 months prior to the donor's most recent negative multiantigen screening test for HCV." FDA believes that this 12-month period prior to the last negative multiantigen screening test for HCV establishes with high confidence that, prior to that date, possible HCV infection would have been detected by a screening test; if any "window period" donation was collected, it would have occurred after that date. For example, it would not be necessary to identify collections dating back indefinitely for a donor who has donated every 6 months from January 1983 until testing repeatedly reactive on a screening test for evidence of HCV infection in January 1998, with the last negative multiantigen screening test on July 1, 1997. In this example, the last negative multiantigen screening test for antibody to HCV is July 1, 1997, and 12 months prior to that would be July 2, 1996. Under the proposal, the blood establishment would use the later date of July 2, 1996 (rather than the maximum time period back to January 1983), and the blood establishment would identify donations made on or after July 2, 1996, to July 1, 1997, as possible "window period" donations. In this example, donations made prior to July 2, 1996, would not be suspected to be "window period" donations, capable of transmitting HCV infection to a transfusion recipient. Note that a negative test result on a single antigen EIA screening test for HCV may not be used as the "most recent negative multiantigen screening test" and is not a basis to limit the "lookback" activity, as described previously, due to the limited sensitivity of the single antigen HCV EIA test.

FDA is proposing the review of historical testing records to identify five specific instances following a repeatedly reactive multiantigen screening test that should be used to identify increased risk of transmitting HCV from the donor's prior collections. Under § 610.48(c), blood establishments would identify prior collections from donors who tested repeatedly reactive for evidence of HCV infection on a licensed, multiantigen screening test and who: (1) Tested positive on a supplemental test for HCV performed on the repeatedly reactive sample (as specified in § 610.48(c)(1)); or (c)(2) tested indeterminate on a supplemental test for HCV (as specified in § 610.48(c)(2)); or (c)(3) testing repeatedly reactive on licensed HCV EIA 3.0 screening test and negative on a licensed HCV RIBA 2.0 supplemental test but with no records of a negative licensed HCV RIBA 3.0 supplemental test performed on the repeatedly reactive sample or a later sample from the same donor; or (4) tested repeatedly reactive for evidence of HCV infection on an HCV EIA 2.0 screening test with no record of a supplemental test for HCV performed on the repeatedly reactive sample or on a later sample from the donor and no record of a negative licensed HCV EIA 3.0 screening test performed on the repeatedly reactive sample or later on the same donor; or (5) tested repeatedly reactive for evidence of HCV infection on a licensed, HCV EIA 3.0 screening test with no record of a supplemental test for HCV performed on the repeatedly reactive sample or on a later sample from the same donor. As discussed previously, the requirements of proposed § 610.48(c) for review of historical testing records to identify prior collections from affected donors are particular to the testing methods used and exceptions are specified in § 610.48(g), Exemption from Quarantine. Prior collections that would not be identified as possible "window period" donations and would not require further action are exempted from quarantine as described in § 610.48(g)(2). For donors identified in accordance with § 610.48(c)(4) and (c)(5) for whom no records of further testing exist to clarify the status of prior collections determined to be at increased risk of transmitting HCV infection, blood establishments would be required, as described under proposed § 610.48(e), to perform quarantine and consignee notification for any in-date prior collections that remain in inventory and to perform further testing, as described under proposed § 610.48(h)(1).

I. Proposed § 610.48(d), Review of Records and Identification of Donors Testing Repeatedly Reactive on a Single Antigen Screening Test Prior to the Effective Date of this Regulation

The purpose of § 610.48(d), which parallels the requirements of § 610.48(c), is to identify, through a review of historical testing records, those prior collections that might have been collected during the window period of HCV infection, based on a single antigen screening test result. Similar to the requirements of § 610.48(c), which is based on the multiantigen screening test, proposed § 610.48(d) would: (1) Require blood establishments to review available historical records of donor testing that occurred prior to the effective date of this regulation to identify prior collections that are potential window period donations; (2) require the review of available historical testing records dating back indefinitely for computerized electronic records and to January 1988 for other readily retrievable records; and (3) require that blood establishments complete the review or historical testing records within 1 year of the effective date of any final rule that results from this proposal.

Under § 610.48(d), blood establishments would identify previously distributed blood and blood components in any of the following four instances: (1) As proposed in § 610.48(d)(1), where the donor tested repeatedly reactive for evidence of HCV infection on the single antigen screening test and repeatedly reactive on an HCV EIA 2.0 or HCV EIA 3.0 screening test for HCV performed on the repeatedly reactive sample or a fresh sample from the same donor; (2) as proposed in § 610.48(d)(2), where the donor tested repeatedly reactive for evidence of HCV infection on the single antigen screening test and either positive or indeterminate on an HCV 2.0 or HCV 3.0 strip immunoblot assay (HCV RIBA 2.0 or HCV RIBA 3.0 supplemental test, respectively) supplemental test for HCV; or (3) as proposed in § 610.48(d)(3), where the donor tested repeatedly reactive for evidence of HCV infection on an HCV EIA 1.0 screening test, with a signal to cut off (S/CO) value less than 2.5 for at least two out of the three EIA tests (i.e., the initial EIA screening test and the duplicate retests) with no record of a supplemental test or multiantigen screening test for HCV performed on the repeatedly reactive sample or on a later sample from the same donor ; or (4) as proposed in § 610.48(d)(4), where the donor tested repeatedly reactive for evidence of HCV infection on an HCV EIA 1.0 screening test, with a S/CO value equal to or greater than 2.5 for at least two out of the three EIA tests or with no determination of S/CO value for all three EIA tests, and with no record of a supplemental test or multiantigen screening test for HCV performed on the repeatedly reactive sample or on a later sample from the same donor. (The S/CO value for each test result is calculated as the ratio of the absorbency value obtained for the donor sample divided by the absorbency value for the cutoff in that assay run.)

As previously discussed in section I.C of this document, the PHS Advisory Committee met on January 28, 1999, to consider options for expanding the targeted HCV "lookback" program to include recipients of blood from donors subsequently identified as repeatedly reactive by the single antigen HCV EIA 1.0 screening test. Approximately 80 percent of the HCV EIA 1.0 repeatedly reactive donations were identified before the first confirmatory test became available. The PHS Advisory Committee concluded that it would be reasonable to limit the "lookback" for EIA 1.0 based on the S/CO value of the screening tests in cases where supplemental testing had not been done and further testing of the original repeatedly reactive sample or a later sample from the same donor was impractical. The PHS Advisory Committee concluded that it would be appropriate to perform HCV "lookback" on a subset of the donors testing repeatedly reactive on EIA 1.0 screening tests to capture the vast majority of the true positives and minimize the unnecessary false recipient notifications. The requirements proposed in § 610.48(d) and (i) reflect the PHS Advisory Committee's recommendations for use of the S/CO value based on a critical ratio of 2.5 in evaluating risk of HCV transmission under "lookback" circumstances identified in the review of historical testing records.

As discussed previously, the requirements of proposed § 610.48(d) for review of historical testing records to identify prior collections from affected donors are particular to the testing methods used and exceptions are specified in § 610.48(g), Exemption from quarantine. Prior collections that would not be identified as possible "window period" donations and would not require further action are exempted from quarantine as described in § 610.48(g)(3).

J. Proposed § 610.48(e), Quarantine and Consignee Notification Following the Review of Historical Testing Records Based on Screening Performed Using a Multiantigen Screening Test

The purpose of proposed § 610.48(e) is to require quarantine of prior collections that were identified in the review of historical testing records, based on a multiantigen screening test in accordance with proposed § 610.48(c), until further testing is completed, if necessary, and the blood establishment can make a determination to release the prior collections from quarantine (under proposed § 610.48(j)(2)), or to destroy or relabel them (under proposed § 610.48(k)). Proposed § 610.48(e) would require blood establishments to quarantine certain prior collections until further testing is completed to clarify the status of the prior collections, and to notify consignees so that prior collections they hold can be quarantined. This requirement is intended to prevent the transfusion of a prior collection from a donor identified in the review of records as being at increased risk of transmitting HCV infection while further testing is performed.

Proposed § 610.48(e)(1) would require blood establishments to quarantine in-date prior collections of blood and blood components collected from donors identified in the review of records, under proposed § 610.48(c), while further testing is performed, as required in proposed § 610.48(h)(1) or as optional testing is performed in accordance with § 610.48(h)(2).

As previously mentioned, some exceptions to quarantine are specified in proposed § 610.48(g)(2). Prior collections that meet the criteria under proposed § 610.48(g)(2) would not be suspected as "window period" donations and would be exempt from quarantine, as discussed in following sections. If no exemption to quarantine applies, blood establishments would be required to perform quarantine within 3 days of the date on which the establishment identifies a donor's repeatedly reactive multiantigen screening test. All identification performed in accordance with § 610.48(c) and the resulting quarantine and notification must be completed within a maximum of 1 year from the effective date of any final rule resulting from this proposal.

Proposed § 610.48(e)(2) would require blood establishments, within 3-calendar days of the date on which the donor's repeatedly reactive multiantigen screening test is identified, to notify consignees of the donor's test results, including supplemental test results, if available, so that consignees may quarantine all in-date prior collections of blood and blood components subject to quarantine under proposed § 610.48(e)(1). FDA is specifically requesting comments on the appropriateness of the 1-year timeframe to complete all quarantine and notification.

K. Proposed § 610.48(f), Quarantine and Consignee Notification Following the Review of Records Based on Screening Performed Using a Single Antigen Screening Test

The purpose of § 610.48(f), which parallels the requirements of § 610.48(e), is to require quarantine of prior collections that were identified in the review of historical testing records based on single antigen testing, in accordance with proposed § 610.48(d), until further testing is completed, if necessary, and a determination can be made to release the prior collections from quarantine (under proposed § 610.48(j)(3)), or to destroy or relabel them (under proposed § 610.48(k)). Proposed § 610.48(f) would require blood establishments to quarantine certain prior collections until further testing is completed to clarify the status of the prior collections, and to notify consignees so that prior collections they hold can be quarantined. This requirement is intended to prevent the transfusion of a prior collection from a donor identified in the review of records as being at increased risk of transmitting HCV infection while further testing is performed.

Proposed § 610.48(f)(1) would require blood establishments to quarantine in-date prior collections of blood and blood components from donors identified in the review of historical testing records, under proposed § 610.48(d), while further testing is performed, as required in proposed § 610.48(i)(1) or as optional testing is performed in accordance with § 610.48(i)(2).

Under this proposal, blood establishments would be required to perform quarantine within 3 calendar days of the date on which the blood establishment identifies a donor's repeatedly reactive single antigen screening test. All identification performed in accordance with § 610.48(d) and the resulting quarantine and notification must be completed within a maximum of 1 year from the effective date of any final rule resulting from this proposal. As previously mentioned, some exceptions to quarantine are specified in proposed § 610.48(g)(3). Prior collections that

meet the criteria under proposed § 610.48(g)(3) would not be suspected as "window period" donations and would, therefore, be exempt from quarantine, as discussed in following sections.

Proposed § 610.48(f)(2) would require blood establishments, within 3-calendar days of the date on which the donor's repeatedly reactive single antigen screening test is identified, to notify consignees of the donor's test results, including supplemental test results, if available, so that consignees may quarantine all in-date prior collections of blood and blood components subject to quarantine under proposed § 610.48(f)(1). FDA is specifically requesting comments on the appropriateness of 3-calendar days proposed for completion of the quarantine of prior collections and consignee notification under § 610.48(f) and the appropriateness of the 1-year timeframe to complete all quarantine and notification.

Proposed § 610.48(f)(3) would require consignees notified in accordance with proposed § 610.48(f)(2) to quarantine all prior collections of blood and blood components subject to quarantine under proposed § 610.48(f)(1), except as provided in proposed § 610.48(g)(3).

L. Proposed § 610.48(g), Exemption From Quarantine

Proposed § 610.48(g) specifies which prior collections are not suspected as being window period donations and, therefore, are not subject to quarantine under proposed § 610.48(a), (e), and (f). Proposed § 610.48(g)(1) would exempt from quarantine certain prior collections otherwise subject to quarantine under proposed § 610.48(a) when a donor tests repeatedly reactive on a multiantigen screening test for evidence of HCV infection. Proposed § 610.48(g)(1)(i) is intended to identify certain donations that are not suspected of being collected during the "window period" because they were collected prior to the time a possible window period could have existed, and would not be subject to quarantine under proposed § 610.48(a). Under proposed § 610.48(g)(1)(i), for donations collected more than 12 months prior to the donor's most recent negative multiantigen screening test, a high confidence level exists that no infection could have existed at the time of donation and remain undetected by a screening test, and, therefore, blood establishments would not be required to quarantine blood or blood components "collected more than 12 months prior to the donor's most recent negative multiantigen screening test when tested for HCV in accordance with § 610.40(a). An explanation of "window period" donations and a corresponding example are provided previously in the description of proposed § 610.48(c).

In addition, proposed § 610.48(g)(1)(ii) would provide that when an appropriate licensed supplemental test for HCV (discussed in this section III.L) is found to be negative and is completed within the 3-day time period provided for completion of quarantine and consignee notification, quarantining of prior collections of blood and blood components from that donor would not be required. Thus, if the supplemental test is found negative within 3-calendar days after the date on which the donor tested repeatedly reactive for evidence of HCV infection (the time provided for completion of quarantine and consignee notification), then the repeatedly reactive screening test result would be interpreted as a "false positive," would not indicate HCV infection, and prior collections from that donor would not be considered to be at increased risk of transmitting HCV. If, however, the supplemental testing is completed more than 3 days after the date of the repeatedly reactive screening test result (the time provided for completion of quarantine and consignee notification), the blood and blood components would be quarantined but could then be released from quarantine if the supplemental test is negative, as provided in proposed § 610.48(j).

As specified in proposed § 610.48(g), the supplemental test must be appropriately chosen, i.e., the appropriately chosen supplemental test should contain all the antigens of the screening test that was performed. Under proposed § 610.48(g)(1)(ii), if the repeatedly reactive screening test was obtained using an HCV EIA 2.0 screening test, then an appropriate supplemental test would be either an HCV RIBA 2.0 or an HCV RIBA 3.0. However, if the repeatedly reactive screening test result was obtained using an HCV EIA 3.0 screening test, then the appropriate supplemental test would be an HCV RIBA 3.0. The HCV RIBA 2.0 supplemental test would not be an appropriately chosen supplemental test following an HCV EIA 3.0 screening test because the HCV RIBA 2.0 supplemental test does not include all antigens contained in the HCV EIA 3.0 screening test.

Proposed § 610.48(g)(2) provides for exceptions from quarantine performed in accordance with proposed § 610.48(e) following the review of historical testing records based on screening performed using a multiantigen screening test. Similar to the provisions of proposed § 610.48(g)(1), proposed § 610.48(g)(2) is intended to exempt from quarantine those prior collections that are not suspected as being collected during the "window period." Under proposed § 610.48(g)(2), prior collections of blood and blood components would not be subject to quarantine under proposed § 610.48(e) if they meet any of the following criteria: (1) The prior collection was donated more than 12 months prior to the donor's most recent negative multiantigen screening test for evidence of HCV infection that preceded the repeatedly reactive screening test; or (2) records show that the repeatedly reactive screening test result was obtained using an HCV EIA 2.0 screening test, and either the original sample or a later sample from the same donor was tested and found negative using an HCV RIBA 2.0, or an HCV RIBA 3.0 supplemental test or an HCV EIA 3.0 screening test. (As previously discussed, a negative test result on a single antigen EIA screening test for HCV may not be used as the "most recent negative multiantigen screening test" and is not a basis to limit the "lookback" activity, as described previously, due to the limited sensitivity of the HCV EIA 1.0 screening test); or (3) records show that the repeatedly reactive screening test result was obtained using an HCV EIA 3.0 screening test, and either the original sample or a later sample from the same donor was tested and found negative using an HCV RIBA 3.0 supplemental test.

Proposed § 610.48(g)(3) provides for exceptions from quarantine (performed in accordance with proposed § 610.48(f)) following the review of records based on screening performed using a single antigen screening test. Similar to the provisions of proposed § 610.48(g)(1) and (g)(2), proposed § 610.48(g)(3) is intended to exempt from quarantine those prior collections that are not suspected as being collected during the "window period." Under proposed § 610.48(g)(3), prior collections of blood and blood components would not be subject to quarantine under proposed § 610.48(f) if they meet any of the following four criteria: (1) Records show that the repeatedly reactive screening test result was obtained using an HCV EIA 1.0 screening test, and either the original sample or a later sample from the same donor was tested and found negative using an HCV EIA 2.0 or an HCV EIA 3.0 screening test (exempted under proposed § 610.48(g)(3)(i)); or (2) records show that the repeatedly reactive screening test result was obtained using an HCV EIA 1.0

screening test, and either the original sample or a later sample from the same donor was tested and found negative using a HCV RIBA 2.0 or a HCV RIBA 3.0 supplemental test (exempted under proposed § 610.48(g)(3)(ii)); or (3) the donor identified in accordance with proposed § 610.48(d)(1), as testing repeatedly reactive on an HCV EIA 2.0 or 3.0 screening test, was further tested using an HCV RIBA 2.0 or HCV RIBA 3.0 supplemental test, using a fresh sample, or frozen sample from the repeatedly reactive donation and the result was negative (exempted under § 610.48(g)(3)(iii)); or (4) the donor identified in accordance with proposed § 610.48(d)(2), as testing indeterminate on an HCV RIBA 2.0 supplemental test, was further tested using either an HCV EIA 3.0 or a HCV RIBA 3.0 supplemental test using a fresh sample, or frozen sample from the repeatedly reactive donation and the result was negative (exempted under proposed § 610.48(g)(3)(iv)).

FDA is also proposing a conforming amendment to § 610.46(c), which specifies requirements for exemption from quarantine for HIV "lookback," for consistency with the HCV "lookback" requirements by changing "Whole Blood, blood components, Source Plasma and Source Leukocytes" to "blood and blood components."

M. Proposed § 610.48(h), Further Testing Following Review of Historical Testing Records and Consignee Notification Based on Screening Performed Using a Multiantigen Screening Test

Proposed § 610.48(h) is intended to require that prior collections identified in accordance with § 610.48(c)(4) and (c)(5), based on multiantigen screening test results, either be further tested and consignees notified so that blood establishments can determine if the prior collection should be released from quarantine (under § 610.48(j)), or destroyed or relabeled (under § 610.48(k)), and if notification of transfusion recipients is necessary (under § 610.49(a)). In addition, blood establishments would have the option to perform further testing for prior collections identified in accordance with § 610.48(c)(2) and (c)(3). Proposed § 610.48(h)(1) would require blood establishments, by 1 year from the effective date of any final rule resulting from this proposal, to perform further testing to clarify the status of prior collections collected from a donor identified, in accordance with § 610.48(c)(4) and (c)(5), as being at increased risk of transmitting HCV. Proposed § 610.48(h)(1) would require that further testing be performed as follows: (1) As proposed in § 610.48(h)(1)(i)(A), if the repeatedly reactive test result was obtained using a licensed HCV EIA 2.0 screening test, blood establishments would perform a licensed supplemental test for HCV on a frozen sample from the repeatedly reactive donation, if it is available. If such a frozen sample is not available, blood establishments would obtain a fresh sample from the donor and perform a licensed supplemental test for HCV; or alternatively, (2) as proposed in § 610.48(h)(1)(i)(B), if the repeatedly reactive test result was obtained using a licensed HCV EIA 2.0 screening test, blood establishments would perform a licensed HCV EIA 3.0 screening test on a frozen sample, if it is available. If such a frozen sample is not available, blood establishments would obtain a fresh sample from the donor and perform a licensed HCV EIA 3.0 screening test and a licensed supplemental test if the HCV EIA 3.0 screening test is repeatedly reactive; or (3) as proposed in § 610.48(h)(1)(ii), if the repeatedly reactive test result was obtained using a licensed HCV EIA 3.0 screening test, blood establishments would perform a licensed supplemental test for HCV on a frozen sample, if available. If such a frozen sample is not available, blood establishments would obtain a fresh sample from the donor and perform a licensed supplemental test for HCV; or (4) as proposed in § 610.48(h)(1)(iii), blood establishments would make a determination that neither a frozen sample from the repeatedly reactive donation nor a fresh sample from the donor is available for further testing. For example, the blood establishment might make a determination that additional testing is not possible because the sample was not stored properly, or the donor could not be located or the donor declined further testing.

Under proposed § 610.48(h)(2), blood establishments would have the option to perform further testing on prior collections identified in accordance with § 610.48(c)(2) and (c)(3). This provision would make it possible to clarify the status of the prior collections and, in some instances, based on further testing, it might not be necessary to destroy the prior collections or notify transfusion recipients. Under proposed § 610.48(h)(2), blood establishments that have performed the review of records and identified prior collections in accordance with proposed § 610.48(c)(2) or (c)(3) of this section may further test a frozen sample from the repeatedly reactive donations or a fresh sample from the same donor by 1 year from the effective date of any final rule resulting from this proposal, as follows: (1) As proposed in § 610.48(h)(2)(i), if the donor was identified in accordance with proposed § 610.48(c)(2) of this section as testing repeatedly reactive using an HCV EIA 2.0 screening test, and indeterminate on a HCV RIBA 2.0 supplemental test, blood establishments have the option to perform further testing using either an HCV EIA 3.0 screening test or a currently available licensed supplemental test for HCV; or (2) as proposed in § 610.48(h)(2)(ii), if the donor was identified in accordance with proposed § 610.48 (c)(2) of this section as testing repeatedly reactive using an HCV EIA 2.0 screening test, indeterminate on a HCV RIBA 2.0 supplemental test, and repeatedly reactive on an HCV EIA 3.0 screening test, blood establishments have the option to perform further testing using an appropriately chosen licensed supplemental test for HCV (refer to section L of this document that discusses proposed § 610.48(g) for more information regarding use of "an appropriately chosen supplemental test"); or (3) as proposed in § 610.48(h)(2)(iii), if the donor was identified in accordance with (c)(2) of this section as testing repeatedly reactive using an HCV EIA 3.0 screening test, and indeterminate on a HCV RIBA 2.0 supplemental test, blood establishments have the option to perform further testing using an appropriately chosen licensed supplemental test for HCV; or (4) as proposed in § 610.48(h)(2)(iv), if the donor was identified in accordance with proposed § 610.48 (c)(3) of this section as testing repeatedly reactive using an HCV EIA 3.0 screening test, and negative on a HCV RIBA 2.0 supplemental test, blood establishments have the option to perform further testing using an appropriately chosen licensed supplemental test for HCV. Based on the results of the further testing, the blood establishment can make a decision regarding the next appropriate step under proposed § 610.48(j), to release from quarantine, or under proposed § 610.48(k), to destroy or appropriately label prior collections, or under proposed § 610.49(a), to notify any transfusion recipients.

Under proposed § 610.48(h)(3), blood establishments would be required to notify consignees of the results of the additional testing, performed in accordance with proposed § 610.48(h)(1) or (h)(2), upon completing the additional testing and prior to 1 year from the effective date of any final rule resulting from this proposal. Blood establishments would be required to notify the consignee of any risk of HCV transmission that exists for such prior collections, based on the results of the additional testing. If the prior collection was from a donor identified in the review of historical testing records in accordance with proposed § 610.48(c)(1) through (c)(5), and no additional testing was performed, or if no sample was available for further testing, as provided in proposed § 610.48(h)(1)(iii), the blood establishment would be required, within 1 year from the effective date of a final rule that results from this proposal, to notify consignees of any risk of HCV transmission for such prior collections.

The review of historical testing records identifies those donors whose test results indicate some degree of risk of HCV transmission for prior collections. If the testing records do not include supplemental testing, further testing of the original repeatedly reactive sample or a fresh sample from the donor is needed. The purpose of further testing is to provide the opportunity for blood establishments to evaluate the test results and determine the next appropriate step in the "lookback" process. Blood establishments must consider several significant issues when evaluating HCV screening and supplemental tests. Prior collections from donors who subsequently test positive or indeterminate on a supplemental test for HCV (except donors testing indeterminate on a RIBA 3.0 supplemental test as described below), are at increased risk of transmitting HCV. Prior collections from such donors would be destroyed or relabeled as proposed in § 610.48(k), or, if transfused, would trigger notification of recipients because of the increased risk of transmission of HCV infection.

However, in the case of a donor whose screening test was repeatedly reactive by HCV EIA 2.0, if an indeterminate RIBA 2.0 supplemental test result is followed by a negative result on an HCV EIA 3.0 screening test or an HCV RIBA 3.0 supplemental test, prior collections may be released from quarantine, as proposed in § 610.48(j), and transfusion recipients need not be notified. This release from quarantine is based on current research that indicates absence of polymerase chain reaction (PCR) reactivity for HCV RNA in HCV RIBA 2.0 indeterminate/HCV EIA 3.0 negative samples or in HCV RIBA 2.0 indeterminate/HCV RIBA 3.0 negative samples. Conversely, prior collections from donors who subsequently test repeatedly reactive on an EIA screening test and indeterminate on an HCV RIBA 3.0 supplemental test must also be destroyed or relabeled because they represent an increased risk of HCV transmission (under proposed § 610.48(k)). However, if these prior collections have been transfused, consignee notification for the purpose of recipient notification need not be performed (as noted in relevant sections of proposed § 610.49(a)) due to infrequent PCR positivity (only 1.6 percent) in HCV EIA 3.0 repeatedly reactive/HCV RIBA 3.0 indeterminate samples and infrequent (0.5 percent to 4 percent) PCR reactivity in HCV RIBA 2.0 indeterminate/HCV RIBA 3.0 indeterminate samples.

N. Proposed § 610.48(i), Further Testing and Consignee Notification Following Review of Records Based on Screening Performed Using a Single Antigen Screening Test

The purpose of proposed § 610.48(i), which parallels the requirements of proposed § 610.48(h), is to require that prior collections, identified in the review of historical testing records and based on single antigen testing in accordance with § 610.48(d)(4), be further tested and consignees notified so that blood establishments can determine if the prior collections should be released from quarantine (under § 610.48(j)), or destroyed or relabeled (under § 610.48(k)), and if notification of transfusion recipients is necessary (under § 610.49(a)). In addition, blood establishments would have the option to perform further testing for prior collections identified in accordance with § 610.48(d)(1), (d)(2), and (d)(3). Proposed § 610.48(i)(1) would require blood establishments, within 1 year of the effective date of any final rule resulting from this proposal, to perform further testing to clarify the status of prior collections collected from a donor identified, in accordance with § 610.48(d)(4), as being at increased risk of transmitting HCV.

Proposed § 610.48(i)(1) would require that further testing for donors identified in accordance with proposed § 610.48(d)(4) be performed as follows: (1) As proposed in § 610.48(i)(1)(i), blood establishments would be required to perform a licensed supplemental test for HCV on a frozen sample from the repeatedly reactive donation, if available. If such a frozen sample is not available, blood establishments would be required to obtain a fresh sample from the donor and perform a licensed RIBA 3.0 supplemental test for HCV; or (2) as proposed under § 610.48(i)(1)(ii), blood establishments would be required to make a determination that neither a frozen sample from the repeatedly reactive donation nor a fresh sample from the donor is available for further testing. For example, under certain circumstances, the blood establishment could make a determination that additional testing is not possible because the sample was not stored properly, or the donor could not be located or the donor declined further testing.

Under proposed § 610.48(i)(2), blood establishments would have the option to perform further testing on prior collections identified in accordance with § 610.48(d)(1) and (d)(2). This provision would make it possible to clarify the status of the prior collections and, in some instances, based on further testing, it might not be necessary to destroy the prior collections or notify transfusion recipients. Under proposed § 610.48(i), blood establishments that have performed the review of historical testing records and identified prior collections in accordance with proposed § 610.48 (d)(1) or (d)(2) of this section may further test a frozen sample from the repeatedly reactive donation or a fresh sample from the same donor by 1 year from the effective date of any final rule resulting from this proposal, as follows: (1) As proposed under § 610.48(i)(2)(i), if the donor was identified in accordance with proposed § 610.48 (d)(1) of this section as testing repeatedly reactive on an HCV EIA 1.0 screening test and repeatedly reactive on either an HCV EIA 2.0 or HCV EIA 3.0 screening test, blood establishments have the option to perform further testing using an appropriate licensed supplemental test for HCV; or (2) as proposed under § 610.48(i)(2)(ii), if the donor was identified in accordance with paragraph (d)(2) of this section as testing repeatedly reactive on an HCV EIA 1.0 screening test with an indeterminate test result obtained using a HCV RIBA 2.0 supplemental test, blood establishments have the option to perform further testing using a currently available licensed supplemental test for HCV or an HCV EIA 3.0 screening test. If such optional further testing is performed using an HCV EIA 3.0 screening test and the result is repeatedly reactive, blood establishments have the additional option to perform further testing using an appropriately chosen licensed supplemental test for HCV; or (3) as proposed under § 610.48(i)(2)(iii), if the donor was identified in accordance with paragraph (d)(3) of this section as testing repeatedly reactive on an HCV EIA 1.0 screening test with a S/CO value less than 2.5 for at least two out of the three EIA tests, and with no record of a supplemental test or multiantigen screening test for HCV performed on the repeatedly reactive sample or on a later sample from the same donor, blood establishments have the option to perform further testing using a licensed multiantigen screening test for HCV or a licensed supplemental test for HCV.

Under proposed § 610.48(i)(3), blood establishments would be required to notify consignees of the results of the additional testing, performed in accordance with proposed § 610.48(i)(1) or (i)(2), upon completing the additional testing and prior to 1 year from the effective date of any final rule resulting from this proposal. Blood establishments would be required to notify the consignee of any risk of HCV transmission that exists for such prior collections, based on the results of the additional testing. If the prior collection was from a donor identified in the review of historical testing records in accordance with proposed § 610.48(d)(1) through (d)(4), and no additional testing was performed, or if no sample was available for further testing, as provided in proposed § 610.48(i)(1)(ii), the blood establishment would be required to notify consignees, within 1 year from the effective date of a final rule that results from this proposal, of any risk of HCV transmission for such prior collections.

O. Proposed § 610.48(j), Release From Quarantine

The purpose of proposed § 610.48(j) is to identify those prior collections of blood and blood components intended for transfusion or for manufacture into injectable products that have been quarantined and further tested that may be released from quarantine, based on the results of the additional testing. Under proposed § 610.48(j)(1), those prior collections subject to quarantine under proposed § 610.48(a) would be released for use only if the donor's current, repeatedly reactive sample is further tested using a licensed, supplemental test for HCV, as required in proposed § 610.48(b), and the result of the supplemental test is negative. Because the negative supplemental test result indicates that the repeatedly reactive screening test result was a "false positive," prior collections from the donor are not suspected as being a possible window period donation, are not at increased risk of transmitting HCV and therefore, may be released from quarantine.

Under proposed § 610.48(j)(2), prior collections subject to quarantine under proposed § 610.48(e)(1) (as a result of the review of historical testing records and based on a multiantigen screening test) would be released from quarantine only if such prior collections were not suspected as being "window" period donations. Such prior collections, if not exempt from quarantine under proposed § 610.48(g)(2), would be released from quarantine if certain conditions are met as follows: (1) As proposed in § 610.48(j)(2)(i)(A), if the donor's testing records meet the conditions specified in proposed § 610.48(c)(4) (repeatedly reactive HCV EIA 2.0 screening test without additional test results) and further testing was performed in accordance with § 610.48(h)(1)(i)(A) on a frozen sample from the repeatedly reactive donation or a fresh sample from the same donor, and the result of the licensed supplemental test for HCV is negative; or (2) as proposed in § 610.48(j)(2)(i)(B), if the donor's testing records meet the conditions specified in proposed § 610.48(c)(4) and the blood establishment performed further testing in accordance with proposed § 610.48(h)(1)(i)(B) on a frozen sample from the repeatedly reactive donation or a fresh sample from the same donor, using either a licensed HCV EIA 3.0 screening test and the result is negative, or the result of the licensed HCV EIA 3.0 screening test is repeatedly reactive and further testing is performed using a licensed supplemental test for HCV and the result is negative; or (3) as proposed in § 610.48(j)(2)(ii), if the donor's testing records meet the conditions specified in proposed § 610.48(c)(5) (repeatedly reactive HCV EIA 3.0 screening test without additional test results) and the blood establishment performed further testing in accordance with proposed § 610.48(h)(1)(ii) of this section on a frozen sample or a fresh sample from the same donor using a licensed, supplemental test for HCV and the result is negative; or (4) as proposed in § 610.48(j)(2)(iii), if the donor's testing records meet the conditions specified in proposed § 610.48(c)(2) (repeatedly reactive multiantigen screening test and indeterminate supplemental test) and the blood establishment performed further testing in accordance with proposed § 610.48(h)(2), and one of three conditions specified in proposed § 610.48(j)(2)(iii)(A), (j)(2)(iii)(B) or (j)(2)(iii)(C) applies. (Proposed § 610.48(j)(2)(iii)(A) addresses repeatedly reactive sample that was tested using an HCV EIA 2.0 screening test, or a later sample from the same donor that was further tested in accordance with proposed § 610.48(h)(2)(i) of this section using either an HCV EIA 3.0 screening test or a licensed supplemental test for HCV and the result is negative. Proposed § 610.48(j)(2)(iii)(B) addresses the repeatedly reactive sample that was tested using an HCV EIA 2.0 screening test or a later sample from the donor that was further tested in accordance with proposed § 610.48(h)(2)(ii) of this section using a HCV RIBA 3.0 and the result is negative. Proposed § 610.48(j)(2)(iii)(C) addresses the repeatedly reactive sample that was tested using an HCV EIA 3.0 screening test or a later sample from the same donor that was further tested in accordance with proposed § 610.48(h)(2)(iii) of this section using a licensed supplemental test for HCV and the result is negative) or; (5) under proposed § 610.48(j)(2)(iv), if the donor's testing records meet the conditions specified in proposed § 610.48(c)(3) (repeatedly reactive HCV EIA 3.0 screening test and indeterminate HCV RIBA 2.0 supplemental test) and further testing was performed in accordance with proposed § 610.48(h)(2)(iv) of this section on a frozen sample or a fresh sample from the same donor using a licensed supplemental test for HCV and the result is negative.

Under proposed § 610.48(j)(3), prior collections subject to quarantine under proposed § 610.48(f)(1) (as a result of the review of historical testing records and based on a single antigen screening test) would be released from quarantine only if such prior collections were not suspected as being "window" period donations. Such prior collections, if not exempt from quarantine under proposed § 610.48(g)(3), would be released from quarantine if certain conditions are met as follows: (1) Under proposed § 610.48(j)(3)(i), if the donor's testing records meet the conditions specified in proposed § 610.48(d)(4) (repeatedly reactive HCV EIA 1.0 screening test with an S/CO value greater than or equal to 2.5) and further testing was performed in accordance with proposed § 610.48(i)(1)(i) on a fresh sample, or frozen sample from the repeatedly reactive donation using a licensed supplemental test for HCV and the result is negative; or (2) under proposed § 610.48(j)(3)(ii), if the donor's testing records meet the conditions specified in proposed § 610.48 (d)(1) (repeatedly reactive HCV EIA 1.0 screening test and repeatedly reactive HCV EIA 2.0 or 3.0 screening test) and further testing was performed in accordance with proposed § 610.48(i)(2)(i) on a fresh sample, or frozen sample from the repeatedly reactive donation and the result of the appropriate supplemental test for HCV is negative; or (3) under proposed § 610.48(j)(3)(iii), if the donor's testing records meet the conditions specified in

proposed § 610.48 (d)(2) and further testing (in the case of a repeatedly reactive HCV EIA 1.0 and indeterminate HCV RIBA 2.0 supplemental test) was performed in accordance with proposed § 610.48 (i)(2)(ii) on a fresh sample, or frozen sample from the repeatedly reactive donation and the result when further tested using either an HCV EIA 3.0 screening test or a licensed supplemental test for HCV is negative; or (4) under proposed § 610.48(j)(3)(iv), if the donor's testing records meet the conditions specified in proposed § 610.48 (d)(3) (repeatedly reactive HCV EIA 1.0 with an S/CO less than 2.5) and further testing was performed in accordance with proposed § 610.48(i)(2)(iii) on a fresh sample, or frozen sample from the repeatedly reactive donation and the result when further tested using a licensed multiantigen screening test for HCV or a licensed supplemental test for HCV is negative.

FDA is proposing a conforming amendment to § 610.46(d), which specifies requirements for release from quarantine for HIV "lookback," for consistency with the HCV "lookback" requirements by changing "Whole Blood, blood components, Source Plasma and Source Leukocytes" to "blood and blood components."

P. Proposed § 610.48(k), Destruction or Labeling of Prior Collections Held in Quarantine

The purpose of proposed § 610.48(k) is to identify prior collections that must be destroyed or appropriately labeled, that is, those prior collections that are not exempt from quarantine under proposed § 610.48(g) and do not meet the conditions for release from quarantine in accordance with proposed § 610.48(j). Proposed § 610.48(k) would require that blood establishments and consignees take appropriate action for prior collections subject to quarantine under proposed § 610.48(a), (e), and (f). Blood establishments would be required to either destroy the quarantined prior collections or appropriately label the collections for in vitro use unless: (1) The prior collection was determined to be exempt from quarantine in accordance with proposed § 610.48(g), or (2) the prior collection was subject to release from quarantine under proposed § 610.48(j). FDA recognizes there may be some limited uses for quarantined prior collections which are not suitable for release from quarantine for the product's original intended use. Such prior collections should not be used for transfusion or for further manufacturing into injectable products. FDA recommends that these prior collections be destroyed as a general practice; however, in limited situations, release for research or manufacture into in-vitro diagnostic reagents may be acceptable. If released for these uses, prior collections should be relabeled consistent with §§ 606.121 and 640.70. In addition, these prior collections must be relabeled as "Biohazard" with the cautionary statements as follows:

Collected from a donor who subsequently tested reactive for anti-HCV. An increased risk of transmission of hepatitis C is present."; in addition, the label must contain one of the following cautionary statements, as appropriate: "Caution: For Further Manufacturing Into In-Vitro Diagnostic Reagents For Which There Are No Alternative Sources." or "For Laboratory Research Use Only.

FDA is proposing a conforming amendment to § 610.46, the HIV "lookback" requirements, for consistency and to clarify the actions to be taken for prior collections subject to quarantine under § 610.46(a). FDA is proposing to redesignate § 610.46(e) as § 610.46(f) and to add new § 610.46(e) *Destruction or labeling of prior collections held in quarantine*, consistent with this proposal.

Q. Proposed § 610.48(l)

Proposed § 610.48(l) specifies that actions taken under proposed § 610.48 do not constitute a recall. This regulation is consistent with current § 610.46(e) applicable to the HIV "lookback" requirements (as noted previously, FDA is proposing to redesignate paragraph (e) as paragraph (f)). While there are similarities between the product recall process and "lookback," there are several important differences: (1) The recall procedures described in part 7 (21 CFR part 7) are intended as a guideline while "lookback" would be a regulatory requirement; (2) additional steps are required in "lookback" which are not ordinarily performed in a product recall; (3) because each "lookback" would be initiated due to similar circumstances, a health hazard evaluation and recall classification by the agency (see § 7.41) is unnecessary; and (4) the products being quarantined may not be in violation of applicable laws (see § 7.40). FDA recognizes that a "lookback" action does not mean that an establishment has erred or did not meet its obligations under the regulations and the law in assuring the safety of the blood supply. Failure to take appropriate action in accordance with the proposed "lookback" regulations, however, would be a violation and FDA would take enforcement action, when appropriate, in such situations.

R. Proposed § 610.49(a), Hepatitis C Virus (HCV) "Lookback;" Notification of Transfusion Recipients

The purpose of proposed § 610.49 is to identify the circumstances under which it is necessary to notify transfusion recipients; who is responsible for performing the notification; and the timeframes for completing the notification process. The notification process is intended to result in the notification of transfusion recipients who have received prior collections of blood and blood components from a donor later determined to be at increased risk of transmitting HCV infection because they are possible "window period" donations. Refer to the discussion in the description of proposed § 610.48(c) for more information on "window period" donations. As previously discussed, there are two sets of circumstances which trigger "lookback" activity. The notification of transfusion recipients would be performed as a result of: (1) The identification of a donor who returns to donate again and tests repeatedly reactive for evidence of HCV infection on a licensed multiantigen screening test (as specified in § 610.48(a)) and further testing (performed as specified in proposed § 610.48(b)) indicates an increased risk of transmitting HCV; or (2) the identification of a donor, as a result of the review of historical testing records (in accordance with proposed § 610.48(c) or (d)), and further testing (as shown in historical records or as performed under proposed § 610.48(h) or (i)) indicates an increased risk of transmitting HCV. Under the proposal, transfusion recipient notification need not be performed for prior collections of Source Plasma and Source Leukocytes, because they are intended for further manufacture and not for transfusion. Proposed § 610.49(a), would require transfusion services to take appropriate actions, in accordance with § 610.49(b) and (c), when a transfusion recipient has received blood or blood components, from a donor later determined to be at increased risk of transmitting HCV infection as follows: (1) The donor was identified in accordance with proposed § 610.48(a) and the result of the licensed, supplemental test performed in accordance with proposed § 610.48(b) is positive; or (2) the donor was identified in accordance with proposed § 610.48(c)(1), and the result of the supplemental test identified in the review of records is positive; or (3) the donor was identified in accordance with proposed § 610.48(c)(2), and the result of the supplemental test identified in the review of records is indeterminate, unless either the historical testing records or further testing (in accordance with proposed § 610.48(h)) show the indeterminate supplemental test result was obtained using a licensed supplemental test, and the initial test result was determined to be a false positive because any of the conditions for exemption from quarantine or release from quarantine have been met ; or (4) the donor was identified in accordance with proposed § 610.48(c)(4) or (c)(5) as testing repeatedly reactive on a multiantigen screening test with no record of further testing and the result of the licensed, supplemental test performed, in accordance with proposed § 610.48(h)(1)(i)(A), (h)(1)(i)(B), or (h)(1)(ii) is positive; or (5) the donor was identified in accordance with proposed § 610.48(c)(4) or (c)(5) as having no record of further testing and no fresh or frozen sample is available for further testing, as specified in proposed § 610.48(h)(1)(iii); or (6) the donor was identified in accordance with proposed § 610.48(d)(1) unless the initial test result was determined to be a false positive because any of the conditions for exemption from quarantine (under proposed § 610.48(g)(3)) or release from quarantine (under proposed § 610.48(j)(3)) have been met, or the donor was further tested in accordance with § 610.48(i)(2)(i) using an appropriately chosen supplemental test for HCV and the result is negative or indeterminate; or (7) the donor was identified in accordance with proposed § 610.48(d)(2) and the result of the supplemental test performed using an HCV RIBA 2.0 or HCV RIBA 3.0 supplemental test is positive as identified in the review of historical testing records; or (8) the donor was identified in accordance with proposed § 610.48(d)(2), and the result of the supplemental test performed using HCV RIBA 2.0 is indeterminate, unless any of the conditions for exemption from quarantine (under proposed § 610.48(g)(3)), or release from quarantine (under proposed § 610.48(j)(3)) have been met, or the donor was further tested in accordance with proposed § 610.48(i)(2)(ii) using a licensed supplemental test for HCV and the result is indeterminate; or (9) the donor was identified in the review of historical testing records in accordance with proposed § 610.48(d)(3) (repeatedly reactive HCV EIA 1.0 with an S/CO value less than 2.5) and the result of the licensed, supplemental test for HCV performed in accordance with proposed § 610.48(i)(2)(iii) is positive; or (10) the donor was identified in the review of historical testing records in accordance with proposed § 610.48(d)(4) (as testing repeatedly reactive on a single antigen screening test with a S/CO value equal to or greater than 2.5 for at least two of the three EIA tests, or the S/CO value can not be calculated, and with no record of further testing) and the result of the licensed, supplemental test for HCV performed in accordance with § 610.48(i)(1) is positive; or (11) the donor was identified in the review of historical testing records, in accordance with § 610.48(d)(4), and no record of further testing is available and no fresh or frozen sample is available for further testing, as specified in § 610.48(i)(1)(ii).

FDA is proposing conforming amendments to HIV "lookback" requirements of § 610.47(a) for consistency with the HCV "lookback" requirements of proposed § 610.49(a). FDA is proposing to amend § 610.47(a) to clarify that transfusion services shall notify recipients of prior collections of blood and blood components from a donor later determined to be at increased risk of transmitting HIV infection when tested for evidence of HIV infection and the result of the additional tests required in § 610.46(b) are positive.

S. Proposed § 610.49(b), Notification of Recipients of Prior Transfusion

Proposed § 610.49(b) describes the requirements for the process of notification of transfusion recipients. Under proposed § 610.49(b), consistent with requirements for notification in the HIV "lookback" regulations in § 610.47, the transfusion service would either notify the physician of record (i.e., the physician of record or physician who ordered the blood) and ask him or her to inform the recipient, or would notify the recipient directly. FDA recognizes that, under certain circumstances, the physician may have developed an ongoing relationship with the patient and may agree to take responsibility for notification and counseling. The transfusion service is ultimately responsible for ensuring that the notification takes place. The transfusion service might seek assistance in the notification process. For example, the transfusion service might determine that such notification and counseling would be best conducted by staff in another department in the hospital, who may be better trained and experienced in counseling patients. Under proposed § 610.49(b) and under the proposed conforming amendment to § 610.47(b), a transfusion service may elect to notify the transfusion recipient directly, without the assistance of the patient's physician of record. FDA specifically requests comment whether the transfusion service should be required to perform concurrent notification of the physician of record whenever the transfusion service notifies the transfusion recipient directly.

Proposed § 610.49(b) would require the transfusion service to make a minimum of three attempts to notify the transfusion recipient or the recipient's physician of record. The time period provided for completion of the recipient notification would be based on the date of donor testing and the date of receipt of the supplemental test result from the blood establishment. Recipient notification based on donor testing completed after the effective date of the regulation, as specified in the final rule resulting from this proposal, would be required to be completed within a maximum of 12 weeks of receipt of the results of the donor's supplemental test for HCV from the blood establishment. Recipient notification based on donor testing completed prior to the effective date of the regulation, as specified in the final rule resulting from this proposal (historical records of donor testing), would be required to be completed within 1 year of receipt of notification of test results from the blood establishment. FDA is proposing a longer period of time for completion of transfusion recipient notification based on donor testing completed prior to the effective date of the regulation because such notification would be made as a result of the review of historical testing records performed in accordance with proposed § 610.48(c) and (d), and it is possible that a transfusion service could have a large number of notifications to complete. However, FDA believes that the transfusion recipient notification process should begin and be completed as soon as feasible because such a notification will not require a year to complete in all cases. FDA recognizes that many blood establishments may be performing such transfusion recipient notifications consistent with the recommendations of the June 1999 draft guidance. Therefore, FDA believes that if a blood establishment has a limited number of transfusion recipient notifications to perform as a result of this regulation, then the notifications could be completed in less than the 1-year period that would be provided under this proposal. In addition, donors identified in accordance with proposed § 610.48(c)(2) through (c)(5), and proposed § 610.48(d)(1) through (d)(4) generally will be further tested by the blood establishment in accordance with § 610.48(h) and (i), respectively. In those instances, FDA would require that the notification of recipients based on such a licensed supplemental test, performed after the effective date of the regulation, be completed within 12 weeks of the date of receipt of the supplemental test result from the blood establishment.

Under proposed § 610.49(b), the transfusion service would be responsible for the basic explanation to the recipient, referral for counseling and further testing, and documentation of the notification or attempts to notify the physician of record or the recipient, under § 606.160 of this chapter. Under this proposal, each establishment should have a well-designed system for notification, and would need to develop SOP's that describe each step in the notification system, as well as the required documentation. The SOP would address the need for documentation of person(s) contacted, by whom, when and whether the transfusion recipient was notified directly, or the physician of record agreed to notify the recipient, and the outcome of the notification efforts, including the reasons for inability to notify.

FDA is requesting comment on the appropriateness of requiring a minimum of three attempts to notify affected transfusion recipients as proposed for HIV and HCV "lookback." FDA is proposing to increase the record retention requirement to 10 years (proposed § 606.160(d)) and to increase the length of time for which HIV and HCV "lookback" must be initiated, from a maximum of 5 years as currently required in § 610.46(a) for HIV "lookback" (for HCV "lookback" in proposed § 610.48(a)). In addition, FDA is proposing to require HCV "lookback" based on the review of available historical testing records (proposed § 610.48(c) and (d)) for those prior collections" * * * dating back indefinitely for computerized electronic records and to January 1, 1988, for other readily retrievable records." FDA specifically requests comment on the minimum number of attempts which should be required to notify affected transfusion recipients identified in the records that are more than 5 years old and who, therefore, might be more difficult to locate. FDA also requests the submission of data which support a specific number of attempts to notify affected transfusion recipients.

FDA is proposing conforming amendments to HIV "lookback" requirements of § 610.47(b) for consistency with the HCV "lookback" requirements of proposed § 610.49(b). FDA is proposing to amend § 610.47(b) to clarify that transfusion services have the option of either notifying the transfusion recipient directly or notifying the recipient's physician of record and asking him or her to notify the recipient and that notification (based on donor testing completed after the effective date of the regulation) must be completed within a maximum of 12 weeks.

T. Proposed § 610.49(c), Notification of Legal Representative or Relative

Proposed § 610.49(c) would require the transfusion service or physician to notify a legal representative, designated in accordance with State law, if the transfusion recipient has been adjudged incompetent by a State court. In addition, if the transfusion recipient is competent, but State law permits a legal representative or relative to receive the information on the recipient's behalf, proposed § 610.49(c) would require the transfusion service or physician to notify the recipient, or his or her legal representative or relative. If the transfusion recipient is a minor at the time of notification, the transfusion service would be required to notify the recipient's legal representative. Under proposed § 610.49(c), reasons for notifying the recipient's relative or legal representative on his or her behalf would be documented, as required in the recordkeeping provisions of § 606.160. Proposed § 610.49(c) would not require notification efforts to continue if the recipient is deceased because, as previously discussed, direct percutaneous exposure to infectious blood, particularly in the setting of drug abuse, accounts for the majority of HCV infections acquired in the United States. Secondary transmission of HCV to sexual partners, care providers or others with close contact is very unlikely.

FDA is proposing conforming amendments to HIV "lookback" requirements of § 610.47(c) for consistency with the HCV "lookback" requirements of proposed § 610.49(c). FDA is proposing to amend § 610.47(c) to clarify that transfusion service or physician would be required to notify the legal representative if the transfusion recipient is a minor at the time of notification and to document the result of the notification or the attempts to complete the notification.

U. Proposed § 610.49(d), Reference Tables

Proposed § 610.49(d) includes four tables intended to assist in identifying the applicable paragraphs of proposed §§ 610.48 and 610.49 and the corresponding "lookback" actions. In particular, the requirements of proposed §§ 610.48 and 610.49 that are based on the review of historical testing records require that many different testing sequences be addressed. These tables are intended to clarify the applicable sections and the corresponding steps of the "lookback" process that must be considered for a particular sequence of tests.

Table 1 identifies applicable sections for the "lookback" process based on current donor testing, for donors identified in accordance with proposed § 610.48(a). For example, a donor that tests repeatedly reactive for HCV upon returning to donate again, would be identified by the blood establishment in accordance with proposed § 610.48(a). Table 1 of proposed § 610.49 lists the subsequent "lookback" actions that must be taken and the applicable regulations. Continuing with this example, in addition to other "lookback" actions, table 1 shows that such a donor would be further tested in accordance with proposed § 610.48(b), and prior collections could be released from quarantine if the conditions of proposed § 610.48(j)(1) were met.

Tables 2, 3, and 4 of proposed § 610.49 identify applicable sections for the "lookback" process based on the review of historical testing records. A different table applies based on the specific screening test that was performed. Table 2 identifies applicable sections based on the review of historical testing records for donors identified in accordance with proposed § 610.48(c) as testing repeatedly reactive using an HCV EIA 3.0 screening test. Table 3 identifies applicable sections based on the review of historical testing records for donors identified in accordance with proposed § 610.48(c) as testing repeatedly reactive using an HCV EIA 2.0 screening test. Table 4 of proposed § 610.49 identifies applicable sections based on the review of historical testing records for donors identified in accordance with proposed § 610.48(d) and tested using a single antigen screening test, HCV EIA 1.0.

IV. Analysis of Impacts and Initial Regulatory Flexibility Analysis

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze whether a rule may have a significant impact on a substantial number of small entities and, if it does, to analyze regulatory options that would minimize the impact. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The agency has determined that the proposed rule may be a significant action as defined by the Executive Order. The analysis below details FDA's estimate of the potential costs and benefits of the rule. As described in the analysis that follows, the rule is likely to have a significant economic effect on a substantial number of small entities. FDA has therefore prepared an Initial Regulatory Flexibility Analysis. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

A. Economic Impact

The purpose of the proposed rule is to help ensure the continued safety of the blood supply and to help ensure that information is provided to consignees and recipients of blood products in the event of a repeat donor's seroconversion to positivity for hepatitis C. The proposed action is considered necessary to interdict prior in-date collections at increased risk for transmitting HCV and to help assure that blood product recipients receive counseling and treatment if necessary, as effective therapies become available for hepatitis C. The proposed rule will further support public confidence in safety of the U.S. blood supply, recognizing priorities for the reduction of infectious disease risks to transfusion recipients. The agency further notes that the costs and benefits of the FDA and the Health Care Finance Administration (HCFA) rule are not additive, as the impacts considered in the HCFA rule are also accounted for in the FDA rule.

1. The Number and Type of Entities Affected

The proposed rule will affect establishments that collect, process, and ship blood and blood components, and establishments that transfuse those products. The affected entities include commercial plasma centers, regional and community blood collection or donation centers, hospitals that operate blood collection centers, and facilities that transfuse blood products. The HCFA estimates that there are approximately 6,200 transfusing facilities. FDA's Office of Blood Research and Review (OBRR) has a record of 2,801 registered blood and plasma establishments.

According to a 1992 survey (Ref. 3), U.S. blood establishments collect an annual total of 13,794,000 units of blood. Allogeneic donations (not directed for a specific recipient) accounted for 87.2 percent (12,035,000 units). Approximately 79 percent of allogeneic donations are provided by repeat donors. (This percentage is based on American Red Cross estimates based on donations between January 1996 and June 1997.) FDA's analysis of the HCV "lookback" rule focuses on allogeneic donations by repeat donors, and the subset of those donors expected to test repeatedly reactive in a screening test for evidence of HCV infection. As outlined in preceding sections of this document, the proposed rule includes a set of provisions for processes to be performed by blood establishments. In general terms, these provisions concern donor recordkeeping, record review, identification and quarantine of affected units for repeat reactive donors, notification of consignees of unpooled products concerning the HCV status of affected units, and further testing to confirm HCV positivity. The proposed rule also specifies requirements for blood product consignees that relate to quarantine of in-date unpooled products based on blood establishment notifications, and recipient notification when appropriate.

Plasma centers will be affected by the proposed rule only to the extent that these establishments store and distribute unpooled units to consignees that also retain unpooled units in their inventories. FDA currently has little information about the volume of unpooled units retained by plasma centers that would be affected by this proposal. Because this information is essential for the estimation of economic impact, FDA requests detailed industry comment on current practices for recordkeeping and retention of unpooled units of plasma (including estimated numbers of unpooled units), both at collection centers and the facilities to which these units are subsequently shipped. For the purpose of this analysis, FDA has assumed that most units will be pooled prior to the initiation of any "lookback" activity and, therefore, that plasma establishments will be minimally affected by the proposed rule. Plasma establishments similarly will not be affected by the proposed requirements for review of historical testing records. FDA, therefore, assumes that the primary impact on plasma establishments will involve the review of the proposed regulation by each establishment to determine how current facility SOP's would be affected.

With the exception of hospitals that both collect and transfuse blood products, most establishments affected by the rule will either act as a blood collection establishment or as a consignee (transfusion service), not as both. To distinguish the impact of the requirements for blood establishments and for consignees, the rule provisions affecting each type of entity will be treated separately in the analysis that follows. Table 1 of this document provides a summary of the estimated one-time versus the yearly costs for blood establishments and blood product consignees. The basis for these estimates are explained in sections IV.A.2 and IV.A.3 of this document.

TABLE 1.—SUMMARY OF ESTIMATED ONE-TIME YEARLY COSTS FOR BLOOD ESTABLISHMENT AND BLOOD PRODUCT CONSIGNEES

Affected Entities (number)	One-Time Cost	Yearly Cost
Blood Establishments (2,800)		
Hepatitis C Virus (HCV) "Lookback" Standard Operating Procedures (SOP's)	$2,875,040	
Prospective review		$4,558,442
Historical review	$33,239,402	
Subtotal	$36,114,442	$4,558,442
Consignees (6,200)		
HCV "Lookback" SOP's	$2,546,464	
Prospective review		$2,114,632
Historical Review	$50,106,540	
Subtotal	$52,653,004	$2,114,632
Total	$88,767,446	$6,673,074

2. Estimated Impact on Blood and Plasma Establishments

Many of the provisions of the proposed rule will affect blood establishments. Each establishment will need to review the provisions of the rule in order to reconcile current facility practices for record review, sample quarantine, consignee notification and other related processes, and donor and blood product recordkeeping, with the requirements of the rule. FDA estimates the cost of performing such a one-time review and reconciliation of blood establishment SOP's to be approximately $1,027 per establishment, assuming that the review will require approximately 40 hours per facility and be performed by a staff medical technologist (Ref. 4). This yields a total one-time cost of $2,875,040.

The proposed rule requires that blood establishments extend the retention period for required processing records for blood donors from 5 to 10 years after the records of processing have been completed or 6 months after the latest expiration date for the individual product, whichever is a later date. FDA estimates that this provision will cost approximately $3,110,240 per year, assuming that routine maintenance of donor files for the additional period of time will require approximately 40 hours of additional programming support time per facility per year, at a cost of $27.77 per hour of programmer time, based on 1997 Bureau of Labor Statistics estimates (40 x $27.77 x 2,800).

The proposed rule requires that blood and plasma establishments act within 3-calendar days of receiving the results of an FDA-licensed HCV test performed by a blood establishment or a CLIA-certified laboratory, with repeatedly reactive HCV results for a repeat blood donor. The establishment would retain the records for all in-date products and quarantine any in-date unpooled product that remain in inventory, quarantine all in-date unpooled prior collections, and notify consignees of the repeatedly reactive test result so that they may also quarantine any in-date unpooled prior collections. However, prior collections made more than 12 months prior to the last negative multiantigen HCV screening test are exempt from the required quarantine. Following the repeatedly reactive results of the initial screening tests, the blood establishment would be required to notify consignees of the result of the more specific supplemental HCV test within 45-calendar days after the day on which the donor tests repeatedly reactive in a screening test for evidence of HCV infection. If the result of further testing with a licensed supplemental test is negative, then the initial screening test result can be considered a "false positive" and the in-date prior collections can be released from quarantine.

FDA's estimated cost of these provisions is based on an estimated number of consignee notifications multiplied by the unit cost of each notification. First, the number of annual affected blood donations was calculated as the product of 12 million donations, an 80 percent repeat donor rate, and a 0.12 percent HCV positive donor rate. The resulting 11,520 figure was then adjusted upward to 12,816 to reflect the difference found between the number of donors triggering "lookback" and the component notifications reported as interim results from a recent survey conducted by the Centers for Disease Control and Prevention (CDC) (Ref. 4). Assuming a cost of $113 per notification based on remarks from a representative of the nation's blood banks (Ref. 5) yields a consignee notification cost to blood banks of $1,448,202 per year (12,816 x $113). Thus, the prospective review in the proposed rule results in a yearly total cost of $4,558,442 ($3,110,240 + $1,448,202) for blood establishments. These costs may be slightly understated, because the CDC survey-based projections extend back only to 1988 records. Nevertheless, because the proposed rule requires pre-1988 searches only for "computerized electronic records," this underestimate would be small.

The proposed rule would also require a review of historical testing records of donations collected prior to the effective date of the rule. Blood establishments will be required to review records from prior collections to identify donors that tested repeatedly reactive in a screening test for evidence of HCV infection, for whom either: (1) There is no record of further testing, (2) the donor tested indeterminate on a supplemental test for HCV (with some exceptions), or (3) the donor tested positive on a supplemental test. The purpose of the record review is to identify prior collections from donors who are likely to be infected in order to notify recipients of such donations, and quarantine affected products that remain in inventory.

Following their review of historical testing records, blood establishments would be required to do the following tasks. If the records show that the repeat donation, testing repeatedly reactive in a screening test for evidence of HCV infection, was followed by an appropriate licensed supplemental test with confirmed negative results, no further action is needed. If the repeat donation, testing repeatedly reactive in a screening test for evidence of HCV infection, was followed by a supplemental test with confirmed positive results, the blood establishment would notify consignees of blood products from the donor's prior donations and quarantine affected products that remain in inventory. If the records show that the donation, testing repeatedly reactive in a screening test for evidence of HCV infection, was followed by a supplemental test with indeterminate result, or there is no record of supplemental testing to determine the donor's HCV status, the blood establishment would try to perform supplemental testing to clarify the status of prior collections. If a frozen sample from the donation testing repeatedly reactive in a screening test for evidence of HCV infection is available, that sample would be used in supplemental testing; otherwise, the blood establishment would attempt to contact the donor to obtain a fresh sample for testing. If further testing with fresh or frozen samples is accomplished, the blood establishment would be required to notify consignees of the test result. If no frozen sample is available and a fresh sample cannot be retrieved from the donor, the blood establishment would be required to notify consignees of the results of the repeatedly reactive screening test and the inability to clarify the donor's HCV status. Within 1 year of the effective date of the final rule, blood establishments would be required to perform the testing needed to clarify the status of prior collections. Blood establishments would be required to notify consignees of HCV positive test results within 45 days of completion of further testing performed as a result of the review of historical testing records. If no further testing could be performed, consignees would be notified within 1 year.

FDA's estimate of the cost of performing the specified review of historical testing records is based on the CDC estimate of 294,154 attempted notifications (188,448 during the period 1990 to mid-1992 and 105,706 during the period from mid-1992 to 1998) and the estimated cost of $113 per notification (Ref. 5). This yields a one-time review cost of $33,239,402. Again, this estimate does not account for pre-1988 computerized electronic records, but the agency believes there are relatively few.

In total, as shown in table 1, FDA's estimates that blood collection agencies will incur "lookback" related one–time costs of about $36.1 million and annual costs of about $4.6 million. As the industry has already initiated this program, it is likely that the greater part of these costs have already been incurred.

3. Estimated Impact on Blood Product Consignees

The proposed rule would require that transfusion services (i.e., consignees) notify transfusion recipients who received prior collections from a donor at increased risk of transmitting HCV. Recipient notification is included in both the prospective "lookback" and the review of historical testing records to identify prior collections. The transfusion service may notify the physician of record or notify the recipient directly. If the transfusion recipient is a minor or adjudged incompetent by a State court, the transfusion service or physician would be required to notify the recipient's legal representative. The proposed rule is expected to generate one-time costs and some additional annual costs for blood product consignees. One-time costs include the development of facility SOP's for recipient notification. FDA assumes that these tasks will involve the review of current SOP's (e.g., for HIV "lookback") and the adaptation or modification of current procedures to address the provisions of this rule and estimates that they will require an average of 16 hours per facility for facilities that act as consignees. The review would be performed by a staff medical technologist at an estimated cost of $25.67 per hour. Thus, FDA estimates the total one-time cost for the 6,200 transfusing facilities to be $2,546,464.

For notifications resulting from prospective donor testing and required quarantine, the required notification effort would include a minimum of three attempts to notify the transfusion recipient and would be completed within a maximum of 12 weeks of receipt from the blood establishment of the results of the donor's supplemental test for HCV. The agency's estimated cost of compliance with provisions concerning the prospective review and recipient notification is based on the previously described estimate of 11,520 annual affected donations. This figure was adjusted to 12,816 to reflect the CDC survey finding that the number of components sent to transfusion facilities exceeded the number of donors triggering "lookback" at blood centers by 11.2 percent. The cost per attempted notification is estimated at $165 which reflects the average cost quoted by a third party contractor for matching, notifying, testing, counciling, and documenting "lookback" efforts for over 100 hospitals (Ref. 6). Although the proposed rule does not specifically require hospitals to perform testing and counciling services, many do. These assumptions yield an annual cost of $2,114,632 (12,816 x $165) for blood consignees to conduct prospective "lookback" activities.

Notifications resulting from the review of historical testing records and the identification of prior collections are to be completed by the transfusion service within 1 year of receipt of notification from the blood establishment. The recipient notification provided by the transfusion service would include a basic explanation to the recipient, referral for counseling and further testing and documentation of the notification or attempts to notify the physician of record or recipient. The estimated one-time cost of recipient notification associated with the review of historical testing records is $50,106,540. This is based on the CDC estimate of about 303,676 recipients identified for notification (188,448 from 1990 to mid–1992 and 115,228 from 1990 to mid–1992), and the average cost of $165 of staff time per component for recipient notification. Thus, FDA estimates the total one-time cost to blood transfusion facilities to be $52,653,004 ($2,546,464 + $50,106,540) for conducting retrospective "lookback".

The cost of targeted HCV "lookback" notification in the United States is expected to compare favorably with the experiences reported in earlier efforts, e.g., in Canada (Ref. 7), which were likely based on less automated approaches to recordkeeping. Table 2 of this document shows the cost of the HCV "lookback" per recipient notified, using CDC data to project various outcomes of the "lookback" effort. As shown in table 2, the assumption that a total of 258,551 transfusion recipients will be identified for notification through the historical "lookback" effort translates to an estimated one-time cost of about $642 per recipient identified. CDC further estimates that approximately 57,885 will still be living and notified through the retrospective review. This estimate implies a one-time cost of $1,440 per notified living recipient.

TABLE 2.—ESTIMATED COST PER RECIPIENT NOTIFICATION

	Cost of "Lookback" and Notification[1]	Cost Per Recipient Transfused	Cost Per Recipient Notified
Prospective	$6,673,074[2]	$658	$1,541
Historial	$83,345,942	$642	$1,440

[1] Excludes cost of developing SOP's.

[2] Annual cost.

B. Benefits of the Proposed Rule

The proposed rule is intended to help ensure the continued safety and adequacy of the national blood supply. Threats to the safety of the blood supply and the importance of a timely regulatory response to assure public safety have been the focus of numerous review efforts in recent years, by the U.S. House of Representatives Committee on Government Reform and Oversight, Subcommittee on Human Resources and Intergovernment Relations, the General Accounting Office, IOM, and private organizations including the American Liver Foundation and the DHHS Advisory Committee on Blood Safety and Availability. The proposed "lookback" effort provides benefits both at the individual level of blood recipients and at a societal level, in terms of both the safety and continued adequacy of the national blood supply. The discussion that follows first addresses individual level benefits and then considers societal benefits.

1. Individual Benefits of HCV "lookback"

Over the past several years, the improved accuracy of HCV testing, the increased understanding of hepatitis C outcomes, the value of counseling against risk behaviors that worsen outcomes, and the advances in treatment of HCV have collectively created a medical and ethical imperative to inform identified transfusion recipients of their HCV risk. Prior to the widespread use of HCV screening of blood donors, transfusion was one of the most common modes of transmission. Although patients with chronic hepatitis C may remain asymptomatic for a number of years, the consequences of their disease are extremely serious. For example, CDC population-based studies indicate that 40 percent of chronic liver disease is HCV-related, resulting in an estimated 8,000 to 10,000 deaths each year (Ref. 8). Current CDC estimates of medical and work-loss costs of all HCV-related acute and chronic liver disease (including cases resulting from blood transfusion) are in excess of $600 million annually, and HCV-associated end-stage liver disease is the most frequent indication for liver transplantation among adults. The cost of liver transplantation is estimated to be approximately $200,000 in the first year and $20,000 per year for subsequent years; and the cost of treatment for hepatocellular carcinoma, another sequelae of chronic liver disease, is estimated to be $10,000 per year (Ref. 9).

Timely notification of HCV infection benefits the infected blood recipient in several important ways. First, although factors predicting severity of liver disease due to HCV have not been well-defined, recent data indicate that increased alcohol intake is associated with more severe liver disease. According to CDC, even moderate amounts of alcohol in patients with chronic hepatitis C might enhance liver disease. Consequently, an HCV-infected patient identified by the proposed "lookback" program could minimize liver damage associated with alcohol consumption by restricting his or her intake.

Next, while other percutaneous exposures currently represent the most common means of infection, some case-control studies have also reported a positive association with sexual contact with a person with a history of hepatitis and acquiring hepatitis C. In fact, 15 to 20 percent of the acute hepatitis C patients reported to CDC's sentinel counties surveillance system have a history of sexual exposure in the absence of other risk factors. Infected patients identified through the proposed "lookback" procedures could take steps to protect sexual partners from the risk of infection.

Next, it is important to note that identified infected patients would benefit from treatment with available therapies. Studies of patient characteristics and responsiveness to therapy indicate that best results are achieved if treatment is initiated earlier in the disease, when patients are younger and have not yet developed cirrhosis (Ref. 10). For example, Bennett et al. estimated the cost effectiveness of a single course (6 months) of treatment with alfa interferon and found that patients at age 20 experience an average of 3.1 years of life gained at $500 per year of life extended (YLE); 30-year-old patients have an average gain of 1.9 years of life, at $7,100/YLE; patients starting treatment at age 50 have 6 months of life gained at $7,100/YLE; and 70-year-old patients gain an average of 22 days at $62,000/YLE (Ref. 11).

Next, care providers for the identified infected patient would be aware of the infection and could use additional precautions to avoid the risk of exposure to blood or wounds when providing care to the patient. Finally, identified infected patients would be informed that they must not donate blood.

Currently, the primary treatment for chronic hepatitis C is alfa interferon therapy (Ref. 12). On average, of those patients who undergo interferon treatment, a reported 10 to 20 percent show a sustained response after 6 months of therapy, and 20 to 30 percent a sustained response if therapy is continued for 12 months. Although alfa interferon produces a wide array of adverse side effects (Ref. 13), and some patients experience a relapse of HCV infection despite therapy, the benefits for patients identified for treatment through HCV "lookback" are likely to continue to increase as improved therapies are developed. In particular, combination therapy using alfa interferon plus ribavirin has been reported to result in an improved outcome (Ref. 13).

In addition to the "lookback" costs discussed previously, the overall cost-effectiveness of the proposed regulation will vary with the cost and effectiveness (i.e., cure rate) of therapy for hepatitis C, and the cost of treatment for chronic liver disease and its sequelae in the absence of, or with failure of treatment for hepatitis C. A single course of alfa interferon therapy has been estimated to cost $2,300 (Ref. 9), but hepatitis C therapy is a rapidly changing area of clinical practice and the cost-effectiveness of treatment can shift dramatically with the introduction of new drugs and the age distribution and the comorbidities of the population receiving treatment. An illustrative example, however, can demonstrate the potential benefits of the increased therapies that might result from this regulation. Although FDA cannot precisely determine the number of HCV positive individuals that would respond to the notification and seek medical consultation, a projection derived largely from interim findings of the CDC survey indicates that retrospective notification activities might identify about 3,764 cases of previously unidentified chronic HCV. This projection assumes that about 22.4 percent of 258,551 potential recipients are notified, about 13 percent of those notified test positive for HCV, 66.7 percent of the HCV cases are not currently known, and 75 percent of the HCV cases are chronic. Kim et al. (Ref. 9) found that, on average, patients with chronic HCV gain 0.25 discounted (3 percent) quality adjusted life-years (QALY's) from 6 months of interferon-2b treatment. (The authors do not provide estimates for any other discount rates.) On this basis, the above assumptions imply that retrospective "lookback" would gain a total of 941 QALY's, at a cost of about $88,573 per QALY.

There is no generally accepted means of valuing life-years saved, although a number of empirical studies indicate a societal willingness-to-pay of from $1.6 million to $11.6 million to avoid a statistical death. Assuming a mid-range estimate of $5 million and annualizing over a 35-year period at 3 percent yields an annual value of $233,000. The above assumptions imply that providing 6 months of interferon- 2b therapy to an additional 3,764 HCV-positive individuals could produce societal willingness-to-pay benefits of $219 million. The additional discounted (3 percent) incremental cost of providing such therapy was estimated by Kim et al. to be about $1,000 per patient, which implies an additional treatment cost of only $3,764,000 (3,764 patients x $1,000). Thus, by this measure, the individual benefits of retrospective HCV "lookback" easily exceed their incremental costs.

The benefits of the prospective "lookback" provisions can be similarly analyzed. Based on the CDC interim findings, FDA assumed that prospective "lookback" notifications would be initiated for 10,894 transfused recipients, of which 48 percent would be successful, 5.4 percent of those who are notified would test positive for HCV, 66.7 percent would be previously unknown, and 75 percent chronic. Thus, 123 patients could potentially gain 0.25 QALY's per year at a cost of roughly $217,011 per QALY. According to the monetization values described above, these health gains could generate annual benefits of $7.2 million, or roughly the level of the prospective "lookback" costs.

The agency recognizes the substantial uncertainty that surrounds such estimates. For example, medical cost-effectiveness studies sometimes assume a maximum societal value of about $50,000 per QALY. This modification would imply one-time retrospective "lookback" benefits of about $47 million and annual prospective "lookback" benefits of about $1.5 million, which would cover over half of the estimated initial costs of compliance. In addition, the figures assume that the distribution of recipient ages would reasonably match those of the Kim et al. study. Other studies of HCV treatment outcomes may project differently. FDA seeks public comment on the above assumptions and estimates.

2. Societal Benefits of HCV "lookback"

In addition to the direct benefits of medical treatment, the proposed "lookback" program will help to boost confidence and trust in the national blood supply. Thus, HCV "lookback" will generate societal benefits that are incremental to the health benefits discussed above. Recent public reviews of blood supply issues have recognized the importance of assuring both safety and the perception of safety. For example, reviews suggest that the public trust in the blood supply system was severely shaken by the transmission of HIV by blood products. This effect was exacerbated by the perceived failure of blood collection centers, public health agencies, and health care providers to take timely action to prevent or minimize patient risk. The failure to institute an HIV "lookback" program at an early date resulted in a number of cases in which transfusion recipients were unaware of their infection, failed to seek treatment and subsequently infected others (Refs. 13 and 14).

Now that information is available to identify and to offer counseling and treatment options for those confirmed HCV-positive, FDA believes that the public trust demands the timely communication of relevant risk information. Although the agency cannot accurately assess the dollar value of this public trust or the potential impact of its loss, the following discussion, considers the cost of unfavorable shifts in public perception to be a potential indicator of the value of stabilizing public trust in the U.S. blood system. The purpose of the discussion is to provide an order-of-magnitude value assessment to which the estimated costs of HCV "lookback" can be compared.

Potential indicator of yearly cost: Changes in the blood donation patterns. The impact of the AIDS epidemic on the perceived safety of the nation's blood supply is believed to have contributed to the reduction in volunteer blood donations and to the dramatic increase in autologous and directed blood donation in subsequent years. The IOM discussion of bioethical issues in risk communication regarding the blood supply describes blood services as special because "Trust is perhaps uniquely important. You know pretty fast if you have lost the public trust because people stop showing up to donate" (Ref. 17). This comment suggests two measures of the loss of public trust in the blood supply in the wake of the HIV/AIDS transfusions of the 1980's: The reduction in the volume of allogeneic blood donations and the substantial increase in the volume of autologous blood collections. These shifts have associated opportunity costs and inefficiency costs. Part of the observed changes in blood donation reflect tighter donor screening and more efficient use of the patient's own blood in scheduled surgery. But some of the shift is believed to reflect a distrust of the blood supply not warranted based on objective measures of disease risk. FDA reviewed the extent of the blood donation decline that might be attributable to AIDS-related public mistrust and asked whether a similar round of impacts might result if risk communication about known HCV exposures were perceived as inadequate by the general public.

CDC estimates that the number of donations per donor has dropped from five as recently as 1992 to 1993, to two donations per donor in the period 1996 to 1998. This trend was already apparent in the survey findings of Wallace et al. published in 1995. Their survey compared blood collections in 1989 with collections in 1992, and found that 904,000 fewer allogeneic units and 462,000 more autologous units of blood were collected in 1992 compared with 1989. At an estimated average price of $103 per unit[1], the reduction in (allogeneic) donations represents an annual loss to the nation's blood supply valued at $93.11 million. If the allogeneic donations yielded more than one product per unit donation, the loss of potential supply would be greater.

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[1] The estimates of $103 per allogeneic unit and $137 per autologous unit represent midpoint values in the range of blood costs reported by S. L. Lee in "Patients' Willingness to pay for Autologous Blood Donation" in *Risk in Perspective*, Harvard Center for Risk Analysis, vol. 6, No. 6, June 1988.

Autologous blood collection presents less risk of infectious disease, but it is not generally considered to be cost-effective, since much of the collected product is ultimately discarded because the patient does not require it. Of the estimated 1,117,000 autologous units collected in 1992, a total of 546,000 was reported as discarded. At an estimated average cost of $137 per unit, this represents an annual loss valued at $74.80 million. These discarded autologous units represent a real cost incurred by either the hospital or other blood establishment (if unrecoverable), by the third-party payer, or by the patient for a product that provided no therapeutic value. The most recent data suggest that the volume of unnecessary autologous collections is starting to decline, with clinical practice changes and regained public trust in the blood supply. Although the shifting patterns of blood collections may largely reflect appropriate responses to actual blood safety risks, if even a fraction of the shifts result from misperceptions, due to perceived failures in government and industry risk communication, then avoidable opportunity and inefficiency costs will be incurred.

FDA cannot assume that the failure to require notification of known exposures to hepatitis C among transfusion recipients would produce a similar second round of blood supply shifts and costs. However, hepatitis C has been characterized in the media, which influences public perception, as being as lethal as AIDS (Ref. 18) and its prevalence is much greater. If timely communication and support for patients, after inadvertent exposure to hepatitis C, were to eliminate as little as 15 percent of the yearly costs associated with the supply shifts described previously, this annual saving of over $25 million would exceed the $19 million in total annualized compliance costs estimated to be imposed by this regulation (calculated over 10 years at 7 percent).

3. Alternatives Considered for HCV "Lookback"

FDA finds that the targeted "lookback" approach proposed is the most effective of several alternatives when evaluated in terms of ethical, cost, and effectiveness criteria. The following provides a discussion of the alternatives that have been considered.

a. *Alternative:* Publication of FDA guidance but no regulatory requirement for "lookback". One alternative to regulation involves FDA taking no further action, as the agency has already issued industry guidance concerning HCV "lookback". The principle advantage of this approach would be the elimination of FDA expenses related to issuing and later enforcing the rule. However, although the "lookback" process described in the guidance is much the same as that required under the proposed rule, the approach would be less effective in achieving the desired benefits. Because FDA would only recommend a process and timeframe, but have no basis for enforcing it, some in industry may elect a more extended timeframe for performing the "lookback" based on the review of historical testing records in order to spread the costs of this effort. Such delay, however, would increase each recipient's risk of serious disease complications and speed the spread of infection.

For blood establishments, a potential cost of such delay would be the risk of litigation by blood recipients who discover through other means that they have contracted hepatitis C through transfusion. The risk of litigation, however, appears relatively small. Blood-product related injuries have been removed from the scope of strict liability law by blood shield laws in 47 of the 51 jurisdictions in this country. Although these laws may protect society's interest in assuring an adequate blood supply by shielding providers and manufacturers from liability claims in instances where due care is taken, they have also made it difficult and often impossible for individuals to obtain compensation for infections acquired from blood or blood products. A review of transfusion associated AIDS litigation for the period 1984 through 1993 (Ref. 20) reports only a handful of cases based on failure of a blood establishment to perform "lookback" and none were reported won by a plaintiff on this basis. The adoption of an approach involving agency informal action based on the expectation of industry self-regulation to solve problems has been strongly criticized in the IOM review as inadequate to protect the public in the context of HIV/AIDS. FDA believes this view is similiarly applicable to HCV.

b. *Alternative:* Use of general "lookback.". An alternative to targeted "lookback" is an approach referred to as "general lookback." This approach would be implemented through the general broadcast and other public media and regional medical organizations. The program would be aimed at all patients who received blood before the onset of screening, with the recommendation that they be tested for evidence of infection. Physicians participate in the program by recommending that previously transfused patients be tested for HCV. The program often includes a letter campaign to all previously transfused patients (regardless of the HCV status of the blood donors) from hospitals and other blood consignees who performed the transfusion service.

The cost and ultimate effectiveness of general "lookback" would vary depending on the program structure. All of the general "lookback" approaches involve reduced costs for blood collection centers, because the identification of infected donors would no longer be required. Nevertheless, if the general "lookback" involves a consignee letter campaign, the record review needed to identify current addresses for all transfusion recipients could be as great or greater than that required to identify only those recipients of blood products who are at higher risk of HCV.

A recent Canadian effort involving general letter "lookback" is estimated to have cost $1,654 per identified and confirmed positive recipient ($2,123 including HCV testing) (Ref. 7). Another Canadian hospital had completed a general letter "lookback" for HCV when the Canadian Red Cross Society began targeted "lookback" in 1995. By April of 1998, at least 13 new seropositive recipients had been identified by targeted "lookback" who were missed by general "lookback." As a result, targeted "lookback" raised the number of HCV-positive recipients tested at that hospital by at least 9 percent over general "lookback."

A general approach without letter notification can be less costly. A 1990 electronic media program in Cincinnati, for example, was estimated to have cost the blood center only $13,370, or $209 per identified positive recipient; although the authors note that "costs to the notified recipients may far exceed those of the Center" (Ref. 19). Despite the vigorous public information campaign, less than 5 percent of these recipients sought testing (Ref. 24). The CDC also is undertaking a program of general "lookback" media activities, but evidence of effectiveness is not yet available.

At this time, FDA believes that although general "lookback" may be less costly, it is unlikely to communicate the relevant risk message to the majority of affected transfusion recipients. The effectiveness of a general "lookback" program requires that patients: (1) Be reached by the program, (2) be aware of the transfusion episode, and (3) seek testing even though the average risk per recipient is small. Experience suggests that a substantial share of patients and families are not aware of earlier transfusions. A review of general "lookback" efforts in Canada, for example, found that 25 to 32 percent of pediatric patients and their families were unaware of an earlier transfusion. FDA agrees that general "lookback" activities can be important, particularly by reaching the population at risk due to parenteral drug use or other risk behaviors not involving blood transfusion. General "lookback" activities can also reinforce the effectiveness of targeted "lookback." The agency believes, however, that by itself, general "lookback" does not adequately inform all affected recipients of blood transfusions.

c. *Proposed: Use of targeted "lookback."* The "lookback" provisions of the proposed rule can be characterized as a "targeted lookback" program, meaning that the notification of infection risk is limited to or targeted at individuals identified as recipients of blood from donors subsequently found to be infected with HCV. Targeted "lookback" requires that the transfusion service be aware that the donor subsequently tested positive, donor and product disposition records be available to link blood components with the identified donors, and the physician or transfusion service know the recipient's current whereabouts. Blood consignees would locate recipient records for all transfused units from an affected donor, and have current recipient or physician address information available so that notifications can be delivered. Ideally, the recipient will still be alive and be able to receive testing and treatment, if appropriate.

Recent experiences among Canadian facilities implementing HCV "lookback" suggest that the effectiveness of targeted "lookback" may vary, depending on the extent to which these conditions for success hold true within a community. For example, a Canadian Red Cross Center in Toronto reported that although able to identify 5,301 affected components, trace 3,209 of those to hospitals, obtain responses for 2,807 (87 percent) of the units, and identify 2,437 as having been transfused, the establishment found that 45 percent of the transfused patients had already died. Of those remaining, only 184 patients (8 percent of the transfused) were finally tested as a result of the "lookback" effort, although as many as 68 percent of those tested were found to be HCV positive (Ref. 21).

Despite the difficulties of implementing targeted "lookback," FDA concludes that it remains a valuable means of reaching patients at high risk for HCV. As noted previously, a comparison of Canadian efforts in targeted "lookback" versus general "lookback" through physician and public education found that a large number of targeted patients and families were unaware of the transfusion episode. These recipients would not have been reached through the general "lookback" effort (Ref. 7). Similar experiences have occurred with HIV "lookback" efforts (Ref. 22).

C. Small Business Impact

Because of the lack of information to characterize the relevant volumes of affected blood and plasma products, the impact on those establishments and consignees that might qualify as small entities is uncertain. The FDA has therefore prepared an Initial Regulatory Flexibility Analysis. The blood establishments and blood product consignees affected by the proposed rule are included under the major SIC (standard industrialization classification) group 80 for providers of Health Services. According to Section 601 of the Regulatory Flexibility Act of 1980, the term "small entity" encompasses the terms "small business," "small organization" and "small governmental jurisdiction." According to the Small Business Administration (SBA), a small business within the blood industry is an enterprise with less than $5 million in annual receipts. A small organization is a not-for-profit enterprise which is independently owned and operated and is not dominant in its field. A "small governmental jurisdiction" generally means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.

The FDA registry of blood establishments does not provide an indication of the size of the registered entities. Although uncertain, it is likely that some smaller facilities may experience significant costs as a result of compliance with the proposed rule. According to the 1996 directory of the American Association of Blood Banks (AABB), only 34 regional and community blood centers have annual revenues of less than $5 million and each collect no more than 30,000 donations per year. Based on their survey of the blood industry in 1992, Wallace et al. (Ref. 3) estimate an annual total of 12,035,000 units of allogeneic blood were collected by blood establishments. Each small blood center would therefore account for approximately 0.2 percent (30,000/12,035,000) of all collections. Assuming that the one-time and annual costs of HCV "lookback" for blood collection facilities (see table 1 of section IV of this document) will be proportionate to the volume of collections, this implies that the small centers would each experience a one-time cost of approximately $72,229 ($36,114,442 x 0.002) and yearly costs of approximately $9,117 ($4,558,442 x 0.002). Based on an estimated average price of $103 per allogeneic unit (see footnote 1) this one-time cost would represent approximately 2 percent ($72,229/($103 x 30,000)) of annual average revenues. The yearly costs of on-going prospective "lookback" would represent approximately 0.3 percent of average annual revenues ($9,117/($103 x 30,000)).

Hospitals are expected to be the primary entity affected by the proposed requirements for transfusion services, but the extent of the small business impact is uncertain. Although the details of transfusion activities at hospitals are not available, FDA examined other data to develop a preliminary assessment of small business impact. The size of U.S. hospitals varies substantially. The 1998 American Hospital Association (AHA) survey data indicate a total of 5,134 U.S. registered community hospitals grouped into eight bed size categories. The average annual revenues for facilities in these bed size categories range from approximately $5.5 million to $513 million. However, since many hospitals are not-for-profit or are operated by state and local governments, the SBA annual receipts criteria for small businesses would not apply to these facilities. Of the 5,134 U.S. community hospitals included in the AHA report 1,330 are under the control of State and local government, 3,045 are nonprofit institutions and the remaining 759 are reported to be investor-owned.

The number of hospitals that would meet at least one of the various SBA definitions for small entities is uncertain. According to the AHA statistics for 1998, the smallest reported hospital size category includes 262 hospitals with 6 to 24 beds, and total gross revenues of $1.43 billion, yielding average revenues of $5.46 million. FDA assumes that the 11 facilities reported to be investor-owned within this bed size category could qualify as small entities. Although it is possible that all nonprofit hospitals may qualify as small entities, it appears that a number of facilities might be excluded from that definition because they are reported to be hospitals in a system. According to the AHA survey definition, "hospitals in a system" refer to those "hospitals belonging to a corporate body that owns and/or manages health provider facilities or health-related subsidiaries;.

the system may also own non-health-related facilities" (Ref. 23). The AHA currently has record of 1,592 hospitals that are non-Federal and nonprofit (including State and local government controlled) that are hospitals in a system. If these facilities were excluded, FDA estimates that 2,783 (1,330 State and local + 3,045 nonprofit − 1,592 in-a-system) non-Federal, nonprofit hospitals may qualify as small entities. Thus, a total of 2,794 (2,783 + 11) hospitals might qualify as small entities.

The agency does not know how many of the estimated affected transfusion recipients received their transfusion as part of care provided at a hospital qualifying as a "small entity." The following analysis of potential impact by size of hospital suggests that, regardless of hospital size, the cost impact may be limited if the number of affected transfusion recipients is proportionate to the number of inpatient surgeries performed by hospitals in different size categories. Table 3 of this document estimates the percentage of all inpatient hospital surgeries, based on the number of inpatient surgeries reported to AHA as performed by hospitals in different bed size categories. This percentage is used to estimate a share of the total 303,676 retrospective recipient notification activities initiated by hospitals in each category. The number of transfusion recipients to be contacted per hospital within a bed size category is based on the total estimated recipients per bed size category divided by the number of hospitals reported for each category. These estimates are presented in the right-most column of table 3. (Note that estimated values are rounded).

TABLE 3.—ESTIMATED NUMBER OF AFFECTED BLOOD RECIPIENTS PER HOSPITAL, BASED ON ESTIMATED NUMBER OF FACILITIES AND DISTRIBUTION OF IMPORTANT SURGERIES BY HOSPITAL SIZE CATEGORY (RETROSPECTIVE REVIEW)

Bed Size Category	Non-Federal Hospitals	Estimated Percent Inpatient Surgeries	Estimated Share of Recipients	Estimated Recipients per Hospital
6 to 24	262	0.21	627	2
25 to 49	905	2.02	6,121	7
50 to 99	1,128	6.03	18,315	16

Table 4 presents estimates of the cost per hospital, which are derived from estimates of the number of transfusion recipients per hospital (as shown in table 3) and the estimated notification cost of $165 per recipient. To provide additional perspective on relative impact, table 4 includes the notification cost shown as a percentage of average annual gross revenues per hospital. The notification cost is estimated to be approximately 0.01 percent of the average annual gross revenues for every size category.

TABLE 4.—ESTIMATED NOTIFICATION COST AS A PERCENT OF GROSS ANNUAL REVENUE, BASED ON ESTIMATES OF AVERAGE ANNUAL HOSPITAL REVENUE

Bed Size Category	Cost per Hospital for Retrospective Notification	Gross Annual Revenue per Hospital	Notification Cost as Percent of Gross Annual Revenue
6 to 24	$395	$[illegible].459 million	0.01 percent
25 to 49	$1,115	$12.606 million	0.01 percent
50 to 99	$2,679	$27.711 million	0.01 percent
100 to 199	$7,256	$74.803 million	0.01 percent

A similar analysis of the yearly cost impact of prospective on-going notification, that would involve an estimated 12,816 affected components distributed across all hospitals, produces costs per hospital per year ranging from $17 per facility for the smallest hospital size category, to approximately $1,936 per facility for hospitals in the 500 + bed size category. For all bed size categories, the estimated yearly costs represent less than one-thousandth of a percent of average annual revenues.

These findings of the Initial Regulatory Flexibility Analysis suggests that the relative cost impact may be fairly consistent across hospitals of different sizes, if the number of affected transfusion recipients per hospital is proportionate to the number of inpatient surgeries performed by hospitals in different size categories. However, the distribution of affected transfusion recipients across hospitals of different size and types of ownership is currently unknown. Because this information is essential for the estimation of the economic impact on small entities, FDA requests industry comment on the anticipated numbers of affected transfusion recipients, the ability to trace transfused products, and the volume of transfused products handled by consignees, particularly those that can be classified as small entities.

In general, it is expected that the regulatory costs for blood establishments will be a function of the volume of donors, the number of donations testing repeatedly reactive in a screening test for evidence of HCV infection, the volume of donor blood components that must be traced, the quality of facility recordkeeping and the number of different consignees to which the collection facility distributes blood products. These factors are likely to be larger and generate higher potential costs for larger blood establishments. Yet careful screening is already in place in most facilities, which will minimize the number of affected units over time. It is similarly expected that transfusing facilities will already have recordkeeping systems and SOP's in place that can be readily adapted to HCV "lookback." Also, recordkeeping and procedures to support targeted "lookback" for HIV are expected to provide a ready capability to trace donations and components affected by the proposed rule. FDA anticipates therefore that most of the information infrastructure needed for HCV "lookback" will already be in place for both blood establishments and blood transfusion services. For both types of establishments, the cost of compliance will primarily involve additional staff time.

As described earlier, FDA has considered several alternatives, and considers that a targeted "lookback" will be the most effective approach to contacting affected recipients of HCV-infected blood products. However, within that approach the agency allows for flexibility in the facility's individual approach to compliance, to help minimize the resource impact. For example, the particular design and systems for record-keeping and standard operating procedures developed in response to the proposed rule are under the control of the facility, as is the approach taken to notification. This will enable each facility to develop procedures that are most appropriate and cost-effective given the resources available. In addition, the agency has specified a limited time frame for notification, and a maximum required number of attempts, in order to provide a clear endpoint to facility efforts related to the "lookback."

Although FDA has obtained initial estimates of the number of blood centers that would be classified as small entities, the agency currently does not have data on the distribution of repeat donors, donations testing repeatedly reactive in a screening test for evidence of HCV infection, and affected blood components, for those establishments that would qualify as small business entities. Because this information is essential for the estimation of the economic impact on small businesses, FDA requests industry comment on the current recordkeeping, the ability to trace products, and the volumes of donation units and components handled by these facilities.

V. The Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown in section V of this document with an estimate of the annual reporting and recordkeeping burden. Included in this estimate is the time for reviewing the procedures, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Reporting and recordkeeping requirements within Current Good Manufacturing Practices for Blood and Blood Components: Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk for Transmitting HCV Infection ("lookback").

Description: This proposed rule would require that blood establishments prepare and follow written procedures when the blood establishments have collected Whole Blood, blood components, Source Plasma, and Source Leukocytes later determined to be at risk for transmitting HCV infections. Under the proposed rule, blood establishments would be required to include procedures that are similar to procedures now in effect for HIV "lookback" (§§ 610.46 and 610.47), for clarifying the status of the donor who later tests repeatedly reactive in a licensed screening test for HCV, quarantining prior collections from such donors, and notifying transfusion recipients, as appropriate, based on further testing of the donor. When a donor who previously donated blood is tested in accordance with § 610.40 on a later donation, and tests repeatedly reactive for antibody to HCV, the blood establishment would be required to perform a supplemental test using a licensed test, and notify consignees who received Whole Blood, blood components, Source Plasma, and Source Leukocytes from prior collections so that appropriate action is taken. Blood establishments and consignees would be required to quarantine previously collected Whole Blood, blood components, Source Plasma and Source Leukocytes from such donors (some exemptions apply), and where appropriate, consignees would notify transfusion recipients.

Under the proposed rule, blood establishments additionally would be required to perform a one-time retrospective review of historical HCV testing records that will identify prior collections from donors at increased risk for transmitting HCV. The retrospective review of HCV testing records would be limited to a period of time that is 12 months prior to the last negative licensed multiantigen screening test, whenever there is a record of such a prior test. Blood establishments would be required to notify consignees of the risk of HCV transmission that exists for prior collections based on the retrospective review of HCV testing records and the results of the supplemental HCV testing performed before or as a result of the retrospective review of testing records. Blood establishments would notify consignees of the risk of HCV transmission that exists for prior collections from a donor who tested repeatedly reactive on a screening test for HCV and for whom the blood establishment has no record of further testing and further testing is impractical or infeasible (an exception may apply). Under this proposal, consignees would notify the transfusion recipients.

FDA is also proposing conforming amendments to certain provisions of §§ 610.46 and 610.47, the HIV "lookback" regulations (61 FR 47413, September 9, 1996). The proposed revisions to §§ 610.46 and 610.47, discussed under the corresponding sections of this proposal, are intended to clarify and provide consistency between the HIV and HCV "lookback" requirements but do not include a requirement for the retrospective review of historical HIV testing records. The agency is issuing this proposed rule to help ensure that the blood supply continues to be safe, that information is provided to users of blood and blood components, and that transfusion recipients of blood and blood components at risk for transmitting HCV will be notified, as appropriate.

Description of Respondents: Blood establishments (Business and Not-for-Profit) and consignees of blood establishments, including hospitals, transfusion services and physicians.

The total reporting and recordkeeping burden for the first year is estimated to be 492,148 hours. However, of this total approximately 470,237 hours would be expended on a one-time basis for establishing the written procedures and doing the one-time retrospective review of historical HCV testing records. Therefore, 21,911 hours is estimated as the ongoing annual burden related to this proposed regulation. The total ongoing annual burden for blood collection facilities under §§ 610.46(a), 610.46(b), 610.47(b) and 606.160(b)(1)(viii) for HIV "lookback" is estimated to be 1,843 hours. The total ongoing annual burden for blood collection facilities under §§ 610.48(a)(1)(ii), 610.48(b), 610.49(b), 610.49(c) and 606.160(b)(1)(viii) for HCV "lookback" is estimated to be 20,698 hours.

Based on information previously discussed in section IV of this document, there are approximately 2,800 FDA registered blood establishments in the United States that collect approximately 12 million allogeneic donations annually. The CDC estimates there are approximately 9,628,000 donations from repeat donors per year. The following reporting and recordkeeping estimates are based on information provided by industry, and FDA experience.

1. *HIV Reporting Burden*

In table 5, it is estimated that approximately 3,500 repeat donors (an annual average of 1.25 repeat donors per establishment) will test repeatedly reactive on a screening test for HIV. Under proposed §§ 610.46(a) and (b), this estimate results in 3,500 notifications of the HIV screening test results to consignees by blood establishments for the purpose of quarantine of affected units, and another 3,500 notifications to consignees of subsequent test results. FDA estimates an average of 10 minutes per notification of consignees.

In addition, it is estimated that 180 transfusion services not subject to HCFA regulations will be required under § 610.47(b) to notify physicians, or in some cases recipients, an average of 0.14 times per year resulting in a total number of 25 notifications. The estimate of one-half hour for notifications under § 610.47(b) is based on the minimum requirement of three attempts to notify recipients by transfusion services. FDA estimates that each repeat donor has donated two previous times and two components were made from each donation. The estimates for HIV "lookback" provided in the tables differ from the estimates for HIV "lookback" provided in a notice published in the **Federal Register** of November 4, 1999 (64 FR 60212) because FDA has new, updated information from industry representatives from which to base its estimates.

2. *HCV Reporting Burden*

Based on the interim results from a recent CDC survey (ref. 4), CDC estimates that 11,520 repeat donors per year would test repeatedly reactive for antibody to HCV. Under proposed §§ 610.48(a)(1)(ii) and 610.48(b), blood establishments would notify the consignee two times for each of the 12,816 components prepared from these donations, once for quarantine purposes and again with additional HCV test results for a total 25,632 notifications as an annual ongoing burden. Under proposed § 610.49(b) and (c), FDA estimates that approximately 6,200 transfusion services would notify two recipients annually.

A. HCV One-time Reporting Burden

Based on estimates from CDC, FDA expects that for the one-time retrospective review of historical testing records, as many as 303,676 blood components would be at increased risk for transmitting HCV. For each of these products, under §§ 610.48(e)(2), 610.48(f)(2), 610.48(h)(3)(i) and (ii), and 610.48(i)(3)(i) and (ii), blood establishments would notify consignees to quarantine these products and report additional HCV test results to consignees, and, under § 610.49(b) and (c), consignees would notify transfusion recipients or recipients' physicians of record. CDC estimated that there could be approximately 258,125 transfusion recipients that would be notified after a one-time retrospective review of historical test results for HCV screening. The numbers in the hours per response column are based on FDA's knowledge and experience regarding notification.

B. HCV Ongoing Annual Reporting Burden

Under § 610.49(b) and (c), it is estimated that transfusion services may be expected to notify approximately 10,894 transfusion recipients per year, as previously discussed. The estimated average 0.5 hours to complete notification under §§ 610.47(b), 610.49(b) and (c) is based on FDA's knowledge and experience. The estimates of 13 hours, 5,447 hours, and 129,063 hours, respectively, allow for a consignee to make up to three attempts to complete the notification process.

3. *HIV and HCV Recordkeeping Burden*

In the recordkeeping charts, the numbers in the hours per record column are based on FDA's estimate of the time to complete one record. FDA estimates that it will take blood collection facilities approximately 40 hours to establish the written procedures proposed under § 606.100(b)(19) and consignees approximately 16 hours to establish written procedures in accordance with proposed § 610.49(b) and (c). In table 7, the estimate of 154 recordkeepers and 175 total annual records are based on the estimate that the HIV "lookback" requirements of § 610.47(b) are already implemented voluntarily by more than 95 percent of the facilities, which collect 98 percent of the Nation's blood supply. FDA estimates that it takes transfusion services approximately 10 minutes to document and maintain the records to relate the donor with the unit number of each previous donation. The time required for recordkeeping under § 606.160(b)(1)(viii) is estimated to be approximately 10 minutes for each HIV or HCV repeatedly reactive donation record and approximately 10 minutes per transfusion recipient record required under §§ 610.47(b) and 610.49(b) and (c).

FDA estimates the burden for this collection of information as follows:

TABLE 5.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.46(a)	2,800	1.25	3,500	.17	600
610.46(b)	2,800	1.25	3,500	.17	600
610.47(b)	180	0.14	25	.50	13
610.48(a)(i)(ii)	2,800	4.6	12,816	.17	2,179
610.48(b)	2,800	4.6	12,816	.17	2,179
610.49(b)and (c)	6,200	2	10,894	.50	5,447
Total					11,018

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 6.—ESTIMATED ONE-TIME REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Respondents	Hours per Response	Total Hours
610.48(e)(2)	2,800	41	115,228	.1	11,523
610.48(f)(2)	2,800	67	188,448	.1	18,845
610.48(h)(3)(i) and (h)(3)(ii)	2,800	41	115,228	.1	11,523
610.48(i)(3)(i) and (i)(3)(ii)	2,800	67	188,448	.1	18,845
610.49(b) and (c)	6,200	42	258,125	.5	129,063
Total					189,799

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 7.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Record	Total Hours
606.160(b)(1)(viii)					
HIV	154	1.14	175	.17	30
HIV	2,800	1.25	3,500	.17	600
HCV	2,800	9	25,632	.17	4,357
606.160(b)(1)(viii)	5,200	4	25,632	.17	4,357
610.49(b) and (c)	6,200	2	12,816	.17	2,179
Total					11,523

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 8.—ESTIMATED ONE-TIME RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Frequency of Recordkeeping	Total Records	Hours per Record	Total Hours
606.100(b)(19)	2,800	1	2,800	40	112,000
606.100(b)(19)	6,200	1	6,200	16	99,200
606.160(b)(1)(viii)	2,800	108	303,676	0.08	24,294
606.160(b)(1)(viii)	6,200	49	303,676	0.08	24,294
610.49(b) and (c)	5,200	42	258,125	0.08	20,650
Total					280,438

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

There are no capital costs or operating and maintenance costs associated with this collection of information.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to submit written comments regarding information collection by December 18, 2000, to the Office of Information and Regulatory Affairs, OMB (address above), Attention: Wendy Taylor, Desk Officer for FDA.

VI. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposed rule by February 14, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VII. Proposed Effective Date

The agency is proposing that any final rule that may issue based upon this proposed rule become effective 180 days after its date of publication in the **Federal Register**.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Alter, M., "Epidemiology of Hepatitis C," *Hepatology*, 26:62S–65S, 1997.

2. Alter, M., "Epidemiology of Hepatitis C," *Hepatology*, 26:62S–65S, 1997.

3. Wallace, E. L., W. H. Churchill, D. M. Surgenor, J. An, G. Cho, S. McGurk, and L. Murphy, "Collection and Transfusion of Blood and Blood Components in the United States, 1992," *Transfusion*, 35: 802–812, 1995.

4. Alter, M., CDC Survey Interim Results.

5. MacPherson, J., America's Blood Centers, "Advisory Committee on Blood Safety and Availability" Tenth Meeting, vol. II, p. 7.

6. Quattrocchi, R., Home Access Health Corp.

7. Goldman, M., S. Juodvalkis, P. Gill, and G. Spurll, "Hepatitis C Lookback," *Transfusion Medicine Review*, vol. 12, No. 2: 84–93, 1998.

8. U.S. Department of Health and Human Services, Center for Disease Control and Prevention, "Recommendations for Prevention and Control of Hepatitis C Virus (HCV) Infection and HCV–Related Chronic Disease," *Morbidity and Mortality Weekly Report*, vol. 47, No. RR–19, October 16, 1998.

9. Kim, W. R., J. J. Poterucha, J. E. Hermans, T. M. Therneau, E. R. Dickson, R. W. Evans, and J. B. Gross, "Cost-Effectiveness of 6 and 12 Months of Interferon-alfa Therapy for Chronic Hepatitis C," *Annals of Internal Medicine*, vol. 127, No. 10, November 1997.

10. Davis, G. L., and J. Y. N. Lau, "Factors Predictive of a Beneficial Response to Therapy of Hepatitis C," *Hepatology*, vol. 26, No. 3, Suppl.1: 122s–126s.

11. Bennett, W. G., Y. Inoue, J. R. Beck, J. B Wong, S. G. Pauker, and G. L. Davis, "Estimates of the Cost-Effectiveness of a Single Course of Interferon-alfa2b in Patients with Histologically Mild Chronic Hepatitis C," *Annals of Internal Medicine*, vol. 127, No. 10, November 1997.

12. National Institutes of Health (NIH) Consensus Development Conference Panel Statement: Management of Hepatitis C, Hepatology, vol. 26, No. 3, Suppl. 1:2s–10s, 1997.

13. Dusheiko, G., "Side Effects of Alpha Interferon in Chronic Hepatitis C," *Hepatology*, vol. 26, No. 3, Suppl. 1:112s–119s, 1997.

14. J. G. McHutchison et al., *New England Journal of Medicine*, 339: 1485, 1998.

15. Leveton, L. B., H. C. Sox, Jr., and M. A. Stoto, editors, *HIV and the Blood Supply: An Analysis of Crisis Decisionmaking*, Chapter 7, Institute of Medicine, National Academy Press, Washington, DC, 1995.

16. Ottosen, J. S., *The Blood Conspiracy: How to Avoid Getting AIDS and Hepatitis in a Transfusion*, Aspen Leaf Press, Woodland Park, CO, 1993.

17. Moreno, J. D., "Attitudes Toward Risk: The Right to Know and the Right to Give Informed Consent" in *Blood and Blood Products: Safety and Risk*, Institute of Medicine, National Academy Press, Washington, DC, 1996.

18. Groopman, J., "The Shadow Epidemic" *The New Yorker*, May 11, 1998.

19. Zuck, T. F., G. A. Rose, U. J. Dumaswala, N. J. Geer, "Experience with a Transfusion Recipient Education Program about Hepatitis C," *Transfusion*, vol. 30, No. 8, 761, 1990.

20. Kern, J. M., and B. B. Croy, "A Review of Transfusion-Associated AIDS Litigation: 1984 Through 1993," *Transfusion*, vol. 34, No. 6, 1994.

21. Wall, A., W. Lau, J. Lewis, J. A. Chiavetta, S. Mohammad, and R. Herst, "Hepatitis C Virus (HCV) Targeted Lookback Program," *Transfusion*, vol. 37 Suppl. s392, 1997.

22. Gill, M. J., D. Towns, S. Allaire, and G. Meyers, "Transmission of Human Immunodeficiency Virus Through Blood Transfusion: The Use of Lookback and Traceback Approaches to Optimize Recipient Identification in a Regional Population," *Transfusion*, vol. 37, 513–516, 1997.

23. Healthcare InfoSource, Inc., a subsidiary of the American Hospital Association, *Hospital Statistics*, 1998 ed., Chicago IL.

24. AuBuchon, J., "Public Health, Public Trust, and Public Decision Making: Making Hepatitis C Virus Lookback Work," *Transfusion*, vol. 39, p. 124, 1999.

List of Subjects

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 606 and 610 be amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

2. Section 606.100 is amended by revising paragraph (b)(19) to read as follows:

§ 606.100 Standard operating procedures.

* * * * *

(b) * * *

(19) Procedures in accordance with §§ 610.46 and 610.48 of this chapter to look at prior donations of blood and blood components from a donor who has donated blood and subsequently tests repeatedly reactive for evidence of human immunodeficiency virus (HIV) infection or hepatitis C virus (HCV) infection when tested in accordance with § 610.40 of this chapter or when a blood establishment has been made aware of other test results indicating evidence of HIV or HCV infection. Procedures to quarantine in-date blood and blood components, intended for further manufacture into injectable products that were obtained from such donors; procedures to notify consignees regarding the need to quarantine such products; procedures to determine the suitability for release of such products; procedures to notify consignees of blood and blood components from such donors of the results of the HIV and HCV testing performed on such donors; procedures in accordance with §§ 610.47 and 610.49 of this chapter to notify physician of record so that recipients of transfusion with blood or blood components are informed that they may have received blood or blood components at increased risk of transmitting HIV and HCV, respectively.

* * * * *

3. Section 606.160 is amended by revising paragraph (b)(1)(viii) and the second sentence of paragraph (d) to read as follows:

§ 606.160 Records.

* * * * *

(b) * * *

(1) * * *

(viii) Records of quarantine, consignee notification, further testing, transfusion recipient notification, and disposition performed under §§ 610.46, 610.47, 610.48, and 610.49 of this chapter.

* * * * *

(d) * * * The retention period shall be no less than 10 years after the records of processing have been completed or 6 months after the latest expiration date for the individual product, whichever is the later date. * * *

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

4. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

5. Section 610.40 is amended by adding paragraph (g) to read as follows:

§ 610.40 Test for hepatitis B surface antigen.

* * * * *

(g) For a donor whose test result for HIV or HCV is repeatedly reactive when tested in accordance with paragraphs (a), (c), and (d) of this section, or when a blood establishment has been made aware of other test results indicating evidence of HIV or HCV infection, the blood establishment shall comply, as applicable, with §§ 610.46, 610.47, 610.48, and 610.49.

6. Section 610.46 is amended by revising the section heading and paragraph (a), the heading for paragraph (b), the first sentence of paragraphs (b) and (c), and paragraph (d); by redesignating paragraph (e) as paragraph (f); by revising newly redesignated paragraph (f); and by adding new paragraph (e) to read as follows:

§ 610.46 Human Immunodeficiency Virus (HIV) "Lookback;" quarantine, consignee notification and further testing.

(a) *Quarantine and consignee notification.* (1) All blood and plasma establishments shall take appropriate action when a donor of blood or blood components tests repeatedly reactive for evidence of HIV infection on a screening test in accordance with § 610.40(a), or when the blood establishment has been made aware of other test results indicating evidence of HIV infection, provided the testing was performed by a laboratory certified under the Clinical Laboratory Improvement Amendments of 1988, using a test approved by FDA. For blood and blood components collected from that donor at any time prior to the repeatedly reactive test, whenever records are available, if intended for transfusion or for further manufacture into injectable products, except those products exempt from quarantine in accordance with paragraph (c) of this section, the blood establishment shall, within 3-calendar days after the date on which the donor tested repeatedly reactive for evidence of HIV infection or after the date on which the blood establishment was made aware of other test results indicating evidence of HIV infections, identify the prior collections from that donor and:

(i) Quarantine all such prior collections of blood and blood components; and

(ii) Notify consignees of the repeatedly reactive HIV screening test result so that the consignee may quarantine all such prior collections of blood and blood components.

(2) Consignees notified in accordance with paragraph (a)(1)(ii) of this section shall quarantine all such prior collections of blood and blood components held at that establishment, except as provided in paragraph (c) of this section.

(b) *Further testing and consignee notification of results.* Blood establishments shall perform further testing on the donor's blood, as specified in § 610.40(c), and shall notify the consignee(s) of the results of this test within 45-calendar days after the date on which the donor tested repeatedly reactive for evidence of HIV infection on a screening test. * * *

(c) *Exemption from quarantine.* Prior collections otherwise subject to quarantine under paragraph (a) of this section need not be held in quarantine if a determination has been made that the blood or blood component was collected more than 12 months prior to the donor's most recent negative screening test when tested for HIV in accordance with § 610.40(a). * * *

(d) *Release from quarantine.* Prior collections of blood and blood components intended for transfusion or further manufacture into injectable products which have been quarantined under paragraph (a) of this section may be released if the donor's current repeatedly reactive sample is subsequently tested for antibody to HIV as provided in paragraph (b) of this section and the test result is negative, absent other informative test results.

(e) *Destruction or labeling of prior collections held in quarantine.* Blood establishments and consignees shall destroy or appropriately label for in vitro use prior collections of blood and blood components otherwise subject to quarantine in accordance with paragraphs (a) and (d) of this section, unless such prior collections are determined to be exempt from quarantine in accordance with paragraph (c) of this section or subject to release from quarantine in accordance with paragraph (d) of this section. Quarantined prior collections made available for in vitro use shall be appropriately relabeled consistent with §§ 606.121 and 640.70 of this chapter. In addition, these units must be relabeled as "Biohazard" with the cautionary statement as follows:

"Collected from a donor who subsequently tested positive for anti-HIV. An increased risk for transmission of human immunodeficiency virus is present;" in addition, the label must contain one of the following cautionary statements, as appropriate: "Caution: For Further Manufacturing Into In Vitro Diagnostic Reagents For Which There Are No Alternative Sources." or "For Laboratory Research Use Only."

(f) *Actions under this section.* Actions under this section do not constitute a recall as defined in § 7.3 of this chapter.

7. Section 610.47 is revised to read as follows:

§ 610.47 Human Immunodeficiency Virus (HIV) "Lookback;" notification of transfusion recipients.

(a) *Appropriate actions following further testing.* Transfusion services that are not subject to the Health Care Financing Administration's regulations on conditions of Medicare participation for hospitals (42 CFR part 482) are required to take appropriate action in accordance with paragraphs (b) and (c) of this section when a recipient has received prior collections of blood or blood components from a donor later determined to be unsuitable when tested for evidence of infection due to HIV and the result of the additional tests as provided for in § 610.46(b) are positive.

(b) *Notification of recipients of prior transfusion.* If the transfusion service has administered blood or blood components as described in paragraph (a) of this section, the transfusion service shall either notify the recipient directly or notify the recipient's physician of record (i.e., physician of record or physician who ordered the blood or blood component) and ask him or her to inform the recipient of the need for HIV testing and counseling. If the physician is not available or declines to notify the recipient, the transfusion service shall notify the recipient and inform the recipient of the need for HIV testing and counseling. The notification process shall include a minimum of three attempts to notify the recipient, or the recipient's physician, and be completed within a maximum of 12 weeks of receipt of the result of the licensed, more specific test for HIV from the blood establishment. The transfusion service is responsible for notification, including basic explanations to the recipient and referral for counseling and further testing, and shall document the notification and the result of attempts to notify the recipient and the recipient's physician of record, if contacted, under § 606.160 of this chapter.

(c) *Notification of legal representative or relative.* If the transfusion recipient has been adjudged incompetent by a State court, the legal representative, designated in accordance with State law, shall be notified. If the transfusion recipient is competent, but State law permits a legal representative or relative to receive the information on the recipient's behalf, the transfusion service or the physician who agreed to perform the notification on behalf of the transfusion service shall notify the recipient or his or her legal representative or relative. If the transfusion recipient is a minor at the time of notification, the transfusion service or physician, as described in this paragraph, shall notify the recipient's legal representative or relative. If the transfusion recipient is deceased, the transfusion service or physician, as described in this paragraph, shall continue the notification process and inform the deceased recipient's legal representative or relative. The transfusion service is responsible for notification, including basic explanations to the recipient's legal representative or relative and referral for counseling and further testing of the recipient, and shall document the notification and the result of attempts to notify the recipient's legal representative or relative and the recipient's physician of record, if contacted, under § 606.160 of this chapter. Reasons for notifying the recipient's relative or legal representative on his or her behalf shall be documented under § 606.160 of this chapter.

8. Section 610.48 is added to subpart E to read as follows:

§ 610.48 Hepatitis C Virus (HCV) "Lookback;" quarantine, consignee notification and further testing.

(a) *Quarantine and consignee notification.* (1) *Repeatedly reactive screening test.* All blood and plasma establishments shall take appropriate action when a donor of blood or blood components tests repeatedly reactive for evidence of HCV infection on a screening test, in accordance with § 610.40(a), or when the blood establishment has been made aware of other test results indicating evidence of HCV infection, provided the testing was performed by a laboratory certified under the Clinical Laboratory Improvement Amendments of 1988, using a test approved by FDA. For in-date blood and blood components collected from that donor at any time prior to the repeatedly reactive test,

whenever records are available, if intended for transfusion, or if intended for further manufacture into injectable products, except those products exempt from quarantine in accordance with paragraph (g)(1) of this section, the blood establishment shall, within 3-calendar days after the date on which the donor tested repeatedly reactive for evidence of HCV infection or after the date on which the blood establishment was made aware of other test results indicating evidence of HCV infection, identify the prior collections from that donor and:

(i) Quarantine all such prior collections of blood and blood components; and

(ii) Notify consignees of the repeatedly reactive HCV screening test result so that the consignee may quarantine all such prior collections of blood and blood components.

(2) *Quarantine by consignee.* Consignees notified in accordance with paragraph (a)(1)(ii) of this section shall quarantine all such prior collections of blood and blood components held at that establishment, except as provided in paragraph (g)(1) of this section.

(b) *Further testing and consignee notification of results.* In the case of a donor with a repeatedly reactive screening test for HCV, blood establishments shall perform further testing on the donor's blood, as specified in § 610.40(c). Where prior collections from the same donor were distributed, blood establishments shall notify the consignee(s) of the results of this test within 45-calendar days after the date on which the donor tested repeatedly reactive for evidence of HCV infection on a screening test.

(c) *Review of historical testing records and identification of donors tested using a multiantigen screening test prior to [the effective date of the final rule].* Blood establishments shall review records of donor testing completed prior to [the effective date of the final rule] in order to identify donors who tested repeatedly reactive for evidence of HCV infection on a multiantigen screening test for HCV and to identify prior collections from such donors. Blood establishments shall, by (date 1 year from the effective date of the final rule), identify previously distributed blood and blood components from such donors, based on available required records maintained in accordance with § 606.160 of this chapter, dating back indefinitely for computerized electronic records and to January 1, 1988, for other readily retrievable records, or to the date 12 months prior to the donor's most recent negative multiantigen screening test for antibody to HCV, whichever is the lesser period. Blood establishments shall identify previously distributed blood and blood components from such donors in any of the following instances:

(1) *First instance.* Where the donor tested repeatedly reactive for evidence of HCV infection on the multiantigen screening test and positive on a supplemental test for HCV performed on the repeatedly reactive sample;

(2) *Second instance.* Where the donor tested repeatedly reactive for evidence of HCV infection on the multiantigen screening test and indeterminate on a supplemental test for HCV performed on the repeatedly reactive sample;

(3) *Third instance.* Where the donor tested repeatedly reactive for evidence of HCV infection on an HCV EIA 3.0 multiantigen screening test and negative on a HCV 2.0 strip immunoblot assay (HCV RIBA 2.0 supplemental test) with no record of a negative licensed HCV 3.0 strip immunoblot assay (RIBA 3.0 supplemental test) performed on the repeatedly reactive sample or a later sample from the same donor.

(4) *Fourth instance.* Where the donor tested repeatedly reactive for evidence of HCV infection on a licensed HCV EIA 2.0 screening test with no record of a supplemental test for HCV performed on the repeatedly reactive sample or on a later sample from the same donor and no record of a negative licensed HCV EIA 3.0 screening test performed on the repeatedly reactive sample or a later sample from the same donor; or

(5) *Fifth instance.* Where the donor tested repeatedly reactive for evidence of HCV infection on a licensed HCV EIA 3.0 screening test with no record of a supplemental test for HCV performed on the repeatedly reactive sample or on a later sample from the same donor.

(d) *Review of historical testing records and identification of donors tested using a single antigen screening test prior to [the effective date of the final rule].* Blood establishments shall review records of donor testing completed prior to [the effective date of the final rule] in order to identify donors who tested repeatedly reactive for evidence of HCV infection on a single antigen screening test for HCV and to identify prior collections from such donors. Blood establishments shall, by (date 1 year from the effective date of the final rule), identify previously distributed blood and blood components from such donors, based on available required records maintained in accordance with § 606.160 of this chapter, dating back indefinitely for computerized electronic records and to January 1, 1988, for other readily retrievable records, or to the date 12 months prior to the donor's most recent negative multiantigen screening test for antibody to HCV, whichever is the lesser period, in any of the following instances:

(1) *First instance.* Where the donor tested repeatedly reactive for evidence of HCV infection on the single antigen screening test and repeatedly reactive on an HCV EIA 2.0 or HCV EIA 3.0 screening test performed on the repeatedly reactive sample or a fresh sample from the same donor;

(2) *Second instance.* Where the donor tested repeatedly reactive for evidence of HCV infection on the single antigen screening test and either positive or indeterminate on an HCV 2.0 or HCV 3.0 strip immunoblot assay (HCV RIBA 2.0 or HCV RIBA 3.0, respectively) supplemental test for HCV performed on the repeatedly reactive sample or a fresh sample from the same donor;

(3) *Third instance.* Where the donor tested repeatedly reactive for evidence of HCV infection on an HCV EIA 1.0 screening test, with a signal to cutoff (S/CO) value less than 2.5 for at least two out of the three EIA tests (i.e., the initial EIA screening test and the duplicate retests), with no record of a supplemental test or multiantigen screening test for HCV performed on the repeatedly reactive sample or on a later sample from the same donor; or

(4) *Fourth instance.* Where the donor tested repeatedly reactive for evidence of HCV infection on an HCV EIA 1.0 screening test, with a S/CO value equal to or greater than 2.5 for at least two out of the three EIA tests (i.e., the initial EIA screening test and the duplicate retests) or with no determination of S/CO value for all three EIA tests, and with no record of a supplemental test or multiantigen screening test for HCV performed on the repeatedly reactive sample or on a later sample from the same donor.

(e) *Quarantine and consignee notification following the review of historical testing records based on screening performed using a multiantigen screening test.* Blood establishments shall, by (date 1 year from the effective date of the final rule), complete all quarantine and consignee notification requirements for prior collections from donors identified in the review of historical testing records in accordance with paragraph (c) of this section as follows:

(1) *Quarantine.* Blood establishments shall, within 3-calendar days of the date of the identification of the donor's repeatedly reactive multiantigen screening test for HCV, quarantine all in-date prior collections of blood and blood components collected from such a donor at any time prior to the

repeatedly reactive multiantigen screening test and identified in accordance with paragraph (c) of this section, if intended for transfusion, or if intended for further manufacture into injectable products, except those products exempt from quarantine in accordance with paragraph (g)(2) of this section.

(2) *Consignee notification.* Blood establishments shall, within 3-calendar days of the date of identification of the donor's repeatedly reactive multiantigen screening test for HCV, notify consignees of the donor's test results, including the supplemental test results, if available, so that consignees may quarantine all in-date prior collections of blood and blood components subject to quarantine under paragraph (e)(1) of this section.

(3) *Quarantine by consignees.* Consignees notified in accordance with paragraph (e)(2) of this section shall quarantine all in-date prior collections of blood and blood components subject to quarantine under paragraph (e)(1) of this section, except as provided in paragraph (g)(2) of this section.

(f) *Quarantine and consignee notification following the review of historical testing records based on screening performed using a single antigen screening test.* (1) *Quarantine.* Blood establishments shall, by (date 1 year from the effective date of the final rule) and within 3-calendar days of the date of the identification of the donor's repeatedly reactive single antigen screening test for HCV, quarantine all in-date prior collections of blood and blood components collected from such a donor at any time prior to the repeatedly reactive single antigen screening test and identified in accordance with paragraph (d) of this section, if intended for transfusion, or if intended for further manufacture into injectable products, except those products exempt from quarantine in accordance with paragraph (g)(3) of this section.

(2) *Consignee notification.* Blood establishments shall, within 3-calendar days of the date of identification of the donor's repeatedly reactive single antigen screening test for HCV, notify consignees of the donor's test results, including the supplemental test results, if available, so that consignees may quarantine all in-date prior collections of blood and blood components subject to quarantine under paragraph (f)(1) of this section.

(3) *Quarantine by consignees.* Consignees notified in accordance with paragraph (f)(2) of this section shall quarantine all in-date prior collections of blood and blood components subject to quarantine under paragraph (f)(1) of this section, except as provided in paragraph (g)(3) of this section.

(g) *Exemption from quarantine.* As used in § 610.48, an appropriately chosen licensed supplemental test is one which includes all antigens contained in the screening test that was performed.

(1) *Prior collections subject to quarantine under paragraph (a) of this section.* Prior collections otherwise subject to quarantine under paragraph (a) of this section need not be placed in quarantine if a determination has been made that:

(i) The blood or blood component was collected more than 12 months prior to the donor's most recent negative multiantigen screening test when tested for HCV in accordance with § 610.40(a); or

(ii) An appropriately chosen licensed supplemental test for HCV, performed in accordance with paragraph (b) of this section has been completed within 3-calendar days of the date of the donor's repeatedly reactive screening test and the result is negative.

(2) *Prior collections subject to quarantine under paragraph (e)(1) of this section.* Prior collections otherwise subject to quarantine under paragraph (e)(1) of this section need not be placed in quarantine if a determination has been made that:

(i) The blood or blood component was collected more than 12 months prior to the donor's most recent negative multiantigen screening test for HCV that preceded the repeatedly reactive screening test; or

(ii)(A) The repeatedly reactive screening test result was obtained using an HCV EIA 2.0 screening test, and either the original sample or a later sample from the same donor was tested and found negative using an HCV RIBA 2.0 or HCV RIBA 3.0 supplemental test or an HCV EIA 3.0 screening test; or

(B) The repeatedly reactive screening test result was obtained using an HCV EIA 3.0 screening test, and either the original sample or a later sample from the same donor was tested and found negative using an HCV RIBA 3.0 supplemental test;

(3) *Prior collections subject to quarantine under paragraph (f)(1) of this section.* Prior collections otherwise subject to quarantine under paragraph (f)(1) of this section need not be placed in quarantine if the donor's testing records show that:

(i) The repeatedly reactive screening test result was obtained using an HCV EIA 1.0 screening test, and either the original sample or a later sample from the same donor was further tested and found negative using an HCV EIA 2.0 or 3.0; or

(ii) The repeatedly reactive screening test result was obtained using an HCV EIA 1.0 screening test, and either the original sample or a later sample from the same donor was tested and found negative using an HCV RIBA 2.0 or HCV RIBA 3.0 supplemental test ; or

(iii)(A) The donor, identified in accordance with paragraph (d)(1) of this section, as testing repeatedly reactive on an HCV EIA 2.0, was further tested using a HCV RIBA 2.0 or HCV RIBA 3.0 supplemental test, on a fresh sample, or frozen sample from the repeatedly reactive donation and the result was negative; or

(B) The donor, identified in accordance with paragraph (d)(1) of this section, as testing repeatedly reactive on an HCV EIA 3.0, was further tested using an HCV RIBA 3.0 supplemental test, on a fresh sample, or frozen sample from the repeatedly reactive donation and the result was negative; or

(iv) The donor identified in accordance with paragraph (d)(2) of this section, as testing indeterminate on a HCV RIBA 2.0 supplemental test, was further tested using either an HCV EIA 3.0 or a HCV RIBA 3.0 supplemental test on a fresh sample, or frozen sample from the repeatedly reactive donation and the result was negative.

(h) *Further testing following review of historical testing records and consignee notification based on screening performed using a multiantigen screening test.* (1) *Further testing.* Blood establishments that have performed the review of records and identified prior collections in accordance with paragraphs (c)(4) and (c)(5) of this section shall, by (date 1 year from the effective date of the final rule):

(i)(A) If the repeatedly reactive test result was obtained using a HCV EIA 2.0 screening test, perform a licensed supplemental test for HCV on a frozen sample from the repeatedly reactive donation, if available; or if such a frozen sample is not available, obtain a fresh sample from such a donor and perform a licensed supplemental test for HCV; or

(B) If the repeatedly reactive test result was obtained using a HCV EIA 2.0 screening test, perform a licensed HCV EIA 3.0 screening test on a frozen sample, if available, or on a fresh sample from such a donor and perform a licensed supplemental test if the HCV EIA 3.0 screening test is repeatedly reactive; or

(ii) If the repeatedly reactive test result was obtained using a HCV EIA 3.0 screening test, perform a licensed supplemental test for HCV on a frozen sample, if available, or on a fresh sample from such a donor; or

(iii) Make a determination that neither a frozen sample from the repeatedly reactive donation nor a fresh sample from the donor is available for further testing.

(2) *Options for further testing.* Blood establishments that have performed the review of records and identified certain prior collections in accordance with paragraphs (c)(2) or (c)(3) of this section, and as described in paragraphs (h)(2)(i) through (h)(2)(iv) of this section may further test a frozen sample from the repeatedly reactive donation or a fresh sample from the same donor by (date 1 year from the effective date of the final rule), as follows:

(i) Donors identified in accordance with paragraph (c)(2) of this section as testing repeatedly reactive using an HCV EIA 2.0 screening test, and indeterminate on an HCV RIBA 2.0 supplemental test, may be further tested using either a licensed HCV EIA 3.0 screening test or a currently available licensed supplemental test for HCV;

(ii) Donors identified in accordance with paragraph (c)(2) of this section as testing repeatedly reactive using an HCV EIA 2.0 screening test, indeterminate on a HCV RIBA 2.0 supplemental test, and repeatedly reactive on an HCV EIA 3.0 screening test, performed in accordance with paragraph (h)(2)(i) of this section, may be further tested using an appropriately chosen licensed supplemental test for HCV;

(iii) Donors identified in accordance with paragraph (c)(2) of this section as testing repeatedly reactive using an HCV EIA 3.0 screening test, and indeterminate on a HCV RIBA 2.0 supplemental test, may be further tested using an appropriately chosen licensed supplemental test for HCV;

(iv) Donors identified in accordance with paragraph (c)(3) of this section as testing repeatedly reactive using an HCV EIA 3.0 screening test, and negative on a HCV RIBA 2.0 supplemental test with no record of a negative HCV RIBA 3.0 supplemental test, may be further tested using an appropriately chosen licensed supplemental test for HCV.

(3) *Consignee notification.* Except for blood and blood components exempt from quarantine in accordance with paragraph (g)(2) of this section, blood establishments shall:

(i) Within 45 days following completion of additional testing and prior to (date 1 year from the effective date of the final rule), notify consignees of the results of the additional licensed screening test and/or the licensed, supplemental test performed in accordance with paragraphs (h)(1) and (h)(2) of this section; or

(ii) Prior to (date 1 year from the effective date of the final rule), notify consignees of the test results for a donor who was identified in the review of historical testing records, in accordance with paragraphs (c)(1) through (c)(5) of this section.

(i) *Further testing following review of historical testing records and consignee notification based on screening performed using a single antigen screening test.* (1) *Further testing.* Blood establishments that have performed the review of records and identified prior collections in accordance with paragraph (d)(4) of this section shall, by (date 1 year from the effective date of the final rule):

(i) Perform a licensed, supplemental test for HCV on a frozen sample from the repeatedly reactive donation, if available; or if such a frozen sample is not available, obtain a fresh sample from such a donor and perform a licensed supplemental test for HCV; or

(ii) Make a determination that neither a frozen sample from the repeatedly reactive donation nor a fresh sample from the donor is available for further testing.

(2) *Options for further testing.* Blood establishments that have performed the review of records and identified certain prior collections in accordance with paragraphs (d)(1) or (d)(2) of this section and described in paragraphs (i)(2)(i) through (i)(2)(iii) of this section may further test a frozen sample from the repeatedly reactive donation or a fresh sample from the same donor, by (date 1 year from the effective date of the final rule), as follows:

(i) Donors identified in accordance with paragraph (d)(1) of this section as testing repeatedly reactive on an HCV EIA 1.0 screening test and repeatedly reactive on either an HCV EIA 2.0 or HCV EIA 3.0 screening test may be further tested using an appropriately chosen licensed supplemental test for HCV; or

(ii) Donors identified in accordance with paragraph (d)(2) of this section as testing repeatedly reactive on an HCV EIA 1.0 screening test with an indeterminate test result obtained using an HCV RIBA 2.0 supplemental test, may be further tested using a currently available licensed supplemental test for HCV or an HCV EIA 3.0. If such optional further testing is performed using an HCV EIA 3.0 and the result is repeatedly reactive, blood establishments may perform further testing using an appropriately chosen licensed supplemental test for HCV.

(iii) Donors identified in accordance with paragraph (d)(3) of this section as testing repeatedly reactive on an HCV EIA 1.0 screening test with a S/CO value less than 2.5 for at least two out of the three EIA tests, and with no record of a supplemental test or multiantigen screening test for HCV performed on the repeatedly reactive sample or on a later sample from the same donor, may be further tested using a licensed multiantigen screening test for HCV or a licensed supplemental test for HCV.

(3) *Consignee notification.* Except for blood and blood components exempt from quarantine in accordance with paragraph (g)(3) of this section, blood establishments shall:

(i) Within 45 days following completion of additional testing and prior to (date 1 year from the effective date of the final rule), notify consignees of the results of the additional licensed screening test and/or the licensed, supplemental test performed in accordance with paragraphs (i)(1) and (i)(2) of this section; or

(ii) Prior to (date 1 year from the effective date of the final rule), notify consignees of the test results for a donor who was identified in the review of historical testing records in accordance with paragraphs (d)(1) through (d)(4) of this section.

(j) *Release from quarantine.* (1) *Prior collections subject to quarantine under paragraph (a) of this section.* Prior collections of blood and blood components intended for transfusion or further manufacture into injectable products which are subject to quarantined under paragraph (a) of this section may be released if the donor's current, repeatedly reactive sample is subsequently tested using a licensed, supplemental test for HCV as provided in paragraph (b) of this section and the result is negative.

(2) *Prior collections subject to quarantine under paragraph (e)(1) of this section.* Prior collections of blood and blood components, which are not exempt from quarantine under paragraph (g)(2) of this section, and are otherwise subject to quarantine under paragraph (e)(1) of this section may be released from quarantine if:

(i)(A) The donor's testing records meet the conditions specified in paragraph (c)(4) of this section and further testing was performed in accordance with paragraph (h)(1)(i)(A) of this section on a frozen sample from the repeatedly reactive donation or a fresh sample from the same donor using a licensed supplemental test for HCV, and the result of the licensed supplemental test for HCV is negative; or

(B) The donor's testing records meet the conditions specified in paragraph (c)(4) of this section and further testing was performed in accordance with paragraph (h)(1)(i)(B) of this section on a frozen sample from the repeatedly reactive donation or a fresh sample from the same donor using a licensed, HCV EIA 3.0 screening test and the result is negative, or using a licensed, supplemental test if the HCV EIA 3.0 screening test is repeatedly reactive and the result of the licensed, supplemental test is negative; or

(ii) The donor's testing records meet the conditions specified in paragraph (c)(5) of this section and further testing was performed in accordance with paragraph (h)(1)(ii) of this section on a frozen sample or a fresh sample from the same donor using a licensed, supplemental test for HCV and the result is negative; or

(iii) The donor's testing records meet the conditions specified in paragraph (c)(2) of this section and further testing was performed, in accordance with paragraph (h)(2) of this section, as follows:

(A) The repeatedly reactive sample (test performed using an HCV EIA 2.0 screening test), or a later sample from the donor was further tested in accordance with paragraph (h)(2)(i) of this section using either a licensed HCV EIA 3.0 screening test or a licensed supplemental test for HCV and the result is negative; or

(B) The repeatedly reactive sample (test performed using an HCV EIA 2.0 screening test) or a later sample from the donor was further tested in accordance with paragraph (h)(2)(ii) of this section using an licensed supplemental test for HCV and the result is negative; or

(C) The repeatedly reactive sample (test performed using an HCV EIA 3.0 screening test) or a later sample from the donor was further tested in accordance with paragraph (h)(2)(iii) of this section using a licensed supplemental test for HCV and the result is negative; or

(iv) The donor's testing records meet the conditions specified in paragraph (c)(3) of this section and further testing was performed in accordance with paragraph (h)(2)(iv) of this section on a frozen sample or a fresh sample from the same donor using a licensed supplemental test for HCV and the result is negative.

(3) *Prior collections subject to quarantine under paragraph (f)(1) of this section.* Prior collections of blood and blood components, which are not exempt from quarantine under paragraph (g)(3) of this section, and are otherwise subject to quarantine under paragraph (f)(1) of this section may be released from quarantine if:

(i) The donor's testing records meet the conditions specified in paragraph (d)(4) of this section and further testing was performed in accordance with paragraph (i)(1)(i) of this section on a fresh sample, or frozen sample from the repeatedly reactive donation using a licensed supplemental test for HCV and the result is negative; or

(ii) The donor's testing records meet the conditions specified in paragraph (d)(1) of this section and further testing was performed in accordance with paragraph (i)(2)(i) of this section on a fresh sample, or frozen sample from the repeatedly reactive donation and the result of the an appropriately chosen licensed supplemental test for HCV is negative; or

(iii) The donor's testing records meet the conditions specified in paragraph (d)(2) of this section and further testing was performed in accordance with paragraph (i)(2)(ii) of this section on a fresh sample, or frozen sample from the repeatedly reactive donation and the result when further tested using either a licensed HCV EIA 3.0 screening test or a licensed supplemental test for HCV is negative;

(iv) The donor's testing records meet the conditions specified in paragraph (d)(3) of this section and further testing was performed in accordance with paragraph (i)(2)(iii) of this section on a fresh sample, or frozen sample from the repeatedly reactive donation and the result when further tested using a licensed multiantigen screening test for HCV or a licensed supplemental test for HCV is negative.

(k) *Destruction or labeling of prior collections held in quarantine.* Blood establishments and consignees shall destroy or appropriately label for in vitro use prior collections of blood and blood components otherwise subject to quarantine in accordance with paragraphs (a), (e), and (f) of this section, unless such prior collections are determined to be exempt from quarantine in accordance with paragraph (g) of this section or subject to release from quarantine in accordance with paragraph (j) of this section. Quarantined prior collections made available for in vitro use shall be appropriately relabeled consistent with §§ 606.121 and 640.70 of this chapter. In addition, these units must be relabeled as "Biohazard" with the cautionary statement as follows:

"Collected from a donor who subsequently tested reactive for anti-HCV. An increased risk of transmission of hepatitis C virus is present."; in addition, the label must contain one of the following cautionary statements as appropriate: "Caution: For Further Manufacturing Into In-Vitro Diagnostic Reagents For Which There Are No Alternative Sources" or "For Laboratory Research Use Only."

(l) *Recalls.* Actions under this section do not constitute a recall as defined in § 7.3 of this chapter.

9. Section 610.49 is added to subpart E to read as follows:

§ 610.49 Hepatitis C Virus (HCV) "Lookback;" notification of transfusion recipients.

(a) *Appropriate actions following further testing.* Transfusion services are required to take appropriate action in accordance with paragraphs (b) and (c) of this section when a recipient has received prior collections of blood or blood components from a donor later determined to be at increased risk of transmitting HCV infection when tested for evidence of infection due to HCV and:

(1) The result of the licensed, supplemental test, performed as prescribed in § 610.48(b) and in accordance with the testing requirements specified in § 610.40(c), is positive;

(2) The result of the supplemental test identified in the review of historical testing records is positive, as specified in § 610.48(c)(1);

(3) The result of the supplemental test identified in the review of historical testing records in accordance with § 610.48(c)(2) is indeterminate, unless:

(i) The review of historical testing records shows the supplemental test was performed using an HCV RIBA 3.0 supplemental test; or

(ii) Any of the conditions for exemption from quarantine specified in § 610.48(g)(2) have been met; or

(iii) The donor was further tested in accordance with § 610.48(h)(2)(i), (h)(2)(ii), or (h)(2)(iii) and any of the conditions for release from quarantine specified in § 610.48(j)(2)(iii) have been met; or

(iv) The donor was further tested in accordance with § 610.48(h)(2)(ii) or (h)(2)(iii) using a supplemental test for HCV and the result is indeterminate;

(4) The result of the licensed supplemental test performed in accordance with § 610.48(h)(1)(i)(A), (h)(1)(i)(B), or (h)(1)(ii) is positive for a donor identified in the review of historical testing records in accordance with § 610.48(c)(4) and (c)(5), as testing repeatedly reactive on a multiantigen screening test in the past with no record of further testing;

(5) No record of further testing is available for a donor identified in the review of historical testing records, in accordance with § 610.48(c)(4) and (c)(5), and no fresh or frozen sample is available for further testing, as specified in § 610.48(h)(1)(iii);

(6) The result of the additional test using HCV EIA 2.0 or 3.0 identified in the review of historical testing records is repeatedly reactive, as specified in § 610.48(d)(1), unless:

(i) Any of the conditions for exemption from quarantine specified in § 610.48(g)(3) have been met; or

(ii) The donor was further tested in accordance with § 610.48(i)(2)(i) and any of the conditions for release from quarantine specified in § 610.48(j)(3) have been met; or

(iii) The donor was further tested in accordance with § 610.48(i)(2)(i) using an appropriately chosen licensed supplemental test for HCV and the result is indeterminate; or

(7) The result of the supplemental test performed using an HCV RIBA 2.0 or HCV RIBA 3.0 is positive for a donor identified in the review of historical testing records in accordance with § 610.48(d)(2);

(8) The result of the supplemental test performed using an HCV RIBA 2.0 is indeterminate, for a donor identified in the review of historical testing records in accordance with § 610.48(d)(2), unless:

(i) Any of the conditions for exemption from quarantine specified in § 610.48(g)(3) have been met; or

(ii) The donor was further tested in accordance with § 610.48(i)(2)(ii) and any of the conditions for release from quarantine specified in § 610.48(j)(3) have been met; or

(iii) The donor was further tested in accordance with § 610.48(i)(2)(ii) using a licensed supplemental test for HCV and the result is indeterminate; or

(9) The result of the licensed, supplemental test for HCV or a licensed multiantigen screening test performed in accordance with § 610.48(i)(2)(iii) is positive for a donor identified in the review of historical testing records, in accordance with § 610.48(d)(3); or

(10) The result of the licensed, supplemental test for HCV performed in accordance with § 610.48(i)(1) is positive for a donor identified in the review of historical testing records, in accordance with § 610.48(d)(4), as testing repeatedly reactive on a single antigen screening test with a S/CO value equal to or greater than 2.5 for at least two of the three EIA tests, or the S/CO value can not be calculated, and with no record of further testing; or

(11) No record of further testing is available for a donor identified in the review of historical testing records, in accordance with § 610.48(d)(4), and no fresh or frozen sample is available for further testing, as specified in § 610.48(i)(1)(ii).

(b) *Notification of recipients of prior transfusion.* If the transfusion service has administered blood or blood components later determined to be at increased risk of transmitting HCV infection, as described in paragraph (a) of this section, the transfusion service shall either notify the recipient directly or notify the recipient's physician of record (i.e., physician of record or physician who ordered the blood or blood component) and ask him or her to inform the recipient of the need for HCV testing and counseling. If the physician is not available or declines to notify the recipient, the transfusion service shall notify the recipient and inform the recipient of the need for HCV testing and counseling. The notification of transfusion recipients based on donor testing completed after (the effective date of the final rule) shall include a minimum of three attempts to notify the recipient or the recipient's physician of record and be completed within a maximum of 12 weeks of receipt of the result of the supplemental test for HCV from the blood establishment. The notification of transfusion recipients based on donor testing completed prior to (the effective date of the final rule) shall include a minimum of three attempts to notify the recipient or the recipient's physician of record and be completed within 1 year of the date on which the transfusion service received notification from the blood establishment. The transfusion service is responsible for notification, including basic explanations to the recipient and referral for counseling and further testing, and shall document the notification and the result of attempts to notify the recipient and the recipient's physician of record, if contacted, under § 606.160 of this chapter.

(c) *Notification of legal representative or relative.* If the transfusion recipient has been adjudged incompetent by a State court, the legal representative, designated in accordance with State law, shall be notified. If the transfusion recipient is competent, but State law permits a legal representative or relative to receive the information on the recipient's behalf, the transfusion service or the physician who agreed to perform the notification on behalf of the transfusion service shall notify the recipient or his or her legal representative or relative. If the transfusion recipient is a minor at the time of notification, the transfusion service or physician, as described in this paragraph, shall notify the recipient's legal representative or relative. If the transfusion recipient is deceased, the transfusion service or physician, as described in this paragraph, may discontinue the notification process. The transfusion service is responsible for notification, including basic explanations to the recipient's legal representative or relative and referral for counseling and further testing of the recipient, and shall document the notification and the result of attempts to notify the recipient's legal representative or relative and the recipient's physician of record, if contacted, under § 606.160 of this chapter. Reasons for notifying the recipient's relative or legal representative on his or her behalf shall be documented under § 606.160 of this chapter.

(d) *Reference tables.* Tables 1 through 4 of this paragraph show the various tests performed for HCV (including both current donor testing shown in table 1 of this paragraph and tests identified in the review of historical testing records in tables 2 through 4 of this paragraph), steps of the "lookback" process, and applicable provisions of §§ 610.48 and 610.49. Based on the initial screening test select the appropriate table from the following:

TABLE 1.—OUTLINE OF PROVISIONS OF §610.48 FOR HEPATITIS C VIRUS (HCV) "LOOKBACK" BASED ON CURRENT DONOR TESTING

Actions to be taken	Applicable section(s):
Identify prior collections	610.48(a)(1)
Quarantine prior in-date collections	610.48(a)(1)(i)
Notify consignees to quarantine	610.48(a)(1)(ii)
Consignees perform quarantine of prior collections	610.48(a)(2)
Exemptions from quarantine	610.48(g)(1)(i) 610.48(g)(1)(ii)
Perform further testing	610.48(b)
Notify consignees of test results	610.48(b)
Release prior collections from quarantine	610.48(j)(1)[1]
Destroy or label prior collections	610.48(k)
Notify transfusion recipients	610.49(a)(1)[2]

[1] If the licensed supplemental test for HCV is negative.
[2] If the licensed supplemental test for HCV is positive.

TABLE 2.—OUTLINE OF PROVISIONS OF §610.48 FOR HEPATITIS C VIRUS (HCV) "LOOKBACK" BASED ON REVIEW OF HISTORICAL TESTING RECORDS AND IDENTIFICATION OF DONORS TESTING REPEATEDLY REACTIVE USING AN HCV EIA[1] 3.0 SCREENING TEST

Results of Further Testing:	RIBA 2.0[2] Positive or RIBA 3.0[3] Positive	RIBA 2.0 Negative	RIBA 2.0 Indeterminate	RIBA 3.0 Negative	RIBA 3.0 Indeterminate	No Supplemental Test Done	
Actions To Be Taken:	Applicable Sections						
Identify prior collections	610.48(c)(1)	610.48(c)(3)	610.48(c)(2)		610.48(c)(2)	610.48(c)(5)	
Quarantine prior in-date collections	610.48(e)(1), (e)(2), (e)(3)	610.48(e)(1), (e)(2), (e)(3)	610.48(e)(1), (e)(2), (e)(3)		610.48(e)(1), (e)(2), (e)(3)	610.48(e)(1), (e)(2), (e)(3)	
Notify consignees to quarantine							
Consignees perform quarantine of prior collections							
Exemptions from quarantine	610.48(g)(2)(i)	610.48(g)(2)(i)	610.48(g)(2)(i)	610.48(g)(2)(ii)(B)	610.48(g)(2)(i)	610.48(g)(2)(i)	
Perform further testing						610.48(h)(1)(ii)[4]	610.48(h)(1)(iii)[6]
Perform optional further testing		610.48(h)(2)(iv)[4]	610.48(h)(2)(iii)[4]				
Notify consignees of test results	610.48(h)(3)(ii)	610.48(h)(3)(i) 610.48(h)(3)(ii)	610.48(h)(3)(i) 610.48(h)(3)(ii)		610.48(h)(3)(ii)	610.48(h)(3)(i) 610.48(h)(3)(ii)	610.48(h)(3)(i) 610.48(h)(3)(ii)
Release prior collections from quarantine		610.48(j)(2)(iv)[5]	610.48(j)(2)(iii)(C)[5]			610.48(j)(2)(ii)[5]	
Destroy or label prior collections	610.48(k)	610.48(k)	610.48(k)		610.48(k)	610.48(k)	610.48(k)
Notify transfusion recipients	610.[illegible](a)(2)		610.49(a)(3)			610.49(a)(4)[7]	610.49(a)(5)

[1] "EIA" means enzyme linked immunosorbant assay.
[2] "RIBA 2.0" means HCV 2.0 strip immunoblot assay.
[3] "RIBA 3.0" means HCV 3.0 strip immunoblot assay.
[4] Using a licensed supplemental test for HCV.
[5] If the licensed supplemental test for HCV is negative.
[6] No frozen or fresh sample is available for further testing.
[7] If the licensed supplemental test for HCV is positive.

TABLE 3.—OUTLINE OF PROVISIONS OF § 610.48 FOR HEPATITIS C VIRUS (HCV) "LOOKBACK" BASED ON REVIEW OF HISTORICAL TESTING RECORDS AND IDENTIFICATION OF DONORS TESTING REPEATEDLY REACTIVE USING AN HCV EIA[1] 2.0 SCREENING TEST

Results of Further Testing:	RIBA 2.0[2] Positive or RIBA 3.0[3] Positive	RIBA 2.0 Negative	RIBA 2.0 Indeterminate		RIBA 3.0 Negative	RIBA 3.0 Indeterminate	No Supplemental Test Done		
Actions to be Taken:	Applicable Sections								
Identify prior collections	610.48(c)(1)		610.48(c)(2)			610.48(c)(2)	610.48(c)(4)		
Quarantine prior in-date collections	610.48(e)(1), (e)(2), (e)(3)		610.48(e)(1), (e)(2), (e)(3)			610.48(e)(1), (e)(2), (e)(3)	610.48(e)(1), (e)(2), (e)(3)		
Notify consignees to quarantine									
Consignees perform quarantine of prior collections									
Exemptions from quarantine	610.48(g)(2)(i)	610.48(g)(2)(ii)(A)	610.48(g)(2)(i)		610.48(g)(2)(ii)(A)	610.48(g)(2)(i)	610.48(g)(2)(i)		
Perform further testing							610.48(h)(1)(i)(A)[9]	610.48(h) (1)(i)(B)[10]	610.48(h) (1)(iii)[11]
Perform optional further testing			610.48(h) (2)(i)[4] 610.48(h)(2)(ii)[5]	610.48(h) (2)(i)[6]					
Notify consignees of test results	610.48(h)(3)(ii)		610.48(h)(3)(i) 610.48(h) (3)(ii)	610.48(h)(3)(i) 610.48(h) (3)(ii)		610.48(h) (3)(ii)	610.48(h)(3)(i) 610.48(h)(3)(ii)	610.48(h)(3)(i) 610.48(h)(3)(ii)	610.48(h)(3)(i) 610.48(h)(3)(ii)
Release prior collections from quarantine			610.48(j)(2)(iii)(A)[7] 610.48(j)(2)(iii)(B)[8]	610.48(j) (2)(iii)(A)[8]			610.48(j)(2)(i)(A)[12]	610.48(j)(2) (i)(B)[13]	
Destroy or label prior collections	610.48(k)		610.48(k)	610.48(k)		610.48(k)	610.48(k)	610.48(k)	610.48(k)
Notify transfusion recipients	610.49(a)(2)		610.49(a)(3)	610.49(a)(3)			610.49(a)(4)[14]	610.49(a)(4)[14]	610.49(a)(5)

[1] "EIA" means enzyme linked immunosorbant assay.
[2] "RIBA 2.0" means HCV 2.0 strip immunoblot assay.
[3] "RIBA 3.0" means HCV 3.0 strip immunoblot assay.
[4] Using an HCV EIA 3.0 screening test.
[5] If the HCV EIA 3.0 screening test is repeatedly reactive, may perform a licensed supplemental test for HCV.
[6] Using a licensed supplemental test for HCV.
[7] If the HCV EIA 3.0 screening test is negative.
[8] If the licensed supplemental test for HCV is negative.
[9] Perform a licensed supplemental test for HCV.
[10] Perform an HCV EIA 3.0 screening test and perform a licensed supplemental test for HCV if the HCV EIA 3.0 screening test is repeatedly reactive.
[11] No frozen or fresh sample is available for further testing.
[12] If the licensed supplemental test for HCV is negative.
[13] If the HCV EIA 3.0 screening is negative; or, if it is repeatedly reactive, the licensed supplemental test for HCV is negative.
[14] If the licensed supplemental test for HCV is positive.

TABLE 4.—OUTLINE OF PROVISIONS OF § 610.48 FOR HEPATITIS C VIRUS (HCV) "LOOKBACK" BASED ON REVIEW OF HISTORICAL TESTING RECORDS AND IDENTIFICATION OF DONORS TESTING REPEATEDLY REACTIVE USING AN HCV EIA[1] 1.0 SCREENING TEST

RESULTS OF FURTHER TESTING:	EIA 2.0[2] Repeatedly Reactive	EIA 3.0[3] Repeatedly Reactive	EIA 2.0 Negative or EIA 3.0 Negative	RIBA 2.0 Positive or RIBA 3.0 Positive	RIBA 2.0 Indeterminate	RIBA 3.0 Indeterminate	RIBA 2.0 Negative or RIBA 3.0 Negative	S/CO[4] < 2.5	S/CO >2.5 or No Determination of S/CO	
ACTIONS TO BE TAKEN:	Applicable Sections									
Identify prior collections	610.48(d)(1)	610.48(d)(1)		610.48(d)(2)	610.48(d)(2)	610.48(d)(2)		610.48(d)(3)	610.48(d)(4)	
Quarantine prior in-date collections	610.48(f)(1), (f)(2), (f)(3)	610.48(f)(1), (f)(2), (f)(3)		610.48(f)(1), (f)(2), (f)(3)	610.48(f)(1), (f)(2), (f)(3)	610.48(f)(1), (f)(2), (f)(3)		610.48(f)(1), (f)(2), (f)(3)	610.48(f)(1), (f)(2), (f)(3)	
Notify consignees to quarantine										
Consignees perform quarantine of prior collections										
Exemptions from quarantine	610.48(g)(3)(iii)[5]	610.48(g)(3)(iii)[5]	610.48(g)(3)(i)		610.48(g)(3)(iv)[7]		610.48(g)(3)(ii)			
Perform further testing									610.48(i)(1)(i)[13]	610.48(i)(1)(ii)[14]
Perform optional further testing	610.48(i)(2)(i)[6]	610.48(i)(2)(i)[6]			610.48(i)(2)(ii)[8]			610.48(i) (2)(iii)[10]		
Notify consignees of test results	610.48(i)(3)(i) 610.48(i)(3)(ii)	610.48(i)(3)(i) 610.48(i)(3)(ii)		610.48(i)(3)(ii)	610.48(i)(3)(i) 610.48(i)(3)(ii)	610.48(i)(3)(ii)		610.48(i)(3)(i) 610.48(i)(3)(ii)	610.48(i)(3)(i) 610.48(i)(3)(ii)	610.48(i)(3)(i) 610.48(i)(3)(ii)
Release prior collections from quarantine	610.48(j)(3)(ii)[5]	610.48(j)(3)(ii)[5]			610.48(j)(3)(iii)[9]			610.48(j)(3)(iv)[11]	610.48(j)(3)(i)[15]	
Destroy or label prior collections	610.48(k)	610.48(k)		610.48(k)	610.48(k)	610.48(k)		610.48(k)	610.48(k)	610.48(k)
Notify transfusion recipients	610.49(a)(6)	610.49(a)(6)		610.49(a)(7)	610.49(a)(8)			610.49(a)(9)[12]	610.49(a)(10)[16]	610.49(a)(11)

[1] "EIA" means enzyme linked immunosorbant assay.
[2] "RIBA 2.0" means HCV 2.0 strip immunoblot assay.
[3] "RIBA 3.0" means HCV 3.0 strip immunoblot assay.
[4] "S/CO" means "Signal to cut off."
[5] If further testing using an appropriately chosen supplemental test for HCV was performed and the result was negative.
[6] May perform further testing using an appropriately chosen licensed supplemental test for HCV.
[7] If further testing using an HCV EIA 3.0 screening test or an HCV RIBA 3.0 supplemental test was performed and the result was negative.
[8] May perform further testing using an HCV EIA 3.0 screening test or a licensed supplemental test for HCV. If an HCV EIA 3.0 screening test is performed and is repeatedly reactive, may perform further testing using a licensed supplemental test for HCV.
[9] If further testing using an HCV EIA 3.0 screening test or a licensed supplemental test for HCV was performed and the result was negative.
[10] May perform further testing using a licensed multiantigen screening test for HCV or a licensed supplemental test for HCV.
[11] If further testing using a licensed multiantigen screening test for HCV or a licensed supplemental test for HCV was performed and the result was negative.
[12] If further testing using a licensed multiantigen screening test for HCV or a licensed supplemental test for HCV was performed and the result was positive.
[13] Using a licensed supplemental test for HCV.
[14] No frozen or fresh sample is available for further testing.
[15] If the licensed supplemental test for HCV is negative.
[16] If the licensed supplemental test for HCV is positive.

Dated: December 3, 1999.

Jane E. Henney,
Commissioner of Food and Drugs.

Donna E. Shalala,
Secretary of Health and Human Services.
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 482

[HCFA–3014–P]

RIN 0938–AJ29

Medicare and Medicaid Programs; Hospital Conditions of Participation: Laboratory Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require hospitals that transfuse blood and blood products to prepare and follow written procedures for appropriate action when it is determined that blood and blood products the hospitals received and transfused are at increased risk for transmitting hepatitis C virus (HCV); quarantine prior collections from a donor who is at increased risk for transmitting HCV infection; notify transfusion recipients, as appropriate, of the need for HCV testing and counseling; and extend the records retention period to 10 years.

These changes are based on recommendations by the Secretary's Advisory Committee on Blood Safety and Availability. The intent is to aid in the prevention of HCV infection and to create opportunities for disease prevention many years after recipient exposure to a donor.

DATES: We will consider written comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on or before January 16, 2001.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, U.S. Department of Health and Human Services, P.O. Box 8010, Attention: HCFA–3014–P, 7500 Security Boulevard, Baltimore, Maryland 21244–8010.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or,
Room C5–09–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Because of staffing and resource limitations, we cannot accept audio, visual, or facsimile (FAX) copies of comments. In commenting, please refer to file code HCFA–3014–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Mary Collins, (410) 786–3189.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 1861(e) of the Social Security Act (the Act), hospitals must meet certain conditions in order to participate in the Medicare program. These conditions are intended to protect patient health and safety and ensure that high-quality care is provided. Hospitals receiving payment under Medicaid must meet the Medicare conditions of participation.

Regulations containing the Medicare conditions of participation for hospitals are located in the Code of Federal Regulations at 42 CFR part 482. The condition of participation for hospital laboratory services at § 482.27 (c) currently specifies the steps hospitals must take when they become aware they have administered potentially human immunodeficiency virus (HIV) infectious blood or blood products to a patient. The more detailed requirements for laboratories appear in 42 CFR part 493, which sets forth requirements for all laboratories participating in the Medicare, Medicaid, and Clinical Laboratory Improvement Amendments (CLIA) programs.

The Health Care Financing Administration (HCFA) and the Food and Drug Administration (FDA) are responsible for ensuring the safety of blood and blood products.

Blood banks (referred to as blood establishments in FDA regulations) are subject to the FDA regulations for current good manufacturing practices and additional standards for the manufacture of blood and blood components under 21 CFR parts 211, 600, 601, 606, 610, and 640. Laboratories that provide transfusion services are subject to CLIA requirements for quality control and health and safety standards (42 CFR part 493, subpart K). Laboratories in hospitals are also subject to the hospital conditions of participation for adequacy of laboratory services (42 CFR 482.27). HCFA coordinates inspections of hospital-based blood banks with the FDA to minimize duplication of effort and reduce the burden on affected facilities.

Hepatitis C virus (HCV) was first discovered and established as a causative agent of transfusion-associated hepatitis in the late 1980s. In October 1989, FDA's Blood Products Advisory Committee (BPAC) first discussed steps to identify and quarantine potentially HCV infectious blood and blood products remaining in storage and notify recipients of the blood. (These steps are known as "lookback.") BPAC advised that there was insufficient information available concerning HCV infection to propose either product quarantine or notification of recipients transfused with products prepared from prior collections from donors later determined to be at increased risk for transmitting HCV.

In 1996, the Tenth Report of the U.S. House of Representatives Committee on Government Reform and Oversight (H. Rpt. No. 104–746) focused attention on the significant public health problem that HCV infections pose for the nation. HCV infection is the most common blood-borne infection in the United States. The Centers for Disease Control and Prevention (CDC) estimate that during the 1980s, as many as 180,000 new HCV infections occurred each year. Since 1989, the annual number of new infections has declined by 80 percent. Currently approximately 4 million individuals in the United States are believed to be chronically infected with HCV.

In 1996, however, data from the Third National Health and Nutritional Examination Survey conducted from 1988 to 1994 indicated that chronically infected persons may not be aware of their infection. Despite progression of the disease, HCV infection is usually asymptomatic for about 20 years, but in many cases causes serious liver injury that is thought to be the leading cause of late stage liver failure and cirrhosis in the United States. HCV is also thought to play a significant role in the development of liver cancer. Between 8,000 and 12,000 deaths annually result from HCV-related chronic liver disease.

HCV can be transmitted in a number of ways, including sharing of drug use equipment among injection drug users, blood transfusion and solid organ transplants from infectious donors, hemodialysis, occupational exposure to blood, perinatal exposure of infants to infected mothers, and unprotected sex.

In response to scientific data that show that HCV is transmissible through infectious blood and blood products, FDA has implemented an extensive system of donor screening and testing procedures performed before, during, and after a donation takes place to help prevent the transfusion of blood and blood products that are infected with HCV.

Blood establishments are currently testing each donation of blood and blood components for the antibody to HCV. FDA restricts the use, for transfusion or further manufacture, of donations testing repeatedly reactive for the antibody to HCV. Repeatedly reactive means that the initial HCV antibody screening test is reactive (in which case it is retested in duplicate), and that one or both of the duplicate tests are reactive.

As a result of the FDA blood donor screening and testing procedures, the risk of transmitting HCV infections through blood transfusion is very low. Despite the best practices of blood establishments, however, a person may donate blood early in the infection process when the antibody to HCV is not detectable by the screening test but is nevertheless present in the donor's blood (a so-called "window" period). If the donor attempts to donate blood at a later date, the test for the antibody to HCV may at that time be repeatedly reactive. Under these circumstances, previously collected blood and blood products would be at increased risk for transmitting HCV, and a recipient of a blood product collected during the window period would not know whether the donor was infected with HCV at the time of the previous donations. Approximately 7 percent of the 3.9 million Americans believed to be chronically infected with HCV were infected as a result of transfusion of blood components before the availability of donor screening tests or due to past use of non-viral-inactivated plasma derivative products.[1]

As a result of advances in identifying the presence of HCV, the window period continues to shrink. The FDA proposed rule titled "Current Good Manufacturing Practice for Blood and Blood Components: Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk of Transmitting HCV Infection ('Lookback')," published elsewhere in this issue of the **Federal Register**, provides more information on the length of the window period and discusses various diagnostic modalities for HCV infection.

The incidence of transfusion-transmitted HCV infection has decreased markedly since the implementation of donor screening for HCV and viral inactivation of clotting factors and intravenous immune globulins. Blood establishments implemented donor screening tests after a single antigen, enzyme linked immunosorbent assay (EIA) for antibody to HCV (HCV EIA 1.0 screening test) was licensed in May 1990. FDA issued a memorandum to all registered blood establishments in November 1990, "Testing for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)," recommending use of approved donor screening tests for antibody to HCV. A lookback program was not recommended because: (1) Screening tests available at the time could not distinguish between on-going infection and recovery, thus rendering unclear the meaning of a reactive test for any one individual; (2) donor screening for antibody to HCV did not include confirmatory testing, and most notification would have been based on false positive donor test results; (3) there was limited knowledge of routes of transmission for HCV other than parenteral; and (4) no potential long-term benefits of therapy were known.

A significantly more sensitive multiantigen screening test (HCV EIA 2.0 screening test) was licensed in March 1992. In June 1993, FDA licensed an HCV 2.0 strip immunoblot assay (HCV RIBA 2.0), also known as recombinant immunoblot assay (RIBA), a supplemental test for antibody to HCV. Supplemental tests for antibody to HCV are used to distinguish false positive test results from true repeatedly reactive screening test results. Following the December 1993 BPAC meeting, BPAC recommended product quarantine of prior collections from a donor who later tests repeatedly reactive for the antibody to HCV and tests positive or indeterminate on a supplemental test; however, BPAC only marginally endorsed consignee notification for the purpose of transfusion recipient notification because the public health benefit of the notification was not clear.

The Public Health Service Advisory Committee on Blood Safety and Availability (PHS Advisory Committee) discussed improvements in the treatment and management of HCV infection and improvements in testing for the antibody to HCV at public meetings held on April 24, 1997 and on August 11 and 12, 1997. The PHS Advisory Committee also discussed the public health benefits of notifying transfusion recipients receiving prior collections from a donor who subsequently tests repeatedly reactive for evidence of HCV infection.

Following the Department of Health and Human Services' acceptance of recommendations from the PHS Advisory Committee, the FDA developed guidance, published in March 1998, regarding procedures for testing blood for HCV, quarantining blood and blood products, and notifying patients who may have received HCV-infected blood and blood products.

At public meetings on November 24, 1998 and January 28, 1999, the PHS Advisory Committee reconsidered the issue of recipient notification related to repeatedly reactive results on the single antigen screening test. The PHS Advisory Committee recommended that targeted lookback should be initiated based on a repeatedly reactive HCV EIA 1.0 screening test result on a repeat donor unless a supplemental test was performed and the result did not indicate increased risk of HCV infection, or, in the absence of a supplemental test result, unless the signal to cut off value of the repeatedly reactive HCV EIA 1.0 screening test was less than 2.5 or follow-up testing of the donor was negative.

FDA published a notice in the **Federal Register** on June 22, 1999 (64 FR 33309) announcing the availability of a draft guidance titled "Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of Donor Test Results for Antibody to HCV (Anti-HCV)." Consistent with the recommendations of the PHS Advisory Committee, this revised draft guidance addressed lookback actions related to donor screening by HCV EIA 1.0 and also recommended that the search of historical testing records of prior donations from donors with repeatedly reactive EIA 1.0, EIA 2.0, or EIA 3.0 screening tests for HCV should extend back indefinitely to the extent that electronic or other retrievable records exist.

In the proposed rule titled "Medicare and Medicaid Programs; Hospital Conditions of Participation; Provider Agreements and Supplier Approval" (HCFA–3745–P), published on

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[1] M.J. Alter, "Epidemiology of Hepatitis C," Hepatology 26.3 (1997): 62s–65s.

December 19, 1997 in the **Federal Register** (62 FR 66726), we proposed to revise the hospital conditions of participation to focus on patient care outcomes, reflect a cross-functional view of the hospitals' organization and patient treatment, encourage flexibility in meeting quality standards, and eliminate outdated and redundant evaluation criteria. The lookback requirement for HIV infectious blood and blood products was the only lookback under this proposed condition. The HIV requirement was restated without change in the existing § 482.27(c). This requirement would merely be redesignated under this proposed rule. We are still in the process of analyzing comments we received on the December 19, 1997 proposed rule as we develop the final rule.

Should the restructuring of part 482 in the December 19, 1997 proposed rule become final before we publish this proposed rule (HCFA–3014–P) as a final rule, the provisions dealing with potentially HCV infectious blood and blood products would be set forth in the final rule (HCFA–3014–F) as a revision to § 482.145.

II. Provisions of This Proposed Rule

In order to have consistent industry standards for potentially infectious blood and blood products, we propose to adopt as our requirements for hospitals the procedures for HIV and HCV proposed by the FDA published elsewhere in this issue of the **Federal Register**. Since our proposed rule is in concert with the FDA's proposed rule, we will consider comments we receive in conjunction with the FDA. We specifically request comments on the reasonableness of our adopting the FDA requirements.

The FDA proposed rule for HCV lookback would require the search of historical testing records of prior donations from donors with repeatedly reactive EIA 1.0, EIA 2.0, or EIA 3.0 screening tests for HCV to extend back indefinitely for computerized electronic records and to January 1, 1998 for other retrievable records. Under the FDA rule, the blood establishment would notify the hospital if it supplied the hospital with potentially HIV or HCV infectious blood.

Our proposed rule would amend the hospital conditions of participation to require a hospital to develop agreements with outside blood banks under which the blood bank would notify the hospital when it has supplied the hospital with potentially HCV infectious blood and blood products. This proposed rule would establish a lookback, similar to that now in effect for HIV, requiring hospitals, when notified by blood banks, to quarantine prior collections from a donor who later tests repeatedly reactive for evidence of HCV infection, and to notify transfusion recipients based on further testing of such a donor, as appropriate.

In existing § 482.27, we propose to remove the designation for paragraph (a) and redesignate paragraphs (b) and (c) as (a) and (b), respectively. In addition, we would add a definition of potentially HCV infectious blood and blood products as prior collections from a donor who tested repeatedly reactive for evidence of HCV infection on a single antigen screening test with a signal to cut off value equal to or greater than 2.5 for at least two of the three EIA tests, or the signal to cut off value cannot be calculated, and with no record of further testing; who tests or tested repeatedly reactive for evidence of HCV infection and positive on a multiantigen supplemental test licensed at an earlier or later date by FDA; who tested repeatedly reactive for evidence of HCV infection and indeterminate on a supplemental test for HCV, unless an indeterminate RIBA 3.0 supplemental test result was obtained or a negative EIA 3.0 or negative RIBA 3.0 test result was subsequently obtained; who tested repeatedly reactive for evidence of HCV infection on a multiantigen screening test with no record of further testing; or who tested repeatedly reactive for evidence of HCV infection on a single antigen screening test and repeatedly reactive on a subsequent multiantigen screening test, unless a negative supplemental test result or an indeterminate RIBA 3.0 supplemental test result was obtained. (See proposed § 482.27(b)(2).)

Our regulations currently require that a hospital that regularly uses the services of an outside blood bank have an agreement with the blood bank that requires the blood bank to notify the hospital if the blood bank has supplied the hospital with potentially HIV infectious blood. This proposed rule would amend that provision to also require notification in the case of potentially HCV infectious blood. (See proposed § 482.27(b)(3).) In addition, we would revise our regulations to include HCV-relevant testing required by FDA. (See proposed § 482.27(b)(3)(ii).)

As a new provision, we would require hospitals to include in agreements with blood banks that the blood bank notify the hospital under FDA's proposed 21 CFR 610.48(h)(3)(i) and (h)(3)(ii), and (i)(3)(i) and (i)(3)(ii). The FDA's proposed rule would require hospitals to perform a lookback of blood or blood products collected from a donor extending back indefinitely for computerized electronic records and to January 1, 1998 for other retrievable records, or to the date 12 months before the donor's most recent negative multiantigen screening test for the antibody to HCV, whichever is the later date. (See proposed § 482.27(b)(3)(ii) and (b)(3)(iii).)

We would also revise our regulations to apply the provisions regarding the quarantine of potentially HIV infectious blood and blood products currently set forth at § 482.27(c)(3) to potentially HCV infectious blood and blood products. In addition, we would require hospitals to destroy or label prior collections of blood or blood products held in quarantine as set forth in FDA's proposed 21 CFR 610.48(k). (See proposed § 482.27(b)(4).)

Hospitals are currently required to maintain clinical records on all patients for 5 years. We would add a new provision requiring hospitals to maintain adequate records of the source and disposition of all units of blood and blood products for at least 10 years from the date of disposition. Hospitals would be required to increase the record retention period yearly until 10 years of records from the date of disposition have accrued. (For example, the first year after the effective date of this regulation, hospitals would have 6 years of records, the second year after the effective date, 7 years, etc., until 10 years have been reached.) Hospitals would then be able and expected to maintain 10 years of patient records. (See proposed § 482.27(b)(5).) This is necessary to increase opportunities for disease prevention or treatment years after a recipient has been exposed to a donor later determined to be at risk of transmitting a disease through transfusion.

The FDA has proposed changes in its requirement for patient notification to allow transfusion services to make three attempts to either notify patients directly or notify the attending physician or the physician who ordered the blood. We are proposing that hospitals follow the same notification procedures with regard to potentially HIV and HCV infectious blood and blood products. For consistency, we are also proposing that the HIV lookback requirements be changed to conform to the requirements for HCV lookback. (See proposed § 482.27(b)(6).)

We propose to add a new paragraph (c) requiring hospitals to comply with FDA regulations pertaining to the appropriate testing and quarantining of infectious blood and blood products and to the notification and counseling of recipients that may have received infectious blood and blood products.

Note that our Medicaid regulations at § 441.17 ("Laboratory services") provide that the State plan must pay for laboratory services furnished by a hospital-based laboratory meeting the requirements for Medicare participation set forth in § 482.27. Therefore, the provisions of this proposed rule would also affect the Medicaid program. That is, in order for the laboratory services furnished by a hospital-based laboratory under Medicaid to be covered under the State plan, the hospital would have to meet the new requirements set forth in this proposed rule.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the provisions summarized below that contain information collection requirements:

Section 482.27 Condition of participation: Laboratory services

In summary, § 482.27(b)(3) requires a hospital that regularly uses the services of an outside blood bank to establish and maintain a written agreement with the blood bank that governs the procurement, transfer, and availability of blood and blood products. This section also requires the blood bank to notify the hospital within 3 calendar days after the date on which the donor tested repeatedly reactive for evidence of HCV infection or after the date on which the blood establishment was made aware of other test results indicating evidence of HCV infection, as outlined in (i) through (iii).

In summary, § 482.27(b)(5) requires a hospital to maintain, in a manner that permits prompt retrieval, adequate records of the source and disposition of all units of blood and blood products for at least 10 years from the date of disposition. In addition, this section requires a hospital to maintain a fully funded and documented plan that demonstrates how the hospital will transfer these records to another hospital or other entity if the former hospital ceases operation for any reason.

In summary, § 482.27(b)(6) requires a hospital that has administered potentially HIV or HCV infectious blood or blood products (either directly through its own blood bank or under an agreement), or released the blood or blood products to another entity or individual, to make at least three attempts to notify the patient, or to notify the attending physician or the physician who ordered the blood or blood product and ask the physician to notify the patient, that potentially HIV or HCV infectious blood or blood products were transfused to the patient. Time frame and notification requirements are outlined in §§ 482.27(b)(6), (b)(7), and (b)(8).

In summary, § 482.27(b)(9) requires a hospital to maintain policies and procedures for notification and documentation that conform to Federal, State, and local laws, including requirements for confidentiality and medical records.

In summary, § 482.27(b)(10) requires a physician or hospital, if the patient has been adjudged incompetent by a State court, to notify a legal representative designated in accordance with State law. If the patient is competent, but State law permits a legal representative or relative to receive the information on the patient's behalf, the physician or hospital must notify the patient or his or her legal representative or relative. If the patient is deceased, the physician or hospital must continue the notification process and inform the deceased patient's legal representative or relative. If the patient is a minor, the legal guardian must be notified.

While all of the information collection requirements referenced above are subject to the Paperwork Reduction Act, the burden associated with these requirements is captured and discussed in the FDA's proposed regulation titled "Current Good Manufacturing Practice for Blood and Blood Components: Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk of Transmitting HCV Infection ('Lookback')," Docket No. 98N–0609. Therefore, we are assigning 1 token hour of burden to these requirements.

The FDA's rule assigns a one-time burden of 16 hours for hospitals to develop procedures to conduct lookback activities. HCFA also requires hospitals that currently receive blood from an outside blood bank to have an agreement with the blood bank that governs the procurement, transfer, and availability of blood and blood products for HIV. Our proposed rule would require those hospitals to modify their current agreements to include HCV. Although the FDA does not require hospitals to have this agreement, we believe that the time necessary to perform this task would be minimal and is already captured in the 16 hours allotted in the FDA rule.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirement. These requirements are not effective until they have been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn: John Burke, HCFA–3014–P, Fax number: (410) 786–0262,

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn.: Allison Herron Eydt, HCFA Desk Officer, Fax numbers: (202) 395–6974 or (202) 395–5167.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the DATES section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of the proposed rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). Because the projected cost of this proposed rule falls below the threshold for a major rule, we have determined that this proposed rule is not a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. We believe that this proposed rule is not an economically significant rule as described in the Executive Order, nor a significant action as defined in the Unfunded Mandates Reform Act. Aggregate impacts of the rule, and aggregate expenditures caused by the rule, would not reach $100 million for either the public or the private sector. As discussed in the following paragraphs, because of the lack of information to characterize the number and volumes of affected blood and blood products in hospitals that might qualify as small business entities, the impact on small business establishments is uncertain.

It is clear that a number of hospitals that provide blood transfusions will be affected by the implementation of this proposed rule and that a substantial number of those entities will be required to make changes in their operations. For these reasons, we have prepared the following voluntary analysis. This analysis, in combination with the rest of the preamble, is consistent with the analysis set forth by the RFA.

B. Anticipated Effects

1. Effects on Hospitals

This proposed rule would require hospitals that transfuse blood and blood products to (1) prepare and follow written procedures for appropriate action when it is determined that blood and blood products the hospitals received and transfused are at increased risk for transmitting HCV; (2) quarantine prior collections from a donor who is at increased risk for transmitting HCV infection; (3) notify transfusion recipients, as appropriate, of the need for HCV testing and counseling; and (4) extend the records retention period to 10 years.

The proposed rule would affect hospitals that transfuse blood and blood components. We estimate that there are approximately 6,200 Medicare- and Medicaid-participating hospitals. The CDC estimates that 303,676 recipients may need to be notified due to the historical review.

As indicated previously, the proposed rule would require hospitals to notify transfusion recipients who received prior collections from a donor at increased risk for transmitting HCV. The hospital may notify the attending physician or notify the recipient directly. If the transfusion recipient is a minor or adjudged incompetent by a State court, the hospital or physician would be required to notify the recipient's legal representative. The proposed rule is expected to generate one-time costs and some additional annual costs for hospitals. One-time costs include the development of procedures and policies for recipient notification and the agreement a hospital should have with a blood bank if it uses the services of an outside bank. We assume that these tasks will involve a review of current procedures and policies (for example, for HIV lookback) and the adaptation or modification of current procedures and policies to address the provisions of this rule, and we estimate, in consultation with the FDA, that the tasks will require an average of 16 hours per facility. The Bureau of Labor Statistics estimates that the total hourly compensation in 1997 for a staff medical technologist performing the review would be $25.67. Thus, we estimate the total one-time cost for all 6,200 hospitals to develop HCV lookback procedures to be $2,546,464 (16 x $25.67 x 6,200). (See Table in this section.)

For notifications resulting from donors tested on or after the effective date of the final rule under FDA's proposed § 610.48(a)(b), the hospital's required notification effort must include a minimum of three attempts to notify the transfusion recipient, and the hospital must complete the process within a maximum of 12 weeks from the time it receives from the blood establishment the results of the donor's supplemental test for HCV. The following estimated cost for compliance with provisions concerning the prospective review and recipient notification is based on: (1) FDA's estimation of the number of recipient notification multiplied by the unit cost of each notification. First, the number of annual affected blood donations was calculated as the product of 12 million donations, an 80 percent donor rate, and a 12 percent HCV positive donor rate. (2) The resulting 11,520 figure was then adjusted upward to 12,816 to reflect the difference found between the number of donors triggering lookback and the component notifications reported as interim results from a recent survey conducted by the Centers for Disease Control and prevention (CDC). (3) The cost per attempted notification is estimated at $165, which reflects the average cost quoted by a third party contractor for matching, notifying, testing, counseling, and documenting lookback efforts for over 100 hospitals.[2] Although the proposed rule does not specifically require hospitals to perform testing and counseling services many do. These assumptions yield an annual cost of $2,114,640 (12,816 × $165) for hospitals to conduct prospective lookback activities. (See Table in this section.)

For notifications resulting from donors tested before the effective date of the final rule under FDA's proposed § 610.48(c)(d), the hospital must complete the notification effort within 1 year from the time it receives notification from the blood establishment. The recipient notification provided by the hospital must include a basic explanation to the recipient, referral for counseling and further testing, and documentation of the notification or attempts to notify the attending physician or recipient. Notification resulting from the review of historical testing records and the identification of prior collections are to be completed by the hospital within one year of receipt of notification from the blood establishment. The recipient notification provided by the hospital would include a basic explanation to the recipient, referral for counseling and further testing and documentation of the notification or attempts to notify the physician of record or recipient. The estimated one-time cost of recipient notification associated with the review of historical testing records is $50,106,540. This is based on the CDC estimate of blood components of about 303,676 recipients identified for notification produced from donations (188,448 from 1990 to mid-1[illegible]2 and 115,228 from 1990 to mid-1992), and the average cost of $165 of staff time per component for recipient notification. Thus, the total one-time cost to hospitals for conducting the historical "lookback" efforts is estimated to be $52,653,004 ($2,546,464 to develop procedures and $50,106,540 for recipient notification). (See Table in this section.)

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[2] Richard Quattrocchi, Home Access Health Corporation.

SUMMARY OF ESTIMATED COST OF PROPOSED RULE

Type of cost	Total one-time cost	Total annual cost
Development of HCV Lookback Procedures	[1] $2,546,464.00	
Prospective Review		[3] $2,114,640.00
Historical Review	[2] 50,106,540.00	
Total	52,653,004.00	2,114,640.00

[1] Based on 6,200 hospitals.
[2] Based on the CDC estimate of the total number of blood products (303,676).
[3] Based on the CDC estimate of 12,816 repeat-donor repeatedly reactive donations per year.

2. Effects on Beneficiaries

Timely notification of HCV infection benefits beneficiaries, both directly and indirectly, in several important ways. First, although factors predicting the severity of liver disease due to HCV have not been well defined, recent data indicate that increased alcohol intake is associated with more severe liver disease. According to CDC, even moderate amounts of alcohol in patients with chronic HCV might exacerbate liver disease. Consequently, an HCV-infected patient identified by the proposed lookback program could minimize liver damage associated with alcohol consumption by restricting his or her intake.

Furthermore, while other percutaneous exposures currently represent the most common means of infection, some case-control studies have also reported that HCV can be transmitted through sexual contact. In fact, 15 to 25 percent of the acute HCV patients who were reported to CDC's sentinel counties surveillance system have a history of sexual exposure in the absence of other risk factors. Infected patients identified through the proposed lookback procedures could take steps to protect sexual partners from the risk of infection.

It is also important to note that identified infected patients would benefit from counseling and treatment with available therapies. Studies of patient characteristics and responsiveness to therapy indicate that best results are achieved if treatment is initiated earlier in the disease, when patients are younger and have not yet developed cirrhosis.[3] For example, Bennett et al. estimated the cost effectiveness of a single course (6 months) of treatment with interferon alfa and found that patients at age 20 gained an average of 3.1 years of life, at $500 per year of life extended (YLE); 30-year-old patients gained an average of 1.9 years of life, at $1200/YLE; patients starting treatment at age 50 gained 6 months of life, at $2900/YLE; and 70-year-old patients gained an average of 22 days, at $62,000/YLE.[4]

Another benefit of timely notification is that care providers for the infected patient would be aware of the infection and could use additional precautions to avoid the risk of exposure to blood or wounds when providing care.

Finally, infected patients would be informed that they must not donate blood. The proposed lookback program would, therefore, help to ensure the safety and continued availability of the national blood supply.

3. Effects on Medicaid and Medicare Programs

We expect this proposed rule to generate a one-time cost to develop procedures for recipient notification. We estimate that this cost will be less than $5 million. Finally, the total one-time cost for the development of HCV lookback procedures and for recipient notification associated with the review of historical testing records is estimated to be $52,653,004 ($2,546,464 + $50,106,540). These one-time costs would likely be distributed among health programs as follows: Medicare, 33.3 percent; private health insurance, 30.5 percent; Federal Medicaid, 9.8 percent; State Medicaid, 5.8 percent; other private funds, 7.9 percent; other Federal funds, 6.9 percent; and other State and local funds, 5.7 percent. The total Federal distribution would be 50 percent; that is, 33.3 percent for Medicare, 9.8 percent for Medicaid, and 6.9 percent for other Federal sources. The degree to which the Federal programs fund these amounts will vary: Medicaid providers may be able to pass on costs through the States depending on the method of payment the State Medicaid program has adopted, while Medicare payments could be limited because of the hospital outpatient prospective payment system and increase only in accordance with specific rules regarding coverage of HCV testing for patients who have been exposed to HCV-infected blood, including those identified through the FDA lookback process.

It is important to note that, although this proposed rule presents the costs that would be imposed on all payers of hospital services, including the Medicare and Medicaid programs, it merely conforms to the FDA's proposed rule and has no additional economic impact. It simply repeats the analysis performed in the FDA companion rule and presents the same total costs to hospitals.

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[3] G.L. Davis and J.Y.N. Lau, "Factors Predictive of a Beneficial Response to Therapy of Hepatitis C," Hepatology 26.3 (1997): 122s–126s.

[4] W.G. Bennett et al., "Estimates of the Cost-Effectiveness of a Single Course of Interferon-alfa2b in Patients with Histologically Mild Chronic Hepatitis C," Annals of Internal Medicine, 127.10 (1997): 855–865.

C. Alternatives Considered

The PHS Advisory Committee discussed improvements in the treatment and management of HCV infection and improvements in testing for the HCV antibody at public meetings held in April and August 1997. The Advisory Committee recommended that blood establishments and hospitals notify previous recipients of blood components from donors who tested positive for HCV upon a subsequent donation.

Following the Department of Health and Human Services' acceptance of recommendations from the PHS Advisory Committee, FDA developed industry guidelines for testing blood for HCV, quarantining blood and blood products, and notifying patients who may have received HCV-infected blood and blood products. We explored the possibility of using a program memorandum to notify hospitals that they are required to follow FDA guidelines. We believe, however, that we should promulgate an enforceable regulation.

The following discussion considers some key elements of successful lookback efforts, describes certain challenges identified in lookback programs already in operation, and reviews the value of targeted recipient notification and treatment efforts.

The lookback provisions of the proposed rule can be characterized as a "targeted lookback" program, meaning that the notification of infection risk is limited to, or targeted at, individuals identified as recipients of blood from donors subsequently found to be infected with HCV. This program is distinct from "general lookback" programs, which are aimed at all patients who received blood before the onset of screening and which include the recommendation that the patients be tested for evidence of infection. General and targeted lookback programs may be complementary. General lookback can be conducted in a variety of ways, including use of the broadcast media, education, and letter campaigns addressed to physicians or patients. By contrast, targeted lookback can only be performed successfully if the transfusion service is aware that the donor subsequently tested positive, if donor and product disposition records are available to link blood components with the identified donors, and if the physician or hospital knows the recipient's current whereabouts. Hospitals would locate recipient records for all transfused units from an affected donor and would have current recipient or physician address information available so that the hospitals could deliver notifications. Ideally, the recipient would still be alive and would respond to the notification for testing and treatment, if appropriate.

However, recent experiences among Canadian facilities implementing HCV lookback suggest that the effectiveness of targeted lookback may vary depending on the extent to which conditions for success exist within a community. For example, an analysis of targeted lookback in Quebec province found that, because the records were inadequate or the whereabouts of recipients were unknown, hospitals could provide information on only approximately 50 percent of the components involved.[5] A Canadian Red Cross Center in Toronto reported on another lookback challenge. Although the establishment was able to identify 5,301 affected components, trace 3,209 of those to hospitals, obtain responses for 2,807 (87 percent) of the units, and identify 2,437 as having been transfused, 45 percent of the transfused patients had already died. Of those remaining, the Canadian facilities finally tested only 184 patients (8 percent of the transfused patients) as a result of the lookback effort although as many as 68 percent of those tested were found to be HCV positive.[6]

Despite the difficulties of implementing targeted lookback, it is considered a valuable means of reaching patients at high risk for HCV. For example, a comparison of Canadian efforts in targeted lookback with general lookback through physician and public education found that a large number of patients and families were unaware of the transfusion episode. These recipients would not have been reached through the general lookback effort.[7]

Timely notification is important because studies of patient characteristics and responsiveness to therapy indicate that the best results are achieved if patients receive treatment when they are younger and have not yet developed cirrhosis.[8] The primary treatment for chronic HCV is alfa interferon therapy.[9] Of those patients who undergo interferon treatment, a reported 10 to 20 percent show a sustained response (SR) after 6 months of therapy, and 20 to 30 percent show an SR if therapy is continued for 12 months. However, alfa interferon produces a wide array of adverse side effects,[10] and some patients experience a relapse after therapy. Still, the benefits for patients identified for treatment through HCV lookback are likely to continue to increase as improved therapies are developed. For example, recent reports based on pilot studies and completed randomized controlled trials indicate that the combination of interferon alfa and ribavirin leads to higher virological SR rates (40 to 50 percent) than interferon alfa alone, which was administered in 6-month clinical trials.[11] FDA has recently approved the use of this combination therapy for HCV patients who suffer a relapse after initial therapy with interferon alone.

As discussed in section I of this document, the BPAC and PHS Advisory Committee have met a number of times to discuss HCV testing and other issues related to "HCV lookback." The PHS Advisory Committee made recommendations after considering alternative procedures to notify transfusion recipients. Alternative approaches for lookback are available but are not considered fully effective. Because of the importance of a safe national blood supply and because our mission is to protect the public health, we accepted the recommendations of the PHS Advisory Committee and did not select an alternative approach.

D. Conclusion

In addition to the prospective HIV lookback that hospitals are currently required to perform, hospitals would be required to conduct a lookback of transfusion recipients of potentially HCV-infected blood. This proposed rule would also require hospitals to have in their agreements with blood banks that blood banks notify hospitals after performing the FDA-mandated lookback. Therefore, we have prepared a voluntary analysis consistent with the analysis set forth by the RFA. We solicit public comments on the extent that any of the entities would be significantly economically affected by these provisions.

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[5] M. Goldman *et al.*, "Hepatitis C Lookback," Transfusion Medicine Review 12.2 (1998): 84–93.

[6] A. Wall *et al.*, "Hepatitis C Virus (HCV) Targeted Lookback Program," Transfusion 37 (1997): 392s.

[7] M. Goldman *et al.*, "Hepatitis C Lookback," Transfusion Medicine Review 12.2 (1998): 84–93.

[8] G.L. Davis and J.Y.N. Lau, "Factors Predictive of a Beneficial Response to Therapy of Hepatitis C," Hepatology 26.3 (1997): 122s–126s.

[9] A. Wall *et al.*, "Hepatitis C Virus (HCV) Targeted Lookback Program," Transfusion 37 (1997): 392s.

[10] G. Duscheiko, "Side Effects of Alpha interferon in Chronic Hepatitis C," Hepatology 26.3 (1997): 112s–119s.

[11] National Institutes of Health (NIH) Consensus Development Conference Panel Statement: Management of Hepatitis C, Hepatology 26.3 (1997): 2s–10s.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by OMB.

We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that it would not significantly affect the rights, roles, and responsibilities of States.

List of Subjects in 42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 42 CFR part 482 would be amended as set forth below:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 482.27, the designation for paragraph (a) is removed; paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively; redesignated paragraph (b) is revised; and a new paragraph (c) is added to read as follows:

§ 482.27 Condition of participation: Laboratory services.

* * * * *

(b) *Standard: Potentially infectious blood and blood products*—(1) Definition. Potentially human immunodeficiency virus (HIV) infectious blood and blood products are prior collections from a donor—

(i) Who tested negative at the time of donation but tests repeatedly reactive for the antibody to HIV on a later donation;

(ii) Who tests positive on the FDA-licensed, more specific test or other followup testing required by FDA; and

(iii) For whom the timing of seroconversion cannot be precisely estimated.

(2) *Definition.* Potentially hepatitis C virus (HCV) infectious blood and blood products are prior collections from a donor—

(i) Who tested repeatedly reactive for evidence of HCV infection on a single antigen screening test with a signal to cut off value equal to or greater than 2.5 for at least two of the three enzyme linked immunosorbent assay (EIA) tests, or the signal to cut off value cannot be calculated, and with no record of further testing;

(ii) Who tests or tested repeatedly reactive for evidence of HCV infection and positive on a multiantigen supplemental test licensed at an earlier or later date by FDA;

(iii) Who tested repeatedly reactive for evidence of HCV infection and indeterminate on a supplemental test for HCV, unless an indeterminate recombinant immunoblot assay (RIBA) 3.0 supplemental test result was obtained or a negative EIA 3.0 or negative RIBA 3.0 test result was subsequently obtained;

(iv) Who tested repeatedly reactive for evidence of HCV infection on a multiantigen screening test with no record of further testing; or

(v) Who tested repeatedly reactive for evidence of HCV infection on a single antigen screening test and repeatedly reactive on a subsequent multiantigen screening test, unless a negative supplemental test result or an indeterminate RIBA 3.0 supplemental test result was obtained.

(3) *Services furnished by an outside blood bank.* If a hospital regularly uses the services of an outside blood bank, it must have an agreement with the blood bank that governs the procurement, transfer, and availability of blood and blood products. The agreement must require that the blood bank notify the hospital—

(i) Within 3 calendar days if the blood bank supplied blood and blood products collected from a donor who tested negative at the time of donation but tests repeatedly reactive for the antibody to HIV or HCV on a later donation or who is determined to be at increased risk for transmitting HIV or HCV infection;

(ii) Within 45 days of the test, of the results of the FDA-licensed, more specific test for HIV or HCV, as relevant, or other followup testing required by FDA; and

(iii) Within 3 calendar days if the blood bank supplied blood and blood products collected from a donor, whenever records are available, as set forth in FDA's 21 CFR 610.48(h)(3)(ii) and (i)(3)(ii), in instances in which the donor—

(A) Tested repeatedly reactive on the screening test and positive on a supplemental test for HCV performed on the repeatedly reactive sample;

(B) Tested repeatedly reactive on the screening test and indeterminate on a supplemental test for HCV; or

(C) Tests repeatedly reactive on the screening test with no record of a supplemental test for HCV performed on the repeatedly reactive sample and no record of a negative licensed screening test performed on the same donor.

(4) *Quarantine and disposition of blood and blood products pending completion of testing.* If the blood bank (either internal or under an agreement) notifies the hospital of the repeatedly reactive HIV or HCV screening test results, the hospital must determine the disposition of the blood or blood product and quarantine all blood and blood products from previous donations in inventory.

(i) If the blood bank notifies the hospital that the result of the FDA-licensed, more specific test or other followup testing required by FDA is negative, absent other informative test results, the hospital may release the blood and blood products from quarantine.

(ii) If the blood bank notifies the hospital that the result of the FDA-licensed, more specific test or other followup testing required by FDA is positive, the hospital must—

(A) Dispose of the blood and blood products; and

(B) Notify the transfusion recipients as set forth in paragraph (b)(6) of this section.

(iii) If the blood bank notifies the hospital that the result of the FDA-licensed, more specific test or other followup testing required by FDA is indeterminate, the hospital must destroy or label prior collections of blood or blood products held in quarantine as set forth in FDA's 21 CFR 610.48(k).

(5) *Recordkeeping by the hospital.* The hospital must maintain—

(i) Adequate records of the source and disposition of all units of blood and blood products for at least 10 years from the date of disposition;

(ii) The records in a manner that permits prompt retrieval; and

(iii) A fully funded plan to transfer these records to another hospital or other entity if the former hospital ceases operation for any reason.

(6) *Patient notification.* If the hospital has administered potentially HIV or HCV infectious blood or blood products (either directly through its own blood bank or under an agreement) or released the blood or blood products to another entity or individual, the hospital must take the following actions:

(i) Make at least three attempts to notify the patient, or to notify the attending physician or the physician who ordered the blood or blood product and ask the physician to notify the patient, that potentially HIV or HCV infectious blood or blood products were transfused to the patient.

(ii) Immediately notify the patient, or other individual as permitted under paragraph (b)(10) of this section, of the need for HIV or HCV testing and counseling.

(iii) If the physician is unavailable or declines to make the notification, make at least three attempts to give this notification to the patient or other individual.

(iv) Document in the patient's medical record the notification or attempts to give the required notification.

(7) *Timeframe for notification.* (i) *For donors tested on or after [effective date of final regulation].* For notifications resulting from donors tested on or after [effective date of final regulation] as set forth in FDA's 21 CFR 610.48(a)(b), the notification effort begins when the blood bank notifies the hospital that it received potentially HIV or HCV infectious blood and blood products and continues for 12 weeks unless—

(A) The patient is located and notified; or

(B) The hospital is unable to locate the patient and documents in the patient's medical record the extenuating circumstances beyond the hospital's control that caused the notification timeframe to exceed 12 weeks.

(ii) *For donors tested before [effective date of final regulation].* For notifications resulting from donors tested before [effective date of final regulation] as set forth in FDA's 21 CFR 610.48(c)(d), the notification effort begins when the blood bank notifies the hospital that it received potentially HCV infectious blood and blood products. The hospital must make at least three attempts to give notification and must complete the actions within 1 year of the date on which the hospital received notification from the outside blood service.

(8) *Content of notification.* The notification must include the following information:

(i) A basic explanation of the need for HIV or HCV testing and counseling.

(ii) Enough oral or written information so that the transfused patient can make an informed decision about whether to obtain HIV or HCV testing and counseling.

(iii) A list of programs or places where the patient can obtain HIV or HCV testing and counseling, including any requirements or restrictions the program may impose.

(9) *Policies and procedures.* The hospital must establish policies and procedures for notification and documentation that conform to Federal, State, and local laws, including requirements for the confidentiality of medical records and other patient information.

(10) *Notification to legal representative or relative.* If the patient has been adjudged incompetent by a State court, the physician or hospital must notify a legal representative designated in accordance with State law. If the patient is competent, but State law permits a legal representative or relative to receive the information on the patient's behalf, the physician or hospital must notify the patient or his or her legal representative or relative. If the patient is deceased, the physician or hospital must continue the notification process and inform the deceased patient's legal representative or relative. If the patient is a minor, the legal guardian must be notified.

(c) *General blood safety issues.* Hospitals must comply with regulations of the FDA as they pertain to blood safety issues in the following areas:

(1) Appropriate testing and quarantining of infectious blood and blood products.

(2) Notification and counseling of recipients that may have received infectious blood and blood products.

Authority: Sections 1818(d)(2) and 1818A(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2) and 1395i–2a(d)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 22, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Dated: March 27, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–28908 Filed 11–15–00; 8:45 am]

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Federal Register

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November 16, 2000

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 103

Temporary Flight Restrictions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 103

[Docket No. FAA–2000–8274; Notice No. 00–13]

RIN 2120–AH13

Temporary Flight Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to add a new temporary flight restriction regulation to address specific traffic management procedures for aircraft operations in the vicinity of aerial demonstrations or major sporting events. In addition, this action proposes to change the title of the regulation used to manage aircraft operations near hazard or disaster areas. This action also proposes to clarify the operating requirements for temporary flight restrictions in the vicinity of national disaster areas in the state of Hawaii. Finally this action proposes to amend the Ultralight Vehicle regulations to include all applicable references to temporary flight restrictions. The FAA is proposing these actions to enhance the safe and efficient use of airspace and to prevent any unsafe congestion of sightseeing and other aircraft operations in the vicinity of hazard areas, disaster areas, aerial demonstrations, or major sporting events.

DATES: Send your comments on or before January 16, 2001.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–8274 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment period closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–2000–XXXX." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office (GPO) electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm.htm or GPO's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

Petitions

On May 20, 1999, the Department of Defense (DoD) request that the FAA establish a temporary flight restriction (TFR) to prohibit all non-participating aircraft from operating over or within airspace used by the military aerial demonstration teams such as the United States Air Force Air Demonstration Squadron (the Thunderbirds), the United States Naval Flight Demonstration Team (the Blue Angels), the United States Army Parachute Team (the Golden Knights), or other DoD aircraft teams, while practicing or performing aerial demonstrations. DoD explains that when pilots are executing aerobatic manuevers, they operate aircraft in close formations and perform opposing solo maneuvers at high speeds. DoD contends that in those circumstances, the pilot reaction time necessary to safely "see and avoid" non-participating aircraft could be reduced. In the absence of a TFR, non-participating aircraft can enter, and have entered, both aerial demonstration practice area airspace and airshow airspace. DoD contends that the primary potential safety hazards experienced during air shows were non-participating aircraft that enter the airspace area used for aerial demonstration events.

Operators of DoD aircraft conduct their aerial demonstrations pursuant to a waiver of the requirements listed in 14 Code of Federal Regulations (CFR) part 91, including maximum airspeed and minimum altitude restrictions. In addition, specific DoD-issued requirements are applicable. However, DoD believes that using TFRs over aerial demonstration areas will provide sanitized airspace in which to conduct their aerobatic operations and formally prohibit non-participating aircraft from entering this airspace.

On July 19, 1999, the International Council of Air Shows (ICAS) petitioned the FAA to amend 14 CFR to include regulations that would provide for a safe airspace environment for air show operations (Docket Number 29664).

ICAS states that the high speeds and complex maneuvers common in today's air show performances make it impossible for the participating and nonparticipating aircraft to rely completely on the "see and avoid" method of collision avoidance. ICAS believes that TFRs would prevent a midair collision and protect spectators on the ground from possible death or injury and protect property from damage that could result from a non-participating aircraft intruding into aerial demonstration events. ICAS states that it received 48 reports of intrusions, between July 1989 and June 1997, by non-participating aircraft into airspace used by air shows or practice sessions for aerial demonstrations.

In addition, the FAA has received requests from Major League Baseball officials, Summer/Winter Olympics officials, the Tournament of Roses Football Game Committee, and others to temporarily restrict aircraft operations over various major sporting events such as the Olympic Games, the Tournament of Roses Football Game, and the Kodak Albuquerque International Balloon Fiesta.

The FAA has determined that the issues identified by DoD, ICAS, and others have merit. Therefore, the FAA believes a new section pertaining to the management of aircraft operations in the vicinity of aerial demonstrations or major sporting events is warranted. In addition, the FAA considers that this proposed rulemaking responds to the ICAS petition for rulemaking and considers the ICAS petition closed.

Past Practices

On January 25, 1971, the FAA issued the Temporary Flight Restrictions Final Rule (36 FR 1467). This rule amended 14 CFR § 91.91 (since re-codified as 14 CFR § 91.137) to provide for the issuance of a Notice to Airmen (NOTAM) that would implement a TFR over a designated disaster or hazard area. In the preamble to the final rule, the FAA stated that the intent of the rule was to prevent hazardous congestion of sightseeing aircraft over the site of an aircraft or train accident, forest fire, earthquake, flood, or other disaster of substantial magnitude. In the past the FAA has used TFRs for major sporting events and aerial demonstrations based on an interpretation of the scope of § 91.137(a)(3) contained in FAA Order 7210.3R. The order indicates that a TFR may be issued for sporting events or aerial demonstrations generating a high degree of public interest, citing § 91.137(a)(3) as regulatory authority. The FAA has reviewed the regulatory history of § 91.137, and has concluded that it is limited to disaster or hazard areas and was not intended to be used for planned events.

The FAA's proposal to add regulations covering TFRs for major sporting events would overturn the practice of using § 91.137(a)(3). If this proposal is adopted, the FAA Advisory Circulars and FAA Orders addressing TFRs would be modified accordingly.

Special Federal Aviation Regulations

In addition to using § 91.137 for planned events, the FAA has also issued Special Federal Aviation Regulations (SFAR) to establish TFRs in the vicinity of certain major sporting events to address the management of aircraft operations in the vicinity of such events and to prevent unsafe congestion of aircraft that are sightseeing over and around such events. These SFAR were for specific events and had a specific duration. Most recently, for example, on May 18, 1999, the FAA published a Notice of Proposed Rulemaking (NPRM) for an SFAR to establish TFRs for the Kodak Albuquerque International Balloon Fiesta in Albuquerque, NM (64 FR 27160). The proposed restrictions addressed Balloon Fiesta operations for the periods October 2 through October 10, 1999, and October 7 through October 15, 2000. The FAA did not receive any comments on the NPRM, and on August 17, 1999, the FAA published the final SFAR to institute the TFRs (64 FR 44814). The FAA previously published a proposed SFAR for the Kodak Albuquerque International Balloon Fiesta on July 15, 1998 (63 FR 38236) and a final SFAR to implement the TFRs on September 28, 1998 (63 FR 51768). Again, these TFRs were for a specific event and had a short duration while the event was going on. The FAA has issued similar TFRs for other specific events such as the Olympics and Goodwill Games.

In an effort to streamline its processes, the FAA is proposing to establish a rule that will allow the FAA to address the management of aircraft operations in the vicinity of aerial demonstrations and sporting events so that individual SFARs will not have to be issued.

Section-by-Section Discussion of the Proposal

The FAA is proposing several changes to part 91 and part 103. The proposed changes are to:

(1) Change the title of § 91.137 to clarify that the regulation concerns aircraft operations near hazard or disaster areas;

(2) Clarify the operating requirements detailed in § 91.138; and

(3) Add a new section (§ 91.145) that would address the management of aircraft operations in the vicinity of aerial demonstrations and major sporting events.

(4) Amend part 103, Ultralight Vehicles, to include all applicable references to TFRs.

Section 91.137

Section 91.137 is currently titled "Temporary Flight Restrictions," and prescribes operating requirements to be followed when flight restrictions are issued in accordance with this particular section. However, the title of this section of the regulation is not specific enough in conveying the intent of the regulation, leading to misinterpretation of the purpose of the rule. Currently, the FAA receives many requests for TFRs that do not meet the intent of the rule. To address this issue, the FAA proposes to retitle § 91.137 as "Temporary Flight Restrictions in the Vicinity of Disaster/Hazard Areas," since this title better describes the intent and activities addressed by this section.

Section 91.138 Temporary Flight Restrictions in National Disaster Areas in the State of Hawaii

The FAA proposes to clarify the operating requirements detailed in § 91.138 by modifying subparagraph (b) to read: "When a NOTAM has been issued in accordance with this section, no person may operate an aircraft within the designated airspace unless at least one of the following conditions is met." The current language could be misinterpreted to mean that all of the conditions must be met before operating an aircraft within the designated airspace. Clarifying this section will help to avoid any potential confusion.

Section 91.145 Temporary Flight Restrictions in the Vicinity of Aerial Demonstrations or Major Sporting Events

The FAA has determined that the issues identified by DoD, ICAS, and others, as discussed earlier in the preamble, have merit. Accordingly, the FAA is proposing to add a new section to part 91 that would prohibit a person from operating an aircraft or device, or engage in any activity within the designated airspace area, except in accordance with the authorizations, terms, and conditions of the temporary flight restriction in the NOTAM, unless otherwise authorized by: (1) Air traffic control; or (2) A Flight Standards Certificate of Waiver or Authorization issued for the demonstration or event. In addition, the new section proposes to authorize the Administrator to exclude the following flights from a flight restriction issued under the proposed § 91.145: (1) Essential military; (2) Medical and rescue; (3) Presidential and Vice Presidential; (4) Visiting heads of state; (5) Law enforcement and security; and (6) Public health and welfare.

When a TFR of this type is issued, aircraft management procedures for the event would be published in a National Flight Data Center (FDC) NOTAM that would detail, for example, general procedures to include altitudes; times; frequency; point of contact; Air Traffic Control facility; special clearances; and any other pertinent information.

The FAA intends to employ this type of TFR for specific events. Examples of the events that would be covered by the proposed TFR include, but are not limited to the following: the Blue Angels, Thunderbirds, and Golden Knights air demonstration teams; the Summer/Winter Olympic Games; the annual Tournament of Roses Football Game; World Cup Soccer; Major League Baseball All-Star Game; the World Series; the Kodak Albuquerque Internationl Balloon Fiesta; the Sandia Classic Hang Gliding Competition; and the Indianapolis 500 Mile Race. These types of events may be of such a magnitude that would warrant the use of a TFR to prevent the unsafe congestion of aircraft operations in the affected area, and to ensure the safety of persons and property on the ground.

The amount of airspace needed to provide a safe environment for aerial demonstrations/major sporting events would vary depending on the event. The area that would be restricted would normally be limited to the minimum airspace area/altitude/time required to manage participating and non-participating aircraft in the area. For example, during the 1999 Olympic games held in Atlanta, GA, the FAA implemented special traffic management procedures within the airspace overlying competition venues from three hours before to three hours after each event. The TFR areas generally were circular areas of 1 to 4 nautical miles in radius from the surface to approximately 2500 feet above ground level.

During the 1999 Kodak Albuquerque International Balloon Fiesta held in Albuquerque, NM, the FAA implemented special traffic management procedures within a 4 nautical mile radius, extending from the surface up to but not including 8,000 feet mean sea level. The TFR area was in effect between the hours of 0530 Mountain Daylight Time (MDT) and 1200 MDT, and from 1600 MDT until 2200 MDT on October 2 through October 10, 1999, and October 7 through October 15, 2000.

To prevent an unsafe congestion of sightseeing aircraft above an event that may generate a high degree of public interest, the FAA would consider factors such as: The area where the event will be held; effect flight restrictions will have on known aircraft operations; any existing Air Traffic Control (ATC) airspace traffic management restrictions; estimated duration of the event; degree of public interest; number of spectators; provisions for spectator safety, number and types of participating aircraft; use of mixed height and low performance aircraft; impact on non-participating aircraft; weather minimums; and emergency procedures that will be in effect.

Part 103, Section 103.20 Flight Restrictions in the Proximity of Certain Areas Designated by Notice to Airmen

The FAA proposes to revise this section by adding references to §§ 91.137, 91.138, and 91.145. This proposal will ensure that all applicable references to temporary flight restrictions are included in the requirements.

Notice to Airmen Information

Time-critical aeronautical information that is of a temporary nature, or is not sufficiently known in advance to permit publication on aeronautical charts or in other operational publications, receives immediate dissemination via the NOTAM system. All domestic operators planning to fly in the vicinity of aerial demonstrations or major sporting events would need to pay attention to NOTAMS and FDC NOTAM information.

A NOTAM contains information on airports, runways, navigational aids, radar services, and other information essential to flight. A FDC NOTAM contains information that is regulatory in nature, such as amendments to aeronautical charts and restrictions to flight.

Pilots and operators need to consult the monthly NOTAM Domestic/International publication. This publication contains FDC NOTAMs and NOTAMs. Special information, including graphics, would be published in the monthly publication in advance of the event. For more detailed information concerning the NOTAM system, refer to the Aeronautical Information manual "Preflight" section.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. The FAA is not allowed to propose or adopt a regulation unless a reasoned determination is made that the benefits of the intended regulation justify the costs. The FAA's assessment of this proposal indicates that its economic impact would be minimal. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, the FAA has not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory Policies and Procedures. The FAA does not need to do the latter analysis where the economic impact of a proposal is minimal. The major economic impact of having a temporary flight restriction would be the inconvenience of circumnavigation to operators who may want to operate in the area of the TFR. An aircraft operator could avoid the restricted airspace by flying over it or by circumnavigating the restricted airspace. Because the possibility of such occurrences is for a limited time and the restricted areas are limited in size, circumnavigation costs would be negligible.

The benefits of establishing a TFR would primarily be a lowered risk of midair collisions between participating and non-participating aircraft. While benefits cannot be quantified, the FAA believes the benefits would be commensurate with the costs attributed to the temporary inconvenience of the flight restrictions for operators near the TFR area.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall

endeavor, consistent with the objective on the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The major economic impact of having a temporary flight restriction would be the inconvenience of circumnavigation to operators who may want to operate in the area of the TFR. An aircraft operator could avoid the restricted airspace by flying over it or by circumnavigating the restricted airspace. Because the possibility of such occurrences would be for a limited time and the restricted areas would be limited in size, circumnavigating costs would be negligible. Consequently, the FAA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore no affect on any trade-sensitive activity.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private section; such a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 91

Aircraft flight, Airspace, Aviation safety, Air Traffic Control.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 91 and 103 of Title 14, Code of Federal Regulations as follows:

PART 91—AIR TRAFFIC AND GENERAL OPERATING RULES

1. The authority citation for 14 CFR part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44[illegible]5, 44716, 44717, 44722, 46306, 46315, 4[illegible]16, 46502, 46504, 46506, 46507, 47122, 47508, 47528–47531.

2. Amend § 91.137 by revising the title as follows:

§ 91.137 Temporary flight restrictions in the vicinity of disaster/hazard areas.

* * * * *

3. Amend § 91.138 by revising paragraph (b) to read as follows:

§ 91.138 Temporary flight restrictions in national disaster areas in the State of Hawaii.

* * * * *

(b) When a NOTAM has been issued in accordance with this section, no person may operate an aircraft within the designated area unless at least one of the following conditions is met:

(1) That person has obtained authorization from the official in charge of associated emergency or disaster relief response activities, and is operating the aircraft under the conditions of that authorization.

(2) The aircraft is carrying law enforcement officials.

(3) The aircraft is carrying persons involved in an emergency or a legitimate scientific purpose.

(4) The aircraft is carrying properly accredited newspersons, and that prior to entering the area, a flight plan is filed with the appropriate FAA or ATC facility specified in the NOTAM and the operation is conducted in compliance with the conditions and restrictions established by the official in charge of on-scene emergency response activities.

(5) The aircraft is operating in accordance with an ATC clearance or instruction.

* * * * *

4. Add § 91.145 to subpart B as follows:

§ 91.145 Management of aircraft operations in the vicinity of aerial demonstrations and major sporting events.

(a) The FAA will issue a Notice to Airmen (NOTAM) designating an area of airspace in which a temporary flight restriction applies when it determines that a TFR is necessary to protect persons or property on the surface or in the air, to maintain air safety and efficiency, or to prevent the unsafe congestion of aircraft in the vicinity of an aerial demonstration or major sporting event.

These demonstrations and events include:

(1) United States Naval Flight Demonstration Team (Blue Angels);

(2) United States Air Force Air Demonstration Squadron (Thunderbirds);

(3) United States Army Parachute Team (Golden Knights);

(4) Summer/Winter Olympic Games;

(5) Annual Tournament of Roses Football Game;

(6) World Cup Soccer;

(7) Major League Baseball All-Star Game;

(8) World Series;

(9) Kodak Albuquerque International Balloon Fiesta;

(10) Sandia Classic Hang Gliding Competition;

(11) Indianapolis 500 Mile Race;

(12) Any other aerial demonstration or sporting event the FAA determines to need a temporary flight restriction in accordance with paragraph (b) of this section.

(b) In deciding whether a temporary flight restriction is necessary for an aerial demonstration or major sporting event not listed in paragraph (a) of this section, the FAA considers the following factors:

(1) Area where the event will be held.

(2) Effect flight restrictions will have on known aircraft operations.

(3) Any existing ATC airspace traffic management restrictions.

(4) Estimated duration of the event.

(5) Degree of public interest.

(6) Number of spectators.

(7) Provisions for spectator safety.

(8) Number and types of participating aircraft.

(9) Use of mixed high and low performance aircraft.

(10) Impact on non-participating aircraft.

(11) Weather minimums.

(12) Emergency procedures that will be in effect.

(c) A NOTAM issued under this section will state the name of the aerial demonstration or sporting event and specify the effective dates and times, the geographic features or coordinates, and any other restrictions or procedures governing flight operations in the designated airspace.

(d) When a NOTAM has been issued in accordance with this section, no person may operate an aircraft or device, or engage in any activity within the designated airspace area, except in accordance with the authorizations, terms, and conditions of the temporary flight restriction published in the NOTAM, unless otherwise authorized by:

(1) Air traffic control; or

(2) A Flight Standards Certificate of Waiver or Authorization issued for the demonstration or event.

(e) For the purpose of this section:

(1) *Flight restricted airspace area for an aerial demonstration*—The amount of airspace needed to protect persons and property on the surface or in the air, to maintain air safety and efficiency, or to prevent the unsafe congestion of aircraft will vary depending on the aerial demonstration and the factors listed in paragraph (b) of this section. The restricted airspace area will normally be limited to a 5 nautical mile radius from the center of the demonstration and an altitude 17000 mean sea level (for high performance aircraft) or 13000 feet above the surface (for certain parachute operations), but will be no greater than the minimum airspace necessary for the management of aircraft operations in the vicinity of the specified area.

(2) *Flight restricted area for a major sporting event*—The amount of airspace needed to protect persons and property on the surface or in the air, to maintain air safety and efficiency, or to prevent the unsafe congestion of aircraft will vary depending on the size of the event and the factors listed in paragraph (b) of this section. The restricted airspace will normally be limited to a 3 nautical mile radius from the center of the event and 2500 feet above the surface but will not be greater than the minimum airspace necessary for the management of aircraft operations in the vicinity of the specified area.

(f) A NOTAM issued under this section will be issued at least 30 days in advance of an aerial demonstration or a major sporting event, unless the FAA finds good cause for a shorter period and explains this in the NOTAM.

(g) When warranted, the FAA Administrator may exclude the following flights from the provisions of this section;

(1) Essential military.

(2) Medical and rescue.

(3) Presidential and Vice Presidential.

(4) Visiting heads of state.

(5) Law enforcement and security.

(6) Public health and welfare.

PART 103—ULTRALIGHT VEHICLES

5. The authority citation for 14 CFR part 103 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103–40104, 40113, 44701.

6. Section 103.20 is revised as follows:

§ 103.20 Flight restrictions in the proximity of certain areas designated by notice to airmen.

No person may operate an ultralight vehicle in areas designated in a Notice to Airmen under § 91.137, § 91.138, § 91.141, § 91.143 or § 91.145 of this chapter, unless authorized by ATC.

Issued in Washington, DC on November 2, 2000.

John Walker,

Program Director, Air Traffic Airspace Management Program.

[FR Doc. 00–29318 Filed 11–15–00; 8:45 am]

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- Exportation and importation of animals and animal products:
  - Spain; Spanish Pure Bred horses; published 11-16-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Fishery conservation and management:
  - Alaska; fisheries of Exclusive Economic Zone—
    - Vessel monitoring system; published 10-17-00
    - Vessel monitoring system; correction; published 10-23-00

FEDERAL COMMUNICATIONS COMMISSION

- Digital television stations; table of assignments:
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  - Illinois; published 10-11-00
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HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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  - Progestational drug products; patient-directed labeling; published 11-16-99

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Alcohol, Tobacco and Firearms Bureau

- Technical amendments; published 11-16-00

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- Pork Promotion, Research, and Consumer Information:
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- Walnuts grown in—
  - California; comments due by 11-22-00; published 10-23-00

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

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- Exportation and importation of animals and animal products:
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    - East Anglia; comments due by 11-20-00; published 9-20-00
- Interstate transportation of animals and animal products (quarantine):
  - Equine viral arteritis regulatory program for horses; comments due by 11-20-00; published 9-20-00
  - Swine; interstate movement within production system; comments due by 11-20-00; published 9-21-00
- Plant-related quarantine, foreign:
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AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

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Economic Analysis Bureau

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  - BE-577; direct transactions of U.S. reporter with foreign affiliate; comments due by 11-20-00; published 9-21-00
  - BE-82; annual survey of financial services transactions between U.S. financial services providers and unaffiliated foreign persons; comments due by 11-20-00; published 9-21-00
  - BE-93; annual survey of royalties, license fees, and other receipts and payments for intangible rights between U.S. and unaffiliated foreign persons; comments due by 11-20-00; published 9-21-00

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1235/P.L. 106–467
To authorize the Secretary of the Interior to enter into contracts with the Solano County Water Agency, California, to use Solano Project facilities for impounding, storage, and carriage of nonproject water for domestic, municipal, industrial, and other beneficial purposes. (Nov. 9, 2000; 114 Stat. 2026)

H.R. 2780/P.L. 106–468
Kristen's Act (Nov. 9, 2000; 114 Stat. 2027)

H.R. 2884/P.L. 106–469
Energy Act of 2000 (Nov. 9, 2000; 114 Stat. 2029)

H.R. 4312/P.L. 106–470
Upper Housatonic National Heritage Area Study Act of 2000 (Nov. 9, 2000; 114 Stat. 2055)

H.R. 4646/P.L. 106–471
To designate certain National Forest System lands within the boundaries of the State of Virginia as wilderness areas. (Nov. 9, 2000; 114 Stat. 2057)

H.R. 4788/P.L. 106–472
Grain Standards and Warehouse Improvement Act of 2000 (Nov. 9, 2000; 114 Stat. 2058)

H.R. 4794/P.L. 106–473
Washington-Rochambeau Revolutionary Route National Heritage Act of 2000 (Nov. 9, 2000; 114 Stat. 2083)

H.R. 4846/P.L. 106–474
National Recording Preservation Act of 2000 (Nov. 9, 2000; 114 Stat. 2085)

H.R. 4864/P.L. 106–475
Veterans Claims Assistance Act of 2000 (Nov. 9, 2000; 114 Stat. 2096)

H.R. 4868/P.L. 106–476
Tariff Suspension and Trade Act of 2000 (Nov. 9, 2000; 114 Stat. 2101)

H.R. 5110/P.L. 106–477
To designate the United States courthouse located at 3470 12th Street in Riverside, California, as the "George E. Brown, Jr. United States Courthouse". (Nov. 9, 2000; 114 Stat. 2182)

H.R. 5302/P.L. 106–478
To designate the United States courthouse located at 1010 Fifth Avenue in Seattle, Washington, as the "William Kenzo Nakamura United States Courthouse". (Nov. 9, 2000; 114 Stat. 2183)

H.R. 5331/P.L. 106–479
To authorize the Frederick Douglass Gardens, Inc., to establish a memorial and gardens on Department of the Interior lands in the District of Columbia or its environs in honor and commemoration of Frederick Douglass. (Nov. 9, 2000; 114 Stat. 2184)

H.R. 5388/P.L. 106–480
To designate a building proposed to be located within the boundaries of the Chincoteague National Wildlife Refuge, as the "Herbert H. Bateman Education and Administrative Center". (Nov. 9, 2000; 114 Stat. 2186)

H.R. 5410/P.L. 106–481
Library of Congress Fiscal Operations Improvement Act of 2000 (Nov. 9, 2000; 114 Stat. 2187)

H.R. 5478/P.L. 106–482
To authorize the Secretary of the Interior to acquire by donation suitable land to serve as the new location for the home of Alexander Hamilton, commonly known as the Hamilton Grange, and to authorize the relocation of the Hamilton Grange to the acquired land. (Nov. 9, 2000; 114 Stat. 2192)

H.J. Res. 102/P.L. 106–483
Recognizing that the Birmingham Pledge has made a significant contribution in fostering racial harmony and reconciliation in the United States and around the world, and for other purposes. (Nov. 9, 2000; 114 Stat. 2193)

S. 484/P.L. 106–484
Bring Them Home Alive Act of 2000 (Nov. 9, 2000; 114 Stat. 2195)

S. 610/P.L. 106–485
To direct the Secretary of the Interior to convey certain land under the jurisdiction of the Bureau of Land Management in Washakie County and Big Horn County, Wyoming, to the Westside Irrigation District, Wyoming, and for other purposes. (Nov. 9, 2000; 114 Stat. 2199)

S. 698/P.L. 106–486
To review the suitability and feasibility of recovering costs of high altitude rescues at Denali National Park and Preserve in the State of Alaska, and for other purposes. (Nov. 9, 2000; 114 Stat. 2201)

S. 710/P.L. 106–487
Vicksburg Campaign Trail Battlefields Preservation Act of 2000 (Nov. 9, 2000; 114 Stat. 2202)

S. 748/P.L. 106–488
To improve Native hiring and contracting by the Federal Government within the State of Alaska, and for other purposes. (Nov. 9, 2000; 114 Stat. 2205)

S. 893/P.L. 106–489
To amend title 46, United States Code, to provide equitable treatment with respect to State and local income taxes for certain individuals who perform duties on vessels. (Nov. 9, 2000; 114 Stat. 2207)

S. 1030/P.L. 106–490
To provide that the conveyance by the Bureau of Land Management of the surface estate to certain land in the State of Wyoming in exchange for certain private land will not result in the removal of the land from operation of the mining laws. (Nov. 9, 2000; 114 Stat. 2208)

S. 1367/P.L. 106–491
To amend the Act which established the Saint-Gaudens National Historic Site, in the State of New Hampshire, by modifying the boundary and for other purposes. (Nov. 9, 2000; 114 Stat. 2209)

S. 1438/P.L. 106–492
National Law Enforcement Museum Act (Nov. 9, 2000; 114 Stat. 2210)

S. 1778/P.L. 106–493
To provide for equal exchanges of land around the Cascade Reservoir. (Nov. 9, 2000; 114 Stat. 2213)

S. 1894/P.L. 106–494
To provide for the conveyance of certain land to Park County, Wyoming. (Nov. 9, 2000; 114 Stat. 2214)

S. 2069/P.L. 106–495
To permit the conveyance of certain land in Powell, Wyoming. (Nov. 9, 2000; 114 Stat. 2216)

S. 2425/P.L. 106–496
Bend Feed Canal Pipeline Project Act of 2000 (Nov. 9, 2000; 114 Stat. 2218)

S. 2872/P.L. 106–497
Indian Arts and Crafts Enforcement Act of 2000 (Nov. 9, 2000; 114 Stat. 2219)

S. 2882/P.L. 106–498
Klamath Basin Water Supply Enhancement Act of 2000 (Nov. 9, 2000; 114 Stat. 2221)

S. 2951/P.L. 106–499
To authorize the Secretary of the Interior to conduct a study to investigate opportunities to better manage the water resources in the Salmon Creek watershed of the Upper Columbia River. (Nov. 9, 2000; 114 Stat. 2223)

S. 2977/P.L. 106–500
To assist in establishment of an interpretive center and museum in the vicinity of the Diamond Valley Lake in southern California to ensure the protection and interpretation of the paleontology discoveries made at the lake and to develop a trail system for the lake for use by pedestrians and nonmotorized vehicles. (Nov. 9, 2000; 114 Stat. 2224)

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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule implements a provision of Public Law 106–9, enacted April 5, 1999, under which certain types of consideration paid to a small business investment company (SBIC) by a small business are excluded from "cost of money" limitations.

DATES: This final rule is effective December 18, 2000.

FOR FURTHER INFORMATION CONTACT: Leonard W. Fagan, Investment Division, at (202) 205–7583.

SUPPLEMENTARY INFORMATION: On June 20, 2000, SBA published a proposed rule to implement a provision of Public Law 106–9, enacted April 5, 1999, that amended section 308(i)(2) of the Small Business Investment Act of 1958. See 65 FR 38223. This amendment provided that certain types of consideration paid to an SBIC by a small business are excluded from the regulatory limitations on "Cost of Money" established by the Small Business Administration (SBA). The amendment excluded from these Cost of Money limits any consideration consisting of "contingent obligations" granting the SBIC an interest in the "equity or increased future revenue" of the small business.

SBA received no comments on the proposed rule during the 30-day public comment period and is finalizing the proposed rule without change. The final rule contains the following provisions:

Revised § 107.855(g)(12) allows the exclusion of royalty payments for all SBIC financings. Previously, this exclusion applied only to "LMI Investments" as defined in § 107.50. To qualify for the exclusion, the royalty must be based on improvement in the performance of the small business after the date of the financing. The royalty could be expressed, for example, as a percentage of any increase in an underlying unit of measurement (*e.g.*, revenues or sales) after the date of the financing. The royalty can be based on an increase in more than one unit of measurement; for example, a royalty could provide for payment to the SBIC if either the revenue or the profits of the small business increased.

If an SBIC makes an investment through a holding company or an investment vehicle, as permitted under § 107.720(b), SBA will evaluate performance improvements by looking through the holding company or investment vehicle to the performance of the operating business itself.

Also with respect to royalty payments, the definition of a Debt Security in § 107.815(a) is revised to include a loan with a right to receive royalties that are excluded from the Cost of Money. As a result, a financing of this type will be subject to the lower Cost of Money ceiling applicable to Debt Securities, rather than the higher ceiling applicable to Loans with no upside potential.

This rule also adds § 107.855(g)(13), which excludes from Cost of Money any gains realized by an SBIC from the disposition of Equity Securities issued by a small business. This provision has been added as a clarification, since SBA's longstanding practice has been to exclude such gains from the Cost of Money limits. For example, if an SBIC receives warrants that qualify as Equity Securities, or converts debt to an Equity Security, any gains realized on the disposition of these interests do not count against the Cost of Money ceiling.

Finally, § 107.855(i) has been removed. This paragraph allowed an SBIC that was lending to a small business to receive a one-time "bonus" at the end of the loan term, contingent upon one or more factors reflecting the performance of the business during the loan period. Such bonus payments were excluded from the Cost of Money. The revision of § 107.855(g)(12), which provides a broader exclusion of contingent payments from the Cost of Money, renders the bonus provision redundant.

Compliance With Executive Orders, 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

This final rule does not constitute a "significant" regulatory action within the meaning of section 3(f) of Executive Order 12866 and thus, was not reviewed by the Office of Management and Budget (OMB).

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, SBA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of the final rule is to implement a provision of Public Law 106–9 allowing small business investment companies (SBICs) to realize contingent payments, such as royalties, from small businesses without being subject to regulatory limits on the amount of consideration received. Interest and other non-contingent payments made to SBICs by small businesses will continue to be subject to the existing Cost of Money regulations. This provision is expected to be attractive primarily to SBICs considering investments in small businesses that are seeking to grow, but whose owners do not want to give substantial equity interests to outside investors. In such cases, the SBIC can participate in the growth of the business by collecting a royalty rather than through an ownership interest.

Based on recent statistics for the SBIC program, the circumstances that this final rule addresses do not appear to apply to most small businesses currently receiving SBIC financing. In fiscal year 1999, SBICs provided financing to 1,983 different small businesses. In approximately two-thirds of all the financings closed during that year, the SBIC obtained an actual or potential equity interest in the small business; even if the proposed rule had been in place, it is unlikely that these transactions would have included royalty provisions. The remaining one-third of SBIC financings typically consist of loans to very small businesses with low growth potential, which are unlikely to have the ability to make royalty payments under any circumstances. Thus, it is unlikely that this final rule will affect a substantial number of small entities. The final rule is expected to expand financing opportunities for certain small businesses wishing to grow while remaining closely held, rather than make SBIC financing more expensive for small businesses currently being served by the program.

For purposes of Executive Order 12988, SBA has determined that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this final rule has no federalism implications.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this final rule contains no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, SBA is amending 13 CFR part 107 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g and 687m.

2. In § 107.815, revise the first sentence of paragraph (a) to read as follows:

§ 107.815 Financings in the form of Debt Securities.

* * * * *

(a) *Definitions*. Debt Securities are instruments evidencing a loan with an option or any other right to acquire Equity Securities in a Small Business or its Affiliates, or a loan which by its terms is convertible into an equity position, or a loan with a right to receive royalties that are excluded from the Cost of Money pursuant to § 107.855(g)(12).* * *

* * * * *

3. In § 107.855, revise paragraph (g)(12), add paragraph (g)(13) and remove paragraph (i) to read as follows:

§ 107.855 Interest rate ceiling and limitations on fees charged to Small Businesses ("Cost of Money").

* * * * *

(g) * * *

(12) Royalty payments based on improvement in the performance of the Small Business after the date of the Financing.

(13) Gains realized on the disposition of Equity Securities issued by the Small Business.

* * * * *

Dated: November 3, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–29522 Filed 11–16–00; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Health Care

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration is adopting new size standards for 19 Health Care industries and retaining the existing $5 million size standard for the remaining 11 Health Care industries. The North American Industry Classification System classifies Health Care industries under Subsector 621, Ambulatory Health Care Services; Subsector 622, Hospitals; and Subsector 623, Nursing and Residential Care Facilities. These revisions are made to more appropriately define the size of businesses in these industries that SBA believes should be eligible for Federal small business assistance programs.

DATES: This final rule is effective on December 18, 2000.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Assistant Administrator for Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: On May 4, 1999, the Small Business Administration (SBA) proposed revisions to 11 size standards for the Health Care industries (64 FR 23798). At that time, SBA size standards were established for industries defined by the Standard Industrial Classification (SIC) System. Effective October 1, 2000, SBA established its size standards based on industries defined by the new North American Industry Classification System (NAICS), and no longer uses the SIC System (65 FR 30836, dated May 15, 2000). Accordingly, the changes to the Health Care size standards adopted in this final rule pertain to the NAICS industries.

The NAICS makes several noteworthy changes to the Health Care industries listed in the SIC System. First, the NAICS changes the terminology of the health related industries to "Health Care" from "Health Services" under the SIC System. Second, the NAICS establishes a Sector (equivalent to a Division in the SIC System) titled "Health Care and Social Assistance." Health Services was a Major Group under the Services Division with 19 industries. The Health Care industries are grouped into three Subsectors (equivalent to a Major Group in the SIC System). Third, the number of Health Care industries increases to 30 NAICS industries from 19 Health Services SIC industries.

SBA has decided to adopt the proposed revisions of May 4, 1999 to the Health Care size standards. Most SIC Health Services industries correspond to a NAICS industry. However, there are some Health Services industries, or activities within an industry, that are combined with other SIC industries to form a new Health Care NAICS industry. In these cases, SBA has followed the guidelines it used to establish NAICS size standards. These guidelines are described in the proposed rule of October 22, 1999 (64 FR 57188) and the final rule of May 15, 2000 (65 FR 30836). In most cases, the NAICS size standard is the same as or higher than the size standard SBA had proposed for the SIC industry. Two activities in one Health Services industry, however, were reclassified into industries outside of the Health Care with a size standard lower than proposed for their SIC industries. The following table lists the proposed size standards by SIC industry and adopted size standards corresponding to the NAICS industries.

SIC code	SIC industry	Proposed size standard (millions of dollars)	NAICS code	NAICS industry	Adopted size standard (millions of dollars)
8011	Offices and Clinics of Doctors of Medicine.	$7.5			
	Surgical and Emergency Centers	....	621493	Freestanding Ambulatory Surgical and Emergency Centers.	$7.5
	HMO Medical Centers	....	621491	HMO Medical Centers	7.5
	Offices of Physicians, Mental Health Specialists.	....	621112	Offices of Physicians, Mental Health (part).	7.5
	Offices of Physicians Except Mental Health.	....	621111	Offices of Physicians (except Mental Health Specialists) (part).	7.5
8021	Offices and Clinics of Dentists	5.0	621210	Offices of Dentists	5.0
8031	Offices and Clinics of Dentists	5.0			
	Offices of Doctors of Osteopathy, Except Mental Health.	....	621111	Offices of Physicians (except Mental Health Specialists) (part).	7.5
	Offices of Doctors of Osteopathy, Mental Health.	....	621112	Offices of Physicians, Mental Health Specialists (part).	7.5
8041	Offices and Clinics of Chiropractors	5.0	621310	Offices of Chiropractors	5.0
8042	Offices and Clinics of Optometrists	5.0	621320	Offices of Optometrists	5.0
8043	Offices and Clinics of Podiatrists	5.0	621391	Offices of Podiatrists	5.0
8049	Offices and Clinics of Health Practitioners, NEC.	5.0			
	Mental Health Practitioners, Except Physicians.	....	621330	Offices of Mental Health Practitioners (except Physicians).	5.0
	Offices of Physical, Occupational, Recreational, and Speech Therapists and Audiologists.	....	621340	Offices of Physical, Occupational, and Speech Therapists Audiologists Offices of All Other.	5.0
	Other Offices of Health Practitioners	....	621399	Miscellaneous Health Practitioners	5.0
8051	Skilled Nursing Care Facilities	10.0			
	Continuing Care Retirement Communities.	....	623311	Continuing Care Retirement Communities (part).	10.0
	All Other Skilled Nursing Care Facilities.	....	623110	Nursing Care Facilities (part)	10.0
8052	Intermediate Care Facilities	7.5			
	Continuing Care Retirement Communities.	....	623311	Continuing Care Retirement Communities (part).	10.0
	Mental Retardation Facilities	....	623210	Residential Mental Retardation Facilities.	7.5
8059	Nursing and Personal Care Facilities, NEC.	5.0			
	Continuing Care Retirement Communities.	....	623311	Continuing Care Retirement Communities (part).	10.0
	Other Nursing and Personal Care Facilities.	....	623110	Nursing Care Facilities (part)	10.0
8062	General Medical and Surgical Hospitals.	25.0	622110	General Medical and Surgical Hospitals (part).	25.0
8063	Psychiatric Hospitals	25.0	622210	Psychiatric and Substance Abuse Hospitals (part).	25.0
8069	Specialty Hospitals Except Psychiatric.	25.0			
	Children's Hospitals	....	622110	General Medical and Surgical Hospitals (part).	25.0
	Substance Abuse Hospitals	....	622210	Psychiatric and Substance Abuse Hospitals (part).	25.0
	Other Specialty Hospitals	....	622310	Specialty (except Psychiatric and Substance Abuse) Hospitals.	25.0
8071	Medical Laboratories	10.0			
	Diagnostic Imaging Centers	....	621512	Diagnostic Imaging Centers	10.0
	Medical Laboratories, Except Diagnostic Imaging Centers.	....	621511	Medical Laboratories	10.0
8072	Dental Laboratories	5.0	339116	Dental Laboratories	(1)
8082	Home Health Care Services	10.0	621610	Home Health Care Services	10.0
8092	Kidney Dialysis Centers	25.0	621492	Kidney Dialysis Centers	25.0
8093	Specialty Outpatient Facilities, NEC	7.5			
	Family Planning Centers	....	621410	Family Planning Centers (part)	7.5
	Outpatient Mental Health Facilities	....	621420	Outpatient Mental Health and Substance Abuse Centers.	7.5
	Other Specialty Outpatient Facilities	....	621498	All Other Outpatient Care Centers	7.5
8099	Health and Allied Services, NEC	7.5			
	Blood and Organ Banks	....	621991	Blood and Organ Banks	7.5
	Medical Artists	....	541430	Graphic Design Services (part)	5.0
	Medical Photography	....	541922	Commercial Photography (part)	5.0
	Childbirth Preparation Classes	....	621410	Family Planning Centers (part)	7.5
	Other Health and Allied Services	....	621999	All Other Miscellaneous Ambulatory Health Care Services.	7.5

[1] 500 Employees.

As shown in the table, the adopted size standard for doctors of osteopathy is $7.5 million, although the proposed size standard for this industry was $5 million. Under the NAICS, SIC 8031 (Offices and Clinics of Doctors of Osteopathy) was combined into NAICS 621111 (Offices of Physicians) and NAICS 621112 (Office of Physicians, Mental Health Specialists). These two industries were substantially created from SIC 8011 (Offices and Clinics of Doctors of Medicine), where SBA proposed and is adopting $7.5 million. Consistent with SBA's guidelines in establishing NAICS size standards, the size standard for the SIC code that accounted for the greatest amount activity within the new NAICS is the size standard adopted for that NAICS code. The size of the offices and clinics of medical doctors industry is significantly larger than the offices and clinics of doctors of osteopathy industry.

A similar situation arose with SIC codes 8052 (Intermediate Care Facilities) and 8059 (Nursing and Personal Care Facilities, Not Elsewhere Classified). SBA proposed $7.5 million for SIC 8052 and $5 million for SIC 8059. However, most of SIC 8052 and all of SIC 8059 were combined with SIC 8051 (Skilled Nursing Care Facilities) to form two NAICS industries—NAICS 623311 (Continuing Care Retirement Communities) and 623110 (Nursing Care Facilities). SIC 8051 is much greater in size than both SIC 8052 and 8059 combined. Thus, the $10 million size standard proposed for SIC 8051 is adopted for both NAICS 623311 and 623110.

The size standard for Dental Laboratories changed to 500 employees effective October 1, 2000. This industry involves the manufacture of dentures, crowns and other dental appliances. Under the SIC system, the manufacture of dental appliances was classified as a manufacturing activity unless the dental appliances were produced on a custom or individual basis. The SIC system classified those latter activities within the Services Division under the Dental Laboratories industry (SIC 8072). NAICS now classifies all manufacturing of dental appliances as manufacturing, and placed the Dental Laboratories industry under the manufacturing sector—NAICS 339116. SBA's long standing policy has been to establish a size standard no lower than 500 employees for a manufacturing industry. This change was discussed and proposed in the October 22, 1999 proposed rule. SBA received no comments on this change and adopted the 500 employee size standard for NAICS 339116 in the May 15, 2000 final rule.

Two activities within SIC 8099, Health and Allied Services, Not Elsewhere Classified, were reclassified to industries in the Professional, Scientific, and Technical Services Sector with a size standard lower than proposed for SIC 8099. The activity of Medical Artists was combined with SIC 7336, Commercial Art and Graphic Design to form NAICS 541430, Graphic Design Services. The $5 million size standard for SIC 7336 was adopted for NAICS 541430 since it accounts for virtually all of the new NAICS industry.

The activity of Medical Photography was classified into NAICS 541922, Commercial Photography. That NAICS industry is the same as the SIC 7335 with the addition of Medical Photography. The $5 million size standard of SIC 7335 was adopted for NAICS 541922 since it accounts for virtually all the activities within the NAICS industry.

Background

SBA proposed changes to size standards based on its analysis of the latest available economic characteristics data on the Health Care industries from the U.S. Bureau of the Census (the Census Bureau) and Federal contract award data from the Federal Procurement Data Center. (At the time of the proposed rule, these data, and SBA's size standards, were based on the SIC system. To be consistent with the newly implemented NAICS size standards, the remainder of this rule will use the NAICS terminology to refer to industries affected by this rule. In a few cases, however, references are made to SIC industries to ensure the information discussed is accurate.) With regard to the economic characteristics data, SBA evaluated average firm size, distribution of industry receipts by size of firm, start-up costs, and industry competition of firms in the Health Care industries. SBA compared these characteristics to the average characteristics of all industries with a $5.0 million size standard (the most common size standard established for nonmanufacturing industries and referred to as the "anchor" size standard for the nonmanufacturing industries). Doing so enabled SBA to determine whether it should propose size standards for the Health Care industries that would be the same, higher, or lower than the $5 million anchor size standard.

In addition to the economic characteristics data, SBA reviewed the percent of total Federal contract dollars awarded to Health Care small businesses to determine if small businesses were obtaining a reasonable share of Federal contracts. For three industries covering Offices and Clinics of Medical Doctors, Specialty Outpatient Facilities, and Health and Allied Service—Not Elsewhere Classified (formally SIC codes 8011, 8093, and 8099, respectively), the proportion of Federal procurement was so much lower than that of firms at the anchor size that SBA proposed increasing those three size standards from the anchor size of $5 million to $7.5 million. For a further discussion of SBA's size standard methodology and analyses leading to the proposed size standards see the proposed rule of May 4, 1999 (64 FR 23798). What follows is a summary of the comments received and an explanation of the decision to adopt the proposed increases to the Health Care industries.

Discussion of Comments on the Proposed Rule

SBA received 17 timely comments on the proposed size standards. Two of these included comments by others in their organization. Of the 17 comments, two were from Federal agencies, one comment came from an industry association, and the remainder came from representatives of Health Care firms.

In summary, one commenter supported the proposed size standards without comment. One hospital association generally supported the proposed rule, but had several recommendations to modify it, which are discussed below. All of the others supported an increase in the size standards, but higher than the ones proposed by SBA.

The commenters raised eight major issues concerning the proposed size standards. Because of the comments, we reevaluated the data before adopting the proposed size standards. The issues are: (1) What are the true small business contracting opportunities in the Health Care industries; (2) do the proposed size standards provide for an appropriate increase to the existing size standards; (3) whether there should be a common size standard for all Health Care industries; (4) whether there should be an employee-based size standard; (5) whether we should establish a new industry code for Health Maintenance Organizations; (6) whether we should have the same size standard for doctors of medicine as for doctors of osteopathy; (7) whether Medicare and Medicaid distributions should be counted as Federal procurements; and (8) whether the receipts of affiliated health care services should be included in gross income. Below we explain our response to each issue.

What Are the True Small Business Contracting Opportunities in the Health Care Industries?

The supporters of size standards higher than those proposed most often gave reasons relating to Federal contracting as the basis for a change. Commenters stated that firms at the proposed size standard are not large enough to compete successfully for the size and type of contracts offered in today's procurement environment. They stated that in recent years Federal contracts have grown progressively larger and more comprehensive. These contracts are generally multi-year and regional and often include services other than health care such as establishing, recruiting, and monitoring doctor or dentist practices. These commenters argued that size standards higher than those proposed are needed to recognize the size of small firms that can perform on these newer contracts.

Specifically, comments expressed a consistent and serious concern that the proposed size standard of $7.5 million for Offices and Clinics of Doctors of Medicine (SIC 8011), Intermediate Care Facilities (SIC 8052), Specialty and Outpatient Facilities (SIC 8093), and Health and Allied Services, NEC (SIC 8099) would preclude most firms from Federal procurement. They contended that the impact of keeping the size standards as low as proposed would be that few firms could qualify as small given the size of the health care contracts, and those that did, would quickly outgrow their small business status. Likewise, some Federal contracting officials expressed concern that the government would lose "stellar performers" who would no longer be considered small after receiving just two or three contracts.

In addition, several comments raised the issue that very few hospitals would qualify as small with the proposed $25 million size standard. They believed that if this size standard were adopted for hospitals, Federal agencies would be limited in their ability to support small business programs, such as the small business set-aside program.

Procuring agencies' comments opposing the "low" proposed size standards for hospitals also stated that they currently have problems meeting their commitment to include more small businesses because finding for-profit hospitals in some areas is difficult. If the for-profit hospitals (that is hospitals that qualify as businesses) are usually larger than the proposed $25 million size standard, agencies will not be able to set aside contracts for health care services.

SBA acknowledges that Federal agencies are issuing larger contracts than in the past. However, contract award data from the Federal Procurement Data System do not substantiate that large dollar contracts dominate Federal contracting to an extent that significantly limits small business opportunities. The vast majority of Federal contract awards are still within a size that small businesses should be capable of performing. Without verifiable data showing that large contracts adversely impact small business opportunities, these comments do not support establishing size standards to accommodate what appears to be a small proportion of overall contracting. Nonetheless, we are researching Federal procurement patterns and trends in greater detail to determine whether a separate size standard for Federal procurement of Health Care may be justified in the future.

Do the Proposed Size Standards Provide for an Appropriate Increase to the Existing Size Standards?

Most of the comments addressed the question of what size standard should be adopted for all of the Health Care industries. All the comments agreed that the size standard should be increased, but most of the comments disagreed with the proposed size standards. Most of the comments supporting an increased size standard substantiated their comments with reasons related to Federal procurement. However, other reasons were also given for supporting higher size standards in the industry, such as the mergers and affiliations with Health Maintenance Organizations (HMOs) that were generally not a force in the health care industries just a decade ago.

Commenters also pointed out that an increased size standard is justified because the cost of entry into these industries has also increased over time, especially technology costs. These technology costs include costs for specialty diagnostic and treatment equipment such as computer-aided imaging. Commenters cited high start-up costs because of the specialty equipment and the high-paid staff needed to operate them as reasons for increasing size standards in the industries. They pointed out that not all doctors' offices are similar, some are "high-risk" specialties such as radiology, obstetrics and gynecology, and anesthesiology. These types of offices have high start-up and operating costs in addition to the physician and nursing compensation. Therefore, if all of the specialties have the same size standard, some offices within the same industry will be at a bigger disadvantage to remain within the "small" status.

SBA is not convinced, at this time, that an additional increase over the size standards proposed is justified. Many of the factors discussed above are reflected in the Census Bureau data that SBA uses to evaluate industry size standards. Later this year SBA will receive the 1997 Economic Census on the Health Care industries. If any significant differences are observed between the 1992 and 1997 data, SBA will consider a larger size standard where appropriate.

Whether There Should Be a Common Size Standard for All Health Care Industries?

A majority of the commenting firms and both Government agencies argued for a common size standard all Health Care industries. The most often mentioned size standard was $25 million. The basis for these comments was the merger, affiliation and HMO activity that has integrated the various industries more so than in the past. For example, hospitals have home health care businesses, HMOs link formerly independent private offices together into larger networks, and independents (that decide not to join an HMO) may merge or affiliate to continue to be viable in this new environment. These firms integrate the skills of each profession to offer quality services to their clients.

SBA agrees with the desirability of establishing the same size standard for industries in the same Subsector provided that industry-specific factors are reasonably consistent within that Subsector. However, neither the industry characteristic data nor the Federal procurement data supports one size standard for all Health Care industries. For example, we could find no justification in the economic characteristics data to continue the same size standard of $5 million for general medical and surgical hospitals and physician's offices. Accordingly, SBA does not believe that there should be a common size standard for all Health Care industries. Because the data support different levels, whichever one was selected would only fit some of the industries. Furthermore, based on the data, no case could be made to support that a $25 million size standard would be appropriate for all Health Care.

Whether There Should Be an Employee-Based Size Standard?

Two comments recommended that SBA adopt an employee-based size standard for all Health Care industries rather than a receipts-based size standard. The comments provided no supporting evidence showing why number of employees is a better measure of size than receipts. The Small Business Act requires us to use receipts as the basis for size standards in the service industries (Small Business Act (§ 3(a)(2)(C))). In addition, SBA's policy has been to use employee-based size standards for manufacturing, mining and wholesale, and receipts-based size standards for most non-manufacturing industries. Therefore, SBA will continue to use receipts as the basis for size standards in the Health Care industries.

Whether We Should Establish a New Industry Code for HMOs?

Some of the comments expressed the need for a new industry to cover the HMO industry. On October 1, 2000, SBA implemented size standards based on NAICS industries. The NAICS lists three codes for HMOs—(1) facilities actually providing health care listed as an "HMO Medical Center" (NAICS 621491), (2) health practitioners contracting to provide their services to subscribers of prepaid health plans within "Offices of Physicians" (NAICS 62111), and (3) organizations that underwrite and administer health and medical insurance policies, but which do not directly provide health care services as "Direct Health and Medical Insurance Carriers" (NAICS 524114).

Because HMOs have not previously been designated as a separate industry, the Census Bureau has not collected the same data for HMOs as it has collected for SIC industries. Now that the NAICS has identified specific industries for HMOs, the 1997 Economic Census will have data on HMOs. We expect to have that data later this year and will review the HMO size standards at that time.

Whether We Whould Have the Same Size Standard for Doctors of Medicine as for Doctors of Osteopathy?

In response to SBA's review of the Health Care size standards and to our proposal to increase the size standards for doctors of medicine, we received comments recommending that doctors of medicine and doctors of osteopathy have the same size standards. The commenters stated that both health care providers basically meet the same educational requirements and perform the same services. The proposed rule included doctors of osteopathy in the group of health care services remaining at the $5 million while the size standard for doctors of medicine was proposed to be $7.5 million.

Based on the comments, we agree that the same standard should be adopted for doctors of osteopathy and doctors of medicine recognizing that the two professions should be considered as one for most purposes. Furthermore, NAICS recognizes that these two types of practitioners should be considered the same and combined doctors of osteopathy and doctors of medicine into a new industry titled "Offices of Physicians" (NAICS code 62111). As previously discussed, $7.5 million is being adopted for this industry and results in the same size standard being applicable to doctors of medicine and doctors of osteopathy.

Whether Medicare and Medicaid Distributions Should Be Counted as Federal Procurements?

Although we specifically requested comments on this issue in the proposed rule, we received only one comment. A hospital association representing nearly 5,000 hospitals took a strong stand against this approach. It contended that the payments are to and for health care beneficiaries, not the health care provider. As such, these payments are not discretionary but mandatory payments for services obtained by beneficiaries. In addition, it stated that health care services are purchased by beneficiaries based on consumer preference in a competitive environment. SBA agrees and does not believe the distribution of Medicare and Medicaid funds should influence the establishment of size standards.

Whether the Receipts of Affiliated Health Care Services Should Be Included in Gross Income?

The Health Care industries are continuing to evolve. Since the advent of managed care changed the Health Care landscape, other networks and alliances have emerged to respond to this new environment. Many hospitals own or control home health services, physician clinics, medical laboratories or dialysis centers. SBA's regulations require that the income of all affiliates be included when calculating average annual receipts. We received one comment on this subject. A hospital association recommended that income from such hospital affiliates not be taken in consideration when calculating either the average annual receipts of the hospital or the home health services, physician clinics, medical laboratories or dialysis centers so that hospital affiliates could qualify as small businesses.

Affiliation is a key concept in determining which businesses are small. One of the criteria for being a small business under the Small Business Act (§ 3(a)) is that it be independently owned and operated. Businesses owned or controlled by other concerns have access (actual or potential) to resources not available to other similar businesses. The Census Bureau data we use to evaluate size standards captures affiliation through ownership among businesses. Other new relationships in terms of networks and alliances may have to be looked at on a case-by-case basis. We believe our current affiliation regulations are adequate to distinguish relationships that lead to control, and, thus, when we should consider businesses affiliated (see 13 CFR 121.103).

Why We Are Adopting These Size Standards?

Comments to the proposed rule generally argued for higher size standards because of trends in Federal procurement. They also argued that the proposed size standards were not high enough to effectively help small businesses obtain additional Federal contracting opportunities. They recommended that we adopt a much higher size standard, such as $25 million, but did not identify supporting data.

In view of these comments, SBA had three viable options; (1) adopt the proposed standards, (2) revise the size standards upward based on comments without supporting data, or (3) suspend action on the size standards and wait for more current data.

SBA decided to go with option one—adopt the size standards as proposed. SBA does not believe that the reasons given by the comments for a $25 million size standard, in the absence of supporting data, are sufficient to support that level. SBA cannot follow larger and larger Federal contracts with increasing size standards when industry characteristics do not otherwise support the action. Also, size standards are used for purposes other than Federal procurement, such as regulatory flexibility analyses and SBA financial assistance programs. Thus, we need to ensure that size standards are viable for a variety of uses.

Because most of the comments expressed concerns in the Federal procurement area, we recognize that we need to consider establishing a size standard just for the purpose of Federal procurement of Health Care. Our preliminary work on this approach

shows that more research is needed to determine if size standards larger than adopted by this final rule are supportable and how to best describe Federal procurements for Health Care. If we believe a different standard(s) is justified, a new proposed rule will be issued. Meanwhile, firms in these industries will benefit from the increase made in this final rule. SBA chose not to suspend action on the proposed size standards until we have more current data because the proposed higher size standards will make more opportunities available for small businesses than retaining the current size standards and all of the commenters supported higher size standards for the Health Care industries.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866.

This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this final rule addressing the following questions: (1) What is the need for and objective of the rule, (2) what are the significant issues raised by the commenters in response to the initial regulatory flexibility analysis (IRFA), (3) what is SBA's assessment of those IFRA issues, (4) what changes if any are made from the proposed rule as a result of the comments on IFRA, (5) what is SBA's description and estimate of the number of small entities to which the rule will apply, (6) what is the projected reporting, record keeping, and other compliance requirements of the rule, and an estimate of the classes of small entities which will be subject to the requirements, (7) what type of type of professional skills are necessary to prepare the required reports or records, (8) what are the steps SBA has taken to minimize the economic impact on small entities, (9) what are the legal policies or factual reasons for selecting the alternative adopted in the final rule, and (10) what alternatives did SBA reject.

(1) What Is the Need for and Objective of the Rule?

These revisions are made to more appropriately define the size of businesses in these industries that SBA believes should be eligible for Federal small business assistance programs.

(2) What Are the Significant Issues Raised by the Commenters in Response to the IRFA?

The comments raised eight major issues concerning the proposed size standards, but none of the comments addressed the IRFA in the proposed rule.

(3) What Is SBA's Assessment of Those IFRA Issues?

No issues were raised in response to the IFRA, so SBA had no issues to assess.

(4) What Changes if any Are Made From the Proposed Rule as a Result of the Comments on IFRA?

None, since no comments were received on the proposed rule concerning the IRFA.

(5) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

SBA estimates that 4,700 additional firms will be considered small as a result of this final rule. These firms will be eligible to seek available SBA assistance provided that they meet other program requirements. Of the additional firms gaining eligibility, more than half would be Offices and Clinics of Doctors of Medicine, and Skilled Nursing Care Facilities. Firms becoming eligible for SBA assistance as a result of this rule cumulatively generate more than $50 billion in annual sales; total sales in all twelve industries receiving a size standards increase are $544 billion.

(6) What Is the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Rule and an Estimate of the classes of small entities Which Will Be Subject to the Requirements?

The new size standards are not expected to impose any additional reporting, record keeping or compliance requirements on small entities because a change in size standards does not affect their business operations. Increasing size standards provides more access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(7) What Type of Professional Skills Are Necessary to Prepare the Required Reports or Records?

No reports or records are required as a result of changing the size standards.

(8) What Are the Steps SBA Has Taken to Minimize the Economic Impact on Small Entities?

Most of the economic impact on small entities will be positive. The most significant benefits to businesses that would obtain small business status as a result of adoption of this final rule are: (1) Eligibility for the Federal Government's procurement preference programs for small businesses 8(a) firms, small disadvantaged businesses and small businesses located in Historically Underutilized Business Zones) and (2) the eligibility for SBA's financial assistance programs such as 7(a) and 504 business loans. SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $325 million per year under the small business set-aside program, the 8(a) program or unrestricted contracts. This represents 7.4 percent of the $4.4 billion the Federal government awarded in these nineteen Health Care industries during fiscal year 1999. Under SBA's 7(a) Guaranteed Loan Program and Certified Development Company (504) Program, SBA estimated that less than $4 million in new loans could be made to these newly defined small businesses. During fiscal year 1999, $600 million in loans were guaranteed by SBA under these two financial programs for firms in the Health Care industries. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. (For example, more than 95% of the 1999 loans were made to firms with less than $3.5 million in receipts.) Thus, increasing the size standard would likely result in only a small increase in small business guaranteed loans to businesses in these Health Care industries.

The competitive effects of size standard revisions differ from those normally associated with other regulations which typically burden smaller firms to a greater degree than larger firms in areas such as prices, costs, profits, growth, innovation and mergers. The change to size standards is not anticipated to have any appreciable affect on any of these factors. Firms affected by this rule-making would be eligible to seek available SBA assistance provided that they meet other program requirements. However, small businesses, 8(a) firms, or small disadvantaged businesses much smaller than the size standard for their industries may be less successful in competing for some Federal procurement opportunities due to the presence of larger newly defined small businesses. On the other hand, with more and larger small businesses competing for small business set-aside and 8(a) procurements, contracting agencies are likely to increase the overall number of contracting opportunities available under these programs.

(9) What Were the Legal Policies or Factual Reasons for Selecting the Alternative Adopted in the Final Rule?

As stated in 15 U.S.C. 632(a)(3) and 13 CFR 121.102, SBA is to consider the differences in industries when establishing size standards. SBA is not convinced, at this time, that an additional increase over the size standards proposed is justified. Many of the factors discussed in the comments are reflected in the Census Bureau data that SBA uses to evaluate industry size standards, so they are already included in our analysis published in the proposed rule. Later this year SBA will receive the 1997 Economic Census on the Health Care industries. If any significant differences are observed between the 1992 and 1997 data, SBA will consider new size standards where appropriate. Nonetheless, we are researching Federal procurement patterns and trends in greater detail and will evaluate the 1997 Economic Survey data to determine whether an increased size standard for Federal procurement of Health Care is justified.

(10) What Alternatives Did SBA Reject?

SBA acknowledges that Federal agencies are issuing larger contracts than in the past. However, contract award data from the Federal Procurement Data System do not substantiate that large dollar contracts dominate Federal contracting to an extent that significantly limits small business opportunities. The vast majority of Federal contract awards are still within a size that small businesses should be capable of performing. Without verifiable data showing that large contracts adversely impact small business opportunities, these comments do not support establishing size standards to accommodate what appears to be a small proportion of overall contracting.

For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of the order.

For the purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule does not impose new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 121

Administrative procedure and practice, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For reason stated in the preamble, SBA is amending 13 CFR Part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of Part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.201, amend the table "SIZE STANDRDS BY NAICS INDUSTRY," under the heading SECTOR 62—Health Care and Social Assistance, revise the entries Subsector 621—Ambulatory Health Care Services, Subsector 622—Hospitals, and Subsector 623—Nursing and Residential Care Facilities, to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification codes?

* * * * *

SIZE STANDARD BY NAICS INDUSTRY

NAICS codes	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
* * *	* *	* *
	Sector 62—Health Care and Social Assistance	
* * *	* *	* *
	Subsector 621—Ambulatory Health Care Services	
621111	Offices of Physicians (except Mental Health Specialists)	$7.5
621112	Offices of Physicians, Mental Health Specialists	$7.5
621210	Offices of Dentists	$5.0
621310	Offices of Chiropractors	$5.0
621320	Offices of Optometrists	$5.0
621330	Offices of Mental Health Practitioners (except Physicians)	$5.0
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists	$5.0
621391	Offices of Podiatrists	$5.0
621399	Offices of All Other Miscellaneous Health Practitioners	$5.0
621410	Family Planning Centers	$7.5
621420	Outpatient Mental Health and Substance Abuse Centers	$7.5
621491	HMO Medical Centers	$7.5
621492	Kidney Dialysis Centers	$25.0
621493	Freestanding Ambulatory Surgical and Emergency Centers	$7.5
621498	All Other Outpatient Care Centers	$7.5
621511	Medical Laboratories	$10.0
621512	Diagnostic Imaging Centers	$10.0
621610	Home Health Care Services	$10.0

SIZE STANDARD BY NAICS INDUSTRY—Continued

NAICS codes	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
621910	Ambulance Services	$5.0
621991	Blood and Organ Banks	$7.5
621999	All Other Miscellaneous Ambulatory Health Care Services	$7.5
	Subsector 622—Hospitals	
622110	General Medical and Surgical Hospitals	$25.0
622210	Psychiatric and Substance Abuse Hospitals	$25.0
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	$5.0
	Subsector 623—Nursing and Residential Care Facilities	
623110	Nursing Care Facilities	$10.0
623210	Residential Mental Retardation Facilities	$7.5
623220	Residential Mental Health and Substance Abuse Facilities	$5.0
623311	Continuing Care Retirement Communities	$10.0
623312	Homes for the Elderly	$5.0
623990	Other Residential Care Facilities	$5.0
* * *	* *	* *

Dated: November 9, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–29523 Filed 11–16–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–364–AD; Amendment 39–11965; AD 2000–23–13]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1121, 1121A, 1121B, 1123, 1124, and 1124A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Israel Aircraft Industries, Ltd., Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes. This action requires a one-time inspection, and corrective action if necessary, to ensure the proper installation of the tie rod through the dust shield and both jackscrew assemblies on the horizontal stabilizer trim actuator. This action is necessary to prevent jamming or disconnection of the horizontal stabilizer trim actuator, which could result in reduced pitch control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 2000.

Comments for inclusion in the Rules Docket must be received on or before December 18, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–364–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–364–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on all Israel Aircraft Industries, Ltd., Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes. The CAAI advises that the horizontal stabilizer trim actuator can jam or disconnect due to incorrect installation, maintenance, or inspection. The CAAI reports one case of incorrect installation of the trim actuator tie rod and dust shield, which may have caused an accident. Jamming or disconnection of the actuator, if not corrected, could result in reduced pitch control of the airplane.

Explanation of Relevant Service Information

Israel Aircraft Industries, Ltd., has issued the following alert service bulletins:

Service bulletin	Date	Model
1121 Commodore Jet Alert Service Bulletin 1121–27A–028	August 28, 2000	1121 JET COMMANDER.
1123 Westwind Alert Service Bulletin 1123–27A–053	August 28, 2000	1123 WESTWIND.
1124 Westwind Alert Service Bulletin 1124–27A–147	August 28, 2000	1124 and 1124A WESTWIND.

These alert service bulletins describe procedures for a one-time visual inspection to determine whether the tie rod is installed correctly through the dust shield and both jackscrew assemblies on the horizontal stabilizer trim actuator. The inspection includes measuring the distance between the bottom of the dust shield and the housing of the horizontal stabilizer actuator. The CAAI classified these service bulletins as mandatory and issued Israeli airworthiness directive 27–00–09–01, dated September 24, 2000, to ensure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent jamming or disconnection of the horizontal stabilizer trim actuator, which could result in reduced pitch control of the airplane. This AD requires accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between AD and Relevant Service Information

Operators should note that, although the alert service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA or the CAAI. In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the CAAI would be acceptable for compliance with this AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–NM–364–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–13 Israel Aircraft Industries, LTD.: Amendment 39–11985. Docket 2000–NM–364–AD.

Applicability: All Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming or disconnection of the horizontal stabilizer trim actuator, which could result in reduced pitch control of the airplane, accomplish the following:

Inspection

(a) Within 25 flight hours after the effective date of this AD: Perform a detailed visual inspection to determine whether the tie rod is installed correctly through the dust shield and both jackscrew assemblies of the horizontal stabilizer trim actuator. Do the inspection per Israel Aircraft Industries Alert Service Bulletins 1121–27A–028 (for 1121 JET COMMANDER series airplanes), 1123–27A–053 (for 1123 WESTWIND series airplanes), or 1124–27A–147 (for 1124 and 1124A WESTWIND series airplanes); all dated August 28, 2000; as applicable.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If both the tie rod and the dust shield are correctly assembled: No further action is required by this AD.

(2) If either the tie rod or the dust shield is not correctly assembled: Prior to further flight, accomplish the actions specified by either paragraph (a)(2)(i) or (a)(2)(ii).

(i) Replace the horizontal stabilizer trim actuator with a serviceable part in accordance with the airplane maintenance manual. Or

(ii) Repair the horizontal stabilizer trim actuator in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Administration of Israel (CAAI) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Spares

(b) As of the effective date of this AD, no person shall install a horizontal stabilizer trim actuator on any airplane, unless the actuator has been inspected and all applicable corrective actions have been performed in accordance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD: The actions shall be done in accordance with the following alert service bulletins:

Service bulletin	Date
1121 Commodore Jet Alert Service Bulletin 1121–27A–028	August 28, 2000.
1123 Westwind Alert Service Bulletin 1123–27A–053	August 28, 2000.
1124 Westwind Alert Service Bulletin 1124–27A–147	August 28, 2000.

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Israeli airworthiness directive 27–00–09–01, dated September 24, 2000.

Effective Date

(f) This amendment becomes effective on December 4, 2000.

Issued in Renton, Washington, on November 7, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29078 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–259–AD; Amendment 39–11969; AD 98–09–16 R1]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; rescission.

SUMMARY: This amendment rescinds an existing Airworthiness Directive (AD), applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes.

That AD currently requires revising the Airplane Flight Manual to add specific flightcrew instructions to be followed in the event of failure of the first generator, which could lead to the loss of main battery power and result in the loss of all electrical power, except the emergency battery supply, during flight. The requirements of that AD were intended to prevent failure of the second of two direct current generators after the failure of the first generator. Since the issuance of that AD, the FAA has received further information indicating that the incident that prompted that AD was an isolated case.

DATES: Effective November 17, 2000.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes was published in the **Federal Register** on November 9, 1999 (64 FR 61044). That action proposed to rescind AD 98–09–16. Rescission of AD 98–09–16 constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor would it commit the agency to any course of action in the future.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the rescission of the rule as proposed.

Cost Impact

The FAA estimates that 145 airplanes of U.S. registry are affected by AD 98–09–16. The actions that are currently required by that AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is approximately $8,700, or $60 per airplane. However, the adoption of this rescission will eliminate those costs.

Removal of the AFM revision required by AD 98–09–16 will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of removal of the AFM revision is estimated to be $8,700, or $60 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Rescission

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding an AD which removes amendment 39–10497, to read as follows:

98–09–16 R1 AEROSPATIALE: Amendment 39–11989. Docket No. 98–NM–259–AD. Rescinds AD 98–09–16, Amendment 39–10497.

Applicability: All Model ATR–42 and ATR–72 series airplanes; certificated in any category.

Effective Date

This rescission is effective November 17, 2000.

Issued in Renton, Washington, on November 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29378 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedule II Control of Dihydroetorphine Under the Controlled Substances Act (CSA)

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This is a final rule issued by the DEA that dihydroetorphine (7,8-dihydro-7α-[1-(R)-hydroxy-1-methylbutyl]-6,14-endo-ethanotetrahydrooripavine) is a Schedule II controlled substance. Although dihydroetorphine is not specifically listed in Schedule II of the Controlled Substances Act (CSA), it is a derivative of thebaine and as such is controlled under 21 U.S.C. 812 Schedule II(a)(1) which includes "Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate." Dihydroetorphine is a derivative of thebaine, a natural constituent of opium, hence dihydroetorphine is, by virtue of 21 U.S.C. 812 and 21 CFR Part 1308.12(b)(1)(16), a Schedule II controlled substance. International control of dihydroetorphine in Schedule I of the Single Convention on Narcotic Drugs, 1961 in 1998 prompted the DEA to specifically list dihydroetorphine as a controlled substance in Schedule II of the CSA.

EFFECTIVE DATE: November 17, 2000.

FOR FURTHER INFORMATION OR QUOTA REQUESTS CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Is Dihydroetorphine and Why Is It Controlled?

Dihydroetorphine is the international non-proprietary name for a chemical substance which is chemically similar to etorphine. It is an opiate-like

substance that is 3–4 order of magnitude (1000 to 10,000 times) more potent than morphine but with a shorter duration of action. The effects of dihydroetorphine and its psychological dependence liability are similar to those produced by heroin. Animal studies demonstrate that it is a highly potent analgesic with effects that begin within 15 minutes of administration and the effects last from 60–90 minutes. Dihydroetorphine was registered in China in December of 1992 for the relief of acute severe pain. However, abuse of dihydroetorphine began soon after it was marketed in China in 1992. Dihydroetorphine is not marketed or used medically in the United States. As a thebaine derivative, dihydroetorphine is controlled in Schedule II of the CSA in the United States.

Under What Authority Is Dihydroetorphine Controlled?

This order is prompted by a letter dated November 11, 1998, in which the United States Government was informed by the Secretary-General of the United Nations that dihydroetorphine has been added to Schedule I of the Single Convention on Narcotic Drugs, 1961 (1961 Convention). As a signatory Member State to the 1961 Convention, the United States is obligated to control dihydroetorphine under national drug control legislation, *i.e.*, the CSA. Dihydroetorphine is currently controlled under Schedule II of the CSA as a thebaine derivative, and as such, all regulations and criminal sanctions applicable to Schedule II substances have been and are applicable to dihydroetorphine. Schedule II control under the CSA satisfies the requirements of Schedule II control under the 1961 Convention.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation. DEA has determined that this rule is not a significant regulatory action under Executive Order 12866, Section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Regulatory Flexibility Act

This action will not have a significant economic impact on a substantial number of entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This action provides notification of control of dihydroetorphine in Schedule II of the CSA in order to comply with international treaty obligations. Although dihydroetorphine was not specifically listed in the CSA as a controlled substance, it was already controlled in Schedule II of the CSA as a derivative of thebaine.

Unfunded Mandate Reform Act

This rule will not result in the expenditure of state, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132 Federalism

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Plain English

The DEA makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation please contact Patricia M. Good, Chief, Policy and Liaison Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, phone (202) 307–7297.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by Section 201(d)(1) of the CSA [21 U.S.C. 811(d)(1)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, Appendix to Subpart R, Section 12, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—[AMENDED]

1. The authority citation for Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.12 is amended by redesignating paragraphs (b)(1)(8) through (b)(1)(16) as (b)(1)(9) through (b)(1)(17) and adding a new paragraph (b)(1)(8) to read as follows:

§ 1308.12 Schedule II.

* * * * *

(b) * * *

(1) * * *

(8) dihydroetorphine—9334

* * * * *

Dated: November 7, 2000.

Julio F. Mercado,

Deputy Administrator.

[FR Doc. 00–29439 Filed 11–16–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–244]

Drawbridge Operation Regulations: Raritan River, Arthur Kill, and Their Tributaries, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Perth Amboy railroad bridge, at mile 0.5, across the Raritan River in New Jersey. This deviation from the regulations allows the owner of the bridge to keep the bridge in the closed position from 10:30 a.m. on November 28, 2000 through 11 a.m. on November 30, 2000. This action is necessary to facilitate the inspection of the bridge wedge mechanism system at the bridge.

DATES: This deviation is effective from November 28, 2000, through November 30, 2000.

FOR FURTHER INFORMATION CONTACT: Judy Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Perth Amboy railroad bridge, at mile 0.5, across the Raritan River has a vertical clearance in the closed position of 8 feet at mean high water and 13 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.747.

The bridge owner, New Jersey Transit (NJTRANSIT), requested a temporary deviation from the drawbridge operating regulations to facilitate the inspection of the bridge wedge mechanism system at the bridge. This deviation to the operating regulations allows NJTRANSIT to keep the Perth Amboy Bridge in the closed position from 10:30 a.m. on November 28, 2000 through 11 a.m. on November 30, 2000.

The bridge owner did not provide the required thirty-day notice to the Coast Guard for this deviation; however, this deviation was approved because the inspection/repairs are necessary in order to keep the bridge operating and prevent an unscheduled closure due to component failure.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 7, 2000.

Gerald M. Davis,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 00–29516 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–00–240]

RIN 2115–AA97

Safety Zone: Andrew McArdle (Meridian Street) Bridge, Chelsea River, Chelsea, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Chelsea River for the Andrew McArdle Bridge repairs in all waters 100 yards upstream and 100 yards downstream from the bridge location. The safety zone temporarily requires a four-hour advance notification by vessels wishing to transit through the zone. The safety zone is needed to protect vessels from the hazards posed during repairs to the bascule floor beams and bridge fender system. It is also needed to allow sufficient time to move the construction barges in and out of the channel for vessel transits during the repair period.

DATES: This rule is effective from Wednesday, October 18, 2000, through Friday, December 8, 2000.

ADDRESSES: Documents as indicated in this preamble are part of docket CGD1–00–240 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) David Sherry, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about this event was not provided to the Coast Guard until October 12, 2000, making it impossible to publish a NPRM or a final rule 30 days in advance of its effective date. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to regulate a portion of the Chelsea River and protect the maritime public from the hazards associated with bridge repair activities. Additionally, the repair activity takes place only on weekdays from 6:30 a.m. until 5 p.m. and does not close the channel to users.

Background and Purpose

The Andrew McArdle Bridge over the Chelsea River, Chelsea, MA, fender system and bascule floor beams require repairs. During the repair evolution, barges will be moored in the center of the channel. Barge placement requires a four-hour advance notice by vessels wishing to transit the area, to ensure vessel safety.

This regulation establishes a safety zone in all waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the Andrew McArdle Bridge. This safety zone prohibits entry into or movement within this portion of the Chelsea River without a four hour advance notice given to personnel on scene. In an effort to maximize commerce during the closures, waterway users were invited to provide input at meetings on the following dates: August 11, 17, 24, and 31, September 7, 14, 21, and 28, and October 5, 2000. The meetings, hosted by Marine Safety Office Boston, were attended by stakeholders and promoted a consensus of the most favorable requirements for bridge repair efforts during the effective period.

The repair work requires a four hour advance notice for passage to minimize lost work time due to setting up, cleaning the site, and assuring safety for ship traffic. The Coast Guard was able to balance this need with community demands through the aforementioned open forum. The group arrived at a consensus between marine operators, the bridge owner, Massachusetts State Highway officials, and construction contractor. The expected duration of the safety zone will be from Wednesday, October 18, 2000 through Friday, December 8, 2000. During the effective dates, the channel will be open with construction on going, but a four-hour notice is required for vessel passage. Notice shall be given to the Andrew McCardle Bridge bridge tender via VHF channel 13. The bridge tender will convey the notice of passage to the construction barge operator. Smaller vessels that can navigate the area without requiring the barges to move are not required to give this notice. The Coast Guard will make Marine Safety Information Broadcasts and Local Notice to Mariners announcements informing mariners of this safety zone.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited duration of the safety zone and limited commercial traffic expected in the area during the effective periods. Moreover, commercial operators will receive advance channel closure notification through Port Operators Group meetings, Safety Marine Information Broadcasts and industry dissemination. The early notification will permit mariners ample time to alter voyage plans.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612.), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" may include: (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields; and (2) governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Chelsea River between October 9, 2000 through December 8, 2000.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The Coast Guard will issue maritime advisories before the effective period that will be widely available to users of the river; and the closures are based on waterway user input.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this final rule so that they could better evaluate its effects on them and participate in the rulemaking process. The Coast Guard coordinated meetings on August 11, 17, 24, and 31; September 7, 14, 21, and 28, and October 5, 2000, involving Chelsea River users to gain input and feedback on the construction. The group organized and agreed upon the schedule provided.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposal calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have federalism implications under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T00–240 to read as follows:

§ 165.T00–240 Safety Zone: Andrew McArdle Bridge, Chelsea River, Chelsea, MA.

(a) *Location.* The following area is a safety zone:

All waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the Andrew McArdle Bridge.

(b) *Effective Dates.* This section is effective Wednesday, October 18, 2000 through Friday, December 8, 2000.

(c) *Regulations.*

(1) The channel will be open with construction on going with a four-hour notice to the Andrew McCardle Bridge bridge tender on VHF channel 13 required for vessel passage.

(2) Entry into or movement within this zone is prohibited without four-hour notification to the Andrew McCardle Bridge bridge tender, unless authorized by the Captain of the Port Boston.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(4) The general regulations covering safety zones in section 165.23 of this part apply.

Dated: October 18, 2000.

J.R. Whitehead,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 00–29517 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

RIN 0651–AB19

Treatment of Unlocatable Patent Application and Patent Files

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office is amending the rules of practice to provide for the replacement of patent application and patent files that cannot be located after a reasonable search. This change is designed to expedite the process of application and patent file reconstruction to minimize the processing or examination delays resulting when the Office cannot locate an application or patent file after a reasonable search.

EFFECTIVE DATE: November 17, 2000.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr by telephone at (703) 308–6906, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr.

SUPPLEMENTARY INFORMATION: Over 330,000 patent applications (provisional and nonprovisional) were filed in the United States Patent and Trademark Office (Office) in fiscal year 1999. On occasion, an application or patent file cannot be located.

When a patent application or patent file cannot be located after a reasonable search and the application or patent file is necessary to conduct business before the Office, the Office will "reconstruct" the application or patent file. This involves placing a duplicate copy of the original application papers and all of the correspondence between the Office and applicant or patentee in a new file wrapper. The Office currently (since the spring of 1997) uses its Patent Application Capture and Review (PACR) system to image scan the application papers submitted on the filing date of the application (except for any appendix or information disclosure statement) and to create an electronic database (PACR database) containing a duplicate record of the original application papers (application papers were microfilmed prior to the spring of 1997). Thus, the Office can obtain a copy of the original application papers from its PACR database (or microfilm records).

The Office, however, does not possess a duplicate copy of subsequent correspondence from the applicant or patentee (*e.g.*, applicant replies or other papers) concerning the application or patent. While the Office may have a copy of some Office correspondence (Office actions saved on a disc or computer hard drive), the Office often does not possess a complete copy of the Office correspondence concerning the application or patent (*e.g.*, paper-based forms or notices). Thus, to reconstruct a file accurately, the Office must request that the applicant or patentee either provide a complete copy of his or her record of the correspondence between the Office and the applicant or patentee, or produce his or her record of the correspondence between the Office and the applicant or patentee for the Office to copy.

Formerly, the request that applicant provide a copy of (or produce) his or her record of the correspondence between the Office and the applicant did not require a reply within any set time period. In a pending application, this added to the delay in processing and examination resulting from the inability to locate the application file. To expedite the process of reconstructing the file of an application or patent file, the Office is amending the rules of practice to provide that the Office will now set a time period within which applicant or patentee must either provide a complete copy of his or her record of the correspondence between the Office and the applicant or patentee, or produce his or her record of the correspondence between the Office and the applicant or patentee for the Office to copy. Since the Office cannot continue to examine an application for which it does not have a complete copy, the failure to provide a copy of (or produce) his or her record of the correspondence between the Office and the applicant in a pending application within this time period will result in abandonment of the application. *See* 35 U.S.C. 133 (failure to prosecute an application in a timely manner "after any action therein" shall be regarded as abandonment of the application).

Corresponding with an applicant or patentee when an application is abandoned or patented is often difficult because address information is often not current. There are many good reasons for keeping correspondence information current in an abandoned application or patent. Patent applicants and patent owners should keep the correspondence address and any fee address current for the patent to ensure that correspondence is mailed to applicant's or patentee's current address. In an abandoned application, the Office may attempt to communicate with applicant regarding a petition for access. If the address has not been updated, then the Office may not be able to consider applicant's views in deciding whether to release the application to a member of the public. The Customer Number Practice described in section 403 of the *Manual of Patent Examining Procedure (MPEP)* (7th ed. 1998) (Rev. 1, Feb. 2000) provides a procedure where a patent applicant or owner can easily change the correspondence address for a number of patents or patent applications. In addition, the "Fee Address" Indication Form (PTO/SB/47) (reproduced at *MPEP* 2595) enables a patent owner to complete one form to designate a single fee address for any number of patents or applications in which the issue fee has been paid.

When changing the address(es) associated with a patent, the patent owner should bear in mind that the Office has a number of addresses related to the patent: (1) An application correspondence address; (2) the return address for the assignment documents; and (3) the fee address for maintenance fee purposes. *See MPEP* 2540. The correspondence address is the address to which Office actions and notices are mailed during the patent application process and is often not current within a few years of patent issuance. As a result, the regulations related to reexamination proceedings require that a patent owner be served with a copy of a Reexamination Request at the Office of Enrollment and Discipline address for the attorney or agent of record, if there is an attorney or agent of record. *See MPEP* 2220. If there is no attorney or agent of record, the copy is required to be served upon the patent owner. *See* 37 CFR 1.33(c). In the procedure to obtain a copy of a patent file set forth in this notice, the request will be directed to the correspondence address.

The Office is planning for full electronic submission of applications and related documents by fiscal year 2003. Once the Office transitions to a total Electronic File Wrapper environment, the inability to locate a paper application file should no longer be a significant issue. However, this rule change is necessary to provide for the replacement of unlocatable application and patent files until the Office has completely transitioned to a total Electronic File Wrapper environment.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.251 is added to set forth a procedure for the reconstruction of the file of a patent application, patent, or any other patent-related proceeding that cannot be located after a reasonable search. The phrase "an application" applies to any type of application (national or international), and regardless of the status (pending or abandoned) of the application.

Section 1.251(a) provides that in the event the Office cannot locate the file of an application, patent, or any other patent-related proceeding after a reasonable search, the Office will notify the applicant or patentee and set a time period within which the applicant or patentee must comply with the notice. The applicant or patentee may comply with a notice under § 1.251 by providing: (1) A copy of his or her record (if any) of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents); (2) a list of such correspondence; and (3) a statement that the copy is a complete and accurate copy of the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents), and whether applicant or patentee is aware of any correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patentee's records (§ 1.251(a)(1)). The applicant or patentee may also comply with a notice under § 1.251 by: (1) Producing his or her record (if any) of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy (except for U.S. patent documents); and (2) providing a statement that the papers produced by applicant or patentee are applicant's or patentee's complete record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents), and whether applicant or patentee is aware of any correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patentee's records (§ 1.251(a)(2)). If applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, the applicant or patentee must comply with a notice under § 1.251 by providing a statement that applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (§ 1.251(a)(3)).

According to § 1.251(a), if the applicant or patentee possesses all or just some of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, the applicant or patentee is to reply by providing a copy of (or producing) his or her record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (§§ 1.251(a)(1) or (a)(2)). If applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, the applicant or patentee is to reply with a statement to that effect (§ 1.251(a)(3)).

Any appendix or information disclosure statement submitted with an application is not contained in the Office's PACR database. Therefore, the applicant or patentee must also provide a copy of any appendix or information disclosure statement (except in the limited circumstance discussed below) submitted with the application. Since the Office can obtain copies of U.S. patent documents (U.S. patent application publications and patents) from its internal databases, the Office is not requiring applicants or patentees to provide copies of U.S. patent application publications and patents that are among the applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding.

Section 1.251(b) provides that with regard to a pending application, the failure to provide a reply to such a notice within the time period set in the notice will result in abandonment of the application.

Response to Comments

The Office published a notice proposing changes to the rules of practice to provide for the replacement of application and patent files that cannot be located after a reasonable search. *See Treatment of Unlocatable Application and Patent Files*, Notice of Proposed Rulemaking, 65 FR 42309 (July 10, 2000), 1237 *Off. Gaz. Pat. Office* 28 (Aug. 1, 2000) (notice of proposed rulemaking). The Office received eleven written comments (from intellectual property organizations, patent practitioners, and the general public) in response to the notice of proposed rulemaking. Comments generally in support of the change are not discussed. The comments and the Office's responses to the remaining comments follow:

Comment 1: Several comments inquired as to how long an applicant or patentee will be given to provide a copy of the file in reply to a notice under § 1.251. The comments suggested that: (1) Applicants be given a minimum period of three months to reply to a notice under § 1.251; (2) this period for reply be set forth in § 1.251 (rather than merely set forth in the *MPEP* or left completely up to the discretion of Office officials); and (3) this period for reply be extendable under § 1.136(a). One comment also suggested that patentees be given at least five months to reply to a notice under § 1.251.

Response: The Office will set a time period of three months for reply in a notice under § 1.251 in an application. The time period will be extendable under § 1.136(a) (unless the notice indicates otherwise) by three months up to a maximum period for reply of six months in an application. *See* 35 U.S.C. 133.

The Office will set a time period of six months for reply in a notice under § 1.251 in a patent. The time period will not be extendable under § 1.136(a) in a patent because 35 U.S.C. 41(a)(8) only authorizes the Office to charge fees for extensions of time in proceedings involving an application. *See MPEP* 2265.

Section 1.251 will not include these time periods. These time periods, however, will be included in the *MPEP* and not left to the complete discretion of various Office officials.

Comment 2: One comment suggested that there should be no reduction in patent term adjustment for the entire delay for the initial search and for compliance with a notice under § 1.251. Another comment suggested that for purposes of patent term adjustment, all of the time taken to reconstruct the file "should be charged against the Office."

Response: Patent term and patent term adjustment are provided for by statute. *See* 35 U.S.C. 154(a)(2) and (b) and 173. The inability to locate an application file in and of itself does not give rise to patent term adjustment under 35 U.S.C. 154(b). Rather, patent term adjustment is an issue only if the inability to locate the application file causes the Office to miss one of the time frames specified in 35 U.S.C. 154(b)(1)(A) or (B), or prolongs the duration of one of the proceedings specified in 35 U.S.C. 154(b)(1)(C). In addition, if an applicant fails to reply to a notice under § 1.251 within three months of its mailing date, any patent term adjustment under 35 U.S.C. 154(b) will be reduced by a period equal to the number of days (if any) beginning on the day after the date that is three months after the mailing date of the notice under § 1.251 and ending on the date the reply to the notice under § 1.251 was filed. *See* 35 U.S.C. 154(b)(2)(C)(ii) and § 1.704(b).

Comment 3: Several comments inquired as to what steps are taken to search for a file before it is determined to be unlocatable (*i.e.*, inquired as to what is a reasonable search). One comment expressed concern that the procedure in § 1.251 not be used as a substitute for a reasonable search for such a file. Another comment suggested that a reasonable time limit (*e.g.*, three months) be established for such a search so that reconstruction of the file (if necessary) can begin promptly.

Response: When an application file is determined to be unlocatable, the Official Search Unit or a Technology Center designee conducts a search for the application file in every location where the application file might reasonably be located: *e.g.*, its location as indicated in the Office automated application tracking system (the Patent Application Locating and Monitoring or PALM system), the examiner's office, and the Technology Center's central files, technical support, and receptionist areas. If the application file still cannot be located, the application is flagged as "lost" in the PALM system. The flagging of an application in the PALM system as "lost" causes the PALM system to signal any person who then attempts a PALM transaction for the application (for which the application file is required) that the application file was previously unlocatable and should be taken to the person who was conducting a search for the application file. If no PALM transaction for the application occurs within thirty days, the Office then begins the file reconstruction process.

Comment 4: One comment opposed the proposed change on the basis that it did not address the problem (*i.e.*, the Office's inability to locate certain files). The comment indicated that the Office should better train its staff to track application and patent files, and to conduct a more diligent search for an application or patent files.

Response: The Office is addressing this issue by: (1) Revising procedures for searches for applications; and (2) moving towards a total Electronic File Wrapper environment. Nevertheless, the majority of comments recognize that establishing procedures for the prompt reconstruction of unlocatable files is important not only to the conduct of business before the Office, but is also important to the public (third parties) which relies upon the information in a patent file when conducting an infringement or validity analysis.

Comment 5: One comment suggested that the Office provide a printout of the contents entries from the Office's PALM system with any notice under § 1.251 to assist the applicant or patentee.

Response: The suggestion is adopted.

Comment 6: One comment inquired as to how long it takes the Office to realize it has lost a file.

Response: The Office usually realizes that it cannot locate a patent file when a member of the public requests a copy of the file. The Office usually realizes that it cannot locate an application file when its PALM system indicates that the application is due for some action.

Comment 7: One comment inquired as to how long it will take for the Office to act on an application once the file has been reconstructed.

Response: Once an application file has been reconstructed, it is docketed for action based upon its stage in the application examination process. In most situations, the application will be acted upon immediately.

Comment 8: Several comments suggested that the Office should take special steps with files that have been reconstructed to ensure that the applicant or patentee is not again required to provide a copy of the file.

Response: The Office takes the steps that can reasonably be taken to avoid misplacing any application or patent file. Thus, there are no further "special" steps that could reasonably be taken to avoid misplacing reconstructed application or patent files.

Comment 9: One comment suggested that the Office should first attempt to reconstruct the file based upon the material it has (*i.e.*, copies of Office actions, and sequence listings), and then require the applicant or patentee to supply the specific materials that the Office does not have. Another comment suggested that the applicant or patentee should not be required to produce copies of documents available to the Office from other sources (*e.g.*, U.S. or foreign patents or patent publications).

Response: The Office has considered attempting to reconstruct portions of the application or patent file based upon material contained in other Office databases. These databases, however, do not always contain accurate or complete copies of the papers actually in the application or patent file (*e.g.*, Office actions may be draft or incomplete and may not include the pre-printed forms sent with Office actions). The best way to reconstruct an application or patent file quickly, completely, and accurately is to obtain a copy of the applicant or patentee's records of correspondence between the Office and applicant or patentee for the application or patent.

The Office can obtain copies of U.S. patent application publications and patents from its databases. Therefore, the Office is not requiring applicants or patentees to provide copies of U.S. patent application publications and patents that are among the applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding. The Office, however, may not be able to obtain copies of foreign patent documents or nonpatent literature from its databases. Therefore, the Office is requiring applicants or patentees to provide copies of foreign patent documents and nonpatent literature that are among the applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding.

Comment 10: One comment suggested that the applicant or patentee be required to provide a copy of only the papers formally of record in the application or patent file (*i.e.*, not proposed amendments submitted to an examiner for consideration on an informal basis).

Response: The applicant or patentee is required to provide a copy of applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding. While an "informal" (or "proposed") amendment submitted to an examiner for consideration is not entered into the specification or drawings of the application, Office practice is to make such an informal or proposed amendment of record in the application file (usually by attachment to an interview summary record). Thus, "informal" amendments submitted to examiners for consideration are part of the correspondence between the Office and the applicant (or patentee) that must be submitted (if contained in applicant's or patentee's records of the application or patent).

Comment 11: One comment questioned whether § 1.251 applies when the file is otherwise available, but is missing specific documents.

Response: Section 1.251 generally applies only to situations in which the file of an application or patent (not just certain documents) is unlocatable. When a document is missing from an application, Office practice is to call the applicant's representative and request

submission (generally by facsimile) of a copy of the missing document. While the Office intends to continue to treat missing documents in this relatively informal manner (rather than issuing a notice under § 1.251), the Office may issue a notice under § 1.251 to obtain a copy of a missing document if the Office's informal attempts to obtain a copy of the document are unsuccessful.

Comment 12: One comment questioned what the Office does with the original file if it is discovered after the file has been reconstructed.

Response: The Office will combine the papers into a single file wrapper and then destroy the other file wrapper (as well as any duplicate papers).

Comment 13: One comment argued that the provisions of § 1.251 are not effective as to a patentee since there is no threat (*e.g.*, threat of abandonment) if a patentee does not comply with a notice requiring a copy of the patent file. Another comment suggested that the Office expressly indicate that there is no consequence if a patentee fails to comply with a notice under § 1.251 because a statutory change would be required for the Office to be able to impose a consequence such as lapse of the patent on a patentee.

Response: If a patentee does not timely reply to a notice under § 1.251, the patent will not "lapse" or expire. Nevertheless, it is incorrect to say that there is no consequence to a patentee who fails to comply with a notice under § 1.251. If a patentee fails to timely comply with a notice under § 1.251, the only certified copy of the patent file that the Office will be able to produce will be a copy of the patent and a copy of the application-as-filed (which may have an adverse impact during attempts to enforce the patent). In addition, if the patent is involved in a proceeding before the Office, the Office may take action under § 1.616 or § 10.18. Thus, the provisions of § 1.251 will be effective as to a patentee even in the absence of a statutory change to impose some other consequence (*e.g.*, lapse of the patent).

Comment 14: Several comments argued that the threat of holding an application abandoned when the file was lost by the Office was patently unfair. One comment suggested that the sanction for noncooperation with a requirement for a copy of the application file for applications subject to the twenty-year patent term provisions of 35 U.S.C. 154(a)(2) be a reduction of any patent term adjustment under 35 U.S.C. 154(b), and that the sanction for noncooperation with a requirement for a copy of the application file for applications not subject to the twenty-year patent term provisions of 35 U.S.C. 154(a)(2) be a requirement for a terminal disclaimer.

Response: As discussed above, the Office cannot process or examine an application if its file is unlocatable. Treating noncooperation with a requirement for a copy of the application file for applications solely by a reduction of any patent term adjustment or requirement for a terminal disclaimer would give rise to an open-ended suspension of action for any application in which the applicant chooses not to timely reply to a notice under § 1.251.

It is well established that keeping an application pending before the Office for an indeterminate period of time with no prospect of action being taken by either the Office or the applicant is not consistent with the spirit of the patent application examination process. *See Planning-Machine Co.* v. *Keith*, 101 U.S. (11 Otto) 479, 485 (1879) (applicant cannot without cause hold an application pending during a long period without prosecuting the application). If an applicant fails to cooperate with the Office's attempt to reconstruct the file of an unlocatable application, there is no prospect of action being taken by either the Office or the applicant until the applicant replies to the notice under § 1.251. Therefore, if the file of an application is unlocatable and the applicant fails to cooperate with the Office's attempt to reconstruct the file, it is appropriate to terminate proceedings in that application and treat the application as abandoned.

Comment 15: One comment suggested that if an application becomes abandoned for failure to reply to a notice under § 1.251, the applicant should be able to revive the application. Another comment suggested that the Office should permit the applicant to revive the application for unintentional abandonment at no cost to the applicant (the cost being absorbed by the Office).

Response: An application abandoned for failure to timely reply to a notice under § 1.251 may be revived pursuant to § 1.137, provided that the conditions specified in § 1.137 can be met (*i.e.*, the delay in reply to the notice under § 1.215 was unavoidable or unintentional). 35 U.S.C. 41(a)(7) requires the Office to charge a fee for filing a petition to revive an abandoned application, regardless of whether the delay was unintentional or unavoidable. In any event, an application abandoned for failure to timely reply to a notice under § 1.251 is not abandoned because the Office cannot locate the application, but because the applicant failed to timely reply to the notice under § 1.251.

Comment 16: Several comments argued that applicants and patentees are unable to state with absolute confidence that their records are a complete and accurate copy of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding (since correspondence from the Office may have been lost in the mail). Some comments suggested that an applicant or patentee be required to state only that the copy is a complete and accurate copy of the applicant or patentee's record of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding. Another comment suggested that an applicant or patentee be required to state only that the copy is complete and accurate to the best of the individual's knowledge and belief, upon reasonable investigation.

Response: Sections 1.251(b)(1) and (b)(2) as proposed provided for the situation in which the applicant or patentee possessed a complete and accurate copy of the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, and § 1.251(b)(3) as proposed provided for the situation in which an applicant or patentee did not possess a complete and accurate copy of the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding. Since applicants and patentees cannot be certain of whether their records are a complete and accurate copy of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, §§ 1.251(a)(1) and (a)(2) as adopted provide for the situation in which the applicant or patentee possesses some record (whether complete or incomplete) of the correspondence between the Office and the applicant or patentee, and § 1.251(a)(3) provides for the rare situation in which an applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee.

Sections 1.251(a)(1) and (a)(2) will require a statement that the copy produced by applicant or patentee is a complete and accurate copy of the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents), and whether applicant or patentee is aware of any correspondence between the

Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patentee's records. An applicant or patentee should be able to state with confidence that the copy provided to or produced for the Office is a complete and accurate copy of the applicant's or patentee's record (if any) of all of the correspondence between the Office and the applicant or patentee, and whether applicant or patentee is aware of any correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patent's records.

Comment 17: One comment suggested that § 1.251 was unclear as to whether the applicant or patentee was being required to state that the copy being produced by the applicant or patentee for copying by the Office, or the copy produced by the Office, was a complete and accurate copy of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding.

Response: Section 1.251(a)(2) requires a statement that the copy produced by applicant or patentee (not the copy produced by the Office) is a complete and accurate copy of applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding.

Comment 18: One comment required that the Office indicate where or to whom the applicant or patentee is to produce the applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding for copying by the Office.

Response: If an applicant or patentee decides to produce his or her record of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding for copying by the Office under § 1.251(a)(2) (rather than provide a copy under § 1.251(a)(1)), the record should be brought to the Customer Service Center in the Office of Initial Patent Examination (Crystal Plaza 2, 2011 South Clark Place, Arlington, VA 22202).

Comment 19: One comment noted that § 1.251 provides the option of producing the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy when the applicant or patentee possesses a complete copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding. The comment suggests that the Office should also provide the option of producing the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy when the applicant or patentee does not possess a complete copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding.

Response: Section 1.251(a)(2) provides the option of producing the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy even when the applicant or patentee does not possess a complete copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding.

Comment 20: Several comments suggested that the Office should reimburse applicants or patentees for the costs of copying the application or patent file and delivering the copy to the Office.

Response: The Office does not currently reimburse applicants or patentees for the costs of copying the application or patent file and delivering the copy to the Office. The changes in this final rule will not affect the costs of copying the application or patent file and delivering the copy to the Office as compared to current practice. The Office will study the reimbursement question to consider the costs and operational considerations associated with such a proposal.

Classification

Administrative Procedure Act

The changes in this final rule concern only the procedures for obtaining a copy of applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for an application, patent, or other proceeding when necessary to reconstruct the file of such application, patent, or other proceeding. Therefore, prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law).

Regulatory Flexibility Act

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. *See* 5 U.S.C. 603.

Executive Order 13132

This document does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This document has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This document involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this document was submitted for approval by OMB under control number 0651–0031. The United States Patent and Trademark Office submitted this information collection package to OMB for its review and approval because the changes in this notice affect the information collection requirements associated with that information collection package.

The title, description, and respondent description of this information collection is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the changes in this notice is to set forth the procedures for obtaining a copy of applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for an application, patent, or other proceeding when necessary to reconstruct the file of such application, patent, or other proceeding.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08/21–27/31/42/4[illegible]/61/62/63/64/67/68/91/92/96/97.

Type of Review: Approved through October of 2002.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 2,231,365.

Estimated Time Per Response: 0.46 hours.

Estimated Total Annual Burden Hours: 1,018,736 hours.

Needs and Uses: During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access: Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office Washington, DC 20231, or to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503 (Attn: Desk Officer for the United States Patent and Trademark Office).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.251 is added immediately following § 1.248 to read as follows:

§ 1.251 Unlocatable file.

(a) In the event that the Office cannot locate the file of an application, patent, or other patent-related proceeding after a reasonable search, the Office will notify the applicant or patentee and set a time period within which the applicant or patentee must comply with the notice in accordance with one of paragraphs (a)(1), (a)(2), or (a)(3) of this section.

(1) Applicant or patentee may comply with a notice under this section by providing:

(i) A copy of the applicant's or patentee's record (if any) of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents);

(ii) A list of such correspondence; and

(iii) A statement that the copy is a complete and accurate copy of the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents), and whether applicant or patentee is aware of any correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patentee's records.

(2) Applicant or patentee may comply with a notice under this section by:

(i) Producing the applicant's or patentee's record (if any) of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy (except for U.S. patent documents); and

(ii) Providing a statement that the papers produced by applicant or patentee are applicant's or patentee's complete record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents), and whether applicant or patentee is aware of any correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patentee's records.

(3) If applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, applicant or patentee must comply with a notice under this section by providing a statement that applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding.

(b) With regard to a pending application, failure to comply with one of paragraphs (a)(1), (a)(2), or (a)(3) of this section within the time period set in the notice will result in abandonment of the application.

Dated: October 31, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–29411 Filed 11–16–00; 8:45 am]

BILLING CODE 3510–16–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[ET Docket No. 98–237; FCC 00–363]

3650–3700 MHz Government Transfer

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates 50 megahertz of spectrum in the 3650–3700 MHz band to the fixed and mobile (base stations) terrestrial services on a primary basis. We are "grandfathering" existing fixed satellite service ("FSS") earth station sites in this band and, for a limited time, will accept new applications for FSS earth stations in the vicinity (*i.e.*, within 10 miles) of these grandfathered sites to operate on a co-primary basis in the band. We will also permit additional FSS earth station operations on a secondary basis. This will ensure the continuity of FSS operations and permit new FSS operations to help alleviate congestion in the adjacent 3700–4200 MHz FSS band. Finally, to provide for compatibility with both terrestrial fixed service and FSS operations in the band, we are limiting the terrestrial mobile service use of the band to base station operations.

DATES: Effective February 15, 2001.

FOR FURTHER INFORMATION CONTACT: Rodney Conway, Office of Engineering and Technology, (202) 418–2904.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Report and Order*, ET Docket No. 98–237, FCC 00–363 adopted October 12, 2000, and released October 23, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, International

Transcription Service, (202) 857–3800, 1231 20th Street, NW. Washington, DC 20036.

Summary of the Report and Order

1. Based on the record in this proceeding and the need to balance competing demands for this spectrum, we are adopting our proposal to allocate the 3650–3700 MHz band for terrestrial fixed service operations on a primary basis. As indicated by the commenting parties, allocation of this band on a primary basis for fixed service will facilitate the operation of a broad range of new advanced services. We believe that the 3650–3700 MHz band is situated low enough in the radiofrequency spectrum so as to permit favorable transmission characteristics which will allow the establishment of service links that can cover significant distances. In addition, 50 megahertz will provide enough bandwidth to allow for high speed digital data and video services. These characteristics should prove useful in establishing basic and advanced telecommunications services within rural areas of the country.

The need for advanced services in rural areas has been well documented in recent studies. These studies conclude that Americans living in rural areas and inner cities do not have access to advanced services that are comparable to services available to people living in other areas. A lack of broadband infrastructure could limit the potential of these communities to attract and retain businesses and jobs, especially businesses that are dependent on electronic commerce. Lack of infrastructure could also restrict community access to education, health care, and recreational services. We conclude that allocation of the 3650–3700 MHz band for the fixed service will serve the public interest by providing broadband data services to residential and business consumers, particularly in rural areas. Additionally, this allocation will facilitate an alternative means of providing basic telephone service, thus fostering a competitive market structure for direct public switched telephone network ("PSTN") access for rural and underserved areas of the U.S. For example, it could be used to provide unserved persons with a wireless connection to the PSTN and to economically serve high-cost wireline service areas, including rural areas.

2. Given the challenging spectrum sharing environment involving the relatively weaker satellite receive signals, we remain concerned about mobile station (*i.e.*, roving handset) operations in the 3650–3700 MHz band. However, while we note that mobile station operations may raise interference concerns, we find that land mobile base stations should be allowed to operate within the 3650–3700 MHz band. Mobile base stations are fixed and thus do not raise the same interference concerns as mobile handset operations. Mobile base stations in the 3650–3700 MHz band might operate with land mobile services offered in the 4940–4990 MHz band.

Specifically, the land mobile base stations could transmit in the 3650–3700 MHz band, and the land mobile receivers could use the 4940–4990 MHz band to transmit back to the land mobile base station. We therefore allocate the 3650–3700 MHz band to the mobile service on a nationwide co-primary basis with the fixed service. However, we limit this allocation to base station operations only. Consistent with the international allocation in this band, we are not permitting aeronautical mobile operations. Land mobile base stations in the 3650–3700 MHz band will be subject to the same coordination procedures as FS stations concerning grandfathered Government radiolocation and grandfathered FSS operations.

3. In the *Notice of Proposed Rule Making and Order* ("NPRM and Order"), 64 FR 2462, January 14, 1999, we imposed a freeze on the acceptance of applications for earth station operations in the 3650–3700 MHz band. We proposed to permanently implement this action, but sought comment on alternative methods to meet the terrestrial fixed service needs while minimizing the effect on FSS operations. While some satellite providers indicate that sharing on a co-primary basis is possible, we decline to adopt such a proposal. We recognize that fixed operations and FSS share spectrum in some bands. We will permit sharing to the extent it is technically possible and promotes efficient use of the spectrum.

However, in this band, allowing FSS on an unrestrained co-primary basis would impede any potential widespread use of the band for terrestrial services. Due to the weak signals that are received in the FSS, coordination with the higher-powered terrestrial operations would result in potentially large geographic areas where terrestrial services could not operate to avoid interference to FSS. The size and shape of these "exclusion zones" may be different for each FSS earth station site because factors such as shielding, antenna orientation and terrain elevation will vary from site to site. These coordination requirements and the presence of exclusion zones would significantly increase transaction costs and create a disincentive for deployment of new terrestrial operations. Thus, we find that unrestrained deployment of FSS earth stations could hinder or greatly inhibit the opportunities for terrestrial operations in the band.

4. Pursuant to the Balanced Budget Act of 1997, the National Telecommunications and Information Administration ("NTIA"), identified the 3650–3700 MHz band as a possible substitute for 15 megahertz at 1990–2110 MHz. A statutory condition of the substitution requires that alternative spectrum "better serve the public interest, convenience, and necessity" and that "the alternative could reasonably be expected to produce comparable receipts." The other bands identified by NTIA as alternatives to the 15 megahertz at 1990–2110 MHz include: 944–960 MHz, 1390–1400 MHz, 1427–1432 MHz, 1670–1675 MHz, and 2500–2690 MHz. As noted in our Spectrum Policy Statement, the 944–960 MHz and 2500–2690 MHz bands are already used extensively for non-Government services. We also observe that portions of the 1390–1400 MHz and 1427–1432 MHz have already been allocated and assigned to non-Government use. The remaining portions of these bands and the 1670–1675 MHz band are small, noncontiguous segments and thus we believe are unlikely to raise comparable receipts as required by the BBA. Thus, with the exception of 3650–3700 MHz, none of the bands identified by NTIA is available to satisfy the requirements of the BBA. Because this 50 megahertz is at a higher frequency than 15 megahertz of spectrum identified in the 1990–2110 MHz band, additional bandwidth is required to compensate for increased path losses that occur in the 3650–3700 MHz band. For these reasons, we find that the 3650–3700 MHz band is an equivalent and viable substitute for 15 megahertz of spectrum at 1990–2110 MHz, taking into account differences in propagation characteristics between the two bands.

5. Because we are substituting the 3650–3700 MHz band for 15 megahertz of spectrum in the 1990–2110 MHz band, we must assign licenses for this spectrum by competitive bidding to satisfy the requirements of the BBA. Our allocation to the terrestrial services will enable us to establish service rules consistent with the statutory mandate to auction licenses for this spectrum.

6. Recently enacted legislation states that the Commission "shall not assign spectrum used for international or

global satellite services by competitive bidding." FSS in this band has historically been restricted to international, intercontinental services. Given that this band is allocated for space-to-Earth or downlink services, this footnote implies that data is being transmitted from another country. Even if this restriction were not in place, the international inter-continental nature of the satellite systems deployed in this band results in a footprint that extends well beyond the U.S. border into other countries. Because FSS is, or may be, used for the provision of international satellite services in this band, we believe that the assignment of FSS licenses by competitive bidding would be inconsistent with the ORBIT Act.

While we do not plan to assign FSS licenses for the 3650–3700 MHz band by competitive bidding, we are taking a number of steps to continue to accommodate FSS use of the band. Specifically, we are: (1) Grandfathering existing FSS earth station sites on a co-primary basis; (2) providing a limited opportunity to request additional co-primary FSS earth station sites within 10 miles of existing grandfathered FSS earth station sites; and (3) allowing other new FSS earth station sites on a secondary basis. In addition, we note that the 3600–3650 MHz band remains available for FSS earth station operations on a primary basis.

7. While incumbent FSS operations could relocate to other bands that are available for FSS, relocation would necessitate significant reconfiguration costs and disrupt continuity of operations. Recognizing the importance of providing continuity of service to the public, we will grandfather existing FSS earth station sites indefinitely. We also believe that the Commission should not mandate relocation of FSS operations to other bands because FSS and terrestrial operations, as limited by this *First Report and Order*, are not fundamentally incompatible. We are not, however, precluding voluntary negotiations between existing FSS licensees and new terrestrial licensees for relocation where feasible.

8. We realize that grandfathering existing FSS earth station sites will impose constraints on new terrestrial operations. However, in many cases these new terrestrial fixed and mobile operations should be able to co-exist with existing FSS earth stations by "engineering in" facilities to avoid interference. Furthermore, many rural, remote and less densely populated areas that could benefit significantly from deployment of terrestrial fixed and mobile services are not effected by existing grandfathered FSS earth station sites. Thus, we conclude that grandfathering existing FSS earth station sites will not unreasonably constrain the new terrestrial services.

9. In the *Memorandum Opinion & Order (MO&O)*, 65 FR 36900, June 12, 2000, the Commission did not establish a time limit for the filing of FSS earth station applications. However, because the new FSS facilities permitted by the *MO&O* could affect the use of the 3650–3700 MHz band by the terrestrial services, we now find it necessary to establish a limit on the acceptance of such applications and on the construction of FSS facilities. Accordingly, applications for FSS earth stations in the 3650–3700 MHz band within 10 miles of the authorized coordinates of an existing grandfathered earth station submitted prior to December 1, 2000 and subsequently authorized for service by the Commission will be co-primary with the terrestrial services. Such FSS earth stations will be grandfathered as described above. We consider the filing of an FSS earth station application before the cut-off date to be an expression of immediate need consistent with the intent of the *MO&O*. However, applicants will be required to complete construction and be operational within one year from the date of initial authorization. If a license for an FSS earth station at a grandfathered site is assigned or transferred, the earth station will retain its grandfathered status, provided there is no change in the site coordinates. In addition, certain modifications are permitted to the extent there is no change in the site coordinates. Such modifications should be minor in nature and can include changes in the polarization and antenna orientation. However, changes such as an increase in the height of the center line of the dish or a change in geographical coordinates of greater than one second in either latitude or longitude would not be considered minor. Further, any change in the earth station antenna dish size that increases the likelihood of receiving interference will not be considered a minor change in facilities. If a license for a grandfathered FSS station is forfeited pursuant to section 25.161(c) of the Commission's rules, the site will no longer be considered primary and will lose its grandfathered status.

10. Subsequent to the end of the filing window, we will continue to accept applications for additional FSS earth stations. These authorizations, however, will be provided on a secondary basis only in the 3650–3700 MHz band. Secondary status will apply for new earth station sites located both inside and outside the coordination zones. We note that FSS earth stations only receive signals in this band, and thus cannot cause interference. We also note that secondary FSS earth stations are not entitled to protection from primary terrestrial operations. We find that allowing additional FSS expansion on a secondary basis will help alleviate congestion in the adjacent C-band (3700–4200 MHz) and allow FSS providers to market available capacity, while preserving opportunities for a viable terrestrial services. In addition, allowing additional FSS earth stations on a secondary basis may enable FSS providers licensed under Part 25 to enter into private arrangements with terrestrial service licensees in the secondary market for access to this spectrum. We note, however, that an agreement between a terrestrial service licensee and an FSS operator would not elevate an FSS earth station in this band to primary status relative to other FS licensees.

11. Consistent with our regulatory treatment of existing FSS earth stations, we will grandfather the sites currently used to provide TT&C operations. As a result those sites will receive the same protections as the other grandfathered FSS earth stations in the 3650–3700 MHz band, except that they will be protected only for the frequencies they are authorized to use for TT&C operations. Any other TT&C operations site that receives grandfathering protection in the 3650–3700 MHz band will also be protected only for the specific frequencies the site is authorized to operate on pursuant to the license it holds.

12. We deny the TT&C petition's request for a reservation of 10 MHz of spectrum in the 3650–3700 MHz band for TT&C operations, *See Public Notice*, Report Number 2306, dated November 23, 1998. We find that reserving 10 MHz of spectrum for TT&C operations for a few earth station sites would be an inefficient use of limited spectrum resources. We have determined that the public interest will be best served by adopting a regulatory framework that will foster the development and deployment of terrestrial services in the 3650–3700 MHz band. Nothing in part 2 of the Commission's rules prohibits TT&C operations under the FSS allocation in this band, or from grandfathered FSS earth station locations, provided the non-TT&C operations of the satellite system include operations in the fixed satellite service.

13. In the *NPRM and Order*, the Commission requested comment on a proposal to delete the unused secondary

non-Government radiolocation service allocation in the 3650–3700 MHz band. No comments were filed supporting the continued secondary allocation for the unused non-Government radiolocation service and we find no sufficient reason to maintain the secondary unused allocation. Accordingly, we adopt the proposal and delete the unused secondary non-Government radiolocation allocation to preserve the availability of the spectrum for use by the terrestrial services and FSS operations. We note that sufficient spectrum remains available within the 2900–3650 MHz band, on a secondary basis, to accommodate non-Government radiolocation service needs.

14. In the *NPRM and Order*, we noted that, as a condition of the transfer of the 3650–3700 MHz band to a mixed-use status, three Government radiolocation sites would be allowed to operate indefinitely in the band within an 80-kilometer "radius of operation" surrounding each site. NTIA indicates that a coordination distance of 80 kilometers around these three sites will provide adequate identification of spectrum conflicts, and that the Commission should coordinate any non-Government terrestrial service or FSS station within 80 kilometers of these sites with NTIA's Frequency Assignment Committee on a case-by-case basis. In the *NPRM and Order*, we requested comment on what actions should be taken to achieve this coordination in a manner to promote the ability of new non-Government services to co-exist with extremely high powered Government mobile radar systems in the adjacent 3300–3650 MHz band as well as with occassional high powered in-band use at three grandfathered Government radiolocation sites.

15. Because the requirement to protect the three grandfathered Government radiolocation sites at an 80 kilometer distance is a condition of the transfer of this spectrum, we adopt NTIA's proposal for an 80 kilometer coordination radius to ensure that these sites will be protected from interference. This requirement means that non-Government terrestrial service and FSS stations located within 80 kilometers of the three grandfathered Government radiolocation stations may not cause interference to the grandfathered Government radiolocation operations, that they must accept any interference received from such operations, and that they must be coordinated before commencing operation. The coordination requirement will apply to all non-Government stations, not just base station operations, because any station within the coordination zone could potentially cause interference to the protected Government operations.

Given that coordination is required only for areas within 80 kilometers of three grandfathered Government radiolocation sites, we find that this should affect a limited number of non-Government stations. We adopt this coordination requirement in a footnote to the Table of Allocations contained in Section 2.106 of the Commission's rules. The coordination procedures are addressed as part of the service rules in the *Second NPRM*, adopted simultaneously with the *First Report and Order* and published elsewhere in this issue of the **Federal Register**.

16. In the *NPRM and Order*, the Commission proposed to delete the Government radiolocation service allocation from the 3650–3700 MHz band, except for grandfathering three Government radio location sites that would continue operations in the band. The Commission also proposed to permit Government radiolocation operations in the 3650–3700 MHz band on Naval vessels at an appropriate distance from the shore. NTIA recommends the inclusion of a footnote to the Table of Frequency Allocations indicating that off-shore Government radiolocation operations may operate on a noninterference basis with authorized non-Government operations, and may not hinder the implementation of any non-Government operations. NTIA recommends that a distance of 30 nautical miles (55.5 kilometers) from shore be specified. It notes that this recommended distance is based upon limited information, and that a different distance may later be found appropriate after further measurements and experience with non-Government use of the 3650–3700 MHz band.

17. After carefully reviewing the comments concerning this issue, we find that NTIA's recommended distance of 30 nautical miles from the shore of the U.S. or its territories may be insufficient to protect non-Government services that will operate in the band. We note that NTIA has indicated previously that the operational radius of the three grandfathered Government radiolocation operations is 80 kilometers. We note that 80 kilometers is approximately equal to 44 nautical miles. We are concerned that allowing operation of Government radiolocation stations any closer than 44 nautical miles (80 kilometers) to the U.S. or its territories will have the potential to cause interference to non-Government operations in the band. Therefore, we specify a distance of 44 nautical miles, which is equivalent to the 80 kilometers grandfathered Government radiolocation "radius of operation" as described in the *NPRM and Order*. NTIA's request to include the Government radiolocation allocation via a footnote, as described, will not hinder the introduction of non-Government services in the band, given the 80-kilometer protection limit.

Additionally, offshore Government radiolocation stations will not be allowed to cause interference to non-Government stations, irrespective of their location. Further, if additional technical information and analysis is made available to us concerning any change in the distance requirements, we will consider altering the distance as appropriate.

18. In the *NPRM and Order*, we proposed to delete the unused Government aeronautical radionavigation service (ground based) allocation in the 3650–3700 MHz band. We see no useful purpose in continuing this allocation. Therefore, for the reasons set forth in the *NPRM and Order*, we adopt our proposal to delete the Government aeronautical radionavigation service (ground based) allocation from the 3650–3700 MHz band to preserve the band for non-Government use.

Final Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rule Making and Order*, in ET Docket 98–237.[2] The Commission sought written public comments on the proposals in the *NPRM and Order*, including the IRFA. The Final Regulatory Flexibility Analysis ("FRFA") in this *First Report and Order*, conforms to the RFA.[3]

A. Need for and Objective of This Report and Order

20. These rules allocate the 3650–3700 MHz band to the fixed, mobile (base stations only), and grandfathered fixed satellite services on a co-primary basis and for non-grandfathered fixed satellite service earth station operations on a secondary basis. These actions are taken in order to make this transfer spectrum available for commercial services, including those of any small businesses. The adoption of this *First Report and Order* will provide additional spectrum to be used in meeting the growing demand for fixed, mobile (base station only) and fixed satellite services among all sizes of providers.

B. Legal Basis for Adopted Rules

21. The adopted rule changes are authorized pursuant to Sections 4, 4(i), 157, 303, 303(g), 303(r), 307, and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307, and 332(c)(7).

C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

22. No comments were filed in response to the IRFA that was contained in the *NPRM and Order* in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

23. For purposes of this First Report and Order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[4] Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration ("SBA").[5]

24. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[6] Nationwide, as of 1992, there were approximately 275,801 small organizations.[7] The definition of "small governmental jurisdiction" is one with populations of fewer than 50,000.[8] There are 85,006 governmental jurisdictions in the nation.[9] This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or 96 percent, have populations of fewer than 50,000.[10] The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or about 81,600, are small entities that may be affected by our rules. Nationwide, there are 4.44 million small business firms, according to SBA reporting data.[11]

25. The Commission has not developed a definition of small entities applicable to fixed satellite service licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with no more than 11.0 million in annual receipts.[12] According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of 11 million or less and qualify as small entities.[13]

26. As described, the designations we hereby adopt will permit wireless services, as broadly defined to include fixed and mobile base station operations. Neither the Commission nor the SBA has developed a definition of small entities applicable to wireless services licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies.

27. The rules adopted by the First Report and Order will affect applicants who wish to provide fixed, mobile (base stations only) and/or fixed satellite services in the 3650–3700 MHz band. Pursuant to 47 CFR 24.702(b) the Commission has defined "small entity" for Blocks C and F broadband licensees as firms that had average gross revenues of less than $40 million dollars in the three previous calendar years. This Commission regulation defining "small entity" in the context of broadband PCS auctions has been approved by the SBA.[14] With respect to the 3650–3700 MHz license applicants, we propose to use the small entity definition adopted in the Broadband PCS proceeding.

28. The Commission has not yet determined how many licenses will be awarded, nor will it know how many licensees will be small businesses until the auction is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed which may result in additional small entities. In view of our lack of knowledge of the entities which will seek licenses in the 3650–3700 MHz band, we will assume that, for the purposes of our evaluations and conclusions in the FRFA, all of the prospective licensees are small entities, as that term is defined by the SBA or our definitions for the 3650–3700 MHz band. We invite comment on this analysis.

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

29. The rules adopted in the *First Report and Order* allocate the 3650–3700 MHz band to the fixed, mobile (base station operation, and grandfathered fixed satellite services on a co-primary basis and for non-grandfathered fixed satellite service earth station operations on a secondary basis. These adopted rules do not require any additional reporting, recordkeeping or other compliance requirements. Rules that may apply to the auctioning and licensing of these operations or other operating requirements will be addressed in the Second Notice of Proposed Rule Making in this proceeding and any reporting, recordkeeping and other compliance requirements will be addressed then.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. No petition for rule making was filed to initiate this proceeding and there are no comments in this proceeding that suggest alternatives to the adopted allocation. We requested comment on alternatives that might minimize the amount of economic impact on small entities and no alternatives were offered. The allocation adopted in this First Report and Order represents the most efficient and least

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[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] See 14 FCC Rcd 1295 (1999), 64 FR 2462, January 14, 1999.

[3] See 5 U.S.C. 604.

[4] See 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632).

[5] See 15 U.S.C. 632.

[6] Id. Section 601(4).

[7] Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[8] 5 U.S.C. 601(5).

[9] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[10] Id.

[11] See 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[12] See 13 CFR 12..201, Standard Industrial Classification (SIC) Code 4899.

[13] See U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms, 1992, SIC Code 4899 (issued May 1995).

[14] See Implementation of Section 309(j) of the Communications Act, Competitive Bidding, PP Docket 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–82 (¶ 115) (1994), 59 FR 37566, July 22, 1994

restrictive method to accomplish the Commission's policies and objectives.

G. Federal Rules That May Duplicate, Overlap, or Conflict With the Rules

31. None.

H. Report to Congress

32. The Commission will send a copy of the First Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the First Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 604(b).

List of Subjects in 47 CFR Parts 2 and 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 90 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Page 54 is revised.

b. In the list of United States (US) Footnotes, footnote US110 is revised and footnotes US348 and US349 are added.

c. In the list of Non-Federal Government (NG) Footnotes, footnotes NG169 and NG170 are added.

d. In the list of Federal Government (G) Footnotes, footnotes G59 and G110 are revised.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

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BILLING CODE 6712-01-P

2900-3100 RADIONAVIGATION S5.426 Radiolocation S5.425 S5.427			2900-3100 MARITIME RADIONAVIGATION Radiolocation G56 S5.427 US44 US316	2900-3100 MARITIME RADIONAVIGATION Radiolocation US44 S5.5427 US316	Maritime (80) Private Land Mobile (90)
3100-3300 RADIOLOCATION Earth exploration-satellite (active) Space research (active) S5.149 S5.428			3100-3300 RADIOLOCATION S5.333 US110 G59 S5.149	3100-3300 Radiolocation S5.333 US110 S5.149	Private Land Mobile (90)
3300-3400 RADIOLOCATION S5.149 S5.429 S5.430	3300-3400 RADIOLOCATION Amateur Fixed Mobile S5.149 S5.430	3300-3400 RADIOLOCATION Amateur S5.149 S5.429	3300-3500 RADIOLOCATION US108 G31 S5.149	3300-3500 Amateur Radiolocation US108 S5.149 S5.282	Private Land Mobile (90) Amateur (97)
3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) Mobile Radiolocation S5.431	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile Radiolocation S5.433 S5.282 S5.432				
	3500-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation S5.433 S5.435		3500-3650 RADIOLOCATION US110 G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110 US245	3500-3600 Radiolocation US110	Private Land Mobile (90)
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile				3600-3650 FIXED-SATELLITE (space-to-Earth) US245 Radiolocation US110	
			3650-3700 US245 US348 US349	3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 MOBILE except aeronautical mobile NG170 US245 US348 US349	
	See next page for 3700-4200 MHz		See next page for 3700-4200 MHz	See next page for 3700-4200 MHz	See next page for 3700-4200 MHz

BILLING CODE 6712-01-C

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United States (US) Footnotes

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US110 In the bands 3100–3300 MHz, 3500–3650 MHz, 5250–5350 MHz, 8500–9000 MHz, 9200–9300 MHz, 9500–10000 MHz, 13.4–14.0 GHz, 15.7–17.3 GHz, 24.05–24.25 GHz and 33.4–36.0 GHz, the non-Government radiolocation service shall be secondary to the Government radiolocation service and to airborne doppler radars at 8800 MHz, and shall provide protection to airport surface detection equipment (ASDE) operating between 15.7–16.2 GHz.

* * * * *

US348 The band 3650–3700 MHz is also allocated to the Government radiolocation service on a primary basis at the following sites: St. Inigoes, MD (38° 10′ N., 76° 23′ W.); Pascagoula, MS (30° 22′ N., 88° 29′ W.); and Pensacola, FL (30° 21′ 28″ N., 87° 16′ 26″ W.). All fixed and fixed satellite operations within 80 kilometers of these sites shall be coordinated through the Frequency Assignment Subcommittee of the Interdepartmental Radio Advisory Committee on a case-by-case basis.

US349 The band 3650–3700 MHz is also allocated to the Government radiolocation service on a non-interference basis for use by ship stations located at least 44 nautical miles in off-shore ocean areas on the condition that harmful interference is not caused to non-Government operations.

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Non-Federal Government (NG) Footnotes

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NG169 After December 1, 2000, operations on a primary basis by the fixed-satellite service (space-to-Earth) in the band 3650–3700 MHz shall be limited to grandfathered earth stations. All other fixed-satellite service earth station operations in the band 3650–3700 MHz shall be on a secondary basis. Grandfathered earth stations are those authorized prior to December 1, 2000, or granted as a result of an application filed prior to December 1, 2000, and constructed within 12 months of initial authorization. license applications for primary operations for new earth stations, major amendments to pending earth station applications, or applications for major modifications to earth station facilities filed on or after December 18, 1998, and prior to December 1, 2000, shall not be accepted unless the proposed facilities are in the vicinity (*i.e.*, within 10 miles) of an authorized primary earth station operating in the band 3650–3700 MHz. License applications for primary operations by new earth stations, major amendments to pending earth station applications, and applications for major modifications to earth station facilities, filed after December 1, 2000, shall not be accepted, except for changes in polarization, antenna orientation or ownership of a grandfathered earth station.

NG170 In the band 3650–3700 MHz, the mobile except aeronautical mobile service is limited to base station operations. These base stations are subject to the same coordination procedures as fixed service operations in the band 3650–3700 MHz.

Federal Government (G) Footnotes

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G59 In the bands 902–928 MHz, 3100–3300 MHz, 3500–3650 MHz, 5250–5350 MHz, 8500–9000 MHz, 9200–9300 MHz, 13.4–14.0 GHz, 15.7–17.7 GHz and 24.05–24.25 GHz, all Government non-military radiolocation shall be secondary to military radiolocation, except in the sub-band 15.7–16.2 GHz airport surface detection equipment (ASDE) is permitted on a co-equal basis subject to coordination with the military departments.

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G110 Government ground-based stations in the aeronautical radionavigation service may be authorized between 3500–3650 MHz when accommodation in the band 2700–2900 MHz is not technically and/or economically feasible.

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PART 90—PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934 as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

4. Section 90.103(b) is amended by removing the entry 3500 to 3700 under the heading "megahertz" in the frequency table and adding in numerical order the entry 3500 to 3650 to read as follows:

§ 90.103 Radiolocation Service.

* * * * *

(b) * * *

RADIOLOCATION SERVICE FREQUENCY TABLE

Frequency of band	Class of station(s)	Limitation
* *	*	*
Megahertz		
* *	*	*
3500 to 3650	do	12
* *	*	*

* * * * *

[FR Doc. 00–28819 Filed 11–16–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 99–25; FCC 00–349]

Creation of Low Power Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: This document corrects errors in the final rule portion regarding low power radio service published in the **Federal Register** of November 9, 2000.

DATE: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Julie Barrie, (202) 418–2130, Policy and Rules Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This contains corrections to the rule portion of the Commission's *Memorandum Opinion and Order on Reconsideration ("MO&O")*, MM 99–25; FCC 00–349, 65 FR 67289 (November 9, 2000). The full text of the Commission's *MO&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. SW., Washington, DC. The complete text of this *MO&O* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 1231 20th St., NW., Washington, DC 20036.

Correction

§ 73.810 [Corrected]

1. In § 73.810, on page 67302, in the second column, paragraphs (b)(i), (b)(ii), (b)(iii), and (b)(iv) are corrected to read (b)(1), (b)(2), (b)(3), and (b)(4).

§ 73.860 [Corrected]

2. In § 73.860, on page 67304, in the first column, paragraphs (b)(i), (b)(ii), (b)(iii), and (b)(iv) are corrected to read (b)(1), (b)(2), (b)(3), and (b)(4).

William F. Caton,

Deputy Secretary.

[FR Doc. 00–29492 Filed 11–16–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF80

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 991108299–0313–02; I.D. 102299A]

RIN 0648–XA39

Endangered and Threatened Species; Final Endangered Status for a Distinct Population Segment of Anadromous Atlantic Salmon (*Salmo salar*) in the Gulf of Maine

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) (the Services) determine endangered status pursuant to the Endangered Species Act of 1973 (ESA), as amended, for the Gulf of Maine distinct population segment (DPS) of Atlantic salmon. A biological review team (BRT) composed of the Services' staff completed a comprehensive status review of Atlantic salmon which resulted in the proposed listing on November 17, 1999. After reviewing additional information, including information submitted during the comment period on the proposed listing, and after considering the low numbers of returning adults, the lower than anticipated parr to smolt survival, and the serious and continuing nature of threats to the species, the Services conclude that the Gulf of Maine DPS warrants protection under the ESA. The Services have determined that the Gulf of Maine DPS is in danger of extinction throughout its range.

DATES: The effective date of this rule is December 18, 2000.

ADDRESSES: The complete file for this final rule is available for inspection, by appointment, during normal business hours at the National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930; or the U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035.

FOR FURTHER INFORMATION CONTACT: Mary Colligan, NMFS, at the address above (978–281–9116), or Paul Nickerson, FWS, at the address above (413–253–8615).

SUPPLEMENTARY INFORMATION:

Background

Species Life History and Status

A summary of the status of Atlantic salmon in Maine is included in this document. Additional biological information for the Gulf of Maine DPS of Atlantic salmon can be found in the Services' 1995 and 1999 status reviews. The 1999 Status Review can be viewed at the following site: http://news.fws.gov/salmon/asalmon.html. This information is also summarized in previous **Federal Register** documents (59 FR 3067, January 20, 1994; 60 FR 14410, March 17, 1995; 60 FR 50530, September 29, 1995; 62 FR 66325, December 18, 1997; 64 FR 62627, November 17, 1999).

Consideration as a "Species" Under the Endangered Species Act

The ESA defines species as "any species of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife that interbreeds when mature." 16 U.S.C. 1532(15). This definition allows for the recognition of DPSs at levels below taxonomically recognized species or subspecies.

The Services have published a policy (61 FR 4722, February 7, 1996) to clarify the phrase "distinct population segment" for the purposes of listing, delisting, and reclassifying species under the ESA. This DPS policy identifies three elements to be considered in a decision regarding the status of a possible DPS as endangered or threatened under the ESA: (1) The *discreteness* of the population segment in relation to the remainder of the species or subspecies to which it belongs; (2) the *significance* of the population segment to the species or subspecies to which it belongs; and (3) the *conservation status* of the population segment in relation to the ESA listing standards. The conservation status for this DPS will be discussed in relation to the ESA's listing factors.

A population segment may be considered discrete if it satisfies either one of the following two conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

The Services examined life history, biogeographical, genetic, and environmental information in evaluating Atlantic salmon throughout its U.S. range. The Services used zoogeographic maps of boundaries between areas that likely exert different selective pressures on Atlantic salmon populations and have substantial differences in riverine-marine ecosystem structure and function. Key elements to these determinations include: (1) spatial arrangements of river systems that create isolation, and (2) watershed location within ecological provinces and subregions that affect the productivity and ecology of riverine-marine ecosystem complexes. Using zoogeographic maps, the Services determined that historic U.S. Atlantic salmon populations were comprised of at least three population segments: Long Island Sound, Central New England, and Gulf of Maine. As detailed in the 1999 Status Review, the Long Island Sound and the Central New England population segments have been extirpated. The following two sections on discreteness and significance provide the rationale for the Services' determination that the Gulf of Maine populations comprise a DPS.

The Gulf of Maine DPS includes all naturally reproducing remnant populations of Atlantic salmon from the Kennebec River downstream of the former Edwards Dam site, northward to the mouth of the St. Croix River. The DPS includes both early- and late-run Atlantic salmon (Baum, 1997). The river specific hatchery reared fish are also included as part of the DPS. However, these hatchery fish will not count toward a delisting until they have spawned naturally in the wild. Historically, the Androscoggin River delimited the range of the DPS to the south, but populations south of the Kennebec River have been extirpated.

There are at least eight rivers in the DPS range that still contain functioning wild salmon populations, although at substantially reduced abundance levels (Baum 1997; King *et al.* 1999). The core of these remnant populations is located in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Ducktrap, and Sheepscot Rivers and Cove Brook.

Discreteness of the Gulf of Maine Population Segment of Atlantic Salmon

The Services examined three major indicators to determine whether the Gulf of Maine population segment of Atlantic salmon is separate from other populations: (1) Straying of spawning fish from their natal river; (2) recolonization rates outside the range of the population segment; and (3) genetic differences observed throughout the range of Atlantic salmon. The separateness analysis for the Gulf of Maine population segment from other Atlantic salmon populations reviewed the following: (1) persistence of these populations; (2) geographic segregation; (3) limited stocking from outside the population segment; and (4) genetic analyses. The Services conclude from this information that genetic and demographic data demonstrate the Gulf of Maine population segment is separate from other populations to the north.

The Services also conclude that while it is unlikely that any Atlantic salmon populations in the United States exist in a genetically pure native form, present populations are descendants of these aboriginal stocks, and their continued presence in indigenous habitat indicates that important heritable local adaptations still exist. The conservation of the populations of the Gulf of Maine population segment is essential because these Atlantic salmon represent the remaining genetic legacy of ancestral populations that were locally adapted to the rivers and streams of the region that formerly extended from the Housatonic River in Connecticut to the headwaters of the Aroostook River in Maine.

The northern range of the Gulf of Maine population segment is delimited by the natural zoogeographical constraints on local adaptations and an international boundary. There are substantial differences in the control of exploitation, management of habitat, conservation status, and regulatory mechanisms of Atlantic salmon between the United States and Canada (May, 1993; Baum, 1997). Management and conservation programs in the United States and Canada have similar goals, but differences in legislation and policy support the use of the United States/Canada international boundary as a measure of discreteness for the purposes of evaluating stock status. Therefore, the Services conclude that the Gulf of Maine population segment of Atlantic salmon satisfies both criteria for demonstrating discreteness, as outlined in the Services' DPS Policy. However, we note that it is only necessary to satisfy one of these criteria to conclude that the population segment is discrete from other populations.

Significance of the Gulf of Maine Population Segment of Atlantic Salmon

The second element of the Services' DPS Policy is the consideration of the population segment's biological and ecological significance to the taxon to which it belongs. This may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Riverine habitat occupied by the Gulf of Maine population segment of Atlantic salmon is unique in that it is at the southern extent of the North American range of Atlantic salmon (Saunders, 1981; Baum, 1997). To survive at the extreme southern range, U.S. Atlantic salmon populations had to adapt to distinct physical and environmental conditions (Saunders, 1981). The Services conclude that there is substantial evidence that remnant populations of the Gulf of Maine population segment have persisted in their native range. The loss of this population segment would result in a significant gap in the range of this taxon, moving the range of this species an additional degree of latitude to the north. The loss of these populations would restrict the natural range of Atlantic salmon to the region above the 45th parallel and beyond the borders of the United States.

We cannot ignore that artificial selection created by hatchery practices has had some influence upon the present genome of the Gulf of Maine population segment. Given our current understanding of the genetic composition of these stocks (Bentzen and Wright, 1992; Kornfield, 1994; King *et al.*, 1999), the documented persistence of native stocks (Kendall, 1935; Baum, 1997), and the fact that most of the hatchery stocking influences were internal to the Gulf of Maine population segment range, the Services conclude that hatchery fish have not substantially introgressed with the remnant populations and genomes of the fish that comprise the Gulf of Maine population segment. The majority of fish stocked into the population segment rivers came from the Penobscot hatchery stock, which, in turn, had originated from the population segment rivers earlier this century (Baum, 1997). The Services believe that there is an important genetic legacy remaining in the population segment, and the loss of these populations would negatively affect the genetic resources of Atlantic salmon as a whole because it would contribute to further range reduction. The genetic resources of these most southerly stocks are considered vitally important to the species' future survival.

Based on a review of available information, the Services concluded that the Gulf of Maine population segment of Atlantic salmon meets both criteria for discreteness. Available data demonstrate that the population segment has unique life history characteristics that have a heritable basis and that both environmental and genetic factors make the Gulf of Maine population segment different from other populations of Atlantic salmon in their life history and ecology. Further, the Services conclude that the available information supports the conclusion that the Gulf of Maine population segment of Atlantic salmon is biologically and ecologically significant. The Gulf of Maine population segment satisfies the first two criteria of the Services' DPS policy because it is both discrete and significant, and therefore, it is a DPS. The third and final element is the conservation status of the population segment in relation to the ESA's standards for listing. The conservation status of the DPS is examined in the following sections which provide an overview of the habitat within the DPS, population abundance, and an analysis of the listing factors.

Description of the Habitat Within the Gulf of Maine DPS

The Gulf of Maine DPS encompasses all naturally reproducing remnant populations of Atlantic salmon from the Kennebec River downstream of the former Edwards Dam site, northward to the mouth of the St. Croix River. The Penobscot and its tributaries are only included downstream from the site of the Bangor Dam. The watershed structure, available Atlantic salmon habitat, and abundance of Atlantic salmon stocks at various life stages are best known for the seven largest rivers with extant Atlantic salmon populations. There is less known about the habitat and population ecology of smaller rivers, with the possible exception of Cove Brook (Meister, 1962; Baum, 1997).

Broadly speaking, the watersheds within the DPS are sparsely populated and generally are managed for the growth and harvest of forest products and lowbush blueberries. The Ducktrap and Sheepscot River watersheds were once intensively farmed but are now mostly forested. The habitat within the

DPS range is generally characterized as being free-flowing, medium gradient, cool in water temperature, and suitable for spawning in gravel substrate areas.

Population Abundance of the Gulf of Maine DPS

Abundance is a critical criterion in assessing the status of a species under the ESA. Current abundance compared to historical levels and analysis of recent trends were used to determine the biological status of Atlantic salmon of the Gulf of Maine DPS. Documented returns of adult Atlantic salmon within the DPS range are low relative to conservation escapement goals (U.S. Atlantic Salmon Assessment Committee (USASAC), 1999). The conservation escapement goal is defined as the number of returning adults needed to fully use the spawning habitat. The total documented natural (wild & stocked fry) spawner returns to the rivers of the Gulf of Maine DPS range for the past 5 years were: 1995 (83); 1996 (74); 1997 (35); 1998 (23); 1999 (32); and 2000 (22) (preliminary data). It must be noted that counts are provided only for rivers with trapping facilities and only for periods when those facilities were operational. Therefore, the documented count does not represent a complete count of adult returns to the rivers within the DPS range.

The pre-fishery abundance index of North American salmon stocks that migrate to the Greenland region of the North Atlantic Ocean continues to be low in spite of apparently improving marine habitat conditions as reflected by ocean surface temperature data in the past few years (North Atlantic Salmon Work Group (NASWG), 1999). The pre-fishery abundance is an estimate of the one sea winter fish (1SW), (fish that have spent one winter in the sea since leaving the river) in Greenland prior to the fishery and is used as a possible indicator of future returns to homewaters. The apparent non-response to improving marine habitat to date is believed to be caused, in part, by generally depressed spawning populations in North American home rivers and the resultant low number of juvenile salmon entering the ocean.

Generally speaking, densities of young-of-the-year salmon (0+) and parr (1+ and 2+) remain low relative to potential carrying capacity. The numbers indicate how long the parr have been in the rivers subsequent to hatching. In Maine, most parr remain in the rivers for 2 years. These depressed juvenile abundances, where not supplemented by stocking, are a direct result of low adult returns in recent years. A total parr population estimate is not available for the entire DPS. However, the Atlantic Salmon Commission (ASC) and NMFS have conducted a basin-wide parr population study on the Narraguagus River since 1991. In addition, the NMFS and the ASC have been conducting a study on the Narraguagus River, monitoring the outmigration of smolts including the timing of migration, survival, length, weight, and the number of smolts from 1996 through 1999 (Kocik *et al.*, 1998a).

Since 1996, estimates of large parr in the Narraguagus River have ranged from 11,700 to 27,000, while corresponding outmigrating smolt estimates range from 2,800 to 3,600. Even in years with a substantial increase in large parr production (126 percent), smolt production has increased only modestly (3 percent). Total estimated smolt production in the Narraguagus is well below the estimated production capacity (18,000) and warrants further investigation. The preliminary estimate of the emigrant smolt population in the Narraguagus in 1999 was 3,607, which would represent production from the 1996–1997 spawners. Based on this, an average overwinter survival for 1999 was calculated to be 14.3 percent. Overwinter survival in 1999 was significantly lower than observed in 1997 (24.4 percent) and not statistically significantly different from 1998 estimates. These studies suggest that there is a 99–percent probability that overwinter freshwater survival from 1+ and older parr to smolt was less than 30 percent, the minimum estimate cited in previous studies. Survival estimates in the Narraguagus River for all years studied are substantially lower than estimates previously reported in scientific literature and previously accepted estimates for this region (Bley, 1987; Bley and Moring, 1988; Baum, 1997; Kocik *et al.*, 1999). Thus, smolt production from freshwater habitat is much lower than would be expected based on habitat surveys and prior estimates of survival rates. These substantially lower survival rates could be negatively impacting population recovery. Additionally, researchers found that approximately half of the emigrating smolts do not reach the Gulf of Maine. These preliminary data led the Services to conclude that low overwinter and emigration survival rates may be impeding the recovery of these populations and are an issue of concern. The cause for the low survival rates has not been identified.

To determine if recent pre-smolt and marine survival estimates on the Narraguagus River are representative of other downeast Maine Atlantic salmon rivers, a similar study was conducted on the Pleasant River. In 1999 from April to June, 676 smolts were captured in a smolt trap on the Pleasant River. An additional 31 fish were captured with fin deformities and coloration, and body form suggesting that they were of hatchery origin. A commercial hatchery that raises Atlantic salmon smolt is located upstream of the capture site.

Given the data reviewed and summarized in this section, the Services conclude that naturally reproducing Atlantic salmon populations of the Gulf of Maine DPS are at extremely low levels of abundance. This conclusion is based principally on the fact that spawner abundance is less than 10 percent of the number required to maximize juvenile production, juvenile abundance indices are lower than historical counts, and freshwater smolt production is less than a third of estimated capacity. Fry are being stocked to fill available habitat and parr abundance is increasing as a result. The number of smolts leaving the river, however, is not increasing at the same rate.

Conservation Hatchery Program

Broodstock developed from wild fish from the Dennys, East Machias, Machias, Narraguagus and Sheepscot Rivers are held at Craig Brook National Fish Hatchery (CBNFH) in Orland, Maine. These captive broodstock increase the effective population size for these rivers and provide a buffer against extinction. Parr were collected from the Pleasant River and were transferred to the North Attleboro National Fish Hatchery (NANFH) in Massachusetts. These Pleasant River fish were later destroyed due to the presence of a newly discovered Atlantic salmon viral disease, Salmon Swimbladder Sarcoma Virus (SSSV). In the spring of 2000, program cooperators initiated a second attempt to rebuild a captive wild broodstock for the Pleasant River salmon population. This was made possible by the creation of six isolation bays as part of the reconstruction of the CBNFH. A trap on the Pleasant River at Columbia Falls captured emigrating Atlantic salmon smolts to help enumerate the population and to determine origin (wild or aquaculture). A total of 37 smolts and 24 age 2+ parr were brought into the CBNFH for holding until they mature for broodstock. Subsequently, 52 age 1+ parr were collected during the summer of 2000 to augment the earlier smolt and parr collections.

The response of Atlantic salmon populations to supplemental stocking programs can be partially evaluated based on juvenile production, but adult returns are the ultimate evaluation measure. It takes over 4 years from initial fry stocking to detect a response to that stocking in terms of returning adults. A substantial number of fry must be stocked to produce significant results due to the normal high mortality of juvenile fish. Because stocking did not begin in some rivers until 1996 and several year classes are necessary to present a trend, it will not be known until at least 2001 if fry-stocked fish will contribute a substantial element to all five rivers for which there is a river-specific stocking program.

All of the broodstock held at the CBNFH are now fitted with Passive Integrated Transponder (PIT) tags which allow for complete tracking and management of the broodstock, as well as tracking the mating and offspring of the broodstock. In 1999, the FWS expanded its Atlantic salmon genetics program to include genetic characterization of all broodfish used for the rehabilitation of Maine's wild populations. This characterization will help managers maintain the genetic integrity of wild and captive fish, identify appropriate management units, help prevent irreversible losses of genetic diversity, and evaluate the stocking program. Additional details on protocols used within CBNFH are described in the "Response to Comments" section of this document. In addition to the CBNFH program, the Maine aquaculture industry is participating in the supplementation program by raising fish derived from the broodstock. These fish were stocked in the Dennys and Machias Rivers as potential spawners in the fall of 2000.

Previous Federal Actions

In 1991, the FWS designated Atlantic salmon in five rivers in "Downeast" Maine (the Narraguagus, Pleasant, Machias, East Machias, and Dennys Rivers) as Category 2 candidate species under the ESA (56 FR 58804, November 21, 1991). Both Services received identical petitions in October and November of 1993 to list the Atlantic salmon (*Salmo salar*) throughout its historic range in the contiguous U.S. under the ESA. On January 20, 1994, the Services found that the petition presented substantial scientific information indicating that a listing may be warranted (59 FR 3067).

The Services conducted a joint review of the species in January 1995, and found that the available biological information indicated that the species described in the petition, Atlantic salmon throughout its range in the United States, did not meet the definition of "species" under the ESA. Therefore, the Services concluded that the petitioned action to list Atlantic salmon throughout its historic United States range was not warranted (60 FR 14410, March 17, 1995). In the same notice, the Services determined that a DPS that consisted of populations in seven rivers (the Dennys, East Machias, Machias, Pleasant, Narraguagus, Ducktrap, and Sheepscot Rivers) did warrant listing under the ESA. On September 29, 1995, after reviewing the information in the status review, as well as state and foreign efforts to protect the species, the Services proposed to list the seven rivers DPS as a threatened species under the ESA (60 FR 50530, September 29, 1995). The proposed rule contained a special rule under section 4(d) of the ESA which would have allowed for a State plan, approved by the Services, to define the manner in which certain activities could be conducted without violating the ESA. In response to that special provision in the proposed rule, the Governor of Maine convened a task force which developed a Conservation Plan for Atlantic Salmon in the seven rivers. That Conservation Plan was submitted to the Services in March 1997.

The Services reviewed information submitted from the public, current information on population levels, and assessed the adequacy of the Maine Atlantic Salmon Conservation Plan, and on December 18, 1997, withdrew the proposed rule to list the seven rivers DPS of Atlantic salmon as threatened under the ESA (62 FR 66325). In that withdrawal notice, the Services redefined the species under analysis as the Gulf of Maine DPS to acknowledge the possibility that other populations of Atlantic salmon could be added to the DPS if they were found to be naturally reproducing and to have wild stock characteristics. NMFS maintained the Gulf of Maine DPS as a candidate species to acknowledge ongoing concern over the species' status. In the 1997 withdrawal notice, the Services outlined three circumstances under which the process for listing the Gulf of Maine DPS of Atlantic salmon under the ESA would be reinitiated: (1) An emergency which poses a significant risk to the well-being of the Gulf of Maine DPS is identified and not immediately and adequately addressed; (2) the biological status of the Gulf of Maine DPS is such that the DPS is in danger of extinction throughout all or a significant portion of its range; or (3) the biological status of the Gulf of Maine DPS is such that the DPS is likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

The Services received the State of Maine 1998 Annual Progress Report on implementation of the Conservation Plan in January 1999. On January 20, 1999, the Services invited comment from the public on the first annual report and other information on protective measures and the status of the species. The comment period remained open until March 8, 1999 (64 FR 3067). The Services reviewed all comments submitted by the public and provided a summary of those, along with their own comments, to the State of Maine in March 1999. The State of Maine responded to the Services' comments on April 13, 1999.

In order to conduct a comprehensive review of the protective measures in place and the status of the species, as was committed to in the 1997 withdrawal notice, the BRT was reconvened to update the January 1995 Status Review for Atlantic salmon. The 1999 Status Review was made available on October 19, 1999 (64 FR 56297). On November 17, 1999, the Services published a proposed rule to list as endangered the Gulf of Maine Atlantic salmon DPS, which includes all naturally reproducing remnant populations of Atlantic salmon from the Kennebec River downstream of the former Edwards Dam site northward to the mouth of the St. Croix River at the United States-Canada border. The Services stated that to date they had determined that these populations are found in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Sheepscot, and Ducktrap Rivers and in Cove Brook, all in eastern Maine.

The proposed rule invited comment from the public and specifically solicited comments regarding: (1) biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this DPS; (2) the location of any additional populations of the Gulf of Maine DPS of Atlantic salmon within the DPS range, including, but not limited to, Bond Brook, Togus Stream, Passagassawaukeag River, Kenduskeag Stream, Felts Brook, and the Pennamaquan River; (3) additional information concerning the range, distribution, and population size of the DPS; (4) current or planned activities in the subject area and their possible impacts on this DPS; (5) additional efforts being made to protect naturally reproducing populations of Atlantic salmon; and (6) the relationship of existing hatchery populations to natural populations of the DPS.

Summary of Comments and Information Received in Response to the Proposed Rule

We have reviewed all written and oral comments received during the comment period and have incorporated updated data and information into appropriate sections of this rule. We have organized substantive comments concerning the proposed rule into specific issues. We grouped comments of a similar nature or subject matter into a number of broader issues. These issues and our response to each are presented in the subsections below.

The proposed rule announced a comment period to close on February 15, 2000. On January 7, 2000, the Services extended the comment period to March 15, 2000 (65 FR 1082). On March 15, 2000, the Services further extended the comment period to April 14, 2000 (65 FR 13935). During the 150-day public comment period, the Services received over 200 written comments. Three public hearings were held: January 29, 2000, in Machias, Maine; January 31, 2000, in Ellsworth, Maine; and February 1, 2000, in Rockland, Maine (65 FR 1082). Nearly 1,000 individuals attended the three public hearings.

In addition to soliciting and reviewing public comments, the Services must seek peer review of its listing proposals. On July 1, 1994, the Services published a series of policies regarding listings under the ESA, including a policy for peer review of proposed listings (59 FR 34270). In accordance with this policy, on February 9, 2000, the Services requested peer review of the proposed rule. The proposed rule and status review were sent to six reviewers and responses were received from three of these reviewers.

A summary of the peer review comments and the other comments received in response to the proposed rule follows.

Issue 1: Peer Review

Comment 1: Some commenters voiced objections that the proposed rule and genetic data have not been peer reviewed.

Response: The 1995 proposed rule, 1995 status review, 1997 genetics reports, and the November 1999 proposed rule were subjected to international peer reviews. Six scientists outside the Services with no involvement in the status review process were asked to critically review the proposed rule; three responded. The three peer reviewers concluded that the recommendation to list the population as endangered was consistent with the current status of the population and the requirements of the ESA.

One peer reviewer stated that there was insufficient evidence in support of the Gulf of Maine DPS designation but recommended that its conservation status warranted special consideration. That reviewer also stated that because Atlantic salmon have a refined homing instinct with minimal straying, the status of Atlantic salmon populations in Canada will have no bearing on the persistence and recovery of Atlantic salmon in Maine. That reviewer further stated that the absence of irrevocable evidence of genetic and ecological discreteness, as well as significance, is irrelevant in this context.

The second peer reviewer agreed with the overall conclusions of the proposed rule, but pointed out several areas of inconsistencies in the proposed rule. This reviewer raised concern over the fact that Atlantic salmon aquaculture is already well established in the DPS range and expressed concern over the use of weirs to identify the influence of aquaculture-reared fish on the wild salmon. This reviewer cautioned against the use of hatchery stocks for restoration, and advised that a genetic monitoring regime should be implemented for each hatchery stock. Finally, this reviewer recommended a greater discussion of the implications of dams (both natural and artificial) and dam removal on historic and potential life history strategies for Atlantic salmon.

The third peer reviewer supported listing and found the biological information to be well founded and described, and concurred that the population segment is discrete and in danger of extinction. This reviewer cited run timing, size of fish, strong homing instincts, sea age at maturity, and management differences in the United States and Canada as evidence of a DPS. This reviewer expressed concern over the low numbers of adult returns and stated that the heavy loss of smolts on their outward migration suggested a hypothesis related to endocrine disrupting chemicals from chemical spray and other endogenous sources. This reviewer stated that the conclusion that aquaculture practices must be carefully controlled and regulated is justified and cited information from Norway and Scotland as support. This reviewer encouraged further investigation to discover the magnitude and causes of at sea mortality and encouraged consideration of the possible effects of climate change on the Gulf of Maine DPS.

Comment 2: Several comments were made that the Federal stocking program should be subjected to an external peer review.

Response: The Services supported the premise of a peer review of the salmon hatchery program when it was requested by the State of Maine in January 1999. The Services continued to cooperate with the State of Maine, Trout Unlimited, and the National Fish and Wildlife Foundation in assembling the peer review panel and the scope of the review. This initiative ended in late 1999, when the State of Maine withdrew its support. The Services would again support an external review of the state, Federal, and private hatchery programs in Maine.

Issue 2: Accuracy and Sufficiency of the Scientific Data

Comment 3: Several commenters stated that there is a lack of data on the actual population size of the DPS and the causes of the stated decline. Comments specifically questioned the exclusion of Penobscot River adult returns from the DPS data and the present existence of any wild salmon populations in the Pleasant and Dennys Rivers. It was suggested that no revision of the earlier 1997 decision as to the status of the DPS should be made until all data are demonstrated to be complete and unequivocal.

Response: The numbers reported in the 1999 Status Review and reflected in the proposed rule represent actual fish counts. The Narraguagus River is the only river with relatively complete and accurate population data during the period of population decline. Adult salmon counts on the other DPS rivers are either partial or completely lacking. However, during the review period there were counts of spawning redds in those rivers that provide strong and consistent circumstantial evidence that the decline in adult salmon spawners documented in the Narraguagus River occurred simultaneously in other DPS rivers. The implication of the redd counts is that the entire adult salmon population in the Gulf of Maine DPS numbers in the low hundreds. The number of adults counted annually at the Veazie Trap in the Penobscot River are the direct or indirect product of salmon juveniles stocked from Green Lake and CBNFH as part of the 30-year restoration effort in that river. The Penobscot, with the exception of Cove Brook, which is a tributary to the Penobscot, is not currently considered part of the Gulf of Maine DPS. The return numbers to the Penobscot are of interest because they provide insight into the marine survival of North American stocks.

A partial salmon trapping program and the observation of redds in the Dennys River and occasional observation of wild adult salmon and redds most years in the Pleasant River are adequate indications that a salmon population still exists at some level in those rivers. Because of its proximity to marine cages, the Dennys River is most likely to bear the greatest impact from aquaculture escapees. However, the genetic analyses of individuals taken as juveniles from the Dennys River to be used as broodstock for the CBNFH indicate that these fish are of wild origin. The Pleasant River population is probably the most at risk due to low numbers of adults combined with juvenile fish that escaped from or were discharged from an aquaculture hatchery in the watershed. We do not believe that the failure to observe redds for one year is evidence of extinction. In fact, as of August 2000, three wild adult salmon were reported at the weir site. At any point in time, there are usually 5 or more different generations, or year classes, of a river population in existence. A failure of one spawning year class does not represent extinction. There is also the possibility that redds were present but not observed because of river conditions.

The data for adult salmon returns and for juvenile salmon within rivers in the DPS are not complete, but clearly demonstrate that a serious population decline has occurred over the past 10 to 15 years. The database on redd counts, the thorough documentation of the Narraguagus population trend, the general sea survival trend indicated by hatchery-based populations on the Penobscot, the extensive database on population trends on many Canadian rivers and the abundance estimates of 1SW salmon off the West Greenland feeding grounds maintained by the International Council for the Exploration of the Sea (ICES), all provide evidence of the precarious state of the Gulf of Maine DPS of Atlantic salmon.

Comment 4: One commenter complained that the Services failed to provide the raw data that formed the basis of the description of the DPS and the conclusion that the DPS was in danger of extinction.

Response: All data used by the Services in the development of the proposed rule was referenced in the *Review of the Status of Anadromous Atlantic Salmon (Salmon salar) Under the United States Endangered Species Act* (July 1999) and has been available through a number of sources. The genetics information used in the Status Review and proposed rule is contained in reports that present analyses of raw genetics data developed by the USGS, and much of it has been available on the internet. The raw data for these genetic reports were requested by the State of Maine and provided by the USGS. Because the USGS had not yet completed compiling the most recent raw genetics data available, there was a delay in responding to a request for these data. The data were provided to the requestor as soon as processing and quality control requirements were completed by the laboratory. These new data were not available for use or consideration in the development of the proposed rule, nor were these data relied upon in the development of the final rule.

Comment 5: Some commenters stated that there was no basis in the information available to justify revision of the decision made relative to the 1997 withdrawal.

Response: The reasons for the November 17, 1999, proposed listing are specifically described on pages 62636 and 62637 of the published proposed rule. The second paragraph on page 62637 stipulates the factors that are primary sources of concern. Major changes in the status of salmon documented by data available after the 1997 decision and leading up to the 1999 proposed rule relate to new disease and genetic threats, continuing concerns about threats posed by aquaculture escapees, lack of progress in resolving concerns over existing aquaculture practices, low juvenile in-river survival levels, continuing decline in adult returns, and the lack of sufficient progress in dealing with sport fishing (at that time) and water withdrawals.

Comment 6: Some commenters stated that there are no data to form a basis for the Services' determination that the population will go extinct rather than recover in response to current recovery activities.

Response: The data available from the study of juvenile survival in the Narraguagus River, the discovery of a large number of aquaculture hatchery origin juveniles in the Pleasant River, a new and growing threat of a fatal viral disease, Infectious Salmon Anemia (ISA), the increasing use of European strain salmon by the Maine aquaculture industry, and the extremely low marine survival indicated by data developed by the ICES, were considered in the context of the data and show a continued decline of DPS adult salmon returns. Under such circumstances, the Services have determined that a listing of "endangered" is appropriate. A recovery plan will be developed which will contain recovery targets. When those recovery targets are achieved, then the Gulf of Maine DPS may be considered for reclassification.

Issue 3: Inclusion of Other Rivers

Comment 7: Some commenters questioned why other Atlantic salmon rivers, such as the Penobscot, in the geographic range of the DPS were not included in the proposed rule.

Response: Salmon from a given river were excluded from the DPS if information indicated that the fish likely did not substantially represent a wild population that had persisted through time. Information used to make that determination included the existence of a reproducing population that historically had access to natal spawning habitat adequate to have persisted, and the likelihood and extent of introgression with fish from outside the geographic range of the DPS. This latter factor was assessed with a variety of data including stocking history (number of fish, life stages, and source population), return rates of stocked fish, the origin of returning adults (i.e., hatchery vs. wild), and genetic characterization.

Tributaries in the lower portion of the Penobscot River (south of the Bangor dam) were included within the geographic range of the DPS because of their continued historic free access to migrating salmon, as evidenced by the existence of at least one genetically unique, naturally reproducing population. A decision whether to include or exclude fish that inhabit the mainstem of the river or tributaries above Bangor dam has been deferred until further analysis has been completed, including a detailed genetic characterization. Samples have been collected and are currently being analyzed. The Services plan to make a determination as to the appropriateness of adding the mainstem and upper tributaries of the river to the DPS in the year 2001.

Issue 4: Reason for Observed Genetic Difference

Comment 8: Some commenters questioned whether the genetic differences noted between the fish from the Gulf of Maine DPS and Canadian populations, and among populations in the DPS, could reflect the effects of small population size (e.g., population bottlenecks, genetic drift, founder effects) or introgression of non-native fish, rather than the existence of historical, adaptively important genetic differences.

Response: Numerous studies have shown that Atlantic salmon are

naturally substructured into genetically differentiated populations, and that this structure is important to the overall fitness and productivity of the species. Recent analyses indicate that genetic structure exists among the fish in the DPS rivers. Whether this structure reflects the existence of adaptively important traits is subject to varying interpretations, although it should be noted that the different interpretations of the data presented are not mutually exclusive. Small populations can maintain important, genetically based, adaptive traits.

After analysis of all available data, especially in the context of the DPS representing the extreme southern terminus of the present range of wild stocks in North America, the Services concluded that the remaining populations have retained unique, adaptively important genetic traits, the loss of which could preclude recovery of self-sustaining populations. Hence, the Services are concerned with preventing irreversible changes to the genetic integrity of the remaining populations.

Recognizing that there are differences in how the genetic data are interpreted, it should be noted that the genetic differences observed among wild populations within North America are not central to the listing decision. The Gulf of Maine DPS is delineated largely by its unique geographical location and ecological setting relative to other salmon populations.

Issue 5: Delineation of the Gulf of Maine DPS

Comment 9: Some stated that the proposed DPS appears to have been contoured to coincide with the political need of the Federal restocking program to justify the capital and operational costs of its river-specific breeding program.

Response: The rivers comprising the current range of the Gulf of Maine DPS have long held a special designation by the State of Maine. In the July 1984 *Management of Atlantic Salmon in the State of Maine, A Strategic Plan*, the Maine Atlantic Sea-Run Salmon Commission designated seven rivers as "Category A", having fishable populations of wild Atlantic salmon. These are seven of the eight rivers that comprise the Gulf of Maine DPS. In 1991, in response to a continuous decline of these wild Atlantic salmon populations, the FWS designated them as Category 2 candidate species under the ESA, developed a prelisting recovery plan in cooperation with the Atlantic Sea-Run Salmon Commission, and initiated a river-specific fish culture program. The DPS designation and river-specific culture program for six of these seven rivers is the product of those events and an ESA Status Review in 1995. Contrary to the premise of the comment, in review of the original petition to list Atlantic salmon throughout the U.S. range, the Services specifically rejected as listable entities several salmon populations that were the focus of five Federal hatcheries representing considerably greater capital and operational costs.

Issue 6: Effect of Previous Stocking

Comment 10: Some commenters questioned how there could be a river specific genetic strain of fish with 128 years of stocking. Another commenter stated that it appeared that distinct populations of Atlantic salmon in the Ducktrap River and Cove Brook have persisted over time despite the fact that throughout history less than 100,000 fry were stocked in the Ducktrap and no salmon were stocked in Cove Brook.

Response: Evidence suggests that stocking success was relatively poor prior to 1971. From 1971 to 1990, most stocking efforts in Maine used smolts rather than earlier life stages with survival much improved over earlier stocking efforts. Starting in 1991, all stocking within the Gulf of Maine DPS has been river-specific in origin.

Recent genetic studies show that unique genetic material exists in the Ducktrap River and Cove Brook. Although local variability is present in these stocks, they appear to be more closely related to other DPS stocks than to either Canadian or European stocks.

Some authors have asserted that the magnitude of past stocking efforts has facilitated introgression and eliminated local variability (Kornfield *et al.*, 1995). While the historic isolation of stocks within the DPS may have been greater and supported higher levels of genetic difference, subtle distinctions between stocks within the DPS remain, and differences relative to populations outside the DPS are clear. The majority of Atlantic salmon stocks used for supplemental stocking within the Gulf of Maine DPS have been from within the DPS geographic range (Baum, 1997). Because the source of most stocking efforts has been from within the DPS, the genetic effects from stock mixing would be substantially less than from stocks from outside the DPS. A comprehensive examination of unstocked and stocked DPS rivers suggests that while past stocking efforts have likely increased gene flow between populations, this gene flow was insufficient to eliminate local variability (King *et al.*, 2000a; King *et al.*, 2000b).

Comment 11: Some commenters believed that it is dangerous to label Maine's salmon populations as a DPS since there is no historical baseline from pre-stocking years to compare.

Response: There are no known biological samples available for genetic testing prior to 1940 from Atlantic salmon of either northern or southern populations. It is true that having such samples from Atlantic salmon populations prior to stocking would be useful. However, the Services are required to use the best available scientific information upon which to base a determination. The Services believe that acknowledgment and protection of existing genetic diversity is critical to the survival of salmon within the DPS. It is also important to note that the Gulf of Maine DPS is delineated largely by its unique geographical location and ecological setting relative to other populations.

Issue 7: Relationship between Life History, Morphometric Characteristics, and Genetics

Comment 12: Some commenters questioned the reliance on life history and morphometric characteristics in delineating the DPS, as they did not believe these are genetically based.

Response: Life history and morphometric characteristics have been shown to be related to both genetics and environment and their interaction. The proportion of 2SW fish in Maine stocks, age at smoltification, and marine maturation rates of several salmonid species have been shown to be heritable traits.

Differences in life history among U.S. Atlantic salmon stocks and those of Canada were identified as early as 1874 (Atkins, 1874). U.S. Atlantic salmon stocks have been composed of predominantly 2SW salmon (> 80 percent) from at least the late 1800s to the present (Atkins, 1874; Kendall, 1935; and USASAC, 1999). In contrast, many Canadian stocks and several in Europe have a much higher grilse component with a concurrently lower 2SW component that is frequently less than 50 percent (Hutchings and Jones, 1998). This life history trait is partially controlled by stock genetics (Bailey *et al.*, 1980; Naevda, 1983; Glebe and Saunders, 1986; Ritter *et al.*, 1986; Herbinger and Newkirk, 1987; Hutchings and Jones, 1998; Palm and Ryman, 1999). U.S. stocks have a return age composition that differs from Canadian stocks, especially neighboring stocks in the Scotia-Fundy region. It is most probable that these differences are primarily due to genetic make-up. The sex ratios of 1SW salmon differ between

Maine DPS rivers and nearby Canadian rivers. Maine 1SW salmon are predominantly (95 percent) male (Baum, 1997) while those in the Miramichi River, Canada, are only about 75 percent male (Randall, 1985). Genetic control of maturation rates in salmonids is not exclusive to Atlantic salmon (Naevda *et al.*, 1981; Naevda, 1983; Iwamoto *et al.*, 1984; and Burger and Chevassus, 1987).

The migration at sea differs between Maine DPS rivers and Canadian rivers; Maine salmon have been shown to migrate at low percentages to East Greenland while Canadian salmon have not been found there (Baum, 1997), and Maine DPS salmon return to their natal rivers earlier in the year than Canadian salmon (Baum, 1997). Size of adult salmon returning to Maine rivers differs between the Gulf of Maine DPS and the nearby Canadian population segment. Maine 1SW salmon are about 2.5 centimeters (cm) longer than Miramichi River, Canada, salmon, and Maine 3SW salmon are about 6.0 cm longer than those in nearby Canadian rivers (data from Baum, 1997 and Randall, 1985). Furthermore, the egg production of Maine DPS salmon is about 10 to 20 percent greater than that of Saint John River salmon of similar size (data from Baum and Meister, 1971 and Randall, 1985).

Recent analyses of juvenile Atlantic salmon data suggest that while environment has a strong influence upon juvenile growth, smolt age and maturation (precocious parr) (Brannon, 1982), heritable differences between stocks also influence growth and performance (Baily, 1980; Hershberger *et al.*, 1982; Iwamoto *et al.*, 1982, 1984; Saxton *et al.*, 1984; Iwamoto *et al.*, 1986; Kincaid, 1994; and Hutching and Jones, 1998) and ultimately determine the ability of stocks to exploit their native habitat (Metcalfe, 1998). Though many of the distinct life history traits displayed by Maine salmon relative to nearby Canadian stocks have not been experimentally shown to have a genetic basis, it is unlikely that environmental factors alone can account for all of these differences (Baum, 2000). The combination of heritable traits and the unique environment in Maine constrain the scope of adaptation and provide pressures of natural selection that are exhibited in unique life history characteristics.

Taking into account all of the foregoing factors, the Services' BRT determined that differences in life history characteristics historically contributed to the distinctness of the Gulf of Maine DPS. Remnant stocks have maintained the most characteristics of these factors: Smoltification at a mean age of two, different migration patterns and earlier run timing, predominant adult returns as 2SW fish (age four), low proportion of female 1SW fish, longer 1SW and 3SW fish, and greater egg production. Since the proportion of 2SW fish in an Atlantic salmon stock has a documented genetic basis (Naevda, 1983; Glebe and Saunders, 1986; Ritter *et al.*, 1986; Herbinger and Newkirk, 1987; Hutchings and Jones, 1998; and Palm and Ryman, 1999), the BRT concluded that the DPS has unique life history characteristics that have a heritable basis. The BRT also concluded that both environmental and genetic factors make the Gulf of Maine DPS markedly different from other populations of Atlantic salmon in their life history and ecology. The National Academy of Sciences will be conducting a study of Atlantic salmon. Upon evaluation of the final report, the Services will take appropriate action, if any.

Issue 8: Separateness of the DPS

Comment 13: Some commenters questioned whether adequate data existed to support the contention that the Gulf of Maine DPS is separate from other U.S. stocks of Atlantic salmon.

Response: Defined zoogeographical regions in New England separate the Gulf of Maine DPS from populations in most of the other New England rivers. Although biological data are lacking for these extirpated stocks, it is likely that populations were distinct because of differences in selective pressures in each region.

Issue 9: Reproductive Isolation

Comment 14: Some commenters questioned how the Gulf of Maine DPS could be reproductively isolated when substantial numbers of females per generation migrate between the DPS rivers and the Penobscot River.

Response: Migration rates between rivers are not large. Tagging studies have shown that hatchery fish (which tend to have higher straying rates than wild fish) stocked into Maine rivers exhibited a straying rate of one to two percent. In Norway, populations are considered discrete despite straying rates of five to eight percent. Additionally, studies show that although mixing of stocks has occurred, genetic differences between stocks exist.

Issue 10: Historic Distribution and Abundance of Atlantic Salmon in North America

Comment 15: Some commenters cited studies which suggest that Atlantic salmon did not occur in North America before or during the last glacial period (approximately 70,000 to 10,000 years ago) and the limited documentation of these populations prior to the 1800's combined with sporadic records during the first half of this century raises questions regarding their historic abundance. In addition, some commenters questioned the reliance in the Status Review on four or five biological surveys taken in intervals of about 20 to 25 years. Since there were significant stocking efforts in between these time periods, they stated that fish documented in these surveys (once every 20 years or so) are not necessarily from native or wild populations.

Response: Anadromous Atlantic salmon were native to nearly every major coastal river north of the Hudson River (Atkins, 1874; Kendall, 1935). Genetic differentiation between North American and European stocks (Taggart *et al.*, 1995) supports the assumption that Atlantic salmon were present in North America before the last glacial period and that they persisted over time (Behnke, 1996). However, populations may have migrated southward for a time while their northern range was covered with glacial ice (Behnke, 1996). Claims that Atlantic salmon did not exist in New England before or during the last glacial period or before 1500 are based on the fact that no salmon bones have ever been found in excavated regions of the area (Carlsson, 1993). These explanations do not take into account the acidity of the soil in Maine and surrounding regions which may have naturally destroyed the delicate bones over time (Behnke, 1996), or that genetics data suggest differentiation about 8,000 to 10,000 years ago. Based on the best available data, there were likely at least 11 U.S. coastal watersheds outside of Maine that historically supported wild salmon populations. Beland (1984) reported that at least 34 Maine Rivers held Atlantic salmon populations at one time. Other sources report the number to be 28 (MacCrimmon and Gots, 1979; Kendall, 1935).

Issue 11: Importance of Genetics

Comment 16: Some commenters questioned that if genetic differences were that important, then how could Atlantic salmon from the Penobscot River be used to successfully establish runs of wild salmon in the Connecticut River? Additionally, they questioned if multiple populations established from a donor population would differentiate into genetically distinct populations in 20 generations.

Response: The loss of naturally reproducing fish in the Connecticut and Merrimack River drainages represented

nearly 40 percent of historic U.S. Atlantic salmon juvenile production habitat. The loss of habitat in these two southernmost rivers and their indigenous Atlantic salmon populations certainly had an influence on the genetic diversity of this species in the United States and North America. These rivers are currently the focus of restoration efforts using nonindigenous stocks mostly of Penobscot River origin. Return rates from stocking in the Connecticut and Merrimack Rivers have been poor relative to other North American stocks (Saunders, 1981; Friedland *et al.*, 1993). These low return rates appear to be attributable to the loss of local adaptations to unique habitat characteristics associated with the extirpated stocks (Jones, 1978; Lindell, 1987; Saunders, 1981). Additional research supports this hypothesis and indicates that when stocks are transferred to new river systems, those from nearby rivers typically exhibit higher return rates than stocks from rivers farther away (Ritter, 1975; Reisenbichler and McIntyre, 1977; Riddell *et al.*, 1981; Ritter *et al.*, 1986; and Hopley, 1989). Additionally, stock specific differences in susceptibility to bacterial and viral diseases underscore the importance of genetic variability not only to the viability of local stocks but as a genetic resource for conservation, restoration, and commercial aquaculture applications (Gjedrem and Gjoen, 1995). The loss of locally adapted stocks has made restoration more difficult in southern New England. Fortunately, some salmonids have shown evidence of plasticity when introduced to new environments, and locally adapted and genetically differentiated stocks have developed in less than 20 generations (MacCrimmon and Marshall, 1968; MacCrimmon *et al.*, 1970; MacCrimmon, 1971; and Krueger *et al.*, 1994). Reintroduction and range-expansion programs use this plasticity to create viable populations, but typically success rates are highest with neighboring stocks or those from similar ecosystems (Reisenbichler and McIntyre, 1977; Krueger *et al.*, 1981; and Reisenbichler and Rubin, 1999). As these restoration programs continue, their focus on the redevelopment of river-specific stocks should enhance the genetic resources of Atlantic salmon in the United States.

Issue 12: The Role of the River Specific Stocking Program in Recovery

Comment 17: Some commenters questioned the appropriateness and success of the FWS river specific stocking program.

Response: The Atlantic salmon rehabilitation program is a cooperative program involving numerous State and Federal agencies, as well as non-governmental organizations. There has been a considerable amount of review, oversight, and guidance on every aspect of this program (fish culture, health, genetics, management, and habitat evaluation) since its inception in 1991. The Maine Atlantic Salmon Technical Advisory Committee (TAC) reviews program activities and makes recommendations to the Atlantic Salmon Commission (ASC), and the Services for final decisions. Also, the USASAC provides guidance to program cooperators.

The Services supported the suggestion for a peer review of the river specific stocking program when it was proposed in January 1999, by the State of Maine, Trout Unlimited, and National Fish & Wildlife Foundation. This initiative was dropped when the State of Maine withdrew its support in the fall of 1999. The role of the river specific program will be examined during the development of the recovery plan.

Comment 18: Some commenters voiced concern about the restoration program and the potential disastrous failure of that program in terms of interbreeding, adapting the fish to freshwater, and misplacing wild fry in habitat.

Response: Although the above mentioned aspects of the stocking program are discussed and reviewed continually among program cooperators, the discussion in the Status Review did not address many of the concerns presented during the public comment period. These issues will be discussed much more comprehensively during the development of the recovery plan.

The level of genetic diversity in Maine Atlantic salmon populations is very similar to the level found in Canada. The level of genetic diversity found in fish within the DPS is similar to the level of genetic diversity found in other North American populations, which indicates that the genetic diversity and variation have not been diminished by the river specific fish culture program. All precautions are being taken by cooperators in broodstock collections, management and spawning protocols to ensure that this genetic integrity is maintained. Monitoring of the river-specific Atlantic salmon broodstock at CBNFH show that the heterozygosity of the rivers has not been compromised and is sufficiently robust to maintain a viable population at this time. Continuous monitoring protocols are in place to ensure that genetic integrity is maintained.

While it is true that the captive broodstock at CBNFH have not seen a marine phase, many years of adult returns from the hatchery-produced progeny of hatchery-reared broodstock indicate that this should not affect the ability of the offspring to undergo smoltification and emigrate to the ocean after the normal 2-year in-river juvenile phase.

Habitat in the rivers in the DPS has been mapped during low summer flows by Maine ASC and FWS biologists. Efforts are made during stocking to target areas which have been identified as good fry habitat. Fry stocking is usually suspended during periods of higher than normal flows to prevent stocked fry from being washed out of the target stocking areas.

Comment 19: Some commenters cited poor returns in 1997, 1998, and 1999 as evidence of failure of the river-specific stocking program.

Response: The life history of the Atlantic salmon is complex. Survival at all life stages is dependent upon many biological and physical factors in the freshwater and marine environments. The goal of the river-specific stocking program is to ensure that the freshwater rearing habitat is optimally used by genetically suitable stocks for the purpose of producing out-migrating smolts in spite of low returning adult populations. The goal is to maintain a population until those factors which are negatively affecting populations are lessened through naturally occurring forces and/or human intervention.

Hatchery program evaluations indicate that the hatchery program, through both fry and broodstock releases, has increased the juvenile population beyond what the low number of returning adults would provide.

It has taken several years to develop captive broodstock from parr collection in numbers sufficient to optimally use the rearing habitat. This level of use has been approached only within the last 4 or 5 years. The adult returns to DPS rivers in recent years reflect releases of relatively small numbers of fry. It is premature to make any statements regarding the success or failure of the stocking program's contribution to adult returns since it takes four years to grow from a fry to adult salmon. Significant adult returns from significant numbers of stocked fry should begin to appear in 2001.

The Services will continue to monitor the success of the hatchery program and continue to explore ways to improve hatchery releases, especially in light of the newly redesigned CBNFH isolation facility. For example, the current program was recently revised to sample and track the DNA from individuals which comprise a mating pair. This allows the tracking of stocked fry and better assessment, monitoring, and management of the fish culture program.

The best scientific principle, which is accepted world-wide, dictates that the best source to use to rebuild a fish or wildlife population is that same population. If this population does not exist, then the next best population to use is one that is nearby and similar biologically. The remnant populations of six of the eight rivers within the Gulf of Maine DPS range are being used to maintain and rebuild these salmon populations.

Comprehensive DNA fingerprinting of each salmon broodstock for the DPS rivers indicates that the level of genetic diversity and variation are similar to other North American populations. This indicates that the river-specific program has not diminished the genetic integrity of these populations. All precautions are being taken by program cooperators in broodstock collections, management, and spawning protocols to ensure that this integrity is maintained. Continuous monitoring of the river-specific Atlantic salmon broodstock at CBNFH shows that the hetereozygosity of the rivers has not been compromised and is sufficiently robust to maintain a viable population.

The goal of the Atlantic salmon rehabilitation program is to maintain a juvenile population of genetically compatible salmon while optimizing the use of rearing habitat to produce out-migrating smolts until the adult population recovers adequately to meet natural reproduction requirements. Monitoring studies have shown that juvenile populations in areas which have been stocked with fry are higher than would be expected from the observed levels of natural reproduction. The hatchery program also provides refugia for salmon populations which are at low levels and in danger of ceasing to exist, as is the case with the Gulf of Maine DPS salmon populations. The stocking program has been successful in these aspects of the program. Continued monitoring of the river-specific stocking program will be conducted to evaluate its impact on the recovery of the Gulf of Maine DPS. Modifications based upon the results of the monitoring will be made as necessary.

Comment 20: One commenter suggested that the Services should work with the new ASC and direct the hatcheries to return all river-specific fish they have in the holding tanks to their specific rivers—return all to their home rivers, remove all weirs and allow the fish to move naturally.

Response: Returning all hatchery broodstocks to the rivers of origin is an option that could be posed to the ASC for discussion within the Commission, and with other involved state and Federal agencies, and the interested public for consideration.

The Services believe, however, that this action, under current environmental conditions, would pose an unacceptable risk to the small remnant populations in the Gulf of Maine DPS for several reasons. The hatchery system serves two functions. It provides a refuge for those remnant salmon populations which are in danger of extinction, as well as increasing the probability of rebuilding these populations, because survival at all lifestages in the hatchery is much greater than in the wild. This affords an opportunity to protect and maintain these populations until environmental conditions become more favorable to the survival of the salmon through natural cycles, and as a result of habitat protection and enhancement being conducted by agencies and watershed councils.

Broodstock that are surplus to the needs of the hatchery are returned to their river of origin. In 1996, 503 adult fish were returned to their rivers, 583 in 1997, 907 in 1998, and 81 in 1999.

Comment 21: One commenter claimed that the river specific stocking program has no biological basis at this time due to low population sizes.

Response: The benefits and risks of a river-specific rehabilitation program must be considered in the context of population dynamics, especially population size, which can cause (1) inbreeding depression, (2) loss of genetic variation, and (3) outbreeding depression. If populations become small, the risk of inbreeding depression and loss of genetic variation increases. In response to this, one management option is the introduction of fish from outside the population; however, hazards such as outbreeding depression are associated with this option.

For the salmon in question, each population is comprised of multiple year classes of wild and captive fish. The effective population size is hence much larger than the number of returning adults in any given year. Nonetheless, if effective population size becomes low, or if genetic data indicate a loss of variation within a population, then it would be appropriate to consider modification of the river-specific protocols for a given population. DNA fingerprinting of broodstock indicates that the levels of genetic diversity within the broodstocks from the DPS rivers are similar to other wild populations in other countries. In addition, many precautions are being taken by program cooperators in broodstock collections, management, and spawning protocols to ensure that genetic integrity is maintained.

Comment 22: Some commenters stated that the existing stocking program is clearly not working, and suggested that the Services invite the watershed councils and sporting clubs to help redesign that program. They suggested that the current program be replaced with a new river-by-river stocking program with oversight groups that are composed of at least 50 percent local citizens.

Response: The current rehabilitation program is a river-by-river program using remnant populations to rebuild the salmon populations. The redesign and reconstruction of the CBNFH has allowed cooperators to develop broodstocks for six of the eight DPS rivers, with no plans being made to develop broodstock for the Ducktrap River and Cove Brook.

The watershed councils participate in the current program and are invited to provide input through Project SHARE (Salmon Habitat and River Enhancement), watershed council meetings, and meetings of the Downeast River Coalition, as well as informal discussions with the agencies. Watershed Councils are also encouraged to participate in meetings of the Maine TAC and ASC, and are actively participating in stocking and fish culture activities. This is an evolving process, and it is anticipated that the agencies and watershed councils will work more closely together as time goes on. For example, the Downeast River Coalition and various fishery agencies have cooperated in developing the Pleasant River Broodstock Management Plan. Additional opportunities for involvement will be available during the recovery planning process.

Issue 13: Fish Health

Several comments were received on the relative risk to the DPS from fish diseases. These comments raised questions of three types: (1) Questions regarding the risk posed by aquaculture fish, specifically concerning ISA; (2) questions regarding the need to destroy the Pleasant River broodstock; and (3) questions regarding why Federal hatcheries are not held to the same fish health standards as private fish culture facilities.

Comment 23: Some commenters stated that there is no basis to presume that aquaculture fish pose a special threat to wild salmon in Maine since (a) ISA has existed in Canada for 3 years without appearing in any U.S. fish, (b) there is no scientific documentation of aquaculture fish transmitting disease to wild fish, and (c) the disease already exists in the wild.

Response: The Services recognize that disease is a natural part of wild salmon's existence as fish pathogens are a normal part of the aquatic environment. However, the concern raised in the proposed rule relates primarily to the recent occurrence of two disease organisms that were previously unknown in the DPS's geographic area. One is the SSSV recently discovered in Pleasant River broodstock (see Response 13b).

The second is the occurrence of the ISA virus in Canadian aquaculture pens, some within the known infective range of U.S. sea pens. The ISA virus is extremely destructive to maturing salmon and there is no known cure. This virus has only been known to cause disease in situations where fish were artificially confined and was not observed in the carrier state in free ranging salmon or other species until very recently. The ISA virus has been found in wild salmon in Scotland, as well as in confined rainbow trout, wild sea trout, and eels. There is a possibility that the virus can be spread to confined populations (e.g. sea pens) by wild fish of other species, but that has not yet been demonstrated. It is known that it is transmissible laterally between fish pens within 5 kilometers (km) of each other, and by the discharge of slaughter wastes. ISA disease has, to date, only been found in wild fish that have been exposed to infected aquaculture fish in New Brunswick, Canada. There are Canadian aquaculture sites with recent ISA infections close enough to U.S. aquaculture sites in Cobscook Bay, the location of Maine's greatest concentration of salmon aquaculture pens, to create a significant risk of the introduction of the virus to U.S. aquaculture stocks. The extensive testing and precautions that have been taken by the Maine aquaculture industry and the State in response to this situation underscore this risk. A significant portion of the adult DPS salmon must swim near U.S. pens in Cobscook Bay and the vicinity of the Machias Rivers. The possible establishment of ISA in and around U.S. pen sites, and its presence in nearby Canadian aquaculture sites pose a risk to wild salmon. This may have severe consequences and was not known to exist during the 1995 Status Review. The Services recognize that fish pathogens exist in the wild, and aquaculture operations or any other artificially created concentration of fish do not in themselves create pathogens or disease. However, the effect of concentrations of individuals on magnifying the level of any pathogen present and the rate and extent of any resultant epizootic is well known (Finlay and Falkow, 1989). Therefore, the Services concluded that the presence of the ISA virus in the geographic range of the DPS, and the existence of extensive concentrations of net pens create a new and significant risk directly to the DPS adults and indirectly to the rehabilitation program currently supplementing the DPS juvenile population.

Comment 24: One commenter questioned the decision to destroy the Pleasant River broodstock.

Response: State and Federal agencies responsible for producing fish for release in the wild maintain extensive fish health management programs designed to protect the fish being produced for the public, the facilities used to produce them, and most importantly, the public health and health of other wild fish populations and their environment. Procedures to be followed by an agency when a fish disease situation develops are documented through guidelines and policies (e.g. Fish and Wildlife Service National Fish Health Policy and Guidelines, New England Salmonid Health Guidelines, and various state regulations) which are generally based on procedures described in the so-called "Blue Book" produced by the American Fisheries Society. In general, the most stringent counteractions to a disease outbreak in a hatchery are called for when the disease agent is a newly discovered pathogen or one that had not previously been found in the affected geographic area. This was the case with the disease that attacked the Pleasant River wild broodstock being held in captivity at the North Attleboro National Fish Hatchery (NANFH). A retrovirus named SSSV and believed to be the cause of fatal symptoms that developed in the sub-adult Pleasant River broodstock, represented a previously unknown salmon disease. The extent of the threat posed to salmon was not known but, under conditions that existed at the NANFH, the disease was fatal and had no known treatment. The Massachusetts Fish and Wildlife Department, in accordance with customary procedures with an exotic disease, required the FWS to remove these fish from the hatchery which discharges its water into state public waters. The surviving fish were placed in quarantine facilities available at the USGS laboratory in West Virginia so that research could be conducted before destroying and disposing of these infected fish. Subsequent testing of a related group of Pleasant River broodstock held at a private facility in Maine showed these fish also carried the virus, though there were no disease symptoms. These fish had to be removed in order to protect the viability of the facility as a commercial hatchery. No suitable quarantine facilities existed that could safely hold the fish, thus necessitating their destruction. Even if quarantine facilities could have been found and the fish never developed symptoms, their usefulness as broodstock was compromised. Since the virus may be transmissible from an infected parent to the eggs it produced, and given the exotic nature of the virus, any juvenile salmon produced from those infected fish could represent a serious threat to wild and aquaculture fish, and could not prudently be released into the wild.

In the spring of 2000, program cooperators initiated a second attempt to preserve and rebuild the Pleasant River salmon population. This was made possible by the reconstruction of CBNFH and the addition of one isolation bay. A trap on the Pleasant River at Columbia Falls captured outmigrating Atlantic salmon smolts to help enumerate the population and to determine origin (wild or aquaculture). A total of 37 smolts and 24 age 2 parr were brought into CBNFH for holding until they become mature broodstock. Subsequently, 52 age 1+ parr were captured during the summer of 2000 to augment these earlier smolt and parr collections.

In the past year, the FWS and the State of Maine have developed procedures to manage broodstock from populations that contain the SSSV. Newly captured wild broodstock are held in isolation for testing. Any carriers of the virus are culled from the broodstock population in the hatchery prior to spawning, and fry are tested for the presence of the virus prior to release. In 1999, the FWS, in cooperation with the Maine Fish Health Technical Committee, developed a "Best Management Plan for SSSV" for the CBNFH. All broodstock which previously tested positive for SSSV were removed from the spawning population and not used in the 1999 spawning season.

Comment 25: Federal hatcheries are not held to the same fish health standards as private fish culture facilities.

Response: As a matter of national policy, a national fish hatchery abides by the fish health regulations of the state in which it is located or the state to which fish are shipped. Further, national fish hatcheries abide by the FWS's Fish Health Policy and Guidelines and, in New England, the New England Salmonid Health Guidelines in cases where those requirements are more stringent than the prevailing state requirements. In special situations dealing with imperiled fishes, the Service and the appropriate state agency may develop special procedures, especially relative to disease testing and monitoring, if general practices are not possible for rare stocks.

Issue 14: Fish Stocking Policies in DPS Rivers

Comment 26: Comments were received that questioned how the listing would deal with the current stocking policies in the DPS rivers. Brook and brown trout have been stocked in some of the DPS rivers and landlocked salmon are known to populate headwater lakes of DPS rivers. Concern was raised regarding the potential for interbreeding, competition, and agonistic behavior among and between species.

Response: As noted in the *Review of the Status of Atlantic Salmon (Salmo salar) under the U.S. Endangered Species Act* (1999), interactions between wild Atlantic salmon and other salmonids are mostly limited to interactions with brook trout and brown trout. Competition between species likely plays an important regulatory role and may cause Atlantic salmon, brook and brown trout populations to fluctuate on an annual basis. However, it is difficult to draw conclusions regarding the effects and magnitude of interspecific competition or (in the case of landlocked salmon) the extent of interbreeding.

The Maine Department of Inland Fish and Wildlife recently began an evaluation to better understand the interactions between Atlantic salmon and other freshwater fishes. A draft report entitled "Potential Interactions Between Atlantic Salmon and Freshwater Fishes" has been completed with specific emphasis on DPS rivers. The report is now being routed through administrative channels with a copy to the ASC for review.

Results of the draft evaluation suggest that areas that require additional evaluation or scrutiny include the Sheepscot River where natural reproduction of brown trout is known to occur. Brown trout were once stocked in the watershed. While they are no longer intentionally released in the river, wild populations will continue to be monitored in future years. Both landlocked and sea-run salmon are known to spawn at the outlet of Meddybemps Lake, the headwaters of the Dennys River watershed. Management measures that will include screens at the outlet of the lake may minimize interactions by limiting the introduction of landlocked salmon to the river. A proposal to rear brown and rainbow trout, as well as a brook trout/char crosses in an aquaculture venture in the Sheepscot River estuary has been approved by the U.S. Army Corps of Engineers (ACOE). Also, surveys have documented a resident population of largemouth bass in the Ducktrap River. This species was released in the watershed in the 1960's, and currently there is no viable way to control the population. It is anticipated that the fishery resource agencies will continue to assess and evaluate the potential for impacts to sea-run Atlantic salmon resulting from interactions with other fish species. Where feasible and appropriate, measures will be implemented to avoid and minimize adverse impacts to salmon.

Issue 15: Bycatch of Atlantic Salmon in Commercial Fisheries

Comment 27: Four comments were received concerning the issue of a listing and its potential adverse effect on other commercial fisheries. Specifically there was concern that listing would immediately result in a closure of elver fishing and consequently limit jobs.

Response: Juvenile eels, or elvers, begin to migrate into Gulf of Maine watersheds in March with peak migrations occurring in April and May. Extended migrations sometimes continue into June and July. The elver migration and fishery occurs coincident with the emigration of Atlantic salmon smolts. The elver fishery may extend into June, coincident with immigration of adult salmon destined for upriver spawning areas. Regulations of the elver fishery include a season from March 22 to May 31, ban on harvest of elvers upriver of the head-of-tide, limits on the length of fyke nets that can be set in waterways, prohibition on nets from the middle third of any waterway, and a requirement for finfish excluder panels integral with nets to minimize bycatch and mitigate adverse impacts on non-target species. Most nets are deployed near head-of-tide and immediately adjacent to the shore. Entry into the elver fishery was limited in 1999 to reduce harvest, and in 2000, a lottery was introduced for license acquisition. American eels are managed by an interstate fishery management plan under the Atlantic States Marine Fisheries Commission. As long as the member states are in compliance with the fishery management plan, there will be no closures or changes in the state program.

Elvers are often evenly distributed throughout the water column when moving upriver on the flood tide but near head-of-tide they are found along the shore. Maine Department of Marine Resources (DMR) biological staff in recent years have not observed or documented incidental bycatch of either juvenile or adult Atlantic salmon in elver nets. Fish species that have been captured in small numbers include smelt, pollock, stickleback, pipefish, and mummichog. Fishing effort for elvers has decreased in the last 3 years because of restricted license issuance and the fact that market price has decreased considerably. It is not likely that there will be fishery closures or loss of jobs in this fishery, nor a significant decrease in license issuance when the Gulf of Maine DPS of Atlantic salmon is listed as an endangered species.

Issue 16: Poaching

Comment 28: Some commenters were concerned that a reduction of recreational angler presence on DPS rivers would increase poaching.

Response: Measures continue to be implemented by resource agencies to minimize and eliminate the illegal take of salmon on DPS and other salmon rivers in the State of Maine. Funds were made available through grants to support two State seasonal enforcement staff on DPS rivers in years 1998 and 1999, and residual grant funds have been used to purchase surveillance equipment in the year 2000. While funding for enhanced fishery enforcement efforts on DPS rivers diminished in 2000, resource agency personnel are keenly aware of the need to advise recreational anglers and the public that protection of Atlantic salmon is a high priority. The DMR is posting signs on salmon rivers that advise of the presence of salmon and the need for their protection. In addition, the DMR has employed a seasonal Marine Patrol Officer to promote and enforce recreational fishing regulations.

While all waters in the State of Maine are closed to angling for sea-run salmon, other protective measures are also being implemented on an as-needed basis. In late June 2000, a reach of the Penobscot River immediately downstream from the Veazie Dam was closed to all angling to eliminate the accidental capture of salmon. The ban on fishing was needed because striped bass anglers were catching salmon in that area. This reach of river downstream of the dam is a location where both salmon and striped bass congregate. The reported bycatch of salmon by anglers fishing for American shad on the Narraguagus River prompted an increase in enforcement personnel presence on the river during spring 2000. In addition, resource personnel involved in scientific studies on the Narraguagus River have kept enforcement staff advised of angler activity and have continued to advise anglers and the public of the need to protect all life stages of salmon.

A unique initiative involving the release of mature salmon in the Dennys River and the Machias River estuary in fall 2000, is expected to foster cooperation among anglers and residents of these watersheds for the protection of salmon. This cooperative venture involving the aquaculture industry and fishery resource agencies will place a full complement of adult salmon on the spawning grounds in the Dennys River and adult fish in the lower Machias River. Interest in this initiative is high among stakeholders, and it is anticipated that this interest will offer increased protection for salmon in the watersheds. This program will be evaluated to determine the utility of this approach in a recovery effort.

Issue 17: Aquaculture

Comment 29: The concern has been raised that fish being used in aquaculture have not been removed from the wild for a sufficient amount of time to become genetically distinct from wild stocks. As a result, these fish should not pose a threat to wild resident populations should they escape from captivity.

Response: A large percentage of the fish being used in aquaculture currently are of European origin and, therefore, are genetically different from the native North American strains. North American strains used by the industry are genetically different from wild North American strain due to changes introduced through domestication. The industry selects fish best suited to grow in captivity, which would likely select for different traits and characteristics than those most suited for survival in the wild.

Comment 30: One commenter suggested that farm raised fish should be introduced into the rivers to allow fishing for everybody and improve the economy.

Response: The goal of the Maine Atlantic salmon rehabilitation program is to enhance and protect the eight remnant populations of Atlantic salmon in the rivers which comprise the Gulf of Maine DPS. The Services are using river-specific remnant populations and rebuilding them to the spawning escapement level needed to sustain the population. This is to achieve both human and environmental benefits, so that people will be able to fish for these salmon in the future, as they have done in the past.

Farm fish releases for sport fishing are inappropriate, particularly at a time when the salmon runs are so endangered. Recovery of wild runs and permanent habitat protection are the objectives of conservation for the Gulf of Maine DPS. Sport fishing can be considered once the other objectives are attained.

Comment 31: One commenter questioned the decision not to stock some river-specific fish from aquaculture facilities into the rivers due to fish health concerns.

Response: River-specific Atlantic salmon being raised by the aquaculture industry in net pens located in Machias Bay will be released into appropriate rivers after passing a comprehensive fish health survey. These releases are part of an evaluation program being overseen by the TAC to rebuild the salmon populations in these rivers, evaluate the impacts of these releases on juvenile populations, and set a direction for future cooperative programs with the aquaculture industry. The TAC is created by a Cooperative Agreement and is composed of state and Federal representatives who advise the Federal and state resource agencies on any technical matters relative to the Atlantic salmon restoration and rehabilitation programs in Maine.

The river-specific fish held in Cobscook Bay will not be released based on the recommendation of the Maine Fish Health Technical Committee. This recommendation was made as a result of the risk of spreading ISA to wild salmon populations and aquaculture facilities in the United States. This "quarantine" procedure is consistent with protocols adopted in Canada to prevent the spread of this virus in an effort to protect both the wild and aquaculture stocks of Atlantic salmon. ISA is already present in the Canadian side of Cobscook Bay.

Comment 32: Some commenters questioned the evidence regarding numbers of escapees in rivers or actual impact on wild stocks in Maine from aquaculture, including any impacts from the use of European stocks.

Response: Since the aquaculture industry began in the Canadian Maritime Provinces in 1979, escapees from sea pens and hatcheries have been documented in 14 rivers in New Brunswick and Nova Scotia, Canada. The Magaguadavic River is the only river in the Maine/Maritime area that has been monitored closely for interactions between wild and farmed fish. That monitoring began in 1992. Adult salmon of farmed origin have outnumbered wild salmon in that river since 1994 and exceeded 80 percent for three of the five years between 1994 and 1998. Analysis of eggs taken from the Magaguadavic River in 1993 revealed that at least 20 percent of the redds were constructed by females of farm or cultured origin, and another 35 percent were of possible cultured origin (Carr *et al.*, 1997). In addition, emigrating smolts in 1996 were 51 to 67 percent farm-origin and those exiting the river in 1998 were 82 percent farm-origin and cited as evidence of leakage of juveniles from aquaculture facilities on the watershed (Canadian Department of Fisheries and Oceans (DFO), 1999).

The U.S. aquaculture industry is newer and smaller than the Canadian industry, but has been growing rapidly. Occurrences of adult escapees in Maine Rivers are increasing commensurately. Maine production increased from less than 500,000 smolt stocked and 2,000 metric tons produced annually before 1990 to over four million smolt stocked and up to 15,000 metric tons (mt) produced annually by 1998. There is a standing crop of about six million sub-adult salmon in pens in eastern Maine (Baum, 2000). Since documented escapees in Maine rivers were listed through 1997 in the 1999 Status Review, Baum (2000) has provided documentation of 143 more adult escapees observed for the St. Croix, Dennys, Narraguagus, and Union Rivers for 1997–1999. Though the St. Croix and Union Rivers are not DPS rivers, they serve to demonstrate the relation between increasing numbers of salmon in net pens and the increasing occurrence of escapees in nearby rivers. In evaluating the extent of escapes, it must be remembered that these are observed escapees and represent only a portion of actual escapees.

Intensive studies of genetic interaction between wild salmon and aquaculture escapees in Northwest Ireland rivers have clearly demonstrated that escaped juvenile salmon have completed their entire life cycle in the wild, including accurate homing to natal rivers and interbreeding with wild salmon (Clifford *et al.*, 1998). It has been demonstrated that escapees are present in some of the DPS rivers, and many have been observed to be sexually mature (Baum, 2000). There is recent observation of circumstantial evidence of a female aquaculture escapee successfully spawning in the Dennys River (personal communication, Ed

Baum, 1996). Genetic studies (King *et al.*, 1999) have shown the rare occurrence in wild (DPS) fish collected in Maine of alleles that are common in European stocks. This strongly suggests that some level of introgression of European alleles may have already occurred. The experiences from rivers in Canada (DFO, 1999), Ireland (Clifford *et al.*, 1998), and Norway (Fleming *et al.*, 2000), which are very similar to Maine salmon rivers, and where aquaculture has a longer history and a greater level of investigation, provide substantial evidence that negative impacts to the DPS can be reasonably anticipated to occur in Maine.

Comment 33: Some commenters stated that the voluntary Code of Containment combined with weirs on some rivers provide adequate protection of wild stocks from escapees without any further steps needed.

Response: There were no data collected for the Dennys, Pleasant, Machias, East Machias, Ducktrap, or Sheepscot rivers for sea pen escapees during the last three years. Where data are available (Baum, 2000), there is a clear trend towards increasing numbers of escapees from cages entering nearby Maine rivers commensurate with the rapid expansion of aquaculture in eastern Maine. This increase is occurring in spite of most Maine sea pens currently implementing the voluntary industry Code of Containment standards.

Comment 34: One commenter suggested that a 1– percent pen escape rate (based on Norwegian data) and a 1–percent survival to the river (basis of commenter's estimate uncertain) would result in 600 escapees in the eastern Maine rivers (with a standing crop of six million). As the great bulk of salmon are raised near the estuaries of the Dennys and the two Machias Rivers, the commenter supposed that annual escape to those rivers would outnumber the estimated DPS populations in those rivers by several fold. Among these rivers, a weir is present only on the Dennys. Trapping facilities and a weir are planned for the Machias/East Machias respectively, but the date and financing are undetermined. It is also important to note that weirs are seasonal structures and, therefore, do not trap fish on a year-round basis. Fish barriers can reduce the degree of threat from a relatively large number of escapees, but cannot be considered as adequate protection for the DPS.

Response: Recent evidence of juvenile escapees from an aquaculture hatchery emigrating as smolts from the Pleasant River (Baum, 2000) represent a threat that Codes of Containment for sea pens and weirs entirely fail to address. A commercial hatchery is also located on the East Machias River.

Issue 18: Marine Survival

Comment 35: Some commenters questioned why the Services consider Maine salmon populations to be on the verge of extinction instead of simply attributing the decline to population cycles.

Response: Although population dynamics of Atlantic salmon are intimately related to and influenced by environmental variables, threats caused by man exacerbate the severity of the situation. These threats are serious enough to make a difference between survival and extinction. It is important to note that Atlantic salmon populations continue to decline even with recent increases in favorable marine environmental variables.

Issue 19: Climate Change

Comment 36: Some commenters cited accounts of temperature rises of one to three degrees Celsius since the 1920s and 1930s, and questioned whether the remaining wild Atlantic salmon of the Gulf of Maine DPS will be able to survive such climatic variability.

Response: An examination of the effect of warming climate on fishery resources illustrates the challenges to fish on the southern end of their range. Climate models predict significant warming over the next century as the carbon dioxide content of the atmosphere increases. Records show that there have been periods of warming and cooling of the North Atlantic Ocean, but changes have not been uniform over all areas.

Global warming can have an effect on sea temperatures, wind currents, fresh water input, and mixing of the ocean's surface layer. Fish, being poikilotherms, maintain a body temperature almost identical to their surrounding environment. Thermal changes of just a few degrees Celsius can critically affect biological functions in salmonids such as protein metabolism (McCarthy and Houlihan, 1997; Somero and Hofmann, 1997; and Reid *et al.*, 1998), response to aquatic contaminants (Reid *et al.*, 1997), reproductive performance (Van Der Kraak and Pankhurst, 1997), smolt development (McCormick *et al.*, 1997), species distribution limits (McCarthy and Houlihan, 1997; Keleher and Rahel, 1996; and Welch *et al.*, 1998), and community structure of fish populations.

It has been suggested that an overall increase in river water temperatures due to global warming may actually benefit certain fish populations due to greater growth opportunity. Increased opportunities for growth in the spring and summer could increase the percentage of fish that enter the upper size distribution of a population and smolt the following spring (Thorpe, 1977; Thorpe *et al.*, 1980; and Thorpe, 1994). In addition, warmer rearing temperatures during the late winter and spring have been shown to advance the timing of the parr-smolt transformation in Atlantic salmon (Solbakken *et al.*, 1994). There is, however, an optimal temperature range and a limit for growth after which salmon parr will stop feeding due to thermal stress. During this time, protein degradation and weight loss will increase with rising water temperature (McCarthy and Houlihan, 1997).

Issue 20: Threat Posed by Public Hatchery Practices

Comment 37: Some commenters stated that the Status Review did not adequately address the risks posed by public hatchery practices given their dominant influence on Maine salmon and the proposed extension of the ESA's protection to their output.

Response: It is true that a hatchery program can have large impacts, both positive and negative, on fish populations. Every precaution is being taken to ensure that the river-specific rehabilitation program in Maine will enhance the population in a positive manner. Broodstock are collected in such a manner as to maximize the genetic material available in the individual rivers.

The rehabilitation program is carried out with the guidance of state and Federal fish genetic experts, and spawning is conducted according to protocols developed and peer reviewed by the Maine TAC and Assessment Committee. Activities are guided by program specific documents such as the following: *Broodstock Collection Recommendations to the Maine TAC* by the Maine Atlantic Salmon Broodstock Working Group; *Management and Spawning Protocols for Atlantic Salmon Broodstocks at the CBNFH, October, 1997*; *CBNFH Interim Disease Management Plan, Best Management Plan for SSSV by the Lamar (PA) Fish Health Unit, November 1999*; *Atlantic Salmon Broodstock Management and Breeding Handbook by the USFWS, Biological Report 89 (12) July 1989*; and the *CBNFH Standard Husbandry Procedures for Biosecurity* (In draft). Activities are also guided by regional and agency policies and guidelines regarding fish health and management plans such as the following: *Maine Atlantic Salmon Restoration and*

Management Plan, 1995–2000, Atlantic Sea Run Salmon Commission; *Report of the Maine Atlantic Salmon Authority to the Joint Standing Committee on Inland Fisheries and Wildlife*; *Maine Atlantic Salmon Management Plan with Recommendations Pertaining to Staffing and Budget Matters, January 1997*; and *Atlantic Salmon Conservation Plan for Seven Maine Rivers, The Maine Atlantic Salmon Task Force. March 1997.*

Fish health management is conducted in close consultation with the FWS' Lamar Fish Health Unit, the Maine Fish Health Technical Committee, and in strict compliance with state, regional, and Federal regulations, protocols, and guidelines.

Hatchery populations are included as part of the DPS when they are similar to the native, naturally spawned fish, and are listed along with the DPS when they are determined to be essential to the recovery of the wild population. These hatchery populations are vital to compensate for the prolonged period of low adult returns, but they are not counted as part of the recovery goal. That goal is based upon wild spawners returning. Since the river specific broodstock were derived from the wild populations, they are determined to be similar to the naturally spawning fish. Genetic analysis of the broodstock has confirmed that the genetic diversity of the wild populations is being maintained in the captive population. Therefore, the river-specific broodstock and their progeny are part of the DPS. The purpose of the river-specific program is to facilitate recovery of these depleted populations. The river specific program is providing a critical role in increasing the effective population size of five of the populations within the DPS, and therefore providing a buffer against extinction. The hatchery populations are, therefore, essential to the survival and recovery of the wild populations. The Services further believe that naturally spawning Atlantic salmon populations founded by the hatchery populations will play an important role in the recovery process.

The Services have issued a final policy regarding controlled propagation of species listed under the ESA (65 FR 56916, September 20, 2000). The policy recognizes that, in certain circumstances, controlled propagation is an essential tool for the conservation and recovery of listed species. The policy advises that if controlled propagation is to be used as a strategy in the recovery of a listed species, it must be conducted in a manner that will minimize risk to existing populations and preserve the genetic and ecological distinctness of the listed species. These have all been considerations in designing and administering the current hatchery program. The ongoing and future role of the river-specific rearing program in the overall recovery plan for the Gulf of Maine DPS will be fully addressed in the recovery plan to be developed following this listing action.

Issue 21: Impact on Individuals

Comment 38: Many commenters expressed concern that listing would affect the conduct of their daily lives by imposing additional restrictions upon them once listing occurred.

Response: Unless an individual or organization is engaged in an activity that is likely to result in a "take" of Atlantic salmon, they will not be affected by the listing. A list of potential take activities was provided in the proposed rule and a revised list is being published in this final rule. It is the opinion of the Services that few, if any, individual citizens will be engaged in these activities or any others which may cause "take" of salmon. The Services remain committed to working with individuals and industries to ensure adequate protection is provided to Atlantic salmon and their habitat while minimizing effects to individuals and businesses. The Services acknowledge that listing the DPS may require some modification of current practices in the aquaculture and agriculture industries, and the Services have been working with the affected groups to achieve the necessary level of protection for salmon within the DPS. We are confident that these changes can be accomplished with minimal disruptions.

Issue 22: Citizen Suits

Comment 39: Some commenters suggested that listing the DPS would bring a rash of lawsuits pursuant to the citizen suit provision of the ESA. The intent of the suits would be to force changes in land use or business practices in Maine.

Response: Section 11(g) of the ESA entitled "Citizen Suits" says, in part, "* * * any person may commence a civil suit on his own behalf (A) to enjoin any person, including the United States and any other Governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this act or regulation issued under the authority thereof."

This provision of the ESA is exercised by citizens or organizations seeking redress in those instances where they contend that no action, limited action, or inappropriate action is putting listed or petitioned, species at risk. The individual or organization making such claims is required to present information to support its position. Currently, the only salmon-related active citizen suits under this provision in Maine are against the Services for accepting the State of Maine Atlantic Salmon Conservation Plan in 1997, and concurrently withdrawing a proposed rule designating a seven-river DPS as "threatened."

Issue 23: Resources for Recovery

Comment 40: Some commenters expressed concern that there were not adequate resources to bring about salmon recovery.

Response: The determination of whether a species is "threatened" or "endangered" is a biological one and does not consider the economic benefits or costs of listing. The Services acknowledge that listing does not guarantee that additional funding will become available, but the "endangered" or "threatened" designation raises the level of awareness about the species' plight, and allows the Services to spend funds from the portions of both Services' budgets designated for listed species management and protection. It also increases the likelihood that other involved Federal, State, and private organizations will dedicate more funds for salmon recovery. It is also important to note that section 7 of the ESA provides mandatory protection from any Federally permitted, authorized, funded, or carried out activities that would cause jeopardy. In fact, the proposal has already generated increased involvement and funding commitments from a number of Federal agencies including the Environmental Protection Agency (EPA), ACOE, and the Natural Resource Conservation Service. The State of Maine has also authorized additional salmon funds in the most recent legislative session.

Issue 24: Economic Concerns

Comment 41: Many commenters at the public hearings orally and in writing expressed concern that additional regulations that accompany listing would cause severe economic hardship, particularly in Washington County, and that many people could lose their jobs as a result.

Response: Section 4(b)(1)(A) of the ESA states, in part, that listing determinations shall be made, "..solely on the basis of the best scientific and commercial data available.." without weighing economic factors. The Services acknowledge the concerns that have been expressed and have adopted a number of policies to make implementation of the ESA more flexible and to increase the options that affected citizens have in order to comply with the law. These are designed to encourage conservation by private landowners and others and provide them some certainty as to what is expected in the future. These policies include: "Safe Harbor Agreements," which provide landowners who voluntarily implement conservation actions for listed species with assurances that their regulatory obligations will not increase with an increase in these species on their lands; "habitat conservation plans" (HCPs) or "conservation plans," which must accompany an application for a Section 10(a)(1)(B) incidental take permit; and "No Surprises" under Section 10(a)(1)(B), which provides assurances to landowners that if "unforeseen circumstances" arise, there will be no additional commitment of land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed to in a properly implemented habitat conservation plan.

Issue 25: Predation

Comment 42: Many commenters expressed concerns that unchecked populations of seals and cormorants were contributing to declining salmon populations.

Response: The FWS has begun development of a draft Environmental Impact Statement (EIS) and management plan for double crested cormorants. It will explore alternatives for managing cormorants throughout the contiguous United States including such options as a hunting season, control at breeding colonies by state agencies, and the continued issuance of depredation permits to private landowners. Maine has identified salmon as one of several issues that should be examined during the EIS process, as required under the National Environmental Policy Act of 1969 (NEPA).

The 2000 Annual Meeting of the USASAC held a special session on seals and seal predation on Atlantic salmon. It was reported that populations of both grey and harbor seals have experienced steady growth since the early 1980s. Harbor seals in the vicinity of the Maine coast have experienced an 8.9–percent annual increase in their population. Populations of grey seals experienced a 7.4–percent annual growth in the Gulf of St. Lawrence, and a 12.6–percent increase at Sable Island. It was noted that seals are opportunistic feeders and will target both benthic and schooling pelagic fish species. Primary diet items of harbor seals include herring, cod, pollock, squid and hake. No salmon have been identified in harbor seal stomachs. Grey seals feed primarily on squid, herring, hake, and cod. There are two documented cases of grey seal predation on Atlantic salmon in the Gulf of St. Lawrence. During trapping operations in Maine incidents of scarring and injury on adult Atlantic salmon have been observed. The DFO conducted a literature search on seal predation and found that only two Atlantic salmon were found out of 5,680 seal stomachs examined. It was noted that if 100 percent of the Atlantic salmon biomass in the Atlantic Ocean were consumed by harp seals, Atlantic salmon would account for only 0.01 percent of their annual diet. This illustrates the difficulty in documenting Atlantic salmon predation by seals.

Based on existing information, it appears that additional investigation is warranted to examine the potential for localized seal predation on salmon at critical concentration points and times such as during smolt outmigration and in the vicinity of weirs. In addition, seal predation at marine cages is of concern because it results in a loss in inventory for the grower and because it increases the potential for escape of farmed fish. The NMFS is working with the State of Maine to investigate these issues.

Lethal take of marine mammals is authorized under the Marine Mammal Protection Act (MMPA) under very limited situations. Specifically, section 109(h)(1) of the MMPA authorizes Federal, state, and local officials to take marine mammals in a humane manner in the course of their duties if such taking is for: (A) the protection or welfare of the mammal, (B) the protection of the public health and welfare, or (C) the nonlethal removal of nuisance animals. Section 101(c) authorizes the taking of marine mammals if imminently necessary in self defense or to save the life of a person in immediate danger. Lethal taking to protect fishing gear or catch is prohibited by section 118(a)(5) and 101(a)(4). In the 1994 amendments to the MMPA, Congress directed a scientific investigation be conducted to determine whether California sea lions and Pacific harbor seals are having a significant negative impact on the recovery of salmonid fishery stocks listed under the ESA or are having broader impacts on the coastal ecosystems of Washington, Oregon, and California. The Working Group recommended additional research in a number of areas but found that existing information on the seriously depressed status of many salmonid stocks is sufficient to warrant actions to remove pinnipeds in areas of co-occurrence where pinnipeds prey on depressed salmonid populations. In February 1999, based on these working group recommendations, NMFS submitted a report to Congress with the following four recommendations: implement site-specific management for California sea lions and Pacific harbor seals; develop safe, effective, non-lethal deterrents; selectively reinstate authority for commercial fishers to kill harbor seals and sea lions to protect their gear and catch; and conduct additional research. Studies on the interactions of seals with netpens and at natural concentration sites (weirs, falls) should be conducted.

Issue 26: Forest Practices

Comment 43: Some commenters suggested that current forest practices may be negatively affecting salmon.

Response: Although the Status Review and the Maine Atlantic Salmon Conservation Plan identify a number of activities associated with forest practices that have the potential to affect salmon, the Services do not believe that current forest practices pose a significant threat to the well-being of the species. However, given the precarious status of the species even minor impacts must be recognized and dealt with. Consequently, the Services will continue to work with the industry, the Watershed Councils, and Project SHARE to secure additional habitat protection throughout the watersheds.

Issue 27: Agricultural Practices

Comment 44: A number of commenters expressed concern that agricultural activities in Maine were negatively impacting salmon.

Response: The Services do not believe that current agricultural practices are a major threat to the DPS with the exception of water withdrawals from the Pleasant, Narraguagus, and Machias Rivers. Pesticide sampling has been conducted in seven of the DPS watersheds, and hexazinone was the only chemical detected. There is no evidence that it is toxic to fish. Pollution from livestock can affect water quality, but efforts are underway to eliminate the impacts. Livestock husbandry is limited primarily to the mid-coast watersheds. As noted here, significant progress is being made to insure that withdrawals of irrigation water are protective of salmon, but more work remains to be done before the Services can consider this threat to be eliminated. The Services will continue to monitor forestry and agricultural practices and their effects on salmon during the recovery process.

Issue 28: Local Involvement

Comment 45: A number of commenters urged the Services to be cognizant of the critical role of local citizens in the protection and recovery of Atlantic salmon. Some expressed concern that the involvement and cooperation of such citizens would cease with a listing action.

Response: The Services fully agree that the successful recovery of Atlantic salmon will depend on the cooperation and involvement of the citizens of Maine and in particular those who live and work in the eight watersheds. The ESA encourages cooperative efforts and local involvement. As stated at the public hearings and elsewhere, the Services intend to draft a recovery plan for the Gulf of Maine DPS of Atlantic salmon by building upon the model of the Maine Conservation Plan which emphasizes citizen involvement. The Services envision a large role for the Watershed Councils in the recovery planning process and, based on comments provided at the public hearing, will also involve local Soil and Water Districts.

Summary of Factors Affecting the Gulf of Maine DPS of Atlantic Salmon

Section 4 of the ESA (16 U.S.C. 1533) and regulations promulgated to implement the listing provisions of the ESA (50 CFR part 424) set forth the procedures for adding species to the Federal list. Section 4 also requires that listing determinations be based solely on the best scientific and commercial data available, without consideration of possible economic or other impacts of such determinations. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the ESA. These factors and their application to the Gulf of Maine DPS of Atlantic salmon are described here.

(A) The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Demonstrated and potential impacts to Atlantic salmon habitat within the DPS watersheds result from the following causes: (1) Water extraction; (2) sedimentation; (3) obstructions to passage including those caused by beaver and debris dams and poorly designed road crossings; (4) input of nutrients; (5) chronic exposure to insecticides, herbicides, fungicides, and pesticides (in particular, those used to control spruce budworm); (6) elevated water temperatures from processing water discharges; and (7) removal of vegetation along streambanks. The most obvious and immediate threat is posed by water extraction on some rivers within the DPS range, as it has the potential to expose or reduce salmon habitat.

The threat of blocked passage due to debris or beaver dams is an annual event. The ASC, Project SHARE, and the Watershed Councils have demonstrated an ability to annually remove or reduce that threat. Chronic exposure to chemical residues in the water is a threat that warrants further investigation. In particular, potential impacts during the process of smoltification are being examined. Sedimentation from a variety of sources also warrants closer review as it may be altering habitat and rendering it incapable of supporting Atlantic salmon. Water temperatures in the vicinity of berry processing water discharges should be monitored to determine if they make habitat unsuitable for Atlantic salmon. Permit exemptions for agriculture practices should be evaluated to determine if they provide adequate protection to riparian habitat.

All of these potential impacts to Atlantic salmon habitat need to be examined in more detail for their individual and cumulative impacts. Study results on the Narraguagus River demonstrate that full freshwater production is not being achieved despite fry stocking efforts. These results could mean that one or a combination of factors within the rivers is negatively impacting freshwater habitat for Atlantic salmon. The relationship between these factors and freshwater production and survival of salmon needs to be studied in detail so that cause and effect connections can be determined or ruled out. Corrective actions can then be implemented as appropriate to enhance recovery.

There does not appear to be one particular habitat issue which poses a significant threat to the entire DPS by itself. Because of their indirect relationship to habitat, agricultural water withdrawals are discussed separately in relation to listing factor (D) below. Additional study will be needed to determine whether the cumulative impacts from habitat degradation discussed here may reduce habitat quality and limit habitat quantity available to Gulf of Maine DPS salmon at various stages in their life history within freshwater. At present, the scientific and commercial data available do not show that loss of habitat is creating a danger of extinction to the DPS.

(B) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The United States joined with other North Atlantic nations in 1982 to form the North Atlantic Salmon Conservation Organization (NASCO) for the purpose of managing salmon through a cooperative program of conservation, restoration, and enhancement of North Atlantic stocks. NASCO achieves its goals by controlling the exploitation by one member nation of Atlantic salmon that originated within the territory of another member nation. The U.S.' interest in NASCO stemmed from its desire to ensure that foreign fisheries intercepting U.S. origin fish did not compromise the long-term commitment by the states and Federal government to rehabilitate and restore New England Atlantic salmon stocks.

On February 5, 1999, the DFO announced adoption of the precautionary approach by a continued closure of the commercial Atlantic salmon fishery for Newfoundland and Labrador for an additional three years. Further restrictions on Canadian Atlantic salmon recreational fisheries were also announced, including the requirement to only use barbless hooks for angling in Newfoundland and Labrador, and coordination with Watershed Management groups.

In 1999, the West Greenland Commission of NASCO agreed on a multi-year approach for conservation of salmon stocks in Greenland, and, therefore, for 1999 and 2000, the catch at West Greenland in each of the years is restricted to the amount used internally in Greenland. The reported catch in 1999 was 19 tons and the unreported catch was estimated to be approximately 10 to 15 tons. Based on discriminant analysis of characteristics from scales sampled in the fishery, 91 percent of fish in 1999 were of North American origin, the highest proportion on record. The catch at West Greenland in 1999 was estimated to consist of 17.8 tons (5,700 salmon) of North American origin and 1.8 tons (600 salmon) of European origin. These values represent an increase of 84 percent of the North American and a reduction of 33 percent of the European components, respectively, from the landings in 1998.

In October 1987, the New England Fishery Management Council prepared a Fishery Management Plan (FMP) to implement U.S. management authority for all Atlantic salmon of U.S. origin pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*. The FMP was intended to safeguard U.S. Atlantic salmon, protect the U.S. investment in the state/Federal restoration program, and strengthen the U.S. position in international negotiations. The FMP prohibits possession of Atlantic salmon in the Exclusive Economic Zone.

Starting in the 1980s, as runs decreased, the Maine Atlantic Sea Run Salmon Commission imposed increasingly restrictive regulations on the recreational harvesting of Atlantic salmon in Maine. The allowable annual harvest per fisherman was reduced by the State from ten salmon in the 1980s to one grilse in 1994. In 1995, regulations were promulgated to allow only catch and release fishing for Atlantic salmon in Maine, closing the last remaining recreational harvest opportunities for sea run Atlantic salmon in the United States. From the 1960s through the early 1980s, the average exploitation rate in Maine rivers has been estimated to range from approximately 20 percent to over 25 percent of the run (Beland, 1984; Baum, 1997). In retrospect, this level of harvest was likely too high, especially in light of the extensive commercial harvest at that time. In 1993, the documented sport catch of sea-run Atlantic salmon in Maine was 659 fish, with 152 killed, and 507 released (USASAC, 1994). The USASAC reported that 33 fish were caught and released within the range of the DPS in 1997, 20 fish in 1998, and 12 in 1999. In December 1999, salmon angling was closed statewide.

Atlantic salmon parr remain vulnerable to harvest by trout anglers and mortality associated with this activity has been documented. It is believed that poaching activity occurs at fairly low levels in Maine rivers. The low returns of wild adult salmon to Maine rivers highlight the importance of continuing assessment of all sources of mortality that may pose a risk to the DPS.

Both commercial and recreational harvest of Atlantic salmon historically played a role in the decline of the Gulf of Maine DPS of Atlantic salmon. The Canadian commercial fishery in Newfoundland and Labrador is under a moratorium for the next 3 years. The West Greenland commercial fishery will continue as an internal use only fishery through the 2000 fishing season. Continuation of the internal use fishery in Greenland poses a reduced but continuing concern to the Gulf of Maine DPS of Atlantic salmon. Recreational fishing targeting other species also has the potential to result in the incidental catch of Atlantic salmon at various life stages. This could result in their injury or death. Thus, these fisheries also pose a threat to Atlantic salmon. There was one documented poaching event in 1998, indicating that poaching continues to pose a threat to Atlantic salmon. Continued enforcement efforts and adequate penalties are essential to minimize this threat.

In view of elimination of the directed fishery in Maine and changes in the high seas fishery, the existing commercial fishery off West Greenland and bycatch in existing recreational fisheries in Maine are no longer considered as limiting the survival of the Gulf of Maine DPS of Atlantic salmon. Therefore, the best data presently available do not show that overutilization is creating a danger of extinction.

(C) Disease or Predation

Fish diseases have always represented a source of mortality to Atlantic salmon in the wild, though major losses due to disease are generally associated with salmon aquaculture. The level of threat from disease has remained relatively static until the last 3 years. Three recent events that have increased disease as a threat to the DPS are: (1) The appearance of the ISA virus in 1996 in Canada, within the range of possible exposure of migrant DPS salmon, subsequent spreading of that disease closer to the Maine border, and the collection of aquaculture escapees and wild fish testing positive for the ISA virus; (2) the discovery in 1998 of the retrovirus SSSV within the DPS; and (3) new information available in 1999, on the potential impact of coldwater disease (CWD) on salmon.

Wild parr were taken from the Pleasant River, Maine, in 1995 (180), 1996 (80), and 1997 (164), and held in isolation at the NANFH and a private hatchery in Deblois, ME for the purposes of rearing the fish to sexual maturity, spawning them, and returning progeny back to the Pleasant River. Mortalities associated with tumors in the viscera (particularly the swimbladder) began to appear in the salmon at North Attleboro in 1997 and continued in 1998. Cornell University scientists identified the causative agent as a retrovirus named SSSV that had never been previously documented except once in Scotland in the 1970s. Virus-positive fish from North Attleboro were moved to a quarantine facility at the USGS facility in Leetown, WV to obtain detailed information about the virus.

Pleasant River fish at the Deblois Hatchery were also found to be positive for the virus, though no disease or mortality occurred. Further testing of wild salmon held as broodstock at the CBNFH showed that the virus was present in carrier state in eight individuals of over 500 tested. Some of these individuals had been in captivity for several years, and others were only recently captured and held in isolation. The implications are that the virus exists at some level in wild populations and has been present for at least several years. However, its presence in a carrier state in two other hatcheries, some for several years, without any clinical indication of disease, and the lack of any observation of symptoms in wild populations suggest that the threat of disease from SSSV is limited. Until future research or experience provides additional information, the threat associated with this virus remains uncertain. The virus has caused lethal disease under conditions that existed at one hatchery and, therefore, must be considered a threat.

The second virus that represents a relatively new threat to the DPS is the causative agent of ISA. This virus causes lethal disease in maturing salmon held in salt water. Discovered in 1984, it was known only in Norway prior to 1996, when it was diagnosed in aquaculture sea pens in New Brunswick, Canada. The following year it was found in Scotland. Monitoring in the Magaguadavic River in New Brunswick by the Atlantic Salmon Federation has confirmed both aquaculture escapees and wild fish infected with the ISA virus. There is no known control of the disease except removal of fish held within 5 km of an infected site. An extensive survey of Maine aquaculture operations found no ISA virus present within the United States. The Province of New Brunswick has taken extensive actions to control the spread of the virus. But the effectiveness of these actions is not assured and the affected Canadian aquaculture operations are near U.S. pen sites. Thus the virus represents a serious threat because of its potential to spread to the U.S. pens near the rivers and migration routes used by the Gulf of Maine DPS of Atlantic salmon.

Cold Water Disease caused by the bacterium *Flavobacterium psychrophilum* has recently been found to be a serious problem to Atlantic salmon in New England waters. New information from ongoing studies by the Biological Resources Division of the USGS at their Leetown Science Center, WV has shown that the pathogen induces pathology and subsequent mortality among juvenile Atlantic salmon. The pathogen is transmitted vertically from carrier sea-run adults to offspring via the eggs.

Predation has always been a factor influencing salmon numbers but under

conditions of a healthy population would not be expected to threaten the continued existence of that population. The threat of predation on the Gulf of Maine DPS of Atlantic salmon is significant today because of the very low numbers of adults returning to spawn and the dramatic increases in population levels of some predators, including cormorants, striped bass, and several species of seals.

Most rivers within the DPS range do not contain dams that delay and concentrate salmon smolts and make them more vulnerable to cormorant attacks. Also, the recovery of striped bass populations over the past decade is concentrated more in rivers south of the DPS range. Furthermore, cormorants and striped bass are transitory predators impacting migrant juveniles in the lower river and estuarine areas. Seals, however, have reached high population levels not reported before, and salmon remain vulnerable to seal predation through much of their range.

In summary, the threat of disease is escalated both by its potential impact on Atlantic salmon in the wild and the threat it poses to the health of the river-specific broodstock and to the role of the hatchery program in the recovery effort. The best available scientific and commercial data show that disease presently creates a danger of extinction to the Gulf of Maine DPS of Atlantic salmon. There are insufficient data at this time to show that predation creates a danger of extinction to the DPS.

(D) Inadequacy of Existing Regulatory Mechanisms

Major threats continue to be poor marine survival, water withdrawals, disease, and aquaculture impacts, especially interaction with European strain and hybrid (European/North American) salmon. A variety of state and Federal statutes and regulations seek to address threats to Atlantic salmon and their habitat. These laws are complemented by international actions under NASCO, many interagency agreements, and state-Federal cooperative efforts. Implementation and enforcement of these laws and regulations could be strengthened to further protect Atlantic salmon. The appropriate state and Federal agencies have established coordination mechanisms and have joined with private industries and landowners in partnerships for the protection of Atlantic salmon. These partnerships will be critical to the recovery of the species. Existing regulatory mechanisms either lack the capacity or have not been implemented adequately to decrease or remove the threats to wild Atlantic salmon. The discussion that follows will focus on those laws which have not proven sufficient to deal with threats, or, if adequate, are not being sufficiently implemented or enforced.

(1) Water withdrawals

Maine has made substantial progress in addressing the issue of agricultural water withdrawals but regulations and water use planning are not complete and in place to provide sufficient protection to the DPS. The Maine Land and Water Resource Council and the Maine Land Use Regulatory Commission (LURC) must approve requests for withdrawals for irrigation, and can curtail withdrawals if water levels go below what is considered necessary for the well being of the species. Until the water use planning is complete, however, the allowable surplus above that needed for salmon has not been quantified. In 1999, the LURC limited the amount of water that could be drawn from the Pleasant, Narraguagus, and Machias Rivers. The State Department of Environmental Protection (DEP) is developing a rule to address withdrawals on a state-wide basis. At this point, water withdrawals in unorganized towns are not regulated. The absence of completed water management plans for all DPS rivers subject to future agricultural water withdrawals, and of permanent protection for salmon flows, creates a danger of extinction for the Gulf of Maine DPS.

(2) Disease

The European ISA virus has become established in North American aquaculture fish in proximity to Atlantic salmon in the DPS. The Services believe that Maine's fish health regulations may not fully ensure testing, reporting, and depopulation of diseased fish. Consequently, there remains an extremely serious possibility of ISA disease spreading from aquaculture fish. Also, the occurrence of a heretofore unknown retrovirus, SSSV, is not yet specifically addressed by any regulations. Disease episodes have impacted the Services' river-specific stocking program in that Pleasant River broodstock had to be destroyed. Efforts are now underway to reestablish that broodstock. The Services thus conclude that inadequate regulation of disease vectors presents a serious threat to the health of the DPS.

(3) Aquaculture

The known risks inherent in wild stocks interacting with aquaculture escapees have increased significantly from 3 years ago when the Services believed that certain restrictions on the importation and use of foreign salmon stocks were in place and enforced. Available data indicate that the percentage of European strain hybrid fish raised in aquaculture facilities has increased. Maine State Law (PL 1991 c381 sub section 2) restricts importing fish and eggs, but fails to restrict importing European milt, thus enabling expansion of the use of hybrids between European and North American salmon in aquaculture. Also, permit holders have continued to use European strains or hybrids despite their commitment not to when obtaining ACOE permits, which were issued in reliance on applications which stated that no European strains or hybrids would be placed in cages. In addition, permits have not been issued by the EPA under the Clean Water Act to limit the discharge of pollutants from these aquaculture facilities. Thus, existing regulatory mechanisms are not adequate to address the threat of non-native Atlantic salmon used in aquaculture facilities.

Existing regulatory mechanisms are not sufficient to remove the threat posed by agricultural water withdrawals, disease, and aquaculture to the Gulf of Maine DPS of Atlantic salmon. Given extremely low numbers of adult returns, without adequate regulation these threats create a danger of extinction of the Gulf of Maine DPS of Atlantic salmon.

(E) Other Natural or Manmade Factors Affecting its Continued Existence

The Maine Atlantic salmon aquaculture industry is currently composed of 12 companies, at 33 sites, with 773 cages covering 800 leased acres of water. Farms are concentrated in Cobscook Bay near Eastport, ME, but are located as far south as the Sheepscot River, although that site currently does not grow Atlantic salmon. The industry in Canada is approximately twice the size of the Maine industry. In addition, two freshwater hatcheries are located on rivers within the DPS range.

Atlantic salmon that escape from farms and hatcheries pose a threat to native Atlantic salmon populations in coastal Maine rivers. Escapes and resultant interactions with native stocks are expected to increase given the continued operation of farms and growth of the industry under current practices. There is substantial documentation that escaped farmed salmon disrupt redds of wild salmon, compete with wild salmon for food and habitat, interbreed with wild salmon, transfer disease or parasites to wild salmon, and/or degrade benthic habitat (Clifford, 1997; Youngson *et al.*, 1993;

Webb *et al.*, 1993; Windsor and Hutchinson, 1990; and Saunders, 1991). A comparison study in Canada revealed that survival of wild post-smolts moving from Passamaquoddy Bay to the Bay of Fundy was inversely related to the density of aquaculture cages (DFO, 1999). In addition, there has recently been concern over interactions when wild adult salmon migrate past closely spaced cages, creating the potential for behavioral interactions, disease transfer or interactions with predators (DFO, 1999; Crozier, 1993; Skaala and Hindar, 1997; Carr *et al.*, 1997; and Lura and Saegrov, 1991).

Atlantic salmon that either escaped or were released from aquaculture facilities have been found in the St. Croix, Penobscot, Dennys, East Machias, and Narraguagus Rivers in the United States (Baum, 1991; USASAC, 1996; 1997). In 1994 and 1997, escaped farmed fish represented 89 percent and 100 percent, respectively, of the documented run for the Dennys River, and in 1995, 22 percent of the documented run for the Narraguagus River. Escaped farmed salmon have also been documented as an incidental capture in the recreational fishery, and observed in the Boyden, Hobart, and Pennamaquan Rivers. The first aquaculture escapee in the State of Maine was documented in 1990, and the first sexually mature escapee was documented in 1996. Escaped farmed fish are of great concern in Maine because even at low numbers they can represent a substantial portion of fish in some rivers. Also, populations at low levels are particularly vulnerable to genetic intrusion or other disturbance caused by escapees (DFO, 1999; Hutchings, 1991). Preliminary results from the 1999 wild smolt assessment project in the Pleasant River suggest that several outmigrating smolts were of hatchery origin based on fin condition (Kocik *et al.*, 1999, unpublished data). Of the 676 outmigrating smolts that were captured between April and May 1999, between five percent and 25 percent were estimated to be of hatchery origin.

Given current aquaculture practices, the Services have opposed the use of reproductively viable European strains (pure and hybrid) of Atlantic salmon within North America and the continued importation of European gametes (milt). This opposition is based on genetic studies that demonstrate that there are significant differences between North American and European Atlantic salmon (King *et al.*, 1999), and the advice from geneticists that interbreeding among genetically divergent populations negatively impacts natural populations (Utter, 1993; Verspoor, 1997; and Youngson and Verspoor, 1998). The introgression by non-North American Atlantic salmon stocks presents a substantial threat of disrupting the genetic integrity of North American stocks and threatens fitness through outbreeding depression.

Comprehensive protective solutions to minimize the threat of interactions between wild and aquaculture salmon have not been implemented. The industry voluntarily adopted a Code of Practice in October 1998. The Services are not aware of monitoring results of that Code but note that escapes continued to be documented in the DPS in 1999 and 2000, when the Code was in place. Weirs help minimize the potential interaction between escapees and wild salmon, but they are not present on all rivers and where present are only in place seasonally. In 1997 and 1998, the Services worked with industry and State representatives in an attempt to eliminate further importation of European stocks, remove pure European strain from marine cages, mark all fish prior to placement in marine cages, and phase out the holding of North American/European hybrids. These efforts were unsuccessful. In July of 1999, the Services initiated discussions directly with the Maine DMR (the state agency responsible for aquaculture industry regulation). These discussions were only partially successful because, although information was exchanged, agreement on timing or specific measures was not reached.

Further, marine survival rates, as discussed in a second threat within factor (E), continue to be low for U.S. stocks of Atlantic salmon, and the subsequent low abundance of salmon impedes recovery of the DPS. Scientists have attributed natural mortality in the marine environment to sources that include stress, predation, starvation, disease, parasites, and abiotic factors. In addition, scientific studies indicate that year-to-year variation in return rates of U.S. salmon stocks is generally synchronous with other North Atlantic stocks. This information suggests that the trend in return rates is, in part, the result of factors that occur when the stocks are in the North Atlantic, particularly the Labrador Sea. Scientists have concluded that a significant proportion of the variation in recruitment or return rate is attributed to post-smolt survival. However, the factors responsible for reduced post-smolt survival are not well understood.

Thus, existing aquaculture practices and low marine survival create a danger of extinction of the Gulf of Maine DPS of Atlantic salmon.

State Conservation Efforts

Section 4(b)(1)(A)of the ESA requires us, in making a listing determination, to take into account efforts being made by the state, foreign nations, or their political subdivisions, to protect the DPS of Atlantic salmon. In 1997, Maine developed a conservation plan that attempted to identify and address threats to the species. The state has implemented a number of the items contained in the various sections of the plan. Additional details on conservation activities can be found in the 1999 Annual Progress Report on implementation of the Maine Atlantic Salmon Conservation Plan for Seven Maine Rivers, prepared by the Maine Atlantic Salmon Commission and available at www.state.me.us/asa/99AnnRpt.html. Since publication of the proposed rule on November 17, 1999, the following accomplishments can be noted:

a. In December 1999, the State closed all salmon fishing until further notice, thus eliminating this as a source of mortality. The possibility of mortality from bycatch still exists when trout, striped bass, and other fish are the being targeted.

b. The final draft of the Pleasant River water use management plan is scheduled for completion in the fall of 2000. Draft plans for the Narraguagus River and a major tributary will be available then as well. Planning efforts have included instream flow requirements to protect salmon, and alternative sources of water are being sought.

c. The State of Maine appropriated $810,000 for Atlantic salmon in fiscal year 2000/2001. The DEP hired a water quality specialist dedicated to the DPS rivers with a portion of those funds. The Maine ASC manages the distribution of the balance of available funds. Watershed Councils and other groups have submitted proposals for salmon and salmon habitat projects to the ASC for funding consideration.

d. Weirs constructed by the State of Maine are in place and functioning on the Dennys and Pleasant Rivers.

e. Acquisition and permanent protection of a 220–acre tract of land on the Narraguagus River was completed in October 2000.

f. The Maine ASC and the FWS continue to map salmon habitat in the eight DPS rivers. Mapping and geographic information system (GIS) coverage will be completed for the East Machias River this year.

In determining whether to make this rule final, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Gulf of Maine DPS of Atlantic salmon, while taking into account ongoing conservation efforts and commitments made by the State of Maine and other entities. Based on our evaluation, listing the Gulf of Maine DPS of Atlantic salmon as endangered is warranted.

The Services are listing this DPS of anadromous Atlantic salmon as endangered under the ESA because of the danger of extinction created by factor (C) through disease; factor (D) through inadequate regulation of agricultural water withdrawals, disease, and aquaculture; and factor (E) through existing aquaculture practices and low marine survival. These factors take on added significance given the poor adult returns and lower than expected parr to smolt survival. At present, the DPS is known to include populations of Atlantic salmon in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias, and Dennys Rivers, as well as Cove Brook. Both the naturally reproducing populations of the Gulf of Maine DPS of Atlantic salmon and those river-specific hatchery populations cultured from them are included in this listing. In the future, DPS populations may be identified in additional rivers based on ongoing stream surveys and continuing genetic analyses. This could be done in a separate notification process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, state agencies, private organizations, groups, and individuals. The ESA provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, here.

Section 7(a) of the ESA, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the ESA are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal activities that could occur and impact the Gulf of Maine DPS of Atlantic salmon include, but are not limited to, the carrying out or the issuance of permits for marine aquaculture pen sites, freshwater hatcheries, cranberry bog development, water withdrawal projects, pesticide registration, streambank stabilization, and road and bridge construction. In our experience, nearly all ESA section 7 consultations have been resolved so that the species have been protected and the project objectives have been met.

In addition, ESA section 7(a)(1) requires all Federal agencies to review the programs they administer and use these programs in furtherance of the purposes of the ESA. All Federal agencies, in consultation with us, are to carry out programs for the conservation of endangered and threatened species listed pursuant to section 4 of the ESA.

The Services believe that the State of Maine's Atlantic salmon conservation plan can become a strong foundation for recovery once it is revised and updated to take current conditions, threats, and progress into account. We will work closely with Maine agencies, conservation groups, and industry participants to bring the plan up to date and ensure effective implementation.

The ESA and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. To possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally is also illegal.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the ESA for the species. The intent of this policy is to increase public awareness as to the effects of this final listing on future and ongoing activities within this species range.

The Services believe that, based on the best available information, the following actions are unlikely to result in a violation of section 9:

(1) Possession of Atlantic salmon acquired lawfully by permit issued by the Services pursuant to section 10 of the ESA, or by the terms of an incidental take statement in a biological opinion pursuant to section 7 of the ESA;

(2) Federally approved projects that involve activities such as silviculture, agriculture, road construction, dam construction and operation, discharge of fill material, siting of marine cages for aquaculture, hatchery programs, and stream channelization or diversion for which consultation under section 7 of the ESA has been completed, and when such activity is conducted in accordance with any terms and conditions given by the Services in an incidental take statement in a biological opinion pursuant to section 7 of the ESA;

(3) Routine culture and assessment techniques, including the FWS' river-specific rehabilitation program at CBNFH; and

(4) Emergency responses to disease outbreaks.

Activities that the Services believe could result in violation of section 9 prohibitions against "take" of the Gulf of Maine DPS of anadromous Atlantic salmon include, but are not limited to, the following:

(1) Targeted recreational and commercial fishing, bycatch associated with commercial and recreational fisheries, and illegal harvest;

(2) The escapement of reproductively viable non-North American strain or non-North American hybrid Atlantic salmon in freshwater hatcheries within the DPS range;

(3) The escapement from marine cages or freshwater hatcheries of domesticated salmon such that they are found entering or existing in rivers within the DPS range;

(4) Failure to adopt and implement fish health practices that adequately protect against the introduction and spread of disease;

(5) Siting and/or operating aquaculture facilities in a manner that negatively impacts water quality and/or benthic habitat;

(6) Discharging (point and non-point sources) or dumping toxic chemicals, silt, fertilizers, pesticides, heavy metals, oil, organic wastes or other pollutants into waters supporting the DPS;

(7) Blocking migration routes;

(8) Destruction and/or alteration of the species' habitat (e.g., instream dredging, rock removal, channelization, riparian and in-river damage due to livestock, discharge of fill material, operation of heavy equipment within

the stream channel, manipulation of river flow);

(9) Violations of discharge or water withdrawal permits that are protective of the DPS and its habitat;

(10) Pesticide or herbicide applications in compliance with or in violation of label restrictions; and

(11) Unauthorized collecting or handling of the species (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the DPS).

Other activities not identified here will be reviewed on a case-by-case basis to determine if violation of section 9 of the ESA may be likely to result from such activities. We do not consider these lists to be exhaustive and provide them as information to the public.

This final rule applies all ESA section 9 (16 U.S.C. 1538) protective measures to prohibit taking, interstate commerce, and other prohibitions applicable to endangered species, with the exceptions provided under section 10 of the ESA (16 U.S.C. 1539). Section 9 of the ESA and implementing regulations (50 CFR 17.21) set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction.

For listed species, ESA section 7(a)(2) (16 U.S.C. 1536(a)(2)) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Services. Consultations will be conducted on a river-specific basis pursuant to identification of river-specific recovery units within the DPS.

ESA sections 10(a)(1)(A) and 10(a)(1)(B) (16 U.S.C. 1539(a)(1)(A) and (a)(1)(B)) provide the Services with authority to grant exceptions to the ESA's "taking" prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species. A directed take refers to the intentional take of listed species. The Services have issued section 10(a)(1)(A) research/enhancement permits for other listed species for a number of activities.

ESA section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state or university research not receiving Federal authorization or funding, and the implementation of state fishing regulations.

National Environmental Policy Act

The FWS has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the NEPA, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the ESA. The notice for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the NEPA. (See NOAA Administrative Order 216–6).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094 which expires on February 28, 2001. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

References Cited

You may request a complete list of all references cited in this document from Paul Nickerson or Mary Colligan (see ADDRESSES).

Classification

The Conference Report on the 1982 amendments to the ESA notes that economic considerations have no relevance to determinations regarding the status of species, and that the Regulatory Flexibility Act is not applicable to the listing process. Similarly, listing actions are not subject to the requirements of Executive Order 13132 and are exempt from review under Executive Order 12866.

Authors

The primary authors of this document are Mary Colligan, NMFS, and Paul Nickerson, FWS; refer to ADDRESSES section.

List of Subjects

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

For the reasons set out in the preamble, 50 CFR parts 17 and 224 are amended as follows:

PART 17–ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following entry, in alphabetical order under FISHES, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Salmon, Atlantic	*Salmo salar*	U.S.A., Canada, Greenland, western Europe	U.S.A., ME Gulf of Maine Atlantic Salmon Distinct Population Segment, which includes all naturally reproducing wild populations and those river-specific hatchery populations of Atlantic salmon having historical, river-specific characteristics found north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix River at the U.S.-Canada border. To date, the Services have determined that these populations are found in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Sheepscot, and Ducktrap Rivers and in Cove Brook, Maine.	E	705	NA	NA
*	*	*	*	*	*	*	

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531-1543 and 16 U.S.C. 1361 *et seq.*

4. In § 224.101, paragraph (a) is revised to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(a) *Marine and anadromous fish.* The following table lists the common and scientific names of endangered species, the locations where they are listed, and the citations for the listings and critical habitat designations.

Species[1]		Where listed	When listed	Critical habitat
Common name	Scientific Name			
Shortnose sturgeon	*Acipenser brevirostrum*	U.S.A., northwestern Atlantic, in river systems from the Saint John River in New Brunswick, Canada, to the St. Johns River, Florida	32 FR 4001, Mar. 11, 1967	NA
Southern California steelhead	*Oncorhynchus mykiss*	U.S.A., CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Santa Maria River, San Luis Obispo County, California (inclusive) to Malibu Creek, Los Angeles County, California (inclusive)	62 FR 43937, Aug. 18, 1997	64 FR 5740, Feb. 5, 1999
Upper Columbia River steelhead	*Oncorhynchus mykiss*	U.S.A., WA, including the Wells Hatchery stock and all naturally spawned populations of steelhead (and their progeny) in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the U.S.—Canada Border	62 FR 43937, Aug. 18, 1997	64 FR 5740, Feb. 5, 1999
Snake River sockeye salmon	*Oncorhynchus nerka*	U.S.A., ID, Snake River	56 FR 58619, Nov. 20, 1991	58 FR 68543, Dec. 28, 1993

Species[1]		Where listed	When listed	Critical habitat
Common name	Scientific Name			
Upper Columbia River spring-run chinook salmon	*Oncorhynchus tshawytscha*	U.S.A., WA, including all naturally spawned populations of chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington (excluding the Okanogan River), the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington, and the Chiwawa River (spring run), Methow River (spring run), Twisp River (spring run), Chewuch River (spring run), White River (spring run), and Nason Creek (spring run) hatchery stocks (and their progeny)	64 FR 14308, Mar. 24, 1999	65 FR 7764, Feb. 16, 2000
Sacramento River winter-run chinook salmon	*Oncorhynchus tshawytscha*	U.S.A., CA, Sacramento River	59 FR 13836, Mar. 23, 1994	58 FR 33212, Jun. 16, 1993
Salmon, Atlantic	*Salmo salar*	U.S.A., ME Gulf of Maine Atlantic Salmon Distinct Population Segment, which includes all naturally reproducing wild populations and those river-specific hatchery populations of Atlantic salmon having historical, river-specific characteristics found north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix River at the U.S.-Canada border. To date, the Services have determined that these populations are found in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Sheepscot, and Ducktrap Rivers and in Cove Brook, Maine.		NA
Totoaba	*Cynoscion macdonaldi*	Mexico, Gulf of CA	44 FR 29480, May 21, 1979	NA

* * * * * * *

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[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs)(for a policy statement, see 56 FR 58612, November 20, 1991)

Dated: November 13, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Dated: November 8, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–29423 Filed 11–14–00; 4:05 pm]

BILLING CODE 3510–22–F, 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000831250-0250-01; 102500C]

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Closure of Directed Fishery for Pacific Mackerel; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to the action closing the directed fishery for Pacific mackerel.

SUMMARY: This document contains a correction to the Pacific mackerel closure which was published on November 1, 2000.

DATES: Effective November 17, 2000.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, 562-980-4036.

SUPPLEMENTARY INFORMATION:

Background

The directed fishery for Pacific mackerel was closed at 12:01 a.m. on October 27, 2000, by publication of a document in the **Federal Register** on November 1, 2000 (65 FR 65272). The document contains an error that requires correction.

Correction

In rule FR DOC. 00-28109, on page 65272, in the issue of Wednesday, November 1, 2000 (65 FR 65272), make the following correction:

On page 65272, in the third column, under the heading **SUPPLEMENTARY INFORMATION**, the last sentence is corrected to read as follows:

"For the reasons stated here and in accordance with the FMP and its implementing regulations at 50 CFR 660.509, the directed fishery for Pacific mackerel will be closed October 27, 2000, after which time no more than 20 percent by weight of a landing of Pacific sardine, northern anchovy, jack mackerel, or market squid may consist of Pacific mackerel."

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 9, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–29415 Filed 11–16–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 679

[Docket No. 000714206-0307-02; I.D. 061400A]

RIN 0648-AM53

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce. ACTION: Final rule.

ACTION: Final rule

SUMMARY: NMFS issues a final rule that reduces observer experience requirements for some catcher vessels and reduces observer coverage experience requirements for some shoreside processors participating in the Western Alaska Community Development Quota (CDQ) fisheries. This action is necessary to reduce costs associated with the observer coverage requirements in the CDQ fisheries. It is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective December 18, 2000.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) prepared for this action may be obtained from Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Regional Administrator at the same address.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) according to the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels and implementing the FMP appear at 50 CFR parts 600 and 679.

Through the CDQ program, NMFS allocates a portion of the BSAI groundfish, prohibited species, halibut, and crab total allowable catch (TAC) to 65 eligible Western Alaska communities. Unlike open access fisheries, the program makes individual vessels, processors, and CDQ groups accountable for their catch of groundfish and prohibited species. Because of this, the catch monitoring observer coverage and observer training standards are more stringent as compared to many other fisheries. CDQ observers receive more training and must have more experience than regular NMFS-certified observers. Observer coverage levels in the CDQ fisheries are also higher than those for most of the non-CDQ fisheries. In most cases, at least one of the CDQ observers on a vessel or in a processing plant also must be qualified as a "lead" CDQ observer. Lead qualification is gear-specific and is gained by having prior experience with the same gear type as the CDQ vessel on which the lead observer is deployed, or prior experience in a shoreside plant if the lead CDQ observer is deployed at a shoreside plant.

NMFS has reviewed the observer coverage and experience requirements and determined that, in some cases, the observer coverage or training requirements could be reduced without affecting the ability of NMFS to collect the data necessary to monitor and manage the CDQ fishery.

On July 24, 2000, NMFS published a proposed rule to implement these reductions (65 FR 45579). The proposed rule included a full description of observer coverage and training requirements in the CDQ fisheries, and the rationale for reducing those requirements. The proposed rule also solicited public comment for 30 days. No comments were received, and NMFS is publishing this final rule without changing the regulatory text of the proposed rule.

This final rule implements the following reductions in observer coverage and experience requirements:

1. Elimination of the requirement for a lead CDQ observer on all catcher

vessels greater than or equal to 60 ft (18.3 m) LOA using trawl gear. A CDQ observer is still required. This reduction is justified because the vessel must retain all groundfish CDQ and salmon prohibited species quota (PSQ) and deliver it to a shoreside processor, where it is sorted by species, weighed, and reported to NMFS. Existing regulations require a lead CDQ observer on a vessel to estimate the at-sea discards of halibut PSQ and crab PSQ and monitor compliance with retention requirements. NMFS believes that these duties can be performed adequately by a CDQ observer who has prior experience as an observer, but not necessarily gear-specific experience required of a lead CDQ observer.

2. Elimination of the requirement for a lead CDQ observer on a catcher vessel greater than or equal to 60 ft (18.3 m) LOA using nontrawl gear that chooses to retain all groundfish CDQ species (option 1 defined at 50 CFR 679.32(c)(2)(ii)(A)). A CDQ observer is still required. NMFS believes the gear-specific experience of a lead CDQ observer is unnecessary for vessels choosing catch accounting option 1. NMFS will continue to require a lead CDQ observer on catcher vessels using nontrawl gear that select option 2, which uses observer data as the basis for all CDQ catch accounting.

3. Elimination of the requirement that a shoreside processing plant provide a CDQ observer to monitor deliveries from catcher vessels that use nontrawl gear and select option 2. Under option 2, only data collected by the observer on the catcher vessel is used for CDQ catch accounting. Therefore, neither a lead CDQ observer nor a CDQ observer is necessary at the plant.

4. Elimination of the requirement that shoreside processors required to provide CDQ observers provide a lead CDQ observer when taking CDQ deliveries. A CDQ observer is still required. NMFS has determined that prior experience in a shoreside plant is not necessary for the observer to adequately monitor the sorting and weighing of CDQ deliveries.

5. Reduction of the observer coverage requirements for shoreside processors taking CDQ deliveries from catcher vessels equal to or greater than 60 ft (18.3 m) LOA using nontrawl gear and using option 1 (full retention) for CDQ catch accounting to allow the vessel observer to monitor the CDQ delivery in the processing plant. A separate CDQ observer for the shoreside processor is not necessary if the vessel observer can monitor the sorting and weighing of catch at the shoreside processor without exceeding the regulatory working hour limits. Under this revision, the shoreside processor could still choose to provide an additional CDQ observer at the processing plant if the shoreside processor did not want its activities to be limited by the working hour limits for the vessel observer.

Table 1 shows all of the CDQ observer coverage requirements that will be in effect under 50 CFR 679.50 after this final rule becomes effective.

TABLE 1. REVISED CDQ OBSERVER COVERAGE REQUIREMENTS

Category	CDQ Observer Coverage Requirements (effective in 2000)
Catcher, < 60 ft, any gear	none
Catcher, ≥ 60 ft, trawl gear	1 CDQ observer
Catcher, ≥ 60 ft, nontrawl gear, Option 1[1]	1 CDQ observer
Catcher, ≥ 60 ft, nontrawl gear, Option 2[2]	1 lead CDQ observer
Catcher/processor, trawl and motherships	1 lead CDQ observer and 1 CDQ observer
Catcher/processor, longline, pot	1 lead CDQ observer and 1 CDQ observer
Shoreside processor[3], deliveries from vessels using trawl gear	1 CDQ observer for each CDQ delivery
Shoreside processor, deliveries from vessels <60 ft using nontrawl gear and groundfish CDQ fishing	1 CDQ observer for each CDQ delivery
Shoreside processor, deliveries from vessels <60 ft using nontrawl gear and halibut CDQ fishing	no observer required for delivery
Shoreside processor, deliveries from vessels using nontrawl gear, Option 1[1]	1 CDQ observer for each CDQ delivery; may use vessel CDQ obs. under certain circumstances.[4]
Shoreside processor, deliveries from vessels using nontrawl gear, Option 2[2]	no CDQ observer required for delivery

[1] Option 1 is a CDQ catch accounting option that requires the vessel operator to retain all groundfish CDQ and salmon PSQ and deliver it to a processor where it is sorted by species, weighed, and reported to NMFS.

[2] Option 2 is a CDQ catch accounting option where catch may be discarded at sea. Observer data is used for all catch accounting and the processor's reports of landed catch weight are not used as the basis for CDQ catch accounting.

[3] Includes stationary floating processors.

[4] Instead of having a separate observer for the shoreplant, the vessel observer may monitor sorting and weighing of CDQ delivery as long as working hour limitations for the vessel observer are not exceeded.

This final rule also makes a minor revision to the introductory paragraph of 50 CFR 679.50(c)(4). The current paragraph requires the owner or operator of a vessel engaged in CDQ fishing to comply with CDQ observer coverage requirements for each day the vessel is used to harvest, transport, process, deliver, or take deliveries of CDQ or PSQ species. NMFS is removing the requirement that CDQ observers be onboard catcher/processors or motherships when they are being used only to transport CDQ catch. In some cases, processor vessels and motherships continue to transport CDQ catch onboard long after catching and/or processing of the CDQ catch has been completed. No need exists for a CDQ observer to be onboard solely to monitor the transport of processed product.

Classification

At the proposed rule stage, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this action, if adopted, would not have a significant impact on a substantial number of small entities. A summary of that certification follows:

The final rule would apply to the 21 catcher vessels greater than or equal to 60 ft LOA (18.3 m) and 10 shoreplants that participate in the CDQ fishery. The action would remove the gear-specific experience requirements for CDQ observers deployed in shoreplants and on some types of vessels, which would increase the number of observers qualified to be deployed in the CDQ fisheries. This increased flexibility would reduce the possibility that a qualified observer would not be available when a vessel or processor wants to participate in a CDQ fishery. This action would also allow a shoreside plant taking CDQ deliveries from some non-trawl catcher vessels to provide an observer without CDQ observer-training, rather than a CDQ observer, and would reduce observer coverage levels under certain circumstances.

Based on the analysis presented in the Regulatory Impact Review prepared for this rule, NMFS estimates that this action will have a positive impact on the vessels and processors that will be directly impacted by the action and will have no negative impact on observer contractors. As far as NMFS is able to determine, this final rulemaking will not have a significant impact on a substantial number of small entities.

No comments were received on that certification and the basis for it has not changed. Accordingly, a regulatory flexibility analysis has not been prepared for this rule.

A copy of the RIR can be obtained from NMFS (see ADDRESSES).

This final rule has been determined to be not significant for purposes of E.O. 12866.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comments on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Alaska Regional Administrator (see ADDRESSES).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 9, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.50, paragraph (h)(1)(i)(E)(4) is removed, the first sentence of the introductory text in paragraph (c)(4) is revised, paragraph (c)(4)(v) is added, and paragraphs, (c)(4)(iv), and (d)(4) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2000.

* * * * *

(c) * * *

(4) *Groundfish and halibut CDQ fisheries.* The owner or operator of a vessel groundfish CDQ fishing or halibut CDQ fishing as defined at § 679.2 must comply with the following minimum observer coverage requirements each day that the vessel is used to transport (catcher vessels only), harvest, process, deliver or take delivery of CDQ or PSQ species. * * *

* * * * *

(iv) *Catcher vessel using trawl gear.* A catcher vessel equal to or greater than 60 ft (18.3 m) LOA using trawl gear, except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one CDQ observer as described at paragraph (h)(1)(i)(D) of this section aboard the vessel.

(v) Catcher vessel using nontrawl gear. A catcher vessel equal to or greater than 60 ft (18.3 m) LOA using nontrawl gear must meet the following observer coverage requirements:

(A) *Option 1.* If the vessel operator selected Option 1 (as described at § 679.32(c)(2)(ii)(A)) for CDQ catch accounting, then at least one CDQ observer as described at paragraph (h)(1)(i)(D) of this section must be aboard the vessel.

(B) *Option 2.* If the vessel operator selected Option 2 (as described at § 679.32(c)(2)(ii)(B)) for CDQ catch accounting, then at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section must be aboard the vessel.

* * * * *

(d) * * *

(4) *Groundfish and halibut CDQ fisheries.*–(i) *CDQ deliveries requiring observer coverage.* Subject to paragraph (d)(4)(ii) of this section, each shoreside processor taking deliveries of groundfish or halibut CDQ must have at least one CDQ observer as described at paragraph (h)(1)(i)(D) of this section present at all times while CDQ is being received or processed.

(ii) *CDQ deliveries not requiring CDQ observer coverage.* A shoreside processor is not required to provide a CDQ observer for CDQ deliveries from the following vessels:

(A) Vessels less than 60 ft (18.3 m) LOA that are halibut CDQ fishing;

(B) Vessels equal to or greater than 60 ft (18.3 m) LOA using nontrawl gear that have selected Option 1 (as described at § 679.32(c)(2)(ii)(A)) for CDQ catch accounting, so long as the CDQ observer on the catcher vessel monitors the entire delivery without exceeding the working hour limitations described in paragraph (d)(4)(iii) of this section; and

(C) Vessels equal to or greater than 60 ft (18.3 m) LOA using nontrawl gear that have selected Option 2 (as described at § 679.32(c)(2)(ii)(B)) for CDQ catch accounting.

(iii) *Observer working hours.* The time required for the CDQ observer to complete sampling, data recording, and data communication duties may not exceed 12 hours in each 24-hour period, and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

* * * * *

[FR Doc. 00–29484 Filed 11–16–00; 8:45 am]

BILLING CODE: 3510-22-S

Proposed Rules

Federal Register
Vol. 65, No. 223
Friday, November 17, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("Commission") solicits comments as to whether to amend Rule 7 of the Rules and Regulations Under the Textile Fiber Products Identification Act ("Textile Rules," 16 CFR 303.7) to designate a new generic fiber name and establish a new generic fiber definition for a fiber manufactured by Cargill Dow, LLC ("Cargill Dow"), of Minnetonka, Minnesota. Cargill Dow suggested the name "synterra" for the fiber, which it described as polylactic acid or polylactide, and referred to as "PLA."

DATES: Comments will be accepted through January 29, 2001.

ADDRESSES: Comments should be submitted to: Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Comments should be identified as "16 CFR Part 303—Textile Rule 8 Comment—P948404."

FOR FURTHER INFORMATION CONTACT: James G. Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580; (202) 326–3035, FAX: (202) 326–2190, <<jmills@ftc.gov>>.

SUPPLEMENTARY INFORMATION:

I. Background

Rule 6 of the Textile Rules (16 CFR 303.6) requires manufacturers to use the generic names of the fibers contained in their textile fiber products in making required fiber content on labels. Rule 7 (16 CFR 303.7) sets forth the generic names and definitions that the Commission has established for synthetic fibers. Rule 8 (16 CFR 303.8) describes the procedures for establishing new generic names.

Cargill Dow applied to the Commission on August 28, 2000 for a new fiber name and definition.[1] It stated that PLA fibers are synthetic but are derived from natural renewable resources (agricultural crops such as corn). It maintained that PLA can combine certain advantages of natural fibers with those of certain synthetic fibers. Cargill Dow said that, although it does not itself currently produce products made from Natureworks™ PLA fiber (the PLA fiber it currently manufactures), it does contract with others for the production of the fiber and sells the fiber to end users. Cargill Dow contended that its proprietary Natureworks™ PLA fiber, and PLA that may be made using alternative processes, have unique properties that, along with PLA's unique fundamental chemistry, differentiate PLA fibers from all other recognized and listed synthetic or natural fibers.

Cargill Dow explained that PLA's fundamental polymer chemistry allows control of certain fiber properties and makes the fiber suitable for a wide variety of technical textile fiber applications, especially apparel and performance apparel applications. Of most significance to consumers, Cargill Dow maintained, is that PLA fibers exhibit: (1) Low moisture absorption and high wicking, offering benefits for sports and performance apparel and products; (2) low flammability and smoke generation; (3) high resistance to ultra violet (UV) light, a benefit for performance apparel as well as outdoor furniture and furnishings applications; (4) a low index of refraction, which provides excellent color characteristics; and, (5) lower specific gravity, making PLA lighter in weight than other fibers. In addition to coming from an annually renewable resource base, it stated, PLA fibers are readily melt-spun, offering manufacturing advantages that will result in greater consumer choice.

Contending that the unique chemistry of fibers made from PLA is inadequately described under existing generic names listed in 16 CFR Part 303.7, Cargill Dow petitioned the Commission to establish the generic name "synterra." After an initial analysis, the Commission announced, on October 30, 2000, that it had issued Cargill Dow the designation "CD 0001" for temporary use in identifying PLA fiber pending a final determination as to the merits of the application for a new generic name and definition. A final determination will be based on whether the record in this proceeding indicates that Cargill Dow meets the Commission's criteria for issuing new fiber names and definitions, as described in Part II, below.

II. Invitation To Comment

The Commission is soliciting comment on Cargill Dow's application generally, and on whether the application meets the Commission's criteria for granting applications for new generic names.[2]

First Criterion: The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public.

Second Criterion: The fiber must be in active commercial use or such use must be immediately foreseen.

Third Criterion: The granting of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies.

The Commission notes that the repeat units of PLA are linked by ester groups, which means that PLA fiber is a polyester. The Commission agrees with the petitioner, however, that PLA fiber does not fit into the current definition for polyester in Rule 7. The Commission is considering three approaches to resolve this situation, and requests comment from the public on the relative merits of each:

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[1] This petition and additional information that Cargill Dow submitted are on the rulemaking record of this proceeding. This material, as well as any comments that are filed in this proceeding, will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC. Any comments that are filed will be found under the Rules and Regulations Under the Textile Fiber Products Identification Act, 16 CFR Part 303, Matter No. P948404, "Cargill Dow Generic Fiber Petition Rulemaking." The comments also may be viewed in electronic form on the Commission's website at <www.ftc.gov>.

[2] The Commission first announced these criteria on Dec. 11, 1973, at 38 FR 34112, and later clarified and reaffirmed on Dec. 6, 1995, 60 FR 62353, on May 23, 1997, 62 FR 28343, and on Jan. 6, 1998, 63 FR 447 and 63 FR 449.

1. Amend the Rule to broaden the current definition for polyester in section 7(c) of the Rule to include PLA fiber;

2. Amend the current definition for polyester in section 7(c) of the Rule by creating a separate subcategory and definition for PLA fiber within the polyester category; or,

3. Amend the Rule to create a new, separate category in Rule 7 for PLA fiber.

Before deciding whether to amend Rule 7, the Commission will consider any comments submitted to the Secretary of the Commission within the above-mentioned comment period.

III. Cargill Dow's Petition

A. Chemical Composition and Physical and Chemical Properties of PLA Fiber

In its petition, Cargill Dow described in detail the fiber PLA. The following description from the petition is substantially verbatim:

1. Synterra fibers are typically made using lactic acid as the starting material for polymer manufacture. This is unique in that lactic acid comes from fermenting various sources of natural sugars. These sugars can come from a variety of annually renewable agricultural crops such as corn or sugar beets.

2. PLA used to make the fiber can be polylactic acid or polylactide. Although the lactide intermediate route, used by Cargill Dow, has proven most effective, direct condensation of lactic acid will also result in PLA. The latter route, however, results in a lower molecular weight polymer. Both routes allow for the development of PLA fibers that offer advantages to consumers explained more fully below (although the process used by CDP usually does so more readily), and are shown below:

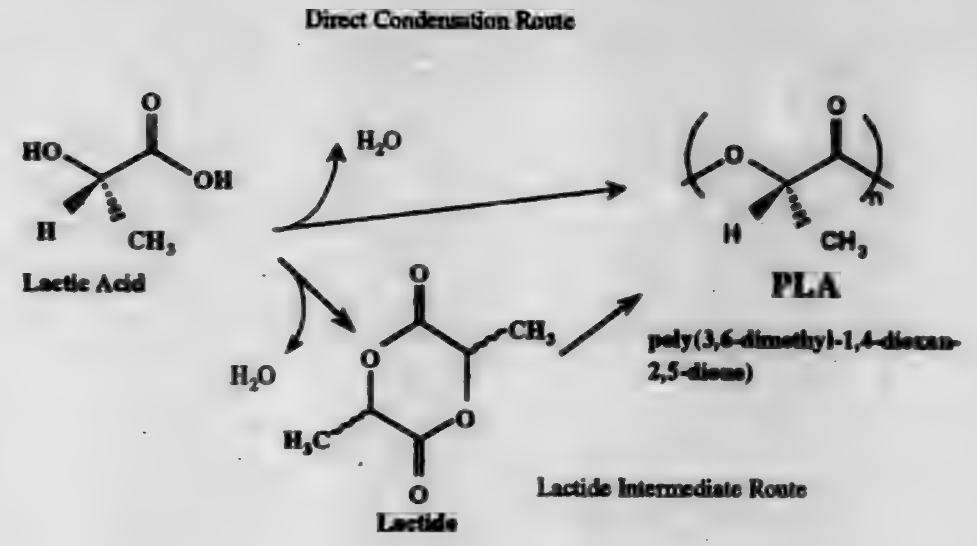
Direct Condensation Route
HO
OH
O
H
CH3
Lactic Acid
H2O
O
O
H
CH3
n
PLA
poly(3,6-dimethyl-1,4-dioxan-2,5-dione)
H2O
O
O
O
O
CH3
H3C
Lactide
Lactide Intermediate Route

3. PLA is also unique in that the lactic acid monomer exists in two optically active forms. Use of the lactide intermediate route results in three different lactide forms. These forms include D-lactide, L-lactide, or meso-lactide:

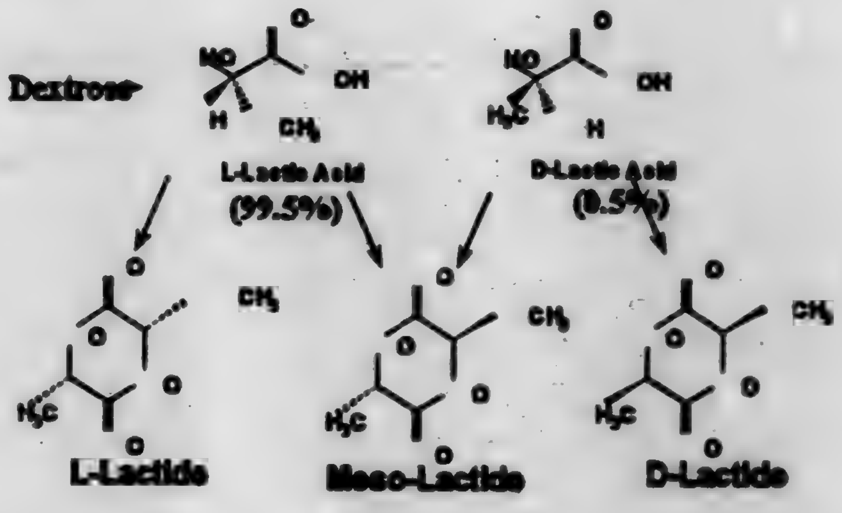

4. These different monomers, when polymerized, dictate the crystalline nature of the polymer. By controlling the ratio of D units in the polymer through polymerizing more D-lactide or meso-lactide the amount of crystallinity the polymer is capable of being varied from a very high amount to none. As would be expected, this results in polymers with distinctly different properties. By controlling the level of the "D" units in the polymer chain, the resulting polymer and fiber melt temperature can be varied in the semi-crystalline polymers. For instance, the following graph gives the fiber peak crystalline melt temperatures for a range of different percent D polymers that were mechanically spun and drawn.

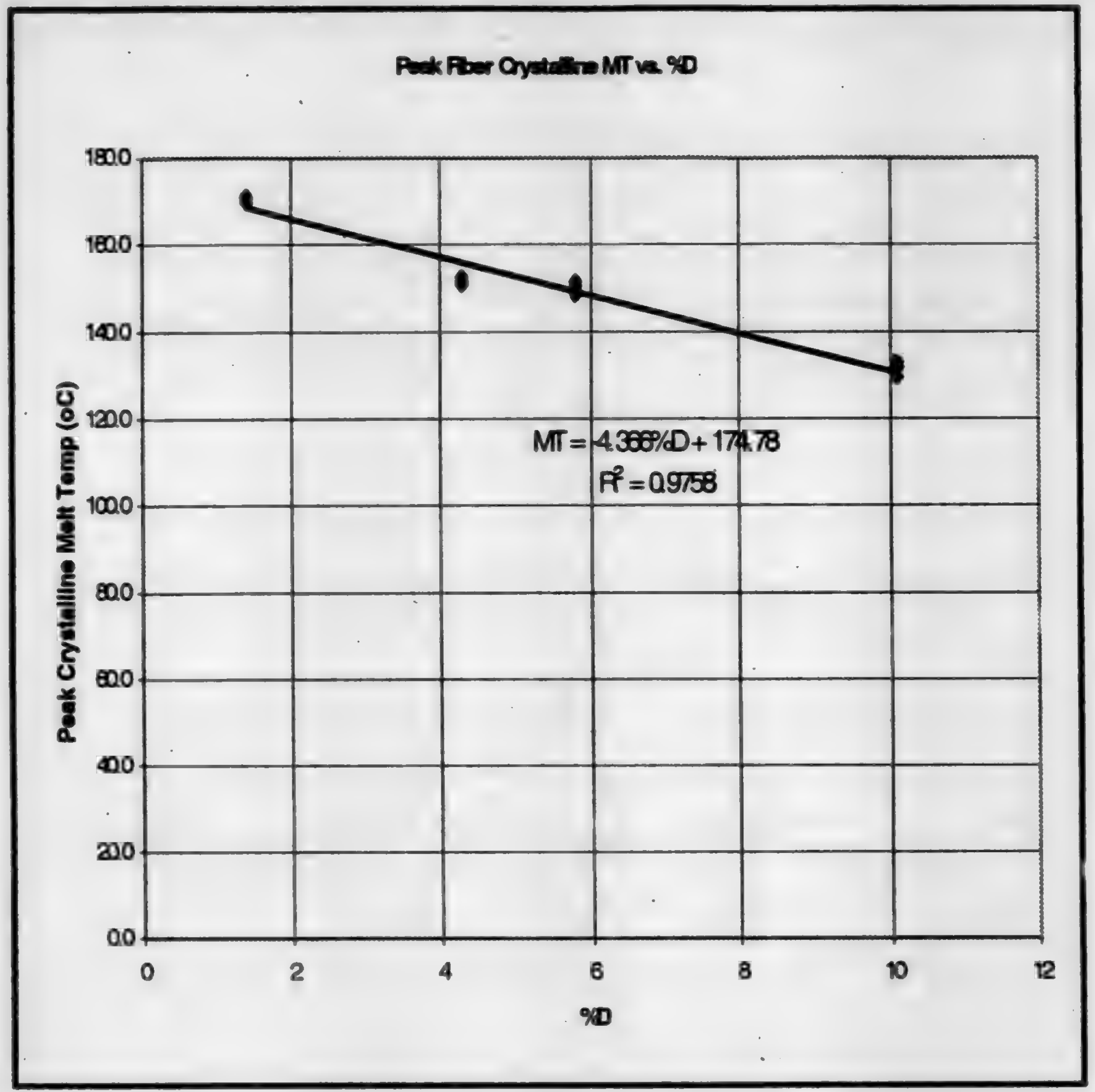

5. As a naturally-derived but synthetic product, synterra fibers exhibit properties some of which are similar to and some of which are different from many of the fibers commercially available today, including the various types of polyesters, nylons, acrylics and naturally occurring fibers such as cotton, wool, silk and rayon. See the table below, which compares several properties of fibers and fabrics against PLA. Importantly, the unique chemistry of PLA results in physical property differences such that existing fiber definitions do not fully or exactly describe PLA. Of likely significance to consumers is that PLA fibers are derived from a fully renewable natural resource, but offer many key advantages of synthetic fabrics as well.

Fiber property	Nylon 6	Acrylic	PET	PLA	Rayon	Cotton	Silk	Wool
Specific Gravity	1.14	1.18	1.39	1.25	1.52	1.52	1.34	1.31
Tm (°C)	215–220	−320 °C (Degrades)	254–260	130–175	None	None	None	None
Tenacity (g/d)	5.5	4.0	6.0	6.0	2.5	4.0	4.0	1.6
Elastic Recovery (5% strain).	89	50	65	93	32	52	52	69
Moisture regain (%)	4.1	1–2	0.2–0.4	0.4–0.6	11	7.5	10	14–18
Contact Angle (θ)	70	Not Measured	82	76				
Wicking (L–W slope; higher slope, more wicking.		Not Measured	0.7–0.8 (no finish)	6.3–7.5 (no finish); 19–26 (with finish)				
Heat of Combustion (MJ/kg).	31	31	23	19	17	17		21
Flammability	Medium smoke; melts	Moderate flammability; melts	High smoke; burns 6 min after flame removed	Low smoke; burns 2 min after flame removed	Burns	Burns	Burns	Burns slowly; self-extinguishing
LOI (%)	20–24	18	20–22	26	17–19	16–17		24–25
UV resistance	Poor	Excellent	% Change in Elong. at Peak=30 (100 hrs. xenon arc)	% Change in Elong. at Peak=0 (100 hrs. xenon arc)	Poor	Fair–Poor	Fair–Poor	Fair
Refractive Index	1.52	1.50	1.54	1.45	1.52	1.53	1.54	1.54

For consumers, the interaction of PLA with water, including moisture regain, wicking and contact angle, another measure of interaction with moisture, is likely to be significant. PLA exhibits low moisture absorption (0.4–0.6% moisture regain), similar to polyester, but lower than nylon, acrylic and natural fibers. At the same time, the rate of wicking is higher than other fibers like PET, with a Lucas-Washburn slope of 6.3–7.5 for PLA, versus 0.7–0.8 for PET.

For applications in apparel, but especially in furnishings, PLA's favorable combustion characteristics, including low smoke generation and LOI attributes, offer advantages to consumers. PLA polymer is an aliphatic chain, and thus burns cleanly, with only a small amount of faint, white smoke, as testing on PLA fibers demonstrates, per the table above. This means that in applications where especially stringent fire performance characteristics are required (necessitating fire retardant treatment even with PLA), reduced amounts of fire retardants will likely be needed relative to other fibers. This is an added environmental benefit.

Also, the unique modulus of PLA fiber allows fabrics to be made which are stiffer and more shape retaining than nylon, but softer, with better drape and hand than polyester. Furthermore, Natureworks™ PLA fibers exhibit a unique index of refraction, which may allow very lustrous fabrics to be made and dyed with very deep color. Excellent resistance to UV light is another significant differentiating property, as is elastic recovery, which is considerably higher than most other fibers.

6. PLA can be processed on conventional fiber equipment. PLA fibers have been manufactured and used in continuous filament, staple, and several nonwoven processes, as well as via new technologies such as high speed spinning and microdenier fibers. High speed spinning can be used to produce lower denier fibers and to produce more fiber per unit time, increasing productivity, which should ultimately offer economic benefits to consumers. Lower deniers and microdenier technologies have been increasing in apparel markets to give better hand and softer feel. Because of the unique properties of fibers made from Natureworks™ PLA, these fibers can and are being used in a broad range of applications. Sports and performance apparel, fashion apparel and general apparel, technical textiles, along with nonwovens are applications that best utilize the unique properties described above.

Cargill Dow also provided additional information about the launderability and drycleanability of PLA fiber, which appears in detail on the public record, relevant parts of which appear substantially verbatim as follows:

Summary of Fabric Cleaning Results

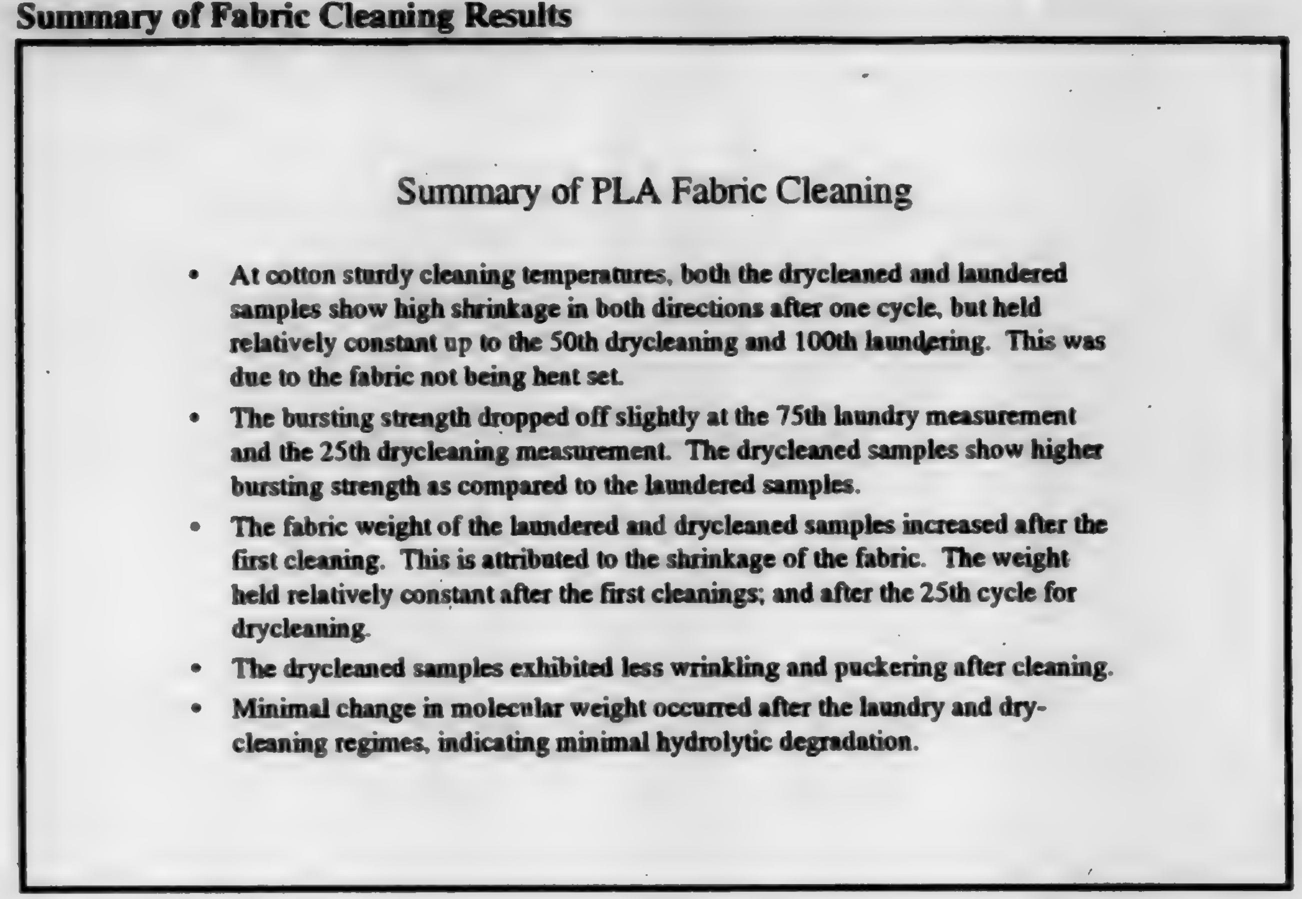

Summary of PLA Fabric Cleaning

- At cotton sturdy cleaning temperatures, both the drycleaned and laundered samples show high shrinkage in both directions after one cycle, but held relatively constant up to the 50th drycleaning and 100th laundering. This was due to the fabric not being heat set.
- The bursting strength dropped off slightly at the 75th laundry measurement and the 25th drycleaning measurement. The drycleaned samples show higher bursting strength as compared to the laundered samples.
- The fabric weight of the laundered and drycleaned samples increased after the first cleaning. This is attributed to the shrinkage of the fabric. The weight held relatively constant after the first cleanings; and after the 25th cycle for drycleaning.
- The drycleaned samples exhibited less wrinkling and puckering after cleaning.
- Minimal change in molecular weight occurred after the laundry and dry-cleaning regimes, indicating minimal hydrolytic degradation.

To verify that the initial dimensional change was due to not being heat set, Cargill Dow repeated the testing with an interlocking knit fabric, made from Flat Drawn Yarn which was heat set and dyed, prior to testing. Results were as contained in the figure, below:

Washing and Drycleaning Results on dyed filament fabric

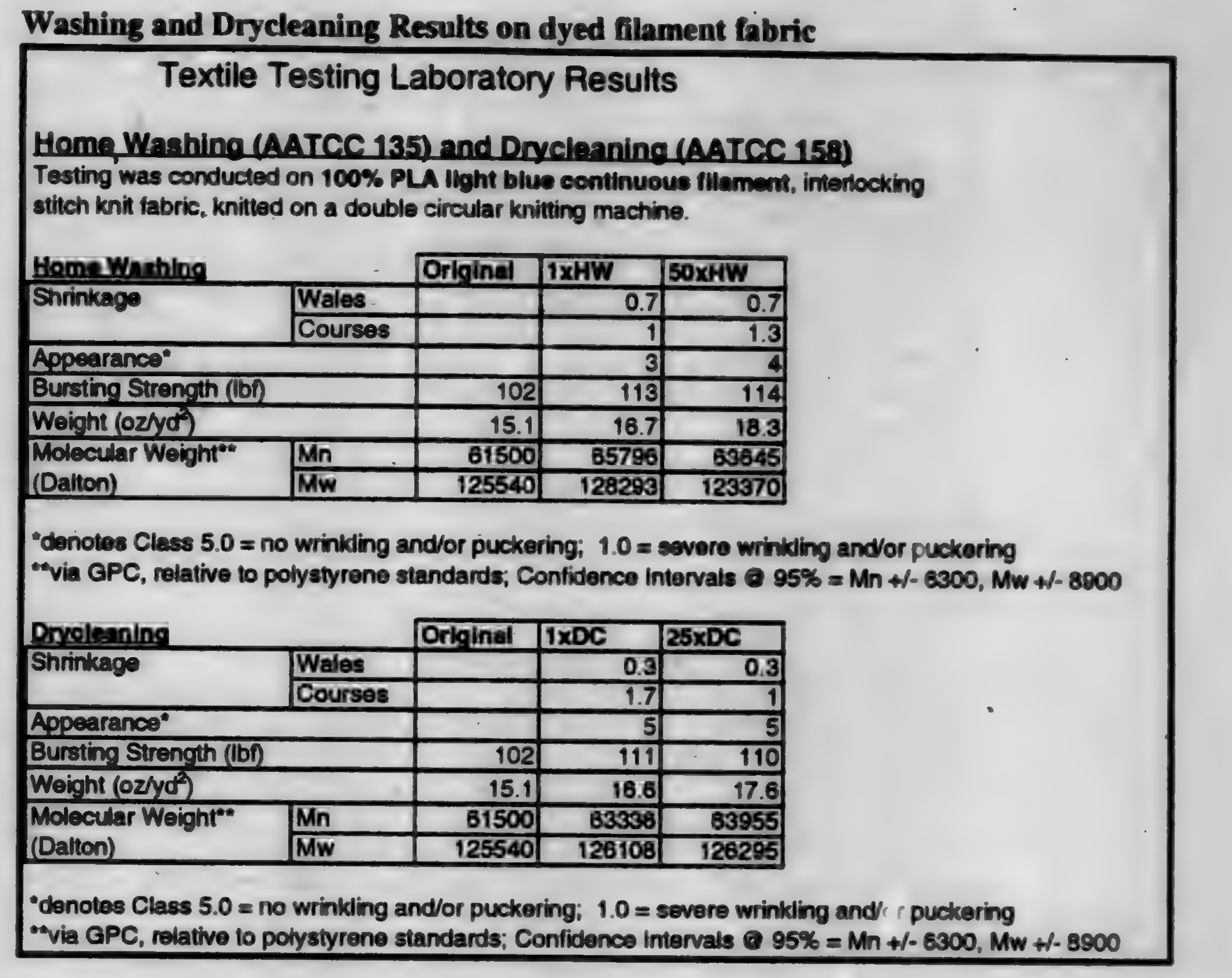

Textile Testing Laboratory Results

Home Washing (AATCC 135) and Drycleaning (AATCC 158)

Testing was conducted on **100% PLA light blue continuous filament**, interlocking stitch knit fabric, knitted on a double circular knitting machine.

Home Washing		Original	1xHW	50xHW
Shrinkage	Wales		0.7	0.7
	Courses		1	1.3
Appearance*			3	4
Bursting Strength (lbf)		102	113	114
Weight (oz/yd²)		15.1	16.7	18.3
Molecular Weight** (Dalton)	Mn	61500	65796	63645
	Mw	125540	128293	123370

*denotes Class 5.0 = no wrinkling and/or puckering; 1.0 = severe wrinkling and/or puckering

**via GPC, relative to polystyrene standards; Confidence Intervals @ 95% = Mn +/- 6300, Mw +/- 8900

Drycleaning		Original	1xDC	25xDC
Shrinkage	Wales		0.3	0.3
	Courses		1.7	1
Appearance*			5	5
Bursting Strength (lbf)		102	111	110
Weight (oz/yd²)		15.1	16.6	17.6
Molecular Weight** (Dalton)	Mn	61500	63336	63955
	Mw	125540	126108	126295

*denotes Class 5.0 = no wrinkling and/or puckering; 1.0 = severe wrinkling and/or puckering

**via GPC, relative to polystyrene standards; Confidence Intervals @ 95% = Mn +/- 6300, Mw +/- 8900

The results suggest that fabrics made with fibers from PLA are very stable to laundering and drycleaning. The fabrics exhibited very little shrinkage during cleaning, since they were thermally stable prior to testing.[3]

In addition to suggesting the generic name "synterra," Cargill Down proposed the following definition for PLA fiber.

> *synterra:* A manufactured fiber in which the polymer is produced either (a) by the condensation of lactic acid or (b) by ring opening of the cyclic dimer, lactide, in both cases where at least 85% of the primary component is derived from a renewable resource as an integral part of the polymer chain.

B. Commercial Uses of PLA

Addressing the extent to which its fiber has been put into active commercial use, Cargill Dow stated in its petition:

> Fibers produced from Natureworks™ PLA have been made * * * into finished goods that are ready to commercialize, and several are in test markets. Cargill Dow is in the process of building a second polymer plant in Blair, Nebraska, capable of producing 140,000 Metric Tons, or approximately 30,000,000 pounds per year of PLA polymer. Cargill Dow has customer commitments in fiber applications to purchase or use a significant portion of this polymer capacity, and anticipates that 50% or more of the plant's capacity to be sold as fiber-grade polymer. This plant is under construction and is expected to be commissioned in the fourth quarter of 2001.

C. Importance of New Generic Name to the Public

Cargill Dow argued that granting the petition would facilitate the use of this fiber in commercial consumer applications. It also stated that a new generic term (like synterra) would help consumers identify products made from PLA. Thus, Cargill Dow maintained that a new generic name would be important to the public at large, not just knowledgeable professionals.

IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis (5 U.S.C. 603–604) are not applicable to this proposal because the Commission believes that the amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Commission has tentatively reached this conclusion will respect to the proposed amendment because the amendment would impose no additional obligations, penalties or costs. Ten amendments simply would allow covered companies to use a new generic name for a new fiber that may not appropriately fit within current names and definitions. The amendment would impose no additional labeling requirements.

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[3] Cargill Dow did not evaluate wash or dry clean color fastness in either of the tests above. However, Cargill Dow stated that BASF has been developing the dyeing process, using disperse dyes on PLA. As part of its work, BASF studied colorfastness in washing. This information can be obtained from Cargill Dow's website, at the following address: <<http://www.cdpoly.com/images/BASF_Dye_Study.pdf>> Basically, BASF has identified dye combinations which give standard and high colorfastness to washing with fabrics made from these fibers. The launderability of PLA fibers was also examined (among other qualities) in a study by James Lunt, Ph.D., and Andrew L. Shafer, at Cargill Dow Polymers, LLC, entitled Polylactic Acid Polymers from Corn; Potential Applications in the Textiles Industry (also available at Cargill Dow's website.

To ensure that no substantial economic impact is being overlooked, however, the Commission requests public comment on the effect of the proposed amendment on costs, profits, and competitiveness of, and employment in, small entities. After receiving public comment, the Commission will decide whether preparation of a final regulatory flexibility analysis is warranted. Accordingly, based on available information, the Commission certifies, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed amendment, if promulgated, would not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

This proposed amendment does not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (PL 104–13, 109 Stat. 163) and its implementing regulations. (5 CFR 1320 *et seq.*) The collection of information imposed by the procedures for establishing generic names (16 CFR 303.8) has been submitted to OMB and has been assigned control number 3084–0101.

List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade practices.

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act (15 U.S.C. 70e(c)).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–29468 Filed 11–16–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 001113318-0318-01; I.D. 110200D]

RIN 0648-AO75

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna Incidental Catch

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: NMFS intends to undertake rulemaking to reduce the level of Atlantic bluefin tuna (BFT) that is discarded dead by vessels in the pelagic longline fishery, and issues this ANPR to request comments on potential changes to the Atlantic tuna regulations that could reduce the level of dead discards of BFT including the adjustment of target catch requirements for landing incidental catch. The level of allowed discards needs to be reduced in order to decrease the waste of valuable bycatch.

DATES: Written comments on this ANPR must be received on or before December 14, 2000.

ADDRESSES: Written comments should be addressed to Christopher Rogers, Acting Chief, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Pat Scida, 978-281-9260.

SUPPLEMENTARY INFORMATION: The Atlantic pelagic longline fishery, which commonly targets swordfish, sharks, and yellowfin and bigeye tunas, also occasionally catches BFT incidental to these other fisheries. Because the U.S. longline fleet has not historically targeted BFT, the portion of the U.S. national BFT quota allocated to the longline category has always been intended to account for incidental catch only. Accordingly, under current BFT regulations, vessels permitted in the Atlantic Tunas Longline category are permitted to retain and land BFT caught with pelagic longline gear only if a specific minimum level of other fish species are landed from the same trip. While the regulations pertaining to landing incidental BFT catch have been adjusted on several occasions, the pelagic longline industry continues to comment that the target catch requirements are overly restrictive and result in unnecessary dead discards.

Background

The history of U.S. regulatory activity and public comment regarding this issue dates back to the early 1980's. A full description of this history is provided in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) chapter 3, section 3.5.3 "Management Measures to Address Bycatch Problems."

In 1998, the International Commission for the Conservation of Atlantic Tunas (ICCAT), in its recommendation on western BFT rebuilding, required that nations minimize dead discards of BFT to the extent practicable and established a dead discard allowance of 79 metric tons (mt) for western BFT, 68 mt of which was allocated to the United States. The 1998 ICCAT recommendation also provided that, if a nation exceeds its dead discard allowance in one year, that nation must deduct the excess from its following year's landing quota. If the actual amount of dead discards is less than the allowance, one-half of the difference may be added to the allocation of catch that can be retained. Dead discards of BFT are reported to ICCAT by NMFS, along with landings data, and are summarized in the U.S. National Report to ICCAT.

The final rule that implemented the HMS FMP addressed the dead discard issue by establishing a time/area closure for the use of pelagic longline gear in the Northwestern Atlantic from 39° to 40° N. lat. and 68° to 74° W. long. during the month of June. This closed area was chosen to meet the goal of minimizing BFT dead discards while having the least economic impact on the directed pelagic longline fisheries. Since NMFS first implemented BFT incidental catch regulations, the agency has received public comment and inquiries regarding the target catch requirements to retain incidental catch of BFT and the effectiveness of the regulations in avoiding dead discards. These comments have continued after the publication of the HMS FMP.

Potential Adjustments

Several reviews of landings, logbook, and observer data have been conducted in recent years regarding the pelagic longline fisheries interaction with BFT. Observer data from longline trips (from 1991 to 1994) indicate that two or fewer BFT were hooked on 91 percent of all

observed trips. Longline landings information for 1998 and 1999 indicate that median values for landed catch (not including BFT) are approximately 3,000 lb (1,361 kg) for trips made in the months of January through April, and 3,800 lb (1,724 kg) for trips made in May through December, in fisheries south of 34° N. lat.; and 3,700 lb (1,679 kg) for trips made throughout the year in fisheries north of 34° N. lat. For the same time period, 75 percent of the trips had a landed catch (other than BFT) of approximately 1,350 lb (613 kg) for trips made in the months of January through April, and 1,650 lb (749 kg) for trips made in May through December, in fisheries south of 34° N. lat; and 1,600 (726 kg) for trips made throughout the year in fisheries north of 34° N. lat.

Based on current landings and dead discard information, NMFS could consider several possible adjustments. One approach could be to undertake a comprehensive review and adjust target catch requirements, geographic location, and seasonal subdivisions. An alternative could be to adjust the target catch requirements while maintaining the current geographic and southern area seasonal subdivision. For example, in the Longline south subcategory, from January through April, one fish per vessel per fishing trip with at least 1,500 lb (680 kg) of target catch, or two fish per vessel per trip with at least 4,500 lb (2,040 kg) of target catch; from May through December, one fish per vessel per fishing trip with at least 3,500 lb (1,588 kg) of target catch, or two fish per vessel per trip with at least 6,000 lb (2,722 kg) of target catch. In the Longline north subcategory, one fish per vessel per fishing trip with at least 3,500 lb (1,588 kg), or two fish per vessel per trip, with at least 6,000 lb (2,722 kg) of target catch. Under this alternative, another option could be to adjust only the percent target catch requirement for the Northern area (e.g., 5 or 8 percent versus two percent) and to maintain the current target catch requirements, by season, for the south.

Another alternative could be to institute one target catch requirement (either a percent or a fixed number of BFT) coastwide regardless of season. For example, one BFT per vessel per fishing trip with at least 1,500 lb (680 kg) of target catch, or two fish per vessel per trip with at least 4,000 lb (1,815 kg) of target catch, or one BFT per trip, so long as other targeted species are landed. Under this alternative, another option could be to apply a percent target catch requirement coastwide.

Request for Comments

NMFS requests comments on possible changes to the BFT landings allowances as outlined above or on alternative means of reducing dead discards of BFT in the pelagic longline fisheries. Comments received by the due date will be considered in drafting any proposed changes to the Atlantic tuna regulations.

Authority: 16 U.S.C.971 *et seq.* and 1801 *et seq.*

Dated: November 13, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–29473 Filed 11–14–00; 3:22 pm]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 65, No. 223
Friday, November 17, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commission on 21st Century Production Agriculture; Notice of Meeting

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of the meetings in November/December of the Commission on 21st Century Production Agriculture. The purpose of the meetings on November 30 and December 1, 2000 is a working session to address issues regarding agricultural policy initiatives to be included in the Commission report. These meetings are open to the public.

PLACE, DATE, AND TIME OF MEETING: The meetings will be held November 30, 2000, from 8:30 pm–5:00 pm, in Room 108–A, Whitten Building and December 1, 2000, from 8:30 am to 5:00 pm, in Room 221–A, Whitten Building, U.S. Department of Agriculture.

FOR FURTHER INFORMATION CONTACT: Mickey Paggi (202–720–3139), Director, Commission on 21st Century Production Agriculture, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0524.

Dated: November 13, 2000.

Keith J. Collins,
Chief Economist.

[FR Doc. 00–29441 Filed 11–16–00; 8:45am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers to be Used for Publication of Legal Notice of Appealable Decisions for the Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice and correction.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notices of decisions is in addition to direct notice of decisions to those known to be interested in or affected by a specific decision. The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on May 18, 2000, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR part 215. The list of newspapers to be used for 215 notice and decision is corrected.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR parts 217 and the use of the corrected newspaper listed under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW., Atlanta, Georgia 30309, Phone: 404–347–4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspaper which are listed by Forest Service Administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper. The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions: Affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico. *Atlanta Journal*, published daily in Atlanta, GA

Southern Region

Regional Forester Decisions: Affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the principal newspaper elected by the National Forest of that state or Ranger District.

National Forests in Alabama, Alabama

Forest Supervisor Decisions:
  Montgomery Advertiser, published daily in Montgomery, Al
District Ranger Decisions:
  Bankhead Ranger District: *Northwest Alabamian*, published weekly (Monday & Thursday) in Haleyville, AL
  Conecuh Ranger District: *The Andalusia Star News*, published daily (Tuesday through Saturday) in Andalusia, AL
  Oakmulgee Ranger District: *The Tuscaloosa News*, published daily in Tuscaloosa, AL
  Shoal Creek Ranger District: *The Anniston Star*, published daily in Anniston, AL
  Talladega Ranger District: *The Daily Home*, published daily in Talladega, AL
  Tuskegee Ranger District: *Tuskegee News*, published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions:
  El Nuevo Dia, published daily in Spanish in San Juan, PR
  San Juan Star, published daily in English in San Juan, PR

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions: *The Times*, published daily in Gainesville, GA
District Ranger Decisions:
  Armuchee Ranger District: *Walker County Messenger*, published bi-weekly (Wednesday & Friday) in LaFayette, GA
  Toccoa Ranger District: *The News Observer* published weekly (Wednesday) in Blue Ridge, GA
  Brasstown Ranger District: *North Georgia News*, published weekly (Wednesday) in Blairsville, GA
  Tallulah Ranger District: *Clayton Tribune*, published weekly (Thursday) in Clayton, GA
  Chattooga Ranger District: *Northeast Georgian*, published twice weekly (Tuesday & Friday) in Cornelia, GA
  Chieftain & Toccoa Record, published twice weekly (Tuesday & Friday) in Toccoa, GA
  White County News Telegraph, published weekly (Thursday) in Cleveland, GA
  The Dahlonega Nuggett, published weekly (Thursday) in Dahlonega, GA
  Cohutta Ranger District: *Chatsworth Times*, published weekly (Wednesday) in Chatsworth, GA
  Oconee Ranger District: *Eatonton Messenger*, published weekly (Thursday) in Eatonton, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions:
  Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)
  Johnson City Press, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)
District Ranger Decisions:
  Ocoee-Hiwassee Ranger District: *Polk County News*, published weekly (Wednesday) in Benton, TN
  Tellico-Hiwassee Ranger District: *Monroe County Advocate*, published weekly (Thursday) in Sweetwater, TN
  Nolichucky-Unaka Ranger District: *Johnson City Press* published daily in Johnson City, TN
  Watauga Ranger District: *Johnson City Press*, published daily in Johnson City, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions: *Lexington Herald-Leader*, published daily in Lexington, KY
District Ranger Decisions:
  Morehead Ranger District: *Morehead News*, published bi-weekly (Tuesday and Friday) in Morehead, KY
  Stanton Ranger District: *The Clay City Times*, published weekly (Thursday) in Stanton, KY
  London Ranger District: *The Sentinel-Echo*, published tri-weekly (Monday, Wednesday, and Friday) in London, KY
  Somerset Ranger District: *Commonwealth-Journal*, published daily (Sunday through Friday) in Somerset, KY
  Stearns Ranger District: *McCreary County Record*, published weekly (Tuesday) in Whitley City, KY
  Redbird Ranger District: *Manchester Enterprise*, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions: *The Tallahassee Democrat*, published daily in Tallahassee, FL
District Ranger Decisions:
  Apalachicola Ranger District: *The Liberty Journal*, published weekly (Wednesday) in Bristol, FL
  Lake George Ranger District: *The Ocala Star Banner*, published daily in Ocala, FL
  Osceola Ranger District: *The Lake City Reporter*, published daily (Monday-Saturday) in Lake City, FL
  Seminole Ranger District: *The Daily Commercial*, published daily in Leesburg, FL
  Wakulla Ranger District: *The Tallahassee Democrat*, published daily in Tallahassee, FL

Frances Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions: *The State*, published daily in Columbia, SC
District Ranger Decisions
  Enoree Ranger District: *Newberry Observer*, published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC
  Andrew Pickens Ranger District: *The Daily Journal*, published daily in Seneca, SC
  Long Cane Ranger District: *The Augusta Chronicle*, published daily in Augusta, GA
  Wambaw Ranger district: *Post and Courier*, published daily in Charleston, SC
  Witherbee Ranger district: *Post and Courier*, published daily in Charleston, SC

George Washington and Jefferson National Forests, Virginia

Forest Supervisor Decisions: *Roanoke Times*, published daily in Roanoke, VA
District Ranger Decisions:
  Lee Ranger District: *Shenandah Valley Herald*, published weekly (Wednesday) in Woodstock, VA
  Warm Springs Ranger District: *The Recorder*, published weekly (Thursday) in Monterey, VA
  Pedlar Ranger District: *Roanoke Times*, published daily in Roanoke, VA
  James River Ranger District: *Virginian Review*, published daily (except Sunday) in Covington, VA
  Deerfield Ranger District: *Daily News Leader*, published daily in Staunton, VA
  Dry River Ranger District: *Daily News Record*, published daily (except Sunday) in Harrisonburg, VA
  Blacksburg Ranger District: *Roanoke Times*, published daily in Roanoke, VA *Monroe Watchman*, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times and Monroe Watchman.*)
Glenwood Ranger District: *Roanoke Times*, published daily in Roanoke, VA
  New Castle Ranger District: *Roanoke Times*, published daily in Roanoke, VA
  Mount Rogers National Recreation Area: *Bristol Herald Courier*, published daily in Bristol, VA
  Clinch Ranger District: *Kingsport-Times News*, published daily in Kingsport, TN
  Wythe Ranger District: *Southwest Virginia Enterprise*, published bi-weekly (Wednesday and Saturday) in Wytheville, VA

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions: *The Town Talk*, published daily in Alexandria, LA
District Ranger Decisions:
  Caney Ranger District: *Minden Press Herald*, published daily in Minden, LA
  Homer Guardian Journal, published weekly (Wednesday) in Homer, LA
  Catahoula Ranger District: *The Town Talk*, published daily in Alexandria, LA
  Calcasier Ranger District:
  Rapides Parish Area—*The Town Talk*, published daily in Alexandria, LA
  Vernon Parish Area—*Leesville Leader*, published daily in Leesville, LA
  Kisatchie Ranger District: *Natchitoches Times*, published daily (Tuesday–Friday and on Sunday) in Natchitoches, LA
  Winn Ranger District: *Winn Parish Enterprise*, published weekly (Wednesday) in Winnfield, LA

Land Between the Lakes National Recreation Area, Kentucky and Tennessee

The Paducah Sun, published daily in Paducah, KY

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions: *Clarion-Ledger*, published daily in Jackson, MS
District Ranger Decisions:
Bienville Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Chickasawhay Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Delta Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
De Soto Ranger District: *Clarion Ledger*, published daily in Jackson, MS
Holly Springs Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Homochitto Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Tombigbee Ranger District: *Clarion-Ledger*, published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions: *The Asheville Citizen-Times*, published daily in Asheville, NC
District Ranger Decisions:
Appalachian Ranger District: *The Asheville Citizen-Times*, published daily in Asheville, NC
Cheoah Ranger District: *Graham Star*, published weekly (Thursday) in Robbinsville, NC
Croatan Ranger District: *The Sun Journal*, published weekly (Sunday through Friday) in New Bern, NC
Grandfather Ranger District: *McDowell News*, published daily in Marion, NC
Highlands Ranger District: *The Highlander*, published weekly (mid May–mid Nov Tues & Fri; mid Nov–mid May Tues only) in Highlands, NC
Pisgah Ranger District: *The Asheville Citizen-Times*, published daily in Asheville, NC
Tusquitee Ranger District: *Cherokee Scout*, published weekly (Wednesday) in Murphy, NC
Unwharrie Ranger District: *Montgomery Herald*, published weekly (Wednesday) in Troy, NC
Wayah Ranger District: *The Franklin Press*, published bi-weekly (Wednesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
District Ranger Decisions:
Caddo Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Cold Springs Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Fourche Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Jessieville Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Mena Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Oden Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Poteau Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Winona Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Womble Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Choctaw Ranger District: *Tulsa World*, published daily in Tulsa, OK
Kiamichi Ranger District: *Tulsa World*, published daily in Tulsa, OK
Tiak Ranger District: *Tulsa World*, published daily in Tulsa, OK

Ozark-St. Francis National Forest: Arkansas

Forest Supervisor Decisions: *The Courier*, published daily (Tuesday through Sunday) in Russellville, AR

District Ranger Decisions:

Sylamore Ranger District: *Stone County Leader*, published weekly (Tuesday) in Mountain View, AR
Buffalo Ranger District: *Newton County Times*, published weekly in Jasper, AR
Bayou Ranger District: *The Courier*, published daily (Tuesday through Sunday) in Russellville, AR
Pleasant Hill Ranger District: *Johnson County Graphic*, published weekly (Wednesday) in Clarksville, AR
Boston Mountain Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR
Magazine Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR
St. Francis Ranger District: *The Daily World*, published daily (Sunday through Friday) in Helena, AR

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions: *The Lufkin Daily News*, published daily in Lufkin, TX
District Ranger Decisions:
Angelina National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX
Davy Crockett National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX
Sabine National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX
Sam Houston National Forest: *The Courier*, published daily in Conroe, TX
Caddo & LBJ National Grasslands: *Denton Record-Chronicle*, published daily in Denton, TX

The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on May 18, 2000, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR 215. The list of newspapers to be used for 215 notice and decision is corrected as follows:

Chattahoochee-Oconee National Forest, Georgia

District Ranger Decisions:
Oconee Ranger District:
Change:
Monticello News to *Eatonton Messenger*, published weekly (Thursday) in Eatonton, GA

Kisatchie National Forest, Louisiana

District Ranger Decisions:
Calcaseiu Ranger District:
Clarify:
Rapides Parish Area—*The Town Talk*, published in Alexandria, LA
Add:
Vernon Parish Area—*Leesville Leader*, published daily in Leesville, LA

Dated: November 7, 2000.

David G. Holland,

Deputy Regional Forester.

[FR Doc. 00–29122 Filed 11–16–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Dry Fork Vegetation Restoration EIS—Lewis and Clark National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to treat vegetation on approximately 4,100 acres in Cascade and Judith Basin Counties, Montana. An assessment titled Dry Fork Vegetation and Recreation Restoration Environmental Assessment (EA) was completed in August 1999 and a Decision Notice/Finding of No Significant Impact was released on June 15, 2000. On appeal, a portion of the decision dealing with vegetative restoration was reversed. In order to further the purposes of the National Environmental Policy Act and to provide additional disclosure, the analysis will now be revisited and documented in an Environmental Impact Statement (EIS).

DATES: Comments concerning the scope of the analysis, issues, the alternatives, and evaluation of alternatives were received during development of the EA. Although no formal scoping period is proposed for this EIS, comments will be accepted and an opportunity to comment on the draft EIS will be provided.

ADDRESSES: Send written comments to Rick Prausa, Forest Supervisor, Lewis and Clark National Forest, 1101 15th Street North, Box 869, Great Falls, MT 59403. Electronic mail may be sent to comment/rl__lewisclark@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Jennifer Scheer, EIS Team Leader, (406) 791–7700.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to treat vegetation on approximately 4,100 acres in the Dry Fork of Belt Creek drainage on the Kings Hill Ranger District of the Lewis and Clark National Forest. The entire project area covers about 40,700 acres in the western portion of the Little Belt Mountains. The purpose of the proposed action is to move the condition of the area's forest and grasslands in a direction more closely approximated under natural conditions in which fire succession played a larger role. In addition, the proposed action will reduce the risk of large wildfire by reducing fuel accumulation. The previous EA considered, in detail, five alternatives for vegetative treatment. This EIS will include those alternatives, but will replace Alternative 5 in the EA with the modified alternative previously identified for selection in the decision notice. The alternatives evaluate a variety of treatment methods, including timber harvest, prescribed burning, road construction or reconstruction, and road closure to address issues and concerns in the project area.

Decisions To Be Made: The Forest Supervisor will decide whether and where vegetative treatment activities would take place in the project area. He will decide the number of acres, if any, on which treatment would take place and the types of treatment methods to be used. He will decide when any management activities would take place, what mitigation measures would be implemented to address concerns, and whether the action requires amendment(s) to the Lewis and Clark Forest Plan.

Responsible Official: Rick Prausa, Forest Supervisor, is the Responsible Official for making the decision to implement any of the alternatives evaluated. He will document his decision and rationale in a Record of Decision.

Preliminary Issues: Issues associated with vegetative treatments that were identified during scoping and development of the Environmental Assessment include impacts of proposed activities on wildlife and fish species and their habitat, soil resources, water quality and water yield, and forest health.

Public Involvement, Rationale, and Public Meetings: Initial scoping for this project began in April 1998. A letter was sent to 376 individuals requesting comment on the proposed action. Public participation, including public meetings, field trips, and community involvement, occurred throughout the development of the EA. Comments were received on the EA and an opportunity provided for appeal of the decision. A portion of the decision resulting from the EA was reversed on appeal. As scoping on this proposal has already taken place during development of the EA, no formal scoping period or public meetings on the proposal are being considered at this time, however, public participation in this analysis is welcome at any time. Documenting the analysis in an Environmental Impact Statement provides an opportunity to strengthen the analysis and allow for additional public review and comment. A 45-day review period for comments on the Draft EIS will be provided. Comments received will be considered and included in documentation of the Final EIS. The public is encouraged to take part in the process and to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service has sought and will continue to seek information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action.

Electronic Access and Filing Addresses: Comments may be sent by electronic mail (e-mail) to comment/r1__lewisclark@fs.fed.us. Please reference the Dry Fork Vegetation Restoration EIS on the subject line. Also, include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

Estimated Dates for Filing: The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December, 2000. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by March, 2001. In the final EIS, the Forest Service is required to respond to comments received during the comment period that pertain to the environmental consequences of the action, as well as those pertaining to applicable laws, regulations, and policies. These will be considered in making a decision regarding the proposal.

The Reviewers Obligation To Comment: The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* versus *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* versus *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: October 11, 2000.

Robin Strathy,

Acting Lewis and Clark Forest Supervisor.

[FR Doc. 00–29476 Filed 11–16–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, December 11, 2000. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Public Law 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. The tentative agenda will include refining issue statements and describing the desired future condition of the SRA.

The public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the December 11 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Williamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: November 13, 2000.

Y Robert Iwamoto,

Deputy Forest Supervisor.

[FR Doc. 00–29455 Filed 11–16–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

South Texas Electric Cooperative, Inc.; Notice of Intent to Hold A Public Workshop and Prepare An Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold a public workshop and prepare an environmental assessment.

SUMMARY: The Rural Utilities Service (RUS) intends to hold a public scoping meeting/workshop and prepare an environmental assessment (EA) in connection with possible impacts related to the construction and operation of a combined cycle combustion turbine generation facility. The project is proposed by South Texas Electric Cooperative (STEC), of Nursery, Texas and Medina Electric Cooperative, Inc., of Victoria, Texas. RUS may provide financing assistance for the project. RUS will conduct a public scoping meeting/workshop at the Sam Rayburn Generating Plant Pavilion, which is located three miles west of Nursery, Texas on FM 447. The meeting/workshop will be held on Wednesday, December 6, 2000, from 6:00 p.m. until 8:00 p.m.

FOR FUTHER INFORMATION CONTACT: Dennis E. Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1953 or e-mail: or Joe Araiza, Project Manager, Burns and McDonnell, 1776 Yorktown, Suite 840, Houston, Texas 77056, telephone: (713) 622–0224 or e-mail: jaraiza@burnsmcd.com.

SUPPLEMENTARY INFORMATION: STEC and Medina are proposing to construct a 3-on-1 LM6000 combined-cycle combustion turbine 186 MW generation plant available for commercial dispatch in January 2003. The preferred site is the existing Sam Rayburn Plant, which is located in Nursery, Texas. The existing plant infrastructure will be utilized for this new generation addition including existing gas lines, cooling water ponds and switchyard.

Alternatives to be considered by RUS include no action, load management and energy conservation, purchase power, alternative generators and alternative sites.

Comments regarding the proposed project may be submitted in writing at the public meeting/workshop or in writing no later than January 5, 2001, to RUS at the address provided above.

An environmental assessment (EA) will be prepared for the proposed project. Based on a review of the Environmental Assessment and other relevant information, RUS will determine if the preparation of an environmental impact statement is necessary. Should RUS determine that the preparation of an environmental impact statement is not necessary, it will prepare a Finding of No Significant Impact.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations and completion of the environmental review procedures as prescribed by RUS's Environmental Policies and Procedures.

Dated: November 13, 2000.

Glendon D. Deal,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 00–29483 Filed 11–16–00; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 18, 2000.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Customization & Distribution of Air Force Special Promotion Items

HQ Air Force Recruiting Service, 550 D Street West, Suite 1, Randolph AFB, Texas.
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Grounds Maintenance

Department of Energy, Nevada Support Facility, 232 Energy Way, North Las Vegas, Nevada.
NPA: Positive Access, Inc., Las Vegas, Nevada.

Janitorial/Custodial

Depot Maintenance Industrial Fund, Tinker Air Force Base, Oklahoma.
NPA: Oklahoma County Council for Mentally Retarded Citizens, Inc., Oklahoma City, Oklahoma.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Commodities

Arming Adapter, Self Adjusting

1325–01–158–8635
1325–01–159–8083

Air Freshener Deodorant, General Purpose

6840–00–932–4692

Envelope, Wallet

7530–00–281–4844
7530–00–281–4846

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–29494 Filed 11–16–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the procurement list.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodity previously furnished by such agencies.

EFFECTIVE DATE: December 18, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 26, July 7, and September 22 and 29, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 34145, 41941, 57313 and 58505) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodity and services.
3. The action will result in authorizing small entities to furnish the commodity and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Cloth, Cleaning
7920–01–004–7847

Services

Grounds Maintenance, Family Housing and Naval Hospital, Marine Corps Base, Camp Lejeune, North Carolina
Janitorial/Custodial, Bureau of Land Management, Carlsbad Field Office, 620 East Green Street, Carlsbad, New Mexico
Operation of Individual Equipment Element Store, Department of the Air Force, 125 Bennett Avenue, Hurlburt Field, Florida

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. Accordingly, the following commodity is hereby deleted from the Procurement List:

Commodity

Door Knob Conversion Kit
5340–01–394–0237
5340–01–394–0238
5340–01–394–0239
5340–01–394–0240
5340–01–394–0241
5340–01–394–0242
5340–01–394–3874

Louis R. Bartalot,
Deputy Director (Operations).

[FR Doc. 00–29495 Filed 11–16–00; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111300B]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder Monitoring Committee, Scup Monitoring Committee, and Black Sea Bass Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Monday, December 4, 2000, beginning at 10:00 a.m. with the Summer Flounder Monitoring Committee, followed by the Scup Monitoring Committee and the Black Sea Bass Monitoring Committee.

ADDRESSES: The meeting will be held at the Sheraton International Airport, 7032 Elm Road, BWI Airport, Baltimore, MD 21240, telephone 410-859-3300.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302-674-2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, telephone 302-674-2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to recommend the 2001 recreational management measures for summer flounder, scup, and black sea bass.

Although non-emergency issues not contained in this agenda may come before the Committee for discussion, those issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fisheries Conservation and Management Act, provided the public has been notified of the Committee's intent to take

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis (see **ADDRESSES**) at least 5 days prior to the meeting date. final action to address the emergency.

Dated: November 13, 2000.

Richard W. Surdi,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–29487 Filed 11–16–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111300C]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee. Recommendations from the Committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Wednesday, December 6, 2000, beginning at 9:30 a.m. through Thursday, December 7, 2000, beginning at 8:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Colonial Hotel, One Audubon Road, Wakefield, MA 01880; telephone (781) 245-9300.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950; telephone: (978) 465-0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465-0492.

SUPPLEMENTARY INFORMATION: The Committee will continue to work on the development of a collaborative research program for New England fisheries to address the next round of funds appropriated by Congress for 2001.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of

the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: November 13, 2000.

Richard W. Surdi,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–29486 Filed 11–16–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111300A]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

DATES: The meetings will be held December 4 through 12, 2000, in Anchorage, Alaska. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W. Third Avenue, Anchorage, Alaska. Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council staff, telephone: 907-271-2809.

SUPPLEMENTARY INFORMATION:

Meeting Dates, Times and Agendas

Monday, December 4 through Friday, December 8, 2000, 8 a.m.

The agenda for the Advisory Panel will mirror that of the Council listed below, with the exception of the reports under Item 1, and Item 10, appointments to committees.

Monday, December 4 through Thursday, December 7, 2000 8 a.m.

The Scientific and Statistical Committee (SSC) will address the following items on the Council agenda:

1. Steller sea lion issues.
2. Halibut Charter Individual Fishing Quota report.
3. All items under Groundfish Management in Council agenda Item 8.

Wednesday, December 6 through Tuesday, December 12, 2000, 8 a.m.

The agenda for the Council's plenary session will include the following issues:

1. Reports:
   (a) Executive Director's Report.
   (b) State Fisheries Report by Alaska Department of Fish and Game.
   (c) NMFS Management Report.
   (d) Enforcement and Surveillance reports by NMFS and the Coast Guard.
   (e) U.S. Fish and Wildlife report on sea otters.
   (f) International Pacific Halibut Commission report on halibut quotas and discard mortality rates.
2. *Halibut Subsistence*. Review action taken in October, particularly the inclusion of Adak, Alaska in the list of eligible communities.
3. *Crab Rationalization*. Discuss possible alternatives and provide direction to staff for further development.
4. *Essential Fish Habitat/Habitat Areas of Particular Concern*. Status report and discussion of the stakeholder process.
5. *Halibut Charter IFQ Program*. Review corrected data and receive progress report on analysis.
6. *Steller Sea Lion Issues*. Review biological opinion and associated Steller sea lion protective measures and take action as appropriate.
7. American Fisheries Act:
   (a) Review preliminary cooperative performance report.
   (b) Industry report on Pacific cod sideboard issues.
8. Groundfish Management:
   (a) Review Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Stock Assessment and Fishery Evaluation Reports for the 2001 groundfish fisheries.
   (b) Provide recommendations for catch and bycatch specifications for the 2001 BSAI and GOA groundfish fisheries.
   (c) Discuss BSAI Pacific cod pot gear suballocations; develop problem statement and provide direction to staff for analysis.
9. Staff Tasking:
   (a) Industry and staff reports on potential salmon bycatch measures.
   (b) Discussion and direction for Report to Congress on the effects of the American Fisheries Act.
   (c) Review overall project tasking and provide direction to staff.
   (d) Announcement of appointments to the Advisory Panel and SSC for 2001.

Sunday, December 10, 2000, 12 p.m.–Executive Session (This session is not open to the public.)

Other committees and workgroups may hold impromptu meetings throughout the meeting week. Such meetings will be announced during regularly scheduled meetings of the Council, Advisory Panel, and SSC, and will be posted at the hotel.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen at 907-271-2809 at least 5 days prior to the meeting dates.

Dated: November 13, 2000.

Richard W. Surdi
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–29485 Filed 11–16–00; 8:45 am]

BILLING CODE: 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

November 13, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 17, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade

Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 67253, published on December 1, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 13, 2000

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on November 17, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
Group I	
200–227, 300–326, 360–363, 369(1)[2], 369pt.[3], 400–414, 464, 469pt.[4], 600–629, 666, 669pt.[5] and 670, as a group.	246,330,442 square meters equivalent.
Group II	
237, 239pt.[6], 331–348, 350–352, 359(1)[7], 359(2)[8], 359pt.[9], 431, 433–438, 440–448, 459pt.[10], 631, 633–652, 659(1)[11], 659(2)[12], 659pt.[13], and 443/444/643/644/843/844(1), as a group.	886,682,799 square meters equivalent.
Sublevels in Group II	
359(1) (coveralls, overalls and jumpsuits).	680,524 kilograms.
659(1) (coveralls, overalls and jumpsuits).	731,366 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369(1): only HTS number 6307.10.2005.

[3] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 6406.10.7700 and HTS number in 369(1).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[5] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211 32.0025 and 6211.42.0010.

[8] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[9] Category 359pt.: all HTS numbers except 6406.99.1550 and HTS numbers in 359(1) and 359(2).

[10] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29489 Filed 11–16–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 13, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 17, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70220, published on December 16, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 13, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on November 17, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
Levels in Group I	
219	66,589,672 square meters.
313	50,310,018 square meters.
314	9,972,734 square meters.
315	18,315,636 square meters.
317	25,551,660 square meters.
334/634	185,114 dozen.
335/635	754,089 dozen.
342/642	1,708,866 dozen.
345	248,589 dozen.
369–S[2]	830,219 kilograms.
641	1,792,427 dozen.
647/648	900,145 dozen.
Group II	
200, 201, 220–227, 237, 239pt.[3], 300, 301, 331–333, 350, 352, 359pt.[4], 360–362, 600–604, 606[5], 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt.[6], 666, 669pt.[7], 670, 831, 833–838, 840–858 and 859pt.[8], as a group.	162,671,041 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[4] Category 359pt.: all HTS numbers except 6406.99.1550.

[5] Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

[6] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[7] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–29488 Filed 11–16–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

November 13, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Sri Lanka and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 13, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	411,971 dozen.
314	6,150,137 square meters.
331/631	4,123,332 dozen pairs.
333/633	77,549 dozen.
334/634	908,759 dozen.
335/835	399,854 dozen.
336/636/836	598,572 dozen.
338/339	1,817,521 dozen.
340/640	1,574,241 dozen.
341/641	2,591,292 dozen of which not more than 1,727,528 dozen shall be in Category 341 and not more than 1,727,528 dozen shall be in Category 641.
342/642/842	945,110 dozen.
345/845	244,763 dozen.
347/348/847	1,465,842 dozen.
350/650	169,634 dozen.
351/651	469,849 dozen.
352/652	1,938,686 dozen.
359–C/659–C[1]	1,866,596 kilograms.
360	2,050,046 numbers.
363	17,569,344 numbers.
369–D[2]	1,319,061 kilograms.
369–S[3]	1,099,214 kilograms.
434	7,676 dozen.
435	16,448 dozen.
440	10,965 dozen.
611	8,029,348 square meters.
635	533,141 dozen.
638/639/838	1,295,127 dozen.
644	727,007 numbers.
645/646	290,802 dozen.

Category	Twelve-month restraint limit
647/648	1,559,180 dozen.
840	407,399 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 10, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29490 Filed 11–16–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on the Extension of Temporary Amendment to the Requirements for Participating in the Special Access Program for Caribbean Basin Countries and the Outward Processing Program

November 13, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning the extension of amendment to the requirements for participation in the Special Access Program and the Outward Processing Program.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In order to qualify for Special Access Program treatment, a textile product must be assembled from U.S. fabric in a Caribbean Basin Initiative (CBI) or Andean Trade Preference Act (ATPA) country with which the United States has entered into a bilateral agreement regarding guaranteed access levels under the Special Access Program. The product must be assembled from fabric formed and cut in the United States; meaning that all fabric components of the assembled product (with the exception of findings and trimmings, including elastic strips) must be U.S. formed and cut. Upon entry into the United States, the product must be classified under heading 9802.00.8015 of the Harmonized Tariff Schedule of the United States.

Findings and trimmings of non-U.S. origin may be incorporated into the assembled product provided they do not exceed 25 percent of the cost of the components of the assembled product. Certain non-U.S. formed, U.S. cut interlinings for suit jackets and suit-type jackets may currently qualify as findings and trimmings under a temporary amendment to the Special Access Program.

A notice and letter to the Commissioner of Customs published in the **Federal Register** on December 18, 1998 (see 63 FR 70112), and amended on December 24, 1998 (see 64 FR 149, published on January 4, 1999), extended, through December 31, 2000, the exemption period for women's and girls' and men's and boys' chest type plate, "hymo" piece or "sleeve header" of woven or weft inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of tailored suit jackets and suit-type jackets in Categories 433, 435, 443, 444, 633, 635, 643 and 644, which are entered under the Special Access Program (9802.00.8015), provided they are cut in the United States.

On January 1, 2000, goods covered under the Outward Processing Program (9802.00.8017) were also authorized to use this exemption, as outlined in the letter and notice to the Commissioner of Customs, dated December 9, 1999 (see 64 FR 69746, published on December 14, 1999).

The purpose of this notice is to request public comment on CITA's intention to extend through December 31, 2002, this exemption for women's and girls' and men's and boys' "hymo" type interlining. There will be a 30-day comment period beginning on November 17, 2000 and extending through December 18, 2000. Anyone wishing to comment or provide data for information regarding domestic production or availability of the products mentioned above is invited to submit comments or information to Richard B. Steinkamp, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230: ATTN: Becky Geiger.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29491 Filed 11–16–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force A–76 Initiatives Cost Comparisons and Direct Conversions (As of September 30, 2000)

The Air Force is in the process of conducting the following A–76 initiatives. Cost comparisons are public-private competitions. Direct conversions are functions that may result in a conversion to contract without public competition. These initiatives were announced and in-progress as of September 30, 2000, include the installation and state where the cost comparison or direct conversion is being performed, the total authorizations under study, public announcement date and actual or anticipated solicitation date. The following initiatives are in various stages of completion.

COST COMPARISONS

Installation	State	Function(s)	Total authorization	Public announcement date	Solicitation issued or scheduled date
ANDERSEN	GUAM	COMMUNICATIONS OPERATIONS AND MAINTENANCE	24	15–Sep–00	30–May–01
ANDREWS	MD	COMMUNICATION FUNCTIONS	161	04–Oct–99	26–Sep–01
ANDREWS	MD	GROUNDS MAINTENANCE	9	17–Dec–98	12–May–00
ANDREWS	MD	AIRCRAFT MAINTENANCE AND SUPPLY	815	25–Jul–97	26–May–99
ANDREWS	MD	HEATING SYSTEMS	22	17–Dec–98	18–Feb–00
AVON PARK	FL	RANGE OPERATIONS	38	22–Dec–99	15–Sep–01
BARKSDALE	LA	PROTECTIVE COATING	13	14–Dec–98	29–Jun–00
BEALE	CA	BASE OPERATING SUPPORT	383	08–Sep–99	07–Mar–01
BOLLING	DC	SUPPLY AND TRANSPORTATION	138	01–Dec–98	12–Sep–00
CARSWELL	TX	BASE OPERATING SUPPORT	69	03–Feb–00	05–Jun–01
DAVIS MONTHAN	AZ	BASE SUPPLY	35	04–Jan–00	30–Oct–00
EDWARDS	CA	TRANSIENT AIRCRAFT MAINTENANCE/AEROSPACE GROUND EQUIPMENT.	146	06–Nov–98	09–Jun–00
EDWARDS	CA	BASE OPERATING SUPPORT	553	09–Dec–98	08–Nov–00
EGLIN	FL	CIVIL ENGINEERING	200	03–Dec–96	21–Jul–98
EGLIN	FL	AIRCRAFT MAINTENANCE AND SUPPLY	319	15–Sep–00	01–Aug–01
EGLIN	FL	ADMINISTRATIVE SUPPORT	49	22–Sep–99	26–Sep–00
EIELSON	AK	COMMUNICATIONS OPERATIONS AND MAINTENANCE	63	29–Oct–99	05–Jan–01
ELMENDORF	AK	BASE SUPPLY	208	26–Mar–99	21–Apr–00
ELMENDORF	AK	COMMUNICATIONS OPERATIONS AND MAINTENANCE	81	05–Jan–00	07–Nov–00
HANSCOM AFB	MA	CIVIL ENGINEERING	201	09–Dec–98	25–Feb–00
HANSCOM AFB	MA	EDUCATION/TRAINING AND PERSONNEL	17	25–Nov–98	20–Apr–00
HANSCOM AFB	MA	BASE SUPPLY	70	10–Nov–98	01–May–00
HILL AFB	UT	BASE OPERATING SUPPORT	576	30–Sep–98	25–Nov–00
HOLLOMAN AFB	NM	TEST TRACK	125	18–Nov–99	20–Nov–00
HURLBURT COM FL	FL	HOUSING MANAGEMENT	12	08–Jun–00	01–May–01
HURLBURT COM FL	FL	ADMINISTRATIVE SUPPORT	33	28–Apr–99	09–Mar–01
HURLBURT COM FL	FL	COMMUNICATION FUNCTIONS	50	31–Jul–98	15–Apr–01
HURLBURT COM FL	FL	ENVIRONMENTAL	7	22–Jun–00	15–Mar–01
HURLBURT COM FL	FL	BASE SUPPLY	33	15–Jul–98	17–Feb–00
KEESLER	MS	MULTIPLE SUPPORT FUNCTIONS	741	21–Sep–99	19–Dec–00
KIRTLAND	NM	EDUCATION SERVICES	12	26–Oct–98	20–Mar–00
LACKLAND	TX	MULTIPLE SUPPORT FUNCTIONS	1440	26–Jan–99	09–Aug–99
LANGLEY	VA	GENERAL LIBRARY	11	22–Dec–98	07–Jun–00
MAXWELL	AL	EDUCATION SERVICES	35	24–Jul–00	29–Sep–00
MAXWELL	AL	MULTIPLE SUPPORT FUNCTIONS	814	28–Apr–98	22–Mar–99
MCCHORD	WA	GROUNDS MAINTENANCE	10	14–Jun–99	22–Sep–00
MULTIPLE INSTLNS		TRANSIENT AIRCRAFT MAINTENANCE	24	07–Jul–99	01–Dec–00
RAMSTEIN	GERMY				

COST COMPARISONS—Continued

Installation	State	Function(s)	Total authorization	Public announcement date	Solicitation issued or scheduled date
SPANGDAHLEM	GERMY				
MULTIPLE INSTLNS		TRANSIENT AIRCRAFT MAINTENANCE	15	07–Jul–99	29–May–00
LAKENHEATH	UK				
MILDENHALL	UK				
MULTIPLE INSTLNS		EDUCATION SERVICES	73	17–Aug–00	25–Jan–01
ANDERSEN	GUAM				
EIELSON	AK				
ELMENDORF	AK				
HICKAM	HI				
KADENA	JA				
KUNSAN	KR				
MISAWA	JA				
OSAN	KR				
YOKOTA	JA				
MULTIPLE INSTLNS		COMMUNICATION FUNCTIONS	141	11–Mar–99	14–Apr–00
GENERAL MITCHELL	WI				
WESTOVER	MA				
MINN–ST PAUL	MN				
YOUNGSTOWN	OH				
WILLOW GROVE	PA				
GRISSOM	IN				
PITTSBURG	PA				
MARCH	CA				
HOMESTEAD	FL				
CARSWELL	TX				
NEW ORLEANS	LA				
MULTIPLE INSTLNS		COMMUNICATION FUNCTIONS	208	03–Aug–99	01–Nov–00
LANGLEY	VA				
HILL AFB	UT				
MULTIPLE INSTLNS		MULTIPLE SUPPORT FUNCTIONS	124	14–Jul–99	28–Jun–01
CROUGHTON	UK				
FAIRFORD	UK				
MOLESWORTH	UK				
MULTIPLE INSTLNS		PERSONNEL SERVICES	223	16–Jun–00	15–Mar–01
BARKSDALE	LA				
CANNON	NM				
DAVIS MONTHAN	AR				
DYESS	TX				
ELLSWORTH	SD				
HOLLOMAN	NM				
KEFLAVIK	ICELD				
LAJES	AZORE				
LANGLEY	VA				
MINOT	ND				
MOODY	GA				
MOUNTAIN HOME	ID				
NELLIS	NV				
SEYMOUR JOHNSON	NC				
SHAW	SC				
WHITEMAN	MO				
NEW BOSTON	NH	BASE OPERATING SUPPORT	48	03–Dec–97	01–Oct–00
NEW ORLEANS NAS	LA	BASE OPERATING SUPPORT	45	03–Feb–00	02–Jan–01
OFFUTT	NE	BASE OPERATING SUPPORT	1581	30–Sep–98	16–Feb–01
PATRICK	FL	SUPPLY AND TRANSPORTATION	43	14–May–98	25–Oct–00
PETERSON	CO	PERSONNEL SERVICES	90	05–Jan–00	01–Dec–00
RANDOLPH	TX	MULTIPLE SUPPORT FUNCTIONS	1224	14–Sep–00	TBD
ROBINS	GA	BASE SUPPLY	133	01–Apr–99	16–Oct–00
ROBINS	GA	EDUCATION SERVICES	57	07–Jan–99	17–Aug–00
ROBINS	GA	ENVIRONMENTAL	49	07–Jun–00	20–Apr–01
ROBINS	GA	ADMINISTRATIVE TELEPHONE SWITCHBOARD	17	17–Mar–99	01–May–00

COST COMPARISONS—Continued

Installation	State	Function(s)	Total authorization	Public announcement date	Solicitation issued or scheduled date
SCOTT	IL	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	169	19–Mar–98	16–Aug–99
SCOTT	IL	PERSONNEL SERVICES	236	25–Jun–99	19–Feb–01
SEMBACH	GERMY	COMMUNICATION FUNCTIONS	48	18–Dec–98	30–Oct–00
SHEPPARD	TX	MULTIPLE SUPPORT FUNCTIONS	493	21–Sep–99	29–Jun–00
TINKER	OK	BASE SUPPLY	152	30–Nov–98	17–Nov–99
TINKER	OK	EDUCATION SERVICES	65	16–Nov–98	17–Nov–99
TRAVIS	CA	VEHICLE OPERATIONS AND MAINTENANCE	131	15–Jul–98	24–Aug–00
USAF ACADEMY	CO	CIVIL ENGINEERING	497	01–Dec–98	24–Mar–00
USAF ACADEMY	CO	BASE OPERATING SUPPORT	106	08–May–98	09–May–00
USAF ACADEMY	CO	FOOD SERVICES	297	06–May–98	21–Apr–99
USAF ACADEMY	CO	COMMUNICATION FUNCTIONS	114	20–May–99	20–Jul–00
WHITEMAN	MO	UTILITIES PLANT	11	18–Aug–99	01–Jun–00
DIRECT CONVERSIONS					
ANDERSEN	GUAM	AIR TRAFFIC CONTROL	12	14–Sep–99	30–Jun–00
BOLLING	DC	EDUCATION/TRAINING AND PERSONNEL	12	01–May–00	08–Jan–01
COLUMBUS	MS	SURVIVAL EQUIPMENT	29	18–Apr–00	15–Apr–01
EDWARDS	CA	LIBRARY	7	09–Dec–98	11–Nov–00
EIELSON	AK	SUPPLY IEE	5	17–May–00	12–Aug–99
ELLSWORTH	SD	ENVIRONMENTAL	7	05–Nov–98	14–Apr–00
F E WARREN	WY	BASE COMMUNICATIONS	105	30–Oct–97	19–Jul–00
GRAND FORKS	ND	MUNITIONS MAINTENANCE	5	17–May–99	13–Oct–00
HICKAM	HI	AIR MOBILITY OPERATIONS CONTROL CENTER (AMOCC).	53	29–Oct–99	13–Jul–00
HICKAM	HI	FURNISHINGS MANAGEMENT	11	27–Jun–00	01–Dec–00
HOLLOMAN AFB	NM	MILITARY FAMILY HOUSING MAINTENANCE	68	12–May–97	14–Oct–00
KIRTLAND	NM	GENERAL LIBRARY	6	12–Jan–99	01–Oct–00
KIRTLAND	NM	RECREATIONAL SUPPORT	9	12–Jan–99	01–Oct–00
KIRTLAND	NM	FOOD SERVICES	15	29–Oct–99	21–Sep–00
KIRTLAND	NM	ENVIRONMENTAL	32	24–Nov–98	01–Oct–00
LANGLEY	VA	AIRCRAFT FLEET SERVICES	11	29–Jun–99	25–Sep–00
LANGLEY	VA	COMMUNICATION FUNCTIONS	8	23–Mar–99	01–Dec–00
LANGLEY	VA	COMMUNICATIONS ADMINISTRATION AND INFORMATION FUNCTION.	13	31–Jan–00	02–Nov–00
LANGLEY	VA	DATA PROCESSING EQUIPMENT OPERATIONS	15	04–Nov–99	16–Nov–00
MALMSTROM	MT	BASE COMMUNICATIONS	85	06–Oct–97	15–Aug–00
MCGUIRE	NJ	FURNISHINGS MANAGEMENT	2	14–May–99	30–Oct–00
MCGUIRE	NJ	HEATING SYSTEMS	6	04–May–99	15–Nov–00
MINOT	ND	GROUNDS MAINTENANCE	9	18–May–99	23–Oct–00
MT HOME	ID	GROUNDS MAINTENANCE	6	20–Jul–99	20–Jul–00

COST COMPARISONS—Continued

Installation	State	Function(s)	Total authorization	Public announcement date	Solicitation issued or scheduled date
MULTIPLE INSTLNS		ADMINISTRATIVE SUPPORT	67	08–Aug–00	25–Jan–01
ANDERSEN	GUAM				
EIELSON	AK				
ELMENDORF	AK				
HICKAM	HI				
KADENA	JA				
KUNSAN	KR				
MISAWA	JA				
OSAN	KR				
YOKOTA	JA				
OFFUTT	NE	COMPUTER OPERATIONS	76	17–Feb–99	21–Jul–00
RANDOLPH	TX	COURSEWARE DEVELOPMENT	38	30–Sep–99	30–Jun–00
ROBINS	GA	PROTECTIVE COATING	8	18–Jan–00	19–Jan–01
ROBINS	GA	GENERAL LIBRARY	6	23–Nov–99	20–Nov–00
ROBINS	GA	AIRFIELD MANAGEMENT	10	06–Jun–00	24–May–01
SCHRIEVER	CO	FOOD SERVICES	18	02–Sep–99	01–Nov–00
SCOTT	IL	ADMINISTRATIVE SWITCHBOARD	85	05–Aug–99	03–Nov–00
SHAW	SC	COMMUNICATION FUNCTIONS	3	18–May–99	10–Oct–00
SHAW	SC	ENVIRONMENTAL	2	22–Mar–00	10–Aug–00
TINKER	OK	SOFTWARE PROGRAMMING	67	08–May–00	01–Dec–00
VANCE	OK	SURVIVAL EQUIPMENT	22	04–Feb–00	21–Oct–99
VANDENBERG AFB	CA	MISSILE STORAGE & MAINTENANCE	86	14–Apr–99	18–Dec–99

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–29477 Filed 11–16–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice To Extend the Public and Agency Scoping Period and Conduct an Additional Scoping Meeting for the Environmental Impact Statement (EIS) for the Development of an Air-to-Ground Training Range in the State of Montana

The Air National Guard is issuing this notice to advise the public of its decision to extend the public and agency scoping period for the preparation of the Draft EIS which will assess the potential environmental impacts of a proposal to develop an air-to-ground training range in the State of Montana.

An additional scoping meeting will be held on December 12, 2000 at the Phillips County Library, 10½ South 4th East, Malta, MT. The purpose of the additional scoping meeting is to address the development of additional alternatives in Phillips County. The comment period for scoping related comments has been extended to January 15, 2001 to ensure sufficient time to consider public and agency comments in the screening process and preparation of the Draft EIS. You may call 1–800–545–8680 (select option 5, Wing Headquarters) to give oral comments. If you have questions or require additional information, please contact Major Mitnik at (301) 836–8636 or (301) 836–8065. Written comments should be submitted to the following address: Montana EIS, ANG/CEVP, ATTN: Major Tammy Mitnik, 3500 Fetchet Avenue, Andrews Air Force Base, Maryland 20762.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–29518 Filed 11–16–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent Licenses to Cummins Industries, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of a prospective license to Cummins Industries, Inc. to the Government-owned inventions described in U.S. Patent No. 5,760,089 entitled, "Chemical Warfare Agent Decontaminant Solution Using Quaternary Ammonium Complexes," dated issued: June 2, 1998.

DATE: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than January 16, 2001.

ADDRESS: Written objections aré to be filed with the Office of Patent Counsel, Naval Surface Warfare Center, Dahlgren Laboratory, CD222, 17320 Dahlgren Road, Dahlgren, VA 22448–5100, telephone (540) 653–8061.

FOR FURTHER INFORMATION CONTACT: James B. Bechtel, Esq., Patent Counsel, Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, telephone: (540) 653–8061, fax: (540) 653–7816, or email: *BechtelJB@nswc.navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR Part 404).

Dated: November 7, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–29478 Filed 11–16–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES01–10–000, et al.]

Oklahoma Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

November 9, 2000.

Take notice that the following filings have been made with the Commission:

1. Oklahoma Gas and Electric Company

[Docket No. ES01–10–000]

Take notice that on November 6, 2000, Oklahoma Gas and Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term promissory notes and other evidences of indebtedness, including guarantees, in an amount not to exceed $400 million, from time to time during a period ending December 31, 2002.

Comment date: November 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Ogden Martin Systems of Fairfax, Inc.

[Docket No. ES01–11–000]

Take notice that on November 7, 2000, Ogden Martin Systems of Fairfax, Inc. submitted an application pursuant to section 204 of the Federal Power Act requesting authorization to make borrowing in an amount not to exceed $142 million pursuant to a secured long-term revolving loan and letter of credit.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Wheelabrator Shasta Energy Company, Inc.

[Docket No. QF84–431–002]

Take notice that on November 1, 2000, Wheelabrator Shasta Energy Company Inc. (Shasta Energy) filed a request for recertification that, subsequent to a change in upstream ownership, a qualifying small power production facility with a current net capacity of 49.9 megawatts that is leased and operated by Shasta Energy and is located in Shasta County, California, is a qualifying small power production facility.

Comment date: December 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Consumers Energy Company

[Docket No. ER01–359–000]

Take notice that on November 3, 2000, Consumers Energy Company (Consumers), tendered for filing executed Firm and Non-Firm Point to Point Transmission Service Agreements with NRG Power Marketing Inc. (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreements have effective dates of October 25, 2000.

Copies of the filed agreements were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Indianapolis Power & Light Company

[Docket No. ER00–1026–005]

Take notice that on November 2, 2000, Indianapolis Power & Light Company (IPL), tendered for filing its refund report in the referenced docket.

Copies of this filing were served on the Indiana Utility Regulatory Commission and affected transmission customers.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Sierra Pacific Power Company

[Docket No. ER00–2003–002]

Take notice that on November 6, 2000, Sierra Pacific Power Company (Sierra) tendered for filing a refund report in compliance with the directive of the September 18, 2000 order in the above-captioned docket that approved a settlement to establish the Transmission Loss Factor for transmission service Sierra renders under its Open Access Transmission Tariff (OATT).

Copies of this filing were furnished to each affected wholesale customer and to each state commission within whose jurisdiction the wholesale customers distribute and sell electric energy at wholesale. Copies were also served upon the Public Utilities Commission of Nevada and the Public Utilities Commission of California.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. PP&L Colstrip III, LLC

[Docket No. ER01–357–000]

Take notice that on November 3, 2000, PP&L Colstrip III, LLC, tendered a notice of cancellation of its FERC Electric Tariff, Original Volume No. 1. PP&L Colstrip III, LLC requests an effective date of this cancellation of January 2, 2001.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Central Power and Light Company

[Docket No. ER01–356–000]

Take notice that on November 3, 2000, Central Power and Light Company (CPL), tendered for filing a revised Service Agreement between CPL and Magic Valley Electric Cooperative, Inc. (MVEC) under CPL's FERC Electric Tariff, Thirteenth Revised Volume No. 1.

CPL requests an effective date of May 5, 2000, for the revised Service Agreement. Accordingly, to the extent necessary, CPL seeks waiver of the Commission's filing requirements. CPL has posted the filing according to the requirements of 18 CFR 35.2(d).

Copies of the filing are available for public inspection in CPL's offices in Corpus Christi, Texas.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PJM Interconnection, L.L.C.

[Docket No. ER01–355–000]

Take notice that on November 3, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed Interim Interconnection Service Agreement between PJM and First State Power Management, Inc.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by the parties.

Copies of this filing were served upon First State Power Management, Inc. and the state electric utility regulatory commissions within the PJM control area.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Carolina Power & Light Company

[Docket No. ER01–354–000]

Take notice that on November 3, 2000, Carolina Power & Light Company

(CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with The Detroit Edison Company. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of October 30, 2000, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Indianapolis Power & Light Company

[Docket No. ER00–3518–001]

Take notice that on November 3, 2000, Indianapolis Power & Light Company (IPL), tendered for filing its compliance filing in the above-referenced docket.

Copies of this filing have been served upon Citizens Gas & Coke Utility and the Indiana Utility Regulatory Commission.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. MidAmerican Energy Company

[Docket No. ER00–3273–001]

Take notice that on November 2, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a First Revised Service Agreement No. 15 dated July 10, 2000, entered into with Resale Power Group of Iowa, pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff Original Volume No. 5.

MidAmerican requested a July 27, 2000, effective date for the Service Agreement, as amended, subject to MidAmerican making a compliance filing to conform MidAmerican's previous filing in this matter dated July 26, 2000 to be consistent with the necessary filing rate schedule designations as required by Order No. 614, FERC Stats & Regs. ¶ 31,096 (2000) and Southwest Power Pool Inc., 92 FERC ¶ 61,109 (2000).

MidAmerican has served a copy of the compliance filing on the Resale Power Group of Iowa, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Central Illinois Light Company

[Docket No. ER00–3386–002]

Take notice that on November 2, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing Scheduled A to an Interconnection Agreement with Bio-Energy Partners for Generation Interconnection and Parallel Operation.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Enron Energia Industrial de Mexico, S. de R.L. de C.V.

[Docket No. EG01–25–000]

Take notice that on November 6, 2000, Enron Energia Industrial de Mexico, S. de R.L. de C.V. (Enron Mexico), a company with its principal place of business at Av. Lazaro Cardenas 2321, Ste. 601, Residencial San Agustin, San Pedro Garza Garcia, Nuevo Leon 66260 Mexico, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Enron Mexico is engaged in the development of a 245 MW natural gas powered cogeneration facility to be located near Monterrey, Mexico. From the facility, Enron Mexico will sell both electricity and steam under power purchase and steam purchase agreements to retail customers in Mexico.

Comment date: November 30, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–29450 Filed 11–16–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6903–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): *Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123,* EPA ICR #1424.04, OMB Control #2050–0077 which will expire on March 1, 2001. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 4, 2000.

ADDRESSES: Mail comments on specific aspects of this renewal of the information collection to Local Governments Reimbursement Project Officer, Office of Emergency and Remedial Response (5204–G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC, 20460. You may review the draft renewal information collection form and the instrument from 8:30 am to 5:30 pm, Monday through Friday by visiting Public Docket No. LGR, located at 1235 Jefferson Davis Highway, (ground floor) Arlington, VA. A reasonable fee my be charged for copying docket material.

Electronic or fax versions of this material may be obtained by calling Lisa Boynton on (703) 603–9052 and leaving an email address or fax number, or by emailing Boynton.Lisa@epa.gov.

FOR FURTHER INFORMATION CONTACT: Lisa Boynton, (703) 603–9052, Local Governments Reimbursement Project Officer, Office of Emergency and Remedial Response (5204–G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are Local Governments that apply for reimbursement under this program.

Title: Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA section 123, EPA ICR #1424.04, OMB Control #2050–0077 which will expire on March 1, 2001.

Abstract: The Agency requires applicants for reimbursement under this program authorized under section 123 of CERCLA to submit an application that demonstrates consistency with program eligibility requirements. This is necessary to ensure proper use of the Superfund. EPA reviews the information to ensure compliance with all statutory and program requirements. The applicants are local governments who have incurred expenses, above and beyond their budgets, for hazardous substance response. Submission of this information is voluntary and to the applicant's benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement:

Burden item	Average hours per application
Read Instructions[a]	1
Gather Information[b]	3
Compile Information[c]	3
Complete Application[d]	1
File and Maintain Information[e]	1
Total Estimated Burden Hours Per Application	9
Total Estimated Number of Applications Submitted by All Applicants per Year	× 200
Total Estimated Annual Burden Hours	1600
Total Estimated Cost Burden to Responders[f]	$ 23,300

[a] Time to read or hear instructions. This includes the time which will be needed by applicants to familiarize themselves with the requirements for requesting reimbursement and the instructions for completing the application form.

[b] Time to gather information. This includes the time necessary to collect various reports from files and extract pertinent information and find additional reference materials and information.

[c] Time to compile information. This includes the time necessary to assemble information specific to the response for which reimbursement is being sought. This may include interviewing first responders and ascertaining the number of work-hours involved in the response.

[d] Time to complete application. This includes the time required to enter the pertinent information on the application form in accordance with the line-by-line instructions.

[e] Time to file and maintain information. This includes the time needed for preparing file folders, indexes, and filing.

[f] Estimated hourly rate is $18.50. This estimate takes into consideration that the application may be prepared by a secretary, Fire Chief, County Clerk, Health Professional, or other administrative staff.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: October 2, 2000.

Larry Reed,
Acting Director, Office of Emergency and Remedial Response.

[FR Doc. 00–29506 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6612–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–L39057–OR Rating EC2, Rimrock Ecosystem Restoration Project, To Promote Healthy and Sustainable Watershed Conditions, Implementation, Umatilla National Forest, Heppner Ranger District, Grant, Morrow and Wheeler Counties, OR.

Summary: EPA expressed concerns regarding air quality due to prescribed burning, funding of K–V projects, and roads. EPA requested that the EIS commit to completing restoration projects; describe the smoke management program and provide information on road density.

ERP No. D–AFS–L65365–ID Rating EC2, Swan Flat Timber Sale, Proposal to Cut and Haul Sawtimber, Caribou National Forest, Land Resource Management Plan (LRMP), Montpelier Ranger District, Bear Lake County, ID.

Summary: EPA expressed concerns regarding road obliteration, air quality, harvesting in a roadless area, and beetle infestation. EPA requested clarification and additional information on these issues.

ERP No. D–BLM–K67053–CA Rating EC2, Mesquite Mine Expansion Project, To Expand the Existing Open-Pit, Heap-Leach, and Precious Metal Mine, Federal Mine Plan of Operations Approval, Conditional Use Permits and Reclamation Plan Approval, Imperial County, CA.

Summary: EPA expressed concerns based on the project's predicted long-term pit water quality, potential ecological risk, and impacts to waters of the U.S. EPA recommended additional information in the FEIS regarding pit water quality predictions, mitigation, reclamation and bonding, and inclusion of the waste rock sampling and disposal plan and a demonstration of compliance with the Clean Water Act section 404(b)(1) guidelines.

ERP No. D–FRC–E08020–00 Rating EO2, Gulfstream Natural Gas System Project, Construction and Operation, To Provide Natural Gas Transportation Service, AL, MS and FL.

Summary: EPA is concerned that the Gulfstream proposal would impact forested wetlands and marine hard "live" bottoms along the proposed pipeline route. Hard bottoms are essentially "unmitigatable". EPA also suggested that only one of the two competing alignments across the Gulf of Mexico (separate EISs) should be potentially certificated by FERC (Gulfstream vs. Buccaneer) or only one larger joint effort with modification and further mitigation.

ERP No. DR–BLM–K65213–NV Rating LO, Black Rock Desert area. Minor issues were raised concerning construction of fee collection stations and monitoring for OHV impacts.

Summary: EPA expressed a lack of objections to BLM's preferred management plan for the Black Rock Desert area. Minor issues were raised concerning construction of fee collection stations and monitoring for OHV impacts.

ERP No. DR–FAA–K51037–CA Rating EC2, Metropolitan Oakland International Airport (MOIA), Airport Development Plan (ADP), Reevaluation of the Forecasts and Planning Assumptions in the ADP, Airport Layout Plan Approval, Funding and COE section 404 and 10 Permits Issuance, Port of Oakland, Alameda County, CA.

Summary: EPA expressed concerns on cumulative noise, air quality and wetland impacts; impacts to areas regulated under section 10 of the Rivers and Harbors Act; and environmental justice impacts. EPA also expressed concern with the narrow range of alternatives and requested that one alternative eliminated from consideration be analyzed in detail.

Final EISs

ERP No. F–AFS–E65052–KY Daniel Boone National Forest, Implementation, Salvage Harvest Due to 1998 Storm Damage Timber, McCreary and Pulaski County, KY.

Summary: EPA remains concerned about degradation of the Rock Creek and Marsh Creek waterways from erosion and siltation associated with road building and forestry activities in these areas. Adherence to Best Management Practices and preventing use of off-highway vehicles in these areas should be vigorously implemented and strictly monitored to ensure that water quality and in-stream habitat are fully protected.

ERP No. F–BIA–K65223–CA Cortina Integrated Solid Waste Management Project, Development and Operation, Approval of Land Lease Cortina Indian Rancheria of Wintin Indians, Colusa County, CA.

Summary: The Final EIS addressed the concerns raised by EPA on the Draft EIS. EPA requested that commitments and mitigation measures in the FEIS be reflected in BIA's Record of Decision. Because the project is on tribal land, EPA noted its continuing regulatory and/or permit role under several federal laws, including the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act.

ERP No. F–NPS–J61102–00 Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr. Memorial Parkway Winter Use Plan, Implementation, Fremont County, ID, Gallatin and Park Counties, MT and Park and Teton Counties, WY.

Summary: EPA's review has concluded that the preferred alternative for this project would adequately remedy the on-going significant impacts to environmental resources and human health in these Parks. The document provides a reasonable range of alternatives and discloses, in detail, the environmental effects of each alternative.

ERP No. F–SFW–K99029–NV Clark County Multiple Species Habitat Conservation Plan, Issuance of a Permit to Allow Incidental Take-of-79 Species, Clark County, NV.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–COE–K32046–CA Port of Los Angeles Channel Deepening Project, To Improve Navigation and Disposal of Dredge Material for the Inner Harbor Channels, Los Angeles County, CA.

Summary: EPA's review found the Final Supplemental EIS to be generally responsive to concerns EPA raised on the Draft Supplemental EIS. EPA provided comments on toxic air contaminants (hazardous air pollutants) associated with the project and the suitability of dredged materials for aquatic or ocean disposal. EPA asked the Corps to explore the feasibility of reasonable mitigation measures for reducing emissions of air toxics.

Dated: November 14, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–29528 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6612–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly Receipt of Environmental Impact Statements filed November 6, 2000 through November 9, 2000 pursuant to 40 CFR 1506.9.

EIS No. 000381, Final EIS, BOP, CA, Lassen County Federal Correctional Institution (FCI), Construction and Operation, To House Median-Security Inmates and Federal Prison Camp, Possible Site is Southwest Site, Lassen County, CA, Due: December 18, 2000, Contact: David J. Dorworth (202) 514–6470.

EIS No. 000382, Final EIS, SFW, CA, Trinity River Mainstem Fishery Restoration, To Restore and Maintain the Natural Production of Anadromous Fish, Trinity and Humboldt Counties, CA, Due: December 18, 2000, Contact: George Guillen (707) 822–7201.

EIS No. 000383, Draft EIS, BLM, NM, Sierra and Otero Counties Resource Management Plan Amendment and Federal Fluid Minerals Leasing and Development, Implementation, Sierra and Otero Counties, NM, Due: February 20, 2001, Contact: Tom Philips (505) 525–4377.

EIS No. 000384, Draft Supplement, FHW, CO, Colorado Forest Highway 80, Guanella Pass Road (also known as Park County Road 62, Clear Creek County Road 381 and Forest Development Road 118), Additional Alternative includes Rehabilitation, Light Reconstruction and Full Construction, Funding, Clear Creek and Park Counties, CO, Due: January 16, 2001, Contact: Richard Cushing (303) 716–2138.

EIS No. 000385, Final EIS, COE, NB, Sand Creek Watershed Restoration Project, To Develop Environmental Restoration, City of Wahoo, Saunders County, NB, Due: December 18, 2000, Contact: Kevin Mayberry (402) 221–4020.

EIS No. 000386, Final EIS, COE, CA, Murrieta Creek Flood Control and Protection, Implementation, Riverside County, CA , Due: December 18, 2000, Contact: Timothy Smith (213) 452–3854.

EIS No. 000387, Final EIS, AFS, MT, Rocky Mountain Front Mineral Withdrawal, Implementation, Helena and Lewis and Clark National Forests, Great Falls, MT, Due: December 18, 2000, Contact: Rick Prausa (406) 791–7720.

EIS No. 000388, Draft EIS, FHW, PA, NY, US Route 15 Improvement Project, from PA–6015, section G–20 and G–22 Tioga County, Pennsylvania and PIN 6008.22.123 Steuben County, New York (US Route 15 between PA Route 287 and Presho, New York, Funding and COE section 404 Permit, Tioga County, PA and Steuben County, NY, Due: January 31, 2001, Contact: James A. Cheatham (717) 221–3461.

EIS No. 000389, Final EIS, BLM, CA, Imperial Project, Open-Pit Precious Metal Mining Operation Utilizing Heap Leach Processes, Updated Information concerning "Endangered, Rare or Threatened" Biological Resources, Plan of Operations and Reclamation Plan Approvals, Right-of-Way Grants, Conditional Use/U.S. COE Permits, El Centro Resource Area, Desert District, Due: December 18, 2000, Contact: Glen R. Miller (760) 337–4400.

EIS No. 000390, Final EIS, AFS, Forest Service Roadless Area Conservation, Implementation, Proposal to Protect Roadless Areas, Due: December 18, 2000, Contact: Scott Conroy (703) 605–5299.

Amended Notices

EIS No. 000376, Final EIS, AFS, ID, Goose Creek Watershed Project, Harvesting Timber and Improve Watershed, Payette National Forest, New Meadows Ranger District, Adams County, ID, Due: December 8, 2000, Contact: Kimberly Brandel (208) 347–0300.

Revision of FR Notice published on 11/09/2000: CEQ Due Date Corrected from 12/11/2000 to 12/08/2000.

EIS No. 000377, Final EIS, COE, MO, Chesterfield Valley Flood Control Study, Improvement Flood Protection, City of Chesterfield, St. Louis County, MO, Due: December 8, 2000, Contact: Deborah Foley (314) 331–8485.

Revision of FR notice published on 11/09/2000: CEQ Due Date Corrected from 12/11/2000 to 12/08/2000.

EIS No. 000379, Final EIS, COE, WA, Programmatic EIS—Green/Duwamish River Basin Restoration Program, Capitol Improvement Type Program and Ecological Health, King County, WA, Due: December 8, 2000, Contact: Patrick Cagney (206) 764–6577.

Revision of FR notice published on 11/09/2000: CEQ Due Date Corrected from 12/11/2000 to 12/08/2000.

Dated: November 14, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–29529 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6903–5]

Request for Applications, Ecology and Oceanography of Harmful Algal Blooms Program

AGENCY: Environmental Protection Agency.

ACTION: Notification of financial assistance for project assistance.

SUMMARY: The purpose of this notice is to advise the public that the participating agencies are soliciting research proposals of up to 3 years duration, and depending on appropriations up to 5 years for multidisciplinary regional studies, for the Ecology and Oceanography of Harmful Algal Blooms (ECOHAB) program. This program provides support for research on algal species whose populations may cause or result in deleterious effects on ecosystems and human health. Studies of the causes of such blooms, their detection, effects, mitigation, and control in U.S. coastal waters, are solicited. This document details the requirements for applications for research support that will be considered by the Federal research partnership.

DATES: The deadline for proposals is January 31, 2001, by 3:00 PM, EST.

ADDRESSES: Submit the original and twenty copies of your proposal to Coastal Ocean Program Office, N/SCI2, SSMC#3, 9th Floor, Room 9752, 1315 East-West Highway, Silver Spring, MD 20910. The required forms for applications with instructions are accessible on the Internet at http://es.epa.gov/ncerqa/rfa/forms/downlf.html. Forms may be printed from this site.

The complete announcement program can be accessed on the Internet at *http://www.epa.gov/ncerqa*, under "announcements."

AWARDS: Final selection of awardees by the participating agencies will be determined on the basis of peer and panel recommendations, applicability of the proposed effort to the interests and objectives of an agency, and the availability of funds. It is anticipated that each award will be made through and be administered by a single agency; however, several agencies may participate in providing assistance to individual components of multi-institutional projects. Applicants recommended for funding may be requested to resubmit their proposals and modify their budgets and/or work plans to comply with special requirements of the particular agency supporting their awards. Awards will be subject to the terms and conditions of the sponsoring agency.

FOR FURTHER INFORMATION CONTACT: Technical Information: Dr. Kevin Sellner, ECOHAB Coordinator, COP Office, 301–713–3338/ext 127, EMail: ksellner@cop.noaa.gov. Administrative Information: Dr. Robert E. Menzer, EPA/NCER, (202) 564–6849, EMail: menzer.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

Program Goals and Topic Areas

The National Center for Environmental Research/Environmental Protection Agency (EPA); the Coastal Ocean Program, and the Office of Protected Resources, National Oceanic and Atmospheric Administration (NOAA)/Department of Commerce; the Directorate for Geosciences, Division of Ocean Sciences/National Science Foundation (NSF); the Office of Naval Research (ONR)/Department of Defense; and the Office of Earth Science/National Aeronautics and Space Administration (NASA) are cooperating in an opportunity for investigators to propose activities to address three primary areas in the national problem of HABs. For the first area, proposals are sought for individual studies or small interdisciplinary efforts that address gaps in general knowledge related to the nature of HAB phenomena. These studies should address fundamental ecological and oceanographic questions related to HABs. The second area of interest is the prevention, control, and mitigation of HABs and their impacts. The purpose of this area is to encourage research into key questions on the underlying mechanisms involved with HABs and their control and accompanying ecosystem impact, without necessarily being limited to particular study regions. The third research area is to characterize the impact of acute and chronic exposure to HAB species or toxins on marine mammals, birds, and other protected species.

Eligibility

Academic and not-for-profit institutions located in the U.S., and state or local governments, are eligible under all existing authorizations. Some participating agencies are authorized to make awards to profit-making firms and international institutions. NOAA and other permitted Federal partnering agencies may fund investigators from Federal laboratories that successfully compete through the ECOHAB Program announcement, but salaries of full time Federal employees will be in accord with individual agency policies. Federal investigators will be required to submit certifications or documentation which clearly show that they have specific legal authority to receive funds from another Federal agency in excess of their appropriations. Applications from non-Federal and Federal applicants will be competed against each other. Proposals from Federal researchers deemed acceptable and selected for funding will be funded through a medium other than a grant or cooperative agreement, where legal authority exists for such funding. In order for projects to be eligible for support by NOAA Sea Grant, the projects must include non-Federal matching funds equivalent to 50% of the total Federal funds requested.

How To Apply

The original and twenty (20) copies of the fully developed application (21 in all) and one (1) additional copy of the abstract, prepared in accordance with the instructions in the full announcement, must be received by NOAA no later than 3:00 P.M. Eastern Time on the closing date, January 31, 2001.

Program Authorities. For COP: 33 U.S.C. 883d and P.L. 105–383; for the Office of Protected Resources/NOAA: 16 U.S.C. 1382 and 16 U.S.C. 1421a; EPA: 33 U.S.C 1251 *et. seq.* and 40 CFR parts 30 and 40; for NSF: 42 U.S.C. 1861 *et. seq.*; for ONR: 10 U.S.C 2358 as amended and 31 U.S.C 6304; and for NASA: 14 CFR part 1260.

Catalog of Federal Domestic Assistance Numbers. 11.478 for the Coastal Ocean Program; 11.472 for NOAA/Office of Protected Resources; 66.500 for the Environmental Protection Agency; 47.050 for the National Science Foundation, and 12.300 for the Office of Naval Research.

Dated: October 31, 2000.

Approved for publication.

Norine E. Noonan,

Assistant Administrator for Research and Development, USEPA.

[FR Doc. 00–29503 Filed 11–16–00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–200003; FRL–6751–8]

Technical Resource Center for Integrated Pest Management in Schools and Day Care Centers; Solicitation of Grant Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting pre-application grant proposals and is prepared to provide up to $100,000 for the establishment of a Technical Resource Center for promoting the adoption of integrated pest management (IPM) in schools and day care centers. This Center will be regionally based (region of the country and target states to be identified by the applicant). The Center will provide information, guidance, education, training and other tools necessary for schools and day care centers to successfully launch and sustain IPM programs geared at reducing children's exposure to pests and pesticides. EPA will award a cooperative agreement with up to $100,000 in initial funding, with the possibility of additional future funding depending on the availability of funds budgeted for this purpose. Selection of the successful grantee will be made based on the evaluation of the pre-application proposal and the results of oral interviews with prospective grantees. This notice describes eligibility, activities, application procedures and requirements, and evaluation criteria

DATES: All pre-applications must be received on or before December 15, 2000.

ADDRESSES: Submit pre-application proposals to: Katherine J. Seikel, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information contact: Katherine J. Seikel, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (703) 308–8272; e-mail address: seikel.kathy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to all entities eligible to receive funding pursuant to the assistance award authority of FIFRA section 20. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Scope and Purpose

The cooperative agreement to be funded pursuant to this announcement will provide funding for activities designed to foster the adoption and maintenance of IPM programs in schools and day care centers in a particular region of the country, and in states to be selected by the grantee. Thus, we anticipate this center being regional—not national—in scope. Applicants are expected to provide information on how and why they have targeted a particular region of the country for IPM in schools, and on the number of schools and day care centers in the region they intend to serve (so EPA can gauge the scope and feasibility of the project plan).

Applicants should provide information on the status of IPM implementation in this region as it exists today. Applicants should also outline specific goals and include a strategic plan for changing the status quo as a result of activities funded under this assistance agreement. Applicants are encouraged to provide clear-cut, measurable goals for their work under this cooperative agreement. An example would be the number of schools and day care centers in the target region, the number of those schools and day care centers currently practicing IPM, and the number of schools/day care centers which the grantee will have engaged in the establishment of IPM programs by the end of the first year of this cooperative agreement.

The expected duration of this project is 1–2 years. The applicant has the flexibility to propose the start and end dates.

III. Eligibility

Eligible recipients are all entities eligible to receive grants under the authority of FIFRA section 20, as amended by Public Law 106–074. Eligible entities include, but are not limited to States, tribes, institutions of higher learning, non-profit

organizations, for-profit businesses, and individuals.

A. General Requirements

1. There are no requirements for matching funding under this grant program. However, applicants are encouraged to seek funding from sources other than EPA to supplement the income of this Center. Applicants must identify, as part of this proposal, any funds from other sources (private or public) that will be used to carry out proposed grant projects.

2. If the applicant has conducted, or is currently working on a related project(s), please provide a brief description of those projects and funding sources in the application.

B. Administrative Reporting Requirements

The applicant must provide EPA with the original plus three copies of the Semi-annual progress reports. These reports must include:

1. Total financial expenditures for the quarter, with costs broken down by cost element, i.e. direct labor, travel costs, supplies, equipment sub contract costs, sub grantee costs, indirect costs.

2. For direct labor, provide the names and percentage time devoted to the project for each person assigned to the assistance agreement.

3. For travel costs, provide names of travelers, destinations, and purpose of trip(s).

4. For indirect costs (overhead, fringe benefits, general and administrative expenses, etc.), provide the base of allocation, the name of the cognizant audit Agency and the period for which final rates were negotiated.

5. Total estimated expenditures for the next quarter, with costs broken down by cost element and anticipated activities for the upcoming quarter.

6. Explanation of expenditures that are significantly higher or lower than projected in the original budget estimate. If expenditures are higher than originally estimated, explain how project activities will be accomplished within the originally budgeted amount or, alternatively, provide a projection of any anticipated shortfall or activities that must be reduced or curtailed to stay within the budget.

7. Justification for any anticipated changes to personnel assigned to the project or changes to the level of effort to be devoted by approved personnel. Provide curricula vitae for any proposed additions or replacements to the project team.

8. A summary statement of funds available for the budget period, expenditures by quarter for all quarters included in the budget period, and funds remaining in the budget period.

9. Explanation of any difficulties encountered during the reporting period or foreseen for future reporting periods that might hinder the recipient's accomplishment of planned project activities.

10. Technical progress, including an accounting of all work shops attended and held, training provided, consultations, tally of phone calls to 800 number, amount and nature of all written materials distributed to outside parties, number of facilities that have launched new IPM programs, and any other measures that can serve as measures of grantee progress toward institutionalization of IPM programs in schools falling within its target zone. The technical progress report should also provide information on obstacles encountered, unforseen difficulties or any other indicators that program objectives may not be accomplished on time and reasonably in conformance with anticipated project costs.

In addition to periodic progress reports, the grantee shall furnish the EPA Project Officer ALL materials developed or maintained by the Center. The Government reserves the right to cite, distribute, and otherwise use these materials for public purposes which extend beyond the scope of this assistance agreement.

IV. Authority

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), section 20, Research, as amended by Pubic Law 106–074 authorizes EPA to award grants for the purpose of conducting research, development, and monitoring as necessary, "Provided that, notwithstanding any other provisions of law, beginning in FY 2000 [October 1, 1999] and thereafter, grants awarded under section 20 of FIFRA, as amended, shall be available for research, development, monitoring, public education, training, demonstrations, and studies."

V. Activities to be Funded

EPA will provide financial assistance in the form of a cooperative agreement to fund a Technical Resource Center for IPM in schools to fund activities proposed by the grantee, in consultation with EPA. These activities may include:

1. Establishing programs to increase public awareness of IPM and undertaking all such actions as may be necessary to aggressively promote the adoption of IPM programs by schools and day care centers in the target region.

2. Creating awareness of IPM to prospective school administrators or other decision-makers through effective use of outreach and other communications strategies. (This might include publication of newsletters, development of a web page, providing a toll-free telephone line, etc.).

3. Coordinating development and distribution of guidance and other resources necessary for successful implementation of IPM in schools and day care centers falling within the region targeted by the grantee. This could include user friendly best practices, "how-to" guides, pest specific management tips, etc. Much of this guidance already exists; therefore, it is expected that the center would devote substantially more effort toward assessing the value of existing tools for schools (guidance, handbook, video and audio tapes, etc.) and determining which is best suited for widespread distribution than on developing new materials.

4. Building and maintaining a library of all applicable state-developed school IPM materials.

5. Establishing a core group of nationally recognized school IPM trainers and consultants. Providing training and work shops for groups such as school administrators, facilities services staff, food services staff, and teachers.

6. Maintaining a database and communications network. This could involve some new development but should, to the extent possible, draw upon existing resources to avoid re-inventing the wheel and to maximize the application of grant funds toward the diffusion of IPM in targeted schools districts. In all likelihood, this will require establishing a toll free 800 number to handle call-ins.

7. Finding and filling information gaps to facilitate adoption of IPM in schools.

8. Developing training efforts such as a national short course on IPM at the Center's location, symposia and on-site visits for coordinators of new and existing programs, etc.

9. Measuring the effectiveness of local IPM efforts through use of model guidelines for IPM training and implementation or other methods developed by the cooperator.

10. Creating guidance for schools to self-evaluate (or for outside parties to evaluate) schools' implementation of IPM.

11. Providing assistance to the State Pest Control Associations and the National Pest Management Association in training Pest Control Operators on school IPM implementation.

VI. Pre-Application Requirements, Procedures, and Schedule

Applicants must submit a proposal for the pre-application procedure. The pre-application, as described in this unit, consists of two parts—a work plan and a budget.

The Agency will use the applicant's work plan and budget to select projects to be funded under this grant program. After EPA conducts a review of all pre-applications, it may, at its discretion, conduct interviews, either telephonically or in person, with applicants. The results of the interview, along with written material accompanying the proposal submission, will be used to determine the successful applicant. The successful applicant will be contacted and requested to submit other documents (such as the "Application for Federal Assistance" form, a "Budget Information: Non-Construction Programs" form, and other required forms) to complete the application process.

All applicants must submit one original and three copies of the pre-application (double-sided copies). Pre-applications must be reproducible (for example, stapled in the upper left-hand corner, on white paper, and with page numbers). The deadline for EPA's receipt of pre-applications is December 15, 2000.

The pre-application consists of the following two parts.

1. *Work plan*. The work plan must describe the proposed project. The work plan must be no more than 15-typed pages in length (excluding resumes). One page is one side of a single-spaced typed page. The pages must be letter size (10 or 12 characters per inch (cpi) and must have margins that are at least 1 inch.

Resumes of key personnel shall be included in an appendix to the proposal and should include references (names, phone numbers or other contact information) for previous or current grants or contracts within the last 5 years. The appendix must be no more than 10 pages total and follows the same paging and spacing description as provided above.)

2. *Budget*. The budget should include the following categories of costs:

A. Personnel
B. Fringe benefits
C. Travel
D. Equipment
E. Supplies
F. Contractual
G. Other
H. Total direct charges (sum of personnel, fringe benefits, travel, equipment, supplies, contractual, and other)
I. Indirect charges and total (sum of total direct charges and indirect charges)

VII. Evaluation Criteria

EPA will review all applications. Applications will be reviewed for quality, strength, and completeness against the following criteria:

1. *Management plan and technical approach*. This will include, among other things, the plan for making use of available resources to stock the center, plan for becoming financially self-sufficient, strategy for determining the order of priority for introducing IPM into various states and school districts, etc. Applicant must include reasonable and attainable goals and an approach that is clearly detailed. The plan should include expected outcomes and procedures that will be used to evaluate progress toward achievement of these outcomes. Applicant should provide information on projects of similar scope and magnitude that he/she has managed.

2. *Technical expertise*. This includes qualifications, education, training and field experience of all staff assigned to the project. The applicant should describe positions of staff, roles and responsibilities, and their qualifications. Applicant should include documentation of qualified expert staff who may be used as a reference but may not be directly compensated.

3. *Budget and schedule*. This budget and schedule will be evaluated to ensure they are reasonable, clear, and consistent with the intended use of the funds. Applicants should assume that this project will be funded for 18 months to 2 years only. The availability of funds for additional time periods is not known at this point in time. EPA's role is to provide start-up funding for the center. It is anticipated that the center will ultimately become self-sustaining.

VIII. Submission to Congress and the Comptroller General

Under the Agency's current interpretation of the definition of a "rule," grant solicitations such as this which are competitively awarded on the basis of selection criteria; are considered rules for the purpose of the Congressional Review Act (CRA). The CRA, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, children's health, pesticides.

Dated: November 8, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc 00–29512 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6903–6]

Investigator-Initiated Grants: Request for Applications

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for applications.

SUMMARY: This notice provides information on the availability of fiscal year 2001 investigator-initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research areas within the solicitations and are listed below.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research (8703R), 1200 Pennsylvania Avenue, NW., Washington DC 20460, telephone (800) 490–9194. The complete announcements can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa under "announcements."

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Environmental Monitoring for Public Access and Community Tracking (EMPACT); (2) Children's Vulnerability to Toxic Substances in the Environment; (3) Research Program on Statistical Survey Design and Analysis for Aquatic Resources (joint with NASA); (4) Aggregate Exposure Assessment for Pesticides: Longitudinal Case Studies; (5) Ecological Indicators for Gulf of Mexico Estuaries; and (6) Environmental Statistics Center. Applications must be received as follows: February 21, 2001, for topic (1); February 28, 2001, for topic (2); March 1, 2001, for topic (3); March 7, 2001, for topic (4); March 8, 2001, for topic (5); and March 21, 2001, for topic (6).

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contact persons for the EMPACT RFA are Barbara Karn (*karn.barbara@epa.gov*), telephone 202–564–6820, and Charlotte Cottrill (*cottrill.charlotte@epa.gov*), telephone 202–564–6771. Contact person for the Children's Vulnerability RFA, the Aggregate Exposure Assessment for Pesticides RFA, and the Environmental Statistics Center RFA is Chris Saint (*saint.chris@epa.gov*), telephone 202–564–6909. Contact persons for the Ecological Indicators for Gulf of Mexico Estuaries RFA are Barbara Levinson (*levinson.barbara@epa.gov*), telephone 202–564–6911, and Eric Lindstrom (elindstr@hq.nasa.gov), telephone 202–358–4540. Contact person for the Statistical Survey Design and Analysis RFA is Barbara Levinson (*levinson.barbara@epa.gov*), telephone 202–564–6911.

Dated: November 1, 2000.
Approved for publication

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 00–29505 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6903–1]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Engineering Committee of the US EPA Science Advisory Board (SAB), will meet December 5–7, 2000 in conference room 6530, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The meeting will begin by 8:30 a.m. on December 5 and adjourn no later than 4:00 p.m. on December 7. All times noted are Eastern Standard Time. The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

Purpose of the meeting: At this meeting, the Committee will consider for approval the report of the Natural Attenuation Research Subcommittee. The Subcommittee reviewed the present and proposed natural attenuation research program of EPA's Office of Research and Development (ORD) so that ORD can refine its plans and programs on this topic. This activity began with a conference call meeting on January 26th conference call meeting, included a face-to-face meeting August 14–15, 2000; the most recent meeting was October 25, 2000. Background, including the availability of review materials, will be found in previous notices. (The most important of these is 65 FR 1866–1867, January 12, 2000).

The Committee will also consider potential FY2001 activities. The Agency has requested a review of the Surface Impoundments Study for the Office of Solid Waste and a consultation on sustainability research for the Office of Research and Development. The Committee will consider whether to use the draft report of the Science Advisory Board's Risk Reduction Options Subcommittee as an input to a potential initiative on risk reduction.

The Committee has also requested briefings on various Agency topics. The exact briefings depend upon the availability of the speakers, but may include: contaminated sediments, the environmental impacts of natural hazards, industrial ecology, and the information needs of risk managers.

Availability of materials: A copy of the Natural Attenuation draft and a draft meeting agenda will be available on the SAB website (*www.epa.gov/sab*) approximately two weeks prior to the meeting.

For further information: Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Kathleen White Conway, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at conway.kathleen@epa.gov. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Kathleen White Conway no later than noon Eastern Standard Time on November 28.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General information: Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Conway at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 9, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–29507 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34203E; FRL–6753–3]

Chlorpyrifos; Receipt of Requests For End-Use Product Amendments and Cancellations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Companies that hold the pesticide registrations of enduse pesticide products containing chlorpyrifos [O,O-diethyl O-(3,5,6-trichloro-2-pyridinyl)phosphorothioate] have asked EPA to cancel or amend their registrations. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests from the registrants. These requests for voluntary cancellation and amendment are the result of a memorandum of agreement signed by EPA and the basic manufacturers of the active ingredient chlorpyrifos on June 7, 2000. Registrants identified in this notice requesting voluntary cancellation and amendments are in large part the customer of these basic manufacturers. Given the potential risks, both dietary and nondietary, that chlorpyrifos use poses, especially to children, EPA intends to grant the requested cancellations and amendments to delete uses. EPA also plans to issue a cancellation order for the deleted uses and the canceled registrations at the close of the comment period for this announcement. Upon the issuance of the cancellation order, any distribution, sale, or use of chlorpyrifos products will only be permitted if such distribution, sale, or use is consistent with the terms of that order.

DATE: Comments must be received on or before December 18, 2000. Comments on the requested amendments to delete uses and the requested registration cancellations must be submitted to the address provided in **ADDRESSES** and identified by docket control number OPP–34203E.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34203E in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8589; fax number: (703) 308–8041; e-mail address: myers.tom@epa.gov.

SUPPLEMENTARY INFORMATION: This announcement consists of three parts. The first part contains general information. The second part addresses the registrants' requests for registration cancellations and amendments to delete uses. And the third part proposes existing stock provisions that will be set forth in the cancellation order that the Agency intends to issue at the close of the comment period for this announcement.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use chlorpyrifos products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment for chlorpyrifos, go to the Home Page for the Office of Pesticide Programs or go directly http://www.epa.gov/pesticides/op/chlorpyrifos.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34203E. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34203E in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by email to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34203E. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Receipt of Requests To Cancel and Amend Registrations To Delete Uses

A. Background

In a memorandum of agreement (Agreement) effective June 7, 2000, EPA and the basic manufacturers of the active ingredient chlorpyrifos agreed to several voluntary measures that will reduce the potential exposure to children associated with chlorpyrifos containing products. EPA initiated the negotiations with registrants after finding chlorpyrifos, as currently registered, was an exposure risk especially to children. As a result of the Agreement, registrants that hold the pesticide registrations of end-use products containing chlorpyrifos (who are in large part the customer of these basic manufacturers) have asked EPA to cancel or amend their registrations for these products. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests from the registrants. With respect to the registration amendments, the registrants have asked EPA to amend end-use product registrations to delete the following uses: All termite control uses (these will be phased out); all residential uses (except for ant and roach baits in child resistant packaging (CRP) and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); all indoor non-residential uses (except ship holds, industrial plants, manufacturing plants, food processing plants, and containerized baits in CRP); all outdoor non-residential sites (except golf courses, road medians, industrial plant sites, nonstructural wood treatments, and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); and use on post-bloom apple trees. In addition, the companies agreed to limit the maximum chlorpyrifos end-use dilution to 0.5% active ingredient (a.i.) for termiticide uses that will be phased out, limit the maximum label application rate for outdoor non-residential use on golf courses, road medians, and industrial plant sites to 1 lb/a.i. per acre, and either classify all new/amended chlorpyrifos products (except baits in CRP) as Restricted Use or package the products in large containers, depending on the formulation type, to ensure that remaining chlorpyrifos products are not available to homeowners. In return, EPA stated that with this Agreement, it had no current intention to initiate any cancellation or suspension proceedings under section 6(b) or 6(c) of FIFRA with respect to the issues addressed in the Agreement.

EPA previously published on September 20, 2000 a **Federal Register** Notice (65 FR 56886) (FRL–6743–7) announcing receipt of amendments and cancellations for manufacturinguse products and associated enduse products for signatories of the Memorandum of Agreement that was signed on June 7, 2000 and subsequent ancillary agreements. A copy of the Memorandum of Agreement that was signed on June 7, 2000 is located in docket control number OPP–34203D.

B. Requests for Voluntary Cancellation of End-Use Products

Pursuant to the Agreement and FIFRA section 6(f)(1)(A), several registrants have submitted requests for voluntary cancellation of registrations for their end-use products. The registrations for which cancellations were requested are identified in the following Table 1.

TABLE 1.–END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Verdant Brands, Inc	70–178	Dursban 1/2G Granular Insecticide
	70–180	Dursban Lawn & Ornamental Spray
	70–184	Kill-Ko Dursban 1G Granular Insecticide
	70–228	Home Pest Insect Killer
	70–232	Rigo Dursban 2EC Liquid Insecticide
	70–255	Rigo Home Pest Control
	70–286	Rigo Dursban 1E Insecticide
	70–290	Rigo's Best Termite Killer
Dexol, A Division of Verdant Brands, Inc	192–141	Dexol Dexa-Klor Granules Soil Insect Control
	192–142	Dexol Dexa-Klor Insect Spray
	192–151	Dexol Dexa-Klor Pest Control Indoor Insect Killer

TABLE 1.–END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	Reg. No.	Product
	192–171	Dexol Roach, Cricket and Spider Dust
	192–173	Dexol Termite and Lawn Insect Killer
	192–180	Dexol Dursban Granules Insect Control
	192–192	Dexol Predator Home Insect Killer II
Whitmire Micro-Gen Research Laboratories, Inc.	499–147	Whitmire PT 270 Dursban
	499–256	Whitmire Chlorpyrifos Pressurized Residual Spray
	499–270	Whitmire 1–12 Insecticide
	499–292	Whitmire PT 279 Engage Residual Injection System
	499–315	Whitmire Duration PT 275
	499–317	Whitmire 1–6 Insecticide
	499–364	Whitmire PT 1900 Total Release Insecticide
	499–379	Whitmire PT 479 Regulator
	499–423	Whitmire TC-135 Chlorpyrifos MC
	499–424	Whitmire TC-160 Microencapsulated Termiticide
	499–448	Whitmire TC 151 Bait
Walco-Linck Company	506–158	TAT Flea & Tick Killer with Residual Action
	506–164	TAT Roach & Ant Killer II
The Scotts Company	538–69	Scotts Western Lawn Insect Control
	538–94	Scotts Western Lawn Insect Control Plus Fertilizer
	538–140	Summer Insect and Disease Control Plus Lawn Fertilizer
	538–153	Scotts Proturf Insect Control Plus Fertilizer
	538–154	Scotts Summer Insect Control Plus Fertilizer For Lawns
Rockland Corporation	572–213	Rockland Insecticide for Wood Destroying Pests
	572–219	Rockland Super Professional Dursban Chinch Bug Killer
Indy Specialty Products, Inc.	654–131	Klor-Ban Concentrate
Prentiss Incorporated	655–577	Prentox Residual Insect Spray #2
	655–739	Prentox Pyrifos 0.5 Water Base Insecticide
	655–743	Prentox Pyrifos 1E
The Garden Grow Company	802–530	Lilly/Miller Chlorban Insect Spray
	802–532	Lilly/Miller Chlorban Insect Granules
	802–560	Lilly/Miller 1% Chlorban Insect Granules
	802–595	Lilly/Miller Hose'n Go Ant, Flea & Tick Killer
Southern Agricultural Insecticides, Inc.	829–250	Home & Garden Home Pest Control Spray
	829–281	SA-50 Brand Home Pest Control Concentrate
Green Light Company	869–158	Green Light Dursban Granules
	869–168	Green Light Many Purpose Dursban Granules
	869–172	Green Light Borer Killer II
	869–184	Green Light Fire Ant Killer
	869–185	Green Light House Plant Spray II
	869–191	Green Light Indoor Flea & Tick Spray
	869–205	Green Light Ready-to-Use Fire Ant Mound Drench
	869–209	Green Light Dursban 5% Granules
	869–210	Green Light Double Dursban Granules
	869–221	Green Light Many Purpose Dursban Concentrate II
The Garden Grow Company	909–94	Cooke Act Plus Lawn Insecticide
	909–108	Cooke Ant Barrier
Agriliance	1381–149	Green Velvet Lawn Food Plus Insect Control
Universal Cooperatives, Inc.	1386–627	Red Panther Dursban Granular Turf and Lawn Insecticide
	1386–628	Red Panther Dursban 1
	1386–659	Agway Insect Spray
I. Schneid	2155–127	KR–24
PBI/Gordon Corporation	2217–646	Gordon's Dursban Turf Insecticide
Sergeant's	2517–52	Sergeant's Flea & Tick Collar
	2517–57	Sergeant's Fast-Acting Flea & Tick Collar for Dogs
Hartz	2596–135	Hartz 330 Day Flea & Tick Collar for Dogs
Wellmark International	2724–327	Zoecon RF-150 Yard and Kennel Spray
	2724–486	Arthitrol 0.5% Dursban (Granular) Ant and Roach Bait
Coyne Chemical Company	3050–136	Coyne Formula No. 101
ABC Compounding	3862–93	Assault
	3862–126	WB Residual Pressurized Spray
BETCO	4170–78	RA26 Residual Insecticide Spray
Combe Incorporated	4306–15	Sulfodene Scratchex Flea and Tick Collar for Dogs
Pet Chemicals	4758–135	Holiday Flea & Tick Killer
S.C. Johnson & Son, Inc.	4822–152	Raid Treatment for Crawling Insects
	4822–189	Raid Liquid Roach & Ant Killer Formula I
	4822–226	Raid Tree Guard Spray
	4822–230	Raid Outdoor Flea Killer
	4822–231	Raid Gypsy Moth & Japanese Beetle Killer II
	4822–232	Raid Gypsy Moth & Japanese Beetle Killer
	4822–236	Raid Tree Guard Spray Formula II
	4822–238	Raid Home Insect Killer Formula II
	4822–263	Raid Fire Ant Killer

TABLE 1.–END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	Reg. No.	Product
	4822–264	Raid Fire Ant Killer Formula 2
	4822–275	Raid Outdoor Insect Killer
	4822–382	Raid Wasp & Hornet Killer
	4822–390	Raid Wasp & Hornet Killer Formula XII
	4822–402	Raid Max Roach Bait III
	4822–412	Raid Wasp & Hornet Killer ND
	4822–451	Raid Wasp & Hornet Killer AD
	4822–498	PA Formula #2
Verdant Brands, Inc	5887–144	Black Leaf Dursban
	5887–177	Ready-to-Use Ant, Roach, Flea and Spider Spray
Midco Products Company, Inc.	6658–42	Pyreban-3
Carl Pool Products	6926–11	Carl Pool Lawn and Turf Food Plus Dursban 15–5–10
Cessco, Inc.	6959–73	Cessco ID Residual Insecticide
Carter-Wallace, Inc.	8220–38	Victory 12 Full Year Collar with Dursban Insecticide for Large Dogs
	8220–39	Victory II Full Season Cat Collar
Robinson Associates	8278–6	Metro (Tested) Soildrin D
Pursell Industries, Inc.	8660–10	Sta-Green Law Pest Control & Fertilizer 25–3–3
	8660–13	Sta-Green Lawn Pest Control & Fertilizer A
	8660–14	Sta-Green Lawn Pest Control & Fertilizer B
	8660–78	Dursban Lawn Insect Control
	8660–86	Dursban Granules
	8660–94	Green Up Insect & Grub Control with Dursban
	8660–97	Dursban 4E Insecticide
	8660–102	Dursban Plus
	8660–108	VertaGreen Dursban—DDVP 1.25 Turf Insecticide
	8660–109	VertaGreen Dursban—DDVP 2.50 Turf Insecticide
	8660–110	VertaGreen Home Pest Killer
	8660–122	Lawn & Ornamental Insect Spray Concentrate
	8660–123	Vertagreen Dursban 0.5% Granules
	8660–152	VertaGreen Professional Turf Food with Dursban
	8660–177	Golden Vigoro Insect Control Plus Lawn Fertilizer
	8660–182	Green Turf Lawn Food with Insect Control
	8660–193	Ideal 18 Insect Control Plus Lawn Fertilizer
	8660–194	Ideal 20 Insect Control Plus Lawn Fertilizer
	8660–195	Ideal 25 Insect Control Plus Lawn Fertilizer
	8660–203	Koos Dursban 1.00 Granules
	8660–213	Par Ex Slow Release Fertilizer Plus Insect Control
	8660–232	Vigoro 2.32 Insecticide Granules
	8660–239	Vigoro Granular Cinch Bug Control
	8660–240	Vigoro Insect Control Plus Lawn Fertilizer for Texas Turf
Sherwin-Williams Company	10900–67	858 P.D. Aqueous Roach & Ant Spray
Illinois Tool Works, Inc.	11694–91	Duramist
Speer Products Incorporated	11715–70	Speer Roach & Ant Killer
	11715–97	Magic Guard Dursban Ant & Roach Pressurized Spray
	11715–99	Magic Guard Ant & Roach Killer
	11715–110	Mug-A-Bug Professional Strength Insecticide
	11715–132	Better World Ready-to-use Insecticide
	11715–133	Mug-A-Bug II Professional Strength Insecticide
	11715–139	SPI Spot Treatment Spray
	11715–142	SPI Ant & Roach Spray
	11715–163	Speer Transparent Emulsion Spray 0.1% + 0.5%
	11715–298	Pro-Tect Home Pest Control
	11715–299	Speer Point Five Chlorpyrifos Aerosol
	11715–306	Speer Cyfluthrin Flea Killer
	11715–312	Speer D-Trans Residual Spray with Nylar
	11715–324	SPI Chlorpyrifos Wasp & Hornet Spray
	11715–326	SPI Chlorpyrifos Pet Area Treatment with Nylar
	11715–327	Security Granulated Chinch Bug Killer
Louisiana Chemical USA, Inc.	11746–15	Davis Kill-A-Bug XI
	11746–16	Davis Kill-A-Bug XII
Rainbow Technology Corporation	13283–8	Rainbow Insect Control
	13283–15	Rainbow Liquid RTU Fire Ant Killer
Positive Formulators, Inc.	26693–3	6 Months Pest Control
	26693–5	Killmaster II CC
Unicorn Laboratories	28293–35	Unicorn 30 Flea Spray
	28293–49	Unicorn Yard & Kennel Spray Concentrate
	28293–103	Unicorn House & Carpet Spray WB
	28293–104	Unicorn Dursban Household Insecticide
	28293–211	Termi–Chlor Termite Concentrate
	28293–321	Dursban 1EC Insecticide
PBI/Gordon Corporation	33955–540	Acme Ant Granules Contains Dursban Insecticide

TABLE 1.–END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	Reg. No.	Product
	33955–547	Acme Dursban Insecticide for Lawns & Ornamentals
	33955–550	Acme Roach-Rid Brand Home Pest Killer
Pet Chemicals	37425–10	Adams Surface Spray
	37425–24	Adams Lawn and Kennel Spray Concentrate
Morgro, Inc.	42057–100	Dursban (R) Insecticide
CCL Industries Inc.	46813–38	CCL Crawling Insect Killer I
	46813–42	CCL Insecticide Foam Spray I
Marman USA, Inc.	48273–16	Agroban 4E
Gro Tec, Inc.	59144–8	Ant, Flea & Tick Granules
	59144–9	Green Charm Dursban 1% Granules
	59144–37	R & M Yard & Kennel Spray Concentrate
Kop-Coat, Inc.	60061–106	Woodlife B Clear Wood Preservative
Contract Packaging, Inc.	67572–53	CP Flea and Brown Dog Tick Granules—S.F.
Speer Products Incorporated	68688–3	Elite Yard & Kennel Spray
	68688–40	Elite Dursban 1–12–R144 Insecticide

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that EPA cancel any of their pesticide registrations. Section 6(f)(1)(B) of FIFRA requires that EPA provide a 30-day period in which the public may comment before the Agency may act on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180-day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless (1) the registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrants have requested that EPA waive the 180-day comment period. In light of this request, EPA is granting the request to waive the 180-day comment period and is providing a 30-day public comment period before taking action on the requested cancellations. Given the potential risks, both dietary and nondietary, that chlorpyrifos use poses, especially to children, EPA intends to grant the requested cancellations at the close of the comment period for this announcement.

C. Requests for Voluntary Amendments to Delete Uses From the Registrations of End-Use Products

Pursuant to section 6(f)(1)(A) of FIFRA, several registrants have also submitted requests to amend their other enduse registrations of pesticide products containing chlorpyrifos to delete the aforementioned uses from any product bearing such use. The registrations for which amendments to delete uses were requested are identified in the following Table 2.

TABLE 2.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

Company	Reg. No.	Product/SLNs
Whitmire Micro-Gen Research Laboratories, Inc.	499–367	Whitmire PT 275 Dur-O-Cap Microencapsulated Chlorpyrifos Liquid Concentration
	499–405	Whitmire PT–1920 Total Release Insecticide
	499–413	Whitmire TC 100 Intern
	499–419	Whitmire PT 275 Dur-O-Cap Microencapsulated Chlorpyrifos
The Scotts Company	538–98	Proturf 30–5–3 Fertilizer Plus Insecticide III
	538–111	Proturf Insecticide III
	538–191	24–3–3 Fertilizer Plus Insecticide III
	538–226	Fertilizer Plus Insecticide/Preemergent Weed Control
Rockland Corporation	572–329	Urban Insect Spray
Prentiss Incorporated	655–441	Prentox Residual Concentrate DV-One
	655–466	Prentox Dursban 2E Insecticide
	655–499	Prentox Dursban 4E Insecticide
	655–696	Prentox Pyrifos 0.50 RTU
	655–764	Prentox Dursban 2.32G Granular Insecticide
	655–766	Prentox Dursban 1/2G Granular Insecticide
	655–786	Prentox Pyrifos Residual Spray
	655–792	Prentox D+2 Insecticide
	655–793	Prentox Super Brand D+2 Insecticide
Southern Agricultural Insecticides, Inc.	829–223	SA–50 Dursban .5G Granular insecticide
	829–279	SA–50 Dursban 2-E Insecticide
	829–280	SA–50 Dursban 4-E Insecticide
	829–291	SA–50 Brand Dursban 1% Mole Cricket Bait
	829–292	SA–50 Brand Dursban 2.5% Granular Insecticide
ISK Biocides, Inc.	1022–543	Chapcide 4-EC
Universal Cooperatives, Inc.	1386–652	Security Pro-Turf 1 Insect Control Granules
	1386–653	Security Pro-Turf 2 Insect Control Granules
	1386–613	Dursban Lawn and Ornamental Insect Control
	1386–615	Termite Kill II
	1386–649	Dursban 4E Insecticide
Wellmark International	2724–487	Arthitrol 0.5% Dursban Paste Bait
Cessco, Inc.	6959–67	Cessco Accudose Aerosol for Fire Ant Control
Knox Fertilizer Company, Inc.	8378–26	Dursban 92 with Plant Food
	8378–27	Dursban 114 + Fertilizer
	8378–28	Dursban 50 Granular Insecticide
	8378–33	Dursban 1.14 Granules
	8378–34	2.32 Dursban Granules
The Andersons, Inc.	9198–32	Turf Care for Lawn Maintenance 38–0–0 with Dursban Brand Insecticide
	9198–39	Turf Care Dursban 2.5G
	9198–68	The Andersons 1% Dursban Brand Insecticide
	9198–82	Tee Time Fertilizer with 0.52% Dursban 30–3–5
	9198–84	Andersons Tee Time 30–3–5 with 0.65% Dursban
	9198–85	Tee Time Fertilizer with 0.71% Dursban 30–3–5
	9198–98	Andersons Tee Time with Team/Dursban I
	9198–99	Andersons Tee Time 19–5–9 with Team/Dursban
	9198–127	Twinlight Professional Dursban Lawn Insect Killer
	9198–132	The Andersons 0.97% Dursban Brand Insecticide
	9198–137	The Andersons 0.5% Dursban Brand Insecticide
Gowan Company	10163–158	Gowan Chlorpyrifos 4E
Lesco, Inc.	10404–15	Lesco 2.32 Granular Insecticide
	10404–27	Lesco 40–0–0 Fertilizer with Dursban
	10404–29	Lesco 32–5–7 Fertilizer with Dursban
	10404–40	Lesco 20–0–10 Fertilizer with Dursban
	10404–67	Lesco 1% Dursban Granular
	10404–81	Lesco 0.97 Dursban Granules
Sungro Chemicals, Inc.	11474–40	Sungro Reside Du
	11474–55	Sungro Combo Water Base
	11474–66	Sungro Dursbo
	11474–90	Sungro Buggone II Residual Insecticide
Rainbow Technology Corporation	13283–14	Rainbow Fire Ant Killer
	13283–17	Rainbow KO Fire Ant Killer
Drexel Chemical Company	19713–504	Regatta 4E
Positive Formulators, Inc.	26693–2	Killmaster II
Unicorn Laboratories	28293–87	Unicorn House and Carpet Spray
	28293–99	Unicorn Dursban Spray
	28293–121	Unicorn Dursban—Resmethrin Spray
	28293–142	Unicorn Kennel Spray
	28293–149	Unicorn House and Carpet Spray II
	28293–200	Unicorn Dursban 2E
	28293–201	Unicorn Dursban 2.5% Granules
	28293–202	Unicorn Dursban 1.0% Granules
	28293–203	Unicorn Dursban 1%-D Dust
	28293–204	Unicorn Dursban 4E
	28293–205	Unicorn Dursban 1–12
	28293–210	Dursban 1E Insecticide
	28293–265	Unicorn Dursban 6.7% Insecticide
	28293–266	Dursban Plus Resmethrin Concentrate
Howard Johnson's Enterprises, Inc.	32802–19	Dursban Insecticide 0.7 Plus Fertilizer
	32802–20	Dursban 1.14 Granular Lawn and Turf Insect Control
	32802–21	Dursban 1.14 Plus Lawn Fertilizer
	32802–22	Dursban 2.32G
	32802–39	Dursban .5 Granules Insecticide
	32802–49	Dursban 100 Granules
Phaeton Corporation	47006–5	Orlik Dursban granules
Marman USA, Inc.	48273–13	Pestban 2E
	48273–14	Pestban TC
	48273–19	Pestban 4E
Biodyne Americas Corporation	59920–1	Super IQ Insecticide Coating APT
	59920–2	Super IQ Insecticide Coating LC

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be amended to delete one or more pesticide uses. The registrants have requested that EPA waive the 180-day comment period. In light of this request, EPA is granting the request to waive the 180-day comment period and is providing a 30-day public comment period before taking action on the requested amendments to delete uses. Given the potential dietary and nondietary risks that chlorpyrifos use poses, especially to children, EPA intends to grant the requested amendments to delete uses at the close of the comment period for this announcement.

III. Proposed Existing Stocks Provisions

The registrants have requested voluntary cancellation of the chlorpyrifos registrations identified in Table 1 and voluntary amendment to terminate certain uses of the chlorpyrifos registrations identified in Table 2. Pursuant to section 6(f) of FIFRA, EPA intends to grant the requests for voluntary cancellation and amendment. For purposes of the cancellation order that the Agency intends to issue at the close of the comment period for this announcement, the term existing stocks will be defined, pursuant to EPA's existing stocks policy at 56 FR 29362, Wednesday, June 26, 1991, as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation or amendment. Any distribution, sale, or use of existing stocks after the effective date of the cancellation order that the Agency intends to issue that is not consistent with the terms of that order will be considered a violation of section 12(a)(2)(K) and /or 12(a)(1)(A) of FIFRA.

1. *Distribution, sale or use of products bearing instructions for use on apple trees post-bloom* . The distribution or sale of existing stocks by any person of any product listed in Table 1 or 2 that bears instructions for post-bloom application to apple trees (other than tree trunk use) will not be lawful under FIFRA after December 31, 2000. The use of existing stocks of such product for post-bloom application to apple trees (other than tree trunk use) will not be lawful under FIFRA after December 31, 2000. Any other use of such product until that date must be in accordance with the existing labeling of that product.

2. *Distribution or sale by registrants of products bearing other uses*— (a) *restricted use and package size limitations* . (i) The distribution or sale by registrants of existing stocks of any EC formulation product listed in Table 1 or 2 will not be lawful under FIFRA after February 1, 2001 unless the product is labeled as restricted use.

(ii) The distribution or sale by registrants of existing stocks of any product listed in Table 1 or 2 labeled for any agricultural use and that is not an EC, will not be lawful under FIFRA after of February 1, 2001, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation, 50 pounds of a granular formulation, or 25 pounds of any other dry formulation;

(iii)The distribution or sale by registrants of existing stocks of any product listed in Table 1 or 2 labeled solely for nonagricultural uses (other than containerized baits in CRP) and that is not an EC, will not be lawful under FIFRA after of February 1, 2001, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation or 25 pounds of a dry formulation.

(b) *Prohibited uses*. The distribution or sale of existing stocks by registrants of any product identified in Table 1 or 2 that bears instructions for any of the following uses will not be lawful under FIFRA after February 1, 2001:

(i) Termite control, unless the product bears directions for use of a maximum 0.5% active ingredient chlorpyrifos enduse dilution;

(ii) Post-construction termite control, except for spot and local termite treatment, provided the label of the product states that the product may not be used for spot and local treatment after December 31, 2002;

(iii) Indoor residential except for containerized baits in CRP;

(iv) Indoor non-residential except for containerized baits in CRP and products with formulations other than EC that bear labeling solely for one or more of the following uses: Warehouses, ship holds, railroad boxcars, industrial plants, manufacturing plants, or food processing plants;

(v) Outdoor residential except for products bearing labeling solely for one or more of the following public health uses: Individual fire ant mound treatment by licensed applicators or mosquito control by public health agencies;

(vi) Outdoor non-residential except for products that bear labeling solely for one or more of the following uses: golf courses, road medians, and industrial plant sites, provided the maximum label application rate does not exceed 1lb./ai per acre; mosquito control for public health purposes by public health agencies; individual fire ant mound treatment for public health purposes by licensed applicators; and fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts and processed wood products.

3. *Retail and other distribution or sale* . The retail distribution of existing stocks of products listed in Table 1 or 2 bearing instructions for the prohibited uses set forth above in Unit III.2.(b)(i)(vi) of this Notice will not be lawful under FIFRA after December 31, 2001. Except as provided in the previous sentence or in Units III.1. and III.4. of this Notice, EPA intends to permit distribution or sale of products identified in Table 1 or 2 by persons other than registrants until such stocks are exhausted.

4. *Final distribution, sale and use date for pre-construction termite control*. The distribution, sale or use of any product listed in Table 1 or 2 bearing instructions for pre-construction termiticide use will not be lawful under FIFRA after December 31, 2005, unless, prior to that date, EPA has issued a written determination that such use may continue consistent with the requirements of FIFRA.

5. *Use of existing stocks* . Except as provided above in Units III.1. and III.4., EPA intends to permit the use of existing stocks of products listed in Table 1 or 2 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

List of Subjects

Environmental protection, Memorandum of Agreement, Pesticides and pests.

Dated: November 8, 2000.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–29511 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6904–1]

Proposed CERCLA Administrative Cashout Settlement; Energynorth Natural Gas, Inc., and Public Service of New Hampshire, Nashua River Asbestos Site, Nashua, NH

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future response costs concerning the Nashua River Asbestos Site in Nashua, New Hampshire with the following settling parties: EnergyNorth Natural Gas, Inc., and Public Service of New Hampshire. The settlement requires the settling party to pay $787,341.76 to the Hazardous Substance Superfund plus an additional sum for interest on that amount calculated from December 31, 1999 through the date of payment. The settlement includes a covenant not to sue the settling party pursuant to Sections 106 and 107(a) of CERCLA," 42 U.S.C. 9606 and 9607(a).

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating

to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02214–2023.

DATES: Comments must be submitted on or before December 18, 2000.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RAA, Boston, Massachusetts 02203 and should refer to: In re: Nashua River Asbestos Site, U.S. EPA Docket No. I–99–0044.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Steven Schlang, U.S. Environmental Protection Agency, Region I, Office of Environmental Stewardship, One Congress Street, Suite 1100, Mailcode SES, Boston, MA 02114–2023.

Dated: September 29, 2000.

Richard Cavagnero,

Acting Director, Office of Site Remediation & Restoration.

[FR Doc. 00–29509 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–OW–6903–2]

Notice of Intent To Develop Ambient Water Quality Criteria for Protection of Human Health—Methylmercury; Notice of Reopening to Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reopening to public comment period.

SUMMARY: This notice informs the public that the period for the submission of scientific and technical information for the development of the revised Ambient Water Quality Criterion for Methylmercury is extended.

DATES: The comment period has been extended fifteen days to November 27, 2000.

ADDRESSES: Send an original and three copies of any written significant scientific information to W–00–29 Comment Clerk, Water Docket, Ariel Rios 1200 Pennsylvania Ave., N.W. Washington, D.C. 20460. Comments may be hand-delivered to the Water Docket, Room EB57, 401 M Street, SW, Washington, D.C. 20460. Issues may also be submitted electronically to *OW-Docket@epa.gov*. Information should be submitted as a WP5.1, 6.1 and/or 8.0 or an ASCII file with no form of encryption.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Manibusen, Health and Ecological Criteria Division (4304), US EPA, Ariel Rios Building, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460; (202) 260–3688; *manibusan.mary@epa.gov*

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency published in the **Federal Register** of October 12, 2000 (65 FR 60664), that scientific and technical information that pertains to the development of a revised Ambient Water Quality Criterion for Methylmercury should be received within 30 days of the **Federal Register** publication date of October 12, 2000. In response to public interest, the Environmental Protection Agency has granted a fifteen day extension to the public comment period.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 00–29504 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, November 21, 2000, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Interim Rule (amending Appendix C to Part 325) to Revise the Risk-Based Capital Treatment for Securities Borrowing Transactions.

Discussion Agenda

Memorandum and resolution re: Final Regulation Prescribing Consumer Protections for Bank Sales of Insurance.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW, Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information, concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: November 14, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–29548 Filed 11–4–00; 5:03 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collections of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before January 16, 2001.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, submitted by electronic mail to regs.comments@federalreserve.gov, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Draft copies of the proposed reporting forms may be obtained at the Board's web site (www.federalreserve.gov). Draft copies of the proposed forms, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Revision, Without Extension, of the Following Reports

1. *Report title:* Consolidated Financial Statements for Bank Holding Companies.

Agency form number: FR Y–9C.
OMB control number: 7100–0128.
Frequency: Quarterly.
Reporters: Bank holding companies.
Annual reporting hours: 231,474.
Estimated average hours per response: 33.45.
Number of respondents: 1,730.
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form. Currently data reported on the FR Y–9C, Schedule HC–H, Column A, requiring information of "assets past due 30 through 89 days and still accruing" and memoranda item 2 are confidential pursuant to Section (b)(8) of the Freedom of Information Act 5 U.S.C. 552(b)(8).

Abstract: The FR Y–9C consists of standardized consolidated financial statements similar to commercial bank Report of Condition and Income (Call Report) (FFIEC 031–034; OMB No. 7100–0036). The FR Y–9C is filed quarterly by top-tier bank holding companies that have total assets of $150 million or more and by lower-tier bank holding companies that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

Current actions: The Federal Reserve proposes to implement numerous revisions that will streamline the existing reporting requirements. These eliminations and reductions in detail will help the Federal Reserve achieve the objective set forth in Section 307(c) of the Riegle Community Development and Regulatory Improvement Act of 1994, which directs the banking agencies to review the information that institutions currently report in the Call Report and the bank holding company (BHC) reports and eliminate existing reporting requirements that are not warranted for safety and soundness or other public policy purposes.

As part of the streamlining process, the Federal Reserve proposes several reporting changes that will introduce more uniformity to certain aspects of regulatory reporting. These changes would provide more uniformity within the holding company reports and also would bring several items into closer alignment with the Call Report and the Thrift Financial Report. For example, standard loan categories would be used for all of the schedules that collect loan information. However, not all loan-related items are needed on all schedules for supervisory purposes. Other proposed modifications to the BHC reports are intended to make its form and content more closely resemble the manner in which information is presented in financial statements that banks prepare in accordance with generally accepted accounting principles (GAAP) for other financial reporting purposes.

In addition to streamlining the existing FR Y–9C reporting requirements by eliminating information that is no longer of significant value, the Federal Reserve is also endeavoring to improve the relevance of the FR Y–9C by identifying new types of information that are considered critical to the Federal Reserves' supervisory data needs going forward. In so doing, the Federal Reserve has focused primarily on new activities and other recent developments that may expose institutions to new or different types of risk.

Furthermore, by proposing the following new reporting requirements at the same time as the FR Y–9C streamlining changes, BHCs will be able to make all of the necessary systems changes at one time. However, the new reporting requirements would be implemented on the same schedule as the Call Report. The Federal Reserve believes that combining these various types of revisions into a single package should result in lower start-up costs and

reporting burden for BHCs from a system's perspective.

The Federal Reserve proposes to make the following changes to the FR Y–9C, except for new information on securitization activities, effective with the March 31, 2001, reporting date. Proposed new information on securtization activities would be effective with the June 30, 2001, reporting date.

Changes Related to Proposed Changes to the Call Report[1]

Schedule HC—Consolidated Balance Sheet

1. Move "Loans and leases held for sale" onto the balance sheet as a separate category under item 4, "Loans and lease financing receivables." This change will bring the FR Y–9C balance sheet presentation of these loans into conformity with GAAP. Loans and leases held for sale are currently included on the balance sheet in item 4.a, "Loans and leases, net of unearned income," together with loans that the holding company has the intent and ability to hold for the foreseeable future or until maturity or payoff. However, loans and leases held for sale are separately identified in the loan schedule in Schedule HC–B, part I, Memorandum item 3. Loans and leases held for sale would continue to be reported with the holding company's other loans in the loan schedule (Schedule HC–B, part I).

2. Item 4.c, "Allocated transfer risk reserve," would be deleted from the balance sheet, but would be reported in the new regulatory capital schedule, which is discussed below. BHCs would report their loans and leases net of any allocated transfer risk reserve in the loan schedule (Schedule HC–B, part I).

3. Items 27.e, "Net unrealized holding gains (losses) on available-for-sale securities," 27.f, "Accumulated net gains (losses) on cash flow hedges," and 27.g, "Cumulative foreign currency translation adjustments," would be combined and reported as "Accumulated other comprehensive income."[2] This change would conform the presentation of the equity capital section of the FR Y–9C balance sheet to FASB Statement No. 130, Reporting Comprehensive Income.

4. A new item for "Other equity capital components" would be added to the equity capital section of the balance sheet. This item would include treasury stock and unearned Employee Stock Ownership Plan shares, which, under GAAP, are to be reported in a contra-equity account on the balance sheet. These items will continue to be reported separately in the proposed revised regulatory capital schedule. This change will make the equity capital section more consistent with GAAP and with the equity capital section of the balance sheet in the proposed bank Call Report and the Thrift Financial Report.

Schedule HC–A—Securities

1. Add new items on fair value and amortized cost information for six categories of asset-backed securities that are currently included in the items for "Debt securities." The six categories that would be reported on Schedule HC–A, item 5, are securities backed by: a. credit card receivables, b. home equity lines, c. auto loans, d. other consumer loans, e. commercial and industrial loans, and f. all other loans. The Federal Reserve proposes to collect information to facilitate more effective assessments of BHC credit and other exposures related to their portfolios of asset-backed securities. Currently, virtually all non-mortgage asset-backed securities are reported in two FR Y–9C items, *i.e.*, Schedule HC–A, items 4.a and 5.a, U.S. and foreign "Debt securities." The proposed segregation of specific categories of asset-backed securities from "Debt securities" would promote risk-focused supervision by enhancing the Federal Reserves' ability to assess credit exposures and asset concentrations.

2. Memoranda items 4.a., "Net unrealized holding losses on available-for-sale equity securities with readily determinable fair values' and 4.c., "Amount of net unrealized holding gains on available for sale equity securities" would be moved to the new regulatory capital schedule, which is discussed below.

3. Memoranda item 9.c, "All other equity securities," (equity securities without readily determinable fair values), would be moved to a new Schedule HC–F—Other Assets. These equity securities are outside the scope of FASB Statement No. 115, Accounting for Certain Investments in Debt and Equity Securities. Therefore, including them in the FR Y–9C with available-for-sale securities in Schedule HC–A, albeit at historical cost rather than at fair value, has not been consistent with GAAP. Moving equity securities without readily determinable fair values to the Memoranda schedule is intended to eliminate this inconsistency.

Schedule HC–B, Part I—Loans and Leases

1. The definition of "Construction and land development" loans (item 1.a) and, hence, the definitions for the other categories of loans secured by real estate (items 1.b through 1.e) would be revised to make them consistent with reporting requirements in this area for savings associations as reported on the Thrift Financial Report. The FR Y–9C instructions for "Construction and land development" loans currently direct BHCs to exclude from this loan category loans to acquire and hold vacant land and construction loans with original maturities greater than 60 months. These two types of loans are instead reported as loans secured by farmland, 1–4 family residential properties, multifamily residential properties, or nonfarm nonresidential properties, as appropriate. The definitions for the five categories of "Loans secured by real estate" would be revised so that land loans and long-term construction loans are reported in a recaptioned item 1.a, "Construction, land development, and other land loans."

2. The separate loan categories for "Loans to depository institutions" and "Acceptances of other banks" (items 3 and 4, respectively) would be combined.

3. Item 6.a, column A, "Credit cards and related plans" to individuals for household, family, and other personal expenditures, would be split into separate loan categories for "Credit cards" and "Other revolving credit plans."

4. A single Memorandum item for the total amount of a BHC's "Loans and leases restructured and in compliance with modified terms" would replace the multiple Memorandum items in which BHCs must currently report information about such restructured credits (Memorandum items 1.a through 1.h.) Restructured loans secured by 1–4 family residential properties and restructured consumer loans would be excluded from the revised Memorandum item.

5. A new Memoranda item 3, "Loans secured by real estate to non-U.S. addressees (domicile)" would be added in order to enhance the Federal Reserve's ability to evaluate the performance of real estate loans by addressee.

6. The filing criteria for Part II, Trading Assets and Liabilities, would be modified. BHCs that report a quarterly average for trading assets of $2 million or more (new proposed item 4.a, Schedule HC–E) as of the March 31st

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[1] Schedule lettering and titles used throughout this notice refer to existing schedules. However, the Federal Reserve also proposes to alter schedule order and schedule titles to align with the Call Report.

[2] The first two of these components of "Accumulated other comprehensive income" would be separately identified in the proposed new regulatory capital schedule.

report date of the current calendar year would complete Schedule HC–B, Part II. Analysis of quarter-end trading assets data indicate that using this reporting threshold would provide adequate coverage of BHCs actively involved in trading and would be comparable to the coverage of bank trading activity proposed for the Call Report. In addition, Part II, Trading Assets and Liabilities, would be formatted as a separate Schedule HC–D, to be consistent with presentation in the Call Report.

Schedule HC–F—Off-Balance-Sheet Items

1. The two-way breakout of Part I, item 2, "Standby letters of credit and foreign office guarantees," between item 2.a.(1), "To U.S. addressees," and 2.a.(2), "To non-U.S. addressees," would be eliminated and replaced with a single combined item.

2. Part II, Item 3, "Securities borrowed," would no longer be collected from all BHCs. Instead, the amount of borrowed securities that exceed 10 percent of total equity capital[3] would be reported in renumbered item 9, "All other significant off-balance-sheet items."

3. The information collected in Part II, items 5.a, 5.b, and 5.c on the outstanding principal balance of and amount of recourse on three categories of financial asset transfers would be moved from Schedule HC–F and incorporated into the proposed new schedule on securitization and asset sale activities, which is discussed below.

4. Part II, Item 6.b, "Participations in acceptances acquired by the reporting BHC," and Memorandum item 1, "Participations in unused commitments" would be deleted from Schedule HC–F, and information would be collected only on the proposed new regulatory capital schedule discussed below. Memorandum item 1 would be redefined to collect information on commitments with an original maturity exceeding one year on the new regulatory capital schedule.

5. Part III, Item 3.b for the gross notional amount of derivative contracts held for purposes other than trading that are not marked to market would be deleted. All derivative contracts, including those held for purposes other than trading, will be marked to market once a BHC adopts FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities, which is effective for fiscal years beginning after June 15, 2000. Thus, item 3.b will no longer have any relevance in 2001.

6. Part III, items 4.c.(1) and (2) for the gross positive and gross negative fair values of derivatives held for purposes other than trading that are not marked to market would be deleted because of the effect of FASB Statement No. 133.

In addition, items on Schedule HC–F would be renumbered and formatted to better align with the order of items presented on Schedule RC–L, Off-Balance-Sheet Items, on the Call Report.

Schedule HC–G—Memoranda

1. The scope of item 14, "Income earned, not collected on loans," would be expanded to cover all "Accrued interest receivable," and the item would be included on a new "Other Assets" schedule discussed below. Broadening this category to include interest earned, not collected on earning assets other than loans would be more consistent with the typical presentation of accrued interest receivable in financial statements prepared for other financial reporting purposes.

2. Memorandum item 19, "Deferred tax assets in excess of regulatory capital limits," would be retitled as "Disallowed deferred tax assets" and moved to the revised regulatory capital schedule (Schedule HC–R), which is discussed below. This proposed change is part of an effort by the Federal Reserve to place all items collected principally for regulatory capital calculation purposes in a revised regulatory capital schedule rather than having these items scattered across various FR Y–9C schedules as they are at present.

3. Items 17.a through 17.d, in which banks report a six-way breakdown of the "Outstanding principal balance of 1–4 family residential mortgage loans serviced for others' would be moved from Schedule HC–G and condensed into a two-way servicing breakdown in the proposed new schedule on securitization and asset sale activities, which is discussed below.

4. Items 20.a through 20.f, which collect data on quarterly sales of annuities, mutual funds, and proprietary products, would be eliminated. In place of these items, each BHC would respond to a "yes" or "no" question asking whether it sells private label or third party mutual funds and annuities. In addition, BHCs would report the total assets under the reporting BHC's management in proprietary mutual funds and annuities. For BHCs with proprietary mutual funds and annuities, reporting the amount of assets under management should be significantly less burdensome than reporting the quarterly sales volume for these proprietary products.

5. Item 22, "Net unamortized realized deferred gains (losses) on off-balance-sheet derivative contracts included in assets and liabilities reported in Schedule HC," would be eliminated.

Schedule HC–H—Past Due and Nonaccrual Loans, Lease Financing Receivables, Placements, and Other Assets

1. The presentation of loan category information would be modified to better match the loan schedule (HC–B) as proposed by moving the current breakdown of loans secured by real estate from the Memoranda section of Schedule HC–H, item 4, to item 1 of Schedule HC–H, and item 5.a would be redefined to exclude related plans, which would be reported in item 5.b. In addition BHCs would separately report their past due and nonaccrual loans secured by real estate in foreign offices. Also the presentation order and certain item captions would be revised to better align with Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, on the Call Report.

2. Memorandum item 6.b, "Replacement cost of [past due derivative] contracts with a positive replacement cost," would be deleted. Once BHCs adopt FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities, all of their derivative contracts will be carried on the balance sheet at fair value. Since the replacement cost of a derivative contract is its fair value and its book value will also be its fair value, Memorandum items 6.a., "Book value of amounts carried as assets," and 6.b would duplicate each other. The caption for Memorandum item 6.a would be revised to read "Fair value of amounts carried as assets."

3. Eliminating confidential treatment for certain past due and nonaccrual data: The Federal Reserve proposes to eliminate the confidential treatment for items past due 30 to 89 days and restructured items beginning with amounts reported as of March 31, 2001. An important public policy issue for the Federal Reserve has been how to use market discipline to complement supervisory resources. Market discipline relies on market participants having information about the risks and financial condition of banking organizations. The FR Y–9C, in particular, is widely used by securities analysts, rating agencies, and large institutional investors as sources of BHC-specific data. Disclosure that increases transparency should lead to more accurate market assessments of risk and value. This, in turn, should result in more effective market discipline on BHCs.

Despite this emphasis on market discipline, the Federal Reserve currently accords confidential treatment to the information BHCs report in Schedule HC–H of the FR Y–9C on the amounts of their loans, leases, and other assets that are past due 30 to 89 days and still accruing and on the amount of restructured loans and leases that are past due 90 days or more and still accruing or in nonaccrual status. This is the only financial information currently collected on the FR Y–9C that is treated as confidential on an individual BHC basis. In contrast, the information BHCs report on the amounts of their loans, leases, and other assets that are 90 days or more past due and still accruing or that are in nonaccrual status has been publicly available. The Federal Reserve proposes to make all past due and restructured loan and lease information publicly available in order to give the public, including BHCs, more complete information on the level of and trends in asset quality at individual institutions.

Some banking organizations have held that information on loans, leases and other assets that are past due 30 to 89 days is not a reliable indicator of future loan losses or of general asset quality. They further note that market discipline would be reduced, rather than enhanced, by the release of information that is highly susceptible to misinterpretation to the extent that it could cause an unjustifiable loss of funding to the industry. However, banking supervisors have consistently found information on loans and leases past due 30 to 89 days to be helpful in identifying banks with emerging asset quality problems. Therefore the Federal Reserve believes that such information is a useful indicator of general asset quality and would not represent misleading information to the public. Moreover, BHCs have the option to include in their notes to the balance sheet a brief narrative statement that provides explanatory comments about any data disclosure which they feel may be subject to misinterpretation, the text of which is available to the public.

Schedule HC–I—Risked-Based Capital

The Federal Reserve proposes to revise the risk-based capital schedule (Schedule HC–I) by incorporating many of the reporting concepts of the FR Y–9C's optional regulatory capital worksheet. All top-tier BHCs with total consolidated assets of $150 million or more would continue to be required to complete the entire revised regulatory capital schedule. The proposed schedule will also more directly correspond to the proposed commercial bank Regulatory Capital schedule on the Call Report. Schedule HC–I would also be retitled "Regulatory Capital" and relabeled Schedule HC–R.

In general, the proposed revised format would use a systematic, step-by-step building block approach under which BHCs would report the various components and adjustments that determine Tier 1, Tier 2, and total capital, as well as risk-weighted assets. This means that all regulatory capital ratios—the Tier 1 leverage ratio, the Tier 1 risk-based capital ratio, and the total risk-based capital ratio—would be derived directly from the items that BHCs report on this schedule. These ratios would also be disclosed in the schedule. The carrying values of all on-balance-sheet asset values and the face value or notional amount of most off-balance-sheet items used in the capital calculations would function as "control totals" and banks would allocate these amounts to the appropriate risk weight categories in accordance with the risk-based capital guidelines.

Existing items in Part III require the reporting of the major capital categories—Tier 1, Tier 2, Tier 3, and total risk-based capital—as well as risk-weighted assets and average total assets, which is used in the Tier 1 leverage ratio. The amounts reported in these existing items should be the amounts determined by BHCs for their own internal capital analyses consistent with the applicable capital standards. These items (Part III items 1.a through 4) are so-called self-reported capital items. The first part of the proposed revised regulatory capital schedule would essentially replicate the steps that BHCs are already going through to determine the major capital categories on a self-reported basis and therefore should not impose significant additional reporting burden. Moreover, to facilitate this proposed step-by-step building block approach to computing these capital categories, the Federal Reserve proposes to move a number of items that are collected principally for regulatory capital calculation purposes from their currently scattered locations in other FR Y–9C schedules to their more logical position in the proposed revised capital schedule. For example, as previously discussed the item for "Deferred tax assets in excess of regulatory capital limits" that is currently collected in Schedule HC–G—Memoranda, would now be included in the proposed revised Schedule HC–I (and retitled as "Disallowed deferred tax assets").

Overall, the Federal Reserve believes that the proposed revisions to the regulatory capital schedule provide a rational, systematic approach to reporting the elements of capital as well as the components of risk-weighted assets. The proposed approach should offer both enhanced and efficient reporting for both BHCs and users of the FR Y–9C report.

Schedule HC–S—Securitization and Asset Sale Activities

The Federal Reserve proposes to revise and expand the information collected in the FR Y–9C to facilitate more effective analysis of the impact of securitization and asset sale activities on BHC credit exposures. In this regard, the Federal Reserve proposes to introduce a separate new schedule (Schedule HC–S) effective with the June 30, 2001, reporting date that would comprehensively capture information related to BHC securitization and asset sale activities. At present, the FR Y–9C includes several items in various schedules that are used to assess BHC involvement in securitization and asset sale activities. The items generally focus on the securitization and sale of 1–4 family residential mortgages and consumer loans. However, over the past few years, the scope and volume of BHC asset securitization activities have expanded significantly beyond the traditional 1–4 family residential mortgage and consumer loan areas into other areas, most notably into the areas of home equity and commercial lending.

Under this proposal, BHCs involved in securitization and asset sale activities would report quarter-end (or year-to-date) data for seven loan categories similar to the manner in which they report their loan portfolios. These data would cover 1–4 family residential loans, home equity lines, credit card receivables, auto loans, other consumer loans, commercial and industrial loans, and all other loans and leases. For each loan category, BHCs would report: (1) The outstanding principal balance of assets sold and securitized with servicing retained or with recourse or seller-provided credit enhancements, (2) the maximum amount of credit exposure arising from recourse or credit enhancements to securitization structures (separately for those sponsored by the reporting institution and those sponsored by other institutions), (3) the past due amounts and charge-offs and recoveries on the underlying securitized assets, (4) the amount of any commitments to provide liquidity to the securitization structures, (5) the outstanding principal balance of assets sold with servicing retained or with recourse or seller-provided credit enhancements that have not been securitized, (6) the amount of ownership (or seller's) interests carried as securities or loans, and (7) the maximum amount of credit exposure arising from assets sold with recourse or seller-provided credit enhancements that have not been securitized. A limited amount of information would also be collected on BHC credit exposures to asset-backed commercial paper conduits. For the home equity line, credit card receivable, and the commercial and industrial loan categories, BHCs would also report the amount of any ownership (or seller's) interests in securitizations that are carried as securities and the past due amounts and charge-offs and recoveries on the assets underlying these seller's interests.

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[3] As described below, the Federal Reserve proposes to eliminate this reporting threshold.

At present, BHCs report certain information related to securitizations, asset sales, and servicing in current Schedule HC–F—Off-Balance Sheet Items and Schedule HC–G—Memoranda. To avoid the loss of this information until the delayed effective date of new Schedule RC–S, these existing items will be moved into and reported in the Memoranda section of Schedule HC–S for the March 31, 2001, report date. These existing items and what will happen to them after they are collected in the March 31, 2001, FR Y–9C are as follows:

1. Schedule HC–F, items 5.a.(1) and (2) and items 5.b.(1) and (2)—in which BHCs report the outstanding principal balance and amount of recourse exposure on (a) "First lien 1–4 family residential mortgage loans" and (b) "Other financial assets" that have been transferred with recourse and are treated as sold—will be collected in Schedule HC–S, Memorandum items 4.a.(1) and (2) and items 4.b(1) and (2), for the final time as of March 31, 2001.

2. Schedule HC–F, items 5.c.(1) and (2)—in which BHCs report the outstanding principal balance and amount of retained recourse on "Small business obligations transferred with recourse under Section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994"—will be collected in Schedule HC–S, Memorandum items 1.a and 1.b, as of March 31, 2001, and thereafter.

3. Schedule HC–G, item 17—in which BHCs provide a six-way breakdown of the "Outstanding principal balance of 1–4 family residential mortgage loans serviced for others" by type of servicing contract—will be collected in condensed form in Schedule HC–S, Memorandum items 2.a and 2.b, as of March 31, 2001, and thereafter. In addition item 2.c, which is not currently reported in the FR Y–9C, would begin to be reported as of June 30, 2001, consistent with the proposed reporting for Schedule RC–S.

Schedule HI—Consolidated Income Statement

2. Report the combined amount of tax-exempt loan and lease income in a single income statement item, Memoranda item 3. This would mean that, going forward, the body of the income statement (Schedule HI) would contain only two items for interest and fee income from loans (item 1.a.(1), "In domestic offices" and item 1.a.(2), "In foreign offices, Edge and Agreement subsidiaries, and IBFs") and a single item (item 1.b) for income from lease financing receivables.

2. The breakout of interest income on balances due from depository institutions (by domestic versus foreign offices) would be eliminated. Currently, this information is reported in Schedule HI, items 1.c.(1) and 1.c.(2). Going forward, there would only be a total reported for this information.

4. The number of categories of securities income that BHCs are required to report would be reduced. BHCs would report their income for the three following categories of securities in the body of the income statement: (a) U.S. Treasury securities and U.S. government agency obligations, (b) Mortgage-backed securities, and (c) All other securities. BHCs would report their "Income on tax-exempt securities issued by states and political subdivisions in the U.S." in a new income statement Memorandum item 4 rather than in the income statement (Schedule HI) itself.

5. Item 2.c, "Interest on borrowed funds," would be retitled "Interest on trading liabilities and other borrowed money." The instructions for this item also would be clarified to include trading liabilities.

6. Item 4.a, "Provision for credit losses," would be revised so that it includes only the provision for loan and lease losses. BHCs would report any provision for credit losses on off-balance-sheet exposures in item 7.e, "Other noninterest expense" and they would itemize and describe this provision in Memoranda item 7, if it is significant.

7. Item 4.b, "Provision for allocated transfer risk," would be eliminated as a specific income statement item. BHCs would report any provision for allocated transfer risk in "Other noninterest expense" and itemize and describe it in Memoranda item 7 if it is significant.

8. Noninterest income: Board staff proposes to add several new noninterest income categories to those currently collected in the FR Y–9C income statement (Schedule HI). Noninterest income has grown substantially over the last few years as a source of revenue for BHCs. A more detailed breakdown of noninterest income would provide the Federal Reserve with valuable supervisory information on the amount and type of fee-generating activities within the BHC.

These categories were selected in part based on a review of noninterest income information currently reported by BHCs in Schedule HI, Memoranda items 5 and 6. In these items, BHCs must itemize and describe, using their own terminology, their most significant categories of "Service charges, commissions, and fees" and "Other noninterest income." Two of the proposed new income statement categories represent items, or modifications of items, for which specific preprinted captions currently appear in Schedule HI (Memoranda items 6.a and 6.b). As a result, these items would no longer be reported in the Memoranda section of Schedule HI. The categories of noninterest income that would be added as specific items on the FR Y–9C income statement are: (1) Investment banking, advisory, brokerage, and underwriting fees and commissions, (2) venture capital revenue, (3) net servicing fees, (4) net securitization income, (5) insurance commissions and fees, (6) net gains (losses) on sales of loans, (7) net gains (losses) on sales of other real estate owned, and (8) net gains (losses) on sales of other assets (excluding securities). The current income statement item for "Other service charges, commissions, and fees" (item 5.b.(2)) would be discontinued. The new noninterest income items would provide greater comparability among the categories of noninterest income currently reported by BHCs. Some of the proposed noninterest income categories would represent the only information provided in the FR Y–9C on certain activities. By collecting more detailed noninterest income data, the significance of each of these activities can be compared to other income-generating activities of the BHC.

9. New item 7.c, "Amortization expense of intangible assets," would be added to the income statement (Schedule HI).

10. In Schedule HI—Memoranda, the threshold for itemizing and describing significant components of "Other noninterest income" and "Other noninterest expense" in items 6 and 7 would be changed to 1 percent of the total of interest income and noninterest

income from the current threshold of 10 percent of other noninterest income and 10 percent of other noninterest expense, respectively. This revised threshold is consistent with the Securities and Exchange Commission's threshold for the disclosure by bank holding companies of components of other noninterest income and expense.

11. Similar to the reporting revision proposed to Schedule HC–B, Part II, Trading Assets and Liabilities, the filing criteria for Memoranda item 9, "Trading revenue," would be revised to require BHCs to complete Memoranda item 9 only if they report a quarterly average for trading assets of $2 million or more as of the March 31st report date for the current calendar year.

12. The instructions for Memorandum items 10.a through 10.c that request BHCs to disclose the impact of derivatives held for purposes other than trading on interest income, interest expense, and noninterest income (expense) would be revised. For reporting beginning in 2001 when FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities, is in effect, all derivatives would be reported on the balance sheet at fair value and the accounting for fair value and cash flow hedges under Statement No. 133 differs from current hedge accounting practices.

In addition, certain item captions would be modified to better align with similar information reported on the bank Call Report Income Statement.

Schedule HI–A—Changes in Equity Capital

1. The manner in which the previous year-end balance of equity capital is reported in this schedule so that it better corresponds with how this balance is presented in financial statements prepared in accordance with GAAP. At present, BHCs must report the "Equity capital end of previous calendar year" in the FR Y–9C in item 1. If the BHC has filed any amendments to this previous year-end FR Y–9C report that affected its originally reported total equity capital, these equity capital adjustments are reported in item 2, and the amended equity capital balance for the previous year-end is reported in item 3. The Federal Reserve proposes to eliminate item 2 and, in effect, have BHCs report what is now reported in item 3 as their previous year-end equity capital balance. Thus, as Schedule HI–A would be revised, BHCs would report "Equity capital most recently reported for the end of the previous calendar year" in item 1. The Federal Reserve also proposes to combine item 11, "Cumulative effect of changes in accounting principles from prior years," and item 12, "Corrections of material accounting errors from prior years," and designate the combined items as item 2, "Restatements due to corrections of material accounting errors and changes in accounting principles," of revised Schedule HI–A. The next item in revised Schedule HI–A (item 3) would then be captioned "Balance end of previous calendar year as restated."

2. Items 13.a, "Change in net unrealized holding gains (losses) on available-for-sale securities," 13.b., "Change in accumulated net gains (losses) on cash flow hedges," and 18, "Foreign currency translation adjustments" would be combined and replaced by an item for "Other comprehensive income." This item would also include any minimum pension liability adjustment recognized during the year-to-date in accordance with GAAP, which BHCs currently have to report elsewhere in Schedule HI–A. Identifying "Other comprehensive income" in the changes in equity capital schedule is consistent with FASB Statement No. 130, Reporting Comprehensive Income.

In addition, Schedule HI–A would be renumbered and certain captions would be modified to better align with the Changes in Equity Capital schedule on the Call Report.

Schedule HI–B—Charge-Offs and Recoveries on Loans and Leases and Changes in Allowance for Credit Losses

1. The presentation of loan category information would be modified to better match the loan schedule (HC–B) as proposed by moving the current breakdown of loans secured by real estate from the Memoranda section of Schedule HI–B, item 1, to item 1 of Schedule HI–B, and item 5.a would be redefined to exclude related plans which would be reported in item 5.b. In addition BHCs would also separately report their charge-offs and recoveries of loans secured by real estate in foreign offices. Also the presentation order and certain item captions would be revised to align with the Charge-Offs and Recoveries schedule on the Call Report.

2. The scope of Part II would be revised to cover changes in the allowance for loan and lease losses rather than the entire allowance for credit losses. In addition, similar to the proposal discussed above for Schedule HI–A—Changes in Equity Capital, the manner in which the previous year-end balance of the allowance is reported in Schedule HI–B, Part II, would be changed so that it better corresponds with its presentation in financial statements prepared in accordance with GAAP. At present, BHCs report the balance of the allowance as "originally reported" in their previous year-end FR Y–9C report in item 1. The effects of any amendments to the previous year-end FR Y–9C on the allowance as originally reported are included in item 3, "Adjustments." Item 1 would be revised to eliminate the need to report these adjustments from amended FR Y9–C reports in item 3. Thus, BHCs would report the "Balance most recently reported at end of previous year" for the year-end allowance for loan and lease losses in item 1.

3. Schedule HI–B, Part II, Memorandum item 1, "Credit losses on off-balance-sheet derivative contracts," would be retitled "Credit losses on derivatives" and moved to Schedule HI, memoranda item 11.

Other Revisions Not Related to Call Report Changes

The following proposed revisions are not directly related to the proposed Call Report changes for March 2001. Most of these changes are proposed to provide greater consistency with current Call Report items that are not part of the March 2001 revisions.

Schedule HC—Consolidated Balance Sheet

1. To better align the presentation of the FR Y–9C Balance Sheet with that of the Call Report Balance Sheet, components of item 7, "Other real estate owned," and item 10, "Intangible assets," and line items 16, "Commercial paper," and 17, "Other borrowed money with a remaining maturity of more than one year" would be moved to the Memoranda schedule.

2. Item 20, "Mandatory convertible securities," with a two-way breakout between item 10.a, "Equity contract notes, gross" and item 10.b, "Equity commitment notes, gross" would be eliminated. Information on mandatory convertible securities would be included in item 21, "Subordinated notes and debentures.

In addition, items on Schedule HC would be renumbered and certain line item captions modified to better align with information reported on the Call Report Balance Sheet.

Schedule HC–A—Securities

1. Memoranda item 7, "U.S. government agency and corporation obligations (exclude mortgage-backed securities)" would be moved to Schedule HC–A, as item 2. Currently a two-way breakout of this item is collected for such securities "Issued by U.S. government agencies" (Memoranda item 7.a) and for securities "Issued by

U.S. government-sponsored agencies" (Memoranda item 7.b) from BHCs with total consolidated assets of $1 billion or more. These two items would replace the total reported for U.S. government agency and corporate obligations currently reported in item 2 and would be reported by all BHCs. This change would provide for consistency in reporting with the Call Report Schedule RC–B, Securities.

2. Memoranda item 8, "Mortgage-backed securities (MBS)," with the breakout between "Pass-through securities" (item 8.a) and "Other mortgage-backed securities (include CMOs, REMICs, and stripped MBS)" (item 8.b) would be moved to Schedule HC–A, new item 4. These items would then be reported by all BHCs, rather than by BHCs with total consolidated assets of $1 billion or more. FR Y–9C data show that BHCs of $1 billion or more in total assets have long been actively involved in mortgage-backed securities. For 1999, mortgage-backed securities represented 45 percent of the total securities portfolio for BHCs of $1 billion or more in total assets. Call Report data show that, for commercial banks between $150 million and $1 billion in total assets, mortgage-backed securities represented nearly 30 percent of their total securities portfolio in 1999. Given the suspected significance of BHC involvement in this activity at all levels, the Federal Reserve proposes to collect mortgage-backed security information from all FR Y–9C respondents. All commercial banks currently file this information on the Call Report.

3. Collect a new item 7, "Investments in mutual funds and other equity securities with readily determinable fair values' from all FR Y–9C respondents in order to assure the completeness and continuity of the reporting of BHC security holdings given the proposed changes to Memoranda items 7 and 8. Currently this information (Memoranda item 9.a) is collected only from BHCs with total consolidated assets of $1 billion or more. All commercial banks currently file this information on the Call Report.

4. Item 3.a, "Taxable securities" and item 3.b, "Tax exempt securities," would be combined. The caption would read "Securities issued by states and political subdivisions in the U.S."

5. Items reported for U.S. securities (item 4) and Foreign securities (item 5) would be modified to collect only U.S. debt securities and Foreign debt securities for consistency with the Call Report.

Schedule HC–B—Loans and Lease Financing Receivables

1. The three-way breakout for item 8, "All other loans," would be collapsed to a single item, eliminating items 8.a, "Taxable obligations (other than securities) of states and political subdivisions in the U.S." and 8.b, "Tax exempt obligations (other than securities) of states and political subdivisions in the U.S." This change would provide for consistency in reporting with the Call Report Loan schedule.

In addition, items from Schedule HC–B would be renumbered to align with the presentation order on the Call Report Loan schedule.

Schedule HC–F—Derivatives and Off-Balance-Sheet Items

1. Item 2, "Financial standby letters of credit," and item 2.a, "Amount of financial standby letters of credit conveyed to others" would be added to provide for consistency in reporting this off-balance-sheet information with similar items collected on the Call Report, and to tie information reported in Schedule HC–F with off-balance-sheet information proposed in Schedule HC–R, item 44, "Financial standby letters of credit."

2. Item 3, "Performance standby letters of credit," and item 3.a, "Amount of performance standby letters of credit conveyed to others" would be added to provide for consistency in reporting this off-balance-sheet information with similar items collected on the Call Report, and to tie information reported in Schedule HC–F with off-balance-sheet information proposed in Schedule HC–R, item 45, "Performance standby letters of credit."

3. Item 9, "Other significant off-balance-sheet items (exclude off-balance-sheet derivatives) that exceed 10% of total equity capital" would be retitled as "All other off-balance-sheet items (exclude derivatives)" to capture all other off-balance-sheet exposures to provide for consistency in reporting this off-balance-sheet information with the similar item collected on the Call Report and would provide analysts a complete measure of the risk associated with these exposures.

Schedule HC–G—Memoranda

1. The two-way breakdown of deferred tax assets captured in item 1.a.(1), "IRS loan loss provision," and item 1.a.(2), "Other," would be eliminated in favor of a single item for "Net deferred tax assets" and the item would be included on a new "Other Assets" schedule discussed below. Similarly, the two-way breakdown of deferred tax liabilities captured in items 1.b.(1), "IRS loan loss provision," and item 1.b.(2), "Other," would be eliminated in favor of a single item for "Net deferred tax liabilities" and would be included on a new "Other Liabilities" schedule discussed below.

2. Item 3, "Number of full-time equivalent employees" would be moved to Schedule HI, Income Statement, memoranda item 5, to be consistent with presentation in the Call Report.

3. Item 7.a, "Amount of cash items in process of collection netted against deposit liabilities in reporting Schedule HC," item 8, "Reciprocal demand balances with depository institutions (other than commercial banks in the U.S.)," and item 16, "Please describe and list below separately the dollar amount outstanding of assets removed from the reporting company's balance sheet (Schedule HC) in connection with assets netted against liabilities when there exists a legal right of offset" would be eliminated.

Schedule HC–I—Risked Based Capital

1. Schedule HC–I, Part I, Memoranda item 6, "Fair value of mortgage servicing assets," would be retitled as "Estimated fair value of mortgage servicing assets" and moved to Schedule HC–M, Memoranda item 18.a(1).

Schedule HC–IC—Additional Detail on Capital Components

Items on Schedule HC–IC would be included in the Memoranda section of the revised risk-based capital schedule. In addition, the Federal Reserve proposes the following changes.

1. Item 1.a.(4), "Other items included in 'Minority interest in consolidated subsidiaries and similar items,' on Schedule HC subject to limits in Tier 1 capital," would be added to provide for a more complete disclosure of elements incorporated into the calculation of Tier 1 capital.

2. Item 1.b., "Auction rate preferred stock and any other perpetual preferred stock deemed by the Federal Reserve to be eligible for Tier 2 capital only," item 2., "Total perpetual debt, undedicated portions of mandatory convertible securities and long-term preferred stock with an original maturity of 20 years or more that qualify for supplementary capital (after discounting)," and item 3, "Intermediate preferred stock with an original weighted-average maturity of 5 years or more; subordinated debt with an original weighted average maturity of 5 years or more; or unsecured long-term debt issued by BHC prior to March 12, 1988, that qualified as secondary capital

(after discounting)" would be eliminated.

Schedule HC–H—Past Due and Nonaccrual Loans, Lease Financing Receivables, Placements, and Other Assets

1. Item 1, "Loans secured by real estate" as a total would be deleted. This item can be derived from the sum of the components of revised item 1.

New Schedules for "Other Assets" and "Other Liabilities"

As mentioned previously, the Federal Reserve proposes to add two new schedules for the reporting of "Other Assets" and "Other Liabilities." Items reported on these schedules consist of items currently reported on the Memoranda and Securities schedules, and certain new and revised items. The addition of these schedules will provide greater consistency with the presentation provided in the Call Report. The "Other Assets" schedule would consist of the following items: (1) Accrued interest receivables, (2) Net deferred tax assets, (3) Interest-only strips receivable (not in the form of a security) on Mortgage loans and Other financial assets, (4) Equity securities that do not have readily determinable fair values, and (5) Other. The "Other Liabilities" schedule would consist of the following items: (1) Net deferred tax liabilities, (2) Allowance for credit losses on off-balance-sheet credit exposures, and (3) Other.

Item 2 on the "Other Liabilities" schedule, "Allowance for credit losses on off-balance-sheet credit exposures," is included on the balance sheet as a component of other liabilities sheet separate from the allowance for loan and lease losses. At present, the limited number of BHCs that have an allowance for credit losses on off-balance-sheet credit exposures combine this allowance with their allowance for loan and lease losses when completing Schedule HI–B, Part II, (Changes in) Allowance for Credit Losses. Because the allowance for loan and lease losses is reported on the balance sheet (Schedule HC), the amount of the allowance for credit losses on off-balance-sheet exposures can be derived. However, as discussed previously, the Federal Reserve is proposing to revise the scope of Schedule HI–B, Part II. This change creates the need for the proposed new item to identify the amount, if any, of a BHC's allowance for credit losses on off-balance-sheet exposures.

Schedule HI—Consolidated Income Statement

2. Item 5.b.(1) "Service charges on deposit accounts" and item 5.b.(2) "Other service charges, commissions, and fees" would be combined and retitled "Service charges on deposit accounts in domestic offices." In addition, Memorandum item 5 would be deleted since this item was for the purpose of describing items included in 5.b.(2) that exceeded a particular threshold.

3. Memorandum item 4 "Income taxes applicable to gains (losses) on securities not held in trading accounts" would be deleted.

Schedule HI–B, Part II—Allowance for Credit Losses

1. Item 6, "Foreign currency translation adjustments," would be combined with new item 5, "Adjustments.

Revisions Related to the Gramm-Leach-Bliley Act of 1999

The Federal Reserve proposes to collect certain information to address the difference in the supervisory requirements for BHCs and newly formed financial holding companies (FHCs) that conduct insurance-related activities. While bank holding companies have engaged in a relatively limited amount of insurance-related activities for some time, the volume and complexity of insurance related activities engaged in by FHCs will likely increase as they take advantage of the provisions of the Gramm-Leach-Bliley Act of 1999 (GLBA).

Insurance related activities of BHCs have been limited to the provisions provided under Regulation Y and the Garn-St. Germain Depository Institutions Act of 1982. Now FHCs, among other things, can engage in and affiliate with full service insurance companies providing insurance agency (sales) and underwriting activities. In addition, while traditional BHCs have been able to engage in various nonbank activities and new businesses, they were required to apply in advance to acquire or launch material new business lines. Today, BHCs that qualify as FHCs are able to rapidly enter insurance activities without advance notification to the Federal Reserve.

The existing FR Y9–C is structured to accommodate bank, securities and other activities incidental to banking, but not for insurance activities. With the latest Call Report proposal, adjustments are being proposed to reflect both new authority and financial innovation for bank-level activities and many of these same changes are also being proposed for the FR Y9–C. However, those Call Report adjustments do not include insurance underwriting, since that activity remains impermissible for banks. Because insurance underwriting affiliates are unique to FHCs, the FR Y9–C will need to reflect this special affiliation in a way that is useful to supervisors and the public without creating undue burden.

As an umbrella supervisor, it is essential for the Federal Reserve to evaluate the volume and nature of insurance activities conducted by an FHC on a fully consolidated basis. A few basic indicators of the nature and volume of the FHC's insurance business that cut across legal entities and business lines will be critical, especially since the number of entities and related functional regulators involved with such activities can be substantial and impractical for the Federal Reserve to aggregate on its own. Moreover, with hundreds of BHCs now qualified as FHCs, monitoring those that have begun to engage in insurance activities, and how rapidly they are growing that business, will be extremely challenging. Regulatory disclosures will be particularly important for smaller FHCs that do not regularly publish statements to the marketplace. By adopting some modest reporting supplements to the FR Y9–C, the Federal Reserve will be better prepared to tailor and calibrate its supervisory and coordination efforts with functional supervisors on an as needed and risk-focused basis.

Simply stated, these data would serve to identify whether the organization has engaged in agency business (sales), underwriting and reinsurance activities and indicate the approximate size of its reserve positions (which constitute the largest liability for an insurance company and the most prominent source of insurer insolvency). These "identifiers" will serve as a tool for identifying when the Federal Reserve will need to contact and coordinate with functional regulators to get additional information without duplicative or onerous burden on the FHC's functionally-regulated entities.

The Federal Reserve proposes to add a new schedule HC–I, "Insurance-Related Activities," to obtain the following "identifier" information: Part I, Property and Casualty; Part II, Life and Health; and Part III, All Insurance-Related Activities. Items proposed for Part I are: Agent balances; Reinsurance recoverables; Deferred acquisition costs and value of insurance acquired; Policy benefits, reserves, and loss adjusted expenses; and Unearned premiums. Items proposed for Part II are: Separate account assets; Asset valuation reserve and interest maximization reserve; Policy benefits, reserves, and loss adjusted expenses; Liabilities for premiums and other deposit funds; and Separate account liabilities. Items proposed for Part III are: Total assets and Net Income.

The Federal Reserve also proposes to add two "identifier" items to Schedule HI, Consolidated Income Statement. Under item 5, "Noninterest income," item 5.i, "Premiums earned" would be added. Under item 7, "Noninterest expense," item 7.d, "Benefits, losses and expenses from insurance related activities" would be added.

Instructions

Instructional revisions and clarifications will be done in accordance with changes made to the Call Report instructions and revisions to the Capital Guidelines.

2. *Report title:* Parent Company Only Financial Statements for Large Bank Holding Companies

Agency form number: FR Y–9LP.

OMB control number: 7100–0128.

Frequency: Quarterly.

Reporters: Bank holding companies.

Annual reporting hours: 37,985.

Estimated average hours per response: 4.49.

Number of respondents: 2,115.

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each bank holding company that files the FR Y–9C. In addition, for tiered bank holding companies, a separate FR Y–9LP must be filed for each lower tier bank holding company.

Current actions: The Federal Reserve proposes the following revisions to the FR Y–9LP effective with the March 31, 2001, reporting date.

Schedule PC—Parent Company Only Balance Sheet

1. Item 4.f, "Allocated transfer risk reserve," would be deleted from the balance sheet. BHCs would report item 4.c, "Loans, net of unearned income" and item 4.c, "Leases, net of unearned income" net of any allocated transfer risk reserve.

2. Item 15, "Mandatory convertible securities," with a two-way breakout between item 15.a, "Equity contract notes, gross" and item 15.b, "Equity commitment notes, gross" would be eliminated. Information on mandatory convertible securities would be included in item 16, "Subordinated notes and debentures."

3. Items 20.e, "Net unrealized holding gains (losses) on available-for-sale securities," and 20.f, "Accumulated net gains (losses) on cash flow hedges" would be combined and reported as "Accumulated other comprehensive income." This change would conform the presentation of the equity capital section of the FR Y–9LP balance sheet to FASB Statement No. 130, Reporting Comprehensive Income.

4. A new item for "Other equity capital components" would be added to the equity capital section of the balance sheet. This item would include treasury stock and unearned Employee Stock Ownership Plan shares, which, under GAAP, are to be reported in a contra-equity account on the balance sheet. Treasury stock (item 20.g) would no longer be reported separately. This change will make the equity capital section more consistent with GAAP and with the equity capital section of the balance sheet in the proposed bank Call Report and the Thrift Financial Report.

Schedule PI—Parent Company Only Income Statement

1. Item 2.c.(1), "Provision for credit losses," would be revised so that it includes only the provision for loan and lease losses. BHCs would report any provision for credit losses on off-balance-sheet exposures in item 2.d, "All other expenses."

2. Item 2.c.(2), "Provision for allocated transfer risk," would be eliminated as a specific income statement item. BHCs would report any provision for allocated transfer risk in item 2.d, "All other expenses."

Instructions

Instructional revisions and clarifications would be made as necessary, to conform with changes made to the Call Report instructions.

3. *Report title:* Parent Company Only Financial Statements for Large Bank Holding Companies.

Agency form number: FR Y–9SP.

OMB control number: 7100–0128.

Frequency: Semiannual.

Reporters: Bank holding companies.

Annual reporting hours: 29,001.

Estimated average hours per response: 3.82.

Number of respondents: 3,796.

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9SP is a parent company only financial statement filed on a semiannual basis by one-bank holding companies with total consolidated assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.

Current actions: The Federal Reserve proposes the following revisions to the FR Y–9SP effective with the June 30, 2001, reporting date.

Balance Sheet

1. Items 16.d, "Net unrealized holding gains (losses) on available-for-sale securities," and 16.e, "Accumulated net gains (losses) on cash flow hedges" would be combined and reported as "Accumulated other comprehensive income." This change would conform the presentation of the equity capital section of the FR Y–9SP balance sheet to FASB Statement No. 130, Reporting Comprehensive Income.

2. A new item for "Other equity capital components" would be added to the equity capital section of the balance sheet. This item would include treasury stock and unearned Employee Stock Ownership Plan shares, which, under GAAP, are to be reported in a contra-equity account on the balance sheet. Treasury stock will continue to be reported separately as Memoranda item 3 (if the amount exceeds 5 percent of equity capital). This change would make the equity capital section more consistent with GAAP and with the equity capital section of the balance sheet in the proposed bank Call Report and the Thrift Financial Report.

3. Memoranda item 4, "Mandatory convertible securities, net," would be eliminated.

In addition the following change would be made independent of changes proposed to the FR Y–9C. Instructions for Memoranda item 1, "Total consolidated assets of the bank holding company," indicate that this item is to be completed only by multibank holding companies with total consolidated assets of less than $150 million, without any debt outstanding to the general public and not engaged in a nonbank activity (either directly or indirectly) involving financial leverage and not engaged in credit extending activities. Board staff proposes to remove this reporting threshold and require all BHCs that file the FR Y–9SP to complete this item so that staff can monitor the size of these institutions.

Instructions

Instructional revisions and clarifications would be made as necessary, to conform with changes made to the Call Report instructions.

Proposal To Approve Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Reports

1. *Report title:* Quarterly Financial Statements of Nonbank Subsidiaries of Bank Holding Companies.

Agency form number: FR Y–11Q.

OMB control number: 7100–0244.

Frequency: Quarterly.

Reporters: Bank holding companies.

Annual reporting hours: 14,402.

Estimated average hours per response: 6.35.

Number of respondents: 567.

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to most of the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form. Currently FR Y–11Q, memorandum item 7.a, loans and leases past due 30 through 89 days and FR Y–11Q, memorandum item 7.d, loans and leases restructured and included in past due and nonaccrual loans are confidential pursuant to Section (b)(8) of the Freedom of Information Act 5 U.S.C. 552(b)(8).

Abstract: The FR Y–11Q is filed quarterly by the top tier bank holding companies for each nonbank subsidiary of a bank holding company with total consolidated assets of $150 million or more in which the nonbank subsidiary has total assets of 5 percent or more of the top-tier bank holding company' consolidated Tier 1 capital, or where the nonbank subsidiary' total operating revenue equals 5 percent or more of the top-tier bank holding company' consolidated total operating revenue. The report consists of a balance sheet, income statement, off-balance-sheet items, information on changes in equity capital, and a memoranda section.

Current actions: The Federal Reserve proposes the following revisions to the FR Y–11Q effective with the March 31, 2001, reporting date.

Balance Sheet

1. Items 20.e, "Net unrealized holding gains (losses) on available-for-sale securities," and 20.f, "Accumulated net gains (losses) on cash flow hedges" would be combined and reported as "Accumulated other comprehensive income." This change would conform the presentation of the equity capital section of the FR Y–9C balance sheet to FASB Statement No. 130, Reporting Comprehensive Income.

2. A new item for "Other equity capital components" would be added to the equity capital section of the balance sheet. This item would include treasury stock and unearned Employee Stock Ownership Plan shares that, under GAAP, are to be reported in a contra-equity account on the balance sheet. Treasury stock (item 20.h) would no longer be reported separately. This change will make the equity capital section more consistent with GAAP and with the equity capital section of the balance sheet in the proposed FR Y–9C.

Memoranda

1. Consistent with changes proposed to the FR Y–9C, Memoranda item 7.a, "Loans and leases past due 30 through 89 days," and Memoranda item 7.d, Loans and leases restructured and included in past due and nonaccrual loans," would no longer be afforded confidential treatment.

2. The scope of item 12.a, "Income earned, not collected on loans," would be expanded to cover all "Accrued interest receivable." Broadening this category to include interest earned, not collected on earning assets other than loans would be more consistent with the typical presentation of accrued interest receivable in financial statements prepared for other financial reporting purposes.

Income Statement

Noninterest income: Noninterest income has grown substantially over the last few years as a source of revenue for BHCs. A more detailed breakdown of noninterest income would provide the Federal Reserve with valuable supervisory information on the amount and type of fee-generating activities within the BHC.

Therefore, the Federal Reserve proposes to add several new noninterest income categories to those currently collected in the FR Y–11Q income statement. These categories were selected in part based on a review of noninterest income information currently reported by BHCs in Schedule HI, Memoranda items 5 and 6, of the FR Y–9C. In these items, BHCs must itemize and describe, using their own terminology, their most significant categories of "Service charges, commissions, and fees" and "Other noninterest income."

The categories of noninterest income that would be added as specific items on the FR Y–11Q income statement are: (1) Investment banking, advisory, brokerage, and underwriting fees and commissions, (2) venture capital revenue, (3) net servicing fees, (4) net securitization income, and (5) insurance commissions and fees. The current income statement items for "Income from underwriting activities," "Income from brokerage activities," "Income from loan servicing," and "Other service charges, commissions, and fees" (items 5.b.(2),(3),(4) and (6)) would be discontinued.

The new noninterest income items would provide greater comparability among the categories of noninterest income currently reported by BHCs. Some of the proposed noninterest income categories would represent the only information provided in the FR Y–11Q on certain activities. By collecting more detailed noninterest income data, the significance of each of these activities can be compared to other income-generating activities of the nonbank subsidiary and of the BHC.

Changes in Equity Capital

1. The manner in which the previous year-end balance of equity capital is reported in this schedule would be changed so that it better corresponds with how this balance is presented in financial statements prepared in accordance with GAAP. At present, nonbank subsidiaries must report the "Equity capital end of previous calendar year" in the FR Y–11Q in item 1. If the nonbank subsidiary has filed any amendments to this previous year-end FR Y–11Q report that affected its originally reported total equity capital, these equity capital adjustments are reported in item 6, and the amended equity capital balance for the previous year-end is reported in item 7. Item 1 would be revised to have nonbank subsidiaries report "Equity capital most recently reported for the end of the previous calendar year."

2. Item 16, "Foreign currency translation adjustments" would be replaced by an item for "Other comprehensive income." This new item would include any change in net unrealized holding gains (losses) on available-for-sale securities and any change in accumulated net gains (losses) on cash flow hedges (currently included

in item 6, "Other adjustments"). Identifying "Other comprehensive income" in the changes in equity capital schedule is consistent with FASB Statement No. 130, Reporting Comprehensive Income.

Instructions

Instructional revisions and clarifications would be made as necessary, to conform with changes made to the Call Report instructions.

2. *Report title:* Annual Financial Statements of Nonbank Subsidiaries of Bank Holding Companies.

Agency form number: FR Y–11I.

OMB control number: 7100–0244.

Frequency: Annual.

Reporters: Bank holding companies.

Annual reporting hours: 8,531.

Estimated average hours per response: 3.24.

Number of respondents: 2,633.

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form. Currently FR Y–11I, Schedule A, item 7.a, loans and leases past due 30 through 89 days and FR Y–11I, Schedule A, item 7.d, loans and leases restructured and included in past due and nonaccrual loans are confidential pursuant to Section (b)(8) of the Freedom of Information Act 5 U.S.C. 552(b)(8).

Abstract: The FR Y–11I is filed annually by the top tier bank holding companies for each of their nonbank subsidiaries that are not required to file a quarterly FR Y–11Q. The FR Y–11I report consists of similar balance sheet, income statement, off-balance-sheet, and change in equity capital information that is included on the FR Y–11Q. However, some of the items on the FR Y–11I are collected in a less detailed manner. In addition, the FR Y–11I also includes a loan schedule to be submitted only by respondents engaged in extending credit.

Current actions: The Federal Reserve proposes the following revisions to the FR Y–11I effective with the December 31, 2001, reporting date.

Changes in Equity Capital

1. The manner in which the previous year-end balance of equity capital is reported in this schedule would be changed so that it better corresponds with how this balance is presented in financial statements prepared in accordance with GAAP. At present, nonbank subsidiaries must report the "Equity capital end of previous calendar year" in the FR Y–11I in item 1. If the nonbank subsidiary has filed any amendments to this previous year-end FR Y–11I report that affected its originally reported total equity capital, these equity capital adjustments are reported in item 6, and the amended equity capital balance for the previous year-end is reported in item 7. Item 1 would be revised to have nonbank subsidiaries report "Equity capital most recently reported for the end of the previous calendar year."

2. Item 5, "Foreign currency translation adjustments" would be replaced by an item for "Other comprehensive income." This new item would include any change in net unrealized holding gains (losses) on available-for-sale securities and any change in accumulated net gains (losses) on cash flow hedges (currently included in item 6, "Other adjustments"). Identifying "Other comprehensive income" in the changes in equity capital schedule is consistent with FASB Statement No. 130, Reporting Comprehensive Income.

Schedule A—Loans and Lease Financing Receivables

1. Consistent with changes proposed to the FR Y–9C, item 7.a, "Loans and leases past due 30 through 89 days," and item 7.d, Loans and leases restructured and included in past due and nonaccrual loans," would no longer be afforded confidential treatment.

Instructions

Instructional revisions and clarifications would be made as necessary, to conform with changes made to the Call Report instructions.

Board of Governors of the Federal Reserve System, November 13, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–29426 Filed 11–16–00; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 4, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:1.

1. Nancy Barr Dixon, Eufaula, Alabama; Michael Charles Dixon, Sr., Eufaula, Alabama; Hope Cotton Dixon, Eufaula, Alabama; Michael Charles Dixon, Jr., Eufaula, Alabama; Claudia Dixon Balkcom, Atlanta, Georgia; Heather Barr Dixon, Eufaula, Alabama; Marian Christine Dixon, Birmingham, Alabama; Rebecca Janie Mac Dixon, Auburn, Alabama; Robert Mack Dixon, Eufaula, Alabama; Mary Elliott Dixon, Eufaula, Alabama; Mary Clayton Dixon, Eufaula, Alabama; Eric Ross Fenichel, Atlanta, Georgia; Janie Dixon King, Eufaula, Alabama; William Daniel King, Eufaula, Alabama; Robert Mack Dixon, Jr., Eufaula, Alabama; Preston Copeland Dixon, Birmingham, Alabama; James Franklin Dixon, III, Birmingham, Alabama; Rita Hallett Dixon, Birmingham, Alabama; Thomas Seay Lawson, Jr., Montgomery, Alabama; Sarah Clayton Lawson, Montgomery, Alabama; and Preston Copeland Clayton, Jr., Eufaula, Alabama; all to retain voting shares of Eufaula BancCorp, Inc., Eufaula, Alabama, and thereby indirectly retain voting shares of Southern Bank of Commerce, Eufaula, Alabama.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. William Edwin Shoemaker, Cambridge, Nebraska; to acquire voting shares of FNB Financial Services, Inc., Cambridge, Nebraska, and thereby indirectly acquire voting shares of The First National Bank of Cambridge, Cambridge, Nebraska.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. David B. and Mary T. Weyrich, Paso Robles, California; to acquire additional voting shares of Heritage Oaks Bancorp, Paso Robles, California, and thereby indirectly acquire additional voting shares of Heritage Oaks Bank, Paso Robles, California.

Board of Governors of the Federal Reserve System, November 14, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–29525 Filed 11–16–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 14, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Israel Salt Industries, Ltd., Atlit, Israel, through its direct and indirect control of 45.25 percent of the voting shares of Bank Hapoalim B.M., Tel Aviv, Israel; to become a bank holding company as a result of the establishment by Bank Hapoalim of Signature Bank, New York, New York (in formation). Signature Bank would be a wholly owned subsidiary of Bank Hapoalim.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. F&M National Corporation, Winchester, Virginia; to merge with Community Bankshares of Maryland, Inc., Bowie, Maryland, and thereby indirectly acquire Community Bank of Maryland, Bowie, Maryland.

2. Virginia Capital Bancshares, Inc., Fredericksburg, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Fredericksburg State Bank, Fredericksburg, Virginia.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Northstar Financial Group, Inc, Bad Axe, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Northstar Bank (in organization), Bad Axe, Michigan.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Mississippi Valley Bancshares, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Southwest Bank of Phoenix (in organization), Phoenix, Arizona. Comments regarding this application must be received not later than December 11, 2000.

E. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Lauritzen Corporation, Omaha, Nebraska; to become a bank holding company by acquiring 21.09 percent of the voting shares of First National of Nebraska, Inc., Omaha, Nebraska, and thereby indirectly acquire voting shares of First National Bank of Omaha, Omaha, Nebraska; First National Bank & Trust Company of Columbus, Columbus, Nebraska; First National Bank, North Platte, Nebraska; First National Bank, South Dakota, Yankton, South Dakota; Platte Valley State Bank & Trust Company, Fremont, Nebraska; Fremont National Bank & Trust Company, Fremont, Nebraska; First National Bank of Kansas, Overland Park, Kansas; and First National of Colorado, Inc., Fort Collins, Colorado; and thereby acquire First National Bank, Fort Collins, Colorado; Bank in Boulder, Boulder, Colorado; and Union Colony Bank, Greeley, Colorado.

Board of Governors of the Federal Reserve System, November 14, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–29526 Filed 11–16–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.27) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Mizuho Holdings, Inc., Tokyo, Japan, and Dai-Ichi Kangyo Bank, Limited, The, Tokyo Japan; to engage *de nova* through its subsidiary, Dealerconx, Inc., Livingston, New Jersey, in providing loan and lease agency and brokerage services, data processing services and loan/lease servicing through an internet-based data processing application available to retail automotive dealers that seek loan and lease financing and related financial services for customers' retail automobile purchases, pursuant to § 225.28(b)(1), (2), (3), and (14) of Regulation Y.

2. Svenska Handelsbanken, Stockholm, Sweden; to engage *de novo*, through its subsidiary, Oktogon Advisers, LLC, New York, New York, in providing portfolio investment advice on a discretionary and directed basis (including advice on derivative transactions and structured assets) to U.S. and non-U.S. clients, including corporations and institutional investors (such as pension funds and insurance companies), charitable foundations, religious and university endowment funds, private investment companies, and hedge funds (both off-shore and on-shore) and mutual funds, pursuant to § 225.28(b)(6) of Regulation Y.

3. Westdeutsche Landesbank Girozentrale, Dusseldorf, Germany; to acquire Gulfstream Global Investors, Ltd., Addison, Texas, and thereby engage in investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, November 14, 2000.

Robert deV. Frierson,

Associate Secretary of the Baord.

[FR Doc. 00–29527 Filed 11–16–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. R–1086]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved the fee schedules for Federal Reserve priced services and electronic connections and a private-sector adjustment factor (PSAF) for 2001 of $206.9 million. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF.

DATES: The new fee schedules become effective January 2, 2001.

FOR FURTHER INFORMATION CONTACT: For questions regarding the fee schedules: Erik Kiefel, Financial Services Analyst, Retail Payments, (202/721–4559); Susan Foley, Senior Financial Services Analyst, ACH Payments, (202/452–3596); Cynthia Yablon, Financial Services Analyst, Funds Transfer and Book-Entry Securities Services, (202/452–2046); Donna DeCorleto, Financial Services Project Leader, Noncash Collection Service, (202/452–3956); Michael Lambert, Senior Financial Services Analyst, Special Cash Services, (202/452–3376); or Paul Grabow, Senior Information Technology Analyst (electronic connections), (202/452–2830), Division of Reserve Bank Operations and Payment Systems. For questions regarding the PSAF: Gregory Evans, Manager, Financial Accounting, (202/452–3945), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) *only*, please contact Janice Simms (202/872–4984). Copies of the 2001 fee schedules for the check service are available from the Board, the Reserve Banks, or the Federal Reserve Banks' financial services web site at *www.frbservices.org*.

SUPPLEMENTARY INFORMATION:

I. Priced Services

A. Overview

The Federal Reserve Banks continue to meet the Monetary Control Act's requirement that they recover, over the long run, their direct and indirect costs, including imputed costs and profits, of providing priced services. Over the period 1990 through 1999, the Reserve Banks recovered 99.7 percent of their total costs for providing priced services, including imputed expenses, special project costs that were budgeted for recovery, and targeted after-tax profits, or return on equity (ROE).[1]

For 2000, the Reserve Banks estimate that they will recover 100.4 percent of the costs of providing priced services. They project a 98.0 percent recovery rate in 2001, largely due to transition costs associated with the check modernization project and the transition to a new cost-allocation method for the book-entry service. The primary risks to the 2001 projection are the Reserve Banks' ability to meet aggressive revenue and cost targets in the check service, because of the impact of the check modernization project; the uncertain effects of price-structure and service-level changes being implemented for automated clearinghouse (ACH) interoperator transactions; and increased competition for ACH and funds-transfer services.

In their 2001 fee schedules, the Reserve Banks include changes that continue to provide an economic incentive for depository institution customers to make greater use of electronic payment services. In particular, the price index for electronic payment services (ACH, funds transfer and net settlement, book-entry securities, and electronic check) and electronic connections is projected to decline approximately 1.9 percent in 2001. The index for paper-based payment services (check, special cash, and noncash collection) is expected to increase 6.4 percent. The overall 2001 price index for all Federal Reserve priced services is projected to increase 4.2 percent, the same as the increase in 2000. Since 1996, the overall price index has increased only half a percent.[2]

The following are changes in fee structures and levels for priced services in 2001:

- The Reserve Banks will make no changes to fees for the Fedwire funds transfer and national net settlement services. The price index for Fedwire funds transfers has declined more than 46 percent since 1996.
- The Reserve Banks will increase the surcharge for an off-line Fedwire book-entry securities transfer 39 percent in 2001 to $25. The fee change is expected to cost customers approximately $197,000 next year. Other book-entry fees will remain at 2000 levels. Including the fee change for 2001, the price index for the book-entry securities service has declined more than 9 percent since 1996.
- The Reserve Banks will retain current prices for customers of the FedACH service. The Reserve Banks are initiating discussions with private-sector operators (PSOs) to negotiate deposit deadlines and fees for transactions that they exchange with each other. The new deadlines will be in place no later than June 2001, and the price structure modifications will be implemented no later than September 2001. Since 1996, the price index for the ACH service has decreased almost 49 percent.
- The Reserve Banks will increase transaction fees for all check products 2.6 percent compared with current prices or 3.9 percent compared with April 2000 fees. Transaction fees for paper check products are projected to increase 2.6 percent over current prices or 3.9 percent compared to April 2000 fees. Paper check products include forward-processed, fine-sort, and returned checks. Reserve Banks are standardizing paper check products and implementing a more-consistent pricing structure across the Reserve Banks. Reserve Banks also will introduce new prices designed to encourage the accuracy of qualified returned checks and discourage the use of large-dollar checks. Transaction fees for payor bank services, which include electronic check products, will increase 2.9 percent from current prices or 3.7 percent from April 2000 fees. Electronic check products include electronic check presentment, image services, and electronic information. The price index for all check products, which includes imputed fees and other product and service fees not captured in the comparison of the individual transaction fees, is projected to increase 5.9 percent in 2001. The price index for paper check products is increasing 6.3 percent, while that for payor bank and check electronic connection services is decreasing 2.2 percent. Including the fee changes in 2001, the price index for the entire check service has increased almost 23 percent since 1996. Aggregate check service fee increases in 2001 are expected to cost depository institution customers approximately $50 million, assuming no changes to current customer processing choices.[3]

B. Discussion

Table 1 presents an overview of the budgeted 2000, estimated 2000, and projected 2001 cost-recovery performance for all priced services.

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[1] These imputed costs, such as taxes that would have been paid and the return on capital that would have been earned had the services been provided by a private business, are referred to as the PSAF. The PSAF is based on data developed in part from a model comprising the nation's fifty largest (by asset size) bank holding companies. Based on consolidated financial data for the holding companies in the model for each of the last five years, the targeted ROE is the budgeted after-tax profit that the Federal Reserve would have earned had it been a private business. This ten-year recovery rate is based upon the method used for the pro forma income statement for Federal Reserve priced services published in the Board's *Annual Report*. The pro forma income statement reflects certain offsets to costs related to the transition to financial accounting standards number 87 (FAS 87) that have not been included in the 1999 repricing pro forma in this memorandum. Beginning in 2000, the PSAF includes additional financing costs associated with pension assets used by priced services. This ten-year cost-recovery amount has been computed as if these costs historically had been included in the PSAF calculations. If this modification were not applied to prior periods, the ten-year recovery rate would increase to 101.1 percent. In order to provide a more accurate comparison against the targeted return on equity that was used for establishing prices within those services, the 1999 service-line recovery data in this memorandum do not reflect the revisions to the PSAF method.

[2] These estimates are based on a chained Fisher Ideal price index. This index provides customers with a representation of the total price or cost of Reserve Bank services, offering a more complete picture than is possible solely from comparing changes in individual service fees over time. This index is not adjusted for quality changes in Federal Reserve priced services. Data elements used in calculating the index include explicit fee revenue from priced services products and services and electronic connections to the Reserve Banks, volumes associated with those products and services, and imputed income associated with clearing balances through the Reserve Banks. The price index is calculating using the actual, estimated, or projected full-year revenues and volumes. For 2001, the year-over-year percentage change in the index results from a comparison of the 2001 projections to the 2000 estimates for priced services revenues and volumes. The Reserve Banks delayed implementing the fee changes for 2000 until April to minimize changes for depository institution customers during the period surrounding the century rollover. The 2001 index, therefore, does not directly compare the impact of the prices implemented on April 2000 against the 2001 prices because the 2000 estimate includes revenues and volumes from the first quarter of 2000. The changes in the price index since 1996 are calculated with full-year 2001 projected and 1996 actual revenues and volumes.

[3] The volume-weighted fee calculations for 2001 are based on a comparison of current and April 2000 transaction fees with the 2001 fees for check products, all weighted using the projected 2001 volumes. These volume-weighted calculations summarize changes in *specific* check product transaction fees while the chained Fisher Ideal price index includes the *all-in costs* to a customer of purchasing a market basket of Federal Reserve check products. The fees being introduced to encourage the accuracy of qualified returned checks and the greater use of electronic payment systems instead of large dollar checks are *not* included in the calculations of these transaction fee changes.

TABLE 1.—PRICED SERVICES COST RECOVERY
[Percent]

Priced service	2000 Budget	2000 Estimate	2001 Budget
All services	99.0	100.4	98.0
Check	98.7	100.3	97.7
ACH	100.0	100.1	100.2
Funds transfer	100.4	100.0	100.1
Book-entry	101.3	102.4	94.9
Noncash collection	108.5	110.8	102.2
Special cash	101.6	103.4	100.6

The aggregate cost-recovery rate is heavily influenced by the check service, which accounts for approximately 83 percent of the total cost of priced services. The electronic services (ACH, Fedwire funds transfer, and Fedwire book-entry securities transfer) account for about 17 percent of costs. The noncash collection and special cash services represent a *de minimis* proportion of priced services expenses. Figure 1 shows the proportion of 2000 estimated priced services costs attributable to each service.

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FIGURE 1
2000 ESTIMATED PRICED SERVICE COSTS BY SERVICE

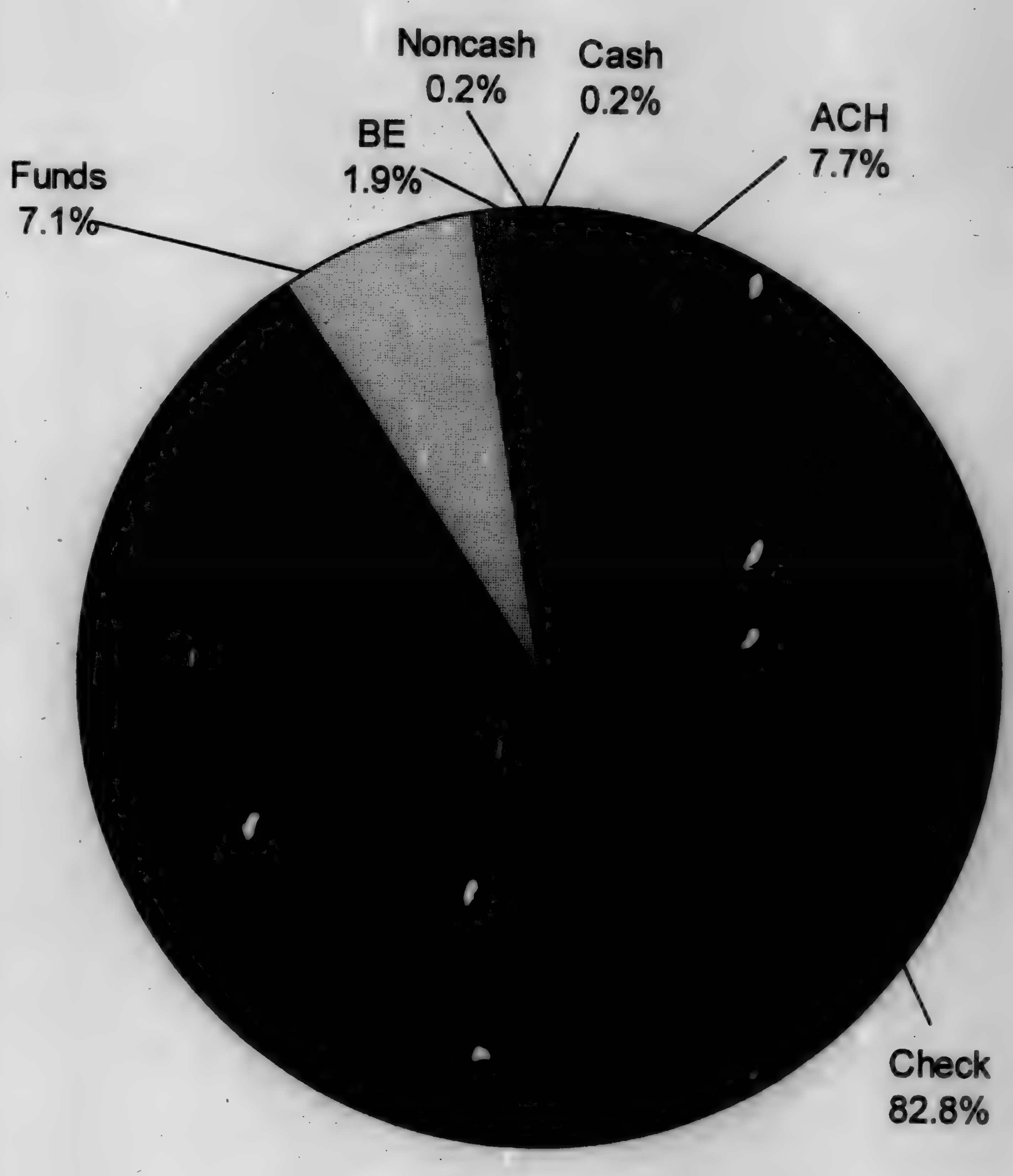

Table 2 summarizes the cost and revenue performance for priced services since 1999.

TABLE 2.—PRO FORMA COST AND REVENUE PERFORMANCE[a]

[In millions of dollars]

Year	1 Revenue[b]	2 Total expense[c]	3 Net income (ROE) [1 − 2]	4 Target ROE[d]	5 Recovery rate after target ROE[e] [1/(2+4)] (percent)
1999	867.6	787.0	80.6	56.0	102.9
2000 (Estimate)	920.5	818.7	101.7	98.4	100.4
2001 (Budget)	978.5	889.4	89.1	109.3	98.0

[a] Calculations on this table and subsequent pro forma cost and revenue tables may be affected by rounding.

[b] Includes net income on clearing balances.

[c] The calculation of total expense on this and subsequent pro forma cost and revenue tables includes operating expenses and imputed costs plus special project costs recovered during the year. Imputed costs include interest on debt, taxes, FDIC insurance, Board of Governors expenses related to priced services, and the cost of float. Credits for prepaid pension costs under SFAS 87 are also included. In 1999, the book-entry service recovered $1.7 million in special project costs related to the completion of the automation consolidation project. In 2000, the check service estimates that it will recover fully $6.3 million in special project costs related to the ongoing check modernization initiative. In 2001, the check service projects that it will recover fully $15.1 million in special project costs related to check modernization.

[d] Target ROE is based on the ROE included in the PSAF and has been adjusted for taxes, which are included in column 2.

[e] If the PSAF method used to calculate the 2000 and 2001 aggregate priced service cost in this table were applied to the actual 1999 calculations, the recovery rate would decline to 100.4 percent.

1. 2001 Price Index

The price index for electronic payment services and electronic connections is projected to decline approximately 1.9 percent in 2001, and the index for paper-based payment services is expected to increase 6.4 percent. The overall 2001 price index for Federal Reserve services is projected to increase 4.2 percent, the same as the increase in 2000. The overall price index has increased half a percent since 1996. The higher overall price index in 2001 is attributable mainly to increased check prices. Figure 2 compares the Federal Reserve's price index for priced services with the gross domestic product price deflator, which shows that the cost of Federal Reserve priced services has historically increased more slowly than that of the deflator.

The decline in the price index for electronic payments services since 1996 has reflected, in large part, the ability of the Reserve Banks to capitalize on the operational efficiencies and scale economies inherent in providing payment services through centralized electronic payment processing applications. Between 1992 and 1998, the Reserve Banks' automated data processing facilities were consolidated into three sites, significantly reducing the cost of providing electronic payment services.

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FIGURE 2
FEDERAL RESERVE PAYMENT SERVICES PRICE INDEX
Chained Fisher Ideal Index Compared With GDP Price Deflator

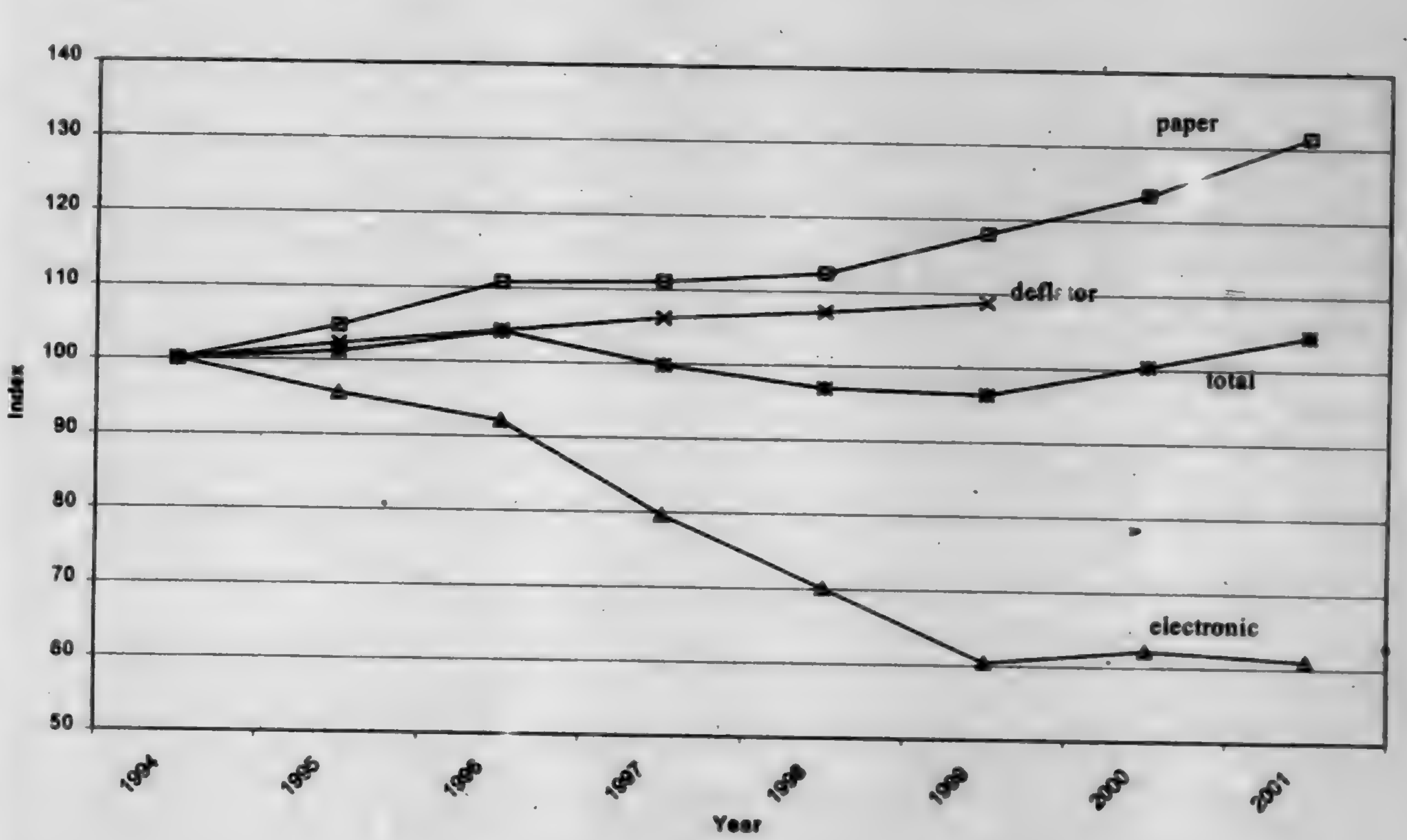

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2. Allocation of Corporate Overhead Costs to Priced Services

Corporate overhead costs are allocated to priced services in total and to other Reserve Bank activities based on their proportion of total Reserve Bank costs (expense-ratio basis). Because corporate overhead costs are not closely related to any particular priced service, the priced services portion of these costs are assigned among the individual services to facilitate the funding of significant multiyear strategic investments that would otherwise result in short-term price fluctuations, subject to established minimum and maximum amounts.[4] To a small extent in 1999, the Reserve Banks assigned these costs among priced services to accelerate the retirement of debt associated with the automation consolidation special project. In 2000, the assignment of corporate overhead costs to individual priced services supported the Reserve Banks' strategic check modernization project. In 2001, the overhead costs will be assigned along the traditional expense-ratio basis. Table 3 shows the assignment of corporate overhead costs for the years 1999–2001.

TABLE 3.—CORPORATE OVERHEAD ALLOCATIONS TO PRICED SERVICES

[In millions of dollars]

Year	Check	ACH	Funds transfer	Book-entry	Noncash collection	Special cash	Total
1999 Actual	38.8	3.7	6.0	0.0	0.1	0.2	48.8
2000 (Estimate)	55.6	2.4	3.1	0.8	0.1	0.1	62.1
2001 (Budget)	45.1	4.2	2.9	1.1	0.1	0.1	53.5

3. 2001 Projected Performance

The Reserve Banks project that they will recover 98.0 percent of total expenses related to priced services, including imputed expenses and target ROE, in 2001. The 2001 fees for priced services will result in a net income of $89.1 million, compared with a target ROE of $109.3 million. The check service will recover fully the approximately $15.1 million of 2001 priced services costs associated with the check modernization special project.

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[4] Under the new Reserve Bank cost accounting method, corporate overhead costs for 2001 include all of the following activities: corporate administration functions, budget preparation and control, expense accounting, and general ledger accounting. Corporate overhead costs for 1999 and 2000 also included all or a portion of central mail operations, legal, records management and contingency planning, motor vehicles, and audit, which have now become support costs.

4. 2000 Estimated Performance

The Reserve Banks estimate that priced services will yield a net income of $101.7 million in 2000, compared with a target ROE of $98.4 million. In 2000, the Reserve Banks estimate that they will recover 100.4 percent of the costs of providing priced services, including imputed expenses, all check modernization special project costs, and target ROE, compared with a target recovery rate of 99.0 percent.[5]

5. 1999 Performance

In 1999, the Reserve Banks'' priced services revenue yielded a net income of $80.6 million, compared with a targeted ROE of $56.0 million. The Reserve Banks recovered 102.9 percent of total expenses, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE, compared with a targeted recovery rate of 101.0 percent. The Reserve Banks recovered a larger-than-expected percentage of costs because of higher volumes, midyear increases in check prices, and increased pension credits.

In 1999, the Reserve Banks completed their recovery of transition costs associated with the automation consolidation project (special project costs) and associated financing costs. In addition to facilitating fee reductions in electronic payment services, the consolidation initiative has dramatically improved the Reserve Banks' disaster recovery and information security capabilities, increased the System's responsiveness to change, and enhanced the central bank's management of payment system risk.

C. Check

Table 4 presents the actual 1999, estimated 2000, and projected 2001 cost-recovery performance for the check service.

TABLE 4.—CHECK PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1−2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)] (percent)
1999	707.3	649.8	57.5	45.1	101.8
2000 (Estimate)	762.2	678.9	83.3	60.8	100.3
2001 (Budget)	816.1	745.2	70.9	90.3	97.7

1. 1999 Performance

The check service recovered 101.8 percent of total costs in 1999, including imputed expenses and targeted ROE. Higher-than-anticipated volume growth at most Reserve Banks and midyear price increases helped actual cost recovery to exceed the targeted rate of 101.0 percent. The volume of checks collected increased 3.0 percent from 1998 levels because of several factors, including the increased reliance on Reserve Bank check processing by some banks during merger-related operational changes and the introduction of new check products.

2. 2000 Performance

Through August 2000, the check service has recovered 101.0 percent of total costs, including imputed expenses and target ROE.[6] The Reserve Banks estimate that the check service will recover 100.3 percent of its costs for the full year compared with the target 2000 recovery rate of 98.7 percent. The higher recovery rate is due to improved cost controls implemented by Reserve Banks, midyear price increases at a number of Reserve Banks, and increased pension credits.

Volume growth within paper check products through August 2000 has varied from the original budget projections. Growth of the volume of forward-processed items slowed substantially from the 1999 pace as some merger and acquisition volumes that were outsourced to the Reserve Banks reverted back to the merged institutions' processing platforms. Return-item volume has been higher than anticipated Systemwide as several correspondents have stopped providing return-check services. Table 5 summarizes the year-to-date and full-year estimated growth rates for all paper check products.

TABLE 5.—PAPER CHECK PRODUCT GROWTH RATES

[Percent]

	Budgeted 2000 growth	Volume growth through August 2000	Estimated 2000 growth
Total forward-collected	4.5	0.7	1.9
Forward-processed	4.7	2.4	3.0
Fine-sort[a]	2.6	−10.2	−9.3
Returns	−2.3	1.3	−1.6

[a] Electronic fine-sort volume is excluded from these numbers. Electronic fine-sort is a service that allows depository institutions to exchange fine-sort information electronically among themselves while also exchanging the actual checks. Including the electronic fine-sort product offered at one Reserve Bank, budgeted 2000 fine-sort volume growth is actually targeted to decrease 1.6 percent, with the estimated 2000 volume growth decreasing 14.2 percent.

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[5] Through August 2000, the Reserve Banks recovered 101.5 percent of total priced services expenses, including imputed expenses, check modernization special project costs, and target ROE.

[6] Total costs include special project costs of $15.1 million. None of those costs are deferred and financed.

The Board considers the Reserve Banks' 2000 volume estimates for forward-processed items to be reasonable. The Board believes, based upon year-to-date trends, that return-volume growth may be understated.

Continuing a trend over the last few years, the Reserve Banks have seen steadily increasing demand for electronic check products. Reserve Banks provide electronic check data or images provided to paying bank for about 35 percent of checks they collect. Year-to-date 2000 demand for image products has grown to approximately 800 million items, or 7 percent of checks collected by the Reserve Banks in 2000. Growth and penetration rates for electronic check products are summarized in table 6. Given the current volume growth through August, the Board believes that Reserve Banks are underestimating demand for electronic check services.

TABLE 6.—ELECTRONIC CHECK PRODUCT PENETRATION AND GROWTH RATES

[Percent of checks collected]

	Penetration rate through August 2000	Year-over-year growth through August 2000	Estimated 2000 growth
Electronic check presentment	20.6	10.2	5.6
Truncation	5.4	9.8	4.5
Non-truncation	15.2	10.4	6.0
Electronic check information	7.3	−7.4	−11.9
Images	6.9	46.2	34.8

3. 2001 Pricing

For the coming year, the Reserve Banks will focus on the check modernization initiatives to standardized check processing across all Reserve offices. The Board expects the Reserve Banks to incur significant transition costs associated with these initiatives over the next several years. These initiatives include

- Check standardization—implement a standard, centrally managed, check-processing environment at all Reserve Banks
- Enterprise-wide adjustments—implement a standard, centrally managed, enterprise-wide adjustments system at all offices
- Image services system—redesign the current image-processing infrastructure based on a standard, centrally managed, single platform
- Electronic access and delivery—design and execute a strategy to provide customers with remote electronic access and delivery of check services over the Internet.

The check modernization initiatives are expected to reduce costs and improve service over the long term. This effort will lead to better quality and more technologically advanced products and services for customers, greater flexibility and responsiveness to customer needs and requirements, and more consistent price and product structures across the Reserve Banks. Ultimately, the efficiencies gained through the modernization initiatives should lead to cost savings at the Reserve Banks.

In 2001, per-item and cash-letter fees for all check products are increasing 3.9 percent on a volume-weighted basis compared with fees introduced in April 2000 and 2.6 percent compared with current fees. Per-item and cash-letter fees for paper-based check products are increasing at about the same rate. This increase was driven by price adjustments for both forward and return products. On a volume-weighted basis, the average per-item and fixed fees for payor bank services will increase 3.7 percent compared with April 2000 fees and 2.9 percent compared with current fees.

Table 7 provides details on the 2000 price changes.

TABLE 7.—2001 PRICE CHANGES

[Percent]

Products	2001 vs. April 3, 2000 fees	2001 vs. current 2000 fees
All check products	3.9	2.6
Total paper products	3.9	2.6
Forward-processed	3.6	2.5
Fine-sort	7.0	5.1
Returns	3.7	2.9
Payor bank services	3.7	2.9
Electronic check presentment	0.4	0.1

Table 8 summarizes ranges of key check fees for 2001.

TABLE 8.—SELECTED CHECK FEES

	2000 price ranges (per item)	2001 price ranges (per item)
Items:		
Forward-processed:		
City	$0.004 to 0.081	$0.005 to 0.079.
RCPC	$0.004 to 0.180	$0.004 to 0.200.

TABLE 8.—SELECTED CHECK FEES—Continued

	2000 price ranges (per item)	2001 price ranges (per item)
Forward fine-sort:		
City	$0.004 to 0.015	$0.005 to 0.020.
RCPC	$0.0025 to 0.018	$0.004 to 0.019.
Qualified returned checks:		
City	$0.17 to 1.11	$0.17 to 1.10.
RCPC	$0.21 to 1.75	$0.21 to 1.50.
Raw returned checks:		
City	$1.00 to 5.50	$1.00 to 5.50.
RCPC	$1.00 to 5.50	$1.00 to 5.55.
Cash letters:	(per cash letter)	(per cash letter)
Forward-processed[a]	$1.75 to 9.25	$2.00 to 13.50.
Forward fine-sort	$3.00 to 14.00	$3.00 to 14.00.
Returned checks: raw/qualified	$1.75 to 14.00	$1.75 to 14.00.
Payor bank services:	(min.) (per item)	(fixed) (per item)
MICR information	$5–$30 $0.001–0.0060	$2–$15 $0.0012–0.0060.
Electronic presentment	$3–$14 $0.001–0.0045	$2–$11 $0.0010–0.0100.
Truncation	$3–$25 $0.004–0.0170	$2–$10 $0.0060–0.0180.
Image		$2–$15 $0.0020–0.0200.

[a] Includes a fifty-cent check-relay surcharge due to higher fuel costs. Both bounds of the price range would decrease $0.50 if this surcharge were not included.

The Reserve Banks will adopt several pricing strategies that are designed to increase the efficiency of Reserve Bank operations, improve the quality of return-check deposits, and reduce the risk associated with the check payments system. In turn, these improvements will decrease the costs associated with processing payments, and the savings will ultimately be passed along to customers in the form of lower transaction fees. Specifically, the Reserve Banks will price for certain categories of return-item exceptions that can be identified in Reserve Bank processing operations. The Reserve Banks also will charge for processing commercial checks with a value of $10 million or more to depositing customers. It is expected that this charge will encourage customers to use electronic payment systems, such as funds transfer and ACH, for large-dollar payments. These prices will be introduced during the second quarter of 2001.

For 2001, the Reserve Banks project that the check service will recover 97.7 percent of total costs, including imputed expenses, costs associated with the check automation standardization special project, and target ROE. Total expenses are projected to increase approximately $66.3 million, or 9.9 percent, from estimated 2000 expenses. Total expenses for 2001 include approximately $67.6 million for the four check modernization projects and a special project for related extraordinary expenses, a total increase of $44 million from the 2000 estimate.

The check service is projected to have revenue in 2001 of $816.1 million from forward collection and return-item processing (81.4 percent), payor bank services (10.8 percent), and other operating and imputed revenues (7.8 percent). Total revenue is expected to increase approximately $53.9 million, or 7.1 percent, in 2001 as a result of increased service revenue ($53.4 million).

In 2001, forward-processed volume is projected to be 15.5 billion, an increase of 1.6 percent compared with the 2000 estimate. Fine-sort volumes, without electronic fine-sort, are estimated to be 1.3 billion, or 5.2 percent, less than the 2000 estimate. Fine-sort volumes including electronic fine-sort are estimated to be 2.0 billion, or 3.5 percent, less than the 2000 estimate. Total returns are projected to be 175.8 million, an increase of 0.5 percent from the 2000 estimate.

MICR presentment and MICR presentment plus volume are projected to be 2.9 billion, reflecting growth of about 17 percent in 2001. Truncation volume is expected to be 987.0 million, an increase of almost 10 percent, and image services volume is budgeted to be 1.5 billion, reflecting growth of nearly 27 percent in 2001. MICR information is projected to decrease by 1.0 billion items or about 13 percent in 2001.

The Board believes that the costs of check modernization initiatives present the greatest risk to the cost projections for the check service. In particular, staffing costs may be greater than anticipated given the competitive labor markets that exist nationwide. Further, operational costs, productivity, and service quality are at risk if there are slippages in the transition schedules or unanticipated increases in the costs for the modernization initiatives.

D. Automated Clearinghouse (ACH)

Table 9 presents the actual 1999, estimated 2000, and projected 2001 cost-recovery performance for the commercial ACH service.

TABLE 9.—ACH PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1 − 2]	4 Target ROE	5 Recovery rate after target ROE (percent) [1/(2+4)]
1999	67.8	55.9	11.9	4.5	112.3
2000 (Estimate)	70.5	61.4	9.1	8.0	101.6
2001 (Budget)	75.5	66.4	9.1	8.9	100.2

1. 1999 Performance

The ACH service recovered 112.3 percent of total expenses, including imputed expenses and targeted ROE, in 1999. Commercial ACH volume was 12.5 percent higher than 1998 volume, slightly greater than the 12.0 percent increase originally projected for 1999. During the year, ACH lowered all origination fees by $0.0005.

2. 2000 Performance

Through August 2000, the ACH service recovered 103.4 percent of total expenses, including imputed expenses and target ROE. For the full year, Reserve Banks estimate that the service will recover 101.6 percent of total expenses compared with the target 2000 recovery rate of 100.0 percent. The estimated over-recovery is due to lower total expenses of 1.4 percent, which is being caused by a reduction in national support costs. The increase in total expenses since 1999 is mainly attributable to ACH's assuming a larger allocation of joint priced corporate overhead to support the check modernization initiatives.

Through August 2000, commercial ACH volume has increased 13.5 percent from the same period in 1999. For the full year, Reserve Banks expect commercial volume to increase 11.6 percent compared with the 13.9 percent increase originally projected for 2000. The Reserve Banks cite consolidation in the financial services industry as a partial driver for the lower-than-expected volumes and anticipate further volume reductions as competitive pressures increase. The Board questions whether the significantly slower growth rate that is expected through year-end reasonably reflects the effect of these competitive pressures. The Board believes that the expected growth rate may be understated.

3. 2001 Pricing

The Board recently approved modifications to the Reserve Banks' deposit deadlines and pricing practices for transactions they exchange with private-sector operators (PSOs). (65 FR 66249, November 3, 2000). The Reserve Banks are working collaboratively with ACH operators to establish interoperator deposit deadlines by which the Reserve Banks and the PSOs would exchange interoperator transactions. Further, the Reserve Banks are initiating discussions with the PSOs to negotiate the structure and level of fees that will be charged by the Reserve Banks as well as those fees that the Reserve Banks will pay the PSOs. The new deadlines and price structure for PSOs are intended to address the competitive concerns that have been raised by industry representatives. The new deadlines will be implemented no later than June 2001 and the price structure modifications will be implemented no later than September 2001. The specific implementation date for each of these modifications will be announced well in advance of the effective dates. The Reserve Banks will also assess a monthly settlement fee of $20 (per routing number), rather than the current monthly account servicing fee, to depository institutions that send and receive all their transactions to and from the Reserve Banks through PSOs. The Reserve Banks no longer plan to assess origination or receipt fees directly to these depository institutions. Additionally, the Reserve Banks will charge ACH operators half the published electronic connection fee to reflect the use of the connection by both ACH operators and the Reserve Banks to send each other interoperator transactions. These changes will only apply to any intermediary that is defined as an operator under National Automated Clearing House Association (NACHA) rules. The Reserve Banks will retain the 2001 ACH prices at the current levels, except for the changes for interoperator transactions.

The Reserve Banks project that the ACH service will recover 100.2 percent of its costs in 2001, including imputed expenses and target ROE. Total expenses are projected to increase $5.9 million, or 8.5 percent, from the 2000 estimate because of growth in support and overhead costs, particularly those related to business development. Total revenue in 2001 is projected to increase $4.9 million, or 7.0 percent more than the 2000 estimate. The higher revenue is attributable to projected commercial volume growth and increased revenue from electronic connections, offset somewhat by lost revenue from the new pricing of interoperator transactions.

ACH volume in 2001 is projected to increase 12.1 percent from 2000 estimates. The 2001 volume projection assumes a rate of growth between the 12.5 percent experienced in 1999 and expected growth in 2000, which is estimated at 11.6 percent. This growth rate, revenues, and cost recovery, however, do not account for several risks in 2001. The major risks include the uncertain effects of price-structure and service-level changes being implemented for interoperator transactions, the increased competitive pressures from PSOs, and future consolidations in the financial services industry. The Board believes that a 12.1 percent growth rate may be difficult to achieve because this rate may not fully reflect these risks.

E. Funds Transfer and Net Settlement

Table 10 presents the actual 1999, estimated 2000, and projected 2001 cost-recovery performance for the funds transfer and net settlement services.

TABLE 10.—FUNDS TRANSFER AND NET SETTLEMENT PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

	1 Revenue	2 Total expense	3 Net income (ROE) [1−2]	4 Target ROE	5 Recovery rate after target ROE (percent) [1/(2+4)]
1999	69.2	61.3	7.8	5.2	104.0
2000 (Estimate)	65.1	57.6	7.5	7.5	100.0
2001 (Budget)	63.1	55.6	7.5	7.5	100.1

1. 1999 Performance

For 1999, the funds transfer and net settlement services recovered 104.0 percent of total costs, including imputed expenses and targeted ROE, compared with a targeted recovery rate of 102.0 percent. This over-recovery was primarily due to expenses $3.2 million (4.5 percent) less than original budget projections; the decrease in expenses resulted from an 11.2 percent and a 3.2 percent decrease in direct and support costs, respectively. Service revenue for 1999 was approximately $1.8 million (2.6 percent) less than original budget projections. A $0.9 million (27.7 percent) decrease in net income on clearing balances accounted for almost half of the deficit. In addition, electronic connection revenue was $0.6 million (6.2 percent) lower than anticipated due to fewer than anticipated customers signing on to services related to electronic access. The rest of the revenue shortfall was due to lower-than-anticipated volume in the highest-priced (low-volume) tier. Funds transfer volume increased 4.7 percent from the 1998 level, compared with a budgeted 5.8 percent growth.

2. 2000 Performance

Through August 2000, the funds transfer and net settlement services recovered 103.9 percent of total costs, including imputed expenses and target ROE. For full-year 2000, the Reserve Banks estimate that the funds transfer and net settlement services will recover 100.0 percent of total expenses, compared with a target recovery rate of 100.4 percent. The Board believes the Reserve Banks' estimated 2000 cost recovery is too low given year-to-date experience.

Funds transfer volume through August 2000 has increased 6.5 percent relative to the same period in 1999. For the full year, the Reserve Banks estimate a 5.7 percent volume increase compared with a budgeted increase of 6.0 percent.

3. 2001 Funds Transfer Pricing

The Reserve Banks will retain the current per-transfer fees and thresholds for volume-based discounts. The average (volume-weighted) per-transfer price would be $0.223. In addition, the Reserve Banks will retain the off-line surcharge at its current level.

Reserve Banks project that the Fedwire funds transfer service will recover 100.1 percent of total costs, including imputed expenses and target ROE, in 2001. Total costs are expected to decline $2.0 million (3.1 percent) from the 2000 estimate, primarily due to reduced operating costs of $1.4 million (2.4 percent) and a decrease in PSAF costs of $0.5 million (3.6 percent). The reduction in operating costs is mainly due to staff reductions.

Funds transfer volume is expected to decrease 1.2 percent from 2000 estimated levels, due primarily to potential shifts in volume to CHIPS. In first quarter 2001, CHIPS will introduce a new intraday finality service that will provide more risk controls and thus reduce the impediments to the use of CHIPS for some payments that are currently processed via Fedwire. The Reserve Banks anticipate a 3.0 percent decline in funds transfer volume from high-volume customers that are also CHIPS participants, partially offset by increases in volume from middle-tier customers. Revenue is projected to decline $2.0 million (3.1 percent) in 2001 compared with the 2000 estimate because of slightly lower 2001 volume and the full-year effects of the April 2000 on-line fee reductions.

4. 2001 Net Settlement Pricing

The Reserve Banks will retain the local and enhanced net settlement fees at the 2000 price levels. The enhanced net settlement service will be fully implemented during 2001 as local settlement services are phased out by year-end.

F. Book-Entry Securities

Book-entry securities includes purchase and sale activity. Table 11 presents the actual 1999, estimated 2000, and projected 2001 cost-recovery performance for the book-entry securities service.[7]

TABLE 11.—BOOK-ENTRY SECURITIES TRANSFER PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1−2]	4 Target ROE	5 Recovery rate after target ROE (percent) [1/(2+4)]
1999	17.3	15.1	2.2	1.0	107.4
2000 (Estimate)	18.0	15.7	2.3	1.9	102.4
2001 (Budget)	19.9	18.6	1.3	2.3	94.9

1. 1999 Performance

The book-entry securities service recovered 107.4 percent of total costs in 1999, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE, compared with a targeted recovery rate of 105.2 percent.[8] Service revenue for 1999 was approximately $650,000 (3.9 percent) greater than original budget projections. Origination volume increased 0.6 percent from the 1998 level, compared with an expected decrease of 5.7 percent. The increase in volume resulted from a general increase in mortgage-debt refinancing and a higher-than-expected issuance of mortgage-backed securities.

2. 2000 Performance

Through August 2000, the book-entry securities service recovered 106.4 percent of total costs, including imputed expenses and target ROE. For full-year 2000, the Reserve Banks estimate that the book-entry securities service will recover 102.4 percent of total costs, compared with a target recovery rate of 101.3 percent. This higher-than-budgeted recovery rate reflects revenue that is 6.1 percent greater than budget. The increase in revenue is due to higher-than-expected volumes.

Book-entry securities transfer volume has increased 7.5 percent from February 2000 to August 2000 compared with the same period in 1999.[9] The full-year growth rate for origination volume is expected to be 4.8 percent more than actual 1999 volumes, compared with the flat projections originally forecast at the beginning of the year. Like the increase in 1999, this volume increase is due to an increase in mortgage-debt refinancing and greater use of agency securities as a hedge against other investment risks.

3. 2001 Pricing

Except as noted below, the Reserve Banks will retain all fees in 2001 at their current levels. There will be a $7 increase to the off-line surcharge to originate and receive a transfer, to $25, to better reflect the costs of providing off-line transfers for book-entry securities.

The purchase and sale service represents less than 1 percent of the costs and revenues of the book-entry securities service line. Provision of this service, which facilitates the purchase and sale of Treasury and government agency securities by depository institutions on the secondary market, is consolidated at the Federal Reserve Bank of Chicago. The Reserve Banks will maintain the $40 transaction fee for securities purchases and sales.

The Reserve Banks project that the book-entry securities service will recover 94.9 percent of costs in 2001, including imputed expenses and target ROE. Excluding target ROE, expenses are projected to increase $2.9 million (18.3 percent) from the 2000 estimate. This is primarily due to the implementation of the new book-entry cost allocation model that will shift more costs to the priced portion of the service.

Book-entry securities transfer volume is projected to increase 8.9 percent compared with the 2000 estimate. The 18.3 percent increase in total book-entry expenses is expected to be partially offset by a $1.8 million (10.2 percent) increase in revenue from the projected start of the conversion of Government National Mortgage Association (Ginnie Mae) securities to the National Book-Entry System (NBES) during the fourth quarter of 2001. Full recovery under the new cost-allocation approach is expected in 2002 when the conversion of Ginnie Mae to NBES has been completed.

G. Noncash Collection

Table 12 lists the actual 1999, estimated 2000, and projected 2001 cost-recovery performance for the noncash collection service.

TABLE 12.—NONCASH COLLECTION PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	1 Revenue	2 Total Pexpense	3 Net income (ROE) [1−2]	4 Target ROE	5 Recovery rate after target ROE (percent) [1/(2+4)]
1999	3.0	2.0	1.0	0.1	140.3
2000 (Estimate)	2.4	2.0	0.4	0.2	110.8
2001 (Budget)	2.0	1.7	0.2	0.2	102.2

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[7] The Reserve Banks provide securities transfer services for securities issued by the U.S. Treasury Department, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the Treasury Department assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the money settlement component of a Treasury securities transfer; this component is not treated as a priced service.

[8] In 1999, the book-entry service recovered the last $1.7 million remaining from the Reserve Banks' automation consolidation special project. All costs associated with this special project have now been fully recovered.

[9] Before February 1999, the Federal Reserve did not charge customers for book-entry receipts. Therefore, the volume data before February 1999 includes only originations whereas the data after February 1999 includes both originations and receipts. A comparison of volumes using January 1999 data would skew the results.

1. 1999 Performance

The noncash collection service recovered 140.3 percent of total expenses in 1999 (including imputed expenses and targeted ROE) compared with a targeted recovery rate of 118.6 percent. Volume for 1999 decreased 18.8 percent from 1998 levels compared with a 26.6 percent budgeted volume decline. The volume decline was less than budgeted levels because of both unexpected called-bond activity and higher-than-expected coupon volume.

2. 2000 Performance

Through August 2000, the noncash collection service recovered 119.3 percent of its costs. For full-year 2000, the Reserve Banks estimate that the noncash collection service will recover 110.8 percent of costs, including imputed expenses and target ROE, compared with the target recovery rate of 108.5 percent. Through August, volume declined 15 percent compared with the same period in 1999, while the overall industry experienced a volume decline of 18 to 20 percent for the same period. The Reserve Banks estimate that full-year 2000 volume will decline 17.1 percent from 1999 levels compared with a 31.5 percent budgeted decline. Volume decline is expected to be lower than budgeted in part because the service received unexpected volume from existing and new customers as well as higher-than-budgeted bond collections from called and maturing securities. The estimated volume decline for the year is slightly greater than the actual decline for the first eight months of the year because of the recent withdrawal of volume by the System's largest depositor of noncash items.

3. 2001 Pricing

The Reserve Banks will increase one fee relative to 2000 fee levels. Specifically, the Reserve Banks will increase the return-item fee from $15 to $20 for items that are returned to the depositor as uncollected. The Reserve Banks project that the noncash collection service will recover 102.2 percent of total costs, including imputed expenses and target ROE, in 2001.

Total expenses are projected to decline approximately $0.2 million, or 10.8 percent, in 2001. Despite the higher return-item fee, the Reserve Banks project that revenue will decline approximately $0.4 million, or 17.7 percent, in 2001, because of a projected volume decline of 20.9 percent. The projection is based on the recent loss of the Reserve Banks' largest depositor, which has begun to process its own volume, and the overall industry volume decline.

New issues of bearer municipal securities effectively ceased in 1983 when the Tax Equity and Fiscal Responsibility Act of 1982 removed the tax advantage for investors. Volume declines will continue as the number of unmatured bearer municipal securities declines. The Reserve Banks' Cash Fiscal Product Office estimates that in a few years, the steadily declining number of bearer securities will make full cost recovery in this service unlikely. The Board is working with the Reserve Banks to determine the long-term strategy for this service.

H. Special Cash

Priced special cash services represent a very small portion (less than one percent) of overall cash services provided by the Reserve Banks to depository institutions. Special cash services include the provision of wrapped coin, packaging of nonstandard currency orders and deposits as well as coin deposits, and shipping of currency and coin by registered mail. Table 13 presents the actual 1999, estimated 2000, and projected 2001 cost-recovery performance for the special cash service.

TABLE 13.—SPECIAL CASH PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	1 Revenue	2 Total expense	3 Net income (ROE) (1 − 2)	4 Target ROE	5 Recovery rate after target ROE (percent) [1/(2+4)]
1999	3.0	2.9	0.2	0.0	103.8
2000 (Estimate)	2.2	2.1	0.2	0.1	103.4
2001 (Budget)	1.8	1.7	0.1	0.1	100.6

1. 1999 Performance

In 1999, the special cash service recovered 103.8 percent of total expenses, including imputed expenses and targeted ROE, compared with a targeted recovery rate of 105.8 percent.

2. 2000 Performance

Through August 2000, the special cash service recovered 99.3 percent of total expenses, including imputed expenses and target ROE. For full-year 2000 the Reserve Banks estimate, however, that the special cash service will recover 103.4 percent of total expenses, compared with a target recovery rate of 101.6 percent. Revenue is estimated to decrease approximately $0.8 million, or 26.1 percent, and total costs in 2000 are estimated to decrease slightly more than $0.8 million, or 28.9 percent, compared with 1999 costs. The estimated revenue and cost decreases are due mainly to the elimination of the wrapped-coin business in Cleveland and of the registered mail business in the Dallas and San Francisco Districts.

3. 2001 Pricing

For 2001, the Reserve Banks project that the special cash service will recover 100.6 percent of costs, including imputed expenses and target ROE. Total costs in 2001 are projected to decline $0.3 million, or 15.4 percent, from the 2000 level. Revenue in 2001 is expected to decline $0.4 million, or 18.3 percent.

The anticipated revenue and cost reductions are due primarily to the full-year effects of the Fourth District's decision to exit the coin-wrapping business in April 2000 and the Eleventh and Twelfth Districts' decisions to exit the registered mail business in late August 2000.

Beginning in 2001, the El Paso office will increase the fee for Express Cash Orders from $60.00 to $80.00. Boston will increase the surcharge for registered mail from $30 to $45 and decrease the insurance fee from $0.80 to $0.50 per $1,000 in excess of the first $25,000. The Tenth District will increase the surcharge for registered mail from $13 to $16 and the insurance fee from $0.27 to $0.32.

II. Private-Sector Adjustment Factor

A. Background

Each year, as required by the Monetary Control Act, the Reserve Banks set fees for "priced services" to depository institutions. These fees are set to recover all direct and indirect costs and imputed costs, such as financing costs, return on capital, taxes, and certain other expenses that would have been paid had the services been provided by a private business firm. These imputed costs are based on data developed in part from a model comprising consolidated financial data for the nation's fifty largest (asset size) bank holding companies (BHCs). The imputed costs and imputed profit are collectively referred to as the private-sector adjustment factor (PSAF).

1. Cost of Capital

The method for calculating the PSAF involves determining the value of Federal Reserve assets that will be used in providing priced services during the coming year, the financing mix used to fund them, and the rates paid for this financing. Assets are determined using Reserve Bank information on actual assets and projected disposals and acquisitions. The priced portion of mixed-use assets is determined based on the allocation of the related depreciation expense. Short-term assets are assumed to be financed with short-term liabilities and long-term assets are assumed to be financed with a combination of long-term debt and equity.

The long-term debt and equity rates are based on the average of these elements for BHCs in the model for each of the last five years. Because short-term debt, by definition, matures within one year, only data for the most recent year are used for computing the short-term debt rate.

2. Income Taxes

For simplicity, given that federal corporate tax rates are graduated, various credits and deductions can apply and state taxes vary, a specific tax rate is not calculated for Federal Reserve priced services. Instead, imputed taxes are captured by using a pretax return on equity (ROE). This result influences the dollar level of the PSAF and Federal Reserve price levels because this is the return a shareholder would expect in order to invest in a private business firm. The use of the pretax return on equity assumes a 100 percent recovery of expenses, including the target return on equity, will be achieved. The PSAF is, therefore, based on a precise matching of revenues and actual and imputed costs. Should the pretax earnings be over or under the target ROE, the PSAF is adjusted ("variable PSAF") for the tax expense or savings associated with the adjusted recovery. The tax rate is the median of the rates paid by the BHCs over the past five years adjusted to the extent that BHCs are invested in municipal bonds.

3. Other

The PSAF also comprises the estimated expenses of the Board of Governors related to priced services. An assessment for FDIC insurance is imputed based on current FDIC rates and projected clearing balances held with the Federal Reserve.

B. Discussion

The increase in the 2001 PSAF is due to higher priced service asset levels, primarily the net pension asset. Partially offsetting the increase in asset levels is the inclusion of short-term payables as a source for financing short-term assets.

1. Asset Base

The total estimated value of Federal Reserve assets to be used in providing priced services in 2001 is reflected in Table 14. Table 15 shows that the assets assumed to be financed through debt and equity are projected to total $1,162.4 million. This amount represents an increase of $45.9 million, or 4.1 percent, from the assets financed in 2000. Growth of $105.1 million in the net pension asset accounts for the majority of the increase, while higher Reserve Bank building and equipment assets account for an additional $20.9 million.

Partially offsetting the increase in asset levels is a reduction of $80.1 million resulting from the inclusion of short-term payables as a financing source. Only those short-term assets that cannot be financed with actual (rather than imputed) short-term liabilities, such as sundry items payable, earnings credits due depository institutions, and accrued expenses, are financed with short-term debt. This is a change for 2001, recognizing that these non-imputed liabilities could be used to finance assets, which resulted in a $4.0 million decrease in PSAF.

2. Cost of Capital and Taxes

Table 15 also shows the financing and tax rates and the other required PSAF recoveries for 2001 and the rates used for developing the PSAF for 2000. The pretax ROE rate increased from 23.3 percent for 2000 to 24.0 percent for 2001. The effective tax rate to be used in 2001 remains unchanged from the 2000 rate at 31.5 percent.

3. Capital Adequacy and FDIC Assessment

As shown in table 16, the amount of capital imputed for the 2001 PSAF totals 30.8 percent of risk-weighted assets and 5.3 percent of total assets. The capital to risk-weighted asset ratio and the capital to total assets ratio both exceed regulatory guidelines for well-capitalized institutions and BHCs. As a result of these capital ratios, the FDIC assessment decreased from $2.9 million for 2000 to zero for 2001.

III. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payment system participants are subject to the competitive impact analysis described in the March 1990 policy statement "The Federal Reserve in the Payments System."[10] Under this policy, the Board assesses whether the change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position of the Federal Reserve deriving from such legal differences. If the fees or fee structures create such an effect, the Board must further evaluate the changes to assess whether their benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be retained while reducing the hindrances to competition.

The Board does not believe that these fees and fee structures will have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. Assuming the Reserve Banks' volume and cost projections are accurate, these fees are set to provide the Federal Reserve a return on equity similar to that earned by large BHCs and provide for full cost recovery over the long run.

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[10] FRRS 7–145.2.

TABLE 14.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[In millions of dollars—average for year]

	2001	2000
Short-term assets:		
Imputed reserve requirement on clearing balances	$742.4	$762.2
Investment in marketable securities	6,681.9	6,859.5
Receivables [11]	77.3	74.2
Materials and supplies [11]	3.6	3.4
Prepaid expenses [11]	23.4	21.4
Items in process of collection	3,606.7	3,804.2
Total short-term assets	11,135.3	11,524.9
Long-term assets:		
Premises [11] [12]	417.5	411.7
Furniture and equipment [11]	185.5	180.1
Leasehold improvements and long-term prepayments [11]	73.9	64.2
Prepaid pension costs [11]	718.5	599.8
Total long-term assets	1,395.4	1,255.8
Total Assets	12,530.7	12,780.7
Short-term liabilities:		
Clearing balances and balances arising from early credit of uncollected items	7,424.3	7,621.7
Deferred credit items	3,606.7	3,804.2
Short-term debt [13]	18.9	99.0
Short-term payables [14]	85.4	0.0
Total short-term liabilities	11,135.3	11,524.9
Long-term liabilities:		
Postemployment/retirement benefits [11]	251.9	238.3
Long-term debt [13]	479.1	400.9
Total long-term liabilities	731.0	639.2
Total liabilities	11,866.3	12,164.1
Equity [13]	664.4	616.6
Total liabilities and equity	12,530.7	12,780.7

NOTE: Details may not add to totals due to rounding.

[11] Financed through PSAF; other assets are self-financing.

[12] Includes allocations of Board of Governors' assets to priced services of $0.7 million for 2001 and $0.5 million for 2000.

[13] Imputed figures represent the source of financing for certain priced services assets.

[14] For the 2001 PSAF, short-term payables attributable to priced services are included as a financing source for short-term assets such as receivables, materials and supplies, and prepaid expenses.

TABLE 15.—DERIVATION OF THE 2001 AND 2000 PSAF

[In millions of dollars]

	2001	2000
A. Assets to be financed [15]:		
Short-term [16]	$18.9	$99.0
Long-term [17]	1,143.5	1,017.5
	1,162.4	1,116.5
B. Weighted average costs:		
1. Capital Structure [18]:		
Short-term debt (percent)	1.6	8.9
Long-term debt (percent)	41.2	35.9
Equity (percent)	57.2	55.2
2. Financing rates/costs [18]:		
Short-term debt (percent)	4.7	5.1
Long-term debt (percent)	6.5	6.6
Pretax equity (percent)	24.0	23.3
3. Elements of capital costs:		
Short-term debt	$18.9×4.7%=$0.9	$99.0×5.1%=$ 5.0
Long-term debt	$479.1×6.5%=31.1	$400.9×6.6%=26.5
Equity [19]	$664.4×24.0%=159.5	$616.6×23.3%=143.7
	$191.5	$175.2
C. Other required PSAF recoveries:		
Sales taxes	$10.5	$10.4
Federal Deposit Insurance assessment	0.0	2.9
Board of Governors expenses	4.9	4.2
	15.4	17.5
D. Total PSAF recoveries	$206.9	$192.6
As a percent of assets	17.8	17.3
As a percent of expenses [20]	24.5	26.5
E. Tax Rate (percent)	31.5	31.5

NOTE: Details may not sum to totals due to rounding.

[15] Priced service assets are based on the direct determination of assets method.

[16] For 2001, short-term assets consist only of those short-term assets that are not financed with short-term payables.

[17] Consists of total priced long-term assets less postretirement/postemployment benefit liabilities.

[18] For 2001, net short-term assets are assumed to be financed with short-term debt, for 2000 all short-term assets are assumed to be financed with short-term debt. Of the total long-term assets for 2001, 41.9% are assumed to be financed with long-term debt and 58.1% with equity.

[19] The pretax rate of return on equity is based on the average after-tax rate of return on equity, adjusted by the effective tax rate to yield the pretax rate of return on equity for each bank holding company for each year. These data are then averaged over five years to yield the pretax return on equity for use in the PSAF.

[20] System 2001 budgeted priced service expenses less shipping are $842.8 million.

TABLE 16.—COMPUTATION OF 2001 CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES

(millions of dollars)

	Assets	Risk weight assets	Weighted
Imputed reserve requirement on clearing balances	$742.4	0.0	$0.0
Investment in marketable Securities	6,681.9	0.0	0.0
Receivables	77.3	0.2	15.5
Materials and supplies	3.6	1.0	3.6
Prepaid expenses	23.4	1.0	23.4
Items in process of collection	3,606.7	0.2	721.3
Premises	417.5	1.0	417.5
Furniture and equipment	185.5	1.0	185.5
Leases, leasehold improvements & long-term prepayments	73.9	1.0	73.9
Prepaid pension costs	718.5	1.0	718.5
Total	12,530.7		2,159.2
Imputed equity for 2001	$664.4		
Capital to risk-weighted assets (percent)	30.8		
Capital to total assets (percent)	5.3		

NOTE: Details may not sum to totals due to rounding.

AUTOMATED CLEARING HOUSE FEE SCHEDULE [21]

	Fees
Origination (per item or record) [22]:	
Items in small files	$0.0055
Items in large files	0.0045
Addenda record	0.0020
Receipt (per item or record):	
Item	0.007
Addenda record	0.002
Input file processing fees (per file):	
Small file	1.75
Large file	6.75
Monthly fees:	
Account servicing fee (per routing number)	25.00
Information extract file	10.00
Return item/notification of change (NOC) fees [23]:	
Voice response return/NOC [24]	2.00
Nonelectronic input/output fees [25]:	
Tape input/output	25.00
Paper output	15.00
Diskette output	15.00
Facsimile return/NOC [26]	15.00
Cross-border fees:	
Cross-border item	0.037
Same-day recall of item at receiving gateway operator	3.50
Same-day recall of item not at receiving gateway operator	5.00
Item trace	5.00

AUTOMATED CLEARING HOUSE FEE SCHEDULE[21]—Continued

	Fees
Microfiche	3.00
Delivery by courier[27]	10.00

[21] This fee schedule does not reflect the price changes for interoperator transactions.

[22] Small files contain fewer than 2,500 items and large files contain 2,500 or more items.

[23] The Reserve Banks also assess a $15 fee for every government paper return/NOC they process. This service is not considered a priced service. The fee includes the transaction fee and conversion fee.

[24] The fee includes the transaction fee in addition to the voice-response fee.

[25] These services are offered in contingency situations only.

[26] The fee includes the transaction fee in addition to the conversion fee.

[27] The courier charge is in addition to the fee charged by the Reserve Banks.

FUNDS TRANSFER AND NET SETTLEMENT FEE SCHEDULE

	Fees
Funds transfer:	
Volume-based pricing fees (originations and receipts):	
Per transfer for the first 2,500 transfers per month	$0.33
Per transfer for additional transfers up to 80,000 per month	0.24
Per transfer for every transfer over 80,000 per month	0.17
Surcharge:	
Off-line transfer originated	15.00
Telephone notification	15.00
Net settlement:	
Basic fee (settlement sheet and enhanced NSS):	
Settlement charge per entry	0.95
Settlement file charge	12.00
Surcharge:	
Off-line origination per file[28] (settlement sheet)	15.00
Telephone notification per file (settlement sheet and enhanced NSS)	15.00
Minimum monthly fee	60.00
Fedwire-based, small-dollar arrangement per settlement day[29]	100.00
Fedwire-based, large-dollar arrangement per settlement day[29]	100.00–175.00

[28] The off-line origination surcharge will be waived by Reserve Banks that do not provide an electronic submission capability for the settlement sheet service.

[29] Participants in arrangements and settlement agents are also charged the applicable Fedwire funds transfer fee for each transfer into and out of the settlement account.

BOOK-ENTRY SECURITIES FEE SCHEDULE

	Fees
Book-entry securities transfer:	
Basic transfer fee:	
Transfer originated	$0.70
Transfer received	0.70
Reversal originated	0.70
Reversal received	0.70
Surcharge:	
Off-line transfer originated or received	25.00
Off-line reversal originated or received	25.00
Monthly maintenance fees:	
Account maintenance (per account)	15.00
Issues maintained (per issue/per account)	0.45
Purchase & sale:	
Transaction fee	40.00

NONCASH COLLECTION FEE SCHEDULE

	Fees
Coupon collection:	
Cash letters:	
With five or fewer coupon envelopes	$7.50
With six to fifty coupon envelopes	15.00
Coupon envelopes:	
With five or fewer coupon envelopes	4.75
With six to fifty coupon envelopes	2.50
Return items	20.00

NONCASH COLLECTION FEE SCHEDULE—Continued

	Fees
Bond collection (per bond):	[30]40.00

[30] Plus actual shipping costs.

SPECIAL CASH SERVICES FEE SCHEDULE

	Fee
Wrapped coin (per box[31]):	
All Fourth District offices	Discontinued April 2000.
Helena	$2.25.
Nonstandard packaging:	
Seventh District offices (per currency order or deposit)	$12.00.[32]
Helena (per coin bag deposited)	$2.00.
El Paso (express cash orders)	$80.00.[33]

	Surcharge	Insurance fee[35]
Registered mail fees[34]:		
First District	$45.00	$0.50.
Helena[36]	$14.00	
Tenth District offices	$16.00	$0.32.
El Paso	Discontinued August 2000.	
Twelfth District offices	Discontinued August 2000.	

[31] There are 50 rolls of coin in each box.

[32] This service only applies to the $1 through $20 denominations.

[33] El Paso's Express Cash Order fee applies only to orders that need to be prepared on the same day as notice is received from depository institutions.

[34] Depository institutions also pay any postage fees incurred for registered mail. Postage fees are billed separately from Federal Reserve Bank surcharges and insurance fees.

[35] Insurance fees are based on every $1,000 shipped via the registered mail service in excess of the first $25,000, which is covered by the U.S. Postal Service.

[36] The Helena Office only ships registered mail packages valued up to $25,000, so no additional insurance is needed in excess of the $25,000 covered by the U.S. Postal Service.

Electronic Connection Fee Schedule[37]

The Reserve Banks charge fees for the electronic connections used by depository institutions to access priced services and allocate cost and revenue associated with electronic access to the various priced services.

	Per month
Current FEDNET Network:	
Dial—receive and send (FedLine®)	$75.00
Link encrypted dial	200.00
High-speed dial @ 56 kbps	350.00
Multi-drop leased line	500.00
Dedicated leased line (to 9.6 kbps)	750.00
High-speed leased line @ 19.2 kbps	850.00
High-speed leased line @ 56 kbps	1,000.00
High-speed leased line @ 128 kbps	1,800.00
High-speed leased line @ 256 kbps	2,000.00
Cross-District	Actual cost[38]
Frame Relay Network:	
Frame Relay—Fedline @ up to 19.2 kbps[39]	500.00
Frame Relay—Computer interface (CI) @ 56 kbps	1,000.00
Frame Relay—CI @ 256 kbps	2,000.00
Frame Relay—CI T1	2,500.00

[38] The customer will pay the actual costs of the circuit and a monthly surcharge to cover an equitable share of expenses associated with customer support, depreciation of hardware (that is, link encryption units), and other overhead expenses. This fee must be, at a minimum, equivalent to the standard fee for the particular type of leased line connection.

[39] The Frame Relay FedLine 19.2 kbps connection is identical to the Frame Relay 56 kbps connection except for the following: (a) redundant equipment is not included with the 19.2 kbps option; and (b) the speed limitation of 19.2 kbps is imposed by FedLine. This connection is otherwise capable of operating at 56 kbps.

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[37] Installation, training, contingency hardware, and software certification are not considered priced services, and the fees for these services are not listed here. For a copy of the full electronic access fee schedule, contact the local Federal Reserve Bank.

Test and Contingency Options[40]

Connection type	Logical split	Full circuit backup	Frame connection only	Redundant components
Fedline @ up to 19.2 kbps	No charge	$500	$420	N/A
CI @ 56 kbps	No charge	845	765	155
CI @ 256 kbps	No charge	1,750	1,585	250
CI T1	No charge	2,230	2,010	270

Logical split: Applies to production and test systems that are located together at the same facility. The institution could use the production equipment with a logical split (different port) in their router as a test or contingency facility. There is no additional cost for this option.

Full circuit backup: Applies to production and test systems, or production and contingency systems, that are located at separate facilities, including another bank office or a third-party contingency site.[41] This option replicates full production technology and costs; only one set of equipment components is provided.

Frame connection only: Applies to production and test systems, or production and contingency systems, that are located at separate facilities. The institution uses a frame relay link connection with no ISDN dial-up backup. Only one set of equipment components is provided.[42]

Redundant components: Includes a Cisco router, CSU/DSU, encryptor and rack.[43]

By order of the Board of Governors of the Federal Reserve System, November 8, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–29384 Filed 11–16–00; 8:45 am]

BILLING CODE 6210–01–P

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[40] Test and contingency options, including redundant parts, are only available to customers with a primary connection.

[41] Prices shown are for full circuit backup only located at the customer site. Multiple customers sharing a single disaster-recovery connection at a third-party provider will result in custom implementations. Districts will bill the vendor's bank for the contingency circuit.

[42] Prices shown are for frame connection only located at the customer site. Multiple customers sharing a single disaster recovery connection at a third-party provider will result in custom implementations. Districts will bill the vendor's bank for the contingency circuit.

[43] Redundant components are available only for the following connections: CI 56 kbps, CI 256 kbps, and CI T1. Customers with FedLine 19.2 kbps connections that require redundant equipment will be obliged to upgrade their connection to CI 56 kbps.

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, November 22, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 15, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–29575 Filed 11–15–00; 11:52 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Public Workshop: The Mobile Wireless Web, Data Services and Beyond: Emerging Technologies and Consumer Issues

AGENCY: Federal Trade Commission.

ACTION: Notice announcing workshop.

SUMMARY: The Federal Trade Commission ("Commission") has set December 11–12, 2000 as the dates for a public workshop examining emerging wireless Internet and data technologies and the privacy, security, and consumer protection issues they raise.

DATES: The workshop will be held December 11–12, 2000 in the Commission Meeting Room (432), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: For questions about the workshop, contact: Ellen Finn, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202–326–3296, e-mail efinn@ftc.gov; Stacy Feuer, Division of Advertising Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202–326–3072, e-mail sfeuer@ftc.gov.

SUPPLEMENTARY INFORMATION:

The Mobile Wireless Web, Data Services and Beyond: Emerging Technologies and Consumer Protection Issues

Workshop Goals

One of the Commission's principal missions is to protect consumers from unfair and deceptive acts or practices. In recent years, the Internet and other new technologies have had a significant effect on this mission and the Commission has held numerous public workshops on issues related to the emerging global electronic marketplace. These workshops provide an opportunity for the Commission and the public to learn about these technologies changes and for the Commission to learn how best to provide guidance to both consumers and businesses. These workshops also provide an opportunity for businesses to learn about the Commission's consumers protection and competition concerns. In the past, the Commission has hosted forums on such topics as online consumer privacy issues, advertising disclosures in new media, on-line dispute resolution mechanisms, and business to business electronic marketplaces.

Mobile wireless Internet and data technologies raise money of the privacy and advertising issues previously considered by the Commission.

Accordingly, the goal of the announced workshop is to educate government officials and other interested parties about emerging wireless technologies, and to provide a forum for discussion of the privacy, security, and consumer protection issues raised by these new technologies.

Questions To Be Addressed

(1) Mobile Technology and Business Models

(a) Where is wireless Internet and data technology today and where is it going? What devices are currently available for wireless Web access and data services? What sorts of devices and services are anticipated? How will mobile commerce or "m-commerce" develop?

(b) How do wireless Internet and data services function? What types of relationships will consumers have with wireless equipment makers, carriers, data service providers and others involved in the provision of these services? Will consumers' wireless data services be supported by advertising (as many Internet site are), or will consumers pay for subscriptions (like cable television) or pay fees-per-service accessed?

(2) Privacy and Security

What privacy and security issues do wireless devices raise? For example, how will location information be used (generally and more particularly with respect to advertising) and what are the privacy and security implications of the availability of location information? Is transmission of personal information secure in the wireless medium? As wireless devices converge so that cell phones, personal digital assistants, and electronic wallets may become a single device, how are the risks of identity theft increased and what security measures are possible?

Within this broad topic, the workshop would address existing regulatory structures and existing or emerging self-regulatory initiatives, as well as technological methods of addressing privacy and security concerns.

(3) Disclosures

How can companies make effective disclosures on small screens (both advertising and privacy disclosures)? Particularly as devices move to a combination of voice and text communication, how do traditional concepts like "clear and conspicuous" and "equal prominence" apply? Are there other aspects of this unique medium that will require modification of traditional consumer protection approaches?

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–29471 Filed 11–16–00; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board Federal Financial Accounting Standards

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of New Exposure Draft *Eliminating Disclosures Related to Tax Revenue Transactions by the Internal Revenue Service, Customs, and Others.*

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has published a new exposure draft, *Eliminating Disclosures Related To Tax Revenue Transactions By The Internal Revenue Service, Customs, and Others.*

A summary of the proposed Statement follows:

On November 13, 2000, the Federal Accounting Standards Advisory Board (FASAB) released for public comment an exposure draft (ED) to amend Statement of Federal Financial Accounting Standards (SFFAS) 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting. The amendment would eliminate the current requirement to disclosure certain information about taxes receivable The exposure draft, entitled Elimination of Disclosures Related to Tax Revenue Transactions by the Internal Revenue Service, Customs, and Others, Amending Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources, will be out for comment until February 16, 2001.

SFFAS No. 7 applies to entities collecting taxes on behalf of the Federal Government. The two entities collecting the vast majority of Federal taxes are the Internal Revenue Service (IRS) and the U.S. Customs Service (Customs). The Board has concluded that the disclosures required by SFFAS No. 7 do not accomplish a reconciliation of account balances and would mislead those attempting to evaluate IRS' and other tax-collecting entities' performance regarding taxes receivable. The disclosures include compliance activity that precedes the recognition of taxes receivable. Certain supplementary information on compliance assessments, preassessment work in process, claims for refunds, and write-offs would continue to be required as supplementary information.

Two Board members disagree with the decision of the majority. They would retain the disclosure requirement.

The exposure draft will soon be mailed to FASAB's mailing list subscribers. Additionally, it is available on FASAB's home page *http://www.financenet.gov/fasab.htm.* Copies can be obtained by contacting FASAB at (202) 512–7350, or *fontenroser.fasab@gao.gov.* The Board has posed specific questions for comment. Respondents are encouraged to address those questions and to comment on any part of the exposure draft. For further information call Richard Fontenrose (202) 512–7358.

Written comments are requested by February 16, 2001, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW, Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW, Room 6814, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: November 13, 2000.

Wendy M. Comes,

Executive Director.

[FR Doc. 00–29419 Filed 11–16–00; 8:45 am]

BILLING CODE 1610–01–M

GENERAL ACCOUNTING OFFICE

Notice of Meetings

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of meetings through June 2001.

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on Thursday, December 7 and Friday, December 8 from 9 a.m. to 4 p.m. in room *6N30,* 441 G St., NW., Washington, DC.

The purpose of the meeting is to discuss issues related to:
—National Defense PP&E;
—Stewardship Reporting;
—Corrections of Errors through Prior Period adjustments;

—Charter and Operating Procedures for the Accounting and Auditing Policy Committee;
—Technical Agenda; and
—Outreach.

A Steering Committee meeting of the Board's Principal Board members will be held in conjunction with the Board meeting. A more detailed agenda can be obtained from the FASAB website (*www.financenet.gov/fasab.htm* after November 30, 2000.

Following the December meeting, the schedule for the next three meetings of the Board is as follows:

—Thursday and Friday, February 22 and 23, 2001;
—Thursday and Friday, April 26 and 27, 2001; and
—Monday and Tuesday, June 18 and 19, 2001.

The purpose of these meetings will be to discuss issues related to:

—Stewardship Reporting;
—National Defense Property, Plant & Equipment;
—Deletion of Paragraph 65.2—Material Revenue—Related Transaction Disclosures;
—Natural Resources;
—Correction of Errors Through Prior Period Adjustments;
—Codification of FASAB Standards;
—Accounting and Auditing Policy Committee issues; and
—Any other topics as needed.

A Steering Committee meeting of the Board's Principal Board members will be held in conjunction with each of the Board meetings. A more detailed agenda for each Board meeting can be seen on the FASAB website *www.financenet.gov/fasab.htm* one week prior to each meeting. The location of each meeting will be given in the website agenda.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. For the December meeting, please notify FASAB by December 6 of your planned attendance by calling 202–512–7350, and for the subsequent meetings one day prior to the respective meeting.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mailstop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: November 13, 2000.

Wendy M. Comes,

Executive Director.

[FR Doc. 00–29418 Filed 11–16–00; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Order ADM 1095.1F]

Environmental Considerations in Decisionmaking

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Notice of final revisions to internal procedures.

SUMMARY: This notice announces that GSA is publishing final revised internal GSA procedures to be followed in implementing the requirements of section 102(2) of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321, ital.); Executive Order 11514 of March 5, 1970, entitled "Protection and Enhancement of Environmental Quality," and in compliance with regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). The intended effect of these documents is to enhance GSA's ability to comply with NEPA, to exclude certain program actions from the requirement to prepare an environmental assessment (EA) or an environmental impact statement (EIS), to focus NEPA analysis to those actions that may be major Federal actions significantly affecting the quality of the human environment, and to make changes reflecting current GSA organization structure. These changes affect GSA internal procedures only.

EFFECTIVE DATE: October 19, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Colin Wagner, NEPA Liaison, Environmental Business Strategies, PXE 4046, Public Buildings Service, U.S. General Services Administration, 1800 F Street, N.W., Washington, D.C. 20405 (202–501–2888).

SUPPLEMENTARY INFORMATION: This revision updates and supercedes the February 25, 1985, [FR 7648] and December 8, 1995 GSA Order ADM 1095.1E. A draft of the procedures was published for public review and comment on June 26, 1998. Interested persons were asked to submit comments by July 27, 1998. The U.S. Environmental Protection Agency (EPA) requested and was given additional time to submit comments. No other requests for an extended comment period were received. Responses to comments plus other technical changes are described below. Copies of the PBS NEPA Desk Guide are available from GSA (see **FOR FURTHER INFORMATION**, above) or on the Internet at: *http://www.gsa.gov/pbs/pt/call-in/erlsub4.htm.*

(1) Summary

The revised ADM Order 1095.1F and the PBS NEPA Desk Guide are administrative and procedural improvements intended to enhance GSA's ability to comply with NEPA and related legal authorities and Executive Orders, while also ensuring public involvement in decisionmaking. These improvements result from more than 25 years of agency experience with NEPA. Development of the revised ADM Order 1095.1F and the PBS NEPA Desk Guide was a multi-year process involving GSA National Office and Regional Office personnel who represent the agency's collective technical and managerial expertise in environmental quality and NEPA compliance. Members of the Environmental Quality Advisory Group (EQAG) represented GSA business lines and the 11 GSA regions.

(2) Comments and Responses

GSA received two comments on the proposed revisions, one from a Federal agency [USEPA] and one from a State agency.

a. USEPA provided no specific comments, stating: "In general, we find the revised orders and NEPA Desk Guide to be well written, comprehensive, clear and understandable. It serves as a good model for other agencies who may need to develop NEPA guidance specific to their mission."

GSA appreciates the comment.

b. GSA received a comment from the Wyoming State Geological Survey stating that "studies involving the identification and evaluation of paleontologic resources" on GSA property should be considered an automatic categorical exclusion from NEPA.

GSA disagrees with this comment. GSA believes that under certain circumstances evaluation of palentologic resources may involve excavations that have the potential to significantly affect the human environment, and therefore should be subject to more rigorous NEPA review. The NEPA review process is a practical planning tool in which GSA identifies other regulatory compliance issues. While excavations of paleontologic and archaeological resources are specifically governed by other legal authorities (such as the Archaeological Resources Protection Act), the integration of NEPA with other legal authorities is a policy established in the CEQ regulations. 40 CFR 1500.2(c) directs Federal agencies to "integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively." By including other planning and environmental reviews within the NEPA process, the process becomes comprehensive and cohesive, and issues may be identified. GSA has added a new Checklist CATEX that specifically addresses excavations and which requires preparation of the CATEX Checklist: 5.4(m): "Archaeological studies permitted under the Archaeological Resources Protection Act (ARPA) and paleontological studies."

(3) Other Changes

GSA has also identified other paragraphs in the ADM and PBS NEPA Desk Guide that needed to be revised. The more substantive changes include the following:

a. Questions were raised as to why GSA needs to issue the new guidance in the form of an ADM order, a PBS order, and a PBS NEPA Desk Guide. There was substantial duplication between the PBS order and the PBS NEPA Desk Guide. The suggestion was to place the information contained in the PBS order in either the ADM or the PBS NEPA Desk Guide. This change would have no effect on the content or authority of the GSA orders.

This change has been made.

b. The title "NEPA Center of Expertise (NCE)" has been changed to "Regional Environmental Quality Advisor (REQA)"

c. Automatic CATEX 5.3 (a) has been narrowed from "Issuance of easements, licenses, or outleases for use of space in existing Federal office buildings, where consistent with local planning and zoning, provided Section 106 of the NHPA is complied with where applicable" to "Outleases, licenses, and other arrangements for non-federal use of space in existing Federal office buildings, where such use is consistent with local planning and zoning, where Section 106 of the NHPA is complied with where applicable; and there is no evidence of community controversy or unresolved environmental issues."

d. Automatic CATEX 5.3(m) has been narrowed by adding the following text: "* * * where there is no evidence of unresolved environmental issues."

e. One new Automatic CATEX has been added:

5.3(k) "Other repair and alteration projects where: 1) no toxic or hazardous substances are involved with the project or exist in or on the property where the project takes place; 2) no properties listed on or eligible for the National Register of Historic Places are involved; 3) the building envelope or foot-print will not be increased; 4) there is no evidence of community controversy; and 5) there is no evidence of other unresolved environmental issues."

f. Checklist CATEX Section 5.4(d) has been changed from "Transfer of real property to government agencies" to "Transfer of real property to Federal, State, and local agencies, and Indian tribes."

g. Checklist CATEX Section 5.4(h) has been changed from "Issuance of easements, licenses, or outleases for use of space in Federal facilities other than existing office buildings" to "Outleases, licenses, and other arrangements for non-federal use of land or space in facilities other than existing Federal office buildings."

h. One new Checklist CATEX has been added to Section 5.4 and the section has been renumbered accordingly: 5.4(n) Installation of antennae consistent with FPMPD–242.

i. Additional circumstances which trigger a 30-day public review period for a FONSI before going ahead with the proposed action or deciding to prepare an EIS have been added to Desk Guide Section 6.10.3. The additional circumstances are based on the Council on Environmental Quality's "Forty Frequently Asked Questions," Number 37b [46 FR 18026, March 23, 1981]:

(a) If the proposal is a borderline case, *i.e.,* when there is a reasonable argument for preparation of an EIS;

(b) If it is an unusual case, a new kind of action, or a precedent setting case such as a first intrusion of even a minor development into a pristine area;

(c) When there is a scientific or public controversy over the proposal; or

(d) When it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS.

(e) If the proposed action would be located in a floodplain or wetland.

Dated: October 19, 1999.

David J. Barram,

Administrator, General Services Administration.

GSA Order

Subject: Environmental Considerations in Decisionmaking

1. *Purpose.* This order establishes policy and assigns responsibility for implementing the National Environmental Policy Act (NEPA), its implementing regulations, and related laws, executive orders, and regulations in the decisionmaking processes of the General Services Administration (GSA).

2. *Cancellation.* ADM 1095.1E, dated December 8, 1995, is canceled.

3. *Background.* The National Environmental Policy Act (NEPA) and the Government wide implementing regulations of the Council on Environmental Quality (40 CFR 1500–1508, hereinafter, the CEQ regulations) require that each Federal agency consider the impact of its actions on the human environment, and prescribes procedures to be followed in doing so. Other laws, executive orders, and regulations provide related direction. Each Federal agency is required to implement internal procedures to ensure that the requirements of NEPA are met. Existing orders are out of date and do not provide for current requirements.

4. *Nature of revision.* This revision reflects a thorough internal review of GSA's systems for implementing NEPA. It replaces an interim order, ADM 1095.1E, which was adopted to govern GSA's compliance with NEPA while this review took place. This revised order is issued in coordination with an explanatory desk guide to NEPA review, which together provide GSA with an efficient, up-to-date NEPA compliance system that is consistent with principles of accountability, flexibility, and environmental responsibility.

5. *Policy:* In all its decisionmaking, GSA will attend carefully to the National Environmental Policy set forth in Section 101 of NEPA. To the maximum extent practicable, GSA will ensure that its actions protect and where possible improve the quality of the human environment, including the built and sociocultural environments of the nation's urban areas. GSA decisionmakers will use the NEPA review process prescribed in the CEQ regulations as a practical planning tool, and integrate both the NEPA review process and the Section 101 National Environmental Policy into decisionmaking in an efficient, cost-effective manner. The NEPA review process will be initiated at the earliest possible stage in planning any GSA action, and will be carried forward in coordination with other planning activities. Decisionmakers will ensure that they have reviewed and fully understand the environmental impacts of each decision, before making any such decision. All managers responsible for decisionmaking on GSA actions will be accountable for being knowledgeable about, and attendant to, the requirements of NEPA and the National Environmental Policy that these requirements are designed to advance.

6. *Responsibilities.*

6a. *Commission, Public Buildings Service (PBS).*

6.a.(1) The Commissioner acts for the Administrator, GSA, on matters relating to NEPA implementation, and oversees implementation of this order. This ADM, the NEPA Desk Guide, and related direction governs GSA compliance with NEPA and related legal authorities.

6.b. *NEPA Liaison.*

6.b.(1) Is the principal GSA advisor on NEPA-related requirments, including but not limited to compliance with NEPA and the coordination of NEPA compliance with the requirements of the laws and regulations listed in Appendix 1 of the NEPA Desk Guide.

6.b.(2) Provides expert advise on NEPA-related matters to GSA Heads of Services, Business Lines, and Regional Administrators.

6.b.(3) Provides intra-agency and interagency liaison and coordination on NEPA-related matters on a national basis.

6.b.(4) Provides the periodically updates GSA program guidance, after consultation with the General Counsel, Heads of Services, Business Lines, and Regional Administrators.

6.b.(5) Provides education and training within GSA pertinent to implementation of NEPA and related authorities.

6.b.(6) Coordinates with GSA's Environmental Executive in maintaining a record of GSA's environmental activities, and in advancing the national environmental policy articulated in NEPA and other statues and executive orders.

6.b.(7) Serves as GSA representative in coordination with outside groups at the national level regarding NEPA-related matters.

6.c. *Regional Administrators.*

6.c.(1) Are accountable for execution of GSA's responsibilities under NEPA and related authorities with respect to actions under their jurisdiction.

6.c.(2) Serve as the responsible agency official under CEQ regulations with respect to the environmental effects of actions under their jurisdiction.

6.c.(3) Maintain NEPA Regional Environmental Quality Advisors (REQA) within their staffs, augmented as necessary through interagency agreements and contracts, to ensure regional interdisciplinary competence in environmental matters.

6.c.(4) In consultation with the NEPA Liaison, ensure that all regional staff with responsibility for planning, approving, and implementing construction, repair, alteration, site and facility acquisition, real property management, maintenance, and real property disposal receive appropriate training in how to carry out GSA's responsibilities under NEPA and related authorities.

6.d. *GSA Environmental Executive.*

6.d.(1) Serves as GSA's Environmental Executive under Executive Order 12873.

6.d.(2) Coordinates with the NEPA Liaison to ensure agency-wide consistency in areas of shared or related responisiblity, and in advancing the national environmental policy articulated in NEPA and other statutes and executive orders.

6.e. *Heads of Services and Business Lines.*

6.e.(1) Serve as the responsible agency officials under CEQ regulations for actions subject to their approval.

6.e.(2) Ensure accountability for implementation of the policy set forth in this order.

6.e.(3) In consultation with the NEPA Liaison, ensure that staff responsible for supporting the functions of the responsible agency official under CEQ and related authorities receive appropriate training in how to carry out GSA's responsibilities.

6.f. *The Office of General Counsel.*

6.f.(1) Is responsible for legal interpretation of NEPA and related authorities, and represents GSA in litigation under such authorities.

6.f.(2) Advises the NEPA Liaison during the development and delivery of guidance and training.

7. *Administrative Guidance.*

7.a. The NEPA Liaison has overall program responsibility for establishing procedures, training, and professional standards, and for maintaining interagency administrative responsibilities and relationships. These functions will be carried out at the working level by a professional NEPA Liaison staff.

7.b. Heads of Services and Business Lines will assist and cooperate with the NEPA Liaison in the development and delivery of training, as well as procedural and program guidance, and act as coordinators for program needs of the Services and Business lines on a national basis.

7:c. Regional Business Lines have responsibility for ensuring that NEPA compliance responsibilities are satisfied, and the policy articulated in paragraph 5 of this order is followed, with respect to their programs and projects. In consultation with the REQA, the Business Lines will utilize interdisciplinary professional expertise in their implementation of NEPA responsibilities.

8. *Implementation of NEPA and Related Authorities.*

8.a. In accordance with applicable regulations and standards, and with program guidance provided by the NEPA Liaison, the responsible agency official shall:

8.a.(1) Ensure that the applicable requirements of NEPA and related authorities are met in a timely manner during planning for any GSA action, in a manner consistent with the policy articulated in paragraph 5 of this order.

8.a.(2) Ensure that mitigation measures established through review of actions under NEPA and related authorities are carried out as part of implementing the actions.

8.a.(3) Ensure that the means by which GSA has met its responsibilities, and the costs involved in doing so, are fully documented.

8.b. All Heads of Service, Business Lines, and Regional Office will employ the PBS NEPA Desk Guide, issued and periodically updated by the NEPA Liaison, as guidance in carrying out this order.

9. Effective Date. Every effort shall be made to implement the provisions of this order immediately.

[FR Doc. 00–29263 Filed 11–16–00; 8:45 am]

BILLING CODE 2820–BR–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Temporary Assistance to Needy Families, Medicaid, Aid to Needy Aged, Blind, or Disabled Persons and State Children's Health Insurance Program for October 1, 2001 through September 30, 2002

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: The Federal Medical Assistance Percentages and Enhanced Federal Medical Assistance Percentages for Fiscal Year 2002 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 2001 through September 30, 2002. This notice announces the calculated "Federal Medical Assistance Percentages" and "Enhanced Federal Medical Assistance Percentages" that we will use in determining the amount of Federal matching in State medical assistance (Medicaid), State Children's Health Insurance Program (SCHIP) expenditures, and for the annual reconciliation of contingency funds under Title IV–A. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Programs under title XIX of the Act exist in each jurisdiction; programs under titles I, X, and XIV operate only in Guam and the Virgin Islands; while a program under title XVI (AABD) operates only in Puerto Rico. Programs under title XXI began functioning in fiscal year 1998. The percentages in this notice apply to State expenditures for assistance payments, medical services and medical insurance services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs.

Sections 1905(b) and 1101(a)(8)(B) of the Act require the Secretary of Health and Human Services to publish these percentages each year. The Secretary is to figure the percentages, by formulas in sections 1905(b) and 1101(a)(8)(B), from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within the upper and lower limits given in those two sections of the Act. The statute specifies the percentages to be applied to the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

The "Federal medical assistance percentages" are for Medicaid. These percentages will also be used for the annual reconciliation of any Contingency funds received under the Temporary Assistance for Needy Families program.

The "Enhanced Federal Medical Assistance Percentages" are for use in the State Children's Health Insurance Program under Title XXI, and in the Medicaid program for certain children for expenditures for medical assistance described in sections 1905(u)(2) and 1905(u)(3). There is no specific requirement to publish these percentages. We include them in this notice for the convenience of the States.

EFFECTIVE DATES: The percentages listed will be effective for each of the four quarter-year periods in the period beginning October 1, 2001 and ending September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Tolbert or Robert Stewart, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 442E Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.588–Temporary Assistance for Needy Families; 93.563–Child Support Enforcement; 93.659–Adoption Assistance; 93.778–Medical Assistance Program; 93.767–State Children's Health Insurance Program)

Dated: November 6, 2000.

Donna E. Shalala,

Secretary of Health and Human Services.

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 2001–SEPTEMBER 30, 2002

[Fiscal Year 2002]

State	Federal medical assistance percentages	Enhanced federal medical assistance percentages
Alabama	70.45	79.32
Alaska	53.01	67.11
American Samoa*	50.00	65.00
Arizona	64.98	75.49
Arkansas	72.64	80.85
California	51.40	65.98
Colorado	50.00	65.00
Connecticut	50.00	65.00
Delaware	50.00	65.00
District of Columbia**	70.00	79.00
Florida	56.43	69.50
Georgia	59.00	71.30
Guam*	50.00	65.00
Hawaii	56.34	69.44
Idaho	71.02	79.71
Illinois	50.00	65.00
Indiana	62.04	73.43
Iowa	62.86	74.00
Kansas	60.20	72.14
Kentucky	69.94	78.96
Louisiana	70.30	79.21
Maine	66.58	76.61
Maryland	50.00	65.00
Massachusetts	50.00	65.00
Michigan	56.36	69.45
Minnesota	50.00	65.00
Mississippi	76.09	83.26
Missouri	61.06	72.74
Montana	72.83	80.98
Nebraska	59.55	71.69
Nevada	50.00	65.00
New Hampshire	50.00	65.00
New Jersey	50.00	65.00
New Mexico	73.04	81.13
New York	50.00	65.00
North Carolina	61.46	73.02
North Dakota	69.87	78.91
Northern Mariana Islands*	50.00	65.00
Ohio	58.78	71.15
Oklahoma	70.43	79.30
Oregon	59.20	71.44
Pennsylvania	54.65	68.26
Puerto Rico*	50.00	65.00
Rhode Island	52.45	66.72
South Carolina	69.34	78.54
South Dakota	65.93	76.15
Tennessee	63.64	74.55
Texas	60.17	72.12
Utah	70.00	79.00
Vermont	63.06	74.14
Virgin Islands*	50.00	65.00
Virginia	51.45	66.02
Washington	50.37	65.26
West Virginia	75.27	82.69
Wisconsin	58.57	71.00
Wyoming	61.97	73.38

* For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI and Part A of title IV will be 75 per centum.

** The value in the table was set for the state plan under titles XIX and XXI and for capitation payments and DSH allotments under those titles. For other purposes, including programs remaining in Title IV of the Act, the percentage for DC is 50.00.

[FR Doc. 00–29112 Filed 11–16–00; 8:45 am]

BILLING CODE 4154–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Plan for States/Territories.

OMB No.: 0970–0114.

Description: The Child Care and Development Fund (CCDF) Plan for States and Territories is required from the child care Lead Agency by section 658E of the Child Care and Development Block Grant Act of 1990 (P.L. 101–508), 42 U.S.C. 9858. The implementing regulations for the statutorily required Plan are at 45 CFR 98.10 through 98.18. The Plan, submitted on the ACF–118, is required biennially and remains in effect for two years. This Plan, provides ACF and the public with a description of, and assurance about, the State's child care program. The ACF–118 is approved through October 31, 2001 making it available to States and Territories needing to submit Plan Amendments through the end of the FY 2001 Plan Period. However, in July 2001, States and Territories will be required to submit their FY 2002–2003 Plans. Consistent with the statute and regulations, ACF requests extension of the ACF–118 with minor corrections and modifications. The Tribal Plan (ACF–118A) is not affected by this notice.

Respondents: State and Territorial Lead Agencies.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	56	.5	162.57	4,552

Estimated Total Annual Burden Hours:

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: November 8, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–29463 Filed 11–16–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Maternal and Child Health Federal Set-Aside Program; Special Projects of Regional and National Significance; Community-Based Abstinence Education Project Grants

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $17 million in fiscal year (FY) 2001 funds is available for making competitive grants to implement strategies to provide abstinence education to adolescents, ages 12 through 18, in communities across the Nation. Eligibility is open to public and private entities which clearly and consistently focus on a designated definition of "abstinence education" and agree not to provide a participating adolescent any other education regarding sexual conduct in the same setting. All awards will be made under the program authority of section 501(a)(2) of the Social Security Act, the Maternal and Child Health (MCH) Federal Set-Aside Program (42 U.S.C. 701(a)(2)). These grants (CFDA #93.110NO) will be administered by the Maternal and Child Health Bureau (MCHB), HRSA. Approximately $1.5 million will be available for up to 15–20 one-year planning grants, with awards ranging from $75,000 to $100,000, and approximately $15.5 million will be available for up to 25–50 three-year implementation grants, with annual awards ranging from $250,000 to $1 million, depending on continued availability of funds. Projects may be located in any State, the District of Columbia, and United States territories, commonwealths, and possessions. Funds for Community-Based Abstinence Education project grants are appropriated by Public Law 106–246.

This announcement will appear in the **Federal Register** and on the HRSA Home Page at: *http://www.hrsa.dhhs.gov/*. **Federal Register** notices are found by following instructions at: *http://www.access.gpo.gov/su__docs/aces/aces140.html*.

DATES: Entities which intend to submit an application for this grant program are expected to notify MCHB's Division of State and Community Health by December 1, 2000. The deadline for receipt of applications is February 2, 2001. Applications will be considered "on time" if they are either received on or before the deadline date or postmarked on or before the deadline date. The projected award date is April 27, 2001.

ADDRESSES: To receive a complete application kit, applicants may telephone the HRSA Grants Application Center at 1–877–477–2123 (1–877–HRSA–123) beginning November 15, 2000, or register on-line at: *http://www.hrsa.dhhs.gov/*, or by accessing *http://www.hrsa.gov/g__order3.htm* directly. This program uses the standard Form PHS 5161–1 (rev. 7/00) for applications (approved under OMB No. 0920–0428). Applicants must use the appropriate Catalog of Federal Domestic Assistance (CFDA) number when requesting application materials. The CFDA is a Government wide compendium of enumerated Federal programs, projects, services, and activities which provide assistance. The CFDA Number for the Community-Based Abstinence Education project grant program is: #93.110NO. All applications should be mailed or delivered to: Grants Management Officer (MCHB), HRSA Grants Application Center, 1815 N. Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, telephone: 1877–HRSA–123 (477–2123), E-mail: *hrsagac@hrsa.gov*.

This application guidance and the required form for the Community-Based Abstinence Education project grant program may be downloaded in either WordPerfect 6.1 or Adobe Acrobat format (.pdf) from the MCHB HomePage at *http://www.mchb.hrsa.gov/*. Please contact Joni Johns at 301–443–2088 or *jjohns@hrsa.gov/*, if you need technical assistance in accessing the MCHB Home Page via the Internet.

Letter of Intent: To assist MCHB in planning for an orderly review of applications, entities which intend to submit an application for this grant program are invited to notify MCHB's Division of State and Community Health in one of three ways: telephone, 301–443–2204; fax, 301–443–9354; or mail, MCHB, HRSA; Division of State and Community Health; Parklawn Building, Room 18–31; 5600 Fishers Lane; Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michele Lawler, 301–443–2204 (for questions specific to project activities of the program, program objectives, or the Letter of Intent described above); and Dorothy Kelley, 301–443–3288 (for grants policy, budgetary, and business questions).

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Title II of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2000 (Public Law 106–113) included an advance appropriation for FY 2001 of $20 million for the Adolescent Family Life (AFL) program, authorized under Title XX of the Public Health Service Act, to support prevention-oriented abstinence education project grants.

Title II, chapter 4, of Public Law 106–246, the "Military Construction Appropriations Act of 2001," rescinded this advance $20 million appropriation for the AFL program. Instead, it appropriated $20 million for the MCH Block Grant's Federal Set-Aside Program—which supports Special Projects of Regional and National Significance (SPRANS)—to support community-based Abstinence Education project grants for FY 2001. The law provides that funds be used:

> * * * for making competitive grants to provide abstinence education (as defined in section 510(b)(2) of such Act) to adolescents * * * Provided further, That such grants shall be made only to public and private entities which agree that, with respect to an adolescent to whom the entities provide abstinence education under such grant, the entities will not provide to that adolescent any other education regarding sexual conduct, except that, in the case of an entity expressly required by law to provide health information or services the adolescent shall not be precluded from seeking health information or services from the entity in a different setting than the setting in which the abstinence education was provided * * *."

The pending FY 2001 Labor-HHS-Education Appropriations Act (H. R. 4577) includes an advance appropriation, under SPRANS, of $30 million for the Community-Based Abstinence Education grant program for FY 2002. The House report accompanying the bill (H. Rpt. 106–645) elaborates upon rules for projects funded under the program:

> The Committee supports abstinence education for adolescents, ages 12 through 18, and supports expansion of efforts to present an abstinence-only message to America's youth. The preliminary results from these program[s] in states such as Oklahoma are promising. It is important, however, to ensure that America's youth do not receive mixed message[s], or medically inaccurate information. The legislation directs that abstinence messages given to a group of youth[s] by a grantee must not be diluted by any instructor or materials from the same grantee. Nothing in the legislation is intended to prevent these adolescents from seeking health information or services. Nothing shall preclude entities who are teaching these abstinence-only classes and who have a public health mandate from discussing other forms of sexual conduct or providing services, as long as this is conducted in a different setting than where and when the abstinence-only course is being conducted. In allocating grant funds, priority should be given to those organizations which have a strong record of support of abstinence education as defined in sections (a) through (h) of title 5, section 510(b)(2) of the Social Security Act.

In the laws cited above, Congress also earmarked a portion of the total amounts appropriated to support comprehensive evaluations, including longitudinal evaluations, of abstinence education. These evaluation activities are beyond the purview of this announcement.

Abstinence-only education programs are one way to educate young people and create an environment within communities that supports teen decisions to postpone sexual activity. In 1999, 49.9 percent of high school students reported having had sexual intercourse and 36.3 percent reported having had sexual intercourse within the previous three months. (CDC, MMWR, June 9, 2000). There are some indications that early sexual intercourse by adolescents can have negative effects on social and psychological development. Research shows that teen pregnancy is linked to a list of risk factors similar to those for other problem behaviors of adolescence, such as alcohol and drug use, violence, delinquency, and school drop-out. Teen parenting is associated with the lack of high school completion and the initiation of a cycle of poverty for mothers. The Department of Health and Human Services established the reduction of teen pregnancies as a priority goal in its 1997 strategic plan. Overall, the teen birth rate declined by 18 percent from 1991 to 1998, with all States reporting a decline in the birth rate of teens 15–19 years of age between 1991 and 1998. (CDC, NCHS, Vital Statistics Reports, March 28, 2000).

In addition to the rules Congress has established for the program, SPRANS Community-Based Abstinence Education project grants are subject to regulations, at 42 CFR Part 51a, that are applicable to all SPRANS projects. The Federal SPRANS authority was enacted as part of the MCH Block Grant under Section 501(a)(2) of the Social Security Act, by the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Public Law 97–35). In general, the set-aside in section 502(a) permits the Secretary to retain 15 percent of the total MCH Block Grant appropriation each fiscal year to support discretionary grants in certain categories: MCH Research; MCH Training; Genetic Disease Testing, Counseling and Information Dissemination; Newborn Screening; Hemophilia Diagnostic and Treatment Centers; and Other Special Projects to Improve Maternal and Child Health. No percentage of the available funds is specified by law for any particular category of SPRANS grant. H. R. 4577 adds Community-Based Abstinence Education as a SPRANS project category. However, the funds made available for Abstinence Education grants under H. R. 4577 are specified or "earmarked" only for this purpose; they will not be counted toward compliance with the statutorily-determined 15 percent SPRANS set-aside amount.

The projects funded under this announcement are also intended to complement the existing categorical program of Grants to States for Abstinence Education, authorized under section 510(b)(2) of Title V by Public Law 104–193, the "Personal Responsibility and Work Opportunity Act of 1996." The purpose of that block grant program is to enable States to support abstinence education, and, at the option of the State, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity with a focus on those groups most likely to bear children out-of-wedlock. The law provides for a mandatory annual appropriation of $50 million for FY 1998 through FY 2002. Grants are awarded to each State based on a statutory formula determined by the proportion that the number of low income children in the State bears to the total number of low income children in all States. Grant applications are accepted only from the State health agency responsible for the administration (or supervision of the administration) of the Title V MCH Block Grant, with funds disbursed at the discretion of the Governor unless otherwise established under State law or judicial precedent. There is a required match of three non-Federal dollars for every four Federal dollars awarded. If a State chooses not to apply for a grant, the State's allocation is returned to the Treasury and is not available for redistribution among remaining States.

Consistent with other SPRANS grant programs, the Bureau encourages coordination and collaboration between the State agencies administering a Section 510 Abstinence Education grant and community-based organizations applying for a SPRANS Community-Based Abstinence Education project grant. Such coordination and collaboration is considered beneficial in promoting complementary efforts between State and community agencies and advancing maternal and child health.

Projects funded through the SPRANS Community-Based Abstinence Education grant program share a common definition of "abstinence education" with the Section 510-funded State programs. For purposes of both programs (as well as abstinence education programs funded under the Title XX AFL program), the term "abstinence education" means "an educational or motivational program which—

(A) Has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

(B) Teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

(C) Teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

(D) Teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

(E) Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

(F) Teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

(G) Teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

(H) Teaches the importance of attaining self-sufficiency before engaging in sexual activity."

Curricula developed or selected for implementation in the SPRANS Community-Based Abstinence Education grants program are expected to be responsive to the eight elements of the Section 510 abstinence education definition and may not be inconsistent with any aspect of that definition.

Authorization

Section 501(a)(2) of the Social Security Act, 42 U.S.C. 701(a)(2), and Public Law 106–246.

Purpose

The purpose of the SPRANS Community-Based Abstinence Education grant program is to provide support to public and private entities for the development and implementation of abstinence education programs for adolescents, ages 12 through 18, in communities across the country. This program funds the planning and implementation of community-based, abstinence-only educational interventions designed to reduce the rate of births to teenagers, the proportion of adolescents who have engaged in sexual intercourse, and the proportion of teenagers who have engaged in risk behaviors, such as tobacco, alcohol, and drug use.

Specific objectives for the SPRANS Community-Based Abstinence Education planning and implementation grants are to:

- Support programmatic efforts that foster the development of abstinence-only education for adolescents, ages 12 through 18, in communities across the country.
- Develop and implement abstinence-only programs that target the prevention of teenage pregnancy and premature sexual activity.
- Develop abstinence education approaches that are culturally sensitive and age-appropriate to meet the needs of a diverse audience of adolescents, ages 12 through 18.
- Implement curriculum-based community education programs that promote abstinence decisions to adolescents, ages 12 through 18.

The SPRANS Community-Based Abstinence Education grant program project activities are expected to complement and enhance State grantees' required efforts to achieve performance goals and objectives established for the existing Title V "Section 510" projects in accordance with the requirements of the "Government Performance and Results Act (GPRA) of 1993" (Pub. L. 103–62). This Act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance. SPRANS Community-Based Abstinence Education program grantees will be required to report annually on the four national performance measures presented in Figure 1.

FIGURE 1.—SPRANS COMMUNITY-BASED ABSTINENCE EDUCATION GRANT PROGRAM

[National Performance Measures]

#1	Proportion of program participants who successfully complete or remain enrolled in an abstinence-only education program.
#2	Proportion of program participants who have engaged in sexual intercourse.

FIGURE 1.—SPRANS COMMUNITY-BASED ABSTINENCE EDUCATION GRANT PROGRAM—Continued

[National Performance Measures]

#3	Proportion of program participants who report a reduction in risk behaviors, such as tobacco, alcohol, and drug use.
#4	The rate of births to female program participants.

In addition, each SPRANS Abstinence Education grantee will be required to submit to MCHB an annual report on its activities, including a narrative discussion of the project's progress toward achieving the goals, objectives and performance measures, an unduplicated count of clients served, total number of client encounters, and a list of the communities served.

Applicants for SPRANS Community-Based Abstinence Education implementation grants must submit three-year targets for each national performance measure. Applicants for the planning grants are not required to submit performance measure targets for the one-year planning period. Further information on performance measurement for this program and instructions regarding performance measurement-related application requirements are included in the Program Guidance.

OMB approval for the data reporting will be sought, as required under the Paperwork Reduction Act of 1995.

Curricula developed or selected for implementation in the SPRANS Community-Based Abstinence Education grants program must address all eight elements of the Section 510 abstinence education definition and may not be inconsistent with any element of that definition.

Applicants may choose, but are not required, to have their selected curricula reviewed by the State Agency Director(s) of the State or States that will be affected by the proposed project. MCHB encourages consultation and collaboration between grantees and the State agencies throughout the life of the project.

Applicants should be aware that grantees may not teach or promote religion in their SPRANS Community-Based Abstinence Education projects. Non-profit organizations and other community-based organizations, including faith-based organizations, are eligible to apply (see Eligibility, below), but must provide assurance that they will respect this requirement. Each grant project must be accessible to the public generally, not just to those of a particular religious affiliation.

Background information on this issue is available via the Internet at: *www.mchb.hrsa.gov.*

In addition, this program is subject to Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1861–62), which prohibits discrimination based on sex in programs which receive Federal financial assistance.

Eligibility

Under SPRANS project grant regulations at 42 CFR Part 51a.3, any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450(b)), is eligible to apply for grants covered by this announcement. Projects must clearly and consistently focus on the designated definition of "abstinence education" and applicants must agree not to provide a participating adolescent any other education regarding sexual conduct in the same setting.

Applicants proposing to provide abstinence-only education and who have a public health mandate, such as State or local health departments, community health centers or other community-based clinics, must provide assurance that any discussion of other forms of sexual conduct or provision of services is conducted in a setting different from where and when the abstinence-only course is being conducted.

Funding Level/Project Period

Two types of grants will be awarded in FY 2001 under this program—one-year planning grants, with awards ranging from $50,000 to $75,000; and three-year implementation grants, with awards ranging from $250,000 to $1,000,000 per year. Planning grant funding will support program planning, training and community assessment activities. Implementation grant funding will support the development and implementation of three-year projects.

Approximately $1.5 million will be awarded to support 15 to 20 planning grants; about $15.5 million will be awarded to support 25 to 50 implementation grants. Some adjustment in funding amounts between categories may be made, depending on the number and quality of applications received.

The project period consists of one or more budget periods, each generally of one year duration. Continuation of any project from one budget period to the next is subject to satisfactory performance, availability of funds, and program priorities.

Funding Priorities

Priority for funding will be given to entities in local communities which demonstrate a strong record of support for abstinence education among adolescents. An approved proposal that reflects this priority will receive a 5-point favorable adjustment in the priority score, before funding decisions are made.

Review Criteria

The following are generic review criteria applicable to all MCHB programs:

(1) The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;

(2) The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials;

(3) The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results;

(4) The extent to which the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel; and

(5) The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.

The final review criteria used to review and rank applications for the SPRANS Community-Based Abstinence Education grant program are included in the application kit. Applicants should pay strict attention to addressing these criteria, as they are the basis upon which their applications will be judged.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 525).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372

The MCH Federal Set-Aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

Dated: November 13, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–29425 Filed 11–16–00; 8:45 am]

BILLING CODE 4160-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C., as amended. The discussions could reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and the premature disclosure of discussions related to personnel and programmatic issues would be likely to significantly frustrate the subsequent implementation of recommendations.

Name of Committee: Board of Scientific Counselors, National Cancer Institute Subcommittee A—Clinical Sciences and Epidemiology.

Date: November 27–28, 2000.

Closed: November 27, 2000, 7:00 p.m. to 9:15 p.m.

Agenda: Discussion of personnel and programmatic issues and review and evaluate individual Principal Investigators.

Place: Holiday Inn—Washington/Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Closed: November 28, 2000, 8:30 a.m. to 5:30 p.m.

Agenda: Discussion of personnel and programmatic issues and review and evaluate individual Principal Investigators.

Place: National Cancer Institute, Building 31, C Wing, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Abby Sandler, Ph.D., Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7019, Rockville, MD 20852, (301) 496–7628.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 9, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29430 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Prevention Research Small Grant Program.

Date: December 5–6, 2000.

Time: 6 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Sherwood Githens, PhD., Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29435 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 16–17, 2000.

Time: 4:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD., Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93,929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29427 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: December 13–14, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Richard D. Crosland, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 9, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29429 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 20, 2000.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David I. Sommers, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 1, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Mary Sue Krause, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, Bethesda, MD 20892–9606, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 8, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29431 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 8, 2000.

Time: 2 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 8120 Wisconsin Avenue, Vesailles IV Room, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29434 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: November 17, 2000.

Time: 9 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Rebecca H. Hackett, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS19J, Bethesda, MD 20892, (301) 594–2771, hackettr@nigms.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 92.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29436 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel; Protein Information Resource for the Next Millennium.

Date: December 5–6, 2000.

Time: December 5, 2000, 7:30 p.m. to 9:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Time: December 6, 2000, 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Milton Corn, MD, Associate Director, Office of Extramural Programs, National Library of Medicine, National Institutes of Health, One Rockledge Center, Suite 301, 6706 Rockledge Drive, MSC 6075, Bethesda, MD 20892–6075, 301–496–4621.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 9, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29433 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 13, 2000.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD., JD, Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 9, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29428 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 8, 2000.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele C. Hindi-Alexander, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7848, Bethesda, MD 20892, (301) 435–3554.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 8, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29432 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 14, 2000.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892; (Telephone Conference Call).

Contact Person: Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892; (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 14, 2000.

Time: 2 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892; (Telephone Conference Call).

Contact Person: Zakir Bengali, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701

Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892; (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16–17 2000.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Angela M. Pattatucci-Aragon, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892; (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16, 2000.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Angela M. Pattatucci-Aragon, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 20, 2000.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele C. Hindi-Alexander, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7848, Bethesda, MD 20892, (301) 435–3554.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 22, 2000.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yvette M. Davis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 27, 2000.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Perkins, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892; (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 27, 2000.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Julian L. Azorlosa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892; (301) 435–1507.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 28, 2000.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Timothy J. Henry, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892; (301) 435–1147.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 28, 2000.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892; (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 28, 2000.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eugene Zimmerman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892; 301–435–1220, zimmerng@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 28, 2000.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892; (301) 435–1147.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 28, 2000.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard D. Rodewald, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892; (301) 435–1024.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 29, 2000.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eugene Zimmerman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892; 301–435–1220, zimmerng@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 29, 2000.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard D. Rodewald, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892; (301) 435–1024, rodewalr@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 30–December 1, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Ave., NW., Washington, DC 20007.

Contact Person: Arnold Revzin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892; (301) 435–1153.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 30, 2000.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheri Wiggs, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892; (301) 435–1261.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 9, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29437 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–46]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 17, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 9, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs, Assistance Programs.

[FR Doc. 00–29300 Filed 11–16–00; 8:45 am]

BILLING CODE 4210–29–M

INTER-AMERICAN FOUNDATION

Sunshine Act Meeting

TIME AND DATE: November 30, 2000, 10 a.m.–3:30 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, VA 22203.

STATUS: Open session except for the portion specified as closed session as provided in 22 CFR Part 1004.4(f).

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the May 23, 2000, Meeting of the Board of Directors
- Discussion of Fiscal Year 2001 Programs and Operations
- Report on Congressional Activities
- Closed Session To Discuss Personnel issues. Closed session as provided in 22 CFR Part 1004.4 (f).

CONTACT PERSON FOR MORE INFORMATION: Carolyn Karr, General Counsel, (703) 306–4350.

Dated: November 14, 2000.

Carolyn Karr,

General Counsel.

[FR Doc. 00–29665 Filed 11–15–00; 3:44 pm]

BILLING CODE 7025–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Bureau of Reclamation

[FES 00–48]

Notice of Availability of Final Environmental Impact Statement/Environmental Impact Report

AGENCIES: Fish and Wildlife Service, Bureau of Reclamation, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement for the proposed Trinity River Mainstem Fishery Restoration.

SUMMARY: This notice announces the availability of a joint final Environmental Impact Statement/Environmental Impact Report (FEIS/EIR) for the Trinity River Mainstem Fishery Restoration. This notice is the second notice of availability and follows the first notice of availability and the rescission of that notice which appeared in the **Federal Register** on October 20, 2000, and October 25, 2000, respectively. The U.S. Fish and Wildlife Service, U.S. Bureau of Reclamation, Hoopa Valley Tribe, and Trinity County prepared a FEIS/EIR to assist the Secretary of the Interior in developing recommendations for permanent instream fishery flow requirements, habitat restoration projects, and operating criteria and procedures for the Trinity River Division of the Central Valley Project, California, necessary for the restoration and maintenance of natural production of anadromous fish in the Trinity River. Such recommendations are required by: the January 14, 1981, Secretarial Decision that initiated the Trinity River Flow Evaluation; the Trinity River Basin Fish and Wildlife Management Act (Public Law 98–541); and the Central Valley Project Improvement Act (Public Law 102–575).

DATES: A Record of Decision and permit decision will occur no sooner than thirty (30) days after the publication of the Environmental Protection Agency's notice of availability.

ADDRESSES: Copies of the FEIS/EIR will be available on compact disc which, along with a summary, can be obtained by contacting the Fish and Wildlife Service, 1655 Heindon Road, Arcata, California 95521, (707) 822–7201. The documents are also available for review at the following government offices and libraries:

Government Offices

Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California 95521, (707) 822–7201;

Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, California 95825, 916–414–6464;

Trinity County Planning Department, 303 Trinity Lakes Blvd, Weaverville, CA 96093 (530) 623–1351;

Trinity County Natural Resources Division, 98A Clinic Ave., Hayfork, CA 96041, (530) 628–5949.

Libraries

Alameda Free Library, 2264 Santa Clara Avenue, Alameda, California 94501–4506, (510) 748–4669; Beale Memorial Library, 701 Truxtun Ave, Bakersfield, California, 93301, (661) 868–0700; Cesar Chaves Central Library, 605 N. El Dorado St, Stockton, California, (209) 937–8415; California State Library, Information and Reference Center, 914 Capitol Mall, Room 301, Sacramento, California 95814, (916) 654–0261; Colusa County Free Library, 738 Market Street, Colusa, California 95932–2398, (530) 458–7671; Contra Costa County Library, 1750 Oak Park Boulevard, Pleasant Hill, California 94523–4497, (510) 646–6423; Coos Bay Public Library, 525 W. Anderson Ave., Coos Bay, Oregon, 97420, (541) 269–1101; Del Norte County Library District, 190 Price Mall, Crescent City, California 95531–4395, (707) 464–9793; Fresno County Library, Central Branch, 2420 Mariposa St., Fresno, California, (559) 488–3195; Humboldt County Library, 1313 Third Street, Eureka, California 95501–1088, (707) 269–1900; Humboldt State University Library, Humboldt State University, Arcata, California 95521, (707) 826–4939; Lake County Library, 1425 N. High Street, Lakeport, California 95453–3800, (707) 263–8816; Los Angeles Public Library, 630 W. Fifth Street, Los Angeles, California, 9007–12097, (213) 228–7515; Marin County Free Library, 3501 Civic Center Drive, San Rafael, California 94903–4188, (415) 499–6051; Mendocino County Library-Ft. Bragg, 499 E Laurel St., Fort Bragg, California, 95437, (707) 964–2020; Mendocino County Library-Ukiah, 105 N. Main Street, Ukiah, California 95482–4482, (707) 463–4491; Menlo Park Public Library, 800 Alma Street, Menlo Park, California 94025–3460, (650) 858–3460; Merced County Library, 2222 M St., Merced, California, 95340, (209) 385–7434; Modesto Jr. College Library, 425 College Ave, Modesto, California, 95350, (209) 575–6498; Monterey Public Library, 625 Pacific Street, Monterey, California, 93940, (831) 646–3932; Sacramento Public Library, 828 I Street, Sacramento, California 95814–2589, (916) 264–2770; San Francisco Public Library, 100 Larkin Street, San Francisco, California 94102–4796, (415) 557–4400; San Jose Public Library, 180 W. San Carlos Street, San Jose, California 95113–2096, (408) 277–4822; Santa Cruz Public Library, 224 Church Street, Santa Cruz, California 95060–3873, (408) 429–3532; Shasta County Library, 1855 Shasta Street, Redding, California 96001–0460, (530) 225–5769; Siskiyou County Free Library, 719 Fourth Street, Yreka, California 96097–3381, (530) 842–8175; Sonoma County Library, Third and E Streets, Santa Rosa, California 95404–4400, (707) 545–0831; Tehama County Library, 645 Madison Street, Red Bluff, California 96080–3383, (530) 527–0607; Trinity County Free Library, 211 N. Main Street, Weaverville, California 96093–1226, (530) 623–1373; Willows Public Library, 201 N. Lassen St., Willows, California, 95988, 530–934–5156; Central Library, 801 SW. 10th Avenue, Portland, Oregon 97205, (503) 248–5123; and National Clearinghouse Library, 624 Ninth Street, NW, 600, Washington, DC 20425, (202) 376–8110.

The FEIS/EIR will be available at the Fish and Wildlife Service website at http://www.ccfwo.r1.fws.gov.

FOR FURTHER INFORMATION CONTACT: Dr. MaryEllen Mueller, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2606, Sacramento, CA 95825 (916) 414–6464 or Jay Glase, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521 (707) 822–7201.

SUPPLEMENTARY INFORMATION: Construction of the Trinity River Division (TRD) of the Central Valley Project (CVP) was completed in 1963. The primary function of the TRD is to store Trinity River water for regulated diversion to the Central Valley of California for agricultural, municipal, and industrial uses. Construction and operation of the TRD resulted in the diversion of up to 90 percent of the average annual discharge in the Trinity River at Lewiston, and blocked access to 109 miles of salmon and steelhead spawning and rearing habitat. Reduced river flows, combined with excessive watershed erosion and encroachment of the river channel by riparian vegetation, caused major changes in the channel morphology resulting in the simplification and degradation of the remaining salmon and steelhead habitat of the Trinity River below the Lewiston Dam. This, in turn, resulted in rapid declines of salmon and steelhead populations following completion of the TRD.

In response to declining fisheries and degraded habitat conditions, the Secretary of the Interior (Secretary) decided in 1981 to increase flows in the Trinity River ranging from 140,000 acre-feet to 340,000 acre-feet annually, with reductions in dry and critically dry years. In addition, the Fish and Wildlife Service was directed to undertake a Flow Evaluation Study to assess fish habitat at various flows, summarize the effectiveness of other instream and watershed restoration activities, and recommend appropriate flows and other measures necessary to better maintain favorable habitat conditions. The Flow Evaluation Study began in October 1984 and was completed in June 1999. In October 1984, the Trinity River Basin Fish and Wildlife Management Act (Management Act) (Public Law 98–541) was enacted by Congress with the goal of restoring fish and wildlife populations to pre-TRD levels. The Act provided funding for construction, operation, and maintenance of the 11-item action plan developed by the Trinity River Task Force in 1982. In 1992, the Central Valley Project Improvement Act (CVPIA) (Public Law 102–575) was passed. Section 3406(b)(23) of the CVPIA provides, through the TRD, an instream release of not less than 340,000 acre-feet of water into the Trinity River to meet Federal trust responsibilities to protect fishery resources of the Hoopa Valley Tribe and to meet the fishery restoration goals of the Management Act. The recommendations for mainstem Trinity River fishery restoration will be developed after appropriate consultations with Federal, State, Tribal, local agencies, and affected interests, and after completion the Flow Evaluation Study. To restore the natural production of anadromous fish in the Trinity River in accordance with the 1981 Secretarial Decision, the Management Act, and the CVPIA, the FEIS/EIR analyzes the impacts of:

(1) Increased instream releases into the Trinity River to provide anadromous fish habitat and restore fluvial processes,

(2) Implementation of a channel rehabilitation program,

(3) Implementation of a spawning gravel supplementation program,

(4) Implementation of a watershed rehabilitation program, and

(5) Implementation of an Adaptive Environmental Assessment and Management Program.

On October 19, 1999, the Service published a notice in the **Federal Register** announcing the availability of the draft EIS/EIR and the commencement of the public comment period in the **Federal Register** (64 FR 56364). The comment period was originally scheduled to end on December 8, 1999. However, on December 2, 1999 the Service extended the period until December 20, 1999 (64 FR 67584). On December 27, 1999 the Service published a notice in the **Federal Register**, which reopened the public comment period until January 20, 2000 (64 FR 72357). In total, the lead agencies received written comments from 6445 people and organizations (1009 letters and 5436 preprinted postcards). The primary concerns expressed in many of the comments related to fishery resource analyses, power generation impacts analyses, mechanical modifications to riverine habitat and the amount of river flow proposed for restoration efforts. A list of the commenters and the response of the agencies to the comments is presented in the FEIS/EIR.

The FEIS/EIR is intended to accomplish the following:

(1) Inform the public of the proposed action and alternatives;

(2) Address public comments received during the scoping and comment periods;

(3) Disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and

(4) Indicate any irreversible commitment of resources that would result from implementation of the proposed action.

This notice is provided pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500, 1508), and the California Environmental Quality Act of 1970, as amended.

The Technical Appendixes (TA) for this FEIS/EIR will be made available upon request from the U.S. Fish and Wildlife Service, Arcata Office, 1655 Heindon Road, Arcata, CA 95521; (707) 822–7201. Documents cited in the FEIS/EIR and its supporting TAs will be available for viewing in Sacramento (U.S. Fish and Wildlife Service, 2800 Cottage Way, 946–414–6464), Arcata (U.S. Fish and Wildlife Service 1655 Heindon Road; 707–822–7201), and Weaverville (Trinity County Library, 211 N. Main Street, Weaverville, California 96093, 530-623–1373).

(Authority: NEPA, the National Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); E.O. 11514, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and CEQ Regulations 40 CFR 1503.1)

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 00–29316 Filed 11–16–00; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–690–00–5101–01–B109; CACA–CACA–40467]

Proposed Cadiz Groundwater Storage Dry-Year Supply Program, Pipeline Right of Way and Plan Amendment

AGENCY: Bureau of Land Management, Department of the Interior, Needles Field Office, Desert District, California.

ACTION: Notice of Public Meeting on the Supplemental Draft Environmental Impact Statement.

SUMMARY: A public meeting on the Supplement to the Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Cadiz Groundwater Storage Dry-Year Supply Program is scheduled for November 29, 2000 at 7:00 p.m. in the Twentynine Palms City Hall, 6132 Adobe Road, Twentynine Palms, CA. The Supplement was prepared in response to comments about groundwater resources and related air quality issues. It provides more information and presents a Groundwater Monitoring and Management Plan (Plan) that is part of the proposed project. The Plan would govern water storage and extraction operations, including the amount of indigenous groundwater that may be extracted over the project's 50-year life. Metropolitan Water District (MWD) and the Bureau of Land Management jointly prepared the Supplement, with the National Park Service and the U.S. Geological Survey as cooperating agencies.

The 45-day public review period for the Supplement ends December 4, 2000. Copies may be reviewed at Metropolitan's headquarters in Los Angeles, BLM offices in Riverside and Needles, the Norman Feldhyme Library in San Bernardino, and the Needles, Twentynine Palms and Barstow Branch Libraries. Written comments may be submitted to Mr. Jack Safely, MWD, PO Box 54153, Los Angeles, CA 90054–0153 or Mr. James Williams, Bureau of Land Management, 6221 Box Springs Blvd., Riverside, CA 92507–0714.

DATES: Public Meeting November 29, 2000.

ADDRESSES: Twentynine Palms City Hall, 6132 Adobe Road, Twentynine Palm, CA.

TIME: 7:00 p.m.

FOR ADDITIONAL INFORMATION CONTACT: Further information regarding the project may be obtained from Mr. Jack Safely of MWD at (213) 217–6981 or James Williams of BLM at (909) 697–5390.

Dated: November 13, 2000.

Alan Stein,

Acting District Manager.

[FR Doc. 00–29456 Filed 11–16–00; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–920–00–1310–FI–P; MTM 89255]

Notice of Proposed Reinstatement of Terminated Oil And Gas Lease

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: Under Pub. L. 97–451, the lessee timely filed a petition for reinstatement of oil and gas lease MTM 89255, Sweet Grass County, Montana . The lessee paid the required rental accruing from the date of termination.

We haven't issued any leases affecting the lands. The lessee agrees to new lease terms for rentals and royalties of \$5 per acre and 16⅔ percent respectively. The lessee paid the \$500 administration fee for the reinstatement of the lease and \$125 cost for publishing this Notice.

The lessee has met the requirements for reinstatement of the lease per Sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of \$5 per acre;
- The increased royalty of 16⅔ percent.

FOR FURTHER INFORMATION CONTACT: Karen L. Johnson, Chief, Fluids Adjudication Section, BLM Montana State Office, PO Box 36800, Billings, Montana 59107, 406–896–5098.

Dated: November 3, 2000.

Karen L. Johnson,

Chief, Fluids Adjudication Section.

[FR Doc. 00–29479 Filed 11–16–00; 8:45 am]

BILLING CODE 4310-\$\$-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: G01–0033]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 31 S., R. 15 W., accepted September 22, 2000

T. 11 S., R. 21 E., accepted October 20, 2000

Washington

T. 27 S., R. 34 E., accepted February 4, 1999

T. 22 S., R. 11 W., accepted October 5, 2000

T. 33 S., R. 17 E., accepted October 20, 2000

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (1515 S.W. 5th Avenue), P.O. Box 2965, Portland, Oregon 97208.

Dated: October 31, 2000.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 00–29480 Filed 11–16–00; 8:45 am]

BILLING CODE 4310-33-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–891 (Preliminary)]

Foundry Coke From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of foundry coke, provided for in heading 2704.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On September 20, 2000, a petition was filed with the Commission and the Department of Commerce by ABC Coke, Birmingham, AL; Citizens Gas and Coke, Indianapolis, IN; Erie Coke, Erie, PA; Tonawanda Coke, Tonawanda, NY; and the United Steelworkers of America, AFL–CIO, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of foundry coke from China. Accordingly, effective September 20, 2000, the Commission instituted antidumping duty investigation No. 731–TA–891 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 27, 2000 (65 FR 58103). The conference was held in Washington, DC, on October 11, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 6, 2000. The views of the Commission are contained in USITC Publication 3365 (November 2000), entitled Foundry Coke from China: Investigation No. 731–TA–891 (Preliminary).

Issued: November 9, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–29410 Filed 11–16–00; 8:45 am]

BILLING CODE 7020-02-P

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–402 and 731–TA–892–893 (Preliminary)]

Honey From Argentina and China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Argentina and China of honey, provided for in subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV). The United States International Trade Commission also determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Argentina of honey that are alleged to be subsidized by the Government of Argentina.

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[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR § 207.2(f)).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 29, 2000, a petition was filed with the Commission and the Department of Commerce by the American Honey Producers Association (AHPA), Bruce, South Dakota, and the Sioux Honey Association (SHA), Sioux City, Iowa, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of honey from Argentina and China and by reason of subsidized imports of honey from Argentina. Accordingly, effective September 29, 2000, the Commission instituted countervailing duty investigation No. 701–TA–402 (Preliminary) and antidumping duty investigations No. 731–TA–892–893 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 6, 2000 (65 FR 59871, October 6, 2000). The conference was held in Washington, DC, on October 20, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 13, 2000. The views of the Commission are contained in USITC Publication 3369 (November 2000) entitled Honey from Argentina and China: Investigations Nos. 701–TA–402 and 731–TA–892–893 (Preliminary).

Issued: November 13, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–29513 Filed 11–16–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 201F]

Controlled Substances: 2000 Aggregate Production Quota

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of the revised 2000 aggregate production quota for marihuana.

SUMMARY: This notice establishes a revised 2000 aggregate production quota for marihuana, a Schedule I controlled substance in the Controlled Substances Act (CSA).

EFFECTIVE DATE: November 17, 2000.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On September 18, 2000, notice of a proposed revision to the 2000 aggregate production quota for marihuana was published in the **Federal Register** (65 FR 56328). All interested persons were invited to comment on or object to this proposed aggregate production quota on or before October 3, 2000.

The DEA did not receive any comments on the proposed revision. As such, the DEA has determined that the proposed 2000 aggregate production quota for marihuana is sufficient for the estimated scientific, research and development requirements.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby orders the following revision to the 2000 aggregate production quota for the listed controlled substance, expressed in grams of manicured material (*i.e.* leaves, flowering tops, and seeds):

Basic class	Established revised 2000 aggregate production quota
Marihuana	350,000

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary

importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Furthermore, this action involves only one basic class of controlled substances. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: November 7, 2000.

Julio F. Mercado,

Deputy Administrator.

[FR Doc. 00–29440 Filed 11–16–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
  NY000003 (Feb. 11, 2000)
  NY000013 (Feb. 11, 2000)
  NY000018 (Feb. 11, 2000)
  NY000021 (Feb. 11, 2000)
  NY000026 (Feb. 11, 2000)
  NY000029 (Feb. 11, 2000)
  NY000055 (Feb. 11, 2000)
  NY000060 (Feb. 11, 2000)

Volume II

Pennsylvania
  PA000002 (Feb. 11, 2000)
  PA000003 (Feb. 11, 2000)
  PA000007 (Feb. 11, 2000)
  PA000008 (Feb. 11, 2000)
  PA000010 (Feb. 11, 2000)
  PA000016 (Feb. 11, 2000)
  PA000018 (Feb. 11, 2000)
  PA000019 (Feb. 11, 2000)
  PA000020 (Feb. 11, 2000)
  PA000021 (Feb. 11, 2000)
  PA000027 (Feb. 11, 2000)
  PA000038 (Feb. 11, 2000)
  PA000059 (Feb. 11, 2000)
  PA000060 (Feb. 11, 2000)
  PA000061 (Feb. 11, 2000)
  PA000065 (Feb. 11, 2000)

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National

Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC This 8th Day of November 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–29151 Filed 11–16–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL CAPITAL PLANNING COMMISSION

District of Columbia Plans for the Reuse and Restoration of Kingman and Heritage Islands; Public Meeting and Intent To Prepare an Environmental Assessment

AGENCY: National Capital Planning Commission and the District of Columbia Department of Parks and Recreation.

ACTION: Notice of intent regarding proposed development by the District of Columbia for the reuse and restoration of Kingman and Heritage Islands. Legislation granting title of the Islands to the District of Columbia requires that any redevelopment of the Islands comply fully with the requirements of the National Environmental Policy Act (NEPA) of 1969. This notice indicates the intent to prepare an Environmental Assessment and scoping for the action pursuant to NEPA and the National Historic Preservation Act, section 106.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), and in accordance with the Environmental Policies and Procedures implemented by the National Capital Planning Commission (Commission), the Commission announces its intent, in conjunction with the District of Columbia Department of Parks and Recreation, as Joint Lead Agencies, to conduct one (1) public meeting to discuss the preparation of an Environmental Assessment (EA) for the proposed development, reuse, and restoration of Kingman and Heritage Islands located within and adjacent to the Anacostia River in the District of Columbia. The purpose of the public meeting is to determine the significant environmental issues related to the construction and operation of all proposed development planned by the District of Columbia Department of Parks and Recreation and share preliminary information on potential impacts, solicit community input, and determine potential development plans. The meeting will serve as part of the environmental scoping process for the preparation of the EA.

This Notice of Intent (NOI) initiates the formal environmental review process for this project that may proceed to the development of an Environment Impact Statement if it is determined that significant environmental impacts would occur from the planned action. The public is encouraged to submit written comments concerning alternatives for the planned development and on any potential impacts at this time. The Commission and the District of Columbia considers an EA to be the appropriate initial analysis to review the potential environmental effects of the District of Columbia Department of Parks and Recreation plans. Public scoping and comments will be considered in the development of this initial NEPA review. An Environmental Impact Statement may result from the development of the EA and this NOI and scoping will be considered part of the Environmental Impact Statement scoping should that analysis be necessary. The comments and responses received on the scope of the alternatives and potential impacts will be considered for both environmental documents, but additional public comment will be required in the Environmental Impact Statement if that document is developed.

Kingman and Heritage Islands are located within the Anacostia River. Kingman is the larger of the two islands and is bisected by the Benning Road Bridge. The portion of Kingman Island north of the Benning Bridge is developed as part of the Langston Golf Course. The southern portion of the island is undeveloped and contains minimal vegetation. Several stands of mature trees exist along the water's edge and the remainder of the site is covered with fill, ground cover, and groundcover vegetation. Heritage Island is located immediately west of the portion of Kingman Island that lies between the Benning Road and East Capitol Street Bridges. This island is also undeveloped and is similar to Kingman. The islands were created in 1916 by the U.S. Army Corps of Engineers as part of a reclamation project for improving the flow in the Anacostia River. The larger island contains approximately 40 acres and is just over a mile in length. The smaller island, Heritage Island, is approximately 6 acres.

The community and District of Columbia Office of Planning have identified three alternative scenarios for development. These include:

Option A—Landscape Enhancements and Passive Uses

Option A emphasizes minimal development and generally passive uses on both Kingman and Heritage Islands. The Islands would be used for walking or jogging around the Islands and explorations from the water via human-powered watercraft that can access the island from a boat tie-up point. Other low-intensity uses could also be considered including a modest monument or artistic installations, a boardwalk through the wetland in Kingman Lake, a children's playground or community maintained garden. No permanent structures are envisioned and no development would occur on Heritage Island.

The Islands would predominantly be accessed via the footbridges from the RFK Stadium parking lot. Security would be maintained by prohibiting use of the Islands after dusk, thus requiring fencing and some security lighting at the points of entry.

Option B—Moderate Usage of the Islands for Educational Purposes

Option B allows more interactive uses on the island while preserving and enhancing the majority of the island as a natural area. This option includes a full-scale environmental education center that could range in size from a one-room exhibit space to a two-story structure that includes a classroom and laboratory. This building could also accommodate a police sub-station to enhance security on the islands. A mix of trails will include both paved and unpaved routes around Kingman Island and a boardwalk through the Kingman Lake wetlands. A boat-tie up point will be created to allow access to the islands from the water. Bird observation towers will be constructed so as to blend in with the natural landscape. A playground will be provided for children and a camping area for overnight excursions will be established and maintained. This option may also include a monument or sculpture.

A variation on Option B would also incorporate a 3-hole youth golf facility in the extreme northern portion of the island. The environmental impacts of this option will be assessed both with and without the golf development.

Access to the islands would be permitted both from the footbridges and, because of the need for service deliveries, from the Benning Road access drive. Security would be maintained by closing the gates to the Island at dusk and providing an Urban Ranger to help patrol the islands. Security must be provided when campers are on the islands.

Option C—Active Use for Recreational Purposes

Option C focuses on the reuse of the islands as a 9-hole, par 3 youth golf facility. This use would develop the upper portion of Kingman Island as a putting green and golf holes. The facility will be accessible from Langston Golf Course via an underpass under Benning Road on the east side of the Island. The development would also include a riverwalk along the edge of the golf course and extending down the length of the islands. A boat-tie up and bird observation towers will also be provided in this development plan. In addition, monuments and public art, camping facilities, and a playground could also be incorporated.

Security will be maintained by regular use and activity on the islands. In addition, the golf course will be well lit with the possibility of extending lighting along the major trails. It is anticipated that some form of private security might also be employed in conjunction with regular police patrols.

The EA will identify and analyze environmental impacts and mitigation options of the alternative plans including the No Action alternative. Topics for environmental analysis include short-term construction-related impacts; long-term changes in traffic, parking, socio-economic impacts, land use and physical/biological conditions within the project area; cultural (historic and archeological) in accordance with the Section 106 of the National Historic Preservation Act, and visual resource protection, site operation, and maintenance.

SUPPLEMENTARY INFORMATION: The environmental scoping process will include all written comments and one (1) public meeting for the purpose of determining significant issues related to the alternatives and to the potential impacts associated with the proposed development of Kingman and Heritage Islands. The public meeting will be held: Tuesday, December 12, 2000, 6 PM–9 PM at the St. Benedict the Moor Church, 320 21st Street, NE (21st & C Streets), Washington, D.C. 20002.

This public meeting will be advertised locally by the District of Columbia Department of Parks and Recreation and notice will appear in the District of Columbia Register. National Capital Planning Commission, District of Columbia Department of Parks and Recreation, and District of Columbia Office of Planning representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal, regional and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the EA.

An Informational Packet will be available for review at the offices of the National Capital Planning Commission at 401 Ninth Street, NW, 5th Floor, Suite 500, North Lobby, and at the District of Columbia Office of Planning. Contact Karina Ricks, D.C. Office of Planning, 801 N. Capitol Street, NE, Washington, D.C. 20002, Phone: (202) 442–7600, fax: (202) 442–7637, email: karina.ricks@dc.gov. Agencies and the general public are invited and are encouraged to provide written comments on the scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, environmental scoping comments should clearly describe specific issues or topics that the community believes the EA should address.

DATES: All written statements regarding environmental review of the Proposed Kingman and Heritage Island development must be postmarked no later than January 12, 2001, to the following address: National Capital Planning Commission, 401 Ninth Street, NW, 5th Floor, Suite 500, North Lobby, Washington, D.C. 20576, Attention: Mr. Eugene Keller, Environmental Review Officer.

FOR FURTHER INFORMATION PLEASE CONTACT: National Capital Planning Commission, Mr. Eugene Keller, Environmental Review Officer, 401 Ninth Street, NW, 5th Floor, Suite 500, North Lobby, Washington, D.C. 20576, Phone: (202) 482–7270 or Karina Ricks, DC Office of Planning, 801 N. Capitol Street, NE, Washington, D.C. 20002, Phone: (202) 442–7600.

Dated: November 8, 2000.

Ash Jain,

General Counsel and Congressional Liaison, National Capital Planning Commission.

[FR Doc. 00–29532 Filed 11–16–00; 8:45 am]

BILLING CODE 7520–01–U

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting/Conference Call

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting/conference call for NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10 (a)(1)(2) of the Federal Advisory Committee Act (P.L. 92–463).

International Watch: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's Foreign Policy Team on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

DATE: December 13, 2000, 12 p.m.–1 p.m. EST

For International Watch Information, Contact: Kathleen A. Blank, Attorney/Program Specialist, NCD, 1331 F Street NW., Suite 1050, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), kblank@ncd.gov (e-mail).

Agency Mission: NCD is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

Open Meeting/Conference Call: This advisory committee meeting/conference call of NCD will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference call at the NCD office. Those interested in joining this conference call should contact the appropriate staff member listed above. Records will be kept of all International Watch meetings/conference calls and will be available after the meeting for pubic inspection at NCD.

Signed in Washington, DC, on November 14, 2000.

Ethel D. Briggs,

Executive Director.

[FR Doc. 00–29515 Filed 11–16–00; 8:45 am]

BILLING CODE 6820-MA-M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* New.
2. *The title of the information collection:* General Licensee Registration.
3. *The form number, if applicable:* NRC Form 664.
4. *How often the collection is required:* Annually.
5. *Who will be required or asked to report:* General Licensees of the NRC who possess devices subject to registration under 10 CFR 31.5.
6. *An estimate of the number of annual respondents:* 4,300.
7. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,433 hours annually (4,300 respondents x 20 minutes per form).
8. *An indication of whether Section 3504(h), Pub. L. 96–511 applies:* Applicable.
9. *Abstract:* NRC Form 664 would be used by NRC general licensees to make reports regarding certain generally licensed devices subject to registration. The registration program is intended to allow NRC to better track general licensees, so that they can be contacted or inspected as necessary, and to make sure that generally licensed devices can be identified even if lost or damaged, and to further ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the requirements for proper handling and disposal of generally licensed devices and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

A copy of NRC Form 664 and the final OMB supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 1F23, Rockville, MD 20852. OMB clearance requests are also available at the NRC Worldwide web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*. The OMB supporting statement, and NRC Form 664 will be available on the NRC home page for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by December 18, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Amy Farrell, Office of Information and Regulatory Affairs (3150–), NEOB–10202, Office of Management and Budget, Washington, DC 20503, (202) 395–7318.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, MD, on this 13th day of November, 2000.

For the Nuclear Regulatory Commission.

Beth C. St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–29458 Filed 11–16–00; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 6–9, 2000, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 14, 1999 (64 FR 55787).

Wednesday, December 6, 2000

1 p.m.–1:05 p.m.: Opening Statement by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

1:05 p.m.–3 p.m.: Issues Associated with Core Power Uprates (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding issues associated with core power uprates, including: Staff plans for developing a Standard Review Plan Section for power uprate reviews; staff position regarding the need for applying risk-informed decisionmaking in the review of significant power uprate applications; and other related matters.

3:15 p.m.–4:45 p.m.: Differing Professional Opinion (DPO) on Steam Generator Tube Integrity (Open)—The Committee will hear a report by the Chairman of the Ad Hoc Subcommittee on DPO regarding conclusions and recommendations of the Ad Hoc Subcommittee on the technical merits of the DPO issues, and will meet with representatives of the NRC staff and the DPO author, as needed.

4:45 p.m.–5 p.m.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the Thermal-Hydraulic Phenomena Subcommittee regarding the status of review of the GE Nuclear Energy TRACG best-estimate thermal-hydraulic code.

5 p.m.–5:15 p.m.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the Plant Systems Subcommittee regarding ABB/CE and Siemens digital I&C applications and insights gained from a meeting with the RSK on digital I&C in Germany during November 2000.

5:30 p.m.–7 p.m.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports. In addition, it will prepare a response to the Commission request that the ACRS provide a detailed discussion on how the perceived weaknesses with industry-developed thermal-hydraulic codes may adversely affect the NRC's regulatory role and provide more specific recommendations on how those weaknesses should be addressed.

Thursday, December 7, 2000

8:30 a.m.–8:35 a.m.: Opening Statement by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:30 a.m.: Meeting with NRC Commissioner Diaz (Open)—The Committee will meet with NRC Commissioner Diaz to discuss the NRC Safety Research Program and other items of mutual interest.

9:45 a.m.–11:45 a.m.: South Texas Project Exemption Request (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and South Texas Project Nuclear Operating Company (STPNOC) regarding the STPNOC's exemption request to exclude certain components from the scope of special treatment requirements in 10 CFR Part 50 and the associated NRC staff's Draft Safety Evaluation Report.

12:45 p.m.–2:15 p.m.: Control Room Habitability (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the nuclear industry regarding issues associated with control room habitability and the staff and industry efforts in resolving those issues.

2:30 p.m.–4 p.m.: Proposed Final Regulatory Guide DG–1053, "Calibration and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final Regulatory Guide DG–1053, including the staff's resolution of public comments.

4 p.m.–5 p.m.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

5 p.m.–7 p.m.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Friday, December 8, 2000

8:30 a.m.–8:35 a.m.: Opening Statement by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Proposed Modifications to the Commission's Safety Goal Policy Statement for Reactors (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed modifications to the Commission's Safety Goal Policy Statement for reactors.

10:15 a.m.–11:30 a.m.: Annual Report to the Commission on the NRC Safety Research Program (Open)—The Committee will discuss the draft ACRS report to the Commission on the NRC Safety Research Program, and will meet with representatives of the NRC staff, as needed.

1 p.m.–1:30 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

1:30 p.m.–1:45 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

1:45 p.m.–2:15 p.m.: Election of ACRS Officers for CY 2001 (Open)—The Committee will elect a Chairman and Vice Chairman for the ACRS and a Member-at-Large for the Planning and Procedures Subcommittee for CY 2001.

2:15 p.m.–3:15 p.m.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

3:15 p.m.–7 p.m.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, December 9, 2000

8:30 a.m.–1 p.m.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2000 (65 FR 60476). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. James E. Lyons, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. James E. Lyons prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. James E. Lyons if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Mr. James E. Lyons (telephone 301–415–7371), between 7:30 a.m. and 4:15 p.m., EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EST, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

The ACRS meeting dates for Calendar Year 2001 are provided below:

ACRS meeting No.	Meeting dates
....	January 2001—No meeting.
479	February 1–3, 2001.
480	March 1–3, 2001.
481	April 5–7, 2001.
482	May 10–12, 2001.
483	June 6–8, 2001.
484	July 11–13, 2001.
....	August 2001—No meeting.
485	September 6–8, 2001.
486	October 4–6, 2001.
487	November 8–10, 2001.
488	December 6–8, 2001.

Dated: November 13, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–29460 Filed 11–16–00; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 5, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, December 5, 2000—1 p.m. Until the Conclusion of Business

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 9, 2000.

James E. Lyons,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–29461 Filed 11–16–00; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection: Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15c3–3, SEC File No. 270–87, OMB Control No. 3235–0078.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection[s] of information to the Office of Management and Budget for extension and approval.

- Rule 15c3–3 Customer Protection—Reserves and Custody of Securities

Rule 15c3–3 requires broker-dealers that hold customer securities to obtain and maintain possession and control of fully paid and excess margin securities they hold for customers. In addition, the rule requires broker-dealers that hold customer funds to make either a weekly or monthly computation to determine whether certain customer funds need to be segregated in a special reserve bank account for the exclusive benefit of the firm's customers. It also requires broker-dealers (1) to maintain a description of the procedures utilized to comply with the possession and control requirements of the rule; (2) to maintain a written notification from the bank where the Special Reserve Bank Account is located that all assets in the account are for the exclusive benefit of broker-dealer's customers; and (3) to give telegraphic notice to the Commission, and the appropriate Self-Regulatory Organization under certain circumstances.

Commission staff estimates that the average number of hours necessary for each broker-dealer subject to the rule to make the required reserve computations is 2.5 hours per response. Approximately 327 broker-dealers choose to make a weekly computation and 115 broker-dealers choose to make a monthly computation. Accordingly, the total burden for this requirement is estimated to be 45,960 hours annually for all broker-dealers, based upon past submissions. The staff believes that financial reporting specialists will make the computations. The staff estimates that the hourly salary of a financial reporting specialist is $72.40 per hour.[1] Consequently, Commission staff estimates that the annual total cost of compliance with the reserve computation requirement for all broker-dealers, taking overhead into consideration, is $3,327,504.

In addition, Commission staff estimates that broker-dealers file approximately 30 notices per year pursuant to the rule. Commission staff estimates that it takes approximately 30 minutes to file each notice. Accordingly, the total burden for this requirement is estimated to be 15 hours annually for all broker-dealers, based on past submissions. The average cost per hour is approximately $72.40. Consequently, Commission staff estimates that the annual total cost of compliance with the notice requirement for all broker-dealers, taking overhead into consideration, is $1,086.

Based on the above, Commission staff estimates that the total cost of compliance with the rule for all broker-dealers is $3,328,590.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: November 9, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29442 Filed 11–16–00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension: Rule 17Ad–2(c), (d), and (h), SEC File No. 270–149, OMB Control No. 3235–0130

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") had submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

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[1] Per Securities Industry Association (SIA) Management and Professional Earnings, Table 011 (Financial Reporting Manager) + 35% overhead (based on end-of-year 1998 figures).

- Rule 17 Ad–2(c), (d) and (h) Transfer Agent Turnaround, Processing and Forwarding Requirements

Rule 17Ad–2(c), (d), and (h), 17 CFR 240.17Ad–2(c), (d), and (h), under the Securities Exchange Act of 1934, enumerate the requirements with transfer agents must comply to inform the Commission or the appropriate regulator of a transfer agent's failure to meet the minimum performance standards set by the Commission rule by filing a notice.

While it is estimated there are 900 transfer agents, approximately ten notices pursuant to 17Ad–2(c), (d), and (h) are filed annually. In view of (a) the readily available nature of most of the information required to be included in the notice (since that information must be compiled and retained pursuant to other Commission rules); (b) the summary fashion in which such information must be presented in the notice (most notices are one page or less in length); and (c) the experience of the staff regarding the notices, the Commission staff estimates that, on the average, most Notices require approximately one-half hour to prepare. The Commission staff estimates a cost of approximately $30.00 for each half hour spent preparing the notices per year, transfer agents spend an average of five hours per year complying with the rule at a cost of $300.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Considerations will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: November 7, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29443 Filed 11–16–00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43545; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments on the Pacific Exchange, Inc.'s Request To Expand the Number of Securities Eligible for Trading Pursuant to the Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis

November 9, 2000.

I. Introduction

On October 16, 2000, the Pacific Exchange, Inc. ("PCX") submitted[1] to the Securities and Exchange Commission ("Commission" or "SEC") a request to expand the maximum number of Nasdaq National Market ("Nasdaq/NM") securities eligible for trading[2] pursuant to the Joint Transaction Reporting Plan for the Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis ("Plan").[3] The current maximum number of eligible Nasdaq/NM securities that may be traded pursuant to UTP is 1000 securities.[4] The Commission is soliciting comment on whether to expand the number of eligible Nasdaq/NM securities that may be traded by a national securities exchange pursuant to the Plan to include all Nasdaq/NM securities.

II. Background

The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/NM securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.[5] The Commission approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when trasnaction reporting pursuant to the Plan commenced. The Commission originally approved the Plan on June 26, 1990.[6] Accordingly, the pilot period commenced on July 12, 1993 and was scheduled to expire on July 12, 1994.[7] The Plan has since been in operation on an extended pilot basis.[8]

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[1] *See* Letter from Thomas E. Connaghan, Senior Vice President Equities, PCX, to Mr. Robert L.D. Colby, Deputy Director, Division of Market Regulation, SEC, and Mr. Robert Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc. ("Nasdaq") (Oct. 16, 2000).

[2] Section 12(f) of the Securities Exchange Act of 1934 ("Act") describes the circumstances under which an exchange may trade a security that is not listed on the exchange, *i.e.* by extending unlisted trading privileges ("UTP") to the security. *See* 15 U.S.C. 781(f). Section 12(f) required exchanges to apply to The Commission before extending UTP to any security. To approve an exchange UTP application for a registered security not listed on any exchange ("OTC/UTP"), Section 12(f) required the Commission to determine that various criteria had been met concerning fair and orderly markets, the protection of investors, and certain national market initiatives. Section 12(f) was amended on October 22, 1994; the amendment removed the application requirement. OTC/UTP is now allowed only pursuant to a Commission order or rule, which is to be issued or promulgated under essentially the same standards that previously applied to Commission review of UTP applications.

[3] The signatories to the Plan, *i.e.*, the National Association of Securities Dealers, Inc. ("NASD"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX") (previously, the Midwest Stock Exchange, Inc.), the Philadelphia Stock Exchange, Inc. ("PHLX"), the PCX, and the Cincinnati Stock Exchange ("CSE") are the "Participants." The BSE, however, joined the Plan as a "Limited Participant," and reports quotation information and transaction reports only in Nasdaq/NM securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[4] Exchange trading in Nasdaq/NM securities began in April 1987 when the CHX began trading 25 Nasdaq/NM securities. *See* Securities Exchange Act Release No. 24406 (April 29, 1987), 52 FR 17495 (May 8, 1987). The Commission increased the maximum number of eligible securities from 25 to 100 in 1991, from 100 to 500 in 1995, in response to a request from the CHX, and from 500 to the current 1000 limit in 1999, again in response to a request from the CHX. *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990); Securities Exchange Act Release No. 36102 (Aug. 14, 1995), 60 FR 43626 (Aug. 22, 1995); and Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999).

[5] *See* Section 12(f)(2) of the Act. 15 U.S.C. 781(f)(2).

[6] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990).

[7] *See* Letter from David R. Rusoff, Foley & Lardner, to Betsy Prout, Division of Market Regulation. (May 9, 1994).

[8] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); Securities Exchange Act Release No. 35221 (Jan. 11, 1995), 60 FR 3886 (Jan 19, 1995); Securities Exchange Act Release No. 36102 (Aug. 14, 1995), 60 FR 43626 (Aug. 22, 1995); Securities Exchange Act Release No. 36226 (Sept. 13, 1995), 60 FR 49029 (Sept. 21, 1995); Securities Exchange Act Release No. 36368 (Oct. 13, 1995); 60 FR 54091 (Oct. 19, 1995); Securities Exchange Act Release No. 36481 (Nov. 13, 1995), 60 FR 58119 (Nov. 24, 1995); Securities Exchange Act Release No. 36589 (Dec. 13, 1995), 60 FR 65696 (Dec. 20, 1995); Securities Exchange Act Release No. 36650 (Dec. 28, 1995), 61 FR 358 (Jan. 4, 1996); Securities Exchange Act Release No. 36934 (Mar. 6, 1996), 61 FR 10408 (Mar. 13, 1996); Securities Exchange Act Release No. 36985 (Mar. 18, 1996), 61 FR 12122 (Mar. 25, 1996); Securities Exchange Act Release No. 37689 (Sept. 16, 1996), 61 FR 50058 (Sept. 24, 1996); Securities Exchange Act Release No. 37772 (Oct. 1, 1996), 61 FR 52980 (Oct. 9, 1996); Securities Exchange Act Release No. 38457 (Mar. 31, 1997), 62 FR 16880 (Apr. 8, 1997); Securities Exchange Act Release No. 38794 (June 30, 1997), 62 FR 36586 (July 8, 1997); Securities Exchange Act Release No. 39505 (Dec. 31, 1997) 63 FR 1515 (Jan. 9, 1998); Securities Exchange Act Release No. 40151 (July 1, 1998), 63 FR 36979 (July 8, 1998); Securities Exchange Act Release No. 40896 (Dec. 31, 1998), 64 FR 1834 (Jan. 12, 1999); Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999); and Securities Exchange Act Release No. 42268 (Dec. 23, 1999), 65 FR 1202 (Jan. 6, 2000).

III. Description of the Plan

The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors, subscribers and others of quotation and transaction information in "eligible securities." The Plan contains various provisions concerning its operation, including Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access, Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer; Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.[9]

IV. Description of the Proposal

The Commission is proposing pursuant to Section 12(f) of the Act[10] to expand the number of eligible Nasdaq/NM securities that may be traded by a national securities exchange pursuant to the Plan to include all Nasdaq/NM securities. The current maximum number of eligible Nasdaq/NM securities that may be traded pursuant to the Plan is 1000 securities.[11]

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed change that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room.

All submissions should refer to File No. S7–24–89 and should be submitted by December 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29446 Filed 11–16–8:45am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–4354[illegible]; File No. 600–32]

Self-Regulatory Organizations; Global Joint Venture Matching Services—US, LLC; Notice of Filing of Application for Exemption From Registration as a Clearing Agency

November 9, 2000.

I. Introduction

On September 21, 2000, the Global Joint Venture Matching Services—US, LLC ("GJVMS") filed with the Securities and Exchange Commission ("Commission") an application on Form CA–1[1] for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 ("Exchange Act")[2] and Rule 17Ab2–1 thereunder.[3] GJVMS is requesting an exemption from clearing agency registration in connection with its proposal to offer an electronic trade confirmation service and a matching service. The Commission is publishing this notice to solicit comments on the exemption request.

II. Background

A. Structure of the GJVMS

The GJVMS is a limited liability company which prior to the commencement of its operations will become a wholly-owned subsidiary of the Global Joint Venture. The Global Joint Venture is a proposed joint venture between The Depository Trust & Clearing Corporation ("DTCC"),[4] Thomson Institutional Services Inc. ("TISI"),[5] and Interavia, A.G., a Swiss corporate affiliate of TISI. Within the Global Joint Venture, the institutional trade processing services currently offered by DTC will be combined with the institutional trade processing services currently offered by Thomson Financial ESG.[6] While the Global Joint Venture will have several lines of business, it will conduct its domestic electronic trade confirmation ("ETC") service and matching service wholly through the GJVMS.

Initially, the automated facilities and systems environment necessary to operate the ETC and matching services will be provided to the GJVMS by DTC pursuant to a services agreement between DTCC and the Global Joint Venture. Also pursuant to the services agreement, DTCC will provide to the Global Joint Venture legal and regulatory, audit, accounting, and human resources services, and the Global Joint Venture will make these services available to the GJVMS. It is anticipated that there will also be a services agreement between the Global Joint Venture and the GJVMS.

As explained in detail below, DTC and Thomson Financial ESG's institutional trade processing services are the two principal systems used by broker-dealers and institutional investors for post-trade, presettlement processing of trades. The merger of these two services would link the two largest providers of institutional post-trade, presettlement processing services, and as a result, would establish a core building block for straight-through processing ("STP")[7] and T+1.[8]

DTCC will transfer to the Global Joint Venture DTC's TradeSuite which consists of the following services: TradeMessage, TradeMatch, TradeSettle, and TradeHub.

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[9] The full text of the Plan, as well as "Concept Paper" describing the requirements of the Plan, are contained in the original filing which is available for inspection and copying in the Commission's public reference room.

[10] 15 U.S.C. 78l(f).

[11] *See supra* note 4.

[12] 17 CFR 200.30–3(a)(29).

[1] Copies of GJVMS's Form CA–1 are available for inspection and copying at the Commission's Public Reference Room in File No. 600–32.

[2] 15 U.S.C. 78q–1.

[3] 17 CFR 240.17Ab2–1.

[4] DTCC was created in 1999 as a holding company for The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC"). DTC and NSCC are registered with the Commission as clearing agencies.

[5] TISI is a wholly owned subsidiary of Thomson Financial, a Thomson Corporation subsidiary. Thomson Corporation is a global electronic information company.

[6] Thomson Financial ESG is a wholly owned subsidiary of Thomson Financial, a Thomson Corporation subsidiary.

[7] STP is the completion of presettlement and settlement processes based on trade data that each party to a transaction enters only once into an automated system.

[8] T+1 refers to an industry initiative to reduce the settlement cycle for securities transactions from three days (T+3) to one day (T+1). It is anticipated that the settlement cycle will be shortened from T+3 to T+1 during 2004.

1. TradeMessage provides for the automated exchange of post-trade messages between broker-dealers, custodians, and institutions, including messages such as block-trade notices of execution, allocation instructions, trade confirmations, and affirmations.
2. TradeMatch electronically compares investment managers' allocations with broker-dealers' trade confirmations.
3. TradeSettle supplies allocations, trade confirmations, and settlement messages with account and settlement data from DTC's Standing Instructions Database ("SID") and routes settlement instructions to custodian banks and broker-dealers' clearing agents. SID is a database of customer relationship information and settlement data that is shared by investment managers, broker-dealers, and custodians.
4. TradeHub is a real-time global message switch which routes messages between parties using different communications protocols, message formats, and firm and securities identifiers.

TISI will transfer to the Global Joint Venture the following services of Thomson Financial ESG: ALERT, OASYS, OASYS Global, MarketMatch, and ITM Benchmarks.

1. ALERT is a database of customer relationship information and settlement data that is shared by investment managers, broker-dealers, and custodians.
2. OASYS provides for the electronic communication and acceptance or rejection of allocation instructions between investment managers and broker-dealers.
3. OASYS Global provides for the electronic communication of allocation instructions and confirmations between investment managers and broker-dealers.
4. MarketMatch streamlines the matching of trade details with broker counterparties around the world, leading to lower processing costs, improved trade management, and shorter settlement times.
5. ITM Benchmarks is a suite of services that provide operational statistics relating to trade processing. These include statistics on average response times, the number of attempts it takes to make settlement, and the percentage of trades ready for settlement at particular points in time.

B. Current Institutional Trade Settlement Processes

The institutional trade process typically starts when an institution or its agent places an order to buy or sell securities with its broker-dealer. After the broker-dealer executes the trade, the broker-dealer will advise the institution of the details of the executed trade. This is generally called a notice of execution. Once received, the institution advises the broker-dealer how the trade should be allocated among its various accounts.

When the broker-dealer completes allocating the shares among the institution's accounts, the broker-dealer submits trade data reflecting its distribution to each of the institution's accounts. DTC's TradeSuite service forwards the trade data in the form of a confirmation for each account to the institution, the broker-dealer, and other interested parties (*e.g.*, correspondent banks or trustees). The institution reviews the confirmation for accuracy (*i.e.*, compares the confirmation to its allocation instructions). For each confirmation that is accurate, the institution will send an information message to DTC. DTC will generate and send an affirmed confirmation to the broker-dealer and to the institution's settlement agent. At this point, the trade is sent into DTC's settlement system. (DTC's TradeSuite service is not a settlement system in that no money or securities move through it.) The trade also must be authorized by the party obligated to deliver the securities (*i.e.*, the selling party) before settlement can occur.

C. The Commission's Interpretive Release on Matching

On April 6, 1998, the Commission issued an interpretive release regarding matching services ("Matching Release").[9] Matching is the term used to describe the process whereby an intermediary independently determines whether trade data submitted by a broker-dealer (*i.e.*, confirmation information) matches the trade data submitted from the broker-dealer's institutional customer (*i.e.*, allocation information). If the information matches, the intermediary generates an affirmed confirmation to the broker-dealer and the institution. In the Matching Release, the Commission concluded that matching constitutes a clearing agency function, specifically the "comparison of data respecting the terms of settlement of securities transactions," within the meaning of Section 3(a)(23)(A) of the Exchange Act.[10] Therefore, any person providing independent matching services must either register with the Commission as a clearing agency or obtain an exemption from registration pursuant to Section 17A of the Exchange Act and Rule 17Ab2–1 thereunder.[11]

III. GJVMS's Request for Exemption

A. Introduction

The purpose of the GJVMS will be to introduce significant efficiencies into institutional trade processing by combining the complementary post-trade, presettlement services of DTC and Thomson Financial ESG to offer the securities industry an integrated system for post-trade, presettlement processing of institutional trades. This should assist firms in dealing with the ever growing and unprecedented levels of securities trading. The GJVMS will also be a positive response to the expected move to T+1.

According to "Paving The Way To Straight Through Processing" (July 2000), a white paper published by DTCC, as trading volumes have continued their dramatic upward climb over the past decade, securities industry executives are focusing their attention on the transformation the industry must undergo to cope with these volumes and the potential for even greater increases in the years ahead. According to DTCC and the Securities Industry Association ("SIA"), 250 million institutional trade confirmations were processed in 1999.

The industry has concluded that the current post-trade presettlement processing system for institutional trades will need major changes if a shorter settlement period is to be achieved. Even in a T+3 environment, the current system is showing signs of strain under the increasing volumes of trades. Today, institutional trades are primed for settlement through a series of sequential and repetitive steps, using a process developed when the volume of trades was far lower than it is today and when settlement occurred on T+5.

To deal with this increasing volume, the industry has embraced the concept of straight-through processing or STP which, in its most basic form, is the process of seamlessly passing information to all parties without manual handling or redundant processing. Concurrent with this objective, the industry is seeking to reduce risk, by shortening the time between trade date and settlement date.

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[9] Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 [File No. S7–10–98].

[10] 15 U.S.C. 78c(a)(23)(A).

[11] 15 U.S.C. 78q–1; 17 CFR 240.17Ab2–1. The Commission has approved a proposed rule change filed by DTC that allows DTC to provide matching services. Securities Exchange Act Release No. 39832 (April 6, 1998), 63 FR 18062 [File No. SR–DTC–95–23]. The Commission has also granted Thomson Financial Technology Services, Inc., a wholly owned subsidiary of TISI, an exemption from registration as a clearing agency. Securities Exchange Act Release No. 41377 (May 7, 1999), 64 FR 25948 [File No. 600–31].

Many in the industry believe that changing the institutional post-trade presettlement process is called for, even without factoring in a move to T+1.[12] The existing process is showing signs of strain as trade volume grows. As firms have increased their investments to add capacity and improve internal processing, confirm and affirm rates have not improved, leading to greater risk for the industry.[13]

B. GJVMS's Proposed Service

GJVMS plans on offering an ETC service and a matching service. The ETC service would transmit messages (*i.e.*, confirmation and affirmation messages) among broker-dealers, institutional customers, and custodian banks and would ultimately result in the production of an affirmed electronic trade confirmation in accordance with the requirements of various self-regulatory organizations rules.[14] The matching service would compare, or match trade information submitted by a broker-dealer (*i.e.*, confirmation information) with the trade information submitted by an institutional customer (*i.e.*, allocation instructions) to produce an affirmed confirmation.[15]

GJVMS represents in its Form CA–1 that as a condition of obtaining an exemption from clearing agency registration, it shall.[16]

(1) Provide the Commission with an audit report that addresses all the areas discussed in the Commission's Automation Review Policies (ARPs);[17]

(2) Provide the Commission (beginning in its first year of operation) with annual reports and any associated field work prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in the ARPs;

(3) Provide the Commission with twenty business days advance notice of any material changes that it makes to its matching service and ETC service. These changes will not require the Commission's approval before they are implemented;

(4) Provide the Commission with prompt notification of significant systems outages lasting more than thirty minutes;

(5) Respond and its service providers (including DTCC and Global Joint Venture) shall respond to requests from the Commission for additional information relating to its matching service and ETC service and provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to the matching service and ETC service. The requests for information shall be made and the inspections shall be conducted solely for the purpose of reviewing the matching service's and the ETC service's operations and compliance with the federal securities laws and the terms and conditions of GJVMS's exemptive order;

(6) Supply the Commission or its designee with periodic[18] reports regarding the affirmation rates for institutional transactions effected by institutional investors that utilize its matching service and ETC Service;

(7) Preserve a copy or record of all trade details, allocation instructions, central trade matching results, reports and notices sent to customers, reports regarding affirmation rates that are sent to the Commission or its designee, and any complaint received from a customer, all of which pertain to the operation of its matching service and ETC service. It shall retain these records for a period of not less than five years, the first two years in an easily accessible place;

(8) Develop fair and reasonable linkages between its matching service and other central matching services that are regulated by the Commission or that receive an exemption from clearing agency registration from the Commission; and

(9) Not perform any clearing agency function (such as net settlement, maintaining a balance of open positions between buyers and sellers, or marking securities to the market) other than as permitted under the contemplated exemption.

C. Statutory Standards

Section 17A(b)(1) of the Exchange Act requires all clearing agencies to register with the Commission before performing any of the functions of a clearing agency.[19] However, Section 17A(b)(1) also states that, upon our own motion or upon a clearing agency's application, we may conditionally or unconditionally exempt the clearing agency from any provisions of Section 17A or the rules or regulations thereunder if we find that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A. The GJVMS believes that the undertakings it has proposed as a condition of obtaining an exemption from clearing agency registration will allow it to protect the public interest and will strike the appropriate balance between the necessity of safety and soundness on the one hand and the need to foster efficiency, competition, and capital formation on the other hand.

The Commission has exercised its authority to conditionally exempt an applicant from clearing agency registration on four prior occasions.[20] In those cases, the applicants requesting exemption from clearing agency registration were required to meet standards substantially similar to those required of registrants under Section 17A in order to assure that the fundamental goals of that section were furthered (*i.e.*, safety and soundness of

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[12] In July 2000, the SIA released its T+1 Business Case Model which the Commission is in the process of reviewing.

[13] The average daily U.S. institutional trade volume increased to 432,000 trades in 1999 from 182,000 trades in 1995. However, in 1999, an average of 70,000 institutional trade confirmations with an average value of $15 billion a day, were not submitted by broker-dealer into DTC's TradeSuite system on trade date. This doubled the 1995 average of 36,000 valued at $7 billion. DTCC has experienced trade date confirmation input rates as low as 76% on certain peak days during the first quarter of 2000 as compared with the fairly steady average rate of 85% over the past several years. In addition, only 12% of trades are currently affirmed on trade date and only 88% of trades are affirmed by noon of T+2, the deadline for automatic submission of the affirmed trade into DTC's settlement system. The remaining 12% are not automatically entered into DTC's settlement system and require further action on the part of the parties to settle. As trade volumes continue to rise or in a T+1 environment, these levels will be unacceptable.

[14] These rules are National Association of Securities Dealers Rule 11860(a)(5), New York Stock Exchange Rule 387(a)(5), Municipal Securities Rulemaking Board Rule G–15(d)(ii), American Stock Exchange Rule 423(5), Chicago Stock Exchange Article XV, Rule 5, Pacific Exchange Rule 9.12(a)(5), and Philadelphia Rule 274(b).

[15] The matching service will be used to match trade information where either the broker-dealer or the institutional customer or both is a U.S. entity and where the security is registered in the United States.

[16] Exhibit S of GJVMS's Form CA–1. GJVMS also represents that it will not impose prohibitions or limit access to its service by potential customers but that it might terminate a subscription for failure to pay fees.

[17] Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703 and 29185 (May 9, 1991), 56 FR 22490.

[18] DTC submits monthly affirmation/confirmation reports to the appropriate self-regulatory organizations. The Commission anticipates a similar schedule.

[19] 15 U.S.C. 78q–1(b)(1).

[20] Securities Exchange Act Release Nos. 36573 (December 12, 1995), 60 FR 65076 (order approving application for exemption from clearing agency registration for the Clearing Corporation for Options and Securities); 38328 (February 24, 1997), 62 FR 9225 (order approving application for exemption from clearing agency registration for Cedel Bank, now Clearstream); 39643 (February 11, 1998), 63 FR 8232 (order approving application for exemption from clearing agency registration by Morgan Guaranty Trust Company of New York, Brussels Office, as operator of the Euroclear System); and 41377 (May 7, 1999), 64 FR 25948 (order approving application for exemption from clearing agency registration for Thomson Financial Technology Services, Inc.).

the national clearance and settlement system).

In the Matching Release, the Commission stated that an entity that limited its clearing agency functions to providing matching services might not have to be subject to the full range of clearing agency regulation. In addition, the Commission stated that an entity seeking an exemption from clearing agency registration for matching would be required to: (1) Provide the Commission with information on its matching services and notice of material changes to its matching services; (2) establish an electronic link to a registered clearing agency that provides for the settlement of its matched trades; (3) allow the Commission to inspect its facilities and records; and (4) make periodic disclosures to the Commission regarding its operations.

GJVMS's matching service would be the only clearing agency function that it would perform under an exemptive order. While the Commission believes that GJVMS's matching services could have a significant impact on the national clearance and settlement system, the Commission does not believe that GJVMS's matching services raise all of the concerns raised by an entity that performs a wider range of clearing agency functions. GJVMS represents in its Form CA–1 that as a condition of its exemption, it will comply with the conditions suggested by the Commission in the Matching Release. Therefore, the Commission believes that it may not be necessary to require GJVMS to satisfy all of the standards required of registrants under Section 17A.

The Commission anticipates that in addition to considering the public interest and the protection of investors, the primary factor in evaluating GJVMS's application will be whether GJVMS is so organized and has the capacity to be able to facilitate prompt and accurate matching services subject to the specific conditions that it has proposed.[21] In particular, GJVMS has represented that, among other things, it will provide the Commission with (1) an independent audit report that addresses all the areas discussed in the Commission's ARPs prior to beginning commercial operations and annually thereafter, (2) on-site inspection rights, and (3) a current balance sheet and income statement prior to beginning operations.

The Commission expects that any exemption from clearing agency registration for GJVMS would contain all of the conditions that GJVMS has proposed in its Form CA–1. The Commission requests comment on whether these conditions are sufficient to promote the purposes of Section 17A and to allow the Commission to adequately monitor the effects of GJVMS's proposed activities on the national system for the clearance and settlement of securities transactions. In addition, the Commission invites commenters to address whether granting GJVMS an exemption from clearing agency registration would impose any burden on competition that is not necessary or appropriate in furtherance of Section 17A of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by December 18, 2000. Such written data, views, and arguments will be considered by the Commission in deciding whether to grant GJVMS's request for exemption from registration. Persons desiring to make written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

Reference should be made to File No. [600–32]. Copies of the application and all written comments will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29447 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

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[21] *See* Section 17A(b)(3)(A) of the Exchange Act, 15 U.S.C. 78q–1(b)(3)(A).

[22] 17 CFR 200.30–3(a)(16).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43521; File No. SR–CBOE–00–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to an Interpretation of Paragraph (b) of Article Fifth of Its Certificate of Incorporation

November 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2000, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On October 10, 2000, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt a rule change consisting of an interpretation of Article Fifth of the CBOE Certificate of Incorporation, as interpreted in the agreement between the CBOE and the Chicago Board of Trade ("CBOT") dated September 1, 1992 (the "1992 Agreement"), which is incorporated in CBOE Rule 3.16(b), concerning the effect of the proposed restructuring of the CBOE or other action that may be taken by the CBOT to change its trading rules or procedures on the right of the 1,402 full members of the CBOT to become members of CBOE without having to purchase a CBOE membership (the "exercise right"). The CBOE's proposed rule change also embodies a plan to enable CBOE to continue to provide fair and orderly markets in the securities traded on the Exchange in the event the exercise right is extinguished as a result of action taken by the CBOT. Below is the text of the proposed rule change. New language is *italicized*.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Nancy L. Nielsen, Assistant Corporate Secretary, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission (October 10, 2000). Amendment No. 1 supersedes the original filing in its entirety.

Special Provisions Regarding Memberships

Rule 3.16(a)–(b) No change.

Interpretation and Policies

.01 Pursuant to and in accordance with the Exercise Right embodied in Paragraph (b) of Article Fifth of the Exchange's Certificate of Incorporation, every present and future member of the CBOT, "so long as he remains a member" of CBOT, may be an exerciser member of the Exchange. As the Exercise Right has been interpreted in paragraph (b) of this Rule and in the 1992 Agreement referred to therein, only Eligible CBOT Full Members and Eligible CBOT Full Member Delegates have the right to become exerciser members of the Exchange. The 1992 Agreement defines an "Eligible CBOT Full Member" to mean "an individual who at the time is the holder of one of the One Thousand Four Hundred Two (1,402) existing CBOT full memberships ("CBOT Full Memberships") and who is in possession of all trading rights and privileges appurtenant to such CBOT Full Membership." The term "Eligible CBOT Full Member Delegate" is defined in the 1992 Agreement to mean "the individual to whom a CBOT Full Membership is delegated (leased) and who is in possession of all trading rights and privileges appurtenant to such CBOT Full Membership." The 1992 Agreement also provides that "in the event the CBOT splits or otherwise divides CBOT Full Memberships into two or more parts, all such parts and the trading rights and privileges appurtenant thereto, shall be deemed to be part of the trading rights and privileges appurtenant to such CBOT Full Membership and must be in the possession of an individual as either an Eligible CBOT Full Member or an Eligible CBOT Full Member Delegate in order for that individual to be eligible to be an Exerciser Member." CBOT, which since its inception has been a not-for-profit membership corporation, is proposing to demutualize or otherwise restructure so as to become a for-profit stock corporation. As a part of that restructuring, CBOT has transferred its electronic trading system to a new subsidiary. While not part of the current restructuring, CBOT may in the future distribute shares in the new subsidiary to CBOT members (stockholders), and it may issue additional shares in the new subsidiary as a part of a public or private financing. In addition, either as part of its restructuring or in a change to its trading rules and procedures that it may implement apart from the restructuring, CBOT proposes to give direct trading access to the electronic trading system to persons who are not now members of CBOT, and to trade all CBOT products on the electronic trading system, including its agricultural contracts and other products heretofore traded only by CBOT Full Members on the CBOT open-outcry trading floor.

Once CBOT becomes a stock corporation, it will no longer have members. Nevertheless, so long as CBOT does no more than convert from a membership corporation to a stock corporation without changing its trading rules and procedures so as to extend the right to trade CBOT products, electronically or otherwise, to persons who are not CBOT full members or the stockholder equivalent of such members, CBOE interprets its rules to treat persons who become stockholders of CBOT in the restructuring as a result of their ownership of one of the 1,402 full CBOT memberships (or their delegates) as if they were full members for purposes of the Exercise Right. This means that so long as those stockholders retain all of the stock and other interests that may be distributed to them in respect of their full CBOT memberships and continue to hold all of the trading rights and privileges in respect of CBOT that they held in their former status as full members of CBOT, then those stockholders or their delegates who satisfy the requirements of an eligible CBOT Full Member Delegate will be entitled to the Exercise Right.

However, CBOE interprets the Exercise Right to terminate immediately for all 1,402 CBOT full members or the stockholder-equivalent of such members (of their delegates) if, whether as a part of a demutualization or other restructuring of CBOT or otherwise, CBOT changes its trading rules and procedures so as to extend the right to trade all CBOT products, electronically or otherwise, to persons who are not CBOT Full Members or the stockholder-equivalents of such members (or their delegates) or so that, if the Exercise Right were to continue to be available, CBOT Full Members or the stockholder-equivalents of such members (or their delegates) would be able to trade all CBOT products directly on CBOT at the same time as they are trading on the Exchange as exerciser-members.

In the event the Exercise Right is terminated pursuant to the preceding paragraph, the Exchange will promptly act to develop and propose a plan that will respond to CBOE's ongoing need to be able to provide fair and orderly markets in the securities it trades, and at the same time will be fair to the 1,402 former members of CBOT who will have lost their exercise rights. The plan to be developed by CBOE for this purpose will be subject to the approval of the Exchange membership, and to the approval of the Securities and Exchange Commission.

During an interim period while this plan is being developed, the Exchange shall interpret its rules to stay the impact of the extinguishment of the Exercise Right on the trading access of those CBOT full members (or their delegates) who were exerciser members of the Exchange in good standing as of the close of business on August 28, 2000 ("grandfathered exercisers"), and shall permit such persons to continue to be able to trade on the Exchange for the duration of the interim period notwithstanding the extinguishment of the exercise right. This interim period will extend for at least six months from the date the Exchange gives notice to its members that exercise right has been extinguished as a result of the restructuring of CBOT or changes to CBOT's trading rules or procedures as described above, and for any additional period until the Exchange's permanent plan to respond to the termination of the Exercise Right has been approved and implemented. However, once the Exercise Right is terminated under this interpretation, CBOT members or stockholders (or their delegates) who were not exerciser members of the Exchange in good standing on August 28, 2000, shall not be permitted to exercise or have access to the Exchange's trading floor during the interim period. In order to continue to have trading access to the Exchange during this interim period, grandfathered exercisers will be required to maintain their status as members or stockholders of CBOT in good standing in accordance with the rules of CBOT (or as the delegates of such members or stockholders). Among other things, this means that delegates will need to remain in compliance with the terms of their CBOT lease arrangements.

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide an interpretation of the rules of the CBOE concerning the effect of the CBOT's proposed restructuring and of other changes that the CBOT proposes to make to the trading rights and privileges of its members on the exercise right. The proposed rule change also includes a plan to enable the CBOE to continue to provide fair and orderly markets if the exercise right is extinguished because of the consummation of certain steps of the proposed restructuring of the CBOT or the consummation of the other changes to the CBOT's trading procedures.

Background of the Exercise Right

Paragraph (b) of the Article Fifth of the CBOE's Certificate of Incorporation (hereafter, "Article Fifth(b)") provides in part that "every present and future member of [CBOT] who applies for membership in the [Exchange] and who otherwise qualifies shall, so long as he remains a member of said Board of Trade, be entitled to be a member of the [Exchange] notwithstanding any such limitation on the number of members and without the necessity of acquiring such membership for consideration or value from the [Exchange], its members or elsewhere." Paragraph 2(a) of the 1992 Agreement provides that only an individual who is an "Eligible CBOT Full Member" or an "Eligible CBOT Full Member Delegate" is a member of the CBOT within the meaning of Article Fifth(b). Paragraph 1(a) of the 1992 Agreement defines an "Eligible CBOT Full member" to mean "an individual who at the time is the holder of one of the One Thousand Four Hundred Two (1,402) existing CBOT full memberships ("CBOT Full Memberships") *and* who is in possession of all trading rights and privileges appurtenant to such CBOT Full Membership." The term "Eligible CBOT Full Member Delegate" is defined in Paragraph 1(b) of the 1992 Agreement to mean "the individual to whom a CBOT Full membership is delegated (leased) *and* who is in possession of all trading rights and privileges appurtenant to such CBOT Full Membership." (Emphasis supplied in both definitions.) Paragraph 2(b) of the 1992 Agreement also provides that "in the event the CBOT splits or otherwise divides CBOT Full Memberships into two or more parts, all such parts, and the trading rights and privileges appurtenant thereto, shall be deemed to be part of the trading rights and privileges appurtenant to such CBOT Full Membership and must be in possession of an individual as either an Eligible CBOT Full Member or an Eligible CBOT Full Member Delegate in order for that individual to be eligible to be an Exerciser Member."

These provisions reflect an underlying intent that CBOT members must choose at any given time to use their CBOT membership to trade either on the CBOT or (by exercise) on the CBOE, but not on both exchanges at the same time. This fundamental principle has driven the way in which the exercise right has been interpreted as the CBOT's trading procedures have evolved over the years. When the exercise right was first included in the CBOE's Certificate of Incorporation as a right belonging to CBOT members, the concept of exchange membership, on the CBOT as on all exchanges, embraced the indivisible coupling of trading access and ownership. All of CBOT's owners had the right to trade there, and the only persons who had the right to trade on the CBOT were its owners. The traditional integration of access and ownership embodies in the concept of membership was subsequently attenuated, when "seat-leasing" was permitted on the CBOT in the late 1970s and when the CBOT proposed to allow its members to split the trading rights of its members by issuing evening trading permits. In each of these cases, Article Fifth(b) was interpreted so as to preserve the original intent of the exercise right. In the case of seat leasing, the CBOE interpreted its rules to provide that only the delegate (lessee) of a CBOT membership who held all of the trading rights appurtenant to full membership would be able to exercise, and that the owner of the CBOT membership, by giving up his trading rights to a delegate, has lost the right to exercise. In response to evening trading permits and other split-ups of the trading rights of CBOT members, the CBOT and the CBOE agreed in Paragraph 2(b) of the 1992 Agreement that, in the event of any such a split-up or division of CBOT Full Memberships into two or more parts, "all such parts, *and* the trading rights and privileges appurtenant thereto, * * * must be in the possession of an individual as either an Eligible CBOT Full Member or an Eligible CBOT Full Member Delegate in order for that individual to be eligible to be an Exerciser Member [of CBOE]." [Emphasis supplied].

The common thread in each of these situations is that full CBOT members must choose at any given time whether to use their CBOT memberships to trade CBOE products and, while they are doing so, not to trade CBOT products. In other words, the exercise right consistently has been interpreted as imposing a practical cost on its use, because a CBOT member must be willing to give up trading access to CBOT products during any time that member is trading on the CBOE as an exerciser member. It always has been a fundamental assumption of the exercise right that this constraint, together with the related difficulties in managing the risk of trading while moving back and forth between the CBOT and the CBOE floors, would limit the number of exerciser members. In fact, over the past twenty years the number of full CBOT members (or delegates) who have been exerciser members of CBOE has fluctuated between approximately 450 and 700 individuals. In other words, at least 50% of the CBOT full members (or delegates) eligible to exercise at any given time have chosen not to do so, and instead have chosen to trade (or to lease the right to trade) as members of CBOT only. A principal purpose of the 1992 Agreement was to prevent any division either of the trading rights and privileges appurtenant to a CBOT full membership or of any division of the CBOT full membership itself from nullifying the practical cost associated with the use of the exercise right.

CBOT's Restructuring Proposal and Changes to Electronic Trading Procedures

Recently, the CBOT has proposed to its members a major restructuring of the CBOT that, if implemented, the CBOE believes will conflict with the terms and the purpose of the exercise right. The CBOT described its proposed restructuring in a "Restructuring Report" distributed to the CBOT membership on May 16, 2000,[4] and in ballot materials distributed to CBOT members on June 1, 2000, in connection with a membership vote on the first step of the restructuring, and the CBOT described a modified proposal in a letter to its members dated September 21, 2000.

As described in these materials, the CBOT's restructuring consists of a number of separate but related steps. The first step, which has already been accomplished, was to change the state of incorporation of the CBOT from Illinois to Delaware, while continuing to preserve the status of the CBOT as a not-for-profit membership corporation.[5]

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[4] *See* CBOT Restructuring Report (May 16, 2000).

[5] The CBOE has stated that it will not take any action to limit the exercise right if the CBOT

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The next step of the proposed restructuring, which also appears to have taken place, was the creation of a new, for-profit stock subsidiary of the CBOT, to which the CBOT has transferred its electronic trading system and related rights and obligations. These rights and obligations previously were held by a partnership (the Ceres Partnership), of which the CBOT was the sole general partner. The new electronic trading subsidiary owns and operates an electronic trading system for the trading of those CBOT products previously traded on the electronic trading system of the Ceres Partnership. This subsidiary proposes ultimately to trade all CBOT products.[6] In particular, the CBOT Restructuring Report states not only that "CBOT members will be afforded full trading rights and privileges to trade at the electronic trading company," but also that nonmembers of the CBOT, wherever located, "will not be required to own seats or any other type of membership interests in order to utilize directly the electronic trading platform."[7]

In other words, CBOT members no longer would enjoy exclusive access to trade CBOT products. Through this reformulated electronic trading platform, nonmembers would have equivalent access to trade CBOT products that previously could be traded only by and through members. The reformulated electronic trading facility apparently also would afford CBOT members (or their delegates) the ability to trade CBOT products at the same time as they are trading on the CBOE pursuant to the exercise right.

According to CBOT's materials, the next step of the CBOT's restructuring will be to change the form of organization of CBOT from a not-for-profit membership corporation to a for-profit stock corporation. When this has been accomplished, persons who had been members of the membership corporation will become stockholders of the stock corporation, in exchange for their membership interests in the CBOT. In the proposed restructuring that was described in June 2000, the CBOT stated that shares in the electronic trading subsidiary would be distributed to the former members of CBOT, either concurrently with the change of CBOT from a membership to a stock corporation or shortly thereafter. This action was to be followed by a public offering of additional shares in the electronic trading company. As more recently described in a September 21, 2000 letter from the Chairman of the Board to CBOT members, it now is proposed by CBOT that the electronic trading company would remain a wholly-owned subsidiary of CBOT after CBOT changes from a membership to a stock corporation. However, the CBOT still would continue to evaluate its ownership structure and consider whether to separately offer shares in the two companies or otherwise to separate their ownership in the future. Regardless of whether the electronic trading company remains a wholly-owned subsidiary of CBOT or its shares are distributed to persons other than CBOT, it appears from the CBOT materials, as part of the restructuring or concurrently with its implementation, the CBOT proposed to utilize the electronic trading company to provide comprehensive electronic access to trade CBOT products to individuals who are not CBOT members.[8]

These next steps of the restructuring, whether they consist only of the change to a for-profit stock corporation or also include the distribution of shares in the electronic trading subsidiary, are subject to one or more votes of the CBOT membership. According to the CBOT materials, these steps also are subject to applicable regulatory approvals from the Commodity Futures Trading Commission and the Commission. As of June 1, 2000, the CBOT anticipated implementing all of the steps of the restructuring prior to the end of the current year. Although the statements made by CBOT officials in announcing the revised restructuring in September did not mention any specific dates for implementing the next step of the restructuring, it was represented that the change in strategy would accelerate the process of demutualizing CBOT.

After announcing its revised restructuring plan, the CBOT also announced, in a letter dated September 20, 2000, from the Chairman of CBOT to the CBOT members, that its Board of Directors had approved a major change in the way in which all of CBOT's agricultural contracts would be traded, subject to the change being approved by a vote of the CBOT members. This change would result in all of CBOT's agricultural contracts, which heretofore have been traded only by CBOT full members by open-outcry on the CBOT trading floor, being traded during all of the CBOT's hours of operation on the electronic trading system, side-by-side with trading in the CBOT's open-outcry market. Although the details of this change have not yet been communicated, the September 20 letter stated that it was being proposed to "satisfy member and customer demand for increased access to these products."

The Effect of CBOT's Proposed Changes on the Exercise Right

If and when the CBOT implements the restructuring proposal described above and the proposed grant of electronic access to trade its products, including its agricultural contracts, the following changes will have been effected: (1) the CBOT no longer will be a membership corporation, but instead will be a stock corporation, with its former members as its stakeholders; (2) the CBOT's electronic trading system, formerly a member-access only system owned and operated by a partnership of which the CBOT was the general partner, will be an open-access system owned and operated by a for-profit subsidiary of the CBOT, although the CBOT thereafter may distribute the shares of that subsidiary to CBOT members or other persons; (3) all CBOT products will be traded side-by-side on the existing open-outcry trading floor (as long as that market continues to operate) and on the open-access electronic trading system; and (4) members of the CBOT no longer will enjoy exclusive access to trade directly all products traded on the CBOT because persons who are not members will now be able to trade directly all CBOT products through the CBOT's electronic system. Even if the CBOT implements only the modification to the way in which agricultural contracts are traded, without restructuring as a for-profit stock corporation, the right to trade these contracts, which formerly was limited to CBOT full members on the CBOT trading floor, will then be shared with all persons who have access to the new electronic trading facility.

The proposed restructuring of the CBOT and the proposed modification of the way in which agricultural products are traded will extinguish the exercise right, whether implemented together or separately. First, as already noted, after the CBOT restructures as a for-profit stock corporation, the CBOT no longer will have members, because the CBOT will no longer be a membership corporation. Accordingly, with specific reference to Article Fifth(b) of the CBOE Certificate of Incorporation, no person

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implements no more than this step of the restructuring. *See* Letter dated June 29, 2000, from Thomas A. Bond, Vice-Chairman of CBOE, to David Brennan, Chairman of CBOT, enclosing CBOE Information Circular IC00–64.

[6] *See* CBOT Restructuring Report (May 16, 2000), at p. 12.

[7] *See* CBOT Restructuring Report (May 16, 2000), at pp. 12 and 14.

[8] As discussed below, the CBOT recently also proposed, independent of any restructuring proposal, to provide complete electronic access to trade its agricultural contracts by allowing them to be traded for the first time on the CBOT's electronic trading facility.

any longer will be within the category of "present and future members" of the CBOT who, for "so long as he remains a member" is entitled to avail himself of the exercise right. Moreover, by destroying its membership structure, the CBOT will have made it impossible for its former members to hold "all trading rights and privileges appurtenant to such CBOT Full Membership," a requirement that Paragraphs 1(a) and 2(b) established as a fundamental prerequisite to the continued existence of the exercise right.

Second, once the CBOT's electronic trading facility may be accessed directly by nonmembers of the CBOT for the trading of CBOT products that previously could be traded only by CBOT members, CBOT members (or their delegates) will have lost a key "privilege" of membership within the meaning of the 1992 Agreement—namely, the privilege of being able to trade CBOT products to the exclusion of nonmembers. A "privilege" is defined as a "particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens" or a "peculiar right, advantage * * * [or] power."[9] Under this definition, the exclusive access of CBOT members to trade CBOT products is a "privilege," in that it is a "particular or peculiar benefit or advantage" that members enjoy and that is "beyond the common advantages" of nonmembers. The CBOT members therefore will have lost an important "privilege" of membership once the electronic trading facility is made available to nonmembers for the trading of CBOT products. Because CBOT members no longer will possess all of the "rights and privileges appurtenant" to their memberships, CBOT members will cease to meet the definitions of either an "Eligible CBOT Full Member" or an "Eligible CBOT Full Member Delegate," the only categories of persons who are entitled to become a member of CBOE pursuant to the exercise right.

Notwithstanding that the change from a membership to a stock corporation would provide a sound basis for considering the exercise right to be extinguished, the CBOE does not interpret the exercise right as having been extinguished if the CBOT only takes this single reorganizational step. While the taking of this step and the consequent elimination of members of CBOT is inconsistent with the terms of Article Fifth(b) and the 1992 Agreement, the CBOE does not interpret Article Fifth(b) and the 1992 Agreement so that this step, by itself, will cause the termination of the exercise right, so long as the CBOT takes no further action to erode what has been the trading rights and privileges of its former members. Instead, if the CBOT does no more than to change from a Delaware not-for-profit membership corporation to a Delaware for-profit stock corporation and if the 1,402 CBOT full members thereby become stockholders of CBOT, the CBOE proposes to treat such persons in precisely the same way that full CBOT members are currently treated. This means that those 1,402 stockholders of CBOT would remain entitled to the exercise right if they retain all of the stock in CBOT and all other interests that may be distributed to them in respect of their full CBOT memberships and if they continue to hold all of the trading rights and privileges that they previously held as full CBOT members. Similarly, the CBOE proposes that delegates of all of the trading rights and privileges appurtenant to full CBOT membership (but not the delegating stockholder) would also continue to be entitled to the exercise right.

However, whether occurring when or after the CBOT becomes a stock corporation, and once the right to trade all CBOT products is made available to persons who are not CBOT members (or stockholders), the CBOE interprets the exercise right as being extinguished, because the CBOT would no longer have members and because the CBOT stockholders would no longer possess all of the trading rights and privileges appurtenant to membership. Moreover, even if the CBOT does not restructure as a stock corporation, the exercise right would be extinguished once CBOT members lose this privilege of exclusive access to trade CBOT products.[10]

As set forth above, these interpretations follow from, and are consistent with, not only the language of Article Fifth(b) as interpreted in the 1992 Agreement, but also the way in which the exercise right is intended to operate. In particular, the underlying purpose and intent of the exercise right has been that CBOT members need to choose at any given time to use their CBOT membership to trade either on the CBOT or (by the exercise right) on the CBOE, and may not trade on both exchanges at the same time. Because the exercise right has been interpreted to require CBOT members to make this choice, there has been a practical cost associated with the exercise right and therefore a natural constraint on the number of people who exercise.

However, the CBOT proposes a restructuring and a change in its trading rules or procedures as a result of which, CBOT membership no longer would be needed to trade CBOT products directly. If the exercise right were to survive such changes, CBOT members (or stockholders) would no longer have to choose at any given time between trading CBOT products as members or stockholders of that exchange or trading CBOE products as exerciser members of the CBOE. Instead, if the exercise right were not extinguished in the face of these changes, it is probable that all 1,402 of the present full members of CBOT, or their lessees, would chose to exercise to trade on the CBOE, since they could do so while retaining trading access to all CBOT products by means of the electronic trading facility.

Not only would this scenario be inconsistent with the language and purpose of Article Fifth(b) and the 1992 Agreement, it would inflict serious harm on the CBOE. First, it would undermine CBOE's ability to maintain a fair and orderly market. Instead of there being approximately 1,600 members trading on CBOE (the current 700 exercisers plus the approximately 900 persons who own a CBOE membership directly, or their lessees), there would likely be 2,300 persons having direct access to CBOE. This would strain CBOE's facilities to the breaking point, as it would lead to far more persons having direct access to the CBOE trading floor than the floor and its facilities are capable of accommodating. This development therefore would be inconsistent with the maintenance of fair and orderly markets on CBOE. Second, the addition of 700 additional CBOE members would allow the exercise right to dilute the value of CBOE memberships substantially in a way that has never been contemplated or allowed since the time the exercise right was first established.

Thus it is clear both as a matter of interpreting the language of Article Fifth(b) and the 1992 Agreement and of implementing the purposes intended to be served thereby, and in order to maintain the CBOE as a fair and orderly securities market, the exercise right should be extinguished once the CBOT restructures or otherwise changes its trading rules or procedures so as to deprive its full members of the exclusive trading access to its products, which has been one of the rights and privileges appurtenant to membership.[11]

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[9] *See Black's Law Dictionary* at 1197 (6th Ed. 1990).

[10] Regardless of the effect of these developments on the exercise right, the CBOE believes that the exercise right would be extinguished with respect to those CBOT members who fail to continue to possess all of the interests in the CBOT that may have been distributed in respect to their CBOT memberships, including interests in CBOT's electronic trading facility, as required by Section 2(b) of the 1992 Agreement regarding the division of CBOT membership into separate parts.

Transitional Proposal

Just as adding 700 more persons to the floor of the CBOE would tax its physical space and resources beyond the breaking point, so too would the overnight elimination of some 700 exerciser members from the CBOE trading floor run the risk of disrupting its market. This result would follow because there suddenly would be 700 fewer persons on the floor acting either as market makers to provide liquidity and continuity for the CBOE market, or as brokers to represent customer orders. To prevent this risk of disruption to its market, CBOE believes that notwithstanding the extinguishment of the exercise right upon the implementation of changes described above, the CBOE must be able to allow CBOT members or their lessees who are already exerciser members of the CBOE to continue to have trading access to the CBOE for an interim period. The CBOE proposes to stay for an interim period the impact of the extinguishment of the exercise right on the trading access of those members of CBOT (or their delegates) who were exerciser members of the CBOE on a designated cut-off date, by permitting such persons to continue to be able to trade on the CBOE during this interim period.[12] For this purpose, the CBOE proposes the close of business on August 28. 2000, as the cut-off date for determining who would have the right to continue to have trading access to the CBOE during the interim period. CBOT members (or their delegates) who were exerciser members of CBOE in good standing on that date ("grandfathered exercisers") would continue to be able to trade as members of the CBOE for the duration of the interim period, notwithstanding the implementation of any step of the CBOT restructuring or other change to its trading rules or procedures that has the effect of extinguishing the exercise right as described above. However, persons who were not effective exercisers on that cut-off date would not be permitted to exercise or have access to the CBOE trading floor during the interim period. In order to continue to have trading access to CBOE during this period, grandfathered exercisers would be required to maintain their status as full members of the CBOT or as holders of all of the stock distributed to them in respect of full CBOT memberships (or as the delegates of such members or stockholders) in accordance with the rules of CBOT. Among other things, this means that delegates would need to remain in compliance with the terms of their CBOT lease arrangements.

During the interim period when grandfathered exercisers would be allowed to have trading access on CBOE even after the exercise right has been extinguished, the CBOE would propose a permanent response to the situation presented by the extinguishment of the exercise right. This permanent response would address the CBOE's ongoing need to be able to provide fair and orderly markets in the securities it trades and would be fair to the 1,402 former members of the CBOT who will have lost their exercise rights. This interim period would extend for six months from the date the CBOE gives notice that the exercise right has been extinguished in accordance with the interpretation of Article Fifth(b) and the 1992 Agreement as described above, and for such additional period as may be needed to develop and implement a permanent response to the extinguishment of the exercise right. The permanent response would be subject to the approval of the CBOE members under Section 2.1 of the CBOE's Constitution, and to the approval of the Commission under Section 19(b)(1) of the Act.[13]

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b) of the Act in general,[14] and in particular, with Section 6(b)(5) of the Act,[15] in that it is a reasonable interpretation of existing rules of the Exchange that is designed to promote just and equitable principles of trade, to perfect the mechanisms of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 99 days of such date if it finds such longer period to be appropriate and publishes its reasons for so funding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should fix six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No.

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[11] Before or after the CBOT implements those steps of its restructuring or those changes to its trading rules or procedures that cause the exercise right to be extinguished in accordance with the rules interpretation reflected in this filing, the CBOE believes that it is possible that CBOT will take (or, unknown to the CBOE, may already have taken) other actions that raise independent questions concerning the continued existence of the exercise right that are not addressed in this filing. These steps may or may not be part of the restructuring, or the CBOT may further revise its proposed restructuring in ways that this filing does not address. If any such event makes it necessary for the CBOE to further interpret its rules applicable to the exercise right, CBOE proposes to do so pursuant to one or more separate filings (or amendments to this filing) under Section 19(b)(1) of the Act. 15 U.S.C. 78s(b)(1).

[12] In this respect, the decision to stay the effectiveness of what would otherwise result in a termination of trading access is analogous to the right of the CBOE under CBOE Rule 3.19 (formerly CBOE Rule 3.17) ("Obligation of Terminating Members"). This rule authorizes the CBOE, under circumstances when a membership would otherwise automatically terminate on account of a failure to satisfy certain requirements of membership, to permit the member "to retain the member's status for such period of time as the Exchange deems reasonably necessary" to provide time to cure the failure.

[13] 15 U.S.C. 78s(b)(1).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

SR–CBOE–00–44 and should be submitted by December 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29449 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43541; File No. SR–DTC–00–10]

Self-Regulatory Organizations; Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Combination of the Depository Trust Company's TradeSuite Institutional Trade Processing Services With Thomson-Financial ESG's Institutional Trade Processing Services

November 9, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 22, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change being filed by DTC is DTC's proposal to combine its TradeSuite family of institutional trade-related services ("TradeSuite Business") with the institutional trade processing services offered by Thomson Financial ESG ("ESG Business")[2] in a proposed joint venture, the Global Joint Venture ("GJV"), between The Depository Trust & Clearing Corporation ("DTCC")[3], Thomson Information Services Inc. ("TISI")[4], and Interavia, A.G. ("IAG").[5] The proposal is as follows:

- After receipt of all necessary regulatory approvals, DTC will transfer existing assets of the TradeSuite Business, TISI will transfer existing U.S. assets of the ESG Business, and IAG will transfer existing non-U.S. assets of the ESG Business to the GJV between DTCC, TISI, and IAG.
- Certain support functions and other services will be provided to the GJV by DTCC, DTC, and TISI pursuant to service contracts.
- The GJV will provide post-trade, presettlement related services, including execution notification, allocation, electronic trade confirmation ("ETC"), central matching, operational and standing databases (*i.e.*, trade enrichment), and communications between trading parties and their settlement agents.
- The GJV's governance arrangements will be designed to assure that the "U.S. regulated aspects" of the GJV's activities,[6] including the pricing structure for the fees to be charged to users of such services, will be subject to the control of users.
- The GJV will be operated on a for-profit basis. Fifty percent of any profits not retained by the GJV will be distributed to DTCC.[7]
- The GJV will provide its ETC service and its central matching service through its wholly owned subsidiary, the GJV Matching Services—US, LLC, which has applied for an exemption from registration as a clearing agency.[8]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[9]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The expansion of the global economy, the tremendous growth in transaction levels in both domestic and cross-border markets, and the emergence of electronic trading vehicles has resulted in dramatic increases in securities trading volumes. This growth in volume is beginning to constrain the capacity of financial institutions to process trades efficiently so that they settle on time. Operations professionals in both domestic and foreign securities markets have concluded that the current sequential and fragmented electronic trade confirmation/affirmation model must be made more efficient and that broader industry connectivity to electronic systems must be encouraged so that these systems will be used for the large number of cross-border transactions that still rely upon the telephone and telefax for the communication of trade and settlement information.[10]

According to DTC, the combination of the TradeSuite[11] and ESG Business[12] and the linking of their current services and customers could produce immediate benefits. For example, DTC estimates that 12% of institutional trades processed in TradeSuite are affirmed on trade date and that only 87% are affirmed by noon of T+2. By introducing allocations processed in the ESG Business' OASYS system to the TradeSuite Business' TradeMatch, a much larger percentage of trades can be affirmed earlier in the settlement cycle.

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Thomson Financial ESG is a wholly owned subsidiary of Thomson Financial, a Thomson Corporation subsidiary.

[3] DTCC was created in 1999 as a holding company for DTC and the National Securities Clearing Corporation ("NSCC").

[4] TISI is a wholly owned subsidiary of Thomson Financial, a Thomson Corporation subsidiary. Thomson Corporation is a global electronic information company.

[5] IAG is a Swiss corporate affiliate of TISI.

[6] The term "U.S. regulated aspects" of the GJV's activities refers to any services that would require registration with the Commission as a clearing agency, an exemption from such registration, or designation as a "qualified vendor" as defined in New York Stock Exchange Rule 387(a)(5), in National Association of Securities Dealers Rule 11860(a)(5), and in similar rules of other self-regulatory organizations. Such activities, therefore, would include the GJV's proposed ETC and centralized matching services for institutional transactions settling in the U.S., including cross-border transactions between a U.S. broker-dealer and an institution located abroad.

[7] Profits distributed to DTCC that are not retained by DTCC will be available for rebate to the participants of DTCC's wholly-owned subsidiaries, DTC and NSCC subject to such determination by DTCC's Board of Directors.

[8] The Commission has stated that matching is a clearing agency function that requires an entity that performs matching to register as a clearing agency or obtain an exemption from registration as a clearing agency. However, an entity that only provides a matching services does not have to be subject to the full range of clearing agency regulation. Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 [File No. S7–10–98]. In 1999, the Commission granted Thomson an an exemption from clearing agency registration to provide matching services. Securities Exchange Act Release No. 41377 (May 7, 1999), 64 FR 25948 [File No. 600–31]. GJV Matching Services-US, LLC has applied for exemption from clearing agency registration from the Commission. Securities Exchange Act Release No. 43540 (November 9, 2000), [File No. 600–32].

[9] The Commission has modified the text of the summaries prepared by DTC.

[10] *See, e.g.*, Securities Industry Association Institutional Transaction Processing Committee White Paper (December 1, 1999).

[11] Generally, the TradeSuite Business consists of the following products: TradeMessage, TradeMatch, TradeSettle and TradeHub.

[12] Generally, the ESG Business consists of the following products: ALERT, OASYS, OASYS Global, MarketMatch, and ITM Benchmarks.

Earlier affirmation would allow broker-dealers and their institutional customers to identify and resolve the exceptions and potential fails much earlier in the settlement cycle.

In the longer term, the combination of TradeSuite's and ESG's systems development expertise and other resources would enable the proposed joint venture to develop and market globally a single integrated "workflow" approach to trade management for both domestic and cross-border transactions. This development would facilitate the industry's goal of achieving straight-through processing, which would help manage the tremendous growth in trading volumes and prepare for the transition to shorter settlement cycles.

In addition, the DTC resources to be transferred to the GJV or provided to the GJV pursuant to a services contract are for the most part resources that are already fully dedicated to the TradeSuite Business. Therefore, implementation of the subject proposal will not deprive DTC of resources needed for it to provide its other services in a safe and sound manner. Furthermore, all existing services of the TradeSuite and ESG Businesses will continue uninterrupted during and after the transfer to the GJV.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[13] and the rules and regulations thereunder applicable to DTC because the implementation of the subject proposal will facilitate the prompt and accurate clearance and settlement of institutional transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition. The proposed joint venture will serve members of the securities industry and will be governed by its users. DTCC (which itself is owned by, and whose board represents, users) will own 50.1% of the GJV Class A Interests and only Class A Interests will have the right to vote on matters relating to the U.S. regulated aspects of the GJV's activities that are submitted to Interestholders.[14] The GJV board of directors will be composed of eight Managers, seven of whom shall be voting Managers and one of whom, the President of the GJV, shall be a non-voting Manager. Of the seven voting Managers, two will be appointees of DTCC and may be DTCC directors or officers ("DTCC Board Representatives"). Two voting Managers will be appointed by TISI and IAG, acting jointly. The remaining three voting Managers will be representatives of the global securities industry, two of whom will be nominees of DTCC. Board decisions involving U.S. regulated aspects of the GJV's business will require the affirmative vote of at least one of the two DTCC Board Representatives. In addition, the approval of both Interestholders will be required for many significant matters.

The purpose of the joint venture will be to introduce significant efficiencies into trade processing by combining two existing businesses with complementary positions and strengths. The joint venture will combine these two businesses to offer the securities industry an integrated system for trade processing which will assist firms in dealing with unprecedented levels of securities trading. The joint venture will also be a positive response to the expected industry and regulatory mandate to reduce settlement cycles worldwide and thereby to reduce risk affecting the national clearance and settlement system.

The joint venture will cooperate with other post-trade presettlement processing systems in order to achieve interoperability.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposal from DTC participants or others have not yet been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC.

All submissions should refer to file No. SR–DTC–00–10 and should be submitted by December 8, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29448 Filed 11–16–00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43535; File No. SR–NASD–00–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Rule 10334 of the NASD Code of Arbitration Procedure

November 8, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. NASD Dispute Resolution has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[13] 15 U.S.C. 78q–1.

[14] The GJV Class B Interests, which will have the right to vote on matters that do not relate to U.S. regulated aspects as well as to share in the GJV's profits attributable to its domestic business, will be owned 50% by DTCC, 45% by TISI, and 5% by IAG. The GJV Class C Interests, which will have the right to vote on matters that do not relate to U.S. regulated aspects as well as to share in the GJV profits attributable to its foreign business, will be owned 50% by DTCC and 50% by IAG.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to: (1) Amend Rule 10334 of the Association's Code of Arbitration Procedure ("Code") to accelerate the expiration date of the Rule from August 1, 2002 to December 31, 2000; (2) to delete paragraph (i) of Rule 10205, Schedule of Fees for Industry and Clearing Controversies and paragraph (h) of Rule 10332, Schedule of Fees in Customer Disputes, which relate solely to Rule 10334; and (3) renumber Rules 10205 and 10332 accordingly. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

10334. Procedures for Large and Complex Cases

(a) through (g) Unchanged.

(h) Temporary Effectiveness.

This Rule shall remain in effect until [August 1, 2002] *December 31, 2000,* unless modified or extended prior thereto by the Board of Governors.

* * * * *

10205. Schedule of Fees for Industry and Clearing Controversies

(a) through (h) Unchanged.

[(i) If an eligible matter is submitted for arbitration as a large and complex case, under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334, the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over $10,000,000.]

[(j)] *(i)* Schedule of Fees.

(Remainder unchanged).

* * * * *

10332. Schedule of Fees for Customer Disputes

[(h) If an eligible matter is submitted for arbitration as a large and complex case under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334, the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over $10,000,000.]

[(i)] *h* Schedule of Fees.

(Remainder unchanged).

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II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Dispute Resolution included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Dispute Resolution has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 10334 of the Code establishes certain optional procedures for handling and managing large and complex ("LAC") cases, defined as those involving claims of $1 million or more. Specifically, the Rule provides for an administrative conference at the outset of the case, a preliminary hearing before an arbitrator to resolve discovery and other disputes, and the opportunity for parties to select arbitrators through preferential rankings. Use of the Rule results in higher filing fees and deposits for claimants than proceeding under the general provisions of the Code.

The Rule was adopted for a one-year pilot period in 1995. At that time, the procedures established by the Rule were not available in other arbitration cases. In 1997, the NASD amended the Rule to make certain of its provisions voluntary, which had been mandatory. At the same time, the NASD extended the Rule for five years to provide enough time to determine whether parties would use the Rule more frequently as amended. In its rule filing, the NASD noted that few parties were electing to proceed under the Rule. Parties elected to proceed under the Rule in only 43 of the 880 cases from May 2, 1995 until January 28, 1997 that were eligible for treatment under the Rule. The few parties who did elect to proceed under the Rule apparently did so to take advantage of the availability of a list selection procedure for the appointment of arbitrators. The NASD found that parties were deterred from using the Rule by the higher fees it required.

Since then, changes to the Code and to NASD Dispute Resolution practices have extended the most important of the procedures established by Rule 10334 to all cases, including the selection of arbitrators through preferential rankings. The benefits of the administrative conference and the preliminary hearing are available through the Initial Pre-hearing Conference that is now held in almost all cases. Moreover, the discovery process has been significantly enhanced with the recent adoption of the Discovery Guide.

As a result of these changes, use of the Rule has decreased significantly from its already low 1997 level. Through July 31st of this year, parties have elected to proceed to the administrative conference phase of the LAC process in only 4 out of 366 eligible cases; in 1999, parties did so in only 6 out of 679 cases. More significantly, in none of these cases did the parties elect to proceed under Rule 10334 past the administrative conference stage to discovery, arbitrator selection, and the hearing on the merits. While some of these cases may have settled, it is also probable that once the parties understood that the benefits of the Rule are available under the Code without the higher fees required under the Rule, they elected not to continue to proceed under the Rule. Whatever the reason, no case has gone past the administrative conference stage of Rule 10334 procedures since 1997.

Even though it is rarely used, the Rule requires staff training and resource allocation. It can also be a source of confusion for parties, who may not realize that they can now obtain the principal benefits of the LAC case program without paying the higher fees required under the Rule.

Therefore, given the lack of use of Rule 10334, and the fact that the primary benefits of the Rule are available under general Code procedures at less cost to parties, NASD Dispute Resolution believes that additional time is not needed to determine that the Rule should be sunset. Therefore, the proposed rule change would amend the Rule to accelerate its expiration date to December 31, 2000.

The proposed rule change would also delete paragraph (i) of Rule 10205, Schedule of Fees for Industry and Clearing Controversies and paragraph

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[3] 17 CFR 240.19b–4(f)(6).

(h) of Rule 10332, Schedule of Fees in Customer Disputes, which relate solely to Rule 10334, and renumber Rules 10205 and 10332 accordingly.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Dispute Resolution believes that accelerating the expiration date of Rule 10334 will serve the public interest by eliminating an unnecessary, redundant Code provision that confuses parties and results in needless expenditure of NASD Dispute Resolution resources.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Association as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act.[5] Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until December 31, 2000, more than 30 days from November 3, 2000, the date on which it was filed, and the NASD provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–65 and should be submitted December 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29444 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43536; File No. SR–NASD–00–48]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Requiring Public Disclosure of Receipt of a Delisting Notice

November 9, 2000.

I. Introduction

On August 10, 2000, the National Association of Securities Dealers Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would require an issuer to publicly disclose the receipt of a delisting notice for failure to comply with Nasdaq's continued listing requirements. Notice of the proposed rule change appeared in the **Federal Register** on October 5, 2000.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

Nasdaq proposes to amend Rule 4815(b) and IM 4120–2, "Disclosure of Written Notice of Staff Determination," to require an issuer to make a public announcement through the news media disclosing the receipt of a written staff determination to prohibit continued listing requirements ("Staff Determination") and the rule(s) upon which the Staff Determination was based. The proposal also requires the public announcement to be make as promptly as possible, but not more than seven calendar days following the receipt of the Staff Determination. Additionally, the proposal provides that if the public announcement is not made by the issuer within the time allotted, trading of its securities shall be halted, even if the issuer appeals the Staff Determination as set forth in Rule 4820. If the issuer fails to made the public announcement by the time that the Listings Qualification Panel issues its decision, that decision will also determine whether to delist the issuer's securities for failure to make the public announcement.

According to Nasdaq, the proposed rule change is designed to require a Nasdaq issuer to publicly disclose the receipt of a written delisting notice for failure to comply with the continued listing requirements. Since Nasdaq does not currently have such a requirement, some Nasdaq issuers publicly disclose the receipt of a Staff Determination while other issuers do not make the disclosure. In this regard, Nasdaq proposes that the public announcement shall not only disclose the receipt of a Staff Determination, but shall also indicate the Marketplace Rule(s) upon which it was based.

Furthermore, Nasdaq proposes that an issuer be required to make the public announcement as promptly as possible, but not more than seven calendar days following the receipt of the Staff Determination. Nasdaq believes this time frame will provide an issuer with a sufficient opportunity to prepare a public announcement while also ensuring that investors receive information in a timely manner. If an issuer fails to disclose the receipt of a Staff Determination, trading of its securities will be halted until the disclosure is made, even if the issuer appeals to the Listings Qualifications Panel, as provided for under Marketplace Rule 4820. If an issuer fails to make the public announcement by the time the Listing Qualification Panel issues its decision, that decision will also determine whether to delist an issuer's securities for failure to make the public announcement.

III. Discussion

The Commission finds the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[4] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6)[5] of the Act. Section 15A(b)(6)[6] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest.

Specifically, the Commission finds that the proposal to amend NASD Rule 4815 to require that an issuer make a public announcement through the news media to disclose the receipt of a Staff Determination to prohibit continued listing of the issuer's securities as a result of the issuer's failure to comply with the continued listing requirements is consistent with Section 15A(b)(6)[7] because it will provide notice to investors that Nasdaq has determined to delist an issuer's securities for non-compliance with Nasdaq's continued listing requirements, and the Rules upon which the Staff Determination was based. Such information should serve to protect present and future investors in an issuer's securities by providing them with this information as promptly as possible, and not more than seven calendar days following the receipt of a Staff Determination for failure to comply with continued listing requirements. Nasdaq believes, and the Commission agrees, that requiring public announcement of this information as promptly as possible, but not more than seven calendar days from receipt of the Staff Determination, allows a reasonable timeframe for the issuer to prepare an announcement, while ensuring that investors receive the information in a timely manner. The Commission believes that investors should have the benefit of knowing that an issuer has failed to meet Nasdaq's continued listing requirements and the Rules upon which the Staff Determination is based, and therefore finds the provision that trading of an issuer's securities, if an issuer fails to disclose receipt of a Staff Determination, will be halted until the disclosure is made, even if the issuer appeals to the Listing Qualifications Panel, to be reasonable and consistent with the Act. Finally, the Commission believes that the proposal should benefit investors because it will ensure that all Nasdaq issuers publicly disclose the receipt of a Staff Determination in both a timely and uniform manner, as opposed to the current situation whereby some issuers voluntarily make the disclosure while others do not.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 15A(b)(6),[8] in particular.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–00–48), be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29445 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43549; File No. SR–NASD–00–50]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Definition of "Public Offering" for Purposes of Nasdaq's Shareholder Approval Rules

November 13, 2000.

On August 11, 2000, The National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, The Nasdaq Stock Marker, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change regarding the adoption of interpretive material defining "Public Offering" for purposes of Nasdaq's shareholder approval rules.[2] On October 4, 2000, the Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was noticed in the **Federal Register**.[4] On October 13, 2000, the NASD filed Amendment No. 2 to the proposed rule change.[5] No comments were submitted on the proposed rule change. This order approves the proposed rule change, as amended.

I. Background

Nasdaq rules require shareholder approval for stock issuances of 20 percent or more of an issuer's total shares outstanding, offered at less than the greater of book or market value. The applicable rules further provide, however, that shareholder approval is not required for a "public offering," although that term is not defined in the rules. Recently, a number of issuers have inquired as to whether certain large, below-market offerings were

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[4] 15 U.S.C. 78o(b)(6).

[5] 17 CFR 240.19b–4(f)(6).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43383 (September 28, 2000), 65 FR 59480.

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–3(b)(6).

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The American Stock Exchange, Inc. filed a similar proposed rule change SR–Amex–00–46. *See* Securities Exchange Act Release No. 43419 (Oct. 6, 2000), 65 FR 61206 (Oct. 16, 2000).

[3] Amendment No. 1 changed the section under which the proposed rule change was filed from Section 19(b)(3) to Section 19(b)(2) of the Act and made other technical changes. *See* Letter from Edward Knight, Executive Vice President and Chief Legal Officer, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC (Oct. 2, 2000).

[4] Securities Exchange Act Release No. 43420 (Oct. 6, 2000), 65 FR 61011 (Oct. 13, 2000).

[5] Amendment No. 2 made a minor technical change to the interpretation. *See* Letter from Arnold P. Golub, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, SEC (Oct. 11, 2000). Because the amendment is technical, it does not need to be published for comment.

"public offerings" because the transactions, which were initiated pursuant to exceptions to the registration requirements, were registered with the Commission prior to closing the transactions.[6] Historically, for purposes of assessing the applicability of the shareholder approval rules, Nasdaq staff has interpreted "public offering" as a broadly distributed, registered offering based on a firm commitment underwriting. Conversely, Nasdaq staff does not consider a transaction to be a "public offering" for these purposes when the transaction is of limited distribution and/or is not based on a firm commitment underwriting, even if the offering was registered. Because the offerings described had limited distributions and, in some cases, the offerees were pre-determined by the issuer, Nasdaq believed that these transactions were not "public offerings" for purposes of the shareholder approval rules.

To help to ensure that all issuers understand how Nasdaq will determine whether a transaction is a "public offering" for purposes of the shareholder approval rules, Nasdaq has prepared the proposed Interpretative Material. Determinations as to whether a transaction is a "public offering" for purposes of these rules will be made based on the facts and circumstances surrounding each particular transaction. The proposed Interpretative Material identifies a number of factors that will be considered when determining whether an offering is a "public offering," including the type of offering; the marketing of the offering; the extent of the offering's distribution; the offering price; and the extent to which the issuer controls the offering and its distribution.

II. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[7] of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[8] The Commission believes the Interpretative Material is designed to educate issuers and other interested parties as to how Nasdaq defines a "public offering" in order to ensure that issuers are aware as to which transactions require shareholder approval under the NASD's rules, thus promoting just and equitable principles of trade and protecting investors and the public interest.

It Is Therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposal, SR–NASD–00–50, as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29466 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43538; File No. SR–NYSE–00–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Arbitration Rules Regarding Pilot Program for Mediation and Administration Conferences

November 9, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations's Statement of the Terms and Substance of the Proposed Rule Change

The purpose of extending and amending the pilot program for mediation is to continue to offer mediation as a way for parties to settle cases earlier with fewer costs. The administrative conference pilot, as extended and amended, will allow the arbitrators(s) to intervene early in the case to set deadlines and resolve preliminary issues. Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

* * * * *

Rule 638 Mediation

(a) Mediation Pending Arbitration

(1) [(a)] A single mediation session of up to four hours will be conducted in all cases [not involving public customers] submitted for arbitration where the amount of the claim is [$500,000] *$250,000* or more.

(2) [(b)] The New York Stock Exchange will provide the parties with a mediator. The mediator's fee for the single mediation session shall be $500 and shall be paid by the New York Stock Exchange. If the parties select a mediator of their own choosing, from outside the list of proposed mediators, they shall be responsible for any difference in the mediator's fee. If the parties desire they can extend the mediation beyond the first session at their own expense.

(3) [(c)] Unless the parties agree on a mediator, the Director of Arbitration will send the parties a list of five proposed mediators together with the mediators's biographical information described in Rule 608. The parties shall have ten days to agree on a mediator from the list or chose their own mediator. If no agreement is reached. the Director of Arbitration will select a mediator from the list unless all the names on the list are objected to by the parties. In that instance, the Director of Arbitration will appoint a mediator from outside the list.

(4) [(d)] Unless otherwise agreed to by the parties, mediation shall not delay the arbitration.

(5) [(e)] The mediation shall be confidential and no record kept of the proceeding. The mediator will not be permitted to act as an arbitrator in the same case and the mediator shall not be called to testify in any proceeding regarding the mediation.

[(f) Mediation under this rule shall be available in all matters submitted to arbitration involving public customers where the amount of the claim is $500,000 or more, upon the consent of the parties. The mediator will be compensated under paragraph (b) of this rule.]

(6) [g] In all other matters submitted to arbitration, mediation shall be available upon the consent of the parties, at their own expense.

(b) Mediation Prior to Arbitration

(1) If the parties agree, any matter eligible for arbitration under the Constitution and Rules of the New York Stock Exchange may be mediated at the Exchange. To begin mediation under

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[6] The Commission believes that this activity is not appropriate under Section 5 of the Securities Act of 1933. *See* 15 U.S.C. 77e.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

this paragraph, the parties must file with the Exchange an agreement to mediate.

(2) At the time of filing an agreement to mediate, a party shall pay a non-refundable filing fee to the Exchange as required for the filing of an arbitration for the same amount in dispute under Rule 629 (Schedule of Fees) unless the fee is waived by the Director of Arbitration. The parties are directly responsible for the payment of the mediator's fee.

(3) If the case does not settle after mediation, the non-refundable filing fee will be applied to the non-refundable filing fee if a party elects a commence arbitration.

Rule 639 Administrative Conferences

In all cases where the amount of the claim is [$500,000] *$250,000* or more, the parties shall attend an administrative conference with the arbitrators. [The arbitrators will decide whether the conference is conducted by telephone or in person.] The Director of Arbitration will schedule the conference within [30] *90* days after the [answer is filed] *Director serves the Statement of Claim, unless all parties request that it be scheduled later. The administrative conference will be conducted by telephone with the chairperson presiding. In any claim involving a public customer, a public arbitrator will conduct the administrative conference, unless the public customer demands, in writing, a securities arbitrator. The chairperson shall have discretion to conduct the conference in-person and may request that all of the arbitrators attend the conference.*

At the conference, the Arbitrator(s) may establish a schedule for discovery and the hearing, issue subpoenas and direct the appearance of witnesses, and resolve or narrow any other issue which may expedite the arbitration.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of amending the extending the pilot programs (Rules 638 and 639) is to continue to offer mediation as a way of parties to settle cases earlier with lower costs.[3] The administrative conference allows the arbitrators to intervene early in the case to set deadlines and resolve preliminary procedural issues. The Exchange is also proposing to amend both pilot programs to include a greater number of cases by lowering the threshold amount to $250,000 from $500,000.

Mediation

Since November of 1998, the Exchange has sponsored a pilot mediation program. Under the pilot (Rules 638), a single mediation session of up to four hours is conducted in all cases not involving public customers submitted for arbitration where the amount of the claim is $500,000 or more. The Exchange pays the mediator up to $500.00 for this single mediation session. There are no costs assessed to the parties unless they select a mediator whose rate is higher or if the parties agree to go beyond the single session. Of the cases mediated under this provision of the pilot, approximately 31 percent (15 of 48) have settled before arbitration. Early settlements reduce costs and provide a greater measure of party satisfaction.

Under the pilot, mediation is also available in cases involving public customers where the claim is $500,000 or more upon agreement of the parties. These cases also qualify for the Exchange's $500 incentive payment to the mediator. In all other cases, mediation is available at the parties' own expense. The Exchange, however, will provide the parties with a list of mediators, will assist in facilitating the parties' agreement to mediate and will make its conference room facilities available for the mediation.

To evaluate the pilot, the staff of the Exchange met with mediators and lawyers who participated in mediation under the pilot. Based on the evaluators' comments and the settlement rate, the Exchange is proposing to extend the pilot for two years, as amended.

To encourage greater use of mediation, the Exchange proposes to amend the mediation pilot program to include all cases within a lowered threshold of claims of $250,000 or more. Most commentators supported the pilot's provision that a single mediation session of up to four hours be conducted in all cases with claims of $250,000 or more. This process relieves the parties from having to suggest mediation because the Exchange rule provides for it. Many parties believe that the other side will view their suggestion to mediate as a sign of weakness. it also assists counsel in getting their clients to consider mediation by making it part of the arbitration process—with little or no cost to them.

As amended, all cases with claims of $250,000 or more will be included in the pilot. This includes cases involving public customers. The pilot's inclusion of customer cases may lead to more and earlier settlements. Under the present pilot, where the parties have elected to mediate, 78.9 percent (15 of 19) of the customer cases with claims over $500,000 have settled before arbitration.

Under the present pilot, a single mediation session of up to four hours is conducted. Mediation is a voluntary process and neither the Exchange nor the mediator can require a party to mediate. The mediation may last less than four hours or the parties may refuse to participate at all. The pilot's only requirement is that the Director of Arbitration arrange for the mediation. The Director will delegate to the Exchange's staff the tasks of sending the parties a list of mediators and selecting a mediator from the list if the parties do not agree to a mediator. If the parties object to all the names on the list, the Director will appoint a mediator from outside the list. Once the parties or the Director selects a mediator, the Director will schedule the mediation and advise the parties. The mediator may contact the parties to preliminarily discuss the case. The pilot does not require the parties to do anything they do not wish to, including exchange information or documents; and there is no required pre-mediation exchange of exhibits. The goal of scheduling mediation is to encourage the parties to try to resolve the dispute as quickly and efficiently as possible. Unless the parties otherwise agree, mediation will not delay the arbitration.

The Exchange will continue to pay the mediator's fee for one session, up to $500, in cases where the rule provides that a single mediation session is to be conducted. Many commentators noted that the Exchange's provision for a single mediation session and incentive payment of the mediator's fee, up to $500, is helpful in encouraging their clients to agree to try mediation. The average mediation settles or reaches an impasse after approximately two sessions.

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[3] The Commission approved the Exchange's mediation program and administrative conference rule on a two-year pilot basis through November 20, 2000. *See* Securities Exchange Act Release No. 40695 (November 19, 1998), 63 FR 65834 (November 30, 1998). On October 31, 2000, the Exchange's current pilot programs for mediation and administrative conferences were extended for six months. *See* Securities Exchange Act Release No. 43496, (October 31, 2000).

The Exchange is also proposing to allow parties to mediate without first filing for arbitration. The current pilot only applies to cases already filed with the NYSE for arbitration. Allowing the parties to mediate prior to filing an arbitration may save the parties some costs of arbitration. The party requesting mediation will be required to pay a non-refundable filing fee. This fee will be based upon the filing fee required for arbitration under Rule 629 for claims of the same amount. If the case does not settle after mediation,the Exchange will apply the fee to the non-refundable filing fee for arbitration. The parties are also required to pay the mediator's fee and agree on how the fee will be shared. The parties' agreement to mediate will not toll the time limitation for submission of a claim to arbitration.

As under the original pilot, cases with claims for less than $250,000 may also be mediated when the parties agree. However, in these cases the parties are responsible for payment of the entire mediator's fee. During the pilot program, where the parties have agreed to mediate claims below $500,000, 76 percent (16 of 21) have settled.

Administrative Conferences

Since November of 1998, the pilot program has provided for an administrative conference with the parties and arbitrators in cases over $500,000. The conference allows the arbitrators to set deadlines early in the case and resolve preliminary issues with the aim of expediting the arbitration. To date, 124 administrative conferences have been conducted. Most commentators supported the administrative conference with certain changes. The Exchange is proposing to amend and extend the pilot for two years.

In order to expedite a greater number of claims, the Exchange is proposing to lower the threshold for administrative conferences from $500,000 to $250,000. the Exchange is also proposing that, by default, the chairperson of the panel conduct the conference by telephone. This will allow the staff to schedule the conference earlier because it will involve coordinating the schedules of fewer persons. In cases involving public customers, a public arbitrator will conduct the administrative conference unless the public customer requests, in writing, a securities arbitrator. The Chairperson shall have discretion to conduct the conference in-person and may request that all of the arbitrators attend the conference. Under the amended pilot, the Director of Arbitration will schedule the conference 90 days after service of the Statement of Claim, rather than 30 days after the answer is filed. The additional period of time is intended to permit the parties to frame the issues for the administrative conference. The administrative conference pilot does not affect the parties' right to request a pre-hearing conference to resolve discovery disputes and other preliminary matters under Rule 619.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[4] in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–39 and should be submitted by December 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29467 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3476]

Determination; Assistance to the National Democratic Alliance (NDA)

Pursuant to section 451 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. sec. 2261) (the "Act"), and section 1–201 of Executive Order 12163, as amended, I hereby authorize, notwithstanding any other provision of law, the use of up to $3.0 million in FY 2000 funds made available under Chapter IV of Part II of the Act for assistance to the civilian wing of the Sudanese National Democratic Alliance.

This authorization shall be reported to Congress immediately and published in the **Federal Register**.

Dated: October 31, 2000.

Madeline Albright,

Secretary of State.

[FR Doc. 00–29520 Filed 11–16–00; 8:45 am]

BILLING CODE 4710–25–P

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[4] 15 U.S.C. 78f(b)(6).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Bureau of Oceans, International Environmental and Scientific Affairs

[Public Notice No. 3475]

Public Meeting To Discuss Preparations for Negotiations on an International Agreement Through the United Nations Environment Program on Persistent Organic Pollutants

SUMMARY: The United States Government, through an interagency working group chaired by the U.S. Department of State, is preparing for the fifth and final negotiations through the United Nations Environment Program (UNEP) on a global agreement to address the release of certain persistent organic pollutants (POPs). The final negotiating session is scheduled to take place in Johannesburg, South Africa, on December 4–9, 2000. The Department of State will host a public meeting for environmental non-governmental organizations (NGOs) in advance of this session to outline issues likely to arise in the context of the negotiations. The public meeting will take place on Tuesday, November 21, 2000, from 11:00 a.m. to 12:30 p.m. in Room 7835 of the U.S. Department of State, 2201 C Street NW, Washington, DC. To expedite their entrance into the building, attendees should provide to Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (tel. 202–647–9266, fax 202–647-5947) their name, organization, date of birth and Social Security number by noon on Monday, November 20, 2000. Attendees should enter the C Street entrance and bring picture identification with them. For further information, please contact Dr. Marie Ricciardone, U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW, Washington DC 20520. Phone 202–736–4660, fax 202–647–5947, e-mail RicciardoneMD@state.gov.

SUPPLEMENTARY INFORMATION:

The UNEP POPs Negotiations

The POPs treaty is the first global treaty to address in a comprehensive manner the risks to human health and the environment of chemicals and other pollutants. The treaty will in the first instance deal with twelve substances: aldrin, endrin, hexachlorobenzene, toxaphene, chlordane, dieldrin, heptachlor, mirex, DDT, PCBs, dioxins and furans. These substances fall into three categories: Pesticides, industrial chemicals, and unintended by-products of combustion and industrial processes.

These global negotiations are an ambitious undertaking, since they encompass a broad range of measures to address POPs of transboundary concern. These range from controls on production and use for commercial chemicals, controls on POPs wastes, and controls on by-products that come from combustion and industrial processes. For many countries, this will be the first time that these substances have been controlled, and the effects are likely to be far-reaching.

Since the U.S. and other developed countries have already taken actions on these chemicals, a major goal for the agreement is broad participation by developing countries and, consequently, meaningful reductions in the amount of pollutants that are released into the environment. A critical part of the agreement will be technical and financial assistance mechanisms to help developing countries effectively implement their obligations.

Timetable and Point of Contact

The POPs Intergovernmental Negotiating Committee (INC) expects to complete its work at its fifth session in Johannesburg. In preparation for the fifth session of the INC, the State Department is preparing its position for the negotiation, and has scheduled a public meeting to be held on Tuesday, November 21, 2000 from 11:00 a.m. to 12:30 p.m. in Room 7835 of the U.S. Department of State. Members of the interagency working group who will participate in the proposed negotiation will provide an overview of U.S. preparations for the fifth session. The U.S. Department of State is issuing this notice to help ensure that interested and potentially affected parties are aware of and knowledgeable about these negotiations, and have an opportunity to offer comments. Those organizations or individuals which cannot attend the meeting, but wish to either submit a written comment or to remain informed, should provide Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (phone 202–647–9266; fax 202–647–5947) with their statement and/or their name, organization, address, telephone and fax numbers, and their e-mail address.

Dated: November 14, 2000.

Bob Ford,

Deputy Director, Office of Environmental Policy, U.S. Department of State.

[FR Doc. 00–29519 Filed 11–16–00; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–176]

WTO Dispute Settlement Proceeding Regarding United States of America—Section 211 of the Department of Commerce Appropriations Act, 1999

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of the establishment and composition of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO") requested by the European Communities and their Member States (the "EC"). The EC has asked that the panel examine whether section 211 of the "Omnibus Appropriations Act of 1998" [sic] is consistent with U.S. obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPs Agreement"). The statutory provision to which the EC refers is section 211 of the Department of Commerce Appropriations Act, 1999, as included in Pub. L. 105–277 ("Section 211"). Section 211 concerns the registration or enforcement, by Cuban entities or their successors in interest, of trademarks, trade-names, or commercial names that are substantially similar to trademarks, trade-names, or commercial names associated with businesses confiscated without compensation by the Cuban government, without the consent of the previous owners of the trademarks, trade-names or commercial names.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by November 28, 2000, to be assured of timely consideration by USTR.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Att: Section 211, Office of the United States Trade Representative, 600 17th Street, NW., Washington, D.C., 20508.

FOR FURTHER INFORMATION CONTACT: L. Daniel Mullaney, Associate General Counsel, at (202) 395–3581.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that, on October 26, 2000, the WTO Director-General appointed the following persons to serve as panelists in this dispute: H.E. Mr. Wade Armstrong, Chairman; Mr. François Dessemontet, Member; and Mr. Armand de Mestral, Member. This appointment was made pursuant to Article 8.7 of the WTO Dispute Settlement Understanding. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, is expected to issue a report detailing its findings and recommendations within six to nine months after it is established. USTR solicited comments from the public on the issues in this dispute in a **Federal Register** notice dated August 1, 2000 (65 FR 46999); those comments are on file at USTR and need not be resubmitted in reponse to this notice.

Major Issues Raised and Legal Basis of the Complaint

In is request for the establishment of a panel, the EC alleges that three substantive provisions of section 211 are inconsistent with the TRIPs Agreement:

1. The EC alleges that Section 211(a)(1) limits the right to register or renew trademarks, trade-names or commercial names at the United States Patent and Trademark Office, in violation of TRIPs Article 2.1, in conjunction with Article 6 quinquies A(1) of the Paris Convention for the Protection of Industrial Property (1967) ("Paris Convention"), and TRIPs Article 15.1. The EC alleges that Section 211(a)(1) does this by, in the case of trademarks, trade-names and commercial names that are substantially similar to trademarks, trade-names, or commercial names associated with businesses confiscated without compensation by the Cuban government, requiring the consent of the original owner or his successor-in-interest of the trademark, trade-name, or commercial name.

2. The EC alleges that Section 211(a)(2)—by providing that U.S. courts shall not recognize, enforce, or otherwise validate common law or registration rights asserted by designated nationals or their successors in interest in trademarks, trade-names and commercial names that are substantially similar to trademarks, trade-names, or commercial names associated with businesses confiscated without compensation by the Cuban government—violates TRIPs Art. 2.1, in conjunction with Articles 6 bis (1) and 8 of the Paris Convention, and TRIPs Article 16.1 (which require WTO Members to provide protection for well-known trademarks and for trade names). The EC also alleges that Section 211(a)(2) violates the TRIPs enforcement provisions, such as TRIPs Article 42, and the most favored nation and national treatment provisions of the TRIPs Agreement (TRIPs Articles 3.1, 2.1 (in conjunction with Article 2(1) of the Paris Convention), and 4).

3. Finally, the EC allegs that Section 211(b)—by providing that U.S. courts shall not recognize, enforce, or otherwise validate treaty rights asserted by designated nations or their successors in interest in trademarks, trade-names and commercial names that are substantially similar to trademarks, trade-names, or commercial names associated with businesses confiscated without compensation by the Cuban government (unless the original owner consents)—violates TRIPs Art. 2.1, in conjunction with Articles 6 bis (1) and 8 of the Paris Convention (requiring protection of well-known trademarks and of trade-names) and TRIPs Articles 3.1, 4, 16.1, and 42 (provisions concerning most favored nation treatment, national treatment, trademark rights conferred, and fair and equitable enforcement procedures).

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute or other matters related to this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person reouesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street. NW., Washington, D.C. 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding, the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–176, "Section 211") may be made by calling Brenda Webb, (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–29482 Filed 11–16–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–8252]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0012 and 2115–0518

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) U.S. Coast Guard Academy—Preliminary Application and Supplemental Forms and (2) International Oil Pollution Prevention Certificate. Before submitting the ICRs to OMB, the Coast Guard is requesting comments on the items described below.

DATES: Comments must reach the Coast Guard on or before January 16, 2001.

ADDRESSES: You may mail comments to the Docket Management System (DMS) [USCG 2000–8252], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The DMS maintains these public docket for this requests. Comments will become part of this docket and will be available for inspection or copying in room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2000–8252], and give the reason for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Request

1. *Title:* U.S. Coast Guard Academy—Preliminary Application and Supplemental Forms.

OMB Control Number: 2115–0012.

Summary: Any person who wishes to compete for an appointment as a Coast Guard Cadet must fill out a Preliminary Application and Supplemental Forms.

Need: 14 U.S.C. 211 authorizes the Superintendent of the U.S. Coast Guard Academy to ensure that qualified people have every opportunity to compete for appointments as cadets.

Respondents: Men and women between the ages of 17 and 22.

Frequency: As needed.

Burden Estimate: The estimated burden is 6,640 hours annually.

2. *Title:* International Oil Pollution Prevention Certificate.

OMB Control Number: 2115–0518.

Summary: The information collected aids in the prevention of pollution from ships. An International Oil Pollution Prevention Certificate and other records serve to verify vessels' compliance with certain international and domestic rules on shipping.

Need: 33 U.S.C. 1901–1915 require that domestic rules implement MARPOL 73/78.

Respondents: Owners and operators of vessels.

Frequency: On occasion and every five years.

Burden Estimate: The estimated burden is 6,658 hours annually.

Dated: November 7, 2000.

S.A. Richardson,

Acting, Director of Information and Technology.

[FR Doc. 00–29422 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

High Density Traffic Airports; Slot Allocation and Transfer Method

ACTION: Statement of policy.

SUMMARY: This action explains the adoption and implementation of a temporary policy regarding the minimum slot usage requirement for slots and slot exemptions at LaGuardia Airport for the winter season. A recent increase in the total number of operations at the airport, largely as a result of recently enacted legislation liberalizing access to slot-controlled airports, has had a significant operational impact at the airport. This policy will assist carriers in addressing operational issues by allowing limited flexibility of the slot usage requirement.

EFFECTIVE DATE: Effective upon publication.

FOR FURTHER INFORMATION CONTACT: Lorelei D. Peter, Office of the Chief Counsel, AGC–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3073.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 2000, the "Wendell H Ford Aviation Investment and Reform act of the 21st Century" ("AIR 21") was enacted. Section 231 of AIR 21 significantly amends 49 U.S.C. § 41714 and created 49 U.S.C. §§ 41716, 41717, and 41718. These provisions enable air carriers meeting specified criteria to obtain new slot exemptions at New York's LaGuardia Airport (LaGuardia) and John F. Kennedy International Airport (JFK); Chicago's O'Hare International Airport (O'Hare); and Washington, DC's Ronald Reagan Washington National Airport (National). As a result of this legislation, the Department of Transportation (Department) issued eight orders establishing procedures for the processing of various applications. This policy statement addresses operations at LaGuardia as authorized under Order 2000–4–11 (LaGuardia—Exemptions for air service to small and nonhub airports—limited to aircraft with a seating capacity of less than 71) and Order 2000–4–10 (LaGuardia—Exemptions for new entrant and limited incumbent air carriers).

Specifically, Order 2000–4–11 implements 49 U.S.C. 41716(a), which provides in pertinent part that exemptions must be granted to any airline using Stage 3 aircraft with less than 71 seats that proposes to provide nonstop service between LaGuardia and an airport that was designated as a small hub or nonhub in 1997 under certain conditions. The exemption must be granted if: (1) The airline was not providing such nonstop service between the small hub or nonhub and LaGuardia Airport during the week of November 1, 1999; (2) the proposed service between the small hub or nonhub and LaGuardia, exceeds the number of flights provided between such airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet as replacement of turboprop service that was being provided during the week of November 1, 1999.

According to AIR–21 and the Department's Orders, air carriers meeting the statutory tests delineated above automatically receive blanket approval for slot exemptions, provided that they certify in accordance with 14 CFR 302.4(b) that they meet each and every one of the statutory criteria. The certification should state the communities and airport to be served, that the community was designated a small hub or nonhub as of 1997, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the planned effective dates. Carriers must also certify that the proposed service represents new service, additional frequencies, or regional jet service that has been upgraded from turboprop service when compared to service of the week of November 1, 1999. In addition, carriers must state the number of slot exemptions and the times needed to provide the service.

Order 2000–4–10 implements the provisions of 49 U.S.C. § 41716(b), which states in pertinent part, that exemptions must be granted to any new entrant or limited incumbent airline using Stage 3 aircraft that proposes "* * * to provide air transportation to or from LaGuardia or John F. Kennedy International Airport if the number of slot exemptions granted under this subsection to such air carrier with respect to such airport when added to the slots and slot exemptions held by such air carrier with respect to such airport does not exceed 20." Applications submitted under this provision must identify the airports to be served and the time requested.

In August, there were 55 additional exemption operations at LaGuardia authorized by the Department and allocated by the FAA Slot Administration Office under the provisions of AIR 21. The number of exemptions increased to 192 by mid-September and is expected to reach 274 by mid-November 2000.

Preliminary FAA air traffic operations data reported by OPSNET for September 2000 indicate that there were 1,163 average daily operations at LaGuardia. This is an increase of approximately 18 percent over the September 1999 level of 982 average daily operations. OPSNET reported that air traffic control delays of 15 minutes or more at LaGuardia increased to 10,515 for September 2000 from 3,108 in September 1999. The percentage of flights recorded with air traffic delays increased to 30.13 percent from 10.55 percent. In comparison, the second highest level of OPSNET reported air traffic delays was at Newark International Airport where the percentage of flights delayed showed a small decline to 8.5 percent in September 2000 compared to 8.7 percent in September 1999.

Since September, traffic management programs have been implemented regularly by the FAA Air Traffic Control System Command Center due to the increased volume of flights at the airport. Peak period demand routinely exceeds airport capacity. Delays of one hour or more are frequent, even during ideal weather conditions. Delays often increase to several hours in duration when adverse aviation weather reduces system capacity. Many airlines have operationally addressed the increased delays through various means, including waiting for the assigned clearance time, canceling flights, reaccommodating passengers on later flights, and adding flying time to account for increased operating times.

Statement of Policy

As a result of the additional operations and the impact described above on the operating environment at LaGuardia, the FAA finds that it is necessary to issue a temporary policy concerning the slot usage requirement for operations at LaGuardia. This change in policy is effective for the reporting periods of September/October and November/December in 2000, and January/February and March/April in 2001. At least 60 days prior to the end of the March/April reporting period, the FAA will evaluate operations at the airport and determine whether to extend this policy or take other action regarding slot usage.

In response to the large increase in volume-related delays, the FAA believes that airlines' decisions to cancel flights or otherwise make determinations on the operation of a flight should not be unduly influenced by the slot use or lose provision. While the cancellation of flights may be burdensome on both the airline passenger and the airline, advance planning should permit more efficient overall carrier operations while allowing passengers to be appropriately accommodated. One result of this temporary policy may be that fewer flights will operate, which may decrease delays for the remaining operations.

During the above stated months, the FAA will permit carriers operating slots or slot exemptions at LaGuardia to temporarily return to the FAA slots issued under the authority of 14 CFR part 93, subpart S, or exemption slots issued by the Department. This allows carriers to turn in slots and exemption slots in advance due to schedule planning or other decisions by the carriers without jeopardizing the permanent loss of the slot or slot exemption. Carriers that plan to return slots or slot exemptions must notify the FAA Slot Administration Office in advance and provide the slot withdrawal number, frequency and effective period of the return. Slots and slot exemptions returned to the FAA under this policy will not be allocated to any other carrier during the effective period and will revert automatically to the operator at the expiration of the period for which it was returned.

Carriers must contact the FAA Slot Administration Office concerning the date and frequency of restart-up should dates change. The Department has determined that a carrier returning slot exemptions under this policy will not need to recertify under Order 2000–4–10 and Order 2000–4–11 provided that all other certified conditions remain valid.

The FAA will treat a slot or slot exemption as used if the flight was scheduled but canceled for operational reasons and the slot would not otherwise have been subject to withdrawal. In the use or lose reports submitted to the FAA, carriers should indicate the flight was scheduled and, if appropriate, was canceled due to operational reasons. Carriers may report a slot or slot exemption as operated only if the flight was in fact operated. The FAA advises carriers to retain records of such cancellations should the FAA request additional documentation regarding the reason for the cancellation.

The FAA notes that when the slot usage requirements was last revised in 1992, the FAA specifically addressed the fact that adoption of the 80 percent usage threshold takes into account certain factors such as weather and operational delay. The adopted 80 percent usage requirement provides an appropriate balance that ensures limited slot resources are used and allows a reasonable level of nonoperation due to operational, scheduling or other reasons. The FAA recognizes, however, that the additional operations at LaGuardia as a result of AIR–21 slot exemptions have impacted operational performance and significantly increased air traffic delays at the airport beyond this historical rates. Consequently, the FAA believes that is necessary to implement this policy on a temporary basis through the April 2001 reporting period.

The FAA will also extend the due date for the September/October 2000 reporting period by three weeks in order to allow operators additional time to review their reports in light of this policy statement. This extension will apply to slots and slot exemptions at the four high density airports. Slot usage reports for the September/October 2000 reporting period will be due by December 5, 2000.

This temporary policy on nonoperation or return of slots and slot exemptions does not apply to the use or lose provisions for slots at other high density traffic airports unless the operator can provide clear and convincing evidence that a flight cancellation at that airport was directly related to the non-operation of a slot at LaGuardia, as described in this policy statement. This policy is not intended to provide blanket relief to any slot operator not meeting the minimum usage requirement due to reasons other than those discussed previously. It is also not intended to establish a basis for the FAA to routinely consider delays and traffic management programs as grounds for a usage waiver. These factors were considered during the rulemaking process. Any waiver of the slot usage requirement at other high density airports for non-operation of flights at LaGuardia not covered by this policy will continue to be processed in accordance with 14 CFR Section 39.227.

Issued in Washington, DC, on November 13, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–29408 Filed 11–14–00; 3:09 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Athens and Meigs Counties, Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Retraction of notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of the retraction of the Notice of Intent to prepare an Environmental Impact Statement for a proposed highway project in Athens and Meigs Counties, Ohio, that was originally published in the **Federal Register** on October 19, 1999.

The FHWA determined environmental studies to document consultations between the Ohio Department of Transportation and FHWA were necessary. Based on these environmental studies, FHWA has determined that potentially significant impacts were avoided and the Finding Of No Significant Impact designation remains valid. An Environmental Impact Statement will not be prepared.

FOR FURTHER INFORMATION, CONTACT: Andreas Garnes, Rural Programs Engineer, Federal Highway Administration, 200 N. High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6856.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 8, 2000.

Andreas Garnes,

Rural Programs Engineer, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 00–29481 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSAC–96–1, Notice No. 23]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee ("RSAC") meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 3:30 p.m. on Thursday, December 7, 2000.

ADDRESSES: The meeting of the RSAC will be held at the Wyndham Washington, DC Hotel in the Vista Ballroom, 1400 M Street, NW, Washington, DC 20005, (202) 429–1700. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Trish Paolella, or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202) 493–6212/6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTAL INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee ("RSAC"). The meeting is scheduled to begin at 9:30 a.m. and conclude at 3:30 p.m. on Thursday, December 7, 2000. The meeting of the RSAC will be held at the Wyndham Hotel in the Vista Ballroom, 1400 M Street, NW, Washington, DC, 20005 (202) 429–1700. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual voting representatives and five associate representatives drawn from among 30 organizations representing various rail industry perspectives, two associate representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico and other diverse groups. Staffs of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

The RSAC will be briefed on the current status of activities of RSAC working groups and task forces responsible for carrying out tasks the RSAC has accepted involving blue signal protection, cab working conditions, and the definition of reportable "train accident."

There will be discussion about the possible tasking of the Training and Qualification of Safety Critical personnel and a briefing on the status of the North American Joint Positive Train Control Project. Also, if the draft Notice of Proposed Rulemaking for Cab Working Conditions is approved by the Working Group, the full committee may be requested to consider recommendations for FRA action on that issue. The committee may also be asked to consent to mail balloting with respect to future recommendations of the Locomotive Crashworthiness Working Group, following an update on the group's activities.

Informational status briefings concerning the Switching Operations Fatality Analysis task force efforts, the Grade Crossing Technical Working Group, the American Public Transportation Association's Passenger Rail Equipment Safety Standards and the Harriman Awards will be presented.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on November 13, 2000.

George Gavalla,

Associate Administrator for Safety.

[FR Doc. 00–29421 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–8292]

Sea Princess Trading, Inc. and the Sabine Transportation Company; Notice of Petition for a Declaratory Order

AGENCY: Maritime Administration, Transportation.

ACTION: Notice of petition.

SUMMARY: The Maritime Administration is seeking public comment on the

subject petition. Pursuant to 46 CFR 201.74, Sea Princess Trading, Inc. (Trading), the owner, and the Sabine Transportation Company (Sabine), the operator, by petition dated November 7, 2000, request a ruling that the SEA PRINCESS, a 37,500 DWT oil tanker, would if converted to a dry bulk carrier in a foreign shipyard be qualified to lift cargo reserved to privately owned United States-flag commercial vessels by section 901(b)(1) and 901b *et seq*., of the Merchant Marine Act, 1936, as amended (Act); provided the United States Coast Guard ruled that the vessel so converted qualified for a coastwise endorsement to its document of registration pursuant to 46 App. U.S.C. 883 and 46 U.S.C. 12106.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than close of business (5 p.m. EST) December 1, 2000.

ADDRESSES: Your comments should refer to docket number MARAD–2000–8292. You may submit your comments in writing to: Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th St., SW, Washington, DC 20590. You may also submit them electronically via the internet at http://dmses.dot.gov/submit/. You may call Docket Management at (202) 366–9324 and visit the Docket Room from 10 a.m. to 5 p.m., EST., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: You may call Frances M. Olsen, Acting Director, Office of Cargo Preference, (202) 366–4610. You may send mail to Frances M. Olsen, Acting Director, Office of Cargo Preference, Room 8118, Maritime Administration, 400 Seventh St., S.W., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self addressed, stamped postcard in the envelope containing your comments. Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT**. You should mark "CONFIDENTIAL" on each page of the original document that you would like to keep confidential. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send comments containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the Petition and the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket Room are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/). On that page, click on "search." On the next page (http://dms.dot.gov/search/), type in the four digit docket number shown at the beginning of this document. The docket number for this document is MARAD–2000–8292. After typing the docket number, click on "search." On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Petition Request

Pursuant to 46 CFR 201.74, Sea Princess Trading, Inc. (Trading), the owner, and the Sabine Transportation Company (Sabine), the operator, by petition dated November 7, 2000, request a ruling that the SEA PRINCESS, a 37,500 DWT oil tanker, would if converted to a dry bulk carrier in a foreign shipyard be qualified to lift cargo reserved to privately owned United States-flag commercial vessels by section 901(b)(1) and 901b *et seq*., of the Merchant Marine Act, 1936, as amended (Act); provided the United States Coast Guard ruled that the vessel so converted qualified for a coast wise endorsement to its document of registration pursuant to 46 App. U.S.C. 883 and 46 U.S.C. 12106.

On April 15, 1994, the Maritime Administrator rendered an opinion that the tanker GOLDEN MONARCH when converted to a bulk carrier in Korea would not be eligible to lift preference cargo, although the Coast Guard had ruled that the MONARCH was eligible for a coastwise endorsement. Aquarius Marine Company Docket No. A–185. MARAD's decision was upheld by the United Stastaes Court of Appeals for the Second Circuit in *Aquarius* v. *Pena*, 64 F.3d 89 (2nd cir. 1985).

Trading and Sabine ask the Maritime Administration to essentially reverse its decision in the GOLDEN MONARCH case.

This notice is published as a matter of discretion, and the fact of its publication should in no way be considered a favorable or unfavorable decision on the application, as filed, or as may be amended. MARAD will consider all comments submitted in a timely fashion, and will take such action as may be deemed appropriate.

By Order of the Maritime Administrator.

Dated: November 14, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–29514 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5734; Notice 2]

Decision That Nonconforming 1994–1998 Land Rover Discovery Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1994–1998 Land Rover Discovery multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1994–1998 Land Rover Discovery MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1994–1998 Land Rover Discovery), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) petitioned NHTSA to decide whether 1994–1998 Land Rover Discovery MPVs not originally manufactured to conform to all applicable Federal motor vehicle safety standards are eligible for importation into the United States. NHTSA published notice of the petition on June 3, 1999 (64 FR 29938) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Land Rover North America, Inc. ("Land Rover"), the United States representative of the Rover Group, the vehicles' manufacturer. In this comment, Land Rover identified several modifications beyond those specified in the petition that would be necessary to conform non-U.S. certified 1994–1998 Land Rover Discovery MPVs to all applicable Federal motor vehicle safety standards.

Land Rover stated that non-U.S. certified 1994–1998 Land Rover Discovery MPVs are not equipped with a seat belt warning lamp, and that this component would have to be installed for the vehicles to comply with Standard No. 101, *Controls and Displays*. Land Rover also noted that in order to comply with Standard No. 101, the vehicles' instrument panel would have to be equipped with a means for adjusting the panel's illumination.

Land Rover also stated that side reflectors would have to be installed on the vehicles to comply with Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*. Additionally, Land Rover noted that the vehicles' driver's side rearview mirror would have to be replaced with a flat glass U.S.-model component to comply with Standard No. 111, *Rearview Mirrors*. Land Rover also stated that a transmission shift interlock and "key in ignition" warning system would have to be installed for the vehicles to comply with Standard No. 114, *Theft Protection*.

With respect to the requirements of Standard No. 208, *Occupant Crash Protection*, Land Rover observed that air bag systems are optional in some non-U.S. certified 1994–1998 Land Rover Discovery MPVs. As a consequence, Land Rover stated that some vehicles will require those systems (including sensors, warning lamps, air bags, air bag ECU, and warning harnesses) to be retrofitted, and that this may lead to quality control and subsequent reliability problems. Additionally, Land Rover noted that air bag labels must be molded into the front sun visors of non-U.S. certified 1994–1998 Land Rover Discovery MPVs. Land Rover additionally observed that prior to the 1997 model year, ALR/ELR seat belt retractors were not installed in the front and rear outboard seating positions of non-U.S. certified Land Rover Discovery MPVs.

Land Rover also stated that there are significant differences between U.S. certified and non-U.S. certified 1994–1998 Land Rover Discovery MPVs with respect to compliance with Standard No. 301, *Fuel System Integrity*. A key difference cited by Land Rover is the addition of a stamped steel stiffening saddle welded to the frame of U.S. certified models to stiffen the fuel tank enclosures so that they may withstand rear impact testing to determine compliance with the standard. Land Rover stated that "this stamped steel frame reinforcement is welded in place by the chassis manufacturer while the frame is mounted in a precise welding jig to ensure proper alignment and straightness." Land Rover contended that because this reinforcement is not available through the manufacturer's parts system, the entire chassis on a non-U.S. certified model would have to be replaced to achieve compliance with the standard. Land Rover further stated that in addition to the frame stiffener, there is a "unique rear cross-member and integrally welded rear tow hitch that must also be fitted" on non-U.S. certified models to comply with Standard No. 301.

Additionally, Land Rover stated that because diesel powered versions of non-U.S. certified 1994–1998 Land Rover Discovery MPVs have never been certified for sale in the United States, "the entire fuel system including [the] fuel tank assembly may not comply" with Standard No. 301. Land Rover asserted that the petitioner must conduct certification testing to ensure that diesel powered models comply with the standard before they may be imported into the United States.

Land Rover also observed that gasoline powered non-U.S. certified 1994–1998 Land Rover Discovery MPVs are equipped with some fuel system components that differ from those on U.S. certified models. Because Standard No. 301 compliance tests apply to the entire fuel system, Land Rover contended that the entire fuel system on non-U.S. certified vehicles must be modified so that it is materially identical to the fuel system on the U.S.-certified version.

Land Rover also noted that a utility vehicle warning label must be affixed to the driver's sun visor of non-U.S. certified 1994–1998 Land Rover Discovery MPVs to meet the requirements of 49 CFR 575.105, *Vehicle Rollover*. Additionally, Land

Rover contended that the owners manual supplied with non-U.S. certified 1994–1998 Land Rover Discovery MPVs must be replaced with the version supplied with U.S. certified models, because that version contains several Federally required messages and warning statements.

Concluding its comments, Land Rover contended that non-U.S. certified 1994–1998 Land Rover Discovery MPVs are ineligible for importation into the United States because those vehicles are equipped with a chassis that differs significantly from the one on their U.S.-certified counterparts, and that the chassis "cannot be properly modified."

NHTSA accorded J.K. an opportunity to respond to Land Rover's comments. In its response, J.K. stated, with respect to the Standard No. 101 compliance issues raised by Land Rover, that it will replace the entire instrument cluster during conversion with one that includes all U.S.-model parts and associated systems, including the seatbelt warning systems and adjustable instrument illumination control. With respect to the Standard 108 issue raised by Land Rover, J.K. stated that it will change the bumper ends in the conversion process, and that the U.S. model ends it will install are equipped with marker lights. J.K. additionally stated that all vehicles will be inspected for compliance with Standard No. 111 at the time of importation, and that U.S. model mirror systems will be installed if necessary during the conversion process. Similarly, J.K. stated that all vehicles will be inspected for compliance with Standard No. 114 at the time of importation, and that a transmission interlock switch, which incorporates the key warning micro-switch, will be added to vehicles lacking that device.

J.K. also stated that all vehicles will be inspected for compliance with Standard No. 208 at the time of importation, and that all parts necessary to achieve compliance with that standard will be added during the conversion process. J.K. noted that all parts necessary to conform the vehicles' air bag system to the standard are available through dealers or the original equipment manufacturer, including sensors, warning lamps, air bags, air bag ECU, and warning harnesses. J.K. also stated that air bag labels will be attached to the front sun visors during the conversion process, and that ALR/ELR seat belt retractors will be fitted in 1996 and earlier model year vehicles.

With regard to the Standard No. 301 compliance issues raised by Land Rover, J.K. stated that all frame modifications made by the manufacturer to achieve compliance with that standard can be accomplished in a similar manner during conversion, using a precise welding jig to ensure proper alignment and straightness during installation. Likewise, J.K. asserted that the rear cross-member and integrally welded rear tow hitch receiver modifications applied by the manufacturer can be accomplished during conversion. J.K. also stated that during conversion, all fuel system components will be replaced with U.S. model components to meet EPA requirements, and modified to the same material condition as those on the U.S. certified vehicle. J.K. also stated that all required manuals and labels are added during the conversion process.

NHTSA believes that J.K.'s response adequately addresses the issues that Land Rover has raised regarding the petition. NHTSA further notes that the modifications described by J.K. would not preclude non-U.S. certified 1994–1998 Land Rover Discovery MPVs from being found "capable of being readily altered to comply with applicable motor vehicle safety standards."

NHTSA has accordingly decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–338 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1994–1998 Land Rover Discovery MPVs that were not originally manufactured to conform to all applicable Federal motor vehicle safety standards are substantially similar to 1994–1998 Land Rover Discovery MPVs originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 13, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety, Compliance.

[FR Doc. 00–29420 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that has been extended, revised, or implemented unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comments concerning an extension, without change, of an information collection titled Financial Subsidiaries and Operating Subsidiaries. The OCC also gives notice that it has sent the information collection to OMB for review.

DATES: You should submit your comments to both OCC and the OMB Desk Officer by December 18, 2000.

ADDRESSES: You should send your comments to the Communications Division, Attention: 1557–0215, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, you can send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: You may request additional information, a copy of the collection, or a copy of the supporting documentation submitted to OMB by contacting Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0215), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Financial Subsidiaries and Operating Subsidiaries.

OMB Number: 1557–0215.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no

change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The information requirements in 12 CFR part 5 are located as follows:

12 CFR 5.24(d)(2)(ii)(G)—Conversion: An institution must identify all subsidiaries that will be retained following the conversion and provide information and analysis of the subsidiaries' activities that would be required if the converting bank or savings association were a national bank establishing each subsidiary pursuant to sections 5.34 or 5.39. The OCC will use the information to determine whether to grant the financial institution's request to convert to a national charter.

12 CFR 5.33(e)(3)(i) and (ii)—Business combinations: A national bank must identify any subsidiary to be acquired in a business combination and state the activities of each subsidiary. A national bank proposing to acquire, through a business combination, a subsidiary of a depository institution other than a national bank must provide the same information and analysis of the subsidiary's activities that would be required if the applicant were establishing the subsidiary pursuant to sections 5.34 or 5.39.

The OCC needs this information regarding the subsidiaries to be acquired to determine whether to approve the business combination. The OCC will use this information to confirm that the proposed activity is permissible for operating subsidiaries and to ensure that a bank proposing to conduct activities through a financial subsidiary satisfies relevant statutory criteria.

12 CFR 5.34—Operating subsidiaries: A national bank must file a notice or application to acquire or establish an operating subsidiary, or to commence a new activity in an existing operating subsidiary. The application or notice provides the OCC with needed information regarding the activities and location(s) of the operating subsidiaries. The OCC will review the information to determine whether proposed activities are legally permissible, to ensure that the proposal is consistent with safe and sound banking practices and OCC policy, and that it does not endanger the safety and soundness of the parent national banks.

12 CFR 5.35(f)(1) and (2)—Bank service companies: Under section 5.35(f)(1), a national bank that intends to make an investment in a bank service company, or to perform new activities in an existing bank service company, must submit a notice to and receive prior approval from the OCC.

Under section 5.35(f)(2), a national bank that is "well capitalized" and "well managed" may invest in a bank service company, or perform a new activity in an existing bank service company, by providing the appropriate OCC district office written notice within 10 days after the investment, if the bank service company engages only in the activities listed in section 5.34(e)(5)(v). The OCC will review after-the-fact notices to confirm the permissibility of the national bank's investment in the bank service company.

12 CFR 5.36(e)—Other equity investments—Non-controlling investments: A national bank may make a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in the activities described in section 5.36(e)(2) by filing a written notice. The OCC will use the information provided in the notice to confirm that the national bank is well capitalized and well managed, and that the bank meets the requirements applicable to non-controlling investments.

12 CFR 5.39—Financial subsidiaries: A national must file a notice prior to acquiring a financial subsidiary or engaging in activities authorized pursuant to section 5136A(a)(2)(A)(i) of the Revised Statutes (12 U.S.C. 24a) through a financial subsidiary. A national bank that intends, directly or indirectly, to acquire control of, or hold an interest in, a financial subsidiary, or to commence a new activity in an existing financial subsidiary, must obtain OCC approval through the procedures set forth in sections 5.39(i)(1) and (2). The OCC will review this information to ensure that a proposal satisfies applicable statutory criteria.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 587.

Estimated Total Annual Responses: 587.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 587 burden hours.

OCC Contact: Jessie Dunaway, Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Attention: 1557–0215, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

OMB Desk Officer: Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0215, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Comments: The Agencies have a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments regarding any aspect of these collections of information.

Dated: November 13, 2000.

Stuart Feldstein,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 00–29464 Filed 11–16–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing a new fee schedule for the transfer of book-entry securities maintained on the National Book-Entry System (NBES). This fee schedule will take effect on January 2, 2001. Based on the latest review of costs, the new basic fee for a Treasury book-entry security transfer will be reduced $.02 for each transfer. Concurrent with Treasury's fee reduction, the Federal Reserve will be increasing the fee for the movement of funds by $.02. These changes will result in the combined fee for a Treasury security transfer of $.70. The combined fee is unchanged from CY 2000.

In addition to the basic fee, off-line transfers have a surcharge. The surcharge for an off-line Treasury book-entry transfer will be $25.00, increasing $7.00 or 39%.

EFFECTIVE DATE: January 2, 2001.

FOR FURTHER INFORMATION CONTACT: Edward C. Leithead, Director, Primary & Secondary Market Fixed Income Securities (Financing), Bureau of the Public Debt, Suite 3014, 26 Federal Plaza, New York, NY 10278, telephone (212) 264–6358.

- Diane M. Polowczuk, Government Securities Specialist (Financing), Bureau of the Public Debt, Room 510, 999 E Street NW., Washington, DC 20239–0001, telephone (202) 691–3550.

SUPPLEMENTARY INFORMATION: On October 1, 1985, the Department of the Treasury established a fee structure for the transfer of Treasury book-entry securities maintained on NBES.

Based on the latest review of book-entry costs and volumes, Treasury will decrease its basic fee and increase the off-line surcharge from the levels currently in effect. Beginning January 2, 2001, the basic fee will be $.63 for each securities transfer and reversal sent and received, a 3% fee reduction per transfer. The current off-line surcharge of $18.00 will increase to $25.00, a 39% increase.

The basic transfer fee assessed to both sends and receives reflects stability of costs associated with the processing of a security transfer. The increased off-line surcharge reflects the additional costs associated with the processing of off-line security transfers.

The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, or for wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

The fees described in this notice apply only to the transfer of Treasury book-entry securities held on NBES. The Federal Reserve System assesses a fee to recover the costs associated with the processing of the funds component of Treasury book-entry transfer messages, as well as the costs of providing book-entry services for Government agencies on NBES. Information concerning book-entry transfers of government agency securities, which are priced by the Federal Reserve System, is set out in a separate **Federal Register** notice published by the Board of Governors of the Federal Reserve System elsewhere in this issue of the **Federal Register**.

The following is the Treasury fee schedule that will take effect on January 2, 2001, for the book-entry transfers on NBES:

TREASURY-NBES FEE SCHEDULE[1] EFFECTIVE JANUARY 2, 2001

[In Dollars]

Transfer type	Basic fee	Off-line surcharge	Funds[2] movement fee	Total fee
On-line transfer originated	.63	.00	.07	.70
On-line transfer received	.63	.00	.07	.70
On-line reversal transfer originated	.63	.00	.07	.70
On-line reversal transfer received	.63	.00	.07	.70
Off-line transfer originated	.63	25.00	.07	25.70
Off-line transfer received	.63	25.00	.07	25.70
Off-line account switch received	.63	.00	.07	.70
Off-line reversal transfer originated	.63	25.00	.07	25.70
Off-line reversal transfer received	.63	25.00	.07	25.70

[1] The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, or the wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

[2] The funds movement fee is not a Treasury fee, but is charged by the Federal Reserve for the cost of moving funds associated with the transfer of a Treasury book-entry security.

Authority: 31 CFR 357.45

Dated: November 9, 2000.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 00–29385 Filed 11–16–00; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–04: OTS Nos. H–3683 and 00567]

Lawrence Financial Holdings, Inc., Ironton, OH; Approval of Conversion Application

Notice is hereby given that on November 13, 2000, the Director, Office of Examination and Supervision, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Lawrence Federal Savings Bank, Ironton, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: November 14, 2000.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 00–29457 Filed 11–16–00; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register
Vol. 65, No. 223
Friday, November 17, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2449]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

Correction

In notice document 00–28614 appearing on page 67009 in the issue of Wednesday, November 8, 2000, make the following correction:

On page 67009, in the second column, in the fifth line from the bottom, “November 14, 2000” should read “November 24, 2000”.

[FR Doc. C0–28614 Filed 11–16–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Plans Established or Maintained Under or Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

Correction

In proposed rule document 00–27044 beginning on page 64482 in the issue of Friday, October 27, 2000, make the following correction:

§2510.3–40 [Corrected]

On page 64498, in the second column in paragraph (h) in the second line, “December 26, 2000” should read “[60 days from the date of publication in the **Federal Register** as a final regulation]”.

[FR Doc. C0–27044 Filed 11–16–00; 8:45 am]

BILLING CODE 1505–01–D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Friday,
November 17, 2000

Part II

Federal Communications Commission

47 CFR Parts 2, 25, and 27
Transfer of the 3650 Through 3700 MHz Band and the 4.9 GHz Band From Federal Government Use; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, and 27

[ET Docket No. 98–237 and WT Docket No. 00–32; FCC 00–363]

Transfer of the 3650 Through 3700 MHz Band and the 4.9 GHz Band From Federal Government Use

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish licensing and service rules for the assignment of fixed and mobile services licenses in the 3650 through 3700 MHz band. This document also seeks comments on whether technical requirements or other reasons justify licensing the band and the 4940 through 4990 MHz band at the same time. This action is intended to facilitate the provision of a broad range of services, including traditional voice telephony and new broadband, high-speed, data and video services, and to help foster the introduction of such services to rural and underserved areas of the United States.

DATES: Submit comments on or before December 18, 2000, and submit reply comments on or before January 16, 2001. Written comments by the public on the proposed information collections are due January 16, 2001. Written comments on the proposed information collections must be submitted by the Office Management and Budget (OMB) on the proposed information collections on or before March 19, 2001.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, D.C. 20554, or via the Internet to *jboley@fcc.gov*, and to Ed Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to *Edward.Springer@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Eli Johnson, 202–418–1310. For additional information concerning the information collections contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Notice of Proposed Rule Making (Second NPRM) in ET Docket No. 98–237 and WT Docket No. 00–32, FCC 00–363, adopted October 12, 2000, and released October 24, 2000. The complete text of the Second NPRM and Initial Regulatory Flexibility Analysis is available on the Commission's Internet site, at www.fcc.gov. It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, D.C., and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., CY–B400, 445 12th Street S.W., Washington, D.C. Comments may be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html, or by e-mail to ecfs@fcc.gov.

Synopsis of the Second NPRM

1. In this Second NPRM, the Commission proposes licensing and service rules for the assignment of fixed and mobile services licenses in the 3650 through 3700 MHz band to fixed and mobile (base stations) terrestrial services by competitive bidding. The Second NPRM also seeks comment on whether technical requirements or other reasons justify licensing the 4940 through 4990 MHz (4.9 GHz) band at the same time.

2. The 3600 through 3700 MHz band has been allocated for use by the Federal Government on a primary basis for radiolocation services. The associated First Report and Order adopted with the Second NPRM, allocates the 50 megahertz of spectrum in the 3650 through 3700 MHz band to the fixed and mobile (base stations) terrestrial services on a primary basis, (*See* Notice of Proposed Rulemaking and Order in ET Docket No. 98–237, 64 FR 2462, January 14, 1999.)

3. The Commission is "grandfathering" existing fixed satellite service (FSS) earth stations in this band, and, for a limited time will accept new applications for FSS earth stations in the vicinity of these grandfathered sites to operate on a co-primary basis in the band. The Commission will also permit additional FSS earth station operations on a secondary basis. The Second NPRM proposes that both new and existing FSS earth stations be subject to part 25 of the Commission's Rules.

4. As discussed in paragraph 120 in the full text of the Second NPRM, the Commission proposes to assign terrestrial service licenses in this band pursuant to the Commission's part 1 competitive bidding rules. The Commission also proposes to license the 3650 through 3700 MHz band under part 27 of the Commission's Rules as modified to reflect the particular characteristics and circumstances of services offered through the use of spectrum in the 3650 through 3700 band. (*See* the Proposed Rules portion of this FR Summary or Appendix E of the Second NPRM.) The Commission also seeks comment on the geographic area and spectrum blocks that should be used to license this spectrum. Further, as discussed in paragraphs 42 through 44 of the Second NPRM, the Commission seeks comment on whether technical requirements or other reasons justify licensing the 3650 through 3700 MHz and the 4.9 GHz bands at the same time. (*See* the Notice of Proposed Rulemaking in WT Docket 00–32, 65 FR 14230, March 16, 2000.)

5. The Commission, in paragraph 47 of the Second NPRM, proposes that licensees in the 3650 through 3700 MHz band be subject to the Universal Licensing System (ULS). ULS is the interactive licensing database developed by the Wireless Telecommunications Bureau to consolidate and replace eleven existing licensing systems used to process applications and grant licenses in the wireless services. License applications filed by part 27 licensees must be filed electronically via ULS.

6. The Commission, as indicated in paragraph 49 of the Second NPRM, seeks comment from the public in general concerning the proposals set forth in the Second NPRM. The Commission, however, specifically seeks comment from Indian Tribal governments on the proposals contained in the Second NPRM. The Commission believes that the proposals set forth in the Second NPRM have the potential to foster the development and, ultimately, the deployment of new technologies and services to many communities, including tribal communities. Thus, the Commission seeks comment both from Tribal governments and other interested parties on the potential for the spectrum proposals to serve the communications needs of tribal communities.

7. Paragraphs 50 through 56 of the Second NPRM consider regulatory status and flexible use of the 3650 through 3700 MHz band. In this section, the Commission proposes that applicants and licensees in this band not be required to describe their proposed services, but be required to indicate a regulatory status based on any services they choose to provide. Under this proposal, licensees who change the service they offer, such that it would change their regulatory status, must notify the Commission within 30 days of the change. Changes resulting in the discontinuance, reduction, or impairment of the existing service could

require a different time period for notification as governed by section 101.305 of the Commission's Rules. Paragraphs 57 through 60 of the Second NPRM address eligibility restrictions and spectrum aggregation limitations. Paragraphs 61 through 63 of the Second NPRM pertains to foreign ownership restrictions in the 3650 through 3700 MHz band.

8. Other issues discussed in the Second NPRM include geographic areas and spectrum blocks (paragraphs 64 through 71), license term and renewal expectancy (paragraphs 72 through 74), partitioning and disaggregation of licenses and the use of band managers (paragraphs 75 through 81), performance requirements (paragraphs 82 through 88), equal employment opportunity issues (paragraphs 89 through 90), technical rules (paragraphs 91 and 92), in-band interference control (paragraphs 93 through 109), adjacent band interference control (paragraphs 110 through 116), RF Safety (paragraphs 117 through 119), competitive bidding provisions for small businesses (paragraphs 120 through 127), and additional satellite issues (paragraphs 128 through 133).

Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the Second NPRM. The Commission requests written public comment on the analysis. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Initial Regulatory Flexibility Analysis, the Commission asks a number of questions in the IRFA regarding the prevalence of small businesses in the affected industries.

10. Comments regarding the IRFA must be filed in accordance with the same filing deadlines as comments filed in this Second NPRM, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this Second NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ex Parte Presentations

11. For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission's Rules. (*See generally* 47 CFR 1.1202, 1.1203, 1.1206((a).)

Pleading Dates

12. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before December 18, 2000, and reply comments on or before January 16, 2001. Comments and reply comments should be filed in ET Docket No. 98–237 and WT Docket No. 00–32. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street, S.W., Washington, D.C. 20554, with a copy to Eli Johnson, Policy Division, Wireless Telecommunications Bureau, 445 Twelfth Street, S.W., Washington, D.C. 20554.

13. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your E-Mail address>." A sample form and directions will be sent in reply.

14. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Center, Room CY–A257, at the Federal Communications Commission, 445 Twelfth Street, S.W., Washington, D.C. 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc.), CY–B400, 445 12th Street, S.W., Washington, D.C. 20054, (202) 857–3800.

Ordering Clauses

15. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Second Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel of Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat 1164, 5 U.S.C. 601 *et seq.* (1981).

16. Pursuant to sections 4, 4(i), 157, 303, 303(g), 303(r), 307, and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307, and 332 (c)(7) the Second Notice of Proposed Rule Making is adopted.

Initial Regulatory Flexibility Analysis

17. This is a synopsis of the Initial Regulatory Flexibility Act Statement in this Second Notice of Proposed Rule Making (Second NPRM). The full text of the Initial Regulatory Flexibility Act Statement may be found in Appendix C of the full Second NPRM.

18. As required by the Regulatory Flexibility Act (RFA) the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Second NPRM. 5 U.S.C. 603 The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Second NPRM. The Commission will send a copy of the Second NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

A. Need for, and Objectives of, the Proposed Rules

19. The actions taken in this Second NPRM are intended to facilitate the provision of a broad range of services. The Commission believes the 3650 through 3700 MHz band may be used to foster the introduction of wireless services to rural areas of the United States and to develop new and more effective competition to existing wireline local exchange carriers by providing for an economical means to

offer competitive "local loop" or "last-mile" facilities.

B. Legal Basis for Proposed Rules

20. The proposed action is authorized under sections 4, 4(i), 157, 303, 303(g), 303(r), 307, and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307, and 332(c)(7).

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

21. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

22. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. The definition of "small governmental jurisdiction" is one with populations of fewer than 50,000. There are 85,006 governmental jurisdictions in the nation. The Commission estimates that 96 percent, or about 81,600, are small entities that may be affected by the proposed rules. Nationwide, there are 4.44 million small business firms, according to SBA reporting data.

23. The Commission has not developed a definition of small entities applicable to fixed satellite service licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with no more than $11.0 million in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities.

24. The Commission must assign licenses for this spectrum by competitive bidding to satisfy the requirements of the Balanced Budget Act of 1997. The Commission has not yet determined how many licenses will be awarded. Moreover, the Commission does not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed. The Commission therefore assumes that, for purposes of our evaluations and conclusions in the IRFA, all prospective licensees are small entities, as that term is defined by the SBA or our proposed small business definitions for terrestrial fixed and mobile services in the 3650 through 3700 MHz band.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

25. Applicants for licenses to provide terrestrial fixed and mobile services in the 3650 through 3700 MHz band will be required to submit short-form applications using FCC Form 175. In addition, winning bidders must submit long-form license applications through the Universal Licensing System using FCC Form 601, and other appropriate forms. The Commission invites comment on how these filing requirements can be modified to reduce the burden on small entities.

26. As proposed, all services, other than fixed satellite service earth stations, in the 3650 through 3700 MHz band would be governed by part 27 of the Commission's Rules, and, in certain instances, part 20. The proposals under consideration in this item include requiring commercial licensees to make showings that they are in compliance with construction requirements, file applications for license renewals and make certain other filings as required by the Communications Act. The Commission requests comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

27. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof; for small entities.

28. The Second NPRM proposes the following small business definitions for bidders in auctions of licenses in the 3650 through 3700 MHz band: an "entrepreneur" would be defined as an entity with average annual gross revenues for the three preceding years not exceeding $40 million, a "small business" would be defined as an entity with average annual gross revenues for the three preceding years not exceeding $15 million, and a "very small business" would be defined as an entity with average annual gross revenues for the three preceding years not exceeding $3 million. In developing these definitions, the Commission considered the alternative of using only two small business definitions, as it did in the case of the 2.3 GHz Wireless Communications Service (WCS) and certain other services. However, the Commission believes that an additional third category of small businesses may be appropriate because the deployment of fixed wireless equipment in nearby spectrum bands suggests that entry costs may be lower than was the case for the 2.3 GHz WCS when it was licensed in 1997. Thus, very small businesses may now be better able to take advantage of bidding credits to acquire licenses and provide communications services.

29. The Commission, while proposing a requirement that fixed and mobile services applicants identify whether or not they seek to provide common carrier services, also proposes to allow these applicants to request common carrier status as well as non-common carrier status for authorization in a single license, rather than require these applicants to choose between common carrier and non-common carrier services. The Commission also proposes that fixed and mobile applicants and licensees in the 3650 through 3700 MHz band not be required to describe their proposed services, but be required to indicate a regulatory status based on any services they choose to provide. The Commission, however, particularly seeks comment on the effect of this flexible approach on possible investment in communications services and systems and more generally on technology development.

30. The Commission proposes that there be no restrictions on eligibility for fixed and mobile services licensees in

the 3650 through 3700 MHz and 4.9 GHz bands other than the alien ownership restrictions set forth in section 310 of the Communications Act. The Commission proposes that both common carrier and non-common carrier licensees in the 3650 through 3700 MHz band provide the alien ownership information requested in FCC Form 601, as well as amendments to FCC Form 602 to reflect any changes in foreign ownership information.

31. The Commission has reduced burdens wherever possible. To minimize any negative impact, however, the Commission proposes certain provisions that will redound to the benefit of small entities. These special provisions include partitioning and spectrum disaggregation. These provisions will allow smaller entities to overcome entry barriers. In addition, the Commission seeks comment on whether it would be appropriate to license the 3650 through 3700 MHz band for fixed and mobile services using smaller geographical licensing areas. The use of smaller licensing areas could benefit small entities by reducing costs and build-out expenses. The Commission also seeks comment on different approaches to minimizing the burdens of interference management.

32. The regulatory burdens the Commission proposed to retain are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The Commission seeks comment on significant alternatives commenters believe we should adopt.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

33. None.

Paperwork Reduction Analysis

34. This Second NPRM contains proposed and modified information collections. As part of our continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Second NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 16, 2001. OMB comments are due March 19, 2001. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0926.

Title: The Transfer of the Bands from Federal Government Use: Notice of Proposed Rulemaking.

Form No.: FCC Forms 601, 602, 603, 604, 605.

Type of Review: Modified information collection.

Respondents: Business or other for profit.

Number of Respondents: 200.

Estimated Time Per Response: 113 hours.

Total Annual Cost Burden: 0.

Total Annual Burden: 22,600 hours.

Needs and Uses: The various information reporting and verification requirements, and the prospective coordination requirement will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934. Such information has been used in the past and will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

List of Subjects

47 CFR Part 2

Radio.

47 CFR Parts 25 and 27

Communications common carriers, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2, 25 and 27 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Add a new non-Federal Government footnote in numerical order to § 2.106, the Table of Frequency Allocations, to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NGXXX Fixed-satellite service systems that operate primarily outside the 3650 through 3700 MHz band may be authorized to perform space operations, such as, telemetry, tracking and telecommand operations in the band 3650 through 3700 MHz, provided the requirement in § 25.202(g)(1) of this chapter is satisfied.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 322, unless otherwise noted.

4. In § 25.202, add a new sentence at the end of paragraph (g) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

* * * * *

(g) * * * Telemetry, tracking and telecommand functions for satellite service systems operating outside of the band 3650 through 3700 MHz may be authorized on a secondary basis in the 3650 through 3700 MHz band upon a particularized showing of need.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

5. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

6. Add new paragraph (b)(3) to § 27.1 to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(3) 3650 through 3700 MHz band.

* * * * *

7. Add the following definition in alphabetical order to § 27.4 to read as follows:

§ 27.4 Terms and definitions.

* * * * *

Grandfathered fixed satellite service earth station. An earth station in the 3650 through 3700 MHz band is an earth station that is authorized prior to December 1, 2000, or granted as a result of an application filed prior to December 1, 2000.

* * * * *

8. Add new paragraph (c) to § 27.5 to read as follows:

§ 27.5 Frequencies.

* * * * *

(c) *3650 through 3700 MHz band.* The 3650 through 3700 MHz band is available for licensing pursuant to this part.

9. In § 27.14, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

§ 27.14 Construction requirements; Criteria for comparative renewal proceedings.

* * * * *

(d) *3650 through 3700 MHz band.* (1) For a WCS licensee that offers fixed, point-to-point service, the construction of four permanent links per one million people in its licensed service area within the prescribed license term set forth in § 27.13 would constitute substantial service.

(2) For a WCS licensee that offers fixed, point-to-multipoint service, a demonstration of coverage of 20 percent of the population of its licensed service area within the prescribed license term set forth in § 27.13 would constitute substantial service.

(3) For a licensee that offers fixed satellite service, the construction of one earth station per licensed service area within the prescribed license term set forth in § 27.13 would constitute substantial service.

* * * * *

10. In § 27.50, redesignate paragraph (c) as paragraph (d) and add a new paragraph (c) to read as follows:

§ 27.50 Power limits.

* * * * *

(c) The following power and antenna height limits apply to base and fixed stations operating in the 3650 through 3700 MHz band: Base and fixed stations must not exceed an effective radiated power of 1640 watts and an antenna height of 300 m height above average terrain, or its equivalent.

* * * * *

11. In § 27.53, redesignate paragraph (f) as paragraph (g) and add a new paragraph (f) to read as follows:

§ 27.53 Emission limits.

* * * * *

(f) Base and fixed service operations in the 3650 through 3700 MHz band are subject to the emission limits set forth in § 101.111 of this chapter.

* * * * *

12. Add new paragraph (c) to § 27.55 to read as follows:

§ 27.55 Field strength limits.

* * * * *

(c) 3650 through 3700 MHz band: 54 dBμV/m

13. Revise § 27.57 to read as follows:

§ 27.57 International coordination.

WCS licensees shall comply with the appropriate coordination agreements between the United States and Canada and the United States and Mexico concerning cross-border sharing and use of WCS bands. Operations in the border areas shall be subject to coordination with bordering countries and provide protection to non-U.S. operations in the appropriate frequency bands. In addition, satellite operations in WCS spectrum shall be subject to international satellite coordination procedures.

14. In § 27.58, add introductory text before paragraph (a) to read as follows:

§ 27.58 Interference to MDS/ITFS receivers.

The following rules concerning interference to Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") receivers apply only to WCS licensees in the 2305–2320 and 2345–2360 MHz bands:

* * * * *

15. Add a new § 27.61 to read as follows:

§ 27.61 FS/FSS coordination procedure.

Base and fixed service transmitters in the 3650 through 3700 MHz band that are located within 200 kilometers of a grandfathered fixed satellite service earth station must be coordinated prior to construction to reduce the potential for interference. The fixed station licensee must use the coordination procedures specified in § 101.21 of this chapter.

16. A new Subpart H is added to part 27 to read as follows:

Subpart H—Competitive Bidding Procedures for the 3650 Through 3700 MHz Band

Sec.

27.701 3650 through 3700 MHz band subject to competitive bidding.

27.702 Designated entities.

Subpart H—Competitive Bidding Procedures for the 3650 Through 3700 MHz Band

§ 27.701 3650 through 3700 MHz band subject to competitive bidding.

Mutually exclusive initial applications for terrestrial service licenses in the 3650 through 3700 MHz band are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

§ 27.702 Designated entities.

(a) *Eligibility for small business provisions.* (1) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $40 million for the preceding three years.

(4) For purposes of determining whether an entity meets any of the definitions set forth in paragraph (a)(1), (a)(2), or (a)(3) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered in the manner set forth in § 1.2110(b) and (c) of this chapter.

(5) A consortium of very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section. A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(2) of this section. A consortium of entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(3) of this section. Where an applicant or licensee is a consortium of small businesses (or very small businesses or entrepreneurs), the gross revenues of each small business (or very small business or entrepreneur) shall not be aggregated.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

[FR Doc. 00–28820 Filed 11–16–00; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Friday,
November 17, 2000

Part III

Department of Education

Parent Training and Information Centers Program; Notice

DEPARTMENT OF EDUCATION

Parent Training and Information Centers Programs

AGENCY: Department of Education, Office of Special Education and Rehabilitative Services.

ACTION: Notice of proposed waiver.

SUMMARY: We are proposing to waive the requirements in EDGAR at 34 CFR 75.261 as applied to the Parent Training and Information Centers (PTIs) funded in FY 1999 and to authorize the Centers to carry out additional activities to support fifth year funding. Section 75.261 sets forth the conditions for extending a project period, including the general prohibition against extending projects that involve the obligation of additional Federal funds. We also propose to issue one year continuation awards in FY 2003 to 15 Parent Training and Information Centers project funded in FY 1999 in order to ensure the most efficient use of Federal funds. Only those grantees who currently hold the FY 1999 four year grant awards under the Parent Training and Information Centers projects would be eligible to apply for the funds. The Department is therefore soliciting public comment on the proposed waiver.

DATES: Comments must be received on December 18, 2000.

ADDRESSES: All comments concerning this proposal should be addressed to Debra Sturdivant or Donna Fluke, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3527, Switzer Building, Washington, DC 20202–2641.

FOR FURTHER INFORMATION CONTACT: Debra Sturdivant, Telephone: (202) 205–8038, or Donna Fluke, Telephone: (202) 205–9161. If you use a telecommunication device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed waiver.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed waiver. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed waiver in Room 3414, Switzer Building, 330 C Street SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed waiver. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background

On June 9, 1999, we issued a Notice Inviting Applications for New Awards under the Parent Training and Information Centers Program for Fiscal Year 1999. In this notice the Department announced that it would make fifteen awards of up to 48 months (four-year cycle awards) under 34 CFR 75.105(c)(3) and the Individuals with Disabilities Education Act (IDEA), which directed us to support the establishment of Parent Training and Information Centers that provide training and information to parents of children with disabilities to help improve results for their children.

The fifteen Centers affected by this notice include thirteen State awards and two other awards, one that focuses on the needs of Native Americans families, and one that focuses on military families. The grant period for these centers extends for four years until May 31, 2003.

Reasons

Beginning with the awards made under this program in FY 2000, we have determined that five years provides a more appropriate funding cycle in order to foster more efficient use of Federal funds. On this basis, we believe that it makes the most programmatic sense to issue continuation awards to the existing fiscal year 1999 grantees in order to make their award cycle consistent with the fiscal year 2000 five-year cycle awards. However, to do so, we must waive the requirement in 34 CFR 75.261(c)(2), which prohibits project period extensions that involve the obligation of additional Federal funds. We are proposing this waiver at this time in order to give the affected grantees early notice of the availability of a fifth year of funding.

Regulatory Flexibility Act Certification

We certify that the proposed waiver and the activities required to support fifth year funding would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by this proposal are the fiscal year 1999 PTI Centers currently receiving Federal funds. However, the proposal would not have a significant economic impact on the Centers because the waiver and activities required to support fifth year funding would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposal would impose minimal requirements to ensure the proper expenditure of program funds, including requirements that are standard to continuation awards.

Paperwork Reduction Act of 1980

This proposal has been examined under the Paperwork Reduction Act of 1980 and has been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened Federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

We particularly request comments on whether this proposed waiver would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number 84.328; Training and Information for Parents of Children with Disabilities.)

Dated: November 13, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–29451 Filed 11–16–00; 8:45 am]

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National Archives and Records Administration 1985

Federal Register

Friday,
November 17, 2000

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana; Final Rule

Record of Decision Concerning Grizzly Bear Recovery in the Bitterroot Ecosystem; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE00

Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), intend to restore the grizzly bear (*Ursus arctos*), a threatened species, into east-central Idaho and a portion of western Montana. We are designating grizzly bears to be reintroduced into the area described in this rule as a nonessential experimental population pursuant to section 10(j) of the Endangered Species Act of 1973, as amended. Grizzly bear populations have been extirpated from most of the lower 48 United States. They presently occur in populations in the Selkirk and Cabinet-Yaak ecosystems in north Idaho, northeastern Washington, and northwestern Montana; the North Cascades ecosystem in northwestern Washington; the Northern Continental Divide ecosystem in Montana; and the Yellowstone ecosystem in Montana, Wyoming, and Idaho.

The purpose of this reintroduction is to reestablish a viable grizzly bear population in the Bitterroot ecosystem in east-central Idaho and adjacent areas of Montana, one of six grizzly recovery areas identified in the Grizzly Bear Recovery Plan. We evaluated potential effects of this final rule in the "Final Environmental Impact Statement on Grizzly Bear Recovery in the Bitterroot Ecosystem." This grizzly bear reintroduction does not conflict with existing or anticipated Federal agency actions or traditional public uses of wilderness areas or surrounding lands.

EFFECTIVE DATE: This rule is effective December 18, 2000.

ADDRESSES: The complete file for this final rule is available for inspection, by appointment during normal business hours, at U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, Montana 59812.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, at the above address, or telephone (406) 243–4903.

SUPPLEMENTARY INFORMATION:

Background

1. Legislative

The Endangered Species Act Amendments of 1982, Public Law 97–304, made significant changes to the Endangered Species Act (Act) of 1973 as amended (16 U.S.C. 1531–1540), including the creation of section 10(j), which provides for the designation of specific populations of listed species as "experimental populations." Previous authorities in the Act permitted us to reintroduce a listed species for conservation and recovery purposes. However, local opposition to reintroduction efforts from parties concerned about potential restrictions, and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, reduced the effectiveness of reintroduction as a conservation and recovery tool.

Under section 10(j), the Secretary can designate reintroduced populations established outside the species' current range but within its historical range as "experimental." Reintroduction of the experimental populations must further the conservation of the listed species. An experimental population must be separate geographically from nonexperimental populations of the same species. Designation of a population as experimental increases our flexibility and discretion in managing reintroduced listed species.

After designating a population as experimental under section 10(j) of the Act, the Secretary must determine whether such populations are essential, or nonessential, to the continued existence of the species. Regulatory restrictions may be considerably reduced under a nonessential experimental population designation, which is defined as being nonessential to the survival of the species. For the purposes of section 7 of the Act, we treat nonessential experimental populations that are located outside of the National Wildlife Refuge System or National Park System as if they are species proposed for listing. If a nonessential experimental population is located within such a refuge or park, the population is treated as if it is listed as a threatened species.

Section 7 provisions for Federal agency coordination have limited application to nonessential experimental populations found outside such refuges and parks. The two provisions that apply are: (1) Section 7(a)(1), which requires all Federal agencies to use their authority to conserve listed species; and (2) section 7(a)(4), which requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species throughout its range. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

Individual animals used in establishing an experimental population may be obtained from other populations if their removal is not likely to jeopardize the continued existence of the species and a permit has been issued in accordance with 50 CFR part 17.22 prior to their removal.

2. Biological

This final experimental population rule addresses the grizzly bear, a threatened species that once ranged throughout most of western North America. An estimated 50,000 grizzly bears roamed the American West prior to European settlement (U.S. Fish and Wildlife Service 1993). However, distribution and population levels of this species have been diminished by excessive human-caused mortality and loss of habitat. Today, only 1,000–1,100 grizzly bears remain in a few isolated populations in Montana, Idaho, Wyoming, and Washington. This represents approximately 2 percent of their historic range in the lower 48 States (U.S. Fish and Wildlife Service 1993). The grizzly bear was listed as a threatened species in the lower 48 States under the Act in 1975 (40 FR 3173).

The natural history of grizzly bears and their ecological role was poorly understood during the period of their eradication in the conterminous United States. As with other large predators, grizzly bears were considered a nuisance and threat to humans. Today, the grizzly bear's role as an important and necessary part of natural ecosystems is better understood and appreciated.

The grizzly bear was a widespread inhabitant of the Bitterroot Mountains in east-central Idaho and western Montana. Historic grizzly bear range includes national forest lands within and surrounding the Selway-Bitterroot Wilderness Area and Frank Church-River of No Return Wilderness Area on both sides of the Salmon River. The demise of the grizzly from the Bitterroot ecosystem was due to the actions of humans. Bears were actively killed for their fur, for sport, and to eliminate possible threats to humans and domestic livestock. The last verified death of a grizzly bear in the Bitterroot Mountains occurred in 1932, and the last tracks were observed in 1946 (Moore 1984, 1996). Although

occasional unverified reports of grizzly sightings persist in the ecosystem (Melquist 1985), no verified tracks or sightings have been documented in more than 50 years, and currently there is no evidence of any grizzly bears in the Bitterroot ecosystem (Melquist 1998).

Recovery Efforts

The reestablishment of a grizzly bear population in the Bitterroot ecosystem will increase the survival probabilities and further the conservation of the species in the lower 48 States. If the experimental population is lost, it will not diminish the survival probabilities for bears in other ecosystems. However, if the experimental population is successful, it will enhance grizzly bear survival and conservation over the long term by providing an additional population and thus adding a measure of security for the species.

The Grizzly Bear Recovery Plan, finalized in 1982 (U.S. Fish and Wildlife Service 1982), called for the evaluation of the Selway-Bitterroot ecosystem as a potential recovery area. Subsequently, an interagency team of grizzly bear scientists concluded the area provided suitable habitat and could support 200 to 400 grizzly bears (Servheen *et al.* 1991). In 1991, the Interagency Grizzly Bear Committee subsequently endorsed the Bitterroot ecosystem as a grizzly bear recovery area, and requested that we initiate measures to achieve recovery in the area.

In 1992, we organized a Technical Working Group to develop a Bitterroot ecosystem chapter to append to the Grizzly Bear Recovery Plan. This interagency group of biologists worked with a citizens' involvement group composed of local residents and agency personnel to draft a recovery plan chapter. Public comments, including those from local communities in central Idaho and western Montana, were integrated into the final chapter. We revised the Grizzly Bear Recovery Plan in 1993 (U.S. Fish and Wildlife Service 1993) and later produced the Bitterroot Ecosystem Recovery Plan Chapter (Chapter) as an appendix (U.S. Fish and Wildlife Service 1996). This Chapter called for the reintroduction of a small number of grizzly bears into the Bitterroot ecosystem as an experimental, nonessential population under section 10(j) of the Act and the preparation of a special rule and an Environmental Impact Statement (EIS) on this proposal. By establishing a nonessential experimental population, more flexible management practices may be implemented to address potential negative impacts or concerns regarding the recovery. The Chapter identified a tentative long-term recovery objective of approximately 280 grizzly bears for the Bitterroot ecosystem.

Planning for the recovery of grizzly bears into the Bitterroot ecosystem of east-central Idaho and western Montana was initiated in 1993, when the agencies of the Interagency Grizzly Bear Committee requested that an EIS be prepared. We then formed and funded an interagency team to prepare the EIS in 1995. The team included our specialists and those from the Forest Service, Idaho Department of Fish and Game, Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe. The Grizzly Bear EIS program for the Bitterroot ecosystem emphasized public participation from the outset.

We developed a public participation and interagency coordination program to identify issues and alternatives to be considered in the EIS process. We published a Notice of Intent (NOI) concerning grizzly bear recovery in the Bitterroot ecosystem in the **Federal Register** on January 9, 1995 (60 FR 2399). The notice was furnished as required by National Environmental Policy Act (NEPA) regulations (40 CFR 1501.7) to obtain input from other agencies and the public on the scope of issues to be addressed in the EIS. This NOI asked the public to identify issues that should be addressed in the Draft EIS. A few days earlier, we issued a news release announcing the beginning of the NEPA process and the start of an EIS on grizzly bear recovery to the Bitterroot ecosystem.

Eight preliminary issues were identified in March 1995 from scoping meetings for the Chapter and the NOI to prepare an EIS. Three preliminary alternatives also were identified and published in a Scoping of Issues and Alternatives brochure, which was mailed to 1,100 people and distributed at 7 open houses. The brochure gave background information, described the purpose and need of the proposed action, listed preliminary issues and alternatives, and explained how to become involved in the EIS process. We asked interested parties to identify relevant issues and alternatives related to grizzly bear reintroduction into the Bitterroot ecosystem for the analysis. On June 5, 1995, we published a notice in the **Federal Register** initiating the formal scoping process with a 45-day comment period (60 FR 29708). We sent a news release to the print, radio, and television media in western Montana and Idaho on June 26, 1995, announcing the dates and locations for public open houses. We initiated public scoping of issues by mailing a brochure detailing the EIS process.

From July 5 to 11, 1995, we held seven public scoping sessions in the form of open houses in Grangeville, Orofino, and Boise, Idaho; Missoula, Helena, and Hamilton, Montana; and in Salt Lake City, Utah. At the open houses, people could watch a 5-minute introductory video about the proposed action of reintroducing a nonessential experimental population, and representatives of the Service, the Forest Service, and State fish and wildlife agencies were available to discuss grizzly bears, their recovery, and the EIS process. Those attending the open houses received copies of the issue and alternative scoping brochure and the question-and-answer booklet. We encouraged them to leave written comments with agency personnel or mail their comments later. Verbal comments or questions were also heard and responded to by the agency representatives, but verbal testimony was not formally recorded. More than 300 people attended these scoping sessions and offered comments on the proposal, the preliminary issues, and alternatives, and voiced their opinions on grizzly bears and reintroduction. We extended the scoping comment period for 30 days (from July 20 to August 21, 1995). On July 25, we provided a press release to local and national media to announce the extension. This extension was requested by numerous public interests with varied opinions on this complex topic.

We solicited written public comments on issues and alternatives at the open houses and through the media. In response, we received more than 3,300 written comments from individuals, organizations, and government agencies. These comments arrived in more than 565 letters, open house meeting notes, 6 petitions, and 6 form letters or postcards. Strong polarization of concerns regarding grizzly bear management typified the public comments. Approximately 80 percent of written responses were from residents of counties in Montana and Idaho adjacent to the proposed reintroduction area. Major concerns raised included public safety, impacts of grizzly bears on existing land uses, travel corridors and linkages, nuisance bears and their control, and depredation by bears on domestic livestock and native ungulates.

We continued public involvement and outreach activities in 1995 and began to prepare the EIS. The Bitterroot Ecosystem Chapter—Supplement to the Grizzly Bear Recovery Plan was finalized and signed on September 11, 1996. The EIS Team continued to follow the NEPA process to prepare the Draft EIS. The team completed the Draft EIS in August 1996, and released it to us and then to agency partners for internal review and comment. Comments were incorporated, and we reviewed the final draft in February 1997. We incorporated comments from the final review and completed the Draft EIS in June 1997 (U.S. Fish and Wildlife Service 1997).

We released the Draft EIS and proposed special rule for public review and comment on July 1, 1997. The proposed rule, "Proposed Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana" was then published in the **Federal Register** on July 2, 1997 (62 FR 35762) (U.S. Fish and Wildlife Service 1997a). Comments were accepted through September 30, 1997. We then extended the comment period to November 1, 1997, based on numerous requests for more time to prepare responses. Following a request from a member of the Idaho congressional delegation, we extended the comment period a second time to December 1, 1997.

During October 1997, we held public hearings/open houses in seven communities on the perimeter of the Bitterroot area to gather public comments on the Draft EIS and proposed rule. Approximately 1,400 people attended these hearings, and 293 individuals testified. The Salmon and Hamilton hearings both had more people signed up to speak than time allowed. The dates and locations for the public hearings were Challis, Idaho, and Hamilton, Montana (October 1); Missoula, Montana, and Lewiston, Idaho (October 2); Boise, Idaho, and Helena, Montana (October 3); and Salmon, Idaho (October 8). In addition, we held meetings with local community and State leaders, and interest groups in communities around the perimeter of the proposed recovery area. The Draft EIS, the Summary of the Draft EIS, and the Special Rule were all published on our web site at http://www.r6/fws/gov/endspp/grizzly.

We received comments on the two draft documents from more than 24,000 individuals, organizations, and government agencies. These comments arrived in more than 2,660 letters, Draft EIS summary forms, resolutions, and hearing testimonies. Ten petitions were received with more than 21,000 signatures. Fifteen form letters were identified. This degree of interest from the public indicates the strong feelings people have about the possibility of grizzly bear recovery in the Bitterroot ecosystem.

An analysis of the public comments on the Draft EIS and proposed rule was performed by an interagency team of 14 employees from our agency and the U.S. Forest Service (Content Analysis Team) in December 1997 and January 1998. The system used to analyze comments was objective, reliable, and traceable. We prepared a detailed summary report, "Summary of Public Comments on the Draft Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem" and an executive summary report of 24,251 public comments and released the summary to the public in April 1998 (U.S. Fish and Wildlife Service 1998).

The major issues raised by the public included recovery area boundaries; bear sources; designation of experimental nonessential population; the Endangered Species Act; restrictions on use of public lands; local control; best available science; the grizzly bear as a missing component of the ecosystem; what is a viable grizzly population; population corridor linkages; range requirements of the grizzly; effects to the grizzly (genetics, disease, bear safety, adequate food); ecosystem protection; effects of grizzlies on human health and safety; effects of grizzlies on livestock and pets; effects of grizzlies on big game species and hunting opportunities; effects of grizzlies on recreational opportunities and public access; effects on local economy (jobs); and the need for education. Issues raised during public comment on the Draft EIS were similar to the issues identified during public scoping.

The Content Analysis Team briefed the EIS Team regarding the results of the Draft EIS comment analysis in February 1998. The EIS Team met numerous times to thoroughly review the content analysis reports and original comment letters. They identified significant issues and, through the NEPA process, discussed and decided on necessary revisions to the Draft EIS and proposed rule to be responsive to public comment. During 1998, the EIS Team prepared the Final EIS and revised the special rule. In early 1999, we began our internal review of the draft final EIS and the draft final rule.

We released the Final EIS on grizzly bear recovery in the Bitterroot ecosystem on March 24, 2000. Chapter 5 of the Final EIS contains a detailed review of public comments on the Draft EIS, including comments on the proposed rule, and the Service's response. The Final EIS considers six alternatives: (1) Restoration of Grizzly Bears as a Nonessential Experimental Population with Citizen Management (Preferred Alternative); (1A) Restoration of Grizzly Bears as a Nonessential Experimental Population with Service Management; (2) Natural Recovery—The No Action Alternative; (3) No Grizzly Bear Alternative; (4) Restoration of Grizzly Bears as a Threatened Population with Full Protection of the Act and Habitat Restoration; and (4A) Restoration of Grizzly Bears as a Threatened Population with Full Protection of the Act and Service Management. All comments on the Final EIS received from the public during the 30-day public review period were considered prior to preparation of the Record of Decision.

On November 13, 2000, the Service signed the Record of Decision on the Final EIS, and selected the Preferred Alternative (Alternative 1 in the Final EIS) for implementation (see following document in this section of the **Federal Register**). This alternative is the Restoration of Grizzly Bears as a Nonessential Experimental Population with Citizen Management.

Experimental/Reintroduction Site

We intend to restore grizzly bears into the Bitterroot ecosystem of east-central Idaho in the Selway-Bitterroot and Frank Church-River of No Return Wilderness Areas on Federal lands managed by the Forest Service. The Bitterroot location was selected as a site for an experimental population of grizzly bears based on several factors. The area known as the Bitterroot ecosystem is centered around the federally designated Wilderness Areas of central Idaho, while a small portion extends eastward over the crest of the Bitterroot Mountains into Montana. It includes about 67,526 square kilometers (26,072 square miles) of contiguous national forest lands in central Idaho and western Montana. These include portions of the Bitterroot, Boise, Salmon/Challis, Clearwater, Nez Perce, Payette, Sawtooth, and Panhandle National Forests in Idaho, and the Bitterroot and Lolo National Forests in western Montana. The core of the ecosystem contains three designated wilderness areas including the Frank Church-River of No Return, Selway-Bitterroot, and Gospel Hump. These areas provide approximately 15,793 square kilometers (6,098 square miles) of grizzly bear habitat. We plan to reintroduce grizzly bears only into the Selway-Bitterroot Wilderness Area unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate. We will identify specific release sites that have high-quality bear habitat and low likelihood of human encounters.

There is no documentation that grizzly bears from northwestern Montana have moved into central Idaho. There is no evidence of any grizzly bears in the Experimental Population Area, thus there is no evidence of an existing grizzly bear population in the Experimental Population Area. In an effort to create a definition of a population for use in determining the feasibility of experimental population status for the Bitterroot ecosystem, we solicited input from 54 scientists familiar with bear populations. Thirty-seven scientists responded, and we adopted a definition. The definition of a grizzly bear population, as used in the Final EIS to define a minimal existing grizzly bear population in the Bitterroot, follows: "A grizzly bear population is defined by verified evidence within the previous six years, consisting of photos within the area, verified tracks and/or sightings by reputable scientists or agency personnel, of at least two different female grizzly bears with young or one female seen with different litters in two different years in an area geographically distinct (separate) from other grizzly bear populations. Verifiable evidence of females with young, to be geographically distinct (separate), would have to occur greater than 10 miles (U.S. Fish and Wildlife Service 1993, page 171) from the nearest non-experimental grizzly bear population recovery zone boundary." Research data from the Cabinet-Yaak ecosystem indicates the average home range size of an adult female grizzly bear, when converted to a circle, has a radius of 10 miles (Kasworm and Servheen 1995).

The term "current range," as it is used in this rule, refers to the area inside or within 10 miles of the recovery zone line of currently occupied grizzly bear recovery zones (U.S. Fish and Wildlife Service 1993, page 171). The term "geographically separate," as it is used in this rule, means that the Experimental Population Area and the recovery zone boundary of any existing grizzly bear population are separated by more than 10 miles.

The Bitterroot Experimental Population Area is outside the current range but within the historic range of the grizzly bear. The Bitterroot Experimental Population Area is greater than 10 miles from any recovery zone boundary of any existing grizzly bear population. Thus, the Service has determined that the east-central Idaho reintroduction area is consistent with provisions of section 10(j) of the Act; specifically, that experimental grizzly bears must be geographically separate from other, nonexperimental populations. Grizzlies dispersing into areas outside of the Experimental Population Area will receive all the protections of a threatened species under the Act. Although the Service has determined that there is no existing grizzly bear population in the Experimental Population Area, we will continue to monitor for the presence of any grizzly bears naturally occurring in the area, and evaluate any new reports of sightings from the area.

Reintroduction Protocol

We will undertake the grizzly bear recovery project in the Bitterroot ecosystem in cooperation with the U.S. Forest Service, other Federal agencies, the States of Idaho and Montana, the Nez Perce Tribe, and entities of the Canadian Provincial government. We will also enter into agreements with the appropriate Canadian Provincial government agencies to obtain grizzly bears.

Grizzly bears (*Ursus arctos*) for this reintroduction will be obtained from Canadian and U.S. grizzly populations with permission from the Canadian Provincial governments and concurrence from the appropriate State officials. Grizzly bears can be taken by authorized State, Federal, and tribal authorities for scientific or research purposes under the authorities granted by 50 CFR 17.40.

The Bitterroot ecosystem recovery program proposes moving a minimum of 25 grizzly bears of both sexes over a 5-year period from areas in Canada (in cooperation with Canadian authorities) and the United States that presently have populations of grizzly bears living in habitats that are similar to those found in the Bitterroot ecosystem. We will reintroduce only bears with no history of conflict with humans or livestock. We will capture and reintroduce bears at the time of year optimal to their survival. This process will likely occur when grizzly bear food supplies in the Bitterroot ecosystem are optimum. We plan to transport bears to east-central Idaho, provide any necessary veterinary care, and fit them with radio collars in order to monitor them by the use of radiotelemetry. We will determine the movements of individual grizzly bears and how they use their habitat, and keep the public informed of general bear locations and recovery efforts. We will release bears close enough to each other to create a "colony" or population of bears, providing the basis from which they will successfully reproduce and expand in numbers.

Grizzly bears are common in western Canada (10,000 to 11,000 in British Columbia) and Alaska (an estimated 30,000 to 35,000). An estimated minimum of 325 grizzly bears exist in the Northern Continental Divide ecosystem in northwestern Montana, and an estimated minimum of 328 exist in the Yellowstone ecosystem (1998 estimates per Grizzly Bear Recovery Plan criteria (U.S. Fish and Wildlife Service 1993)). The Final EIS analysis indicates no significant adverse impact to source populations from removal of grizzly bears for reintroduction to the Bitterroot ecosystem (U.S. Fish and Wildlife Service 2000), i.e., no significant adverse biological impact is expected from the removal of 10–15 grizzly bears from the British Columbia population over a 5-year period, and no significant adverse biological impact is expected from the removal of 10–15 grizzly bears from the Northern Continental Divide and/or Yellowstone ecosystem populations over a 5-year period. Such removals will be from areas that are outside the recovery zone, and not within 10 miles of the recovery zone line of either ecosystem. Under 50 CFR 17.80(b), the term "nonessential experimental population" means an experimental population whose loss would not be likely to appreciably reduce the likelihood of the survival of the species in the wild. The Service finds that grizzly bears to be used in the reintroduction effort meet the definition of "nonessential" because the loss of the reintroduced grizzlies is not likely to appreciably reduce the likelihood of survival of the species in the wild.

We will continue to ask private landowners and agency personnel in or around the Bitterroot ecosystem to immediately report any grizzly bear observations to us or to other authorized agencies. We will also conduct an extensive public information and education program. Public cooperation will be encouraged to ensure close monitoring of the grizzly bears and quick resolution of any conflicts that might arise. Specific information on grizzly bear reintroduction procedures can be found in Appendix 6, "Scientific Techniques for the Reintroduction of Grizzly Bears," in the Final EIS.

Status of Reintroduced Population

In accordance with section 10(j) of the Act, this rule designates grizzly bears reintroduced to the Bitterroot ecosystem as a nonessential experimental population. After reintroduction, every grizzly bear found within the Experimental Population Area will be considered a nonessential experimental animal. The primary reasons for this designation are the biological status of the grizzly and the need for management flexibility to achieve reintroduction goals. Such designation will allow these grizzly bears to be treated as a species proposed for listing for the purposes of section 7 of the Act. This designation allows us to establish a more flexible and less restrictive special rule, rather than applying the general prohibitions of the Act that otherwise apply to threatened species.

We find that protective measures and management practices under this final rule are necessary and advisable for the conservation of the grizzly. We also find that nonessential experimental status is appropriate for grizzly bears taken from wild populations and released into the Bitterroot ecosystem of east-central Idaho. Formal section 7 consultation will not be required for any proposed U.S. Forest Service activity in the Bitterroot ecosystem as a result of the experimental reintroduction of bears, and the requirements of section 7(a)(2) will not apply because there are no National Wildlife Refuges or National Parks within the Bitterroot Experimental Population Area. However, because nonessential experimental grizzly bears will be treated as a species proposed for listing, the conferencing requirements under section 7(a)(4) will apply. Presently, we envision no conflicts with any current or anticipated management actions of the U.S. Forest Service or other Federal agencies in the area. The national forests are beneficial to the reintroduction effort in that they form a natural buffer to private properties and are typically managed in a manner compatible for grizzly bears and other wildlife.

Most of the reintroduction area is composed of remote and sparsely inhabited wild lands. However, some risks to grizzly recovery are associated with take of grizzlies resulting from other land uses and various recreational activities. Potential threats are hunting, trapping, animal damage control activities, and high-speed vehicular traffic. Hunting, trapping, and USDA Wildlife Services programs are prohibited or strictly regulated by State and Federal law and policy. Very few paved or unpaved roads are in the reintroduction area or immediately outside of it. The unpaved roads typically have low levels of vehicle traffic, and are constructed for low speeds and used only seasonally. Grizzly bears, therefore, should encounter vehicles and humans infrequently. In accordance with existing labeling, the use of toxicants lethal to grizzlies is prohibited. Overall, the possible risks and threats that could impact the success of the recovery effort are thought to be minimal.

Location of the Experimental Population Area

The Bitterroot Grizzly Bear Experimental Population Area includes most of east-central Idaho and part of western Montana (see map attached to rule). This approximately 65,113-square-kilometer area (25,140-square-mile area) will include the area bounded by U.S. Highway 93 from its junction with the Bitterroot River near Missoula, Montana, to Challis, Idaho; Idaho Highway 75 from Challis to Stanley, Idaho; Idaho Highway 21 from Stanley to Lowman, Idaho; Idaho Highway 17 from Lowman to Banks, Idaho; Idaho Highway 55 from Banks to New Meadows, Idaho; U.S. Highway 95 from New Meadows to Coeur d'Alene, Idaho; Interstate 90 from Coeur d'Alene, Idaho, to its junction with the Clark Fork River near St. Regis, Montana; the Clark Fork River from its junction with Interstate 90 near St. Regis, to its confluence with the Bitterroot River near Missoula, Montana; and the Bitterroot River from its confluence with the Clark Fork River to its junction with U.S. Highway 93, near Missoula, Montana. Much of the Experimental Population Area has high-quality bear habitat with low likelihood of conflicts between grizzly bears and humans.

The proposed release site for restoring grizzly bears into east-central Idaho is on national forest land in the Selway-Bitterroot Wilderness Area. The Bitterroot Grizzly Bear Recovery Area (Recovery Area) consists of the Selway-Bitterroot Wilderness and the Frank Church-River of No Return Wilderness (approximately 14,983 square kilometers; 5,785 square miles) (see map attached to rule). The Recovery Area is located within the Experimental Population Area, and is the area where grizzly bear recovery will be emphasized. If, in the future, new wilderness areas are designated adjacent to the Recovery Area, the Citizen Management Committee may recommend to the Secretary their addition to the Recovery Area. The Secretary would have to amend this special rule to change the definition of the Recovery Area.

Management of the Reintroduced Population

This special rule establishes a 15-member Citizen Management Committee (Committee) to facilitate recovery of the experimental grizzly bear population in the Bitterroot ecosystem. The Committee will make recommendations to the land and wildlife management agencies that the Committee believes will lead to recovery of the grizzly bear in the Bitterroot ecosystem. Decisions on and implementation of these recommendations will remain the responsibility of the land and wildlife management agencies. The Idaho Department of Fish and Game, Nez Perce Tribe, Montana Department of Fish, Wildlife, and Parks, and the Forest Service, in coordination with us, will continue to exercise day-to-day management responsibility within the Experimental Population Area.

The Committee will have the authority and responsibility for various tasks relating to the experimental grizzly bear population, to include: (1) Soliciting technical advice from outside experts; (2) implementing the Bitterroot Chapter of the Grizzly Bear Recovery Plan; (3) establishing a public participation process to review Committee recommendations; (4) developing strategies to emphasize recovery in the Experimental Area; (5) developing grizzly bear-related guidance for proper camping and sanitation within the Experimental Population Area; and (6) developing a response protocol for responding to grizzly bear encounters. See question 9 of the special rule for a complete list of Committee tasks.

Two scientific advisors will be appointed to provide the Committee with ready access to independent scientific information on grizzly bears. These advisors, which will not be employed by Federal agencies involved in grizzly bear recovery, will be nonvoting members, and are to attend all Committee meetings.

The special rule provides a procedure to monitor the progress of the Committee and resolve disputes if Committee actions are not contributing to the recovery of grizzly bears in the Bitterroot ecosystem or not in compliance with this special rule. Included in this provision of the special rule is a process to establish a peer review panel of three scientists (Scientific Review Panel). The Scientific Review Panel will review issues, solicit additional information if necessary, and, using the best scientific and commercial data available, make timely recommendations to the Committee as to whether actions and decisions are in compliance with the special rule and leading to recovery of the grizzly bear in the Bitterroot ecosystem. The Scientific Review Panel process is diagrammed in Figure 1. Question 11 of the special rule contains the procedures to be followed when Committee actions are not leading to the recovery of the grizzly bear in the Experimental Population Area, including the steps that will be undertaken if the Secretary assumes lead management responsibility for the experimental population.

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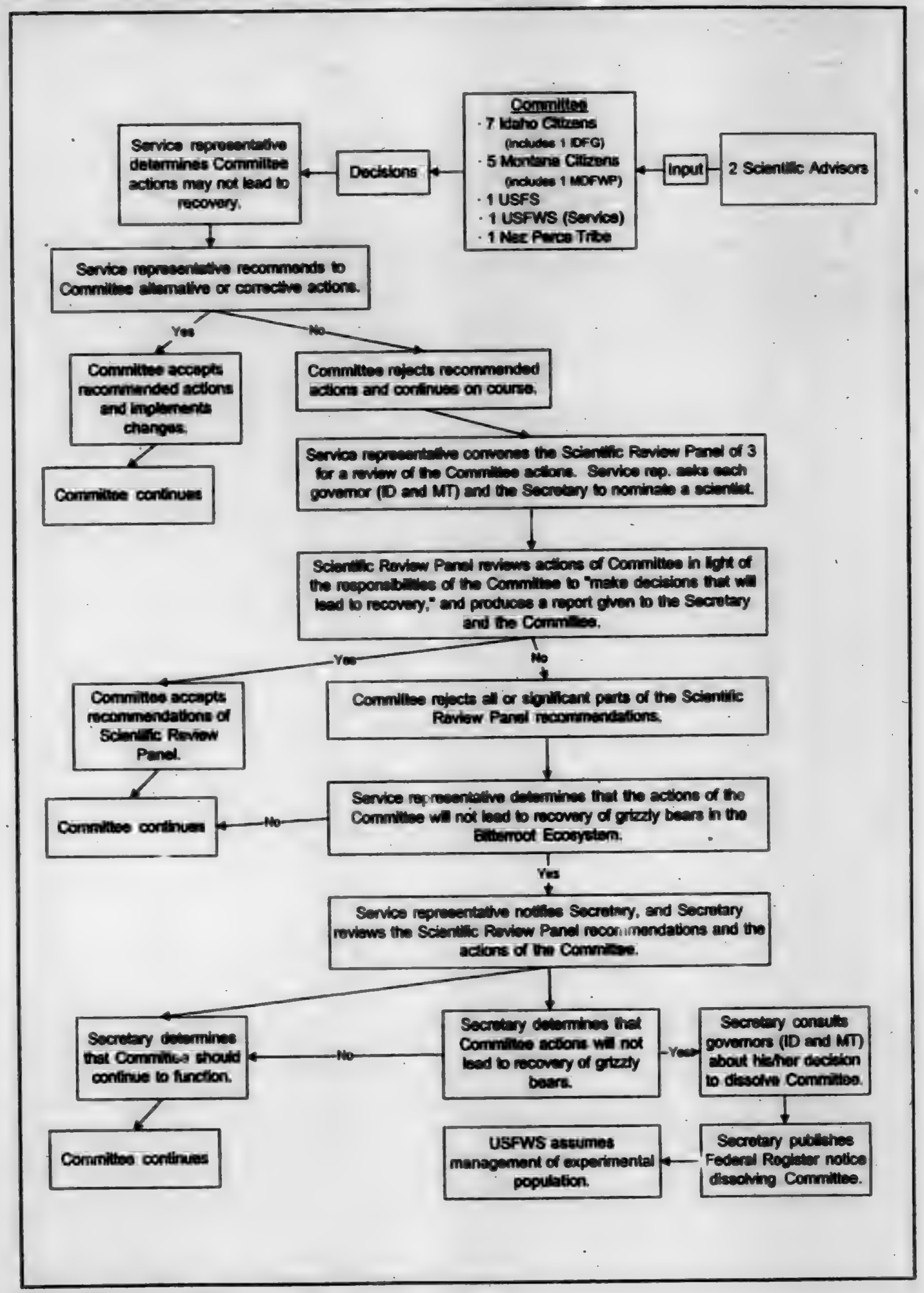
Committee
· 7 Idaho Citizens
(includes 1 IDFG)
· 5 Montana Citizens
(includes 1 MDFWP)
· 1 USFS
· 1 USFWS (Service)
· 1 Nez Perce Tribe
Input
2 Scientific Advisors
Decisions
Service representative determines Committee actions may not lead to recovery.
Service representative recommends to Committee alternative or corrective actions.
Yes
No
Committee accepts recommended actions and implements changes.
Committee continues
Committee rejects recommended actions and continues on course.
Service representative convenes the Scientific Review Panel of 3 for a review of the Committee actions. Service rep. asks each governor (ID and MT) and the Secretary to nominate a scientist.
Scientific Review Panel reviews actions of Committee in light of the responsibilities of the Committee to "make decisions that will lead to recovery," and produces a report given to the Secretary and the Committee.
Yes
No
Committee accepts recommendations of Scientific Review Panel.
Committee continues
Committee rejects all or significant parts of the Scientific Review Panel recommendations.
No
Service representative determines that the actions of the Committee will not lead to recovery of grizzly bears in the Bitterroot Ecosystem.
Yes
Service representative notifies Secretary, and Secretary reviews the Scientific Review Panel recommendations and the actions of the Committee.
Secretary determines that Committee should continue to function.
No
Secretary determines that Committee actions will not lead to recovery of grizzly bears.
Yes
Secretary consults governors (ID and MT) about his/her decision to dissolve Committee.
Committee continues
USFWS assumes management of experimental population.
Secretary publishes Federal Register notice dissolving Committee.

Figure 1. Scientific Review Panel process.

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Potential for Conflict With Federal and Other Activities

Public opinion surveys, public comments on grizzly bear management planning, and the positions taken by elected officials indicate that grizzly bears should not be reintroduced without assurances that current uses of public and private lands will not be disrupted by grizzly bear recovery activities. The Committee will emphasize the recovery of grizzly bears in the Recovery Area, but bears moving outside the Recovery Area into other parts of the Experimental Population Area will be accommodated through management provisions in the special rule and through the management plans and policies developed by the Committee.

"Emphasize the recovery" means grizzly bear management decisions in the Recovery Area will favor bear recovery so that this area can serve as core habitat for survival, reproduction, and dispersal of the recovering population. Reintroduction of bears will occur within the Recovery Area, and is specifically planned within the Selway-Bitterroot Wilderness unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate.

"Accommodate" means grizzly bears that move outside the Recovery Area onto public land in the Experimental Population Area will not be disturbed unless they demonstrate a real and imminent threat to human safety or livestock. The Committee will not recommend that bears be disturbed or moved unless conflicts, including conflicts associated with livestock, are both significant and cannot be corrected as determined by the Committee. In this case, the Committee will develop strategies to discourage grizzly bear occupancy in appropriate portions of the Experimental Population Area.

Unless the Committee determines otherwise, grizzly bears will be discouraged from occupying private lands outside the national forest boundary in the Bitterroot Valley, Montana (exclusion area). Bears entering this area will be captured and returned to the Recovery Area. If a grizzly bear enters the exclusion area, State and Federal wildlife management agencies will attempt to capture it immediately and notify the public of its presence as soon as possible. The public will be updated until the bear is caught. Further, any grizzly bear that occupies inhabited human settlement areas on private land within the Experimental Population Area that, in the judgment of the management agencies or Committee, presents a clear threat to human safety or that shows signs that it may become habituated to humans, will be relocated by management agencies or destroyed, if necessary. This provision is to prevent conflicts and possible bear-human injury or the death of bears, and to promote and enhance public safety.

No formal consultation under section 7 of the Act will be required regarding potential impacts of land uses, including resource extraction, on nonessential experimental grizzly bears. However, because the nonessential experimental grizzly bears are treated as a proposed species for listing, Federal agencies will be required to confer, in accordance with section 7(a)(4) of the Act, on actions that are likely to jeopardize the continued existence of the experimental bears. The Committee is responsible for recommending changes in land-use standards and guidelines as necessary for grizzly bear management. The Committee will develop recommendations on existing management plans and policies of land and wildlife management agencies, as necessary, for the management of grizzly bears in the Experimental Population Area. The final decision on implementation of recommendations from the Committee will be made by those agencies. If the Committee recommendations require significant changes to existing plans and policy, and the agencies tentatively agree to accept those recommendations, then the NEPA requirements may apply. Such management plans and policies will be in accordance with applicable State and Federal laws.

People can continue to kill grizzly bears in self-defense or in defense of others, with the requirement that such taking be reported within 24 hours to appropriate authorities (OMB #1018–0095). After obtaining a permit from us, a person will be allowed to harass a grizzly bear attacking livestock (cattle, sheep, horses, and mules) or bees in the Experimental Population Area provided that all such harassment is by methods that are not lethal or physically injurious to the grizzly bear and such harassment is reported within 24 hours to the appropriate authorities. We will also permit the use of livestock guard dogs to harass grizzly bears in a nonlethal fashion around livestock. A livestock owner may be issued a permit to kill a grizzly bear killing or pursuing livestock on private lands if the response protocol established by the Committee has been satisfied and it has not been possible to capture the bear or deter depredations through agency efforts. If significant conflicts between grizzly bears and livestock occur within the Experimental Population Area but outside of the Recovery Area, these could be resolved in favor of livestock by capture or elimination of the bear depending on the circumstances. We do not intend to establish a Federal compensation program for grizzly bear depredation, but compensation from existing private funding sources will be encouraged. Animal control toxicants lethal to bears are currently not used on public lands within the Recovery and Experimental Population Areas. We anticipate that ongoing animal damage control activities will not be affected by grizzly bear recovery. The Committee will review any conflicts or mortalities associated with these activities and will recommend necessary changes.

Summary of Public Participation

The proposed rule was published in the **Federal Register** on July 2, 1997 (62 FR 35762) (U.S. Fish and Wildlife Service 1997a). The proposed rule also was included as Appendix 13 of the Draft Environmental Impact Statement (Draft EIS) (U.S. Fish and Wildlife Service 1997) and was published on the Internet [illegible] http://www.r6.fws.gov/endspp/grizzly. We received public comments on the proposed rule and the Draft EIS through December 1, 1997, which included two extensions of the deadline in response to public requests for more time to comment. During October 1997, we held public hearings/open houses to gather public comments on the Draft EIS and proposed rule in seven communities on the perimeter of the Bitterroot area. Approximately 1,400 people attended these hearings, and 293 individuals testified. The dates and locations for the public hearings were: Challis, Idaho, and Hamilton, Montana (October 1); Missoula, Montana, and Lewiston, Idaho (October 2); Boise, Idaho, and Helena, Montana (October 3); and Salmon, Idaho (October 8). In addition, we held meetings with local community leaders, State leaders, and interest groups in communities around the perimeter of the proposed Recovery Area.

More than 24,000 individuals, organizations, and government agencies provided comments on the two draft documents. These comments arrived in more than 2,660 letters, Draft EIS summary forms, resolutions, and hearing testimonies. The comments received included 10 petitions with more than 21,000 signatures and 15 form letters. An interagency team of 14 employees from the Fish and Wildlife Service and the Forest Service conducted an analysis of the public comments on the Draft EIS and proposed rule in December 1997 and January 1998. We made a concerted effort to ensure that the methods used to analyze public comments were objective, reliable, and traceable. We prepared a detailed summary report, "Summary of Public Comments on the Draft Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem" and an executive summary report of 24,251 public comments and released the summary to the public in April 1998 (U.S. Fish and Wildlife Service 1998).

We reviewed and considered all written and oral comments relating to the proposed rule. Comments that specifically addressed the proposed rule were made in 33 individual letters. Numerous other comments on the draft EIS were specific to the proposed rule or related management considerations. We also considered these comments in our review of the proposed rule. We include a detailed summary of the significant issues raised in public comments on the Draft EIS and the proposed rule and our response to those issues in Chapter 5 of the Final EIS. The following summary of key changes made to the final rule as a result of issues raised in public comments on the proposed rule is abbreviated from the Final EIS Chapter 5 discussion of public comments. Refer to the Final EIS and "Summary of Public Comments on the Draft Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem" for a more comprehensive discussion of public comments on the proposed rule and Draft EIS. Both documents are available to the public (see ADDRESSES section).

Key Changes in Final Rule as a Result of Public Comment

We made the following key changes and clarifications to the final rule or to discussions in the final rule based on public comments received on the proposed rule. These changes, individually and cumulatively, do not alter the predicted effect of the final rule.

1. In response to the issues of how and where the experimental population of grizzly bears will be managed, we clarified and defined several terms in the final rule including "recovery emphasis," "accommodate," and "Recovery Area." We added a statement in paragraph (l)(2) of the final rule regarding the potential for consideration of future designated Wilderness areas for inclusion in the Recovery Area. In paragraph (l)(1) of the final rule, we modified the boundaries in the northeast end of the Experimental Population Area to use the Clark Fork River as a boundary instead of I–90, which was used in the proposed rule, because the Clark Fork River is a more logical biological boundary for the north end of the Experimental Population Area than the highway.

2. In response to the issue of effects of grizzly bears on livestock, we clarified the types of harassment permitted, including the use of livestock guard dogs around livestock.

3. The following clarifications and additions respond to the issue of human safety: If a grizzly bear enters the exclusion area in the Bitterroot Valley, State and Federal wildlife management agencies will attempt to capture it immediately, notify the public of its presence, and keep the public updated until the bear is caught. Further, any grizzly bear that occupies the exclusion area or other inhabited human settlement areas on private land within the Experimental Population Area and that presents a clear threat to human safety or whose behavior indicates that it may become habituated to humans will be relocated or destroyed by management agencies.

4. We changed the minimum time for determining the success or failure of the experimental reintroduction that the Committee must incorporate into the standards that they establish for such a determination. The proposed rule stated that the success or failure of the program cannot be measured in fewer than 10 years. After consideration of many comments, we changed the final rule to reflect our belief that absent extraordinary circumstances, the success or failure of the program cannot be measured in fewer than 20 years.

5. We added a clarification regarding how we would calculate a refined recovery goal for the Bitterroot experimental population. The proposed rule indicated that, if the Committee refines the recovery goal for the Bitterroot grizzly bear population after grizzly bears are reintroduced and occupy suitable habitats in the Experimental Population Area, the recovery goal will be consistent with the habitat available within the Recovery Area. The Committee will consider additional adjacent areas of public land for contribution of suitable grizzly bear habitat for recovery when setting the recovery goal if additional land is shown to be necessary by the best scientific and commercial data available.

6. We added several clarifications and changes to the Committee structure and function. We made these changes in response to the following public comment issues: (a) How the Committee will be selected; (b) the need for scientific expertise on the Committee; (c) the need for clarification regarding mission, operations, and authority of the Committee; (d) the need for further insulation of the Committee from political influence; and (e) the need for a process to resolve conflicts between the Secretary and the Committee. The corresponding clarifications and changes are listed below:

(a) The Governors of Idaho and Montana will include written documentation of the qualifications of each person they nominate to the Secretary, and these nominations must be made within 60 days following the request from the Secretary.

(b) The Secretary will appoint two scientific advisors to the Committee as nonvoting members, to attend all meetings and provide scientific expertise to the Committee.

(c) We added Mission and Operating Guidelines Statements for the Committee.

(d) The Committee will implement the Bitterroot Chapter of the Recovery Plan in accordance with the final rule. The Committee may also make recommendations to land and wildlife management agencies regarding changes to plans and policies, but the final decision on implementation of those recommendations will be made by those agencies. NEPA requirements may apply.

(e) The Secretary can assume lead management implementation responsibility from the Committee if the Secretary determines the Committee's decisions are not leading to recovery. The rule lays out a specific process for accomplishing this assumption of responsibility, which involves a Scientific Review Panel.

7. We changed the rule to indicate that bears outside the boundaries of the Experimental Population Area will have the status of "threatened," rather than "experimental." This is consistent with other experimental population rules.

In addition to the key changes just discussed, we have also changed the language and organization of the final rule to comply with the principles of "plain language." These changes do not affect the content of the rule.

Status of Reintroduced Grizzly Bears and Conclusion

If the status of the grizzly bear in the Bitterroot ecosystem is changed to threatened or endangered under the Act as a result of legal action or lawsuits, we will remove from the wild all reintroduced grizzly bears designated as nonessential experimental and revoke the pertinent regulations on the experimental population.

We do not foresee any likely situation that would require us to change the nonessential experimental status until the grizzly bear is recovered and delisted in the Bitterroot ecosystem according to provisions outlined in the Recovery Plan.

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that reintroducing grizzly bears into the Bitterroot ecosystem will further the conservation and recovery of the species.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this rule is a significant regulatory action (see item "d") and has been reviewed by the Office of Management and Budget. Although the significance of this action under Executive Order 12866 is not related to economic effects, we have prepared an economic assessment for this special rule. The cost-benefit portion of this assessment is presented below. A complete copy of the assessment is available upon request see ADDRESSES section.

Cost-Benefit Assessment of the 10(j) Rule

The Service proposes to undertake the reintroduction of an experimental population of grizzly bears into the Bitterroot ecosystem for three principal reasons: (1) It is the policy of the Federal government to recover federally protected listed species so that they may be removed from the protection of the Act; (2) there is no naturally occurring market for the conservation and reintroduction of federally protected species; and (3) the reintroduction is being proposed on land owned and operated by the Federal government.

As explained previously, the Act requires the Federal government to conserve listed species and the ecosystems upon which they depend. Congress enacted the Act, as they do many other Acts, because of the need for the Federal government to correct for a market failure that results in resources being allocated inefficiently. Typically, public markets are able to allocate resources in the most efficient manner as long as there are no entry or exit constraints for market participants and no individual or group of individuals are able to influence the market price. The grizzly bear, however, like other wildlife, is not a publically traded commodity. This is because wildlife, in general, exhibits public good characteristics that render the benefits enjoyed by individuals unrivaled. In other words, because the benefits exhibited by the grizzly bear can be enjoyed by many individuals without effect on the level enjoyed by others, a "free-rider" problem exists whereby individuals who value the grizzly bear have an incentive to let others pay for its provision. Under these circumstances, such goods are typically under-supplied and require the Federal government to step in and correct for this social inefficiency.

In addition to the public good characteristics of the grizzly bear, perhaps as compelling a case can be made in that the Federal government is proposing to reintroduce the grizzly bear on federally owned and operated land. As a land manager, the Federal government attempts to manage its lands in a manner that is most socially efficient. The grizzly bear is a large land mammal that requires a substantial amount of acreage to survive on its own. As a result, the Federal government is in a unique position to, among other things, manage its large land holdings to the benefit and reintroduction of the grizzly bear. As a large public landowner, the Federal government constantly tries to manage its lands in a manner that provides the greatest benefit to society. Through the Wilderness Act, Congress recognized a need for the Federal government to provide and manage some of its lands as wilderness due to its public good characteristics and the lack of a market to provide a socially optimal amount. By re-establishing the grizzly bear to a public wilderness, the Federal government is maximizing social welfare to those recipients who value true wilderness in the sense that the wilderness will more closely represent its original, primitive state.

Baseline

The Service conducted an economic analysis for the EIS, looking at effects on hunter harvest, livestock depredation, land use restrictions, human safety, visitor use and existence values. This economic assessment uses some of the information used in the EIS. We recognize that we could have chosen to proceed with grizzly bear reintroduction in the Bitterroot without a new regulatory or rulemaking action (the alternative that provided for reintroduction with full Act protection), in which case we would not have needed to promulgate a 10(j) rule. However, given our need for the public and their elected officials to lend their full support to efforts to recover the grizzly bear in the Bitterroot ecosystem, our doing so would be highly unlikely. Therefore, we have chosen to compare the economic effects of the 10(j) rule to reintroduce grizzly bears to the Bitterroot ecosystem to a "no bear" baseline (as done in the EIS), rather than a baseline that assumes full protection under the Act.

Economic Effects of the Rule

The area affected by this rule consists of a limited area of mostly designated wilderness and surrounding lands in east central Idaho and western Montana, the Bitterroot ecosystem. The Bitterroot ecosystem, as characterized by data from 10 counties in central Idaho and 4 counties in western Montana, is approximately 44,419 square miles and 76% Federal land. As of 1996, the area had a population of about 241,000; a $4.6 billion local economy; 440,570 cattle and sheep (298,000 are grazed on national forest); approximately 274,360 ungulates, with a hunter harvest of 28,023; and, received approximately $13.2 million from recreational visits to national forests annually.

Most of the reintroduction area is composed of remote and sparsely inhabited wild lands. Very few paved or unpaved roads are in the reintroduction area or immediately outside of it. These unpaved roads typically have low levels of vehicle traffic, and are constructed for low speeds and used only seasonally. Grizzly bears, therefore, should encounter vehicles and humans infrequently.

Potential Costs

One of the potential costs of grizzly bear restoration to the Bitterroot ecosystem is reduced big game hunting opportunities in hunting units/districts in or near the Recovery Area. However, we do not expect grizzly bear recovery to have any significant effect on huntable populations of ungulates in the Bitterroot ecosystem. Using Mattson's (1997) estimates of average grizzly bear predation rates of 1.4 and 5.8 ungulates per year for adult female and male bears respectively, a recovered population of 280 grizzly bears would be expected to prey upon 504 ungulates per year given a 50:50 sex ratio and a 50:50 adult-subadult ratio. This amount of loss would represent approximately 0.11% of estimated ungulate populations in the Bitterroot ecosystem, and would not measurably impact ungulate populations or hunter harvest. Of course, the impact would be significantly less until the population of grizzly bears is fully recovered, which is estimated to take 50–110 years.

A second area of potential costs associated with grizzly bear restoration to the Bitterroot ecosystem is the possibility of livestock depredation by the recovered grizzly population. Again, these costs are expected to be very low, and are expected to be minimal prior to full recovery of the population of grizzly bears in the Bitterroot ecosystem. Via a mathematical equation using depredation rates from the Yellowstone and Northern Continental Divide ecosystems in relation to total livestock in each of these ecosystems, we estimated that after a recovered population of 280 grizzly bears is achieved, depredation incidents involving livestock would take from 4 to 8 cattle, and from 5 to 44 sheep annually. The calculation of lost value due to this depredation is straightforward. The lost value per year is equal to the estimated number of lost animals per year times the market value of those animals. Given the average value per cow of $565 and the average value per sheep of $92 (average values as of 1996 according to Montana and Idaho Departments of Agricultural Statistics as cited in U.S. Fish and Wildlife Service 2000), we estimate that between $2,720 and $8,568 per year in livestock predation losses would occur after grizzly bears are fully recovered. It is possible that a private compensation program (such as exists for the gray wolf recovery program) will be set up to lessen the impact of these costs to individual ranchers. If this were the case, the impact of livestock losses would be shifted from the individual ranchers to contributors to such a fund.

We expect that any land use restrictions due to the restoration of grizzly bears to the Bitterroot ecosystem would be minor and temporary, and would not result in lost economic value in recreational activities, timber harvest, or mineral extraction. This conclusion is based on the experience of the Interagency Grizzly Bear Committee, a group composed of officials of the Service, the Forest Service, the Bureau of Land Management and state wildlife offices, and responsible for coordinating management of grizzlies in nearby locations.

It is expected that any land use restrictions on recreation due to the restoration of grizzly bears to the Bitterroot would not result in lost economic value. While some visitors may be inconvenienced due to occasional temporary trail closures, this inconvenience is unlikely to result in any appreciable loss of economic value as, based on experience in other areas where grizzly bears exist, such closures will be rare and use will shift to trails elsewhere. Regulations specific to outfitters operating within the Recovery Area and backcountry recreationists, including horsepackers and river rafters, may be promulgated at some future time requiring the use of bear-proof garbage and food containers and methods when in the backcountry.

While these regulations would necessarily involve some economic impact to the outfitter and the public, we do not anticipate that this impact would be substantial in any respect. The cost of bear-proofing an outfitter's camp can vary depending on the method of protection used. For a small outfitter, slings and pulleys may run as much as $50 to $100 dollars. For larger outfitters, electric fencing or containers could run $1,000 dollars. For very large outfitters with multiple camps the total cost could be $2,000 to $3,000. It is very unlikely that outfitters would reduce operations in the recovery area due to increased costs of bear-proof containers. Big game outfitting on USFS lands is allocated through special use permits. These permits are, in many areas, highly valued assets of the outfitter's business. It is unlikely that an outfitter would either abandon or underutilize their permit because of the cost of purchasing bearproof containers. The cost of the containers when amortized across the outfitter's clients over the life of the containers would represent a very small portion of the total operating expense that the outfitters face.

Timber harvest and mineral extraction are land use activities that are compatible with bear recovery as long as they meet the standards and guidelines of the Forest Service's Forest Plans. Current Forest Plans for the Clearwater and Nez Perce National Forests outside of wilderness areas are adequate for grizzly bear recovery, and we do not anticipate that this grizzly bear reintroduction will result in an economic effect on current timber harvest plans or mineral extraction. It is anticipated that future Forest Plans will continue to manage for grizzly bears as the Forest Service is required by the Act to carry out programs for the conservation of this and other listed species, the Forest Service has been an active member of the Interagency Grizzly Bear Committee, and undeveloped lands will only become more rare and valuable to the continued existence of wildlife in the future.

We examined the costs to human safety and found these to be relatively small. In the Bitterroot ecosystem, during the first several decades following reintroduction, chance of injury caused by grizzly bears would be exceedingly small due to the low density of bears in the area. Projections for human injury once bears are recovered 50–110+ years in the future, are less than one injury per year and approximately one grizzly bear-induced human mortality every few decades. Backcountry precautions, primarily keeping human foods away from bears, dramatically reduces human-grizzly bear incidents. The potential of encounters between people and grizzly bears is low, and injury rates for the Bitterroot are expected to be similar to the rates for areas outside of the national parks where grizzly bears exist.

For comparison, we used human injury rates from areas with similar circumstances: The Northern Continental Divide ecosystem and the Yellowstone ecosystem outside of Glacier and Yellowstone National Parks, respectively. Human-bear interactions in a national park are much more numerous than would be expected in the remote Bitterroot wilderness, and the statistics are not comparable. In northwest Montana (outside of Glacier Park) and northern Idaho, only two bear-inflicted injuries (one mortality) have occurred in the last 50 years. In the Bob Marshall Wilderness in 1956 a hunter shot and injured a grizzly bear that responded by mortally injuring him. In the Mission Valley in 1985, a bird hunter shot and wounded a grizzly that responded by injuring him. In the Yellowstone ecosystem outside of Yellowstone National Park, there have been 22 injuries due to grizzly bears (including 3 mortalities) within the last 159 years, for an average of one mortality every 53 years.

Given that mortalities in both of these areas average one every 50 years, and the generally accepted range of values for a human life is $4–10 million, cost in human mortalities is expected to average approximately 80,000–200,000 per year. Costs have only been monetized for human mortality. Human injury is also an additional potential cost, but was not determined for this assessment.

A potential cost is a decrease in visitation of the area by the public. However, changes in visitor use are difficult to anticipate. While some individuals might wish to see a grizzly bear in the wild, others might wish to avoid the possibility of encountering one. The costs of decreased visitation was not estimated.

Finally, the cost for the actual reintroduction is expected to be approximately $433,600 per year for the 5-year reintroduction period (U.S. Fish and Wildlife Service 2000). This includes the cost of capturing and transplanting bears ($90,600), monitoring and management of the population ($173,000), travel expenses of the Citizen Management Committee

($20,000), and initial costs for sanitation, outreach, and law enforcement activities by the Forest Service ($150,000). Annual costs for monitoring and citizen management is expected to be approximately $193,000 for each year beyond the 5-year reintroduction period.

SUMMARY OF POTENTIAL COSTS ASSOCIATED WITH THE 10(J) RULE

	Potential annual cost ($)
Big game hunting	Insignificant.
Livestock depredation	2,720–8,568.[1]
Bear-proofing	Not quantified as annual cost.
Timber harvest	Insignificant.
Mineral extraction	Insignificant.
Human mortality	80,000–200,000.[1]
Human injury	Not determined.[2]
Reduction in visitation	Not determined.
Costs of monitoring/management.	193,000.[3]
Total	275,720–401,568.

[1] Costs expected to be significantly lower initially (approaching zero), reaching these amounts after 50–110 years.

[2] Costs expected to be significantly lower initially with projections of one injury/year after 50–110 years.

[3] Costs expected to be $433,632 for the initial 5 years.

Potential Benefits

Grizzly bears are a high-profile species with interest nationwide. A survey of Yellowstone National Park visitors found that respondents ranked the grizzly bear highest among wildlife species they would most like to see on their trip to the park. Restoration of grizzly bears in the Bitterroot ecosystem would further increase national awareness of the presence of this species in the lower 48 States.

Existence value is the value a person associates with the knowledge that a resource exists, even if that person has no plans or expectations of ever directly using that resource. People may hold this value for a number of reasons. In this case, the resource being valued is a recovered or recovering population of grizzly bears in the Bitterroot ecosystem. Since existence values potentially affect everyone in the country, some of these impacts fall to individuals outside of the Bitterroot ecosystem. Because the presence of grizzly bears completes both the biological component of the ecosystem and the wilderness experience, existence benefits are expected to result from the reintroduction.

Another potential benefit is an increase in visitation of the area by the public. However, as stated in the "Potential Costs" section, changes in visitor use are difficult to anticipate. No monetary value is given to benefits from visitor use in this assessment.

Cost-Benefit Summary

We anticipate no significant costs to land use activities on public or private land with regard to hunting, timber harvest, mining, or public access/recreational use. Annual costs associated with livestock depredation, equipment for outfitters to bear-proof camps, risk to human safety, and management and monitoring of the population of grizzly bears are estimated to be approximately $275,720–401,568 or more (depending on costs for bear-proofing by outfitters). It is uncertain what the net visitation impacts will be. They were not quantified in this assessment. Existence value benefits are expected to result from this rule.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The rule would allow management of grizzly bears by government agencies and the public to minimize conflicts over uses of public lands, effects on domestic animals and livestock, and impacts on ungulate populations. A Citizen Management Committee would be authorized to manage implementation of the experimental population and would be tasked with implementing the Bitterroot Chapter of the Grizzly Bear Recovery Plan. Reintroduction could result in grizzly bear recovery in the Bitterroot ecosystem (achievement of the tentative recovery goal of approximately 280 grizzly bears occupying suitable habitat) in a minimum of 50 years (4% growth rate), although recovery would likely require more than 110 years (2% growth rate after the bears were released.

(b) This rule will not create inconsistencies with other agencies' actions. Nonessential experimental population designations under section 10(j) of the Act reduces both the interagency consultation requirements (with other Federal agencies) and "taking" restrictions of the Act. The reintroduction of grizzly bears will occur on Federal public lands managed by the U.S. Forest Service. The action allowed by this rulemaking is consistent with the policies and guidelines of the Forest Service. Because of the substantial regulatory relief provided by nonessential experimental population designations, we do not believe the reintroduction of these bears will conflict with existing or proposed human activities or hinder public use of the Bitterroot ecosystem.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients because we expect minimal impacts or restrictions to existing human uses of the Bitterroot ecosystem.

(d) This rule will raise a novel policy issue. We have previously promulgated more than a dozen section 10(j) rules for experimental populations of other listed threatened and endangered species in various localities since 1984. However, this is the first experimental population rule that establishes a management process that includes a Citizen Management Committee. For this reason, the rule is a significant regulatory action in accordance with Executive Order 12866.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

We certify that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We have determined that the small entities most likely to be affected by this rule are producers of domestic livestock. There are 4,327 farms within the 14 counties covering the Bitterroot grizzly bear primary analysis area in central Idaho and western Montana. As discussed above, grizzly depredation on domestic livestock would likely be minimal during the estimated 50–110+ years until the population of grizzly bears in the Bitterroot ecosystem is fully recovered. We estimate that after a recovered population of 280 grizzly bears is achieved, depredation incidents involving livestock would be from 4 to 8 cattle and from 5 to 44 sheep per year. Prior to full recovery, depredation losses are expected to be below these estimated levels. In a worst-case situation, depredation could impact 52 out of 4,327 farms, which would not constitute a substantial number of small entities (U.S. Fish and Wildlife Service 2000).

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined that designation of a nonessential experimental population of grizzly bears in the Bitterroot ecosystem will not cause: (a) Any effect on the economy of $100 million or more; (b) any major increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Based upon the analysis of identified factors, we have determined that no individual industries within the United States will be significantly affected, and no changes in the demography of populations are anticipated. The intent of this special rule is to facilitate and continue the existing commercial activity while providing for the conservation of the grizzly bear through reintroduction to suitable habitat.

Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.)

We have determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, that this final rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

The management responsibility for the reintroduced population will rest with a Citizen Management Committee created by the Secretary. This Committee will involve local people in the management of this population. Travel and per diem for non-Federal members of this Committee and funding for the function of this Committee will come from the Service.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This designation will not "take" private property and will not alter the value of private property. More than 75% of the area included in the nonessential experimental population area is on Federal lands.

Federalism

In accordance with Executive Order 13132, this rule will not affect the structure or role of States and will not have direct, substantial, or significant effects on States. Also, our economic analysis indicates that considerable economic benefits would result from the designation.

In keeping with Department of the Interior policy, the Service requested information from and coordinated development of the proposal with appropriate State resource agencies in Idaho and Montana. In addition, both States participated in the development of the EIS. The Service will continue to coordinate any future designation of experimental population status with the appropriate State agencies.

Civil Justice Reform

In accordance with Executive Order 12988, we have further determined that this regulation does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. We have made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule contains collections of information requiring the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* Authorization for this information collection has been approved by OMB and has been assigned control number 1018–0095. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

A Final EIS on the reintroduction of the grizzly bear in the Bitterroot ecosystem has been prepared and is available to the public (see **ADDRESSES**). The Final EIS should be referred to for analysis of the Preferred Alternative chosen in the Record of Decision.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have closely coordinated this rule with the Nez Perce Indian Tribe, which has been involved in development of the rule, and determined that there are no effects.

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Author

The principal author of this final rule is Dr. Christopher Servheen (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend section 17.11(h) by revising the table entry for "Bear, grizzly (=brown)" under "MAMMALS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Bear, grizzly (=brown).	*Ursus arctos*	Holarctic	U.S.A., conterminous (lower 48) States, except where listed as an experimental population.	T	1,2D,9	NA	17.40(b)
Do	......do	......do	U.S.A. (portions of ID and MT, see 17.84(l)).	XN	706	NA	17.84(l)
*	*	*	*	*	*	*	

3. Amend section 17.84 by adding paragraph (l) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(l) Grizzly bear (*Ursus arctos*).

(1) *Where does this special rule apply?* The special rule in this paragraph (l) applies to the designated Bitterroot Grizzly Bear Experimental Population Area (Experimental Population Area), which is found within the species' historic range and is defined as follows:

The boundaries of the Experimental Population Area are delineated by U.S. 93 from its junction with the Bitterroot River near Missoula, Montana, to Challis, Idaho; Idaho 75 from Challis to Stanley, Idaho; Idaho 21 from Stanley to Lowman, Idaho; State Highway 17 from Lowman to Banks, Idaho; Idaho 55 from Banks to New Meadows, Idaho; U.S. 95 from New Meadows to Coeur d'Alene, Idaho; Interstate 90 from Coeur d'Alene, Idaho, to its junction with the Clark Fork River near St. Regis, Montana; the Clark Fork River from its junction with Interstate 90 near St. Regis to its confluence with the Bitterroot River near Missoula, Montana; and the Bitterroot River from its confluence with the Clark Fork River to its junction with U.S. Highway 93, near Missoula, Montana (See map at the end of this paragraph (l)).

(2) *What is the legal status of the grizzly bear?*

(i) The grizzly bear is listed as "threatened" in § 17.11 (h) and protected under this part. However, the grizzly bear population to which this paragraph (l) applies is considered a nonessential experimental population in accordance with section 10(j) of the Act.

(ii) We have determined that, as of December 18, 2000, no grizzly bear population exists in the Experimental Population Area. We find, in accordance with § 17.81 (b), that the reintroduction of grizzly bears as a nonessential experimental population, as defined in § 17.81 (b), will further the conservation of the species and will be consistent with provisions of section 10(j) of the Act, which requires that an experimental population be geographically separate from other nonexperimental populations of the same species. We also find, in accordance with § 17.81 (c)(2), that the experimental population of grizzly bears in the Experimental Population Area is not essential to the survival of the species in the wild.

(iii) Grizzly bears within the Experimental Population Area and the Recovery Area will be accommodated through management provisions provided for in this paragraph (l) and through management plans and policies developed by the Citizen Management Committee (Committee; see paragraph (l)(6) of this section). After reintroduction, every grizzly bear found within the Experimental Population Area will be considered a member of the nonessential experimental population.

(iv) In the conterminous United States, a grizzly bear that is outside the Experimental Population Area identified in paragraph (l)(1) of this section will be considered as threatened.

(3) *Where will grizzly bears be released, and where will recovery be emphasized?*

The Bitterroot Grizzly Bear Recovery Area identifies the area of recovery emphasis within the Experimental Population Area. The Recovery Area consists of the Selway-Bitterroot Wilderness and the Frank Church-River of No Return Wilderness (See map at the end of paragraph (l) of this section). All reintroductions will take place in the Selway-Bitterroot Wilderness unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate. If, in the future, new wilderness areas are designated adjacent to the Recovery Area, the Committee may recommend to the Secretary their addition to the Recovery Area. The Secretary would have to amend this paragraph (l) to change the definition of the Recovery Area.

(4) *What activities are prohibited in the Experimental Population Area?*

(i) You may not take (see definition in § 10.12 of this subchapter) any grizzly bear in the Experimental Population Area, except as provided in this paragraph (l). We may refer unauthorized take of grizzly bears to the appropriate authorities for prosecution.

(ii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any grizzly bear or parts thereof that are taken from the Experimental Population Area or possessed in violation of the regulations in this paragraph (l) or in violation of applicable State wildlife conservation laws or regulations or the Act.

(iii) You may not attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this paragraph (l).

(5) *What activities are allowed in the Experimental Population Area?*

(i) For purposes of this paragraph (l), except for persons engaged in hunting or shooting activities, you will not be in violation of the Act for "unavoidable and unintentional take" (see definition in paragraph (l)(16) of this section) of grizzly bears within the Experimental Population Area when such take is incidental to a legal activity and is not a result of negligent conduct lacking reasonable due care, and when due care was exercised to avoid the taking. Any taking must be reported within 24 hours to appropriate authorities as listed in paragraph (l)(5)(iii) of this section. Persons lawfully engaged in hunting or shooting activities must correctly identify their target before shooting in order to avoid illegally shooting a grizzly bear. Shooting a grizzly bear as a result of mistaking it for another species is considered a lack of reasonable due care. The act of taking a grizzly bear that is wrongly identified as another species may be referred to appropriate authorities for prosecution.

(ii) Any person with a valid permit issued by us may take grizzly bears in the Experimental Population Area for scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes. Such permits must be consistent with the Act, with management plans adopted for the nonessential experimental population, and with applicable State wildlife conservation laws and regulations.

(iii) You may take grizzly bears in the Experimental Population Area in self-defense or in defense of the lives of others. Such taking must be reported within 24 hours as to date, exact location, and circumstances to the Grizzly Bear Recovery Coordinator, University Hall, Room 309, University of Montana, Missoula, Montana 59812 (406–243–4903); or the Assistant Regional Director for Law Enforcement, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503–231–6125); or the Assistant Regional Director for Law Enforcement, P.O. Box 25486, DFC, Denver, Colorado 80225 (303–236–7540); and either the Idaho Department of Fish and Game, P.O. Box 25, Boise Idaho 83707 (208–334–3700); or the Montana Department of Fish, Wildlife and Parks, 1420 E. Sixth Avenue, Helena, Montana 59620 (406–444–2535); and Nez Perce Tribal authorities (208–843–2253) (as appropriate).

(iv) Livestock owners may obtain a permit from the Service, and the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, or appropriate Tribal authorities to harass (see definition in § 17.3) grizzly bears found in the Experimental Population Area that are actually pursuing or killing livestock (to include permitting the use of livestock guard dogs around livestock to harass such grizzly bears). Prior to issuance of such a permit, authorized State, Federal, or Tribal officials must document pursuit or killing of livestock. All such harassment must be accomplished by an opportunistic, noninjurious method (see definition of "opportunistic, noninjurious harassment" in paragraph (l)(16) of this section) to the grizzly bear, and such harassment must be reported within 24 hours as to date, exact location, and circumstances to the authorities listed under paragraph (l)(5)(iii) of this section.

(v) Livestock owners may obtain a permit from the Service, and the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks or appropriate Tribal authorities to take grizzly bears on private lands found in the Experimental Population Area in a manner other than harassment as defined in this paragraph (l), in order to protect livestock actually pursued or being killed on private property. Prior to issuance of such a permit, authorized State, Federal, or Tribal officials must document pursuit or killing of livestock. Any response protocol established by the Committee must have been satisfied and efforts to capture depredating grizzly bears by Service or State or Tribal wildlife agency personnel must have proven unsuccessful. All such taking must be reported as to date, exact location, and circumstances within 24 hours to the authorities listed under paragraph (l)(5)(iii) of this section.

(vi) Any authorized employee or agent of the Service or appropriate State wildlife agency or Nez Perce Tribe who is lawfully designated for such purposes, when acting in the course of official duties, may take a grizzly bear from the wild in the Experimental Population Area if such action is necessary to:

(A) Aid a sick, injured, or orphaned grizzly bear;

(B) Dispose of a dead grizzly bear, or salvage a dead grizzly bear that may be useful for scientific study;

(C) Take a grizzly bear that constitutes a demonstrable but nonimmediate threat to human safety or that is responsible for depredations to lawfully present domestic animals or other personal property, if otherwise eliminating such depredation or loss of personal property has not been possible, and after eliminating such threat by live-capturing and releasing the grizzly bear unharmed in the area defined in paragraph (l)(2) of this section or other areas approved by the Committee has been demonstrated not to be possible;

(D) Move a grizzly bear for genetic management purposes;

(E) Relocate grizzly bears within the Experimental Population Area to improve grizzly bear survival and recovery prospects; or (F) Relocate a grizzly bear to avoid conflict with human activities. However, grizzly bears in the Experimental Population Area will not be disturbed unless they demonstrate a real and imminent threat to human safety, livestock, or bees. Unless the Committee determines otherwise, this rule provides that on private lands outside the national forest boundary in the Bitterroot Valley, Montana (exclusion area), any human/grizzly conflicts will be considered unacceptable. Grizzly bear occupancy will be discouraged in the exclusion area, and grizzly bears found there will be captured and returned to the Recovery Area, or placed in captivity, or destroyed, depending on the history of each bear. If a grizzly bear enters the exclusion area, State and Federal wildlife management agencies will attempt to capture it immediately and notify the public of its presence as soon as possible. The public will be kept updated until the bear is caught. Further, any grizzly bear that occupies inhabited human settlement areas on private land within the Experimental Population Area that, in the judgment of the management agencies or Committee, presents a clear threat to human safety or whose behavior indicates that it may become habituated to humans, will be relocated or destroyed by management agencies.

(6) *How will local citizens be involved in the management of the Bitterroot nonessential experimental grizzly bear population?*

(i) The Secretary will establish a Citizen Management Committee for the Bitterroot grizzly bear experimental population and will authorize management implementation responsibility as described in paragraph (l)(9) of this section, in consultation with the Governors of Idaho and Montana. As soon as possible after the effective date of this rule, the Secretary will organize the Committee by requesting nominations of citizen members from the Governors of Idaho and Montana and the Nez Perce Tribe and nominations of agency members by represented agencies.

(ii) The Committee will be composed of 15 members serving 6-year terms. Appointments may initially be of lesser terms to ensure staggered replacement.

(A) Membership will consist of seven individuals appointed by the Secretary based upon the recommendations of the Governor of Idaho, five members

appointed by the Secretary based upon the recommendations of the Governor of Montana, one member representing the Nez Perce Tribe appointed by the Secretary based on the recommendation of the Nez Perce Tribe, one member representing the Forest Service appointed by the Secretary of Agriculture, and one member representing the Fish and Wildlife Service appointed by the Secretary. Members recommended by the Governors of Idaho and Montana will be based on the recommendations of interested parties and will include at least one representative each from the appropriate State wildlife agencies. If either Governor or the Tribe fails to make recommendations within 60 days, the Secretary (or his/her designee) will accept recommendations from interested parties, and will make the appointments.

(B) The Committee will consist of a cross-section of interests reflecting a balance of viewpoints, and members are to be selected for their diversity of knowledge and experience in natural resource issues, and for their commitment to collaborative decision-making. In their recommendations to the Secretary, the Governors of Idaho and Montana will attach written documentation of the qualifications of those nominated relating to their knowledge of, and experience in, natural resource issues and their commitment to collaborative decision-making.

(C) Except for the representatives from Federal agencies, the Committee will be selected from communities within and adjacent to the Recovery and Experimental Population Areas.

(D) The Secretary will fill vacancies as they occur with the appropriate members based on the recommendation of the appropriate Governor, the Nez Perce Tribe, or agency.

(7) *Will independent scientific information be readily available to the Committee?*

The Secretary will appoint two scientific advisors to the Committee as nonvoting members to attend all meetings of the Committee and to provide scientific expertise to the Committee. These scientific advisors will not be employed by Federal agencies involved in grizzly bear recovery. The Secretary will contact the Wildlife Society Chapters in Idaho and Montana and the Universities of Idaho and Montana for nominations and will select one wildlife scientist representing each State and appoint them as advisors to the Committee.

(8) *What is the overall mission of the Committee, and how will it operate?*

(i) The mission of the Committee is to facilitate recovery of the grizzly bear in the Bitterroot ecosystem by assisting in implementing the Bitterroot ecosystem chapter of the recovery plan (Bitterroot Ecosystem Recovery Plan Chapter—Supplement to the Grizzly Bear Recovery Plan, U.S. Fish and Wildlife Service, Missoula, Montana, 1996). The Committee will make recommendations to land and wildlife management agencies that it believes will lead to recovery of the grizzly bear. Decisions on, and implementation of, these recommendations are the responsibility of the land and wildlife management agencies.

(ii) The Committee will meet a minimum of two times per year. These meetings will be open to the public. Additionally, the committee will provide reasonable public notice of meetings, produce and provide written minutes of meetings to interested persons, and involve the public in its decision-making process. This public participation process will allow members of the public and/or special interest groups to have input to Committee decisions and management actions.

(9) *What authority will the Committee have, and what will be its primary tasks?*

The Committee will have the authority and the responsibility to carry out the following functions:

(i) Developing a process for obtaining the best biological, social, and economic data. This process will include an explicit mechanism for soliciting peer-reviewed, scientific articles on grizzly bears and their management, and holding periodic public meetings not less than every 2 years, in which qualified scientists may submit comments to and be questioned by the Committee. The two scientific advisors will lead this process. The Committee will base its decisions upon the best scientific and commercial data available. All decisions of the Committee, including components of its management plans, must lead toward recovery of the grizzly bear in the Bitterroot ecosystem and minimize social and economic impacts to the extent practicable within the context of the existing recovery goals for the species.

(ii) Soliciting technical advice and guidance from outside experts. The scientific advisors will lead the development of an ongoing process to provide the Committee with the best scientific and commercial data available. The scientific advisors will provide this information in the form of peer-reviewed scientific articles on grizzly bears and their management, Committee meetings with presentations by scientific experts, and requests to State and Federal management agencies and the private sector for scientific expertise and advice.

(iii) Implementing the Bitterroot Ecosystem Chapter of the Grizzly Bear Recovery Plan consistent with this paragraph (l). The Committee will develop recommendations on existing management plans and policies of land and wildlife management agencies, as necessary, for the management of grizzly bears in the Experimental Population Area. The Committee will make recommendations to land and wildlife management agencies regarding changes to plans and policies, but the final decision on implementation of those recommendations will be made by those agencies. If Committee recommendations require significant changes to existing plans and policy, and the agencies tentatively agree to accept those recommendations, then the requirements of the National Environmental Policy Act may apply. Such management plans and policies will be in accordance with applicable State and Federal laws. The Committee will give full consideration to Service comments and opinions and those of the Forest Service, Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe.

(iv) Providing means by which the public may participate in, review, and comment on the decisions of the Committee. The Committee must thoroughly consider and respond to public input prior to making decisions.

(v) Developing its internal processes, where appropriate, such as governance, decision-making, quorum, terms of members, officers, meeting schedules and location, public notice of meetings, and minutes.

(vi) Requesting staff support from the Service, the Idaho Department of Fish and Game, Montana Department of Fish, Wildlife and Parks, Forest Service, other affected Federal agencies, and the Nez Perce Tribe, when necessary to perform administrative functions, and requesting reimbursement from us for non-Federal Committee members for costs associated with travel, lodging, and incidentals.

(vii) Reviewing existing grizzly bear standards and guidelines used by the Forest Service and other agencies and landowners. The Committee will perform an annual review of grizzly bear mortalities and the number and location of bear/human conflicts. This review will be the primary mechanism to assess the adequacy of existing management techniques and standards. If the

Committee deems such standards and guidelines inadequate for recovery of grizzly bears, the Committee may recommend changes to the Forest Service and other agencies and landowners.

(viii) Developing grizzly bear guidance for proper camping and sanitation within the Experimental Population Area and making recommendations to land management agencies for adoption of such guidelines. Existing camping and sanitation procedures developed in other ecosystems with grizzly bears will serve as a basis for such guidelines.

(ix) Developing a protocol for responding to grizzly/human encounters, livestock depredations, damage to lawfully present property, and other grizzly/human conflicts within the Experimental Population Area. Any response protocol developed by the Committee will have to undergo public comment and be revised as appropriate based on comments received. Any conflicts or mortalities associated with these activities will result in review by the Committee to determine what the Committee may do to help prevent future conflicts or mortalities. The Committee will recommend, as necessary, policy changes on trail restrictions for human safety to appropriate wildlife and land management agencies.

(x) Recommending to the Service changes to recovery criteria, including mortality limits, population determinations, and other criteria for recovery as appropriate.

(xi) Reviewing all human-caused grizzly bear mortalities to determine whether new measures for avoiding future occurrences are required and make recommendations on such measures to appropriate land and wildlife management agencies. If grizzly bear mortalities occur as a result of black bear hunting, the Committee will work with the State Fish and Game Departments in both Idaho and Montana to develop solutions to minimize the effects on grizzly bears of black bear hunting.

(xii) Developing strategies to emphasize recovery inside the Recovery Area and to accommodate grizzly bears inside other areas of the Experimental Population Area.

(A) Grizzly bears may range outside the Recovery Area because grizzly bear habitat exists throughout the Experimental Population Area. The Committee will not recommend that bears be disturbed or moved unless conflicts are both significant and cannot be corrected as determined by the Committee. This provision includes conflicts associated with livestock, for which the Committee will develop strategies to discourage grizzly bear occupancy in portions of the Experimental Population Area outside of the Recovery Area.

(B) Unless the Committee determines otherwise, this rule provides that private land outside the national forest boundary in the Bitterroot Valley, Montana (exclusion area), is an area where any human/grizzly conflicts will be considered unacceptable. Grizzly bear occupancy will be discouraged in these areas, and grizzly bears will be captured and returned to the Recovery Area. If a grizzly bear enters the exclusion area, State and Federal wildlife management agencies will attempt to capture it immediately and notify the public of its presence as soon as possible. The public will be kept updated until the bear is caught. Further, any grizzly bear that occupies the exclusion area or other inhabited human settlement areas on private land within the Experimental Population Area that, in the judgment of the management agencies or Committee, presents a clear threat to human safety or whose behavior indicates that it may become habituated to humans, will be relocated or destroyed by management agencies.

(xiii) Establishing standards for determining whether the experimental reintroduction has been successful and making recommendations on the inclusion of such standards in the Grizzly Bear Recovery Plan. These standards will be based on the best scientific and commercial information available and will reflect that, absent extraordinary circumstances, the success or failure of the program cannot be measured in fewer than 20 years. General guidelines for the standards by which failure will be measured include, but are not limited to, one or more of the following conditions:

(A) If, within the number of years established by the Committee following initial reintroduction, no relocated grizzly bear remains within the Experimental Population Area and the reasons for emigration or mortality cannot be identified and/or remedied; or

(B) If, within the number of years established by the Committee following initial reintroduction, no cubs of the year or yearlings exist and the relocated bears are not showing signs of successful reproduction as evidenced by no cubs of the year or yearlings.

(xiv) Developing procedures for the expeditious issuance of permits described in paragraphs (l)(5)(iv) and (l)(5)(v) of this section, and making recommendations on such procedures to appropriate agencies.

(xv) Developing 2-year work plans for the recovery effort for submittal to the Secretary pursuant to paragraph (l)(11)(i) of this section.

(xvi) Establishing, based on the best available science, a refined interim recovery goal for the Bitterroot Ecosystem Chapter of the Grizzly Bear Recovery Plan and a final recovery goal when sufficient information is available and after grizzly bears are reintroduced and occupy suitable habitats in the Experimental Population Area. As this information becomes available, the Committee may recommend the recovery goal to the Secretary along with procedures for determining how this goal will be measured. The recovery goal for the Bitterroot grizzly bear population will be consistent with the habitat available within the Recovery Area. Additional adjacent areas of public land can be considered for contribution of suitable habitat when setting the recovery goal if additional land is shown to be necessary by the best scientific and commercial data available. Any recommendations for revised recovery goals developed by the Committee will require public review and our approval as appropriate prior to revision of any recovery plan. Grizzly bears outside the Recovery Area and within the Experimental Population Area can contribute to meeting the recovery goal if their long-term occupancy in such habitats outside the Recovery Area is reasonably certain.

(10) *What agencies will be responsible for day-to-day management activities?*

The Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, the Nez Perce Tribe, and the Forest Service, in coordination with us, will exercise day-to-day management responsibility within the Experimental Population Area in accordance with this paragaraph (l). The Service and these cooperating agencies will share management responsibility as per agreements with, and in consideration of, recommendations from the Committee.

(11) *How will progress of the Committee be monitored; and what process will be followed by the Secretary to resolve disputes over whether Committee actions are leading to recovery?*

(i) The Secretary or our representative on the Committee will review the Committee's 2-year work plans (see paragraph (l)(9)(xv) of this section). If the Secretary determines, through our representative on the Committee, that the Committee's decisions, work plans, or the implementation of those plans are not leading to the recovery of the grizzly bear within the Experimental Population Area or are not in compliance with this paragraph (l), our representative will ask the Committee to determine whether such a decision, plan, or implementation of a plan is leading to recovery and is in compliance with this paragraph (l). The Secretary, who retains final responsibility and authority for implementation of the Act, will review the Committee's determination, as provided in paragraphs (l)(11)(ii) through (iv) of this section, and then make a final determination. Should the Secretary find that a decision, work plan, or implementation of a plan by the Committee is inadequate for recovery of the grizzly bear or is not in compliance with this paragraph (l), the Secretary may assume lead management responsibility.

(ii) The Service representative will consider Committee input before making any determination that Committee actions are not leading to recovery or are not in compliance with this paragraph (l). In the event that our representative on the Committee determines that the actions of the Committee are not leading to recovery of the Bitterroot grizzly bear population or are not in compliance with this paragraph (l), he or she will recommend to the Committee, based on the best scientific and commercial data available, alternative or corrective actions and provide 6 months for the Committee to accomplish those actions. Should the Committee reject these corrective actions, our representative will convene a Scientific Review Panel of three and will submit to the panel for review those Committee actions or decisions that he or she has determined are not leading to recovery or are not in compliance with this paragrpah (l). The Service representative will consider the views of all Committee members prior to convening a Scientific Review Panel.

(iii) Members of the Scientific Review Panel will be professional scientists who have had no involvement with the Committee and are not employed by Federal agencies responsible for grizzly bear recovery efforts. The Secretary will select one member of the panel, and the Governors of Idaho and Montana in consultation with the Universities of Idaho and Montana (respectively), will select one panel member each. The Scientific Review Panel will review Committee actions or decisions, solicit additional information if necessary and, using the best scientific and commercial data available, make timely recommendations to the Committee as to whether Committee actions will lead to recovery of the grizzly bear in the Bitterroot ecosystem and are in compliance with paragraph (l). Examples of Committee actions, decisions, or lack of actions that can be submitted to the Scientific Review Panel include, but are not limited to, the following: sufficiency of public involvement in Committee activities; decisions involving sanitation and outreach activities; management of nuisance bears; adequacy of recommendations to land and wildlife management agencies; adequacy of Committee actions in addressing issues such as excessive human-caused grizzly bear mortality; and other actions important to recovery of the grizzly bear in the Bitterroot ecosystem. Committee compliance with paragraph (l) provides the basis for the recommendations of the Scientific Review Panel.

(iv) If, after timely review, the Committee rejects the recommendations of the Scientific Review Panel, and our representative determines that Committee actions are not leading to recovery of the Bitterroot population, he or she will notify the Secretary. The Secretary will review the Panel's recommendations and determine the disposition of the Committee.

(A) If the Secretary determines that the Committee should maintain lead management responsibility, the Committee will continue to operate according to the provisions of this paragraph (l) until the recovery objectives under paragraph (l)(9)(xvi) of this section or the Bitterroot Ecosystem Chapter of the Recovery Plan have been met and the Secretary has completed delisting.

(B) If the Secretary decides to assume lead management responsibility, the Secretary will consult with the Governors of Idaho and Montana regarding that decision and further attempt to resolve the disagreement. If, after such consultation, the Secretary assumes lead management responsibility, the Secretary will publish a notice in the **Federal Register** explaining the rationale for the determination and notify the Governors of Idaho and Montana. The Committee will disband, and all requirements identified in this paragraph (l) regarding the Committee will be nullified.

(12) *How will the Bitterroot grizzly bear population be monitored?*

The reintroduced population will be monitored closely by Federal and State agencies in cooperation with the Committees for the duration of the recovery process, generally by use of radio telemetry as appropriate.

(13) *How will success or failure of the project be evaluated?*

The status of Bitterroot grizzly bear recovery will be reevaluated separately by the Committee and by the Secretary at 5-year intervals. This review will take into account the reproductive success of the grizzly bears released, human-caused mortality, movement patterns of individual bears, food habits, and overall health of the population and will recommend changes and improvements in the recovery program. Evaluating these parameters will assist in determining success or failure of the restoration.

(14) *What process will be followed if the Secretary determines the project has failed?*

(i) If, based on the criteria established by the Committee, the Secretary, after consultation with the Committee, the Governors of Idaho and Montana, the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe, determines that the reintroduction has failed to produce a self-sustaining population, this paragraph (l) will not be used to reintroduce additional bears. Any remaining bears will retain their experimental status.

(ii) Prior to declaring the experimental reintroduction a failure, we will investigate the probable causes of the failure. If the causes can be determined, and legal and reasonable remedial measures identified and implemented, we will consider continuing the recovery effort and maintaining the relocated population. If such reasonable measures cannot be identified and implemented, we will publish the results of our evaluation in the **Federal Register** in a proposed rulemaking to terminate the authority for additional experimental grizzly bear reintroductions in the Bitterroot ecosystem.

(15) *Will the legal status of grizzly bears in the Experimental Population Area change?*

We do not intend to change the "nonessential experimental" designation to "essential experimental," "threatened," or "endangered" and foresee no likely situation that would result in such changes. Critical habitat cannot be designated under the nonessential experimental classification, 16 U.S.C. 1539(j)(2)(C)(ii).

(16) *What are the definitions of key terms used in the special rule in this paragraph (l)?*

In addition to terms defined in § 10.12 and 17.3 of this subchapter, the following terms apply to this paragraph (l):

Accommodate means allowing grizzly bears that move outside the Recovery Area onto public land in the

Experimental Population Area to remain undisturbed unless they demonstrate a real and imminent threat to human safety or livestock.

Citizen Management Committee (Committee) means that Committee described in paragraph (l)(6) of this section.

Current range means the area inside or within 10 miles of the recovery zone line of currently occupied grizzly bear recovery zones or any area where there is a grizzly bear population, as defined in this paragraph (l)(16).

Exclusion area (Bitterroot Valley) means those private lands in Montana lying within the Bitterroot Experimental Population Area in the Bitterroot Valley outside the Bitterroot National Forest boundary south of U.S. Highway 12 to Lost Trail Pass and west of Highway 93.

Experimental Population Area (Bitterroot Grizzly Bear Experimental Population Area) means that area delineated in paragraph (l)(1) of this section within which management plans developed as part of the Committee described in paragraph (l)(9) of this section will be in effect. This area includes the Recovery Area. The Experimental Population Area is within the historic range of the grizzly bear, but geographically separate from the current range of the grizzly bear.

Geographically separate means separated by more than 10 miles. The term refers to "wholly separate geographically" in section 10(j)(2) of the Act. The Experimental Population Area and the recovery zone boundary of any existing grizzly bear population must be geographically separate.

Grizzly bear population is defined by verified evidence within the previous 6 years which consists of photos within the area, verified tracks, or sightings by reputable scientists or agency personnel of at least two different female grizzly bears with young or one female with different litters in 2 different years in an area geographically separate from other grizzly bear populations. Verifiable evidence of females with young, to be geographically separate, would have to occur greater than 10 miles from the nearest nonexperimental grizzly bear population recovery zone boundary.

Opportunistic, noninjurious harassment means harassment (see definition of "harass" in § 17.3) that occurs when the grizzly bear presents itself (for example, the bear travels onto and is observed on private land or near livestock). This paragraph (l) permits only this type of harassment. You cannot track, attract, search out, or chase a grizzly bear and then harass it. Any harassment must not cause bodily injury or death to the grizzly bear. The intent of harassment permitted by this definitioin is to scare bears away from the immediate area.

Recovery Area (Bitterroot Grizzly Bear Recovery Area) means the area of recovery emphasis within the Experimental Population Area, and is delineated in paragraph (l)(2) of this section. This area consists of the Selway-Bitterroot and Frank Church-River of No Return Wilderness areas. The Recovery Area is within the historic range of the species.

Recovery emphasis means grizzly bear management decisions in the Recovery Area will favor bear recovery so that this area can serve as core habitat for survival, reproduction, and dispersal of the recovering population. Reintroduction of grizzly bears is planned to occur within the Selway-Bitterroot Wilderness portion of the Recovery Area unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate.

Unavoidable and unintentional take means accidental, unintentional take (see definition of take in § 10.12 of this subchapter) that occurs despite reasonable care, is incidental to an otherwise lawful activity, and is not done on purpose. An example would be striking a grizzly bear with an automobile. Taking a grizzly bear by shooting will not be considered unavoidable and unintentional take. Shooters have the responsibility to be sure of their targets.

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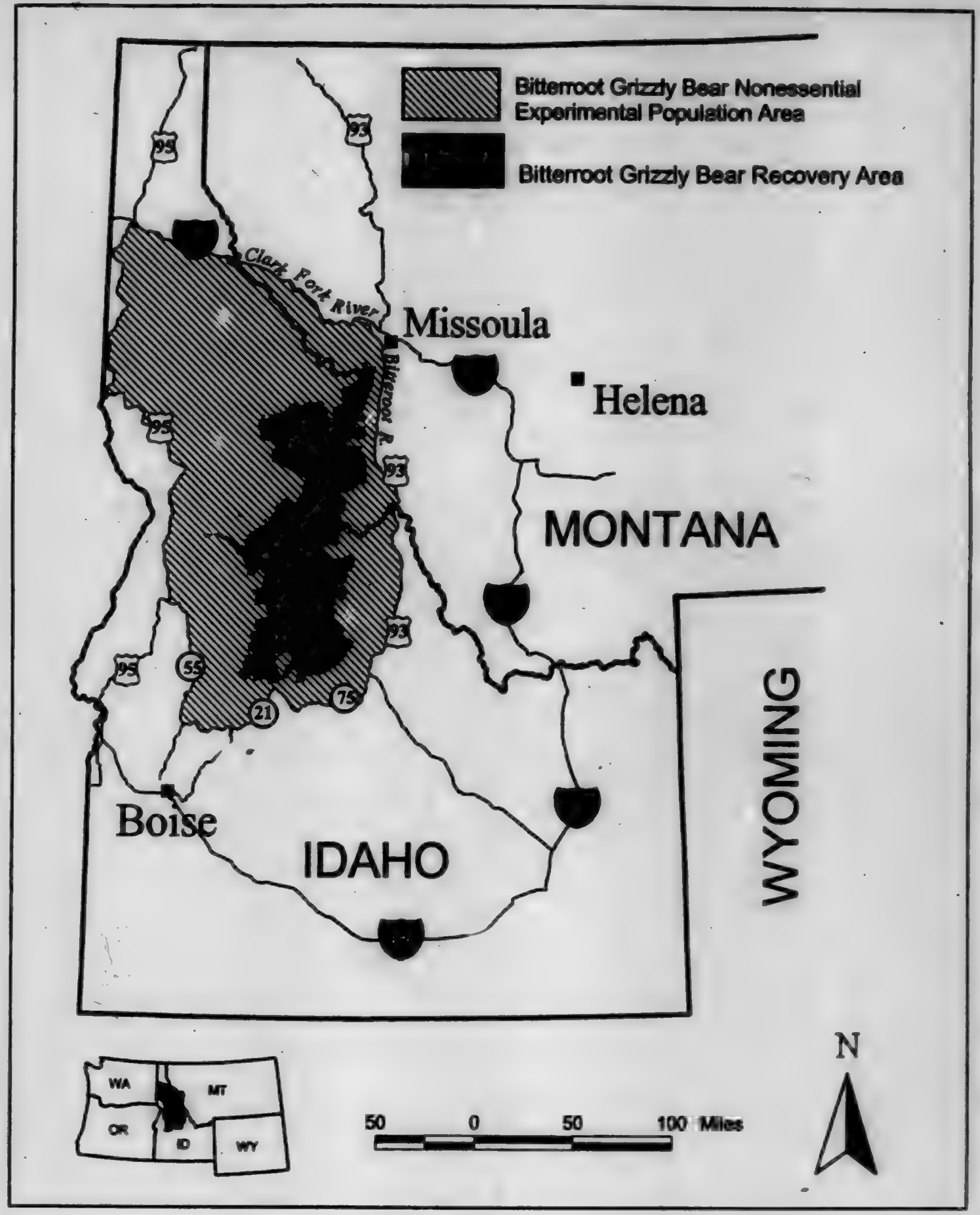
▨ Bitterroot Grizzly Bear Nonessential Experimental Population Area
■ Bitterroot Grizzly Bear Recovery Area
Clark Fork River
Missoula
Helena
Bitterroot R.
MONTANA
IDAHO
Boise
WYOMING
95
93
55
21
75
WA
MT
OR
ID
WY
50
0
50
100
Miles
N

Dated: November 14, 2000.

Kenneth L. Smith,

Acting Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 00–29530 Filed 11–16–00; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Record of Decision Concerning Grizzly Bear Recovery in the Bitterroot Ecosystem

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Fish and Wildlife Service (Service) issues this Record of Decision (ROD) and Statement of Findings upon consideration of the Final Environmental Impact Statement (FEIS) for the Recovery of the Grizzly Bear in the Bitterroot Ecosystem.

The Service has considered alternatives and evaluated their impacts for the recovery of the grizzly bear (*Ursus arctos horribilis*) in the Bitterroot Ecosystem of east central Idaho and western Montana as presented in the FEIS. We have solicited public and agency comments and considered these comments in the NEPA process and in making our decision. Based on that evaluation and review, the Service has decided to implement the Proposed Action Alternative as described in the FEIS. This determination was based on a thorough analysis of environmental, social, economic, and other considerations.

ADDRESSES: Additional copies of this ROD may be requested from Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, Bitterroot Grizzly Bear FEIS, P.O. Box 5127, Missoula, Montana 59806, or e-mail "fw6_bitterroot@fws.gov." The document also is available for viewing and downloading at "http://www.r6.fws.gov/endspp/grizzly/."

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, at the above address, or telephone (406) 243–4903.

SUPPLEMENTARY INFORMATION:

Background

The intent of this action is to recover the threatened grizzly bear in the Bitterroot Ecosystem. Grizzly bears are a part of America's rich wildlife heritage and once ranged throughout most of the western United States. However, distribution and population levels of this species have been diminished by excessive human-caused mortality and loss of habitat. Today, only 1,000 to 1,100 grizzly bears remain in a few populations in Montana (Northern Continental Divide, Yellowstone, and Cabinet-Yaak Ecosystems), Idaho (Yellowstone, Cabinet-Yaak, and Selkirk Ecosystems), Wyoming (Yellowstone Ecosystem), and Washington (Selkirk and North Cascades Ecosystems). Wildlife species, like grizzly bear, are most vulnerable when confined to small portions of their historical range and limited to a few, small populations. Expansion of the range of the species will increase the number of bears within the lower 48 United States, increase habitat size and extent, and further conservation of the species.

The Bitterroot Ecosystem is one of the largest contiguous blocks of Federal land remaining in the lower 48 United States. The core of the ecosystem contains two wilderness areas which comprise the largest block of wilderness habitat in the Rocky Mountains south of Canada. Of all remaining unoccupied grizzly bear habitat in the lower 48 States, this area in the Bitterroot Mountains has the best potential for grizzly bear recovery, primarily due to the large wilderness area. As such, the Bitterroot Ecosystem offers excellent potential to support a healthy population of grizzly bears and to boost long-term survival and recovery prospects for this species in the contiguous United States.

The Selected Alternative

The Selected Alternative is the Proposed Action as described in the FEIS. The purpose of this alternative is to restore grizzly bears to central Idaho, designate this population as "nonessential experimental," and implement provisions within sections 4 and 10(j) of the Endangered Species Act (ESA) to conduct special management to address local concerns. A Citizen Management Committee (CMC) will be tasked with management implementation responsibilities for the Bitterroot grizzly bear experimental population. The "experimental population" designation gives the Service the flexibility to promulgate a special rule that applies only to the reintroduced population. Protections established by the special rule can thus be tailored to specific areas and specific local conditions. Because these reintroduced grizzly bears will be classified as an experimental population, the Service can institute management practices that address local concerns about excessive government regulation on private lands, uncontrolled livestock depredation, excessive big game predation, and lack of State government and local citizen involvement in the program. The Service considers this a "nonessential" experimental population because several additional populations exist within the 48 conterminous United States and, as such, its loss would not be likely to appreciably reduce the likelihood of the survival of the species in the wild.

The Bitterroot Grizzly Bear Experimental Population Area (Experimental Population Area), which includes most of central Idaho and part of western Montana, will be established by the Service under authority of section 10(j) of the ESA. The Experimental Population Area encompasses approximately 25,140 square miles. This will include the area bounded by U.S. Highway 93 from its junction with the Bitterroot River near Missoula, Montana, to Challis, Idaho; Idaho Highway 75 from Challis to Stanley, Idaho; Idaho Highway 21 from Stanley to Lowman, Idaho; Idaho Highway 17 from Lowman to Banks, Idaho; Idaho Highway 55 from Banks to New Meadows, Idaho; U.S. Highway 95 from New Meadows to Coeur d'Alene, Idaho; Interstate 90 from Coeur d'Alene, Idaho, to its junction with the Clark Fork River near St. Regis, Montana; the Clark Fork River from its junction with Interstate 90 near St. Regis, to its confluence with the Bitterroot River near Missoula, Montana; and the Bitterroot River from its confluence with the Clark Fork River to its junction with U.S. Highway 93, near Missoula, Montana. The best scientific evidence available indicates there are no grizzly bears in the Experimental Population Area at this time. Ongoing grizzly bear monitoring efforts will continue.

The Service will designate a Bitterroot Grizzly Bear Recovery Area (Recovery Area) to consist of the Selway-Bitterroot Wilderness and the Frank Church-River of No Return Wilderness. The Recovery Area, a portion of the Experimental Population Area, encompasses approximately 5,785 square miles. The Recovery Area is the area of recovery emphasis. This means grizzly bear management decisions in the Recovery Area will favor bear recovery, allowing this area to serve as core habitat for survival, reproduction, and dispersal of the recovering population.

During the first few months of implementation a CMC will be formed. The CMC will be tasked with management implementation responsibilities by the Secretary of the Department of the Interior, in consultation with the governors of Idaho and Montana, for the Bitterroot grizzly bear nonessential experimental population. The CMC will be comprised of local citizens and agency representatives from Federal and State agencies and the Nez Perce Tribe. Two scientific advisors will be appointed by the Secretary to the CMC as non-voting members, to attend all meetings and provide scientific expertise to the CMC. The CMC will be responsible for recommending changes in land-use standards and guidelines as necessary for grizzly bear management. Recommendations made by the CMC to land and wildlife management agencies will be subject to review and final decisions on implementation will be made by the responsible agency. All decisions of the CMC including components of its management plans must lead toward recovery of the grizzly bear and minimize social and economic impacts to the extent practicable within the context of the existing recovery goals for the species. Grizzly bear management will allow for resource extraction activities to continue.

Subject to availability of funding, grizzly bears will be reintroduced into the Selway-Bitterroot Wilderness portion of the Recovery Area during the second year of implementation. Specific reintroduction sites will be identified by the land and wildlife management agencies and the CMC. The Service, in coordination with the Forest Service, States of Idaho and Montana, Nez Perce Tribe, and the CMC will release a minimum of 25 grizzly bears into the Recovery Area over a period of 5 years. In order to increase the probability of survival of the initial bears, we will consider accelerating the release of the bears in the first few years, as appropriate, and in coordination with the CMC. The origin of bears for placement will include areas more than 10 miles beyond existing recovery zone lines in the Yellowstone and Northern Continental Divide Ecosystems, and British Columbia and Alaska (nonsalmon-eating bears), as appropriate. Bears will be removed from source populations only if there is no significant impact to population health or recovery. This release will be no sooner than 1 year after initiation of formation of the CMC and initiation of sanitation and information efforts.

Bears moving outside the Recovery Area will be accommodated through management provisions in a final Special Rule and through recommendations on land and wildlife management plans and policies developed by the CMC, unless potential conflicts are significant and cannot be corrected. The term "accommodate" means grizzly bears that move outside the Recovery Area onto public land in the Experimental Population Area will not be disturbed unless they demonstrate a real threat to human safety or livestock.

People can continue to kill grizzly bears in self-defense or in defense of others, provided that such taking is reported within 24 hours to appropriate authorities. Grizzly bears will be managed according to existing grizzly bear guidelines, except in the case of grizzly bears on private land that are killing livestock and could not be captured by management authorities. In such cases, landowners will be issued a permit by the Service and the Idaho Fish and Game Department, or the Montana Department of Fish, Wildlife, and Parks, or appropriate Tribal authorities. Following issuance of a permit by the Service and the Idaho Fish and Game Department, or the Montana Department of Fish, Wildlife, and Parks, or appropriate Tribal authorities, the permittee will be allowed to harass, through noninjurious means, a grizzly bear attacking livestock (cattle, sheep, horses, and mules) or bees. A livestock owner may be issued a permit to kill a grizzly bear killing or pursuing livestock on private lands if it has not been possible to capture such a bear or deter depredations through agency efforts. If significant conflicts occur between grizzly bears and livestock within the Experimental Population Area outside of the Recovery Area, these can be resolved in favor of the livestock by agencies capturing or eliminating the bear, depending on the circumstances. There will be no Federal compensation program for livestock losses, but compensation from existing private funding sources will be encouraged.

It is anticipated that ongoing animal damage control activities will not be affected by grizzly bear recovery. Animal control toxicants lethal to bears are not used on public lands within the Recovery Area and the Experimental Population Area. Any conflicts or mortalities associated with these activities will result in a review by the CMC, and any necessary changes will be recommended by the CMC.

The selected alternative will be implemented as an overlapping staged process. The initial stage will be formation of the CMC. The second stage will be simultaneous with CMC formation and will include efforts to decrease the availability of human-related foods to wildlife by increasing the availability of bear-proof garbage storage containers in campgrounds and facilities in and around the Recovery Area. The sanitation program will include efforts by the Forest Service, permittees, and private landowners in and around the Recovery Area. The second stage also will include an enhanced information effort to inform people who recreate in the area how to minimize their chances of encountering bears. Public education efforts will include—presentations at schools in and around the Recovery Area to teach children about grizzly bears and how to recreate safely in grizzly bear country; presentations to all civic clubs and interested organizations about grizzly bears and how to recreate safely in grizzly bear country; and placing of informative signs at all trail heads in and around the Recovery Area. The third stage will be placement of bears, which will begin after the CMC has been established and the sanitation and information programs have begun.

The selected alternative represents the environmentally preferable alternative which balances the biological needs of recovering grizzly bears and public concerns about the potential management of non-experimental grizzly bear populations under the ESA. Establishment of the nonessential experimental population as proposed under this alternative will require promulgation of a final special rule. This alternative offers the most efficient and realistic plan to result in the recovery of grizzly bears in the Bitterroot Ecosystem, given concerns of local residents over grizzly bear restoration. The nonessential experimental population designation under section 10(j) of the ESA will allow for flexible and responsive management to minimize the potential negative impacts of grizzly bears to private property, big game populations, other listed or sensitive species, and other natural resource programs on private and public lands. The CMC will be tasked with management responsibilities for this grizzly bear population to address local concerns.

In order to implement the Proposed Action Alternative in the FEIS, the Service is required to publish a regulation to establish a nonessential experimental population of grizzly bears. When such a special rule establishing the experimental population is promulgated, the Service will administer the regulation in the manner described in the FEIS and this ROD. This will require cooperation with and by other agencies within the Department of the Interior, including but not limited to the Bureau of Land Management and the Bureau of Indian Affairs, and the Department of Agriculture, including but not limited to the Forest Service and Wildlife Services. The Service also will cooperate with the States of Wyoming, Idaho, and Montana, the Nez Perce and other potentially affected Indian Tribes, and various other individuals within the United States and Canadian governments.

Implementation of this decision is contingent upon the Service receiving adequate appropriations, so that the current level of funding for Service activities in other grizzly bear recovery areas will not be compromised.

Other Alternatives Considered

Other than the proposed action, the major alternatives considered and evaluated were:

Alternative 1A. Restoration of Grizzly Bears as a Nonessential Experimental Population with Service Management Alternative. Grizzly bears would be reintroduced to central Idaho and designated as a nonessential experimental population. The Service would manage this grizzly bear population under provisions of section 10(j) of the ESA to address local concerns. The nonessential experimental designation would allow flexibility in the Service management of the population such that negative impacts to private property, big game populations, other listed species, and other natural resource programs on private and public lands could be minimized. However, this alternative does not address one of the most substantive issues from public comment on the proposal—the issue of necessity for local control and input into resource management decisions affecting local citizens. Given the contentious nature of this proposal, and the local opposition to Federal management actions, the Service believes the probability of successfully recovering grizzly bears in the Bitterroot Ecosystem will be maximized by actively involving local citizens in management of the restored population.

Alternative 2. The No Action Alternative—Natural Recovery. This alternative describes the implications of current management activities, assuming these will continue over the next 50+ years. A description of this course of no action provides a reference point to compare and evaluate environmental consequences associated with other alternative plans. The overall environmental effects of taking no action would likely result in no recovery of grizzly bears in the Bitterroot Ecosystem, although it may result in grizzly bear repopulation in 100–160 years. Given existing information, it is very unlikely that grizzly bears would disperse from currently occupied areas and successfully repopulate the Bitterroot Ecosystem naturally. If grizzly bears did disperse to the Bitterroot Ecosystem they would be protected as threatened under the ESA. This would result in less management flexibility for the Service to resolve local concerns about land use restrictions on public land, predation on big game herds and potential loss of hunting opportunity, and livestock depredation.

Alternative 3. The No Grizzly Bear Alternative. This alternative would prevent grizzly bear recovery in the Bitterroot Ecosystem by changing current laws and allowing unrestricted take of grizzly bears by the public. This alternative would prohibit restoration of the currently missing native grizzly bear from the largest block of wilderness habitat in the Rocky Mountains south of Canada. Under this alternative, the potential contribution of an additional population of grizzly bears to the recovery effort in the conterminous United States would never be realized. Also, none of the economic and social benefits or costs associated with the presence of a restored grizzly bear population would occur. This alternative would require new legislation by Congress to change the ESA, and legislation by the States of Idaho and Montana to change State laws that protect grizzly bears in the Bitterroot Ecosystem.

Alternative 4. Restoration of Grizzly Bears as a Threatened Population with Full Protection of the ESA and Habitat Restoration Alternative. This alternative would achieve recovery through reintroduction of a threatened population of grizzly bears and extensive habitat protection and enhancement to promote natural recovery. Primary grizzly bear management responsibility would reside with the Service and include active participation by the States and the Nez Perce Tribe. A 10-member Scientific Committee would be established to perform additional research, implement reintroduction of bears, and monitor results of the program. Certain actions in this alternative, such as the road management plan to obliterate a large number of roads to achieve a road density of 0.25 mile/square mile and the elimination of timber harvest in all roadless areas, are not necessary actions to achieve grizzly bear recovery, and thus decrease the efficiency with which this alternative could achieve recovery in the Bitterroot Ecosystem. Also, reintroduction of a threatened population would allow less management flexibility to address local concerns about livestock depredation, restrictions to natural resource programs on public and private lands, and impacts to other wildlife species. Based on numerous public comments on this proposal, the Service believes the probability of successfully recovering grizzly bears in the Bitterroot Ecosystem will be maximized by actively involving local citizens in management of the restored population

Alternative 4A. Restoration of Grizzly Bears as a Threatened Population with Full Protection of the ESA and Service Management Alternative. This alternative would achieve recovery through reintroduction of a threatened population of grizzly bears with the Service managing recovery of the population. Other Federal and State agencies and the Nez Perce Tribe would assist the Service with management activities. A 10-member Scientific Advisory Committee would be appointed to make recommendations regarding research needs and strategies for reintroduction and monitoring of grizzly bears. Reintroduction of a threatened population would allow less management flexibility to address local concerns about livestock depredation, restrictions to natural resource programs on public and private lands, and impacts to other wildlife species.

Minimization of Impacts

Possible project impacts and public concerns, and methods to be used to mitigate those impacts and concerns were addressed as follows:

(1) Lack of local public involvement in the management of the reintroduced species was addressed by development of the CMC concept;

(2) Lack of sufficient scientific input was addressed by adding two scientific advisors to the CMC to be nominated by the Universities of Idaho and Montana, and requiring the CMC to use the best available science in decision-making;

(3) Public safety on private lands in the Bitterroot Valley, Montana, was addressed by making these private lands an exclusion zone where any grizzly bear would be immediately captured and relocated into the wilderness or destroyed if necessary;

(4) Possibility of political interference from the Secretary of the Department of the Interior on the CMC was addressed by establishing a scientific review panel that would be formed if the Service representative determined (after consultation with the CMC) that the CMC was not making decisions that would lead to recovery;

(5) Concern about removal of bears from existing threatened populations was addressed by clarifying that bears will not be removed from within the United States grizzly bear recovery zones or within 10 miles of bear recovery zones so as to not remove any

bears from these core areas for any listed population;

(6) Concern that the CMC would make land management decisions on public lands was addressed by clarifying that the CMC will not make land management decisions on public lands, but may make only recommendations about changes in public land management or public hunting seasons, and any changes regarding these issues would have to be made with public involvement by the land management or State fish and game agencies after complying with NEPA or other appropriate laws;

(7) Adequacy of the habitat in the Bitterroot Ecosystem was addressed by adding an appendix report from the Craighead Wildlife-Wildlands Institute documenting the abundance and distribution of grizzly bear food groups in the Bitterroot Ecosystem, and by a habitat-based population assessment by Dr. Mark Boyce of the University of Alberta detailing how many grizzly bears can be expected to live in the Bitterroot Ecosystem;

(8) Lack of a corridor between the Bitterroot Ecosystem and areas where grizzlies presently exist was addressed by noting that the linkage zone evaluation task in the recovery plan will be completed in 2000, and will identify where possible linkage zones exist and what can be done to maintain the opportunities for such linkage in the future; and,

(9) Impacts to listed steelhead and salmon species will be minimized through Service adherence to the conservation recommendations of the National Marine Fisheries Service Biological Opinion for this project dated May 1998.

Significant New Issues Raised from Comments Received on the FEIS

The Service appreciates all comments on the FEIS, and the high level of public interest and participation throughout the NEPA process for this proposal. The Service received a number of comments during the 30-day time period following publication of the notice of availability of the FEIS. Approximately 14,800 total comments were received from individuals, organizations, and government agencies, which included 800 letters and 14,000 form letters/postcards. The Service reviewed all public comments prior to developing this ROD. The majority of comments received were directed at registering opposition or support to the reintroduction of grizzly bears into the Bitterroot Ecosystem. Many comments were essentially votes which contained a statement of opinion, and were not substantive input to environmental issues or alternatives to correct or improve the content of the FEIS and ROD.

The majority of substantive issues raised in the FEIS comments were identical or similar to issues raised during three previous public comment periods for this proposal. These issues have been addressed by the Service throughout the NEPA process in the following documents, incorporated here by reference—"Final Environmental Impact Statement on Grizzly Bear Recovery in the Bitterroot Ecosystem" (U.S. Fish and Wildlife Service 2000); "Summary of Public Comments on the Draft Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem" (U.S. Fish and Wildlife Service 1998); "Draft Environmental Impact Statement on Grizzly Bear Recovery in the Bitterroot Ecosystem" (U.S. Fish and Wildlife Service 1997); "Summary of Public Comments on the Scoping of Issues and Alternatives for Grizzly Bear Recovery in the Bitterroot Ecosystem" (U.S. Fish and Wildlife Service 1995); "Summary of Public Comments on the Notice of Intent to Prepare an Environmental Impact Statement for the Reintroduction of Grizzly Bears to the Bitterroot Ecosystem" (U.S. Fish and Wildlife Service 1995).

A few new issues were raised during the 30-day time period following the notice of availability of the FEIS. Response to these new issues are listed below.

Issue 1—Several commentors suggested that we accelerate reintroduction with more than 5 bears per year and use more than 25 total bears if more bears are available. Other comments suggested using bears from Alaska.

Response—The Service recognizes that accelerating reintroduction would foster recovery of the grizzly by increasing their probability of survival in the first few years, and we will consider increasing the number of bears released in the first few years, as appropriate. We will coordinate any such decision with the CMC. The Service also will consider the possibility of reintroducing interior Rocky Mountain (non-salmon eating) bears from Alaska as appropriate, and will coordinate any such decision with the CMC.

Issue 2—Some commentors asked why we did not consider essential experimental status in the range of alternatives in the FEIS.

Response—The term "essential" experimental population means an experimental population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. The Service has always considered a reintroduced Bitterroot population to be "nonessential" experimental because several additional populations exist within the 48 conterminous United States and, as such, its loss would not be likely to appreciably reduce the likelihood of the survival of the species in the wild.

Issue 3—Some commentors continue to question the suitability of the habitat data including those data presented in Appendix 21D, the report on the abundance and distribution of grizzly bear food plant groups in the Salmon-Selway Ecosystem. Other comments questioned why the Recovery Area does not include certain areas in the Bitterroot Ecosystem that contain quality food sources.

Response—The Service believes that the data on bear foods presented in the FEIS are the best data available and demonstrate the sufficiency of the habitat to support a grizzly bear population. Under the Proposed Action Alternative grizzly bears are expected to occupy the areas outside the recovery emphasis area and will be accommodated so they can continue to live in these areas. Accommodate means allowing grizzly bears that move outside the Recovery Area onto public land in the Experimental Population Area to remain undisturbed unless they demonstrate a real and imminent threat to human safety or livestock. However, as recovery proceeds, the Service and the CMC will cooperate to continue to increase the available knowledge and consider new information on the distribution and abundance of bear foods in the Bitterroot Ecosystem; and will use such knowledge to make management decisions to promote recovery. The Service is committed to using the best data available.

Issue 4—Some commentors stated that the implementation of the Proposed Action Alternative would be in conflict with existing Forest management plans and would require the Forest Service to issue a ROD in order to implement the Proposed Action Alternative.

Response—The Service has consulted with the Forest Service on this concern, and the Forest Service does not see any conflicts with existing forest management plans nor does the Forest Service see the need to issue an EIS and a ROD to concur with the Proposed Action Alternative of the Service.

Issue 5—Some commentors suggested that the Scientific Review Panel needs specific timeframes for response and that the governors should not have the ability to appoint two of the three members.

Response—The Service believes that specific timeframes would be unwarranted given the varied nature of considerations in which this panel would be involved, and notes that the process protocol for the Scientific Review Panel will be laid out clearly in the Special Rule. We also believe that it is important for the appointment of members of the Panel to be a shared responsibility in order to have shared ownership of the results of the panel review. The process of the Scientific Review Panel will be an open public process and the Service believes that appointment of inappropriate members of the panel would be contrary to the Special Rule. Also, the Secretary has the responsibility to consider the recommendations of the Scientific Review Panel but is not bound by their recommendations as to the future of the CMC.

Issue 6—Some commentors were concerned that there is no guarantee that any voting members of the CMC would be scientists and felt that the science advisors should be voting members.

Response—Representation on the CMC is expected to include scientists from State and Federal agencies and the CMC is directed to use the best available scientific information in making decisions as per their charter. The Service also believes that having the scientific advisors attending as non-voting members will actually make their input and comments less subject to pressure and influence than scientists from the respective States who are voting members. The CMC process and meetings will be open to the public. If the input of the scientific advisors is not sought by the CMC or if their input is ignored in CMC decisions, then this will be public knowledge and the CMC will have to explain their actions. If the advice of the scientific advisors is ignored to the point that the decisions of the CMC are not leading to recovery, the Secretary's representative will inform the CMC of this and of the possible empaneling of the Scientific Review Panel. This Scientific Review Panel could recommend that the input of the scientific advisors should be heeded and remind the CMC that they are bound to use the best available science. Thus, the Service believes there are sufficient checks and balances in the process to assure that the input of the scientific advisors will be used by the CMC.

Issue 7—One commentor stated that the CMC will only review the plans and policies of agencies, and not projects that may jeopardize the continued existence of an experimental species, and believes this does not meet the standard of the ESA.

Response—Meeting section 7 responsibilities is not a responsibility of the CMC. If a Federal agency determines that its action might jeopardize the continued existence of the species, the agency shall conference with the Service, as per the mandates of section 7(a)(4) and section 10(j)(2)(C) of the ESA.

Issue 8—Some commentors asked where the wording is in section 10 of the ESA that allows delegation of decision-making authority to the CMC.

Response—The authority for creation of the CMC is contained in section 4(f)(2) of the ESA where it states, "The Secretary, in implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons." Under this authority, the CMC is tasked with specific responsibilities for recovery by implementing the recovery program in the Bitterroot Ecosystem. Further, section 4(f)(2) of the ESA states that appointments of such groups to develop and implement recovery plans ". . . shall not be subject to the Federal Advisory Committee Act." Additionally, Federal agencies have authority under case law to task another entity to accomplish certain functions, as long as there are appropriate and adequate legal safeguards.

Issue 9—One commentor asked how corporate landowners will relate to the CMC and how will the CMC be involved in the review of corporate management plans for these lands.

Response—The Governors of each State are able to appoint corporate landowners or employees of such corporations to the CMC. The Service believes that inclusion of corporate landowners in CMC processes is important and valuable, and will encourage the CMC to involve corporate landowners in CMC outreach efforts, invite corporate landowners to CMC meetings, and to include corporate landowners in CMC processes. Private land owners would not lose any of their management authority and the CMC would only make management recommendations to them.

Issue 10—Some commentors indicated the Service needs to implement a proactive outreach and information and education program combined with a sanitation program to better inform the public about grizzly bear management and to increase the safety of humans and bears in the Bitterroot.

Response—The Service has included this as stage two in the implementation of the selected alternative.

Issue 11—Some commentors think the success or failure of the program should be measured over a longer timeframe than a minimum of 10 years as stated in the FEIS.

Response—The Service agrees that for such a long-lived species a 10-year timeframe to measure the success or failure of reintroduction is not sufficient. We have extended the timeframe to a minimum of 20 years, such that it reads, "* * * the success or failure of the program cannot be measured in less than 20 years."

Issue 12—Some commentors think there is inadequate information and research to indicate there are currently no grizzly bears in the Bitterroot Ecosystem.

Response—The best scientific evidence available indicates there are no grizzly bears in the Experimental Population Area at this time. Published reports by Melquist (Melquist 1985. A preliminary survey to determine the status of grizzly bears in the Clearwater National Forest of Idaho) and by Groves (Groves 1987. A compilation of grizzly bear reports from central and northern Idaho), as well as the March 28, 1998, letter from Wayne Melquist to Christopher Servheen presented in Appendix 23 of the FEIS show no documentation of grizzly bears in the Bitterroot Ecosystem. Ongoing grizzly bear monitoring efforts would continue, and the Service will continue to follow up on promising reports and to cooperate with all efforts to locate grizzly bears in the Bitterroot Ecosystem.

Issue 13—Some commentors were concerned that the Secretary can ignore a notice of the Scientific Review Panel that the CMC is not making decisions that will lead to recovery and decide to continue the CMC rather than disband it.

Response—The ultimate authority to make decisions to implement the ESA is that of the Secretary. Nothing in the Special Rule or the FEIS can subjugate the authority of the Secretary to the Scientific Review Panel. The Scientific Review Panel process and any subsequent decisions of the Secretary will be open to the public and public review.

Issue 14—One comment questions if there is a contradiction between the statement that grizzly bear management decisions will favor bear recovery in the Recovery Area, and the statement that if significant conflicts occur between grizzly bears and livestock in the Experimental Population Area that the conflict could be resolved in favor of livestock.

Response—The ROD has been clarified to state that if significant conflicts occur between grizzly bears and livestock in the Experimental Population Area, outside the Recovery Area, the conflict could be resolved in favor of livestock.

Issue 15—One comment questions if the Cabinet-Yaak and Selkirks would have grizzly "populations" using the definition of a population in the FEIS in Appendix 25.

Response—Both the Cabinet-Yaak and Selkirk Ecosystems have had multiple sightings of females with cubs and with enough offspring to meet the definition of a population used in the FEIS.

Findings and Decision

Having reviewed and considered the FEIS for the recovery of the grizzly bear in the Bitterroot Ecosystem and the public comments thereon, the Service finds as follows:.

(1) The requirements of NEPA and its implementing regulations have been satisfied; and

(2) Statutory authority for the Service to implement this project exists; and

(3) The Proposed Action Alternative represents the best balance between the Service's goals and the objectives and the public's concerns identified throughout the public participation process; and

(4) Consistent with the recovery goals, and with social, economic, and other essential considerations from among the reasonable alternatives, the Proposed Action Alternative minimizes or avoids adverse environmental effects to the maximum extent practicable, including effects disclosed in the FEIS; and

(5) Consistent with the social, economic, and other essential considerations to the maximum extent practicable, adverse environmental effects identified in the FEIS will be minimized or avoided.

Having made the above findings, the Service has decided to proceed, as funding permits, with implementation of the Proposed Action Alternative. The decision to implement this alternative is subject to the following conditions that will further minimize or avoid the environmental impacts and public concerns identified during the environmental review process:

(1) The process of grizzly bear recovery in the Bitterroot Ecosystem will be implemented in a staged process with initial formation of the CMC, and ongoing sanitation enhancement and public information efforts;

(2) if the Service receives adequate funding, grizzly bears could be reintroduced in 2002, following formation of the CMC and successful initiation of the sanitation and informational efforts, which will be ongoing as the bears are placed in the area;

(3) bears for reintroduction will be taken from areas more than 10 miles beyond existing recovery zone lines in the Yellowstone and Northern Continental Divide Ecosystems, and from British Columbia and Alaska (nonsalmon-eating bears), as appropriate;

(4) to maximize human safety and bear survival, bears placed in the Bitterroot will have no history of conflict with people or livestock;

(5) all reintroduced bears will be radio-monitored upon placement; and

(6) at least 25 bears will be placed into the area in coordination with the CMC and this number may increase pending scientific considerations of the need to have a larger initial population so as to increase the probability of eventual recovery.

This statement of Findings/ROD will serve as the written facts and conclusions relied upon in reaching this decision.

Dated: November 13, 2000.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

Appendix—Errata Sheet for the Final Environmental Impact Statement on Grizzly Bear Recovery in the Bitterroot Ecosystem

The following list includes clarifications or corrections to the FEIS. Many of the items listed were brought forward by the public in their comments on the FEIS. The Service appreciates the input, and this opportunity to correct and improve the FEIS. None of the corrections listed below significantly affect the analyses or conclusions of effect in the FEIS.

1. Table S–2 (page xl), Table 2–1 (page 2–79), Chapter 2 (page 2–57, last paragraph)—The FEIS incorrectly states that for the Service to implement Alternative 4, the principal laws that govern land management (agencies) on Federal lands would have to be changed. This is corrected to state that for the Service to implement Alternative 4, the National Forest Land Management Plans that govern land management by agencies on Federal lands would have to be amended or revised.

2. Pages 2–27 (fourth paragraph, last sentence) and 2–41 (third paragraph)—The FEIS states, "bears found outside the experimental population area boundaries are a fully threatened species, not experimental bears." This is restated, "In the conterminous United States, a grizzly bear that is outside the experimental population area will be considered as threatened."

3. Page 2–6, number 3(b); page 2–8, fourth paragraph; page 2–12, second paragraph—The FEIS states, "Two scientific advisors would be appointed by the Secretary to the CMC as non-voting members, to attend all meetings and provide scientific expertise in support of CMC management recommendations." This is clarified to state, "Two scientific advisors would be appointed by the Secretary to the CMC as non-voting members, to attend all meetings and provide scientific expertise to the CMC."

4. Page 6–128, second paragraph, last sentence—The FEIS states, "The CMC would be responsible for developing land-use restrictions as necessary for grizzly bear management." This is corrected to be consistent with other statements in the FEIS that indicate, "The CMC would be responsible for recommending changes in land-use standards and guidelines in the Bitterroot Ecosystem as necessary for grizzly bear management. Decisions on, and implementation of these recommendations is the responsibility of the land and wildlife management agencies."

5. Page 4–18, third paragraph, first sentence—The FEIS states, "This alternative allows for a citizens management committee to decide if trails, roads, and other areas would be closed to improve recovery efforts for grizzly bears." This is corrected to state, "This alternative allows for a citizen management committee to make recommendations to land management agencies for road, trail and area closures necessary to improve recovery efforts for grizzly bears."

6. Page 2–14, second paragraph—The FEIS states, "Idaho Department of Fish and Game and/or the Nez Perce Tribe, Montana Department of Fish, Wildlife, and Parks, and the USDA Forest Service, in coordination with the Service, would exercise day-to-day management responsibility within the experimental population area while implementing the Bitterroot Ecosystem Grizzly Bear Recovery Plan Chapter, the Special Rule, and the policies and plans of the CMC." This is clarified to state, "Idaho Department of Fish and Game and/or the Nez Perce Tribe, Montana Department of Fish, Wildlife, and Parks, and the USDA Forest Service, in coordination with the Service, would exercise day-to-day management responsibility within the experimental population area while implementing the Bitterroot Ecosystem Grizzly Bear Recovery Plan Chapter, the Special Rule, and considering the recommendations of the CMC."

7. Page 6–111, Table 6–13—The Management Area Type of "Unroaded/essentially undeveloped" is corrected to "Essentially undeveloped."

8. The Welcome Creek Wilderness in western Montana was omitted from the list of designated wilderness areas in the Primary Analysis Area. The addition of this designated wilderness area to the Primary Analysis Area increases the total Wilderness acreage by 28,000 acres.

[FR Doc. 00–29531 Filed 11–16–00; 8:45 am]

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Federal Register

Friday,
November 17, 2000

Part V

The President

Proclamation 7377—America Recycles Day, 2000

Federal Register
Vol. 65, No. 223
Friday, November 17, 2000

Presidential Documents

Title 3—

The President

Proclamation 7377 of November 15, 2000

America Recycles Day, 2000

By the President of the United States of America

A Proclamation

As we look forward to Thanksgiving, our annual celebration of America's great bounty, it is appropriate to observe America Recycles Day and focus on how to preserve that bounty for the benefit of future generations.

Recycling waste and purchasing products made from recycled materials are among the easiest and most effective measures every American can take to conserve our resources and create a cleaner environment. Currently, our country recovers more than 28 percent of the billions of pounds of waste generated by Americans annually—an effort that translates into enough savings to supply the energy needs of 9 million U.S. households. But the recycling process succeeds only when recovered materials are returned to retailers as new products that are purchased by consumers; otherwise, the recycled products themselves must be disposed of as waste.

Buying recycled products conserves resources, reduces water and air pollution and greenhouse gas emissions, and saves energy. While beneficial for the environment, the recycling process is good for our economy as well. By promoting the development of markets for recycled products, we are also creating new jobs, many of which are in America's inner cities, where job creation is particularly critical. It is estimated that while incinerating 10,000 tons of waste creates 1 job, and landfilling the same amount creates 6 jobs, recycling the same 10,000 tons creates 36 jobs. Nationwide, recycling and remanufacturing provide 1 million jobs and $100 billion in revenue.

To ensure the Federal Government's leadership in the recycling effort, I signed an Executive Order in 1998 directing all Federal agencies to expand and strengthen their commitment to recycling and buying recycled-content and environmentally preferable products. The Federal Government now purchases more than $350 million in recycled-content products annually—an increase of $112 million a year, or 30 percent, from just a decade ago.

America Recycles Day helps us to build on this progress by uniting environmental and community organizations, business and industry, and agencies at all levels of government as partners in the vital effort to keep recycling working. By encouraging every business and consumer in America to start or enhance recycling efforts and to buy recycled-content products, we can sustain our economy, improve our environment, and preserve our precious natural resources for the sake of generations to come.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 15, 2000, as America Recycles Day. I urge all Americans to observe this day with appropriate ceremonies and activities and to take personal responsibility for the environment not only by recycling, but also by choosing to purchase and use products made from recycled materials.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

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H.R. 1235/P.L. 106–467

To authorize the Secretary of the Interior to enter into contracts with the Solano County Water Agency, California, to use Solano Project facilities for impounding, storage, and carriage of nonproject water for domestic, municipal, industrial, and other beneficial purposes. (Nov. 9, 2000; 114 Stat. 2026)

H.R. 2780/P.L. 106–468

Kristen's Act (Nov. 9, 2000; 114 Stat. 2027)

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H.R. 4312/P.L. 106–470

Upper Housatonic National Heritage Area Study Act of 2000 (Nov. 9, 2000; 114 Stat. 2055)

H.R. 4646/P.L. 106–471

To designate certain National Forest System lands within the boundaries of the State of Virginia as wilderness areas. (Nov. 9, 2000; 114 Stat. 2057)

H.R. 4788/P.L. 106–472

Grain Standards and Warehouse Improvement Act of 2000 (Nov. 9, 2000; 114 Stat. 2058)

H.R. 4794/P.L. 106–473

Washington-Rochambeau Revolutionary Route National Heritage Act of 2000 (Nov. 9, 2000; 114 Stat. 2083)

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National Recording Preservation Act of 2000 (Nov. 9, 2000; 114 Stat. 2085)

H.R. 4864/P.L. 106–475

Veterans Claims Assistance Act of 2000 (Nov. 9, 2000; 114 Stat. 2096)

H.R. 4868/P.L. 106–476

Tariff Suspension and Trade Act of 2000 (Nov. 9, 2000; 114 Stat. 2101)

H.R. 5110/P.L. 106–477

To designate the United States courthouse located at 3470 12th Street in Riverside, California, as the "George E. Brown, Jr. United States Courthouse". (Nov. 9, 2000; 114 Stat. 2182)

H.R. 5302/P.L. 106–478

To designate the United States courthouse located at 1010 Fifth Avenue in Seattle, Washington, as the "William Kenzo Nakamura United States Courthouse". (Nov. 9, 2000; 114 Stat. 2183)

H.R. 5331/P.L. 106–479

To authorize the Frederick Douglass Gardens, Inc., to establish a memorial and gardens on Department of the Interior lands in the District of Columbia or its environs in honor and commemoration of Frederick Douglass. (Nov. 9, 2000; 114 Stat. 2184)

H.R. 5388/P.L. 106–480

To designate a building proposed to be located within the boundaries of the Chincoteague National Wildlife Refuge, as the "Herbert H. Bateman Education and Administrative Center". (Nov. 9, 2000; 114 Stat. 2186)

H.R. 5410/P.L. 106–481

Library of Congress Fiscal Operations Improvement Act of 2000 (Nov. 9, 2000; 114 Stat. 2187)

H.R. 5478/P.L. 106–482

To authorize the Secretary of the Interior to acquire by donation suitable land to serve as the new location for the home of Alexander Hamilton, commonly known as the Hamilton Grange, and to authorize the relocation of the Hamilton Grange to the acquired land. (Nov. 9, 2000; 114 Stat. 2192)

H.J. Res. 102/P.L. 106–483

Recognizing that the Birmingham Pledge has made a significant contribution in fostering racial harmony and reconciliation in the United States and around the world, and for other purposes. (Nov. 9, 2000; 114 Stat. 2193)

S. 484/P.L. 106–484

Bring Them Home Alive Act of 2000 (Nov. 9, 2000; 114 Stat. 2195)

S. 610/P.L. 106–485

To direct the Secretary of the Interior to convey certain land under the jurisdiction of the Bureau of Land Management in Washakie County and Big Horn County, Wyoming, to the Westside Irrigation District, Wyoming, and for other purposes. (Nov. 9, 2000; 114 Stat. 2199)

S. 698/P.L. 106–486

To review the suitability and feasibility of recovering costs of high altitude rescues at Denali National Park and Preserve in the State of Alaska, and for other purposes. (Nov. 9, 2000; 114 Stat. 2201)

S. 710/P.L. 106–487

Vicksburg Campaign Trail Battlefields Preservation Act of 2000 (Nov. 9, 2000; 114 Stat. 2202)

S. 748/P.L. 106–488

To improve Native hiring and contracting by the Federal Government within the State of Alaska, and for other purposes. (Nov. 9, 2000; 114 Stat. 2205)

S. 893/P.L. 106–489

To amend title 46, United States Code, to provide equitable treatment with respect to State and local income taxes for certain individuals who perform duties on vessels. (Nov. 9, 2000; 114 Stat. 2207)

S. 1030/P.L. 106–490

To provide that the conveyance by the Bureau of Land Management of the surface estate to certain land in the State of Wyoming in exchange for certain private land will not result in the removal of the land from operation of the mining laws. (Nov. 9, 2000; 114 Stat. 2208)

S. 1367/P.L. 106–491

To amend the Act which established the Saint-Gaudens National Historic Site, in the State of New Hampshire, by modifying the boundary and for other purposes. (Nov. 9, 2000; 114 Stat. 2209)

S. 1438/P.L. 106–492

National Law Enforcement Museum Act (Nov. 9, 2000; 114 Stat. 2210)

S. 1778/P.L. 106–493

To provide for equal exchanges of land around the Cascade Reservoir. (Nov. 9, 2000; 114 Stat. 2213)

S. 1894/P.L. 106–494

To provide for the conveyance of certain land to Park County, Wyoming. (Nov. 9, 2000; 114 Stat. 2214)

S. 2069/P.L. 106–495

To permit the conveyance of certain land in Powell, Wyoming. (Nov. 9, 2000; 114 Stat. 2216)

S. 2425/P.L. 106–496

Bend Feed Canal Pipeline Project Act of 2000 (Nov. 9, 2000; 114 Stat. 2218)

S. 2872/P.L. 106–497

Indian Arts and Crafts Enforcement Act of 2000 (Nov. 9, 2000; 114 Stat. 2219)

S. 2882/P.L. 106–498

Klamath Basin Water Supply Enhancement Act of 2000 (Nov. 9, 2000; 114 Stat. 2221)

S. 2951/P.L. 106–499

To authorize the Secretary of the Interior to conduct a study to investigate opportunities to better manage the water resources in the Salmon Creek watershed of the Upper Columbia River. (Nov. 9, 2000; 114 Stat. 2223)

S. 2977/P.L. 106–500

To assist in establishment of an interpretive center and museum in the vicinity of the Diamond Valley Lake in southern California to ensure the protection and interpretation of the paleontology discoveries made at the lake and to develop a trail system for the lake for use by pedestrians and nonmotorized vehicles. (Nov. 9, 2000; 114 Stat. 2224)

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Federal Register
Vol. 65, No. 224
Monday, November 20, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634, 2635 and 2638

RINs 3209–AA00 and 3209–AA04

Technical Updating Amendments and Correction to Certain Executive Branch Regulations of the Office of Government Ethics

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is updating and correcting some of the sections of its executive branch regulations on financial disclosure, standards of ethical conduct and ethics responsibilities. These amendments include the addition to the financial disclosure regulation of statutorily mandated higher categories of value reporting and adjustment of the reporting thresholds for gifts and travel reimbursements. In addition, OGE is raising the dollar ceiling for widely attended gathering nonsponsor gifts under the standards regulation

DATES: The amendments in this rulemaking document are effective November 20, 2000, except for the amendments to 5 CFR 2634.304 that are being made retroactively effective to January 1, 1999.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, telephone: 202–208–8000, ext. 1110; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is amending various sections of its executive branchwide ethics regulations on financial disclosure, standards of ethical conduct (the Standards), and Government ethics responsibilities, as codified at 5 CFR parts 2634, 2635 and 2638, in order to update them. These technical amendments also include a correction of a typographical error in 5 CFR 2634.301(d)(6).

These revisions to pertinent provisions of OGE's branchwide financial disclosure regulation, as codified at 5 CFR 2634.301(d) and 2634.302(b)(1), will add to the regulation the higher categories of value for assets, income, transactions and liabilities over $1,000,000 as required for public reports (on the Standard Form (SF) 278) under the Ethics in Government Act (the Ethics Act), as amended by sections 20 and 22 of the 1995 Lobbying Disclosure Act (Public Law 104–65). See section 102(a)(1)(B), (d)(1) and (e)(1) and the then-newly added section 102(a)(8) of the Ethics Act, 5 U.S.C. appendix, section 102(a)(1)(B), (a)(8), (d)(1) and (e)(1). The higher categories of value for assets, transactions (as recently determined by OGE for reports on the new 2000 edition of the SF 278 only), and liabilities are: $1,000,001 to $5,000,000; $5,000,001 to $25,000,000; $25,000,001 to $50,000,000; and over $50,000,000. For income, the higher categories are: $1,000,001 to $5,000,000; and over $5,000,000. The new regulatory text would also clarify that the higher categories only apply to items held by the report filer alone or jointly with his or her spouse and/or dependent children. For any such items held *solely* by a filer's spouse and/or dependent children, only the traditional "over $1,000,000" category would apply. To date, in a series of guidance memorandums over the years, OGE has asked departments and agencies to so notify filers administratively.

In addition, OGE is retroactively adjusting, to January 1, 1999, the reporting thresholds for gifts and travel reimbursements in the OGE executive branchwide regulation at 5 CFR 2634.304 (& as illustrated in examples following that section) for both the public and confidential financial disclosure systems under section 102(a)(2)(A) & (B) of the Ethics Act, 5 U.S.C. appendix, section 102(a)(2)(A) & (B), as extended to the executive branch confidential reporting system in subpart I of OGE's 5 CFR part 2634 regulation. These changes are necessitated by the increase by the General Services Administration (GSA) of the "minimal value" to $260 or less (from the prior level of $245 or less) for the three-year period 1999–2001 under the Foreign Gifts and Decorations Act, to which the Ethics Act and OGE regulatory thresholds are pegged. See 64 FR 13700–13701 (March 22, 1999), revising the GSA foreign gifts regulation, now to be codified at new 41 CFR 102–42.10 (formerly § 101–49.001–5), see 65 FR 45540 (July 24, 2000). The new reporting thresholds being codified in OGE's financial disclosure regulation are "more than $260" for the aggregation threshold for reporting and "$104 or less" for gifts and reimbursements which do not have to be counted towards the aggregate threshold (from the prior levels of $250 and $100, respectively). Further, OGE will adjust those thresholds in the future as needed in light of GSA's revaluation of "minimal value" every three years for foreign gifts purposes.

Finally, the widely attended gathering gift exception ceiling for nonsponsor gifts of free attendance under the standards of ethical conduct regulation, at 5 CFR 2635.204(g)(2) (& as illustrated in a couple of examples following paragraph (g)), will likewise be raised from $250 to $260. As OGE noted in the preambles to the proposed and final rules on such nonsponsor gifts, that ceiling is based in part on the financial disclosure gifts reporting threshold. See 60 FR 31416 (June 15, 1995) and 61 FR 42968 (August 20, 1996). Thus, it is reasonable now to adjust the nonsponsor gift ceiling to match the increase in the reporting threshold. The other requirements for acceptance of such nonsponsor gifts, including an agency interest determination and expected attendance by more than 100 persons, remain unchanged.

In addition, OGE is adding an unrelated reference in the related statutes section of the Standards, at 5 CFR 2635.902(l), to the criminal prohibition at 18 U.S.C. 1030 on fraudulent access and related activity in connection with computers.

Finally, OGE is updating the citations to the Ethics Act financial disclosure provisions, current Executive Order 12674 (as modified by E.O. 12731), and the definition of the executive branch in the pertinent provisions of 5 CFR part 2638 on ethics responsibilities of OGE and designated agency ethics officials.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, opportunity for public comment and 30-day delay in effectiveness as to these technical updates and the correction. The notice, comment and delayed effective date provisions are being waived in part because these minor amendments concern matters of agency organization, practice and procedure. Further, it is in the public interest that correct and up-to-date information be contained in the affected sections of OGE's regulations as soon as possible. The increase in the reporting thresholds for gifts and reimbursements also lessens the reporting burden somewhat, and thus the effective date of that regulatory revision is being made retroactively effective to January 1, 1999, when the change became effective under the Ethics Act, as amended.

Executive Order 12866

In promulgating these minor amendments, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under that Executive order, since they are not deemed "significant" thereunder.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this amendatory rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and has provided a report thereon to the Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2635

Conflict of interests, Government employees.

5 CFR Part 2638

Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: November 13, 2000.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, the Office of Government Ethics pursuant to its authority under the Ethics in Government Act and Executive Order 12674, as modified by E.O. 12731, is amending 5 CFR parts 2634, 2635 and 2638 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.301 is amended by removing the dollar amount "$1,00,000" in paragraph (d)(6) and adding in its place the dollar amount "$1,000,000", by removing the "." following paragraph (d)(7) and adding a ";" in its place, and by adding a new paragraph (d)(8) to read as follows:

§ 2634.301 Interests in property.

* * * * *

(d) * * *

(8) Provided that, with respect to items held by the filer alone or held jointly by the filer with the filer's spouse and/or dependent children, the following additional categories over $1,000,000 shall apply:

(i) Greater than $1,000,000 but not more than $5,000,000;

(ii) Greater than $5,000,000 but not more than $25,000,000;

(iii) Greater than $25,000,000 but not more than $50,000,000; and

(iv) Greater than $50,000,000.

* * * * *

3. Section 2634.302 is amended by removing the "." following paragraph (b)(1)(viii) and adding a ";" in its place, and by adding a new paragraph (b)(1)(ix) to read as follows:

§ 2634.302 Income.

* * * * *

(b) * * *

(1) * * *

(ix) Provided that, with respect to investment income of the filer alone or joint investment income of the filer with the filer's spouse and/or dependent children, the following additional categories over $1,000,000 shall apply:

(A) Greater than $1,000,000 but not more than $5,000,000; and

(B) Greater than $5,000,000.

* * * * *

§ 2634.304 [Amended]

4. Section 2634.304 is amended by:

a. Removing the words "$250 or more" in paragraphs (a) and (b) and in Example 1 following paragraph (d) and adding in their place in each instance the words "more than $260";

b. Removing the note following paragraph (b) and the first note following paragraph (d);

c. Removing the dollar amounts "$100" in paragraph (d) and in Examples 1 and 2 following paragraph (d) and adding in their place in each instance the dollar amount "$104";

d. Removing the dollar amount "$150" in Example 1 following paragraph (d) and adding in its place the dollar amount "$190";

e. Removing the dollar amounts "$130" and "$250" in Example 3 following paragraph (d) and adding in their place, respectively, the dollar amount "$150" and the words "more than $260"; and

f. Removing the dollar amount "$250" in Example 4 following paragraph (d) and adding in its place the dollar amount "$260".

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

5. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 2635.204 [Amended]

6. Section 2635.204 is amended by removing the dollar amounts "$250" in paragraph (g)(2) and in Examples 1 and 2 following paragraph (g)(6) and adding in their place in each instance the dollar amount "$260", and by removing the dollar amount "$500" in Example 2 following paragraph (g)(6) and adding in its place the dollar amount "$520".

7. Section 2635.902 is amended by adding a new paragraph (l), previously reserved, to read as follows:

§ 2635.902 Related statutes.

* * * * *

(l) The prohibition against fraudulent access and related activity in connection with computers (18 U.S.C. 1030).

* * * * *

PART 2638—OFFICE OF GOVERNMENT ETHICS AND EXECUTIVE AGENCY ETHICS PROGRAM RESPONSIBILITIES

8. The authority citation for part 2638 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 2638.101 [Amended]

9. Section 2638.101 is amended by removing the references to "II" in paragraphs (a) and (b) and adding in their place in each instance the reference "I", and by adding the words "executive branch" between the words "These" and "regulations" in paragraph (b).

10. Section 2638.104 is amended by revising the definition of "Executive branch" to read as follows:

§ 2638.104 Definitions.

* * * * *

Executive branch includes each executive agency as defined in 5 U.S.C. 105 and any other entity or administrative unit in the executive branch. However, it does not include any agency, entity, office or commission that is defined by or referred to in 5 U.S.C. app. 109(8)–(11) of the Act as within the judicial or legislative branch.

* * * * *

§ 2638.201 [Amended]

11. Section 2638.201 is amended by removing the references to "II" and adding in their place in each instance the reference "I", and by removing the words "11222 (relating to standards of conduct" between the words "Order" and "for" in the last sentence and adding in their place the words "12674 as modified (relating to principles of ethical conduct".

[FR Doc. 00–29493 Filed 11–17–00; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB52

General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of confirmation of direct final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice that comments were received regarding direct final rule on General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, and reconfirms the effective date of the direct final rule. This notice also serves to address the comments received.

DATES: The direct final rule, which was published on May 17, 2000, at 65 FR 31246, was effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Wei M. Moy, Chief, Power Resources & Planning Branch, Power Supply Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1568, 1400 Independence Avenue, SW, Washington, DC 20250–1568. Telephone: (202) 720–1438. FAX (202) 720–1401. E-mail: wmoy@rus.usda.gov.

Background

The Rural Utilities Service (RUS) published a direct final rule on May 17, 2000, at 65 FR 31246, in the **Federal Register** amending § 1710.254, Alternative Sources of Power, to allow flexibility in determining whether a borrower needs to solicit bids from all sources for new or replacement generation. It also deleted the requirement that borrowers seek bids if RUS financial assistance is requested from all sources for generation projects of 10 megawatts or more or for modifications to existing plants if it results in an increase in capacity of 10 percent. RUS reserves the right to review each project on a case-by-case basis and determine whether there is a need for a borrower to seek bids from all sources for the project.

RUS received comments from three parties on this direct final rule, two of which were deemed adverse. According to RUS policy, should adverse comments be received concerning a direct final rule, the agency would withdraw the direct final rule and the companion proposed rule, which was published in the same issue of the **Federal Register**, would be the ruling action. RUS failed to issue a withdrawal notice. As a result, the direct final rule became effective on July 3, 2000. In lieu of this oversight, RUS feels that this notice of confirmation of direct final rule serves to address the concerns of the commentors and at the same time confirms the effective date of the direct final rule. If not for this oversight, this rule would have become effective through the normal regulatory process though its companion proposed rule and then as a final rule.

A summaries of these comments and responses follows:

Comments

Comment: Tri-State is in agreement with the amendment, and appreciates the flexibility that RUS has written into this amendment. However, Tri State recommended (1) That language be added regarding environmental issues, and (2) that, if RUS requires an applicant to solicit proposals for sources of power, the applicant be allowed to comply with the requirement by submitting competitive bids previously obtained by regional utilities.

Reply: RUS appreciates the support for its efforts to modify the requirement that borrowers must seek bids from all sources if funding is requested for generation projects equal to or greater than 10 megawatt or for modifications to existing plants if it results in an increase in capacity of 10 percent or more. Although the comments on environmental issues and the timing of competitive bid solicitations are appreciated, RUS feels these comments are non-responsive and do not effect language in the regulation.

Comment: Otter Tail suggests that competitive bidding should be a standard imposed on any party seeking federal financing and that the inefficiencies in the review and approval process should not cause delays in an efficiently run business or agency. Otter Tail feels that RUS borrowers should be meeting their power needs within the market place and only when competitive policies have been followed should any borrower be eligible for federally subsidized loans.

Reply: The amendment does not abandon the practice of seeking competitive bids. Upon an RUS review of each project, a determination will be made whether there is a need for a borrower to seek competitive bids for the project. This evaluation by RUS will be performed on a case-by-case basis. RUS will continue to follow good business practice and make sound business decisions. At the same time, RUS will provide its borrowers with the flexibility to make sound business decisions to meet the power needs of rural America.

Comment: Edison objects to the amendment, stating that the present regulation has been in existence for a long time and is entirely consistent with the nation's transition to competitive wholesale power markets. RUS borrowers should seek to meet their power needs out of these markets and make every effort to do so before seeking more assistance from RUS in the form of subsidized loans.

Reply: This amendment deletes the requirement that borrowers seek bids if RUS financial assistance is requested from all sources for 10 megawatts or more or for modifications to existing plants if it results in an increase in capacity of 10 percent. RUS will review each project on a case by case basis and determine whether there is a need for a borrower to seek competitive bids from all sources for the project. RUS will provide its borrowers with the flexibility to make sound business decisions to meet the power needs of rural America.

The direct final rule requires RUS to review each project on a case-by-case basis and determine whether there is a need for a borrower to seek bids from all sources for the project. Following the initial RUS review, if it is determined that a full solicitation for bids to supply new or replacement generation is necessary, then RUS will require such an evaluation process be completed. This amendment in no way is intended to minimize the need for all borrowers to follow good business practice in making economically sound business decisions. The direct final rule provides RUS electric borrowers with the flexibility and tools necessary to make prudent decisions to meet the power needs of rural customers in the competitive environment advanced by industry restructuring efforts.

These amendments to § 1710.254, provide borrowers with increased flexibility during the new and replacement electric power evaluation period. The new policy requires RUS to review each project on a case-by-case basis and determine whether there is a need for a borrower to seek bids from all sources for the project. Following this initial RUS review, if it is determined that a full solicitation for bids to supply new or replacement generation is necessary, then RUS will require that such an evaluation process be completed.

As the electric industry moves to a more competitive environment, it is imperative that RUS prudently review and revise policy when necessary. The amendments to 7 CFR part 1710 are in no way intended to minimize the need for all borrowers to follow good business practice in making economically sound business decisions. The direct final rule provides RUS borrowers with the flexibility and tools necessary to make prudent decisions to meet the power needs of rural customers in the competitive environment advanced by industry restructuring efforts.

To that effect the direct final rule stands as published.

Confirmation of Effective Date

This is to confirm the effective date of July 3, 2000, of the direct final rule, 7 CFR Part 1710, General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, published in the **Federal Register** on May 17, 2000, at 65 FR 31246.

Dated: November 13, 2000.

Anthony C. Haynes,

Acting Administrator, Rural Utilities Service.

[FR Doc. 00–29499 Filed 11–17–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–345–AD; Amendment 39–11969; AD 2000–22–21]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10, Model MD–10, and Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–10, Model MD–10, and Model MD–11 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to ensure that the flight crew is advised of appropriate procedures for disabling certain fuel pump electrical circuits following failure of a fuel pump electrical connector. For certain airplanes, this action also requires revising the AFM to prohibit resetting of tripped fuel pump circuit breakers. This action is necessary to prevent continued arcing following a short circuit of the fuel pump electrical connector, which could damage the conduit that protects the power lead inside the fuel tank, and result in the creation of a potential ignition source in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective December 5, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 5, 2000.

Comments for inclusion in the Rules Docket must be received on or before January 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–345–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–345–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA,

Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received reports of four incidents on McDonnell Douglas Model DC–10 and MD–11 series airplanes, in which a short circuit occurred in the electrical connector between the power lead and the housing of a fuel pump. The circuit breaker did not trip in any of these incidents because the electrical arcing that occurred was shorter in duration than necessary for the circuit breaker to detect the arcing and open the circuit. In the event of such a short circuit of a fuel pump electrical connector, continued arcing of the electrical connector could damage the conduit that protects the power lead inside the fuel tank, which could create a potential ignition source in the fuel tank.

The subject fuel pump electrical connector on all McDonnell Douglas Model MD–10 series airplanes is identical to that on McDonnell Douglas Model DC–10 and MD–11 series airplanes on which the incidents occurred. Therefore, all of these airplanes may be subject to the unsafe condition described above.

In addition, the Procedures Section of the FAA-approved Airplane Flight Manual (AFM) for McDonnell Douglas Model DC–10 and certain MD–11 series airplanes permits the flight crew to reset the fuel pump circuit breaker one time if the circuit breaker is tripped. (If it is tripped again, the AFM prohibits resetting it.) However, tripping of the circuit breaker may be caused by arcing following short circuit of a fuel pump electrical connector. Resetting the fuel pump circuit breaker if it is tripped due to arcing could allow arcing to continue and create a potential ignition source in the fuel tank. (The Limitations Section of the AFM for McDonnell Douglas Model MD–10 series airplanes already prohibits resetting the fuel pump circuit breaker; therefore, these airplanes are not subject to this unsafe condition.)

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Flight Operations Bulletin DC–10–00–01A, MD–11–00–03A, and MD–10–00–02A, dated September 20, 2000. The flight operations bulletin provides instructions for revising the Procedures Section of the FAA-approved AFM by inserting certain Interim Operating Procedures (IOP). These IOP's advise the flight crew of proper procedures for disabling certain fuel pump electrical circuits following failure of a fuel pump electrical connector.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent continued arcing following a short circuit of the fuel pump electrical connector, which could damage the conduit that protects the power lead inside the fuel tank, and result in the creation of a potential ignition source in the fuel tank. This AD requires accomplishment of the actions specified in the flight operations bulletin described previously. For certain airplanes, this AD also requires revising the Limitations Section of the FAA-approved AFM to prohibit resetting of any fuel pump circuit breakers.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing an inspection and a modification that will positively address the unsafe condition addressed by this AD. Once these actions are developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–345–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–22–21 McDonnell Douglas: Amendment 39–11969. Docket 2000–NM–345–AD.

Applicability: All Model DC–10, Model MD–10, and Model MD–11 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent continued arcing following a short circuit of the fuel pump electrical connector, which could damage the conduit that protects the power lead inside the fuel tank, and result in the creation of a potential ignition source in the fuel tank, accomplish the following:

Airplane Flight Manual (AFM) Revision (Procedures Section)

(a) Within 14 days after the effective date of this AD, insert applicable Interim Operating Procedures regarding abnormal operations for fuel pump electrical connector failures into the Procedures Section of the FAA-approved AFM, in accordance with Boeing Flight Operations Bulletin DC–10–00–01A, MD–11–00–03A, and MD–10–00–02A, dated September 20, 2000.

Airplane Flight Manual Revision (Limitations Section)

(b) For Model DC–10 and Model MD–11 series airplanes: Within 14 days after the effective date of this AD, insert the following information into the "Fuel Management" paragraph of the Limitations Section of the FAA-approved AFM which may be accomplished by inserting a copy of this AD into the AFM.

"Do not reset any tripped fuel pump circuit breakers."

Note 1: If the information in paragraph (b) of this AD is already in the "Fuel Management" paragraph of the Limitations Section of the AFM, no further action is required by paragraph (b) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD, the AFM revision shall be done in accordance with Boeing Flight Operations Bulletin DC–10–00–01A, MD–11–00–03A, and MD–10–00–02A, dated September 20, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on December 5, 2000.

Issued in Renton, Washington, on November 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28478 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–25–AD; Amendment 39–11986; AD 2000–23–14]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney JT9D series turbofan engines. This AD will require installation of an improved No. 4 bearing internal oil pressure tube, initial and repetitive inspections of the No. 4 bearing oil pressure tube for turbine exhaust case (TEC) strut clearance and alignment, and, if necessary, replacement with serviceable parts. This amendment is prompted by loss of integrity in the oil system that allows oil to migrate into high temperature metal cavities in the turbine exhaust case and cause oil fires. The actions specified by this AD are intended to prevent oil fires in and around the No. 4 bearing area that could cause excessive thermal growth of the sixth stage low pressure turbine (LPT) disk, liberation of the sixth stage LPT disk, uncontained engine failure, and damage to the airplane.

DATES: Effective date January 19, 2001. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 19, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108; telephone: (860) 565–6600, fax: (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7147, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) applicable to Pratt & Whitney (PW) JT9D series turbofan engines was published in the **Federal Register** on November 24, 1999 (64 FR 66118). That action proposed to require installation of an improved No. 4 bearing internal oil pressure tube, initial and repetitive inspections of the No. 4 bearing oil pressure tube for TEC strut clearance and alignment, and, if necessary, replacement with serviceable parts, in accordance with PW Service Bulletin (SB) No. 5707, dated September 17, 1986, and in accordance with certain sections of the PW JT9D Engine Manuals: part numbers (P/Ns) 646028, 770407, 770408, 777210, 785059, and 754459.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Reasons for This Modification and Inspection Program

One commenter states that the reports referenced in the NPRM focus only on engine fires, not uncontained engine failure and aircraft damage. Since the commenter has been using a tube of a design earlier to the one required by this AD for a long time without incident, the commenter requests that the FAA confirm the reasons for the modification and inspection program.

The FAA investigated the reports of oil fires in and around the No. 4 bearing area on the PW JT9D series turbofan engines and concluded that the heat generated by the oil fires could cause excessive thermal growth of the sixth stage LPT disk, liberation of the sixth stage LPT disk, uncontained engine failure, and damage to the airplane.

Applicability Section

One commenter requests the modification of the applicability section of the AD to specify the BG 700 series of the JT9D–7R4D engines. The applicability section of the NPRM includes the JT9D–7R4D series engines. The PW SB JT9D–7R4–72–289, dated March 26, 1986, applies to the BG 700 series. The commenter has the JT9D–7R4D (BG 900) series engines and would like the applicability section of the AD to reflect the BG 700 series.

The FAA agrees. The applicability section has been changed accordingly. Another commenter requests that the list of aircraft on which the affected engines may be installed be expanded to include Airbus A300 airplanes. The FAA agrees. The FAA will add Airbus A300 airplanes to the list, but cautions that this AD list is advisory in nature and does not limit the applicability of the AD to just those engines which are installed on the listed airplanes.

Engine Manual Part Numbers

One commenter requests that paragraph (b) reflect the JT9D–7A engine manual P/N 770408. The commenter also requests that the section title of 72–53–01 of the JT9D–59A engine manual, P/N 754459, be revised to reflect "Heavy Maintenance Check" instead of "Inspection 01."

The FAA agrees. The engine manual P/Ns listed in the NPRM contain all engine models affected. However, the engine manufacturer has issued model-specific versions of these manuals. Therefore, it is possible that the operator may only have the model-specific version of the manual and not the all-encompassing engine manuals referred to in this AD. Revised paragraph (b) includes references to the model-specific JT9D engine manuals and to correct the reference to the title of Section 72–53–01 of P/N 754459.

Inspection Interval

Another commenter requests that the FAA weigh the benefits of conducting frequent inspections against the additional risks incurred by conducting the inspections. The commenter also states that it has not experienced an oil pressure tube failure due to TEC strut misalignment. The commenter considers an inspection interval at each heavy engine shop visit to be adequate, as opposed to every time the "N" or "P" flange is separated.

Two commenters recommend that the FAA replace the word "disconnected" with the word "separated." The phrase "at the next time when the "N" or "P" flange is disconnected" occurs three times in the AD. One of the commenters suggests that since a flange is normally separated, not disconnected, this language may cause some confusion.

The FAA agrees in part. The FAA has decided to change the definition of shop visit to better reflect the original intent of the inspection. The original intent was that the inspections be performed during a complete disassembly of the TEC; this is the frequency interval contained in the engine manuals. The proposed language even if the recommended change from "disconnected" to "separated" is made, could still be perceived as a more frequent inspection interval than that intended by the FAA. Based on comments received and further coordination with the engine manufacturer, the FAA has developed a more precise definition. Therefore, the FAA has revised the phrase, "at the next time when the "N" or "P" flange is disconnected," to read: "at the next turbine exhaust case disassembly when all hardware is stripped from the case." These inspections are required at the same frequency contained in the engine manuals.

Request for Confirmation of Terminating Action

One commenter requests that the FAA confirm if there is a terminating action for the repetitive clearance and alignment check in accordance with the engine manual. The commenter questions if replacement of the pressure tube in accordance with PW SB 5707 and JT9D–7R4–72–289 constitutes the terminating action.

The FAA does not agree. There is no terminating action for this inspection. The inspections are required to make sure that there is sufficient tube clearance and that the TEC strut is aligned correctly. This inspection is an integral part of maintaining the airworthiness of this tube.

FAA's Determination

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 2,310 engines of the affected design in the worldwide fleet. Approximately 1,183 of these engines are installed on airplanes of U.S. registry. Review of purchase orders indicate that approximately 1,547 pressure tubes have been sold to the airlines; therefore this action will affect no more than 763 engines. It will take approximately one work hour per engine to accomplish the proposed actions; the average labor rate is $60 per work hour. Required parts will cost approximately $1,465 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be no more than $1,163,575.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–14 Pratt & Whitney: Amendment 39–11986. Docket No. 99–NE–25–AD.

Applicability: Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –7Q, –7Q3, –20, –20J, –59A, –70A, and –7R4D (BG 700) series turbofan engines, installed on but not limited to Boeing 747 and 767, Airbus A300, and McDonnell Douglas DC–10 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To prevent oil fires in and around the No. 4 bearing area, which could result in excessive growth of the sixth stage low pressure turbine (LPT) disk, liberation of the sixth stage LPT disk, uncontained engine failure, and damage to the airplane, accomplish the following:

Installation of Improved Hardware

(a) At the next disassembly of the turbine exhaust case (TEC) when all hardware is stripped from the case after the effective date of this AD, install an improved No. 4 bearing internal oil pressure tube in accordance with PW Service Bulletin (SB) No. 5707, dated September 17, 1986, and SB JT9D–7R4–72–289, dated March 26, 1986.

Inspections

(b) Perform initial and repetitive inspections of the No. 4 bearing oil pressure tube and TEC strut for clearance and alignment, and, if necessary, replace with serviceable parts, in accordance with the applicable PW JT9D Engine Manuals, part numbers (P/Ns) 646028, 770407, 770408, and 777210, Section 72–53–01, Turbine Exhaust Case Assembly—Inspection 01; P/N 785059, Section 72–53–05, Turbine Exhaust Case Assembly—Inspection/Check–01–Config–2; and P/N 754459, Turbine Exhaust Section—Heavy Maintenance, Section 72–53–01, Turbine Exhaust Case Assembly—Check, as follows:

(1) Initially inspect at the next disassembly of the TEC when all hardware is stripped from the case after the effective date of this AD.

(2) Thereafter, inspect at every disassembly of the TEC when all hardware is stripped from the case.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement of the oil pressure tube shall be done in accordance with PW Service Bulletin No. 5707, pages 1–7, dated September 17, 1986, and PW Service Bulletin No. JT9D–7R4–72–289, pages 1–6, dated March 26, 1986. The initial and repetitive inspections shall be done in accordance with the specified sections of the appropriate PW JT9D Engine Manual:

P/N	Section	Pages	Date
646028	72–53–01	805–809	March 1, 1999.
754459	72–53–01	508	October 15, 1999.
754459	72–53–01	508A–508D	April 15, 1999.
770407	72–53–01	805	March 1, 1999.
770408	72–53–01	805	March 1, 1999.
777210	72–53–01	805–806	October 15, 1998.
777210	72–53–01	807	April 15, 1999.
777210	72–53–01	815–818	October 15, 1998.
785059	72–53–05	803	March 15, 1999.
785059	72–53–05	807–810	March 15, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108; telephone: (860) 565–6600, fax: (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 19, 2001.

Issued in Burlington, Massachusetts, on November 7, 2000.

Donald E. Plouffe,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–29212 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–34]

Amendment to Class E Airspace; Algona, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace at Algona, IA. The FAA has developed Area Navigation (RNAV) Runway (RWY) 30 ORIGINAL, a Standard Instrument Approach Procedure (SIAP) to serve Algona Municipal Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for other Instrument Flight Rules (IFR) operations at this airport. This action will also amend the geographical coordinates of Algona Municipal Airport, IA.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, March 22, 2001.

Comments for inclusion in the Rules Docket must be received on or before January 15, 2001.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations and Airspace Branch, Air Traffic Division, ACE–530, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–34, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informed docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations & Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV RWY 30 ORIGINAL, SIAP to serve the Algona Municipal Airport, Algona, IA. The amendment to Class E airspace at Algona, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Algona Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR procedures. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–34." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA Algona, IA [Revised]

Algona Municipal Airport, IA
(Lat. 43°04′40″N., long. 94°16′19″W)
Algona NDB
(Lat. 43°04′53″N., long. 94°16′21″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Algona Municipal Airport, and within 3.1 miles each side of the 294° bearing of the Algona NDB extending from the 6.4-mile radius to 10 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 3, 2000.

H.J. Lyons,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–29660 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–14]

RIN 2120–AA66

Alteration of VOR Federal Airway; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action eliminates a segment of Federal Airway V–382 (V–382) between Bryce Canyon, UT, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and Grand Junction, CO, VORTAC. The FAA is taking this action to delete a portion of the airway because the flight inspection found the current route segment unusable for navigation.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 2000, the FAA proposed to amend 14 CFR part 71 (part 71) to eliminate a segment of V–382 (65 FR 41388). This action was considered necessary due to the failure of repeated flight inspections on this segment of V–382. Interested parties were invited to participate in this rulemaking by submitting written comments on the proposal to the FAA. No comments were received. Except of editorial changes, this amendment is the same as that proposed in the notice.

The Rule

The FAA is amending part 71 to modify V–382 by eliminating the route segment between Bryce Canyon and Grand Junction, CO, VORTAC. Since 1998, V–382 has been unusable between Bryce Canyon, UT, VORTAC and the Grand Junction, CO, VORTAC. This segment of V–382 no longer passes flight inspection and is out of service. The action retains the route segment from Grand Junction, CO, VORTAC to Durango, CO, VORTAC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Domestic VOR Federal airway listed in this document would be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–382 [Revised]

From Grand Junction, CO; Cones, CO; to Durango, CO.

* * * * *

Issued in Washington, DC, on November 13, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–29659 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–20]

RIN 2120–AA56

Amend Legal Description of Jet Route J–501

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of Jet Route 501 (J–501) in Canadian Airspace due to the decommissioning of the Camp Scott, British Columbia (BC), Radio Beacon (RBN).

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 2000, the FAA was notified by Transport Canada that Camp Scott, BC, RBN was decommissioned. This decommissioning action affects J–501 within Canada.

The Rule

This action amends title 14 CFR part 71 (part 71) by amending the legal description of J–501 in Canadian airspace due to the decommissioning of the Camp Scott, BC, RBN. The FAA is taking this action to remove reference to the Camp Scott RBN in the description of J–501. The decommissioning of the Camp Scott RBN will generate a break in the J–501 between the Tofino, BC, RBN and the Sandspit, BC, very high frequency omnidirectional range/tactical air navigation facility. This action provides an uninterrupted route on J–501.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 2004—Jet Routes.

* * * * *

J–501 [Amended]

From San Marcus, CA, via Big Sur, CA; Point Reyes, CA, via Rogue Valley, OR; Hoquiam, WA; INT Hoquiam 354° and Tatoosh, WA, 162° radials; Tatoosh; Tofino, BC, Canada, RBN. From Sandspit, BC, Canada; Biorka Island, AK; Yakutat, AK; Johnstone Point, AK; Anchorage, AK; Sparrevohn, AK; Bethel, AK; to the INT of the Bethel 258° radial and the Anchorage CTA/FIR boundary, excluding the airspace within Canada.

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Issued in Washington, DC, on November 13, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–29658 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Parts 1 and 311

Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended by the Debt Collection Improvement Act of 1996

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule amendments.

SUMMARY: The Commission is correcting certain previously published adjustments to civil penalty amounts within its jurisdiction. These corrections will maintain the civil penalty amounts currently published in Commission Rule 1.98, as last adjusted in 1996. These corrections will not affect certain related amendments intended to incorporate previously omitted adjustments in civil penalty amounts for Recycled Oil Rule violations.

EFFECTIVE DATE: These amendments are effective November 20, 2000.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2447, atang@ftc.gov.

SUPPLEMENTARY INFORMATION: The Commission is correcting certain civil penalty inflation adjustments, 65 FR 60857 (Oct. 13, 2000), that were intended to update civil penalty amounts that the Commission last adjusted for inflation in 1996 under the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. 2461 note. *See* 61 FR 54548 (Oct. 21, 1996), 55840 (Oct. 29, 1996). Section 5 of the FCPIAA requires, in relevant part, that any inflation "increase" since the last adjustment be rounded to the nearest multiple of $10 (for "penalties less than or equal to $100"), the nearest $100 (for "penalties greater than $100 but less than or equal to $1,000"), the nearest $1,000 (for "penalties greater than $1,000 but less than or equal to $10,000"), or the nearest $5,000 (for "penalties greater than $10,000 but less than or equal to $100,000").

In determining how these rounding categories apply, the Commission had referred to the original statutory penalty amounts. For example, for penalties under section 5 of the FTC Act, the Commission used the rounding category "for penalties greater than $1,000 but less than or equal to $10,000" (i.e., increases are rounded in multiples of $1,000), even though section 5 penalties had been increased to $11,000 in 1996.

The rounding categories, however, do not expressly rely upon or refer to the original statutory amounts of the penalties, nor is the Commission aware of any legislative history to support a retroactive reading of "penalties" once the original statutory penalty amount has been increased. Rather, in calculating increases, the statute expressly refers to the increase since the penalties were last set "or adjusted" by law. *See* FCPIAA Sec. 5(b) (defining cost-of-living adjustment). Thus, for example, increases in the penalty for a violation of section 5 of the FTC Act (i.e., $11,000) must be rounded in multiples of $5,000 (rather than multiples of $1,000, as when the penalty was only $10,000).

Applying the rounding rules this way, the Commission has determined that the relevant increase in the Consumer Price Index (CPI) since the last adjustment in 1996 is not large enough yet to authorize the recently published increased in the civil penalty amounts within the Commission's jurisdiction.[1] Accordingly, the Commission has determined that the civil penalty amounts in Commission Rule 1.98, 16 CFR 1.98, as last adjusted in 1996, should remain unchanged for now. This determination does not affect the previously published rule amendments to include civil penalties for Recycled Oil Rule violations, which were inadvertently omitted from the 1996 adjustment. The Commission is re-publishing its final rule amendments to preserve these conforming amendments while making the civil penalty corrections discussed earlier.

These procedural amendments are exempt from the notice-and-comment requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(B). The requirements of the Regulatory Flexibility Act also do not apply. *See* 5 U.S.C. 603, 604.

List of Subjects

16 CFR Part 1

Administrative practice and procedure, Penalties, Trade practices.

16 CFR Part 311

Energy conservation, Labeling, Recycled oil, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, chapter I, subchapters A and C, of the Code of Federal Regulations, as follows:

SUBCHAPTER A—ORGANIZATION, PROCEDURES AND RULES OF PRACTICE

PART 1—GENERAL PROCEDURES

1. Revise the title of subpart L to read as follows:

Subpart L—Civil Penalty Adjustments Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended by the Debt Collection Improvement Act of 1996

2. Revise the authority for subpart L to read as follows:

Authority: 28 U.S.C. 2461 note.

§ 1.98 Adjustment of civil monetary penalty amounts.

This section makes inflation adjustments in the dollar amounts of civil monetary penalties provided by law within the Commission's jurisdiction. The following civil penalty amounts apply to violations occurring after November 20, 2000:

(a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)—$11,000;

(b) Section 11(*l*) of the Clayton Act, 15 U.S.C. 21(*l*)—$5,500;

(c) Section 5(*l*) of the FTC Act, 15 U.S.C. 45(*l*)—$11,000;

(d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)—$11,000;

(e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)—$11,000;

(f) Section 10 of the FTC Act, 15 U.S.C. 50—$110;

(g) Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65—$110;

(h) Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b)—$110;

(i) Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e)—$110;

(j) Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2)—$110;

(k) Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a)—$110;

((*l*) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b)—$5,500 and $11,000, respectively; and

(m) civil monetary penalties authorized by reference to the Federal Trade Commission Act under any other provision of law within the jurisdiction of the Commission—refer to the amounts set forth in paragraphs (c), (d), (e) and (f) of this section, as applicable.

SUBCHAPTER C—REGULATIONS UNDER SPECIFIC ACTS OF CONGRESS

PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL

4. The authority for part 311 continues to read as follows:

Authority: 42 U.S.C. 6363(d).

5. Amend § 311.6 by revising the last sentence to read as follows:

§ 311.6 3 Prohibited acts.

* * * Violations will be subject to enforcement through civil penalties (as adjusted for inflation pursuant to § 1.98 of this chapter), imprisonment, and/or injunctive relief in accordance with the enforcement provisions of Section 525 of the Energy Policy and Conservation Act (42 U.S.C. 6395).

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–29469 Filed 11–17–00; 8:45 am]

BILLING CODE 6750–01–M

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[1] For adjustment purposes, inflation is determined by calculating the percentage by which the June CPI for the calendar year preceding the adjustment (166.2 in 1999) exceeds the June CPI for the year when the last adjustment was made (156.7 in 1996). *See* FCPIAA 5(b). Thus, the relevant inflation increase if 6.1% (not the figure previously stated by the Commission). In any event, this amount is not yet large enough to justify the inflation increases authorized by the statute's rounding rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 00N–1596]

Uniform Compliance Date for Food Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing January 1, 2004, as the uniform compliance date for food labeling regulations that are issued between January 1, 2001, and December 31, 2002. FDA periodically announces uniform compliance dates for new food labeling requirements to minimize the economic impact of label changes. On December 23, 1998, FDA established January 1, 2002, as the uniform compliance date for food labeling regulations that issued between January 1, 1999, and December 31, 2000.

DATES: This rule is effective November 20, 2000. Submit written comments by February 5, 2001.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Louis B. Brock, Center for Food Safety and Applied Nutrition (HFS–24), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4273.

SUPPLEMENTARY INFORMATION: FDA periodically issues regulations requiring changes in the labeling of food. If the effective dates of these labeling changes were not coordinated, the cumulative economic impact on the food industry of having to respond separately to each change would be substantial. Therefore, the agency periodically has announced uniform compliance dates for new food labeling requirements (see e.g., the

Federal Registers of October 19, 1984 (49 FR 41019), December 24, 1996 (61 FR 67710), December 27, 1996 (61 FR 68145), and December 23, 1998 (63 FR 71015)). Use of a uniform compliance date provides for an orderly and economical industry adjustment to new labeling requirements by allowing sufficient lead time to plan for the use of existing label inventories and the development of new labeling materials. This policy serves consumers' interests as well because the cost of multiple short-term label revisions that would otherwise occur would likely be passed on to consumers in the form of higher prices.

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 is not required.

FDA has examined the economic implications of this final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety, distributive, and equity effects). Executive Order 12866 classifies a rule as "economically significant" if it meets any one of a number of specified conditions including having an annual effect on the economy of $100 million, adversely affecting some sector of the economy in a material way, or adversely affecting jobs or competition. A regulation is considered a "significant" regulatory action under Executive Order 12866 if it raises novel legal or policy issues. FDA finds that this final rule is neither an economically significant rule nor a significant regulatory action as defined by Executive Order 12866. In addition, in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the administration of OMB has determined that this final rule is not a major rule for purposes of congressional review. The establishment of a uniform compliance date does not impose either costs or benefits. For future labeling requirements, FDA will assess the costs and benefits of the uniform compliance date as well as the option of setting other dates.

Because FDA has issued this final rule without first publishing a general notice of proposed rulemaking, a final regulatory analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601–612). Nonetheless, the uniform compliance date does not impose any burden on small entities. The agency will assess the costs and benefits of setting alternative dates as part of the regulatory flexibility analyses of future labeling regulations.

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

This action is not intended to change existing requirements for compliance dates contained in final rules published before January 1, 2001. Therefore, all final FDA regulations published in the **Federal Register** before January 1, 2001, will still go into effect on the date stated in the respective final rule.

The agency generally encourages industry to comply with new labeling regulations as quickly as feasible, however. Thus, when industry members voluntarily change their labels, it is appropriate that they incorporate any new requirements that have been published as final regulations up to that time.

In rulemaking that began with publication of a proposal on April 15, 1996 (61 FR 16422), and ended with a final rule on December 24, 1996 (61 FR 67710), FDA provided notice and an opportunity for comment on the practice of establishing uniform compliance dates by issuance of a final rule announcing the date. Receiving no comments objecting to this practice, FDA finds any further rulemaking unnecessary for establishment of the uniform compliance date. Nonetheless, under 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether this uniform compliance date should be modified or revoked.

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this final rule by February 5, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. After its review of any comments received to this final rule, FDA will either publish a document providing its conclusions concerning the comments or will initiate notice and comment rulemaking to modify or revoke the uniform compliance date established by this final rule.

The new uniform compliance date will apply only to final FDA food labeling regulations that require changes in the labeling of food products and that publish after January 1, 2001, and before December 31, 2002. Those regulations will specifically identify January 1, 2004, as their compliance date. All food products subject to the January 1, 2004, compliance date must comply with the appropriate regulations when initially introduced into interstate commerce on or after January 1, 2004. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 2004, the agency will determine for that regulation an appropriate compliance date, which will be specified when the final regulation is published.

Dated: November 8, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–29538 Filed 11–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8907]

RIN 1545–AX73

Application of the Anti-Churning Rules for Amortization of Intangibles in Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the amortization of certain intangible property under section 197. Specifically, the regulations apply the anti-churning rules under section 197(f)(9) to partnership distributions resulting in basis adjustments under sections 732(b) and 734(b). This document also amends certain parts of the previously issued

final regulations (TD 8865), including those parts that relate to the amount of a basis adjustment under sections 732(d) and 743(b) that is subject to the anti-churning rules under section 197(f)(9). The final regulations interpret the provisions of section 197(f)(9), reflecting changes to the law made by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), and affect taxpayers who acquired intangible property after August 10, 1993, or made a retroactive election to apply OBRA '93 to intangibles acquired after July 25, 1991.

DATES: *Effective Date:* These regulations are effective November 20, 2000.

Applicability Date: These regulations apply to distributions or transfers occurring on or after November 20, 2000. However, a taxpayer may choose, on a transaction-by-transaction basis, to apply these regulations to property acquired (or partnership transactions occurring) after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197–1T) and before November 20, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Sotos or Robert G. Honigman at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends § 1.197–2 of the Income Tax Regulations (26 CFR Part 1) to provide additional rules regarding the application of section 197(f)(9) to partnership transactions under sections 732(b) and 734(b). This document also amends certain provisions of the final regulations under section 197 issued on January 25, 2000 (TD 8865, 65 FR 3820).

On January 16, 1997, the IRS published proposed regulations (REG–209709–94) in the **Federal Register** (62 FR 2336) under sections 167(f) and 197, including the anti-churning rules in section 197(f)(9). In commenting on the proposed regulations, some practitioners noted that additional guidance was needed regarding how the special anti-churning rule of section 197(f)(9)(E) should apply to increases in the basis of partnership property under sections 732, 734, and 743. In response to these comments, the IRS published proposed regulations (REG–100163–00) in the **Federal Register** (65 FR 3903) on January 25, 2000, providing rules for determining the portion of a basis adjustment under sections 732(b) and 734(b) that will be subject to the anti-churning rules. Final regulations (TD 8865, 65 FR 3820) (referred to herein as the "existing regulations") were issued at the same time as the proposed regulations. The existing regulations provide guidance regarding the application of the anti-churning rules to basis adjustments under sections 732(d) and 743(b) and to remedial allocations of deductions for amortization of section 197(f)(9) intangibles (i.e., goodwill and going concern value that was held or used at any time during the period beginning on July 25, 1991, and ending on August 10, 1993 (unless an election was made under § 1.197–1T) and any other section 197 intangible that was held or used during such period and was not depreciable or amortizable under prior law).

The IRS received no requests to speak at a public hearing that was scheduled for May 24, 2000, and consequently the IRS canceled the hearing. Written comments were received in response to the notice of proposed rulemaking. The comments received and revisions made are discussed below.

Explanation of Provisions and Summary of Comments

A. In General

Section 197(f)(9)(E) provides that, in applying the anti-churning rules for basis adjustments under sections 732, 734, and 743, determinations are made at the partner level, and each partner is treated as having owned and used such partner's proportionate share of the partnership's assets. With respect to basis adjustments under sections 732(b) and 734(b), this rule requires taxpayers and the IRS to analyze transactions that actually involve a distribution of property from the partnership to a partner as deemed transactions involving transfers of property directly among the partners. In applying the anti-churning rules to basis adjustments under section 732(b), the distributee partner is deemed to acquire the distributed intangible directly from the continuing partners of the distributing partnership. Similarly, in applying the anti-churning rules to basis adjustments under section 734(b), the continuing partners are deemed to acquire interests in the intangible that remains in the partnership from the partner who received a distribution (giving rise to the section 734(b) basis adjustment) of property other than the intangible.

Consistent with this view of the transactions, § 1.197–2(g)(3) of the existing regulations provides that the increase in the basis of a distributed section 197(f)(9) intangible under section 732(b) or the increase in the partnership's basis of an undistributed section 197(f)(9) intangible under section 734(b) is treated as a new intangible acquired as a result of the distribution. The rules for determining whether such basis adjustments are subject to the anti-churning rules under section 197(f)(9) operate by reference to the facts surrounding each partner's acquisition of its interest in the partnership, the relation of the distributee partner and the continuing partners, and the portion of the intangible that is allocable to such partners. Although the specific rules are not phrased in terms of analyzing a deemed transfer of a portion of an intangible between the distributee partner and the continuing partners, the effect of the rules is to analyze such a deemed transfer.

Under the proposed regulations, it first is necessary to determine whether the portion of an intangible that a partner is deemed to acquire as a result of the distribution was subject to the anti-churning rules immediately prior to the deemed transfer. Even if the intangible is a section 197(f)(9) intangible with respect to the partnership, for purposes of analyzing a deemed transfer, the partner's share of the intangible is treated as not being subject to the anti-churning rules if the intangible was held by the partnership at the time that the partner (or predecessor partner) acquired the partnership interest, and the partner (or predecessor partner) would have been able to amortize the intangible had the partner (or predecessor partner) directly acquired the intangible under the same circumstances that the partner (or predecessor partner) acquired the partnership interest. If a partner's share of the intangible is treated as not being subject to the anti-churning rules for this purpose, then the anti-churning rules would not apply to the portion of the basis adjustment that is attributable to the deemed transfer.

If the partner's share of the intangible was treated as being subject to the anti-churning rules immediately prior to the deemed transfer, it is necessary, as a further step, to determine whether the deemed transferor and transferee are related. If the partners are not related, the anti-churning rules would not apply to the basis adjustment that gives rise to the deemed transfer.

The proposed regulations also contain rules for measuring the portion of the intangible that is deemed to be transferred by the relevant partners in the deemed transactions together with certain additional rules designed to prevent circumvention of the anti-churning rules through the use of partnerships.

B. Continuing Partner's Share of Basis Adjustment Under Section 734(b)

The proposed regulations provide that, for purposes of analyzing basis adjustments under section 734(b), a continuing partner's share of a basis increase is equal to (1) the total basis increase allocable to the intangible; multiplied by (2) a fraction equal to (A) the unrealized appreciation from the intangible that would have been allocated to the continuing partner if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction; over (B) the total unrealized appreciation from the intangible that would have been realized by the partnership if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction.

One commentator stated that, under the proposed regulations, the fraction for determining a continuing partner's share of the basis adjustment under section 734(b) could lead to inappropriate results in some circumstances. For example, if a partner contributes to a partnership a section 197(f)(9) intangible which has a fair market value that exceeds its tax basis at the time of the contribution, and, at some later date, in an unrelated transaction, the contributing partner is redeemed from the partnership resulting in a section 734(b) adjustment to the intangible, the proposed regulations could determine that the entire adjustment under section 734(b) is allocable to the contributing partner (assuming that the basis adjustment does not exceed the section 704(c) gain attributable to the property), even though the contributing partner is no longer a partner in the partnership.

Treasury and the IRS agree that the fraction used in the proposed regulations can lead to inappropriate results. Furthermore, as discussed below, particularly in situations involving intangibles with built-in gain that are contributed to a partnership, an approach relying on a partner's share of appreciation in an intangible (whether measured before or after a distribution) to determine the partner's share of a basis increase under section 734(b) appears to be inconsistent with the purpose of section 197(f)(9)(E).

Positive basis adjustments under section 734(b) can be analyzed from two different perspectives: gain eliminated or deductions created. Under § 1.755–1(c)(2)(i), positive section 734(b) basis adjustments are allocated first to appreciated properties within a class so as to eliminate the built-in gain (and hence section 704(c) gain) with respect to such properties. In analyzing gain on disposition of the asset, the basis adjustment inures first to the benefit of the contributing partner since it will reduce the section 704(c) gain recognized by the partner upon the disposition of the asset by the partnership. However, in analyzing depreciation or amortization deductions attributable to the asset, the basis will inure first to the non-contributing partners to the extent that they were being denied such deductions as a result of the ceiling rule. In determining the portion of an intangible that a partner is deemed to receive from the distributee partner for purposes of applying the anti-churning rules, it seems that a rule focused on who would receive a deduction as a result of a section 734(b) basis adjustment, rather than who would avoid gain, is more appropriate.

A partner's proportionate share of partnership capital generally serves as a good proxy for estimating a partner's share of deductions. Accordingly, for purposes of determining a continuing partner's share of a section 734(b) basis adjustment, the fraction utilized in the final regulations compares a continuing partner's post-distribution capital account as determined under section 704(b) and § 1.704–1(b)(2)(iv) to the aggregate of all of the continuing partners' post-distribution capital accounts (or if the partnership does not maintain capital accounts in accordance with § 1.704–1(b)(2)(iv), the fraction is determined by reference to the partner's overall interest in the partnership under § 1.704–1(b)(3)). Treasury and the IRS believe this change best reflects how deductions are likely to flow from the intangible asset in a typical partnership arrangement.

C. Amortization of Section 197(f)(9) Intangible Where Some But Not All of the Basis Adjustment Under Section 734(b) Is Amortizable

The proposed regulations provide that taxpayers may use any reasonable method to determine amortization of a section 734(b) adjustment with respect to an intangible for book purposes, provided that the method does not permit any portion of the tax deduction for amortization attributable to the adjustment to be allocated to a partner who is subject to the anti-churning rules. Several commentators requested guidance as to what methods would be considered reasonable in situations where part, but not all, of a section 734(b) basis adjustment is attributable to an intangible that is subject to the anti-churning rules.

In response to the comments, the final regulations contain an example illustrating one method for determining book amortization that will be considered reasonable under the regulations.

D. Adjustments Under Sections 743(b) and 732(d) Where the Transferor of the Partnership Interest Is Related to the Transferee

The existing regulations provide that the anti-churning rules apply with respect to positive basis adjustments under section 743(b) only if the person acquiring the partnership interest is related to the person transferring the partnership interest. One commentator pointed out that, even if the transferor partner is related to the transferee partner, there still may be situations where the section 743(b) adjustment should be amortizable by the transferee.

To illustrate the commentator's point, consider the following example: A partnership (PRS) with two partners, A and B, held an intangible subject to the anti-churning rules on August 10, 1993. The partnership has made a section 754 election. On June 1, 1995, A transfers his entire interest in PRS to C, an unrelated person. C has a positive section 743(b) basis adjustment with respect to the intangible that is not subject to the anti-churning rules. On April 30, 2000, C transfers his entire interest in PRS to D, a person related to C. C's section 743(b) basis adjustment disappears as a result of the transfer, and D obtains a new section 743(b) basis adjustment with respect to the intangible. According to the commentator, the ownership of the interest in PRS by C (a party unrelated to A) should permanently purge any taint with respect to a section 743(b) basis adjustment attributable to C's interest. The fact that D is related to C should not prevent D from amortizing the basis adjustment.

The commentator's suggestion is consistent with the aggregate approach in the regulations for adjustments under sections 732(b) and 734(b). Under § 1.197–2(h)(12)(ii) and (iv) of these final regulations, if a partner acquires an interest in a partnership from an unrelated partner after August 10, 1993, and after the partnership has acquired the section 197(f)(9) intangible, the partner will be treated as holding a portion of the intangible that is not subject to the anti-churning rules for purposes of analyzing subsequent deemed transfers relating to basis adjustments under sections 732(b) and 734(b). The existing regulations are amended to include similar provisions for purposes of analyzing the application of the anti-churning rules with respect to basis adjustments under section 743(b).

The existing regulations pertaining to section 732(d) adjustments also are amended to coordinate those provisions with the change discussed above for section 743(b) adjustments. The amendment provides that the anti-churning rules do not apply to an increase in the basis of a section 197(f)(9) intangible under section 732(d) if, had an election been in effect under section 754 at the time of the transfer of the partnership interest, the distributee partner would have been able to amortize the basis adjustment made pursuant to section 743(b).

E. Modification of Rule Where a Partner Is or Becomes a User of a Partnership Intangible

Section 1.197–2(h)(12)(vi) of the proposed regulations provides a rule to prevent avoidance of the anti-churning rules where a partner subject to the anti-churning rules becomes or remains a user of the intangible after the basis of the intangible is adjusted with respect to another partner under section 732, 734, or 743. One commentator noted that § 1.197–2(h)(12)(vi) could apply if the partnership itself continues to use the intangible, at least where the deemed transferor of the intangible continues to own more than a 20 percent interest in the partnership, because the partner would be treated under the attribution rules as continuing to use the intangible by virtue of the partnership's use of the intangible. The commentator stated that such a result appears inconsistent with the policies underlying section 197(f)(9)(E), which ignore the existence of the partnership for purposes of anti-churning determinations with respect to basis adjustments under sections 732, 734, and 743. The commentator requested that the final regulations make clear that a partnership's continued use of an intangible would not invoke the rule of § 1.197–2(h)(12)(vi).

Consistent with this comment, § 1.197–2(h)(12)(vi) of these final regulations makes clear that the proscribed use must be by an anti-churning partner or related person other than the partnership. Attributed use of the intangible from the partnership to a partner will not cause this rule to apply.

F. Clarification With Respect to Remedial Allocations

Section 1.197–2(g)(4)(ii) of the existing regulations provides that "if a partner contributes a section 197 intangible to a partnership and the partnership adopts the remedial allocation method for making section 704(c) allocations of amortization deductions, the partnership generally may make remedial allocations of amortization deductions with respect to the contributed section 197 intangible in accordance with § 1.704–3(d)." Comments have been received expressing concern that, because no similar affirmative rule is contained in the anti-churning section of the regulations, if a contributing partner owns a greater than 20 percent interest in the partnership (and thus is considered related to the partnership), the rule allowing remedial allocations will not be available. While Treasury and the IRS believe that it was clear under the existing regulations that remedial allocations of amortization deductions could be made where the contributing partner is related to the partnership (as opposed to the non-contributing partners), an affirmative rule has been added to the anti-churning rules at § 1.197–2(h)(12)(vii)(B) in order to eliminate any doubt with respect to this issue.

In addition, the rule regarding the disallowance of remedials where a non-contributing partner is related to the contributing partner is amended in these final regulations to also cover situations where, as part of a series of related transactions that includes the contribution of the section 197(f)(9) intangible to the partnership, the contributing partner (or a related person) becomes or remains a direct user of the contributed intangible. Consistent with the analysis of remedials as being akin to a section 743(b) basis adjustment for the non-contributing partners, Treasury and the IRS believe that it is inappropriate for a non-contributing partner to obtain amortization deductions with respect to a portion of a contributed section 197(f)(9) intangible where the prior owner of the intangible becomes or remains a direct user of the intangible in connection with the contribution. See also section 197(f)(9)(A)(iii) and § 1.197–2(h)(12)(vi).

G. Rules for Determining When a Partnership Interest Is Treated as Being Acquired From a Related Person for Purposes of Analyzing Basis Adjustments Under Sections 732(b) and 734(b)

For purposes of analyzing deemed transfers resulting from basis adjustments under sections 732(b) and 734(b) in applying the anti-churning rules, the proposed regulations provide that if a partner contributed the distributed section 197(f)(9) intangible to the partnership, the partnership interest acquired by such partner is treated as not being described in § 1.197–2(h)(12)(ii)(A)(2) and (3) (for section 732(b) adjustments) or 1.197–2(h)(12)(iv)(A)(2) and (3) (for section 734(b) adjustments) (*i.e.*, the rules that allow a prior purchase of a partnership interest from an unrelated person to purge the partner's anti-churning taint in analyzing subsequent deemed transfers relating to basis adjustments). Accordingly, in order for a basis adjustment to a section 197(f)(9) intangible under section 732(b) or 734(b) to be amortizable, the deemed transfer (as a result of the basis adjustment) from the contributing partner must be to an unrelated partner.

Commentators indicated that this rule is unnecessary. According to the commentators, §§ 1.197–2(h)(12)(ii)(A)(2) and (3) and 1.197–2(h)(12)(iv)(A)(2) and (3), by their terms, cannot apply where the deemed transferor contributed the section 197(f)(9) intangible to the partnership. Treasury and the IRS agree with this comment. Accordingly, the final regulations omit the rule regarding a partner who contributes the distributed section 197(f)(9) intangible.

Special Analyses

It has been determined that the final regulations are not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the final regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are David J. Sotos and Robert G. Honigman of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.197–2 is amended by:

1. Revising paragraphs (h)(12)(ii), (h)(12)(iii), (h)(12)(iv), (h)(12)(v), and paragraph (h)(12)(vi)(A).
2. Removing ", and" at the end of paragraph (h)(12)(vi)(B)(*2*)(*ii*) and adding a period in its place.
3. Removing paragraph (h)(12)(vi)(B)(*3*).
4. Removing the first sentence of paragraph (h)(12)(vii)(B) and adding two new sentences in its place.
5. Removing the last two sentences of paragraph (iii) of *Example 27* in paragraph (k) and adding three sentences in their place.
6. Adding *Examples 28, 29, 30,* and *31* to paragraph (k).
7. Revising paragraphs (l)(1) and (l)(2).

The additions and revisions read as follows:

§ 1.197–2 Amortization of goodwill and certain other intangibles.

* * * * *

(h) * * *

(12) * * *

(ii) *Section 732(b) adjustments*—(A) *In general.* The anti-churning rules of this paragraph (h) apply to any increase in the adjusted basis of a section 197(f)(9) intangible under section 732(b) to the extent that the basis increase exceeds the total unrealized appreciation from the intangible allocable to—

(*1*) Partners other than the distributee partner or persons related to the distributee partner;

(*2*) The distributee partner and persons related to the distributee partner if the distributed intangible is a section 197(f)(9) intangible acquired by the partnership on or before August 10, 1993, to the extent that—

(*i*) The distributee partner and related persons acquired an interest or interests in the partnership after August 10, 1993;

(*ii*) Such interest or interests were held after August 10, 1993, by a person or persons other than either the distributee partner or persons who were related to the distributee partner; and

(*iii*) The acquisition of such interest or interests by such person or persons was not part of a transaction or series of related transactions in which the distributee partner (or persons related to the distributee partner) subsequently acquired such interest or interests; and

(*3*) The distributee partner and persons related to the distributee partner if the distributed intangible is a section 197(f)(9) intangible acquired by the partnership after August 10, 1993, that is not amortizable with respect to the partnership, to the extent that—

(*i*) The distributee partner and persons related to the distributee partner acquired an interest or interests in the partnership after the partnership acquired the distributed intangible;

(*ii*) Such interest or interests were held after the partnership acquired the distributed intangible, by a person or persons other than either the distributee partner or persons who were related to the distributee partner; and

(*iii*) The acquisition of such interest or interests by such person or persons was not part of a transaction or series of related transactions in which the distributee partner (or persons related to the distributee partner) subsequently acquired such interest or interests.

(B) *Effect of retroactive elections.* For purposes of paragraph (h)(12)(ii)(A) of this section, references to August 10, 1993, are treated as references to July 25, 1991, if the relevant party made a valid retroactive election under § 1.197–1T.

(C) *Intangible still subject to anti-churning rules.* Notwithstanding paragraph (h)(12)(ii) of this section, in applying the provisions of this paragraph (h) with respect to subsequent transfers, the distributed intangible remains subject to the provisions of this paragraph (h) in proportion to a fraction (determined at the time of the distribution), as follows—

(*1*) The numerator of which is equal to the sum of—

(*i*) The amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section; and

(*ii*) The total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply; and

(*2*) The denominator of which is the fair market value of such intangible.

(D) *Partner's allocable share of unrealized appreciation from the intangible.* The amount of unrealized appreciation from an intangible that is allocable to a partner is the amount of taxable gain that would have been allocated to that partner if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction.

(E) *Acquisition of partnership interest by contribution.* Solely for purposes of paragraphs (h)(12)(ii)(A)(*2*) and (*3*) of this section, a partner who acquires an interest in a partnership in exchange for a contribution of property to the partnership is deemed to acquire a pro rata portion of that interest in the partnership from each person who is a partner in the partnership at the time of the contribution based on each partner's respective proportionate interest in the partnership.

(iii) *Section 732(d) adjustments.* The anti-churning rules of this paragraph (h) do not apply to an increase in the basis of a section 197(f)(9) intangible under section 732(d) if, had an election been in effect under section 754 at the time of the transfer of the partnership interest, the distributee partner would have been able to amortize the basis adjustment made pursuant to section 743(b).

(iv) *Section 734(b) adjustments*—(A) *In general.* The anti-churning rules of this paragraph (h) do not apply to a continuing partner's share of an increase in the basis of a section 197(f)(9) intangible held by a partnership under section 734(b) to the extent that the continuing partner is an eligible partner.

(B) *Eligible partner.* For purposes of this paragraph (h)(12)(iv), eligible partner means—

(*1*) A continuing partner that is not the distributee partner or a person related to the distributee partner;

(*2*) A continuing partner that is the distributee partner or a person related to the distributee partner, with respect to any section 197(f)(9) intangible acquired by the partnership on or before August 10, 1993, to the extent that—

(*i*) The distributee partner's interest in the partnership was acquired after August 10, 1993;

(*ii*) Such interest was held after August 10, 1993 by a person or persons who were not related to the distributee partner; and

(*iii*) The acquisition of such interest by such person or persons was not part of a transaction or series of related transactions in which the distributee partner or persons related to the distributee partner subsequently acquired such interest; or

(*3*) A continuing partner that is the distributee partner or a person related to the distributee partner, with respect to any section 197(f)(9) intangible acquired by the partnership after August 10, 1993, that is not amortizable with respect to the partnership, to the extent that—

(*i*) The distributee partner's interest in the partnership was acquired after the partnership acquired the relevant intangible;

(ii) Such interest was held after the partnership acquired the relevant intangible by a person or persons who were not related to the distributee partner; and

(iii) The acquisition of such interest by such person or persons was not part of a transaction or series of related transactions in which the distributee partner or persons related to the distributee partner subsequently acquired such interest.

(C) *Effect of retroactive elections.* For purposes of paragraph (h)(12)(iv)(A) of this section, references to August 10, 1993, are treated as references to July 25, 1991, if the distributee partner made a valid retroactive election under § 1.197–1T.

(D) *Partner's share of basis increase*—(*1*) In general. Except as provided in paragraph (h)(12)(iv)(D)(*2*) of this section, for purposes of this paragraph (h)(12)(iv), a continuing partner's share of a basis increase under section 734(b) is equal to—

(i) The total basis increase allocable to the intangible; multiplied by

(ii) A fraction the numerator of which is the amount of the continuing partner's post-distribution capital account (determined immediately after the distribution in accordance with the capital accounting rules of § 1.704–1(b)(2)(iv)), and the denominator of which is the total amount of the post-distribution capital accounts (determined immediately after the distribution in accordance with the capital accounting rules of § 1.704–1(b)(2)(iv)) of all continuing partners.

(*2*) *Exception where partnership does not maintain capital accounts.* If a partnership does not maintain capital accounts in accordance with § 1.704–1(b)(2)(iv), then for purposes of this paragraph (h)(12)(iv), a continuing partner's share of a basis increase is equal to—

(i) The total basis increase allocable to the intangible; multiplied by

(ii) The partner's overall interest in the partnership as determined under § 1.704–1(b)(3) immediately after the distribution.

(E) *Interests acquired by contribution*—(*1*) *Application of paragraphs (h)(12)(iv)(B) (2) and (3) of this section.* Solely for purposes of paragraphs (h)(12)(iv)(B)(*2*) and (*3*) of this section, a partner who acquires an interest in a partnership in exchange for a contribution of property to the partnership is deemed to acquire a pro rata portion of that interest in the partnership from each person who is a partner in the partnership at the time of the contribution based on each such partner's proportionate interest in the partnership.

(*2*) *Special rule with respect to paragraph (h)(12)(iv)(B)(1)* of this section. Solely for purposes of paragraph (h)(12)(iv)(B)(*1*) of this section, if a distribution that gives rise to an increase in the basis under section 734(b) of a section 197(f)(9) intangible held by the partnership is undertaken as part of a series of related transactions that include a contribution of the intangible to the partnership by a continuing partner, the continuing partner is treated as related to the distributee partner in analyzing the basis adjustment with respect to the contributed section 197(f)(9) intangible.

(F) *Effect of section 734(b) adjustments on partners' capital accounts.* If one or more partners are subject to the anti-churning rules under this paragraph (h) with respect to a section 734(b) adjustment allocable to an intangible asset, taxpayers may use any reasonable method to determine amortization of the asset for book purposes, provided that the method used does not contravene the purposes of the anti-churning rules under section 197 and this paragraph (h). A method will be considered to contravene the purposes of the anti-churning rules if the effect of the book adjustments resulting from the method is such that any portion of the tax deduction for amortization attributable to the section 734 adjustment is allocated, directly or indirectly, to a partner who is subject to the anti-churning rules with respect to such adjustment.

(v) *Section 743(b) adjustments*—(A) *General rule.* The anti-churning rules of this paragraph (h) do not apply to an increase in the basis of a section 197 intangible under section 743(b) if the person acquiring the partnership interest is not related to the person transferring the partnership interest. In addition, the anti-churning rules of this paragraph (h) do not apply to an increase in the basis of a section 197 intangible under section 743(b) to the extent that—

(*1*) The partnership interest being transferred was acquired after August 10, 1993, provided—

(i) The section 197(f)(9) intangible was acquired by the partnership on or before August 10, 1993;

(ii) The partnership interest being transferred was held after August 10, 1993, by a person or persons (the post-1993 person or persons) other than the person transferring the partnership interest or persons who were related to the person transferring the partnership interest; and

(iii) The acquisition of such interest by the post-1993 person or persons was not part of a transaction or series of related transactions in which the person transferring the partnership interest or persons related to the person transferring the partnership interest acquired such interest; or

(*2*) The partnership interest being transferred was acquired after the partnership acquired the section 197(f)(9) intangible, provided—

(i) The section 197(f)(9) intangible was acquired by the partnership after August 10, 1993, and is not amortizable with respect to the partnership;

(ii) The partnership interest being transferred was held after the partnership acquired the section 197(f)(9) intangible by a person or persons (the post-contribution person or persons) other than the person transferring the partnership interest or persons who were related to the person transferring the partnership interest; and

(iii) The acquisition of such interest by the post-contribution person or persons was not part of a transaction or series of related transactions in which the person transferring the partnership interest or persons related to the person transferring the partnership interest acquired such interest.

(B) *Acquisition of partnership interest by contribution.* Solely for purposes of paragraph (h)(12)(v)(A) (*1*) and (*2*) of this section, a partner who acquires an interest in a partnership in exchange for a contribution of property to the partnership is deemed to acquire a pro rata portion of that interest in the partnership from each person who is a partner in the partnership at the time of the contribution based on each such partner's proportionate interest in the partnership.

(C) *Effect of retroactive elections.* For purposes of paragraph (h)(12)(v)(A) of this section, references to August 10, 1993, are treated as references to July 25, 1991, if the transferee partner made a valid retroactive election under § 1.197–1T.

(vi) *Partner is or becomes a user of partnership intangible*—(A) *General rule.* If, as part of a series of related transactions that includes a transaction described in paragraph (h)(12)(ii), (iii), (iv), or (v) of this section, an anti-churning partner or related person (other than the partnership) becomes (or remains) a direct user of an intangible that is treated as transferred in the transaction (as a result of the partners being treated as having owned their proportionate share of partnership assets), the anti-churning rules of this paragraph (h) apply to the proportionate share of such intangible that is treated as transferred by such anti-churning partner, notwithstanding the application of paragraph (h)(12)(ii), (iii), (iv), or (v) of this section.

* * * * *

(vii) * * *

(B) *Allocations where the intangible is not amortizable by the contributor.* If a section 197(f)(9) intangible was not an amortizable section 197 intangible in the hands of the contributing partner, a non-contributing partner generally may receive remedial allocations of amortization under section 704(c) that are deductible for Federal income tax purposes. However, such a partner may not receive remedial allocations of amortization under section 704(c) if that partner is related to the partner that contributed the intangible or if, as part of a series of related transactions that includes the contribution of the section 197(f)(9) intangible to the partnership, the contributing partner or related person (other than the partnership) becomes (or remains) a direct user of the contributed intangible. * * *

* * * * *

(k) * * *

Example 27. * * *

(iii) * * * However, A is an anti-churning partner under paragraph (h)(12)(vi)(B)(*2*)(*i*) of this section. As a result of the license agreement, A remains a direct user of the section 197(f)(9) intangible after the transfer to C. Accordingly, paragraph (h)(12)(vi)(A) of this section will cause the anti-churning rules to apply to the entire basis adjustment under section 743(b).

Example 28. Distribution of section 197(f)(9) intangible to partner who acquired partnership interest prior to the effective date. (i) In 1990, A, B, and C each contribute $150 cash to form general partnership ABC for the purpose of engaging in a consulting business and a software manufacturing business. The partners agree to share partnership profits and losses equally. In 2000, the partnership distributes the consulting business to A in liquidation of A's entire interest in ABC. The only asset of the consulting business is a nonamortizable intangible, which has a fair market value of $180 and a basis of $0. At the time of the distribution, the adjusted basis of A's interest in ABC is $150. A is not related to B or C. ABC does not have a section 754 election in effect.

(ii) Under section 732(b), A's adjusted basis in the intangible distributed by ABC is $150, a $150 increase over the basis of the intangible in ABC's hands. In determining whether the anti-churning rules apply to any portion of the basis increase, A is treated as having owned and used A's proportionate share of partnership property. Thus, A is treated as holding an interest in the intangible during the transition period. Because the intangible was not amortizable prior to the enactment of section 197, the section 732(b) increase in the basis of the intangible may be subject to the anti-churning provisions. Paragraph (h)(12)(ii) of this section provides that the anti-churning provisions apply to the extent that the section 732(b) adjustment exceeds the total unrealized appreciation from the intangible allocable to partners other than A or persons related to A, as well as certain other partners whose purchase of their interests meet certain criteria. Because B and C are not related to A, and A's acquisition of its partnership interest does not satisfy the necessary criteria, the section 732(b) basis increase is subject to the anti-churning provisions to the extent that it exceeds B and C's proportionate share of the unrealized appreciation from the intangible. B and C's proportionate share of the unrealized appreciation from the intangible is $120 (2/3 of $180). This is the amount of gain that would be allocated to B and C if the partnership sold the intangible immediately before the distribution for its fair market value of $180. Therefore, $120 of the section 732(b) basis increase is not subject to the anti-churning rules. The remaining $30 of the section 732(b) basis increase is subject to the anti-churning rules. Accordingly, A is treated as having two intangibles, an amortizable section 197 intangible with an adjusted basis of $120 and a new amortization period of 15 years and a nonamortizable intangible with an adjusted basis of $30.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-third of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($0) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($180 − $120 = $60), over the fair market value of the distributed intangible ($180).

Example 29. Distribution of section 197(f)(9) intangible to partner who acquired partnership interest after the effective date. (i) The facts are the same as in *Example 28*, except that B and C form ABC in 1990. A does not acquire an interest in ABC until 1995. In 1995, A contributes $150 to ABC in exchange for a one-third interest in ABC. At the time of the distribution, the adjusted basis of A's interest in ABC is $150.

(ii) As in *Example 28*, the anti-churning rules do not apply to the increase in the basis of the intangible distributed to A under section 732(b) to the extent that it does not exceed the unrealized appreciation from the intangible allocable to B and C. Under paragraph (h)(12)(ii) of this section, the anti-churning provisions also do not apply to the section 732(b) basis increase to the extent of A's allocable share of the unrealized appreciation from the intangible because A acquired the ABC interest from an unrelated person after August 10, 1993, and the intangible was acquired by the partnership before A acquired the ABC interest. Under paragraph (h)(12)(ii)(E) of this section, A is deemed to acquire the ABC partnership interest from an unrelated person because A acquired the ABC partnership interest in exchange for a contribution to the partnership of property other than the distributed intangible and, at the time of the contribution, no partner in the partnership was related to A. Consequently, the increase in the basis of the intangible under section 732(b) is not subject to the anti-churning rules to the extent of the total unrealized appreciation from the intangible allocable to A, B, and C. The total unrealized appreciation from the intangible allocable to A, B, and C is $180 (the gain the partnership would have recognized if it had sold the intangible for its fair market value immediately before the distribution). Because this amount exceeds the section 732(b) basis increase of $150, the entire section 732(b) basis increase is amortizable.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-sixth of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($0) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($180 − $150 = $30), over the fair market value of the distributed intangible ($180).

Example 30. Distribution of section 197(f)(9) intangible contributed to the partnership by a partner.

(i) The facts are the same as in *Example 29*, except that C purchased the intangible used in the consulting business in 1988 for $60 and contributed the intangible to ABC in 1990. At that time, the intangible had a fair market value of $150 and an adjusted tax basis of $60. When ABC distributes the intangible to A in 2000, the intangible has a fair market value of $180 and a basis of $60.

(ii) As in *Examples 28* and *29*, the adjusted basis of the intangible in A's hands is $150 under section 732(b). However, the increase in the adjusted basis of the intangible under section 732(b) is only $90 ($150 adjusted basis after the distribution compared to $60 basis before the distribution). Pursuant to paragraph (g)(2)(ii)(B) of this section, A steps into the shoes of ABC with respect to the $60 of A's adjusted basis in the intangible that corresponds to ABC's basis in the intangible and this portion of the basis is nonamortizable. B and C are not related to A, A acquired the ABC interest from an unrelated person after August 10, 1993, and the intangible was acquired by ABC before A acquired the ABC interest. Therefore, under paragraph (h)(12)(ii) of this section, the section 732(b) basis increase is amortizable to the extent of A, B, and C's allocable share of the unrealized appreciation from the intangible. The total unrealized appreciation from the intangible that is allocable to A, B, and C is $120. If ABC had sold the intangible immediately before the distribution to A for its fair market value of $180, it would have recognized gain of $120, which would have been allocated $10 to A, $10 to B, and $100 to C under section 704(c). Because A, B, and

C's allocable share of the unrealized appreciation from the intangible exceeds the section 732(b) basis increase in the intangible, the entire $90 of basis increase is amortizable by A. Accordingly, after the distribution, A will be treated as having two intangibles, an amortizable section 197 intangible with an adjusted basis of $90 and a new amortization period of 15 years and a nonamortizable intangible with an adjusted basis of $60.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-half of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($60) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($120 − $90 = $30), over the fair market value of the distributed intangible ($180).

Example 31. Partnership distribution causing section 734(b) basis adjustment to section 197(f)(9) intangible.

(i) On January 1, 2001, A, B, and C form a partnership (ABC) in which each partner shares equally in capital and income, gain, loss, and deductions. On that date, A contributes a section 197(f)(9) intangible with a zero basis and a value of $150, and B and C each contribute $150 cash. A and B are related, but neither A nor B is related to C. ABC does not adopt the remedial allocation method for making section 704(c) allocations of amortization expenses with respect to the intangible. On December 1, 2004, when the value of the intangible has increased to $600, ABC distributes $300 to B in complete redemption of B's interest in the partnership. ABC has an election under section 754 in effect for the taxable year that includes December 1, 2004. (Assume that, at the time of the distribution, the basis of A's partnership interest remains zero, and the basis of each of B's and C's partnership interest remains $150.)

(ii) Immediately prior to the distribution, the assets of the partnership are revalued pursuant to § 1.704–1(b)(2)(iv)(*f*), so that the section 197(f)(9) intangible is reflected on the books of the partnership at a value of $600. B recognizes $150 of gain under section 731(a)(1) upon the distribution of $300 in redemption of B's partnership interest. As a result, the adjusted basis of the intangible held by ABC increases by $150 under section 734(b). A does not satisfy any of the tests set forth under paragraph (h)(12)(iv)(B) and thus is not an eligible partner. C is not related to B and thus is an eligible partner under paragraph (h)(12)(iv)(B)(*1*) of this section. The capital accounts of A and C are equal immediately after the distribution, so, pursuant to paragraph (h)(12)(iv)(D)(*1*) of this section, each partner's share of the basis increase is equal to $75. Because A is not an eligible partner, the anti-churning rules apply to A's share of the basis increase. The anti-churning rules do not apply to C's share of the basis increase.

(iii) For book purposes, ABC determines the amortization of the asset as follows: First, the intangible that is subject to adjustment under section 734(b) will be divided into three assets: the first, with a basis and value of $75 will be amortizable for both book and tax purposes; the second, with a basis and value of $75 will be amortizable for book, but not tax purposes; and a third asset with a basis of zero and a value of $450 will not be amortizable for book or tax purposes. Any subsequent revaluation of the intangible pursuant to § 1.704–1(b)(2)(iv)(*f*) will be made solely with respect to the third asset (which is not amortizable for book purposes). The book and tax attributes from the first asset (*i.e.*, book and tax amortization) will be specially allocated to C. The book and tax attributes from the second asset (*i.e.*, book amortization and non-amortizable tax basis) will be specially allocated to A. Upon disposition of the intangible, each partner's share of gain or loss will be determined first by allocating among the partners an amount realized equal to the book value of the intangible attributable to such partner, with any remaining amount realized being allocated in accordance with the partnership agreement. Each partner then will compare its share of the amount realized with its remaining basis in the intangible to arrive at the gain or loss to be allocated to such partner. This is a reasonable method for amortizing the intangible for book purposes, and the results in allocating the income, gain, loss, and deductions attributable to the intangible do not contravene the purposes of the anti-churning rules under section 197 or paragraph (h) of this section.

(l) * * * (1) *In general.* This section applies to property acquired after January 25, 2000, except that paragraph (c)(13) of this section (exception from section 197 for separately acquired rights of fixed duration or amount) applies to property acquired after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197–1T), and paragraphs (h)(12)(ii), (iii), (iv), (v), (vi)(A), and (vii)(B) of this section (anti-churning rules applicable to partnerships) apply to partnership transactions occurring on or after November 20, 2000.

(2) *Application to pre-effective date acquisitions.* A taxpayer may choose, on a transaction-by-transaction basis, to apply the provisions of this section and § 1.167(a)–14 to property acquired (or partnership transactions occurring) after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197–1T) and—

(i) On or before January 25, 2000; or

(ii) With respect to paragraphs (h)(12)(ii), (iii), (iv), (v), (vi)(A), and (vii)(B) of this section, before November 20, 2000.

* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved: November 9, 2000.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury.

[FR Doc. 00–29524 Filed 11–17–00; 8:45 am]

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DEPARTMENT OF LABOR

Office of the Secretary

Employment Standards Administration

Wage and Hour Division

29 CFR Parts 1 and 5

RIN 1215–AA94

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule an amendment to the regulations that govern the employment of "helpers" on federally-financed and assisted construction contracts subject to the prevailing wage standards of the Davis-Bacon and Related Acts (DBRA). Specifically, this document amends the regulations to incorporate the Wage and Hour Division's longstanding policy of recognizing helper classifications and wage rates only where their duties are clearly defined and distinct from those of journeyworker and laborer classifications in the area; the use of such helpers is an established prevailing practice in the area; and the term "helper" is not synonymous with "trainee" in an informal training program.

EFFECTIVE DATE: January 19, 2001.

FOR FURTHER INFORMATION CONTACT: William W. Gross, Director, Office of Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3028, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–0569. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule does not contain any new information collection requirements and does not modify any existing requirements. Thus, the rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1995.

II. Background

Apart from the brief periods, as discussed below, when the suspended "helper" regulations were implemented, the longstanding practice of the Department of Labor ("DOL" or "the Department") has been to allow the use of helper classifications on DBRA-covered construction projects only where (1) the duties of the helper are clearly defined and distinct from those of the journeyworker and laborer; (2) the use of such helpers is an established prevailing practice in the area; and (3) the term "helper" is not synonymous with "trainee" in an informal training program.

On May 28, 1982, Wage and Hour published revised final Regulations, 29 CFR Part 1, Procedures for Predetermination of Wage Rates, and 29 CFR Part 5, Subpart A—Davis-Bacon and Related Acts Provisions and Procedures (47 FR 23644 and 23658, respectively), containing new provisions intended to allow contractors to expand their use of helpers on Davis-Bacon covered projects at wages lower than those paid to skilled journeyworkers.[1]

These regulations were challenged in a lawsuit brought by the Building and Construction Trades Department, AFL–CIO, and a number of individual unions. On December 23, 1982, the U.S. District Court for the District of Columbia Circuit held that the new helper regulations conflicted with the Davis-Bacon Act and enjoined DOL from implementing the regulations. *See Building and Construction Trades Department, AFL–CIO, et al.* v. *Donovan, et al.*, 553 F. Supp. 352 (D.D.C. 1982). On appeal, the U.S. Court of Appeals for the District of Columbia upheld the Department's authority to allow the increased use of helpers, concluding that the Secretary's regulatory definition was "not clearly unreasonable." *Building and Construction Trades Department, AFL–CIO, et al.* v. *Donovan, et al.*, 712 F.2d 611, 630 (D.C. Cir. 1983), *cert. denied*, 464 U.S. 1069 (1983). However, the court struck down that part of the regulation that allowed for the issuance of a helper wage rate where helpers were only "identifiable." *Id.* at 624.

On remand, the district court lifted the injunction as it applied to the helper definition, but maintained it as to the remaining helper regulations. The district court added that the Secretary "may, however, submit to this Court reissued regulations governing the use of helpers, and if these regulations conform to the decision of the Court of Appeals, they will be approved." 102 CCH Labor Cases ¶ 34,648, p. 46,702 (D.D.C. 1984).

In accordance with the district court's order, DOL published in the **Federal Register** (52 FR 31366, August 19, 1987) proposed revisions to the helper regulations to add the requirement that helpers must prevail in an area in order to be recognized. The Department, on January 27, 1989, published a revised final rule governing the use of helpers on federal and federally assisted construction contracts subject to the Davis-Bacon and Related Acts (54 FR 4234).

On September 24, 1990, the district court vacated its injunction, and on December 4, 1990, Wage and Hour published a **Federal Register** notice implementing the helper regulations, effective February 4, 1991 (55 FR 50148).

In April 1991, Congress passed the Dire Emergency Supplemental Appropriations Act of 1991, Public Law 102–27 (105 Stat. 130), which was signed into law on April 10, 1991. Section 303 of Public Law 102–27 (105 Stat. 152) prohibited the Department from spending any funds to implement or administer the helper regulations as published, or to implement or administer any other regulation that would have the same or similar effect. In compliance with this directive, the Department did not implement or administer the helper regulations for the remainder of fiscal year 1991.

After fiscal year 1991 concluded and subsequent continuing resolutions expired, a new appropriations act was passed that did not include a ban restricting the implementation of the helper regulations. On January 29, 1992, Wage and Hour issued All Agency Memorandum No. 161, instructing the contracting agencies to include the helper contract clauses in contracts for which bids were solicited or negotiations were concluded after that date. On April 21, 1992, the U.S. Court of Appeals for the District of Columbia invalidated the regulation that prescribed a ratio of two helpers for every three journeyworkers for being without sufficient support in the record, but upheld the remaining helper provisions. *Building and Construction Trades Department, AFL–CIO* v. *Martin*, 961 F.2d 269 (D.C. Cir. 1992). To comply with this ruling, on June 26, 1992, Wage and Hour issued a **Federal Register** notice removing the invalidated text, 29 CFR 5.5(a)(4)(iv), from the Code of Federal Regulations. 57 FR 28776.

Subsequently, Section 104 of the Department of Labor Appropriations Act of 1994, Public Law 103–112, enacted on October 21, 1993, prohibited the Department of Labor from expending funds to implement or administer the helper regulations during fiscal year 1994. Accordingly, on November 5, 1993, Wage and Hour published a **Federal Register** notice (58 FR 58954) suspending the regulations governing the use of semi-skilled helpers on DBRA-covered contracts, and reinstating the Department's prior policy regarding the use of helpers. The Department of Labor Appropriations Act for fiscal year 1995 again barred the Department from expending funds with respect to the helper regulations (Section 102, Public Law 103–333). That prohibition extended into fiscal 1996 as a result of several continuing resolutions. There was no such prohibition in the Department of Labor's Appropriations Acts for fiscal 1996 and 1997, Public Law 104–134, enacted on April 26, 1996, and Public Law 104–208, enacted on September 30, 1996.

On August 2, 1996, Wage and Hour published in the **Federal Register** (61 FR 40366) a proposal to continue to suspend the implementation of the helper regulations while additional rulemaking procedures were undertaken to determine whether further amendments should be made to those regulations. On December 30, 1996, a final rule was published in the **Federal Register** (61 FR 68641) continuing the suspension. Pursuant to that final rule, the November 5, 1993 suspension of the helper regulations continues in effect until Wage and Hour either (1) issues a final rule amending (and superseding) the suspended helper regulations; or (2) determines that no further rulemaking is appropriate, and issues a final rule reinstating the suspended regulations.

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[1] The following four new provisions were promulgated:

- A new definition of the term "helper," allowing a helper's duties to overlap with those of a journeylevel worker: "A *helper* is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice." [29 CFR 5.2(n)(4), 47 FR 23667.]
- A provision allowing a helper classification to be included in the wage determination if it was an "identifiable" local practice. 29 CFR 1.7(d), 47 FR 23655.
- A provision limiting the number of helpers to two for every three journeyworkers. 29 CFR 5.5(a)(4)(iv), 47 FR 23670.
- A provision allowing the addition of helper classifications on contracts containing wage determinations without helper classifications, where helpers are utilized in the area. 29 CFR 5.5(a)(1)(ii)(A), 47 FR 23686.

By decision dated July 23, 1997, the U.S. District Court for the District of Columbia upheld the Department's December 30, 1996 final rule continuing the suspension of the helper regulations until the completion of rulemaking proceedings. *Associated Builders & Contractors, Inc.* v. *Herman,* C.A. No. 96–1490, 1997 WL 525268 (D.D.C. July 23, 1997).

The Department, by Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on April 9, 1999 (64 FR 17442), proposed for public comment an amendment to the regulations that would reflect the longstanding policy of recognizing helpers as a distinct classification on DBRA-covered work only where Wage and Hour determines that (1) the duties of the helpers are not performed by other classifications in a given area, *i.e.*, the duties of the helper are clearly defined and distinct from those of the journeyworker and laborer; (2) the use of such helpers is an established prevailing practice in the area; and (3) the term "helper" is not synonymous with "trainee" in an informal training program.

In addition to the proposed rule, the Administrator also presented for comment the reasons the Department had concluded that the suspended rule should not be implemented, as well as the various other alternatives that had been considered by the Department: (1) Add a ratio requirement to the suspended helper definition; (2) change the "helper" definition to emphasize the semi-skilled nature of the classification; (3) define "helpers" based on the Bureau of Labor Statistics, Occupational Employment Statistics (OES) Dictionary of Occupations, which focuses on unskilled duties and the worker's interaction with journeylevel craft workers; and (4) explicitly delineate the semi-skilled tasks performed by each helper classification. The Administrator also presented for comment an Economic Impact Analysis comparing the economic costs of the proposed rule governing the use of helpers under the DBRA to those under the suspended rule and the other alternatives considered by DOL, and a Regulatory Flexibility Analysis.

The Department received 23 responses to the NPRM. These included 18 responses providing substantive comments, one with no comments, and four requesting an extension of the comment period. Comments were received from three groups of Congressional Representatives: Representatives Charlie Norwood, Bill Goodling, Cass Ballenger, John Boehner, Peter Hoekstra, Buck McKeon, and Ron Paul, Representatives William L. Clay, Major R. Owens, and James E. Clyburn; and Representatives Jan Schakowsky and Anthony Weiner. Comments were also submitted by six contractor associations: The Associated General Contractors, Inc. (AGC); the Associated Builders and Contractors, Inc. (ABC); the Small Business Survival Committee (SBSC); the Associated Prevailing Wage Contractors, Inc. (APWC); the AGC of Texas (Highway, Heavy, Utilities and Industrial Branch); and the Mechanical Electrical Sheet Metal Alliance (MESMA), which is a coalition of members of the Mechanical Contractors Association of America (MCAA), the National Electrical Contractors Association (NECA) and the Sheet Metal and Air Conditioning Contractors National Association (SMACNA).

Also submitting comments were three union organizations and a union-contractor group: The Building and Construction Trades Department, AFL–CIO (Building Trades); the Laborers' International Union of North America (LIUNA); the International Brotherhood of Electrical Workers (IBEW); and the National Joint Apprenticeship and Training Committee for the Electrical Industry (NAJTC), which was jointly created by the IBEW and NECA.

The Texas Department of Transportation (TxDOT) commented on the proposal, as did two academic sources: A.J. Thieblot, Ph.D., Adj. Prof., University of Baltimore and the Regulatory Studies Program, Mercatus Center, George Mason University, Wendy L. Gramm, Director. Comments were also provided by two individual companies, Halliburton/Kellog Brown & Root (through in-house counsel) and Elevator Control Service (Elcon).

Finally, two elevator contractors' associations (the National Association of Elevator Contractors and the National Elevator Industry, Inc.) and two elevator contracting companies (Quality Elevator Co. and Barbee Curran Elevator Co., Inc.) requested an extension of the comment period. Requests for extension of time were not granted.

III. Comments and Analysis

In the NPRM, the Department proposed not to implement the suspended "semi-skilled" helper rule, but instead, to issue a rule reflecting the current, longstanding practice of recognizing helpers only where they are a separate and distinct class with clearly defined duties. The Department also provided therein a detailed explanation of the problems it identified with respect to the suspended helper definition, as well as a discussion of other alternatives for identifying helpers that were considered.

As explained in the NPRM, the Department had preliminarily concluded that the suspended rule was not capable of being administered and enforced effectively in accordance with the goals and requirements of the Davis-Bacon Act, especially in view of the court-ordered abandonment of the ratio provision. The Department stated that the suspended rule is problematic because it represents a sharp departure from the Department's traditional practice of identifying job classifications based on the duties performed by such classifications. The suspended helper definition is unique in that it allows the determination of a Davis-Bacon classification based on subjective standards—the worker's skill level ("semi-skilled") and the existence of work-site supervision. Furthermore, the Department noted that the definition is internally inconsistent in that the examples given of the types of assistance the helper might provide to a journeyworker are not semi-skilled, but rather are largely unskilled duties commonly performed by laborers. The Department also stated that the requirements that the helper be "semi-skilled" and work under the supervision of a journeyworker are vague and would provide little assistance in enforcement.

The Department reasoned that, because the suspended rule allows the duties of a helper to overlap with those of both journeyworkers and laborers and provides no readily ascertainable means for distinguishing helpers from other classifications, contractors would find it difficult to determine whether they were in compliance and the Department in turn would find it difficult to enforce the regulation. Additionally, the Department expressed concern that the ambiguities in the suspended rule would make it difficult to prevent unscrupulous contractors from intentionally reclassifying large numbers of both journeyworkers and laborers as helpers when they work on DBRA projects, thus undermining locally prevailing wages for construction job classifications. The Department indicated that this is an even greater concern now that there is no longer any numerical limitation to using helpers on DBRA projects.

The Department also concluded that there seemed to be no generally accepted meaning for the term "helper" in the construction industry, and therefore there was reason to believe that the definition in the suspended rule did not in fact represent industry practice. For this reason, the Department was concerned that it would be difficult to conduct meaningful wage surveys and, therefore, specifically requested that commenters submit evidence regarding how helpers are in fact used.

Wage data collected by the Department during the implementation period provided further support for the Department's decision to reconsider the advisability of implementing the suspended rule. A key underpinning of the helper rule at the time it was proposed was the notion that helper use is widespread in construction in the private sector. According to the preamble to the proposed rule published in 1987, the Secretary projected that helpers would prevail in two-thirds to 100% of all craft classifications.[2] The wage survey data submitted to the Department during the implementation period, though admittedly limited in quantity and geographic scope, indicated to the Department that use of helpers might not be as widespread as previously thought. This led the Department to examine other available data sources in order to reassess its previous assumption that helper use is widespread.

The Department also became concerned, as a secondary matter, that the suspended rule might have a negative impact on apprenticeship and training by lessening the incentive for contractors to employ apprentices and trainees participating in formal programs.

After a full and careful review of the suspended rule, as well as a number of alternative approaches, the Department decided to propose for implementation the duties-based approach to recognizing helpers, which reflects longstanding policy. As discussed in the NPRM, it is the Department's view that this approach is more consistent with the intent of the Davis-Bacon Act to assure that workers employed on federal and federally-assisted construction work are paid at least the wages paid to workers doing similar work on similar construction in the area. The Department also stated in the NPRM that this approach, in sharp contrast to that under the suspended rule, would provide an objective basis for administration and enforcement of helper use, as well as clear criteria to facilitate compliance.

The following is a summary and analysis of the comments received as they relate to the proposed regulation, the alternatives considered, the problems identified by the Department with respect to the suspended rule, and the Department's analysis and conclusions concerning the proposed rule set forth in the NPRM. Each submission has been thoroughly reviewed and each comment has been carefully considered.

Problems With the Suspended Helper Definition

1. The Suspended Helper Definition Would Be Difficult To Administer and Enforce

The Building Trades commented that the suspended rule would be unenforceable because it is simply too difficult to distinguish a helper from a journeylevel worker on a job site. The Building Trades stated that, if contractors and subcontractors were permitted to assign helpers to perform the tasks of any and all classes of laborers and mechanics at less pay, as the suspended definition would allow, the requirement in the Davis-Bacon Act that wages be based on "corresponding classes" would effectively be read out of the statute. The AGC, the ABC, and Dr. Thieblot, on the other hand, stated in their respective comments that the Department should be able to identify helper classes through area practice surveys as easily as it differentiates among the various trade classifications.

The Department believes that it is much more difficult to identify a helper classification under the suspended rule, than to identify a craft or laborer classification under the traditional duties-based approach. Under DBRA, a laborer or mechanic is entitled to be paid the prevailing rate for the work performed according to the local area practice, and therefore, is classified based on the duties the worker performs. Because under the suspended definition, helpers may perform the duties of other classifications—both journeylevel workers and laborers—without any limitations other than that they be supervised by and assist a journeyworker, it would be extremely difficult for the Department to identify the work of a helper in any given area, both for enforcement and wage determination purposes.

Comments suggesting that the Department can simply examine prevailing practices to identify helpers provide no practical guidance for resolving the suspended rule's inherent definitional problems. Construction craft workers generally perform certain basic, core duties that are specific to their respective classifications and therefore, are more easily identifiable for both enforcement and wage determination purposes. For example, it is widely understood that carpenters use hammers, saws and other tools of the trade to construct structures made of wood. Area practice issues arise concerning gray areas, where in a particular locality certain types of duties may be performed by another craft as an adjunct to its core duties, or may be carved out as a separate classification altogether. Thus, in some areas, carpenters may install drywall, while in others it may be installed by a specialty classification referred to as "drywall installers." An area practice survey can make this determination. But it is not necessary for Wage and Hour to conduct an area practice survey to determine the work of each and every classification. For example, an area practice survey would not be needed to determine whether, instead of building wood structures, carpenters install water pipes, because such work is part of the basic, core duties of a plumber. Conversely, helpers, under the suspended rule, cannot be identified under the duties-based approach because there is no generally accepted subset of duties performed by helpers that would distinguish the helper from other classifications.

LIUNA commented that the combination of the suspended rule's allowance of overlap with laborers' duties and the lower wages generally paid to helpers would result in either the displacement of laborers in favor of workers classified and paid at lower helpers' rates, or the performance by the existing laborer workforce of the same work at lower wage and fringe benefit rates—contrary to the purpose of the Davis-Bacon Act to prevent Federal construction from depressing locally prevailing wages. LIUNA observed that many of the work activities of certain construction laborer classifications are precisely the same as the potential helper duties specifically enumerated under the suspended rule. LIUNA noted, for example, that a wide variety of "tender" classifications, which are negotiated between the Laborers' local unions and construction employers throughout the country, include the same duties that would be performed by helpers under the suspended regulations.[3] Dr. Thieblot, however, stated that the fact that the suspended helper definition may include work that would otherwise be done by laborers should be of no more concern to the Department than the performance by "tender" classifications of work that could be done by laborers.

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[2] The final rule stated, without quantification, that this percentage would be reduced to the extent that collectively bargained rates were found to prevail and did not provide for a helper classification. 54 FR 4234, 4242 (January 27, 1989).

The Department believes that LIUNA's concerns on the overlap of helper duties with other existing laborer classifications under the suspended rule are valid. The Department also believes that the recognition of a wide variety of tender classifications under its current policy demonstrates the manner in which helper classifications will be recognized under the final rule. The Department under its current policy, and under the final rule, will issue rates for helper classifications where the duties they perform are distinct from those of other classifications, including the journeyworkers they assist and other laborer or tender classifications. Tender classifications recognized by the Department must meet these criteria. While tender classifications do perform laborer-type duties, their performance of such work must be prevailing in the locality, *i.e.*, more tenders than any other classification perform the work in question in that particular locality. In contrast, under the suspended rule, the *use* of helpers by contractors must be prevailing in the locality and the duties they perform is determined by area practice, but there is no requirement that their performance of certain duties be prevailing in relation to those performed by other classifications in the locality. Thus, the suspended rule would allow the duties of a helper to overlap with those of other classifications that prevail within the locality, possibly leading to the employment of helpers to perform the work of other classifications at lower wages. Because tender/helper classifications must perform distinct duties for which the tender/helper classifications prevails in the locality, the recognition of such classifications does not carry the same potential for abuse and, therefore, the undermining of prevailing wages associated with the use of helpers under the suspended rule.

The Department indicated in the NPRM that it does not believe that the suspended rule can be effectively enforced under the vague, subjective criteria of its definition. For instance, the Department stated in the NPRM that the suspended definition's failure to distinguish between "semi-skilled" and "skilled" workers presented the Department with a "fundamental problem" when it tried to develop enforcement guidelines. LIUNA commented that the suspended definition provides no guidance for distinguishing between a "semi-skilled" helper who uses tools of the trade, and a journeyworker with little experience. The ABC stated, on the other hand, that contractors have developed methods for recognizing differences between skilled and semi-skilled work and have implemented pay scales based on such differences. None of the commenters, however, has identified any methods or criteria used by contractors that would be helpful to the Department in distinguishing between skilled and semi-skilled work. Similarly, the AGC stated that contractors routinely make hiring decisions based on skill level and compensate craft workers based on their training and experience. The Department believes that these practices are reflective of the normal practice of non-union employers in many industries where workers within an occupation are paid a range of rates based on their training and experience. The Department does not believe that such a practice demonstrates the existence of separate classes of workers within the meaning of the Davis-Bacon Act.[4]

The AGC stated that whether a skilled worker would accept and perform a "semi-skilled" job as a helper is an irrelevant concern, because compliance should focus on ensuring that individuals are properly compensated for the work they actually perform. This point echoes one of the Department's main concerns which led it to reject the suspended helper rule in favor of the traditional duties-based approach under the proposed rule. Under the suspended rule, individuals classified as helpers, who may perform the work of both higher paid craft workers and laborers, would not be compensated based on the work they perform, but rather on their comparatively lower skill levels. Furthermore, the Department still does not believe it could draw the line effectively between semi-skilled and skilled work, especially given that, in today's construction market, skilled craft workers may perform a whole range of duties from unskilled to semi-skilled to skilled, and laborers often perform what may be considered semi-skilled work as well.

The Department also observed in the NPRM that the supervision aspect of the suspended helper definition would provide little assistance in distinguishing a helper from other classifications of workers. LIUNA agreed that supervision by a journeyworker is not a practical standard for distinguishing "semi-skilled" helpers from others on the work-site, because many classifications are supervised by other workers or supervisors. LIUNA stated that laborers, apprentices, trainees and lesser skilled journeyworkers all may work under the "direction and supervision" of other, more highly skilled journeyworkers. The AGC, on the other hand, stated that the definition of a helper does not need to "indicate the nature or amount of direction that helpers must receive to distinguish them from others on a worksite," because this should be left to local prevailing practice. None of the commenters offered suggestions as to how, from a practical standpoint, the Department could determine local supervisory practices.

Nothing in the comments received by the Department contradicts its view that laborers and journeylevel construction workers, like helpers under the suspended rule, also may work under the "direction and supervision" of other journeyworkers. In the Department's experience, which is supported by LIUNA's comments, supervision on a construction worksite is often an amorphous concept, especially where it is performed by a "team leader," and therefore, does not lend itself to objective evaluation. Thus, the Department continues to be of the opinion that supervision by a journeyworker is not a practical standard for distinguishing *semi-skilled* helpers from other classifications on the worksite.

The Department also stated in the NPRM that it believes the problems resulting from the suspended rule's definitional ambiguities are compounded by evidence that the term "helper" has multiple, quite different meanings within the construction industry. LIUNA stated that the examples of duties that a helper may perform, as listed in the suspended definition, are not "semi-skilled," but rather include a range of skilled, semi-skilled, and unskilled duties commonly performed by other classifications. AGC, on the other hand, stated that many different craft classifications have multiple, quite different meanings within the construction industry, and that this is the primary reason that no standard definitions have ever been promulgated for craft classifications performing Davis-Bacon work.

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[3] LIUNA stated that the laborer's role as a "tender" or "helper" to other trades has a long history, as demonstrated by the American Federation of Labor's 1903 charter to LIUNA, which described the laborer's work as "tending to masons, mixing and handling all materials used by masons (except stone setters), building of scaffolding for mason's plasters, building of centers for fire proofing purposes, tending to carpenters, tending to and mixing of all materials for plastering, whether done by hand or any other process, clearing of debris from buildings, scoring, underpinning and raising of old buildings * * *." LIUNA also stated that, although today the term "tender" is preferred over "helper" in describing laborers' support relationship to other craft workers, the two terms are interchangeable in the construction industry and that DOL's Davis-Bacon *General Wage Determinations* include "literally hundreds of examples of 'tender' or 'helper' job titles (mason tender, plasterer tender, carpenter tender, plumbing tender, etc.) listed as part of the laborer classification."

[4] See the recent decision of the Administrative Review Board in *Miami Elevator Company* and *Mid-American Elevator Company, Inc.*, ARB Case Nos. 98–086 and 97–145 (April 25, 2000), pp. 33–34.

While it is true, as discussed above, that craft classifications may have somewhat different meanings within the industry, craft classifications generally encompass certain well-recognized duties that are widely understood to be the core duties of the craft occupation. Thus, despite the occasional need for clarification regarding the prevailing classification used by contractors in an area for workers performing specialized work, the fundamental scope of work of most construction craft occupations is not usually in question.

In contrast, it appears to the Department, as demonstrated by the rulemaking record, that a helper classification can have various meanings and uses even within the same locality. For example, the APWC stated that helpers, in its view, "are semi-skilled workers who work under the direction of and provide assistance to journeymen," whereas the AGC of Texas described the use of helpers in the State of Texas as "allow[ing] construction contractors to utilize *unskilled* workers while teaching them a trade or skill through our on-the-job training programs." [Emphasis added]. Similarly, commenters on the proposed rule to continue the suspension of the helper regulations, variously characterized helpers as skilled workers who have not been trained in the full range of journeylevel work, short-term entry-level workers assisting journeyworkers in unskilled laborer duties, and longer-term specialized workers who perform a limited number of duties that overlap journeylevel workers. 61 FR 68646. In this regard, the Department, in the NPRM, invited commenters to submit further evidence regarding how helpers are in fact used by contractors, particularly any data regarding whether there is in fact a generally recognized definition of helpers that is capable of being objectively identified. No such data were submitted by the commenters. The Department therefore believes that it was correct in its view that no definition of helpers exists that could adequately reflect "the actual and varied practice in the construction industry as a whole or even in any particular area."

The Department also expressed its concern that Wage and Hour would not be able to conduct a meaningful wage determination process using the suspended definition of helpers in light of the likelihood that contractors responding to area wage surveys would ascribe very different meanings to the term "helpers." Dr. Thieblot stated that surveying for helper rates presents no special difficulties since it is Wage and Hour's practice "to accept the rates and job titles as submitted by the contractors who paid them, whatever those titles might be" without analyzing job content. Dr. Thieblot stated, for example, that it should be no more difficult for Wage and Hour to determine if the job title "mason's helper" prevails in a given area, than to determine if the job title "mason's tender" prevails.

This comment highlights a common misunderstanding of the Department's wage determination process. Wage and Hour, in gathering wage data, does not automatically accept the job titles as submitted by reporting employers. Wage and Hour's experience in collecting wage data is that contractors may use different job titles for the same craft work. When faced with more than one name for the same type of work, Wage and Hour must determine whether the workers with the various job titles in question perform the same basic duties, in which case the data for such work will be combined for the purpose of determining the prevailing classification and issuing a single prevailing rate for the particular work performed. In other cases, Wage and Hour might determine that it is the prevailing practice in a certain area for workers under a more specific job title (*e.g.*, drywall hanger) to perform a subset of the duties of a more generalized craft (*e.g.*, carpenter), and thus issue a separate wage rate for the specific job title where the data indicate that the specialized classification prevails for such work in the area. Thus, Wage and Hour does not automatically accept job titles as submitted by employers, but rather analyzes job content, as appropriate, as part of the wage determination process.

The problem with gathering data for helper classifications differs significantly from the difficulty presented where workers in an area perform the same craft work, but under different job titles. A helper classification, even if referred to by many different names within the locality, could nonetheless be surveyed effectively if the duties performed by workers with the various job titles for a helper were distinct from those of other classifications and essentially the same under each title. The problem with identifying helpers during the wage determination process is that the term "helper" under the suspended rule can serve to describe a variety of workers performing many different types of work. The Department is additionally concerned that the suspended helper rule, which imposes upon the wage determination process a definition of a helper that was created by the Department, may not necessarily reflect the reality of how helpers are in fact utilized in any given locality. Some employers may classify workers performing the work of helpers under the suspended rule as journeylevel workers, craft workers, or semi-skilled workers, while still others may classify such workers as laborers, unskilled workers, or tenders. In this regard, the Department notes that several contractors surveyed in the processing of helper conformance requests during the period the suspended regulations were in effect indicated that they used the job title "laborer" for workers meeting the definition of "helper" under the suspended regulation. Thus, because their practices vary from each other and from the definition in the suspended rule, the Department continues to be of the view that contractors, when responding to Davis-Bacon wage surveys, would likely be inconsistent in how they classify workers as helpers. This in turn would raise questions regarding the reliability of any wage data received for a given locality concerning employment of helpers.

The SBSC acknowledged that the suspended helper rule is a break from the tradition under the DBRA of identifying and differentiating among job classifications on the basis of tasks performed by each classification. SBSC commented, however, that the Wage and Hour Division has an outdated construction mentality and that its complaints about the use of helpers suggest a hesitancy to modernize its views. SBSC's comments also questioned the Department's concern that helpers will replace laborers, stating that it is a misclassification to insist that helpers are laborers; it "is the old class of laborer that has become suspect." SBSC's comments provide little practical guidance on how to create a definition of helpers that could be effectively enforced consistent with the underlying intent of the DBRA. In addition, the substantial number of laborers reported in the wage surveys in the record, as well as the comments submitted by LIUNA in support of the interests of laborers in this rulemaking procedure, do not support SBSC's view that laborers no longer constitute a viable worker classification on Davis-Bacon covered construction.

The Mercatus Center acknowledged that the Department's enforcement and administrative concerns may be justified, but cautions that they must be balanced against the productivity and cost-saving benefits from the suspended definition of helpers. The Mercatus Center further noted that by proposing to eliminate the flexibility of a helper to perform the duties of other job classifications, the Department would eliminate one of the most important cost-saving features of the helper position. While the Department believes that cost-saving features are certainly desirable, they cannot be determinative where the approach in question (*i.e.*, the definition of helpers under the suspended rule) cannot be fairly and effectively administered in a manner consistent with the goals of the statute to protect prevailing wages for the corresponding classes of work performed. Indeed, one of the principal objectives of the Davis-Bacon Act was to set a floor on wages so that wages would not be reduced below the prevailing wage as a result of competitive bidding for Federal construction contracts.

The ABC stated that the absence of a significant number of complaints or incidents of abuse during the time the suspended rule was in effect should be viewed as evidence that the Department's stated concerns about enforcement difficulties are overstated. Neither the absence nor presence of complaints had a bearing on the Department's determination that the suspended helper rule cannot be administered and enforced effectively; rather, as explained in the NPRM, it was the difficulty encountered in attempting to develop effective enforcement guidelines during the implementation period that initially raised these concerns. The suspended helper regulations were in effect for too brief a period for the absence of complaints to be indicative of a lack of enforcement difficulties. Though the suspended rule had an implementation period of approximately 20 months, it was nearly a year after implementation before the helper provisions could begin to be included in DBRA-covered construction contracts, following changes to the Federal Acquisition Regulations and the Defense Acquisition Regulations. Thus, the suspended helper rule simply was not in force for a sufficient period of time to draw any conclusions from the number of complaints received during its application.

After carefully reviewing the comments, the Department is persuaded that the suspended rule cannot be effectively administered and enforced. The suspended rule provides no objective basis for distinguishing between helpers and other classifications, and furthermore is vague and internally inconsistent. Its effect, contrary to the intent of the statute, would be to allow contractors and subcontractors on DBRA projects to assign the duties of both craft workers and laborers to helpers who are paid at lower wage rates, with virtually the only restriction being that the worker receive some supervision. As a result, the Department remains concerned that implementation of the suspended rule would lead to many instances of intentional and unintentional misclassification of workers and potential abuse of the rule, which the Department would be unable to prevent or remedy. None of the comments submitted provided any information or arguments which alleviated these concerns.

Additionally, the Department believes it would not be able to collect meaningful, consistent wage data regarding use of helpers for wage determination purposes. The Department believes that the ambiguous language of the definition in the suspended rule would not give contractors adequate guidance and would lead to inconsistent wage reporting. Because there is no generally recognized practice regarding how helpers are used, contractors reporting wage data in accordance with the definition in the suspended rule in some instances probably would report as helpers workers whom they consider journeymen or laborers.

The court of appeals, in its review of the Department's original rulemaking concerning helpers, stated that its deference to the Secretary's choice of policy "is properly near its greatest when his decision turns on the enforceability of various regulatory schemes." *Donovan*, 712 F.2d at 629. The Department has been unable to develop a method for determining whether workers classified as helpers have been correctly classified under the suspended rule, consistent with the fundamental statutory goal of preserving locally prevailing wages for construction job classifications. Since the rulemaking record does not demonstrate that the suspended rule is capable of practical and efficient administration and enforcement to achieve the statutory goals under DBRA, the Department must reject implementation of the suspended rule.

2. Helpers Are Less Widespread Than Previously Believed

As explained in the preamble to the proposed rule, the belief that a distinct class of "helpers" was in widespread use in the construction industry was a key assumption underlying the Department's development of the suspended helper regulation. 64 FR 17445. Although not a representative sample, the data submitted to the Department in the 78 surveys conducted during the brief period the suspended rule was in effect failed to substantiate that assumption. In its earlier rulemaking, the Department had projected that use of helpers would be found to be a prevailing practice in from two-thirds to 100 percent of all craft classifications surveyed, except where collectively bargained rates were found to prevail and did not provide for a helper classification. 52 FR 31366, 31369–70 (August 19, 1987); 54 FR 4234, 4242 (January 27, 1989). The Department's experience with the survey data collected in 1992 and 1993 during the brief time that the suspended regulations were in effect was quite different. In the 78 surveys conducted, the use of helpers prevailed in only 69, or 3.9 percent of the 1763 classifications issued, and only 48 of the 69 helper classifications, or 2.7 percent of the 1763 classifications, were based on the practices of non-union contractors and subcontractors. Furthermore, in only 20 of the 78 surveys conducted were any non-union helper classifications found to prevail.

The Economic Impact and Flexibility Analysis in the proposed rule also provided data showing that helpers were less widespread than previous analyses had assumed. The 1996 Current Population Survey (CPS), compiled and published by the Bureau of Labor Statistics (BLS) and the Bureau of the Census, shows that helpers constituted only 1.2 percent of total construction employment. Data from the Occupational Employment Statistics (OES) program showed that helpers comprised 8.7 percent of the total construction work force. Because OES does not contain a separate classification for construction laborer, and its definitions of the helper classifications appear to include laborers, the Department believes the OES overstates the use of helpers. For this reason, the Department developed an alternative estimate, adjusting the OES data by utilizing the percentage of laborers in the CPS workforce. The adjusted OES data resulted in an estimate that helpers constituted 3.4 percent of the total construction workforce.

In their comments, the Building Trades stated that the Department's data on helper use are consistent with the 1996 Current Population Survey (CPS) compiled by BLS and the Bureau of the Census, which showed that helpers only account for 1.2 percent of total construction industry employment. The Building Trades believes that these data support its longstanding contention that the underlying purpose of the suspended helper regulation was not to reflect locally prevailing practices, but to "artificially interject" a non-prevailing classification of construction workers into Davis-Bacon covered projects as a means of undercutting prevailing wages.

The ABC questioned the appropriateness of the Department's consideration of whether the use of helpers in the construction industry is "widespread." The ABC stated that the proper test for determining the existence of helper classifications under the statute is not whether the use of helpers is "widespread," but rather whether it "prevails." The Department acknowledges that a basic prerequisite to issuing wage rates for classifications under Davis-Bacon, including helper classifications, is a determination of whether such classifications and corresponding pay rates prevail in the particular locality where the project is to be performed. However, the Department believes its consideration of the overall extent of helper use in the construction industry, *i.e.*, whether helper use is "widespread," is appropriate as part of a broad inquiry concerning the advisability of implementing the suspended regulations. As the Department stated in the NPRM, "[t]he belief that a distinct class known as 'helpers' was in widespread use in the construction industry was a key assumption underlying the Department's development of the helper regulation." 64 FR 17445. It is appropriate for the Department to determine, before taking further regulatory action, if the original underlying assumption concerning the extent of helper use, which provided the impetus for the suspended rule, was borne out by the data collected during the period the regulations were in effect, or by any other more recent, relevant data available to the Department. The Department believes this is a particularly significant consideration where there is so little consensus on a definition of helpers or how helpers are used.

Several commenters expressed their belief that the Department has underestimated the prevalence of helpers in the construction industry. Representative Norwood and the congressmen who joined in his comments state that "[o]ver 75 percent of all construction in the private sector are performed by contractors who use semi-skilled helpers. One study found that on a given open-shop job, 35–50 percent of the workers in each craft are likely to be helpers." The source for these data was not identified, and therefore, the Department is unable to weigh this information against the data already available to the Department concerning the prevalence of helpers. These data, furthermore, do not indicate to what extent helper classifications actually prevail in the construction industry.

The AGC stated that more recent BLS survey data contradict the Department's conclusions regarding employment of helpers. In support, the AGC cites the NCS test surveys discussed above for Jacksonville and Tucson, which, according to the AGC, showed that helpers comprise 13.6 percent and 14.8 percent, respectively, of the total number of construction craft workers in those two localities.

The AGC is referring to four fringe benefit pilot surveys in Tucson, Arizona; Jacksonville, Florida; Salt Lake City, Utah; and Toledo, Ohio, which BLS conducted pursuant to its National Compensation Survey (NCS) program to test the feasibility of collecting detailed fringe benefit data for occupations within the construction industry. In these surveys, helpers[5] constituted 9.6 percent, 8.3 percent, 4.2 percent, and 2.5 percent, respectively, of the total construction workforce.[6] Laborers constituted 14.3 percent, 6.9 percent, 9.9 percent, and 10.1 percent, respectively, of the total workforce. Combined, helper employment in these areas was 5.8 percent of total construction employment.

It is important to note that the four pilot surveys, which included Jacksonville and Tuscon, were not designed to collect data on the employment of helpers, and do not report helpers by craft. In addition, because the NCS studies obtained data for only four geographic areas, the information produced by these studies cannot be projected to a nationwide estimate of the percent of helpers relative to the construction workforce as a whole. The Department believes that the information provided by these surveys is generally in line with the estimates used for the cost impact analysis provided in the NPRM.

The helper data reported in these four pilot studies also reflect inconsistencies between the level of skill associated with the "helper" and their compensation levels. Logically, a semi-skilled job would be expected to command a higher wage than an unskilled one, but this was not borne out by the NCS survey data. Helpers are defined, for purposes of these surveys, as "semi-skilled" workers; however, Table 2 of the NCS surveys shows that "semi-skilled" helpers are paid approximately the same wage as "unskilled" non-union laborers.[7] This inconsistency lends credence to the view that there is a widely disparate use of "helpers" in the construction industry.

The ABC stated that the Occupational Employment Statistics (OES) data show as many as 500,000 helpers currently working in the construction industry. As explained in the NPRM, the OES survey did not include a separate construction laborers definition, and the helper definition appears to encompass laborers where they assist craft workers. It is likely therefore that the OES figures include many laborers and other unskilled workers in the helper category. For this reason, the Department believes that OES figures overstate the use of helpers in the construction industry.

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[5] "Helpers, construction trades" were defined by the National Compensation Survey as "[s]emi-skilled workers who assist other workers of usually higher levels of competence or skill. Helpers perform a variety of duties such as furnishing another worker with materials, tools, and supplies; cleaning work areas, machines, and equipment; feeding or offbearing machines; holding materials and tools; and performing routine duties. Helpers specialize in a particular craft or trade. A helper may learn a trade but does so informally and without contract or agreement with the employer."

The AGC mistakenly refers to the helper definition used in the NCS surveys as the OES definition. The OES definition is set forth *infra* at note 15. In the future, NCS surveys (and OES surveys) will use the new Standard Occupational Classification (SOC) definition. Under the SOC definition, helpers are described as follows: "Help [craft worker] by performing duties of lesser skill. Duties include using, supplying or holding materials or tools, and cleaning work area and equipment."

[6] The percentage figures cited by the AGC are considerably higher than those previously cited by the Department because those cited by AGC reflect the elimination of supervisory construction workers from the total number of construction workers surveyed. The percentage of helpers in relation to the entire construction workforce is the appropriate percentage to compare to the data utilized in the NPRM.

[7] The NCS surveys actually show that the average wage rates reported for helpers are *below* the wage rates reported for "unskilled" construction laborers. However, the lower average wage rate paid helpers in these NCS surveys appears to be due to the fact that the laborer's rates are an average of wage rates paid to both union and non-union workers, while the helper's rates are based only on non-union data.

The ABC also noted that the Department, when first publishing the suspended rule in 1982, relied upon earlier BLS estimates that helpers constitute between 3 and 9 percent of the total workers in the industry, and stated that these estimates do not differ greatly from the statistics cited in the most recent NPRM. In the preamble to its 1982 Final Rule, the Department stated that BLS survey data of large metropolitan areas indicated that the estimated helper share of employment in the construction industry was between 3.2 percent and 5.6 percent. 47 FR 23650. However, the Department indicated that this estimate might be understated because the survey was limited to areas that were "heavily unionized." *Id.* To correct this understatement, the Department assumed that the true union share of Davis-Bacon employment was 50 percent and, accordingly, adjusted the estimate of the helper share of employment in the construction industry to between 5.98 and 9.4 percent. *Id.* The Impact Analysis in the 1987 proposed rule utilized the OES survey as the basis for its assumption that 15 percent of employees in construction will be helpers. 52 FR 31368–31369. As discussed in the Impact Statement published in the NPRM, the Department now believes these estimates overstate the percentage of helpers in construction employment.

However, none of these surveys and studies shows the degree to which the use of helper classifications is actually prevailing within the meaning of the DBRA.[8] As discussed above, the 1987/1989 rulemaking projected helper classifications would prevail in two-thirds to 100% of all non-union craft classifications. The Department's limited experience, as reflected in the data collected during the implementation period, does not support these projections.

Several commenters stated that the 78 wage surveys conducted in 1992–93, upon which the Department relied in part to assess the extent of helper use, constituted too small a sample to be a reliable measure of the extent of helper employment throughout the construction industry. The AGC and the ABC cited a GAO audit of the Davis-Bacon wage survey process as the basis for their opinion that the Davis-Bacon surveys are unreliable and should not be used as a basis for estimating the extent of helper employment. GAO/HEHS–96–130 (May 1996). The ABC suggested that these survey results might also be unreliable because a large number of non-union contractors either did not voluntarily participate in the survey process or were not aware that helpers should be reported during the implementation period. Dr. Thieblot also expressed his belief that factors other than scarcity explain why relatively few helper rates were determined to prevail during the implementation period. Dr. Thieblot stated that the Department's inability to find helper rates prevailing during this period was due to the type of surveys conducted, where they were conducted, and how the results were interpreted.

The Department agrees with the comments that the 78 surveys were not a statistically valid sample and are not a reliable measure of the extent of helper employment in the industry. However, the Department has found its 1992–1993 survey data to be consistent with the relatively low incidence of helpers reflected in the other available data sources discussed in the Impact Analysis. The Department believes that a sufficient number of surveys were conducted to provide evidence that the earlier estimates of the extent to which use of helpers prevails were overstated. It is also worth noting that most of the surveys were selected to target areas where the Department believed that use of helpers would likely be found to be prevailing.[9]

While the report from the GAO raises the possibility that some prevailing wage decisions issued during this period might be affected by the submission of erroneous data, there is no evidence that the data collected by the Department concerning prevalence of the use of helpers were inaccurate or skewed by the submission of erroneous data.[10] Erroneous reporting of an employee's classification is not a typical error mentioned in the GAO report.[11] Thus, the GAO findings are not relevant to the issue of prevalence of the use of helpers and cannot be used to support the conclusion that the surveys conducted during the time that the semi-skilled helper rule was in effect are an unreliable source of information on that issue. The Department also disagrees with the comment that contractors were not made aware that they should be reporting helper employment during the implementation period. Specific instructions were included on the WD–10 survey forms to inform contractors of the definition of "helper" and that workers falling within that definition should be listed as helpers, regardless of job title.

Dr. Thieblot re-analyzed the non-union data on helper use, discarding all surveys which, based on the areas in which the surveys were performed and the type of construction surveyed, he did not believe would be likely to produce helper classifications. He then proceeded to eliminate all classifications that he believed would not ordinarily utilize helpers, such as truck drivers and equipment operator classifications. After paring down the data in this manner, Dr. Thieblot concluded that helper use prevails in 14.5% (48 of 331) of those non-union classifications he believed could possibly use helpers.

The assumptions on which Dr. Thieblot's analysis was based, regarding which geographic areas and which types of construction and classification are likely to produce helper classifications, appear to be speculative and inconsistent with the data in the surveys.[12] In any event, this total is much less than the two-thirds to 100% of all (non-union) craft classifications in which the Department previously estimated helpers would prevail.

Dr. Thieblot also questioned what he termed the Department's "unexplained rejections of helper rates as prevailing

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[8] In this regard, the AGC commented that "[t]he percentage of helpers in the 'construction industry' is likely to underestimate their numbers and reveals nothing about their employment with respect to a particular craft."

[9] The Department also reopened unpublished surveys that were conducted before the helper rules were in effect in order to include helper data.

[10] As the Department stated in the Final Rule, continuing the suspension of the "semi-skilled" helper regulations, "It is inappropriate to draw conclusions concerning the accuracy of survey results based on the GAO report. The report did not examine or verify the accuracy of wage determination data, survey response rates, or calculation of prevailing wages. It focused on the policies and procedures utilized to prevent the use of inaccurate data, and proposed changes to strengthen those policies and procedures." 61 FR 68641, 68645.

[11] The typical errors mentioned in the GAO report concerning data submissions include:

- Reporting the wrong peak week,
- Reporting a slightly incorrect wage or fringe benefit rate (*e.g.*, reporting the rates currently being paid rather than the rates that were paid during the peak week that occurred ten months previously), or
- Reporting an average wage rate rather than the wage rate paid to each individual worker within the classification (*e.g.*, an employer might report five electricians paid one average rate when in fact each electrician was paid a slightly different rate).

[12] For example, although Dr. Thieblot eliminated highway construction and truck drivers from his count on the assumption that these types of construction and classifications would not use helpers, the Department found 6 instances in which truck driver distributor helpers prevailed and 3 instances in which mechanics' helpers prevailed on highway construction.

* * *." However, the Department followed the suspended rules at 29 CFR 1.7(d) for determining the circumstances in which a helper classification is found to prevail. For example, where the union electrician's rate was found to prevail, an electrician's helper classification would not be found to be prevailing unless it was the practice for union contractors to hire electrician's helpers. Where the electrician's rate was based on an average of wages paid, the determination of whether use of electrician's helpers prevailed was based on a comparison of the number of craft workers (journeymen, apprentices, trainees and helpers) working on projects utilizing electrician's helpers with the number of craft workers (journeymen, apprentices, and trainees) working on projects without helpers. Finally, the Department's data sufficiency guidelines in effect at the time required that the Department not list a classification and wage rate where the number of helpers used (or any other classification), or the number of contractors using helpers was not sufficient to determine a prevailing wage.[13]

After review of the comments, the Department continues to believe that helpers are not as widespread as it had previously assumed.

3. The Suspended Regulation Could Have a Negative Impact on Formal Apprenticeship and Training Programs

Although not its primary concern in this rulemaking, the Department believes that the potential impact of the suspended rule on formal apprenticeship and training programs merits discussion, given the Secretary's broad authority to protect and promote the welfare of workers, including the authority under the National Apprenticeship Act of 1937, 29 U.S.C. 50, *et seq.* (also known as the Fitzgerald Act) to promote apprenticeship. As stated in the NPRM, the Department believes that the suspended helper regulations could undermine effective training in the construction industry if contractors are permitted to use helpers, who may never become journeylevel workers, in lieu of apprentices and trainees participating in formal programs that place ratio limits on their use, assure that they receive full training, and lead to jobs at the journey level.

Several commenters were concerned about the negative impact the suspended helper rule would have on formal apprenticeship and training programs. Congressional Representatives Clay, Owens, and Clyburn stated that minority and female workers would suffer reduced earning opportunities and/or lost wages and benefits if the suspended helper regulation were implemented. These congressmen expressed concern that the suspended rule would trap younger workers, including a disproportionate share of minority workers, in the new helper classifications; as a result these workers would never enter apprenticeship programs, which are the primary route to obtaining decent wages and fringe benefits. Representatives Schakowsky and Weiner echoed these concerns, stating that the suspended rule, which contains no requirement that contractors provide any training to helpers, would have an adverse impact on construction worker training and apprenticeship programs, thus exacerbating the current skills shortage in the construction industry. These congressmen also stated their belief that the suspended regulation would reduce opportunities available to minority and female workers within the construction industry by relegating them to helper status.

The Building Trades commented that, in the NPRM, the Department greatly understated the long-term negative impact the suspended regulation would have on formal apprenticeship and training programs. The Building Trades stated that the suspended helper regulations would permit almost unfettered use of low-paid semi-skilled helpers on DBRA-covered projects, thus offering contractors and subcontractors savings in labor costs without the *quid pro quo* of investing in apprenticeship training. The Building Trades stated that contractors and subcontractors who participate in and provide financial support for formal apprenticeship and training programs would be placed at a competitive disadvantage *vis-á-vis* contractors using helpers, thus undermining their continued participation in such programs. The Building Trades also expressed its concern that the suspended rule's failure to encourage formal craft training would eventually lead to a severe shortage of skilled craft workers in the industry.

LIUNA cited the GAO's finding that a "major incentive" for contractors to use apprentices has been the ability to pay less than the prevailing wage on DBRA projects. GAO/HRD–92–43 (1992), p. 11. LIUNA stated that the reduced apprenticeship opportunities that would accompany the suspended rule would result in additional costs for training workers, a long-term shortage of skilled workers, fewer genuine training opportunities for women and minority craft workers, and an increase in construction injuries, since most injuries occur to new, entry-level workers who are untrained or inadequately trained.

MESMA noted that prevailing wage laws support the funding and viability of many labor-management apprenticeship programs that provide state-of-the-art training and produce the most productive workers in the industry. MESMA stated that the overuse of helpers could lead to a reduction in skills and diminishing quality of construction, as well as an increase in industrial accidents, because helpers generally receive little or no safety training.

The NJATC commented that helpers under the suspended definition would likely perform the same role that apprentices now perform on the jobsite, only at a lower cost. The NJATC stated its belief that this practice would result in fewer indentured apprentices, as contractors, in competition to win federal construction contracts, would replace "journeymen-in-training" apprentices with lower-paid helpers in continually increasing numbers. NJATC stated that, within five to ten years, this replacement of apprentices with helpers on DBRA projects would result in an acute shortage of skilled construction workers.

The IBEW commented that, if use of helpers is allowed extensively on DBRA projects, contractors would no longer be motivated in a competitive setting to spend 2 percent or more of their payroll on training, and use an apprenticeship system requiring ratios, when they could use helpers and avoid such requirements.

On the other hand, both the ABC and the AGC commented that there is no basis for the Department's concern that increased recognition of helper classifications may have a detrimental effect on apprenticeship and training programs. The ABC stated that, over the last decade, funding and participation by open shop contractors in apprenticeship and training programs has increased significantly, independent of the Davis-Bacon regulatory process. The ABC stated that the Department's policies regarding apprenticeship programs and ratio requirements have made apprenticeship training unavailable to some workers who desire to enter the construction industry in semi-skilled jobs. The ABC further stated that the helper classification is an important point of entry into the construction industry for young people, women and minorities, and that it is improper for the Department to refuse to recognize the prevailing practice of employing helpers in an effort to force into training programs workers who either may not be qualified or may not desire such training.

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[13] Wage and Hour procedures in effect at the time required that, in order for a prevailing rate to be issued, there must be at least 6 workers employed by at least 3 contractors if the contractor-response rate was less than 50 percent, and at least 3 workers employed by at least 2 employers if the response rate was 50 percent or more.

While acknowledging that the helper classification cannot be used as an informal training program, the APWC stated that it fulfills an important entry-level job opportunity for many construction workers. The AGC of Texas, on the other hand, stated that the use of helpers allows contractors to utilize unskilled workers while teaching them a trade or skill. Dr. Thieblot expressed concern that a larger number of skilled journeymen will be needed to sustain the construction industry in the future than the number which can be provided by existing apprenticeship and formal training programs. Dr. Thieblot also expressed his belief that the suspended helper rules, to the extent they would allow informal, on-the-job training of semi-skilled workers, would provide a necessary alternative to formal apprenticeship and training programs for training and upgrading workers to journeyman status.

The Mercatus Center expressed its belief that the increased employment of helpers under the suspended rule would provide greater employment and training opportunities for minorities and women. The ABC recommended more study on the potential impact on minorities and women prior to issuance of the proposed rule. The APWC stated that it is inappropriate for the Department, in analyzing the merits of the helper regulations, to express a preference for formal training, such as provided under union-sponsored apprenticeship plans, over the informal training methods utilized in the non-union sector.

The Department continues to believe that formal structured training programs are more effective than informal on-the-job training alone. The Department's encouragement of formal training is reflected in the provisions of the Secretary's DBRA regulations that currently allow laborers and mechanics classified as "apprentices" or "trainees" to be paid less than the prevailing wage rate on Davis-Bacon covered projects only if they are enrolled in a bona fide apprenticeship program registered with the Department's Office of Apprenticeship, Training Employer and Labor Services (ATELS) (formerly, Bureau of Apprenticeship and Training (BAT)) or a State Apprenticeship Agency recognized by ATELS, or a bona fide training program approved by the Department's Employment and Training Administration.

The Department views any increases in funding and participation in formal training programs in the open-shop construction community as a positive development, but this does not address the concerns expressed by several of the commenters that the implementation of the suspended rule would discourage the growth of such programs and result in the replacement on DBRA-covered projects of apprentices and trainees enrolled in formal programs, by helpers who could perform the same work as apprentices and trainees at a lower cost to the construction contractor and without any restrictions as to how helpers are used. The Department shares this concern, along with the additional concern that workers employed as helpers—and particularly, young, minority and female workers—will not receive the type of training necessary to become higher skilled, better paid workers. The Department notes that the Congressional Budget Office (CBO) has also recognized that the suspended rule might have a negative impact on apprenticeship and training programs.[14]

Although not the paramount concern in this rulemaking, the Department is of the view that the increased use of helpers under the suspended rule poses a significant risk that formal apprenticeship and training programs on DBRA-covered projects would be undermined.

Discussion of Other Alternatives Considered

Except for TxDOT, which appears to favor a combination of the proposed alternatives, none of the commenters urged the Department to adopt any of the alternatives set forth below. The ABC stated that, while it believes that the Department should reinstate the suspended rule, it would support further study of any of the proposed alternatives. The ABC commented that each of the proposed alternatives is preferable to adoption of the proposed rule, and that the Department has not given sufficient study to the alternative approaches. On the other hand, both the Building Trades and LIUNA indicated their belief that none of the alternative approaches considered by the Department is viable.

The Mercatus Center commented that the Department has not properly assessed the quantitative benefits of the alternatives presented in the NPRM. The Mercatus Center stated that, without better information on the costs and benefits of the alternatives, the Department places inordinate weight on such factors as ease of administration and enforcement, rather than on net social benefits. As explained in the NPRM, "[e]ach alternative would likely result in greater use of helpers than under the proposed rule, but less than under the suspended rule," and therefore, "the economic impact would presumably yield some portion but not all, of the savings anticipated under the suspended rule." 64 FR 17455. The Department also stated that it would not be possible to provide detailed estimates of the economic impacts of the alternatives because "each alternative encompassed many possible variations and outcomes" and "there is no data source that would provide appropriate information on these variations and outcomes." *Id.*

1. Add a Ratio Requirement to the Suspended Helper Definition

The Department stated in the NPRM that it believed that implementation of a ratio provision would be essential if the suspended rule were implemented, in order to reduce the potential for abuse. The Department recognized, however, that adoption of a ratio provision would not address or resolve the suspended rule's definitional problems that make it extremely difficult for contractors, as well as Wage and Hour and contracting agencies, to identify and distinguish helpers from other workers for DBRA enforcement and wage determination purposes. The Department also questioned whether, as a practical matter, an appropriate nationwide or local ratio standard could be determined, and expressed concern for the substantial resources that would be required to determine appropriate ratios based on local practices.

The Building Trades expressed the view that any fixed nationwide ratio, like the ratio that was struck down in Federal court, would be arbitrary and capricious because it would be inconsistent with the underlying principle of DBRA that labor standards reflect local prevailing practices. LIUNA stated that the addition of a ratio requirement under the suspended rule

would not address or resolve the definitional problems inherent in the suspended rule, and that it would be extremely difficult to develop an appropriate ratio standard that would reflect local practices.

Noting that the D.C. Circuit Court of Appeals allowed the Department to reinstate a ratio requirement provided that the Department can support such ratio with an administrative record, the ABC commented that the Department failed to develop such a record and did not attempt to set local ratios through the wage survey process.

The Mercatus Center stated that the Department should re-evaluate the original rationale for including a ratio in the suspended rule. The Mercatus Center noted that ratios appropriate for productive construction efforts are subject to change with changes in production methods, materials, technology, and population, and that due to regulatory time lag, any binding ratio might be obsolete in a few years. The Center suggested that if a rationale for the type of abuse a ratio is intended to prevent could be articulated, then a ceiling that is non-binding, but that would prevent any feared abuse of the helper category, might be workable.

TxDOT recommended that the Department adopt a combination of measures, including the addition of a ratio requirement to the suspended definition to prevent abuse of the helper classification. TxDOT suggested that varying the ratio requirement, depending on the type of work performed, might be a way of validating the ratio provision.

None of the commenters has provided the Department with specific guidance as to how an appropriate nationwide or local ratio standard could be determined. As noted in the NPRM, a nationwide ratio would not accord with local practices, whereas locally developed ratios would present significant administrative and enforcement concerns and would require substantial resources for implementation.

The difficulty with determining locally prevailing ratios begins with deciding how that ratio should be calculated. The easiest method would be to compare the total number of helpers to the total number of journeyworkers reported for the classification. This methodology, however, does not measure the typical ratio of helpers to journeyworkers on any particular job. For example, four hypothetical data submissions might report carpenters and carpenter helpers as follows:

Project	Number of carpenter helpers	Number of carpenters
A	1	2
B	1	2
C	6	1
D	1	2
Totals	9	7

In this example, the prevailing jobsite ratio of carpenter helpers to carpenters is clearly 1:2 (*i.e.*, on three of the four projects, contractors used one helper for every two carpenters). However, if the ratios are averaged the resulting ratio would be almost 2:1 (1.875), and a ratio derived by dividing the total number of helpers by the number of carpenters would be greater than 1:1 (*i.e.*, 9:7 or 1.286). Therefore, either of these approaches could frequently yield a distorted picture of the true prevailing ratio.

Collecting and verifying data on the ratio of helpers to journeyworkers for each jobsite is likewise a difficult task. Currently, Wage and Hour collects data for each classification based on the "peak week" of employment on the project. This "peak week" may differ for each classification. Since one may find that the peak week of employment for carpenters is a different week than that for the carpenters' helpers, the ratio would vary as well. It is not clear how the peak week concept should be applied in this situation. Any solution to this question could be administratively costly and time-consuming for Wage and Hour and for contractors, thereby impacting the Department's ability to obtain the cooperation of contractors to collect accurate data.

The Department remains of the view that adding a ratio requirement would be essential to reduce the potential for abuse from the excessive use and misclassification of helpers if the suspended rule were implemented. The D.C. Circuit Court of Appeals also recognized the importance of a ratio provision to the effective administration and enforcement of the suspended helper rule when it stated that "the Secretary has increased the likelihood that gross violations will be caught, or at least that evasion will not get too far out of line, by putting the forty-percent cap on the use of helpers. * * * [T]he existence of some cap at least increases our confidence that the Secretary has considered the enforcement problems of the new definition and responded to them." Donovan, 712 F.2d at 630.

More importantly, the Department continues to believe the addition of a ratio provision to the suspended helper rule—although it might curb the worst abuses—would not address or resolve the problems inherent in the suspended rule's definition, which, as discussed above, make it extremely difficult to identify helpers for DBRA enforcement and wage determination purposes.

2. Change the Suspended "Helper" Definition To Emphasize the Semi-Skilled Nature of the Classification

In the NPRM, the Department stated that it believed that amending the "helper" definition to emphasize its semi-skilled nature would help assure that the helper classification would be a true "semi-skilled" classification rather than a broad catch-all classification that could perform everything from laborer duties to an undefined and potentially unlimited assortment of skilled tasks overlapping the work of journeyworkers. The Department suggested that this approach would aid in distinguishing helpers from laborers by emphasizing the "semi-skilled" nature of helpers, as distinguished from the unskilled duties in the definition in the suspended rule. Under this approach the definition would elaborate on the supervisory relationship between the helper and the journeyworker and the craft-specific assistance provided, and expressly limit the unskilled work the helper could perform. The Department noted, however, that this alternative would not resolve the administrative and enforcement problems that stem from the overlap of duties between journeyworkers and helpers, and that it might result in helper classifications being used to replace, rather than supplement, the use of apprentices and trainees registered in bona fide training programs.

The Building Trades commented that, even under this modified definition of a helper, it would not be possible to distinguish a helper from a laborer because laborers also assist craft workers and many use tools of the trade to perform certain duties. The Building Trades also noted that a laborer working under the supervision of a journeylevel worker could be classified as a lower-paid helper under this definition, simply by adding to his or her duties a few relatively low-skilled tasks using tools of the trade.

LIUNA stated that this alternative would not prevent the substitution of helpers for laborers, because laborers perform not only unskilled duties, but a wide array of semi-skilled duties as well. LIUNA further stated that, because laborers generally earn higher wages than helpers, this alternative would result in misclassification of laborers just as would the suspended rule.

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[14] The CBO stated in its Study: "Modifying the Davis-Bacon Act: Implications for the Labor Market and the Federal Budget," July 1983 at page 42: "Contractors who would have been induced to provide approved training and apprenticeship programs, because doing so was the only way of paying less than journeymen's wages on federal projects, might now reduce the number of apprentices in favor of helpers and informal trainees. To the extent that this adjustment occurred, less-skilled workers might receive less training of the type that would qualify them for entry into the skilled crafts—possibly reducing minority access to these crafts and limiting the supply of skilled labor in the future."

The ABC stated that the Department's rejection of this alternative on the grounds that helpers would continue to have overlapping duties with journeymen is inappropriate. The ABC stated that, if the prevailing practice is to employ helpers to perform duties overlapping with those of journeylevel workers, it is the Department's statutory obligation to recognize that practice.

The Department continues to believe that this alternative would not resolve the administrative and enforcement problems that would stem from the overlap of duties between journeyworkers and helpers. The Department remains of the view that the emphasis on semi-skilled duties under this approach might result in helper classifications being used to replace, rather than supplement, the use of apprentices and trainees registered in bona fide training programs. Furthermore, it appears that this alternative might not even resolve the problems of overlap of duties between helpers and laborers.

3. Define "Helpers" Based on the Bureau of Labor Statistics, Occupational Employment Statistics (OES) Dictionary of Occupations, Which Focuses on Unskilled Duties and the Worker's Interaction With Journeylevel Craft Workers [15]

The Department noted in the NPRM that this approach, by focusing on the role of the helper in assisting the journeyworker and eliminating the "semi-skilled" characterization from the definition of helpers, could provide a more practical basis for distinguishing helpers from journeyworkers. However, the Department expressed its concern that laborers may often perform the same work encompassed within the OES helper definition, thereby causing significant problems for Wage and Hour in conducting wage and area practice surveys and in enforcement because of the lack of clear differentiation between the classifications. The Department also stated that it might be difficult under this approach for contractors to determine whether workers performing similar or identical duties are "laborers" or "helpers" when submitting DBRA survey data and in classifying workers on DBRA-covered projects.

Both the Building Trades and LIUNA commented that this alternative would present the same problem as that presented by the suspended rule, viz., helpers and laborers both perform the work as described in the operative definition. The Building Trades and LIUNA state that it would be difficult for contractors to determine whether workers performing similar or identical duties are laborers or helpers when submitting Davis-Bacon survey data and in classifying workers on DBRA projects.

The AGC commented that the OES definition of a helper is consistent with the definition in the suspended regulation, and can be used by contractors to effectively distinguish helpers from laborers and other craft workers. The ABC objected to the Department's characterization of the OES definition as "eliminating the semi-skilled characterization" from the definition of helpers. The ABC further stated that any such elimination would deny an essential component of helpers and would defeat the statutory mandate of recognizing prevailing practices.

None of the commenters has demonstrated how helpers can be effectively distinguished from laborers under this approach for both enforcement and wage determination purposes, given that laborers would often perform the same work as that described in the OES helper definition. Moreover, the Department does not believe that focusing on the role of the helper in assisting the journeyworker is an effective means for distinguishing helpers from laborers. None of the commenters disputes that laborers, too, are frequently called upon in the performance of their regular duties to assist journeymen.

4. Explicitly Delineate the Semi-Skilled Tasks Performed by Each Helper Classification

As this so-called "job family" approach was described in the NPRM, an employee who performs only lower level duties that are associated with a particular craft may be classified and paid at the lower level helper rate; however, an employee who performs some lower level duties and some higher level duties must be paid the higher journeylevel rate for all of the employee's work time. The Department stated that this approach, in effect, would allow for the expanded use of helpers, with differentiation based on the skill and knowledge required to perform particular duties. The Department theorized that once the duties or tasks that the helpers could perform were clearly defined, wage data could be collected on that basis, and contractors could reasonably be expected to comply with the wage requirements for the various classifications employed on their contracts, thereby facilitating administration and enforcement. The Department stated, however, that developing clear definitions of the duties or tasks that helpers to each journeylevel craft worker would be allowed to perform would be very difficult, requiring extensive occupational analyses and further rulemaking to promulgate helpers' duties descriptions. The Department further questioned whether this approach, which presumably would result in uniform, nationwide definitions, would be consistent with the underlying principle that DBRA classifications are determined based on local area practices.

The Building Trades and LIUNA stated that developing clear definitions of the duties or tasks that helpers would be allowed to perform would be very difficult, requiring extensive occupational analyses to develop accurate and specific descriptions of helpers' duties. They also commented that the uniform, nationwide definitions that would result from application of this alternative would not necessarily reflect locally prevailing practices, as DBRA requires.

TxDOT appears to favor this or a similar approach, in that it recommended (in conjunction with other recommendations) the use of standardized definitions for both journeylevel and helper classifications, stating that each level of classification should require a specific level of skill, and for those classifications where a specific skill is not required, the common laborer classification should be utilized in lieu of a helper classification. TxDOT stated that, under this approach, the need for a semi-skilled worker classification would be eliminated. The AGC of Texas provided a copy of its "Standard Job Classifications" booklet to demonstrate the use of standard, uniform job definitions for job classifications, including several helper classifications, in connection with highway, heavy, utility, and industrial construction projects in the State of Texas.

TxDOT also proposed that the Department expand and define the role of training programs with regard to such helper classifications, thus allowing helpers to progress to a status of "journeyman trainee" and then

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[15] The OES Dictionary of Occupations classification scheme includes a broad category titled "Helpers, Laborers, and Material Movers, Hand, Exclud[ing] Agricultural and Forestry Laborers." The work of helpers in the construction industry is described as follows: "Help workers in the construction trades, such as Bricklayers, Carpenters, Electricians, Painters, Plumbers and Surveyors. Perform duties such as furnishing tools, materials, and supplies to other workers; cleaning work areas, machines, and tools; and holding materials or tools for other workers."

journeyman. However, though the Department has concern for the impact its helper regulations may have on apprenticeship and training programs, it is not within the Department's purview in the context of this Davis-Bacon Act rulemaking to expand and define the role of training programs with respect to helpers.

The Department believes that adoption of this approach is simply not practicable because of the expenditure of time and resources that would be necessary to develop job descriptions for all the construction crafts. The Department also believes that this approach is inadvisable because it would amount to recognizing sub-classifications within each craft, a practice that has never been permitted under DBRA.

Furthermore, close examination reveals that the helper definitions created by the AGC of Texas suffer from the same infirmities as the helper definition in the suspended rule. For example, the AGC of Texas booklet provides the following job description for a "Carpenter Helper, Rough" classification: [16]

> A learner or worker semi-skilled in this craft who assists a rough carpenter by expediting materials, keeping work area clean, sawing lumber to size specified, and assisting in constructing wooden structures, under the direction of a Rough Carpenter. Performs other related duties.

Like the suspended helper definition, this definition uses the undefined term "semi-skilled" to describe the carpenters' helper classification without explaining what it means to be "semi-skilled." Additionally, this definition is internally inconsistent in that it defines the carpenters' helper as "semi-skilled," but specifically lists duties that might commonly be performed by unskilled laborers. The definition not only allows the duties of a helper to overlap with those of a journeyworker, but also provides no limitation on the duties a carpenter's helper can perform by including the open-ended phrase "[p]erforms other related duties." Lastly, this definition, by referring to a carpenter helper as a "learner," poses perhaps an even greater risk than the suspended helper definition that helpers will be substituted for apprentices and trainees participating in formal programs that lead to workers achieving journeylevel status.

The Proposed Rule—Helpers as a Distinct Class With Clearly Defined Duties Which Do Not Overlap With Laborer or Journeyman Classifications

Congressional Representatives Norwood, Goodling, Ballenger, Boehner, Hoekstra, McKeon, and Paul opposed the Department's proposed helper regulations, stating that they would tend to discourage rather than facilitate the use of helpers on DBRA projects. They commented that the proposed regulations are deficient because they do not reflect current industry practice and are not responsive to the needs and practices of the vast majority of the construction industry. These congressmen also stated that the proposed helper rule, in contrast to the suspended rule, will not encourage access by low-skilled workers to valuable entry-level jobs. They further stated that opening more helper jobs under the suspended rule would attract workers to the construction industry, which suffers from a serious shortage of skilled workers.

Representatives Clay, Owens, and Clyburn supported the proposed rule on the basis that it not only better reflects the current practices of Davis-Bacon contractors, but also ensures that minority workers will be paid locally prevailing wages and fringe benefits. They further commented that the proposed rule will ensure that the Federal government, through its procurement practices, will not act to undermine the living standards of workers, and will promote continued access to the kinds of apprenticeship programs that are essential if new workers in the construction industry are to better themselves.

Representatives Schakowsky and Weiner also urged the Department to adopt as final the proposed rule because it recognizes the need for a clear delineation and limitation on the use of helpers on DBRA-covered projects. They stated that the proposed rule will encourage proper training for young, minority and female workers by promoting formal and effective apprenticeship programs. They also commented that the proposed rule will enhance the presence of more skilled and productive workers on Davis-Bacon projects, thus reducing the costs resulting from job-related injuries and improving the economic situation of the entire community.

The AGC, the ABC, Dr. Thieblot, and the SBSC all opposed the Department's proposed rule and advocated implementation of the suspended rule. These commenters, as well as the APWC, stated that where the use of helpers prevails, they should be recognized by the Department in accordance with its statutory mandate to reflect prevailing practices. For example, the ABC commented that, if it is the prevailing practice to employ helpers in a given locality to perform overlapping duties with journeymen, the Department of Labor has an obligation to recognize that practice. The AGC echoed this point, stating that even if helpers prevail in only 3.9 percent or 2.7 percent of surveyed job classifications, as surmised by the Department in its NPRM, helper classifications should nonetheless be recognized in those instances where they are found to prevail. The ABC also urged the Department to delay issuance of the proposed rule until the upgrade of the Department's survey and data collection processes has been completed and a fair and objective study of the helper issue is conducted.

The AGC of Texas supported restoring the increased use of helpers under the suspended rule, stating that for more than 35 years helper classifications have been recognized in Texas and are still being used on projects that have no Federal funds. The Mercatus Center generally opposed adoption of the proposed rule, primarily based on economic considerations. Elcon specifically objected to the Department's refusal under its current policy to approve the elevator helper classification negotiated by the International Union of Elevator Constructors. Elcon stated that the Davis-Bacon Act should not be used to make new rules that would reduce competition, unnecessarily inflate costs on Federal construction projects, provide unfair advantages for nonunion organizations, and create separate job definitions for Federal projects.

The Building Trades and LIUNA both urged the Department to adopt the proposed rule. They favored the proposed rule because it reestablishes the duties-based classification approach, provides an objective basis for administration and enforcement, including clear criteria that facilitate contractor compliance, and is consistent with the statutory intent to assure that workers employed on DBRA projects receive the prevailing wages paid to workers performing similar work on similar construction in the same area. They also stated that the proposed rule's lack of overlapping duties will discourage contractor misclassification and abuse and that the requirement that helpers be separate and distinct from journeylevel workers and laborers will facilitate collection of wage data used to establish prevailing wage rates on DBRA work. Finally, they stated that the proposed rule will provide strong incentives to contractors and subcontractors to establish and participate in formal apprenticeship and training programs.

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[16] The definition for a "Carpenter Helper, Rough" is fairly representative of all of the helper definitions contained in the AGC of Texas booklet. They generally all begin with the phrase, "A learner or worker semi-skilled in this craft"; require supervision by the journeyworker; provide a list of specific duties; and conclude with the phrase, "Performs other related duties." Though the specific duties vary from craft to craft with respect to each helper classification, they are basically unskilled duties that a laborer could perform.

MESMA opposed the use of helpers without stringent enforcement by the Department as part of a comprehensive Davis-Bacon reform effort. MESMA expressed concern that the overuse of helpers could lead to a reduction in workforce skills, diminishing quality of construction, and an increase in industrial accidents. The NJATC opposed the helper concept in general based on its belief that the institution of helpers will have a negative impact on apprenticeship and training programs. The IBEW opposed adoption of the Department's proposed rule based on its general opposition to use of helper classifications, under any definition, on DBRA projects. The IBEW suggested that the creation of helper classifications may bring down wage scales, put more people in poverty, and force construction workers to work more than one job in order to survive economically. MESMA and the IBEW both questioned whether the helper criteria under the proposed regulation can be effectively administered and enforced.

Based on careful review of the comments and further consideration of the alternatives, the Department has decided to adopt as a final rule an amendment to the regulations that will incorporate the longstanding policy of recognizing helpers as a distinct classification on DBRA-covered work only where Wage and Hour determines that (1) the duties of the helper are clearly defined and distinct from those of the craft worker and laborer, *i.e.*, the duties of the helper are not routinely performed by any other classifications in a given area; (2) the use of such helpers is the prevailing practice in the area; and (3) the helper is not used as a "trainee" in an informal training program.

The Department favors this approach because it incorporates the duties-based methodology for distinguishing classifications that the Department utilizes in identifying other classifications under the DBRA. By providing for the recognition of helpers based on the duties they perform, rather than on the worker's skill level and the existence of supervision, the proposed rule provides an objective basis for Wage and Hour to administer and enforce the statute's prevailing wage requirements with respect to the employment of helpers. This duties-based approach also facilitates compliance by providing clearer criteria to be followed by contractors who wish to employ helpers on DBRA-covered projects.

The Department also believes that, by recognizing helpers only where their duties are distinct and do not overlap with those routinely performed by other classifications, the proposed rule will discourage contractor misclassification and/or abuse that could result from contractors reclassifying journeyworkers and laborers as helpers at lesser rates of pay on DBRA jobs.

The Department believes that the proposed rule provides the only approach that is administratively feasible. Unlike some of the other alternatives considered, the policy under the proposed rule does not require Wage and Hour, in its enforcement, to make a fact-bound inquiry of each worker to assess his or her skill level and the nature of the worksite supervision he or she receives to determine whether the worker will be recognized as a "helper" for Davis-Bacon purposes. The requirement that helpers have distinct duties from those of other classifications on the wage determination also facilitates the collection of wage data that more reliably reflect the prevailing wage rates paid for work performed by helpers on DBRA-covered construction work.

Under the regulations, helpers—whatever their job title—will be recognized, as they are today, whenever their duties are separate and distinct from duties routinely performed by other classifications. For example, tender classifications are common on Davis-Bacon wage determinations. On the other hand, where helpers are just lesser skilled workers of a particular craft, they will be included in the surveys under the craft classification, and their rates averaged together with the journeylevel workers (where there is no rate paid to a majority of the workers in the classification).[17]

Additionally, this approach maintains the current incentive to contractors to establish and participate in structured apprenticeship and training programs that facilitate the advancement of lesser skilled workers to journeylevel status.

The chief objection to the proposed rule expressed by commenters in this rulemaking is that it disregards local area practices in those instances where there may be a prevailing practice of employing helpers who do not meet the three-part regulatory test as set forth above. The gravamen of this objection is that the proposed rule does not accord with the Department's statutory obligation to provide classifications and wage rates that mirror locally prevailing practices.

The Department believes that the proposed rule is fully consistent with the DBRA's underlying prevailing wage goals and requirements. The Davis-Bacon Act provides little guidance concerning the methodology the Secretary is to use in determining "classes" of laborers and mechanics and their respective prevailing wage. Consequently, the Secretary has a substantial amount of flexibility and discretion in devising a methodology to fulfill the Department's statutory obligations and responsibilities under the Act. *Donovan*, 712 F.2d at 616, 629–630; *Miami Elevator Company and Mid-American Elevator Company, Inc.*, ARB Case Nos. 98–086 and 97–145 (April 25, 2000), slip op. at 35.

The Davis-Bacon Act directs the Secretary to determine the prevailing wage for "corresponding classes" of laborers and mechanics. It has been the longstanding practice of the Department—with the exception of the short period during which the suspended rule was implemented—to utilize a duties-based approach to identifying classes of laborer and mechanics.[18] Under this practice, the duties that a particular class of worker performs may vary somewhat from one area to another; and a classification may be recognized in one area and be subsumed under another classification in another area, in accordance with prevailing area practice. Thus, in one area a helper may be a separate class, while, in another area, it may be subsumed under another classification in accordance with prevailing area practice. Although this duties-based distinction is not mandated by the statute, the Department believes it is fully consistent with the legislative history and statutory intent.

Furthermore, the Department believes it simply is not feasible to graft onto a duties-based system of classifications, one class defined on the basis of skill and supervision. Since the craft worker is not defined on the basis of skill and supervision, and the prevailing wage of the craft worker is based on rates paid to workers with a range of skills and supervision, it does not make sense to carve out certain workers who may have less skill and receive more supervision.

In addition, the Department has been unable to determine how the suspended helper rule can be administered and enforced in accordance with the DBRA's prevailing wage requirement. A review of the comments reveals no consensus as to how helpers are used in the construction industry, and the commenters provided no information to aid the Department in identifying a generally accepted definition of a helper that corresponds to industry practices. Nor is there a practicable, reasonable way to identify helpers, when the manner in which they are used varies so in each and every area where DBRA-covered construction is taking place.

The Department's Administrative Review Board in its recent decision in the case of *Miami Elevator Company and Mid-American Elevator Company, Inc.*, ARB Case Nos. 98–086 and 97–145 (April 25, 2000), explained the Department's position. In response to an argument that the Department's refusal to approve an elevator helper classification because it did not meet the current three-part test resulted in "a staffing pattern that is inconsistent with locally prevailing practice," the Board stated as follows:

> "[W]e note that the oft-repeated declaration that the purpose of the Davis-Bacon Act is to 'hold * * * a mirror up to local prevailing wage conditions and reflect * * * them' on federal construction projects is a simplistic and inaccurate characterization of the statute. [Citation omitted]
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> "[I]t is virtually inevitable that some laborers and mechanics who work in a given jurisdiction are paid less than the prevailing wage rates determined by the Secretary, yet the congressionally-mandated prevailing wage scheme requires that all construction workers be paid not-less-than the prevailing rate when employed on a federal construction contract—even those workers who might otherwise be employed on non-Federal projects in the local construction industry at lower pay scales. The goal of the Act is not merely to replicate (or "mirror") the full range of local pay scales, but to require that workers be paid at least the prevailing rate.
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> * * * * *
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> "In sum, the prevailing wage mechanism chosen by Congress always has included the possibility that some construction workers in a locality who normally earn less than the prevailing wage might earn more when employed on a project subject to the Act; similarly, the Secretary and the Administrator have a long history of limiting the circumstances under which workers in a training mode would be allowed to work on federally-funded projects, generally insisting that such workers be enrolled in government-approved training programs designed to promote quality training and prevent abuse. The fact that these forces combine to produce a staffing pattern that may not 'mirror' local practice does not mean that the Administrator's decisions are incorrect, either under the law or regulations." *Miami Elevator Company, supra,* slip op. at 33–34.

Accordingly, the Department concludes that the proposed rule, by requiring that the duties of a helper be distinct from those of other classifications employed on the jobsite, best fulfills the fundamental purpose of the Davis-Bacon Act to assure that workers employed on federal and federally-assisted construction work be paid at least the wages paid to corresponding classes of workers on similar construction in the area.

The Department points out that it is not its intention that a helper classification would never be issued simply because some workers in another classification occasionally perform the work in question. As discussed above, the Department intends to issue helper classifications where the duties in question are not routinely performed by another classification on the wage determination and it is the prevailing practice in the area for helpers/tenders to perform the work in question, *provided* the other criteria of the regulation are met. In other words, although roofers may occasionally tear off roofing or carry roofing materials, the Department will issue a roofer's helper classification in a wage determination if more roofer's helpers perform these tasks than roofers on the projects surveyed, *provided* that the helpers tasks are clearly defined and do not include duties that prevail for other classifications in the area (*e.g.*, application of roofing where it is prevailing practice that roofers perform this work), and that the helper is not an informal trainee. Consistent with the Department's practice on approval of additional classifications under the conformance procedures at section 5.5(a)(1)(ii)(A), moreover, the Department will not approve an additional classification of helper if the helper performs any tasks that are ever performed by other classifications on the wage determination. Thus, in the example given, the Department would not approve the roofer's helper as an additional classification because tearing off of roof and carrying of roofing materials are sometimes done by roofers.

Consistent with the above discussion, the regulations have been amended to delete the suspended provision at section 1.7(d), defining the circumstances in which use of helpers would be found to prevail. The Department will apply its longstanding policies in determining prevailing practices. Section 5.2(n)(4) has been revised to set forth the circumstances in which helpers will be recognized on wage determinations and in additional classification (conformance) requests. Finally, the conformance provisions at section 5.5(a)(1)(ii) have been revised to delete the special references to helpers from the suspended paragraphs, and the second conformance provision at section 5.5(a)(1)(v), which was in effect during the period of the suspended regulation, has been deleted.

Additional Modifications

The regulations are further amended to reflect the organizational change in the title of the Bureau of Apprenticeship and Training (BAT) to the Office of Apprenticeship, Training Employer and Labor Services (ATELS).

IV. Executive Order 12866; § 202 of the Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act

Summary

The Department determined that the proposed rule should be treated as "economically significant" within the meaning of Executive Order 12866 and as a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act because the various alternatives to the proposed rule, including reinstatement of the suspended rule, could result in potential savings in excess of $100 million per year. Therefore, a full economic impact analysis was prepared and presented for comment.[19] The principal finding of this analysis was that any impact resulting from the increased use of helpers under the suspended rule, or any of the other alternatives considered, would be relatively modest. The Department estimated potential savings under the suspended rule to be from $72.8 million

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[17] Employers who use helpers that meet the definition under this final rule should report the use of helpers in response to Davis-Bacon prevailing wage surveys, along with a description of the duties or other characteristics that distinguish helpers from other workers. Where "helpers" perform the duties of another classification on the wage determination, the employer should report the "helper" under that classification. If helpers are listed on a WD–10 survey form, the Department will determine whether they are a separate classification, meeting the criteria of the regulations; if not, the Department will determine the appropriate classification for the work performed and include the "helpers" and their wage rates under that classification—laborer, craft worker, or otherwise.

[18] The Department has created a regulatory exception for apprentices and trainees in approved programs.

[19] The Department also determined, for the reasons explained in the NPRM, that the provisions of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking. None of the commenters disputed this determination.

(utilizing Current Population Survey (CPS) data) to $296.0 million (utilizing Occupational Employment Statistics (OES) data). The Department also devised an alternative methodology that is OES-based, but utilizes CPS data to compensate for the likelihood that OES data overestimate the number of helpers and underestimate the number of laborers. This "adjusted-OES data" provided an estimate of $108.6 million in possible savings. As discussed in the NPRM, the Department believes that the potential savings are likely to be closer to $72.8 million than $296.0 million.

Discussion of Comments

The AGC does not believe that the surveys and data sources used by the Department support the conclusion that the employment of helpers is not as widespread as previously believed. Specifically, the AGC pointed out that, although the OES survey used does combine laborers, helpers and other categories, the survey is being revised to separate the helpers and laborers, making it more useful in the future. The AGC states that independent contractors rarely bid on Federal construction contracts, but rather are frequently hired by the contractors that are awarded the contracts. It therefore disagreed with the Department's view that inclusion of self-employed workers in the CPS is a strength of the survey. Furthermore, the AGC disagreed with the Department's statement that the OES definition of helpers is very similar to laborers who assist journeymen. Finally, the AGC disagreed with the Department's conclusion that the OES survey likely includes laborer employment with helper employment, thereby overstating the number of helpers and stated that the Department offers no support for its view that contractors cannot distinguish between helpers and laborers.

The ABC believes that the Department's economic impact and flexibility analysis greatly understates the economic costs of the proposed rule. Raising similar concerns to those raised by the AGC, the ABC stated that the Department's analysis is flawed by: (1) A lack of evidence that helpers would replace laborers and apprentices in proportion to the number of workers in each of those occupations; (2) the absence of a basis for assuming that OES statistics include large numbers of laborers in the estimates of helpers; (3) improper inclusion of self-employed workers in the universe of "relevant" construction employment; and (4) the use of flawed and distorted 1992–1993 wage surveys to estimate the number of classifications in which helpers would prevail. The ABC estimates that the proposed rule will cost hundreds of millions of dollars each year.

Turning first to the CPS survey, the Department continues to believe that it is appropriate to include independent contractors in construction workforce data. As the AGC said, independent contractors (performing as journeylevel workers) are frequently hired by contractors on Davis-Bacon contracts. Furthermore, independent contractors performing the work of laborers or mechanics are covered by the Act. No other concerns have been raised regarding the appropriateness of the data in the CPS. Therefore, as stated in the NPRM (*see* 64 FR 17561), based principally on the fact at this time the OES has not published data with a separate classification for laborer, together with the fact that OES does not collect data on self-employed individuals, Wage and Hour continues to believe that the CPS data are more likely than the OES data to be representative of the distribution of employment in construction by occupation for helpers and laborers.

The assumption that helpers would replace laborers, apprentices, and journeyworkers in proportion to the number of workers in each of these occupations is addressed in the NPRM at 64 FR 17499. The Department explained that the 1989 helper impact analysis assumed that helpers would replace only journeyworkers, and measured the wage differentials based only on this replacement effect. The Department now believes this assumption was incorrect because helpers frequently perform laborers' duties and laborers' wage rates would sometimes be higher than helpers' rates on the wage determination. The Department observed that comments received from some contractors surveyed in the processing of helper conformance requests during the period the suspended regulations were in effect indicated that they used the job title "laborer" for workers meeting the definition of "helper" under the suspended regulation. The Department took a "middle ground" in its impact analysis by assuming that helpers would replace laborers, apprentices, and journeyworkers in the same proportion as their relative occupational employment.[20] The comments do not undermine the reasonableness of this assumption or provide a reasonable, alternative approach.

The assumption that large numbers of laborers are included in the OES helper data is based on the absence of a separate OES laborer classification, and the fact that the duties described in the OES helper definition are similar to those performed by laborers.[21] Furthermore, other available surveys, such as the CPS, the Decennial Census, and the four NCS pilot surveys conducted by BLS show a much greater incidence of laborer employment than could be gleaned from the OES survey data. As AGC pointed out, a separate construction laborer classification is included in the new Standard Occupational Classification definitions and will be used in future OES surveys.

The ABC's contention that the 1992–1993 wage surveys were distorted has been discussed above. In addition, these survey results were used only for the assumption that helpers would be likely to "prevail" for a limited number of classes in areas representing about half the construction employment covered by the Davis-Bacon and Related Acts.[22]

Representative Norwood and the congressmen who joined in his comments stated that the proposed rule is based on an unrealistic economic impact analysis, noting that the Congressional Budget Office (CBO) has estimated that legislation allowing the increased use of helpers could save the Federal government $1.4 billion over five years and $3.5 billion over 10 years. The CBO's precise methodology for estimating the reduction in discretionary outlays over five and ten year periods has not been provided. It is the Department's understanding that the CBO estimates are based on the methodology used by the Department to estimate savings in its original impact analysis conducted in 1982, with estimated percentages of savings modified (from 1.6 percent of federal construction costs to .8 percent) to account for changes to certain assumptions made in the 1982 analysis.[23] For the reasons set forth in the NPRM, the Department now believes, based on more current information and data sources that were not then available, that many of those assumptions were wrong. The Department also points out that the CBO savings estimates are consistent with the high end of the savings estimates set forth in the Department's latest economic impact analysis, based on the OES data.

The Building Trades and LIUNA both state that the Department's economic impact analysis overstates any possible cost savings under the suspended rule and that consideration of certain other factors would eliminate the "modest" savings predicted by the Department in its analysis. The other factors that the Building Trades and LIUNA believe would offset any potential savings under the suspended rule include: (1) Lowered productivity of construction workers as contractors employ more low-wage, lesser-skilled workers; (2) lowered income and sales tax revenues resulting from lowered worker income; (3) negative impact on apprenticeship programs with reduced training levels and lower skill levels among construction workers; (4) increased incidences of accidents and increased workers' compensation premiums due to the increase in the number of new, entry-level workers who are untrained or inadequately trained; and (5) the negative impact on the quality of public construction resulting from the increased use of lower-paid, lesser-skilled workers. Finally, the Building Trades and LIUNA believe that the suspended rule, in and of itself, would probably have no effect on Federal budgetary outlays, as it is unlikely that there would be a reduction in congressional appropriations for Federal and federally-assisted public building and public works projects to reflect the anticipated cost savings from the increased use of helpers.

While the factors mentioned by the Building Trades and LIUNA could have some bearing on impact analysis estimates (the NPRM did, for example, note the possibility of reduced savings as a result of fewer apprenticeships and higher journeyworker wage rates), adequate data simply are not available to allow detailed consideration of these factors. Of the many studies cited, none provides the framework or data necessary for integration into an economic impact analysis. Furthermore, there may be offsetting factors which could neutralize the effects of the factors cited.

Of the many studies cited by these commenters, none provides the framework or data necessary for integration into an economic impact analysis. For the most part, the studies cited in the union comments do not focus directly on the comparative costs of the two helper rules, but rather on the more general cost differentials associated with union versus open shop construction. Moreover, the Department has determined that comparisons would be made using only primary, direct costs for the following reasons: (1) Generally accepted databases maintained by Federal agencies should be relied upon in the comparative cost study; and (2) the impact of such factors as productivity, social costs/benefits, and construction quality are not definitive, and therefore, consideration of these factors would invite considerable debate from those who have reached opposite conclusions based on their research.

The Department therefore concludes that the belief expressed by the Building Trades and LIUNA that adoption of the suspended rule would probably have no effect on Federal budgetary outlays is too speculative to form an appropriate basis for their integration into a cost-impact analysis.

Final Regulatory Impact Analysis

After review of the comments, the Department has concluded that there is no reason to change its estimates of the potential savings under the suspended rule and the other alternatives considered, in comparison to the proposed rule, as set forth in the preliminary regulatory impact analysis.

V. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, Public Law 96–354 (94 Stat. 1164; 5 U.S.C. 601 *et seq.*), Federal agencies are required to prepare and make available for public comment an initial regulatory flexibility analysis that describes the anticipated impact of proposed rules that would have a significant economic impact on small entities. Though the Department determined that a regulatory flexibility analysis was not necessary for the proposed rule because it would not have a significant economic impact on a substantial number of small entities, it nonetheless published for comment such an analysis because of the interest in the rule.[24] After review of the comments and consideration of the various alternatives, the Department has prepared the following regulatory flexibility analysis regarding this rule:

(1) The Need for and Objectives of the Rule

In 1982, Wage and Hour published final regulations which, among other things, would have allowed contractors to use "semi-skilled" helpers on Davis-Bacon covered projects at wages lower than those paid to skilled journeyworkers. These rules represented a sharp departure from Wage and Hour's longstanding practice of not allowing overlap of duties between job classifications. To protect against possible abuse, a provision was included limiting the number of helpers which could be used on a covered project to a maximum of two helpers for every three journeyworkers. This ratio provision was subsequently invalidated by the U.S. Court of Appeals for the District of Columbia.

As discussed in greater detail above, during its existence, the helper rule has been the subject of considerable litigation and Congressional attention. The rule has been enjoined by the district court and modified on two occasions as a result of court of appeals decisions. It has twice been implemented for short periods of time. It has also been suspended on two occasions as the result of Congressional action prohibiting Wage and Hour from spending any funds to implement or administer the helper rule. On December 30, 1996, the Department's suspension of the 1982 rule was continued pending completion of this rulemaking.

The helper rule was originally proposed and adopted because it was believed that it would result in a construction workforce on Federal construction projects that more closely reflected private construction's "widespread" use of helpers to perform certain craft tasks and, at the same time, effect significant cost savings in federal construction costs. It was also believed that the expanded definition would provide additional job and training opportunities for unskilled workers, in particular women and minorities. The Department's subsequent efforts to develop enforcement guidelines led it to conclude that administration and enforcement of the revised helper rule would be much more difficult than anticipated, especially in light of the court's invalidation of the ratio provision. Moreover, new data has led the Department to conclude that the use of helpers is not as widespread as previously thought. The Department is also concerned about the possible negative effect of the helper regulations on formal apprenticeship and training programs. These factors led the Department to conclude that the suspended helper rule should not be implemented and that new regulations were needed to govern employment of helpers on DBRA-covered projects. The objective of these regulations is to establish the most appropriate approach to governing employment of helpers on DBRA-covered projects.

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[20] With its "middle ground" approach, the Department calculated that the great majority of helpers would replace higher-paid journeyworkers, thus enhancing the potential savings computed under the suspended definition.

[21] Helpers, as defined by OES, "perform duties such as furnishing tools, materials and supplies to other workers; cleaning work areas, machines, and tools; and holding materials or tools for other workers."

[22] One or more classifications of helper (union and open shop) were found to prevail in 35 of 78 surveys. Open shop helpers were found to prevail in only 20 of 78 surveys.

[23] A 1994 GAO report, "Changes to the Davis-Bacon Act Regulations and Administration," (GAO/HEHS–94–95R, February 7, 1994), noted that, as of September 1993, the use of helpers was found to be a prevailing practice in 23 of 73 surveys (32 percent) completed since the surveys were started in April 1992.

[24] The Department believed that a Regulatory Flexibility Analysis was not necessary because (1) the proposed regulation would not result in any changes in requirements for small businesses; (2) if Wage and Hour were to propose implementing the suspended rule or any of the alternatives considered, it would not be more costly than current regulatory requirements, and therefore, would not have a significant economic impact on a substantial number of small entities; and (3) neither the suspended rule nor any of the alternatives considered could be implemented in a manner that would accomplish the objectives of the statute.

(2) Summary of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

The Department received a number of comments regarding the economic impact analysis prepared pursuant to Executive Order 12866. Those comments were discussed in the previous section containing the Department's economic impact analysis. The Department received no separate comments concerning its initial regulatory flexibility analysis.

(3) Number of Small Entities Covered Under the Rule

Size standards for the construction industry are established by the Small Business Administration (SBA), and are expressed in millions of dollars of annual receipts for affected entities, *i.e.*, Major Group 15, Building Construction—General Contractors and Operative Builders, $17 million; Major Group 16, Heavy Construction (non-building), $17 million; and Major Group 17, Special Trade Contractors, $7 million. The overwhelming majority of construction establishments would have annual receipts under these levels. According to the Census, 98.7 percent of these establishments have annual receipts under $10 million. Therefore, for the purpose of this analysis, it is assumed that virtually all establishments potentially affected by this rule would meet the applicable criteria used by the SBA to define small businesses in the construction industry.

As explained above, however, the final rule would cause no impact on small entities since it does not propose to make any changes in requirements applicable to small businesses. Implementation of the suspended rule or any of the alternatives considered would expand the use of helpers and could result in some savings to the Federal government and to recipients of Federal assistance. The impact would depend upon the specifications of the alternative relative to current practice. Even relative to unlimited use, however, possible savings would be very modest, ranging from 0.239 percent of the value of Davis-Bacon annual construction starts (CPS), to 0.359 (adjusted OES), and 0.958 (unadjusted OES) percent and, as discussed in the Department's economic impact analysis in the NPRM, may very well be short-termed.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

There are no reporting or recording requirements for contractors under the final rule. Nor would there be any such requirements under the suspended rule or any of the alternatives considered. The compliance requirements under any rule regarding helpers would merely require contractors who use helpers to do so in accordance with a chosen regulatory framework and pay helpers at least the prevailing wages for the helper classification as set by the Department.

(5) Description of the Steps Taken To Minimize the Significant Economic Impact on Small Entities Consistent with the Objectives of the Davis-Bacon and Related Acts

The Department carefully analyzed the suspended rule, as well as a number of alternative approaches, to determine whether they could be enforced and administered in a manner consistent with the objectives of the Davis-Bacon and Related Acts. Based on this analysis, the Department concluded that the final rule, which adopts the Department's current policy governing employment of helpers, is the only alternative considered that is both consistent with the purposes of the Davis-Bacon and Related Acts and capable of practical and efficient administration, enforcement, and compliance.

The Department also performed an economic impact analysis wherein the Department estimated the relative economic costs under the suspended rule, the various alternatives considered, and the final rule, respectively. As detailed above, the Department concluded from this analysis that any economic cost savings to the Federal government and recipients of Federal assistance, resulting from the increased use of lower-paid helpers under the suspended rule or any of the other alternatives considered, would be relatively modest. The Department therefore determined that implementation of the final rule, which preserves the status quo concerning employment of helpers on DBRA-covered projects, would not have a significant economic impact on a substantial number of small entities.

Document Preparation

This document was prepared under the direction and control of John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 1

Administrative practice and procedure, Construction industry, Government contracts, Minimum wages.

29 CFR Part 5

Administrative practice and procedure, Construction industry, Employee benefit plans, Government contracts, Minimum wages, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 29 CFR Part 1 and Part 5 are amended as set forth below:

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

1. The authority citation for Part 1 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; and the laws listed in appendix A of this part.

2. Section 1.7(d) is revised to read as follows:

§ 1.7 Scope of consideration.

* * * * *

(d) The use of *helpers, apprentices* and *trainees* is permitted in accordance with part 5 of this subtitle.

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

3. The authority citation for Part 5 continues to read as follows:

Authority: 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; 29 U.S.C. 259; 108 Stat. 4104(c); and the statutes listed in section 5.1(a) of this part.

4. In § 5.2, paragraph (n)(1) is amended by removing "Bureau of Apprenticeship and Training" each place it appears in the paragraph and inserting in its place "Office of Apprenticeship Training, Employer and Labor Services", and paragraph (n)(4) is revised to read as follows:

§ 5.2 Definitions.

* * * * *

(n) * * *

(4) A distinct classification of "helper" will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

(i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(ii) The use of such helpers is an established prevailing practice in the area; and

(iii) The helper is not employed as a trainee in an informal training program. A "helper" classification will be added to wage determinations pursuant to § 5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

* * * * *

5. Section 5.5 is amended by removing paragraphs (a)(1)(ii)(A)(4) and (a)(1)(v); by removing "; and" from the end of paragraph (a)(1)(ii)(A)(3) and inserting in its place a period; by revising paragraph (a)(1)(ii)(A)(1) to read as set forth below; and by removing the phrase "Bureau of Apprenticeship and Training" each place it appears in paragraph (a)(4) and inserting in its place "Office of Apprenticeship Training, Employer and Labor Services" and removing "Bureau" each time it appears in paragraph (a)(4) and inserting in its place "Office".

§ 5.5 Contract provisions and related matters.

* * * * *

(a) * * *

(1) * * *

(ii)(A) * * *

(*1*) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

* * * * *

Signed at Washington, D.C., on this 14th day of November, 2000.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

[FR Doc. 00–29533 Filed 11–17–00; 8:45 am]

BILLING CODE 4510–27–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2483; MM Docket No. 99–282; RM–9710]

Radio Broadcasting Services; Littlefield, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document dismisses a Petition for Reconsideration filed on behalf of Mountain West Broadcasting directed to the *Report and Order* in this proceeding, which denied the requested allotment of Channel 265C to Littlefield, Arizona, for failure to demonstrate that Littlefield qualifies as a community for allotment purposes. *See* 65 FR 25463, May 2, 2000. The petition for reconsideration is dismissed as it does not meet the limited provisions set forth in the Commission's Rules under which a rule making action will be reconsidered. With this action, this docketed proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, in MM Docket No. 99–282, adopted October 25, 2000, and released November 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–29625 Filed 11–17–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF73

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Tidewater Goby

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the tidewater goby (*Eucyclogobius newberryi*), pursuant to the Endangered Species Act of 1973, as amended (Act). The designation includes 10 coastal stream segments in Orange and San Diego Counties, California, totaling approximately 9 linear miles of streams. Critical habitat includes the stream channels and their associated wetlands, flood plains, and estuaries. These habitat areas provide for the primary biological needs of foraging, sheltering, reproduction, and dispersal, which are essential for the conservation of the tidewater goby.

Section 7 of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify designated critical habitat. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat.

DATES: The effective date of this rule is December 20, 2000.

ADDRESSES: You may inspect the complete file for this rule at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008, by appointment during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address; telephone 760/431–9440, facsimile 760/431–5902.

SUPPLEMENTARY INFORMATION:

Background

The tidewater goby (*Eucyclogobius newberryi*) is the only member of the monotypic genus *Eucyclogobius* and is in the family Gobiidae. This fish was first described in 1857 by Girard as *Gobius newberryi*. Based on Girard's specimens, Gill (1862) erected the genus *Eucyclogobius* for this distinctive species. The majority of scientists have accepted this classification (*e.g.*, Bailey *et al*. 1970, Miller and Lea 1972, Hubbs *et al*. 1979, Robins *et al*. 1991, Eschmeyer *et al*. 1983). A few older works including Ginsburg (1945) placed the tidewater goby and the eight related eastern Pacific species into the genus *Lepidogobius*. This classification includes the currently recognized genera *Lepidogobius*, *Clevelandia*, *Ilypnus*, *Quietula*, and *Eucyclogobius*. Birdsong *et al*. (1988) coined the informal *Chasmichthys* species group, recognizing the phyletic relationship of the eastern Pacific group with species in the northwestern Pacific.

Crabtree's (1985) allozyme work on tidewater gobies from 12 localities throughout the range shows fixed allelic differences at the extreme northern (Lake Earl and Humboldt Bay) and southern (Canada de Agua Caliente, Winchester Canyon, and San Onofre Lagoon) ends of the range. The northern, central, and southern California populations are genetically distinct from each other. The more centrally distributed populations are relatively similar to each other (Brush Creek, Estero Americano, Corcoran Lagoon, Arroyo de Corral, Morro Bay, Santa Ynez River, and Jalama Creek). Crabtree's results indicate that there is a low level of gene flow (movement of individuals) between the populations sampled in the northern, central, and southern parts of the range. However, Lafferty *et al*. (1999a) point out that Crabtree's sites were widely distributed geographically, and may not be indicative of gene flow on more local levels.

Dawson *et al*. (2000) conducted an analysis of mitochondrial DNA from populations ranging from Humboldt to San Diego counties. Results indicated the southern California populations of tidewater gobies diverged from other tidewater gobies along the California coast long ago. These southernmost populations may have begun diverging from the remainder of the gobies in excess of 1,000,000 years ago. We recently proposed recognition of the tidewater gobies in southern California (*i.e.*, Orange and San Diego Counties) as an endangered distinct population segment (DPS) (June 24, 1999; 64 FR 33816).

The tidewater goby is a small elongate fish seldom exceeding 50 millimeters (mm) (2 inches (in.)) standard length. This fish is characterized by large, dusky pectoral fins and a ventral sucker-like disk formed by the complete fusion of the pelvic fins. Tidewater gobies are nearly transparent, with a mottled brownish upper surface, and often with spots or bars on dusky dorsal and anal fins. The mouth is large and oblique with the upper jaw extending nearly to the rear edge of the eye. The eyes are widely spaced. The tidewater goby is a short-lived species, apparently having an annual life cycle (Eschmeyer and Herald, 1983, Irwin and Soltz 1984, Swift *et al*. 1997).

The tidewater goby is endemic to California, and is unique in that it is restricted to coastal brackish water habitats. Historically, the species ranged from Tillas Slough (mouth of the Smith River, Del Norte County) near the Oregon border to Agua Hedionda Lagoon (northern San Diego County). Within the range of the tidewater goby, shallow, brackish water conditions occur in two relatively distinct situations: 1) the upper edge of tidal bays, such as Tomales, Bolinas, and San Francisco bays near the entrance of freshwater tributaries, and 2) the coastal lagoons formed at the mouths of small to large coastal rivers, streams, or seasonally wet canyons, along most of the length of California. Few well documented records of this species are known from marine environments outside of coastal lagoons and estuaries (Swift *et al*. 1989). Historically, the southern population of tidewater gobies occupied the coastal lagoons formed at the mouths of small to large coastal rivers, streams, or seasonally wet canyons from Aliso Creek in Orange County, to Agua Hedionda Lagoon in Northern San Diego County.

The tidewater goby is often found in waters of relatively low salinities (around 10 parts per thousand (ppt)) in the uppermost brackish zone of larger estuaries and coastal lagoons. However, the fish can tolerate a wide range of salinities and is frequently found throughout lagoons (Swift *et al*. 1989, 1997; Worcester 1992, Worcester and Lea 1996). Tidewater gobies regularly range upstream into fresh water, and downstream into water of up to 28 ppt salinity (Worcester 1992, Swenson 1995). Specimens have also been collected at salinities as high as 42 ppt (Swift *et al*. 1989). The species' tolerance of high salinities (up to 60 ppt for varying time periods) likely enables it to withstand exposure to the marine environment, allowing it to colonize or reestablish in lagoons and estuaries following flood events (Swift *et al*. 1989; Worcester and Lea 1996; Lafferty *et al*. 1999a). Tidewater gobies in southern California appear to be highly tolerant of varying salinities. Tidewater gobies were collected in May 2000 from French and Aliso lagoons, San Diego County, two lagoons located within 500 m of each other. Although both lagoons had hundreds of larval, juvenile and adult tidewater gobies, the salinities of the two lagoons varied markedly. Aliso Lagoon consisted of entirely fresh water, while French Lagoon ranged from 45 to 51 ppt (Service field data 2000).

Tidewater gobies are usually collected in water less than 1 meter (m) (3 feet (ft)) deep and many localities have no area deeper than this (Wang 1982, Irvin and Soltz 1984; Swenson 1995). However, they have been found in waters over 1 m (3ft) in depth (Worcester 1992, Lafferty and Altstatt 1995; Swift *et al*. 1997; Smith 1998). In lagoons and estuaries with deeper water, the lack of collections of tidewater gobies in depths greater than 1 m (3 ft) may be due to the inadequacy of the sampling methods, rather than the lack of gobies (Worcester 1992, Lafferty 1997, Smith 1998).

Tidewater gobies often migrate upstream into tributaries up to 2.0 kilometers (km) (1.2 miles) (mi) from the estuary. However, in San Antonio Creek and the Santa Ynez River in Santa Barbara County, tidewater gobies are often collected 5–8 km (3–5 mi) upstream of the tidal or lagoonal areas, sometimes in beaver-impounded sections of streams (Swift *et al*. 1989). The fish move upstream in summer and fall as sub-adults and adults. There is little evidence of reproduction in these upper areas (Swift *et al*. 1997). Tidewater gobies in Southern California have been found as far as 5 km (3 mi) from the estuary in the Santa Margarita River (Holland and Swift 1992; Dan Holland, Camp Pendleton Amphibian and Reptile Survey, pers. comm. 2000).

The life of tidewater gobies is tied to the annual hydrologic cycles of the coastal lagoons and estuaries (Swift *et al*. 1989, 1994; Swenson 1994, 1995). Water in estuaries, lagoons and bays is at its lowest salinity during the winter and spring as a result of precipitation and runoff. During this time, high runoff causes the sandbars at the mouths of the lagoons to breach, allowing mixing of the relatively fresh estuarine and lagoon waters with seawater. This annual building and breaching of the sandbars is part of the normal dynamics of the systems in which the tidewater goby has evolved (Zedler 1982, Lafferty and Alstatt 1995, Heasly *et al*. 1997). The

time of sandbar closure varies greatly among systems and years, and typically occurs from spring to late summer. Summer salinity in the lagoon depends upon the amount of freshwater inflow at the time of sandbar formation (Zedler 1982, Heasly *et al*. 1997).

Males begin digging breeding burrows 75 to 100 mm (3–4 in.) deep, usually in relatively unconsolidated, clean, coarse sand averaging 0.5 mm (0.02 in.) in diameter, in April or May (Swift *et al*. 1989; Swenson 1994, 1995). Swenson (1995) demonstrated that tidewater gobies prefer this substrate in the laboratory, but also found tidewater gobies digging breeding burrows in mud in the wild (Swenson 1994). Page (C. Page, Biological Consultant, pers. com. 2000) found that tidewater gobies commonly built breeding burrows and spawned in silt-dominated muddy habitats. Inter-burrow distances range from about 5 to 275 centimeters (cm) (2 to 110 in) (Swenson 1995). Females lay about 100 to 1,000 eggs per clutch, averaging 400 eggs per clutch, with clutch size depending on the size of both the female and the male. Females can lay more than one clutch of eggs over their lifespan, with captive females spawning 6–12 times (Swenson 1995). Spawning frequency in wild females probably varies due to fluctuations in food supply and other environmental conditions. Male gobies remain in the burrow to guard the eggs that are attached to sand grains in the walls of the burrow. Males also spawn more than once per season (Swenson 1995) and have been observed guarding multiple clutches in the same burrow (Swift *et al*. 1989, Swenson 1995). Males frequently go at least for a few weeks without feeding and this probably contributes to mid-summer mortality (Swift *et al*. 1989; Swenson 1994, 1995).

Reproduction peaks during spring to mid-summer (late April or May to July) and can continue into November or December depending on the seasonal temperature and rainfall. Reproduction sometimes increases slightly in the fall (Swift *et al*. 1989). Reproduction takes place when the water temperature is from 15–20 degrees Celsius (°C) (60–65 degrees Fahrenheit (°F)) and at salinities of 0–25 ppt (Swift *et al*. 1989; Swenson 1994, 1995). Typically, winter rains and cold weather interrupt spawning, but in some warm years reproduction may occur throughout the year (Goldberg 1977, Wang 1984). Goldberg (1977) showed by histological analysis that females have the potential to lay eggs all year in Southern California, but this rarely has been documented. Length-frequency data from southern and central California (Swift *et al*. 1989; Swenson 1994, 1995) and age data analysis from central California populations (Swift *et al*. 1997) indicate that tidewater gobies typically live one year or less, although some may overwinter upstream (Irwin and Soltz 1984).

Tidewater goby eggs hatch in 7–10 days at water temperatures of 15–18 °C (60–65 °F) at lengths of 4–7 mm (0.2 in.). The newly hatched larvae are planktonic (float in water column) for one to a few days and once they reach 8–18 mm (0.3–0.8 in.) in length, move to substrate oriented (living on or near the bottom of the estuary or lagoon). All larger size classes are substrate oriented and little habitat segregation by size has been noted (Swift *et al*. 1989, Swenson 1995). However Worcester (1992) found that larval gobies in Pico Creek Lagoon tended to use the deeper portion of the lagoon. Individuals collected in marshes appear to be larger (43–45 mm (1.7–1.8 in.) standard length) than those collected in open areas of lagoons (32–35 mm (1.3–1.4 in.) standard length) (Swenson 1995).

Studies of the tidewater goby's feeding habits suggest that it is a generalist. At all sizes examined, tidewater gobies feed on small benthic (bottom-dwelling) invertebrates, crustaceans (usually mysids, amphipods, and ostracods), snails, and aquatic insect larvae, particularly flies (dipterans) (Irwin and Soltz 1984; Swift *et al*. 1989; Swenson 1994, 1995). The food items of the smallest tidewater gobies (4–8 mm (0.2–0.3 in.)) have not been examined, but they probably feed on unicellular phytoplankton or zooplankton similar to many other early stage larval fishes (Swenson and McCray 1996).

Tidewater gobies are preyed upon by native species such as prickly sculpin (*Cottus asper*), staghorn sculpin (*Leptocottus armatus*), starry flounder (*Platichthys californicus*) (Swift *et al*. 1997), and possibly steelhead (*Oncorhynchus mykiss*) (Swift *et al*. 1989). Tidewater gobies were found in stomachs of about 6 percent of 120 fish of the former three species examined, and comprised about 20 percent by volume of the prey. Predation by the native Sacramento perch (*Archoplites interruptus*) and tule perch (*Hysterocarpus traski*) may have prevented tidewater gobies from inhabiting the San Francisco Bay delta (Swift *et al*. 1989), although direct documentation to support this hypothesis is lacking.

Several non-native fish species, such as largemouth bass and yellowfin gobies, also prey on tidewater gobies. The shimofuri goby (*Tridentiger bifasciatus*), which has become established in the San Francisco Bay region (Matern and Fleming 1995), may compete with the smaller tidewater goby, based on dietary overlap (Swenson 1995) and foraging and reproductive behavioral alterations in captivity. Shimofuri gobies eat juvenile tidewater gobies in captivity, but usually were unable to catch subadult and adult tidewater gobies (Swenson and Matern 1995). Evidence of predation or competition in the wild is lacking (Swenson 1999), although Wang (1984) found that yellowfin gobies prey on tidewater gobies. Shapovalov and Taft (1954) documented the non-native striped bass (*Morone saxatilis*) preying on tidewater gobies in Waddell Creek Lagoon, but stated that striped bass were found only infrequently in the areas inhabited by the goby. Non-native sunfishes and black bass (centrarchids) have been introduced in or near coastal lagoons and may prey heavily on tidewater gobies under some conditions. Although tidewater gobies disappeared soon after centrarchids were introduced at several localities, direct evidence that the introductions led to the extirpations is lacking (Swift *et al*. 1989, 1994; Rathbun et al. 1991). Predation by young-of-the-year largemouth bass (*Micropterus salmoides*) on tidewater gobies was documented in one system (Santa Ynez River), where tidewater gobies accounted for 61 percent of the prey volume of 55 percent (10 of 18) of the juvenile bass sampled (Swift *et al*. 1997).

In Southern California, non-native sunfish (Centrarchidae), largemouth bass, and channel catfish (*Ictulurus punctatus*) are all suspected of impacting tidewater goby populations through predation in the San Mateo and Santa Margarita lagoons (Swift and Holland 1998). Yellowfin gobies are thought to have contributed to the extirpation of tidewater gobies from the Santa Margarita River (Swift *et al*. 1994). The tidewater goby population at Cockleburr Creek is reduced presumably due to predation and competition from the large numbers of non-native mosquitofish (Swift and Holland 1998).

Non-native African clawed frogs (*Xenopus laevis*) also prey upon tidewater gobies (Lafferty and Page 1997), although this is probably not a significant source of mortality due to the limited distribution of this species in tidewater goby habitats. The frogs are killed by the higher salinities that occur when the lagoons are breached (Glenn Greenwald, Service, pers. obs.).

Lafferty *et al*. (1999a) monitored persistence of 17 tidewater goby populations in Santa Barbara and Los

Angeles counties during and after the heavy winter flood flows of 1995. All 17 populations persisted after the high flows and no significant changes in population sizes were detected. In addition, gobies apparently colonized Canada Honda, approximately 10 km (6 mi) from the closest known population during or after the flooding (Swift *et al.* 1997). Lafferty *et al.* (1999a, 1999b) proposed that flood events such as those that occurred in 1995, flush gobies out into the ocean's littoral zone where they are dispersed by longshore currents to other estuaries generally south along the coast. As Swenson (1999) points out, Lafferty's work suggests that, because prevailing longshore currents on the California coast are southerly, populations at the northern ends of geographic clusters of populations are more likely than southern populations to serve as source populations. Lafferty *et al.* (1999b) estimated the extirpation and recolonization rates for 37 populations in Southern California from over 250 presence-absence records and found a high rate of recolonization. The results suggest that there is more gene flow among populations within geographic clusters (e.g., northern California, San Francisco Bay, Santa Cruz, San Luis Obispo, and Southern California) than previously believed. They also found a positive association between tidewater goby presence and wet years, suggesting that flooding may contribute to recolonization of sites from which gobies have temporarily disappeared.

Lagoons in which tidewater gobies are found range in size from less than 0.10 hectare (ha) (0.25 acres (ac)) of surface area to about 800 ha (2,000 ac). Most lagoons with tidewater goby populations are in the range of 0.5–5.0 ha (1.25–12.5 ac). Surveys of tidewater goby localities and historical records indicate that persistence of tidewater goby populations is related to size, configuration, location, and access by humans (Swift *et al.* 1989, 1994). Water surface areas smaller than about 2 ha (5 ac) generally have histories of extinction, extirpation, or population reduction to very low levels, although some as small as 0.35 ha (0.86 ac) have been identified as having persistent tidewater goby populations (Swift *et al.* 1997, Lafferty 1997, Heasly *et al.* 1997). As evidenced by the Canada Honda colonization (Swift *et al.* 1997), relatively long distances from the nearest source populations are not obstacles to colonization or reestablishment. Many of the small lagoons with histories of intermittent populations are within 1–2 km (0.6–1.2 mi) of larger lagoons that can act as sources of colonizing gobies.

Today, the most stable and largest populations are in lagoons and estuaries of intermediate sizes, 2–50 ha (5–125 ac) that have remained relatively unaffected by human activities, although some systems that are heavily affected or altered also have relatively large and stable populations (e.g., Humboldt Bay, Humboldt County; Santa Clara River, Ventura County; Santa Ynez River, Santa Barbara County; and Pismo Creek, San Luis Obispo County). In many cases, these probably have provided the colonists for the smaller ephemeral sites (Swift *et al.* 1997; Lafferty *et al.* 1999b).

Previous Federal Action

We first classified the tidewater goby as a Category 2 species in 1982 (47 FR 58454). It was reclassified as a Category 1 species in 1991 (56 FR 58804) based on status and threat information in Swift *et al.* (1989). At those times, Category 2 species were those taxa for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support a listing proposal. Category 1 species, now referred to as candidate species, were those taxa for which we had on file, sufficient information on biological vulnerability and threats to support a proposal to list as threatened or endangered. On October 24, 1990, we received a petition from Dr. Camm Swift, Associate Curator of Fishes at the Los Angeles Museum of Natural History, to list the tidewater goby as endangered. Our finding that the requested action may be warranted was published on March 22, 1991 (56 FR 12146). A proposal to list the tidewater goby as an endangered species was published on December 11, 1992 (57 FR 58770). On March 7, 1994, the tidewater goby was listed as an endangered species (59 FR 5494). At that time, we did not designate critical habitat, because critical habitat was not then determinable and a final decision on critical habitat required detailed information on the possible economic effects of designation. At that time, we did not have sufficient information to perform the economic analysis.

On September 18, 1998, the Natural Resources Defense Council, Inc., filed a lawsuit in Federal District Court in California against us for failure to designate critical habitat for the tidewater goby. On April 5, 1999, the court ordered that the "Service publish a proposed critical habitat designation for the tidewater goby in 120 days" (*Natural Resources Defense Council, Inc.* v. *U. S. Department of the Interior et al.*, CV 98–7596, C.D. Cal.).

On June 24, 1999, we proposed to delist the northern populations of the tidewater goby and to retain the tidewater goby populations in Orange and San Diego Counties as endangered based on our reevaluation of the species status throughout its range (64 FR 33816). We determined that north of Orange County more populations exist than were known at the time of the listing, that threats to those populations are less severe than previously believed, and that the tidewater goby has a greater ability to recolonize habitats from which it is temporarily absent than was known in 1994 (64 FR 33816). Moreover, we believe that the populations of tidewater gobies in Orange and San Diego Counties are genetically distinct and represent a DPS. We believe that this DPS, comprised of gobies from only eight localities, continues to be threatened by habitat loss and degradation, predation and competition by non-native species, and extreme weather and streamflow conditions. Therefore, we proposed that populations north of Orange County be removed from the List of Endangered and Threatened Animals, and that the southern DPS of tidewater gobies be retained as an endangered species on the list.

On August 3, 1999, we proposed critical habitat for the tidewater goby (64 FR 42250). We reopened the comment period on October 15, 1999 (64 FR 55892), to announce the time and location of public hearings and provide for additional public comment. This second comment period closed on November 30, 1999. On June 28, 2000, we published a notice (65 FR 39850) announcing the reopening of the comment period on the draft proposal to designate critical habitat for the tidewater goby and a notice of availability of the draft economic analysis on the proposed determination. The comment period was opened for an additional 30 days, closing on July 28, 2000.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires consultations on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species and its supporting documentation. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (*i.e.*, gray literature).

Habitat is often dynamic, and species may move from one area to another over time. For these reasons, all should understand that critical habitat designations do *not* signal that habitat outside the designation is unimportant or may not be required for recovery. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential to conserve the tidewater goby, we used the best scientific and commercial data available. This included data from research and survey observations published in peer-reviewed articles, data collected on the U.S. Marine Corps Base, Camp Pendleton (Camp Pendleton), data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits, and comments received on the proposed rule and economic analysis.

Primary Constituent Elements

In accordance with section 3(5) of the Act, for habitat within the geographic range occupied by the species, critical habitat is defined as specific areas that contain those physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The habitat features (primary constituent elements) that provide for the primary biological needs of foraging, sheltering, reproduction, and dispersal that are essential for the conservation of the species are described at 50 CFR 424.12, and include, but are not limited to, the following:

Space for individual and population growth, and for normal behavior;

Food, water, or other nutritional or physiological requirements;

Cover or shelter;

Sites for breeding, reproduction, or rearing of offspring; and

Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent habitat elements for the tidewater goby were determined from studies on their habitat requirements and population biology (Lafferty *et al.* 1999a, 1999b; Manion 1993; Swensen 1994, 1995, 1999; Swift *et al.* 1989) and include habitat components that are essential to the biological needs of foraging, nest construction, spawning, sheltering, and dispersal. The foundation for the primary constituent elements of the tidewater goby is provided by coastal lagoons and estuaries supported by a relatively natural hydrologic regime and an environment with so few exotic fishes that tidewater gobies are unaffected by their presence. These elements are described in greater detail below.

Coastal lagoons and estuaries with natural hydrology generally provide several specific habitat elements that gobies require. For instance, aquatic systems supported by a natural hydrological regime are often characterized by a combination of slightly different habitat types: freshwater creek, brackish lagoon, and coastal salt marsh. This habitat variance generally ensures that some deep pockets of permanent water remain as refugia during times of drought; provides for a variety of substrate types, of which sand and silt are necessary for construction of burrows; and provides for structural complexity of the stream channel, which supports various types of aquatic and emergent vegetation. This structural complexity and presence of vegetation may ensure that all gobies are not washed out to sea during flood events (Swensen 1995). Lastly, lagoons and estuaries with a natural hydrological regime and corresponding habitat complexity generally provide for the diversity of prey species (*e.g.*, aquatic invertebrates, including aquatic insect larvae, ostracods, crustaceans, and snails) that gobies require.

The second constituent element of tidewater goby habitat is a system that is free from exotic species or nearly so. Exotic fishes can debilitate, perhaps to the point of extirpation, tidewater goby populations through competition and predation. Largemouth bass, black bass, sunfishes, striped bass, shimofuri gobies, and yellowfin gobies all appear to prey on tidewater gobies. Keeping exotic species out of occupied goby habitats, and eliminating them from potential reestablishment sites will be crucial to the conservation of the goby.

Criteria Used To Identify Critical Habitat

We have limited our designation to Orange and San Diego Counties, because it is within this area that tidewater gobies are threatened with extinction and essential habitat areas for this species can be identified. Currently, within Orange and San Diego Counties no known populations occur outside of Camp Pendleton. Populations on Camp Pendleton fluctuate and most have temporarily been extirpated on several occasions. Because there is a total of only eight populations currently known within Orange and San Diego Counties, a random event or combination of events could affect all eight populations and cause the species to be lost from those counties. Furthermore, because the best available information (Dawson *et al.* 2000) indicates that tidewater gobies in Orange and San Diego Counties comprise a unique genetic unit, we proposed this population for listing as a DPS (for additional discussion on the DPS, see the June 24, 1999, proposed rule 64 FR 33816).

Our critical habitat designation must take into consideration the fact that the current information indicates that tidewater goby populations north of Orange County are not in danger of extinction or likely to become so in the foreseeable future. North of Orange County, fluctuations in the number of populations of tidewater gobies are also common. However, these populations are of sufficient number (ranging from about 40 during drought conditions to about 80 under wet conditions) and distribution such that they are not in danger of extinction now or in the foreseeable future. The last pronounced drought (1987–1991) did not threaten the goby north of Orange County with extinction. In nearly all areas where populations were reported absent due to drought or a combination of drought and human-caused factors, gobies repopulated naturally shortly after a return to wetter conditions. Thus, a return to drought conditions does not mean endangerment for the goby populations north of Orange County.

Furthermore, most of the lagoons and estuaries that no longer support gobies north of Orange County lost them decades ago when they were altered in ways that severely, and for all practicable purposes permanently, affected the hydrology, such that they could no longer support gobies. Therefore, while there are some exceptions, north of Orange County tidewater gobies do live in most of the estuaries where they can live (notwithstanding normal extirpation and re-colonization within the metapopulation (interconnected subpopulations)). Thus, this historical loss of habitat did not result in a continuing trend toward extinction. In effect, the information on the species current status and trends indicates that, for the tidewater goby populations north of Orange County, the 1994 listing rule misinterpreted the risk of extinction such that the goby was mistakenly listed as endangered (for additional discussion, see the proposed delisting rule 64 FR 33816).

This information was the basis for the delisting proposal, which addressed errors in the original 1994 listing for the tidewater goby populations north of Orange County, along with current goby status and threats. We have received a substantial number of comments on the proposed delisting. However, the main reaction expressed in the comment letters from the public was that the Service, armed with very little new information, was, in its delisting proposal, reversing its position on the status of the goby without basis. The public comment letters also expressed concern that the delisting proposal was arguing that the goby was in less danger of extinction now than in 1994. These comments included carefully reasoned and informed set of suggestions for improving our analysis of current risk of extinction, and we consider this designation in light of that information. At this time, we continue to believe that the 1994 listing rule misinterpreted the risk of extinction and that listing under the Act is not necessary for the tidewater goby populations north of Orange County. However, we want to ensure that we have made the best decision possible and intend to reopen the comment period on the proposed delisting in the near future.

We have not yet made a final determination on the delisting proposal. Therefore, the entire species remains listed, and the Act requires us to designate critical habitat for the species. The facts and analysis described above, however, are highly relevant to the question of what areas constitute critical habitat for the species. In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." This requires more than that the habitat be essential for the long-term survival and well-being of the species. Rather, the habitat must be essential for the "conservation" of the species. Under the Act, "conservation" is a technical term, defined as the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary. In the case of a species that, although technically listed, does not meet the standard for listing, *e.g.*, it should be delisted, but that action has not yet taken place, no methods or procedures are required to bring the species to the point where listing is no longer necessary. In other words, that species is already "conserved," as that term is defined in the Act. Thus, as a technical legal matter, no areas can be "essential to the conservation" of a species that currently does not warrant listing.

This is precisely the situation with respect to the northern populations of the goby. The best available biological information indicates that listing under the Act is already not necessary for the tidewater goby populations north of Orange County. In other words, the northern populations are already conserved, as that term is used in the Act, and consequently no areas are essential to the conservation of the northern populations. Moreover, we find that no areas north of Orange County are essential to the conservation of the populations in Orange and San Diego Counties. Therefore, the habitat areas for the northern population are not essential to the conservation, as defined in the Act, of any of the populations, or the species as a whole. We are not suggesting that there are no threats to the goby populations north of Orange County or that these populations would not benefit from other actions to manage or protect the species or its habitat. However, given the technical legal requirements of the Act, critical habitat designation is not the appropriate vehicle for addressing this need. Under the Act's definition of critical habitat, no areas north of Orange County qualify for designation as critical habitat for the species. As we continue to analyze the proposed delisting, we will evaluate the best biological information available. If we identify additional areas that are essential to the conservation of the species, we will revise this critical habitat designation as appropriate.

The population in Orange and San Diego Counties is endangered because some of the places where it used to live have been altered so much that they are unsuitable for gobies. These remaining populations, currently eight, fluctuate, and periodically go extinct, only to be repopulated later by colonists from nearby populations. The conservation of the goby depends upon the existence of enough habitat areas to support this natural pattern (Swift *et al.* 1989, Lafferty *et al.* 1999). All of the remaining habitat areas which are presently inhabited by gobies are subject to various threats to habitat quality (see analysis in 64 FR 33816) and require special management considerations or protection. These are designated as critical habitat.

In accordance with section 3(5)(A)(ii) of the Act, areas outside the geographical area occupied by the species at the time it is listed may meet the definition of critical habitat upon determination that they are essential for the conservation of the species. The long-term survival of tidewater gobies in Orange and San Diego Counties depends upon the presence of enough habitat areas to support the natural pattern of local extinctions and recolonizations (Swift *et al.* 1989, Moyle *et al.* 1995, Lafferty *et al.* 1999b, Swenson 1999) that characterize its population biology. The eight fluctuating populations where gobies exist today are insufficient in number and quality to remove gobies in this part of the range from a high risk of extinction. Thus, unoccupied habitats which can support gobies in the future play an essential role in the conservation of the goby. To determine which unoccupied areas are essential and should be designated as critical habitat, we evaluated which unoccupied areas could support tidewater gobies, and, by virtue of their geographical distribution, provide for a network of habitat areas supporting gobies and acting as sources of recolonization for other nearby habitat areas.

Two sites that fulfill these criteria are Aliso Creek, Orange County, and Agua Hedionda Lagoon, San Diego County. The tidewater goby population at Aliso Creek was intensively studied in the 1970s, and the habitat parameters that supported tidewater gobies when they occurred there are well documented (Swift *et al.* 1989). Habitat parameters have not changed since tidewater gobies occupied the creek (Camm Swift, ichthyologist consultant, pers. comm. 2000, see Summary of Comments and Recommendations section). In Agua Hedionda Lagoon, recent fish surveys found cheekspot (*Ilypnus gilberti*) and shadow gobies (*Quietula y-cauda*), species which can co-occur with, and have similar habitat requirements to tidewater gobies indicating that suitable conditions may currently exist in the lagoon to support tidewater gobies (MEC 1995). More recently, a study carefully examined the suitability of habitat in Agua Hedionda Lagoon specifically for tidewater gobies. The study examined habitat parameters such as substrate, salinity, water temperature, water depth, and fish species assemblage, and compared these with values in habitats occupied by tidewater gobies. Results from this study demonstrated that the lagoon can currently support tidewater gobies (Merkel and Associates 1999a and 1999b, see Summary of Comments and Recommendations section). Because suitable habitat exists at both of these lagoons, and because additional tidewater goby localities are within 10 miles of these lagoons, we find that Aliso Creek, Orange County, and Agua Hedionda Lagoon, San Diego County can support tidewater gobies in the future and that these two estuaries contribute to the network of habitat areas that can support tidewater gobies and act as sources of recolonization following the natural pattern of local extinction in other nearby habitat areas. We are designating Aliso Creek, Orange County, and Agua Hedionda Lagoon, San Diego County, because they are essential to the conservation of tidewater gobies.

In defining critical habitat boundaries, it was not possible to exclude existing man-made features and structures within the area designated, such as buildings, roads, railroads, and other features. These features will not themselves contain one or more of the primary constituent elements. Federal actions limited to those features, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

In summary, in determining areas that are essential to conserve tidewater goby, we used the best scientific information available to us. The critical habitat areas described below constitute our best assessment of areas needed for the species' conservation and recovery.

Critical Habitat Designation

For the reasons described above, the following general areas are designated as critical habitat. Where delineated, the 50-year flood plain is used to establish boundaries within the designated waterways. In areas where the 50-year flood plain is not delineated, the presence of alluvial soils (soils deposited by streams), obligate and facultative wetland vegetation, abandoned river channels, or evidence of high water marks will be used to determine the extent of the flood plain and the boundaries for the designation (see legal descriptions for exact habitat boundaries):

1. Aliso Creek (Orange County) and its associated lagoon and marsh from the Pacific Ocean to approximately 1.0 km (0.6 mi) upstream;
2. San Mateo Creek and its associated lagoon and marsh, from the Pacific Ocean to approximately 1.3 km (0.9 mi) upstream;
3. San Onofre Creek and its associated lagoon and marsh from the Pacific

Ocean to approximately 0.6 km (0.4 mi) upstream;

4. Las Flores Creek and its associated lagoon and marsh from the Pacific Ocean to Interstate 5 (approximately 1.0 km (0.6 mi));

5. Hidden Creek and its associated lagoon and marsh from the Pacific Ocean to Interstate 5 (approximately 0.8 km (0.5 mi));

6. Aliso Creek and its associated lagoon and marsh from the Pacific Ocean to Interstate 5 (approximately 0.7 km (0.4 mi));

7. French Creek and its associated lagoon and marsh from the Pacific Ocean to Interstate 5 (approximately 0.7 km (0.4 mi));

8. Cockleburr Creek and its associated lagoon and marsh, from the Pacific Ocean to Interstate 5 (approximately 1.0 km (0.6 mi));

9. Santa Margarita River from the Pacific Ocean to a point approximately 5.0 km (3.1 mi) upstream; and

10. Agua Hedionda Lagoon and its associated marsh and creek from the Pacific Ocean to a point approximately 3.7 km 2.3 mi) upstream.

Although the majority of land being proposed for designation is under Federal administration and management, some estuary and riparian habitats are on State, county, city, and private lands. The Aliso Creek segment, Orange County, is owned by the County of Orange, the City of South Laguna, and private interests. Agua Hedionda Lagoon is owned by the San Diego Gas and Electric Company, which leases to the City of Carlsbad, and public and private interests. The segments on San Mateo Creek, San Onofre Creek, Las Flores Creek, Hidden Creek, Aliso Creek, French Creek, Cockleburr Creek, and the Santa Margarita River are on Camp Pendleton.

Effect of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding. In 50 CFR 402.02, "jeopardize the continued existence" (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect newly designated critical habitat and they have retained discretionary involvement in the action. Further, some Federal agencies may have conferenced with us on proposed critical habitat. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the tidewater goby or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and require that a section 7 consultation be conducted include, but are not limited to:

(1) Activities such as water diversion or impoundment, groundwater pumping, artificial lagoon breaching to protect urban or agricultural areas from inundation, or any other activity that alters water quality or quantity to an extent that water quality becomes unsuitable to support gobies, or any activity that significantly affects the natural hydrologic function of the lagoon system;

(2) Activities such as coastal development, sand and gravel mining, channelization, dredging, impoundment, or construction of flood control structures, that alter watershed characteristics or appreciably alter stream channel and/or lagoon morphology; and

(3) Activities which could lead to the introduction of exotic species, especially exotic fishes, into occupied or potential goby habitat.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species. In those cases, it is highly unlikely that additional modification to the action would be required as a result of designating critical habitat. However, critical habitat may provide benefits toward recovery when designated in areas currently unoccupied by the species.

Designation of critical habitat could affect Federal agency activities. Federal agencies already consult with us on activities that may effect the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the U. S. under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Road construction, right of way designation, or regulation of agricultural activities by Federal agencies;

(4) Some military activities on the Camp Pendleton;

(5) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(6) Construction of communication sites licensed by the Federal Communications Commission; and

(7) Activities funded or authorized by Federal agencies.

This section serves in part as a general guide to clarify activities that may affect or destroy or adversely modify critical habitat. However, specific Federal actions will still need to be reviewed by the action agency. If the agency determines the activity may affect critical habitat, they will consult with us under section 7 of the Act. If it is determined that the activity is likely to adversely modify critical habitat, we will work with the agency to modify the activity to minimize negative impacts to critical habitat. We will work with the agencies and affected public early in the consultation process to avoid or minimize potential conflicts and, whenever possible, find a solution that protects listed species and their habitat while allowing the action to go forward in a manner consistent with its intended purpose.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see ADDRESSES section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503–231–2063, facsimile 503–231–6243).

Summary of Comments and Recommendations

In the August 3, 1999, proposed rule (64 FR 42250), we requested interested parties to submit factual reports or information that might contribute to development of a final rule. The 60-day comment period closed on October 4, 1999. We contacted appropriate Federal and State agencies, county and city governments, scientific organizations, and other interested parties. We reopened the comment period on October 15, 1999, (64 FR 55892) to announce the time and location of public hearings and provide for additional public comment. We published public notices of the proposed rule in the *North County Times*, the *San Diego Union Tribune*, and the *Orange County Register*, on October 18, 1999, which invited general public comment. We posted copies of the proposed rule and draft economic analysis on our internet site. We held two hearings on November 4, 1999, in Carlsbad, California. Notices appeared in the previously named newspapers on October 18, 1999, to announce the extension of the public comment period until November 30, 1999, and the scheduling of the public hearings in Carlsbad, California, on November 4, 1999. Transcripts of the hearings are available for inspection (see ADDRESSES section). On June 28, 2000, we published a notice (65 FR 39850) announcing the reopening of the comment period and the availability of the draft economic analysis on the proposed determination. The comment period was opened for an additional 30-days, closing on July 28, 2000.

We requested four ichthyologists (fish biologists) familiar with the species to review the proposed critical habitat designation. However, only two responded by the close of the comment period. Both of these reviewers provided valuable information about the biology, status, and range of the species, and suggested adding areas to the critical habitat designation. These comments are addressed in this section, and relevant data provided by the reviewers has also been incorporated into the "Background" section.

We received a total of 40 written and 28 oral comments during the public comment periods. Of those written comments, eight supported critical habitat designation, 30 opposed critical habitat designation, and two provided additional information. Of those oral comments, 3 supported critical habitat designation, 24 opposed critical habitat designation, and one provided additional information. Written and oral comments were received from one Federal agency, two state agencies, six local agencies, and 28 private organizations, companies, and individuals. Several commenters commented multiple times, both written and orally. All comments received were reviewed for substantive issues and new data regarding critical habitat and the biology and status of the tidewater goby. We address all comments received during the comment periods and public hearing testimony in the following summary of issues. Comments of a similar nature are grouped into a single issue.

Issue 1: Procedural and Legal Compliance

The following comments and responses involve issues related to public involvement in the designation process and compliance with the Act and other laws, regulations, and policies.

Comment 1a: The creation of the Orange and San Diego Counties distinct population segment of the tidewater goby is invalid because it was created as part of a proposal to delist the tidewater goby in a portion of its range. The Service should first delist the species throughout its entire range, then propose the DPS separately.

Our Response: This final rule designating critical habitat for the tidewater goby finalizes the proposed designation of critical habitat for the tidewater goby (64 FR 42250) that addressed the conservation of the species throughout its entire range. The proposed rule to create a DPS and remove the northern populations of the tidewater goby from the list of threatened and endangered species was a separate proposed rule (64 FR 33816). In the section above titled "*Criteria Used To Identify Critical Habitat,*" we provide a detailed explanation as to the basis for this designation, including how this critical habitat designation relates to the proposed DPS and delisting. As discussed in our response to comment 1b, we must make a determination regarding critical habitat for the entire species at this time, based on the best information available.

Comment 1b: The Service cannot designate critical habitat on a proposed Distinct Population Segment (DPS). Because the Service has designated critical habitat for a DPS that has not yet been listed in a final rule, the proposed critical habitat designation is invalid.

Our Response: The Act requires us to designate critical habitat for the species, not the proposed DPS. Although our designation is limited to Orange and San Diego Counties, it is not because we are designating critical habitat for the proposed DPS, but rather those are the areas that we have identified that meet the definition of critical habitat for the species. In the section above titled "*Criteria Used To Identify Critical Habitat,*" we provide a detailed explanation as to the basis for this designation, including how the designation relates to the proposed DPS.

Comment 1c: The Service fails to include any economic analysis in its proposed rule, and thus gives inadequate notice of the action proposed.

Our response: In the proposed rule, we acknowledged that section 4(b)(2) of the Act requires us to consider the economic and other relevant impacts of designating a particular area as critical habitat. We also stated that we would conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination and announce the availability of the draft economic analysis with a notice in the **Federal Register**. We conducted an economic analysis. On June 28, 2000 (65 FR 39850), we published a notice in the **Federal Register** announcing the availability of the draft economic analysis and reopening the public comment period for 30 days.

We utilized the economic analysis, and took into consideration comments and information submitted during the public hearing and comment period, to make this final critical habitat designation. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Comment 1d: The Service cannot designate critical habitat until it first complies with National Environmental Policy Act requirements.

Our Response: An environmental assessment and/or an environmental impact statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice in the **Federal Register** outlining our reasons for this determination on October 25, 1983 (48 FR 49244). This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Comment 1e: The proposed rule is based on unpublished data that has not been made available to the public for review. The commenter asserts that the Service has proposed a regulatory action on the basis of secret data that has never been made available for public comment.

Our Response: The commenters use "Lafferty, *et al.* (in prep.)" and "Jacobs (*in litt.* 1998)" as examples of unpublished data not available to the public for review. However, we made both references available to the public, as indicated in the "References Cited" section of the proposed rule. They were also part of the administrative record for the proposed rule. Additionally, the two citations referred to as "Lafferty, *et al.* (in prep.)" were published in 1999 (Lafferty *et al.* 1999a and 1999b) and were available as peer-reviewed literature during the second comment period on the proposed rule. The material cited in "Jacobs (*in litt.* 1998)" is now in an unpublished manuscript that has been submitted for publication and is cited in this final rule as "Dawson *et al.* 2000."

Comment 1f: One commenter stated that it was inappropriate for us to fail to designate critical habitat for the populations north of Orange County solely on the basis of the proposed rule to delist those populations. In particular, the commenter claims that doing so would be in violation of the April 5, 1999, order requiring the Service to propose designation of critical habitat for the species.

Our Response: The comment is based on the erroneous understanding that we artificially limited the proposed, and now final, rules to designate critical habitat for the tidewater goby because of the existence of a proposed rule to delist the tidewater goby in a portion of its range. In fact, the proposed and final critical habitat designation and the proposed delisting rule is irrelevant to the question of what areas should be designated as critical habitat for the tidewater goby. What is relevant is that our analysis of the best available information indicates that the areas north of Orange County do not constitute critical habitat as defined by the Act. This is discussed in greater detail in the section above titled, "*Criteria Used To Identify Critical Habitat.*" Although this same information is also the basis for the proposed delisting, that action and this one are separate and independent administrative actions. Finally, the Court on November 19, 1999, dismissed a motion to enforce judgement based on the same grounds that the commenter raised.

Issue 2: Biological Concerns

The following comments and responses involve issues related to the biological basis for the designation.

Comment 2a: The use of the 50-year flood plain to define the lateral extent, or width of the critical habitat units, is unrealistic. The 50-year flood plain has not been delineated in most of the areas containing critical habitat units.

Our Response: We agree that the use of the 50-year flood plain is not easily defined in certain areas where the 50-year flood plain is not delineated or is in dispute. In those cases, we have changed the lateral extent of critical

habitat designation to be the presence of alluvial soils (soils deposited by streams), obligate and facultative riparian vegetation (requiring and usually occurring in wetlands respectively), abandoned river channels, or known high water marks. These features characterize the lateral extent of critical habitat within rivers, streams, and their associated estuaries where the 50-year flood zone has not been identified. Existing man-made features and structures within this area, such as buildings, roads, railroads, and other features, do not contain, and do not have the potential to develop the primary constituent elements for the tidewater goby.

Comment 2b: Tidewater gobies are not documented to occur in upstream portions of rivers and streams in Orange and San Diego Counties. There is no evidence that the upstream areas proposed meet the Service's definition of critical habitat for the tidewater goby.

Our Response: Tidewater gobies often migrate upstream into tributaries up to 2.0 km (1.2 mi) from estuaries. In San Antonio Creek and the Santa Ynez River in Santa Barbara County, tidewater gobies are often collected 5–8 km (3–5 mi) upstream of the tidal or lagoonal areas, sometimes in beaver-impounded sections of streams (Swift *et al.* 1989). The fish move upstream in summer and fall as sub-adults and adults. There is little evidence of reproduction in these upper areas (Swift *et al.* 1997).

Tidewater gobies were collected in Trabuco Creek, Orange County, in 1939, approximately 4.5 km (2.8 mi) from the ocean (mouth of San Juan Creek) (UMMZ collection number 1[illegible]3000). In San Diego County, tidewater gobies were collected from the Santa Margarita River approximately 3.5 km (2.2 mi) from the mouth of the River in 1991. Presumably, they may have occurred further upstream if not for a beaver dam, which at that time acted as an effective barrier to fish movement (Holland 1992). This speculation turned out to be an accurate prediction when in May 2000, several years after the beaver dams were removed by high flood flows, gobies were collected approximately 4.5 km (2.8 mi) upstream of the mouth of the Santa Margarita River in the vicinity of the power line crossing (D. Holland, pers. comm. 2000). Clearly, tidewater gobies can occupy upstream portions of creeks in San Diego and Orange counties.

Little is known about why tidewater gobies utilize these upstream areas. Swenson (1995) found that tidewater gobies in marsh habitats in these upstream areas were larger and had fewer parasites than gobies in nearby creek and lagoon habitats. However, Swenson (1995) also found that gobies of all life stages occurred in lagoon, marsh, and creek habitats, indicating that they can complete their life cycle in any of the three habitat types. Because all life history stages of the species can be found here these areas are important to the species and we are including upstream areas as part of the critical habitat units in this designation.

Comment 2c: One commenter claimed that the proposed rule has overstated the potential impacts of the Foothill Transportation Corridor South to tidewater gobies. In contrast, another commenter expressed concern about the significant and enduring impacts to upland and riparian species, including tidewater gobies, from the proposed preferred alignment of the Foothill Transportation Corridor South.

Our Response: The proposed "CP alignment" of the Foothill Transportation Corridor South (FTCS), if constructed, may have substantial negative impacts to the tidewater goby, specifically in San Mateo and San Onofre Creeks (Michael Brandman and Associates 1997). The lagoons at the mouth of San Mateo Creek and San Onofre Creek are both now occupied by tidewater gobies, and these two lagoons typically support large goby populations from several thousand to approximately 70,000 gobies (Swift and Holland 1998). These two populations, along with Las Flores Creek, are the largest and most persistent in the region and are thought to serve as source populations for dispersal into the ephemeral estuaries and streams in the area. Thus these populations are important to the recovery of the tidewater goby.

The FTCS CP alignment would have both significant short-term and long-term impacts to tidewater gobies in the San Mateo Creek and San Onofre Creek drainage basins (Michael Brandman and Associates 1998). Short-term impacts would include mortality and temporary loss of habitat for breeding, feeding, and sheltering due to blockage or diversion of water flow, increased siltation from the required cut and fill of thousands of tons of earth, and the disturbance of low oxygen sediments. Long-term impacts would include: the permanent alteration of the hydrologic regime, primarily in changes to flow regimes, temperature patterns, and sediment movement characteristics of the streams; permanent loss of habitat for breeding, feeding, and sheltering due to siltation; and permanent deterioration in water quality of the streams from the continuous input of heavy metals and other contaminants. These types of changes to the abiotic elements of a stream are often associated with corresponding changes to the ichthyofauna (fish species assemblage within a region). Generally, this kind of disturbance results in an increase of exotic fish species to the detriment of the indigenous (native) ichthyofauna (Moyle and Light 1996). A preliminary investigation of the impacts to tidewater gobies from the CP alignment found that these impacts would be less than significant after mitigation (Michael Brandman and Associates 1998). However, we believe that the benefits of the proposed mitigation would be minimal and that construction of the CP alignment would likely result in the loss of these populations and potentially preclude recovery for this species.

Issue 3: Economic Analysis

There were numerous comments that addressed economic issues.

Comment 3a: The Service should recognize the importance of the coastal railway corridor and that any critical habitat designation is not intended to impede rail service or the maintenance or improvement of rail facilities in the coastal railway corridor.

Our Response: The coastal railway crosses all tidewater goby critical habitat units. Any activities permitted, funded, or carried out by a Federal agency that jeopardize the species or destroy or adversely modify its critical habitat will require a section 7 consultation with the Service. Any non-federal activity resulting in take of tidewater gobies, as defined by the Act, will require a section 10(a)(1) permit issued by the Service. We will work closely with the responsible agencies within the coastal railway corridor to avoid and minimize impacts to tidewater goby populations and critical habitat from future maintenance or improvements to the coastal railway. Consultations will now need to consider critical habitat.

Comment 3b: Designation of critical habitat will cause private property values to decline and will negatively affect businesses.

Our Response: The economic analysis indicates that designation of critical habitat for the tidewater goby will not have a significant economic impact. The economic analysis does acknowledge that the designation of critical habitat may affect private property values. We believe that this short-term effect would occur from market uncertainty and public perception of the perceived impacts of the critical habitat designation on property values. We also believe that this short-term effect on property values would diminish over time. We did not find supporting evidence during the preparation of the economic analysis to estimate or document this potential short-term effect on property values. The economic analysis determined that there will be an insignificant impact to businesses.

Comment 3c: The Service must consider the economic impacts of critical habitat designation on the Encina Power Station located at the mouth of Agua Hedionda Lagoon. The power plant is a must-run facility that provides 25 percent of all power used in San Diego County. The operators of the facility have raised concerns that the designation of critical habitat would result in ecological modifications to the marine environment in order to return the lagoon to the brackish coastal environment preferred by the goby. According to the operators, returning the lagoon to its former condition would threaten the power station's ability to maintain use of its cooling system, which currently relies on water temperature and flow more characteristic of a tidal environment.

Our Response: We believe that the existing characteristics of Agua Hedionda as fully tidal lagoon would not be altered by designation of critical habitat for the goby. As such, designation of critical habitat for Agua Hedionda is not expected to impact the ability of the power station to continue functioning. The Encina Power Station, however, currently operates under numerous Federal permits, including permits relating to air emissions, water discharge, dredging, and oil spill response. The main impact is that critical habitat will need to be considered in consultations on renewals of existing Federal permits or to obtain new permits.

Comment 3d: One commenter voiced concern that the draft economic analysis failed to consider impacts from critical habitat designation in unoccupied units.

Our Response: The draft economic analysis addressed current and future activities in unoccupied units. We have withdrawn the proposed designation of critical habitat for Buena Vista Lagoon (see explanation under response to comment 4b3, below). In most cases, there was no evidence that the proposed activity would involve a Federal nexus. In the absence of a Federal nexus, critical habitat designation would have no impact on the proposed activity. In a few cases, however, a Federal nexus associated with a proposed activity was identified. In such cases, the draft economic analysis addresses the potential delays and administrative costs attributable to new Section 7 consultations. Discussion of these costs can be found on pages 19, 20, 21, 22, and 24 of the report.

Comment 3e: One commenter indicated that the draft economic analysis is flawed because it does not account for the fact that the proposed critical habitat includes "waters of the United States."

Our Response: The draft economic analysis considered the regulatory program of the U.S. Army Corps of Engineers to authorize the discharge of dredged and fill material into "waters of United States" under the section 404 of the Clean Water Act (see Exhibit ES–1, Summary of Impacts of Under the Proposed Designation of Critical Habitat for the Tidewater Goby in the final economic analysis available from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section)).

Comment 3f: Two commenters indicated that the incremental approach used in the draft economic analysis is improper and fails to comply with the requirements set forth in the Act.

Our Response: We do not agree that the economic impacts of the listing should be considered in the economic analysis for the designation of critical habitat. The Act requires that listing decisions be based solely on the best available scientific and commercial data available (section 4(b) of the Act). Congress also made it clear in the Conference Report accompanying the 1982 amendments to the Act that "economic considerations have no relevance to determinations regarding the status of species * * *." We use the economic analysis to make decisions on excluding areas from critical habitat under section 4(b)(2) of the Act. The section 4(b)(2) exclusion process does not include an economic analysis related to the listing of a species. Our economic analysis evaluates the incremental effect of critical habitat on current or planned activities and practices and does not address effects associated with the listing of the species.

Comment 3g: One commenter stated that the draft economic analysis failed to account for the current housing shortage in California.

Our Response: The final critical habitat designation for the goby includes ten coastal tributaries in Orange and San Diego Counties. As the units are limited to bodies of water and its associated flood plain, the designation of critical habitat for the goby would not reduce the amount of developable land or exacerbate the current housing shortage in the affected counties.

Comment 3h: One commenter indicated that the draft economic analysis failed to address the cumulative impact of multiple critical habitat designations.

Our Response: Under the requirements set forth by the Act, the Service is required to estimate the potential impacts attributable to the proposed government action, in this case the designation of critical habitat for the goby. The Service is not required to evaluate the potential cumulative impacts associated with the listing or critical habitat for multiple species. However, the draft economic analysis of critical habitat for the goby considers the incremental impacts of designating critical habitat in the context of existing baseline regulations. As such, the analysis considers the economic effects of critical habitat designation for the goby in the context of other Federal, state, or local regulations, as well as additional species protected by the Act.

Comment 3i: One commenter stated that the draft economic analysis failed to address the economic impacts associated with modifying Agua Hedionda Lagoon.

Our Response: The designation of critical habitat for the goby will not result in modifications to the current ecological conditions at Agua Hedionda Lagoon. Recent research (Merkle and Associates 1999) indicates that the current ecological conditions at Agua Hedionda are suitable for the goby. As a result, no modifications to the lagoon will occur as a result of designation of critical habitat, and no economic impacts associated with modifications to Agua Hedionda are expected.

Comment 3j: One commenter stated the draft economic analysis failed to assess the economic impacts on private persons and state entities that lack a Federal nexus.

Our Response: The primary effect of a critical habitat designation is regulatory and occurs under section 7 consultation of the Act, when Federal agencies must consult with the Service whenever activities they fund, authorize, or carry out may affected listed species or designated critical habitat. Activities on land owned by individuals, organizations, states, local, and Tribal governments only require consultation with the Service if their actions occur on Federal lands; require a Federal permit, license, or other authorization; or involve Federal funding. If there is no Federal nexus, we do not anticipate that the designation will have a significant economic impact on private persons and state entities. The economic analysis does acknowledge that the designation of critical habitat has the potential to affect

private property values (see response to comment 3b).

Comment 3k: One commenter expressed concern that public comments submitted by the North San Diego County Transportation Board (NCTD) on the proposal to designate critical habitat for the goby were not included in the draft economic analysis.

Our Response: Public comments submitted by the North San Diego County Transportation Board (NCTD) in July 2000, were incorporated into the final economic analysis of critical habitat designation for the goby.

Comment 3l: One commenter expressed concern that the draft economic analysis did not address current water quality maintenance activities in Aliso Creek conducted by the County of Orange.

Our Response: A discussion of current and future water quality maintenance activities in Aliso Creek, based on public comments submitted in July 2000, was incorporated into the final economic analysis of critical habitat designation for the goby.

Issue 4: Site Specific Issues

The following comments and responses involve issues related to the inclusion or exclusion of specific areas, or our methods for selecting appropriate areas for designation as critical habitat. We received comments challenging our proposed determination of critical habitat for all the proposed units.

Comment 4a: Several commenters pointed out errors in mileages, locations, or descriptions in the proposed rule.

Our Response: Corrections have been made in the final rule to reflect these comments, where appropriate.

Issue 4b: We received comments for all 11 units proposed for designation asserting that the specified unit(s) was unsuitable for designation, or they recommended the specific unit(s) be excluded from designation.

Our Response: We carefully considered the information provided in the comments regarding requested exclusions and removals. The following is an overview of our rationale for areas retained as well as the rationale for specific units (responses 4b1 through 4b5).

Comment 4b1: Aliso Creek cannot currently support tidewater gobies, and restoration of the lagoon for the species is unrealistic at this time.

Our Response: Many of the ecological characteristics of Aliso Creek lagoon have not changed noticeably since gobies occupied the creek in the late 1970's (Camm Swift, ichthyologist consultant, pers. comm. 2000) The predominant substrate is sand. Small patches of aquatic vegetation typical of a coastal marsh (*Typha, Scirpus, Salicornia*, and *Distichlis*) grow around the margin of the lagoon. The system still forms a brackish water lagoon in the spring, which is usually opened to the ocean later in the year by winter flows. The water quality of the lagoon in the 1970's was such that warning signs were posted to keep beach visitors out of the lagoon's waters. This, too, has not changed. Although the watershed has become more urbanized over the past 2 decades, there has not been a noticeable change in the lagoon since it was formerly occupied by the species.

Currently, the local agency stakeholders are working with the U.S. Army Corps of Engineers to develop an Aliso Creek Watershed Management Plan with the central goal of restoring the watershed. We believe that because the lagoon has not changed noticeably since the 1970's, and because there is now a concerted effort by the community to restore the watershed upon which the lagoon depends, Aliso Creek represents one of the most promising prospects for reestablishing a goby population. As such, Aliso Creek and its lagoon are essential to the conservation of the species and are therefore designated as critical habitat.

Comment 4b2: The Service should not designate any areas on Camp Pendleton because populations on the base have remained relatively stable, and all threats to tidewater goby populations are addressed by the existing biological opinions, management programs, and within the ongoing NEPA-compliance program of the base.

Our Response: Currently, tidewater gobies occupy eight locations on Camp Pendleton. These include, from north to south, San Mateo Creek, San Onofre Creek, Las Flores Creek, Hidden Creek, Aliso Creek, French Creek, Cockleburr Creek, and the Santa Margarita River. All eight localities are relatively pristine coastal wetlands and are all crossed or just downstream of Interstate 5 and the coastal railway.

Although currently there are eight locations on Camp Pendleton occupied by the species, this situation is rare and has not previously been recorded. As recently as 1991 the number of occupied goby localities was only three (Swift and Holland 1998, Dan Holland *in litt.* 1999). Of the eight currently occupied areas, only one of these, Las Flores Creek, has remained continuously occupied since 1987. San Mateo Creek and San Onofre Creek have both been extirpated in recent years as a result of human-caused habitat alteration. Hidden Creek appears to be perennial but may become so hypersaline in a severe drought as to be unsuitable for any fish species (Swift and Holland 1998). Aliso Creek, French Creek, and Cockleburr Creek are all relatively ephemeral and have not supported gobies in times of drought. The Santa Margarita River seemed to be a large stable population until 1991, but gobies disappeared in 1991, shortly after the exotic yellowfin goby (*Acanthogobius flavimanus*) became abundant in the estuary.

In the proposed rule, we stated that all eight historic and currently occupied tidewater goby locations in southern California contained the primary constituent elements necessary to support gobies. This has been substantiated by the fact that all eight locations are now occupied. We believe that these localities represent the center of the metapopulation in Orange and San Diego Counties and will be the keystone for recovery of the species. As such, these areas are essential to the conservation of the species.

Pursuant to the definition of critical habitat, an area must also require "special management considerations or protections." This is a term that originates in the definition of critical habitat in section 3 of the Act. Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and manages for the long-term conservation of the species. The Service considers a plan adequate when it meets all of the following three criteria: (1) The plan provides a conservation benefit to the species (i.e., the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the management plan will be implemented (i.e., those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and (3) the plan provides assurances the conservation plan will be effective (i.e., it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act.

In 1995, the Service issued a programmatic biological opinion on the "Programmatic Activities and Conservation Plans in Riparian and Estuarine/Beach Ecosystems on Marine

Corps Base, Camp Pendleton," including an Estuarine/Beach Ecosystems Conservation Plan (Biological Opinion 1–6–95–F 02, 1995). The reasonable and prudent measures of the biological opinion require the Marines to adopt and implement the Estuarine/Beach Ecosystem Conservation Plan.

The Estuarine/Beach Ecosystem Conservation Plan is structured to minimize the effects to listed species resulting from programmatic impacts associated with ongoing and future training, maintenance, recreation, and construction activities. Because the terms and conditions are mandatory, there are assurances that Conservation Plan will be implemented, and the Marines have the authority to carry out the measures in the plan. Therefore, our second special management criterion is also met. However, because the conservation plan outlines broad goals for benefiting tidewater gobies without clearly identifying specific conservation efforts, its effectiveness is not assured. The Estuarine/Beach Ecosystem Conservation Plan does not contain specific biological objectives for the tidewater goby. The Conservation Plan focuses primarily on avian species. It does not identify specific measures or targets to achieve an increase in the tidewater goby population size. Also, because the plan is general in nature, it does not outline parameters that can be used to measure achievement of objectives or standards by which to measure them. Population surveys and monitoring requirements are identified in the Conservation Plan, but have not been met as defined in the plan. The Service is unable to determine that the Estuarine/Beach Ecosystem Conservation Plan will be effective, and consequently, it is not adequate to preclude the need to designate critical habitat.

Comment 4b3: Buena Vista lagoon is currently unsuitable for supporting a population of tidewater gobies. The designation of Buena Vista Lagoon as critical habitat for the tidewater goby is premature at best and could actually preclude the modifications needed to create such habitat.

Our Response: Buena Vista Lagoon, a California Department of Fish and Game Ecological Reserve, is currently predominated by freshwater marsh conditions, and is closed to the Pacific Ocean by a concrete weir. This configuration, as well as the Pacific Coast Highway, the coastal railway, and Interstate 5 bridges, which are all predominantly dirt fill structures, constrict the lagoon such that sediment can no longer be moved through the system. The lagoon has been gradually filling with sediment and, without modifications to the system, the lagoon will conceivably fill entirely, transforming the lagoon into a mud flat. This situation has become apparent to the California Department of Fish and Game (CDFG), the Buena Vista Lagoon Foundation, and residents of the local communities in Carlsbad and Oceanside (Tim Dillingham CDFG pers. comm. 1999, Ron Wooton, Buena Vista Lagoon Foundation, pers. comm 1999).

In its current configuration, Buena Vista Lagoon is essentially a freshwater lake with a fish fauna that consists entirely of non-native freshwater fishes. Some of these, such as largemouth bass (*Lepomis macrochirus*), have been implicated in the decline of tidewater gobies (Swift *et al.* 1997). However, if the lagoon were once again open to the Pacific Ocean, the habitat could support tidewater gobies. Opening the lagoon to tidal flushing would also provide an outlet to move sediment through the system, which would prevent the lagoon from becoming a mud flat, and provide some sediment to the ocean to help build local beaches. We believe that simply removing the weir structure at the mouth of the lagoon and replacing it with a structure that would permit tidal flow would be enough to restore some goby habitat to the lagoon.

The Buena Vista Lagoon Foundation is a non-profit private corporation dedicated to the protection and maintenance of Buena Vista Lagoon. The Foundation has a memorandum of understanding with the CDFG authorizing it to prepare an Ecological Reserve Land Management Plan (ERLMP) on behalf of the department. Among the proposals being considered is the potential for establishing a tidal flushing system which would open the lagoon to the Pacific Ocean. We feel that Buena Vista Lagoon could provide essential habitat for the tidewater goby and that the current direction of the ERLMP toward a more tidal system at Buena Vista Lagoon will accommodate the creation of tidewater goby habitat. However, while we believe Buena Vista Lagoon could be restored to provide tidewater goby habitat, we do not have information demonstrating such restoration is essential to the conservation of the species. Therefore, we are removing it from the designation.

Comment 4b4: Agua Hedionda Lagoon is unsuitable for tidewater gobies and so should not be designated as critical habitat.

Our Response: We received a number of comments questioning the feasability of Agua Hedionda Lagoon to support tidewater gobies. These commenters claimed that the habitat in Agua Hedionda Lagoon had been so altered since 1940, the last year in which gobies were collected from the lagoon, that the lagoon could not only not support tidewater gobies, but that the possibility of restoration of the lagoon for the species was not feasible. Many of these comments were grounded in the misconception that the lagoon would have to be restored to pre-1940 conditions to support the species. These commenters were concerned that critical habitat would trigger widespread lagoon alterations to restore habitat and thereby eliminate the many and varied uses of this tidal lagoon. Also, the commenters were concerned that alterations necessary to make suitable habitat for gobies would reduce the habitat suitability for other sensitive species that currently occupy the lagoon. We believe areas within the lagoon could support gobies now, without any restoration effort, and without any extensive changes to the current configuration or uses of the lagoon. We address habitat suitability within the lagoon here, and will deal with the effects of the designation on Agua Hedionda Lagoon and the various uses within it in the succeeding comment.

The comments we received generally cited four habitat elements within the lagoon as being unsuitable for gobies: water quality, salinity, sediment, and the presence of predatory species. The most recent survey effort of fishes and sediments was conducted by Merkel and Associates (1999) on September 23, 1999. The water quality, salinity, sediment, and fish species composition results of this survey indicated to us that not only are there areas within the lagoon that could support the tidewater goby, but that the lagoon will probably not require any restoration to do so (Merkel and Associates 1999).

Merkel and Associates (1999) reported that salinity measurements of the areas of the eastern lagoon ranged from 5 to 48 ppt with an average of about 26.5 ppt. The tidewater goby is often found in waters of relatively low salinities (around 10 ppt) in the uppermost brackish zone of larger estuaries and coastal lagoons, but can tolerate a wide range of salinities, and has been collected at salinities as high as 42 ppt (Swift *et al.* 1989, 1997; Worcester 1992, Worcester and Lea 1996; Swenson 1995). A recent survey of French Creek Lagoon in June of 2000 found thousands of tidewater gobies of all life stages. Salinity in French Creek Lagoon during this survey ranged from 45–51 ppt and temperatures ranged from 31–32 °C (Service field data 2000). Merkel and

Associates (1999) also reported that water temperatures within the lagoon were 21–22 °C and depth ranged from 0.1 to 1.0 m. Tidewater gobies are usually collected in water less than 1 m (3 ft) deep, and in temperatures typically between 9–25 °C (Swift *et. al.* 1989; Wang 1982; Irvin and Soltz 1984; Worcester 1992; Swenson 1995). Thus, depth and temperature are also within the range usually occupied by gobies. Given what we know of the water quality tolerances and preferences of this species for salinity, temperature, and depth, the conditions in the eastern end of Agua Hedionda Lagoon appear suitable to support gobies.

Merkel and Associates (1999) found that sediments in the east end of Agua Hedionda Lagoon ranged from fine sand to silt/clay. Although there are no comprehensive studies comparing the sediment composition of tidewater goby habitats in different localities, there appears to be preference of gobies for coarser sand substrates, especially for breeding (Swift *et al.* 1989, Worcester 1992, Swenson 1995). However, muddy, marshy conditions are a typical feature in tidewater goby habitats, and have been shown to be occupied by gobies in San Antonio Creek, the Santa Ynez River, Aliso Creek (Orange County), San Mateo Creek, San Onofre Creek, Las Flores Creek, French Creek, Aliso Creek (San Diego County) and the Santa Margarita River (Swift *et al.* 1989, Holland 1992, Swift *et. al.* 1994, Swift *et al.* 1997, Swift and Holland 1998, Service field data 2000). Swenson (1995) found that in San Gregorio and Pescadero Creek, tidewater gobies inhabited a variety of habitats, including (1) sandy lagoons, (2) mud or gravel-bottomed reaches of creeks, and (3) muddy marsh pools. Swenson (1995) also found that tidewater gobies of all life stages were collected in all three of these habitat types, suggesting that tidewater gobies can complete their life cycle in any one of the three. Worcester (1992) found that although tidewater gobies were significantly associated with coarse sand and fine gravel substrates, their distribution was significantly associated with a number of other physical habitat parameters so it was unclear how important substrate was in determining their presence. Page (Carl Page pers. com. 2000) has found that tidewater gobies are actually most strongly associated with food abundance in Lake Earl, Del Norte County, and showed little preference for substrate. Furthermore, Page found that tidewater gobies commonly utilized silt dominated muddy habitats, built breeding burrows and spawned in these muddy habitats, and that their post planktonic larvae utilized muddy silt dominated habitats exclusively, presumably due to food availability. Based on this information, we conclude that substrates in Agua Hedionda Lagoon would not preclude the occurrence of tidewater gobies, and that they could occupy these areas.

Merkel and Associates (1999) found that the shoreline was steep sided at the east end of Agua Hedionda Lagoon, and stated this feature may make the lagoon unsuitable for tidewater gobies. In fact, tidewater gobies occupy a number of lagoon and estuarine habitats that are more steeply sided than Agua Hedionda Lagoon. An example of such a lagoon is Hidden Creek, San Diego County. This lagoon consists of what can only be described as a slot canyon with vertical walls extending from the bottom of the lagoon to as much as 10 m above the water's surface. Other occupied lagoons at Aliso Creek (San Diego County), Cockleburr Creek, Shuman Lagoon, and the Santa Ynez River all have steep sides as a prominent habitat feature (Swift *et al.* 1997, Swift and Holland 1998). Therefore, the shoreline configuration at Agua Hedionda appears suitable for tidewater gobies.

Another contention of some commenters as to the suitability of Agua Hedionda for tidewater gobies was that occurrence of native and non-native competitors and predators in the lagoon would preclude the possibility of occupation by tidewater gobies. Merkle and Associates (1999) found the following fish species at Agua Hedionda in September 1999: California killifish (*Fundulis parvipinnis*), topsmelt (*Atherinops affinis*), deepbody anchovy (*Anchoa compressa*), arrow goby (*Clevelandia ios*), mosquitofish (*Gambusia affinis*), striped mullet (*Mugil cephalous*), and California butterfly ray (*Gymnura marmorata*). With the exception of the California butterfly ray, these are all species that the tidewater goby currently co-occurs with in other lagoons in San Diego County (Swift and Holland 1998). Fish surveys of the inner lagoon in 1994 and 1995 (Marine Environmental Consultants *in litt.* 1997) found 23 species, all native, and most, species that the tidewater goby co-occurs with, with the exception of the yellowfin goby (*Acanthogobius flavimanus*). Yellow fin gobies are a non-native species thought to compete and predate on tidewater gobies (Wang 1984, Swift and Holland 1998). Yellowfin gobies were not present in the most recent survey (Merkel and Associates 1999). We conclude that the fish fauna of Agua Hedionda Lagoon is suitable for tidewater gobies, and, in fact, is representative of faunas gobies co-occur with in other coastal lagoons.

Jenkins and Wasyl (1999) analyzed tidewater goby migration based on the coastal currents in the vicinity of Agua Hedionda Lagoon. The authors were addressing the effects of existing offshore current patterns on the success of tidewater goby dispersal to adjacent lagoon habitats. The authors found that 55–60 percent of nearshore currents at Agua Hedionda had a net southward transport, and 40–45 percent of nearshore currents had a net northward transport. The authors also estimated that the probability that northward nearshore currents would transport gobies to Buena Vista Lagoon to the north was about 0.4 percent. They did not estimate the probability of gobies being transported to Batiquitos Lagoon to the south. While this report examined an interesting line of research, two recently published studies documented the dispersal of tidewater gobies among coastal lagoons (Lafferty *et al.* 1999a, 1999b).

Comment 4b5: We received a number of comments concerning the potential changes or alterations to Agua Hedionda Lagoon resulting from a critical habitat designation. Many of these commenters believed that critical habitat designation would result in widespread changes to the existing configuration of the lagoon and the corresponding affects to current uses of the lagoon.

Our Response: Agua Hedionda Lagoon is dredged to retain tidal influence within the lagoon which provides for a deep tidal bay type of habitat. This configuration also accommodates a number of recreational and other uses, including motorboating, water skiing, and a commercial shellfish farm. Although this differs markedly from the historic conditions within the lagoon, we feel that there are still areas within the lagoon which provide potential habitat for tidewater gobies. We believe that the current configuration of the lagoon could support the species as well as the existing uses within the lagoon.

Comment 5: San Juan Creek and the San Luis Rey River should be included as critical habitat.

Our Response: We received several comments proposing that San Juan Creek and the San Luis Rey River should be designated as critical habitat. Recent investigations at San Juan Creek and the San Luis Rey River have provided some data as to the suitability of these habitats to support tidewater gobies (Michael Brandman and Assoc. 1998, Dan Holland pers. comm. 2000). These data indicate that if efforts were undertaken to restore tidewater goby habitat to these systems, they may support the species. San Juan Creek and the San Luis Rey River may be important in the species recovery and their potential value will be assessed in the recovery plan for the species. However, while San Juan Creek and the San Luis Rey River may be restored to provide suitable habitat for tidewater gobies, we do not have information demonstrating these areas are essential to the conservation of the species; therefore, these areas do not meet the definition of critical habitat.

Summary of Changes From the Proposed Rule

We changed the rule to better define the lateral extent of critical habitat in response to a comment that the 50-year flood plain is undelineated or in dispute in many areas and is not useful in defining the lateral extent of critical habitat for the goby. In this final rule we have defined the lateral extent of critical habitat as the 50-year flood plain or the stream channels, estuaries, and other areas within these reaches potentially inundated by high flow events. The lateral extent of high flow events, and critical habitat, can be determined by the presence of alluvial soils (soils deposited by streams), obligate and facultative riparian vegetation (requiring and usually occurring in wetlands respectively), abandoned river channels, or known high water marks. This constitutes the present aquatic and riparian zones of the rivers, streams, and their associated estuaries designated as critical habitat. Existing human-constructed features and structures within this area, such as buildings, roads, railroads, and other features, do not contain, and do not have the potential to develop, those habitat components. It should be noted that this change does not increase the amount of critical habitat designated, but rather is a less ambiguous method of defining the same critical habitat boundaries.

We have also excluded Buena Vista Lagoon. We note that tidewater goby habitat could be created at Buena Vista Lagoon. Restoring tidal flow by removing the existing weir structure currently blocking the mouth of the lagoon would probably create some habitat for the species (see comment 4b3 in the "Summary of Comments and Recommendations" section above). However, as we do not have information demonstrating that restoration of Buena Vista Lagoon is essential for the conservation of the tidewater goby, we have not included the area in this final designation.

Additionally, we have changed the maps to better reflect the lateral extent of areas within these stream reaches that constitute critical habitat. The maps are a graphical representation only and do not constitute the definition of the critical habitat units. The maps are provided for reference purposes only, to guide Federal agencies and other interested parties in locating the general boundaries of the critical habitat unit (50 CFR 17.94(b)).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We completed a draft economic analysis and made it available to the public for comment (65 FR 39850). We also completed a final economic analysis that incorporated public comment, information gathered since the draft analysis, and changes to the critical habitat designation. The analysis found that there would be an economic impact from the designation that would vary on a situational level, and that most of the impact would come in the form of new section 7 consultations in unoccupied habitat units. We have determined that these economic impacts are minimal and do not warrant excluding any areas from the designation. The final economic analysis is available to the public at the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

This document has been reviewed by the Office of Management and Budget (OMB), in accordance with Executive Order 12866. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The tidewater goby was listed as an endangered species in 1994.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; it does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 1 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse modification of designated critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of areas within the geographic range occupied by the tidewater goby does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas outside the geographic range occupied by the species may have incremental impacts on what activities may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. However, our analysis did not identify any significant incremental effects. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat, although they continue to be bound by the provisions of the Act concerning "take" of the species.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the tidewater goby since the listing in 1994. The prohibition against adverse modification of critical habitat is not expected to have a significant economic impact. Because of the potential for impacts on other Federal agency activities, we will continue to review this action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any significant incremental effects.

(d) This rule will not raise novel legal or policy issues. This final determination follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 1.—IMPACTS OF TIDEWATER GOBY LISTING AND CRITICAL HABITAT DESIGNATION

Categories of Activities	Activities Potentially Affected by Species Listing Only [1]	Additional Activities Potentially Affected by Critical Habitat Designation [2]
Federal Activities Potentially Affected [3].	Activities the Federal Government carries out such as: regulation of activities affecting waters of the U.S. (under section 404 of the Clean Water Act); regulation of water flows, damming, diversion, and channelization; road construction, right of way designation; regulation of agricultural activities; some military activities on the Camp Pendleton; hazard mitigation and post-disaster repairs; and construction activities..	Activities by Federal Agencies in any unoccupied critical habitat areas.
Private Activities Potentially Affected [4].	Activities such as: those affecting waters of the U.S. (under section 404 of the Clean Water Act); regulation of water flows, damming, diversion, and channelization; road construction, right of way designation; agricultural activities; hazard mitigation and post-disaster repair; and construction activities that require a Federal action (permit, authorization, or funding).	Funding, authorization, or permitting actions by Federal Agencies in any unoccupied critical habitat areas.

[1] This column represents the activities potentially affected by listing the tidewater goby as an endangered species (March 7, 1994; 59 FR 5494) under the Endangered Species Act.

[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

[3] Activities initiated by a Federal agency.

[4] Activities initiated by a private entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above and in this final determination, this designation of critical habitat for the tidewater goby is not expected to have a significant economic impact. We have designated property owned by Federal, State and local governments, and private property. Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the U. S. under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Road construction, right of way designation, or regulation of agricultural activities by Federal agencies;

(4) Some military activities on the Camp Pendleton;

(5) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(6) Construction of communication sites licensed by the Federal Communications Commission; and

(7) Activities funded or authorized by Federal agencies.

Some of these activities sponsored by Federal agencies within critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed in section 1 above, these actions are largely required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have significant additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this final determination will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in section 1, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This designation will not "take" private property and will not alter the value of private property.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This designation of critical habitat imposes no additional restrictions to those currently in place, and therefore has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This final determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands that are essential for the conservation of the tidewater goby because they do not support populations or suitable habitat. Therefore, we are not designating critical habitat for the tidewater goby on Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Carlsbad Fish and Wildlife Office (see ADDRESSES section).

Author. The primary author of this final rule is the Carlsbad Fish and Wildlife Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h), by revising the entry for "goby, tidewater" under "FISHES" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Goby, tidewater	*Eucyclogobius newberryi.*	U.S.A. (CA)	do	E	527	17.95(e)	NA
*	*	*	*	*	*	*	

3. Amend § 17.95(e) by adding critical habitat for the tidewater goby (*Eucyclogobius newberrii*) under paragraph (e) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes.

* * * * *

Tidewater goby (Eucyclogobius newberrii)

1. Critical habitat units are depicted for Orange and San Diego Counties, California, on the maps below and as described below.

2. Critical habitat includes the sections of streams indicated on the maps below and areas within these reaches potentially inundated by high flow events. Where delineated, this is the 50-year flood plain of the designated waterways. In areas where the 50-year flood plain is not delineated the presence of alluvial soils (soils deposited by streams), obligate and facultative wetland vegetation, abandoned river channels, or evidence of high water marks can be used to determine the extent of the floodplain. Critical habitat does not include existing man-made features and structures within this area, such as buildings, roads, railroads, and other features, which do not contain, and do not have the potential to develop the primary constituent elements for the tidewater goby.

3. Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, and reproduction. These elements include coastal lagoons and estuary systems supported by a natural hydrological regime, which results in sufficient streamflow, areas of shallow water as well as deep pockets of permanent water, sand and silt substrate, a variety of aquatic and emergent vegetation, and a diversity of prey species; and an environment free from exotic fishes.

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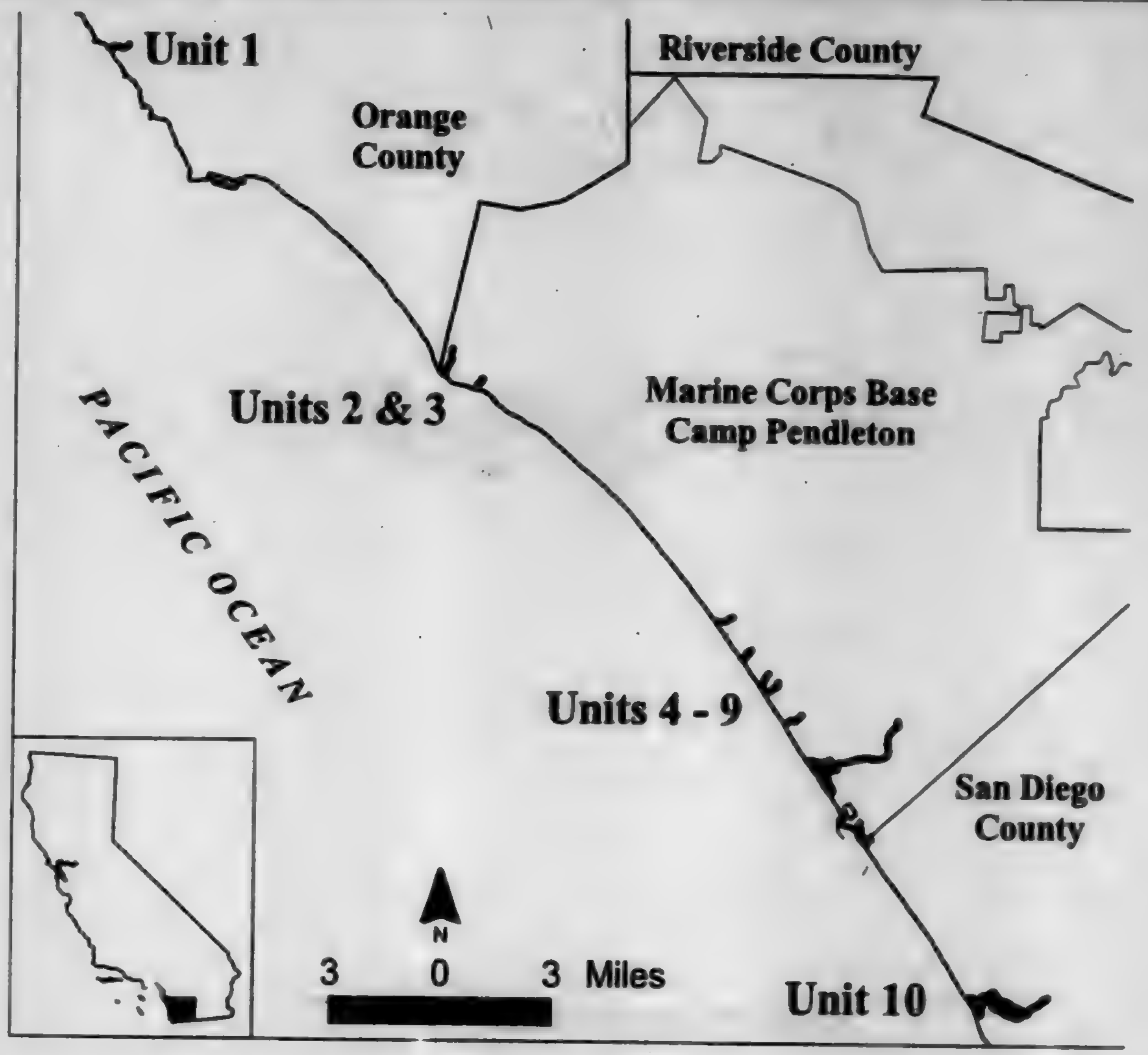

Map Unit 1: Orange County, California. From USGS 7.5′ quadrangle map Laguna Beach, California, and San Juan Capistrano, California. San Bernardino Principal Meridian, California, T. 7 S., R 8 W., beginning at a point on Aliso Creek in SW sec. 32 and at approximately 33°30′46″ N latitude and 117°44′37″ W longitude, UTM coordinates 430853.4 E, 3708395.9 N, and proceeding downstream (westerly) to the Pacific Ocean covering approximately 1.0 km (0.6 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.

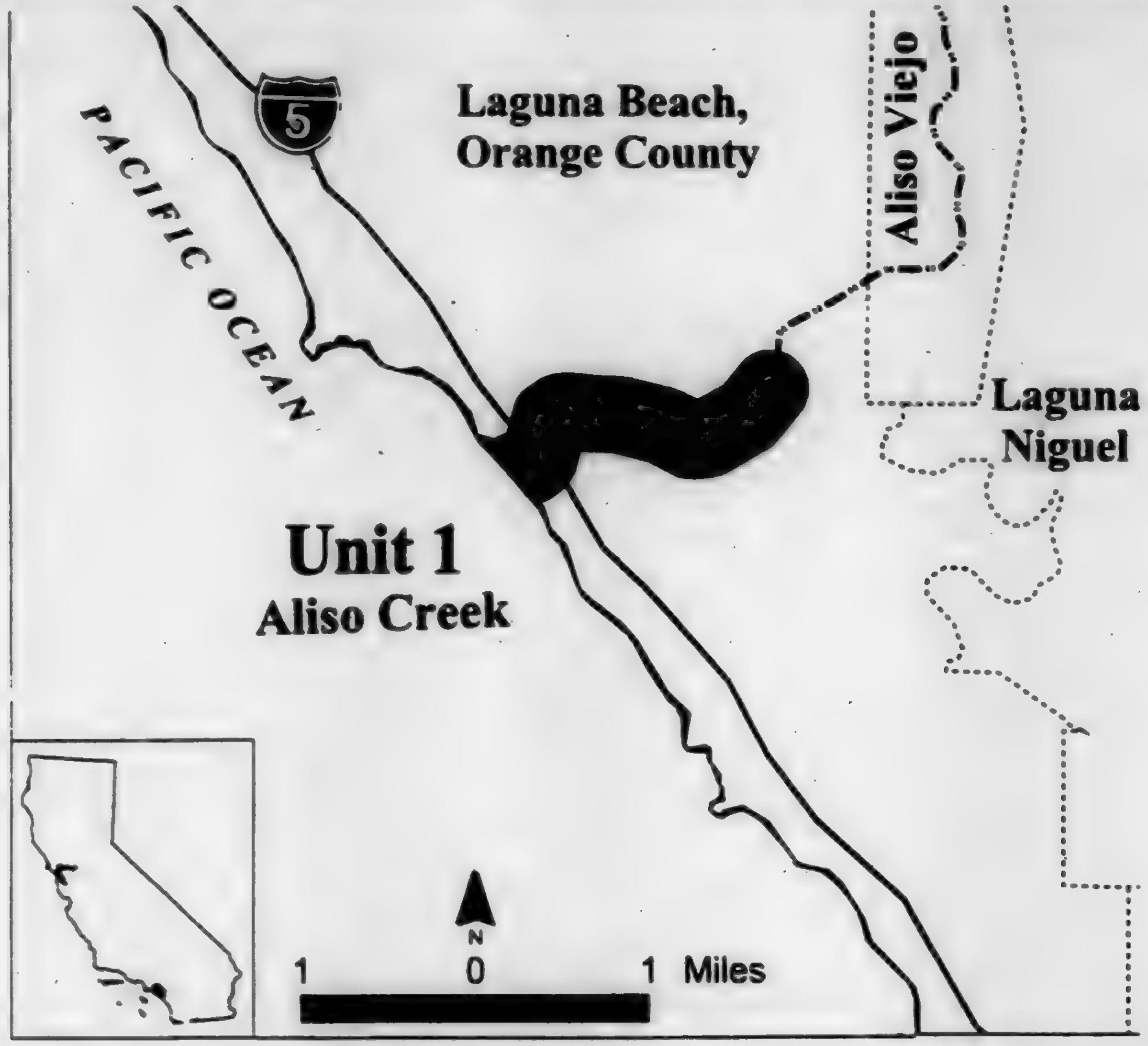
Laguna Beach,
Orange County
Aliso Viejo
PACIFIC OCEAN
5
Laguna
Niguel
Unit 1
Aliso Creek
N
1
0
1 Miles

Map Unit 2: San Diego County, California. From USGS 7.5′ quadrangle map San Clemente, California. San Bernardino Principal Meridian, California, T. 9 S., R. 7 W., beginning at a point on San Mateo Creek in NW sec. 14 and at approximately 33°23′46″ N latitude and 117°35′20″ W longitude, UTM coordinates 445152.5 E, 3695369.7 N, and proceeding downstream (southerly) to the Pacific Ocean covering approximately 1.3 km (0.9 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.

Map Unit 3: San Diego County, California. From USGS 7.5′ quadrangle map San Clemente, California. San Bernardino Principal Meridian, California, T. 9 S., R. 7 W., beginning at a point on San Onofre Creek in SE sec. 14 and at approximately 33°23′05″ N latitude and 117°34′30″ W longitude, UTM coordinates 446450.2 E, 3694074.4 N, and proceeding downstream (southwesterly) to the Pacific Ocean covering approximately 0.6 km (0.4 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.

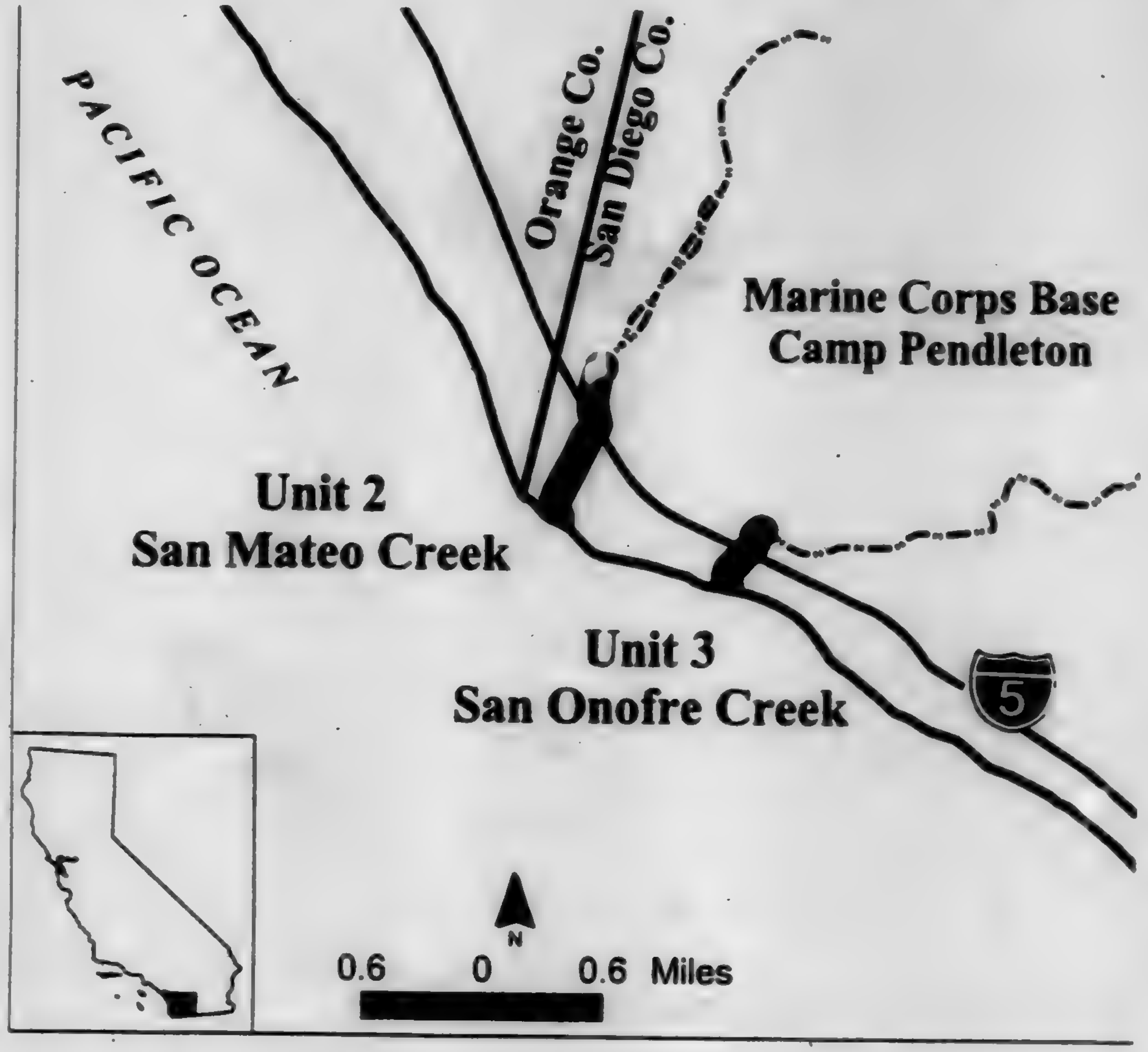
PACIFIC OCEAN
Orange Co.
San Diego Co.
Marine Corps Base
Camp Pendleton
Unit 2
San Mateo Creek
Unit 3
San Onofre Creek
5
N
0.6
0
0.6 Miles

Map Unit 4: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 10 S., R. 6 W., beginning at a point on Las Flores Creek in the middle of sec. 13 and at approximately 33°17′32″ N latitude and 117°27′20″ W longitude, UTM coordinates 457495.3 E, 3683780.1 N, and proceeding downstream (westerly) to the Pacific Ocean covering approximately 0.8 km (0.5 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.

Map Unit 5: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 10 S., R. 5 W., beginning at a point on Hidden Creek in W sec. 30 and at approximately 33°16′46″ N latitude and 117°26′48″ W longitude, UTM coordinates 458321.5 E, 3682362.9 N, and proceeding downstream (southwesterly) to the Pacific Ocean covering approximately 0.8 km (0.5 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.

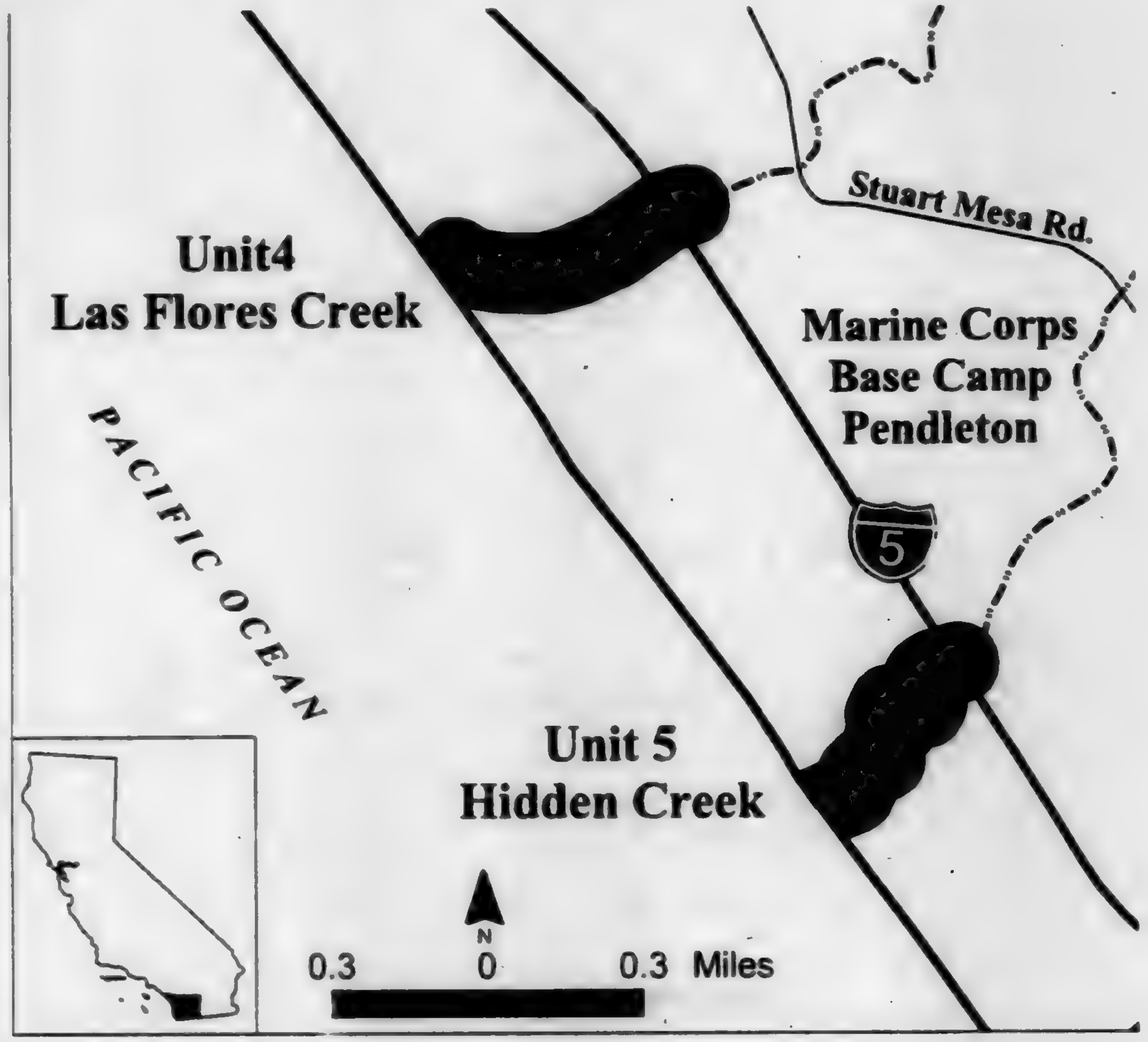

Map Unit 6: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 10 S., R. 5 W., beginning at a point on Aliso Creek in NE sec. 31 and at approximately 33°16′13″ N latitude and 117°26′19″ W longitude, UTM coordinates 459521.7 E, 3680981.1 N, and proceeding downstream (southwesterly) to the Pacific Ocean covering approximately 0.7 km (0.4 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.

Map Unit 7: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 10 S., R. 5 W., beginning at a point on French Creek in E sec. 31 and at approximately 33°16′01″ N latitude and 117°26′01″ W longitude, UTM coordinates 459078.8 E, 3681354.4 N, and proceeding downstream (westerly) to the Pacific Ocean covering approximately 0.7 km (0.4 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.

Map Unit 8: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 11 S., R. 5 W., beginning at a point on Cockleburr Creek in NE sec. 5 and at approximately 33°15′16″ N latitude and 117°25′21″ W longitude, UTM coordinates 460570.4 E, and 3679563.4 N, and proceeding downstream (westerly) to the Pacific Ocean covering approximately 1.0 km (0.6 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.

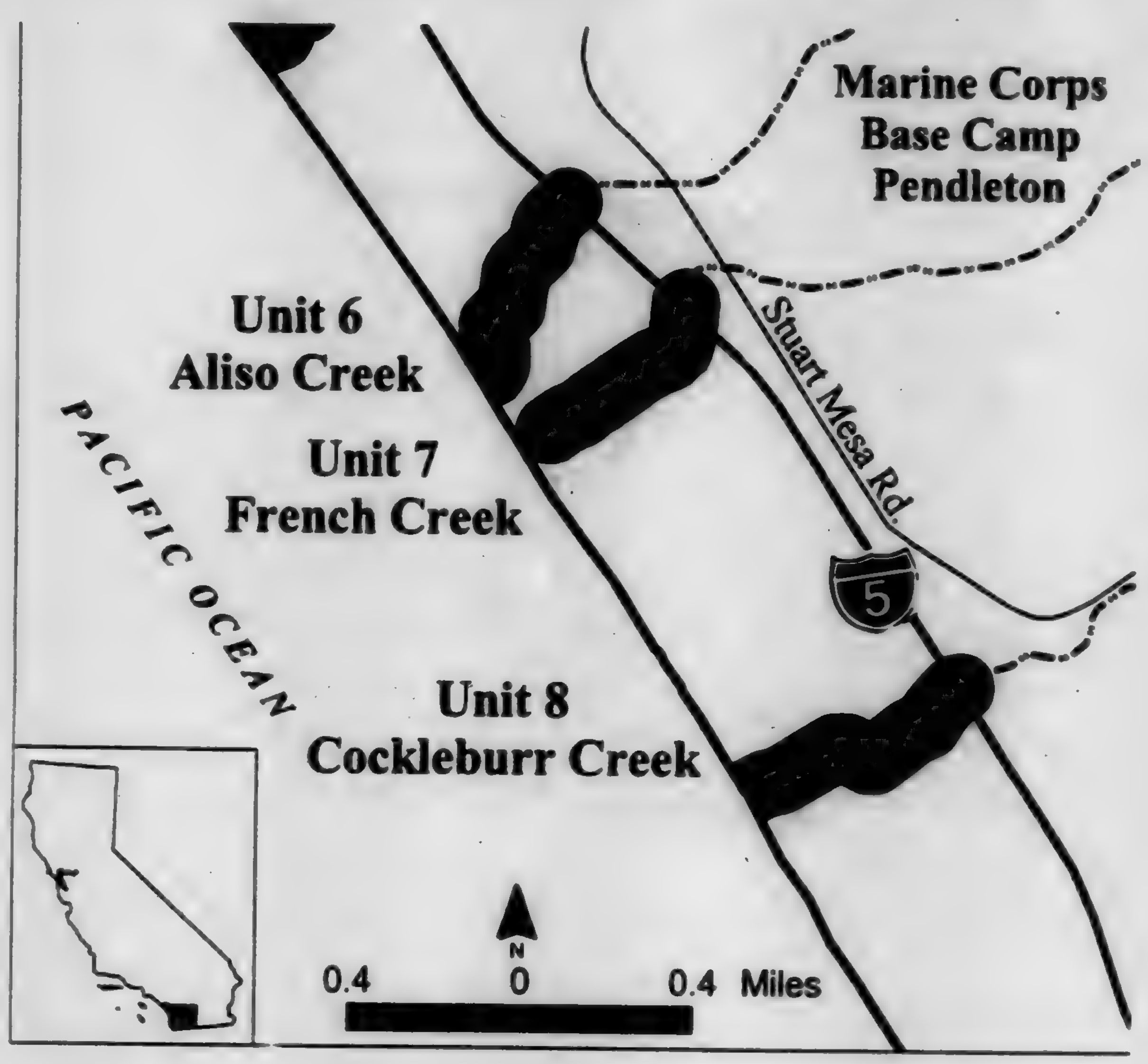

Map Unit 9: San Diego County, California. From USGS 7.5′ quadrangle map Oceanside, California. San Bernardino Principal Meridian, California, T. 11 S., R. 5 W., beginning at a point on the Santa Margarita River in NW sec. 2 and at approximately 33°15′08″ N latitude and 117°22′38″ W longitude, UTM coordinates 464774.9 E, 3679326.9 N, and proceeding downstream (westerly) to the Pacific Ocean covering approximately 5.0 km (3.1 mi.), including the river's 50-year flood plain, associated lagoons and marsh.

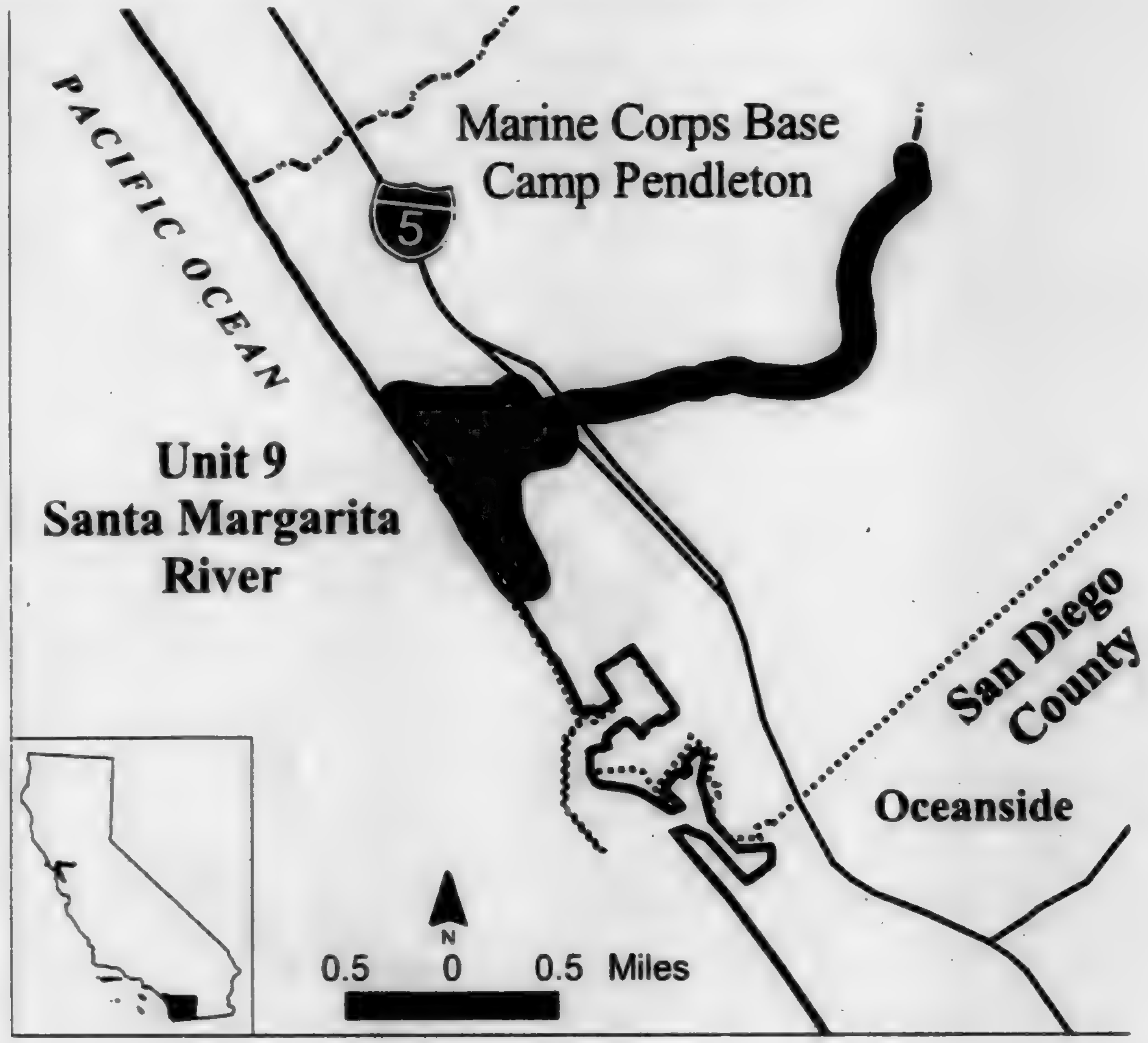
PACIFIC OCEAN
Marine Corps Base Camp Pendleton
5
Unit 9 Santa Margarita River
San Diego County
Oceanside
N
0.5 0 0.5 Miles

Map Unit 10: San Diego County, California. From USGS 7.5′ quadrangle map San Luis Rey, California. San Bernardino Principal Meridian, California, T. 12 S., R. 4 W., beginning at a point on Augua Hedionda Creek in the middle of Section 9 and at approximately 33°08′44″ N latitude and 117°18′19″ W longitude, UTM coordinates 471444.4 E, 3667474.6 N, and proceeding downstream (southwesterly) to the Pacific Ocean covering approximately 3.7 km (2.3 mi.), including the creek, its 50-year flood plain, Agua Hedionda Lagoon, and associated marsh.

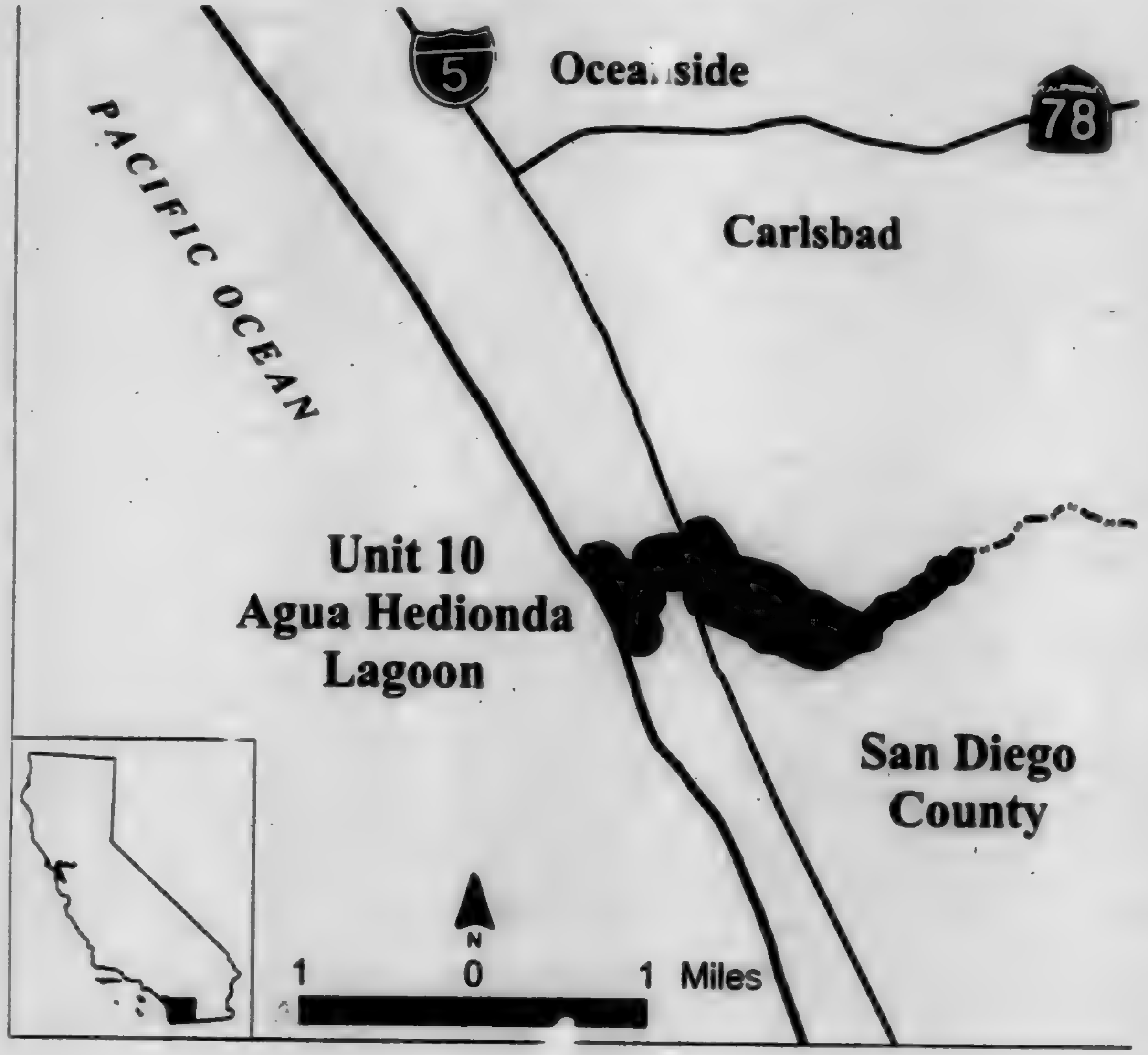
5
Oceanside
78
PACIFIC OCEAN
Carlsbad
Unit 10 Agua Hedionda Lagoon
San Diego County
N
1 0 1 Miles

Dated: November 13, 2000.

Kenneth L. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–29547 Filed 11–17–00; 8:45 am]

BILLING CODE 3420–55–C

Proposed Rules

Federal Register
Vol. 65, No. 224
Monday, November 20, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–158–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, that currently requires revising the Airplane Flight Manual to include procedures to prevent dry operation of the center wing fuel tank override/jettison pumps and, for certain airplanes, to prohibit operation of the horizontal stabilizer tank transfer pumps in-flight. That AD was prompted by a report indicating that several override/jettison fuel pumps from the center wing tanks and main tanks had been removed because circuit breakers for the override/jettison fuel pumps were tripped, or low pump output pressure was indicated. For certain airplanes, this action would require installation of improved fuel pumps, which would terminate the requirements of the existing AD. This proposal is prompted by new information received from the fuel pump manufacturer. The actions specified by the proposed AD are intended to prevent contact between the rotating paddle wheel and the stationary end plates within the center wing tank override/jettison fuel pumps or horizontal stabilizer tank transfer pumps, which could cause sparks and/or a hot surface condition and consequent ignition of fuel vapor in the center wing tank or horizontal stabilizer tank during dry pump operation (no fuel flowing).

DATES: Comments must be received by January 4, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–158–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–158–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–158–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–158–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 15, 1998, the FAA issued AD 98–25–52, amendment 39–10957 (63 FR 71214, December 24, 1998), applicable to all Boeing Model 747 series airplanes, to require revising the Airplane Flight Manual to include procedures to prevent dry operation of the center wing fuel tank override/jettison pumps and, for certain airplanes, to prohibit operation of the horizontal stabilizer tank transfer pumps in-flight. That action was prompted by a report indicating that several override/jettison fuel pumps from the center wing tanks and main tanks had been removed because circuit breakers for the override/jettison fuel pumps were tripped, or low pump output pressure was indicated. The requirements of that AD are intended to prevent contact between the rotating paddle wheel and the stationary end plates within the center wing tank override/jettison fuel pumps or horizontal stabilizer tank transfer pumps due to excessive wear of the pump shaft carbon thrust bearing, which could cause sparks and/or a hot surface condition and consequent ignition of fuel vapor in the center wing tank or horizontal stabilizer tank during dry pump operation (no fuel flowing).

Actions Since Issuance of Previous Rule

In the preamble to AD 98–25–52, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Since the issuance of AD 98–25–52, the FAA has received information from the fuel pump manufacturer indicating that it has now determined the cause of the premature wear of the thrust carbon bearings of the center wing tank override/jettison fuel pumps, and the horizontal stabilizer tank transfer pumps. The thrust washer located in the pump shaft thrust bearing was coated with aluminum oxide, applied using a plasma spray method, and investigation revealed that this method has a life limit of less than 500 flight hours. Further investigation revealed that aluminum oxide coating applied to the thrust washer using a D-gun spray method has a life limit of more than 15,000 flight hours.

During operation at normal fuel pump rotation speeds (7,000 to 8,000 RPM), the steel-to-steel contact may produce sparks or hot spots sufficient to ignite fuel vapor from the center wing tank or horizontal stabilizer tank, when the pump is running dry. The center wing fuel tank pumps on 747–400 series airplanes are normally operated until the fuel in the tank is exhausted and the pump inlet is uncovered, exposing the fuel pump to dry or partially dry operation for a period of time during each flight when the center wing tank is used. The horizontal stabilizer tank on 747–400 series airplanes uses the same pumps and is also run out dry each time it is used. Replacement of the existing pumps with improved pumps having the correct thrust washers installed enhances airplane safety in that it eliminates the possibility that pumps with bad washers will be operated when the pump is running dry.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–25–52 to continue to require revising the Airplane Flight Manual to include procedures to prevent dry operation of the center wing fuel tank override/jettison pumps and, for certain airplanes, to prohibit operation of the horizontal stabilizer tank transfer pumps in-flight. For certain airplanes, the proposed AD also would require the installation of improved fuel pumps, which would terminate the requirements of the existing AD.

Cost Impact

There are approximately 1,100 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 250 airplanes of U.S. registry would be affected by this proposed AD.

The AFM revisions that are currently required by AD 98–25–52 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $15,000, or $60 per airplane.

The replacements that are proposed in this new AD action would take approximately 25 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $375,000, or $1,500 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10957 (63 FR 71214, December 24, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2000–NM–158–AD. Supersedes AD 98–25–52, amendment 39–10957.

Applicability: All Model 747 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified,altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent contact between the rotating paddle wheel and the stationary end plates within the center wing tank override/jettison fuel pumps or horizontal stabilizer tank transfer pumps due to excessive wear of the pump shaft carbon thrust bearing, which can cause sparks and/or a hot surface condition and consequent ignition of fuel vapor in the center wing tank or horizontal stabilizer tank during dry pump operation (no fuel flowing), accomplish the following:

Restatement of Requirements of AD 98–25–52

Airplane Flight Manual (AFM) Revisions

(a) Within 7 days after December 29, 1998 (the effective date of AD 98–25–52, amendment 39–10957), revise the Limitations Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

"For Model 747–400 series airplanes equipped with a horizontal stabilizer tank, operation of the horizontal stabilizer tank transfer pumps is prohibited in flight.

A tripped circuit breaker of a center wing tank override/jettison pump or a tripped circuit breaker of a horizontal stabilizer tank transfer pump must not be reset until the associated fuel pump has been inspected for damage and any damage has been repaired.

The center wing tank override/jettison pumps must be operated in accordance with either option 1 or option 2 below.

Option 1

If the center wing tank override/jettison pumps are required for flight, the center tank must contain a minimum of 17,000 pounds (7,700 kilograms) at engine start. The fuel quantity indicating system of the center wing tank must be operative to dispatch with center wing tank fuel intended for use in the flight.

Select both center wing tank override/jettison pump switches off at or before the fuel quantity of the center wing tank reaches 7,000 pounds (3,200 kilograms). Note: On Model 747–400 series airplanes, the "FUEL OVRD CTR L" and "FUEL OVRD CTR R" engine indication and crew alerting system (EICAS) messages will be displayed with the switches off.

The center wing tank override/jettison pumps may be operated with less than 7,000 pounds of fuel in the center wing tank if required to address an emergency (such as fuel jettison or low fuel quantity).

Option 2

If the center wing tank override/jettison pumps are required for flight, the center tank must contain a minimum of 50,000 pounds (22,700 kilograms) at engine start. The fuel quantity indicating system of the center wing tank must be operative to dispatch with center wing tank fuel intended for use in the flight.

Select both center wing tank override/jettison pump switches off at or before center wing tank fuel quantity reaches 3,000 pounds (1,400 kilograms).

The center wing tank override/jettison pumps may be operated with less than 3,000 pounds of fuel in the center wing tank if required to address an emergency (such as fuel jettison or low fuel quantity)."

New Requirements of This AD

Determination of Correct Thrust Washer

(b) For airplanes having center wing fuel tank override/jettison pumps and, if installed, horizontal stabilizer tank transfer pumps, and all pumps meet the criteria specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD (*i.e.*, the correct thrust washer is installed), no further action is required by this AD.

(1) Verify the serial number on the pump data plate. The first four digits of the pump serial number represent the month and year of manufacture (*e.g.*, 0697 indicates a pump manufactured in June 1997). If the serial number date code indicates that the pump was manufactured prior to July 1996, or after November 1998, and if the operator can determine that the pump was not overhauled or repaired after July 31, 1996, then the pump has the correct thrust washer installed. If the pump was overhauled or repaired after July 31, 1996, and the operator has maintenance/overhaul records showing that the thrust washer was not replaced, or was replaced with the correct thrust washer, as specified in paragraph (c) of this AD, then the pump has the correct thrust washer installed.

(2) For airplanes having a date of manufacture prior to July 1996, if the operator can determine that the pump was not overhauled or repaired after July 31, 1996; and the pump was not replaced with a new pump manufactured between July 1996 and November 1998, then the pump has the correct thrust washer installed. If the pump was overhauled or repaired after July 31, 1996, and the operator has maintenance/overhaul records showing that the thrust washer was not replaced, or was replaced with the correct thrust washer, as specified in paragraph (c) of this AD, then the pump has the correct thrust washer installed.

(3) For airplanes having pumps installed containing a serial number on the pump data plate with the suffix "P," the pump has the correct thrust washer installed.

Terminating Action

(c) For airplanes that do not meet the requirements specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD; or if the serial number on the pump data plate of any fuel pump cannot be determined: Within 24 months after the effective date of this AD, replace the applicable center wing fuel tank override/jettison pumps and horizontal stabilizer tank transfer pumps with Crane Hydro-Aire fuel pumps having a thrust washer, part number 60–06561, with a date code of 9848 ("98" indicates the year 1998, and "48" indicates the 48th week in 1998), or higher, etched on the outside diameter of the thrust washer. Accomplishment of this paragraph terminates the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance (AMOC) or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector or Principal Maintenance Inspector, as applicable, who may add comments and then send it to the Manager, Seattle ACO.

(2) With the exception of FAA AMOC letter to Boeing (No. 98–140–437, dated December 9, 1998), AMOC's approved previously in accordance with AD 98–25–52, amendment 39–10957, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 13, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29498 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–114–2–7480; FRL–6904–2]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas: Control of Gasoline Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the EPA, propose to fully approve a State Implementation Plan (SIP) revision submitted by the State of Texas establishing a low-Reid Vapor Pressure (RVP) fuel requirement for gasoline distributed in 95 counties in the eastern and central parts of Texas. Texas developed this fuel requirement to reduce emissions of volatile organic compounds (VOC) as part of the State's strategy to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the Houston and Dallas-Fort Worth nonattainment areas. We are approving Texas' fuel requirements into the SIP because we found that the fuel requirement is in accordance with the requirements of the Clean Air Act (the Act) as amended in 1990 and is necessary for these nonattainment areas to achieve the ozone NAAQS.

DATES: Comments should be received on or before December 20, 2000.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

What Does the State's Low-RVP Regulation Include?

The State's low-RVP regulation requires that gasoline sold within the 95 attainment counties listed in the regulations have a maximum RVP of 7.8 psi. The regulations apply to gasoline sold at gasoline dispensing facilities between June 1 and October 1 of each year, and between May 1 and October 1 of each year for bulk plants, gasoline terminals and gasoline storage vessels.

The 95 central and eastern Texas counties affected by these rules are Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.

How Does the Low-RVP Proposal Relate to Other SIP Activities in the State?

Current planning efforts by the State are directed at three nonattainment areas, Houston-Galveston (HGA), Dallas-Fort Worth (DFW), and Beaumont-Port Arthur (BPA). The attainment demonstration SIPs for two of these areas rely upon the low-RVP fuel to make their demonstrations. The SIPs are:

(1) The Dallas Attainment Demonstration, adopted on April 19, 2000, and submitted on April 25, 2000.

(2) The Houston Attainment Demonstration, proposed by the State on August 9, 2000. It will be submitted to EPA no later than December 2000.

Texas has adopted a Regional SIP to complement these attainment demonstration SIPs for Houston and Dallas, and provide additional emission reductions necessary for these areas to attain the ozone NAAQS. The Texas Regional SIP includes a list of controls that apply in the attainment areas surrounding these nonattainment areas. Specifically, the Texas Regional SIP includes three control programs to reduce emissions of nitrogen oxides (NO_X) and VOC: a regional low-RVP fuel program (the subject of this action), a stationary source program, and a Stage I vapor recovery program.

What Is Proposed?

We are proposing to approve a SIP revision establishing a low-RVP fuel requirement for gasoline sold in the 95 eastern and central counties of Texas. The State's low-RVP program will only apply in the listed attainment counties and will not apply in the designated nonattainment counties in the HGA, DFW, or BPA areas because these areas are already subject to federal fuel controls that are at least as stringent.

What Are the Clean Air Act Requirements?

This action is pursuant to section 110 of the Act. The approval of the State's fuel control measure must also meet the requirements of section 211(c)(4)(C). Under this section, we may approve a state fuel control into a SIP if we find that the control is "necessary" to achieve a NAAQS.

The EPA's August 21, 1997, Guidance on Use of Opt-in to RFG and Low-RVP Requirements in Ozone SIPs gives further guidance on what EPA is likely to consider in making a finding of necessity. The guidance sets out four issues to be analyzed:

1. The quantity of emissions reductions needed to achieve the NAAQS;
2. Other possible control measures and the reductions each would achieve;
3. The explanation for rejecting alternatives as unreasonable or impracticable; and
4. A demonstration that reductions are needed even after implementation of reasonable and practicable alternatives, and that the fuel control will provide some or all or the needed reductions.

In this notice of proposed rulemaking and accompanying Technical Support Document (TSD), we address these issues in a slightly different fashion. Though somewhat differently stated, the 4 items listed for consideration in the guidance are covered by the review done for this submittal. First, we explain the way in which the low-RVP program will help the nonattainment areas achieve the NAAQS. This serves the same purpose as the first item listed in the Guidance. Though we do not discuss the specific amount of reductions needed, this is the basis for satisfying the necessity showing required by the Clean Air Act. Second, we review the reasonableness and practicability of non-fuel control alternatives. This satisfies the second and third items listed in the Guidance and meets the specific requirements of section 211(c)(4)(C). Finally, we show that with implementation of all reasonable and practicable control measures and the regional fuel controls, the Houston and Dallas nonattainment areas may be able to just attain the ozone NAAQS but the ozone design value for these areas is expected to continue to exceed the one hour standard for ozone. This meets item number 4 in the Guidance and rounds off the demonstration that the measure is necessary.

What Did the State Submit?

The State submitted this revision to the SIP by letter from the Governor dated August 16, 1999. This was followed by two technical supplements dated October 13, 1999, and February 11, 2000. The SIP submittal contains Chapter 114, Texas Administrative Code (TAC), as adopted on June 30, 1999, and April 19, 2000, a request for a waiver from federal preemption pursuant to section 211(c)(4)(C) of the Act, and Texas laws providing the authority for the State to adopt and implement revisions to the SIP.

Texas submitted data and analyses to support a finding under section 211(c)(4)(C) that the State's low-RVP requirement is necessary for the DFW and HGA nonattainment areas to achieve the ozone NAAQS. The State has (1) identified the reduction in modeled peak values needed to achieve attainment of the ozone NAAQS; (2) identified all other reasonable and practical control measures; (3) shown that even with the implementation of all reasonable and practicable control measures, the State would need additional emissions reductions for these nonattainment areas to meet the ozone NAAQS (124 ppb) on a timely basis; and (4) demonstrated that the low-RVP requirement would contribute to those additional reductions.

Why Is the State Submitting this SIP for Low-RVP Gasoline in Attainment Areas of Texas?

Lowering the RVP in gasoline reduces VOC emissions. This is primarily through reducing evaporative losses from vehicle fuel tanks, lines, and carburetors as well as losses from gasoline storage and transfer facilities. To a lesser degree there is also a reduction in the VOCs in vehicle exhaust. Without the proposed fuel controls, the 95-county area subject to the proposed fuel control would receive gasoline with an RVP of up to 9.0 psi during the summer months. The State, based on modeling results using EPA's complex model, estimates that the proposed regional low-RVP program will reduce VOC emissions from automobiles by at least 14%.

Ozone and the precursor pollutants that cause ozone can be transported into an area from pollution sources hundreds of miles upwind. In order to address ozone pollution, EPA has traditionally focused its control strategies on reducing emissions within the nonattainment areas. EPA and states, however, have become increasingly aware of the contribution to ozone nonattainment from upwind sources of ozone and its precursors. Modeling and other analyses support the conclusion that lowering VOC emissions through Texas' regional low-RVP program will benefit the DFW and HGA nonattainment areas through one or more of three mechanisms: reducing ozone transport, reducing VOC transport, and reducing the transport of higher RVP gasoline into the nonattainment areas in commuters' vehicles. Each of these mechanisms is discussed in more detail in the TSD for this proposal.

The analysis in the TSD suggests that the low-RVP control in various counties will benefit the nonattainment areas in different ways. For some counties the primary benefit will be the reduction of ozone transport from those counties to the nonattainment counties, while in others the primary benefit will be a reduction in the emissions from commuters' vehicles. A single RVP control throughout the 95-county area captures all the attainment counties contributing to nonattainment in the DFW and HGA areas, and avoids a patchwork of fuel controls. We therefore agree with the State that it is reasonable to adopt a uniform program throughout the 95-county area to allow fuel supplies to be co-mingled in the pipeline, promote trading, and simplify tracking compliance.

Are There Any Reasonable and Practicable Alternatives to the Regional Low-RVP Program?

The State conducted thorough analyses of control measures available to benefit the DFW and HGA nonattainment areas. The HGA and DFW SIPs contain long lists of stationary source controls that are or will be required, expansion and upgrading of the vehicle inspection and maintenance programs, and a host of other measures that must be implemented including a ban on the use of residential lawn and garden equipment before noon during the summer in the HGA nonattainment area and delay of construction activities during daylight savings time in both HGA and DFW nonattainment areas. The attainment SIPs use a weight-of-evidence (WOE) analysis to show that implementation of all reasonable and practicable controls, including the regional low-RVP program, should just bring the DFW area into attainment. Attainment demonstration modeling for all nonattainment areas suggests that even with the implementation of all reasonable and practicable controls, the modeled peak value for the areas may exceed the 1-hour ozone standard and that additional reductions are necessary to achieve the standard.

The Metropolitan Planning Organizations in both the DFW and HGA areas examined several hundred options for potential reductions in each nonattainment area. At this point in time, other non-fuel reductions are either non-existent or considered impracticable. Texas also submitted a long list of non-fuel measures that it considered for implementation outside the nonattainment areas. These measures were also found by the State to be unreasonable or impracticable based primarily on cost and the time required to implement the measures.

Based on the State's analysis of the cost-effectiveness and the time required to implement these measures, we agree that there are no reasonable or practicable non-fuel control measures available to the State to achieve the ozone NAAQS. Compared to all measures outlined in the TSD, low-RVP fuel is the most reasonable and practicable measure available to reduce background ozone levels and curtail the transport of ozone and precursors into the nonattainment areas. The State estimates that the cost for implementing the low-RVP fuel will be less than 0.3 cents per gallon. In addition, the benefits of the low-RVP program will be felt immediately upon implementation.

The TSD includes a detailed review of the controls that the State has already proposed or adopted and the reasonableness and practicability of the non-fuel alternatives that are still available. A more complete description of the State's analysis of the measures considered for the attainment area may also be found in the October 13, 1999 technical supplement submitted by the State.

Is the Regional Low-RVP Fuel Control Program Necessary for Achieving the NAAQS?

The 1996 document, Guidance on Using Modeled Results to Demonstrate Attainment of the Ozone NAAQS, presents two approaches to demonstrating attainment, a statistical approach and a deterministic approach. For the purposes of the attainment demonstrations submitted for the DFW, and proposed for the HGA nonattainment areas, the deterministic approach was used. Though EPA's review is far from complete, CAMx modeling for both attainment demonstrations appears to predict that even with implementation of all reasonable and practicable measures, including the regional low-RVP control, the design values for the nonattainment areas will still be above the 1-hour ozone standard. It should be noted that EPA is working with the State to bring the areas into attainment. EPA will address the design value modeling and attainment demonstration for the various areas in separate actions to be published at future dates.

Preliminary review of attainment demonstration modeling submitted on April 25, 2000, for DFW appears to indicate that with all measures taken into account in the model, including the regional low-RVP program, the modeled peak value for the DFW area remains very close to or in excess of the NAAQS. Therefore, it is apparent that every ton of ozone reduction is necessary to achieve the 1-hour standard including those that result from the other measures adopted and proposed for the 95 attainment counties.

The Houston modeling submitted in November, 1999, showed, after modeling extensive controls including the low-RVP program, an estimated shortfall of 118 tpd of NO_X. The shortfall of NO_X represents additional reductions that the model would require to show a modeled peak ozone value of 124 ppb. While modeling submitted in November, 1999, indicated only a very slight benefit from VOC controls, more recent models which support the proposed attainment demonstration SIP for HGA indicate a clear need for VOC reductions.

Further, Texas performed regional modeling (submitted in April 2000) which demonstrated that the VOC reductions provided by the regional low-RVP control are necessary to reduce ozone in the nonattainment areas. The models predicted that a mixture of NO_X and VOC controls, including the regional low-RVP control, would reduce modeled peak values. Texas proposed another revision to the Houston SIP on August 9, 2000. The new proposal with revised emission estimates has an estimated NO_X shortfall of only 78 tpd. As mentioned above, the modeling in the new proposal shows a greater sensitivity to VOC controls than previous modeling studies.

Does the State Submittal Meet the SIP Approval Requirements Under Section 110?

The Texas Regional SIP submittal, including the regional low-RVP fuel control program, meets the requirements outlined in section 110. The Texas rules for this SIP include adequate enforceability measures.

Texas submitted the fuel portion of the Texas Regional SIP under a Governor's letter dated August 16, 1999. The submittal contains the appropriate hearing actions, a preamble, and the regional low-RVP rules. The State also submitted technical supplements dated October 13, 1999, and February 11, 2000, that provided data on commuter patterns and an analysis of measures considered for the attainment area. The SIP was deemed complete by operation of law on February 16, 2000.

On February 9, 2000, the State proposed revisions to the fuel rules previously adopted in 30 TAC 114. Revisions included strengthening the enforcement provisions. The State adopted these rules on April 5, 2000. Revised chapter 114 rules were submitted under a Governor's letter dated April 25, 2000. The revisions strengthened enforcement provisions that EPA requested during the public comment period for the original submittal.

How Will the Program Be Enforced?

The Texas Natural Resource Conservation Commission will implement the low-RVP rule. Producers, importers, terminals, pipelines, truckers, rail carriers, and retail dispensing outlets are subject to provisions of this rule. Registration, recordkeeping, reporting, and certification requirements are included.

We find that these rules are an acceptable approach for enforcing the low-RVP gasoline program.

Proposed Action By EPA

Texas' regional low-RVP program will provide needed VOC and ozone reductions for the DFW and HGA ozone nonattainment areas. Without the program, the modeled peak ozone values for the nonattainment areas will continue to exceed the 1-hour ozone standard. The State demonstrated that the regional low-RVP fuel control program is necessary to help the DFW and HGA nonattainment areas achieve the 1-hour ozone standard and that no other reasonable or practicable alternatives remain that would bring about timely attainment. We are proposing to approve the Texas Regional Low-RVP Gasoline Program into the Texas SIP under § 110(k)(3) of the CAA as meeting the requirements of § 110(a) and Part D. We are also proposing to find that this SIP revision meets the requirements of section 211(c)(4)(C) of the Act.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Regional Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use Voluntary Consensus Standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 3, 2000.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

[FR Doc. 00–29645 Filed 11–17–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2485; MM Docket No. 00–226; RM–10001]

Radio Broadcasting Services (Fair Bluff, North Carolina, Litchfield Beach, Johnsonville and Olanta, South Carolina)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, at the request of joint petitioners Atlantic Broadcasting Co., Inc., permittee of Station WSIM, Channel 287C3, Fair Bluff, North Carolina, and The Waccamaw Neck Broadcasting Company, licensee of Station WPDT, 286A, Johnsonville, South Carolina, seeks comment on a petition for rule making proposing the reallotment of Channel 287C3 from Fair Bluff, North Carolina, to Litchfield Beach, South Carolina, as the community's first local aural transmission service, and the reallotment of Channel 286A from Johnsonville, South Carolina, to Olanta, South Carolina, as the community's first local aural transmission service. Channel 287C3 can be allotted to Litchfield Beach in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at petitioners' requested site, 0.4 kilometers (0.3 miles) South, at coordinates 33–27–47 NL and 79–06–05 WL. Channel 286A can be allotted to Olanta in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at petitioner's requested site, 4.9 kilometers (3.0 miles) East, at coordinates 33–55–38 NL and 79–52–41 WL. *See* Supplementary Information.

DATES: Comments must be filed on or before December 26, 2000, and reply comments on or before January 10, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties in MM Docket No. 00–215 should serve petitioner, or its counsel or consultant, as follows: Gary S. Smithwick, Smithwick & Belendiuk, P.C., 1990 M Street, N.W., Suite 510,1990 M Street, N.W., Suite 510 Washington, D.C. 20036, (Counsel to Atlantic Broadcasting Co. Inc.), Stephen T. Yelverton, Yelverton Law Firm, 601 Pennsylvania Ave., N.W., Washington, DC 20004 (Counsel to Waccamaw Neck Broadcasting Company).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, Docket No. 00–226, adopted October 25, 2000, and released November 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Petitioners are requested to provide further information to establish that Litchfield Beach and Olanta are communities for allotment purposes. They are also asked to provide information on any public interest benefit other than provision of a first local transmission service which would justify the grant of the reallotment of Channel 286A from Johnsonville to Olanta, as it would result in the removal of the sole local transmission service at Johnsonville.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C 154, 303, 334 and 336.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina is amended by removing Fair Bluff, Channel 287C3.

3. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Johnsonville, Channel 286A and adding Litchfield Beach, Channel 287C3, and Olanta, Channel 286A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–29626 Filed 11–17–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2482; MM Docket No. 00–222, RM–10002; MM Docket No. 00–223, RM–10003; MM Docket No. 00–224, RM–10004; MM Docket No. 00–225, RM–10005]

Radio Broadcasting Services; North English, IA; Pendleton, SC; Hamilton, TX; Munday, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes four new allotments to North English, IA; Pendleton, SC; Hamilton, TX; and Munday, TX. The Commission requests comments on a petition filed by Iowa-Keokuk Radio (Russell Johnson, sole proprietor) proposing the allotment of Channel 246A at North English, Iowa, as the community's first local aural transmission service. Channel 246A can be allotted to North English in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.7 kilometers (4.8 miles) southwest of city reference coordinates. The coordinates for Channel 246A at North English are 41–27–15 North Latitude and 92–07–21 West Longitude. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be filed on or before December 26, 2000, and reply comments on or before January 10, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Russell G. Johnson, Iowa-Keokuk Radio, 1240 Loomis Ave., Des Moines, Iowa 50315 (Petitioner for the North English, IA proposal); H. David Hedrick, P.O. Box 27, 317 Stonegables Ct., Gray, GA 31032 (Petitioner for the Pendleton, SC proposal); Stargazer Broadcasting, Inc., P.O. Box 519, Woodville, TX 759779 (Petitioner for the Hamilton, TX proposal); and Wm. Brett Richardson and Robert Lewis Thompson, Thiemann Aitken & Vohra, L.L.C., 908 King Street, Suite 300, Alexandria, VA 22314 (Counsel for MAREE Communications).

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–222; MM Docket No. 00–223; MM Docket No. 00–224; and MM Docket No. 00–225, adopted October 25, 2000, and released November 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

The Commission requests comments on a petition filed by H. David Hedrick proposing the allotment of Channel 240A at Pendleton, South Carolina, as the community's first local FM aural transmission service. Channel 240A can be allotted to Pendleton in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 240A at Pendleton are 34–38–49 North Latitude and 82–46–37 West Longitude.

The Commission requests comments on a petition filed by Stargazer Broadcasting, Inc. proposing the allotment of Channel 299A at Hamilton, Texas, as the community's second local aural transmission service. Channel 299A can be allotted to Hamilton in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.4 kilometers (7.1 miles) northwest of city reference coordinates. The coordinates for Channel 299A at Hamilton are 31–46–54 North Latitude and 98–12–08 West Longitude.

The Commission requests comments on a petition filed by MAREE Communications proposing the allotment of Channel 270C1 at Munday, Texas, as the community's first local aural transmission service. Channel 270C1 can be allotted to Munday in compliance with the Commission's minimum distance separation requirements with a site restriction of 25 kilometers (15.5 miles) northwest of city reference coordinates. The coordinates for Channel 270C1 at Munday are 33–37–48 North Latitude and 99–46–57 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding North English, Channel 246A.

3. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Pendleton, Channel 240A.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Hamilton, Channel 299A, and Munday, Channel 270C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media bureau.

[FR Doc. 00–29624 Filed 11–17–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2481; MM Docket No. 00–101; RM–9005]

Radio Broadcasting Services; Buckhead and Sparta, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: The Commission denies the request of Barinowski Investment Company to substitute Channel 274C3 for Channel 274A, reallot the channel from Sparta to Buckhead, GA, as its first local aural service, and modify the license of Station WPMA–FM accordingly. *See* 65 FR 37753, June 16, 2000. The Commission found that the proposal would not result in a preferential arrangement of allotments because it would remove the sole local aural service from the more populous community and result in more presently underserved people losing service.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–101, adopted October 25, 2000, and released November 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–29623 Filed 11–17–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AH71

Migratory Bird Permits; Review of Falconry Education Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for comments.

SUMMARY: We are soliciting public comments to help us develop options for regulating falconry education facilities. We have two pending applications for permits to conduct falconry and conservation educational programs with migratory birds pursuant to section 704 of the Migratory Bird Treaty Act of 1918, as amended. Some of the activities outlined in these applications constitute the practice of falconry by instructors and participants. Falconry is specifically regulated under certain Fish and Wildlife Service regulations, and only persons who qualify for falconry permits by meeting minimum requirements may possess raptors (birds of prey) for their use in hunting prey. The applicants' programs feature instructors who maintain falconry permits, but they seek to exempt their participants from meeting minimum requirements and obtaining falconry permits. We are requesting public comments on whether we should deny these permit requests, or whether we should amend the falconry regulations to create additional, and less restrictive, opportunities for the public to participate in falconry.

DATES: Written comments should be submitted by January 19, 2001, to the address below.

ADDRESSES: You may mail or deliver comments to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203. You also may submit comments via the Internet to: *falconry__programs@fws.gov*. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service; (703) 358–1714.

SUPPLEMENTARY INFORMATION: Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation that we have received your message, contact us directly at (703)358–1714.

Background

Falconry is the sport of hunting with trained raptors to take game animals, such as rabbits and squirrels, as defined in 50 CFR 21.3. In 1972, raptors came under the protection of the Migratory Bird Treaty Act, and in 1976 we promulgated regulations for a joint State/Federal falconry program. The regulations set rigorous requirements for entry into the sport, specified raptor housing and equipment standards, and set stringent reporting and marking requirements. Somewhat cautionary and restrictive, the regulations were promulgated at a time when there was considerable concern over the diminished status of many raptor populations. The falconry regulations reflected a sincere attempt to satisfy diverse and often conflicting interests while at the same time providing adequate protection for raptors. In 1989, we amended the regulations to establish simpler, less restrictive rules governing the use of most raptors because their populations were generally increasing, and the number of falconers was relatively small.

Currently, approximately 4,000 persons are permitted to practice falconry in the United States, and 400 persons are permitted to breed raptors in captivity. Persons who want to practice falconry must comply with the falconry regulations in 50 CFR 21.28–29, in addition to complying with State falconry and hunting laws. Persons who want to breed raptors must comply with the raptor propagation regulations in 50 CFR 21.30, in addition to complying with State wildlife propagation laws.

The falconry regulations require individuals to have knowledge, experience, equipment, and raptor housing before we may issue them a falconry permit. Permits are issued in three classes—Apprentice, General, and Master—depending on the applicant's age and experience. A person must have a Federal (and State) falconry permit before they may possess raptors, train them by various handling techniques, and use them in hunting. The regulations also prescribe the species and numbers of raptors that falconers may possess, which vary by the class of permit. We further allow permitted falconers to use the birds in their possession for conservation education and the demonstration of falconry to audiences.

Special Purpose Permits

Two applicants have requested permits issued under Special Purpose (50 CFR 21.27) to possess raptors to use in falconry and conservation educational programs. Because of the wide nature of permits that may be issued under Special Purpose, we determine these permit conditions individually. We have issued numerous Special Purpose permits for conservation education purposes, and the conditions for these permits are largely standardized due to the large numbers of this type. Most of these conservation education permits authorize the possession of raptors for use in programs where birds are displayed to an audience, and the audience participants are not allowed to handle the birds.

We have previously issued three Special Purpose permits for falconry and conservation education facilities, and two of these permits remain active. These active permits are issued to the British School of Falconry (BSF), Manchester, Vermont; and the Falconry and Raptor Education Foundation (FAREF), White Sulphur Springs, West Virginia. In general, we authorized these permittees to possess a specified number of raptors listed in 50 CFR 10.13. This authorization allowed the facilities to have more birds than they could possess under their instructors' individual falconry permits, which allows them to provide falconry opportunities to more participants.

The permits issued to BSF and FAREF require the birds to be captive-bred, and also require the facilities to comply with certain parts in the falconry regulations, including raptor housing, leg-banding for identification, and submission of raptor acquisition report forms. Although we require the instructors at the BSF and FAREF to maintain either General or Master class falconry permits, we do not require participants to obtain their own permits.

The BSF and FAREF programs allow participants without prior experience to handle the birds in various ways. Typically, the instructor first places a raptor on the gloved hand of each participant. The participant then grasps a leash attached to the bird's legs, and releases and recalls the bird using whistles and food rewards. Both facilities also provide raptor conservation educational programs to the public, which may include the limited handling of birds on the gloved hand of several audience members.

The permit issued to the BSF expires on December 31, 2000. The permit issued to the Falconry and Raptor Education Foundation expired on December 31, 1999, but because they submitted a renewal application at least 30 days prior to the expiration date, their permit is still active. Additionally, we have received a new application from New England Falconry, Shutesbury, Massachusetts, for a similar, but expanded, Special Purpose permit.

The new applicant requests a permit to possess captive-bred Harris hawks, prairie falcons, and peregrine falcons for the purpose of educating the public about falconry, raptors, conservation and the environment, through the experience of falconry. The applicant requests to provide a variety of educational programs, including programs similar to those provided by the BSF and FAREF, which allow the handling of birds. In addition, the applicant requests authority to provide hunting programs, wherein the participant would hold a lofting pole (T-shaped pole with perch on top), and the instructor would place the raptor on the pole. The bird, although trained to respond to handlers, would be physically unrestrained, and could fly at prey flushed by dogs. If a kill is made, the instructor would remove the bird from the prey, and return it to the lofting pole held by the participant. Previously, we had expressly prohibited the BSF from conducting similar hunting programs after determining that the participants were clearly practicing falconry as defined in 50 CFR 21.3.

Determination of the Scope of Falconry

Because we have received public comments regarding these permits, we reviewed the falconry regulations and the definitions provided in 50 CFR 10.12 and 21.3. We have determined that participants at the BSF and FAREF are practicing falconry as defined and regulated under 50 CFR 21.28–29 and therefore must fully comply with these regulations. In arriving at this determination, we concluded that the falconry regulations clearly encompass all activities relating to the sport of falconry, including the housing, handling, and training of raptors, in addition to their use in hunting.

We now need to determine whether to continue to allow the operation of falconry educational facilities, and, if so, with what requirements. In order to allow their continuation, we must either impose a handling restriction for participants on these Special Purpose permits (similar to most other educational permits), or expand the falconry regulations by amendment.

Public Comments Solicited

Interested persons are invited to submit comments on continuing to allow the operation of falconry education facilities in the United States. We request suggestions, materials, recommendations, and arguments. We invite comments from the public; permitted falconry facilities; falconry organizations; environmental organizations; corporations; local, State, Tribal and Federal agencies; and any other interested party. Please ensure that any comments submitted in response to this request for comments pertain to issues presented in this notice.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

Comments are particularly sought concerning the following issues:

(1) Whether we should amend the falconry regulations to allow the operation of falconry education facilities to include active participant handling of raptors.

(2) Whether participants at hands-on falconry education facilities should be required to obtain individual permits, and what type(s) of permit classes should be created for participants, with requirements such as age, examinations, and experience.

(3) What type(s) of permitting requirements should be created for these facilities, and the requirements for obtaining these permits, such as instructor qualification, raptor equipment and housing, and commercial status of the facilities (profit vs. nonprofit).

(4) What program restrictions should be placed on falconry education facilities, such as limiting participants to raptor handling by release and recall only, or whether participants should participate in hunting activities, and how.

(5) What program requirements should be placed on falconry education facilities, such as requiring a specified core curriculum, or requiring that conservation education be included.

(6) Which raptor species should be used, and/or whether species used at falconry education facilities should be limited to nonindigenous species, which do not require MBTA permits.

(7) What benefits are obtained by participants in falconry education facilities, including whether participants have easier access to explore the sport of falconry, and whether participants have used their experience to better qualify for an Apprentice class permit.

(8) Whether participants gain enough knowledge to properly handle raptors without harming the birds or themselves.

(9) Whether more people will apply for falconry permits after attending falconry education facilities, and whether suppliers of captive-bred raptors (regulated under 50 CFR 21.30) could provide for an increased demand for birds, or whether impacts to wild stock may result.

(10) Whether the falconry education facilities generally contribute to awareness of the resource by teaching more people about the conservation of raptors.

(11) How the economies of local communities would be impacted by the co-location of a falconry education facility.

(12) How raptor propagators may be affected economically from changes in sales of captive-bred birds.

(13) How State wildlife agencies would be affected, including whether administrative workloads would increase, whether amended regulations would conflict with State laws, and whether States would have greater or reduced flexibility in administering the joint permitting system.

We welcome comments on the issues described above and encourage the submission of new options or any suggestions.

Paperwork Reduction Act

This request for comments does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collection associated with migratory bird permit programs is covered by an existing OMB approval No. 1018–0022, which expires on 02/28/2001. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

Authorship: The primary author of this notice is Diane Pence, Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01585.

Authority: The authority for this notice is the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703–712).

Dated: November 9, 2000.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 00–29562 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–113–1]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of public meeting and request for suggested agenda topics.

SUMMARY: We are issuing this notice to inform producers and users of veterinary biological products, and other interested individuals, that we will be holding our tenth annual public meeting to discuss regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. We are in the process of planning the meeting agenda and are requesting suggestions for topics of general interest to producers and other interested individuals.

DATES: The public meeting will be held on Tuesday and Wednesday, April 10 and 11, 2001, from 8 a.m. to approximately 5 p.m. each day.

ADDRESSES: The public meeting will be held in the Scheman Building at the Iowa State Center, Iowa State University, Ames, IA.

FOR FURTHER INFORMATION CONTACT: For further information on agenda topics, contact Dr. Richard E. Hill, Jr., Director, Center for Veterinary Biologics, Veterinary Services, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785, fax (515) 232–7120, or e-mail CVB@usda.gov. For registration information, contact Ms. Kathy Clark at the same address and fax number; phone (515) 232–5785 extension 128; or e-mail Kathryn.K.Clark@usda.gov.

SUPPLEMENTARY INFORMATION: Since 1989, the Animal and Plant Health Inspection Service (APHIS) has held nine public meetings in Ames, IA, on veterinary biologics. The meetings provide an opportunity for the exchange of information between APHIS representatives, producers and users of veterinary biological products, and other interested individuals. APHIS is in the process of planning the agenda for the tenth annual meeting, which will be held on April 10 and 11, 2001.

The agenda for the meeting is not yet complete. Topics that have been suggested include: (1) Labeling; (2) duration of immunity/efficacy; (3) delivery systems; (4) risk assessment; (5) target animal safety; (6) animal care; and (7) international harmonization. Before finalizing the agenda, APHIS is seeking suggestions for additional meeting topics from the interested public.

We would also like to invite interested individuals to use this meeting to present their ideas and suggestions concerning the licensing, manufacturing, testing, and distribution of veterinary biologics.

Please submit suggested meeting topics (for both breakout and general sessions) and proposed presentation titles to the person listed under **FOR FURTHER INFORMATION CONTACT** on or before December 15, 2000. For proposed presentations, please include the name(s) of the presenter(s) and the approximate amount of time that will be needed for each presentation.

After the agenda is finalized, APHIS will announce the schedule in the **Federal Register**.

Done in Washington, DC, this 14th day of November 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–29614 Filed 11–17–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval To Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request OMB approval for a new information collection from Summer Food Service Program (SFSP) state agencies, sponsoring organizations, former sponsoring organizations, site directors, school food authorities, and from parents or guardians of elementary-school-age children who live near SFSP sites.

DATES: Comments on this notice must be received by January 19, 2001 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Requests for additional information should be directed to Jane Allshouse, Diet, Safety, and Health Economics Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street, NW., Washington, DC 20036–5831, tel. 202–694–5449. Submit electronic comments to *allshous@ers.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for ERS collection of information for an SFSP Implementation Study.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for new data collection from SFSP state agencies, sponsoring organizations, former sponsors, site directors, School Food Authorities near SFSP sites, and parents or guardians of elementary-school-age children who live near SFSP sites.

Abstract: USDA needs to obtain detailed information on SFSP operations and administration and to learn more about the factors that contribute to the large gap in participation levels between the National School Lunch Program (NSLP) and the SFSP. Such knowledge will help the USDA determine whether future changes in SFSP policy are warranted. Currently, very little administrative data are collected at the national level on the operations of this program. Furthermore, the last national study of the program collected data in 1986.

To evaluate how program operations contribute to participation levels and the nutritional benefits of SFSP participation, and to study the characteristics of participants and eligible nonparticipants and the factors affecting participation, many kinds of information must be obtained. Data for this study will be collected from five separate, but related, constituencies:

- Program staff at the state agency or USDA Food and Nutrition Service (FNS) regional office.
- Current SFSP sponsors, who may be School Food Authorities, government agencies, public or nonprofit residential camps, National Youth Sports Camps, or other nonprofit organizations.
- Former SFSP sponsors who recently left the program.
- Site directors (in conjunction with site visits to observe operations, meal content, and the extent of plate waste).
- Parents or guardians of participating and eligible nonparticipating children of elementary school age who live near SFSP sites.

The data will be collected on a one-time basis in 2001, to provide USDA and Congress with information prior to the next reauthorization of the SFSP.

The information collected will help USDA to describe program operations at all administrative levels, and to identify possible barriers to program participation by low-income children.

Obtaining sample frame information for the study will require data collection at several stages. State agencies will be contacted several times for lists of sponsors and their sites. Some sites operating in the prior year will be selected as locations for the participant-nonparticipant study, and School Food Authorities near these sites will be contacted to request lists of students who receive free or reduced-price school lunches at the elementary schools closest to the selected sites. These school lists will provide the sample frame for the parent survey. Sponsors selected for the sample will be contacted to provide updated site lists in early summer.

State data collection will involve telephone interviews with state administrators from all 54 states and territories that offer the SFSP (or, in a few states, with the FNS regional office staff who administer the program).[1] In addition, states will be asked to provide administrative data on the sponsors and sites sampled for detailed study. At substate levels, samples will be selected to provide estimates with a 10 percent coefficient of variation or less, when weighted by the number of participants served at each level. All samples will be nationally representative; they will be selected with probability proportional to size, where the measure of size will be average daily attendance at SFSP sites administered. A national sample of 120 sponsors will have the option of completing a self-administered mail survey or a telephone interview. One hundred former sponsors will be interviewed by telephone to provide information on why sponsors leave the SFSP. Site directors at 150 sites will be interviewed in person, and their sites will be observed by trained site visitors. Finally, a sample of 1,200 parents or guardians of elementary-school-age children eligible to participate at nearby SFSP sites will be interviewed by telephone, using computer-assisted telephone interviewing (CATI).

Respondent burden will be minimized for the parent survey by using CATI methods to streamline the interviewing process, and by carefully training interviewing staff on survey procedures. Burden will be minimized at other levels by relying on administrative records for variables that are consistently available across states. In addition, states, sponsors, and School Food Authorities will be encouraged to provide lists or other administrative records in whatever form is most convenient to them.

Responses will be voluntary and confidential, except for aggregate data that are already published from administrative records. To ensure confidentiality, data will be reported only in tabular form, with analysis cells large enough to prevent identification of individual agencies or families. In addition, identifying information will be kept only by the contractor and will be released only to the contractor's internal staff who need it directly for the survey and analysis operations.

Estimate of Burden: To develop the sample frame and obtain administrative records, we estimate the burden to be as follows:

State administrators—40 hours each (Sponsor and site lists and administrative records will only be obtained for the 50 states and the District of Columbia.)
Sponsors—4 hours each
School Food Authorities—8 hours each

To complete the interviews, the estimated burden is:

State administrators—1 hour to prepare for the interview, 45 minutes to complete the interview[2]
Sponsors—1 hour to complete either the self-administered questionnaire or the telephone interview, 30 minutes to look up information for the interview, plus a 15-minute phone call to inform sponsor about site visits
Former Sponsors—30 minutes each
Site Directors—30 minutes for the interview, plus 30 minutes for explanation and discussion of the site visit, including the meal and plate waste observation
Eligible Parents or Guardians—25 minutes each
Ineligible Parents or Guardians—2 minutes each for screening questions[3]

Respondents: Respondents include federal, state, and local government staff, school district staff, and staff from local nonprofit organizations that sponsor the SFSP or have in the recent past, and private citizens.

Estimated Number of Respondents: 1,655 in total: 55 state administrators, 120 sponsors, 30 school food authorities, 100 former sponsors, 150 site directors, 1,200 parents or guardians of elementary-school-age children.

Estimated Total Annual Burden on Respondents: Total of 3768 hours.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address stated in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Dated: October 30, 2000.

Betsey Kuhn,

Director, Food and Rural Economics Division.

[FR Doc. 00–29563 Filed 11–17–00; 8:45 am]

BILLING CODE 3410-18-P

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[1] The FNS regional office administers the program in Michigan and Virginia, and divides responsibilities in New York with the New York Department of Education. Thus, there will be two state interviews in New York, or 55 total.

[2] There will be two state interviews for New York, as noted above.

[3] Parents or guardians will be ineligible if their children are away for the summer, or if the family has moved out of the area near the SFSP site.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on December 5, 2000, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Committee organization.
3. Pending business.
4. Special reports.
5. New initiatives.
6. Presentation of papers or comments by the public.
7. Summary and actions.

Closed Session

8. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the committee suggests that presenters forward the public presentation materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 11, 1999, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: November 14, 2000.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 00–29597 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1125]

Approval for Expansion of Subzone 61D Merck, Sharp & Dohme Quimica De Puerto Rico, Inc. Plant Arecibo, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Puerto Rico Exports Development Corporation, grantee of FTZ 61, has requested authority on behalf of Merck, Sharp & Dohme Quimica de Puerto Rico, Inc. (Merck), to add capacity and to expand the scope of manufacturing authority under zone procedures within Subzone 61D at the Merck plant in Arecibo, Puerto Rico (FTZ Docket 49–2000, filed 8/10/00);

Whereas, notice inviting public comment has been given in the **Federal Register** (65 FR 51293, 8/23/00);

Whereas, pursuant to 15 CFR 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on manufacturing authority when the proposed activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances (15 CFR 400.32(b)(1)(i)); and,

Whereas, the FTZ staff has reviewed the proposal, taking into account the criteria of 15 CFR 400.31 and 400.32, and the Executive Secretary has recommended approval;

Now, Therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to 15 CFR 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the FTZ Act and the Board's regulations, including 15 CFR 400.28.

Signed at Washington, DC, this 9th day of November 2000.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–29633 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1126]

Approval for Expansion of Subzone 61E Merck, Sharp & Dohme Quimica De Puerto Rico, Inc. Plant Barceloneta, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Puerto Rico Exports Development Corporation, grantee of FTZ 61, has requested authority on behalf of Merck, Sharp & Dohme Quimica de Puerto Rico, Inc. (Merck), to add capacity and to expand the scope of manufacturing authority under zone procedures within Subzone 61E at the Merck plant in Barceloneta, Puerto Rico (FTZ Docket 50–2000, filed 8/10/00);

Whereas, notice inviting public comment has been given in the **Federal Register** (65 FR 51293, 8/23/00);

Whereas, pursuant to 15 CFR 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on manufacturing authority when the proposed activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances (15 CFR 400.32(b)(1)(i)); and,

Whereas, the FTZ staff has reviewed the proposal, taking into account the criteria of 15 CFR 400.31, and the Executive Secretary has recommended approval;

Now, Therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to 15 CFR 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the FTZ Act and the Board's regulations, including 15 CFR 400.28.

Signed at Washington, DC, this 9th day of November 2000.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–29634 Filed 11–17–00; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed-circumstances administrative review of the antidumping duty order on brake rotors from the People's Republic of China. Based on this information, we preliminarily determine that Laizhou Auto Brake Equipment Co., Ltd. is the successor-in-interest to Laizhou Auto Brake Equipments Factory for purposes of determining antidumping liability. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 20, 2000.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR Part 351 (April 2000).

Background

On April 17, 1997, the Department published in the **Federal Register** the antidumping duty order on brake rotors from the People's Republic of China ("PRC") (62 FR 18740). On September 29, 2000, Laizhou Auto Brake Equipment Co., Ltd. ("LABEC") submitted information and documentation in support of its claim that it is the successor-in-interest to Laizhou Auto Brake Equipment Factory ("LABEF") and requested that the Department conduct a changed-circumstances review to determine whether LABEC should receive the same antidumping duty treatment as is accorded to LABEF with respect to the subject merchandise.

Scope of Review

The products covered by this review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans, recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those rotors which have undergone some drilling and on which the surface is not entirely smooth. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles and do not contain in the casting a logo of an original equipment manufacturer ("OEM") which produces vehicles sold in the United States (e.g., General Motors, Ford, Chrysler, Honda, Toyota, and Volvo). Brake rotors covered in this review are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron which contain a steel plate but otherwise meet the above criteria. Excluded from the scope of the review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Separate Rates

In order to determine whether to initiate a changed-circumstances review with respect to LABEC, the Department as a matter of practice first must conduct a separate rates analysis of the company. In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate.

Based on information contained in its September 29, 2000, submission, LABEC is registered in the People's Republic of China ("PRC") as a limited liability company owned by private individuals. Thus, a separate rates analysis is necessary to determine whether LABEC is independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* ("*Bicycles*") 61 FR 19026 (April 30, 1996)).

To establish whether a firm is sufficiently independent from government control, and therefore entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

LABEC has placed on the administrative record documentation to demonstrate absence of *de jure* governmental control, including the 1994 "Foreign Trade Law of the People's Republic of China," and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations," promulgated on June 3, 1988.

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of stock companies including limited liability companies. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* ("*Furfuryl Alcohol*") 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China* 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to LABEC.

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide* and *Furfuryl Alcohol*.

LABEC asserted the following: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, statements contained in LABEC's September 29, 2000, submission indicate that the company does not coordinate its prices with other exporters. This information supports a preliminary finding that there is *de facto* absence of governmental control of the export functions of LABEC. *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review*, 62 FR 55215 (October 23, 1997). Consequently, we have preliminarily determined that LABEC has met the criteria for the application of a separate rate.

Initiation and Preliminary Results of the Review

In its September 29, 2000, submission, LABEF advised the Department that, effective January 2000, its owners changed the name of the company to LABEC. The company's name change resulted when two of the original five owners sold their shares in the company and the remaining three original owners then changed the registration of the company from a collectively-owned company to a limited liability company with the Laizhou Industrial and Commercial Administration Bureau ("LICAB"). In its submission, LABEF states that all personnel, operations, and facilities remain essentially unchanged as a result of changing the name of the company to LABEC.

Thus, in accordance with section 751(b) of the Act, the Department is initiating a changed-circumstances review to determine whether LABEC is the successor-in-interest to LABEF for purposes of determining antidumping duty liability with respect to the subject merchandise. In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992). While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review,* 59 FR 6944 (February 14, 1994); *Canadian Brass, and Fresh and Chilled Atlantic Salmon from Norway: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review,* 63 FR 50880 (September 23, 1998). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

We preliminarily determine that LABEC is the successor-in-interest to LABEF, following LABEF's name change to LABEC and its change in company registration with LICAB as a result of decisions made by LABEF's original owners. LABEF has submitted documentation and statements in support of its claim that changing its name to LABEC has resulted in no significant changes in either production facilities, supplier relationships, customer base, or management. This documentation consisted of: (1) a letter to LICAB requesting its name to be changed to LABEC; (2) a letter from LICAB granting LABEF's proposed name change to LABEC; and (3) LABEC's business license issued by LICAB. Because LABEC has presented evidence to establish a *prima facie* case of its successorship status, we find it appropriate to issue the preliminary results in combination with the notice of initiation in accordance with 19 CFR 351.221(c)(3)(ii).

Thus, we preliminarily determine that LABEC should receive the same antidumping duty treatment with respect to brake rotors as the former LABEF. If these preliminary results are adopted in our final results of this changed-circumstances review, we will instruct the Customs Service to suspend shipments of subject merchandise made by LABEC at LABEF's cash deposit rate (*i.e.*, zero percent). The shipments of subject merchandise to be suspended are those which are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this changed-circumstances review.

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 50-days after the date of publication of this notice, or the first workday thereafter. Case briefs from interested parties may be submitted not later than 57 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in those comments, may be filed not later than 64 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed-circumstances review, including the results of its analysis of issues raised in any written comments, within 270 days after the date of this initiation or within 80 days if all parties agree to our preliminary results.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: November 13, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–29629 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Cut-to-Length Carbon Steel Plate From Romania; Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of the antidumping duty administrative review for the period August 1, 1999 through July 31, 2000.

SUMMARY: On October 2, 2000, in response to a request made by Bethlehem Steel Corporation and U.S. Steel Group, a unit of USX Corporation (collectively, petitioners), the Department of Commerce (the Department) published a notice of initiation of antidumping duty administrative review of cut-to-length carbon steel plate from Romania, for the period August 1, 1999 through July 31, 2000. Because the petitioners have withdrawn the only request for review, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATE: November 20, 2000.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2924 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

Background

On August 31, 2000, petitioners requested that the Department conduct an administrative review for the period August 1, 1999 through July 31, 2000 of Sidex, S.A., a producer of the subject merchandise, Metalexportimport, S.A., and Windmill International PTE, Ltd., exporters of the subject merchandise. There were no other requests for review. On October 2, 2000, the Department published a notice of initiation of antidumping duty administrative review of cut-to-length carbon steel plate from Romania, in accordance with 19 CFR 351.221(c)(1)(i). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 65 FR 58733 (October 2, 2000). On October 3, 2000, petitioners withdrew their request for review.

Rescission of Review

Pursuant to Departmental regulations, the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). The petitioners' withdrawal of their request for review was within the 90-day time limit; accordingly, we are rescinding the administrative review for the period August 1, 1999 through July 31, 2000, and will issue appropriate assessment instructions to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation. This determination is issued and published in accordance with 19 CFR 351.213(d)(4) and sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: November 9, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 00–29631 Filed 11–20–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Notice of Extension of the Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 20, 2000.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Samantha Denenberg, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2243 and (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 1999).

Background

On May 1, 2000, the Department published a notice of initiation of the administrative review of the antidumping duty order on Certain Welded Carbon Steel Pipes and Tubes from Thailand, covering the period March 1, 1999 through February 29, 2000 (65 FR 25303). The preliminary results are currently due no later than December 1, 2000.

Extension of Time Limit for Preliminary Results

Because of the complex issues enumerated in the Memorandum from Barbara E. Tillman to Joseph A. Spetrini, *Extension of Time Limit for the Preliminary Results of Administrative Review of Certain Welded Carbon Steel Pipes & Tubes from Thailand,* dated November 6, 2000, and on file in the Central Records Unit (CRU) of the Main Commerce Building, Room B–099, we find that it is not practicable to complete this review by the scheduled deadline. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the preliminary results of review by 120 days (i.e., until March 31, 2001).

Dated: November 6, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–29630 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Emory University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 00–027. *Applicant:* Emory University, Atlanta, GA 30322. *Instrument:* Slice Physiology Setup. *Manufacturer:* Luigs and Neumann, Germany. *Intended Use:* See notice at 65 FR 58046, September 27, 2000. *Reasons:* The foreign instrument provides superposition of recorded fluorescent images with positional information from a microscope for precise positioning of tissue structures in the field of interest in the microscope. *Advice received from:* National Institutes of Health, October 30, 2000.

Docket Number: 00–031. *Applicant:* University of Georgia, Athens, GA 30602. *Instrument:* (Two) Plant Growth Chambers, Model GC8–2H. *Manufacturer:* Enconair Ecological Chambers, Canada. *Intended Use:* See notice at 65 FR 59175, October 4, 2000. *Reasons:* The foreign instrument provides: (1) Capability to diagnose malfunction of chamber via telephone modem connection and (2) automatic notification of laboratory personnel of chamber malfunction by factor monitoring using synthesized voice messages. *Advice received from:* National Institutes of Health, October 30, 2000.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument. We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 00–29632 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 96–A0005."

Spirit Index, Ltd. original Certificate was issued on November 15, 1996 (61 FR 59217, November 21, 1996).

A summary of the application for an amendment follows.

Summary of the Application

Applicant: Spirit Index, Ltd., 342 White Horse Pike, Clementon, New Jersey, 08021–4345.

Contact: Thomas P. Kaczur, Vice President, Telephone: (800) 581–1002.

Application No.: 96–A0005.

Date Deemed Submitted: November 7, 2000.

Proposed Amendment: Spirit Index, Ltd. seeks to amend its Certificate to change the name of the Certificate holder from Spirit Index, Ltd. originally located at 342 White Horse Pike to Thomas P. Kaczur at 259 Rockaway Street, Islip Terrace, New York 11752–1104.

Dated: November 13, 2000.

Morton Schnabel,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 00–29612 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111500E]

NOAA's Teacher-At-Sea Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 19, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judy Sohl, OMAO, MOP1, 1801 Fairview Ave East, Seattle WA 98102-3767 (phone 206–553–2633).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA provides educators an opportunity to gain first-hand experience with field research activities by allowing them to spend up to three weeks at sea on a NOAA research vessel. Applications are necessary to select participants, and educators participating on a cruise must submit a report detailing their experiences and resulting ideas for classroom activities.

II. Method of Collection

Paper forms or reports are submitted. The forms are available over the Internet.

III. Data

OMB Number: 0648–0283.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Individuals (teachers, educators).

Estimated Number of Respondents: 375.

Estimated Time Per Response: 1.25 hours for an application; 15 minutes for a recommendation; and 2 hours for a follow-up report.

Estimated Total Annual Burden Hours: 309.

Estimated Total Annual Cost to Public: $536.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 14, 2000

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–29641 Filed 11–17–00; 8:45 am]

BILLING CODE 3510-12-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111300D]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Reef Fish Stock Assessment Panel (RFSAP).

DATES: The meeting will begin on Monday, December 4, 2000, at 9 a.m. through Friday, December 8, 2000, concluding at 12 p.m.

ADDRESSES: The meeting will be held at the National Marine Fisheries Service Southeast Fisheries Science Center (SEFSC), 75 Virginia Beach Drive, Miami, Florida.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone 813–228–2815.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The RFSAP is composed of biologists who are trained in the specialized field of population dynamics. They advise the Council on the status of stocks and, when necessary, recommend a level of allowable biological catch (ABC) needed to prevent overfishing, or to effect a recovery of an overfished stock. They may also recommend catch restrictions needed to attain management goals.

The RFSAP will convene to review sensitivity analyses of the 1999 red grouper stock assessment which was conducted by the NMFS at the request of the RFSAP, and recommend a range of ABC for 2001. The analyses were requested by the RFSAP at its previous meeting in August 2000 to examine the sensitivity of stock assessment results to the inclusion or exclusion of older, and possibly questionable, landings data provided by Cuba for years prior to 1976; the assumed level of release mortality of undersized fish; and the shape of the red grouper stock-recruitment relationship. NMFS has completed the analyses and declared the Gulf of Mexico stock of red grouper to be overfished, based on the 1999 stock assessment, and the results of the additional analyses. However, a peer review of the analyses has not yet been conducted by the RFSAP. The severity of the overfished condition, and the ABC range needed to effect a recovery also have yet to be determined.

Pending completion by NMFS of additional analyses requested by the RFSAP of the 1998 vermilion snapper assessment and 2000 assessment update, the RFSAP will review these analyses and may recommend a range of ABC for 2001 to stop overfishing from occurring in the vermilion snapper fishery. Some model scenarios from the 1998 stock assessment suggested that the stock was being fished at a rate that could result in it becoming overfished. It was, therefore, classified by NMFS as not overfished butapproaching an overfished condition. The analyses requested by the RFSAP were to examine the robustness and relationship of the vermilion snapper assessment tuning indices to changes in the directed fishery for red snapper.

The RFSAP may also review the results of additional red snapper recovery projections conducted by NMFS at the request of the Council.

These additional projections are based on assumptions of juvenile red snapper shrimp trawl bycatch mortality and natural mortality suggested by an outside biologist which differ from the assumptions used by NMFS. The outside biologist has proposed that the shrimp trawl bycatch mortality is lower, and the natural mortality is higher, than those used in the NMFS red snapper stock assessments. The results of these analyses will initially be presented by NMFS at the November 13–17, 2000, Council meeting in Biloxi, Mississippi, and may subsequently be reviewed by the RFSAP if requested by the Council. The analyses must be peer reviewed by the RFSAP before they can be used as a basis for changing the red snapper total allowable catch.

Although non-emergency issues not on the agendas may come before the RFSAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the RFSAP will be restricted to those issues specifically identified in theagendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: November 14, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–29637 Filed 11–17–00; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111500A]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council's Joint Dogfish Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, December 7, 2000, from 10 a.m. – 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton International Hotel, BWI Airport, 7032 Elm Road, Baltimore, MD; telephone 410–859–3300.

Council Address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904. New England Fishery Management Council, 50 Water Street, The Tannery — Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone 302–674–2331, ext. 19, or Paul Howard, Executive Director, New England Fishery Management Council; telephone 978–465–0492.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to develop recommendations to the Mid-Atlantic and New England Fishery Management Councils for management measures for the spiny dogfish fishery for the 2001–2002 fishing year based on recommendations of the Spiny Dogfish Monitoring Committee.

Although non-emergency issues not contained in this notice may come before these Councils for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at 302–674–2331 at least 5 days prior to the meeting date.

Dated: November 15, 2000

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–29640 Filed 11–17–00; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103000C]

Marine Mammals; File No. 821–1588

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Texas A&M University, Department of Marine Biology, 5007 Avenue U, Galveston, TX 776551, (Principal Investigator: Dr. Randall W. Davis), has applied in due form for a permit to take marine mammals for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before December 20, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312);and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson and Simona Roberts, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–227).

The application has three different projects: PROJECT I. — Hunting Behavior and Energics of Weddell Seals: Up to 40 Weddell seals (*Leptonychotes weddellii*) will be captured, tagged, handled, annually. The study will investigate the behavioral and energetic adaptations that enable Weddell seals to forage in the Antarctic fast-ice environment. Hypotheses on general foraging strategies, searching behavior, searching mechanics, modes of swimming, metabolic costs of foraging and foraging efficiency for different environmental conditions and prey type will be tested. Activities will occur in Antarctica.

PROJECT II — Stock Assessment: Up to 28 species of cetaceans will be taken by photo-id/photogrammery, behavioral observation, biopsy sampling and satellite tagging. The goals of this research are to study cetacean behavior through direct observation and by attaching SLTDRs and video camera/data recorders to certain species.

PROJECT III — Physiological Adaptations and Genetics Using Tissues of Marine Mammals: Import/export specimen materials from South Africa, Canada, and other locations as specimens may become available. This study of diving adaptations of marine mammals muscle, skeletal material, and other related samples will be obtained from South Africa, Canada, and possibly other locations.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 7, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–29638 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110300C]

Marine Mammals; File No. 731–1509–01

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Robin Baird, Ph.D., 2 Supanee Court, French's Road, Cambridge CB4 3LB, UNITED KINGDOM, has requested an amendment to Scientific Research Permit No. 731–1509–01.

DATES: Written or telefaxed comments must be received on or before December 20, 2000.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6426);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802–4213, (562/980–4021); and

Regional Administrator, Alaska Region, Federal Building, Room 461, 709 West 9th Street, Juneau, Alaska 99802, (907/586–7235).

Comments may also be submitted by facsimile at 301/713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 731–1509–01, issued on November 24, 1999 (64 FR 67563–67564) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No.731–1509–01 authorizes the applicant to conduct radio tagging via suction-cup attachment, photo-identification, and behavioral observations of species of cetaceans in the waters of Washington, Southeast Alaska, Oregon, California, Hawaii, and the Mediterranean and Ligurian Seas in order to study diving behavior of the subject cetacean species. The authority of this permit expires on July 31, 2004.

The applicant is now forwarding three requests. (1) Increase suction cup tagging takes of Humpback whales (*Megaptera novaeangliae*) in Hawaii from 15 to 35 annually. (2) Increase harassment takes incidental to suction cup tagging of Humpback whales (*Megaptera novaeangliae*) in Hawaii from 25 to 50 annu Globicephala macrorhynchus ally. (3) Allow for biopsy sampling of cetacean species in the following waters:

(a) Mediterranean and Ligurian Seas- 30 takes for each species of Cuvier's beaked whale (*Ziphius cavirostris*), Risso's dolphin (*Grampus griseus*), Short-finned pilot whale (*Globicephala macrorhynchus*),Striped dolphin (*Stenella coeruleoalba*); 15 takes for Fin whales (*Balaenoptera physalus*); and 45 takes for Sperm whales (*Physeter macrocephalus*).

(b) Hawaii- 60 takes for each species of Killer whale (*Orcinus orca*), Short-finned pilot whale (*Globicephala macrorhynchus*), Melon-headed whale (*Peponocephala electra*), False killer whale (*Pseudorca crassidens*), Pygmy killer whale (*Feresa attenuata*), Spinner dolphin (*Stenella longirostris*), Pantropical spotted dolphin (Stenella attenuata), Striped dolphin (*Stenella coeruleoalba*), Risso's dolphin (*Grampus griseus*), Rough-toothed dolphin (*Steno bredanensis*), Bottlenose dolphin (*Tursiops truncatus*), Dwarf sperm whale (*Kogia simus*), Pygmy sperm whale (*Kogia breviceps*), Bottlenose whale (*Hyperoodon sp.*), Baird's beaked whale (*Berardius bairdii*), Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale (*Mesoplodon densirostris*), Bryde's whale (*Balaenoptera edeni*); and 45 takes for each species of Sperm whale (*Physeter macrocephalus*), Sei whale (*Balaenoptera borealis*), Humpback whale (*Megaptera novaeangliae*), Fin whale (*Balaenoptera physalus*), Blue whale (*Balaenoptera musculus*), and Northern right whale (*Eubalaena glacialis*).

(c) California, Oregon, Washington and Alaska- 60 takes for each species of Killer whale (*Orcinus orca*), Short-finned pilot whale (*Globcephala macrorhynchus*), Melon-headed whale (*Peponocephala electra*), False killer whale (*Pseudorca crassidens*), Pygmy killer whale (*Feresa attenuata*), Spinner dolphin (*Stenella longirostris*), Pantropical spotted dolphin (*Stenella attenuata*), Striped dolphin (*Stenella coeruleoalba*), Long-beaked common dolphin (*Delphinus capensis*), Short-beaked common dolphin (*Delphinus delphis*), Risso's dolphin (*Grampus griseus*), Northern right whale dolphin (*Lissodelphis borealis*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Rough-toothed dolphin (*Steno bredanensis*), Bottlenose dolphin (*Tursiops truncatus*), Dall's porpoise (*Phocoenoides dalli*), Harbor porpoise (*Phocoena phocoena*), Dwarf sperm whale (*Kogia simus*), Pygmy sperm whale (*Kogia breviceps*), Bottlenose whale (*Hyperoodon sp.*), Baird's beaked whale (*Berardius bairdii*), Cuvier's beaked whale (*Ziphius cavirostris*), Hubbs' beaked whale (*Mesoplodon carlhubbsi*), Stejneger's beaked whale (*Mesoplodon stejnegeri*), Ginkgo-toothed whale (*Mesoplodon ginkgodens*), Blainville's beaked whale (*Mesoplodon densirostris*), Hector's beaked whale (*Mesoplodon hectori*), Gray whale (*Eschrichtius robustus*); and 45 takes for each species of Sei whale (*Balaenoptera borealis*), Humpback whale (*Megaptera novaeangliae*), Fin whale (*Balaenoptera physalus*), Blue whale (*Balaenoptera musculus*), and Northern right whale (*Eubalaena glacialis*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Dated: November 15, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–29639 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

November 14, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Memorandum of Understanding dated February 17, 2000 between the Governments of the United States and Belarus establishes a limit for the period January 1, 2001 through December 31, 2001.

This limit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of glass fiber fabric products in Category 622, produced or manufactured in Belarus and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of 12,190,000 square meters of which not more than 1,060,000 square meters shall be in Category 622–L.[1]

Products in the above categories exported during 2000 shall be charged to the applicable category limit for that year (see directives dated March 16, 2000 and April 7, 2000) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Belarus.

This limit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–29566 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DR–F

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[1] Category 622–L: only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

November 14, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Korea and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
200–223, 224–V[1], 224–O[2], 225–227, 300–326, 360–363, 369pt.[3], 400–414, 464, 469pt.[4], 600–629, 666, 669–P[5], 669pt.[6] and 670–O[7], as a group.	407,419,089 square meters equivalent.
Sublevels within Group I	
200	513,098 kilograms.
201	2,803,813 kilograms.
218	10,400,663 square meters.
219	9,470,523 square meters.
224–V	11,939,042 square meters.
300/301	3,488,883 kilograms.
313	56,856,958 square meters.
314	31,700,947 square meters.
315	19,491,172 square meters.
317/326	21,129,524 square meters.
363	1,217,639 numbers.
410	3,708,545 square meters.
604	441,725 kilograms.
607	1,248,081 kilograms.
611	4,160,266 square meters.
613/614	6,933,775 square meters.
617	5,749,961 square meters.
619/620	98,704,345 square meters.
624	10,146,989 square meters.
625/626/627/628/629.	17,750,465 square meters.
669–P	2,553,154 kilograms.
Group II	
237, 239pt.[8], 331–348, 350–352, 359–H[9], 359pt.[10], 431, 433–438, 440–448, 459–W[11], 459pt.[12], 631, 633–652, 659–H[13], 659–S[14] and 659pt.[15], as a group.	610,355,029 square meters equivalent.
Sublevels within Group II	
237	68,998 dozen.
239pt.	278,992 kilograms.
333/334/335	312,020 dozen of which not more than 159,478 dozen shall be in Category 335.
336	65,939 dozen.
338/339	1,386,755 dozen.
340	721,113 dozen of which not more than 374,425 dozen shall be in Category 340–D[16].
341	194,913 dozen.
342/642	250,788 dozen.
345	134,721 dozen.
347/348	513,098 dozen.
350	19,178 dozen.
351/651	263,459 dozen.
352	205,017 dozen.
359–H	2,953,472 kilograms.
433	14,241 dozen.
434	7,304 dozen.
435	36,785 dozen.
436	15,572 dozen.
438	62,432 dozen.
440	203,003 dozen.
442	52,623 dozen.
443	322,056 numbers.
444	57,344 numbers.
445/446	53,423 dozen.
447	91,144 dozen.
448	37,021 dozen.
459–W	100,143 kilograms.
631	346,169 dozen pairs.
633/634/635	1,376,430 dozen of which not more than 156,084 dozen shall be in Category 633 and not more than 581,677 dozen shall be in Category 635.
636	289,611 dozen.
638/639	5,358,921 dozen.
640–D[17]	3,205,306 dozen.
640–O[18]	2,671,088 dozen.
641	1,081,382 dozen of which not more than 40,846 dozen shall be in Category 641–Y[19].
643	801,140 numbers.
644	1,205,280 numbers.
645/646	3,671,642 dozen.
647/648	1,386,615 dozen.
650	28,064 dozen.
659–H	1,429,798 kilograms.
659–S	206,387 kilograms.
Group III	
831, 833–838, 840–844, 847–858 and 859pt.[20], as a group.	17,494,508 square meters equivalent.
Sublevel within Group III	
835	29,429 dozen.
Group IV	
845	2,315,056 dozen.
846	822,354 dozen.
Group VI	
369–L/670–L/870[21], as a group.	81,361,297 square meters equivalent.

[1] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36,0020.

[2] Category 224–O: all remaining HTS numbers in Category 224.

[3] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905, (Category 369–L); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[5] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[6] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[7] Category 670–O: All HTS numbers except only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[8] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[9] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[10] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.20.2060 (Category 359–H); and 6406.99.1550.

[11] Category 459–W: only HTS number 6505.90.4090.

[12] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[13] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[14] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[15] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540.

[16] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[17] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[18] Category 640–O: only HTS numbers 6203.23.0080, 6203.29.2050, 6205.30.1000, 6205.30.2050, 6205.30.2060, 6205.30.2070, 6205.30.2080 and 6211.33.0040.

[19] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[20] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[21] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 1, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factors for the following merged categories are listed below:

Category	Conversion factor (Square meters equivalent/category unit)
333/334/335	33.75
369–L/670–L/870	3.8
633/634/635	34.1
638/639	12.96

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29567 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

November 14, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of June 23, 2000 between the Governments of the United States and the Lao People's Democratic Republic, establishes a limit for Categories 340/640 for the period January 1, 2001 through December 31, 2001.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limit for Categories 340/640.

This limit may be revised if Laos becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Laos.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001

CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of June 23, 2000 between the Governments of the United States and the Lao People's Democratic Republic, you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Laos and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of 184,683 dozen.

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Lao People's Democratic Republic.

Products in the above categories exported during 2000 shall be charged to the applicable category limit for that year (see directive dated December 10, 1999) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Laos becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Laos.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29568 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

November 14, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Philippines and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
237	2,284,529 dozen.
331/631	7,398,029 dozen pairs.
333/334	357,875 dozen of which not more than 51,377 dozen shall be in Category 333.
335	232,941 dozen.
336	847,690 dozen.
338/339	2,611,936 dozen.
340/640	1,159,852 dozen.
341/641	1,046,620 dozen.
342/642	733,210 dozen.
345	218,348 dozen.
347/348	2,568,760 dozen.
350	193,296 dozen.
351/651	799,710 dozen.
352/652	3,140,670 dozen.
359–C/659–C [1]	1,086,526 kilograms.
361	2,441,638 numbers.
369–S [2]	553,458 kilograms.
431	178,113 dozen pairs.
433	3,507 dozen.
443	42,408 numbers.
445/446	28,966 dozen.
447	8,053 dozen.
611	7,327,550 square meters.
633	47,244 dozen.
634	586,172 dozen.
635	378,360 dozen.
636	2,209,132 dozen.
638/639	2,683,169 dozen.
643	1,128,465 numbers.
645/646	930,992 dozen.
647/648	1,549,964 dozen.
649	9,395,504 dozen.
650	138,348 dozen.
659–H [3]	1,820,297 kilograms.
847	1,207,369 dozen.
Group II	
200–227, 300–326, 332, 359–O [4], 360, 362, 363, 369–O [5], 400–414, 434–438, 440, 442, 444, 448, 459pt. [6], 464, 469pt. [7], 600–607, 613–629, 644, 659–O [8], 666, 669–O [9], 670–O [10], 831, 833–838, 840–846, 850–858 and 859pt. [11], as a group.	246,949,299 square meters equivalent.
Sublevel in Group II	
604	2,588,600 kilograms.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); and 6406.99.1550 (359pt.).

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[6] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[7] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[11] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC, administrative arrangements notified to the Textiles Monitoring Body and a Memorandum of Understanding dated August 19, 1998 between the Governments of the United States and the Republic of the Philippines.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 4, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29569 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: National Defense University; National Security Education Program.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Vice President, National Defense University, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 19, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Attn: Dr. Edmond J. Collier, Arlington, VA 22209–2248.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the National Security Education Program Office, at (703) 696–1991.

Title; Associated Form; and OMB Number: National Security Education Program (NSEP) Service Agreement for Scholarship and Fellowship Awards; DD Form 2752; OMB Number 0704–0368. National Security Education Program (NSEP) Service Agreement Report (SAR); DD Form 2753; OMB Number 0704–0368.

Needs and Uses: The information collection requirement is necessary to obtain verification that applicable scholarship and fellowship recipients are fulfilling service obligation mandated by the National Security Education Act of 1991, Title VIII of Pub. L. 102–183, as amended.

Affected Public: U.S. individuals or households; federal government agencies.

Annual Burden Hours: 40.

Number of Respondents: 300.

Responses Per Respondent: 2.

Average Burden Per Response: 30 minutes.

Frequency: Semi-annual.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are recipients of undergraduate scholarships and graduate fellowship assistance from the National Security Education Program (NSEP), established by the National Security Education Act of 1991. DD Form 2752 is the Service Agreement that award recipients sign in order to acknowledge their understanding of their service obligation, and agree to the obligation. DD From 2753 is the Service Agreement Report Form on which the student provides an account of his or her work toward fulfilling the service obligation, or justifies a request for deferment. The forms supporting this information collection requirement represent the sole means of establishing a written agreement of the service obligation and progress reports toward fulfilling this obligation between students who receive NSEP undergraduate scholarship and graduate fellowship awards, the program office and the Department.

Dated: November 14, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–29556 Filed 11–17–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: National Defense University; National Security Education Program, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Vice President, National Defense University announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 19, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Attn: Dr. Edmond J. Collier, Arlington, VA 22209–2248.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the National Security Education Program Office, at (703) 696–1991.

Title; Associated Form; and OMB Number: National Security Education Program (NSEP) Proposal Budget Estimate Worksheet; DD Form 2729; OMB Number 0704–0366. National Security Education Program (NSEP) Proposal Cover Sheet; DD Form 2730; OMB Number 0704–0366.

Needs and Uses: The information collection requirement is necessary to obtain and record the qualifications and budget information of universities submitting proposals for NSEP funding.

Affected Public: U.S. public and private institutions of higher education.

Annual Burden Hours: 2000.

Number of Respondents: 250.

Responses per Respondent: 1.

Average Burden per Response: 6.5 hours.

Frequency: Annual.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are representatives of U.S. colleges and universities who choose to submit a proposal in competition for a National Security Education Program (NSEP) Institutional Grant. The NSEP was established by the National Security Education Act of 1991. DD form 2729, National Security Education Program (NSEP) Proposal Budget Worksheet, is a single-page document in which the applicant indicates the cost associated with the proposal by four major categories. Without this form there would be no precise, standard manner for applicants to portray their budget requests. Further there would be no consistent measure by which the merit-review panelists could judge these proposals. DD Form 2730, National Security Education Program (NSEP) Proposal Cover Sheet, is a concise vehicle for transmitting proposals. This form eliminates the need for lengthy nonstandard letters of transmittal. The form also facilitates processing the proposals as all data elements necessary for processing the proposal are on this one form. Additional savings of time and money are realized by the respondents who are required to use these forms instead of unnecessarily elaborate brochures, elaborate art work, expensive paper and bindings, or other such presentations.

Dated: November 14, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–29557 Filed 11–17–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Design Criteria Standard for Electronic Records Management Software Applications

AGENCY: Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence DoD.

ACTION: Notice of availability.

SUMMARY: The DoD Standard, "Design Criteria Standard for Electronic Records Management Software Applications" is being revised. The document sets forth mandatory requirements for software applications used by Department of Defense organizations to manage their records. The current version has been endorsed, with some recommendations, by the National Archives and Records Administration (NARA) for other Federal Agency use. A draft of the revised version, which incorporates security markings and related issues, as well as the NARA recommendations, is available for review and comment.

DATES: Submit comments by January 19, 2001.

ADDRESSES: Download the document and comment form from URL: *http://jitc.fhu.disa.mil/recmgt.* Requests and comments may be e-mailed to: *matsuurs@fhu.disa.mil.*

FOR FURTHER INFORMATION CONTACT: Steve Matsuura, telephone (520) 538–5169.

Dated: November 14, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–29558 Filed 11–17–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Disposal and Reuse of the Hunters Point Annex To Naval Station Treasure Island, Formerly Hunters Point Naval Shipyard, San Francisco, California

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) (1994), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR parts 1500–1508, hereby announces its decision to dispose of the Hunters Point Annex to Naval Station Treasure Island, formerly Hunters Point Naval Shipyard (Hunters Point), which is located in San Francisco, California.

Navy analyzed the impacts of the disposal and reuse of Hunters Point in an Environmental Impact Statement (EIS), as required by NEPA. The EIS analyzed two reuse alternatives and identified the Land Use Alternatives and Proposed Draft Plan, Hunters Point Shipyard, dated March 1995, as modified by the San Francisco Redevelopment Agency on January 6, 1997, (Reuse Plan) and described in the EIS as the Proposed Reuse Plan Alternative, as the Preferred Alternative. The Preferred Alternative proposed to use the Hunters Point property for industrial, commercial, residential, and educational activities and to develop parks and recreational areas.

Navy plans to dispose of Hunters Point in a manner that is consistent with the Reuse Plan and under the authority of Section 2824(a) of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, as amended by Section 2834 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160. Section 2834 of Public Law 103–160 authorizes the Secretary of the Navy to convey the Hunters Point property to the City of San Francisco or a local reuse organization approved by the City.

This Record Of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entity and the local zoning authority.

Background: Hunters Point Naval Shipyard ceased operating as a ship construction, overhaul, and repair facility in 1974. Thereafter, Navy leased the property to various private entities and, between 1986 and 1990, Navy used the facility to repair several Naval vessels.

Under the authority of the Defense Authorization Amendments and Base Closure and Realignment Act, Public Law 100–526, 10 U.S.C. 2687 note (1994), the 1988 Defense Secretary's Commission on Base Realignment and Closure recommended that Navy exclude Hunters Point from its Strategic Homeport Program. This recommendation was approved by the Secretary of Defense, Frank Carlucci, and accepted by the One Hundred First Congress in 1989.

In 1990, Navy designated the property as the Hunters Point Annex to Naval Station Treasure Island, which is also located in San Francisco. Section 2824(a) of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, directed Navy to lease not less than 260 acres at Hunters Point to the City of San Francisco at fair market value for a period of at least 30 years.

Under the authority of the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. § 2687 note (1994), the 1991 Defense Base Closure and Realignment Commission recommended closing the Hunters Point Annex to Naval Station Treasure Island. The Commission also recommended that Navy lease the entire property and permit continuing occupancy by certain Navy components. These recommendations were approved by president Bush and accepted by the One Hundred Second Congress in 1991.

The 1993 Defense Base Closure and Realignment Commission modified the 1991 Commission's recommendation by directing Navy to dispose of the Hunters Point Annex in any lawful manner, including by leasing the property. The 1993 Commission's recommendation was approved by President Clinton and accepted by the One Hundred Third Congress in September 1993.

Later in 1993, Section 2834 of Public Law 103–160 amended Section 2824(a) of Public Law 101–510 and gave the Secretary of the Navy authority to convey Hunters Point Naval Shipyard to the City of San Francisco or a local reuse organization approved by the City instead of leasing the property. This authority is independent of the Defense Base Closure and Realignment Act of 1990, as well as the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484 (1994), and its implementing regulations, the Federal Property Management Regulations, 41 CFR part 101–47.

Hunters Point Naval Shipyard is located in the City of San Francisco and covers 936 acres, of which 443 acres are submerged. The property is bounded on the north by India Basin; on the east and south by San Francisco Bay; on the southwest by South Basin; and on the northwest by the Bayview-Hunters Point area of San Francisco. This part of the City contains light and heavy industrial activities, commercial activities, residential areas, and parks and recreational areas.

The North Gate at the intersection of Innes Avenue and Donahue Street provides the primary access to Hunters Point. The South Gate, located on Crisp Avenue and currently closed except for emergencies, provided secondary access to Hunters Point. The Shipyard property is relatively flat except for a residential area located on the crest of a ridge known as Hunters Point Hill.

Hunters Point Naval Shipyard was engaged in the construction, conversion, overhaul, repair, alteration, drydocking, and outfitting of Naval vessels and service craft. The primary berthing areas for vessels are located in the eastern part of the Shipyard and consist of the quay wall, the North Pier, the South Pier, and the Regunning Pier. Two small piers, Piers B and C, are located in the northeastern part of the base, and three larger piers, Piers 1, 2 and 3, are located in the southeastern part of the base. There is a 450-ton bridge crane situated on the Regunning Pier; it is considered an identifying characteristic of Hunters Point Naval Shipyard that reflects its historic industrial use.

Two large drydocks, Drydock 2 and Drydock 3 (which replaced Drydock 1), are located in the eastern part of the base and, together with four adjacent buildings (Buildings 140, 204, 205, and 207), comprise the Hunters Point Commercial Drydock Historic District. Drydock 4, the second largest drydock on the Pacific Coast, is located in the eastern part of the base between North Pier and South Pier. Three smaller drydocks, Drydocks 5, 6, and 7, are located in the northeastern part of the base.

This Record of Decision addresses the disposal and reuse of the entire Hunters Point Naval Shipyard property. About 40 percent of the property is currently being leased. On the leased property, 58 buildings are being used for industrial activities; 12 buildings are being used for light industrial and arts and cultural activities; three buildings are being used for commercial activities; one building is being used for recreational activities; and about 60 acres in the northern part of the property are being used for law enforcement training activities.

Navy published a Notice of Intent in the **Federal Register** on June 28, 1995, announcing that Navy and the City of San Francisco would jointly prepare an Environmental Impact Statement/Environment Impact Report (EIS/EIR) under NEPA and the California Environmental Quality Act, Cal. Pub. Res. Code, §§ 21000–21177 (CEQA), that analyzed the impacts of the disposal and reuse of Hunters Point Naval Shipyard. On July 12, 1995, Navy and the City held a public scoping meeting at the Southeast Community Facility located in the Bayview-Hunters Point area of San Francisco, and the scoping period concluded on July 30, 1995.

Navy and the City distributed a Draft EIS/EIR (DEIS/DEIR) to Federal, State, and local agencies, elected officials, interested parties, and the general public on November 21, 1997, and commenced a 60-day public review and comment period. During this period, Federal, State, and local agencies, community groups and associations, and interested persons submitted oral and written comments concerning the DEIS/DEIR. On December 10, 1997, Navy and the City held a public hearing in Building 101 at the Shipyard. On December 11, 1997, Navy and the city held another public hearing in a joint session with the San Francisco Planning Commission and the San Francisco Redevelopment Agency Commission at the War Memorial Veterans Building in San Francisco. The City also held two additional public hearings on January 13, 1998 and January 15, 1998.

After the public comment period for the DEIS/DEIR concluded, Navy and the City modified the analysis for the disposal and reuse of the Shipyard and prepared a Revised DEIS/DEIR. On November 6, 1998, Navy and the City distributed the Revised DEIS/DEIR to Federal, State, and local agencies, elected officials, interested parties, and the general public and commenced a 60-day public review and comment period, which was extended for 14 days. During this period, Federal, State, and local agencies, public interest groups, and one individual submitted written comments concerning the Revised DEIS/DEIR. On December 9, 1998, Navy and the City held a public hearing on the Revised DEIS/DEIR in Building 101 at the Shipyard. On December 17, 1998, Navy and the City held a second public hearing in a joint session with the San Francisco Planning Commission and the San Francisco Redevelopment Agency Commission at the War Memorial Veterans Building in San Francisco. After the public comment period concluded, Navy and the City decided to prepare separate final NEPA and CEQA documents.

Navy's responses to the public comments on the Revised DEIS/DEIR were incorporated in Navy's Final EIS (FEIS), which was distributed to the public on March 3, 2000, for a review period that concluded on April 4, 2000. Navy received five comments on the FEIS.

The City's responses to the public comments on the Revised DEIS/DEIR were incorporated in the City's document entitled Hunters Point Shipyard Reuse, Revised Draft Environmental Impact Report, Comments and Responses, dated January 2000, which was distributed to the public on January 24, 2000, for a review period that concluded on February 8, 2000. The San Francisco Redevelopment Agency and the San Francisco Planning Commission certified the EIR on February 8, 2000. Redevelopment Agency Resolution No. 12–2000; Planning Commission Resolution No. 11–2000.

Alternatives: NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this Federal property. In the FEIS, Navy analyzed the environmental impacts of two reuse alternatives. Navy also evaluated a "No Action" alternative that would leave the property in caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

In 1991, the Mayor of San Francisco, Art Agnos, created the Mayor's Hunters Point Shipyard Citizens Advisory Committee, composed of local government agencies and residents of the City. The Advisory Committee solicited the views of residents of the Bayview-Hunters Point community and others in the City concerning the redevelopment of Hunters Point Naval Shipyard. In February 1993, the Advisory Committee set goals and proposed various uses for the Shipyard. In February 1994, after public participation, the Advisory Committee established seven guidelines to apply to the preparation of a reuse plan for the Shipyard property: Create jobs for economic vitality; support existing businesses and artists; create an appropriate mix of new businesses; balance redevelopment and environmental conservation; make the Shipyard available for transitional uses; integrate new uses of the Shipyard property into current plans for the Bayview area; and acknowledge the social and cultural history of the Hunters Point area.

Applying these guidelines, the Advisory Committee developed four preliminary reuse alternatives: Education and Arts, Industrial, Maritime, and Residential. Each alternative, except the Residential alternative, proposed a substantial amount of industrial and maritime activities. At a public workshop on June 2, 1994, the Advisory Committee selected the Education and Arts alternative as most consistent with the guidelines for redevelopment of the Shipyard. This alternative proposed a more diverse mix of land uses and businesses and had the potential to create more jobs for residents of the Bayview-Hunters Point area. The Advisory Committee developed three preliminary plans that could implement the Education and Arts alternative. These plans were evaluated through extensive public participation.

On February 14, 1995, the Advisory Committee adopted the Land Use Alternatives and Proposed Draft Plan, Hunters Point Shipyard. On March 6, 1995, the San Francisco Board of Supervisors endorsed this plan as the preferred alternative for use in the environmental analysis. Board of Supervisors Resolution No. 175–95, dated March 17, 1995.

In a letter to Navy dated January 6, 1997, the San Francisco Redevelopment Agency modified the 1995 reuse plan to take account of the San Francisco Bay Conservation and Development Commission's management program for San Francisco Bay. Property in the southeastern part of the Shipyard that had previously been designated for future redevelopment and open space was dedicated to maritime industrial use. The proposed street pattern in the southern part of the base was reconfigured to align with the boundary of the maritime industrial area. The Redevelopment Agency also changed the use of five acres of open space at the western end of Spear Avenue from passive recreational use to active recreational use.

The Reuse Plan, identified in the FEIS as the Preferred Alternative, proposed a mix of land uses. This Alternative would use 96 acres for industrial activities; 85 acres for maritime industrial activities; 70 acres for research and development; 55 acres for commercial activities, including a hotel and conference center, office space, entertainment, and artists' studios; 25 acres for educational and cultural activities; 38 acres for residential development; and 124 acres for open space and recreational activities. The Preferred Alternative would use some of the existing facilities and build new facilities. It will be necessary to upgrade existing utility and infrastructure systems and improve the Shipyard's streets and public transportation network in order to support the proposed redevelopment of the property.

The Preferred Alternative would extend Spear Avenue, a northeast-southwest road on the base, to provide access to the development in the southern part of the base and to connect the eastern and western parts of the property. Innes Avenue and Crisp Avenue would provide access to the Hunters Point property. By the full build-out year of 2025, the Reuse Plan would create about 6,400 new jobs. It would build 500 live/work units and 1,300 residences composed of apartments, single-family houses, and duplexes.

The Preferred Alternative would develop about 775,000 square feet of space on 96 acres in the center of the southern part of the base for industrial activities. These activities could include manufacturing, sales, and distribution businesses concerned with perishable products, chemical and allied products, primary and fabricated metals, and electrical and electronic equipment and parts. Wholesale services, automobile and trucking services, courier services, equipment leasing, printing and publishing activities, warehouses and distribution facilities, airport-related ground transportation services, artists' studios, and motion picture product companies could also occupy property in this part of the Shipyard.

On 85 acres along the waterfront in the southeastern part of the base, the preferred Alternative would develop about 360,000 square feet of space for maritime industrial activities. This Alternative could use the wharves and Drydock 4 in this area for maintenance and repair of vessels and could also provide rail and truck facilities, container freight stations, intermodal container transfer facilities, offices, and storage areas. The Preferred Alternative could also develop areas here for maintaining containers and container-handling equipment and for other port activities. The maritime activities would complement the industrial activities on the adjacent 96 acres.

Along Spear Avenue and in the northern part of the Shipyard, the Preferred Alternative would develop about 312,000 square feet of space on 70 acres for research and development activities. These activities could include manufacturing, sales, and distribution businesses that would serve the medical profession. Other activities could include data processing, telecommunications, artists' studios, and live/work units.

The Preferred Alternative would develop about 1,150,000 square feet of space in four areas for various purposes such as artists' studios, live/work units, recording studios, hotel and conference facilities, retail stores, are galleries, engineering research and development facilities, educational and health services, warehouses and distribution facilities, business services, real estate and insurance services, and restaurants. This development would cover about 55 acres at the Shipyard: along Spear Avenue north of the industrial activities; northeast of Drydock 4 between the maritime industrial and research and development activities; along the waterfront at the northeast end of the property; and along Innes Avenue at the north entrance to the base. The Preferred Alternative would also build about 500 apartments above commercial facilities.

In two areas covering 25 acres at the eastern end of the shipyard and in a small area along Spear Avenue north of the industrial activities, the Preferred Alternative would develop about 555,600 square feet of space for educational and training facilities, museums, theaters, galleries, specialty retail shops, restaurants, artists' studios, and conference facilities. Part of this development at the eastern end of the shipyard is located in the Hunters Point Commercial Drydock Historic District.

The Preferred Alternative would develop about 1,300 residences composed of apartments, single-family houses, and duplexes on 38 acres in the existing residential area on Hunters Point Hill and along Crisp Avenue in the northwestern part of the Shipyard. This Alternative could also develop gardens in an open space and passive recreational area adjacent to the residential area along Crisp Avenue.

The Preferred Alternative would develop open space and recreational areas along the waterfront from the western end of the base to the southern tip of the base. Most of the property in this area would be used for passive recreation and to restore wetlands. In the center of the base, this Alternative would develop open space with both active and passive recreational areas. In the eastern part of the base along the waterfront, it would develop plazas and promenades. At the northern tip of the base, the Preferred Alternative would develop open space containing hard surfaces and passive recreational areas and would restore wetlands there. Public access trails would be located along waterfront areas and provide a link to the regional Bay Trail.

Navy analyzed a second "action" alternative, described in the FEIS as the Reduced Development Alternative. This Alternative proposed the same land uses in the same places as those set forth in the Preferred Alternative. In the Reduced Development Alternative, however, there would be less intense development characterized by fewer and smaller buildings than proposed under the Preferred Alternative.

The Reduced Development Alternative would extend Spear Avenue to provide access to the development in the southern part of the base and to connect the eastern and western parts of the property. Innes Avenue and Crisp Avenue would provide access to the Hunters Point property. By the full build-out year of 2025, the Reduced Development Alternative would create about 2,700 new jobs. It would build 100 live/work units and 300 residences composed of apartments, single-family houses, and duplexes.

The Reduced Development Alternative would develop about 377,000 square feet of space on 96 acres in the center of the southern part of the base for industrial activities. These activities could include manufacturing, sales, and distribution businesses concerned with perishable products, chemical and allied products, primary and fabricated metals, and electrical and electronic equipment and parts. Wholesale services, automobile and trucking services, courier services, equipment leasing, printing and publishing activities, warehouses and distribution facilities, airport-related ground transportation services, artists' studios, and motion picture production companies could also occupy property in this part of the Shipyard.

On 85 acres along the waterfront in the southeastern part of the base, the Reduced Development Alternative would develop about 173,000 square feet of space for maritime industrial activities. This Alternative could use the wharves and Drydock 4 in this area for maintenance and repair of vessels and could also provide rail and truck facilities, container freight stations, intermodal container transfer facilities, offices, and storage areas. The Reduced Development Alternative could also develop areas here for maintaining containers and container-handling equipment and for other port activities. The maritime activities would complement the industrial activities on the adjacent 96 acres.

Along Spear Avenue and in the northern part of the Shipyard, the Reduced Development Alternative would develop about 100,000 square feet of space on 70 acres for research and development activities. These activities could include manufacturing, sales, and distribution businesses that would serve the medical profession. Other activities could include data processing, telecommunications, artists' studios, and live/work units.

The Reduced Development Alternative would develop about 300,000 square feet of space in four areas for various purposes such as artists' studios, live/work units, recording studios, hotel and conference facilities, retail stores, art galleries, engineering research and development facilities, educational and health services, warehouses and distribution facilities, business services, real estate and insurance services, and restaurants. This development would cover about 55 acres at the Shipyard: along Spear Avenue north of the industrial activities; northeast of Drydock 4 between the maritime industrial and research and development activities;

along the waterfront at the northeast end of the property; and along Innes Avenue at the north entrance to the base. The Reduced Development Alternative would also build about 100 apartments above commercial facilities.

In two areas covering 25 acres at the eastern end of the Shipyard and in a small area along Spear Avenue north of the industrial activities, the Reduced Development Alternative would develop about 345,000 square feet of space for educational and training facilities, museums, theaters, galleries, specialty retail shops, restaurants, artists' studios, and conference facilities. Part of this development at the eastern end of the Shipyard is located in the Hunters Point Commercial Drydock Historic District.

The Reduced Development Alternative would develop about 300 residences composed of apartments, single-family houses, and duplexes on 38 acres in the existing residential area on Hunters Point Hill and along Crisp Avenue in the northwestern part of the Shipyard. This Alternative could also develop gardens in an open space and passive recreational area adjacent to the residential area along Crisp Avenue.

The Reduced Development Alternative would develop open space and recreational areas along the waterfront from the western end of the base to the southern tip of the base. Most of the property in this area would be used for passive recreation and to restore wetlands. In the center of the base, this Alternative would develop open space with both active and passive recreational areas. In the eastern part of the base along the waterfront, it would develop plazas and promenades. At the northern tip of the base, the Reduced Development Alternative would develop open space containing hard surfaces and passive recreational areas and would restore wetlands there. Public access trails would be located along waterfront areas and provide a link to the regional Bay Trail.

Environmental Impacts: Navy analyzed the direct, indirect, and cumulative impacts of the disposal and reuse of this Federal property. The EIS addressed impacts of the Preferred Alternative, the Reduced Development Alternative, and the "No Action" Alternative for each alternative's effects on transportation, traffic and circulation, air quality, noise, land use, visual resources and aesthetics, socioeconomics, hazardous materials and waste, geology and soils, water resources, utilities, public services, cultural resources, and biological resources. This Record Of Decision focuses on the impacts that would likely result from implementation of the Reuse Plan, identified in the Final EIS as the Preferred Alternative.

The Preferred Alternative would have significant impacts on transportation, traffic and circulation. The Preferred Alternative would implement a Transportation Demand Management (TDM) program that would include substantial ridesharing, use of public transportation, and nonvehicular travel modes. By the full build-out year of 2025, this Alternative would generate 21,832 average daily trips. The traffic generated by the Reuse Plan would cause substantial delays during peak commuting hours at three intersections near Hunters Point Naval Shipyard. Delays arising out of traffic congestion would also increase at two other intersections, along three freeway segments, and on 11 freeway ramps, but these delays would not be significant. Additionally, the demand for public transportation, pedestrian sidewalks, and bike paths and related accommodations would exceed the projected capacity, causing a significant impact on these services and resources. Implementation of the Preferred Alternative would also increase the number of trucks entering and leaving the Hunters Point property.

The Preferred Alternative would not have a significant impact on air quality. The traffic generated by this Alternative would increase ozone precursor emissions and PM_{10} emissions, but the increase would not result in additional violations of Federal or State ambient air quality standards. Carbon monoxide emissions would also increase at congested intersections, but the increase would not result in violations of Federal or State standards for ambient air quality. The vehicle emission analysis assumed that a TDM program would be implemented. The impact on air quality resulting from demolition, construction, and renovation activities over the 25-year build-out period would not be significant. The acquiring entity would be responsible for complying with Bay Area Air Quality Management District (BAAQMD) guidelines for controlling airborne dust during development.

The Preferred Alternative would be consistent with many of the land use and transportation objectives and policies contained in the regional air quality plan developed by BAAQMD and the Association of Bay Area Governments as well as the Air Quality Element of the City of San Francisco's Master Plan. The particular land use pattern set forth in the Reuse Plan has not yet been incorporated in the regional air quality plan, but Federal and State laws require periodic updating of this plan to reflect changing land use and transportation plans.

Section 176(c) of the Clean Air Act, 42 U.S.C. 7506 (1994), requires Federal agencies to review their proposed activities to ensure that these activities do not hamper local efforts to control air pollution. Section 176(c) prohibits Federal agencies from conducting activities in air quality areas such as the San Francisco Bay Area that do not meet one or more of the national standards for ambient air quality, unless the proposed activities conform to an approved implementation plan. The United States Environmental Protection Agency regulations implementing Section 176(c) recognize certain categorically exempt activities. Conveyance of title to real property and certain leases are categorically exempt activities. 40 CFR 93.153(c)(2)(xiv) and (xix). Therefore, the disposal of Hunters Point Naval Shipyard will not require Navy to conduct a conformity determination.

Navy has not operated any stationary emission sources at Hunters Point since 1974. The Reuse Plan does not provide sufficient information concerning future projects to permit evaluation of the impacts that could be associated with related stationary emission sources. Proponents of such projects must submit air permit applications to BAAQMD, and it will determine whether specific mitigation measures must be imposed as a condition of granting new permits. To reduce toxic air contaminant emissions from stationary sources, the San Francisco Redevelopment Agency has committed to requiring all potential stationary sources of toxic contaminants allowed at Hunters Point to be evaluated and permitted as one facility. New potential stationary sources would only be allowed if the estimated incremental toxic air contaminant health risk from all stationary sources at Hunters Point were consistent with BAAQMD significance criteria for an individual facility. This approach is more stringent than current BAAQMD permitting requirements.

The Preferred Alternative would have a significant noise impact on certain residences to be built on the Hunters Point property. The noise generated by the increase in traffic would exceed State and local standards for residential exposure to noise for those residences located within 100 feet of the center of Donahue Street. Although less than significant, there could also be noise impacts on the proposed live/work units located in the northeastern part of the base resulting from the proposed maritime industrial activities at Drydock 4. Noise arising out of demolition and construction activities would be governed by the City's noise ordinance.

The Preferred Alternative would not have a significant impact on land use. It would convert this industrial property into a mix of land uses that would provide additional businesses, residential areas, and open space in the Bayview-Hunters Point area. Although the intensity of the development proposed by this Alternative would be evident to local residents and businesses, the proposed land uses along the northwest boundary of the base are similar to the existing land uses on adjacent property and the proposed open space would provide a buffer. During the 25-year build-out period, new educational and cultural activities could be temporarily incompatible with industrial activities being conducted under leases in the vicinity of North Pier and Drydock 4.

Implementation of the Preferred Alternative would require the City to amend the San Francisco Master Plan by adopting this Alternative as a new Area Plan of the Master Plan or by amending some or all of the Master Plan's nine elements. While disposal of the Hunters Point property will not have an effect on California coastal resources, it will be necessary for the San Francisco Redevelopment Agency to obtain coastal development permits from the Bay Conservation and Development Commission.

About 198 acres of dry land on the base are subject to a public trust established by California law for land that was formerly tidelands or under navigable waters when California became a state. The Tidelands Trust mandates that public tidelands and submerged lands must be used for the benefit of the people of California for maritime commerce, navigation, fisheries, and recreation. The proposed industrial, research and development, educational and cultural, and residential development of property in this area may not be consistent with the Trust's restrictions. The City of San Francisco, however, could avoid this impact by defining the non-trust uses as interim uses or by entering into an agreement with the California State Lands Commission to impose public trust restrictions on non-trust lands in exchange for the removal of Tidelands Trust restrictions on Trust property.

The Preferred Alternative would not have an adverse impact on visual resources. Although the intensity of development would increase, the new facilities would be limited in height and size to be consistent with existing structures at Hunters Point. This restriction, contained in the City's document entitled Design for Development, Hunters Point Shipyard, Redevelopment Project, dated August 1997, will preserve the views of San Francisco Bay from the hilltop residential area.

The Preferred Alternative would not have an adverse impact on socioeconomics. By the year 2025, this Alternative would create about 6,400 new jobs, which would constitute about 15 percent of the jobs projected to be available in the South Bayshore area by the year 2020. These new jobs would stimulate economic growth in the community. The Preferred Alternative would increase the number of residents in the South Bayshore area by 3,900 people, which is within the population growth projected by the Association of Bay Area Governments. By the year 2025, there would be 1,800 residential units on the Hunters Point property. This would constitute about 14 percent of the projected increase in housing in the South Bayshore area by the year 2020. This Alternative would make at least 15 percent of the new residences affordable for low and moderate income households.

The Preferred Alternative would not have a significant impact on schools. By the year 2025, the Preferred Alternative would generate an increase of 714 school age children living in the South Bayshore area. This constitutes a one percent increase in the projected number of students in the San Francisco Unified School District in the year 2020.

The Preferred Alternative would not have a significant impact on the environment arising out of the use or generation of hazardous substances by the acquiring entity. Hazardous materials used and hazardous wastes generated by the Reuse Plan will be managed in accordance with Federal, State, and local laws and regulations.

Implementation of the Preferred Alternative would not have an impact on public health and safety. Navy will inform future property owners about the environmental condition of the property and may, when appropriate, include restrictions, notifications, or covenants in deeds to ensure the protection of human health and the environment in light of the intended use of the property.

The Preferred Alternative could have significant impacts on geology and soils. The Hunters Point property is located in a highly active seismic region and, except for the residential area on the hilltop, is built on artificial fill that has a high potential for liquefaction, densification, and differential settlement. New construction activities will be required to meet current building codes governing seismic safety. The impacts from hazards arising out of ground movement can be reduced to an insignificant level by upgrading the existing buildings to comply with current seismic safety standards. Additionally, serpentinite, a rock that underlies major parts of the hillsides and slopes at Hunters Point, contains naturally occurring chrysotile asbestos, which could become a health hazard if released and inhaled during construction-related excavation activities. The acquiring entity must comply with Federal, State and local laws and regulations governing impacts from demolition and construction activities and the transportation and disposal of materials containing asbestos.

The Preferred Alternative would not have a significant impact on water resources. Wastewater from Hunters Point is currently discharged to the City's Southeast Water Pollution Control Plant. Stormwater from Hunters Point is discharged directly into San Francisco Bay. The Plant treats discharge from the City's combined system and handles both wastewater and stormwater from the eastern part of San Francisco. During heavy rainstorms, the capacity of the combined system can be exceeded. As a result, excess flows consisting of about six percent wastewater and 94 percent stormwater are discharged into the Bay without full treatment. Although an accepted and permitted feature of the City's combined system, these excess flows can have adverse impacts on the Bay and on recreational activities at nearby Candlestick Point State Recreation Area.

The FEIS evaluated three options for the treatment of wastewater and stormwater. Under Option 1, the City would upgrade and maintain the existing Navy systems that carry wastewater and stormwater separately. Under Option 2, the City would replace the existing Navy systems with new separate wastewater and stormwater systems. Under Option 3, the City would replace the existing Navy systems with a combined system that would handle both wastewater and stormwater.

In its document entitled Hunters Point Shipyard Reuse, Revised Draft Environmental Impact Report, Comments and Responses, dated January 2000, the City certified that it would implement Option1 or Option 2 for managing wastewater and stormwater on the Hunters Point Property and eliminated Option 3. Under Option 1 and Option 2, wastewater generated by implementation of the Reuse Plan would contribute only about one half of one percent of the total wastewater discharged to the Southeast Water Pollution Control Plant. Stormwater would not be discharged into the combined system but would continue to be discharged to the Bay. Because the discharge from Hunters Point to the Plant would be relatively small, there would not be an adverse impact on the volume and frequency of the excess flows from the City's combined system.

Stormwater must be managed in accordance with Federal, State, and local laws and regulations, and the acquiring entity will be responsible for building adequate drainage facilities. The City will build stormwater retention and treatment areas on the Hunters Point property that will improve the quality of discharges to San Francisco Bay. The required Stormwater Pollution Prevention Plan will designate the locations of these retention and treatment areas and will identify drainage patterns designed to direct flow toward these areas.

The Preferred Alternative would not have a significant impact on utilities. The projected demands for potable water and wastewater treatment would constitute a small part of the City's overall demand and would not significantly affect the capacity of the City's systems. Although the Preferred Alternative proposed to upgrade utility systems, it would not be necessary to build major new utility infrastructure to comply with current regulations and the projected demand for utilities.

The amount of solid waste generated by the Preferred Alternative would increase due to demolition, construction, and redevelopment activities but would decrease over time as the demolition and construction activities were completed. By the year 2025, this increase would constitute only about one percent of the total solid waste generated in the City.

The Preferred Alternative would not have a significant impact on public services. The proposed redevelopment of the Shipyard would increase the demand for police, fire, and emergency medical services. The distance between the Hunters Point property and local City fire stations may require the City to use the fire station at the Shipyard. Although the existing water system at the Shipyard has inadequate water pressure to meet fire fighting requirements, the Preferred Alternative proposed to upgrade the water system to satisfy these requirements.

The Preferred Alternative would not have a significant impact on cultural resources. In the course of leasing Shipyard property in 1993, Navy performed a cultural resources survey of Hunters Point Naval Shipyard pursuant to section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f (1994), and its implementing regulations, Protection of Historic Properties, 36 CFR part 800. In a letter dated April 23, 1993, Navy determined that nine structures (Drydocks 2, 3, and 4; Buildings 140, 204, 205, and 207; the seawall and wharves; and the site of the western tip of Drydock 1) qualified for listing on the National Register of Historic Places as contributors to the Hunters Point Commercial Drydock Historic District. Navy also determined that the leasing of certain property located west of this District would have no effect on the Shipyard's historic resources. In a letter dated June 16, 1993, the California State Historic Preservation Officer (SHPO) concurred with Navy's determinations.

In 1998, Navy undertook another review of the historic resources at Hunters Point in connection with the Section 106 process that accompanied consideration of disposal of the Shipyard. In a letter dated April 9, 1998, Navy determined that Drydock 4 was individually eligible for listing on the National Register of Historic Places and that only six structures (Drydock 2, Drydock 3, and Buildings 140, 204, 205, and 207) qualified for listing as contributors to the Hunters Point Commercial Drydock Historic District. In this letter, Navy set forth its new determination that the seawall and wharves and the remnants of Drydock 1 had lost their physical integrity and no longer contributed to the Historic District. In a letter dated May 29, 1998, the SHPO concurred with Navy's determinations.

Navy has completed consultation pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR part 800, with the Advisory Council on Historic Preservation and the SHPO. These consultations identified actions that Navy must take before it conveys Hunters Point Naval Shipyard to the City and actions that the City or an acquiring entity must take to avoid or mitigate adverse impacts on the structures that are eligible for listing on the National Register. These obligations were set forth in a Memorandum Of Agreement, dated January 11, 2000, among Navy, the Advisory Council on Historic Preservation, and the California State Historic Preservation Officer.

Navy will nominate Drydock 4 and the Hunters Point Commercial Drydock Historic District for listing on the National Register of Historic Places in accordance with 36 CFR 60.9. Navy completed an Historic American Engineering Record for Drydock 4, and the Department of the Interior's National Park Service accepted this documentation on November 18, 1996. Navy will also submit an Historic American Engineering Record for the Commercial Drydock Historic District to the National Park Service.

The Memorandum Of Agreement requires the San Francisco Redevelopment Agency to consult with the San Francisco Landmarks Preservation Advisory Board and the City's Planning Department, acting as the Certified Local Government, to ensure that the adaptive reuse of historic properties and adjacent new development conform to the provisions of the Hunters Point Shipyard Redevelopment Plan, dated July 1997; the City's document entitled Design for Development, Hunters Point Shipyard, Redevelopment Project, dated August 1997; and the California Historic Building Code, California Building Standards Code, Title 24, Part 8. These City documents and State laws contain requirements and procedures that encourage the preservation of historic resources by, for example, prohibiting demolition and requiring that alterations must conform with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

The Preferred Alternative would have significant impacts on biological resources. Implementation of this Alternative could reduce the habitat value of the Shipyard's wetlands that provide some of the best habitat for waterfowl and shorebirds along the western shore of the central part of San Francisco Bay. The increase in activities on this property could also result in an inadvertent take of migratory birds, nests, and eggs. Implementation of the preferred Alternative could also have a beneficial impact, because it would create four wetland areas along the Bay. These wetlands could provide additional habitat for waterfowl, shorebirds, and aquatic wildlife. In a letter dated January 22, 1998, the United States Fish And Wildlife Service concurred with Navy's determination that the disposal and reuse of Hunters Point Naval Shipyard would not adversely affect any Federally-listed or proposed threatened and endangered species.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 3 CFR 859 (1995), requires that Navy determine whether any low income and minority populations will experience

disproportionately high and adverse human health or environmental effects from the proposed action. Navy analyzed the impacts on low income and minority populations pursuant to Executive Order 12898. The FEIS addressed the potential environmental, social, and economic impacts associated with the disposal of Hunters Point Naval Shipyard and subsequent reuse of the property under the two proposed alternatives. All but one of the impacts identified are mitigable, and most have an effect only on the Shipyard property itself. The one significant adverse unmitigable impact is a traffic delay on a local intersection (Third Street and Cesar Chavez Street) that is not located on the Shipyard. Low income and minority populations residing within the region would not be disproportionately affected by this localized adverse impact. Indeed, the increased employment opportunities, housing, and recreational resources generated by the Preferred Alternative would have beneficial effects.

Navy also analyzed the impacts on children pursuant to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, 3 CFR 198 (1998). Under the Preferred Alternative, the largest concentration of children would be present in the residential, educational, and recreational areas. The Preferred Alternative would not pose any disproportionate environmental health or safety risks to children.

Mitigation: Implementation of Navy's decision to dispose of Hunters Point Naval Shipyard does not require Navy to implement any mitigation measures. Navy will take certain actions to implement existing agreements and to comply with regulations. These actions were treated in the Final EIS as agreements or regulatory requirements rather than as mitigation. Before conveying any property at Hunters Point Naval Shipyard, Navy will nominate Drydock 4 and the Hunters Point Commercial Drydock Historic District for listing in the National Register of Historic Places. Navy completed an Historic American Engineering Record for Drydock 4, which the National Park Service accepted on November 18, 1996. Navy will also submit an Historic American Engineering Record for the Commercial Drydock Historic District to the National Park Service.

The FEIS identified and discussed those actions that will be necessary to mitigate the impacts associated with the reuse and redevelopment of Hunters Point Naval Shipyard. The acquiring entity, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for implementing necessary mitigation measures.

Comments Received on the FEIS: Navy received comments on the FEIS from one Federal agency, three private organizations, and one person. The Federal agency was the United States Environmental Protection Agency. The private organizations were Golden Gate University's Environmental Law and Justice Clinic on behalf of the Southeast Alliance for Environmental Justice; Arc Ecology on behalf of the Alliance for a Clean Waterfront; and the Bayview Hunters Point Community Advocates. All of the substantive comments received concerned issues already discussed in the Final EIS. Those comments that require clarification are addressed below.

The Environmental Protection Agency commented that Navy did not adopt in the FEIS an Environmental Management System as a mitigation measure that could reduce the local community's future risk of exposure to toxins. Navy identified mitigation measures in the FEIS that would reduce all significant impacts to a less than significant level, except for the traffic delay at one intersection. Existing Federal, State, and local air, water, and solid and hazardous waste laws and regulations control the discharge and release of pollutants through permitting, reporting and monitoring requirements. These statutory and regulatory authorities adequately protect human health and the environment. The enforcement of applicable environmental laws and regulations will ensure compliance and minimize disproportionate impacts.

Navy received several comments concerning the adequacy of the discussion of Navy's Installation Restoration Program in the FEIS and its relationship to the City's proposed reuse of the Shipyard property. Navy evaluated the impacts of the proposed reuse under the assumption that Navy will meet its statutory obligations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601–9675q (1994), which requires protection of human health and the environment. Section 4.7.1 of the FEIS discusses Navy's obligations to protect human health and the environment and to provide information about the environmental condition of the property at conveyance. Information concerning Navy's cleanup program at Hunters Point Naval Shipyard is available at the San Francisco Main Library's Science, Technical and Government Documents Room, 100 Larkin Street, San Francisco, and at the Anna E. Waden Branch Library, 5075 Third Street, in the Bayview area of San Francisco.

Regulations Governing the Disposal Decision: Navy's decision to dispose of Hunters Point Naval Shipyard was based upon the environmental analysis in the FEIS and Section 2824(a) of Public Law 101–510, as amended by Section 2834 of Public Law 103–160. Section 2834 of Public Law 103–160 authorizes Navy to convey the Hunters Point property to the City of San Francisco or a local reuse organization approved by the City. This authority is independent of the Defense Base Closure and Realignment Act of 1990, 10 U.S.C. 2687 note (1994), as well as the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484 (1994), and its implementing regulations, the Federal Property Management Regulations, 41 CFR part 101–47.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations, and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property.

Conclusion: The City has determined in its Reuse Plan that the property should be used for various purposes including industrial, commercial, residential, and educational activities and to develop parks and recreational areas. The property's location, physical characteristics, and existing infrastructure as well as the current uses of adjacent property make it appropriate for the proposed uses.

Although the "No Action" Alternative has less potential for causing adverse environmental impacts, this Alternative would not take advantage of the location, physical characteristics, and infrastructure of Hunters Point Naval Shipyard or the current uses of adjacent property. Additionally, it would not foster local economic redevelopment of the base.

The acquiring entity, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for adopting practicable means to avoid or minimize environmental harm that may result from implementing the Reuse Plan.

Accordingly, Navy plans to dispose of Hunters Point Naval Shipyard in a manner that is consistent with the City of San Francisco's Reuse Plan for the property.

Dated: October 16, 2000.

Robert B. Pirie, Jr.

Assistant Secretary of the Navy (Installations And Environment).

Dated: November 14, 2000.

J.L. Roth,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 00–29650 Filed 11–17–00; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

[Docket No. EA–101–B]

Application to Export Electric Energy; Avista Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Avista Corporation (Avista, formerly The Washington Water Power Company) has applied to amend its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before December 20, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA).

On October 17, 1994, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order EA–101 authorizing Avista to export through Bonneville Power Administration's (BPA) Nelway, Washington, international transmission facilities (Presidential Permit PP–36) up to 100 MW of firm capacity and associated energy to West Kootenay Power, for the months of November, December, January and February. On May 12, 1995, Avista applied to DOE to amend the export authorization issued in Order EA–101 to: (1) Increase the export limit to 400 MW; (2) authorize exports for all months of the calendar year; (3) remove the expiration date; and (4) add BPA facilities authorized by Presidential Permit's PP–10 and PP–46 to the list of facilities that Avista may use for export. On October 23, 1995, FE issued the requested amendment in Order EA–101–A. On September 25, 2000, Avista filed an application with FE to amend Order EA–101–A to increase the authorized export limit from 400 MW to 1000 MW.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Avista request to export to Canada should be clearly marked with Docket EA–101–B. Additional copies are to be filed directly with Mr. Robert J. Lafferty, Manager, Electric Resources, Avista Corporation, P.O. Box 3727, Spokane, Washington 99220–3727 *and* R. Blair Strong, Paine, Hamblen, Coffin, Brooke and Miller, 717 W. Sprague, Suite 1200, Spokane, WA 99201–3505.

A final decision will be made on this application after DOE determines whether the proposed action would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities as required by Section 202(e) of FPA.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–101. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–101–A proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on November 14, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–29596 Filed 11–17–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–193–A]

Application to Export Electric Energy; Energy Atlantic, LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Energy Atlantic, LLC (Energy Atlantic) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before December 20, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: On November 24, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–193 authorizing Energy Atlantic to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Joint Owners of the Highgate Project, Inc., Maine Electric Power Company, Maine Public Service Company, and Vermont Electric Transmission Company. That two-year authorization will expire on November 24, 2000.

On October 27, 2000, Energy Atlantic filed an application with FE for renewal of the export authority contained in Order No. EA–193 for a term of five years.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance

with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Energy Atlantic request to export to Canada should be clearly marked with Docket EA–193–A. Additional copies are to be filed directly with Michael E. Small, Wendy N. Reed, Wright & Talisman, P.C., 1200 G Street, NW., Suite 600, Washington, DC 20005 and Calvin D. Deschene, Director, Energy Atlantic, L.L.C., PO Box 1148, Presque Isle, Maine 04769.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order No. EA–193. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–193 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Electricity," from the Regulatory Info menu, and then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on November 14, 2000.

Anthony Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–29595 Filed 11–17–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Interstate Electric Transmission System; Electric Reliability Issues; Notice of Inquiry

AGENCY: Department of Energy.

SUMMARY: The Department of Energy (DOE) is seeking comments on whether to initiate, pursuant to section 403 of the DOE Organization Act (42 U.S.C. 7173), a rulemaking for final action to the Federal Energy Regulatory Commission (FERC) to impose mandatory electric reliability standards. This is the initial step in a process in which DOE intends to examine electric reliability issues and proposals, and the extent of Federal authority under existing law, given the transition to restructured, more competitive electricity markets. Based on the results of that examination, DOE will consider the issuance of a proposed rulemaking. Any proposed rulemaking would seek to promote and ensure the long-term reliability of the interstate electric transmission system. DOE is seeking responses to particular questions posed below, and welcomes any other comments or proposals pertinent to an electric reliability rulemaking.

DATES: Written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time January 4, 2001. DOE is requesting a signed original, a computer diskette (WordPerfect or Microsoft Word) and 3 copies of the written comments. Comments can also be filed electronically by e-mail to: *policy.energy@hq.doe.gov*, noting "Electric Reliability Comments" in the subject line.

ADDRESSES: Written comments should be submitted to: Office of Policy, Office of Economic, Electricity and Natural Gas Analysis, PO–21, Attention: Electric Reliability Comments, U.S. Department of Energy, Forrestal Building, Room 7H–034, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Conti, U.S. Department of Energy, Office of Policy, Office of Economic, Electricity and Natural Gas Analysis, Forrestal Building, PO–21, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–4767, e-mail: *john.conti@hq.doe.gov*, or Lot Cooke, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, GC–76, 1000 Independence Ave., SW., Washington, D.C. 20585, (202) 586–0503, e-mail: *lot.cooke@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: The 1998 Final Report of the Secretary of Energy Advisory Board's Task Force on Electric System Reliability noted:

> * * * the electricity industry is in a transition from a highly regulated industry dominated by monopoly utilities to an industry that will rely, in large part, upon competitive commercial markets at both the wholesale and retail levels. The industry is unbundling, and the old institutions for reliability are no longer sufficient. We are already in the middle of our journey toward a restructured electricity industry. However, the new policies and institutions needed to assure electric reliability are not yet in place. Until such policies and institutions are in place, substantial parts of North America will be exposed to unacceptable risks.

The complete report is available at *http://www.hr.doe.gov/seab*.

The events of the last two summers have borne out the Task Force's warnings. During the Summer of 1999 a number of regions of the country experienced blackouts and brownouts. Utilities located in other areas narrowly avoided major reliability-related problems. This past summer the California Independent System Operator declared a record number of "Stage 2" electricity emergencies and was often on the brink of having to implement rolling blackouts. Some businesses were forced to temporarily shut down operations and millions of people were left to wonder whether the lights would be on when they returned home from work in the evening.

The Report of the Secretary of Energy Advisory Board's Task Force, and a report prepared by the Department of Energy's Power Outage Study Team (available at *http://www.policy.energy.gov/*), offered recommendations on actions that could be taken to improve the reliability of the electric grid. Some of these recommendations focused on efforts to improve the adequacy of our electricity supply to ensure that it keeps pace with demand for power. Other recommendations attempted to address some potential problems associated with the security of the integrated bulk power grid. Both reports recommended that all users of the bulk power system be subject to mandatory reliability rules.

The electric utility industry, through a tradition of voluntary self-regulation and cooperation, has historically performed admirably in maintaining reliability. That self-regulation was accomplished under the auspices of the North American Electric Reliability Council (NERC). NERC was established in 1968 as a voluntary membership organization. NERC develops standards, guidelines, and criteria for ensuring and evaluating the electricity system's security and adequacy. NERC operates through ten regional councils and has been largely successful in maintaining a high degree of transmission grid reliability. The reliability councils have functioned without formal enforcement powers, relying on voluntary compliance.

However, in a highly competitive electricity market, voluntary self-regulation of reliability issues may not be sufficient. Utilities are under increasing pressures to cut costs and maximize the economic value of the electric transmission grid, to the possible detriment of electric reliability. In addition, in a competitive environment industry participants may use reliability concerns as a pretext for anti-competitive behavior.

NERC and other interested parties have stated that the establishment and enforcement of mandatory reliability standards will be necessary to protect the reliability of the bulk power system in a restructured electricity industry. The Administration's proposed comprehensive electricity restructuring legislation—the Comprehensive Electricity Competition Act (CECA) (H.R.1828 and S.1047 in the U.S. House of Representatives and the U.S. Senate respectively)—includes a provision that would amend the Federal Power Act (FPA) (16 U.S.C. 791a, *et seq.*) to require FERC to approve the formation of and oversee a self-regulating reliability organization that prescribes and enforces mandatory reliability standards. Several other bills introduced in the 106th Congress included similar proposals. Although the Senate approved S. 2071, which authorizes mandatory reliability standards, on June 30, 2000, the Committee on Commerce of the House of Representatives failed to act on this or any other electric reliability-related legislation.

Because the 106th Congress is likely to adjourn without enacting legislation to improve the reliability of the electric grid, DOE is considering using its authority under section 403 of the DOE Organization Act to initiate an electric reliability rulemaking at FERC. To assist DOE in its consideration of this issue, we are requesting comments on the following questions:

1. Is the existing arrangement of voluntary compliance with industry reliability rules sufficient to ensure reliability of the bulk power transmission system? If not, why not, and has reliability been jeopardized by violations of the existing bulk power reliability standards?
2. What can FERC do under existing authorities to address reliability concerns?
3. If FERC has the authority to establish and enforce reliability standards, may FERC delegate such authority to a self-regulating reliability organization? Should it do so?
4. Are there elements in CECA, or other electric reliability legislative language, which can, with or without modification, be used in a rulemaking?
5. What should the relationship be between Regional Transmission Organizations, as advanced in FERC Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31, 089 (2000), and an Electric Reliability Organization as proposed in CECA?
6. How should the responsibilities and roles of FERC and the States be addressed in a rulemaking?
7. Recognizing the international nature of the interconnected transmission grid, how could implementation of mandatory reliability standards be coordinated with Canada and Mexico?

In addition to the above, commenters are encouraged to discuss, comment on, and make suggestions on other electric reliability issues that may be relevant to DOE's consideration of a rulemaking. Comments submitted pursuant to the Notice of Inquiry will be deemed public and will not be treated as confidential.

Issued in Washington, D.C. on November 15, 2000.

Bill Richardson,

Secretary of Energy.

[FR Doc. 00–29600 Filed 11–17–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC01–512–000]

Notice of Proposed Information Collection and Request for Comments

November 14, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before January 19, 2001.

ADDRESSES: Written comments on the proposed collection of information may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425 and by E-mail at *mike.miller@ferc.fed.us*.

SUPPLEMENTARY INFORMATION:

Abstract: The FERC–512, "Application for Preliminary Permit" (OMB No. 1902–0073) is used by the Commission to implement the statutory provisions of Sections 4(f), 5 and 7 of the Federal Power Act (FPA), 16 U.S.C. Sections 791a *et seq.* & 3301–3432. The purpose of obtaining a preliminary permit is to maintain priority of the application for a license for a hydroelectric power facility while examining and surveying to prepare maps, plans, specifications and estimates; conducting engineering, economic and environmental feasibility studies; and making financial arrangements. The conditions under which the priority will be maintained are set forth in each permit. During the term of the permit, no other application for a preliminary permit or application for a license submitted by another party can be accepted. The term of a permit is three years. The information collected under the designation FERC–512 is in the form of a written application for a preliminary permit which is used by Commission staff to determine the qualifications of the applicant to hold a preliminary permit, review the proposed hydro development for feasibility and to issue a notice of the application to solicit public and agency comments. The Commission implements these mandatory filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 4.31–.33, 4.81–82.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents (1)	Annual responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
45	1	73	3,285

Estimated cost burden to respondents is $182,186; (*i.e.,* 3,285 hours divided by 2,080 hours per full time employee per year multiplied by $115,357 per year equals $182,186). The cost per respondent is $4,049.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29580 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER 363 000]

American Transmission Systems, Inc.; Notice of Filing

November 13, 2000.

Take note that on November 3, 2000, American Transmission Systems, Inc., tendered for filing proposed amendments to its Open Access Transmission Tariff designed to implement the Ohio Retail Electric Program. American Transmission Systems, Inc., requests waiver of notice to permit an effective date of January 1, 2001 for the amendments.

Copies of this filing have been served on the transmission customers of American Transmission Systems, Inc., Parties to FirstEnergy's Ohio transition plan case, and the utility commissions in Ohio and Pennsylvania.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 24, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29592 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–010]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 14, 2000.

Take notice that on November 2, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet proposed to become effective November 1, 2000:

Original Sheet No. 14R

ANR advises that the purpose of the filing is to implement new negotiated rate transactions that supplement the previously approved restructured portfolio of negotiated rate transactions with Wisconsin Public Service Corporation.

ANR states that a copy of this filing is being mailed to the affected shippers and to each of ANR's FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 customers, and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/online/rims.htm*.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29584 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–563–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

November 14, 2000.

Take notice that on November 7, 2000, Chandeleur Pipe Line Company tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective December 15, 2000.

Second Revised Sheet No. 43A

Chandeleur Pipe Line Company asserts that the purpose of this filing is to comply with the Commission's order issued October 25, 2000 in Docket No. RP00–563–000.

Chandeleur is directed to remove Tariff Section 7.9(d) of its General Terms and Conditions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29585 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–596–001]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

November 14, 2000.

Take notice that on November 6, 2000, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Sixth Revised Sheet No. 269 to be effective retroactively on September 29, 2000.

CIG states that pursuant to FERC Commission Order, dated October 27, 2000 in Docket No. RP00–596–000, this compliance filing is being made to remove incremental rate tariff language from CIG's Right of First Refusal, Section 3.1 of its General Terms and Conditions.

CIG further states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29587 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–361–000]

Consumers Energy Company; Notice of Filing

November 13, 2000.

Take notice that on November 3, 2000, Consumers Energy Company (Consumers), tendered for filing an executed Non-Firm Point to Point Transmission Service Agreement with Midland Cogeneration Venture Limited Partnership (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreement has an effective date of October 25, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 24, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29590 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–365–000]

Kentucky Utilities Company; Notice of Filing

November 13, 2000.

Take notice that on November 3, 2000, AmerenCIPS tendered for filing a Notice of Cancellation stating that effective as of June 12, 2000, Rate Schedule FERC No. 97, dated June 1, 1988, (Docket No. ER 88–439) filed with the Federal Energy Regulatory Commission by Central Illinois Public Service Company is to be canceled.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests must be filed on or before November 24, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29594 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER–358–000]

New York State Electric & Gas Corporation; Notice of Filing

November 13, 2000.

Take notice that on November 3, 2000, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a supplement to Rate Schedule 72 filed with FERC corresponding to an Agreement with the Municipal Board of the Village of Bath (the Village). The proposed supplement would decrease revenues by $289.27 based on the twelve month period ending December 31, 2001.

The rate filing is made pursuant to Section 2(a) through (c) of Article IV of the December 1, 1977 Facilities Agreement between NYSEG and the Village, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month period during December 31, 1999. The revised facilities charge is levied on the cost of the tap facility constructed and owned by NYSEG to connect its 34.5 kV transmission line located in the Village to the Village's Fairview Drive Substation.

NYSEG reqests an effective date of January 1, 2001.

Copies of the filing were served upon the Municipal Board of the Village of Bath and the Public Service Commission of the State of New York.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or by November 24, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.201(a)(1)(m) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29589 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3742–002]

Northeast Utilities Service Company; Notice of Filing

November 14, 2000.

Take notice that on November 8, 2000, Northeast Utilities Service Company (NUSCO) filed non-confidential versions of two rate schedules (the CL&P Agreement) and the WMECO Agreement) dated April 10, 2000 which were filed with the Commission on September 22, 2000 on a confidential basis.

NUSCO requests that the agreements become effective by December 1, 2000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 24, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29577 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 696]

PacifiCorp; Notice of Authorization for Continued Project Operation

November 14, 2000.

On October 27, 1998, PacifiCorp, licensee for the American Fork Project No. 696, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 696 is located on American Fork Creek in Utah County, Utah.

The license for Project No. 696 was issued for a period ending October 31, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 696 is issued to PacifiCorp for a period effective November 1, 2000, through October 31, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 1, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that PacifiCorp is authorized to continue operation of the American Fork Project No. 696 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29581 Filed 11–17–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–060]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 14, 2000.

Take notice that on November 3, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective December 1, 2000.

Third Revised Sheet No. 8B
Original Sheet No. 8B.01
Original Sheet No. 8B.02

REGT states that the purpose of this filing is to reflect the addition of a new negotiated rate arrangement involving three contracts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims. htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29582 Filed 11–17–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–362–000]

Southern Energy Delta, L.L.C., Southern Energy Potrero, L.L.C.; Notice of Filing

November 13, 2000.

Take notice that on November 3, 2000, Southern Energy Delta, L.L.C. (SE Delta), and Southern Energy Potrero, L.L.C. (SE Potrero), tendered for filing revised tariff sheets to the Must-Run Service Agreements between SE Delta, SE Potrero, and the California Independent System Operator Corporation. The revisions include changes to the: (i) Contract Service Limits, (ii) Hourly Availability Charges and Penalty Rates, and (iii) projected outage information for the generating units owned by SE Delta and SE Potrero, for the year beginning January 1, 2001, as well as corrections to certain typographical errors.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 24, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29591 Filed 11–17–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–016]

TransColorado Gas Transmission Company; Notice of Tariff Filing

November 14, 2000.

Take notice that on November 8, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sixteenth Revised Sheet No. 21 and Twelfth Revised Sheet No. 22, with an effective date of November 1, 2000.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets revised TransColorado's tariff to reflect the new negotiated-rate firm transportation service contracts with Sempra Energy Trading and the amended negotiated-rate contract with Retex, Inc.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29583 Filed 11–17–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–14–000]

City of Vernon, California v. California Independent System Operator Corporation; Notice of Complaint

November 14, 2000.

Take notice that on November 9, 2000, the City of Vernon, California (Vernon) tendered for filing a Complaint Requesting Fast Track processing against the California Independent System Operator Corporation (ISO). The Vernon Complaint asserts that the ISO has unreasonably delayed approval of Vernon's application to the ISO to become a Participating Transmission Owner (PTO) in the ISO transmission system, and that the ISO has thereby violated its FERC Electric Tariff and the Federal Power Act. Vernon requests that the Commission order the ISO to promptly take action to approve and implement Vernon PTO status as of January 1, 2001, or, in the alternative, for the Commission itself to take actions necessary to implement Vernon PTO status effective as of January 1, 2001.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before November 29, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Answers to the complaint shall also be due on or before November 29, 2000. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29579 Filed 11–17–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–364–000]

Wisconsin Electric Power Company; Notice of Filing

November 13, 2000.

Take notice that on November 3, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Allegheny Energy Supply Company, LLC.

Wisconsin Electric respectfully requests an effective date of November 1, 2000 to allow for economic transactions.

Copies of the filing have been served on Allegheny Energy Supply Company, LLC, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 24, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the

Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29593 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–592–001]

Wyoming Interstate Company, LTD. Notice of Tariff Compliance Filing

November 14, 2000.

Take notice that on November 6, 2000, Wyoming Interstate Company, Ltd. (WIC), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 2, Substitute Third Revised Sheet No. 61 to be effective retroactively on September 29, 2000.

WIC states that pursuant to FERC Commission Order, dated October 26, 2000, in Docket No. RP00–592–000, this compliance filing is being made to remove incremental rate tariff language from WIC's Right of First Refusal, Section 5.1 of its General Terms and Conditions.

WIC further states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29586 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–594–001]

Young Gas Storage Company, Ltd.; Notice of Tariff Compliance Filing

November 14, 2000.

Take notice that on November 6, 2000, Young Gas Storage Company, Ltd. (Young), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Substitute Second Revised Sheet No. 70 to be effective retroactively on September 29, 2000.

Young states that pursuant to FERC Commission Order, dated October 25, 2000, in Docket No. RP00–594–000, this compliance filing is being made to remove incremental rate tariff language from Young's Right of First Refusal, Section 3.1 of its General Terms and Conditions.

Young further states that copies of this filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29578 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–13–000, et al.]

Bangor Hydro-Electric Company, et al.; Electric Rate and Corporate Regulation Filings

November 8, 2000.

Take notice that the following filings have been made with the Commission:

1. Bangor Hydro-Electric Company and Emera Incorporated

[Docket No. EC01–13–000]

Take notice that on November 1, 2000, Bangor Hydro-Electric Company (Bangor Hydro) and Emera Incorporated (Emera) submitted for filing an application under section 203 of the Federal Power Act (16 U.S.C. § 824b) and Part 33 of the Commission's Regulations (18 CFR 33.1), seeking the Commission's approval and related authorizations to effectuate the merger between Bangor Hydro and Emera. Under the terms of the proposed merger, Emera will obtain all of the Bangor Hydro's outstanding shares of common stock, with Bangor Hydro to continue to provide service under its name as an Emera subsidiary.

Copies of the filing were served on the Maine Public Utilities Commission, as well as the Maine Public Advocate.

Comment date: December 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Wheelabrator Shasta Energy Company, Inc. and BTA Holdings, Inc.

[Docket No. EC01–15–000]

Take notice that on November 1, 2000, Wheelabrator Shasta Energy Company Inc. (Shasta Energy) and BTA Holdings, Inc. (BTA Holdings) tendered for filing pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (1994), and Part 33 of the Commission's Regulations, 18 CFR part 33, an Application requesting Commission authorization for the proposed acquisition of the stock of Shasta Energy by BTA Holdings, which is indirectly 50% owned by each of Duke Energy Corporation and an individual.

Shasta Energy and BTA Holdings also request waiver of Section 33.2(g) of the Commission's regulations, as well as waiver of the requirement of Section 33.3 of the Commission's regulations to file Exhibits C, D, E, F and I. Shasta Energy and BTA Holdings further request privileged treatment for commercially sensitive information included in their Application.

A copy of this filing was served on the California Public Utilities Commission.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. The AES Corporation, Inversiones Cachagua Limitada, and Mercury Cayman Co. III, Ltd.

[Docket No. EC01–17–000]

Take notice that on November 3, 2000, The AES Corporation, on behalf of two wholly-owned subsidiaries, Inversiones Cachagua Limitada and Mercury Cayman Co. III, Ltd. (collectively, Applicants), tendered for filing an application requesting all necessary authorizations under section 203 of the Federal Power Act (FPA), 16 U.S.C. § 824b (1996), for Applicants to acquire a partial ownership interest in Merchant Energy Group of the Americas, Inc., a power marketer and public utility under the FPA.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Lakefield Junction, L.P., Great River Energy

[Docket No. EC01–19–000]

Take notice that on November 2, 2000, Lakefield Junction, L.P. and Great River Energy tendered for filing an application under section 203 of the Federal Power Act for approval of the transfer of all the partnership interests in Lakefield Junction, L.P. to Great River Energy. Lakefield Junction, L.P. is a limited partnership organized under the laws of the State of Delaware for the purpose of developing, owning, and operating an approximately 550 MW electric generation facility near Trimont, Minnesota.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Panda Gila River, L.P.

[Docket No. ER01–353–000]

Take notice that on November 2, 2000, Panda Gila River, L.P. (Panda Gila River), 4100 Spring Valley, Suite 1001, Dallas, Texas 75244, tendered for filing in Docket No. ER00–1779 pursuant to 18 CFR 35.13 and § 131.53 of the Federal Energy Regulatory Commission's Rules and Regulations, a Notice of Cancellation to become effective November 3, 2000.

Panda Gila River states that it has never entered into any wholesale electric power or energy transactions, and has never utilized its Electric Rate Schedule FERC No. 1.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Natural Gas Trading Corporation

[Docket No. ER01–352–000]

Take notice that on November 2, 2000, Natural Gas Trading Corporation (NGTC), petitioned the Commission for acceptance of NGTC Rate Schedule FERC No.1; the granting of certain blanket approvals, including the authority to sell authority at market-based rates; and the waiver of certain Commission regulations.

NGTC intends to engage in wholesale electric power and energy purchases and sales as a marketer. NGTC is not in the business of generating or transmitting electric power.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Northern Indiana Public Service Company

[Docket No. ER01–351–000]

Take notice that on November 2, 2000, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with Commonwealth Edison Company (Commonwealth Edison).

Northern Indiana has requested an effective date of October 10, 2000.

Copies of this filing have been sent to Commonwealth Edison, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER01–339–000]

Take notice that on November 2, 2000, American Electric Power Service Corporation (AEPSC), tendered for filing an executed interconnection and Operation Agreement between Ohio Power Company and Big Sandy Peaker Plant, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of September 21, 2000.

A Copy of the filing was served upon the Public Service Commission of West Virginia and the Virginia State Corporate Commission.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. J. Aron & Company

[Docket No. ER01–340–000]

Take notice that on November 2, 2000, J. Aron & Company (J. Aron), a marketer of electric power, tendered for filing Notice of Cancellation of its Rate Schedule FERC No. 1, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1994), and Section 35.15 of the Commission's regulations, 18 CFR 35.15.

J. Aron proposes for its cancellation to be effective on January 1, 2001.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket No. ER01–343–000]

Take notice that on November 2, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed interconnection service agreement between PJM and El Paso Merchant Energy L.P.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties.

Copies of this filing were served upon El Paso Merchant Energy L.P., and the state electric utility regulatory commissions within the PJM control area.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER01–348–000]

Take notice that on November 2, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and The Village of Bethel, Ohio (Bethel).

Cinergy and Bethel are requesting an effective date of January 1, 2001.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER01–347–000]

Take notice that on November 2, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and The Village of Hamersville, Ohio (Hamersville).

Cinergy and Hamersville are requesting an effective date of January 1, 2001.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER01–346–000]

Take notice that on November 2, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and Kenergy, Corp. (Kenergy).

Cinergy and Kenergy are requesting an effective date of January 1, 2001.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER01–345–000]

Take notice that on November 2, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and The Village of Ripley, Ohio (Ripley).

Cinergy and Ripley are requesting an effective date of January 1, 2001.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Northern Indiana Public Service Company

[Docket No. ER01–344–000]

Take notice that on November 2, 2000, Northern Indiana Public Service Company (Northern Indiana), tendered a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with Entergy Power Marketing Corp., (EPMC).

Northern Indiana has requested an effective date of October 10, 2000.

Copies of this filing have been sent to EPMC, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER01–350–000]

Take notice that on November 2, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and The Village of Georgetown, Ohio (Georgetown).

Cinergy and Georgetown are requesting an effective date of January 1, 2001.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER01–349–000]

Take notice that on November 1, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and The Village of Blanchester, Ohio (Blanchester).

Cinergy and Blanchester are requesting an effective date of December 1, 2000.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Services, Inc.

[Docket No. ER00–2132–003]

Take notice that on November 1, 2000, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing a compliance Interconnection and Operating Agreement with Calcasieu Power, LLC, in accordance with the Commission's order in Entergy Services, Inc., 93 FERC ¶ 61,108 (2000).

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. American Transmission Company LLC

[Docket No. ER01–366–000]

Take notice that on November 2, 2000, American Transmission Company LLC (ATCLLC), tendered for filing Generator Interconnection agreements between ATCLLC and Wisconsin Electric Power for the following generators.

ATCLLC requests an effective date of January 1, 2001.

Big Quinnesec Falls Hydro Plant
Brule Hydro Plant
Chalk Hill Hydro Plant
Concord Power Plant
Germantown Power Plant
Michigamme Hydro Plant
Oak Creek Power Plant
Paris Power Plant
Peavy Falls Hydro Plant
Pine Hydro Plant
Pleasant Prairie Power Plant
Point Beach Power Plant
Port Washington Power Plant
Presque Isle Power Plant
Twin Falls Hydro Plant
Valley Power Plant
White Rapids Hydro Plant

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. NSTAR Services Company

[Docket No. ER01–369–000]

Take notice that on November 1, 2000, ISO New England Inc., tendered for filing a Report of Compliance relating to a Special Interim Market Rule in response to the Commission's July 26, 2000 Order in this proceeding, or, in the alternative, an emergency Market Rule change under Section 205 of the Federal Power Act.

Copies of said filing have been served upon all parties to this proceeding, upon NEPOOL Participants, and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the governors and utility regulatory agencies of the six New England States.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. NSTAR Services Company

[Docket No. ER01–368–000]

Take notice that on November 1, 2000, ISO New England Inc., tendered for filing a Report of Compliance relating to Market Rule 17, Market Monitoring, Reporting and Market Power Mitigation, in response to the Commission's July 26, 2000 Order in this proceeding.

Copies of said filing have been served upon all parties to this proceeding, upon NEPOOL Participants, and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. ISO New England Inc.

[Docket No. ER01–316–000]

Take notice that on November 1, 2000, ISO New England Inc. (ISO), tendered for filing proposed rates under Section 205 of the Federal Power Act for recovery of its administrative costs for 2001. The ISO requests that an Interim Tariff be allowed to go into effect on January 1, 2001, and a Tariff to go into effect upon issuance of a final Commission order.

Copies of the transmittal letter were served upon all Participants in the New England Power Pool (NEPOOL) and all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as on the utility regulatory agencies of the six New England States. Participants were also served with the whole filing electronically and posted on the world-wide web.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–29549 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1162 002

Kacie Lake Hydro, Inc., Notice of Surrender of Preliminary Permit

November 8, 2000.

Take notice that Kacie Lake Hydro, Inc., permittee for the proposed Kacie Lake Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on March 23, 1999, and would have expired on February 28, 2002. The project would have been located on an unnamed stream, near the city of Unalaska, Alaska.

The permittee filed the request on October 3, 2000, and the preliminary permit for Project No. 11620 shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–29588 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–6902–9]

California State Nonroad Engine and Vehicle Pollution Control Standards; Notice of Within the Scope Determinations

AGENCY: Environmental Protection Agency.

ACTION: Notice Regarding Within the Scope Determinations.

SUMMARY: EPA today has determined that certain amendments to the California regulations for standards and test procedures for; utility and lawn and garden engines (ULGE Rule); heavy-duty non-road engines and vehicles (HDNR Rule); and nonroad recreational vehicles and engines (NRRV Rule), are within the scope of the previous authorizations of Federal preemption granted to California for its three nonroad rules pursuant to section 209(e) of the Act.

DATES: Any objections to the findings in this notice regarding EPA's determination that California's amendments to its regulations for test procedures for nonroad engines and vehicles are within the scope of previous authorizations must be filed by December 20, 2000. Otherwise, at the end of this 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent **Federal Register** notice.

ADDRESSES: Any objections to the within the scope findings described above should be filed with Robert Doyle at the address noted below. The Agency's decisions as well as all documents relied upon in reaching these decisions, including those submitted by the California Air Resources Board (CARB), are available for public inspection in the Air and Radiation Docket and Information Center during the working hours of 8:00 a.m. to 4:00 p.m. at the Environmental Protection Agency, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460, Tel. (202) 260–7549. The Dockets included in these determinations are as follows: Docket A–2000–05—ULGE Rule—Certification and Implementation Amendments; Docket A–2000–06—ULGE Rule and HDNR Rule—Military/Tactical Vehicles and Engines Exemptions Amendments; Docket A–2000–07—ULGE Rule—CO Standards Revisions Amendments; Docket A–2000–08—ULGE Rule—Snowthrowers & Ice Augers Certification Options Amendments; NRRV Rule—Speciality Vehicle CO Standards Revision Amendments.

Copies of the Decision Document for these determinations can be obtained by contacting Robert Doyle as noted below, or can be accessed on the EPA Office of Mobile Sources Internet Home Page, also noted below.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney-Advisor, Certification and Compliance Division (6403J), U.S. Environmental Protection Agency, 1200 Pennsylvania, NW., Washington, DC 20460. Telephone: (202) 564–9258, FAX:(202) 565–2057, E-Mail: *Doyle.Robert@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Electronic Copies of Documents

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Transportation and Air Quality (OTAQ) Home Page (*http://www.epa.gov/OTAQ.* Users can find these documents by accessing the OTAQ Home Page and looking at the path entitled "Chronological List of All OTAQ Regulations." This service is free of charge, except for any cost you already incur for Internet connectivity. The official **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (*http://www.epa.gov/docs/fedrgstr/EPA-AIR/*).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc. may occur.

II. Within the Scope Determinations for Amendments to Previously Authorized Nonroad Standards and Procedures

As noted above, CARB has requested that EPA confirm its determinations that the various amendments contained in its requests are within the scope of the authorizations previously granted by EPA for the various CARB nonroad rules. This within the scope determination concept originated in EPA's historical procedures for review of CARB onroad standards waiver requests. Early in the history of the motor vehicle waiver program, CARB submitted to the Agency amendments to standards and regulations which had already received a waiver. Because these amendments did not fundamentally alter the standards which had received the waiver, EPA determined that the amendments did not have to be treated as a request for a new waiver, and therefore, EPA did not have to offer the opportunity for a public hearing before its review of the request (as section 209(b) requires for new waiver requests). Rather, EPA reviewed the amendments, found them to be covered by the previous waiver and issued a determination to that effect.[1] Subsequently, EPA formulated a within the scope standard of review as follows:

> If California acts to amend a previously waived standard or accompanying enforcement procedure, the change may be included within the scope of the previous waiver if it does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable federal standards, does not affect the consistency of California's requirement with section 202(a) of the (Act), and raises no new issues affecting the Administrator's previous waiver determination.[2]

Although CARB has received authorizations for various sets of its nonroad standards on three separate occasions, the requests covered in this Notice are the first ones submitted by CARB for EPA to consider under a WIS approach. For these nonroad WIS requests, CARB has recommended that "(f)or reasons of consistency and administrative efficiency, the U.S. EPA should similarly find that amendments to California nonroad regulations, for which authorizations have previously been granted, can be found to be within the scope of the existing authorizations. That is, if the criteria referenced in (the excerpt above) are satisfied as they relate to amendments of nonroad regulations, the Administrator should find the nonroad amendments to be within the scope of existing authorizations." CARB also noted that, for nonroad within the scope requests, the findings that CARB must make, and the analysis EPA must perform on these findings, is not significantly different than the CARB and EPA tasks in the nonroad authorization process.[3]

Regarding EPA's oversight role for nonroad WIS requests, EPA's regulations which implement section 209(e) do not specifically cover situations in which CARB requests approval for amendments to its authorized standards for nonroad engines. EPA has declared previously, however, that it would interpret section 209(b) (onroad waiver requests) and section 209(e) (nonroad authorization requests) similarly where the language is similar.[4] EPA finds that the appropriate procedure for analysis and review of nonroad amendments WIS requests would be the same basic review and analysis and review used for onroad amendments WIS requests. Accordingly, EPA will use the within the scope criteria analysis currently used in the motor vehicle waiver program for application to requests from California regarding amendments to previously authorized nonroad standards and requirements. Specifically, if California acts to amend a previously authorized standard or accompanying enforcement procedure, the amendments may be considered within the scope of a previously granted authorization provided that it does not undermine California's determination that its standards in the aggregate are as protective of public health and welfare as applicable Federal standards, does not affect the consistency with section 209 of the Act,[5] and raises no new issues affecting EPA's previous authorization determination.

III. The California Requests

I have determined that certain amendments to the California regulations for standards and test procedures for 1) utility and lawn and garden engines (ULGE Rule), 2) heavy-duty non-road engines and vehicles (HDNR Rule), and 3) nonroad recreational vehicles and engines (NRRV) Rule), are within the scope of the previous authorization of Federal preemption granted to California for its three nonroad rules pursuant to section 209(e) of the Act. These amendments, which are in four separate requests from California, and are described below, address various implementation and certification concerns that had arisen since California adopted these rules.

(A) CARB Nonroad Certification and Implementation Amendments

By letter dated March 27, 1996, CARB notified EPA that it has adopted numerous amendments to its ULGE Rule which were first approved by CARB at a public hearing on July 28, 1994. These amendments specifically addressed some implementation and certification concerns and also served to align CARB's Rule with the EPA Small Nonroad Engine Rule and with the utility engine practices adopted by international standards organizations. Some of these amendments which pertained to petroleum-based certification fuels were adopted expeditiously, on August 29, 1994, at the request of manufacturers who wanted to certify their test engines with the alternative Phase II fuel for 1995 calendar year production. The remaining amendments in this package were adopted by CARB on May 26, 1995.

These amendments, according to CARB, sprang from communications between CARB staff and the regulated industries which identified areas in both the enforcement provisions and the test procedures that needed clarification. Additionally, CARB notes, the amendments serve to modify test procedures to better reflect industry practice and to be more consistent with Federal and international procedures.

These amendments to the regulations accomplish the following:

—The definition of "engine family" was revised and new definitions were adopted for "basic engine," "engine model," and some related terms to provide manufacturers with greater flexibility in identifying engine families for certification testing.

—The regulations regarding emission control labels for these engines were revised to clarify who must attach the initial label and the supplemental label (which is required only if the initial label is obscured when installed in or on equipment), and the regulation requiring a fuel label on these engines was repealed because it was deemed unnecessary.

—The regulations regarding emission warranties were revised to make clear the warranty responsibility remains with the engine manufacturer even when the engine is labeled with the equipment manufacturer's name or trademark.

—The regulations regarding Assembly-Line Quality-Audit (ALQA) test procedures, which were originally based on the on-road program, were amended to better suit utility engine production practices, such as establishing new procedures for dealing with low-volume productions more typical to the utility engine production.

—The regulations regarding new engine compliance procedures, which allow CARB to perform emission testing on new engines at any point in the manufacturer's distribution process (including at retail stores), were based on the on-road program. The amendments to these regulations are designed to address properly the circumstances unique to utility engines.

—The regulations regarding manufacturer penalties were amended to clarify the specific liabilities of engine manufacturers and equipment manufacturers to be enjoined from the sale of noncomplying products. This will cover situations where an engine manufacturer sells an incomplete engine to an equipment manufacturer who uses inappropriate components in assembling the finished engine and thus produces a noncomplying engine.

—The regulations regarding test procedures generally serve to bring the California test procedures into closer conformity with the EPA Small Engine Rule test procedures, and also offer manufacturers some flexible options relative to alternative fueled engine certification, gasoline certification test fuels, and diesel-cycle engine family categorization. Finally, amendments were added regarding tamper resistance of adjustable engine parameters based on the corresponding regulations in the on-road program.

CARB has requested that EPA "confirm the ARB's determination that these amendments fall within the scope of the Clean Air Act section 209(e)(2) authorization for the adoption of the Utility Regulations that was granted by (EPA) on July 5, 1995."[6]

(B) CARB Nonroad Military Tactical Vehicle Exemptions Amendments

By letter dated October 7, 1996, CARB notified EPA that it has adopted amendments to its ULGE Rule and HDNR Rule which were first approved by CARB at a public hearing on December 14, 1995. CARB amended Title 13, California Code of Regulations, sections 2400 and 2420 to exempt engines used in off-road military tactical vehicles and equipment from the applicable standards and regulations contained in (respectively) the ULGE Rule and the HDNR Rule. CARB took this step to align the California regulations with the corresponding Federal regulations.

Specifically, CARB exempted from the ULGE Rule and HDNR Rule any engines used in off-road military vehicles or equipment which have been exempted from EPA regulation under a "national security exemption (NSE)." Under the EPA rules applicable to small spark-ignition engines and large nonroad diesel engines, an NSE is available to a manufacturer of nonroad engines used in military applications.[7] CARB also exempted from the ULGE Rule and HDNR Rule any nonroad military tactical vehicles or equipment which has received a Federal certificate of conformity under the EPA Small Engine Rule. CARB took this step to cover certain vehicles or equipment which may be commercially available with Federal certification, but fall within CARB's definition of "military tactical vehicles or equipment." This step, CARB states, will further ensure that the military will not be required to create a separate California fleet.

CARB has requested that EPA "confirm the ARB's determination that the adopted provisions fall within the scope of the * * * previous authorizations that have been granted for off-road vehicles and equipment under 209(e)(2) of the CAA."[8]

(C) CARB Nonroad Tier I Carbon Monoxide Standard Revision for Class 1 and 2 Engines

By letter dated October 9, 1996, CARB notified EPA that it has amended its regulations setting the Tier I carbon monoxide (CO) standard for class 1 and 2 nonroad engines, by revising the standard from 300 grams per brake horsepower-hour (g\bhp-hr) to 350 g\bhp-hr. This amendment was adopted by CARB in January 1996 after CARB received a July 1995 petition from the Briggs & Stratton Corporation (B&S) asking for this change. The company, a manufacturer of small engines used primarily in lawnmowers, requested that CARB relax its original CO standard because of technical difficulties in two of its largest engine models with in-use performance when the engines of these families were calibrated to comply with the 300 g\bhp-hr standard. B&S had indicated to CARB that, in fact, because of potential warranty claim liability and damage to its corporate reputation, the company would not certify these two models under the original standard. If this occurred, CARB noted that the low cost, high volume segment of the utility engine market would not be available to California buyers.[9]

The petition requested that the CARB standard for CO for the class 1 and 2 engines be relaxed to 350 g\bhp-hr to be equivalent to the corresponding Federal standard of 350 g\bhp-hr. CARB admitted that this step would result in the CARB standard being less stringent than the Federal standard because CARB allows manufacturers to choose certification fuel which is differently formulated than the EPA-required certification fuel. CARB found, nevertheless, that its ULGE regulations overall, even with the relaxation of the Tier One CO standard, continue to be, in the aggregate, more protective of public health and welfare that the applicable Federal regulations.

CARB has requested that EPA "confirm the ARB's determination that the adopted (CO standard) amendment falls within the scope of the previous authorization for utility engines granted

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[1] The first "within the scope" determination resulted from EPA placing a condition on the original waiver granted for California's Assembly Line Testing on August 31, 1971. EPA stated that the "waiver shall not prohibit California from adopting modifications of the presently proposed assembly line test and associated numerical standards where such modifications are designed to improve correlation with certification standards and test procedures or where California determines that the objectives of the assembly line test requirement can be satisfied at reduced cost to the consumer." In CARB's follow-up request, EPA determined that the condition it had placed on the earlier waiver had been satisfied and thus found California's amendments to "exist within the meaning and intent of the (earlier) waiver." 37 Fed. Reg. 14831 (July 25, 1972).

[2] 51 FR 12391 (April 10, 1986).

[3] *See, e.g.*, letter form James D. Boyd, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated March 27, 1996, Docket A–2000–05, Entry II–D–1.

[4] This position was expressed in the Preamble to the publication of the final regulations implementing section 209(e) of the Act. *See* Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards, 59 Fed. Reg. 36969, 36982 (July 20, 1994).

[5] EPA has interpreted the requirement regarding whether "California standards and accompanying enforcement procedures are not consistent with section 209" to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers. In Order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted form state regulation. California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1). Finally, and most importantly in terms of application to nonroad within the scope requests such as these, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA will review nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. As previous decisions granting waivers of Federal preemption for motor vehicles have explained, State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification requirements.

[6] Letter from James D. Boyd, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated March 27, 1996, Docket A–2000–05, Entry II–D–1.

[7] *See*, respectively, 40 CFR § 90.908 (1998) and 40 CFR § 89.908 (1998).

[8] Letter from Michael P. Kenny, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated October 7, 1996, ("CARB request letter") Docket A–2000–06, Entry II–D–1. This WIS request from CARB also asked EPA to confirm its determination that some amendments dealing with national security exemptions for on-road motor vehicles are within the scope of previous waivers granted under section 209(b). This particular request will be addressed in a forthcoming proceeding.

[9] Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Docket A–2000–07, Entry II–D–2, p. 4.

under section 209(e)(2) of the Federal Clean Air Act."[10]

(D) CARB Snowthrower & Ice Auger Optional HC and NO_X Standards, and Specialty Vehicle CO Standard Revision

By letter dated April 8, 1997, CARB notified EPA of two new sets of rule amendments. First, CARB stated that it has amended its ULGE regulations to provide manufacturers of engines used in snowthrowers and ice augers the option of not having to certify to the HC and NO_X standards. Second, CARB stated that it amended the NRRV Rule to increase the carbon monoxide standard from 300 g/bhp-hr to 350 g/bhp-hr for engines used in specialty vehicles[11] that are under 25 hp and manufactured after the effective date of the amendments through calendar year 1998.

Under the ULGE Rule as initially adopted by CARB in 1990, snowthrowers and ice augers were included in the Rule's coverage and thus were treated no differently than all other utility, lawn and garden equipment. In contrast, the EPA small engine rule, issued in 1995, exempted wintertime equipment from HC and NO_X standards. EPA noted that because snowthrowers and ice augers were clearly used only during the winter, it would not be reasonable to subject them to stringent control requirements aimed at addressing summertime ozone nonattainment problems.[12]

In March, 1996, the Tecumseh Products Company and the Toro Products Company, along with several servicing dealers, petitioned CARB to exempt snowthrowers and ice augers from HC and NO_X standards. The industry petition noted that the emissions contribution from this type of winter-time equipment was very small, and that the requested change also would harmonize California and Federal treatment of this equipment.[13] CARB granted this petition by adopting the requested changes. In its request letter to EPA, CARB acknowledged that because this step removes a mandatory standard for a class of utility equipment, it reduces the overall stringency of the CARB ULGE Rule. CARB found, nevertheless, that its ULGE regulations overall, even with the exemption of snowthrowers and ice augers from HC and NO_X standards, continue to be, in the aggregate, more protective of public health and welfare than the applicable Federal regulations.

The CARB NRRV Rule, as adopted in 1994, applies to various types of small nonroad vehicles including specialty vehicles under 25 hp. Because the engines used in the under 25 hp speciality vehicles were generally the same engines used in small utility equipment (Class 1 and 2 engines), CARB adopted emission standards for these vehicles that paralleled the emission standards for the small engines covered by the ULGE Rule. As discussed above, in response to an industry petition, in January 1996 CARB amended its ULGE Rule setting the Tier I carbon monoxide (CO) standard for class 1 and 2 nonroad engines, by revising the standard from 300 g/bhp-hr to 350 g/bhp-hr. Because the under 25 hp specialty vehicles use the Class 1 and 2 small nonroad engines now under the relaxed CO standard in the ULGE Rule, CARB amended the NRRV Rule to correspond with the revised CO standard of 350 g/bhp-hr.

CARB has requested that EPA "confirm the ARB's determination that the adopted amendments fall within the scope of the previous authorizations that * * * EPA has granted under section 209(e)(2) of the CAA for utility engines and recreational vehicles (citations omitted)."[14]

In the letters for these requests, CARB stated that the various amendments will not cause the California nonroad standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Regarding consistency with section 209, CARB stated that the amendments (1) apply only to nonroad engines and vehicles and not to motor vehicles or engines, (2) apply only to those nonroad engines and vehicles which are not included in the preempted categories, and (3) do not raise any concerns of inadequate leadtime or technological feasibility or impose any inconsistent certification requirements (compared to the Federal requirements). Finally, CARB stated that the amendments raise no new issues affecting the prior EPA authorization determinations.

EPA agrees with all CARB findings with regard to the provisions listed above. Thus, EPA finds that these amendments are within the scope of previous authorizations. A full explanation of EPA's decision is contained in a Decision Document which may be obtained from EPA as noted above.

Because these amendments are within the scope of previous authorizations, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings by December 20, 2000, EPA will consider holding a public hearing to provide interested parties an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(e) authorization determination and that EPA should reconsider its findings. Otherwise, these findings shall become final on December 20, 2000.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce nonroad engines and vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by January 19, 2001. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

EPA's determination that these California regulations are within the scope of prior authorizations by EPA does not constitute a significant regulatory action under the terms of Executive Order 12866 and this action is therefore not subject to Office of Management and Budget review.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Finally, the Administrator has delegated the authority to make determinations regarding authorizations under section 209(e) of the Act to the Assistant Administrator for Air and Radiation.

Dated: November 9, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–29500 Filed 11–17–00; 8:45 am]

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[10] Letter from Michael P. Kenny, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated October 9, 1996, ("CARB request letter") Docket A–2000–07, Entry II–D–1.

[11] CARB defines "specialty vehicles" as "any vehicle powered by an internal combustion engine having not less than three wheels in contact with the ground, having an unladen weight generally less than 2000 pounds, which is typically operated between 10 and 35 miles per hour. * * * Speciality vehicles are mainly used off of highways and residential streets. Applications of such vehicles include, but are not limited to, carrying passengers, hauling light loads, grounds keeping and maintenance, resort or hotel areas, airports, etc." 13 CCR 2411(a)(19).

[12] EPA explained that "on a national level, ozone nonattainment is primarily a seasonal problem that occurs during warm sunny weather. Regulating HC and emissions from products used exclusively in the winter, such as snowthrowers (and ice augers), will not advance the Agency's mission to correct this seasonal problem." 60 FR 34582, 34591 (July 3, 1995), 40 CFR 90.103(a)(5)(1998).

[13] Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Docket A–2000–08, Entry II–D–2, p. 3, and Attachment A (Industry petition).

[14] Letter from Michael P. Kenny, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated April 8, 1997, ("CARB request letter") Docket A–2000–08, Entry II–D–1.

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–6903–3]

California State Nonroad Engine and Vehicle Pollution Control Standards; Notice of Within the Scope Determinations for Amendments to California's Small Off-Road Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: Notice Regarding Within the Scope Determinations.

SUMMARY: The California Air Resources Board (CARB), by letter dated October 4, 1999, requested that EPA confirm CARB's finding that amendments to its Small Off-Road Engine (SORE) Regulations are within-the-scope of a prior authorization under section 209(e) of the Clean Air Act (Act), 42 U.S.C. 7543(b), granted by EPA for CARB's original SORE Regulations in July 1995. EPA in this notice has made the requested confirmation for many of the amendments in the CARB request. EPA has also determined that other amendments in this CARB request were not within the scope of the prior authorization because these amendments are new standards, and will announce the opportunity for a public hearing on these specific amendments.

DATES: Any objections to the findings in this notice regarding EPA's determination that California's amendments to its regulations for test procedures for nonroad engines and vehicles are within the scope of previous authorizations must be filed by December 20, 2000. Otherwise, at the end of this 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent **Federal Register** notice.

ADDRESSES: Any objections to the within the scope findings in this notice should be filed with Robert Doyle at the address noted below. The Agency's decisions as well as all documents relied upon in reaching these decisions, including those submitted by the California Air Resources Board (CARB), are available for public inspection in the Air and Radiation Docket and Information Center during the working hours of 8:00 a.m. to 4:00 p.m. at the Environmental Protection Agency, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The Docket for this matter is Docket A–2000–09. Copies of the Decision Document for these determinations can be obtained by contacting Robert Doyle as noted below, or can be accessed on the EPA Office of Mobile Sources Internet Home Page, also noted below.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney-Advisor, Certification and Compliance Division, (6403J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564–9258, FAX: (202) 565–2057, E-Mail: *Doyle.Robert@EPA.GOV*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Electronic Copies of Documents

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Transportation and Air Quality (OTAQ) Home Page (http://www.epa.gov/OTAQ). Users can find these documents by accessing the OTAQ Home Page and looking at the path entitled "Chronological List of All OTAQ Regulations." This service is free of charge, except for any cost you already incur for Internet connectivity. The official **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (*http://www.epa.gov/docs/fedrgstr/EPA-AIR/*).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc. may occur.

II. Amendments to the SORE Regulations

We have determined that certain amendments to the CARB SORE[1] Regulations are within the scope of a prior authorization under section 209(e) of the Clean Air Act (Act), 42 U.S.C. 7543(b), granted by EPA to CARB's original SORE Regulations by decision of the Administrator dated July 5, 1995.[2] The SORE regulations apply to all gasoline, diesel, and other fueled utility and lawn and garden equipment engines 25 horsepower and under, with certain exceptions. Under the original authorization, the SORE regulations established two "tiers" of exhaust emission standards for these engines (Tier 1 from 1995 through 1998 model years, and Tier 2 for model year 1999 and beyond), as well as numerous other requirements. The amendments to the regulations, outlined in CARB's request letter,[3] and fully described CARB's submissions, accomplish the following:

- The descriptive terms "handheld" and nonhandheld" have been dropped in favor of describing covered engines by engine displacement categories. The former handheld engines are now called "less than or equal to 65 cubic centimeters (cc)," or "0–65cc," and the former nonhandheld engines are now called "greater than 65 cc." CARB stated that the former categories were picked to ensure that multi-positional equipment supported solely by the operator could use the lighter (but dirtier) handheld engines, which are usually two-stroke engines. Because of manufacturer difficulty with the engine definitions, CARB chose engine displacement to define category choices.
- CARB has changed both the previously authorized Tier 2 standards and the authorized implementation dates for those standards. For the 0–65cc engines, CARB extended the Tier 1 standards for one more year, through model year 1999, so Tier 2 standards do not begin for these engines until the model year 2000. CARB also changed the Tier 2 standards, by relaxing the CO and PM standards, and changing the format of the HC and NO_X standards to allow manufacturers more flexibility. For the Over 65 cc engines, CARB extended the Tier i standards two additional years, through calendar year 2001 for most engines in this category. The extension is longer in some special cases: through 2002 for engines equal to or greater than 225cc and horizontal

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[1] These amendments, among other things, renamed the regulations from the Utility, Lawn and Garden Engine Regulations (ULGE Rule) to the Small Off-Road Engine Regulations (SORE Rule).

[2] 60 FR 37440 (July 20, 1995). The CARB small engine emission regulations were then called the Utility, Lawn and Garden Engine (ULGE) regulations. The new amendments, among other things, renamed the ULGE regulations as the SORE regulations

[3] Letter from Micahel P. Kenney, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated October 4, 1999, Docket A–2000–09, entry II–B–1.

shaft engines below 225 cc, and through 2006 for vertical shaft engines below 225 cc. Additionally, manufacturers who produce more than 40,000 spark-ignited engines per year between 65 and 225cc for sale in California's extreme nonattainment areas are responsible for additional emission standards to obtain the emission reductions that would have occurred under the original CARB staff proposal for these amendments.

- For small compression ignition engines, CARB extended the coverage of the Tier 1 standards one additional year, through model year 1999. For model year 2000 and later, CARB amended the SORE regulations to implement the emission standards for small nonroad compression ignition engines in the Statement of Principles agreed upon by CARB, EPA and various industry members in 1996. The effect of these standards is a relaxation of the Tier 1 standards; the CARB staff acknowledged that it did not believe the 3.2 g/bhp-hr $HC + NO_X$ standard was attainable in the prescribed time period of the CARB Tier 2 standards. CARB notes, however, that the amended small compression engine standards will provide good SIP benefits while also providing California/Federal harmonization of the regulations.[4]
- CARB has expanded the applicability of the SORE Rule to include speciality vehicles and golf carts; these vehicles previously were regulated under the CARB Nonroad Recreational Vehicle Rule. This change results in all engines less than 25 hp used in mobile applications now being covered by the same Rule. CARB also modified the applicability of the Rule to remove the provision that includes engines that produce a rated power greater than 25hp but are governed to produce actual power of under 25hp. CARB had found that a small number of engines of that type were built on an automotive base. The manufacturer expected the engine would not be subject to the SORE standards, but because the manufacturer's customer installed a governor downrating the engine, it became subject to these standards. CARB states that engines in this grouping will be regulated in an upcoming rulemaking to levels appropriate to their automotive origins.[5]
- Manufacturers will have the option of demonstrating compliance with the PM standard through an engineering evaluation rather than through direct testing measurement, the only method allowed in the original rule. CARB staff recommended this change after learning that a simple formula could produce a valid PM measurement value, and thus save manufacturers the cost of the expensive sampling equipment required to measure PM. CARB devised this formula based on information from an industry group showing that PM emissions from two-stroke engines will be no greater than the tested HC emissions divided by the fuel to oil ratio used in the engine.[6]
- CARB has established a program of averaging, banking and trading (ABT) of emission credits for manufacturers of these engines. Manufacturers will be able to use a corporate average to show compliance with the $HC + NO_X$ standard. For any one engine family, the manufacturer can establish a "Family Emission Limit (FEL)" which will be the emission standard for that family, and the FEL can be above the standard (subject only to a set upper limit), so long as the average of all the manufacturer's families met the standard. This corporate average would weight individual engine families by power, load factor, sales and durability period. CARB notes that this credit program is designed to provide industry the flexibility to address problems such as low sales volume engines for which emission reductions are relatively costly by allowing manufacturers to focus efforts first on the higher sales volume engines. The manufacturer averaging program also includes an emission reduction credits mechanism. CARB will allow manufacturers to generate Production Emission Reduction Credits when the final $HC + NO_X$ sample mean (from the production line testing) of an engine family is below the FEL. These credits earned can be used for certification and as a remedy for noncompliance of another engine family.[7]
- CARB amended its "quality audit" requirements. In the original program, manufacturers were required to test 1% of total production for compliance in end of production line tests ("green" engines). In the new requirements, manufacturers now have an option to follow a procedure similar to the Federal "Cumulative Sum ("Cum Sum") procedure. Under Cum Sum, manufacturers can complete the production line testing with a small number of engines when the family is clean, and thus not have to meet the 1% of production requirement. CARB's amendments alter the Cum Sum requirements by requiring a minimum testing rate of 2 engines from each family per quarter to ensure continued sampling. Manufacturers of small volume families can minimize their tests by retaining the 1% testing number. With the exception of the quarterly minimum, CARB's program is similar to that adopted for the Federal nonhandheld program and proposed for the Federal handheld program.[8]
- CARB amended its emission warranty regulations by expanding the list of covered emission-related parts to include air filters and pressure regulators.

In an October 4, 1999 letter to EPA, CARB notified EPA of the above-described amendments to its SORE regulations and asked EPA to confirm that these amendments are within the scope of previous authorizations.[9] EPA can make such a confirmation if certain conditions are present. Specifically, if California acts to amend a previously authorized standard or accompanying enforcement procedure, the amendments may be considered within the scope of a previously granted authorization provided that it does not undermine California's determination that its standards in the aggregate are as protective of public health and welfare as applicable Federal standards, does not affect the consistency with section 209 of the Act,[10] and raises no new issues affecting EPA's previous authorization determination.[11]

In its request letter, CARB stated that the various amendments will not cause the California nonroad standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Regarding consistency with section 209, CARB stated that the amendments (1) apply only to nonroad engines and vehicles and not to motor vehicles or engines, (2) apply only to those nonroad engines and vehicles which are not included in the preempted categories, and (3) do not raise any concerns of inadequate leadtime or technological feasibility or impose any inconsistent certification requirements (compared to the Federal requirements). Finally, CARB stated that the amendments raise no new issues affecting the prior EPA authorization determinations.

EPA agrees with all CARB findings with regard to the provisions listed. Thus, EPA finds that these amendments are within the scope of previous authorizations. A full explanation of EPA's decision is contained in a Decision Document which may be obtained from EPA as noted above.

Because these amendments are within the scope of previous authorizations, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings by December 20, 2000, EPA will consider holding a public hearing to provide interested parties an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(e) authorization determination and that EPA should reconsider its findings. Otherwise, these findings shall become final on December 20, 2000.

Our decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce nonroad engines and vehicles for sale in California. For this reason, we hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by January 19, 2001. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

EPA's determination that these California regulations are within the scope of prior authorizations by EPA does not constitute a significant regulatory action under the terms of Executive Order 12866 and this action is therefore not subject to Office of Management and Budget review.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Finally, the Administrator has delegated the authority to make determinations regarding authorizations under section 209(e) of the Act to the Assistant Administrator for Air and Radiation.

Dated: November 9, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–29501 Filed 11–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–6903–4]

California State Nonroad Engine and Vehicle Pollution Control Standards; Opportunity for Public Hearing and Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and request for public comment.

SUMMARY: The California Air Resources Board (CARB), by letter dated October 4, 1999, requested that EPA confirm CARB's finding that amendments to its Small Off-Road Engine (SORE) Regulations are within-the-scope of a prior authorization under section 209(e) of the Clean Air Act (Act), 42 U.S.C. 7543(b), granted by EPA to CARB's original SORE Regulations in July 1995. EPA has made the requested confirmation for many of the amendments in the CARB request and published this determination in an earlier FR notice. EPA also determined that other amendments in this CARB request were not within the scope of the prior authorization because these amendments are brand new standards. For this reason, EPA is announcing the opportunity for a public hearing on these specific amendments.

DATES: EPA has tentatively scheduled a public hearing for December 8, 2000, commencing at 9:30 am. Any person who wishes to testify on the record at the hearing must notify EPA in writing by December 1, 2000 that he or she will attend the hearing to present oral testimony regarding EPA's determination. If EPA receives one or more requests to testify, this hearing will be held. If EPA does not receive any requests to testify, this hearing will be canceled. Anyone who plans to attend the hearing should contact Robert Doyle by telephone or E-Mail (number and address below) to determine if this hearing will be held. Regardless of whether or not a hearing is held, any party may submit written comments regarding EPA's determination by or before December 22, 2000.

ADDRESSES: Parties wishing to present oral testimony at the public hearing should provide written notice to John Guy, Acting Manager, Engine Compliance Programs Group, (6403J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. If EPA receives a request for a public hearing, EPA will hold the public hearing in the first floor conference room at 501 3rd Street, NW., Washington, DC. Parties wishing to send written comments should provide them to Mr. Guy at the above address. EPA will make available for public inspection at the Air and Radiation Docket and Information Center written comments received from interested parties, in addition to any testimony given at the public hearing. The Air Docket is open during working hours from 8:00 a.m. to 4:00 p.m. at EPA, Air

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[4] Staff Report, Docket A–2000–09, entry II–B–2, p. 32–33, Final Regulation Order—Exhaust Standards and Test Procedures, Docket A–2000–09, entry II–B–8, part VI, p. 98. CARB adopted by reference, with some modifications, 40 CFR Part 89 as that Part relates to the small compression engines.

[5] CARB Staff Report, Docket A–2000–09, entry II–B–2, pp. 10–11.

[6] CARB Staff Report, Docket A–2000–09, entry II–B–2, p. 21.

[7] CARB Staff Report, Docket A–2000–09, entry II–B–2, p. 8–9, and p. 35, Final Regulation Order, Exhaust Standards and Test Procedures, Docket A–2000–09, entry II–B–8, pp. 53–63 (emission reduction credits) and p. 110 (upper limit).

[8] CARB Staff Report, Docket A–2000–09, entry II–B–2, p. 8–9, and Final Statement of Reasons, Docket A–2000–09, entry II–B–7, p.44–45.

[9] The CARB request also included amendments which established brand new durability standards for covered engines (where before there were none). EPA has determined that these two sets of regulation amendments in this request cannot be considered within the scope of the previous authorization because these particular amendments set new and/or more stringent standards and therefore properly should be reviewed as a new authorization request. Accordingly, EPA will offer the opportunity for a public hearing on these new standards.

[10] EPA has interpreted the requirement regarding whether "California standards and accompanying enforcement procedures are not consistent with section 209" to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers. In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from state regulation. California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1). Finally, and most importantly in terms of application to nonroad within the scope requests such as these, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA will review nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. As previous decisions granting waivers of Federal preemption for motor vehicles have explained, State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification requirements.

[11] Decision Document for California Nonroad Engine Regulations Amendments, Dockets A–2000–05 to 08, entry V–B, p. 28.

Docket (6102), Room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The reference number for this docket is A–2000–09.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney-Advisor, Certification and Compliance Division, (6403J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (U.S. mail), 501 3rd Street NW, Washington, DC 20001 (courier mail). Telephone: (202) 564–9258, Fax:(202) 565–2057, E-Mail: *Doyle.Robert@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Electronic Copies of Documents

EPA makes available an electronic copy of this Notice on the Office of Transportation and Air Quality (OTAQ) homepage (http://www.epa.gov/OTAQ). Users can find this document by accessing the OTAQ homepage and looking at the path entitled "Regulations." This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary website: *(http://www.epa.gov/docs/fedrgstr/EPA-AIR/).*

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

II. Background

(A) Nonroad Authorizations

Section 209(e)(1) of the Act addresses the permanent preemption of any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) of the Act allows the Administrator to grant California authorization to enforce state standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a regulation that sets forth, among other things, the criteria, as found in section 209(e)(2), by which EPA must consider any California authorization requests for new nonroad engines or vehicle emission standards (section 209(e) rules).[1, 2]

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to emissions control of new engines not listed under section 209(e)(1).[3] The section 209(e) rule and its codified regulations[4] formally set forth the criteria, located in section 209(e)(2) of the Act, by which EPA must grant California authorization to enforce its new nonroad emission standards.

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement that EPA cannot find "California standards and accompanying enforcement procedures are not consistent with section 209" to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers.[5] In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from state regulation.[6] California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1).

Finally, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA will review nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. As previous decisions granting waivers of Federal preemption for motor vehicles have explained, State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification requirements.[7]

With regard to enforcement procedures accompanying standards, EPA must grant the requested authorization unless it finds that these procedures may cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards promulgated pursuant to section 213(a), or unless the Federal and California certification test procedures are inconsistent.[8]

Once California has received an authorization for its standards and enforcement procedures for a certain group or class of nonroad equipment engines or vehicles, it may adopt other conditions precedent to the initial retail sale, titling or registration of these engines or vehicles without the necessity of receiving an additional authorization.[9]

If California acts to amend a previously authorized standard or accompanying enforcement procedure, the amendment may be considered within the scope of a previously granted authorization provided that it does not undermine California's determination that its standards in the aggregate are as protective of public health and welfare as applicable Federal standards, does not affect the consistency with section 209 of the Act, and raises no new issues affecting EPA's previous authorization determination.[10]

(B) The SORE Amendments Request

EPA granted California authorization for its SORE Rule by decision of the Administrator dated July 5, 1995.[11] The SORE Rule, which applies to all gasoline, diesel, and other fueled utility and lawn and garden equipment engines 25 horsepower and under, with certain exceptions established two "tiers" of exhaust emission standards for these engines (Tier 1 from 1995 through 1998 model years, and Tier 2 for model yea 1999 and beyond), as well as numerous other requirements. By letter dated October 4, 1999, CARB notified EPA that it had adopted numerous amendments to its SORE Regulations which were first approved at a public hearing on March 26, 1998. These amendments are the product of CARB's continuing reviews of industry efforts to comply with the requirements of the CARB nonroad program. The Board directed the CARB staff to review the industry progress in developing the technology required to comply with the Tier 2 standards, and to consider issues raised by the industry in this process. The staff recommended to the Board that the SORE regulations "be modified to reflect the realities of the small engine market and the technological capabilities of the industry."[12] These recommended amendments which CARB adopted consequently reduce compliance burdens on manufacturers while also "preserving most of the emission reductions—including most reductions in excess of comparable federal program—that U.S.E.P.A. previously authorized."[13]

In its request letter, CARB asked EPA to confirm the CARB determination that the amendments to the SORE regulations set forth in its request package are within the scope of the 209(e) authorization of the original authorization granted by EPA for the SORE Rule in July 1995. EPA has made such a determination for most of the regulation amendments included in the CARB request.[14] EPA also has determined, on the other hand, that one set of regulation amendments in this request cannot be considered within the scope of the previous authorization because these particular amendments set brand new, more stringent standards and therefore properly should be reviewed as a new authorization request. These amendments set useful life standards for covered engines (where before there were none). Accordingly, EPA announces this opportunity for a public hearing on these new standards.

III. Procedures for Public Participation

Any party desiring to make an oral statement on the record should file ten (10) copies of its proposed testimony and other relevant material with John Guy Doyle at the address listed above no later than December 20, 2000. In addition, the party should submit 25 copies, if feasible, of the planned statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until December 22, 2000. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at EPA Air Docket, in Docket No. A–2000–09.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: November 9, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–29502 Filed 11–17–00; 8:45 am]

BILLING CODE 6560-50-P

[1, 2] *See* 59 FR 36969 (July 20, 1994), and regulations set forth therein, 40 CFR Part 85, Subpart Q, 85.1601–85.1606.

[3] As discussed above, states are permanently preempted from adopting or enforcing standards relating to the control of emissions from new engines listed in section 209(E)(1).

[4] *See* 40 CFR Part 85, Subpart Q, 85.1605.

[5] *See* FR 36969, 36983 (July 20, 1994).

[6] Setion 209(e)(1) of the Act has been implemented, *See* 40 CFR Pt. 85, Subpart Q 85.1602, 85.1603.

[7] To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and the Federal requirement with the same test vehicle in the course of the same test. *See, e.g.*, 43 Fed. Reg. 32182 (July 25, 1978).

[8] *See, e.g., Motor and Equipment Manufacturers Association, Inc.* v. *EPA*, 627 F.2d 1095, 1111–14 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 952 (1980) (*MEMA I*); 43 Fed. Reg. 25729 (June 14, 1978).

While inconsistency with section 202(a) includes technological feasibility, lead time, and cost, these aspects are typically relevant only with regard to standards. The aspect of consistency with 202(a) which is of primary applicability to enforcement procedures (especially test procedures) is test procedure consistency.

[9] *See* 43 FR 36679, 36680 (August 18, 1978).

[10] Decision Document for California Nonroad Engine Regulations Amendments, Dockets A–2000–05 to 08, entry V–B, p.28.

[11] 60 FR 37440 (July 20, 1995). The CARB small engine emission regulations were then called the Utility, Lawn and Garden Engine (ULGE) regulations. The new amendments, among other things, renamed the ULGE regulations as the SORE regulations.

[12] CARB Notice of Public Hearing with attached Staff Report, Docket A–2000–09, entry II-B–2, p. 2.

[13] Letter from CARB to EPA requesting within the scope confirmation for amendments to SORE Rule, dated October 4, 1999, Docket A–2000–09, entry II-B–1, p.3.

[14] Decision Document for California Nonroad Engine Regulations Amendments, Dockets A–2000–05 to 08, entry V–B.

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6904–4]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that The Research Strategies Advisory Committee (RSAC) of the US EPA Science Advisory Board (SAB), will meet on December 12 and 13, 2000 at the One Washington Circle Hotel located at One Washington Circle, NW, Washington, D.C. The meeting will begin by 8:30 a.m. and adjourn no later than 5:00 p.m. Eastern Standard time on both days. The meeting is open to the public, however, seating is limited and available on a first come basis.

Purpose of the Meeting—The purpose of the meeting is to discuss the FY 2002 Agency Budget Process and Schedule as a prelude to the Committee's formal review of the Science and Technology (S&T) portion of that budget in February. The Committee will be briefed on the Agency's Science Plan and Inventory, and it will consider how to conduct the second phase of its review of the implementation of EPA's Peer Review Process. The Committee will also spend part of the meeting planning its activities for the next year.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Dr. John "Jack" R. Fowle III, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4547; FAX (202) 501–0323; or via e-mail at *fowle.jack@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Fowle no later than noon Eastern Standard Time on December 7, 2000.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 9, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–29644 Filed 11–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6904–7]

Draft Benchmark Dose Technical Guidance Document

AGENCY: Environmental Protection Agency.

ACTION: Notice of Peer-Review Workshop and Public Comment Period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that Eastern Research Group, Inc. (ERG), an EPA contractor for external scientific peer review, will organize, convene, and conduct an external peer-review workshop to review the draft document titled: "Benchmark Dose Technical Guidance Document" (EPA/630/R–00/001). The EPA is also announcing a 30-day public comment period for the draft document. The document was prepared by an EPA Risk Assessment Forum Technical Panel. The Technical Panel will consider the peer-review and public comment submissions in finalizing the document.

DATES: The peer-review workshop will begin on Thursday, December 7, 2000, at 8:30 a.m. and end at 5:00 p.m., then reconvene Friday, December 8, 2000, from 8:00 a.m. to 1:00 p.m. Members of the public may attend as observers, and there will be a limited time for comments from the public. The 30-day public comment period begins November 20, 2000, and ends December 20, 2000.

ADDRESSES: The external peer-review workshop will be held at the Holiday Inn Capital, 550 C Street SW, Washington DC 20024. To attend the workshop register by November 30, 2000 by calling ERG at (781) 674–7374 or send a facsimile to (781) 674–2906. You may also register on the Internet at *http://www.erg.com/conferences/index.htm*, or by E-mail at confmail@erg.com. Space is limited, and reservations will be accepted on a first-come, first-served basis. There will be a limited time for comments from the public during the workshop. Please let ERG know if you wish to make comments.

The draft "Benchmark Dose Technical Guidance Document" is available primarily via the Internet at *http://www.epa.gov/ncea/bnchmrk/bmds—peer.htm*. A limited number of paper copies are available from the Technical Information Staff (8623D), NCEA–W; telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy, please provide your name, mailing address, and the document title, draft "Benchmark Dose Technical Guidance Document." Copies are not available from ERG. Comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, NW, 5th Floor, Washington, DC 20006; telephone: 202–564–3261; facsimile: 202–565–0050. Comments should be in writing and must be postmarked by December 20, 2000. Please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies. Electronic comments may be emailed to: nceadc.comment@epa.gov.

Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: For workshop information, registration, and logistics, contact ERG, 110 Hartwell Avenue, Lexington, Massachusetts 02173; telephone: (781) 674–7374; facsimile: (781) 674–2906.

For information on the public comment period, contact Marilyn Brower, Risk Assessment Forum Staff; telephone: 202–564–3363; facsimile: 202–565–0062; or email: brower.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION: The U.S. EPA conducts risk assessments for an array of health effects that may result from exposure to environmental agents and that require an analysis of the relationship between exposure and health-related outcomes. The dose-response assessment can be approached as a two-step process, the first being the definition of a point of departure (POD) and the second extrapolation from the POD to low environmentally-relevant exposure levels. The benchmark dose (BMD) approach provides a more quantitative alternative to the first step in the dose-response assessment than the current no-observed-adverse-effect-level/lowest-observed-adverse-effect-level (NOAEL/LOAEL) process for noncancer health effects and can be applied to determining the POD proposed for cancer endpoints (EPA, 1996). As the Agency moves toward harmonization of approaches for cancer and noncancer risk assessment, the dichotomy between cancer and noncancer health effects is being replaced by consideration of mode of action and whether the effects of concern are likely to be linear or nonlinear at low doses. Thus, the purpose of this document is to provide guidance for the Agency on the application of the BMD approach in determining the POD, whether a linear or nonlinear low dose extrapolation is used.

The document addresses a number of issues that must be resolved in order to apply the BMD approach for dose-response assessment in a consistent manner. These issues include: (1) Determination of appropriate studies and endpoints on which to base BMD calculations; (2) selection of the benchmark response (BMR) value; (3) choice of the model to use in computing the BMD; (4) details surrounding computation of the confidence limit for the BMD (BMDL); and (5) reporting requirements for BMD and BMDL computation.

Since the methods for BMD computation require appropriate software, another purpose of this document is to provide enough information about preferred computational algorithms to allow users to make an informed choice in the selection of that software. The document does not advocate use of any particular software package, although it is recommended that software with well documented algorithms, such as the Agency's BMD software (BMDS) package, be used. Nor is this guidance intended to document any particular software package, although it will present examples for illustrative purposes that use the Agency's BMDS package. It is also expected that this guidance will inform the design of studies for the computation of BMDs and dose-response analysis, though this will not be covered explicitly. The terminology used in the document is consistent with the EPA's BMDS. This software is available on the Internet at *http://www.epa.gov/ncea/bmds.htm*.

The Risk Assessment Forum has been active in promoting research and discussion on BMD issues since 1990. In 1993 the Risk Assessment Forum sponsored a colloquium on the applications of BMD methods to noncancer risk assessment. The focus of this colloquium was to review a Forum draft report that outlined the techniques and presented the major questions and decisions involved in applying the BMD method. Following this a technical panel published a background document on the use of BMD in health risk assessment (EPA/630/R–94/007). In the ensuing years the Forum sponsored several workshops and symposia on the BMD approach, including a 1996 external peer review on an earlier draft of the document presently undergoing review. Following this external peer review, the Technical Panel will consider reviewers' and public comments in finalizing the document.

This document is intended to be updated as new information becomes available that would suggest approaches and default options alternative or additional to those indicated here and should not be viewed as precluding additional research on modified or alternative approaches that will improve quantitative risk assessment.

Dated: November 9, 2000.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 00–29648 Filed 11–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6902–7]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as Amended, 42 U.S.C. 9622(h), CHEMCENTRAL Warehouse Fire CERCLA Site, Kent, WA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement and request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendment and Reauthorization Act ("CERCLA"), notice is hereby given of a proposed settlement to resolve a claim against CHEMCENTRAL Corporation. The proposed settlement concerns the federal government's past response costs at the CHEMCENTRAL Warehouse Fire CERCLA Site, Kent, Washington. The settlement requires the settling party, CHEMCENTRAL Corporation, to pay $24,066.34 to the Hazardous Substance Superfund. For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region 10, office at 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed settlement may be obtained from Mary Shillcutt, Regional Hearing Clerk, EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, telephone number (206) 553–2429. Comments should reference the "CHEMCENTRAL Warehouse Fire CERCLA Site" and EPA Docket No. CERCLA–10–2001–0006 and should be addressed to Ms. Shillcutt at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer G. MacDonald, Assistant Regional Counsel, EPA Region 10, Office of Regional Counsel, 1200 Sixth Avenue, Seattle, Washington 98101, telephone number (206) 553–8311.

Dated: November 8, 2000.

Charles E. Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 00–29357 Filed 11–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51956; FRL–6754–1]

Certain New Chemicals; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA is issuing this notice to correct the Test Marketing Exemption T–00–0006.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51956. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA NonConfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the center is (202) 260–7099.

II. What Does This Correction Do?

EPA issued a notice in the **Federal Register** of October 17, 2000, (65 FR 61326) (FRL–6749–3) in which incorrectly provided information on Test Marketing Exemption T–00–0006, as an ingredient in a new human antipersoirant formulation. This document corrects the TME as follows:

In FR Doc. 00–26640, at page 61328, the entry to Table II. in the 5th column, the word "antipersoiant" is corrected to read "antiperspirant".

List of Subjects

Environmental Protection, Chemicals, Premanufacturer notices.

Dated: November 9, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–29649 Filed 11–17–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6904–5]

Public Water System Supervision Program Revision for the State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State of South Dakota has revised its Public Water System Supervision (PWSS) primacy program by adopting regulations for the Consumer Confidence Report Rule that correspond to 40 CFR part 141, Subpart O. Having determined that these revisions meet all pertinent requirements in the Safe Drinking Water Act, 42 U.S.C. 300f et seq., and EPA's implementing regulations at 40 CFR parts 141 and 142, the EPA approves them.

Today's approval action does not extend to public water systems in Indian Country as that term is defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Item B.

DATES: Any member of the public is invited to submit written comments and/or request a public hearing on this determination by December 20, 2000. Please see Supplementary Information, Item C for information on submitting comments and requesting a hearing. If no hearing is requested or granted, then this action shall become effective December 20, 2000. If a public hearing is requested and granted, then this determination shall not become effective until such time following the hearing as the Regional Administrator issues an order affirming or rescinding this action.

ADDRESSES: Written comments and requests for a public hearing should be addressed to: William P. Yellowtail, Regional Administrator, c/o Linda Himmelbauer (8P–W–MS), U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466.

[Reviewing Documents]

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA Region 8, Municipal Systems Unit, 999 18th Street (4th floor), Denver, Colorado 80202–2466; (2) South Dakota Department of Environment and Natural Resources, Drinking Water Program, 523 East Capital Avenue, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Linda Himmelbauer, Municipal Systems Unit, EPA Region 8 (8P-W-MS), 999 18th Street, Suite 300, Denver, Colorado 80202–2466, telephone 303–312–6263.

SUPPLEMENTARY INFORMATION: Effective January 9, 1984, EPA approved South Dakota's application for assuming primary enforcement authority for the PWSS program, pursuant to section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR part 142 (see 48 FR 55173.) The South Dakota Department of Environment and Natural Resources (DENR) administers South Dakota's PWSS program.

A. Why are Revisions to State Programs Necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the National Primary Drinking Water Regulations (NPDWRs) at 40 CFR part 141. (40 CFR 142.10(a).) Changes to state programs may be necessary as federal primacy requirements change, as states must adopt all new and revised NPDWRs in order to retain primacy. (40 CFR 142.12(a).)

B. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in South Dakota?

South Dakota is not authorized to carry out its Public Water System Supervision program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to: Lands within the exterior boundaries of the following Indian Reservations located within the State of South Dakota:

a. Cheyenne River Indian Reservation.
b. Crow Creek Indian Reservation.
c. Flandreau Indian Reservation.
d. Lower Brule Indian Reservation.
e. Pine Ridge Indian Reservation.
f. Rosebud Indian Reservation.
g. Standing Rock Indian Reservation.
h. Yankton Indian Reservation.

EPA held a public hearing on December 2, 1999, in Badlands National Park, South Dakota, and accepted public comments on the question of the location and extent of Indian country within the State of South Dakota. In a forthcoming **Federal Register** notice, EPA will respond to comments and more specifically identify Indian country areas in the State of South Dakota.

C. Requesting a Hearing and Submitting Written Comments

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of South Dakota. A notice will also be sent to the person(s) requesting the hearing as well as to the State of South Dakota. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. A final determination will be made upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: November 7, 2000.

Jack W. McGraw,

Acting Regional Administrator, EPA, Region 8.

[FR Doc. 00–29646 Filed 11–17–00; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

Office of Communications; Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of State is cancelling the following Optional Form because of low usage:

OF 129, Individual Property Record Card

DATES: Effective November 20, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: October 20, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–29616 Filed 11–17–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control (ACIPC), Family and Intimate Violence Prevention Subcommittee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: ACIPC Family and Intimate Violence Prevention Subcommittee.

Time and Date: 12 p.m.–4 p.m., November 28, 2000.

Place: The Hyatt Regency Atlanta, 265 Peachtree Street, N.E., Atlanta, Georgia 30303

Status: Open to the public, limited only by the space available.

Purpose: To advise and make recommendations to ACIPC and the Director, National Center for Injury Prevention and Control (NCIPC), regarding feasible goals for prevention and control of family and intimate violence and sexual assault. The Subcommittee will make recommendations regarding policies, strategies, objectives and priorities.

Matters to be Discussed: The Subcommittee will review current and planned family and intimate violence prevention program initiatives and activities.

Agenda items are subject to change as priorities dictate.

This notice is published less than 15 days prior to the meeting due to administrative delay.

Contact Person for More Information: Ileana Arias, Ph.D., Team Leader, Family and Intimate Violence Prevention Team, DVP, NCIPC, CDC, 4770 Buford Highway, NE, M/S K60, Atlanta, Georgia 30341–3724, telephone 770/488–4410.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 15, 2000.

Carolyn J. Russell,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–29719 Filed 11–16–00; 12:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control (ACIPC), Science and Program Review Subcommittee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal Advisory committee meetings.

Name: ACIPC Science and Program Review Subcommittee.

Time and Date: 1:30 p.m.–5 p.m., November 28, 2000.

Place: The Hyatt Regency Atlanta, 26 Peachtree Street, N.E., Atlanta, Georgia 30303

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee provides advice on the needs, structure, progress and performance of NCIPC programs. The Subcommittee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Subcommittee also advises on priorities for research to be supported by contracts, grants, and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: The Subcommittee will discuss the national violent death reporting system, NCIPC programmatic reviews, cooperative agreement funding for fiscal year 2000, and the external peer review of intramural research.

Agenda items are subject to change as priorities dictate.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Time and Date: 8:30 a.m.–3:30 p.m., November 29, 2000.

Place: The Hyatt Regency Atlanta, 26 Peachtree Street, N.E., Atlanta, Georgia 30303.

Status: Open to the public, limited only by the space available.

Purpose: The Committee advises and makes recommendations to the Secretary, the Assistant Secretary for Health, the Director, CDC, and Director, National Center for Injury Prevention and Control (NCIPC) regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance of intramural and extramural research, and also provides guidance on the needs, structure, progress and performance of intramural programs, and on extramural scientific program matters. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee also recommends areas of research to be supported by contracts and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: Following the Acting Director's update, which will include an introduction of the new NCIPC Director, NCIPC's Division of Violence Prevention will give an overview of violence against women programs. The Committee will also discuss reports from the November 28, 2000, meetings of the Subcommittee on Family and Intimate Violence Prevention and Subcommittee on Science and Program Review.

This notice is published less than 15 days prior to the meeting due to administrative delay.

Contact Person for More Information: Mr. Thomas E. Blakeney, Acting Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1481.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 15, 2000.

Carolyn J. Russell,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–29720 Filed 11–16–00; 12:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Allergenic Products Advisory Committee, Biological Response Modifiers Advisory Committee, Blood Products Advisory Committee, Transmissible Spongiform Encephalopathies Advisory Committee, and the Vaccines and Related Biological Products Advisory Committee in the Center for Biologics Evaluation and Research (CBER). Nominations will be accepted for vacancies that will or may occur through January 31, 2002.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae should be sent to the addresses below.

FOR FURTHER INFORMATION CONTACT: Regarding nominations, except for consumer representatives: Nancy T. Cherry, Scientific Advisors and Consultants Staff, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314.

Regarding nominations for consumer representatives: Maureen A. Hess, Office of Consumer Affairs (HFE–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301–827–4421.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members with appropriate expertise for vacancies listed below.

1. *Allergenic Products Advisory Committee:* Three vacancies occurring August 31, 2001; immunology, pediatrics, internal medicine, biochemistry, statistics, and related scientific fields.
2. *Biological Response Modifiers Advisory Committee:* Five vacancies occurring March 31, 2001; biological response modifiers, immunology, virology, molecular biology, rDNA technology, infectious diseases, viral oncology, statistics, and cellular kinetics.
3. *Blood Products Advisory Committee:* Nine vacancies occurring September 30, 2001; clinical and administrative medicine, hematology, immunology, blood banking, surgery, internal medicine, biochemistry, engineering, statistics, biological and physical sciences, and other related scientific fields.
4. *Transmissible Spongiform Encephalopathies Advisory Committee:* Three vacancies occurring January 31, 2002; clinical administrative medicine, hematology, virology, neurology, infectious diseases, immunology, blood banking, surgery, internal medicine, biochemistry, biostatistics, epidemiology, biological and physical sciences, sociology/ethics, and other related professions.
5. *Vaccines and Related Biological Products Advisory Committee:* Three vacancies occurring January 31, 2002; immunology, molecular biology, rDNA, virology, bacteriology, epidemiology, biostatistics, allergy, preventive medicine, infectious diseases, pediatrics, microbiology, and biochemistry.

Functions

Allergenic Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic diseases.

Biological Response Modifiers Advisory Committee

Reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in

the prevention and treatment of a broad spectrum of human diseases.

Blood Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood and products derived from blood and serum or biotechnology which are intended for use in the diagnosis, prevention, or treatment of human diseases.

Transmissible Spongiform Encephalopathies Advisory Committee

Reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health.

Vaccines and Related Biological Products Advisory Committee

Reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases.

Qualifications

Persons nominated for membership on the committees shall have adequately diversified experience appropriate to the work of the committee in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The particular needs at this time for each committee are shown above. The term of office is up to 4 years, depending on the appointment date.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Self-nominations are also accepted. Nominations shall include the name of the committee, a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member (name of committee(s) must be specified), and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

Consumer Representatives

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees to represent consumer interests. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Selection of members representing consumer interests is conducted through procedures that include use of a consortium of consumer organizations that has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Nominations shall include a complete curriculum vitae of each nominee, current address and telephone numbers, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or in any advisory committee. The term of office is up to 4 years, depending on the appointment date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: November 7, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–29536 Filed 11–20–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0218]

Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol" dated October 2000. The guidance document provides information on the revised release limits to be used by the Center for Biologics Evaluation and Research (CBER) for its evaluation of standardized dust mite and grass allergen vaccines submitted to CBER for lot release. The establishment of suitable potency limits for standardized allergen vaccines submitted to CBER for lot release is necessary to help ensure the safety, purity, and potency of these products. The guidance document announced in this notice finalizes the draft guidance entitled "Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol" that was announced in the **Federal Register** on February 15, 2000.

DATES: Submit written comments at any time.

ADDRESSES: Submit written requests for single copies of "Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol" dated November 2000 to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph L. Okrasinski, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled "Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol" November July 2000. The guidance document provides information to FDA reviewers regarding broader relative potency limits for CBER evaluation of standardized dust mite and grass allergen vaccines submitted to CBER for lot release. Issues addressed in the guidance document include, but are not limited to, the following: (1) Diagnostic equivalence, (2) theraputic equivalence, (3) safety equivalence, (4) lot-to-lot variation in allergen vaccine potency, and (5) current and broadened CBER release limits for standardized dust mite and grass allergen vaccines submitted to CBER for lot release. The guidance document announced in this notice finalizes the draft guidance entitled, "Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol" that was announced in the **Federal Register** on February 15, 2000 (65 FR 7557).

This guidance document represents the agency's current thinking with regard to the potency limits for standardized dust mite and grass allergen vaccines. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm.

Dated: October 13, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–29537 Filed 11–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–3010]

"Guidance for Industry: Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts"; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts" dated November 2000. The guidance document provides information on developing stability protocols for standardized grass pollen extracts. The development of suitable stability studies is necessary to determine the shelf life of standardized grass pollen extracts to help ensure the safety, purity, and potency of these products. The guidance document announced in this notice finalizes the draft guidance entitled "Guidance for Industry on Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts" that was announced in the **Federal Register** of August 25, 1997.

DATES: Submit written comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled "Guidance for Industry: Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts" dated November 2000 to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph L. Okrasinski, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts" dated November 2000. The guidance document is intended to provide information to manufacturers regarding stability studies on grass pollen extracts. Such stability studies are used to determine the shelf life of the product. This guidance document does not, however, change lot release criteria for these products. Issues addressed in the guidance document include, but are not limited to: (1) Current lot release criteria, (2) lot release versus stability protocol, (3) modified stability protocol, (4) retesting, (5) dealing with test failure, and (6) extension of dating. The guidance document announced in this notice finalizes the draft guidance entitled "Guidance for Industry on Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts" that was announced in the **Federal Register** of August 25, 1997 (62 FR 44975).

This guidance document represents the agency's current thinking with regard to the testing limits in stability protocols for standardized grass pollen extract. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

Interested persons may, at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm.

Dated: November 6, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–29535 Filed 11–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Year 2000 Community Health Center and National Health Service Corps User/Visit Survey (OMB No. 0915–0185)—Reinstatement, With Change

The purpose of this study is to conduct a sample survey which has three components: (1) A pilot study, including an evaluation of both retrospective and prospective sampling methodologies; (2) a personal interview survey of Community Health Center (CHC) and National Health Service Corps (NHSC) site users; and (3) a record-based study of visits to CHCs and NHSC sites. CHCs and NHSC sites serve predominantly poor minority medically underserved populations. The proposed user and visit survey will collect in-depth information about CHC and NHSC site users, their health status, the reasons they seek care, their diagnoses, and the services utilized in a medical encounter.

The Year 2000 User/Visit Survey was developed using similar questionnaire methodology from the 1995 User/Visit Survey in conjunction with a contractor and will allow longitudinal comparisons for CHCs with the 1995 version of the survey data, including monitoring of process outcomes over time. The Year 2000 User/Visit Survey is the first year that NHSC non-grantee, freestanding sites will be surveyed.

The estimated response burden for the pilot test is as follows:

Form	Number of respondents	Responses per respondent	Total respondents	Hours per response	Total burden hours
Site Induction	10 (sites)	1	10	1	10
Site Sampling Methods: Retrospective & Prospective.	10 (sites)	1	10	1.5	15
User Survey Tracing Procedures	20 users at 10 sites	1	200	.5	100
User Survey	3 users at 10 sites	1	30	2.25	67.5
Visit Survey	10 (sites)	30	300	.5	150
Total	260		550		342.5

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 13, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–29539 Filed 11–17–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Substance Abuse Prevention and Treatment (SAPT) Block Grant Application Guidance and Instructions, FY 2002—2004 (OMB No. 0930–0080, Revision)—Sections 1921 through 1935 of the Public Health Service Act (U.S.C. 300x–21 to 300x–35) provide for annual allotments to assist States to plan, carry out, and evaluate activities to prevent and treat substance abuse and for related activities. Under the provisions of the law, States may receive allotments only after an application is submitted and approved by the Secretary, DHHS. For the federal fiscal year 2002–2004 SAPT block grant application cycles, the Substance Abuse and Mental Health Services Administration (SAMHSA) will provide States with revised application guidance and instructions to implement changes made by Public Law 106–310, signed by the President on October 17. Revisions to the previously-approved application resulting from the new SAMHSA authorizing legislation reflect the following changes: (1) Section 1922(a) under which States were required to use 35% of the funds on drug related activities and 35% on alcohol related activities (42 U.S.C. 300x–22) is repealed. (2) The Section 1925 requirement for the States to maintain a revolving fund of $100,000 to assist with half way houses for persons recovering from drug or alcohol abuse is now made optional (42 U.S.C. 300x–25). (3) Section 1930, which requires the States to maintain their financial support for substance abuse services at a level equal to the average of what they had spent the previous two years, is amended to permit non-recurring expenditures for a singular purpose to be excluded from the calculation of the Maintenance of Effort (MOE) requirement (42 U.S.C. 300x–30). (4) Section 1952 is amended to allow any amount paid to a State for a fiscal year to be available for obligation and expenditure until the end of the fiscal year following the fiscal year for which the amounts were paid, in effect giving a State two years to obligate and spend (42 U.S.C. 300x–62). These changes do not have an impact on the burden estimate for the application.

In addition, changes are being made to the annual reporting requirements associated with Section 1926 (42 U.S.C. 300x–26), which requires States to have in effect a law prohibiting access and distribution of tobacco products to minors under age 18. In Section II, the following changes are being made with respect to Goal #8 and Attachment G: (1) In Goal #8, States will not be required to report on activities that were reported in previous applications (i.e., the requirement to report on prior year compliance information is eliminated). (2) In Attachment G: (a) questions are re-ordered so they are in chronological order to facilitate reporting on compliance activities; (b) seven of the nine questions are revised to define more precisely the information that SAMHSA needs in order to review and approve applications and eliminate duplication in State reporting; (c) Matrix 7a has been renamed Form G3, and Form G3 now requires States to report specific ages of the youth inspectors rather than age ranges. These changes do not impose additional response burden for the application and should shorten the time for review of applications.

ANNUAL REPORTING BURDEN

	Number of respondents	Responses per respondent	Hours per response	Total burden
Sections I–III—Red Lake Indians	[1] 1	1	531	531
Sections I–III—States and Territories	59	1	564	33,276
Section IV–A	40	1	50	2,000
Section IV–B	20	1	42	840
Total				36,647

[1] Red Lake Indian Tribe is not subject to tobacco requirements.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room, 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: November 14, 2000.

Joseph H. Autry III,

Deputy Administrator, SAMHSA.

[FR Doc. 00–29564 Filed 11–17–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–30]

Notice of Proposed Information Collection: Comment Request; Section 8 Project Based Assistance Program: Approval for Police or Other Security Personnel to Live in Project

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 19, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, D.C. 20410, telephone (202) 708–5221 this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Ulyses Bridges, Office of Housing Assistance Policy Division, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number (202) 708–3000 (this is not a toll-free number) for copies of the proposed forms and other available.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of

information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 8 Project-Based Assistance Program.

OMB Control Number, if applicable: 2502–

Description of the need for the information and proposed use: Approval for police or other security personnel to live in project.

Agency form numbers, if applicable: N/A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 10,000; the frequency of responses is 1; estimated time to prepare collection is approximately 2 hours, and the total annual burden hours are estimated to be 20,000.

Status of the proposed information collection: New collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Date: November 13, 2000.

William C. Apgar,

Assistant Secretary for Housing-FHA.

[FR Doc. 00–29555 Filed 11–17–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Revised Environmental Assessment/Habitat Conservation Plan Related to Application for an Incidental Take Permit for the Magic Carpet Woods Association Project, Leelanau Township, Leelanau County, Michigan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; correction.

SUMMARY: This document corrects the Internet address listed in a document published in the **Federal Register** on November 13, 2000, regarding the notice of availability of a revised draft Environmental Assessment (EA) and Habitat Conservation Plan (HCP) for an Incidental Take Permit for the Magic Carpet Woods Association Project, Leelanau Township, Leelanau County, Michigan.

FOR FURTHER INFORMATION CONTACT: Peter Fasbender, (612) 713–5343, *peter fasbender@fws.gov.*

Correction

In the document announcing the notice of availability of draft EA and HCP for incidental take for the piping plover, FR 00–28900, beginning on page 67753 in the issue of November 13, 2000, make the following correction in the **ADDRESSES** section. At the end of the 1st paragraph in **ADDRESSES** section on page 67753, correct the Internet address to "http://midwest.fws.gov/nepa" from "www/midwest.fws.gov/nepa".

Dated: November 14, 2000.

T.J. Miller,

Acting, Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 00–29565 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–AF]

Notice of Resource Advisory Council Vacancy

AGENCY: Northeast California Resource Advisory Council Susanville, California, Bureau of Land Management, Interior.

ACTION: Notice of vacancy

SUMMARY: Pursuant to authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Northeast California Resource Advisory Council is seeking nominations to fill a vacancy on the council. The person selected to fill the vacancy will complete an unexpired term that ends in September 2002. The designee will be eligible to compete for the full three-year term when the current term expires.

SUPPLEMENTARY INFORMATION: The council vacancy is in membership category two: persons representing national or regionally recognized environmental groups, dispersed recreational activities, archeological or historical interests, or nationally or regionally recognized wild horse and burro interest groups. Advisory Council members are appointed by the Secretary of the Interior. The person selected must have knowledge or experience in the interest area specified, and must have knowledge of the geographic area under the council's purview (the northeast portion of California and the northwest corner of Nevada).

Qualified applicants must have demonstrated a commitment to collaborate to solve a broad spectrum of natural resource issues.

Nomination forms are available by contacting BLM Public Affairs Officer Joseph J. Fontana, 2950 Riverside Drive, Susanville, CA 96130; by telephone (530) 257–5381; or email, jfontana@ca.blm.gov. Nominations must be returned to: Bureau of Land Management, 2950 Riverside Drive, Susanville, CA 96130, Attention Public Affairs Officers, no later than Friday, Friday, Jan. 12, 2001.

FOR ADDITIONAL INFORMATION: Contact BLM Eagle Lake Field Manager Linda Hansen or Public Affairs Officer Joseph J. Fontana at the above phone or email address.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 00–29601 Filed11–17–00; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–01–1220–PD]

Supplementary Rules for the Silver Saddle Ranch and the Ambrose Carson River Natural Area; Carson City, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplementary rules.

SUMMARY: The Carson City Field Manager establishes these Supplementary Rules in support of the Interdisciplinary Management Plan for the Silver Saddle Ranch and the Ambrose Carson River Natural Area. In 1997, the Bureau of Land Management (BLM) completed a land exchange resulting in the transfer of the Silver Saddle Ranch (SSR) in Carson City from private to public ownership. The ranch includes residential buildings, barns, fences, meadow lands, and sensitive riparian areas along the Carson River. In cooperation with the municipality of Carson City, BLM has developed a long-term management plan. This plan will provide for adequate on-site management and protection of these features, as well as for recreational use of the area by the public. The management plan addresses both the Silver Saddle Ranch and the Ambrose Carson River Natural Area (ACRNA). The ACRNA is managed by the BLM in partnership with Carson City through the Carson City Parks and Recreation Department to provide recreational access to the Carson River. The ACRNA is located on the east side of Carson River approximately one and a quarter miles north of SSR. The plan also focuses on meshing existing and future management plans for the Prison Hill Recreation Area, Pine Nut Mountains and other public lands adjacent to the river corridor in Eagle Valley. The plan is consistent with provisions of other City plans, including the Carson River Master Plan, Carson River Park Master Plan, Bicycle System Plan, and the Eagle Valley Trails System Plan.

These supplementary rules were reviewed by the public in June, 2000, during the comment period for the final Management Plan for the ACRNA and SSR.

ADDRESSES: Mail: Field Office Manager, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701.

Personal or messenger delivery: 5665 Morgan Mill Road, Carson City, Nevada 89701.

Internet e-mail: www.nv.blm.gov/carson/default.htm.

FOR FURTHER INFORMATION CONTACT: Chris Miller, Outdoor Recreation Planner, or Richard Conrad, Assistant Manager, Non-Renewable Resources, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone (775) 885–6000. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Lands covered by the supplementary rules

The public lands affected by these restrictions are described as follows:

Mt. Diablo Meridian

T. 15 N., R 20 E.,
Sec. 11: SE¼
Sec. 14: E½

Excepting therefrom those public lands within these sections that lie east of Deer run Road.

Sec. 22: SE¼SE¼
Sec. 26: SW¼NE¼, W½, W½SE¼;
Sec. 27: NE¼,NE¼SE¼;
Sec. 35: NW¼NE¼

Excepting therefrom that portion of the NE¼NE¼NW¼ of Section 26 as conveyed to Carson City, and all that portion lying below the natural, ordinary high water line of the Carson River.

II. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They are not intended to affect commercial activity, but contain rules of conduct for public use of certain recreational areas. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed supplementary rules? How could this description be more helpful in making the supplementary rules easier to understanding?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules merely contain rules of conduct for certain recreational lands in Nevada. These rules are designed to protect the environment and the public health and safety. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the "Public comment procedure" section above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). Again, the supplementary rules merely contain rules of conduct for recreational use of certain public lands. The supplementary rules have no effect on business—commercial or industrial—use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these proposed supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. The supplementary rules do not require anything of State, local, or tribal

governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anyone's property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules affect land in only one State, Nevada, and do not address jurisdictional issues involving the State government. Therefore, in accordance with Executive Order 13132, BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Chris Miller of the Carson City Field Office, Bureau of Land Management, Department of the Interior.

Under the authority of 43 CFR chapter II, part 8360, sections 8364.1, 8365, 8365.1–2, and 8365.1–6, the Nevada State Director proposes supplemental rules applicable to these areas, to read as follows:

Supplementary Rules for the Silver Saddle Ranch and the Ambrose Carson River Natural Area

Sec. 1 Motor vehicle rules

a. You may use motorized vehicles only in parking areas and on designated routes of travel.

b. Motorized vehicles must be equipped with an approved spark arrester, as required and specified by 43 CFR 8343.1(c)

Sec. 2 Closed and limited use areas.

a. You may enter the area of the Silver Saddle Ranch (SSR) west of the Carson River only between the posted hours of sunrise to sunset, except during special events permitted by the BLM. This restriction also applies to SSR lands east of the Carson River and the Ambrose Carson River Natural Area (ACRNA) which are open sunrise to sunset.

b. Except during BLM guided or permitted activities, along the river corridor a three quarter (¾) mile long portion of riparian area west of the banks of the Carson River at the Silver Saddle Ranch, south of the Carson River Park and north of the Mexican Ditch trail, is closed to public use in order to protect both wildlife and riparian vegetation.

c. All agricultural fields are closed to the public while in farming/grazing operational use.

Sec. 3 Other restrictions on recreation use.

a. You may ride bicycles, or horses only on designated trails.

b. West of the Carson River, on the Silver Saddle Ranch, you must keep your dog on a leash at all time.

c. You must remove and properly dispose of any manure created by your pets.

d. To fish, you must possess a valid State of Nevada fishing license.

Sec. 4 Prohibited acts.

You must not:

a. Drive a motorized vehicle except in parking areas in designated routes of travel;

b. Drive a motorized vehicle not equipped with an approved spark arrester;

c. Enter areas that are closed under Sec. 2 of these supplementary rules;

d. Camp at the ACRNA or at the SSR without a permit from BLM-.

e. Discharge any firearms, fireworks, or projectiles.

f. Start or use a campfire without specific BLM authorization. You may use portable stoves using gas, kerosene, jellied petroleum, or pressurized liquid fuel. Until such time as BLM installs permanent fire rings, grates, and/or other appropriate facilities, charcoal fires are allowed only if you first obtain a BLM permit.

g. Ride bicycles or horses except on designated trails;

h. Allow dogs and other pets to run unrestricted in areas specified in Sec. 3b of these supplementary rules;

i. Fail to remove manure deposited by your pet.

Sec. 5 Penalties.

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any person failing to comply with the supplemental rules provided in the notice, may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, other penalties in accordance with 43 U.S.C. 1733 or both.

Sec. 6 Administrative and emergency use.

These supplementary rules do not apply to emergency or law enforcement personnel, or BLM employees engaged in the performance of their official duties.

Dated: November 3, 2000.

Jean Rivers-Council,

Associate State Director, Nevada.

[FR Doc. 00–29602 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan, Environmental Impact Statement, Mount Rainier National Park, Washington

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement and General Management Plan.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for Mount Rainier National Park, Washington.

DATES: Comments on the DEIS/GMP will be accepted through February 9,

2001. Public meetings concerning the DEIS/GMP will be held at the following locations and dates: *Seattle:* Sunday, December 3, 2000, 2:00–5:00 PM, Recreational Equipment, Inc. (REI), North Conference Room, 222 Yale N; *Olympia:* Monday, December 4, 2000, 10:00 AM–12:30 PM, Department of Ecology, Main Auditorium, 300 Desmond Drive; *Tacoma:* Monday, December 4, 2000: 5:00 PM–9:00 PM, Washington State History Museum, 1911 Pacific Avenue; *Enumclaw:* Tuesday, December 5, 2000, 5:00–9:00 PM, Green River Community College Center, 1414 Griffin; *Packwood:* Wednesday, December 6, 2000, 5:00–9:00 PM, Packwood Senior Center, 12931 U.S. Highway 12; *Yakima:* Thursday, December 7, 2000, 5:00–9:00 PM, Doubletree Hotel, 1507 North First Street; *Eatonville:* Friday, December 8, 2000, 5:00–9:00 PM, Pack Forest, 9010 453rd St. E.

Comments: If you wish to comment on the DEIS/GMP, you may mail your comments to the Mount Rainier Team, Denver Service Center, P.O. Box 25287, Denver, CO 80225–0287. You may also send your comments via the Internet to *www.mountainercomments@nps.gov*. Note that there are no spaces between the words. Capitalization does not matter. Please submit Internet comments as a text file avoiding the use of special characters and any form of encryption. Be sure to include your name and return street address in your Internet message.

Please be aware that names and addresses of respondents may be released if requested under the Freedom of Information Act. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Anonymous comments may be included in the public record. However, the NPS is not legally required to consider or respond to anonymous comments.

ADDRESSES: The DEIS/GMP will be available for review on the Internet at *www.hps.gov/planning.* and *www.nps.gov/mora.* Copies of the DEIS/GMP are available from the Superintendent, Mount Rainier National Park, Star Route, Tahoma Woods, WA 98304. Public reading copies of the DEIS/GMP will be available for review at the following locations: Office of the Superintendent, Mount Rainier National Park, Tahoma Woods, Washington 98304, phone (360) 569–2211; NPS Library, Columbia Cascades Support Office, 909 First Avenue, Seattle, WA 98104–1060, phone (206) 220–4114; Office of Public Affairs, Pacific West Region, NPS, 600 Harrison St., Suite 600, San Francisco, CA 94107–1372, phone (415) 427–1320; Office of Public Affairs, NPS, 18th and C Streets NW, Washington, DC 20240, phone (202) 208–6843.

SUPPLEMENTARY INFORMATION: The DEIS/GMP analyzes three alternatives for managing the resources, visitors, and facilities in Mount Rainier National Park. The plan is intended to provide a foundation to help park managers guide park programs and set priorities. The alternative that is finally chosen as the plan will guide the management of Mount Rainier National Park over the next 20 years.

The "no-action" alternative is a continuation of the present management course regarding the management of visitor use. The NPS's proposed action, alternative 2, would continue focusing on protecting the park's natural and cultural resources, while improving the quality of visitor experiences. Among other actions, shuttle service would be provided to Paradise, White River campground, Sunrise, Mowich Lake, and the Westside Road; overflow parking would be eliminated throughout the park; the Henry M. Jackson Memorial Visitor Center at Paradise would be replaced with a smaller facility; the Carbon River Road would eventually be closed to private vehicles; and private vehicles would park 0.5 mile from Mowich Lake. Alternative 3 would offer a different combination of visitor opportunities than those offered in the proposed action. Under this alternative more designated parking spaces would be provided at several popular facilities, visitors would be able to drive high-clearance vehicles on the Westside Road, the last 0.75 mile of the Mowich Lake Road would be surfaced, and State Road 410 would be plowed in the winter up to the White River entrance. None of the alternatives would propose major new developments within the park. Both alternatives 2 and 3 would establish a visitor carrying capacity framework, provide shuttles, eliminate overflow parking, provide new visitor information services and facilities, and recommend a boundary adjustment near the Carbon River entrance.

The DEIS/GMP evaluates the environmental consequences of the proposed action and the other alternatives on natural resources (e.g., air and water quality, soils, special status species), geologic (volcanic and nonvolcanic) hazards, cultural resources (e.g., historic resources, archeological resources), visitor experiences (e.g., visitor access, the range of activities available, wilderness values and experiences), and the socioeconomic environment (e.g., regional context, gateway communities).

FOR FURTHER INFORMATION CONTACT: Eric Walkenshaw, Mount Rainier National Park, at the above address and telephone number, or Larry Beal, Denver Service Center, P.O. Box 25287, Denver, CO 80225–0287, phone (303) 969–2454.

Dated: November 1, 2000.

William C. Walters

Deputy Regional Director, Pacific West Region.

[FR Doc. 00–29552 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Management Plan/Special Resource Study/Record of Decision Shenandoah Valley Battlefields National Historic District, VA

AGENCIES: Shenandoah Valley Battlefields National Historic District Commission and National Park Service; Department of the Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Shenandoah Valley Battlefields National Historic District Commission and the National Park Service have signed a Record of Decision for the Management Plan/Special Resource Study for the Shenandoah Valley Battlefields National Historic District.

The NPS and the Commission will implement the proposed action identified in the Abbreviated Final Environmental Impact Statement (Alternative B: "Clusters"). A new non-profit organization, the Shenandoah Valley Battlefields Foundation, will be created to manage the District. Battlefields and related Civil War resources will be protected through the combined efforts of the Foundation and its partners. Visitor services and interpretation will be focused at five geographic groupings—clusters—of battlefields, nearby towns, and other visitor sites. Each cluster will include a Civil War orientation center to interpret the stories of that particular cluster within the context of the larger District. The clusters and other sites in the District will be linked through brochures, interpretive displays, and a wayfinding system that emphasizes historic routes.

The Foundation will represent the varied interests of the District and serve as the "lead managing partner" for implementing the plan. As principal partners, the Commonwealth of Virginia and the NPS will serve on the Foundation board and support its operations and programs. The NPS will also provide technical assistance throughout the District.

In the Special Resource Study portion of the plan, the NPS analyzed the District and the battlefields and found that Cedar Creek Battlefield—currently a National Historic Landmark—meets the criteria for inclusion in the National Park System. The NPS will present the study and supporting information to the United States Congress for its consideration.

The proposed action is also the environmentally preferred alternative. Relative to the other alternatives, this alternative would cause the least damage to the environment and best protect, preserve, and enhance historic and cultural resources in the District.

The Commission and the NPS selected the proposed action for several reasons. It was positively received by those that attended the public meetings and responded to the newsletter and draft plan/EIS. It best fulfills the legislative mandate, has the fewest negative impacts, and generates the greatest degree of local participation. In addition, the proposed action distributes the economic benefits of tourism most evenly throughout the District, creates the greatest degree of local stewardship for battlefield preservation, and offers opportunities to tell the most complete story of all the alternatives.

For further information or to receive a complete copy of the Record of Decision, contact: Shenandoah Valley Battlefields NHD Commission, P.O. Box 897, 8895 Collins Drive, New Market, Virginia 22844, (868) 689–4545.

Dated: October 26, 2000.

Marie Rust,

Northeast Regional Director, National Park Service.

[FR Doc. 00–29554 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statement; Merced Wild and Scenic River Comprehensive Management Plan; Yosemite National Park, Madera and Mariposa Counties, California; Revision to Record of Decision

SUMMARY: The Department of the Interior, National Park Service has revised the original Record of Decision for the Final Environmental Impact Statement, Merced Wild and Scenic River Comprehensive Management Plan, Yosemite National Park. The Record of Decision was originally signed on August 9, 2000 and published in the **Federal Register** on August 18, 2000. The Revised Record of Decision is designed to clarify statements regarding the process to be used by the National Park Service in complying with § 7 of the Wild and Scenic Rivers Act and to clarify the measurement of the river corridor boundaries and the river protection overlay. The Record of Decision was issued after completion of Draft and Final Environmental Impact Statements for the Merced Wild and Scenic River Comprehensive Management Plan.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR Part 1500), and in accord with a ruling of the U.S. District Court for the Eastern District of California, the National Park Service (NPS) prepared and circulated a Draft and Final Environmental Impact Statement for the Merced Wild and Scenic River Comprehensive Management Plan ("Plan"). The Plan was designed to satisfy the Wild and Scenic Rivers Act's requirements for a Comprehensive Management Plan. To achieve this goal, the Plan presented five alternatives for NPS stewardship of an 81-mile segment of the 122 miles of the Merced River designated as "Wild and Scenic" by Congress in 1987. Each of the alternatives presented a different combination of seven management elements to prescribe desired future conditions, typical visitor activities and experiences, and allowed park facilities and management activities. The seven management elements are: boundaries, classifications, Outstandingly Remarkable Values, a determination process to comply with § 7 of the Act, the River Protection Overlay, management zoning, and the Visitor Experience and Resource Protection framework.

The Draft and Final Environmental Impact Statements assessed the full range of foreseeable environmental consequences and identified all practicable measures to avoid or minimize environmental impacts. More than 2,500 comments were received on the Draft Environmental Impact Statement and approximately 30 comments were received following the release of the Final Environmental Impact Statement (FEIS). All public comments received were carefully reviewed and considered prior to making a decision on the Plan.

A Record of Decision on the Plan was approved on August 9, 2000 and the Notice of Approval of the Record of Decision appeared in the **Federal Register** on August 18, 2000 (65 FR 50565). In that Record of Decision, the NPS adopted the Proposed Action (Alternative 2), as described in the FEIS. As explained in the original Record of Decision, the primary feature that distinguished Alternative 2 from the other alternatives is the interplay of four of its management elements: boundaries, classifications, River Protection Overlay and management zoning. The NPS determined that Alternative 2 would protect and enhance the river's ORVs while allowing for appropriate levels and types of visitor use and development.

II. Reason for Revision

The Record of Decision is being revised to clarify that all statements in the FEIS and Record of Decision regarding the Army Corps of Engineers' definition of the "ordinary high water mark" shall reflect the regulatory definition of that term as found in 33 CFR Section 328.3. This clarification will eliminate text that inaccurately summarized the definition of ordinary high water mark as the 2.33 year floodplain. The regulatory definition of ordinary high water mark as published in the Code of Federal Regulations does not include any reference to the 2.33 year floodplain. Instead, the regulatory definition states: "The term "ordinary high water mark" means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas."

This regulatory definition will be used by the NPS for measuring the extent of the River Protection Overlay and the river corridor boundaries. The river corridor boundaries established by this Plan begin at the ordinary high water mark (as defined by the U.S. Army Corps of Engineers in 33 CFR Section 328.3) and extend one-quarter mile on each side of the river, except in the El Portal Administrative Site where the boundary extends out to the 100-year floodplain or the extent of the River Protection Overlay, whichever is greater. Similarly, the River Protection Overlay will be measured beginning from the ordinary high water mark.

The Record of Decision is also being revised to clarify statements in the FEIS regarding the process to be used for fulfilling the requirements of § 7 of the Wild and Scenic Rivers Act. The Merced River Plan/FEIS includes statements that "Water resources projects that have a direct and adverse effect on the values for a designated river must either be redesigned and resubmitted for a subsequent § 7 determination, abandoned, or may proceed following written notification of the Secretary of the Interior and the United States Congress." This statement inaccurately summarized the intent of the NPS. The following process will be used by the NPS for projects requiring § 7 review. Water resources projects found to have a direct and adverse effect on the values of this designated river will be redesigned and resubmitted for a subsequent § 7 determination or abandoned. In the event that a project can not be redesigned to avoid direct and adverse effects on the values for which the river was designated, the NPS will either abandon the project or will advise the Secretary of the Interior in writing and report to Congress in writing in accordance with § 7(a) of the Act .

The NPS has reviewed these revisions to determine whether there are any new or different impacts associated with these clarifications. The clarification with regard to the § 7 process does not diminish or change the NPS's obligations to comply with § 7 of the Act, nor does it modify the steps to be followed by the NPS in evaluating whether a project would have a direct and adverse affect on river values. The clarification with regard to the definition of ordinary high water is intended to more accurately reflect the regulatory definition of that term. This clarification does not alter the extent of the river corridor boundaries, and it does not change the use of the River Protection Overlay as a tool to protect areas immediately adjacent to the river. Because these revisions are minor clarifications and do not result in changes to the management elements contained in Alternative 2, they do not result in substantial changes relevant to environmental concerns. These modifications are also not in response to significant new information.

Copies: Interested parties desiring to obtain a copy of the Revised Record of Decision may contact the Superintendent, Yosemite National Park, P.O. Box 577, Yosemite, California 95389 (or via telephone request at (209) 372–0201). The complete document will also be posted on the Yosemite National Park Webpage (http://www.nps.gov/yose/planning).

Dated: November 3, 2000.

John J. Reynolds,

Regional Director, Pacific West.

[FR Doc. 00–29550 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Furnace Creek Water Management Plan, Death Valley National Park, Inyo County, California; Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: Pursuant to §102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Council on Environmental Quality regulations (40 CFR 1502.9(c)), the National Park Service intends to prepare an Environmental Impact Statement for a water management plan for the Furnace Creek area in Death Valley National Park. The overall purpose of the plan is to provide for maintaining a sustainable water source meeting appropriate human use needs in the Furnace Creek area, while also protecting unique natural resource values in the area. Upgrading the water supply system is necessary because the existing system is subject to water quality problems. In addition, due to fluctuations in water volumes delivered by the current system, it does not provide a reliable supply of water.

Background: The objectives of the Furnace Creek Water Management Plan include developing a water collection strategy which will: (i) Serve the potable and non-potable Furnace Creek area human use water needs, including the NPS, the AmFac Inn and Ranch Resort, and the Timbisha Shoshone Tribe; (ii) provide for protecting existing biological resource values in the Travertine-Texas Springs area, as well as facilitating potential restoration of riparian and aquatic habitats, in a manner compatible with addressing existing governmental obligations to provide water according to extant amounts.

The current Furnace Creek water collection system was built in the mid-1970's and is nearing the end of its useful life span. The need for replacing this collection system now arises because the current infrastructure undergoes unpredictable fluctuations in the volume of water available for human use, and produces a quality of water that occasionally makes it difficult to achieve state water drinking standards. Since the facilities were originally constructed, inventories of water-dependent plants and animals and the discovery of several new endemic species in the local springs have created greater awareness of the biological value of local wetland and riparian habitats. In addition, completion of this EIS process is consistent with both the existing and draft revision of the park General Management Plan, as well as legislation regarding the Timbisha Shoshone Homeland.

Planning and Public Involvement: During the forthcoming conservation planning and environmental impact analysis process, alternatives and any requisite mitigation measures will be developed that will identify a reasonable range of options for providing a reliable and safe water supply system for Furnace Creek. The process will be conducted in consultation with State and local governments, organizations, Tribes, and interested members of the public. The Furnace Creek Water Management Plan will be prepared by the NPS; its anticipated that cooperating agencies for preparation of the EIS will be identified within 60 days of publication of this Notice in the **Federal Register**. The public will be invited to participate from the outset of the scoping process through completion of the draft and final EIS. To initiate this collaboration, three scoping meetings will be held during winter, 2001 as follows: January 30 (Pahrump), January 31 (Death Valley National Park), and February 1

(Independence). The exact locations and times of the meetings (or scheduling of any additional meetings) will be announced via regional and local news media.

Future Information: Information about development and status of the Furnace Creek Water Management Plan will be distributed via mailings, the Death Valley National Park Webpage (*http://www.nps.gov/deva/planning*), and regional and local news media. To request being added to the mailing list, please leave your name and address on the voice mail telephone at (760) 786–3256 or write to the address below. Interested individuals, organizations, and agencies wishing to provide any written comments on new issues or concerns should respond to: Superintendent, Attn: Furnace Creek Water Management Plan, Death Valley National Park, CA 92328. All such comments must be postmarked on or before March 14, 2001. If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision Process: Availability of the Draft EIS for review and comment will be announced by formal Notice in the **Federal Register**, through local and regional news media, the Park's Webpage, and direct mailing. At this time the Draft EIS is anticipated to be available for public review and comment in autumn 2001. Comments on the Draft EIS will be fully considered as an aid in preparing a Final EIS as appropriate. At this time it is anticipated that the Final EIS will be completed in summer 2002. It is anticipated that notice of an approved Record of Decision will be published in the **Federal Register** in winter 2002. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Death Valley National Park.

Dated: November 7, 2000.

Patricia L. Neubacher,

Acting Regional Director, Pacific West.

[FR Doc. 00–29553 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Vacation Cabin Site Policy at Lake Mead National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The National Park Service announces publication of the Vacation Cabin Site policy at Lake Mead National Recreation Area.

Comments: Written comments were made on the draft revision, with a closing date of September 1, 2000. Only one comment was received on the draft revision, that the policy regarding approved exotic plants for use within the recreation area was confusing. The National Park Service has clarified the language regarding exotic plant species.

ADDRESSES: The Vacation Cabin Site policy is available on the Internet at http://www.nps.gov/lame/concessions/vcs.html. Requests for copies should be sent to Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005.

FOR FURTHER INFORMATION CONTACT: Concessions Program Management at 702/293–8923.

SUPPLEMENTARY INFORMATION: Cabin site lease extensions are expiring in 2000 and 2001. New permits will be issued for a five year period, the maximum length of time allowed by law. This policy will become part of the permit.

There are three vacation cabin site areas within Lake Mead National Recreation Area: Stewart Point (54 sites), located along Lake Mead in Nevada, approximately two miles northeast of Rogers Spring; Temple Bar (32 sites), located along Lake Mead in Arizona, approximately one mile southeast of Temple Bar Resort; and Katherine (35 sites), located along Lake Mohave in Arizona, approximately two miles north of Katherine Landing.

Dated: November 2, 2000.

William K. Dickinson,

Acting Superintendent, Lake Mead National Recreation Area.

[FR Doc. 00–29551 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG); Correction

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Public Meetings; Correction.

SUMMARY: The Bureau of Reclamation published a notice of public meetings in the **Federal Register** of October 19, 2000 (65 FR 62750), concerning meetings of the Glen Canyon Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG). The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; E-mail at: rpeterson@uc.usbr.gov

Correction

In the **Federal Register** of October 19, 2000, in the FR Doc. 00–26934, on page 62750, in the first column, correct the "Dates and Location" caption to read:

DATES AND LOCATION: The AMWG will conduct two public meetings as follows:

Phoenix, Arizona—January 11–12, 2001. The meeting will begin at 9:30 a.m. and conclude at 4:00 p.m. on the first day and begin at 8 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Dated: November 15, 2000.

Eluid L. Martinez,

Commissioner, Bureau of Reclamation.

[FR Doc. 00–29657 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on November 9, 2000, a proposed Consent Decree in *United States* v. *150 Acres of Land, More or Less,* Civil Action No. 5:95 CV 1009, was lodged with the United States District Court for the Northern District of Ohio.

The Consent Decree settles an action brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability

Act, 42 U.S.C. § 9601, *et seq.*, ("CERCLA") for the recovery of past costs incurred by the United States in responding to releases or threatened releases of hazardous substances at the Bohaty Drum Site, located in Medina, Ohio. The proposed settlement set forth in the Consent Decree addresses the liability of five Claimants to the defendant Site, each of which owns an undivided interest in the Site. Under the terms of the proposed decree, the Settling Claimants will pay the United States a total of $100,000 in settlement of the United States' past costs claims against the defendant Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20044–7611, and should refer to *United States* v. *150 Acres of Land, More or Less,* D.J. Ref. 90–11–2–1108.

The Consent Decree may be examined at the office of the United States Attorney, Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue East, Cleveland, Ohio 44114, and at United States Environmental Protection Agency Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–29540 Filed 11–17–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, and with Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on November 2, 2000, a proposed Consent Decree in *United States* v. *Amerada Hess, et al.*, Civil Action No. 3: CV00–1912, was lodged with the United States District Court for the Middle District of Pennsylvania. In this action, brought pursuant to Sections 106, 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. 9606, 9607 and 9613, the United States sought injunctive relief and the recovery of costs incurred by EPA in response to the release or threat of release of hazardous substances at the Butler Mine Tunnel Superfund Site, in Pittston Township, Luzerne County, Pennsylvania.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to D.J. Ref. 90–11–3–134/1.

The Consent Decree may be examined at the Office of the United States Attorney for the Middle District of Pennsylvania, c/o Justin Blewitt, Assistant U.S. Attorney, Federal Building Washington & Linden Streets, Scranton, PA 18501; and at U.S. EPA Region III, c/o Charles Hayden, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $40.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–29542 Filed 11–17–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on November 3, 2000, a proposed Consent Decree in *United States* v. *The Detroit Edison Company, et al.,* Civil Action No. 00–74844, was lodged with the United States District Court for the Eastern District of Michigan. This Consent Decree represents a settlement of claims brought against the Detroit Edison Company, Ford Motor Company, and General Motors Corporation ("Settling Defendants") in the above-referenced action under Section 107 of the Comprehensive Environmental Response, Compensation, and Recovery Act ("CERCLA"), 42 U.S.C. 9607, to recover costs incurred by the United States in connection with the J.E. Berger Superfund Site in Detroit, Michigan.

The Department of Justice will receive a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *The Detroit Edison Company, et al.* (E.D. Mich.), D.J. Ref. 90–11–3–06946.

The Consent Decree may be examined at the Office of the United States Attorney, 211 West Fort Street, Suite 2001, Detroit, Michigan 48226–3211, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost), payable to the Consent Decree Library.

Bruce S. Gelber,

Chief Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–29541 Filed 11–17–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on June 29, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Financial Services Technology Consortium, Inc. ("Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chen Yu Enterprises, Burlingame, CA; and EDS, Plano, TX joined the Consortium as associate

members. Also, Sandia National Laboratories, Albuquerque, NM; Lawrence Livermore National Laboratories, Livermore, CA; Polytechnic/Cornell University, Brooklyn, NY; Oak Ridge National Laboratories, Oak Ridge, TN; Novell, Orem, UT; Los Alamos National Laboratory, Santa Fe, NM; General Services Administration, Washington, DC; National Institute of Standards & Technology, Gaithersburg, MD; Siliware, Inc., New York, NY; and Global Transaction Company, Inc., Columbus, OH have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Financial Services Technology Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Services Technology Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on March 31, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28517).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–29543 Filed 11–17–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on October 23, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Educational Testing Service, Princeton, NJ; Miami-Dade Community College, Miami, FL; Oracle Corporation, Redwood Shores, CA; Sun Microsystems, Inc., Palo Alto CA; University of Michigan-Ann Arbor, Ann Arbor, MI; eduprise Inc., Morrisville, NC; Microsoft Corporation, Redmond, WA; Apple Computer, Inc., Cupertino, CA; Macromedia, Redwood City, CA; MindLever.com, Raleigh, NC; SCT Corporation, Malvern, PA; unext.com, Deerfield, IL; WebCT, Peabody, MA; Cisco Systems, Inc., San Jose, CA; University of Maryland, Adelphi, MD; Blackboard, Inc., Washington, DC; Department of Education-Training and Youth Affairs (Australia)—University of New England, Armidale, New South Wales, AUSTRALIA; click2learn.com, Inc., Bellevue, WA; and Training Server, Baltimore, MD have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc., intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on July 21, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–29545 Filed 11–17–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—J Consortium, Inc.

Notice is hereby given that, on October 20, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), J Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cardsoft, Inc., Mountain View, CA; Centro Ricerche Fiat-CRF, Orbassano, Italy; Enea Realtime AB, Taby, Sweden; Pacific Numerics, San Diego, CA; Mecel AB, Gothenburg, Sweden; Metawave Video Systems, Ltd., Newbury, Berkshire, United Kingdom; Michael Barr, Silver Spring, MD; William N. Locke, Bethel Park, PA; and Joe Sexton, San Jose, CA have been added as parties to this venture. Also, UK Ministry of Defence, Weymouth, United Kingdom has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and J Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On August 9, 1999, J Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 21, 2000 (65 FR 15175).

The last notification was filed with the Department on July 21, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 11, 2000 (65 FR 49263).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–29544 Filed 11–17–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2090–00; AG Order No. 2336–2000]

RIN 1115–AE 26

Extension of Designation of Somalia Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Somalia under the Temporary Protected Status (TPS) program expired on September 17, 2001. This notice extends the Attorney General's designation of Somalia under the TPS program until September 17, 2000. Eligible nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) may re-register for TPS and an extension of employment

authorization. Re-registration is limited to persons who registered for the initial period of TPS, which ended on September 16, 1992, or who registered after that date under the late initial registration provision. Persons who are eligible for late initial registration may register for TPS during this extension.

EFFECTIVE DATES: The extension of the TPS designation for Somalia is effective September 18, 2000, and will remain in effect until September 17, 2001. The 30-day re-registration period begins November 20, 2000, and will remain in effect until December 20, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service (INS), Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority To Extend the Designation of Somalia Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General does not determine that the foreign state no longer meets the conditions for designation, the period is automatically extended for six months pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). The period of designation may, however, be extended to 12 or 18 months at the Attorney General's discretion. 8 U.S.C. 1254a(b)(3)(C). Such an extension makes TPS available only to persons who have been continuously physically present in the United States from the effective date of the initial designation.

Why Did the Attorney General Decide To Extend the TPS Designation for Somalia?

On September 16, 1991, the Attorney General designated Somalia for TPS for a period of 12 months. 56 FR 46804 (Sept. 16, 1991). Since that date, the Departments of State and Justice have annually reviewed conditions within Somalia. Most recently, the Attorney General extended Somalia's TPS designation on September 13, 1999; based on that order, Somalia's TPS designation ran through September 17, 2000. 64 FR 49511 (Sept. 13, 1999).

The Departments of State and Justice have recently reviewed conditions within Somalia. The review resulted in a consensus that a further 12-month extension is warranted. The reasons for the extension are explained in a State Department memorandum that states: "Open warfare remains a fact of life in southern Somalia, where bands compete for land and power * * *. The current security situation in southern Somalia makes the unqualified return of Somalis from the United States dangerous."

Based on these reviews, the Attorney General finds that conditions in Somalia warrant a 12-month extension of the designation of Somalia under section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). There continues to be an ongoing armed conflict within Somalia and, due to that conflict, requiring the return of aliens who are nationals of Somalia would pose a serious threat to their personal safety. 8 U.S.C. 1254a(b)(1)(A). Because the Attorney General did not determine that the conditions in Somalia no longer warrant TPS, the designation was automatically extended by operation of statute on September 18, 2000. 8 U.S.C. 1254a(b)(3)(C). On the basis of the findings described above, the Attorney General finds that the TPS designation for Somalia should be extended for an additional 12-month period, rather than the six-month automatic extension provided for in the statute. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS, How Do I Register for an Extension?

Persons previously granted TPS under the Somalia program may apply for an extension by filing a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins November 20, 2000 and ends December 20, 2000. Additionally, you must file a Form I–765, Application for Employment Authorization. See the chart below to determine whether or not you must submit the one-hundred dollar ($100) filing fee with the Form I–765.

If	Then
You are applying for employment authorization through September 17, 2001.	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You already have employment authorization or do not require employment authorization.	You must complete and file the Form I–765 with no fee.
You are apply for employment authorization and are requesting a fee waiver.	You must complete and file the Form I–765, a fee waiver request, and affidavit (and any other information) in accordance with 8 CFR 244.20.

To re-register for TPS, you also must include two identification photographs (1½″ x 1½″).

Where Should I File for an Extension of TPS?

Nationals of Somalia (or persons who have no nationality and who last habitually resided in Somalia) seeking to register for the extension of TPS must submit an application and accompanying materials to the district office of the INS that has jurisdiction over the applicant's place of residence.

When Can I File for an Extension of TPS?

The 30-day re-registration period begins November 20, 2000, and will remain in effective until December 20, 2000.

Is Late Initial Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Somalia under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Somalia (or an alien having no nationality who last habitually resided in Somalia);

(2) Have been continuously physically present in the United States since September 16, 1991;

(3) Have continuously resided in the United States since September 16, 1991; and,

(4) Be admissible as an immigrant, except as otherwise provided in section 244(c) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the initial registration period from September 16, 1991, through September 16, 1992, he or she

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(1) Was in valid nonimmigrant status, or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the condition listed above. 8 CFR 244.2(g).

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Somalia (or alien having no nationality who last habitually resided in Somalia) who is otherwise eligible for TPS and has applied for or plans to apply for asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denial may also be grounds of denial for TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A); 8 U.S.C. 1254a(c)(2)(B).

Does This Extension Allow Nationals of Somalia (or Aliens Having No Nationality who Last Habitually Resided in Somalia) Who Entered the United States After September 16, 1991, To File for TPS?

No. This is a notice of an extension of the TPS designation for Somalia. It is not a notice of redesignation for Somalia for TPS. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States and does not expand TPS availability to include nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who arrived in the United States after the date of the original designation, in this case, September 16, 1991.

Notice of Extension of Designation of Somalia Under the TPS Program

By the authority vested in me as Attorney General under section 244(b)(3)(A) and (C), and (b)(1) of the Act, I have consulted with the appropriate agencies of the Government concerning whether the conditions under which Somalia was designated for TPS continue to exist. As a result, I determine that the conditions for the original designation of TPS for Somalia continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Somalia under section 244(b) of the Act is extended for an additional 12-month period from September 18, 2000, until September 17, 2001.

(2) I estimate that there are approximately 350 nationals of Somalia (or persons having no nationality who last habitually resided in Somalia) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from September 18, 2000, to September 17, 2001, nationals of Somalia (or persons having no nationality who last habitually resided in Somalia) who received a grant of TPS (or has an application pending) during the initial period of designation from September 16, 1991, until September 16, 1992, must re-register for TPS by filing a new application for TPS, Form I–821, along with an application for employment authorization, Form I–765, within the 30-day period beginning on November 20, 2000 and ending on December 20, 2000. Late registration will be allowed only for good cause shown pursuant to 8 CFR 244.17(c).

(4) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before September 17, 2001, the designation of Somalia under the TPS-program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(5) Information concerning the TPS program for nationals of Somalia (or persons who have no nationality and who last habitually resided in Somalia) will be available at local INS offices upon publication of this notice and on the INS website at http://www.insdoj.gov.

Dated: November 13, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–29546 Filed 11–17–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 13, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz/Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration (MSHA).

Title: Main Fan Operation and Inspection.

OMB Number: 1219–0030.

Affected Public: Business or other for-profit.

Frequency: Recordkeeping, daily.

Number of Respondents: 7.

Number of Annual Responses: 2,625.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 1,313.

Total Annualized Capital/Startup Costs: $735.

Total Annual Costs (operating/maintaining systems or purchasing services): $735.

Description: This information is required by 30 CFR 57.22204 and is collected through daily pressure recordings used by the mine operator and MSHA to maintain a constant surveillance on-mine ventilation, and to ensure that unsafe conditions are identified early and corrected. Technical consultants may occasionally review the information when solving problems.

Type of Review: Reinstatement of a previously approved collection for which approval has expired.

Agency: Mine Safety and Health Administration (MSHA).

Title: Record of Examinations for Hazardous Conditions.

OMB Number: 1219–0083.

Affected Public: Business or other for-profit.

Frequency: Recordkeeping, each shift.

Number of Respondents: 1,215.

Number of Annual Responses: 411,885.

Estimated Time Per Response: 1.5 hours.

Total Burden Hours: 617,828.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 30 CFR 77.1713 requires operators of surface coal mines and surface facilities to keep records of the results of mandatory examinations for hazardous conditions. Records consist of the nature and location of any hazardous condition found and the actions taken to abate the hazardous condition.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration (MSHA).

Title: Explosive Materials and Blasting Units.

OMB Number: 1219–0095.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Number of Respondents: 7.

Number of Annual Responses: 7.

Estimated Time Per Response: 1 hour.

Total Burden Hours: 7.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: In the absence of permissible explosives or blasing units having adequate blasting capacity for metal and nonmetal gassy mines, 30 CFR 57.22606 provides procedures by which mine operators shall notify MSHA of all non-approved explosive materials and blasting units to be used prior to their use in underground gassy metal and nonmetal mines. MSHA uses this information to determine that the explosives and procedures to be used are safe for blasting in a gassy underground mine.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–29618 Filed 11–17–00; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 13, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comment which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Employment and Training Administration.

Title: Job Corps Placement and Assistance Record.

OMB Number: 1205–0035.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 62,429.

Estimated Time Per Respondent: 5 to 15 minutes.

Total Burden Hours: 13,567.

Total Annualized Capital/Startup Costs: $176,731.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: This form is used to obtain information about student training for placement of students in jobs, further education or the military. The forms are prepared by Job Corps Centers and placement specialists for each student separating from Job Corps Centers and have no further impact on the public.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Women.

OMB Number: 1220–0110.

Affected Public: Individuals or households.

Number of Respondents: 6,889.

Estimated Time Per Respondent: 61 minutes.

Total Burden Hours: 6,976.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services: $0.

Description: The Department of Labor will use this information to help understand and explain the

employment activities, unemployment problems, and retirement decisions of women. The mature women currently are ages 64–78 and the young women are ages 47–57. We first interviewed them for the NLS in 1967 and 1968, respectively.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–29619 Filed 11–17–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 13, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Employment and Training Administration.

Title: Job Corp Enrollee Allotment Determination.

OMB Number: 1205–0030.

Affected Public: Individuals or households; Federal Government.

Frequency: On occasion.

Number of Respondents: 7,500.

Estimated Time Per Respondent: 12 Minutes.

Total Burden Hours: 1,500.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Job Corp enrollees may elect to have a portion of their readjustment allowance/transition payment sent to a dependent biweekly. This form provides the information necessary to administer these allotment and qualification for the allotment.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: Contingent Work Supplement to the Current Population Survey (CPS).

OMB Number: 1200–0153.

Affected Public: Individuals or households.

Frequency: One-time.

Number of Respondents: 48,000.

Estimated Time Per Respondent: 8 Minutes.

Total Burden Hours: 6,400.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The contingent work supplement will gather information on the number and characteristics of workers holding jobs expected to last for a limited time (contingent employment). In addition, the supplement will collect information about workers in several alternative employment arrangements.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–29620 Filed 11–17–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of the following information collection: (1) Regulations 29 CFR part 5, Davis-Bacon and Related Acts/Contract Work Hours and Safety Standards Act Reporting Requirements; and (2) Claim for Compensation by Dependents Information Reports. Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below within 60 days of the date of this Notice.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

29 CFR Part 5, Davis-Bacon and Related Acts/Contract Work Hours and Safety Standards Act Reporting Requirements

I. Background

This regulation prescribes labor standards for federally financed and assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA), as well as labor standards for construction contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA). The Davis-Bacon Act provides that every contract wage subject to the Act must contain a provision (wage determination) stating the minimum wages and fringe benefits to be paid the various classes of laborers and mechanics employed on the contract. Any class of laborer or mechanic not listed in the wage determination which is to be employed under the contract shall be classified in conformance with the wage determination, and a report of the action shall be submitted to DOL for review and approval. Further, where a benefit plan is not of the conventional type described in the Act and/or common in the construction industry which is established under a customary fund or program, the regulation provides for contractors to request approval of unfunded fringe benefit plans.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to ensure that employees on federally financed or assisted contracts receive the wage protection to which they are entitled by law.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Davis-Bacon and Related Acts/Contract Work Hours and Safety Standards Act Reporting Requirements-Regulations 29 CFR part 5.

OMB Number: 1215–0140.

Affected Public: Business or other for-profit; Federal Government; State, Local, or Tribal Government.

Frequency: On occasion.

Requirement	Respondents	Responses	Time per response	Burden hours
Conformance Report	3,500	3,500	15 min	875
Unfunded Fringe Benefit Plans	6	6	1 hour	6

Total Responses: 3,506.

Estimated Total Burden Hours: 881.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,262.16.

Claim for Compensation by Dependents Information Reports

I. Background

The forms included in this information request are used by Federal employees and their dependents to claim benefits, prove continued eligibility for benefits, and to show entitlement to the remaining compensation of a deceased beneficiary under the Federal Employees' Compensation Act. There are nine forms in this information collection request. They are the CA–5, CA–5b, CA–1031, CA–1085, CA–1093, CA–1615, CA–1617, CA–1618, and CA–1074.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements of the Federal Employees' Compensation Act. The information contained in these forms is used by the Division of Federal Employees' Compensation to determine entitlement to benefits under the Act, to verify dependent status, and to initiate, continue, adjust, or terminate benefits based on eligibility criteria.

Review: Extension.

Agency: Employment Standards Administration.

Title: Request for Earnings Information.

OMB Number: 1215–0155.

Agency Numbers: CA–5, CA–5b, CA–1031, CA–1074, CA–1085, CA–1093, CA–1615, CA–1617, and CA–1618.

Affected Public: Individuals or households.

Form	Respondents/responses	Frequency	Minutes per form	Burden hours
CA–5	150	Once	90	225
CA–5b	20	Once	90	30
CA–1615	500	Once	30	300
CA–1617	300	Semiannually	30	150
CA–1085	500	Once	45	375
CA–1031	150	Annually	15	37
CA–1074	10	Once	60	10
CA–1093	15	Once	30	7
CA–1618	150	Semiannually	30	75

Total Responses: 1,895.

Estimated Total Burden Hours: 1,209.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $435.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 14, 2000.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 00–29617 Filed 11–17–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel (National Heritage Fellowships sections) to the National Council on the Arts will be held on December 5–8, 2000 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: November 8, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–29559 Filed 11–17–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnerships Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that two meetings of the Partnerships Advisory Panel (Regional Partnership Agreements sections A and B) to the National Council on the Arts will be held by teleconference at 3:00 p.m. on December 12 and 3:00 p.m. on December 13, 2000 in Room 726 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

These meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: November 13, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–29560 Filed 11–17–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board, Executive Committee

DATE AND TIME: November 22, 2000, 10 a.m.–10:15 a.m. Open Session; November 22, 2000, 10:15 a.m.–11 a.m. Closed Session.

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Room 1205, Arlington, VA 22230.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Wednesday, November 22, 2000

OPEN SESSION (10 a.m. to 10:15 a.m.)

—Approval of NSB Interim Report on International S&E

—Approval of Management Response to NSF/OIG Semiannual Report

CLOSED SESSION (10:15 a.m. to 11 a.m.)

—NSF Budget

Marta Cehelsky,

Executive Officer.

[FR Doc. 00–29715 Filed 11–15–00; 4:59 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric & Gas Company, South Carolina Public Service Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–12 issued to South Carolina Electric & Gas Company (SCE&G, the licensee) for operation of the Virgil C. Summer Nuclear Station, Unit No. 1, located in Fairfield County, South Carolina.

The proposed amendment would change Technical Specifications (TS) 3.8.1.1 and 3.8.1.2 to revise the minimum volume requirements for the emergency diesel generator (EDG) fuel oil system.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

The proposed change raises the minimum required fuel oil storage volume to 48,500 gallons for Modes 1–4 and raises the minimum required fuel oil storage volume to 42,500 gallons for Modes 5 and 6. These new TS volume requirements reflect design basis calculation revisions for load requirements following a design basis accident [DBA]. The increase in these TS volume requirements ensure[s] that at least 2% margin is maintained above the seven day requirement for Modes 1–4. Also, it ensures that at least 10% margin is maintained above the seven day requirement for Modes 5 and 6, which meets the 10% margin requirement set forth in Section 5.4 of ANSI [American National Standards Institute] N195–1976, "Fuel Oil Systems for Standby Diesel Generators." This change also raises the day fuel tank minimum volume to 360 gallons for Modes 1–6, which meets the 10% margin requirement set forth in Section 6.1 of ANSI N195–1976, "Fuel Oil Systems for Standby Diesel Generators." These revised TS volume requirements ensure that each EDG can supply the output necessary to assure the operation of the plant equipment required to prevent unacceptable consequences for any plant design basis event or accident condition. Therefore, there is no impact on the consequences of any accident.

In addition, the licensee performed an analysis to consider the impact of the proposed TS Bases change involving Fuel Oil Storage Tank capacity on plant risk. The licensee concluded that the increase in risk resulting from the proposed change to the licensing basis is insignificant. This change does not involve a significant increase in the probability of an accident previously evaluated since the change solely impacts risk during Loss of Offsite Power (LOOP) conditions for a duration of longer than about 7.14 days. When a LOOP of this duration occurs, the TS Bases change will reduce the operator response time to replenish the Fuel Oil Storage Tank to prevent the loss of a diesel generator from 7.7 days to 7.14 days for each of the EDGs. SCE&G believes that, given the relatively large recovery times, this reduction in response time will not significantly affect the calculated human error probabilities of operator response time. In addition, the change in the probability of recovery of AC power in the time frame between 7.14 days and 7.7 days is small. Therefore, SCE&G concludes that the risk impact of the proposed TS Bases change involving Fuel Oil Storage Tank capacity is small.

Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

The proposed change raises the minimum required fuel oil storage volume to 48,500 gallons for Modes 1–4 and raises the minimum required fuel oil storage volume to 42,500 gallons for Modes 5 and 6. These new TS volume requirements reflect design basis calculation revisions for load requirements following a design basis accident. The increase in these TS volume requirements ensure[s] that at least 2% margin is maintained above the seven day requirement for Modes 1–4. Also, it ensures that at least 10% margin is maintained above the seven day requirement for Modes 5 and 6, which meets the 10% margin requirement set forth in Section 5.4 of ANSI N195–1976, "Fuel Oil Systems for Standby Diesel Generators." This change also raises the day fuel tank minimum volume to 360 gallons for Modes 1–6, which meets the 10% margin requirement set forth in Section 6.1 of ANSI N195–1976, "Fuel Oil Systems for Standby Diesel Generators." These changes are not associated with the possibility to create any new or different accident.

In addition, the proposed TS Bases change involving Fuel Oil Storage Tank capacity margins does not create the possibility of any new or different kind of accident. A single failure, consisting of the loss of one train of EDG fuel oil storage and transfer systems will not result in the loss of minimum diesel generator capacity, which is in accordance with Section 5.2 of ANSI N195–1976, "Fuel Oil Systems for Standby Diesel Generators." The on-site oil storage shall remain sufficient to operate the minimum number of diesel-generators following the limiting DBA for 7 days, with at least 2% margin for Modes 1–4 and at least 10% margin for Modes 5 and 6.

3. Does this change involve a significant reduction in margin of safety?

No.

The proposed change raises the minimum required fuel oil storage volume to 48,500 gallons for Modes 1–4 and raises the minimum required fuel oil storage volume to 42,500 gallons for Modes 5 and 6. These new TS volume requirements reflect design basis calculation revisions for load requirements following a design basis accident. The increase in these TS volume requirements ensure[s] that at least 2% margin is maintained above the seven day requirement for Modes 1–4. Also, it ensures that at least 10% margin is maintained above the seven day requirement for Modes 5 and 6, which meets the 10% margin requirement set forth in Section 5.4 of ANSI N195–1976, "Fuel Oil Systems for Standby Diesel Generators." This change also raises the day fuel tank minimum volume to 360 gallons for Modes 1–6, which meets the 10% margin requirement set forth in Section 6.1 of ANSI N195–1976, "Fuel Oil Systems for Standby Diesel Generators."

In addition, the proposed TS Bases change involving Fuel Oil Storage Tank capacity does not involve a significant reduction in the margin of safety. A single failure, consisting of the loss of one train of EDG fuel oil storage and transfer systems will not result in the loss of minimum diesel generator capacity, which is in accordance with Section 5.2 of ANSI N195–1976, "Fuel Oil Systems for Standby Diesel Generators." The on-site oil storage shall remain sufficient to operate the minimum number of diesel-generators following the limiting DBA for 7 days, with at least 2% margin for Modes 1–4 and at least 10% margin for Modes 5 and 6.

The licensee performed an analysis to evaluate the impact of the proposed TS Bases change involving Fuel Oil Storage Tank capacity on plant risk. The licensee concluded that the increase in risk resulting from the proposed change to the licensing basis is insignificant. This change does not involve a significant reduction in the margin of safety since the change solely impacts risk during Loss of Offsite Power (LOOP) conditions for a duration of longer than about 7.14 days. When a LOOP of this duration occurs, the TS Bases change will reduce the operator response time to replenish the Fuel Oil Storage Tank to prevent the loss of a diesel generator from 7.7 days to 7.14 days for each of the EDGs. SCE&G believes that, given the relatively large recovery times, this reduction in response time will not significantly affect the calculated human error probabilities of operator response time. In addition, the change in the probability of recovery of AC power in the time frame between 7.14 days and 7.7 days is small. Therefore, SCE&G concludes that the risk impact of the proposed TS Bases change involving Fuel Oil Storage Tank capacity is small.

Pursuant to 10 CFR 50.91, the preceding analyses provides a determination that the proposed Technical Specifications change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 20, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 10, 2000, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 14th day of November 2000.

For the Nuclear Regulatory Commission.

Richard L. Emch, Jr.,

Chief, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–29635 Filed 11–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Summary and Categorization of Public Comments on the Control of Solid Materials: Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the completion and availability of NUREG/CR–6682, Final Report, entitled "Summary and Categorization of Public Comments on the Control of Solid Materials."

ADDRESSES: Copies of NUREG/CR–6682, Final Report, may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is available for inspection and/or copying for a fee in the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville, Maryland. A copy is also posted on the NRC's internet web site at URL = "http://www.nrc.gov/NMSS/IMNS/controlsolids.html."

FOR FURTHER INFORMATION CONTACT: Giorgio Gnugnoli, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–7135.

SUPPLEMENTARY INFORMATION: At this time, the NRC is in the preliminary stages of examining its approach for control of solid materials and has sought public input to its decision-making process through various forums. To aid in this process, the NRC prepared an Issues Paper that described issues and alternatives related to release of solid materials. This Issues Paper was published in the **Federal Register** on June 30, 1999, (64 FR 35090). That **Federal Register** Notice (FRN) provided for an opportunity to submit public comments on the Issues Paper, in general, and specifically on the NRC examination of its approach for control of solid material. The closing period for public comments was originally November 15, 1999, but was extended until December 22, 1999. The FRN invited public comment on the paper and, to provide further opportunity for public input, the NRC held a series of public meetings during Fall 1999 at the following four locations: (1) San Francisco, CA on September 15–16, 1999; (2) Atlanta, GA on October 5–6, 1999; (3) Rockville, MD on November 1–2, 1999; (4) Chicago, IL on December 7–8, 1999.

The Issues Paper described the following 2 process alternatives: (1) Continue current NRC practice of case-by-case consideration of licensee requests for release of solid material or consider updating existing guidance; and (2) conduct a rulemaking to establish criteria for control of solid materials.

Over 800 comments have been received on the Issues Paper. The majority of the comments focused on the specific technical approaches. With the assistance of contractors, the public meeting transcripts and the public comments received by the NRC staff were collected and organized into a database to facilitate NRC staff review of the public comment. The NUREG/CR–6682 provides a summary and characterization of the public comments and meetings, as well as major trends in the comments.

Various sections of the NUREG/CR–6682 summarize comments received on the process alternatives for establishing criteria for control of solid material. These alternatives include continuing the current case-by-case approach or whether to conduct a rulemaking. Moreover, the NUREG/CR–6682 summarizes comments on the technical approaches as to what the criteria should be. Finally, comments on development of NRC's technical information base, other procedural issues, international issues, and materials that should be considered are also addressed.

The public comments received were discussed in SECY–00–0070, dated March 23, 2000, which provided the Commission with a summary of results of the public meetings. They were also part of the information available to the Commission in making a decision, on August 18, 2000, to defer a final decision on whether to proceed with rulemaking and in providing direction to the NRC staff to proceed with a National Academy of Sciences study on alternatives and to continue with development of a technical information base. The comments will be used by the NRC in its continuing evaluation of this issue.

Dated at Rockville, Maryland, this 9th day of November 2000.

For the Nuclear Regulatory Commission.

Patricia Holahan,

Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 00–29636 Filed 11–17–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27277]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 13, 2000.

Notice is hereby given that the following filings(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 8, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarants(s) at the address(es) specified below. Proof of service (by affidavit or in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 8, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. (70–3429)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its wholly owned subsidiary, AEP Resources, Inc. ("Resources", and together with AEP, "Applicants"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b), 32 and 33 of the Act and rules 45 and 53 under the Act to their application-declaration previously filed under the Act.

By orders dated December 22, 1994, May 10, 1996 and April 27, 1998 ("Prior Orders") (HCAR Nos. 26200, 26516 and 26864), the Commission authorized AEP and Resources to, among other things, issue debt and equity securities ("Securities")[1] through December 31, 2000, for investment in "exempt wholesale generators" ("EWGs") and "foreign utility companies" ("FUCOs"), as defined in sections 32 and 33 of the Act. AEP and Resources were also authorized to acquire the securities of one or more companies ("Project Parents") that directly or indirectly hold the securities of one or more EWGs or FUCOs ("Power Projects"). The Prior Orders also provided authority for AEP to guarantee the obligations of Resources, for AEP and Resources to guarantee the obligations of one or more Project Parents or Power Projects, and for Project Parents to guarantee the obligations of their Power Projects[2] all in an aggregate amount which, together with the proceeds of the Securities, would not exceed 100% of AEP's consolidated retained earnings, as defined in rule 53(a) under the Act ("Investment Limitation").

By order dated June 14, 2000 (HCAR No. 27186), the Commission approved the merger of AEP and Central and South West Corporation "CSW"), a registered holding company. In the order, the Commission also increased the Investment Limitation to allow AEP to issue and sell Securities and provide guarantees in an amount of up to 100% of AEP and CSW's combined consolidated retained earnings after giving effect to the merger ("Modified Investment Limitation").

The Applicants now request authority for AEP to extend, through June 30, 2005 and within the Modified Investment Limitation, AEP's authority under the Prior Orders to issue and sell Securities and to guarantee the indebtedness and other financial commitments of Resources, Project Parents and Power Projects for investments in EWGs and FUCOs. The Applicants separately request authority, through June 30, 2005, for Resources to guarantee obligations, other than indebtedness,[3] of Project Parents and Power Projects, and for Project Parents to guarantee obligations of Power Projects, other than indebtedness, each in amounts not exceeding $3 billion outstanding at any time.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29598 Filed 11–17–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3478]

Office of Visa Services; 60-Day Notice of Proposed Information Collection: J Visa Waiver Review Application Data Sheet

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: New collection of information Originating Office: CA/VO.

Title of Information Collection: J Visa Waiver Review Application Data Sheet.

Frequency: Once per application.

Form Number: None assigned.

Respondents: Foreign Applicants.

Estimated Number of Respondents per year: 10,000.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 20,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Eric Cohen, 2401 E St NW, Rm L–703, U.S. Department of State, Washington, DC 20520, Tel: 202–663–1164.

Dated: September 14, 2000.

George Lannon,

Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 00–29628 Filed 11–17–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 3477]

Bureau of Oceans and International Environmental and Scientific Affairs; Notice of Information Collection Under Emergency Review: State Department Form DS–2031, OMB No. 1405–0095

AGENCY: Department of State.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency approval.

Originating Office: OES/OMC.

Title of Information Collection: Shrimp Exporter's/Importer's Declaration.

Frequency: 10,000.

Form Number: DS–2031.

Respondents: Shrimp exporters and importers.

Estimated Number of Respondents: 3,000.

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[1] In particular, AEP was authorized to issue and sell up to ten million shares of its common stock and to incur short-term debt in the form of notes issued to banks and commercial paper. Resources was authorized to incur short-term and long-term debt. The Applicants state that, because of the adoption of rule 52, any securities issuance by any associate company, other than AEP, constitutes an exempt transaction under the rule.

[2] The Prior Orders provided that AEP could guarantee Resources' issuance of long-term notes having terms of not less than nine months nor more than twenty years, bearing interest at a fixed rate, a fluctuating rate or a combination of fixed and fluctuating rates. AEP was authorized also to guarantee borrowings by Resources under lines of credit that would generally bear interest at an annual rate not greater than the prime commercial rate in effect from time to time. Finally, the prior Orders authorized AEP to guarantee the issuance and sale of commercial paper by Resources maturing not more than 270 days from the date of issuance.

[3] The Applicants state that guarantees by AEP subsidiaries of indebtedness is exempt under rules 45 and 52.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 1,667 hours.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by December 31, 2000. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to David Hogan, Office of Marine Conservation, 202–647–2335, U.S. Department of State, Washington, DC 20520.

Dated: November 7, 2000.

David Balton,

Acting Deputy Assistant Secretary for Oceans, Fisheries and Space, Department of State.

[FR Doc. 00–29627 Filed 11–17–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review for Camarillo Airport, Camarillo, California

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice.

SUMMARY: The FAA announces that it is reviewing a proposed Noise Compatibility Program submitted by the county of Ventura for the Camarillo Airport, Camarillo, California under the provisions of Title I of the Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (thereinafter referred to as "the Act") and Title 14, Code of Federal Regulations (CFR), part 150. This program was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps submitted under Title 14, CFR, part 150 were in compliance with applicable requirements effective September 10, 1998. The proposed Noise Compatibility Program will be approved or disapproved on or before May 4, 2001.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the Noise Compatibility Program is November 6, 2000. The public comment period ends January 4, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Armstrong, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: PO Box 92007 World Way Postal Center, Los Angeles, CA, 90009–2007; street address: 15000 Aviation Boulevard, Hawthorne, CA, 90261; Telephone Number (310) 725–3614. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for Camarillo Airport which will be approved or disapproved on or before May 4, 2001. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of Title 14, CFR, part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth in the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the Noise Compatibility Program for Camarillo Municipal Airport, effective on September 6, 2001. It is requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before, May 4, 2001.

The FAA's detailed evaluation will be conducted under the provisions of Title 14, CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities. will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, Community Environmental Needs Division, 800 Independence Avenue, SW, Room 621, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Room 3012, Hawthorne, CA, 90261.

County of Ventura, Department of Airports, 555 Airport Way, Camarillo, CA 93010.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on November 6, 2000.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 00–29662 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held December 5–7, 2000, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: December 5: Plenary Session; (1) Introductory Remarks; (2) Review and Approve Agenda; (3) Working Group–2, AMS(R)S Avionics Equipment MOPS, (WG–2) Convenes to continue work of Minimum Aviation System Performance Standards (MASPS) document; December 6: (4) Working Group–3, AMS(R)S MASPS, (WG–3) Convenes to continue work of VDL 2 and VDL 3 Minimum Operational Performance Standards (MOPS) Document (may convene on Tuesday if WG–2 finishes early); December 7: (5) Plenary reconvenes; (6) Review of ICAO and Aeronautical Mobile Communications Panel (AMCP) activities; (7) Review Working Group activities; (8) Review Standards and Recommended Practices (SARPs) Changes; (9) Other Business; (10) Date and location of Next meeting; (11) Closing. Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 13, 2000.

Jancie L. Peters,

Designated Official.

[FR Doc. 00–29663 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193/EUROCAE Working Group 44; Terrain and Airport Database

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting to be held December 4–8, 2000, starting at 9:00 a.m. The meeting will be held at Hilton Melbourne Beach Oceanfront, 3003 North A1A, Indialantic, FL 32903 (just North of Melbourne).

The agenda will include: December 4: Opening Plenary Session: (1) Welcome and Introductory Remarks; (2) Review/Approval of Meeting Agenda; (3) Review Summary of the Previous Meeting; (4) Presentation: "Intermap Technologies;" (5) Presentation: "DEM's and Airport Vector Data;" (6) Presentation/Discussion: "Proposal for Development of Object-Oriented Symbology & Color Renderings for Advanced Cockpit Avionics;" Subgroup 2, Terrain and Obstacle Databases: (a) Review Summary of the Previous Meeting; (b) Review Actions of the Previous Meeting; (c) Review of the Draft Document; (7) Subgroup 3, Airport Databases: (a) Review Summary of the Previous Meeting; (b) Review Actions of the Previous Meeting; (c) Review of the Draft Document; (d) Presentation: "Exemplary Airport Generation and Validation using RTCA SC–193/EUROCAE WG44 SG3 Methodology;" December 5–6: (8) Continue Subgroups 2 and 3 Discussion; December 7: Plenary Session: (9) Continue Subgroups 2 and 3 Discussion; December 8: Closing Plenary Session: (10) Summary of Subgroups 2 and 3; (11) Assign Tasks; (12) Other Business; (13) Date and Location of Next Meeting; (14) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://*www.rtca.org* (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 13, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–29664 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Elmira/Corning Regional Airport, Elmira, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of the proposed release of approximately 25 acres of land at Elmira/Corning Regional Airport to allow its sale for the development of commercial retail stores. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. The Fair Market Value of the land will be paid to the Airport Sponsor, and used for capital development of the airport.

Any comments the agency receives will be considered as a part of the decision.

DATES: Comments must be received on or before December 20, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Philip Brito, Manager, FAA New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Ann L. Clarke, Airport Manager, Elmira/Corning Regional Airport, at the following address: Ms. Ann L. Clarke, Airport Manager, Elmira Corning Regional Airport, Suite 1, 276 Sing Sing Road, Horseheads, New York 14845.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530; telephone (516) 227–3803; FAX (516) 227–3813; E-Mail *Philip.Brito@faa.gov*.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Garden City, New York, on October 3, 2000.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 00–29576 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Glynco Jetport, Brunswick, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Glynco Jetport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 20, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steven V. Brian, Executive Director of the Glynn County Airport Commission at the following address: Mr. Steven V. Brian, Executive Director, Glynn County Airport Commission, 500 Connole Street, Brunswick, Georgia 31525.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Glynn County Airport Commission under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Tracie Dominy, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 3003337–2747, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Glynco Jetport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 6, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Glynn County Airport Commission was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 9, 2001.

The following is a brief overview of the application.

PFC Application No. 00–01–C–00–BQK.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2001.

Proposed charge expiration date: November 1, 2010.

Total estimated net PFC revenue: $517,141.

Brief description of proposed project(s):

- Master Plan
- Baggage Claim and ARFF Extension
- Remark Runway
- Rehabilitate Taxiway "D"
- Construct ARFF Maintenance Facility
- Terminal Roadway Improvements
- Terminal Renovation
- Alternative Impose Retire PFC Debt

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non scheduled certificate route air carrier (filing form T–100).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Glynn County Airport Commission.

Issued in Atlanta, Georgia on November 6, 2000.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 00–29661 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the twenty-first session of the United Nation's Committee of Experts on the Transport of Dangerous Goods (UN COE) to be held December 4–13, 2000 in Geneva, Switzerland.

DATES: November 28, 2000 9:30 AM–1:00 PM, Room 2201; January 11, 2001, 10:00 AM–1:00 PM, Room 8236–8240.

ADDRESS: Both meetings will be held at DOT Headquarters, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, or Bob Richard, Assistant International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the twenty-first session of the UN COE and to discuss U.S. positions on UN COE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the UN COE session and to prepare for the Committee's 2001–2002 biennium which commences with the nineteenth session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UN COE) which is scheduled for July 2–13, 2001 in Geneva, Switzerland. Topics to be covered during the public meetings include: (1) Global harmonization of classification criteria including flammable aerosol test methods and criteria; (2) Reformatting the UN Recommendations into a model rule, (3) Intermodal portable tank requirements including requirements for the transport of solids in portable tanks, (4) Requirements applicable to small quantities of hazardous materials in transport (limited quantities) including package marking requirements, package quantity limits and requirements

applicable to consumer commodities, (5) Harmonized requirements for compressed gas cylinders, (6) Classification of individual substances, (7) Requirements for bulk and non-bulk packagings used to transport hazardous materials, (8) Requirements for the transport of Ammonium Nitrate Emulsions and (9) Hazard communication requirements including harmonized shipping paper requirements.

The public is invited to attend without prior notification.

Documents

Copies of documents for the UNCOE meeting may be obtained by downloading them from the United Nations Transport Division's web site at http://www.unece.org/trans/main/dgdb/dgcomm/dgcomm.html. Information concerning UN dangerous goods meetings including agendas can be downloaded at http://www.unece.org/trans/danger/meetings.htm#ST/SG. These sites may also be accessed through RSPA's Hazardous Materials Safety Homepage at http://hazmat.dot.gov/intstandards.htm. RSPA's site also provides information regarding the UNCOE and SCOE and related matters such as a summary of decisions taken at the 18th session of the UNSCOE, meeting dates and a summary of the primary topics which the UNCOE plans to address.

Issued in Washington, DC, on November 14, 2000.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 00–29573 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33954]

Hollis & Eastern Railroad Company, a Delaware Corporation—Acquisition and Operation Exemption—Hollis & Eastern Railroad Company, an Oklahoma Corporation

Hollis & Eastern Railroad Company (Applicant), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate the railroad line of Hollis & Eastern Railroad Company (Target) between Duke, OK, at milepost 0, and the Wichita, Tillman & Jackson Ry. Co. line, at milepost 14, located approximately 14 miles to the east.[1]

The transaction was scheduled to be consummated on or about November 9, 2000. The earliest the transaction could be consummated was November 7, 2000, 7 days after the exemption was filed.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33954, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Bryan Bishop, Esq., Locke Liddell & Sapp LLP, 2200 Ross Avenue, Suite 2200, Dallas, TX 75201.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 13, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–29651 Filed 11–17–00; 8:45 am]

BILLING CODE 4915–00–P

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[1] Target, an Oklahoma corporation, is a 99.3%-owned subsidiary of Republic Gypsum Company. Applicant, a Delaware corporation, is a wholly owned subsidiary of Target. Target will, pursuant to Oklahoma and Delaware law, merge into Applicant with Applicant being the surviving corporation. Following the mergers, Applicant will be converted to a Delaware limited liability company. As a result, the state of incorporation of Target will be changed from Oklahoma to Delaware, and Target will be changed to a Delaware limited liability company.

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Grant Program for Research and Development in the Field of Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of request for grant applications.

SUMMARY: The Bureau of Transportation Statistics supports its goal of advancing the field of transportation statistics through the Transportation Statistics Research Grants program. This notice solicits applications for projects that (1) support the development of the field of transportation statistics; and/or (2) involve research or development in transportation statistics. It outlines the purpose, goals, and general procedures for application and award. For FY 2001, BTS will make available up to $500,000 in grant funds to eligible organizations.

DATES: For BTS to consider your application, we must receive it by January 19, 2000, at 5 P.M. Eastern Standard Time. Applications received after January 19, 2000, will be held for the next cycle, which is anticipated to be every six to twelve months, unless you request in writing that your application be returned.

ADDRESSES: You must send six copies of the application package to the BTS Grants Program, Room 3430, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Promod Chandhok, Office of Statistical Programs and Services, Bureau of Transportation Statistics, Room 3430, 400 Seventh Street, SW, Washington, DC 20590; phone (202) 366–2158; fax: (202) 366–3640; e-mail: promod.chandhok@bts.gov.

SUPPLEMENTARY INFORMATION:

I. Background—Advancing the Discipline of Transportation Statistics

The purpose of this grant program is to provide financial assistance to eligible organizations to help advance the discipline of transportation statistics. These grants are authorized by section 5109 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178 (1998), codified at 49 U.S.C. 111(g)). BTS anticipates awarding up to $500,000 per year in grants for projects that (1) support development of the field of transportation statistics; and/or (2) advance research or development in transportation statistics.

BTS is an operating administration within the U.S. Department of Transportation (DOT). Its mission is to lead in developing transportation data and information of high quality, and to advance their effective use in public and private transportation decision-making. In accomplishing this mission, BTS works to improve six key attributes of transportation data and analysis—quality, comparability, completeness, timeliness, relevance, and utility.

Our ultimate goal is to make transportation better—to enhance safety, mobility, economic growth, the human and natural environment, and national security (the five strategic goals of the

Department of Transportation). BTS's role in this goal is to put together data and information that others need to make decisions concerning transportation. We collect data and compile, analyze, and publish statistics. Many others, both within and outside DOT, are involved in building this knowledge base and BTS could not do it alone.

While there are many excellent transportation data programs and many excellent statistics programs, few are devoted to the intersection of these two disciplines. Bringing a better understanding of statistics to transportation data will improve data quality, increase utility (e.g., by improving measures of travel), and reduce costs (e.g., by using techniques to make data collection, analysis, and dissemination more efficient). BTS wants to foster the transportation statistics discipline and increase its quality and usefulness to the transportation community. This grants program is one way BTS is working toward this goal.

II. Eligibility Requirements

What Organizations May Apply?

BTS invites applications from public and private non-profit institutions of higher education. We strongly encourage Minority Serving Institutions, which have been traditionally under represented in transportation statistics, to submit applications. If organizations partner on a project, the participants should submit a single application. You may submit more than one application as long as the applications are for separate and distinct projects.

What Projects Are Eligible for Funding?

Eligible projects must support the development of the field of transportation statistics and/or involve research or development in transportation statistics. Examples include, but are not limited to, research and development in the following areas:

(1) Visualizing and mining transportation databases;

(2) Aggregating and analyzing databases maintained by DOT agencies, especially where the research involves multiple modes of transportation;

(3) Improving the quality and usability of federal transportation statistics;

(4) Developing exposure measures (e.g., vehicle miles traveled) for use in risk analyses;

(5) Improving the statistical use of geographic information systems to better understand and quantify travel behavior;

(6) Developing performance measures for the transportation system;

(7) Designing and analyzing transportation surveys;

(8) Improving data quality and data collection; and

(9) Enhancing or extending the National Transportation Library to better express or incorporate statistical analyses.

What Are the Cost Sharing Requirements?

For awards of $100,000 or more, the recipient shall fund at least 50 percent of the project's total estimated funding requirement. The nonfederal match must come from sources other than the project sponsor, and must be cash contributions rather than in-kind contributions. In reviewing all applications, even those requesting less than $100,000, the degree of cost-sharing will be considered, with more weight given to cash contributions than in-kind services.

III. Application Contents

For more information about sending your application, please refer to the ADDRESSES and DATES sections listed above. In order to be considered for funding under this program, your application package must include the following:

(1) A Project Narrative. This must not exceed seven letter size pages, single-sided and double-spaced. Use at least 12-point type and one inch margins. In general, the information you provide should be in sufficient detail so BTS understands the proposed work and its anticipated benefits. It should also demonstrate that you have the necessary experience and resources to accomplish it. The narrative must identify the organization; how it meets the eligibility criteria; its experience and accomplishments in collecting, analyzing, and/or disseminating transportation data; and the qualifications of the principals proposed to conduct the activities. The narrative must also describe the proposed activity, including how you would accomplish it, a timeline listing major milestones associated with the project, and a list of specific products and/or services with the dates they will be delivered.

(2) An Application for Federal Assistance. Submit OMB SF–424 (Application for Federal Assistance), which is the official form required for all federal grants. It requests basic information about the grantee and the proposed project. Under Part 10 of this form, use 20.920 and Transportation Statistics Research Grants for the Catalog of Federal Domestic Assistance Number and Title. Also submit OMB SF–424A (Budget Information—Nonconstruction Programs). You can download these forms from the OMB Internet site at http://www.whitehouse.gov/omb/grants.

(3) An Evaluation Plan. Include a brief description of how you will evaluate and measure the success of the project, including the anticipated benefits and challenges in completing it. This can be part of the Project Narrative.

(4) Resumes. Include resumes of up to three key personnel who would be significantly involved in the project.

(5) Letters of Commitment. If your proposal includes the significant involvement of other eligible organizations, your application must include letters of commitment from them.

IV. Application Review Process and Selection Criteria

The Transportation Statistics Research Grants program uses a competitive process and applications will be evaluated based on the merit and relevance of the proposed project in relation to the other applications received. BTS anticipates making multiple awards based on this solicitation. While BTS will select the most meritorious proposals, we may choose to not award all available funds.

Upon receiving an application, BTS will conduct an initial review to determine if it meets the eligibility criteria and contains all of the items specified under the Application Contents section of this announcement. A BTS evaluation committee will then review each complete application from an eligible recipient using the evaluation criteria listed below (the order of criteria does not designate priority) and the BTS Director will select the final grants. The evaluation criteria are:

(1) How well does the proposal support BTS's strategic goals of improving the quality, comparability, completeness, timeliness, relevance, and utility of transportation data? How well does the proposal serve the broad transportation interests of the United States?

(2) How innovative is the proposed activity? To what extent is the work being accomplished elsewhere?

(3) How much experience has the applicant demonstrated in one or more of the following areas—collecting, analyzing, storing, or disseminating transportation data, particularly data collected or disseminated by BTS, and working with theoretical statistical issues concerning transportation data?

(4) Does the applicant have the professional qualifications and team members necessary for satisfactory performance of the proposed activity?

(5) How well does the technical approach and proposed costs reflect an understanding of the procedures necessary to complete the required tasks?

(6) To what degree does the proposal include cost-sharing? More weight will be given to proposals with cash contributions than in-kind services. For awards of $100,000 or more, BTS requires cash contributions of 50 percent toward the project's total estimated funding requirement.

V. Amount of Funds Available and Period of Support

We anticipate that approximately $500,000 per year will be designated to support grants, subject to the availability of appropriated funds. This estimate does not bind BTS to a specific number of offers or awards, nor to a specific amount of funding support for particular awards or awards in aggregate. It is anticipated that individual awards amounts, based upon demonstrated needs, will likely range from $50,000 to $200,000, though BTS has not established minimum or maximum funding levels.

Given the limited amount of funds available, applicants are strongly encouraged to seek other funding opportunities to supplement the federal funds. Preference will be given to applicants with cost sharing proposals from within or outside their organizations.

The period of time of awards will vary with the complexity of the project and it is possible that grants will be awarded for periods greater than one year.

VI. BTS Involvement

BTS involvement, if any, will vary by award. If you anticipate BTS involvement, you must note this in your project narrative and any support BTS provides will be specified in the award agreement. BTS will assign a liaison to serve as the primary contact regarding the grant.

VII. Terms and Conditions of Award

(1) Prior to award, each grantee will be required to complete additional government application forms, such as OMB SF–424B (Assurances—Nonconstruction Programs), and with certification requirements, such as 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation Government-Wide Debarment and Suspension (Non-Procurement).

(2) Each grantee shall submit quarterly progress reports, a draft final report, and a final report that reflects the BTS liaison's comments.

Thank you for your interest in our Transportation Statistics Research Grants program.

Ashish Sen,
Director.

[FR Doc. 00–29571 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 900]

Availability of ATF Publication 5400.7 (Federal Explosives Law and Regulations—2000)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: General notice.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this notice: (1) To announce the release of ATF Publication 5400.7 (09/00), "Federal Explosives Law and Regulations—2000" and (2) to make certain technical corrections to that publication. The purpose of this publication is to serve as a guide to Federal explosives laws, regulations, and related information.

ADDRESSES: ATF P 5400.7 (09/00), "Federal Explosives Law and Regulations—2000" is available at no cost upon request from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950. The publication may also be viewed at ATF's web site at: *http://www.atf.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Bill O'Brien, Public Safety Branch, Bureau of Alcohol, Tobacco and Firearms, 680 Techworld South Building, Washington, DC 20226 (202–927–7930).

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) is pleased to announce the release of ATF Publication 5400.7 (09/00), "Federal Explosives Law and Regulations—2000." The purpose of this publication is to serve as a guide to Federal explosives law, regulations, and related information. Several changes have been made to explosives laws and regulations since the last publication.

In examining the completed publication, we observed two errors in the regulations section which need to be corrected, as follows:

1. In 27 CFR 55.218 (Table of distances for storage of explosive materials), footnote 3 at the end of the table, "11/2 lbs." should be changed to read "1½ lbs."; and

2. In 27 CFR 55.223 (Table of distances between fireworks process buildings and other specified areas), the title heading of the table was omitted and should be added to read:

Distance From Passenger Railways, Public Highways, Fireworks Plant Buildings Used to Store Consumer Fireworks and Articles Pyrotechnic, Magazines and Fireworks Shipping Buildings, and Inhabited Buildings.[3] [4] [5]

In addition to the above, we wish to point out that the correct address of the ATF Out-of-Business Records Center is: 2029 Stonewall Jackson Drive, Spring Mills Office Park, Falling Waters, West Virginia 25419. The regulations at 27 CFR 55.128 (Discontinuance of business) will be amended to reflect this change in a forthcoming Treasury decision.

Approved: November 13, 2000.

Bradley A. Buckles,
Director.

[FR Doc. 00–29615 Filed 11–17–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–66

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–66, Certain Payments Made Pursuant to a Securities Lending Transaction.

DATES: Written comments should be received on or before January 19, 2001.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue

Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Payments Made Pursuant to a Securities Lending Transaction.

OMB Number: 1545–1566.

Notice Number: Notice 97–66.

Abstract: Notice 97–66 modifies final regulations which were effective November 14, 1997. The notice relaxes the statement requirement with respect to substitute interest payments relating to securities loans and sale-repurchase transactions. It also provides a withholding mechanism to eliminate excessive withholding on multiple payments in a chain of substitute dividend payments.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 377,500.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 61,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 14, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29652 Filed 11–17–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209682–94]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning final regulation, REG–209682–94 (TD 8847), Adjustments Following Sales of Partnership Interests, (§§ 1.732–1 and 1.743–1).

DATES: Written comments should be received on or before January 19, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Adjustments Following Sales of Partnership Interests.

OMB Number: 1545–1588.

Regulation Project Number: REG–209682–94.

Abstract: Partnerships, with a section 754 election in effect, are required to adjust the basis of partnership property following certain transfers of partnership interests. This regulation relates to the optional adjustments to the basis of partnership property following certain transfers of partnership interests under section 743, the calculation of gain or loss under section 751(a) following the sale or exchange of a partnership interest, the allocation of basis adjustments among partnership assets under section 755, the allocation of a partner's basis in its partnership interest to properties distributed to the partner by the partnership under section 732(c), and the computation of a partner's proportionate share of the adjusted basis of depreciable property (or depreciable real property) under section 1017.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 226,000.

Estimated Time Per Respondent: 4 hrs.

Estimated Total Annual Burden Hours: 904,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 13, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29653 Filed 11–17–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–111–80]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–111–80 (TD 8019), Public Inspection of Exempt Organization Returns (§ 301.6104(b)–1).

DATES: Written comments should be received on or before January 19, 2001.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Public Inspection of Exempt Organization Returns.

OMB Number: 1545–0742.

Regulation Project Number: EE–111–80.

Abstract: Internal Revenue Code section 6104(b) authorizes the IRS to make available to the public the returns required to be filed by exempt organizations. The information requested in section 301.6104(b)–1(b)(4) of this regulation is necessary in order for the IRS not to disclose confidential business information furnished by businesses which contribute to exempt black lung trusts.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 22.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 22.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 14, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29654 Filed 11–17–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form T, Forest Activities Schedule.

DATES: Written comments should be received on or before January 19, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Forest Activities Schedule.

OMB Number: 1545–0007.

Form Number: Form T.

Abstract: Form T is filed by individuals and corporations to report income and deductions from the operation of a timber business. The IRS uses Form T to determine if the correct amounts of income and deductions are reported.

Current Actions: There are no substantive changes being made to Form T at this time.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 37,000.

Estimated Time Per Respondent: 39 hr., 5 min.

Estimated Total Annual Burden Hours: 1,446,330.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 14, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29655 Filed 11–17–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The IRS Advisory Council (IRSAC) will hold a public meeting on Wednesday, December 6, 2000.

FOR FURTHER INFORMATION CONTACT: Candy Ryan, Office of National Public Liaison, CL:NPL, Room 7559 IR, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: 202–622–6440, not a toll-free number. E-mail address: public__liaison@irs.gov.

SUPPLEMENTARY INFORMATION: This notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the IRSAC will be held on Wednesday, December 6, 2000, from 9:00 a.m. to 4:30 p.m. in Room 3313, main IRS building, 1111 Constitution Avenue, NW., Washington, DC 20224. Issues to be discussed include: IRS balanced measures, business modernization update, filing season readiness, strategic planning & budgeting, and reports from the three IRSAC sub-groups regarding the IRS Wage & Investment, Small Business/Self Employed and Large & Mid Size Business operating divisions. Last minute changes to the agenda or order of topic discussions are possible and could prevent effective advance notice. The meeting will be in a room that accommodates approximately 50 people, including IRSAC members and IRS officials. Due to the limited space and security specifications, please call Candy Ryan to confirm your attendance. Ms. Ryan can be reached at (202) 622–6440 (not toll-free). Attendees are encouraged to arrive at least 30 minutes prior to the starting time of the meeting, to allow enough time to clear security at the 1111Constitution Avenue, NW. entrance.

If you would like for the IRSAC to consider a written statement, please call (202) 622–6440, or write to Karl W. Glover, Office of National Public Liaison, CL:NPL, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 7559 IR, Washington, DC 20224, or E-mail at public__liaison@irs.gov.

Dated: November 14, 2000.

Susanne M. Sottile,

Designated Federal Official and Director, Office of National Public Liaison.

[FR Doc. 00–29656 Filed 11–17–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463), dated October 6, 1972, that the Veterans' Advisory Committee on Rehabilitation has been renewed for a 2-year period beginning November 9, 2000, through November 9, 2002.

Dated: November 9, 2000.

By direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–29613 Filed 11–17–00; 8:45 am]

BILLING CODE 8320–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Monday,
November 20, 2000

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 567, 591, 592, and 594

Certification; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform With the Federal Motor Vehicle Safety Standards; Schedule of Fees Authorized by 49 U.S.C. 30141; Proposed Rules

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 591, 592, and 594

[Docket No. NHTSA–2000–8159; Notice 1]

RIN 2127–AH67

Certification; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform With the Federal Motor Vehicle Safety Standards; Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend regulations that pertain to the importation by registered importers (RIs) of motor vehicles that were not manufactured to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards. The principal effect of these changes would be to expedite the importation of vehicles originally manufactured for sale in Canada. These proposals would require corresponding minor amendments to other regulations, which we are also proposing.

We are also proposing a number of changes in requirements for RI registration applications, RI duties, and suspension or revocation of RI registrations (49 CFR part 592). We are also proposing an amendment of our fee regulation, 49 CFR part 594, to add a new fee for processing the information that we would require from RI's who import motor vehicles from Canada under the simplified procedure we are proposing.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 4, 2001.

The final rule would be effective 30 days after its publication in the **Federal Register**.

ADDRESSES: You should mention the docket number of this document in your comments, and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http//dms.dot.gov*. Click on "Help & Information," or "Help/Info" to obtain instructions for filing the document electronically.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, 400 Seventh St., SW., Washington, DC 20590. (202–366–5263).

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I. Background of This Rulemaking Action

A. The 1968 Importation Regulation (19 CFR 12.80)

The National Traffic and Motor Vehicle Safety Act of 1966 ("the Safety Act"), now codified as 49 U.S.C. Chapter 301 "Motor Vehicle Safety," grants us authority to issue Federal motor vehicle safety standards ("FMVSS"), and to require that vehicles imported into the United States be brought into compliance with them. For the first two decades after enactment of the Safety Act, vehicles that were not originally manufactured to comply with the FMVSS were imported under a regulation we jointly issued with the United States Customs Service ("Customs"), 19 CFR 12.80, effective January 10, 1968. Under § 12.80(b)(1)(iii), a nonconforming motor vehicle could be brought into the United States permanently if its importer demonstrated to us within 120 days after entry that the vehicle had been brought into compliance with the FMVSS. Performance of the importer was secured by a Customs bond given at the time of importation. Until January 31, 1990 this was the DOT regulation that applied to the importation of noncomplying vehicles.

B. The Imported Vehicle Safety Compliance Act of 1988 (Pub. L. 100–562)

During the 1980s, as the dollar grew stronger against European currencies, the volume of nonconforming imported vehicles also grew, peaking at 65,000 units in 1985. When Congress reviewed our importation program in the wake of this influx, it concluded that the safety of the public could be enhanced by a comprehensive revision of the laws under which nonconforming motor vehicles were imported.

On October 31, 1988, Congress enacted the Imported Vehicle Safety Act of 1988 ("the 1988 Act"). It became effective on January 31, 1990. As we explain more fully below, under the 1988 Act, a nonconforming vehicle of a specific make, model, and model year could not be admitted into the United States unless we had determined that it was capable of being modified so that it would comply with the FMVSS in effect as of the date it was manufactured.[1] Further, the importer could no longer choose any facility to perform conformance work. Such work had to be performed by, and noncomplying vehicles intended for resale had to be imported by, a "registered importer" ("RI"). Under the 1988 Act, a RI is an entity that we have recognized as being technically and financially capable of satisfying a number of requirements, including the ability to conform noncomplying vehicles to the FMVSS and to remedy noncompliances and safety-related defects, without charge, that exist in the vehicles that they have imported. See generally 49 U.S.C. 30141–30147 and 49 CFR parts 591–594.

During the last few years, a strong dollar has once again resulted in an unanticipated volume of imported vehicles not originally manufactured to conform to the FMVSS, this time from Canada rather than from Europe. In 1998, 76,092 noncomplying vehicles were imported into the United States, which virtually doubled in 1999, to a total of 151,842 vehicles. Approximately 99 percent of these vehicles were Canadian.

C. Vehicle Eligibility Determinations (49 CFR Part 593)

As noted above, before a nonconforming motor vehicle can be imported into the United States, we must have decided that vehicles of that make, model, and model year are capable of being modified to comply with the FMVSS. We are authorized to make such a decision on one of two bases: (1) The nonconforming vehicle is substantially similar to one whose manufacturer has certified it for sale in the United States, and it is capable of being readily modified to comply with the FMVSS, or (2) if there is no substantially similar vehicle, the vehicle's safety features comply with, or are capable of being modified to comply with, the FMVSS (see 49 U.S.C. 30141). We make these decisions upon application by a RI or a manufacturer, or on our own initiative. In all cases, we publish notices in the **Federal Register**, first to invite comment, and then to announce our decision. Each year, we also publish a list of eligible vehicles, and this also appears as appendix A to 49 CFR part 593, *Determinations That a Vehicle Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards is Eligible for Importation*.

It has become apparent to us that many vehicles originally manufactured and certified for sale in Canada (we will refer to these as "Canadian vehicles," even though some of these vehicles were manufactured elsewhere, such as the United States, and then imported into Canada) had counterparts of the same make, model, and model year in the United States that were virtually indistinguishable from them. This is due to the fact that the Canadian Motor Vehicle Safety Standards ("CMVSS") are identical to the FMVSS in all but a few respects. To facilitate importation, we decided on our own initiative that most Canadian vehicles certified as complying with the CMVSS were "substantially similar" to vehicles certified as complying with the FMVSS and were therefore eligible for importation (see 55 FR 32988, August 13, 1990 and the portion of part 593, appendix A, entitled "Vehicles Certified by Their Original Manufacturer as Complying With All Applicable Canadian Motor Vehicle Safety Standards"). By making blanket Canadian-vehicle-eligibility decisions on our own initiative, we have also facilitated international trade by removing the need for numerous individual petitions.

D. Importation of Canadian Vehicles for Personal Use

Some time ago, we simplified the procedures under which virtually-complying Canadian vehicles could be imported for personal use. We decided that the certification requirement of the Safety Act (49 U.S.C. 30115) could be satisfied by a letter from the original manufacturer of the Canadian vehicle to the importer stating that the vehicle met all applicable FMVSS except for minor labeling requirements (by this we mean such as those established by FMVSS No. 101 (a "km" label for a speedometer calibrated in kilometers) and the tire information placard required by S4.3 of FMVSS No. 110). On this basis, we have exempted from the RI process Canadian vehicles imported for personal use by individuals who have a *de facto* certification letter from the vehicle manufacturer. This has expedited traffic at the U.S./Canadian border and relieved a burden on importers whose Canadian cars virtually comply with the FMVSS. However, those Canadian vehicles that have not been manufactured to meet the FMVSS that are more stringent than the CMVSS, such as FMVSS No. 208, *Occupant Crash Protection*, and the dynamic crash requirements of FMVSS No. 214, Side Impact Protection, obviously cannot be covered by a manufacturer's virtual-compliance letter. Thus, such vehicles must be brought into compliance pursuant to a contract with a RI.

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[1] The 1988 Act contains several exceptions under which noncomplying vehicles can be imported without going through a RI. See 49 U.S.C. 30112(b), *e.g.*, vehicles imported for temporary use, vehicles that are at least 25 years old.

II. How We Propose To Simplify the Importation Process for Canadian Vehicles Imported for Resale

We have concluded that some of the current procedures and requirements have resulted in regulatory requirements on the importation of Canadian vehicles for resale that are not necessary to implement the safety purposes of the statute. Therefore, we are proposing a number of simplifying amendments.

A. The Present Process

Nonconforming vehicles imported for resale can only be imported by a RI. The RI must enter the vehicle under a bond that guarantees that it will bring the vehicle into compliance and certify its compliance to us within 120 days after entry. 49 U.S.C. 30141(d); 49 CFR 591.8. The RI must support its certification with appropriate documentation. If we accept the certification and documentation, we inform the RI and release the bond.

Until the bond is released, the RI must not register the vehicle or license it for use on the public roads (or release it from its custody for such purposes). 49 U.S.C. 30146(a). However, if the RI has not heard from us within 30 days after submitting its certification package, it may release the vehicle. But if we advise the RI within the 30-day period that we intend to inspect the vehicle, the RI must retain custody until the inspection is completed. 49 U.S.C. 30146(c).

Failure of the RI to comply with these and other requirements can result in forfeiture of the bond, and/or civil penalty liability.

The ever-growing number of Canadian imports, the desire of RIs to turn over their inventory promptly, and the submission to and review by NHTSA of extensive compliance certification information has resulted in strains on the existing system. We have recently implemented procedures to expedite vehicle entry, and we are also working on a number of other measures, such as electronic submission of data by RIs, to improve the process. However, we believe that other improvements should be made that would require the regulatory changes proposed below.

B. How We Would Treat Canadian Vehicles Imported for Resale if the Manufacturer Has Informed NHTSA That the Vehicle Is in Virtual Compliance With the FMVSS

We have tentatively concluded that we should make it easier to import Canadian vehicles for resale that are covered by a letter from the original manufacturer indicating that they are in compliance with all applicable FMVSS except for some labeling requirements of Standards Nos. 101, 110 or 120 (and, occasionally, the daytime running lamp (DRL) specifications of Standard No. 108), the same way we have been doing for vehicles imported for personal use. Most manufacturers of Canadian-certified vehicles have informed us which of their late-model vehicles conform to the FMVSS except in minor respects. More than 99 percent of the 151,842 vehicles imported in 1999 came from Canada and 75 percent of them fit into this category. We propose to identify these virtually-conforming vehicles as "Type 1 motor vehicles." However, we would require that the manufacturer's letter also include a statement of compliance with U.S. bumper and theft prevention standards. A "Type 1 motor vehicle" would be defined as follows:

> Type 1 motor vehicle means a motor vehicle that is certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards and whose original manufacturer has informed NHTSA in writing that the vehicle complies with all applicable Federal motor vehicle safety, bumper, and theft prevention standards (except for the labeling requirements of Federal Motor Vehicle Safety Standards Nos. 101 and 110 or 120, and, if appropriate, S5.5.11 of Standard No. 108 (related to daytime running lamps)).

We propose to add an appendix A to part 592, as reflected in this notice, which would list by make, model, and model year the vehicles that would be Type 1 vehicles. We would revise that list from time to time to reflect the current circumstances.

Type 1 motor vehicles imported for resale would still have to be imported by a RI, and the RI would have to ensure they comply with all applicable FMVSS. In particular, because many Canadian vehicles have DRLs that do not comply with FMVSS No. 108 (either because they are too bright or because they are mounted higher than we permit), the RI, as today, would have to assure that the DRLs comply as manufactured, or either replace the DRL modules with compliant modules or disconnect the DRLs. In addition, the RI would have to substantiate that a Type 1 motor vehicle is not subject to any outstanding recalls or, alternatively, that all pending safety recall work has been completed. Under our proposal, a RI would not have to submit documents to us demonstrating that compliance work had been performed, but it would have to retain appropriate documentation for 10 years for our review if we asked for it. These are the same documents that importers of Type 2 motor vehicles (defined below) would have to retain, and are more specifically described in proposed § 592.6(b).

Neither a bond nor a conformity statement would have to be furnished for Type 1 vehicles. They would therefore be admitted pursuant to a new declaration added to 49 CFR part 591, specifically a new § 591.5(g) (to replace the present "reserved" subsection) stating that the vehicle has been manufactured and certified to conform to the CMVSS and that the manufacturer has represented to NHTSA that the vehicle conforms to the FMVSS, bumper, and theft prevention standards except for minor safety labeling requirements and, if appropriate, DRLs. Therefore, those provisions of 49 U.S.C. 30146(a), under which RIs must retain custody of vehicles for 30 days after submission of a conformance certification, or until notified by NHTSA that the bond has been released, would not apply. Type 1 motor vehicles could be released after the RI performs all necessary conformance work, affixes a certification label, and confirms that there are no outstanding unremedied safety recalls covering the vehicle. This will simplify procedures for both the RIs and NHTSA, and expedite the importation of these vehicles.

For purposes of safety recalls, the RI is the statutory manufacturer of each motor vehicle it imports or conforms. 49 U.S.C. 30147(a)(1)(B). Therefore, regardless of the Type of vehicle imported, the RI is required to assure that owners of vehicles it imports or conforms for personal use are notified of all determinations that the vehicles have a noncompliance or safety-related defect and that it can be remedied without charge. For this reason, among others, NHTSA needs to have certain information regarding all vehicles imported for resale. For Type 1 vehicles, we believe that the following information is necessary: Make, model, model year, Vehicle Identification Number ("VIN"), vehicle type, date of manufacture, and date of importation. RIs would be required to furnish this information to us on a monthly basis, not later than 10 calendar days after the end of the month in which the vehicle was imported. In addition, as noted above, RIs would have to keep records covering all importations, including documentation on the modifications that it performed to conform vehicles and substantiation of its confirmation that all outstanding safety recall work has been performed on all the vehicles that they import or conform for personal use, including Type 1 motor vehicles, and allow us to inspect these records upon our request.

Establishment of a Type 1 category represents our tentative conclusion as to how best to simplify importation from Canada of vehicles for resale. We are interested in having comments on the proposed process, whether there are additional ways in which the process could be simplified, or, alternatively, whether the simplified process proposed in this notice might compromise safety in a manner that has not occurred to us.

C. How We Would Treat Other Motor Vehicles

With respect to the remaining noncomplying motor vehicles that are not Type 1 motor vehicles, we propose to call them "Type 2" moter vehicles, and would define them as follows:

> "Type 2 motor vehicle means a motor vehicle, other than a Type 1 motor vehicle, that is not certified by its original manufacturer as complying with all applicable Federal motor vehicle safety, bumper, and theft prevention standards."

In addition to the requirements set out above for safety recall work and recordkeeping for Type 1 vehicles, Type 2 vehicles would still be imported under a conformance bond, and the RI would therefore be obligated under 49 U.S.C. 30146(a) to retain custody for 30 days after submission of the conformity certification to us, unless we release the bond earlier or request an inspection.

Approximately 99 percent of motor vehicles imported last year were manufactured for sale in Canada, comply with the Canadian Motor Vehicle Safety Standards, and thus are very similar to vehicles manufactured for sale in the United States (although 24% of these vehicles would by Type 2 motor vehicles because their manufacturers have not advised us that they comply with the FMVSS). The majority of RIs have not been importing vehicles manufactured for sale in countries other than Canada. At the present time, all RIs must fulfill the same requirements. Because conformance modifications of Canadian cars are relatively simple, and a RI may not need the technical expertise required to conform vehicles manufactured for sale in countries other than Canada, we have considered whether it is feasible to establish two categories of RIs, one restricted to importing vehicles certified to the CMVSS (Type 1 and Type 2 vehicles of Canadian origin), and the other, unrestricted as at present. We are interested in having comments on this subject, which will have some relevance to the more detailed registration requirements we are proposing below.

III. Problems We Have Encountered in Administering the RI Program and How We Propose To Deal With Them

In administering the RI program, we have encountered many situations that were not anticipated when we adopted part 592 in 1989. We are proposing a number of changes to part 592 and announcing several interpretations of the statute and existing regulations, in order to address these situations and to assure that the RI program operates efficiently under the circumstances existing today.

A. Requirements for Registration and Its Maintenance (Sec. 592.5)

An entity that wishes to register as an RI must file an application with us as specified in 49 CFR 592.5(a). Moreover, at the time an RI submits its annual fee, as required by 49 U.S.C. 30141(a)(3), it must file an annual statement in which it affirms that the information provided in its application remains unchanged. 49 CFR 592.5(e).

As addressed below, based on experience gained over the years, we would require more information from a person seeking to be a RI than was originally required. Moreover, we need to obtain this additional information from each existing RI. Because a RI who was registered before the application requirements are amended cannot affirm the continuing correctness of information that it has never furnished, we have concluded that the most appropriate way to ensure that appropriate information is provided is to require existing RIs to maintain their existing registrations by providing the additional information called for by any final rule not later than 30 days after the effective date of the amended regulation. See proposed § 592.6(r).

If you wish to comment on whether we should have two categories of RI, as discussed above, we ask that you also address which items of the proposed information should be different for applicants who would be permitted to import only Type 1 vehicles and Type 2 vehicles of Canadian origin.

1. Sections 592.5(a)(3)and (5): Whether a Post Office Box or Canadian Address Is an Acceptable Address for a RI; Identification of Officer(s) Authorized To Certify Compliance to NHTSA; Identification of Applicant and Its Principals

Section 592.5(a)(3) requires the applicant to provide its "address," among other information. Two issues have arisen with respect to this requirement: Whether a RI may give a post office box as its sole address, and whether a Canadian address is acceptable.

We have accepted a post office box as the sole mailing address for a RI. However, there are times when we may wish to communicate with a RI by Registered Mail, such as notification of suspension of registration, and the U.S. Postal Service requires a street address for this purpose. Also, sometimes we use overnight delivery services that cannot deliver to a post offiee box. Further, we need to know the actual location of each of a RI's facilities in order to assure that the RI is properly carrying out its duties and responsibilities. Without street address(es), we are unable to inspect records and vehicles as authorized by 49 U.S.C. 30146(c), or to communicate by Registered Mail. Accordingly, we want to amend § 592.5(a)(3) to require a RI applicant to provide the street addresses of all its vehicle conversion recordkeeping, and storage facilities in the United States, and to designate one of these as a mailing address. The applicant could also give a post office box as a mailing address, provided that it is located in the same city as the designated street address. The RI would be required to affirm in its annual statement to NHTSA that these addresses remain correct and to notify us of any change in these addresses (proposed §§ 592.5(f), 592.6(l), 592.6(m)).

We have not required that principals of a RI be citizens of the United States, and we have registered several RIs who have used mailing addresses in Canada; however, we have required them to maintain facilities in the United States where conformance work is performed and records are kept. We have reviewed the question of our ability to afford RIs with mailing addresses outside the United States adequate notice and process in administrative and judicial proceedings. We have concluded that if the RI is an entity organized under the laws of any State (e.g., corporation, partnership, sole proprietorship), it may be legally served at the street address of the United States facility it has provided us, even though its principal(s) may reside at a mailing address in Canada. The question of the adequacy of service may differ, however, if the RI is an entity that is not organized under the laws of any State, that is to say, if it is a sole proprietorship, partnership, or corporation under the laws of Canada.

The statute addresses the question of service upon non-residents to the extent of specifying that a manufacturer "offering a motor vehicle or motor vehicle equipment for import shall designate an agent on whom service of notices and process in administrative and judicial proceedings may be made." 49 U.S.C. 30164(a). We have implemented section 30164 with 49 CFR 551.45, *Service of process on foreign manufacturers and importers.* This regulation requires "any manufacturer, assembler, or importer of motor vehicles" to "designate a permanent resident of the United States upon whom service of all processes, notices, orders, decisions, and requirements may be made for him and on his behalf * * *." 49 CFR 551.45(a). As a RI is an "importer of motor vehicles," we therefore propose to require an applicant organized under the laws of another country to file a designation of agent in the form specified in Sec. 551.45 before we register it as a RI. (proposed Sec. 592.5(a)(5)(E)). This would not relieve the RI from maintaining required facilities and records within the United States.

Given the difficulties discussed above, we are interested in having comments on whether we should not register applicants organized under the laws of another country or sole proprietors who are not citizens of the United States.

We are also proposing that an applicant identify itself, its principals, and the form of its organization and the state laws under which it is organized. We would define a "principal" as any officer, partner, or director of a RI, and any person whose ownership interest in a RI is 10% or more. We need to be able to identify all officers and persons with a significant ownership interest in an applicant in order to be able to decide whether an application should be granted. For example, we need to know whether such an individual has previously been associated with a RI that has been suspended or revoked. If the applicant is a corporation, we intend to require it to include a statement provided by the Secretary of State, or other appropriate official of the state in which the applicant is organized, certifying that the applicant corporation is in good standing. We would also require an applicant to provide a copy of its license or similar document to do business as an importer/modifier/seller of motor vehicles in each state or political subdivision thereof where it intends to perform such activities as a RI or, alternatively, a statement by the applicant that it has made a bona fide inquiry and is not required by state or local law to have such a license.

We propose to require the principals of an applicant to provide their dates of birth and social security numbers, which we would keep confidential. The reason for this is to allow us to determine whether any person associated with an applicant has ever been convicted of a misdemeanor or felony involving motor vehicles or the motor vehicle business, such as title fraud, odometer fraud, auto theft, or the sale of stolen vehicles. If we discover that there is such a person associated with an applicant, we could deny the application after considering the severity of the offense and the prospective role of the associate in operating the RI's business.

For reasons discussed more fully later in this notice, we are proposing to require that conformity certifications be submitted to NHTSA by a principal of the RI. This would be an officer, a partner, or the sole proprietor of the RI but not someone who is merely an employee. Therefore, we are proposing to require that the RI application identify each principal who will be authorized to sign conformity certifications submitted to NHTSA.

2. Section 592.5(a)(8): Defining "Service Insurance Policy" and "Independent Insurance Company" To Best Ensure That Owners Will Be Able To Have Noncompliances and Safety-Related Defects Remedied Without Charge

Under 49 U.S.C. 30147(a)(1)(A), a noncompliance or a safety-related defect that is determined to exist in a vehicle that is substantially similar to a vehicle imported by a RI generally is deemed to exist in the vehicle imported by the RI. Since a RI "shall be deemed to be the manufacturer of any imported motor vehicle that the importer imports or brings into compliance * * *." (49 U.S.C. 30147(a)(1)(B)), the RI has the responsibility, pursuant to 49 U.S.C. 30117(b), 30118–30121, and 30166(f), to ensure that owners are notified of such noncompliances and defects and that they can be remedied without charge to the vehicle owner.

Section 30147(b) directs us to require each RI (including any successor in interest) to provide and maintain evidence of sufficient financial responsibility to meet the above-referenced obligations. To implement section 30147(b), we currently require a RI applicant to submit to us a copy of a contract to acquire (or a copy of the policy itself) a prepaid "mandatory service insurance policy underwritten by an independent insurance company," in an amount that equals $2,000 for each motor vehicle for which the applicant will furnish a certificate of conformity to the Administrator. Section 592.5(a)(8). In addition, we require each RI to maintain such an insurance policy in effect. Section 592.6(i). The purpose of these requirements is to ensure that each RI will have the financial capability to remedy any noncompliance or safety-related defect that exists in the vehicles it has imported, and to ensure that owners have a financial recourse if the RI does not perform, or if the RI is no longer in business.

In 1989, when we originally adopted this provision, we were guided by the experience of the Environmental Protection Agency (EPA), which had a similar provision addressing the financial capability of Independent Commercial Importers (ICIs) (i.e., entities that conform imported vehicles to EPA's emissions requirements) to honor emissions warranties (40 CFR 85.1510(b)(2)(I)). Equipment, vehicle, and engine manufacturers, and the California Air Resources Board (CARB), had suggested that ICIs acquire prepaid insurance and/or bonds to cover warranty and recall liability for the useful life of each vehicle. Without a requirement for an insurance policy or bond to cover warranty and recall repairs, owners of vehicles obtained from firms that are no longer in business would have to bear the repair costs.

EPA decided to require a prepaid "mandatory service insurance policy" that, in effect, assures effective warranty coverage. Following EPA's lead, and because the prepaid mandatory service insurance policy seemed to be an acceptable means of assuring the ICIs' performance with respect to warranties and emissions recalls, we required RIs to have a similar insurance policy covering the vehicles it imports, rather than post a recall bond.

We now understand that the mandatory service insurance policies under the Clean Air Act are intended to cover only those parts installed, and modifications performed, to satisfy the emissions requirements of that statute. Thus, the policies are financial guarantees or warranties of the work actually performed by the ICI. The purpose of the NHTSA requirement, on the other hand, is not to provide warranty coverage of compliance work performed by the RI, but to ensure that a vehicle owner will be compensated if the RI responsible for the vehicle is unable to provide a remedy without charge for all noncompliances and safety defects that exist in the vehicle, not just those related to the conformance work performed by the RI. Assuming that service insurance policies are effective and workable, we do not believe that this difference justifies a substantially different approach, such as a surety bond, from the course of action we have followed for over a decade. However, to ensure that the current approach adequately protects owners, we are proposing to make certain changes, as described below.

When the 1988 Act became effective in 1990, we discovered that no established insurance company would issue a "mandatory service insurance policy." However, American Consumer Service Corporation (ACSC) was willing to issue a "Warranty Policy." After review, and in light of the unavailability of insurance products as originally intended, we decided to accept the warranty while the insurance remained unavailable, and ACSC has been the principal issuer of these policies to RIs. Within the past two years, other entities have been issuing similar "warranty policies." However, we are concerned about the financial capability of the issuers of these policies to honor them. Some of the issuing companies do not appear to be recognized as insurance companies by the states in which they are located, and it is not clear whether there are state requirements regarding the adequacy of their financial reserves, etc. Moreover, we are unsure of how "independent" they may be of the RIs to which they furnish the policies.

Aware of our concern about stand-alone warranty policies, in the fall of 1999 ACSC persuaded the National Warranty Insurance Company Risk Retention Group to underwrite the warranty policies it issues, and Signet Star Reinsurance Company to act as the reinsurer. These two companies are registered by the state of Nebraska to conduct an insurance business. At this time, we intend to rely on these safeguards for the warranty policies issued by ACSC.

We have informed companies other than ACSC that are issuing warranty policies that they must be backed by a guarantee of performance similar to that above, either by becoming insurance companies that meet the requirements of State law if they are not already, or by having the policies they issue underwritten by a recognized insurance company. We have also informed them that such policies must be issued by a truly independent company, e.g., one in which no RI or any of its officers, directors, employees, or shareholders has a financial interest and in which no legal relation (e.g., relative) of a RI's officers, directors, shareholders or employees is employed.

While in this notice we are not proposing to change Sec. 592.5(a)(8), we are proposing to add definitions of the terms "service insurance policy" and "independent insurance company" to address our concerns.

A "service insurance policy" would be defined as any policy issued or underwritten by an independent insurance company which covers a specific Type 1 or Type 2 motor vehicle and guarantees that any noncompliance with a Federal motor vehicle safety standard or safety-related defect determined to exist in that vehicle, will be remedied without charge to the owner of the vehicle. An "independent insurance company" would be defined as an entity that is registered with any State and authorized thereby to conduct an insurance business, none of whose affiliates, shareholders, officers, directors, or employees, or in affinity with such, is employed by, or has a financial interest in or otherwise controls or participates in the business of, a RI to which it issues or underwrites such policies. The phrase "in affinity with such" includes but is not limited to family members.

We note, also, that some RIs are furnishing policies limited to coverage of vehicles originally manufactured for sale in Canada. These policies are not valid for vehicles manufactured for sale elsewhere, and we will not accept these restricted policies for compliance certification submissions for Type 2 vehicles of other than Canadian origin.

We are also interested in having comments on whether there might be an alternative, simpler means of ensuring that owners of vehicles imported by RIs will be able to have recalls performed, such as the provision of a bond in a certain amount (e.g., 5% of the dutiable value of the vehicle).

3. Section 592.5(a)(9): Capability of an Applicant To Perform Conformance Work

The original "gray market" provisions of the Safety Act emphasized the responsibility of the importer to bring its imported nonconforming vehicles into compliance, but the Act was silent regarding the qualifications of the importer/modifier. In the 1988 Act, Congress rejected the 20-year practice of leaving conformers of motor vehicles unregulated, and enacted a statutory scheme under which only RIs may import noncompliant vehicles for resale. The statute directed NHTSA to establish procedures and requirements that, among other things, ensure that the RI "will be able technically" to carry out conformance and recall repair work. 49 U.S.C. 30141(c)(1)(C). This was intended to reassure the public that a Federal agency had reviewed the qualifications of a person to bring vehicles into compliance with the FMVSS and to repair vehicles covered by safety recall campaigns. (Of course, the fact that an entity has become a RI should not be interpreted or represented as our "approval" of a RI; it simply means that the RI has met the requirements of the statute and regulations.)

As reflected in 49 CFR § 592.5(a)(9), we currently require an applicant to demonstrate that it will be "technically able (to remedy a noncompliance or safety-related defect) through repair." However, the regulation does not address the technical ability of the applicant to conform vehicles or the sufficiency of its facilities to do so. Therefore, we are proposing to amend § 592.5(a)(9) to correct this oversight by requiring an applicant to submit information sufficient to demonstrate to us that it has technical ability to bring vehicles into compliance with safety, bumper, and theft prevention standards, and to perform recall repairs on vehicles, such as its experience repairing vehicles and the qualifications of its personnel.

To demonstrate ownership or leasing of facilities adequate for the conformance, repair, and storage of vehicles, under § 592.5(a)(9)(B), an applicant would have to provide a copy of the lease agreement or ownership document relating to that facility. We are also proposing that the applicant provide a copy of a license or other similar document issued by an appropriate local authority permitting the applicant to do business as an importer, or modifier, or seller of motor vehicles, or, alternatively, a statement by the applicant that it has made a bona fide inquiry and is not required by state or local law to have such a license.

We are authorized to inspect the conformance, storage, and record-keeping facilities of an applicant to assist us in deciding on a RI application. 49 U.S.C. 30141(c)(1)(B). In some instances, we have conducted an on-site inspection to judge the technical competence of an applicant; in others, we have relied on the description provided in the application. To reduce the need to conduct on-site inspections and to expedite the process, we are proposing to require an applicant to submit photographs in non-electronic form, with street addresses, of each of its lots and garages; i.e., the facilities where vehicles would be conformed and stored prior to their release and remedied in safety recall campaigns.

If you are commenting on the feasibility of a two-tier RI system, your comments on this section of our proposal would be particularly pertinent.

4. Section 592.5(a)(11): Ensuring That an Applicant Understands Its Duties

At present, Section 592.5(a)(11) requires an applicant to state that it will fully comply with the duties of a RI as set forth in § 592.6. We are proposing additions to and clarifications of the duties of a RI. In this light, we are proposing an amendment of § 592.5(a)(11) to require an applicant to state that it has read and understood the duties of a registered importer as set forth in 49 CFR 592.6 and that it will fully comply with each such duty.

5. Section 592.5(b): Incomplete Applications

Under the present regulation, if the information submitted is incomplete, the Administrator notifies the applicant of the areas of insufficiency and that the application is in abeyance.

We propose a clarification under which the Administrator would notify the applicant of the "information that is needed," and that the Administrator will not give further consideration to the application until the information is received.

6. Section 592.5(e): Denial of Applications

We would remove from present § 592.5(d) and place in a new subsection (e) material on denial of applications and refunds of certain components of the initial annual fee.

At present, the regulation states only that "If the information [in the application] is not acceptable, the Administrator informs the applicant in writing that its application is not approved." We are proposing to expand this in several ways.

We currently require an applicant to state that it has never had a registration revoked pursuant to § 592.7 (§ 592.5(a)(6)). We would continue this requirement and we would restate section 30141(c)(3) as well by specifying that we shall deny registration to an applicant whose registration has previously been revoked.

We also currently require an applicant to state that it is not and was not "directly or indirectly, owned or controlled by, or under common ownership or control with, a person who has had a registration revoked" (§ 592.5(a)(6)). We would also continue this requirement and refer to the portion of section 30141(c)(3) that specifies that we may deny registration to an applicant that is or was owned or controlled by, or under common ownership or control with, a RI whose registration has been revoked. For example, if we revoke the registration of a corporate RI which had four officers, we would deny registration to an applicant in which any one of the four individuals, or specified family members, is involved.

Under the current regulation, each RI's application must include the "names of all owners, including shareholders, partners, or sole proprietors" (§ 592.5(a)(4)), and, if an owner is a corporation, "the names of all shareholders of such corporation whose ownership interest is 10 percent or greater" (§ 592.5(a)(5)). The RI is required to inform us of any change in the ownership information it has provided (§ 592.5(f)). Thus, under the present regulation, there is some information that can be used to compare the ownership interests of a RI whose registration has been revoked with those of an applicant. However, the present regulation, in our view, is not sufficient to cover situations where an application is filed by person(s) that may be influenced by a revoked RI, or its shareholders, principals, partners, or employees, and whose name may not have appeared on that RI's application. For example, this would include a spouse, in-law, child, partner, substantial shareholder, or employee. Thus, we would also require an applicant to state whether any of its shareholders, officers, directors, employees, or in affinity with such, had been previously affiliated with a RI in any capacity (e.g., major shareholder, partner, participant in the business), and, if so, to state the name of the RI and the capacity.

We would provide that denials shall be in writing and shall include the reasons for the denial. Applicants would be authorized to submit a petition for reconsideration of the denial within 30 days.

7. Section 592.5(f): The Due Date for the RI's Annual Fee

Present subsection (e) would be redesignated subsection (f). Under 49 U.S.C. 30141(a)(3), we are directed to establish, and a RI must pay, an annual fee "to pay for the costs of carrying out the registration program for importers * * *." Such fees are specified in 49 CFR 594.6. Section 592.5(e) currently requires a RI to provide with this fee an annual statement that affirms that certain of the information provided in its original application "remains correct."

The annual fee covers a fiscal year, October 1 through September 30 of the year following. At present, the fee, along with the affirmation statement, must be filed and paid not later than October 31 of each year. This is a month after the beginning of the fiscal year. Moreover, § 592.7(a) now provides that we may not revoke or suspend a registration until the 31st calendar day after an unpaid fee is due and payable. The 31st calendar day after October 31 is December 1. This means that a RI that does not pay its annual fee has a "free ride" to continue to operate for two months into the fiscal year.

To address this anomaly, we want to amend the present provisions to require payment of the annual fee, and submission of the annual affirmation statement, not later than September 30 of each year, to cover the next fiscal year. In addition, as discussed in more detail below, we are proposing to amend § 592.7(a) to specify that we may automatically suspend an RI's registration if the annual fee has not been paid by the close of business on October 10 or, if October 10 is a weekend or a holiday, the next business day.

8. Transfer of Current Section 592.5(f): Notification of Change of Information in a RI Application

Under current § 592.5(f), a RI must notify us within 30 days of any change in the information provided in its application. This duty is more appropriately located in § 592.6, and we are proposing to transfer it to a new § 592.6(m).

9. Section 592.5(h): Treatment of Applications Pending on Effective Date of the Final Rule

We may have received, but not acted upon, registration applications that are pending when the final rule based upon this proposal becomes effective. Under proposed subsection (h), if the application does not contain all the information that will then be required by § 592.5(a) as amended by the final rule, we would notify the applicant of the additional information required by the new rule and inform it that we are deferring further consideration of its application until the information is received.

B. Duties of a Registered Importer (§ 592.6)

The duties of a RI are set forth in § 592.6. Upon review, we have tentatively decided that several provisions in that section should be amended or clarified, and that several more need to be modified to reflect the establishment of different Types of motor vehicles. Therefore, we propose revising § 592.6 in its entirety.

The present duties imposed by § 592.6 may be summarized as follows, by their subsection:

(a) Bond requirements;
(b) Record-keeping;
(c) Conformance records after initial certification for same make, model, and model year has been submitted;
(d) Certification of conformed vehicles;
(e) Certification to NHTSA;
(f) Substantiation of certification;
(g) Obligation to notify and remedy;
(h) Requirement to admit NHTSA representatives for inspection;
(i) Maintenance of prepaid mandatory service insurance policy; and
(j) Obligation upon failure to conform vehicles.

Under our proposed revision, we would adopt the following structure of subsections for § 592.6:

(a) Conformance and bond requirements;
(b) Recordkeeping;
(c) Certification of conformed vehicles;
(d) Certification documentation to be submitted to NHTSA for Type 2 motor vehicles;
(e) Information to be submitted to NHTSA for Type 1 motor vehicles;
(f) Acts prohibited before bond release;
(g) Furnishing the service insurance policy with the vehicle;
(h) Odometer disclosure requirements;
(i) Obligation to export or abandon a vehicle upon failure to conform it;
(j) Obligation to provide notification of and remedy for safety-related defects and noncompliances, and to submit related reports to NHTSA;
(k) Requirement to admit NHTSA representatives for inspection;
(l) Requirement to provide an annual statement with fee;
(m) Notification to NHTSA upon change of information provided in application; prior notice of change of facility.
(n) Assurance that at least one full-time employee is present at each facility;
(o) Prohibition against co-utilization of employees, or conformance, repair, or storage facilities with any other RI;
(p) Timely response to NHTSA information requests;
(q) Timely payment of fees; and
(r) provision not later than 30 days after effective date of final rule of information required of new RI applicants.

1. Section 592.6(a): Duties To Ensure Conformance of All Imported Vehicles With Safety, Bumper, and Theft Prevention Standards and To Furnish a Conformance Bond for Type 2 Motor Vehicles

Under current § 592.6(a), a RI has the duty to "furnish to the Secretary of the Treasury (acting on behalf of the Administrator)" a bond to assure that it will bring a nonconforming vehicle into conformity with the FMVSS within 120 days of entry. Literally speaking, this is a duty to furnish a bond only, and not, by its terms, a duty to conform the vehicle, which exists in the statute. We believe that subsection (a) should be amended to encompass both duties, and a third duty as well: To assure that any vehicle that a RI imports has been deemed eligible for importation by the Administrator pursuant to part 593. The duty to conform the vehicle would include conformance to Federal bumper and theft prevention standards if they applied to the vehicle.

Although we believe that 120 days is not required for the relatively minor or straightforward modifications needed to bring Type 2 motor vehicles of Canadian origin into compliance with applicable standards, we are not currently proposing to reduce this period and the present 120 days would continue to apply to Type 2 motor vehicles. However, we welcome comments on whether such a reduction for Canadian Type 2 vehicles would be appropriate, and, if so, an appropriate period.

Until now, part 592 has been silent on the RI's responsibility to ensure conformance with the theft prevention standard, though the matter is addressed in part 567, the certification regulation. It is a violation of Federal laws to import motor vehicles that do not comply with safety and bumper standards, but in each case the statutory prohibition does not apply if the vehicles have been determined to be capable of complying and are brought into conformity after importation (See 49 U.S.C. 30112, 30146, and 32506). It is also a violation of Federal law to import a vehicle that does not comply with the theft prevention standard (see 49 U.S.C. 33114), but section 33114 provides no exceptions. Thus, until now, we have interpreted section 33114 as requiring a vehicle to meet the theft prevention standard at the time of entry, and have not allowed post-entry conformance. We have implemented this through our certification regulation (49 CFR part 567): If a RI imports a passenger car or multipurpose passenger vehicle from a line listed in appendix A of 49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard*, and the original manufacturer has not affixed a label meeting the requirements of § 567.4(k), the RI is required to inscribe the Vehicle Identification Number on certain parts (§ 541.5(b)(3)), and to affix a label meeting these requirements before the vehicle is imported (§ 567.4(k)). We recognize, however, that it may be difficult to mark parts or to take other actions needed to certify compliance with the theft prevention standard outside the United States.

The purpose of the theft prevention standard "is to reduce the incidence of motor vehicle thefts by facilitating the tracing and recovery of parts from stolen vehicles" (§ 541.2). We view it as highly unlikely that an imported vehicle subject to the theft prevention standard would be stolen while in the custody of a RI. We have tentatively concluded that the purpose of the standard would not be compromised by allowing a RI to bring a vehicle into compliance after its entry, when it is conforming and certifying vehicles to the safety and bumper standards, and we are proposing an amendment of § 567.4(k) to permit this.

In accordance with our views, we propose that a RI, as part of its Type 1 information submission or as part of its Type 2 certification, include a statement that the vehicle is not subject to the parts marking requirements of the theft prevention standard, or, alternatively, that the vehicle conforms to these requirements. The submission would also have to indicate whether the vehicle conformed as originally manufactured or whether the RI brought it into conformity.

2. Section 592.6(b): Recordkeeping Requirements

For the most part, existing recordkeeping requirements will be retained. Our proposed amendment to Sec. 592.6(b) would clarify that record-keeping requirements apply to importations of Type 1 motor vehicles as well as to importations of any vehicle for which a RI furnishes a certificate of conformity to NHTSA (this includes vehicles imported for personal use conformed under contract, as well as vehicles that the RI imports for resale). We also want to clarify that all records must be kept as hard copies (not electronically) at the facility in the United States identified by the RI in its application. The records would include copies of certifications of conformity submitted to NHTSA covering Type 2 motor vehicles, and information furnished covering Type 1 motor vehicles. The use of the term "the facility" means that all required records must be stored at a single location.

A primary purpose of record-keeping is to provide a ready means of identifying vehicles for which a RI is responsible for providing remedy without charge in the event of a defect or noncompliance determination. The period of free remedy was recently increased by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (PL 106–414, effective November 1, 2000) from 8 to 10 years. Accordingly, Sec. 592.6(b) will be amended in the near future to specify that a RI shall retain the required records for 10 years, rather than for 8 years, as is presently required. This amendment is reflected in proposed 592.6(b).

3. Section 592.6(c): Whether a Person Other Than the RI May Affix a Certification Label to a Vehicle After It Is Conformed; Whether the Certification Label May Be Affixed Outside the United States

Under 49 U.S.C. 30146(a)(3), "each registered importer shall include on each motor vehicle * * * a label prescribed by the (Administrator) identifying the importer and stating that the vehicle has been altered by the importer to comply with the standards applicable to the vehicle." We implemented this section by present § 592.6(d), which requires the RI, upon completion of compliance modifications, to permanently affix a certification of compliance to the vehicle that meets the general vehicle certification requirements of 49 CFR part 567, and to provide a photograph of the label to us. These requirements would be continued in proposed § 592.6(c), and modified as discussed below.

Two questions have arisen with respect to gray market vehicle certification: Who may affix the certification label, and whether the certification label may be affixed outside the United States if compliance work is completed before importation.

In a recent instance, we discovered that a RI had not taken possession of the vehicles it had imported and was shipping its certification labels to a customer without having actually seen the cars it was purporting to modify and certify. We had made it clear, in the preamble to the final rule adopting Part 592, that a RI may not contract to have another person conform a vehicle for which it is the importer of record (54 FR 40063 at 40066). For similar reasons, it is improper for a RI to delegate the responsibility to affix the certification label.

In every instance, the proper course of action for a RI is to take physical possession of a vehicle, then perform all necessary conformance modifications at a facility identified to NHTSA, and permanently affix the certification label on the vehicle at the conformance facility at the end of the modification process. We would therefore add to proposed Sec. 592.6(c) the requirement that all conformance work be performed at a facility identified to NHTSA for that purpose and that the certification label be permanently affixed at that facility after all appropriate modifications are performed on the vehicle.

We have not allowed pre-importation certification of motor vehicles that have been conformed by persons other than their original manufacturers. Congress intended to provide us with a review function to ensure that nonconforming vehicles are properly conformed by responsible entities. To allow certification outside the United States by someone other than the original manufacturer would allow these vehicles to be imported as "complying" vehicles, outside of the RI process, which would be inconsistent with the purpose and structure of the 1988 Act. We intend to continue this policy. Therefore, we specify in proposed § 592.6(c) that certification labels may be affixed only in the United States. However, we wish to clarify that a RI may perform conformance modifications and recall remedy repairs outside the U.S. before importation, provided that the RI has imported the vehicles before the label is permanently affixed and before it submits the relevant compliance information to NHTSA.

4. Sections 592.6(d) and 592.6(e): Documentation That a RI Must Submit to NHTSA

Currently, § 592.6(f) specifies a limited amount of information that must be submitted to NHTSA with the RI's conformance certification. However, it provides that the RI must also submit "such information, if any, as the Administrator may request." Over the years, we have identified a number of other items that we need to effectively administer the RI importation program, and we have advised the RIs of these items through newsletters and direct communications. We will continue to require this information (with one exception discussed below) for Type 2 motor vehicles, and we have decided that it would be more appropriate to identify these items in § 592.6 rather than rely on informal communication with RIs.

Therefore, we are proposing a new § 592.6(d), which would specify that the initial certification conformance package submitted to NHTSA for a Type 2 motor vehicle contain (A) the make, model, model year and date of manufacture, odometer reading, VIN meeting the requirements of 49 CFR part 565, and Customs Entry Number, (B) a statement that the RI has brought the vehicle into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, and a description, with respect to each standard for which modifications were needed, of how it has modified the vehicle, (C) a copy of the bond given at the time of entry to ensure conformance, (D) the vehicle's vehicle eligibility number, (E) a copy of the HS–7 form executed at the time of its importation if a Customs broker did not make an electronic entry with Customs, (F) true and unaltered front, side, and rear photographs of the vehicle, (G) true and unaltered photographs of the original manufacturer's certification label and the certification label of the Registered Importer permanently affixed to the vehicle (and, if the vehicle is a motorcycle, a photograph or photocopy of the Registered Importer certification label before it has been affixed), (H) documentation including photographs sufficient to demonstrate conformity, and (I) the policy number of the service insurance policy furnished with the vehicle pursuant to § 592.6(g).

A RI's second and subsequent certification submissions for a given make, model, and model year Type 2 motor vehicle would normally need to contain the same information as its first submission, including the conforming VIN of the vehicle covered, and would have to refer to its first submission. However, if the RI conformed the vehicle in the same manner as it stated in its initial submission, the RI may say so in a subsequent submission, and it need only provide photographs and other documentation of the modifications that it made to achieve conformity.

Currently, we require RIs to submit a copy of the actual service insurance policy that applies to each vehicle with the certification conformance package for the vehicle. We have tentatively concluded that this is not necessary, as long as the RI submits the insurance policy number or other identifying information so that we have a record in case the owner of the vehicle needs to utilize the policy. We would continue to require the RI to retain a copy of the policy in its records.

Section 592.6 does not currently address a RI's duties with respect to pending recalls on vehicles for which it is responsible under the statute. In recent years, we have required RIs to include a statement in each certification conformity package that there are no outstanding recalls (i.e., recalls for which the remedy had not been performed). However, we have found that some RIs were not actually checking to see if this was true and that in some cases vehicles were being released to the public with unremedied noncompliances and safety defects. Because of the clear adverse impact that this practice has on safety, we are proposing to require that RIs substantiate that there are no unremedied defects or noncompliances applicable to any vehicle that it imports or conforms. We would require that a RI submit substantiation that, at the time of submission of its certification of conformity under § 592.6(d) or the required information under § 592.6(e), the vehicle is not subject to any safety recall campaigns being conducted by its original manufacturer (or its U.S. subsidiary) in the United States, or, alternatively, that all noncompliances and defects covered by those safety recalls have been remedied.

Such substantiation would normally be in the form of a document issued by the original manufacturer or a franchised dealer of that manufacturer stating that there are no recalls pending that apply to the vehicle for which the remedy work has not been performed. If the manufacturer's records indicated that there were one or more recall campaigns for which the remedy had not been performed, the RI would have to submit repair records demonstrating that the remedy work had been performed prior to release of the vehicle. We would like comments on whether it would be sufficient to merely require the RIs to maintain this substantiation in their records, or whether they should be required to submit it to us along with the other required information.

For Type 1 motor vehicles, we would adopt a new § 592.6(e) requiring the submission of much less documentation than is currently required, and much less than would be required for Type 2 motor vehicles. The required information would include the make, model, model year, odometer reading, VIN that conforms to 49 CFR part 565, date of manufacture, Customs entry number, the name of the insurance company and the policy number of the service insurance policy to be provided with the vehicle, and substantiation that there are no pending safety recalls for which the remedy work has not been performed. The RI would be required to provide this information on a monthly basis so that we receive it within 10 calendar days after the end of the month in which the vehicle was imported.

We are moving in our administration of import procedures to allow the electronic submission of certain conformance documentation. However, we need to assure ourselves that all photographic information is authentic. Current technology is sufficiently advanced that it is easy to alter photographs. We therefore have proposed to require that certain photographic information submitted for Type 2 motor vehicles, and retained for all vehicles conformed by RIs, be in true and non-altered form: specifically, views of the vehicle speedometer/odometer displays and the RI label and certification labels on the doors. As in the current regulation, for motorcycles, the RI would also have to submit a true and unaltered photograph or a photocopy of the label itself, flat, to allow readability, as well as of the label as affixed to the motorcycle crossbar.

Section 592.6(e) currently requires a RI, after it has completed bringing a vehicle into conformity, to certify to NHTSA that the vehicle complies with all applicable FMVSS, "and that it is the person legally responsible for bringing the vehicle into conformity." In some recent instances, RIs have purported to certify vehicles without any knowledge or exercise of management control over the process. For example, certification to NHTSA has been provided by individuals, hundreds of miles away from the vehicles, who have been granted a power of attorney from the RI. In another instance, we informed a RI that we would not accept certifications to us from appointed individuals resident in Canada. In our view, certification to NHTSA is a responsibility that must not to be delegated by a RI to someone who has no personal knowledge of the relevant information. We therefore are proposing in new § 592.6(d) that the certification to NHTSA required for Type 2 motor vehicles can only be signed by a principal of the RI, who must attest to personal knowledge that the RI has performed all work required to bring the vehicle into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards. As noted above, the identity of the principal authorized to make this certification must be stated in the RI application or subsequent filings with NHTSA pursuant to § 592.6(m). Certification to the Administrator would have to be personally signed and not be a signature that is stamped or otherwise mechanical in origin. The submission to the Administrator would have to identify the facility where the conformance work was performed, and the location where the vehicle may be inspected.

Similarly, the information furnished to us for Type 1 motor vehicles would have to be submitted by a principal of the RI.

Finally, we want to add a word of caution. For many years we have accepted a RI's certification in the form of a check list that allows the RI to indicate whether the vehicle was originally manufactured to conform with a specific standard (by checking a column headed "O"), or modified by the RI to conform to the standard (by checking a column headed "M"), or that the standard is inapplicable (by checking a column headed "N/A"). There have been times in their haste to certify that RIs have inaccurately checked the box of a standard that does not apply to the vehicle, or indicated that the RI modified the vehicle when the vehicle, in fact, was originally manufactured to comply, or indicated that a standard did not apply when it did. These inaccuracies call into question the accuracy of the remaining certifications. We wish to advise RIs that we may reject such certifications and return such submissions to the RI. We will also return submissions that are incomplete. If a submission is returned to a RI, we would charge to the RI the costs associated with the return. Return would not toll the 120-day period submitting compliance information as provided under § 592.6(a). Further, if a RI has certified that it has modified a vehicle. whether by checking an "M" box or otherwise, and we discover that it has not in fact modified the vehicle, we will consider that to be a knowingly false certification within the meaning of 49 U.S.C. 30115 and 30141(c)(4)(B), and grounds for automatic suspension of a RI registration, as discussed below. To bring greater accountability to the certification process by encouraging RIs to complete their certification in a careful and thorough manner so that NHTSA may expedite its certification review, we propose to add appropriate language to paragraph (d) to address these issues.

We seek comments on whether a registration ought to be suspended, either automatically or non-automatically, if a RI continues to submit inaccurate or incomplete certifications over a period of time.

5. Section 592.6(f): Acts Prohibited Before Expiration of 30 Days After Submission of Compliance Statement or Release of the Conformance Bond

A RI may license or register an imported motor vehicle for use on public roads, or release custody of a motor vehicle to a person for license or registration for use on public roads "only after 30 days after the registered importer certifies (to NHTSA) that the motor vehicle complies [with applicable FMVSS]." 49 U.S.C. 30146(a)(1). We have construed this provision to allow a RI to license or register a vehicle, or release custody of a vehicle, for use on the public roads less than 30 days after receipt of the conformance package if we have notified the RI that the conformance bond required by 49 U.S.C. 30141(d) has been released.

We have tried to accommodate RIs by reducing data-submission requirements for Canadian vehicles, and expediting the process by releasing the conformance bonds. During this year, we have released those bonds within an average of five working days. However, despite these short processing times, we have discovered that in some instances vehicles imported from Canada have been shipped directly to auction houses or dealers and sold within days after entry, before bonds were released, and in some instances, even before we had received the vehicle's certification of conformity from the RI.

The RI's duty to retain "custody" of the vehicles is a statutory requirement that has not been explicitly implemented previously in part 592 even though it is one of the conditions of the performance bond required by part 591 and its Annex A. To eliminate any possible confusion, we want to clarify this statutory requirement.

Issues have arisen as to whether the retention of "custody" requires a RI to maintain physical possession of a vehicle at one of its own facilities, pending bond release. It has been our view that, at a minimum, we need to know the location of a vehicle to be able to inspect it during the period before we release the bond, and to have the same access to the vehicle as if it were stored at the RI's own facility. In addition, title to the vehicle must not have passed from the RI to any U.S. entity before bond release so that we can be certain that a RI will be able to fulfill the bond condition to export or abandon the vehicle if NHTSA does not release the bond. See letters of April 17, 2000, from Frank Seales, Jr., to Philip Trupiano, and of April 19, 2000, from Kenneth N. Weinstein to John Dowd et al.

As noted before, 75 percent of Canadian vehicles imported are Type 1 motor vehicles. Under today's proposal, the custody issue would no longer arise with respect to Type 1 motor vehicles, since they would enter free of bond requirements. However, they remain relevant to Type 2 motor vehicles.

With respect to Type 2 motor vehicles, we are proposing to adopt requirements that parallel those of EPA with respect to emissions requirements established under the Clean Air Act to ensure that the RI retains physical possession of a vehicle at its own facility pending bond release. Under EPA's regulation, during the period of "conditional admission" before EPA issues a certificate of conformity and a vehicle is released, the importer may not operate the vehicle on the public roads, sell or offer it for sale, or store it on the premises of a dealer. 40 CFR 85.1513(b). We believe that these restrictions would be appropriate for Type 2 motor vehicles, including those of Canadian origin that are not Type 1 motor vehicles. Thus, if a RI imports a Type 2 motor vehicle from Canada (or elsewhere) and sells it at any time before the end of the 30-day hold period or before the bond had been released, whichever first occurs, or stores it on another's lot, or allows it to be operated on the public roads, a violation will have taken place for which sanctions may be imposed. We recognize that this approach could affect present practices of some RIs with respect to some Canadian vehicles, but we believe that it is a necessary safeguard for vehicles not covered by a letter from their manufacturer that would qualify them as Type 1 motor vehicles.

In addition to the restrictions that parallel EPA's, we are also proposing language that tracks the statutory prohibitions against premature licensing or registering of a Type 2 motor vehicle for use on the public roads, or release of custody to any person for such purposes.

In line with our past interpretations, we propose to continue to permit a RI to obtain title in its own name to the vehicles that it imports for resale, either before or after importation, but we shall not allow the RI to title it in the name of any other entity (such as a title clearer, dealer or a retail purchaser) until after we have released the bond. This is designed to ensure that the RI retains the ability to export or abandon the vehicle to the United States, upon demand by the United States, for its failure to conform the vehicle.

Since Type 1 vehicles would be admitted free of bond, we seek comments on whether title restrictions are appropriate for them.

6. Section 592.6(g): Duty To Provide Copy of the Service Insurance Policy With Each Vehicle

We propose requiring that a RI provide a copy of the service insurance policy (guaranteeing that a remedy will be provided without charge to the vehicle owner in the event of a safety recall) with each vehicle it imports not later than the time the RI sells the vehicle. When a RI has conformed a vehicle imported for personal use, the RI would have to provide a copy with the vehicle not later than the time it releases custody of the vehicle to its importer-owner. Finally on a monthly basis, a RI would have to provide to the insurance company issuing the policies the VINs of each vehicle covered by a policy, retaining a copy of this correspondence in its files. We are adding this duty to ensure that the purchasers of all gray market vehicles are aware of their ability to use this policy to have safety recall work done at no charge to them, and to ensure that the issuers of the policies are informed of the number and identity of the vehicles that their policies cover.

7. Section 592.6(h): Duty To Provide and Retain Copies of Odometer Disclosure Statements

We wish to call attention to an obligation that another statute imposes upon persons who sell vehicles. Pursuant to 49 U.S.C. 32705 and 49 CFR part 580, *Odometer Disclosure Requirements*, a person transferring ownership of a motor vehicle must provide an odometer mileage disclosure statement to the transferee. Dealers and distributors, such as a RI who imports vehicles for resale, must also retain a copy for five years (49 CFR 580.8(a)). We want to reiterate these obligations in part 592, so that a RI which focuses principally on 49 CFR parts 591–594 does not miss this requirement. Also, a failure to comply with these requirements would be a violation of this Part.

8. Section 592.6(j): Duty To Remedy Noncompliances and Safety-Related Defects, and To Provide Reports Regarding Recalls

As discussed above, each RI is statutorily responsible for conducting safety recalls in the vehicles that it imports or conforms. 49 U.S.C. 30147(a)(1). Section 592.6(g) currently specifies certain of a RI's responsibilities with respect to recalls, but it does not address all relevant issues.

As currently written, § 592.6(g) is primarily directed toward recalls that are announced after a vehicle has been released by the RI and is already in the possession of an owner, and does not address recalls that apply to imported vehicles at the time they are imported. To assure that there is no misunderstanding about the duties of a RI under the latter circumstances, we have proposed to amend §§ 592.6(b), (c), (d), and (e) to explicitly require a RI to assure that all recall remedy work has been performed. (Information about recalls is available from a variety of sources, including the vehicle manufacturers, their dealers, and NHTSA's Internet Website: www.nhtsa.gov/cars/programs/recalls. Whether the recall work has been performed on a specific vehicle often can be determined by inspecting the vehicle or by reviewing its repair records. This information is always available from the manufacturer and usually from the manufacturer's franchised dealers).

We are also proposing amendments addressing a RI's responsibilities for recalls that are announced after the vehicle has been certified by the RI. These duties already exist by virtue of section 30147(a)(1). However, some RIs apparently have not attended to their obligations in this regard. To further emphasize these obligations, we propose to restate them in Part 592.

Current § 592.6(g) requires the RI to provide notification and remedy "with respect to any motor vehicle for which it has furnished a certificate of conformity." As discussed above, we would no longer require submission of a "certificate of conformity" for Type 1 motor vehicles, but would continue the RI's responsibility for recalls affecting such vehicles. Therefore, we plan to amend the phrase in new § 592.6(j)(1) to read, "with respect to any motor vehicle that it has imported or for which it has furnished a certificate of conformity." This will be broad enough to cover Type 1 motor vehicles that the RI imports for resale, as well as Type 2 motor vehicles that it sells and/or for which it furnishes conformity statements to NHTSA.

We understand that it is the practice of most major manufacturers who sell vehicles in the United States to include in their safety recall campaigns vehicles that were originally manufactured for sale in Canada that have been registered in the United States (with the exception of some Asian producers of Canadian vehicles). Nevertheless, the statute requires a RI to assure that the owner of each vehicle it imports or conforms has been provided with notification of all noncompliances and safety-related defects and the opportunity to receive a free remedy.

To allow us to ascertain whether a RI is satisfying those obligations, when a vehicle manufacturer determines that a noncompliance or safety-related defect exists in its vehicles and commences its notification and remedy campaign, we need each RI to inform us whether the manufacturer's campaign will also cover vehicles that the RI has imported. If it does not, the RI must notify the current owner and provide an appropriate remedy. We are proposing to require each RI to inform us not later than 30 days after a vehicle manufacturer commences its notification campaign whether the manufacturer's recall will cover vehicles imported by the RI. If not, the RI would be required to furnish us with a copy of the notification that it intends to send to the vehicle owners, in accordance with 49 CFR part 577, and to provide the appropriate remedy without charge.

To allow us to monitor the performance of manufacturers in carrying out their recall responsibilities, we issued 49 CFR 573.6, which requires manufacturers conducting recalls to provide six quarterly reports to us setting forth specified information regarding the recall. This information includes the number of vehicles or items of equipment covered by the campaign and the number of vehicles or equipment items remedied by the end of each calendar quarter. Although RIs are "manufacturers," we have tentatively concluded that some of the provisions of § 573.6 can be relaxed with respect to them.

For recalls that have been announced by a vehicle manufacturer before the RI submits the information required by § 592.6(d) or (e), the RI must ensure the completion of appropriate recall repairs before it releases the vehicle; therefore, there appears to be no need for the RI to submit any reports pursuant to § 573.6 with respect to those recalls. This is reflected in proposed § 592.6(j)(5). Nor do we need to receive reports from RIs with respect to recall campaigns being conducted by the manufacturer on vehicles imported by the RI.

There may be instances when the U.S. manufacturer does not want to include the Canadian counterparts of the recalled vehicles in its campaign. Recall responsibility in this instance falls upon the RI, as it does when the RI makes its own determination of a defect or noncompliance. In these instances we need to receive reports from RIs. While 49 CFR 573.6 requires vehicle manufacturers to submit six quarterly reports containing extensive, detailed information, we believe that fewer reports and significantly less information is needed from RIs. Therefore, we are proposing to merely require two reports for each post-importation recall campaign. The first report would be due nine months after the RI began to notify owners, and the second report would cover the 18-month period after notification began. Those reports would be due not later than the 30th day following the end of each of the two periods. Also, in view of the differences between RIs and other vehicle manufacturers, we are proposing in § 592.6(j)(5) to reduce the amount of information required in such reports.

Finally, we have reviewed current § 592.6(g)(2)(i) relating to the 8-year period of remedy without charge, and have restated it in proposed § 592.6(j)(6) in a much simpler fashion. By doing so, we are heeding E.O. 12866 and its goal to write all rules in plain language. As noted in our discussion under § 592.6(b), the TREAD Act has increased the period of free remedy to 10 years. This increase, effective as of the date of enactment of the TREAD Act, is reflected in proposed § 592.6(j)(2).

9. Section 592.6(m): Duty To Notify NHTSA of Any Change of Information in the Registration Application Including Prior Notification Before Adding or Discontinuing the Use of Any Facility

At present, § 592.5(f) requires a RI to notify us not later than 30 days after a change in any of the information submitted in its registration application. We would maintain this requirement as a duty under new § 592.6(m), with one exception.

We have tentatively concluded that, where the change involves the use of a facility not designated in the registration application, we should be notified of the intent to use such facility not less than 30 days before such change takes place, and provided with the same information required in the original RI application, including non-electronic photographs of the facility. This will allow us to evaluate the adequacy of the new facility for the services to be performed there. We are also proposing to require the RI to notify us 10 days in advance before it discontinues the use of any identified facility, and to identify the facility, if any, that will be used in its stead.

10. Section 592.6(n): Duty To Assure That at Least One Full-Time Employee of a RI Is Present at Each of the RI's Facilities

Where a RI has several separate facilities, we are concerned about the RI's ability to supervise conformance and recall work to maintain records regarding the vehicles it has imported, and our ability to inspect the vehicles, operation, and records. To address these concerns, we have tentatively decided to adopt a new § 592.6(n) to require each RI to assure that at least one full-time employee of the RI is present at each of its facilities. This is consistent with our statement in the preamble to the final rule establishing part 592 that a RI may not utilize agents to fulfill its statutory responsibilities, and that "conformance operations must be carried out by

Registered Importers (and) their employees." 54 FR 40083, at 40086.

11. Section 592.6(o): Prohibition of Two or More RIs Co-Utilizing the Same Employee or the Same Conformance, Repair, or Storage Facility

Questions have been raised whether two or more RIs may use common employees or a shared facility to perform conformance modifications or recall repairs, or to store imported vehicles. As indicated above, we do not allow a RI to make arrangements with other persons, including its customers (e.g., used car dealers) and other RIs, under which the other entity would perform the RI's duties. We have tentatively concluded that to allow two or more RIs to use the same employee, or a common facility for repairs, conformance work, or storage, raises the possibility of ineffective management and controls, particularly when the main office of a RI is some distance away from the facility in question. A storage facility shared with another RI will also make it more difficult to identify bonded vehicles for which an individual RI may be responsible when we are conducting inspections. We therefore propose to add a new § 592.6(o) to prohibit a RI from co-utilizing any employee, or any conformance, repair, or storage facility, with another RI.

If a RI stores bonded vehicles on premises that do not belong to it, the storage area should be clearly delineated and the vehicles being stored not mingled with vehicles for which the RI is not responsible (other than its vehicles that have been released from bond).

12. Section 592.6(p): Duty To Provide Timely Response To NHTSA Requests for Information

Under 49 U.S.C. 30166(e), we reasonably may require a manufacturer to make reports to enable us to decide whether it is complying with any of our requirements. Our requests for information invariably identify the date by which we expect a response. As noted above, a RI is a statutory manufacturer because it imports motor vehicles for resale. We have tentatively decided that a regulation reiterating the requirement to make timely reports under section 30166(e) will heighten our ability to obtain information, and to provide a basis for suspension or revocation of a registration if the information is not forthcoming.

13. Section 592.6(q): Duty To Pay Fees in a Timely Manner

We propose a new section adding a specific duty for a RI to pay all applicable fees in a timely manner. Although a registration may be suspended under § 592.7(a) upon a RI's failure to pay fees when they are due and payable, we wish to emphasize that it is an affirmative duty for a RI to pay fees and pay them in a timely manner.

14. Section 592.6(r): Duty of Entities That Are RIs When Final Rule is Adopted To Provide Information That Will Be Required of New RI Applicants

As described above, we are proposing to make comprehensive revisions in § 592.5 to the information required in RI applications. By their own terms, these new requirements would apply to applications pending as of the effective date of the final rule. However, we believe that, to assure proper qualifications and operations, entities that are RIs at the time the final rule becomes effective must furnish the equivalent information, even though that information was not required at the time they submitted their original applications. In order to ensure that this information is provided by those whose applications have been granted previously (*i.e.*, those who are already RIs at the time of the final rule), we are proposing that RIs, not later than 30 days after the effective date of the amendments to § 592.5(a), provide all the information that the revised regulation will require. A RI may incorporate by reference any item of information previously provided to the Administrator in its application, annual statement, or notification of change by a clear reference to the date, page and entry in the existing document. This additional information would include the RI's designation of an agent for service of process if it is not organized under the law of any state of the United States. Failure to provide this information in a timely manner would be grounds for suspension.

C. Automatic Suspension, Revocation, and Suspension of Registrations; Reinstatement of Registrations (Sec. 592.7)

1. Section 592.7(a): Automatic Suspension of a Registration

49 U.S.C. 30141(c)(4)(A) authorizes NHTSA to suspend a registration for not complying with specified statutory requirements as well as "regulations prescribed under this subchapter", *i.e.* 49 U.S.C. 30141–47. Two of the circumstances warranting suspension are of a serious enough nature that section 30141(c)(4)(B) requires the suspension to be automatic: when a Registered Importer does not, in a timely manner, pay a fee required by Part 594 of this title or for knowingly filing a false or misleading certification under 49 U.S.C. 30146. Our present regulation covers this in 49 CFR 592.7(a) and (b).

Currently, § 592.7(a) provides that a registration will automatically be suspended if we have not received a fee by the beginning of the 31st day after it is due and payable.

Until now, we have only applied this provision to the annual fee that the RI must pay pursuant to § 594.6. However, 49 U.S.C. 30141(a)(3) also authorizes the imposition of fees "to pay for the costs of—(A) processing bonds provided * * * under subsection (d) of this section; and (B) making the decisions under this subchapter."

Under this provision, we have established fees for the filing of a petition for a determination whether a vehicle is eligible for importation (§ 594.7); for importing a vehicle covered by an eligibility determination by NHTSA (§ 594.8); for reimbursement of bond processing costs (§ 594.9); and for review and processing of a conformity certificate (§ 594.10). We are also proposing to add a new § 594.11 to establish a fee applicable to the importation of Type 1 motor vehicles, infra.

Under current § 594.5(e), (f), and (g), the fees for importing a vehicle covered by a NHTSA eligibility determination, for bond processing costs, and for the NHTSA review and processing of a conformity certificate are to be submitted with the certificate of conformity. However, we have allowed RIs to delay payment until 30 days after we issue a monthly invoice indicating the amount due. In practice, about 80 percent of the payments are made less than two weeks after the invoice, and most payments are transmitted electronically or made by credit card. We are proposing to formalize the actual payment practice by establishing a due date of 15 days from the date of the invoice by deleting subsections (e), (f), and (g) and adding a new § 594.5(f).

Since there can be no legitimate reason for not paying required fees in a timely manner, we intend to suspend automatically a RI's registration if any of the required fees are not received by their due dates. As we propose in § 592.7(a)(1), if a RI has not paid its annual fee by October 10 or paid its other fees within 15 calendar days of NHTSA's invoice, on the next business day we would inform Customs that the RI's registration had been suspended

until further notice, and that the RI may not import any additional motor vehicles. We intend to apply this policy as of the effective date of the final rule to fees that are overdue as of that date under the old rule.

If a fee is paid after registration is suspended, following receipt and clearance of the payment we would reinstate the registration and inform Customs of this action. However, to further encourage timely payment and to partially cover our administrative costs of processing such a suspension and reinstatement, we are proposing to require the RI to also pay an amount equal to 10 percent of the overdue amount as a condition of having the registration reinstated.

Congress also directed us to establish procedures for automatically suspending a registration of a RI that has knowingly filed a false or misleading certification. 49 U.S.C. 30141(c)(4)(B). We have currently implemented this to some degree in § 592.7(b). The procedure that we currently follow is not truly "automatic." We inform the RI in writing of the facts giving rise to our belief that it has knowingly filed a false or misleading certification, and afford it 30 days in which to present data, views, and arguments in its behalf. After considering the views of the RI, we make a final decision and notify the RI in writing. If we decide to suspend, we inform the RI of the period of suspension.

Upon review of these provisions, we propose to revise them to reflect the express intent of Congress that a knowing filing of a false or misleading certification shall result in automatic suspension of a registration. We believe there are certain situations under which we could justifiably conclude that a filing had been knowingly false or misleading, such as by filing(s) of false or misleading certifications after we have warned the RI of similar transgressions, by filing a document that was clearly falsified, by falsely representing a vehicle to be older than it really is and certifying it to performance requirements that applied in an earlier year rather than to the requirements that applied in the year of its manufacture, or by representing that recall work had been done when it had not been done. Under proposed § 592.7(a)(2), if we decide that a RI has knowingly filed a false or misleading certification, we would automatically suspend the RI's registration, notifying the RI by letter of the decision, the length of the suspension, if applicable, and the facts and conduct upon which our decision was based. We would afford the RI, within 30 days of the Administrator's notification, an opportunity to challenge the decision by presenting data, views and arguments in writing or in person. We could also suspend a registration non-automatically for these violations under section 30141(c)(4)(A). For example, in a complex case involving filing a false and misleading certification under section 30146, we might provide an opportunity for a hearing before issuing a suspension.

We have identified three further situations that we believe warrant automatic suspension. It is imperative that we be able to reach each RI to obtain information or to conduct an inspection. Each RI must include telephone numbers and a street address in the United States with its application. Under current § 592.5(f), a regulation prescribed under section 30141(c)(1), a RI is to notify us in writing within 30 days after its change of street address or phone number. As noted above, in proposed new § 592.6(m), a RI would be required to notify us at least 30 days in advance of its change of street address and/or telephone number.

There have been instances in which mail addressed to a RI has been returned as "undeliverable." When this occurs, and the RI cannot readily be contacted by us, the agency has lost its ability to communicate with the RI even though the RI may still be importing motor vehicles. This is an untenable and unacceptable situation. Therefore, we are proposing in § 592.7(a)(3) to automatically suspend a registration, and request Customs not to allow vehicles to be imported into the U.S. by a RI, if our letters to the RI are returned to us as undeliverable at the street address it has provided to us or if the telephone number provided to us is disconnected.

As discussed above, we are proposing that each entity who is a RI at the time that the final rule is adopted provide us with information equivalent to that which will be required of new RI applicants not later than 30 days after the effective date of the final rule (§ 592.6(r)). If a RI fails to provide this information, we would automatically suspend its registration (§ 592.7(a)(4)).

Our final proposal for automatic suspension of a registration reflects our concern over the recent practice of some RIs of releasing vehicles based upon forged or otherwise falsified documents purporting to be agency bond release letters. Such falsification is a criminal action deserving of severe sanctions. We intend to refer such matters to the Department of Justice for its consideration of possible criminal prosecution. In addition, however, we believe that the registration of a RI that is releasing vehicles on the basis of such falsified bond release letters should be suspended automatically, and we are proposing to include appropriate language in § 592.7(a). Moreover, it is likely that during such a suspension we would commence a proceeding to revoke the registration, in accordance with the procedures discussed below that we would adopt as part of § 592.7(b).

We are interested in having comments as to whether other violations of section 30141(c)(4) might warrant automatic suspension, such as failure to admit a NHTSA inspector to the premises, or to make records available for inspection.

2. Section 592.7(b): Non-Automatic Suspension and Revocation of Registrations

49 U.S.C. 30141(c)(4)(A) requires us to establish procedures for revoking or suspending a registration for not complying with a requirement of 49 U.S.C. 30141–30147, or any of sections 30112, 30115, 30117–30122, 30125(c), 30127, or 30166, or regulations prescribed under any of those sections. We had intended to implement 49 U.S.C. 30141(c)(4)(A) by regulation but have not completely done so.

The statute authorizes us to consider revocation or suspension of a RI's registration for a broad range of violations, literally for any failure to comply with any aspect of the Imported Vehicle Safety Act of 1988 or its implementing regulations, 49 CFR parts 591–594, as well other general requirements of Chapter 301 relating to notification, recalls, inspections, and recordkeeping. We are therefore proposing in § 592.7(b) to reflect the statutory language of 49 U.S.C. 30141(c)(4)(A) and to clarify and broaden the circumstances under which a registration may be suspended or revoked. This would encompass any failure to perform any duty prescribed by § 592.6.

We have also reviewed the suspension and revocation procedures currently specified in § 592.7(b) and (c). Under these procedures, if the Administrator has reason to believe that a RI has failed to comply with a requirement and that a RI's registration should be suspended or revoked, (s)he notifies the RI in writing, affording an opportunity to present data, views, and arguments, either in writing or in person, as to why the registration should not be revoked or suspended. The Administrator then decides as to the appropriate action under the circumstances. If a registration is suspended or revoked, the RI may request reconsideration of the decision "if the request is supported by factual matter which was not available to the Administrator at the time the registration was suspended or revoked" (current § 592.7(d)).

These procedures currently apply to all suspensions and revocations (other than the automatic suspension of § 592.7(a) for failure to pay a fee). As discussed above, they would be slightly modified to apply to automatic suspensions to address cases in which a RI knowingly files a false or misleading certification.

We are proposing a revised procedure for non-automatic suspension and revocation of registrations. Under our proposal, the Administrator would notify the RI if there was reason to believe that the RI had violated one or more statutes or regulations, and that suspension for a proposed period or revocation would be an appropriate sanction under the circumstances. The proceedings would then essentially follow those set out in §§ 592.7(a), (b), and (c) of the current regulation, affording the RI, within 30 days of the Administrator's notification, an opportunity to present data, views and arguments in writing or in person as to whether the violations occurred, why the registration ought not to be suspended or revoked, or whether the suspension should be shorter than proposed. The Administrator would make a decision on the basis of all information then available, and notify the RI in writing of the decision. Because the Registered Importer would have already been afforded an opportunity to present data, views, and arguments relating to the proposed suspension, we do not plan to provide an opportunity to seek administrative reconsideration of a decision to suspend or revoke a registration under this subsection.

3. Section 592.7(c): Reinstatement of Suspended Registrations

Current § 592.7(f) specifies that the Administrator shall reinstate a suspended registration if the cause that led to the suspension no longer exists, as determined by the Administrator, either upon the Administrator's motion, or upon the submission of further information or fees by the RI. We believe that the provisions governing reinstatement of registrations need to be clarified and expanded to reflect the changes we are proposing in our suspension procedures.

Under our proposal, there are four specific bases upon which a registration could be automatically suspended (§ 592.7(a)), and a registration may be suspended for failure to comply with statutory or regulatory authorities after notification from the Administrator (§ 592.7(b)). Proposed § 592.7(c) would specify the conditions under which the registrations would be reinstated under each of the proposed bases for suspension.

4. Section 592.7(d): Effect of Suspension or Revocation.

If a registration is suspended or revoked, the entity will no longer be considered a RI, will no longer have the rights and authorities appertaining thereto, and must cease and will not be allowed to import vehicles. We would notify Customs of our action.

Under current § 592.7(e), if a registration is revoked, the RI is not refunded any annual or other fees it has paid for the fiscal year in which its registration is revoked. This would be retained in new § 592.7(d). In addition, in accordance with 49 U.S.C. 30141(c)(2), the section would specify that a RI whose registration has been revoked may not apply for reregistration. The prohibition would apply if any of the principals of the applicant had been, or been affiliated with, a principal of the RI whose registration was revoked.

5. Section 592.7(e): Continuing Obligations of a RI Whose Registration Has Been Revoked or Suspended

Section 592.7(e)(1) would clarify that a RI whose registration is suspended or revoked remains obligated under § 592.6(j) to notify owners of, and to remedy, noncompliances or safety-related defects for each vehicle for which it has furnished a certificate of conformity or information to the Administrator.

Although a suspended or revoked RI will be foreclosed from importing vehicles, there may well be Type 2 motor vehicles in its custody that are still under bond, or Type 1 vehicles for which information has not been submitted to the Administrator pursuant to § 592.6(e). New § 592.7(e)(2) would cover these vehicles. With respect to those Type 2 motor vehicles that the RI has certified and for which it has submitted certificates of conformity to NHTSA at the time of a suspension or revocation, NHTSA will review and act upon the submissions as if the suspension or revocation had not occurred, and the RI may release the vehicles from custody when NHTSA releases the bonds, even if its suspension is in effect. With respect to those vehicles for which certification or information submissions have not been submitted at the time a registration has been suspended, and the suspension is for the first time, the RI would not be precluded from performing conformance work, and it would be allowed to certify vehicles and submit certificates of conformity or information to NHTSA when the registration is reinstated, but it would be required to retain custody of those vehicles during the suspension period. NHTSA will toll the 120-day submittal period during the term of the first suspension. When a registration has been revoked, or suspended for a second (or more) time, the RI would be required to export all vehicles for which it has not yet submitted certificates of conformity or information to NHTSA at the time of the suspension or revocation.

As for those vehicles imported for personal use under § 591.5(f)(2)(ii) that the RI has contracted to conform and for which it has not yet submitted certifications, the RI would be required to notify immediately the owners of the vehicles of NHTSA's action. We are proposing to adopt a conforming amendment to part 591 under which the notified owner would be required to contract with another RI in order to have the vehicle certified and released. The applicable 120-day period for submission of certification information would be tolled during the period from the date of the RI's notice to the importer until the date of the contract with the substitute RI. This would be designated as § 591.7(e). We would remove existing § 591.7(e), which has expired (§ 591.7(e) provided for applications to the Administrator, on or before February 14, 2000, to change the status of vehicles imported pursuant to § 591.5(j)).

D. Proposed Amendments of Part 591 to Preclude the Importation by a RI of a Salvage, Repaired Salvage, or Reconstructed Motor Vehicle; Minor Conforming Amendments to Part 591; § 592.9: Forfeiture of Bond

Within the past year, some RIs have sought to import heavily damaged motor vehicles both before and after their repair. In addition, some motor vehicles have been imported consisting of the body of one vehicle and the chassis and frame of another. Although we may have determined under part 593 that the original vehicles, as manufactured, are capable of being modified to meet Federal motor vehicle safety standards, when a vehicle has been heavily damaged or reconstructed, we have no assurance that it can be restored to a condition in which it complies, or can be brought into compliance with, the Federal motor vehicle safety standards. We have tentatively decided that the

safety of the American public would be served by prohibiting importation of salvage vehicles into this country. Accordingly, we propose amending part 591 to require a RI to declare that the motor vehicle it is importing (whether Type 1 or Type 2) is not a salvage motor vehicle, a repaired salvage motor vehicle, or a reconstructed motor vehicle as defined below.

Under the proposal, a "salvage motor vehicle" would mean a vehicle that is less than 25 years old that has been damaged to the extent that to restore it to operable and licensable condition would require replacement of two or more specified major components such as engine and transmission, frame, front clip assembly and rear clip assembly. This definition is based in large part upon that of the State of Georgia. A "repaired salvage motor vehicle" would mean a salvage motor vehicle that has been restored to an operable and licensable condition. A "reconstructed motor vehicle" would mean a vehicle less than 25 years old whose body is mounted on a chassis or frame that is not its original chassis or frame. Pursuant to 49 U.S.C. 30112(b)(9), motor vehicles that are at least 25 years old may be imported without the need to meet the Federal motor vehicle safety standards.

Under our proposal, Part 592 would be extended to cover conformance with the theft prevention standard. We need, then, to modify the terms of the safety and bumper standard conformance bonds (appendix A and appendix B of part 591) to cover compliance with the theft prevention standard as well, and appropriate amendments are proposed. The two bonds presently differ somewhat in wording because they were adopted at different times, and we would also revise them in nonsubstantive ways to be more consistent with each other.

There is no need to modify the bond terms to reflect their applicability only to Type 2 motor vehicles, since the regulatory text in the first instance does not require the entry of a Type 1 motor vehicle to be accompanied by a bond.

Section 591.8(c) requires that "the surety on a bond shall possess a certificate of authority to underwrite Federal bonds. (See list of certificated sureties at 54 FR 27800, June 30, 1989)." When published late in 1989, this list was intended to be a reference to current sureties, rather than a list of sureties that is incorporated by reference. The list is a document that changes as sureties are added to and dropped from the list, and we wish to drop the reference to it. The requirement would remain, of course, that, at the time the bond is given, the surety possesses a certificate of authority to underwrite Federal bonds.

To ensure that the conditions under which the conformance bond may be forfeited are clearly understood, we are proposing to adopt a new § 592.9 that clearly describes the forfeiture conditions.

E. Section 594.11: Fees To Be Paid by Registered Importers for Importation of Type 1 Motor Vehicles

Under 49 CFR part 594, *Schedule of Fees Authorized by 49 U.S.C. 30141*, certain fees are due from RIs: A fee for importation of a vehicle covered by an eligibility decision made on NHTSA's initiative (§ 594.8); a fee to cover bond processing costs (§ 594.9), and a fee to cover review of and processing a conformity certificate (§ 594.10).

Type 1 motor vehicles remain vehicles covered by an eligibility decision made on NHTSA's initiative, and it appears appropriate that RIs continue to pay the fee established by § 594.8(c) for each Type 1 motor vehicle they import. Because no bond or certification conformity statement would accompany these vehicles, the fees established by §§ 594.9 and 594.10 would no longer be applicable. However, we will be receiving and processing certain identifying information on Type 1 motor vehicles, including information relating to safety recalls, and we believe that we will spend some amount of time on these activities that should be reimbursed pursuant to 49 U.S.C. 30141(c)(4). Based upon our experience in processing conformity packages submitted by RIs for Canadian vehicles, we estimate that the cost of processing the importation of a Type 1 motor vehicle would be approximately $13. Accordingly, we are proposing to add a new § 594.11 to require a fee of $13 for each Type 1 motor vehicle imported by a RI. If the information is submitted by Automated Broker Interface (ABI), the fee would be $6, provided that payment is by credit card and that all the information is correct.

These fees are identical to those that we adopted on September 19, 2000, as an amendment to § 594.10, *Fee for review and processing of conformity certificate*, and which apply to the importation of all nonconforming vehicles, including Canadian vehicles, effective October 1, 2000 (65 FR 56497). Because we cannot adopt § 594.11 until the amendments to part 592 are adopted, the fees specified in § 594.11 for the processing of information submitted for Type 1 vehicles will not be effective until October 1, 2001, assuming that a final rule based on this proposal is issued before that date. The question then arises as to the fee to be paid to the agency by a RI for the importation of Type 1 vehicles in the period between the effective date of the final rule and October 1, 2001. Because the information furnished the Administrator for Type 1 vehicles is, in effect, a certification of conformity of those vehicles, we will continue to collect the fees specified in § 594.10 in the interim period. We note, too, that these fees would be identical to those proposed for § 594.11.

IV. Effective Date

The final rule would be effective 30 days after its publication in the **Federal Register**.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866. After considering the impacts of this rulemaking action, we have determined that the action is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The intent of the rulemaking action is to modify regulatory procedures that have been in effect for almost ten years. In most cases, the effect of the proposed amendments would be to relax or eliminate burdens on regulated entities. This action does not involve a substantial public interest or controversy. The rulemaking action would not have a substantial impact on any transportation safety program or on state and local governments. The impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

We have also considered the effects of this action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). For the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this action will not have a significant economic impact upon a substantial number of small entities.

The following is our statement providing the factual basis for our certification (5 U.S.C. 605(b)). The proposal primarily affects registered importers (RIs) of motor vehicles. As of September 20, 2000, there were 166 entities that are currently RIs under 49 CFR part 592. Their business is importing motor vehicles for resale. That this is a profitable business is demonstrated by the growing number of vehicles imported from Canada and the increasing number of applicants to become a RI. About 75 percent of vehicles being imported are Type 1 motor vehicles as defined by the proposal. If the proposed rule is adopted, a RI would be relieved of the present necessity to provide conformance bonds for these vehicles and to provide conformance information to us, resulting in cost savings to the RI. Other aspects of the proposal are refinements and clarifications of existing RI obligations. RIs may or may not be small businesses as defined by the Small Business Administration's regulations, but we believe that the overall effect of the proposal will be to the economic benefit of any RI, regardless of its size. Governmental jurisdictions will not be affected.

C. Executive Order 13132 (Federalism)

E.O. 13132 (64 FR 43255, August 10, 1999), revokes and replaces E.O.s 12612 "Federalism" and 12875 "Enhancing the Intergovernmental Partnership." E.O. 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." E.O. 13132 defines the term "Policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. National Environmental Policy Act

We have analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because the proposal would not impose any manufacturing requirements. We expect the volume of vehicles imported from Canada to increase, independent of our rulemaking actions.

E. Civil Justice Reform

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Paperwork Reduction Act

The procedures in this rule to permit importation of motor vehicles and equipment not originally manufactured for the U.S. market include information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The original information collection requirements of part 591 were approved by the OMB pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Under the proposal, new requirements would be imposed for submission of safety recall data on all vehicles, but this would be more than offset by the proposed reduction in paperwork required for Type 1 motor vehicles, which are 75 percent of the vehicles currently imported. We believe, therefore, that the existing clearance covers a final rule that would be based on implementing this proposal and we have not sought a new or expanded clearance. This collection of information has been assigned OMB Control No. 2127–0002 ("Motor Vehicle Information").

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because a final rule based on this proposal would not have an effect of $100 million, no Unfunded Mandates assessment has been prepared.

H. Plain Language

E.O. 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language include consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the proposed rule clearly stated?
—Does the proposed rule contain technical language or jargon that is unclear?
—Would a different format (grouping and order of sections, use of heading, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies

from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation, 49 CFR part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the internet. To read the comments on the internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were "NHTSA–2000–1234," you would type "1234."

(4) After typing the docket number, click on "search."

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

List of Subjects in 49 CFR Parts 567, 591, 592, and 594

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 567, 591, 592, and 594 would be amended as follows:

PART 567—CERTIFICATION

1. The authority citation for part 567 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, 33108, and 33109; delegation of authority at 49 CFR 1.50.

2. Section 567.4 would be amended by revising paragraph (k) to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(k) In the case of passenger cars and multipurpose passenger vehicles (as defined by § 541.4(b)(5) of this chapter) admitted to the United States under part 591 of this chapter to which the label with statement required by paragraphs (a) and (g)(5)(ii) respectively of this section has not been affixed by the original producer or assembler of the vehicle, if the vehicle is from a line listed in appendix A to part 541 of this chapter the registered importer shall affix a label meeting the requirements of paragraph (g)(5)(ii) this section.

* * * * *

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER AND THEFT PREVENTION STANDARDS

1. The authority citation for part 591 would be revised to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

2. Section 591.4 would be amended by adding the following definitions in alphabetical order:

§ 591.4 Definitions.

* * * * *

Reconstructed motor vehicle means a motor vehicle whose body is less than 25 years old and which is mounted on a chassis or frame that is not its original chassis or frame and that is less than 25 years old.

Repaired salvage motor vehicle means a salvage motor vehicle that has been repaired to the extent that any State will issue it a title and register it for use on the public streets, roads or highways.

Salvage motor vehicle means a motor vehicle less than 25 years old that has been wrecked, damaged, or destroyed to the extent that to repair it to the extent that any State would issue it a title and register it for use on the public streets, roads or highways would require replacement of two or more of the following subassemblies: Front clip assembly (fenders, grille, hood and bumper), rear clip assembly (rear quarter panels and floor panel assembly), side assembly (fenders, door(s), and quarter panel), engine and transmission, top assembly (except for convertible tops), or frame.

3. Section 591.5 would be amended as follows:

a. By revising the introductory text of paragraph (f),

b. By adding the word "and" following the semicolon at the end of paragraph (f)(2)(ii),

c. By adding a new paragraph (f)(3), and

d. By adding a new paragraph (g). The revision and additions read as follows:

591.5 Declarations required for importation.

* * * * *

(f) The vehicle does not conform with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but the importer is eligible to import it because:

* * * * *

(3) The vehicle is not a salvage motor vehicle, a repaired salvage motor vehicle, or a reconstructed motor vehicle.

(g) The vehicle was certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards and its original manufacturer has informed NHTSA that it complies with all applicable Federal motor vehicle safety, bumper, and theft prevention standards except the labeling requirements of Federal Motor Vehicle Safety Standards Nos. 101 and 110 or 120, and (if appropriate) S5.5.11 of § 571.108 of this chapter (related to daytime running lamps). The vehicle is not a salvage motor vehicle, a repaired salvage motor vehicle, or a reconstructed motor vehicle.

* * * * *

4. Section 591.6 would be amended by revising paragraphs (c) and (d) to read as follows:

§ 591.6 Documents accompanying declarations.

* * * * *

(c) A declaration made pursuant to paragraph (f) of § 591.5 of this part, and under a bond for the entry of a single vehicle, shall be accompanied by a bond in the form shown in Appendix A to this part in an amount equal to 150% of the dutiable value of the vehicle, or, if under bond for the entry of more than one vehicle, shall be accompanied by a bond in the form shown in Appendix B to this part and by Customs Form CF 7501, for the conformance of the vehicle(s) with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, or, if conformance is not achieved, for the delivery of such vehicles to the Secretary of the Treasury for export at no cost to the United Sates, or for its abandonment.

(d) A declaration made pursuant to paragraph (f) of § 591.5 of this part by an importer who is not a Registered Importer shall be accompanied by a copy of the contract or other agreement that the importer has with a Registered Importer to bring the vehicle into conformance with all applicable Federal motor vehicle safety, bumper, and theft prevention standards.

* * * * *

5. Section 591.7 would be amended by revising paragraph (e) to read as follows:

§ 591.7 Restrictions on importations.

* * * * *

(e) If the importer of a vehicle under § 591.5(f)(2)(ii) has been notified in writing by the Registered Importer with which it has executed a contract or other agreement that the registration of the Registered Importer has been suspended (for other than the first time) or revoked, pursuant to § 592.7 of this chapter, and that it has not affixed a certification label on the vehicle and/or filed a certification of conformance with the Administrator as required by § 592.6 of this chapter, and that it therefore may not release the vehicle for the importer, the importer shall execute a contract or other agreement with another Registered Importer for the certification of the vehicle and submission of the certification of conformance to the Administrator. The Administrator shall toll the 120-day period for submission of certification information to the Administrator pursuant to § 592.6(d) of this chapter during the period from the date of the Registered Importer's notification to the importer until the date of the contract with the substitute Registered Importer.

6. Section 591.8 would be amended by revising the first sentence of paragraph (a) and by revising paragraphs (c), (d), introductory text, (d)(1), (d)(2), and (d)(6) to read as follows:

§ 591.8 Conformance bond and conditions.

(a) The bond required under paragraph (c) of § 591.6 of this part for importation of a vehicle not originally manufactured to conform with all applicable standards issued under part 541, part 571 and part 581 of this chapter shall cover only one motor vehicle and shall be in an amount equal to 150% of the dutiable value of the vehicle. * * *

* * * * *

(c) The surety on the bond shall possess a certificate of authority to underwrite Federal bonds.

(d) In consideration of the release from the custody of the U.S. Customs Service, or the withdrawal from a Customs bonded warehouse into the commerce of, or for consumption in, the United States, or a motor vehicle not originally manufactured to conform to applicable standards issued under part 541, part 571, and part 581 of this chapter, the obligors (principal and surety) shall agree to the following conditions of the bond:

(1) To have such vehicle brought into conformity with all applicable standards issued under part 541, part 571, and part 581 of this chapter within the number of days after the date of entry that the Administrator has established for such vehicle (to wit, 120 days);

(2) In the case of a vehicle imported pursuant to paragraph (f) of § 591.5, to file (or if not a Registered Importer, to cause the Registered Importer of the vehicle to file) with the Administrator, a certificate that the vehicle complies with each Federal motor vehicle safety, bumper, and theft prevention standard in the year that the vehicle was manufactured that applies in such year to the vehicle; or

* * * * *

(6) If the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), or to abandon the vehicle to the United States, or to deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or to any other port of entry, and to secure all documents necessary for exportation of the vehicle from the United States at no cost to the United States, or in default of abandonment or redelivery after prior notice by the Administrator to the principal, to pay to the Administrator the amount of the bond.

* * * * *

7. Appendix A to part 591 would be amended by revising the introductory text and Conditions (1), (2), and (6) to read as follows:

Appendix A to Part 591—Section 591.5(f) Bond for the Entry of a Single Vehicle

Department of Transportation

National Highway Traffic Safety Administration

Bond to ensure conformance with federal motor vehicle safety, bumper, and theft prevention standards

(To redeliver vehicle, to produce documents, to perform conditions of release such as to bring vehicle into conformance with all applicable Federal motor vehicle safety, bumper, and theft prevention standards)

Know All Men by These Presents That

(principal's name, mailing address which includes city, state, ZIP code, and state of incorporation if a corporation), as principal, and (surety's name, mailing address which includes city, state, ZIP code and state of incorporation), as surety, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of (bond amount in words) dollars ($ (bond amount in numbers)), which represents 150% of the entered value of the following described motor vehicle, as determined by the U.S. Customs Service: (model year, make, series, and VIN) for the payment of which we bind ourselves, our heirs, executors, and assigns (jointly and severally), firmly bound by these presents.

WITNESS our hands and seals this _____ day of _____, 20_____.

Whereas, motor vehicles may be entered under the provisions of 49 U.S.C. Chapters 301, 325, and 331; and DOT Form HS–7 "Declaration,"

Whereas, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal desires to import permanently the motor vehicle described above, which is a motor vehicle that was not originally manufactured to conform with the Federal motor vehicle safety, or bumper, or theft prevention standards; and

Whereas, pursuant to 49 CFR part 592, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal has been granted the status of Registered Importer of motor vehicles not originally manufactured to conform with the Federal motor vehicle safety, bumper, and theft prevention standards (or, if not a Registered Importer, has a contract with a Registered Importer covering the vehicle described above); and

Whereas, pursuant to 49 CFR part 593, a regulation promulgated under 49 U.S.C. Chapter 301, the Administrator of the National Highway Traffic Safety Administration has determined that the motor vehicle described above is eligible for importation into the United States; and

Whereas, the motor vehicle described above has been imported at the port of _____, and entered at said port for consumption on entry No. _____, dated _____, 20_____,

Now, therefore, the condition of this obligation is such that—

(1) The above-bounden principal (the "principal"), in consideration of the permanent admission into the United States of the motor vehicle described above (the "vehicle"), voluntarily undertakes and agrees to have such vehicle brought into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards within the time period specified by the Administrator of the National Highway Traffic Safety Administration (the "Administrator");

(2) The principal shall then file, or if not a Registered Importer, shall then cause the Registered Importer of the vehicle to file, with the Administrator a certificate that the vehicle complies with each Federal motor vehicle safety standard in effect in the year that the vehicle was manufactured and which applies in such year to the vehicle, and that the vehicle complies with applicable requirements of the Federal bumper and theft prevention standards;

* * * * *

(6) And if the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), the principal shall abandon the vehicle to the United States, or shall deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator the amount of this obligation;

* * * * *

8. Appendix B to part 591 would be amended by revising the introductory text and Conditions (1), (2), and (6) to read as follows:

Appendix B to Part 591—Section 591.5(f) Bond for the Entry of More Than a Single Vehicle

Department of Transportation

National Highway Traffic Safety Administration

Bond to ensure conformance with federal motor vehicle safety, bumper, and theft prevention standards

(To redeliver vehicles, to produce documents, to perform conditions of release such as to bring vehicles into conformance with all applicable Federal motor vehicle safety, bumper, and theft prevention standards)

Know All Men by These Presents That (principal's name, mailing address which includes city, state, ZIP code, and state of incorporation if a corporation), as principal, and (surety's name, mailing address which includes city, state, ZIP code and state of incorporation) as surety, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of (bond amount in words) dollars ($ (bond amount in numbers)), which represents 150% of the entered value of the following described motor vehicle, as determined by the U.S. Customs Service: (model year, make, series, and VIN of each vehicle) for the payment of which we bind ourselves, our heirs, executors, and assigns (jointly and severally), firmly bound by these presents.

WITNESS our hands and seals this __day of __, 20__.

Whereas, motor vehicles may be entered under the provisions of 49 U.S.C. Chapters 301, 325, and 331; and DOT Form HS–7 "Declaration,"

Whereas, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal desires to import permanently the motor vehicles described above, which are motor vehicles that were not originally manufactured to conform with the Federal motor vehicle safety, or bumper, or theft prevention standards; and

Whereas, pursuant to 49 CFR part 592, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal has been granted the status of Registered Importer of motor vehicles not originally manufactured to conform with the Federal motor vehicle safety, bumper, and theft prevention standards; and

Whereas, pursuant to 49 CFR part 593, a regulation promulgated under 49 U.S.C. Chapter 301, the Administrator of the National Highway Traffic Safety Administration has determined that each motor vehicle described above is eligible for importation into the United States; and

Whereas, the motor vehicles described above have been imported at the port of _____, and entered at said port for consumption on entry No. _____, dated _____, 20_____;

Now, therefore, the Condition of this Obligation is such that—

(1) The above-bounden principal (the "principal"), in consideration of the permanent admission into the United States of the motor vehicles described above (the "vehicles"), voluntarily undertakes and agrees to have such vehicles brought into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards within the time period specified by the Administrator of the National Highway Traffic Safety Administration (the "Administrator");

(2) For each motor vehicle described above, the principal shall then file with the Administrator a certificate that such vehicle complies with each Federal motor vehicle safety standard in effect in the year that such vehicle was manufactured and which applies in such year to such vehicle, and that such vehicle complies with applicable requirements of the Federal bumper and theft prevention standards;

* * * * *

(6) And if the principal has received written notice from the Administrator that such vehicle has been found not to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, and written demand that such vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), the principal shall abandon such vehicle to the United States, or shall deliver such vehicle, or cause such vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of such vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator an amount equal to 150% of the entered value of such vehicle as determined by the U.S. Customs Service;

* * * * *

PART 592—REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 592 would be revised to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

2. Section 592.4 would be amended by adding the following definitions in alphabetical order:

§ 592.4 Definitions.

* * * * *

Independent insurance company means an entity that is registered with any State and authorized to conduct an insurance business, none of whose affiliates, shareholders, officers, directors, or employees, or in affinity with such, is employed by, or has a financial interest in, or otherwise controls or participates in the business of, a Registered Importer to which it issues or underwrites a service insurance policy.

* * * * *

Principal means any officer, partner, or director of a Registered Importer, and any person whose ownership interest in a Registered Importer is 10% or more.

* * * * *

Safety recall means a notification and remedy campaign conducted pursuant to 49 U.S.C. 30118–30120 to address a noncompliance with a Federal motor vehicle safety standard or a defect that relates to motor vehicle safety.

Service insurance policy means any policy issued or underwritten by an independent insurance company which covers a specific Type 1 or Type 2 motor vehicle and guarantees that any noncompliance with a Federal motor vehicle safety standard or defect related to motor vehicle safety determined to exist in that vehicle will be remedied without charge to the owner of the vehicle.

Type 1 motor vehicle means a motor vehicle that is certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards and whose original manufacturer has informed NHTSA in writing that the vehicle complies with all applicable Federal motor vehicle safety, bumper, and theft standards (except the labeling requirements of Federal Motor Vehicle Safety Standards Nos. 101 and 110 or 120, and (if appropriate) S5.5.11 of § 571.108 of this chapter (related to daytime running lamps)).

Type 2 motor vehicle means a motor vehicle, other than a Type 1 motor vehicle, that is not certified by its original manufacturer as complying with all applicable Federal motor vehicle safety, bumper, and theft prevention standards.

3. Section 592.5 would be amended by revising paragraphs (a)(3), (4), (5), (9) and (11), (b), (e) and (f) and by adding a new paragraph (h) to read as follows:

§ 592.5 Requirements for registration and its maintenance.

(a) * * *

(3) Sets forth the full name, street address, and title of the person preparing the application, and the full name, street address, e-mail address (if any), and telephone and facsimile (if any) numbers in the United States of the person for whom application is made (the "applicant").

(4) Specifies the form of the applicant's organization and the State under which it is organized, and:

(i) If the applicant is an individual, the application must include the full name, street address, date of birth, and Social Security Number of the individual;

(ii) If the applicant is a partnership, the application must include the full name, street address, date of birth, and Social Security Number of each partner; if one or more of the partners is a limited partnership, the application must include the names and street addresses of the general partners and limited partnership; if one or more of the partners is a corporation, the application must include the information specified by either paragraph (a)(4)(iii) or (iv) of this section, as applicable;

(iii) If the applicant is a non-public corporation, the application must include the full name, street address, date of bith, and Social Security Number of each officer, director, manager, and person who is authorized to sign documents on behalf of the corporation. The application must also include the name of any person who owns or controls 10 percent or more of the corporation. The applicant must also provide a statement issued by the Office of the Secretary of State, or other official of the State in which the applicant is incorporated, certifying that the applicant is a corporation in good standing;

(iv) If the applicant is a public corporation, the applicant must include a copy of its latest 10–K filing with the Securities and Exchange Commission, and provide the name and address of any person who is authorized to sign documents on behalf of the corporation;

(v) Contains a statement that the applicant has never had a registration revoked pursuant to § 592.7, nor is it, or was it, directly or indirectly, owned or controlled by, or under common ownership or control with, a Registered Importer which has had a registration revoked pursuant to § 592.7; and

(vi) Identifies any shareholder, officer, director, employee, or any person in affinity with such, who has been previously affiliated with another Registered Importer in any capacity. If the response is affirmative, the applicant shall state the name of each such Registered Importer and the affiliation of any identified person.

(5) Includes the following:

(i) The street address of each of its facilities for conformance, storage, and repair in the United States that the applicant will use to fulfill its duties as a Registered Importer and where the applicant will maintain the records it is required by this part to keep;

(ii) The street address that the applicant designates as its mailing address (in addition, an applicant may list a post office box, provided that it is in the same city as the street address designated as its mailing address);

(iii) A copy of the applicant's business license or other similar document issued by a State of the United States or a political subdivison thereof, authorizing it to do business as an importer, or modifier, or seller of motor vehicles, or a statement by the applicant that it has made a bona fide inquiry and is not required by such state or local law to have such a license or document;

(iv) The name of each principal of the applicant whom the applicant authorizes to submit conformity certifications to NHTSA and the street address of the repair, storage, or conformance facility where each such principal will be located; and

(v) If an applicant is not organized under the laws of a State of the United States, the application must be accompanied by the applicant's designation of an agent for service of process in the form specified by § 551.45 of this chapter.

* * * * *

(9) Sets forth in full complete descriptive information, views, and arguments sufficient to establish that the applicant:

(i) Is technically able to modify any nonconforming motor vehicle to conform to all applicable Federal motor vehicle safety, bumper, and theft prevention standards, including but not limited to the professional qualifications of the applicant and its employees at the time of the application (such as whether any such have been certified as mechanics), and a description of their experience in conforming and repairing vehicles;

(ii) Owns or leases facilities sufficient in nature and size to repair, conform, and store the number of vehicles for which it provides certification of conformance to NHTSA and which it imports and may hold pending release of conformance bonds, including a copy of a deed or lease evidencing ownership or tenancy for each such facility, still or video photographs of each such facility, the street address of each such facility, and for each such facility, a license or similar document issued by an appropriate state or local authority stating that the applicant is licensed to do business as an importer and/or modifier and/or seller of motor vehicles at that facility (or a statement by the applicant that it has made a bona fide inquiry and is not required by state or local law to have such a license or permission);

(iii) Is financially and technically able to notify and remedy a noncompliance with a Federal motor vehicle safety standard or defect related to motor vehicle safety determined to exist in the vehicles that it imports and/or for which it provides certification of conformity to NHTSA through repair, repurchase or replacement of such vehicles; and

(iv) Is able to acquire and maintain information regarding the vehicles that it imported and the names and addresses of owners of the vehicles that it imported and/or for which it provided certifications of conformity to NHTSA in order to notify such owners when a noncompliance or defect related to motor vehicle safety has been determined to exist in such vehicles.

* * * * *

(11) Contains the statement: "I certity that I have read and understood the duties of a Registered Importer, as set forth in 49 CFR 592.6, and that [name of applicant] will fully comply with each such duty. I further certify that all the information provided in this application is true and correct. I further certify that I understand that, in the event the registration for which it is applying is suspended or revoked, or lapses, (name of applicant) will remain obligated to notify owners and to remedy noncompliances or safety related defects, as required by 49 CFR 592.6(j), for each vehicle for which it has furnished a certificate of conformity or information to the Administrator."

(b) If the application is incomplete, the Administrator notifies the applicant in writing of the information that is needed for the application to be complete and advises that no further action will be taken on the application until the applicant has furnished all the information needed.

* * * * *

(d) When the application is complete (and, if applicable, when the applicant has paid a sum representing the inspection component of the initial annual fee), the Administrator reviews the application and decides whether the applicant has complied with the requirements prescribed by paragraph (a) of this section. The Administrator shall base this decision on the application and upon any inspection NHTSA may have conducted of the applicant's conformance, storage, and recordkeeping facilities and any assessment of the applicant's personnel. If the Administrator decides that the applicant complies with the requirements, (s)he informs the applicant in writing and issues it a Registered Importer Number.

(e)(1) The Administrator shall deny registration to any applicant who (s)he decides does not comply with the requirements of paragraph (a) of this section and to an applicant whose previous registration has been revoked. The Administrator also may deny registration to an applicant that is or was owned or controlled by, or under common ownership or control with, or in affinity with, a Registered Importer whose registration has been revoked. In determining whether to deny an application, the Administrator may consider whether the applicant is comprised in whole or in part of relatives, employees, major shareholders, partners, or relations of former partners, of a Registered Importer whose registration was revoked.

(2) If the Administrator denies an application, (s)he informs the applicant in writing of the reasons for denial and that the applicant is entitled to a refund of that component of the initial annual fee representing the remaining costs of administration of the registration program, but not those components of the initial annual fee representing the costs of processing the application, and, if applicable, the costs of conducting an inspection of the applicant's facilities.

(3) Within 30 days of the date of the denial, the applicant may submit a petition for reconsideration. The applicant may submit information and/or documentation supporting its request. If the Administrator grants the request, (s)he notifies the applicant in writing and issues it a Registered Importer Number. If the Administrator denies the request, (s)he notifies the applicant in writing and refunds that component of the initial annual fee representing the remaining costs of administration of the registration program, but does not refund those components of the initial annual fee representing the costs of processing the application, and, if applicable, the costs of conducting an inspection.

(f) In order to maintain its registration, a Registered Importer must file an annual statement. The Registered Importer must affirm in its annual statement that all information provided in its application or pursuant to § 592.6(r) of this part, or as may have been changed in any notification that it has provided to the Administrator in compliance with § 592.6(m) of this part, remains correct, and that it continues to comply with the requirements to be a Registered Importer. The Registered Importer must include with its annual statement a current copy of its service insurance policy. Such statement must be titled "Yearly Statement of Registered Importer," and must be filed not later than September 30 of each year. A Registered Importer must also pay any annual fee, and any other fee, that is established under part 594 of this chapter. An annual fee must be paid not later than September 30 of any calendar year for the fiscal year that begins on October 1 of that calendar year. The Registered Importer must pay any other fee not later than 15 days after the date of the written notice from the Administrator.

* * * * *

(h) An applicant whose application is pending on [the effective date of the final rule] and which has not provided the information required by paragraph (a) of this section, as amended, will be notified by the Administrator that it must provide all the information required by this amended subsection before the Administrator gives further consideration to the application.

4. Section 592.6 would be revised to read as follows:

§ 592.6 Duties of a registered importer.

Each Registered Importer must:

(a) With respect to each motor vehicle that it imports into the United States, assure that the Administrator has decided that it is eligible for importation pursuant to part 593 of this chapter, prior to such importation. The Registered Importer must also bring such vehicle into conformity with all applicable Federal motor vehicle safety standards prescribed under part 571 of this chapter, the bumper standard prescribed under part 581 of this chapter, if applicable, and the theft prevention standard prescribed under part 541 of this chapter, if applicable, and furnish certification to the Administrator pursuant to § 592.6(e) of this part, within 120 calendar days after such entry, if a Type 2 motor vehicle. For each Type 2 motor vehicle, the Registered Importer must furnish to the Secretary of Treasury at the time of importation a bond in an amount equal to 150 percent of the dutiable value of the eligible vehicle, as determined by the Secretary of the Treasury, to ensure that such vehicle either will be brought into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards or will be exported (at no cost to the United States) by the importer or the Secretary of the Treasury or abandoned to the Unites States. However, if the Registered Importer has procured a continuous entry bond, it must furnish the Administrator with such bond, and must furnish the Secretary of the Treasury (acting on behalf of the Administrator) with a photocopy of such bond and Customs Form CF 7501 at the time of importation of each Type 2 motor vehicle.

(b) Establish, maintain, and retain, for 10 years from the date of entry, at the facility in the United States it has identified in its application pursuant to

§ 592.5(a)(5)(ii) of this part, for each Type 1 motor vehicle that it imports, and each Type 2 motor vehicle for which it furnishes a certificate of conformity, the following records, correspondence and other documents, in hard copies:

(1) The declaration required by § 591.5 of this chapter.

(2) All vehicle or equipment purchase or sales orders or agreements, conformance agreements between the Registered Importer and persons who import motor vehicles for personal use, and correspondence between the Registered Importer and the owner or purchaser of the vehicle.

(3) The make, model, model year, odometer reading, and VIN of each vehicle that it imports and the last known name and address of the owner or purchaser of the vehicle.

(4) Records, both photographic and documentary, sufficient to identify the vehicle and to substantiate that it has been brought into conformity with all safety, bumper, and theft prevention standards that apply to the vehicle, that the certification label has been affixed, and that either the vehicle is not subject to any safety recalls or that all noncompliances and safety defects covered by such recalls were remedied before the submission to the Administrator under paragraph (d) or (e) of this section. All required photographs shall be in true and unaltered form.

(5) A copy of the certification submitted to the Administrator pursuant to paragraph (d) of this section, and information submitted pursuant to paragraph (e) of this section.

(6) The number that the issuer has assigned to the service insurance policy that will accompany the vehicle and the name of the issuer of the policy, and substantiation that the Registered Importer has notified the issuer of the policy that a policy of the issuer has been provided with the vehicle.

(c) Take possession of the vehicle and perform all modifications necessary to conform the vehicle to all Federal motor vehicle safety, bumper, and theft prevention standards that apply to the vehicle at a facility that it has identified to the Administrator pursuant to § 592.5(a)(5)(i) of this part, and permanently affix to the vehicle at that facility, upon completion of conformance modifications and remedy of all noncompliances and defects related to any pending safety recalls, a label that identifies the Registered Importer and states that the Registered Importer certifies that the vehicle complies with all Federal motor vehicle safety, bumper, and theft prevention standards that apply to the vehicle, and contains all additional information required by § 567.4 of this chapter.

(d) For each Type 2 motor vehicle, certify to the Administrator:

(1) within 120 days of the importation that it has brought the motor vehicle into conformity with all applicable Federal motor vehicle safety and bumper standards in effect at the time the vehicle was manufactured. The Registered Importer shall also certify, as appropriate, that either:

(i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter);

(ii) The vehicle complied as manufactured with those parts marking requirements; or

(iii) The Registered Importer has brought the vehicle into compliance with those requirements.

(2) If the Registered Importer certifies that the vehicle was originally manufactured to comply with a standard that does not apply to the vehicle or that it has modified the vehicle to conform to such standard, or if the certification is incomplete, the Administrator may refuse to accept the certification. The Administrator shall refuse to accept a certification for a vehicle that has not been determined to be eligible for importation under part 593 of this chapter. If the Administrator does not accept a submission, (s)he shall return it to the Registered Importer. The costs associated with such a return will be charged to the Registered Importer. If the Administrator returns the submission as described above, the 120-day period specified in paragraph (d)(1) of this section continues to run. If the Registered Importer certifies that it has modified the vehicle to bring it into compliance with a standard and has, in fact, performed no such modifications, the Administrator will regard such certification as "knowingly false" within the meaning of 49 U.S.C. 30115 and 49 U.S.C. 30141(c)(4)(B).

(3) The certification must be signed and submitted by a principal of the Registered Importer designated in its registration application pursuant to § 592.5(a)(5)(iv) of this part, with an original signature and not with a stamp or other device, and must include the statement that the signer has personal knowledge that the RI has performed all work required to bring such vehicle into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards.

(4) The submission to the Administrator must specify the location of the facility where the vehicle was conformed, and the location where the Administrator may inspect the motor vehicle.

(5) The submission to the Administrator must contain substantiation that the vehicle is not subject to any safety recall campaigns as of the time of such submission, or, alternatively, that all noncompliances and defects covered by those safety recall campaigns have been remedied.

(6) When a Registered Importer certifies a make, model, and model year of a Type 2 motor vehicle for the first time, its submission must include:

(i) The make, model, model year and date of manufacture, odometer reading, VIN that complies with § 565.4(b), (c), and (g) of this chapter, and Customs Entry Number,

(ii) A statement that it has brought the vehicle into conformity with all Federal motor vehicle safety, bumper, and theft prevention standards that apply to the vehicle, and a description, with respect to each standard for which modifications were needed, of the modifications performed,

(iii) A copy of the bond given at the time of entry to ensure conformance with the safety standards,

(iv) The vehicle's vehicle eligibility number,

(v) A copy of the HS–7 form executed at the time of its importation if a Customs broker did not make an electronic entry with Customs,

(vi) True and unaltered front, side, and rear photographs of the vehicle,

(vii) True and unaltered photographs of the original manufacturer's certification label and the certification label of the Registered Importer affixed to the vehicle (and, if the vehicle is a motorcycle, a photograph or photocopy of the Registered Importer certification label before it has been affixed),

(viii) Photographs and documentation sufficient to demonstrate conformity, and

(ix) The policy number of the service insurance policy furnished with the vehicle pursuant to paragraph (g) of this section.

(7) Except as specified below in this paragraph, a Registered Importer's second and subsequent certification submissions for a given make, model, and model year vehicle must contain the same information as its first submission, including the VIN of the vehicle covered that complies with § 565.4(b), (c), and (g) of this chapter, and must refer to its first submission. If the Registered Importer conformed such a vehicle in the same manner as it stated in its initial submission, it may say so in a subsequent submission and it need only provide photographs and documentation of the modifications that

it made to such a vehicle to achieve conformity.

(e) For each Type 1 motor vehicle:

(1) Submit to the Administrator the make, model, model year, odometer reading, VIN that complies with § 565.4(b), (c), and (g) of this chapter, date of manufacture, and Customs entry number of the vehicle, the policy number of the service insurance policy furnished with the vehicle pursuant to paragraph (g) of this section, and substantiation that the vehicle is not subject to any safety recall campaigns as of the time of the submission, or, alternatively, that all noncompliances and defects covered by those safety recall campaigns have been remedied.

(2) The submission must contain a statement that the vehicle complies with, or that the Registered Importer has brought it into compliance with, all safety and bumper standards that apply to the vehicle. The Registered Importer shall also state, as appropriate, that either:

(i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter);

(ii) The vehicle as manufactured complied with those parts marking requirements; or

(iii) The Registered Importer brought the vehicle into compliance with those requirements.

(3) The submission must be signed and submitted by a principal of the Registered Importer designated in its registration application pursuant to § 592.5(a)(5)(D) of this part, with an original signature and not with a stamp or other device, and must include the statement that the signer has personal knowledge that the RI has certified that the vehicle complies with all applicable Federal motor vehicle safety, bumper, and theft prevention standards.

(4) The information required by this subparagraph must be submitted on a monthly basis so that the Administrator receives it within 10 days of the end of the month in which the vehicle was imported.

(f) With respect to each Type 2 motor vehicle, not take any of the following actions until the bond referred to in paragraph (a) of this section has been released, unless 30 days have elapsed from the date the Administrator receives the Registered Importer's certification of compliance of the motor vehicle in accordance with paragraph (d) of this section (the 30-day period may be extended if the Administrator has made written demand to inspect the motor vehicle):

(1) Operate the motor vehicle on the public streets, roads, and highways;

(2) Sell the motor vehicle or offer it for sale;

(3) Store the motor vehicle on the premises of a dealer;

(4) License or register the motor vehicle for use on public streets, roads, or highways; or

(5) Release custody of the motor vehicle to a person for sale, or license or registration for use on public streets, roads, and highways.

(g) Furnish with each motor vehicle for which it furnishes certification or information to the Administrator in accordance with paragraphs (d) or (e) of this section, not later than the time it sells the vehicle, or releases custody of a vehicle to an owner who has imported it for personal use, a service insurance policy written or underwritten by an independent insurance company, in the amount of $2,000. The Registered Importer shall provide the insurance company with a monthly list of the VINs of vehicles covered by the policies of the insurance company, and shall retain a copy of each such list in its files.

(h) Comply with the requirements of part 580 of this chapter, *Odometer Disclosure Requirements*, when the Registered Importer is a transferor of a vehicle as defined by Sec. 580.3 of that part.

(i) With respect to any Type 2 motor vehicle it has imported and for which it has furnished a performance bond, deliver such vehicle to the Secretary of the Treasury for export, or abandon it to the United States, upon demand by the Administrator, if such vehicle has not been brought into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards in a timely manner.

(j)(1) With respect to any motor vehicle that it has imported or for which it has furnished a certificate of conformity or information to the Administrator as provided in paragraphs (d) or (e) of this section, provide notification and a remedy without charge to the vehicle owner according to part 577 of this chapter, after any determination that a vehicle to which such motor vehicle is substantially similar under part 593 of this chapter contains a defect related to motor vehicle safety or fails to conform with an applicable Federal motor vehicle safety standard. However, this obligation does not exist if the manufacturer of the vehicle or the Registered Importer of such vehicle demonstrates to the Administrator that the defect or noncompliance is not present in such vehicle, or that the defect or noncompliance was remedied before the submission of the certificate or the information to the Administrator, or that the original manufacturer of the vehicle will provide such notification and remedy.

(2) With respect to defects and noncompliances that are determined to exist in vehicles described in the first sentence of paragraph (j)(1) of this section, inform the Administrator in writing whether the original manufacturer or the Registered Importer will provide the required notification and remedy. If the Registered Importer informs the Administrator that the manufacturer will notify and remedy, the Registered Importer must submit documentation sufficient to support its statement. If the Registered Importer informs the Administrator that it will notify and remedy, it must provide the Administrator with a copy of the notification that it intends to send. A Registered Importer must inform the Administrator according to this subsection not later than 30 days after the original manufacturer commences its notification campaign.

(3) Any notification to vehicle owners sent by a Registered Importer must contain the information specified in § 577.5 of this chapter, and must include the statement that if the Registered Importer's repair facility is more than 50 miles from the owner's mailing address, remedial repairs may be performed at no charge at a specific facility designated by the Registered Importer that is within 50 miles of the owner's mailing address, or, if no such facility is designated, that repairs may be performed anywhere, with the cost of parts and labor to be reimbursed by the Registered Importer.

(4) Such notification by a Registered Importer must also conform to the requirements of §§ 577.7 and 577.8 of this chapter, and is subject to §§ 577.9 and 577.10 of this chapter.

(5) Except as provided in this paragraph, instead of the six quarterly reports required by § 573.6(a) of this chapter, the Registered Importer must submit to the Administrator two reports containing the information specified in § 573.6(b)(1)–(4) of this chapter. The reports shall cover the periods ending nine and 18 months after the commencement of the owner notification campaign, and must be submitted within 30 days of the end of each period. However, the reporting requirements established by this paragraph shall not apply to any safety recall that a vehicle manufacturer conducts that includes vehicles for which the Registered Importer has submitted the information required by paragraphs (d) or (e) of this section.

(6) The requirement that the remedy be provided without charge does not apply if the motor vehicle was bought by its first purchaser from the Registered Importer (or, if imported for personal use, conformed pursuant to a contract with the Registered Importer) more than 10 calendar years before the date the Registered Importer or the original manufacturer notifies the Administrator of the noncompliance or safety-related defect pursuant to part 573 of this chapter.

(k) In order that the Administrator may determine whether the Registered Importer is meeting its statutory responsibilities, allow representatives of NHTSA during operating hours, upon demand, and upon presentation of credentials, to copy documents, or to inspect, monitor, or photograph any of the following:

(1) Any facility where any vehicle for which a Registered Importer has the responsibility of providing a certificate of conformity to applicable safety standards is being modified, repaired, tested, or stored, and any facility where any record or other document relating to the modification, repair, testing, or storage of these vehicles is kept;

(2) Any part or aspect of activities relating to the modification, repair, testing, or storage of vehicles by the Registered Importer;

(3) Any motor vehicle for which the Registered Importer has provided a certification of conformity to the Administrator before the Administrator releases the conformance bond.

(l) Provide an annual statement and pay an annual fee as required by § 592.5(e) of this part.

(m) Except as noted in this paragraph, notify the Administrator in writing of any change that occurs in the information which was submitted in its registration application, not later than the 30th calendar day after such change. If a Registered Importer intends to use a facility that was not identified in its registration application, not later than 30 days before it begins to use such facility, it must notify the Administrator of its intent to use such facility with a description of its intended use, provide a copy of the lease or ownership agreement relating to that facility and a copy of the license or similar document issued by an appropriate state or municipal authority stating that the Registered Importer is licensed to do business at that facility as an importer and/or modifier and/or seller of motor vehicles (or a statement that it has made a bona fide inquiry and is not required by state or local law to have such a license or permission), and supply non-electronic photographs of that facility. If a Registered Importer intends to change its street address or telephone number or discontinue use of a facility that was identified in its registration application, it shall notify the Administrator not less than 10 days before such change or discontinuance of such use, and identify the facility, if any, that will be used instead.

(n) Assure that at least one full-time employee of the Registered Importer is present at each of the facilities it maintains for the repair, conformance, or storage of motor vehicles in connection with its duties as a Registered Importer.

(o) Not co-utilize the same employee, or any repair, conformance, or storage facility with any other Registered Importer.

(p) Make timely, complete, and accurate responses to any requests by the Administrator for information, whether by general or special order or otherwise, to enable the Administrator to decide whether the Registered Importer has complied or is complying with 49 U.S.C. Chapters 301, 325, and 331, and the regulations issued thereunder.

(q) Pay all fees either by certified check, cashier's check, money order, credit card, or Electronic Funds Transfer System made payable to the Treasurer of the United States, in accordance with the invoice of fees incurred by the Registered Importer in the previous month that is provided by the Administrator. All such fees are due and payable not later than 15 days from the date of the invoice.

(r) Not later than [30 days after the effective date of the final rule amending § 592.5(a)], file with the Administrator all information required by § 592.5(a) of this part, as amended. If a Registered Importer has previously provided any item of information to the Administrator in its registration application, annual statement, or notification of change, it may incorporate that item by reference in the filing required under this subsection, provided that it clearly indicates the date, page, and entry of the previously-provided document.

5. Section 592.7 would be revised to read as follows:

§ 592.7 Automatic suspension, suspension, revocation, and reinstatement of suspended registrations.

This section specifies the acts and omissions that may result in suspensions and revocations of Registered Importers by NHTSA, the process for such suspensions and revocations, and the provisions applicable to the reinstatement of suspended registrations.

(a) *Automatic suspension of a registration.* 49 U.S.C. 30141(c)(4)(B) explicitly authorizes NHTSA to automatically suspend a registration when a Registered Importer does not, in a timely manner, pay a fee required by part 594 of this chapter or for knowingly filing a false or misleading certification under 49 U.S.C. 30146. NHTSA also may automatically suspend a registration under other circumstances, as specified in paragraphs (a)(3), (4) and (5) of this section.

(1) If the Administrator has not received the annual fee from a Registered Importer by the close of business on October 10 of a year, or, if October 10 is a weekend or holiday, by the next business day thereafter, or has not received any other fee owed by a Registered Importer within 15 calendar days from the date of the Administrator's invoice, the Registered Importer's registration will be automatically suspended at the beginning of the first following business day. The Administrator will promptly notify the Registered Importer in writing of the suspension. Such suspension shall remain in effect until reinstated pursuant to paragraph (c)(1) of this section.

(2) If the Administrator decides that a Registered Importer has knowingly filed a false or misleading certification, (s)he shall promptly notify the Registered Importer in writing that its registration is automatically suspended. The notification shall inform the Registered Importer of the facts and conduct upon which the decision is based, and the period of suspension (which begins as of the date of the Administrator's written notification). The notification shall afford the Registered Importer an opportunity to seek reconsideration of the decision by presenting data, views, and arguments in writing and/or in person, within 30 days. Not later than 30 days after the submission of data, views, and arguments, the Administrator, after considering all the information available, shall notify the Registered Importer in writing of his or her decision on reconsideration. Any suspension issued under this paragraph shall remain in effect until reinstated pursuant to paragraph (c)(2) of this section.

(3) If mail is undeliverable to the Registered Importer at the official street address it has provided to the Administrator, or if the telephone has been disconnected at the telephone number specified by the Registered Importer, the Administrator may automatically suspend the Registered Importer's registration. Such suspension shall remain in effect until the

registration is reinstated pursuant to paragraph (c)(3) of this section.

(4) If a Registered Importer, not later than [30 days after the effective date of the final rule amending § 592.5(a)], does not file with the Administrator all information required by § 592.5(a) of this part, as required by § 592.6(r) of this part, the Administrator may automatically suspend the registration. The Administrator shall promptly notify the Registered Importer in writing of the suspension. Such a suspension shall remain in effect until the registration is reinstated pursuant to paragraph (c)(4) of this section.

(5) If a Registered Importer releases one or more Type 2 motor vehicles on the basis of a forged or falsified bond release letter, and the Administrator has not in fact issued such a letter, the Administrator may automatically suspend the registration. The Administrator shall promptly notify the Registered Importer in writing of the suspension. The notification shall afford the Registered Importer an opportunity to seek reconsideration of the decision by presenting data, views, and arguments in writing and/or in person, within 30 days. Not later than 30 days after the submission of data, views, and arguments, the Administrator, after considering all the information available, shall notify the Registered Importer in writing of his or her decision on reconsideration. Any suspension issued under this paragraph shall remain in effect until reinstated pursuant to paragraph (c)(2) of this section.

(6) The Administrator, in his or her sole discretion, may provide notice of a proposed suspension or revocation based on the matters in paragraphs (a)(1) through (a)(5) of this section, and provide an opportunity to be heard prior to a decision, as provided in paragraph (b)(2) of this section.

(b) *Non-automatic suspension or revocation of a registration.* (1) 49 U.S.C. 30141(c)(4)(A) authorizes NHTSA to revoke or suspend a registration if a Registered Importer does not comply with a requirement of 49 U.S.C. 30141–30147, or any of 49 U.S.C. 30112, 30115, 30117–30122, 30125(c), 30127, or 30166, or any regulations issued under these sections. These regulations include, but are not limited to, parts 567, 568, 573, 577, 591, 593, and 594 of this chapter.

(2) When the Administrator has reason to believe that a Registered Importer has violated one or more of the statutes or regulations cited in paragraph (b)(1) of this section and that suspension or revocation would be an appropriate sanction under the circumstances, (s)he shall notify the Registered Importer in writing of the facts giving rise to the allegation of a violation and the proposed length of a suspension, if applicable, or revocation. The notice shall afford the Registered Importer an opportunity to present data, views, and arguments, in writing and/or in person, within 30 days of the date of the notice, as to whether the violation occurred, why the registration ought not to be suspended or revoked, or whether the suspension should be shorter than proposed. If the Administrator decides, on the basis of the available information, that the Registered Importer has violated a statute or regulation, the Administrator may suspend or revoke the registration. The Administrator shall notify the Registered Importer in writing of the decision, including the reasons for it. A suspension or revocation is effective as of the date of the Administrator's written notification. The Administrator shall state the period of any suspension in the notice to the Registered Importer. There shall be no opportunity to seek reconsideration of a decision issued under this paragraph.

(c) *Reinstatement of suspended registrations.* (1) When a registration has been suspended under paragraph (a)(1) of this section, the Administrator will reinstate the registration when all fees owing are paid by wire transfer or certified check from a bank in the United States, together with a sum representing 10 percent of the amount of the fees that were not timely paid.

(2) When a registration has been suspended under paragraph (a)(2) or (a)(5) of this section, the registration will be reinstated after the expiration of the period of suspension specified by the Administrator, or such earlier date as the Administrator may subsequently decide is appropriate.

(3) When a registration has been suspended under paragraph (a)(3) of this section, the registration will be reinstated when the Administrator decides that the Registered Importer has provided a street address to which mail to it is deliverable and a telephone number in its name that is in service.

(4) When a registration has been suspended under paragraph (a)(4) of this section, the registration will be reinstated when the Administrator decides that the Registered Importer has provided all relevant documentation and information required by § 592.6(r) of this part.

(5) When a registration has been suspended under paragraph (b) of this section, the registration will be reinstated after the expiration of the period of suspension specified by the Administrator, or such earlier date as the Administrator may subsequently decide is appropriate.

(d) *Effect of suspension or revocation.* If a Registered Importer's registration is suspended or revoked, as of the date of suspension or revocation the entity will no longer be considered a Registered Importer, will no longer have the rights and authorities appertaining thereto, and must cease importing, and will not be allowed to import, vehicles for resale. The Registered Importer will not be refunded any annual or other fees it has paid for the fiscal year in which its registration is revoked. The Administrator shall notify the U.S. Customs Service of the suspension or revocation of the registration.

(e) *Continuing obligations.* (1) A Registered Importer whose registration is suspended or revoked remains obligated under § 592.6(j) of this part to notify owners and to remedy noncompliances or safety related defects for each vehicle for which it has furnished a certificate of conformity or information to the Administrator.

(2) With respect to any vehicle for which it has not affixed a certification label and submitted a certificate of conformity or information to the Administrator under § 592.6(d) or (e) of this part at the time its registration has been suspended, and the suspension is for the first time, the Registered Importer may not affix a certification label or submit a certificate of conformity until its registration is reinstated, and the Administrator will toll the 120-day period during the term of that suspension.

(3) When a registration has been revoked, or suspended for other than the first time, the Registered Importer must export within 30 days of the effective date of the suspension or revocation all vehicles that it imported to which it has not affixed a certification label and furnished a certificate of conformity or information to the Administrator pursuant to § 592.6(d) or (e) of this part. With respect to any vehicle imported pursuant to § 591.5(f)(2)(ii) of this part that the Registered Importer has agreed to bring into compliance with all applicable standards and for which it has not certified and furnished a certificate of conformity or information to the Administrator, the Registered Importer must immediately notify the owner of the vehicle in writing that its registration has been suspended or revoked.

6. Section 592.8 would be amended by revising paragraph (a), the first sentence of paragraphs (b), (c), and (d), and paragraph (e) to read as follows:

§ 592.8 Inspection; release of vehicle and conformance bond.

(a) With respect to any Type 2 motor vehicle for which it must provide a certificate of conformity to the Administrator as required by § 592.6(d) of this part, a Registered Importer shall not obtain title, licensing, or registration of the motor vehicle for use on the public roads, or release custody of it for such titling, licensing or registration, except in accordance with the provisions of this section.

(b) When conformance modifications to a Type 2 motor vehicle have been completed, a Registered Importer shall submit the certification and information required by § 592.6(d) of this part to the Administrator. * * *

(c) Before the end of the 30th calendar day after receipt of certification of a Type 2 motor vehicle, the Administrator may inform the Registered Importer in writing that an inspection of the vehicle is required to ascertain the veracity of the certification. * * *

(d) The Administrator may by written notice request certification verification by the Registered Importer before the end of the 30th calendar day after the date the Administrator receives certification of a Type 2 motor vehicle.

* * *

(e) If the Registered Importer has received no written notice from the Administrator by the end of the 30th calendar day after it has furnished a certification of a vehicle to the Administrator, the Registered Importer may release the vehicle from custody, sell or offer it for sale, or have it titled, licensed or registered for use on the public roads.

* * * * *

7. New Section 592.9 would be added to read:

§ 592.9 Forfeiture of bond.

(a) A Registered Importer is required by § 591.6 of this chapter to furnish a bond with respect to each Type 2 motor vehicle that it imports. The conditions of the bond are set forth in § 591.8 of this chapter. Failure to fulfill any one of these conditions may result in forfeiture of the bond. A bond may be forfeited if the Registered Importer:

(1) Fails to bring the motor vehicle covered by the bond into compliance with all applicable standards issued under part 571, part 581, and part 541 of this chapter within 120 days;

(2) Fails to file with the Administrator a certificate that the motor vehicle complies with each Federal motor vehicle safety, bumper, and theft prevention standard in effect at the time the vehicle was manufactured and which applies to the vehicle;

(3) Fails to cause a motor vehicle to be available for inspection if it has received written notice from the Administrator that an inspection is required;

(4) Releases the motor vehicle before the Administrator accepts the certification and any modification thereof, if it has received written notice from the Administrator that there is reason to believe that the certification is false or contains a misrepresentation;

(5) Before the bond is released, releases custody of the motor vehicle to any person for license or registration for use on public roads, streets, and highways, or licenses or registers the vehicle, including titling the vehicle in the name of another person, unless 30 calendar days have elapsed after the Registered Importer has filed the certificate specified in paragraph (a)(2) of this section and the Registered Importer has not received written notice pursuant to paragraph (a)(3) or (a)(4) of this section. For purposes of this part, a vehicle is deemed to be released from custody if it is not located at a duly identified facility of the Registered Importer and the Registered Importer has not notified the Administrator of the vehicle's location or, if written notice has been provided, if the Administrator is unable to inspect the vehicle, or if the Registered Importer has transferred title to any other person regardless of the vehicle's location; or

(6) Fails to deliver the vehicle, or cause it to be delivered, to the custody of a District Director of Customs at any port of entry, for export or abandonment to the United States, and to execute all documents necessary to accomplish such purposes, if the Administrator has furnished it written notice that the vehicle has been found not to comply with all applicable Federal motor vehicle safety standards along with a demand that the vehicle be delivered for export or abandoned to the United States.

8. An Appendix A to part 592 would be added to read as follows:

APPENDIX A TO PART 592—TYPE 1 MOTOR VEHICLES AS OF [DATE FINAL RULE IS PUBLISHED] IMPORTED UNDER VSA 80 OR VSA 81

Year	Make	Model	Exceptions
1995	Audi	All.	
1996		All.	
1997		All.	
1998		All.	
1999		All.	
2000		All.	
1995–2000	Chrysler	Cirrus.	
1995–2000		Concorde.	
1995–2000		Intrepid.	
2000		Neon.	
1996–2000		Sebring Convertible.	
1995–2000		Sebring Coupe.	
1995–2000		Town & Country.	
1995–1999	Dodge	Avenger.	
1995–1999		Neon.	
1994–1995		Stealth.	
1995–1999		Stratus.	
1995–2000		Viper.	
1995–2000		Caravan.	
1995–2000		Grand Caravan.	
1995–2000		Dakota.	
1998–2000		Durango.	
1995–2000		Ram Pickup.	
1995–2000		Ram Van/Wagon.	

APPENDIX A TO PART 592—TYPE 1 MOTOR VEHICLES AS OF [DATE FINAL RULE IS PUBLISHED] IMPORTED UNDER VSA 80 OR VSA 81—Continued

Year	Make	Model	Exceptions
1994–1997	Eagle	Vision.	
1995	Ford	All.	
1996		All.	
1997		All.	
1998		All.	
1999		All.	
2000		All.	
1995	General Motors (Buick, Cadillac, Chevrolet, Geo, Oldsmobile, Pontiac, Saturn)	All.	
1996		All.	
1997		All.	
1998		All.	
1999		All.	
2000		All.	
1995	Infiniti	All.	
1996		All.	
1997		All.	
1998		All.	
1999		All.	
2000		All.	
1995–2000	Jeep	Cherokee.	
1995–2000		Grand Cherokee.	
1995–1996		YJ.	
1997–2000		TJ.	
1995	Nissan	All Except	Sentra
1996		All Except	Sentra
1997		All Except	Sentra
1998		All Except	Sentra
1999		All Except	Sentra
2000		All.	
1995–1999	Plymouth	Breeze.	
1995–1999		Neon.	
1997		Prowler.	
1999–2000		Prowler.	
1995–2000		Voyager.	
1995–2000		Grand Voyager.	
1995	Volkswagen	All.	
1996		All.	
1997		All.	
1998		All.	
1999		All Except	Gold
2000		All.	

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

1. The authority citation for part 594 would continue to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 30141; 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

2. Section 594.5 would be amended as follows:

a. By removing present paragraphs (e), (f), and (g) and adding new paragraph (f);

b. By redesignating paragraphs (h) and (i) as paragraphs (e) and (g) and revising newly redesignated paragraph (g). The addition and revision read as follows:

§ 594.5 Establishment and payment of fees.

* * * * *

(f) The Administrator will furnish each Registered Importer with a monthly invoice of the fees owed by the Registered Importer for reimbursement for bond processing costs and for the review and processing of conformity certificates and information regarding importation of Type 1 motor vehicles, as defined in § 592.4 of this chapter. A person who for personal use imports a vehicle covered by a determination of the Administrator must pay the fee specified in either § 594.8(b) or (c) of this chapter, as appropriate, to the Registered Importer, and the invoice will also include these fees. The Registered Importer must pay the fees within 15 days of the date of the invoice.

(g) Fee payments must be by certified check, cashier's check, money order, credit card, or Electronic Funds Transfer System, made payable to the Treasurer of the United States.

* * * * *

3. Section 594.9 would be amended by revising paragraph (a) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

(a) Each Registered Importer must pay a fee based upon the direct and indirect costs of processing each bond furnished to the Secretary of the Treasury on behalf of the Administrator with respect to each vehicle for which it furnishes a certificate of conformity pursuant to § 592.6(d) of this chapter.

* * * * *

4. Section 594.11 would be added to read as follows:

§ 594.11 Fee for review and processing of information relating to importation of Type 1 motor vehicles.

(a) Each Registered Importer must pay a fee based on the agency's direct and indirect costs for the review and processing of information relating to the importation of a Type 1 motor vehicle pursuant to § 592.6(e) of this chapter.

(b) The direct costs attributable to the review and processing of information relating to the importation of a Type 1 motor vehicle include the estimated cost of contract and professional staff time, computer usage, and record assembly, marking, shipment and storage costs.

(c) The indirect costs attributable to the review and processing of information relating to the importation of a Type 1 motor vehicle include a pro rata allocation of the average benefits of persons employed in reviewing and processing the information, and a pro rata allocation of the costs attributable to the rental and maintenance of office space and equipment, the use of office supplies, and other overhead items.

(d) The fee for review and processing of information relating to the importation of each Type 1 motor vehicle submitted on and after October 1, 2001, is $13. However, if the vehicle covered by the information has been entered electronically with the U.S. Customs Service through the Automated Broker Interface and the Registered Importer submitting the information has an e-mail address, the fee for the information is $6, provided that the fee is paid by a credit card issued to the Registered Importer and that all the information is correct.

Issued on: November 28, 2000.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 00–29034 Filed 11–17–00; 8:45 am]

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Federal Register

Monday,

November 20, 2000

Part III

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Play Areas; Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 98–2]

RIN 3014–AA21

Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Play Areas

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Amendment to advisory note.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) is amending an advisory note to the accessibility guidelines for play areas. The amended advisory note clarifies that play components that are attached to a composite play structure and can be approached from a platform or deck (*e.g.*, climbers and overhead play components), are elevated play components. These play components are not considered ground level play components also, and do not count toward meeting the number of ground level play components that must be located on an accessible route.

DATES: The amendment is effective December 20, 2000.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 134 (Voice); (202) 272–5449 (TTY). E-mail address: *greenwell@access-board.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this document may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 2 on the telephone keypad, then 1, and requesting publication S–42 (Play Areas Final Rule, Amended Appendix Note). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication S–42. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk). This document is also available on the Board's Internet site (*http://www.access-board.gov/play/finalrule-aan.htm*).

Background

On October 18, 2000, the Access Board issued final accessibility guidelines for play areas. 65 FR 62498 (October 18, 2000). The guidelines serve as the basis for enforceable standards to be adopted by the Department of Justice for new construction and alterations of play areas covered by the Americans with Disabilities Act. The guidelines distinguish between ground level and elevated play components, and provide that a minimum number of ground level and elevated play components must be located on an accessible route.

The appendix to the guidelines contains advisory notes to assist in understanding the guidelines. Advisory note A15.6.3 addresses elevated play components that are attached to a composite play structure. As originally issued, the advisory note used the example of a climber attached to a composite play structure. The advisory note stated that the climber may be considered either a ground level or elevated play component. The advisory note explained that if an accessible route is provided to the base of the climber and to the top of the climber, and the climber is counted toward meeting the number of elevated play components on an accessible route, the same climber cannot be counted toward meeting the number of ground level play components on an accessible route. The purpose of the advisory note was to clarify that such play components cannot be "double-counted" as both ground level and elevated play components. However, if climbers and other overhead play components that are attached to a composite play structure are counted as ground level play components, instead of elevated play components, it would result in significantly less access in play areas. Fewer ground level and elevated play components would have to be located on an accessible route; ramp access would be more limited; and there would be less diversity in the types of ground level play components provided. The advisory note was not intended to create a "loophole" for evading the guidelines. The economic assessment, which analyzed the impact of the guidelines, counted climbers and overhead play components attached to a composite play structure as elevated play components. Play equipment manufacturers and operators, who have followed the guidelines on a voluntary basis prior to their adoption as enforceable standards by the Department of Justice, have counted climbers and overhead play components attached to a composite play structure as elevated play components. Accordingly, the amended advisory note states that play components that are attached to a composite play structure and can be approached from a platform or deck (e.g., climbers or overhead play components), are considered elevated play components. The amended advisory note further states that these play components are not considered ground level play components also, and do not count toward meeting the number of ground level play components that must be located on an accessible route.

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities, Transportation.

Thurman M. Davis, Sr.,

Chair, Architectural and Transportation Barriers Compliance Board.

For the reasons set forth above, part 1191 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY

Guidelines for Buildings and Facilities

1. The authority citation for 36 CFR part 1191 continues to read as follows:

Authority: 42 U.S.C. 12204.

1191 Appendix A [Amended]

2. In Part 1191, the appendix to Appendix A is amended by revising pages A22, A23 and A24 to read as follows:

Appendix A to Part 1191—Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

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APPENDIX

A15.6.1 General. This section is to be applied during the design, construction, and alteration of play areas for children ages 2 and over. Play areas are the portion of a site where play components are provided. This section does not apply to other portions of a site where elements such as sports fields, picnic areas, or other gathering areas are provided. Those areas are addressed by other sections of ADAAG. Play areas may be located on exterior sites or within a building. Where separate play areas are provided within a site for children in specified age groups (e.g., preschool (ages 2 to 5) and school age (ages 5 to 12)), each play area must comply with this section. Where play areas are provided for the same age group on a site but are geographically separated (e.g., one is located next to a picnic area and another is located next to a softball field), they are considered separate play areas and each play area must comply with this section.

A15.6.2 Ground Level Play Components. A ground level play component is a play component approached and exited at the ground level. Examples of ground level play components include spring rockers, swings, diggers, and stand alone slides. When distinguishing between the different types of ground level play components, consider the general experience provided by the play component. Examples of different types of experiences include, but are not limited to, rocking, swinging, climbing, spinning, and sliding. A spiral slide may provide a slightly different experience from a straight slide, but sliding is the general experience and therefore a spiral slide is not considered a different type of play component than a straight slide.

The number of ground level play components is not dependent on the number of children who can play on the play component. A large seesaw designed to accommodate ten children at once is considered one ground level play component.

Where a large play area includes two or more composite play structures designed for the same age group, the total number of elevated play components on all the composite play structures must be added to determine the additional number and types of ground level play components that must be provided on an accessible route, and the type of accessible route (e.g., ramps or transfer systems) that must be provided to the elevated play components.

Ground level play components accessed by children with disabilities must be integrated in the play area. Designers should consider the optimal layout of ground level play components accessed by children with disabilities to foster interaction and socialization among all children. Grouping all ground level play components accessed by children with disabilities in one location is not considered integrated.

A15.6.3 Elevated Play Components. Elevated play components are approached above or below grade and are part of a composite play structure. A double or triple slide that is part of a composite play structure is one elevated play component. For purposes of this section, ramps, transfer systems, steps, decks, and roofs are not considered elevated play components. These elements are generally used to link other elements on a composite play structure. Although socialization and pretend play can occur on these elements, they are not primarily intended for play.

Some play components that are attached to a composite play structure can be approached or exited at the ground level or above grade from a platform or deck. For example, a climber attached to a composite play structure can be approached or exited at the ground level or above grade from a platform or deck on a composite play structure. Play components that are attached to a composite play structure and can be approached from a platform or deck (e.g., climbers and overhead play components), are considered elevated play components. These play components are not considered ground level play components also, and do not count toward the requirements in 15.6.2 regarding the number of ground level play components that must be located on an accessible route.

A15.6.4 Accessible Routes. Accessible routes within the boundary of the play area must comply with 15.6.4. Accessible routes connecting the play area to parking, drinking fountains, and other elements on a site must comply with 4.3. Accessible routes provide children who use wheelchairs or other mobility devices the opportunity to access play components. Accessible routes should coincide with the general circulation path used within the play area. Careful placement and consideration of the layout of accessible routes will enhance the ability of children with disabilities to socialize and interact with other children.

Where possible, designers and operators are encouraged to provide wider ground level accessible routes within the play area or consider designing the entire ground surface to be accessible. Providing more accessible spaces will enhance the integration of all children within the play area and provide access to more play components. A maximum slope of 1:16 is required for ground level ramps; however, a lesser slope will enhance access for those children who have difficulty negotiating the 1:16 maximum slope. Handrails are not required on ramps located within ground level use zones.

Where a stand alone slide is provided, an accessible route must connect the base of the stairs at the entry point, and the exit point of the slide. A ramp or transfer system to the top of the slide is not required. Where a sand box is provided, an accessible route must connect to the border of the sand box. Accessibility to the sand box would be enhanced by providing a transfer system into the sand or by providing a raised sand table with knee clearance complying with 15.6.6.3.

Elevated accessible routes must connect the entry and exit points of 50 percent of elevated play components. Ramps are preferred over transfer systems since not all children who use wheelchairs or other mobility devices may be able to use or may choose not to use transfer systems. Where ramps connect elevated play components, the maximum rise of any ramp run is limited to12 inches. Where possible, designers and operators are encouraged to provide ramps with a lesser slope than the 1:12 maximum. Berms or sculpted dirt may be used to provide elevation and may be part of an accessible route to composite play structures.

Platform lifts complying with 4.11 and applicable State and local codes are permitted as a part of an accessible route. Because lifts must be independently operable, operators should carefully consider the appropriateness of their use in unsupervised settings.

A15.6.5 Transfer Systems. Transfer systems are a means of accessing composite play structures. Transfer systems generally include a transfer platform and a series of transfer steps. Children who use wheelchairs or other mobility devices transfer from their wheelchair or mobility devices onto the transfer platform and lift themselves up or down the transfer steps and scoot along the decks or platforms to access elevated play components. Some children may be unable or may choose not to use transfer systems. Where transfer systems are provided, consideration should be given to the distance between the transfer system and the elevated play components. Moving between a transfer platform and a series of transfer steps requires extensive exertion for some children. Designers should minimize the distance between the points where a child transfers from a wheelchair or mobility device and where the elevated play components are located. Where elevated play components are used to connect to another elevated play component in lieu of an accessible route, careful consideration should be used in the selection of the play components used for this purpose. Transfer supports are required on transfer platforms and transfer steps to assist children when transferring. Some examples of supports include a rope loop, a loop type handle, a slot in the edge of a flat horizontal or vertical member, poles or bars, or D rings on the corner posts.

A15.6.6 Play Components. Clear floor or ground spaces, maneuvering spaces, and accessible routes may overlap within play areas.

A specific location has not been designated for the clear floor or ground spaces or maneuvering spaces, except swings, because each play component may require that the spaces be placed in a unique location. Where play components include a seat or entry point, designs that provide for an unobstructed transfer from a wheelchair or other mobility device are recommended. This will enhance the ability of children with disabilities to independently use the play component.

When designing play components with manipulative or interactive features, consider appropriate reach ranges for children seated in wheelchairs. The following table provides guidance on reach ranges for children seated in wheelchairs. These dimensions apply to either forward or side reaches. The reach ranges are appropriate for use with those play components that children seated in wheelchairs may access and reach. Where transfer systems provide access to elevated play components, the reach ranges are not appropriate.

Where a climber is located on a ground level accessible route, some of the climbing rings should be within the reach ranges. A careful balance of providing access to play components but not eliminating the challenge and nature of the activity is encouraged.

A15.6.7 Ground Surfaces. Ground surfaces along clear floor or ground spaces, maneuvering spaces, and accessible routes must comply with the ASTM F 1951 Standard Specification for Determination of Accessibility to Surface Systems Under and Around Playground Equipment. The ASTM F 1951 standard is available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, telephone (610) 832-9585. The ASTM F 1951 standard may be ordered online from ASTM (http://www.astm.org). The ASTM 1951 standard determines the accessibility of a surface by measuring the work required to propel a wheelchair across the surface. The standard includes tests of effort for both straight ahead and turning movement, using a force wheel on a rehabilitation wheelchair as the measuring device. To meet the standard, the force required must be less than that required to propel the wheelchair up a ramp with a 1:14 slope. When evaluating ground surfaces, operators should request information about compliance with the ASTM F 1951 standard.

Ground surfaces must be inspected and maintained regularly and frequently to ensure continued compliance with the ASTM F 1951 standard. The type of surface material selected and play area use levels will determine the frequency of inspection and maintenance activities.

Children's Reach Ranges

Forward or Side Reach	Ages 3 and 4	Ages 5 through 8	Ages 9 through 12
High (maximum)	36 in (915 mm)	40 in (1015 mm)	44 in (1120 mm)
Low (minimum)	20 in (510 mm)	18 in (455 mm)	16 in (405 mm)

[FR Doc. 00–29599 Filed 11–17–00; 8:45 am]

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Monday,
November 20, 2000

Part IV

Department of Transportation

Federal Aviation Administration

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14 CFR Part 93

Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones; Final Rule

Commercial Routes for the Grand Canyon National Park; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–1999–5926]

RIN 2120–AG74

Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Delay of effective date.

SUMMARY: On April 4, 2000, the FAA published two final rules for Grand Canyon National Park (GCNP). One rule limited the number of commercial air tour operations in the GCNP Special Flight Rules Area (SFRA); the other modified the airspace of the SFRA. The Commercial Air Tour Limitations final rule was effective on May 4, 2000. The airspace modifications were scheduled to become effective December 1, 2000. On July 31, 2000, the United States Air Tour Association and seven air tour operators in GCNP requested a stay of the compliance date for the rules from the FAA. On October 11, 2000, the FAA published a denial of the stay request. On October 25, 2000, the Air Tour Providers filed with the D.C. Circuit Court of Appeals a Motion for Stay and Emergency Relief Pending Review of an Agency Order. On November 2, 2000, the FAA filed with the D.C. Circuit Court of Appeals its Opposition to Petitioners' Motion for Stay Pending Review and Notification of Administrative Stay of Route and Airspace Rules. This document delays the effective date of the Airspace Modification Final Rule so that the FAA may investigate further some new safety issues raised by the Air Tour Providers.

DATES: The final rule Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones, was issued on March 28, 2000, and published in the **Federal Register** on April 4, 2000 (65 FR 17735). It was scheduled to become effective on December 1, 2000. The FAA is delaying the effective date of the final rule until December 28, 2000. This action does not affect the Commercial Air Tour Limitations final rule that became effective May 4, 2000.

ADDRESSES: You may view a copy of the final rules, Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area and Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones, through the Internet at: *http://dms.dot.gov*, by selecting docket numbers FAA–99–5926 and FAA–99–5927. You may also review the public dockets on these regulations in person in the Docket Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the plaza level of the Nassif Building at the Department of Transportation, 7th Ave., SW, Room 401, Washington, DC, 20590.

As an alternative, you may search the Federal Register's Internet site at http://www.access.gpo.gov/su_docs for access to the final rules.

You may also request a paper copy of the final rules from the Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, or by calling (202) 267–9680.

FOR FURTHER INFORMATION CONTACT: Howard Nesbitt, Flight Standards Service (AFS–200), Federal Aviation Administration, Seventh and Maryland Streets, SW, Washington, DC 20591; Telephone: (202) 493–4981.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2000, the Federal Aviation Administration published two final rules, Area and Flight Free Zones (Air Space Modification), and the Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area (Commercial Air Tour Limitation). See 65 FR 17763; 65 FR 17708; April 4, 2000. The FAA also simultaneously published a notice of availability of Commercial Routes for the Grand Canyon National Park (Routes Notice). See 65 FR 17689, April 4, 2000. The Commercial Air Tour Limitations final rule became effective on May 4, 2000. The Air Space Modification final rule and the routes set forth in the Routes Notice were scheduled to become effective December 1, 2000. The effective date of the Air Space Modification final rule and the new routes was delayed to provide the air tour operators ample opportunity to train on the new route system during the non-tour season. The Final Supplemental Environmental Assessment for Special Flight Rules in the Vicinity of Grand Canyon National Park (SEA) was completed on February 22, 2000, and the Finding of No Significant Impact was issued on February 25, 2000.

On May 8, 2000, The United States Air Tour Association and seven air tour operators (hereinafter collectively referred to as the Air Tour Providers) file a petition for review of the two final rules before the United States Court of Appeals for the District of Columbia Circuit. The FAA, The Department of Transportation, the Department of Interior, the National Park Service and various federal officials were named as respondents in this action. On May 30, 2000, the Air Tour Providers filed a motion for stay pending review before the Court of Appeals. The Federal respondents in this case filed a motion for summary denial on grounds that petitioners had not exhausted their administrative remedies. The Court granted the federal respondents summary denial on July 19, 2000. The Grand Canyon Trust, the National Parks and Conservation Association, the Sierra Club, the Wilderness Society, Friends of the Grand Canyon and Grand Canyon River Guides, Inc. (The Trust) filed a petition for review of the same rules on May 22, 2000. The Court, by motion of the federal respondents, consolidated that case with that of the Air Tour Providers. The Hualapai Indian Tribe of Arizona filed a motion to intervene in the Air Tour Providers petition for review on June 23, 2000. The Court granted that motion on July 19, 2000.

On July 31, 2000, the Air Tour Providers filed a motion for stay before the FAA. Both the Hualapai Indian Tribe and the Trust filed oppositions to the Air Tour Providers' stay motion. On October 11, 2000, (65 FR 60352) the FAA published a disposition of the stay request, denying the stay. On October 25, 2000, the Air Tour Providers filed a Motion for Stay and Emergency Relief Pending Review of an Agency Order with the Court of Appeals. The federal respondents filed their Opposition to Petitioner's Motion for Stay Pending Review and Notification of Administrative Stay of Route and Airspace Rules on November 2, 2000.

Agency Action

The Air Tour Providers have raised some specific safety allegations about the routes in the Dragon Corridor (Green Route 2 and 2R), Zuni Point Corridor (Green 1; Black 1) and east of the Desert View Flight Free Zone (Black 2 and Green 3). These safety issues were not previously raised to the FAA and thus the FAA has not had the opportunity to investigate the merit of these allegations. The FAA takes these allegations very seriously and thus has sent out a group of FAA safety inspectors to verify the significance of these allegations. Based on the information obtained from these investigators, the FAA will determine how to best resolve any safety issues of merit. The FAA will report its findings to the Court by November 28, 2000. Because of the interrelationship between the new routes and the airspace changes adopted in the final rule, the FAA is delaying the effective date of the Airspace Modification until December 28, 2000. If the FAA determines that any of the safety issues raised by Petitioners have merit, then it will take the necessary steps to resolve them before making any of the routes effective and thus necessitating the implementation of the airspace modification final rule.

Immediate Effective Date

The FAA finds that good cause exists under 5 U.S.C. 553(d) for this final rule to become final rule upon issuance. The FAA and NPS must implement new air tour routes, flight-free zones, and flight corridors at the same time in order to transition to a new operating environment in GCNP. The FAA has determined that because new safety concerns have been raised that need to be investigated further, it is paramount that their rule become effective immediately.

Economic Evaluation

In issuing the final rule for the Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zone, the FAA prepared a cost benefit analysis of the rule. A copy of the regulatory evaluation is located in docket Number 99–5926, Amendment No. 93–80. This delay of the effective date for the final rule will not affect that evaluation, although the delay in the implementation of the EFZs may be temporarily cost relieving for air tour operators.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the FAA completed a final regulatory flexibility analysis of the final rule. This extended delay of the effective date will not affect that supplemental analysis.

Federalism Implications

This amendment will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals. The FAA has determined that this rule will not impose any unfunded mandates.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (Air).

Adoption of Amendments

Accordingly, the Federal Aviation Administration (FAA) amends 14 CFR part 93 as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

§§ 93.305 and 93.307 [Amended]

2. Sections 93.305 and 93.307 published on December 31, 1996 (61 FR 69330), corrected at 62 FR 2445 (January 16, 1997), and delayed at 65 FR 5397 (February 3, 2000) and made effective December 1, 2000 in a rule published on April 4, 2000 (65 FR 17736) because effective December 28, 2000.

§§ 93.301, 93.305, 93.307, 93.309 [Amended]

3. The amendments to Section 93.301, 93.305, 93.307 and 93.309 published on April 4, 2000 (65 FR 17736) now become effective on December 28, 2000.

Dated: Issued in Washington D.C. on November 14, 2000.

Jane F. Garvey,

Administrator, Federal Aviation Administration.

[FR Doc. 00–29622 Filed 11–16–00; 10:18 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Routes for the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice; Delay of effective date.

SUMMARY: On April 4, 2000, the FAA issued a Notice of Availability of commercial routes in the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA) setting forth new routes available for GCNP. Additionally, on that same day, the FAA published a final rule modifying the airspace of the SFRA. The new routes and the Airspace final rule are interrelated. On July 31, 2000, the United States Air Tour Association and seven air tour operators in GCNP requested a stay of the compliance date for the airspace final rule from the FAA. On October 11, 2000, the FAA published a denial of the stay request. On October 25, 2000, the Air Tour Providers filed with the D.C. Circuit Court of Appeals a Motion for Stay and Emergency Relief Pending Review of an Agency Order. On November 2, 2000, the FAA filed with the D.C. Circuit Court of Appeals its Opposition to Petitioners' Motion for Stay Pending Review and Notification of Administrative Stay of Route and Airspace Rules. This document delays the effective date of the Route system until December 28, 2000 so that the FAA may investigate some new safety issues just raised by the Air Tour Providers.

DATES: The Notice of availability for Commercial Routes for the Grand Canyon National Park was issued on March 28, 2000, and published in the **Federal Register** on April 4, 2000 (65 FR 17698). It was scheduled to become effective on December 1, 2000. The FAA is delaying implementation of the routes until December 28, 2000.

FOR FURTHER INFORMATION CONTACT: Howard Nesbitt, Flight Standards Service, (AFS–200). Federal Aviation Administration, Seventh and Maryland Streets, SW, Washington, DC 20591; Telephone (202) 493–4981.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2000, the Federal Aviation Administration published two final rules, the Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones (Air Space Modification), and the Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area (Commercial Air Tour Limitation). See 65 FR 17736; 65 FR 17708; April 4, 2000. The FAA also simultaneously published a notice of availability of Commercial Routes for the Grand Canyon National Park (Routes Notice). See 65 FR 17698, April 4, 2000. The commercial Air Tour Limitations final rule became effective on May 4, 2000. The Air Space Modification final rule and the routes set forth in the Routes Notice were scheduled to become effective December 1, 2000. The effective date of the Air Space Modification final rule and the new routes was delayed to provide the air tour operators ample opportunity to train on the new route system during the non-tour season. The Final Supplemental Environmental Assessment for Special Flight Rules in the Vicinity of Grand Canyon National Park (SEA) was completed on February 22, 2000, and the Finding of No Significant Impact was issued on February 25, 2000.

On May 8, 2000, the United States Air Tour Association and seven air tour operators (hereinafter collectively referred to as the Air Tour Providers) filed a petition for review of the two final rules before the United States Court of Appeals for the District of Columbia Circuit. This petition did not cover the Routes Notice. The FAA, The Department of Transportation, the Department of Interior, the National Park Service and various federal officials were named as respondents in this action. On May 30, 2000, the Air Tour Providers filed a motion for stay pending review before the Court of appeals. The federal respondents in this case filed a motion for summary denial on grounds that petitions had not exhausted their administrative remedies. The Court granted the federal respondents summary denial on July 19, 2000. The Grand Canyon Trust, the National Parks and Conservation Association, the Sierra Club, the Wilderness Society, Friends of the Grand Canyon and Grand Canyon River Guides, Inc. (The Trust) filed a petition for review of the same rules on May 22, 2000. The Court, by motion of the federal respondents, consolidated that case with that of the Air Tour Providers. The Hualapai Indian Tribe of Arizona filed a motion to intervene in the Air Tour Providers petition for review on June 23, 2000. The Court granted that motion on July 19, 2000.

On July 31, 2000, the Air Tour Providers filed a motion for stay before the FAA. Both the Hualapai Indian Tribe and the Trust filed oppositions to the Air Tour Providers' stay motion. On October 11, 2000, (65 FR 60352) the FAA published a disposition of the stay request, denying the stay. On October 25, 2000, the Air Tour Providers filed a Motion for Stay and Emergency Relief Pending Review of an Agency Order with the Court of Appeals. The federal respondents filed their Opposition to Petitioner's Motion for Stay Pending Review and Notification of Administrative Stay of Route and Airspace Rules on November 2, 2000.

Agency Action

The Air Tour Providers have raised some specific safety allegations about the routes in the Dragon Corridor (Green Route 2 and 2R), Zuni Point Corridor (Green 1; Black 1) and east of the Desert View Flight Free Zone (Black 2 and Green 3). These safety issues were not previously raised to the FAA and thus the FAA has not had the opportunity to investigate the merit of these allegations. The FAA takes these allegations very seriously and thus has sent out a group of FAA safety inspectors to verify the significance of these allegations. Based on the information obtained from these investigators, the FAA will determine how to best resolve any safety issues of merit. The FAA will report its findings to the Court by November 28, 2000. In the meantime, the FAA is delaying the effective date of the new routes until December 28, 2000. Elsewhere in this **Federal Register**, the FAA also is delaying the effective date of the airspace changes adopted in the April 4, 2000 final rule. The FAA also has suspended training on the routes in the Dragon Corridor, Zuni Point Corridor and east of Desert View Flight Free Zone until it has completed its safety review. If the FAA determines that any of the safety issues raised by Petitioners have merit, then it will take the necessary steps to resolve them before making any of the routes effective. The FAA also will provide adequate time for the needed training.

Dated: Issued in Washington, D.C. on November 14, 2000.

Jane F. Garvey,

Administrator, Federal Aviation Administration.

[FR Doc. 00–29621 Filed 11–16–00; 10:18 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 20, 2000

COMMERCE DEPARTMENT
Export Administration Bureau
- National security industrial base regulations:
  - Imported articles; effect on national security; paperwork reduction; published 10-19-00

ENVIRONMENTAL PROTECTION AGENCY
- Acquisition regulations:
  - Inspector General Office Hotline posters within contractor work areas; display requirements; published 9-21-00
- Air quality implementation plans; approval and promulgation; various States:
  - Alabama; published 9-20-00
  - Connecticut; published 10-19-00
  - Tennessee; published 9-20-00
  - Virginia; published 10-6-00

FEDERAL TRADE COMMISSION
- Federal claims collection:
  - Civil monetary penalties; inflation adjustment; published 10-13-00

GOVERNMENT ETHICS OFFICE
- Executive Branch regulations; technical amendments and corrections; published 11-20-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
- Food for human consumption:
  - Food labeling—
    - Regulations uniform compliance date; published 11-20-00

INTERIOR DEPARTMENT
Indian Affairs Bureau
- Human services:
  - Financial Assistance and Social Services Programs; published 10-20-00

INTERIOR DEPARTMENT
Minerals Management Service
- Royalty management:
  - Indian leases; gas valuation regulations; amendments; published 10-19-00

NUCLEAR REGULATORY COMMISSION
- Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
  - Approved spent fuel storage casks; list; published 10-19-00

TRANSPORTATION DEPARTMENT
Coast Guard
- Drawbridge operations:
  - Florida; published 11-15-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
- Airworthiness directives:
  - Eurocopter France; published 10-16-00
- Commercial space transportation:
  - Licensed reentry activities; financial responsibility requirements; published 9-19-00
  - Reusable launch vehicle and reentry licensing regulations; published 9-19-00

TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
- Motor carrier safety standards:
  - Transportation Equity Act for 21st Century; implementation—
    - Safety fitness procedures; published 8-22-00

TREASURY DEPARTMENT
Internal Revenue Service
- Income taxes:
  - Partnerships; amortization of intangibles; application of anti-churning rules; published 11-20-00

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AGRICULTURE DEPARTMENT
Agricultural Marketing Service
- Raisins produced from grapes grown in—
  - California; comments due by 11-27-00; published 9-27-00

COMMERCE DEPARTMENT
Export Administration Bureau
- Export administration regulations:
  - Foreign policy-based export controls; effects on exporters and general public; comments due by 11-30-00; published 11-6-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
- Fishery conservation and management:
  - Alaska; fisheries of Exclusive Economic Zone—
    - Bering Sea snow crab; overfished stock rebuilding; comments due by 11-28-00; published 9-29-00
  - Magnuson-Stevens Act provisions—
    - Domestic fisheries; exempted fishing permits; comments due by 11-28-00; published 11-13-00
- Marine mammals:
  - Incidental taking—
    - Harbor porpoise take reduction plan; comments due by 11-27-00; published 10-27-00
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    - Beluga whales; Cook Island, AK, stock; comments due by 11-27-00; published 10-4-00

COMMODITY FUTURES TRADING COMMISSION
- Commodity Exchange Act:
  - Futures commission merchants; daily computation of amount of customer funds required to be segregated; amendments; comments due by 11-30-00; published 10-31-00

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
- Consumer products; energy conservation program:
  - Electric distribution transformers; efficiency standards; comments due by 12-1-00; published 10-6-00

ENVIRONMENTAL PROTECTION AGENCY
- Air pollutants, hazardous; national emission standards:
  - Leather finishing operations; comments due by 12-1-00; published 10-2-00
- Air quality implementation plans; approval and promulgation; various States:
  - Connecticut; comments due by 11-27-00; published 10-27-00
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- Air quality planning purposes; designation of areas:
  - Washington; comments due by 12-1-00; published 11-16-00
- Hazardous waste program authorizations:
  - Arizona; comments due by 11-27-00; published 10-27-00
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- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
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- Toxic substances:
  - Polychlorinated biphenyls (PCBs)—
    - PCB waste return from U.S. territories outside U.S. Customs Territory; comments due by 12-1-00; published 11-1-00

FEDERAL COMMUNICATIONS COMMISSION
- Common carrier services:
  - Federal-State Joint Board on Universal Service—
    - Oncor Communications, Inc.; forbearance petition; comments due by 11-30-00; published 11-9-00
- Digital television stations; table of assignments:
  - Louisiana; comments due by 11-27-00; published 10-10-00
  - Nevada; comments due by 11-27-00; published 10-6-00
  - New York; comments due by 11-27-00; published 10-6-00
  - South Carolina; comments due by 11-27-00; published 10-6-00
- Radio stations; table of assignments:
  - Arizona; comments due by 12-1-00; published 10-31-00
  - Various States; comments due by 12-1-00; published 10-31-00

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- Federal Management Regulation:
  - Personal property—
    - Replacement pursuant to exchange/sale authority; comments due by 11-27-00; published 9-26-00

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- Medical devices:
  - Postmarket surveillance; comments due by 11-27-00; published 8-29-00

HEALTH AND HUMAN SERVICES DEPARTMENT
- Civil Rights Restoration Act:
  - Nondiscrimination on basis of race, color, national origin, handicap, sex, and age; conforming amendments; comments due by 11-27-00; published 10-26-00

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
- Equal employment opportunity; policies and procedures; update; comments due by 11-27-00; published 10-26-00
- Mortgage and loan insurance programs:
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    - Section 221(d)(2) mortgage insurance program; discontinuation; comments due by 11-27-00; published 9-28-00

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Fish and Wildlife Service
- Endangered and threatened species:
  - Nesogenes rotensis, etc. (three plants from Mariana Islands and Guam); comments due by 11-29-00; published 10-30-00
- Migratory bird hunting:
  - Tungsten-nickel-iron shot approval as nontoxic for waterfowl and coots hunting; comments due by 11-29-00; published 10-30-00

INTERIOR DEPARTMENT
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- Royalty management:
  - Small refiner administrative fee; comments due by 11-27-00; published 9-26-00

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Surface Mining Reclamation and Enforcement Office
- Permanent program and abandoned mine land reclamation plan submissions:
  - Missouri; comments due by 11-30-00; published 10-31-00

INTERIOR DEPARTMENT
National Indian Gaming Commission
- Indian Gaming Regulatory Act:
  - Environment and public health and safety; comments due by 11-30-00; published 7-24-00

POSTAL SERVICE
- Domestic Mail Manual and postage meters:
  - Postal security devices and information-based indicia; production, distribution, and use; comments due by 11-30-00; published 10-2-00
- Domestic Mail Manual:
  - Curbside Mailboxes Design Standards; revision; comments due by 12-1-00; published 11-1-00
  - Refunds and exchanges; comments due by 11-28-00; published 9-29-00
  - Sack preparation changes for periodicals nonletter-size mailing jobs that include automation flat rate and presorted rate mailings; comments due by 11-30-00; published 10-30-00

TRANSPORTATION DEPARTMENT
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- Outer Continental Shelf activities:
  - Regulations revisions; comments due by 11-30-00; published 6-30-00
- Ports and waterways safety:
  - Lower Mississippi River; Vessel Traffic Service establishment; comments due by 12-1-00; published 8-18-00

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  - Agusta S.p.A.; comments due by 12-1-00; published 10-2-00
  - Airbus; comments due by 11-30-00; published 10-31-00
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  - Honeywell International Inc.; comments due by 11-27-00; published 9-26-00
  - Israel Aircraft Industries, Ltd.; comments due by 11-29-00; published 10-30-00
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- Class E airspace; comments due by 11-29-00; published 9-29-00
- VOR Federal airways and jet routes; comments due by 11-27-00; published 10-11-00

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Alcohol, Tobacco and Firearms Bureau
- Alcohol, tobacco, and other excise taxes:
  - Commerce in firearms and ammunition—
    - Firearms; annual inventory; comments due by 11-27-00; published 8-28-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1235/P.L. 106–467
To authorize the Secretary of the Interior to enter into contracts with the Solano County Water Agency, California, to use Solano Project facilities for impounding, storage, and carriage of nonproject water for domestic, municipal, industrial, and other beneficial purposes. (Nov. 9, 2000; 114 Stat. 2026)

H.R. 2780/P.L. 106–468
Kristen's Act (Nov. 9, 2000; 114 Stat. 2027)

H.R. 2884/P.L. 106–469
Energy Act of 2000 (Nov. 9, 2000; 114 Stat. 2029)

H.R. 4312/P.L. 106–470
Upper Housatonic National Heritage Area Study Act of 2000 (Nov. 9, 2000; 114 Stat. 2055)

H.R. 4646/P.L. 106–471
To designate certain National Forest System lands within the boundaries of the State of Virginia as wilderness areas. (Nov. 9, 2000; 114 Stat. 2057)

H.R. 4788/P.L. 106–472
Grain Standards and Warehouse Improvement Act of 2000 (Nov. 9, 2000; 114 Stat. 2058)

H.R. 4794/P.L. 106–473
Washington-Rochambeau Revolutionary Route National Heritage Act of 2000 (Nov. 9, 2000; 114 Stat. 2083)

H.R. 4846/P.L. 106–474
National Recording Preservation Act of 2000 (Nov. 9, 2000; 114 Stat. 2085)

H.R. 4864/P.L. 106–475
Veterans Claims Assistance Act of 2000 (Nov. 9, 2000; 114 Stat. 2096)

H.R. 4868/P.L. 106–476
Tariff Suspension and Trade Act of 2000 (Nov. 9, 2000; 114 Stat. 2101)

H.R. 5110/P.L. 106–477
To designate the United States courthouse located at 3470 12th Street in Riverside, California, as the "George E. Brown, Jr. United States Courthouse". (Nov. 9, 2000; 114 Stat. 2182)

H.R. 5302/P.L. 106–478
To designate the United States courthouse located at 1010 Fifth Avenue in Seattle, Washington, as the "William Kenzo Nakamura United States Courthouse". (Nov. 9, 2000; 114 Stat. 2183)

H.R. 5331/P.L. 106–479
To authorize the Frederick Douglass Gardens, Inc., to establish a memorial and gardens on Department of the Interior lands in the District of Columbia or its environs in honor and commemoration of Frederick Douglass. (Nov. 9, 2000; 114 Stat. 2184)

H.R. 5388/P.L. 106–480
To designate a building proposed to be located within the boundaries of the Chincoteague National Wildlife Refuge, as the "Herbert H. Bateman Education and Administrative Center". (Nov. 9, 2000; 114 Stat. 2186)

H.R. 5410/P.L. 106–481
Library of Congress Fiscal Operations Improvement Act of 2000 (Nov. 9, 2000; 114 Stat. 2187)

H.R. 5478/P.L. 106–482
To authorize the Secretary of the Interior to acquire by donation suitable land to serve as the new location for the home of Alexander Hamilton, commonly known as the Hamilton Grange, and to authorize the relocation of the Hamilton Grange to the acquired land. (Nov. 9, 2000; 114 Stat. 2192)

H.J. Res. 102/P.L. 106–483
Recognizing that the Birmingham Pledge has made a significant contribution in fostering racial harmony and reconciliation in the United States and around the world, and for other purposes. (Nov. 9, 2000; 114 Stat. 2193)

S. 484/P.L. 106–484
Bring Them Home Alive Act of 2000 (Nov. 9, 2000; 114 Stat. 2195)

S. 610/P.L. 106–485
To direct the Secretary of the Interior to convey certain land under the jurisdiction of the Bureau of Land Management in Washakie County and Big Horn County, Wyoming, to the Westside Irrigation District, Wyoming, and for other purposes. (Nov. 9, 2000; 114 Stat. 2199)

S. 698/P.L. 106–486
To review the suitability and feasibility of recovering costs of high altitude rescues at Denali National Park and Preserve in the State of Alaska, and for other purposes. (Nov. 9, 2000; 114 Stat. 2201)

S. 710/P.L. 106–487
Vicksburg Campaign Trail Battlefields Preservation Act of 2000 (Nov. 9, 2000; 114 Stat. 2202)

S. 748/P.L. 106–488
To improve Native hiring and contracting by the Federal Government within the State of Alaska, and for other purposes. (Nov. 9, 2000; 114 Stat. 2205)

S. 893/P.L. 106–489
To amend title 46, United States Code, to provide equitable treatment with respect to State and local income taxes for certain individuals who perform duties on vessels. (Nov. 9, 2000; 114 Stat. 2207)

S. 1030/P.L. 106–490
To provide that the conveyance by the Bureau of Land Management of the surface estate to certain land in the State of Wyoming in exchange for certain private land will not result in the removal of the land from operation of the mining laws. (Nov. 9, 2000; 114 Stat. 2208)

S. 1367/P.L. 106–491
To amend the Act which established the Saint-Gaudens National Historic Site, in the State of New Hampshire, by modifying the boundary and for other purposes. (Nov. 9, 2000; 114 Stat. 2209)

S. 1438/P.L. 106–492
National Law Enforcement Museum Act (Nov. 9, 2000; 114 Stat. 2210)

S. 1778/P.L. 106–493
To provide for equal exchanges of land around the Cascade Reservoir. (Nov. 9, 2000; 114 Stat. 2213)

S. 1894/P.L. 106–494
To provide for the conveyance of certain land to Park County, Wyoming. (Nov. 9, 2000; 114 Stat. 2214)

S. 2069/P.L. 106–495
To permit the conveyance of certain land in Powell, Wyoming. (Nov. 9, 2000; 114 Stat. 2216)

S. 2425/P.L. 106–496
Bend Feed Canal Pipeline Project Act of 2000 (Nov. 9, 2000; 114 Stat. 2218)

S. 2872/P.L. 106–497
Indian Arts and Crafts Enforcement Act of 2000 (Nov. 9, 2000; 114 Stat. 2219)

S. 2882/P.L. 106–498
Klamath Basin Water Supply Enhancement Act of 2000 (Nov. 9, 2000; 114 Stat. 2221)

S. 2951/P.L. 106–499

To authorize the Secretary of the Interior to conduct a study to investigate opportunities to better manage the water resources in the Salmon Creek watershed of the Upper Columbia River. (Nov. 9, 2000; 114 Stat. 2223)

S. 2977/P.L. 106–500

To assist in establishment of an interpretive center and museum in the vicinity of the Diamond Valley Lake in southern California to ensure the protection and interpretation of the paleontology discoveries made at the lake and to develop a trail system for the lake for use by pedestrians and nonmotorized vehicles. (Nov. 9, 2000; 114 Stat. 2224)

Last List November 14, 2000

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869–042–00002–1)	22.00	[1] Jan. 1, 2000
4	(869–042–00003–0)	8.50	Jan. 1, 2000
5 Parts:			
1–699	(869–042–00004–8)	43.00	Jan. 1, 2000
700–1199	(869–042–00005–6)	31.00	Jan. 1, 2000
1200–End, 6 (6 Reserved)	(869–042–00006–4)	48.00	Jan. 1, 2000
7 Parts:			
1–26	(869–042–00007–2)	28.00	Jan. 1, 2000
27–52	(869–042–00008–1)	35.00	Jan. 1, 2000
53–209	(869–042–00009–9)	22.00	Jan. 1, 2000
210–299	(869–042–00010–2)	54.00	Jan. 1, 2000
300–399	(869–042–00011–1)	29.00	Jan. 1, 2000
400–699	(869–042–00012–9)	41.00	Jan. 1, 2000
700–899	(869–042–00013–7)	37.00	Jan. 1, 2000
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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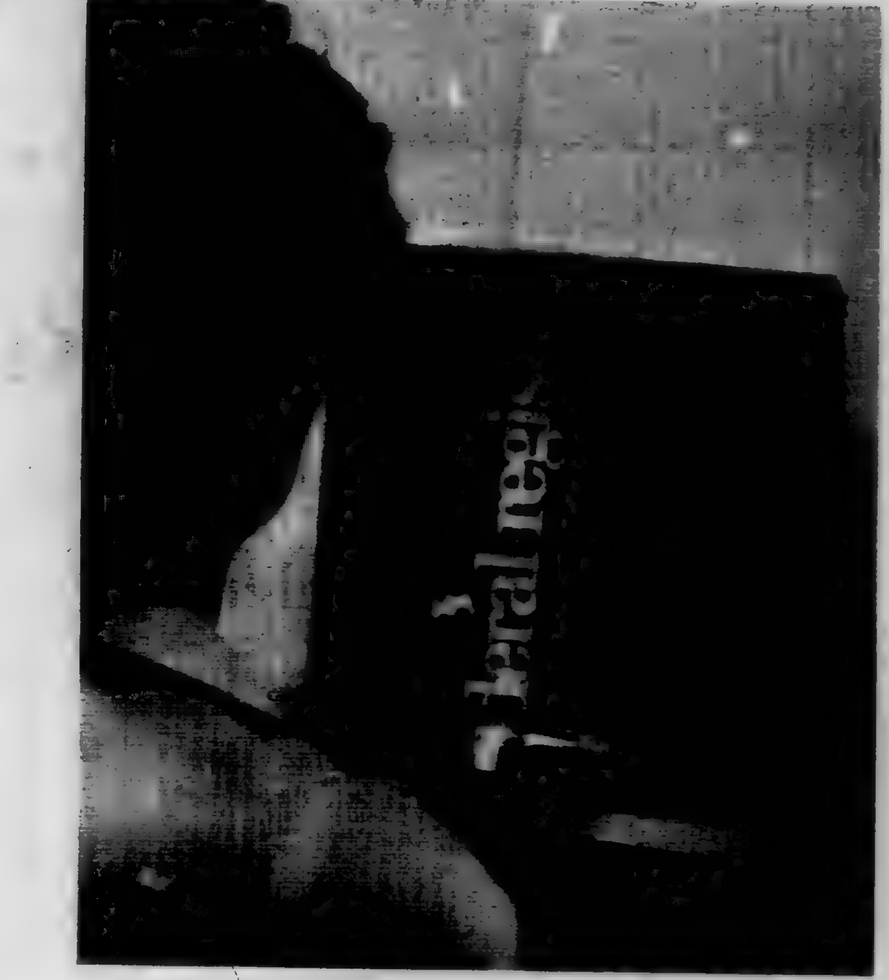

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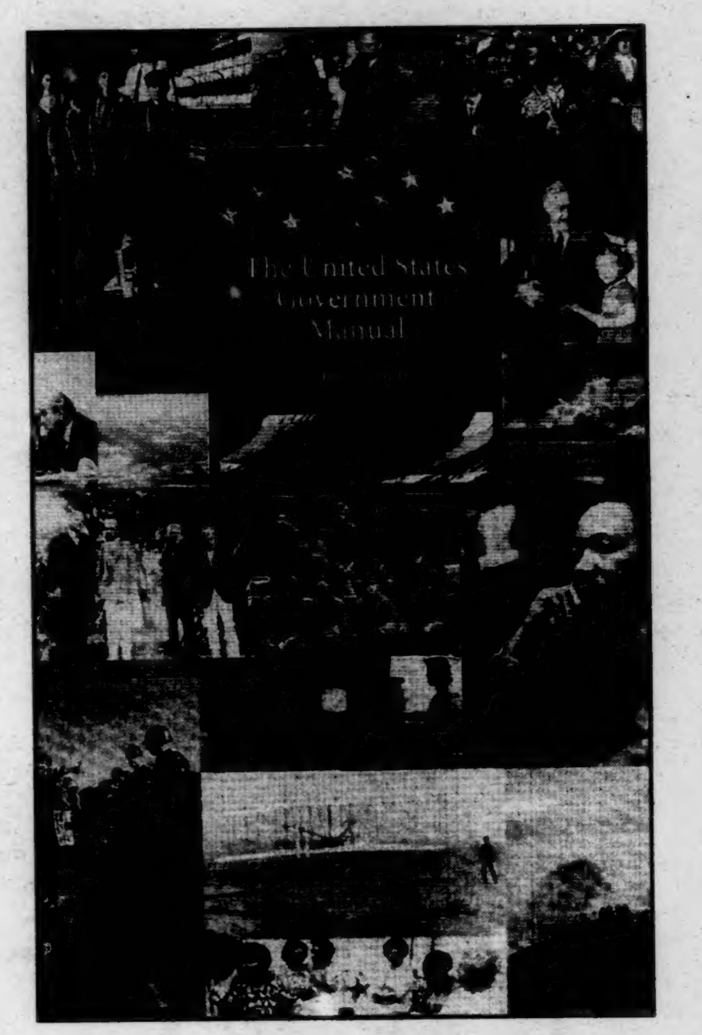

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